

STATE OF SOUTH CAROLINA  
 IN THE COURT OF APPEALS  
 Appeal from Lexington County  
 Honorable R. Knox McMahon, Circuit Court Judge

**RECEIVED**

SEP 30 2020

**SC Court of Appeals**

THE STATE,

RESPONDENT.

v.

~~WILLIAM HOWARD HEATH,~~

APPELLANT.

CASE NO. 2018-000938

MOTION TO AMEND AND  
 PERFECT APPEAL  
 BY JOINING IN BRIEFS

COMES NOW Appellant, William Howard Heath, moving this Honorable Court for leave to supplement the Record on Appeal pursuant to Rule 212 (b) S.C.A.C.R. Appellant contends that with the Appellant Brief already submitted for review, there are procedural errors, structural errors, abuses of discretion, as well as errors of law remaining that have not been raised for this Honorable Court to decide the claims merit. Many of these issues being asked to be raised will fit beside the issues already submitted so they will aid the Court with their ruling. A case recently reversed by the South Carolina Supreme Court (State v Perry Appellate Case No. 2017-1965, Opinion No. 27963) in May of 2020, overruled two (2) cases (State v Wallace and State v Hallman), cited as the deciding factor on the consolidation of indictments using prior bad acts 404 (b) to do so. Appellant hereby moves this Court to proceed under Rule 208 (6) in Joining in Briefs pro-se, or in the alternative, for this Court to issue an order compelling Appellant's Appeal Attorney to comply on raising the remaining issues requested to him by Appellant. Specifically Appellant will argue trial Court erred in: (1) Denial of Petitioner's motion for severance; (2) to conduct the required 403 balancing test after finding clear and convincing evidence under 404 (b); (3) improper consolidation using 404 (b) common scheme and plan exception; (4) qualifying a witness as an expert in delayed reporting; (5) to suppress all evidence seized in a search of Appellant's residence and all fruits of that search pursuant to the Fourth Amendment to the United States Constitution and Mapp v Ohio, 367 U.S. 643, S.Ct. 1684 (1961) and Georgia v Randolph; (6) under Rule 403, allowing the State to display highly inflammatory

images where the unfair prejudice outweighed the probative value; (7) not granting Appellant a mistrial after Court prejudiced Appellant by aiding the State on how to question a witness and the witness on how to answer the question being asked.

Appellant had brought these said issues to the attention of his State appointed attorney who cited *Jones v Barnes*, 436 U.S. 745 (1983) and said in the letter "the decision on what issues to raise is mine (appellate attorney)." However, in *Martinez v Ryan*, 566 U.S. 1, 132 S.Ct. 1309, 182 L.Ed. 2d 272 states "An attorney's errors during an appeal on direct review may provide cause to excuse a procedural default; if the attorney appointed by the State to pursue the direct appeal is ineffective, the State prisoner had been denied fair process and the opportunity; to comply with the States' procedures and obtain and adjudication on the merits of his claims. This is what we are dealing within this present case and the reason for this motion. If these issues are not raised on direct appeal and Appellant asserts the claim to ineffective assistance of counsel if case is not reversed, there would be no merit to the issue because this Court or the South Carolina Supreme Court had not reviewed and ruled on the issues that the Appellant is trying to raise at this point. The PCR Court would find that they cannot rule that the assistance of counsel was ineffective because there is not ruling as to the issue itself. It would need to be heard from this court before ruling on it, which is where we are today.

Additionally, if this case were to not be reversed based on the sole issues in the brief at the present time and the issues Appellant is attempting to raise now were raised in a Federal Habeas Corpus with the Fourth Circuit, this would not be heard and ruled upon due to the fact that all State remedies were not exhausted with the issues Appellant is trying to raise at this time. As before, it would be remanded down to where we are today.

Appellant's State appointed attorney is denying the Appellant due process by invoking his thought that he (attorney) is the only individual who can raise the issues and who gets to decide if the issues have merit, not the Court.

Now, to combat the attorneys claim Appellant cites *McCoy v Louisiana*, 138 S.Ct. 1500, 200 L.Ed. 2d 821, 86 U.S. Lw4271. In *McCoy*, an individual need not surrender control entirely to counsel. "The choice of whether to represent yourself is not all or nothing, as to gain assistance, a defendant need not surrender control entirely to counsel." For this Honorable Court to not grant this motion would keep Appellant from having meritorious issues decided on direct review which, if not heard and ruled upon, would create a due process violation within a Sixth

Amendment, within a due process violation put in motion by the Circuit Court who tried the case.

