

The Following supports ineffective
Assistance of Appellate Counsel claim

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S.C. SUPREME COURT



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

April 27, 2011

Mr. Trey Williams, #341036
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your case

Dear Mr. Williams:

Thank you for your phone call today, April 27, 2011. After we talked I called Mr. Delaney to get the dates for your prior hearings so we can try to obtain those transcripts. Mr. Delaney is out of his office this week, so I will try again next week. In order to obtain a transcript we need to know the date, the court reporter and the judge.

I received two letters you sent me with your list of concerns on April 6, 2011. I had drafted a response but it had not been mailed.

I will consider the concerns you raised in your letters when I read your transcript. If you have any further questions, you may call me collect at (803) 734-1330.

Thank you.

Sincerely,

LaNelle C. Durant
Appellate Defender



SCCID

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 7, 2011

Mr. Trey Williams, #341036
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your letter

Dear Mr. Williams:

I am in receipt of your letter. Thank you for writing. I will certainly consider the issues you raised when I prepare your case.

If you have any questions, please feel free to contact me.

Thank you.

Sincerely,

LaNelle C. Durant
Appellate Defender

LCD:pds

new
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EXHIBIT #11.

The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 19, 2011

Trey Williams #341036
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: The State v. Williams, Trey

Dear Mr. Williams:

With reference to your letter of November 7, 2011, if you want to remove your attorney from your case you must file a motion with the Court.

Very truly yours,

V. Claire Allen
V. Claire Allen
DEPUTY CLERK

TAG/lb

cc: Appellate Defender Lanelle Durant
Assistant Deputy Attorney General Salley W. Elliott



SCCID

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Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 1, 2012

Mr. Trey Williams, #341036
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your case

Dear Mr. Williams:

I talked with Robert M. Dudek, Chief Appellate Defender, concerning your request to have a different appellate attorney assigned to your case from this office. Mr. Dudek stated I will continue to represent you on your direct appeal. Your other option is to file a motion with the Court to have me relieved as your counsel. However, this agency will not, according to Mr. Dudek, appoint another attorney if the Court relieves me. Consequently, if you understand the dangers and disadvantages of self-representation and you wish to proceed with "eyes wide open" the Court will allow you to represent yourself on appeal. If this is how you wish to proceed then please advise me and I will send you the necessary affidavit and warnings regarding the dangers of self-representation. Your other option is to motion to have the Court relieve me and you can retain outside counsel with the assistance of family or friend. However, Mr. Dudek wanted me to stress to you that you do not have the right to appointed counsel of your choice at trial or now on appeal.

I am happy to continue to represent you. However, I will honor whatever decision you make. If you have any questions, please feel free to call me collect at (803) 734-1330.

Thank you.

Sincerely,

LaNelle C. Durant

Appellate Defender

LCD:pds



SCCID

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Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

April 19, 2012

Mr. Trey Williams, #341036
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your case

Dear Mr. Williams:

Enclosed please find a copy of the Initial Brief of Appellant, the April 15-16, 2010 transcript, the May 24-26, 2010 trial transcript, and the exhibits in your case. I have also included five cases from the list you provided. I wish we could have provided the entire list but we do not have the capability to do that.

In order for you to obtain your mental health records you would have to send your release to the agency giving them permission to send you your records along with your request for the records.

I hope this helps you. However, if you have any further concerns or questions, please contact me.

Thank you.

Sincerely,

LaNelle C. Durant
Appellate Defender

LCD:pds
Encl.



Division of Appellate Defense
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Columbia, South Carolina 29201-3332
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Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

April 19, 2012

Mr. Trey Williams, #341036
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your case

Dear Mr. Williams:

Mr. Robert M. Dudek forwarded to me your letter to him, which he received on April 12, 2012, where you spoke of your concerns about the brief I filed on your behalf.

You and I have communicated numerous times via letters and telephone calls. In our telephone conversation on February 29, 2012, I asked you to send me a list of the issues you wanted presented in a brief, or your own brief, which you agreed to do. However, I did not receive this, and I had exhausted my extensions. I did brief the issue you had mentioned several times. Please remember that we can only brief issues where the trial attorney made an objection or a motion.

I am sorry you are unhappy with the brief, but you can file a PCR alleging I was ineffective if the Court does not rule in your favor.

If you have any further concerns or questions, please contact me.

Thank you.

Sincerely,

LaNelle C. Durant
Appellate Defender

LCD:pds

550 WISACKY HWY.
BISHOPVILLE, S.C. 29010
MAY 11 2012
SC SUPREME COURT
APPELLATE DEPT.
JAMES C. DURANT
SC CIR. APPELLATE DEFENSE
PO BOX 11589
COLUMBIA, SC 29211-1589

DEAR MS. DURANT,
ALLOW MY CORRESPONDENCE TO SERVE AS MY FORMAL REQUEST FOR YOU TO GIVE INCLUSIONS TO MY ISSUES THAT I SUBMITTED TO YOU IN REGARDS TO THE TRIAL JUDGE MAKING ERRORS IN MY TRIAL, AS IT BEING FORCED TO GO PRO SE AND THE CONFLICT OF INTEREST ISSUE WHERE THE RELIEVED ATTORNEY WHOM WAS ADVERSE TO ME WERE MADE THE STANDBY COUNSEL, AS I HAVE SUBMITTED CORRESPONDENCES TO YOU IN THE PAST AND NEVER RECEIVED YOUR RESPONSES LETTING ME KNOW YOUR RESPONSES ACCORDINGLY TO THE UPDATED LAWS OF THIS STATE, I AM UNDERTAKING THE ACTIONS TO MAKE SURE THAT MY ISSUES ARE PERFECTLY PRESERVED ON THE RECORD(S) TO BE RAISED TO THE APPELLATE COURT, I EXPRESSED TO YOU THAT YOUR ISSUE WAS A BRIEFED ONE THAT I KNOW IS APPROPRIATE AND COVERS MY RIGHT BEING DENIED TO A TRIAL BY A JURY AND I HAVE NO PROBLEMS WITH THAT BUT AS YOU HAD REVIEWED THE TRIAL RECORD YOU OVERLOOKED THE FACTS THAT THERE EXISTS AN EX PARTE FORMULATION TO THE RECORD, THERE IS A PORTION OF THE TRIAL TRANSCRIPT MISSING AND THE OMISSION OF THE RECORD IS CRUCIAL TO THE FACT THAT THE JUDGE'S RELIEVING TRAIL COUNSEL AND THE REASONS GIVEN ARE NOT IN THE COLLOQUY AND AS YOU KNOW THE RULING MUST BE GIVEN ACCORDINGLY TO LAW, THE APPELLATE COURT WILL AGREE THAT THE RECORD IS INCOMPLETED AND HAS MANY OMISSIONS TO IT AND THIS SHOULD HAVE BEEN CORRECTED WELL BEFORE YOU SUBMITTED YOUR ONE ISSUE, AND UNDER THE RIGHTS THAT I WISH TO EXPRESS TO BE EXERCISED WHILE THE APPEAL IS STANDING ARE ONES THAT THE COURT WOULD HAVE ME TO DO BECAUSE THEY ARE ONES THAT PROTECTS ME FROM HAVING ISSUES TO BE ABANDON ON THE APPEAL, I KNOW YOU GAVE YOUR PRESENTATION IN THE INITIAL START OF MY CASE BUT HOWEVER I DID NOT UNDERSTAND THE LANGUAGE IN ITS PARTICULARS AND I AM NOT TO BE SANCTIONED FOR THIS, YOU HAVE STATED THAT THE COURT WOULD NOT ALLOW YOU TO ADD ISSUES AND IN THIS SENSE I WOULD AGREE BUT THE COURT WILL ALLOW YOU TO MAKE CORRECTIONS TO MY APPEAL BEING SUBMITTED SO IT CAN BE COMPLETED WHEREAS ALL OF THE ISSUES BEING BRIEFED AND SUBMITTED FOR AN APPELLATE COURT REVIEWING, THE TIME FOR MY CASE TO BE REVIEW IN SUCH FASHIONS ARE NOW BY THE APPELLATE COURT AND IT IS UPON ME TO PROSECUTE MY CASE WITH DUE DILIGENCES AND AS IT STANDS THE DILIGENCES THAT I AM UTILIZING NOW ARE THE ONES THAT THE APPELLATE COURT DEEMS APPROPRIATE ACCORDINGLY TO WELL SETTLED LAWS BY OUR SUPREME COURT, THE SC SUPREME COURT HAS EXPRESSED THAT MY CASE IS IN THE COURT OF APPEALS AND THEY CAN NOT DEAL WITH IT WHILE IT IS IN THIS COURT BUT THEY HAVE FAR WARNED ME THAT NOTHING CAN BE CONSIDERED OTHER THAN WHAT THE COURT HAD REVIEWED WHILE IT WAS IN THE COURT OF APPEALS, NOW HERE IS WHERE MY CASE ARE PROBLEMATIC TO HOW IT WAS PERFECTED, AND TRULY THIS IS WHAT I AM TRYING TO AVOID, BUT KEEP IN MIND, I HAVE NO PROBLEM WITH THE ISSUE YOU SUBMITTED AND I WILL HAVE IT TO BE REMAINED AS SUBMITTED, BEING PRO SE ON AN APPEAL WILL ONLY CUT MY CHANCES AT PREPARING MY APPEAL AND THE EXPERTISE I DON'T HAVE TO LITIGATE AS YOU HAVE, THERE IS NO COMPUTERS TO DO UPDATED RESEARCHES AVAILABLE TO ME AND THIS IS NOT SOMETHING THAT I WANT TO FACE, AN OBSTACLE... WELL I HOPE THAT YOU REVAMP THE WHOLE SCENARIO OF MY CASE ON APPEAL AND PLACE THE REPORTER ON NOTICE TO HAVE THIS OMITTED PORTION OF THE RECORD PROCURED AND GIVE FURTHER REVIEWING TO THE AVAILABLE ISSUES THAT MUST BE RAISED TO THE APPELLATE COURT AND PLACE MY CASE ADEQUATELY TO THE COURT FOR THE REVIEW AS SHOULD HAVE BEEN, AGAIN EXPRESS MY DESIRES TO NOT HAVE ANY ISSUES ABANDONED DUE TO THE FACTS THAT THIS IS THE COURT FOR MY APPEAL ISSUES TO BE PRESENTED TO FOR A REVIEW FOR ERROR OF LAWS COMMITTED BY THE TRIAL COURT SO THAT IT CAN BE CORRECTED. I APPRECIATE YOUR TIME AND YOUR REPLY AND RESPONSES ARE MANDATORY, PER SE ATTORNEY/CLIENT PRIVILEGES.
THANKING YOU IN THE ADVANCE FOR YOUR TIME AND HELP GIVEN TO ME THUS FAR, I LOOK FORWARD IN HEARING FROM YOU IN THIS VERY NEAR FUTURE.
IN THANK YOU FOR YOUR ATTENTION AND TIME GIVEN TO ME IN THIS CRUX MATTER.

21, 2012

RESPECTFULLY SUBMITTED,

S/ Trey D. Williams

TREY D. WILLIAMS

LEE C.I.

990 WISACKY HWY.

BISHOPVILLE, S.C. 29010

JAMES C. DURANT, ESQ.

PO BOX 11589

COLUMBIA, SC 29211-1589

TREY D. WILLIAMS, #341036
LEE C.I. / DS-2253
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010

LeNelle C. Durant
SC CID, APPELLATE DEFENSE
PO BOX 11589
COLUMBIA, SC 29211-1589

DEAR MS. Durant,
ALLOW MY CORRESPONDENCE TO SERVE AS MY FORMAL REQUEST FOR YOU TO GIVE INCLUSIONS TO MY ISSUES THAT I SUBMITTED TO YOU IN REGARDS TO THE TRIAL JUDGE MAKING ERRORS IN MY TRIAL, AS IT BEING FORCED TO GO PRO SE AND THE CONFLICT OF INTEREST ISSUE WHERE THE RELIEVED ATTORNEY WHOM WAS ADVERSE TO ME WERE MADE THE STANDBY COUNSEL, AS I HAVE SUBMITTED CORRESPONDENCES TO YOU IN THE PAST AND NEVER RECEIVED YOUR RESPONSES LETTING ME KNOW YOUR RESPONSES ACCORDINGLY TO THE UPDATED LAWS OF THIS STATE, I AM UNDERTAKING THE ACTIONS TO MAKE SURE THAT MY ISSUES ARE PERFECTLY PRESERVED ON THE RECORD(S) TO BE RAISED TO THE APPELLATE COURT, I EXPRESSED TO YOU THAT YOUR ISSUE WAS A BRIEFED ONE THAT I KNOW IS APPROPRIATE AND COVERS MY RIGHT BEING DENIED TO A TRIAL BY A JURY AND I HAVE NO PROBLEMS WITH THAT BUT AS YOU HAD REVIEWED THE TRIAL RECORD YOU OVERLOOKED THE FACTS THAT THERE EXISTS AN EX PARTE FORMULATION TO THE RECORD, THERE IS A PORTION OF THE TRIAL TRANSCRIPT MISSING AND THE OMISSION OF THE RECORD IS CRUCIAL TO THE FACT THAT THE JUDGE'S RELIEVING TRIAL COUNSEL AND THE REASONS GIVEN ARE NOT IN THE COLLOQUY AND AS YOU KNOW THE RULING MUST BE GIVEN ACCORDINGLY TO LAW, THE APPELLATE COURT WILL AGREE THAT THE RECORD IS INCOMPLETED AND HAS MANY OMISSIONS TO IT AND THIS SHOULD HAVE BEEN CORRECTED WELL BEFORE YOU SUBMITTED YOUR ONE ISSUE, AND UNDER THE RIGHTS THAT I WISH TO EXPRESS TO BE EXERCISED WHILE THE APPEAL IS STANDING ARE ONES THAT THE COURT WOULD HAVE ME TO DO BECAUSE THEY ARE ONES THAT PROTECTS ME FROM HAVING ISSUES TO BE ABANDON ON THE APPEAL, I KNOW YOU GAVE YOUR PRESENTATION IN THE INITIAL START OF MY CASE BUT HOWEVER I DID NOT UNDERSTAND THE LANGUAGE IN ITS PARTICULARS AND I AM NOT TO BE SANCTIONED FOR THIS, YOU HAVE STATED THAT THE COURT WOULD NOT ALLOW YOU TO ADD ISSUES AND IN THIS SENSE I WOULD AGREE BUT THE COURT WILL ALLOW YOU TO MAKE CORRECTIONS TO MY APPEAL BEING SUBMITTED SO IT CAN BE COMPLETED WHEREAS ALL OF THE ISSUES BEING BRIEFED AND SUBMITTED FOR AN APPELLATE COURT REVIEWS, THE TIME FOR MY CASE TO BE REVIEW IN SUCH FASHIONS ARE NOW BY THE APPELLATE COURT AND IT IS UPON ME TO PROSECUTE MY CASE WITH DUE DILIGENCES AND AS IT STANDS THE DILIGENCES THAT I AM UTILIZING NOW ARE THE ONES THAT THE APPELLATE COURT DEEMS APPROPRIATE ACCORDINGLY TO WELL SETTLED LAWS BY OUR SUPREME COURT, THE SC SUPREME COURT HAS EXPRESSED THAT MY CASE IS IN THE COURT OF APPEALS AND THEY CAN NOT DEAL WITH IT WHILE IT IS IN THIS COURT BUT THEY HAVE FAR WARNED ME THAT NOTHING CAN BE CONSIDERED OTHER THAN WHAT THE COURT HAD REVIEWED WHILE IT WAS IN THE COURT OF APPEALS, NOW HERE IS WHERE MY CASE ARE PROBLEMATIC TO HOW IT WAS PERFECTED, AND TRULY THIS IS WHAT I AM TRYING TO AVOID, BUT KEEP IN MIND, I HAVE NO PROBLEM WITH THE ISSUE YOU SUBMITTED AND I WILL HAVE IT TO BE REMAINED AS SUBMITTED, BEING PRO SE ON AN APPEAL WILL ONLY CUT MY CHANCES AT PREPARING MY APPEAL AND THE EXPERTISE I DON'T HAVE TO LITIGATE AS YOU HAVE, THERE IS NO COMPUTERS TO DO UPDATED RESEARCHES AVAILABLE TO ME AND THIS IS NOT SOMETHING THAT I WANT TO FACE, AN OBSTACLE... WELL I HOPE THAT YOU REVAMP THE WHOLE SCENARIO OF MY CASE ON APPEAL AND PLACE THE REPORTER ON NOTICE TO HAVE THIS OMITTED PORTION OF THE RECORD PROCURED AND GIVE FURTHER REVIEWING TO THE AVAILABLE ISSUES THAT MUST BE RAISED TO THE APPELLATE COURT AND PLACE MY CASE ADEQUATELY TO THE COURT FOR THE REVIEW AS SHOULD HAVE BEEN, AGAIN EXPRESS MY DESIRES TO NOT HAVE ANY ISSUES ABANDONED DUE TO THE FACTS THAT THIS IS THE COURT FOR MY APPEAL ISSUES TO BE PRESENTED TO FOR A REVIEW FOR ERROR OF LAWS COMMITTED BY THE TRIAL COURT SO THAT IT CAN BE CORRECTED. I APPRECIATE YOUR TIME AND YOUR REPLY AND RESPONSES ARE MANDATORY, PER SE ATTORNEY/CLIENT PRIVILEGES.
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IN THANK YOU FOR YOUR ATTENTION AND TIME GIVEN TO ME IN THIS CRUX MATTER.

21, 2012

1

C. DURANT, ESQ.
ES/TDW

RESPECTFULLY SUBMITTED,

S/ Trey D. Williams
TREY D. WILLIAMS

LEE C.I.

990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
APPELLANT



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 14, 2013

Trey Williams, #341036
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your case

Dear Mr. Williams:

Enclosed is a copy of the opinion of the Court of Appeals affirming your conviction. Please be advised that our office will be closing your case along with this letter.

Please be aware that there is a **one year statute of limitations for filing an application for post-conviction (PCR) relief**. This is one year from the date of the enclosed opinion. This statute of limitations is **very strictly enforced**, so please be sure that **you** comply with it. Please understand *it is your responsibility alone to be sure this PCR application is timely filed*. **This application must be filed with the clerk of court in the county of your conviction**. There is also now a **one year statute of limitations for filing for federal habeas**. However, you must **exhaust your PCR claims** in state court, before raising them in federal court.

Please be aware that the time between your direct appeal becoming final, and the date your PCR application is filed **will count against your federal habeas statute of limitations in the future**. I do wish you the best. Feel free to contact me if you have any questions.

