Mr. George A. Jones, # 254442
Broad River Correctional Institution
Marion Unit B 239
4460 Broad River Rd.
Columbia, SC 29210

Date: 2/14/19

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

Dear Mr. Shearouse:

Enclosed please find for filing and processing with the South Carolina supreme court a pro se response to the writ of certiorari that is already on file with the supreme court. Once filing is complete, please return the clocked stamped copy to me with file date thereof.

RESPECTFULLY SUBMITTED,

S/ George A Jones

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO EDGEFIELD COUNTY

R. LAWTON MCINTOSH, CIRCUIT COURT JUDGE

George A. Jones, Petitioner

-VS-

STATE OF SOUTH CAROLINA. Respondent

PRO-SE-RESPONSE

This matter Comes before the supreme court by way of an memorandum in support of the writ of certiorari for consideration in this case which is already on file with the South Carolina supreme court.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to order of commitment of the Edgefield county clerk of court. Applicant was indicted at the July 29, 2009, term of the Edgefield county Grand jury for lewd act with a minor (2009-GS-19349); and at the November 2009 term of the Edgefield county Grand jury for criminal sexual conduct with a minor 1st Degree (2009-GS-19-409). Adrian L. Falgione, Esquire represented defendant during his jury trial held February 2-5 the Honorable William P. Keesley sentenced applicant to thirty years on the CSC 1st conviction and 15 years on the lewd act conviction, both sentences to be run concurrently.

A notice of appeal was filed, and the appeal was perfected when an Anders Brief of appellant was filed by Wanda Carter, Esq. with the office of appellate Defense on May 16, 2011. The applicant also filed a pro se brief May 25, 2011. On Febuary 28, 2012, the court of Appeals dismissed applicant's appeal in an unpublished opinion. (George Jones v. State, No.

2012-UP-120). The remittitur was issued on March 16, 2012.

DIRECTED APPEAL

The United States supreme court has recently recognized that defense counsel must conduct a reasonable investigation to discover all reasonable available mitigation evidence and evidence to rebut any aggravating evidence that may be introdaced by the prosecutor. Wiggins v. Smith, 539 U.S. 510, 123 S.Ct. 2527 2537, 156 L.Ed. 2d 47 (2003).

Now I bring to the awareness of other issues that applicant should have received; that is the fact of appeal of the subject matters pertaining to the case the applicant sixth Amendment entitles him to effective assistance of counsel on appeal. The sixth Amendment as applied to the states through the fourteenth Amendment, guarantees a criminal defendant the right to counsel on his first appeal as of right and also guarantees him the effective assistance of counsel on such an appeal U.S.C.A, Const. Amends. 6-14. It appeared that counsel had no timely direct appeal from the conviction, and that the deadline did abridge the defendant's constitutional right to counsel on appeal. U.S.C.A. Const Amend 6. Since the applicant told his lawyer Ms. Countney Clyburn Pope, Esquire to appeal from the PCR and the lawyer dropped the ball, then the defendant has been deprived of counsel, but of any assistance of counsel on PCR appeal and also abandonment is per se violation of the sixth Amendment U.S.C.A. Const. Amend. 6. In fact it would show prejudice to the applicant, Hudson v. Hunt, 235 F. 3d 892 (4th cir.2000).

The court went on to hold that a professionally reasonable attorney should, in all cases, consult with the defendant regarding an appeal. Id.; White v. State, 263 S.C. 110, 208 S.E. 2d 351 (1974). In determining whether an attorney should consult with the criminal defendant concerning an appeal, the totality of the circumstance must be considered Id. In examining the totality of the circumstances courts should consider;

(1) that a rational defendant would want to appeal for example, because there are non-frivolous grounds for appeal); or (2) that this particalar defendant reasonable demonstrated to counsel that he was interested in appealing. Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights, thee applicant may petition the South Carolina supreme court for review of direct appeal issue pursuant to White v. State, see Rule 227 (g)(1) SCACR; Davis v. State, 288 S.C. 290, 342 S.E. 2d 60 (1986).

