April , 2013

Cichey L. Mayo, 284692
Lee Corr Inst
990 Wisacky Hwy
Bishopville, SC 29010

Daniel E. Shearouse, Clerk:
The Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201

Re: Mayo v. State; 2011-CP-40-6548

Dear Mr. Shearouse,

Enclosed for filing in your Court please find my original Pro Se Explanation Pursuant To Rule 203(d)(1)(b) And 243(e), SCACR, with attached envelope, and Certificate Of Service.

Thank you for your assistance in this matter.

S. Cichey Mayo
Cichey L. Mayo, Applicant

cc: Robert D. Corney, Esquire
File Copy

State Of South Carolina County Of Richland	In The Court Of Common Pleas For The Fifth Judicial Circuit
Cichey L. Mayo, 284692, Applicant, v State of South Carolina, Respondent.	2011-CP-40-6548. Pro Se Explanation Pursuant To Rule 203(d)(1)(b) And 243(e), SCACR

Now comes the Applicant, Cichey L. Mayo, pro se, and will show this Court, in accord with the SCACR Rules enumerated above, that he is factually and legally entitled by South Carolina law to an appeal from his guilty plea, as provided for in the ruling handed down in White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Applicant will also satisfy for this Court the requisite standard of Rule 243(e), SCACR, in showing that the Final Order now under appeal is incorrect, having published findings of fact and conclusions of law contrary to established South Carolina rulings, thereby constituting an error of law in the present case.

Procedural History

Applicant accepts as true the facts submitted by Respondent under the Procedural History heading in the Order Of Dismissal now being appealed, and will further inform this Court that Applicant received a letter from Wilson P. Davis, Applicants appointed PCR counsel, on April 2, 2013, putting Applicant on Notice that Applicant had twenty (20) days from receipt of the letter to "provide a written explanation showing that there is an issue which can be reviewed on appeal", which designates April 22, 2013 as Applicants latest date within which to submit this Explanation. A copy of the date-stamped envelope bearing the letter named above is attached to this Explanation and incorporated by reference into this pleading.

Argument

Under the Direct Appeal heading in the Order Of Dismissal it was noted that the sole allegation before the Court is whether Applicant is entitled to a belated direct appeal of his 2002 guilty plea before Judge McKellar pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). The Order also correctly states that Applicant contends he did not know about his right to

appeal from his plea, and therefore did not knowingly and intelligently waive his right to appeal. Against this valid and meritorious claim specifying constitutional infringement, the Court found that Applicants testimony was not credible, while conversely finding trial counsels testimony to be credible. The Transcript of Applicants PCR hearing will affirm this finding to be incongruous with the fundamental principle of determining the truth of a contested matter at law by and through the fact-finding process, as was accomplished at Applicants PCR evidentiary hearing. The record clearly divulges through trial counsels testimony that counsel failed Applicant at a most critical juncture of Applicants due process entitlements, as regards the statute of limitations governing an appeal from Applicants guilty plea. Applicant testified that he requested to know what was unknown to him, forming that request in the best way he knew, in the context of the language of a then seventeen (17) year old young adult, which was "what to do next?" Applicant further stated that trial counsel was mute at that time, which could possibly have been an outward expression of counsels internal dismay at the sentence imposed on Applicant. Whatever the unspoken disappointment of trial counsel depicted, counsel nevertheless failed to meet the duty to consult requirement addressed

in Roe v. Flores-Ortega, 528 U.S. 470 (2000). The crux of this case, in fact and law, turns on the uncontested declaration by Applicant that as a 17 year old youth he asked trial counsel what else could be done, and this question posed after Applicant was sentenced. Trial counsels admission that Applicant was not advised of his right to appeal the guilty plea conviction fully supports Applicants testimony, thereby rendering the Courts finding of Applicants testimony not being credible contradictory to the sworn testimony presented by Applicant and trial counsel. Tantamount to Roe Applicant "reasonably demonstrated that he was interested in appealing", even though Applicant was not, at that time, knowledgeable or articulate to the degree of asking for an appeal. Applicant depended exclusively on trial counsel for effective assistance after being sentenced to 47 years, finding himself under stress and in uncharted water. Assessing the foregoing statements to be genuine issues of material fact, this Court should reach the decision that the lower court has made erroneous findings and conclusions which contravene well-settled and longstanding doctrines and rulings by the South Carolina Supreme Court, as well as the United States Supreme Court, which penned with clarity the required standard for effective attorney performance in Strickland v. Washington, 466 U.S. 668. Trial counsels untimely

