IN THE SOUTH CAROLINA SUPREME COURT

CASE NO. 2014-CP-21-1976

Tarus Tremaine Henry #336127,

Petitioner,

Vs.

State of South Carolina,

Respondent. /

REQUEST FOR LEAVE TO PROCEED UNDER S.C.R. Civ. P., 60(b), FOR RELIEF FROM JUDGMENT.

This matter is being brought to the attention of this Honorable South Carolina Supreme Court, by way of a pro-se Petitioner who at this time is "without counsel". ANd seeks to file a Civil Procedure under Rule 60(b), back to the Court of Common Pleas for relief from judgment.

Petitioner respectfully supplied this Honorable Court with a true and correct copy of the motion, and exhibits for which this motion will be based, and hereby respectfully request permission to proceed forward due to its extremely important contents.

Respectfully Submitted,

/s/ [signature]

Tarus Tremaine Henry #336127
Leiber Corr. Institution
PO Box 205
Ridgeville, S.C. 29472

cc: S.C. Attor.
file
6/12/2018

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

In The Court Of Common Pleas
Twelfth Judicial Circuit

Tarus Tramaine Henry, #336127,

Petitioner/Applicant

Vs.

Case No.: 2014-CP-21-1976

State of South Carolina,

Respondent. /

MOTION FOR RELIEF FROM JUDGMENT
PURSUANT TO S.C.R. Civ. P., 60(b).

This matter is being respectfully brought to the attention of this Honorable Court by way of a pro-se Applicant, claiming an important right for "relief from judgment", in a Post-Conviction matter rendered on April 16, 2018. Whereas, time for a Rule 59(e) has expired and this being the proper vehicle in order to obtain redress from the above ruling.

In addition, it is also worth noting, "that under the RUle 60 (b), a Petitioner must apply for 'leave to proceed' from the proper Court of Appeals when a appeal has been taken from the PCR Court ruling". Enclosed, Petitioner includes a copy of such appeal

stamped and filed. Coupled with PCR counsel's letter "informing the Petitioner as of May 11, 2018. Mr. Johnathan D. Waller, Attorney At Law, no longer represents this Petitioner". Thus, at the time of filing this motion, Petitioner in "unrepresented by counsel".

S.C.R. Civ. Proc., Rule 60(b).

Accordingly, "On a motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons":

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in the time to move for a new trial under Rule 59 (b);

(3) fraud, misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

RELEVANT HISTORY OF THE CASE

Petitioner is currently incarcerated in the South Carolina De-

partment of Corrections pursuant to a Florence County Clerk's Office commitment order. Petitioner was indicted at a December 2008 term of the Florence Grand Jury proceeding, charged with two counts of unlawful conduct towards a child, one count of assault and battery with intent to kill, and one count of arson second degree.

Petitioner proceeded to trial before the Honorable Ralph King Anderson (after numerous **Mental Evaluations**, where Petitioner had obtained a vast history of mental diseases, prior to the incident, as well as underwent "brain surgery" before the age of eighteen), Jr.,and a jury, and convicted as indicted.

Judge Anderson sentenced Petitioner to ten years for each count of unlawful conduct towards a child, concurrently; Judge Anderson also sentenced Petitioner to twenty years for ABWIK and Twenty years for arson, each to be served consecutively.

In this case, a timely appeal was taken to the S.C. Court of Appeals. See State v. Henry, Op. No. 2011-UP-562 (S.C. Ct. App. filed Dec. 13, 2011). After such denial, Petitioner filed a timely petitioner for rehearing, which was denied on January 13, 2012. Petitioner than filed a writ of certiorari, in the South Carolina Supreme Court, which was denied on August 23, 2013.

On July 17, 2014, Petitioner filed the instant PCR for relief and a amended application on March 10, 2015. The State made its return on September 14, 2016. And a evidentary hearing was convened on January 31, 2018, at the Florence County Courthouse. Petitioner was present at the hearing, and represented by Johnathan D.

Waller, Esquire. Raising several claims of "Ineffective Assistance of Counsel" based on his perceived trial counsel's deficient performance during trial. Trial counsel was none other than Ms. Karen E. Parrott, Equire.

THE VICTIM'S TRIAL TESTIMONY

The victim in this case testified she and Petitioner had been arguing on the morning of the stabbing based on Petitioner's unemployed status during that time period. Tr. p. 434-36. That she wanted her mother to watch the kids and Petitioner objected. Tr. p. 435. That she wen in the bedroom to call her mother and discovered the phone line was cut. Tr. p. 437. The victim testified the room seemed to get dark, and she felt something around her neck and looked down and realized she was bleeding. Tr. p. 438-39. She testified she fell to the floor and continued to feel Petitioner hitting and cutting her. Tr. p. 439-40. She recalled Petitioner while administering blows, he said "are you going to tell on me"? Need to be here and be a family, be here with the family". Tr. p. 440.