Sincerely,

LaNelle Cantey DuRant
Appellate Defender

LCD/mch

Enclosure: Post-Conviction Relief Application

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

INDICTMENT

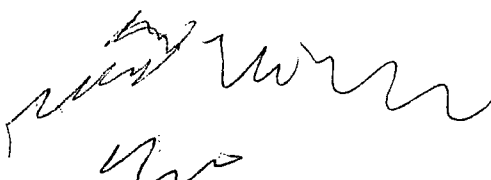
At a Court of General Sessions, convened on June 18, 2009 the Grand Jurors of York County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That on or about February 23, 2009, the Defendant Trey Alexander Williams did willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree, in that the Defendant Trey Alexander Williams did engage in a sexual battery with a minor victim who, at the time of the incident, was less than eleven (11), to wit: the Defendant Trey Alexander Williams (Date of Birth: September 21, 1988) did commit the sexual battery of cunnilingus (oral intercourse) upon the minor victim Jada Westbrook (Date of Birth: September 17, 2002), in that said Defendant did place his mouth upon the vaginal/genital area of said minor and/or said Defendant did kiss and/or lick the vaginal/genital area of said minor victim. Said incident occurred in York County, South Carolina. Said incident did occur within York County, South Carolina. All in violation of Section 16-3-655(A)(1), of the Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR



WITNESSES

PD Burris

ARREST WARRANT NUMBER

27945

ACTION OF GRAND JURY

TRUE BILL

VERDICT

reperson of Grand Jury

te: 6/18/09

reperson of Petit Jury

te:

DOCKET NO. 2009-GS-402646

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 18 Term 2009

THE STATE

VS.

TREY ALEXANDER WILLIAMS

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A MINOR,
FIRST DEGREE**

SC Code: 16-3-655(A)(1)

CDR Code: 0385

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

) CERTIFIED TRUE COPY

COUNTY OF YORK

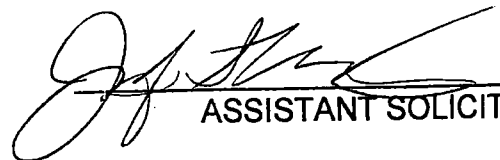
) 2010 MAY 28 PM 1:04

At a Court of General Sessions, convened on May 27, 2010 the Grand Jurors of York County present upon their oath: ~~DAVID HAMILTON~~
CLERK OF COURT
YORK COUNTY, SC

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That on, about or between September 2008 and February 23, 2009, Defendant Trey Alexander Williams did in York County, South Carolina, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree, by engaging in sexual battery with a minor who was less than eleven (11) years of age, to wit: Jada Westbrook (Date of Birth: September 17, 2002). All in violation of Section 16-3-655(A)(1), of the Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

D\Burris

AMENDED INDICTMENT:
DOCKET NO. 2009-GS-46-2646

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

May 13 Term 2010

ARREST WARRANT NUMBER

7945

ACTION OF GRAND JURY

Jennifer Torsiello

18-09 True Billed

TRUE BILL

person of Grand Jury

5-13-10

VERDICT

Guilty - Sexual battery

involved sexual intercourse by

Defendant, Trey Alexander Williams

John C. Hargis III

person of Petit Jury

Judge

7/26/10

THE STATE

vs.

TREY ALEXANDER WILLIAMS

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR,
FIRST DEGREE

SC Code: 16-3-655(A)(1)

CDR Code: 0385

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW

IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150
POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151

(803) 418-5708

FAX: (803) 934-9618 TOLL FREE: (877) 770-8792

Email: cbrooks@ctbrooks.com

May 14, 2015

Trey Williams, 341036
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina, 29010

RE: Trey Williams v State of South Carolina

Dear Mr. Williams:

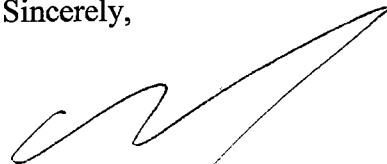
Per your conversation with my paralegal, enclosed please find a copy of your handwritten Judicial Notice of Adjudicated Facts as well as a copy of the Motion for Continuance.

We have searched your file and cannot locate the expert Dubose documents so I am going to assume that if they were mailed to us, we have returned them to you. If you do not have these, they may be obtainable from your original trial attorney or your other PCR attorneys. I would suggest trying to secure that information from one of those sources.

We still have not heard back from Judge Lee considering her decision in you PCR matter. As soon as I receive a decision from her, I will promptly forward you a copy for your records.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,



Charles T. Brooks, III
CTB, III/srw

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW

IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150
POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151
(803) 418-5708

FAX: (803) 934-9618 TOLL FREE: (877) 770-8792

Email: cbrooks@ctbrooks.com

RECEIVED

OCT 20 2014

October 8, 2014

Trey Williams, 341036
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina, 29010

S.C. SUPREME COURT

RE: Trey Williams v State of South Carolina

Dear Mr. Williams:

In preparing your Judicial Notice, you indicated that you wanted to get all your mental/medical records.

Enclosed you shall find a medical release form for your signature. Also, please furnish me with name of all of your mental/medical providers so that we may request this information.

Sincerely,



Charles T. Brooks, III
CTB, III/jlb

Enclosure

Amber W. Bailey

State of South Carolina

County of York

Trey Williams # 344266

V.

State of South Carolina

In the Court of Common Pleas

Sixteenth Judicial Circuit

2013-CP-46-1797

Judicial Notice of Adjudicated Facts

Respectfully, the sole purpose of this Notice of Adjudicated Facts is to show petitioner's diligence in attempting to have PCR Counsel adequately and sufficiently address and fairly inform the PCR Court of all the relevant facts and the claims Federal Constitutional basis. See, *Mallory v. Smith*, 27 F.3d 991, 995, held the exhaustion Requirement demands that PCR Counsel do more than scatter some meek shift needles in the haystack of the State Court Record. The grounds relied upon must be presented free up and squarely, the Federal questions must be plainly defined, and that bleak references which hint that a theory may be lurking will not suffice, see, *Kornahrens v. Evatt*, 46 F.3d 1359, 1362. PCR Counsel was informed of these principles in the PCR application, Amendments, letters sent to counsel and by way of this "Judicial Notice of Adjudicated Facts". The Rules S.C.L. Civ. P. 71.1(2), also specifically mandate that counsel must be permitted a reasonable time to confer, to evaluate the application and to insure that all available grounds for relief are included in the application, and allow use of discovery and all other civil rules, see, *Grable v. State*, 379 S.E.2d 118, which include the use of interrogatories, depositions and other discovery mechanisms such as subpoenas.

Petitioner states that he would be denied due process due to ineffective assistance of counsel under the (PCR) mandate S.C. Code ANN § 17-27-30, through § 16D by counsel's failure to raise adequately and sufficiently petitioner's meritorious claims to withstand *Strickland* supra and to make sure that all issues are raised and ruled on for appellate review. Petitioner asserts that this can not be established in (PCR) unless he is provided effective assistance of counsel.

to demonstrate petitioner's due process violations. "All counsel must perform up to professional standards in all criminal proceedings, even in collateral review" under the U.S. Supreme Court ruling in Martinez v. Ryan, 2012 WL # 912430.

Despite the importance of PCR remedies as safeguard against unjust, unconstitutional, and erroneous convictions, the systemic devolving of the importance of PCR process is widespread. Convicted persons in South Carolina raising post-conviction challenges rely almost exclusively on appointed counsel, most of whom have little experience in this area of the law. The purpose of the PCR Act is to provide a comprehensive mechanism to the State's courts attention to any unresolved and previously not mentioned questions of facts and laws relevant to their conviction or sentence. The application must allege particular grounds for relief and the specific defects in the trial or criminal proceedings that warrant a reversal or rescission including the legal basis for the claim, supporting facts; and Relief desired "to include affidavits, Court Records, or other Material Relevant. Petitioner, asserts that he is a lay person and cannot be held responsible for PCR counsel inadequately presenting, developing, investigating, ascertaining and/or eliciting any of petitioner's due process violation claims. Such a blatant failure by PCR counsel at this critical stage is outside the range of competent attorney in criminal cases, and hence, will have operated to deny petitioner his one fair bite at the apple, in his initial review collateral proceedings, which will be the "cause" and "prejudice" to any future procedural defaults. (1) Inadequate assistance of counsel at initial review collateral proceeding may establish "cause" for a prisoner's procedural defaults.

(2) A.E.D.P.A. did not bar petitioner from using ineffective assistance of his Post Conviction attorney to establish "cause" and "prejudice" from his procedural defaults; and.

(3) Remand was required to determine whether petitioner's attorney in the first State collateral proceeding was ineffective, whether underlying ineffective assistance of trial counsel's claims was substantial. In The Supreme Court in Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, stated that Federal Courts on habeas Corpus must hold a evidentiary hearing if applicant did not receive a full and fair evidentiary hearing in State Court either at time of trial or in collateral proceeding, see, 28 USC § 2243 if:

- 1) Merits of factual dispute were not resolved in State hearing;
- 2) factual determinations not fairly supported by the record as a whole;
- 3) fact finding procedure not adequate;
- 4) Substantial allegation of Newly discovered evidence

5) Not afford a full and fair State hearing. Petitioner will be able to meet all his needs if review PCR procedure is ineffective. Even where procedures employed does not violate Constitutional Standards, if it appears to be seriously inadequate for ascertainment of truth, it is Federal Judge's duty on habeas corpus, or at the State's Supreme Court to disregard State's findings and take evidence anew. When a evidentiary hearing is required because of unresolved factual dispute, State court record (to include this Judicial Notice) of criminal prosecution is competent evidence, and either party may choose to rely solely upon evidence therein.

It is for the above reasons that there could not have been even the semblance of a full and fair hearing unless the State Court actually "perched" and "decided" the issues presented. If initial review collateral counsel was ineffective, then compliance would be unworkable, and would constitute "cause" under this Standard. Where a petitioner defaults a claim as a result of the denial of the right to effective assistance of counsel, the State which is responsible for the denial as a Constitutional matter, must bear the cost of any resulting default and the harm to the State's interest that Federal habeas review entails. In other words it is not the gravity of the attorney's errors that matter, but that it constitutes a violation of petitioner's right to counsel, so that the errors must be seen as an external factor, imposed to the State.

In Petitioner PCR application the following allegations have been made to PCR Court:

- 1) Petitioner's waiver of trial counsel was invalid and not in compliance with due process of law
- 2) Standby trial counsel provided ineffective assistance of counsel
- 3) Appellate counsel provided ineffective assistance of counsel
- 4) Prosecutorial misconduct / vindictive prosecution
- 5) Petitioner's waiver of the Jackson v. Denno hearing was not intelligently made
- 6) Petitioner's waiver of Jury trial was invalid and unintelligently made
- 7) Insufficient evidence

PCR Counsel should answer the PCR application, and fully apprise the State court of the Federal Constitutional claims by relying on Federal and State cases that employ a Constitutional Analysis, asserting the claims in terms that call to mind the specific right protected by the Constitution, and allege facts that fall well within the mainstream of Constitutional litigation. As a strategic matter, counsel should prepare a brief summarizing the evidence, introducing the court to the issues presented in the PCR applications and make explicit constitutional argument. These correct methods of raising and presenting claims would be invaluable to the Court's understanding of the relevant facts and law, and compliance with the exhaustion requirements. See, *Rose v. Lundy*, supra, and *Picard v. Connor*, supra.

PCR Counsel should use interrogatories, and Subpoenas, because the moving party presents his evidence first and has the burden to prove by a preponderance that petitioner is entitled to Relief. See, S.C.R. Civ. P Rule 71 (c); *Cobbs v. State*, 408 S.E. 2d 223, 225 citing *Beckett v. State*, 294 S.E. 2d 482; and *Butler v. State*, 334 S.E. 2d 813. Petitioner asserts that it is because of this burden that PCR Counsel should view the PCR hearing in the same manner as counsel would view any non-jury trial, even more so in this case at bar because of the petitioner's allegations that the waiver of trial counsel was involuntary, unknowing and unintelligently made. As such petitioner was denied the opportunity to present meritorious defenses by way of his own forensic specialist, or to cross examine the State's forensic specialist, to challenge other testimony, witnesses, and evidence presented by the State. Petitioner asserts that the record is void of the courts or standby counsel ever explaining to petitioner what, why, when and how to object to testimony or evidence, or likewise with cross examining witnesses. See trial transcript pg # 5 to 13 Line 1-25, this record does not reflect petitioner being voluntarily knowingly and intelligently being properly informed of the advantages or disadvantages of proceeding pro se and therefore is not in compliance with due process and constitutional standards. See, *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461; *Carnley v. Cochran*, 369 U.S. 506, 82 S.Ct. 884, 8 L.Ed. 2d 70; *Gideon v. Wainwright*, 370 U.S. 335, 83 S.Ct. 272. For the courts have made it clear that this right cannot be forgone without deliberate choice by the defendant. See *Stevenson v. State*, 522 S.E. 2d 343 S.C.(1999) To establish a valid waiver of counsel the accused must be advised of the right to counsel and adequately warned of the dangers of self-representation; in the absence of a specific inquiry by the lower court addressing the dangers and disadvantages of proceeding pro se. See, *Watts v. State*, 556 S.E. 2d 368 (S.C. 2001) If the record fails to demonstrate an informed choice to proceed pro se with eyes open, then the defendant did not make a knowing and voluntary waiver; Trial judge failed to make a meaningful inquiry into defendant's background to determine whether he had sufficient experience or knowledge to waive counsel.

Petitioner asserts that the trial court did not ask petitioner for his age, educational level, criminal history or competency. See *Gardner v. State*, 351 S.C. 407 (2002), when determining if an accused has a sufficient background to understand the dangers of self-representation, the courts must consider 1), Age, educational background, and physical and mental health; (Petitioner is requesting PCR Counsel to gather mental records for PCR hearing); 2), whether he was previously involved in criminal trials; (Petitioner first offense); 3), Nature of the charges, possible penalties; (Record is void of counsel or the court explaining to petitioner the elements of the charges); 4), whether counsel explained to him the dangers, (Petitioner had conflict of interest with counsel and made several complaints)

5), Whether he was attempting to delay or manipulate the proceedings; (The Record is void of any attempt at either);
6), Whether the court appointed Stand by counsel; (The Record reflects the trial court instantaneously Stand by
counsel to See trial transcript pg #13); 7), Whether he knew he would be required
to comply with the rules of procedure at trial; (The Record is void of petitioner being informed); 8),
Whether he knew of legal challenges he could raise in trial (again the Record is void of any explanations);
9), Whether the exchanges between the accused and the court consisted merely of piecemeal answers to pro
forma questions; (The Record reflects ^{little more} and); 10), Whether his waiver resulted from either
coercion or mistreatment; (The Record reflects the trial courts tone and demeanor was aggressive and
hostile to defendant.)

* Furthermore petitioner points PCR Counsel, PCR Courts, and this Record of Judicial action to Stand by
Counsel's failure to comply with the States independent and adequate State ground "Contemporaneous objection
Requirement at trial to the below listed meritorious issues. Petitioner was deprived from complying with the States
procedures "Solely due to ineffective assistance of Stand by counsel. See, *Mannwright v. Sykes*, 433 U.S.
States, a State procedural Rule which requires that a "Contemporaneous objection" be made deserves great
Respect from Federal Courts, because of the fact that;

1), it is a Rule employed by a coordinate jurisdiction within Federal system and for the many interest it
serves in its own right;

2), it enables the Record to be made with respect to the Federal Constitutional claims when the Record and
Recollections of witnesses are freshest; and

3), it enables the judge who observes the demeanor of those witnesses to make the factual determinations
necessary for properly deciding the Federal Constitutional question.

A Contemporaneous objection may lead to the exclusion of evidence or behavior objected to, thereby
making a major contribution to finality in criminal litigation: Without the evidence claimed to be vulnerable
on Federal Constitutional grounds, a jury or judge may acquit a defendant, and that would end the case,
or a jury or judge may nonetheless convict, and he will have one less Federal claim to assert in his Federal
petition. Furthermore, an objection on the spot may force the prosecution to take a look back at its hole
card, and even if the prosecutor thinks that the State trial judge will admit the evidence he must contemplate
the possibility of Reversal by the State appellate court or the ultimate issuance of a Federal writ based
on the impropriety of the State courts Rejection of the Federal Constitutional claim. See, *Stone v. Powell*,
428 U.S. 465; *Henderson v. Kibbe*, 431 U.S. 145, 157.

Petitioner, asserts that there can be no dispute of the prejudice he suffered because of Counsel the
involuntary, unknowing and unintelligent waiver of trial counsel and Stand-by counsel's failure
to comply with the independent and adequate State procedural ground which would prevent direct Review

of his Constitutional violation. Said failure to comply with the State's Contemporaneous objection Rule was ~~plain error~~ which affected substantial Rights, and thereby, may be noticed although they were not brought to the attention of the courts due to ineffective assistance of Counsel (Stand by). See, U.S. V. Olano, *Supra*; U.S. V. Young, *Supra*; U.S. V. Atkinson, *Supra* and Chapman V. California, *Supra*. Petitioner cites many cases which shows that Counsel was ineffective for failing to preserve any issue at a full trial for appeal by way of contemporaneous objection; See, Medlock V. One 1985 Jeep Cherokee VIN 1JCNB78285T127001, 322 S.C. 127, 134, 470 S.E. 2d 375, 378 (1996) (To preserve an issue for appeal, a contemporaneous objection is necessary and specific grounds must be clearly stated); State V. White, 311 S.C. 289, 428 S.E. 2d 740 (Ct App 1993); State V. Lynn, 277 S.C. 228, 226, 284 S.E. 2d 786, 789 (1991) (Concluding defense counsel's failure to contemporaneously object did not preserve the issue for appellate review); In ON L.L.C V. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E. 2d 716, 724 (2000); and State V. Williams, 303 S.C. 410, 411, 401 S.E. 2d 168, 169 (1991).

Thus, it is clear that Stand by Counsel's failure to comply with the State's Contemporaneous objection Rule is the "Cause" and "Prejudice"; See, Martinez V. Ryan, 2012 WL 912950, and Coleman V. Thomas, *Supra*; U.S. V. Frady, 456 U.S. 152, 102 S.Ct. 1584 71, L.E. 2d 816; Engle V. Isaac, 456 U.S. 102 S.Ct. 1558, 71 L.Ed. 2d 783; State V. Duttani, 304 S.C. 347, 404 S.E. 2d 516; U.S. V. David, 83 F. 3d 683 (C.A. 4 V.A May 6 1996); Adkins V. Bordenkircher, 874 F. 2d 1474 (4th Cir) and many other cases support petitioners Stand. See, Meadows V. Legursky, 904 F. 2d 903 (C.A. 4 W.VA 1990), held, it had to waive the State's procedural requirements to meet the ends of justice, waived the contemporaneous objection requirements when the denial of Constitutional Rights deprives the defendant of a fair trial.

