October 10, 2018

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

Re: ***Steven W. Littlejohn v. State***
Lower Court Case No 2015-CP-11-2042
Appellate Case No. 2017 – 001054

Dear Clerk:

Please find enclosed an original motion for relief from judgment, that is being submitted pursuant to SCRCP Rule 60 (b) with exhibits, affidavit, remittitur, and certificate of service to be "clocked-date-stamped" and filed by your office with a clocked-in copy of the same returned to me in the enclosed self-addressed stamped envelope pursuant to rule 602 SCACR as soon as feasible.

With the Kindest Regards
Steven W. Littlejohn #321946

CC: Valerie G. Giovanoli
Assistant Attorney General

RECEIVED
OCT 15 2018
S.C. SUPREME COURT

State of South Carolina
County of Cherokee
Steven W. Littlejohn

v.
State of South Carolina
Respondent

In the Supreme Court of South Carolina

AFFIDAVIT

Lower Court Case No 2015-CP- 11 – 0242
Appellate Case No. 2017-001054

I, Steven W. Littlejohn, Petitioner /Applicant have this date reviewed the "Conditional Order of Dismissal" signed by R. Keith Kelly, Chief Administrative Judge, Seventh Judicial Circuit in the above noted matter." Page 5 of 9 (i) should have been amended to the following: (See Exhibit No. 6)

Respondents inappropriately used a rule of appellate procedure that was no longer applicable (i.e. Rule 224 SCACR) and was reserved by the S.C. Supreme Court thereby prejudicing applicant and defaulting his claim.

Not the Applicant, as fraudulently alleged by respondents in the "Conditional Order of Dismissal" dated September 23, 2015. Petitioner submits he was represented by Appellate Counsel on appeal. Petitioner did not use SCACR Rule 224 since the hybrid representation is not allowed.

Notary Public for S. C.
Sworn to before me this
10 day of October 2018
EXP: 5-18-26

Steven W. Littlejohn #321946
Petitioner/Applicant

cc. Valerie G. Giovanoli
Assistant Attorney General

State of South Carolina
County of Cherokee
Steven W. Littlejohn
Petitioner
v.

State of South Carolina
Respondent

In the Supreme Court of South Carolina

Lower Court Case
No 2015-CP- 1100242
Appellate Case No. 2017-001054
Certificate of Service

I, Steven W. Littlejohn do hereby certify that I have this day served the Petitioners SCRCP Rule 60 (b) Motion for Relief from Judgement in the foregoing action on the attorney of record by depositing one copy of the same with exhibits, in the United States mail and addressed as follows:

Office of the Attorney General
Valerie Garcia Giovanoli, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

This 10 day of October 2018.

Steven W. Littlejohn #321946
Turbeville Correctional Institution
SNB #234
1578 Clarence Coker Highway
Turbeville, South Carolina 29162

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

November 14, 2017

The Honorable Brandy W. McBee
PO Drawer 2289
Gaffney SC 29342-2289

REMITTITUR

Re: Steven W. Littlejohn v. State
Lower Court Case No. 2015CP1100242
Appellate Case No. 2017-001054

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

cc:
Valerie Garcia Giovanoli, Esquire
Steven W. Littlejohn, 321946

State of South Carolina
County of Cherokee

Steven W. Littlejohn,
Petitioner/Applicant
v.

State of South Carolina
Respondent

In the Supreme Court
of South Carolina

No 2015-CP- 1100242
Appellate Case No. 2017-001054
Rule 60 (b) (3), (4)

Motion for Relief
From Judgement

You will please take notice that the undersigned will move this court for "Relief from Judgement" dated November 14, 2017 on the grounds of fraud upon the Court and the Judgement is void as provided by SCRCP.

Issue One: Did the Court of Appeals lack jurisdiction to advance respondent's motion under South Carolina Appellate Court Rule 224, while placed in reserve by the South Carolina Supreme Court?

Supporting Facts:

For the first time on appeal Respondent's attorney raised the unobjected/unpreserved claim of error regarding the material fact of the five-year negotiated sentence memorialized in the transcript record and intentionally submitted a false and fraudulent "Motion to Correct the Record and File a Supplemental Appendix" (9-09-09) pursuant to SCACR Rule 224 that was placed in reserve (5-3-07) by the South Carolina Supreme Court, violating the Court's Order. This motion was part of a scheme to defraud the Court and was erroneously granted by the court without jurisdiction. (See exhibits No. 1, 2, 3, 4, and 5).

