IN THE COURT OF COMMON
PLEAS FOR THE THIRTEENTH
JUDICIAL CIRCUIT

Donna Boyd, Petitioner, vs. State of South Carolina, Respondent.	)	C/A No.: 2019-CP-23-03867 **RESPONSE TO FINAL ORDER OF DISMISSAL**

The Honorable South Carolina Supreme Court,

Dear Honorable Court,

The Petitioner hereby makes its Response and Notice of Appeal In Opposition to Respondent's Final Order of Dismissal. The Petitioner noted in the certificate of service, the Respondent asserted that it served a copy of the Proposed Final Order of Dismissal on April 13, 2021. The Petitioner submits that the order of dismissal should be denied for the following reasons:

I. BACKGROUND AND PROCEDURAL HISTORY

The Petitioner Donna Boyd, (Petitioner), was convicted in violation of the South Carolina and United States Constitution. On October 30, 2012, Petitioner exercising her constitutional right to vote was assaulted by an unknown "White" male causing Petitioner injury to the left arm, hand and shoulder. While standing in the roped off area waiting to vote, "White" male

aggressively approached Petitioner. "White" male aggressively leaned into the Petitioner, with one hand forced open the Petitioner's handbag which was on her left shoulder and with his other hand forcefully shoved papers into Petitioner's handbag **(Ex. 1, Supplemental Report, 10/30/2012).**

After forcefully shoving papers into the Petitioner's handbag, white male stated angrily, and loudly, "You been served." At no time did the white male identify himself or ask the Petitioner's name. As the Petitioner stood in line, the woman standing in front of the Petitioner asked about the matter and it was at this time the Petitioner realized that it was the racist HOA that had been harassing her since 2009. The Petitioner got the name and phone number of the female witness and two (2) other witnesses to the incident.

Before leaving the county offices, Petitioner called Greenville County Square Security and spoke with Greenville County Sheriff's Deputy Jack Burdine. The Petitioner asked Deputy Burdine if there was a "video tape" and if it were possible to pull that video. Deputy Burdine confirmed that there was video surveillance of the incident. But Deputy Burdine said that Petitioner would need a court order to get a copy of the tape. Notably, Deputy Burdine also said that video recorded over every thirty days.

Later Petitioner and sister went to LEC and spoke with Greenville County Deputy Matt Holman. As the Petitioner explained what happened earlier, Deputy Holman became antagonistic, and stated rudely, "He was trying to serve you." It was apparent that Deputy Holman was bothered when the Petitioner said the white male was aggressive and hostile. When the Petitioner insisted that the man had no right to go into her bag, then Deputy Holman exclaimed that the man assaulted the Petitioner.

The Petitioner told Deputy Holman that the incident occurred earlier at the Greenville

County Offices and that she spoke with Deputy Burdine who confirmed videotape of the incident. As the Petitioner waited to give her statement, Deputy Holman called Greenville County Offices Security and confirmed that there was "Video" of the incident. Deputy Holman took the Petitioner's statement and made a complaint of assault. The Petitioner gave Deputy Holman the phone numbers listed on the process documents and said that the unknown white man suspect more than likely worked for Eric Hedrick, former builder/developer who was currently acting as property manager/landscaper for her community. The Petitioner also provided the names of the three (3) witnesses to the incident **(A. Rutledge, and B. and R. Young).**

Deputy Holman said that it would take a couple of days to identify the suspect before he could issue a warrant for his arrest. The Petitioner went to the Asheville Veterans Affairs (VA) Hospital on 10/31/2012, and confirmed injury to her arm, hand, and shoulder **(Ex. 1, Supplemental Report, 10/30/2012, and Victim Witness Statement).**

On November 2, 2012, Petitioner received two (2) voicemails from Deputy Holman. First, Holman requested that Petitioner call him through the nonemergency line. Next, Deputy Holman said, "I talked to one of those numbers, and I got a couple of more steps to take before, actually I know the 'guy' who knows the one who served those papers on you.' "So, I believe it may take a working day, business working day, before we can get back in touch with the other two who hired the guy (Eric Hedrick and J. Chris Brown), so just give me a couple of days, and I'll try again tomorrow."'

Further, Deputy Holman said, "If I don't hear back this business, I will check again next week, just letting you know that I did find out some information; I will be checking again next week and following up on that as soon as possible." **(Deputy Matt Holman, Voicemail,**

11/2/2012). In the magistrate hearing held on June 25, 2014, Deputy Holman testified that he did not speak to or know the suspect (Jack Crump) before trial. However, discovery revealed that Jack Crump called and spoke with Deputy Holman on 11/03/2012. Also, discovery showed that Deputy Holman took a statement from the suspect (Jack Crump) over the phone, and did not require the suspect to handwrite or sign his statement as he had required of the Petitioner on 11/16/2012 **(Ex. 3, Jack Crump, Supplemental Report, 11/03/2012).**

Further, Deputy Holman said Jack Crump told him that he spoke with an 'unknown' deputy before he served the Petitioner at County Square. Also, Jack Crump said that he was a retired State Trooper and that he was there to serve Petitioner. Also, during the magistrate hearing one of the witnesses that the State used to give perjured testimony and false evidence against the Petitioner, testified that he saw fellow Deputy Jack Burdine make a **copy of the "Videotape" and give it to Deputy Holman.**

Deputy Mark Griffin also pointed to Deputy Holman from the witness stand. The Petitioner also discovered through Deputy Griffin's testimony that the 'unknown' Greenville County Deputy that Jack Crump spoke with was Jack Burdine. Deputy Holman allegedly placed the "video" or "CD" into P/E on November 7, 2012 **(Ex. 4, Property Report, CD, 11/07/2012).** On November 7, 2012, the Petitioner called Deputy Holman to check the status of her complaint. The Petitioner left message with dispatch requesting that Deputy Holman call her.

Later that day the Petitioner received a call from Deputy Holman asking the Petitioner come to the Greenville County Sheriff's Office to make a statement. The Petitioner said she made a statement on 10/30/2012. Deputy Holman said that she had, but he needed a written statement. The Petitioner said she had not been required to write a written statement in the past. And Deputy Holman said that the Sheriff's Office had implemented a "New Policy". Please note

that the Petitioner served as a deputy with the Greenville County Sheriff's Office from 1991-1994.

Further, Deputy Holman said that he could not proceed with the Petitioner's case until she submitted a handwritten statement. But, note that Deputy Holman did not require a handwritten statement from the suspect (Jack Crump). On November 8, 2012, Petitioner received two (2) voicemails from Deputy Holman. First voicemail received at 3:23 p.m. said, "I was trying to call you and see if there was going to be a time to meet with me today to give me that statement and let me know what you want to do, if you still want to give a statement and go forward with this." **(Ex. 2, Deputy Holman, Voicemail, 11/08/2012).**

And at 4:23 p.m. exactly one hour later, Deputy Holman left the following voicemail: "Hey Ms. Boyd this is Deputy Holman again with the Greenville County Sheriff's Office. I thought about the message that I left you. I wasn't sure if I left you my unit number, just a reminder if you check your messages today." Deputy Holman further stated, "I will be getting off at 7 p.m., and will return to work 7 a.m. on Monday (November 12, 2012), my unit number is B35, so if you still want to participate and give me that statement then just call me back, mainly my returning your call was to make sure you had my unit number, and you didn't get the run around from dispatch." In hindsight, it is evident that Deputy Holman is setting the stage for the false arrest and prosecution of the Petitioner.

