In the Court of Common Pleas
Eleventh Judicial Circuit
Saluda County Clerk of Court
Ms. Sheri Coleman – Clerk
100 E. Church Street
Saluda, SC 29138

RE: Notice of Appeal / Explanation Required Pursuant to Rule 243 (c) SCACR

Dear Ms. Sheri Coleman:

Please find enclosed the original notice of appeal and explantion of appeal pursuant to Rule 243 (c) SCACR. Please file and send a stamped a clocked copy back, to be filed in your office.

I'm thanking you in advance for your assistance.

x James F. Robison July 16, 18

cc:

South Carolina, Office of Attorney General
P.O. Box 11549
Columbia, SC 29210

Notice of Appeal/ Explanation

Explantion Required pursuant to Rule 243 (c) SCACR

Applicant/ Appellant James P. Robinson # 250720/2016-CP-41-00697

1) Voir Dire
2) Motion for a new trial in the Court of Common Pleas – Saluda County
3) PCR filed
4) Conditional Order to Dismiss
5) Return and Motion to Dismiss
6) Motion in Opposition to Respondent Return and Conditional Order to Dismiss
7) Appellant Declaration in Support of PCR application
8) Final Order of Dismissal

A substantial Constitutional Right 6th Amendment was violated where a miscarriage of justice taken place which denied appellant the right to an impartial jury, to witness that former attorney, Thomas D. Broadwater, presiding Judge Edward B. Cottingham, Solicitor Lake Eric Summers failed to dismiss, strike, and object to a juror that was bias, juror served and sat on jury, juror's uncle testified for the state. Juror's uncle is a county official, the Coroner for Saluda County. A constitutional Right Violation can be raised at any time. The matter at hand. Appellant was denied his right to Due Process as granted by the 6th Amendment to an impartial jury.

1) The PCR judge misconstrued section 17-27-45 (A) in finding that appellant was required to file his claim within one year after his trial. The PCR judge apparently overlooked the discovery Rule in section 17-27-45(c) which allows one year after the discovery of "material facts" not previously presented and heard that require vacation of the conviction or sentence to file a PCR application appellant argued he did not discover the bias juror until June 8, 2015, and he promptly filed a motion for a new trial, which appellant never had motion ruled on. Appellant promptly filed a PCR application seven (7) months after the motion for a new trial after making that discovery. Appellant claims that he is entitled to the discovery rule is not conclusively refuted by the record. Appellant believes judge erred by summarily dismissing appellant's claim.

2) Appellant believes a genuine issue of facts exists as to whether appellant's claim is successive under section 17-27-90, which permits an applicant to file a subsequent PCR application only if the applicant demonstrates a sufficient reason why the claims asserted therein were not asserted previously. Appellant argues he has demonstrated sufficient reason why his claim was not included in his first, second, third PCR applications were dismissed. However, state contends that this bias juror could have been discovered earlier through the exercise of due diligence and therefore, appellant has failed to state a "sufficient reason" based on this factual dispute, a hearing is necessary to resolve this critical issue.

3) The PCR judge erred in granting the state's motion for summary dismissal because genuine issues of material facts exist as to whether appellant's PCR claim is successive or un-timely, SEE: Leaman, 363 S.C. at 431, 611 S.E. 2d at 495 (S.C. Code ann 17-27-70(B)(C). Nothing summary dismissal of a PCR application without a hearing is appropriate only when it is apparent on the face of the application that (1) there is no need for a hearing to develop any facts, (2) the appellant is not entitled to relief where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR application and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which only can be resolved by a hearing, Delany v. State 269 S.C. 555, 556, 238 S.E.2d 679 (1977).

4) According to SC Code of Laws Title 14 Chapter 7 Article 9 section 14-7-1020. Jurors may be examined by courts if juror is not indifferent, he/she should be set aside, the court on motion of either party in suit, examine on oath any person who is called as juror to know whether he/she is related to either party, has any interest in the case, has expressed or formed any opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection, if it appears to the court that the juror is not indifferent in the cause, he/she must be placed aside as to the trial of that cause and another must be called.

   Presiding Judge Edward B. Cottingham committed an error of law by failing to do an inquiry individually on juror which juror was a possible interest in the cause, to wit that her uncle was a witness for state, her uncle testified for the state at trial.

5) Juror Tavy T. Hendrix, a bias juror should have been dismissed for cause due to a "material fact" that juror is related by blood closely related to a witness for the state that testified at applicant's trial, juror served on jury. The coroner, her uncle testified for the state at applicant's trial. Defense attorney Mr. Broadwater, Judge Edward B. Cottingham, Solicitor Lake Eric Summers failed to dismiss, strike, and object to juror for cause.

   S.C. code of Law Statute 17-27-20(A)(1)(4) any person who has been convicted of or sentenced for a crime and who claims (1) that the conviction or sentence was in violation of the constitution or sentence was in violation of the United States or the Constitution or Laws of this state. (4) that there exists evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence in the interest of justice.

6) The presence of a bias juror cannot be harmless, the error requires a new trial without a showing of actual prejudice. Dyer, 151, F 3d at 973, United States v. Martinez Salazar, 120 S.Ct 774, 782 (Jan. 19, 2000).

7) applicant filed a declaration in support of his after discovered evidence claim. Learning that he was convicted by a bias juror, by means of being closely related by blood to a witness for the state at applicant's trial. There was never an inquiry done on juror. There is no way to determine with any degree of certainty whether a defendant's right to see a fair trial by an impartial jury was abridged. SEE: Edwards 631 S.E. 2d 244, 248 (2006). The proper remedy in such cases is granting of a new trial. Ford, 334 SC at 66, 512, S.E. 2d at 504.

Appellant believes in the interest of fairness and justice that this Honorable Court should grant appellant an appeal and appoint counsel to represent appellant.