

Dear Clerk,

PLEASE FIND ENCLOSED IS
PETITIONER'S EXPLANATION FOR APPEAL PURSUANT
TO RULE 243 (C) OF S.C.A.C.R. IN HUDSON V. STATE
APPELLATE CASE NO: 2019-001437

THANK YOU FOR YOUR TIME AND ASSISTANCE
IN THIS MATTER

DATED 9-23-2019

Darnell Hudson

RECEIVED

SEP 26 2019

S.C. SUPREME COURT

IN THE SUPREME COURT OF SOUTH CAROLINA
COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY COURT OF
COMMON PLEAS

APPEALING THE HONORABLE R. SCOTT SPROUSE
CHIEF ADMINISTRATIVE JUDGE FOR THE 10TH
JUDICIAL CIRCUIT

APPELLATE CASE NO: 2019-001437

DARNEIL HUDSON # 227328 PETITIONER

v.

STATE OF SOUTH CAROLINA RESPONDENT.

HERE COMES THE PETITIONER, DARNEIL HUDSON, ACTING PRO SE. IN THE ABOVE CAPTIONED MATTER, MOVES UPON THIS COURT PURSUANT TO RULE 243 (C) OF SOUTH CAROLINA APPELLATE COURT RULES PROVIDING HIS EXPLANATION AS TO WHY THE LOWER COURT DETERMINATION FOR DISMISSING HIS POST-CONVICTION RELIEF APPLICATION WAS IMPROPER IN CIVIL ACTION NUMBER: 2018-CP-04-01305 HUDSON V. STATE

THE COURT PROVIDED PETITIONER TWENTY (20) DAYS FROM RECEIPT OF ITS LETTER DATED AUGUST 29, 2019 TO MAKE A SUFFICIENT SHOWING THAT ARGUABLE ISSUES EXIST WHICH ENTITLES PETITIONER TO APPELLATE REVIEW. THE COURT INFORMED PETITIONER THAT HIS EXPLANATION MUST CONTAIN SUFFICIENT FACTS, ARGUMENTS AND CITATION TO LEGAL AUTHORITY TO SHOW WHY THE DETERMINATION OF THE LOWER COURT WAS IMPROPER. PETITIONER RECEIVED THE

COURT'S LETTER CONCERNING HIS EXPLANATION PURSUANT TO RULE 243 (c) OF S.C.A.C.R. ON THE DATE OF SEPTEMBER 5TH, 2019, THIS WRITTEN EXPLANATION AS TO WHY THE LOWER COURT WAS IMPROPER FOR DISMISSING HIS POST-CONVICTION RELIEF APPLICATION WITHOUT AN EVIDENTIARY HEARING NOW FOLLOWS:

PROCEDURAL HISTORY

PETITIONER IS PRESENTLY CONFINED IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS PURSUANT TO ORDERS OF COMMITMENT OF THE ANDERSON COUNTY CLERK OF COURT. DURING ITS FEBRUARY 2001 TERM THE ANDERSON COUNTY GRAND JURY INDICTED PETITIONER FOR (SEVEN COUNTS) OF KIDNAPPING (2001-GS-04-365, 366, 367, 368, 369, 370, 371). THEREAFTER, DURING ITS JUNE 2001 TERM, THE ANDERSON COUNTY GRAND JURY INDICTED PETITIONER FOR (ONE COUNTY) OF ARMED ROBBERY (2001-GS-04-1621).

ON AUGUST 7-9, 2001 PETITIONER PROCEEDED TO A JURY TRIAL BEFORE THE HONORABLE JOHN W. KITTREDGE. FOLLOWING DELIBERATIONS, THE JURY CONVICTED THE PETITIONER AS INDICTED FOR ALL CHARGES. JUDGE KITTREDGE SENTENCED PETITIONER TO EIGHT CONCURRENT TERMS OF LIFE IMPRISONMENT FOR EACH CHARGE.

PETITIONER TRIAL ATTORNEY WAS DOROTHY MANIGUIT, WHO FILED A TIMELY NOTICE TO APPEAL, AND WANDA H. HAILE, ESQUIRE, PERFECTED AN APPEAL ON PETITIONER'S BEHALF.

THE SOUTH CAROLINA COURT OF APPEALS AFFIRMED PETITIONER'S CONVICTIONS AND SENTENCES IN A PUBLISHED OPINION ON MARCH 17, 2003. STATE V. EAST 353 S.C. 634, 578 SE2d 748 (CT. APP. 2003). THE REMITTITUR WAS ISSUED ON APRIL 2, 2003.

