The Supreme Court of South Carolina

The Honorable Daniel E. Shealhouse
Clerk of Court
P.O. Box 11330
Columbia SC 29211

Dear Clerk,

Enclosed for filing is ① Motion For Transcript At Court Expense / Motion For Appt. of Counsel ② Six copies of same motion ③ Appellant's Pro Se application - Exhibit A Proof of Service

Sincerely,
S/ Dion O. Taylor

Dated:
7-2-15

RECEIVED
AUG 14 2015
S.C. SUPREME COURT

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RECEIVED
AUG 14 2015
S.C. SUPREME COURT

The State of South Carolina
In The Supreme Court

Appeal from Charleston County
Court of Common Pleas
R. Markley Dennis Jr., Circuit Court Judge

CASE #: 2012-CP-10-8090

Dion O. Taylor ... Appellant
v.
'State' ... Respondent

Proof of Service

I, Appellant, Dion O. Taylor, certify that I have served Motion For Trans. At Gov't Expense on Respondent by depositing a copy of it, in the U.S. MAIL, postage prepaid on date of 7-2-15 & addressed to: Office of the Attorney General, P.O. Box 11549, Columbia SC 29211.

S/Dion O. Taylor

Dated:
7-2-15

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original

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S.C. SUPREME COURT

The State of South Carolina
In The Supreme Court

Dion O. Taylor ... Appellant (Petitioner)
v.
'State' ... Respondent

CASE#: 2012-CP-8090
Motion For Trans. At Gov. Expense & Motion For Appt. of Counsel

This Motion comes before this Honorable Court, as it is derived from post-conviction relief dismissal, wherein as delineated by SCACR, the Appellant must furnish the Court w/a copy of his initial pcr evidentiary hearing. Forthwith, are the reasons this Court should grant Motion.

Discussion

The petitioner is an indigent prisoner & has no means of paying the requisite fees to the court reporter for transcript. The petitioner had an appeal dismissed by this Court due to the same inability to pay in '2011', costs at that time for trans. began at $350.00, according to the court reporter. The Appellant only has vague recollections of the testimony by himself & public defender, but certain particular issues he will encapsulate, as to show need for said trans. The petitioners Due Process (Brady), Fifth, Sixth & Equal Protection violations are at issue. The State was well aware that the Appellant is an indigent person through representation by Public Defender Office. However, the State left the Appellant w/out counsel on his direct Appeal & has claimed throughout that petitioner failed to file Appeal. The pcr evidentiary hearing trans. will provide evid. of the dismissal of the Appellants pro se filed direct Appeal, because the issues could not be preserved for review under state law.

The Constitution dictates representation of an Indigent by the State on his first Appeal as of right. At the pcr hearing, the lower court

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found the testimony of public defender credible, but the circumstances & facts belie that finding. At plea hearing, public defender claims he had no insanity defense for the Appellant so he advised the Appellant to plead guilty. At petitioners plea hearing, counsel is found making what appear to be passionate & cogent arguments for serious mental health diagnoses, & issues yet failed to when it was requested to procure or request a subsequent eval for his client, as can be realized by S.C. law. A person is found insane At the time of commission of charged crime, by law, is not accountable for his actions. Counsel at said per hearing testified he had no problems communicating w/ the Appellant, yet he filed a motion to be relieved due to issues w/ communication & the overall displeasure w/ counsel performance. Counsel at said hearing stated Appellant never asked him to file a direct Appeal, when the fact was the Appellant never knew that was an option or right. Counsel describes Appellants past petty crime/crim. history & in Attorney-client file notes, is found admitting his client had never been to prison. The PCR App. also raises several other issues of material facts which satisfy the criteria for granting of trans. At govt expense. At Appellants plea hearing, prosecution cites a 'written' confession executed by the Appellant, however, prosecution never produced the written version w/ discovery & pursuant to Brady, only the typed version by detective. At the time of execution of written confession, Appellant wasn't medicated w/ prescribed meds, was just released from mental hospital after commitment by hospital officials, Appellant invoked his Fifth Amend right to silence At outset & only after arriving at detention cntr. & contact was initiated by an Ofc., did he involuntarily sign waiver of rights & make statement. Only after yrs passed did the Appellant realize there being a stark variance in the written & typed confession. The Appellant, at times germane to situations referenced to, wasn't medicated since release from mental hospital. This prejudiced the Appellants cause immensely as the

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At the time of signing unsworn & confession, his will was overborne & additionally forensic doctors used a confession, involuntarily given w/ significant differences, to support an Accountability finding. Prosecution suppressed the evid. of the written confession & counsel filed discovery under Rule 5 & Brady, received discovery, & yet failed to compel prosecution to produce Brady material. The Appellant still has not seen this written version & never had an opportunity to compare variance noted. This would have been a determining factor in him going to trial. Additional material issues, such as the difference in the dollar amount which was substantially different from what was claimed the business was deprived of, & the indictment & charge was for armed robbery, & victim in statement about crime mentions nothing of a weapon being used, police brought victim to identify the Appellant, when certain items were not on the Appellant, which was described in description of perpetrator. These are material facts which warrant production of trans. At gov't expense, contained w/in App.

Applicable Law

Smith v. Robbins, 120 S.Ct 746 (2000): "In Anders v. California ... we held that to protect indigent const. rights to Appellate counsel... the States are free to adopt different procedures, so long as these proceedings adequately safeguard a def. right to Appellate counsel." Spencer v. Texas, 385 U.S. 554, 564, 87 S.Ct 648 (1967): ("... the question is whether... procedures fall below the min. level the Fourteenth Amend. will tolerate," 385 U.S. at 569, 87 S.Ct 648). The petitioners Equal Protection rights by & through the Fourteenth Amend, were violated by the State, by leaving the Appellant w/out counsel on his first Appeal as of right. State knew of the Appellants indigency by direct & circuitous knowledge & the courts & counsel failed to apprise the Appellant of said rights. Furthermore, by the very nature of the dismissal of the Appellants pro se filed direct Appeal, it was not an Appeal of frivolity, only one executed w/out aid of counsel. 'SCC ID' document goes to further prove State knew of

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Appellant indigency but refused to represent him due to it being an appeal from a guilty plea, an inadequate procedure, Evitts v. Lucey, 469 U.S. 387, 105 S.Ct 830 (1985) (def. entitled to a new appeal when failure to comply -- led to dismissal of first appeal). Moreover, counsel had knowledge that appellant was ill & didn't know of appeal rights, yet failed to appraise & admits his client wanted a trial at pc hearing. United States v. Cronic, 466 U.S. 648, 649-50, 104 S.Ct: "The presumption that counsels asst. is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage..." Cronic, supra, at 659, 104 S.Ct 2039. The same is true on appeal. "See Penson, supra, at 88, 109 S. Ct 346. Roe v. Flores-Ortega, 120 S.Ct 1029 (2000): "The complete denial of counsel during a critical stage... mandates a presumption of prejudice, because the adversary process itself has been rendered unreliable." Counsels deficiencies can't be construed as strategic maneuvering, his actions espouse ineffectiveness of counsel. There is a reasonable probability if not for counsel errors, appellant would have insisted on going to trial. (See Thompson v. State, 531 S.E.2d 294 (S.C 2000), Hill v. Lockhart, 106 S.Ct 366 (1985), & Cherry v. State, 386 S.E.2d 624 (S.C. 1999).