Defendant counsel assistance resulted in ineffective because he failed to render reasonably effective assistance under prevailing norms, and that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 688, 104 S.Ct. 2052 (1984), Porter v. State, 368 S.C. 378, 383, 629 S.E. 2d 353, 356 (2006). In order to prove prejudice defendant will show "there is a reasonable probability that, but for counsel's unprofessional errors the result of the proceeding would have been different, "Cherry v. State, 300 S.C. at 117 18 386 S.E. 2d at 625. A reasonable probability is a probability is a probability sufficient to undermine confidence in the outcome of trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E. 2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 SCt. 2052 (1984).

This matter is before the court by way of writ of certiorari from an order denying petitioner George A. Jones application for post-conviction relief (PCR). At the conclusion of the trial of this PCR case, the circuit court took the decision on the merits under advisement and directed both the state and Jones to prepare proposed orders. The circuit court eventually signed the orderprepared by the state and denied all claims for relief. In preparing the order; however, the state did not address each of Jones's claims, and did not include specific findings of fact or conclusions of Law on any of Jones claims. Neverthe less, the circuit court signed the order. As the Law requires when PCR order does not contain specific findings of fact and conclusions of Law, Jones's PCR counsel should have filed a motion pursuant to Rule 59(e) of the South Carolina

Rules of civil procedure. See Marlar v. State, 375 S.C. 407, 410, 653 S.E. 2d 266, 267 (2007)(holding, "a Rule 59(e) motion must be filed if issues are not adequately addressed" in the PCR order). In the motion PCR counsel explained the "order of Dismissal does not contain specific findings of fact and conclusions of Law regarding each of the claims presented at the evidentiary hearing as required by S.C. code Ann. § 17-27-80 (2014). Nevertheless the circuit court summarily denied the motion, stating only.

If Jones counsel would have filed the motion the "Applicant's motion pursuant to Rule 59(e) SCRCP would been denied.

In his petition for writ of certiorari, Jones requested a remand to the circuit court and asked this court to require the circuit court to prepare an order that complies with section 17-27-80 and Rule 52 (a) of the South Carolina Rules of civil procedure. Rather than filing a return to Jones petition, the state filed a motion to ermand the case for detailed findings of fact and conclusions of Law, conceding a remand would be appropriate in light of the PCR orders patent inadequacies.

This is not the first time this court has raised concerns over orders prepared by the state that do not comply with section 17-27-80 and Rule 52 (a). Twenty six years ago in Pruitt v. State, 310 S.C. 254, 423 S.E. 2d 127 (1992), the court stated, we take this opportunity to express our concern with the increasing number of orders in PCR proceedings that fail to address the merits of the issues raised by the applicant. Not only does this deprive the parties of rulings on the issues raised, but it makes review by the appellate court more difficult and ultimately increases the work load of all involved where, as in this case, a new hearing is required to secure the rulings which should have been made initially. Counsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order, and the PCR judge should carefully review the order prior to signing it. Even after an order is filed, counsel has an obligation to review the

order and file a Rule 59 (e), SCRCP, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by § 17-27-80 and Rule 52 (a), SCRCP.

