

State of South Carolina  
County of Richland

John Wallace Hayward  
Applicant

State of South Carolina  
Respondent

The Supreme Court of South  
Carolina

Appellate Case No. 2022-000385

RECEIVED

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S.C. SUPREME COURT

For this matter to proceed I am responding within twenty (20) days of a letter that I signed for on April 6, 2022 to advise this Court on the date of November 24, 2021 when I signed for my final order of dismissal and providing the Court with reasons why a prohibition should not be imposed on future filings by me in the circuit court.

I have submitted copies of the final order of dismissal's front page being filed, copy of the Judge's signature and a copy of the envelope to show when I obtained it.

My Petition for Writ of Certiorari was mainly dealing with Question # 15 Answer (a) on my PCR application to solidify appellate jurisdiction to secure a proper "bite of the apple," proper PCR evidentiary hearing, because that is the main issue at hand. But to help stop any

prohibition ~~and~~ against any future filings I am  
also ~~including~~ including Question #15 Answers  
(b), (c), (d), (e) and (f) my motion  
to Amend PCR file Dec 19, 2019. These  
issue should help the court in the determination  
of Appellate Case No. 2022-000385.

Respectfully Submitted,

John Fuyel  
#291763

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 )  
 John Wallace Hayward, #291763 )  
 )  
 Applicant )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTH JUDICIAL CIRCUIT

2019-CP-40-0286

**FINAL ORDER OF DISMISSAL**

RICHLAND COUNTY  
 FILED  
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 JANE T. W. MORRIS  
 C.C.P., G.S., J.F.C.

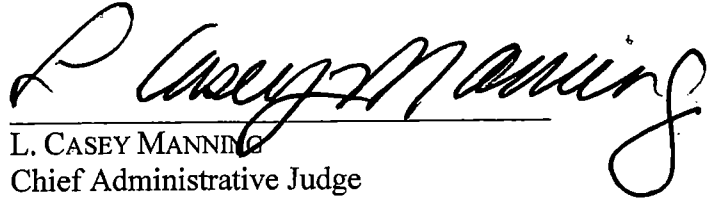
This matter comes before the Court pursuant to an application for post-conviction relief filed by Applicant John Wallace Hayward on January 15, 2019. Respondent made its Return and Motion to Dismiss on September 10, 2021, requesting the application be summarily dismissed because it was untimely, successive to Applicant's prior PCR actions, and failed to state a cognizable claim for relief.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed September 16, 2021, provisionally denying and dismissing this action, while giving Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 13, 2021, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant submitted correspondence to Respondent titled "Applicant's Response to Conditional Order of Dismissal with the resubmitting of The Applicant's Motion to Amend PCR Motion for Relief from Judgment stamped Dec. 19. 2019" wherein Applicant argues he should be allowed to proceed on his application because the South Carolina Court of Appeals improperly sent down the remittitur for three of his offenses following the completion of his direct appeal in

attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 5 day of November, 2021.



L. CASEY MANNING  
Chief Administrative Judge  
Fifth Judicial Circuit

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Columbia, South Carolina

Jeanette W. McBride  
CLERK OF COURT  
RICHLAND COUNTY  
P.O. Box 2766  
Columbia, SC 29202-2766

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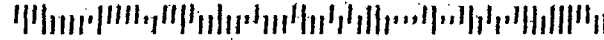
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Applicant's 2 Richland County charges endured prejudice from the 10 vacated Lexington County charges during the Applicant's plea/trial proceeding Question #15 Answer (b)

The instant ground comes to the Court with the concession that a 6<sup>th</sup> and 14<sup>th</sup> Amendment violation prejudiced the applicant's entire plea proceeding not just Lexington County but Lexington and Richland County making the entire plea proceeding fall below the standard of effective assistance of counsel guaranteed by the U.S. Const. 6<sup>th</sup> Amendment applicable to the States through the U.S. Const 14<sup>th</sup> Amendment. The applicant was denied his 6<sup>th</sup> Amendment right to counsel during his plea proceeding. The 6<sup>th</sup> Amendment right to the U.S. Constitution provides that in all criminal prosecution that the accused shall enjoy the right to the assistance of counsel for his defense is made obligatory on the states by the 14<sup>th</sup> Amendment and indigent defendant in criminal prosecution in state court has the right to have counsel appointed for him. USCA Const Amend 6<sup>th</sup> and 14<sup>th</sup> Gideon v. Wainwright 372 US 335, 83 S.Ct 792 (1963) Gideon announced a rule that has been recognized and applied by the Supreme Court of South Carolina in State v Cowart 251 SC 360; 162 SE2d 535 (1968) The effective assistance of counsel is a necessary requisite of due process of law. State v Cowart. The due process clause requires that a defendant enter his guilty plea voluntarily, knowingly and intelligently USCA Const Amend 14; SC Const art 153 State v Nesbitt 411 SC 194 768 SE2d 67 (SC Jan 14 2015). The 6<sup>th</sup> Amendment's guarantee of assistance of counsel is among those Constitutional rights so basic to fair trial that their infraction can never be treated as harmless error. Holloway v

