

State of South Carolina  
In The Court of Appeals

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CERTIORARI To Berkeley County  
The Berkeley Court of Common Pleas

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**RECEIVED**

AUG 28 2020

SC Court of Appeals

Appellate Case 2017-002051

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ROD SANTA MCCRACKEN

Appellant

vs.

State of South Carolina

1 of 22

# Respondent

Motion to ~~Review~~ the previously  
filed motion to recall the  
remititur; motion to stay and  
hold in abeyance case 2017-002054;  
motion to challenge the Court of  
Appeals Jurisdiction and motion  
to motion therefor

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Also in the case 2019-CP-08-1992  
et al.

To: The SC Court of Appeals,  
The SC Attorney General,  
2 of 22

Attorney Robert M. Dudek,  
The Berkeley County Court  
of Common Pleas et al.,

The petitioner gives the  
court and all parties judicial notice  
of the existence of case 2019-CP-08-  
1992 that existed over a year before  
any ruling occurred under case  
2017-002051. This subsequent PCR  
has now been filed in Berkeley  
County establishing case 2019-CP-08-  
1992. Due to the recent pending  
filing I am respectfully petitioning

And OR motioning before the SC  
COURT of Appeals to stay AND OR  
hold in ABEYANCE CASE 2017-002051.  
THE PETITIONER seeks this for the  
following REASONS:

(1) THE STATE IS PRESENTLY IN  
DEFAULT UNDER CASE 2019-CP-08-1992  
WHERE they had (1) YEAR to bring  
the CASE to its conclusion. THE US  
SUPREME COURT touch off these time  
tables that exist via STATE LAW AND  
OR STATE CONSTITUTIONS UNDER THE  
CASE OF BETTERMAN v MONTANA  
2016. I'm ARGUING AGAINST THE

Precedent established by State v. Langford in 2012 where by Betterman the matter goes beyond any right the prosecutor has in controlling his docket. The provision of law relied upon is set in place by the state legislature which if the judges make any effort to water it down, such an act would be deemed a violation of the separation of powers clause producing unconstitutional action voiding the courts involvement jurisdiction for that unconstitutional action. The seeking default is in the process

of being filed in CASE 2019-CP-08-1992. This does include the structural error in which the state has denied me the appointment of legal counsel at critical stages of the proceedings under CASE 2019-CP-08-1992 which extremely prejudiced the applicant giving way to CASE 2019-CP-08-1992 being unjustly delayed beyond the time frame set in place by the legislatures which the courts do not have the power to expand.

(2) In re to the final order issued in CASE 2015-CP-08-60822

2692, there is now constitutional challenge to the order's validity which is jurisdictional in nature as is clearly elaborated upon under case 2019-CP-08-1992. Since the final order issued under case 2015-CP-08-2692 by the litigation presented under case 2019-CP-08-1992 is by due process law to be deemed unconstitutional and void and will be as if there were no final order issued at all. This would automatically constitute a challenge to the SC Court of Appeals juris-

diction UNDER CASE 2017-002051.  
The final order issued UNDER CASE  
2015-CP-08-2692 is a JURISDICTIONAL  
PREREQUISITE to the SC COURT of  
APPEALS ENTERTAINING JURISDICTION  
UNDER CASE 2017-002051. Thus,  
ANY RULING coming out of CASE 2019-  
CP-08-1992 would HAVE A DIRECT  
IMPACT on ANY decision that would  
potentially come out of CASE  
2017-002051 WHERE the UNCONSTITU-  
TIONAL ACTION ARGUED would void the  
SC COURT of APPEALS JURISDICTION Ab  
initio JORTMILL v FITZGERALD, SEAD,

2014 WL 7339453 (SC App. 2014);  
Caldwell v Winquist, 402 SC 565,  
741 S2d 583 (SC App 2013); MARTIN -  
EVANS v CHESAPEAKE APPALACHIA, LLC,  
FSupp.3d, 2015 WL 668485 (10th Cir.  
2015); BARTELS BY AND THROUGH BARTELS  
v. SABER HEALTH CARE GROUP, LLC, 880  
F3d 668 (4th Cir 2018).

(3) The petitioner is aware that it is addressing the issue of subject matter jurisdiction. It can be brought up for the first time on appeal. But there are more crucial elements and or factors that exist in this case, that

such circumstances as they present themselves, also in fundamental fairness to the state, and to give them a full, fair and proper opportunity to respond. It would be more appropriate to raise the claim in the PCR court first. This is also due to the fact that one of the claims being asserted is fraud upon the court. Under the independent action rule, it is more appropriate to bring the action in the court where the fraud upon the court is alleged to have

OCCURRED, AND IN THIS CASE, IT IS THE PCR COURT. WHAT DELAYED THE PETITIONER IN SEEKING REDRESS IS THAT THE COURT HAD THIS STATE APPOINTED COUNSEL ON ME AND THE MOMENT I WOULD HAVE TAKEN STEPS TO ASSERT THE RIGHTS. THE COURT WOULD HAVE ASSERTED THAT I WAS ENGAGING IN HYBRID DEFENSE. THIS EXTREMELY PREJUDICED ME. IN SUCH, IT WOULD BE MORE PROPER TO FILE IN THE PCR COURT AND THEN SEEK TO STAY CASE 2017-002051 UPON THE RECALLING OF THE REMITTOR UNTIL THE MATTERS ARE ADDRESSED IN THE