Deputy Holman called twice on November 8, 2012, to ensure that Petitioner had his unit number and work schedule so she would only make the written statement through him. Deputy Holman's actions were premeditated because he stated in his supplemental report that he went to County Square to ask about the video. He said that he met with deputies and they all reviewed the video; however, Deputy Holman did not require these deputies to make sworn statements that

they saw the video on 10/30/12 or 11/07/12. And later the State claimed at the magistrate hearing held on June 25, 2014, that the evidence was destroyed sometime in 2012, and substituted the 'destroyed' Video with the testimony of these three (3) deputies. Deputy Holman said in his supplemental that the suspect served the Petitioner without incident. Also, Deputy Holman said it was a false complaint, opining, "No injury resulted from this civil process." **(Ex. 5, Deputy Holman, Supplemental Report, 11/07/2012).**

Deputy Holman said the case was unfounded due to video evidence, also, said evidence was signed over to him and he placed it into property and evidence on 11/07/2012. Further, Holman said he called the Petitioner and explained her case would not go forward without a written statement. Further, Deputy Holman said he spoke with Petitioner on November 12, 2012, and Petitioner noted she wanted to provide a written statement on Friday, November 16, 2012.

Deputy Holman said if the Petitioner provided a written statement and it is also inaccurate, this case brought before a magistrate for obtaining a warrant. Please note that Petitioner's original case of assault not prosecuted or closed out. The Petitioner asserts that Deputy Holman's statement is an unequivocal fabrication. First, the Petitioner last spoke with Deputy Holman on 11/07/2012. At which time Deputy Holman said if the Petitioner wanted to go forward with her case, she would have to make a written statement. The Petitioner said she made a statement on 10/30/2012.

Deputy Holman said she had but he needed the Petitioner to put it in her words (handwrite) since he put the original statement in his words. Deputy Holman said if the Petitioner wished to proceed with the complaint, Petitioner had to provide a written statement. Next, Petitioner did not speak with Deputy Holman on 11/12/2012, nor agree to meet with

Deputy Holman on 11/16/2012. The Petitioner knew Deputy Holman would be at work because he left a voicemail on 11/8/2012, stating he would return to work on 11/12/2012.

However, the Petitioner did not go to LEC on 11/12/2012. The Petitioner went to LEC on November 16, 2012. On November 16, 2012, the Petitioner and her Sister went to LEC to make another statement (written). The Petitioner told desk officer she made a complaint on 10/30/2012, and she was there to make a written statement. Notably, the desk officer seemed confused about the Petitioner making another statement. The Petitioner requested to speak with Deputy Holman, and told he was on patrol.

The Petitioner said she had been instructed by Deputy Holman to make a written statement. The desk officer called to inform Deputy Holman the Petitioner was waiting in the lobby. Immediately after speaking with Deputy Holman the desk officer walked over to the Petitioner who was sitting near the front entrance. The desk officer gave the Petitioner a statement form and instructed the Petitioner to write her statement. A few minutes later, Deputy Holman arrived, and walked over to the Petitioner. Deputy Holman reviewed the statement and asked if the Petitioner was injured during the incident. The Petitioner said she had and visited the VA Hospital on 10/31/2012. Deputy Holman insisted Petitioner put this information in her written statement.

After Petitioner completed her statement, Deputy Holman looked over the report carefully and instructed the Petitioner to initial any mistakes made in her statement. **(Ex. 6, Victim Statement, 11/16/2012).** Deputy Holman took the written statement, and alluded that he was going to see the magistrate to get a warrant for the arrest of the suspect that assaulted the Petitioner. The Petitioner and Sister were sitting near the front entrance. About fifteen (15) minutes later Deputy Holman returned and stood next to security within the security threshold of

the LEC.

Deputy Holman called the Petitioner's name. The Petitioner walked toward Deputy Holman, and when she crossed the security threshold, Deputy Holman said, "I have a warrant for your arrest." The Petitioner retorted, for what? Deputy Holman retorted, "For filing a false police report, put your hands behind your back." The Petitioner asked Deputy Holman if he had viewed the videotape, and how had she filed a false report? Notably, the "Videotape" was not removed at any time after it was placed into P&E on 11/07/2012. More importantly, the "Video" was not removed from P&E on 11/16/2012. Therefore, Magistrate Judge Hudson did not view the "Video" before issuance of the arrest warrant dated 11/16/2012.

Notably, at the magistrate hearing held on June 25, 2014, Judge Dean Ford instructed the "All White" jury that the State chose the day before trial, to find that Magistrate Hudson had "probable cause" to arrest the Petitioner on November 16, 2012. The Petitioner argues that the Fourth Amendment required that probable cause exist at the time of the Petitioner's arrest on November 16, 2012.

And the PCR court opined, "So there was the investigation after that to determine probable cause really didn't exist on the back end when you're supposed to determine probable cause on the front end." Moreover, the PCR judge said, according to Attorney Lyall's testimony that it's the practice of the solicitor's office if they close the case, then if there's any evidence that's associated with that case and, in this case, being the "Video", that automatically goes away. And then we open up this new file. "That's the new file."

"And you're trying to convince the Court or whomever that the probable cause for that was not, at the least, the video being a possible probable cause for that. 'But you destroyed that.' "So, you take the video out of the equation, how in the world do you get the probable cause in

the second case for filing a false report?" 'How do you get that?' "You don't get there." "And I cannot for the life of me wrap my mind around that logic." "You cannot do that." **(Transcript, P. 103-104, Lines 1-24, 10/26/2018).**

Further the PCR court said, "It is incumbent upon the State in these cases on the appellate, on the trial - - on the state level, and even at the level of post-conviction relief to be fair." **(P.104, Line 25; P. 105, Lines 1-7).** Moreover, the PCR judge said, "Mr. Lyall himself said he got the case - - he looked at it the day before the trial and figured out it wasn't a big deal. It wasn't a big deal. "So if he just looked at it the day before the trial and he's - - he's the lawyer and he didn't - - and he didn't think it was such a big deal to, at least, have some dialogue about the video." **(Transcript, P. 105, 16-25; P. 106, Lines 1-25; P. 107, Lines 3-24).** "So, clearly the Petitioner's guilt was not based upon any factual evidence to support the conviction, but the Petitioner's guilt based solely upon the "All White" jury 'belief' that the State had "probable cause" to arrest the petitioner on 11/16/2012.

The Fourth Amendment of the United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath and affirmation.

Deputy Holman said angrily, "You said that white man was hostile and aggressive when he served you; 'I saw the video, and in my **'interpretation'** he was not aggressive enough to cause your injuries; therefore, you filed a false police report.'" The Petitioner handcuffed and taken out the front entrance where a vehicle was waiting. Note in the supplemental report, Deputy Holman stated due to R/O's vehicle located in the back lot of the LEC, Deputy May (A35) advised that he would transport both R/O and Petitioner to the detention center **(Ex. 7A,**

Supplemental, 11/16/2012). The Petitioner states that this is an unequivocal lie. Deputy Holman took the Petitioner out the front entrance of LEC where a patrol car is waiting. As Deputy Holman led the Petitioner to the parked patrol car, a deputy ran up to Deputy Holman and asked what was going on? Deputy Holman angrily handed the warrant to the deputy as though he had arrested the criminal of the year.

