19-8186

IN THE SUPREME COURT OF THE UNITED STATES
October Term 2019

LEROY STATON, Petitioner

Against

96-GS-34-982
2018-CP-34-0113
(County of Marlboro)
Appellate Case: 2018-001731

SUPERINTENDENT, LEE CORRECTIONAL INSTITUTION,
BISHOPVILLE S.C.

ORIGINAL

PETITION FOR A WRIT OF CERTIORARI REGARDING HABEAS CORPUS
TO THE FOURTH CIRCUIT COURT OF APPEALS

Leroy Staton

Leroy Staton 241382, Petitioner
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QUESTIONS PRESENTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES:

PENNSYLVANIA CASES:

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PETITION FOR A WRIT OF CERTIORARI

LEROY STATON, Defendant-Petitioner, an inmate and prays for a Writ of Certiorari and the exercise of this Court's supervisory capacity over the courts below, or habeas corpus in this court's original jurisdiction.

OPINIONS BELOW

The opinions of the United States courts below are annexed.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. 1254 and 1257, and Rule 20 (U.S.S.C.)

CONSTITUTIONAL PROVISIONS INVOLVED

This petitioner invokes the protections of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and Article I, Section 9, [3] and Sect. 10 [1],Bill of Attainder prohibition)

CROSS REFERENCE

KAWANIA McINTOSH, v. Supt. (U.S.S.C.) CA-3. No. 19-2155
(On issue of Bill of Attainder in Pennsylvania)

WHY THIS COURT SHOULD HEAR THIS CASE:

THIS IS A PETITION FOR CERTIORARI REGARDING HABEAS CORPUS.

YOUR PETITIONER WAS FALSELY CONVICTED OF RAPE AND MURDER. THE DECEDENT WAS FOUND ONE MONTH AFTER HER SUFFOCATION DEATH IN A BROOK. THE DECEDENT WAS FULLY CLOTHED AND DUCT TAPED IN HER CLOTHES TO THE POINT OF BEING RAPE-PROOF.

THE EXAMINING PHYSICIAN FOUND NO EVIDENCE THAT SHE HAD BEEN RAPED.

YOUR PETITIONER WAS CONVICTED ON THE THEORY THAT THERE WAS A GANG RAPE AND MURDER TO COVER THE CRIME.

SINCE THERE WAS NO RAPE NOR GANG RAPE, THERE WAS NO GANG MURDER, AND THERE WAS NO EVIDENCE YOUR PETITIONER WAS GUILTY OF A MURDER OR ANY CONSPIRACY TO RAPE OR MURDER.

PETITIONER, BEING NOT GUILTY IS ENTITLED TO EQUITABLE TOLLING AS NO RATIONAL JURIST WOULD HAVE FOUND HIM GUILTY OF RAPE WHICH DID NOT HAPPEN NOR OF MURDER TO COVER-UP A NON-RAPE.

AS THESE ISSUES OF INNOCENCE WERE NEVER ADJUDICATED, INSTANT PETITION IS PERMITTED AS A MATTER OF LAW.

THE SOUTH CAROLINA TIME LIMITATION ON CLAIMS OF ACTUAL INNOCENCE IS AN UNCONSTITUTIONAL BILL OF ATTAINDER AND SEPARATION OF POWERS AND PREVENTS AN ADJUDICATION OF INNOCENCE.

IN THE SUPREME COURT OF THE UNITED STATES
October Term 2019

LEROY STATON, Petitioner

Against

SUPERINTENDENT, LEE CORRECTIONAL INSTITUTION, BISHOPVILLE S.C.

96-GS-34-982
2018-CP-34-0113
(County of Marlboro)
Appellate Case: 2018-001731
CA-4 No. 19415

PETITION

LEROY STATON, Petitioner, petitions this court for an order granting certiorari regarding his Petition for a Writ of habeas corpus, as Habeas corpus relief is available if Constitutional error had substantial and injurious effect or influence on the resulting conviction. (Fry v. Pliler, 551 U.S. 112, 121, [2007]) which it did, and says:

HISTORY OF THE CASE:

Petitioner, with other defendants was convicted of murder, kidnapping, first degree criminal sexual assault, and conspiracy; after a jury trial before Hon. Edward B. Cottingham, Circuit Court Judge, with Ralph J. Wilson, Esq., Solicitor, and Milton M Moore, Esq. for this defendant, March 10, 1997 to March 19, 1997, following the death of a Darlene Patterson whose body was found in a body of water near Burnt Factory Road on November 24, 1994, following her last appearance to her sister on November 12, 1994 after she (the victim) had hired Ringo Pearson to repair her car. She failed to make a phone call in about an hour and did not appear for a planned event the next day. (Court of Appeals, 2001, State v. Stuckey 347 S.C. 484, 556 S.E.2d 403) which appeal to the South Carolina Supreme Court denied April 19, 2004 (State v. McIntosh, 2004, 358 S.C. 432, 595 S.E.2d 484), Application to the United States District Court was denied (8:2011cv00745). Subsequent instant applications were denied, as untimely.

Application to the Fourth Circuit Court of Appeals was denied, filed: November 14, 2019. (Annexed) Petitioner was repeatedly denied access to justice by time limitations.

FACTS OF THE CASE:

1, The S.C. Court of Appeals reported that: "Police discovered Victim's body floating in a creek near Burnt Factory Road on November 24, 1994. Her wrists were bound together behind her back with duct tape. With the exception of her forehead, part of her chin, and a small area at the tip of her nose, her face was entirely covered with duct tape which was wrapped around her head. **Her pants were pulled down below** **406 **her knees**. *490." **WRONG**

2, Sandra Condra, M.D. forensic pathologist testified: "She was clothed in underpants, stretch type pants, shoes and socks, as well as a bra and a sweatshirt. She was taped with duct tape. And I would be glad to get into that if you like at this point.... Her ankles were taped together. And the left middle finger was caught in the -- in the back of her underpants, but her wrist and ankles were taped together and the pants were actually caught in the duct tape." (N.T. p. 544:5-17) THE DECEDENT WAS NOT WEARING PULLED DOWN PANTS , BUT HER PANTS WERE CAUGHT IN THE TAPE ON HER HANDS AND HER FINGER WAS CAUGHT IN HER UNDERPANTS. There is no reference to her pants being pulled down. Since her finger was caught in her underpants, and the pants were caught in the tape around her wrists, the conclusion is inescapable. Her regular stretch pants, and her underpants were up to her waist, and taped in place to her waist to her finger. Her pants were not pulled down. She was not vulnerable to being raped.

3, Sandra Condra, M.D further testified that there was no injury to the decedent's genitals that was consistent with sexual assault. She did testify that genital injury does not always happen during sexual assault. (Id. p. 559) Sandra Condra, M.D further testified that there was no evidence of seminal fluid or sexual enzymes in the vaginal area. (Id. p. 566) Oddly, we have a case where some six men were convicted of raping the decedent, and there is no evidence of injury or sexual fluids. The fact is that the decedent's vagina was effectively sealed closed by the clothing and by having her legs taped together.

4, It is an inescapable fact that THERE WAS NO RAPE.

5, Ralph J. Wilson, Solicitor, in his closing argument to the jury said: "And every bit of the testimony in this record is that she was taped up from the very first time at the pig pickin (cookout of pig's feet) until the day they dumped her into the river." (Id. p. 1612:12-15) This makes rape of the decedent at the cookout impossible.

6, Leroy Staton was reported to have been at the cookout, but denied knowing any girl was there, and certainly denied raping her. He did not have any inclination to accuse others of a

crime he knew nothing about. According to the forensic pathologist and the Solicitor, the decedent, if she were at the cookout was impossible to rape because she was sealed shut with a chastity belt of clothing and duct tape, which the Solicitor assures the court was in place during the cookout. Leroy Staton is absolutely not guilty of raping the decedent.

7, Since there was no rape, there was no gang rape.

8, Since there was no (gang) rape, there was no motive nor opportunity for this defendant to conspire to kidnap, or murder the decedent.