There were grounds to seek a subsequent eval. by additional examiners as provided by S.C. Ann. § 44-23-410(c), appellant informed counsel of such desire & counsel refused to do so. The suppressed written confession will throw the evid & the case in a different light, as the written version to best of memory, explicitly states that appellant hasn't been taking psychiatric meds since leaving hospital in past 3 weeks, while the typed version says only he ~~is~~ on prescription meds for mental health illnesses. This though seemingly innocuous is not due to the need for voluntariness of waiver & confession needed for said to be lawfully executed. There were discrepancies in the evid. against the appellant (re victim statement not mentioning weapon, records differential, Id suggestive nature, victim saying in statement that assailant came from her rear, behind her, ect).

The prosecution suppression violates Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct, 1194, 1196, (1963), this Court held that "suppression by the

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prosecution of evid. favorable to an accused upon request violates Due Process where the evid. is material to guilt or punishment."

Throughout the Appellants App. there is reference made to the still unadduced confession, which Appellant had no chance to examine w/out the confession, the evid. against the Appellant was ~~tainted~~ tenuous, the gravity of such is of more significance, when it involves punishment of a mentally ill individual, wherein doctors findings were in part premised upon an involuntarily given written confession & waiver (same date & time). This situation is analagous to one found in Gibson v. State, 514 S.E. 2d 320 (S.C. 1999), where the def. lacked knowledge of material evid. The knowledge that Appellant did have is neutralized by the involuntariness, his mental state & the prosecution not producing said evid. It was not Reasonable for counsel, after seeing prosecution did not comply w/ Brady & discovery, to not compel them to do so & this as well, was ineffectiveness of counsel. State v. Knighton, 512 S.E. 2d 117 (S.C. App. 1999), outlines by way of Rule 5 SCR Crim. P., that the info suppressed was subject to lawful disclosure. It was unreasonable for counsel not to discuss w/ his client the suggestive nature of single person I.D.'s as described in State v. Moore, 513 S.E. 2d 626 (S.C. 1999): "Single person showups are disfavored because they are suggestive in nature." This aligns itself w/ S.C. precedent in Neil v. Biggers, 409 U.S. 188, 196, 93 S.Ct 375, 380, 34 L.Ed 2d 401 (1972). It appears, if the Appellant was to conjecture, that counsel premised his inaction due to the confession, but as stated, the nature of the confession itself was reason enough to pursue other options. Also, the Appellant brings forth in his App., is in the victims own words, distinct mention being robbed w/ a weapon, said the assailant came from a behind & there was too much opportunity for misidentification, especially when viewed c/ when Appellant was positively I.D.' his person was absent of clothing, accessories that were part of the identification & used for description purposes. The dollar amount differed in excess of over $200.00, this is significant because by police elect, the Appellant was apprehended just min. after the robbery, there was no way for him to plausibly spend or discard of the other monies. These were issues for a jury. None of the mentioned issues

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were discussed w/Appellant, so he could make an informed decision so he could challenge the confession voluntariness for a trial that counsel admits his client desired. At PCR hearing counsel testified that he didn't have an insanity defense, but at guilty plea hearing, counsel makes following statements: pg 16 Lines 4-6 of trans.: "He was evicted the day before & I think this got him into this kind of major depressive state that led to... robbery..."; Lines 10-11: "He also at the time was not taking his meds, which he needs to do..."; Lines 18-20, "... I don't think ... he's the kind of person who would just do this to get money..." Counsel makes these pleas yet doesn't respond favorably to request by Appellant for additional examination (See S.C. Code Ann. § 44-23-410(c)) & didn't present issues to his client, as he would have been more adamant for the trial he desired. In State v. Pittman, 420 S.E.2d 437 (N.C. 1992) "... the inescapable conclusion is that the confession most probably was not the product of meaning volition." (quoting Blackburn v. Alabama, 361 U.S. 199, 211 4 L.E.2d 242, 250 (1960).

The Appellant believes these are incontrovertible facts that posit an indomitable argument for production of trans. At govt expense, As the petitioner directs The Courts Attention to its Adjudication in Gunter v. State, 267 S.C. 486, 229 S.E.2d 723 (S.C. 1976): "This Appeal comes from the dismissal of an App. for PCR... Wholed the State is not constitutionally required to furnish a free trans. to an indigent collaterally Attacking his conviction Absent A showing of need & the App. RAISES NO gen. issue of material fact Are RAISED in the Application." Gunter made no showing of need & the App. RAISES no gen. issue of material fact." The petitioner has distinguished his case from Gunter in that his App. raises several issues of material fact & has shown throughout this Motion the need for (See Ex. A PCR Application) This Court has found the criteria for granting a trans. At govt expense stan dard in 28 U.S.C.A. § 753(f): "Fees for trans. furnished... to persons proceeding under Crim. Justice Act (18 U.S.C. 3006A)... allowed to defend or appeal... shall be paid by the U.S. out of monies Appropriated for these purposes." 18 U.S.C. A. § 3006A: (1) Representation shall be provided for any financially eligible person who) (A) is entitled to appt. of counsel under the SIXTH Amend...., (B) faces loss of liberty... & Fed Law

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requires the appt. of counsel." Gary v. State, 347 S.C. 627 557, S.E.2d 662 (S.C. 2001): '... we find counsel should be appointed under Rule 71.1(d) when the State moves for dismissal under §17-27-45(G) & the Applicant raises an issue of material fact regarding the applicability of the one yr. limitation. We remand the case for appt. of counsel & an evid. hearing regarding claim of equitable tolling of the one yr limitation." The same presents itself in Appellants case, as w/ on this Motion, applicability of one yr lim. is at issue due to counsel ineffectiveness of not apprising of ~~Appellate~~ Appeal rights & Petitioner moves Court for contemporaneous granting of appt. of counsel. In addition, pursuant rules do not allow copies of hand-generated material, w/ the filing requirements of SCACR, this would be unduly burdensome on Appellant.

Conclusion

Due to the need of the petitioner & violations enumerated herein, & material fact issues of Application, the Appellant prays for production of trans. At govt expense to be provided to the Appellant & the Court. He also seeks appt. of counsel, contingent upon this Courts Acceptance of Appeal. Appellant seeks time constraints associated w/ this Appeal itself to be held in Abeyance until Adjudication of this Motion.

Respectfully submitted,
Dion O. Taylor

Dated:
7/2/15

The State of South Carolina
In The Supreme Court

Dion O. Taylor ... Appellant (Petitioner)
v.
'State' ... Respondent

CASE #: 2012-CP-10-8090/Motion For Trans. At Gov't Expense & Motion For Appt. of Counsel

This motion comes before this Honorable Court, as it is derived from post-conviction relief dismissal, wherein, as delineated by SCACR, the Appellant must furnish the Court w/ a copy of his initial per evidentiary hearing. Forthwith, are the reasons this Court should grant Motion(s).

