

Noel Gray #307590
Murray #152 B
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, SC. 29210

August 17, 2017

The Honorable Daniel E. Shearouse,
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC. 29211

RECEIVED

AUG 21 2017

S.C. SUPREME COURT

Re: Gray Noel V. State of South Carolina, CA 2015-CP-02-01730 / App. # 2015-002615

Dear Honorable Clerk,

Enclosed are the Direct Appeal Appellate Brief dated April 12, 2013; the Courts
ruling; The Remittitur; PCR Notice dated Feb. 4, 2014; The March 20, 2014 PCR Application;
March 20, 2014 motion with filing; April 14, 2014 filing; April 16, 2014 filing;
April 24, 2014 filing; May 15, 2014 filing; Improper Indexed Application
2015-CP-02-01730; June 19, 2015 filing; July 1, 2015 filing, Material facts to
show the Clerks failure to properly Index a PCR Application on March 24, 2014
and not on July 9, 2015 in clear violation of Rule 71.1 (e) SCRPC and the First
and Fourteenth Amendments of the U.S. Constitution. Also, Judge Early does not have the
Jurisdiction to sign any orders in my case pursuant to Rule 501 Co JC. Canon 3 (A) (B)
(1) (8) and (E) SCRPC, and the Honorable Toles Order. April 12, 2013. Respectfully

Noel Gray #307590

Noel Gray
Pro-se.

cc/file | § 2254



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 12, 2013

Mr. Noel Gray, #307590
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: Your appeal

Dear Mr. Gray:

Enclosed is a copy of the Initial Brief of Appellant in your case, which I have filed with the South Carolina Court of Appeals.

Please contact me if you have any questions.

Sincerely,

Robert M. Pachak
Appellate Defender

RMP/pcm

Enclosure

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NOEL GRAY,

APPELLANT

APPELLATE CASE NO. 2012-213607

INITIAL BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Whether appellant's case should be remanded for a hearing and the appointment of counsel on his after discovered evidence claim that trial counsel failed to convey two plea agreement offers to him?

STATEMENT OF THE CASE

Appellant was convicted of two (2) counts of criminal sexual conduct with a minor in the second degree after a jury trial held before the Honorable Jackson V. Gregory on February 2, 2005. Appellant was sentenced to life imprisonment without the possibility of parole. He was represented by Kelly P. Brown, Esquire.

Appellant appealed his convictions and the appeal was dismissed after a review pursuant to Anders v. California by the Court of Appeals on January 11, 2008. State v. Gray, Op. No. 2008-UP-040.

Appellant filed his first application for post-conviction relief on April 18, 2008. An evidentiary hearing was held on February 2, 2009, before the Honorable Doyet A. Early, III. Appellant was present and was represented by counsel. Both appellant and trial counsel testified at the hearing. On April 2, 2009, Judge Early issued an order denying and dismissing the application for post-conviction relief. A Johnson Petition for Writ of Certiorari was filed with the South Carolina Supreme Court and it was denied on December 2, 2010.

Appellant filed another application for post-conviction relief on December 9, 2011. Appellant alleged newly discovered evidence and ineffective assistance of PCR counsel. Respondent filed a return and motion to dismiss alleging the application to be successive and for failing to meet the filing requirements of the statute of limitations. After a conditional order of dismissal and appellant's response, the application was dismissed by Judge Early on June 26, 2012. Appellant appealed the order of dismissal, but the appeal was dismissed on August 30, 2012, by the South Carolina Supreme Court pursuant to Rule 243 (c), SCACR.

On September 24, 2012, appellant filed a motion for a new trial pursuant to Rule 29(b), SCRCrimP. Appellant also filed a motion for appointment of counsel. On December 4, 2012, Judge Early filed a form order denying the motion for new trial and the motion for appointment of counsel. (ROA. p. 49 – 50). The motions were denied without a hearing and without an explanation.

This appeal follows.

ARGUMENT

Appellant's case should be remanded for a hearing and the appointment of counsel on his after discovered evidence claim that trial counsel failed to convey two plea agreement offers to him.

Appellant's motion for a new trial pursuant to Rule 29(b), SCPCrimP was filed on September 24, 2012. (ROA. p. 1). In the motion, he wrote that on October 12, 2011, he received a Rule 5 discovery package from trial counsel that contained two plea agreements that counsel failed to disclose to him. Appellant cited Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) which held that the failure to communicate a plea offer to a client constitutes deficient performance. (ROA. p. 2). Any plea offer was better than the life imprisonment without parole sentence that he received. (ROA. p. 3).

In Clark v. State, 365 S.C. 385, 434 S.E.2d 266 (1993), the court wrote that to obtain a new trial based on after discovered evidence, a party must show that the evidence:

- (1) Would probably change the result if a new trial is had;
- (2) Has been discovered since the trial;
- (3) Could not have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and
- (5) Is not merely cumulative or impeaching.

Here the plea agreement would have changed the result because appellant would have pled guilty and avoided a life sentence without parole. Appellant has shown that he discovered the existence of the plea agreement since the trial. He could not have discovered the plea agreements

before trial because they were not disclosed to him. The plea agreements would have been material to guilt or innocence. And, the plea agreements were not merely cumulative or impeaching.¹

Appellant has alleged facts that have not been refuted. He should be allowed a hearing on his allegations. In Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005), the Court held that when considering the State's motion for summary dismissal, where no evidentiary hearing has been held, a PCR judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant. Surely, the same rules would apply to a motion for after discovered evidence under Rule 29(b).

¹ In McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013), the Court adopted a different after-discovered evidence test as it relates to juror misconduct. The Court may want to look at current after-discovered test as it relates to the failure to disclose plea agreements.

CONCLUSION

Appellant's case should be remanded for a hearing on the merits of his claim and he should have counsel appointed at the local level to assist him.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of April, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NOEL GRAY,

APPELLANT

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Rule 29(b) Motion;
- (2) Form Order Denying Rule 29(b) Motion
- (3) Miscellaneous Exhibits
- (4) Prior PCR Application and Supporting Documents
- (5) Return and Motion to Dismiss
- (6) Conditional Order of Dismissal
- (7) Applicant's Response to Conditional Order of Dismissal
- (8) Post-Conviction Relief (Successive Application Amendment)
- (9) Final Order of Dismissal

I certify that this designation contains no matter which is irrelevant to this appeal.

April 12th, 2013

Robert M. Pachak

Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

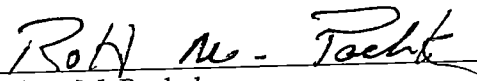
V.

NOEL GRAY,

APPELLANT

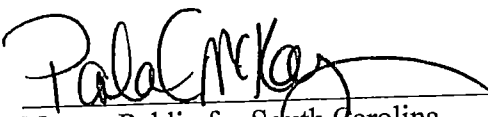
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of April, 2013.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of April, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Noel Gray, Appellant.

Appellate Case No. 2012-213607

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

RECEIVED

FEB 28 2014

Unpublished Opinion No. 2014-UP-036
Submitted December 1, 2013 – Filed January 29, 2014

SC Court of Appeals

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App.
2011) ("The granting of a new trial because of after-discovered evidence is not

avored, and this court will affirm the trial court's denial of such a motion unless the trial court abused its discretion." (internal quotation marks omitted)); *id.* ("In order to warrant the granting of a new trial on the ground of after-discovered evidence, the movant must show the evidence (1) is such as will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial by the exercise of due diligence; (4) is material to the issue; and (5) is not merely cumulative or impeaching."); Rule 29(b), SCRCrimP (providing "[a] motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of the actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence").

AFFIRMED.¹

SHORT, WILLIAMS, and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



EXHIBIT#

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
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

February 24, 2014

The Honorable Liz Godard
PO Box 583
Aiken SC 29802-0583

REMITTITUR

Re: The State v. Noel Gray
Lower Court Case No. 2004GS0201333, 2004GS0201334
Appellate Case No. 2012-213607

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Noel E. Gray, Jr., #307590
Salley W. Elliott, Esquire
Robert M. Pachak, Esquire
Alan McCrory Wilson, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

February 4, 2014

Noel Gray, #307590
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: Your case

Dear Mr. Gray:

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,

Robert M. Pachak
Appellate Defender

RMP/pcm

Enclosure: Post-Conviction Relief Application

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

NOEL E. GRAY JR #307590
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and veified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make chr to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exeise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay thfees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention BROAD RIVER CORR. INST.
2. Name and location of Court which imposed sentence SECOND JUDICIAL CIRCUIT AIKEN, SC.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2004-GS-02-1333
 - (b) 2004-GS-02-1334
 - (c) 2004 GS-02-1335
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) FEBRUARY 2, 2005
 - (b) SAME

- (c) SAME
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. SOUTH CAROLINA COURT OF APPEALS
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. AFFIRMED
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. JANUARY 29, 2014
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. N/A
 - iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
 - (b) N/A
 - (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) ~~PROSECUTORIAL MISCONDUCT (Dropped)~~
- (c) JURISDICTIONAL and SUBJECT MATTER JURISDICTION

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) SEE RULE 29(b) MOTION WITH MATERIAL FACTS
- (b) ~~SAME AS AD(a)~~ Dropped
- (c) SEE JURISDICTION/SUPPLEMENTAL JURISDICTION MOTION WITH MATERIAL F

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. RULE 29(b) SCR Crim P. GENERAL SESSIONS
 - ii. DIRECT APPEALS COURT
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. 2nd Judicial Circuit Court Aiken South Carolina
 - ii. SOUTH CAROLINA COURT OF APPEALS
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. Denied
 - ii. Denied
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. December 4, 2012
 - ii. February 29, 2014

- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- ii. SUBJECT MATTER JURISDICTION
- iii. JURISDICTION

(b) the proceedings in which each ground was raised:

- i. POST CONVICTION RELIEF dated February 2, 2009.
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) ^{w.g.} ~~N/A~~ Jurisdiction can be raised at any time
- (b) N/A
- (c) N/A

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NO
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES

- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

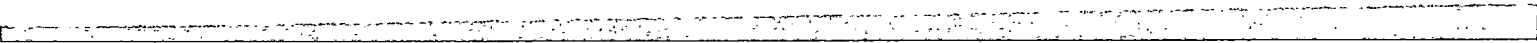
18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. KELLY P. BROWN ESQ. 410 Barnwell Ave. N.W. PO Box 2247 Dixie, SC. 29502
 - ii. ROBERT M. PALWAK ESQ. PO Box 11589 Columbia, SC. 29211-1589
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. TRIAL
 - ii. Direct Appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:
All INDICTMENTS, INFORMATIONS and Complaints Dismissed with PREJUDICE,

20. Are you now under sentence from any other court that you have not challenged?
NO

Also for #19 the Applicant would move the Honorable Court to grant re-offer of the Non-violent plea deal offered by the State, and the trial counsel refused to convey.



