

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

RECEIVED

AUG 24 2017

S.C. SUPREME COURT

August 21, 2017

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

App. Case No. 2015-002615
Re: Gray, Noel V. State of South Carolina, Case No. 2015-CP-02-01730

Honorable Clerk.

Enclosed are the following court filings showing the petitioner is entitled to relief sought in this writ of Certiorari as follows:

1. letter from PCR Counsel dated December 18, 2008, Gutten V. State Violation.
2. State V. Holbrook, 260 S.E.2d 181 S.C. S.Ct. 1979 Art. IV(c); V(c).
3. Order of Continuance obtained illegally by Trial Counsel October 29, 2009.
4. Initial PCR Before Judge Early January 5, 2009 for Trial Counsel;
5. PCR Transcript 2008-CP-02-0734, February 2, 2009;
6. Order of Dismissal dated April 6, 2009;
7. Petitioner's Rule 59(e) SCRPC filed January 5, 2009 to Clerk of Court and

to PCR Counsel on January 15, 2009:

8. Indexed to General Sessions Notice August 3, 2004; from Trial Counsel;

9. Petitioners Seeking evidence April 6, 2013, and Riled April 11, 2013
to preserve.

10. Clerks Response April 8, 2013;

11. Trial list for weeks of October 18, & 25

12 Trial Calendar 10-18-04 - Jackson v. Gregory not on bench.

10-25-04 - Judge Lloyd in chambers / not on bench No Clerk

Reporter in open Court "Continuance Illegal" State v. Holbrook.
Supra, Art. IV (c).

13 Calendar for October 29, 2004, on Friday "its impossible for the
State to be prepared to try petitioners case in the October 2004 term
of Court, get continuance before the 18th. not after.

14. Petitioners State v. Holbrook, Supra Motion to vacate Sentence
and Conviction "not adjudicated pursuant to Rule 40(b) SCRPC, w/summons;
Verification; Motion to Proceed without Payment; Sworn Affidavit w/
exhibits & 65 filings.

15. Petitioners Public Index Request August 24, 2015

16 Public Indexes for Filings:

F-718991 pages 1-2

F-718990 Pages 1-2

G-720746 page 1

2008-CP-02-0734 pages 1-2

2011-CP-02-02776 pages 1-2

2013-CP-02-0478 pages 1-2

2015-CP-02-01730 pages 1-2.

These exhibits clearly prove the prejudice the Petitioner is suffering pursuant to Key v. Currie, 365 S.C. 115, 466 S.E.2d 356 (1991) due to no dispositions are filed nor the filings have been before a Chief Admin. Judge pursuant to Rule 40(h) SCRPC, and the petitioner's filing of a writ of mandamus and complaints filed in the State Supreme Court were erroneously denied see July 1, 2015 and August 5, 2015 filings and August 20, 2015 and the writ of habeas corpus order dated June 3, 2015 erroneously denying it as well.

17. Petitioners ADDED Dum per Bell v. State, 410 S.C. 436, 765 S.E.2d 4, (2014) a new case.

18. Petitioners combined motions to have PCK App. properly filed and Motion for Relief from erroneous order 2015-CP-02-01730 filed November 4, 2015.

These filings are clearly proven beyond or reasonable doubt that the petitioner is suffering prejudice and that his sentence and conviction is obtained in clear violation of the Sixth; and Fourteenth Amendments under the U.S. Constitution and State v. Holbrook Supra Art. 10(c).

CC/FILE / 32254

Respectfully Submitted
J/ell May #307590
Pro Se

BRADLEY L. BONI

Attorney at Law
208 Newberry Street, NW
Aiken, South Carolina 29801

Mailing Address

Post Office Box 652
Aiken, South Carolina 29802

Telephone: (803) 644-4460
Fax: (803) 644-4469

December 18, 2008

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

Re: Case Number 2008-CP-02-734

Dear Mr. Gray:

I am in receipt of your letters dated May 6, 2008, and October 20, 2008, as well as your Christmas card. Thank you for the thoughtful card, and I must apologize for having not written sooner. In your first letter you asked how long I've been practicing law and if I have ever done a C.S.C. case. To answer, I have been practicing 8 years, and I have never tried a C.S.C. case to which I'm assuming you mean a Criminal Sexual Conduct case. I am not a criminal nor trial lawyer. My practice is limited to real estate and probate. As soon as I can come down to Columbia, I will do so in order that we may meet in person. In the meantime, please do not hesitate to contact me in the future.

With Best Regards,

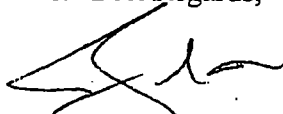

Bradley L. Boni

EXHIBIT #1
(3)
(~~111~~)

EXHIBIT 19-1

274 S.C. 4 (1979)
260 S.E.2d 181

The STATE, Respondent,
v.
Hubert P. HOLBROOK and Russell Stanley Holbrook, Appellants.

21082

Supreme Court of South Carolina.

November 13, 1979.

5 *5 *H.F. Partee and Jesse A. McCall, Jr., Greenville, for appellants.*

Atty. Gen. Daniel R. McLeod and Asst. Attys. Gen. Brian P. Gibbes and Sally G. Young, Columbia, and Sol. William W. Wilkins, Jr., Greenville, for respondent.

November 13, 1979.

LEWIS, Chief Justice:

Appellants, convicted in Greenville County of housebreaking and grand larceny, appeal on the ground, among others, that the lower court erred in denying their motion to dismiss the charges against them for lack of a speedy trial within the time limitations of the Interstate Agreement on Detainers Act, S.C. Code (1976), Section 17-11-10, *et seq.* We reverse.

During 1977, the appellants were arrested and incarcerated in Rome, Georgia. Pursuant to the terms of the Interstate Agreement on Detainers Act, the State acquired their return to this jurisdiction to stand trial on the aforementioned charges. On June 14, 1978, they were placed in the Greenville County Detention Center, and on September 21, 1978 they indicated to the solicitor that they wished to plead guilty. However, on the same day, appellant Hubert Holbrook elected not to plead and the State subsequently withdrew its offer to allow the other appellant to plead guilty. Their case was called for trial on October 16, 1978. At no time, during the 124 days of incarceration in this jurisdiction prior to trial, did the State make a motion for continuance; nor does legal ground appear to excuse the failure to so move. The appellants made a motion for dismissal of charges with prejudice at the start of the trial, which the trial judge denied. Their motion should have been granted.

The relevant sections of the Interstate Agreement on Detainers Act, Section 17-11-10, *supra*, provides as follows:

6 IV(c) In respect of any proceedings made possible by this Article, trial shall be commenced within one hundred *6 twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

V (c) ... in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

We have previously considered, in *State v. Patterson et al.*, S.C. 256 S.E. (2d) 417 and *State v. Allen*, 269 S.C. 233, 237 S.E. (2d) 64, the nature of the time constraints imposed by the Act. In accord with these prior decisions, the 120 day time limitation imposed under Article IV(c) is mandatory and required dismissal of the charges against

EXHIBIT 19-2

appellants with prejudice.

Because of our disposition of this matter, we need not consider the appellants' other assignment of error.

Accordingly, these cases are remanded and the lower court is directed to enter orders of dismissal with prejudice concerning both appellants.

LITTLEJOHN, NESS, RHODES and GREGORY, JJ., concur.

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
v.)
NOEL GRAY,)
DEFENDANT)

ORDER FOR CONTINUANCE

Ind. #: 2004-GS-02-1333 to 2004-GS-02-1334

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 11 day of October 2004.

2013

Liz Godard
Clerk of Court
Cheryl J. Wentz
Deputy Clerk

This matter comes before the Court on the combined motions of the Defendant, by and through his attorney Kelley Perkins Brown, and the State for an order continuing this matter pursuant to the Interstate Agreement of Detainers.

Upon review of the file, the Court finds the following:

1. The Defendant Noel Gray has been indicted for two counts of Criminal Sexual Conduct with a Minor in the Second Degree and one count of Grand Larceny;
2. The Defendant properly filed for disposition of these charges pursuant to the Interstate Agreement on Detainers on May 11, 2004;
3. The Defendant has been transported from the Federal Medical Center in Lexington, KT to the Aiken County Detention Center;
4. The Defendant, his attorney, and the State are all in agreement that this matter should be continued for good cause at this time as the attorney for the Defendant does not feel that she has had adequate time to prepare a defense on these charges, and the State was prepared to try this case during the October 2004 term of court;
5. The State agrees that if this matter, and any related indictments that may arise from the facts alleged in the original indictments, is not disposed of by February 28, 2005 then the above-listed indictments, and any related indictments that may arise from the facts alleged in the original indictments, will be dismissed with prejudice pursuant to the Interstate Agreement on Detainers.

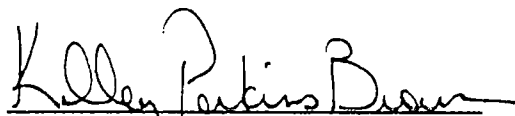
IT IS SO ORDERED.

DONE this 29th day of October 2004 at Aiken, South Carolina.

Reginald L. Lloyd
Reginald L. Lloyd
Chief Administrative Judge
Second Judicial Circuit

FILED NOV 8 2004
Liz Godard
Clerk of Court
D. Sharon Higgins
Deputy Clerk

I SO CONSENT:

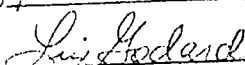
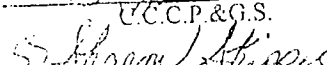


Kelley Perkins Brown
Attorney for Defendant

I SO CONSENT:



Everett K. Chandler
Assistant Solicitor
Second Judicial Circuit

FILED per 8 200 4

U.C.C.P. & G.S.

Deputy Clerk



HENRY McMASTER
ATTORNEY GENERAL

January 5, 2009

Kelley Perkins Brown, Esquire
Post Office Drawer 2247
Aiken SC 29802

**Re: Noel Gray, 307590 v. State of South Carolina
2008-CP-02-0734**

Dear Ms. Brown:

The above-named individual has filed an Application for Post Conviction Relief in the Circuit Court, and a hearing has been scheduled in this matter. Due to the nature of the allegations made by the Applicant, it will be necessary that you appear at the hearing to render testimony on behalf of the State.

Post-conviction relief hearings are scheduled to be held in the Second Circuit during the week beginning February 2, 2009, the Honorable Doyet A. Early, III, presiding. You will be served with a subpoena. I have scheduled this hearing for **Monday, February 2, 2009 at 9:30AM, at the Aiken County Courthouse**. Please let me know if you have any serious conflicts on that date.

If this case has not been previously scheduled, I am enclosing a copy of our Return and transcript for your reference. If this hearing was previously continued, you should already have a copy of our file. If you are missing any documents, please contact this office as soon as possible. Please bring with you any records or files that may be of further assistance in refuting the Applicant's allegations. In addition, I will try to discuss this matter with you prior to the hearing, but if you know of any thing that should be brought to my attention or if you have any questions, do not hesitate to call me.

Sincerely,

Mary S. Williams
Assistant Attorney General

MSW/aekr

State of South Carolina

County of Aiken

) Court of Common Pleas
08-CP-02-00734

Noel Gray, Jr.

Plaintiff

vs.

State of South Carolina
Defendant

) Transcript of Record

February 2, 2009
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

A P P E A R A N C E S:

Bradley L. Boni, Esq.
Attorney for the PlaintiffMary S. Williams, Esq.
Attorney for the DefendantLisa H. Davenport
Official Court Reporter

INDEX OF WITNESSES

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Cross examination by Mr. Boni..... 16

EXHIBITS

NO.

DESCRIPTION

ID

EV

S-1

Order for continuance

15

15

1 (Whereupon, on February 2, 2009 the following
2 proceedings were held:)

3 THE COURT: This is the State versus Noel Gray?

4 MS. WILLIAMS: Yes, Your Honor. May it please the
5 Court. He was represented at trial by Kelley Brown. He
6 is represented today by Brad Boni. His PCR was filed on
7 April 18 of 2008. This case arises from two charges -- a
8 criminal sexual conduct in the second degree with the
9 minor. He has raised several PCR allegations in his
10 application.

11 In general terms there were -- he raised issues of
12 violation of the federal Interstate Agreement on Detainers
13 Act, an enhanced sentence under the recidivist statute, an
14 officer committing perjury, failing to discover witnesses,
15 that life without parole is an illegal sentence, failure
16 to inform him that he cannot -- that excuse me, failure to
17 ~~inform him of his right to make a closing argument,~~
18 failing to suppress the testimony of a witness named L [REDACTED]
19 B [REDACTED], the use of the words rape trauma, and that he
20 should've had a lesser included ABHAN and that there was
21 no evidence to support a DSS finding putting his name on a
22 registry. We would ask to clarify any allegation at this
23 time so that the court is aware of what we're looking at.

24 THE COURT: All right. He had an appeal?

25 MS. WILLIAMS: He did have a direct appeal and the

1 issue raised in that appeal was the legitimacy of a prior
2 Georgia conviction being used for the recidivist statute.
3 His appeal was dismissed. The Court found that the
4 Georgia charge was fine to be used as a prior offense to
5 activate South Carolina's recidivist statute. The
6 remittitur was sent on January 30 of 2008.

7 THE COURT: Thank you.

8 All right, sir: Mr. Boni?

9 MR. BONI: Your Honor, my client's allegations boil
10 down to ineffective assistance of counsel regarding the
11 violation of the Interstate Agreement and Detainers Act
12 and then the second issue being that she did not raise any
13 issue on the most serious offense on the recidivist
14 statute giving my client life without parole. Those are
15 really the main two arguments that he has put in his brief
16 that we feel need to be addressed.

17 ~~THE COURT: All right. You may call any witnesses~~
18 you deem appropriate.

19 MR. BONI: We'd like to call Mr. Gray.

20 NOEL E. GRAY, JR., after being duly sworn,
21 testified as follows:

22 THE CLERK: Please have a seat in the witness box and
23 state your full name for the Court.

24 THE WITNESS: My name is Noel Eugene Gray, Jr.

25 THE COURT: Your witness.

DIRECT EXAMINATION

1
2 BY MR. BONI:

3 Q Mr. Gray, when did you file your request for final
4 disposition of your charges here in South Carolina?

5 A I didn't hear you, sir.

6 Q I'm sorry. When did you file your request for final
7 disposition of your charges?

8 A May 5, 2004.

9 Q May 5, 2004?

10 A (Witness nods head.)

11 Q Okay. And when were you actually transported to
12 South Carolina?

13 A September 1, 2004 by the Aiken County Sheriff's
14 Office.

15 Q Okay. And your trial began on January 31 of 2005,
16 ended on February 2, 2005; is that correct?

17 A Yes, sir.

18 Q Which, if my math is correct, I believe that's more
19 than 180 days since May 2004 -- May 5, 2004?

20 A (Witness nods head.)

21 Q Did you ever consent to a continuance of your trial?
22 A No, sir.

23 Q Did you ever appear in open court for a continuance
24 of your trial?

25 A No, sir.

1 Q Were you aware that a continuance had ever been filed
2 on your behalf?

3 A No, sir.

4 Q Okay. Let me ask that one more time. So, you never
5 appeared in open court for a continuance on this trial?

6 A No, sir.

7 Q All right.

8 A Never have.

9 Q Is there anything else that you'd like to state for
10 the court for Judge Early?

11 A Well, yes, sir --

12 THE COURT: Wait a minute. What's the point you're
13 trying to make?

14 MR. BONI: The point I am trying to make, Your Honor,
15 is that more than 180 days had passed since he filed for
16 disposition of his charges that were pending in South
17 ~~Carolina to the date of trial which under Interstate~~
18 Agreement detainers Act --

19 THE COURT: Give me a code section.

20 MR. BONI: Code section 17-11-10, article 3.

21 THE COURT: Hold on. 17-11-10, article 3.

22 MR. BONI: Article 3, paragraph A, Your Honor.

23 THE COURT: A.

24 MR. BONI: It states that he should be brought to
25 trial within 180 days.

1 THE COURT: Shall be; right?

2 MR. BONI: Shall be brought to trial --

3 THE COURT: Provided that the good cause shown in
4 open court the prison or his counsel being present the
5 Court having jurisdiction may grant any necessary or
6 reasonable continuances. All right, sir. Do you have a
7 copy of the request for final disposition?