9, The decision of the Court of Appeals was based on the false information that the decedent had her pants pulled down. Since this is incorrect, and the decedent was fully insulated against rape at the cookout, the only opportunity for Leroy Staton to have assaulted her; he is therefore not guilty of rape, nor any of the associated crimes, and the government's witnesses were giving incorrect information to the jury, resulting in a fundamentally unfair trial and a miscarriage of justice.

10, The Court of Appeals goes on to claim that "Stuckey orchestrated or at a minimum permitted others to hold Victim at his home as a sex-slave to partygoers and friends." (State v. Stuckey 347 S.C. 484, 501, 556 S.E.2d 403,412) This cannot be true because the decedent was immunized against sex attack by the duct tape chastity contrivance which the Solicitor assures the court was in place from the start of the cookout.

THE STATE'S WITNESSES WERE NOT COMPETENT TO TESTIFY.

11, "The State's case against Petitioner and other co-defendants consisted primarily of the testimony from co-defendants Danny Davis and Bobby Ransom." (State v. McIntosh, 2004, 358 S.C. 432, 437, 595 S.E.2d 484, 487) "Davis testified that he suffered brain damage from a traumatic head injury.... His alcohol use caused him to forget events and confuse things." (437, 486) "Davis testified that he saw nonexistent shadows, heard a lot of nonexistent voices, and talked with imaginary friends .... and taking anti-psychotic medications. (Id. 437,486) Ransom testified that he often blacked out and suffered from memory loss." (Id. 437, 487) "Davis changed his story a lot of times." (Id. 438, 487) Any jury verdict based on their testimony is overtly irrational, and their testimony should be stricken from the record as incompetent because they repeatedly testified that the decedent was raped, when the evidence proves that this is not true.

12, The United States District Court erroneously held (Staton v. Warden, 2012 WL 33214) that your petitioner's claim of actual innocence was time barred. In this instant case the United States Court was ignorant of the principles of Newly Available Evidence, Plain Error, and Miscarriage of Justice. (see Memorandum of Law annexed)

COUNSEL AT ALL LEVELS WAS CONSTITUTIONALLY INEFFECTIVE.

13, Counsel at all levels failed to notice or litigate the impossibility of the sexual assault charge and the extensive implications instead litigating frivolous issues.

14, Application to the local court, the South Carolina Court of Appeals, and the South Carolina Supreme Court was futile as this state has no remedy for miscarriage of justice, and South Carolina has unconstitutionally declared defendants permanently guilty

ARGUMENT

I, DEFENDANT IS NOT GUILTY AS THERE WAS NO RAPE AND THEREFORE NO MURDER TO COVER-UP A NON-RAPE, RESULTING IN A CONVICTION WHICH NO RATIONAL JURIST WOULD HAVE DECIDED, WHICH RESUULTED FROM DUE PROCESS VIOLATIONS WHICH FURTHER RESULTED IN A FUNDAMENTALLY UNFAIR TRIAL.

The evidence in this case is that the decedent was found suffocated by duct tape over her nose and mouth, and fully clothed with clothing secured by duct tape particularly in the pelvic area, making her rape-proof. The forensic pathologist reported that there was no evidence of rape (considering that a month in the water may have obliterated biological evidence of rape, but did not alter her rape-proof encapsulation). The South Carolina Court of Appeals reported that the decedent was found with her pants pulled down. This is incorrect.

FALSE EVIDENCE

"As long ago as Mooney v. Holohan, 294 U.S. 103, 294 U.S. 112, (1935) this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice'. This was reaffirmed in Pyle v. Kansas, 317 U.S. 213 (1942). In Napue v. Illinois, 360 U.S. 264 (1959), we said 'the same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.. Id. At 360 U.S. 269. Thereafter, Brady v. Maryland, 373 U.S. AT 373 U.S. 87, held that suppression of material evidence justifies a new trial 'irrespective of the good faith or bad faith of the prosecution." (Giglio v. U.S. , 405 U.S. 150, 153, 92 S.Ct. 763, 766; see also: Banks v. Drerke, 540 U.S. 668, 124 S.Ct. 1256; Cash v. Maxwell, 132 S.Ct. 611 (2012) ; Alexander v. Shannon, 2005 WL 1213903; Sistrunk v. Rozum, Ed. Cir., 674 F.3d 181 (2012)) The use of a bag of broken glass, represented to be a murder weapon to the jury, unsuitable for testing or even visual confirmation is clearly incompatible with the rudimentary demands of justice as a due process violation rendering the verdict unsustainable.

"In considering a motion for a new trial, a trial judge may weigh the evidence and consider the credibility of the witnesses, and if he finds the verdict is against the weight of the evidence, is based on false evidence, or will result in a miscarriage of justice, he must set aside the verdict, even if it is supported by substantial evidence." (King v. McMillan, 4th Cir., 2010, 595 F.3d 301; Bryant v. Aiken Regional Medical Centers, 4th Cir. 2003, 333 F.3d 536; see also: Cline v. Wal-Mart Stores, Inc. 4th Cir. 1998, 144 F.3d 294)

"Evidence may be false either because it is perjured, or though not itself factually inaccurate, because it creates a false impression of facts which are known not to be true." (Hamric v. Bailey, 4th. Cir. 1967, 386 F.2d 390)

THE DEFENDANT WAS A VICTIM OF A MISCARRIAGE OF JUSTICE AND IS ENTITLED TO HIS DAY IN COURT.

"(S)uccessive PCR applications (are permitted) where the defendant was denied due process due to numerous procedural irregularities." (Williams v. Ozmint, 380 S.C. 473, 477; 671 S.E.2d 600, 601) and also "when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice." (Aice v. State, 305 S.C. 448, 451; 409 S.E.2d 392, 394, see: Butler v. State, 302 S.C.

466; 397 S.E.2d 87), and further the trial court's decisions were contrary to clearly established federal law as decided by the United States Supreme Court. (Taylor v. Williams, 529 U.S. 362, 410; Humphries v. Ozmint, 397 F.3d 206, see: Dretke v. Haley, 541 U.S. 386, 393, 124 S.Ct. 1847; Bousley v. U.S. 523 U.S. 614, 623, 118 S.Ct. 1604; Schlup v. Delo, 513 U.S. 298, 115 S.Ct. 851; House v. Bell, 547 U.S. 518, 126 S.Ct. 2064) It is never too late to prevent forfeiture of life or liberty. (Sawyer v. Whitley, 505 U.S. 333, citing Brown v. Allen, 344 U.S. 443, 554, also Nelson v. Adams, 529 U.S. 460)

Defendant is a victim of a fundamental miscarriage of justice. Trial counsel did not raise this error with the court and appellate counsel failed to raise this issue on appeal despite a request by the defendant. Trial counsel and appellate counsel failed to raise this issue at trial, at post-trial proceedings, or on appeal.

Procedural default may bar a federal claim, but not in the case of actual innocence. (Gray v. Netherland, 518 U.S. 152, 165-66; 116 S.Ct. 2074)
Netherland, 518 U.S. 152, 165-66; 116 S.Ct. 2074) See **also McQuiggin v. Perkins 133 S,Ct. 1924, 2013. McQuiggin v. Perkins is particularly interesting. The Court further holds that miscarriage of justice (actual innocence) overcomes procedural bars, effectively holding that conviction of an innocent person is unacceptable (essentially: unconstitutional).**

The Third Circuit Court of Appeals has repeatedly held that miscarriage of justice claims can be considered by the United States habeas court. "The Court stated that only an error that resulted in a complete miscarriage of justice, or in a proceeding inconsistent with the rudimentary demands of fair procedure is reviewable in a habeas proceeding." Pethtel v. Ballard, CA4, 2010, 617 F.3d 299) "Thus to further ensure that fundamental fairness remains the central concern of the writ of habeas corpus, the Supreme Court has recognized a fundamental miscarriage of justice exception to this procedural default doctrine's cause requirement...."
(Richmond v. Polk, CA4, 2004, 375 F.3d 309) (See also:
U.S. v. Foote, CA4, 2015, 784 F.3d 931, U.S. v. Mikalajunas, CA4, 1999, 186 F.3d 490, Whiteside v. U.S. , CA4, 2014, 748 F.3d 541, O'Dell v. Netherland, CA4, 1996, 95 F.3d 1214, Arnold v. Evatt, CA4, 1997, 113 F.3d 1352, Teleguz v. Pearson, CA4, 2012, 689 F.3d 322, Weeks v. Angelone, CA4, 1999, 176 F.3d 249, McCarver v. Lee, CA4, 2000, 221 F.3d 583)