Indeed, the purpose of Stand by Counsel is to help a defendant whom intelligently, knowingly and willingly waived right to trial counsel, and whom is not familiarized with the rules of procedure of a trial, to direct, consult, advise and inform him on when and how to protect his Constitutional Rights under due process of the law. If trial court instructs Stand by Counsel to do nothing, See trial transcript pg # 13, then defendant is without such Stand by Counsel and therefore denied the chance to test the prosecution's case to ensure that the proceeding serves the function of adjudicating guilt or innocence while protecting the rights of the person charged; See, Powell V. Alabama, 287 U.S. 45. The defendant requires the guiding hand of Counsel and on Stand by Counsel at every step in the proceedings against him. Without Stand by Counsel's help, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence, even more so important when petitioner's waiver of Counsel was unwitting, unknowing, involuntary, and through coercion, and trial court instructing Stand by Counsel to do nothing. This action of trial court and Stand by Counsel denied petitioner assistance at this critical stage in the trial, and petitioner was abandoned by Stand by Counsel and failed to recognize meritorious issues, present meritorious defenses, and/or challenge testimony and evidence.

Nevertheless, petitioner raised trial counsel's ineffectiveness to the trial court, filed many complaints on counsel's untruthfulness, conflict of interest about his concern that counsel was unprepared, unwilling and incompetent to represent him at trial, thus the reason petitioner felt forced to proceed pro-se. Petitioner explained to the court that he had no faith in trial counsel's ability to protect any of his rights at trial based on this on going conflict of interest with counsel. This pro trial unprofessional performance of counsel violated petitioner's due process to a fundamental fair proceeding, and was the reason petitioner was forced and coerced to an involuntary, unknowing and unintelligent waiver. See, *Eady*, supra, at 170, 120 S.Ct. at 1596. A Constitutional claim that implicates fundamental fairness... Compels Review Regardless of possible procedural defaults. It also held, the Sixth Amendment itself requires that responsibility for default be imputed to the State, "which must not conduct trials at which persons who face incarceration must defend themselves without adequate legal assistance, *Cuyler v. Sullivan*, 446 U.S. 335, 109 S.Ct. 1708. Ineffective assistance of counsel, is then the "cause" for a procedural default. Thus in order to establish "cause" the court stated a Federal Habeas petitioner need only satisfy that the failure to object or to be advise to object was the product of his counsel (Stand by counsel) ignorance or oversight, not deliberate tactic, See, *Murray v. Carrier*, 477 U.S. 485. Petitioner asserts it was solely because of Stand by counsel's failure to advise, suggest, or inform petitioner on what, when, why and how to object which is ineffective assistance of counsel that petitioner was denied a fair trial. It therefore, was Stand by counsel's cumulative errors that were sufficiently egregious and prejudicial. No objections threw out a entire trial that petitioner's due process was violated. The law makes plain that the controlling consideration must be whether petitioner was denied fundamental fairness in the State court proceeding, See, *Rose v. Lundy*, 455 U.S. 509, 102 S.Ct. 1192.

Petitioner asserts that Stand by counsel's failure to advise, suggest or inform petitioner on what, when, why and how to object and comply with the States Contemporaneous objection Rule was a complete abandonment at a critical stage. See *Maples v. Thomas*, 132 S.Ct. at 912, Abandonment by counsel or Stand by counsel constitutes cause to excuse a procedural default when petitioner has no notice that he effectively lacks representation or a legal advisor at the relevant time. This breach of duty and the on going conflict of interest was antagonistic to petitioner's stance, and a complete disparity with serious prejudicial effects which forced petitioner to stand trial not knowing how to protect any trial rights or procedures.

These Constitutional claim advanced above and below, calls into question the accuracy of the proceeding and petitioner's guilt. See, *Harris v. Nelson*, 394 U.S. 236, 290-291, 89 S.Ct. 1086. The Court explained in *Engle* that cause and prejudice standard will be met in those cases where review of a State prisoner's claim is necessary to correct a fundamental Miscarriage of Justice at 135, 102 S.Ct. at 1576.

These cases has also established that where a Constitutional violation has probably resulted in the conviction of one who is actually innocent. A Federal Court may grant the writ even in the absence of a showing of cause for the procedural default. See, MURPHY V. CARPER, 477 U.S. 478 106 S.Ct. 2654. Let this "Actual Notice" reflect petitioner's assertion of Actual Innocent on the charges.

This is petitioner's formal request to have his PCR Counsel sufficiently and adequately raise the following claims to the State Court, in compliance with the PCR Mandates of S.C. and State and Federal, exhaustion Requirement.

Issues Presented To The PCR Courts

1) Involuntary, Unknowing, Unintelligent waiver of Counsel

- A) Was the waiver in compliance with due process of Law
- B) Does the Record reflect threats, coercion or duress in this alleged waiver violation
- C) Was this waiver based on ineffective assistance of the Counsel.
- D) Can Counsel's behavior be a plea or waiver, or which lead to the plea, or waiver be considered under the Sixth Amendment.

Begin

Others to be Amended by PCR Counsel after Review. If the Higher Courts Review, and mentions claims are found to exist then Ineffective Assistance of PCR Counsel is the "Cause" and "prejudice" of any future defaults on these claims, in Federal Court. PCR Counsel must assure that this issue is addressed properly, and Ruled upon accordingly, in compliance with the Constitutional Standard of due process and equal protection of Law.

2) Ineffective Assistance of Counsel / Trial Counsel and Stand by Counsel

- A) The Record reflects conflict of interest existed with Trial Counsel, and Stand by Counsel, causing the waiver to be involuntary, and unintelligent made due to ineffective assistance.
- B) Was the waiver the product of ineffective assistance, coercion or duress, of Stand by Counsel
- C) Was Stand by Counsel ineffective for failing to object and preserve for appeal, Involuntary, unknowing waiver of a Jackson V. Denno hearing
- D) Was Counsel and Stand by Counsel ineffective for failing to object, and preserve for appeal - Involuntary, unknowing and unintelligently made waiver of a Jury trial
- E) Was Counsel, and Stand by Counsel ineffective for failing to Request for a lesser included charge

F) Was trial counsel and standby counsel ineffective in failing to properly investigate the fact and the law of the case, failing to appreciate the meaning of applicable laws, and court proceedings.

G) Failing to object to the insufficiencies of evidence to support a conviction when the verdict was reached.

H) Was trial counsel and standby counsel ineffective for failing to present forensic specialist for petitioner defense.

I) Was trial counsel and standby counsel ineffective for failing to object, to the Prosecution's misconduct, by way of misrepresenting the forensic evidence in to the court, fraud upon the court, by official court officers of the State, presenting perjured testimony and false documentation, to the deliberate deceive the Courts.

Petitioner is requesting his PCR Counsel, to investigate, ascertain, and alert all of petitioner's due process violation claims listed above, to ensure that they all are properly raised and ruled on accordingly, in compliance with Constitutional Standards, to include S.C.R. (supp) Rule 59(a) or (E) motion. Respectfully, Request for an appeal on any adverse decisions. All Stated Plain and Clear in this Further Notice for the Court Record and Consideration, along with due diligence, "cause" and "prejudice" Standards and exhausting Requirement.

Cumulative Error

Harmless Error

When an error "could" have been and was the subject of an objection at trial, the appellate Courts have three (3) possible standards of review:

- 1) Harmless beyond a reasonable doubt;
- 2) High probability of harmlessness;
- 3) More probable than not harmless.

An error is harmless if it is unimportant in relation to the whole and the verdict rendered was surely unattributable to the error. A reviewing appellate Court need only conclude that the error claimed did not prejudice a defendant from receiving a fair trial. "It is important to have a trial free of those errors which might influence a verdict when the evidence on the issue of liability is so close that the jury might reasonably return a different verdict."

The cumulative effect of two or more individually harmless errors has the potential to prejudice a defendant to the same extent as a single reversible error. The purpose of a cumulative error analysis is to address that individually have been found to be harmless it is not reversible. It analyzes whether their cumulative effect on the outcome of the trial is such that collectively they can no longer be determined to be harmless. Unless, an aggregate harmlessness determination can be made, collective error will mandate reversal, just as surely as will individual error that cannot be considered harmless. The harmlessness of cumulative error is determined by conducting the same inquiry as for individual error, courts look to see whether the defendant's substantial rights were affected:

"An involuntary, unknowing, and unintelligent waiver" of a Constitutional Right and a total deprivation of effective assistance of counsel at trial is not subject to the harmless error analysis." An involuntary waiver is such the intention it can never be treated as harmless error.

See, United States v. Manner, 185 F.3d 574 (6th Cir. 1999); ARIZ. v. Fulminante, 499 U.S. 279 (U.S. 1991); 28 USC § 2111; Chapman v. Cal. 386 U.S. 18 (U.S. 1967); Cooper v. California, 386 U.S. 58 (U.S. 1967); Haddad v. Lockhead California Corp. 720 F.2d 1434 (9th Cir. Cal 1983); State v. Northcutt, 322 S.C. 267 (S.C. 2007); State v. Blank, 955, 50, 2d. 90/29 Apr 11 2007; Karsten v. McCray, 157, 111. App 3d. 1 (111 App. Ct 2d Dist 1987); United States v. Rivera, 907 F.2d 1462 (10th Cir. Oct 1990); United States v. Lane, 474 U.S. 438 (U.S. 1986); Tague v. Board of Directors, 633 F.2d 1309, 9th Cir. Nov 1980; United States v. Acosta, 475 F.3d 677 (5th Cir. Tex 2007)

In Beckman v. State (2013), S.C. the cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial or proceeding and the cumulative effect of the errors affects the outcome of the trial or proceeding. See, State v. Johnson, 334 S.C. 78, 93, 512 S.E.2d 795, 503 (1999), an appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; Rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal. Id. See, State v. Gardner, NO 69726-91 (July 28 2013) (Multiple errors may combine to deprive an accused person of a fundamentally fair trial in violation of due process clause of the Constitution. In light of the cumulative effect of the errors assigned above, Petitioner was denied a fundamentally fair trial, or waiver of counsel. Cumulative errors can be noticed in this State.

Abdullahi

Additionally, Petitioner makes the following allegation against his Appellate Council's ineffectiveness

3) Appellate Counsel was ineffective, in failing to raise meritorious issues of involuntary, unknowing and unintelligent waiver of trial counsel, waiver of jury trial, and ineffective assistance of counsel claim.

A) Appellate Counsel failed to adequately raise abuse of discretion on the trial court, for the above mentioned issues.

Petitioner is alleging that appellate counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. Therefore breach of counsel unreasonable standard of representation, petitioner was severely prejudiced because petitioner was denied a chance to raise meritorious issues raised above, See, Smith v. Robbins, 528 U.S. 239, 120 S.Ct. 794. The highest court have stated: Counsel, however, can also deprive petitioner of the right to effective assistance, simply by failing to render adequate legal assistance, See, Cuyler v. Sullivan, 446 U.S. at 344, 100 S.Ct. at 1716. It also stated if counsel does not conduct a substantial investigation with each of several plausible lines of defense, assistance may nonetheless be ineffective, counsel's errors resulted in actual actual and substantial disadvantage to the course of petitioner's defense. See, Lombard v. Lynaugh, 868 F.2d 1475, held counsel ineffective for filing Anders brief when new - frivolous issues existed for appeal.

Petitioner contends that the Record does not contain any probative evidence to support the notion that the waiver was knowingly and intelligently made, or that stand by counsel was effective in protecting petitioner's Constitutional Rights. Counsel appointed to represent an indigent appellate, ordinarily should consult with his client at least once to ascertain his clients desires with regards to the alleged trial errors which the appellant wishes to press, because counsel has a duty to press arguments initiated by his client which may arguably be supported even though counsel does not personally espouse them. Counsel must act in the role of an active advocate in behalf of his clients appeals to the best of their ability. Fundamental fairness entitled indigent defendant to an adequate opportunity to present their claims fairly within the adversary system. See, AZE V. Oklahoma, 470 U.S. 68. When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the courts must examine the Record to determine whether appellate counsel failed to present significant and obvious issues on appeal, See, Gray v. Greer, 810 F.2d 644, 646. Generally, the presumption of effective assistance of Counsel will be overcome when the alleged ignored issues are clearly strong or meritorious issues. Conversely, an appellate advocate may deliver deficient performance and prejudice a defendant by mounting a dead horse winner, even though counsel may have presented strong but unsuccessful claims on appeal, See, Page v. U.S 884 F.2d 300, 302; Matire v. Wainwright, 811 F.2d 1430, 1438; U.S. v. Alerre, 430 F.2d 681; U.S. v. Addison, 2001 WL 409453.

Conclusion

Petitioner has given ethical notice, to PCR Counsel, the State's PCR Courts and all of parties involved in this matter of the issues and Constitutional violations that he wanted adequately and sufficiently raised. Any failure to have these issues presented and ruled upon is due to ineffective assistance of the State appointed PCR Counsel, which failed to comply with the PCR Mandates of this State. PCR Counsel should submit a proper order Granting PCR Relief with finding of facts and conclusion of law which support these allegations. PCR Counsel should file a S.C.P. Civ. P. Rule 59(A) and (E) to assure that all issues raised are ruled upon and/or preserved for appeal. PCR Counsel should subpoena the following list of people which will help support petitioner's allegations, and bring before the PCR Courts any unresolved and previously not mentioned questions of fact, law, and evidence, because of said involuntary, unknowing and unintelligent waiver of trial Counsel and the complete abandonment of stand by Counsel.

List of People to be Subpoena

- 1) Erik Daniel Delany Esquire - Stand by Counsel
- 2) Angela Hyland (Rock Hill police depart) First officer before medical personnel was called
- 3) Detective William Burress (Rockhill police depart) conflicting statement from alleged victim mother
- 4) Michelle Stearn - DSS Case worker, will testify to conflicting statement from alleged victim mother
- 5) Annie Davis - 803-324-8173, 984 South land drive Rockhill S.C. 29730 (Vital testimony)
- 6) Tonitha Debose - 240-605-0823 Medical specialist will testify regarding proper procedures not followed
- 7) All Medical staff, employees, ect from the Penobscot medical center to include all reports, side notes, agencies documents and test results
- 8) Janice Price, and Dwight Reynolds from South Carolina Children's Advocacy Medical Response System, 1615 Augusta Road W. Columbia South Carolina 29169, # 803-791-1513
Dickerson Center for children # 803-791-1511, will testify to the overall medical assessment Reports
(Will testify to no such crime based on medical evidence))

Petitioner asserts that he was denied the debose and evidence in his trial to have these people testify. Further, because this testimony will show petitioner's innocence, it would be ineffective and a complete miscarriage of justice, if PCR Counsel does not investigate, subpoena and present this favorable evidence to the PCR Court for consideration. PCR Counsel has an moral and ethical duty to diligently investigate each person requested to be subpoena, to ascertain if any evidence or testimony would help his clients defense. Again any failure, or delay or excuse will be the "cause" and the "prejudice" to any waiver of these defenses.

TREY Alexander Williams 341036
x - J. Henry Alexander Williams

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Alison. Lee, Circuit Court Judge

Appellate Case No. 2016-001553

Trey A. Williams, #341036

Respondent,

v.

State of South Carolina

Petitioner.

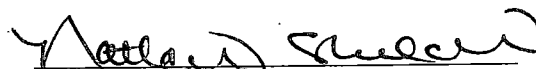
RESPONDENT'S MOTION TO SUPPLEMENT APPENDIX

NOW COMES Respondent, by and through his undersigned attorney, and motions this Court to supplement the appendix. Respondent filed a document with the Clerk of Court titled "Judicial Notice of Adjudicated Facts" on October 17, 2014. This document is referenced in both the PCR transcript (Appendix p. 191-192) and the Order granting relief (Appendix p. 248). The document was timely filed prior to Respondent's PCR hearing. The PCR Judge references this document in the PCR hearing and has some discussion with counsel for both sides about its inclusion in the PCR packet.

THEREFORE, Respondent respectfully requests that the Court grant his motion and supplement the Appendix in this case by adding the "Judicial Notice of Adjudicated Facts" to the Appendix as pp. 269-280.

Respectfully Submitted,

March 13, 2017



Nathan J. Sheldon
SC Bar #: 0074943
331 E. Main St., Suite 200
Rock Hill, SC 29730
803-909-9343
Attorney for Respondent

cc. Justin J. Hunter, Esq.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Trey A. Williams, 341036

☒ Plaintiff

v.

State Of South Carolina

☐ Defendant.

IN THE COURT OF COMMON PLEAS

FILED-RECEIVED

2014 OCT 17 PM 2:09

CASE NO.

2013-CP-46-1797

DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SCMOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Charles T. Brooks, Iii, Bar No. 11762

Address:

309 Broad Street, Sumter, South Carolina, 29150

phone: (803)418-5708 fax: (803) 934-9618

e-mail: other:

Defendant's Attorney:

, Bar No.

Address:

phone: fax:

e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

October 13, 2014

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support(check reason) ☐ Domestic Abuse or Abuse and Neglect☒ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____☐ CONTESTED - AMOUNT DUE: _____

FILED-RECEIVED
2014 OCT 17 PM 2:09
STATE OF SOUTH CAROLINA
COUNTY OF YORK
TREY WILLIAMS, 344266
Applicant
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC
DOCKET NO.: 2013-CP-46-1797
JUDICIAL NOTICE OF ADJUDICATED FACTS
STATE OF SOUTH CAROLINA
Respondent,

The Applicant through undersigned Counsel wishes to file this Judicial Notice of Adjudicated facts as follows:

Respectfully the sole purpose of this Notice of Adjudicated Facts is to show Applicant's diligence in attempting to have PCR Counsel adequately and sufficiently address and fairly inform the PCR Court of all the relevant facts and claims. *Mallory v Smith*, 27 F3d 991, 995 held the exhaustion requirement demands the PCR Counsel do more than "scatter some make-shift needles in the haystack" of the State Court Record. The grounds relied upon must be presented squarely. The Federal questions must be plainly defined and that bleak references which hint that a theory may be lurking will not suffice, see *Kornahrens v Evatt*, 66 F.3d 1359, 1362. The Rules also specifically mandate that counsel must be permitted a reasonable time to confer, to evaluate the application and to insure that all available grounds for relief are included in the application and allow use of discovery and all other Civil Rules, which include the use of interrogatories, depositions and other discovery mechanisms such as subpoenas.

Applicant states that he would be denied due process due to ineffective assistance of counsel under the PCR mandate S. C. Code Ann § 17-27-20, through § 160 by Counsel's failure to raise adequately and sufficiently Applicants meritorious claims to withstand *Strickland Supra* and to make sure that all issues are raised and ruled on for appellate review. Petitioner asserts this cannot be established in PCR unless he is provided effective assistance of counsel to demonstrate Applicant's due process violations.