8 MR. BONI: Yes, I believe I do, Your Honor.

9 THE COURT: What happens when it's not done within
10 180 days?

11 MR. BONI: Well, under the case State v Holbrook I
12 believe...

13 THE COURT: You got a copy of the case?

14 MR. BONI: No, sir. Unfortunately, I do not. I
15 apologize.

16 THE COURT: Is it a difficult case to find or?

17 MR. BONI: I apologize. State v Holbrook was the
18 violation of 120 days which is further down in that act.
19 Once the person is brought to South Carolina or to the
20 receiving state, once he's been transported they have 120
21 days from that period to bring to trial which that would
22 have been violated as well without a continuance. That is
23 what was under State v Holbrook.

24 THE COURT: Do you have any caselaw that shows I'm
25 supposed to dismiss it?

1 MS. WILLIAMS: I am not sure this is the perfect time
2 to mention, but I believe Mrs. Brown has a copy of a
3 continuance order in her file.

4 THE COURT: Has a copy of what, ma'am?

5 MS. WILLIAMS: She may have -- I believe that she has
6 a continuance order and may testify to that.

7 THE COURT: I am just asking what --

8 MR. BONI: No, Your Honor. I don't believe I have a
9 copy of the case.

10 THE COURT: Okay. Move along. So, your position is
11 they should have tried it within 180 days and the failure
12 to do so would result in a dismissal of the charges and
13 your counsel was ineffective because they did not bring
14 that to the Court's attention?

15 THE WITNESS: Yes, sir.

16 MR. BONI: Our second issue on the most serious
17 offense, I don't know that it necessarily requires any
18 testimony. I think it's more of a legal argument.

19 THE COURT: All right. Now, Mr. Gray, I've taken the
20 testimony on the Interstate Agreement on Detainers Act.
21 The other one is the recidivism statute which, I assume,
22 would be based on the record and legal argument; is that
23 correct?

24 THE WITNESS: I believe so, Your Honor.

25 THE COURT: All right. Is there anything else you

1 want to tell me in connection with those two issues?

2 THE WITNESS: Yes, sir, with the IADA at the time
3 that it was violated I also sent correspondence to your
4 office as well as --

5 THE COURT: My office?

6 THE WITNESS: -- Miss Wallis. Yes, sir.

7 THE COURT: Why would you send it to me?

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

12 THE COURT: All right. Anything else?

13 THE WITNESS: No, sir.

14 THE COURT: Any cross examination on the testimony
15 he's given so far?

16 MS. WILLIAMS: No, sir.

17 THE COURT: You may step down.

18 All right, sir. Why don't you let me hear from you
19 on the legal argument on the recidivism statute?

20 MR. BONI: Yes, Your Honor. That statute under South
21 Carolina law requires prior convictions from other state
22 may be used to trigger this statute and convictions
23 offense will be classified as a most serious offense.
24 Prior conviction under State v Lindsey must contain all of
25 the elements of the most serious offense.

1 His prior conviction from Georgia was for aggravated
2 child molestation. Under the Georgia statute aggravated
3 child molestation occurs when such person commits an
4 offense of child molestation which act physically injures
5 a child or involves an act of sodomy. The Georgia
6 indictment against my client stated -- alleged that he
7 unlawfully performed a sexual act; to wit, sodomy, an
8 immoral and indecent act involving the mouth of the
9 accused and the vagina of the minor victim.

10 In Georgia sodomy does not require actual
11 skin-to-skin contact. You can be found guilty of sodomy
12 even if clothing is on and nowhere in his indictment or
13 any of the allegations state that all the clothing was off
14 and there was any actual contact.

15 THE COURT: In his Georgia indictment. In the
16 indictment from Georgia?

17 MR. BONI: Yes, Your Honor, in the Georgia
18 indictment. Which, obviously, under his offense here and
19 the criminal sexual conduct act it does require sexual
20 battery which among many things means cunnilingus. An act
21 of cunnilingus requires the male tongue to reach the
22 female vagina that was stated in State v Morgan.

23 So, it is our belief that the same elements are not
24 there -- that the elements from his Georgia conviction do
25 not have the same or similar elements that are here in his

1 criminal sexual conduct act, and, therefore, would not
2 trigger the recidivist statute and create a life without
3 parole sentence.

4 THE COURT: He was convicted of criminal sexual
5 conduct in the second degree?

6 MR. BONI: Second degree.

7 THE COURT: Without the enhancement it would have
8 carried what sentence?

9 MR. BONI: I think a maximum of 20 years, I believe.

10 THE APPLICANT: It was 30; 15 apiece.

11 MR. BONI: Okay. It was 15 apiece. So, it would've
12 been a maximum of 30.

13 THE COURT: On the consecutive type sentence?

14 MR. BONI: Yes, Your Honor.

15 THE COURT: All right. Anything else?

16 MR. BONI: That's it, Your Honor.

17 MS. WILLIAMS: Just with regard to the recidivist
18 statute, Your Honor, I would just note for the record that
19 the Court of Appeals ruled on this issue and found that --

20 THE COURT: Did they issue a written opinion or was
21 it just a --

22 MS. WILLIAMS: They issued a short per curiam opinion
23 following the submission of an Andrews brief and did
24 actually address that the Trial Judge erred by allowing
25 the prior out of state charge for aggravated child

1 molestation to be classified as a most serious offense in
2 South Carolina. After a thorough review of the record the
3 Court of Appeals dismissed that appeal on that exact
4 allegation.

5 MR. BONI: And, Your Honor, I think possibly it might
6 be because it was not really an appealable issue. I think
7 it was more of an issue that went to the PCR relief
8 because it was ineffective assistance of counsel for not
9 raising this issue at sentencing.

10 THE COURT: All right, ma'am. How about detainer?

11 MS. WILLIAMS: I would like to call Kelley Brown to
12 give testimony. If we could get Mrs. Brown.

13 KELSEY P. BROWN, after being duly sworn,
14 testified as follows:

15 THE CLERK: Please have a seat in the witness box and
16 state your full name for the Court.

17 THE WITNESS: ~~My name is Kelley Perkins Brown.~~

DIRECT EXAMINATION

18 BY MS. WILLIAMS:

19 Q Mrs. Brown, when were you appointed to represent
20 Mr. Gray in this matter?

21 A My file indicates that our office was appointed and I
22 was assigned to represent him on February 17 of 2004
23 pursuant to his writing from out of state and requesting
24 an attorney on the charges. I did not actually have
25

1 opportunity to confer with with Mr. Gray until he was
2 transported from I believe it was Lexington, Kentucky to
3 the the Aiken County Detention Center sometime after
4 September -- beginning of September of 2004.

5 Q And are you aware -- did he ever send you a request
6 for information on this International Detainer -- I'm
7 sorry; the Detainer Act question?

8 A Well, he had questions about that. I believe the
9 correspondence that I had from him regarding that issue
10 started around December of 2004.

11 Q And was there ever a continuance granted in the case?

12 A Yes, there was. An order was signed by Judge
13 Reginald Lloyd who was the Chief Administrative Judge for
14 the Second Judicial Circuit at that time and that was
15 signed on October 29 of 2004 and was filed on November 8
16 of 2004. I had spoken with Mr. Gray on October 13, I
17 ~~believe it was, about the fact that the State was prepared~~
18 to try his case during the October term of court and that
19 because I had not had the opportunity to speak with him
20 about his charges until he was transported here it was a
21 very short period of time between that and the October
22 term of court and that I felt it was in his best interest
23 to have an attorney who was prepared to go forward for
24 trial given the serious nature of these charges and at the
25 time he agreed for me to seek a continuance on his behalf.

1 Q Does that continuance -- was there a date given
2 through which the continuance would last?

3 A Yes. The order stated that if the indictments had
4 not been dealt with -- been disposed of by February 28 of
5 2005, then they would be dismissed with prejudice pursuant
6 to the Interstate Agreement on Detainers.

7 Q All right. And if we could -- if I could get a copy
8 of that order, I would like to submit that order into
9 evidence in this case or at least let the Judge have an
10 opportunity to review that.

11 THE COURT: Let me see it, please.

12 Q I would like to ask you a little bit about your
13 research regarding the recidivist statute. Did you have
14 an opportunity to review the records of his Georgia
15 conviction?

16 A Yes, I did.

17 Q And did you do research on this point to determine if
18 you felt that that conviction could be used?

19 A I did. I looked at the statute itself and also the
20 -- I had a copy of the indictment, and by my research and
21 understanding the allegation was even though the term of
22 art of sodomy isn't a term of art that we would have used
23 here in South Carolina pursuant to that statute the
24 allegations under which he plead guilty involved an
25 indecent act involving the mouth of the accused and the

1 vagina of the victim being a child under the age of 14 and
2 based on my research of South Carolina law of how the
3 South Carolina courts had interpreted other out-of-state
4 statutes it seemed on its face and based on my research
5 that the allegations would have met the factual
6 allegations necessary to sustain an indictment and
7 conviction for criminal sexual conduct with a minor in the
8 second degree in the state of South Carolina, and,
9 therefore, was appropriate to be used for enhancement
10 purposes under our recidivist statute.

11 THE COURT: Isn't that exactly what the appellate
12 brief was written on to the Court of Appeals by whoever
13 did it?

14 MS. WILLIAMS: Yes, sir.

15 THE COURT: Mr. Clarty. I mean, I just read the
16 brief. It seems like it is the same argument that you
17 ~~just made and the same thing you're testifying about.~~

18 THE WITNESS: Yes, sir.

19 MS. WILLIAMS: We would have no further testimony on
20 these issues.

21 THE COURT: All right. Let's mark this order for
22 continuance no. 1 for the State in this PCR. Hold on one
23 second, please. Let the Court Reporter mark it.

24 (Whereupon, State's Exhibit No. 1 was marked for
25 identification and received into evidence.)

1 THE COURT: Are you aware of the order of continuance
2 by Judge Lloyd?

3 THE APPLICANT: No, sir, I was not. It was never
4 brought to my attention, sir.

5 THE COURT: Well, okay. Were you aware of it, sir?
6 Your lawyer?

7 MR. BONI: I was not aware of it.

8 THE COURT: Take a look at it. All right. You've
9 had a chance to look at it?

10 MR. BONI: Yes, Your Honor.

11 THE COURT: Anything from this witness, ma'am?
12 Anything further by the State?

13 MS. WILLIAMS: Nothing further.

14 THE COURT: Sir, anything?

15 MR. BONI: Yes, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. BONI:

18 Q You stated October 13, 2004 was when an agreement was
19 made on the continuance; is that correct?

20 A That's when I consulted with Mr. Gray about the
21 continuance and he agreed that it was in his best interest
22 to have the matter continued. I also informed him of the
23 order after it was signed. He and I had communication
24 about that matter.

25 Q Okay. Did you get anything in writing from him

1 regarding that?

2 A No, I did not.

3 Q Okay. And regarding the allegations in the Georgia
4 indictment in your research, did you ever see where it
5 mentioned anything about skin-to-skin contact?

6 A I don't recall.

7 Q Okay. Do you recall if it ever mentioned anything
8 regarding whether clothing was on or off in those
9 allegations?

10 A If whatever involved --

11 Q If clothing between Mr. Gray and the victim -- if
12 they were wearing clothes or if the victim was not wearing
13 clothes. Do you remember -- recall in your research if
14 ever that was mentioned in the indictment or --

15 A It was not mentioned in the indictment. I would find
16 it hard to believe that an allegation could be made of
17 ~~mouth-to-vaginal contact with clothing being present.~~

18 However, the indictment did not mention anything
19 specifically about the presence or absence of clothing.

20 MR. BONI: May I have one moment, Your Honor?

21 THE COURT: You may.

22 MR. BONI: No, Your Honor, nothing further.

23 THE COURT: Any cross? Any redirect, ma'am?

24 MS. WILLIAMS: Nothing further from the State.

25 THE COURT: You may step down.

1 THE WITNESS: Thank you.

2 THE COURT: Anything else on behalf of the State?

3 MS. WILLIAMS: I've provided the statutes and the
4 State versus Lindsey if Your Honor has any desire to look
5 at those, and other than that, we have nothing further.

6 THE COURT: Thank you. Anything on behalf of the
7 applicant?

8 MR. BONI: No, Your Honor.

9 THE COURT: All right. I am going to take it under
10 advisement and please have proposed orders within 30 days.
11 Please explain that to your client.

12 (End of transcript of record.)
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CERTIFICATE OF REPORTER

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State of South Carolina

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County of Aiken

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I, Lisa H. Davenport, Official Court Reporter for the second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Aiken County, South Carolina, on the 2nd day of February, 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 28, 2009



Lisa H. Davenport, Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Noel Gray, Jr., #307590,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SECOND JUDICIAL CIRCUIT
) Case No.: 2008-CP-02-0734

04-GS-02-1333, 1334

Warrant F 718990

F 718990
STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

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

APR - 6 2009

Liz Godard
C.C.C.P. & G.A., Aiken County, S.C.

Barbara Wiggins
Deputy Clerk

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 18, 2008. The Respondent made its Return on or about December 29, 2008. An evidentiary hearing into the matter was convened on February 2, 2009, at the Aiken County Courthouse Bradley Boni, Esquire, represented the Applicant. Mary S. Williams, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was Kelley Perkins Brown, Esquire. This Court also had before it a copy of the trial transcript, the records of the Aiken County Clerk of Court, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted at the by the Aiken County Grand Jury for two counts of criminal sexual conduct with a minor – second degree (2004-GS-02-1333 & 1334). Kelley Perkins Brown, Esquire, represented him.

Applicant proceeded to a jury trial before the Honorable Jackson V. Gregory. Applicant was found

Page 1 of 6

4-6-09
Liz Godard
C.C.C.P. & G.A.
8:30 AM
Deputy Clerk

guilty, and on February 2, 2005, Applicant was sentenced to life imprisonment on each count.

A notice of appeal was filed and an appeal perfected. An Anders brief was submitted, and Applicant submitted a *pro se* brief. The South Carolina Court of Appeals dismissed the appeal. State v. Gray, Op. No. 2008-UP-040 (S.C. Ct. App. filed Jan. 11, 2008). The remittitur was sent on January 30, 2008.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Violation of Federal Interstate Agreement on Detainers Act."
2. "Ineffective assistance of trial counsel."
3. "Subject matter jurisdiction."