The Supreme Court of South Carolina has accepted the holdings of the United States Supreme Court (Anders v. California, 386 U.S. 738, 87 S.Ct. 1396) that right to counsel shall apply to arguable issues on appeal. (Austin v. State, 305 S.C. 453; 409 S.E.2d. 395, 1991 S.C. LEXIS 195) and this is reviewable on the normal "any evidence" standard. (See: Cherry v. State, 300 S.C. 115, 386 S.E.2d 624, 1989) There is no evidence that the trial or appellate counsel sought review of these crucial issues, and as the "statute of limitations does not apply to Austin claims (Austin Id., Odom v. State, 337 S.C. 256, 523 S.E.2d 753, 1999, see: Wilson v. State, 348 S.C. 215, 559 S.E.2d 581, affirming Odom) the defendant is not restricted by time limitations. Specifically, the equitable doctrine of laches does not apply to Austin claims as "the statute of limitations found in S.C. Code Ann. 17-27-45(A) does not apply to Austin claims. (Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200, 2002 S.C. LEXIS 251)

The above notwithstanding, "Equitable tolling is reserved for extraordinary circumstances." (Pelzer v. State, 378 S.C. 516, 519, 662 S.E.2d 618, 619, 2008 S.C. App. LEXIS 95) and applies to this case in that "(I)t would be unconscionable to enforce the limitation period against the party and gross injustice would result." (Id. p. 522, p. 621) Frankly, the miscarriage of justice is so repugnant in this matter, it would appear that the State would want, as its duty, to expunge this miscarriage of justice. In the interests of justice, the defendant is entitled to release.

SOUTH CAROLINA HABEAS RELIEF UNDER THE POST-CONVICTION RELIEF ACT

The Constitution of South Carolina provides, protects and secures the right to relief by the procedure of habeas corpus. The Constitution states "The privilege of the writ of habeas corpus shall not be suspended unless when, in case of insurrection, rebellion or invasion, the public safety may require it. (S.C. Const. art. I, S. 18)

Following the adoption of the Uniform Post-Conviction Relief Act, post-conviction relief largely replaced habeas corpus relief. "The UPCA directed that post conviction relief (PCR) was to encompass the relief available under the common law writ of habeas corpus, the relief available under the expansion of the writ (Simpson v. State, 329 S.C. 43, 44; 495 S.E.2d 429, 430, 1980), and the relief available by collateral attack under any common law, statutory or other writ, motion, petition, proceeding, or remedy." (Williams v. Ozmint, 380 S.C. 473, 476; 671 S.E.2d 600, 601) "However, during the 1950's and 1960's South Carolina Courts greatly

expanded the use of the writ in order to ensure that our state afforded prisoners a proceeding where they could assert claims regarding constitutional violations (Williams v. Ozmint, Id.) and apparently in response to decisions of the United States Supreme Court related to whether state procedures for providing relief for violations of constitutional rights were adequate to meet the exhaustion requirement for federal habeas corpus (Simpson v. State of S.C. 329 S.C. 43, 45, 495 S.E.2d 429, 430]

Citing: Townsend v. Sain, 372 U.S. 293, etc.) " "The Uniform Act encompassed the relief available under the common law writ, and the relief available under the expansion of the writ..." (Simpson, pp: 46, 430) "Because we believe the rule in *Tyler,* is the appropriate rule, we now hold that a matter which is cognizable under the Act may not be raised by a petition for a writ of habeas corpus before the circuit of other lower courts." (Simpson, Id.) The Supreme Court continues: "Under art. V, S. 5 of the South Carolina Constitution, this Court retains the ability to entertain writs of habeas corpus in our original jurisdiction and grant relief in those unusual cases where there has been a violation which in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice [Butler v. State, 302 S.C. 466, 397 S.E.2d 87] (Simpson, Id.) And further, "We are not unaware of art. 1, S. 18 of the South Carolina Constitution which states that the writ of habeas corpus may not be suspended except when, in cases of insurrection, rebellion or invasion, the public safety may require it. However, our action today does not suspend the writ, but merely curtails its use to those situations where the Act would not be applicable, *Tyler v. State, supra.*" (Simpson, Id., pp. 47, 431) "(T)his court has stated that habeas corpus is available once the petitioner has exhausted all post-conviction remedies. (Simpson, pp. 46, 430, citing: Hunter v. State, 316 S.C. 105, 447 S.E.2d 203, 1994, etc.) however, this court stated that habeas corpus cannot be used as a substitute for appeal or other remedial procedure for the correction of errors for which a criminal defendant had an opportunity to avail himself...we now hold that a matter which is cognizable under the Act may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts, (repeating) (Simpson, pp. 46, 430) in violation of the express intent of the PCR Act.

The legislature has enacted a post-conviction relief act which encompasses the relief available under habeas corpus, which relief is not, under the Constitution of the State of South Carolina, to be suspended except in case of war, rebellion, etc. The Supreme Court held that it may grant relief in the form of habeas corpus for denial of fundamental fairness. The lower courts are authorized to grant habeas relief under the PCRA since habeas is encompassed within

that act, yet the legislature has imposed a "time-bar" on post-conviction relief, which did not exist under Constitutionally secured "unsuspendable" habeas relief, which the South Carolina Supreme Court is "not unmindful of" yet, the lower courts, with the authority to grant habeas relief as encompassed under the PCRA refuse to do so when there is a one year span of inaction ignominiously called a "time-bar" which is clearly in contravention under the Constitutional prohibition against suspension of habeas relief which was made part of the PCRA.

This petitioner is now seeking relief from a miscarriage of justice under the PCRA, which encompasses habeas relief, yet is told that her right to the same relief (for: constitutional violations, fundamental miscarriage of justice, or fundamental fairness) has been suspended by a "time-bar" which is clearly unconstitutional since the legislature subverted the protections of habeas corpus by re-labeling it "Post-Conviction Relief". Yet the appellate courts of South Carolina continue to maintain that relief is available for miscarriage of justice, etc. which the lower courts refuse to recognize claiming that they cannot provide relief because of a "time-bar" which is clearly unconstitutional since the Post-Conviction Act has encompassed habeas relief which cannot be suspended, or otherwise degraded by an illegal "time-bar."

In fact, the legislature has incorporated habeas relief into the post-conviction relief act which cannot be suspended and essentially made it part of the Act. The "time-bar" must yield to the constitutional prohibition against suspension of habeas relief, now subsumed by the Act.

What could be more unacceptable in a civilized society than to have innocent persons rotting in prisons for decades because the courts refuse to grant relief because of a time-bar after one year, when the same relief is cognizable under the Constitutionally secured right to habeas corpus without time limitation, as would be evident in civilized societies. Effectively, the legislature, as judged by the court, has subverted the Constitution by inventing a time-bar for habeas relief simply by calling it Post-Conviction Relief, and done so because the police-state has grown to unmanageable proportions with huge numbers of innocents in prisons who are time-barred from release from habeas corpus relief under an erroneous presumption that the legislature illegally suspended habeas relief, or even had the authority to do so.

The purpose of habeas corpus is to test the legality of the prisoner's present detention (McCall v. State, 247 S.C. 15; 145 S.E.2d 419) The only remedy that can be granted is release

from custody (Id.) A habeas corpus petition must support the requested relief (Hunter v. state, 316 S.C. 104; 447 S.E.2d 203) Although the allegations in the petition are to be treated as true, (Tillman v. Manning, 241 S.C. 221; 127 S.E.2d 721) the petition must make out a prima facie case showing petitioner is entitled to relief. (Welsh v. McDougall, 246 S.C. 258; 143 S.E.2d 455; Crosby v. State, 241 S.C. 40, 126 S.E.2d 843) prisoner must present sufficient factual allegations to support the petition (Hayes v. State, 242 S.C. 328; 130 S.E.2d 907) It must allege petitioner has exhausted all other remedies, and it must set out a constitutional claim that meets the standard delineated in Butler v. State, 302 S.C. 466; 397 S.E.2d 87, cert. den. 498 U.S. 972) If petition on its face meets these requirements, petitioner is entitled to a hearing. (See: Gibson v. Gibson, Opinion 24737, filed: November 7, 1996, S.C.S.C.)