STATE OF SOUTH CAROLINA

)
)
)

VERIFICATION

County of

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

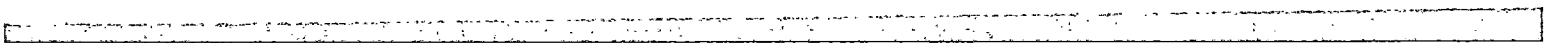
Noel E Gray Jr. #307580

SWORN to and subscribed before me this 20th
day of March, 2014.

Susan H. Frye (L.S.)
Notary Public

My Commission Expires
March 5, 2016

My Commission Expires: _____



**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

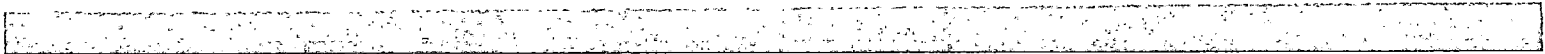
Noel E. May Jr. #307530
Applicant

SWORN or affirmed to and subscribed before me this
20th day of March, 2014.

Susan H. Frye
Notary Public

My Commission Expires:
March 5, 2018

My Commission Expires: _____



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN)

FORTH THE SECOND JUDICIAL CIRCUIT COURT

NOEL E. GRAY JR # 307590)

2004-GS-02-1333-1335

Pro-Se Applicant)

08-CP-02-00734

VS.)

MOTION TO AMEND APPELLATE CASE NO. 2012-213607 TO SUBJECT MATTER CLAIMS

STATE OF SOUTH CAROLINA)

WITH STATEMENT OF FACTS and CONCLUSION

Respondent)

OF LAW IN SUPPORT OF pursuant to S.C. Code Ann. § 17-27-70(a); § 17-27-80

Comes now into court Noel E. Gray Jr. # 307590 by and through Pro-Se Representation respectfully moving this Honorable Court to Amend Applicant's Appeal No: 2012-213607 denial to his Subject matter Jurisdiction and Jurisdiction Claims pursuant to S.C. Code Ann. § 17-27-70(a) and § 17-27-80 with Statement of facts and Conclusions of Law In Support of as follows:

The applicant came across two(2) plea agreements that the State offered the applicant on October 12, 2011. By the preponderance of material facts, Trial Counsel provided ineffective assistance by her unreasonably failing to not only object to the LWOP Sentence pursuant to S.C. Code Ann. § 17-25-45(a) recidivist Statute, but she failed to preserve any issues for direct review and this failure prejudiced the whole outcome of the case. see Strickland v. Washington, 466 U.S. 668, 686 (1984).

COPY FILED ORIGINAL FILED

MAR 24 2014 8:30 AM AIKEN COUNTY CLERK OF COURT

Also Trial Counsel withheld 2 two plea agreements in which one was Non-Violent and a lesser -included offense charge.

Pursuant to Libretti v. U.S., 516 U.S. 29, 50-51 (1995) Counsel has a "critical" obligation to advise a client of "the advantages and disadvantages of a plea agreement."

Missouri v. Frye, 132 S. Ct. 1399 (2012) 'Justice Kennedy residing'. The Sixth Amendment, applicable to the States by the terms of the Fourteenth Amendment provides that the accused "shall" have the assistance of counsel in all criminal prosecutions. The right to counsel is the right to effective assistance of counsel see Strickland v. Washington, 466 U.S. 668, 686 (1984) This case arises in the context of claimed ineffective assistance that led to the lapse of a prosecution offer of a plea bargain, a proposal that offered terms more lenient than the Terms of Life without the Possibility of Parole (LWOP).

The initial question is whether the Constitutional right to counsel extends to the negotiation and consideration of plea offers, that lapse or are rejected. Because if counsel had conveyed these offers especially a Non-Violent lesser -included offense charge, there was a certain opportunity to do 10 years rather than die in the South Carolina Department of Corrections, therefore, prejudice presumes.

also citing Daive v. State, 381 S.C. 601, 675 S.E. 2d 416 (2009)

(1) defense performed deficiently with respect to the States initial plea offer; (2) Applicant has showed that he was prejudiced by his

own counsel's deficient performance, therefore, for a Public Defender to show contempt and prejudice towards her own client by committing "Extrinsic Fraud" by lying to the Court and Judge Lloyd and Judge Early and also her own client.

This claim of Ineffective Assistance of Counsel claims at trial level is not reviewable on direct Appeal, but rather may be asserted in proceeding under the PCR Act.

The applicant respectfully contends that prejudice presumed when assistance of counsel was denied entirely during a critical stage of the proceeding. See Strickland v. Washington, 466 U.S. 675, 692 and also Mikens v. Taylor, 535 U.S. 162, 166 (2002).

The Sixth Amendment guarantees the right to effective Assistance of Counsel in all Criminal prosecutions see Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (per curiam) See also Padilla v. Ky., ___ U.S. ___ 130 S.Ct. 1473, 1480-81 (2010) (1) Counsel's performance fell below an objective standard of reasonableness see Strickland v. Washington, - 466 U.S. 668, 687-88 (1984) (2) Counsel's deficient performance prejudiced the defendant, resulting in an unreliable or fundamentally unfair outcome in the proceeding.

Trial Counsel's Violations of applicant's Fast and Speedy Trial Contract pursuant to the Federal Interstate Agreement on Detainers Act Violating Due Process under the Fourteenth Amendment see: Klopfert v. N.C. 386 U.S. 213, 222-24 (1967)

Strunk v. U.S. 412 U.S. 434, 440 (1973) Vacating Sentence and

dismissing indictment's was the "only possible remedy" for applicant
denied right to speedy trial while serving a ~~State~~ State Sentence.
because 18 U.S.C. app. 2 under the IADA Trial must commence
within 180 days of a prosecutor's and appropriate court's receipt
of a prisoners request for trial on charges pending in another
jurisdiction, and trial must commence within 120 days of
a prisoners transfer to another jurisdiction for trial see
id, § 2 art III (2); IV (c) and Fey v. Michigan 507 U.S. 431, 52
(1993) therefore, the applicant knows that the State was not at
fault for the gross neglect he is suffering, but because the
incompetence of his own trial Counsel's unprofessional actions.

Applicant is suffering continuing consequences as a result
of his invalid conviction and sentence see: Jackson v. State, 489 -
S.E.2d 916. Because of this gross negligence of Trial Counsel
this State lost jurisdiction of the Subject Matter making
applicant's sentence and conviction void and UnConstitutional

Respectfully Submitted

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

NOEL E. GRAY JR. #307590)
Pro Se Applicant)
V.)

2004-GS-02-1333-1335
08-CP-02-00734

STATE OF SOUTH CAROLINA)
Respondent)

CERTIFICATE OF SERVICE

I Noel Gray # 307590 do hereby certify that I have deposited the Original with a true copy to be filed into this Honorable Court postage pre-paid and for a clock stamped copy sent back to the applicant this 20th day of March 2013 to the address as follows:

Aiken County Clerk of Court
In the Court of Common Pleas
For the Second Judicial Circuit
PO Box 583
Aiken, SC. 29802-0583

SUBSCRIBED AND SWORN BEFORE ME

This 20th day of March, 2014

By Susan A. Frye /s/

Notary Public for South Carolina

My Commission Expires: _____ My Commission Expires
March 5, 2018

March 20, 2014

Dear Honorable Clerk of Court,

please find enclosed a true Original and a true copy of applicants Motion to Amend Appellate Case No. 2012-213607 to Subject Matter Jurisdiction Claims with Statement of Facts and conclusion of law pursuant to SC Code § 17-27-70(a) and § 17-27-80 to file into this Honorable Court.

This will go perfectly with my Ineffective Assistance Claims of my Federal ZADA Contract. The applicant knows that the State of South Carolina was not responsible for these violations but was done by his own Trial Counsel.

These issues do have merit and material facts have been applied as according to PCR Statutes. But Jurisdictional Issues done fall under PCR Statutes or Rules and it can be raised at any time. Please send me a clock stamped copy back please. Thank you kindly also thank you for those documents you sent to me April 8, 2013 that helped me to support this action.

God Bless you Ma'am

Respectfully Requested

Noel E. Gray Jr. #307590

Noel E. Gray Jr.

