

STATE OF SOUTH CAROLINA
In The Supreme Court.

CERTIORARI TO AIKEN COUNTY
DOYET A. EARLY, III CHIEF ADMIN. JUDGE
COURT OF COMMON PLEAS

APPELLATE CASE NO. 2017-1729
LOWER CASE NO. 2015-CP-62-01730

Noel E. Gray Jr. #307590 Petitioner

Vs.

State of South Carolina Respondent

MOTION FOR LEAVE OF COURT TO REINSTATE WRIT OF CERTIORARI

Petitioner making it's Motion For Stay of Court To Reinstate
Writ of Certiorari, would respectfully show this Court:

I.

The Honorable Doyet A. Early, III did not have the jurisdiction to
Rule on the Order dated July 18, 2017 filed on July 31, 2017 pursuant to
S.C. Const. Art. V § 4 Order handed down by the Honorable Chief Justice
Toal on April 12, 2013 deeming Judge Early as a Conflict of Interest
see Exhibit enclosed.

This matter arrived pursuant to a Motion to Recuse Judge Early
in violation of Rule 501 COJC SCACR Canon 3 (E)(1) citing Floyd v. State,
303 S.C. 298, 400 S.E.2d 145 (1991) filed on March 13, 2013 because of his
extreme Bias towards the petitioner "see Exhibit" enclosed"

RECEIVED

OCT 22 2018

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO AIKEN COUNTY S.C. SUPREME COURT
DOYETAE EARLY, III. CHIEF ADMIN JUDGE
COURT OF COMMON PLEAS

Appellate Case No. 2017-1729
Lower Case No. 2015-CP-02-01730

Noel Gray, #307590 ----- Petitioner

v.

State of South Carolina ----- Respondent.

CERTIFICATE OF SERVICE

The petitioner hereby submits that a true copy of the Motion for Leave of Court, to Reinstate writ of Certiorari, Sworn Affidavit, and proof of Service has been deposited in the U.S. Mail postage prepaid and addressed to the following parties

1. The Honorable Robert J. Herte, Clerk of Court, P.O. Box 583 Aiken, SC 29802-0583;
2. Ms. Danielle C. Gourley, Asst. Atty. Gen. P.O. Box 11549, Columbia, SC 29211-1549 by.

"Certified Mail Receipt enclosed"

Pursuant to Rule 243(g); and 203 (d)(1) and (B) (i) S.C. App. Ct. Rules, all parties are served.

SUBSCRIBED AND SWORN to before me

this 18th day of October, 2018

x Kenneth Mitchell ys

Notary Public for South Carolina

my commission expires: May 23, 2028

Noel Gray

Noel Gray, #307590

BREI / Marion #152 B

4460 Broad River Rd.

Columbia SC 29210

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO AIKEN COUNTY
DOYET A. EARLY, III CHIEF ADMIN. JUDGE
COURT OF COMMON PLEAS

Appellate Case No. 2017-CO-1729
Lower Case No. 2015-CP-02-01730

Noel E. Gray, Jr. #307590 ----- Petitioner

v.

State of South Carolina ----- Respondent.

SWORN AFFIDAVIT OF PETITIONER

The petitioner here in swears under the penalty of Perjury pursuant to S.C. Code Ann. § 16-9-10 that every thing contained here-in are true and correct, and supported by genuine issues of material fact to constitute a legal cause of action and the petitioner is entitled to relief requested in this motion for Leave of Court to Reinstate Writ of Certiorari. To the best of the petitioner's knowledge and beliefs this action is ripe for review and the 1 year Statute of limitations has not been tolled.

SUBSCRIBED AND SWORN to before me

this 18th day of October : 2018

x Kenneth Mitchell ys

Notary Public for South Carolina

My Commission Expires: May 23, 2028

Noel Gray

Noel Gray #307590

BRCT/Merion #152B

4460 Broad River Rd.

Columbia, SC. 29210

Noel Gray #307590
MARION #152 B
BROAD RIVER CORR JUST
4460 BROAD RIVER ROAD
COLUMBIA, SC 29210

October 16, 2018

RECEIVED

OCT 22 2018

S.C. SUPREME COURT

The Honorable Robert J. Herte,
Clerk of Court
In The Court of Common Pleas
PO Box 583
Aiken, SC 29802-0583

Re: Motion for Leave of Court to Reinstate writ of Certiorari Appellee Case
No. 2017-001729/2015-CP-02-01730 Improperly Indexed by Clerk Anne Knopfle
on July 9, 2015 / Filed on March 24, 2014 and Judge Early violating Rule 501
COTC SCACR Canons 1, 2, 3 and Rule 502 RTC SCACR Rule 7(a) 1, 4, 7, 9,
by signing Orders dated January 23, 2017 and July 31, 2017 and C.J. Tuels
Order dated April 12, 2013 "Judge Early is a Conflict of Interest"

Dear Mr. Herte,

On several occasions, the Applicant here-in has attempted
to have this illegal and unconstitutional Actions of this Court corrected
for Rule 71.1(c) SCRP improper indexing and erroneous rulings that violates
the Applicants due process of law and Equal protection of the law and his 1st.
Amendment right to equal access to this Court. It has been consistently denied
and obstructed violating the 5th and 14th Amendments, US Const. and Art. 133 SC Const.

Enclosed for filing in this Court is Applicants Motion filed in the State
Supreme Court. please clerk stamp a copy on this for me please. Zam indigent.
May God Bless You!

Respectfully Requested

Noel Gray

Noel Gray #307590

Prose Applicant

Noel Gray #307590
MARION #152(B)
BROAD RIVER CORR. INST.
4460 BROAD RIVER ROAD
COLUMBIA SC. 29210

October 16, 2018

RECEIVED

OCT 22 2018

The Honorable Daniel E. Sheerouse
Clerk of Court
PO Box 11330
Columbia, SC. 29211

S.C. SUPREME COURT

Re: Motion for leave of Court to Reinstate writ of Certiorari NO.
2017-001729 / 2015-CP-02-01730 / Appointment of Counsel Requested
Also enclosed Exhibits, the Respondents already have them. EXHIBITS 65 pgs.

Dear Honorable Sheerouse

Please find enclosed the above cited Motion with Sworn Affidavit
and Certificate of Service to be filed in this Court. Also enclosed is a True
Copy to be clocked stamped and returned in the SASE enclosed for your
convenience. Also All parties are served.

The petitioner found the Certified Mail Receipt serving the State
dated August 15, 2017, due to these excessive shutdowns, the evidence was
lost, and the lockdowns due to the Lee County murders. I apologize for the
mistakes. Also, note, the petitioner is entitled to Relief pursuant to the
Honorable CJ Toles order dated April 12, 2013 deeming Judge Early as a
Conflict of Interest and illegally signing the Orders dated January 23, 2017,
Re: 2013-CP-02-00478 and July 31, 2017 Re: 2015-CP-02-01730.

Also, the 2015-CP-02-01730 was an improperly indexed NO. The PCR
Application was filed on March 24, 2014 Genuine necessary Recd.

Please file this in the interest of Justice pursuant to the 5th and
14th Amend. US Const. and Article 1 § 3 of the SC Const.

Respectfully Submitted
Noel Gray
Noel Gray #307590
Pro-se Petitioner

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

OCT 22 2018

S.C. SUPREME COURT

CERTIORARI TO AIKEN COUNTY
DOYET A. EARLY, III, CHIEF ADMIN. JUDGE
COURT OF COMMON PLEAS

Appellate Case No. 2017-001729
Lower Case No. 2015-CP-02-01730

Noel E. Grau, Jr. #307590 ----- Petitioner.

v.

State of South Carolina. ----- Respondent.

MOTION FOR LEAVE OF COURT TO REINSTATE WRIT OF CERTIORARI

Petitioner making his Motion FOR LEAVE OF COURT TO REINSTATE WRIT OF Certiorari, would respectfully Show this Court:

I.

The Honorable Doyet A. Early, III did not have the jurisdiction to Rule on the Orders dated July 18, 2017 filed on July 31, 2017 and January 3, 2017 filed on January 23, 2017 pursuant to SC Const. Article V §4 Order handed down by the Honorable Chief Justice Tolson dated April 12, 2013 deeming Judge Early as a "Conflict of Interest" See enclosed exhibit.

This matter arrived pursuant to a Motion to Recuse Judge Early in violation of Rule 501 (OSCAR Canon) 1, 2, 3 and Canon 3(E)(1) citing Floyd v. State, 303 S.C. 298, 400 S.E.2d 145 (1991) filed on March 13, 2013 because of his extreme biasness towards the petitioner. See exhibit enclosed.

This Honorable Court made it's Order on October 24, 2017 due to the Petitioner has failed to provide a proof of Service showing that a copy of the Notice of Appeal was served on the Opposing party as required by Rules 243(b) and 203(d)(1);(B)(i) of the South Carolina Appellate Court Rules. Accordingly, this matter was dismissed, and the Remittitur was sent on November 9, 2017.

Due to the excessive shutdowns caused by the Gang Related Stebbings and the Lee County Murders, the proof of Service was lost. But on October 15, 2018 the petitioner discovered attached to the Envelope, serving the Clerk of Court was the Certified Mail Receipt dated August 15, 2017 see Exhibit enclosed. Therefore, the Opposing party was served according to the Rules as Ordered by this Honorable Court.

The petitioner makes a Status Quo Ante on the Res Gestae of the misapplication of Laws, Misrepresentation of Genuine Material Facts that will support entitlement of this writ of Certiorari being granted and that the petitioner's Sentences and Convictions are obtained in clear violation of the U.S. Constitution, S.C. Constitution and Federal and State Case laws.

Also, Judge Early's erroneous Rulings on the 2008-CP-02-0734; - 2011-CP-02-02776; 2013-CP-02-0478; Rule 29(b) SCR Crim. P. and 2015-CP-02-01730 Actions require a Vacatur and are Void for lack of Subject Matter Jurisdiction pursuant to Anderson v. Anderson, 299 S.C. 110, 382 S.E.2d 897 (1989), and Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001).

PCR Action 2008-CP-02-0734 was held before Judge Early on February 7, 2009. The petitioner was represented by a Real Estate Attorney Bradley L. Boni Esq. who has never done a Criminal Case before.

The following issues were raised:

1. Violated Federal Interstate Agreement on Detainers Act Contract (IADA);
2. Ineffective Assistance of Trial Counsel, Failure to object to properly preserve the unlawful Sentence enhancement under S.C. Code § 17-25-45 Recidivist Statute for Appellate Review;
- 3 Subject Matter Jurisdiction.

Petitioner sent PCR Counsel a Motion pursuant to Rule 59(e) SCRPC on January 15, 2009, due to it being sent to the Clerk of Court on January 5, 2009, but was returned with instructions to send to PCR Counsel.

In this PCR, PCR Counsel was totally unprepared, he had no case law: pursuant to Rule 71.1(e) SCRPC and S.C. Code Ann. § 17-27-80.

He had no Trial Transcripts pursuant to Gunter v. State, 229 S.E.2d 723, 724 (S.C. 1976).

No discovery pursuant to S.C. Code Ann. § 17-27-150 (B) (2003)

No funds were obtained for Investigative or Expert Services pursuant to S.C. Code Ann. § 17-3-50 (B), (C) (2003)

In this PCR a Order of Continuance came out obtained by Trial Counsel Kelly P. Brown Esq. Aiken County Public Defender on October 29, 2004 from the Honorable Reginald L. Lloyd Chief Admin. Judge Second Judicial Circuit and was filed on November 8, 2004.

On April 6, 2009 Judge Early made his erroneous Order of Dismissal dismissing the 3 issues with prejudice and stating that the Subject Matter Jurisdiction Issue was waived a clear and Misapplication of law.

PCR Counsel had a Statutory Mandated duty to follow the PCR Statute Rule 71.1(d) SCRPC. and to file a Rule 59(e) SCRPC to preserve the petitioners issues for Appellate Review and to correct Judge Early's erroneous findings of fact, and misapplication of law. And the Respondents unlawful presumption that the Court of Appeals stated "that the prior Conviction was fine to be used" was not correct.

Also, PCR Counsel failed to subpoena Appellate Counsel Eleanor Duffy Cleary of the S.C. Div. of Indigent Defense.

PCR Counsel failed to file the Rule 59(e) SCRPC citing: Blanding - v. Werden of McCormick Corr. Inst. 2013 WL 5316613 "Conclusion"

Petitioner's argument that PCR Counsel's "failure" to file a Rule 59(e) SCRPC Motion in the PCR Court establishes cause for the procedural default on the grounds raised.

Had PCR Counsel been a Criminal Trial Court lawyer or hired a investigator;

or an expert, he would have discovered the following:

1. The Continuance obtained by Trial Counsel was in clear violation of Rule 407 RPC Rule 8.4 Misconduct at A, b, c, d, e, g, and the petitioner filed grievances against her at the Office of Disciplinary Counsel see Matter No. 09-DE-L-0877 and 12-DE-L-0375 and she committed the unlawful act of felony perjury pursuant to S.C. Code Ann. § 16-9-10 a felony under S.C. Code Ann. § 16-1-10 (1985) pursuant to the Continuance and her testimony.

The State was not prepared to try this case in the October Term of Court as Stated, "Proof" pursuant to the Trial Counsel's Official Correspondence dated August 3, 2004 and August 16, 2004 the term of Court of October consisted from the 18th through the 29th.

In the Newly Discovered Evidence pursuant to S.C. Code Ann. § 17-27-45 (B) dated September 25, 2018 from the Honorable Clerk Katie Williams Deputy Clerk of Aiken County. The Terms of Court for October 2004, The Honorable Reginald L. Lloyd Chief Admin. Judge was not on the bench. Also there was no Court Reporter due to the Trial Court Sessions were over, And the Continuance was obtained on the 29th, therefore, there is no possible way the State was prepared to try the petitioner's 2004-05-02-1333-1334-1335 Indictment) in the October Term of Court as Stated by Trial Counsel on the 2nd Day of February (2004)

The petitioner also contends that if the State was prepared to try this case in the October Term of Court 2004, you file the Continuance before the 18th, not on the 29th when Trial Court Session is over, a clear violation of Ineffective Assistance of Trial Counsel citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984); U.S. v. Cronin, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed. 2d 657 (1984); State v. Cherry, 361 S.C. 588, 606 S.C. 2d - 475 (2004). *Infra*

Also, the petitioner discovered in the Trial Court Transcripts, the following "Deed Bony" winners that was abandoned by Trial Counsel and Appellate Counsel Eleanore Duff Cleary citing U.S. v. Cook 45 F.3d 388 (CA 10 1995), as follows:

Trial Counsel was ineffective for challenging Trial Court's erroneous conclusions that the State met its burden of proving S.C. Code Ann. § 6-3-655 (2) beyond a Reasonable doubt and Combined Appellate Counsel was ineffective for abandoning the relevance argument

ROA pg. 153 at 11-25 Trial Counsel makes her Mid Trial Motion for a Directed Verdict as to both indictments, at ROA pg. 154 at 4-10 ... the State has not produced sufficient or credible evidence by which the jury could find beyond a reasonable doubt that Mr Gray would be guilty of the charges.

The Court on ROA pg. 157 at 12-18 "I think there is plenty of evidence, if believed, and that is for the jury's determination, that if believed, that would be supported to the allegations of CSC 2nd to both indictments

Trial Court denies the motion ROA pg. 156 at 25 and 157 at 1.

ROA pg. 161 at 18-25, pg. 162 at 1-4 Trial Court moves the Court the second time for a renewal of the Directed Verdict as previously stated.

on 5-11 Trial Court erroneously stated again "I think there is plenty of adequate testimony to support a jury's verdict ... at 7 "I will deny the motion ...

ROA pg. 252 at 24-25 and pg. 253 at 1-13 Trial Counsel makes her 3rd. Post-Trial motion and moves for a New Trial.

on 14-19 The Court makes another erroneous ruling "I think it's strictly a credibility of witnesses situation, and if the jury found the testimony to be believable, I think there was sufficient evidence and so that motion would be denied.