310 S.C. at 255-56, 423 S.E. 2d at 128; see also Smalls v. State, 422 S.C 174, 195, 810 S.E. 2d 836, 847 (2018) (holding "the PCR court ... did not make specific findings"); Ramirez v. State, 419 S.C. 14, 21 n.6, 795 S.E. 2d 841, 841, 845 n.6 (2017) (finding error because "there are no findings of fact contained within the PCR court's order to support its conclusion"). Simmons v. State, 416 S.C. 584, 592, 788 S.E. 2d 220, 225 (2016) (holding. The PCR court's general denial of all claims not specifically addressed in the PCR court's order does not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of Law. (quoting Marlar, 375 S.C. at 409, 653 S.E. 2d at 266)); Tappeiner v. State. 416 S.C. 239, 249 n.5, 785 S.E. 2d 471, 476 n.5 (2016), (reiterating "the PCR court is required to make specific findings of fact and state expressly its conclusions of Law. Relating to each issue presented (quoting section 17-27-80)); Marlar, 375 S.C. at 468, 653 S.E. 2d at 266 (holding, "pursuant to S.C. code Ann. § 17-27-80 ... the PCR judge must make specific findings of fact and state expressly the conclusions of Law relating to each issue presented."); Marlar, 375 S.C. at 410, 653 S.E. 2d at 267 ("reiterat[ing] our admonition "from Pruitt); Hall v. Catoe, 360 S.C. 353, 364-65, 601 S.E. 2d 335, 341 (2004) (repeating our admonition from Pruitt Bryson v. State, 338 S.C. 236, 236-37, 493 S.E. 2d 500 (1997) (remand[ing] this matter to the post-conviction relief judge to make specific findings of fact and conclusions of Law as to each issue); McCullough v. State, 320 S.C. 270, 272, 464 S.E. 2d 340, 341 (1995) (repeating our admonition from Pruitt, and finding it necessary to vacate the order and remand this matter to the circuit court and further "admonish[ing] all those involved in future PCR matters to be meticulous in preparing and reviewing proposed order so that the find order sets forth

the required findings and reasons for those findings); McCray v. State, 305 S.C. 329, 330, 408 S.E. 2d 241, 241 (1991) (finding [the PCR court's conclusions regarding ineffective assistance are insufficient for appellate review and fail to meet the standard set forth in [section 17-27-80]").

A prisoner's inability to present a claim of trial error is of particular concern when the claim is one of ineffective assistance of counsel. The right to the effective assistance of counsel at trial is a bedRock principle in our justice system. It is deemed as an " Obvious truth" the idea that "any person haled into court, who is too poor to hire a Lawyer, cannot be assured a fair trial unless counsel is provided for him. Gideon v. Wainwright, 372 U.S. 335, 344, 83 S.Ct. 792, 9 L.Ed 2d 799 (1963). Indeed, the right to counsel is the foundation for our adversary system. Defense counsel tests the prosecution's case to ensure that the proceedings serve the function of adjudicating guilt or innocence, while protecting the rights of the person charged.

Petitioner's case is one of clear and plain manifest injustice, not only of his trial but also thereafter to a gross degree. Petitioner's trial was extremely unfair, and then all reviews in the courts thereafter have not been maeningful, fair or served any degree of justice. As chief Justice Finneny once stated some of the poor and under privileged do fall through the cracks of justice such is the case with the petitioner. Poor, little education no legal skills or ability to even develop legal skills who has to depend upon jailhouse lawyers to get him in the court, then to each time have appointed state's attorneys miserably fail him. As petitioner has to endure a prison system that has grew houtile and vindictive toward prisoners and their access of courts during the last decade, while petitioner has sought justice. No one can possibly read petitioner trial transcript, of records and say that petitioner had anything close to a fair

trial. And, no one can read the records of the post-conviction action and appeals, and say that he had a full fair and meaningful opportunity to raise his constitutional claims of being denied a fair trial, due process of Law and effective assistance of trial counsel.

CONFLICT OF INTEREST

The defendant contends that on August 13, 2009, he received a letter from the supreme court of South Carolina office of Disciplinary counsel, informing him about the complaint he had filed against the solicitor Ervin Jerome Maye, Esquire for the Eleventh Judicial circuit court for Edgefield county. I quote the letter as following: I have received your letter dated August 10, 2009. Your letter notes that you filed a complaint against Mr. Ervin Jerome Maye, that an investigation panel of the commission on lawyer conduct did not dismiss your complaint but made a confidential disposition, and that Mr. Maye remains the solicitor in charge of my case. My letter asks if it is a conflict of interest for Mr. Maye to now try my case. My attorney informed me that the CSC with a minor in the first degree was dropped, but that solicitor Maye was charging me with a different crime. I mention that Mr. Maye is presenting the new charge to the grand jury for indictment. I ask how Mr. Maye can add new charges against me when the old one couldn't stand.

