STATE OF SOUTH CAROLINA : *COUNTY OF GREENVILLE*)	**IN THE COURT OF COMMON PLEAS FOR THE THIRTEETH JUDICIAL CIRCUIT**
JOSE ALBERTO MALDONADO, # 312648, **PLAINTIFF, PRO – SE,**	**CIVIL ACTION CASE NO. 2015-CP-23-04747** **APPELLATE CASE NO. 2017-002092**
v.	**RETURN AND MEMORANDUM IN SUPPORT OF MOTION**
STATE OF SOUTH CAROLINA, EX REL, W. WALTER WILKINS, SOLICITOR, MEGAN H. ATTY. GEN., ASSISTANT, THIR-TEENTH JUDICIAL CIRCUIT, **DEFENDANTS.**	**REQUEST FOR DEFAULT JUDGMENT PURSUANT TO RULE 55, SCRCP AND JAMESON, S.C. CODE ANN. § 17-27-40**

To: Honorable, Judge, Donald W. "Don" Beatty, C.J., Chief, SC Supreme Court, its Order of December 13, 2018, and Perry H. Gravely, Administrative Judge for Common Pleas Court.

Now came the Jose Alberto Maldonado, # 312648 the Plaintiff pro-se, who ask and prays to Honorable lower Court, and the South Carolina Supreme Court, to issue a new Order in favor to the Plaintiff, in consideration. To against the "(State)'s Defendants for default judgment" of Rule 55(a) (b) SCRC, and demand of judgment by default may be entered as follows:

Thus, the Lower Court of Common Pleas for the Thirteenth Judicial Circuit did not ruled the previously Order, that had been entered, from South Carolina Supreme Court, and Ordered to the "Clerk of the lower court to correct the case number on the Remittitur" issued date **December 13, 2018.** [Fn.1] Enter this return in support of motion for default judgment against the defendant for failure to respond the **"summons and complaint."** See Rule 245, SCACR.

The lower court have the duty to remand and reverse the ("Fourth Post Conviction Relief Action Application against the Defendants with the Court of Common Pleas."). When the plaintiff issued and filed the complaint on July 31, 2015.

PROCEDURAL HISTORY

Here and after, Plaintiff also filed a "Motion Order" against the Defendants, to correct the case No.

1. Jurisdiction to Honorable Court that have to support this Motion/Request for default judgment, and ruling the Order from **December 13, 2018** after the Plaintiff had been filed a **"MOTION, ORDER TO CORRECT THE CASE NUMBER TO THE REMITTITUR/4THACTION'S ORDERS OF DESMISSAL TO REFLECT LOWER COURT CASE NO. 2015-CP-23-04747."** ***And as law Sanction Pursuant to S.C. Code of Law Rules, Rule 55(a)(b), 37,(a), (b)(1)(2), SCRCP. And S.C. Code 1976 § 17-27-40.***

2015-PC-23-04747 directly captioned it to Hon: "Preside Judge — Perry H. Gravely its unconstitutional signature orders" denying the Plaintiff's pleading, for been filed in the Court of Common Pleas against the lower court's judgment pursuant as the (4th application post-conviction relief action"), and also that issue filed "Motion Order" have been supported by **"SUMMONS AND COMPLAINT,"** against the opposite party ("Defendants") to respond the complaint." Captioned — "State of South Carolina, EX REL, W. WALTER WILKINS, Solicitor, and MEGAN H. JAMESON, Atty. Gen. Assistant, who represent the State in the Court of Common Pleas for the Thirteenth Judicial Circuit. However, the Plaintiff summoned the defendants in this action against them upon to the limitation action within thirty (30) days, to answer that summons and complaint. , **See e.g.,** ***Superscope Inc. v. Benjamin Co., Inc. 277 S.E.2d 596 (1981) pursuant to § 15-9-970.***

See the **"MOTION, ORDER TO CORRECT THE CASE NUMBER TO THE REMITTITUR/4TH PCR ACTION'S ORDERS OF DESMISSAL TO REFLECT LOWER COURT CASE NO. 2015-CP-23-04747.**

'The **PLAINTIFF,** ***have been attached below as the Motion issue dated January 9, 2019.'" (See: below of this Motion, Attachments: (Q)(1 through 7)(R. Pp. 56-62); (Summons and Complaint, Attachments: (R)(1, through 67)(R. Pp. 1-5);*** **and** ***(Plaintiff's Exhibits Record on Appeal, Attachments: (S)(1, through 4)(R. Pp. 68-71).***

STANDARD OF REVIEW

Thus, the Plaintiff, have being attached below as the MOTION ORDER TO DISMISS THE INDICTMENT's **Attachment; (Q)** as the **"summons",** and filed in the above entitled action ("which had been filed in the Office of the Clerk of Court for the Court of Common Pleas Thirteenth Judicial Circuit"). Now enter this Motion against the (State)'s defendants with this Honorable lower court and South Carolina Supreme Court for failure to not respond the Complaint issue filed on **January 9, 2019** within the jurisdiction of **Rule 12 (b), SCRCP;(2)** "lack of jurisdiction over the person"; (4) "insufficiency of process" (5) "insufficiency of service of process"; (6) "failure to state facts sufficient to constitute a cause of action" and (7) "failure to join a party under Rule 19," ("instead of the ***"JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION, Pursuant to this Rule 19 SCRCP,*** as the **"State Grand Jury, James Parker, Clerk of Court,"** see the ***"ORDER MOTION TO DISMISS THE INDICTMENTS CASE No(s) 2003-GS-23-04545; 2003-GS-23-004547; and 2005-GS-47-0026 Count I. & Count IV***. At Page 12, against a Lisa O. Dunbar Clerk, State Grand Jury, Foreman Mrs. Cathy P. Coffey, within the former Attorney General now the Governor Henry McMaster, and see at the same (ORDER MOTION's Fn. 1, Pages 14, & 17 against the signature of former Chief Administrative judge — Criminal Fifth judicial Circuit Presiding Judge in S.C. State Grand Jury, "Signed Lloyd Reginald I. A large seat-9 June 27, 2005"")); See at *Maybin v. Northside Correctional Center*, 891 F.2d 72, at 74 (4th Cir. 1984)(quoting *Dunbar v. Vandermore*, 295 S.C. 493, 369 S.E.2d 150-51 (SC. App. 1988) under this ORDER MOTION TO DISMISS THE INDICTMENTS, at (page 2); see also *Evans v. State,* 344 S.C. 60, 543 S.E.2d 547,

551 (2001)(when the dispute is not as to the underlying facts but as to the interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on motion to dismiss for failure to state a cause of action) See at **Evens, 60, 543 S.E.2d at 551,** pursuant to **Rule 12(b)(6).**

ANALYSIS

Therefore, the Plaintiff, brought this "Motion/Request for Default Judgment against the (State)'s Defendants, Ex Rel, W. WALTER WILKINS, Solicitor, behind as Megan H. Jameson, Assistant of Attorney General Alan M. Wilson for the South Carolina State, and others to challenge the letter from January 17, 2019, a disciplinary proceeding, including this motion is been subject to the '***ORDER MOTION TO DISMISS THE INDICTMENT'S INFORMATION***"' to against the State Grand Jury's Fraudulent photocopies indictments", **without the jurisdiction of the State's legislature power of the S.C. Const. Art. I. § 11, and art. V. § 22,** and now enter this Motion/Request for Default Judgment.

Thus, all Defendants have been represented by counsel of records Alan W. Wilson who represent the "State of South Carolina's office, or agency, and also him support a perfunctory letter to prohibit a portion of the **"MOTION TO CORRECT THE CASE NUMBER TO THE REMITTITUR/4TH PCR. ACTION's ORDERS OF DESMISSAL TO REFLECT LOWER COURT CASE NO. 2015-CP-23-04747, Pursuant to S.C. Code Ann. § 17-27-40." (See; Attachments: (Q)(1)(1 through 7)(R. Pp. 56-62), that has been supported by an Summons and Complaint, see (Attachments: (R)(1 through 5)(R. Pp. 64-67). Appellate Case No. 2017-002092. All of which list civil action number 2015-CP-23-04747.**

Hereby, Defendant Mr. Megan H. Jameson ("Assist. Atty. Gen."), reaffirm that: "The Jose Alberto Maldonado has sent to the office for filing", and addressed to both Courts, "Please note that these submissions are in direct contravention of the **August 02, 2018,** Order from the South Carolina Supreme Court" this Court expressly "prohibiting a Mr. Maldonado from filing any further collateral actions in the circuit court, including PCR. Action, and habeas corpus actions, as well as any motions relating to the previously filed collateral actions, challenging indictments 2005-GS-23-04545, 2003-GS-23-4547, and 2005-GS-47-0026, Count I, and Count IV. And the convictions and sentences thereon, or any motions in the underlying criminal cases, including a motion pursuant to Rule 29, SCR. Crim. P. without first obtaining permission to do so from the S.C. Supreme Court." See e.g., ***Booker v. South Carolina Dep't of Corrections,*** 855 F.3d 533, at 547's (Fn.5) (4th Cir. 2017). Plaintiff's arguments state in the **"ORDER MOTION TO DISMISS THE INDICTMENTS's (pages, 10 & 15). U.S.C.A. Const. Amends. 1st, 4th, 5th, 6th, and 14th. 18. U.C.C.A. § 1001, and S.C. Code Ann. § 16-9-10."** This Court have to hold an evidentiary hearing under this cases,

Kneece v. State, 269 S.C. 177, 236 S.E.2D 746, 747 (1977))(quoting, *Herring v. State,* 262 S.C. 597, 206 S.E.2d 885 (1974) including the ***Jose Alberto Maldonado v. State, Civil case No. 2013-CP-23-1440's* hearing before Hon: Edward W. Miller, granted a hearing on October 25, 2013.** In the matter as to the judge on the filed Order from November 8, 2013 in which he denied Applicant's Motion/Request for Default judgment, and denied the Applicant a full hearing to be hear no longer that ***("Five - to - ten minutes, see the Oct. 25, 2013 Third PCR Act. Transcript's Hearing").*** Judge Miller with bias filed an "Order denying Motion to Alter or Amend" on April **9, 2014".** See: **(Apex. (F)(61-83)(R. Pp. 154 through 175.ROA);** & **(Apex. (F)(7-9)(R. Pp. 99-101.ROP).**

"The Defendants is record failed to show any valuable evidence to the summons and complaint, and now require an evidentiary hearing to this Court review the Plaintiff's conviction within the ("SCDC") and without any legal indictment as the true bill, prejudice that Plaintiff is conviction, and Defendants against the limitation action to responded in filing the answer to the summons with "insufficiency of service of process", and "failure to state facts sufficient constitute a cause of action." See Rule 12(b), (5)(6), SCRCP."

