THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

2021-CP-001235

DONNA BOYD,

PETITIONER,

against

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITIONER'S NOTICE OF APPEAL AND EXPLANATION AS TO WHY THIS DETERMINATION IS IMPROPER

On October 20, 2021, the Petitioner sent the following notice of appeal and a written explanation as to why this determination was improper. This Court's correspondence dated November 2, 2021, acknowledged receipt of the Petitioner's notice of appeal and evinced that this Court received the Petitioner's notice of appeal. However, this Court's correspondence implied that this Court did not receive the Petitioner's explanation as to why this determination was improper and the accompanying documents.

If this Court received the notice of appeal, certainly, this Court received the written explanation and copious documents that accompanied the notice of appeal. These documents would have been hard to miss since they were contained in a large priority mail flat rate envelope. Included with the notice of appeal were sufficient facts, arguments, citation to legal

authority and exhibits to show that there is an arguable basis for asserting that the determination by the lower court was improper. The Petitioner asks this Court to locate the exhibits that accompanied the notice of appeal dated October 20, 2021. And ironically, this Court again asks the Petitioner to provide the written explanation required by Rule 243(C).

The Petitioner asserts that she already provided the Petitioner's written explanation as to why this determination was improper. The Petitioner asserts that this Court's actions further substantiates the Petitioner's claims and concerns that the Petitioner has been denied due process since the inception of her cases and the Petitioner's efforts to seek appellate review have been stymied and outright denied since the inception of the Petitioner's matters. Never mind a fair bite at the apple the Petitioner has yet to see the apple.

A defendant has a procedural right to one fair bite at the apple. That is, every defendant has a right to file a direct appeal and one PCR application. The Petitioner asserts that she has not received a direct appeal since the courts and Respondent have interfered and prevented the Petitioner from seeking appellate review. Case in point, the Petitioner filed a timely appeal following the denial of her PCR application. However, the former clerk of court (Daniel A. Shearouse) dismissed the Petitioner's appeal one month later, claiming that Petitioner had failed to notify this Court that she had ordered the transcript.

Note that the clerk of court had not acknowledged that the Petitioner's appeal filed before it dismissed the Petitioner's appeal on April 22, 2019. The Clerk of Court acknowledged receipt of the appeal on April 23, 2019. It appears that the former clerk of court exceeded the bounds of his ministerial duty. We take this opportunity to remind clerks of court of their ministerial duty to docket filings irrespective of potential flaws that may exist. *Miller v. State,* 377 S.C. 99, 102, 659 S.E.2d 492, 493 (2008) ("[I]t is not within the Clerk of Court's authority to refuse to

perform her duty based on her opinion that a filing lacks legal merit or is untimely."). This duty is not discretionary. *See* 21 C.J.S. *Courts* § 335 (2021). Unless specifically authorized by statute or a court rule, a clerk of court may not exercise any judicial power reserved for a judge. *Id.* ("The clerk cannot, without express constitutional or statutory authority, exercise any judicial functions.").

This includes the prohibition of performing any action contingent on deciding a question of law. *Id.* ("It follows that a clerk of court cannot ordinarily determine questions of law."). Accordingly, a clerk of court does not have the authority to reject a filing based on ostensible or perceived failures, including whether the document is contained on the proper form. Because the clerk's role is ministerial in this respect, the clerk shall not be "concerned with the merit of the papers or with their effect and interpretation . . . ." *Id.* § 337.

Stated differently, "[a] clerk of court may not reject a pleading for lack of conformity with requirements of form; only a judge may do that." *Hooker v. Sivley*, 187 F.3d 680, 682 (5th Cir. 1999); *see also Gorod v. Tabachnick*, 696 N.E.2d 547,548 (Mass. 1998) ("In the absence of an order from a judge, [clerks] may not refuse to accept a notice of appeal, even if they believe that no appeal is available or that the notice is untimely or otherwise defective."). Instead, the clerk shall accept the filing, thereby permitting the court to decide any issues the parties may have with it.

The Petitioner noted that Respondent's "Orders" do not reference any portion of the transcript. As a matter of fact, there is absolutely no mention of the PCR transcript dated October 26, 2018 in the Respondent's Orders. Strangely, the former clerk of court dismissed the Petitioner's appeal on April 22, 2019, purporting that Petitioner had failed to notify this Court that the transcript had been ordered. But, notably, the Respondent has not made any mention of

the transcript dated October 26, 2018. The Petitioner asserts that Respondent has the transcript and is willfully refusing to acknowledge the record since it destroys the Respondent's arguments. Case in point, the PCR judge said "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 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" **(Transcript, Page 107, Lines 9-16, 10/26/2018).** The Petitioner also noted that the PCR court said, "I – my remedy is granting a new trial. And that's why I said that. So that's where I'm at." **(Tran. P. 113, Lines 6-17, 10/26/2018).**

The Petitioner also provided portions of the transcript to support the arguments in her responses. In the Petitioner's response dated August 18, 2021, and the Petitioner's notice of appeal and written explanation dated October 20, 2021, the Petitioner submitted pages **54 thru 113 of the PCR transcript.** However, the Petitioner noted that the Respondent's final order of dismissal only contained pages 97 thru 101 and pages 107 thru 113.

On December 6, 2021, the Petitioner again submitted pages 54 thru 113 of the PCR transcript. Also, the Petitioner sent a CD recording of the magistrate hearing held on June 25, 2014. The Respondent was provided a copy of the magistrate hearing in August 2014. The Petitioner noted that Respondent's final order failed to acknowledge receipt of the recorded magistrate hearing dated June 25, 2014 **(Ex., 1111, CD, Magistrate Hearing, June 25, 2014).**

The Petitioner again asserts this appeal to support that this appeal should not be dismissed for the following showing:

The Petitioner argues that she should be permitted to appeal the dismissal of her first PCR application pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Under *Austin*, a defendant can appeal a denial of a PCR application after the statute of limitations has expired if the defendant either requested and was denied an opportunity to seek appellate review, or did not knowingly and intelligently waive the right to appeal. *Id*; *see also King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992).

The PCR judge summarily dismissed the Petitioner's third PCR application, alleging that it was filed after the statute of limitations had expired; it is successive to Petitioner's prior PCR actions; it is barred by the doctrine of res judacata; and because Petitioner's claims are otherwise without merit.

FACTUAL/PROCEDURAL BACKGROUND

On **November 16, 2012**, Petitioner was arrested on the misdemeanor charge of filing a false police report. On **November 22, 2012**, Petitioner's former counsel sent notice or representation. Counsel requested Jury Trial, Video and other evidence. Magistrate Court sent Subpoena" to appear dated 2/18/2014 to the Petitioner's home. The Petitioner who was in law school out of state discovered the summons on 3/4/2014. Respondent failed to "Notice" Petitioner's counsel.

March 5, 2014, Petitioner's counsel motioned for continuance until May 2014, due to semester exams. Magistrate Assistant Rick Loveday and Assistant Solicitor Mitchell K. Byrd flat out denied the request, saying 'Roll Call' would proceed as scheduled. Notably, Roll Call on a misdemeanor charge. **Note: 474 days passed since arrest on misdemeanor charge (Ex. 10, ORDER, 02/14/2011).** March 8, 2014, Petitioner's counsel asserted his concerns to Magistrate

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

March 8, 2014, Counsel again requested discovery, at least ten (10) days before the call of the case for trial. Counsel asked that Court forward all 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 supporting the basis of reasonableness for the issuing of the arrest warrant of the Petitioner for this charge, any "PROBABLE CAUSE" to arrest the Petitioner, any evidence that arresting officer had any "Videotape' to give him probable cause to arrest the Petitioner.

June 25, 2014, Petitioner appeared for magistrate trial. Petitioner informed for the first time that "Video" pertaining to her criminal case had been destroyed by Deputy Holman sometime in 2012. The "Video" placed into evidence on November 7, 2012. Also, on June 25, 2014, Discovery dated March 11, 2014, disclosed to the Petitioner for the first time. Petitioner's attorney requested discovery on March 10, 2014. State claimed that it disclosed "Discovery" to counsel, but, Petitioner noted that the discovery dated March 11, 2014, did not disclose the specific evidence requested by counsel, i.e., Witnesses for the State, Probable Cause to arrest the Petitioner, "Videotape" of the incident or that the video had been destroyed.

Petitioner's counsel relieved by Judge Ford on April 9, 2014 **(Ex. 14, Order to Release)**. Judge Ford put Petitioner on the trial docket on April 9, 2014**(Ex. 8A, Subpoena to Appear, 04/09/2014).** All-white jury chosen by the State on June 24, 2014. The Petitioner noted in the

three earlier subpoenas to appear, jury selection was on the day of the trial **(Ex. 8A).** But in the subpoena to appear dated May 9, 2014, the All-White jury was selected the day before trial **(Ex. 8B).** Petitioner requested that case be dismissed due to destroyed evidence. Greenville County Public Index showed that on May 9, 2014, State employed three (3) deputies to testify that they saw the videotape at some time in 2012 **(Ex. 16, Public Index).**

Also, the record showed that State had planned as early as January 7, 2014, to use these deputies as "Witnesses" against the Petitioner and "substitutes" for the alleged destroyed videotape **(Ex.16A, Notice of Unavailability for Court, 01/07/2014).** These three (3) deputies were not eyewitnesses to the incident.

On June 25, 2014, the Petitioner requests for counsel and continuance of case denied. The Petitioner afforded about fifteen (15) minutes to inspect the discovery that she had received that day for the first time. Both hired prosecutor and Petitioner summoned by judge to appear in jury room while jury deliberated. Jury told Judge Ford that they did not understand probable cause and asked if he could give them the definition in writing. Judge refused but told the jury that they had to do the best they could.