"This is clearly a Gross-Miscarriage of Justice" citing Aice, 409 S.E.2d at 394. and a clear violation of Rule 501 COJCSACR Canons and the Fifth and Fourteenth Amend(s) of the U.S. Const. and Art. 1 § 3 of the S.C. Const. citing Lowry v. State, 376 S.C. 499, 657 S.E.2d 766 (2008) Petitioner's claim arises out of the Due Process Clauses of the Fifth and Fourteenth Amendments, which protect an accused against conviction unless the State supplies proof beyond a reasonable doubt of each element necessary to constitute the crime with which the accused is charged citing S.C. Const. -

Article 133.

In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) This principle prohibits the use of evidentiary presumptions in a jury charge that have the effect of relieving the State of its burden of proof beyond a reasonable doubt as to every essential element of the crime, see Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979) "Burden Shifting" and Rose v. Clark, 478 U.S. 570, 106 S.Ct. 3101, 92 L.Ed.2d 460 (1986) "Burden Shifting"; Smith v. Robbins, 528 U.S. 259 (2000).

The petitioner also relies on Patterson v. New York, 432 U.S. 197, - 97 S.Ct. 2319, 53 L.Ed.2d 281 (1977) and Jackson v. Virginia, 443 U.S. 307, - 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

Please take Judicial notice to the elements and Testimony of Dr. Lisa Bethea States Witness:

Pursuant to S.C. Code Ann. § 16-3-655 (2) A person is guilty of C.S.C. 2nd. if the actor engages in "Sexual Battery" with a victim who is Fourteen years of age or less, but who is at least eleven years of age.

The elements of the offense is under the "Sexual Battery" requirements. Sexual Battery is defined as "Sexual Intercourse, Cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.

Dr. Lisa Bethea Direct Exam ROApg. 117 - 130. "Please not Trial Counsel was ineffective for her failure to subpoena a Medical Expert citing: Gersten - v. Senkowski, 426 F.3d 589 (CA 2 2005) Defense Counsel was ineffective for failing to call a witness, or even consult in preparation for trial and cross-examination of the prosecutor's witnesses, any medical expert on child Sexual Abuse. See also Miller v. Snokowski, 268 F.Supp.2d 296 (E.D.N.Y. 2003)

And Medical Evidence to support CSC was sought Hoissonback v. White, 133 F.3d 1382 (CA 11 1998) Remand

Also, note Trial Counsel failed to use the victims Medical Records to

impeach her credibility citing: Tucker v. Prelesnik, 181 F.3d 747 (CA 6 1999).
also citing: State v. White, 273 S.C. 487, 257 S.E.2d 239 (1979) Defendant
is allowed to impeach a witness on cross-exam regarding
evidence.

(ROA pg. 120 at 22) Q And what was the purpose of your exam?

at 23: A. The purpose of my exam is to document any objective

at 24: evidence of Sexual Abuse or Physical abuse,

at 25 Q And what type of exam did you perform on (ROA pg. 121 at 1) Christina?

at 2 A As we usually do, we perform a complete exam, head to
at 3 toe of the child in a gown and including a genital at 4 exam.

at 5 Q And what were your findings in this case?

at 6 A The exam was basically normal

at 7 Q And when you say normal, what are you looking for as a
at 8: possibility of abnormalities in the pelvic area in a at 9 Sexual
assault case?

at 10: well, there are, as you can imagine, many things to look
for, abrasions, bruises, vaginal discharges, at 12: bleeding, scars, multiple
abnormalities

at 13: Okay, And so, you did not find any of those

at 14: No

This testimony just cleared the petitioner of any CSC 2nd offense
and Trial Counsel was clearly ineffective under Cronic, for failure to
challenge Trial Courts erroneous abuse of Discretion e.g. State v. Edens,
250 S.E.2d 116, 118 (S.C. 1978); State v. Pierce, 207 S.E.2d 414, 417 (S.C. 1974).

And she was ineffective under Strickland Supra, and Cherry Supra,
for failure to pursue a lesser-included offense as a defense: citing:
Young v. Zant, 677 F.2d 792 (CA 11 1982). also citing: Kerrigan v. State,
406 S.E.2d 160 (S.C. 1991) Reverte / Remand.

Therefore, Appellate Counsel Eleonore Daffy Cleary was ineffective
for her failure to raise insufficient evidence citing: Carpenter v. Mohr,

163 F.3d 938 (CA 6 1998) see also Holsclaw v. Smith, 822 F.2d 1041, 1047 (CA 11 1987) (In sum, we are of the view that, if Counsel had challenged the sufficiency of the evidence, in the trial court and on Direct Appeal, there is a "reasonable probability" that he would have prevailed, also citing: McHale v. U.S. 175 F.3d 115, (CA 2 1999). Petitioner challenged Appellate Counsel abandonment of the filed appeal on October 9, 2006 to the Office of Disciplinary Counsel Matter No. 05-DE-L-1221. In order to preserve ineffective assistance of Appellate Counsel citing Smith v. Robbins, 328 U.S. 259 (2000); Pennsylvania v. Finley, 481 U.S. 551, (1987); Guntz v. Lucey, 469 U.S. 387 (1985) a clear deprivation of due process of law and a fundamentally unfair denial of equal protection of the law citing the Fifth, and Fourteenth Amendments of the U.S. Constitution and Art. 1 § 3 SC State Constitution Appellate Counsel Cleary failed to prosecute the appeal.

The Anders mandate was not followed Freels v. Hills, 843 F.2d 956, (CA 6 1988).

And Appellate Counsel's No-merit brief was unconstitutionally deficient Lombard v. Lynaugh, 868 F.2d 1475 (CA 5 1989), and was a constructive denial of Counsel Lofton v. Whitley, 905 F.2d 885 (CA 5 1990).

The petitioner filed a Pro-Se Brief on November 9, 2006, but due to hybrid representation citing: Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010); Jones v. State, 348 S.C. 13, 588 S.E.2d 517 (2002); Koon v. Clove, 338 S.C. 423, 527 S.E.2d 357 (2000); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); U.S. v. Singleton, 107 F.3d 1091, 1102 (4th Cir. 1997); State v. Benedict, 607 So. 2d 817, 832 (La App-1st Cir. 1992); Lindsey v. Whitley, 1993 WL 241851, 1 (5th Cir. 1993) (unpublished); and Foster v. State, 298 S.C. 306, 397 S.E.2d 907 (1998) The Court held: Once Counsel is appointed to an indigent, he/she does not have a constitutional right to hybrid representation. Therefore, pursuant to the State Appointed Attorneys' failures to comply with the Statutory requirements as provided by the Rules of Court and procedures, the petitioner's hands are tied and these "failures" are justified as a "State Created Structural defect" that has violated due process of law and caused the petitioner to have an unfair denial of a State Created

Liberty Interest.

Also, Trial Counsel was ineffective for her failure to raise her Motion for New Trial based on Linda Brown's Testimony R/A pg. 39 at 20-25 - pg. 64 at 1-5. This was clearly prosecutorial misconduct and using unfair prosecutorial tactics that gave petitioner an unfair trial, inflamed the passions of Trial Court and Jury that got him falsely convicted on perjured testimony in clear violation of the Fifth and Fourteenth Amendments under the U.S. Constitution and Art. 1 § 3 S.C. Constitution.

And Counsel's failure to object to this unlawful testimony was fundamentally unfair and shocking to the Universal Sense of Justice citing: Butler v. State, 397 S.E.2d 87, 88 (S.C. 1990) (citations omitted) (quoting State v. Miller, 84 A.2d 459, 463 (N.J. Super. Ct. App. Div. 1951).

Opening Statements Solicitor Chandler

R/A pg. 31, pg. 32 at 20-25 in Linda Brown,,, but sometimes participated in it. R/A pg. 33 at 5 "Gory Details", R/A pg. 34 at 17 Linda Brown,,, R/A pg. 44 at 20-25 Linda Brown Direct Exam: in use me as a feel partner,,, R/A pg. 47 at 6 using me once again as a feel partner.

Please take Judicial notice to the Trailer testimony from 13-25 R/A pg. 48 at 1-25; R/A pg. 49 at 1-2. The mother was not participating in the Sexual acts "What happened" "I wonder" "Yep. Set up."

Cross-Exam Trial Counsel

R/A pg. 52 at 5-13 Statements to Inv. Blevins, and Solicitor on October are inconsistent to the Statements to the jury. Trial Counsel ineffective for failing to impeach Linda Brown's testimony constituted deficient performance. citing: U.S. Ex. Rel. McCall v. O'Grady, 908 F.2d 170 (CA 7 1990); Rezend v. Evidentiary Hearing; Moffett v. Kolb, 930 F.2d 1156 (CA 7 1991) Petition Granted; Driscoll v. Delo, 71 F.3d 201 (CA 8 1995) The District Courts grant of writ was affirmed.

Also note Trial Counsel opened the door to inadmissible evidence citing Wood v. U.S. 995 F.2d 1317 (CA 6 1993) Mike Williams R/A pg. 96 at 2-4 "I had him investigated by law enforcement. And they came to my house and picked him up. That was the time he was gone."

also citing U.S. v. Bosch, 584 F.2d 1113 (CA 1 1978) On Direct Appeal
p. 1123 "Evidence of other crimes" The Court's instructions to the jury
in response to both questions about Exhibit "K" were clearly erroneous.
"Evidence of other crimes is not admissible to prove the character of a
person in order to show that he acted in conformity therewith, Fed. R.
Evid. 404(b). p. 1124 Although a Court is entitled to rely to a great extent
on the parties' attorneys to protect their own clients' interests, the Court
too, has a duty to ensure that a Criminal defendant receives a fair trial
U.S. v. Nobles, 422 U.S. 225, 203, 95 S.Ct. 2160, 45 L.Ed.2d 141 (1975) (omitted)
[Conviction Reversed and New Trial Ordered].

CLOSING ARGUMENTS SOLICITOR CHANDLER

RUApp. 163 at 25 ... Mom says she would watch Junior pg. 164 at 1-2
sexually... while he was groping her mother, at 17 Her mother served her
up. RUApp. 165 at 5. mother denied it at 6 she was participating; at 12
participating in it; at 22 mother served her up.

RUApp. 166 at 4-5 Trial Counsel Objects to Solicitor Chandler's
statements but fails to properly preserve the issue for appellate Review.
RUApp. 168 at 24-25 she admits ... RUApp. 169 at 1 ... used her as a feeder
and would feel on her breasts... but at 4-5 Solicitor changes the story
now mom is feeling on daughter's breasts. at 10 she opens herself up
of being charged... what mother would admit to any of this unless
it's true "Vouching for the Credibility of the witness", at 21 This is
the truth". RUApp. 170 at 3 How this mother can do this... at 5
Anybody else can have their day in Court, at 25 her mother failed to
protect her, ... RUApp. 172 at 7, the mother was participating "...
RUApp. 173 at 4 - And no matter how at 5 disappointed, disgusted, or
totally through that you are at 6 with the actions of Linda Brown...
at 8 this case is not about Linda Brown to day... at 10 her mother
did what she did in at 12 mother failed to protect her in at 13 she
offered her up...

Ms. Brown Trial Counsel RUApp. 174 at 11

ROA pg. 177 at 8-12 Solicitor Chendler Objects

ROA pg. 178 at 3 in Focusing on Linda, at 7 admits to lying on multiple occasions, at 12 prevent her from prosecution, at 19-20 she doesn't get prosecuted, at 22 she hasn't been charged at 22 Cristina wasn't taken away from her. at 25 I was involved too...

ROA pg. 80 at 2 Junior says I'm out of here, He was gone at 8 already, gone for a period of time, He says I'm out of here, They get in a huge fight over it, Christine told you, they fought, see ROA pg. 87 at 1-20 cross-examine Christine Brown "He mother begged him not to leave, got angry with him. But he left. He left anyways and next thing you know, lo and behold, Linda's making a phone call? She's angry, Christine is probably upset too. She loves him, but loved her mother too. And she told you, she'd lie for her mother. Important New Trial Issue citing State v. Paul Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986) see Rule 401 SCRE, evidence should be excluded if it is calculated to arouse the sympathy or prejudice of the jury. Reverse/Remand for New Trial Hard feeling towards the defendant by victim's family relevant "Vendetta" issue.

ROA pg. 181 at 2 "expert wants you to believe that Christy's story... at 25 keeps me from being prosecuted in

Trial Counsel unveils the objections on both sides: at ROA pg. 184 at 2-5 "You know, they accuse me of using Linda Brown as a smoke screen. That's not what they are doing with these experts. Using them as a smoke screen, to kind of bolster the credibility of these witnesses. at 24-25, but it's a smoke screen. They want to bolster because they know these witnesses ROA pg. 185 at 1-2, aren't credible because they've lied so much, they want to bring in these experts to bolster the case, citing Rogers v. State, 261 SE-288, 199 SE-2d 761 (1973) A New Trial was issued due to the State using Professional Medical Experts to bolster the credibility of the alleged victim when penetration was at issue.

The petition rests on State v. Hinson, 293 S.C. 406, 361 S.E.2d 120

1987 also citing S.C. Const. Art 1 § 3 "Defendant was allowed to renew motion and file supplemental documentation in support of motion for New Trial based on the non-disclosure of Promise of immunity made to witness by Solicitor. When the State disclosed nothing prior to trial regarding promise of immunity with respect to prosecution's witness, witness responded to questioning by Trial Counsel / Cross Exam, - RWA pg. 64 at 1-3 Q "You're hoping and praying that your testimony here today will keep you out of Jail, is that right A at 3, I hope it will." and after Sentencing, Prosecution made no references to Linda Brown getting immunity for her alleged Sexual Contact with her daughter

Due process requires disclosure by prosecution, upon motion of Defendant, evidence which would be favorable to the accused, and which is material of Guilt or innocence, and evidence which may be used to impeach the Credibility of the witness is favorable to the accused.

The petitioner also relies on Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963) and U.S. v. Bagley, 473 U.S. 667, 105 S.Ct. 3375, 87 LEd-2d 481 (1985) Reversed / Remanded.

Now, let's see how prejudicial Linda Brown's Testimony was to the Trial Court and his erroneous abuse of Discretion! RWA pg. 255 at 12-25: The Court: In fact, that's one thing I want to say and I'm not going to dwell on it too much, but I think that the Solicitor, if they do their job, they will be indicting her because I think it's one of the worst things I've ever seen in all my years as a judge and a lawyer. And she did more than make a mistake, she violated the law very seriously and to my way of thinking, you know, there are always predators out there, but for the person who is charged with protecting a young girl to give away is just RWA pg. 256 at 1-2 beyond -- just wrong. But anyway, that's just how I feel, and the case is not before me now. at 5-8 But I did want to say that I wanted to express my opinion that I think the Solicitor's Office

Ought to indict her to the full extent of the law and let her get her day in court.

On November 22, 2011 the petitioner received a Document from the Aiken County Sheriff's Dept. Linda Brown was never charged or indicted.

The petitioner contends, he was not prosecuted at Trial, Linda Brown was.

Now let's go back to PCR Action 2008-CP-02-0734 dated February 2, 2009. Before Judge Early.

PCR Tr. pg. 9 at 1-11 Petitioner gives Oral testimony pursuant to S.C. Code Ann. § 17-27-80 (Crim), Simpson v. Moore, 627 S.E. 2d 701, 712 (S.C. 2006) that he sent correspondence to Trial Counsel, Judge Early and Ms. Willis Alvers at 7. The Court why would you send it to me? at 8-11: Petitioner: I was trying to report that my IADIA was violated and I was trying to seek some legal help because I tried talking to my counsel, but she wouldn't discuss it with me. and I filed grievances on behalf of the as well.

Direct Exam Trial Counsel PCR Tr. pg. 12 at 18-25, PCR Tr. pg. 13 at 8-10 well, he had questions about that, I believe the correspondence that I had from him regarding that issue started around December of 2004. at 11 And was there ever a continuance granted in this case? at 12 Yes... signed on October 29, of 2004, at 17, the state was prepared in October term of Court... at 25 "he agreed" in

Cross-exam PCR Tr. pg. 16 at 21 "He agreed" in at 23 He and I had communication about that matter. at 25 Okay, did you get any thing in writing from him PCR Tr. pg. 17 at 1-2 regarding that issue, No I did not. Infra!

Now let's look at the Prior Conviction, was it fine to be used as a sentence enhancement pursuant to S.C. Code Ann. § 17-25-45 Recidivist Statute. No As follows:

PCR Tr. pg. 3 at 24 Judge Early asks Ms. Willis "All right,

He had an Appeal?

at 25 Ms. Williams, He did have a direct appeal and the PCR Tr. pg. 4 at 1-6 ... The Court found that the Georgia offense was fine to be used ...

