Bobby C. Jenkins #271240
Evans. CI Inst. (RhuB108)
610 Hwy 9 West
Bennettsville, SC 29512

June 23, 2016

The Honorable Daniel E Shearouse
Clerk of Court
South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

RE: Bobby C. Jenkins v State
Appellate case No. 2016-001251

Dear Honorable SIR:

In compliance with your with your Letter head Dated June 15, 2016 received and signed on June 17, 2016 from Evans CI Mailroom, to file the written Explanation Required by Rule #243(c). SCACR. The Appellant hereby files his Explanation into the S.C. Supreme court, and the same was served on the Honorable Caitlin B. Hasting, SC Attorney General office. Also Ask the court to except the 64 pages

Sincerely
Bobby Jenkins
Bobby Jenkins

cc

Bobby C. Jenkins #271240
Evans CORR Inst (RHUB 108)
610 Hwy 9 West
Bennettsville, SC 29512

June, 23, 2016

The Honorable Daniel E Shearouse
clerk of Court
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Bobby C. Jenkins v State
Appellate case NO# 2016-001251

Dear Honorable SIR:

I wrote the court previously explaining I was not in population but segregation and my legal Material was not in my possesion. I Just receive the Documents but could not obtain copies to send to the Attorney General of my Exhibits which the state already have. I Ask the courts to forward only copies of the Exhibits because its not my fault I could not obtain copies.

Bobby Jenkins

In The state of south carolina
In The supreme court
Appellate case No. # 2016-001251

Bobby c. Jenkins #271240
Appellant

v.

The state of south carolina
Appelle

Certificate
of
Service

Comes now Bobby c. Jenkins #271240, Appellant, and hereby certify that a copy of the written Explanation, pursuant to Rule #243(c). SCACR, was served upon the Appelle. the Honorable Caitlin Bazan Hastings, S.C. Ass. Attorney General, S.C. Attorney General's office, P.O. Box 11549. Columbia. S.C. 29211, VIA united stateds postal Mail, by depositing It in the U.S. Mailbox, hereat Evans, corr. Inst. 610 Hwy 9 west; Bennettsville, SC 29512

Bobby Jenkins
Bobby C. Jenkins
#271240

The Appellant's written Explanation pursuant to Rule #243(c), SCACR, and the certificate of service, Is hereby filed In compliance with:

(1) Houston v. Lack, 487 U.S. 266 (1988)
(2) Lomax v. Armontrout, 923 F.2d 574, 8th cir. cert. denied, 112 S.Ct 60 (1991)
(3) Sudduth v Arizona Atty Gen, 921 F.2d 206, (9th Cir. 1990)

This day _____ of _____, 2016;

AFFirmed to and subscribed to before me this _____ day of _____, 2016

_____
Notary public

_____
My commission Exp.

cc:

Bobby Jenkins

NO Notary the Day
Mailed out at work

In The State of South Carolina
In The Supreme Court
Appellate case NO# 2016-001251

Bobby C. Jenkins #271240,
Appellant,

V

The State of South Carolina
Appelle,

Notice of Appeal

"Explanation"

pursuant to Rule #243(c). SCACR

Comes now Bobby C. Jenkins, Appellant pursuant to Rule #243(c) SCACR and order by the Honorable Daniel E. Shearouse, Clerk of court. South Carolina Supreme Court to submit An Explanation as to why the circuit court's Ruling was Improper !!!

The Appellant Asserts the circuit court's Ruling was Improper and violates his fourteenth (14th) Amendment due process Rights and humbly Asks this Honorable Court to "Remand" his case back to the circuit court for An Evidentary hearing and shows the court the Following:

(1) The Appellant Asserts the final order: Issued by the Honorable William H. Seals, Jr. on may 3, 2016. Is not in Accord with the s.c. courts Ruling in Jamison v. state, 410 S.C. 456, 470, 765 S.E. 2d 123, 130 (2014) and Mccoy v state, ___ S.E. 2d ___. 2013 WL 441549 (February 6, 2013) !!!

In Mccoy v state, supra the court stated... when considering the states Motion for Summary dismissal, where no evidentiary hearing has been held the PCR Judge must Assume facts presented by by the Applicant are true and view those facts in the light most favorable to the Applicant. see eg. Leamon v state, 363 S.C. 432, 434, 611 S.E 2d 494, 495 (2005) citing s.c. code Ann § 17-27-80 Judge seals Jr. focuses on the issues he thought could be dismissed and not all issues that was clearly ignores an substantial constitutional Rights violations. Whereas the Applicant Asserted and presented Evidence (VIA Exhibits) that at the time he pleaded guilty. to

Kidnapping, CSC 1st and Armed Robbery on December 6, 2000. The Newly discovered Evidence was discovered after the entry of the plea and, in the exercise of reasonable dilgence, could not have been discovered prior to the entry of the plea, and (2) the Newly discovered evidence is of such weight and quality that, under the facts of circumstances of that particular case, the "interest of Justice" requires the applicant's guilty plea be vacated. Jamison v State 410 S.C. 456, 470, 765 S.E. 2d 123, 130 (2014) If my co-defendant went to trial AFter my conviction and sentence (see Exhibits) and his transcript was incorporated AFter the remanded PCR 2007 which was Denied 2008 When I received this transcript of co-defendant Eric Jenkins AFter my conviction and sentence as well as my post conviction hearing why wouldn't I be entitled to bring these issues forth Applicant has not failed to established that he could not have discovered this Alleged Evidence before

he entered his guilty plea, or in the exercise of reasonable diligence because it was discovered 2012 it was brought forth but Dismissed by the Honorable Benjamin H. Culbertson January 10, 2013. The through reasonable diligence those issues present in this successive PCR was within the one year statute of limitations for PCR Actions. There are als o Errors of Law and Due process violations that render vaction of conviction and sentence According to the united states Constitution and Southcarolina Constitution.

Carter v state, 362 S.E. 2d 20, 21 (S.C. 1987) Generally successive application's for post conviction relief are viewed with disfavor and the applicant has the burden of showing that a new ground for relief could not have been raised in a previous application. Foxworth v st., 275 S.C. 615, 274 S.E. 2d 415 (1981) Land v state, 274 S.C. 243, 262 S.E. 2d 735 (1980) If the Applicant meet this burden a hearing must be afforded despite the sucessive-

ness of the Application. case v state 277 S.C. 474, 289 S.E. 2d 413 (1982) South Carolina civil rules Merely requires that the pleadings give notice of the claim being made against the Adversary and of the grounds upon which it rests; rather than Allege in detail the specific facts upon which the claim is based. The purpose of notice pleading is simply to give fair notice to the opposing party of the legal claims, but the resolution of facts which sustain a pleading is left to discovery.

S.C. code Ann. § 17-27-45(B)(2003); see also Talley, 640 S.E. 2d at 882 (determining that the limitations period set forth in section 17-27-45(B) applied in Talley's post-conviction relief application because the application was filed within one year of Alabama v Shelton, 535 U.S. 654 (2002) which announced a watershed rule of criminal procedure that applies retroactively); see Franklin v Maynard, 588 S.E. 2d 604, 606 n. 7 (S.C. 2003) (citing S.C. code Ann. § 17-27-45(B)(A an Applicant is not barred from raising mental retardation in a second PCR Application).