While waiting in the courtroom during jury deliberation, Petitioner observed and took a photo of State's witness Jack Crumpton leaning over into a vehicle and talking with a juror. The Petitioner made this known to Judge Ford, who hesitantly addressed Petitioner's concern on the record, and retorted, just in case Petitioner appealed. The State's witness admitted that he spoke with the juror.

And when Judge Ford asked his reason for speaking with the juror? Jack Crumpton said that he wanted to know her opinion of the case. On June 25, 2014, the All-White Jury convicted the

Petitioner on the jury "instruction" that the magistrate judge had probable cause to arrest the Petitioner on November 16, 2012. The Petitioner sentenced to 30 days or $300.

July 7, 2014, Petitioner appealed her conviction to the court of common pleas;

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

July 18, 2014, Petitioner sent certified letter to Judge Ford requesting the transcript of the hearing;

July 24, 2014, Petitioner received an "Undated" letter from Judge Ford asserting, "No recordings were available for that session of court. 'The audio tool malfunctioned.'" The envelope that contained the "Undated" letter postmarked **July 23, 2014**;

July 23, 2014, The Magistrate Return filed;

The State did not inform Petitioner of the Magistrate Return filed on 7/23/2014;

July 28, 2014, Petitioner submitted complaint against Judge Dean Ford;

August 4, 2014, Petitioner received letter informing that OODC received the complaint against hired prosecutor George K. Lyall; Petitioner had not made a complaint against Lyall at that time;

August 11, 2014, Petitioner sent email to the Chief Administrative Judge; Petitioner asked that charge be dismissed without her appearance and also 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 that 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 confirm receipt, Petitioner resent email; Petitioner also drove to the Greenville County Courthouse and spoke via phone with Angie, the assistant to Chief Administrative Judge Letitia H. Verdin. Petitioner informed that she placed a copy of the email from Judge Hill's law clerk in Judge Verdin's mailbox and asked that she intervene in the matter. Petitioner said she had grave concerns about Judge Hill objectively deciding the Petitioner's appeal on the merits since Judge Hill, at the behest of Judge Stilwell forced the Petitioner's brother to represent himself at trial. Judge Hill also openly reprimanded the Petitioner for opposing his racist and unlawful actions against her brother;

The Petitioner submits the following arguments to show that since the inception of the Petitioner's criminal case, Respondent and others acting at its behest, have been relentless in their efforts to stymie and thwart the Petitioner's efforts to appeal her false arrest and wrongful conviction. The Respondent has demonstrated an unequivocal and willful disregard for the rule of law and the constitutional rights of the Petitioner, particularly, the Fourteenth Amendment, which granted, citizenship to all persons born or naturalized in the United States—including former enslaved people – and guaranteed all citizens "equal protection of the laws." 'Nor shall any State deprive any person of life, liberty, or property, without due process of law."' The Respondent and courts have demonstrated a seething and unrelenting racial hatred for the Petitioner and those of similar ilk.

1. **Absolutely no probable cause prior to arrest or at time of arrest. Deputy Holman stated no specific and articulable facts in his affidavit to support that he had "probable cause" to arrest the Petitioner.**

The Fourth Amendment protects the right of the people to be secure in their persons, houses, papers, and effects, against all unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath and affirmation. "Probable cause to arrest exists where the facts and circumstances within the officers' knowledge, and of which they have reasonably trustworthy information, are sufficient in themselves to warrant a belief by a man of reasonable caution that a crime is being or has been committed by the person arrested." Law enforcement officers must be able to clearly articulate their use of probable cause in a sworn statement called an Affidavit of Probable Cause.

Here, Deputy Holman arrested the Petitioner after he made the determination, absent any articulable facts and circumstances that the Petitioner had made a false police complaint based on his subjective belief that the Petitioner had not sustained any injuries from the assault. The arrest warrant stated that on October 30, 2012, Petitioner was aggressively approached by a white male subject and that white male subject forcefully shoved papers into her bag causing injury to Petitioner's shoulder, arm, and hand.

Deputy Holman stated that through further investigation, "Video" surveillance unfounded Petitioner's complaint. Deputy Holman failed to state any articulable facts and circumstances that contradicted the Petitioner's stated injuries or the Petitioner's account of the assault incident. Probable cause to arrest exists where the facts and circumstances within the officer's knowledge and of which they have reasonably trustworthy information are sufficient to warrant a man of reasonable caution to believe that an offense has been or is being committed by the person arrested.

When the Petitioner asked Deputy Holman why she was being arrested? Deputy Holman retorted 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 you any injuries; therefore, you filed a false police report." Deputy Holman's assertion that Petitioner's statement was unfounded based on his and "other" unknown deputies "interpretation" of the "Video" that inexplicably was later destroyed by Deputy Holman is not sufficient to support the required standard for probable cause.

The probable cause standard requires articulable facts, not Deputy Holman's belief or suspicions that since he could not see any physical injuries, the Petitioner was not injured due to the process of service incident. The Petitioner noted in the Victim Statement dated 11/16/2012, that she went to the hospital on 10/31/2012, the day after the assault incident, for an injured shoulder, arm and hand. Diagnosis: Sprain. Also, Petitioner went on 11/14/2012 for possible blood clot, diagnosis: **tear (Ex. 6, Victim Statement, 11/16/2012).**

So, on the day of the Petitioner's arrest, Deputy Holman had knowledge that Petitioner received treatment for her injuries. The Petitioner asserts that she was the Victim on 10/30/2012, and she went to the Sheriff's Office to make a complaint. The Petitioner's claims warranted further investigation. However, State/Respondent resolute in its unfettered racial animus toward the victim seized upon the opportunity to fabricate, and facilitate the false arrest and malicious prosecution of the Petitioner.

Moreover, Petitioner asserts that Respondent has demonstrated an unfettered hatred toward the Petitioner ever since she strenuously opposed the unlawful twenty-one month detention, prosecution, reprehensible 2011 wrongful conviction of her brother. The Petitioner asserts that her complaint should have been allowed to go through the criminal and judicial process as afforded to all other complainants and not heinously hijacked by the State.

The State should have arrested suspect Jack Crumpton for the assault of the Petitioner. And had the "Suspect" been the Petitioner, the State without hesitation would have arrested the suspect and prosecuted him to the fullest extent of the law. The Petitioner asserts that it was the judge's responsibility to determine if Petitioner made a false police report, not Deputy Holman. Further, that determination should have been made by a neutral and detached magistrate and only after the Petitioner was afforded her day in court.

The Respondent should have brought suspect Jack Crumpton before Magistrate Judge Hudson and Judge Ford. And had the state investigated and presented evidence showing that Petitioner made a false police report against the suspect, only then should the Petitioner been arrested and charged for filing a false police report.

The Fourth Amendment states, the right of the people to be secure in their persons against unreasonable searches and seizures, shall not be violated, and no WARRANTS shall issue, but upon probable cause. As evidenced in the warrant, Magistrate Hudson did not have an iota of evidence to support probable cause to arrest the Petitioner. Thus, the warrant to arrest the Petitioner should not have been issued.

In the supplemental dated 11/16/2012, Deputy Holman stated that he retrieved the "Videotape" from property & evidence and collected the written statement of the Petitioner, and then presented both to Judge Hudson. Further, Deputy Holman said that after reviewing the original complaint and the "Video" evidence, Judge Hudson issued the arrest warrant of the Petitioner for filing a false police report **(Ex. 1, The initial claim is the Petitioner's statement dated 10/30/2012).**

First, the Property & Evidence record showed that the "Video" was placed into evidence by Deputy Holman on November 7, 2012. Second, the P&E record shows that the "Video" was not

signed out on 11/16/2012, or at any other time **(Ex. 4, Property & Evidence, 11/07/2012).** Third, Petitioner asserts that it would have been impossible for Judge Hudson to have viewed the "Video" and issued the warrant in the short span of fifteen minutes.

During the magistrate hearing held on June 25, 2014, Deputy Holman testified that before the Petitioner's arrest on 11/16/2012, he went to property & evidence, signed the videotape out, went to see the judge whom he swore was a very busy judge and he did not know would be available. Deputy Holman testified that Judge Hudson viewed "Video" evidence and the judge determined that there was probable cause to arrest the Petitioner **(Ex. 7A-1).**

But in another supplemental report, Deputy Holman stated that Petitioner provided a written statement which contradicted the "Video" evidence. Noticeably missing in Deputy Holman's report and Warrant are articulable and factual details supporting how the Petitioner's statement contradicted the "Video" evidence.

Further, Deputy Holman said that he discussed this information with Judge Hudson. The Petitioner noted Deputy Holman did not mention that "Video" evidence was presented or that Judge Hudson viewed the "Video" evidence, which contradicted Deputy Holman's previous statement that both written statement of the Petitioner and "Video" evidence were presented to Judge Hudson for review **(Ex. 7A-2).**

Significantly, Petitioner noted that there is no assertion in the WARRANT that Judge Hudson viewed the "Video" before he made his probable cause determination. During the magistrate hearing, the Petitioner questioned whether the State had probable cause to arrest on November 16, 2012. Contracted Prosecutor George K. Lyall stated that he believed that magistrate judge had probable cause because he did not "believe" a judge would determine the probable cause without seeing the "Video" **(Ex. 1111, Magistrate Hearing, CD, 06/25/2014).**

The Petitioner retorted that it did not matter what the prosecuting attorney "believed" but what the judge asserted in the actual record. Here, the Petitioner noted that there is no assertion in the "WARRANT" that Magistrate Judge Hudson viewed the video. To the contrary, the Property & Evidence record showed that the "Video" was not even signed out on November 16, 2012. The Petitioner asserts that it would have been impossible for Magistrate Hudson to view the "Video" that was secured in Property & Evidence on 11/16/2012.

