

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Roger L. Couch, Judge

Case No. 2010-CP-42-6815

The State of South Carolina, Respondent,


v.

Frederick Alvin Hayzill, Appellant.

PETITIONER-APPELLANT EXPLANATION PURSUANT TO
RULE 243(c), SCACR
CERTIORARI TO REVIEW POST-CONVICTION RELIEF ACTION

Frederick A. Hayzill appeals the order of the Honorable Roger L. Couch dated March 15, 2013 (filed in the Clerk's Office March 18, 2013). Appellant received written notice of entry of this order on March 25, 2013, and herewith provides an explanation, pursuant to Rule 243(c), SCACR, as to why the lower court's determination that the post-conviction relief action is barred as successive or being untimely under statute of limitations is improper.

Dated: 9th April, 2013


Frederick A. Hayzill
Broad River C.I.
4460 Broad River Road
Columbia, SC 29210

Other Counsel of Record:
Suzanne H. White, Esq.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

PETITIONER-APPELLANT EXPLANATION PURSUANT TO RULE 243(c), SCACR
Case No. 2010-CP-42-6815

Where the post-conviction relief court has determined that the PCR action is barred as successive or being untimely under the statute of limitation, the petitioner must provide an explanation as to why this determination was improper. Rule 243(c), SCACR.

It is Petitioner's contention that substantive due process is defined as "'A right grounded in the Fifth Amendment and the Fourteenth Amendment. The very essence of those amendments, as they relate to substantive due process, is the concept that the government may not act arbitrarily or capriciously in making, interpreting, or enforcing the law. A person is entitled to both substantive due process and procedural due process.'" Ballentine's Law Dictionary, Legal Asst. Ed., 1994; Jack G. Handler, J.D. Thus, in a case such as this where Petitioner's claim and right is "grounded in the Fifth Amendment and the Fourteenth Amendment," he argues that it was improper for the lower court to determine that his PCR action is barred as successive or untimely under the statute of limitation and on grounds of res judicata because substantive due process claims grounded in the Fifth and Fourteenth Amendments may not be deemed forfeited, waived, or otherwise extinguished on the basis of a state ground rule of defense predicated on a theory or doctrine of successiveness, statute of limitations, or res judicata - absent probative evidence of the contrary on the record.

Petitioner contends in other words, for example, that no State-created law, doctrine, or rule can supercede or 'trump' or preempt a substantive "due process" and "equal protection" of law constitutional guarantee. In fact, the Fourteenth Amendment specifically proscribes and prohibits in

plain language the enactment or enforcing of any such law by any State. Therefore by extension, where substantive due process rights are grounded in the Fifth and Fourteenth Amendments, such "rights" may not ^{BE} abridged or be otherwise extinguished by judicial scheme or plan. A constitutionally guaranteed substantive due process "right" remains extant so long as it is unadjudicated via a determination hearing in a common plea court of law. Amend. V, and Amend. XIV, U.S. Const.; Rule 52(a), SCRPC; and Rule 59(a)(2), SCRPC.; §17-27-90, SCCOL.

Petitioner submits that, although he may have inadequately asserted in his grounds for relief his claim of the denial of substantive due process and the equal protection of law, he now asserts that the PCR court's ruling was improper where the lower court in Case No. 2004-CP-42-2868 denied Petitioner's "due process" claim. Appendix page 526, lines 21-25. §17-27-90, SCCOL. Thus, Petitioner is entitled to a determination hearing on the merits of this genuine issue of material fact. Rule 52(a), 59(a)(2), and 60(b)(1), SCRPC. The same reasoning as to why the lower court's determination is improper applies to the currently standing order [Case No. 2010-CP-42-6815] of dismissal, filed March 18, 2013 in the Spartanburg County Clerk of Court office.