Said attorney has stated that if we are not successful with the issues he has raised, that Appellant can quote "you will be able to raise your questions about my decision not to raise these issues in a PCR as an ineffective assistance of appellate counsel claim." The prominent issue with this is that it's not provable without the higher Courts hearing the issue to begin with. This Honorable Court (S.C. Court of Appeals), as well as the South Carolina Supreme Court is where the decision is made as to whether the issues have merit, not the attorney's. These issues need to be heard in the here and now not the future where we would have taken many unnecessary steps just to end up in the very same Court with the very same issues that Appellant is attempting to have heard now. This injustice in process would only prove to take up many unnecessary years of Appellant's freedom.

Lastly, should this case be reversed and remanded back for a new trial, the Appellant would suffer as much greater injustice by allowing the circuit court to try the Appellant under the almost identical circumstances with the identical due process violations as before. By allowing this, it would basically be creating a double-jeopardy scenario.

Should this Honorable Court need any additional facts or details as to my claims or insight as to the issues Appellant is attempting to raise, Appellant will be glad to furnish them as needed. Appellant prays that this Honorable Court will consider everything brought before them this day of September 11 2020 and allow due process to prevail. This motion is untimely due to the Coronavirus shutdown of State's Attorney's offices and prison quarantine.

September 11, 2020

Respectfully submitted,



William Howard Heath #376266, Appellant  
Lee Correctional Institution F6B-2248  
990 Wisacky Highway  
Bishopville, South Carolina 29010

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT.

v.


WILLIAM HOWARD HEATH,

APPELLANT.

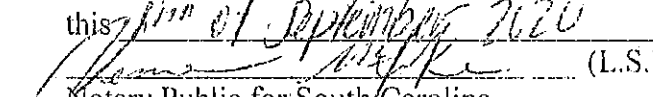
CASE NO. 2018-000938

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of APPELLANT'S MOTION TO AMEND AND PERFECT BRIEF in the above referenced case has been served upon the following by the United States mail, first class: J. Benjamin Aplin, Esquire, at Post Office Box 11549, Columbia, SC 29211; William F. Schumacher, IV, Esquire, at Post Office Box 11549, Columbia, SC 29211; David Alexander, Esquire, at Post Office Box 11589, Columbia SC 28211-1589; Clerk of Court, United States Court of Appeals for the Fourth Circuit, 1100 E. Main St., Suite 501, Richmond, VA 23219; Daniel E. Shearouse Clerk of Court for the South Carolina Supreme Court, Post Office Box 11330, Columbia, SC 29211; Supreme Court of the United States, 1 First St. NE, Washington, DC 20543; Wayne Floyd Law Office, P.A. Atty. Colin Spangler, Esquire, Post Office Box 3972, West Columbia, SC 29171-3972; Sabina S. Heath, 249 West Fork Rd. Gilbert, SC 29054; Ronald L. Heath Jr., 104 Underwood Dr., Lexington, SC 29072; Court of Appeals SC, 1015 Sumter St., Post Office Box 11629, Columbia SC 29211, this 11 day of September 2020.

  
William Howard Heath #376266, Appellant  
Lee Correctional Institution F6B-2248  
990 Wisacky Highway  
Bishopville, South Carolina 29010

SUBSCRIBED AND SWORN TO before me

this 11<sup>th</sup> of September 2020  
 (L.S.)

Notary Public for South Carolina.

My Commission Expires: 09/11/2029

Dear Clerk,

Upon receipt of enclosed documents, would you please make a copy with a date/clock stamp and return it to me for my records. I wish to have a case file retained with these documents for future reference to this Court, retained by this Court.

Sincerely,

William Heath

William Heath #376266  
Lee Correctional Institution  
Fl B-2248 Housing Unit  
990 Wisnisky Hwy.  
Bishopville, S.C. 29010

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SEP 16 2020

S.C. SUPREME COURT

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SEP 30 2020

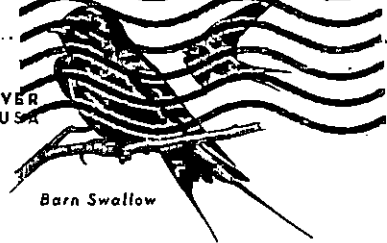
SC Court of Appeals

William Heath # 376266  
Lee C.I. F6B-2248  
990 Wisacky Hwy.  
Bishopville, S.C. 29010

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FOREVER  
USA



Barn Swallow

Daniel E. Shearouse Clerk of Court  
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, S.C. 29211

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SC Court of Appeals

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