

THE STATE OF SOUTH CAROLINA  
COUNTY OF JASPER

**RECEIVED**

In Re: Joseph Hugo Gibbs, #185709

DEC 21 2018

v

SC Court of Appeals

Warden of Evans; Mr W. Eagleton

Petition for Habeas Corpus

Nunc Pro tunc

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FILED  
2012 NOV -7 AM 9:19  
MARGARET BOSTICK  
CLERK OF COURT  
JASPER COUNTY SC

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STATE OF SOUTH CAROLINA )  
County of; Jasper }

( THE COURT OF COMMON PLEAS  
{ For the 14'th Circuit

Mr. Joseph H. Gibbs, #185709 )  
Petitioner )

Case # 2012-CP-27- 691

Vs )

**PETITION: FOR A WRIT OF HABEAS  
CORPUS, ad subjiciendum**

Mr. Willie Eagleton; Warden )  
Respondents )

**nunc pro tunc**

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**Introduction**

I, the above named, and undersigned petitioner pro se, respectfully moves this court for the Writ of Habeas Corpus, SC Ann (1976) §17-17-10 et seq, & Rule 65(f) SCRPC; to correct errors of law; and grant relief from restraint of my liberty. I am an inmate at the Evans prison in Bennettsville SC. I have previously filed for habeas corpus, ie @ 7.> & 10.> below.

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1.> I am filing this remedial action in good faith; And believe that I am entitled to the writ as extraordinary means, that is supported by the substancial evidence of record and fact on the legal & constitutional issues raised: Other forms of relief have been inadequately judicated.

**Jurisdiction**

2.> This court has jurisdiction pursuant to the SC Const Art. V §11, §20 (1895 rev 2009), and SC Ann (1976) §14-3-310 & §17-17-30. Court of record.

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**Facts / Procedural History**

- 3.> Arrest Warrant- c734363- Murder 10/18/1991
- Arrest Warrant- c734377- Burglary 1'st 11/4/1991
- Arraignment- None-
- Preliminary Hearing- None-
- Bond Hearing- None-
- Indictment- 1992-gs-27-002- Murder 3/9/1992, "Not True Billed"
- Indictment- 1992-gs-27-003- Burglary 1'st 3/9/1992, "Not true Billed"
- Trial- Jury- March/10,11/1992- Convicted, General Sessions
- Judge- Honorable; William T Howell
- Prosecutor- Mr. Randolph Murdaugh, III- 14'th Circuit.

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Public Defender- Mr. Steven Plexico.

Sentence- 3/11/92- LIFE- Burglary 1'st in the Jasper County Dept of  
Public Works.

LIFE- Murder in (or) SCDC. **Concurrant.**

Psychological Evaluation / Competence Hearing- None-

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4.> A timely notice of Direct Appeal was filed, and Docketed as 92-728. Mr. Robert M. Dudek of the SC. Appellant Defence was appointed. He ordered the trial materials from Mr. Plexico on 3/31/92. I requested counsels records under the FOIA, on 10/5/92, and received partial compliance without indictments or warrants. Mr. Dubek filed an Anders brief on 7/29/1992, in the SC. Supreme Court raising;

Whether the court erred in refusing to instruct the jury on the law of involuntary manslaughter where appellant shot victim as a reflex while in fear.?

As part of the brief he filed a Petition to be relieved as counsel, on lack of appellate merit, and designation of matter that entire ROA was filed. The Record on Appeal did not contain Jury POLL, nor Indictments/ Warrants or Commitment orders, nor orders or transcripts/Transmittal papers from any arraignment or preliminary or bond hearings. I then filed a Petition to perfect the appeal pursuant to §§18-9-100,120, along with a certificate of service, affidavit, dated 9/25/92, and designation of matter & petition for other counsel dated 9/28/92. After notice from the Clerk of the Court, I filed a Pro Se letter/brief dated 11/13/92 with records. By unpublished Order #93-MO-111 filed 5/14/93, the Supreme Court (Dismissed the Appeal), granting counsels motion, and did not address the merits, or pro se petitions.

5.> I then filed a Motion to the Trial Judge, pursuant to Rule 60(B)(4-5) SCRPC with Memorandum to correct "Errors of Fact & Law" for relief from judgment, dated 7/28/1993, and filed in the Clerks office on Aug/11/1993 2:36 pm. No answer was made or Hearing had, nor Order had.? No Docket # issued. SC adopted all but part (6) of (B) from the federal rules. This action was held quasi civil and criminal to correct errors by the trial judge. The PCR court finally dismissed this issue. The Federal habeas court in 1994 dismissed on mixed petition as this action not having been appealed.

6.> **Exhaustion of PCR Remedies:** I filed an application for PCR dated 11/4/1994, docketed as 1994-CP-27-309. One counsel Mr Thayer Rivers was

appointed, but was later removed, and Mr. Albert Keckley was appointed. The state through Mr Robert Deloach made a return on 1/25/95, that did not answer the allegations of error; but did move to summary dismiss all grounds except ineffective trial counsel. The PCR raised the following Grounds with specific allegations and fact;

- 1: Trial Errors @ p.6(A)--12(J).
- 2: Denial of Due Process Rights, @ p.12(A)---16(G).
- 3: Ineffective Trial Counsel, @ p.16(A)---23(Q).
- 4: Denied Access to Courts, @ p.23(A)--(24(C).
- 5: Ineffective Appellant Counsel, @ p.24(A)--27(E).
- 6: UnConstitutional Suppression of Evidence, @ p.27(A)(1)--28(A)(5).
- 7: Prosecutorial Misconduct, @ p 28(A)--31(B)(3).

A hearing was held on 3/20/95. Honorable; Larry Patterson, presiding. At the opening, Mr Deloach declared that they didnt know when I was indicted, ie PCR TRanscripts p.4 ln 7-8. I was sworn in and questioning began ie @ 4 ln 20 and Mr Keckley pointed out to the court a reason for continuance. I could not have gotten witnesses to return at a later date to testify, so the hearing continued. After I was asked to show trial errors ie @ p 6 ln 21 the state interupted, and asked to summary dismiss all grounds except ineffective trial counsel, as not being Cognizable on PCR, to include Due Process. The court agreed,ie @7-8 ln 10. I objected and was told by the court, <<if you have **anything that** your attorney should've brought up in your defence thats what we're here to hear, okay>>. @p 8 ln 11--24. Questioning was conducted by the court, p 8 ln 25--12 ln 14 When I presented failure to investigate the court @ 9 ln 23 said <<let me stop you right there>>. Even though I repeatedly pointed out that i had never even been Indicted, and denied due process of arraignment, preliminary and bond hearings, and insufficient evidence, i was denied the right to argue or submit other legal and constitutional issues. A lot of testimony is deleted from the Transcripts ie --- by the court reporter. My witnesses testified on exculpatory matters, and showed ineffective counsel. Mr Plexico testified and admitted that no investigation was done, and defence was prepared, and he never talked to anyone that would have been present at a pre trial hearing. Even though the court lacked subject matter jurisdiction, and the jury lacked personal matter jurisdiction, because I was never indicted or in a timely manner, and denied all pre trial due process, and the legislature in §17-27-20(a)(1-6) allows this to be raised, the courts do not allow it on pcr.

(a) The PCR court informed the state to prepare the orders. The court

signed the Order Dismissing and Denying with Prejudice my PCR on 4/30/95. Page 15 of the order was missing and not included in the ROA. The order makes a Plain Error in findings of Fact & Law, and only makes a Partial adjudication of the Ineffective Counsel issues, and paraphrases the issues. On the Ineffective Appellant Counsel claim, Even though the State did not produce Mr Dudek for questioning, the court allowed the state to proceed. The order makes a conflict on preservation of issues between counsels, and makes incorrect finding of fact not based on the record. On the Psychological evaluation, the court stated that I didnt present independent psychologist to testify, when the law §44-23-410(1991) demands that an evaluation be had, and I was indigent. The order conflicts with the record and application filed, in its holding, and dismissed issues as waived that I was not allowed to argue. Mr Keckley did not file a Rule 52, 59 SCRPC.

(b) I filed a timely Notice of Appeal, and Motion for Private or Other appellant counsel, since Mr Keckley stated in writing that he did not want the appeal, and didnt know how, and ineffective appellant counsel was an issue. Justice Moore, Ordered that PCR Counsel would do the Certiorari, and Appellant defence would handle cost. Mr. Keckley filed a Johnson petition under Anders, dated 1/18/96, and raised the issue of;

Did petitioner receive ineffective assistance of counsel and was his right to due process under the 5'th amendment violated and his right to be confronted with the witnesses against him under the 6'th amend violated by his counsel holding a preliminary hearing without the knowledge or presence of petitioner.?

Counsels petition for cert also included a motion to be relieved on lack of merit of argued issue. Counsel filed an Appendix as ROA with the Petition for Certiorari, that did not include the Jury list found at Page 5A of the Direct Appeal ROA, and discussed at hearing, and did not include indictments warrants, or other SCDC and court records, and Only included the first 6 pages of the 33 page PCR application. I upon notice of the Clerk of Court, I filed a "Pro Se Brief and Addendum with Appendix. In my pro se brief is included, 30 questions to the court, a Statement of the Case, and Argument Facts on the issues, and Conclusion. The SC Supreme Court "Chief Justice" alone dismissed the petition and granted counsels motion, dated Nov/8/1996. I was not served the order or received same until @ Nov/14/1997, after I kept calling Mr Keckley to see what was taking so long, then he sent me the order. I filed a Motion and Complaint to the SC Supreme Court asking for a new PCR hearing. I was informed

by the Clerk, that the Chief Justice Finney could not give advise.

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(c) I submit and argue that the legal and constitutiona issues now raised in this petition; are either not cognizable on direct appeal, or PCR, or were presented but not fully and fairly adjudicated on the facts and law, and that Certiorari was not granted to review the Order. Pursuant to SC. Ann. §17-17-10 et seq I am entitled to the writ, and Pursuant to SC. Ann. §17-25-10 I am being punished for a crime, that I was not DULY and legally, and constitutionally convicted of by a court of competent jurisdiction.

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7.> I filed a state petition for habeas corpus on 10/8/1998, docketed as #98-CP-27-267, with appendix of supporting court records, pursuant to Rule 65(f) SCRPC & §17-17-10 et seq. All parties were properly served. On 1/12/99 I filed a motion to change the caption to Gibbs V Catoe, due to change of Director of SCDC. The respondent nor the SC Attorney General answered the petition or allegations. On 2/3/99 I received notice and roster for a hearing before Judge Goodstein on 3/2/99. I served parties notice and forward proof of service to the Clerk of Court. At hearing SCDC lawyers were present, but I was informed that the Attorney Generals Notice was lost and he was not present and Hearing would be before her on June/1/1999.

(d): The respondents through Mr Benjamine Aplin "Asst Attorney General" filed a summary judgment motion to dismiss on procedure dated 3/4/99, without answering the legal and constitutional issues. I filed a timely answer, 3/15/99 and forwarded a copy to Administrative Judge Jackson Gregory. Mr Aplin then went Judge Shopping and forwarded a Proposed order to Judge Donald Beatty, 4/9/99, in Spartanburg SC (Now Supreme Court Justice). I filed timely objection to the proposed order. I received notice and roster of the hearing before judge Goodstein for 6/1/99, and served parties notice and forwarded proof of service on May/19/1999 to the clerk of court. In response Mr Aplin, on 5/24/99 filed a pre dated order of 4/21/99 from Judge Beatty in the clerks office by mail. I then filed an emergency petition for writ of mandamus dated 5/26/99 to Judge Goodstein. The Clerk signed for it on 6/2/99, along with parties that were served. "No Answer or Response" On 6/24/99 I filed a notice of appeal, and informed the Clerk of Court that a Mandamus was pending in Jasper County, and that I would amend the petition. On June/28/99 I filed an amended petition for  
Order not filed until 6/21/99 P.5

mandamus and attached a Rule 65(f)(2) SCRPC complaint, and served all parties. No Answer was made. I was appointed appellant counsel Ms Ailene Clare on the Habeas Corpus Petition. I Received Notice and Roster that a hearing before Judge Gregory on the mandamus was set for 8/3/99. I informed Appellant Counsel and the Clerk SC Appeals Court. I served all parties notice, and forwarded proof of service to the clerk of court. When I was not transported to court on 8/3/99, I filed an objection to the Jasper Co Clerk of Court. I filed a complaint to Judge Gregory, and His Law Clerk informed me that He was not the Administrative Law Clerk for 1999, that Judge Smoaks in Walterboro SC was, and she forwarded documents to him. [Judge Beatty had signed the original proposed order as the Administrative Law Judge for the 14'th Circuit.] Judge Smoaks law clerk then informed me that he had spoken with Mr Aplin, and I had counsel on appeal. I filed a Motion for Default on 8/27/99, and forwarded a copy to the Court of appeals and appellant counsel. No Answer or hearing.