Further, Petitioner stated that Probable Cause should have been established before or at the time of the Petitioner's arrest on November 16, 2012. On June 25, 2014, Magistrate Ford instructed the "All-White Jury" to determine whether there was probable cause to arrest the Petitioner on November 16, 2012.

Note that over a year and a half had passed since the Petitioner's arrest, and the Respondent was still trying to ascertain whether it had probable cause to arrest the Petitioner on November 16, 2012. The magistrate's judge's jury instructions; the Respondent's calculated failure to timely prosecute Petitioner's case; informing the Petitioner of the video's destruction on day of trial; hiring "All White" jury the day before trial; employing three deputies to testify against the Petitioner; and the Respondent hiring private attorney George K. Lyall to prosecute the State's misdemeanor case further substantiated that Respondent did not have 'probable cause' to arrest the Petitioner on November 16, 2012.

And the PCR court also took issue with the Respondent, saying, "You've got an initial arrest warrant where some officer found probable cause to issue it on behalf of this - - Ms. Boyd. There was a determination of probable cause at the issuance of that warrant. And that was based on the officer looking at that video - - because the video was in existence at that time - - looking at the video, talking to the witnesses. And based upon that, probable cause was issued for the

warrant. It was only after that - - and if I'm wrong on the facts, you tell me. Because I'm listening. And I've read this record. Only after that, there was an investigation done. And if you look on the warrant that you - - that the State provided me in this packet, somebody scratched out what was on the original warrant, and wrote the word probable cause, and put a question mark behind it.

"So there was the investigation after that to determine 'probable cause' really didn't exist on the back when you're supposed to determine probable cause on the front end." Further, 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 police 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 (Tran., PCR, P. 103-104, Lines 1-24, 10/26/2018).**

Further, the PCR judge 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 **(Tran., 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 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. He

knew that either Mr. Talley (former counsel) or somebody had requested the video in the prior case if he knew about it **(Tran., P. 105, Lines 16-25).**

But if that's the basis, I've got a hard time getting to the fact that this Defendant is not entitled to this information. And the State has not taken me there. Further, the PCR judge reasoned, the - - this case - - to cure all of this - you know, sometimes, cases come before the Court and they could have been cured, you know. Sometimes, we get sores that start out as scabs. And scabs we can take care of. Sores, sometimes, we can't. This case started out as a scab that all that needed to be done was grant the continuance, grant the continuance. Everybody gets a fair shot. Try the case. Do all that **(Tran., P. 106, Lines 1-12).**

Here, the Petitioner strenuously asserts that her arrest and conviction was not based upon any factual evidence, or legal basis, to support that the Petitioner had committed the misdemeanor crime of filing a false police report. But instead the Petitioner's arrest and subsequent conviction was based upon both Deputy Holman's and the "All-White" jury's subjective belief that Petitioner filed a false police report, and that probable cause existed at the time of Petitioner's arrest on November 16, 2012.

2. Contracted Prosecutor Lyall admitted that "Video" destroyed sometime in 2012. Discovery dated March 11, 2014, alluded that "Evidence" may be in Property & Evidence, Late Discovery.

The Petitioner was informed of the destruction of the "Video" for the first time at the Petitioner's magistrate hearing held on June 25, 2014. The "Discovery" dated March 11, 2014 was also provided to Petitioner for the first time on 06/25/2014. The 'notice' allegedly sent to counsel indicated that discovery is not attached. But indicated that there were 18 pages of

discovery available, and this discovery had been uploaded in a pdf file in PCMS saved under images **(Ex. 15, Notice, 03/11/2014).**

This notice also indicated that "Evidence" was available in the Property & Evidence Room at the LEC, and Petitioner's counsel should contact the solicitor's office to view the evidence. Petitioner noted the front page indicated there were video recordings relevant to the Petitioner's case, which were available for viewing and downloading on the internet. But indicated on the back page that evidence was contained in P&E, and instructed counsel to contact the solicitor's office to view evidence **(Ex. 15).**

The Petitioner's former counsel requested discovery on March 10, 2014, and requested that Respondent file and forward filed copies in the enclosed self-addressed stamped envelope. And the magistrate court filed these documents on March 13, 2014. Petitioner's former counsel also requested the following ten days (10) days prior to the call of the trial: (4) Any facts supporting the basis of reasonableness for the issuing of the arrest warrant of the Petitioner for this charge? (5) Any written statement(s) of any alleged victim(s), State witnesses on the above alleged charge(s)? (6) Any supporting facts or evidence that the Greenville County Sheriff Deputy had any "probable cause" to arrest the Petitioner? (7) Any supporting facts or evidence that the arresting officer had "Video Tapes" or electronic tapes to give him/them "probable cause" to arrest the Petitioner? (8) Any evidence that Greenville County Deputies had no evidence giving them "probable cause" to arrest the Petitioner? (9) Furnish the defendant's attorney(s) with a complete listing and/or recitation of any evidence or lack of evidence in the State's possession which may be favorable to the Petitioner? **(Ex. 10A-11, Rule 5 and Brady Request, 03/10/2014).**

Attorney Talley made this Rule 5 and Brady Request on March 10, 2014. However,

the Petitioner noted that the alleged discovery dated March 11, 2014, did not disclose any of the "Requested" discovery, specifically, the "Probable Cause, Videotape" and the State's Witnesses" against the Petitioner. Also, the State alluded that Videotape was available on March 11, 2014, but when the Petitioner inquired about the "Videotape" on 06/25/2014, Contracted Prosecutor George K. Lyall told the Petitioner that the "Video" had been destroyed sometime in 2012?

Note that the "Video" was placed into Property & Evidence on 11/07/2012, which means the "Video" allegedly destroyed sometime between 11/07/2012 and 12/31/2012, 54 days later? Also, note, when Attorney Talley motioned to withdraw as counsel for the Petitioner, Judge Ford granted the withdrawal on April 9, 2014, without notice to the Petitioner.

Immediately after Petitioner's counsel relieved on April 9, 2014, Judge Ford on 4/9/2014 put the Petitioner on the trial docket **(Ex. 8, 8A-8B, Ex. 14, Order, 04/09/2014)**. Also, note that prior to withdrawal, Attorney Talley on March 8, 2014, had requested a continuance until after May or after the Petitioner completed the Spring Semester of Law School. **(Ex. 9, Motion, 03/08/2014).** Notably, this continuance was denied by Assistant Solicitor Mitchell K. Byrd and Rick Loveday **(Ex. 13, Continuance Request, 03/05/2014).** Attorney Talley said that Assistant Loveday's ridiculous, unfair and unreasonable objection to the case being continued has a strong odor of racial discrimination, and that the Solicitor's Office attempted control of the Trial Docket is an unconstitutional violation of the Separate Branches of Government.

Moreover, Attorney Talley said, "If the defendant and her undersigned attorney were "White" it is highly unlikely that Assistant Loveday, who appears to be white, and/or the

Solicitor's Office would have objected to a reasonable "Continuance" considering that this is the first time that this case has appeared on the Trial Docket and due to the fact that the defendant has a legitimate reason to request a Continuance" **(Ex. 9, P. 16, 03/05/2014).**

Also Counsel said that although the Petitioner was placed on the Trial Docket for the week of March 17, 2014, the Petitioner's attorney was never notified by either Court or the Solicitor's Office and only learned that the Petitioner was on the Trial Docket of March 17, 2014 from the defendant herself, which by itself is a Denial of Due Process considered that this interferes with the defendant being able to request a Continuance and **reasonable discovery** from the Asst. Solicitor who is handling the case. Note that "Discovery" had not been disclosed to the Petitioner or her attorney on March 8, 2014.

At the PCR hearing, Contracted Prosecutor Lyall testified that he knew the evening before the magistrate hearing that the "Video" had been destroyed. Lyall testified that he believed it was the evening before Petitioner's magistrate trial. He sat down and looked at the file. Lyall said there was an indication that there was video. Lyall testified that he contacted Deputy Holman that night to enquire about the videotape. Deputy Holman explained that when the original case number was created, which was the assault and battery, a case number was assigned to that charge and to that investigation. And that the video was matched, or mated or paired with that case number **(Tran., P. 54, Lines 11-25).**

Subsequently, when it was **determined by Deputy Holman** that Ms. Boyd had given false information that generated a new case number, a second case number. And the original case number was closed out. That was the allegation of assault and battery. That case was closed. The Petitioner has thoroughly inspected the records and has not found any record evincing that the Petitioner's case was administratively closed before 11/16/2012. Lyall testified that

Holman said that when evidence is associated with a case that has been administratively closed, it was the policy of property and evidence, at that time, to discard all evidence. So, that video was, in fact, destroyed, thrown away, whatever in 2012 when the case involving the allegations of assault and battery were administratively closed by the sheriff's office **(Tran., P. 55, Lines 1-15).**

Further, hired prosecutor Lyall testified that the initial case was opened for the charges that the Petitioner had been assaulted. Lyall also confirmed there was a videotape that accompanied that case. Lyall testified that the **officers investigated** the case that was opened by the Petitioner and saw the video **(Tran., P. 55, Lines 16-25).**

Lyall further testified the video was attached to that (case). Lyall confirmed the State's assertions that they (Holman and other officers?) determined that there was no evidence of it. And so they closed the case and then, also, discarded the videotape that was a part of that case. And so a new case was opened in which they now charge the Petitioner for filing a false police report. But instead of making a duplicate copy to place in that file, the file was destroyed before that happened?