filing of a Motion For Reconsideration in Applicants behalf cannot, in any manner of procedural operation, alleviate the duty to consult requirement, nor justify the failure to fully inform and advise Applicant of his inherent U.S. Constitutional appeal entitlements. The Court of Common Pleas has made an erroneous report in the faulty findings and conclusions as given in the Order Of Dismissal now being appealed. In finding Applicants testimony not credible, while finding trial counsels testimony credible, is incredulous in and of itself, wherein Applicant succinctly stated a constitutional claim that went unrefuted by trial counsel. As a material fact of the record, testimony given by trial counsel fully supports Applicants claim for remedy by a White belated appeal. Applicants procedural default may be perceived as arising from Applicants failure to explicate the specific ground to be raised on direct appeal. Applicant will now offer the correlative subject matter issue addressed in Neal v. Wainwright, 512 F. Supp. 92, where the criminal defense attorney was found ineffective, having violated the Defendants U.S.C.A. Sixth Amendment right, for advising the Defendant that he did not have a defense to present, nor did counsel know of any defense that could be raised. Applicants trial counsel testified that he (counsel) subscribed to this identical course of action in advising Applicant that there was no viable

defense which could be raised at trial. This Sixth Amendment violation committed by trial counsel subjected Applicant to the position of unknowingly, unintelligently, and involuntarily waiving his constitutional right to the adversarial process, which procedure was ratified as a safeguard for the protections and guarantees granted to all criminal Defendants.

Another deserving issue which Applicant was unknowingly precluded from raising through direct appeal is the matter of trial attorney informing Applicant that the State would seek the death penalty if Applicant were to proceed to trial by jury. Hindsight and the discovery of case law in effect at the time of Applicants trial bolsters the proposition that the State would have been hard-pressed to seek the death penalty against any of the codefendants in the case by reason of the multiple accusations lodged as to Whom actually did the shooting; see State v. Peterson, 335 S.E.2d 800.

The Court, in Its Order Of Dismissal, stated that Applicants claim of trial counsels failure to meet the duty to consult requirment - even if taken as true - is insufficient to entitle him to a belated appeal. Applicant views this position as illogical, and in opposition to the tenet set forth in Roe, Thompson v State, 248 S.C. 475, 151 S.E.2d 221, State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889, and Florida v Nixon, 543 U.S. 175, 125 S. Ct. 551, 560.

The Court, in Its Order Of Dismissal, has construed Applicants request of "where to go from here" as not meeting the elemental standard of linguistics for establishing a formal request for an appeal. Applicant will again draw this Courts attention to the material fact that he was 17 years old at the time of the request, possessed zero knowledge, education, or instruction in criminal procedure, and had no understanding of the appeal process. Therefore, the appeal procedure was virtually unknown to Applicant. However, the overriding desire to engage any available challenge for seeking relief from the dilemma he found himself in was a motivation strong enough to incite Applicant to immediately ask what else could be done. This documented intent at further action by Applicant is, in fact, sufficient to show that Applicant wanted to appeal. Should Applicant have been granted that right to appeal the question confronted to an appellate court would have been the adjudication of whether or not Applicant had non-frivolous grounds for appeal. The record stands to prove that Applicant was unconstitutionally deprived of such adjudication for want of trial counsels reasonable assistance in providing timely information, advice, and dependable consultation in relation to every option available for appeal at the end of Applicants guilty plea proceeding.