The Petitioner submits moreover in this explanation that, "Post-conviction relief processes created by the states are the result of the United States Supreme Court's determination that the Fourteenth Amendment may require the states to afford state prisoners some adequate corrective process for the hearing and determination of claims of violation of federal constitutional guarantees. See Case v. Nebraska, 381 U.S. 336, 85 S.Ct. 1486 (1965). South Carolina adopted its version of the Uniform Post-Conviction Procedure

Act in 1969. S.C.Code Ann. §§ 17-27-10 to -160 (1985 & Supp.1999) (PCR Act).'" [quoting Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (S.C. 2000)]. The Petitioner thus asserts that S.C. Code § 17-27-90 does not allow a subsequent PCR application for any ground finally adjudicated or raised if said ground was knowingly, voluntarily, and intelligently waived in the proceeding unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application. Petitioner argues that it logically follows, and the statute's construction clearly allows, for a subsequent PCR application for any ground not knowingly, voluntarily, and intelligently waived in the proceedings. And it is not necessary for the court to make a finding of sufficiency as to why the ground for relief was not asserted or was inadequately raised in the original, supplemental or amended application.

However, where, as here, the Petitioner did in fact raise his right to due process claim in the original [2000-CP-42-2971; filed 10-31-00] PCR application on the substantive Ground ("C"), where he asserted that the conviction was obtained in violation of "due process" clauses, he now clarifies and adequately raises and asserts that although the issue was then inadequately raised and articulated, the theory and essence of his claim remains yet extant due to its constitutional underpinnings. Amendments V and XIV, U.S. Const.

Petitioner contends moreover that, where the issue once again was inadequately raised at the [2004-CP-42-2868; filed 8-20-10] PCR proceeding in an effort to obtain adjudication on the merits of the claim, the PCR court refused to render a judgment. See Appendix Page 526, lines 21-25. Thus,

the Petitioner contends, nevertheless, that the issue remains yet extant due to its constitutional underpinnings. Therefore this PCR action nor its claim is procedurally barred under statute of limitations, nor the doctrine of successiveness, and neither by the principle of res judicata. The Petitioner thus reasserts his claim that he did not knowingly, voluntarily, nor intelligently waive presentation and adjudication of any due process or equal protection Fifth and Fourteenth Amendment constitutional issues at the original or any subsequent post-conviction relief proceedings herein referenced. Therefore the Petitioner asserts he is not procedurally barred from bringing this same claim before the South Carolina State Court in a subsequent PCR application. For there is no probative evidence in the record which demonstrates the Petitioner ever knowingly nor voluntarily waive any **V or XIV Amendment** due process or equal protection rights guaranteed to him in the U.S. Constitution.

The Petitioner moreover asserts that the lower court's determination that the Petitioner's PCR action is barred as successive or being untimely under the statute of limitation or on ground of res judicata is improper because the court, "When considering the State's motion for summary dismissal of an application, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant," [quoting Al-Shabazz], which Petitioner avers the lower court has failed in its analysis to do in reaching its decision. The Petitioner submits also that, where the standing order cited as authority in making its decision Aice v. State, it is Petitioner's objection and contention that Aice is inapposit and therefore inapplicable case law authority in that Aice was afforded due process by way of direct appeal in the disposition of his case.

Wherefore, the action Aice sought on post-conviction relief was a 'discretionary' appeal in its nature and essence. see Aice, 305 S.C. 448, 409 S.E.2d 392 (S.C. 1991).

The Petitioner asserts on the otherhand, however, in his claim that the "rights" he seeks the court's adjudication thereupon are grounded in the **Fifth and Fourteenth Amendments** to the U.S. Constitution. Thus, these matters may not be deemed 'discretionary'. For claims based upon constitutional grounds may not be unknowingly, involuntarily, nor unintelligently waived or extinguished absent probative evidence on the record demonstrating voluntary relinquishment thereof. Petitioner further asserts as supporting authority that: "'ruling on a Rule 12(b)(6), SCRCP, motion to dismiss must be based solely upon the allegations set forth on the face of the complaint, and the motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory of the case.'" Cf. Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995), quoting Al-Shabazz, supra. Petitioner states further that, "'summary dismissal without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief.'" S.C.Code Ann. § 17-27-80 and -90, SCCOL.

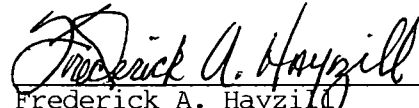
Thus, it is Petitioner's claim in this Explanation that he is entitled to a hearing to determine and adjudicate the merits of his fundamental due process and equal protection rights grounded in the **Fifth and Fourteenth Amendments** to the United States Constitution. The lower court's ruling in the standing order is improper.

WHEREFORE, Petitioner is entitled to an evidentiary hearing as a matter

of fact by a preponderance of the evidence in his favor, and as a matter of constitutional law and state statutory rights as demonstrated in case law authority and discussions thereupon. Failure to conduct a determination hearing into this matter will result in prejudice in the judgment of conviction in this case.