PCR Counsel failed to object to Respondent's misrepresentation of the Direct Appeal's determination, PCR Tr. pg. 11 at 22-25, Ms. Williams: Trial Judge erred ... PCR Tr. pg. 12 at 3-4 Court of Appeals dismissed the appeal on that exact allegation. Wrong. Misrepresentation of Genuine Material Facts.

Now let's evaluate Trial Counsel's Misrepresentation of the issue. PCR Tr. pg. 14 at 12-25. I would like to ask you a little bit about your research regarding the Recidivist Statute ...

I did. I looked at the Statute myself, and also I had a copy of the indictment ... even though the term of oral Sodomy isn't a term of art that we would use here in South Carolina pursuant to that Statute ... PCR Tr. pg. 15 at 1-18 ... "it seemed on its face" and based on my research ... was appropriate to be used for enhancement purposes under our Recidivist Statute.

The Court at 11. Isn't that exactly what the appellate brief was written on to the Court of Appeals by whoever did it.
at 14, Ms. Williams Yes, Sir.

Now Trial Counsel reveals her lies to her research PCR Tr. pg. 17 at 3-5 PCR Counsel asks Trial Counsel OK and regarding the allegations in the Georgia indictment in your research, did you ever see where it mentioned anything about Skin to Skin Contact?

at 6 I don't recall

at 7 OK, Do you recall if it ever mentioned anything regarding whether clothing was on or off in those allegations?

at 12-14 If clothing between Mr Gray and the victim -- if they were wearing clothes or if the victim was not wearing clothes,

Do you recall in your research if ever mentioned in the indictment, or
at 15-19 Trial Counsel: It was not mentioned in the indictment,

I would find it hard to believe that an allegation could be made of mouth to vaginal contact with clothing being present. However, the indictment did not mention anything specifically about the presence or absence of clothing.

PCR Tr. ps. 18 Ms. Williams gave the Statutes and the State v. Lindsey case. This clearly shows Trial Counsel and the Respondent lied to the judge in the initial PCR.

Trial Counsel's misrepresentation of her Research was clearly out of Perjury, Deceit, Fraud and a clear violation of Rule 407 RCP SCACR Rule 8.4. This clearly supports Trial Counsel's indecency and Ineffectiveness towards the petitioner citing U.S. v. Allen, 88 F.3d 765 (CA 9 1996) "The certified copies of the convictions on their face supports petitioner's position that the convictions were uncounseled Remand on Petitioner's Sixth Amendment claim, and for resentencing.

Also, Counsel commits perjury at the PCR citing Lahoy v. Armontrout, 923 F.2d 578 (CA 1991). Pg. 579 "If conditions exist casting doubt on the reliability of the State Courts Findings of fact, the presumption of correctness [of the State Court] may be rebutted, and the petitioner is entitled to a Evidentiary Hearing to review those findings. This court will find the requisite conditions exist in the circumstances of Trial Counsel's clearly established violation of Rule 8.4 Misconduct at (a) - (g) Rule 407 RCP SCACR, and her perjured testimony in the initial PCR, before Judge Early.

Judge Early's Order of Dismissal with prejudice was clearly, erroneous abuse of Discretion citing Edens v. State, Supra, and Pierce v. State, Supra, dated April 6, 2009. Also note "due to Judge Early, Trial Counsel and PCR Counsel's Unconstitutional actions that deprived an indigent of a State Created Liberty Interest, he filed grievances to preserve those rights see 09-DE-J-0199, 09-DE-L-0877; 09-DE-L-0876 and Petitioner's Constitutional Challenge of Trial Counsel's Statements (Vacate previous rulings and Remand for PCR).

PCR Counsel filed his appeal to the State Supreme Court without filing a mandated Rule 59(e) SCRPC and the Writ of Certiorari as follows:

On August 26, 2009, Div. of Appellate Defense appointed Ms. Wende H. Carter Esq., to represent him.

Appellate Counsel had a mandated duty pursuant to Strickland, Supra, Pennsylvania v. Finley, 481 U.S. 551 (1987), Furtt v. Lacey, 469 U.S. 387 (1985); Anders v. California, Supra, and Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988) and S.C. App. Ct. R. 243(g) to raise every issue in the petition for Writ of Certiorari to prevent procedural default in Federal Habeas Review and on December 2, 2009 Appellate Counsel only filed an updated version of the Initial Direct Appeal. Appellate Counsel filed "Initial Direct Appeal" whether the Trial Judge erred by sentencing appellant to LWOP where his prior conviction from Georgia, was not for nor for an offense that would be classified as a most serious offense in South Carolina? ...

In appellant's indictment there is no allegation that his tongue reached the victim's vagina, Contact with mouth through clothing constituted agg - child molestation in Georgia, but would not constitute CSC in South Carolina. Therefore, appellant's prior conviction is not necessarily for a crime that would be classified as a most serious offense as required by Section 17-25-45(A)(2), Therefore, he should not have been sentenced to (LWOP) under the recidivist statute.

Conclusion, Based on the foregoing, appellant's case should be Remanded for resentencing.

Writ of Certiorari Brief pursuant to Johnson, Supra as follows:

Trial Counsel erred in failing to object to petitioner's LWOP sentence under 17-25-45 in order to preserve the issue for Appellate Review because the prior conviction used to enhance sentencing did not qualify as a most serious offense under South Carolina CSC offenses.

State v. Lindsey, 335 S.C. 15, 583 S.E.2d 740 (2003) where the Court held that the defendant's prior rape conviction did not qualify as a most-serious offense with respect to our State CSC statutes because there was no indication that the prior rape contained the requisite element of force, i.e. via aggravated force or aggravated coercion under S.C. Code Ann. § 16-3-652 and 653. The Lindsey Court reversed the (WOP) and Remanded for re-sentencing.

As a rule, unless an objection is made at the time the evidence is offered and a final ruling is made, the issue is not preserved for review, State v. Rice, 375 S.C. 302, 652 S.E.2d 409 (Cr.App. 2007).

Trial Counsel erred in failing to object to petitioner's (WOP) sentence under 17-25-45 because the prior conviction used to enhance sentencing did not qualify as a most-serious offense in light of S.C. CSC statutes, Trial Counsel's errors in failing to preserve the issue for appellate review violated due process at sentencing under the Sixth and Fourteenth Amendments to the U.S. Constitution and Art. 1 § 14 and § 3 of the S.C. State Constitution.

Conclusion. Based on the foregoing argument, petitioner's writ of Certiorari should be granted in order to allow full briefing on the issue.

Also, note petitioner filed a Pro-Se Brief on December 29, 2009 that contained 322 pages see 2009-126986.

Both Direct Appeal 4p.op.No. 2008-4P-040 and 2008-1P-02-0734 PCR Writ of Certiorari was Dismissed without merit on January 11, 2008 and the Remittitur was sent on January 30, 2008 and on December 2, 2010 and the Remittitur was sent on December 21, 2010.

The petitioner's Federal Habeas Review C/A No. 4:11-227-CMC-TER was a complete joke. And Mr. William Edgar Salter, III. Respondent misrepresented the petitioner's Writ of Certiorari filings. In his Return and Memorandum of law in Support of Motion for Summary Judgment dated July 20, 2011, on Page 4. The dequate representation of PCR Counsel was filed on July 2nd, 2009, this document was not a Pro-Se Response to the erroneous Johnson petition as Counsel Stated, The petitioner was not afforded to file a Pro-Se Response until December 3, 2009 45 day notice.

1 Every issue raised in the Pro-Se Brief in Direct Appeal filed on November 9, 2006; PCR dated April 18, 2008; and Rule 59(c) SCRCP sent on January 5, 2009 pre-maturely; and Writ of Certiorari dated December 29, 2009.

The petitioner filed a grievance due to Appellate Counsel Wanda H. Carter for her ineffectiveness Matter No. 09-DCR-1542. Therefore the petitioner did not feel to raise the issues contained in his Pro-Se Briefs or Rule 59(c) SCRCP it was a State Created Structural defect that caused the petitioner to lose his State and Federal Court proceedings.

The Petitioner's hands were tied due to Hybrid Representation. And the blame falls on the State Appointed Counsel. A clear miscarriage of Justice, and unfair denial of due process of law and equal protection of the law.

The petitioner is a victim of Ineffective Assistance of Counsel and Appellate Counsel and Incompetent PCR Rec'd State Attorney, that establishes the cause for the procedural Defaulted Claims in 18 USC 2254 habeas Review in violation of the Fourteenth Amendment under the US Constitution.

On October 12, 2011 the petitioner was sent a Rule 5 Brady Disclosure from Trial Counsel, and in this package the following documents were found:

1. Trial Counsel's official Correspondence dated August 3, 2004 and August 16, 2004: October Term of Court 18th - 29th.

2. Letter to Trial Counsel dated December 25, 2004 PCR Tr. pg. 9 at 1-11 and Page 13 at 8-10

3. Letter for Judge Early Dated December 29, 2004 PCR Tr. pg. 9 at 1-11

4. Return Correspondence from Judge Early dated January 10, 2005:

5. Legal Envelope with Judge Early's official Address:

6. Prosecution's discovery of Linda Brown participating in Sexual Battery dated October 7, 2004:

7. Subpoena never enforced and Content, not at trial dated January 11, 2005.

8. Diken County Sheriff's Dept. Research from Petitioner dated November 7, 2011.

9. Return from Vickie P. Snyder Records Manager, "Linda not charged"

dated November 22, 2011

10. Federal IADID Contract not at PCR
11. Sent to Kirkland & RAB on February 15, 2004 (ZADA) violation;
12. DNA taken on February 18, 2005 "Proof of Imprisonment"
13. Sent back to Jail on February 21, 2005;
14. Grievance #1 dated February 27, 2005 "Federal Property Destroyed"
15. Grievance #2 dated February 28, 2005;
16. Grievance at Federal Prison Dated March 2, 2005;
17. Correspondence from Federal Probation Officer, dated September 22, 2011;
18. Federal Correspondence to Warden Stevenson "Petitioner still under the Color of Federal Law on Custody";

19. 2 Former Plea offers dated October 7, 2004 and January 11, 2005, one is a non-violent offense, and alleged victims medical Records not at Trial.

On December 9, 2011 the petitioner filed a PCR Action 2011-CP-02-02776 Newly Discovered evidence pursuant to S.C. Code Ann. § 17-27-20 (a) (4) There is evidence of material facts, not previously presented or heard that require vacation of Sentences and Convictions in the interest of Justice. Also, cited Cooks v. State, 575 S.E.2d 557 (S.C. 2003) S.C. Code Ann. § 17-27-45(c)(2003) that fell under the "Discovery Rule" this newly Discovered evidence was filed within 1 year after discovering Trial Counsel's errors. The petition was timely and petitioner was entitled to a Evidentiary hearing to determine if Trial Counsel was ineffective.

This PCR Action was erroneously dismissed with prejudice on June 26, 2012 to cover up Trial Counsel's ineffectiveness and that petitioner was serving an illegal and UnConstitutional Sentence unlawfully, and without a Evidentiary Hearing.

On September 24, 2012 the petitioner filed a Rule 29(b) SCRCrim. P. regarding the erroneous rulings that constituted a gross miscarriage of Justice. See the Directed Verdict Motions "Preserved" and Linda Brown's Testimony On November 30, 2012 Judge Early erroneously denied this action

as well a clear violation of due process of law and Rule 501 CODE SCACR Canon 1, 2, 3. and without hearing or explanation.

On December 4, 2012 the petitioner filed an Appeal to this erroneous ruling to the SC Court of Appeals:

On December 18, 2012 the petitioner is issued Appellate Case No. 2012-213607

On January 11, 2013 the petitioner is appointed Mr. Robert M. Pachek Esq. of the S.C. Div. of Appellate Defense.

On April 12, 2013 Mr. Pachek files his Internal Brief pursuant to Owens v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) failure to communicate a plea offer to a client constitutes deficient performance. The petitioner also stands on Missouri v. Frye, 132 S.Ct. 1399 (2012); Lafley v. Cooper, 132 S.Ct. 1376 (2012); Bell v. State, 410 S.C. 436, 765 S.E.2d 4 (2014)

The Appeal was complete on January 29, 2014 and the Remittitur was sent on February 24, 2014

On February 4, 2014 Appellate Counsel sends official correspondence to petitioner with the PCR Application to be filed before the Lyer Statute of limitations.

On March 20, 2014 the petitioner sends the Application to the Court with a motion to file Motion to Amend the Subject Matter Claims to the Appellate Case No. 2012-213607 Application

It was filed on March 24, 2014

On July 9, 2015 Clerk Anita Knoepfle Deputy Clerk improperly indexes the March 24, 2014 filing to 2015-CP-02-01730 a clear violation of Rule 71.1(c) SCRPC and the First Amendment right to equal access to the Court a clear violation also to due process of law under the Fourteenth Amendment to the U.S Constitution and Article 1 § 3 S.C. State Constitution.

This improper indexing of the 2nd Judicial Circuit Court is a Circumstance beyond the petitioner's Control McCleskey v. Zant, 499 U.S. 467, 468 (1991).

Because of Judge Early's Misconduct and Daniel L. Gourley's Acts of Bad Faith and Misapplication of the Subject Matter Jurisdiction Claims, the petitioner filed a Preliminary Injunction against Judge Early and the SC Atty. General Mr. Alon Wilson, to have the Court fix the Irreparable Injuries caused by the Defendants on February 27, 2017.

The petitioner had a hearing before the Honorable Edger W. Dickson 1st Judicial Circuit in Court Room 5 on September 25, 2017 at 1:30 pm. in Aiken County, but the petitioner did not get the Jury Trial he demanded.

Judge Dickson erroneously denied the action to cover up the Defendants illegal and unconstitutional actions, on June 6, 2018 and the petitioner filed a Rule 59(e) SCRPC to this erroneous ruling on June 25, 2018 in which it is still pending.

Judge Early and the Respondents are clearly misrepresenting the Subject Matter Jurisdictional issues raised by petitioner in the initial PCR 2008-CP-02-0734 on 2 his State v. Holbrook, 274 S.C. 4, 260 S.E.2d 181 (1979) motion to vacate Sentence and Conviction pursuant to Rule 60(b)(3)-(4) SCRPC filed on January 23, 2014 see Order Denying Applicants Rule 60(b) Motion for Relief From final Order of Dismissal illegally signed and denied by Judge Early on January 23, 2017. Re: 2013-CP-02-0478

The initial Filing was on January 23, 2014, and the second attempt to have the motion heard on October 5, 2015 please note the Respondent made it's Return on December 30, 2016.

This is in clear violation of Rule 40(h) SCRPC and S.C. Code Ann. §17-27-20 (a) the State had a mandated duty to file it's Return in the allotted 30 day requirement. Genuine Material facts support that their failure to abide by the Statutory requirement entitled petitioner to entitlement of relief as a matter of law pursuant to Kneece v. State, 236 S.E.2d, 746, 747 (S.C. 1977) (per curiam) (citing Herring v. State, 206 S.E.2d 885 (S.C. 1974)) (per curiam) see also Slezak v. South Carolina, No. 2003-CP-10-766, 2003 WL 25459562 at *8 (S.C. Com. Pl. Nov. 24, 2003) (citing Kneece with approval).

Pursuant to State v. Hulbrook, Supra, Art. IV(c) S.C. Code Ann. § 17-11-10
containing the Sixth and Fourteenth Amendments of the U.S. Constitution and
Article I § 3 and § 18 S.C. State Constitution S.C. Code Ann. § 17-23-90 (1977)

Article IV(c) in respect of any proceedings made possible by this article. Trial
shall be commenced within one hundred ~~6~~ twenty days of the arrival of the prisoner
in the receiving State, but for good cause shown in "Open Court", the prisoner or his
counsel being present, the Court having jurisdiction of the matter may grant any
necessary or reasonable Continuance "See Continuance Filed on October 29, 2004"

The Continuance was obtained in chambers and after the Trial Court
Session) were over.