The Deputy looked at the warrant and shook his head, like really! And the deputy ran back into LEC. The Applicant believed that officer was Deputy May who had been requested by Deputy Holman to park the patrol car at the front entrance. Contrary to what Deputy Holman said in supplemental, Deputy Holman, not Deputy May put the Petitioner into the patrol car and drove the Petitioner to the detention center. The Petitioner asserts that Holman deliberately perjured his statements in an attempt to hide the truth and his involvement because he knew his actions were malicious and unlawful.

As the Petitioner and Deputy Holman were waiting for detention to open the sliding door, the Petitioner said the man improperly served her and that he had no right to go into her bag. Deputy Holman said nothing. But when the Petitioner said the 'video' showed the man shoved the papers into her bag and had no right to do so, Deputy Holman retorted, "He could've dropped the papers at your feet." The Petitioner retorted, "But he didn't."

Deputy Holman's expression showed he suddenly realized he messed up, which later explained why Deputy Holman and State claimed at the magistrate hearing held on 06/25/2014 the "Video" was destroyed sometime in 2012. Immediately after the Petitioner's arrest, the Petitioner received a solicitation to participate in Pretrial Intervention. On November 22, 2012, counsel informed Magistrate Judge Dean Ford that he was representing the Petitioner. Counsel requested a "Jury Trial" on the alleged offense and attached a copy of the warrant **(Ex. 10A,**

Notice of Representation, 11/22/2012).

However, neither counsel nor Petitioner heard from the State until March 4, 2014, at which time Petitioner placed on the docket for the week of March 17, 2014 **(Ex. 8, Subpoena to Appear, and Notice of Jury Trial).** The Summary Court did not notice the Petitioner's counsel, but sent the "Notice" to the Petitioner's home. Notably, the Petitioner was in law school out of state. Counsel complained to the magistrate court and motioned for a continuance until after May 2014, due to semester exams; however, Solicitor Mitchell K. Byrd and Rick Loveday flat out denied the request. The email said that **ROLL CALL** would proceed as scheduled. **(Ex. 13, Rick Loveday, Email, Ex. 8, Subpoena to Appear).**

Counsel asserted his concerns to Magistrate Judge Dean Ford, and said Loveday's and Solicitor Mitchell K. Byrd's unreasonable objection to the Petitioner's case being continued had a strong odor of Racial Discrimination. Further Counsel said Solicitor's Office's Control of the Trial Docket is Unconstitutional **(Ex. 9, Motion for Continuance, 03/08/2014).**

The Petitioner later received a continuance but no specific date as to when the matter rescheduled on the docket. The Petitioner noted more than 477 days had passed since the Applicant's arrest on the 'misdemeanor' charge of filing a false police report. The Supreme Court Order said "Each magistrate and municipal judge of this State shall try or otherwise dispose of all criminal cases within (120) days, in which a jury trial requested **(Ex. 10, Order, 02/14/2011).**

Also, the State failed to provide discovery to the Petitioner and did not provide discovery to the Petitioner until the magistrate hearing held on 06/25/2014.

A chronology of significant events in this case is as follows:

(A) October 30, 2012, Petitioner exercising her constitutional right to vote was assaulted

by Process Server Jack Crump causing injury to the Petitioner's left arm, hand and shoulder;

(B) October 30, 2012, Petitioner confirmed through county security that video of incident available. The Petitioner went to LEC and made a complaint of assault with Deputy Matt Holman;

(C) October 31, 2012, Petitioner sought medical attention for her injuries with the Asheville VA;

(D) November 16, 2012, The Petitioner falsely arrested on the charge of filing false police report;

(E) November 22, 2012, Petitioner's Counsel filed notice of representation. Counsel Requested Jury Trial, Video and other evidence;

(F) March 4, 2014, Magistrate Court sent Subpoena To Appear to Petitioner's home. The Petitioner who was in law school out of state discovered the summons on 03/4/14. The Petitioner noted "Notice" dated 02/18/2014. State failed to notice Petitioner's Attorney.

(G) March 5, 2014, Petitioner's Attorney motioned for continuance until after May 2014, Due to semester exams; however, Rick Loveday (Magistrate Assistant) and Assistant Solicitor Mitchell K. Byrd flat out denied the request, saying "Roll Call" would Proceed as scheduled. 474 days passed since arrest on misdemeanor charge;

(H) March 8, 2014, Petitioner's counsel asserted his concerns to Magistrate Judge Dean Ford. Also stated Solicitor Byrd's and Loveday's unreasonable objection to the Petitioner's case being continued had a strong odor of Racial Discrimination. Further Counsel said the Solicitor's Office's Control of the Trial Docket is Unconstitutional;

(I) March 8, 2014, Petitioner's Counsel again requested discovery, at least ten (10) days Before the call of the case for trial. Counsel asked that Magistrate Court forward filed Copies of Rule 5 and Brady Request to his office in the enclosed self-addressed stamped envelope provided. Counsel requested to inspect written statements of the Petitioner and Any witnesses who have decided to testify against the Petitioner, any facts the Basis of reasonableness for the issuing of the arrest warrant, any "PROBABLE CAUSE" to arrest the Petitioner, and any evidence that the arresting officer had any "Videotape" to give him probable cause to arrest the Petitioner;

(J) March 11, 2014, State claimed that it disclosed "Discovery" to Petitioner's counsel. But State failed to disclose "any witnesses" or that three (3) Greenville County Sheriff's Deputies would testify against the Petitioner at trial. Also, State failed to disclose "Videotape" evidence destroyed sometime in 2012; Counsel denied receipt of discovery on 03/11/2014;

(K) April 4, 2014, Petitioner's Counsel filed motion for withdrawal;

(L) April 9, 2014, Magistrate Judge Dean Ford relieved counsel. On the same day, Judge Ford placed the Petitioner on the docket for May 12, 2014;

(M) June 24, 2014, "All White Jury" chosen by Contracted Prosecutor George K. Lyall, the day before the hearing;

(N) June 25, 2014, Magistrate Hearing held. State provided discovery to the Petitioner, the day of hearing. The State informed Petitioner on the day of trial that "Video" destroyed sometime in 2012. Petitioner informed on day of trial that 'three' deputies who claimed to see the video in 2012 would testify the Petitioner was not assaulted. The Petitioner requested dismissal of charge due to "Destroyed" evidence. The Magistrate

Judge denied dismissal and continuation of the Petitioner's case. Also, denied Petitioner's right to retain counsel. Both Petitioner and Contracted Prosecutor George K. Lyall summoned to the Jury Room while jury deliberated. The Jury asked Judge Ford if it could get the definition of "Probable Cause" in writing because it did not understand what probable cause meant. Judge Ford refused and instructed the jury to do the best it could. The Petitioner caught State's Witness (Jack Crump) talking with Juror. Judge Ford also allowed prosecutor and deputies to roam in the back room where the jurors were. The "Witnesses" for the State not listed in the discovery;

(O) June 25, 2014, Petitioner convicted of filing false police report; Petitioner sentenced to 30 days or $300 fine; Petitioner noticed magistrate judge that she would appeal the decision;

(P) July 7, 2014, Petitioner appealed the conviction to the Greenville County Circuit Court;

(Q) July 9, 2014, State immediately scheduled hearing for August 12, 2014;

(R) July 18, 2014, Petitioner sent a certified letter to Judge Ford requesting the Transcript of the hearing;

(S) July 24, 2014, Petitioner received an 'undated letter' response from Judge Ford asserting, "No recordings were available for that session of court." 'The audio tool used malfunctioned."' However, Petitioner noted that Magistrate Return filed on July 23, 2014. And coincidentally, the envelope that contained the UNDATED RESPONSE was postmarked July 23, 2014.

