

STATE OF SOUTH CAROLINA )  
County of: JASPER )  
=====)

( COURT OF COMMON PLEAS  
( =====  
( Case # 2012-CP-27-0691

Joseph H. Gibbs, #185709 )  
Petitioner )  
Vs )  
Mr. Donnie E. Stonebreaker; Warden )  
Respondent )  
=====)

MOTION: To amend / alter  
judgment and rehearing.

Honorable; Carmen T. Mullen

\*\*\*\*\*

I respectfully moves this court in a timely and proper manner to to amend or alter its summary judgment order, filed July/6/2018, and received by me on July/17/2018, pursuant to Rules 52(b), 59(d) SCRCP. Improper venue and lack of jurisdiction was ordered, Rule 41(b) SCRCP, "merits not adjudicated" : for the following reasons:

**Facts**

1. The habeas corpus <sup>1</sup>/<sub>2</sub> was filed under nunc pro tunc, on 11/7/2012, which contained a procedural history, @ p.2-11, to include **exhaustion of pcr remedies @ (6.>)**, and statement (c), that other remedies were **inadequate** and/or **unavailable**, on issues raised. After receiving 1'st time copy of indictments, I made a formal request for investigation into fabrication of same after trial, based on visible evidence and court record. Appendix 1 & 2, "Attached". No response from SC.AG or party.
2. After years of no response or hearing, or answer to letters of inquiry by court, counsel or party, I filed a complaint, ie **17-DE-J-0132** dated 7/3/17, dismissed 9/25/17. I then sent a request to justice Pleicones dated 10/30/17, response made 11/2/17. When no response was made by court, I filed a proposed order dated 3/21/18. This court sent a letter to Counsel C. Saville AAG, dated 5/1/18, in notice that no answer or motion had been filed.
3. Respondent made a return by motion to dismiss, on lack of jurisdiction and improper venue, based on incomplete, and misstated facts, without answering issues raised. Attached was the order signed by the court.
4. The return and order was dated 6/22/18, and sent to the

wrong prison, and received by me on 7/13/18. I prepared a motion for extension of time to respond for 30 days, dated 7/14/18, and served same on 7/16/18.

5. On July/17/2018, I received the proposed order signed by this court, dated 6/27/18, and filed in the court on July/6/2018 1:03 pm, and postmarked on 7/13/18.

**Correction of fact**

6. At p.2, there was no representation by any "Marva Hardee-Thomas" or any knowledge of same, and none exist in court records.

7. Petitioner was not sentenced to "life without parole" on either offence, and same was concurrent.

8. The indictments were presentments only not being true billed before trial, id. appendix 1 & 2.

9. The 1'st **only** PCR, in incomplete and there were 7 general grounds with specific allegations of error raised; that was not allowed on PCR. Counsel filed a Johnson ie Anders supra petition, and a pro se brief and addendum was filed. I was not served notice of judgment until Nov/14/1997.

10. On direct 92-728 appeal, a petition to perfect appeal, and pro se letter was also filed.

11. In 3:93-cv-02921 the petition was dismissed as mixed, without prejudice, pending appeal on 60(b) SCRCF motion filed 8/11/93, or PCR.

12. In 1'st Habeas, 98cp27267, the petition was dismissed after matter was before Judge Goodstein on 3/2/99, and continued to 6/1/99, and order was signed as the "administrative law judge" 14'th cir, and **not** filed in the court until 6/28/1999, and mandamus was filed to enforce the law, id 17-17-10--200 as a ministerial duty. The order of the SC.Ct of App, 2000-UP-503 found that PCR was unavailable, and articulated habeas procedure in the circuit courts, and somehow held that I did not appeal the PCR. The supreme court did not grant certiorari to review the order.

13. In 2003-cp-27-0184; this was a declaratory judgment action

as ex parte, and was **not** a notice & intent.

14. In **2010-OR-00455**, this docket # is unknown, as the only original jurisdiction to the US S.Ct is (11.>) case #10-8461.

15. In add to allegations raised in their return; there is other grounds raised in the petition, which is shown in my proposed order not allowed on PCR; id pp 16--35

Trial errors structural and infernal, "abuse of discretion by judge" is not allowed on PCR.

Prosecutorial misconduct is not allowed,

Insufficient evidence, is not allowed.

Denial of Due process is not allowed.

The court did not adjudicate the indictment issues and jurisdiction at all.

UnConstitutional suppression of evidence was summary dismissed on motion as with other issues, and not allowed.

All of the unconstitutional issues on jury charge was not adjudicated, or allowed.