51 American Law Report ALR 6th. 1. (2010) Speedy Trial Requirement § 32
"Open Court Construction and Application of Art. IV of the ITADA citing: Dillon v.
State, 844 SW.2d 139 (Tenn. 1992). The Court held: Art. IV of the (ITADA) requires at
a minimum, that a verbatim record be made of the proceeding. The Court
instructed, but the State has an affirmative duty to abide by statutory
requirements and to make a record on the question of whether a Continuance
has been granted for good cause, while deciding the instant issue, based on
a lack of notice, the Subject Criminal Defendant, because there was no Transcript
of the in-chambers discussion, the Court stated "it would in any event, be
unable to properly exercise its Appellate duty to review whether the State
met its burden of showing good cause of a Continuance."

The Court declared, as well that it would decline to hold: as the
Defendant had argued, that Open Court invariably requires a judge on the
bench, and can never be satisfied by an in-chambers, recorded hearing.

Article VI(c) of the ITADA States: In the event that an action on the
indictment, information, or Complaint on the basis of which the detainee
has been lodged, is not brought to trial within the period provided in
Article III or IV thereof, the appropriate Court of the jurisdiction where
the indictments, informations or Complaints has been pending shall enter
an order dismissing the same with prejudice, and any detainee based
thereon, shall cease to be of any force or effect. see also, State v. -

Patterson et al, S.C. 256 S.E.2d 417 and State v. Allen, 269 S.C. 233, 237 S.E.2d 64 the nature of the time constraints imposed by the Act. In accord with these prior decisions, the 120 day time limitation imposed under Article IV(C) "is mandatory" and required dismissal of the charges against appellant with prejudice. Reverse / Remand to Lower Court and is directed to enter order of Dismissal with prejudice"

This brings up petitioners Subject Matter Jurisdiction Issue Trial Counsel's illegal and unconstitutional errors violated due process under the Fourteenth Amendment of the United States Constitution and Article 1 § 3 of the SC State Constitution also Ineffective Assistance of Counsel pursuant to the Sixth Amendment of the United States Constitution and Article 1 § 14 of the SC State Constitution, the Respondents unlawfully shifts the burden to the petitioner to provide an excuse for Counsel's actions and violations of Rule 8.4 Misconduct, Rule 407 SCACR.

Counsel's cumulative errors cannot be forgiven as harmless errors, because her actions contributed to the Courts lack of Subject Matter Jurisdiction denying fundamental fairness on essential element to the concept of Justice.

In Menna v. New York, 423 U.S. 61, 62 N.(2J) (1975) the Court held: Jurisdictional issues are rights which are justified as protecting something, other than the truth seeking process. Id at 62-63 Structural Defects has nothing to do with guilt or innocence.

Judge Early and the Respondent did in fact misrepresent the issue of the Subject Matter Jurisdiction issue. "requesting the application be summarily dismissed based upon it's successiveness, the expiration of the Statute of limitations and the doctrine of res-judicata

This is clearly erroneous and the petitioners 2008-CP-02-0734; 2011-CP-02-02776; 2013-CP-02-0478; Rule 29(b) SCRCrimP and 2015-CP-02-01730 pro-se filings concern genuine issue of material fact and the State is not entitled to the unconstitutional denials as follows:

The erroneous Orders dated January 23, 2017 and July 31, 2017 cannot be barred by res-judicata Pursuant to Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001) Crim. Law Key (7) In post-conviction relief action, the doctrine of res-judicata does not apply to issues of Subject Matter Jurisdiction

2. The filings can not be waived by petitioner N[2-5] The jurisdiction of the Court over the Subject Matter of a proceeding is fundamental rights'. Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989) at N.(5) "Lack of Subject Matter Jurisdiction" may not be waived, even by consent of the parties, and should be taken notice of by this Court.

3. These filings cannot be barred by the Statute of Limitations. It is well-settled that issues related to Subject Matter Jurisdiction may be raised at any time, including for the first time on Appeal in *849 this Court, Carter v. State, 329 S.C. 355, 495 S.E.2d 773 (1998); State v. Funderburk, 259 S.C. 358, 191 S.E.2d 520 (1972).

4. These filings are ripe for review pursuant to S.C. Code Ann. § 17-27-20(a)(1) The Convictions and Sentences were obtained in clear violation of the U.S. Constitution, South Carolina Constitution and Federal and State Law; S.C. Code Ann. § 17-27-20 (a)(2) The Court was without jurisdiction to impose the Sentence;

"S.C. Code Ann. § 17-27-20(a)(3) the Sentence exceeds the maximum authorized by law;

S.C. Code Ann. § 17-27-20(a)(4) there is evidence of material fact, not previously presented or heard, that requires vacation of the Sentences and Convictions in the interest of Justice;

S.C. Code Ann. § 17-27-20(a)(5) the Sentence has expired pursuant to the (GAD) Contract; Sending a Federal Prisoner to State Prison and then releasing him back to Jail deems the Sentence pardoned and the State has no continuing jurisdiction: The Court held in Weekes v. Fleming, 301 F.3d 1175 (U.S. Ct. of App. 10th Cir. 2002) at N (20) Sentence of 5 years means a continuous Sentence, unless interrupted by, in some fault or

the prisoner, and he cannot be required to serve it in installments
White v. Pearlman, 42 F.2d at 789, and citing: Shields v. DeLo, 370
F.2d 1003 (5th Cir. 1967) citing Pearlman, a prisoner cannot be required
to serve his sentence in installments and held on due process grounds
that Texas' action was equivalent to a pardon or commutation of
his sentence and a waiver of jurisdiction, 370 F.2d at 1006.

Furthermore, "Based on the foregoing, the petitioner has
successfully shown by and through genuine material facts and
case law that his current sentence and convictions under a illegal
and unconstitutional sentence and enhancement pursuant to
S.C. Code Ann. § 17-25-45 (a)(2) Recidivist Statute (LWOP) and the two
C.S.C. 2nd degree indictments are void and require a vacatur
pursuant to State v. Holbrook, Supra, Article IV(c), V(c) S.C. Code Ann.
§ 17-11-10 citing the Fifth, Sixth, and Fourteenth Amendments of
the U.S. Constitution and Article 133 and § 18 SC State Constitution
S.C. Code Ann. § 17-23-90 (1977) Citing Klopfer v. North Carolina, 386
U.S. 213, 87 S.Ct. 988 (1967) 18 U.S.C. § 3161-64 Speedy Trial Act citing
the Sixth Amendment under the U.S. Constitution in which is applicable
to the Fourteenth Amendment

Id. Furthermore, "The acts of the Court with respect to matters
as to which it has no jurisdiction are void" Funderburk, 259 S.C. at 261,
191 S.E.2d at 522

Accordingly, pursuant to C.J. Took's Order dated April 12, 2013 and
the Honorable Judge Early's clear violations pursuant to Rule 501 COFC
SCACR Canon 1, 2, 3 and Rule 502 RJD Rule 7(a) 1, 4, 7, 9, and Trial
Counsel's Misrepresentation, Fraud, Deceit, Perjury and Untruthfulness
and the Respondents Misapplication of Genuine Material Facts that do
require a vacatur of the petitioner's sentence and convictions pursuant to
S.C. Code Ann. § 16-3-655 (2) and S.C. Code Ann. § 17-25-45 (A)(2) Indictments
2004-GS-02 1333-1334-1335 must be vacated See Funderburk, 259 S.C. at
261, 191 S.E.2d at 522 ("The acts of the Court with respect to matters as to

which it has no jurisdiction are void").

Conclusion; This Court should Reverse Judge Early's illegal Orders Signed on January 23, 2017 Re: 2013-CR-02-0478 and July 31, 2017 of dismissal and Remand back to the lower Court to vacate the petitioners Sentences and Convictions and "Dismiss all Indictments, Informations, and Complaints with prejudice" pursuant to State v. Hulbrook, 274 S.C.4, 260 S.E.2d 181 (1979) Art. IV(C), U.S. Code Ann. § 12-11-10

Also, pursuant to S.C. Const. Art. 3 § 4 Rights to effective assistance of Trial Counsel and Appellate Counsel McMann v. Richardson, 397 U.S. 759, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970); Beasley v. U.S., 491 F.2d 687 (6th Cir. 1974); Strickland v. Washington, 466 U.S. 669, 104 S.Ct. 2068 (1984) (Counsel's errors were prejudicial and undermined the Trial and Appeal process, and the Confidence in the Outcome, See also Moore v. U.S. 432 F.2d 730-739 (3rd Cir. 1970); Evitts v. Lucy, 469 U.S. 386, 105 S.Ct. 830 (1976) A hearing is required to be held on the issue of ineffective assistance of Counsel and is a independent ground for relief citing; In Re. Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 1072 (1970) "see the Due Process Standard for a Criminal Trial.

Also for the record, petitioner filed grievances on Solicitor Barbara R. Morgan Matter NO. 07-DE-L-0477 and Solicitor Everett K. Chandler Matter NO. 07-DE-L-0478 for their Prosecutorial Misconduct, using unfair prosecutorial tactics and violating the petitioners Federal IDOA Contract by Sending him to State prison when the Contract forbidded it. therefore, preserving this issue as well.

executed on this 16th day of October
Columbia, SC

Respectfully Submitted
Noel Gray
2017 Noel Gray #307590
Pro-Se Petitioner

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO AIKEN COUNTY
DOYET A. EARLY, III, CHIEF ADMIN JUDGE
COURT OF COMMON PLEAS

Appellate Case No. 2017-1729
Lower Case No. 2015-CP-02-01730

Noel E. Gray Jr. #307590 ----- Petitioner

v.

State of South Carolina ----- Respondent.

SWORN AFFIDAVIT OF PETITIONER

The petitioner here in swears under the penalty of perjury pursuant to S.C. Code Ann. § 16-9-10 that everything contained here-in are true and correct, supported by genuine issues of material fact to constitute a legal cause of action and the petitioner is entitled to relief requested in this Motion For Leave of Court To Reinstate Writ of Certiorari

To the best of the petitioner's knowledge and beliefs this action is ripe for review and the year has not been tolled.

SWORN AND SUBSCRIBED BEFORE ME

on this 18th day of October 1, 2018

X Kenneth Miller /s/

Notary Public for South Carolina

Respectfully Submitted

Noel Gray

Noel Gray #307590

Pro Se. Petitioner

my commission Expires:

May 23, 2028

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO AIKEN COUNTY
DOYET A. EARLY, III CHIEF ADMIN. JUDGE
COURT OF COMMON PLEAS

Appellate Case No 2017-001729
Lower Case No. 2015-CP-02-01730

Noel Gray, #307590 ----- Petitioner

v.

State of South Carolina ----- Respondent

CERTIFICATE OF SERVICE

The petitioner hereby submits that a true copy of the Motion for leave of Court to Reinstate writ of Certiorari with Sworn Affidavit and this Certificate of Service has been deposited in the U.S. Mail, postage pre-paid and addressed to the following parties.

1. The Honorable Clerk Robert J. Horne, P.O. Box 583 Aiken, SC. 29802-0583
2. Daniel L. Gourley, Asst. Atty General po Box 11549 Columbia, SC. 29211-1549
by Certified mail Receipt enclosed.

Pursuant to Rule 243(b) and 203(d)(1)-(b)(1) S.C. App. Ct. Rules all
Parties, are Served.

SUBSCRIBED AND SWORN BEFORE ME
on this 18th day of October 1, 2018
Kamelle Mitchell ys
Notary Public for South Carolina

My commission expires: May 23, 2028

Respectfully Submitted
Noel Gray
Noel Gray #307590
Pro se Petitioner

The Supreme Court of South Carolina

Noel Gray, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001729

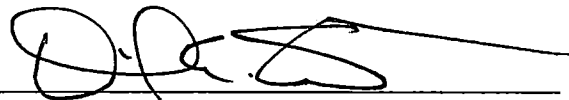
Lower Court Case No. 2015CP0201730

ORDER

Petitioner has failed to provide a proof of service showing that a copy of the notice of appeal was served on the opposing counsel as required by Rules 243(b) and 203(d)(1)(B)(i) of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY

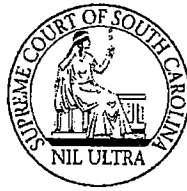


CLERK

Columbia, South Carolina

October 24, 2017

cc: Julie Amanda Coleman, Esquire
Mr. Noel E. Gray, Jr., #307590



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 09, 2017

The Honorable Robert J. Harte
PO Box 583
Aiken SC 29802

REMITTITUR

Re: Noel Gray v. State
Lower Court Case No. 2015CP0201730
Appellate Case No. 2017-001729

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,

Daniel E. Shearouse
DS

CLERK

cc:
Julie Amanda Coleman, Esquire
Noel E. Gray, Jr., #307590

ELECTRONICALLY FILED - 2017 Aug 16 1:11 PM - AIKEN - COMMON PLEAS - CASE#2015CP0201730

Received 11/15/16
Robert R. Allen, Clerk
2016 Broad Street
Columbia, SC

29210

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5929 4922 0000 020E E102

The Honorable Robert R. Allen
Clerk of Court
in the Circuit or Common Pleas
P.O. Box 583
Aiken, SC 29802-0583

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AUG 10 2017

BRCI
MAILROOM

STATE OF SOUTH CAROLINA) IN THE SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN) THE COURT OF COMMON PLEAS

RECEIVED

NOEL E. GRAY, JR. #307590) DOCKET NO. 2013-CP-02-00478 MAR 11 2013

Petitioner,)

BRCI

MAILROOM

VS.)

MOTION FOR THE HONORABLE JUDGE

STATE OF SOUTH CAROLINA)

DOYET A. EARLY, II TO RECUSE

Respondent,)

HIMSELF PURSUANT TO SCACR

RULE 501 (E) (a) CODE OF JUDICIAL

CONDUCT FLOYD V. STATE, 303 S.C.

298,400 S.C.2d 145 (1991)

FILED 13 March 2013

Liz Godard
C.C.P. & G.S.

8:30 am
Angel Wilson
Deputy Clerk

COMES NOW INTO THIS HONORABLE COURT, THE petitioner, Noel E. Gray,

Jr. #307590 pro-se respectfully moves this Honorable Court to Order the Honorable Judge Doyet A. Early II, to recuse himself from this Post Conciliation Relief Case 2013-CP-02-00478.

The petitioner contends that the Honorable has resided on the bench on the petitioner's first PER hearing dated February 2, 2009 and the petitioner has sent correspondence to the Honorable Judge's office on December 29, 2009 before the petitioner's Trial concerning Ineffective Assistance of Trial Counsel and also the petitioner has written up the Honorable for Abuse of Discretion and showing prejudice towards the petitioner with the office of Disciplinary office 09-DE-J-0199 August 4, 2009. It is clear that there is a conflict of interest and he is showing Biasness towards the petitioner. In clear violation of the Sixth and 14th Amend.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

APR 04 2013

Liz Godard
C.C.P. & G. A., Aiken County, S.C.

Angel Wilson
Deputy Clerk

To the United States Constitution, State v. Cooper, 514 S.E.2d -
584, 334 S.C. 340 (1999) Rule 501 COJC. SCACR.

Respectfully Submitted,

Noel E. Gray Jr. #307540

Noel E. Gray Jr.

Pro Se Petitioner

Murray #212 B

Broad River Corr. Inst.

4460 Broad River Rd.

Columbia, S.C.

