STATE OF SOUTH CAROLINA
County of RICHLAND

IN THE SUPREME COURT

Raqib Abdul Alamin
Appellant

Case No: 2014-CP-40-5577

vs.

State of South Carolina
Respondent

MEMORANDUM IN SUPPORT OF RULE 227 SCACR

COME NOW the above-named Appellant who hereby files, pursuant to Rule 227 (Rule 243(c)) of South Carolina Appellate Court Rule (SCACR), his explanation as why the lower court error by summarily denying and dismissing the underlying post-conviction relief:

I. Procedural History

Appellant is confined in the South Carolina Department of correction pursuant to order of commitment of the Richland County Clerk of Court. On August 25, 1997, the City of Columbia sought and obtained an arrest warrant against Appellant for the crime of murder. Appellant was indicted by the Richland County Grand Jury during the December 1997 term for the same. Douglas Strickler, esq., represental Appellant on the charge. Appellant proceeded to a jurst trial before the Honorable James C. William Jr. from January 31 to February 4, 2000, which ended without a verdict.

Appellant proceed again to a jury trial on February 4, 2000, and was found guilty as indicted. Judge William sentenced Appellant to a term of life imprisonment without the possibility of parole.

Appellant filed a timely notice of appeal and a direct appeal was perfected by Daniel T. Stacey, Esq. By opinion decided March 3, 2003, the South Carolina Court of Appeals affirmed Appellant's conviction. State v. Alamin 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003). The Supreme Court of South Carolina denied March 3, 2003, the South Carolina Court of Appeals affirmed Appellant's conviction. State v. Alamin 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003). The Supreme Court of South Carolina denied Appellant's subsequent petition for a writ of certiorari. State v. Al-amin, S.C. Sup. Ct. Order dated October 21, 2004. The Remittitur issued on October 26, 2004.

II Statute Of Limitation / Successive

Pursuant to Artuz v. Bennett 531 U.S. 4, 121 S.Ct 361 (2000) Appellant states his state post-conviction relief or collateral review is "properly filed" as required to toll period under §§ 17-27-45(B) and (C). Therefore, the statute also sets a one-year deadline for filing an application to assert a newly created and retroactively applied standard or right, and a one-year deadline to raise newly discovered material facts that require vacation of a conviction or sentence. Although the Respondent intend to consolidate §§ 17-27-45(B) and

17-27-45(C) into § 17-27-45(A) would be error and clearly not as legislature enacted it, Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Appellant application is not successive.

2011-CP-40-36063

Appellant filed a application for Post-Conviction relief on June 7, 2011. This action was timely filed and was supported by a affidavit by Danny Brown. To prevail on this claim, Appellant had shown the lower court the following Caskey test.

1. That the evidence is such as will probably change the result if a new trial is granted.
2. That it has been discovered since the trial.
3. That it could not have been discovered before trial by the exercise of due diligence.
4. That it is material to the issue.
5. That it is not merely cumulative or impeaching.

State v Caskey 273 S.C. 325, 256 S.E.2d 737 (1979), infra;

1. The evidence of Danny Brown (Frog) would probably change the result if a new trial is granted. Mr. Brown has now been identified as the civilian encounted by Appellant that established an Alibi for Appellant and his where about during the time of the alleged murder. This omitted testimony is critical to the innocence of Appellant and when a jury hears such exculpatory testimony, that allows

the jury to understand all the facts of this case and thus not putting Appellant at the crime scene, and rebuts the States theory of this case.

2. The new evidence has been discovered since the Appellants trial ended. On May 15, 2011 was the first opportunity to locate Mr. Brown and questioned his where about and to verify information from the face of record if, indeed Mr. Brown did in fact encounter Appellant at a phone booth during the time the alleged murder occurred, and requested that the information known to Mr. Brown be put into a affidavit to preserve for future litigation.