LOWER COURT UNDER CASE 2019-CA-08-1992 WHERE ANY SUCH RULING WOULD OF COURSE HAVE A DIRECT IMPACT ON ANY RULING THAT COULD HAVE POTENTIALLY EMERGE FROM CASE 2017-002051 DUE TO THE VIOLATIONS OF DUE PROCESS AND UNCONSTITUTIONAL ACTION THAT HAS OCCURRED BEFORE THAT COURT, ASTERBADI V LEITES, 176 Fed Appx' 426 CA4 (Va 2006); ALEDKA, 2010 WL 4054267 (2010); SOUTH CAROLINA DEPT. OF SOCIAL SERVICES V TRANE, 418 S.C. 308, 792 SE2d 254 (SC App 2016); MR. T. V. MRS. T., 378 SC 127, 662 SE2d 413 (SC App. 2008); S & B

Contractors, Inc v Us, 406 US 4,  
92 Sct 141 (US 1972); Cox v Fleet-  
wood Homes of Georgia, Inc, 334  
SC 55, 512 S2d 498 (SC 1999); Robipl-  
son v Estate of Harris, 388 SC 630,  
698 S2d 222 (SC 2010); Wells Fargo  
BANK N.A. v FARGO, 2016 WL 2944561  
(Nc 2016); Elderberry of Weber City,  
LLC v Living Centers - South East, Inc  
F3d, 2015 WL 4430836 CA4 (Va 2015);  
Wells Fargo BANK N.A. v H.M.H. Roman  
JWO Inc, LLC, 859 F3d 295 (4th Cir 2017);  
Mosley v United States, 2018 WL 1187778  
(WD Nc 2018); Milford v Middleton, 2018  
WL 348059 (DSC 2018). Equitable tolling  
Attaches.

Inasmuch, subject matter jurisdiction can be raised at any time, at any stage, even after a final order has been issued, even for the first time on appeal and the SC Court of Appeals shall not fail to take notice where this jurisdictional challenge, due to the constitutionality of the order emerging from case 2015-CP-08-2692 being called into question, must be adjudicated under the due process prong to subject matter jurisdiction. In such, the court(s) being given jurisdiction by statute.

TORY PROVISIONS DOES NOT PREVENT  
REVIEW WHERE THESE MATTERS ARE  
BEING ARGUED UNDER THE DUE PROCESS  
PROPG TO SUBJECT MATTER JURISDICTION.  
I AM ARGUING AGAINST THE PRECEDENT  
ESTABLISHED BY STATE V GENTRY 2005  
PURSUANT TO APPELLATE COURT RULE 217,  
HILL V SC DEPT. OF HEALTH AND ENVIRON-  
MENTAL CONTROL, 389 SC 1, 698 SE2D  
602 (SC 2010); GURNEY V CONANT,  
LIEBOWITZ & LATMAN, P.C., F.SUPP.3d,  
2015 WL 4460868 (SD NY 2015); STEEL  
CO. V CITIZENS FOR A BETTER ENVIRONMENT,  
523 US 83, 118 S Ct 1003, (US 1998);  
JAMM V CINCINNATI INSURANCE COMPANY

2020 WL 60932 (SD NY 2020); CHASE  
v AIDEAVOR Logistics L.P., 2019 WL  
5847879 \* 2 W.D. Tex.; United States  
v UALLADARES, 2019 WL 4888629 \* 1.  
W.D. Tex.; ARBAUGH v Y & H CORP. 546  
US 500, 126 Sct 1235 (US 2006); STEVENS E.  
HECKER, Plaintiff v. The State of  
Washington, defendant, 2020 WL 134168.  
(Fed Ct. 2020); Hicks v HEART of Hospice,  
LLC, 2019 WL 6255496 (N.D. Miss. 2019);  
KRIKORIAN v Ford Motor Company, 2019  
WL 7042939 (SD Ala 2019); HENDERSON  
v SHIPSEL, 131 Sct 1197, 1198+ US.;  
BURGESS v United States, 2019 WL  
7293400 \* 1 D Md; BARNES v GIVENS  
2019 WL 5579543, \* 3, W.D. Tex.; WALLS

V. Boeing Company, 2019 WL 4931365,  
\* 2 D.C.; JEFFERS V. ST. P. MORGAN CHASE  
& CO., 2019 WL 6255311, \* 1 W.D. Mo.;  
SORRING WIND ENERGY, LLC V. CATIE USA  
INCORPORATED - Fed -, 5th Cir (EXA);  
460 S. LAKE AVENUE, Ltd V Appleton,  
2019 WL 7184737, \* 1 C.D. Cal.; STAYTON  
V. JOHNSON AND JOHNSON, 2019 WL  
7208414, \* 1 C.D. Cal.

