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TO: S.C. SUPREME COURT  
P.O. Box 11330  
Columbia, S.C. 29211

**S.C. SUPREME COURT**

FROM: Angelo Ham #315014  
McCJ/F3 #118  
386 Redemption Way  
McCormick, S.C. 29899

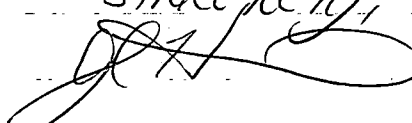
DATE: November 29, 2017

RE: ANGELO HAM V. STATE OF SOUTH CAROLINA  
Case No. 2017-002254

Dear Honorable Shearouse:

Enclosed please find an original  
copy of the "Petition for Writ of  
Certiorari" in the above matter that  
I wish to file in this Court.

With personal kindest regards, I am

Sincerely,  


STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
Certiorari to Darlington County

ROGER E. HENDERSON, Chief Admin. Judge

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c/a No.: 2017-002254

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ANGELO HOUM,

PETITIONER,

VS.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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PETITION FOR WRIT  
OF CERTIORARI

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ANGELO HOUM, #315014  
MCI / F3 #118  
386 Redemption Way  
McCormick, S.C. 29899

# INDEX

INDEX

1

ISSUES PRESENTED

2

STATEMENT OF THE CASE

3-4

ARGUMENT(S)

5-11

CONCLUSION

12

## ISSUE(S) PRESENTED

- 1.) WHETHER PCR COUNSEL WAS INEFFECTIVE FOR FAILING TO PROPERLY PRESERVE ISSUES FOR REVIEW?
- 2.) WHETHER DEFECTS REGARDING THE ADJOURNMENT OF THE COURT'S TERM AND/OR TRUE BILL OR NO BILL OF INDICTMENT WHEN THE COURT IS NOT IN SESSION BY STATUTE OR COURT ORDER AFFECTS THE SUBJECT MATTER JURISDICTION OF THE COURT?

## STATEMENT OF THE CASE

On April 17, 2006, petitioner appeared before the Honorable John M. Milling in Darlington County and pled guilty to murder, armed robbery, and criminal conspiracy. On that same date, he was sentenced to five (5) years imprisonment for criminal conspiracy. On September 14, 2007, he was sentenced to life without parole for murder and to twenty-five (25) years for armed robbery. Henry M. Anderson, Jr., Esq. was plea counsel.

Petitioner filed an application for PCR on November 21, 2008. An evidentiary hearing was held on September 13, 2010 before the Honorable Thomas A. Russo. Petitioner was represented by Gary I. Finkler, Esq. Respondent was represented by Karen C. Rotigan, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. On December 7, 2010, Judge Russo issued an order denying and dismissing petitioner's application for PCR.

PETITIONER filed a petition for writ of certiorari on September 21, 2011 which was transferred to the S.C. Court of Appeals and later dismissed on March 11, 2014.

PETITIONER then filed a second application for PCR on March 18, 2014. No evidentiary hearing was held and the Honorable Roger E. Henderson denied and dismissed with prejudice this application on February 3, 2017.

PETITIONER then filed a motion pursuant to Rule 59 (e) at which was also denied on April 28, 2017.

This petition follows.

## ARGUMENT(S)

1.) PCR COUNSEL WAS INEFFECTIVE FOR FAILING TO PROPERLY PRESERVE PETITIONERS ISSUES FOR REVIEW.

PETITIONER CONTENDS THAT HONORABLE HENDERSON DENIED AND DISMISSED THIS ISSUE WITHOUT HOLDING AN EVIDENTIARY HEARING ALLEGING THAT "APPLICANTS CONTENTION THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF PCR COUNSEL IS NOT A COGNIZABLE CLAIM FOR RELIEF, NOR DOES IT RAISE ANY GENUINE ISSUE OF MATERIAL FACT FOR THIS COURT TO CONSIDER IN EVALUATING THE APPLICATION." SEE APP. PG. 55.

ALTHOUGH PETITIONERS CLAIMS COULD HAVE BEEN BROUGHT FORTH IN HIS FIRST PCR APPLICATION, PETITIONER CONTENDS THAT HIS PCR COUNSEL DID NOT PROPERLY RAISE THEM NOR FILED A MOTION PURSUANT TO RULE 59(e) TO ENSURE THAT THEY BE RAISED OR BROUGHT TO THE ATTENTION

of the courts. However, after the appeal was taken from Petitioners PCR and before the S.C. Court of Appeals ruled on the petition, Petitioner moved before the Court of Appeals and the Burlington County Court of Common Pleas on a motion for relief from judgment under Rule 60(b)(5) to have these issues properly heard and ruled on but, however, the Court dismissed the petition for writ of certiorari which resulted in the Burlington County Court to dismiss the motion.