¶ A. TIME OF LIMITATION TO PRESENT PLAINTIFF HIS GROUNDS AND ARGUMENTS TO THIS COURT

So now the Plaintiff demand under statute limiting arguments to two hours except by special permission of court was intended to prevent abuse of privilege under broad constitutional guaranty to Plaintiff of right to be fully heard in his defense and give Plaintiff two hours in which to argue his case as a matter of right and additional time as a matter of grace. S.C. Code 1976, § 40-5-330; ***State v. El,*** *286 S.C.* 560, 335 S.E.2d 544 (1985); *State v. McIntire,* 221 S.C. 504, 520, 71 S.E.2d 410, at 418 (1952)(quoting, *State v. Ballenger,* 202 S.C. 155, 24 S.E.2d 175 (1943), and State v. Cash, 138 S.C. 167, 136 S.E. 222 (1927). S.C. Const. Art. I. § 14.

1. A portion of the complaint to the letter from defendant on January 17, 2019, filed to "Paul B. Wickensimer Clerk of Court preside Perry H. Gravely Chief Administrative Judge for the Common Pleas, and Honorable Daniel Shearouse, Clerk of the South Carolina Supreme Court."

2. This Hon: Court have to grant an evidentiary hearing, and rejecting the letter to Defendants and issue a new Order to compelling the Order from December 13, 2018. When the Plaintiff brought this action on November 30, 2018, against the S.C. Supreme Court's Order issued date August 2, 2018. As the **"MOTION TO RECALLING THE REMITTITUR".** See the **(Attachment: (B)(2)(R. p.7. As the cover sheet to the "MOTION TO RECALLING THE REMITTITUR",** Plaintiff filed this action on November 30, 2018, and enter to the SC. Supreme Court against the void order on August 2, 2018. Therefore, Plaintiff did not need the permission

to Hon: Supreme Court for the filing of those various documents. Here is the "ORDER TO CORRECT THE CASE NUMBER TO THE REMITTITUR/4TH PCR. ACTION'S ORDERS OF DIMISSAL TO REFLECT LOWER COURT CASE NO. 2015-CP-23-04747", and the "SUMMONS AND COMPLAINT". Against the Megan's letter from January 17, 2019." See at ***Booker,*** 355 F.3d 533 (4th Cir. 2017). U.S.C.A. Const. Amends. 1st, & 14t.

¶ B. THE COURT RULE A JUDGMENT BY DEFAULT AGAINST THE DEFENDANTS

Thus, the Rule 55(a), (b)(1)(2), SCRCP, against the defendants for failure to state a claim pursuant to South Carolina Rules of Civil Procedure, Rule 12(b)(6), "failure to state facts sufficient to constitute cause of action", and for partial summary judgment pursuant to Rule 56. Upon consideration, the Court rules as follows:

(1). That, the defendant Megan, argue in his letter based on the Supreme Court Order August 2, 2018 that Assistant Atty. Gen. Megan H. Jameson not received any documentation or notification that Mr. Maldonado has been granted permission from the Supreme Court: "Here, enter the last Filed as the Supreme Court's Order from December 13, 2018, against that Megan H. Jameson letter."

(2). Thus, the Court ruled the December 13, 2018 Order pursuant to the "MOTION TO CORRECT THE CASE NUMBER" and 'SUMMONS AND COMPLAINT", all of "which the 4th PCR. Action Application list civil action number 2015-CP-23-04747, is pending with the lower court, and both Courts did not possess the right dismissal's orders for failure to denied upon the right case number" [?]

(3). Because as in directly contravention of the August 2, 2018 Order to the Supreme Court, and wrongly expressly prohibiting a Mr. Maldonado from "filing any further collateral action in the circuit court," Mr. Maldonado's claims arising from the allegedly improper disciplinary proceeding against the Order of August 2, 2018, within the invalid denied of the **"MOTION TO RECALLING THE REMITTITUR,** filed **November 30, 2018,"** The Court denied it with the same Order from December 13, 2018. See, id.,

(a). (Here called collectively "the first claim") to SC. Supreme Court and are untimely-barred. It is well-established policy that, when Congress has not established a statute of limitation applicable to the assertion of right under a statute such as Rule 3 (a) (1) (2), SCRCP.

(b). State Court rules should adopt the local law of limitation as it pertains to a cognate state cause of action. See, *Roverts v. Peterson,* 292 S.C. 149, 355 S.E.2d 280 (Ct. App. 1987)(nothing that where the state rule has adopted language of a federal rule, federal cases interpreting the federal rules are persuasive). Objections to the Sufficiency of Service of Process must be specific and must point out in what manner the defendants has failed to satisfy the rule relating to the service provisions. See, e.g.,

O'Brien v. R.J. O'Brien & Assocs., 998 F.2d 1394 (7th Cir. 1993)(holding objection to service of process must be specific and point out in what manner the rules were not satisfied); *Photolab Corp. v. Simplex Specialty Co.,* 806 F.2d 807 (8th Cir. 1986)(same) Sassower v. City of White Plains, 1993 WL 378862 (S.D.N.Y. 1993) (suing for malicious prosecution under § 1983), see at *Hawkins,* 542, 543, 537 S.E.2d at 562 (2000)("this Court holds as a matter of law that an affirmative defense averring a 'complaint is not timely' the defendants does not provide sufficient specificity to invoke ... the insufficiency of service of process defense of [R]ule 12 (b), SCRCP, or **"TO AVOID WAIVER"** under Rule 12 (g), and (h)."); see also *White v. Johnson,* 151 Ga. App. 345, 259 S.E.2d 731 (1979)(nothing that under Georgia law, insufficiency of service of process defense must be specifically pled or is waived). In fact, "[t]he objection to insufficiency of process or its service should point out specifically in what manner Plaintiff has failed to satisfy the requirements of the service provision he utilized." See, at ***(5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure Civil 2d § 1353 (1990))(***citing, *Travelers Ins. Co. v. Panama-Williams, Inc.,* 424 F. Supp. 1156, at 1158 (N.D. Okla. 1976)(Motion overruled) "on Motion to Dismiss allegations of Complaint are accepted as true."

¶ C. ACCEPTANCE AS TRUE OF ALLEGATIONS IN COMPLAINT

This Court hold the averment to defendants after "failed to serve the Plaintiff the right information in the hold record inside to this case, as the "summons and complaint" allegations within the thirty (30) days statute of limitations" overruling the Order from Dec. 13, 2018. Because is insufficient, standing alone, to raise the defense of insufficiency of service of process. In the matter that Megan Harrigan Jameson, failed to identify that he was moving to challenging service of process pursuant to Rule 12 (b)(4)(5), SCRCP. See the **"MOTION TO RECALLING THE REMITTITUR's ("Attachments") at (EXIBIT (8) "RETURN AND MOTION TO DISMISS"); (Apex. (H)(1, through (1)(R. Pp. 297-305.ROA)."** This **("EXHIBIT (8)'s RECORDS;** it is subject to the File of **January 9, 2019. "MOTION, ORDER TO CORRECT THE CASE NUMBER's (EXHIBITS: 1 through 15. ROA), see Attachment: (Q)(1 through 7)"** the Plaintiff preserved this records to introduced in evidence to this Court. And after this Court release a new order to compel disclosure an evidentiary hearing, when this Court denied the Motion to Recalling the Remittitur" but at the same time "ordered to the lower court to correct the case number on **December 13. 2018."**

1. When the defendants failed to specify any defects in the service of process alleged to the **FINAL ORDER OF DISMISSAL", From July 21, 2017, citing the wrong civil case number 2015-CP-23-04757**, The S.C. Supreme Court and Defendant Megan H. Jameson have the Filed Motion to Recalling the Remittitur's

(Exhibit: (10)), and also is been appealed to This Court, see **(Apex. (F)(126-128)(R. Pp. 218-220.ROP).**

Having failed to allege process with even a minimal amount of specificity in his responsive pleading Megan H. Jameson, may not now bootstrap the defense to his statute of limitations argument a separate affirmative defense likewise subject to waiver under Rule 8 (c), SCRCP.

2. Objection, and also this Court reject Megan H. Jameson's assertion that insufficient of service of process in the single letter from **("January 17, 2019 is a lesser included offense")** of the total failure to serve, such letter that proper pleading of the defense of non-service requires less specificity than the defense of insufficiency of service of process. As noted above, Rule 12(b)(5) is the proper vehicle for challenging both "the mode of delivery of the lack of delivery of the summons and complaint." See, **5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure Civil 2d § 1353 (1990)(emphasis added).** See: the **"ORDER MOTION TO DISMISS INDICTMENTS Case no(s) 2003-GS-23-04545; 2003-GS-23-04547; & 2005-GS-47-026 Count I. & Count IV. at, page 2, GROUND I issued "LACK JURISDICTION OVER THE DEFENDANTS TO DEFAULT JUDGMENT.""**

3. Thus the defendants having failed to properly plead the defense of insufficiency of service of process either by motion in his answer January 17, 2019. Defendant has waived the defense against the Plaintiff with a single letter, because Megan H. Jameson failed to challenge with a motion when as a proper service of process properly, he has also failed to not put off from immediate his statute of limitations defense. See *Garner v. Hoock*, 312 S.C. 481, 484, 435 S.E.2d 847, 850 (1993)(Statutory rules of construction may be applied to construction of court rules).

¶ D. PROCEDURAL DEFAULT DOTRINE

Accordingly This Hon: Court review the Atty., Gen. Alan M. Wilson's **"RETURN AND MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT" C/A#: 8:11-cv-01372-TLW,** issue on: **August 22, 2011 (See, Attached: (E)(1)(R. p. 17)(Record on Appeals, Page 266)**; against the South Carolina District Court Greenville/Greenwood, Division, the **"REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE, issued date 9/27/2011."** **(See, Attachments: (F)(1)(2)(R. Pp. 23-24)(ROA. Pp. 272-273);** for this reason and for the principle that Federal Court failed to lacks jurisdiction over the Petitioner to review the merits of a habeas corpus petition after the State of South Carolina its Courts refused to review the complaint, as the Petitioner/Plaintiff's **"indictments and information"** and forth that the Plaintiff against the ("State's Defendants, and the Federal Court's § 2254 Petition for Writ of Habeas Corpus Petition filed on June 2, 2011, after the habeas corpus court denied the Petitioner is Petition on September 27, 2011.")