Respectfully submitted,

Dated: 9th April, 2013


Frederick A. Hayzill
Broad River C.I.
4460 Broad River Rd
Columbia, SC 29210

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
Frederick A. Hayzill)
) Plaintiff,)
 vs.)
)
State of South Carolina)
) Defendant.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT
 CASE NO.: 2010 -CP- 42 - 615

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: <u>Frederick A. Hayzill</u> , Bar No. <u>SCDC#267399</u> Address: <u>Broad River Correc Inst</u> <u>4460 Broad River Rd., Cola., SC 29210</u> Phone: _____ Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: <u>Suzanne H. White</u> , Bar No. _____ Address: <u>P.O. Box 11549</u> <u>Cola., SC 29211-1549</u> Phone: <u>(803)734-3737</u> Fax <u>(803)734-4113</u> E-mail: _____ Other: _____	
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: <u>Rule 59(a)(2), SCRCP and/or Rule 59(e), SCRCP; evid. hearing</u> Estimated Time Needed: <u>90 minutes</u> Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO			
SECTION II: Motion/Order Type			
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant		Date submitted _____, 20__	
SECTION III: Motion Fee			
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT: (check reason)			
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____			
JUDGE'S SECTION			
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____		JUDGE CODE _____ Date: _____, 20__	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____			

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Actual Receipt
 4/4/13
 7302
 Mari Brown
 (FH)

Frederick A. Hayzill 267399
Broad River CI
4460 Broad River Rd
Columbia, SC 29210

The Hon. M. Hope Blackley
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg, SC 29304

27 MARCH, 2013

Re: Frederick A. Hayzill v. The State
Case No. 2010-CP-42-6815

Subj: FILING OF MOTION PURSUANT TO RULE 59(e), 52(a), & 59(a)(2),
SCRCP; AND MOTION TO RECUSE — *FINAL ORDER RECEIVED 3/25/13*


Dear Ms. Blackley:

Enclosed for filing please find the above subject pleading, which is to be incorporated by reference along with all previously filed papers pertinent to these matters.

Please note also that I have included an additional copy of same, along with a SASE, for the return of the additional copy clock-stamped for my records.

Thank you kindly for your patience and attention to this very important matter.

Sincerely,


Frederick A. Hayzill

cc: Suzanne H. White, Esq.,
Assistant Attorney General
✓file

Post Script: Enclosed also is a copy of a "Motion to Recuse; or, in alternative, Objection to Refusal to Self-Recuse". A copy of which is also being served on Respondent.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Frederick Alvin Hayzill, 267399)
)
Applicant,)
)
v.)
)
The State of South Carolina,)
)
Respondent.)
_____)

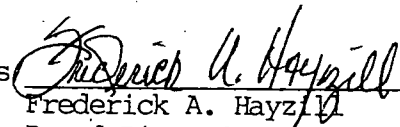
2010-CP-42-6815

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the enclosed Motion to Alter or amend a (Final PCR Order) Judgment has been delivered to the proper SCDC official for mailing, postage prepaid, addressed as follows:

Office of the S.C. Attorney General
ATTN: Suzanne H. White, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

On this 27 day of MARCH, 2013

s. 
Frederick A. Hayzill
Broad River C.I.
4460 Broad River Rd
Columbia, SC 29210

Post Script: Enclosed also is a copy of a "Motion to Recuse; or, in the alternative, Objection to Refusal to Self-Recuse". A copy of which is also being served on Respondent.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Frederick Alvin Hayzill, 267399)
)
Applicant,)
)
v.)
)
The State of South Carolina,)
)
Respondent.)
)

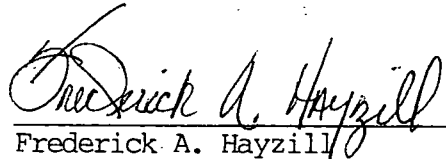
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MOTION TO RECUSE; OR, IN THE
ALTERNATIVE, OBJECTION TO
REFUSAL TO SELF-RECUSE

NOW COMES the above-named Applicant in the above-captioned cause of action and would respectfully move before the Court requesting the Court's currently presiding Chief Administrative Judge to recuse himself from ruling on matters presented in or pertaining to this case, as he is the Judge whose previous post-conviction relief ruling, and presently standing Final Order of Dismissal from which Applicant is appealing. Floyd v. State, 303 S.C. 298, 400 S.E.2d 145 (S.C. 1991).

