

Jose Alberto Maldonado, # 312648

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4848 Goldmine Highway
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May 14th, 2018

In The Supreme Court
Honorable Daniel E. Shearouse
Clerk of Court

Post Office Box 11330
Columbia, South Carolina 29211

Re: Jose Alberto Maldonado # 312648 v. The State of South Carolina
Appellate Case No. 2017-002092.

Dear Clerk of Court:

The Petitioner, file enclosed an original copy; BRIEF IN OPPOSITION TO ORDER INTEND TO DISMISS PETITIONER FOR A WRIT OF CERTIORARI, Included's CERTIFICATE OF SERVICE, ATTACHED BELOW THIS BRIEF. To prove this Honorable Court's Jurisdiction on

Please if this files meets your approval to you. File the original to Honorable Judges, who signed the Order May 3, 2018 . In and return a cloc-stamped to me.

Thank you for your valuable time of this matter. And I look forward to hearing in this Honorable Court soon concerning the content of this Brief.

Sincerely


Jose Alberto Maldonado, # 312648

Files: (1)

cc: Megan Harrigan Jemeson, AG's Office Assistant.

RECEIVED

MAY 18 2018

S.C. SUPREME COURT

The Supreme Court of South Carolina

Jose Alberto Maldonado, # 312648, Petitioner

v.

State of South Carolina, Respondent.

**Appellate Case No. 2017-002092
Lower Court Case No. 2015-CP-23-04747**

**BRIEF IN OPPOSITION TO ORDER INTEND TO
DISMISS PETITION FOR A WRIT OF CERTIORARI**

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STATEMENT OF ISSUES ON APPEAL

ARGUMENTS:

- I. PETITIONER'S REASON IN THE EXPLANATION REQUIREMENT FOR GRANTING THE PETITION.

- II. Failure to Return of Respondent Within (30) days/ Against The Petitioner's Last Files, Record on Appeal, And Appendix, Pursuant To Rule 243(C), ¶(g), & ¶(j), SCACR.

- III. The Threat of the S.C. Supreme Court of an Impending Order To Summarily Dismiss Petitioner's Fourt PCR Act. And To Prevent any Furder Action of Relief, The Order Should be Null and Void. U.S.C.A. Const. Amend. 14th.

TO THE HONORABLE JUDGES OF THE ABOVE - ENTITLED COURT:

INTRODUCTION

1. Petitioner, Jose Alberto Maldonado # 312648, pro - se respectfully moves this Honorable Supreme Court to consider his four application for post-conviction relief action. By Order Entered on May 3, 2018. And after Petitioner filing the explanation requirement by Rule 243(c), SCACR; "within two separate ORDERS," one is for October 23, 2017, with 20 days dateline, but this Hon: Court misplaced the "wrong court C/A#: 2015CP230757."

2. Petitioner immediately filed a letter clearly illustrating the mistake from the opposite party, Magan Harrigan Jameson, who prosecuted Petitioner's four application post conviction relief action, with the wrong case number, (See, Exhibit, (4), Appx.: (B) R. p. 9.ROA).

The Petitioner replied back with a letter on October 25th, 2017, to notified the Honorable Court, demonstrating the lower cour filing of the wrong case number too. (See, Exhibit, (3), Appx.: (A)(3) R. Pp. 1-2. ROA).

3. Thereafter, this Court sent a "second Order" on October 31, 2017. and a Hon: Court has instruted that, this "appeal case involves the Petitioner notice of appeal in C/A#: 2015-CP-23-4747." Furthermore, that the Court shall file the explanation required by Rule 243(c), SCACR, within fifteen (15) days, of the date of such order entered. (See, Exhibit, (1). Appx.:(A) R. i-ii. ROA).

STATEMENT

Thus, the Petitioner issued his petition on November 14th, 2017 the Court clock stamped on December 14th, 2017. With the "PETITIONER'S PETITION TO RELAX THE RULES OF RULE 243(c), SCACR. Quote Rule 267(d) SCACR." Included the Petitioner's DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL."

Therefore, Petitioner filed his "Record on Appeal, on December 5th, 2017", the "Appendix, December 5th, 2017."

