State of South Carolina
Supreme Court
1231 Gervais st,
Columbia, S.C 29201

October 15, 2016

RE: To grant inmate's Johnson Briet due to "rare and unusal circumstances. In the Intrest of Justice

To the Honorable Judges,

The petitioner, Vincent Rice prays that the court accept his Johnson briet included with this letter. First of all Petitioner is a laymen of the law and is a novice in such procedures. Secondly, and most importantly, after confiding with Appeallate counsel, both partics decided it was best for Petitioner to pursue his appeal, being that his release from prison was imminent.

Petitioner, was scheduled to be released from SCDC on Sept 1, 2016, however Petitioner was informed that he would remain in custody on Aug 31, 2016, because SCDC decided 2 days before his release that he is "a violent, no-parole offender." And thus Petitioner's immediate attention was foucused on this deprivation of freedom unjustly. This incident is also relevant to Petitioner's appeal. Therefore, Petitioner Prays this court will accept the included issues in the Intrest of Justice. Please, Petitioner, is consistently a victim of the overarching power of the State. Petitioner has been held illegally since Sept 1, 2016

South Carolina Supreme Court

Vincent Rice
Petitioner
vs.
State of S.C
Respondant

Johnson
Brief

AP-2015-002479

Support of Appellate counsel raised issue

The PCR court denied Petitioners, appeall because they found that ~~or~~ Mathis Chaplin testimony was more credible than that of the petitioner. It should be noted that petitioner consistently stated that he did not understand the elements and nature of the charges, neither did the counsel go over the analysis with him, along with the elements

In the hearing Petitioner repeatedly stated counsel tried to persuade him to plea based upon his prior record, App. 75. 9-17. also at App 80. 1-3. In short the nature of petitioners testimony of the ineffectiveness of counsel was that he was trying to rush him into a plea, just to get it over with; and neglected explaing the law, elements and analysis, penalities and other factors. Mr. Chaplin's testimony during the PCR hearing reflected that Petitioners statements were ~~more~~ most likely credible. In the cross examination with Mr. Chaplin, he could not make a "definite statement as to if he discussed the documents entered into exhibit.

In App. 130. 1-7, Mr. Chaplin's statements reflect that he was looking at the "big picture" which supports that he was unwilling to go over evidence, and elements with the defendant, as to him being guilty of the greater offenses, he wanted it to just be "resolved."

As further evidence to his ineffectiveness, Mr. Chaplin stated on record that he made an error due to substance discrepancy (App. 124. 14-21). He stated that he couldn't remember talking about a "marijuana charge" that was never submitted into evidence (note: Pettioner face 50 yrs on this charged) (App. 129. 1-25)

Counsel states that he and the solictor never discussed the weights of the substance (App. 130, 131. 1-6) which makes petitioner statement credible that he and counsel never discussed this. Mr. Chaplin also stated in court that .5 of crack would not stick as a P.W.I.D (App. 127. 3-16). He stated it was an "oversight." Mr. Chaplin also unaware that his client was "oversentenced" for the controlled substance charges. In conslusion, his testimony reflected he was not familar with the abundant migiating factors of this case proving him to be deficent. He stated he did not want to take on the offenses "individually", which would have reduced time in the first place. Petitioner, has included supporting evidence of his issues, see following page)

# SECTION A- DEFICIENT PERFORMANCE

## FIRST PRONG

### Subsection I. Counsel's failure to investigate facts & circumstances

**Reference**

In relation to the U.S Cons 6th Amend, the criminal attorney's first task is to become aquainted with the facts of the case. Counsel should understand the law of the offense, the elements of the offense charged, the provabilty of each element and the lesser included within the offense charged

Lounds v. state 670 SE.2d 644 - "criminal attorneys have the duty to conduct a reasonable investigation to discover all reasonably availible evidence to rebut any aggravating evidence by the state.