Victim also testified Petitioner's son, Taurus, Jr., entered the living room and said "Daddy, what are you doing"? Tr. p. 442. Petitioner told him to go back to his room. Tr. p. 442. Victim's seven month old daughter who was sitting in her car seat on the living room floor, bagan crying, so Petitioner took both children and left, locking victim inside the apartment. Tr. p. 440-43.

The victim then testified, Petitioner then came back into the apartment, she got up walked down the hallway, this is where the Petitioner passed her again on the way out. Tr. tr. p. 444. And that she was lying on the floor when she smelled smoke, so she got up again, wrapped herself in a blanket and opened the apartment door. Tr. tr. p. 445. She also testified, she was at the top of the stairs when Petitioner came back and helped her down. Tr. tr. p. 445.

PETITIONER'S TESTIMONY AT TRIAL

Petitioner testified at trial in his own defense to the charges Tr. tr. pgs 417-468. That [he] and the victim were married for about one year, and had a child under a year old when this incident occurred. Tr. tr. p. 417-18. As well as a five year old son (Taurus Henry, Jr.,).

Petitioner testified that the victim attacked him as a result of an ongoing argument about paying the rent. Tr. tr. p. 431, lines 1-7. That based on this attack, "he caught the machete with his hand and got cut badly". Tr. tr. p. 431, lines 1-6.. Then with a rag, around his hand and bleeding. He reached for the machete **'then blanked out'**. Tr. tr. p. 433-434, lines 24-25. When asked again as a result of injuring the victim with the machete, Tr. tr. p. 462, lines 17-18 ("You still maintain that you blacked out"? "YES"!.

SYNOPSIS OF PETITIONER'S MENTAL HISTORY

On June 25, 2003, Petitioner was diagnosed with Chronic Schizophrenia, Undifferentiated. According to the medical records before this court in Exhibit "C". The medical report here directly conflicts with the State's assessment of Petitioner's ability to stand trial. The irrefutable evidence of Petitioner's mental medical history comes into the record during several times during the trial, but moreso, in Petitioner's own words and testimony in which "no objection was taken by the State".

At Tr. tr. p. 419, lines 10-11. Counsel asked; "what kind of mental illnesses do you recall having been diagnosed with in the past"? Petitioner recalls the following:

Psychosis and Schizophrenia, bipolar disoder. Tr. tr. p. 419, lines 12-13.

What kind of medications have you taken? Tr. tr. p. 419, line 15.

Zoloft, Geodon, Trazodone, Seroquel. Tr. tr. p. 419, lines 18-20. ANd still on medication at the time of trial.

Moreover, when any inquiry mind goes into Petitioner's medical history. Its more than clear Petitioner's medical mental diseases goes back, dates back to the age of two (2). When Petitioner was just a toddler. Tr. tr. p. 419, lines 1-3. And prior to the age of 18, Petitioner underwent **'brain surgery'** to remove the right temporal lobe of the brain. In which "No expert witness was called to question whether such surgery could have caused the reported black

out. Petitioner experienced on account of the stressful conditions he was living with on June 23, 2008..

But not only that; "Petitioner's medical treatment for mental diseases persisted over the years". His prognosis demanded continued medical treatment for his mental conditions, and he had to be readmitted several times back into a controlled environment several times. Once, "for throwing a knife at his mother", and another, "for attempting to commit suicide". See Exhibits in this case.

Thus, based on the above irrefutable chain of events. A Rule 60(b) is hereby being instituted to obtain "relief from judgment", where such decision should not have any prospective application, as will clearly be demonstrated below.

STATEMENT OF THE ARGUMENT SUPPORTING 60(b).

Petitioner raised several arguments in regards to trial counsel's deficient performance. But at the commencement of the hearing, counsel for the Applicant at the PCR hearing, indicated he would proceed on three (3) claims only. (1) that counsel was ineffective for failing to object to Applicant being shackled in the presence of the jury; (2) Counsel was ineffective for failing to request a continuance or otherwise secure the testimony of Investigator Calvin Timmons, and (3) Counsel was ineffective for failing to communicate and explain a plea offer of guilty but mentally ill (GBMI). The Court found Applicant abandoned all other allegations raised in his application, but not addressed at the hearing.