29210

sworn and Subscribed before me

this 11 day of MARCH, 2013

x Eugene Felt 45
Notary Public for South Carolina

My Commission Expires: My Commission Expires April 4, 2018

EXHIBIT S-4

The Supreme Court of South Carolina

ORDER

I find that in the event of a conflict that prevents a circuit court chief judge for administrative purposes from signing a Conditional Order of Dismissal or a Final Order in a Post-Conviction Relief Matter, judicial efficiency requires a procedure unique to these matters. Now, therefore,

Pursuant to the provisions of S. C. CONST. Art. V, §4,

IT IS ORDERED that Conditional Orders of Dismissal and Final Orders in Post-Conviction Relief Matters are subject to the following procedures:

- a. If the circuit court chief judge for administrative purposes has a conflict and is unable to sign a Conditional Order of Dismissal or Final Order in a Post-Conviction Relief Matter, any circuit judge that is a resident of the judicial circuit may sign the Conditional Order of Dismissal or Final Order.
- b. If the resident circuit judges of the judicial circuit are unable or unavailable to sign a Conditional Order of Dismissal or Final Order in a Post-Conviction Relief Matter, any circuit judge assigned to the judicial circuit may sign the Conditional Order of Dismissal or Final Order.
- c. If the circuit judges assigned to the judicial circuit are unable or unavailable to sign a Conditional Order of Dismissal or Final Order in a Post-Conviction Relief Matter, any circuit judge residing in or assigned to an adjoining judicial circuit may sign the Conditional Order of Dismissal or Final Order.

s/Jean Hoefler Toal
Chief Justice

April 12, 2013
Columbia, South Carolina



ALAN WILSON
ATTORNEY GENERAL

December 30, 2016

The Honorable Doyet A. Early, III
PO Box 90
Bamberg, SC 29003

Re: Noel Gray v. State of South Carolina
2013-CP-02-00478

Dear Judge Early:

Enclosed please find a copy of the State's Return to Applicant's Motion for Relief from Judgment (Rule 60(b)(3)-(4)), which was sent today for filing, and a proposed Order denying the motion in connection with the above referenced case. If the order meets your approval, please sign and return to me in the enclosed envelope, and I will forward to the Aiken County Clerk of Court to be filed and served.

Sincerely,

Julie A. Coleman
Assistant Attorney General

JAC:fvh
Enclosures
cc: Noel Gray, #307590

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert J. Harte, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in the Court.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

JAN 23 2017

Noel Gray, #307590,

2013-CP-02-00478

Applicant, Aiken County, S.C.

v.

State of South Carolina,

Respondent.

**ORDER DENYING APPLICANT'S
RULE 60(b) MOTION FOR RELIEF
FROM FINAL ORDER OF DISMISSAL**

FILED

1.23.17

C.C.P. & G.S.

Deputy Clerk

This matter comes before the Court by way of a document captioned "Petition For Relief From Illegal Order Dated September 17, 2015 pursuant to Rule 60(b)(3)-(4) SCRPC: Brown v. State, supra, State v. Holbrook, supra, Art. 5 UC; UC; SC Code Ann. § 17-11-10; The First; Sixth; Eighth; and Fourteenth Amends under the U.S. Const." filed with the Aiken County Clerk of Court on October 5, 2015. The Respondent made its Return on December 30, 2016. This Order follows.

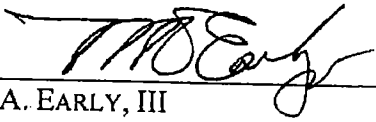
The movant in a Rule 60(b), SCRPC, motion has the burden of presenting evidence, usually provided by affidavits, proving the facts essential to entitle him to relief. Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991). Also, relief under Rule 60(b), SCRPC, requires the existence of a meritorious defense. See Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988).

This Court finds that Applicant has failed to meet his burden of proving that he is entitled to relief under Rule 60(b), SCRPC. Applicant has failed to present any facts that would entitle him to relief from judgment under this rule. Therefore, this Court finds that this Motion should be denied.

[Handwritten signature]
#1

IT IS THEREFORE ORDERED that the 60(b) Motion for Relief From Judgment is hereby DENIED.

AND IT IS SO ORDERED this 3rd day of Jan, 2017.


DOYET A. EARLY, III
Chief Administrative Judge
Second Judicial Circuit

, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Noel Gray, #307590,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2015-CP-02-01730

**CONDITIONAL ORDER
OF DISMISSAL**

FILED November 16, 2015
Liz Godard
C.C.P. & G.S.
Deputy Clerk
8:30am

This matter comes before this Court by way of an application for post-conviction relief filed July 9, 2015. In its Return, Respondent requests that the action be summarily dismissed.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Aiken County. The Applicant was indicted for two counts of Criminal Sexual Conduct ("CSC") with a Minor - Second Degree (2004-GS-02-1333 & 1334). Kelley P. Brown, Esquire, represented him. Applicant was found guilty of both counts following a jury trial. On February 2, 2005, he was sentenced by the Honorable Jackson V. Gregory to life imprisonment without the possibility of parole.

Applicant filed an appeal, and both an Anders brief and *pro se* brief were submitted. The appeal was dismissed. State v. Gray, Op. No. 2008-UP-040 (S.C. Ct. App. filed January 11, 2008). The Remittitur was sent on January 30, 2008.

Applicant initially filed an application for post-conviction relief (PCR) on April 18, 2008 (2008-CP-02-0734). In his application, Applicant set forth the following grounds for relief:

1. "Violation of Federal Interstate Agreement on Detainers Act."
2. Ineffective assistance of counsel.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this
16th day of November 2015
Liz Godard
C.C.P. & G.S. Aiken County, S.C.
Deputy Clerk

3. Subject matter jurisdiction.

An evidentiary hearing was convened on February 2, 2009, at which Applicant was present and represented by counsel. In an order dated April 2, 2009 and filed April 6, 2009, the Honorable Doyet A. Early, III, denied and dismissed the application with prejudice. A Johnson Petition for Writ of Certiorari was then filed in the South Carolina Supreme Court. The Petition was denied on December 2, 2010, and the Remittitur was sent on December 21, 2010.

Subsequently, Applicant filed a Petition for Writ of Habeas Corpus (4:11-227-CMC-TE) on March 25, 2011 in federal district court. By order dated February, 15, 2012, the Honorable Cameron McGowan Currie denied Applicant's motion for summary judgment, Writ of Mandamus, and default judgment. Judge Currie dismissed the petition with prejudice.

Applicant filed his second post-conviction relief application on December 9, 2011 (2011-CP-02-2776). In his application, Applicant set forth the following grounds for relief:

1. Newly discovered evidence.

- a. "Trial Counsel failed to record any statements (in writing, or by audio or video), from any conversation with any neighbors or anyone who knew Mike Williams..."
- b. "...failed to interview any known acquaintances of Linda Brown and Mike Williams to authenticate or disprove what they told the police and the jury."
- c. "...failed to interview Mike Williams, (Linda Brown's lover), or at least disclose any evidence of bad blood against applicant and evidence of bad blood between Linda Brown and applicant."
- d. "...failed to conduct an interview with any other occupants that lived within Mike Williams residence before, during, and after the alleged incidents to gather salient information concerning the alleged victim and Mike Williams..."
- e. Failed to investigate "the total circumstance" of Mike Williams residence and any eyewitnesses to various aspects of the case, including but not limited to: where he was at time of sexual misconduct, his relationship with the victim, relationship of his wife

and Linda Brown, his "real purpose of being a clown," and Mike Williams as the anonymous caller.

- f. Failed to convey plea offer.
 - g. Discovery of trial counsel's resume which shows inexperience.
 - h. Ineffective assistance of trial counsel in:
 - i. Failed to challenge subject matter jurisdiction.
 - ii. Violated due process by not presenting IADA agreement issue as a pre-trial motion.
 - iii. Failed to subpoena and investigate witnesses. (Several named individuals.)
 - iv. Failed to discuss lesser included offense or plea offer.
 - v. Failed to have applicant evaluated by psychologist.
 - vi. Failed to move for trial where Linda Brown was not prosecuted but there was an inference to the jury she would be.
 - vii. "...failed to impeach Dr. Bethea's hearsay testimony that was not supported by material facts, nor was it even scientifically researched, nor does it even exist."
 - viii. "...failed to challenge trial court's denial of directed verdict motion that was preserved for appellate review."
 - ix. "...failed to impeach Mike Williams testimony that impermissibly bolstered the State's case and was prejudicially unconstitutional."
 - x. "...failed to impeach Linda Brown's testimony that was unconstitutionally used to inflame the minds of the jury and the trial court, in which it was extremely prejudicial and harmful error by prosecution and bolstered the State's case."
 - xi. Failed to object to statement that "Linda Brown is not on trial today."
2. Ineffective assistance of PCR counsel.
- a. Failed to address all issues.
 - b. Inadequately raised IADA issue.
 - c. Failed to raise incomplete police investigation.
 - d. Failed to subpoena witnesses (several specific witnesses listed).
 - e. Failed to properly present subject matter jurisdiction issue.
 - f. "...failed to argue that applicant did address the directed verdict motion that was preserved for appellate review."
3. Ineffective assistance of PCR counsel on collateral appeal.
- a. "...failed to address that PCR counsel failed to alter or amend PCR to include all grounds."

- b. "...failed to address that PCR counsel failed to insert applicant's claim, inadequately raised in his original application PCR."
- c. "...failed to address that PCR counsel failed to subpoena witnesses..."
- d. "...failed to address that PCR counsel failed to file a Rule 59(e) as required by law."
- e. "...failed to address that PCR counsel failed to challenge ineffective assistance of appellate counsel on directed verdict motion that was preserved for appellate review."
- f. "...failed to address that PCR counsel failed to challenge ineffective assistance of appellate counsel on directed verdict motion that was preserved for appellate review."
- g. "...failed to address that PCR counsel was incompetent to represent applicant in a civil/criminal procedural review...."
- h. "...failed to move the court that the applicants records were incomplete and were fatally defective, in violation of Rule 609."

Respondent filed its Return and Motion to Dismiss on January 20, 2012. The Honorable Doyet A. Early, III, issued a Conditional Order of Dismissal on January 20, 2012. Applicant filed various objections to the Conditional Order of Dismissal. After reviewing Applicant's objections to the Conditional Order of Dismissal, Judge Early issued a Final Order signed June 26, 2012 and filed on July 5, 2012.

Subsequently, Applicant filed a timely Notice of Appeal. By Order dated April 30, 2012, the South Carolina Supreme Court dismissed Applicant's appeal for failing to show an arguable basis for asserting that the determination of the lower court was improper under Rule 243(C). The Remittitur was issued on September 19, 2012.

On September 24, 2012, Applicant submitted a motion for new trial pursuant to Rule 29, SCRCrimP, in the Aiken County Court of General Sessions asserting, inter alia, he was entitled to a new trial based upon after-discovered evidence; specifically, Applicant claimed that in October 2011, he "discovered" information relating to what he characterized as "plea agreements" that were not communicated to him by trial counsel before trial. After briefs, the

South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Gray, Op. No. 2014-UP-036 (S.C. Ct. App. filed January 29, 2014). The Remittitur was sent on February 24, 2014.

Applicant filed his third application for post-conviction relief alleging that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failure to convey two plea agreements
2. Prosecutorial Misconduct
 - a. Using state witness to commit perjury and failure to expose deal for testimony.
3. Ineffective Assistance of PCR Counsel
 - a. Failure to prepare and aid applicant to present procedural barred constitutional issue's...

Subsequently, Applicant filed various documents and motions:

1. "Motion for the Honorable Judge Doyet A. Early, III to recuse himself..." on March 13, 2013.
2. "Motion for Rule 59(e) to Alter or Amend Judgment and Rule 60(b)(1) Relief from Judgment or Order..." on March 13, 2013.
3. "Motion for Appointment of Post-Conviction Relief Counsel" and "Motion for Order Compelling Complete Discovery of trial counsels file..." on April 15, 2013.
4. "Motion for Production of Complete Discovery" on April 24, 2013.
5. "Motion of Production of Documents and Things Pursuant to Rule 34 S.C.R.Civ. P." filed May 15, 2013.
6. "Motion for Discovery Compelling Discovery Pursuant to SCRCIVP Rule 37" on June 17, 2013.
7. "Motion to Dismiss PCR until pending appeal is complete" on July 12, 2013.
8. "Motion to Strike Motion for Appointment of Counsel filed on February 5, 2014 to represent self pro-se" filed April 16, 2014.
9. "Motion to pull PCR application dated March 20, 2013 Appellate Case NO. 2012-213607 and open for post-conviction hearing and amend jurisdictional issues to PCR application."

-
10. "Motion to Replace PCR application dated February 27, 2013 with Subject Matter and Supplemental Jurisdiction Amendment dated January 23, 2014 with exhibits" filed April 24, 2014
 11. "Motion to Transfer Motion to Grant Funding from Court Costs and Expenses of Representation to 2013-CP-02-00478 to Represent Self..."
 12. "Declaration of entry of default pursuant to Rule 55(A)(2) on the Honorable Doyet A. Early, III Circuit Court Judge and Respondent" filed July 2, 2014.

Respondent filed its Return and Motion to Dismiss on July 15, 2014. The Honorable Perry M. Buckner, issued a Conditional Order of Dismissal on July 21, 2014 and filed July 28, 2014. Applicant filed various objections to the Conditional Order of Dismissal. After reviewing Applicant's objections to the Conditional Order of Dismissal, Judge Buckner issued a Final Order signed September 9, 2015.

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel
 - a. Failure to convey plea offer
2. Subject matter jurisdiction

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

The Applicant was convicted of the offense(s) he challenges in this Application on February 2, 2005. Therefore, the Applicant had to file his application by February 3, 2006. This Application was filed July 9, 2015, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

Additionally, this Court finds that the application should be summarily dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All 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.

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 is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450,

409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980). In regards to the allegations set forth in Applicant's Amendment to the PCR application, these are the same allegations raised by Applicant in a previous PCR application and therefore, by very definition, are successive in nature.

This Court finds that the current application for post-conviction relief must be summarily dismissed because the doctrine of *res judicata* bars the Applicant's claims. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.

The Applicant had a full opportunity to litigate all allegations regarding ineffective assistance of counsel and subject matter jurisdiction in his previous three PCR actions and in his Federal Habeas Corpus action (4:11-227-CMC-TE). The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRPC, the Court summarily dismisses these claims as barred by *res judicata*.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final.

The Applicant shall file any reasons he may have, factual or legal, with the Aiken County Clerk
of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Daniel Gourley, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 28 day of Oct., 2015.


MAITÉ MURPHY
Chief Judge for Administrative Purposes
First Judicial Circuit

St. George, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Noel Gray, #307590,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2015-CP-02-1730

FINAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed July 9, 2015. Respondent made its Return and Motion to Dismiss on September 29, 2015, requesting the application be summarily dismissed based upon its successiveness, the expiration of the statute of limitations, and the doctrine of *res judicata*.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed October 28, 2015 and filed November 16, 2015, provisionally denying and dismissing this action, while giving Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. As evidenced by the attached affidavit of service, Applicant was served with the Conditional Order of Dismissal on November 10, 2015.

Applicant subsequently filed several motions and responses to the Conditional Order of Dismissal, alleging fraud, misrepresentation of material facts, perjury, and bad faith. These responses were filed with the clerk of court on November 4, 2015, December 21, 2015, May 26, 2016, June 6, 2016, July 1, 2016, July 18, 2016, and August 26, 2016.

This Court finds that all of Applicant's objections are meritless. Applicant has failed to show that he should be entitled to a hearing on his untimely and successive PCR application.

MAE
TH

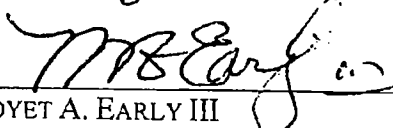
EXHIBIT

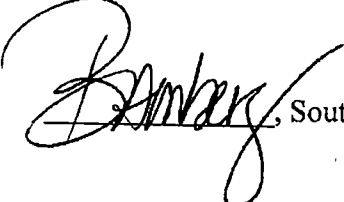
Accordingly, this Court finds that Applicant has failed to provide sufficient reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 18 day of July, 2017.


DOYET A. EARLY III
Chief Administrative Judge
Second Judicial Circuit

 South Carolina.

ELECTRONICALLY FILED - 2017 Jul 31 1:33 PM - AIKEN - COMMON PLEAS - CASE#2015CP0201730

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated [Signature] (Server) as his duly authorized agent for the purpose of making service of the signed Final Order of Dismissal on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF)

AFFIDAVIT OF PERSONAL SERVICE

On this 17th day of OCTOBER, 2017, I served the signed Final Order of Dismissal on Inmate Noel Gray, SCDC Inmate No. 307590 by delivering personally and leaving a copy of the same at Broad River Correctional Institution, Colton, South Carolina. Deponent is not a party to this action.