(e): On 11/10/99 appellant counsel filed an initial merit brief on appeal. On 3/3/2000 she filed the final brief with ROA # 9032. The RCA contained the Emergency petition for Mandamus, but did not contain the Habeas Corpus Petition. The Order of Judge Beatty did not contain the Clock Stamp from clerks office on filing. By order #2000-UP-503 dated 6/28/00 the appeals court denied the appeal, holding that PCR was not Available, that I had not appealed the PCR order from judge Patterson, and described how to petition for state habeas corpus. I filed for rehearing, with supplemental ROA. Denied on 9/6/00. I filed timely notice to petition the SC Supreme Court for Certiorari. Appellant Counsel Ms Ailene Clare was appointed. On 12/20/00 counsel filed a petition for certiorari with appendix. (the appendix excluded supplemental roa and lower court records. on 1/8/2001 I filed a pro se addendum with Motion to grant original jurisdiction on the mandamus/complaint and default, along with the habeas corpus petition, with appendix of lower court records. Respondents through Mr Douglas Leadbetter filed there brief on 4/16/2001. I filed a reply. On July/3/2001 Justice Toal dismissed the petition for Certiorari and pro se motions for original jurisdiction/consolidation. I filed for ReHearing & Injunction. Denied on Aug/10/2001. No Evidentiary Hearing was had on none of the pleadings, no answer was made to any of the complaints, and none of the Merits were adjudicated.

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8>> On 1/3/2003 I filed a Petition for Habeas Corpus as Original Matter

in the SC Supreme Court, docketed as Tr# 200325310 , along with a Motions for Original Jurisdiction, Bail, To Resubmit prior court pleadings in 93-MO-111, 94-cp-27-309, 98-cp-27-267, Appendixes I & II, and Summons/Notice. Service was made. State made no answer. On 2/6/03 the Court denied the Motion for Original Jurisdiction pursuant to Key V Currie. I moved for rehearing on 2/10/03. Denied on 2/20/03. Merits & issues not adjudicated.

9.> I filed a Notice & Intent to seek court action to the SC Budget & Control Board, and forwarded it to the Chairman, Gov Sanford, and SCDC, & Attorney General. Gov Sanford signed for his on 4/7/03. The original was filed in the Jasper County Clerk of Court on 4/10/03. By letter dated 4/17/03 Mr David Tatarsky Esq for SCDC refused to answer punitive pleadings. I later learned at Hearing on 8/28/03, that the Notice & Intent had been docketed as 03-CP-27-135. This was then merged with 03-cp-27-198 by Judge Gregory, and its purpose was dissolved.

10.> On May/16/2003 I filed a petition for Writ of Habeas Corpus with Complaint Pursuant to Rule 65(f)(1)(2) SCRPC (West 2003) in the Jasper Co Clerk of Court, docketed as # 03-CP-27-198 . Attached to the petition was a, Petition for Writ of Prohibition, Motion for Expungment, and Motion for Counsel, with Appendix of prior court records. The Director of SCDC, and Attorney General were served, and signed for same on May/19/2003. Respondents nor state answered or responded to the Legal & Constitutional issues in the habeas corpus, or responded to the other pleadings. I received notice from the clerk of court, dated 6/23/03, that a hearing was set before Judge Gregory for 7/21/03 at the courthouse. I notified all parties. When I was not transported to the court on 7/21/03, I learned that States Lawyers had the hearing postponed on 7/18/03, to hold same at the Ridgeland Prison. I filed a complaint with the office of disciplinary counsel in #03-DE-L-1190. Dismissed, on 8/19/03 & 12/8/03. I went to hearing on 8/28/03 at the Ridgeland Prison before Judge J. Gregory. Ms Holly Scanlon Deputy Clerk of Court, and Ms Donna Hartely Court Reporter was present in the RCI Conference Room. Mr David Tatarsky was counsel for SCDC. After some discussion and the court determined that the Notice & Intent was not itself a law suite against the Governor or Others, it was merged. The court after I demonstrated that the court never had jurisdiction in 1992 on trial, and the case had merit, including the attached complaint for damages, the court would not Address the pleadings, but Ordered a Formal Hearing for Nov/10/2003 at the

Courthouse. I later learned that a witness to the Trial with Evidence was not allowed to enter the prison by the Wardens guards at the gate, and was turned around from court. I ordered the transcripts and much of the testimony was excluded by ---. I was informed by Mr Tatarsk the following week that Counsel for the 14'th Circuit Prosecutor Mr Marshall Waldon, jr would handle the case.

(e): On Sept/19/2003 Mr. Marshall Waldron (Duffie Stone Law Firm) for the state, Filed a Notice of Removal to the US District Court, Docketed as 3;03-CV-3018-10BC. Counsel in Bad Faith stated that service was not had until Aug/19/03, which was perjury. The only documents removed was the Notice & Intent, "Construed into a 42-USC-1983 action" and the Petition for Prohibition. I moved for Withdrawal pursuant to Rule 41 FRCP. Counsel moved for summary judgment. I moved for summary judgment. Mine was denied. The court Granted States Motion in Dictum only as contended in pleading on removed action, on Sept/24/2004 and dismissed constitutional claims sua sponte. The court Summary Remanded the case to state court. Counsel filed a Motions to dismiss on Rule 12(b)(6) SCRPC dated 9/24/04, and stated that the case would be heard before Judge Piper on 10/8/04. When I was not transported I filed a answer to the Two Motions to Dismiss. I filed a complaint with judge Gregory, and the Clerk of Court informed me that a hearing would be before Judge Gregory on 1/5/05 at the Courthouse. Counsel informed me that it would not be held, and would be at the prison when the attorney general wanted it. I filed another complaint and Judge Gregory ordered SCDC to transport me to the Hearing on 1/5/05. At hearing on 1/5/05, i was informed by the Clerk that i was not supposed to be there, because counsel was not there, and they had informed my witness not to show up. I stated The Judge ordered it, and I did not need there lawyer to win. She called counsel, and hearing was had in about an hour. Counsels motions only addressed the Notice & Intent as suite under tort law on personal capacity, on Two Facts not raised by me, and statute of limitations. I objected and pointed out that a habeas corpus and other pleadings were filed. I showed that the Court of General Sessions never had jurisdiction, and that stated a case. Judge Gregory would not address or hold a hearing on the Habeas Petition or Complaint, and only granted counsels specific motions by order, and dismissed the case. The order was filed on 1/25/05. I moved for rehearing and amendment. Denied by form 4 order on 2/19/05. The courts order constituted only a partial order under Rule 56(d) SCRPC. The merits of the Habeas Corpus or Expungment was not adjudicated. I filed a Timely notice of Appeal, and paid filing fees. The Clerk of Court requested a copy of the pleadings, and then ordered the caption to read Gibbs V State. I requested

indictments ect from the Jasper Co Clerk. No Response. I filed the Initial Brief with ROA, and motions, and served Counsel. On 12/6/05 The Court denied the Motions and ordered Counsel to file brief. I filed the final brief on 1/9/06 and served distorted copy made by SCDC to counsel. I received notice from the Clerk on 1/12/06, that additional copies would have to be filed and served prior to 1/30/06. When respondent (SCDC) refused to make the copies, I notified the Court, on 1/20/06. By order @ 1/18/06 The Clerk of Court SC Appeals Court dismissed the appeal. I filed a Petition to Reinstate and rehear the case, since I had filed the ROA and SCDC would not allow copies, and I informed the court and counsel that I had a Large Tumoure and would not be able to proceed until later. On 10/2/06 I received notice from the Clerk of Court that the Appellant records had been lost [or] stolen, and requested counsel to replace same, and they would send me a copy. Counsel complied, and never sent me a copy. I later learned from the SC Supreme Court that only a partial restoration of documents was made. The Court denied the petition to rehear and reinstate the case on 1/21/07. I filed a timely Petition for Certiorari to the SC Supreme Court with ROA, and Appendix. By Order dated June/1/2007 Justice Toal dismissed the Cert, but Granted In Forma Paupris. I requested rehearing. Denied on 6/19/07. Merits of case not adjudicated.

(f): On June/28/2007 I filed a Motion to Hear Habeas Corpus allegations, and Expungment that was not adjudicated in the 1/25/05 order, or by counsels motions, and to Reinstate case for belated appeal, and indigence, Mr. Walron answered the Motion. I filed a Reply. When no futher response was had, I filed an Inquirey to Judge Carmen T Mullen. No Response. I have had recourse with the Jasper County Attorney on 08-cp-27-472 and Request to Take judicial notice, about the pending Motion and Partial Adjudication of 03-cp-27-198. No Response. I filed a Complaint and Request for Investigation to the FBI and US Attorney General and SC Governor & Director Court Administration on 2/11/08. Court Administration Acknowledged receipt. I have since Sent Mr Marvin Jones "Jasper County Attorney" a Copy of the Motion on 4/26/12. No Answer.

11.> When no response from the lower court was had on pending actions, I Petitioned the SC Supreme Court for a Declaratory Judgment & Decree, dated June/30/2010, docketed as TR# 2010165487 with Affidavit dated 5/8/10, challenging the adequacy of the state courts. The court Denied Original Jurisdiction pursuant to Key V Currie on 7/21/10. I requested Rehearing. denied 8/20/10, received on 9/8/10. I then filed a petition in the US Supreme Court for

Certiorari dated 11/7/10, docketed as 10-8461. The Court Dismissed Certiorari on 3/28/2011. Merits not adjudicated.

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**12.>** **Federal Court Actions;** On 10/15/93 I filed a petition for habeas corpus, "28-USC-2254 in Gibbs V Davis 3:93-CV-2921-OBC. The State filed a motion for summary judgment, without answering the issues, and stated I could get relief on PCR. All the state court records were not filed. I answered. The US Magistrate Filed his R&R. I Objected. The District Court Judge, Ruled that Exhaustion was not complete because the Rule 60(B)(4-5) SCRCF motion had not been ruled on or appealed. The court denied states motion, and dismissed case as mixed, without prejudice.

**13.>** On 12/2/1997, i filed a Petition to TOLL the STATUTE of LIMITATIONS in Gibbs V SC Attorney General 3:97-CV-3816-10BC. When I had Not been served the Order denying certiorari from PCR dated 11/8/96, until one year later on about 11/14/97, and filed a complaint to Justice Finney, which was returned by the Clerk, I moved the District Court to Stay time limits to petition for habeas until issues could be judicated in state court. The state filed a motion for summary judgment. The Magistrate made his R&R. I objected, and the District Judge granted dismissal for State on "advisory opinion" until habeas was filed. Dismissed without prejudice.

**14.>** After state habeas certiorari was denied on 8/10/01: I filed a petition for Habeas Corpus wit Complaint attached on 8/28/2001 pursuant to 28-USC-§2241,§1343 in Gibbs V Maynard 3:01-CV-3578 as original matter, with appendixes of state court records. The US Magst ordered state to answer the pleadings, but disallowed appendixes, and ordered them sealed until end of case. By 2nd order the Magst Split the case, and Construed the Complaint into a 42-USC-§1983 action docketed as 3:01-CV-3646, and construed the Habeas Corpus into a 28-USC-2254 action.

