

The SUPREME COURT OF SOUTH CAROLINA

Allen Jackson

Petitioner

Rule 243(e)

Explanation

v

State of South Carolina

No: 2022-000050

Respondent

A copy of this explanation and notice of appeal  
have been served on counsel for the state  
as required by Rule 243(b) and 203(d)(1)(B)(i), SCA2R.  
The law clerk said I didn't have to served state  
one Notice of Appeal but today I have served state  
with Notice of Appeal and explanation under Rule 243(c)  
Supreme Court of

South Carolina Clerk of Court  
P. O. Box 11330 Columbia  
S.C. 29211

S/Allen Jackson  
#178827 Q3A212  
Perry Corr Inst  
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RECEIVED

FEB 02 2022

S.C. SUPREME COURT

## ISSUE 1

Whether Applicant is entitled to an Austin appeal on whether (1) applicant request and was denied an opportunity to seek appellate review or (2) His right to appellate review of previous PCR hearing on March 30, 2009 order of dismissal was not knowingly and intelligently waived on claim of Ineffective Assistance of Counsel that (PCR) court order failed to make specific findings of facts and conclusions of law on final order of dismissal in accordance with S.C. Code Ann. § 17-27-80; see Odom v State, 337 S. Ct. 262, 523 S.E. 2d at 756, Hughes v State, 2016 WL 1452673.

## ISSUE 2

Whether all claims of Ineffective Assistance of Counsel are procedurally barred from being raised in a second (PCR) action. Regardless of whether claim comply with the (PCR) procedure Act, S.C. Code Ann. § 17-27-45(B) or (C). under the doctrine of Res judicata.

Austin v State, 409 S. E2d 395 (S.C. 1991) Under  
Austin a defendant can appeal a denial of  
a (PCR) application after the statute of limita-  
-tions has expired if the defendant either  
request and was denied an opportunity to see  
appellate review or did not knowingly and  
intelligently waive the right to appeal Odom  
v. State 523 S.E. 2d 753 (S.C. 1999).

HERE, Respondent (COD) order date Oct 8, 2021  
in this action clearly establish this "INEFFECTIVE AS-  
-SISTANCE OF COUNSEL" WAS RISED AND PRESENTED AT  
(PCR) hearing held on March 30, 2009, (2005-CP-  
-40-2868) before the honorable L. CASEY MANNING  
Applicant as request (PCR) counsel before the court but  
to proceed pro-se at the (PCR) hearing (see Respon-  
-dent (COD) order date Oct 8, 2021 page 8 and 9) that  
clearly stated that claim is identical to claim now raise in  
this (PCR) action today.

Applicant admitte that its is the same claim rised  
and presented at (PCR) hearing held on Ma-  
-rch 30, 2009. Nowever I had to retried this  
INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM BE-  
-CAUSE (PCR) court final order of dismissal  
denying and dismissing (PCR) action with  
prejudice ... failed to address this claim

raised and presented finding of facts and conclusions of law in accordance with S. Code Ann § 17-27-80, 17-27-100, Rule 52 (a) Eisbourne v State 427 S.C. 505, Marlar v State 644 S.E.2d 769, Pruitt v State 310 S.C. 225.

This Honorable South Carolina Supreme Court Judges has issue numerous of opinions addressing a (PCR) court failure to make finding of facts and conclusion of law regarding duly raised issues presented at (PCR) hearing. McCravy v State 305 S.C. 329.

This South Carolina Supreme Court held that a Austin appeal is intended to act as an applicant final safeguard against unjust procedural error as in this case. The (PCR) court order failed to address finding of facts and conclusion of law on claim of whether trial counsel was ineffective for failure to move to quash murder indictment that failed to state elements of time, place and cause of death in accordance with S.C. Code Ann § 17-19-30, 17-19-90; Rector 158 S.C. 212 and recently in Winn Op. No. 25958 filed March 28, 2005.

Therefore, Applicant is entitled to an Austin supra review hearing on whether he knowingly and intelligently waived his right to appellate review on issue that trial counsel was ineffective for failure to move to quash murder indictment that failed to state element of time place, and cause of death in accordance with S.C. Code Ann § 17-19-90 (2003). Because PCR court final order of dismissal failed to make finding of facts and conclusion of law in accordance with S.C. Code Ann § 17-27-80, 17-27-100, Rule 52 (4). Marlar v State, 466 S.E.2d 769. Pruitt v State, 310 S.C. 254, 423 S.E.2d 127. and

(2) ONE YEAR statute of limitation do not apply to petitioner's appeal from PCR court denial of applicant right to appeal. Odom v State, 337 S.C. 256, 523 S.E.2d 753 Austin v State, 305 S.C. 453, 409 S.E.2d 395 (1991). King v State, 308 S.C. at 348.