**Summary**

Mr. chaplin's peformance fell below the professional norm, being that he failed his first task to investigate the facts and become aquainted with circumstances in the case. Counsel proved to be very uninterested in factual details and favorable circumstances from the very beginning. He did not thouroughly question Applicant of details prior to the incident. He failed to discover the existing lesser included offenses of possession. Had he investigated the facts he would have discovered Applicant was subjected to life without parole convictions, therefore he would have been more prepared to raise every legitimate challenge. He failed to research the provisions of the 44-57-770 statute regarding, credit eligibilty, parole, non-violent and 85%. He did not know why five of Applicants charges were initally dismissed in the pre-lim. He was unaware that several chemical analysis were missing from the discovery evidence. Had he throughly examined the analysis he would have discovered critical discrepancies in the chemical compounds and weight amounts. Had counsel investigated the evidence, he would have discovered an evident break in the chain of custody. If Counsel had investigated the totatily of the facts and circumstances he would have discovered his client was innocent of the greater offenses, and that a majority of offenses could have been dismissed or suppressed before the event of trial.

**Reference**

Kolle v. State 690 SE.2d 73 - "There is evidence plea counsel was deficient in failing to procure pertinent discovery materials which would have allowed suppression at the hearing regarding various discrepancies."

**Closing Statement**

In the plea proceeding counsel expressed his obvious lack of knowledge of relevant facts (transcript pg. 25, 20-23). Applicant assents that counsel was unaquainted with these neccesary facts and circumstances, therefore he could not have adequately advise him in a pleading or adversial procedure.

Q: Would a reasonable attorney, have become aquainted with the above facts and circumstances?

843- 542-6457

# SECTION A - DEFICIENT PERFORMANCE

## FIRST PRONG

**Subsection II** Counsel's failure to inform Applicant of exculpatory information

SCRCP/Rules of Conduct: Rule 1.0 - The lawyer must make reasonable efforts to ensure that the client possesses information reasonably adequate to make an informed decision.

**Summary**

Counsel failed his duty to inform Applicant of affirmative defenses and viable claims thereby depriving him of a well informed decision. Applicant asserts counsel did not inform him of the full range of possible punishments and sentences. In their three brief meetings counsel never informed Applicant that he was subjected to LWOP under the recidivist statute. This critical information became known to the Applicant by the solicitor's statement in the plea proceeding. Counsel never explained the real severity of the offenses, he indicated they weren't that serious, just some pills and weed (trans. pg. 27, 13-14) In regards to the offer on record (trans. pg 22, 6-11), counsel NEVER communicated this offer to Applicant as stated on record. Applicat was told that he was only facing (10) years throughout the entire legal process. Dover v. State. In addition, counsel also informed Applicant that the state's offer was five years (trans. pg 24, 8-9), dismissal of striked etc, was never mentioned by the counsel.

Furthermore, counsel never explained the nature and critical elements of the offenses. He did not inform Applicant of how his conduct made him guilty of the P.W.I.D crimes, or what the state had to actually prove to find Applicant guilty. He consistentely referred to Applicant's prior drug convictions, stating that would be proof that Applicant was guilty. The Applicant once informed counsel that he did not understand the wording in the P.W.I.D indictment; he simply stated, "they make 'em broad to ensure a conviction. This was not helpful information.

In addition, counsel failed to inform Applicant that he had a viable claim to the lesser offenses of possession. Cf. Tisdale v. state 442 SE.2d 410 - (The relevant test is whether there is any evidence that defendant committed the lesser rather than the greater offense.) also, Kerrigan v. state 406 SE.2d 160 - Remanded - "the S.Ct held counsel was ineffective in failing to inform defendant that if he went to trial, he could have requested a charge on lesser offenses.

**References**

Moore v. State 732 SE.2d 871 - "Attorneys have a duty to consult with their clients regarding important decions"

U.S 477 S.Ct 2974 - "whether a [plea] is voluntary depends on information known to defendant

Kolle v. state 690 SE.2d 73 - "Kolle explained he plead guilty and expressed satisfaction with plea counsel's representation because he lacked the necessary information to raise any challenge during the plea proceeding. Kolle entered his plea without the benefit of all exulpatory information.

** Applicant's statement in the hearing suggest he was not fully informed by the counsel ** (see transcript. pg 17, 10-12)

**Closing Statement**

Q: Was counsel ineffective for failing to inform Applicant of the above information?

Q: Is it possible Applicant would have made a different decision if he was adequately informed of this information?