Pro-Se Applicant

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT COURT

NOEL E. GRAY, JR. #307590)
PRO-SE APPLICANT)

2004-GS-02-1333 - 1335
C/NO. 2008-CP-02-00734

VS.)
PRO-SE APPLICANT'S OBJECTION TO
RESPONDENT'S ERRONEOUS DENIAL

STATE OF SOUTH CAROLINA)
RESPONDENT.)

OF COURT FILINGS DATED APRIL
2014.

COPY
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APR 14 2014

AIKEN COUNTY
CLERK OF COURT

COMES NOW INTO THIS HONORABLE COURT Noel E Gray Jr. #307590, by
and through Pro-se Representation respectfully Objecting to the erroneous
Denial of applicants Subject Matter Jurisdiction and Jurisdiction
Court filings.

The applicant agrees that the PCR Action 2008-CP-02-00734 was
dismissed with prejudice by the Honorable Doyet A. Early III Circuit Court
Judge on April 6, 2009.

However, pursuant to e.g., State v. Edens, 520 S.E.2d 116, 118 (S.C.1978);
State v. Pierce, 207 S.E.2d 414, 417 (S.C.1974) the Honorable Doyet A Early III
deprived the applicant his procedural Due Process under the Sixth and Fourteenth
Amendments of the United States Constitution and Article 1 § 3 of the
South Carolina State Constitution by his Erroneous "abuse of
discretion" standard by the Order of Dismissal in which he dismissed
with prejudice, because applicant raised Subject Matter Jurisdiction,

Ineffective Assistance of Trial Counsel, and; Violations of Federal IADA Contract.

The Honorable Doyet A. Early, III never ruled upon the Subject Matter Jurisdiction issue, therefore, it is not procedurally barred, and violates the Post-Conviction Statutes and Rules.

Also, the Honorable questioned Bradley L. Boni Esq, a Court appointed attorney several times regarding his unpreparedness regarding a two page case law to support the Federal IADA Contract Issue.

The applicant has requested the Motions filed to be sent to the Chief Administrative Judge to be heard and ruled upon in Chambers on the Non-Jury Docket.

Fundamental Fairness entitles indigent applicants to an adequate opportunity to present their claims fairly within the adversary system see: AKE V. OKLAHOMA, 470 U.S. 68, 77 (1985).

By Bradley L. Boni Esq. failure to research and to adequately prepare his defense regarding the applicants claims, with no assistance from Counsel, at any time, such a system is "unworkable", "unreasonable", and "unfair".

To satisfy the exhaustion requirement "State prisoner's must give the State Courts "one" full opportunity to resolve any Constitutional issues by invoking one complete round of the State's established appellate review process see: O'SULLIVAN V - BOEREKEL, 526 U.S. 838, 842 (1999); Id. at 844,

The applicant presented evidence through Oral testimony that he corresponded with the Honorable Early before his trial; and that the applicant never consented to the illegal Continuance filed by Trial Counsel as pursuant to S.C. Code Ann. § 17-27-80 (2003). See SIMPSON V. MOORE, 627 S.E.2d 701, 712 (S.C. 2006).

Also, the applicant sent the Honorable Clerk of Court a RULE 59(e) SCRPC on January 5, 2009 to be filed with the Application and Pro-Se Brief, but because of Hybrid Representation the Motion was returned to be sent to Bradley L. Boni, Esq. in which was done on January 15, 2009.

On April 6, 2009, the Honorable Doye + A. Early, III Circuit Court judge issued his final decision in his written Order. The PCR Act requires the Court's order to "Make specific findings of facts, and State expressly it's conclusions of law, relating to each issue presented see S.C. Code Ann. § 17-27-80 (2003)

In order to preserve all the applicants issues, for Appellate Review, Appointed Counsel Bradley L. Boni Esq. was supposed to review the final Order and address any insufficiencies through the RULE 59(e) Motion requesting the PCR Court to specifically address each issue raised in the application see: MARLAR V. STATE, - 653 S.E.2d 266, 267 (S.C. 2007) (per curiam).

In several cases, where the final Order lacked specific findings of fact and conclusions of law, the South Carolina Supreme Court has overlooked the failure to file a RULE 59(e) -

Motion and Remanded for specific findings, (or in some cases) "a new hearing" in order to address the pervasive problem of inadequate Orders see: e.g. McCULLOUGH V. STATE, 464 S.E.2d 340-341 (S.C. 1995), but recently, the Court made clear that this past practice was a "unique" situation in which the Court attempted to remind Circuit Court Judges and parties that (1) specific findings of fact and conclusions of law were required; and (2) A RULE 59(e) Motion may also be used when the Order contains an erroneous finding of fact, a misapplication of law, or if there has been intervening authority relevant to an issue in the case.

[C]ounsel preparing proposed Orders should be meticulous in doing so, Opposing Counsel should call any omissions to the attention of the PCR Judge prior to issuance of the Order, and the PCR Judge should carefully review the Order prior to signing it. Even after an Order is filed, "Counsel has an obligation to review the Order and file a RULE 59(e) Motion SCRPC to alter or amend if the Order fails to set forth all the findings and the reasons for those findings as required by S.C. Code - Ann. § 17-27-80 and RULE 52(a) SCRPC; PRUITT V. STATE, 423 S.E.2d at 128; MARLAR V. STATE, 653 S.E.2d at 267; - and; HALL V. STATE, 601 S.E.2d at 341.

Appointed Counsel Bradley L. Boni Esq. was supposed to by the Strict PCR Rules and Statutes serve the RULE 59(e)

within 10 days of receiving written notice of entry of the Order denying Post-Conviction Relief pursuant to the Rule 59(e) SCRPC.

The applicant was not afforded his one complete bite of the apple he was entitled too pursuant to WILSON V. STATE, - 559 S.E.2d 581 (S.C. 2002); and he was never afforded a complete direct review of his claims brought in the 08-CP-02-0734 PCR Action due to "So many procedural irregularities see WASHINGTON V. STATE, 478 S.E.2d 833, 835 (S.C. 1996).

In ALICE V. STATE, the court explained that every PCR Applicant is entitled to a "full" adjudication on the merits of the PCR Application; or "one" bite at the apple, in which he did not receive, depriving him of his Procedural Due Process violating the applicants Sixth, - and Fourteenth Amendments of the United States Constitution also violating Articl 1 § 3 of the State Constitution.

Pursuant to the Post-Conviction Rules and Statutes the Honorable Doyet A. Early, III committed a serious erroneous "abuse of discretion" violating applicant's Post-Conviction Relief Procedural Due Process by dismissing the applicants PCR 08-CP-02-00734 with prejudice because in order to dismiss with prejudice all issues have to be raised and ruled upon. see e.g. State V. EDENS, 250 S.E.2d- 116, 118 (S.C. 1978); STATE V. PIERCE, 207 S.E.2d 414, 417 (S.C. 1974).

In applicant's PCR dated February 2, 2009 the applicant testified that he tried to obtain help from the Honorable before his trial, in such, the Honorable knew that the Federal

I.A.D.P. Contract and the Subject Matter Jurisdiction issues were extremely vital, and the Order of Continuance was obtained against the applicants will and the continuance was obtained in violation of the IADA agreement violating the BUTLER V. STATE, 397 S.E.2d 87, 88 (S.C. 1990). (italics omitted) (quoting State V. MILLER, 84 A.2d 459, 463 (N.J. Super. Ct. App. Div. 1951)). Standard in which that a Constitutional error before trial, constitutes a "denial" of fundamental fairness shocking to the Universal Sense of Justice.

Pursuant to GIDEON V. WAINWRIGHT, 372 U.S. at 335, applicant's right to legal competent counsel would be "futile" unless it comprehended "effective" legal counsel.

Trial Counsel and PCR Counsel were both in "Extrinsic Fraud" violations see CORLEY V. CENTENNIAL CONST. CO., 247 S.C. 179, 146 S.E.2d 609 (1966); and MR. G V. MRS. G. 320 S.C. 305, 465 S.E.2d 101 (Ct. App. 1995) and also HILTON HEAD CENTER OF SOUTH CAROLINA, INC. V. PUBLIC SERVICE Comm'n. 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987) because their fraud induced the applicant's ability to present his claims and his case depriving him the full and fair opportunity to be heard, violating applicant's "Procedural Legal Due Process in which State and Federal Constitutions and Law protects.

The Applicant filed a Subject Matter Jurisdiction and Supplemental Jurisdiction Motion to Vacate Sentence pursuant to STATE V. HOLBROOK, 274 S.C. 4, 260 S.E.2d 181 (1979) on January 23, 2014 with material facts to support action for the following reasons:

(1) The applicants Conviction and Sentence is in violation of the Constitution of the United States, the South Carolina State Constitution and State and Federal Case law; (2) this Honorable Court was without jurisdiction to impose such Sentence; (3) the Sentence exceeded the Maximum authorized by law; (4) there is evidence of Material facts, not previously presented and heard, that requires vacation of the Conviction and Sentence in the interest of justice; (5) The Sentence has expired; the Federal IADIA Contract has been unlawfully revoked; and is unlawfully held in custody; and (6) the Conviction and Sentence is subject to collateral attack upon grounds of alleged error previously available under common law, Statutory or other Writ, Motion, petition, proceeding or remedy see S.C. Code Ann. - § 17-27-20 (a)(1)-(6).

Also the State cannot remove Federal Jurisdiction that the applicant remains under pursuant to the Federal IADIA Contract.