Arkansas 435 US 475, 98 S.Ct 1173 (1978) "The right to have the assistance of counsel is too fundamental and absolute to allow court to indulge in nice calculations as to the amount of prejudice arising from its denial." Glasser v United States 315 US 60, 76; 62 S.Ct 457, 467. The erroneous deprivation of a defendant's fundamental right to the assistance of counsel is per se reversible error and never harmless. Chapman v California 386 US 18, 87 S.Ct 824 (1967) Gideon

Therefore Lexington County's denial of counsel error was never harmless to the handling of the Richland County charges and it prejudiced his entire plea proceeding because the applicant pled to both county charges (12) at one hearing together. Applicant had a Richland County Public Defender for his Richland County charges but not a Lexington County Public Defender for his Lexington County charges giving him an actual and constructive denial of counsel. Actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice Cronic v U.S. 446 US 648 104 S.Ct 2039 (1984) McKnight v State 320 SC 356 465 SE2d 352 (1995) The prejudice the applicant endured after these violations during his plea proceeding is explained on record by the Supreme Court of South Carolina 3-2 decision (Pleicones, J concurring in part, dissenting in part in separate opinion, Beatty, J concur) in 2011 to grant PCR to his 10 Lexington County charges (265 yrs, affirmed + vacated) but not his 2 Richland County charges (60 yrs, reversed + reinstated). see PCR Attachment pg 27-30; Writ of Certiorari 2011-MO-008 pg 1-4 The last authority that was used by the Supreme Court of South Carolina to grant the applicant ~~total~~ partial relief (77% of sentence vacated) was Nance v Ozmint 367 SC 547 552; 626 SE2d 878, 800

(2006) (observing that prejudice is presumed when an accused is denied counsel at a critical stage). There are times when prejudice is presumed. Where counsel entirely fails to subject the prosecution case to meaningful adversarial testing, there has been a denial of 6<sup>th</sup> Amendment right that makes the adversarial process itself presumptively unreliable and prejudice may be presumed. Cronic v U.S. 446 648; 104 S.Ct 2039 (1984) Nance v Ozmint. Prejudice ~~was~~ clearly presumed during the applicant's plea proceeding. The applicant's Richland County convictions and sentences (23% of sentence reinstated) are the result of partiality <sup>pressure</sup> and prejudice from the 10 Lexington charges that have been vacated and remanded for retrial. The Supreme Court has no jurisdiction to disturb because of alleged excessiveness a sentence which is within the limits prescribed by statute unless statute itself violates Constitution injunction against cruel and ~~unusual~~ unusual punishment or sentence is result of partiality, prejudice pressure or corrupt motive SC Const art 1 § 19; USCA Amend 8, 14 Wood v State 257 SC 197 184 SE2d 702 (1971) Stackton v Leeke 269 SC 459 237 SE2d 896 (1971) Cummings v State 274 SC 26; 260 SE2d 187 (1979) (Defendant, by failing to object at trial to the imposition of sentence, waived right to have sentence review on direct appeal or to raise issue in post conviction proceeding as to whether the sentence was cruel and ~~unusual~~ unusual punishment, absent allegation of ineffective assistance of counsel SC Ann Code § 17-27-20(b)). Since the violation of ineffective assistance of counsel was clear and present during the applicant's plea proceeding, the Supreme Court has jurisdiction to disturb the applicant's excessive sentence because it is the result of partiality, prejudice, pressure or corrupt motive. USCA Amendment 14 Wood, Stackton, Cummings.

The applicant shows that in the setting he was denied fundamental fairness shocking to the universal sense of justice during his plea proceeding and to continue the applicants imprisonment without a new trial/plea proceeding without the <sup>10</sup>dismissed Lexington County charges would amount to a gross ~~miscarriage~~ miscarriage of justice.

Rejection of lesser plea and stopping a forthcoming trial on the advice of counsel to still plea on more severe terms on the advice of counsel was ineffective assistance of counsel. Question #15 Answer (B)

This ground comes to the Court by the applicant seeking relief when ineffective assistance of counsel caused nonacceptance of a plea offer and further proceedings led to a less favorable outcome. The applicant now asks the Court to grant post conviction relief when ineffective assistance of counsel caused rejection of a substantially favorable 20 year concurrent plea offer and then counsel and the applicant prepared for trial to be exonerated for his Richland County charges to then stop the scheduled trial set for December 1 2003 on the advice of Richland County counsel to finally plea to the same 2 Richland County charges along with 10 aggravating Lexington County charges (All 10 vacated and remanded for retrial) on the advice of Richland County counsel did prejudice the handling of the Richland County charges because the applicant would have never been convicted and sentenced to 12 consecutive charges aggregated to 325 (60 years for 2 consecutive conv. + sent's Richland Co., 265 years for 10 consecutive conv + sent's Lexington Co.) without Lexington County at his Richland County plea proceeding but Lexington County was there on the advice of counsel from Richland County.