[Signature]
s/

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 17th day of OCTOBER, 2017
[Signature] (L.S.)
Notary Public for South Carolina

LISA BROWN-ALSTON
Notary Public, State of South Carolina
My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

ADMISSION OF SERVICE

Service of a copy of the signed Final Order of Dismissal is admitted at the S.C. Department of Corrections, Broad River Correctional Institution, Richland,
County, South Carolina, this 17th day of OCTOBER, 2017.

s/ Noel Gray #307590
Inmate Signature
SCDC No. 307590

List case number here
2015-CP-02-1730

EXHIBIT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated Atonia Jacobs (*Server*) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)

COUNTY OF Richland)

AFFIDAVIT OF PERSONAL SERVICE

On this 10 day of November 2015, I served the Conditional Order of Dismissal, on Inmate Noel Gray, SCDC Inmate #307590, by delivering personally and leaving a copy of the same at Broad River Correctional Institution. Deponent is not a party to this action.

s/ Atonia Jacobs

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 10 day of November, 2015

Tammy L. Sanderson (L.S.)
Notary Public for South Carolina

My Commission Expires: 6/10/2018

ADMISSION OF SERVICE

Service of a copy of the within Conditional Order of Dismissal is admitted at the South Carolina Department of Corrections (Broad River Correctional Institution), Columbia, Richland County, SC this 10 day of December, 2015.

s/ Noel Gray
Inmate
SCDC Inmate #: 307590



EXHIBIT Q1

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 4, 2014

Noel Gray, #307590
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: Your case

Dear Mr. Gray:

Enclosed is a copy of the opinion of the Court of Appeals affirming your conviction. Please be advised that our office will be closing your case along with this letter.

Please be aware that there is a **one year statute of limitations for filing an application for post-conviction (PCR) relief**. This is one year from the date of the enclosed opinion. This statute of limitations is **very strictly enforced**, so please be sure that **you** comply with it. Please understand *it is your responsibility alone to be sure this PCR application is timely filed*. **This application must be filed with the clerk of court in the county of your conviction**. There is also now a **one year statute of limitations for filing for federal habeas**. However, you must **exhaust your PCR claims** in state court, before raising them in federal court.

Please be aware that the time between your direct appeal becoming final, and the date your PCR application is filed **will count against your federal habeas statute of limitations in the future**. I do wish you the best. Feel free to contact me if you have any questions.

Sincerely,

Robert M. Pachak
Appellate Defender

RMP/pcm

Enclosure: Post-Conviction Relief Application

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

NOEL E. GRAY JR #307590

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention BROAD RIVER CORR. INST.
2. Name and location of Court which imposed sentence SECOND JUDICIAL CIRCUIT AIKEN, SC.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2004-GS-02-1333
 - (b) 2004-GS-02-1334
 - (c) 2004 GS-02-1335
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) FEBRUARY 2, 2005
 - (b) SAME

- (c) SAME
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. JANUARY 29, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) ~~PROSECUTORIAL MISCONDUCT~~ (Dropped)
- (c) JURISDICTIONAL and SUBJECT MATTER JURISDICTION

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) SEE RULE 29(b) Motion with Material Facts
- (b) ~~SAME AS AD(1)~~ Dropped
- (c) SEE JURISDICTION / SUPPLEMENTAL JURISDICTION Motion with Material Facts

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? ☒ YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. RULE 29(b) SCR Crim P. GENERAL SESSIONS
 - ii. DIRECT APPEALS COURT
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. 2nd Judicial Circuit Court Aiken South Carolina
 - ii. SOUTH CAROLINA COURT OF APPEALS
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. Denied
 - ii. Denied
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. December 4, 2012
- ii. February 29, 2014
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
YES

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- ii. SUBJECT MATTER JURISDICTION
- iii. JURISDICTION

(b) the proceedings in which each ground was raised:

- i. POST CONVICTION RELIEF dated February 2, 2009.
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) ~~NA~~ Jurisdiction can be raised at any time
- (b) NA
- (c) NA

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NO
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. KELLY P. BROWN ESQ. 410 Barnwell Ave. N.W. PO Box 2247 Aiken, SC. 29802
- ii. ROBERT M. PACIAK ESQ. PO Box 11589 Columbia, SC. 29211-1589
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL
- ii. Direct Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

All INDICTMENTS, INFORMATIONS and Complaints Dismissed with PREJUDICE.

20. Are you now under sentence from any other court that you have not challenged?

NO

Also for #19 the Applicant would move the Honorable Court to grant re-offer of the Non-violent plea deal offered by the State, and the trial counsel refused to convey.

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Noel E. May Jr. #307590
Applicant

SWORN or affirmed to and subscribed before me this
20th day of March, 2014.

Susan H. Frye
Notary Public

My Commission Expires
March 5, 2018

My Commission Expires: _____

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

FOR THE SECOND JUDICIAL CIRCUIT COURT

NOEL E. GRAY JR #307590

2004-GS-02-1333-1335

Pro-Se Applicant

08-CP-02-00734

VS.

MOTION TO AMEND APPELLATE CASE NO.

2012-213607 TO SUBJECT MATTER CLAIMS

STATE OF SOUTH CAROLINA

WITH STATEMENT OF FACTS AND CONCLUSION

Respondent

OF LAW IN SUPPORT OF pursuant to

S.C. Code Ann. § 17-27-70(a); § 17-27-80

COMES NOW INTO COURT, Noel E. Gray Jr. #307590 by and through Pro-Se Representation respectfully moving this Honorable Court to Amend Applicant's Appeal No: 2012-213607 denial to his Subject matter Jurisdiction and Jurisdiction Claims pursuant to S.C. Code Ann. § 17-27-70(a) and § 17-27-80 with Statement of facts and conclusions of Law in Support of as follows:

The applicant came across two(2) plea agreements that the State offered the applicant on October 12, 2011. By the perponderance of Material facts, Trial Counsel provided ineffective assistance by her unreasonably failing to not only object to the LWOP Sentence pursuant to S.C. Code Ann. § 17-25-45(a) recidivist Statute, but she failed to preserve any issues for direct review and this failure prejudiced the whole outcome of the case. see Strickland v. Washington, 466 U.S. 668, 686 (1984).

C O P Y
ORIGINAL FILED

MAR 24 2014
8:30 am
AIKEN COUNTY
CLERK OF COURT

Also Trial Counsel withheld 2 two plea agreements in which one was Non-violent and a lesser-included offense charge.

Pursuant to Libretti v. U.S., 516 U.S. 29, 50-51 (1995) Counsel has a "critical" obligation to advise a client of the advantages and disadvantages of a plea agreement.

Missouri v. Frye, 132 S.Ct. 1399 (2012) 'Justice Kennedy, residing'. The Sixth Amendment, applicable to the States by the terms of the Fourteenth Amendment provides that the accused "shall" have the assistance of counsel in all criminal prosecutions. The right to counsel is the right to effective assistance of counsel see Strickland v. Washington, 466 U.S. 668, 686 (1984) This case arises in the context of claimed ineffective assistance that led to the lapse of a prosecution offer of a plea bargain. a proposal that offered terms more lenient than the Terms of Life without the Possibility of Parole (LWOP).

The initial question is whether the Constitutional right to counsel extends to the negotiation and consideration of plea offers, that lapse or are rejected. Because if counsel had conveyed these offers especially a Non-violent lesser-included offense charge, there was a certain opportunity to do 10 years rather than die in the South Carolina Department of Corrections. therefore, prejudice presumes.

also citing Daue v. State, 381 S.C. 601, 675 S.E. 2d 416 (2009)

(1) defense performed deficiently with respect to the States initial plea offer; (2) Applicant has showed that he was prejudiced by his

own counsel's deficient performance, therefore, for a Public Defender to show contempt and prejudice towards her own client by committing "Extrinsic Fraud" by lying to the Court and Judge Lloyd and Judge Early and also her own client.

This claim of Ineffective Assistance of Counsel claims at trial level is not reviewable on direct Appeal, but rather may be asserted in proceeding under the PCR Act.

The applicant respectfully contends that prejudice presumed when assistance of counsel was denied entirely during a critical stage of the proceeding. See Strickland v. Washington, 466 U.S. 675, 692 and also Mikens v. Taylor, 535 U.S. 162, 166 (2002).

The Sixth Amendment guarantees the right to effective Assistance of Counsel in all criminal prosecutions see Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (per curiam) See also Padilla v. Ky., — U.S. — 130 S.Ct. 1473, 1480-81 (2010) (1) Counsel's performance fell below an objective standard of reasonableness see Strickland v. Washington, — 466 U.S. 668, 687-88 (1984) (2) Counsel's deficient performance prejudiced the defendant, resulting in an unreliable or fundamentally unfair outcome in the proceeding.

Trial Counsel's Violations of applicant's Fast and Speedy Trial Contract pursuant to the Federal Interstate Agreement on Detainers Act Violating Due Process under the Fourteenth Amendment see: Klopfer v. N.C. 386 U.S. 213, 222-24 (1967)

Strunk v. U.S. 412 U.S. 434, 440 (1973) Vacating Sentence and

dismissing indictment's was the only possible remedy" for applicant denied right to speedy trial while serving a ~~State~~ State Sentence because 18 U.S.C. app. 2 under the IADA Trial must commence within 180 days of a prosecutor's and appropriate court's receipt of a prisoner's request for trial on charges pending in another jurisdiction, and trial must commence within 120 days of a prisoner's transfer to another jurisdiction for trial see id., § 2 art III (2); IV(c) and Fey v. Michigan 507 U.S. 431, 52 (1993) Therefore, the applicant knows that the State was not at fault for the gross neglect he is suffering, but because the vindictiveness of his own trial Counsel's unprofessional actions.

Applicant is suffering continuing consequences as a result of his invalid conviction and Sentence see: Jackson v. State, 489 - S.E.2d 949, 916. Because of this gross negligence of Trial Counsel this State lost jurisdiction of the Subject Matter making applicant's Sentence and Conviction Void and UnConstitutional

Respectfully Submitted

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

FOR THE SECOND JUDICIAL CIRCUIT

Noel E. Gray Jr. #307590

2004-GS-02-1333-1335

Pro Se Applicant

08-CP-02-00734

v.

STATE OF SOUTH CAROLINA

CERTIFICATE OF SERVICE

Respondent

I Noel Gray # 307590 do hereby certify that I have deposited the Original with a true copy to be filed into this Honorable Court postage pre-paid and for a clock stamped copy sent back to the applicant this 20th day of March, 2013 to the address as follows:

Aiken County Clerk of Court
In the Court of Common Pleas
For the Second Judicial Circuit
PO Box 583
Aiken, SC. 29802-0583

SUBSCRIBED AND SWORN BEFORE ME

This 20th day of March, 2014

By Susan H. Frye c/s

Notary Public for South Carolina

My Commission Expires: March 5, 2018

March 20, 2014

Dear Honorable Clerk of Court,

please find enclosed a true Original and a true copy of applicants Motion to Amend Appellate Case No. 2012-213607 to Subject Matter Jurisdiction Claims with Statement of Facts and conclusion of law pursuant to S.C. Code §17-27-70(a) and §17-27-80 to file into this Honorable Court.

This will go perfectly with my Ineffective Assistance Claims of my Federal IADA Contract. The applicant knows that the State of South Carolina was not responsible for these violations but was done by his own Trial Counsel.

These issues do have merit and material facts have been applied as according to PCR Statutes. But Jurisdictional Issues don't fall under PCR Statutes or Rules and it can be raised at any time. Please send me a clock Stamped copy back please. Thank you kindly also thank you for those documents you sent to me April 8, 2013 that helped me to support this action.

God Bless you Ma'am

Respectfully Requested

Noel E. Gray Jr. #307590

Noel E. Gray Jr.

Pro-Se Applicant

F718990

EXHIBIT 013

F718991

2015CP0201730

B-720746

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF AIKENNOEL E. GRAY JR #307590

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

RULE 71.1(c) SCRCW.P.

NEW PCR APPLICATION

IN THE COURT OF COMMON PLEAS

FILED

7.9

Liz Godard
C.C.P. & G.S.Anita Knepper 30
Deputy Clerk

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention BROAD RIVER CORR. INST.
2. Name and location of Court which imposed sentence SECOND JUDICIAL CIRCUIT AIKEN, SC.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which

sentence was imposed:

(a) 2004-GS-02-1333(b) 2004-GS-02-1334(c) 2004 GS-02-1335

5. The date upon which sentence was imposed and the terms of the sentence:

(a) FEBRUARY 2, 2005(b) SAMESTATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

JUL 09 2015

Liz Godard
C.C.P. & G.S. Aiken County, S.C.Anita Knepper
Deputy Clerk

Revised 3-2003



ALAN WILSON
ATTORNEY GENERAL

July 15, 2014

~~The Honorable Perry M. Buckner~~
Administrative Judge, Fourteenth Circuit
P O Drawer 470
Walterboro, SC 29488-0470

Re: Noel Gray, #307590 v. State of South Carolina
2013-CP-02-00478

Dear Judge Buckner:

Enclosed please find an original proposed **Conditional Order of Dismissal** in the above-captioned case. ~~The Honorable Doyet A. Early, Chief Administrative Judge for the Second Circuit, has a conflict of interest in this matter. Pursuant to the Order issued by Chief Justice Toal dated April 12, 2013,~~ any circuit court judge residing in or assigned to an adjoining judicial circuit may sign in Judge Early's stead. Therefore, if this Order meets your approval, please sign and return to me in the enclosed envelope. I will then forward to the Aiken County Clerk of Court to be filed and served.

Sincerely,


Daniel Gourley
Assistant Attorney General

DG/ck
Enclosures

cc: Noel Gray, #307590

RECEIVED

JUL 15 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

Referred to

Answered

Crowley /dm

2004-05-02-1333-1335

NOEL E. GRAY, JR. #307590,

2013-CP-02-00478

APPLICANT,

COMPLAINT, NOTICE and REQUEST AGAINST

V.

HONORABLE DOYET A. EARLY, III, CIRCUIT COURT JUDGE

FOR THE SECOND JUDICIAL CIRCUIT PURSUANT TO

STATE OF SOUTH CAROLINA

CANON 3 RULE 501 S.C.C.O.J.C. With

RESPONDENT,

AFFIDAVIT IN GOOD FAITH

I Noel E. Gray, Jr. #307590, by and through Pro-Se Representation respectfully submit that this legal Complaint is made in Good Faith, and in attempt to prevent unnecessary judicial litigation.

As Chief Prosecutor, and Attorney General of this great Republican State, your office is a two-fold agency of which the primary aim is to ensure that the guilty shall not escape punishment, or the innocence suffer, see U.S. v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed. 2d 342 (1976).

In Berger v. U.S. 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed. 1314 (holding - the Prosecution to a higher standard is necessary, least the "Special - Significance to the Prosecutor's obligation to serve the cause of Justice be lost, at 427 U.S. at 111 S.Ct. at 2401.

It is my believe that pursuant to your position and power vested -

under S.C. Constitution § 1-7-60 Code of laws. "If a State Agency is in violation of South Carolina Constitution of laws, or in non-compliance, you sir, have the duty to advise them of such ^{///} before any defence is undertaken an investigation shall be made of the facts on which any action, or special proceedings are based, and a duty upon request to protect the prisoner's Constitutional and legal rights.

The applicant herein was not afforded the full and fair bite of his first initial Post-Conviction Relief dated February 2, 2009 before the Honorable Early see (2009-CP-02-00734) in which all issues were not raised nor ruled upon pursuant to S.C. Code Ann. § 17-27-90 at n. 2 pg. 753 see Odom v. State, 523 S.E.2d 753 (1999).

In this current PCR Application, the applicant raised Supplemental Jurisdiction and Subject Matter Jurisdictional Claims in which pursuant to Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 987, 900 (1989); and - Lillard v. Searson, 170 S.C. 304 S.E. 489 (1933) the S.C. State Supreme Court held "we think it's elementary with no need of citation of authority that the act's of a Court with respect to a matter as which it has no jurisdiction are void.

The Honorable Court also held that Judicial Doctrine of Rejudicate does not apply to issues of Subject Matter Jurisdiction, where the claim is that a conviction is "Void" for lack of Jurisdiction see: Brown v. State, 540 S.E.2d 846 (S.C. 2001) at N. [2-5]; see also -

cf. State v. Lynch, 344 S.C. 635, — 545 S.E.2d 511, 514 (2001).

The Third issue was ineffective assistance of Trial Counsel, to which Counsel failed to convey a lesser-included offense plea offer that was given to the applicant on January 21, 2005 in which would have prevented him from being sentenced to Life without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45 (4)(2), in which the Direct Appeal's Court and the Writ of Certiorari ruled that the applicant should not have been sentenced to the LWOP, but because of Trial Counsel's ineffectiveness, the issue was lost, and the applicant suffered.