Clearly, the Court of Appeals erred and lacked jurisdiction to inappropriately apply an inapplicable State Appellate Court Rule 224 while it was placed in reserve by the Supreme Court where no statutory provisions cannot be used for such. (See SCRCP Rule 81). A Court without jurisdiction only has authority to dismiss the action unless provisions are made by statute. When a court has no authority to act, its acts and proceedings are void, not voidable. (Thomas and Howard co. 318 S.C. 286, 291, 457 S.E. 2d 343) (Ross vs Richland County 270 S.C. 100, 240, S.E. 2D 649 (1978)

Without jurisdiction, the Court cannot proceed at all in any cause – jurisdiction is the power to declare the law and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. Pursuant to 60 (b) (4) the Court may grant a part relief from final judgement which is void. It also states that a motion to set aside judgment on the ground it is void must be brought within a reasonable time.

Issue Two: Did both the respondent's attorneys' and the petitioner's attorney collude to purge the record of the five-year negotiated sentence by using and allowing to be used an inapplicable SCACR Rule 224 while placed in reserve by the South Carolina Supreme Court as part of a scheme to intentionally defraud the Court, submitting a false, fraudulent "Motion to Correct the Record and File A Supplemental Appendix", past the statute of limitations?

Supporting Facts:

Petitioner filed his third PCR Application No. 2015-0242 on the grounds of newly discovered evidence (i.e. the State lacked jurisdiction and procedurally defaulted Petitioner's claim, and (2) Ineffective assistance of Appellate Counsel).

For the first time on appeal, Respondent's attorney raised the claim of error which was unpreserved for appellate review) related to the five-year negotiated sentence in the transcript record and by doing so intentionally and knowingly submitted a false "Motion to Correct the Record and filed a Supplemental Appendix" pursuant to SCACR Rule 224 on September 9, 2009, while placed in reserve May 3, 2007 by the South Carolina Supreme Court. (See Exhibits No. 1, 2, of 3 pgs., 5)

Petitioner's attorneys intentionally and knowingly submitted a false "Return To Motion to Correct and filed a Supplemental Appendix" deliberately failing to submit a judicial notice of misconduct directing the Court's attention to the matter that SCACR Rule 224 was reserved and should not be used at the time it was inappropriately used in Petitioner's case.

The Court of Appeals erroneously granted Respondent's false and fraudulent motion submitted pursuant to a SCACR 224, while placed in reserve and unusable, without jurisdiction.

Petitioner uncovered and rooted out newly discovered evidence May 23, 2012 that SCACR Rule 224 was placed in reserve by the South Carolina Supreme Court May 3, 2007 over two years prior to its usage and was not a rule. Therefore, this motion was deliberately submitted to defraud the Court as part of a scheme to "Purge" the record of the five-year negotiated sentence recorded in the transcript. This is extrinsic fraud that prevents a trial of the issue in Petitioner's case. (See Exhibit No. 5)

Because this motion was fraudulently submitted September 9, 2009 submitted pursuant to a SCACR Rule 224 after the Rule had been placed in reserve while the April 8, 2008 (first PCR hearing) was on appeal, Petitioner would have been unable to raise this issue in his collateral review. As a point of clarity, SCACR Rule 224 was reserved May 3, 2007 and the petitioner was sentenced on May 21, 2007. (See Exhibit No. 2, 5)

The PCR record is void of the claim of error with no objections and so the issue that the Respondent brought forward was not preserved for appellate review. State court rules regarding preservation of error prevented the State Supreme Court from addressing the claim as presented since the same claim was not presented to or passed upon by the State's PCR Judge (*See Coleman v. Thompson,* 501 U.S. 727 (1991)

In South Carolina, an issue must have been raised below and ruled upon by the PCR Judge to be preserved for appellate review. *Evans v. State,* 365, S.C. 495, 503-04,611 S. E. 2d 510,512 (2005); *Plyer v. State*, 309 S.C. 408, 424 S.E. 2d 477 (1992). An issue or argument that is not raised at PCR hearing or ruled upon by the PCR Court, is procedurally barred from appellate review.

Since the decision in *Marlar v. State*, 375 S.C. 407, 409; 653 S.E. 2d 266 (2007) decided on November 5, 2007 – after this date the State Supreme Court will not address issues, even in PCR unless first presented to and ruled upon by the trial court. *Smith v. State,* 404, S.C. 493, 745 S. E. 2nd 378, 2012 W.L. 386620 *6 (Ct App. 2012)

The Court's reliance upon the false and fraudulent "Motion to Correct the Record and file A Supplemental Appendix" intentionally submitted to defraud the Court (*Hazel- Glass Co. v. Hartford Empire Co.* 322 U. S. 232, 245-246, 64 S. Ct. 997,88L.Ed 1250 (1944) Pursuant to a reserved SCACR Rule 224, violating a Supreme Court Order, resulted in an error of law and an abuse of discretion by the Court (BB&T v. Taylor 369 S.C. 548, 551)

Clearly, the Court erred addressing the claim of error on appeal, not preserved, presented or passed upon by the State PCR Judge and procedurally defaulted under the independent and adequate state law doctrine.