Being denied right to put up witnesses and defence was not allowed, or not fully adjudicated.

Judges remarks to counsel in front of jury was not allowed.

All of the specific allegations of legal and constitutional error that warranted the relief was not allowed, or not fully and fairly adjudicated; nor was an adequate fact finding process had.

Only ineffective assistance of trial counsel was allowed; in part.

### **Argument**

16. Here the order appears to be another **ghost written**, and a sufficient review of the pleadings and evidence was not done, Anderson 470 US @572 [judge relied on order prepared by prevailing party, in error without sufficient review. Ghost written orders were admonished in Colony Square 819 F.2d 272 (11'th Cir 1987) when a court deffers to a lower court finding unless erroneous, it relies on an order that was not a **full and fair** product of fact and law by the court itself] Jefferson V Zant 263 GA. 316,317.

17. The order dose not make a **prima facie** finding on the face

of the petition itself, nor dose it adjudicate the releif sought, and habeas is to remedie the unlawful and unconstitutional restraint of liberty.

18. The order denies subject matter jurisdiction, when jurisdiction of this court to issue the writ is conferred by **Title 14** and authority by **17-17-10,30** statutory code of SC. And Constitutional jurisdiction by **artical V §11, §20** SC (1895 revised 2009), *id* p.1(HC/691).

19. The order violates **Artical 1 §8** SC Constitution, as it denies the mandatory language of the statutory laws **§17-17-10** etq and **§17-25-10**, to remedie unlawful and unconstitutional convictions and restraint on liberty, and by **Emphasis** usurps the Legislative Branch of Goverment, by expanding the Judicial Branch interpretations as suspension of the writ, contrary to Gibson supra and Simpson supra, as well as other citations.

20. Habeas Corpus is a remedie procedure, and PCR is an independent cause of action, and the record, as shown in the (HC/691) and was inadequate and unavailable, see dissent of justice Ness in Simmons V State 215 SE.2d 883 (1975) and ~~§17-17-20~~ did not susspend state habeas, but did make any issue procedurally bard at pcr, not cognizable on fed habeas §28-USC-2254.

21. The order dose not make a finding of fact and law on subject matter jurisdiction, and the lack of any indictments in the courts records, even at PCR, and I did argue that I had not been indicted or afforded any due process procedure prior to trial.

22. I submit that the order did not allow for the untimely filing of summary dismissal motion, or the defence of **res judica** [res judica waived if not timely waived, 2017-WL 4781380, *id* Arzonia V Cali 530 US 392 @ 410 (2000)].

23. That the affirmative defences of **preclusion, collateral estoppel, res judica, or successive petition**, since these require proof by the respondent that the prior courts had in fact and law adjudicated the issues raised. They did not, and in fact the other pleadings filed, raised issues supported by the record, but through **abuse** of the summary judgment process, were not fully and fairly adjudicated by the court in an **unbiased** hearing or order.

24. That the prior courts have not complied remedied the constitutional and legal violations shown, and even in Keeler 500 SE.2d 123 (1998) the SC. S.Ct found that the jury charge raised was unconstitutional by the US S.Ct, but he did not raise it at all on PCR. SC Must grant relief that Fed Law requires, Yates 484 US 211 @ 218, and justice Toal recognized that Yates ruling 108 S.Ct 534 was mandatory on state court in her dissent with Justice Finney.

25. The order dose not address the doctrine on **nunc pro tunc** id Blacks Law Dict 10'th Ed. **9 ALR 3d 462** [prerequisite for npt order is some previous action by the court, that is not adequate in the record, Ex Parte Strom 343 SC 257 (2000)].

26. The order dose not make a finding on the Plain Error declarations, that although cannot be raised in the court of appeals or SC Supreme Court; can be raised in the circuit court, of first resorts.

#### Conclusion

Wherefor having responded and pleaded to this court to alter or amend its judgment, and to grant hearing on issues not adjudicated, that this court will recind and make an unbiased, and full and fair finding of fact and law on the merits of the petition.