(T) July 28, 2014, Petitioner made a complaint against Judge Dean Ford with the Office of Disciplinary Counsel. Subsequently, Petitioner received a letter dated August

4, 2014, asserting that it had received the complaint against George K. Lyall; however, Petitioner had not made a complaint Lyall at that time;

(U) August 11, 2014, Petitioner sent email to Chief Administrative Judge. Petitioner asked that charge be dismissed without her appearance and indicated that she had to attend to personal matters. Petitioner timely submitted her appeal and fully briefed her issues. And since this was not an evidentiary hearing there would be no lost testimony. Petitioner requested that judge move forward with her case and make a decision in her absence; Petitioner received email response from Weston White, law clerk for Judge D. Garrison Hill, instructing Petitioner to resend email copying opposing counsel Mitchell K. Byrd. Petitioner discovered Mitchell K. Byrd was opposing counsel; the email Did not otherwise indicate or instruct Petitioner to appear unless otherwise told; Petitioner sent email again copying opposing counsel Mitchell K. Byrd;

(V) August 12, 2014, And when opposing counsel failed to confirm receipt, Petitioner Resent Email; Also, Petitioner drove to the Greenville County Courthouse; spoke Via phone with Angie, the Assistant to Chief Administrative Judge Letitia H. Verdin. The Petitioner informed that she placed a copy of the email from Judge Hill's law clerk in Verdin's mailbox and asked that she intervene in the matter; Petitioner said she had grave concerns about Judge Hill objectively deciding Petitioner's appeal on the merits since Judge Hill, at the behest of Judge Stilwell forced the Petitioner's brother to go to trial and litigate his criminal matter. Judge Hill also openly reprimanded the Petitioner for opposing the judge's unlawful actions against her brother;

(W) August 21, 2014, Petitioner received letter from court of common pleas informing Petitioner that her appeal DISMISSED WITH PREJUDICE FOR FAILURE TO

PROSECUTE;

(X) August 27, 2014, Petitioner submitted the notice of appeal to the South Carolina Court of Appeals. Petitioner also requested the transcript. After receipt of transcript, Petitioner immediately noted glaring discrepancies in the record;

(Y) October 9, 2014, after Petitioner filed notice of appeal, Petitioner received letter from Deputy Attorney General Sally W. Elliott. Attorney Elliott said she received the Notice of appeal, and lead counsel would be assigned once the Petitioner filed the Initial Brief and Designation of Matter. Also Attorney Elliott said she would appreciate if Petitioner sent any correspondence about the Petitioner's matter directly to her and Petitioner would be notified once lead counsel assigned;

(Z) November 26, 2014, Petitioner filed Initial Brief and Designation of Matter;

(1) December 23, 2014, Petitioner received another letter from Attorney Elliott informing that she received the initial brief and designation of matter. Attorney Sally W. Elliott assigned herself as lead counsel;

(2) January 28, 2015, the State filed its Initial Brief and Designation of Matter, alleging Petitioner failed to present these issues to the circuit court; Also Petitioner's recording of Magistrate hearing held on June 25, 2014, struck from the record;

(3) March 11, 2015, Respondent's motion granted by Judge Few;

(4) March 26, 2015, Petitioner retained Attorney J. Falkner Wilkes to take over criminal appeal;

(5) March 26, 2015, Attorney Wilkes filed motion to engage counsel and amend initial Brief;

(6) May 10, 2015, Petitioner asked former Chief Justice Few to recuse himself because it

is evident that he is working in the interests of the State;

(7) May 22, 2015, Former Chief Justice Few refused to recuse himself;

(8) September 1, 2015, State filed Final Criminal Brief of Respondent;

(9) September 10, 2015, Petitioner's Counsel filed Criminal Brief of the Petitioner;

(10) November 2, 2015, The Petitioner timely submitted several copies of her civil brief and designation of matter. Respondent did not file brief; the Court dismissed the Petitioner's civil appeal on June 8, 2016, claiming at the very end that Petitioner failed to preserve her issues on the record;

(11), Petitioner noted that both civil and criminal appeal were dismissed one week within each other and for the same reason. The Petitioner also noted that the same justices allegedly affirmed the decisions;

(12) September 16, 2016 Attorney J. Falkner Wilkes petitioned for rehearing and of his own volition claimed that he filed Writ of Certiorari with the South Carolina Supreme Court. However, there is no evidence that a "Writ" was filed;

(12A), May 30, 2017, "Writ" allegedly denied based on "Vote of Court;"

(12B) December 4, 2017, Petitioner filed her first PCR Application;

(12C) October 26, 2018, PCR hearing held; Judge Kinlaw decided to remand the case back to the magistrate court for a new trial (Transcript of Record, P.107, Lines 10-24, P.108, Lines 1-3). In opposition to Judge Kinlaw's decision, former Assistant Attorney General Deshawn Mitchell requested additional time to brief the following issues raised by Judge Kinlaw and the Petitioner's PCR application:

(1) The Judge summoned the Petitioner and Contracted Prosecutor George K. Lyall to the

Jury room while jurors deliberated; (2) State's Witness's Conversation with Juror; and (3) the destruction of the Videotape. Assistant Prosecutor Mitchell asked for a week to brief the issues or until November 5, 2018. However, Judge Kinlaw gave the State twenty (20) days, and told the Petitioner she could also submit a brief in response to the three questions outlined. The deadline to submit the additional brief is November 15, 2018.

(13) November 6, 2018, Attorney Mitchell submitted the Respondent's Brief **(Ex. 1A);**

(14) November 15, 2018, Petitioner called and informed the court that she was ill and requested until November 16, 2018, to submit the optional brief. Petitioner instructed to reach out to Attorney Mitchell and confirm that it was okay to file the brief late since Judge Kinlaw had set a strict deadline. The Petitioner emailed Attorney Mitchell, but it came back undeliverable. Also, the Petitioner called Mitchell but was unable to reach or leave voicemail. Petitioner then called AG's office to ask the whereabouts of Attorney Mitchell. After further investigation, the Assistant informed that Attorney Mitchell no longer worked for the AG as of November 6, 2018, significantly, the same date Attorney Mitchell submitted the first Order of Dismissal. Notably, Petitioner was not cc'd of Mr. Mitchell's departure or replacement. The Petitioner did not brief the issues by the 11/15/2018 deadline;

(15) November 26, 2018, Petitioner received an email from Judge Kinlaw's law clerk requesting that she submit her brief. The Petitioner emailed the PCR Court saying, the purpose of this email is to serve as the brief and to inform this honorable court that the Petitioner provided the recording of the Magistrate Hearing held on June 25, 2014, to the State in August 2014. The Petitioner argued that there is no reason to waste the courts time, other resources, and aggravate her illness when there is a recording that

unequivocally supports what was said and done in Judge Ford's courtroom on June 25, 2014?