The applicant could have benefited with the 20 year concurrent plea offer for his 2 Richland County charges or with a fair jury trial because the applicant is serving a 60 year sentence which is the maximum penalty he could have received if found guilty at his Richland County trial but on the advice of counsel the applicant pled to the 2 Richland County charges and still received the maximum penalty. The advice of Richland County counsel made the applicant's entire plea proceeding fall below an objective standard of reasonableness and that there is a reasonable probability that

without the 6<sup>th</sup> and 14<sup>th</sup> Amendment violation during his plea proceeding the applicant would not have rejected but accepted the Richland County 20 year concurrent plea offer, see Strickland v Washington, 466 US 668; 104 S.Ct 2052 (1984) or would not have pled guilty but would have insisted on going to trial for the Richland County charges, see Hill v Lockhart, 474 US 52 106 S.Ct 366 (1985) see also Lafler v Cooper, 132 S.Ct 1376 (2012) (the favorable plea offer was reported to the client but was rejected on the advice of counsel then there was a trial before a jury. After a guilty verdict the defendant received a sentence harsher than that offered in the rejected plea offer.) and Missouri v Frye, 132 S.Ct 1399 (2012) (defense counsel did not inform the defendant of the plea offer and after the plea had elapsed the defendant still pled guilty but on more severe terms.) Bell v State, 410 SC 436 765 SE2d 4 (SC App 2014) ~~The~~ Smalls v State, 422 SC 174; 810 SE2d 836 (2018)

The applicant proves that the advice of counsel to plea to plea to 10 aggravating Lexington County charges outside of jurisdiction that he did not investigate induced the applicant to reject a Richland County 20yr concurrent plea offer from the State for his 2 Richland County charges that also induced a ~~that~~ Richland County trial stoppage to finally still advise the applicant to plea guilty to the same 2 Richland County charges and the 10 aggravating Lexington County charges together for 32.5 years but after the 10 Lexington County convictions and sentences (26.5 yrs) were vacated for the denial of counsel at a critical stage the applicant has to

serve 2 <sup>consecutive</sup> Richland County convictions and sentences (60 yrs) from the collateral damage from the 10 vacated Lexington County convictions and sentences on the advice of Richland County counsel was a deficient performance and fell below an objective standard of reasonableness. The applicant should be granted relief because before Lexington County charges induced his plea with Richland County together at one plea proceeding the applicant was ready to go to trial for the Richland County charges <sup>and</sup> with the 10 Lexington County charges vacated and remanded for retrial it would be only fair to grant the applicant relief, a retrial for his 2 Richland County charges as well.

The applicant shows that in the setting he was denied fundamental fairness shocking to the universal sense of justice during his plea proceeding and to continue the applicant's imprisonment without a new trial/plea proceeding would amount to a gross miscarriage of justice.

1 extradited back to South Carolina. The agents ended up  
2 showing Ms. Robinson a photo lineup of Mr. McKenzie and  
3 that she indicated that that was the person, Frank  
4 McKenzie was the person that she knew as Mel or Merv. And  
5 his street name was actually Merv, so she was on board  
6 with what his street name would be.

7           Lastly, your Honor, the fourth individual was  
8 actually identified in about June of this year, Quinjarro  
9 Pressley was arrested for a number of armed robberies over  
10 in Lexington County. The police were able to get a  
11 description of him and again showed the photograph to Ms.  
12 Robinson and she indicated that that was the person she  
13 knew as Wayne or Juan.

14           Your Honor, Mr. Hayward again has been  
15 incarcerated I believe since January 18<sup>th</sup> of this year  
16 on this charge, and he has not given any sort of statement  
17 but his co-defendants have all given statements against  
18 him and were all going to be called as witnesses against  
19 him in the trial that was going to be called today.

20           Your Honor, just briefly, the second armed  
21 robbery that he had occurred on November 25th of last  
22 year. It was a robbery of an individual named Harry  
23 Vogel. Mr. Vogel was a pizza deliveryman for Dominoes  
24 Pizza on Decker Boulevard.

25           Your Honor, on that night Mr. Vogel was heading

1 happened in the same crime spree.

2 THE COURT: I thought they were getting ready to go  
3 forward on a trial, and that's when the plea arose.

4 MR. PETRANO: That's correct. And --

5 THE COURT: Well, they would have tried him on --

6 MR. PETRANO: The Richland.

7 THE COURT: On the Richland charges and not...

8 MR. PETRANO: I'm just speculating that. I --

9 THE COURT: All right. Do we need to put any  
10 evidence up with respect to this matter, Mr. Mokeba, or  
11 have you all stipulated as to --

12 MR. JEFFRIES: Your Honor, I think --

13 THE COURT: -- what --

14 MR. JEFFRIES: -- we can stipulate as to the fact  
15 that --

16 THE COURT: -- what Mr. Mokeba would or would not say  
17 in terms of what kind of investigation he made into the  
18 matter, if any. What kind of counsel -- I mean, did he,  
19 in fact, act as de facto counsel, even though he may not  
20 have been appointed, did he --

21 MR. JEFFRIES: I think it's fair to say he would have  
22 been acting as de facto counsel.

23 THE COURT: Well, but I mean, that may -- I don't  
24 know what he's going to get up and say. He may say that  
25 he did a thorough investigation in Lexington County, and

1 A No.

2 Q And how did you initially become aware of the  
3 Lexington County charges and how far in the process of  
4 representing him on the Richland County charges did you  
5 become aware?

6 A Okay. I'll try and be brief here. This case  
7 actually came to me after Ms. Coggiola left the Public  
8 Defender's Office.

9 It was initially Lee Coggiola's case. When she left,  
10 the case was reassigned to me. And again, I remember this  
11 case a little bit more vividly based on the surrounding  
12 circumstances.