Also in CLARK V. STATE, 468 S.C.2d 653 (S.C. 1996) the applicant was serving a Federal Sentence when the State signed the Federal Contract and agreed to it's terms according to State and Federal law in which they are committed to uphold, applicant's Trial Counsel lied to the Administrative Law Judge Honorable Lloyd to get an illegal Continuance and give the State an tactical advantage over him because the State was not prepared to try this case in the

October 2004 term of Court. And the State placed a Federal Inmate into the State Department of Corrections against his will and against the "Federal ZMDA" in which makes the Sentence "Complete" and "Void" - Therefore, the State did not uphold it's agreement to the Federal Authorities.

Also trial counsel and PCR counsel is responsible for and expected to present an accused "fair" and "best" defense see: RICHARDSON V. STATE, 310 S.C. 360, 363, 426 S.E. 2d 795, 797 (1993); and ROGERS V. STATE, 261 S.C. 288, 199 S.E. 2d 761 (1973), the absence of findings of fact, it is improper for the PCR Judge to deny a applicant's motion for relief on his allegations of Ineffective Assistance of Counsel see MCCRAY, V. STATE, 305 S.C. 329, 408 S.E. 2d 241 (1991).

Also the Pro-se Brief of applicant and the application for PCR was based entirely upon his claim that he did not have the effective Assistance of Counsel because of their incompetency, thus, allegations set fourth a prima facie violation of the applicants procedural due process and Constitutional rights, and raised a question of facts which could only be determined in the lower Court by an evidentiary hearing.

In PEARSON V. HARRISON, CA 4 (S.C. 2001) 9 Fed. Appx 85: In South Carolina, to preserve an issue for review, parties are required to make sure that the lower Court's final judgement reflects a ruling on all the issues raised, and if the final

judgement does not contain such a ruling, parties are required to file a Motion to amend judgement, but in the specific context of PCR. The South Carolina Supreme Court has consistently vacated and remanded PCR Judgements that do not contain findings on issues presented; notwithstanding a PCR applicant's failure to preserve an issue, by filing a Motion to Amend, in which the Applicant instructed Counsel Bradley L. Boni Esq. to do so, see EXHIBIT #54 in Motion dated January 23, 2014. pursuant to COLEMAN V. THOMPSON, 501 U.S. 722, 755, 111 S.Ct. 2546, 115 LEd.2d 640 (1991); PENNSYLVANIA V. FINLEY, 481 U.S. 551, 107 S.Ct. 1990, 95 LEd. 2d 539 (1987). The right to appointment of Counsel extends to the first Appeal of right see S.C. Code Ann. § 17-27-80 (1976); RULE 52(a) SCRPC; McCray v. STATE, 305 S.C. 329, 408 S.E.2d 241 (1991), in which Appellate Counsel was ineffective for "Abandoning" the relevance argument.

Because of PCR Counsel's incompetency, he denied the applicants procedural due process rights under the Strict PCR Statutes and if he would have provided the Honorable Early the two page case law State v. Holbrook, the applicants first PCR would not have been dismissed with prejudice.

The Honorable Clerk of Court sent applicant a couple of documents that clearly showed Trial Counsel lied to Honorable Early dated April 8, 2013, and the LWOP Sentence was illegally obtained and the prior Conviction was not fine to

used as Trial Counsel and Mary S. Williams Esq. for the State told the Honorable Early in the 08-CP-02-0734 PCR Hearing dated February 2, 2009, in clear violation of the Eighth Amendment of the United States Constitution, for Cruel and unusual punishment and excessive Sentencing.

Subject Matter Jurisdiction can be raised in any court at any time see: CARTER V. STATE, 329 S.C. 355, 52 S.E.2d 733 (1989); and HOPE V. STATE, 328 S.C. 78, 429 S.E. 76 (1997).

Also the South Carolina Supreme Court holds that: Lack of Subject Matter Jurisdiction can be raised at any time, or for the first time on appeal see: LAKE V. REALER CONST. CO. - 330 S.C. 242, 498 S.E.2d 650 (1999); STATE V. FUNDERBURK, 191 S.E. - 2d 520 (S.C. 1972); STATE V. SOWELL, 85 S.C. 278, 67 S.E. 316 (1910). "Jurisdictional Issues cannot be waived at any time".

Also applicant's Sentence and Conviction is 'Void' pursuant to Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 987, 900 (1989).

The South Carolina Supreme Court hold (that the judicial Doctrine of rejudicate does not apply to issues of Subject Matter Jurisdiction "where the claim is, that the conviction was "void" for lack of Subject Matter Jurisdiction" citing BROWN V. STATE, - 540 S.E.2d 864 (S.C. 2002) at N. [2-5].

In MENNA V. NEW YORK, 423 U.S. 61, 62 N (2) (1975) The Court held, "Jurisdictional issues are Rights which are justified as protecting something, other than the truth seeking

Process," id., 62-63, Structural defects has nothing to do with guilt or innocence.

See also CF STATE V. LYNCH, 344 S.C. 635 —, 545 S.E. 2d 511, 514 (2001) the Court held: (Surprise or prejudice to the defendant is not the issue, when analyzing whether the Court had Subject Matter Jurisdiction, at N. [6] accord. STATE V. PARKER, 294 S.C. — 465, 468 S.E. 2d 617, 618.

Subject Matter Jurisdiction and Jurisdictional Issues has nothing to do with Post Conviction Relief Rules or Statutes. and the applicant has the Constitutional Right to address these issues in a hearing before the Honorable Court.

And the applicant would like to request that the Honorable Doyet A. Early III to preside over the case pursuant to 08-CP-02-00734 because, he can clearly prove by and through material facts Trial Counsel lied to him and Ms. Mary S. Williams Esq. did also, to re-adjudicate the errors of Law.

Therefore, the State and Federal Case law and the State and Federal Constitution requires a hearing pursuant to the filings of the applicant and it would be a gross. Mis carriage of Justice and erroneous abuse of Discretion to deny such request.

Violating applicants Legal Procedural Due Process pursuant to the Sixth and Fourteenth Constitutional Amendments of the United States and Article 1 § 3 of the State Constitution.

Respectfully Requested.
and Submitted.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

IN SUPPORT OF APPLICANTS OBJECTION TO THE
RESPONDENT'S ERRONEOUS DENIAL OF COURT FILING

DATED APRIL 3, 2014

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APR 14 2014 8:30

AIKEN COUNTY
CLERK OF COURT

Noel E Gray Jr, #307590

Pro-Se Applicant,

vs.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I Noel E. Gray Jr. #307590 certify that the Original and
a true copy of above titled objection has been submitted to the Honorable
Clerk of Court by U.S. Mail postage pre-paid and addressed to:
The Honorable Clerk of Court's office, P.O. Box 583 Aiken, SC. 29802.
this 11th day of April, 2014

SUBSCRIBED AND SWORN BEFORE ME

this 11th day of April, 2014

by Susan H. Frye vs

Notary Public for South Carolina,

My Commission Expires

My Commission Expires
March 5, 2018

Respectfully Submitted

Noel E Gray Jr #307590

Noel E. Gray Jr.

Pro-Se Applicant

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN)

FOR THE SECOND JUDICIAL CIRCUIT COURT

NOEL E. GRAY JR #307590)

2004-BS-02-133-1335

Pro. Se Applicant)

08-CP-02-00734

VS.)

AFFIDAVIT OF NOEL E. GRAY JR.

STATE OF SOUTH CAROLINA)

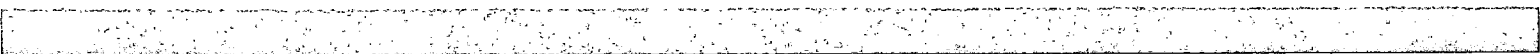
Respondent.)

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8a
AIKEN COUNTY
CLERK OF COURT

COMES NOW INTO THIS HONORABLE COURT, being duly sworn and deposed, I Noel E. Gray Jr. Under the penalty of perjury declares that the information provided in the Objection are true and correct to the best of my knowledge and belief.

Respectfully Submitted
Noel E. Gray Jr. #307590
Noel E. Gray Jr.
Pro. Se Applicant.

SUBSCRIBED AND SWORN BEFORE ME
this 11th day of April, 2014
by Susan H. Frye ys
Notary Public for South Carolina
My Commission Expires: My Comm. #



Noel E. Gray Jr. #307590

Wetree #274

Broad River Conv. Inst.

4460 Broad River Rd.

Columbia, SC, 29210

APRIL 11, 2014

THE Honorable Clerk of Court
for the Second Judicial Circuit,
Court of Common Pleas
P.O. Box 583
Aiken, SC, 29802

Re: Applicant's Objection to Respondent's Erroneous Denial of Court Filings.

Dear Honorable Clerk,

I would like to submit this above objection to be filed in your Honorable Court. The applicant has also enclosed a True Copy to be clocked stamped and returned via postage pre paid and self addressed envelope for your use. I thank you for your time and help in this matter. I'm praying for you.

God Bless You Ma'am

Respectfully Submitted,

Noel E. Gray Jr. #307590

Noel E. Gray Jr.

Pro-Se Applicant.

THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) FOR THE SECOND JUDICIAL CIRCUIT COURT

NOEL E. GRAY, JR #307590) 2004-GS-02-1333-1335
Pro-Se Applicant,) C/A NO: 2013CPO2 00478
))
VS.) MOTION TO PULL PCR APPLICATION DATED
) MARCH 20, 2014 Appellate Case No, 2012-
THE STATE OF SOUTH CAROLINA) 213607 AND OPEN FOR POST-CONVICTION
Respondent,) HEARING, and Amend JURISDICTIONAL
ISSUES TO PCR APPLICATION.