Part II with Argument

As part of the scheme, Petitioner's attorney intentionally and knowingly submitted a false, fraudulent "Return to Motion To Correct Record and File a Supplemental Appendix" but deliberately failed to submit a judicial notice of misconduct directing the court's attention to the fact that SCACR Rule 224 was reserved at the time it was inappropriately used in the Petitioner's case, thereby violating a Supreme Court order dated May 3, 2007, prejudicing the Petitioner and procedurally defaulting his case. (Rule of Professional Conduct 8.3 (A), 8.4 (d) (See Exhibit No. 1, 3, 5,) But for counsel's deficient performance the results of this proceeding would have been different citing Strickland v. Washington 466 U. S. 668 104 S. Ct. 2052, 802 Ed 2d 674 (1984)

This procedural default was a direct result of inadvertence of Appellate Court Counsel and State for intentionally allowing this illegal proceeding to transpire when the State's Attorneys and Petitioner's attorney were fully aware of the circumstances of an inapplicable rule that was no longer in use. The appellate record is void of any mention of SCACR Rule 224 being reserved as Appellate Counsel was ineffective for corruptly selling out his client's interest to the opposite side. (*Bizzell v. Hemington*, 548 F 2d 505 4th Cir. 2977). This is extrinsic fraud used to prevent the petitioner from fully exhibiting and trying his case.

In *Murray v. Carrier* 106 S. Ct. 2601 (1986) the Sixth and Fourteenth amendments of the United States Constitution mandates the State to bear the risk or constitutionally deficient assistance of counsel where procedural default is the result of ineffective assistance of counsel, the Sixth and Fourteenth amendments require that the responsibility for default be imputed to the State.

The court's reliance upon the false, fraudulent "Return to Motion To Correct the Record and File A Supplemental Appendix" resulted in an error of law and abuse of discretion by the Court (BB& T v. Taylor 369 SC 548,551).

The court erred by not finding Appellate Counsel ineffective for his intentional failure to submit a judicial notice directing the court's attention to the fact that SCACR Rule 224 was inappropriately used, while placed in reserve. Petitioner believes that this was as a result of a scheme to deliberately defraud the Court and Counsel's failure to report misconduct, violating Rules of Professional Conduct. Appellate Counsel was ineffective for selling out his client's interest to the other side.

Part III with Argument

This scheme continued – from the outset after receiving the fraudulent evidence, a tainted conditional Order of Dismissal submitted by the respondent's attorney; Petitioner uncovered/rooted out and made continuous objections of a substantial error in the order material to his case, that specifically alleged (without evidential support and baseless accusation) that the "applicant" inappropriately used SCACR Rule 224 while placed in reserve by the South Carolina Supreme Court when in fact, it was the respondent's attorneys who inappropriately used SCACR Rule 224, violating a Supreme Court Order, which petitioned the Court on appeal to purge the record of the 5-year negotiated sentence memorialized in the transcript record with a false "Motion to Correct the Record and File a Supplemental Appendix" (See Exhibit No.1, 2, 5 6-pg. 5 of 9(i) and enclosed Affidavit).

Respondent's attorneys deliberately presented known false and fraudulent evidence (*Washington v. State* 478 S. E.833) *Ingiglo v. U.S*, 150, 925. Ct. 763, 316 Ed 2d-164 (1992) deliberate deception of a Court by

presentation of known false and fraudulent evidence is incompatible with rudimentary demands of justice as the Respondent's attorneys allowed this known, fraudulent, false evidence to go uncorrected when it appeared. They urged this known false evidence upon the Court and prevailed.

Petitioner submitted his 59E motion to reconsider requesting this substantial material error to be corrected and the record amended. A status check with the Cherokee County Clerk of uncovered and revealed in the record that:

> The Conditional Order of Dismissal filed 9-23-15 Rule 59 E sent to the Attorney General's Office on 10-21-15 – This will be scheduled by the Attorney General's Office".
> (See Exhibit No.7 from the record)

Clearly as a part of an intentional scheme, the Attorney General's Office deliberately failed to schedule a hearing and intentionally submitted false evidence to defraud the Court and to prevent the Petitioner from fully presenting his case regarding the material five-year negotiated sentence in the transcript record. This is extrinsic fraud and is collateral to the material issue tried in this case and effective deprived the Petitioner of a fair hearing or opportunity to present his case. (Rule 60(b) (3). *Jamison v. Ford Motor Co.* 373, S.C. 348).

The Courts' reliance upon this false, fraudulent evidence a conditional "Order of Dismissal" and the baseless allegations regarding who inappropriately used SCACR Rule 224 while being placed in reserve by the Supreme Court when in fact, it was Respondent's Attorneys who intentionally submitted this known, false, fraudulent evidence to defraud the court resulting in an abuse of discretion because the order is based upon factual conclusions that are without evidentiary support. The judgment was procured through fraud upon the Court.