At hearing, Applicant pursued claims of ineffective assistance of counsel for failure to challenge the violation of the Interstate Agreement on Detainers Act and failure to challenge the application of the recidivist statute, S.C. Code §17-25-45.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2007).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence."

Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

THC
#2

~~EXHIBIT 17~~

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Failure to Challenge Violation of Interstate Agreement on Detainers Act

Applicant alleges that trial counsel was ineffective in failing to challenge a violation of the Interstate Agreement on Detainers Act, S.C. Code §17-11-10 ("IADA"). Applicant testified that he was transported to Aiken County from federal custody in September 2004. Applicant testified that

~~EXHIBIT 31-4~~

pursuant to §17-11-10, Article III, subsection (a), he should have been brought to trial within one hundred eighty (180) days of his transport to South Carolina. Because he was not tried until February 2005, Applicant argues that counsel should have challenged the trial.

Trial counsel produced a continuance order signed by the Honorable Reginal Lloyd on October 29, 2004, and filed November 8, 2004. Counsel testified that she spoke with Applicant on October 13, 2004, and informed him that the State was ready to proceed with trial but she felt she needed more time to meet with him due to the seriousness of the charges. Counsel testified that Applicant agreed to the continuance.

I find counsel's testimony credible. It appears that the trial was held after a proper continuance order was filed. Therefore, I find no deficiency in counsel's conduct in this regard.

Failure to Challenge Sentence under "Recidivist Statute," S.C. Code §17-25-45

Applicant was sentenced to life without parole (LWOP) on each count pursuant to S.C. Code §17-25-45, commonly referred to as the "recidivist statute" or "two strikes/three strikes law." At sentencing, the State introduced a certified copy of a conviction for aggravated child molestation from the State of Georgia. (Record on Appeal, pp. 265-266.) S.C. Code §17-25-45(A)(2) provides that "upon a conviction for a most serious offense as defined by this section, a person must be sentenced to life without the possibility of parole if that person has one or more prior convictions for: a federal or out-of-state conviction for an offense that would be classified as a most serious offense under this section." Counsel testified that in her research, the Georgia conviction would count as a most serious offense for purposes of S.C. Code §17-25-45. Applicant argues that because contact with the mouth through clothing can constitute aggravated child molestation in Georgia but would not be criminal sexual conduct in South Carolina, the Georgia conviction should not be

THE

EXHIBIT #

~~EXHIBIT # 31-5~~

considered a "most serious offense" in South Carolina.

This exact issue was raised on appeal. (See Final Anders Brief of Appellant, pp. 6-7.) The South Carolina Court of Appeals dismissed the appeal. An Anders review involves a full review of the record.

...[A]ccording to Anders the reviewing court is obligated to make a full examination of the proceedings on its own. Anders After such an examination, if the reviewing court agrees with the attorney, it may dismiss the appeal or proceed to a decision on the merits. On the other hand, if the court disagrees with the attorney's analysis of the appeal, it must afford the defendant "the assistance of counsel to argue the appeal." The purpose of filing a brief under Anders is to ensure the *merits* of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal.

[Internal citations omitted.] State v. McKennedy, 348 S.C. 270, 559 S.E.2d 850 (2002). It appears that this issue was ruled upon on direct appeal. Therefore, this court cannot find counsel ineffective in this regard.

Applicant argues that the Court of Appeals may have dismissed the appeal because the issue was not preserved. I find no evidence in the record to support this conclusion. Even so, it appears that the offense would qualify as a most serious offense under our law.

It appears that counsel researched the issue and, based on her research, determined that the Georgia offense would constitute a most serious offense under our law. Furthermore, the Court of Appeals addressed the issue on direct appeal. For these reasons, I find that counsel was not deficient in this regard. Further, Applicant has demonstrated no prejudice from the failure to challenge the use of his prior conviction; it appears that the Georgia conviction was properly used pursuant to S.C. Code §17-25-45.

~~EXHIBIT # 31-5~~
EXHIBIT # 31-5

MAE
#5

~~EXHIBIT # 312~~

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED and DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 2 day of April, 2009.

YMB Early
DOYET A. EARLY, III
Presiding Circuit Court Judge
Second Judicial Circuit Court

Bankers, South Carolina

~~EXHIBIT # 312~~

January 5, 2009.

Dear Madam Clerk,

Enclosed is my Motion to Address
all Issues. Please Clock Stamp and Return
(1) Copy back to me. Please

In Kind regard

I Remain

Noel Gray # 307 590

Noel Gray

Broad River Corr. Inst.

4460 Broad River Rd.

Columbia, S.C.

29210

Jan. 15, 2009.

Mr. Gray - Since you have an
appointed attorney, all pleadings
must be filed by him. Please
forward any and all pleadings
to him.

Thank you.

Deputy Clerk

08-CP-02 - 734

(Never Filed)

(EXHIBIT #3)

~~ATTACH #7~~

(5)

~~(172)~~

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COMMON PLEAS COURT
FIRST JUDICIAL CIRCUIT

NOEL GRAY #307590
Appellant

vs.

STATE OF SOUTH CAROLINA
Respondent

Case No. 04-GS-02-1333
and
Case No. 04-GS-02-1334

MOTION TO ADDRESS

ALL ISSUES

Now comes the Applicant Noel Gray #307590, by and through his Court Appointed Attorney, who ask this Honorable Court to require the Attorneys involved in this Post Conviction Relief Action and any Amendment thereof, to be Meticulous in the preparation of any "Order" prepared in this matter.

Specifically, the Appellant request that each and every issue raised within the Post Conviction Relief Application and any Amendment thereof, at the hearing, to be addressed in the "Order" of the Court to be issued at the conclusion of the Evidentiary Hearing in this matter.

The Applicant request this Motion pursuant to S.C. Code § 17-27-80, citing; Pruitt v. State, 423 S.E. 2d 123 (1992); Bryon v. State, 493 S.E. 2d 500 (1997).

Wherefore Applicant request the Motion be "Granted"

Respectfully Submitted,

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 6TH DAY OF January
2009 [Signature]

NOTARY PUBLIC

STATE OF SOUTH CAROLINA My Commission Expires
MY COMMISSION EXPIRES August 25, 2015

Noel Gray #307590

Noel Gray #307590
B.R.C.I. Murray B-224
4460 Broad River Road
Columbia, S.C. 29210

(6)
(~~10~~)

D. nder Corporation of Aiken C nty
410 Barnwell Avenue NW
Post Office Drawer 2247
Aiken, South Carolina 29802

Regina P. Poteat, Chief Public Defender
Kelley Perkins Brown, Deputy Public Defender

David M. Mauldin, Assistant Public Defender
H. Lane Danielsen, Assistant Public Defender
Billie Goodman, Assistant Public Defender

August 3, 2004

Mr. Noel Gray
1037 Cedar Street
New Ellenton, South Carolina 29809

Dear Mr. Gray:

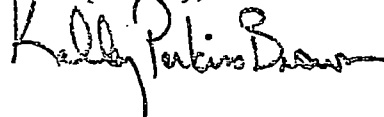
Your case has been indicted for General Sessions Court. You will be required to appear for roll call at **9:00 a.m.** the first day of **each** term of court. You may be required to remain in court until your case has been disposed of. If you are not present for roll call, a bench warrant will be issued for your arrest. The upcoming terms of General Sessions Court **August through December 2004** are as follows:

AUGUST 9 through AUGUST 13, 2004
SEPTEMBER 6 through SEPTEMBER 17, 2004
OCTOBER 18 through OCTOBER 29, 2004
NOVEMBER 8 through NOVEMBER 12, 2004
DECEMBER 6 through DECEMBER 10, 2004

Please note that no shorts, hats, or T-shirts are allowed in the Court Room. Please do not leave the Court Room unless you have been excused by the Solicitor or by the Judge. Your attorney does not have the authority to excuse you from court. If you are unsure of what is going on with your case, please speak with your attorney in the Court Room.

We will not be mailing out notification letters before each term of Court. Do not throw this letter away, as this will be your only notification of the Court dates August through DECEMBER 2004. Please notify us on any address or phone number changes.

Respectfully,



Kelley Perkins Brown
Aiken Co. Public Defender

Telephone: (803) 642-1732 Fax: (803) 642-1739

(EXHIBIT #9)

(15)

2004- GS-02-01333 (F 718991)
2004- GS-02-01334 (F 718990)

April 6, 2013

Dear Honorable Clerk,

Please send me the name of the Court
Reporter and docket Number to the Continuance that was
filed in General Sessions Court by the Honorable Reginald
L. Lloyd Chief Administrative Judge on October 29, 2004

And who has the Record of Transcript for that
Open Court hearing? and what time was that hearing?

Respectfully Requested.

Noel E Gray Jr. #302540

Noel E Gray Jr.

Murray # 212-B

Broad River Conv. Inst.

4460 Broad River Rd.

Columbia, SC. 29210

SWORN AND SUBSCRIBED BEFORE ME

this 8th day of April, 2013

Aussie H. Dryer

Notary Public for South Carolina

My commission Expires: _____ 11/13

CC/FILE

See attached Response
CW

FILED

April 11 2013

W. J. Godard
CLERK OF COURT

Michael S. Givens
CLERK OF COURT

(EXHIBIT A-1)



*Aiken County Clerk of Court
Liz Godard*

**P.O. Box 583
Aiken, SC 29802**

**(803) 642-1757
General Sessions Division**

April 8, 2013

Re: 2004-GS-02-01333 (F718991)
2004-GS-02-01334 (F718990)

Mr. Gray,

I have received your request. I am sending you a copy of the Continuance that you are referring to. I see that it was signed by the judge on 29th day of October, 2004. It was filed in our office on November 8, 2004. I don't know if the continuance was heard before the court in the courtroom or just presented to the Judge in chambers. I pulled the schedule off of the Court Administration Website and see that Judge Lloyd was in Aiken for that scheduled term of court. I am sending you a copy of that along with instructions for ordering transcripts.

Thank you,

A handwritten signature in cursive script, appearing to read "CW", is written over a horizontal line.

Cheryl S. Westall
Chief Deputy Clerk
Criminal Division

(EXHIBIT A-2)

Trial List for Weeks of October 18 & 25

Defendant	Charge	Attorney	Solicitor
Allen, Charles	Shoplifting	L Danielson	JWW
Batté, Damian	Dist MJ (6/4/04)	K Brown	JWW
Bentley, Kathleen	CSC	L Danielson	BRB
Brown, Leon	CSC w/Minor	K Brown	BRB
Busco, Santiago	Lewd Act on Child	M Chesser	EKC
Cant, Tabaria	ABHAN	K Brown	BRB
Colden, Cedric	Murder, Kidnapx2; Armed Robb X2	R Simmons	JWW
Corley, Michael	CSC 3 rd (03-026)	M Puetz	BRB
Cox, John	Poss Cocaine	D Mauldin	EKC
Denry, Janice	Shoplifting	B Goodman	BRB
Eller, Leslie	Obt. Subs by Fraud	L Danielson	JWW
Garrett, Willie	Poss CC	B Harte	JWW
Gillian, McKenzie	PWID CC	L Danielson	JWW
Glover, Frances	Dist Hydrocodone; Prox; Poss Hydrocodone; Poss Methadone	J Whittle	JWW
Gray, Noel	CSC w/Minor	K Brown	EKC
Hearn, Tabitha	Mfg MJ	J Harte	JWW
Hickson, Javier	Unl Poss Firearm <21	B Goodman	BRB
Jackson, Christopher	Dist MJ	B Harte	JWW
Johnson, Merle	Dist Cocaine	L Danielson	JWW
Jordan, Johann	PWID MJ; Prox; ETSBLS	G Walters	JWW
Langford, Demarco	Drugs	M Chesser	BRB
Langford, Dwayne	Drugs	R. Simmons	BRB
Lawrence, Elliot	Poss CC	L Danielson	JWW
Lucas, Loyce	Act After Fact - Felony	K Brown	BRB
McCaig, Alexander	Poss Cocaine	L Danielson	BRB
McMahan, Christopher	Burg 2 nd x2; GL	B Sussman	EKC
Moxley, Timothy	DU	B Harte	EKC
Offenbaker, Galen	Mfg MJ	J Harte	JWW
Paschal, Diane	P&P	J Whittle	BRB

(EXHIBIT A-3)

Trial List for Weeks of October 18 & 25

Perrin, Johnny	Dist CC; Pox; CAP	C Siegler	JWW
Pilot, Leon	Dist Meth	T Williams	JWW
Robinson, Daniel	Dist MJ; Pox	none	JWW
Ross, Cedric	Drugs	D Mauldin	BRB
Smith, Robin	Dist CC; Pox	A Anderson	JWW
Turner, David	CSC w/Mirror x3	T Woodruff	BRB
Vaughn, Betty	RA(B); Throwing Bodily Fluids	E Hatcher	EKC
Wolf, Courtney	PWID MJ	K Brown	JWW

(EXHIBIT A-4)

Circuit	10/4/2004	10/11/2004	10/18/2004	10/25/2004
2	Common Pleas Aiken Lloyd, Reginald <u>SIGWALD</u> 4, 5, 6, 7 <u>SHEPPARD</u> 8	General Sessions Bamberg Nicholson, J. <u>SIGWALD</u>	General Sessions Aiken Keesley, William <u>SIGWALD</u> 18 <u>SHEPPARD</u> 19 <u>SIGWALD</u> 20, 21, 22 <u>DAVENPORT</u> General Sessions 19 Barnwell Buckner, Perry <u>SIGWALD</u> 19 General Sessions 21 Bamberg Keesley, William <u>SIGWALD</u> 21	Common Pleas Barnwell Early, Doyet <u>SIGWALD</u> 25, 26, 27, 28 <u>NO CR NEEDED</u> 29 General Sessions Aiken Lloyd, Reginald <u>THOMAS</u> <u>DAVENPORT</u> General Sessions Aiken / Bamberg / Barnwell Early, Doyet <u>SIGWALD</u> 25, 26, 27, 28 <u>NO CR NEEDED</u> 29

(EXHIBIT A-5)

OCTOBER TERM OF COURT

18th - 29th

	S	M	T	W	T	F	S
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	3	4	5	6	7	8	9
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	17	18	19	20	21	22	23
	24	25	26	27	28	29	30
	31						

(EXHIBIT A-6)

Noel E. Gray Jr. #307590

Water # 274

Broad River Corr. Inst.

4460 Broad River Rd.

Columbia, SC. 29210

January 13, 2014

Honorable Clerks Office.

Court of Common Pleas

For the Second Judicial Circuit

P.O. Box 583

Aiken, SC. 29802-0583

Re: Subject Matter Jurisdiction and Jurisdiction Motion to Vacate Sentence
and Conviction with prejudice pursuant to State v. Holbrook, 274 S.C. 4, 260
S.E. 2d 181 (1979). RULE 60(b); 3; 4 S.C.R.P.

Dear Honorable Clerk of Court.

First, I would like to say Happy New Years to ya'll and I pray
that this Honorable Court will have a blessed year.

I would like to respectfully move this Honorable Court to file
this motion in the Honorable Clerk's office for Common Pleas.