1. Although, the Respondent/or Defendants, mistakenly misused an indicted a Plaintiff' between the South Carolina District Court, and the Agency's to Attorney General Alan M. Wilson's Office, at case ***#:8:11-cv-01372-TLW*** did not match for each other inside as the Plaintiff **"legal indicted to a true bill in their ruled to that District Court,"** this Court have to see and rule that. Because Petitioner/Plaintiff's failure to follow the reasonable state-court procedure on September 14, 2011, in his response in opposition to Respondent's motion for summary judgment **[Doc. 19]** ("against the Plaintiff's motion to amend/correct the Petition **[Doc. 20]**"). See. *Id.* Now this Court rejected the defendants is claims for failure of the service of process properly had been filed in the records of this case **#: 2005-GS-47-0026** had not been enter legally to the habeas corpus court on ***Sept. 27, 2011*** against the Plaintiff, in the habeas corpus court as the **"REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE [Doc. 24]'s review (see: Attached; (F)(1)(R. p. 23-24. ROA. Below this Motion)"** have the wrong indicted of **Feb. 22, 2006** by the state grand jury as to the fabrication to the photo copies indictment for a ***(1st offense:*** The **§ 44-53-375(C)(5)** fall to be a true bill. This Court now require to remand this case for a retrial. ***Rule 12, SCRCP.*** **"Is a procedural default an affirmative defense to this 4th PCR. Act. Application C/A# 2015-CP-23-04747 Filed on July 31, 2015.")**

2. Thus, the S.C. District Court carefully considered the opposite parties' submissions and the record in this **"case #:*8:11-cv-01372-TLW filed on 09/27/2011,*** the Court recommends that Respondent's motion for summary judgment be granted, Petitioner's motion to amend/correct be denied, and the Petition be denied?" See e.g., *Woodfolk v. Maynard,* 857 F.3d 531, at 542 (4th Cir. May 2017)("Construing the February 22, 2006, indicted by the state grand jury for conspiracy to traffic methamphetamine and trafficking 400 grams or more of methamphetamine. **[Doc. 16-4.]** ***To August 22, 2006."*** Petitioner/Plaintiff pled guilty to two counts; conspiracy to traffic between twenty-eight and 100 grams of methamphetamine, 2nd offense, this hearing as a resentencing the Plaintiff, to a run concurrent sentences. See: [Doc. 16-1 at 8, 11-13; see also Doc. 16-2 at 4.] On April 10, 2007, Petitioner was sentenced to twenty years imprisonment for each count. See, at ***[Doc. 24. Pages 1-2.]*****(See, Attachments: (F)(1-2)(R. Pp. 23-24.ROA),** below this Motion.

3. This Honorable Court holds and support that Mr. Jose Alberto Maldonado's 4th Post-Conviction Relief Action Application is not a successive, "Newly Discovery Evidence, against a Time Limitation Actions under *Woodfolk's* Petition is timely." It is well understood "that a criminal judgment includes both a conviction and its associated sentence." *United States v. Dodson,* 291 F.3d 268, 272 (4th Cir. 2002)(internal quotation marks omitted); see ***Deal v. United States,*** 508 U.S. 129, 132, 113 S. Ct. 1993, 124 L.Ed.2d 44 (1993)("a judgment of conviction includes both the adjudication of guilty and the sentence"); *Teague v. Lane,* 489 U.S. 288 314, n.2 109 S. Ct. 1060, 103 L.Ed.2d 334 (1989)(Plurality Opinion)("As we have often stated, a

Criminal judgment necessarily includes the sentence imposed upon the (Defendant, or Plaintiff)"; see also Greco v. State, 347 Md. 423, 701 A.2d 419, 423 n.4 (1997)("Under Maryland law, a final judgment in a criminal case is comprised of the verdict of guilty, and the rendition of sentence"). The Supreme Court has likewise observed that, for purposes of § 44 (d)(1)(A), "[f]inal judgment in criminal case means sentence. The sentence is the judgment." *Burton v. Steward,* 549 U.S. 147, 156, 157 S. Ct. 793, 166 L.Ed.2d 628 (2007)(per curiam)(quoting, *Berman v. United States,* 302 U.S. 211, 212, 58 S. Ct. 164, 82 L. Ed. 204 (1937)(the Plaintiff was sentenced on each count to serve a twenty (20) years, the term of imprisonment to run concurrently. Under the wrong ***S.C. Code Ann. § 44-53-375(C)(5)*** see – ***Evans v. State,*** 363 S.C. 495, 505, 611 S.E.2d 510, at 516 (2005); see also ***State v. Green,*** 337, S.C. 67, 72, 522 S.E.2d 602, at 605 (S.C. App. 1999), below this Motion, ***"ORDER MOTION TO DESMISS THE INDICTMENTS"*** at **Page 27,** pursuant to S.C. Code Ann. §§ 44-53-370(e) (2) (a), and 44-53-375(C)(2). ("Clearly, any conviction on two remaining charges has legal consequences despite the State's agreement to recommend concurrent sentencing.").

4. The Plaintiff was serving a seven-year sentence for trafficking cocaine at the time he plead guilty to the methamphetamine charges. ***(See, R. Attached: (F)(2), at p. 24. [Doc. 24]'s fn.2 [Doc.16-1 at 18: Doc. 16-3 at 1, 5 (sentencing sheets dated Nov. 29, 2005)].*** The, ***"Execution of this sentence for (7) years was suspended after the Plaintiff Pled guilty on August 22, 2006, and has been sentence on April 10, 2007. Plaintiff did not filed a direct appeal within ten (10) days his consecutives sentence for ineffective assistance of counsel in his illegal Superseding Indictment Case No. 2005-GS-47-0026."*** As a result the limitations period generally does not commence until both the (Petitioner), or Plaintiff's conviction and sentence became final for purposes of ("four post-conviction action application case number 2015-CP-23-04747"), 28 U.S.C.A. § 2244, (d)(1)(A), ***Dodson,*** 291 F. 3d at 272 (2002); including 42 U.S.C.A. § 1983 forms. See also ***Van Schaick v. United States***, 586 F. Supp. 1023 (4th Cir. 1983). See the **("ORDER MOTION TO DESMISS THE INDICTMENTS, at page 26, below this MOTION FOR DEFAULT JUDGMENT").**

¶ E. THIS [PROSECUTION] HAVE THE DUTY TO NOT NAGATE A COURT'S AFFIRMATIVE DEFESES

Thus, the Court have to hold the defendants' in Procedural Default, including Default judgment, Under *Engle v. Isaac,* 456 U.S. 107, 120, 102 S. Ct. 1558, at 1568, Fn. 19, & 20. 71 L.Ed.2d 783 (1982).

1. This Honorable Court have to retroactive a careful review at its prior decisions under the December 13, 2018 Order, reveals that this claim is without merits. ("Against the letter of Megan, filed January 17, 2019"), after this Court filing an Opinion pursuant to Rule 220, SCACR, suggest that the prosecution's constitutional duty to no negate affirmative defenses may depend, at least in part, on the manner in which

a State's defendants' defines the charged crime. Compare *Mullaney v. Wilbur*, 421 U.S. 684, 95 S. Ct. 1881, 44 L. Ed.2d 508 (1975) with *Patterson v. New York*, 432 U.S. 197, 97 S. Ct. 2319, 53 L. Ed.2d 281 (1977)(quoting *Isaac,* 120, 102 S. Ct. at 1568). These decisions, however, do not suggest that whenever a State requires the prosecution to prove a particular circumstances as an element of the burden of disproving an affirmative defense without also designating absence of the defense an element of the crime. The Due Process Clause does not mandate that when a State treats absence of an affirmative defense as an "element" of the crime for one purpose, it must do so for all purposes. Compare the structure of Ohio's Code suggests simply that the State decided to assist defendants by requiring the prosecution to disprove certain affirmative defense. Absent concrete evidence that the Ohio Legislature or courts understood ***§ 290 1.05 (A)*** to go further than this "Court decline to accept defendants' construction of State law: Under ***§ 44-53-375(C)(2)(b)."*** While they attempt to cast their claim in constitutional terms, "This Court believe that this claim does not more than suggest that the instructions at defendants' trial may have violate State law, to prosecuting the conviction with ***§ 44-53-375(C)(5).***" Id.

2. Mr. Maldonado, prays to Honorable Court, do not believe what it is over to Plaintiff's both wrong indicted, however, that the principles of *Isaac,* under *Sykes,* Supra 433 U.S. at 90, 97 S. Ct. at 2508 (1977) lend themselves to this limitation. The cost outlined above do not depend upon the type of claim raised by the prisoner. While the nature of a constitutional claim may affect the calculation of cause and actual prejudice, it does not "alter the need to make that threshold showing."

3 ***("The Court of Appeals affirm, therefore,").*** See Id., hereby, any prisoner bringing a constitutional claim to the federal courthouse after a State Procedural Default must demonstrate cause and actual prejudice before obtaining relief. *Engle v. Isaac,* 456 U.S. 107, 120, 129-30, 102 S. Ct. 1568, at 1573 (1982).

¶ F. OBJECTION TO THE ADMISSION OF THE LETTER FROM JANUARY 17, 2019 WITHOUT OF ANY DOCUMENTS TO A TRUE BILL INDICTMENT HAD NOT BEEN PRESENTED ON THIS PROSECUTION

The, Rule 12 (b) is prejudice the total interior as the Megan's letter, because this Court hold that Megan H. Jameson Defendant, Assist. (AG.,) to the (State)'s Defendants in this **Case #: 2015-CP-23-04757,** failed to properly challenge the sufficiency of service of process. And also this Court need not reach the South Carolina Supreme Court's August 2, 2018 Order to the arguments against a Mr. Maldonado, by the Megan H. Jameson waived the right to contest service by making a "motion for summary judgment, as opposed to motion to dismiss or quash pursuant to Rule 12 SCRCP. U.S. v. United Shoes Machinery Corp. 89 F. Supp. 394 85. U.S.P.Q. 5. Objection to admission of documents as a State's falsity records, this Court overruled."