Further, the Petitioner said that she has listened to this recording several times and it reeks of "Due Process" violations. It also contradicts the State's position and the Testimony provided by hired prosecutor George K. Lyall on October 26, 2018. And to no surprise George K. Lyall perjured himself at the PCR hearing held on 10/26/2018. Also on June 8, 2018, Petitioner went to the State's Attorney Office to speak with Attorney Mitchell about my case. The Petitioner waited in the lobby.

Petitioner told he was in a meeting, and almost two hours later told Mr. Mitchell was out to lunch. Petitioner requested a call and spoke with Attorney Mitchell on June 8, 2018. The Petitioner noted in the State's Motion for Extension of Time dated March 28, 2018, the State asserted it requested the transcript of the magistrate hearing on February 6, 2018. (State had three months to request transcript).

However, as of date, Respondent had not obtained the transcript. The State asked for an additional 30 days to file its return, alleging that additional time was necessary for the complete evaluation of the Petitioner's allegations and determination of potentially available defenses for the Respondent. Judge Stilwell granted the State's request on April 4, 2018. The State's request due May 7, 1018.

The State failed to confirm whether it received the "Transcript" that it claimed necessary for the complete evaluation of the Petitioner's claims and potential defenses for the State. However, the Petitioner received the Return dated May 2, 2018, and notably, the "Transcript" that the State was purportedly waiting for was not included in the Return. Also, Petitioner noted that there was no mention of the "Transcript" that the

State claimed it needed to file the RETURN.

The Petitioner asserts that the State's feigned efforts to procure the "Transcript" was just another ploy by the State to delay the Return. Also, this ploy gave the appearance that "Transcript" was available. Where is the Transcript? There cannot be a valid legal proceeding without a record. The Petitioner asserted in her PCR application that Judge Ford claimed the audio tool used malfunctioned.

However, the Petitioner taped the almost seven (7) hour magistrate hearing held on June 25, 2014, and the Office of Disciplinary Counsel provided a copy to Deputy Counsel Sally Elliott in August 2014. And subsequently, Attorney General Elliott requested that "Recording" be stricken from the record. The Petitioner spoke with Attorney Mitchell about the extension of time. Attorney Mitchell said he requested the "Transcript" and informed by Judge Ford the "Machine" was not functioning so there was no recording of the actual transcript.

And when Petitioner asked how the State would evaluate the Petitioner's claims without a record. Assistant Solicitor Mitchell said, "It planned to call "Witnesses" to testify what they remembered." Now bear in mind, Magistrate Hearing held on June 25, 2014, almost four (4) years earlier. Significantly, the Petitioner noted that the only "witness" present for the PCR hearing held on October 26, 2018, was hired prosecutor George K. Lyall. Again the Petitioner was denied the Sixth Amendment right to confront witness.

Remarkably, the State's key witness, arresting officer Deputy Matt Holman failed to appear for the PCR hearing held on 10/26/2018. Also, absent were the "Three Deputies" employed by the State to testify against the Petitioner. Petitioner said she

provided the recording to AG Sally Elliott. Mr. Mitchell seemed surprised, said he did not have a copy, and he would look into it. Also, the Petitioner said AG Sally Elliott had the 'recording' struck from the record?

However, on October 26, 2018, Attorney Mitchell said absolutely nothing about the Transcript of the hearing held on June 25, 2014. But instead used hired prosecutor George K. Lyall to continue and maintain the State's fabricated version of what happened on October 30, 2012; November 16, 2012 and June 25, 2014.

Further, Petitioner said she has been denied "Due Process" and harassed by the courts. Petitioner asked this Honorable Court afford Petitioner "Due Process". The "Due Process" the Petitioner has been denied since the inception of her case. The Petitioner respectfully requested the PCR court remand the Petitioner's matter for a new Trial.

(16) January 24, 2019, PCR court denied relief by order. The Order filed January 31, 2019;

(17) February 7, 2019, The Petitioner noticed of the order;

(18) January 9, 2019, the PCR court secretly sent Respondent email request for second order of dismissal. PCR court requested that Respondent submit the second Order of Dismissal in twenty (20) days. The Petitioner not cc'd or informed of email request for second Order of Dismissal. Notably, Petitioner is the **"Subject" (Ex. 2C, Email Request, Order of Dismissal, P. 1-2, 01/09/2019).**

(19) February 3, 2019, Petitioner discovered Respondent's email with attached proposed Order dated January 22, 2019 **(Ex. 2C).**

The PCR Order dated January 24, 2019, precisely the same order "word for word" as

Respondent's order of dismissal dated January 22, 2019. The Respondent's order of dismissal was in editable form, undated and unsigned **(Ex. 2D, State's Order of Dismissal, 6 Pages, Second Order of Dismissal, 01/22/2019).** The order signed by Judge Kinlaw on January 24, 2019, is the exact same order of dismissal submitted by the Respondent on January 22, 2019. Significantly, this order is the second order of dismissal submitted by the Respondent. Judge Kinlaw signed the order of dismissal on January 24, 2019. Notably, Form 4 missing;

(20) February 14, 2019, Petitioner filed Rule 59 (e) motion requesting specific findings of fact and conclusions of law as required by section 17-27-80 and Rule 52 (a) of the SCRCP **(Ex. 3, Petitioner's Rule 59 (e) Motion, 02/14/2019).** The PCR Court received the motion on February 19, 2019, and summarily denied the Petitioner's 59 (e) motion on February 20, 2019. (Ex. 3A, Order, 02/20/2019). Petitioner received order denying motion on February 23, 2019, **(Ex. 3A).** Notably, in the order denying the Petitioner's 59(e) motion, Judge Kinlaw denied that the PCR court remanded the matter to the Magistrate Court for retrial. However, Judge Kinlaw deleted the language that Petitioner shall remain in the custody of the State within the South Carolina Department of Corrections since Petitioner is not confined **(Ex. 2, Order 01/24/2019).**

(21) March 4, 2019, Petitioner reasserted Rule 59 (e) motion, again, PCR Court denied the motion without response;

(22) March 14, 2019, The Petitioner ordered Transcript;

(23) March 17, 2019, Petitioner submitted notice of appeal to the South Carolina Supreme Court. The Petitioner informed Court through notice of appeal that Transcript ordered on 03/14/2019. Also, Petitioner enclosed two (2) postage

prepaid envelopes and requested Court send clocked documents to Petitioner;

(Ex. 4, Notice of Appeal, 03/17/2019);

(24) March 26, 2019, Petitioner received 'unsolicited' letter dated 03/25/2019 from SCCID asking if Petitioner wanted representation. SCCID said it would close the file if it did not receive the notarized Affidavit of Indigency by April 10, 2019;

(25) April 3, 2019, Petitioner called the Court and inquired about the documents and the Notice of Appeal. Petitioner said Court failed to acknowledge and provide case number for the Appeal. Petitioner told that she needed to speak with case manager (Ashley). Petitioner called Ashley and requested that she call Petitioner. About a minute later, Petitioner received call from Ashley. Ashely asked for the case number so she could look up the case, but Petitioner said that she did not have a case number and that Petitioner had not received the prepaid envelopes with clocked copies. Ashley said she didn't know why Petitioner had not received the documents and assured Petitioner that she would send them. The Petitioner received clocked documents in an envelope dated April 3, 2019, but notably, Court did not return the documents in the prepaid envelopes provided. Also Petitioner noted that **"Notice" acknowledging receipt** of Petitioner's notice of appeal still missing. This Court willfully failed to acknowledge Petitioner's appeal and provide a case number for the Petitioner's appeal. Consequently, there was no date to reference as to when the clock started on the Petitioner's appeal;