Lyall testified that he did not know the exact timing, but opined that, "What should have happened is when a new case is opened and if the videotape was valuable evidence, then the videotape should have been attached to the new case number. That would have - - I mean, it's obvious that is a - - **(Tran., P. 56, Lines 1-14).**

The PCR Judge examined Attorney Lyall's testimony, and said, "That absolutely makes no sense to me." Saying, "The charge upon which they are charging Ms. Boyd with, they're basing it upon - - one of the pieces of evidence was the videotape. "So it makes absolutely no sense to me why the videotape would not be attached to that case number. The

Judge said he understood what Lyall was saying about the first case. But the probable cause for the second charge had to be based upon the videotape." "So why in the world - - you're being - - you're working with the solicitor's office. You're a contract lawyer there." Explain to me - - I don't understand that connection. Is that how they do business over there?" **(Tran., P. 56, Lines 19-25, P. 57, Lines 1-9).**

Attorney Lyall testified that he was only repeating to the Court, Deputy Holman's explanation. The PCR Judge said that he needed to understand the process. The PCR Judge said, **"You are the witness that the State's calling.** So I'm concerned about the process. That the subsequent charge in which Ms. Boyd was charged with was based primarily on one of the pieces of evidence was the video. And the video was destroyed?

Lyall agreed. And said, "I was told that the procedures and policies of the Sheriff's Office. The PCR Judge retorted, who told you that? Contracted Prosecutor Lyall said Deputy Holman when he questioned him as to how this happened and why this happened. **The PCR Judge asked if Deputy Holman was going to be one of his witnesses. And Contracted Prosecutor Lyall said no, "He's not subpoenaed today" (Transcript, P. 57, Lines 10-25., P. 58, Lines 1-13).**

Moreover, the PCR judge said, Mr. Lyall himself said he got the case - - he looked at it the day before the trial and 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. He knew that either Mr. Talley (former counsel) or somebody had requested the video in the prior case if he knew about it **(Tran., P. 105, Lines 16-25).**

But if that's the basis, I've got a hard time getting to the fact that this Defendant is not entitled to this information. And the State has not taken me there **(Tran., P. 106, 1-3).**

3. Respondent deliberately delayed to adjudicate the Petitioner's case to gain the advantage. The Petitioner made complaint on 10/30/2012, Petitioner arrested on 11/16/2012, and convicted on June 25, 2014. The State failed to disclose Witnesses.

The State had not disclosed "Discovery" to the Petitioner's counsel on March 8, 2014. Notably, 477 days after the Petitioner's arrest on 11/16/2012. The Supreme Court Order dated February 15, 2011, required that Jury Criminal cases be disposed within one-hundred twenty **(120) days of filing. The State prosecuted the Petitioner's misdemeanor case of filing a false police report 586 days after arrest. The State purposely delayed to prosecute the Petitioner's matter until it was advantageous to the State (Ex. Order, 02/15/2011).**

Moreover, Petitioner's counsel noted that the Petitioner charged with a pending charge over a year ago but the Petitioner's undersigned Attorney had never heard from the Solicitor's Office or the Court since filing notice of representation on November 22, 2012. Notably, ROLL CALL commenced at 3:00 PM on Monday 5/12/14, and Jury Selection held at 9:30 AM on Tuesday, 5/13/14. More importantly, note that suspect (Jack Crumpton) and the "Three Deputies" were "employed" by the State to testify against the Petitioner. The discovery provided to the Petitioner on June 25, 2014, failed to disclose these witnesses.

The State planned to use these deputies as "Witnesses" against the Petitioner as early as January 7, 2014. But notably, these "Witnesses" were not disclosed to Attorney Talley or the Petitioner. The State's actions show that State purposely destroyed or made the "Video" unavailable and planned to use these deputies testimony in place of the video **(Ex. 16, 16A, State's Witnesses, Public Index, 05/09/2014, Notice of Unavailability of Witness, 01/07/2014).**

The Petitioner was convicted in violation of the South Carolina and United States Constitution.

4. The Petitioner denied Due Process.

Both Federal and South Carolina Constitutions prohibit state action when federal or state government acts in such a way that denies a citizen of life, liberty, or property interests, the person must be given notice, the opportunity to be heard, and a decision by a neutral decision maker. Due process is violated when the State fails to respect all legal rights that are owed to a person. . . . When a government harms a person without following the exact course of law, this constitutes a due process violation, which offends the rule of law.

5. **Spoliation of Evidence: State deliberately destroyed evidence.**

The State deliberately destroyed or failed to safeguard video evidence favorable to the Petitioner. This "Video" was favorable to the Petitioner since it objectively showed the incident as it occurred on October 30, 2012. The suspect, Jack Crumpton, aggressively approached the Petitioner while she stood behind the roped off area waiting to early vote; aggressively leaned into the Petitioner; forcefully opened the Petitioner's shoulder bag with one hand, and forcefully shoved papers into the Petitioner's shoulder bag with his other hand causing Petitioner injury to her left arm, hand, and shoulder.

In South Carolina criminal cases, the issue of spoliation is viewed through the lens of due process. Criminal defendants must prove either **(1)** bad faith in destruction of evidence, **(2)** that

the evidence had the tendency to prove the defendant's innocence before the evidence was destroyed and there is no other evidence available with comparable exculpatory value.

THE STATE ACTED IN BAD FAITH

The State acted in bad faith when it destroyed the "Video" of the assault incident that occurred on October 30, 2012. Before leaving county offices, the Petitioner called Deputy Jack Burdine to confirm video footage of the incident and asked if it were possible to pull that video. Deputy Burdine reluctantly confirmed that there was video of the incident, but said the Petitioner would need a court order to get a copy of the tape. Deputy Burdine said that video recorded over every thirty (30) days.

The Petitioner made a complaint with Deputy Matt Holman of the Greenville County Sheriff's Office. The Petitioner said that she confirmed with Deputy Burdine that there was video of the incident. Deputy Holman called County Square and spoke with Deputy Burdine who confirmed video of the incident. Deputy Holman took the Petitioner's statement and made a complaint of assault. The Petitioner provided the names of three (3) witnesses: A. Rutledge, and B. and R. Young.

Deputy Holman said it would take a couple of days to identify the suspect before he could issue a warrant for his arrest. On November 2, 2012, Petitioner received two voicemails from Deputy Holman. First, Holman requested that Petitioner call through the nonemergency line. Second, 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."**

At the magistrate hearing held on June 25, 2014, Deputy Holman testified that he did not speak to or know the suspect (Jack Crumpton) before trial **(Ex. 1111, Magistrate Hearing, CD, 06/25/2014).** However, discovery revealed that Jack Crumpton called and spoke with Deputy Holman on 11/03/2012. Also, discovery showed that Deputy Holman took a statement from the suspect (Jack Crumpton) over the phone, and did not require the suspect to handwrite or sign the statement as he had required of the Petitioner on November 16, 2012 **(Ex. 3, Jack Crumpton, Supplemental Report, 11/03/2012).**

Further, Deputy Holman said Jack Crumpton told him that he spoke with an 'unknown' deputy before he served the Petitioner at County Square. Also, the suspect said that he was a retired State Trooper and that he was there to serve the Petitioner. Notably, one of the three deputies (David Griffin) employed by the State to testify against the Petitioner, testified that he saw fellow Deputy Jack Burdine make a copy of the "Video" and give it to Deputy Holman.

Deputy David Griffin also pointed to Deputy Holman from the witness stand, identified Deputy Holman as the "Deputy" who received the "Video/CD from Deputy Burdine on 11/07/2012. Also, Petitioner discovered through Deputy Griffin's testimony that the 'unknown' Greenville County Deputy that suspect (Jack Crumpton) spoke with was Jack Burdine. Deputy Holman allegedly placed the Video into Property & Evidence 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 a message with dispatch requesting that Deputy Holman call the Petitioner. Later that day the Petitioner received a call from Deputy Holman requesting the Petitioner come to the Greenville County Sheriff's Office to make a statement. The Petitioner said she made a statement on October 30, 2012. Deputy Holman said she had, but he needed a

written statement in her words. The Petitioner said she had not been required to write a written statement in the past, and Deputy Holman said the Sheriff's Office had implemented a "New Policy."

Moreover, Deputy Holman said that he could not proceed with the Petitioner's case until the Petitioner submitted a handwritten statement. The Petitioner noted that Deputy Holman did not require a handwritten statement from the suspect on 11/03/2012 **(Ex. 3, Supplemental. 11/03/2012).** On November 8, 2012, Petitioner received the following voicemails from Deputy Holman: (1) "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, 3:23 p.m., 4:23 p.m., 11/08/2012. Note: The Petitioner has voicemail recordings dated 11/08/2012).**

Exactly one hour later, Deputy Holman said, "Hey Ms. Boyd this is Deputy Holman again with the Greenville County Sheriff's Office. I thought about the message I left you. I wasn't sure if I left you my unit number, just a reminder if you check your messages today." Holman further stated, "I will be getting off at 7 p.m. and will return to work at 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 did not get the run around from dispatch." In hindsight, it is evident that both Deputy Holman and State are setting the stage for the false arrest and prosecution of the Petitioner.