# SECTION A- DEFICIENT PERFORMANCE

## FIRST PRONG

### Subsection III

**Summary on 22. C.J.S § 404**

During the pleading, the Judge and solictor recited language that was confusing and was never broken down to layment's terms (trans. pg 14 & 15). Throughout the proceeding the colloquy between the Judge and solictor was very perplexing, the Judge never seemed to fully grasp what crimes Applicant had to answer too, even the Judge and solictor gave an indication that they did not understand the language of the offenses themselves. (trans pg 15) The Judge statements increased the perplexity of the hearing, she made several inaccurent statements as to the strikes and crimes Applicant was facing (trans pg 6, 22 / pg 7, 7 / pg 14, 4-8 / pg 19, 24) she also proved to be unclear about other legal principles (pg 19, 14-18). Regarding, (trans pg 31, 17-2) the solictor failed to make it known on record what her consideration of inference weight was. It should be noted the counsel was silent throughout the confusing colloquy. Consequently, if the Judge and solictor had difficulty understanding the legal terms, how could the Applicant have. The Applicant assents the perplexity of the hearing did not aid him in an intelligent understanding of the offenses.

**Reference on Colloquy**

U.S v Kamen 781 F.2d 380 - "Accordingly, we agree with the Wetterlin court, the Judge should not have assumed the defendant already knew and understood what the charges were, rather the court should have assumed he was ignorant of the charges and thus use the hearing to inform the defendant of 'some aspects of legal argot and other legal concepts that are esoteric to an accused. cf Alessi v. U.S 543 F.2d 476 - "This does not eliminate the need for making sure defendant understands the indictments".

Counsel failed his duty to explain the nature and essential elements of the offenses to the Applicant. At the time of the plea hearing, Applicant assents he did not understand the P.W.I.D offenses. The record does not refute this fact. The Judge assumed counsel had properly informed me of the elements of said offenses, she did not engage in an adequate "colloquy" with the Applicant to establish if he actually understood how his conduct satisfied those elements. Therefore, her colloquy did not elict the responses neccesary to demonstrate if Applicant knew how and why he may have been guilty.

Black's Law Dictionary 221 (18th ed. 2005) - colloquy is defined as a "high-level serious" discussion.

Dover v. state 405 SE.2d 391 - "in order for the defendant to knowingly and voluntarily plead guilty, defendant must have a full understanding of consequences of his plea and charges against him, to insure defendant understands, trial Judge usually questions Defendant about facts surrounding the crime.

**Closing Statements**

Evidence exist in the record that Applicant was not afforded critical information in the plea hearing. Therefore, the requirement of the 14th Amen Due Process Clause was not satisfied. Applicant did not have a rational and factual understanding of the crimes and their consequences.

Q: Was Applicant plea an "intelligent admission" of the P.W.I.D elements.

Q: Should the Court have establish Applicant ~~if~~ understood the nature of the crimes?

Q: Did Applicant demonstrate a degree of confusion by his on remarks? (trans. pg 28, 1-2)

Q: Was the colloquy between the Judge and solictor confusing?

# SECTION A - DEFICIENT PERFORMANCE

## FIRST PRONG

**Subsection III** — Plea involuntary due to lack of factual/legal basis and failure to inform the "true nature" of offenses

### Summary

Applicant was not afforded a "real notice" to the nature of the crimes during the sentencing procedure. Therefore an adequate factual basis was not established because the record fails to state how Applicant's conduct satisfied the critical elements. cf. U.S v. Longoria 113 F.2d 975 - "Because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possess an understanding of the law in relation to the facts!" Therefore, Applicant's plea should have not been accepted because a legal basis was not established also. The record will show: The indictments were not read, the charges were not explained, the state never made known what the evidence could prove, Applicant was not directly asked if he understood the nature of of his charges or how he was convinced that he was actually guilty of the offenses. Due to this showing, Applicant asserts his plea was not knowingly and intelligently made.

### References

The Due Process Clause - of the 14th Amen requires that defendant should understand how his conduct satisfies the elements of the offenses charged.

Gaddy, 780 F.2d 945 - At the very least, due process requires that the defendant prior to tendering a guilty plea, recieve a description of the charged offense

Smith v. O'Grady 312 U.S 329, 61 S.Ct 572 - "clearly the plea could not be voluntary in the sense that it constituted an intelligent admission ~~of~~ that he committed the offense unless the defendant recieved real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process!"