The applicant is indigent and he is Pro-se

Also, because of my poverty, I am unable to make one copy

(page 2)

of this Motion, to send to you.

Also, please take notice the applicant has submitted a
Summons; Certificate of Service; Verification; Application to proceed
without Payment of Costs and Affidavit In Support thereof; Affidavit
of Noel E. Gray Jr.; on Exhibits also enclosed.

Please send a Clock Stamped Copy of the Motion back to me.
The Exhibits you do not have too. I have extra copies that were
sent from the U.S. Department of Justice.

Respectfully Requested.

Noel E. Gray Jr. #307530

Noel E. Gray Jr.

Pro-Se Applicant

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

NOEL E. GRAY, JR. # 307590)

Applicant.)

VS.)

STATE OF SOUTH CAROLINA)

Respondent.)

IN THE COURT OF COMMON PLEAS

FOR THE SECOND JUDICIAL CIRCUIT

2004-GS-02-1333 ; 1334

08-CP-02-00734

SUBJECT MATTER JURISDICTION AND
SUPPLEMENTAL JURISDICTION MOTION
TO VACATE SENTENCE AND CONVICTION
PURSUANT TO STATE V. HOLBROOK, 274 S.C.-
4, 260 S.E. 2d 181 (1979)

COMES NOW INTO COURT Appellant Noel E. Gray Jr. # 307590 by and through
Pro-Se Representation respectfully moving this Honorable Court to Grant
Applicant's Subject Matter Jurisdiction and Supplemental Jurisdiction
Motion to Vacate Sentence and Conviction Pursuant to State V. Holbrook, 274-
S.C. 4, 260 S.E. 2d 181 (1979) as follows:

The Honorable Jackson V. Gregory Circuit Court Judge did not have
the Jurisdiction of Subject matter to try and Convict and Sentence Applicant
for the Crimes of (2004-GS-02-1333 ; 1334) and Sentence him to Life with-
out the possibility of Parole pursuant to S.C. Code Ann. § 17-25-45 (a).

Because of Trial Counsel's deficient performance, act's and false
Omissions cumulative with the Court's Structural defects deprived
the Court of Jurisdiction to Convict and Sentence applicant to an
Unlawful LWOP Sentence under the Recidivist Statute, by violating
her Clients Federal Interstate Agreement on Detainer's Act Contract that y

ORIGINAL FILED

JAN 23 2014

AIKEN COUNTY
CLERK OF COURT

is protected by the Color of Federal Law and Jurisdiction, in which the 180 day Fast and Speedy Trial Act cannot be waived.

The Honorable Reginald L. Lloyd Chief Administration Judge "failed" to hold a Judicial Inquiry Proceeding to establish that the applicant gave consent to Trial Counsel's unlawful and Un-Constitutional filing of a Order of Continuance against applicants Federal IADA CONTRACT on October 29, 2004 in which the Honorable failed to protect applicant's Due Process Rights under the Fifth; Sixth; and Fourteenth Amendments to the United States Constitution and to Article 183 of the South Carolina State Constitution see: State v. Orr, 304 S.C. 185, 403 S.E.2d 623 (1991), to safeguard applicant of Ineffective Assistance of Trial Counsel through State interference.

The South Carolina Supreme Court holds "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). Therefore, applicants Trial Court lacked Subject Matter Jurisdiction, and Jurisdiction that could not be waived.

The applicant respectfully contends that he could have not waived a matter, that was "Void", because of the Court's Structural defects.

In Anderson id. the Court held, "we think it's elementary with no need for 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.E. 499 (1933).

In Menna v. New York, 423 U.S. 61-62 n.[2] (1975) The Court held "Jurisdictional issues are rights which are justified at protecting something other than the truth seeking process," id. 62-63; Structural defects has nothing to do with guilt or innocence.

Also, South Carolina Supreme Court holds "that 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 Jurisdiction" citing: Brown v. State, 540 S.E. 2d 846 (S.C. 2001) at n. [2]. 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 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.C. 2d 617, 618 (1986).

Upon the applicant's personal requests to have his charges dismissed pursuant to his Violated IADA Contract, Trial Counsel's failure to omit to the proper Standings of her Clients Federal (IADA) Contract by her unlawful request of an Order of Continuance in which was harmful error, deprived the Court of jurisdiction to Convict and Sentence the applicant see State v. Holbrook, 274 S.C. 4, 260 S.E. 2d 181 (1979) The Honorable Chief Justice Lewis held: The relevant Sections of the IADA § 17-11-10, Supra. provides as follows:

IV(c) In respect of any proceedings made possible by this Article, trial "shall" be commenced within one hundred *6 twenty days of the arrival of the prisoner in the receiving State, "but for good cause-

shown in "Open Court", the prisoner or his Counsel being present, the Court having jurisdiction of the matter may grant any necessary or reasonable Continuance.

V (c) ,, in the event that on action on the indictment, information or complaint on the basis of which the detainee has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending "shall" enter an order dismissing the same with prejudice, and any detainer based thereon "shall" cease to be of any force or effect.

[2] We have previously considered, in State v. Patterson, et. al. S.C., 256 S.E.2d 417 and State v. Allen, 269 S.C. 233, 237 S.E.2d 64, the nature of the time constraints imposed by the act, In accord with these prior decisions, the 120 day time limitation imposed under Article IV(c) is mandatory and required dismissal of the charges against appellant with prejudice.

Reverse and Remanded to Lower Court to enter Order of dismissal with prejudice on all charges "informations, indictments, and complaints. (Thus, Trial Counsel's deficient performance constituted Ineffective assistance of Counsel "in which is a Public Defender".

Also, see Strunk v. U.S. 412 U.S. 434, 440 (1973) Vacating Sentence and dismissing indictment "only possible remedy" for a defendant denied of his right to a Speedy Trial while serving a Federal Sentence in a Federal Prison.

Also see: 18 U.S.C. app. 2 under the (IADIA) Trial must commence within the 180 days of a prosecutor's and appropriate Court's receipt of a prisoner's request for trial on charges pending in another jurisdiction. and Trial must commence within 120 days of a prisoner's transfer to another jurisdiction for trial see id. § 2, art. 111(a); see also: Felix v. Michigan, 507 U.S. 43, 52 (1993); see also:

U.S. v. White, 985 F.2d 271 (6th Cir. 1993) 18 U.S.C. § 3162 (a) (2): requires that a defendant bring a motion for dismissal under the Speedy Trial Act prior to trial. Defendant who brought motion on the day of Trial Waived right to make this argument. See also:

Klopfer v. North Carolina, 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967) The right to a speedy Trial guaranteed by the Sixth Amendment extends to State Prisoners by way of the Fourteenth Amendment due process clause and Article 1 § 3 of the South Carolina State Constitution. see also: U.S. v. Crawford, 982 F.2d 199 (6th Cir. 1993) "When defendant was not tried within the time limits of the Speedy Trial Act and the Court neither granted a continuance, nor explained the reasoning that would have motivated a conclusion that a continuance would serve the ends of justice" the indictments were dismissed" see also:

U.S. v. Jordan, 915 F.2d 563 (9th Cir. 1990) "The Speedy Trial Act thus, requires that a "ends of Justice" continuance be specifically limited in time and that there are findings supported by the record to justify each "ends of Justice" continuance, otherwise, one early "ends of Justice" continuance could exempt the entire case from the requirements of the

Speedy Trial Act altogether, and open the door for wholly unnecessary delays in contravention of the Act's purpose.

Therefore, petitioners/applicants conviction must be Ordered "Void" citing: Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 987, 900 (1989); Strickland v. Washington, id, 466 U.S. at 694, 104 S.Ct. at 2068 (1984) U.S.C.A. Fifth, Sixth, and Fourteenth Amendments and South Carolina Constitution Article I § 3.

In State v. Evans, 307 S.C. 477, 415 S.E.2d 816 (1992), The Court held "The State has the burden to establish that the Court had Subject Matter jurisdiction and Jurisdiction, see also: State v. Hornsby, 484-S.E.2d 869 (S.C. 1997) also the Court held "Denial of Due Process occurs when a defendant in a Criminal Trial is denied Fundamental Fairness essential to concept of justice U.S.C.A. Amendments Sixth and Fourteenth."

There is no doubt or There can be no dispute that trial Counsel had a duty to Safe guard her Client and his Federal IADA Contract and the applicants swears under the penalty of perjury that he never waived any of his Constitutional rights to his Federal IADA Contract, by Trial Counsel lying to the Court that the applicant gave permission to file an Continuance that kills his 180 day Fast and Speedy Trial Act deprived the Court of it's jurisdiction of Subject Matter.

Applicants prejudice presumed when assistance of Counsel was denied entirely during a critical stage of the proceeding, Strickland v. Washington, 466 U.S. at 692 see 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 Strickland v. Washington, 466 U.S. 668, 687-88 (1984);

2) Counsel's deficient performance prejudiced the applicant resulting in an unreliable or fundamentally unfair outcome in the proceeding, Dugas v. Coptan, 482 F.3d 317, 332 (1st Cir. 2005).
Counsel's failure to investigate possible defense was ineffective assistance of Counsel.

RULE 407 SCACR PROFESSIONAL CONDUCT

"A Lawyers responsibilities and functions"

1. A lawyer asserts the Client's position under the Rules of Adversary System. As negotiator, a lawyer seeks a result advantageous to the client;

2. A lawyer "should" be competent, prompt and diligent;

3. A lawyer "should" maintain communication with client concerning the representation;

While it is a lawyer's "duty" when necessary, to challenge the rectitude of official action, it's also a lawyer's "duty" to uphold legal process;

Failure to comply with an obligation or prohibition imposed

by a rule is a basis for invoking the Disciplinary process. See Office of Disciplinary Counsel Re: Kelly P. Brown Esq. 09-DE-L-0877 August 6, 2009.

The Rules presuppose that whether or not disciplinary action should be imposed for a violation, and the severity of a sanction, depend on all the circumstances of a sanction, such as the willfulness and seriousness of the violation, extenuating factors and whether there is previous violations.

Clients are entitled to expect that communication within the scope of the privilege will be protected against compelled disclosure, the Attorney-Client privilege is that of the client and not of the Attorney.

The Client has a reasonable expectation that information relating to the Client will not be voluntarily disclosed.

RULE 1.1 SCACR COMPETENCE

A lawyer "shall" provide competent representation to a client, competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation.

RULE 1.2 SCACR SCOPE OF REPRESENTATION

(a) A lawyer "shall" abide by a client's wishes / decision concerning the objectives of representation subject to paragraphs c-d-e.

(b) A lawyer may limit the objectives of the representation "if" the client consents after consultation, and "shall" consult with the client as to means by which they are to be pursued. A lawyer "shall" abide by a client's decision whether to accept an offer of settlement of a matter see PCR dated December 4, 2011 (2011-CP-02-02776) Newly Discovered evidence.

Both lawyer and client have authority and responsibility in the objectives and means of representation. The Client "has ultimate authority" to determine the purpose to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations, within these limits, a client also has a right to consult with a lawyer about the means to be used in pursuing those objectives. A clear distinction between objectives and means sometimes cannot be drawn. In many cases, client and lawyer relationship partakes of a joint undertaking (in questions of means the lawyer "should" assume responsibility for the technical and legal tactical issues).

RULE 1.3 SCAER DILIGENCE

A lawyer "shall" act with reasonable diligence and promptness in representing a client's interest;

A lawyer "shall" pursue a matter on behalf of a client despite opposition; obstruction; or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause.

A lawyer's workload "should" be controlled that each matter can be adequately handled.

Delaying a client's interests often can be adversely affected by the passage of time or changes of conditions, in extreme instances, as when a lawyer overlooks a Statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can "cause" a client's needless anxiety and undermine confidence in the lawyer's trustworthiness.

RULE 1.4 SCACR COMMUNICATION

(a) A lawyer "shall" keep a client reasonably informed about the status of a matter and promptly comply with reasonable request for information;

(b) A lawyer "shall" explain a matter to the extent reasonably necessary to permit the client to make "informed decisions" regarding the representation;

A lawyer "may not" withhold information to serve on interest or convenience.

The client "should" have sufficient information to participate intelligently in decisions concerning the claims, issues, objectives of the representation. And the means by which they are to be pursued, "to the extent the client is willing and able to do so".

A lawyer "should" fulfill reasonable client's expectation and the information consistent with the duty to act in the client's best interests. This standard may be impracticable, when the client may suffer from mental disability see Rule 1.14 SCACR.

RULE 1.7 CONFLICT OF INTEREST "GENERAL RULE"

Loyalty to a client. Loyalty is an essential element in the lawyer's relationship to a client.

- LAWYERS OWN INTERESTS -

The lawyer's "own interests" "should not" be permitted to have adverse effect on representation of a client.

RULE 1.8 SCACR CONFLICT OF INTEREST PROHIBITED TRANS ACTIONS -

(b) A lawyer "shall" not use information relating to the representation of a client to the disadvantage of the client "unless" the client consents after consultation.

RULE 1.16 SCACR PROFESSIONAL CONDUCT

Upon termination of representation, a lawyer "shall" surrender all papers and property to which the client is entitled.

RULE 3.1 SCACR MERITORIOUS CLAIMS / CONTENTIONS

A lawyer "shall" not bring or defend a proceeding, or assert or controvert an issue therein, unless there is basis for doing so, that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure.

RULE 3.2 SCACR EXPEDITING LITIGATION

A lawyer "shall" make reasonable efforts to expedite litigation consistent with the interest of the client.

Delay "should not" be indulged for the purpose of frustrating an opposing party's attempt to obtain rightful redress, or repose. It's not a justification that is similar conduct is often tolerated by the bench and bar. "The question is whether a competent lawyer acting in

good faith would regard the course of action as having some substantial purpose other than delay.

("The advocate's job or task is to present the client's case with persuasive force").

RULE 3.3 SCACR CANDOR TOWARD THE TRIBUNAL

(a) A lawyer "shall" not knowingly:

- 1) make false statements of material fact or law to a Tribunal;
- 3) Fail to disclose to the Tribunal legal Authority in the Controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

4) Offer evidence that a lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer "shall" take reasonable remedial measures".

(d) In an ex parte proceeding, a lawyer "shall" inform the Tribunal of all material facts known to a lawyer which will enable the Tribunal to make an informed decision, whether or not the facts are adverse,

The advocate's task is to preserve / present the client's case with persuasive force, performance of that duty by the advocate while maintaining confidences of the client is qualified by the advocate's duty of candor to the Tribunal. However, an advocate does not vouch for the evidence submitted in a case or cause; the Tribunal is responsible for assessing its probative value.

An advocate is responsible for pleadings and other documents prepared for litigation. Legal argument based on a knowingly false -

representation of law constitutes dishonesty toward the Tribunal.

RULE 3.5 SCACR IMPARTIALITY / DECORUM OF TRIBUNAL

A lawyer "shall" not:

(a) Seek to influence a judge, juror, member of the jury, venire or other official by means prohibited by law.

(c) Engage in conduct intended to disrupt a Tribunal.

RULE 3.4 SCACR FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer "shall" not:

(a) Unlawfully obstruct another party's access to evidence, or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer "shall" not counsel or assist another person to do any such act;

(b) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(d) In pre-trial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) In trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused.