The respondents did not answer the issues in either case, but did move for summary judgment on both. On 3:01-CV-3646, the magst raised affirmative defences for state, and filed his R&R that 1983 cannot be used to challenge conviction. I objected. The district judge granted state motion and dismissed case. I appealed, docketed as 02-6135. The court dismissed the appeal without answering questions raised, and I moved for rehearing. Denied. 7/31/02.

(g): On 3:01-CV-3578 after 4 extensions of time, the state moved for summary judgment on 1/28/02. I filed a timely answer on 3/4/02, with motion for

TRO/Injunction, Motion to Enclude state court records, Affidavit of 3/2/02, and Motion for Exparte Evidentuary Hearing. Denied. The US Magst filed his R&R on 8/7/02. I objected. The US District Judge granted states motion and Dismissed the case, finding in plain error, that I exceeded the statute of limitations by two days from the PCR, and applied the one year that I had no knowledje of. The court made a general dismissal of prosecutorial misconduct without addressing facts or law under Rule 52, 59, 56 FRCP. Order dose not state prejudice, dated 10/10/2002. I filed motions pursuant to Rule 59 FRCP, 28-USC-§255, 144. Denied 12/2/02. Not Appealed, since only procedure adjudicated.

15.> I filed a Motion for Successive Petition pursuant to 28-USC-2244 along with a 28-USC-2254 petition for habeas corpus in the US Court of Appeals for the 4'th Circuit in Gibbs V Byars docketed as NO.11-234. The court denied the 2244 motion without reason on 8/9/11.

16.> For the reasons so stated above & below, the judicial branch of goverment has failed to make a full and fair finding of fact and law on the legal and constitutional issues raised, resulting in a miscarraige of justice that the ends of justice now require extraordinary relief from unlawfull and false imprisoment. The right to petition the Goverment for ReDress of Grievances under the 1'st Amend US Const, and Art 1 §2 SC Const is pleaded on Due Process of Law, and Equal protection of law

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#### Statement of the Case

17.> That on the morning of 10/18/1991 @ dawn, (all the lights were out in town when I came through @ 1:00 am); I was going to GA, after spending time at the Millstone landing in Hardeeville and stopped at Hwy 31 & 321 for stop sign. I was hailed by Mr Marion Brown and another and presented with crack for the purpose of armed robbery. I thought of a women i'd had an encounter with earlier but had dismissed, and reached for my money, at which time I was struck with a pistol and robbed and told not to come through there again. "I had seen Marions sister earlier that night and was familure with the family."ie Transcripts (TR) P. 147-148. I thought that I had the right to go get my money back or make a citizens arrest, (at that time I didn't know the legal terms or §17-13-10 et seq), since I had been entrapped. I went to Dave Cannons house, and borrowed a 12 guage shot gun. ie TR. 15, 61, 63, 144 and the (PCR) Tr 62,66. I had no intent to

commit a crime.

(h): I pulled up in front of the shack that no one actually lived in, (and was burnt down a short time later) at @ 8:00am. There was No door knob or lock, and most of the inside flooring was gone. A fire place was on the same wall and left. As I walked up to the porch Hermine Brown opened the door and seen me with a gun and just backed up. I stepped to the door frame and stated loudly "Keep Your hands where I can see them and dont move, I just came for my money back". ie Tr 20 ln 20-21. Marion (Bozo) was on a mattress to the left, Sammy jumped up and ran down a hall to the left. Bozo got up and started backing up then went into a left turn reaching into his jacket. I was holding the shotgun at hip level and instinctively fired, ie Tr 152,156. Fred Brown, on a love seat to the right jumped up and grabbed the end of the gun barrel, We scuffled and I ran off the porch and jumped into my car and turned around and sped away. According to EMS Mike Jones The body had been there about 15-40 min before he arrived at 9:01 am. ie Tr 44 ln 21--p 45. Deputy Sheriff Ben Riley stated that he got the call @ 8:45 am, and Hardeeville Police were the first on the scene, They did not testify.? Mr Riley signed a receipt for the gun from a neighbor @ 10:15 am with no finger prints on it. The scene was cleaned up.

18.> I returned to Dave's house before 8:45 am and told him as best I could what had happened, Tr p 61 ln 18--64 ln 7 & p 146--166. (PCR) TR p 62--68 He was not allowed to testify for defence TR p 144-145. I was in an excited state of mind, and called my Boss "Mr Allen Crosby" at Great Dane Trailors in Sav GA and told him what happened and asked for a two week leave of absence to clear the legal matters up. I then proceeded to Tulsa OK to see Ms Dae Clemens. The next day I called Marie Cannon and she told me that BOZO had died. I told her to call Jasper CO Deputy Joel O'Quin and let him know I would be there monday morning, TR p 136--137, p 151, p 161,ln.18--166. I talked to Dee that night and she inspected the car, PCR TR p 68--71 but she was not questioned on this at trial or investigated before trial. The next day I was enroute to SC and was stopped and arrested on a sheriffs warrant c734363, in OZARK AK, @ 11.00 ap 10/20/91. I waived extradition before a judge at Charleston AK on 10/22/91, and was informed then that if I went back I would probably be railroaded, they would grant me asylum, when I explained what happened.

19.> I was picked up in AK by Sheriff Randy Blackmon, and Captain Tommy Scoggins on 11/3/1991. We took several flights to Dallas TX then to Jacksonville

FLA then to Savannah GA. I gave an exaggerated statement, TR p 132--137. When we got to the Savannah Airport I informed them that I exaggerated and when asked why, because we had an attentive audience the whole time. There was a Jackson V Dinto hearing at trial, Tr p 79--101 and counsel objected to the statement, Exhibit # 16, but I was not called to testify on it.

20.> I spent the night at the Jasper County jail, and on 1/4/91 @ 10:am I was taken to the Clerk of Court "Mrs Margeret Bostic, and informed that My attorney would be Mr Steve Plexico. I returned to the jail, then Hardeeville Police Mr Billy Hubbard came and served me with a Warrant c734377 for Burglary 1'st. (He never testified). I was taken back to the Clerk of Court and she stated the same applies. I was then taken to the Hampton County Jail, where I remained until 3/9/1992. I did not see my attorney until @ 1/22/92. I never had any arraignment, preliminary or bond hearing, or psychological evaluation. I was never indicted by a grand jury, and didn't see the prosecutors presentment until 1994.

21.> I was picked up by jailors Mike Peoples, Gene Toomey at Hampton on 3/9/92. When asked I explained, I had been no where, and had not been arraigned, nor indicted, nor for Psychological. When we got to Jasper, they reported it to the Sheriff, but told me not to worry, that [wasn't] needed, and my attorney was trying to get a continuance. Awhile later I was told trial would begin in the morning. I seen Plexico at the jail that night for the 2nd time, and discussed a plea, without addressing the Burglary charge; and I was told at Hampton not to plead unless both charges were combined and disposed of.

22.> I was taken to the courthouse on 3/10/92. At the defence table there was only statements of Marie, Dave, Fred, Sammy, myself, and autopsy reports. I asked about the records of Marion "Bozo", and the Investigator on my right went down to the Clerks office and got it. Mr Plexico had represented The Browns before.

23.> When the jury was selected, TR p 8 ln 7--p 9 ln 4 several people were dismissed. One juror Ms Julia Burns stood up and admitted to being related to Deputy Sheriff Ben Riley "states witness", Tr 48--51; who signed for the gun from a neighbor at 10:15 am. This juror was selected without objection from counsel or state. TR P. 5A shows 11 jurors and one alternate, and the jury poll was excluded, Tr p 206 ln 15--23, even on Anders id 92-728, and the jury list was excluded by counsel in the ROA on certiorari from PCR.

(I): The trial judge addressed the jury in opening, and held up two plain

white pieces of paper, and kept looking at Mr Plexico. TR p 9 ln 5-16. I asked Plexico when did I get indicted, and was told to keep quiet. We didn't have a copy, and i did'nt see it until 1994. At the end of the trial the Judge had to write a form on the indictments for the jury to use to enter a verdict, Tr p 202 ln 10--203 ln 11. I later learned that the grand jury never returned a true bill, and member Connie Scott called about it she was told to stay out of it. This issue has never been judicated on statute or constitutional law of due process or subject matter jurisdiction, nor a finding of fact made.

24.> The prosecutor then charged the jury with law in there opening statement, TR p 11 ln 19--14 ln 5 as there primary focas, and did not meet there burden of proof on allegations; And continued to charge the jury with law in there closing arguments, TR p 180--191. The state made numerous remarks of "lets assume" and "the judge will tell you"; and charged the jury ,TR 185 ln 4-7 "that I was guilty of crimes Not even charged nor evidence for, or What Ever, and that I was guilty of pointing a firearm to show intent, TR 184 ln 19-24, 186 ln 22 when the Judge would not allow my evidence to show Brown was convicted of pointing a firearm, TR 142 ln 4-18, 139 ln 20--145 ln 20. The state futher accused me of armed robbery on the stand, TR 156--157 when I was the victum.

25.> The state went on to Argue, and make hypothetical statements against my plea of justification and use of constitutional rights. The prosecutor told the jury in there closing, That they should speak for Bozo and his family and the people of Jasper CO, TR 191 ln 21-24. The state argued against self defence even though the judge would not charge it. The state took the final closing argument, so I could not answer and rebut there summary of facts and evidence, and accusations. Prosecutorial misconduct is not allowed on PCR.

26.> The prosecutor included in his closing at TR 188 a gross misstatement of fact on intent to purchase crack, for some "little girl" that never existed, and was not supported by any evidence, and Plexico Objected, but this was not corrected by the court, nor raised on direct appeal. Appellant Counsel also did not raise the motions on insufficiency of evidence, subject matter jurisdiction, or post trial motions, that was preserved for appeal, and which is not allowed on PCR. Id TR p 137 ln 21--139 ln 8 & 206 ln 24--207 ln 24. The court advised counsel to file written motions, but none made, and counsel & prosecutor allowed farce trial to continue.

27.> The court addressed Mr. Plexico during the guilt innocence phase, in

a biased manner that shifted the burden of proof, id TR p 60-61 ln 16 139 ln 23--140 ln 5 & 166 by admonishing counsel in front of jury and instructing him what questions to ask ak how, to deny me a defence and help the state. The court went on at TR 151 ln 4-19 & 161 to keep me from rebutting a prior witness of the state, and allowing state to compare testimony over objection of counsel. At TR 166 the court aided the state in suppressing justification testimony, and instructed me to step down before I was through.

(j): The court would not allow me through counsel to present evidence, TR 139 ln 23--140 ln 5 that Hermine Brown "states witness" had recently been convicted of drugs, she testified earlier to the contrary, and at TR 142 ln 1-16 that Marion "Bozo" was recently convicted on 3/13/91 of pointing a firearm, when she testified on 141 that he never had or owned a gun. The court went on to deny me the right to put up witnesses and evidence, at TR 144 ln 9--145 ln 18 in not allowing defence Witness to testify, and in fact threatening to lock him up in front of the jury, without corrective instructions. His testimony was not cumulative because as states witness, defence could only cross on direct, and plexico reserved, TR 17 ln 19, and his testimony given at the PCR hearing showed a fact the jury needed to hear clearly on justification defence. The court would not allow self defence, nor did he instruct the jury on justification under state law. Even the Burglary statute of 16-11-311, states without consent, "which I had" and (1) excludes injury to person who is a participant, which they were, & (3) it was already day time and not night, and the evidence showed there was no intent to commit any crime.

28.> The court made a reasonable doubt charge at TR 193 ln 22--194 ln 1 that shifted the burden of proof, and lowered the presumption of innocence standard in favor of the state by; Instructing the jury on weak, whimsical or imaginary doubt, that was found to be unconstitutional by the US Supreme Court. The court went on to give a presumptive malice charge to further aid the state by charging, TR 199 ln 15--200 ln 18; That malice can be INFERRED from use of a weapon [on plea of self defence and justification and use of constitutional rights], and that PRESUMPTION was REBUTTAL. Further that Malice was not an element of Voluntary Manslaughter 16-3-50 (1991), TR 201 ln 7-10. The court did not charge the lawful element of WILFULNESS 16-3-10, was not even charged. The court did not give any circumstantial evidence charge, and allowed implied vs inferred to become evidence and elements.