See at *United States v. Javier*, 599 F. 3d 264 (2nd Cir. 2010)(quoting, *United States v. Hazel,* 106 F.Supp.2d 14. (D.D.C. 2000) citing *United States v. Gomez Santiago* No Crim. 93-0176 (CCC), 2004 WL 329309 (D.P.R. Fed. 5, 2004)'s ("Magistrate Report and Recommendation").

1. This matter is referred to this lower court and South Carolina Supreme Court as Hon: Beatty J., to "ruling the issuance of summons with a hearing, if the parties or defendants have to be notified to appear." Because the defendants have chosen to dismiss the Plaintiff's criminal charges against the **("Case Operation Ice Cream SLED c/a# 48-05-0004, (See, Attachments: (H)(1-2)(R. Pp 31-32); (Attachments; (J)(1-2)(R. Pp. 33-34); Attachments:(I)(1, 2-3)(R. Pp. 35, 36-37. Record on Evidence); & the James H. Price III's letter had been addressed to Hon: James W. Johnson, Jr. c/o Richard County General Sessions Court, on a sealed indictment from January 23, 2006, defense counsel notify at the time of January 23, 2006. I was arraigned on a fake sealed indictment by the SC. Atty. Gen. Office in the Statewide Grand Jury on the 2005-GS-47-0026. (See, Attached: (I)(4)(R. P. 38).").**

2. It is clear that when no summons are issued, or the issuance occurs after the expiration of Rule 3(a)(2) SCRCP, no tolling effect occurs and a count does that have jurisdiction to held a hearing relating to a violation that occurred within the term. See *United States v. Hazel,* 106 F. Supp. 2d 14, 15. Court lacked Jurisdiction to holds the defendants in default judgment, when a hearing's pending after the expiration of the 120 days stated of rule 3(a)(2) SCRCP, because no Court ruling the letter from August 17, 201. The lower court neither the Supreme Court has been ruled such letter to Plaintiff exhausted his remedies or filed any objection against the defendants. When the summons was issued against the S.C. Supreme Court's Order, directly to the lower court to correct the case number on the remittitur to reflect "lower court case number 2015-CP-23-04747 on December 13. 2018 the SC. Supreme Court Ordered that. Once exhaustion is excused, federal court has power to review merits of petitioner's habeas petition to extent that it raises federal issues. Clause 28 U.S.C.A. 2254(b), and 2244, see e.g., ***Harris v. Champion***, 15 F. 3d 1538, 1553, (10th Cir. 19994) the opposite parties had the duty to submitted documentary and testimonial evidence to the court concerning delays by the Attorney General and South Carolina Supreme Court as well as cumulative delays in the system. ***Duffy v. Mass. Dept. of Corr.*** 746 F. Supp. 232-34's Fn.2 (1990).

3. This Court found no evidence of systemic delay in filing briefs by the Attorney General and also determined that although delay by the Supreme Court of Criminal Appeals may have been inordinate in individual cases, it had not been systemic. The lower court further concluded that there was no cumulative inordinate systemic delay at present. The court held that a delay in adjudicating an appeal of more than two (2) years, from the notice of appeal or order permitting an appeal out of time to issuance of an opinion

would be presumed to be unconstitutional "absent a showing of good and sufficient cause or special circumstances. See Id. *Champion,* 1554." This Court again ruled it, before a habeas corpus under § 2244 (d)(1)(A), under *Dodson,* 291 F. 3d at 272 (4th Cir. 2002) could assert unconstitutional delay in this Court, Plaintiff first had to raise the issue to this Court of Criminal Appeal and permit it to take appropriate action.

4. "[W]here state procedural snarls or obstacles preclude an effective state remedy against unconstitutional convictions, federal courts have no other choice but to grant relief in the collateral proceeding citing this 4th PCR. Action Application filed on July 31, 2015's Original Case No. 2015-CP-23-04747." *Harris, v. Champion*, 15 F.3d at 1555.(Quoting, *Bartone v. United States*, 375 U.S. 52, 54, 84 S. Ct. 21, 22, 11 L. Ed. 2d 11 (1963); see also Hankings v. Fulcomer, 941 F.2d 246, 250 (3rd Cir. 1991). ("[T]he principle of comity weighs less heavily [when] the state has had an ample opportunity to pass upon the matter and failed to sufficiently explain ... delay."); *United States ex rel. Hankins v. Wicker,* 582 F. Supp. 180, 182 (W.D. Pa. 1984) ("If an appropriate remedy does not exist or its utilization is frustrated in the state system, ... [t]he deference accorded the state judicial process must give way to the primary role of the federal courts to redress constitutional deprivations."), aff'd, 782 F.2d 1028 (3rd Cir) (table), cert. denied, 479 U.S. 831, 107 S. Ct. 118, 93 L.Ed.2d 64 (1986). ***Duffy***, 746 F. Supp. at 233's *fn.1* (D. Mass. 1990).

5. Thus, "inexcusable or inordinate delay by the state in processing claims for relief" may make the state process ineffective to protect the Petitioner/Plaintiff's rights and excuse exhaustion. *Wojtczak v. Fulcomer,* 800 F.2d 353, 354 (3rd Cir. 1986); *accord Hill v. Reynolds*, 942 F.2d at 1496 ("[T]he delay in [PETITIONER/PLAINTIFF] faced in having a notice of appeal filed proves his state remedies ineffective."). In *Way v. Crouse*, 421 F. 2d 145, 146-47 (10th Cir. 1970), the *Harris v. Champion*, 15 F.3d at 1555's court concluded that it was proper for a habeas petitioner who had experienced an eighteen-months (18) or more delay in the adjudication of his direct criminal/or notice of appeal (4th PCR.) to "seek vindication of his asserted constitutional application" in the federal, rather than the state, courts. Nothing that "'[t]he concept of federal-state comity involves mutuality of responsibilities, and an unacted upon responsibility can relieve one comity partner from continuous deference,'" this Honorable Court vacate the order from August 2, 2018, and denied the letter issue dated January 17, 2019's arguments and ruled the 4th PCR. Action Application's case number 2015-CP-23-04747, for failure to the lower court is denied, the Plaintiff's 4th PCR. Action, application, ***"within the wrong case number 2015-CP-23-04757."*** *Patterson v. Leeke,* 556 F.2d 1168, 1170 (4th Cir.), cert. denied, 434 U.S. 929, 98 S. Ct. 414, 54 L.Ed.2d 119 (1987). "Although there is a strong presumption in favor of requiring the Plaintiff to pursue his available state remedies, his failure to do so is not an absolute bar to appellate consideration of his claims." *Granberry v. Green,* 481 U.S. 129,

131, 107 S. Ct. 1671, 1674, 95 L. Ed.2d 119 (1987)(quoting Champion, 15 F.3d at 1554). The State may waive Plaintiff's failure to exhaust by failing to raise the defense in federal district court. Id. at 107 S. Ct. at 1675. Likewise, some cases may present special circumstances that make it "appropriate for an appellate court to address the merits of a habeas corpus petition notwithstanding the lack of complete exhaustion." Id. at *Champion,* at Pp. 1554-55, at 131, 107 S. Ct. at 1673; Frisbie v. Collins, 342 U.S. 519, 72 S. Ct. 509, 511, 96 L.Ed.2d 541 (1952). One such circumstance is when the State's process is inadequate to protect a prisoner's rights. ***Duffy,*** at, Page, 233's *Fn.2;* See 28 U.S.C. § 2254(b); *Darr,* 339 U.S. at 210, 70 S. Ct. at 593.

¶ G. THIS PROSECUTION HAVE TO SERVE THE FULL RECORDS TO RESPOND THE PLAINTIFF'S ISSUE FILED SUMMONS AND COMPLAINT ISSUE DATED ON JANUARY 9, 2019

This argument is completely meritless. See e.g., Fed. Rule of Criminal Procedure 4(c)(2) clearly defines the form that a summons must take. It must be in the same form as the "arrest warrant," hereby, Megan H. Jameson is duty as to prove the validity of Plaintiff is incarceration, were the sentence is invalidity inside to the South Carolina Department of Correction ("SCDC") at Kershaw CI. As the Policy OP-21-09 ¶ [2] INMATE RECORDS PLANT AND ACTIVATING INMATE RECORDS PLAN/MATTER OF INSUFFICIENT AND CONSTRUCTION OF SENTENCE IMPOSED. See, at PLAINTIFF/APPELLANT'S REPLY BRIEF TO INITIAL BRIEF OF RESPONDENT ('ALC Case No. 15-ALJ040567-AP, Appellate Case No. 2016-001274) cert. denied February 1, 2018, see Exhibit (E. 7)(R. p. 67). See id., *Champion,* 15 F.3d 1555. Constitutional deprivations.

1. Thus, the prosecution failed to identify the valid sentence as the "Legal Warrant", "Legal Indictment for a second offense" including that no "motion of discovery evidence assisted in Rule 5 SCRCrimP." Under Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 10 L.Ed.2d 215 (1963). ("[S]uppression by prosecution of evidence favorable to an accused upon request violate due process where evidence is material either to guilty or to punishment, irrespective of good faith or bad faith of prosecution U.S.C.A. Const. Amend. 14.

2. Hereby State courts, State agencies and state legislatures are final expositors of State law under our Federal regime. Against the S.C. Const. Art. I. § 11, art. V. § 22."). **Compared the "Maryland Constitution, Art. 15. § 5." by the South Carolina Const. Art. III. § 26, stated as follows**:

Article III. § 26 Oath of office. "Members of the General Assembly, and all officers, before they enter upon the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take and subscribe the following oath: "I do solemnly swear (or affirm) that I am duly quailed, according to the Constitution of this State," to exercise the duties of the office to which I have been elected, (or appointed), and preserve, protect and defend the Constitution of this State and of the United States. ***So help me God."*** See also S.C. Const. Art. V. § 26. *State v. Gist,* 237 S.C. 262, 116 S.E.2d 856 (1960); *State v. Brown* v. 201 S.C. 417, 23 S.E.2d 381 (1942).

