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APR 17 2017

IN THE SUPREME COURT
of SOUTH CAROLINA

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Ervin M. Lopez, #269240,)
) appellate)

Vs.)

Warden, Dennis Bush of)
Broad River C.I.,)
) respondent)

Appellate Case No.: 2017-000778

WRITTEN EXPLANATION

Rule 243(c)

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S.C. SUPREME COURT

NOW COMES, the Petitioner (Ervin M. Lopez) providing a written explanation in accordance with Rule 243(c), as to why the denial and determination of the Lower Court was improper.

Petitioner filed his Original (first) PCR on July 22, 2005 in the Richland County Court. The Case (2005-CP-400-2980) was heard before the Honorable Thomas Cooper on November 3, 2009.

The Order of Denial was issued on May 5, 2010.

Petitioner presented thirteen (13) issues at the Evidentiary Hearing, and all thirteen (13) issues were Ruled upon with a Finding of Fact and Conclusion of Law.

Petitioner filed a timely appeal in the South Carolina Supreme Court for a Writ of Certiorari, and the S.C.C.I.D. appointed Elizabeth Franklin-Best as Counsel to represent the Petitioner on the Appeal.

Appellate Counsel, Elizabeth Franklin-Best submitted an Anders Brief, briefing only two (2) issues out of the thirteen (13) issues Ruled upon with a Finding of Fact and Conclusion of Law in the Order of Denial, issued by the Lower Court.

LEGAL AUTHORITY

Petitioner rely's on the decision in Austin v. State, 409 S.E.2d 395. Which specifically entitles an Appellate to seek review of the issues that were Ruled upon with a Finding of Fact and Conclusion of Law, denied in the Original PCR..

In this case. Petitioner raised thirteen (13) issues at the Original PCR Hearing and All thirteen (13) issues were Ruled upon with a Finding of Fact and Conclusion of Law. However. Appellate Counsel (Elizabeth Franklin-Best) only briefed two (2) issues of the thirteen. This was Ineffective Assistance of Counsel. Her actions abandoned the remaining eleven (11) issues, thus preventing the Petitioner from having a " Fair bite " at the " Proverbial apple ".

Appellate Counsel submitted an Anders brief. However. Under the Anders Ruling, Appellate Counsel is to brief ALL arguable issues, that is, issues that have been Ruled Upon with a Finding of Fact and Conclusion of Law, despite counsel's belief the appeal is frivolous, as a safeguard to the right to appeal.

Petitioner has a Garuanteed right to appeal, and have every issue that was denied with a Finding of Fact and Conclusion of Law heard and presented for review.

The Actions of Appellate Counsel involuntarily abandoned the remaining eleven (11) issues, by not briefing them for Appellate Review.

Petitioner was unable to for-see that the actions of Appellate Counsel would be Ineffective Assistance of Counsel, which would abandoned preserved Issues from the Original PCR and effectively stop Appellate review of the remaining eleven issues previously raised at the PCR.

Since Appellate Counsel's actions were Ineffective Assistance and caused the involuntary abandonment of the remaining eleven (11) issues ruled upon at the Original PCR Hearing. Petitioner is entitled to have a second PCR, to address the Unheard eleven (11) issues previously preserved, so that they can be reviewed by a Higher Court.

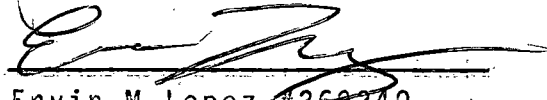
Petitioner should not be penalized for the improper actions of Appellate Counsel abandoning preserved issues.

Wherefore. Petitioner respectfully asks this Honorable Court for an Appeal based on the Austin decision.

Dated: April 17, 2017

Respectfully,

/s/


Ervin M. Lopez, #269240
BRCI-Marion-176
4460 Broad River Road
Columbia, SC. 29210

cc: Richland County Clerk of Court
File

IN THE SUPREME COURT
of SOUTH CAROLINA

Ervin M. Lopez, #269240,)
) appellate)
))
Vs.)
))
Warden, Dennis Bush of)
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CERTIFICATE OF SERVICE

Rule 243(c)

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I Ervin M. Lopez, #269240, (Appellate) in the forgoing matter, do hereby declare under the penalty of perjury for the State of South Carolina. That I have placed in the U.S. Mail one (1) Original copy of a Written Explanation Rule 243(c), to the South Carolina Supreme Court, Clerk of Court Daneil Shearouse, at the below listed address and one (1) copy of same to the Richland County Clerk of Court, Jeanette W. McBride, by way of Broad River Correctional Institutional Legal System on this date: April 17, 2017.

ISI *Ervin Lopez*

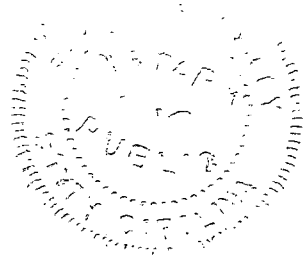
Ervin M. Lopez, #269240
BRCI - Marion - 176
4460 Broad River Road
Columbia, SC. 29210

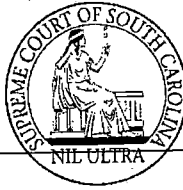
Sworn to and Subscribed before me

this 17 day of April 2017

Notary: *[Signature]*

Exp: 9/16/2026





The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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April 04, 2017

Mr. Ervin Lopez, #269240
Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669

Re: Ervin Lopez v. State
Appellate Case No. 2017-000778

Dear Petitioner:

This Court has received the notice of appeal in the above post-conviction relief action. Since the order of the circuit court determined that this action is barred as being successive and/or as being untimely under the statute of limitations, Rule 243(c) of the South Carolina Appellate Court Rules requires you to provide a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. The failure to make a sufficient showing may result in the dismissal of this matter.

Please provide the explanation required by Rule 243(c) within twenty (20) days of the date of this letter.

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Very truly yours,

A handwritten signature in black ink, appearing to be "J.R. [unclear]", with a long horizontal line extending to the right.

CLERK

cc:

Jessica Elizabeth Kinard, Esquire

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE, CLERK OF COURT

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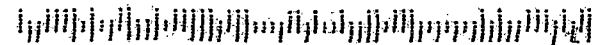
ERVIN LOPEZ, #269240
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