2003-CP-04-03394

P.C.R. APPLICATION

PETITIONER SUBSEQUENTLY FILED A POST-CONVICTION RELIEF ACTION ON OCTOBER 29, 2003, ALLEGING HE WAS BEING HELD UNLAWFULLY FOR THE FOLLOWING REASONS:

1. INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL AND SENTENCING, PURSUANT TO STRICKLAND V. WASHINGTON 466 US 668, 104 S CT 2052 (1984).
2. INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL, PURSUANT TO EVITT'S V. LUCEY 469 US 387, 105 S CT 830 (1985).

ON MAY 11, 2004 PETITIONER AMENDED P.C.R. APPLICATION IN WHICH HE ASSERTED THE FOLLOWING ADDITIONAL ALLEGATIONS:

1. INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL;
2. SUBJECT MATTER JURISDICTION;
3. SECTION § 17-25-50 VIOLATION

SEE EXHIBIT (A) INCORPORATED HERETO IS ATTACHMENT (A) P.C.R. APPLICATION AND AMENDMENT.

THE RESPONDENT MADE ITS RETURN ON SEPTEMBER 17, 2004, REQUESTING AN EVIDENTIARY HEARING TO BE HELD. AN EVIDENTIARY HEARING INTO THE MATTER WAS SUBSEQUENTLY CONVENED ON AUGUST 14, 2007, AT THE ANDERSON COUNTY COURT HOUSE BEFORE THE HONORABLE ALEXANDER S. MACAULAY.

PETITIONER WAS PRESENT AT THE HEARING AND WAS REPRESENTED BY SCOTT ROBINSON, ESQ. THEREAFTER, ON SEPTEMBER 7, 2007, JUDGE MACAULAY ISSUED AN ORDER DENYING AND DISMISSING THE APPLICATION WITH PREJUDICE. SAID ORDER WAS FILED SEPTEMBER 12, 2007. SEE EXHIBIT (B) INCORPORATED HERETO IS ATTACHMENT (B) ORDER OF DISMISSAL OF P.C.R. ACTION.

PETITIONER FILED A NOTICE OF APPEAL NOVEMBER 21, 2007. ON FEBRUARY 12, 2008 THE SOUTH CAROLINA SUPREME COURT DISMISSED THE APPEAL FOR P.C.R. COUNSEL FAILURE TO PROVIDE THE COURT WITH THE DATE ON WHICH HE FIRST RECEIVED NOTICE OF ENTRY OF THE ORDER AS REQUESTED. THE REMITTITUR WAS ISSUED ON FEBRUARY 29, 2008. SEE EXHIBIT (C) INCORPORATED HERETO IS ATTACHMENT (C) SUPREME COURT REQUESTS AND DISMISSAL OF APPEAL.

2008-CP-04-01567
P.C.R. APPLICATION

PETITIONER FILED HIS SECOND APPLICATION FOR POST-CONVICTION RELIEF ON MAY 19, 2008, ALLEGING HE WAS BEING HELD UNLAWFULLY FOR THE FOLLOWING REASONS:

I. INEFFECTIVE ASSISTANCE OF "P.C.R." COUNSEL.

- (A) P.C.R. COUNSEL FAILED TO FILE RULE 59(E) MOTION AFTER ORDER DENYING RELIEF FAILED TO ADDRESS ALL CLAIMS RAISED AT P.C.R. HEARING, [AND]
- (B) P.C.R. COUNSEL FAILED TO FILE A TIMELY NOTICE OF INTENT TO APPEAL.

RESPONDENT FILED ITS RETURN AND MOTION TO DISMISS ON SEPTEMBER 2, 2008 REQUESTING HIS PCR APPLICATION TO BE SUMMARILY DISMISSED. ON SEPTEMBER 5, 2008, JUDGE MACAULAY ISSUED A CONDITIONAL ORDER OF DISMISSAL GRANTING PETITIONER TWENTY DAYS TO SHOW WHY THE CONDITIONAL ORDER SHOULD NOT BECOME FINAL. THEREAFTER, PETITIONER WAS GRANTED AN EVIDENTIARY

HEARING WHICH WAS HELD ON OCTOBER 7, 2009, AT THE ANDERSON COUNTY COURTHOUSE BEFORE THE HONORABLE J. CORDELL MADDOX, JR. PETITIONER WAS PRESENT AT THE HEARING AND REPRESENTED BY DAVID BROUSSEAU, ESQ. ON NOVEMBER 13, 2009 JUDGE MADDOX ISSUED AN ORDER GRANTING PETITIONER A BELATED APPEAL FROM THE DENIAL OF HIS FIRST PCR APPLICATION; SAID ORDER WAS FILED ON NOVEMBER 17, 2009. HOWEVER P.C.R. WAS DENIED ON THE OTHER GROUND. SEE EXHIBIT (D) INCORPORATED HERETO IS ATTACHMENT (D) P.C.R. ORDER ISSUED.