Here, "because the Applicant proceeded on the claim of Ineffective Assistance of Counsel, dealing with trial counsel's failure to adequately communicate and explain the ramifications involving (GBMI) guilty but mentally ill". Under the circumstances of this case, the convictions and sentences must be reversed "by way of this 60(b)", based on the violation of "statutory law" and accompanying Due Process, in which the Applicant was entitled. That protects one rights to a fair trial under circumstances like the present.

In otherwords, what demands this case to be reversed. Is the fact "this trial was not one on which a person with a history of mental diseases could be tried or found guilty, for that matter", by a trier of fact-finders. Without 'the fact-finders' themselves being given the option of four (4) statutory verdicts. See the following legal argument in support:

Legal Argument:

Under South Carolina Code Ann., Section 17-24-30; the following language is recorded with regards to a defendant proceeding to trial "that has exhibited in the past, or currently, with a history of mental illnesses which was introduced into evidence during trial. Here, Petitioner's records of mental illnesses "could not be more extensive, dating back from when he was just two years old", up and continuing during the time of the incident. The statute however quotes the following:

"In a prosecution for a crime when the affirmative defense of insanity is raised sufficiently by the defendant, or when sufficient evidence of a mental disease or defect of the defendant is admitted into evidence, the trier of fact 'shall' find under applicable law, and the verdict 'must' so state, whether the defendant is:

(1) guilty
(2) Not guilty
(3) Not guilty by reason of insanity
(4) Guilty but mentally ill

The judgment under attack here by way of 60 (b) is the PCR Court's denial on April 16, 2018, denying Petitioner's claims of ineffective assistance of counsel "for failing to explain or communicate the details of (GBMI) guilty but mentally ill". Where that was an issue of concern, however inartfully raised. That under §17-24-30, could not be waived nor abandoned by the Defendant/Petitioner. Because such statute (§17-24-30) supplants a "mandatory duty upon the trial court", as well as all involved, to assure a defendant that has produced evidence of a mental disease or defect, to receive a fair trial, as well as the trier of fact (being the jury), being able to function under their proper scope of authority. By so finding; "whether the defendant was (1) Guilty; (2) Not Guilty; (3) Not Guilty by reason of insanity; or (4) Guilty but mentally ill.

Again, Petitioner introduced "a very extensive history during trial (which went uncontested or objected to), which included multiple mental forensic findings by experts in the field". Which indicated his disease developed when he was just a two year old. See Tr. tr. p. 419, lines 1-25. That this disease persisted continually

even up until the day of the June 23, 2008 incident "which Petitioner explained **he blacked out**". Again, this went uncontested by the State.

At the close of trial however, and after the court charged the jury. The following verdicts were instead given to the trier of fact, which defies legal logic. Petitioner **quotes** the following: (Tr. tr. p. 603, lines 2-14)

> "The verdict must be unanimous. All jurors must freely and voluntarily agree to the verdict whatever it is. Madam forelady, once again, do not sign any verdict unless it is a unanimous verdict. Unaniminity is mandated by the constitution. The verdict I have heretofore explain to you just relate to the choices in regard to assault and battery with intent to kill, one not guilty or two guilty of assault and battery with intent to kill. And arson in the second degree not guilty or guilty of arson in the second degree. Count three not guilty or guilty of unlawful conduct towards that child. And Count 4 not guilty or guilty of unlawful conduct towards that particular child". (Unquote!).

The above irrefutably demonstrates "Due Process" was not afforded to the defendant/Petitioner at this trial. As the trier of fact was limited or restricted from functioning in their proper statutory role of receiving the four (4) necessary choices of verdicts in order to find the defendant accountable or not accountable for the acts charged. Which was sanctioned by the South Carolina's General Assembly. Where here at this juncture, 60(b) provides a proper vehicle for Petitioner to obtain "relief from the judgment (April 16, 2018)" when there's absolutely no doubt this conviction and sentences cannot withstand constitutional scrutiny.

STATUTORY CONSTRUCTION

Here's the problem. It is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the legislature. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987); and Miller v. Aiken, 364 S.C. 303 (2005). When a statute's terms are clear and unambiguous on its face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 442 S.E.2d 177, 179 (1994). ANd words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. See Bryant v. City of Charleston, 295 S.C. 408, 368 S.E. 2d 899 (1998).