Pittman v. State 524 SE.2d 423 - "Defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, including the maximum and minimum penalties.

22. C.J.S §400 - Generally for a guilty plea to be voluntary, accused must have an awarness of the true nature of the charges against him, a rational as well as a factual understanding.... Pleading guilty is basically admitting that one's conduct actually falls within the charge, that is why the essential elements must be made known.

*(22. C.J.S Criminal Law §404)* - where accused makes a prima facie showing by alleging that he in fact did not know or understand information which should have been provided at the plea hearing, the burden then shifts to the state.... In making the determination as to the voluntariness of a plea the court may consider the degree of confusion or incapacity demonstrated by accused, the amount of information availible to aid him in his ~~decision~~ decision, the importance of his calculations of the legal principles which he did not understand, the time between the advisement of rights and acceptance of the plea, as well as his actual knowledge as reflected by his statements

# SECTION A- DEFICIENT PERFORMANCE
## FIRST PRONG

**Subsection V** Plea void under contract principles

**Reference**

U.S v. Rourke 74 F.3d - "Plea agreements are unique and the ordinary contract principles are supplemented with a concern that the bargining process not violate the defendant's right to fundamental fairness under the Due Process clause, both to protect the plea bargining defendant from overreaching by the prosecutor."

**Summary**

Applicant's Alford plea resulted to an illegal Adhesion Contract: which is a standard form contract prepared by one party to be signed by the party in a weaker position, who adheres to the contract [plea agreement] with little choice about the terms. Also, the bargining terms of the contract may not be between equals or as there may be no possibilty of bargining at all. The form may be used by an enterprise with such disproportionately strong economic power (the state) that it simply dictates the terms. or the form may be a take-it or leave-it proposition, often called an adhesion contract, underwhich the only alternative is complete adherance or outright rejection. Black's Law Dictionary

Carnine, 974 F.2d 928, Giorgi, 84 F.2d 1026 - "First courts construe plea agreements strictly against the government. This is done for a variety of reasons including the fact that the government is usually the party that drafts the agreement."

Furthermore, Applicant did not "voluntarily", willfully or understandingly" adhere to this contract. The counsel unfairly persuaded him into adherence, which is more commonly known as Undue Influence - Defined as: The improper use of power or trust in such a way that it deprives a persons free will and substitutes another's objective. It is the state of mind of the party unduly influenced. Black's Law Dictionary

* Applicant asserts that the counsel and solictor were in cahoots, both improperly used their power and trust to deprive Applicant of his free will and in turn implementing there objective which was a CONVICTION!

U.S 477 S.Ct 2974- On, "whether a choice is informed and reached without inappropiate pressure".

Macaulay v. Wachovia Bank 569 SE.2d 871 - "Undue influence must be the kind of mental coercion which destroys the free agency of the creator of trust and constraining him or her to do that which is against his or her will, or what he or she would have done if left to their own judgement."

# SECTION A- DEFICENT PERFORMANCE

## FIRST PRONG

### Subsection V

### Closing Statement

Applicant assents, the state used it's disproportionately and overreaching power to place him in a weaker position. This was accomplished in several ways. First, the state deliberately withheld pertinent Brady material, while informing Applicant that all deals would be off if he pursued to review such material. This was an abuse of bargining power. Secondly, Applicant was unexpectedly transported to begin trial, an intentional tactic used by the state. The counsel did not inform Applicant of the trial date in advance, which further weakened his position to bargin if he so chose. These methodica circumstances made Applicant's state of mind fertile, for the incoming mental coercion & undue influence. There is no doubt Mr. Chaplin undly influenced Applicant into the plea agreement(contract). He was the barginer and abused his trust in such a way that he became an agent of the state's overreaching postion. Or yet, he bargined on the state's behalf, thus substituting the best interest of the Applicant for the State and his own objective: A CONVICTION!!

