

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

PERRY H. GRAVELY, CIRCUIT COURT JUDGE
CASE NO. 2016-002094

PETITIONER'S EXPLANATION REQUIREMENT
FOLLOWING THE FILING AND SERVICE OF THE
NOTICE OF APPEAL PER RULE 243, SCACR.

This matter comes before the court pursuant to an conditional order of dismissal which became FINAL ORDER signed by the Honorable PERRY H. GRAVELY. Petitioner was indicted by the Greenville County Grand Jury in the November 2010 term of General Sessions for armed robbery (2009-GS-23-10155 Count 1) and possession of a weapon during the commission of a violent crime (2009-GS-23-10155) Count 2) AFTER the state brought the case to trial, the Petitioner was found guilty. On July 13, 2011, the Honorable C. Victor Pyle, Jr sentenced the Petitioner to Life without Parole for the armed robbery and five years concurrent for possession of a weapon during the commission of a violent crime. The Petitioner Filed a notice of appeal in the South Carolina Court of Appeals.

Susan B. Hackett, Esquire, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal, following the departure of petitioner's original appointed Appellate Counsel Ms. E. Franklin-Best.

The Court of Appeal affirmed the Petitioner's convictions and sentence. State v. Lounds, Op. No. 2013-up-289 (S.C. Ct. App. June 26, 2013) The Petitioner filed Application for Post Conviction Relief, an Evidentiary hearing was held on the matter, October 21, 2014, by the Honorable Letitia W. Verdin, Circuit Court Judge Case No. 2013-cp-23-04178. On December 8, 2014, the Honorable Letitia W. Verdin signed an order dismissing Petitioner's application for Post Conviction Relief with Prejudice. Petitioner, through counsel filed written notice of this entry order on December 20, 2014. Following PCR hearing Petitioner contacted Private Investigator LEE T. CONNELLY of INFO, INC. INVESTIGATIONS, whom provided Petitioner with a copy of Petitioner's trial transcript which was held on July 12, 13, 2011. On June 9, 2015, after reviewing the transcript provided to petitioner on November 22, 2011 from Appellate Counsel Ms. E. Franklin-Best, Petitioner discovered Appellate Counsel Ms. E. Franklin-Best had provided Petitioner with incomplete trial transcript of his trial held on July 12, 13, 2011, missing pages 226-234. Petitioner viewed the transcript provided by Investigator and noticed trial Judge failed to discharge the alternate juror before informing jury to begin deliberations,

thus, in violations SC. Code Ann §14-7-1340 (1976) and Violates Petitioner's rights to trial by impartial jury of no more than 12 Persons. Petitioner Filed PCR With the Greenville County Clerk of Court on August 7, 2015, In the Application Petitioner alleged Ineffective Assistance of trial Counsel (A) Trial Counsel Failed to object to alternate Juror deliberating While Jury Considered Verdict. NEWLY-DISCOVERED EVIDENCE (B) TRANSCRIPT WAS INCOMPLETE. Petitioner Provided Attachment to PCR Answer #10 on the Application, Petitioner Forwarded Day 2 trial transcript Provided by Petitioner's Appellate Counsel Ms. E. Franklin-Best Missing pages 226-234 From Petitioner's trial held on July 12, 13, 2011. Petitioner also Forwarded along With PCR Application letter From Investigator LEE T. CONNELLY the day Petitioner received transcript From the investigator Dated June 9, 2015. Petitioner explained Reason For not addressing the issue in First Application as he was not aware of the transcript Provided by Appellate Counsel on November 22, 2011 missing pages 226-234, and therefore could not have raised the issue in First Application. Petitioner answered he should not be held responsible For the inadvertant act of Appellate Counsel. on October 13, 2015, petitioner amended to PCR Application INEFFECTIVE ASSISTANCE OF Appellate Counsel, Counsel failed to review record before providing transcript of record to petitioner. Petitioner also Forwarded With PCR to be filed With Clerk of Greenville County, transcript provided to Petitioner From PCR Counsel R. Mills ARIAIL, JR. Incomplete as well. Petitioner Forwarded that all With PCR Application, DAY 2 trial transcript received From Appellate Counsel Ms. E. Franklin-Best, Showing the Court Petitioner could not have raised the issue in First PCR Application.