COMES NOW INTO THIS HONORABLE COURT, Noel E. Gray Jr. #307590, by and through Pro-Se Representation respectfully requesting this Honorable Court to Pull the Appellate Case No. 2012-213607 PCR Application from the Subject Matter Jurisdiction and Supplemental Jurisdictional Issues and open the PCR Application.

The South Carolina Court of Appeals ruled and sent the Remittitur on January 29, 2014 and February 24, 2014 therefore, the application is ripe for review, as required by the Strict rules and Statutes of the Post-Conviction Relief,

Also, the applicant would like to Amend the Subject Matter Jurisdiction and Supplemental Jurisdiction Issues to this PCR Application.

By procedural Rule, the applicant is learning how to

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AIKEN COUNTY
CLERK OF COURT

apply them according to their literal meaning. S.C. Code Ann. § 17-27-70(a); § 17-27-80

The applicant also would like to ask for forgiveness for the filing backwards, I'm not trying to work you all, I'm really sorry, but the Respondents are not playing fair ball.

Again, I'm sorry for working you.

Respectfully Submitted.

Noel E Gray Jr. #307590

Noel E. Gray Jr.

THE STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT COURT

NOELE GRAY, JR #307590.)
Pro-Se Applicant,)

2004-GS-02-1333-1335
C/A NO: 2013CPO 2 00478

VS.

MOTION TO STRIKE MOTION FOR APPOINTMENT
OF COUNSEL FILED ON FEBRUARY 5 2014
TO REPRESENT SELF PRO-SE

THE STATE OF SOUTH CAROLINA)
Respondent.)

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AIKEN COUNTY
CLERK OF COURT

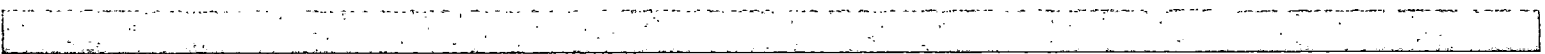
COMES NOW INTO COURT Noel E. Gray Jr. #307590 respectfully moving
this Honorable Court to Strike Applicant's Request for Appointment of Counsel,
dated February 5, 2014. in order for Applicant to Represent his self in
this Action.

The applicant would also move this Honorable Court to grant
Motion for Funding for Court Costs and expenses for case law and
Statutes in order to support action.

Pursuant to the Subject matter Jurisdiction and Supplemental
Jurisdictional issues, the applicant does not have to prove the
Strickland Standard nor does PCR Statutes and Rules Apply.

Therefore, Applicant is Legally and Constitutionally
intitled to a hearing before this Honorable Court, see Brown V -
State, 540 S.E. 2d 864 (S.C. 2002) at N. [2-5] and Anderson V. Anderson,
297 S.C. 110, 115, 382 S.E. 2d 987, 990 (1989).

Respectfully Submitted.



STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT COURT

Noel E. Gray Jr. #307590,
Pro-Se Applicant,

2004-GS-02-1333-1335
CIA NO: 2013CPO 200478

VS.

CERTIFICATE OF SERVICE

State of South Carolina,
Respondent,

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AIKEN COUNTY
CLERK OF COURT

COMES NOW INTO COURT Noel E. Gray Jr. #307590 by and through Pro-Se Representation respectfully Submitting this Motion to Strike Request for Appointment of Counsel to Represent Self in this Matter and to Grant funds pursuant to S.C. Code Ann. § 17-27-60 (2003) in order to obtain case law and materials has been mailed postage pre-paid and addressed to the Honorable Clerk of Courts Office, for the Second Judicial Circuit Court of Common Pleas, P.O. Box 583 Aiken, SC. 29802

SUBSCRIBED AND SWORN BEFORE ME
this 4th day of April, 2014
by Susan H. Joye
Notary Public for South Carolina
My Commission Expires March 5, 2018

Respectfully Submitted
Noel E. Gray Jr. #307590
Noel E. Gray Jr.
Waterloo #274 B.R.C.I.
4460 Broad River Rd.
Columbia, SC. 29210

Noel E Gray Jr. #307590

Waitee #274

Broad River Corr. Inst.

4460 Broad River Rd.

Columbia, SC, 29210

April 14, 2014

Honorable Clerk's Office
for the Second Judicial Circuit
Court of Common Pleas
P.O. Box 583
Aiken, SC, 29802-0583

Re: Motion to Strike Motion For Appointment of Counsel to Represent
Self pro-se and Grant Motion for funds for expenses for case law and
materials to support action and Motion to pull PCR Application dated
March 20, 2014 Appellate Case No. 2012-213607 and open it for a
Post Conviction Hearing and Amend Jurisdictional Issues to
this Application.

Dear Honorable Clerk,

First off, please forgive me for filing backwards, Law
is extremely difficult when the Respondent is not playing fair
ball. But talking to Direct Appeal Counsel, the application is
open for Post-Conviction Relief. Enclosed is a copy to

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)	
		2004-65-02-1333-1335
NOEL E. GRAY, JR #307590	)	2013-CP-02-00478
Pro-Se Applicant,)	
	)	MOTION TO REPLACE PCR APPLICATION
VS.	)	DATED FEBRUARY 27, 2013 WITH PCR
	)	APPLICATION DATED APRIL 16, 2014 WITH
STATE OF SOUTH CAROLINA	)	SUBJECT MATTER AND SUPPLEMENTAL
<u>Respendent,</u>	)	JURISDICTION AMENDMENT DATED
		JANUARY 23, 2014 WITH EXHIBITS

COMES NOW INTO COURT, Noel E. Gray Jr. #307590 by and through Pro-se Representation respectfully moving this Honorable Court to drop the PCR Application dated February 27, 2013 and replace it with the Application filed on April 16, 2014 with the Subject Matter and Supplemental Jurisdictional Issues with Material Facts to Support this action.

The applicant contends that two Applications aren't necessary and the April 16, 2014 and the January 23, 2014 issues are more efficient to support this action, pursuant to S.C. Code Ann. § 17-27-70(a); § 17-27-80 and every issue raised is supported with Material facts pursuant to S.C. Code Ann § 17-27-80(2003).

Also pursuant to S.C. Code Ann. § 17-27-20(a)(4) this Application is not successive, defaulted or barred by Judicial Doctrine of Rejudication that South Carolina per act § 17-27-20(a)(4) (1976)

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AIKEN COUNTY
CLERK OF COURT

code of laws provides for New Facts and Evidence that was not available at the time of alleged PCR 08-CP-02-00734 and PCR 2013-CP-02-00478 that if true would vacate or void the conviction or sentence.

to deny this application would provoke the Erroneous "abuse of discretion Standard see e.g. State v. Edens, 520 S.E. 2d 116, 118 (S.C. 1978); State v. Pence, 207 S.E. 2d 414, 417 (S.C. 1974), and will deprive an indigent his Procedural / legal due process under the Sixth; and Fourteenth Amendments of the United States Constitution and Article 1 § 3 of the South Carolina State Constitution.

Respectfully Submitted,
Noel E. Gray Jr. #307530
Noel E. Gray Jr.
Waterloo #274
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, SC. 29210

SUBSCRIBED AND SWORN BEFORE ME

this 2nd day of April, 2014
by Susan N. Frye

Notary Public for South Carolina

My Commission Expires: _____
2018

NOEL E. GRAY, JR #307590

BROAD RIVER CORR JUST

WATERGE # 274

4460 BROAD RIVER RD

COLUMBIA, SC. 29210

APRIL 23, 2014

HONORABLE CLERK'S OFFICE

IN THE COURT OF COMMON PLEAS

P.O. BOX 583

Aiken, SC 29802 - 0583

Re: MOTION to Replace PCR Application and MOTION to Transfer Motion pursuant to
SC Code Ann. §17-27-60(2003) to 2013-CP-02-00478 filing dated April 16,
2014. Re: ~~08~~-CP-02-00734

Dear Honorable Clerk,

Please find enclosed the Original and a true copy of said motions
to file into your court. Also please send the applicant a clock stamped copy
of said motions in the self addressed and stamped envelope for your
convenience. Your time and help is greatly appreciated.

May God Bless You.

Respectfully Submitted

Noel E Gray Jr #307590

Noel E. Gray Jr.

Pro Se Applicant.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)	
		2004-GS-02-1333-1335
NOELE GRAY, JR # 307590	)	2013-CP-02-00478
PRO SE APPLICANT,)	
	)	MOTION FOR THE CHIEF ADMINISTRATIVE
V.	)	JUDGE TO GRANT PCR APPLICATION
	)	FOR HEARING PURSUANT TO <u>BROWN V -</u>
STATE OF SOUTH CAROLINA	)	<u>STATE</u> , 540 S.E. 2d 864 (S.C. 2002) at N [2+5]
<u>RESPONDENT.</u>	)	FOR <u>"LACK OF JURISDICTION</u> and <u>SUBJECT</u>
		<u>MATTER JURISDICTION</u>

COMES NOW INTO COURT, NOELE GRAY JR. # 307590, by and through pro-se Representation respectfully moving this Honorable Court to by-pass the "The State's Response pursuant to S.C Code Ann.'s 17-27-70 (a) (2003) and Grant applicants PCR Application filed April 16, 2014 by written Order pursuant to S.C.R. CIV.P. 71.1(d). for the following.