PLAIN ERROR

The United States Supreme Court has held, and has therefore imposed on the state courts, that the United States Courts of Appeal may recognize a plain error that affects substantial rights, even if that error was not brought to the district court's attention. "Rule 52(b) [Fed. Rule Crim. Proc.] permits an appellate court to recognize a 'plain error that affects substantial rights, even if the claim was not brought to the district court's attention. Lower courts, of course must apply the Rule as this Court has interpreted it . And the cases that set forth our interpretation hold that an appellate court may, in its discretion, correct an error not raised at trial only where the appellant demonstrates that (1) there is an error, (2) the error is clear and obvious, rather than subject to reasonable dispute, (3) the error affected the appellant's substantial rights, which in the ordinary case means it affected the outcome of the district court proceedings, and (4) the error seriously affects the fairness, integrity or public reputation of judicial proceedings" (internal quotes omitted, United States v. Marcus, 130 S.Ct. 2159, 2163,)

With proper notification, plain error/Constitutional questions of law, survives failure to object to magistrate's report. (Henderson v. Carlson, 3d Cir, 1987, 812 F.2d 874, [2,3], Boggs Diguglieimo, 2008, 3d. Cir, 264 Fed. Appx. 165; Brightwell v. Lehman, 3d. Cir. 2011, 637 F.3d 187, 193-94; Donaldson v. U.S. 3d. Cir, 2006, 281 Fed. Appx. 75, 76 [1]; Nara v. Frank, 2007, 3d. Cir. 2007, 488 F.3d 187, 195; Ferrone v. Onorato,2008, 3d. Cir. 298 Fed. Appx. 138, 140-41; Blasi v. Att. General Pa. USDC, 2000, 120 F. Supp. 2d 451)

"Omission of culpable participation requirement from jury instructions was plain error (which) affected defendant's substantial rights." (U.S. v. Dobson, 419 F.3d 231, 2005, CA3) Bucks County continually relies on an inappropriate "time bar" which is non-cognizable in cases of plain error. "Court of Appeals would review ... for plain error" despite that timely appeal was not taken. (Selkridge v. United of Omaha Life Ins. Co. 360 F.3d 155, 2004, CA3; and would review for plain error where appeal was taken absent timely objection to duplicitous indictment (U.S. v. Sturdivant, (Sotomayor, Calabresi) 2001, 244 F.3d 71, 77, CA3) "(W)e have had little difficulty noticing an error and remanding cases ... where substantial rights were affected and the integrity of our system had been undermined by illegal sentences." (U.S. v. Vasquez, 271 F.3d 93, 2001, CA3) "Plain error doctrine requires that plain error effecting substantial right of defendant not be overlooked." (Govt. of Virgin Islands v. Smith, 1991, 949 F.2d 677, CA3) This plain error is particularly egregious as it upsets hundreds of years of law to result in a fundamentally unfair conviction. (U.S. Corso, 2008, 549 F.3d 921, CA3)

"Under plain error review, we may grant relief if, 1, the District Court committed an error 2, the error is plain, and 3, the error affects substantial rights (United States v. Olano, 507 U.S. 725, 732, 113 S.Ct. 1770). An error is a deviation from a legal rule. (U.S. v. Russell, 134 F.3d 171, 180 CA3, 1988) It is plain when it is clear under current law, And it affects substantial rights when it is prejudicial, it affects the outcome of the district court proceeding." (U.S. v. Harris, CA3, 2006, 471 F.3d 507) In *Harris*, the plain error referenced was bolstering.

NEW EVIDENCE

"New evidence" which is the general equivalent of "newly developed evidence" may be introduced as new evidence if the evidence was not within the power of the defendant to produce it at the prior hearing. (Boumediene v. Bush, 553 U.S. 723 (c) (d), [19,20, 26], 2008) see: District Attorney's Office for the Third Circuit v. Osborne, 557 U.S. 52, 2009) essentially

evidence which could not have been presented by the petitioner in the earlier proceeding. (Stephens v. Kemp, 469 U.S. 1043, 1984; Townsend v. Sain, 372 U.S. 293, 1963)

"Instead, the emphasis on actual innocence allows the tribunal also to consider the

probative force of **relevant evidence** (p. 328) **that was either excluded or unavailable at trial.** Indeed, with respect to this aspect of the *Carrier* standard, we believe that Judge Friendly's description of the inquiry is appropriate. The habeas court must make its determination concerning the petitioner's innocence in light of all evidence, including that alleged to have been illegally admitted (but with due regard to any unreliability of it) and **evidence tentatively claimed to have been wrongly excluded or to have become available only after trial.**" (Schlup v. Delo, 513 U.S. 298, 327-28, 115 S.Ct. 851)

"We have applied the miscarriage of justice exception, to overcome various procedural defaults. These include successive petitions asserting previously rejected claims, see Kuhlman v. Wilson, 477 U.S. 436, 454, 106 S.Ct. 2616, ...) 1986, abusive petitions asserting in a second petition claims (p. 1932) that could not have been raised in a first petition, see McCleskey v. Zant, 499 U.S. 467, 494-495, 111 S.Ct. 1454, ... 1991) , **failure to develop facts in a state court,** see Keeney v. Ramayo-Reyes, 504 U.S. 1, 11-12, 112 S.Ct. 1715) and failure to observe state procedural rules, including filing deadlines ...." (McQuiggin v. Perkins, 133 S.Ct. 1924, 1931-1932)

Petitioner has raised multiple instances of trial error, particularly that the court placed burden of proof on her, and instructed the jury that government only had to show that she was guilty, etc. (See petition for a writ of habeas corpus) "Due to the obvious incompetence of (her) counsel, this evidence was previously unavailable.... The (court) abused its discretion in failing to consider this evidence." (Diaz v. Ashcroft, 107 Fed. Appx. 796, 9 th. Cir. 2007)

Whether the state courts were negligent or malicious in refusing to entertain the petitioner's prayer for relief is moot. "However, to establish 'actual innocence' a petitioner must produce new evidence that was not available at trial to establish her factual innocence." (Royal v. Taylor. 188 F.3d 239, 1999, 4 th. Cir.) Since the state courts have refused to consider her evidence, they have either waived jurisdiction, failed to base decisions on adequate state ground, and have provided her with a threshold of "new evidence" now presented to this court.

This petitioner is actually innocent, and "In order to use an actual innocence claim as a

procedural gateway to assert an otherwise defaulted claim, 'the petitioner must show that it is more likely than not that no reasonable juror would have convicted (her) in the light of the new evidence.' *Schlup,* 513 U.S. at 327, 115 S.Ct. 851. The *Schlup* Court adopted a broad definition

of 'new' evidence to be considered in such cases; a petitioner must offer 'new reliable evidence ... that was not presented at trial.' *Id.* at 324m 115 S.Ct. 851; *see also id.* at 327-28, 115 S.Ct. 851. The Court further explained that a district court undertaking such an inquiry is not bound by the rules of admissibility and should make its assessment in light of all available evidence, including that considered unavailable or excluded at trial and any evidence that became available only after trial. *Id.* at 327-28, 115 S.Ct. 851. (Royal v. Taylor. 188 F.3d 239, 1999, 4 th. Cir.)