Fair Competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witness(es), obstructive tactics in discovery procedure, and the like.

Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed, or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for the purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information.

RULE 3.6 SCACR COMMENT

The public has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern.

RULE 4.1 SCACR TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer, "shall" not:

(a) make a false statement of material fact or law to a third person:

- MISREPRESENTATION -

A lawyer is required to be truthful when dealing with others on a client's behalf. A misrepresentation can occur when or if the

lawyer incorporates or affirms a statement of another person that the lawyer knows to be false. Misrepresentation can also occur by "failure to act".

RULE 4.5 SCACR THREATENING CRIMINAL PROSECUTION

A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

RULE 8.4 SCACR MISCONDUCT

It is professional misconduct for a lawyer to:

- (a) Violate or attempt to violate the rules of professional conduct, knowingly assist or introduce another to do so, or do so through the acts of another.
- (b) Commit a criminal act that reflects adversely to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) Engage in conduct involving moral turpitude;
- (d) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (e) Engage in conduct that is prejudicial to the administration of justice.
- (f) State or imply an ability to influence improperly a government agency or official; or
- (g) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

A lawyer should maintain high standards of professional conduct and "should" refrain from all illegal and morally reprehensible conduct.

Many kinds of illegal conduct reflect adversely of fitness, to practice law, such as offenses involving fraud, violence, dishonesty, breach of trust; or serious interference with the administration of law and justice, and the offense of willful failure to file an income tax return, because of the lawyer's position in society, even minor violations of law by the lawyer may tend to lessen public confidence in the legal profession.

A pattern of repeated offenses, even ones of minor significance, when considered separately, can indicate indifference to legal obligation.

Lawyers holding public office assumes legal responsibilities going beyond those of other citizens. A lawyer abuse of public office can suggest an inability to fulfill the professional role of an attorney.

Anytime Criminal procedures discriminate against applicants by reason of their indigent status, such practices and procedures violate the guarantee of equal protection, where the indigent applicant is subjected to a process which is required of an indigent applicant and subjected to a process which is required of an indigent applicant and not of a non-indigent applicant, the process becomes individually discriminatory and violates applicants the right to equal protection *ex parte* citing: Lexington County, 442 S.E.2d 589, 594 (S.C. 1994).

Also RULE 501 SCACR CANON 3 A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

(A) Judicial Duties in General, The Judicial duties of a judge

take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law* in the performance of those duties, the following standards apply:

(B) Adjudicative Responsibilities

(1) A judge "shall" hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge "shall" be faithful to the law* and maintain professional competence in it. A judge "shall" not be swayed by partisan interests, public clamor or fear of criticism.

(3) A judge "shall" require* order and decorum in proceedings before the judge.

(4) A judge "shall" be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and "shall" require* similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

(5) A Judge "shall" perform judicial duties without bias or prejudice. A judge "shall" not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based on race, sex, religion, national origin, disability, or age, and "shall" not permit staff, court officials.

and others subject to the judge's direction and control to do so.

A judge must refrain from speech, gestures, or other conduct that could reasonably be perceived as control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

Because of Trial Counsel's Ineffective Assistance of Counsel the applicant is suffering continuing consequences as a result of his Invalid, Illegal and Unconstitutional Conviction and Sentence (see Jackson v. State, 489 S.E.2d 916, Prejudice Presumes);

Trial Counsel provided ineffective assistance by unreasonably failing to preserve Client's issues for Direct Review and thus, failure to prejudiced the Outcome of the case see: Cronic, 104 S.Ct. 2039 (1984); Strickland v. Washington, 466 U.S. 668, 686 (1984). Cherry v. State, infra.

Trial Counsel failed to preserve the Illegal and Unconstitutional LWOP Sentence pursuant to S.C. Code Ann. § 17-25-45(a) Recidivist Statute. "See Direct Verdict Motion that was preserved for Appellate review" see Pennsylvania v. Finely, 481 U.S. 551 (1987); Ross v. Moffitt, 417 U.S. 600 (1974) App p. 153 at 11-25; App p. 154 at 1-10; 11-25; App p. 155 at 1-11. Trial Counsel motions for Directed Verdict because the State

Could not produce credible evidence by which the State could find the applicant guilty on the charges beyond a reasonable doubt. But Trial Counsel further requests that the Court would direct a verdict on one element, that the applicant was not in position of familiar; official Custody or Authority. see (App.p. 153; 252)

This request was clearly Harmful error on trial Counsel's part. Please take judicial notice to Applicant's General Sessions Docket; Sentencing Sheet; and indictment's Warrant NO: F-718990 S.C. Code Ann. § 16-3-655(3) 2004-GS-02-1334 dated October 1, 2002.

Pursuant to S.C. Code Ann. § 16-3-655(2)-(3) this charge is not classified as a most-serious, but only as serious. Indictment dated August 9, 2004, S.C. Code Ann. § 16-3-655(3) that Noel Gray, 14 years old, defendant was in a position of familiar, custodial, or official authority, amended.

S.C. Code Ann. § 16-3-655 is a most-serious offense "except" where evidence is presented at a criminal proceeding and the court, after a conviction makes a specific finding on record that the conviction was obtained for this offense resulted from consensual sexual conduct where the victim is younger than the actor as contained in S.C. Code Ann. § 16-3-655(3) see: State v. Warren, 330 S.C. 584, 500 S.E.2d 128 (S.C. 1998) Reversed Cert. Granted: 341 S.C. 349, 534 S.E.2d 687.

The Court Replied "(App.p. 155 at 12-14)" "You actually want that? that the only thing is that he was older? Okay."

This was error of law and extreme prejudice. Let's look at applicant's Post-conviction Relief Hearing before the Honorable Oyer & A. Carby III, dated February 2, 2009, (OS-CP-02-00734): "Issues Raised" (1) Violation of Applicant's

Federal (IADA) Contract; (2) Ineffective Assistance of Trial Counsel;

(3) Subject Matter Jurisdiction. Please take Judicial notice that the PCR Procedure cannot bar Jurisdictional Claims; that they can be raised any time.

(App.p. 273 at 11-22) MS. WILLIAMS: reads of applicant's issues contained in his Prose Brief dated April 8, 2008, at (24) THE COURT: All right, He had a Appeal? at (25) MS. WILLIAMS: He did have a Direct Appeal and the (App.p. 274- at 1-6) issue raised, the Court found, Georgia Conviction was fine to be used, January 30, 2008 "this is error of law and perjury."

(App.p. 279 at 18-25) THE COURT: All right Sir, recidivism Statute. MR. BOWI: Yes, Your Honor, that Statute under, requires prior convictions from other States, most serious offense, State v. Lindsey must contain all of the elements of the most serious offense.

(App.p. 280 at 1-25) His prior-conviction, so it is our belief that the same elements are not there -- that the elements from Georgia Conviction do not have the same in his.

(App.p. 281 at 1-3) Criminal, LWOP Sentence.

(at 17-25) MS. WILLIAMS: Just with Trial Judge erred.

(App.p. 282 at 1-4) allegation.

(at 5-9) MR. BOWI: And Your Honor, Ineffective Assistance of Counsel in Sentencing.

- DIRECT EXAMINATION -

(at 22-25) MS. BROWN: My file indicates, February 17, 2004 pursuant to his writing "from out of State" and requesting an attorney on the Charges see: Affidavit of Indigency and Application for counsel dated February 17, 2004. Applicant was there in the

Doris Gravit Detention Center, filed by Mr. William Hartman.

(App.p. 283 at 1-4) Opportunity ... beginning of September of 2004.

(App.p. 284 at 12-25) I would like ... Georgia Conviction?

(at 16) MS. BROWN: Yes I did!

(at 17-18) MR. BENI: And did ... conviction could be used?

(at 19-25) MS. BROWN: I did. I looked at the Statute it's self and I had a copy of the indictment, and by my research ... term of art of Sodomy isn't a term of art that we would have used here in South Carolina, pursuant to that Statute ...

(App.p. 285 at 1-10) ... it seemed on its face ... was appropriate to be used for enhancement purpose under our recidivist Statute.

(at 11-13) THE COURT: Isn't that exactly what the appellate brief was written on to the Court of Appeals by whoever did it.

(at 14) MS. WILLIAMS: Yes Sir, "again this is Harmful error of law and perjury"

(App.p. 287 at 3-5) MR. BENI: Okay. And regarding ... skin to skin contact?

(at 6) MS. BROWN: I didn't recall.

(at 11-14) MR. BENI: If clothing ... or --

(at 15-19) MS. BROWN: It was not mentioned ... "I would find it hard to believe ... however, the indictment did not mention anything ... absence of clothing" Extreme prejudice "Personal belief not legal" Bias and Ineffective Assistance of Trial Counsel.

~ HARMFUL ERROR INEFFECTIVE ASSISTANCE ~

Notice to seek Life Imprisonment Sentence. S.C. Code Ann. § 17-25-45(a) dated January 10, 2005.

Notwithstanding any other provisions by law, any person who has three
(3) convictions under the laws of this State; any other State; or the United States -

for the Crimes / Convictions of (1) Voluntary Man-Slaughter; (2) Criminal Sexual Conduct First Degree; (3) Armed Robbery; (4) burglary; (5) Safe Cracking; (6) Assault and Battery with intent to kill, shall upon such (third) conviction in this State, be sentenced to Life in prison (LWOP).

Supported by and through material facts the applicant respectfully contends that he has never been charged for any of those above-named Crimes. And (2005-GS-02-1334) is not a most-serious offense. Therefore, the Trial Counsel prejudiced her own client and he is suffering Cruel and Unusual Punishment and excessive Sentencing, in violation of the Eighth Amendment to the United States Constitution. And a victim of Prosecutorial Misconduct and Ineffective Assistance of Trial Counsel, in violation of the Fifth; Sixth and Fourteenth Amendments to the United States Constitution and Article 1 § 3 and 14 of the South Carolina State Constitution.

Also noting, lower-court "dicta" suggesting that if State fails to meet the well established burden of proving existence of Prior-Convictions in applying the Recidivism (2) or (3) Strike Statute to enhance punishment, appropriate remedy would have been to issue the Writ of Habeas Corpus out right see: Lockhart v. Roberts, 485 U.S. 33, 39-41, 109 S.Ct. 285 (1988). (dicta) Burk v. U.S. 1, 18 (1978).

(Direct Appeal Opinion No. 2005-UP-040) Trial Judge erred at Sentencing, LWOP, therefore, appellants Prior-Conviction is not necessarily for a Crime, classified as a most-serious offense as required by S.C. Code Ann. § 17-25-45 (a) Therefore, the appellant should not have been sentenced to (LWOP) sentence see Anderson's Brief (Writ of Certiorari 2005-CP-02-00734) Trial Counsel erred in failing to object, in order to preserve, for Appellate review, because prior, used to enhance, did not qualify, S.C. C.S.C. offense, see: State v. Rice, 375 S.C. 302, 652 S.C. 2d-

409 (Ct.App. 2007) Trial Counsel erred in failing to violate due process at sentencing in Sixth and Fourteenth Amendments to the United States Constitution and Article 1 § 14 of the S.C. State Constitution. (See Johnson Petition)

Extreme prejudice and Ineffective Assistance of Counsel.

(App.p. 257 at 21-25) THE COURT: Well frankly, I wish the law did not require me in a situation like this to give you such / this sentence, I think it's not fair either, frankly; but that's beyond my power, I don't make the laws, I just enforce it.

This is a classic case of Onerous "abuse of discretion," Standard State v. Edens, 250 S.E. 2d 116, 118 (S.C. 1978); State v. Pierce, 207 S.E. 2d 414 - (S.C. 1974)

The Honorable Court lacked jurisdiction to impose this Unconstitutional and Illegal Sentence. There was insufficiency of evidence to convict, The Constitutional test for sufficiency of evidence is "whether after viewing the evidence in light most favorable to the prosecution, any rational trier of fact that could have found the 'essential elements' of a crime beyond a reasonable doubt see: Jackson v. Virginia, 443 U.S. 307, 319 (1979) "(C.S.C. 2nd degree) Sexual Battery means: Sexual Intercourse; Cunnilingus; fellatio; anal intercourse for any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes. The State did not nor could not present any Credible Material evidence to charge the applicant with C.S.C. 2nd. therefore, the element was not met at trial.

The Applicant suffered the following Constitutional violations;

- 1) Coerced Confessions from Linda Brown violation of the Fifth Amendment;
 - 2) Denied a Fast + Speedy Trial violation of the Sixth Amendment;
 - 3) Improper / excessive Sentencing violation of the Eighth Amendment;
 - 4) Denied Due-Process / Equal Protection of the Law violation of the Fourteenth Amendment and Article 1 § 3 of the S.C. State Constitution;
- See also: U.S. v. Kissick, 69 F.3d 1048 (10th Cir. 1995); Prichard v. Lockhart, 990 F.2d 352 (8th Cir. 1993).

Also, please take judicial notice to applicants PCR dated December 9, 2011 - (2011-CP-02-02776) the applicant received newly Discovered Evidence that has never been brought to bar nor ever been ruled upon pursuant to Covitt v. State, 575 S.E.2d 557 - (S.C. 2003) in which fell under the Discovery Rule", Correspondence from Lora Becky Williams; Michael Williams Jr.; Trial Counsel's Failure to provide Discovery violation of Rule 5 Brady Disclosure; two Plea Agreements (1) Lesser-included offense non-violent; Giglio Material Linda Brown Prosecutorial Misconduct.

Please also take judicial notice to the two Plea Agreements; Trial Counsel "Failed to convey" extreme prejudice see: Davis v. State, 381 S.C. 601, 675 S.E.2d 416 - (2009); Missouri v. Frye, 132 S.Ct. 1399 (2012); and pursuant to S.C. Code Ann. § 17-27-45(c) (2003) these documents fell under the "One year" after-the-date of actual discovery; and the Sentence was subject to collateral attack upon relevant grounds and errors under common law, Statutory or other writ; Motion, petition; proceeding or remedy S.C. Code Ann. § 17-27-20(a) (1)(6). because the evidence of material facts has not been previously presented and heard and required a Reversal / Vacation of Sentence and Conviction. in the interest of justice.

Trial Counsel was ineffective for failing to charge the jury of a lesser included offense, denied the applicant his Sixth Amendment right to effective assistance of counsel, Cherry v. State, (1984).

The plea dated January 21, 2005. A jury charge to a lesser included offense is required when the evidence warrants such an instruction State v. Geiger, 370 S.C. 606, 606, 635 S.E.2d 669, 673 (Cr. App. - 2006). Libretti v. U.S. 516 U.S. 29, 50-51 (1995).

S.C. law mandates a jury instruction on a lesser included offense where there is any evidence from which it could be inferred that the "lesser included offense" rather than the greater offense was committed State v. Watson, 349 S.C. 372, 375, 563 S.E.2d 336, 337 (2002); Brightman v. State, 336 S.C. 348, 350-51, 520 S.E.2d 614, 615 (1999); State v. Gourdin, 332 S.C. 396, 398, 472 S.E.2d 241, (1996); In other words, the evidence must allow "a rational inference" that the applicant committed the lesser offense Geiger, 370 S.C. at 607, 635 - S.E.2d at 673.