Furthermore, Applicant assents that counsel could not be considered as an equal barginer in a contract. Counsel boldly showed bias towards Applicant and proved unwilling to seek justice in the best interest of the Applicant; meaning it became obvious to the Applicant that counsel preferred him in prison. On one ~~or~~ occasion he stated to Applicant, "you need more than rehab, prison is the only place for you to get ~~the~~ clean". "If you are released, you'll just fuck up." "You might as well do this time because you aint doing nothing else". Such advice was clearly below the professional norms for criminal attorneys. As a result these remarks caused contention between Applicant and counsel, a fact he vaguely hinted in the hearing (trans. pg 24, 10-12). Consequently, Applicant distrusted Counsel and attempted to have him relieved in an oct 2013 court proceeding, where he made the above and other complaints. It should be noted that the same Judge who sentenced Applicant, was the same Judge that denied him relief of counsel in this proceeding.

Ultimately, counsel proved to be an agent strictly in the intrest of the state, making his performance for the Applicant ineffective and deficient. Therefore, Applicant's position was weakened regarding contract principles. These are the mental coercion and undue influence tatics that counsel used on the Applicant (it is the state of mind of the party undly influenced). First and foremost, the sudden event of trial provoked a state of euphoria and fear in the Applicant, which is what the counsel expected. Applicant was euphoric because a trial was to commence and he had no knowledge of legal challenges, strategies, etc. In addition, Applicant had approx "15" minutes to consider his options. However, counsel didn't allow Applicant a chance to think clearly, he immediately began using the following mental coercion tactics to deprive Applicant of his free will. He said Applicant had no valid defense or challenges whatsoever. He stated he need not discuss a ~~before~~ trial strategy with Applicant because he was a professional. He Stated that the state would find Applicant guilty because of prior drug convictions

# SECTION A- DEFICIENT PERFORMANCE

## FIRST PRONG

### Subsection V

### Closing statements continued

that he had to stand trial for all nine offenses (no severence), and that he would be sentenced consectutively and wouldn't win an appeal. He stated there were "pressures" the Applicant would "yeild" to in prison if he caught a lot of time. He stated that someone named Mr. Muller was upstairs ready to testify against the Applicant (this was a deliberate lie for coercive purposes, this person never even existed as state's evidence, and WAS NOT upstairs ready to testify). Counsel then switched gears, stating he just spoke with the Judge in her chambers, and she informed him that I would get the minimum of five years because she didn't think the offenses were a big deal. He then insisted that Applicant get it over with and submitt an Alford plead, which he said was basically telling the court he didn't commit the offenses. Based upon these facts, counsel did unduly influence Applicant into a void contract (plea agreement). Contract principles requires a "meeting of the minds" The Applicant did not fully understand the crimes, the ranges of possibilites and conseques or the true meaning of Alford. This couplee with inappropiate pressures of the counsel made the agreement involuntary and not freely given.

Q': Did Applicant adhere to the contract based upon his own free will?

Q': Did Counsel abuse his position of trust?

Q': Was counsel biased?

Q': Did counsels advice fall below the standard of a reasonable criminal attorney?

## Closing Summary of Section A- Deficient Performance

The totality of evidence within this section and on record suggest that counsel was only interested in a plea arrangement, despite any existing evidence in the Applicant's favor. Therefore, the Applicant asserts that counsel methodically intended to Unduly Influence Applicant into a plea agreement from the very beginning. That is why he deliberately failed to investigate the facts and circumstances, why he also deliberately failed to inform Applicant of viable claims, essential elements and the full range of consequences and possible outcomes. Thus, he knew it would be impossible for the Applicant to make a free, intelligent and informed decision without the knowledge of existing exulpatory circumstances in his favor. All of these factors were intentionally utilized as tactics by Counsel to make the Applicant more accessible to undue influence. It is for these reasons that Applicant's contract is void and conviction invalid. Counsels performance was overwhelmingly ineffective and deficient, therefore overcoming the presumption of Strickland 466 US 668.

# SECTION A - PREJUDICE & OUTCOME
## SECOND PRONG!

**Subsection I** The prejudice of Applicant

The Applicant suffered prejudice due to the following reasons:

A:) The counsel failed to adequately inform Applicant of the vital details involving the state's initial plea offer, in which they were willing to dismiss all strikes, LWOP and mandatory minimums. Applicant became aware of this offer for the first time in the sentencing. (trans. pg 22, 6-11). He didn't know of these vital details so the State considered it as a rejection. Counsel only informed Applicant the state's offer was five years, he never communicated any dismissals regarding their offer, therefore, Applicant did not "knowingly reject the intial offer that was apparantely in favorable under the circumstances. Counsel's failure to communicate the full scope of the offer cause prejudice.