ARGUMENT

I. PETITIONER'S REASON IN THE EXPLANATION REQUIREMENT FOR GRANTING THE PETITION.

1. Thus, the Court Should Reconsider and Abolish the lower Court its Qualification, and This Explanation Required Jurisprudence. See the Petition for Writ of Certiorari, in Post-Conviction Relief Action, at page 9, (Argument I.). That Petitioner's (Appx. :(C) R. p. 18.ROA) ... That Court Affirmed the Petitioner sentence within the S.C. Code Ann. § 44-53-375(C)(2)(b), (Supp. 2016), and the Court of Appeals, with the S.C. Supreme Court had been failed to review, the matter. Because the Petitioner had not been indicted by the "state grand jury" with such statute. See, id. Hereby the Court of appeal stated that:

a person who is guilty of trafficking in methamphetamine or cocaine based between twenty - eight and nitety-nine grams should be sentence to "a term of imprisonment of not less than (7) years nor more than thirty years" for their ("second offense"). (See, Appx.:(C)(37)-R. Pp. 128-129. ROA). When this Court did not have that "True Bill Indictment with the South Carolina's Title (44) at section 44-53-375(C)(2)(b) for Petitioner his second offense?"

That Court of Appeals ruling's conviction for a second offense without the true bill "indictment". Upon Jose A. Maldonado v. SCDC(2), appellate C/A#: 2016-001274. Unpublished Opinion No 2017-UP-209. Submitted March 1, 2017 - filed May 17, 2017. This Court Affirmed that, the Petitioner sentence with Section 44-53-375(C)(2)(b).

2. Thus, the Petitioner is "Petition for a Writ of Certiorari, in post conviction relief action, application upon the ("Argument II.")", stated as follows:

An OBJECTION TO THE STATE GRAND JURY MAY BE TAKE AT ANY TIME; and this Honorable, Court "Lack of Subject Matter Jurisdiction, pursuant to Newly Discovered Evidence, provides, in pertinent part:

The Petitioner filed a Motion of Rule 60(b) SCRPC, (See, Appx.:(P)(1) R. Pp. 387-436. ROA);(Appx.:(Q)(1) R.Pp. 437-470.ROA); and (Appx.:(R)(1) R. Pp. 471-495.ROA), with the general sessions court term, (See, also Appx.:(S)R. Pp. 495-496. ROA). This is evidence that had been raised with the (4th PCR. Action application), argued by the "MOTION OF RULE 59(e), SCRPC" (See, Appx.:(E)(22-26) R. Pp. 60-64. ROA); (quote McCoy v. State, at 370, 737, S.E.2d 627 (S.C. 2013)(citing, Coats v. State, at 500, 575 S.E.2d 558). See also the (Exhibit.:(17) Appx.:(O) R. Pp. 382-383. ROA). Petitioner filed a "MOTION TO ALLOW TRANSFER AND CONSOLIDATE CASE PURSUANT TO RULE 42(a), SCRPC, 'BETWEEN RULE 60(b), SCRPC, in the pending Motions'", to the "Court of Common Pleas in the 13th Judicial Circuit, pursuant to Petitioner's Case No. 2015-CP-23-04747";and the same motion had been filed to the general sessions court term, 13th judicial circuit/when this court failed to sended the ("Docket Number") or make any rule at the motion of Rule 60(b) SCRPC, for the relief have been sought. Petitioner also filed a motion for "GENERAL JURY DOCKET OR TRANSFER CASE TO JURY TRIAL ROSTER," Pursuant to Rules, Rule 40(f), and 41(b) SCRPC , to compel clause 44-53-375(C)(5), 44-53-375(C)(2)(b), (See, Exhibit, (17) R. Appx.:(O)(2) R. p. 383. ROA), in reference Petitioner his "MOTION FOR GENERAL JURY DOCKET OR TRANSFER CASE TO JURY TRIAL ROSTER, Rules 40(f), & 41(b) SCRPC; S 44-53-375(C)(2)(b). Filed (doc. 9). In the court of general sessions.

3. Pursuant, to Hendrick v. State, 387 S.C. 221, 223, 692 S.E.2d 892 (S.C. App. 2010) the Petitioner has merit, and this Honorable Court must grant the four post conviction relief. In this case, Petitioner's merits had/or has been addressed with this Court. And the Petition is going forward against the lower court for failure to not make any rule, of Rule 60(b), SCRPC. See: Id.

Thus, this Court must see that, and holding an evidentiary hearing to "remend the matter" in the court of general sessions for the Greenville County 13th Judicial Circuit, with instruction to consider, a Jose Alberto Maldonado's Petition for a Writ of Certiorari, in post conviction relief action.