In determining whether such a rational inference exists, the Court must examine the totality of evidence. Id. As this Court explained in State v. Patterson, 337 S.C. 215, 233, 522 S.E.2d 845, 854 (Cr. App. - (1999)). "[I]n order to justify a charge of a lesser included offense, the evidence must be capable of sustaining either a greater or the lesser offense, depending on the jury's view of facts.

- DIRECTED VERDICT VIOLATION -

The Trial Judge has broad discretion in ruling on questions

regarding the relevancy of evidence, and his decision will be reversed only if there is a clear abuse of discretion see State v. Cooney, 320 S.C. 107, 436 S.E.2d 597 (1995) Evidence is relevant if it tends to establish or make or less probable some matter in issue upon which is direct or indirectly bears State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986) See RULE 401 S.C.R. On the other hand, evidence should be excluded if it is calculated to arouse the sympathy or prejudice of the jury or is irrelevant or unnecessary to substantiate the fact State v. Langley, 334 S.C. 647, 515 S.E.2d 98, 100 (1999).

The Trial judge erred in failing to grant a directed verdict where there was insufficient evidence of guilt. In reviewing the refusal to grant a directed verdict, the court must determine whether there is any evidence, either direct or circumstantial, which reasonably tends to prove the guilt of the accused see State v. Creech, 314 S.C. 76, 441 S.E.2d 635 (Ct. App. 1993). If the evidence is consistent with both innocence and guilt, it cannot support a conviction, U.S. v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984). A directed verdict should be granted where there is an absence of competent evidence tending to prove the offense charged because the jury should not be allowed to decide the case based on conjecture which only raises a mere suspicion of the applicant's guilt. State v. Lyles-Gray 328 S.C. 478, 492 S.E.2d 802 (Ct. App. 1997); State v. Barksdale, 311 S.C. 210, 428 S.E.2d 498 (Ct. App. 1993). Thus,

the applicant contends that the conviction in question is insufficient to convey jurisdiction to the court in accordance with the South Carolina Constitution Article I § 11 and the South Carolina Statutes. Lack of Subject Matter Jurisdiction may be raised at any time, including for the first time on appeal or PER State v. Smalls, 336 S.C. 301, 519 S.E.2d 793 (Ct. App. 1999).

Crim. Law Key 1033, 1, the State must present credible evidence to establish each element of the offense charged. State v. Bethers, 120 S.E.2d 239 (1923) It is elementary that every ingredient of a crime must be charged in the indictment. A General reference to the provisions of the Statute is insufficient. It will establish that a failure to recite an essential element of an offense is not amenable to harmless review. U.S. v. Spruill, 118 F.3d 221 (4th Cir. 1997); U.S. v. Hooker, 841 F.2d 1225, 1228 (4th Cir. 1998) (quoting) Hale v. U.S., 59 F.2d 578, 579 (4th Cir. 1937). State v. Stanley, S.C. Ct. App. Opinion No. 4007 (2005)

Also erroneous admissions of child victim's statements to her stepmother concerning alleged sexual abuse by defendant was reversible error, in prosecution for committing Lewd Act upon a child under the age of 14, See Linda Brown App. p. 40-64, even though Stepmother's testimony was cumulative, because State introduced no physical evidence of molestation, case was essentially, a swearing contest, pitting defendant's word against victim's as to whether incident occurred, and "Mother's testimony mirrored victim's testimony improperly bolstering victim's story

in minds of the jury see: State v. Whisonant, 335 S.C. 148, 515 S.E.2d 798 (C.App. 1999); State v. Schmidt, 342 S.E.2d 401 (1986).

November 22, 2011 applicant recieved a document from the Aiken County Sheriffs Department informing him that Linda Brown was not charged or Indicted for her alleged participation in a Sexual act against her daughter.

Pursuant to Giglio v. U.S. 405 U.S. 150, 31 L.Ed. 2d 104, 42 S.Ct. 763 (1972) Held: The Court "Supreme Court" reversed and remanded for a new trial in petitioners case after evidence was newly discovered that the Government failed to disclose a promise of leniency made to it's key witness in return for testimony. Since the Government's case depended almost entirely on the witness's testimony, the witness's credibility was an important issue. Evidence of an agreement between the Government and the witness is relevant to his credibility and the jury is entitled to know of it "when the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility of that witness justifies a new trial (citation omitted). see also Simpson v. Moore, 627 S.E.2d 701 (S.C. 2006); U.S. v. Foster, 874 F.2d 491 (9th Cir. 1989) U.S. v. Frederick, 78 F.3d 1370 (9th Cir. 1996)

therefore the Honorable Jackson V. Gregory Abused his Discretion in not granting applicants mistrial Sug - Sports denying applicant his Substantive Liberty Interest and Procedural Due Process under the Fourteenth Amendment to the United States Constitution;

see also, U.S. v. Hastings, 461 U.S. 499, 103 S. Ct. 1974, 76 L. Ed. 2d 96 (1983);
Const. Law 3890 In Re: Murchison, 349 U.S. 133, 75 S. Ct. 623 (1955); U.S. Ct. Appeals -
4th Cir. v. Town of Eastover, 922 F.2d 1152 (1991).

also please see: Trial Counsel Cross-Exam Mike Williams App. p. 96 at 2-2
Trial Counsel prejudiced her own client by "ringing the bell" of prior bad acts
by labeling him "I had him investigated and they came and picked him up.
That was the time he was gone. Harmful error."

- FEDERAL IADA VIOLATION -

This Honorable Court lost Jurisdiction and Subject Matter Jurisdiction
because of Trial Counsel's biasness and prejudice towards her own client.

see Strickland v. Washington, 466 U.S. 668, 686 (1984); Cherry v. State, 300 S.C. -
115, 119, 386 S.E.2d 624, 626 (1989); Mikens v. Taylor, 535 U.S. 162, 166 (2002).

In Reed v. Forley, 512 U.S. 339, 114, S. Ct. 2291 (1994) the Chief Justice
and Justice O'Connor join Held: (1) The IAD 18 U.S.C. App. § 2 is compact
among 48 States, the District of Columbia and the Federal Government.
Article IV(C) of the IAD provides that of a transferred prisoner "shall"
be commenced within 120 days of the arrival of a prisoner in the
receiving State, but for good cause showing in "Open Court", the
Court *342 having jurisdiction of the matter may grant any necessary or
reasonable Continuance. IAD Article V(C) states that when trial does
not occur within the time prescribed **2294 on the charges "shall" be
dismissed with prejudice.

The IAD is indeed State law, but it is law of the United
States as well, see: Carchman v. Nash, 473 U.S. 716, 719, 105 S. Ct. 3401,

3403, 87 L.Ed. 2d 516 (1985) § 2254 case holding that the IAD "is a Congressionally Sanctioned interstate compact within the compact clause, U.S. Const. Art. I § 10, Cl. 3 and thus, is a Federal law subject to Federal Constitution"). Cyler v. Adams, 449 U.S. 443, 438-442, 101 S.Ct. 703, 707, 66 L.Ed. 2d 641 (1981) ("Congressional Consent Conforms and Interstate Compact into a law of the United States.

The State filed a detainer against the applicant for (2004-GS-02-1333-1335); and COV S.C. Code Ann. § 16-25-20 warrant No. F-718985 while he was serving a Federal Sentence for 18 U.S.C. § 922(g)(1); and § 924(a)(2) See Presentence Investigation Report Docket No. 1:03-263 dated November 13, 2003.

The Federal Government Aided the Applicant in filing the IAD under Federal Jurisdiction on May 5, 2004 Material Facts as follows:

OFFER TO DELIVERY TEMPORARY CUSTODY dated May 4, 2004. Barbara R. Morgan "Solicitor" pursuant to deliver "Temporary Custody."

OFFICIAL LETTERHEAD FEDERAL BUREAU OF PRISONS dated May 5, 2004, Barbara R. Morgan "Solicitor" Re: Gray, Noel 09632-032 Dear Ms. Barbara R. Morgan, The above named inmate has requested disposition, we request, Inmates who are Temporarily Transferred pursuant to the (IADAA) remain under the primary jurisdiction of Federal Authorities, Article V(2), you are required to return Article III (1) of the (IADAA).

(Page 2) while, In Addition, Additionally, this inmate is not to be committed to a state Correctional institution for service

of any State Sentence(s) that may be imposed as a result of your prosecution.

The Federal Authorities the (IADA) and was received by the Solicitors Office on May 11, 2004, by Certified mail.

- PENDING IADA RECEIVED REQUEST MAY 11, 2004;
PROSECUTION DEADLINE (80 days) NOVEMBER 11, 2004;
DATE FOR ASSESSMENT (TRIAL) OCTOBER 18, 2004.

- IAD ACKNOWLEDGMENT -

I acknowledge /// Temporarily /// I am aware /// return me to Federal in Conclusion /// Contract (859) 255-6812 EXT. 5301
Inmate Systems Manager

- IAD CERTIFICATED OF INMATE STATUS -

"Applicant is still under Federal Sentence"

- IAD PLACE OF IMPRISONMENT -

TO: Barbara R. Morgan Esq. "Solicitor" "Failure to take action /// to which your State is committed by Law, will result in the invalidation of the indictment(s); information(s); or Complaint(s).
Thereby agree /// your state to serve any Sentence /// "after" completion of my term of imprisonment /// confined.

- AGREEMENT ON DETAINERS FORM VI -

TO: Jon Ozmint "S.C.D.C. Director" /// taken into custody at the institution on August 31, 2004 for return to this jurisdiction for Trial on or about October 18, 2004. approved Officers "Shawn Rinaman # 5063; Cula Wilson # 496; Barbara R. Morgan "Solicitor" and Mr. Jon Ozmint

this agreement.

— OFFICIAL LETTER HEAD FEDERAL BUREAU OF PRISONS dated August 16, 2004.

TO: Barbara R. Morgan "Solicitor" On May 5, 2004 received by your office May 11, 2004. To date no response in Under Article 111 of the (IADA) inmate Gray is to be brought to trial on these charges within 180 days in Court to render the detainer void based on violation of the IADA.

OFFICE OF THE SOLICITOR dated August 19, 2004.

Signed by: Everett K. Chandler Asst. Solicitor "Conditions"

(c) agree not in or commit them to an institution for service of any State Sentence imposed in prosecutions.

(d) agree to return said inmate to the Federal Institution in obtained;

(e) agree to notify in responsibility to return in Federal Custody Scheduled for Trial October 18, 2004 & Return to Federal Custody November 11, 2004.

— AGREEMENT ON DETAINER FORM VII dated July 29, 2004 —

Signed by Barbara R. Morgan "Solicitor" and the Honorable Reginald L. Lloyd Chief Administration Judge "I am "Solicitor" please be advised that I accept temporary custody in (IADA) "I hereby agree that immediately in after trial.

VIOLATION OF FEDERAL CONTRACT Per: STATE V. STANLEY - S.C. Ct. App. Opinion No. 4007 (2005);

In State v. Stanley (2005) S.C. Code Ann. § 16-9-10 (a)(1): It is unlawful for a person to willfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative or regulatory proceeding in this State.

(a)(2): It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, report or form that is required by the laws of this State.

Giving false testimony at trial; PCR; Direct Appeal; Writ of Certiorari Federal Contract's constitutes felony perjury and subjects the perjurer to a fine and/or up to five (5) years in prisonment. see Collins v. Doe, - 343 S.C. 119, 124 S.E.2d 62 (Ct. App. 2000) Revised on other grounds 352 S.C. - 462, 574 S.E.2d 739 (2002) Perjury or false swearing may constitute Contempt of Court see: e.g. Crute v. Crute, 70 S.E.2d 727 (Ga. Ct. App. - (1952)

It is the duty of the court to exercise supervision and control over the witness(es) in attendance at trial. 23 A. CJS Crim. Law. § 1191 (1989)

In South Carolina, it is firmly settled that the presiding judge has the right to order the arrest of a witness in open court, who has made contradictory statements amounting to perjury.

The Supreme Court addressed this issue in State v. McKenry, 84 S.C. - 234, 71 S.E. 858 (1911) On the contrary, we are inclined to commend prompt action by those charged with the administration of the law. when it has been flagrantly violated; and if perjurers, were more invariably and promptly and vigorously prosecuted and punished.

There would be fewer miscarriages of justice in our courts. i.d. at 236, 71 S.E. at 859. there after in State v. Campbell, 150 S.C. 449, 148 S.E. 472 (1929) the Supreme Court explained.

State v. McKay, 89 S.C. 234, 71 S.E. 858 (1911) The Trial Judge is present in the atmosphere of the trial, and must, in the administration of justice, uphold the dignity of the courts, and he conceives it his duty to see that justice is administered in accordance with sound principles of law. It might be said in passing that it does not appear in the case for appeal that the judge actually had the witness arrested, and under the rules of this court, no exception can be considered which does not find substantiation in the printed case.

All courts have inherent power to punish for contempt see: Curlee v. Howle, 277 S.C. 377, 287 S.E. 2d 915 (1982); State v. Passmore, - 363 S.C. 568, 611 S.E. 2d 273 (Ct. App. 2005). This power is essential to the preservation of order in judicial proceedings and the due administration of Justice Id.

The Trial Judge was supposed to act within his discretion to warn witness(es) about Perjury and take action to prevent the miscarriage of Justice by witnesses perjury.

September 1, 2004 the applicant was taken into custody by Officers Rinaman and Wilson at the Lexington Federal Medical Center located in Lexington Kentucky, and transported to the Doris Gravat Detention Center.

October 13, 2004 Trial Counsel Kelly P. Brown Esq. an Alameda County Public Defender came to the detention center and seen applicant only one time see PCR App. p. 283 at 16-17:

Applicant corresponded with trial Counsel on December 25, 2004, trying to have his charges dismissed per violated (IADRA) Contract:

Applicant corresponded to the Honorable Doyet A. Early III on December 24, 2004 trying to obtain help.

Honorable Early sent copy of Correspondence to trial Counsel.

Applicant corresponded to Chief Public Defender Ms. Willis Alves on January 4, 2005 because Trial Counsel violated his Federal (IADRA) Contract by filing a continuance against his will and trying to obtain help from her.

("Please take Judicial notice that the applicant respectfully contends that he never seen this document or it really existed.")

Applicant corresponded again to Ms. Willis Alves on January 19, 2005 trying to obtain help.

The Applicant received Correspondence from Ms. Alves on January 7, 2005. III I would suggest III regarding the other issues you discussed in trial "Still no help".

Applicant received Correspondence from the Honorable Early's office dated January 10, 2005 "Still no help"

February 2, 2005 the applicant received and suffered excessive and a Cruel and Unusual Punishment Sentence to Life without the

possibility of parole pursuant to SC Code Ann. § 17-25-45(A)
Recidivist Statute In violation of Applicants Fifth; Sixth; Fourteenth;
Amendments to Due Process and Article 1 § 3 of the South Carolina
State Constitution. And also the Eighth Amendment.

The applicant was sent to the South Carolina Department of
Corrections on February 14, 2005. In clear violation of his Federal
IADIA Contract, also see Release Report; Jail time reports; Inmate
Property Inventory; DNA Notice; S.C.D.C. Record Summary; RLE
Medical Intake reports.

The applicant was removed from the South Carolina
Department of Corrections and returned to the Detention Center
February 21, 2005.