29.> The court did charge that INTENT must be present at time of entering

on burglary, whe evidence lacked any showing of intent, or the definition of malice, and the jury thus erred, TR 197 ln 17-24. The court futher charged that the cooling period [is evidence] and excuses justification and constitutional rights, to establish murder, TR 200 ln 19--202 ln 9. Counsel nor state requested corrected charges, nor made objections, nor filed written motions, TR 167 ln 14--170 ln 16 & 204. Prior courts have failed to make correct findings of facts and applied law.

30.> The whole matter was brought on by Marion Brown and Accomplice; And justification was my intent and means to regain tangible property or go to police if need be; And the act of self defence only took place when Brown went into a threatning position when confronted and told to stay still, at which time I fired instinctively without aiming. The shack was not a dwelling or home, it was a place of illegal business, and none of the people worked or paid taxes; and Brown died as a result of occupational hazards. I pleaded Victum status, TR 156 ln 24--157 ln 3 & 210--211.

£> The judges sentence of life in public works on burglary, was primary sentence until 3/13/1997, when SCDC reversed it and made the murder to the <sup>primary</sup> murder, shifting my initial parole eligibility date from June/1999 too nov/2011. I was denied parole on 1/4/2012 by form letter, and request for rehearing.

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#### GROUNDS FOR WRIT

31.> THE GRAND JURY OF JASPER COUNTY, NEVER RETURNED A TRUE BILL INDICTMENT ON THE WARRANTS & CHARGES, NOR WAS A TIMELY PRESENTMENT MADE; NOR WAIVER HAD THROUGH ARRAIGNMENT, PRELIMINARY HEARING, BOND HEARING, OR PSYCHOLOGICAL EVALUATION / COMPETENCE HEARING, RENDERING THE COURT WITHOUT SUBJECT MATTER JURISDICTION, AND JURY WITHOUT PERSONAL MATTER JURISDICTION; AND THE STATE WITHOUT AUTHORITY TO PROSECUTE: DENYING ME DUE PROCESS & EQUAL PROTECTION OF THE LAW, UNDER THE 5'TH & 14'TH §1 US CONST, AND ART 1 §3 & §11 SC CONST; AND NEITHER PROSECUTOR, DEFENCE COUNSEL, OR JUDGE INFORMED ME OR OBJECTED.?

(k): **FACTS;** The indictments "92-gs-27-002, 003", were only hand drawn and signed by +8e prosecutor, dated 3/9/92, and were not true billed, nor published by the Clerk of Court, ie Attached Exhibit A. SCDC record of 1997 shows the murder indictment of 1991-gs 38-002, which I believe is Orangeburg County.

The grand jury did not convene on 3/9/92, as trial was began, and Mr

Plexico sought a continuance, which was denied. I never seen an indictment until Exhibit A was filed on federal habeas, id (12->) above. The indictments, although requested was not filed as part of the Record on Direct Appeal, or Certiorari from PCR, by Counsel or as Officers of the Court.

The trial judge had to write a form on the back of Exhibit A indictments for the jury to enter a verdict on;

TR 203 ln 8--11; ...And, again, sign your name as forelady to the bottom of the indictment. I'll write these forms of verdicts down for you simply as a guide for you to place on the indictments.

Even though this issue has been raised at every stage it has not been judicated, and the original has not been produced. The state admitted at PCR TR 4 ln 6-11 that it is unknown when an indictment was had.

I was never afforded any type of Arraignment before a magistrate, nor Preliminary or Bond hearing to enter a plea, which are normal processes by law, and no competence hearing by a circuit judge, so no waiver or due process was allowed.

jg

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(L): The federal legal (18-USC-§3161,§3162) and constitutional issues raised in prior pleadings, state and federal; have not been judged as a matter of case or controversy; And state is without authority to impose and maintain involuntary servitude.

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32.> **Argument;** I submit and argue that, A grand jury of Jasper County, pursuant to the SC. Const Art. V §22 (1895 Rev 2009)<sup>2</sup> 1989 acts No. 5 & 7, and SC. Ann (1976) §14-9-170, did NOT return a true bill indictments for the trial on the warrants and charges. Without valid indictment by the grand jury so drawn is required, State v Powers 37 S.E 690 (SC 1901).

In SC indictments are constitutionally required by Art. 1 §11 (1895 Rev 2009)<sup>3</sup> id State v Owens 552 SE.2d 745 (SC 2001) (state constitution

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<sup>2</sup> .....The grand jury of each county, and the state grand jury, as the general assembly may establish by general law, Shall consist of eighteen members, twelve of whom MUST agree in a matter before it can be submitted to the court.... see also [1973 (58) 161; 1985 Act No. 1]. This amendment took away protections from the people, and was not knowingly voted on by the people.

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<sup>3</sup> No person may be held to answer for any crime the jurisdiction over which is not within the magistrates court, UNLESS on a presentment or indictment of a grand jury of the county where the crime has been committed,.... The general assembly may provide for the waiver =>

Requires a person be indicted by a grand jury before standing trial for a crime). Indictments are further required by statutory law, SC. Ann. (1976) §17-19-10 et seq;

No person shall be held to answer in any court for an alleged crime or offence, unless upon an indictment by a grand jury. (1962) Code 17-401.  
(1) no statute expressed waiver at time of offence or trial.

I was further not given a copy of the indictment pursuant to §17-19-80, which requires a copy at least 3 days before trial; nor did I enter a plea, nor given opportunity for due process or relief under §17-23-90.

Here I prejudice and harmed by counsel not objecting, or moving to dismiss charges prior to jury being selected, and by prosecutor and judge doing the same as officers of the court, under Strickland V Washington 466 US 68, because I was denied from presenting mitigating Justifiable/excusable defence to grand jury, and judge did not charge the jury with justification defence, even though I pleaded it, and the jury was only allowed to consider whether I killed Brown, construing my exercise of rights and lawful actions into intent.

I further argue that under, SC Ann. (1976) §17-25-10;

No person SHALL be punished for an offence UNLESS Duly, Legally and Constitutionally convicted thereof in a court having Competent Jurisdiction, of the cause, and of the person.

Since the grand jury never returned a true bill indictment, and no waiver was had; That the court lacked jurisdiction of the cause, and jury lacked jurisdiction over the person: And further under SC Ann (1976) §17-23-90, that I should have been granted due process and equal protection and released from custody.

33.> That because I was never afforded any, Arraignment, pursuant to SC Ann. (1976) §22-5-710;

Magistrates in counties in which a county court has been established under provisions of Chapter 9 Title 14, "SHALL issue warrants, and hold preliminary examinations in all criminal cases and take such actions therein as is provided by law in criminal cases,...., In committing or Binding over defendants and Witnesses, such magistrates shall commit or bind over for trial at next ensuing session of county court, EXCEPT in..., in which cases the magistrate shall commit or bind over for trial in general sessions court, such

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<sup>3</sup>> of an indictment by the accused..... 1989 Acts No. 5 & 8. See also [1970 (56) 2684; 1971]. This amendment in 1989 was unconstitutional and took away protections without being duly voted on by the people, and should amount to fraud and be void.

magistrates, immediately after... Shall lodge with the Clerk of Court by which defendant is to be tried all papers and proceedings connected with the case.

I was denied the basic law, and constitutional due process, that further prevented me from obtaining other protections under Rules 2 & 3 SCRCrMP (west 1991), and denied critical stage of confrontation process, and subjected to loss of liberty causing prejudice later at trial, id Gerstine V Pugh 95 S.Ct 854, Crain V Ark 16 S.Ct 952 (due process requires that there shall be arraignment, plea on charge of infamous crime) id SC Ann (1976) §14-7-1110. id Baker V Mccollan 443 US 137, 145 (1979), & Stincer 482 US @ 740.

34.> I submit and argue that because I was denied any form of Preliminary Hearing, or the opportunity to receive one, by law SC Ann (1976) §17-23-160;

When any person charged with a crime who is entitled to a preliminary hearing on such charges appears in person or by counsel in a hearing to set bond, he shall be notified of his right to a preliminary hearing hearing. He shall be furnished a simple form providing him opportunity to request a preliminary hearing by signing and returning this form to the advising magistrate then and there or thereafter....

That I was denied due process of law, and substantive due process of critical stage and evidentiary probable cause, and compulsive process to obtain witnesses and evidence. Id Coleman V Ala 399 US 1, 90 S.Ct 1999, Stincer 482 US 740, 744 n17, 745. & Gerstine supra. At PCR the witnesses who would have been present, were not nor had seen or spoken to counsel, and court made plain error in fact and law, and counsel stated he never spoke to states witnesses either nor conducted any pretrial investigation. I was denied important defences and law as a result of being denied all due process and equal protection.

35.> That because I was denied any form of Bond Hearing, pursuant to SC Ann (1976) §17-15-10 et seq; And Art. 1 §15 SC Const;

All persons SHALL, before conviction, be bailable by sufficient sureties, But bail MAY be denied to persons charged with capital offences, or offences punishable by life imprisonment, giving due weight to evidence and the nature and circumstances of the event. Excessive bail shall not be required; nor shall excessive fines be imposed; nor shall cruel, nor Corporal, nor Unusual punishment be inflicted; Nor shall witnesses be unreasonably detained. (1970 (56) 2684, 1971 (57) 315). this artical was amended unconstitutionally in 1998 reducing the peoples rights and protections.

I was denied without just cause an important right and protection, mandated by

This states laws and const, see also Rule 3 SCRCrMP, and secured by the 8'th Amend US Const. This is an important and critical stage, especially when other pretrial procedures were denied, to examine the nature and circumstances, and establish mitigating circumstances and defences, and probable cause, and to obtain indictment process. id Coleman Supra, Gerstine Supra, Stincer Supra, and since counsel failed to procure at least the basic due process protections, a violation of US V Cronin 466 US 648 is relevant as this amounts to not having counsel at all. Further detention without due process is violative under, Bell V Wolfish 441 US 520, 535 n16 (1978) and Cooper V Dyke 814 F.2nd 941 (4'th Cir 1987) and Coles V Peyton 389 F.2d 224 (4'th Cir 1986). Here I was also denied normally afforded processes of this state, and remedie for such denial by other means.

36.> I submit and argue that because I was denied any form of Competency Hearing, or Psychological Evaluation on capital offence, under SC Ann (1991) §44-23-410 (1990 Act No. 419 §1; 1990 Act No 431 §1), that I was denied an important due process protection and statutory right of law, especially when all other forms of pre trial procedural and substantive due process was arbitrarily and capriciously denied, and there is family history of mental illness, and I pleaded mitigating factors and justification in statement to police, even though exaggerated; and this prejudiced me because it effectively denied defences and presumption of innocence. Pate V Robinson 383 US 375, Dusky V US 632 US 402, and Davenport V State 389 SE.2d 649.

I was held in Hampton County from 11/4/91 until trial March/9/92, and never left are seen any judge except trial judge, nor had any evaluation, and only seen counsel around 1/22/92. In SC Dueprocess prohibits the conviction of one who is mentally incompetent, under In Re; Antonio H 461 SE.2d 825 Rev 477 SE.2d 713.

Here I submit that the issue of sanity is not presented, BUT rather the legality of the proceedings, Code 1962 §32-915, to include the legality and constitutionality of confinement as stated herein and above/below, Douglas V Hall 93 SE.2d 891 (SC 1956) Habeas Corpus 537.1, and Hunter V State 447 SE.2d 203, where <Fundamental Rights> and Fairness were denied previously.

37.> As a matter of (Federal Question); I submit and argue that the Trial Court and jury lacked jurisdiction, and conviction/sentence is void, Lollis V Manning 130 SE.2d 847 (1963), and Faye V Noia 83 S.Ct @ 830 n14, 372 US 404-05, because no valid true bill indictment was had by the state; And I argue that the

5'th Amend rights by language and interpretation by US Supreme Court as a fundamental right is made applicable to SC by the 10'th Amend US Const. Futher the US Supreme court held in Rose V Mitchell 443 US 545, 547 (1979) that although the language of the 5'th in itself dose not apply, however states that employ grand juries are bound by the 14'th §1 Amend to comply with due process and equal protection, and protection from denial of immunities. Here the state has not complied with the US Cont requirment. Futher federal statutory code, 18-USC-§3161, §3162 mandate indictment be had in ample time for trial, and SC has not complied.