Respectfully,

Applicant so move,



Frederick A. Hayzill
Broad River CI
4460 Broad River Rd
Columbia, SC 29210

Dated: 27 March, 2013

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Frederick Alvin Hayzill, 267399)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

2010-CP-42-6815

MOTION TO ALTER OR AMEND
A (FINAL PCR ORDER) JUDGMENT

NOW COMES the above-named Applicant in the above-styled cause, pursuant to Rule 59(e), 59(a)(2), and 52(a), South Carolina Rules of Civil Procedure (SCRCP), respectfully moving before this Honorable Court to grant an evidentiary hearing to determine the merits of his substantial procedural "Due Process" and "Equal Protection" claims which he seeks in these proceedings.

In the alternative, however, the Applicant moves before the Court to convene an evidentiary hearing to judicially determine, at the bare minimum, and adjudicate the theory of his claim that he was convicted in violation of the "due process" and "equal protection" clauses of the Fourteenth Amendment to the United States Constitution, Section 1. (see Appendix Page 359, Grounds "C"; Case No. 2000-CP-42-2971; filed, 10-31-00).

The Applicant would therefore show unto the Court his reasons for so moving before the Court to enter a new judgment or to amend its judgment in the standing Order, as follows:

I.

From the beginning Applicant asserts that his claim and position, as set forth in the Court's standing Order, is erroneously stated. To wit: the last sentence of Paragraph Three on Page One of the Order reads:

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"Appellant further asserts that this failure by trial counsel to inform Appellant of the right does not constitute a knowing and voluntary waiver of his right to direct appeal." The Applicant wherefore here moves to make clear however that his position and 'theory' of the matter is, in fact, that:

"APPELLANT FURTHER ASSERTS THAT TRIAL COUNSEL'S FAILURE TO INFORM OR 'CONSULT' WITH APPELLANT CONCERNING HIS RIGHT TO PROCEDURAL "DUE PROCESS" BY WAY OF DIRECT APPEAL CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL AT A CRITICAL STAGE OF THE PROCEEDINGS." For it was trial counsel's sub-par performance which led to Applicant's deprivation of the right to a timely direct appeal in the first place.

Applicant thus asserts, pursuant to Rule 59(e), SCRCP, and Rule 243(c), SCACR, that it would be improper for the Court to dismiss this matter because, "When considering the State's motion for summary dismissal of an application, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant. Cf. Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995)(ruling on a Rule 12(b)(6), SCRCP, motion to dismiss must be based solely upon the allegations set forth on the face of the complaint, and the motion may not be sustained if facts alleged and INFERENCES REASONABLY DEDUCIBLE THEREFROM WOULD ENTITLE PLAINTIFF TO ANY RELIEF ON ANY THEORY OF THE CASE.)" [emphasis added] Quoting Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742, 747 (S.C. 2000) (Denial of post conviction relief application reversed where dismissal of application was made without evidentiary hearing upon question of whether appellant had been denied effective assistance of counsel because he was unaware of right to appeal, WHICH COULD NOT HAVE BEEN CONCLUSIVELY REFUTED ON BASIS OF RECORD BEFORE LOWER COURT.) Quoting Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (§17-27-80, SCCOL.

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The Applicant therefore asserts that the above-referenced erroneous statement should be altered or amended in the Court's Final Order to state, verbatim, as so revised and framed. For it is heretofore asserted that such is Applicant's reasonably deducible inference and theory of the case where he alleged in the initial post-conviction relief application (2000-CP-42-2971) that one of the grounds for relief on which he bases his allegation that he is being held in custody unlawfully is that the conviction was obtained in violation of procedural "Due Process" clauses. Id., see Appendix Page 359, Grounds "C".

II.

STATUTE OF LIMITATION
(The Inapplicability of)

The Applicant asserts that the one-year statute of limitation bar to relief, as raised by the State and adopted in the Court's Final Order is inapplicable and therefore meritless in this specific case.