13 When the case was assigned to me, I got the files.  
14 During that period, I had actually -- I was preparing for  
15 trial while I was home. My wife just gave birth, and I  
16 was -- I had taken about a month off from work. So I was  
17 preparing for trial while I was at home, so I remember the  
18 facts a little bit better.

19 During the course of preparation, Mr. Longshore was  
20 supposed to assist me. It became -- while some of the  
21 facts -- based on the facts in Richland County, which were  
22 somehow intertwined with some of the facts in Lexington  
23 County, were aware that there were charges pending in  
24 Lexington County.

25 Now, we did not do any investigation, a thorough

① investigation into the ca--- into the facts in Lexington  
2 County. That much I will tell you.

3 We were getting ready to go to trial. I talked to  
4 John. We had -- there were statements out there from  
5 codefendants. We thought it was in his best interest  
6 to -- to have him plead to all of the charges at one and  
7 therefore, not expose him to all the subsequent  
8 consequences.

9 Now, we're thinking well, most serious offenses in  
10 Richland County, subsequent most serious offenses in  
11 Lexington County, will expose him to life in prison, and  
12 it played -- in Richland County would ultimately, we hope,  
13 prevent that from happening.

14 But as far as the investigations are concerned, we  
15 read the statements that were provided by the  
16 codefendants. As far as the details of the rest of the  
17 facts, I -- in Lexington County I just can't tell you  
18 except for the ones that were linked to the Richland  
19 County facts.

20 Q And you recall that there were several Lexington  
21 County charges, several more than there were in Richland  
22 County?

23 A There -- yeah, but the difference -- I think there  
24 would stem out of one. Most of the charges would stem out  
25 of one incident at the residence in Lexington County. I

1 Q However, is it fair to say you were never charged or  
2 never convicted of anything serious or most serious?

3 A No, sir.

4 Q And let me just ask you, would you have entered a  
5 straight-up guilty plea to the Richland County charges had  
6 you been able to defend yourself on the Lexington County  
7 charges?

8 A No, sir.

9 Q And what would you have done if you had been able to  
10 do that?

11 A I was ready to go to trial.

12 Q Let me ask you now, were you working while you were  
13 awaiting the disposition of these charges, or what was  
14 going on with you?

15 A I was -- I was in the county.

16 Q Okay. Alvin S. Glenn Detention Center?

17 A Yes, sir.

18 Q And were you able to retain a private attorney?

19 A No, sir.

20 Q Is that why you were appointed a public defender here  
21 in Richland County?

22 A That was the reason.

23 Q And were you ever at any point appointed a public  
24 defender in Lexington County?

25 A No, sir.

Applicant was not made aware of the maximum statutory penalty when sentenced Question #15 Answer (d)

Applicant's guilty plea was not voluntarily and understandingly made because he was never made aware that he could be sentenced to as much as 325 years. see Dover v State 405 SE2d 391 (SC 1991) "Defendant's guilty plea was not voluntarily and understandingly made because he was never made aware that ~~voluntarily~~ he could be sentenced to as much as 200 years." Since the applicant pled guilty to avoid life without parole the judge could not inform the applicant that the maximum he could receive was around 270 some odd years nor receive life if he decide to run these consecutive, which he did decide to do (see plea trans. pg 40-41, plea trans. pg 23) The applicant was not advised the accurate maximum possible statutory penalty. Instead the Hon. Judge Lloyd gave the applicant ~~the~~ inaccurate and erroneous sentencing information that induced his guilty plea. A plea which induced by erroneous sentencing information is thereby rendered involuntary. Ray v State 303 SC 374; 401 SE2d 151 (1991) Alexander v State 303 SC 539; 404 SE2d 484 (1991) Hinson v State 297 SC 456 377 SE2d 388 (1989) Judge didn't tell the maximum possible statutory penalty. U.S. v Cosarelli 105 F3d 984 (5th Cir 1997) see also State v Pittman 337 SC 597 599; 524 SE2d 623, 624-25 (1999) Taylor v State 422 SC 222 (2018) Without being advised the maximum statutory penalty the applicant's guilty plea was obtained without applicant having a full understanding of the plea and its consequences. citing Boykin v Alabama 89 S.Ct 1709, 395 US 238 (1965) "Petitioner's guilty plea was obtained without petitioner having a full understanding of the plea and its consequences." Without the applicant having a full understanding of the plea and its consequences in the setting, violated the applicant's plea proceeding constituting

denial of fundamental fairness shocking to the universal sense of justice. Where there has been violation, which in the setting, constitutes denial of fundamental fairness shocking to the universal sense of justice. Butler v State, 302 SC 466 468; 397 SE2d 87, 88. ~~App~~ (1990)

Applicant can show he was denied fundamental fairness shocking to the universal sense of justice during his plea proceedings and to continue the applicant's imprisonment without a new trial/plea proceeding would amount to a gross miscarriage of justice.

1 plead on everything and take full responsibility for  
2 everything that I've done.

3 THE COURT: That's mighty noble of you, sir. It  
4 really is.

5 Your sentence on Indictment 03-870 is 30 years.

6 Your sentence on Indictment 03-905 is 30 years.

7 Those sentences are to be consecutive.

8 Your sentence on Indictment 03-4182, assault and  
9 battery with intent to kill, which I believe you did, sir.

10 You offer no explanation for how she got those injuries.

11 I believe her testimony, which means what you did was just  
12 brutal, unnecessary, and quite frankly disgusting, 20  
13 years.