Applicant filed Grievances on Violated (IADIA) and destroyed
Federal Property February 27, 2005 to Lt. Carter; February 28, 2005
Capt. Egerton; and on March 6, 2005.

Applicant was returned to his Federal Prison / Jurisdiction
by officer Rinaman and a UnAuthorized Lt. #4123 in which
was greeted by a perimeter Truck and a AR-15 pointed at him
for unauthorized access to a Federal Institution on March 15,
2005 "Transportation Violation".

The Applicant also contends that the State had no
Jurisdiction to unlawfully imprison a Federal Inmate and
Subject Matter Jurisdiction over Sentence and Conviction.
In Clear Violation of his Fifth; Sixth and Fourteenth

Amendments to the United States Constitution and Article 193 of the South Carolina State Constitution and a victim of the Eighth Amendment. See: Herrera v. Collins, 506 U.S. 390 (1993); and Barefoot v. Estelle, 463 U.S. 880 (1983).

1) The Sentence and Conviction was imposed in violation of the U.S. Constitution; S.C. State Constitutional Laws;

2) The Honorable Court was without jurisdiction to impose such a Sentence;

3) Applicant's Federal (FIDIA) Contract was violated by the State and his own Trial Counsel / a public Defender by her unlawful and Unconstitutional filing of a Continuance by State interference as a device employed to gain a tactical advantage to prosecute the applicant that resulted in actual and substantial prejudice see: U.S. v. Lavasco, 431 U.S. 783, 789 (1977) id. at 789-90 "Harmful error and clear prejudice"

4) The State waived its jurisdiction also by releasing the applicant from his unlawful and Unconstitutional commencement of his State Sentence in which is an implied pardon and that there is no continuing jurisdiction based on the Malfeasance of the States and Trial Counsel's Illegal and Unconstitutional actions;

5) Applicant will also show a Gross miscarriage of justice and how his own Trial Counsel became a Second prosecutor by lying to the Honorable Court and befriending her own client in aiding the State to give applicant an Unlawful LWOP Sentence in violation of the

Eighth Amendment, Trial Counsel did not serve as an advocate and showed contempt for her client such as she was a second prosecutor and the applicant was merely denied counsel see - Rickman v. Bell, 131 F.3d 1150 (6th Cir. 1997); affirming 864 F. Supp. 686 (M.D. Tenn. 1994).

- ILLEGAL CONTINUANCE -

Please take Judicial notice to applicant's PCR Transcripts Hearing before the Honorable Doyet A. Early III. on February 2, 2009 (08-CP-02-00734).

Applicant filed his PCR Application with a pro-se Brief on April 18, 2008;

Applicant was appointed Bradley L. Boni Esq. on May 1, 2008.

PCR Counsel Corresponded to applicant on December 18, 2008 Dear Mr. Gray, "I have never tried a CSC case, I'm not a Trial or Criminal lawyer, My practice is limited to real estate and probate."

Applicant Sent a Rule 59(e) SCRCiUP to the Honorable Clerk on January 5, 2009. But it was returned due to hybrid Representation and was told to send it to appointed Counsel in which was done on January 15, 2009 "But was never filed"

In the State's Return (2008-CP-02-0734) dated December 29, 2008, (page 2) In his application, "Violated Federal IADIA Contract; (2) Ineffective Assistance of Trial Counsel; (3) Subject Matter - Jurisdiction" The Federal IADIA was not mentioned in the Return

Applicant's PCR was held before the Honorable Doyet A. Early III.
presiding dated February 2, 2009 App. p. 271 MS WILLIAMS: Starts
reading off Applicant's issues in Pro-Se Brief. App. p. 273 at 11-23.
,,, Federal IADA Violated, Illegal enhanced Sentence,,,
App. p. 274 at 3-6 MS WILLIAMS Lies to the Court see State v. Stanley
"The Court found that the Georgia Charge was fine to be used,,,
January 30, 2008 This was error of law.

App. p. 275 at 5-8 Filed IADA MAY 5, 2005;

at 13 came to South Carolina September 1, 2005;

at 15 Trial ended February 2, 2005;

at 18-19 over 180 days per IADA contract;

at 22 never consented to a continuance;

at 23-25 never appeared in open Court;

App. p. 276 at 1-2 the applicant respectfully contends that he was not
really sure or aware of this continuance was ever filed, he never seen
this document until February 2, 2009.

at 4-5 never appeared in open Court;

at 12-13 the Honorable caught PCR Counsel's really weak
attempt to disclose the truth regarding the open Court issue.

THE COURT: WAIT A MINUTE? What's the point you're trying to make?

at 14-15 MR. BONI:,,, more than 180 days;

at 19 THE COURT: Give me a Code Section?

at 20 MR. BONI: S.C. Code § 17-11-10 Article III;

at 21 THE COURT: Hold on, § 17-11-10 Article III;

at 22 MR. BONI: Article III paragraph A Your Honor.

at 23 THE COURT: A

at 24-25 MR. BONI: in 180 days

App. p. 277 at 3-7 THE COURT: in provided that for good cause showing in open Court in final disposition.

at 11 MR. BONI: STATE V. HOLBROOK I believe

at 13 THE COURT: Do you have a copy of the case?

at 14-15 MR. BONI: No Sir, unfortunately I do not, I apologize

at 16 THE COURT: Is it a difficult case to find or?

at 17-23 MR. BONI is completely ineffective pursuant to Martinez v. Ryan, 132 S.Ct. 1309 (2012); Trevino v. Thaler, 133 S.Ct. 1511 (2013)

This clearly shows he was not prepared nor did he research the IADRA.

at 24-25 THE COURT: Do you have any case law that shows in supposed to dismiss it?

App. p. 278 at 1-3 MS. WILLIAMS: I'm not sure in continuance in her file!

at 8 MR. BONI: No Your Honor, I don't believe I have a copy of the case.

App. p. 279 at 1-11 MR. GRAY: in corresponded to your office; wrote Ms. Well's Alives; wrote Grievances.

App. p. 279 at 22-25 MS. WILLIAMS: They in Trial Judge served in

App.p. 282 at 1-4 in allegation

at 5-9 MR. BUNI: And your Honor in PCR relief
in ineffective assistance of counsel for not raising this at
Sentencing

App.p. 282 at 22-25 MS. BROWN. MY FILE is appointed in
February 17, 2004.

App.p. 283 at 1-4 Opportunity in Lexington Kentucky in
September 1, 2002:

at 5-7 And are you aware in Detainer Act in question?

at 8-10 Well, he had questions about that in December of
2004.

at 15 Signed October 29, 2004 filed November 8, 2004

"(Please take Judicial Notice to Newly Discovered evidence from the
Honorable Clerk of Court)"

dated April 6, 2013 correspondence to Honorable Clerk.

Response dated April 8, 2013 Trial Court "Official" dated & were
the 18th - 25th.

Reginald L. Lloyd General Sessions (29th) NO CR NEEDED

This clearly shows that the Continuance was void and trial
Counsel lied. By State v. Holbrook this Conviction and Sentence is "Void".
also the 29th. was on a Friday.

- Illegal Continuance by Trial Counsel -

at 16 I had spoken with Mr. Gray on October 13, 2004; ...

at 17 State was prepared in October Term of Court ...

at 18,

at 25 He agreed for me to seek a continuance on his behalf.

App. p. 286 at 1-2 THE COURT: Are you aware Mr. Judge Lloyd?

at 3-4 NO Sir, the applicant respectfully contends that he has never seen this document nor did it really exist until that day!

App. p. 286 at 20-24 MS. BROWN: That's Mr. He agreed Mr. he and I had communication about the matter.

at 25 MR. BROWN: Okay Mr. anything in writing from him?

App. p. 287 at 1 Regarding that?

at 2 MS. BROWN: NO I didn't.

— ILLEGAL AND UNCONSTITUTIONAL CONTINUANCE —

Please take judicial notice to this continuance.

"This matter comes before the court on the combined motions of the defendant, his attorney and the State Mr. (LAWYER).

(# 4) The defendant, his attorney and the State are all in agreement Mr. State was prepared to try this case during the October term of Court Signed October 29, 2004 by the Honorable Reginald L. Lloyd Chief Admin. Judge.

The Applicant respectfully refutes this Serious error of Law material evidence dated August 3, 2004 and August 16, 2004

"Official letter head from Trial Counsel the October term of Court only consists of the 18th - 29th of October (2004).

— CONSTITUTIONAL QUESTION —

How can the State be prepared to try this case during

October Term of Court when it was filed on a day that Trial Court was not in session, and on a Friday?

October 18, 2004 Not Set for Trial

October 25, 2004 Trial Court Session Over

October 29, 2004 NO CR NEEDED

Pursuant to the Federal IADIA Trial Counsel prejudiced her own client Harmful Error and Extreme Prejudice.

Applicant wrote Trial Counsel up with the Office of Disciplinary Office (092 DE-L-0877) August 6, 2009 about her lying and filing an UnConstitutional and Illegal Continuance.

Trial Counsel's reply dated October 14, 2009 clearly shows she deliberately lied "As I testified ... I proposed ... he agreed to do so ... I did not in consent in writing ... to protect myself from false allegations ... it's my word against his. Kelly P. Brown Esq. Deputy Public Defender.

This clearly shows Trial Counsel deliberately violated applicant's Federal Contract. Because he was being accused of a sex offense.

Because of Trial Counsel's Ineffectiveness and Biasness and prejudice towards her own client she made the Applicants Sentence and Conviction "Void" and thus, by and through Material Facts the Applicant is being Unlawfully and Unconstitutionally Contained in the South Carolina Department of Corrections and this Honorable Court "shall" Reverse the Applicants Sentence and Conviction and dismiss all indictments, informations, and complaints with prejudice.

The Contract Clause, Article I § 4 S.C. Const., Art. I § 10,
Cl. 1 U.S. Const. Due Process includes a substantive component
which guards against arbitrary and capricious government
actions. Even when the decision to take action is made through
procedures that are themselves Constitutionally adequate see:
Smith v. City of Fontana, 818 F.2d 141 (4th. Cir. 1987) Cert. denied
Smith v. City, 484 U.S. 935, 108 S.Ct. 311, 98 L.Ed. 2d 269,

The 14th Amendment was intended to secure the
individual from arbitrary exercise of the powers of Government;
(emphasis added) Kentucky Dept. of Corr. v. Thompson, — U.S. — 109-
S.Ct. 1094, 104 L.Ed 2d 507 (1989).

Also Due Process prohibits stopping some litigants who never
has a chance to present their evidence and arguments on a claim,
despite one or more existing adjudications of the identical issue
which stands squarely against their position. see: Robert V. —
Recovery Bureau, 450 S.Ct. 2d 616 (S.C. Ct. App. 1994).

The State waived it's jurisdiction to applicants State
Sentence and the applicant respectfully request this Honorable
Court to Grant Motion to Void Sentence and Conviction also for the
following: Because his State Sentence is satisfied and equivalent
to a pardon in which there is no continuing jurisdiction based on
the State's / malfeasance of the State's actions:

Applicant was removed from the Detention Center and
Sent to the S.C. Dept. of Corrections on February 14, 2005 in clear

of the Federal IADA Contract. see Release Report; Jail time report;
Inmate Property Report; DNA NOTICE; S.C.D.C. Record Summary
Report; SCDC Medical Records

Applicant was removed from S.C.D.C. and returned to the Detention
Center on February 21, 2005. see Indigent Inmate Request form. dated
February 28, 2005.

Applicant filed Grievances on violated IADA Contract and
destroyed Federal Property dated February 27, 2005; Lt. Carter;
February 28, 2005 Capt. Egerton;
March 9, 2005 in General

The applicant was returned to Federal Jurisdiction on March
15, 2005

Applicant's Request to Staff at Federal Facility dated April -
14, 2005 Violated Federal IADA.

Also the Applicant is still under the Color and jurisdiction
of the Federal Government.

Pursuant to the United States Department of Justice
and the Federal Bureau of Prisons:

18 U.S.C § 3585 (a) Commencement of a Sentence

A sentence to a term of imprisonment commences on the date
the applicant is received in custody awaiting transportation to;
or arrives voluntarily to commence service of such sentence at the
official detention facility at which the sentence is to be
served.

U.S. v. Croft, 450 F.2d 1094 (1974) at 22 citing Smith v. Swope, 91 F.2d 260 (1937), in Prisoners Service of Sentence was deemed to begin at the time of commitment in authorities.

Honorable Judge DeMunn stated at 28 It is of interest in Government relies... that a Sentence in shall commence to run... received at the penitentiary. Clark v. State, 368 S.E.2d 653 (S.C. 1996). [3-5] The Sentence of a person convicted of a State or Federal offense commences to run from the date on which such person is received at the penitentiary see: Thomas v. Whalen, 962 F.2d 358 (1992).

Thomas v. Whalen, 962 F.2d 358 (1992). Luttig Circuit Judge at II Title 18 § 3568 of the U.S. Code directs that a Sentence of a person convicted of a federal offense "or State" shall commence to run from the date on which such person is received at the penitentiary, reformatory, or Jail for service of such Sentence.

1) in A detainer neither effects a transfer of a prisoner from Federal to State Custody nor transforms Federal Custody into State Custody by operation of law. *361 merely puts the officials in wanted in another jurisdiction in, U.S. v. Mauro, 436 U.S. 340, 358, 98 S.Ct. 1834, 1845, 56 L.Ed.2d 324 (1978); U.S. v. Bannan, 737 F.2d 413, 415 (4th Cir. 1984) see also: H.R. Rep. No. 1018, S. Rep. No. 1356, 91st Cong. 2d Sess. 3 (1970) and reprinted in 1970 U.S. Code Cong. & Admin News 4864, 4865 also citing Croft and Smith v. Swope. In Re. Jennings, 118 F. 479, 482 (C.C.E.D. Mo. 1902) ("[N]o Ministerial officer, by disobeying the mandate of the Court

and unlawfully Surrendering him to another custody, than that where he rightfully belonged, could suspend the running of the Sentence for that offense.

Applicant respectfully contends that the State only had temporary custody and by Federal Law's of the IADA. The State did not have the jurisdiction to commence it's State Sentence in which they unlawfully did violated applicants 6th and 14th Amendments to the U.S. Constitution and Article 1 § 3 of the S.C. State Constitution and violated applicants Federal IADA. Making his incarceration Illegal, unconstitutional and against his will (Judicial Kidnapping).

Smith v. Swope, 91 F.2d 260 (1937) Honorable Denman Circuit judge, "The least to which a prisoner is entitled "If a ministerial officer, such as a Marshal "In this case" a Solicitor" charged with the duty to execute the Courts orders, fails to carry out such orders, that failure cannot be charged up against the prisoner.

Therefore, the State did not have jurisdiction to incarcerate him.

Shields v. Beto, 370 F.2d 1003 (1967). Applicant contends that he is entitled to immediate release and his continuing incarceration is in violation of his Constitutional rights under the Due Process Clause of the U.S. Constitution 14th Amendment.

The Due Process Clause of the 14th Amendment requires that action by the State through any of it's agencies must be consistent

with the fundamental principles of liberty and justice see:
Buchalter v. People of the State of New York, 319 U.S. 427, 63 S.Ct.
1129, 87 L.Ed. 1492 (1943),

The surrender to another state while the prisoner is serving
a sentence is equivalent to a pardon & more descriptive of the
legal effect of such a surrender than a waiver of jurisdiction.