The Third Circuit (Houck v. Stickman, 625 F.3d 88, 2010) encompassed the reasoning of "(T)he *Gomez* court (which) dealt with the problem by regarding evidence as new if it was not newly discovered as long as it was not presented* to the trier of fact...." (*Houck, citing Gomez*, 350 F.3d 673, 679-80) "Consequently, the Gomez court indicated that a court can evaluate newly presented evidence in making a determination of whether the evidence is strong enough to establish the petitioner's actual innocence ... Overall we are inclined to accept the *Amrine (v. Bowersax*, 128 F.3d 1222, 8th. Cir. 1997) definition of new evidence with the narrow limitation that if the evidence was not discovered for use at trial because trial counsel was ineffective, the evidence may be regarded as new provided that it is the very evidence that the petitioner claims demonstrates his innocence. (*Houck*) The *Houck* court further elaborates in footnotes: 8: His claim of actual innocence in his objections reinforces our determination to regard that claim as preserved for our consideration, 11: The Supreme Court explained in *House v. Bell*, 547 U.S. 518, 538, 126 S.Ct. 2064, 2078) that the actual innocence gateway requires the federal court to assess how reasonable jurors would react to overall newly supplemented record. 12: In *United States v. Davies*, 394 F.3d 182, 191 n. 8, 3d. Cir. 2005 we indicated that new evidence does not necessarily mean newly discovered evidence and may mean newly presented evidence. 13: The adoption of the *Amrine* definition would parallel our recognition in *Goldblum v. Klein*, 510 F.3d 204, 214, 3d. Cir. 2007), that sometimes a court must get ahead of itself and address issues relating to the merits of apparently procedurally barred claims in a determination of whether petitioner's claims... procedurally barred claims may be considered. If a petitioner presents sufficient evidence of actual innocence, he should be allowed through this gateway permitting him to argue the merits of his underlying constitutional claims (*Amrine*, citing *Schlup v. Delo*, 513 U.S. at 326-28)]

ARGUMENT (CONTINUED):

II, THE SOUTH CAROLINA TIME LIMITATION ON CLAIMS OF ACTUAL INNOCENCE IS AN UNCONSTITUTIONAL BILL OF ATTAINDER.

THE TIME BAR REFERRED TO IS UNCONSTITUTIONAL AS IT DECLARES DEFENDANTS PERMANENTLY GUILTY BY LEGISLATIVE FIAT.

"No Bill of Attainder or ex post facto Law shall be passed"
(U.S. Constitution, Art. I, Sect. 9, [1])

A bill of attainder is a legislative act which inflicts punishment without a judicial trial. If punishment be less than death, the act is termed a bill of pains and penalties. Within the meaning of the Constitution, bills of attainder include bills of pains and penalties. (U.S. v. Lovett, 328 U.S. 303, 314, 1946, 66 S.Ct. 1073, 1078)

"Those who wrote our Constitution well knew the danger inherent in special legislative acts which take away the life, liberty, or property of particular named persons (1080) because the legislature thinks them guilty of conduct which deserves punishment. They intended to safeguard the people of this country from punishment without trial by duly constituted courts.

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""The Due Process Clause also (with the "prohibition on Bills of Attainder in Art. I, Sect. 9-10) protects the interests in fair notice and repose that may be compromised by retroactive legislation...." (Bank Markazi v. Peterson, 2016, 136 S.Ct. 1310, 1325) as "the legislation was upheld because it left for judicial determination whether any particular actions violated the new prescription." (Id. Bank, 1326)

A Bill of Attainder is unconstitutional under the South Carolina Constitution: Article 1, Section 4. (Harleyville Mut. Ins. Co. v. State, 2012, 401 S.C. 15, 28, 736 S.E. 2d 651, 658, Byrne's Adm'rs v. Stewart's Adm'rs, 1812, 3 Des. 466, 467)

The "Bill of Attainder Clause intended to implement the separation of powers, acting as a general safeguard against legislative exercise of judicial function. Citing Fletcher v. Peck, 6 Cranch 87, 136 3L.Ed. 162 (1810)" (Plaut v. Spendthrift Farm, Inc. 514 U.S. 211, 242, 1995, 115 S.Ct. 1447, 1464) "The very genesis of our tripartite Government is based upon the proper exercise of their respective powers together with harmonious cooperation between the three independent Branches. Leahey v. Farrell, 362 Pa. page 57, 66 A.2d 577, supra. However, if this cooperation breaks down, the Judiciary must exercise its inherent power to preserve the efficient and expeditious administration of Justice and protect it from being destroyed...." (Com. Ex rel. Carroll v. Tate, 1971, 442 Pa. 45, 53, 274 A.2d 193, 197) " [1] Under the separation of powers doctrine, the legislature may not exercise any power specifically entrusted to the judiciary." (Court of Common Pleas Juvenile Probation. v. Pa. Human Relations, 1996, 546 Pa. 4, 682 A.2d 1246, and 556 Pa. 258, 727 A.2d 1110) (See: In re 42 Pa.C.S. 1703, 1978, 482 Pa. 522, 394 A.2d 444) " A legislative action that impairs the independence of the judiciary in its administration of justice violates the separation of powers...." (Jefferson Cty Appt. Employees v. Pa. Labor Relations Bd., 2009, 603 Pa. 482) "The Judiciary interprets and applies the law, and its proper domain is in the field of the administration of justice under the law. (Pa. Const. art. II, Sect 1, art. IV, sect 1, art. V. Sect 1) (Robinson Tp., Washington Cty. v. Com., 2013, 623 Pa. 564, 710, 83 A.3d 901, 991) There is nothing in the Constitution that permit's the legislature to permanently declare someone who is not guilty as permanently guilty.

What prompted the Bill of Attainder prohibition was "... the fear that the legislature, in seeking to pander to an inflamed popular constituency, will find it expedient openly to assume the mantle of judge, or worse still, lynch mob." (Nixon v. Administrator GS, 433 U.S. 425, 480, 97 S.Ct. 2777, 2809) "A legislature acts responsibly in seeking to accomplish ..." "non punitive legislation " "designed to guarantee the availability of evidence for use in criminal trials" "to the due process of law" . (Nixon, Id. 2807-8, 477) The invalid act, (Lovett, 312, 1077) expressly characterized individuals (who did not take a loyalty oath) as subversive and unfit to continue in Government employment (USSC does not "suggest that such formal legislative announcement of moral blameworthiness or punishment is necessary to an unlawful bill of attainder.") (Nixon, Id. p. 480, 2809)

"(E)quitable principles have traditionally governed the substantitive law of habeas corpus, *Munaf v. Geren*, 553 U.S. 674, 693, 128 S.Ct. 2207 (2008) for we will not construe a statute to displace court's traditional equitable authority absent the clearest command." *Miller v. French* 530 U.S. 327, 340 120 S.Ct. 2246(2000) [Holland v. Florida, 130 S.Ct. 2549, 2560) also McQuiggin v. Perkins 133 S,Ct. 1924, 2013.

ARGUMENT (CONTINUED):

III, COUNSEL WAS INEFFECTIVE FOR FAILING TO NOTICE OR LITIGATE THE IMPOSSIBILITY OF THE SEXUAL ASSAULT (RAPE) AND THAT DEFENDANT IS NOT GUILTY.

"These principles are rooted in due process and the belief that justice is best served when a trial is fundamentally fair." (Brecht v. Abrahamson , 502 or 507 U.S. 619, 627; Wainwright v. Greenfield, 474 U.S. 284)

The Supreme Court of South Carolina has accepted the holdings of the United States Supreme Court (Anders v. California, 386 U.S. 738, 87 S.Ct. 1396) that right to counsel shall apply to arguable issues on appeal. (Austin v. State, 305 S.C. 453; 409 S.E.2d. 395, 1991 S.C. LEXIS 195) and this is reviewable on the normal "any evidence" standard. (See: Cherry v. State, 300 S.C. 115, 386 S.E.2d 624, 1989) There is no evidence that the trial or appellate counsel sought review of these crucial issues, and as the "statute of limitations does not apply to Austin claims (Austin Id., Odom v. State, 337 S.C. 256, 523 S.E.2d 753, 1999, see: Wilson v. State, 348 S.C. 215, 559 S.E.2d 581, affirming Odom) the defendant is not restricted by time limitations. Specifically, the equitable doctrine of laches does not apply to Austin claims as "the statute of limitations found in S.C. Code Ann. 17-27-45(A) does not apply to Austin claims. (Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200, 2002 S.C. LEXIS 251)

CONCLUSION

The defendant is not guilty and his conviction was unlawful on multiple Constitutional grounds and he is entitled to immediate release and arrest of judgment of conviction and sentence, particularly considering the due process and Bill of Attainder violations inherent in his conviction.

Leroy Staton, 241382
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010
Dated: December 7 , 2019

Prior Submissions Re: exhaustion:

SUPREME COURT
STATE OF SOUTH CAROLINA

LEROY STATON, Petitioner

Against

SUPERINTENDENT, LEE CORRECTIONAL INSTITUTION, BISHOPVILLE S.C.