Discussion

The petitioner is an indigent prisoner & has no means of paying the requisite fees to the court reporter for transcript. The petitioner had an appeal dismissed by this Court due to the same inability to pay in '2011,' costs at that time for trans began at $350.00, according to the court reporter. The Appellant only has vague recollections of the testimony by himself & public defender, but certain pertinent issues he will encapsulate, as to show need for state trans. The petitioners Due Process, Fifth, Sixth, Equal Protection, (Brady violation - Fourteenth Amend) violations are at issue.
The State was well aware that the Appellant is an indigent person through representation by Public Defender Office. However, the State left the Appellant w/out counsel on his direct Appeal & has claimed throughout that the petitioner failed to file Appeal.
The per evidentiary hearing trans. will provide evid of the dismissal of the Appellants pro se filed direct Appeal, because the issues

could not be preserved for review under state law. The Const. mandates representation of an indigent by the State on his first Appeal as of right. At the per hearing, the lower court found the testimony of public defender credible, but the circumstances & facts belie that finding. At hearing, public defender claims he had no insanity defense for the Appellant so he advised the Appellant to plead guilty. At the petitioners plea hearing, counsel is found making what appear to be passionate & cogent arguments for serious mental health diagnoses, & issues yet failed to when it was requested, to procure or request a subsequent eval. for his client as can be explized by S.C. law. A person if found insane at the time of commission of charged crime by law, is not accountable for his actions. Counsel at said per hearing testified he had no problems communicating w/ the Appellant, yet he filed a motion to be relieved due to issues w/ communication & the overall displeasure w/ counsel performance. Counsel at said hearing stated Appellant never asked him to file a direct Appeal, when the fact was the Appellant never knew that was an option or right. Counsel describes Appellants past 'petty crime' crim. history & in Attorney-client file notes, is found admitting his client had never been to prison. The per. App. also raises several other issues of material facts which satisfy the criteria for granting of trans. at govt. expense. At Appellants plea hearing, prosecution cites a 'written confession executed by the Appellant, however, prosecution never produced the written version w/ discovery & pursuant to Brady, only the typed version of the detective. At the time of execution of written confession, Appellant was not medicated w/ prescribed meds, he was just released from mental hospital after commitment by hospital officials, Appellant invoked his Fifth Amend. right to silence at outset & only after arriving at detention cntr & contact was initiated by an OSC, did he involuntarily sign waiver of rights & made statement. Only after yrs. had passed did the Appellant realize there being a stark variance in the written & typed confession. The Appellant, at times germane to situations referenced to, he was not

taking prescribed meds since his release from mental health facility. This prejudiced the Appellants cause immensely as he at the time of signing of waiver & confession, his will was overbourne, & Additionally, forensic doctors used a confession, involuntarily given w/ significant differences, to support an Accountability finding. Prosecution suppressed true evid. of the written confession, & counsel filed discovery under Rule 5 & Brady, Received discovery, & yet failed to compel prosecution to produce Brady material. The Appellant still has n't seen this 'written' version & never had an opportunity to compare the variances noted. This would have triggered the remembrance of Appellant & he would have vehemently demanded a trial. Additional material issues, such as the difference in the dollar amount which was substantially different from what was claimed the business was deprived of, & the indictment & charge was for Armed Robbery & victim in statement about crime mentions nothing of a weapon being used, police brought victim to identify the Appellant, when certain items were not on the Appellant, which was described in description of the perpetrator. These are material facts which warrant production of trans. At gov't expense, contained in App.

Applicable Law

Smith v. Robbins, 120 S.Ct 746 (2000): "In Anders v. California ... we held that to protect indigent const. rights to Appellate counsel ... the States are free to adopt different procedures, so long as these procedings adequately safeguard A's clear. right to Appellate counsel." Spencer v. Texas, 385 U.S. 554, 564, 87 S.Ct 648 (1967): ("... the question is whether ... procedures fall below the min. level the Fourteenth Amend will tolerate," 385 U.S. at 569, 87 S.Ct 648). The petitioners Equal Protection rights by & through the Fourteenth Amend., were violated by the State, by leaving the Appellant w/out counsel on his first Appeal as of right. State knew of the Appellants indigence by direct & circumstances knowledge & the courts & counsel failed to appraise the Appellant of said rights Furthermore, by the very nature of the dismissal of the Appellants prose

filed direct appeal, it wasn't an appeal of frivolity, only one executed w/out aid of counsel. 'SCCIS' document goes to further to prove 'State' knew of Appellant indigency but refused to represent due to it being an appeal from a guilty plea, an inadequate procedure. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct 830 (1985) (dec. entitled to a new appeal when failure to comply... led to dismissal of first appeal). Moreover counsel had knowledge that appellant wouldn't & didn't know of appeal rights, yet failed to apprise & admits his client wanted a trial at pc hearing. United States v. Cronic, 466 U.S. 648, 649-50, 104 S.Ct : "The presumption that counsels asst. is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage..." Cronic, supra at 659, 104 S.Ct 2039. 'The same is true on appeal." See Penson, supra, at 88, 109 S.Ct 346. Roe v. Flores-Ortega, 120 S.Ct 1029 (2000): 'The complete denial of counsel denying a critical stage... mandates a presumption of prejudice, because the adversary process itself has been rendered unreliable." Counsels actions can't be construed as strategic maneuvering, his actions espouse ineffectiveness of counsel. There is a reasonable probability if not for counsels errors Appellant would have insisted on going to trial. (See Thompson v. State, 531 S.E.2d 294 S.C. 2000), Hill v. Lockhart, 106 S.Ct 366 (1985) & Cherry v. State, 386 S.E.2d 624 (S.C. 1999). There were grounds to seek a subsequent eval. by additional examiners as provided by S.C. Am. §44-23-410(c), Appellant informed counsel of such desire & counsel refused to do so. The suppressed 'written' confession will throw the evid. & the case in a different light, after as above-described, the significant variance in written & typed versions, the discrepancies in the evid against the Appellant (ie victim statement not mentioning weapon, money difference, IO suggest the nature, victim saying assailant came from behind; a statement ect). The prosecution suppression violates Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct 1194, 1196, (1963) "this Court held that "suppression by the prosecution of evid favorable to an accused upon request violates Due Process where the evid. is material to guilt or punishment."

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Throughout the Appellants App. there is reference made to the still unproduced which Appellant had no chance to examine w/out the confession (confessions), true evid. Against the Appellant was tenous, the gravity of such is of more significance, when it involves punishment of a mentally ill individual, wherein doctors findings were in part premised upon an involuntarily given waiver & confession (same day & time). The situation is analagous to one found in Gibson v. State, 514 S.E. 2d 320 (S.C. 1999), where the def. lacked knowledge of material evid. The knowledge that Appellant elrd have is neutralized by the involuntariness, his mental state, & the prosecution not producing said evid. It was/is unreasonable for counsel, after seeing prosecution elicit comply w/ Brady & discovery, to not compel them to disclose, & pursues as well, ineffectiveness of counsel. State v. Knighton, 512 S.E. 2d 117 (S.C. App. 1999), outlines by way of Rule 5 SCR Crim P., that the info suppressed was subject to Pretrial disclosure. It was unreasonable for counsel not to discuss w/ his client the suggestive nature of single person Id as described in State v. Moore, 513 S.E. 2d 626 (S.C. 1999): "Single person showups are disfavored because they are suggestive in nature." This aligns itself w/ S.Ct precedent on this subject in Neil v. Biggers, 409 U.S. 188, 196, 93 S.Ct 375, 380, 34 L.Ed 2d 401 (1972). Brought forth also in Appellant App., is the victims own words, elicit mention being robbed w/ a weapon, said the Assailant came from behind, there was too much opportunity for misidentification, especially when viewed w/ when Appellant was "positively Id" his persons was absent of clothing, accessories, that were part of the identification & description of the perpetrator. The dollar amount differed, in excess of over $200.00, this is significant because by police acct. the Appellant was apprehended just min. after the robbery, there was no opportunity to plausibly spend or discard of the other monies. None of mentioned issues were discussed w/ Appellant, so he could make an informed decision so he could challenge the confessed voluntariness for a trial that counsel admits his client desired. At per hearing, counsel testified that he

