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FEB 21 2019

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\*\*\*\*\*

Joseph H. Gibbs, 185709  
Appellant  
vs  
State of South Carolina  
Respondent

AP. Case #2018-002271  
Docket #2012-CP-27-0691

MOTION  
For Rehearing

\*\*\*\*\*

I respectfully move this court, pursuant to Rules 221 & 240 SCACR, to reconsider the points of law, and fact of record, raised in the pleadings explained and records filed with the NOA. The order dismissing the appeal was filed Feb/6/2019, and received by me on 2/11/19.

This motion is filed in good faith; and I believe it has merits on vested statutory and constitutional rights. A suggestion for en banc is made.

**FACTS:**

I filed a letter of explanation, to show fundamental errors in the lower courts orders, summary dismissing the petition for habeas, and motion to alter & amend judgment & for rehearing. I also filed a Notice of appeal (NOA) with orders, and revelant pleadings of counsel and myself, and proof of service.

**Argument: Overlooked Points of Law**

1 The lower court formost held that it did not have jurisdiction to hear habeas corpus. As I pointed out in the Motion to alter & amend in lower court (Mtn.A/A) & In this court (Leter), By Law and SC Constitution the circuit court has subject and personal jurisdiction. (leter @ 13).

2 That the lower courts order, as pointed out in the (Mtn.A/A) and (Leter @ 2,9,12) show that Counsels return and order to summary dismiss, was copied word for word by the court, and was full of factual errors that would have been corrected and apparent if the petition and records had been reviewed by the circuit court. This made the orders ghost written which has been ruled against by other

courts, and denies due process by the judicial branch, and denies due process. The state waited since 2012, to once again abuse the summary judgement process, and the court turned an arbitrary eye.

3 Overlooked was a fact of record and law, that the lower court did not address the pleaded **inadequacy** of the PCR process outlined in the Habeas Petition, (Mtn.A/A) & (Leter @4, 5, 2, 6) the States order signed by the court, did not answer the issues or pleading on procedure. By case law, and shown in the PCR transcripts, Not even due process on its own, or trial errors, or prosecutorial misconduct ect can be raised on SC. PCR. "But they can on Habeas.!

4 The state did not produce any records or evidence to support the legal theories and facts it claimed as defences and laches, to include judicial estoppel.

5 As the pleadings show, The general sessions court lacked subject matter jurisdiction in the first case, and this has never been adjudicated, even at PCR.

6 This court erred erred in its order, that the appeal was dismissed because the issues could have been raised on PCR, when PCR was inadequate to address them, and they were summary dismissed then, and PCR was unavailable; and resjudica ect dose not apply.

7 I filed the Habeas, **Nunc Pro Tunc** and in objections to Lower courts orders, that this doctrine would allow the merits to be heard in addition to statutory law, and constitutional right; but this has been overlooked.

8 That the lower courts legal applications in this case has the effect of suspending habeas corpus, and violates seperation of powers.

9 On Direct appeal 92-728, the whole record was not filed per Anders, and was dismissed, "not affirmed"; yet appellate counsel was not at PCR, and the issue was raised, so this should not barr habeas, but in legal record, shows the inadequate process for remedie post trial.

10 As pointed out in the (Leter), (Mtn A/A) and pleadings, I have raised that constitutional and statutory issues that warrant the

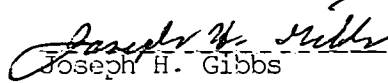
relief sought, and are not precluded.

**CONCLUSION;**

I pray that this court will rehear, the points of law and fact; and recind or reverse its order to dismiss the appeal; and remand same or by its own authority grant what ever remedie it deems just.

February/ 14'th / 2019

Respectfully,

  
Joseph H. Gibbs

ECI, F4-A-282

610 hwy 9 West

Bennettsville SC. 29512

Ph 843-479-4181

CC:

Mr. Christian Saville, esq

C/o Mr. Benjamin limbaugh

Office of: SC. Attorney General

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eci/jhg

State of South Carolina  
In the Court of Appeals  
\*\*\*\*\*

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SC Court of Appeals

TO: Ms. Jenny A. Kitchings  
Clerk of Court  
PO. Box 11629  
Columbia SC. 29211


RE: Joseph Gibbs #185709 - vs - State of SC.  
ECI, F4-A-282  
610 Hwy 9 West AP. Case 2018-002271  
Bennettsville SC. 29512

February/14/2019

Court,

Please find attached for filing in the above case, my original, motion for rehearing. The order was filed 2/6/19, received by me on 2/11/19.

Thanks for your professional assistance. If anything i need to do extra in this matter please let me know.



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PROOF OF SERVICE


\*\*\*\*\*

I the above named and signed appellee, certifies that on this day, one true copy of this motion for rehearing & letter, was served on counsel, Mr. Christian Saville as address below, by depositing same in Evans mail on this Day, postage prepaid and proper.

This / 15<sup>th</sup> / Day of / February / 2019.

Mr. Christian Saville, esq  
c/o Mr. Benjamin Limbaugh  
Office of: SC. Attorney General  
PO. Box 11549  
Columbia SC. 29211-1549

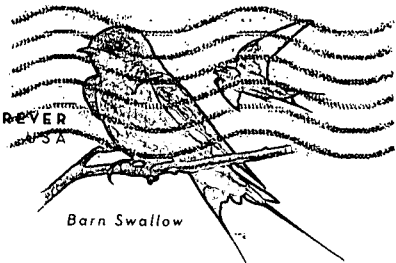
Respectfully

/s/   
Joseph H. Gibbs  
Appellant Pro Se  
Ph 843-479-4131

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COLUMBIA SC 293

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CLERK: SC. COURT OF APPEALS  
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