The Order Of Dismissal has cited the equitable doctrine of latches as the reference for barring the

current claim by Applicant in seeking a White review. Embedded in this incorrect finding is the States attempt to unconstitutionally shift the burden of prejudice by assigning Applicants delay as the reason for the Respondents inability to defend against Applicants action on direct appeal, when the fact of the record will openly display that trial counsels failure to timely and effectively perform as Applicants advocate at the appropriate appeal juncture violated Applicants U.S.C.A. Sixth Amendment right to exercise, through individual decision, his right to appeal — or to knowingly, intelligently, and voluntarily WAIVE such right of appeal. The Respondent cannot logically deduce that the constitutional violation of the denial of Applicants right to a direct appeal has now created a base for a cause of prejudice against the Respondent. This interpretation, as issued in the Order Of Dismissal, projects an unreasonable premise that the State may excuse trial counsels ineffective assistance even in the presence of acknowledging Applicants involuntary forfeiture of his right to a direct appeal.

In accord with Rule 243(e), SCACR, Applicant will now present an arguable basis for asserting that the dismissal of the present Application is improper.

To reiterate an issue of material fact, Applicants trial counsel filed an untimely Notice Of Appeal

against Applicants guilty plea. That appeal was dismissed, dated October 28, 2008. This unwarranted action forced Applicant into the unenviable position of making an unknowing decision to waive his right of appeal. This unknowing waiver is the proximate effect engendered by and from the cause of U.S.C.A. Fifth and Sixth Amendment violations occurring as a result of unconstitutional deprivations of Fifth Amendment due process protections and Sixth Amendment guarantees of the right to the effective assistance of counsel. The dictum of procedural due process demands that criminal Defendants be fully informed at every stage of the proceedings. Because Applicant was not fully informed, either of his entitlements to appeal or of the consequences attached to any action initiated, the waiver as interpreted by the Court cannot stand, by virtue of the nullifying effect propagated by the underlying constitutional violations.

In the Order Of Dismissal the Court has testified to its own incorrect determination regarding Applicants withdrawal of a pending appeal dated December 16, 2002 in that the Court stated, "Applicant was aware of his right to appeal when he submitted the pro se notice of withdrawal on December 16, 2002." This Court is keenly aware that pro se submissions in the appellate courts of South Carolina are deemed hybrid representation, and expressly prohibited

unless authorized by Order of the administrating Court. This waiver used by the Court against Applicant serves as an impediment which prevents Applicants access to his right of appeal. Equal protection of the law can be brought to bar through the procedural axiom that every Defendant has the right to file a direct appeal and one PCR Application ; any deviation from 'every Defendant' delineates inequity, and is unacceptable. Applicant states the unequivocal claim that he meets or exceeds the requisite of 'every Defendant.'

Conclusion

Applicant concludes from the preponderance of material facts and substantive evidence given in this Explanation that he has established for this Court the denial and deprivation of his constitutional right to appeal his guilty plea conviction, which warrants the granting of the relief sought in this Application. Applicant asks this Court to agree with his conclusion and issue an Order granting relief in this case.

For The Grant of relief Applicant prays

S/ Cichey Mayo

Cichey L. Mayo, Applicant.

State Of South Carolina County Of Richland	In The Court Of Common Pleas For The Fifth Judicial Circuit
Cichey L. Mayo, 284692, Applicant, v. State of South Carolina, Respondent	2011-CP-40-6548 Certificate Of Service

Cichey L. Mayo, Applicant in the present action, hereby affirms by his signature affixed to this Certificate that he has, this ___ day of April, 2013, served the attorney for the Respondent with a true copy of his Pro Se Explanation Pursuant To Rule 203(d)(1)(b) And 243(e), SCACR, with attached envelope from PCR counsel, by depositing same in the U.S. mail, first class, postage paid, and addressed to the following:

Robert D. Corney, Esquire
P.O. Box 11549
Columbia, SC 29211

S/ Cichey Mayo
Cichey L. Mayo, Applicant
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990 Wisacky Hwy
Bishopville, SC 29010