(M): Futher because the state failed to provide a meaningfull, previous remedie for the complete denial of all due process protections at the pre trial level, that is normally afforded to people who can hire counsel, including mitigating defences, of both procedural and substantive nature, that I was denied my 14'th §1 amend rights as stated above. I was futher denied 6'th Amend Rights to Due Process, where Effective Counsel was not afforded under Cronic 466 US 648, 658-61 (1984) and Strickland V Washington 466 US 668, 692-94 Standard. I submit that the trial/sentence and proceedings were in violation of federal law and constitution.

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38.> I was denied the right to put up witness and evidence, and the compulsory process, for defence against state, by the trial judge: contrary to the 6'th & 14'th Amend, and Art 1 §3, §14 SC Const; and counsel did not object, or request curative instructions, which prejudiced the jury and shifted the burden of proof.!

At TR 144 ln 10--145 ln 18, when counsel called Mr Dave Cannon to testify for me, and he attempted to question about the evidence of bullet damage to my car, to show that another gun was present, the state objected, and judge dismissed witness and threatened to lock him up for speaking in front of the jury. The state did not produce the car to dispute claims of justification, and inadequate police investigation, or clean up of scene.

Earlier counsel had preserved cross examination on states case at TR 17 ln 17-21, and when state again put up this witness @ 61--64, there was only a brief mention of the bullet evidence at 63 ln 11-12, and no cross examination on this; Yet the judge ruled that it would be proffered when Cannon was eye witness to evidence, and cumulative, when same witness was not testifying for defence. Here

the judge ineffect would not allow me to put evidence the state dont wont, and Counsel Impeached other state witnesses.

(N): Judge would not allow me to put up evidence of "Bozos" past criminal record of Pointing a Firearm on 3/13/1991, ie TR 142 ln 4--18 even when Hermain testified that he never owned a gun, ie 141, when the SLED forensics report stated that no finger prints were on the shot gun, and mine and Freds surly was on it. Futher the prosecutor argued that i was guilty of pointing a firearm or whatever in his closing argument. Here the court was biased and rebuked counsel in presence of jury for trying to submit exculpatory and mitigating evidence.

In Brown V Ruane 630 F3d 62 (1'st Cir 2011) the court held that (whether rooted directly in the due process clause of the 14'th amend, or the Compulsory Process clause of the 6'th amend, The constitution guarantees criminal defendants a meaningful opportunity to present a complete defence). Futher even though i pleaded justification and self defence on the stand, and corrected exaggerated statement I made for viewing audience on the plane, the judge would not allow a defence under SC Ann (1976) §17-13-10 et seq or other mitigated excuse or self defence, but state was allowed to argue against self defence in closing argument. Cannon testified at (PCR TR) 66--68 and established revelant exculpatory evidence that jury should have been allowed to hear. ie Brady V Maryland 373 US 83, 83 S.Ct 1194 (1963), and Richter V Hickman 521 F3d 1222 (9'th Cir 2008) (Under Brady and its Progeny, the state violates due process when it Suppresses or Fails to disclose materialy exculpatory evidence), and US V Geison 612 F3d 471 (6'th Cir 2010) (the constitution guarantees criminal defendant a meaningful opportunity to present a complete defence). The PCR court or other has not adjudicated due process to present evidence or jury standard of finding on the witnesses testimony.

Dave Cannon Sworn (Dave Cannon)

TR. 144 ln 11--145 ln 18. Direct Examination, by Plexico.

Q. So you owned the car that Mr Gibbs was driving that night---

Silicitor: Your honor I object to the question as being leading, sir this is His witness.

Court: This is your witness.

Plexico: Thank you your honor.

Q. Do you know anything about the car that Mr Gibbs drives.

A. Yes, I sold Mr Gibbs that car and---

Solicitor: Your honor please that question has been answered already.

A. I can answer---

Solicitor: You wait a minute sir.

Court: No, Mr Cannon, you wait until I get through now, both of you. This has been asked and answered. If your fixing to go back into prior testimony im not going to allow it.

Plexico: Okay, thats exactly what --- the damage to the car, your honor.

Court: All right, you can step down.

(whereupon Mr Cannon walks by the solicitor, he says something that was inaudible to the court reporter [or anyone] )

Court: All right whats his name?

Solicitor: Mr Cannon, sir.

Court: Mr Cannon do you want to stay over in South Carolina for about six months?

Cannon: No Sir.

Court: Well, you had better not speak to any of the attorneys or any officer of in this court, do you understand me?

Cannon: Yes Sir.

Court: All right sir, go ahead.

Here not only did judge not allow witness to testify, but threatened him in front of jury, and no curative instructions were given, and counsel did not even object. They did not want mitigating evidence presented.

Hermine Brown, Duly Sworn. Re Direct By Plexico.

TR; 142 ln 2--16.

Q. Marion Bozo Brown was your brother ?

A. Yes sir.

Q. From some information about your family, Could you tell the court if on 3/13/91 he plead guilty to pointing a firarm ?

A. Excuse me ?

Q. could you tell me if on 3/13/91 ---

Solicitor: Your honor please, that isnt proper.

A: No Sir, I have not, no.

Solicitor: I object sir.

A. No.

Court: Thats not a crime of moral turpitude. It wouldnt be admissable.

Plexico: Thank you your honor.

Here again, not only did the judge not allow direct mitigating, and exculpatory evidence, but counsel didnt object and thanked the court.

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39.> The judge did make highly prejudicial remarks to counsel, and interfered with defence counsel on cross, and direct examination, and gave no curative instructions, that created a partial jury, and shifted the burden of proof.!

At TR; 60 ln 5--61 ln 10, when counsel tried to get information from Dective Taylor about criminal activity at the house (plexico objected to Exhibit # 8 at P.53 because it didnt reflect what the house was), the state objected, and the court made the following comment;

Court: Why dont you start at the begining and try to work up to it. Ask him if he has ever been to that house before, had occasion to be at that house before.

Plexico: Thank you sir.

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Court: And just try to take it a step at the time, and see what you come up with. But if you dont know the answer, I would suggest you not ask the question. You're supposed to know the answer before you ask the question.

Again the court made the comment to defence witness as stated above at (38.>) but also on direct examination of Hermine Brown, TR; 139 ln 23--140 ln 6, when he showed her a criminal file rebutting her prior testimony;

(Whereupon Plexico hands the witness a document)

Solicitor: Judge, I dont know what hes having her look over, but the proper procedure is to ask her a question first ---

Court: Why dont you ask her a question and if the answer is consistent, sit down; if its not, then you show her the document.

Plexico: Thank you your honor.

Q. On 3/12/91 did you plead guilty to distribution of unlawful drugs, crack cocain. ?

A. Yes I did.

Here again when I took the stand in my own defence, to rebut the states case and make factual corrections to my prior statement to police, on re-direct from Plexico at TR; 165 ln 21-- 166 ln 17, when state had accused me of crimes to include armed robbery that was not evidenced or charged;

Q. Did you break the law that night, aside from that little girl. ?

Solicitor: Your honor please I object to that question sir.

A. I did not break ---

Court: Well, hold on just a second. Im going to let him ask it, hes got to ask something. Go ahead and ask him.

Q. Beside the incident about the little girl, did you break any law that night. ?

A. No sir, I did not break the Supreme Law of the United States of america.

Q. Did you break any --- did you intend to break any law ?

A. No sir, i did not.

Q. Did you go over there intending to kill him ?

Solicitor: Your honor please, I --- thats all been asked, sir, and I object to it being improper anyhow.

Court: Do you have any recross ?

Solicitor: No sir.

Court: Step Down, Call your next witness.

Plexico: Defence rest your honor.

Here it is plain to see from the record that I was not only denied the right to put up witnesses, and evidence, but the court acted in a manner against counsel, that denied me the right to an impartial trial on the evidence, and effective counsel. ie State V Lewis 179 SE.2d 616 @ 619 , and US V Price 13 F3d 711 (3 Cir 1994). Counsel never objected. Because of the forgoing, I was denied my 6'th & 14'th Amend rights to trial by impartial jury, and fair proceedings by effective counsel, as a result of structural trial errors, that also violated Art 1 §3, §14

SC Const, and these issues are not allowed on PCR. The court allowed the Statement to be entered Exhibits #16,#17 that were untruthfull and exagerated and no little girl was ever involved or evidenced, or testified.

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40.> The judge allowed a juror, that was related to states witness and investigating deputy sheriff, that denied me the right to an impartial jury, and counsel did not object under SC Ann. (1976) §14-7-1030!

At jury selection, TR; 8 ln 7--9 ln 5, a juror "Julia Burns" admitted to being related to Ben Riley. But she was qualified by the judge. At TR; P. 5A, the jury roster list 11 jurors and one alternate. The jury poll was obmitted from the transcripts TR; 206 ln 15-22, even though an Anders appeal was had.

This is a structural trial error, that tainted the jury, and denied me the right to an impartial jury on the evidence, under the 6'th & 14'th Amend and Art 1 §3, §14 SC Const, and because counsel did not object under state law, the matter cannot be raised later, or on PCR.

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41.> The judge unconstitutionally & Illegally charged the jury with Burglary 1'st, and Murder, that shifted the burden of proof, and prejudiced the jury to cause an unfounded verdict of guilty, and counsel nor prosecutor objected.!

The court charged the jury on the law of Burglary 1'st, ie TR; 196 ln 1--13, 16-11-311; is in error of law and fact, since (1) excludes a participant of the crime, and it was proven and found by the court that the palce was a crack shack, and not someones home, and the people there were involved.

Futher that is was shown by Police and EMS testimony that the act took place in the day light hours, Tr; 197 ln 17--21, and there was no intent shown to commit a crime, ln 22-25, and I was welcomed there and had been there before, and there was no breaking in, by states on witnesses, and exhibits show there was not even a door knob. The only intent possibly shown was from prosecutors accusations of other crimes, during cross examination of me, and closing argument that was unfounded to include pointing a firearm. The courts minimul charge on burden of proof was overshadowed by inference upon inference piling by state and court. The court did charge 2nd and 3rd degree, and gave a defination of a building, TR 205, however this too was overshadowed by prejudicial instructions.

(O): The court futher charged the jury on reasonable doubt, TR 193 ln 22--194 ln 1;

Now, by reasonable doubt I dont mean a weak or a whimsical, or an imaginary doubt. A reasonable doubt, ladies and gentlemen, is a doubt arising out of the testimony or lack of testimony for which a person would hesitate in reaching a conclusion.

This type of instruction on reasonable doubt has been found to be unconstitutional in Cage V Louisiana 489 US 39, 111 S.Ct 328 (1990), and again in Sullivan V Louisiana 508 US 275, 113 S.Ct 2078 (1993), made retroactive in Adams V Evett 114 S.Ct 1365 (1994). The instructions of the court as a whole on burglary and murder was contrary to In Re Winship 397 US 358 (1970), by the records own language.

(P): The judge then followed with a Murder/voluntary Manslaughter Charge, TR; 199 ln 5--202 ln 9, that was unconstitutional, and shifted the burden of proof, and excluded an element of the offence, and created an Inference of guilt, and created an element to the definition of Malice.!

When the court defined the elements of murder at 199 ln 5-14 he left out the statutory element of "Wilfulness" created by the legislature in §16-3-10 (1976). (this was amended in 2010). <<Expressed or Implied>> are not elements, in 1992 this is court doctrine.

The court went on to define Malice at 199 ln 15--200 ln 2. The court changed implied malice to an Inference;

...,that is either by positive evidence or by inference. Expressed malice is where one person kills another with a sedate, deliberate mind and formed design. Such formed design being evidenced by the external circumstances disclosing the inward intention,....