In PCR Application 2013-CP-02-00478 filed April 16, 2014, the Applicant raised:

1. Ineffective Assistance of Counsel;
2. Sentence and Conviction Void pursuant to Jurisdiction and Subject Matter Jurisdiction.

The applicant filed a Pro se brief supported by material facts on January 23, 2014, but had it transferred to this current application on April 16, 2014.

P Y J M
 ORIGINAL FILED
 MAY 16 2014
 1:45 PM
 AIKEN COUNTY
 CLERK OF COURT

The Honorable Doyet A. Early III Circuit Court Judge and the respondent is depriving the applicant his Procedural Legal due process under the Sixth and Fourteenth Amendments of the United States Constitution and Article I § 3 of the South Carolina State Constitution, by not allowing him to address Subject Matter Jurisdiction and Jurisdictional Claims, in which he is entitled to address pursuant to Kneece v. State, 236 S.E. 2d 746, 747 (S.C. 1977); (per curiam) (citing: Herring v. State, 206 S.E. 2d 885 (S.C. 1974) (Per-curiam): see also: Slezak v. South Carolina, No. 2003-CP-10-766, - 2003 WL 25459562, at *8 (S.C. Com. Pl. Nov. 24, 2003) (citing Kneece with approval). because he is "entitled" to relief.

This application is not barred, defaulted or Successive by Judicial Doctrine of Rejudicate because South Carolina Post-Conviction Act § 17-27-20(a)(4) (1976) Code of Laws provides for new facts and evidence that was not available at the time of applicants first initial Post-Conviction Relief hearing dated February 2, 2009 that if "true" would vacate or void the Sentence or Conviction. "Remand for Evidentiary Hearing".

also, Ineffective Assistance of Counsel is raised in this current application, but it is not the basis the applicant is seeking relief on, but as an issue for applicant's foundation for his State and Federal Structural defects and prejudice. see: Washington v. State, 478 S.E. 2d 833 (1996).

The Honorable Doyet A. Early, III Circuit Court Judge

emmerously deprived the applicant of his Procedural legal due process by dismissing PCR Application (08-CP-02-00734) with prejudice on April 6, 2009 because the applicant testified that he corresponded to the Honorable on December 29, 2008 before his Trial trying to obtain help because of Trial Counsel. (see App. p. 279 at 2-11) "Yes sir, with the IADIA at the time, that it was violated, I also sent correspondence to your office as well as --

THE COURT: MY OFFICE ?

WITNESS: -- Miss Wallis -- Yes sir.

The Court; why would you send it to me ?

WITNESS: I was trying to report that my IADIA was violated and I was trying to seek some legal help because I tried talking to my counsel, but she wouldn't discuss it with me, and I filed Grievances on behalf of that as well.

Pursuant to the Post-Conviction Relief Act S.C. Code Ann. § 17-27-80 (2003) see Simpson v. Moore, 627 S.C.2d 701, 712 (S.C. - 2006) this was relevant to the facts.

The Records are assumed to be correct and the Respondent cannot refute the relevant issues.

The Honorable Doyet A. Early III Circuit Court Judge also was clearly erroneous and abused his discretion in the Order dated April 9, 2014 pursuant to Case No. (2008-CP-02-00734) that all subsequent motions be Stricken from the record.

This action is unjustified and constitutes a deprivation

of "Fundamental Fairness in which is shocking to the Universal sense of Justice see Butler v. State, 397 S.E. 2d 87, 88 (S.C. 1990) - (italics omitted) quoting State v. Miller, 84 A.2d 459, 463 (N.J. Super. Ct. App. Div. 1951).

The issues in the first initial-review collateral proceeding were not adequately raised because of "Extrinsic Fraud" on both Trial Counsel and PCR Counsel because in Corley v. Centennial Const. Co., 247 S.C. 199, 146 S.E. 2d 609 (1966) "A judgement may be set aside on the ground of fraud only if the fraud is "Extrinsic" and not "Intrinsic" also pursuant to Mr. G. v. Mrs. G., 320 S.C. 305, 465 S.E. 2d 101 (S.C. Ct. App. 1995) "Extrinsic Fraud is Collateral or External to the trial of the matter, and, Hilton Head Center of South Carolina, Inc. v. Public Service Comm'n., 294 S.C. 9, 11, 362 S.E. 2d 176, 177 (1987): "Extrinsic Fraud is Fraud that induces a person not to present a case and deprives a person of the right or opportunity to be heard, therefore, the Honorable Early's denial of Subject Matter Jurisdiction is clearly erroneous see: State v. Edens, 250 S.E. 2d 116, 118 (S.C. 1976); and State v. Pierce, 207 S.E. 2d 414, 417 (S.C. 1974).

In Aice v. State, 305 S.C. 448, 452, 409 S.E. 2d 392, 395 (1991) under PCR Rules, an applicant is entitled to a full adjudication of the merits of the Original petition.

The Honorable Early and PCR Counsel knew that the Violated Federal IAOM Contract and the Subject Matter Jurisdiction issues were extremely vital and cannot be waived because

Pruitt v. State, 310 S.C. 254, 423 S.E.2d (1992) held: "an Order denying a defendant's request for PCR relief would be remanded for re-hearing, where it failed to directly address the defendant's claims that his Trial Counsel was ineffective, not only does such failure deprive the parties of rulings on the issues raised, but it makes review by the Appellate Court more difficult, and thus, Counsel preparing Orders should be meticulous in doing so, and opposing counsel has the obligation to review the Order and file a motion to Alter or Amend the Judgment if the Order fails to set forth the required findings and reason.

The applicant sent the Honorable Clerk of Court a Rule 59(e) on January 5, 2004, but it was returned with instructions to send it to appointed Counsel in which was done January 15, 2004 therefore, the applicant did not waive the issues raised.

Matters cannot be waived or barred or defaulted "where the matter was void for the Court's lack of Jurisdiction.

The due process prohibits stopping litigant's who never has a chance to present their evidence and arguments on a claim, despite one or more existing adjudications of the identical issues which stand squarely against their position see: Robert V. Recovery Bureau, 450 S.E.2d 616 (S.C. App. 1994).

The applicant respectfully refutes the Honorable Early's unjustified prejudice that is not allowing him his full adjudication on the merits that he is entitled too.

PCR Application (2011-CP-02-02776) pursuant to Coats v. State, 575 S.E.2d 557 (S.C. 2003), had new material facts that were not heard or ruled upon and required an Evidentiary hearing was Unconstitutionally denied, depriving the applicant his procedural legal due process. Judge Early denied.

A Rule 29(b) S.C.R. Crim. P. was filed with new material facts to support action and again it was denied by Judge Early.

The applicant has followed the PCR procedures and Rules, but the Honorable Early and the Respondent is denying the applicant Fundamental fairness that entitles indigent defendant's to an adequate opportunity to present their claims fairly within the adversary system see: Ake v. Oklahoma, 470 U.S. 68, 77 (1985)

This unconstitutional procedure discriminates against defendants by reason of their indigent status, and violates the guarantee of equal protection. see, Ex parte, Lexington County, 442 S.E.2d 589, 594 (S.C. 1994); and shows bias and prejudice actions in the Honorable's performance of Judicial duties violating Rule 501 Code of Judicial Conduct Standards Canon 3 see: State v. Cooper, 514 S.E.2d 584, 334 S.C. 340 (1991).

Lack of Subject Matter Jurisdiction can be raised at any time see: Loke v. Realer Const. Co. 330 S.C. 242, 498 S.E.2d 650 (1999); and, State v. Funderburk, 191 S.E.2d 520 (S.C. 1972); and State v. Sowell, 85 S.C. 278, 67 S.E. 316 (1910).

In Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E. 2d 987, 900- (1989) the Court held "We think it's elementary with no need of Citation of Authority, that the facts and acts of a Court with respect to a matter as which it has "no" jurisdiction are "void" see also: Lillard v. Searson, 170 S.C. 304 S.C. 499 (1933).

The South Carolina State Supreme Court also held: Judicial Doctrine of rejudicate does not apply to issues of Subject Matter Jurisdiction, where the Claim is that a conviction is "void" for lack of Jurisdiction see: Brown v. State, 540 S.E. 2d 846 (S.C. 2001); at n [2-5] see also: Cf State v. Lynch, 344 S.C. 635 _____, 545 S.E. 2d 511, 514 (2001).

The Court also held that "Surprise or prejudice to the defendant is not an issue here, when analyzing if the Court had Subject-Matter Jurisdiction at n [6] Accord. State v. Parker, 294 S.C. 465, 468 S.E. 2d 617, 618 (1986).

Also pursuant to PCR Rules and Statutes the Honorable Early cannot dismiss with prejudice issues that are Constitutionally safeguarded by the Laws of this Great State and Country; and denies Procedural legal due process and fundamental fairness essential to the concept of Justice U.S.C.A. Amend. Sixth and Fourteenth.

PCR Rules pursuant to SCRCIUP Rule 71.1 (d) in Counsel "shall" insure that "all" available grounds for relief are included in the application and "shall" amend the application if necessary.

And (e) the burden of proof, the applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.

PCR counsel is required by law to file a timely Rule 59(e) SCRCivP Motion to Alter or Amend the Respondent and the Honorable Early's erroneous dismissal with prejudice Ruling in PCA Action (08-CP 02-00734) dated February 2, 2009 10 days after written notice of entry of the Order denying the motion see: S.C. App. Ct. Rule 203(b)(1); Pruitt, 423 S.E. 2d at 128; Marlar, 653 S.E. 2d at 267; and Hall, 601 S.E. 2d at 341. In which he did not.