Clearly the Court erred granting this baseless, groundless, frivolous allegation as the record shows it was the respondent's attorneys who inappropriately used SCACR Rule 224 while reserved and made known false allegation in the "Conditional Order of Dismissal". Respondent's Attorney's role in submitting the following:

I. Known, false and fraudulent "Motion to Correct the Record and File A Supplemental Appendix" – Intentionally submitted pursuant to SCACR Rule 224 while in reserve to defraud the court. (See Exhibit #2)

II. Known, false and fraudulent "Return to Motion to Correct Record and File a Supplemental Appendix – Intentionally using and allowing to be used SCACR Rule 224 while in reserve to defraud the Court. (See Exhibit #3)

III. Known, false "Conditional Order of Dismissal" – Intentionally submitted, falsely alleging it was the "Applicant" who inappropriately used SCACR Rule 224, while reserved, when in fact, it was the respondents – to defraud the court. (See Exhibit #6)

Clearly, the evidence in the record supports the position that the respondent's attorneys affirmatively knew or should have known that SCACR Rule 224 was in reserve, misconduct should have been reported and it was the Respondent who inappropriately used SCACR Rule 224 while reserved.

These attorney's role in submitting known, false record documents constituted a "deliberate planned and carefully executed scheme "to defraud not only the South Carolina Rules of Court but the Court of

Appeals (*Hazel-Atlas Glass co. v. Hartford Empire Co.* 322 U.S. 238, 245-246, 64 S Ct. 997, 88L. Ed. 1250 (1994).

Conclusion

In conclusion, Petitioner expresses and has shown this Honorable Court the unrefuted evidence of a deliberately planned and carefully executed scheme used to defraud the Court by use of a defunct SCACR Rule 224 by the Respondent's attorneys.

Petitioner, by use of SCRE 201 (b) supports his argument that a judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) Generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably be questioned.

Rule 201 (d) states that a court shall take judicial notice if requested by a party and supplied with the necessary information.

Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions established to protect and safeguard the public. Fraud cannot be tolerated in the good order of society.

In considering present facts, the Petitioner has demonstrated the existence of a prima facie showing of a meritorious motion and defense supported by court records, documents, exhibits and affidavit raising jurisdictional error and due process questions of law worthy of investigation and discussion of real facts of conflicting or doubtful evidence that the court may grant relief from judgement within a reasonable amount of time. *See Deaton v. McClury* 380 s. C. 563

Petitioner prays that this Honorable Court will also take into consideration that Petitioner is a "Pro Se" litigant without substantial knowledge and experience in the matter of law and the Court will assist him to assure fairness that protects Petitioner's due process (Sixth and Fourteenth Amendment Constitutional Rights.)

Respectfully Submitted,
Steven W. Littlejohn #321946
Turbeville Correctional Institution
SNB 235
1578 Clarence Coker Highway
Turbeville, South Carolina 29162

Cc: Valerie Garcia Giovanoli, Esquire
Office of the SC Attorney General

Exhibit No. 1

MR. STALVEY: May it please the Court. May I approach?

THE COURT: Yes, sir.

MR. STALVEY: If it please the Court.

Your Honor, this is the State vs. Steven Wayne Littlejohn. Mr. Littlejohn is here on Indictments 06-GS-11-413, 414, 415 and 416.

Your Honor, all of those indictments have been true billed by the grand jury. And they are for possession with intent to distribute crack near a school or playground, possession with intent to distribute cocaine near a school or a playground, possession with intent to distribute crack cocaine and trafficking in cocaine.

Your Honor, he is here to plead guilty to all four of those charges. The state and his attorney, Mr. Roger Poole, have negotiated a sentence of five years to run concurrent on all of these charges. Thank you, Your Honor.

Your Honor, also for the record, the state is agreeing to let Mr. Littlejohn plead to the lesser included offense of trafficking in cocaine second offense. He is indicted for third or subsequent offense, 28 to a hundred grams, which would carry 25 to 30 years. We're letting Mr. Littlejohn plead to the second offense which carries seven to 30 years.

THE COURT: You are Steven Wayne Littlejohn.

Exhibit NO. 2 (1 of 3 pgs.) 0 15CP-11-0242

#

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO CHEROKEE COUNTY
Court of Common Pleas

The Honorable Kenneth G. Goode, Circuit Court Judge
2007-CP-11-495

Steven Wayne Littlejohn, 321946 ..... Petitioner,

v.

State of South Carolina, ... Respondent.

MOTION TO CORRECT THE RECORD AND FILE A SUPPLEMENTAL APPENDIX

Pursuant to Rule 224 of the South Carolina Appellate Court Rules, counsel for Respondent moves for this Court to allow the Respondent to correct the record and file a supplemental Appendix in this case. It has come to the Respondent's attention that the guilty plea transcript found in the appellate record contains a material typographical error.