3. This information could not have been discovered before trial by the exercise of due diligence by the defense or the State. Appellant trial counsel did not know the actual name of Mr. Brown or Mr. Brown's place of residence. The defense inquired about Mr. Brown alias Frog but had no hits as to identify him. R. 484 ll. 18-20. Investigator Allen D. Caldwell for the public defender stated: he could not locate a Frog. Mr. Brown's identity has been unknown until May 15, 2011.

4. The eye witness information is material to the issue at hand because Mr. Brown can prove a Alibi as to Appellant's where about at the time of the alleged murder. Thus, rebutting the State's version as to what happen on the day of August 25, 1992.

5. The information is not merely cumulative or impeaching, because the eye witness testimony of Mr. Brown's put Appellant at a different place

other than the crime scene. Thus, not supporting the same information of earlier evidence. Also, Mr. Brown has nothing to gain as to testifying honesty of the accounts given to the day and time of the incident, and show this Honorable Court Appellant was with him.

2012-CP-40-7884

Appellant filed his second application for Post-Conviction Relief on November 28, 2012, Appellant amended his application through a supplemental filing on January 24, 2013, advancing a new argument that the Court's then-days old holding in State v. Broadnax 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013) created a liberty interest and as exception to the rule should be applied retroactively to his case. The Respondent made its Return and Motion to Dismiss on March 3, 2013, arguing the application was barred by the statute of limitations and as successive. The Honorable L. Casey Manning erred in dismissing the application.

III. Sufficient Reason

Appellant is an layman unskilled in the mechanics of law and that the circuit court did not grant a appointment of counsel to assist with his drafting his claims and objections. In Haines v. Kerner 404 U.S. 519, 520-521, 92 S.Ct 594, 596 (1972). Whitehead v State 310 S.C. 532, 426 S.E.2d 315 (1992) held as a pro-se litigate, the Court must hold Appellant to a lesser

stringent standard than formal pleadings drifted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that Appellant can prove no set of facts in support of his claim which would entitle him to relief.

In support of the above action, in part:

1. Allen D. Caldwell testimony. Trial Record dated February 15-18, 2000 page 484.
2. First affidavit by Daniel Brown dated May 15, 2011.
3. A letter by Audrey Elaine Alamin dated May 11e, 2011.
4. Affidavit by Audrey and Jadeesha Alamin dated June 19, 2012. [See case no. 2012-CP-40-7884 as to how and when the new evidence was discovered].
5. Trial record dated February 15-18, 2000 page 528-529.

Appellant asked to take Judicial Notice, Rule 201(b) on affidavit by Danny Brown dated May 13, 2015. This affidavit was obtain and authenticated by a member of the Spartanburg Police department. See exhibits attached. Appellant could not have obtain the affidavit, except through a family member available at the time and is within the exercise of due diligence "even if it takes years obtain." See Roberts v. Drethe 336 F.3d 632, 641 (5th Cir. 2004); Ward v. Hall 592 F.3d 1144 (11th Cir. 2010)(quoting Dowthitt v. Johnson 230 F.3d 733, 758 (5th Cir. 2000). The lower court ignored the verified application by affidavit in support. The Respondent never intend for Appellant to have relief and is trying to steer the proceedings to

prosecution. That is court fraud.

As further sufficient reason, Appellant application was effected with numberous procedural irregularities.

1. That Appellant's application (2011-CP-40-3663 and 2012-CP-40-7884) was premature.
2. In application 2011-CP-40-3663 was alleged worded newly discovered evidence, whereas, the material witness was after-discovered evidence; a different analysis.
3. Appellants applications was denied without a hearing on a material eye witness was highly prejudical, when such claim is supported by the record.
4. The initial supporting affidavit for 2011-CP-40-3663 and 2012-CP-40-7884 was not authenticated and/or lack pacific facts or elements.

IV The Equitable Doctrine of Laches

In due consideration of the above requirement, Laches is an equitable doctrine defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Bray v. State 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002). Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration

whether the delay has worked injury, prejudice, or disadvantage to the other party, delay alone in assertion of right does not constitute laches."