PETITIONER FILED A TIMELY NOTICE OF APPEAL, AND ELIZABETH FRANKLIN - BEST, ESQ FILED AN APPEAL ON PETITIONER'S BEHALF. THE SOUTH CAROLINA COURT OF APPEALS SUBSEQUENTLY DENIED PETITIONER'S PETITION FOR A WRIT OF CERTIORARI BY WRITTEN ORDER ON JULY 11, 2012. SEE EXHIBIT (E) INCORPORATED HERETO IS ATTACHMENT (E) ORDER DENYING WRIT OF CERTIORARI PETITION.

THE REMITTIVE WAS ISSUED ON JULY 30, 2012.

2012-CP-04-02734
PCR APPLICATION

PETITIONER FILED HIS THIRD APPLICATION FOR POST-CONVICTION RELIEF ON AUGUST 14, 2012. IN THAT APPLICATION, PETITIONER ALLEGED HE WAS BEING HELD IN CUSTODY UNLAWFULLY BASED ON:

1. (A) INEFFECTIVE ASSISTANCE OF P.C.R. COUNSEL PURSUANT TO MARTINEZ V. RYAN 566 US ____ (2012) OPINION OF THE SUPREME COURT OF THE UNITED STATES.
- (B) AT THE PCR EVIDENTIARY HEARING PCR COUNSEL PRECLUDED PETITIONER OF RAISING HIS ISSUES OF INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL.

THEREAFTER, ON FEBRUARY 25, 2013, PETITIONER AMENDED HIS APPLICATION TO INCLUDE THE FOLLOWING ADDITIONAL GROUNDS:

1. THE STATE PROSECUTION VIOLATED APPLICANTS RIGHTS BY THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION AND BY THE SOUTH CAROLINA CONSTITUTION LAW UNDER THE DUE PROCESS CLAUSE WHEN IT FAILED TO DISCLOSE IN ITS RULE (5) BRADY DISCLOSURE THAT ONE OF THE STATE'S WITNESSES HAD A PRIOR CONVICTION WHICH WAS FAVORABLE EVIDENCE TO THE DEFENSE.

PETITIONER FILED ANOTHER AMENDED APPLICATION ON APRIL 4TH, 2013, RAISING THE SAME ISSUE IN HIS FIRST AMENDED P.C.R. APPLICATION. ON JANUARY 27, 2014, RESPONDENT MADE ITS RETURN AND MOTION TO DISMISS, REQUESTING THE APPLICATION BE SUMMARILY DISMISSED AS UNTIMELY AND SUCCESSIVE. ON SEPTEMBER 2, 2014, PETITIONER FILED A PETITION FOR WRIT OF HABEAS CORPUS TO THE SOUTH CAROLINA SUPREME COURT. THEREAFTER, THE COURT INFORMED PETITIONER IT WOULD TAKE NO ACTION ON THE WRIT.

SUBSEQUENTLY ON APRIL 27, 2015 RESPONDENT FILED AN AMENDED RETURN AND MOTION TO DISMISS, AGAIN REQUESTING THAT THE APPLICATION BE SUMMARILY DISMISSED AS UNTIMELY, AND AS SUCCESSIVE. JUDGE MADDOX SUBSEQUENTLY ISSUED A CONDITIONAL ORDER OF DISMISSAL ON MAY 1, 2015, AND FILED MAY 4, 2015, PROVISIONALLY DENYING AND DISMISSING THE APPLICATION WITH PREJUDICE WHILE GIVING APPLICANT TWENTY DAYS TO SHOW WHY THE ORDER SHOULD NOT BECOME FINAL. PETITIONER FAILED TO RESPOND TO THE CONDITIONAL ORDER WITHIN THE ALLOTTED TIME. THEREAFTER JUDGE MADDOX ISSUED A FINAL ORDER OF

DISMISSAL, DENYING AND DISMISSING THE APPLICATION WITH PREJUDICE. PETITIONER DID NOT APPEAL JUDGE MADDOX'S FINAL ORDER.