This Prosecution within the Officers involving in this Case 2005-GS-47-0026, will against the South Carolina Constitution for misconduct or neglect of duty, states as follows:

S. C. Article III. § 27. To the Officers shall be removed for incapacity, ***"misconduct or neglect of duty,"*** in such manner as may be provided by law, when no mode of trial or removal is provided in this Constitution. S.C. Const. Art VI. § 4, see, at S.C. Legislative Manual State Government (2006)'s (R. p. 471) Ethics Commission, State. Created by S.C. Code Ann. § 8-13-310. et seq. And the ("SLED")'s S.C. Code Ann. § 23-3-10. "It was initially created by Executive Order of the Governor in 1974 to replace the State Constabulary which had been for many years the investigative arm of the government of the State. **S.C. Art. VI. § 8** ***"Suspension and Prosecution of Officers Accused of Crime."*** State Ex rel Thompson v. Seigler, 230 S.C. 115, 122, S.E.2d 231, at 234-35 (1956)(quoting, State v. Ballentine, 152 S.C. 365, 150 S.E. 46 66 A.L.R. 574 (1929)(citing, Wilson v. State, 169 U.S. 586 18 S.Ct. 435 42 L. Ed. 865 (1898); Hodges v. Rainey, 341 S.C. 79, at 89, 533 S.E.2d 578 (2000)(quoting, Justice v. Pant, 330 S.C. 37, 43-44, S.E.2d 871, 874 (Ct. App. 1998); citing, State v. Hood, 181 S.C. 488, 188 S.E. 134, 136 (1936).

¶ (H). EQUAL PROTETION OF LAWS AGAINST ARBITRARY ACTION OF GOVERNMENT/SUBJECT TO STATUTORY RESTRICTION WITHOUT ANY VIOLATION OF SEPARATION OF POWERS DOTRINE

The South Carolina Constitution Article I. § 3. Explain that, "Equal protection of laws," holding the statutory provision in violation to the S.C. lower court or "Supreme Court", and "Court of Appeals", and also the "District Court in the habeas corpus's judgment" to September 11, 2011.

1. Thus, the Plaintiff arguing and assert it, pursuant this Art. I. § 3, the illegal sentence and the delay proceeding against the prosecution between the courts generally analyze equal protection challenges under one of three standards: (1) rational basis; (2) intermediate scrutiny; or (3) strict scrutiny. See, art. I. § 3, at note 26, pursuant, Moore v. Moore, 376 S.C. 467, 747, 657 S.E.2d 743, at 474 (2008)(quoting, State ex rel. Williams v. Marsh, 626 S.W. 2d 223, 230 (Mo. 1982)(citing, Wolff v. McDonnell, 418 U.S. 539, 558, 94 S. Ct. 2963, 2976 41 L. Ed 623 (1974) under Dent v. State of W. Va. 129 U.S. 114, 123, 9 S. Ct. 213, 233, 32 L. Ed 623 (1889))("[t]he Court's duty as to ruling that a person's liberty is equally protected, even when the liberty itself is a statutory creation of the State.").

2. When the touchstone of due process is protection of the individual *"against arbitrary action of government,* See, id. Dent v. W. Va., 129 U.S. 114, 123 (1889)." Equal protection requires all persons to be treated alike under like circumstances and conditions, both in privileges conferred and liabilities imposed.

3. Thus the procedures available under the Act must meet the Constitutional standard. State v. Brown 178 S.C. 294, 182 S.E. 838, 841 (1935); ***Ex parte*** **Wall,** 107 U.S. 265, 2 S. Ct. 567, 27 L Ed. 552 (1883)*("[A] court has power to exercise a summary jurisdiction over its attorneys to compel them to act honestly towards their clients, and to punish them by fine and imprisonment for misconduct and, in gross cases of*

misconduct, to strike their names from the roll").

4. The mere form of the proceedings did not require the Supreme Court to interpose by the extraordinary remedy of **"mandamus to compel"** the lower court from thirteenth judicial circuit court against the *"4th PCR Action Application Civil Case No. 2015-CP-23-04747, Perry H. Gravely Chief Administrative judge for Common Pleas to vacate the order from September 1, 2017, had been enter to the lower court's clerk and signed August 24, 2017."* And 'granted the Solicitor's Office W. Walter Wilkins, and Megan H. Jameson, its wrong civil action case number' upon the Jose A. Maldonado Plaintiff's 4th PCR. Action Application, the Defendants' did and violate equal protection, despite claim that solicitor had sough denied *("4th post conviction relief action application")* with a wrong case number from the lower court's original docket as the clerk of court in this Court, when they instead ***("a fake case 2015-CP-23-04757. Against, § 17-27-40).*** *State v. De La Cruz,* 302 S.C. 13, 15, 16, 393 S.E.2d 184's Fn.3, **186** (1990) "judicial discretion in sentencing, in suspending sentences, and in designating that sentences run concurrent or consecutive is subject to statutory restriction without any violation of separation of powers doctrine. – **S.C. Code 1976 §§ 44-53-375 (C) (5), 44-53-375 (C) (2) (b), 17-27-40 and S.C. Const. Art. I. § 8.**

¶ I. A STATE'S CRIMINAL PROCEEDING AGAINST SUBORNATION TO A FEDERAL OFFICER AND THUS IT'S REQUIRE REMOVAL TO FEDERAL COURT UNDER 28 U.S.C.A. § 1442, AND (INA § 245; 8 U.S.C.A. § 1255): THIS COURT HAVE TO SUPPORT DUE PROCESS OF LAWS AGAINST THE STATE'S PROSECUTION IN FEDERAL COURT, TO PLAINTIFF SUING THAT THE STATE'S AGENCIES, INCLUDING "STATE MAGISTRATES, FEDERAL OFFICERS OR AGENCIES SUING OR PROSECUTING. Pursuant to Form EOIR-42B. CANSELATION OF REMOVAL AND ADJUSTMENT OF STATUS FOR CERTAIN NON PERMANENT RESIDENTS." U.S.C.A. Const. Amend. 14, and 42 U.S.C.A. § 1983

See, **Arizona v. Manypenny, 451 U.S. 232, at 241-42, 101 S. Ct. 1657's 15-16, 1664-65, 68 L. Ed. 2d 58 (1981)** "The Court of Appeals concluded that the fact of removal substantially alters the State's right to seek review."

1. Reasoning that a case brought pursuant to ***28 U.S.C.A. § 1442(a)(1)*** arises under federal law, the court held that state enabling statutes retain no significance. But a state criminal proceeding against a federal officer that is removed to federal court does not "arise under federal law" in this pre – empting sense. Rather, the federal court conducts the trial under federal rules of procedure while applying the criminal law of the State. Citing, *Tennessee v. Davis,* 100 U.S. 257, 271-272, 25 l. Ed. 648 (1880). See ***Fed. Rule Crim. Proc. 54(b)(1), Advisory Committee note 18, U.S.C. App., 1480-1481.***

2. This principle is entirely consistent with the purpose underlying the removal of proceedings commenced in state court against a federal officer. Historically, removal under **§ 1442(a)(1),** and its

predecessor statutes was meant to ensure a federal forum in any case where a federal official is entitled to raise a defense arising out his official duties. See, ante of this Motion, at *(R. Pp. 7-8, Plaintiff arguments in his Habeas Corpus Petition filed June 2, 2011 under 2254 Case* ***No. 8:11-cv-01372).*** *Instead;* ***§ 1442.***

3. The act of removal permits a trial upon the merits of the state-law question free from local interest or prejudice. See *Colorado v. Symes,* 286 U.S. 510 517-518, 52 s. Ct. 635, 637, 76 L. Ed. 1253 (1932)*(State of Maryland v. Soper,* 270 U.S. 9 46 S. Ct. 185, 190 70 L. Ed. 449 (1926)(quoting, *Davis v. South Carolina,* 107 U.S. 597, 2 S. Ct. 636, 27 Ed. 574 (1883)). See. id., at ***Plaintiff's Case No. 8:11-cv-01372-TLW.***

5. It also enable the defendants' to have the validity of his immunity defense adjudicated, in a federal forum. *Williangham v. Morgan,* 395 U.S. 402, 407, 89 S. Ct. 1813, 1816 23 L. Ed.2d 396 (1969).

For these reasons this Court has to held that the right of removal is absolute for conduct performed under color of federal office, and has insisted that the policy favoring removal "should not be frustrated by narrow, grudging interpretation of ***§ 1442(a)(1) ; See, INA §§ 245; 8 U.S.C.A. 1255; hereby INA § 101 (f), and 8 U.S.C.A. 1101 (f)(2006 & Supp. 2008)." Objection in this case #: 2005-GS-47-0026 it is not a crime against the Plaintiff, and him is able to removal under a "fee Waiver request Form EOIR-26A 'Application for Forms of Relief"" this "Form against the Prosecution is Case no. 2005-GS-47-0026's Operation Ice-Cream Case 48-05-0004 from SC. law Enforcement Division S/A Max Dorsey ("SLED")."***

"...That Plaintiff against the prosecution under false imprisonment in accordance to the (SLED)'s report upon the ***"indictments information"*** or any government to meet this burden by producing criminal records from the criminal records from the criminal lower court in the Greenville County. Including ***(SCDC)'s Policy OP-21-09¶[2, 7. & 3.6].*** See e.g., ***Santapaola v. Ashcroft,*** 246 F. Supp. 2d 181, 189-90 (D. Conn. 2003) for a list of documents that can be used as a record of conviction..."

–This Hon: Court have to note that the relevant sentence is not what could possibly have been imposed by the statute under which Plaintiff were convicted, but instead the actual sentence under S.C. Code Ann. § 44-53-375(C)(2)(b) were the general session court give. See at *Clair v. State,* 363 S.C. 144, 478 S.E.2d 54 (1994); see also *Ahmed v. AG* of the United States 212 Fed. Appx. 133, 135 (3rd Cir. 2007). (instructing court to look to the sentence imposed).

6. However, in a case where Plaintiff are originally sentenced to trafficking in cocaine first offense under ***(Indictments,*** **No(s).** ***2003-GS-23-04545,2003-GS-23-00454)*** and then resentenced after a trafficking methamphetamine for a second offense violation to ***(Indictment of Case No. 2005-GS-47-0026,*** pursuant § 44-53-375 (C)(5) rev'd and remanding, as a violation to the language of Section 44-53-375(C)(2)(b) this Court will treat the modified sentence as the sentence originally imposed for immigration purpose.). See ***In re Roberts,*** 20 I.