(26) April 4, 2019, Petitioner declined the representation. The Petitioner knew that Chief Appellate Dudek was not acting in her best interest (Ex. 4B);

(27) April 9, 2019, Petitioner received second letter from SCCID (Ex. 4C); SCCID feigned concern about Petitioner's self-representation. SCCID wanted to control the

Petitioner's appeal in the same manner it controlled the Petitioner's brother's appeal. State used this fake concern as a ploy to delay the submission of the Petitioner's appeal. Petitioner noted that when she filed the notice of appeal, the record showed that Petitioner's appeal was "pending" which explained why the Court (Shearouse) failed to "**acknowledge receipt** of Petitioner's appeal." The Court suspended the Petitioner's appeal allowing SCCID (Dudek) time to persuade Petitioner to let SCCID represent her. The Court failed to send prepaid postage envelopes with clocked documents;

(28) April 17, 2019, Petitioner's last correspondence to SCCID (Dudek). SCCID said it would close its file if Petitioner did not submit the notarized Affidavit of Indigency by April 10. But Chief Appellate Defender Dudek made two more attempts to intimidate and persuade Petitioner to allow SCCID to take over the Petitioner's representation. Notably, Chief Dudek claimed that Petitioner's file closed on April 19, 2019 **(Ex. 5, 04/19/2019);**

(29) April 22, 2019, The Court (Shearouse) dismissed Petitioner's matter alleging that Petitioner failed to provide Court with copy of the correspondence with the court reporter showing that transcript timely ordered from the court reporter (including agreement regarding payment for the transcript) as required by Rule 243 (b) and 207 (a) (1) of the South Carolina Appellate Rules (SCACR) **(Ex. 5A, Order, 04/22/2019).**

The Court did not send a deficiency letter to Petitioner before it dismissed the Petitioner's Appeal;

(30) April 23, 2019, the Court acknowledged receipt of the Petitioner's appeal and provided case number for the Petitioner's appeal filed on March 21, 2019. Petitioner received acknowledgment of notice of appeal one (1) month after Petitioner filed notice of appeal. Also, the Court acknowledged the Petitioner's appeal on April 23, 2019, after

the Court dismissed the Petitioner's appeal on April 22, 2019 **(Ex. 5B, The Supreme Court Acknowledgement of Receipt, Case No. 2019-000458, 04/23/2019);**

(31) May 2, 2019, Petitioner filed motion to reinstate. The Court failed to respond to Petitioner's motion **(Ex. 6, Motion to Reinstate, 05/02/2019).** The Petitioner is concerned about this Court's failure and inordinate delay to decide the Petitioner's matter. The Petitioner asserts that PCR court erred when it failed to make specific findings of fact, and state expressly its conclusions of law, relating to each issue **presented as mandated by S.C. Code Ann. § 17-27-80 and Rule 52(a);**

(32) June 29, 2019, The Petitioner received alleged "Order" dated June 27, 2019, denying Petitioner's motion to reinstate. The motion for remand allegedly dismissed as moot. Notably, the Remittitur also dated June 27, 2019, is enclosed;

(33) July 8, 2019, Petitioner filed second PCR 2019-CP-23-03867

Remarkably, it was the Respondent's second order of dismissal dated January 22, 2019, which the PCR court signed and filed on January 31, 2019. On February 14, 2019, the Petitioner submitted a timely motion to amend under Rule 59(e), and 52(a), arguing that the Order of Dismissal did not contain specific findings of fact and conclusions of law regarding each of the claims presented at the evidentiary hearing, as required by S.C. Code Ann. § 17-27-80 and Rule 52(a). The Petitioner asserts that the testimony in the Order of Dismissal is first and foremost erroneous. Moreover, it is not an objective, true, and accurate recitation of the testimony presented during the evidentiary hearing.

Upon review of Supreme Court decisions, the Petitioner noted this Court's prior admonishments in *Pruett* and similar cases citing that when Rule 59(e) invoked, the court must

make specific findings of fact and conclusions of law in respect to each issue presented as required by S. C. Code Ann. § 17-27-80.

In *Pruett v. State*, the Applicant raised several claims for relief in his PCR application and presented evidence regarding those claims during the PCR hearing. 310 S.C. 254, 255, 423 S.E.2d 127, 127-28 (1992). The PCR Order did not address the applicant's claims. The Court vacated the PCR court's order denying relief and remanded the matter to the PCR court to hold a new hearing. The Court noted, "[W]e are not abandoning the general rule that issues must be raised to, and ruled on by, the post-conviction judge to be preserved for appellate review. The extraordinary action we take today is necessary only because our opinion in *McCray* is not being followed." *Id.* at 255 n.2, 423 S.E.2d at 128 n.2 We further explained:

We take this opportunity to express our concern with the increasing number of orders in PCR proceedings that fail to address the merits of the issues raised by the applicant. Not only does this deprive the parties of rulings on the issues raised, but it makes review by the appellate court more difficult and ultimately increases the work load of all involved where, as in this case, a new hearing is required to secure the rulings which should have been made initially. Counsel preparing orders should be meticulous in doing so, opposing counsel should call omissions to the attention of the PCR judge prior to issuance of the order, and the PCR judge should carefully review order prior to signing it. Even after an order is filed, counsel has an obligation to review the order and file a Rule 59(e), SCRCP, motion to alter and amend if the order fails to set forth the findings.

The Petitioner noted in the transcript of the PCR hearing the PCR court remanded the matter to the magistrate court for a new trial on October 26, 2018. Judge Kinlaw said the following:

"I'm going to send this matter right back to the magistrate court. 'I'm going to remand it back there, have it retried - - and go through the process. I - - I just think that's the right thing to do. I really think that's the right thing to do." **(Ex. Transcript, P. 107, Lines 8-17, and P. 108, Lines 1-3, 10/26/2018).** But the PCR court without notice to the Petitioner allowed the Respondent to draw up a second order of dismissal on January 22, 2019, and the PCR court willfully signed off on the January 24, 2019, order denying the Petitioner post-conviction relief. The PCR court made the decision to remand the Petitioner's matter for retrial and there is no later adjudication on the merits by the PCR court to the contrary.

In a post-conviction relief (PCR) proceeding, the burden is on the applicant to prove the allegations in his application, and if there is any probative evidence to support the finding of the PCR judge, those findings must be upheld; likewise, a PCR judge's findings should not be upheld if there is no probative evidence to support them. *Thompson v. State* (S.C. 2000) 340 S.C. 112, 531 S.E.2d 294.

Here, the Petitioner asserts that she proved the allegations in her application and Judge Kinlaw's reasoning supported that she proved the allegations in her post-conviction application. And as evidenced by the PCR record, the Petitioner was denied several rights afforded the Petitioner, including, the Sixth Amendment, which states, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his or her defense."

Post-conviction relief (PCR) applicant must produce the testimony of a favorable witness or

otherwise offer the testimony in accordance with rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. *Banner v. State* (S.C. 1998) 333 S.C. 298, 509 S.E.2d 807. The Petitioner argues that the State willfully destroyed a "Videotape" that was favorable to her defense. This video showed that the Petitioner was assaulted by Jack Crump as she stood in line to cast her early vote on October 30, 2012. Also, the Petitioner provided to Deputy Matt Holman the names of "Three eyewitnesses" on October 30, 2012. But Deputy Holman willfully failed to investigate these witnesses. And Deputy Holman was later complicit in the fabrication of witnesses.