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client have an Insanity defense, but at guilty plea hearing, counsel makes following statements: Pg 16 Lines 4-6 of trans.: 'He was evicted the day before & I think this got him into this kind of major depressive state that led to... robbery..."; Lines 10-11: 'He also at the time was not taking his medicine, which he needs to do..." & Lines 18-20, '... I don't think... he's the kind of person who would just do this to get money...". Counsel makes these statements yet doesn't respond favorably to request by Appellant for deletion/examination & didn't present issues to his client, as he would have been more adamant for the trial he desired. In State v. Pittman, 420 S.E. 2d 437 (N.C. 1992): "... the inescapable conclusion is that the confession most probably was not the product of meaning volition." (quoting Blackburn v. Alabama, 361 U.S. 199, 211 4 L.Ed 2d 242, 250 (1960).

The Appellant believes these are incontrovertible facts that posit an indomitable argument for production of trans. at gov't expense, as the Petitioner directs the Courts attention to its former adjudication, in Gunter v. State, 267 S.C. 486, 229 S.E. 2d 723 (S.C. 1976): 'This Appeal comes from the dismissal of an App. for per... We hold the State is not constitutionally required to furnish a free trans. to an indigent collaterally attacking his conviction absent a showing of need & when no issues of material fact are raised in the application. Gunter made no showing of need & the App. raises no gen. issue of material fact." The Petitioner has distinguished his case from Gunter in that his App. raises several issues of material fact & has shown throughout this Motion the need for. This Court has found the criteria for granting a trans. at gov't expense standard in 28 U.S.C.A. § 753(f): Fees for trans. furnished... to persons proceeding under Crim. Justice Act (18 U.S.C. 3006A)... allowed to defend or Appeal... shall be paid by the U.S. out of monies appropriated for these purposes." 18 U.S.C.A. § 3006A: (1) Representation shall be provided for any financially eligible person who; (H) is entitled to Appt. of counsel under the

Sixth Amend..., (I) frees less of liberty... & Fed law requires the Appt. of counsel." This action derives from violations of Equal Protection, Due Process (Brady), Sixth Amend, Fourteenth Amend & the Appellant prays it finds his situation applicable to said standard & considers Appt. of counsel in conjunction w/the Motion before this Court. Gary v. State, 347 S.C. 627, 557 S.E. 2d 668 (S.C. 2001): "... we find counsel should be appointed under Rule 71.1(d) when the State moves for dismissal under § 17-27-45(a) & the PCR applicant raises an issue of material fact regarding the applicability of the one yr. limitation." We remand the case for Appt. of counsel & an evid. hearing regarding claim of equitable tolling of the one yr limitation." The notice of Appeal filed w/this Court identifies issues of equitable tolling as does this Motion, due to counsel ineffectiveness in not apprising Appellant of Appeal rights & the petitioner reiterates contemporaneous granting of Appt. of counsel. In addition, prison rules do not allow copies of hand-generated material, ~~[illegible]~~ w/ the filing requirements of SCACR, this would be unduly burdensome on Appellant.

Conclusion

Due to the need of the petitioner & violations enumerated herein, & material fact issues of application, the Appellant prays for production of trans. At govt expense to be provided to the Appellant & the Court. He also seeks Appt. of counsel, contingent upon this Courts Acceptance of Appeal. Appellant seeks time constraints associated w/this Appeal itself to be held in Abeyance until Adjudication of this Motion.

Respectfully submitted,

Dion O. Taylor

Dated:
7/2/15

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The State of South Carolina

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Dion O. Taylor ... Appellant
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'State' ... Respondent

Case #: 2012-CP-10-8090
Motion For Transcript At Gov't Expense

This Motion comes before this Court, as it is derived from post-conviction relief dismissal, wherein, as delineated by SCACR, the Appellant must furnish the Court w/ a copy of his initial/pcr evidentiary hearing. Forthwith, are the reasons this Honorable Court should grant the motion that a copy be provided to the petitioner & this Court at gov't expense. In addition, Appellant requests the Court consider contemporaneously, assigning counsel for the indigent Appellant for this Appeal, contingent upon its acceptance of said Appeal.

Discussion

The petitioner is a indigent prisoner & has no means of paying the requisite fees to the court reporter. The petitioner had an Appeal dismissed by this Court due to the petitioners same inability to pay in 2011, costs at that time for trans. started at $350.00. The petitioner only has vague recollections of the testimony by himself & the public defender, but certain particular issues he will encapsulate, as to show the need for trans. The petitioners Due Process, Fifth, Sixth, Equal Protection & Brady violation is at issue. The State was well aware that the petitioner is an indigent person, through representation by the State. However the State, left the Appellant w/ at counsel on his direct Appeal & has

claimed throughout that the petitioner failed to file said appeal. The pcr evid. hearing trans. will provide evid. of the dismissal of the appellants prose filed appeal, because the issues could not be preserved for review under state law. The Constitution mandates representation of an indigent by the state on his first appeal as of right. At the pcr evid. hearing, the court found the testimony of public defender credible, but the circumstances & facts belie that finding. At the pcr evid. hearing the public defender claims he had no insanity defense for the petitioner so he advised the petitioner to plead guilty. At the petitioners guilty plea hearing, public defender is found making what appears to be passionate & eloquent arguments for the petitioners serious mental health diagnoses & issues, yet failed to when requested to procure a request a subsequent eval for his client as can be realized by S.C state law. A person is found insane at the time of commission of charged crime by SC law is not perfect. for his actions. Counsel at said pcr hearing testified he had no problems communicating w/ the appellant, yet he filed a motion to be relieved due to issues w/ communication & the petitioners overall displeasure w/ counsel performance. Counsel at said hearing stated appellant never asked him to file a direct appeal when the fact was the appellant never knew that was an option or right. Counsel describes appellants past petty 'crimes' history & in the attorney-client file notes, is found admitting his client had never been to prison. The pcr application also raises several issues of material fact which satisfy the criteria for granting of the issues. At govt expense. At appellants plea hearing, prosecution cites a 'written' confession executed by the appellant, however prosecution never produced the written version w/ discovery & pursuant to Brady, only the typed version of the detective. At the time of the execution of written confession, appellant wasn't medicated w/ requisite prescribed meds, he was just released from mental hospital by commitment, appellant invoked his fifth Amend.

right to silence & only after at detention center & spoke to by Off. did he involuntarily sign waiver of rights. Only after yrs passed did the Appellant realize the stark variance in the written & typed confession/statement, that the Appellant at times germane to situations referred to, he wasn't taking prescribed meds since his recent release from mental health facility. This prejudiced the Appellants cause greatly as he, at the time of signing of waiver & confession, his will was overborne, & Additionally, forensic doctors used a statement involuntarily given w/ variance to support an recantability finding. Prosecution suppressed the evid of the written confession/statement & counsel failed discovery, received discovery, & yet failed to compel them to produce the Brady material. The Appellant still has not seen this written version & never had an opportunity to compare the differences noted. Additional material issue such as the variance of the dollar amount differed substantially from what was claimed the business was deprived of, the indictment & charges was for armed robbery & the victim in statement about crime mentions nothing of a weapon being used, police brought victim to identify the Appellant when certain items weren't on the Appellant, which was described in profile or description of perpetrator, ect. These are material facts which warrant production of trans. at govt expense.