In Davis v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) the Court held that (1) Defense Counsel performed deficiently with respect to the State's initial plea offer; and (2) defendant showed that he was prejudiced by his own defense Counsel, and her deficient performance rendered the whole outcome fundamentally unfair; reverse and remand for new sentence hearing with the limitation that the new sentence should not exceed the Original Sentence is the appropriate relief.

also in Missouri v. Frye, 132 S.Ct. 1399 (2012) the United States Supreme Court held: (1) Defense Counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that is favorable to the accused; and (2) Counsel's performance was deficient in failing to communicate to defendant

Prosecutor's written plea offer before it expired. Sentence was vacated and Remanded.

Also in Libretti v. U.S. 516 U.S. 29, 50-51 (1995) Trial Counsel has a critical obligation to advise a client of "the advantages and disadvantages of a plea agreement."

Applicant's Sentence and Conviction is extremely unfair, and all of his reviews in the Court's thereafter had been meaningless, and served no degree of justice.

Applicant is entitled to effective Assistance of Counsel at Trial see Strickland v. Washington, 466 U.S. 668, 686 (1984); and McMan v. Richmond, 397 U.S. 753 and that is in violation of the United States Constitutional Rights.

If the attorney makes a serious mistake which could effect the verdict, reversal is required even if the attorney was generally competent. see: Trombly v. Anderson, 459 F. Supp. 1250, 1256 (1977); aff'd. 584 F.2d 807 (6th Cir. 1978); Hyman v. Aiken, 824 F.2d 1405 (4th Cir. 1987). The Court held "due process requires that a Criminal defendant be entitled to complete defense see: State v. Harris, S.C. 427 S.E.2d 409 (1993) citing California v. Trombetta, 467 U.S. 479, 104 S.Ct. 2528 (1984); and State v. Mabe, S.C. 412 S.E.2d 386 (1991).

In this case (2004-GS-02-1333-1334) the Solicitor's of Aiken County did not and could not meet the elements to convict the applicant on SC Code Ann. § 16-3-655 (2) & (3).

In order to charge and convict someone for a crime that is inflicting bodily harm on someone, physically or sexually, the state has the burden to prove every element beyond a reasonable doubt.

In Re. Winship, 397 U.S. 358, 364 (1970); see also Clerk v. Arizona, 548 U.S. 735, 776 (2006) (restating presumption that defendant is innocent unless and until the government proves "beyond a reasonable doubt each element of the offense"). The Winship reasonable doubt standard applies in both State and Federal proceedings see: Sullivan v. La. 508 U.S. 275, 278 (1993).

The Standard protects three (3) interests. First, it protects the defendant(s) liberty interest, see Winship, 397 U.S. at 363; Second it protects the defendant(s) from the stigma of a conviction; Third, it encourages community confidence in Criminal law by giving "concrete substance" to the presumption of innocence id. at 363-64. In this concurring opinion, Justice Harlan note that the Standard is founded on a fundamental value determination of our society that is far worse to convict an innocent man and then let a guilty man go free. Id. at 372 (Harlan J. Concurring).

Mr. Attorney General, Sir, I have a serious delima that I am suffering because of the Honorable Doye H. Early III Circuit Court Judge of the Second Judicial Circuit Court.

In my first initial PCR dated February 2, 2009 see PCR (2008-CP-02-00734) I testified that I corresponded to his office on December 29, 2004 "Before my Trial Complaining about Trial Counsel's Ineffectiveness."

I also testified that Trial Counsel lied to the Chief Administrative Judge to get an illegal Continuance, and I raised Violation of Federal Interstate Agreement on Detainers Act Contract, and Subject Matter Jurisdiction.

The Asst. Atty. General and Trial Counsel lied to judge Early regarding the Direct Appeal issue as well.

On January 5, 2009 I sent the Honorable Clerk a Rule 59(e) but it was returned with instructions to file with appointed Counsel Bradley L. Boni Esq. in which was done January 13, 2009.

It is true, im not entitled to effective Assistance of Counsel in PCR, but that appointed Counsel has the duty by Procedural Rule to file a Rule 59(e) to address all issues raised. pursuant to Martinez v. Ryan, 132 S.Ct. 1309 (2012) see also:

Trevino v. Thaler, 133 S.Ct. 1911 (2013), and he refused to do so. on April 6, 2009 the Honorable Early dismissed my issues with prejudice in clear violation of my Procedural due process under the Fourteenth Amendment of the United States Constitution.

Post-Conviction Statute clearly shows in S.C. Code Ann. § 17-27-80 (1976) Rule 52(a) SCRIUP. A PCR is not supported by factual Material evidence if it fails to make specific findings of facts, relating to each issue raised, or fails to set forth findings of facts that are supported by Trial Transcripts see: McCullough v. State, 464 S.E.2d 340 (S.C. 1990). "Orders in PCR Proceedings shall address all issues properly raised at the hearing.

S.C. Code Ann. § 17-27-90 provides that all applicants are entitled to a full, fair and meaningful opportunity to present one PCR Application id. at N. 2 pg. 753 see: Odom v. State, 523 S.E.2d 753 (1999).

On December 9, 2011, the applicant filed a PCR (2011-CP-02-02776) pursuant to Coats v. State, 575 S.E.2d 557 (S.C. 2003) in which, he had after-Disclosed evidence that met the 1 year Statute of limitations; and has never been ruled upon or heard that required a hearing, but again Judge Early prejudiced the applicant from being able to make an argument that he was entitled to make, again violating applicant's procedural due process and denying Equal application of the law that applicant is entitled to.

Applicant filed a Rule 29(b) SCRCrim P to the Honorable Court and again Judge Early denied this action again. Even though applicant met his burden pursuant to procedural Rule he was entitled to this Hearing, it was still denied, filed September 24, (2012)

Applicant filed an appeal to the erroneous ruling of Judge Early see: State v. Edens, 250 S.E.2d 116, 118 (S.C. 1978); and State v. Pierce - 207 S.E.2d 414 (S.C. 1974). because of his abuse of discretion and again it was not an appealable issue, and applicant was instructed by Mr. Robert M. Pachak Esq. to file a PCR See PCR(2013-CP-02-00478) filed April 16, 2014 with the issues of (1) Ineffective Assistance of Trial Counsel; (2) Supplemental Jurisdiction; and (3) Subject Matter Jurisdictional issues See Appeal Case No. 2012-213607

Applicant also filed a pro-se Brief dated January 23, 2014 pursuant to State v. Holbrook, 274 S.C. 4, 260 S.E.2d 181 (1979) to support action that applicant is entitled to.

The applicant respectfully Submits that he has no animosity towards the Honorable Early but he is in violation of Rule 50 SCACR Cannon 3 because his actions are not being done impartially or Diligently Cannon 3 (B)(5) Judge Early shall perform his judicial duties without bias or prejudice. And he shall not, in the performance of his judicial duties by words,

or conduct manifest bias or prejudice, including but not limited to bias or prejudice based on race, sex, religion, national origin, disability, or age, and shall not permit Staff, Court-officials and others Subject to the Judges direction and control to do so.

The Honorable Early's has manifested biasness and in the past proceedings impaired applicant's fairness of the proceeding and brings the judiciary into disrepute, see State v. Cooper, 514 S.E.2d-584, 334 S.C. 340 (1999).

Mr. Attorney General, Sir, pursuant to the rules and Statutes governing PCR Proceedings, the applicant is "entitled" to a "full" adjudication on the merits raised. Subject Matter Jurisdiction cannot be waived or barred or defaulted "where the matter was void for the Court's lack of Jurisdiction.

The applicant is suffering continuing consequences as a result of his invalid conviction see Jackson v. State, 489 S.E. 2d at 916.

The applicant respectfully contends that the filing dated May 5, 2014 to the Honorable Chief Justice Tol and Justice Donald Beatty was not meant to be Ex parte Communication as of Official Letter Head dated May 7, 2014 per Mr. Daniel E. Shearouse.

Notice is hereby given, that upon your failure to investigate and take appropriate action to cease the unlawful practice, I will within Thirty (30) days, or shortly thereafter, seek Habeas Challenging the Constitutionality of the cited Statutes, and code of laws cited here-in, naming you as personal Respondent.

Wherefore, Sir, I respectfully request that you exercise your powers to correct the Constitutional violations, and provide me with a true copy of your investigation report, opinions, and any action taken.

Your Office is entrusted with the responsibility of defining and issuing a legal opinion regarding the allegations and facts, and if determined to be true, take appropriate action to correct the injustice.

All the applicant is seeking is his chance to challenge his Sentence and Conviction in the PCR (2013-CP-02-00478) hearing that he is entitled too. Please help me out Sir. on this 14th day of July, 2014
Columbia, SC, 29210

Respectfully Submitted
Ned E. Gray Jr #307590
Pro-Se Applicant

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN)

2004-GS-02-1333-1335

NOEL E. GRAY, JR. #307590)

2013-CP-02-00478

Pro-Se APPLICANT,)

) AFFIDAVIT OF APPLICANT IN GOOD FAITH

V.)

)

STATE OF SOUTH CAROLINA)

RESPONDENT,)

I Noel E. Gray Jr #307590 by Pro-Se Representation respectfully submits this Affidavit in Good Faith, and all information is true and correct to the best of my knowledge and beliefs, under the penalty of perjury.

Mr. Attorney General, I do not have any animosity towards The Honorable Early, but he is in violation of Procedural Legal Due Process, under Canon 3 Rule 50 SC.C.O.J.C.; the Sixth and Fourteenth Amendments of the United States Constitution; and Article 1 § 3 of the South Carolina State Constitution.

Judge Early clearly knows that Trial Counsel lied to him in first initial PCR back in 2004, as well as Mr. Mary S. Williams, Asst. Attorney General.

I'm not seeking to get the Honorable into any trouble, but the law is the law.

I would like to resolve this peacefully without a investigation by changing Venue or what ever you deem is efficient, by having this PCR Hearing before another Judge.

By Procedural Rule and Citations of Authority. I am entitled to this PCR.

Mr. Attorney General, Judge Early has falsely denied me access to the Courts by failing to allow me to address my issues fully and by falsely denying my previous filings. that were supported by procedural Rule and Case law.

I really don't want to bring this to the Habeas Statute, but I will if I have to.

The United States Supreme Court and the South Carolina State Supreme Court said I am entitled to this PCR Action by law.

Sir, I know your a busy man, and I respect your authority but I am an innocent man and now I can prove it. Federal law and State law was violated and now I can prove it.

Your time and help is greatly appreciated.

Respectfully Submitted,

Noel E. Gray Jr. #30350

Noel E. Gray Jr.

Broad River, Corr. Inst.

Columbia, SC. 29210

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

2004-65-02-1333-1335

NOEL E GRAY, JR. #307590

2013-CP-02-00478

PRO-SE APPLICANT.

CERTIFICATE OF SERVICE

Y.

STATE OF SOUTH CAROLINA.

RESPONDENT.

I Noel E Gray Jr. # 307590 respectfully submit that I have deposited a Original Complaint, Notice, and Request against Honorable Judge Early, Circuit Court Judge pursuant to Canon 3 Rule 501 SC.C.O.J.C. with Affidavit in Good faith, mailed to the S.C. Attorney General, Mr. A. Wilson Esq. P.O. Box 11549, Columbia, SC. 29211. Postage Pre Paid and addressed this 14th day of July, 2014.

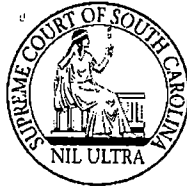
Respectfully Submitted.

Noel E Gray Jr. #307590

Noel E Gray Jr.

Broad River Corr. Inst.

Columbia, SC. 29210



EXH1017 S-14

The Supreme Court of South Carolina OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

William C. Campbell
Assistant Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

March 30, 2015

PERSONAL AND CONFIDENTIAL

Noel Eugene Gray, Jr. #307590
Broad River Correctional Institution
4460 Broad River Road
Wateree 281
Columbia, SC 29210

RE: Lawyer: Daniel Francis Gourley, Esquire
Matter Number: 15-DE-L-0401

Dear Mr. Gray:

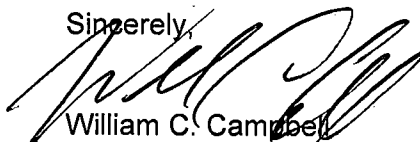
We have received your complaint against Daniel Francis Gourley, Esquire. We will conduct an investigation into the matters you have reported. You will not necessarily be contacted prior to a decision regarding your complaint; therefore, you should submit any additional information or documentation to support your allegations at this time.

The authority of this office and the jurisdiction of the Commission on Lawyer Conduct are limited to issues of whether a lawyer is subject to discipline pursuant to the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR. Where misconduct is found, sanctions may be imposed ranging from a confidential letter of caution or admonition, public reprimand, suspension, or disbarment. If our investigation does not reveal evidence of lawyer misconduct, your complaint will be dismissed.

We take this opportunity to advise you of the limited role of this office and the Commission so that you will be aware that we cannot provide you with assistance or advice. You should promptly seek assistance or advice that you might need from legal counsel or other sources. If you do not have an attorney and believe that you need one, you should contact the South Carolina Bar Lawyer Referral Service at 1(800) 868-2284.

You will be notified of the final disposition of your complaint. It is often many months after receipt of a complaint before a final decision is made. Feel free to contact me if you have any questions or concerns.

Sincerely,



William C. Campbell

WCC/clg



EXHIBIT S-15

ALAN WILSON
ATTORNEY GENERAL

May 15, 2015

~~The Honorable Perry M. Buckner~~
Administrative Judge, Fourteenth Circuit
P O Drawer 470
Walterboro, SC 29488-0470

Re: Noel Gray, #307590 v. State of South Carolina
2013-CP-02-00478

Dear Judge Buckner:

Enclosed please find an original proposed **Final Order of Dismissal** in the above-captioned case. ~~The Honorable Doyet A. Early, Chief Administrative Judge for the Second Circuit, has a conflict of interest in this matter. Pursuant to the Order issued by Chief Justice Toal dated April 12, 2013,~~ any circuit court judge residing in or assigned to an adjoining judicial circuit may sign in Judge Early's stead. Therefore, if this Order meets your approval, please sign and return to me in the enclosed envelope. I will then forward to the Aiken County Clerk of Court to be filed and served.

Sincerely,


~~Daniel Gourley~~
Assistant Attorney General

DG/cc
Enclosures

cc: Noel Gray, #307590



ALAN WILSON
ATTORNEY GENERAL

August 25, 2015

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

RE: Noel E. Gray, Jr., #307590 v. State of South Carolina
Lower Court Case No.: 2013-CP-02-0478
Appellate Case No.: 2015-0001711

Dear Mr. Shearouse:

I am in receipt of your letter dated August 21, 2015, inquiring into the status of the Final Order in the above mentioned lower court case. In full acknowledgement of the Second Circuit ~~Chief Administrative Judge's conflict of interest in this case~~, the proposed Final Order of Dismissal was submitted to the Honorable Perry M. Buckner for his consideration on February 25, 2015. As this proposed Order further denies the Applicant's numerous motions and filings, additional copies of these documents were provided to Judge Buckner for his review as well as the Applicant's response to the Conditional Order of Dismissal. Our file reflects the result of the proposed Final Order remains within Judge Buckner's discretion.

Sincerely,


~~Daniel Gourley~~
Assistant Attorney General
SC Bar No. 100934

DG/cc
Enclosures

cc: The Honorable Perry M. Buckner
Noel E. Gray, Jr., #307590



EXHIBITS-17

ALAN WILSON
ATTORNEY GENERAL

September 29, 2015

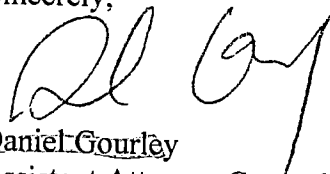
The Honorable Maité Murphy
Chief Administrative Judge, 1st Judicial Circuit
Post Office Box 802
St. George, South Carolina 29477

Re: Noel Gray, #307590 v. State of South Carolina
2015-CP-02-01730

Dear Judge Murphy:

Enclosed please find an original proposed **Conditional Order of Dismissal** in the above-captioned case. The Honorable Doyet A. Early, Chief Administrative Judge for the Second Circuit, has a conflict of interest in this matter. Pursuant to the Order issued by Chief Justice Toal dated April 12, 2013, any circuit court judge residing in or assigned to an adjoining judicial circuit may sign in Judge Early's stead. Therefore, if this Order meets your approval, please sign and return to me in the enclosed envelope. I will then forward to the Aiken County Clerk of Court to be filed and served.

