THE STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. SUPREME COURT

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APPEAL FROM ANDERSON COUNTY

Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

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Appellate Case No. 2012-212682

Case No.: 2011-CP-04-03079

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Tommy Edwin Jones, Jr., 182962, Petitioner,

v.

The State of South Carolina, Respondent.

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**EXPLANATION PURSUANT TO**

**RULE 243(C) SCACR**

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This matter comes before the Court pursuant to the filing of a pro-se Writ of Certiorari received by this Honorable Court on, July 23, 2012. Thereafter the Court sent the Petitioner, Tommy Edwin Jones, Jr., 182962, who is proceeding pro-se, a letter dated August 29, 2012, giving the Petitioner Notice that he must file an "explanation as to why this determination was improper," regarding the circuit court's determination that the action should

be time barred. The Petitioner has requested and have been granted extensions to file this Explanation.

As a pro-se litigant, who was not educated in the law, the Petitioner wrote in plain English what his reasoning for Post-Conviction Relief (PCR) were. Now with assistance, an attempt will be made to clearly define the issue presented in the PCR application, and the available corresponding precedent.

The Petitioner was indicted and pled guilty to several different charges in Anderson County in 1991. At that time the Petitioner was told by counsel that he would be eligible for parole review once a third of the sentence had been complete. This third was based on the calculation of the sentence after appropriate credits extended from the South Carolina Dept. of Corrections. As stated in the handwritten Writ, page 4, the argument was that the plea was based upon the acknowledgment from counsel that parole eligibility would come forth after serving between 6½ to 7 years. Thereafter, the Petitioner would go up for a re-evaluation every two years.

The fact that is a part of the Record is that the Petitioner only went up after serving ten years. Then to add insult to injury the Petitioner is not being taken up every two years, but two years and several months thereafter. Each time months are added to the two years.

Specifically, the Petitioner became parole eligible on May 1, 2001, but thereafter it was not every two years, as required by statute. S.C. Code of Law §24-21-645, indicates that the two year interval is automatice after initial denial of parle. Jernigan v. State, 531 SE2d 507 (SC 2000). The Record will show that recently while at McCormick CI, Petitioner went before

the parole board on May 20, 2009, then when Petitioner was at Allendale CI, Petitioner went before the board again on August 10, 2011. Now the SCDC's computers shows that Petitioner is to go up next on August 10, 2013. These dates do not come out to be "every two years," as mandated by statute.

Inmates have a protected right to a parole hearing. James v. SCDPPPS, 656 SE2d 399 (SC App. 2008). This Court had concluded that this type of claim "is appropriate for PCR because [the Petitioner] alleges counsel was ineffective for improperly advising him when he would be parole eligible." Coats v. State, 575 SE2d 557, 558 (SC 2003).

The Petitioner's claim is enclosed within the State's PCR Act, but not just in S.C. Code of Law §17-27-45(A), but also subsection (C). The statute is clear that it is based on filing within one year of discovery of evidence of material fact. Kurtz v. State, 630 SE2d 472, 473 (SC 2006). The Petitioner filed his PCR application on October 12, 2011. This would be only two months after his last denial of parole.

In the State's Return, Conditional Order of Dismissal, or Order of Dismissal, the fact that the Respondent is in violation of the Petitioner's Due Process rights by not taking him before the Parole Board every twenty-four months, or two years, is conveniently tabsence. PCR Petitioner's claim, that counsel was ineffective for improperly advising him that he would be parole eligible in "6½ to 7 years," fell within discovery rule providing when there was evidence of material facts not previously presented, PCR application was to be filed within one year after date of actual discovery of facts, and did not have to be filed within one year after conviction.

When the date of parole hearing changed from the statutory 24 months, Petitioner filed his PCR application. When reviewing the summary dismissal of an application for relief under the pertinent statute, the Court must view the

facts in the light most favorable to the Petitioner. Leamon v. State, 611 SE2d 494 (SC 2005).

S.C. Code of Law §17-27-20(a)(4) & (6) are pertinent to this argument, because the Petitioner had a State-created liberty interest in the parole board not deviating from the statutory criteria in the reviewing and allowing an opportunity to be reviewed for parole. Cooper v. SCDPPPS, 661 SE2d 106 (SC 2008).

Pursuant to S.C. Code of Law §17-27-45(C), and its explanation in Coats v. State, the above precedent is controlling in this matter and that discovery is the key to allow a resetting of the statute of limitation for the filing of the PCR. The Appellant had his one bite of the apple frustrated, through the attorney general's office not making its main goal to see that justice is done, for both the State and its residents (Petitioner). Brown v. State, 680 SE2d 909 (SC 2009).