Applicable Law

Smith v. Robbins, 120 S.Ct 746 (2000): "In Anders v. California, ... we held that to protect indigent const. right to appellate counsel... the States are free to adopt different procedures, so long as those proceedings adequately safeguard a def. right to appellate counsel." Spencer v. Texas, 385 U.S. 554, 564, 87 S.Ct 648 (1967): ("... the question is whether... procedures fall below the min. level the Fourteenth Amend. will tolerate."; 385 U.S. at 569, 87 S.Ct 648).

The petitioners Equal Protection rights, by & through the Fourteenth Amend were violated by the State of South Carolina by leaving the

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Appellant w/out counsel on his first appeal of right. The State knew of the appellants indigency by direct & circuitious knowledge, & the courts & counsel failed to apprise the appellant of said rights. Furthermore, by its very nature of the dismissal of the appellants pro se filed direct appeal, it was/is an appeal of frivolity. "SCCID" document goes further to prove State knew of indigency but refused to represent due to inadequate procedure & violative State law. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct 830 (1985) (def. entitled to a new appeal when failure to comply ... led to dismissal of first appeal) Moreover, counsel had requisite knowledge that appellant would/did/ client knew of appeal rights, yet failed to apprise of rights & admits his client wanted a trial at pre-trial hearing. United States v. Cronic, 466 U.S. 648, 649-50, 104 S.Ct. "The presumption that counsels asst. is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage." Cronic, supra, at 659, 104 S.Ct 2039. "The same is true on appeal." See Penson, supra, at 88, 109 S.Ct 346. Roe v. Flores-Ortega, 120 S.Ct 1029 (2000) :" The complete denial of counsel during a critical stage ... mandates a presumption of prejudice, because the adversary process itself has been rendered unreliable." Counsels actions cannot be deemed to be strategic maneuvering, but his actions supports ineffectiveness of counsel violative of Sixth Amend of Const. There is reasonable probability, if not for counsels errors, he would have insisted on going to trial. (See Thompson v. State, 531 S.E.2d 294 (S.C. 2000). There were grounds to seek a subsequent eval by additional examiners as provided by S.C. Ann. § 44-23-410 (e), Appellant told counsel of such desire, & counsel refused to do so. The suppressed written confession will throw the evid & the case in a different light, for as described, the stark variations, the discrepancies in evid against the appellant, ect. The prosecution suppression violates Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct 1194, 1196 (1963) this Court held that "suppression by the prosecution of evid. favorable to an accused upon request

violates Due Process where the evid. is material to guilt or punishment."
Throughout the Appellants application there is reference made to the still unproduced written statement which Appellant had no chance to compare variance is spiel statements. He lacked the lucidity at that time for any waiver or confession executed to be considered voluntary. This situation is analagous to the one found in Gibson v. State, 514 S.E.2d 320 (S.C. 1999) when the def. lacked knowledge of material evid. It wasn't reasonable for counsel after seeing that Prosecution did not comply w/ Brady & discovery not to compel them to do so, & this to, was ineffectiveness. State v. Knighton, 512 S.E. 2d 117 (S.C. App. 1999), outlines by way of Rule 5 SCRCrim.P., that the info suppressed was subject to lawful disclosure. It was unreasonable for counsel not to discuss w/ his client the suggestion of single person 'Id' as described in State v. Moore, 513 S.E. 2d 626 (S.C. 1999): "Single person show-ups are disfavored because they are suggestive in nature. This aligns w/ S. Ct precedent on this subject in Neil v. Biggers, 409 U.S. 188, 196, 93 S.Ct 375, 380, 34 L.Ed 2d 401 (1972). In this case & brought forth in the application, the victim' in her own words client mention being robbed w/ a weapon, says her assailant came up from behind, there is too much opportunity for a misidentification, especially when viewed w/ when Appellant was "positively Id'; his persons was absent of clothing, accessories that were part of the description of the perpetrator. The claim amount differed in ~~was~~ excess of over $200 ~~or~~ more of the above issues were discussed w/ the Appellant, so that he could make an informed decision to challenge the confession & further argue, a trial counsel admits client desired. At PCR hearing, counsel testified he didn't have an insanity defense, but at plea hearing counsel makes the following statements: Pg 16 Lines 4-6 of trans: "He was evicted the day before & I think that this put him into this kind of major depressive state that led to... robbery..." Lines 10-11: "He also at the time was not taking his medicine, which he needs to do... &

Pg(6)

Lines 18-20 "... I don't think... he's the kind of person who would just do this just to get money or anything like that..." Counsel makes these statements yet doesn't respond favorably to request by Appellant for deletion and examination & client present issues to his client so he could be more adamant for his desire for trial. In State v. Pittman, 420 S.E. 2d 437 (N.C. 1992): "... the inescapable conclusion is that the confession most probably was not the product of meaning volition." (quoting Blackburn v. Alabama, 361 U.S. 199 2 11 4 L. Ed 2d 242, 250, (1960).

The Appellant believes these are incontrovertible facts that posit an indomitable argument for production of trans. at gov't expense As the petitioner directs the Courts attention to its former adjudication in Gunter v. State, 267 S.C. 486, 229 S.E.2d 723 (S.C 1976): "This Appeals comes from the dismissal of an application for per... We hold the State is not constitutionally required to furnish a free trans to an indigent collaterally attacking his conviction absent a showing of need & when no issues of material fact are raised in the application. Gunter made no showing of need & the App. raises no gen. issue of material fact." The petitioner has distinguished his case from Gunter in that his application raises several issues of material fact & shown throughout this motion the need. This court has found the criteria for granting trans. at gov't expense of a similitude to the fed. courts gov't expense standard in 28 U.S.C.A § 753 (f): "Fees for trans. furnished... to persons proceeding under Crim. Justice Act (18 U.S.C. 3006A)... allowed to defend or Appeal in forma Pauperis shall be paid by the U.S. out of monies appropriated for these purposes." 18 U.S.C.A. § 3006 A: (i) Representation shall be provided for any financially eligible person who; (H) is entitled to Appt. of counsel under the 6th Amend..., (II) faces loss of liberty... & fed. law requires the Appt. of counsel." This action denouncies [illegible] violations of Equal Protection, Due Process, 6th, Fourteenth Amend. violations & the Appellant prays it finds his situation applicable to said standard & considers Appt. of counsel in conjunction

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w/ the motion before this Court. Gamy v. State, 347 S.C. 627, 557, S.E. 2d 662 (S.C. 2001): "... we find counsel should be appointed under Rule 71.1(e) when the State moves for dismissal under § 17-27-45(c) & the PCR Applicant raises an issue of material fact regarding the Applicability of the one yr. limitation.' We remand the case for appt. of counsel & an evid. hearing Regarding claim of equitable tolling of the one yr limitation" The notice of appeal filed w/ this Court identifies issues of equitable tolling as does this motion, due to counsel ineffectiveness in failure to advise of appeal rights, & the petitioner again seeks contemporaneous granting of appt. of counsel.