As lawful authority in support of this claim, the Applicant submits that: "The One-year limitations period in which to file petition for post conviction relief did not apply where defendant was denied direct appeal due to ineffective assistance of counsel." quoting Wilson v. State, 348 S.C. 215, 559 S.E.2d 531 (S.C. 2002); see also S.C. Code Ann. 17-27-45(A), SCCOL.

Thus, Applicant asserts here that the record evidence itself reflects that no direct appeal "Notice" was ever filed on behalf of Applicant by counsel, pursuant to Anders v. California, 386 U.S. 738 (1967), or Rule 20(b)(2), SCACR. And more importantly Applicant asserts where there is no record, probative evidence of 'waiver' of the procedural "Due Process" right to direct appeal, it would then be improper for the Court to determine that this matter falls within the meaning of successiveness under the Uniform

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Post-conviction Procedure Act of South Carolina. 1976, S.C. Code Ann., 17-27-10, et seq.

Applicant thus moves before the Court and requests that a hearing be scheduled in order for the Court to make a finding of fact and conclusion of law on Applicant's substantial procedural "Due Process" and "Equal Protection" of law claims. see , Amendment XIV, Section 1, U.S. Constitution and Amendment V.

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III.
SUCCESSIVENESS
(The Inapplicability of)

Where the doctrine of successiveness is asserted as bar in the standing Order to dismiss Applicant's post-conviction relief action, the Applicant ~~now~~ objects and makes clear that his theory of the case, in part, is in fact that this proceeding is the proper avenue and this Court is the proper forum in which to develop and determine Applicant's substantial procedural "due process" and "equal protection" claims. And moreover it follows that whereas in these proceedings Applicant alleges that the determination hearing of the claims he now urges the Court to adjudicate does not lead to a 'discretionary' appeal of the kind sought in Aice, but rather Applicant's claim here concerns his entitlement to and the effectuation of substantial procedural "due process" and "equal protection" of law rights. The kind of "rights" guaranteed in the constitutions of the United States of America, and the State of South Carolina as well. For it is well-settled constitutional law which commands that the "due process" and "equal protection" clauses of the V and XIV Amendments to the U.S. Constitution, as well as Article I, § 3, 10, 11, and 14 of the State Constitution, supersedes and trumps the State's doctrine of successiveness.

Applicant contends moreover, in the January 4, 2006 Order of Dismissal, that the post-conviction relief court may have misapprehended or misapplied the South Carolina Supreme Court's rulings in Aice v. State, 409 S.E.2d 392 (S.C. 1991) as being dispositive of the facts and claims in Applicant's specific case. Wherefore to the contrary, Applicant submits that Aice is inapposite case law to justify foreclosure of Applicant's claims. The major distinction between the two cases being the procedural "due process" posture in Aice and the procedural "due process" posture and claim in Applicant's case is that Aice's collateral attack arose from a position following the

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effectuation of his direct appeal. On the contrary however, this Applicant has not been afforded adequate procedural "Due Process" and "Equal Protection" rights to a direct appeal. Period.

Thus it is Applicant's assertion that he is entitled to adequate procedural "Due Process" and "Equal Protection" on this fundamental issue despite the fact he may have "inadequately raised" this grounds for relief in the original post-conviction relief application under the substantial Grounds "C". (See, Case No. 2000-CP-42-2971; Appendix Page 359; 1976, S.C. Code Ann. 17-27-90, SCCOL)

Applicant wherefore moves before the Court to alter or amend its judgment in the Final Order, and to grant relief to the Applicant pursuant to Rule 59(e) and Rule 52, SCRCPP, by way of conducting an evidentiary hearing at the Court's earliest opportunity. See also, 17-27-20(a)(4), SCCOL, as additional supporting authority on the matter.

IV.

RES JUDICATA
(The Inapplicability of)

Applicant asserts that the doctrine of "res judicata", as adopted in the Final Order is wholly without merit in this case. It therefore would be improper for the Court to grant summary judgment in favor of Respondent because such a decision would be: "(1) contrary to clearly established federal and State constitutional law, as determined by the Supreme Court of the United States, or (2) involve an unreasonable application of clearly established Federal and State constitutional law, as determined by the Supreme Court of the United States and State of South Carolina."