The american heritage college dictionary 4<sup>th</sup> edition at p.710 defines an inference la,

The act or process of deriving logical conclusions from the premises known or assumed to be true. Infer; 3 ...Socrates argued that a statute inferred the existence of a sculptor.

The court did not charge circumstantial evidence pursuant to State V Mannis 214 SC 99, 59 SE.2d 370 (1949 SC), but used an inference to imply facts in favor of state on malice.

The court went on to charge malice, TR 200 ln 3--18;

Now, malice is INFERRED or IMPLIED from the willful, deliberate or intentional doing of an unlawful act without just cause or excuse. But if facts proven are sufficient to raise an INFERENCE of MALICE, such IS, of course Rebuttal. It is for the jury to determine from all the evidence whether or not malice has been proven beyond a reasonable doubt.

I charge you futher ladies and gentlemen, that Malice may be Inferred from --- when one intentionally kills another with a deadly weapon the INFERENCE of malice may arise If fact are proven beyond a reasonable

doubt sufficient to raise an INFERENCE of malice to your satisfaction, this INFERENCE would simply be an evidentiary fact to be taken into consideration by you, along with other evidence in this case, and you would give it such weight as you determine it should use.

Here the court conveyed an inference as fact, and charged fact to the jury, under the disguise of reasonable doubt, which it lowered at 193 id. This charge includes two charges that were determined to be unconstitutional, and a violation of fundamental rights in Yates V Evatt 500 US 391, 111 S.Ct 1894 (1991) 484 US 211, 391 SE.2d 530 (1989), 474 US 896 (1985), citing Mullaney V Wilbur 95 S.Ct 1881, see also 134 F.3rd 235 (4'th Cir 1995) @ 241 [10] quoting Yates and Sullivan. This charge also violates Winship 90 S.Ct 1068.

The court only gave a minimul and virtually non existant charge on "Aforethought", and combined this with malice; TR 200 ln 19--25;

Now, ladies and gentlemen, you will recall I said there must be malice aforethought and you will observe from that the malice aforethought, while the law does not require that malice exist for any appreciable length of time before commission of the act, there must be aforethought. There must be a combination of the evil intent and the act producing the fatal result.

The court did not establish a defination of aforethought, and had already charged malice was inferred and presumed, and only used the cooling peroid to negate a defence to malice, and establish a lowered burden of proof for the state, when I pleaded justification and no such was charged under state law.

(Q): The judge made an error of law in his charge on voluntary manslaughter, ie. Sc Ann. (1991) §16-3-50, @ TR 201--202 ln 9, on the ellements of law, and on the doctrine of the cooling period to establish malice, and negate the lesser offence:

Now, manslaughter is the unlawfull killing of another without malice, expressed or implied. You will notice that the absence of malice is what distinguishes murder from manslaughter. Now, voluntary manslaughter is the taking of life of another in sudden heat of passion upon sufficient legal provocation.... ...,I will say that when an assult is made with violence or circumstances of indignity upon a mans person or by slapping him or spitting in his face, and the party kills the aggressor, the crime would be reduced to manslaughter. If it appears that the assault was resented immediately and the aggressor was killed in the sudden heat of passion or in the heat of blood.... If the passion had, in fact, cooled or there was sufficient time between the provocation and the killing and the passion had cooled, the killing would not be

attributed to the heat of passion, but to malice. The sufficiency of the cooling time would, of course, depend on whether there was time, all circumstances being considered, for a man of ordinary reason and prudence to have cooled down.

Here the court erred I believe on the malice element, because in 1991 malice was included in §16-3-50, and the elements of Wilfulness, and Aforethought made the determination between murder and manslaughter. Further the court used a cooling period to determine malice, when I had plead justification, and believed that I was within my rights and the law. The jury was only allowed to decide whether I killed Brown or Not, and no State V Cooney 463 SE.2d 597 (SC 1995), charge which extended the reasoning of Peters v State @ 599 [4,5]. Here this shifted the burden of proof, and lowered the states burden of proof on the evidence, contrary to Francis V Franklin 471 US 307, ie Clark 478 US 570.

Further counsel failed to make corrections to the charge, or abuse of the judges discretion, or request a mercy finding from the jury, ie Chubb V State 401 SE.2d 159 (SC 1991), on the Burglary §16-3-311, and this was found to be illegal and unconstitutional.

The SC Supreme Court recognized the unconstitutional and illegal charging of fact to the Jury by the judge ie SC Const Art V §21 in State V Belcher OP NO. 26729 Decided 10/12/2009, but held that is was not applicable on PCR or retroactive, and the court in Yates Supra had already determined this on the US Const, also see Sandstrom V Montana 442 US 510 (1979), and in this case a presumption of malice was created by the charge as a whole, and I was forced to prove the lessor offence after evidence portion of trial had ended. The court further used an inference of fact to lower the states burden of proof, when its witnesses had been impeached, and were incredible, and I pleaded contrary to the statement and of Mitigating justification and rights.

I believe that the charge as a whole, in the record shows that the Judge abused his discretion, and ministerial duties, and left out the wilfulness element of murrder, conveyed expressed, implied, and inference as elements of the offences of burglary and murder, and used inferences to change and charge fact to the jury, and violated my due process rights to a fair trial by an impartial jury on the evidence presented by the state or myself.

42.> The court erred in its ruling on the Jackson hearing, TR 98 ln 18--100, even though counsel did not allow me to testify;

Court: Do you have any testimony, Mr Plexico ?

Mr. Plexico: I do have a motion, your honor, and then my client may wish to testify. Your honor, I dont think----

Court: Hold on a second. In regard to the Jackson hearing, do you have any testimony?

Mr Plexico: No, your honor....

Mr Plexico: ...Well, I dont have a copy of the first statement, your honor.

Court: Isn't it in evidence and haven't you looked at it?

Mr. Plexico: Yes Your honor, it appears to be similar, yes your honor.

Here the court denied counsels motion and allowed my statement over objection. The prosecutor used it, knowing it was partially false, and I had told police I made up most of it for an attentive audience on the planes. I rebutted it my self on the stand, but jury was prejudiced, and excepted states version without allowing exculpatng excuses.

(R): The court futher erred in denying counsels Motion to Direct the Verdict, TR 137 ln 21--139 ln 7, on insufficient evidence to establish the ellements of the charges. Counsel Renewed his motion at end of defence case, TR 167 ln 18--21. Rule 19 SCRCrmp.

The courts have held that proof of the ellements of law is required, ie Grace V State 200 SE 2d 248, @ 256(a), citing Speiser V Randell 357 US 513, 78 S.Ct 1332, at Grace 257. This proof must be substancial, and not meer suspicion.

Pursuant to State V Law 244 SE.2d 302 (SC 1978) the court held that (test of whether accused is criminally responsible for his actions, is whether he had the mental capacity to distinguish moral or LEGAL right from moral or Legal wrong. And to recognize the particular act charged as morally or Legally wrong). §44-53-450.

I believe the Judge erred at law, in denying counsels motion to charge "trespass", "InVoluntary Manslaughter", and "Self Defence", 167 ln 22--170 ln 13, when the evidence presented by state and Defence showed no intent to commit a crime, and mitigating circumstances, State V Morgan 319 SE.2d 135 (SC 1984). Here the court made an inference finding of facts, not in the record, or supported by the "Weight" exception, id State V Clarksdale 428 SE.2d 478 (SC 1993), and Jackson V VA 443 US 307, 99 S.Ct 2781 @ 2790.

I also believe the court erred as a matter of law, and due process, in denying counsels Post Trial Motion for New trial, Tr 207 ln 4--7 without any written motions being required, or requested, and no evidentuary hearing had. I filed a motion for relief to the Trial Judge on 8/11/93, after Direct appeal ended, Rule 204 SCACR, pursuant to Rule 60(b)(4-5) SCRCP, but this was never ruled on by the judge. Here I was Arbitrarily denied due process and equal protection of the law, especially when counsels renewed post trial motions on

earlier motions were denied for same reasons.

(S): Futher the court erred as a matter of law, and fairness, in allowing Prosecutor for state to have the Final closing argument, and waive opening, TR 170 ln 14-16.

Solicitor: okay, sir. State would Waive opening, if your honor please.

Court: okay, sir. Bring the jury out.

Here I was not allowed the opportunity to address or rebut states accusations and improper charges in closing argument, or states summary of evidence, when state was allowed the last say-so. This denied me the right to a fair trial.

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43. I submit that I was denied the right to a fair and impartial trial, and was the victum of prosecutotial misconduct, inviolation of the 14'th §1 Amend US Const, and Art 1 §3 SC Const, because; !

The prosecutor repeatedly bombarded the jury with assumptions, and implied the judges voice;

TR: P.11 ln 24; His honor will charge you,  
180 ln 5,22; His honor will give you an explanation; His honor will charge you.  
181 ln 6,17; His honor will also tell you; His honor will tell you in that regard.  
182 ln 14,18,25; His honor will also charge you; He will tell you; Lets assume; Lets assume.  
183 ln 1,5,23; Lets assume; Lets assume; Lets assume; and Lets assume.  
184 ln 12; Assuming.  
187 ln 5-12; lets assume; I dont assume.  
190 ln 25--191 ln 2; But assuming; assuming; Lets assume.

Here counsel nor court objected, and states assumptions were primarily based on personal opinions, and accusations of crimes not even charged, and no evidence to support same. Boyd V French 147 F.3d 319 (4'th Cir 1995) (prosecutor should refrain from stating his personal opinions during argument and misleading jury about the law).

During cross examination of me on the stand, TR 153 ln 16--165 ln 13, the prosecutor made the following accusations;

Q. But you didn't prevent it, you brought it on, didn't you? You went there to steal money from that fellow.

A. No Sir.

Q. And that is flat out Armed Robbery anyway you figure it, isn't it?

A. No Sir.

Q. Why not, sir.?

- A. Because it was already my property, I was the one that was robbed.
- Q. You know, they make laws, dont you sir, you know the Legislature dose that....
- A. Yes Sir.
- Q. And you know that one of the reasons they have a law against robbing people is to prevent people like you from killing the victums, dont you know that sir?
- A. Yes.
- Q. But in spite of knowing that, in spite of knowing its the law and that you were breaking the law, you went into that house that night with a shotgun to rob that man of money, didn't you sir?
- A. No sir.
- Q. Isn't that what you told the jury, sir?
- A. No sir. You said I went to rob the man. I went to get my property back.
- Q. ---to at gun point....
- A. I was the victum, sir, not the robber.
- Q. Hes dead isn't he, sir.
- A. Yes sir.
- Q. Hes more of a victum than you were.
- A. Yes, sir, No sir, were both victums.

The prosecutor then went on to accuse me of crimes, and wrongs there was no charge for or evidence of, in his closing argument.

TR: 180 ln 9--191

Ladies and gentleman, "Pointing A Firearm", if nothing else, is a crime. ...if I were to point that gun at you, that is a crime in SC.

So when he went in that house with Intention, and he said he was going to point it at him because he knew--- do you remember this --- he had to get the drop on him first,.... And theres no question he went in with the intent to commit a crime and that crime being Armed Robbery to get his money back or Grand Larceny, or Whatever, or Murder.

Well, ladies and gentlemen of the jury, i tell ya'll when you go in with a gun and take money from some-body, that is Armed Robbery.

...Had joseph gibbs been a law abiding citizen and had he not wanted to go get crack, as he says, in exchange for sex. He says that he dosnt break the law but god knows, he told yall that when that woman told him she would give him a little bit if he would give her a little bit, there wasnt no question but that he was going to break the law then.

Plexico: I object your honor, thats improper.

Solicitor: ...I mean he had no problem with breaking the law. but yet he would tell you that on things that matter, such as taking a life, he certainly had no intention.

Here the state not only accused me of crimes that I did not commit, nor was charged with repeatedly, but conveyed those crimes into Intent for Burglary, and the ellements of Murder. He also inferred that Because Brown was dead, that I was not the victum, and repeatedly used his personal opinion of, i dont think, and Yall dont beleive it either, to try and creat evidence in the closing argument when none was formed on the stand, and pictures only showed that the

shack was not a regular house. Further The house did not even have a door knob, and I did not force my way in and Prosecutor allowed testimony evidence from witnesses he knew was false, even though an InAdequate Police, and Defence investigation was done.