Conclusion

Due to the needs of the petitioner violations enumerated herein, & material fact issues the appellant prays for production of transcript at gov't expense, to be provided to the appellant & the Court & simultaneous appt. of counsel contingent upon this Courts acceptance of appeal. Appellant seeks time constraints associated w/ appeal & appeal itself be held in abeyance until adjudication of this motion.

Respectfully submitted,
Don O. Taylor

Dated:
7/2/15

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The State of South Carolina
In The Supreme Court

Dion O. Taylor ... Appellant (Petitioner) v. 'State' ... Respondent

Case #: 2012-CP-10-8090/Motion For Transcript At Cost Expense & Motion For Appt. Of Counsel

This Motion comes before this Honorable Court, as it is derived from post-conviction relief dismissal, wherein, as delineated by SCACR, the appellant must furnish the Court w/ a copy of his initial pcr evidentiary hearing. Forthwith, are the reasons this Court should grant Motion(s).

Discussion

The petitioner is an indigent prisoner & has no means of paying the requisite fees to the court reporter for transcript. The petitioner had an appeal dismissed by this Court due to the same inability to pay in '2011; costs at that time for trans. began at $350.00, according to the court reporter. The appellant only has vague recollections of the testimony by himself & public defender, but certain particular issues he will encapsulate, as to show need for said trans.

The petitioners Due Process, Fifth, Sixth, Equal Protection, (Batson violation - Fourteenth) Amend violations are at issue. The State was well aware that the appellant is an indigent person through representation by Public Defender Office. However, the State left the appellant w/out counsel on his direct appeal & has claimed throughout that the petitioner failed to file said appeal.

The pcr evid. hearing trans. will provide evid. of the dismissal of the appellants pro se filed direct appeal, because the issues

could not be preserved for review under state law. The Const. mandates representation of an indigent by the State on his first appeal as of right. At the per hearing, the lower court found the testimony of public defender credible, but the circumstances & facts belie that finding. At hearing, public defender claims he had no insanity defense for the appellant so he advised the appellant to plead guilty. At the petitioners plea hearing, counsel is found making what appear to be passionate & cogent arguments for serious mental health diagnoses & issues, yet failed to when it was requested, to procure or request a subsequent eval. for his client as can be realized by S.C. law. A person found insane at the time of commission of charged crime by law, is not accountable for his actions. Counsel at said per hearing testified he had no problems communicating w/ the appellant, yet he filed a motion to be relieved due to issues w/ communication & the overall displeasure w/ counsel performance. Counsel at said hearing stated appellant never asked him to file a direct appeal, when the fact was the appellant never knew that was an option or a right. Counsel describes appellants past 'petty crime' crim. history, & in attorney-client file notes, is found admitting his client had never been to prison. The per app. also raises several other issues of material facts which satisfy the criteria for granting of trans. at gov't expense. At appellants plea hearing, prosecution cites a 'written' confession executed by the appellant, however prosecution never produced the written version w/ discovery & pursuant to Brady, only the typed version of the detective. At the time of execution of 'written confession' appellant was not medicated w/ requisite prescribed meds, he was just released from mental hospital after commitment by hospital officials, appellant invoked his fifth Amend. right to silence at outset, & only after arriving at detention cntr & contact initiated by

an OSC., cleel he involuntarily sign waiver of rights. Only after yrs. hael passeel cliel the Appellant realize there being a strak variance in the written & typeel confession/statement. The Appellant At times germane to situations rederenceel to, he wasn't taking prescribed meels since his recent release from mental health facility. This prejudiceel the Appellants cause immensely as he at the time of signing of waiver & confession, his will was overbourne, & neldstionally forensic doctors useel a statement, involuntarily given w/ significant differences to support an accountability finding. Prosecution suppresseel the evicl. of the written confession & counsel fileel discovery under Rule 5 & Brady, receiveel discovery & yet faileel to compel prosecution to produce Brady materiol. The Appellant still hasn't seen this 'written' version & never had an opportunity to compare the variance noteel. This would have taiggereel the remembrance of Appellant & he would have vehemently demandeel a trial. Additional materiol issues), such as the difference in the clollar amount which was substantially diffdrent from what was claimed the business was deprived of, & the indictment & charge was for armed robbery, & the victim in statement about crime mentions nothing of a weapon being used, police brought victim to identify the Appellant, when certain items were'nt on the Appellant, which was described in description of the perpetrator. These are materiol facts which warrant production of trans. at govt expense.

Applicable Law

Smith v. Robbins, 120 S.Ct 746 (2000): "In Anders v. California, ... we held that to protect indigent const. rights to appellate counsel... the States are free to adopt diffdrent procedures, so long as these proceedings adequately safeguard a def. right to appellate counsel."

Spencer v. Texas, 385 U.S. 554 564, 87 S.Ct 648 (1967): ("... the question is whether ... procedures fall below the min. level the

Fourteenth Amend. will tolerate," 385 U.S. at 569, 87 S.Ct 648). The petitioners ~~Equal~~ Equal Protection rights by & through the Fourteenth Amend, were violated by the State, by leaving the Appellant w/out counsel on his first appeal as of right. State knew of the Appellants indigency by directed circuitous knowledge & the courts & counsel failed to apprise the appellant of said rights. Furthermore, by the very nature of the dismissal of the Appellants pro se filed direct appeal, it was/is an appeal of/for voidity / only one executed w/out aid of counsel. 'SCCID' document goes further to prove 'State' knew of appellant indigency but refused to represent due to it being an appeal from a guilty Plea, an inadequate procedure. Smith v. Lucey, 469 U.S. 387, 105 S.Ct 830 (1985) (def. entitled to a new appeal when failure to comply... lead to dismissal of first appeal). Moreover, counsel had requisite knowledge that appellant would/did not know of appeal rights, yet failed to apprise & deliberately his client wanted a trial at pro hearing. United States v. Cronic, 466 U.S. 648, 649-50, 104 S.Ct: "The presumption that counsels asst. is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage." Cronic, supra, at 659, 104 S.Ct 2039. "The same is true on appeal." See Penson, supra, at 88, 109 S.Ct 346. Roe v. Flores-Ortega, 120 S.Ct 1029 (2000): "The complete denial of counsel during a critical stage... mandates a presumption of prejudice, because the adversary process itself has been rendered unreliable." Counsels actions can't be construed as strategic maneuvering, his actions espouse ineffectiveness of counsel. There is a reasonable probability if not for counsel's errors, appellant would have insisted on going to trial. (see Thompson v. State, 531 S.E.2d 294 (S.C. 2000), Hill v. Lockhart, 106 S.Ct 366 (1985) & Cherry v. State, 386 S.E.2d 624 (S.C. 1999). There were grounds to seek a subsequent eval by additional examiners as provided by S.C. Ann. §44-23-410(c), Appellant informed counsel of such desire & counsel refused to do so. The suppressed 'written' confession will throw the evid. & the case in a different light, for as afore-described, the