At the hearing, appointed counsel is supposed to make sure that the applicant supports his issues by the preponderance of the evidence see: Cobbs v. State, 408 S.E. 2d 223, 225 (S.C. 1991); citing: Griffin v. Warden, 286 S.E. 2d 145 (S.C. 1982); Butler v. State, 334 S.E. 2d 813, 814 (1955) (citing: Griffin v. Martin, 300 S.E. 2d 482 (S.C. 1983)).

Pursuant to Coleman v. Thompson, 501 U.S. 722, 753-754, 111 S.Ct. 2546, 115 L.Ed. 2d 640 (1991), an attorney's errors during an appeal on direct review may provide cause to excuse a procedural default; because the attorney appointed by the State to pursue the direct appeal is ineffective, the prisoner has been denied fair process and the opportunity to comply with the State's procedures and obtain an adjudication on the merits of his claims see: 501 U.S., at 754, 111 S.Ct. 2546; Evitts v. Lucey, 469 U.S. 387, 396, 105 S.Ct. 830, 83 L.Ed. 2d 821 (1985); Douglas, Supra, at 357-358, 83 S.Ct. 814; -

without the help of an adequate attorney, a prisoner will have similar difficulties vindicating a substantial ineffective-assistance-of-Trial-Counsel Claim. Claims of ineffective assistance at trial often require investigative work and an understanding of Trial Strategy.

When the issue cannot be raised on direct review, moreover, a prisoner asserting an ineffective-assistance-of-Trial-Counsel claim in an initial-review collateral proceeding cannot rely on a Court opinion or the prior work of an attorney addressing that claim see: Halbert, 545 U.S. at 619, 125 S.Ct. 2582. To present a claim of ineffective assistance at trial in accordance with the State's procedures, then, a prisoner likely needs an effective attorney.

The same would be true if the State did not appoint an attorney to assist the prisoner in the initial-review collateral proceeding.

The prisoner, unlearned in the law, may not comply with the State's procedural rules or may misapprehend the substantive details of federal Constitutional law cf., eg. id. at 620-621, 125 S.Ct. 2582 (describing the educational background of the prison population). While confined to prison, the prisoner is in no position to develop the evidentiary basis for a claim of ineffective-Assistance-which often turns on evidence outside the Trial Record.

A prisoner's inability to present a claim of trial error is of particular concern when the claim is one of ineffective-

assistance of counsel. The right to the effective assistance of counsel at trial is a bedrock principle in this Justice System.

It is deemed as an "obvious truth" the idea that "any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him see:

Gideon v. Wainwright, 372 U.S. 335, 344, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). Indeed, the right to counsel is the foundation for our adversary system. Defense counsel tests the prosecution's case to ensure that the proceedings serve the function of adjudicating guilt or innocence, while protecting the rights of the person charged see: eg., Powell v. Alabama, 287 U.S. 45, 68-69, 53 S.Ct. 55, 77 L.Ed. 158 (1932) ("[the defendant] requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence"). Effective trial counsel preserves claims to be considered on appeal, see: eg., *1318 Fed. Rule Crim. Proc. 52(b), and in federal habeas proceedings, Edwards v. Carpenter, 529 U.S. 446, 120 S.Ct. 1587, 146 L.Ed.2d 518 (2000). also citing Martinez v. Ryan, 182 L.Ed.2d 272, 132 S.Ct. 1309 (2012).

The applicant is not using ineffective assistance of PCR counsel as a ground for relief, but he is using it as a cause see Holland v. Florida, 560 U.S. ___, ___, 130 S.Ct. 2549, 2563, 177 L.Ed.2d 130 (2010).

The applicant respectfully contends that the Subject Matter Jurisdiction and Supplemental Jurisdiction Brief filed on January 23, 2014 supported with material facts cannot be refuted by the Respondent, nor can it be denied.

The applicant is also suffering continuing consequences as a result of his invalid conviction (citing: Jackson v. State, 489 S.C. 2d at 916. and because of Trial Counsel's Unconstitutional Continuance that was obtained October 29, 2009, by her lying to the Chief Administrative Judge Reginald L. Lloyd. to aid the State in gaining Tacticle Advantage over the applicant in which violates the Strickland v. Washington, 466 U.S. 668, 109 S.Ct. 2052, 80 L.Ed. 2d 674 (1984) standards, also see Cherry and Cronic Supra.

Therefore, pursuant to Subject Matter Jurisdiction and Supplemental Jurisdiction the applicant is entitled to a hearing on these matters citing Brown v. State, 540 S.C. 2d 846 (S.C. 2001); at N(2-5) and Cf. State v. Lynch, 344 S.C. 635, 545 S.C. 2d 511, 514 (2001); and Anderson v. Anderson, 299 S.C. 110, 115, 382 S.C. 2d 987, 900 (1989).

The applicant also stands on State v. Holbrook, 274 S.C. 4. 260 - S.C. 2d 181 (1979). pursuant to the Subject Matter Jurisdiction issue and Supplemental Jurisdiction in which makes the current Sentence and Conviction "Void".

Respectfully Submitted.

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

2004-GS-02-1333-1335

NOEL E. GRAY, JR. #307590)
PRO-SE APPLICANT)

2013-CP-02-00478

AFFIDAVIT OF APPELLANT

v.)

O O P V L M C
ORIGINAL FILED

STATE OF SOUTH CAROLINA)
RESPONDENT)

MAY 15 2014
1:45pm
AIKEN COUNTY
CLERK OF COURT

COMES NOW INTO COURT, Noel E. Gray Jr. #307590, by and through
Pro-se Representation Respectfully declaring under the penalty of Perjury
that the enclosed information contained in this Motion, is true and
Correct to the best of my knowledge.

Respectfully Submitted
Noel E. Gray Jr. #307590
Noel E. Gray Jr.

Pro se Applicant
Waterer # 274
Broad River Covv. Inst.
4460 Broad River Rd.
Columbia, SC. 29200

SUBSCRIBED AND SWORN BEFORE ME
this 12th day of May, 2014
K. Andrew H. Fry

Notary Public for South Carolina
My Commission Expires March 5, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

2004-GS-02-1333-1335

NOELE GRAY, JR. #307590

2013-CP-02-00478

PRO SE APPLICANT.

v.

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA

RESPONDENT.

COMES NOW INTO COURT, Noel E Gray Jr. #307590 by and through Pro-se Representation declares that the Original and a true copy of motion to Grant PCR Hearing has been mailed in the U.S. Mail postage pre-paid and addressed to the following.

Honorable Clerk of Courts Office
Court of Common Pleas
PO BOX 583
Aiken, SC 29802-0583.

Respectfully Submitted
Noel E. Gray Jr. #307590
Noel E. Gray Jr.
Pro-se Applicant

SUBSCRIBED AND SWORN BEFORE ME

this 24th day of May, 2014

X Jessica A. Trupis

Notary Public for South Carolina: Commission Expires

March 5, 2018

My Commission Expires: _____

6094 LMC
ORIGINAL FILED
MAY 15 2014
1:45am
AIKEN COUNTY
CLERK OF COURT

Noel E. Gray Jr. # 307590

Walteree # 274

Broad River Corr. Inst.

4460 Broad River Rd.

Columbia, SC 29210

MAY 12, 2014

Honorable Clerk of Court's Office

Court of Common Pleas

P.O. Box 583

Aiken, SC 29802-0583

COPY
ORIGINAL FILED

MAY 15 2014
1:45 pm
AIKEN COUNTY
CLERK OF COURT

Re: Motion to Grant PCR Hearing Pursuant to the Chief Admin. Court
Judge citing Brown v. State SVD SC. 2d 804 (S.C. 2002) at N [2-5].
Subject Matter and Jurisdictional issues.

Dear Honorable Clerk

Please find enclosed the Original and a true copy of above
referenced Motion to be brought before the Chief Admin. Judge in
Chambers on the Non-Jury docket for an written Order.

These issues bypass the South Carolina PCR Statutes and Rules
and requires an evidentiary hearing. Please send the applicant a check
Stamped Copy back in ~~the pre stamped and addressed envelope enclosed~~

Thank you kindly ma'am

Respectfully Submitted.

Noel E. Gray Jr. # 307590

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
NOEL E. GRAY JR # 307590)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)
)

NEW PCR APPLICATION
 IN THE COURT OF COMMON PLEAS
 FILED 7.9.2015

Liz Godard
 C.C.P. & G.S.
Anita Knoepfle 30
 Deputy Clerk

APPLICATION FOR
 POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention BROAD RIVER CORR. INST.
2. Name and location of Court which imposed sentence SECOND JUDICIAL CIRCUIT AIKEN, SC.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which

sentence was imposed:

- (a) 2004-GS-02-1333
- (b) 2004-GS-02-1334
- (c) 2004 GS-02-1335

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) FEBRUARY 2, 2005
- (b) SAME

JUL 09 2015
Liz Godard
 C.C.P. & G.S. Aiken County, S.C.
Anita Knoepfle
 Deputy Clerk

June 19, 2015

Dear Honorable Clerk,

First, I want to thank you for your dedication and time in serving our Courts. I know that you have a lot on your plates and errors do happen.

Enclosed is a ^{Request} ~~Motion~~ to properly file the PCR Application dated April 16, 2014. This Court made an error when it was filed, it was never given a PCR Docket Number 2014-CR-02-_____.