Deputy Holman called twice on 11/08/2012, to ensure that Petitioner had his unit number and work schedule so if she came to LEC, Petitioner would only make the written

statement through him. Deputy Holman's actions were premeditated because he stated in his supplemental report dated 11/07/2012 that he went to County Square to ask about the video. **Notably, Deputy Holman was informed of the video on October 30, 2012, but delayed seven (7) days to view or retrieve the video.**

Deputy Holman stated that he met with deputies and they all viewed the video. However, these 'deputies' accounts of what they allegedly saw before the magistrate trial and what they testified at trial contradicted Deputy Holman's supplemental report. Deputy Holman claimed these three (3) deputies' viewed the video, but notably, these deputies did not make sworn statements on 10/30/2012, or 11/07/2012, supporting that they viewed the Video. Further, Deputy Holman did not require any statements from these deputies supporting what these deputies claimed to see on the videotape.

Further, Deputy Holman said suspect served the Petitioner without incident. Also, Deputy Holman said it was a false complaint, and in his subjective opinion, **"No injury resulted from this civil process."** Notably, this is Deputy Holman's basis for probable cause. Deputy Holman said the case was unfounded due to video evidence, and 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. Deputy Holman said he spoke with Petitioner on November 12, 2012, and Petitioner noted that she wanted to provide a written statement on Friday, November 16, 2012.

Note: The Petitioner did not tell Deputy Holman that she wanted to provide a written statement on 11/16/2012. The Petitioner knew that Deputy Holman would be at work on 11/12/2012 because he left a voicemail on 11/8/2012, stating that he would return to work on 11/12/2012. However, the Petitioner did not go to LEC on 11/12/2012. The Petitioner of her

own volition went to LEC on 11/16/2012. Deputy Holman lied in his police report that Petitioner informed him that she would come to LEC on 11/16/2012, giving the appearance that he had not acted in "bad faith" and maliciously set up the Petitioner to be falsely arrested and prosecuted.

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. Notably, Holman used the word 'inaccurate', which has a "subjective" connotation. The concept of accuracy depends on the lens through which it is viewed. In a general sense, accuracy means correctness, truth, and exactitude. However, this means different things depending on whether you view through an objective or subjective lens. **(Ex. 5, Deputy Holman, Supplemental Report, 11/07/2012).**

After the Petitioner made the written statement on 11/16/2012, Deputy Holman reviewed the statement and asked if the Petitioner was injured during the incident. The Petitioner said that she had been injured and had visited the Asheville VA Hospital on 10/31/2012. Deputy Holman was adamant that Petitioner put this information in her written statement. Deputy Holman looked over the statement carefully and instructed Petitioner to initial any mistakes made in the complaint **(Ex. 6, Victim Statement, November 6, 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 of the LEC. About fifteen or twenty minutes later, Deputy Holman returned, stood within the security threshold next to deputy security officer (Vick Vickers).

Deputy Holman called the Petitioner's name. The Petitioner walked toward Deputy

Holman, and when she crossed the security threshold, Deputy Holman said angrily, "I have a warrant for your arrest." The Petitioner retorted, "For what?" Deputy Holman said angrily, "For filing a false police report, put your hands behind your back." The Petitioner's sister jumped up and stated that she knew that Deputy Holman was up to no good. The Petitioner instructed her sister to inform her attorney of the situation. The Petitioner asked Deputy Holman if he had reviewed the videotape and how had the Petitioner filed a false police report? Deputy Holman stated very 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 you any injuries; therefore, you filed a false police report." (Ex. 5, Supplemental Report, 11/07/2012).**

August 21, 2014, Petitioner received letter from the court of common pleas informing Petitioner that her appeal DISMISSED WITH PREJUDICE FOR FAILURE TO PROSECUTE; 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."' The Petitioner noted that Solicitor Byrd did not request dismissal of the Petitioner's case. **But, it was Judge Hill that dismissed Petitioner's case, opining, "Well it's her appeal. 'She's not here. 'So the appeal is dismissed for failure to prosecute."' (Ex. 23B, Transcript, 08/12/2014).**

August 27, 2014, Petitioner submitted notice of appeal to the South Carolina Court of Appeals. Petitioner also requested transcript and noted glaring discrepancies in the record; Also, Petitioner disclosed the recording of the June 25, 2014, magistrate hearing to the Office of Disciplinary Counsel, who also disclosed this recording to Attorney Salley W. Elliott;

October 9, 2014, Petitioner received letter from Deputy Attorney General Sally W. Elliott. Attorney Elliott said that she received the notice of appeal, and lead counsel would be assigned once Petitioner filed the Initial Brief and Designation of Matter. 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 **(Ex. 25-1, Sally W. Elliott, 10/9/2014);**

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

December 23, 2014, Petitioner received another letter from Attorney Elliott informing that she received the initial brief and designation of matter, and Attorney Elliott assigned herself as lead counsel. Ms. Elliott said that she looked forward to working with the Petitioner on this case **(Ex. 25-2, Salley W. Elliott, 12/23/2014);**

January 28, 2015, State filed its initial brief and designation of matter, alleging Petitioner failed to present these issues to the circuit court. Attorney Elliott had the Petitioner's recording of the magistrate hearing struck from the record **(Ex. 27-1, Order, 03/09/2015)**;

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

March 26, 2015, Petitioner retained Attorney J. Falkner Wilkes to take over criminal appeal; Wilkes filed motion to engage and amend initial brief;

May 10, 2015, Petitioner asked former Chief Justice Few to recuse himself because it is evident that he's working in the interest of the Respondent;

May 22, 2015, Former Chief Justice Few refused to recuse himself from matters pertaining to the Petitioner;

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

September 10, 2015, Counsel filed Criminal Brief of the Petitioner;

November 2, 2015, Petitioner timely submitted several copies of her Civil Brief and Designation of Matter. The Defendant/Respondent did not file civil brief;

June 8, 2016, the court of appeals dismissed the Petitioner's appeal, alleging that Petitioner failed to preserve her issues on the record; Petitioner noted that both civil and criminal appeals were dismissed one week within each other and for the same reason. The Petitioner noted that the same judges affirmed the decisions. The Petitioner noted that the court waited to the very end to allege that Petitioner had failed to preserve her issues on the record;

September 16, 2016, Attorney J. Falkner Wilkes petitioned for rehearing and of his own volition filed a Writ of Certiorari with the South Carolina Supreme Court. No evidence of a writ filed;

May 30, 2017, "Writ" allegedly denied based on "Vote" of Court;

June 12, 2017, Remittitur sent;

Standard of Review

Whether an action should be dismissed for failure to prosecute is left to the discretion of the trial court judge, and his decision will not be disturbed, except upon a clear showing of an abuse of discretion. *Small v. Mungo*, 254, S.C. 438, 442, 175 S.E.2d 802, 804 (1970). When reviewing a motion to dismiss for failure to prosecute pursuant to Rule 41(b), SCRCP, an appellate court may reverse the trial court's decision upon an abuse of discretion. *In Re Miller*, 393 S.C. 248 (2011); *McComas v. Ross*, 368 S.C. 59, 62, 626 S.E.2d 902, 904 (Ct.App. 206). "An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or based on unsupported factual conclusions." *Kiriakides v. Sch. Dist. Of Greenville County*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009). Dismissal constitutes abuse of discretion when the sanction is too

harsh when compared to the conduct at issue. *See McComas v. Ross*, 368 S.C. 59 (Ct.App. 2006).

The Petitioner argues that the circuit court erred in dismissing the Petitioner's appeal under the facts and circumstances of this case. The facts and circumstances of this case fail to support the circuit court's dismissal of Petitioner's appeal. The Petitioner's case involved a criminal appeal from the magistrate court. The record showed that Petitioner fully briefed her case through filings with the circuit court. **(Ex. 19-1, Notice of Criminal Appeal, 07/07/2014)**. A hearing on the appeal was scheduled only forty eight days (48) days after the magistrate trial, and twenty two (22) days after the return of the magistrate **(Ex. 19-2, Roster, 07/09/2014)**.

The case had therefore been pending in the circuit court for only a very short period of time. Note: The charge remained pending in the magistrate's court for approximately one and a half years before a trial was held. Prior to the hearing the Petitioner requested permission of the court to have the matter addressed without her appearance and indicated that she had to attend to some undisclosed personal matters. **(Ex. 21, 21A, 21B Email, 08/11/2014).**

In a responsive email, the judge's law clerk instructed the Petitioner to resend the email copying the solicitor but did not otherwise indicate or instruct Petitioner that she was required to appear unless otherwise instructed. **(Ex. 21A)**. The record therefore showed an attempt of the Petitioner to prosecute the matter without her personal appearance at the hearing. There is no evidence that Petitioner abandoned her case, or neglected in moving it along. Nothing the Petitioner did would have injured the rights of the state in the appeal. The Petitioner clearly sought to have her case decided.

The sanction of dismissal is far too harsh under the circumstances of this case. Dismissal constitutes an abuse of discretion when the sanction is too harsh when compared to the conduct

at issue. *See McComas v. Ross*, 368 S.C. 59, 626 S.E.2d 902 (Ct.App. 2006). The only conduct which appeared to have triggered the dismissal was the Petitioner's failure to appear for the hearing. There is no evidence that Petitioner intended to cause undue delay of the process, or that Petitioner had delayed the process in the past, or that there was a pattern of not appearing for court on prior occasions.

Absent a pattern of egregious behavior, dismissal that terminates the action is far too harsh an action in light of the Petitioner's conduct. In granting a dismissal for failure to prosecute, there must be some showing of indifference to the rights of the defendant. *See Bond v. Corbin*, 68 S.C. 294, 294-95, 47 S.E. 374,374 (1904); *See also McComas, supra.* In *McComas* this Court held that without evidence of an established pattern of behavior, such as history of requesting continuances, or abusing court rules, or evidence of a clear record of delay and contemptuous conduct, dismissal of a case with prejudice constitutes an abuse of discretion.