The Petitioner claims he was not informed of a five-year plea deal prior to his pleading. This claim is based on the appearance of the word "five" on page 3 of his guilty plea transcript. (App. p. 109). The court reporter has sworn by an attached affidavit that the word "five" should actually be the word "fifteen." Page 109 of the Appendix reflects page 3 of the guilty plea transcript. Lines 15-17 currently read, "The state and his attorney, Mr. Roger Poole, have negotiated a sentence of five years to run concurrent on all of these charges." These lines should be corrected to read, "The state and his attorney, Mr. Roger Poole, have negotiated a sentence of **fifteen** years to run concurrent on all of these charges."

The Petitioner did not raise his allegation of a five-year plea offer in his post-conviction relief

Exhibit NO. 4

26 OF 29
26 OF 29

~~ATTACHMENT #6~~ ~~GROUND 2~~
~~36 OF 40~~

application. He briefly raised it at his post-conviction relief hearing, noting that he had not heard anything about a five-year offer until he read his guilty plea transcript. Though the Petitioner mentioned it in his testimony, the record indicates it was not the focus of the PCR hearing. It was not until his Petition for Writ of Certiorari that the Petitioner made substantial argument on the appearance of the word "five" in his guilty plea transcript.

The Petitioner enumerated 31 allegations in his post-conviction relief application, but none of them related to the typographical error discussed herein. The Respondent did not investigate the appearance of the word "five" in the transcript prior to the post-conviction relief hearing because the Petitioner failed to notify the Respondent he intended to raise this issue. At the time of the PCR hearing, the Respondent believed the brief mention of a five-year negotiation was a misstatement by the solicitor. It was clear in following paragraphs that all parties appearing in the record understood the plea negotiation to be for fifteen years rather than five years.

The claim regarding the five years was merely mentioned by the Petitioner and was not the focus of his PCR claim. Further, the PCR Court did not make a finding on this issue and the Petitioner failed to request a finding on this issue through a 59 (e) motion. Rather, the Petitioner raised the issue for the first time in a significant way during his Petition for Writ of Certiorari.

In preparing the State's response to the petition, the Respondent realized the guilty plea transcript possibly contained a significant typographical error. After speaking with the court reporter, Linda Moffitt, it became clear that where the record reflects the solicitor mentioning a five-year negotiation, the solicitor actually stated it was a fifteen-year negotiation. Linda Moffitt was able to conclusively determine a typographical error had been made and the record is erroneous.

The Respondent requests this Court hold time in abeyance to allow for the correction of the error in the record. The Respondent moves to correct the record and supplement the appendix.

An accurate transcript is required for a full and fair review of the lower court's findings. Inasmuch as

the above records are relevant and pertinent material under Rule 227(e), SCACR that should be included in the Appendix, counsel moves this Court to allow the Respondent to include a corrected guilty plea transcript in a Supplemental Appendix.

WHEREFORE, as the Appendix is incorrect, counsel for Respondent requests this Court: (1) grant the motion to allow the Respondent to correct and supplement the Appendix and (2) hold time limits for the filing of the Return to Petition for Writ of Certiorari in abeyance until the motion is ruled upon.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MICHELLE PARSONS KELLEY
Assistant Attorney General
Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

By: Michelle Parsons Kelley
ATTORNEYS FOR RESPONDENT

September 9, 2009.

Exhibit No. 3 (1 of 5 pgs.)

#9

THE STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO CHEROKEE COUNTY
Kenneth G. Goode, Circuit Court Judge
2007-CP-11-495

Steven W. Littlejohn, 321946,

Appellant,

v.

State of South Carolina,

Respondent.

(RETURN TO MOTION TO CORRECT RECORD AND)

(FILE A SUPPLEMENTAL APPENDIX)

There is no rule more fundamental for appeals than that they are a review of actions taken by the lower court based upon the evidence presented to the lower court. Rule 212, SCACR, is not intended to be a vehicle to circumvent this principle. The State is procedurally barred from materially altering the record below by introducing new matter not seen by the trial judge. *Morris v. Anderson County*, 349 S.C. 607, 564 S.E.2d 649, n. 4 (2002); *Norris v. Ferre*, 315 S.C. 179, 183, 432 S.E.2d 491 (Ct. App. 1993).

The transcript now complained of by the State was provided by the State to the Appellant/Applicant, and he justifiably relied upon it in preparing his case. The State should be estopped to present a "new and improved" transcript

at this late date after the Appellant has filed his Petition for Writ of Certiorari based upon the existing record. See *St. Paul Fire & Marine Ins. Co. v. Osborne*, 217 S.C. 96, 59 S.E.2d 849 (1950).

The State concedes in its motion (p. 2) that the Appellant raised the five year issue at the post-conviction relief hearing (in direct examination of both the Applicant and of Assistant Solicitor Stalvey), but the State now claims that this did not count because it did not realize that this testimony was in support of gaining relief! Although the State now claims that it had insufficient notice of this issue, it made no objection at trial; so, at the very least, the issue was tried by consent.