Petitioners contends that "when an applicant is not assisted by a PCR attorney in setting forth all grounds to support his claim of ineffective assistance of trial counsel in his initial application, he or she should not be barred thereafter from submitting a second application to include additional grounds for a courts review." Evitts v. Lucey, 469

U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821  
(1985); Coleman v. Thompson, 111 S.Ct.  
2546, 2568 (1991). See also Robertson  
v. State, 418 S.C. 505, 795 S.E.2d 29 (S.C.  
2016) (citing McCoy v. State, 401 S.C.  
363, 369, 737 S.E.2d 623, 626 (2013)).

Therefore, the lower courts  
decision regarding this issue should  
be reversed and remanded.

## ARGUMENT(S)

- 2.) Trial Court lacked subject matter jurisdiction by true-billing petitioners indictments when not prescribed by statute or court order.

Petitioner contends that the Honorable Roger C. Henderson denied and dismissed with prejudice this issue stating "the chief administrative judge for each circuit schedules terms of the grand jury in each county. The Applicant has failed to sufficiently challenge the legality and sufficiency of the Harry County Grand Jury process. Further, the Applicant has failed to provide any evidence that the Grand Jury did not convene in April 2000 as indicated on his true-billed indictment. Because the Applicant has failed to state with any specificity the evidence supporting his claim, this Court summarily

dismisses this allegation with prejudice." SEE App. pg. 56.

Petitioner contends that he was not indicted by a Harry County Grand Jury and was his indictments true-billed in April 2000. He further states that the alleged crime happened on September 9, 2004 in the county of Burlington. SEE App. pgs. 84-89.

As can be seen on these documents, they were true-billed by Grand Jury Foreman Sherry H. Edwards on October 20, 2005 and sworn to before a Burlington County Court on October 24, 2005. However, no court, by statute or court order, were opened in the Burlington County Court of General Sessions or Common Pleas.

If neither court was open by statute or court order then the law is very clear that the court lacks subject matter jurisdiction

to convene on any civil or criminal case. SEE STATE V. BEST, 257 S.C. 361, 184 S.E.2d 572 (S.C. 1972) ("The circuit court loses jurisdiction with the adjournment of the term.") AND, it is very clear that the Grand Jury can only convene to determine if the indictment should be true-billed or no billed during the Court of General Sessions while the Court is in session. SEE S.C. Code Ann. Section 14-9-210.

Petitioner further points the Courts attention to the facts that NO Court in the County of Darlington was opened on October 20, 2005 when the Darlington County Grand Jury convened and true-billed his indictments. SEE App. pg. 90.

Therefore, the lower courts decision regarding this issue should be reversed and


remanded.

CONCLUSION

Petitioner's writ should be GRANTED and his guilty plea should be VACATED.

NOVEMBER 29, 2017

Respectfully submitted,

  
Angelo Horn  
McCI / F3 # 118  
380 Redemption Way  
McCormick, S.C. 29899

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
Certiorari to Burlington County

Roger E. Henderson, Chief Admin. Judge

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CIA No.: 2007-002254

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Angelo Ham,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

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CERTIFICATE OF  
SERVICE

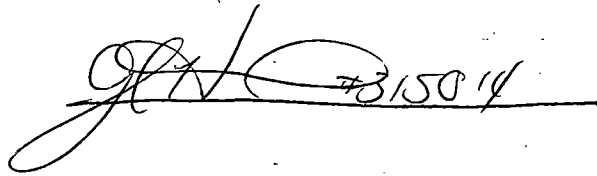
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I, Angelo Ham, hereby certify that an original copy of the "Petitioner's Petition for Writ of Certiorari" in the above-cited matter was this day served on the

Respondent by depositing a copy of the  
same in the U.S. Mail, postage  
prepaid, to the following address:

S.C. OFFICE OF THE ATTORNEY GENERAL  
P.O. Box 11549  
Columbia, S.C. 29211-1549

NOVEMBER 29, 2017

7315014

ANGELO HAM #315014  
MCCF/F3 #118

**McCormick Correctional Institute**  
386 Redemption Way  
McCormick, SC 29899

S.C. SUPREME COURT  
P.O. Box 11330  
Columbia, S.C.

29211

ENCLOSURE TO THE ATTORNEY GENERAL  
S.C. DEPARTMENT OF CORRECTIONS  
McCORMACK CORRECTIONAL INST.

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