14 Your sentence on Indictment 03-4183, armed  
15 robbery, 30 years.

16 Your sentence on 03-4186, armed robbery, is 30  
17 years.

18 Your sentence on Indictment 03-4191, criminal  
19 conspiracy, five years.

20 Your sentence on Indictment 03-4185, burglary in  
21 the first degree, is 30 years.

22 Your sentence on 03-4184, kidnapping, is 30  
23 years.

24 Your sentence on Indictment 03-4187, kidnapping,  
25 is 30 years.

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Your sentence on 03-4190, kidnapping, is 30 years.

Your sentence on 03-4189, kidnapping, 30 years.

Your sentence on Indictment 03-4188, kidnapping, is 30 years.

Mr. Hayward, all of your sentences are to run consecutively, sir. You just do not need to be out among decent people, sir. You do not.

Have a nice life, sir.

MR. SWARAT: Thank you, your Honor.

\*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

1 THE COURT: And we set that one aside for a  
2 moment.

3 You do understand, sir, that the State is not  
4 making a recommendation on these pleas. If I decide to  
5 run these consecutive, which is an option, you could  
6 receive up to life. You could receive by count, and take  
7 out the ABWIK still, around 270 some odd years, and that's  
8 not counting the time on the burglary first. Do you  
9 understand that?

10 THE WITNESS: Yes, sir, your Honor.

11 THE COURT: Do you still wish to plead guilty?

12 THE WITNESS: Yes, sir, your Honor.

13 THE COURT: Okay. I find there is a sufficient  
14 factual basis to accept the pleas on everything except the  
15 assault and battery with intent to kill, and we'll come  
16 back to that in a moment.

17 I also find that — first of all, Mr. Hayward,  
18 let me make sure, nobody's offered you any reward or  
19 promised you anything at all to get to plead guilty today,  
20 have they?

21 THE WITNESS: No, sir, your Honor.

22 THE COURT: Nobody's mistreated you in any way  
23 or coerced you in any way to get you to plead guilty?

24 THE WITNESS: No, sir, your Honor.

25 THE COURT: You're pleading guilty of your own

Use of false testimony and evidence by prosecuting authorities to obtain conviction. Question # Answer (e)

Applicant's guilty plea was obtained with false testimony about false evidence. Prosecution's testimony that applicant became suspect based on his I.D. card being found at the scene (see PCR Att pg App pg 8 plea trans.) is clearly false and/or perjured testimony about false evidence without actual evidence of an I.D. card in the applicant's Rule 5/Motion of Discovery (see PCR Att pg Discovery Checklist) or in existence anywhere to be found. It was error to use false and/or perjured testimony about false evidence to induce the applicant's guilty plea. This was error because "[+]the issue is not why [the witness] fell to tell the truth: rather it is why the solicitor, who knew [the] testimony to be false, failed to correct it" Riddle v Ozmint 631 SE2d 70 Id p. 75 (2006). Reversal was required because "[+]the failure to correct false evidence is a reprehensible as its presentation" Riddle v Ozmint. There is a note written by a police officer that he obtained the I.D. from a witness at the scene (see PCR Att pg I.D. statement from police officer) but again there is no I.D. of the applicant in his Rule 5/Motion of Discovery (see PCR Att pg Discovery Checklist). There is no I.D. in existence, not even in the possession of prosecuting authorities, of the applicant, that was found at the scene making him a suspect. With that said the applicant faced prejudice during his plea proceeding when false and/or perjured testimony was used by the prosecuting authorities, if sufficiently alleged tantamounts a conviction obtained therefrom and is a good ground

for post conviction relief USCA § 2255 Hammond v  
U.S. 309 F2d 935 (CASC 1962) see also Brady v Maryland  
373 US 83, 10 LEd2 215, 83 S.Ct 1194 (1963)

Riddle v Ozmint. Prosecutor's improper comments unfairly  
prejudiced defendant, depriving him of fair trial and  
warranting new trial. Fortune v State 2019 WL 652151 (Dec 4, 2019)

The applicant calls into question the fundamental  
fairness of the universal sense of justice in the setting  
of his plea proceeding when solicitor used false testimony  
and false evidence that induced his guilty plea to the  
Richland County charges and the applicant is serving 2  
~~se~~ consecutive convictions and sentences from US Const  
6<sup>th</sup> and 14<sup>th</sup> Amendment violations. The 6<sup>th</sup> and 14<sup>th</sup>  
Amendment violation, in the setting, violated the applicant's  
entire plea proceeding constituting denial of fundamental  
fairness shocking to the universal sense of justice. Where  
there has been violation, which, in the setting, constitutes  
denial of fundamental fairness shocking to the universal  
sense of justice. Butler v State 302 SC 466, 468  
397 SE2d 87, 88 (1990)

Applicant can show that in the setting he was denied  
fundamental fairness shocking to the universal sense of  
justice during his entire plea proceeding and to  
continue the applicant's imprisonment without a new  
trial/plea proceeding of the applicant's 2 Richland  
County charges without the use of false testimony and  
false evidence would amount to a gross miscarriage of  
justice.