Was applicant denied his sixth Amendment right to the effective assistance of counsel?

Defendant is constitutionally entitled to the effective assistance of counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 L.Ed. 2d 821 (1985); Anderson v. State, 581 S.E. 2d 834 (S.C. 2003). Claims alleging ineffective assistance of counsel are cognizable in post-conviction relief (PCR). (See Kerr v. State, 345 S.C. 183-84, 547 S.E. 2d 494 2001)). Defendant's right to effective assistance include a right to representation that is free from conflict of interest. Woods v. Georgia, 45 U.S. 261, 271, 101 S.Ct. 1097, 1103 67 Ed. 2d 220 (1980)).

The supreme court set forth principals for evaluating whether a defendant's right to be free from conflict representation has been violated in situations where the allegde conflict of interest has been brough to the court's attention in a timely fashion. When defendant filed his complaint against the solicitor Mr. Maye, Esquire with the Disciplinary board, where the solicitor remains on the case and also after the CSC with a minor in the first degree was dropped, but the solicitor Maye was charging defendant with a new charge in this case.

INDICTMENT

TR. P. 667, lines 7-25. Ms. Goldberg: And, your Honor, I think the way technically it will go procedurally is if there's an order from this court allowing the appeal. I will then on his behalf file a notice of appeal from the PCR and attach that order with it so that they know it's allowed even though it's out of time so then it would go through the normal appellate process.

THE COURT: Okay. Well, in that case, Ms. Goldberg, if you will draft an order and I will actually--Mr. Simon, if you will check into the issue of subject matter jurisdiction. If you believe that, in fact, there was no order authorizing that term of court, draft an order that says that and Mr. Simon can respond. I suspect that when you check, you will find that term of court was authorized. But if it turns out that it was not and if there was a problem include that in your order and Mr. Simon will have a chance to respond to it before I sign it.

MS. Goldberg: Thank you your Honor.
Mr. Simon: Thank you your Honor.

Whereupon the hearing was concluded. The records does not established the conclusion of this issue on the indictment. The defendant can prove from the South Carolina Judicial Department "calendar" for Edgefield county there was no grand jury appointed for Edgefield county on July 29, 2009 the records does not established this in this case. And also on November 10, 2009 there was no indictment on that date.

(A) Transmittal to clerk, magistrates, municipal judges, and other officials authorized to issue warrants shall in all cases within the jurisdiction of the court of General Sessions, forward to the clerk of the court of General Sessions all documents pertaining to the case including, but not limited to the arrest warrant and bond. Within fifteen (15) days from the date of arrest in the case of an arrest warrant and date of issuance in the case of other documents. Transmittal shall be pursuant to procedures now or hereafter promulgated by the office of South Carolina court Administration.

(B) Petitioner contends that he was arrest on April 10, 2008. And the action on transmittal to solicitor. The clerk of the court of General Sessions shall forward a copy of any arrest warrant received pursuant to paragraph (A) above to the solicitor **within two (2) business days fromdate of receipt from the issuing official.**

(C) Action on warrant within (90) days after receipt of an arrest warrant from the clerk of court, the solicitor shall take action on the warrant by (1) preparing an indictment for presentment to the grand jury which indictment shall be filed with the clerk of court assigned a criminal case number, and presented to the grand jury, (2) formally dismissing the warrant. Noting on the face of the warrant the action taken, or (3) making other affirmative disposition in writing and filing such action with the clerk of court.

(D) Extensions of time. The solicitor may petition the circuit court for an order delaying action on the warrant, as set forth above for successive ninety (90) day periods if the circuit court specifically finds good cause for such delay for each successive ninety day period.

(E) Record of Proceedings. Any action taken pursuant to paragraphs (A), (B), and (C) above shall be entered in the records of the clerk of court pursuant to procedures now or hereafter promulgated by the office of South Carolina court Administration.