**Reference to the above prejudice**

Hyman v. state 723 SE.2d 375 - "When a defendant rejects a plea bargin, a reviewing court will examine seperately whether trial counsel was ineffective with respect to the defendant's rejection of the offer and his ultimate decision to plead guilt

Davie v. state 675 SE.2d 414 - "In support to a claim of counsels failure to communicate a plea... It is not always neccesary for a defendant to offer objective evidence, depending on the facts of the case, a defendant's self-serving statements may be sufficent to establish prejudice."

B:) The totality of counsel's performance prejudice the Applicant because he was convicted of all the greater offenses, despite existing evidence that should have allieviated him of such a prison term. Applicant was erroronously sentenced to serve 85% of his sentence against the statues provisions, counsel did NOT become familer with the characterization and definitions of the offenses. All of Applicant offenses were 'non-violent'. Furthermore, the statue of 44-53-370, the code of 14-1-60 and the Crime Reform Act, specifally indicates Applicants crimes as non-violent and make him eligible for all credits within SCDC. These laws eliminated Applicant of an 85% mandatory term, but counsel did not know and raise these facts. Applicant suffered prejudice because he is serving a mandatory 85% ~~per~~ term contrary to the provisions of his crimes.

C:) There existed substantial evidence that Applicant should have faced lesser offenses. Counsel never informed Applicant that he had a claim to lesser offenses or could have requested a charge on the lesser offenses in the event of trial. Applicant suffered prejudice because counsel was not aqueinted with the law and the elements of the lesser and greater offenses. Applicant could have answered to the lesser offenses in an effort to mitigate his penalties (strikes, LWOP, etc). 404 SE.2d 140 ; 662 SE.2d 410

# SECTION B- PREJUDICE & OUTCOME

## SECOND PRONG

### Subsection I.

D:) Applicant suffered prejudice because he was convicted of "duplicated offenses" in regards to the P.W.I.D and P.W.I.D proximity offenses. The same exact evidence and conduct was relied upon for the conviction of these seperate offenses, contrary to the Double Jeopardy clause. ct. Jivers v. state also; Vitale 447 U.S 410, 100 S.ct 2260. If counsel had been aquainted with the legal principles of Applicant's case, he would have challenged the "duplicious" nature of these offenses, demanding that one or the other be dismissed.

E:) Applicant was convicted of several drug offenses that relied on insufficent evidence. Applicant was prejudice by counsel's shoddy performance because he failed to discover an evident break in the chain of custody. Applicant has documentation to prove said drugs were never placed into evidence but were used to convict him. These offenses could have been easily dismissed or supressed if counsel had become familiar with the discovery evidence. Applicant asserts this is why several analysis were initally missing from the discovery evidence, and why it took two years for him to recieve "some" of these documents. One of the lab results was not produced until after the conviction, which cause prejudice because it was in the Applicant's favor.)

F.) Applicant only met with counsel 3 times for a total of 45 minutes. Applicant was unexpectedly transported to trial without advance contact from his counsel. Counsel also refused to request an continuance. These circumstances prejudice the Applicant, he was severly unprepared because him and counsel never discussed trial strategies in previous meetings, therefore he had no idea how counsel would rebut the state in an adversial process.

G.) Applicant conveyed to counsel that he felt he was guilty of only one offense and was willing to plea to it. However, prior to and on Dec 3, 2013, counsel informed Applicant that he could not only admit to one offense, he stated Applicant had to plead to "All" the offenses, He also told Applicant 15 minutes before trial that he would be tried for all the offenses. Applicant suffered prejudice because all of the offenses were similar but didn't derive from the same incident. Applicant was entitled to a "severence", he could have plead guilty to the one offense and challenged the remaining offenses in another proceeding. see following reference.