South Carolina courts are required to follow the united states Supreme

court decisions on retroactivity. See e.g. Danforth v. Minnesota, 522 U.S. —, 128 S.Ct. 1029, 1035 (2008) Talley v. State 640 S.E. 2d 878, 880-81 (S.C. 2007)

Second, if a PCR Applicant has newly discovered evidence, she or he may benefit from a more lenient statute of limitations.

Specifically.

If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann § 17-27-45(C) (2003).

A Defendant has the procedural right to one fair bite at the Apple.

Did Defendant Jenkins get one Fair bite?

From the beginning to the end Defendant Jenkins rights was violated, by the courts and his Attorneys.

§17-27-20(a)(1) Deals with the state created right.
(1) the conviction or sentence was in violation of the constitution of the united states, the South carolina constitution. or South carolina state Law; (2) the court was without Jurisdiction to impose the sentence; (3) the sentence exceeds the maximum authorized by law; (4) there is evidence of Material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of Justice; (5) the sentence has expired; probation, parole or conditional release has been unlawfully revoked; or that the applicant is otherwise unlawfully held in custody or other restraint; and (6) the conviction or sentence is otherwise subject to collateral attack upon any ground of Alleged error previously Available under any common law, statutory, or other writ, motion, petition, proceeding or remedy.
If Applicant can show "sufficient reason" for why the ground was not Asserted or was not Asserted or Was inadequately raised in the original Application. § 17-27-90 The court has Strictly construed

the term "sufficient reason" holding that it means that the ground "could not have been raised" in previous Application. Odom v State, 253 S.E.2d 753, 755 (S.C. 1999) : Tilley v State, 511 S.E.2d 689, 691 (S.C. 1991)

some exceptions to the general bar against successive petitions. (1.) Court Allowed a successive PCR application where the applicant's first PCR application was dismissed without assistance of counsel and without hearing. Case v State, 289 S.E. 2d 413, 413-14 (S.C. 1982) (2.) Where the applicant's trial counsel served as his PCR counsel; Carter v State 362 S.E. 2d 20, 21 (S.C. 1987) where the applicant did not have direct review of a claim he brought in PCR due to "so many procedural irregularities. Washington v. State 478 S.E.2d 833, 835 (S.C. 1996) and where the applicant was denied his right to appeal the denial of his PCR application, Austin v State, 409 S.E.2d 395, 396 (S.C. 1991) (per curiam) The South Carolina supreme court has also suggested that a mentally incompetent PCR Applicant should, After regaining competency, be allowed to raise issues in a successive proceeding that could not have been raised earlier because of incompetency Council v Catoe 597 S.E.2d 782, 787 (S.C. 2004) The court has said that such claims must be "fact-based"

and that the Applicant's incompetency must prevent the Applicant from aiding his PCR counsel on that fact-based claim. Id. appeal. Aice, 409 S.E. 2d at 395

PCR Applicant requested and was denied an opportunity to seek appellate review from a PCR denial. or if the right to appeal was not knowingly and intelligently waived. an applicant can petition for certiorari to the South Carolina Supreme court for a new appeal. Id. odom v. State, 523 S.E. 2d 753, 756 (S.C. 1999) A successive Application may be permitted where the court's refusal to hear the claim would constitute a "gross Miscarriage of Justice" Aice, 409 S.E. 2d at 394 where government interference or the reasonable unavailability of the factual basis of the claim impeded counsel's ability to raise the claim. Mccleskey v Zant, 499 U.S. 467, 468 (1991) or where some other circumstance beyond the applicant's control occurred. Id. at 503

To obtain a new Trial based on After discovered evidence, the party Must show that the evidence (1) would probably change the result if a new Trial is had

(2) has been discovered since trial: (3) could not have been discovered before trial; (4) Is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching." McCoy v State, 401 S.C. 363, 368 n. 1, 737 S.E. 2d 623, 625 n. 1 (2013) (quoting Clark v State, 315 S.C. 385, 387-88, 434 S.E. 2d 266, 267 (1993)

Motion for a New Trial based on After Discovered Evidence encompasses claims predicated on the presentation of evidence that existed at the time of trial but of which the defendant was "excusably ignorant. State v Haulcomb, 195 S.E. 2d 601, 606 (S.C. 1973) New trial a motion should be considered when new evidence is discovered shortly after the trial has concluded or when new evidence is discovered after the completion of state PCR, see Simpson v Moore 672 S.E. 2d 701, 708 (S.C. 2006)

2a(b) shows that the evidence (1) would probably change the result if a new trial is had (2) has been discovered since the trial; (3) could not have been discovered before trial: (4) Is Material to the Issue of guilt or innocence; and (5) Is not merely cumulative or impeaching.

State v Taylor 508 S.E.2d 870, 879 (S.C. 1998), see also S.C.R. CRIM. P. 29(b) After discovered evidence affects the case, the evidence "must be material to any mitigating or aggravating circumstances," as opposed to the defendant's guilt or innocence, South, 427 S.E.2d at 670. petitioner bears the burden of proof and must satisfy each element for the court to grant the motion. see Hayden v State, 299 S.E.2d 854, 855 (S.C. 1983) The Motion must be filed before Trial court with Jurisdiction over the conviction. see S.C.R. CRIM. P. 29. There is no limitation son a Motion for new Trial based on after-discovered evidence. See State v. Spann 513 S.E.2d 98, 100 (S.C. 1999) (granting Motion for new Trial where new evidence was discovered 18 years later.) see also State v Hinson, 361 S.E.2d 120, 121-22 (S.C. 1987) Town of Hilton Head Island v Godwin 634 S.E.2d 59, 61-62 (S.C. Ct. App. 2006) State v DeAngelis, 182 S.E.2d 732, 735 (S.C. 1971) existence of such evidence at the time of the trial and that he used due diligence to discover such evidence, or that he could not have been discovered it by the exercise of due diligence.

McCray v State, 408 S.E. 2d 241, 241 (S.C. 1991) (reversing order denying Applicant relief and remanding for a new PCR hearing where PCR court's order failed to make specific findings of fact and conclusions of law sufficient for appellate review. McCullough v State 464 S.E. 2d 340, 341 (S.C. 1995) Pruitt v State, 423 S.E. 2d 127, 128 (S.C. 1992)

Did Trial court violated his Due process Rights when Applicant was Allowed to plead guilty without ordering a mental competency test

Final order only focus on the AFter discovered Evidence Issue and clearly ignores a susbstantial constitutional Rights violation. when considering a summary dismissal In McCoy v State, supra the court's states, where there is no evidentiary hearing has been held, the PCR Judge must assume facts presentend by the Applicant are true and view those facts in the Light most favorable to the Applicant. see e.g. Leamon v State, 363 S.C 432

434.611S.E.2d 494, 495 (2005) (Citing S.C. code Ann § 17-27-80) The Applicant Asserted and presented evidence (VIA Exhibits) that at the time he pled guilty, to Kidnapping, CSC 1st and Armed Robbery, on Dec 6, 2000. The Evidence of a Mental History, clearly supports the fact Applicant was Incapable of Assisting his Attorneys In his Defense, Nor understand the nature of the crimes he was charged with or pled guilty too. Also there were Mitigating Evidence, VIA mental Health History had his Attorneys properly and thoroughly Investigated Applicants case, Both the court and his Attorneys, would have Requested that he be giving a competency-TO stand -Trial Hearing.