4. So this Honorable Supreme Court must rule pursuant of: Hendrick v. State, 223, 692 S.E.2d 892 (S.C. Ct. App. 2010). When the SC. Court of Appeals has interpreted the statute, therein the Court of Appeals must give the relevant term their common and ordinary meaning. And this Court shall issue an "null & void order" to intend to dismiss the Petitioner "Notice of Appeal? Under that four post conviction relief action," is not "a final order," for purposes of appellate review. Reid v. Angelone, 369 F.3d 363 (4th Cir. 2004).

5. However, this Honorable Court must move to support the "Petition for a Writ of Certiorari, in Post - Conviction Relif Action for 'newly discovered evidence'" that has been expressively explained with an information from the "state grand jury issued in April 17, 2015." This Clerk of Court of "state grand jury" released the newly discovery evidence, and as a rule, to support the four post

conviction relief action application, under the "S.C. Code Ann. § 17-27-45(C); Coats v. State, 352 S.C. 504, 575 S.E.2d 557, 559." (Quoting, Al-Shabazz, Supra, this Honorable Court held that, except for two non-collateral matters specifically listed in the "Post-Conviction Relief Action," (i.e., Coats at Fn.1), "PCR is a proper avenue of relief only when applicant mounts 'a COLLATERAL ATTACK CHALLENGING THE VALIDITY OF HIS CONVICTION OR SENTENCE.'"). This Court stated a claim regarding sentence-related, credit or other condition of imprisonment does not fall into this category, Al-Shabazz, 338 S.C. at 367-369, 527 S.E.2d at 747. The avenue application "Four PCR. Action, the Petitioner against relief with this Honorable Court. After this Court denied Petitioner's 'grievance complaint'" subject to Petition for a writ of certiorari in Jose A. Maldonado v. SCDC(2), submitted on July 11, 2017."

And the Court issue a ORDER' based on the "vote of the Court, that petition for a writ of certiorari was denied on Feb. 1, 2018. Appellate Case No. 2017-001525, lower court C/A#: 2015-ALJ-040567-AP. Enter this record to Petitioner's Petition for a Writ of Cetiari, In Post Conviction Relief Action's (R. p. 12).

Therefore, this Court Should Grant the Petitioner's Four Post - Conviction Relief Action.

ARGUMENT

II. Failure to Return of Respondent Within (30) days/Against The Petitioner's Last Files, Record on Appeal, And Appendix, Pursuant To Rule 243(c), ¶(g), & ¶(j), SCACR.

1. Thus, the Petitioner is questioning this Hon: Court, why the Respondent didn't file the "Return" against the Petitioner's four application for post conviction relief action, with (30-days of dateline), "after the Petitioner filed his record on appeal." And Requested, his wrongly filed case No.:2015-CP-23-04757 be filed, the "Respondent's failure to prosecuteed the Petitioner's 'four application for post conviction relief action'" is arguments. For his illegal sentence under the "S.C. Code Ann. §44-53-375(C)(5)."

2. When the Newly Discovered Evidence is clearly documented for the S.C. Court of Appeals, this Court provided it to Petitioner's sentence he faced under "S.C. Code Ann. § 44-53-375(C)(2)(b)." See, e.g., Jose Alberto Maldonado, v. SCDC(2), ALC. Case No.:2015-ALJ-04-0567-OP. Opinion No 2017-UP-209 (S.C. Ct. App. filed May 17, 2017) Appellate Case No.:2017-001525. In this Case the Respondent did and submitted a "Return" upon the Petitioner's ("IGP") complaint, issued on August 10, 2017. Petitioner demand, under the Rule 243(g), SCACR. Holding, as follwos:

"Respondent shall serve a copy of his return on oppositing counsel" (Instead Petitioner's pro - se), and shall file with the Clerk of the Supreme Court an "original and six (6) copies of his return."

3. So now the Petitioner ask to this Hon: Court Grant the Petitioner's PETITION FOR A WRIT OF CERTIORARI, IN POST CONVICTION RELIEF ACTION, under the Rule 243(c), ¶(j), SCACR. Against the Procedure upon grant of certiorari, to Petitioner's four post-conviction relief action.

ARGUMENT

III. The Threat of the S.C. Supreme Court of an Impending Order To Summarily Dismiss Petitioner's Four PCR Act. And To Prevent any Further Action of Relief, The Order Should be Null and Void. U.S.C.A. Const. Amend. 14th.

1. That Petitioner had been arrested on June 26, 2005 for trafficking methamphetamine, and his conviction was for a second offense, to trafficking in cocaine.