Despite the importance of PCR remedies as safeguard against unjust, unconstitutional and erroneous confinements, the systemic devolving of the importance of the PCR process is widespread. Convicted persons in South Carolina raising Post Conviction challenges rely almost exclusively on appointed counsel, most of whom have little experience in this area of the law. The purpose of the PCR Act is to provide comprehensive mechanism to the State's Courts attention to any unresolved and previously not mentioned question of facts and bias relevant to their conviction or sentence. The Application must allege particular grounds for relief and the specific defects in the trial or criminal proceedings that warrant a reversal or rescission including the legal basis for the claim supporting facts; and relief desired "to include affidavits, court records, or other material relevant". Applicant asserts that he is a lay person and cannot be held responsible for PCR Counsel inadequately presenting, developing, investigating, ascertaining and or eliciting any of Applicant's due process violation claims. Such failure by PCR Counsel at this critical stage is outside the range of competent attorney in criminal cases and hence will have operated to deny Applicant his "one fair bite of the apple."

1. Inadequate assistance of Counsel of initial review collateral proceeding may establish "cause" for a prisoner's procedural defaults.
2. A.E.D.P.A. did not bar Applicants from using ineffective assistance of Post Conviction Attorney to establish "cause" and "prejudice" from his procedural defaults and,
3. Remand was required to determine whether Applicant's Attorney in the first State collateral proceeding was ineffective, whether underlying ineffective assistance of Trial Counsel's claims was substantial. In the Supreme Court in "Townsend v Sain, 374 U.S.293, 83 S.Ct 745 stated Federal Courts on Habeas Corpus must hold a evidentiary hearing if Applicant did not receive a full and fair evidentiary hearing in State Court either at time of trial or in collateral proceeding, see 28 USCA § 2243 if:
 - A. Merits of Factual dispute were not resolved in State hearing
 - B. Factual determinations not fairly supported by the records as a whole

- C. Fact finding procedure not adequate.
- D. Substantial allegation of newly discovered evidence.
- E. Applicant not offered a full and fair State hearing.

In Applicant's PCR Application the following allegations have been made to PCR Counsel:

1. Applicant's waiver of trial counsel was invalid and not in compliance with due process of law.
2. Standby Counsel provided ineffective assistance of Counsel.
3. Appellate Counsel provided ineffective assistance of Counsel.
4. Prosecutorial misconduct/vindictive prosecution
5. Applicant's waiver of the Jackson v Denno hearing was not intelligently made.

Insufficient evidence.

PCR Counsel should amend the PCR Application and fairly apprise the State Court of the Federal Constitutional claim by relying on Federal and State cases that employ a Constitutional analysis asserting the claims in terms that call to mind the specific right protected by the Constitution and allege facts that fall well within the mainstream of Constitutional litigation.

PCR Counsel should use interrogatories and subpoenas because the moving party presents his evidence first and has the burden to prove by a preponderance that Applicant is entitled to relief.

Applicant asserts that the trial court did not ask Applicant for his age, educational level, criminal history or competency. See *Gardner v State*, 351 S.C.407(2002). When determining if an accused has a sufficient background to understand the dangers of self-representation, the Courts must consider:

1. Age, educational background, and physical and mental health(Applicant is requesting PCR Counsel to gather mental records for PCR hearing.
2. Whether he was previously involved in criminal trials, Applicant's first offense.
3. Nature of the charges, possible penalties; (record is void of counsel or the Court explaining to Applicant the elements of the charge).
4. Whether Counsel explained to him the dangers(Applicant had conflict of interest with Counsel and made several complaints).

5. Whether he was attempting to delay or manipulate the proceeding.
6. Whether the Court appointed stand-by counsel (the record reflects the trial court
Instructing stand-by counsel see trial transcript pg 113)
7. Whether he knew he would be required to comply with the Rules of Procedure of Trial
(the records is void of Applicant being informed.
8. Whether he knew of legal challenges he could raise in trial (again record is void of any
Explanation.
9. Whether the exchanges between the accused and the court consisted merely of pro form
Answers to pro form question (the record reflect likewise)
10. Whether his waiver resulted from either coercion or mistreatment (the records reflects
the trial courts tone and demeanor was aggressive and hostile to defendant.

Applicant points PCR Counsel, PCR Courts and this Record of Federal notice to Stand-by Counsel's failure to comply with the State's independent and adequate State ground "Contemptuous objection requirement at trial to the below listed meritorious issues. Applicant was denied from complying with the State's procedures "Solely due to ineffective assistance of Stand-by Counsel", See *Wainwright v Sykes*, 433 U. S., states a State procedural Rule which requires that a "Contemptuous objection" be made deserves great respect from Federal Courts because of:

1. It is a rule employed by a coordinate jurisdiction with Federal System and for the
many interests it serves in its own right.
2. It enables the records to be made with respect to the Federal Constitutional claims when
the records and recollections of witnesses are freshest and,
3. It enables the Judge who observes the demeanor of those witnesses to make the factual
determinations necessary for properly deciding the Federal Constitutional question.

A Contemptuous objection may lead to the exclusion of evidence or behavior objected to, thereby making a major contribution to finality in criminal litigation. Without the evidence claimed to be vulnerable on Federal Constitutional grounds a jury or Judge may acquit a Defendant and that would end the case; or, a jury or Judge may nonetheless convict and he will have one less Federal claim to assert

in his Federal Petition. Furthermore an objection on the spot may force the prosecution to take a hard look and even if the prosecutor thinks that the State trial Judge will admit the evidence he must contemplate the possibility of reversal by the State Appellate Court or the ultimate issuance of a Federal Writ based on the impropriety of the State Courts rejection of the Federal Constitutional claim. See *Stone v Powell* 428 U. S. 465, *Henderson v Kibbe*, 431 U. S. 145, 157.

Applicant asserts that there can be no dispute of the prejudice he suffered because of the involuntary, unknowing and unintelligent waiver of trial counsel and stand-by counsel's failure to comply with the independent and adequate State procedural ground which could prevent direct review of his Constitutional violation. Said failure to comply with the State's Contemporaneous objection Rule, affected substantial rights and thereby may be noticed although they were not brought to the attention of the Courts due to ineffective assistance of Stand-by Counsel. See *U. S. v Olano*, *Supra*, *U. S. v Young*, *Supra*, *U. S. v Atkinson*, *Supra*, and *Chapman v California*, *Supra*. Applicant also cites many cases which shows counsel was ineffective for failing to preserve any issue at a full trial for appeal by way of contemporaneous objection. *Medlock v One 1985 Jeep Cherokee*, Vin 1JCWB7828FT12900, 322 S.C. 127, 134, 470 S.E. 2d 375, 378 (1996). To preserve an issue for appeal a contemporaneous objection is necessary and specific grounds must be clearly stated. *State v White*, 311 S. C. 289, 428 S.E. 2d 740 (CT App 1993); *State v Lynn* 277 S.C. 228, 226, 284 S. E. 2d 786, 789 (1981). Concluding defense counsel's failure to contemporaneously object did not preserve the issue for appellate review.

It is clear that Stand-by Counsel's failure to comply with the State Contemporaneous Objection Rule is the "cause" and "prejudice", see *Martinez v Ryan*, *Coleman v Thomas* *Supra*, *U. S. v Frady*, *Engle v. Isaac*, *State v Outlaw*, *U. S. v David*, *Adkins v Bordenkircher*, and many other cases support Applicant's stand. *Meadows v Lequersky*, 904 F 2d 903 (C A 4 W NA 1990), held it had to waive the State's prosecution requirements to meet the ends of justice, waived the contemporaneous objection requirements when the denial of constitutional rights deprives the defendant a fair trial.

Indeed the purpose of Stand-by Counsel is to help a defendant who intelligently, knowingly and willingly waived right to trial counsel and whom is not familiarized with the rules of procedure of a trial,

to direct, consult advise and inform him on when and how to protect his constitutional rights under due process of the law. If trial court instructs stand by to do nothing, see trial transcript page 13, then defendant is without such standby counsel and therefore denied the chance to test the prosecutions case to insure that the proceeding serves the function of adjudicating guilt or innocence while protecting the rights of the person charged. The Defendant required the guiding hand of Counsel and or standby counsel at every step in the proceeding against him. Without standby counsel's help though he be not guilty he faces the danger of conviction because he does not know how to establish his innocence, even more so important when Applicant's waiver of counsel was unintelligent, unknowing involuntary and through coercion and trial court instructing standby counsel to do nothing. This action of trial court and stand by counsel denied Applicant assistance of this critical stage in the trial and petitioner was abandon by standby counsel and failed to recognize meritorious issues, present meritorious defenses and or challenge testimony and evidence. Applicant raised trial counsel's in effectiveness to the trial courts, filed many complaints on counsel's untruthfulness, conflict of interest his concern that counsel was unprepared, unwilling and incompetent to represent him at trial thus the Applicant felt forced to proceed pro-se

Applicant explained to the Court that he had no faith in trial counsels ability to protect any of his rights at trial based on this on going conflict of interest with Counsel. This pre-trial unprofessional performance of counsel violated Applicant's due process to a fundamental fair proceeding and was the reason Applicant was forced and coerced to an involuntary, unknowing and unintelligent waiver. Applicant asserts it was solely because of standby counsel's failure to advise, suggest or inform Applicant on what, when why and how to object which is ineffective assistance of counsel that Applicant was denied a fair trial. It therefore was standby counsel's errors that were sufficiently egregious and prejudicial.

Applicant asserts that standby counsel's failure to advise, suggest or inform Applicant on what, when, why and how to object and comply with the State's contemporaneous objection rule was a complete abandonment at a critical state. This breach of duty and on going conflict of interest was

antagonistic to Applicant with serious prejudicial effects which forced Applicant to stand trial not knowing how to protect any trial rights or procedures.

This is Applicant's formal request to have his PCR Counsel sufficiently and adequately raise the following claims to the State Court, in compliance with the PCR Mandates of S. C. and State and Federal exclusion requirement.

ISSUES PRESENTED TO POST CONVICTION RELIEF COURT

1 Involuntary, unknowing, unintelligent waiver of Counsel

- A. Was the Waiver in compliance with due process of law.
- B. Does the record reflect threats, coercion or duress in this alleged waiver violation.
- C. Was the waiver based on ineffective assistance of plea counsel.
- D. Can Counsel's behavior before a plea or waiver, or which lead to the plea or waiver be considered under the Sixth Amendment.

2 Ineffective Assistance of counsel/trial counsel and standby counsel

- A. The record reflects conflict of interest existed with trial counsel and standby Counsel causing waiver to be involuntary and unintelligent.
- B. Was the waiver the product of ineffective assistance, coercion, or duress of standby counsel.
- C. Was standby counsel ineffective for failing to detect and preserve for appeal, involuntary unknowingly waiver of a Jackson v Denno hearing.
- D. Was counsel and standby counsel ineffective for failing to object and preserve for appeal involuntary, unknowingly and unintelligently made waiver of a Jury trial.
- E. Was counsel and stand by counsel ineffective for failing to request a lesser included charge
- F. Was trial counsel and standby counsel ineffective in failing to properly investigate the facts and the law of the case, failing to appreciate the meaning of applicable

Dear Supreme Court of South Carolina,
Daniel E. Shearouse (Clerk of Court)

10-16-14
EMERGENCY MAIL

RECEIVED

This is Trey Alexander Williams Case No. 2013-CP-46-1797, York County.
I wrote this Agency Also Asking who can I write to properly file my
"Judicial notice of Adjudicated facts" and various other motions like for
expert witnesses, investigator and witness subpoenas also for various S.C. PCR
Rules, laws and options and for case law! I need all the motions, letters and
concerns to get to the Honorable Lee S. Alford, the Chief Administrative
Judge at the York County Moss Justice Center in York, SC! As I have
stated before I can not write the York County Clerk of Court and my
motions, substantial detailed legal letters, expert witness letters and
reports etc that I send to my Attorney of record is being misplaced
and held from me. My Attorney is not communicating properly with me.
And I have lost most of my paper work by sending it to him. I need to file
these documents and motions to the best of my ability and get some substantial
factual information on the record concerning the totality of the relationship between
me and my PCR Counsel and my case!!! Dr. Dwight Reynolds who was involved in
my case and Janice Price both from the Dickerson Center for Children have key
substantial testimony of the proper protocol/procedure that was suppose to come into
immediate action once police authorities was notified of a possible CSC 1st degree
with a minor crime was committed. Exams, specialist etc was suppose to had
been conducted immediately and it was not. They will also testify on how
that erroneous delay harmed the Dr could have and did prejudice the
findings and exams that was conducted and its the state/medical/govern-
mental police fault which should not count against me. Nothing from that Agencies
findings is proper to place me as the criminal to do such a crime or that shows
that the crime ever happened... Amber W. Bailey, Renee S, Susan Larsen,
Dr. Thomas L. Wilkins, the microbiology wetprep specialist and other assisting
medical personnel who wrote down alleged reports from mother of victim and
helped in examinations will also give testimony substantial to why they did
not do all proper exams on the day that the victim came into care, they will
explain and confirm the reports that they got from the victims mom which the
victims mom denied in trial and it would confirm that the crime never
happened or some one other than me did it. It is preserved in my trial records
that I did not get to properly use my reports from discovery in trial because
the people from the Agencies was not present at trial. The medical personnel
from discovery and Piedmont Medical Center will also testify that a figure
would take away the evidence from being a CSC 1st degree with minor. They
will testify that the blood from a microbiology wetprep test is common in
females of all ages for various reasons other than rape and according to
the evidence/facts in my case No. 2013-CP-46-1797 a rape was not found,
or evidence consistent with rape, nor did exams and proceedings from the
start go properly or procedurally because of the states failure. They will
testify that it was alleged that I did this in the past and not recently from the

all law, the focus is usually on Alleged errors made by prior Counsel and other errors of law or fact that occurred outside the record below. The South Carolina Supreme Court said that when asserting the erroneous admission of evidence, a violation of a Constitutional Right or other errors in a proceeding the PCR Applicant generally must frame the issue as one of ineffective assistance of counsel. This assertion is both overbroad and underinclusive - not all errors appropriate for PCR constitute JAOE nor must they be stated as such to be viable PCR claims - but it is correct that post conviction relief is not a substitute for direct appeal! Cognizable claims a PCR applicant can raise almost any allegation relevant to any phase of the previous court proceedings. Specifically, an applicant can raise virtually every alleged denial of a Constitutional Right with the exception of sufficiency of evidence. The PCR Act also recognizes almost any abridgment of a state created right. Specifically the statute permits the following six categories of claims: (1) the conviction or sentence was in violation of the constitution of the United States, the S.C. constitution or S.C. state law; there is evidence to material facts; not previously presented and heard that requires vacation of the conviction or sentence in the interests of justice; if 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. (Jackson v. Virginia, 443 U.S. 307, 313-16 (1979)) Holding that insufficiency of evidence is a federal constitutional error. With this being said I will show letters from my Attorney saying that I do not have any issues valid to raise for PCR and telling me that I can only raise ineffective assistance of counsel. Ignoring my clear evidence and claims and findings of facts. I have some substantial serious information to send to the Chief Judge now, documents, reports, contacts, parts of discovery, etc to go along with my judicial notice of adjudicated facts so I can get my case properly prepared for and heard ASAP! I request that this be sent to the Chief Judge and my Attorney of record and that both contact me regarding this letter. My substantial information must go to the Judge so I can be heard. And since today is 10-16-14 and I just got a letter from my Attorney showing he filed for a continuance improperly without full substantial evidence on 10-7-14. I don't wanna get denied before the Judge gets my full documents that explains why I should be granted all my request. And the clerk of court record will show I have been writing PCR Attorneys since 2013 showing good cause on all of this!!! Please get me the address to write the Chief Judge. I truly must have honest just counsel to help with my PCR. Please do not force me to have my PCR in November and with such counsel. Please!!! I need to write the Chief Judge to show good cause on every aspect of my case...

Very truly
Enclosure as stated
CC: THE Honorable Lee S. Alford Chief Administrative Judge
Charles Brooks III

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW

IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150
POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151

(803) 418-5708

FAX: (803) 934-9618 TOLL FREE: (877) 770-8792

Email: cbrooks@ctbrooks.com

October 1, 2014

Trey Williams, 341036
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina, 29010

RE: Trey Williams v State of South Carolina

Dear Mr. Williams:

Please tell me what witnesses you want and how they are relevant to your PCR case.

If you have Amendment(s) that you wish to have filed on your behalf, please provide those to us and we will be happy to take care of that for you.

Also, we will schedule a telephone conference with you.

Sincerely,

Charles T. Brooks, III
CTB, III/jlb

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW
IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150
POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151

(803) 418-5708

FAX: (803) 934-9618 TOLL FREE: (877) 770-8792

Email: cbrooks@ctbrooks.com

October 15, 2014

Trey Williams, 341036
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina, 29010

RE: Trey Williams v State of South Carolina

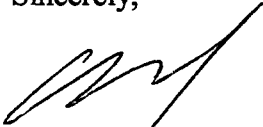
Dear Mr. Williams:

I am again in receipt of a letter you sent to the Supreme Court.

Please be advised that I have not oppressed you in anyway, nor have I destroyed any of your paperwork.

Also, you referred to my having been paid \$15K to handle your case. Please be advised that no money has every been sent nor paid by anyone on your behalf to handle your case.

Sincerely,



Charles T. Brooks, III

CTB, III/11

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW

IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150
POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151
(803) 418-5708

FAX: (803) 934-9618 TOLL FREE: (877) 770-8792

Email: cbrooks@ctbrooks.com

November 4, 2014

Catawba Community Mental Health Center
448 Lakeshore Parkway, Suite 205
Rock Hill, South Carolina, 29730

RE: Trey A. Williams vs. The State of South Carolina
2013-CP-46-1797

Dear Sir or Madam:

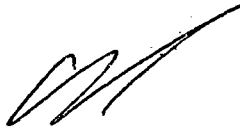
Enclosed you shall find a Medical Release form on Mr. Williams requesting a copy of his medical records from your facility.

Please provide this information as soon as possible as Mr. Williams has requested a copy of these documents and we need this to prepare for his PCR trial.

Thank you for your prompt attention to this matter.

With kind regards, I am,

Sincerely,



Charles T. Brooks, III
CTB, III/jlb
cc: Trey A. Williams

REQUEST FOR ACCESS/AUTHORIZATION TO PROTECTED HEALTH INFORMATION

I request Catawba Community Mental Health Center to disclose Protected Health Information (PHI) as described below.