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On March 15, 2016, petitioner received Conditional order of Dismissal signed by the Honorable Robin B. Stilwell, denying and dismissing this action, while giving the petitioner 20 days to show why the dismissal should not become final. Petitioner responded to Conditional order of Dismissal filed March 21, 2016. In the Conditional order of dismissal signed by the Honorable Robin B. Stilwell was petitioner failed to file within the time period mandated by the statute of limitations. Petitioner responded to Conditional order of Dismissal filed March 21, 2016, petitioner ~~argues~~ argues his failure to file within the time period mandated by the statute of limitations should be excused because petitioner's claim fell within the discovery rule exception to the one-year limitation period and was therefore timely. Petitioner argued he could not have previously raised this issue because the record (transcript) was incomplete meaning the information (issue) was unavailable to him until after dismissal of his first PCR, petitioner was without a complete copy of his trial transcript at his Direct Appeal, and PCR hearing, and was without until family contacted investigator on petitioner's behalf whom provided petitioner with complete copy of his trial held on July 12, 13, 2011. Petitioner was unaware his transcript was incomplete until investigator provided him a copy on June 9, 2015, with petitioner's trial transcript provided to him by appellate counsel rendered the information of petitioner's constitutional rights to trial by impartial jury of no more than 12 persons, in violation of SC Code Ann § 14-7-1340 (1976) Trial Court error (Fundamental ERROR) unavailable to him.

A PCR applicant must allege all available grounds for relief in his original application; any ground not raised in the original application may not be the basis for subsequent application unless the court finds a ground for relief asserted which, for sufficient reason, was not raised in the original application Code Ann §17-27-90. Petitioner avers he has demonstrated sufficient reason why his claim was not included in his first PCR application in that his constitutional right to trial by impartial jury of no more than 12 persons, violation SC. Code §14-7-1340 (1976) Trial Court error Fundamental error was not discovered until after his first PCR application was dismissed. Petitioner now address the conditional order of dismissal. NEW EVIDENCE offered by petitioner was not material to the issue of guilt or innocence, and probably would not change the result if a new trial is had. Petitioner now asserts that the trial had July 12, 13, 2011 could not be relied upon as having produced just results by having an intruder into the jury room. Petitioner cite State v. BONNEAU 276 S.E.2d 300 the court acknowledged that a majority of other jurisdictions had held the intrusion into the jury room by person other than the 12 jurors is sufficient to make a verdict questionable. Petitioner point out in his trial held July 12, 13, 2011 the 12 jurors including the alternate all participated, during deliberations they sent in a note wanting the original police report. They wanted to see

What description the alleged victim gave of the gun
Petitioner alleged used to rob him, meaning all 13 jurors
were involved, participated which makes the verdict questionable
Petitioner submit copy of trial transcript showing 13 jurors
were selected and show where trial court failed to release,
discharge the alternate jury. Petitioner asserts that the
determination by the lower court was improper. Petitioner
argues his second PCR application should not have been
summarily dismissed and ask this court to reverse
and remand this matter for a hearing. Petitioner
direct the courts attention to McCoy v. State, Opinion No. 27214
BINDYKE 220 S.E.2d 521 N.C.

Respectfully Submitted October 20, 2016

ANTHONY WOUNDS
Petitioner

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ANTHONY M. LOUNDS

PETITIONER

V

STATE OF SOUTH CAROLINA

RESPONDENT

CERTIFICATE OF SERVICE

I, ANTHONY LOUNDS do hereby certify that on this October 20, 2016. I served upon the below named individuals copies of the EXPLANATION REQUIREMENT PUR RULE 243 SCACR. by depositing copies of the same via U.S. mail, postage prepaid in an envelope addressed as set forth herein below.

PATRICK SCHMECKPEPER
P.O. Box 11549
Columbia S.C. 29211

ANTHONY LOUNDS
Petitioner.

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