The significant variance in written & typed versions, the discrepancies in the evid. against the appellant (ie victim statement not mentioning weapon, money difference, Id suggestive nature, victim saying assailant came from behind in statement, ect). The prosecution suppression violates Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct 1194, 1196, (1963), this Court held that "suppression by the prosecution of evid favorable to an accused upon request violates Due Process where the evid. is material to guilt or punishment." Throughout the appellants App. there is reference made to the still unproduced written statement which appellant had no chance to compare statements. w/out the confession the evid. against the appellant was tenous, the paucity of such is of more significance, when it involves punishment of a mentally ill individual, wherein doctors find negligence in part premised upon an involuntarily given waiver & confession (same day & time). The situation is analagous the one found in Gibson v. State, 514 S.E.2d 320 (S.C. 1999), where the def. lacked knowledge of material evid. The knowledge that appellant did have of written confession is neutralized by the involuntariness, his mental state, & prosecution not producing said evid. It wasn't reasonable for counsel, after seeing that prosecution did not comply w/ Brady & discovery, to not compel them to do so & thus too was ineffectiveness of counsel. State v. Knighton, 512 S.E.2d 117 (S.C. App. 1999), outlines by way of Rule 5 SCR Crim P. that the info suppressed was subject to lawful disclosure. It was unreasonable for counsel not to discuss w/ his client the suggestion of single person Id as described in State v. Moore, 513 S.E.2d 626 (S.C 1999): "single person showups are disfavored because they are suggestive in nature." This aligns itself w/ S.Ct precedent on this subject in Neil v. Biggers, 409 U.S. 188, 196 93 S.Ct, 375, 380 34 L.Ed 2d 401 (1972). In victims own words, (brought forth in App.), direct mention being robbed w/ a weapon, struck by assailant came from behind, there is too much opportunity for misidentification, especially when viewed w/ when appellant was "positively Id" his persons was absent of clothing, accessories,

that were part of the identification & description of the perpetrator. The clothing amount ~~differed~~ differed in excess of over $200.00, this is significant because by police rect., the appellant was apprehended just min. after the robbery. None of the ~~above~~ issues were discussed w/the appellant, so that he could make an informed decision so he could challenge the confession voluntariness for a trial that counsel admits his client desired. At pcr hearing, counsel testified that he/client have an insanity defense, but at guilty plea hearing, counsel makes following statements: Pg 16 Line 4-6 of trans: "He was evicted the day before & I think this put him into this kind of major depressive state that led to... robbery...", Lines 10-11: "He also at the time was not taking his medicine, which he needs to do..." & Lines 18-20, "...I don't think... he's the kind of person who would just do this to get money or anything like that..." Counsel makes these statements yet doesn't respond favorably to request by appellant for adjudication at examination & didn't present issues to his client, as he would have been more adamant for the trial he desired. In State v. Pittman, 420 S.E.2d 437 (N.C. 1992): "... the inescapable conclusion is that the confession most probably was not the product of meaning volition." (quoting Blackburn v. Alabama, 361 U.S. 199, 211 4 L.Ed 2d 242, 250 (1960)).

The appellant believes these are incontrovertible facts that posit an indomitable argument for production of trans. at gov't expense, as the petitioner directs the Courts attention to its former adjudication in Gurter v. State, 267 S.C. 486, 229, S.E. 2d 723 (S.C. 1976): "This appeal comes from the dismissal of an app. for pcr... we hold the state is not constitutionally required to furnish a free trans. to an indigent collaterally attacking his conviction absent a showing of need & when no issues of material fact are raised in the application. Gurter made no showing of need & the app. raises no gen. issue of material fact." The petitioner has distinguished his case from Gurter in that his app. raises several issues of material fact & has shown throughout this motion the need. This Court has found the criteria for granting a trans. at gov't expense standard in 28 U.S.C.A. § 753 (f): "Fees

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for trans. furnished... to persons proceeding under Crim. Justice Act (18 U.S.C. 3006A)... allowed to defend or appeal... shall be paid by the U.S. out of monies appropriated for these purposes." 18 U.S.C.A. § 3006A: (1) 'Representation shall be provided for any financially eligible person who; (H) is entitled to appt. of counsel under the Sixth Amend..., (I) faces loss of liberty... & Fed. law requires the appt. of counsel." This action derives from violations of Equal Protection, Due Process (Brady), Sixth Amend, Fourteenth Amend & the Appellant prays it finds his situation applicable to said standard & considers appt. of counsel in conjunction w/the Motion before this Court. Gary v. State, 347 S.C. 627, 557, S.E. 2d 662 (S.C. 2001): "... we find counsel should be appointed under Rule 71.1(d) when the State moves for dismissal under § 17-27-45(C) & the pcr applicant raises an issue of material fact regarding the applicability of the one yr limitation." "We remand the case for appt. of counsel & an evid. hearing regarding claim of equitable tolling of the one yr limitation." The notice of appeal filed of this Court identifies issues of equitable tolling as does this motion, due to counsel ineffectiveness in not apprising Appellant of appeal rights, & the petitioner reiterates contemporaneously grant/pray of appt. of counsel. In addition, prison rules do not allow copies of hand-generated material, due to the filing requirements of SCACR, this would be unduly burdensome on appellant.

Conclusion

Due to the need of the petitioner & violations enumerated herein, & material fact issues of application, the Appellant prays for production of trans. at gov't expense, to be provided to the Appellant & the Court. He also seeks appt. of counsel, contingent upon this Courts acceptance of Appeal. Appellant seeks time constraints associated w/appeal itself to be held in abeyance until adjudication of this motion.

Dated: 7-2-15

Respectfully submitted,
s/ Dion O. Taylor

FORM 5

2012-CP-10-8090

STATE OF SOUTH CAROLINA)
)
County of Charleston)

IN THE COURT OF COMMON PLEAS

FILED
2012 DEC 11 PM 4:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Dion Orlando Taylor #335089)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Allendale Correctional Institution, P.O. Box 1151, Fairfax, SC 29827

2. Name and location of Court which imposed sentence Court of General Sessions Chas. County Court of Common Pleas, Chas. SC

3. Name(s) of co-defendant(s) (if any) _____

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) Armed Robbery

(b) CSV 3rd

(c) probation violation

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 6/3/09 - 10yrs All charges ran concurrent

(b)

(c)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty

(c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. [redacted], S.C. Court of Appeals

ii. S.C. Supreme Court

iii.

(b) the result in each such Court to which you appealed:

i. dismissed because issues not preserved & understate law for review

ii. failure to provide PCR application

iii.

(c) the date of each such result:

i. NA

ii. -

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i.

ii.

iii.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a)

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Brady v. Maryland, 373 U.S 83 (1963) Brady violation (prosecutorial)

(b) Ineffective assistance of counsel (not preserving signed written statement

(c) Ineffective assistance of counsel (evidence from crime victim I.S. head injury (Affirmative defense of not guilty)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) In Plea hearing transcript, solicitor can be found stating

(b) In letter dated 11-18-08, Applicants attorney - Groeber

(c) Counsel was ineffective, because the dollar amount that was

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? yes

(d) any other petitions, motions or applications in this or any other Court? yes

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Habeas Corpus Petition

ii. Post conviction

iii. writ of certiorari - As of date - not docketed

iv. _____

(b) the name and location of the Court in which each was filed:

i. U.S. District Court Columbia SC

ii. Court of Common Pleas, Chas. SC

iii. U.S. Supreme Court, Washington DC

PCR Application

I.