Name of Patient (First, Middle, Last): Trey A. Williams DOB: 09/21/1988

Name of Patient at time of treatment if different from above: _____

Patient Street Address/City/State/Zip Code: (Inmate) 990 Wlsacky Hwy. Bishopville, SC 29010

Date(s) of Service: 1997-2006

Name and Address of Recipient of PHI if different from above: The Brooks Law Offices, LLC, Attorney
Charles T. Brooks, III, 309 Broad Street, Sumter, SC 29150

Purpose of Disclosure: For use in Court Proceeding

Expiration of Disclosure: 01/15/2015

PHI Requested:

- | | |
|--|-----------------------|
| • Itemized Bill | |
| • Discharge Summary | Laboratory Reports |
| • History and Physical | _____ |
| • Consultation Report | Specified type or all |
| • Operative Report | |
| • Pathology Report | Radiology Reports |
| • Emergency Room Report | _____ |
| • Entire Record ** | Specified type or all |
| • Other <u>100K DSS And mental health records as per</u> | |

REVOCATION: I may revoke this authorization in writing except for uses or disclosures of PHI made by Catawba Community Mental Health Center relying on this authorization. To revoke this authorization, I must deliver a signed, written statement clearly stating that I revoke this authorization to the Privacy Official of Catawba Community Mental Health Center at the following address:

Catawba Community Mental Health Center
448 Lakeshore Parkway, Suite 205
Rock Hill, South Carolina 29730

RIGHT TO RECEIVE COPY: I will receive a copy of the signed authorization if Catawba Community Mental Health Center requests the authorization individual specifies an earlier date. Upon the conclusion of that time period, this authorization is automatically revoked and no further use or disclosure of the patient's PHI is permitted beyond that date.

I understand that the information described above may be redisclosed by the person or group that I hereby give Catawba Community Mental Health Center and its contract representatives permission to share my information with, and that my information would no longer be protected by the federal privacy regulations. Therefore, I release Catawba Community Mental Health Center, its workforce members, and its contract representatives from all liability arising from the disclosure of my health information pursuant to this agreement. I understand that I may inspect or request copies of any information disclosed by this authorization if Catawba Community Mental Health Center or its contract representatives initiated this request for disclosure. I understand that I may revoke this authorization by notifying Catawba Community Mental Health Center its contractor representatives, in writing, knowing that previously disclosed information would not be subject to my revocation request. I understand that I may refuse to sign this authorization and that my refusal to sign will not affect my ability to obtain treatment, payment or eligibility for benefits.

SIGNATURES:

Patient: Trey A. Williams Date: _____

Reason patient unable to sign: _____

Personal Representative: _____ Date: _____

Relationship: _____ Verification Source: _____

Request Permitted

Request Denied

Denial Letter Sent

Privacy Official Notified

The Brooks Law Offices, LLC

CHARLES T. BROOKS, III,
Attorney

309 Broad Street
Sumter, South Carolina 29150
Post Office Box 3512, Sumter, SC 29151
Post Office Box 291226, Columbia, SC 29229
OFFICE: (803) 418-5708
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792
Email: cbrooks@ctbrooks.com

IRMA R. BROOKS
Attorney

September 16, 2014

Trey Williams, 341036
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina, 29010

RE: Trey Williams v State of South Carolina

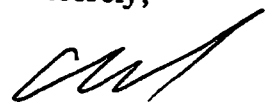
Dear Mr. Williams:

We are in receipt of your letter asking that some investigations be done on your case.

Please be more specific as to what you need investigated so that we may submit a request for funding to the Judge. Please be advised that you need to be very specific in order to try and get funding approved.

With kind regards, I am,

Sincerely,



Charles T. Brooks, III
CTB, III/jlb

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW
IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150
POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151
(803) 418-5708

FAX: (803) 934-9618 TOLL FREE: (877) 770-8792

Email: cbrooks@ctbrooks.com

August 6, 2014

Sixteenth Circuit Solicitor's Offices
ATTN: Kevin S. Brackett, Solicitor
1675 1-A York Highway
Moss Justice Center
York, South Carolina 29745
Via Facsimile & US Mail: 803-628-3025

RE: Trey A. Williams vs. The State of South Carolina
2013-CP-46-1797

Dear Mr. Brackett:

Please be advised that my offices were appointed counsel in reference to the above matter for purposes of representing Mr. Williams in his pending PCR.

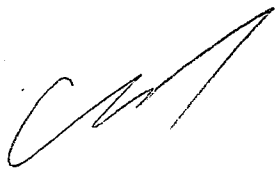
Please provide my offices a copy of the Discovery/Rule 5 Disclosure in Mr. Williams' General Sessions matter, docket no.: 2009-GS-46-02646.

Please provide this information as soon as possible as Mr. Williams has requested a copy of these documents and we need this to prepare for his PCR trial.

Thank you for your prompt attention to this matter.

With kind regards, I am,

Sincerely,



Charles T. Brooks, III
CTB, III/jlm
cc: Trey A. Williams

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW
IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150
POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151
(803) 418-5708
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792
Email: cbrooks@ctbrooks.com

September 16, 2014

Sixteenth Circuit Solicitor's Offices
ATTN: Kevin S. Brackett, Solicitor
1675 1-A York Highway
Moss Justice Center
York, South Carolina 29745

RE: Trey A. Williams vs. The State of South Carolina
2013-CP-46-1797

Dear Mr. Brackett:

On August 6, 2014, we wrote you concerning the above client, Trey Williams. As stated we have been appointed to represent him in his PCR matter. As of this date we have not received a response from your office..

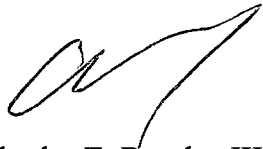
Once again we are requesting a copy of the Discovery/Rule 5 Disclosure in his General Sessions case number 2009-GS-46-02646.

Please provide this information as soon as possible as Mr. Williams has requested a copy of these documents and we need this to prepare for his PCR trial.

Thank you for your prompt attention to this matter.

With kind regards, I am,

Sincerely,



Charles T. Brooks, III
CTB, III/jlb
cc: Trey A. Williams
Rutledge Johnson, Asst. Attorney General



State of South Carolina
The Circuit Court of the Sixteenth Judicial Circuit

Lee S. Alford
Judge

Moss Justice Center
1675-1J York Highway
York, SC 29745-7434
Phone: (803) 628-3048
Fax: (803) 628-3139
lalfordj@sccourts.org

September 25, 2014

Mr. Charles T. Brooks III
The Brooks Law Office, LLC
Post Office Box 3512
Sumter, South Carolina 29151

Re: Trey A. Williams, 344266, vs. State of South Carolina, 2013-CP-46-1797

Dear Mr. Brooks:

Discovery in a Non-Capital Post-Conviction Relief action is rarely granted. It is granted only upon a showing of "good cause." You have not provided in your Motion what discovery you are seeking and why it would be necessary in this case. You can refile, if appropriate, but no relief can be granted in your current Motion.

With kind regards, I am

Yours Very Truly,

A handwritten signature in black ink, appearing to read "Lee S. Alford".

Lee S. Alford
Chief Administrative Judge
Of the Sixteenth Judicial Circuit

LSA:rgb

cc: Rutledge Johnson

The Brooks Law Offices, LLC

CHARLES T. BROOKS, III,
Attorney

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IRMA R. BROOKS
Attorney

November 4, 2014

Trey Williams, 341036
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina, 29010

RE: PCR

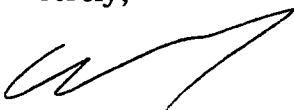
Dear Mr. Williams:

We are in receipt of the signed Medical Release Form for Catawba Community Mental Health Center and we will get this out to them immediately.

In your note, you also gave us the names of some additional facilities that you needed medical records from. Since the release you signed was strictly for Catawba, we have enclosed releases for your signature for the additional facilities. Please return them to us as soon as possible.

With kind regards, I am,

Sincerely,



Charles T. Brooks, III
CTB, III/jlb

Enclosure

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW

IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150
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Email: cbrooks@ctbrooks.com

November 4, 2014

Catawba Community Mental Health Center
448 Lakeshore Parkway, Suite 205
Rock Hill, South Carolina, 29730

RE: Trey A. Williams vs. The State of South Carolina
2013-CP-46-1797

Dear Sir or Madam:

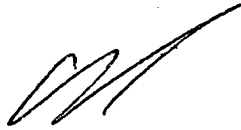
Enclosed you shall find a Medical Release form on Mr. Williams requesting a copy of his medical records from your facility.

Please provide this information as soon as possible as Mr. Williams has requested a copy of these documents and we need this to prepare for his PCR trial.

Thank you for your prompt attention to this matter.

With kind regards, I am,

Sincerely,



Charles T. Brooks, III
CTB, III/jlb
cc: Trey A. Williams

REQUEST FOR ACCESS/AUTHORIZATION TO PROTECTED HEALTH INFORMATION

I request Catawba Community Mental Health Center to disclose Protected Health Information (PHI) as described below.

Name of Patient (First, Middle, Last): Trey A. Williams DOB: 09/21/1988

Name of Patient at time of treatment if different from above: _____

Patient Street Address/City/State/Zip Code: (Inmate) 990 Wisacky Hwy. Bishopville, SC 29010

Date(s) of Service: 1997-2006

Name and Address of Recipient of PHI if different from above: The Brooks Law Offices, LLC, Attorney
Charles T. Brooks, III, 309 Broad Street, Sumter, SC 29150

Purpose of Disclosure: For use In Court Proceeding

Expiration of Disclosure: 01/15/2015

PHI Requested:

- | | |
|--|-----------------------|
| • Itemized Bill | |
| • Discharge Summary | Laboratory Reports |
| • History and Physical | _____ |
| • Consultation Report | Specified type or all |
| • Operative Report | |
| • Pathology Report | Radiology Reports |
| • Emergency Room Report | _____ |
| • Entire Record ** | Specified type or all |
| • Other <u>YORK DSS And mental health records etc.</u> | |

REVOCATION: I may revoke this authorization in writing except for uses or disclosures of PHI made by Catawba Community Mental Health Center relying on this authorization. To revoke this authorization, I must deliver a signed, written statement clearly stating that I revoke this authorization to the Privacy Official of Catawba Community Mental Health Center at the following address:

Catawba Community Mental Health Center
448 Lakeshore Parkway, Suite 205
Rock Hill, South Carolina 29730

RIGHT TO RECEIVE COPY: I will receive a copy of the signed authorization if Catawba Community Mental Health Center requests the authorization individual specifies an earlier date. Upon the conclusion of that time period, this authorization is automatically revoked and no further use or disclosure of the patient's PHI is permitted beyond that date.

I understand that the information described above may be redisclosed by the person or group that I hereby give Catawba Community Mental Health Center and its contract representatives permission to share my information with, and that my information would no longer be protected by the federal privacy regulations. Therefore, I release Catawba Community Mental Health Center, its workforce members, and its contract representatives from all liability arising from the disclosure of my health information pursuant to this agreement. I understand that I may inspect or request copies of any information disclosed by this authorization if Catawba Community Mental Health Center or its contract representatives initiated this request for disclosure. I understand that I may revoke this authorization by notifying Catawba Community Mental Health Center its contractor representatives, in writing, knowing that previously disclosed information would not be subject to my revocation request. I understand that I may refuse to sign this authorization and that my refusal to sign will not affect my ability to obtain treatment, payment or eligibility for benefits.

SIGNATURES:

Patient: Trey A. Williams Date: _____

Reason patient unable to sign: _____

Personal Representative: _____ Date: _____

Relationship: _____ Verification Source: _____

Request Permitted

Request Denied

Denial Letter Sent

Privacy Official Notified

The Brooks Law Office, LLC

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Email: cbrooks@ctbrooks.com

December 2, 2014

The Honorable Alison Renee Lee
P O Box 192
1701 Main St., Room 324
Columbia, SC 29202-0192

RE: Trey A. Williams, 344266 vs. State of South Carolina
2013-CP-46-1797

Dear Judge Lee:

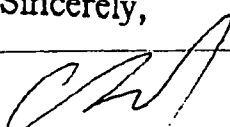
Enclosed herewith you will find a Proposed Order Granting Post Conviction Relief in this matter which was heard before you on November 18, 2014, in York County that I have prepared for your review and consideration.

Please review the proposed Order and if it meets with your approval, please affix your signature where indicated on the Order and return it to me in the envelope I have provided for your convenience.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,


Charles T. Brooks, III
CTB/srw

cc: ~~Trey A. Williams~~
J. Rutledge Johnson, Esquire
Enclosed as stated

STATE OF SOUTH CAROLINA
COUNTY OF YORK

TREY A. WILLIAMS, 344266,

Applicant,

-versus-

STATE OF SOUTH CAROLINA

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-46-1797

ORDER GRANTING
POST CONVICTION RELIEF

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for Post-Conviction Relief filed June 2, 2012. The Respondent made its Return on September 12, 2013. An evidentiary hearing into the matter was convened on November 18, 2014, at the York County Courthouse. The Applicant was represented by Charles T. Brooks, III, Esquire. J. Rutledge Johnson, Esq. of the South Carolina Attorney General's Office represented the Respondent.

At the hearing the Applicant testified on his own behalf. The Court also heard testimony from the Applicant's Trial Counsel. This Court had before it the records of the York County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the June 2009 term of the York County Grand Jury for Criminal Sexual Conduct with a minor first degree (2009-GS-46-2646). A motions hearing was convened on April 15th and 16th 2010, wherein the Applicant requested that he be able to represent himself (*Pro-Se*) during the upcoming trial and this was granted by the Honorable John C. Hayes, III. The Applicant's

3rd U.S. District Court

S.C. 901 Richland St 29 201

appointed counsel, Erik Delaney, Esquire was relieved but appointed as stand-by counsel for the Applicant.

On May 24, 2010, the Applicant appeared before Judge Hayes wherein a bench trial was requested and honored. The Applicant again appeared before Judge Hayes on May 26, 2010, and requested to have a Jury Trial, this request was denied. The trial commenced. The Applicant argued his case and was found guilty as indicted by Judge Hayes. The Applicant was sentenced by The Honorable John C. Hayes, III to confinement thirty (30) years imprisonment. A timely Notice of Appeal was filed with the South Carolina Court of Appeals and this was perfected by Lanelle C. Durant, Esquire of the South Carolina Commission on Indigent Defense. The Court of Appeals affirmed the Applicant's conviction and sentences. *State v. Williams*, Op. No. 2013-UP-102 (S.C. Ct. App. Filed March 13, 2013).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record and transcript from the motion hearing and the trial in its entirety and has heard the testimony at this Post-Conviction Relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

The Applicant was sentenced by the Honorable John C. Hayes, III for Criminal Sexual Conduct with a minor first degree (2009-GS-46-2646). Although, this Court finds that in accordance with *Faretta v. California*, 422 U.S. 806 (1975), that a Defendant does have the constitutional right to refuse counsel and represent themselves in state criminal proceedings, it is that trial Court's duty to ensure that the Defendant in that proceeding is aware of several

different factors to ensure that the Defendant does so willingly and with proper knowledge. The Court finds that the Applicant was not provided with this information properly in this matter and as such his case should be remanded for a new trial in the General Sessions Court.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief be granted; and
2. The Applicant is granted a new criminal trial in the General Sessions Court in this matter.

AND IT IS SO ORDERED this ____ day of _____, 2014

_____, South Carolina

Honorable Alison Lee

State of South Carolina
County of ~~York~~ York
Williams Trey
v.

State of South Carolina

In The Court of Common Pleas
Sixteenth Judicial Circuit
2013-CP-46-1797

Order Granting Post Conviction Relief

This matter comes before the Court by way of an Application for Post Conviction Relief filed on June 12, 2013. On July 18, 2014, Charles T. Brooks III Esquire, was appointed by the York County Clerk of Court. Rutledge Johnson, Assistant Attorney General, submitted the State's Return on or around September 13, 2013.

On August 6, 2014, the Applicant, through appointed counsel filed a Motion for Production of Transcripts, Case documents, and for Motion for discovery and use of Subpoena, See, Appoint "Judicial Notice of ~~adjudicative facts~~"
Filed ^{October 5} ~~September 13~~, 2014 Clerk of Court

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's order of Commitment. The Applicant was indicted at the May 2010 term of the York County Grand Jury for criminal sexual conduct with a minor, first degree (2009-CR-46-2646). Erik Delaney Esquire represented the applicant. Applicant has filed numerous complaints to the Lawyer Judicial Council, Committee, and Bar Association, regarding conflict of interest, because of ineffective assistance of counsel and has requested hearings to have this counsel removed from his case. Applicant was forced to choose between representation of self or ineffective assistance of counsel.

The Applicant proceeded to trial, per se, without an adequate Ex parte inquiry, pursuant to which he was found guilty on May 26th, 2010. The Honorable John C. Hayes, III, sentenced the Applicant to thirty (30) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Lowell C. Durant, Esquire of the South Carolina Commission on Indigent Defense protected the appeal. However, she failed to raise meritorious issues in the appeal. The Court of Appeals affirmed the applicant's conviction and sentence. State v. Williams, Op. No. 2013-UP-102 S.C. Ct. App. filed March 13, 2013.)

Attached herewith and incorporated herein by reference are the records of the York County Clerk of Court to include the "Judicial Notice of ~~adjudicative facts~~" regarding the subject convictions, the Applicant's requested action for PER Counsel to take, and records from the South Carolina Department of Corrections, and the applicable Records.

On November 18th 2014, an evidentiary hearing was conducted in front of the Honorable Allison Renee Lee, at the York County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. The State by Rutledge Johnson, Assistant Attorney General.

At this hearing, Applicant petitioned the PCR Council to have present to testify the following people, see "Judicial Notice of adjudicative facts", and applicant testified on his own behalf. The applicant through witness, and through counsel introduced a number of exhibits. Testifying on behalf of the State was Erik Delaney, Esquire, the applicants trial counsel, and State by Counsel. The Court had before it a copy of the trial transcript, the records of the York County Clerk of Court and the South Carolina Department of Corrections.

The Record before this Court indicates that the Applicant is presently ~~and~~ confined at Lee Correctional Institution with in the South Carolina Department of corrections pursuant to orders of commitment from the York County Clerk of Court. The applicant was indicted by the York County Grand Jury on May, 2010 term, for criminal Sexual Conduct with a minor, first degree. The applicant was represented by Charles T. Brooks III.

On May 26th 2010, the applicant proceeded to trial before the Honorable John C. Hayes in York County. After, the applicant was found guilty by way of bench trial, applicant requested that State by Counsel file a direct appeal.

Issues Presented

1) Involuntary, Unknowning and Unintelligent trial Counsel waiver

In his application "the applicant alleges" that said counsel waiver was not done knowingly, intelligently, and in compliance with due process. Said waiver was involuntarily made because "applicant" had to choose between the right to self representation and "poor Counsel" making his choice of the former involuntary.

This court has had the limited opportunity to review the trial transcript and has heard the testimony and evidence presented at the evidentiary hearing. This Court has had the opportunity to observe the witnesses and to pass on their credibility and has weighed the testimony accordingly. Below are the relevant findings of facts and conclusions of law as required by SC Code Ann § 17-27-80.

In his allegations, applicant alleges that his waiver of trial counsel was unknowingly, involuntary, and unintelligently made, due to coercion, and threats from trial court. Also the Record and Trial Counsel's PCR testimony does not reflect a waiver in compliance with "Faretta" inquiry re due process of law.