96-GS-34-982
2018-CP-34-0113
(County of Marlboro)

UPDATED SUBMISSION: NO LOWER COURT REMEDY

PETITION FOR A WRIT OF HABEAS CORPUS

FOR MISCARRIAGE OF JUSTICE AND PLAIN ERROR

LEROY STATON, Petitioner has received an order from the South Carolina Court of Appeals (dated: May 09, 2019) in which that Court orders that his petition for habeas relief is denied and appeal dismissed because he called it a petition for habeas corpus not an "application under the Post-conviction Relief Act. (Copy annexed)

"The UPCA directed that post conviction relief (PCR) was to encompass the relief available under the common law writ of habeas corpus, the relief available under the expansion of the writ (Simpson v. State, 329 S.C. 43, 44; 495 S.E.2d 429, 430, 1980), and the relief available by collateral attack under any common law, statutory or other writ, motion, petition, proceeding, or remedy." (Williams v. Ozmint, 380 S.C. 473, 476; 671 S.E.2d 600, 601)

2, Therefore the Court of Appeals has dismissed his appeal for frivolous grounds.

3, Further:

His petition for habeas relief cites substantially the same circumstances, evidence and case law as has been submitted instantly to this Supreme Court. (These include briefly that there was no evidence that the woman had been raped, as she was bound in clothing and duct tape, and 'rape proof' , therefore that there was no gang rape, and no circumstances to accommodate her murder, and that the state's primary witness suffered from brain damage and memory loss and was incompetent to testify as a matter of law. This information is culled from the trial transcript and it is inconceivable that these are "not sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was

improper." (annexed) It is bizarre that the courts below do not recognize their own records(?) as the Court of Appeals states.

4, Further:

(Simpson v. State of S.C. 329 S.C. 43, 45, 495 S.E.2d 429, 430]

Citing: Townsend v. Sain, 372 U.S. 293, etc.) " "The Uniform Act encompassed the relief "The Uniform Act encompassed the relief available under the common law writ, and the relief available under the expansion of the writ..." (Simpson, pp: 46, or 430) "Because we believe the rule in *Tyler,* is the appropriate rule, we now hold that a matter which is cognizable under the Act may not be raised by a petition for a writ of habeas corpus before the circuit of other lower courts." (Simpson, Id.) The Supreme Court continues: "Under art. V, S. 5 of the South Carolina Constitution, this Court retains the ability to entertain writs of habeas corpus in our original jurisdiction and grant relief in those unusual cases where there has been a violation which in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice [Butler v. State, 302 S.C. 466, 397 S.E.2d 87]

The South Carolina Constitution specifically states: "The privilege of habeas corpus shall not be suspended unless, when, in cases of insurrection, rebellion or invasion, the public safety may require it. (S.C. Const. Sect. 18) Further, "Each of the Justices of the Supreme Court and the Court of Appeals and Circuit Court and all other courts of record shall have the same power at chambers to issue writs of habeas corpus...." (Article V The Judicial Department, Section 20) and further "Any of the judges ... upon request made in writing by such person ... **or any on his behalf**... award and grant a writ of habeas corpus." (South Carolina Code 17-17-30)

"Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf."

"The writ of habeas corpus commands general recognition a (sic) the essential remedy to safeguard a citizen against imprisonment by State or Nation in violation of his constitutional rights. To make this protection effective for unlettered prisoners without friends or funds, federal courts have long disregarded legalistic requirements in examining applications for the writ and judged papers 204 by the simple statutory test of whether facts are alleged that entitle the applicant to relief." (Darr v. Birford, 339 U.S. 200, 203, 70 S.Ct. 587, 590)

5, Because this proceeding has become irretrievably tangled in delusion and error your petitioner believes that the Court of Appeals following the local court, is unable to provide a rational remedy.

6, It is well settled that a federal court may review constitutional claims when a state

court has no independent nor adequate state procedure, and this becomes a matter of federal, not state law, but particularly where Constitutional error had substantial and injurious effect or influence on the resulting conviction. (Fry v. Pliler, 551 U.S. 112, 121, (2007); Perkins v. Lee, 72 Fed. Appx. 4; 2003 U.S. App. LEXIS 14840, p. 4, 4th. Cir.) The federal habeas court also may consider claims of miscarriage of justice. (Id. , King v. Boyette, 2004 U.S. Dist. LEXIS 24112, p. 3,4; citing: Johnson v. Mississippi, 486 U.S. 578, 587)

7, There is a reference to a "timely application" . Should the Court invoke a violation of a timely submission rule, your petitioner would argue that a legislative declaration that he is permanently guilty by reason of a legislatively enacted time bar is unconstitutional as a Bill of Attainder, and a violation of the Judiciary's inherent authority to make Equitable determinations.

8, Your Petitioner has found that he requires the assistance of outside persons to sort out the lower court's decisions. The Attorney General has cited the extensive experience of the undersigned at assorted levels of the judiciary.* For this reason the undersigned is making this submission as "someone acting in his behalf" of your petitioner. (see section 4, above) with copy to Mr. Staton who asked for this assistance.

Affirmed as true on information and belief,

Mark Marvin
135 Mills Road
Walden, N.Y. 12586
May 19, 2019

Leroy Staton 241382
F #2B Part 2226
990 Wisacky Hwy.
Bishopville, S.C. 29010

I affirm under penalty of perjury that I mailed a copy of this submission to:
Attorney General, P.O.B. 11549, Columbia, S.C. 29211-1549

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

LEROY STATON, Petitioner 96-GS-34-982

Against

2018-CP-34-0113
(County of Marlboro)
Appellate Case: 2018-001731

SUPERINTENDENT, LEE CORRECTIONAL INSTITUTION,
BISHOPVILLE S.C.

OBJECTIONS TO MAGISTRATE'S REPORT AND ORDER

LEROY STATON, Petitioner is in receipt of the Magistrate's REPORT AND ORDER (08/01/19) in this matter and objects to each and every part as unfounded in law and facts, and which reflects a fundamental incompetence on the part of the Magistrate. Your petitioner has referred this bogus Order to his Next Friend and his habeas "Someone" for response.

THE PETITION IS NOT SUCCESSIVE BECAUSE THE ISSUES RAISED WERE NEVER ADJUDICATED ON THE MERITS.

1, The Magistrate's reliance on "New Evidence" is dishonest.

"New evidence" which is the general equivalent of "newly developed evidence" may be introduced as new evidence if the evidence was not within the power of the defendant to produce it at the prior hearing. (Boumediene v. Bush, 553 U.S. 723 (c) (d), [19,20, 26], 2008) see: District Attorney's Office for the Third Circuit v. Osborne, 557 U.S. 52, 2009) essentially evidence which could not have been presented by the petitioner in the earlier proceeding, and establishes that the defendant is innocent. (Stephens v. Kemp, 469 U.S. 1043, 1984; Townsend v. Sain, 372 U.S. 293, 1963) "The plain language of subsection (b)(1)(ii) does not require the petitioner to allege and prove a claim of "after discovered evidence' Rather it simply requires petitioner to prove that there were facts unknown to him and that he exercised due diligence." (20 West's Pa. Prac., Appellate Practice Section 105:15 ; citing: Commonwealth v. Bennett, 2007, 930 A.2d 1264, 1270")

2, Any citizen may file a petition for a writ of habeas corpus, 28 USC 2254(1) "Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf."
"The writ of habeas corpus commands general recognition a (sic) the essential remedy to safeguard a citizen against imprisonment by State or Nation in violation of his constitutional rights. To make this protection effective for unlettered prisoners without friends or funds, federal courts have long disregarded legalistic requirements in examining applications for the

writ and judged papers 204 by the simple statutory test of whether facts are alleged that entitle the applicant to relief." (Darr v. Birford, 339 U.S. 200, 203, 70 S.Ct. 587, 590)

"The privilege of the writ of habeas corpus shall not be suspended unless in the case of rebellion or invasion the public safety may require it."