The State's claim that no separate finding was made on the issue supposes that a trial judge is required to go one by one down the list of facts alleged to be a basis for relief. While this approach would benefit appellate courts, it is not obligatory on trial courts. There was no need for a 59(e) motion because the judge clearly denied relief on all grounds. (See the Conclusion section of the Order, Appendix at p. 8.)

Had the State truly been surprised, its remedy would have been to seek a continuance, which it did not, or to make a post-trial motion to re-open the record for the taking of new evidence, which it did not.

The after-discovered evidence standard is a useful one to apply to the consideration of the State's attempt to add new

matter, despite procedural and constitutional bars. Under this standard a movant must show that there is newly discovered evidence which "could not have been discovered before the trial." Jamison v. Ford Motor Co., 373 S.C. 248, 272, 644 S.E.2d 755 (Ct. App. 2007).

In this case, the State provided the transcript to the Applicant, but apparently did not discuss it with the witnesses before trial. A statement in the record that there had been a plea agreement for 5 years followed by a plea of 15 years is plainly something which needed clarification, and the Applicant sought to do that. This is not something which the State could not have discovered pre-trial by due diligence.

One of the most cherished rights in the many centuries of Anglo-Saxon jurisprudence is the right to confront the witnesses against you with cross-examination, yet the State proposes to paper over what it has belatedly determined to be a weakness in its case with an affidavit! Article I, § 14 of the South Carolina Constitution and the Sixth Amendment to the United States Constitution apply even to the Attorney General. The State cannot introduce new evidence after understanding from the Appellant's Petition for Certiorari that there is a hole in its case without sacrificing due process of law and denying the right of confrontation.

Because the State was charged with drawing up a proposed order after the hearing, it had some control over when the order was submitted and filed. This in turn gave it some

control over the time it had to investigate and file a post-trial motion, yet by its own admission the State waited until after it had received the Petition for Certiorari before it stirred itself into action. Having slept on what it claims to be its rights, the State now wrongly expects this Court to bail it out.

Although the State wants this Court to believe that it could not know what the true situation was until it got around to asking the court reporter about the transcript months after the hearing, in fact, it had a much simpler way to handle the matter on the day of the hearing.

Deputy Solicitor Morin, who had been in charge of plea negotiations before the term in which the Applicant pled, testified and the State could have asked him about plea negotiations. The State put the trial attorney, Roger Poole, on the stand, and it could have asked him about plea negotiations. Although the State now attempts to blame the Applicant for supposedly not hammering on the 5 year issue enough that it dawned upon it that this was an issue, it concedes that the ground was raised, so it cannot now submit an affidavit not subject to cross-examination to respond to the issue post-trial.

CONCLUSION

The State has not stated a basis upon which this Court

can grant the relief sought in the motion, and that relief if granted would do violence to the Appellant's constitutional rights. The motion must accordingly be denied.

John R. Ferguson
Attorney for the Appellant
S.C. Bar No. 1987
107 E. Laurens St.- P.O. Box 286
Laurens, S.C. 29360
(864) 984-2126

September _____, 2009

Exhibit NO. 4 (1 of 2 pgs.)

The Supreme Court of South Carolina

Steven W. Littlejohn, Petitioner,

v.

State of South Carolina, Respondent.

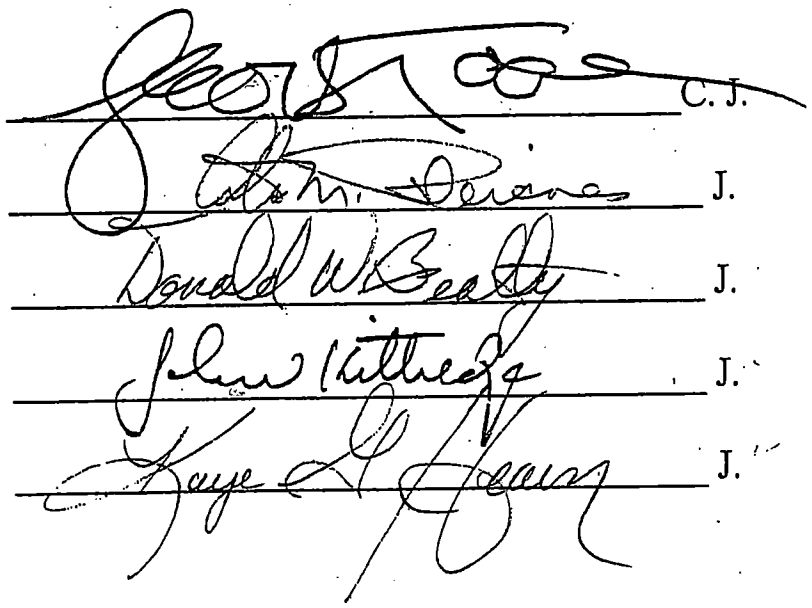
ORDER

Petitioner has filed a petition for a writ of certiorari seeking review of the order of the circuit court denying his application for post-conviction relief. Prior to filing its return, the State seeks to correct a page of the guilty plea transcript and supplement the appendix with the corrected page. Petitioner has filed a return in opposition to the State's motion.

