

Mar 17 2022

S.C. SUPREME COURT

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

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

PETITION FOR REHEARING

On March 15, 2022, this Court issued an Order denying Petitioner-Appellant’s “Motion for Reinstatement of Appeal and a Subsequent Application for Relief, pursuant to Rule – 260(a) and 266, SCACR.” Stating that “Petitioner has not shown good cause for his failure to comply with the page limits of Rule – 243(e)(3).” Pursuant to Rule – 221(a)(b), SCACR, Petitioner-Appellant respectfully petition for rehearing within the fifteen (15) days after the filing of the Order and before the remittitur is sent to the lower courts. Submits that this Court has overlooked or misapprehended the facts and case law that was presented within his motion’s affidavit and memorandum of law for two primary reasons: (1) the significant material facts that was stated within Petitioner-Appellant’s Affidavit in Support of Motion for Reinstatement of Appeal and a Subsequent Application for Relief, (Aff. pp. 2 – 3, paragraph 9 – 13), staying that “due to his low level of competence and limited education,” was the reason for his inability to bring brief within

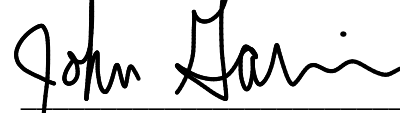
the twenty-five (25) page limit as is required by Rule – 243(e)(3), SCACR; (2) the significant point of law that was stated within Petitioner-Appellant’s memorandum of law in support of his motion for reinstatement of appeal and a subsequent application for relief, that presented a United States Supreme Court authoritative case law in *Schlup v. Delo, supra.*, 513 U.S. 298, 115 S.Ct. 851 (1995); and (3) this Court has failed to rule on the merits of Petitioner-Appellant’s actual innocence issue that was presented within his motion.

Furthermore, this Court has overlooked the relevant evidence (see App. pp. 1097 – 1098) that’s within the record which clearly demonstrates Petitioner-Appellant’s claim of actual innocence and the long-standing, significant case law of *Schlup v. Delo, supra.*, explaining the benefit and appropriateness of a miscarriage of justice, which permits the consideration of an otherwise — barred constitutional claim regarding the determination of guilt or innocence in a non-capital case.

The Petitioner-Appellant respectfully submits that this Court must rule on the merits and the evidence of his claim of actual innocence, pursuant to *Schlup v. Delo*, 513 U.S. 298, 115 S.Ct. 851 (1995).

DATED: March 17, 2022

RESPECTFULLY SUBMITTED,



**John Garvin, # 355509, Pro-se.
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