Findings of Fact and Conclusions of Law

Therefore, this court finds from the transcript, testimony of witnesses and evidence presented at this hearing the applicants waiver did not meet the requirements of due process, was not supported by the Record to be knowingly, voluntarily or intelligently made. Due process was violated when the State unjustifiably hindered self representation by denying applicant meaningful access to research materials.

'inadequate, 621 F.3d 575, 578-79 (6th cir 2010) Right to counsel may not be knowingly and intelligently waived
defendant does not understand nature of charges, Statutory offense, Range of allowable punishments,
possible defense; Brooks v. McCaughy, 380 F.3d 1009, 1013 (7th cir 2004); Iowa v. Tovar, 541 U.S.
99 (2004) The Tovar court explained that "the information a defendant must have to waive counsel intelligently
will depend... upon the particular facts and circumstances surrounding the case. Id. at 92 (quoting Johnson v.
Zechst, 304 U.S. 458, 464 (1938) Among the case specific factors to be considered are "the defendant's education
or sophistication, the complexity or easily grasped nature of the charge, and the stage of the proceedings. Id. at 88;
See also, Patterson v. Ill. 487 U.S. 285, 299 (1988) (Same); Torres v. U.S. 140 F.3d 392, 401 (2d cir 1998) Court
should conduct on the record discussion to ensure defendant's aware of risk and ramifications of self repre-
sentation; U.S. v. Jones, 452 F.3d 223, 228-29 (3d cir 2006) Court must go beyond "IP Interlocking questioning" and
specifically warn defendant of dangers of proceeding pro-se, including that he must conduct defense in accordance
with Federal Rules of evidence and criminal procedure; U.S. v. Williams 641 F.3d 758, 766-67 (6th cir 2011) Court
should follow model inquiry of 13 questions about defendant's familiarity with legal system and charges against
defendant, followed by "strong admonishment" that the court recommends against defendant proceeding pro-se;
U.S. v. Ford, 424 F.3d 525, 531-32 (7th cir 2005) Court should not just confirm defendant desire to proceed without
an attorney, but should also "impress upon... defendant the disadvantages" of proceeding pro-se; See, U.S. v. Hantzis,
625 F.3d 575-579-82 (9th cir 2010) Court must ensure defendant understands nature of charges, possible penalties,
and dangers of self representation, so that the record will establish that he knows what he is doing and his choice is made
with eyes open.

The Supreme Court has not prescribed any formula or script to be read to a defendant who states that he elects
to proceed without counsel." Tovar, 541 U.S. at 88. However, circuit courts have developed various lines of ques-
tions. See U.S. v. McBride 362 F.3d 360, 366 (6th cir 2004) valid waiver because court presented defendant with
12 of 13 questions on model inquiry and complied with essence of last question by reviewing maximum penalty.
In this case at bar, the record is void of any questions to the defendant or inquiry into the nature of the offense
or maximum penalty. See U.S. v. Genim, 471 F.3d 197, 198-200 (DC cir 2006) Waiver valid because court engaged
in extensive discussions of charges, punishments, procedures, and dangers of self representation with defendant.
In this case at bar, again the record is void of any extensive discussions between defendant, counsel, or the courts,
Regarding charges, punishments, or procedures that he must comply with. See, U.S. v. Jones, 452 F.3d 223, 231-32
(3d cir 2006) Waiver invalid because court failed to identify potential problems of obtaining evidence when proceeding
pro-se. Some circuit courts have articulated a three factor test to be used in determining whether a defendant knowingly
and intelligently waived the right to counsel. (1) the nature of the charges against him (2) possible penalties and (3) the
dangers and disadvantages of self representation. The Court must determine that defendant "understands the nature of

the charges, the range of possible punishment, potential defenses, technical problems that may be encountered, and any other facts important to a general understanding of the risks involved (quoting) *U.S. v. Peppers*, 302 F.3d 120, 132, 134 (3d Cir 2002).

Furthermore, because the record reflects the conflict of interest between counsel and client, applicant felt that counsel was being untruthful with him, deliberately misrepresented facts and material evidence, and intentionally withheld discovery evidence favorable to applicant defense. Applicant Request to have this counsel removed, and appointed another counsel, however, he was denied and forced to proceed with counsel, who was forced to work under a conflict of interest. See *Patterson v. Ill.* 482 U.S. 208, 292 N. 4 (1988). If defendant must choose between the right to self representation and poor counsel, the choice of former may be considered involuntary. See, e.g., *Padden v. Maurice*, 424 F.3d 303, 316-318 (3d Cir 2005) involuntarily where defendant given choice between unprepared counsel and self representation; *U.S. v. Silkwood*, 893 F.2d 249 (10th Cir 1989) involuntary where trial counsel and court impermissibly forced defendant to choose between self representation and poor counsel by attempting to persuade defendant of appointed counsel's competency instead of conducting a penetrating inquiry into decision to proceed pro-se.

Petitioner asserts, that because he was never informed of the right procedures, i.e., objection requirement, cross examination or presentation of evidence, access to evidence, discovery and such action of the court interfered with defendant's self representation, and due process; See, *Oses v. Moss*, 961 F.2d 985-87 (1st Cir 1992) defendant's right to proceed pro-se violated when judge excluded defendant from bench or lobby conference during trial, gazed and remarked defendant in front of jury, commented sarcastically about defendant defense, and failed to curb prosecutor's rhetorical comments. Moreover, if the state interferes with a defendant's self representation, due process may be violated; See, *Tate v. Illinois*, 963 F.2d 20, 26 (2d Cir 1992) Remand to determine whether due process violated by defendant's confinement and administrative segregation during 10 month period between arraignment and trial because no opportunity to prepare own defense. See, *Wilton v. Morris*, 767 F.2d 1443, 1446-47 (9th Cir 1985) due process violated when state unjustifiably hindered self-representation by denying meaningful access to current research materials. *Pad v. Edwards*, 554 U.S. 164-173-75 (2008) finding schizophrenic defendant unfit to conduct pro se defense.

Petitioner asserts that the below listed procedure was disregarded by the trial court in this case at bar, See, *U.S. v. Arthurum*, 343 F.3d 762, 768 (5th Cir 2003) where knowing and intelligent because defendant signed waiver form, court explained form to defendant and court advised defendant of advantages and disadvantages. Also, See The South Carolina Commission on Indigent Defense, Division of Appellate defense, letter dated _____

U.S. v. Hall, 610 F.3d 227, 741 (2d Cir 2010) Knowing intelligent aware court conducted (Forette inquiry); however in this case of bar, see, U.S. v. Jones, 452 F.3d 223, 232-34 (3d Cir 2006) waiver not knowing and intelligent because court failed to advise defendant of challenges to self-representation or of potential punishment; Fowler v. Collins, 253 F.3d 244, 250 (6th Cir 2001) Waiver can not be voluntary because court did not make defendant aware of dangers and disadvantage of self-representation or full court's protective role when defendant stated he was unprepared for trial and that involvement was complex; Shaffer v. Bowerson, 329 F.3d 637, 647-48 (8th Cir 2003) court did not comprehensively examine defendant or adequately warn him of dangers

Furthermore, based on petitioner's education/mental level, the trial court abused its discretion by accepting petitioner's request to proceed pro-se, see, U.S. v. Piranoff, 910 F.2d 51, 55 (2d Cir 1990) defendant motion to proceed pro-se properly denied because "district court is not obliged to accept every defendant's invocation of the right to self-representation"; U.S. v. Brunkoff, 613 F.3d 858, 872-74 (3d Cir 2010) defendant motion to proceed pro-se properly denied because request was untimely; U.S. v. Bush, 404 F.3d 263, 272 (4th Cir 2005) denied because purpose of request was to delay and manipulate trial; U.S. v. Cascardine, 621 F.3d 575, 578-79 (6th Cir 2010) denied because defendant not competent to represent himself; Precks v. Kitching, 380 F.3d 1009, 1010 (7th Cir 2004) denied because defendant deemed incompetent; U.S. v. Edelman, 458 F.3d 791, 808-09 (8th Cir 2006) denied defendant's request because it was not timely; U.S. v. Kaczynski, 239 F.3d 1106, 1117 (9th Cir 2001) denied defendant request because made tactically for dilatory purposes; U.S. v. Smith, 413 F.3d 1253, 1281 (10th Cir 2005) denied because defendant not capable of representing himself, 6 days before trial; See U.S. v. Frazer-EI, 204 F.3d 553, 562 (4th Cir 2000) denied because untimely and tactic for delay; U.S. v. Edelman, 458 F.3d 791, 808-09 (8th Cir 2006) denied as untimely because made 5 days before start of trial

Petitioner has attempted thru "Judicial Notice of adjudicative facts" and this proposed order granting PCR Relief, to comply with the exhaustion requirements; Davis v. Strack, 270 F.3d 111, 123 (2d Cir 2001) exhaustion requirement satisfied because applicant fairly presented due process violations by citing with specificity to US Const in state court brief; Nara v. Fennel, 488 F.3d 187, 199 (3d Cir 2007); Neeks v. Rugeley, 176 F.3d 249, 262 (4th Cir 1999) despite fact that highest courts decision did not discuss federal Constitutional issues aff'd, 528 U.S. 225 (2000); Taylor v. Cain, 545 F.3d 327, 333-34 (5th Cir 2008) satisfied despite petitioner's failure to frame claim in Constitutional terms because cited in state court filings; Onufier v. Tyszkiewicz, 225 F.3d 313, 315 (6th Cir 2001) satisfied because petitioner identified Constitutional violations during state court proceedings; Boyko v. Parke, 259 F.3d 781, 789 (7th Cir 2001); Hill v. Lockhart, 28 F.3d 832, 834-35 (8th Cir 1994); Williams v. Jones, 571 F.3d 1086, 1089 (10th Cir 2009); Dale v. Johnson, 488 F.3d 1364, 1368 (11th Cir 2007) (Same)

See, *Hillman v. Taylor*, 529 U.S. 420, 437 (2000); *Pike v. Guerrero*, 492 F.2d 64, 69 (1st Cir 2007) entitled to a hearing because presented extensive evidence in State Court; *Duke v. Pruchanuk*, 321 F.3d 338, 347 (2d Cir 2003) entitled to hearing because diligently sought to develop factual basis underlying habeas petition but prevented by State Court from doing so; *Winston v. Kelly*, 592 F.3d 535, 582-53 (4th Cir 2010) entitled to hearing because did not have opportunity to develop claim in State Court, despite due diligence, but because of ineffective assistance of PCR Counsel; *Hall v. Gusterman*, 534 F.3d 365, 367-69 (5th Cir 2008) entitled to hearing because state did not provide full and fair hearing at which to develop facts; *James v. Brignano*, 470 F.3d 636-642 (6th Cir 2006) entitled to hearing because State Trial Judge, Not petitioner, carried in Not fully developing Record; 28 U.S.C. § 2254(c)(3)(B).

Petitioner asserts that this issue can be raised under Rule 52(b), under ineffective assistance of Counsel, trial errors, and abuse of discretion, because it played a major role in forcing the involuntary waiver of trial Counsel. The courts have ruled that, the role of the plain error doctrine has always been to empower courts especially in criminal cases to correct errors that seriously affect the fairness, integrity or public reputation of judicial proceedings. See *U.S. v. Atkinson*, 297 U.S. 157, 180 S.Ct. 391, 392. If state Rule 52(b) is one of the general provisions of the Rules, applicable to all stages of criminal proceedings in federal Courts. This rule has been relied upon to correct errors that may have seriously prejudiced a possibly innocent defendant, See *U.S. v. Mann*, 557 F.2d 1211, 1215-16 and errors that severely undermine the integrity of the judicial proceeding, See, *U.S. v. Vaughan*, 483 F.2d 92, 94-95. The plain error rule mitigates the harsh impact of the adversarial system, under which the defendant is generally bound by the conduct of his lawyer, by providing relief in exceptional case despite the lawyers failure to object at trial. The courts have been told time and again that legalistic Requirements should be disregarded in examining applications for writ of Habeas Corpus, and the Rules have been relaxed in cases when the trial Court has held under duress, prejudiced testimony or involuntary waiver obtained by trickery or coercion and when a defendant has been inadequately Represented by Counsel. It is never too late for courts in Habeas Corpus proceeding to look straight through procedural Smoke Screens in order to prevent forfeitures of Life or Liberty in flagrant defiance of the Constitution. It is as well clear that appellate procedural defaults should not bar habeas Corpus review of meritorious Constitutional Claims. This issue has been properly raised, and likewise, preserved and should be ruled in accordingly. PCR Counsel must file an SCRPC Rule 59(a) or (e) to assure that this issue is ruled on, for appellate Review.

Issue Presented

(2) Ineffective assistance of Standby / trial Counsel

In his Amended Application, the applicant alleges that trial Counsel ^{pre} trial performance was below professional norms, and is the cause of petitioner's decision to pro-se proceed. That the Courts made it clear that a waiver cannot be voluntary or intelligent if the court failed to advise defendant of the nature of charge, statutory offense, range of allowable punishments, and possible defense, could never be constitutionally correct.

Petitioner asserts that it is because of this conflict of interest which existed between counsel and client in pre-trial proceedings, petitioner felt like he had to choose between the right to self representation or pro counsel, which by its very nature is coercive, pro-se prejudice.

Petitioner asserts that trial Counsel's pre-trial failure to object and preserve for appeal the following errors:

1) Waiver of the Jackson Demand, hearing

4) Amended indictment

2) Waiver of Jury trial

5) guilty verdict after trial

3) Waiver of Counsel

6. denied Public Access to trial

And failure of the trial Court to properly provide a fair Forester inquiry, or inquiry into allegations of conflict of interest claims. See, *Rickman v. Bell*, 130 F.3d 1164, 1169-70 (6th Cir 1997) failure to conduct any preparation for trial amounted to total failure to actively advocate his clients cause. It is because of trial Counsel's failure to communicate effectively with petitioner, to establish counsel's ability and or desire to require the prosecutions case to survive the crucible of meaningful adversarial testing. Petitioner was under the belief, based on pre trial unprofessional performance, that counsel could not and did not want to work with petitioner, thus the conflict of interest reflected on the face of the record, leading up to the Courts appointing this same, conflict of interest attorney to be Standby Counsel, to advise me on procedural Rules, pro-se prejudice.

Petitioner asserts that Standby Counsel prevented / stopped / impeded petitioner from making objections to testimony and evidence, advising petitioner that he could not object to testimony of any of the witnesses and or any of the evidence, or procedural Rules ① not 100.

This Court has had the limited opportunity to review the trial transcript, and has heard the testimony and evidence presented at the evidentiary hearing. This Court has had the opportunity to observe the witnesses and to pass on their credibility and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80

In his allegations before this Court, the applicant allege that the performance of Counsel in the trial, was so below professional standard of competent attorneys, is the "cause" and "prejudice" forcing the Unconstitutional Involuntary Waiver of Trial Counsel. That he felt the risk of Self-Representation, as oppose to poor Counsel, and is pre-se Coercive by Nature.

Finding of Fact and Conclusions of Law

Therefore, this Court finds from the transcript, testimony of witnesses and evidence presented at the evidentiary hearing that Counsel was ineffective, petitioner was prejudiced, Making the waiver involuntary because of ineffective assistance of Counsel. Petitioner asserts that if a waiver such as a plea, Counsel's performance leading up to plea, and included in a plea, surely this right should exist for a waiver of Counsel. Especially when defendant felt that he had to choose between the right to Self-Representation and poor Counsel; *Patterson v. Ill.* 487 U.S. 208, 202 n. 4 (1988) involuntary waiver when defendant given choice between unprepared Counsel and Self-Representation; *Pozden V. Maurer*, 424 F.3d 303, 316-18 (3d Cir 2005); *James V. Bergano*, 470 F.3d 636, 644 (6th Cir 2006); *U.S. V. Silkwood*, 893 F.2d 245, 248-49 (10th Cir 1989) involuntary waiver when trial Court impermissibly forced defendant to choose between Self-Representation and poor Counsel.

The adversarial process protected by the Sixth Amendment requires that the accused have counsel acting in the role of an advocate, *Padilla V. California*, 386 U.S. 738, 745, 875 S.Ct. 1396, 1399. The right to the effective assistance of Counsel is the right of the accused to require the prosecution case to survive the crucible of meaningful adversarial testing. It stated if the process loses its character as a confrontation between adversaries the Constitutional guarantee is violated, *Cramer*, 104 S.Ct. at 2045-46; *Starkland V. Washington*, test applies to challenges of Constitutional waivers of effective assistance of Counsel at all critical stages; See *Hill V. Lockhart V. Kentucky V. Faye V. Coppe*; See *McMann V. Richard Son*, 397 U.S. 769, 771, 90 S.Ct. 1441. The Sixth Amendment requires effective assistance of Counsel at all critical stages of a criminal proceeding. Here, the question is the fairness or reliability of the Waiver, and was it caused by ineffective assistance of Counsel. See, *Smith V. Robbins*, 528 U.S. 259, 120 S.Ct. 746, 764. The highest courts have stated: Counsel, however, can deprive petitioner of the right to effective assistance, simply by failing to render adequate legal assistance; See, *Cuyler V. Sullivan*, 466 U.S. at 344, 100 S.Ct. at 176.

Petitioner asserts that this claim is not waived because the Counsel waiver is involuntary, was a product of coercion, duress, misadvice, ineffective assistance of Counsel, and overbearing judicial over reaching. See *U.S. V. Feltz*, 31 F.3d 455; *Brown V. Peyton*, 485 F.2d 1302; *U.S. V. Rex Del Robinson*

523 F.2d 988; Rickman v. Bell, 131 F.3d 1150, 1157, holding defense counsel's preparation for trial amounted to total failure to actively advocate his clients cause; See, Ramirez v. Berghuts, 490 F.3d 482, 488 (11th Cir 2007); Grasealose v. Bell, 130 F.3d 1161, 1169-70 (6th Cir 1997) failure to conduct any meaningful adversarial challenge is especially appalling in holding attorney ineffective; Crisp v. Duckworth, 743 F.2d 580, 583 (7th Cir 1984); Montgomery v. Peterson, 864 F.2d 407, 412 (7th Cir 1989); MORENO v. Luchters, 509 F.3d 489, 502 (8th Cir 2007); and U.S. v. Barbour, 813 F.2d 1232, 1234 (DC Cir 1987) (Same).