Continued

10. (d). Ineffective for not informing of an affirmative defense
(e). Ineffective for not questioning medical doctors findings about effects of not being on prescribed meds & or being misdiagnosed & taking wrong meds
(f). 8th (Eighth) Amendment violation - S.C. min 10yrs on armed robbery not on case by case basis, circumstances of Applicants case (ie no gen, ect) 10yrs min excessive in comparison w/other sentences in other jurisdictions
(g). not informed by counsel or court of right to appeal by right

11(a). That defendant gave a signed written confession to the crime. Even though this is accurate, it was done while defendant was not lucid & he never had an opportunity to compare his written version to the typed version of detective, The only confession produced & on evidence was/is a typed version by the detective has many discrepancies. Voluntariness of the confession would have been challenged by defendant at or before a trial that he desired, likelyhood of success can be premised upon said discrepancies & counsels admission that his client desired trial & that his client was intoxicated at time of the crime, & confession (ie same day) There would be no need to tell or give detective a statement as the typed version states, when there was/is a written one.
(b) states he received Rule 5 discovery requests. Counsel should have been aware of the signed written confession At pre hearing, solicitor states applicant gave a signed, written confession, not the typed version of the Rule 5. Considering the knowledge counsel had he should have conferred w/his client about the confession & the nature of it & requested this & or produced signed written confession for examination.
(c). Recovered from robbery does not match the dollar amount the business was deprived of & there is a substantial difference in the two, & this is shown on several official documents. Victim of crime identified applicant as her assailant, but in her statement her back was to the door & it stated assailant came from behind & pushed her, no weapon is mentioned in her written statement this differs from the affidavit stating assailant had a weapon. N. Chas. Police Dept states they someone fitting description from the crime, yet several items used to identify the assailant were not [redacted] donning the applicant at time of apprehension. Counsel had knowledge of his client falling through a building at [redacted] evaluation, it was noted that there was no injury. counsel notes state injury was sustained, fall was from 12 to 15 ft [redacted] his head, but counsel did/did not take his client for brain exam & to see if there was an opportunity to present favorable evidence of brain defect along w/the established mental illnesses of his client, to a potential jury. ([redacted] defense of not guilty should have been presented as an option due to these obvious discrepancies, for there would have been reasonable doubt due to the evidence or lack thereof.)

3

II.

Continued

These issues could have been presented to his client, as stated potentially a jury opposing what evaluators had found. In addition Counsel had his clients MUSC "ICP" Summary Discharge showing how his client needed medications & he had knowledge & Admitted his clients conditions worsened upon his release from mental hospital.

(D). Counsel was ineffective for not informing of Affirmative defense(s) of either not guilty or insanity defense. At Applicants PCR hearing counsel is found producing numerous evidentiary contents which would have established an Affirmative defense, moreover PCR judge found that counsels testimony was credible

(E). Counsel was ineffective for not questioning the evaluations, when the reports absent of any reference to his client not being medicated & how this could have Affected his mental state. ~~Failed~~ to interview other doctors who diagnosed Applicant to oppose or in. Responsibility & capacity to confirm Affirmation.

(F) S. C. min 10yr min for Arson & Robbery w/out gun (when defendant) was charged w/ a non-violent crime for first time, its relative to strong arm Robbery which is a non-violent sentence (i.e victim injuries, etc) its min fails to judge on case by case basis.

(G). Rules of Criminal Proc. state judge must advise of Appellate rights even after a guilty plea, this was not done @ plea hearing record ~~[redacted]~~ shows plea was made under some duress, counsel never informed of right to Appeal, counsel notes how he has never been to prison so he wouldn't have known about this procedure S. C. Appellate Procedure invalid for it does not afford Appellant counsel actively for his case, state left Appellant w/out Counsel on Appeal, as a result direct Appeal filed pro se & dismissed due to issues not being able to be reviewed under state law.

(H). Evidence will show Applicant was not on his psychiatric meds before & at PCR hearing, evidence will also show Applicant was Affected Adversely & not able to present issues Adequately

iv.

(c) the disposition thereof:

i. dismissed

ii. dismissed

iii.

iv.

(d) the date of each such disposition:

i. 11-14-11

ii. 3-11-11

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i.

ii.

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. Ineffective assistance of counsel [redacted] not informing of an affirmative defense

ii. Failure to inform of right to direct appeal

iii. [redacted]

(b) the proceedings in which each ground was raised:

i. PCR court petition

ii. habeas petition

iii. [redacted]

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Brady violation- did not have attorney client file, was seperated from bac

(b) Counsel not producing signed confession- same reason as Letter (a) Ab

(c) Ineffective Assistance of counsel (victim T.S, head injury evidence → BACK (e) & (f) on back

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes

(b) your trial, if any? _____

(c) your sentencing? _____

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Cody J. Grodsey, Ninth Circuit Public Defenders Berkeley & Chas County, O.T. Wallace County Office Bldg, 101 Meeting St, 5th Flo BAC

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. plea hearing

ii. _____

iii. _____

(a) from legal property from County transfer to Prison, never recovered & still haven't seen on the statement, (i.e written) for comparison to typed defective recital

(c) same reasons as (a) & (b) & didn't receive another Rule 5 or the Attorney client file until 9-17-12 to identify issues & evidence

(e) Did not have an opportunity to address appropriately at initial PCR hearing, subsequent appeals dismissed at S.C Court of Appeals & Fed. Court level for procedural reasons same reasons as (a) thru (c)

(f) Constitutional implications not known at time of filing PCR initially

*For all above Applicant never knew of right to direct appeal was neither informed by counsel or court of that right

(h) Attempted to address on writ of certiorari; Denied access to courts by Prison never heard on presented, as of date of this App. U.S. Supreme Court has not accepted writ of certiorari

18. (i) Charleston, SC 29401-2214

19. State clearly the relief you seek in filing this application:

vacating or setting aside of conviction

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of Charleston)

VERIFICATION

I, Dion O. Taylor, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Dion O. Taylor

SWORN to and subscribed before me this 27 day of Nov., 2012

Cynthia G. Sanders (L.S.)
Notary Public

My Commission Expires: 3/9/21

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Dion O Taylor, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

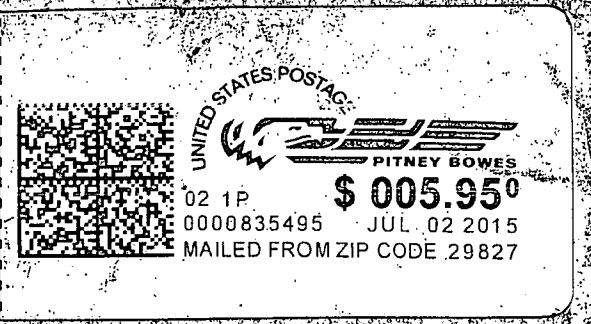
Dion O Taylor
Applicant

SWORN or affirmed to and subscribed before me this 27 day of Nov., 2012

Cynthia L Sanders
Notary Public

My Commission Expires: 3/9/24

Don O. Taylor
5089-2HW-18-A
Dale Correctional Institution
P.O. Box 1151
Fax, SC 29827



The Supreme Court of South Carolina
Daniel E. Shearhouse, Clerk of Court
P.O. Box 11330
Columbia, SC 29211