2014-CP-04-01194

PETITION FOR WRIT OF
HABEAS CORPUS

PETITIONER SUBSEQUENTLY FILED A PETITION FOR WRIT OF HABEAS CORPUS IN THE ANDERSON COUNTY COURT OF COMMON PLEAS, THE RESPONDENT MADE ITS RETURN AND MOTION TO DISMISS THE PETITION FOR WRIT OF HABEAS CORPUS ON JUNE 4, 2015, REQUESTING THE APPLICATION BE SUMMARILY DISMISSED BECAUSE THE ALLEGATIONS COULD HAVE BEEN RAISED IN PRIOR APPLICATION FOR POST CONVICTION RELIEF AND BECAUSE THE STATE SUPREME COURT FOR SOUTH CAROLINA IS THE ONLY COURT ENTERTAIN PETITIONS FOR WRIT OF HABEAS CORPUS IN ITS ORIGINAL JURISDICTION. THE HONORABLE R. LAWTON MCINTOSH ISSUED AN ORDER DISMISSING THE PETITION FOR WRIT OF HABEAS CORPUS ON JUNE 9, 2015 AND FILED ON JUNE 10, 2015. PETITIONER DID NOT APPEAL.

4:15-690-JMC-TER

PETITIONER SUBSEQUENTLY FILED A PETITION FOR A WRIT OF HABEAS CORPUS IN THE UNITED STATES DISTRICT COURT ON THE DAY OF FEBRUARY 18, 2015. THE RESPONDENT MADE ITS RETURN AND MOTION TO DISMISS / SUMMARY JUDGMENT ON JUNE 10, 2015, REQUESTING THE ACTION BE SUMMARILY DISMISSED AS THE RECORD CONCLUSIVELY SHOWED PETITIONER WAS NOT ENTITLED TO ANY RELIEF. THEREAFTER, THE HONORABLE THOMAS E. ROGERS, III, UNITED STATES MAGISTRATE JUDGE ISSUED A REPORT AND RECOMMENDATION ON SEPTEMBER 9, 2015 RECOMMENDING RESPONDENT'S MOTION

FOR SUMMARY JUDGMENT BE GRANTED IN ITS ENTIRETY AND THE PETITION DISMISSED WITHOUT AN EVIDENTIARY HEARING. THE HONORABLE J. MICHELLE CHILDS, UNITED STATES DISTRICT JUDGE, SUBSEQUENTLY ISSUED AN ORDER, ADOPTING JUDGE ROGEE'S REPORT AND RECOMMENDATION, ORDERING RESPONDENT'S REQUEST FOR SUMMARY JUDGMENT BE GRANTED IN ITS ENTIRETY, AND DISMISSING THE PETITION WITHOUT AN EVIDENTIARY HEARING.

PETITIONER'S CURRENT APPLICATION DISMISSED

PETITIONER FILED HIS FOURTH APPLICATION FOR P.C.R., ALLEGING THAT HE IS BEING HELD IN CUSTODY UNLAWFULLY ON THE FOLLOWING GROUNDS:

1. TRIAL-COURT LACK SUBJECT MATTER JURISDICTION VIOLATIONS

- (A). PROSECUTOR AND COURT CONSTRUCTED AMENDED HIS INDICTMENTS
- (B). VIOLATION OF S.C. CODE ANN § 17-25-45 (H) & § 16-3-910, [AND] TRIAL COURT IMPOSED AN EXCESSIVE SENTENCE ON KIDNAPPING INDICTMENT.
- (C) VIOLATIONS OF DUE PROCESS AND EQUAL PROTECTION RIGHTS, TRIAL COURT VIOLATED HIS CONSTITUTIONAL RIGHTS WHEN IMPOSED SENTENCES.

SEE EXHIBIT (F) INCORPORATED HERETO IS PETITIONER'S P.C.R. APPLICATION PETITIONER AMENDED TO THE APPLICATION FOR POST-CONVICTION RELIEF, PETITIONER RAISED THE FOLLOWING GROUNDS FOR RELIEF:

- 1. THE TRIAL COURT OF ANDERSON COUNTY GENERAL SESSIONS LACKED SUBJECT MATTER JURISDICTION OVER HIS CRIMINAL CHARGES FOR ARMED ROBBERY AND

KIDNAPPING PURSUANT TO THE FEDERAL HATE CRIME ACT, 18 U.S.C.A. § 245(b)(1)(2) & (F). THE RESPONDENT MADE ITS MOTION TO DISMISS THEREAFTER ALLEGING THAT HIS P.C.R. APPLICATION SHOULD BE DISMISSED DUE TO UNTIMELY FILED, SUCCESSIVE AND BARRED BY RES JUDICATA. THE COURT, R. SCOTT SPROUSE, ISSUED A CONDITIONAL ORDER OF DISMISSAL AND GRANTED PETITIONER TWENTY DAYS TO SHOW WHY HIS P.C.R. APPLICATION SHOULD NOT BE DISMISSED IN ITS ENTIRETY. THIS ORDER WAS ISSUED ON MARCH 8, 2019.