Applicant Asserts the trial court violated his due process Rights under the fifth (5th) and fourteenth (14th) Amendments of the united states constitution. Evidence was Introduced during the Applicants plea, that he had been in a very serious Automobile accident and had suffered An Head

injury!!!
Applicant Asserts trial counsel subjected him to Ineffective Assistance of counsel, In violation of his sixth (6th) Amendment Rights under the united states constitution. When trial counsel failed to Ask for a continuance; or Ask the trial court for a mental competency To Stand Trial Test. After the Horry county solicitor, the Honorable Jimmy Richardson, Informed her about the Applicant's serious Automobile Accident.

The Applicant Asserts that on Dec. 6, 2000. when he plead guilty. In the Horry county court of General Sessions To the charges of Kidnapping, criminal sexual in the first (1st) Degree, and Armed Robbery. The Trial court violated his Due process Rights under both the fifth (5th) and fourteenth (14th) Amendments of the united states constitution. when it failed to order A mental competence to Stand Trial Evaluation Test. After the Honorable Jimmy Richardson (Horry county solicitor (had Informed trial counsel.

that the Applicant had been in a serious Automobile Accident, and trial counsel brought it to the trial court's Attention when he plead guilty, on December 6, 2000. Applicants sister, who is Also An Horry county Court official "(Mrs. Delores Jenkins-Dewitt, testified that he had suffered A "serious Head Injury" From that Automobile Accident, and he was never the same Afterwards.

In the case Pate v Robinson, 383 U.S. 375, 86 S.Ct 836 (1966) The United States Supreme Court Ruled — 1 "the failure to observe procedures adequate to protect a defendant's Right not to be tried or convicted while Incompetent to stand Trial deprives him of his due process Rights to a Fair trial. See Also (Drope v Missouri 420 U.S. 162, 95 S.Ct. 896; and Thomas v Cunningham, 313 F.2d 934 (C.A. 4th CIR. 1963) However, the Applicant's States both the trial court or his counsel, protected his due process Rights to a Fair guilty plea. Especially, ... After the state offered the Evidence In Regards to the Automobile Accident!!!

The Trial court, before it Accepted Applicant's guilty plea. should have ordered a continuance and requested a Mental competence to stand Trial Evaluation Test. Matthews v. State 596 S.E. 2d 49 (S.C. 2004) / State v Blair 273 S.E. 2d 536; and State v Blair 282 S.E. 2d 596. The Standard for determining whether a defendants mental condition At time of Offence Rendered him criminally Responsible, ...> Is the M'Naghten Test !!!

Inspite of compelling Evidence Introduced by two (2) competent and Reliable witnesses. who are court officials of Horry county. The trial court Ignored their testimonies, and credibility, on December 6, 2000, At Applicants guilty plea. Therefore, violating his due process Rights under the fifth (5th) and fourteenth (14) Amendment of the united states constitution. By Accepting his guilty plea. Without ordering a continuance or Requesting a Mental competence TO Stand Trial Evaluation Test. Also, the failure to do so. the trial court did not protect his due process Rights to a Fair guilty plea proceeding.

see Pate v Robinson, supra!!!

Applicant Asserts Trial counsel subjected him to Ineffective Assistance of counsel. In violation of his Sixth (6th) Amendment Rights under the united states constitution. When trial counsel failed to Ask the Trial Court for a continuance and ask for a mental competence to stand Trial Evaluation Test, before Allowing him to plead guilty. Especially After Receiving compelling and reliable Evidence that Applicant had been in a serious Automobile accident and suffered serious head injury. This evidence was given to trial counsel, by the state and a state official. The Honorable Jimmy Richardson, Horry county Solicitor and Mrs. Deloris Jenkins-Dewitt, who is an Horry county court official and the Applicant's sister!!!

Trial counsels Actions were both deficent and preJudicial and fell below professional norms, and therefore violated both prongs under Strickland v Washington 466 US 668, 104 S.Ct. 2052, 2064 (1984) Trial counsel's actions were "A classic Example of a complete

breakdown in the adversarial process. "As the Evidence that were given to Trial counsel, by two (2) Horry county court officials was credible and Favorable to the Applicant and the protection of his due process Rights of a fair trial.

Had trial counsel Asked for a continuance and Asked for a Mental competence to stand Trial Evaluation would have been to grant trial request because of the Information Regarding Applicants serious head Injury. In regarding Applicants serious head Injury. In the case Wiggins v Smith, 539 U.S. 510, 123 S.Ct 2527 (2003), the united states Supreme court ruled — counsel's failure to Investigate and present Mitigating Circumstances deprived defendant of effective assistance of counsel see Also Mcknight v state, 661 S.E.2d 354 (2008); Nance v Ozmint, 626 S.E.2d 878 (S.C. 200 and Cobbs v State, 408 S.E.2d 223 (S.C. 1991)

Trial counsel's Inaction and failures can not be deemed a trial court strategy. Because counsel's performance was deficient, very prejudicial to the Applicant, fell below, professional norms, and

caused him to suffer a Flagrant due process, Rights violations under the fifth (5th) and fourteenth (14th) Amendments of the united states constitution. The Applicant again. Cites the united states supreme court's Ruling in Pate v Robinson supra, ... the failure to observe procedures Adequate to protect a defendants Right not be tried or convicted while im competent to stand trial deprives him of his due process Rights to a Fair trial." Applicant's sixth (6th) Amendment Rights to Effective Assistance of counsel were violate and because of the due process Rights Ramifications in this Matter, an Evidentiary hearing Is called for. Because Applicant is under going Mental Health Treatment and has been throught out his whole Incarceration !!!,

Did the court erred and prejudice Defendants Rights by Allowing the Brady violation to be Dismissed.

The Newly Evidence or After Discovered was discovered Dealing With this Brady violation After the guilty plead, on Decemeber 6, 2000 In Essence Like McCoy

V. State — S.E. 2d — 2013 WL 441549

The Applicant for the sake of Brevity" ... submit the names of witnesses one who was A Alibi witness to the Alleged crime along with transcript pages In his co defendant trial State v Eric Jenkins, that shows Horry County police Department and Horry county solicitor's office destroyed Evidence that played a key part to the investigation into this Alleged crime in order to get a conviction. This Brady violation consist of a 9-1-1 tape and a police report that was withheld. The 9-1-1 Tape was Destroyed before any arrest by Myrtle Beach police Department ment of Horry county and the Solicitors office knew this, this shows the Horry county Solicitor's office knew and used perJured Testimony that compelled him to plead guilty. The Action of the solicitor, IS A Brady v Maryland violation because this Evidence was withheld from the Applicant and his Attorneys prior to him pleading guilty, on December 6, 2000. before the

Brevity... submitt names of witnesses one who was a Alibi witness to the Alleged crime along with transcript pages In his co defendant trial State v Eric Jenkins, that shows Horry county police Department and Horry county solicitors office destroyed Evidence that played a Key part to the investigation into this Alleged crime in order to get a conviction. This Brady Violation consists of a 9-1-1 tape and a police report that was Destroyed before any arrest by Myrtle Beach Police Department of Horry county and the solicitors office Knew this. This shows the Horry county solicitors office knew and used perJured Testimony that compelled him to plead guilty. The Action of the solicitor, Is a Brady v Maryland violation because this evidence was withheld from the Applicant and his Attorneys prior to him pleading guilty, on December 6, 2000 before the Honorable Sidney T. Floyd In the Horry County Court of General sessions.