2. In this matter before this Honorable Court's Order issue on May 3, 2018 to Petitioner's "Notice of Appeal", the Court argues the denial Petitioner's four application for post conviction relief, and the Court said the: "Petitioner has submitted the explanation required by Rule 243(c), SCACR." So the Petitioner already filed his "explanation", and this Court sent it back a ("third dateline, within 20-days") by finding Petitioner has failed to show that there is an arguable basis for asserting that determination by the lower court was improper. (See the Record on Appeal against the null and void order May 3, 2018). To this Court intent to dismiss the "Notice of Appeal").

3. Thus, the Honorable Court "trying to denie the Petitioner his Petition" in the matter that he has filed 4th applications for post conviction relief, ruling all of which have been without merits, and then, by this Court, grating for a third time twenty days up from May 3, 2018, without review the whole record on appeal, including the Petitioner's Petition for a Writ of Certiorari, In PCR. Action, application. Moreover, the Court made a clear mistake. And for that Petitioner against the "null & void order." May-3, 2018. The Order asking a Petitioner to provided this Court with

any reason(s) he may have as to why this Court should not issue an order prohibiting Petitioner from filing any further collateral action in the circuit court, "including post-conviction relief actions, and HABEAS CORPUS ACTION," as well as any "MOTIONS-RELATING TO THE PREVIOUSLY FILED 'COLLATERAL ACTIONS,' 'CHALLENGING HIS MURDER CONVICTION'. Hereby, Petitioner did not have any record to his four PCR action application in relation of "MURDER CONVICTION the ORDER of May 3, 2018's NULL AND VOID", Because, Petitioner's illegal sentences was for trafficking.

4. The Petitioner ask of this Court why a second serious mistake has been made; in that the Court stated the Petitioner has "MURDER CHARGES" in his criminal case?

5. Thus, it is a serious mistake to the South Carolina Supreme Court, stated the Petitioner have a murder charged, And allow the respondent his introduction of such wrong case number 2015-CP-23-04757.

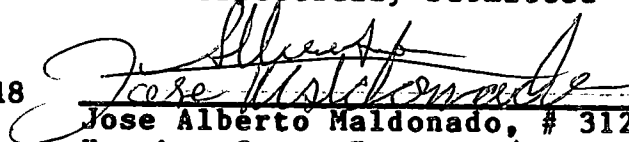
For this reason this Honorable Court must move to grant the Petitioner for a Writ of Certiorari In Post Conviction Relief Action, to reverse and remanded the Petitioner sentence for a second offense, in the general sessions court term, 13th judicial circuit. S.C. Rule 243(C), ¶(j), SCACR.

CONCLUSION

For the reason stated, Petitioner asks this Court to Grant
the petition for writ of certiorari.

Respectfully Submitted

Done this 15th day of May, 2018


Jose Alberto Maldonado
Jose Alberto Maldonado, # 312648
Kershaw Corr. Inst. MB/Room, #63
4848 Goldmine Highway
Kershaw, South Carolina 29067

The Supreme Court of South Carolina

Jose Alberto Maldonado, # 312648. Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-002092
Lower Court Case No. 2015-CP-23-04747

CERTIFICATE OF SERVICE

Undersigned Jose Alberto Maldonado, Pro - Se, hereby certify that on today's date he mailed a copy of the BRIEF IN OPPOSITION TO ORDER INTEND TO DISMISS PETITIONER FOR A WRIT OF CERTIORARI, to Respondent, addressed as follows: AG's Assistant, Megan H. Jameson. 1000 Assembly Street, P.O. Box 11549 Columbia, South Carolina 29211, And the Original Copy, addressed To:

In The Supreme Court
Honorable Daniel E. Shearouse
Clerk of Court
Post Office Box 11330
Columbia, South Carolina 29211

Further, The Petitioner said and Signing:

This 14 day of May, 2018

Respectfully Submitted

Jose Alberto Maldonado
Jose Alberto Maldonado, #312648
The Petitioner, Pro - Se,

SWORN to and SUBSCRIBED Before Me

This 14 day of May, ²⁰¹⁸₂₀₁₇
Cheryl R. Howard
Notary Public for SOUTH CAROLINA

Kershaw CI. M/Room, # 63
4848 Goldmine Highway
Kershaw, South Carolina 29067

My Commission Expires: Jan 27, 2025

JOSE ALBERTO MALDONADO #312698

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LEGAL MAIL

IN THE SUPREME COURT
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