SEE EXHIBIT (G) INCORPORATED HERETO IS COURT ORDER GRANTING PETITIONER TWENTY DAYS TO SHOW WHY HIS CASE SHOULD NOT BE DISMISSED.

PETITIONER MADE HIS TIMELY RESPONSE TO THE COURT'S CONDITIONAL ORDER OF DISMISSAL ON APRIL 3, 2019 ALLEGING THAT HIS P.C.R. APPLICATION COULD NOT BE DISMISSED DUE TO HIS ISSUES OF LACK OF SUBJECT MATTER JURISDICTION OF THE ANDERSON COUNTY COURT OF GENERAL SESSIONS. PETITIONER ASSERTED THAT PURSUANT TO BROWN V. STATE SUPRA, HE HAD A RIGHT TO CHALLENGE THE COURT SUBJECT MATTER JURISDICTION AND THAT THE RESPONDENT'S MOTION TO DISMISS MUST BE DENIED BECAUSE UNTIMELY, SUCCESSIVE APPLICATION OR RES JUDICATA DOES NOT PRECLUDE HIM FROM AN HEARING ON THE MATTER.

SEE EXHIBIT (H) INCORPORATED HERETO IS PETITIONER'S REPLY TO THE COURT'S CONDITIONAL ORDER OF DISMISSAL.

ON AUGUST 8, 2019 THE COURT ISSUED AN ORDER DENYING AND DISMISSING PETITIONER'S APPLICATION FOR POST-CONVICTION RELIEF. SEE EXHIBIT (I) INCORPORATED HERETO IS THE COURT'S ORDER OF DISMISSAL

SUFFICIENT FACTS

PETITIONER ASSESS THAT IT IS A FACT THAT SUBJECT MATTER JURISDICTION CAN BE RAISED AT ANY TIME. THE RIGHT TO RAISE SUCH CLAIM IS FUNDAMENTAL AND PROTECTED BY THE CONSTITUTION AND LAWS OF THIS STATE. IN ADDITION, THERE IS NO PROCEDURAL BARS THAT PRECLUDE A PERSON FROM BEING HEARD ON SUCH CLAIM. THIS FACT WAS EXPRESSED IN BROWN V. STATE 343 S.C. 342, 540 S.E.2d 846.

PETITIONER ASSESS THAT IN HIS POST-CONVICTION RELIEF APPLICATION HE ALLEGED THAT THE COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY LACKED SUBJECT MATTER JURISDICTION OVER HIS CRIMINAL CHARGES OF ARMED ROBBERY AND KIDNAPPING(S) DUE TO THE FEDERAL STATUTE OF 18 U.S.C.A. § 245 HATE CRIME ACT.

PETITIONER ASSESS THAT THE COURT WAS WITHOUT THE POWER AND JURISDICTION TO ENTERTAIN HIS CASE BECAUSE THIS STATE OF SOUTH CAROLINA DO NOT HAVE A CRIMINAL STATUTE OR LAW UNDER HATE CRIME ACTS, THUS VIOLATING THE 11TH AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION WHICH RENDERED HIS CONVICTION(S) AND SENTENCE(S) VOID.

PURSUANT TO S.C. CODE ANN § 17-27-20 (A) OF THE UNIFORM POST-CONVICTION RELIEF PROCEDURE ACT PROVIDED AN AVENUE FOR PETITIONER TO TAKE TO SECURE RELIEF.

PETITIONER ASSESS THAT HE WAS ENTITLED TO RELIEF BECAUSE UNDER 18 USCA § 245 OF THE FEDERAL STATUTE HE WAS A BLACKMAN WHICH WAS CONVICTED FOR ARMED ROBBERY OF ALL CAUCASIAN WHITE PEOPLE AND KIDNAPPING THEM BECAUSE OF THEIR RACE AND COLOR, AND BECAUSE THEY WORKED FOR A RESTAURANT RAN BY ALL CAUCASIAN WHITE

people in ANDERSON COUNTY. PETITIONER ASSESSED THAT THE POLICE KNEW OF PETITIONER ARMED ROBBERY AND KIDNAPPING THE PEOPLE THAT WORKED FOR THE RESTAURANT BECAUSE THEY WERE ALL WHITE PEOPLE AND FAILED TO TURN THE CASE OVER TO THE FEDERAL AUTHORITIES TO CONDUCT THEIR INVESTIGATION OF POSSIBLE ACTS OF HATE OR RACIAL MOTIVE.