Here, the statutory 'words' that mandated Petitioner's four (4) choices of verdicts for the trier of fact to have selected from, in which was constitutionally protected under due process, are for purpose of this argument **"shall and must"**, as used within §17-24-30. See State v. Foster, 277 S.C. 211, 212 284 S.E.2d 780 (1981)("Taken literally, the word shall is mandatory"); see also State v. Smith, Op. No. 2009-UP-369 (S.C. App. 2009). Yet in contravention of this clear statutory directive, "the court issues just two", 'guilty or not guilty'. That under the Due Process Clause renders the verdict a nullity, because the jury could not perform the function in their

proper role of authority. When the statute mandated the court "shall and must" give the four choices. See State v. Campen, 469 S.E.2d 619, 321 S.C. 505 (S.C. App. 1996); and State v. Rimert, 446 S.E.2d 400, 315 S.C. 527 (S.C. 1994)(also noting in Rimert, (citing People v. Ritsema, 105 Mich. App. 602), a defendant cannot waive any of the four (4) prongs, once evidence of the mental defect is admitted into evidence at trial)).

DUE PROCESS CONCERNS

Under Due Process, once a state has created a liberty interest, the Due Process Clause requires fair procedure for its vindication, see Burnette v. Fahey, 687 F.3d 171 (4th Cir. 2012). Such is violated whenever liberty is at stake without fair procedure. See United States v. Johnson, 703 F.3d 464 (8th Cir. 2013).

JURY CONCERNS

In United States v. Ansaldi, 372 F.3d 118 (6th Cir. 2004) A criminal defendant is entitled to a jury instruction on any defense for which there is a foundation in the evidence. And the error in the jury instructions (as here) may so infect a trial that the resulting conviction violates due process. Menendez v. Terhune, 422 F.3d 1012, (9th Cir. 2005)

STRUCTURAL ERROR CONCERNS

Here, the above error of concern calls also into question a conviction predicated on a 'structural error'. Because the failure to have given the statutorily required four (4) verdict choices for the trier of fact to decide the case. Call into question the reliability as well as the accuracy of the trial process, and not merely an error at trial, thus, not amenable to harmless error analysis, "but instead requires automatic reversal". See Arizona v. Fulminante, 499 U.S. 279, 111 S. Ct. 1246 (1991) and Quintero v. Bell, 256 F.3d 409 (6th Cir. 2001).

IN CONCLUSION

Thus, in Conclusion, 60(b) is being respectfully invoked in order to vacate the PCR court's erroneous judgment rendered on April 16, 2018. Based on the contents herein which irrefutably damands relief; "as such judgment is no longer eqitable and should not have any prospective application in law or fact", under §17-24-30, or the United States or South Carolina's Constitution.

In Murray v. Carrier, 477 U.S. 478, 486, 106 S. Ct. 2639 (1986), the Supreme Court made clear the facts of comity and finality must both yield to the importance of correcting the wrongful imprisonment of a prisoner that can demonstrate actual innocence. That in some instances "even an isolated error" can support a ineffective assistance of counsel claim, if it is "sufficiently egregious" and

"prejudicail".

Wherefore, Petitioner prays for leave to proceed in the Court of Common Pleas. Based primarily on the contents herein. As his appeal from the PCR court has been transmitted to the South Carolina Supreme Court, but has not been decided. Nor has an attorney been appointed for the appeal at this time.

Under these circumstances, 60(b) must be filed in the appropriate court of appeals for permission. Thus, a respectful "leave" to do so will accompany this motion. As Petitioner prays for the respective relief and any further relief this Honorable Court deems just and proper.

Respectfully Submitted,

/s/ [signature]

Taurus T. Henry, Sr. #336127
Leiber Correc. Institution SA-44
PO Box 205
Ridgeville, S.C. 29742

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 12th DAY OF JUNE
2018
[signature]
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 6-20-26

cc: S.C. Sup. Ct.
S.C. Attor. Gen.
file
6/12/2018

CERTIFICATE OF SERVICE

I, Tarus Tremaine Henry, #336127, do hereby certify that I have forwarded a true and correct copy of my motion under Rule 60(b) to the State's Attorney General at the address below, with proper postage attached thereto. Executed on the 12th day of June 2018.

Attorney General
State of South Carolina
1000 Assembly Street
Columbia, S.C. 29201

/s/ Tarus T Henry

Tarus T. Henry, #336127
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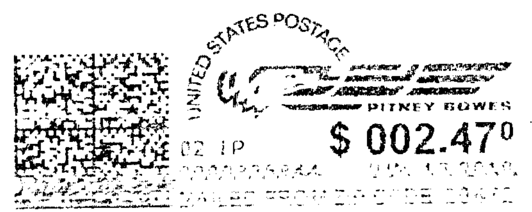

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