(4) Inasmuch, the United States  
SUPREME COURT RECENTLY ADDRESSSED  
THE PETITIONER'S CONSTITUTIONALLY PRO-  
TECTED RIGHTS IN PART WHERE IT DE-  
TERMINED THAT A DEFENDANT IS

constitutionally guaranteed  
personally the right to make his  
defense, speaks to the "assistance"  
of counsel, and an assistant,  
however expert, is still an assistant  
and the defendant's constitutional  
right of autonomy cannot be dis-  
turbed or it would create a con-  
stitutional structural error which  
would void the court's jurisdiction  
for such unconstitutional action.  
since by the independent action  
rule for fraud upon the court it  
would be appropriate to file the  
case in the court where the fraud

Allegedly occurred, couple by the  
petitioner's constitutional right of  
autonomy where he chooses by that  
to exercise that independent  
action in the PCR court. That  
constitutional right of autonomy  
cannot be disturbed or deprived or  
it would void the SC court of appeals  
jurisdiction for such unconstitutional  
action, BROADNAX v STATE, 2019 WL  
1450399 (7th Cir 2019); DANN v United  
States, 41 F Supp 3d 90, 98 D. Mass.;  
MCOY v LOUISIANA, 138 S Ct 1500, 200  
L Ed 2d 821 (US 2018).

In conclusion, by the afore-

mentioned, the petitioner respectfully challenges the SC Court of Appeals jurisdiction and respectfully seek that the Remittitur be Reversed and seek that case 2017-002051 be stayed and or in the alternative, it be held in abeyance until the matters under case 2019-CP-08-1992 come to their conclusion and that order, if necessary, is then appealed and brought before this court. The petitioner prays for this relief, to include any and all other relief the court would deem just, fair

AND PROPER, 24 SENATORIAL DIST  
REPUBLICAN COMMITTEE V ALCOBY, 820  
F3d 624 (4th CIR 2016); QALSON V  
SOUTH CAROLINA STATE PLASTERING, LLC,  
404 SC 250, 743 SE2d 868 (SC App. 2013).  
LIBERTY BUILDERS INC V HORBERT, 336  
SC 658, 521 SE2d 749 (SC 1999); COX  
V WOODMEN OF WORLD INSURANCE  
CO., 347 SC 460, 556 SE2d 397 (SC App  
2000); DOE V DUPLICAN, SE2d, 2008  
WL 984 6820 (SC App. 2008); THOMPSON  
V WATTS, 278 SC 230, 294 SE2d 245  
(SC App 1982); PACIE V DIGUGLIEMMA,  
544 US 408, 416 (2005); JACKSON V ROE,  
425 F3d 654 (9th CIR 2005); BLAKE V.

BAKER, 745 F3d 977 (4th Cir 2014);  
MARTÍNEZ v RYAN, 132 Sct 1309,  
(2012); RUNER v CRAWFORD, 415  
F. Supp 2d 1207 (D. Nev. 2006); MDC Inno-  
ventions, LLC v NORTHERN, ~~7th Cir~~  
--, 2018 WL 129607 (4th Cir 2018);  
HAMER v Neighborhood Housing Services  
of Chicago, 138 Sct 13, 199 LEd2d 249  
(US 2017); MYLES v DOMINOS PIZZA LLC,  
2017 WL 238436 (DC Miss. 2017).

Respectfully,  
RON SALTER McCRAE  
Ron & McCrae

August 24, 2020

STATE of South CAROLINA  
IN THE COURT of APPEALS

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CERTIORARI TO BERKELEY County  
THE BERKELEY COURT of COMMON PLEAS

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APPELLATE CASE 2017-002051

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RON SAPIA MCCRAY

Appellant

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AUG 28 2020

SC Court of Appeals

vs.

STATE of South CAROLINA,

1 of 3

RESPONDENT

PROOF OF SERVICE

I, RON SAKTA McCRAY do  
hereby certify that I have  
mailed and or served a copy of  
a motion to renew the previously-  
ly filed motion to recall the  
remittur; motion to stay and  
hold in abeyance case 2017-  
002051; motion to challenge the  
court of appeals jurisdiction

And motion to motion therefor,  
of the SC COURT of Appeals and  
all involved parties, by US mail  
postage prepaid by placing it in  
the institution mailbox on  
August 24, 2020.

Respectfully,  
Ron SANTA McCRAE  
Ron S McCray

August 24, 2020

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AUG 28 2020

SC Court of Appeals

ROD SANTA MCCRAY  
# 353 031 COOPER B-59  
LIEBER C.Z. PO. Box 205  
RIDGEVILLE, SC 29742

IN RE CASE 2017-002051

To: The SC Court of  
Appeals,

DUE to the effects of  
the CORONAVIRUS I had to have  
MR CRAWFORD mail this in for  
me. PLEASE file it in the  
above captioned case for  
1 of 2

PROPER Adjudication. Thank you  
in advance.

Respectfully  
RON S McCRAE  
Ron S McCrae

August 24, 2020



LAWRENCE L ~~CRAYFORD~~  
#300839 F3A RM 143  
LEE CR 990 Wistacky Hwy  
Bishopville SC 29010

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