According to the sollcitors and the victim I was the one calling the shots the first Assailant. I was the one who first sexually assaulted the victim. I was suspect number 1#. According to this statement the Judge looked at me in a whole different light. In my co-defendant transcript the Actual caller scott chaisson (see VIA Exhibits) Got in his car and started following this truck because it kept turning around in his yard and he got suspicous. In his testimony he came Door to Door with this vehicle the window was rolled down halfway he said he seen a male Driving the vehicle he was wearing glasses. He ask real sternly what are you doing the vehicle took off he immediately got on his car phone and called 9-1-1 there was no one else in the vehicle. He said he never lost sight of this vehicle because he had a fast vehicle. He was describing the person Driving the vehicle. He said he was on the car phone through the entirer time with the 9-1-1 operator. He continue to identified a male was driving the vehicle who was wearing

glasses. He said then on the next street he saw two males run from the pampas grass toward the vehicle and Jump in and afterwards or before there was gun firer. This tape was Destroyed According to the solicitor Investigative report (see VIA Exhibits) It was protocol to destroy a 9-1-1 tape After 60 days After such a violent crime happening and no on being arrested. Is this acceptiable behavior by Myrtle Beach police Department.

This why the Brady violation took place and the police report withheld of the Driver of the vehicle because in refute the probable cause hearing that took place. It shows mistaken identity. It shows the Misconduct of the solicitor to get a conviction and perJured testimony. It shows coercion of my guilty plea. It places me in the vehicle and not running back to the vehicle. It shows I was neither suspect number one or the number two suspect According to the solicitor and the victim.

(See VIA Exhibits) of what the State trooper took from Defendant When he arrested the following

day or less then 24 hours later in the same vehicle According to the tag number given by Scott Chaisson to the 9-1-1 operator and Myrtle Beach Police Detective Diviston. you will see in my Co-defendants transcript these testimonies and other Exhibits. This evidence was withheld by the Solicitor in violation of Brady v Maryland 473 U.S. 667 : 105 S. Ct 3375 : 87 L. Ed 2d 481 : (1985) There is a constitutional error because reasonable probability that, had the evidence been disclosed to the defense the result of the proceeding would have been different. 719 F. 2d 1462 reverse and remanded. There is no way possible I was suspect number one or two, "According to the victim testimony at trial; "Neil-n-Bigger hearing and police report. Suspect number one the Boss the one giving orders the oldest and tallest ejaculated in his hand because he got mad at suspect number two who she is certain did not ejaculate inside of her as well but got some semen on her leg. The victim said suspect number one got mad at suspect number

two he said wipe that off her leg and her private. I did it in my hand the police can test this stuff. (See Exhibits Police Reports of victim. She the victim also said she identified me when the solicitor and Myrtle Beach police Department Allowed a suggested identification hearing took place. They allowed myself and my co defendant to come into the courtin orange Jail suit the only two, while the victim stood behind a two way window and lied at the probable cause hearing that we was the suspects but testified something totally different at the Neil-n-Bigger hearing and at trial. She changed her statement that maybe I was suspect two not number one. (See co defendant Transcripton sandra Weaver on stand along with the Neil-n-Bigger transcript and the police reports. The police incident report suspect number two she said she never seen his face. It was mistaken identity and Newly discovered Evidence that contradicted victim state there was gross prosecutorial

Misconduct and perjury on part of the solicitor. The 9-1-1 tape and transcript of my co-defendant. see Exhibits 1 where my property sheet identify glasses that was taken off my persons and placed in my property. In order to establish due process violations arising from the states failure to preserve evidence a defendant must demonstrate (1) that the evidence state destroyed was in bad faith, or (2) that the evidence prossed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence other evidence of comparable value by other means. State v Cheeseboro, 346 S.C. 526, 538 552 S.E. 2d 300, 307 (2001) see also State v Jackson, 302 S.C. 313, 315, 396 S.E. 2d 101, 102 (1990) State v Ward WL 1173565 (S.C. App. 2011). These four 9-1-1 tapes the actual caller Scott Chaisson who gave the police a statement of the Driver of the truck who had on glasses and that he came door to door with this individual who had the window rolled half way down. He testified at my co-defendant trial he was

on the phone in his car throughout the whole time this incident accured. when the police arrived he was still on his car phone.
The solicitor version of the event at my guilty plea was myself and my co-defendant while sexually assaulting the victim threaten her and After they found out that the vehicle that scott chaisson was driving the actual caller was following this vehicle they stop the Assault laid on top of the victim to shield her, told her not to go to the police and they would be watching her. They then ran from the wooded Area. The victim said two Black male sand a Hispanic Male ran out the wooded area. The Actual caller said he seen only two males run from the pampas grass. (see Exhibits police report of Scott chaisson and transcript at co defendant trial. The solicitor said I was the first rapist the one calling the shots the Aggressor the Boss and once I finish we switch spots suspect number two finish the assault because the vehicle in which was circling around waiting

for them. They then ran from the Wooded Area threaten the victim not to go to the police myself and my co-defendant.

This Brady vs Maryland Material Would of given me a defense against the charges that I would of been going against because how could I be the driver and suspect number one who ran from the Wooded Area after the assault. It would of given my Attorney room to suppress the Evidence that was obtained from an atainted court procedure which obtain my D.N.A because it would of been proven that there was no probable cause because the victim testified and in her police statement never seen the driver of the vehicle nor did he participate in the Attack. It would impeach her testimony and the solicitor. It would of shown both committed perJury and illegal destroyed an withheld documents to get a conviction. It would of stop me from getting convicted of such and repulsive crime. The police report of the victim and the Neiln-Bigger hearing.

Also trial transcript. She states plainly suspect number one stated he came in his hand and not inside of her. My question to the court how did my D.N.A get inside of her. If I was not suspect 1# or suspect 2#. If I was the driver of the vehicle according to the actual caller and the victim said the Driver never assaulted her nor did she see his face. This shows all day that this evidence would of changed the guilty plea proceeding and Trial proceeding. The burden of proof would be on the state to prove every element of this crime to the Jury but they could not cause it would cast doubts into the solicitor version and the victim.