& N. Dec. 294, 302 (BIA 1991)(explaining that an applicant convicted for the sale of cocaine must have unusual or outstanding favorable factors, reasoning that immigration judges may not reassess an applicant's guilty or evidence, and finding that such favorable factors were not shown). Instead Adjustment of Status pursuant to ***INA § 245; 8 U.S.C.A. 1255 (2006). Plaintiff here is to "Apply for cancelation of removal and adjustment of status for certain nonpermanent residents is called*** a ***FORM EOIR-42B."*** As a petition in federal court —For Writ of Habeas Corpus, ***"emergency bond hearing,"*** and stay of deportation— Expiration of removal period renders detention unlawful. 8 U.S.C. A. § 1231(a). When the (State)'s government wrongfully maintains that such detention is permissible under § 44-53-375(C)(5) because of the falsity to 20-years statutory authority for such imprisonment; and/now that Plaintiff can be physically removed quickly to immigration judge enough to justify such imprisonment after this Honorable Court Ordered removal period expired the thirty – 30 days Plaintiff cited in his previously filed deadline summons and complaint against the Defendants issue dated January 9th 2019. *Riddle v. Ozmint,* 369 S.C. 39, 47-48, 631 S.E.2d 70, 75 (2006). Rev'd (Citing, ***Simmons v. State,*** 416 S.C. 584, 592, 788 S.E.2d 220, at 225 (2016)(holding; the Supreme Court, *Kitlredge,* J., held that extraordinary action of remanding application for post-conviction relief based on unpreserved error was warranted). U.S.C.A. Const. Amend. 14; S.C. Code Ann. § 17-27-80; S.C. R. Civ. 52(a), & 59(e).

7. The Supreme Court must affirm the (4th post – conviction relief action application court's findings if they are supported by any competent evidence of probative value in the record. See e.g., *Webb v. State,* 287 S.C. 237, S.E.2d 839 (1984) "when a petition for certiorari under Rule 50(9) is granted, this Court shall advance on the Plaintiff's original docket 4th PCR. Action Application 2015-CP-23-04747" and give preference to the appeal) (quoting, ***Washington v. State,*** 324 S.C. 232, 236, 478 S.E.2d 833, 835 (1996). The failure to correct false evidence is as reprehensible as its presentation See at 75, 631 S.E.2d at 48. "The Supreme Court didn't disagree. The issue is not why Megan failed to tell the truth; rather it is why the Walter Wilkins, Solicitor, who knew Megan H. Jameson's testimony in the Final Order of Dismissal be false, failed to correct it." id., at, ***Simmons,*** 592, 788 S.E.2d at 225 (2016). "[A] prosecutor's deliberate files, "Return and Motion to Dismiss issued on March 8 2017", "Conditional Order of Dismissal issued on March 13, 2017" "Final Order of Dismissal Issued on July 21, 2017", including the "Order filed on September 1, 2017", deception of a court [and] S.C. Supreme Court by the presentation of known false evidence pursuant to their wrong case number at 2015-CP-23-4757 is incompatible with rudimentary demands of justice ***Giulio v. United States,*** 405 U.S. 150, 253, 92 S. Ct. 763, 31 L.Ed.2d 104 (1972). The failure to correct false evidence is as reprehensible as its presentation ***Washington v. State,*** 324 S.C. 232, 236, 478 S.E.2d 833, at, 835 (1996).

¶ J. THE PLAINTIFF, DEMAND IT TO THE LOWER COURT TO PERFECT THE PERRY H. GRAVALY ITS ORDER FROM SEPTEMBER 1, 2017 TO REFLECT THE 4TH PCR. ACTION'S ORIGINAL CIVIL CASE NUMBER 2015-CP-23-04747 AND GRANTING THE 4TH PCR. ACTION APPLICATION

Thus, this Court should have conduct in camera review to determine whether defendants was entitled to discovery of such information, but error in failing to conduct in camera review was harmless.

1. As this Court understand defendant's letter from January 17, 2019 argument from the Supreme Court's Order August 2, 2018 he seeks the proficiency test results not to attack the methodology used or results obtained in his ["false particular case No. 2015-CP-23-04757's dismissal Orders from lower court"]. But as the predicate for his, or the ***["clerk of court is original docket under § 17-27-40 to support to '4TH PCR. ACTION APPLICATION judge who presided the Plaintiff's application error rate.'"]*** In return, defendant Megan H Jameson introduce the letter from January 17, 2019 to support would use that rate to evaluate the accuracy *"presided judge Perry H. Gravely is probability estimates of this wrong case number **2015-CP-23-04757,"*** for example, the clerk of court, written report states that the probability of an individual unrelated to the "Original Civil Action Case 2015-CP-23-04747 clock-stamped did not match by the denial order from September 1, 2017 to Plaintiff's 4th PCR. Action Application filed on July 31, 2015." Obtained from the lower court clerk of court 13th judicial circuit, the evidence is incompetent to a denied the hold records from such 4th PCR. Action Application with the lower court for the common – pleas and did not match to Plaintiff is original civil case. See, ***S.C. Code 1976 § 17-27-40, and S.C. Const. Art. I, § 8.***

1. Further, if the Defendants is proficiency test result to false presence in his wrong civil action case No. 2015-CP-23-04757, their does not perfect the Preside Judge Perry H. Gravely its entire denied orders upon such falsity civil action case number, as represented by assistant attorney general Megan Harrigan Jameson, then, they could potentially be used as impeachment evidence. ***Brady v. Maryland,*** 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed.2d 215 (1963), ***Evans v. State, at p. 516 (2005)*** and Rule 5(a)(1)(C)(D), SCRCrim. P.

2. The Materiality test in the hold record on appeal's 4th PCR. Action Application to Plaintiff as the Original Case Number ... including the allegation against the valid sentences upon of Section 44-53-375(C)(2)(b). et seq. *State v. Kennerly,* 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998)(Nature and Elements of Contempt), aff'd 337 S.C. 617, 524 S.E.2d 837 (1999). ***Evans,*** 505, 611 S.E.2d 510, at 516 (2005).

3. Evidence is material under ***Brady*** if there is a reasonable probability that had the evidence been disclosed, the result of the proceeding would have been different. *State v. Van Dohlen,* 322 S.C. 234, 471 S.E.2d 689 (1996). Impeachment evidence, as well as evidence that is relevant to guilty or punishment, can be material. Id. See, e.g., *Simmons v. State*, 416 S.C. 584, 788 S.E.2d 220, at 225 (2016)(Quoting,

Riddle v. Ozmint, 369 S.C. 38, 47-48, 631, 70, 75 (2006)(same); *Napue v. Illinois,* 360 U.S. 264, 269, 79 s. Ct. 1173, 3 L.Ed 1217 (1959). **S.C. Code Ann. §§ 17-27-20(A)(4); 17-27-80 (2014)**(same); *Washington v. State,* 324 S.C. 232, 478 S.E.2d 833 (1996).

¶ K. THIS COURT RULING THE 4TH PCR. ACTION APPLICATION FOR NEWLY DISCOVERED EVIDENCE

The S.C. Supreme Court Order of December 13, 2018 found "the undisclosed proficiency test results could very well be material to [defendants] a legal indictments/or plaintiff's seal indicted case as require to the filed "4th PCR. Action Application with the lower court on July 31, 2015," and now is support to this Request/Motion for Default Judgment for impeachment and important for cross-examination purposes" and remanding. So now that a circuit court judge could reconsider whether to order disclosure of the hold record on appeals in the (four post-conviction relief action application). Test results. While this Court agree that denied the Megan's letter to January 17, 2019 was flawed, and ordered a pretrial hearing. So this Court finding an error warranting a remand. Civil Case No. 2015-CP-23-04747; and dismissing the ***(Indictment its Information Case No. 2005-GS-47-0026). Citing S.C. Code Ann. §§ 17-27-20(A)(4)/-27-80.***

1. Except "that it shall summons had been filed against the defendants to appear before a Judicial Justice at a stated place and time" as the Greenville County's courthouse for the Common pleas, and must describe the offenses charged. *Albrecht v. United State,* 273 U.S.1, 6, 47 S. Ct. 250 71 L. Ed. 505 (1927) citing, *Ex Part Burford, 3 Cranch,* 448, 453, 2. Ld. 495; *United States v. Michaldski* (D.C) 265 F. 839 (1919). See, Id. at 273 U.S. 1, AT 10 (1927) as a Rule 4(b)(2), and must describe the offenses charged.

2. Applying this standard to S.C. Supreme Court when has not obtained a "summons." But, Although Judge Perry H. Gravely, or Hon: Beatty, Justice Chief, Supreme Court Judge authorize the ruling that issuance of summons to allow this ***"RETURN AND MEMORANDUM IN SUPPORT OF MOTION/REQUEST FOR DEFAULT JUDGMENT"*** against a defendants, that is not the same to the ORDER from Dec. 13, 2018 without been summoned, as actually issuing it. See, e.g., *United States v. Schmidt* 99, F.3d 315, 318 (9th Cir. 1996)(distinguishing between a Supreme Court's Order of "December 13, 2018" that a summons as mandatory issued and the eventual issuance of the summons itself). See, *United States v. Merlino*, 785 F.3d 79, at 86, (3rd Cir. 2015) citing, *United States v. Bernardine*, 237 F.3d 1279, 1282 (11th Cir. 2001) "the **Megan H. Jameson rise its defense, and argues that S.C. Supreme Court's Order from August 2, 2018 is a jurisdictional, against the Plaintiff to prohibit him to filed any further collateral actions, in the circuit court, without first obtaining permission to do so within the South Carolina Supreme Court," "Enter this Permission pursuant to the S.C. Supreme Court's Order of Dec. 13, 2018 against such unconstitutional**

Letter from January 17, 2019." This letter had been addressed without a brief or any motion only within the S.C. Supreme Court's order of August 2, 2018 by prosecuted or denied the Plaintiff access to the Court explained to This Court that he did not received any documentation or notification that Mr. Maldonado has been granted permission from the S.C. Supreme Court for filing of these various documents, Mr. Megan, also "requested it to Perry H. Gravely judge," and had been ignore the Filed Order from This Hon: Supreme Court to *Dec. 13, 2018."* The lower court now decline to file the documents necessary against this letter based on the Supreme Court Order from December 13, 2018.