We hereby deny the petition for a writ of certiorari as to petitioner's *arguments* I, III, IV, V and VI. We reserve a ruling on petitioner's *argument* II until after the State has filed its return.

Because the portion of the transcript the State seeks to correct and include in the appendix is not relevant to the issue remaining before this Court, and the State seeks only to correct a scrivener's error in the transcript, we grant the motion to correct the record and file a supplemental appendix.

IT IS SO ORDERED.



C. J.

J.

J.

J.

J.

Columbia, South Carolina

January 21, 2010

Exhibit No. 5

015CP-110242

Mary McCabe

From: Chris Florian
Sent: Wednesday, May 23, 2012 9:32 AM
To: Mary McCabe
Subject: RE: Scan from a Xerox WorkCentre

Reserved means that there is no Rule 224, they are keeping it as a placeholder. This was done by way of Supreme Court Order dated 5/3/2007.

Chris

-----Original Message-----
From: Mary McCabe
Sent: Tuesday, May 22, 2012 6:14 PM
To: Chris Florian
Subject: RE: Scan from a Xerox WorkCentre

We need to know what this means: "Reserved" in 2009. And what month did it take effect?
mhm

-----Original Message-----
From: Chris Florian
Sent: Tuesday, May 22, 2012 9:02 AM
To: Mary McCabe
Subject: RE: Scan from a Xerox WorkCentre

Rule 224 was marked "RESERVED" in 2009.

Chris

-----Original Message-----
From: Mary McCabe
Sent: Monday, May 21, 2012 6:07 PM
To: Chris Florian
Subject: FW: Scan from a Xerox WorkCentre

Mr. Florian, here's another I need answered. Thanks in advance. mhm

-----Original Message-----
From: DoNotReply@doc.state.sc.us [mailto:DoNotReply@doc.state.sc.us]
Sent: Monday, May 21, 2012 7:09 PM
To: Mary McCabe
Subject: Scan from a Xerox WorkCentre

Please open the attached document. It was scanned and sent to you using a Xerox WorkCentre.

Attachment File Type: PDF

WorkCentre Location: Tyger River CI UY Education (DC016106) 896-3527

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2015 JAN 23 AM 11 15
BRANDY W. MCBEE

CLOCKED IN PROOF

EXHIBIT NO. 3

Exhibit NO. 6 (1 of 3 pgs.)

STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Steven W. Littlejohn, # 321946, Applicant, v. State of South Carolina, Respondent.	2015-CP-11-0242 **CONDITIONAL ORDER OF DISMISSAL**

FILED IN THE OFFICE OF THE CLERK OF COURT
2015 SEP 23 P 4:11
BRANDY W. FREE
CHEROKEE COUNTY, SC

This matter comes before this Court on an application for post-conviction relief (PCR) filed by Steven W. Littlejohn (Applicant) on March 17, 2015. The State (Respondent) made its return, requesting the application be summarily dismissed for failure to file within the time period mandated by the statute of limitations; and because it is barred by the doctrine of *laches*.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Cherokee County. Applicant was indicted at the May 2006 term of the Cherokee County Grand Jury for two counts of Possession with Intent to Distribute (PWID) Cocaine near School and/or Playground (06-GS-11-412; -414), one count of Possession with Intent to Distribute Crack Cocaine (06-GS-11-415 and one count of Trafficking in Cocaine, 28-100 g, third offense (06-GS-11-416). He was represented on the charges by Roger J. Poole, Esquire. On May 21, 2007, Applicant pleaded guilty to two counts of PWID cocaine near School and/or Playground, PWID Cocaine, and Trafficking in Cocaine, second offense. He was sentenced by the Honorable J. Derham Cole to confinement for a period of ten (10) years on each count of the PWID Cocaine near School or Playground, fifteen (15)

RKK

Exhibit NO. 1

i. Applicant inappropriately used a rule of Appellate procedures that was no longer applicable and was reserved by the Supreme Court; being rule 224 SCACR, thus prejudicing Applicant and defaulting his claim.