The victim after she found out my co defendant was taller and younger than me, and that I was the Actual Shortier and the older one. She changed her testimony at trial that maybe I was not suspect number one but suspect number two. This is a Misidentification all day long and her statement

contradicts her prior statement at the probable cause and my co defendant Neil-n-Bigger hearing.
There are several cases that back this up.
Neil v Bigger 409 U.S. 188: 93 S.Ct. 375 34 L.Ed 401: 1972 U.S.
U.S. v Bonner 648 F. 3d 209: 2011 U.S. App. California v Trombetta et AL 467 U.S. 479: 104 S.Ct. 2528: 81 LEd. 2d 413: 1984 U.S. Arizona v Youngblood 488 U.S. 51: 109 S.Ct. 333: 102 L.Ed 2d 281: 1988 U.S.
The solicitor Deceived the court and the public that I was this Monster When he let the real perpertrators still be at Large while I serve a (50) year sentence that was obtain by false and perJured testimony.
My Next important Question to the court IS can a Judge that conducted a probable cause hearing that seized D.N.A reside over Defendant PCR that was remanded for a full evidentiary hearing.
In several cases the Supreme court states that a Judge must not sit on a bench if the

Conducted any proceedthg dealing with a Defendant case. (See Exhibits) that Judge E Lockemy ruled on a probable cause hearing that seized D.N.A. from the Defendant and caused him to be convicted and sentence to (50) years. He also stated in his Denial of March 13, 2007 that my testimony was not credible and the victim testimony had remain the same through out the whole court proceedings. When [t had not. (See Exhibits) of Judge Lockemy Denial of my PCR the victim contradiction in court proceeding and police report that her statement changed. The Judge also stated that my prior Attorney Orrie West Didn't know about the identification procedure when she was my Attorney at the probable cause hearing. Tumey v State of Ohio. 273 U.S. 510, 532. 47 S.Ct 437 71 L.Ed. 749 (1927) Justice must satisfy the appearance of Justice Offutt v United states 348 U.S. 11, 14 75 S.Ct. 1199 L.Ed 11 (1954) The court of Appeals Sloviter, Circuit Judge held that. (1) Judge should have sua sponte

recused himself from considering
Petition challenging Trial over which
he presided as state court Judge,
and (2) court of Appeals would direct
district court Judges to recuse
themselves in similar circumstances
in Future, Vacated and remanded
Plain Error Standard
Harrison, 644 N.E. 2d at 1249 clear
abuse of Discretion undisputed
claim of preJudice when the
trial court expresses an opinion
on the Merits of the controversy
The court must Assume the truth
of the factual Assertions even if
know them to be false. Tezak F.3d
united states v Dalfonso plain error
seriously affects the fairness.
The relevant Federal statute
28 U.S.C § 455 (a) provides that
(a) ny Justice Judge or Magistrate
Judge of the united states shall
disqualify himself in any pro-
ceeding in which his impartiality
might reasonably be questioned
28 U.S.C. § 455 (a) The supreme
court has stated that the purpose
of this provision is to promote

public confidence in the integrity of Judicial process. Liljeberg v Health servs. Acquistion corp. 486 U.S. 847, 860, 108 S.Ct 2194, 100 L.Ed 2d 855 (1988) Clemmon v Wolfe 377 F.3d 322, 328 3d cir. 2003) To satisfy that requirement. An inmate must present both the operative facts and the legal principles that control each claim to the state Judiciary Wilson v Briley 243 F.3d 325, 327 (7th cir. 2001) surely preJudice or interest of a Judge may become apparent prior to trial and requre the removal of that Judicial officer in order to satisfy the requirements of Due process. Anderson v Sheppard. 856 F.2d 741, 745 (6th cir. 1988) Bias or preJudice on the part of a Judge may Exhibit itself prior to the trial by Acts of statements on his parts. Internal quotation marks and citations ommitted Judge Who appears to be tainted requirement that Justice must satisfy the apperance of Justice Its a Bed Rock prinrciple that a Judge should recuse himself. In re Asbestos Litig 977 F.2d

764-776-782 (3d Cir. 1992
No Judge shall hear or determine an appeal from the Decision of case he participate in. The Bed Rock Principle. (congress) A Judge should disclose on the record information that the Judge believes the parties or their lawyers might consider relevant to question of disqualification. Apply. unless disqualification was waived by parties after disclosure by Judge. Cannon 3 is Knowv by the Judge to have a more than de minimis interest that could be substantially effected by the proceeding.
Remittal of Disqualification a Judge disqualified by the terms of section 3 E may disclose on Record the basis of the Judges disqualification and may ask the parties and their lawyers to consider, out of the presence of Whether to waived disqualification. Cuyler v Sullivan 446 U.S. 355, 349-50 (1980
Judicial MIS conduct. not only Judicial Actions but also on Judicial conductor. Rules of professional conduct. Matter of White (S.C.

1988 (330 S.C. 505, 499 S.E. 2d 813
Rule 501 code of Judicial conduct
Rules Governing the Judiciary employees
of the Judicial Dept. and others Assist-
ing the Judicary Judge must recuse
himself and its not up to the Judge's
discretion to provide Applicant re-
quests it by Motion. Floyd v state
400 SE 2d 145, 146 (S.C. 1991) Id S.C.
Code Ann § 17-27-160 (A) (2003)
Applicant found this out later on
and brought this to the Attention
of both Appellate Attorneys
that this Judge was the one who
resided over a probable cause
hearing. This was never brought
to the Attention of the courts
so that the courts could over
turn the Judge who presided
over the Defendant hearing
so that it could be remanded
back for another hearing in the
lower court. It was my PCR Attorney
Duty to investigate this and both
Duties when Defendant brought
it to there Attention so that it
could be brought to the Higher
Courts attention. I have a right

to a PCR. This arguement alone should give me another PCR.
See Exhibits to Attorneys & Judge James E Lockemy.
Did my PCR Attorney Violate Defendants Rights by not Amending his issues he requested her to do. The Defendant ascerts if his counsel would of Assist him the Out come of all these proceedings would of been different.

Memorandum of Law

South carolina supreme court Rules 50 (5)(E and 71.1 D) make it mandatory, that Post conviction Attorneys make sure that all Available grounds are raised in post conviction proceedings after being given court appointed counsel A pro-se Litigant cannot thereafter file and further pleading and any Amendments to his Application must be made by counsel. State v Sanders 269 S.C. 215. 237 S.E 2d 53 (1977) Foster v State, 298 S.E. 306. 379 S.E. 2d 907 (1989) Thus if post conviction counsel does not Amend the pro-se Application

the Applicant has no way to have all supporting grounds heard. State v Carpenter, 277 S.C. 309 286 S.E. 2d 394 (1982) and State v Carpenter 277 S.C. 281, 350 S.E. 2d 180 (1986) prohibits South Carolina Litigants from raising claims of ineffective assistance of Trial counsel during their initial direct Appeals the post conviction proceedings must be viewed as the first Appeal as of right on that particular claim. The South Carolina Supreme Courts decision in Aice v State, S.C. 409 S.E. 2d 392 (1991) holding that there is no constitutional right to counsel in state post conviction proceeding is based on a Far stretched reading of the supreme court decision in Pennsylvania v Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed 539 (1987) The decision in Finley merely held that there is no constitutional right to counsel in state court discretionary Appeal after the Appellate stage has been exhausted Id. 107 S.Ct at (1993-94), because the claim of ineffective Assist-

section 17-27-90 for the general proposition. that successive applications are reviewed with disfavor and the Applicant has the burden of showing that a new ground for relief could not have been raised in a previous application. However Aice supra does not give Attention to court decision in case v state S.C. 494, 289 S.E 2d 413 (1982) which held that if the Applicant meet in the burden a hearing must be afford-ed despite the successiveness of the Application. The facts in case established that case had no Attorney in his first Applica-tion and that it was highly doubt-ful whether in point of fact that he could have raised the appro-priate Arguements Aice, supra Id. 409 S.E 2d at 394.

In a situation where a post conviction applicant is not Assisted by his post conviction Attorney in properly amending his first Application to include all supporting grounds

underlying a claim of ineffective assistance of trial counsel and does not know how to raise the and is barred from presenting pro-se pleading in light of State v Sanders, supra and Foster v State supra. he or she must be seen to be without counsel and in the same position as that of the Applicant in case v State, supra. The court under such circumstances should find that the second Application should be heard despite its successiveness because the first Application lack specificity unless it can find that the Applicant intentionally waived his or her right to have the grounds stated in the subsequent Application heard in the first.

