

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

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Jan 27 2022

**FROM SPARTANBURG COUNTY
Court of Common pleas
J. Derham Cole, Circuit Court**

S.C. SUPREME COURT

**Lower Court Case No.: 2015-CP-42-4699
Appellate Case No. 2020-001418**

John Garvin..... Petitioner-Appellant,

v.

The State of South Carolina..... Respondent-Appellee.

**NOTICE AND MOTION FOR REINSTATEMENT OF APPEAL
AND A SUBSEQUENT APPLICATION FOR RELIEF,
PURSUANT TO RULE – 260(a), AND 266, SCACR**

To: Mr. William H. Ray, Asst. Att’y. General, Attorney for Respondent.

YOU WILL PLEASE TAKE NOTICE, that upon the affidavit of John Garvin, sworn to on the 27th day of January, 2022, proceeding as pro-se and can be heard, will move before the Honorable Justices of the South Carolina Supreme Court, for an Order granting this Motion for Reinstatement of Appeal, pursuant to Rule – 260(a), SCACR, and a Subsequent Application for Relief of his denied three Motions to Enlarge Brief, pursuant to Rule – 266, SCACR. This Motion is made pursuant to an Order of the South Carolina Supreme Court dated January 18, 2022. As grounds for this Motion, Petitioner would state the following:

1. This Court’s January 18, 2022, Order dismissing Petitioner’s appeal and denying his third Motion to Enlarge Brief to exceed the twenty-five (25) page limit, has contravened on Petitioner’s statutory right to appeal, the final judgment of the PCR Judge’s order of dismissal

that was entered on July 9, 2022, under the South Carolina Uniform Post-Conviction Procedure Act section 27-27-100.

2. It also contravenes on Petitioner's right to present to this Court, that his conviction and sentence was in violation of the constitution of the United States or the constitution or laws of this State; or that the Court was without jurisdiction; or that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice, pursuant to S.C. Code Ann. § 17-27-20(A)(1)(2)(4).
3. This Court has blatantly refused to grant Petitioner permission to exceed the twenty-five (25) page limit despite it having the discretion to do so, but has subsequently denied Petitioner's Motion to Enlarge Brief to Exceed the twenty-five (25) page limit on three different occasions, (see Exhibits – 1, 3, and 4), and has failed pursuant to Rule – 220(b), SCACR, to state distinctly it's findings of facts and the reasons for it's decisions to deny Petitioner's Motion to Enlarge Brief for a third time. (See Exhibit – 4).
4. This Court has overlooked Rules – 208(b)(5) and 263(b), SCACR, and the material facts of Petitioner's three Motions to Enlarge Brief, in the following respects:
 - a. Rule – 208(b)(5), SCACR, allows this Court to grant Petitioner permission to exceed the twenty-five (25) page limitation on a Motion to Enlarge Brief that's presented upon the Court with good cause. While Rule – 263(b), SCACR, allows the performing of any act "may be extended ... by the appellate court, or by any judge or justice thereof."
 - b. This Court would disregard the material facts that Petitioner has stated within his second Motion to Enlarge Brief, that establishes good cause reasons as to why Petitioner has exceeded the twenty-five (25) page limit of Rule – 243(e)(3), SCACR, and has erroneously construed Petitioner's second "Motion to Enlarge Brief" as a "motion for reinstatement of appeal." (see Exhibit – 3).
 - c. The appellant court Rules allows Petitioner to exceed the twenty-five (25) page limit, upon the presentation of a Motion to Enlarge Brief, that's before the Court requesting leave to do so with good cause.
 - d. This Court has issued Order's denying Petitioner's three Motion to Enlarge Brief, (see Exhibits – 1, 3, and 4), without a "specific findings of facts" as to why it would issue an Order denying Petitioner's Motion to Enlarge Brief.
 - e. The Order's denying Petitioner's three Motions to Enlarge Brief, (see Exhibits 1, 3, and 4), does not distinctly state the reasons for the Court's decisions in denying Petitioner's Motion to Enlarge Brief for a third time, as is required pursuant to Rule – 220(b), SCACR.
5. This Court's January 18, 2022, Order has overlooked Rule – 208(b)(5) and Rule – 263(b), SCACR and the material facts of Petitioner's Motion to Enlarge Brief and requires a different decision from the one that was rendered by this Court.

6. This Court's failure to consider Petitioner's constitutional claims and to continue his imprisonment without review amounts to a gross miscarriage of justice of a person who is actually innocent of the crime that he is convicted of, and now seeks the reinstatement of his appeal, and a subsequent application for relief of Petitioner's denied three Motion to Enlarge Brief, whereas, Petitioner has presented to this Court substantial constitutional issues that directly involve the violation of his constitutional rights within his Amended Petition for Writ of Certiorari.

WHEREFORE, Petitioner's Motion for Reinstatement of Appeal and a Subsequent Application for Relief is made and based on this notice and motion, the affidavit of John Garvin, and memorandum of law in support of this Motion, copies of which are served with this notice, and on the pleadings, papers, records, and files in this action.

DATED: January 27, 2022



**John Garvin, # 355509, Pro-se.
Lieber Correctional Institution
136 Wilborn Avenue
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