In *McComas* the court found the requirements to support dismissal under state law to be the same as required by the federal cases involving dismissal. In *McComas* the court equated the analysis for unreasonable neglect, as required by the South Carolina case law, to the federal analysis for dismissals for lack of prosecution. Under *McComas*, a dismissal with prejudice, absent a pattern of egregious conduct, is sufficient to establish a clear showing of an abuse of discretion. *McComas, citing Small v. Mungo*, 254 S.C. 438, 442, 175 S.E.2d 802, 804 (1970).

McComas specifically held: "Though Rule 41(b) does not require the defendant prove unreasonable neglect by the Petitioner to be granted a motion to dismiss for failure to prosecute, we find a reasonableness standard should apply in cases of this kind, as illustrated by the federal cases on point. *See McComas*, supra, FN, *emphasis added.*

In applying the reasonableness standard *McComas* recognized that federal cases are clear in consistently holding that dismissal is only appropriate under the most extreme circumstances:

Our Fourth Circuit Court of Appeals has also addressed this issue. The court in *McCargo v. Hedrick*, 545 F.2d 393, 396 (4th Cir. 1976) held that dismissal is a harsh sanction, which "should be resorted to only in extreme cases." Dismissal is generally permitted only in the face of a clear record of delay or contumacious conduct by the plaintiff. *Id.* The discretion should be exercised discreetly and only after due consideration of the availability of sanctions less severe than dismissal. *Id.*; *Bush v. U.S. Postal Service.*, 496 F.2d 42, 44 (4th Cir. 1974).
The Fourth Circuit has said the trial court must consider four factors before dismissing a case for failure to prosecute: (1) the plaintiff's degree of personal responsibility; (2) the amount of prejudice caused the defendant; (3) the presence of a drawn out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal. *Hillig v. Comm'r of Internal Revenue*, 916 F.2d. 171, 174 (4th Cir. 1990). See also *Herbert v. Saffell*, 877 F.2d 267, 270 (4th Cir. 1989); McCargo, 545 F.2d at 396; *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982).

McComas v. Ross, 368 S.C. 59, at 63, 626 S.E.2d 902 (Ct.App. 2006)

The federal circuits have consistently held that a district court may dismiss an action for lack of prosecution, either upon motion by a defendant pursuant to Federal Rule of Civil Procedure 41(b) or on its own motion. *Reizakis v. Loy*, 490 F.2d 1132 (4th Cir. 1974). But because dismissal is such a harsh sanction; however, it "should be resorted to only in extreme cases." *McCargo v. Hedrick*, 545 F.2d 393 (4th Cir. 1976) citing *Dyotherm Corp. v. Turbo Machine Co.*,

392 F.2d 146, 149 (3rd Cir. 1968). **In the Petitioner's case, the record failed to show how the facts in the Petitioner's case presented the rare and extreme circumstances that justified the dismissal of the action.**

Under *McComas*, dismissal is only appropriate where the record shows that the party had a "history of requesting continuances or abusing court rules to evidence a clear record of delay and contemptuous conduct, as required by the federal cases involving dismissal, or unreasonable neglect, as required by the South Carolina case law." *McComas v. Ross*, 368 S.C. 59, 626 S.E.2d 902 (Ct.App. 2006). None of those conditions were found to be present in the Petitioner's case. There was therefore, no factual basis supporting the circuit court's dismissal of the Petitioner's case.

Under the required analysis in *McComas* the circuit court was required to consider conflicting policies: "[a]gainst the power to prevent delays must be weighed the sound public policy of deciding cases on their merits." *McComas quoting Reizakis*, 490 F2d. at 1135. Here, the circuit court failed to apply the proper legal analysis in its decision to dismiss the Petitioner's case.

Cases interpreting the court's ability to dismiss for want of prosecution have uniformly held that it cannot be automatically or mechanically applied. Against the power to prevent delays must be weighed the sound public policy of deciding cases on their merits. *See generally, Wright & Miller, Federal Practice and Procedure*: Civil §§ 2369, 2370 (1971). *Bush v. United States Postal Service,* 496 F.2d 42 (4th Cir. 1974). Consequently, dismissal "must be tempered by a careful exercise of judicial discretion." *Durgin v. Graham*, 372 F.2d 130, 131 (5th Cir. 1967).

While noting that dismissal is a discretionary matter, federal courts applying the same rule have generally upheld dismissal only in the face of a clear record of delay or contumacious

conduct by the plaintiff. *Durham v. Florida East Coast Ry. Co.*, 385 F.2d 366, 368 (5th Cir. 1967). Such a record simply does not exist in the Petitioner's case. Additionally, appellate courts frequently have found abuse of discretion when trial courts, as in the Petitioner's case, failed to apply sanctions less severe than dismissal. *See, e.g., Richman v. General Motors Corp.*, 437 F.2d 196, 199 (1st Cir. 1971); *Flaksa v. Little River Marine Construction Co.*, 389 F.2d 885, 887 (5th Cir. 1968); *Dyotherm Corp. v. Turbo Machine Co.*, 392 F.2d 146, 148 (3rd Cir. 1968). The Petitioner argues that despite a lack of any exceptional circumstances, the circuit court applied the severest sanction possible.

Unlike cases that have upheld dismissals, the Petitioner's record showed no prejudice to the opposing party by the Petitioner's actions. Although generally the lack of prejudice alone to the defendant is not a bar to dismissal, it is a factor that must be considered in determining whether the trial court exercised sound discretion. *Pearson v. Dennison*, 353 F.2d 24, 28 (9th Cir. 1965). *Reizakas v. Loy*, 490 F.2d 1132 (4th Cir. 1974).

Applying the appropriate considerations, the record failed to establish a basis for the extreme sanction of dismissal in the Petitioner's case. (1) The record showed that Petitioner never intended to abandon or neglect her case. The Petitioner fully briefed her issues through the filings with the circuit court. The Petitioner's intent was not to merely delay the case. On the contrary, even in the Petitioner's email indicating that she could not attend the hearing, she nevertheless clearly sought to have the case ruled upon. (2) There is no showing of prejudice to the state from the Petitioner's not appearing at the hearing. As it was not an evidentiary hearing, there was no lost testimony, no evidentiary problems, or other prejudice to the state's position on the appeal.

At worst, it was merely a matter of rescheduling a hearing. (3) There is no record of any prior behavior that would constitute a drawn out history of deliberately being dilatory. (4) The court could have admonished the Petitioner or taken numerous other actions short of ending the case without reaching the merits. Thus, the facts and circumstances failed to support the harsh sanction of dismissal in the Petitioner's case.

Although our supreme court has affirmed cases involving the dismissal of actions based on a failure to prosecute, those dismissals were imposed to maintain the orderly disposition of cases *in the face of repeated warnings to the offending party or multiple opportunities to proceed with trial, and only then upon a finding of unreasonable neglect. See Small v. Mungo*, 254 S.C. 438, 443, 175 S.E.2d 802, 804 (1970).

In the Petitioner's case, there is no evidence of such repeated warnings, multiple opportunities to proceed, or any intentionally offensive or disrespectful behavior on the Petitioner's part. Despite this lack of a factual basis, the circuit court applied the harshest sanction possible. A sanction completely out of proportion to the Petitioner's actions. Absent the most egregious behavior, dismissal is too harsh a punishment where it acts as a permanent procedural bar to further litigation on the merits.

Regardless of the particulars of the analysis, looking at the general rule disfavoring dismissal, ending the Petitioner's appeal and preventing her from reaching the merits of her appeal is unsupported. "Terminating a party's right to reach the merits by dismissal on procedural grounds absent some egregious pattern of behavior has been frowned upon by our courts. *E.g., Orlando v. Boyd*, 320 S.C. 509, 511,466 S.E.2d 353, 355 (1996) (holding that precluding a witness from testifying was an abuse of discretion without a showing of willful disobedience when exclusion amounted to a judgment of default or dismissal)."

Termination of the Petitioner's right to reach the merits of the case is not appropriate where her action was neither egregious nor resulted in any prejudice to the rights of the state. Where the effect will be the same as granting judgment by default or dismissal, a preclusion order may be made only if there is some showing of willful disobedience or gross indifference to the rights of the adverse party. *Baughman v. AT & T Co.*, 306 S.C. 101, at 108-109, 410 S.E.2d 537 (1991) (*citing 4A Moore's Federal Practice* 37.03 (2d. Ed. 1990); and *Campbell v. Johnson*, 101 F. Supp. 705 (S.D.N.Y. 1951)). *Orlando v. Boyd*, 320 S.C. 509 (1996).

In the Petitioner's case, dismissal terminated her action and prevented further hearing on the merits of her appeal from the magistrate's court. Even Judge Anderson's dissent in *McComas* discussing the court's inherent power to dismiss for failure to prosecute recognizes that such dismissal should be without prejudice. In the Petitioner's appeal, the circuit court's dismissal of the Petitioner's appeal ended the case without a hearing on the merits of the issues that she had properly presented to the circuit court through the detailed notice of appeal.

The record showed that the Petitioner sent an email to the court requesting not to have to appear at the hearing. The Petitioner received a response but was not told that she had to appear. Her subsequent failure to appear does not constitute a willful disrespect for either the court or the rights of the state in the case. The record failed to establish the Petitioner's acts constituted unreasonable neglect warranting the harshest sanction possible. Even if some sanction were warranted, an order of dismissal with prejudice under the present facts was not justified and constitutes an abuse of discretion.