IN ADDITION, PETITIONER ASSESSED HIS CONVICTIONS AND SENTENCES MUST BE VACATED. DUE TO THE COURT LACKING SUBJECT MATTER JURISDICTION OVER HIS CRIMINAL CHARGES AND OVER HIM.

SEE EXHIBIT (E) PETITIONER'S AMENDED P.C.R. APPLICATION.

THE COURT, JUDGE R. SCOTT SPOUSE ISSUED A CONDITIONAL ORDER OF DISMISSAL ON MARCH 8, 2019 ALLEGING THAT IT WAS GOING TO DISMISS PETITIONER'S P.C.R. APPLICATION DUE TO IT BEING UNTIMELY, SUCCESSIVE AND BARRED BY RES JUDICATA. THE LOWER COURT GAVE PETITIONER TWENTY DAYS TO SHOW WHY SUCH ORDER SHOULD NOT BECOME FINAL. SEE EXHIBIT (F) COURT'S ORDER

PETITIONER RESPONDED TIMELY TO THE COURT'S CONDITIONAL ORDER OF DISMISSAL AND ASSESSED THAT PURSUANT TO BROWN V. STATE SUPRA, THE COURT COULD NOT DISMISS HIS P.C.R. ACTION. DUE TO UNTIMELY, SUCCESSIVE OR PURSUANT TO RES JUDICATA.

SEE EXHIBIT (G) PETITIONER'S RESPONSE TO COURT'S ORDER.

ON THE DAY OF AUGUST 8, 2019 THE COURT IN THAT MATTER ISSUED A FINAL ORDER OF DISMISSAL, DENYING THE PETITIONER TO AN EVIDENTIARY HEARING ON THE ISSUE RAISED DUE TO BEING FILED UNTIMELY, SUCCESSIVE AND BARRED BY RES JUDICATA. SEE EXHIBIT (H) FINAL ORDER OF DISMISSAL BY THE P.C.R. COURT.

STANDARD OF REVIEW

PURSUANT TO S.C. CODE ANN § 17-27-70 (b) OF THE UNIFORM POST CONVICTION PROCEDURE ACT PROVIDES THAT: WHEN A COURT IS SATISFIED, ON THE BASIS OF THE APPLICATION, THE ANSWER OR MOTION, AND THE RECORD, THAT THE APPLICANT IS NOT ENTITLED TO POST-CONVICTION RELIEF AND NO PURPOSE WOULD BE SERVED BY ANY FURTHER PROCEEDINGS, IT MAY INDICATE TO THE PARTIES ITS INTENTION TO DISMISS THE APPLICATION AND ITS REASONS FOR SO DOING. THE APPLICANT SHALL BE GIVEN AN OPPORTUNITY TO REPLY TO THE PROPOSED DISMISSAL. IN LIGHT OF THE REPLY, OR ON DEFAULT THEREOF, THE COURT MAY ORDER THE APPLICATION DISMISSED OR GRANT LEAVE TO FILE AN AMENDED APPLICATION OR DIRECT THAT THE PROCEEDINGS OTHERWISE CONTINUE, DISPOSITION ON THE PLEADINGS AND RECORD IS NOT PROPER IF THERE EXISTS A MATERIAL ISSUE OF FACT.

PURSUANT TO S.C. CODE ANN § 17-27-70 (b) OF THE UNIFORM POST-CONVICTION PROCEDURE ACT DISMISSAL OF A POST-CONVICTION RELIEF APPLICATION WITHOUT A HEARING IS APPROPRIATE ONLY WHEN (1) IT IS APPARENT ON THE FACE OF THE APPLICATION THAT THERE IS NO NEED FOR A HEARING TO DEVELOPE ANY FACTS AND (2) THE APPLICANT IS NOT ENTITLED TO RELIEF. LEAMON V. STATE 363 S.C. 432, 611 SE2d 494 (2005). HOWEVER, WHEN CONSIDERING THE STATE'S MOTION FOR DISMISSAL OF AN APPLICATION FOR POST-CONVICTION RELIEF, WHERE NO EVIDENTIARY HEARING HAS BEEN HELD, THE COURT MUST ASSUME FACTS PRESENTED BY AN APPLICANT ARE TRUE AND VIEW THOSE FACTS IN THE LIGHT MOST FAVORABLE TO THE APPLICANT. PELZER V. STATE (S.C. 2008) 378 S.C. 516, 662 SE2d 618, WILSON V. STATE (S.C. 2002) 348 S.C. 215, 559 SE2d 581. IF ANY ISSUES OF MATERIAL FACTS EXIST WHICH IS CONSIDERED

