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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BAMBERG COUNTY

Honorable Doyet A. Early, Circuit Court Judge Presiding

CASE NO. 2012-CP-05-46

Jerome A. Owens #299108 Appellant,

STATE OF SOUTH CAROLINA Respondent.

RULE 243(C) Explanation Required
BY THE PETITIONER

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Pursuant to Rule 243(c) SCACR Explanation
Required.

The Petitioner submits the explanation as argued herein and the additional Brief enclosed for this Court to show why the lower court determination was improper.

The entire history of this case is correct as cited by the State.

However, the issues raised were not ruled on by the lower court on the proper merits that control the issue(s) argued in the lower court. August 8, 2007 the lower court issued an order in connection with this case Jerome A. Owens #299108 V. The State of South Carolina 2006-CP-05-105.

At the Post Conviction hearing Judge Michael Baxley denied relief primarily quoting that the "attorney" trial counsel was more credible on the Ineffective Assistance of counsel questions raised to that court and ruled on by that court. There was no Rule 59(c) filed to preserve the issues as raised to the lower court then, because counsel at that hearing abandoned the case without notifying the petitioner. See letter attached from Norma Jett Esquire and Order.

It is now shown that from this single order, that relief has been denied (3) three times to this very Appeal.

Specifically pointing out at this present time for relief was an issue clearly denied by an error of law. In *State V. Campbell* 376 S.C. 212, 656 S.E.2d 371 This court distinguished, determined and ruled that "the subject matter jurisdiction rule" is not the term of court rule. And given *State V. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) the term of court rule is not a rule of subject matter jurisdiction *Campbell* 376 S.C. at 216 (2008).

When this case was decided and published there were three Court of Appeals cases cited as using the term of court rule as a rule of subject matter jurisdiction. See, *State V. Davis* 375 S.C. 12, 649 S.E.2d 178 (Ct. App. 2007) *Town of Hilton Head Island V. Godwin* 370 S.C. 221, 634 S.E.2d 59 (Ct. App. 2006) *State V. Rhinehart*, 312 S.C. 36, 430 S.E.2d 536 (Ct. App. 1993) Framing the rule as a subject matter jurisdiction rule is incorrect.

By this time when this Court ruled on this case, the Petitioner was at the appellate level then and the lower court decided without specific facts and conclusions of law. The lower court also decided that the Petitioner contested his indictment as well citing the subject matter jurisdiction rule.

However, this is not true and the lower court

has made a ruling and decided this case in error so long ago. That is, on his error alone the petitioner has not received due process of the statute.

The closest case the applicant has found and now cites as authority controlling such a denial is in the case of *Washington v. State* 478 S.E.2d 833

This Court at minimum recognized that the lower court ruled *Washington* could have the appellate court determine his issues without his ruling on them first. Denying the petitioner in this case due process of the statutory law and judicial process of a lower court determination. In [essence] the petitioner in this case before this court today, has been denied the same.

See, testimony attached from Post Conviction hearing and the lower court ruling in connection with this issue. Cited for the purpose of this appeal and Rule 243(c) SCACR. Appendix #1. Post Conviction Hearing from the original Transcript, Sentencing sheet, Applicant Brief and memorandum of law are attached. Relevant testimony on this specific issue found on pages 317-321 lines 1-20 Petitioners testimony, Pages 334-348 testimony of trial counsel relevant to this issue and lower court ruling

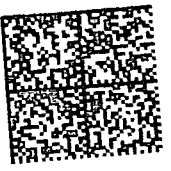
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