This type of conduct was found unconstitutional in Giglo V US 405 US 150 (1972)

The prosecutor went on to commit on my assertion of constitutional rights in;

TR 154 ln 23-155 ln 2; Q. You mean youre going back to the days of the 1800's to the wild west, the man that rules the fastest gun is the one that is the best man, thats what you are telling me. You dont have any respect for the law do you, sir?

A. yes, sir, I do.

187 ln 5--14; Now, I told yall that lets assume for a minyte. now, im going to tell yall, i dont assume, i dont think thats what happened. But what I think makes no difference.... mr Gibbs, had to go back to do this, i had to go back to the 1880's to the wild west and take the law into my hands and you see what kind of situation it creates when you do that. You got a dead man and nothing else.

The facts that you have before you are that Marion brown stole from joseph gibbs monies.

187 ln 25--188 ln 5: ...had he done what was required of him by law, instead of taking the law into his own hands, i would be trying Marion Brown for Armed Robbery. And we would not have a dead man, we would not be wasting this courts time with a Murder Charge, and with a Burglary charge.

The prosecutor then went on to charge the jury with law, to include self defence that the court would not charge, Tr; 180 ln 11--191 more specifically on self defence at; TR 190 ln 19--191 ln 16

In 18- joseph gibbs got mad with Bozo Brown for some reason, and what reason, I do not know. That he went to his house with intent to kill him, that he burglarized it, and that he did in fact kill him. Nowhere have you heard about a gun except, except from joseph gibbs himself. Not one other place have you heard mention of a gun.

But assuming that he did have a gun,, again assuming something I dont think is true, but lets assume that Bozo did have a gun in that house. You cannot consider self defence in this case. And why can't you consider self defence? If Bozo was going to pull out a gun and shoot him, why can't you consider self defence? Because, ladies and gentlemen, the law says that you cannot be the person that brought on the trouble and then claim self defence. In other words,....

Had Joseph Gibbs come into that house and had he said. Mr Brown, I wont my money. And Mr Brown pulled out a gun and had Joseph Gibbs at that point shot him and killed him, Then it wouldn't be murder.

The prosecutor not only spoke of, and substituted his opinion for my credibility and testimony, like he did at TR 182 ln 22--183 ln 6, 184 ln 12--14, 187-188, but he argued against self defence, when I plead justification, and the

judge would not charge it, And He misstated the facts and evidence presented at trial, and even he stated as a negative at 191 ln 13--20 the facts and stipulated that it was not murder. Here this prejudiced the jury, and confused them as to the facts and evidence with suggestion and unfounded opinion. US V Dispos-0-Plastics 172 F.3d 275 (3rd Cir 1999) (1. Prosecutor improper vouching for credibility of prosecution witnesses tainted trial and required reversal of convictions. (2. Vouching occurs where prosecutor personally assures jury concerning witness credibility or expresses personal opinion regarding defendants guilt.)

The prosecutor futher charged the jury with law in his opening argument, TR 11--12 ln 18 and closing argument at TR 184 ln 15--24, 185 ln 14--24, 186 ln 14--19, 188 ln 24--190 ln 2. Futher the prosecutor in his opening statement at TR 13 ln 7--17 is false and was not proven, especially about koncking Hermain across the room and into a fireplace, when the fireplace was on the same wall as the door to the left, and I did not force my way in, and demanded my money, with fair warning. Here the self defence took place when Bozo made a threatning move instead of compliance, and They brought the situation on, by there occupational hazards and actions.

(T): The prosecutor asked the jury to speak for others and send a message, in his closing argument, that was a supplement to the evidence presented and the presumption of innocence, at TR: 191 ln 21 25

You do what is right. The family of merion Brown, The people of Jasper County, We will be waiting on your decision and whatever it be, let it speak the truth and send a message to the people of Jasper County as to what's right and what's wrong. Thank You.

Here the prosecutor ask the jury to speak for others, placing a societal burden on jurors, outside of evidence, US V Olliverre 378 F.3d 412 (4'th Cir. 2004) (a prosecutor should not portray as fact matters that are not in evidence, and he should not misstate the facts are law).

(U): I submit and argue that the record as a whole, shows that the state through the prosecutor, biased and prejudiced the jury, as well as misstated the facts and law, and futher denied me a fair trial by an impartial jury, on the evidence presented, as stated above, and this was found to be a violation of fundamental rights, and unconstitutional in, State V Craig 277 SE.2d 306, State V Parris 161 SE 496, State V Bealin 23 SE.2d 746 @758 [5-6], Mullaney ib 95 S.Ct

1881, and Berger V US 295 US 78, 55 S.Ct 629 (1935). As a result of above allegations supported by the record, it should be found a violation of the 14'th Amend and Art 1 §3, §14 SC Const. Defence counsel objected to one portion of Prosecutorial Misconduct, and that was not raised on Direct appeal, and This Ground is not allowed on SC.PCR.

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44.> Defence counsel did not preform or intend to preform any pretrial investigation, and admitted to this on the stand at PCR id PCR/TR 72 ln 6--91 ln 2, and he did not conduct any interviews with witnesses, in fact witnesses testified at PCR about exculpatory evidence, and Counsel would not return there calls.

Counsel never conducted any pretrial processes to include, arraignment, preliminary hearing, bond hearing, competency hearing, psychological evaluation, and talked to none of the people that would have been involved, and he cast off some of that on his investigator at the PCR hearing, Mr Benjamine Burlson, who did not testify at hearing or trial.

Counsel did not contact me until several months after I was arrested, and he was appointed. He conducted no legal investigation, and was not prepared for trial, as the record shows.

Counsel did not file written post trial motion for new trial, or move for transcripts so a proper motion could be filed, and counsel did not bring up the courts lack of subject matter jurisdiction.

Counsel erred in stipulating for the state at TR 165 ln 21,22, 166 ln 4,5 Q. Did you break the law that night aside from that Little Girl. and Beside from the incident about that Little Girl, did you break the law that night.

As a result of counsels actions, and inactions, as shown above in the grounds for relief, I was denied the effective assistance of counsel, required in the 6'th Amend and Art 1 §14 SC Const, even under the Conservative fundamental rights declaration of Strickland 466 US 668, 692--694, 104 S.Ct 2052 (1984); And under the standard of US V Cronic 466 US 648, a meaningful adversary testing was denied me, as if I had no counsel at all. see also Coles V Peyton 389 F.2d 224 (4'th Cir 1986). Counsel futher erred for the state in stipulating there was a "Little Girl." involved, when there never was any little girl, nor any girl, and none was produced, or evidenced. The act took place hours later, on a temporary lapse of judgment.

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45.> I was denied a full and fair Direct Appeal, as a result of ineffective appellatnt counsel, on viable preserved issues.!

Appellant counsel filed an Anders V California 386 Us 738 (1967), with a Motion to be relieved for lack of merit. Counsel filed a ROA that was incomplete, and did not contain the jury poll, nor Indictments, warrants or copies of evidence presented at trial.

Counsel did not raise trial counsels objection and motion to suppress statement at Jackson hearing, or courts denial.

Counsel did not raise trial counsels motion to direct the verdict on Insufficiency of the Evidence to establish the Ellements of law as charged.

Counsel did not raise Trial counsels objection to prosecutor pitting me against other witness when the judge would not allow him to compare testimony.

Counsel did not raise trial counsels objection to the <little girl>, in prosecutors closing argument, that there was no evidence of, and this witness was not produced.

Counsel did not raise the courts arbitrary dismissal of trial counsels renewed motions at end of trial.

Counsel did not raised issue of courts arbitrary denial of trial counsels Post Trial motion for new trial.

Counsel did not raise subject matter jurisdiction, even though no true billed indictments were present or had, or included in the ROA.

The court held in Pension V Ohio 488 US 75, that (insufficient Anders Brief, prejudicial requirment of Strickland dont apply). The court held in US V Cook 45 F.3d 388 (10'th Cir 1995) (appellate counsels failure to raise a dead bang issue, constitutes ineffective counsel, and establishes a cause for failure to raise issue). Futher in Evitts V Lucey the court held (due process guarantees defendand the right to effective counsel on direct appeal). see also Evans V Clark 868 F.2d 267 (8'th Cir 1989).

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#### CONCLUSION

Wherefor having made my petition for relief from conviction and judgment on the grounds stated above, I believe that this petition is valid, and proper, and other remedies to include previous petitions have been inadequate to provide the relief I seek and demand;

- 1=> Vacate the Conviction and Sentence for Burglary 1'st.
- 2=> Vacate the conviction and sentence for Murder.
- 3=> Restore all civil liberties, and Freedom from restraint.

I further believe that the legal and constitutional issues as a matter of law and error on the part of the trial court, and post collateral courts warrant the issuance of the great Writ of Habeas Corpus.

This 19<sup>th</sup> Day Of September/2012

Respectfully Submitted

Rule 11 SCRPC =>

/s/ Joseph Hugo Gibbs

eci/jhg

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**Verification / Affidavit**

I verify, and submit as affiant, that the above material facts are true and correct to the best of my personal knowledge, and are supported by the record. Further that this petition is made in good faith, and I believe the grounds and facts warrant the relief demanded. /s/ Joseph H. Gibbs

I request and MOVE the court for **in Forma Pauperis**, To excuse me from the Rule 65 SCRPC requirement of cost and fees. I was tried as indigent, and granted same by the SC Supreme Court. /s/ Joseph H. Gibbs. Denied 10/11/12

**Proof Of Service:** I the undersigned petitioner, certify that I have on This/19<sup>th</sup>/day of/September/ 2012, served one true copy of this petition for habeas corpus, with attached Exhibit A, of Indictments/Warrants/Commitment Papers, on, Mr. Willie Eagleton, at Evans, be depositing same in the Mail Room, sealed with Request to Staff, and One copy to Mr Alan Wilson, Esq as addressed below, by Certified Return Receipt Requested Mail, pursuant to Rule 4 SCRPC. The US Mail is normally operating at Evans. One Copy of Exhibit: A, included with service.

Mr. Willie Eagleton; Warden  
Evans Correctional Institution  
610 Hwy 9 West  
Bennettsville SC. 29512  
Ph # 843-479-4181

Mr. Joseph H. Gibbs, #185709  
Rule 11 SCRPC => /s/ Joseph H. Gibbs  
Petitioner Pro Se  
610 Hwy 9 West  
Bennettsville SC. 29512  
Ph # 843-479-4181

Mr. Alan Wilson, esq  
SC. Attorney General  
Po. Box 11549  
Columbia SC. 29211  
Ph # 803-734-3737

Notary Public: SC. Ann (1976) §26-3-10 et seq

sworn to and subscribed before me

on the 19 day of September, 2012

Don J. Thomas  
(Notary Public of South Carolina)

My Commission Expires Sept 19, 2019

Exhibit: A, Attached

State of South Carolina

County of Jasper

14'th Judicial Circuit

=====

In Re: Joseph H Gibbs, #185709

Vs

Willie Eagleton; Warden

=====

Case# 2012-CP-27-691

**Exhibit: A**

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Indictment, 1992-gs-27-002, March/9/1992	. . . . .	001
Arrest Warrant/Affidavit, # C-734363	. . . . .	002
Commitment Order, 92-gs-27-002, 3/11/92	. . . . .	004
Indictment, 1992-gs-27-003, March/9/1992	. . . . .	005
Arrest Warrant/Affidavit, #C734377,	. . . . .	006
Commitment Order, 92-gs-27-003, 3/11/92,	. . . . .	008
Preliminary Hearing Request, Nov/13/1991,	. . . . .	009

Joseph Hugo Gibbs  
 Petitioner Pro Se  
 E.C.I, F-3-B-242  
 610 Hwy 9 West  
 Bennettsville SC. 29512  
 843-479-4181

STATE OF SOUTH CAROLINA )  
 )  
County of Jasper )

**INDICTMENT #92GS27-0002**

At a Court of General Sessions, convened on March 09, 1992,  
the Grand Jurors of Jasper County present upon their oath:

001

**COUNT:** **MURDER**  
**16-3-20**

That Joseph H Gibbs did in Jasper County on or about October 18, 1991,  
feloniously, wilfully and with malice aforethought, kill one Marion M Brown by  
means of shooting and that the said Marion M Brown did die in Jasper County as  
a proximate result thereof on or about the 18th day of October, 1991.