TRUE, AND THE APPLICANT ARTICULATE A VALID CLAIM FOR RELIEF UNDER THE UNIFORM POST-CONVICTION PROCEDURE ACT, THE MATTER IN THE PROCEEDING MUST CONTINUE TO AN EVIDENTIARY HEARING. S.C. CODE ANNS 17-27-70(b). ALLEGATIONS THAT RAISE ISSUES OF MATERIAL FACTS THAT HAS NOT BEEN PREVIOUSLY PRESENTED AND HEARD CAN ONLY BE RESOLVED BY AN EVIDENTIARY HEARING WHERE NO RECORD EXIST TO REFUTE THE ALLEGATIONS PRESENTED. MCCOY V. STATE (S.C. 2013) 401 SE2d 363, 737 SE2d 625, SHAPEL V. STATE 305 SE2d 247.

IN P.C.R. ACTIONS, THE BURDEN OF PROOF IS ON THE APPLICANT TO PROVE BY THE PREPONDERANCE OF THE EVIDENCE HIS ENTITLEMENT TO RELIEF. BUTLER V. STATE 285 S.C. 441, 334 SE2d 813, THIS COURT GIVES DEFERENCE TO THE FACTUAL FINDINGS AND CONCLUSIONS OF LAW OF THE P.C.R. COURT AND WILL UPHOLD THEM IF THERE IS ANY EVIDENCE OF PROBATIVE VALUE TO SUPPORT THEM. SELLNER V. STATE 416 S.C. 606, 610, 787 SE2d 525, 527, (2016) HOWEVER OUR APPELLATE COURT WILL REVERSE THE P.C.R. JUDGE'S DECISION WHEN IT IS CONTROLLED BY AN ERROR OF LAW. PIERCE V. STATE 338 S.C. 139, 145, 526 SE2d 222, 225 (2000) HOLLAND V. STATE 322 S.C. 111, 470 SE2d 378 (1996).

IN THIS MATTER, THE P.C.R. COURT DISMISSED PETITIONER'S P.C.R. APPLICATION WITHOUT CONDUCTING AN EVIDENTIARY HEARING ON THE CLAIMS RAISED BY PETITIONER DUE TO ITS FINDINGS AND CONCLUSIONS OF LAW THAT PETITIONER WAS PROCEDURAL BARRED DUE TO UNTIMELY, SUCCESSIVE APPLICATION AND RES JUDICATA.

PETITIONER'S SUFFICIENT FACTS AND ARGUMENT TO SUPPORT HIS ENTITLEMENT TO APPELLATE REVIEW NOW FOLLOWS!

ISSUE 1

PETITIONER ASSECTS THAT JUDGE R. SCOTT SPROUSE ERRED IN DISMISSING HIS P.C.R. APPLICATION WITHOUT AN EVIDENTIARY HEARING ON THE ISSUE OF LACK OF SUBJECT MATTER JURISDICTION PURSUANT TO S.C. CODE ANN § 17-27-70 (b) OF THE UNIFORM POST CONVICTION PROCEDURE ACT, THUS VIOLATING PETITIONER'S DUE PROCESS AND EQUAL PROTECTION RIGHTS PURSUANT TO THE 5TH & 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND UNDER ART 1 § 3 OF THE SOUTH CAROLINA CONSTITUTION.

PETITIONER INCORPORATES HIS STATEMENT OF FACTS TO SUPPORT HIS ENTITLEMENT TO APPELLATE REVIEW.

ARGUMENT

IT IS A FACT THAT SUBJECT MATTER JURISDICTION CAN BE RAISED AT ANY TIME. BROWN V. STATE 343 S.C. 342, 540 SE2d 846. STATE V. FUNDERBURK 529 S.C. 526, 191 SE2d 520 (1972) THIS RIGHT IS FUNDAMENTAL AND IS PROTECTED BY THE CONSTITUTION AND THE LAWS OF THIS STATE. ANDERSON V. ANDERSON 299 S.C. 110, 382 SE2d 897 (1989). ADDITIONALLY, SUBJECT MATTER JURISDICTION CAN NOT BE WAIVED, NOT EVEN BY CONSENT OF THE PARTIES HUNTER V. BOYD 203 S.C. 518, 28 SE2d 412, 416 (1943) FIELDEN V. FIELDEN 274 S.C. 219, 262 SE2d 43. U.S. V. COTTON 535 U.S. 625 (4TH CIR 2002) WHICH HELD, SUCH CLAIM OF SUBJECT MATTER JURISDICTION VIOLATIONS CAN NEVER BE FORFEITED OR WAIVED.