If South Carolina litigants are entitled to appeal from denials of post conviction relief under Austin v State. S.C. 409 S.E 2d 395 (1991) if they can establish that they did not voluntarily waive their right to appeal, they should also be allowed to file subsequent

Application Alleging that all grounds supporting a claim of ineffective assistance of trial counsel were not presented in the first Application due to ineffective Assistance of post conviction counsel. Who in reality is ~~Not~~ post conviction counsel on such claim, but instead is Appellate Attorney in the first Appeal as of right on that particular claim. 479 SE 2d 805 David E Thompson Blanv-e 565 SE 2d 757

Did Attorney violate Defendant Due process on plea agreement?

The Applicant Attorney failed to disclose a 30 year plea agreement that the Solicitor offered on April 6 of 2000. Applicant was prejudice by his Attorney inadequate Representation and cause the Applicant to get a consecutive sentence of 50 years causing the Applicant to serve 20 more years in the Department of correction because of this unproffessional

error. Strickland v Washington Reason probability that my Attorneys would of presented this offer in time the Applicant would of excepted the concurrent sentence that was offered by the prosecution and it would not of been withdrawn. The sixth Amendment requires effective Assistance of counsel at critical stages of criminal proceeding stages of criminal proceeding stage of proceedings as AFFecting right. Edwards v Garrison 529 F.2d 1374 1975 (4th cir.

The sixth Amendment's protections against ineffective Assistance of counsel are not designed simply to protect the trial. even though counsel's absence in critical stages of a criminal proceeding may derogate from the accused rights to a fair trial. The constitutional guarantee of effective assistance of counsel Applies to pretrial critical stages that are part of the whole course of a criminal proceeding in which

defendants cannot be presumed to make critical decisions with out counsel's Advice. Defendant have a right to effective assistance of counsel on appeal, even though that cannot in any way be character- ized as part of trial event though sentencing does not con- cern the defendants guilt or innocence, ineffective assist- ance of counsel during a sentenc- ing hearing can result in preJudice prong of the strickland test for ineffective Assistance of counsel because any amount of additional Jail time has sixth Amendment significance even if the trial it self is free from constitut- ional Flaw the defendant, who based on counsel, goes to trial instead of taking a more favor- able plea may be preJudiced, as element of ineffective assistance of counsel, from either a conviction on more serious counts of the impostion of a more serious counts of the impostion of more severe sentence. Applicant was offered a concurrent

sentence of 30 years from the solicitor office. The Applicant Attorney s withheld this plea and went in Front of Judge Floyd on a open plea because they felt they could get a better deal because Judge Floyd had been an administrative Judge there for years. Judge Flody warn them that he did not like the fact that Applicant was coming before him on a open plea. My Attorney s did not take the Warning and proceeded without Applicant signing a plea agreement an as a result Applicant received a consecutive sentence of 50 years. The court should conduct an evidentiary hearing to determine whether the defendant has shown reasonable probability that but for counsels errors she would have accepted the plea, and if the showing is made, the court may exercise discretion in determining whether the defendant should receive the term of imprisonment the government offered in

the plea. the sentence he received at trial, or something in between. Halbert v Michigan 545 U.S. 605, 125 S.Ct. 2582, 162 L.Ed.2d 552 and the right to counsel during sentencing. see Glover v united states, 531 U.S. 198, 203-204, 121 S.Ct 696, 148 L.Ed 2d 604. Lockhart V Fretwell, 506 U.S. 364 113 S.Ct. 838, 122 L.Ed. 2d 180 Modified strickland does so again here Fretwell and Nix v whitside 475 U.S. 157, 106 S.Ct 988, 89 L.Ed 2d 123 Williams v Taylor, 529 U.S. 362, 391 392, 120 S.Ct. 1495, 146 L.Ed 2d 389 Missouri v Frye 132 S.Ct. 1399, 182 L.Ed. 2d 379, 80 USLW 4253. In Missouri v Frye Counsel Failure to inForm Frye of the written plea offer before it expired fell below an objective reasonableness standard. vacated and remanded 311 S.W. 3d 350

My Attorney James Gahmore also violated my sixth Amendment in Strickland v Washington supra and because of his unprofessional error and inadequate representation he prejudice

Applicant. Reason probability is sufficent to undermine the outcome. James Galmore did not represent me at my plea hearing he was the lead Attorney According to him and Attorney orrie west. He admitted that he did not speak at my plea bargain. He admitted he should have but did not. The Judge ask if he have Anything to say he said no. Attorney James Galmore also admit that he did think he had a chance at trial the evidence supposively was over Whelming According to my Attorney. He admitts he did not investigate the facts surrounding my case. He admitted that the solicitor office Bonded the victim out of Jail, He also told me that if I took it to trial that the courts Would'nt believe me because the victim was white and I was black. I filed a civil suit on Attorney James Galmore Which was dimissed. 45

because of how it was filed. I see now why I really was not represented because of this civil suit toward him which was a conflict of interest. Jordal iv State, 406 S.C. 443, 752 S.E. 2d 538 (2013) conflict of interest. Reversed Remanded for a new Trial. Outten v Kearney, 464 F. 3d 401, 422 3rd cir. failure to investigate counsel has a duty to make reasonable decision that makes particular investigation necessary Strickland 446 U.S. at 691 one component of that Duty is to investigation of a Alibi Witness Identified by a Defendant.

Did the solictor committ Prosecutorial Misconduct?

When ineffective ~~Assistance~~ of counsel is Alleged as a ground for relief in a PCR Action. the Applicant must prove that counsels conduct so under mined the proper function of the Adversarial process that the trial cannot be

relied upon as having produced a
Just result. Strickland v Washington
466 U.S. 668, 104 S.Ct 2052, 2064, 80
L.Ed 2d 674, 692 (1984) Butler v State
286 S.E. 441, 334 S.E. 2nd 813 (1985)
The courts use a two pronged
test in evaluating Allegations
of ineffective assistance of
counsel.
First the Applicant must prove
that counsel's performance
was deficient under this prong
Attorney performance is measured
by its "reasonableness" under
professional norms Cherry v State
300 S.C. 115, 118-118, 386 S.E. 2d 624
625 (1989)
Second counsel deficient per
formance must have prejudice
the Applicant such that "there is"
a reasonable probability that
but for counsels unprofessional
errors the result of the pro-
bability that but for counsel's
unprofessional errors the result
of the proceeding would have been

different. cherry v state 300. In inter-
preting the prejudice prong our state
supreme court in state v quattlebaum
338 S.C. 441, 527 S.E. 2d 105 (S.C. 2000) held
consistent with existing Federal pre-
cedent, that a defendant must show
either deliberate prosecutorial Mis-
conduct or prejudice to make out a
violation of Sixth Amendment but not
bot. Id. 527 S.E. 2nd at 109. The court
determined that Deliberate prosec-
utorial Misconduct raised a Rebutt-
able presumption of prejudiced. Id
527 SE 2nd 109. moreover claim alleging
that trial counsel was ineffective
for failing to object to trial court
errors are cognizable in PCR Pro-
ceedings. This includes failure to
object to Indmissible evidence.
Dawkins v state, 346 S.C. 151 S.E.
2nd 260 say. LFailure to object to
hear say. Improper arguments by
the prosecution. Matthews v state
200 WL. 1887491 S.C. Ct. decided
June 17th 2002: Erroneous Jury
instructions. plyer v state, 309
S.C. 408. 424 S.E. 2nd 477 (1982)

Counsel deficient for failing to object to improper charge on malice. which improperly shifted burden of proof from the state to the defendant: or any other matter that could other wise be reviewed to direct appeal if not for counsels failure to properly preserve the issue. Accordingly was ineffective for failing to object to an indictment obtained through acts of perJury. Fraud and conspiracy as well as gross prosecutorial Mis-conduct. can be raised in a PCR pro-ceeding pursuant to the Strickland standards of review.

perJury and Gross prosecutorial Misconduct: Did the prosecutorial Misconduct?