For the statute of limitations concerns to be satisfied they must be gauged by the knowingly and intelligent waiver of its comport. The Petitioner has a meritorious issue before the Court and the protection of the Court to ensure his Due Process rights is what the Petitioner prays for.

The Constitution's provision that "[n]o state shall ... deprive any person of life, liberty, or property without due process of law," U.S. Const. Amend XVI, §1, guarantees more than just fair process, it cover[s] a substantive sphere as well, 'barring certain government actions regardless of the fairness of the procedures used to implement them,'" Cnty. of Sacramento v. Lewis, 523 U.S. 833, 840 (1998)(quoting Daniels v. Williams, 474 U.S. 327, 331 (1986)).

Due Process of Law requires that a person shall have a reasonable opportunity to be heard before a legally appointed and qualified impartial

tribunal before any binding decree, order, or judgment can be made affecting his rights to life, liberty or property. LaSalle Bank Nat'l Ass'n v. Davidson, 688 SE2d 121 (SC 2005).

The assumption of the Respondent that the matter could be raised prior to this Petition was ludicrous because the standard had not been adopted, but clearly the precedent now applies. The previous referenced federal habeas was filed in 1997. Discovery occurs with knowledge and any statute of limitation would start then. Martin v. Companion Healthcare Corp., 593 SE2d 624 (SC App. 2004); Moriarty v. Garden Sanctuary Church of God, 511 SE2d 699 (SC App. 1999).

For the Court to ignore a deprivation of constitutional protections so basic, and so fundamental that in its absence criminal trials and/or proceedings cannot reliable serve its function as a vehicle for the determination of guilt or innocence, and no criminal punishment may be deemed or regarded as fair, because the structural constitutional error and/or defect affected the framework of the proceedings and cannot be viewed as harmless.

Finally, the Constitutional rights of criminal defendants are granted to the innocent and the guilty alike, and consequently, the guarantee of effective assistance of counsel does not belong soley to the innocent or attach only to matters affecting the determination of actual guilt. Lafler v. Cooper, 132 S.Ct. 1376, 1388 (2012). For that reason the U.S. Supreme Court has emphasized that, "[d]ismissal of a first ... petition is a particularly serious matter, for that dismissal denies the Petitioner the protections of the Great Writ (PCR) entirely, rushing injury to an important interest in human liberty." Lonchar v. Thomas, 517 U.S. 314, 324 (1996).

As such the Petitioner's Petition cannot be held as untimely, and the decision of the lower Court is based on the wrong caselaw and statutory precedent. Gary v. State, 557 SE2d 662 (S.C 2001). S.C. Code of Law §17-27-45(C) creates a right to be heard and to ignore the statute would deny the Petitioner a state-created liberty, of which he has an interest in. Wolff v. McDonnell, 418 U.S. 539 (U.S. 1974); Furtick v. SCDC, 649 SE2d 35 (SC 2007). The due Process Clause imposes procedural limitations on a State's power to take away protected entitlements. DA's Office v. Osborne, 129 S.Ct. 2308, 2319 (U.S. 2009).

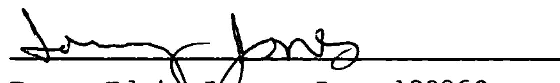
CONCLUSION

For the above stated reasons, an Explanation pursuant to Dennison v. State, 639 SE2d 35 (SC 2006), has been provided that should allow this appeal to continue, because the PCR Court's determination ws improper. Since the deciding judge failed to follow the precedent of Coats and Leamon, he should not be able to hear further actions filed by the Petitioner and the matter should be heard anew.

The substantive rights of Petitioner has been prejudiced because the decision appealed are in violation of constitutional and/or statutory provisions.

THIS THE PETITIONER HUMBLY PRAYS!

Respectfully submitted;



Tommy Edwin Jones, Jr., 182962
Petitioner, Pro-se
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January ___, 2013

THE STATE OF SOUTH CAROLINA

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## PROOF OF SERVICE

I, Tommy Edwin Jones, Jr., 182962, hereby certify that a copy of the foregoing EXPLANATION PURSUANT TO RULE 243(C) SCACR was served upon the following agencies on January 17, 2013, by placing a copy of the same at the Institution's Mail Room to be sent by United States Mail, postage prepaid, and addressed as follows:

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January 17, 2013

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IM3

RIDGELAND CORRECTIONAL INSTITUTION

JAN 17 2013

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