IN PETITIONER'S P.C.R. APPLICATION HE ASSECTED HIS CONSTITUTIONAL AND FUNDAMENTAL RIGHT TO CHALLENGE THE COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY

SUBJECT MATTER JURISDICTION OVER HIS CRIMINAL CHARGES AND HIMSELF DUE TO THE FEDERAL STATUTE OF 18 U.S.C.A. § 245 HATE CRIME ACT WHICH THIS STATE OF SOUTH CAROLINA DO NOT HAVE NO LAWS OR CRIMINAL STATUTES FOR.

THE P.C.R. COURT DISMISSED PETITIONER P.C.R. APPLICATION DUE TO BEING UNTIMELY FILED, SUCCESSIVE AND BARRED DUE TO RES JUDICATA WHICH WAS ERROR, SEE BROWN V. STATE SUPRA WHICH THIS COURT HAS MADE IT CLEAR THAT STATUTE OF LIMITATIONS, SUCCESSIVE APPLICATIONS OR RES JUDICATA DO NOT PRECLUDE AN APPLICANT FROM REVIEW ON THE CLAIM OF SUBJECT MATTER JURISDICTION.

IN PETITIONER'S REPLY TO THE COURT CONDITIONAL ORDER OF DISMISSAL THE PETITIONER POINTED THIS OUT TO THE P.C.R. COURT AND ALSO SHOWED THE COURT THAT IT WAS A NEED FOR A EVIDENTIARY HEARING TO DEVELOPE THE FACTS DUE TO NO RECORD ON THE ISSUE RAISED BY HIM EXIST. MCCOY V. STATE SUPRA.

THE P.C.R. COURT FAILED TO APPLY BROWN V. STATE SUPRA TO PETITIONER'S CLAIM OF LACK OF SUBJECT MATTER JURISDICTION AND ALSO FAILED TO APPLY THE LAW IN THE LIGHT MOST FAVORABLE TO PETITIONER CLAIM. LEAMON V. STATE SUPRA.

PETITIONER ASSETS THAT DUE TO THE P.C.R. COURT ERROR IN FAILING TO APPLY THE LAW TO PETITIONER'S CLAIM OF SUBJECT MATTER JURISDICTION REQUIRES THIS COURT TO REVERSE ITS FINDINGS AND CONCLUSIONS OF LAW AND GRANT HIM AN EVIDENTIARY HEARING ON THE ISSUE RAISED.

Conclusion

DUE TO THE ERROR OF THE P.C.R. COURT FAILING TO APPLY THE LAWS TO PETITIONER'S CLAIM OF SUBJECT MATTER JURISDICTION, THE ORDER RENDER BY THE LOWER COURT MUST BE REVERSED AND AN EVIDENTIARY HEARING MUST BE HELD. BUITER V. STATE SUPRA.

DATED Sept 23RD, 2019

S/ Darnell Hudson

C.C. ATTORNEY GENERAL OFFICE

IN THE SUPREME COURT OF
SOUTH CAROLINA

COURT OF APPEALS

APPEAL FROM ANDERSON
COUNTY COURT OF COMMON
PLEAS

APPELLATE CASE NO.:

2019-001437

PROOF OF SERVICE

DARNELL HUDSON # 227328 PETITIONER,
V.
STATE OF SOUTH CAROLINA RESPONDENT.

I, PETITIONER, IN THE ABOVE CASE NO. 2019-001437,
HUDSON V. STATE, CERTIFY THAT I HAVE SERVED UPON
THE LISTED PARTIES BELOW A COPY OF MY EXPLANATION
FOR APPEAL PURSUANT TO RULE 243(C) OF S.C.A.C.R.
BY DEPOSITING COPIES OF SAME IN THE U.S. POSTAL
MAILBOX ON THIS DAY OF SEPT 23RD, 2019

PARTIES OF THE RECORD

1. LILLIAN L. MEADOWS, ASST ATT GEN.
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 11549
COLUMBIA S.C. 29211

Darnell Hudson
PETITIONER

DATED SEPT 23RD, 2019

2. MR. SHEAROUSE, CLERK
SOUTH CAROLINA SUPREME COURT
P.O. BOX 11330
COLUMBIA S.C. 29211