"(U)nless and until the State provides some reasonable alternative to assist inmates in the preparation of petitions for post-conviction relief, it may not validly enforce a regulation such as that here in issue barring inmates from furnishing such assistance to other prisoners." (Johnson v. Avery, 1969, 89 S.Ct. 747 , 752, 393 U.S. 483, 490) ... as there are not enough lawyers." (Id. 491, 752) but there is allowance for 'training of inmates as paralegal assistants..."(Abdul-Akbar v. Watson, 4 F.3d. 195, 202, CA3, 1993) "Nevertheless, prisoners must be afforded the availability of either adequate law libraries or adequate assistance from persons trained in law" . (Mitchell v. Wydra, 377 Fed. Appx. 143, 2010, citing: Bounds v. Smith, 430 US. 817, 828, 97 S.Ct. 149) "Prison practices or regulations are invalid if they can be construed as imposing barriers to such access (to courts). (Mitchell v. Wydra, p. 144) "Under the First and Fourteenth Amendments, prisoners retain a right of access to the courts .... And in (non direct, collateral, or conditions of confinement) must show arguable claims. (Monroe v. Beard, CA3, 2008, 536 F.3d. 198, p. 205) that is "actual injury." (Id. 206) "Nevertheless prison administrators must come forward with a legitimate governmental interest that justifies the regulation and must demonstrate a rational connection between the policy and that interest." (Id. p. 207) In Monroe, the prison returned confiscated materials to the inmates. (p. 209) The prisons must afford inmates meaningful post-deprivation remedy. (Monroe Id. , p. 210)

"It is well settled that prison officials cannot take retaliatory action against a prisoner who ... acted as a jailhouse lawyer, or ... who has exercised his First Amendment rights" including disciplinary action for writing to outsiders, or for instituting a lawsuit, (Wilson v. Shannon, 1997, EDPA, 982 F.Supp. 337, 339)

You might note that the South Carolina Supreme Court has established that habeas corpus supersedes and encompasses habeas corpus procedure (Gibson v. State, 329 S.C. 37, 40, 495 S.E.2d 426, 428) *Gibson* curiously does not define the nature of the petitioner. See: South Carolina Constitution Art. 5, Sect 5. Under 28 U.S.C.A. 2242, application for habeas corpus may be by "someone acting in his behalf." You might further study: that it is unconstitutional to prevent jailhouse lawyers from providing assistance, Johnson v. Avery, 393 U.S. 483, 488, (1969) Bounds v. Smith 430 U.S. 817 (1977) , Lewis v. Casey, 518 U.S. 343 (1996). Please note Fourth Circuit rulings: Carter v. McGrady 292 F.3d 152 [5] (2002) Sanaleer v. Feder,

2006 WL 266125 (2006), Abdul-Akbar v. Watson 901 F.2d 320 [6] (1990) I do not see any basis for your threats as South Carolina and United States Constitutional law provides for "authorized to perform (activities of law)" as described in S.C. Code Ann. 40-5-310 as you quote, which would appear to include "activities of law" such as assisting inmates with quasi habeas "activities of law" and routine legal matters which after reading the above cited case law you may better apprehend. What say you?

(The S.C. Code prohibits unauthorized practice of law except for "activities of law" which are not restricted to licensed lawyers. This of course includes a huge body of law practice commonly not restricted to lawyers, including those matters of "jailhouse" law authorized by the United States Supreme Court, which are apparently unknown to the South Carolina Supreme Court.)

3, Bill of Attainder is prohibited:

THE TIME BAR REFERRED TO IS UNCONSTITUTIONAL AS IT DECLARES DEFENDANTS PERMANENTLY GUILTY BY LEGISLATIVE FIAT

"No Bill of Attainder or ex post facto Law shall be passed"
(U.S. Constitution, Art. I, Sect. 9, [1])
A bill of attainder is a legislative act which inflicts punishment without a judicial trial. If punishment be less than death, the act is termed a bill of pains and penalties. Within the meaning of the Constitution, bills of attainder include bills of pains and penalties. (U.S. v. Lovett, 328 U.S. 303, 3141946, 66 S.Ct. 1073, 1078)

"Those who wrote our Constitution well knew the danger inherent in special legislative acts which take away the life, liberty, or property of particular named persons (1080) because the legislature thinks them guilty of conduct which deserves punishment. They intended to safeguard the people of this country from punishment without trial by duly constituted courts. See Duncan v. Kahanamoku 66 S.Ct. 606. (O)ur ancestors had ample reason to know that legislative trials and punishments were too dangerous to liberty to exist in the nation of free men they envisioned. And so they proscribed bills of attainder. (Lovett, 317-8, 1080)

""The Due Process Clause also (with the "prohibition on Bills of Attainder in Art. I, Sect. 9-10) protects the interests in fair notice and repose that may be compromised by

retroactive legislation...." (Bank Markazi v. Peterson, 2016, 136 S.Ct. 1310, 1325) as "the legislation was upheld because it left for judicial determination whether any particular actions violated the new prescription." (Id. Bank, 1326)

The "Bill of Attainder Clause intended to implement the separation of powers, acting as a general safeguard against legislative exercise of judicial function. Citing Fletcher v. Peck, 6 Cranch 87, 136 3L.Ed. 162 (1810)" (Plaut v. Spendthrift Farm, Inc. 514 U.S. 211, 242, 1995, 115 S.Ct. 1447, 1464) "The very genesis of our tripartite Government is based upon the proper exercise of their respective powers together with harmonious cooperation between the three independent Branches. Leahey v. Farrell, 362 Pa. page 57, 66 A.2d 577, supra. However, if this cooperation breaks down, the Judiciary must exercise its inherent power to preserve the efficient and expeditious administration of Justice and protect it from being destroyed...." (Com. Ex rel. Carroll v. Tate, 1971, 442 Pa. 45, 53, 274 A.2d 193, 197) " [1] Under the separation of powers doctrine, the legislature may not exercise any power specifically entrusted to the judiciary." (Court of Common Pleas Juvenile Probation. v. Pa. Human Relations, 1996, 546 Pa. 4, 682 A.2d 1246, and 556 Pa. 258, 727 A.2d 1110) (See: In re 42 Pa.C.S. 1703, 1978, 482 Pa. 522, 394 A.2d 444) " A legislative action that impairs the independence of the judiciary in its administration of justice violates the separation of powers...." (Jefferson Cty Appt. Employees v. Pa. Labor Relations Bd., 2009, 603 Pa. 482) "The Judiciary interprets and applies the law, and its proper domain is in the field of the administration of justice under the law. (Pa. Const. art. II, Sect 1, art. IV, sect 1, art. V. Sect 1) (Robinson Tp., Washington Cty. v. Com., 2013, 623 Pa. 564, 710, 83 A.3d 901, 991) There is nothing in the Constitution that permit's the legislature to permanently declare someone who is not guilty as permanently guilty.

What prompted the Bill of Attainder prohibition was "... the fear that the legislature, in seeking to pander to an inflamed popular constituency, will find it expedient openly to assume the mantle of judge, or worse still, lynch mob." (Nixon v. Administrator GS, 433 U.S. 425, 480, 97 S.Ct. 2777, 2809) "A legislature acts responsibly in seeking to accomplish ..." "non punitive legislation " "designed to guarantee the availability of evidence for use in criminal trials" "to the due process of law" . (Nixon, Id. 2807-8, 477) The invalid act, (Lovett, 312, 1077) expressly characterized individuals (who did not take a loyalty oath) as subversive and unfit to continue in Government employment (USSC does not "suggest that such formal legislative announcement of moral blameworthiness or punishment is necessary to an unlawful bill of attainder.") (Nixon, Id. p. 480, 2809)

4, DEFENDANT IS NOT GUILTY

THERE WAS NO EVIDENCE OF RAPE, GANG MURDER OR KIDNAPPING.