Applicant asserts moreover that res judicata does not apply in this case

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because the question of waiver yet remains extant and unadjudicated by this Court where a procedural "Due Process" and "Equal Protection" constitutional claim and guarantee still exists. (See, Fifth and 14th Amendments to the U.S. Constitution.) Thus it would be improper for the Court to fail to alter or amend its Final Order or to make findings of fact and conclusions of law pertaining to these substantial constitutional claims and guarantees. Rule 59(e), SCRCP and Rule 52(a), SCRCP. (PER CURIAM: Petitioner has filed a petition for a writ of certiorari with this Court in which he maintains the order dismissing his post-conviction relief application does not comply with S.C. Code Ann. Sect. 17-27-80 (1985) and Rule 52(a), SCRCP, because it does not contain specific findings of fact and conclusions of law with regard to each issue raised in the application and at the hearing thereon. See also Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992); McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991)) quoting Bryson v. State, 493 S.E.2d 500 (S.C. 1997).

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V.

UNITED STATES CONSTITUTION
FOURTEENTH AMENDMENT
(Claim and Argument)

The Applicant asserts in this motion pursuant to Rule 59(a)(2), Rule 52(a), and Rule 59(e), of the South Carolina Rules of Civil Procedure that, given the Constitutional edicts of the Fourteenth Amendment it would appear that to emphasize the sacrosanct nature of Applicant's, as well as all U.S. citizens' constitutional right to substantial procedural "Due Process" and "Equal Protection" of law claims, the original authors of Amendment XIV, four of whom hailed from the State of South Carolina (J. Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, and Pierce Butler) took painstaking care to make it abundantly clear in Section 1 of the Amendment that: "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 LAW." (quoting Amend. XIV, Sect. 1 to the U.S. Const.; see also, Article I, Sections 3, 10, 11, & 14 of the South Carolina State Constitution.)

Applicant therefore contends the notion of the Court granting a determination hearing in this instance would somehow constitute or create a 'Bright-line' exception to the State's successiveness doctrine, and that such an exception may well swallow the general rule as it's usually applied is both short of a specious form of flawed rationalization. When one considers the true meaning and weight ascribed to the constitutional edict of the 14th Amendment, it would appear in this specific instance that failure to enter a new judgment or to amend the standing order would be to 'enforce' an ap-

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parent 'abridgment' of U.S. Constitutional law, as well as to 'deprive' a citizen of 'life' and 'liberty' without meaning ful "due process" and "equal protection" of law. Thus, the reluctance shown on part of the Court to grant a determination hearing regarding this issue is constitutionally unlawful.

Applicant contends that summary judgment is appropriate only if the moving party "shows that there is no genuine dispute as to any material fact and the [moving] party is entitled to judgment as a matter of law." Rule 56(c), SCRPC. Applicant asserts that the State cannot satisfy this prerequisite because there does exist a genuine issue as to a material fact which is in dispute. The genuine issue of material fact being that the Applicant has been denied procedural "due process" and "equal protection" of a State statutory law of a direct appeal. Amendments V, and XIV, Sect. 1, to the U.S. Const.; see also, Article I, §3, 10, 11, 14 of the South Carolina State Constitution.

Applicant asserts that, in deciding whether there is a genuine issue of material fact, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. Id., Al-Shabazz v. State, at Pg. 747. Rule 56, SCRPC; accord, Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

Applicant thus asserts it would behoove the Court to conduct a determination hearing in order to make finding of fact and conclusion of law with regard to the issue of whether or not there is probative evidence in the record demonstrating Applicant knowingly and voluntarily waived a substantial procedural "due process" and "equal protection" proceeding, and if not to enter a new judgment or amend the presently standing Order.

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VI.

PREJUDICE PRONG ARGUMENT

The Applicant submits, given the fact that he may have indeed "inadequately raised" the issue now asserted upon the Grounds raised in the initial [2000-CP-42-2971] post conviction relief action, §17-27-90, SCCOL; and given that Applicant has never knowing^{ly} waived or forfeited any state statutory or federal constitutional rights guaranteed to him, he thus argues that there yet remains extant and adjudicated his substantial procedural "due process" and "equal protection" rights thereto. These "rights" are irrevocably embodied within the Fifth and Fourteenth Amendments to the U.S. Constitution, as well as in Article I, §14 in the South Carolina State Constitution and may not be extinguished by judicial fiat or under the purported doctrine of successiveness absent a determination hearing on the question of whether there is evidence of an expressed waiver of the matter in the record.