~~ground for post conviction relief USCA § 2255  
Hammond v U.S. 309 F.2d 935 (C.A. 9, 1962) see also  
Brady v Maryland 373 US 83, 10 LE2d 215, 83 S.Ct  
1194 (1963) Riddle v Ozmint~~

~~F~~

1 car that was heading out Assembly Street towards Elmwood.  
 2 He also saw one of the men drop a South Carolina I.D. card  
 3 onto the sidewalk, and he went over, picked it up and  
 4 brought it in so that the police could use that as  
 5 evidence. And he said that even though he only got a  
 6 brief glimpse of the person who dropped the card, he  
 7 believed that the same person who dropped the card was the  
 8 same one whose picture was on the I.D. card.

9 Your Honor, the I.D. card was that of John  
 10 Hayward. The police retrieved it that day and Mr. Hayward  
 11 immediately became a suspect based on his I.D. card being  
 12 dropped at the scene.

13 The police obviously at that point, and the FBI  
 14 was called in, they tried to find Mr. Hayward at the  
 15 address that was on his I.D. card, which was listed as  
 16 Monticello Road. That was not Mr. Hayward's address, and  
 17 the folks there indicated that they didn't know  
 18 Mr. Hayward and that he didn't live at that address.

19 The police continued to try to find Mr. Hayward.  
 20 In the meantime, about five days later on August 13th they  
 21 got an anonymous tip, the Columbia police department did,  
 22 that there was money from the bank robbery, dye-stained  
 23 money at a residence located at 1732 Carnegie Street. The  
 24 officers from Columbia Police Department along with some  
 25 of the agents from the FBI responded over to 1732 Carnegie

copy

**DISCOVERY CHECKLIST**

Defendant John Hayward

- 1) Trial Notice dated 9/25/03
- 2) Indictment on Frank McKenzie
- 3) Indictment on John Hayward
- 4) Rap Sheet on John Hayward (9 pages)
- 5) FBI Receipt for Property Returned to David Helms (1 pg)
- 6) FBI Receipt for Property Returned to Renona Robinson (1 pg)
- 7) FBI Form FD-192 (5 pages)
- 8) Photo Line-ups (6 pages)
- 9) Handwritten notes pertaining to 6/27/02 incident (1 pg)
- 10) Incident Report number 02-20815 (3 pg)
- 11) Statement of G. Bellamy (1 pg)
- 12) Statement of D. Pressley (1 pg)
- 13) Incident Report number 02-25525 (3 pg)
- 14) Statement of Lt. Reaves (1 pg)
- 15) City of Columbia Water bill to 103 Marietta St (1 pg)
- 16) Press Release from CPD (1 pg)
- 17) SLED Report from K. Black (1 pg)
- 18) FBI Form FD-192 (4 pg)
- 19) Handwritten note about Michelle Rawl (1 pg)
- 20) Rental Agreement (3 pg)
- 21) FBI Table of Contents (1 pg)
- 22) FBI Summary (3 pg)
- 23) Renona Robinson (4 pg)
- 24) Renona Robinson (1 pg)
- 25) Renona Robinson (3 pg)
- 26) Pearlle Ingram (1 pg)
- 27) Nathaniel Johnson (1 pg)
- 28) Doan Trang Thieu (2 pg)
- 29) Lan Dinh Nguyen (1 pg)
- 30) Jeri McGalliard (2 pg)
- 31) Summary of Search (4 pg)
- 32) Summaries of Patricia Jones (2 pg)
- 33) Gwen Petrella (1 pg)
- 34) Elona Winn (2 pg)
- 35) Carmen Morgan (2 pg)
- 36) Michelle Rawl (2 pg)
- 37) FDIC Certificate (1 pg)
- 38) Douglas Smith Sr. (1 pg)
- 39) Douglas Smith Jr. (2 pg)
- 40) Norfolk Stop (1 pg)
- 41) Seizure of brown Cadillac (1 pg)

No Photo or  
Picture I.D. of  
John Hayward



Improper Change of Venue from ineffective  
assistance of counsel Question #15 Answer (f)

Counsel was ineffective for allowing an improper change of venue from a few different standpoints. Counsel was ineffective for allowing and not squashing an improper change of venue because the applicant's 10 Lexington County indictments were never true-billed by the grand jury see 10 Lex Co. indictments pg ~~5444~~ pursuant to Section 17-458 of the Code of Laws enacted in accord with article 6 § 2 of the S.C. Constitution provides with reference to change of venue in criminal cases: "No change of venue shall be granted in such cases until a true bill has been found by a grand jury." see also S.C. Code Ann § 17-21-80 Change of venue; notice, application and affidavit. By making the motion for a change of venue which could only be made under the conditions named, the defendants have recognized the fact or are estopped from denying, that a true bill, a valid bill had been returned, State v Bradford 256 SC 51, 180 SE2d 632 (S.C. 1971) Motion for a change of venue brought after the return of a true bill by the grand jury, as required by law, was held to be a waiver of an irregularity in the drawing of the grand jury where the error complained of was not jurisdictional and the defendant was estopped to deny the bill was valid State v Richardson 149 SC 121, 146 SE2d 676 (S.C. 1928) Without a true bill found by the Lexington County grand jury the change of venue was improperly made on the advice of Richland County counsel and should have been squashed because the entire Lexington County matter was outside of his jurisdiction.

The change of venue was also improper without signatures from the judge, Hon. Reginald I. Lloyd nor ~~did~~ <sup>anyone</sup> from the Lexington County Clerk of Court signifying and deferring the jurisdiction of the 10 Lexington County charges into the jurisdiction of the Richland County Clerk of Court.