Sincerely,


Daniel Gourley
Assistant Attorney General

DG/cc
Enclosures

cc: Noel Gray, #307590

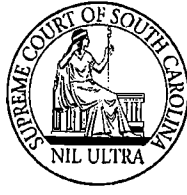


EXHIBIT S-18-19

The Supreme Court of South Carolina

OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Kelly B. Arnold
Assistant Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

October 20, 2016

PERSONAL AND CONFIDENTIAL

Noel Eugene Gray, Jr. #307590
Broad River Correctional Institution
4460 Broad River Road
Murray 152-B
Columbia, SC 29210

Re: Judge: Circuit Court Judge Doyet A. Early, III
South Carolina Circuit Court, Second Circuit
Matter Number: 16-DE-J-0254

Dear Mr. Gray:

We have received and reviewed your complaint about Circuit Court Judge Doyet A. Early, III. The authority of this office and the jurisdiction of the Commission on Judicial Conduct concerning complaints against judges are limited to issues of whether a judge has committed misconduct or is incapacitated within the guidelines of the Rules for Judicial Disciplinary Enforcement, Rule 502, SCACR, adopted by the Supreme Court of South Carolina.

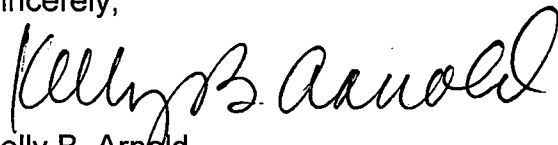
These rules do not apply to questions about whether or not the outcome of a case handled by a judge was fair. We do not have authority to intervene in any matter presently pending before a court or to change the outcome of the decision of a court. These are legal matters which must be addressed by you to the court or raised by you on appeal using the appropriate appellate procedures.

In addition, we do not seek to get a judge to do something a person wants done. We cannot give advice about your case or the legal system in general. This is not a place for an individual to seek relief, but a place where institutional values are promoted for the good of everyone who has dealings with our legal system.

Noel Eugene Gray, Jr.
October 20, 2016
Page Two

The information in your complaint involves legal matters that would not constitute misconduct or incapacity under these rules even if true and, as such, are outside the jurisdiction of this office and the Commission on Judicial Conduct. For this reason, your complaint is dismissed pursuant to the provisions of Rule 19(a) of the Rules for Judicial Disciplinary Enforcement.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly B. Arnold". The signature is written in a cursive, flowing style with a large initial "K".

Kelly B. Arnold

KBA/clg

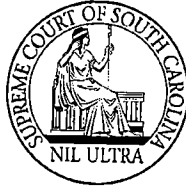


EXHIBIT 5 -23

The Supreme Court of South Carolina

OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Joseph P. Turner Jr.
Senior Assistant Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

November 21, 2017

PERSONAL AND CONFIDENTIAL

Noel Eugene Gray, Jr. #307590
Broad River Correctional Institution
4460 Broad River Road
MU-0152-B
Columbia, SC 29210

RE: Judge: Circuit Court Judge Doyet A. Early, III
South Carolina Circuit Court, Second Circuit
Matter Number: 17-DE-J-0221

Dear Mr. Gray:

We have received your complaint about Circuit Court Judge Doyet A. Early, III. We will conduct an investigation into the matters you have reported. You will not necessarily be contacted prior to a decision regarding your complaint; therefore, you should submit any additional information or documentation to support your allegations at this time.

The authority of this office and the jurisdiction of the Commission on Judicial Conduct are limited to issues of whether a judge is subject to discipline pursuant to the Rules for Judicial Disciplinary Enforcement, Rule 502, SCACR. Where misconduct is found, sanctions may be imposed ranging from a confidential letter of caution or admonition, public reprimand, or removal from office. If our investigation does not reveal evidence of judicial misconduct, your complaint will be dismissed.

We take this opportunity to advise you of the limited role of this office and the Commission so that you will be aware that we cannot provide you with assistance or advice. You should promptly seek assistance or advice that you might need from legal counsel or other sources. If you do not have an attorney and believe that you need one, you should contact the South Carolina Bar Lawyer Referral Service at 1(800) 868-2284.

You will be notified of the final disposition of your complaint. It is often many months after receipt of a complaint before a final decision is made. In the meantime, feel free to contact me if you have any questions or concerns.

Sincerely,

Joseph P. Turner Jr.

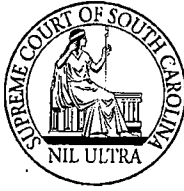


EXHIBIT R-1

The Supreme Court of South Carolina

OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Barbara M. Seymour
Deputy Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Facsimile: (803) 734-1964

March 11, 2015

PERSONAL AND CONFIDENTIAL

Noel Gray #307590
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

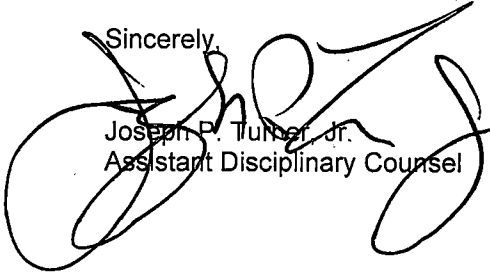
Dear Mr. Gray:

Thank you for your recent letter. The authority of this office is limited to issues of whether a lawyer or judge has committed misconduct or is incapacitated within the guidelines of the conduct rules adopted by the Supreme Court of South Carolina.

This office does not have jurisdiction over clerks of court or the type of matters mentioned in your letter. For this reason, we are unable to assist you. If you believe that your rights have been violated or your interests compromised, we suggest that you seek the advice of a lawyer. If you do not have a lawyer, you should contact the SC Bar Lawyer Referral Service at 1(800) 868-2284. If you cannot afford a lawyer, you might qualify for free legal assistance. You can contact the Legal Aid Telephone Intake Service (LATIS) at (888) 346-5592 to see if you qualify.

If you have a complaint about a lawyer or judge, you will need to provide us with the name of the lawyer or judge and a statement of your allegations. Feel free to contact us if you have any questions.

Sincerely,


Joseph P. Turner, Jr.
Assistant Disciplinary Counsel

JPT/

RECEIVED

STATE OF SOUTH CAROLINA)

IN THE SUPREME COURT

OCT 12 2016

COUNTY OF AIKEN)

OFFICE OF JUDICIAL MISCONDUCT

COMMISSION ON
JUDICIAL CONDUCT

EXHIBIT R2067

Noel Gray, # 307590

) C/A NO. 2015-CP-02-01730

Applicant,)

) OFFICIAL LEGAL COMPLAINT AGAINST

) THE AIKEN COUNTY CLERK OF COURT

) FOR VIOLATIONS OF RULE 71.1(c) SCRCP

) and RULE 40(h) SCRCP citing the First and

) FOURTEENTH AMENDMENTS U.S. CONST.

State of South Carolina

) and Article 1 § 3 S.C. Const.

Respondent.)

RECEIVED

OCT 12 2016

OFFICE OF
DISCIPLINARY COUNSEL

v.

Comes Now before this Office pursuant to the above cited State and Federal Authorities, the applicant here-in files this Official Legal Complaint against the Clerk of Court for Aiken County due to the failure to properly file and index a PCR Application in which violated the Applicants S.C. Code Ann. § 17-27-45(A) (2003) Statute of Limitations. and violated Rule 71.1(c) SCRCP. This due process violation also deprived the applicant of his ability to exhaust his State remedies.

On November 30, 2012 the Honorable Early for the Second Judicial Circuit erroneously denied the Rule 29(b) SCR Crim. P. Motion for New Trial based on After-Discovered Evidence. Citing Coats v. State, Supra, see also the 2011-CP-02-02776 PCR Application that was ripe

for an Evidentiary Hearing pursuant to Shaffer v. State, Supra.

Genuine material fact was provided to support a hearing and Judge Early knew the applicant was telling the truth citing S.C. Code Ann. § 17-27-80 (2003) and Rule 71.1 (e) SCRCP that is the reason in which Judge Early dismissed it with prejudice in order to prevent the applicant from proving these facts that:

1. Trial Counsel lied to Judge Lloyd on October 29, 2004 to obtain a Continuance;
2. The Order was done outside of Court, violating the Federal IADA Contract and the Speedy Trial Act; State v. Holbrook, Supra.
3. Trial Counsel lied to Judge Early on February 2, 2009 in the initial PCR 2008-CP-02-0734, citing Lahan v. Armontrout, Supra.
4. A non-violent plea offer was given by the State and Trial Counsel placed it in the file and never communicated it to the Applicant and he received Two Life without Parole Sentences due to Ineffective Assistance of Counsel.

On December 27, 2012 the applicant filed an appeal to Judge Early's erroneously denial of the Rule 29(b) SCR Crim.P. in which he did not have the Jurisdiction to entertain.

On December 18, 2012 the S.C. Court of Appeals gave the Appellate Case No. 2012-213607 to the applicant.

On January 11, 2013 the Division of Appellate Defense appointed Mr. Robert M. Pachak Esq. to represent the applicant on Appeal.

On March 11, 2013 the Applicant had Judge Early recused off the bench for his Serious Due Process Violations pursuant to Floyd v. State, Supra, and the Supreme Court filed an Order to this refusal, but failed to serve a copy to the Applicant in which "all parties are to be served" violating due process of law citing the Fourteenth Amendment U.S. Const.

On July 12, 2013 the applicant had the 2013-CP-02-0478 PCR Application Dismissed pursuant to Rule 71.1(b) SCRPC, but the Clerk of Court nor the Chief Administrative Judge never brought it to bar nor any written dispositions has ever been filed.

The Honorable Perry M. Buckner for the 14th. Judicial Circuit for Walterboro, SC was warned about these due process violations with genuine material fact, but failed to enforce it, and the 2013-CP-02-0478 PCR Application continued to run even against the Applicants wishes and violated Procedural Rule, Judge Buckner filed his erroneous Final Order on September 17, 2015. and violated Rule 501 COJC SCACR Canons 1 2 3 the applicant filed grievances against Judge Buckner and Daniel F. Gourley Esq. Respondent see 15-DE-J-0068 and 15-DE-L-040, but was erroneously denied and covered up by Mr. Joseph P. Turner Jr. and William C. Campbell.

On April 12, 2013 the Counsel for the applicant filed his Brief citing Davis v. State, Supra, with a Designation of Matter to Be Included on appeal was filed.

~~C-4~~

The S.C. Appellate Court ruled it's decision on January 29, 2014 and the Remittitur was sent on February 24, 2014.

On April 16, 2014 the applicant filed the PCR Application along with a Motion to pull PCR Application Dated March 20, 2014 Appellate Case No. 2012-213607 and Open for PCR and to amend the January 23, 2014 Jurisdictional Issues with exhibits to the Application.

On April 24, 2014 the Applicant had the February 27, 2013 2013-CP-02-0478 Application replaced with the February April 16, 2014 Application, But was never done.

Judge Buckner was fully aware of the due process violations of the Clerk of Court and the Respondent, but failed to act or respond to it. in which violated due process of law.

Then the Respondent takes the Application that was improperly filed after 17 + month later ' Sent April 16, 2014 and Indexed July 9, 2015 and is now before the Honorable Mattie Murphy Chief Admin. Judge for the 1st Judicial Circuit in St. Peter, SC. and Stated in a Conditional Order of Dismissal that the Application is over the Statute of Limitations.

Material facts clearly support the Clerk of Court and the Respondent are hiding the fact that they are responsible for the filing error, not the applicant. and both Judges have been served both Material facts and Motions to correct this

CS

The applicant has even brought these unconstitutional and illegal errors to the State Supreme Courts Attention pursuant to Key v. Currie, Supra, on February 26, 2015 and denied April 8, 2015 and Appellate Case No. 2015-000487 on June 3, 2015 and Appellate Case No. 2015-001711 on August 19, 2015.

The lower court is violating the Applicant's due process of law and is not giving him a fair, full and meaningful opportunity to exhaust his claims.

The Honorable Murphy does possess the evidence that is spoken in this Official Legal Complaint against the Clerical Court. And exhibits and Sworn Affidavits have been sent to support this action.

The Applicant only wants the PCR hearing that he is entitled too. I've been stuck in this lower Court since April 16, 2014 because of the Clerk's vindictiveness.

Rule 71.1(c) SCRPC has been violated. Due Process has been violated and Rule 71.1(d) SCRPC; S.C. Code Ann. § 17-27-45(a) has been violated.

Action needs to be taken, Justice must be afforded to an indigent.

Columbia, SC.

October 4, 2016

Respectfully Reported
Noel Gray #307590
Noel Gray

E-6

Certificate of Service and Sworn Affidavit:

I Noel Gray #307590 do hereby Swear under the Penalty of perjury that the Contents Contained here in this Official legal Complaint against the Clerk of Court of Aiken County are true and correct to the best of my Knowledge and beliefs.

Also, Judge Buckner and Judge Murphy has been fully given all evidence and Motions regarding these issues with Genuine Material fact, in which Supports that the Applicant is entitled to Relief pursuant to Default and Summary Judgment.

The Original Copy of this Complaint is placed in the U.S. Mail postage pre-paid and addressed to the following: Commission of Judicial Conduct c/o Clerk of Aiken County to: Ms. Judy W. Gilham Admin. Asst. 1015 Sumter St. Suite 305 Columbia, SC 29201

SUBSCRIBED BEFORE ME and Sworn

This 4th day of October, 2016

X Susan E. Frye Ys.

Notary Public for South Carolina

My Commission Expires: March 5, 2018

cc/ File / 32254

Respectfully Submitted,

Noel Gray #307590

Noel Gray #307590

Murray #152 B

Broed River Court, Inc.

4460 Broed River Rd

Columbia, SC 29210

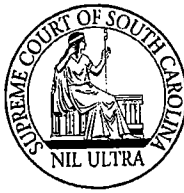


EXHIBIT R-8

The Supreme Court of South Carolina

OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Barbara M. Seymour
Deputy Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Facsimile: (803) 734-1964

October 20, 2016

PERSONAL AND CONFIDENTIAL

Noel Eugene Gray, Jr. #307590
Broad River Correctional Institution
4460 Broad River Road
Murray 152-B
Columbia, SC 29210

RE: Your Correspondence of October 12, 2016

Dear Mr. Gray:

We recently received your complaint alleging misconduct by the Aiken County Clerk of Court. This office does not have jurisdiction over of clerks of court. Because your letter does not allege misconduct on the part of a South Carolina lawyer or judge, we are unable to conduct an investigation into your complaint. We suggest you contact Court Administration. You can mail your complaint to SC Court Administration, 1220 Senate St., Ste. 200, Columbia, SC, 29201.

Sincerely,

Kelly B. Arnold
Assistant Disciplinary Counsel

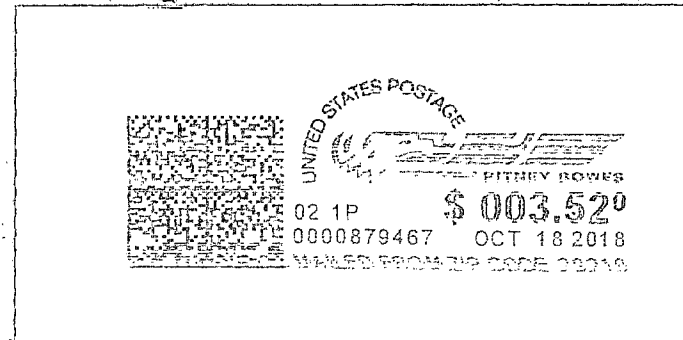
KBA/

24 #307590
52(B)

-Corr. Inst.

River Rd.

29210



Re: 2017-001729/ 2015-CP-02-01730
In The Supreme Court of South Carolina
The Honorable Daniel E. Sheerouse
Clerk of Court
P.O. Box 11330
Columbia, SC

29211

CEIVED

CT 18 2018

BRCI
MAILROOM