Petitioner has attempted the "Judicial Notice" and his proposed order granting PCR Relief, to comply with the exhaustion Requirements; Davis v. Strack, supra, satisfied because applicant fairly presented due process violation by citing with specificity to U.S. Constitution in State Court brief; Abner v. Fennick, supra; Weeks v. Angelone, supra; despite fact that highest courts decisions did not discuss Federal Constitutional issue (2000); Taylor v. Cunn, supra; satisfied despite petitioner's failure to bring claim in Constitutional terms because cited in State Court filings; Onifer v. Tyszkiewicz, supra; satisfied because petitioner identified Constitutional violation during State Court proceeding; Boyko v. Poerke, supra; Hill v. Lockhart, supra; Williams v. Zies, supra; and Ogle v. Johnson, supra; (Same). See, Williams v. Taylor, 529 U.S. 420, 437 (2000); Pike v. Guzman, supra; entitled to a hearing because presented extensive evidence in State Court; Drake v. Prater, supra; entitled to hearing because diligently sought to develop factual basis underpinning habeas petition, but prevented by State Court from doing so; Winston v. Kelly, supra, entitled to a hearing because did not have the opportunity to develop claim in state court, despite due diligence; Hall v. Quarterman, supra and James v. Briganio, supra, entitled to hearing because trial judge, not petitioner, erred in not fully developing record; 28 U.S.C. § 2254 (e)(2)(B).

Petitioner asserts that this issue can be raised under FRCP Rule 52(b), under ineffective assistance of counsel, trial errors, and abuse of discretion, because it played a major role in forcing the involuntary waiver of trial counsel. The courts have ruled that, the role of the Plain Error doctrine has always been to empower courts especially in criminal case to correct errors that seriously affect the fairness, integrity or public reputation of judicial proceedings. See, U.S. v. Atkinson, 292 U.S. 157, S.Ct. 391, 392; U.S. v. Vaughan, supra. The plain error rule mitigates the harsh impact of the adversarial system, under which the defendant is generally bound by the conduct of his lawyer, by providing Relief in exceptional cases, despite the lawyers failure to object at trial. The courts have been told time and again, that legalistic Requirements should be disregarded in examining application for Writ of Habeas Corpus, and the Rules have been relaxed in cases where the trial court

which under duress, perjured testimony or involuntary waiver obtained by trickery or coercion. When a defendant has been inadequately represented by counsel, it is never to late for courts in Habeas Corpus proceeding to look straight through procedural smoke screens in order to prevent forfeitures of life or liberty in flagrant defiance of the Constitution. It is well settled that appellate procedural defaults should not foreclose Habeas Corpus Review of meritorious Constitutional claims. This issue has been properly raised, and likewise, preserved, this court should rule accordingly. Per counsel must file a SCRP. Rule 59(a) or (e) to assure that all issues raised are ruled on for appellate Review.

Issue Presented

(3) Ineffective Assistance of Appellate Counsel

In his amended application "the applicant alleges, that appellate counsel performance was below professional norm, and that petitioner was prejudiced as a result". This Court has had the limited opportunity to review the trial transcript, appeal transcript, and has heard the testimony and evidence presented at the hearing. Has had the opportunity to observe the witnesses and to pass on their credibility and has weighed the testimony accordingly. Set forth below are the relevant findings of facts and conclusion of law as required pursuant to S.C. Code Ann § 17-27-80.

In his allegations before the court, the applicant alleges that his appellate counsel performance was well below professional norm of Strickland, Supra and Constitutional Standards. As a result, petitioner has been prejudiced by counsel inaction in failing to recognize meritorious issues plain on the face of the record. I.e., (1) Involuntary waiver of trial counsel, (2), Abuse of discretion and or (3), due process violation.

Findings of Fact and Conclusion of Law

This Court finds that transcripts, testimony of witnesses and evidence presented at the evidentiary hearing, the applicant Appellate Counsel was ineffective in failing to raise meritorious issues for Review, as such petitioner is alleging prejudice, and a 6th Amend Const, Violation, and due process. See, *Hawkins v. Hannigan*, 188 F.3d 1146, 1152; *Miami v. Hawks*, 97 F.3d 887, 894; *Evitts v. Lucy*, 469 U.S. 387, held, that due process guarantees a criminal defendant effective assistance of counsel in his first appeal as of right; *Douglas v. California*, 372 U.S. 353; *Anders v. California*, 386 U.S. 738; *Entsminger v. Iowa*, 386, and *Rodriguez v. U.S.* 395 U.S. 327, 89 S.Ct. 1715. In *Williams v. Taylor*, supra, the courts held, that ineffective assistance of counsel claims is clearly established Supreme Court precedent within the meaning of § 2254 (D)(1).

3 Petitioner is alleging that appellate Counsel's Representations fell below an objective Standard of Reasonable
ness, and that there is a reasonable probability that, but for counsel's errors, the result of the proceeding
would have been different. Therefore, because of Counsel's unreasonable Standard of Representation,
petitioner was severely prejudiced because petitioner was denied a chance to raise meritorious issues
addressed above and below. See, *Smith v. Robbins*, 528 U.S. 259, 120 S.Ct. 746, 764. The highest court
have stated; Counsel, however, can also deprive petitioner of the right to effective assistance, simply by
failing to render adequate legal assistance; See, *Coyler v. Sullivan*, 446 U.S. at 344, 100 S.Ct. at 1716.
It also stated if counsel does not conduct a substantial investigation into each of several plausible
lines of defense, assistance may nonetheless be ineffective. Counsel's errors resulted in actual and
substantial disadvantage to the cause of petitioner's defense. See *Lambert v. Lough*, 808 F.2d 1475,
held counsel ineffective for filing tactics brief when non-forensic issues existed for appeal.

In *Patterson v. Leek*, 556 F.2d 1148, the S.C. prisoner whose claims have not been reviewed
on direct appeal must first pursue the remedy afforded by S.C. Uniform Post Conviction Relief Act,
S.C. Code § 17-601. Petitioner raised these claims in his PCR application, and when a state requires
a prisoner to raise an ineffective assistance claim in two circumstances:

1) When the State Courts did not provide counsel, in the initial Review Collateral proceeding for a claim
of ineffective assistance at trial;

2) Where appointed counsel in the initial Review Collateral Proceeding where the claim should have
been raised, was ineffective under the Strickland Standards; See, *Williams v. Taylor*, *supra*.

Furthermore, counsel appointed to represent an indigent appellant, ordinarily should consult with his or her
client at least once to ascertain his or her clients desires with regard to the alleged trial errors which
the appellant wishes to press, because counsel has a duty to press arguments initiated by his or her client
which may reasonably be supported even though counsel does not personally espouse them. All of which
the Record Reflects was not done in this case at law. Counsel must act in the role of an active
advocate in behalf of his clients appeal to the best of his ability as opposed to a friend of the court.

Petitioner asserts that his appellate counsel brief was more in favor of the prosecution than in
an active advocate for petitioner, ^{appellate counsel never consulted with petitioner} and just completely
abandoned petitioner's meritorious issues. See, *Swenson v. Baxter*, 386 U.S. 258; and *Holbert v. Michigan*,
545 U.S. 605; the absence of ineffective assistance of counsel in these circumstances, held, violated the defendant's
14th Amendment Rights as defined in *Strickland v. California*, *supra*. Petitioner's Constitutional Right to effective
assistance of Counsel for purpose of appeal was abridged.

Fundamental fairness entitled indigent defendant to an adequate opportunity to present their
claims fairly within the adversary system See, *Albre v. Oklahoma*, 470 U.S. 68. Due process emphasizes

fairness between the State and the individual dealing with the State, see, *Ross v. Moffitt*, supra. In *Griffin v. Illinois*, 351 U.S. at 17-18, held that when a State conditions an appeal from a conviction on the provision of a trial transcript, the State must furnish free transcript, and counsel must review all arguable issues for an appeal, and it is fundamentally unfair for counsel to argue against petitioner claims without providing an opportunity for consultation or for petitioner to seek the advice of another attorney, because it is well known that Appellate Counsel will not raise a claim of ineffective assistance of counsel on his school mark, or on himself. See, *Muskrat v. Carlson*, 120 F.2d 812, 816 cert. denied 446 U.S. 729. It is self evident that to deny a competent lawyer's help through the technical stages of the criminal process or to deny a full opportunity to appeal a conviction because petitioner is poor, is to imperil that purpose and to infect a criminal proceeding with the same dangers of convicting the innocent. Counsel's errors during appeal on direct review should provide cause to reverse a procedural default. Petitioner was deprived from complying with the States procedures "solely" due to ineffective assistance of trial counsel. See, *Wainwright v. Spivey*, 433 U.S. states, a state procedural rule which requires that a "contemporaneous objection" be made deserves great respect.

Petitioner asserts that there can be no ^{dispute} of the prejudice he suffered because of ineffective assistance of trial, and appellate counsel. These errors was plain upon the face of the record, which affected substantial rights, and thereby, may be noticed although they were not brought to the attention of the courts due to ineffective assistance of counsel. See, *U.S. v. Olano*, supra; *U.S. v. Young*, supra; *U.S. v. Atkinson*, supra and *Chapman v. California*, supra.

This unprofessional performance under the prongs of *Strickland* violated petitioner's due process to a fundamental fair proceeding. Petitioner has shown in the above claims that not merely did these errors at pre trial, trial and Appellate Review created prejudice and invoked the involuntary waiver of trial counsel, but that Appellate Counsel failure to raise ineffective assistance of trial counsel claims, worked to petitioner's actual and substantial disadvantage, affecting petitioner whole trial with errors of Constitutional dimensions, see, *Frady*, supra; at 170, 120 S.Ct. at 1596. A Constitutional claim that implicates fundamental fairness... Compels review regardless of possible procedural defaults. It also held, the Sixth Amendment itself requires that responsibility for the default be imputed to the State, which must not conduct trials at which persons who face incarceration must defend themselves without adequate legal assistance. When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the courts must examine the record to determine whether appellate counsel failed to present significant and obvious issues on appeal; see, *Gray v. Green*, 822 F.2d 644, 646. Generally, the presumption of effective assistance of counsel will be overcome when the alleged ignored issues are clearly

strong or meritorious issues. Conversely an appellate advocate may deliver deficient performance and prejudice a defendant by omitting a deserving winner, even though counsel may have presented strong but unsuccessful claims on appeal, See, *Page v. U.S.* 884 F.2d 300, 302; *Matire v. Hamwright* 811 F.2d 1430, 1438. Courts of appeal may consider an ineffective assistance of counsel claim in this State in the first instance on direct appeal when it conclusively appears from the record that counsel was Constitutionally ineffective under *U.S. v. Alaraz*, 430 F.3d 681; *U.S. v. Addison*, 2001 WL 409453.

These Constitutional claims advanced above and within, calls into question the accuracy of the proceeding and petitioner's guilt. The *Habeas Corpus* is the fundamental instrument for safeguarding petitioner against arbitrary and lawless state action, See, *Itorres v. Nelson*, 394 U.S. 236, 290-291 89 S.Ct. 1086. The court explained in "*Engle*" that the cause and prejudice standard will be met in those cases where review of a state prisoner's claim is necessary to correct a fundamental miscarriage of justice, at 135, 102 S.Ct. at 1576. These cases has also established that where a Constitutional violation has probably resulted in the conviction of one who is actually innocent "as in this case at bar".

Petitioner has attempted thru "Judicial Notice" and this proposed order Granting *PER* Relief, to comply with the exhaustion Requirements; *Davis v. Strack*, 270 F.3d 111, 123 (2d Cir 2001); *Mora v. Frank*, 438 F.3d 187, 199 (3d Cir 2007); *Heeks v. Angelone*, *supra*; *Taylor v. Cain*, *supra*; *Dwight v. Tyszkiewicz*, *supra*; *Bojko v. Parke*, *supra*; *Hill v. Lockhart*, *supra*; *Williams v. Jones*, *supra*; exhaustion Requirement satisfied because applicant fairly presented due process violation by citing with specificity to U.S. Const, in State Court brief. See, *William v. Taylor*, 529 U.S. 420, 437 (2000) "Entitled to a hearing because presented extensive evidence in State Court."

Petitioner asserts that this issue can be raised under Rule 52(b), under ineffective assistance of counsel, trial errors, and abuse of discretion, because it played a major role in forcing the involuntary waiver of trial counsel. The Role of the Plain Error doctrine has always been to empower courts especially in Criminal cases to correct errors that seriously affect the fairness, integrity or public Reputation of judicial proceedings. See, *U.S. Atkinson*, *supra*; It states a Rule 52(b) is one of the general provisions, applicable to all stages of criminal proceedings in Federal Courts. This Rule has been relied upon to correct errors that may have seriously prejudiced a possibly innocent defendant; See, *U.S. v. Vaughn*, *supra*. The plain error Rule mitigates the harsh impact of the adversarial system, under which the defendant is generally bound by the conduct of his lawyer, by providing relief in exceptional cases despite the lawyer's failure to object at trial. *PER* Counsel must file a *SCRIP* Rule 59(a) or (E) to assure that all issues are ruled on for appellate review.

Issue Presented

Involuntary Jury Trial Waiver

In his Answered Application, "the Applicant is alleging that said Jury trial waiver was involuntary, unknowing and unintelligent," was not in compliance with due process. Applicant asserts that said waiver of a jury trial can only be effective if it is the result of the defendant, and it must represent his voluntary act."

This Court has had the limited opportunity to review the trial transcript and has heard the testimony and evidence presented at the evidentiary hearing. This Court has had the opportunity to observe the witnesses and to pass on their credibility and has weighed the testimony accordingly. Set forth below are the "Relevant Findings of Fact and Conclusions of Law as Required" pursuant to S.C. Code Ann. § 17-27-80.

In these allegations before this Court, the applicant alleges that it is because of ineffective assistance of counsel *pre trial*, to include conflict of interest, that trial counsel failed to protect petitioner's rights to a fair trial, and is the reason he felt forced to represent his self at trial. See, *Patterson v. Ill.*, 487 U.S. 208, 292 N.4 (1988). If defendant must choose between the right to self representation and poor counsel, the choice of former may be considered involuntary.

Findings of Fact and Conclusions of Law

Therefor, this Court finds from the transcript, testimony and evidence presented at the evidentiary hearing that said Jury trial waiver was in fact involuntary, unknowing, unintelligent and caused by ineffective assistance of counsel, and a violation of due process. See, F.R.C.P. Rule 23, The defendant does not have an absolute right to waive of a jury trial. He must have the approval of the court and the consent of the government. The Supreme Court has unanimously upheld these limitations on waiver. Expressed in the view by the Supreme Court in *Patterson v. United States*, that "trial by jury is the normal and, with occasional exceptions, the preferable mode of disposing of issues of fact in criminal cases above the grade of petty offenses. See, transcript pg # 5, Lines 2-3, pg # 6, Lines 1-4.

In *Singer v. United States*, the court also held that the government need not articulate its reason for wishing to waive jury trial except because of his conflict with counsel, and his sincere belief that counsel was not willing or able to protect any trial rights.

Petitioner asserts that the record is void of trial counsel or the trial court, on or off the record informing petitioner of the dangers or disadvantages of such a Constitutional waiver, and thus could not be voluntary or intelligently made. There must be an expressed and positive waiver of the jury trial by the defendant. Mere failure to request a jury or acquiescence in proceeding without a jury is not enough. "The Rule requires that the waiver be in writing" although it is customary to take the waiver in open court, this is not required. The usual form for waiver is signed personally by the defendant, and his counsel, counsel for the government, and the Judge. However, in this case at bar this Constitutional Standard was not applied. The requirement of written evidence of defendant's desire to waive jury trial is intended to ensure greater probability of his understanding what he is doing and thus enhancing the determination that it was a free and intelligent waiver. Petitioner, asserts that it is because of counsel and the courts failure to comply with the Constitutional Standards that he now challenges said jury trial waiver. Nevertheless, an oral waiver by defendant's counsel in open court has been held sufficient if defendant by his conduct can be said to have ratified the waiver and thus made it his personal act. In this case at bar petitioner asserted to the trial court that he did not want to waive his right to a jury trial and stated in that why he did not wish to waive said right. See, trial transcript pg # 9; Lines 25, pg # 10, Lines 1-6.

Petitioner asserts that a waiver can be effective only if it is the result of the "expressed and intelligent consent of defendant," and it must represent his voluntary act. It clearly is the better practice for trial Judge's to investigate the defendant personally, before accepting a waiver of jury trial, to be sure that the defendant understands his right to trial by jury and the consequences of a waiver. Defendant's certainly has a right to have the advice of counsel in deciding whether to waive. Whether to stand trial before the court or a jury is a subtle tactical question on which the advice of a lawyer is useful. That's why this court must consider the conflict of interest between petitioner and counsel, and the role it played in the failure of counsel and the trial court to inform petitioner of the advantages and disadvantages of a jury waiver. See, *U.S. v. Martin*, 704 F.2d 267, 271-272 (6th Cir 1983); *U.S. v. Hillbrech*, 341 F.2d 553, 556 (7th Cir 1965) cert. denied 381, U.S. 941, 85 S.Ct. 1726, 14 L.Ed. 2d 704 (1965); *U.S. v. Drafke*, 707 F.2d 975 (8th Cir 1983); *U.S. v. Mantone*, 531 F.2d 183 (4th Cir 1975); *U.S. v. Farries*, 459 F.2d 1057 (3d Cir 1972) cert. denied, 409 U.S. 988, 93 S.Ct. 143, 34 L.Ed. 2d 145 (1972); *U.S. v. Bowles*, 428 F.2d 542 (2d Cir 1970) cert. denied 400 U.S. 958, 91 S.Ct. 193, 27 L.Ed. 2d 188 (1970) See, *The Normal and preferable mode*, *Patterson v. U.S.* 381 U.S. 276, 312, 50 S.Ct. 253, 263 74 L.Ed. 854 (1965) and *Swager v. U.S.*, 380 U.S. 24, 35, 85 S.Ct. 783, 790, 13 L.Ed. 2d 630 (1965)

These Constitutional claims advanced above and within, call into question the accuracy of the proceedings and petitioner's guilt. See, *Wheeler v. Nelson*, *supra*, the court explained in *Engle* that the cause and prejudice standard will be met in those cases where review of a state prisoner's claims is necessary to correct a fundamental Miscarriage of Justice, at 135, 1102 S.Ct. at 8576. These cases has also established that where a Constitutional violation has probably resulted in the conviction of one who is actually innocent "as in this case at bar".

Petitioner has attempted their "Substantive Notice of adjudicative facts" and this proposed order granting PCR Relief, to comply with the exhaustion requirements; *Davis v. Strickland*, *supra*; *Noon v. Frank*, *supra*; *Weeks v. Angelone*, *supra*; *Taylor v. Cuna*, *supra*; *Dwyer v. Tyszkiewicz*, *supra*; *Boyle v. Pate*, *supra*; Exhaustion Requirement satisfied because applicant fairly presented his previous violation by citing U.S. Const. in state court brief.

See, *William v. Taylor*, *supra*; *Pike v. Conner*, *supra*; *Drake v. Patterson*, *supra*; *Blawie v. Kelly*, *supra*; *Hull v. Quinterman*, *supra*; *James v. Bergano*, *supra* and 28 U.S.C. § 2254(c)(3)(B) "Entitled to a hearing because presented extensive evidence in state court".