Another reason the Lexington County change of venue was improper was because the judge, Hon. Reginald I. Lloyd never addressed the applicant ~~concerning~~ nor his Lexington County appointed counsel (applicant was denied Lexington County counsel) concerning his Lexington County change of venue. Record shows the judge only addressed the Richland County counsel concerning the Lexington County change of venue, proper venue. see pg [redacted]; plea tran/App. pg 20 Record gives no indication that the judge questioned defendant concerning his change of venue or that defendant addressed the court concerning his change of venue. see Boykin v Alabama 89 S.Ct 1709 395 US 238 (1969) Since the record gives no indication that the judge questioned applicant ~~concerning~~ nor his Lexington County appointed counsel (applicant was denied Lexington County counsel) concerning his Lexington ~~County~~ County change of venue or that the applicant or his Lexington County counsel addressed the court concerning his change of venue then the change of venue was obtained without applicant having a full understanding of the change of venue and its consequences. see Boykin v Alabama

on the advice of Rich Co Counsel

That improper change of venue prejudiced the applicant's 2 Richland County charges by stopping his trial ~~for these 2 charges~~ and allowing 10 aggravating Lexington County charges (that were outside of their jurisdiction and later vacated and remanded for retrial) to overwhelm the entire Richland County plea proceeding (2 Rich Co + 10 Lex Co charges together)

More than likely if Lexington County would not have been allowed to change venue improperly on the advice and guidance of the Rich Co Counsel the applicant would have <sup>either</sup> accepted the 20 year concurrent plea offer for the two Richland County charges or would have went to trial ~~before the Rich Co charges~~ with a chance to be exonerated and/or nevertheless receive less ~~than~~ than the maximum he could have received which was 60 years, ~~but~~ still pled on the advice at Rich Co counsel ~~and~~ still received

the max 60 years. ~~and great obstacles during his Rich Co plea proceeding~~

~~collateral damage from the diverted and remanded Lexington County charges that were outside of their proper jurisdiction because~~  
~~the improper change of venue brought by the ineffective assistance of counsel from the Rich Co Counsel and the denial of Lex Co counsel.~~

~~the result of~~ the improper change of venue brought by the ineffective assistance of counsel from the advice of the Rich Co Counsel and the denial of Lex. Co counsel.

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )  
THE STATE )  
VS. )  
JOHN WALLACE HAYWARD, )  
DEFENDANT )

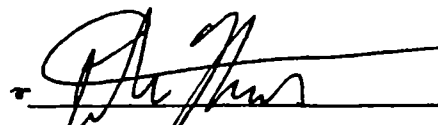
IN THE ELVENTH JUDICIAL CIRCUIT OF  
GENERAL SESSIONS COURT

WAIVER OF CLERK OF COURT

2003-GS-32-4182 through 4191

I want the Clerk of Court for Richland County to sign my papers for me to plead guilty. I know I have the right to have the Lexington County Clerk of Court sign these papers.

I DO NOT want the Lexington County Clerk of Court to accept my waivers and pleas, and I give up those rights. I want the Richland County Clerk to sign the papers and accept my waivers and pleas. This is my decision and choice, and I know what I am doing.


  
John Wallace Hayward  
Defendant

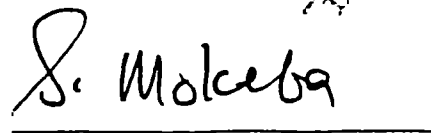
*Handwritten stamp:*  
COPY  
LEXINGTON COUNTY  
SOUTH CAROLINA

Lexington, SC

December 1, 2003

ATTEST:

  
Barbara A. Scott  
Richland County Clerk of Court

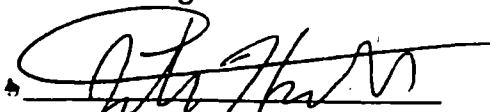
  
S. Molceba  
Attorney for Defendant

STATE OF SOUTH CAROLINA )	IN THE ELEVENTH JUDICIAL CIRCUIT OF
COUNTY OF LEXINGTON )	GENERAL SESSIONS COURT
THE STATE )	
VS. )	WAIVER OF RIGHT AND REQUEST
	TO PLEAD IN RICHLAND COUNTY
JOHN WALLACE HAYWARD, )	2003-GS-32-4182 through 4191
<u>Defendant</u> )	

I have been advised that I have the legal right to have my case heard and tried in Lexington County, and I understand this right. But, I give up and waive this right.

I want to plead guilty in Richland County. This is my decision, and I know what I am doing. I have been advised, and I know, that I cannot be forced or made to plead guilty in Richland County. I am the only person who can make this decision.


It is my decision, and I ask the Judge to let me plead guilty in Richland County. I do not want to be tried or plead in Lexington County. This is my decision and my choice, and I understand what I am doing.

  
 John Wallace Hayward  
 Defendant

Lexington, SC

December 1, 2003

ATTEST:

  
 Richland County  
 Clerk of Court

  
 Attorney for Defendant

TRIPLE COPY

1 Mr. McLamore are going to ask you for a life sentence. I  
2 certainly think he deserves at the very least something  
3 that's going to take him off the streets so he's no harm  
4 to anybody else.