The lower court erred in finding Appellant application is barred under the doctrine of laches. The record is clear. Appellant filed his application for post-conviction Relief, 2011-CP-40-3663 on June 7, 2011 along with affidavit dated May 15, 2011. This matter was dismissed by the Honorable James R. Barber III by order dated November 6, 2012. Appellant filed no appeal. Appellant's filed his application for post-conviction relief, 2012-CP-40-7884 on November 28, 2012 was supported by affidavit dated June 19, 2012 as to how and when the new evidence was discovered. The matter was dismissed by the Honorable L. Casey Manning by order dated May 5, 2014.

Appellant filed a timely notice of appeal on or about May 22, 2014. The South Carolina Supreme Court, noting that "petitioner has failed to show that there is an arguable basis for asserting that the determination by the lower court was improper, "dismissed the matter. Al-Amin v. State, S. C. Sup. Ct. Order dated June 12, 2014. The remittitur issued June 30, 2014.

In his current application, 2014-CP-40-5577 dated September 11, 2014, Supplemental filed September 18, 2015. The time during which Appellant properly filed application (§ 17-27-45(B) and § 17-27-45(C)) for post-conviction relief with respect to the pertinent

claim shall not be counted towards any period of limitation under § 17-27-45(A). McQuiggin v. Perkins, 133 S.Ct. 1924 (2003) See also Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000)

If the statute of limitation begin to run as of the date of the latest of the affidavits, here, May 13, 2015 then absent tolling, Appellant had until May 13, 2016.

Appellant object to the lower Court determination because he has shown diligence entitling him to equitable tolling under S.C. Code Ann. § 17-27-45(B) and (C). Although, Appellant conviction occurred years ago, the record and witnesses are still available. The Respondent would suffer no prejudice as it relates to this action. The Respondent should have provided appointment of counsel and request a hearing because Appellant has shown a prima facie case that a error of law and misconduct had occurred. Therefore, the Application is not barred by the doctrine of laches. Bray v State. 366 S.C. 137, 620 S.E.2d 743 (2005).

V Res Judicata

Actual innocence is not an independant claim, but only a method of excusing default. O'Dell v. Netherland 95 F.3d 1214, 1246 (4th Cir. 1996). To prevail under this theory, a petitioner must produce new evidence not available at trial to establish his factual innocence. Royal v Taylor 188 F.3d 239

(4th Cir. 1999). A petitioner may established actual innocence as to his guilt or his sentence. Matthews v. Evatt 105 F.3d 907, 916 (4th Cir. 1997).

After Honorable L. Casey Manning denied the application, dated May 5, 2014. Within one year, S.C. Code § 15-27-130, Appellant filed his current application (2014-CP-40-5577) on September 11, 2014 and amend September 18, 2015. The Respondent made its Return on or about September 12, 2016.

On October 11, 2016, Appellant filed a document titled "Pro Se Response of Objection to Conditional Order of Dismissal; A Notice Show Cause Pursuant to Rule 52(b), SCRCR, S.C. Code of laws § 17-27-95(b) and Rule 60(b) ie., Intrinsic and Extrinsic fraud, in which Appellant argues a due process violation, in that:

a. "It was fraud upon the Court where Officer J.P. Smith interject his exercise of power in his criminal case by notarizing his own signature in a affidavit, that lead to search warrant, arrest warrant and the state theory of the case. See S.C. Code Ann. § 26-1-95; Op. Atty. Gen 32; Op. Atty. Gen 35. See also In re Ceisor 330 S.C. 497, 501, 499 S.E.2d 809, 811 (1998)."
b. "The Respondent commit fraud upon the Court to get the benefit of an inference that [Appellant] was not allowed to challenge is fraud upon the Court."
c. "That Respondent commit fraud upon the Court

when they lead the Court to evaluate the case through the lens of the Respondent's theory to determine whether the evidence should be admissible. Holmes v. South Carolina 547 U.S. 319 (2006)."

d "That it was fraud upon the Court when the Respondent interference by committing a miscarriage of Justic by obstruction, distraction and neglect."