Here, Applicant argues that trial counsel provided ineffective assist-ance by allowing Applicant to plea to avoid indictment convicted and sentence as well as charged under indictments obtained through willful acts of perJury, Fraud and conspiracy as well as pro-secutorial Misconduct. 49

Therefore Applicant would show the supreme court the following. Applicant True Billed indictments indicate that they were returned by a court of General sessions on April 6, 2000. These indictments were prepared and processed by Chief solicitor Greggory Hembree was the state Judicial official assigned the responsibility of processing these indictments. The grand Jurors presented upon their oath that these indictments were returned on the dates indicated However, the evidence can conclusively be established that April 6th, 2000 are in Fact False. By examining the indictments orders and corresponding certified true copies of the Judicial Department Court term calendar for the indicated Month and year, this calendar indicate that there was no court of General sessions on the date that the indictment indicate (see Exhibits) [redacted] Thus False information is contained in the state indictment prepaid and processed by chief

Solicitor Greggory Hembree.
South carolina law is very specific
concerning matters of false in Fo.
in a state document. It is an
offense against Public Justice
to willfully give false, misleading
or &A comple le in Formation in a state
document. S.C. code Anne 16-9-10
per Jury and subordination of per Jury
states in pertient part:
(A)(2) It is unlawful for a person
to willfully give false, Misleading
or incomplete in Formation on a
document, record for mor report
required by the law of this state.
B (2) A person who violates the provisions
of subsections is guilty of mis-
demeanor and must be imprisoned
not more than 6 months or fined
not less the one hundred.
(C) A person may be convicted under
this section-- If he commits
per Jury by his own Act, consent
or agreement.
The issue here contends that
the court of General sessions
failed to comply with Statutory
law Jurisdictional in nature
Specifying the manner and means

for lawful return of true billed indictments.
The Jurisdiction of a court over the subject matter of a proceeding is determined by the constitution the law of the state. and is fundamenta. State v Heyward, 564, SE 2d 379 (S.C. App. 2002) citing Anderson v Anderson 299 SC 110, 115, 382 SE 2d 897, 900 (1989) Emphasis added Subject matter Jurisdiction not waived even with consent of parties and may be raised at anytime Brown v State, 343 SC 342, 540 SE 2d 846 (2001) and no indictment may be true billed by grand Jury when circuit courts lacks Jurisdiction is co extensive with criminal Jurisdiction of the court in which it is impaneled and for which it is to make inquiry --- State v McClure 277 SC 432, 289 SE 2d 158 (SC 1982) and State v Funderburk 259 SC 256, 191 SE 2d 520 (1972 State v Wheeler 259 SC 571, 193 SE 2d 515 (1972)
The primary Question before this court are whether SC code ann § 14-9-210 is Jurisdiction in nature

and whether it's requires that all criminal indictments must be issued through a grand Jury impaneled before the court of General Sessions, and wheters State non-compliance with mandatory indictment proceeding or procedures and willful acts of per Jury have rendered all Judicial proceedings invalid and its indictments Null.

Its a cardinal rule of statutory construction that primary purpose in interpreting statutes is to ascertain the intent of the Legislature Hodges v Rainey 341 S.C. 79, 85, 533 S.E 2d 578, 581 2000. State v Martin 293 SC 46, 358 SE 2d (1987) there is no room for statutory construction and a court must apply to the statute according to its literal meaning Carolina Power & Light Co v. City of Bennettsville 314 SC 137, 139, 448 SE 2d 177, 179 (1994) Moreover penal statutes must be construed strictly against the state and in favor of defendant. State v Blackmon 304 SC 270 403 S.E 2d 660 (SC 1991)

Accordingly Section 14-9-210. requires strict compliance with

its provisions, and mandates that the grand Jury must be impaneled under the Jurisdiction of the court of General sessions before lawful return of a true billed indictment can take place. When legislative enactment limits the manner in which something may be done the enactment also evinces the intent that it shall not be done no other way.
Failure to comply at the time Defendant was indicted dealing with the statutory law Jurisdictional nature deprives the court of subject matter Jurisdiction. State v Lee 564 SE 2d 372 (SC APP 2002) Gray v State, 276 SC 634 281 SE 2d 226 (SC 1981) and many more And Acts of the court take outside those Statutory restrictions would be necessity be null and void. Before this was changed. In fact our Supreme court has held or determined that no indictment may be true billed by a grand Jury when the court lacks Jurisdiction. The grand Jury must be impaneled under the Jurisdiction of the court of General sessions before lawful return of indictments.

No local rule of court Administrative order, policy, or other procedure can take precedent over statutory law. Which is always controlling. see SC Constitution Article § 1, 4 and State v Cottingham 775 E 2d 897, 224 SC 181 (SC 1980) circuit rule promulgated by individual circuit was unconstitutional. Additionally at the time of my indictment the court of common pleas is vested with NO Authority to take any action no matters pertaining to return of true bill criminal Indictments. Dove v Goldkist Inc. 314 SC 235, 442 SE 2d 598, 600 (SC 1994) see also SC Constitution Art. V § I

When I was indicted there was no grant of concurrent Jurisdiction and therefore for no true bill criminal indictment could be lawfully issued through the court of common pleas, under our Judicial system the presiding Judge in the circuit court loses Jurisdiction with the Adjournment of the term see State v Best 257 SC 361, 186 SE 2d 272 (1972) citing State v Thompson 122 SC 407. 115 SE 326. Also see

State v Rinheart 430 SE 2d 536 (SC APP. 1993)

Thus, No term of court, No lawful Judicial Authority. Accordingly and in this case No court rules order or other procedure can be invoked or cited by state to save its unlawful grand Jury and Jury process, and resulting in Null indictment. Therefore execute Justice and Righteousness. Also brought before the court for Judgment are a violations of SC code Ann §16-9-10. Offense against public Justice and SC Ann§16-17-410. But we know that the law is good if one use it lawfully.

It must be emphasized for purposes of blame that all Solicitor/he holds full knowledge and understanding of the law of this State. It's a requirement of the High office of Prosecutor.