July/ 23 /2018      Respectfully Submitted

Rule 11 SCRPC

*/s/ Joseph H. Gibbs*

Joseph H. Gibbs, 185709

Pro Se  
ECI, F-3-A-255  
610 Hwy 9 West  
Bennettsville SC. 29512  
Ph 843-479-4181

CC  
Mr. Christian Saville, AAG  
Office of SC. Attorney General  
PO. Box 11549  
Columbia SC. 29211  
Ph 803-734-3737

7-23-18|eci/jhg

State of South Carolina  
County of Jasper  
=====

Sept/2/2013

TO: Mr. Alan M. Wilson  
SC. Attorney General  
PO. Box 11549  
Columbia SC. 29211

Mr. David Tatarsky  
General Counsel: SCDC  
Po Box 21787  
Columbia SC 29221-1787

RE: Joseph Gibbs, #185709 Vs Willie Eagleton; Warden, et al.  
E.C.I, F-3-B-242  
610 Hwy 9 West Case # 2012-cp-27-0691  
Bennettsville SC. 29512

Sir's

I am respectfully requesting an investigation by your office's as an elected official & officer of the court, on the following; Complaint of indictments received from the clerk of court, certified 6/14/13, in the above pending case, that appears to be on the face and by record invalid!?

1. Apetition for habeas corpus was filed 11/7/12, and served to warden and AG, on 9/19/12, on unadjudicated claims, and due to plain error of prior procedure in state court.
2. Copies of indictments, 1992-gs-27-002, 003, received from clerk of court for first time, is not on proper <<form 5 (12/87)>> used by SC County Grand Jury. Dated 3/9/1992. General Sessions Court. ?
3. Copies of indictments do not contain clerks filing or clock stamp: No evidence of same being returned true billed on 3/9/92, and No records exist that the grand jury returned a true bill on 3/9/92, or before trial, and according to Reporter and Ct admin, no transcripts exist of Indictment publication or Plexicos "Attorney" oral motion on 3/9/92, and trial began on 3/10. ?
4. Copies of certified indictments dose not contain "Form or Verdict" Drawn by the trial judge at trial, shown in transcripts at TR. P. 202 ln. 10-24, 203 ln 10-11. Pet for habeas @ P.13, 23.> (I), & P.16 31.>(k)(L) & 32.>. Judge Howell had two plain white papers, and he stated Ill just draw these forms on here for you.
5. Signatures on Indictments cover sheet, of forman Zenith m Ingram; Is same Handwriting as found on the jury selection/strike list found at ROA TR. P.5A juror # 45, that was created by counsel during jury selection. [which by the way shows 11 jurors & 1 Alternate]. All these signatures same handwriting, and signature on indictments done after trial. ?
6. Either indictments were true billed by rubber stamp after trial, or forged altogether. ?

7. Indictments were never filed in the ROA on direct appeal, "92-728" id TR Index P.i, nor in the appendis to certiorari from PCR 94-cp-27-309, nor by state at PCR hearing. Nor in ROA # 9032 from habeas in 98-cp-27-267, and [order of judge Beatty was not filed until 6/21/99] after I had been denied transport to hearing before judge Goodstein on 6/1/99 and all parties were served notice, and then Asst AG, Ben Aplin went judge shopping to keep me from getting a hearing, and the SC Ct. App in 2000-UP-503, found that I had not appealed the PCR when I had. ?
8. Judge Gregory ordered Deputy Clerk Ms Holly scanlon, to send me a copy of indictments at hearing in the R.C.I in case 03-cp-27-135, TR. P. 17 ln 4-P.18 on 8/28/03, and this was never done.
9. The states attorney, Mr R. Deloach Asst AG, id PCR TR p. 4 ln 6--11, admitted state did'nt know when I was indicted, and PCR TR. 56 ln 6, P.54 ln 23--P155. The PCR Judge would not allow legal and constitutional issues to be raised on PCR, as only certain questions of ineffective counsel is allowed on SC.PCR, and no Finding of Fact and law was made on this issue.
10. At no prior order, has the courts in SC made a finding of fact and law on this issue, and I have raised, no timely indictment at every stage of prior proceedings, and the courts never had subject and jury never had personal matter jurisdiction. There was no Murder or Burglary, and I thought I was in the Right, that negates malice or intent altogether. Thats why I was never arraigned, had any preliminary hearing, or bond hearing, or Psycological evaluation. Because I killed a black in self defence doing what I thought was right, I was denied all due process to include a fair trial and defence.
11. The statement I gave on the airplane was an exageration, and untrue. I told Capt scoggis, and Sheriff Blackmon this at the airport, and they asked why, i said because we had an attentive audiance, and they said not to worry about it. I rebutted it on the stand, and the sheriff and capt lied when they said there wern't no bullet marks on the car, as they never looked, and I was not allowed to dispute this, and I was denied witnesses to the contrary.