5 Mr. Mokeba asked me about anything that he has  
6 not been charged with. I'm not going to make any  
7 agreement as to anything else that he's done if he hasn't  
8 told his lawyers. So that's the bulk of it today.

9 Your Honor, as to his prior record, all I have  
10 is a possession of — a drug possession charge that I  
11 believe he ended up doing three years on after a probation  
12 revocation.

13 THE COURT: Yes, sir.

14 Let me ask Counsel as well, defense counsel,  
15 that you all I take it are waiving any issues regarding  
16 venue, proper venue?

17 MR. MOKEBA: We are waiving that, your Honor,  
18 yes, sir.

19 THE COURT: And you agree you explained that to  
20 Mr. Hayward and he's in agreement on that?

21 MR. MOKEBA: Yes, sir.

22 THE COURT: Any material disagreement to the  
23 facts as stated by either solicitor?

24 MR. MOKEBA: Yes, sir. I think there is one  
25 disagreement. I think it's the one for the assault and

1 03-GS-32-4185; criminal conspiracy, 03-GS-32-4191; two  
 2 counts of armed robbery, 03-GS-32-4183, and 4186; and five  
 3 counts of kidnapping, 03-GS-32-4184, 4187, 4188, 4189, and  
 4 4190.

5 On December 1st, 2003 the Applicant pled guilty as  
 6 indicted and was sentenced by the Honorable Judge Lloyd to  
 7 basically 325 years consecutive for pretty much everything  
 8 and filed a timely notice of appeal.

9 The South Carolina Court of Appeals -- excuse me, the  
 10 Supreme Court affirmed the conviction on January 3rd,  
 11 2006, State v. Hayward, 05-UP-609.

12 Now I'll turn it over to Mr. Jeffries.

13 THE COURT: All right. Just, I think for your own  
 14 information, Mr. Attorney General --

15 MR. PETRANO: Yes, sir.

16 THE COURT: -- in your return, you state that he was  
 17 -- he waived presentment and then he was directly  
 18 indicted.

19 MR. PETRANO: I do apologize if it was for --

20 THE COURT: Well, if he waives presentment, he wasn't  
 21 indicted.

22 MR. PETRANO: That's correct, Your Honor. I  
 23 apologize for the misstatement in my introduction and in  
 24 the return. I have the paperwork here.

25 THE COURT: I've looked at the indictments. All

1 MR. PETRANO: On all of the 32 indictments, it's the  
2 waiver.

3 THE COURT: You're asking him what that is?

4 MR. PETRANO: Yes, sir. I'm asking the trial counsel  
5 to explain what that is.

6 THE WITNESS: It's a -- it's a waiver to -- of the  
7 Clerk of Court. And -- do you want me to read it out for  
8 the record?

9 BY MR. PETRANO

10 Q No, no. Just -- could you just tell me what it is?

11 A That again, I would just say I want the Clerk of  
12 Court of Richland County to sign my papers for me to plead  
13 guilty. I know that I have a right to have the Lexington  
14 County Clerk of Court sign these papers. I do not -- want  
15 the Lexington County Clerk of Court to accept my waivers  
16 and pleas. I give up those rights. I want the Richland  
17 County Clerk of Court to sign the papers and accept my  
18 waivers and pleas. This is my decision and --

19 Q Did the applicant sign that?

20 A He did.

21 Q And I think I see your signature down there at the  
22 bottom, as well?

23 A That's correct.

24 Q What's -- what are you titled there under your  
25 signature?

13

in Richland County and also waived the right to have the Clerk of Court for Lexington County to sign the papers. App.p. 132, 134.

At the guilty plea proceeding on December 1, 2003 in Richland County, Petitioner waived venue and presentment of Lexington County charges to the Lexington County Grand Jury for assault and battery with intent to kill (03-GS-32-4182), burglary - first degree (03-GS-32-4185), criminal conspiracy (03-GS-32-4191), two counts of armed robbery (03-GS-32-4183; 4186) and five counts of kidnapping (03-GS-32-4184; 4187; 4188; 4189; 4190). App.p. 120-166. Petitioner was represented by Samuel Mokeba, Esquire. On December 1, 2003, the Petitioner pleaded guilty as charged. App.p. 1-42. Petitioner was sentenced by the Honorable Reginald I. Lloyd to confinement for a period of thirty (30) years for each armed robbery, thirty (30) years for each kidnapping, thirty (30) years for burglary - first degree, twenty (20) years for assault and battery with intent to kill and five (5) years for criminal conspiracy. Judge Lloyd ran all sentences consecutively for an aggregate sentence of three hundred twenty-five (325) years. App.p. 40-41.

#### DIRECT APPEAL

The Petitioner filed a timely Notice of Appeal. In the direct appeal, Petitioner was represented by Eleanor Duffy Cleary of the South Carolina Office of Appellate Defense. On July 5, 2005, a *Final Anders Brief of Appellant* was filed and Petition to be relieved as counsel asserting as the sole ground for relief: “[W]hether appellant’s guilty plea failed to comply with the mandates set forth in Boykin v. Alabama ?” The South Carolina Court of Appeal dismissed the appeal on December 8, 2005. State v. Hayward, 05-UP-609 (S.C. Ct. App. Dec. 8, 2005). The Remittitur was issued on January 3, 2006.

#### PCR PROCEEDINGS