Petitioner asserts that this issue can be raised under Rule 52(b), under ineffective assistance of counsel, trial errors, and abuse of discretion, because it played a major role in forcing the involuntary waiver of trial counsel. The role of the Plain Error doctrine has always been to compare courts especially in criminal cases to correct errors that seriously affect the fairness, integrity or public reputation of judicial proceedings. See, *U.S. v. Wilkinson*, *supra*; it state Rule 52(b) is one of the general provisions, applicable to all stages of criminal proceeding in Federal Courts. This Rule has been relied upon to correct errors that may have seriously prejudiced a possible innocent defendant; See, *U.S. v. Vaughan*, *supra*;

PCR Council must file a SERCP Rule 59(a)(1) to assure that this issue is ruled on, for appellate review.

Issue Presented Prosecutorial Misconduct.

In his Amended application, the applicant alleges, prosecutorial Misconduct because the prosecution deliberately and intentionally misrepresented facts and material evidence to the trial court. Prosecution Evidence in an unfair manner, knowingly presenting false testimony and evidence. The applicant alleges the prosecution boosted the credibility of evidence and testimony, by consistently stated misrepresentation of forensic evidence and testimony is "fraud".

This Court has had the limited opportunity to review the trial transcript and has heard the testimony and evidence presented at the evidentiary hearing. This Court has had the opportunity to observe the witnesses and pass on their credibility and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80.

"In his ^{NY} allegations before this Court, the Applicant alleges that prosecutorial misconduct so infected the proceeding with unfairness that it has poisoned the entire legal process. The prosecutors whom are officers of the court, their conduct, if dishonest, would constitute fraud on the court. The Applicant alleges that because the State prosecution conducted an a scheme to intentionally misrepresent or altered evidence, testimony and fact critical to Applicant's defense, which is extrinsic fraud, which was done with an intent to deceive or defraud the court and effectively deprived the Applicant of a fair trial or opportunity to present his case."

Finding of Facts and Conclusion of Law

Therefore, this Court finds from the transcript, testimony and evidence presented at the evidentiary hearing that the prosecution did in fact commit acts that constitute prosecutorial misconduct, See, *Kupferman v. Consolidated Research and Mfg. Corp.*, 459 S.E. 2d 1072 (2nd Cir 1972) (Finding that institution of action by attorney who knew that there was complete defense to an action might be fraud upon the court). Prosecution knew based on forensic evidence, that Applicant did not commit this crime, and that there was no forensic evidence to support an conviction, that's why prosecution initiated ~~the~~ ^{time serve} plea deals to Applicant for less time, and lesser included offense; See, *Great Coastal Express v. International Brotherhood of Teamsters*, 675 F.2d 1349, 1357 (4th Cir 1982) (Finding a verdict may be set aside for fraud on the court if an attorney and witness have conspired to present perjured testimony. Petitioner asserts that every time the prosecution stated that the alleged victim had a fissure, this a deliberate misrepresentation of evidence and facts and in essence was perjured testimony).

Furthermore, Applicant was told by Stand by Counsel that he could not object to the prosecutorial intent to bolster testimony and take evidence material to the facts of the case, or how to object to said false testimony. See, *Rozier v. Ford Motor Co.*, 573 F.2d 1332 (5th Cir 1978) (Fabrication of evidence where attorney is implicated is fraud upon the court) as in this case at bar. See, *H.K. Porter Co. v. Goodyear Tire and Rubber Co.*, 536 F.2d 1115, 1119 (6th Cir 1976) Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court. Petitioner asserts that such actions of the prosecution in misrepresenting facts and evidence is dishonest pursuant to the Rules of Professional Conduct 3.3, 8.4 and others."

See, *Ray v. Ray*, 374 S.C. 79, 647 S.E.2d 237 (2007) (Finding that like all other types of fraud, the perpetrator acted with the intent to defraud, for there is no such thing as accidental fraud). See 42 U.S.C.A. 1983, said statutes generally do not give rise to claims for malicious prosecution, but it will, only when official conspire to procure groundless indictments and charges based upon fabricated evidence or false, distorted, and prejudiced testimony presented to official bodies. The Supreme Court of the United States, in *Martinez v. Madison*, 5, 411 U.S. 137 (1963), clearly states that if the subjective facts demonstrated that the indictments were fraudulent, this would constitute "prosecutorial misconduct" horrendous enough to bar re-prosecution.

These Constitutional claims advance their end within, calls into question the accuracy of the proceeding and petitioner's guilt. The Bill of Rights Corpus is the fundamental instrument for safeguarding petitioner against arbitrary and lawless State Action, See, *Harris v. Nelson*, *supra*; the court explained in *Engle* that the cause and prejudice standard will be met in those cases where review of a state prisoner's claims is necessary to correct a Fundamental Miscarriage of Justice, at 135, 102 S.Ct. of 1576. These cases has also established that where a Constitutional violation has probably resulted in the conviction of one who is actually innocent "as in this case at bar."

Petitioner has attempted their "Judicial Notice of adjudicative facts" and this proposed order Granting PCR Relief, to comply with the exhaustion requirements; *Davis v. Shack*, *supra*; *Nora v. Frank*, *supra*; *Weeks v. Angelone*, *supra*; *Taylor v. Cain*, *supra*; *Onifor v. Tyszkiewicz*, *supra*; *Bojko v. Parke*, *supra*; *Hill v. Lockhart*, *supra*; *Williams v. Jones*, *supra*; and *Cyle v. Johnson*, *supra*, exhaustion Requirement satisfied because applicant fairly presented due process violation by citing with specificity to U.S. Const. in State Court brief.

See, *William v. Taylor*, *supra*; *Pike v. Curran*, *supra*; *Drake v. Portuondo*, *supra*; *Winston v. Kelly*, *supra*; *Hall v. Quarterman*, *supra*; *James v. Bragano*, *supra* and 28 U.S.C. § 2254(e)(2)(b) "Entitled to a hearing because presented extensive evidence in State Court."

Petitioner asserts that this issue can be raised under Rule 52(b), under ineffective assistance of counsel, trial errors, and abuse of discretion, because it played a major role in forcing the involuntary waiver of trial Counsel. See *U.S. v. Atkinson*, *supra*; *U.S. v. Vaughan*, *supra*. The plain error rule mitigates the harsh impact of the adversarial system, under which the defendant is generally bound by the conduct of his lawyer, by providing relief in exceptional cases despite the lawyer's failure to object at trial.

Cumulative Errors Doctrine

In *Cagle v. Muthar*, 317 F.3d 1194 (10th Cir. 2003), the court found prejudice both because of numerous instances of ineffective assistance of trial counsel. See, also *Harris ex Rel. Rensgar* v. *Ward*, 64 F.3d 1432, 1434 (9th Cir. 1992) defense counsel's many deficiencies cumulative prejudice the defense. See, *Mark V. Blodgett*, 970 F.2d 614, 622-25 (9th Cir. 1992); (Cumulative errors requiring reversal. When an error "could" have been and was the subject of an objection at trial, the appellate court have three (3) possible standards of review:

- (1), Harmless beyond a reasonable doubt,
- (2), High probability of harmlessness,
- (3), More probably than not harmless

An error is harmless if it is unimportant in relation to the whole and the verdict rendered was surely unattributable to the error. A reviewing appellate court need only conclude that the error claimed did not produce a defendant from receiving a fair trial. "It is important to have a trial free of those errors which might influence a verdict when the evidence on the issue of liability is so close that the jury might reasonably return a different verdict. The cumulative effect of two or more individually harmless errors has the potential to prejudice a defendant to the same extent as a single reversible error. The purpose of a cumulative error analysis is to address that possibility. Since the cumulative error analysis merely aggregates all the errors that individually have been found to be harmless it is not reversible. It analyzes whether their cumulative effect on the outcome of the trial is such that collectively they can no longer be determined to be harmless. Unless, an aggregate harmlessness determination can be made, collective errors will mandate reversal, just as surely as will individual error that cannot be considered harmless. The harmlessness of cumulative error is determined by conducting the same inquiry as for individual error, Courts look to see whether the defendant's substantial rights were affected:

"A total deprivation of effective assistance of counsel at trial or an involuntary waiver of constitutional rights is not subject to the harmless error analysis." These rights are so basic to a fair trial that its infractions can never be treated as harmless error.

See, *United States v. Manger*, 185 F.3d 574 (6th Cir. 1999); *Aliz v. Fulminante*, 499 U.S. 279 (U.S. 1991); 28 U.S.C. § 2111; *Chapman v. Cal.*, 386 U.S. 18 (U.S. 1967); *Coyne v. California*, 356 U.S. 58 (U.S. 1967); *Haddad v. Lockhead California Corp.*, 720 F.2d 1454 (9th Cir. 1983); *State v. Northcutt*, 372 S.C. 207 (S.C. 2007); *State v. Blank*, 955 S.O. 2d 90 (La. April 11, 2007); *Konsten v. McRay*, 157 (11th App. 3d, 111 App. Ct. 2d dist 1987); *United States v. Rivera*, 900 F.2d 1462 (10th Cir. 1990); *United States v. Lowe*, 474 U.S. 438 (U.S. 1986); *Togusa v. Board of directors*, 633 F.2d 1309 (9th Cir. 1980); *Pearson v. May*, 488 U.S. 75 (U.S. 1998); *McKaskle v. Wiggins*, 465 U.S. 168 (U.S. 1984); *United States v. Mitchell*, 484 F.3d 762 (5th Cir. 2007); *United States v. Mosto*, 425 F.3d 677 (5th Cir. 2007).

In *Beckman v. State* (2013) S.C., the cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial or proceedings and the cumulative effect of the errors affect the outcome of the trial or proceedings. See, *State v. Johnson*, 334 S.C. 78, 93, 512 S.E. 2d 795, 803 (1998), and appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; Rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal. Id. See, *State v. Gardner*, NO 69726-91 (July 28, 2013) / Multiple errors may combine to deprive an accused person of a fundamentally fair trial, in violation of the due process clause of the Constitution. In light of the cumulative effect of the errors assigned above, Mr. Williams was in fact denied a fundamentally fair trial. Cumulative errors can be noticed in this State. Petitioner has made a successful showing that because of ineffective assistance of Counsel said Trial Counsel never was involuntary. See, *Patterson v. Ill.*, 487 U.S. 208, 210 N.4 (1988) involuntary waiver when defendant given choice between unimpaired counsel and self representation; *Parden v. Maurice*, super; *James v. Beyond*, super; *U.S. v. Sikkink*, 893 F.2d 245, 248-49; involuntary waiver when trial court impermissibly forced defendant to choose between self representation and pro counsel.

Conclusion

Petitioner asserts that said "Notice of Adjudicative Fact" was sent to PCR Counsel for the purpose of sufficiently and adequately informing Counsel and the State Court of the principles in the PCR application, "Notice of Adjudicative Fact", proposed order Granting Relief, and S.C.R.P. 59M (15) Motion. See, S.C.R.C.P. 21.1(D), This rule also specifically mandate that counsel must be permitted a reasonable time to confer with petitioner to evaluate the applications and to insure that all available grounds for relief are included in the applications.

See, also, *Gamble v. State*, 379 S.E.2d 118. The Rule allow use of interrogatories, requests to produce documents, depositions, Request for admission, and other discovery mechanisms such as subpoena of the hearing. Moreover, the Record Reflected in Petitioner's Affidavit, and by way of this hearing held before this Honorable Court this day, Counsel has failed to do any of the requested basic discovery. ~~Further~~ Collateral Review counsel should have known that the moving party, presents his evidence first and has the burden to prove, by a preponderance of that petitioner is entitled to the Relief sought in the application, See, S.C.R.C.V.P. Rule 71.1(c); *Cobb v. State*, 408 S.E.2d 223, 225 citing *Beckett v. State*, 294 S.E.2d 482; also, *Burton v. State*, 334 S.E.2d 913. As a strategic matter, counsel should have remembered that the Judge presiding over the evidentiary hearing knows little or nothing about the case in most circumstances. Thus, PER Counsel should prepare a trial brief summarizing the evidence presented at trial, or not presented at trial, and introducing the court to the issues presented in the application for PER. Courts have stated that the most forthright way for counsel to present a Constitutional claim to a State court is of course, to recite the relevant facts and then make an explicit Constitutional argument. Petitioner asserts that he has been denied the opportunity to effective assistance of PER Counsel, because counsel failed to comply with the above mentioned S.C.R.C.V.P. and case law, resulting in the prejudice of a procedural due process violation of Constitutional degree.

These correct methods of raising and presenting claims would have proved invaluable to the Courts understanding of the relevant facts and law, had counsel did his duty and performed up to professional norms under the Sixth Amendment. Similarly, if evidentiary issues will arise at the hearing, Counsel should have prepared a memorandum for the court addressing the issue in sum, the hearing should be viewed in the same manner as counsel would view any Non-Jury trial. Petitioner asserts that his due process under Federal Constitution was completely violated and he was denied his Right to a fundamental fair proceeding under the PER Act because petitioner never received effective assistance of Counsel in PER. Petitioner has a Constitutional procedural due process Right to one fair bite at the apple; See, *Alce v. State*, 409 S.E.2d 392; also S.C. Code Ann § 12-27-80; *Pruitt v. State*, 423 S.E.2d 127, 128; and *Greener v. State*, 636 S.E.2d 371. Failure to fully and finally resolve each issue presented in the PER Application is a violation of due process and does not constitute a final order under Constitution.

Petitioner is challenging the State Court decisions, both in their recognition of established legal standards for determining counsel's effectiveness, trial counsel waiver, jury trial waiver, and in their factual conclusions that the "evidence and entire record viewed as a whole" and cumulative of mitigating evidence presented "did not" raise a reasonable probability that the record would have been different.

Petitioner asserts that he has shown by clear and convincing evidence that the State courts' rulings and factual findings are erroneous, and impossible, and contrary to Supreme Court of the United States precedent in *Strickland v. Washington*, *Supra*, and others. Petitioner states that courts have held that § 2254(D)(1)'s contrary to course requires the rejection of a state courts decision which were substantially different from the relevant precedent of Supreme Court precedent and standard contained in that precedent, but applies them unreasonably to the facts of the case. The courts held that this situation requires relief under § 2254(D)(1). The AEDPA does not require State or Federal Courts to wait for some nearly identical pattern before a legal rule must be applied. *Carey v. Musladin*, *supra*, nor does it prohibit a Federal court from finding an application of a principle was unreasonable, *Lockyer v. Andrade*, 538 U.S. 63. Further, the statute recognizes, to the contrary, that even a general standard may be applied in an unreasonable manner. *William v. Taylor*, 529 U.S. 362, finding a state court decision both contrary to and involving an unreasonable application of the standards set forth in *Strickland v. Washington*, *supra* or *Panetti v. Quarterman*, 127 S.Ct. 2842, 2858 (2007) and *Latter v. Cooper*, *supra*.

In addition to the situation where a state courts decision is "contrary to" or an "unreasonable application" of already established Federal Constitutional Law, 28 U.S.C. § 2254(D)(2), provides that a State court decision "must be" reversed, and relief must be granted, if the State court proceedings resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in State Court proceedings. *Miller-El v. Cockrell*, 537 U.S. 322. As such in this case at bar. Finally, if a legal issue has not been considered by the State court on the merits, the Federal court must decide those issues de-novo. See *Wolfe v. Johnson*, 565 F.3d 140, quoting *Wiggins v. Smith*, 539 U.S. 516, and *Monroe v. Angelone*, 323 F.3d 296. The deferential standard applies even when the State court fails to identify prevailing Federal standards and principles to address the claim, *Faulkner v. Lee*, 290 F.3d 663; and *Williams v. Taylor*, *supra*.

All other Allegations

As to any and all other allegations which were or could have been raised in the Application or at the evidentiary hearing in this matter, ^{"I Ask the Court to"} this Court finds that the Applicant has stated a legitimate reason for the preservation of such right. Said reason must be stated on the Record and included in the record consideration. Reasons are as follows:

- (1) Ineffective Assistance of PCR Counsel
- (2) PCR Counsel is the "cause and prejudice" to any procedural default
- (3) PCR Counsel's failure to adequately and sufficiently develop, or present issues
- (4) The Applicant has shown due diligence in requesting counsel and the courts to address the issues presented to this State Court.
- (5) As of 1-4 petitioner could not comply with S.C. Code Ann. § 17-27-90, and is not a voluntary and intelligent waiver of applicant's right to secure relief and should be allowed as the basis for a subsequent application.

Thus, the Applicant has shown sufficient reason why said unasserted issues were inadequately raised in the original, supplemental or amended application through no fault of his own, see Coleman v. Thomas, *supra*.

^{"I Ask the Court to"} Based on all the foregoing, this Court finds and concludes that the Applicant has satisfied the burden of proof on his allegations before the court. Thus total counsel's performance fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the result of the trial would have been different. Furthermore, because said counsel's waiver was not in compliance with the process of law, it stands as unconstitutional, illegal, and void. Therefore, this Court finds that the applicant has established constitutional violations and deprivations before, during and post trial.

It is therefore ordered: (1) The applicant Post Conviction Relief be granted
(2) Pursuant to S.C. Code Ann. 17-27-90, any and
every wrongs - all grounds for Relief be granted

And it is so ordered this day of _____, 2014
Trey Williams
every wrongs

Dear S.C. Supreme Court, on April 4th, 2017 Trey Alexander Williams #341036 filed the return in the enclosed case matter. This is to the best of his ability and any material in this matter not accepted, considered or taken under advisement will prejudice me at the moment and I'll be prepared to correct it at Federal Review however I am unable to do any better than this at this return, I am sick, on 24 hour lock down, and limited research and material. Immediately following the return enclosed is the two indictments in this case, showing invalid waiver evidence, then the proper PCR Amended Application Handwritten, and document on S.C. Supreme Court filed letter demonstrating an unfair bite at the apple. And ineffective PCR Counsel. Also last is nine letters from Direct Appeal Counsel demonstrating her factual ineffectiveness clear upon the face of the record to not include these records ~~you~~ and merits will be a miscarriage of justice to one who is actually innocent.

Very truly yours

The State of South Carolina
In the Supreme Court

Appeal from York County
Court of common pleas

The Honorable Allison Renee Lee, Circuit Court Judge

Appellate Case No. 2016-001553

Trey Alexander Williams, #341036

Respondent

v.

State of South Carolina, ~~Respondent~~

Petitioner

Respondents Motion to supplement Appendix

NOW comes Respondent AS prose litigant in this above mentioned case. Respondent ASks to Add to the Appendix the Supporting records from Appellate Counsel on direct Appeal, letters from PCR Attorney that supports Return, letters/ Records from S.C. Supreme Court and The first Indictment involved in this case AS well AS the records that show how the PCR should have been conducted from due diligence. These Records should be obtained, sorted through And Added. enclosed is the only records I have to Supplement the rest need be from S.C. clerk Supreme Court records, York County clerk of court PCR Records And Discovery Records.

Respectfully submitted,
Wm Williams

April 4th, 2017