Therefore applicant's State sentence and conviction is satisfied
and there is no continuing jurisdiction. There is ample justification
for applicant's final release as stated by the Court in Rayborn.

Jones v. Rayborn, Kentucky 1962, 346 S.W. 2d 73 case

The Governor is not the only officer to give pardons.
The Governor is not the State, The Governor is the Chief Executive,
but the State may act in many official capacities, through
lesser officials, and thru the acts of many officials other than
the Governor may bind the State. And if the Governor may waive
a right to the State when she is not attempting to exercise her
right to pardon and is acting in another field, we need no reason
why other officials of the State should not also bind the State
by their official acts.

Applicant was transported to the State from federal
custody by means of a Federal INDA and was illegally and UnConstitutionally
incarcerated in the S.C. Dept. of Corrections against his will,
on a "void" sentence and conviction and released from prison back
to Federal Prison before expiration of his term, South Carolina

their jurisdiction by turning the applicant over to his Original jurisdiction before the expiration of his State Sentence.

A prisoner cannot be required to serve his sentence in installments. see: White v. Pearlman, 42 F.2d 788 (1930) also see: Shields v. Beto, (1966); Hunt v. State Dept. of Corrections No. 98 SA - 421 (1999); U.S. v. Lombardo, (1949); In Re: Thomas A. Liberatore, 574 F.2d 78 (1978); Mohley v. Dugger, 823 F.2d 1495 (1987); Matthews v. Meese, 827 F.2d 313 (1987); Ponzi v. Fessenden, 258 U.S. 254, 42 S.Ct. 304 (1922); Weekes v. Fleming, 301 F.3d 1175 (2002); Vaughn v. U.S. 548 F.2d 631 (1977) or in a piecemeal fashion.

It is a basic principle that the applicant's sentence to incarceration has a Due Process right to serve the State Sentence promptly and continuously, rather than in "installments" White v. Pearlman, 42 F.2d 788, 784 (10th Cir. 1930) (Premature Release)

As a matter of fundamental fairness, must be pursued with reasonable diligence. Requiring the applicant to continue to serve his "Voided" Illegal and UnConstitutional Sentence at this point would violate the concept of fundamental fairness that is at the core of Due Process see: State v. Roberts, 568 So. 2d 1017, 1019 (La. 1990) due process and Fundamental Fairness required release of prisoner ... The Court addressed at length in Aime v. Commonwealth, 414 Mass. 667, 673-675 (1993),

Key differences between the Constitutional protections against improper governmental action known as "Substantive -

Due Process "and Procedural Due Process we decided under a traditional procedural due process analysis. Similar to that used in determining whether a defendant has been denied the Constitutional right to a Speedy Trial, we need not decide, therefore, whether incarcerating the defendant (at this point - in time and on these facts) would "shock the conscience" thereby violating his right to Substantive Due Process as well.

Also the applicant rely on Thompson v. Bannan, 296 F.2d. 611; Luther v. Uanyur, 14 F.Supp. 2d 733; Cox v. U.S. 511 F.2d 1096; Smith v. Kansas, 352 F.2d 654 and Delahoussaye v. State, 633 S.E.2d. 158, 160-61 (S.C. 2006).

The applicant respectfully contends that he has no animosity towards the State; the Honorable Dyer A. Early III or Jackson v. Gregory nor S.C.D.C. for his Unlawful and Unconstitutional Sentence and conviction nor does he have this with his trial Counsel, Kelly P. Brown.

The applicant also contends that he has never waived any issues raised in his Pro-Se Briefs Direct Appeal November 9, 2006; PCR April 18, 2008, Writ of Certiorari December 29, 2009; 32254 Federal Habeas Corpus January 27, 2011, because State v. Stuckey, 33 S.C.56, 508 S.E.2d 564 (1998) the applicant cannot do anything when counsel is obtained. Anything that is submitted to the courts has to go through his attorney, and if the issues are not raised or argued it is ineffective Assistance of Trial Counsel.

With these issues raised, a violation has occurred which,

in the setting, constitutes a denial of fundamental fairness
"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),

Respectfully Submitted.

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

NOELE GRAY JR #307590

Applicant,

V.

STATE OF SOUTH CAROLINA

Respondent.

IN RE: SUBJECT MATTER JURISDICTION

And SUPPLEMENTAL JURISDICTION MOTION

TO VACATE SENTENCE AND CONVICTION

) IN THE COURT OF COMMON PLEAS

) FOR THE SECOND JUDICIAL CIRCUIT

) SUMMONS

) FILE NO.

TO: The South Carolina Attorney General's Office;

YOU ARE HEREBY SUMMONED and required to answer the petition herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this petition/motion upon the subscriber, at the address shown below, within thirty 30 days after service hereof, exclusive of the day of such service, and if you fail to answer the petition/motion, judgement by default will be rendered against you for the relief demanded in the petition/motion.

COLUMBIA, SOUTH CAROLINA

January 13th. 2014

Noele Gray Jr. #307590

Waterloo #274

Broad River Corr. Inst.

4460 Broad River Rd.

Columbia, S.C. 29210

C O P Y
ORIGINAL FILED

Pro-Se

JAN 23 2014

AIKEN COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

IN SUPPORT OF SUBJECT MATTER JURISDICTION
and SUPPLEMENTAL JURISDICTION MOTION TO
VACATE SENTENCE AND CONVICTION WITH
PREJUDICE...

NOEL E. GRAY JR #307590

Applicant

VS.

STATE OF SOUTH CAROLINA

Respondent.

CERTIFICATE OF SERVICE

I Noel E. Gray Jr. #307590 Certify that a True Copy of this Motion
with attached EXHIBITS in this case have been submitted in this Honorable
Court by U.S. Mail, Postage Pre-Paid on the 13th day of January
(2014)

Noel E. Gray Jr. #307590

Noel E. Gray Jr.

Pro-Se Applicant

SUBSCRIBED BEFORE ME ON

this 13th day of January, 2014

by Susan H. Fry

Notary Public for South Carolina,

My Commission Expires:

My Commission Expires
March 5, 2018

COPY
ORIGINAL FILED

JAN 23 2014

AIKEN COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

VERIFICATION

I Noel E. Gray Jr #307540, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing Motion; that I know the contents thereof; and that the matters and allegations set forth are true.

Noel E. Gray Jr #307540

Sworn to and Subscribed before me this 13th

day of January, 2014

Susan H. Dyer

Notary Public

My Commission Expires: _____

My Commission Expires
March 5, 2018

COPY
ORIGINAL FILED
JAN 23 2014 100
AIKEN COUNTY
CLERK OF COURT

APPLICATION TO PROCEED WITHOUT PAYMENT

OF COSTS AND AFFIDAVIT

IN SUPPORT THEREOF

I NOEL E. Gray Jr. #307590, hereby apply for leave to proceed in this action without pre-payment of fees or costs or security thereof. In Support of my Motion/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. Gray Jr. #307590

sworn to and subscribed before me this 13th
day of January, 2014

Susan H. Frye

Notary Public

My Commission Expires: _____

My Commission Expires
March 5, 2018

COPY
ORIGINAL FILED

JAN 23 2014

AIKEN COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)	SECOND JUDICIAL CIRCUIT COURT
Noel E. Gray Jr. #307590)	2004-GS-02-1333/1334/1335
Applicant)	08-CP-02-00734
V.)	
STATE OF SOUTH CAROLINA)	AFFIANT OF NOEL E. GRAY JR.
<u>Respondent.</u>)	

COMES NOW INTO COURT, being duly sworn and deposed, I Noel Gray under the penalty of perjury declares that the following documents are True and Correct Copies to the best of my knowledge and belief

MATERIAL FACTS AS FOLLOWS:

- 1) STATE V. ^{HOLBROOK} ~~STANLEY~~ 274 S.C.4, 260 S.E. 2d 181 (1979) (Case) pages 1-2
- 2) General Sessions Docket 2004-GS-02-1334 (2004-GS-02-1333 not needed)
- 3) Sentencing Sheet
- 4) Indictment pages 1-2
- 5) Warrant
- 6) Office of the Solicitor S.C. Code Ann. 17-25-45(4)
- 7) Direct Appeal ANDERS
- 8) JOHNSON Writ of Certiorari
- 9) PCR Application 2011-CP-02-02776 December 9, 2011.
- 10) EXHIBIT'S to Honorable Clerk of Court Pages 1-2
- 11) Letters from Becky Williams pages 1-2
- 12) Letter from Michael Williams

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JAN 23 2014 *100*
AIKEN COUNTY
CLERK OF COURT

- 13) Trial Counsel Discovery Violation
- 14) Plea Agreements 1
- 15) Plea Agreement 2
- 16) Giglio Request
- 17) Giglio Response
- 18) Booking report's pages 1-6
- 19) CDU Warrent
- 20) U.S. v. Noel Gray 1:03cr0263(1)
- 21) P.S.I
- 22) Offer to Delivery Temporary Custody
- 23) Federal Bureau of Prisons pages 1-2
- 24) Certified mail to Solicitor
- 25) Pending IADIA
- 26) IAD Acknowledgment
- 27) IAD Certificate of Inmate Status
- 28) IAD Place of Imprisonment
- 29) Agreement on Detainers Form VI
- 30) Federal Bureau of Prisons pages 1-2
- 31) Officer of the Solicitor
- 32) IAD Prosecutor's Certification
- 33) Agreement on Detainers Form VII
- 34) Release Authorization
- 35) Letter to Kelly Brown
- 36) Letter to Honorable Early w/ response to Trial Counsel

- 37.) Letter to Ms. Wellis Alves 1-2
- 38.) Response from Ms. Alves
- 39.) Response from Honorable Early
- 40.) § 17-25-45(A)
- 41.) R+E Release Report: Jail time report; Inmate property; DNA;
- 42.) S.C.D.C. Record Summary; SCDC Medical Center Records
- 43.) Indigent Inmate Request
- 44.) Grievances 1-2-3
- 45.) Return to Federal Unauthorized Officer 1-2
- 46.) Inmate Request
- 47.) PCR Transcripts 08-CP-02-00734
- 48.) Affidavit / Application for Counsel pages 1-2
- 49.) Prior Conviction Pages 1-8
- 50.) PCR Application 2008-CP-02-0734
- 51.) Pro Se Brief
- 52.) Appointment of Counsel pages 1-2
- 53.) Letter from Counsel
- 54.) Rule 59(e)
- 55.) States Return
- 56.) Order of Dismissal
- 57.) Order of Continuance pages 1-2
- 58.) Notice from Trial Counsel pages 1-2
- 59.) Newly Discovered Evidence Letter from Honorable Clerk pages 1-6
- 60.) Trial Counsel Wrap up 09-DE-C-0517 w/ Reply

61) U.S. Probation Office pages 1-2

62) Trial Court transcripts (the Court will verify this).

63) U.S. Federal Bureau of Prisons pages 1-2. FOIA Request

64) S.C.O.C. Inventory dated June 20, 2005.

65) Writ of Certiorari Pro-Se Brief dated Dec. 29, 2009.

66)

Respectfully Submitted
Noel E. Hery Jr. #307540
Pro-Se Applicant

Given and Subscribed before me this 13th
day of January, 2014
Susan H. Dye
Notary Public

My commission expires:

Commission Expires
March 5, 2018

Aiken County
Clerk of Court
PO Box 583
Aiken, SC 29802

Sworn and Subscribed before
this 10th day of October
x Susan H. Frye
Notary Public for South Carol.

My Commission Expires:
My Commission Expires
March 5, 2018

September 24, 2012

Noel Gray #307590
Murray #212-B
Broad River Correctional Inst
4460 Broad River Road
Columbia, SC 29211

Mr. Gray,

I received your Enclosure Letter, Motion for New Trial & Motion for Appt. of Counsel. I received 5 separate packets from you, but, on the outside of your packets you indicated that there should be 7 total.

Packet 1: Contains your Enclosure Letter, Motion for New Trial & Motion for Appt. of Counsel.

Packet 2: Contains copy of a Trial Transcript

Packets 3 & 4: Contains what looks like copies of all the correspondence you have acquired since your trial.

Packet 5: Contains a copy of everything packet 1 has and a self-addressed envelope to send those copies back to you certified.

I am sending you certified copies of what you have filed with our office. I would appreciate you responding to me as to the number of packets I was supposed to receive. Also, would appreciate you responding and letting me know what your intent was for Packets 2, 3 & 4.

Thank you,

Cheryl S. Westall

Cheryl S. Westall
Chief Deputy Clerk
Criminal Division

Final Packet of Exhibits Sent

this 10th day of October, 2012

Noel Gray #307590

2004- G502- 01333 + 01334

F718991 + F718990

October 5, 2012

Dear Honorable Clerk,

Thank you for your letter dated September 24, 2012.
To answer your question first I am sorry for my lack of
procedural and motion formatting. As a layman of the law
these issues are too complexed for my ability. I see why you all
keep BC's in your possession. Law is a headache I take my hat
off to ya'll. ☺. Packet 2 is Exhibits of Trial Transcripts
and PCR Transcripts to show cause by material facts.

Packets 3-4 is Exhibits to show cause by material facts that
Trial Counsel never investigated or did any research regarding
this case in chief.

Also, 6-7 was also material facts to show cause by material
facts that trial counsel was against her client and also Evidence
of Trial Counsel's Unprofessional Misconduct by withholding Discovery
back on her own client a Brady Violation and the 2011-CP 02-2776
was where I mistakenly misplaced the newly Discovered Evidence
into the wrong Court. Which that Improper PCR Application
contained EXHIBITS of the Newly Discovered Evidence pursuant
to Rule 29(b) of the S.C. R. Crim. P.

I have 1 last copy of packets 6-7 I'm sending you.
These EXHIBITS will show Trial Counsel Ineffectiveness and will
clearly establish prejudice towards her own client.

Mr. Gray,
Received your packet +
filing it with the rest that you
have sent. Thank you.
Christie

Respectfully Submitted
Noel Gray #302570

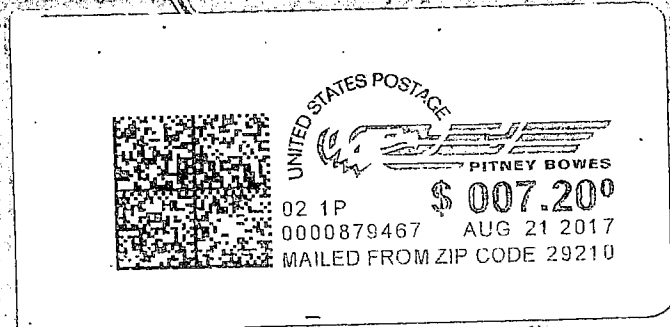
Copies:
Judge Early
Solicitor
P.D.
Mr. Gray

FILED October 10 2012

By: [Signature]
Christie [Signature]

4# 307580
#152 B
River Corr. Inst.
Proed River Rd.
a SC

29210



The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Re: 2015-CP-02-01730/2015-002615
P.O. Box 11330
Columbia, SC

29211

RECEIVED

AUG 21 2017

BRCI
MAILROOM