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The Supreme Court of South Carolina

Jabbar Jomo Straws, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2018-001929

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REHEARING

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Rule 221(a) of South Carolina Appellate Court Rules (SCACR).

This petition for rehearing is in accordance with Rule 240. The order from the Court stated "Petitioner has failed to show that there is an arguable basis for asserting that the determination by the lower Court was improper. Accordingly, this matter is dismissed." There are points supposed by the Petitioner that have been overlooked or misapprehended by the Court. Wherefore, Petitioner hereby prays that this honorable Court reconsiders its

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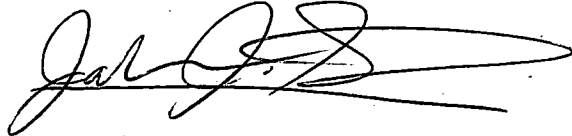
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STRAWS-231018

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S.C. SUPREME COURT

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decision.

A handwritten signature in black ink, appearing to read 'Jabbar J. Straws', with a long horizontal flourish extending to the right.

Jabbar J. Straws, # 231018

Columbia, South Carolina

March 6, 2019

CC:

Kelly Oppenheimer, Esquire

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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MAR 08 2019

S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY

William A. McKinnon, Circuit Court Judge

Jabbar J. Straws, ..... Appellant

The State of South Carolina, ..... Respondent

PETITION FOR WRIT OF CERTIORARI

Jabbar J. Straws  
# 231018  
4848 Goldmine Hwy.  
Kershaw, SC 29067  
Appellant

Caroline Scrantom  
Office of the Att. General  
P.O. Box 11549  
Columbia, SC 29211  
Attorney for Respondent LEGAL

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On December 16, 2005 the Appellant was arrested and charged with armed robbery (2) Kidnapping, (2) assault and battery with intent to kill, and possession of a weapon during the commission of a violent crime. Appellant filed for a preliminary hearing before the next General Sessions term of Court. The preliminary hearing was scheduled but then waived by Appellant's Counsel without his consent.

Appellant then filed a motion to relieve counsel. A hearing was scheduled and held on June 23, 2006 before the Honorable R. Knox McMahon where counsel admitted to waiving Appellant's lawful right to a preliminary hearing without consulting him. See Tr. pg. 22 Ln. 7- pg. 23 Ln. 1; App. pg. 10 Ln. 18- pg. 19.

This denied Appellant due process of law in

accordance with State v. Funderburk, 191 S.E. 2d 520 (1972), equal protection of law in accordance with Brown v. Board of Education, 347 U.S. 483 (1954), Counsel's actions fell below a professional norm in accordance with Strickland, 466 U.S. at 692 (1984), this caused a conflict of interest in accordance with U.S. v. Cronin, 466 U.S. 648, 659 (1984).

Appellant was tried on June 26, 2006, convicted on all charges and sentenced to serve 110 years on June 28, 2006. Appellant appealed. Appeal was denied on September 8, 2009.

Appellant filed motion for post-conviction relief (PCR) on October 28, 2009. The Court appointed S. Jahue Moore, Jr. as Appellant counsel on PCR on November 17, 2009. Appellant wrote

his attorney and asked him to amend his application to include the supporting grounds of ineffective assistance of counsel. PCR counsel failed to do so, and instead did an illegal substitution in accordance with SCACR, Rule 608 section (h)(2), by appointing Jonathan M. Goode, who was unfamiliar with the case. The court has no record of any legal substitution.

He was also unprepared in accordance with SCACR, Rule 403, "Trial Experiences Required," because he had not amended application like Appellant had ask, did not raise all issues such as S.C. Code Ann. § 16-17-735, "sham legal process," and when the case was dismissed on July 28, 2011 Mr. Goode had not appealed

and was no longer with the firm. Appellant did not find this out until after writing Mr. Goode in September about the disposition of the case. This is when he received a copy of the order of dismissal which the appeal time had already expired and all issues not ruled upon.

This is when Appellant filed second PCR in accordance with Austin just to receive his right to appeal first PCR. The case was sabotage from the begin. The Appellant's counsel did not do a 59(e) motion addressing issues that were not rule upon ever when he asked them to do so. So as the Court can see Appellant never received his "one bit at the apple." This was done in violation of Appellant's due process rights in accordance with Bostick v. Stevenson, 589 F.3d

160 U.S. (2009).

If not for counsel's failure to timely motion the Court issues would have been properly preserved for appeal. Strickland, 466 U.S. at 692 (1984).