The appropriate remedy in the Petitioner's case was to remand the case to the circuit court. Procedurally, a remand is appropriate as it would have allowed the Petitioner the opportunity to move to settle the record prior to the circuit court's reaching the merits on the record. The trial

court erred in dismissing her case because (1) the sanction of dismissal was too harsh given the facts and circumstances, and (2) the Petitioner did not fail to prosecute her case.

December 4, 2017, Petitioner filed first PCR Application;

October 26, 2018, PCR hearing held; former assistant attorney Deshawn Mitchell met privately with Judge Kinlaw before the hearing. Judge Kinlaw decided to remand the case back to magistrate court for a new trial **(Tran., P.107, Lines 10-24, P.108, Lines 1-3)**; In opposition to Judge Kinlaw's decision, former assistant attorney 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 Jack Crumpton's conversation with juror; and **(3)** the destruction of the "Videotape". Attorney Mitchell asked for a week to brief the issues or until **11/5/2018**. The PCR judge gave the Respondent twenty (20) days, and told Petitioner she could also submit a brief in response to the three questions raised.

November 15, 2018, deadline to submit additional brief;

November 6, 2018, Attorney Mitchell submitted Respondent's Brief /**First Order of Dismissal (Ex. 1A);**

November 15, 2018, Petitioner informed the court that she was ill and requested until November 16, 2018, to submit the optional brief. Petitioner instructed by Judge Kinlaw's office to reach out to Attorney Mitchell and confirm that it is okay to file the brief late since Judge Kinlaw had set a strict deadline (November 15, 2018). Petitioner emailed Attorney Mitchell, but it came

back undeliverable. Also, Petitioner called Mitchell but unable to reach or leave voicemail. After further investigation, Petitioner informed that Attorney Mitchell no longer worked for the AG's office as of **November 6, 2018**, significantly, the same date Attorney Mitchell submitted the first Order of Dismissal. Petitioner was not cc'd of Mitchell's departure or replacement. **November 26, 2018**, Petitioner received email from Judge Kinlaw's law clerk requesting that she submit brief. The Petitioner emailed the PCR judge, saying, the purpose of this email is to serve as the brief and to inform that the Petitioner provided the recording of the Magistrate Hearing held on June 25, 2014, to the State/Respondent in August 2014. The Petitioner argued that there is no reason to waste court resources, time, or 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.

The Petitioner said that she has listened to this recording several times and it reeks of "Due Process" violations. It also contradicted the State's position and the testimony provided by hired prosecutor George K. Lyle at the PCR hearing held on 10/26/2018.

June 8, 2018, Petitioner went to the State's Attorney Office to speak with Attorney Mitchell about her case, particularly, the transcript. The Petitioner noted in the State's Motion for Extension of Time dated March 28, 2018, the Respondent said it requested the transcript of the magistrate hearing on February 6, 2018 **(The State had three months to request the June 25, 2014, transcript).**

However, Respondent had not obtained the transcript. Respondent asked for an additional thirty (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 Respondent. Judge Stilwell granted the Respondent's request on April 4, 2018. 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 Return dated May 2, 2018, and notably, the "Transcript" that the Respondent was purportedly waiting for was not included in the return. Also, there was no mention of the transcript that Respondent claimed it needed to file the return. The Respondent's effort to procure the "Transcript" was just another ploy by the State to delay its return.

On June 8, 2018, Petitioner spoke with former assistant attorney Deshawn Mitchell about the extension of time. 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. I asked Mitchell how the State would evaluate Petitioner's claims without a record. **Mitchell retorted, "It planned to call "Witnesses" to testify what they remembered."** Significantly, Petitioner noted that the only agent/witness present for the PCR hearing held on October 26, 2018, is hired prosecutor George K. Lyall. Again, Petitioner denied the Sixth Amendment right to confront witnesses(s).

The Respondent'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 utilized by the Respondent to testify against the Petitioner. Petitioner told Attorney Mitchell that the recording of the magistrate hearing had been provided to the Attorney General. Mitchell sounded surprised, said he didn't have a copy and that he would look into it. Petitioner also said that AG Sally Elliott had the recording struck from the record.

On October 26, 2018, Attorney Mitchell made no mention of 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. The Petitioner said in her email to the PCR judge that the Petitioner has been denied "Due Process" and harassed by the courts since the inception of her case. The Petitioner respectfully requested that PCR court remand the Petitioner's matter for a new Trial, which the Judge had ruled to do on October 26, 2018 (**Tran., P.107, Lines, 8-16).**

January 24, 2019, PCR court denied Petitioner relief by order;

January 31, 2019, The Order filed;

February 7, 2019, Petitioner noticed of the order;

January 9, 2019, PCR court secretly sent Respondent email request for SECOND ORDER OF DISMISSAL. PCR court requested that Respondent submit the second order 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);**

The PCR Order dated January 24, 2019, precisely the same order **'word for word'** as the Respondent's order of dismissal dated January 22, 2019. 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 the PCR judge on January 24, 2019, is the exact same order of dismissal submitted by the Respondent on January 22, 2019. The PCR judge, besides his signature, added absolutely nothing to the State's unilateral order of dismissal. The PCR order failed to address the merits of the issues raised by the Petitioner. Significantly, the order of dismissal was void of any specific findings of fact and conclusions of law as it pertained to the issues raised by the Petitioner and the PCR judge's earlier concerns.

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).** In the order denying Petitioner's 59(e) motion, Judge Kinlaw denied that the PCR court remanded the matter to the magistrate court for retrial. But, Judge Kinlaw deleted the language that Petitioner shall remain in custody of the State within the South Carolina Department of Corrections since Petitioner is not confined **(Ex. 2, Order 01/24/2019).**

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

March 14, 2019, The Petitioner ordered Transcript;

March 17, 2019, Petitioner submitted notice of appeal to the South Carolina Supreme Court. Petitioner informed Court through notice of appeal that transcript ordered on 03/14/2019. Petitioner enclosed two (2) postage prepaid envelopes and requested the Court send clocked documents to Petitioner **(Ex. 4, Notice of Appeal, 03/17/2019);**

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

April 3, 2019, Petitioner called the Court to inquire about the documents and the Notice of Appeal. Petitioner said Court failed to acknowledge and provide the case number for the appeal.

Petitioner told that she needed to speak with case manager (Ashley). Petitioner left voicemail for Ashley to call. Ashley called the Petitioner. Ashley asked for the case number so she could look up the case. But Petitioner said she didn't have a case number since one had not been provided to the Petitioner. Also, Petitioner said that she had not received the prepaid envelopes with clocked copies. Ashley said that she did not 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, the Court did not return the documents in the prepaid envelopes provided. Also, Petitioner noted that the "Notice" acknowledging receipt of the 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 appeal;

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

April 9, 2019, Petitioner received second letter from SCCID; SCCID feigned concern for the Petitioner's representation. SCCID wanted to control the Petitioner's appeal in the same manner it controlled the Petitioner's brother's appeal. Respondent used this fake concern as a ploy to delay the submission of Petitioner's notice of appeal. Petitioner noted that when the Petitioner filed the "Notice of Appeal", the record showed that Petitioner's appeal was pending, which explained why this Court (Shearouse) failed to "acknowledge receipt" of the Petitioner's appeal. This Court suspended the Petitioner's appeal allowing SCCID (Dudek) time to persuade Petitioner to allow SCCID represent Petitioner, which explained why this Court failed to send prepaid postage envelopes with clocked documents;

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 Dudek made two (2) more attempts to intimidate and persuade Petitioner to allow SCCID to take over the Petitioner's representation;

April 19, 2019, Chief Dudek claimed that Petitioner's file closed;

April 22, 2019, This Court (Shearouse) dismissed Petitioner's matter alleging that Petitioner failed to provide this Court with a 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 243(b) and 207(a) (1) of the South Carolina Appellate Rules (SCACR) **(Ex. 5A, Order, 04/22/2019).**

The Clerk of Court (Daniel Shearouse) has demonstrated a bias against the Petitioner since the inception of her case. **Notably, this Court deliberately failed to notice the Petitioner that her notice of appeal received and assigned a case number.**

The Petitioner reviewed several Supreme Court cases and noted that in all of these cases this Court provided notice to the Petitioner without fail. Further, the Petitioner noted that whenever a deficiency noted this Court warned the Petitioner before it dismissed the Petitioner's case. However, this Court failed to notice the Petitioner of an alleged defect and without warning summarily dismissed the Petitioner's case alleging that she had not timely ordered the transcript. **This Court did not send a deficiency letter to the Petitioner before it summarily dismissed Petitioner's appeal on April 22, 2019.**

April 22, 2019, The "Notice of Appeal" not acknowledged in the record as filed;

April 23, 2019, This Court acknowledged receipt of the Petitioner's "Notice of Appeal" and provided case number for the Petitioner's appeal filed on March 21, 2019;

Petitioner received acknowledgement of "Notice of Appeal" one (1) month after Petitioner filed notice of appeal. This Court acknowledged Petitioner's "Notice of Appeal" the day after it dismissed the Petitioner's "Appeal" on April 22, 2019 **(Ex. 5B, The Supreme Court Acknowledgement of Receipt, Case No. 2019-000458, 04/23/2019);**

May 2, 2019, Petitioner filed motion to reinstate. This Court failed to respond to Petitioner's motion **(Ex. 6, Motion to Reinstate, 05/02/2019);**

Petitioner concerned about Court's failure and inordinate delay to decide Petitioner's matter. The Petitioner asserted 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 § 17-27-80 and Rule 52(a);**

June 29, 2019, Petitioner received "Order" dated June 27, 2019, denying Petitioner's motion to reinstate. The motion for remand allegedly dismissed as moot. **Remittitur dated June 27, 2019, enclosed;**

July 8, 2019, Petitioner filed Second PCR (2019-CP-23-03867);

May 5, 2021, Second PCR dismissed, alleging that Petitioner failed to respond to a conditional order of dismissal, this Court has held that the Petitioner cannot appeal. *Edith v. State*, 369 S.C. 408, 632 S.E.2d 844 (2006). **Petitioner noted that disposition on the pleadings and record is not proper if there exists a material issue of fact;**

June 21, 2021, Petitioner filed Third PCR **(2021-CP-23-02996);**

September 22, 2021, Third PCR dismissed, alleging PCR filed after the statute of limitations had expired, it is successive to Petitioner's prior actions; it is barred by the doctrine of res judacata, and because Petitioner's claims are otherwise without merit;

The Petitioner argued at both Magistrate and PCR Hearing that the "Video" was critical to her criminal defense since the Petitioner's guilt or innocence hinged upon that video evidence. In the PCR Order, Respondent asserted that Petitioner had evidence of comparable value to prove her case since all of the actors who had a role in the case were available to testify and the jury could consider the testimony.