Further as stated in U.S. v. Cotton, 122 S.CT 1781 (2002), the subject matter jurisdiction of circuit court is both mandatory and jurisdiction, and it is fundamental. Citing, State v. Bryson 357 S.C. 106, 591 S.E. 2d 637 (S.C. App. 2003); Mathis v. State, 335 S.C. 87, 584 S.E. 2d 366 (2003); U.S. v. Daniel, 973 F. 2d 272, 274 (4th cir. 1992). When an indictment does not contain essential elements of the offense charged, the indictment is invalid, and a circuit court, then has no subject matter jurisdiction ever the criminal matter in which to enter a conviction or impose a sentence upon such an indictment as they are void. Carter v. State, 495 S.E. 2d 773 (1998). Brown v. State, 540 S.E. 2d 846 (2001).

Applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple. "Aice v. State, 305 S.C. 448, 452, 409 S.E. 2d 292, 395 (1991). This "bite" includes an applicant's right to appeal the denial of a PCR application, and the right to assistance of counsel in that appeal. See Aice 305 S.C. at 448, 409 S.E. 2d at 392.

There are time when prejudice is presumed when counsel entirly fails to subject the prosecutions case to meaningful adversarial testing, there has been a denial of sixth Amendment right that makes the adversary process itself presumptively unreliable and prejudice may be presumed. Cronic v. U.S., 446 U.S. 648, 104, S.Ct. 2039, 80 L.Ed. 2d 657 (1984); (Nance v. Ozmint, 367 S.C. 647, 626 S.E. 2d 878 (2006).

The defendant argue that he's benn falsely accused of this offense, because he never engages in sexual conduct with the victim there is no proof presented in this case. To be in violation of § 16-3-655, the actor must engage in a "sexual battery" with the victim, South Carolina Dept. of Social Services v. Forrester, (S.C. App. 1984) 282 S.C. 512, 320 S.E. 2d 39.

STATUTE

One of our South Carolina court's primary functions in the interpreting of a statute is to ascertain the direct intention of the legislative intent and apply the statute according to its literal meaning. In construing such a statute, the words or its language must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Statutes 24 (1). The literal meaning and legislative intent of our common Law statute section 17-19-30 (1976) is quite clear cut by its language. The common Law requirement in South Carolina remain the same on every particalar as they stood at common Law of older times. State v. Judges 208 S.C. 497, 38 S.E. 2d 715, 7119 (1946).

Petitioner has submitted many issues for review, challenging many of his counsel's actions and lack of actions during trial, but in our view, the essential issue in this case is as follows:

Did the PCR judge err in finding that petitioner's sixth and fourteenth Amendment rights to counsel were not violated because defense counsel failed to sufficiently investigate, prepare and present the case?

Petitioner claims that the PCR judge erred in finding that his defense counsel were not ineffective for failing to prepare and present the case as required under the sixth Amendment.

The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free. Herring v. New York, 422 U.S. 853, 862, 95 S.Ct. 2550, 2555, 45 L.Ed. 2d 593 (1975).

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
CERTIORARI TO EDGEFIELD COUNTY
R. LAWTON MCINTOSH, CIRCUIT COURT JUDGE

George A. Jones Petitioner,

-VS-

STATE OF SOUTH CAROLINA Respondent.