The prosecutor occupies a quasi-Judicial position and must see that Justice is done. 00-GS-26-849 is a Null and void indictment

with no binding affect.
The primary purpose of an indictment are to put the defendant on notice what he is called upon to answer to, apprise him of the elements to plead guilty or stand trial and to enable the circuit court to know what Judgment to pronounce if the defendant is convicted see Evans v State 363 SC 495, 508-13, 611 SE 2d 510, 517-19 (SC 2005) citing Gentry, 363 at 102-03 610 SE 2d at 500)
This required Notice is a component of the Due process that is accorded every component of the Due process that is accorded every criminal defendants. see u.s constitution Amendment V SC constitution Article I § 3 additionally a criminal defendant has a constitutional and statutory right to have the indictment issued by legally constituted grand Jury see eg. State v means OP No. 26105 SC Supreme Court filed February 6 (2006) See Evans v State 363 SC 495 611 SE 2d 510 (2005) State v Williams

263 SC 290, 210 SE 2d 298 (1974) 9150
See SC constitution Article I § 11
and Article V § 22 SC code Anne
14-9-210
In this case however, petitioner
takes the position that a challenge
to either the illegal grand jury
process or null indictment would
be immaterial, because no valid
Waiver can be entered absolving
the state of its criminal conduct
and Null indictments of no legal
effect and therefore no binding
under law! Petitioners Null Indict
ment is by its very nature in-
sufficient to support a convict-
ion or sentence and protect
against double jeopardy. It is
a axiomatic rule of law that an
indictment deemed to be a Nullity
is something that is legally void" and
of No legal effect. citing Blacks
law Dictionary, 8th E 2004 Nullity
and Void see eg. Hardison v Glendhill
72 GA App. 432, 335 SE 2d 921, 924 (void
Null, ineffectual, Negatory, unable
in law to support the purpose for

which it was intended, and most certainly, a conviction and sentence based on the Fruits, of criminal Acts cannot be allowed to stand under any circumstances.
The facts and evidence in this case very clearly show that the state committed perJury, criminal conspiracy and Fraud in order to secure it conviction against petitioner surely the Evans ruling does not stand for the purposition that because state was not caught for its criminal acts in a timely manner it is granted Absolution.
For the reasons state petitioner Asserts that an obJection to states illegal grand Jury and Null indictment would be pointless. However, for the sake of Arguement petitioner would show this court that. In Murray V Carrier 106 S. Ct. 2639 2645 (1986) the united states Supreme court held that the existence of cause for procedural default [for failure to comply with has states contemporaneous obJection rule] must ordinarily turn on whether the Prisoner

can show that some objective fact or external to the defense impeded counsels errors to comply with the state procedural rule. The court stated without Attempting an exhausive catalog of such objective impediments to compliance with a procedural rule we note that a showing that the factual or legal basis for a claim was not reasonably available to counsel. See Reed v Ross. 468 u s at 16. 104 S. Ct. at 2910 or that some interference by officials "Brown v Allen 344 u s 443. 486. 73 s. Ct. 397, 97 L. Ed 469 (1953) Made compraticable would constitute cause under this Standard Id 106 u s at 2645 S C code Ann § 17-25-10. petitioner would show is this court that as a result of criminal violations committed by state in this case the lower trial court was divested to the requiste Authority to impose Sentencing section 17-25-10 provides that.

No persons shall be punished for an offense unless duly and legally

convicted thereof, in court having competent Jurisdiction of the cause and of the person.

South carolina law holds that Words of a statute must be given their plain and ordinary meaning see State v Muldrow, 348 SC 264, 559 SE 2d 847 (2003) and statutory prescription couched in language such as "shall" "an" "Must" are Mandatory in Application and effect. see e.g. South carolina Police officers Ret. Sys v city of spartanburg, 301 SC 188, 191, 391 SE 2d 239, 241 (1990) Starnes v south carolina Dept of public Safety, 342 SC 216, 221, 535 SE 455, 467 (Ct. App. 2000) A plain reading of section 17-25-10 requires that a criminal defendant cannot be punished [sentence] For an offense until after the state has duly and legally convicted the individual That did not happen in this case.

Accordingly, it would be hard to imagine a situation where the State of South carolina

has violated more of criminal defendants
rights than in the case found here.
Indeed it would allow the state
to maintain a conviction and sentence
under the circumstances described
to adopt such rule of law here would
be tantamout to an unrighteous,
and pervered Judgment.
Petitioner has established that
he was not duly and legally convicted
and therefore was sentenced in this
case should be vacated.
Judicial Integrity will have been
lost if the state is not constrained
by its own statutory and criminal
laws. Basic united states constitu-
tional Due process law dictates
with Authority. the under no
Circumstances can a state commit
criminal Acts against its citizens
in the name of Judicial Economy
The state prosecution knowingly
Violated u.s.c.s section 1623 False
Declaration Before The Grand Jury
1038 False InFo and Hoaxes
1505 obstruction of proceeding
Before Departments agencies

and committes. 1621 Per Jury and 2071 Concealment, removal or mutilation (A) and (B) Thus said Misconduct by the state so AFFected The proceedings with unFairness. That it has poisoned the entire Legal process. Futhermore in Bergen v u s 55 S.Ct 629 and united states supreme Court in MarBury V Madison it states if the Solicitor knew before hand that the indictments was Fraudulent. This constitutes Prosecutorial Misconduct Horrendous Enought to Bar Reprosecution State v Anderson 439 S.E 2d 835 S.C. 1983

See Appellate court Rules Rule 407 Rules of professional conduct Rule 3.8 comment. Also see Quattlebaum

Rule 8.4. (b) It is professional Misconduct for a lawyer to engage in dishonesty, Fraud, deceit or Misrepresentation

Rule 8.4 (e) It is professional Misconduct for a lawyer to engage in Conduct that is prejudicial to Defendant

"Conclusion"

The Applicant Asserts that his PCR Application at bar consist of factual Allegations, that were In Adequately Raised In The original Application. Therefore, unders.c. code Ann sec. 17-27-90 -- AFFords him opportunity to be heard In the PCR court. Because Applicant's due process Rights to a Fair Trial were grossly violated.

Applicant has been denied Effective Assistance of Trial counsel. in Violation of Strickland v Washington 466 U.S. 668, 104 S.Ct 2052. He not trying to bring Martinez v Ryan to the state Level but showing how the Federal courts, Rule that PCR counsel was in violation 132 S.Ct. 1309 (2012) and been denied Effective Assistance of Appellate counsel. In Regards to any and all Appeals. In Violation of Evitts v Lucey 469 U.S. 387, 394, 105 S.Ct 830 (1985) Defendant never receive a Fair bite of the Apple but only Fruits of the poisoness Tree

Date: 6-23-16

Bobby Jenkins

Bobby Jenkins #271240
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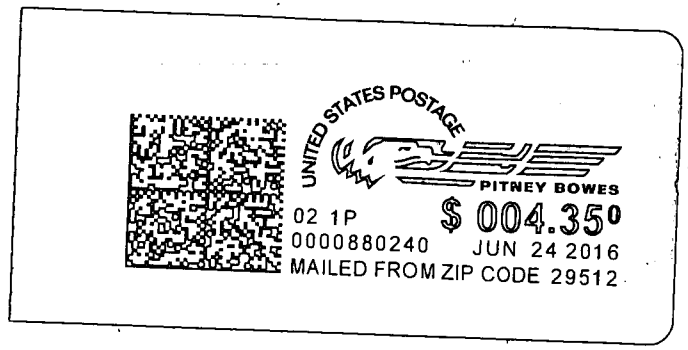

The Honorable Daniel E Shearouse
Clerk of court
South carolina Supreme court
P.O. Box 11330
Columbia, SC 29211

1st

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