2. Ineffective assistance of appellate counsel.

Before this Court are the Cherokee County Clerk of Court records regarding the subject guilty plea, records from the South Carolina Department of Corrections, records from Applicant's prior PCR proceedings, and Respondent's Return and Motion to Dismiss.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

This Court finds the present application for post-conviction relief should be summarily dismissed because it successive to Applicant's previous PCR application. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). The relevant statute provides

> [a]ll grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

S.C. Code Ann. § 17-27-90 (2014). Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application

RKK

Exhibit No. 7

March 18, 2016

Brandy McBee
Clerk of Court, Cherokee County
Post Office Drawer 2289
Gaffney, So. Car. 29342

FILED IN THE OFFICE
CLERK OF COURT
2016 MAR 28 P 12:59
BRANDY W. MCBEE
CHEROKEE COUNTY, SC

Re: Case Status Check

Dear Clerk,

Please provide me with the current to date status of these two Court of Common Pleas Cases Listed below:

1. Steven W. Littlejohn V. State of South Carolina
013CP-110192 - Filed March 22, 2013
dismissed 5/12/15 Re-consider order affirmed original dismissal 6/29/15 Appeals 7/17/15

2. Steven W. Littlejohn V. State of South Carolina
2015-CP-11-0242 - Filed March 7 2015
Conditional Order of Dismissal filed 9/23/2015
Rule 59E sent to AG on 10/21/15 - this will be scheduled by the AG's office 3/29/16

Your Assistance in this Matter is greatly Appreciated.

Respectfully Submitted,
Steven W. Littlejohn
Steven W. Littlejohn

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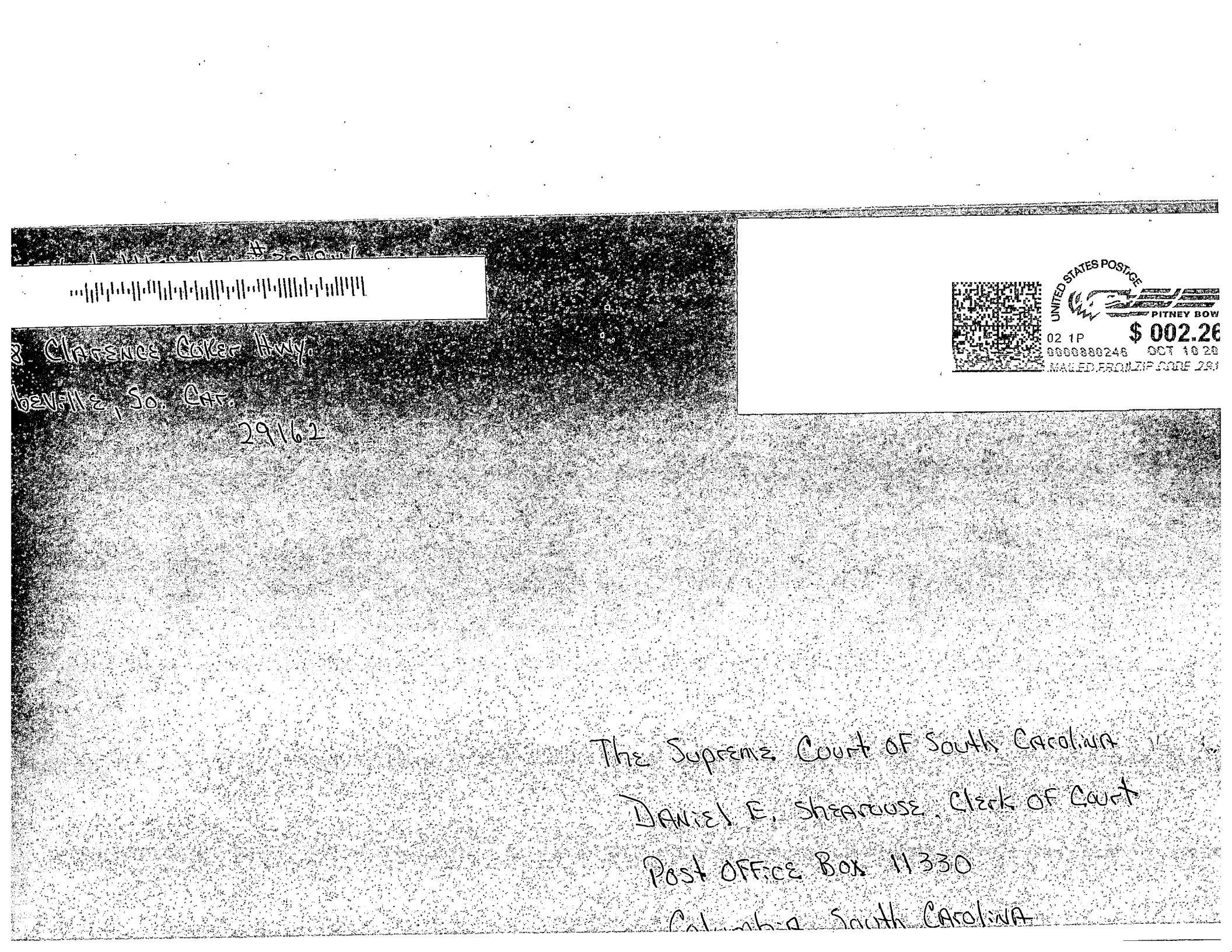

8 Clarence Coker Hwy.
Dalzell, So. Car.
29162

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