Sincerely

*Joseph W. Gibbs*


**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

**OFFICE OF GENERAL COUNSEL**

**RESPONSE TO INMATE CORRESPONDENCE**

INMATE: Joseph Gibbs #185709  
INSTITUTION: Evans CI  
FROM: Christina Kellett  
SUBJECT: Correspondence dated 9-2-13  
DATE: 9-16-13

Your correspondence has been forwarded to the Attorney General's office.

S/   
Christina Kellett  
Administrative Asst.

Received 9/23/13  
A.H.G.

APP 1

7

WITNESSES

S T L Scoggins  
S Sidney Taylor  
Sam Woodward  
Ben Riley  
Randy Blackmon  
Joel O'Quinn

ARREST WARRANT #:

C734363

Arrested on November 18, 1991

ACTION OF GRAND JURY

TRUE BILL   
NO BILL   
FOREMAN *C. W. Smith*

Foreman: \_\_\_\_\_  
Grand Jury

VERDICT

*Murder - Guilty*

Foreman: *Zerith M. Ingram*  
Petit Jury  
Date: *3/11/92*

DOCKET #: 92GS27-0002

THE STATE OF SOUTH CAROLINA  
County of Jasper

COURT OF GENERAL SESSIONS

Term: March, 1992

THE STATE

vs.

Joseph H Gibbs

INDICTMENT FOR

0116

MURDER

16-3-20

TRUE COPY  
MARGARET BOSTICK  
CLERK OF COURT  
JASPER COUNTY, SC  
BY: *[Signature]*  
DATE: *10-14-13*

WITNESSES

S T L Scoggins  
S Sidney Taylor  
S Sam Woodward  
Ben Riley  
Randy Blackmon  
Joel O'Quinn

ARREST WARRANT #:

C734377

Arrested on November 18, 1991

ACTION OF GRAND JURY

TRUE BILL   
NO BILL \_\_\_\_\_  
FOREMAN *E. Smith*

Foreman: \_\_\_\_\_  
Grand Jury

VERDICT

*Burglary in the First  
Degree - Guilty*

Foreman: *Zenith M. Dugan*  
Petit Jury  
Date: *3/11/92*

DOCKET #: 92GS27-0003

THE STATE OF SOUTH CAROLINA  
County of Jasper

COURT OF GENERAL SESSIONS

Term: March, 1992

THE STATE

vs.

Joseph H Gibbs

INDICTMENT FOR

0079

BURGLARY IN THE FIRST DEGREE

(DWELLING) 16-11-311

TRUE COPY  
MARGARET BOSTICK  
CLERK OF COURT  
JASPER COUNTY, SC  
BY: *[Signature]*  
DATE: *10-14-13*

*APP-1 5*

COMMITMENT APPLICATION  
INQUIRY

WELCHPA

SCDC #: 185709  
GIBBS, JOSEPH -

CURR LOC: EVANS

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

OFFENDER CATEGORY....: VIOLENT  
CURR SENT SERVING CAT: VIOLENT

CONVICTION NUM...: ~~500001~~ INDICT NUM...: ~~91EGSE38003~~ WARRANT NUM: ~~2734363~~  
DATE SENTENCED...: 03/11/92 JUDGE LAST...: HOWELL FI: W

STATUTE: COURT ADM:

OFFENSE: 0999 MURDER

OFFENSE DATE: 11/03/91

CHARACT: F FACILITATION OF COUNTS: 01

OFFENSE CNTY: 27 JASPER

PLEA...: N NOT GUILTY

PRIOR ADULT COM GT ~~66503~~

TYPE SENTENCE... : S ADULT-STRAIGHT

COMMITMENT DATE...: 03/11/92

TOTAL SENTENCE...: 999 99 999

MAND SERV REQMT...: 000 00 000

INCARC SENTENCE...: 999 99 999

PAROLE FACTOR....: 2 1/3 SENT. REQ.

PROBATION SENT...: 000 00 000

PAROLE SERV REQMT: 020 00 000

RESTITUTION REQMT: ~~N~~

JAIL CREDIT.....: 128

EXTRA CREDIT.....: 000

SENT START DATE...: 11/03/91

CONVICTION STATUS: AC ACTIVE

CRIME CLASS AT COMMISSION: VIOLENT

CONSECUTIVE IND...: N SPOUSE ABUSE:

CURRENT CRIME CLASS.....: VIOLENT

SEX OFNDR IND....: N LAST UPDATE: P NEW

DATE....: 03/13/97

NO PAROLE: NOT APPLIC CREATED BY.: ~~G-DIMPLETT~~

DATE....: 03/16/92

PF4-DISPCONS PF8-NEXT CONVICTION

Appendix - 2

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