See also attached Motion to set aside a judgment under 60(b)(1)(3). Pursuant to Rule 201 Rule of Evidence section (b)(d) present affidavit by Danny Brown dated May 13, 2015.

Appellant also state that the lower court determination is error because fraud was committed against the Court, there is no such bar on one-year statute of limitation imposed by 60(b)(1)(3) Motion for fraud, and allege fraud on the Court regardless of a passage of time, Parkhurst v. Pittsburgh Point, Inc. 399 Appx 341 2010 WL 4069430 (10th Cir. 2010)

In Appellant supplemental filing of September 18, 2015, he further alleges he is being unlawfully for the following reason:

"Prior judgment should have retrospective application b/c such ruling rendering Appellant trial and appeal counsel ineffective and conviction a miscarriage of Justice."

In application (2012-CP-40-7887) dated November 28, 2012, State v. Broadnax 401 S.C. 238,

736 S.E.2d 688 (2013) was not before the Supreme Court of South Carolina until July 8, 2015, when it took the opportunity to overturn his case, State v. Alamin 353 S.C. 405, 578 S.E.2d 32 (Ct App. 2003).

The Respondent then, without any determination by the Court of the reason that State could justify the Appellant's introduction of prior armed robbery conviction, proceeded to do so. No probative / prejudicial effect analysis ever occurred. The Respondent argue on appeal that this information could be introduced under Rule 609 (a)(2), because, in its opinion armed robbery was a crime of dishonesty and thus automatically admissible to impeach Appellant's credibility.

In fact, the Court of Appeals, in its opinion State v Alamin 578 S.E.2d 32, 32 (Ct. App. 2003), noted that this proposition by the State was one of novel impression, but the Court never connected the dots to declare that under ex post facto analysis, it could only apply Alamin Prospectively on this issue and certainly not to Appellant himself. To do so would be to hold Appellant to a legal standard not in existence at the time of his crime on trial.

"If a rule is applied to the parties in a case on appeal, the rule must then be applied retroactively in all subsequent cases for reasons of equality and stare decisis." James B. Beam Distilling Co. v. Georgia 501 U.S. 529, 111 S.Ct 2439 (1991). See also

Butler v. State 302 S.C. 466, 397 S.E.2d 87 (1990) (the writ will issued only under circumstances were there has been a 'violation, which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice." Id. at 468, 397 S.E.2d at 88.

Our Supreme Court ruling in Broadnax, like statutes, may create liberty interest. Hewitt v. Helms, 459 U.S. 460, 471-472 (1983) court rules are regulations promulgated by the South Carolina Supreme Court, and thus have the force and effect of law.

Pursuant to Prichette v Lanier 766 F. Supp 442 (D.S.C. 1991) "because statutes and court rules qualify, as law, the due process clause is implicated when they are violated. Moreover, court [decision] interpreting statutes and Court rules, qualify as the Common Law. Court loss-jurisdiction when they fail to follow their own rules, statutes and precedents. United States v. Hill 368 U.S. 242 and State v. Colf 337 S.C. 622, 525 S.E.2d 246 (2000). When the Record is absence of specific facts and circumstances that cause such cases to defy appellate review.

VI. Conclusion

Therefore, Appellant has provided this Court a Notice of Appeal and a explanation why the lower court determination was improper. Appellant also request this Court to remand this acting for evidentiary hearing to develope the record and to determine facts underlying his claim and produce facts when a substantial showing of a violation of constitutional right and appointment of counsel

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Certificate of Service

I hereby certify that I have served the Notice of Appeal, Memorandum in Support, Motion to Set aside Judgment and Appendix upon the South Carolina Supreme Court, Division of Appellate Defense Office and the Attorney General Office, Johnny E. James Jr. addressed, postage paid by U.S. Mail.

March 29, 2017

Raqib A Alamin