#### References

U.S v. Halper 590 F.2d 422 - (The prejudice of "joining" offenses) As stated: (1) Defendant may become embarressed or confounded in presenting seperate defenses; (2) the jury may use evidence of one of the crimes charged to infer a criminal disposition on the part of the Defendant from which is found his guilt of the other crime or crimes charged; or

# SECTION B - PREJUDICE & OUTCOME

## SECOND PRONG

### Subsection I.

### References

(3) the jury may cumulate the evidence of the various crimes charged and find guilt when, if considered seperately, it would not so find. A less tangible but perhaps equally persuasive element of prejudice may reside in a latent feeling of hostility engendered by the charging of several crimes as distinct from only one. Keylaw (42011

U.S v. Cardenas 746 F.2d 771 - "To demonstrate an abuse of discretition the defendant must show clear prejudice suffered by having to defend against the charges simutaneously".

State v. Cutro, 618 SE.2d 890 - "offenses which are the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not be properly tried together."

H.1 Ultimately, the Applicant was prejudice because the counsel did not know his client was subjected to LWOP, strikes and the recidiust statute of 17-25-45. If counsel had been appointed with this fact upon taking the case, he would have used due diligence to raise every liegitimate challenge and vigirously defend the Applicant from the provisions of 17-25-45, being that is was very serious. However, under these circumstances counsel never took the case seriously, he erroneously inform Applicant that he faced only (10) years ct. Dover v. State and he did not investigat challenges, viable claims or evidence that would have allieviated his client from the harsh and critical penalties of 17-25-45 The Applicant asserts he had no idea the offenses were that serious until the day of his conviction. Applicant was thus prejudice by counsel's overall performance because he still was convicted of the 17-25-45 provisons, even though there existed overwhelming evidence to relieve him of such a conviction.

7001444?

# Virgo

Virgo is a very independent zodiac. They are fully able to put their intelligence to use and get things done for them selves. They may dwell too much on the past and over complicate things and this may limit their ability to move forward

2,694.71

# Virgo and Business

Virgos are very intelligent they have an excellent memory and a high analytical mind. This makes them good investigators and researchers

904-343-7444 1,22

540 conservancy way
apt 205
Chesapeake Va
23323-1

700160825581
5582
3837
6744
2/19

Angel

Ref# G12000730303

Justin
Shellenbarger
just sent a moneygram
for $200 reference 770186937

# SECTION B- PREJUDICE & OUTCOME

## SECOND PRONG

**Subsection II** How the outcome could have been different

**Outcome A:** Applicant could have recieved a lesser sentence had he been informed of the intial plea offer

The state made an initial offer to dismiss all of Applicant's strikes, LWOP and all mandatory minimums. Applicant was not made aware of these favorable dismissals by counsel, he only told Applicant the state's offer was five years. In fact, Applicant has consistently asserted that he was subject to LWOP, strikes etc. However, if the state did make such an offer, counsel prejudice the Applicant by not communicating it to him. This offer was favorable indeed, and was pertinent to Applicant's decision to adjudicate the case or accep the offer. There is a reasonable probablity, had counsel communicated this exact offer to the Applicant, he would have aborted all legal challenges to accept this offer. Where he could have recieved time served, a diversion program, probation or drug treatment. * The Applicant Must assert that counsel was BIAS and did not want Applicant to have such an favorable opportunity, that is why he deliberately failed to communicate the various dismissals

**References**

Berry v. State 675 SE.2d 425 - "In ~~fact~~ this regards a defendant may choose to forgo a legal challenge and opt for what he considers as a favorable plea arrangement, especially where other charges are dismissed

cooper, 132 S.Ct - (cause for reversal) - "if a defendant relying on erroneous advice from his counsel rejected a plea offer, proceeded to trial and was convicted of a more serious crime than he would have plead guilty to, or recieved a harsher sentence that was recommended under the terms of the plea offer."

**Outcome B:** Applicant would have been found not guilty of the greater offenses of P.W.I.D at trial

**Reference on what must be proved**

McCarthy v. U.S 89 S.Ct 1166 - "His crime required a "knowing and willfull" attempt to defraud the government of it's tax money. Yet through out the sentencing he and his counsel insisted that his actions were merely "neglectful" and "inadvertent" this remarks cast doubt as to if he had full awareness of the nature of the charges. If the petitioner had been adequately informed he would have concluded that he was actually guilty of one of the two closely related offenses

In conclusion, the Petioner Prays the court accepts this appeal and overturn the greater offenses due to the ineffectiveness of counsel Mathis Chaplin in the Intrest of Justic

Respectfully Submitted

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Bishopville, S.C 29010

October, 15 2014