The Petitioner was not informed of the destruction of the "Video" until she appeared for trial on June 25, 2014. At which time, when asked, hired prosecutor George K. Lyle told the Petitioner that arresting officer, Deputy Holman said the "Video" was destroyed sometime in 2012, the exact date not known. Notably, the "Video" placed into P&E on 11/07/12. The Petitioner asked the magistrate judge to dismiss since there was no evidence to substantiate the charge.

But, the magistrate judge who was complicit with the State refused and said there are 'deputies' here today who are going to testify that they saw the video in 2012, and would testify that Jack Crump did not assault the Petitioner when he processed served her on October 30, 2012.

Rule 602, states, "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.

Here, the Petitioner argues that the State violated Rule 602, when it employed and used the testimony of "Three Deputies" who had no personal knowledge of the Petitioner's criminal matter testified that they saw the "Video" the State later claimed was destroyed sometime in 2012. The record showed that the "Video" was allegedly placed into Property & Evidence on 11/07/2012.

So, are we to believe that the "Video" critical to the Petitioner's defense was destroyed sometime between 11/07/2012 and 12/31/2012, less than two (2) months later? And notably, the P&E failed to show that the "Video" was signed out on 11/16/2012, the date of the Petitioner's arrest or ever signed out since being placed into P&E on 11/07/2012?

The State willfully destroyed the video that substantiated the Petitioner's claims, and then used these deputies testimony as substitutes for the Video. These "Three Deputies" all gave inaccurate and inconsistent testimony. The Petitioner strenuously asserts that she was unable to confront and impeach the deputies' and state witnesses testimony without the Video, thus, violating the Confrontation Clause of the Sixth Amendment.

The Fourteenth Amendment, "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Successive Applications

This Court has allowed successive PCR applications where the applicant has been denied complete access to the appellate process. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple." *Aice v. State*, 305, S.C. 448, 452, 409 S.E.2d 392, 395 (1991). This "bite includes an applicant's right to appeal the denial of a PCR application, and the right to

assistance of counsel in that appeal. *See Aice*, 305 S.C. at 448, 409 S.E.2d at 392.

An Austin appeal is used when an applicant is prevented from seeking appellate review of a denial of his or her PCR application. In Austin, the defendant never received a full procedural "bite at the apple" because he was prevented from seeking any review of the denial of his PCR application. *Aice*, 305 S.C. at 452,409 S.E.2d at 395. A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. *See King*, 308 S.C. at 348, 417 S.E.2d at 868. If the PCR court finds an applicant was denied his right to appeal, the applicant can petition for certiorari and this Court will review whether the petitioner was prejudiced by the failure to obtain appellate review. *Id*; *see King*, 308 S.C. at 349, 417 S.E.2d at 868 (outlining the procedure used to seek review pursuant to *Austin v. State*); *Wicker v. State*, 310 S.C. 8,425 S.E.2d 25 (1992).

In the instant case, the Petitioner asserts that she has never received a complete "bite at the apple' since the inception of appellate review. After the Petitioner was wrongfully convicted of filing a false report on June 25, 2014, the Petitioner appealed to the court of common pleas on July 7, 2014. The Petitioner fully briefed her case. And on July 9, 2014, the Respondent hastily placed the Petitioner on the docket for an August 12, 2014, hearing. (Note: The charge remained pending in the magistrate's court for approximately one and half years before a trial was held).

Notably, the Respondent failed to notice the Petitioner of the magistrate return filed on July 23, 2014. On August 11, 2014, the Petitioner who was in law school and ill at the time asked the court to decide the case in her absence. The Petitioner sent an email to the court of common pleas requesting not to have to appear at the hearing. The Petitioner received a response but was not told that she had to appear.

The law clerk for Judge D. Garrison Hill instructed Petitioner to resend the email copying opposing counsel Mitchell K. Byrd. The Petitioner resent the email copying Assistant Solicitor Byrd, and when Byrd failed to confirm receipt of the email, the Petitioner resent the email on August 12, 2014. Also, on August 11, 2014, the Petitioner drove to the courthouse, spoke via phone with Judge Verdin's Assistant Angie, and informed that Petitioner put a copy of the email from the law clerk in Judge Verdin's mailbox. The Petitioner did so because she had grave concerns about Judge Hill objectively considering the Petitioner's case and deciding the Petitioner's appeal on the merits. The Petitioner clearly sought to have her case decided in her absence, and was willing to be bound by the court's decision on August 12, 2014.

And on August 21, 2014, the Petitioner received a letter dated August 14, 2014, informing the Petitioner that her appeal was dismissed for failure to prosecute signed by Judge D. Garrison Hill. The Petitioner noted the information section asserted, "This action came to trial or hearing before the court. 'The issues have been tried and a decision rendered."' Also, the Petitioner noted in the fabricated transcript that Solicitor Byrd did not request dismissal of the Petitioner's case. But it was Judge Hill that dismissed the Petitioner's case. And opined in the record, "Well it's her appeal. She's not here. So the appeal is dismissed for failure to prosecute." **(Ex. 23B, Transcript, 08/12/2014).**

On August 27, 2014, the Petitioner filed her notice of appeal with the South Carolina Court of Appeals. After Petitioner filed her notice of appeal, the Petitioner received a later dated October 9, 2014, from Senior Assistant Deputy Sally W. Elliott of the Office of Attorney General. Ms. Elliott said that she received the notice of appeal in the petitioner's case, and that lead counsel would be assigned once the Petitioner filed her initial brief and designation of matter. Also, Ms. Elliott said that she would appreciate if the Petitioner sent any correspondence about the

Petitioner's matter directly to her and that Petitioner would be notified once lead counsel was assigned **(Ex. 25-1-4, Office of the Attorney General, 10/09/2014).**

And, notably, after the Petitioner filed initial brief and designation of matter, the Petitioner received a letter dated 12/23/2014, confirming receipt of the initial brief and designation of matter, and that she (Ms. Elliott) would be lead counsel **(Ex. 25-2, 12/23/2014).** On March 26, 2015, the Petitioner hired Attorney J. Falkner Wilkes to take over the criminal appeal. And on March 28, 2015, Attorney Wilkes motioned to engage counsel and to amend initial brief **(Ex. 27, Motion).**

May 10, 2015, the Petitioner asked former Chief Justice Few to recuse himself because it was evident that he has a prejudice toward the Petitioner, and that he is working in the interests of the State. However, on May 22, 2015, Judge Few made the unilateral decision not to recuse himself **(Ex. 31, Motion for recusal).** Notably, the Petitioner had a civil and criminal matter going simultaneously.

In the Petitioner's civil appeal, the State allowed the Respondent to file a fraudulent Lis Pendens on June 5, 2012, and on January 10, 2014, the Petitioner was summoned to appear before Judge Charles B. Simmons to harass, intimidate, and force the Petitioner to make settlement with the HOA. The Petitioner has been harassed by this judge since 2010. Moreover, both Judge Simmons and Respondent knew that the lis pendens did not accord with South Carolina Statute § 15-11-30. The Petitioner was concerned about the latitude the court of appeals afforded the Respondent.