The PCR Application dated February 27, 2013 was dismissed on July 12, 2013. The new application was sent to you on April 16, 2014, and on April 24, 2014 the applicant Motioned for this Court to "Replace" the 2013-CR-02-00478 Application with the Subject Matter Jurisdiction and Jurisdiction w/ Attached Amendments and Exhibits and the April 24, 2014 Application. Due to a Direct Appeal was perfected on January 29, 2014 and a Remittitur was sent on February 24, 2014.

The Respondent erroneously filed a Conditional Order of Dismissal on issues that were dismissed and this error is costing me time and a denial of due process pursuant to the 14th Amendment, and also violating my 1st Amendment right to Access to the Courts, regarding an FR hearing that I am entitled to.

Please send me a clock stamped copy provided in this packet with a pre-paid stamped envelope enclosed for your convenience.

Thank you kindly,

Respectfully,

Robert E. Gray Sr.
#307588
Pro-Se.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT

Noel E. Gray, Jr. #307590) CASE NO:

Applicant.) Request
ACTION TO PROPERLY FILE PCR APPLICATION,

v.) Dated APRIL 16, 2014 pursuant to Rule 40 (h);
and Rule 77 (b) SCRPC, S.C. Code Ann. § 17-27-80

STATE OF SOUTH CAROLINA) (2003) § 17-27-20 (a)(1) - (b); Brown v. State,
Respondent.) 540 S.E.2d 846 (S.C. 2001).

COMES NOW INTO COURT, Noel E. Gray Jr. #307590 respectfully moving this Court to Properly file the April 16, 2014 PCR Application along with appointment of Legal Counsel pursuant to Rule 71.1(d) SCRPC to the Non-Jury Dockets to be ruled upon In Chambers to grant a PCR Hearing pursuant to S.C. Code Ann. § 17-27-90 in which provides that all Applicants are entitled to a full and fair and meaningful opportunity to present one PCR Application and All of its issues enclosed. Id. at N. (2) pg. 753 Brown State, 523 S.E.2d 753 (1999)

This PCR Application is not successive, defaulted, or barred by S.C. Code Ann. § 17-27-20 (a)(4) (1976) provides for new "facts, and evidence" that was not available at the time of the prior PCR dated February 2, 2009, that if true, would vacate or void the conviction or sentence Coats v. State, 575 S.E.2d 557 (S.C. 2003), in which concludes that these issues falls under the "discovery Rule" and the applicant is entitled to an evidentiary hearing.

This court made a processing error regarding the April 24, 2014 Application.

The 2013-CP-02-00478 Application was dismissed on January 29, 2014 due to a Direct Appeal was being held see January 29, 2014 Appellate Case No. 2012-213607 U.P. No. 2014-UP-036 and the Remittitur that was filed February 24, 2014, in which Davis v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) was incorporated along with a Designation of Matter to be included in the Appeal.

It appears that the April 24, 2014 Application does not have a filing number 2014-CP-02-_____. And is ripe for review.

I understand the Clerks busy and people make mistakes, I respectfully request for this Court to aid the applicant in obtaining the PCR Hearing he is entitled too. with appointment of counsel.

Respectfully Submitted
Noel Estuary Jr. #307590
Pro-Se Applicant

SUBSCRIBED and Sworn Before me

this 22nd day of June, 2015

Suzanne H. Dye JS

Notary Public for South Carolina

My Commission Expires: _____

Waterloo #281

Broad River Corr-Inst.

4460 Broad River Rd

Columbia, SC.

Commission Expires
March 5, 2018

29210

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Noel E. Gray Jr. #307590) CASE NO:

Applicant.)

CERTIFICATE OF SERVICE

v.)

STATE OF SOUTH CAROLINA)

Respondent.)

COMES NOW INTO COURT, Noel E. Gray Jr. #307590 by and through Pro-se Representation respectfully submitting this ~~Motion~~^{Request} to properly file PCR Application dated April 24, 2014 pursuant to Rule 40(h) and Rule 77(b) SCRCP and S.C. Code Ann. § 17-27-80 (2003) § 17-27-20 (a)(1)-(6) and citing Brown v. State, 540 S.E.2d 846 (S.C. 2001).

Enclosed is the Original and a true Copy to be Clock Stamped and returned in the Self addressed and Stamped pre Paid and mailed to the Honorable Clerk of Court, Court of Common Pleas, Second Judicial Circuit Aiken, SC 29802-0583. by U.S. Mail on this 22 day of

June, 2015.

SUBSCRIBED AND SWORN BEFORE ME

This 22nd day of June, 2015

Susan H. Dryje

Notary Public for South Carolina

My Commission Expires:

My Commission Expires
March 5, 2018

Respectfully Submitted.

Noel E. Gray Jr. #307590
Pro-se.

Mr. Gray -

We are unable to file a motion when there has been no action to open a new case. If you wish to file a new PCR along w/ this motion, we can. - Just please re-sign the attached PCR Application + have it notarized - I can, however file this in your 2013 open + pending PCR case.

Please advise as to your response!

6.24.15

Thanks.
Anita Kneepf.

Noel E. Gray, Jr. #301590

Waterloo #281

Broad River Corr. Inst.

4460 Broad River Rd.


Columbia, SC. 29210

July 1, 2015

Honorable Clerk of Court
For the Second Judicial Circuit
In the Court of Common Pleas
P.O. Box 583
Aiken, SC. 29802-0583

Re: Applicant's New Independent Action "PCR Application" pursuant
to Rule 71.1(c) that was not filed or Indexed according to the SCRCiv.P.

Dear Honorable Clerk.

Thank you for your "Sticky Tab Correspondence" dated
June 24, 2015, .

In this you stated that you were unable to file a
Motion where there has been no action to open a new case.

Ma'am this is incorrect. This office made an error regarding the
New Independent Action "PCR Application" enclosed in this package.

This application was mailed to this office on March 20, 2014
along with a Direct Appeal Order and a Remittitur that was dated

January 29, 2014 and February 24, 2014.

This office failed to file and Index this said application pursuant to Rule 71.1 (c), in which was an Independent Action.

Someone in this office has failed to do their duties correctly and according to the laws and Statutes of this Honorable State see Rule 506 Code of Conduct for Staff Attorneys and Law Clerks SCACR. as follows:

#1 Applicant filed the 2013-CP-02-00478 Application on February 27, 2013;

#2. Applicant had the said application "dismissed" pursuant to Rule 71.1 (b) SCRCv.P. because a Direct Appeal was being perfected, on July 12, 2013;

#3. At the conclusion of the Direct Appeal State v. Gray, Op. No. 2014. UP. 036 the applicant filed this "New PCR Application" in this Court on March 20, 2014, but somehow this Court never filed it, nor did they properly Index this New Independent Action.

#4. The applicant had the Dismissed PCR Application 2013-CP-02-00478 replaced with this current application with the January 23, 2014 Subject Matter Jurisdiction and Supplemental Jurisdiction Issues combined into one action on April 24, 2014.

On July 28, 2014 the Respondent filed an erroneously prepared Conditional Order of Dismissal that was "void and dismissed" issues and mis-lead a Chief Administrative Judge to sign.

This Honorable Court does not have the jurisdiction to entertain the Respondent's false and erroneous conclusion of facts and her

Unconstitutionally and illegally falsifying relevant facts and
Conclusions of law.

Mean this has violated my due process of law under the Fourteenth
Amendment under the United States Constitution. Fruitt U.S. State, 310 S.L.
254, 423 S.E.2d 172 (1992) held that An Order denying a applicant's request
for a PCR hearing "Relief" would be remanded for a Re-hearing where it
failed to directly address the applicant's claims that his Trial Counsel
was ineffective. Not only does such failure deprive the parties of
rulings on the issues raised, but it makes review by the appellate
Court more difficult, and thus, I cant get my issues heard that
was raised in a "New Independent Action Dated March 30, 2014 due
to this office violating Rule 71.1 (c) SCRPC and the Respondent has
filed dismissed claims, and has failed to disclose to an Chief Justice
for Administrative purposes the true issues raised.

Also under Rule 407 SCACR Professional Conduct, the Respondent
has violated this Code by Rule 3.3 (a) (1); Rule 3.4 (a) and Rule 3.5
(a)(1)(D).

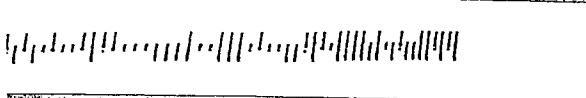
Honorable Clerk you have the duty to correct this illegal and
unconstitutional errors of law and notify Judge Buckner of this
as well. A copy of this correspondence is going to the S.C. Court Admin.
and please properly file this action and Index it and schedule a hearing
and appoint of Counsel.

Respectfully Submitted.

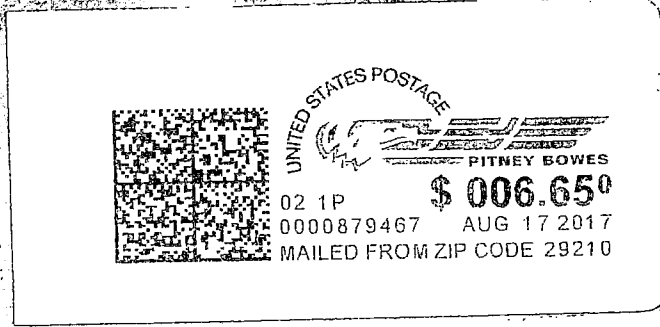
Noel E. Stacy Jr.

#307590

BRCI waterwell #281



River Rd.
29210



(2nd Set of Exhibits)
The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC
29211

RECEIVED
AUG 17 2017
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