The defendant cannot be convicted of rape if there was no rape. The murder was based on the "fact" that there was a rape. Since there was no rape, it cannot be inferred that that there was a gang murder to cover-up a non-existant rape or a kidnapping. The primary witnesses had brain damage and were incompetent to testify. The jury had no basis to find your petitioner guilty of anything. "The only question under *Jackson* (v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979)) is whether that (jury finding) was so unsupportable as to fall below the threshold of bare rationality. (Coleman v. Johnson, 132 S.Ct. 2060, 2065, 80 USLW 3653) and "sparse enough to sustain a due process challenge under *Jackson* . (p. 2065) A "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Jackson v. Virginia, 443 U.S. 307, 326-27, 99 S.Ct. 2781, 2793)

Petitioner's conviction and punishment on the ... charge are for an act that the law does not make criminal. There can be no doubt room for doubt that such a circumstance inherently results in a complete miscarriage of justice and presents exceptional circumstances that justify collateral relief under 28 U.S.C. 2255 (Bousley v. U.S. 118 S.Ct. 1604, 1611, 523 U.S. 614, 623) (W)here the conviction or sentence in fact is not authorized by substantive law, then finality interests are at their weakest. As Justice Harlan wrote, "there is little societal interest in permitting the criminal process to rest at a point where it ought properly never repose." (Welsh v. U.S. , 2016, 136 S.Ct. 1257, 1266)

5, THE ORDER WAS PREPARED BY AN UNSKILLED LAY PERSON WHO HAS NO COMPETENCE IN LAW AND SHOULD NOT BE INVOLVED IN JUDICIAL DECISIONS, OR IS OVERTLY CORRUPT.

This Magistrate is acting to obstruct the workings of justice. Under United States law: "(a) Any judge ... of the (United States) shall disqualify himself in any proceeding in which his impartially might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances (1) Where he has a personal bias ... (5) He... (ii) is acting as a lawyer in the proceeding; ..." (28 U.S.C. S. 455, see: *Cheney v. U.S.* , 541 U.S. 913; *U.S. v. Will*, 449 U.S. 200, 1980; *Laird v. Tatum,* 409 U.S. 824, 1972) This report is so devoid of rational legal findings as to reflect incompetence or malfeasance.

Yours,

Mark Marvin
135 Mills Road
Walden, N.Y. 12586
August 12, 2019

Leroy Staton 241382 (signature to follow when mail permits)
F #2B Part 2226
990 Wisacky Hwy.
Bishopville, S.C. 29010

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

LEROY STATON, Petitioner

Against

96-GS-34-982
2018-CP-34-0113
(County of Marlboro)
Appellate Case: 2018-001731
8:19-cv-01805 TMC (Anderson)

SUPERINTENDENT, LEE CORRECTIONAL INSTITUTION,
BISHOPVILLE S.C. Respondent

NOTICE OF APPEAL

LEROY STATON, Petitioner is in receipt of this court's order dated: 09/26/19 in which his habeas petition is dismissed as "successive". He objected to the Magistrates Report and findings that the petition was successive because the Court could not and did not cite exactly what was successive about the evidence that the decedent was immune to rape because she was rape-proof by being encased in a duct tape reinforced clothing cocoon. This issue was never adjudicated by the court. This issue is pivotal because it means that no rational jurist could find him guilty of rape of a rape-proof woman, and that the other crimes were negated by this fact.

"Instead, the emphasis on actual innocence allows the tribunal also to consider the probative force of **relevant evidence** (p. 328) **that was either excluded or unavailable at trial**. Indeed, with respect to this aspect of the *Carrier* standard, we believe that Judge Friendly's description of the inquiry is appropriate. The habeas court must make its determination concerning the petitioner's innocence in light of all evidence, including that alleged to have been

illegally admitted (but with due regard to any unreliability of it) and **evidence tentatively claimed to have been wrongly excluded or to have become available only after trial.**" (Schlup v. Delo, 513 U.S. 298, 327-28, 115 S.Ct. 851)

Leroy Staton 241382
F #2B Part 2226
990 Wisacky Hwy.
Bishopville, S.C. 29010
October 05, 2019

District Court's address (Anderson/Greenwood)is not on papers.
U.S.D.C. , 901 Richland Street, Columbia, S.C. 29201

Clerk, Fourth Circuit Court of Appeals, 1100 East Main St., Richmond, VA 23219-3538

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UNITED STATES COURT OF APPEALS

FOURTH CIRCUIT

LEROY STATON, Petitioner

Against

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(County of Marlboro)
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SUPERINTENDENT, LEE CORRECTIONAL INSTITUTION,
BISHOPVILLE S.C., Respondent

APPLICATION FOR PERMISSION TO FILE A SUCCESSIVE HABEAS PETITION

LEROY STATON, Petitioner hereby seeks the permission of this Court to file a "successive" habeas petition on the grounds that he was convicted of rape and subsequent murder of a woman who was found:
rape-proof by being encased in a duct tape reinforced clothing cocoon. This issue was never adjudicated by the court. This issue is pivotal because it means that no rational jurist could find him guilty of rape of a rape-proof woman, and that the other crimes were negated by this fact.

That this issue was never adjudicated by the habeas court on the merits, that he is actually innocent, and that no rational jurist would find him guilty of raping a rape-proof woman.

probative force of **relevant evidence** (p. 328) **that was either excluded or unavailable at trial**. Indeed, with respect to this aspect of the *Carrier* standard, we believe that Judge Friendly's description of the inquiry is appropriate. The habeas court must make its determination concerning the petitioner's innocence in light of all evidence, including that alleged to have been illegally admitted (but with due regard to any unreliability of it) and **evidence tentatively claimed to have been wrongly excluded or to have become available only after trial**." (Schlup v. Delo, 513 U.S. 298, 327-28, 115 S.Ct. 851)

"We have applied the miscarriage of justice exception, to overcome various procedural defaults. These include successive petitions asserting previously rejected claims, see Kuhlman v. Wilson, 477 U.S. 436, 454, 106 S.Ct. 2616, ...) 1986, abusive petitions asserting in a second petition claims (p. 1932) that could not have been raised in a first petition, see McCleskey v. Zant, 499 U.S. 467, 494-495, 111 S.Ct. 1454, ... 1991) , **failure to develop facts in a state court,** see Keeney v. Ramayo-Reyes, 504 U.S. 1, 11-12, 112 S.Ct. 1715) and failure to observe state procedural rules, including filing deadlines ...." (McQuiggin v. Perkins, 133 S.Ct. 1924, 1931-1932)

Yours,

Leroy Staton 241382
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October 05, 2019
LS:mm

To:
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FROM THE INSTANT HABEAS PETITION:

1, The Court of Appeals reported that: "Police discovered Victim's body floating in a creek near Burnt Factory Road on November 24, 1994. Her wrists were bound together behind her back with duct tape. With the exception of her forehead, part of her chin, and a small area at the tip of her nose, her face was entirely covered with duct tape which was wrapped around her head. **Her pants were pulled down below** **406 **her knees.** *490." **WRONG**

"2, Sandra Condra, M.D. forensic pathologist testified: "She was clothed in underpants, stretch type pants, shoes and socks, as well as a bra and a sweatshirt. She was taped with duct tape. And I would be glad to get into that if you like at this point.... Her ankles were taped together. And the left middle finger was caught in the -- in the back of her underpants, but her wrist and ankles were taped together and the pants were actually caught in the duct tape." (N.T. p. 544:5-17)

THE STATE'S WITNESSES WERE NOT COMPETENT TO TESTIFY.

"11, The State's case against Petitioner and other co-defendants consisted primarily of the testimony from co-defendants Danny Davis and Bobby Ransom." (State v. McIntosh, 2004, 358 S.C. 432, 437, 595 S.E.2d 484, 487) "Davis testified that he suffered brain damage from a traumatic head injury.... His alcohol use caused him to forget events and confuse things." (437, 486) "Davis testified that he saw nonexistent shadows, heard a lot of nonexistent voices, and talked with imaginary friends .... and taking anti-psychotic medications. (Id. 437,486) Ransom testified that he often blacked out and suffered from memory loss." (Id. 437, 487) "Davis changed his story a lot of times." (Id. 438, 487) Any jury verdict based on their testimony is overtly irrational, and their testimony should be stricken from the record as incompetent because they repeatedly testified that the decedent was raped, when the evidence proves that this is not true. " (from habeas petition filed with District Court)

THE PROSECUTOR GAVE THE COURT FALSE INFORMATION. The fact that the prosecutor reported false information to the court made the truthful evidence unavailable. Since the decedent was rape-proof, and could not be raped, the related crimes also did not happen to the culpability of this petitioner. This is a Due Process violation.

"Instead, the emphasis on actual innocence allows the tribunal also to consider the