Against the peace and dignity of the State, and contrary to the statute  
in such case made and provided.

SOLICITOR Randolph Munday, III

COUNTY OF Gasper

AFFIDAVIT

002

82

Personally appeared before me, judge of the Court, one Arndy Blackman E-734363, being duly sworn, deposes and says that Joseph H. Gibbs (name of defendant) did within this County State on 10-18 19 91, violate the criminal laws of the State of South Carolina [or ordinance of the municipality] in the following particulars:

DESCRIPTION OF OFFENSE

Murder 16-3-10

further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that such probable cause is based on the following facts:

That on or about the above date the accused did willfully & maliciously shoot & kill one Marion Brown. This did take place near Marlboro SC & is in Gasper Co

Subscribed before me, is 18 day of Oct, 19 91.

Arndy Blackman  
Signature of Affiant

Marie C. Brown (L.S.)  
Signature of Issuing Judge

Address P.O. Box 1306  
Bridgeport S.C.  
Phone: 252-5383

Address Robertt  
Bridgeport SC

Phone: 726-7737

STATE OF SOUTH CAROLINA ARREST WARRANT

COUNTY OF Gasper

MUNICIPALITY OF \_\_\_\_\_

ANY LAW ENFORCEMENT OFFICER OF THIS STATE, COUNTY OR MUNICIPALITY, OR ANY CONSTABLE OF THIS COUNTY:

appearing from the above affidavit that there are reasonable grounds to believe that Joseph Hugo Gibbs (name of defendant) did on 10-18 19 91, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of \_\_\_\_\_] as set forth below:

DESCRIPTION OF OFFENSE

Murder 16-3-10

Therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at Bridgeport S.C.  
on Oct 18, 1991.

Marie C. Brown (L.S.)  
Signature of Judge

Joseph H. Gibbs  
on the 4th day of Nov., 1991  
J. S. HIGGINS  
Signature of Constable or Law Enforcement Officer

This warrant is certified for service in  
County \_\_\_\_\_ (Circle one)  
Municipality \_\_\_\_\_ (Circle one)

The accused is to be arrested and brought before me  
to be dealt with according to law.

nature of Judge \_\_\_\_\_ (LS.)

PRELIMINARY HEARING held by

Judge \_\_\_\_\_

on \_\_\_\_\_, 19\_\_\_\_

with \_\_\_\_\_  
Attorney for Defendant

Decision: \_\_\_\_\_

BAIL

Set \_\_\_\_\_, 19\_\_\_\_

Judge \_\_\_\_\_

Amount \_\_\_\_\_

Surety \_\_\_\_\_

RETURN WARRANT TO:

NO. 104000 6-754363  
STATE OF SOUTH CAROLINA  
County \_\_\_\_\_  
Municipality \_\_\_\_\_ (Circle one)

THE STATE  
against

Joseph H. Gibbs

Address: Rt. 1 Box 218 AA

HAIDEEVILLE S.C.

Phone \_\_\_\_\_ SSN 257-94-4921

Sex M Race W Height 6'1" Weight 180

DOB 06/24/54 DL 4653165

Offense MURDER

Code (or Ordinance) § \_\_\_\_\_ Offense Code \_\_\_\_\_

Issuing Judge \_\_\_\_\_ Judge Code \_\_\_\_\_

Officer \_\_\_\_\_

Agency \_\_\_\_\_ ORI No. \_\_\_\_\_

Date of Offense \_\_\_\_\_

Date of Disposition \_\_\_\_\_

Disposition 62 3127 9-10115

Sentence 30YR

Co-Defendants \_\_\_\_\_

Address \_\_\_\_\_  
Phone \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

JURORS

62 3127 9-10115  
PAGE 100X

FILED

SENTENCE

Murder 71

STATE OF SOUTH CAROLINA

CASE NO. 92-27-002

ASPER COUNTY

004

The defendant Joseph M. Gibbs is committed to the Department of Corrections/County for a term of \_\_\_\_\_ months/year and/or to pay a fine of \$ \_\_\_\_\_; provided upon the service of \_\_\_\_\_ months/years and/or payment of \$ \_\_\_\_\_, plus pay/waive costs and assessments as applicable\*, the balance suspended with probation for \_\_\_\_\_ months/years. Remainder of natural life

stitution

For physical injury \$ \_\_\_\_\_

s/No

property damage \$ \_\_\_\_\_

be paid \_\_\_\_\_

clerk for \_\_\_\_\_

er conditions \_\_\_\_\_

e 3/12/92

William J. Howell  
Presiding Judge

sts and Assessments

Non-waivable \$ \_\_\_\_\_

Not waived \$ \_\_\_\_\_

Total \$ 54.00

Margaret Bostick  
Clerk of Court

005

69

STATE OF SOUTH CAROLINA )  
 )  
County of Jasper )

**INDICTMENT #92GS27-0003**

At a Court of General Sessions, convened on March 09, 1992,  
the Grand Jurors of Jasper County present upon their oath:

**COUNT:                   BURGLARY IN THE FIRST DEGREE  
                                 (DWELLING) 16-11-311**

That Joseph H Gibbs did in Jasper County on or about October 18, 1991,  
willfully and unlawfully enter the dwelling of Marion Brown without consent and  
with the intent to commit a crime therein and the defendant did enter in the  
nighttime.

Against the peace and dignity of the State, and contrary to the statute  
in such case made and provided.

SOLICITOR Randolph Murdaugh, III

CITY OF Jasper

AFFIDAVIT

006

83

personally appeared before me, judge of the Court, one Sheriff Granby Blackman being duly sworn, deposes and says that Joseph Gibbs (name of defendant) did within this County State on 10-13 19 91, violate the criminal laws of the State of South Carolina [or ordinance of the municipality] in the following particulars:

DESCRIPTION OF OFFENSE

Burg 16-11-311

further state that there is probable cause to believe that the defendant named above did commit the crime set forth and such probable cause is based on the following facts:

That on or about the above date the accused did enter the dwelling place of Maria Brown and did shoot the said Maria Brown with a 12 ga. shot gun with in said dwelling

C-734377

Subscribed before me, 4 day of Nov, 19 91

[Signature]  
Signature of Affiant

Maria C. Bowe (L.S.)  
Signature of Issuing Judge

Address P.O. Box 1366  
Ridge land SC  
Phone: \_\_\_\_\_

Address PO Box 1366  
Ridge land SC  
Phone: 226-7737

STATE OF SOUTH CAROLINA ARREST WARRANT

CITY OF Jasper

MUNICIPALITY OF \_\_\_\_\_

LAW ENFORCEMENT OFFICER OF THIS STATE, COUNTY OR MUNICIPALITY, OR ANY CONSTABLE OF THIS COUNTY:

Appearing from the above affidavit that there are reasonable grounds to believe that Joseph Gibbs (name of defendant) did on 10-13 19 91, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of \_\_\_\_\_] as set forth below:

DESCRIPTION OF OFFENSE

Burg 16-11-311

therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as thereafter as is practicable.

Done at Ridge land, SC  
on Nov. 4, 19 91

Maria C. Bowe (L.S.)  
Signature of Judge

Swing, defendant.

JOSEPH GIBBS

the 4<sup>th</sup> day of NOVEMBER, 19 91

Signature of Constable or Law Enforcement Officer  
Maurice J. Malphrus

Signature of Constable or Law Enforcement Officer

This warrant is certified for service in  
County (Circle one)  
Municipality (Circle one)

The accused is to be arrested and brought before me  
to be dealt with according to law.

Signature of Judge (L.S.)

PRELIMINARY HEARING held by

Judge, 19

Attorney for Defendant

BAIL

Date Set, 19

Date

Amount

Security

RETURN WARRANT TO:

No. C 134377

STATE OF SOUTH CAROLINA

Gasper County Municipality (Circle one)

THE STATE

against

Joseph Gibbs

Address:

Phone: SSN:

Sex: Race: Height: Weight:

DOB: DL:

Offense: Burglary I

Code (or Ordinance) § 16-11-311 Offense Code

Issuing Judge: Marie C. Bantz Judge Code

Officer: Grand Blodgett Sheriff

Agency: G.C.S.D. ORI No.

Date of Offense: 10-18-91

Date of Disposition

Disposition

Sentence

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

JURORS

S E N T E N C E

Burg 1st 70

STATE OF SOUTH CAROLINA

CASE NO. 92-GS-27003

JASPER COUNTY

008

The defendant Joseph M. Gibbs is committed to the State Department of Corrections/County for a term of \_\_\_\_\_ months/year and/or to pay a fine of \$ \_\_\_\_\_; provided upon the service \_\_\_\_\_ months/years and/or payment of \$ \_\_\_\_\_, plus pay/waive costs and assessments as applicable\*, the balance suspended with probation \_\_\_\_\_ months/years. Remainder of natural life

Restitution

Yes/No

To be paid

property damage \$ \_\_\_\_\_

To clerk for

Other conditions

Effective 3/12/92

Presiding Judge

Costs and Assessments

Non-waivable \$ \_\_\_\_\_

Not waived \$ \_\_\_\_\_

Total \$ 54.00

Margaret Bosstick

Clerk of Court

ALLEN, WYDALE, HAMPTON AND JASPER COUNTIES  
OFFICE OF THE PUBLIC DEFENDER

Second Floor, Court House Annex  
Hampton, South Carolina

009

Gerald Alan Kelly  
Public Defender

Benjamin Burison  
Investigator

Post Office Box 506  
Hampton, South Carolina 29924  
Telephone 803-943-2482

November 13, 1991

The Honorable Marie C. Rawl  
Post Office Box 166  
Ridgeland, S.C. 29936

Dear Judge Rawl:

I have been appointed to represent the following person(s):

Cedric Grant - Warrant# C734375 - Charge - Simple Possession Crack Cocaine  
✓ Joseph Gibbs - Warrant# C734377 - Charge - Burglary I  
C734363 - Charge - Murder  
Joe Chaney - Warrant# D050056 - Charge - Assault & Battery, Simple  
D050055 - Charge - Grand Larceny-Common Law

I respectfully request a preliminary hearing for my client(s) at your convenience.

Sincerely,

*Stephen T. Flexico*

Stephen T. Flexico  
Public Defender

*None had, no witnesses  
Present! etc*

THE STATE OF SOUTH CAROLINA  
County of Jasper  
Fourteenth Judicial Circuit  
=====

**TO:** Mr. Willie Eagleton; Warden  
Evans Correctional Institution  
610 Hwy 9 West  
Bennettsville SC. 29512  
Ph 843-479-4181

Mr. Alan Wilson, esq  
SC. Attorney General  
PO. Box 11549  
Columbia SC. 29211  
Ph 803-734-3737

**RE:** In Re: Joseph H. Gibbs, #185709 Vs Willie Eagleton; Warden  
On Petition for Habeas Corpus: Case # 12-CP-27-69

**NOTICE:** PLEASE TAKE NOTICE, that a petition for Writ of Habeas Corpus, under state law, and Rule 65(f) SCRPC, has been filed in the Clerk of Courts office in Jasper County, with Cover Sheet, Verification / Affidavit, filing letter, and attached commitment papers, warrants, indictments as exhibit A, and proof of service.

\*\*\*\*\*

**SUMMONS:** Please be advised, that you will have 30 days from service by receipt through the US Mail, to answer the attached petition for Writ of Habeas Corpus: Failure to answer may result in waiver of objection to the legal and constitutional issues raised therein.

\*\*\*\*\*

Respectfully Submitted  
/s/ Joseph H. Gibbs  
Joseph Hugo Gibbs  
Petitioner Pro Se  
E.C.I, F-3-B-242  
610 Hwy 9 West  
Bennettsville SC. 29512  
Ph 843-479-4181

7/19/12