## ISSUE 2.

The doctrine of res judicata does not bar claims of ineffective assistance of counsel that comply with the PCR Procedure Act, S.C. Code Ann § 17-27-45 (B) or (C).

Applicant proceeded to trial 29-31 before the  
ble William B. Traxler Jr. and a jury. The jury  
found Applicant guilty as indicted and Judge Tra-  
xler sentenced Applicant to life imprisonment for  
murder and twenty five years for armed rob-  
bery. Applicant trial counsel filed a timely Notice  
of Appeal and South Carolina Supreme Court  
affirmed Applicant conviction and sentence  
in State v. Jackson, Memo. Op No. 92-MO-298  
filed December 18, 1992.

Applicant filed an application for (PCR) on Se-  
ptember 21, 1995. An evidentiary hearing into  
the matter was convened on March 23, 1998.  
Applicant was represented at (PCR) hearing  
by Theresa N. Johns. At the (PCR) hear-  
ing Applicant ask (PCR) counsel Ther-  
esa about admonishing this indictment  
charge for the first time and was informed  
by (PCR) counsel that she did have the  
time to look into indictment charge at  
(PCR) hearing and that she felt that I  
had a good case. But I could come  
back on other (PCR) case on the indi-

ctment if we lose because indictment  
challenge is a subject matter jurisdiction  
issue that could not be waived and may  
be raised at any time. No May 12, 1998 (PCR)  
court issued order of dismissal charging Appli-  
cant (PCR) with prejudice.

(PCR) counsel filed a Notice of Appeal on May  
12, 1998 and on November 3, 2000, Applicant  
Appeal was dismissed as improvidently granted  
by South Carolina Supreme Court. TACKSON  
V. STATE. Memo. Op. No. 2000-MO-130 (Nov. 3, 2000).

Applicant subsequently filed a Petition for  
Writ of Habeas Corpus on December 16, 2003  
Applicant for the first time raise issue  
that " Trial Court lacked subject matter  
jurisdiction to indictment that failed to st-  
-RE ELEMENTS of time, place and CAUSE  
OF DEATH" in Writ filed on December 16,  
2003.

The statute that challenge to the suffi-  
-iciency of the indictment must be made

before the jury is sworn by trial counsel  
WAS EFFECTIVE IN 2003. S.C. Code Ann  
§ 17-19-90(2003). Therefore Writ filed  
ON DECEMBER 16, 2003 IS WELL WITHIN  
ONE YEAR AFTER STATUTE EFFECTIVE  
DATE IN 2003. PURSUANT TO SOUTH CAROLINA  
COURTS RULE 59(E) S.C. Code Ann. 17-27-45(B)  
(C) APPLICANTS ENTITLED TO AMEND CLAIM AS INE-  
FFECTIVE ASSISTANCE OF COUNSEL IN ACCOR-  
DING WITH S.C. Code Ann. § 17-19-90(2003).

IN PELOQUIN V. STATE, THE SOUTH CAROLINA  
SUPREME COURT HELD APPLICANTS ARE ENTIT-  
LED TO ONE YEAR TO FILE AFTER THE EFFE-  
CTIVE DATE OF STATUTE (S.C. Code Ann. §  
17-27-90(2003)) TO FILE CLAIM UNDER STA-  
TUTE OF LIMITATIONS. S.C. Code Ann. § 17-27-  
45(B)(C). PELOQUIN V. STATE 321 S.C. 468.  
469 S.E. 2d 606 (1996).

HOWEVER, WRIT WAS CONDITIONALLY DISMISS  
ON NOVEMBER 5, 2004 FOR FAILURE TO EXHA-  
UST (PCR) REMEDIES THIS EXHAUSTION INCLU-  
DE FILING OF APPLICATION, RENDERING OF AN

order adjudicating the issue and applic-  
-ant petitioning for or knowingly waiving  
Appellate review. Gibson supra 329 S.  
C. 37, 495 S. E2d 426 (1998). Hunter supra  
Pennix v. State, 312 S.C. 436, 441 S.E2d  
315 (1994).