No Comparable Evidence

The Petitioner strenuously asserts that these "three" deputies, under Rule 602, were prohibited from testifying against the Petitioner since these three deputies had no personal knowledge of the incident that occurred 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. First, it is unequivocally clear that these "three deputies" did not witness the incident that occurred on October 30, 2012, as alleged in the State's Return, Judge Ford's Magistrate Return dated July 23, 2014, and the Greenville County Public Index **(Ex. 24, Return of Magistrate, Ex. 16, and Public Index).**

Next, it is apparent that these deputies did not sufficiently view the videotape or they were grossly unclear as to what they had seen almost two (2) years earlier. All three deputies gave inaccurate and inconsistent testimony. For example, when asked the date of the incident, Master Deputy Mansell said that he did not remember. And when the Petitioner asked Deputy Mansell what the Petitioner was doing that day? Deputy Mansell retorted, "What were you doing that day?" The Petitioner asked if he saw a roped off area? Master Deputy Mansell said,

"Were you inside a roped off area?" Petitioner retorted, "You tell me; you saw the video."

Further, David Griffin testified that he saw suspect place the papers in the Petitioner's bag while the Petitioner was sitting with her bag on her lap. Notably, Deputy Griffin did not know the color or size of the bag, and said that the video wasn't really clear. Also, said that he could not identify the Petitioner.

Further Deputy Burdine said that he was informed of the State's case against the Petitioner when he received a summons to appear on March 17, 2014. Deputy Burdine admitted that he did not know what the matter was about until he was summoned to appear in court that day. Deputy Burdine also said the video showed that the suspect dropped the papers in the Petitioner's shoulder bag while she was standing in line and walked away **(Ex. 1111, CD, Magistrate Court Hearing, June 25, 2014).**

After the Petitioner was assaulted on October 30, 2012, the Petitioner immediately asked Deputy Jack Burdine if there was video of the incident. Deputy Burdine reluctantly confirmed that there was video of the incident, but said that the Petitioner would need a court order to get the video footage.

However, on November 7, 2012, Deputy Burdine without hesitation or legal authorization made a copy of the video and gave it to Deputy Holman. The Property & Evidence record showed the "Video" was allegedly placed into P&E custody on 11/07/2012. But when the Petitioner appeared for trial on June 25, 2014, and asked about the videotape, the Petitioner told by 'hired' prosecutor, George K. Lyall that the "Video" was not available and the video had been destroyed sometime in 2012. Now bear in mind, the video placed into P&E on 11/07/2012, and destroyed sometime in 2012? So, this "Video" was allegedly destroyed fifty-four (54) days later? Notably, the P&E record does not show that the "Video"

was cleared for destruction **(Ex. 4, Property Report, CD, 11/07/2012).**

Also, the discovery dated March 11, 2014, provided to the Petitioner on June 25, 2014, indicated that the "Video" was still in Property & Evidence on 03/11/2014. Notably, on June 25, 2014, Magistrate Judge Dean Ford **instructed** the "All White" jury 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. Under the Fourth Amendment, probable cause is usually required before police make an arrest. However, well over a year and a half (586) days later, the State instructed the all-white jury to determine that "probable cause" existed to arrest the Petitioner on November 16, 2012.

And the PCR court also took issue with the State and 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 subjective 'belief' that the State had "probable cause" to arrest the petitioner on 11/16/2012.

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 Petitioner 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 Petitioner'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 Petitioner. 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 held on October 26, 2018, the PCR court remanded the matter to the magistrate court for a new trial. 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 Petitioner 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) Petitioner 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 Crumpton 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. Lyall 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 the suspect did not assault the Petitioner when he processed served her on October 30, 2012.

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

Successive Applications

This Court has allowed successive PCR applications where the Petitioner 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 Petitioner 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 Petitioner'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 Petitioner 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 Petitioner is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the Petitioner 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 Petitioner was denied his right to appeal, the Petitioner 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 or any "bite at the apple' since the inception of appellate review. Thus the Petitioner was denied her right to appeal. 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 magistrate return had not been filed. 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 with prejudice. And Judge Hill 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 not afforded a bite at the apple, let alone a fair bite at the apple. May the Petitioner remind this Court that the State's Attorney is the adversary, the Petitioner is seeking appellate review, and this Court is supposed to be neutral. The Petitioner noted that the Attorney General's office has a chummy relationship with the courts, which violates the Petitioner's due process rights.

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 in accordance wi th the requirements of due process. The second order of dismissal submitted by the Respondent on January 22, 2019, was not adjudicated on the merits by a competent court of jurisdiction. The PCR court allowed the State to unilaterally prepare the order of dismissal. The Respondent unilaterally decided the matter. And as to be expected, the Respondent did not address any of the issues raised in the Petitioner's application. Not surprising, the second order of dismissal did not 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.

PCR Section 17-27-70, Disposition on the pleadings and record not proper if there exists a material issue of fact.

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 Petitioner. 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 PCR judge without notice to the Petitioner, sent an email on January 9, 2019, to the assistant state's attorney instructing her to prepare a second order of dismissal. The Assistant Attorney General submitted the second order of dismissal on January 22, 2019, and the PCR judge summarily signed off on the order without any consideration to the Petitioner's concerns raised during the post-conviction hearing and the other claims raised in the Petitioner's post-conviction application.

The Petitioner was denied an opportunity to thoroughly review the second final order to make certain all the Petitioner's issues raised were adequately addressed as required by section 17-27-80 and Rule 52(a). And when the Petitioner asserted her 59(e) motion, the PCR court ignored and obstinately refused to adhere to the rules of this Court.

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 Petitioner. 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.

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." Also, Judge Kinlaw said, "I - - my remedy is granting a new trial. So that's where I'm at."

"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 concerns about the process

and what transpired in that courtroom. Judge Kinlaw reasoned that the probable cause for the second warrant had to be – that video had to play a part in that. You can't get there without that **(Tran., P. 113, Lines 1-12, 10/26/21).** But, inexplicably, Judge Kinlaw's actions, three months later, contradicted his sentiments, rationale and earlier ruling to remand the matter back to magistrate court for a retrial. Apparently, Judge Kinlaw as the first so-called African American to serve on the 13th Judicial Circuit, was tacitly reminded by fellow judges to stay in his place, and for fear of appearing to go against the status quo, Judge Kinlaw sacrificed his oath and integrity for "going along to get along."

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. Now bear in mind, the Petitioner has sought the appeal of her case since July 7, 2014. The Petitioner asserts that October 26, 2018, was her opportunity to seek post-conviction relief, not the Respondent's and had the Petitioner not availed herself of that opportunity, it is unlikely that the PCR court would have afforded Petitioner the opportunity to submit additional briefs to prove her entitlement to PCR relief.

Before the Petitioner's PCR hearing , the Respondent had more than sufficient time to brief the issues raised by the Petitioner and should have been well versed on those issues. Immediately upon submitting its first order of dismissal on 11/6/18, former assistant attorney Mitchell left the state's attorney's office on November 6, 2018. The State's Attorney's request to brief the issues was only a ploy to delay and eventually deny Petitioner's entitlement to PCR relief. And soon as Assistant Attorney General Mitchell left, unbeknownst to the Petitioner, Assistant Attorney Megan Jameson took over the prosecution. And on January 9, 2019, the PCR court secretly emailed Jameson the request to submit the state's second order of dismissal.

And on January 22, 2019, the Respondent submitted its second order of dismissal. And the PCR judge without giving the Petitioner opportunity to review the AG's second proposed order of dismissal signed off on this order of dismissal on January 24, 2019. Besides his signature, the PCR judge, added absolutely nothing to the second order of dismissal.

Notably, there were no specific findings of facts and conclusions of law as to all issues raised by the Petitioner. The Petitioner timely motioned and was denied Rule 59(e). Again, the court abused its judicial discretion and the Respondent abused its prosecutorial discretion. The Petitioner asserts that regardless of the arguments 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 the 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 and willfully ignoring the rule of law. 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.

Summary Judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Gadson v. Hembree*, 364 S.C. 316, 320 (Ct. App. 2005). An Appellate Court reviews the granting of summary

judgment under the same standard applied by the trial court. *Id.* at 320.

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 the many issues presented in this response. Moreover, the Petitioner respectfully asks this Court to address the other issues raised in the evidentiary hearing and the Petitioner's Post-Conviction Relief application.

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

October 20, 2021
~~November 6~~ December, 2021

cc: Assistant Atty. General Lillian L. Meadows

/s/ Donna Boyd

Donna Boyd
Post Office Box 1168
Mauldin, South Carolina 29662
Pro Se