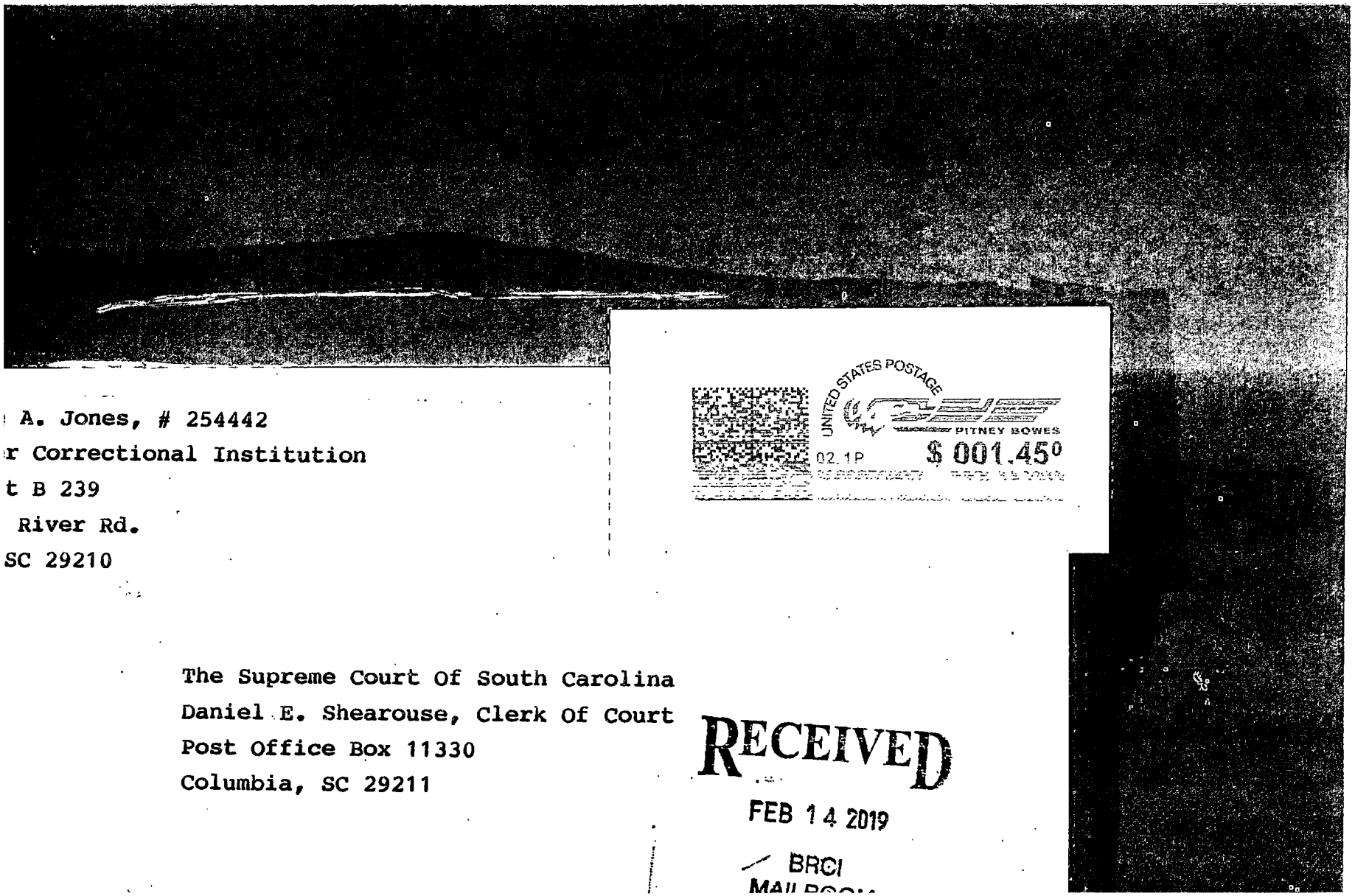
CERTIFICATE-OF-SERVICE

I, George A. Jones, #254442, being sworn upon my oath, depose and say I have subscribed to the foregoing pro se response. That I know the content thereof, that includes every ground known to me for granting this writ of certiorari. I do hereby under oath and penalty of perjury, certify that I have served copies of the pro se response upon the below party upon this exact date.

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

S/ George A. Jones
George A. Jones, #254442

Sworn to and subscribed before me
This 14th day of February 2019
Jennifer Washington
Notary Public For South Carolina
My Commission Expires: March 8, 2028.



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