Applicant filed second applications for PCR  
on June 16, 2005 to exhaust PCR remedies  
as order alleging one issue. That trial  
court lacked subject matter jurisdiction to in-  
-dictment that failed to state elements of  
time, place and cause of death. The Respon-  
-dent made its Return and motion to dismiss  
on July 10, 2008. On July 21, 2009, the Hon-  
-orable L. Casey Manning issued a (COD)  
order provisionally denying and dismissing the motion  
while giving Applicant twenty days to show why  
the dismissal should not become final.

Applicant made his response arguing that  
he originally filed is issue that trial court  
lacked subject matter jurisdiction to murder  
indictment that failed to state elements of  
time, place and cause of death is Whit

Filed December 16, 2003 well within ONE YEAR  
of South Carolina statute S.C. Code Ann 17-19-  
90 (2003), SEE S.C. Code Ann 17-27-45(B),  
PELOQUIN V STATE, 321 S.C. 468, 469 S.E.2d 606  
(1996).

Therefore because there was still conflict-  
ing language of whether the trial court has  
the power to hear a case and whether  
the indictment is sufficient concept con-  
fusion. Until South Carolina Supreme Co-  
urts conclusively held in GENTRY SUPRA  
that indictment challenging to suffice-  
nt or defective must be raised before  
the jury is sworn by trial counsel and not  
after. Overruling a listing of cases  
that combined the concept of sufficiency  
of an indictment and the concept of sub-  
ject matter jurisdiction of court. State v  
Gentry 363 S.C. 93, 60 S.E.2d 494 (2005) S.C. Code  
Ann 17-19-90 (2003).

Applicant is entitled to Admended sub-  
ject matter jurisdiction claim as "trial"  
counsel was ineffective for failure to  
move to quash murder indictment that  
failed to state elements of time, place

AND CAUSE OF DEATH IN ACCORDANCE WITH S.C. Code ANN § 17-19-90 (2003). SEE S.C. Code ANN § 17-27-45 (B) (1). ~~Peterson v State~~ 321 S.C. 468, 409 S.E.2d 606 (1996) S

After Applicant response to court (COD) order date August 28, 2009, the Honorable James R. Barber III, then Chief Administrative Judge. Order that a (P/R) hearing be convened on the next available date. SEE exhibit #1) S.C. Code ANN § 17-27-70

The (P/R) hearing was held on March 30 2009. before the Honorable L. Casey Manning. Applicant request (P/R) counsel but had to proceed pro se at the hearing. (SEE exhibit #2). The Respondent was represented by Brian T. Petrucci Assistant Attorney General. Applicant argued that trial counsel was ineffective for failing to move to quash murder indictment that failed to state elements of time, place and cause of death as raised in allegation attach (SEE exhibit #3). Respondent argued that indictment was not prejudicial Applicant therefore trial counsel was not ineffective for moving to

QUASH indictment and that matter factored in  
grounds issue of material fact. The Court Ho-  
norable L. Casey Manning held the matter  
under advisement until 2011. Then issued  
Final Order of Dismissal denying and dismissing  
the (PCR) action with prejudice. But the (PCR)  
Final order of dismissal failed to make find-  
-ing of facts and conclusion of law one al-  
-iam presented at (PCR) hearing on whether  
that trial counsel was ineffective for fail-  
-ing to move to quash indictment that fa-  
-iled to state elements of time, place  
and cause of death. S.C. Code Ann. §  
17-27-80, (2003) 52(A). Fishburne v State  
427 S.C. 505. MARTIN v State 644 S.C. 2d 769.  
Pratt v State 310 S.C. 2254.

Applicant now filed is current (PCR) application  
to get a ruling on is issue raise at March  
30, 2009 (PCR) hearing, ~~see exhibit #~~ the court  
failed to make finding of facts and its  
conclusion of law one ~~see exhibit #~~ of dismissal  
Moreover, Applicant is entitled to see Austin

APPEAL on whether (1) Applicant requested and was denied an opportunity to seek appellate review or (2) whether Applicant knowingly and intelligently waived his right to appellate review. One claim previously presented at (PCR) hearing on March 30, 2008. (see Respondent (LOD) order date Oct 8, 2021, page 8 and 9 that state this claim is identical to claim raised in this action today. (see exhibit #1 #2 #3).

1 Allen Jackson 178827