According to "Matter of McGurk", attorney's failure to communicate with client about appeal in post-conviction matter violated professional rules requiring a lawyer to provide competent representation, to act with reasonable diligence and promptness in representing client, to keep client reasonably informed about status of matter, and rule establishing that it is professional misconduct for lawyer Disciplinary Enforcement, Rule 413, S.C.R. Prof. Conduct 1.1, 1.3, 1.4, 8.4(a). The results? Definite Suspension.

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Appellant must be seen to be "without counsel" and in the same position as in Case v. State, 277 S.C. 474, 289 S.E. 2d 413 (1982).

The court under such circumstances should find that the second or even third application should be heard despite its successiveness because the first application lacked specificity, unless it can find that the Appellant intelligently waived his right to have the grounds stated in the subsequent application heard in the first.

On November 7, 2013 Appellant's writ of certiorari was denied. He appealed his case all the way to the U.S. Supreme Court. Only to find that all issues he raised were not properly preserved in the lower court. That was April 18, 2016. Appellant then filed

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this action on November 8, 2016 but SCDC mailroom personnel at Kershaw C.I. did not mail out the application, so Appellant should not be held responsible for the Respondent's mishaps. (see Straws v. Alexander et al, Case No. 18-7209 (4th Cir); (5:17-cv-02899-TMC). Appellant had to do another application that was filed on May 2, 2017.

The Appellant has timely appealed in accordance with S.C. Code Ann. § 17-27-45, because the time stops with every filing. Plus, "subject matter jurisdiction" can be raised at anytime, can not be forfeited or waived and should be considered when fairly in doubt, Brown v. State, 343 S.C. 342, 540 S.E. 2d 846 (2001).

In South Carolina, a person in custody has

two primary means of attacking the validity of his conviction: (1) through a direct appeal, or (2) by filing an application for PCR. State law requires that all grounds be stated in the direct appeal or PCR application. Rule 203, SCACR; S.C. Code Ann. §§ 17-27-10, -90; Blakeley v. Rabon, 221 S.E. 2d 767, 770 (S.C. 1976).

If the PCR court fails to address a claim as required by S.C. Code Ann. § 17-27-80, Counsel for the applicant must make a motion to alter or amend the judgment pursuant to 59(e), S.C.R.C.P. to preserve the issue for appellate review. Marlar v. State, 653 S.E. 2d 266, 267 (S.C. 2007).

Counsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge "carefully" review the order prior to

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Signing it. Even after an order is filed, counsel has an "obligation" to review the order and file a Rule 59(e), S.C.R.C.P., motion to alter or amend if the order fails to set forth the findings and reasons for those findings as required by § 17-27-80 and Rule 52(a), S.C.R.C.P., Pruitt v. State, 310 S.C. at 256, 423 S.E. 2d at 128 (1992).

"When considering a motion for summary judgment made by the state, the PCR Court must assume facts presented by an Appellant are true and view those facts in the light most favorable to the Appellant." Wilson v. State, 348 S.C. 215, 559 S.E. 2d 581, 582 (2002).  
Al-Shabazz, Supra.

"Disposition on the pleadings and record is not proper if there exists a material issue


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of fact." Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009), affirmed in part, reversed in part, and remanded, certiorari was granted.

Based on all the foregoing, it is the duty of this Court to conclude that the Appellant has established constitutional violations and deprivations that would require this Court to grant his writ.

Reverse and remand.

November , 2018  
Kershaw, SC 29067

Respectfully Submitted,  
S/ 

Jabbar J. Straws  
# 231018

Appellant

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY

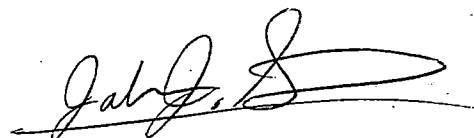
William A. McKinnon, Circuit Court Judge

Jabbar J. Straws, ..... Appellant

The State of South Carolina, ..... Respondent

CERTIFICATE OF SERVICE

The undersigned Pro se Appellant hereby certify that a true copy of PETITION FOR WRIT OF CERTIORARI in the above referenced case has been served upon Caroline Scrantom, Assistant Attorney General, P.O. Box 11549, Columbia, S.C. 29211, this day of November, 2018.



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abbar J. Straws  
# 231018  
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Straws 231018  
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