3. This Court have to issue a new Order to directing the issuance of a summons, taken in combination with notice to that Jose A. Maldonado as the Plaintiff's filed "summons and complaint" satisfied the Rule ***3(a)(1)(2), SCRCP,*** that requirement to "summons [be] issued" after the Defendant had been notify from the Court's Order of ***("December 13, 2018")....***

¶ L. THE JURISDICTION OF SUMMONS ITS DEFINITION'S TO A CIVIL AND CRIMINAL PROCEEDING

Although these definition lack controlling weight in this context. See, e. g., *United States v. Benardine,* 237 F.3d 1279, 2181's Fn.1 (11th Cir. 2001), they reaffirm that a summons traditionally is a document afforded special weight due to its role in the formal initiation of both ***"civil and criminal proceedings."*** (***See, Black's Law Dictionary 1665 (10th ed. 2014)***(defining summons as a "writ or process commencing the Plaintiff's action and requiring the defendants to appear and answer"); *Ballentine's Law Dictionary 1238 (3rd ed. 1969)*(defining summons as "original process upon a proper service of which an action is commenced and the defendant therein named brought within the jurisdiction of the court.").

1. To repeat, the defendants is position is that the Dec. 13, 2018 Order directing the issuance of a Summons, Which was served by email from S.C. Kershaw Correction Institution's "mail room clerk" with an Certificate of Service filed a copy to the Greenville County's Clerk of Court, and Counsel of records Mr. Alan M. Wilson at his Office. (See, Attached (S)(4)(R. Pg. 71, below this Files had been notarized on January 9, 2019), **functionally served as a summons**:

"...It put a Mr. Megan H. Jameson on notice of his obligation to appear, and did so prior to the expiration of the term the Plaintiff cited as thirty – (30) days; (see Attached; (R)(1)(R. Pg., 63, below this files, as the "Summons"). At Term of Rule 3(a)(1)(2), SCRCP...."

2. But crucially, the August 2, 2018 Order fails to meet even the text letter of January 17, 2019, definition to a void the Plaintiff's "Summons and Complaint" filed on January 9, 2019, because it does "require[d] the defendant to appear and answer." at term of South Carolina Rule of Civil Procedure Rule 3(a)(1)(2).

See, Black's Law Dictionary 1665. Because the Supreme Court's August 2, 2018 Order is null and void and forth that it is not jurisdictional against the ("Four PCR. Act. Application is Ground for Release") by the ruled to S.C. Supreme Court.

3. So far, the ruled of this Hon: Supreme Court addressed to the lower court issued on December 13, 2018 as to apprise the lower court to do so to reverse and remand the ***"4th PCR. Act. Application",*** and permitted, and authorized the issuance of a summons and complaint, because this Court did not Ordered with thing the Dec. 13, 2019's Order directly to Plaintiff, or the lower court a time limitation to fixed the remittitur with the right case number. ***Overruling this filed: "MOTION ORDER TO CORRECT THE CASE NUMBER TO THE REMITTITUR/FOURTH PCR. APPLICATION'S ORDERS OF DISMISSAL TO REFLECT LOWER COURT CASE NUMBER 2015-CP-23-04747"*** *This*, Court have to ruling this matter to the lower court after failed to rule that? Enter this section against the lower court's invalid "orders" **SC Code 1976 § 17-27-40.**

4. Further, the Mr. Jose A. Maldonado's 4th PCR Action Application would have never been legally within as the wrong civil case number 2015-CP-23-04757 and now the defendants have to support this **["R]eturn And Memorandum In Support of Motion Request For Default Judgment ... to appear and answer"** absent to ***December 13, 2018 Order*** ("which the summons and complaint issued only after the S.C. Supreme Court release the Order to the Clerk of Court and this lower Court did not retroactive the summons to the respondents to appear and answer the Order"). See, ***id.***

5. Mr. Jose Alberto Maldonado moved for a judgment of acquittal on the ground that lower court fail and ruled that Supreme Court its Order to Dec. 13. 2018 and now this Court ruling the Order and ordered the defendants to appear and answer that a reasonably specify a valid order from August 2, 2018 after the summons had been issued to the lower court's clerk. The Court determined that the probation of **"RETURN AND MEMORANDUM IN SUPPORT OF MOTION REQUEST FOR DEFAULT JUDGMENT"** enter against the defendants, and acting under the authority of this Court when Plaintiff issued the Summons.

6. Thus the Court have jurisdiction to ruling by latter this Court Ordering the defendant to present is valid legal sentenced upon the Plaintiff. See 18 U.S.C. § 401(1)(2), & (3) Plaintiff, rise his allegation that:

"[O]n or about December 13, 2018 ... the defendants ... knowingly and willfully, and in disobedience to correct the case's number on the "remittitur to reflect lower court case number as 2015-CP-23-04747" therein came from the Order of South Carolina Supreme Court, therefore the Court reversed the conviction to Plaintiff, in the December 13, 2018 Order, when had been entered against the "Lower Court, and commands of the Dec. 13, 2018's Order ... did and failed to rule for an initial appearance to a violation of summons and complaint, within the Plaintiff's ***Exhibits Record on Appeal***, as ordered by the Court..."""

See, *United States v. Maull, U.S. District Court E. D. Virginia, Norfolk Division Nov. 17, 2015* — F. Supp. 3d 2015 WL 8329760 116 A.F.T.R. 2d 2015-6817. For those reasons the Plaintiff's **"RETURN AND MEMORANDUM IN SUPPORT OF MOTION REQUEST FOR DEFAULT JUDGMENT would be granting."** Plaintiff here is awarded judgment pursuant to Rule 54(c), SCRCP.

7. "Defendants" or "Plaintiff" may appeal after this Court issued their Opinion with a case law as the ***Rule 220, SCACR,*** by either the Defendant or Plaintiff forwarding a writing notice of appeal to the Clerk of The United States District Court In South Carolina, including the Immigration Court have jurisdiction over the Plaintiff's invalid sentences, by review the invalid claims from defendants for purpose to the ***Immigration statutes as INA § 245 8 U. S.C.A. § 1255.*** See at, *Santa Paola v. Asheroft,* 246 F. Supp. 2d 181, 189-90 (D. Conn. 2003); *United States v. Volpe,* 943 F. Supp. 1211 (N. D. Cal. 1996)*("on January 9, 2019 the Lower Court from Greenville timely received a filed Order to Correct the Case Number to the Remittitur/4th PCR. Action's Orders of Dismissal to Reflect Lower Court Case No. 2015-CP-23-04747, with a Summons and Complaint, in the above – captioned matter on the following persons, "filed motion" for "Reconsideration of the S.C. Supreme Court's Order to December 13, 2018.").* The Defendant's motion is presently pending. See Id.

United States v. Alongi, 346 F. Supp. 2d 394, 396 (2004), this Court ORDERED, that the parties are directed to report forthwith to United States South Carolina Supreme Court as to Hon: Beatty, set at new schedule Order for discovery or to compel the illegal sentence at case #: 2005-GS-47-26 within as the right Valid 4th PCR. Action Application, issue dated on July 15, 2015. So now as a00 ORDERED.

¶ M. THE COURT SHALL AS TO FINDINGS OF FACTS AND CONCLUSION OF LAW

This case is before the court for a determination of summons and complaint followings an entry of default and subsequent order by Hon: Beatty CJ., when this Court issued on Dec. 13, 2018 the Honorable Judge considered the Plaintiff is original "4th PCR Action Application's case number." And now this Court granting Plaintiff's ***"RETURN AND MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT"*** against the defendants.

1. This Court require to ordering an evidentiary hearing to the issuance order from Dec. 13. 2018, to compel the August 2, 2018, as the defense to defendants in their letter of January 17, 2019. Plaintiff prays to Honorable Court, to grant this Motion for default judgment and for failure to prosecuting the Court's Order constitutes the Court's finding of facts and conclusion of law in accordance with Rule 52(a), of the South Carolina Rules of Civil Procedure. See, e.g, *Blue v. Marshall, United States District Court, N. D.*

Indiana South Bend Division 1996 —F. Supp. — 1995 WL 853120. Hereby, plaintiff, "George E. Blue," him was an inmate at the Westville Correctional Center ("WCC") in Westville, Indiana. On Dec. 8, 1994 he filed a pro se complaint pursuant to 42 U.S.C. § 1983 against several correctional employees, including Lt. C. Marshall. The complaint, liberally construed, alleged that "Marshall" discriminated against "Blue" on the basis of his race by having him removed from his prison job assignment in the industrial Complex clothing room in order that white offenders could be given jobs in the clothing room to negate a reverse discrimination claim asserted by another inmate. See, Id. In Jose A. Maldonado's Case, this Court have to avoid any discriminatory issues against him before this Court ruling any relief in favor or both the "Plaintiff" and the opposite Party as the "defendants" under this Case. See, id.

2. Preliminary, the Court notes that the issue of liability has already in Jose A. Maldonado's favor by the S. C. Supreme Court, to quash the August 02, 2018 Order, and ruling the December 13, 2018 Order previous entry of default. See, *Guidman, Antonetti, et al v. Medfit Intern.*, 982 F.2d 686, 693 (1st Cir. 1993)("[A]n entry of a default against a defendants establishes the defendant's liability."); *Adriana Intern. Corp. v. Thoeren*, 913 F.2d 1406, 1414 (19th Cir. 1990)(entry of default judgment under **37 (b), SCRCP,** "Failure to Comply With Order", conclusively established defendants' liability); See, *McNair v. Fairfield County,* 379 S.C. 462 466, 665 S.E.2d 830, 832 (2008)(quoting, *Barnette v. Adams Bros. Logging, Inc.,* 355 S.C. 588, 593-94 (2003)(citing, *In re Anonymous Members of South Carolina Bar*, 346 S.C. 177, 194, 552 S.E.2d 10, 18, 19 (2001). See also *Enriquez v. South Carolina Dep't of Corr.,* 374 S.C. 165, 167, 648 S.E.2d 582, 583 (2007)("the Plaintiff's claims, pursuant to an earlier Motion, "ORDER TO CORRECT THE CASE NUMBER TO THE REMITTITUR/4th PCR. ACTION'S ORDERS OF DISMISSAL TO REFLECT LOWER COURT CASE NO. 2015-CP-23-04747", and "SUMMONS AND COMPLAINT", Issue dated January 9, 2019," to compel, there was a standing order of Dec. 13, 2018 that "defendants" "promptly comply with discovery or [be] subject to sanctions" **Rule 37(b)** expressly provides for an award of sanctions for a party's failure to obey a discovery order. Because, the Attorney General Office failed to fully comply with discovery as ordered, Sanctions were authorized under Rule 37.