The Applicant contends moreover that: "A system of appeal as of right is established precisely to assure that only those who are validly convicted have their freedom drastically curtailed. A State may not extinguish this right because another right of the appellant - the right to effective assistance of counsel - has been violated." (quoting Evitts v. Lucey, 469 U.S. 387, 399, 105 S.Ct. 837-838 (1985)). Accord Rule 243(i)(1), SCACR; and White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). "'Counsel's obligation to consult with the defendant regarding a direct appeal is distinct from, and broader than, the narrow obligation to inform the defendant of his right to appeal.'" [quoting Frazer v. South Carolina, 430 F.3d 696 (4th Cir. 2009)]

"Petitioner demonstrated prejudice, as required to establish an ineffective

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assistance of counsel claim, from his counsel's failure to consult with him regarding the possibility of an appeal.'" [quoting Roe v. Flores-Ortega, 528 U.S. 470, 477-80, 120 S.Ct. 1029 (2000)]. Thus, the Applicant has demonstrated in his document titled "Initial Brief of Appellant", pursuant to White v. State Review, that there are non-frivolous issues for appeal, and that a rational defendant would want to appeal the judgment of conviction in his case.

VII

ARGUMENT OF REMONSTRATION AGAINST
THE STATE'S DEFENSE AND THE COURT'S ORDER
CONCERNING 'IMPLIED WAIVERS' OF
U.S. CONSTITUTIONAL RIGHTS AND PRIVILEGES

The Applicant contends that the defenses advanced by the State and adopted in this Court's Final Order are nullities and totally meritless.

The Applicant submits that it appears that the hypothetical essence of the State's, and thus the Court's standing order of dismissal of his action is that, since the Applicant did not "adequately raise" the claim and argue with specificity in his initial post-conviction relief application that he is entitled to a belated appeal on his violation of "due process" Grounds, that he somehow forfeited his rights thereto based upon the rationale and theory of an 'implied waiver defense.' However it is Applicant's dispute that such a defense and concept is absolutely unreasonable and specious.

The Applicant contends that the crux of his claim and argument rests on the fact that just as the Fifth Amendment guarantees the right that "no person shall be held to answer for a capital, or otherwise infamous crime unless on presentment or indictment of a Grand Jury," so too does the VI Amendment guarantee "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial; ... to be confronted with the wit-

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nesses against him ... and to have the Assistance of Counsel for his defence," so also does the XIV Amendment guarantee in Section 1 that, "All persons born ... in the United States ... are citizens. No State shall make or enforce any law which shall abridge the privileges or immunities of the 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 ... the equal protection of the laws." Therefore the Applicant accordingly contends that, just as these constitutional "rights," "privileges," and "immunities" must be expressly waived on the record, so too must the "rights" and "privileges" that fall into the realm of "due process" and "equal protection of laws" be expressly waived on the record so as to provide probative evidence of such waivers.

The Applicant respectfully submits this is the precise reason why the Court's and its attending officers are encumbered with the responsibility and obligation to ensure that every criminal defendant's Constitutional "rights", "privileges", and "immunities" are not trampled over on account of personal apathy or biases or a petulant mindset. Regrettably, the Applicant submits that the state of criminal jurisprudence in some Judicial Circuits appear to be shrouded in procedural encryption designed in such a way to permit arbitrary caprice and subversion in the dispensation of unbiased justice. It's unfair and it only adds to the cynicism which underlies the Social unrest expressed in the many aberrant behaviors seen in today's civilized Society.

In any event the Applicant therefore respectfully submits that the idea and notion of the State and this Court asserting the doctrine of cessiveness, and 'enforcing' it in this clearly arbitrary manner as a bona

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fide 'law' endowed with the power and legal authority to 'abridge' and undermine a U.S. Constitutional mandate and "privilege" without so much as entertaining a clearly procedural "due process" matter is a mockery and travesty of justice of the most insidious kind.

CONCLUSION

WHEREFORE, for the above stated reasons, the Applicant would Respectfully move before this Court to direct the entry of a new judgment, pursuant to Rule 59(a)(2), SCRCF, and Rule 52(a), SCRCF; and/or amend the findings of fact and conclusions of law in the standing Order pursuant to Rule 59(e), SCRCF. The Applicant would also move before this Court for a motion hearing to fully address the above stated arguments and objections.

Respectfully,

Applicant so moves,

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Dated: 27 March, 2013

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