The Court of Appeals gave the Respondent several opportunities to delay the filing of its initial brief and designation of matter, and when finally compelled to do so, the Respondent claimed his client was unable because he ran out of money. Further, the COA allowed the Respondent to use

excuses and ploys to dismiss the Petitioner's appeal and delay the filing of its initial brief. And when those excuses and ploys failed, the COA (Judge Few) came to the Respondent's rescue by dismissing the Petitioner's meritorious brief, claiming that the Petitioner failed to preserve her issues on the record.

Notably, the Petitioner timely submitted several copies of her final brief and designation of matter on November 2, 2015 **(Ex. 33, Brief of Appellant).** Despite the fact that Respondent had failed to submit its **initial brief and designation of matter**; the Court of Appeals dismissed the Petitioner's civil appeal on June 8, 2016, alleging only at the very end that the Petitioner had failed to preserve her issues on the record.

Moreover, the Petitioner noted that both civil and criminal appeal was dismissed one week within each other and for the same reason. The Petitioner also noted that the same justices affirmed the decisions. The Petitioner argues why the Respondent/State would go to such extents if all the Respondent/State had to do from the inception of the Petitioner's case was to assert "Issue Preservation?" The State has interfered in the Petitioner's right to appellate review, and thwarted all attempts by the Petitioner to have her cases heard, and decided in accordance with the law. As evidenced by the aforementioned the Petitioner denied complete access to the appellate process. Thus, the Petitioner denied a complete "bite at the apple."

Res Judicata

Where a defendant alleges, in a successive post-conviction relief (PCR) application, facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications, and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing. *Robertson v.*

State (S.C. 2016) 418 S.C. 505, 795 S.E.2d 29. Criminal Law 1655 (9).

"The doctrine of res judacata, or claim preclusion, is applied to bar suit in light of a prior judgment when three elements are demonstrated: (1) that 'the prior judgment was final and on the merits, and rendered by a court of competent jurisdiction in accordance with the requirements of due process'; (2) that 'the parties are identical, or in privity, in the two actions'; and (3) that 'the claims in the second matter are based upon the same cause of action involved in the earlier proceeding' i.e., the claims 'arise out of the same transaction or series of transactions, or in the same core of operative facts.'" The matter must end in a valid final judgment on the merits.

Here, the Petitioner asserts that res judicata does not apply in the Petitioner's matter since the first PCR application was not finally adjudicated on the merits by a competent court of jurisdiction. The second order of dismissal submitted by the Respondent on January 22, 2019, did not address any of the issues raised in the Petitioner's application. Nor did the second order of dismissal accord with the PCR court's earlier ruling to remand the petitioner's matter back to the magistrate court to be retried. Thus, the Petitioner's issues were not litigated on the merits. The Petitioner timely motioned for Rule 59(e), and requested that the PCR court make specific findings of facts and conclusions of law as to each issue raised. But, the PCR judge denied the motion as though Rule 59(e) is discretionary. The preparation and finalization of a PCR order is often a collaborative effort.

The Court recognized the prevailing party often prepares a proposed order for the PCR court. *See Hall v. Catoe,* 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004) ("[I]t is common practice for judges to ask a party to draft a proposed order for the sake of efficiency."). When counsel for either side prepares the proposed order, the order must include findings of fact and conclusions of

law as to all issues raised by an applicant. A copy of the proposed order should be transmitted to opposing counsel. Opposing counsel should promptly review the proposed order and alert preparing counsel and the PCR court as to any deficiencies in the proposed order.

Because the PCR judge will ultimately be signing the order, the PCR judge must carefully review the proposed order to ensure it includes appropriate findings of fact and conclusions of law as to all issues raised. Once a proposed order is finalized, signed by the PCR judge, filed, and served upon the parties, the parties should thoroughly review the final order to make sure all issues raised were adequately addressed as required by section 17-27-80 and Rule 52(a); if they were not, a timely Rule 59(e) motion should be filed, requesting the PCR court to address the appropriate issues. The Court reasoned, "When these steps are ignored on the front end, we find ourselves having to remand a case."

In the transcript of the Petitioner's PCR hearing held on October 26, 2018, Judge Kinlaw said verbatim:

"So having said all of that, I've got some issues on both sides of the fence. 'And - - and I'm not the kind of Judge that's going to hide - - duck and hide and tell you what I'm going to do.'"

"I'm going to send this matter right back to the magistrate court." 'I'm going to remand it back there, have it retried, and - - and go through the process.' 'I - - I just think that's the right thing to do. I really think that's the right thing to do.'" **"And if the State has a problem with that ruling,** you know what you got - - you know what you can do."

"But I think - - I think fairness is ultimate on both sides." **(Ex. Transcript, P. 107, Lines 5-24).** Further, Judge Kinlaw said, "But what I'm - - what I'm really hanging my hat on, Mr. Mitchell, is the Sixth Amendment right, that Sixth Amendment, which she did put - - she did put in her application. That's in her application."

Moreover, Judge Kinlaw addressed and argued the issues laid out in the Petitioner's PCR application: Due Process; Destruction of Video; Notice to the Petitioner of the destruction of the video on day of magistrate hearing; Probable Cause to arrest Petitioner after destruction of the video; State's Witness speaking with juror; and Both Contracted Prosecutor and Petitioner summoned to jury room while jury deliberated. And as any reasonable jurist would, Judge Kinlaw raised grave concern about the process and what transpired in that courtroom. However, inexplicably, Judge Kinlaw's actions three months later contradicted his sentiments and earlier ruling to remand the matter back to magistrate court for a retrial.

The Respondent asked if it could brief the issues raised by the Petitioner, and Judge Kinlaw allowed the Respondent to submit an order of dismissal on November 6, 2018. The Petitioner asserts that regardless of the argument posited by the Respondent, there was not an argument that could be or was made by the Respondent that was sufficient to overcome the burden that the Petitioner was not entitled to PCR relief.

The burden was on the Petitioner to make her case for post-conviction relief. And the Petitioner asserts that it was unfair of the PCR court and it contravened the rule of law to allow the Respondent to 'game the system' by allowing the Respondent to submit back to back (successive) frivolous orders of dismissal. The Petitioner argues that the PCR court knew that the Petitioner established her entitlement to relief by a preponderance of the evidence. The Petitioner asserts that if the Respondent can't win on the merits, apparently, it will try to win by any means necessary including frustrating the process. The Respondent's second order of dismissal contradicted the PCR court's earlier ruling that the Petitioner's matter be remanded back to magistrate court.

The Petitioner strenuously asserts that the PCR court made a final adjudication on the merits

on 10/26/2018, and there is no later adjudication to the contrary. The Petitioner made a timely motion for Rule 59(e), Thus, there is a discrepancy as to what the PCR court ruled on October 26, 2018, and what the PCR court did off the record three (3) months later. Therefore the Petitioner asks this Court to clarify this issue and address the other issues raised in the evidentiary hearing and the Petitioner's Post-Conviction Relief application.

Respectfully submitted,

Donna Boyd, Pro Se

cc: Taylor Z. Smith
Assistant Attorney General

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

2019-CP-23-3867

DONNA BOYD,

PETITIONER,

against

STATE OF SOUTH CAROLINA,

RESPONDENT.

AFFIDAVIT OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, certified mail on May ~~20~~ 25, 2021, addressed to their attorney of record. Taylor Z. Smith, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

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