3. Thus, the Attorney General Office, with Mr. Megan H. Jameson Asst. Atty. Gen., remaining issues at the August 2, 2018 Order are without merit and the S.C. Supreme Court failed at the Rule 220(b)(1), SCACR. This Court error to support the defendants is wrong case number 2015-CP-23-04757, under the Rule 220 (c), SCACR. **"Affirmance on any Ground Appearing in Record."** When, this Court provable may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal. See, at 167, 648 S.E.2d 582, at 583 (2007), and the Followings authorities: *State v. 192 Coin-Operated Video*

Game Machines, 338 S.C. 176, 184-85, 525 S.E.2d 872, 877 (2000)(quoting, State v. Petty, 270 S.C. 206, 209, 241 S.E.2d 561, 563 (1978)("[t]he defendants has the burden to provide an adequate record for review"). McNair v. Fairfield County, 379 S.C. 462, 466, 665 S.E.2D 830, at 832 (2008)(when a party fails to comply with a discovery order, the trial court has the discretion to impose a sanction it deems just, including an order dismissing the action.); United States v. DiMussic, 879 F.2d 1488, 1497 (7th Cir. 1989)("As a general rule, a default judgment establishes, as a matter of law, that defendants are liable to Plaintiff as to each cause of action alleged in the complaint."); Buchanan v. Bowman, 820 F.2d 359, 361 (11th Cir. 1987)(where default judgment entered pursuant to Rule 3, (a)(1)(2), SCRCP, and the Court ruling under Rule 37(b) SCRCP. See, the **ORDER MOTION TO DISMISS THE INDICTMENTS, at page 2, below this Motion of "RETURN AND MEMORANDUM IN SUPPORT OF MOTION REQUEST FOR DEFAUL JUDGMENT",** defendants' deemed to have admitted a Jose A. Maldonado the Plaintiff's well-pleading allegations of facts). And

¶ N. SUBSTANTIVE CLAIM THAT PLAINTIFF IS IN DEMAND TO DELAY/VIOLATE RIGHT TO DUE PROCESS

1. Element of the claim

__The Due Process Clause provides that "No person shall ... be deprived of life, liberty, or property, without due process of law..." U.S. Const. amend. V. Similarly, the Fourteenth Amendment provides "nor shall any State deprive any person of life, liberty, or property, without due process of law." Id. amend. XIV, § 1.

__The right to a speedy trial, which is guaranteed an accused by the Sixth Amendment, is a fundamental right imposed on the states by the Due Process Clause of the Fourteenth Amendment. Barker v. Wilngo, 407 U.S. AT 515, 92 S. Ct. 2184. (Quoting, Harris v. Champion, 15, F.3d 1538, at 1558 (1994). Although the Constitution does not require the State to afford a criminal defendant a direct appeal to challenge alleged trial court errors, see McKane v. Durston, 153 U.S. 684, 687, 14 s. Ct. 913, 914, 38 L.Ed. 867 (1894), the Supreme Court has held that

> if a State has created appellate court as "an integral part of the ... system for finally adjudicating the guilt or innocence of a defendant," Griffin v. Illinois, 351 U.S. 351 U.S., at 18[76 S. Ct. at 590], the procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection Clause of the Constitution.

Evitts v. Lucey, 469 U.S. 387, 393, 105 S. Ct. 830, 834, 83 L. Ed.2d 821 (1985)(alteration in original).

__To ensure the criminal defendant's right to a "meaningful appeal" Douglas v. California, 372 U.S. at 358, 83, S. Ct. at 817, the Court has held that when the State affords a criminal defendant an appeal by

right, the Fourteenth Amendment requires, among other things, that counsel be appointed to represent an indigent defendant *id.* at 356-58, 83 S. Ct. at 816-17, that the representation of counsel be effective, Evitts, 469 U.S. at 396, 105 S. Ct. at 836.

__When determining whether a criminal defendant has been deprived of his or her right to timely process at the trial level, the Supreme Court has established a balancing test to be applied on an *ad hoc* basis. Barker, 407 U.S. at 530, 92 S. Ct. at 2191. Four factors should be assessed and balanced: "(1) [l]ength of delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4) prejudice to the defendant." Id. (numbers added). The fourth factor "should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect." *Id.* at 532, 92 S. Ct. at 2193. The "Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." id.

2. Prejudice to the Plaintiff as a result of delay

__The second factor this Court must consider when determining whether a plaintiff's due process rights have been violated is whether the Plaintiff has suffered any prejudice due to delay in adjudicating his appeal. As the Court stated earlier, prejudice may result from any of the following: **(i) oppressive incarceration pending appeal; or (ii) constitutionally cognizable anxiety awaiting resolution of the appeal; (iii) impairment of a "Plaintiff's" grounds for appeal or a defendants' defenses in the event of a retrial.** DeLancy, 741 F.2d at 1248; Rhevark v. Shaw, 628 F.2d at 303 n. 8 (quoting, Harris v. Champion 15 F.3d 1538, 1563. And

3. Appropriate remedies

__If this Court finds that a Plaintiff's due process rights have been violate, it must then address the matter of a remedy. "Only when the court delay's ruling to his ("4th PCR. Action Application Case No 2015-CP-04747") of "prejudiced the [Plaintiff]'s due process rights so as to make his confinement constitutionally deficient," would be the "4th PCR. Action application is **"based on appellate delay"** be appropriate for a Plaintiff whose conviction has been erroneously affirmed." See, at ***Jose A. Maldonado v. SCDC, Appellate Case No. 2016-001274, Unpublished Opinion No. 2017-UP-209 Submitted March 1, 2017—Filed May 17, 2017's Attachments;(C)(1)(2)(R. Pp. 128-129.ROA)*** below this Motion, is entitle to release in his ("four post-conviction relief action") based solely on delay in adjudicating his appeal, when the Plaintiff show actual prejudice. See, at Harris, at 15 F.3d 1567-68. The Plaintiff prays to this Hon: Supreme Court's Order

of Dec. 13, 2018 to conduct an evidentiary hearing, after Plaintiff finding or whose conviction had been erroneously affirmed with the court of appeal, the lower court have to reversed with prejudice and ordering a retrial. ***Plaintiff is entitled to granting release pursuant to his "4th PCR. Action application" because the Court of Appeal affirmed the Plaintiff's second offense conviction without to release the true bill indictment under the language of Section 44-53-375(C)(2)(b), the SC. State's Court of Appeal has been set out the Petitioner/Plaintiff's release by a Unpublished Opinion No 2017-UP-209 Submitted March 1, 2017 — Filed May 17, 2017 in Jose Alberto Maldonado v. SDCD, Appellate Case No. 2016-001274 aff'd. (See, Attachments: (C)(1, & 2)(R. Pp. 8-9. ROA).*** Lower court require to relief is necessary and available. See, *id.*

__"[A]bsent absolute or qualified immunity or other appropriate defense," a Plaintiff for whom "4th PCR. Action application" is not available may seek redress from the responsible parties for any due process violation cause by state appellate delay through a claim for damages under 42 U.S.C. § 1983. *Delancy,* 741 F.2d at 1248; accord *Diaz*, 905 F.2d at 654; *McLallen v. Henderson,* 492 F.2d 1298, 1299-1300 (8th Cir. 1974); *Doesher v. Estelle*, 477 F.Supp. 932, 934 (N.D.Tex.1979), aff'd in part, vacated in part, 616 F.2d 205 (5th Cir. 1980). Because this appeal concerns only Plaintiff is 4th post-conviction relief action application claims, the Court will not rule on the implications of any pending file as § 1983 claims already.

__A Plaintiff whose 4th PCR. Action application appeal has not yet been decided, however, is entitled some form of Section 1983 relief including an immigration court relief too, if he can establish a due process violation arising from delay in adjudicating his state appeal. "...**The most appropriate remedy in these circumstances is to grant a conditional writ, pursuant to "4th PCR. Action application's Appellate Case No. 2017-002092...." i.e., releasing the Petitioner/or Plaintiff, if the State does not decide the Petitioner, or Plaintiff's appeal within a specific period of time; that no longer to sixty (60) days.** ***See, Harris, I, 938 F.2d at 1070; Coe, 922 F.2d at 532-33; Brooks v. Jones, 875 F.2d at 32.***

__ **"Hereby, the Supreme Court should ordered the State to decide the Petitioner/or Plaintiff, to decide the ("4th Post-Conviction Relief Action application, at Civil Case No. 2015-CP-23-04747")'s appeal within sixty (60) days—or such other time as the lower court in the common pleas thirteenth judicial circuit decides is appropriate for good cause shown —or release the Plaintiff's remedies."**

__ Although a conditional order of release is the preferred procedure, if the Plaintiff underlying substantive claims are federal in nature and, either because of the clarity of the issues or the particular equities involved, the S.C. Supreme Court concludes that the better procedure would be for it to resolve

the South Carolina Court of Appeal's rule under Plaintiff is wrongly affirmance of conviction to a second **offense, in the absence of the Plaintiff's indicted to a second offense by S.C. Code Ann. § 44-53-375(C)(2)(b)** Plaintiff is hereby exhaustion, the merits of those claims.

__ However, because review on the merits by the lower court in many regards replicates the Plaintiff's ***notice of thirty 30 days in appeal to his 4th PCR. Action application have not been denied under the original Civil Case Number "2015-CP-23-04747"*** as to the **order from August 2, 2018 is null and void** and the Plaintiff against relief, the **C**ourt should consider the appropriateness of appointing counsel for the indigent Petitioner/or Plaintiff, under *Douglas,* 372 U.S. at 356-57, 83 S. Ct. at 816. (Citing, *Harris v. Champion,* 15. F.3d 1538, at 1567's Fn. 20—24, (10th Cir. 1994). Overruling on other grounds and quash the South Carolina Supreme Court is August 2, 2018 Order in the matter that, is null and void under this Rule 60 (b), SCRCP. See at *United States v. Volpe,* 943 F. Supp. 1211 (N.D. Cal. 1996)

CONCLUSION

THEREFORE, for good cause shown and upon the joint motions of the parties, the Lower Court ORDERS, and that the South Carolina Supreme Court's August 02, 2018 Order of Dismissal is VACATED. When the orders and judgments of the Court of Common Pleas in the Thirteenth Judicial Circuit of Greenville County denied the Plaintiff with the wrong civil case number 2015-CP-23-04757, and the matter is REMANDED for further proceedings consistent with this **RETURN AND MEMORANDUM IN SUPPORT OF MOTION REQUEST FOR DEFAULT JUDGMENT.**

Done this 3 **day of** February, **2020** **Respectfully Submitted**

Jose Maldonado

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