No 22-5032 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

STEVEN LOUIS BARNES, Petitioner

VS

STATE OF SOUTH CAROLINA, Respondent

ON PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF SOUTH CAROLINA

PETITION FOR WRIT OF CERTIORARI

STEVEN LOUIS BARNES
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QUESTION PRESENTED FOR REVIEW

QUESTION 1

IS THERE A DISTINCTION BETWEEN REMEDIES IN RAISING INEFFECTIVENESS OF CONSTITUTIONAL COUNSEL ON DIRECT APPEAL, WHERE CONSTITUTIONAL COUNSEL IS ALLOWED, AND ON COLLATERAL REVIEW, WHERE CONSTITUTIONAL COUNSEL IS NOT ALLOWED, WHEN THE PETITIONER REQUEST FOR AN EVIDENTIARY HEARING? IF NO, DOES THE RESPONDENT'S ARBITRARY AND IRRATIONAL DENIAL OF EVIDENTIARY HEARING ON DIRECT REVIEW VIOLATES THE PETITIONER'S DUE PROCESS RIGHT TO AN ADEQUATE REMEDY TO RAISE INEFFECTIVENESS OF CONSTITUTIONAL COUNSEL

QUESTION 2:

WHETHER IT VIOLATES DUE PROCESS FOR THE TRIAL JUDGE TO DENY THE PETITIONER AN EVIDENTIARY HEARING TO SHOW THE PETITIONER WAS SUBJECTED TO STATE'S INTERFERENCE WITH THE PETITIONER'S COUNSEL, TO INEFFECTIVENESS OF TRIAL COUNSEL, AND TO CONFLICT OF INTEREST WITH THE PETITIONER'S COUNSEL CONCERNING BOTH THE PETITIONER'S INTERSTATE ARGREEMENT OF DETAINER ACT AND SPEEDY TRIAL ISSUES

PARTIES

Steven Louis Barnes, as Petitioner.

State of South Carolina, as Respondent.

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PRIOR OPINIONS

The opinion of the highest state court to review the merits appears at Appendix (L) to the petition and is reported at State v Barnes C/A# Opinion No. 28081.

JURISDICTION

On February 1, 2022, the South Carolina Supreme Court issued an opinion in the Petitioner's criminal case.

This court granted an extension of time to file the petition for a writ of certiorari that was granted to and including May 3, 2022 up and until on July 2, 2022 in Application No. 21A684.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14 amendment

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

INTRODUCTION

A) THE OMITTED BARKER VS WINGO FACTORS, THE REASON FOR THE DELAY, THE INVOCATION OF SPEEDY TRIAL AND PREJUDICE PRONGS THAT WAS NOT HEARD BY SOUTH CAROLINA HIGH COURT BECAUSE OF INEFFECTIVENESS OF CONSTITUTIONAL COUNSEL

On and about February of 2002, the Petitioner was charged with murder of Samuel Stirrup in Edgefield, South Carolina.[1]

In that month, the Petitioner had an extradition hearing in Richmond County Court House, in Augusta Georgia. There at the extradition hearing, the Petitioner was not represented by counsel, but despite this, the Petitioner waived his right to the extradition hearing and requested for the Petitioner to be extradited to South Carolina to stand trial for allege murder.[2] Within thirty (30) days of the extradition hearing, South Carolina officials did not extradite the Petitioner to Edgefield County to stand trial.

In December of 2003, the Petitioner was found guilty of arm robbery, and among other charges, in the Columbia County court house, in Georgia, and was sentenced to life and fifty-five (55) years in prison.[3]

While the Petitioner was at Ware State prison, in Waycross Georgia, the prison officials had sent the Edgefield South Carolina official an IAD petition for the Petitioner to be trialed within one hundred and eighty days.[4]

The Edgefield Solicitor's office responded with its own IAD petition to extradite the Petitioner to Edgefield South Carolina to be tried in one hundred and twenty days.

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[1] After the Petitioner was charge with murder, the Petitioner did not have an initial appearance hearing within forty eight (48) hours of the charges for almost three (3) years.

[2] The South Carolina Edgefield officials did not appointment counsel to the Petitioner for approximately three (3) years in South Carolina after they invoked the extradition Act.

[3] The Georgia court of appeals vacated twenty (20) years off the Petitioner's sentence. The Petitioner's State writ of habeas corpus challenging his life and twenty (20) years sentence for alleged arm robbery, and et.als charges, has been pending for sixteen (16) years in State Court, in Waycross Ga. See Appendix (A). The Petitioner contends that he is innocent of those charges.

[4] In the Petitioner's IAD petition, he requested for the appointment of counsel but Edgefield officials had failed to appoint counsel to the Petitioner before the IAD hearing described in details infra.

On May 18, 2005, the Petitioner was transferred to Edgefield County Detention Center.

On May 25, 2005, the Petitioner had an IAD hearing in front judge William P. Keesely. Presence at the hearing was the Petitioner and the Edgefield Solicitor, Ervin Mayes. Again, the Petitioner was not represented by counsel at a critical stage of the IAD proceeding.[5] The Edgefield Solicitor moved both for a good faith continuances under the IAD and to seek the death penalty. The Petitioner objected in open court on the grounds that his six amendment right to counsel and speedy trial rights was violated because, for one, the Petitioner had filed a pro se speedy trial motion while first in Georgia jail and then Ware state prison in the Edgefield clerk of court, and two, the State knew after the Georgia's extradition hearing, in which the Petitioner waived in order to come to South Carolina, the Petitioner was available to go to trial in Edgefield. The solicitor's office had ample time to request the appointment of counsel to the Petitioner for trial but South Carolina officials had failed to do so. The State of South Carolina's failure to appoint counsel from the time the Petitioner's criminal charges in 2002 to the Petitioner's IAD hearing in March 25, 2005 was prejudicial, and three, that the Petitioner believes that the State of South Carolina was intentionally moving under the IAD good faith exception to have a tactical advantage on the Petitioner by delaying the Petitioner's trial.[6] Despite the Petitioner not represented by counsel at the hearing, and despite the Petitioner's objections in open court, judge Keesely granted the solicitor's motion for good faith continuance.[7]

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[5] The judge keesely did not appoint temporary counsel at the hearing to protect the Petitioner's IAD rights, and among other appellate rights.

[6] Two of the Petitioner's essential and credible witnesses died because of state interference with counsel. One of the Petitioner's witnesses was an Albi witness and the other one was a third party guilt defense witness. As shown infra, both the second trial judge Diana Goodstein, and post conviction relief judge Keesely would not allow the Petitioner to show ineffectiveness of constitutional counsel in order to meet the prejudice prong of the speedy trial analysis, especially when there was an actual conflict of interest in both the court records as shown in details infra. See Appendix (I) and Appendix (L).

[7] See State vs. Rocheville 425 S.E. 2d 32 (1983) (general rule requiring contemporaneous objection to preserve error for direct Appellate review is found when record does not reveal knowing and intelligent waiver of Right To

On about May 26, 2005, the Petitioner timely filed a pro se motion objecting to the judge granting of the solicitor's good faith motion. In the motion, the Petitioner argued the Barker v Wingo speedy trial analysis under the Six amendment of the United States constitution.[8]

On June 6, 2005, Edgefield officials appointed O'Lee Sturkey to the Petitioner.[9] Counsel Sturkey was dismissed as the Petitioner's counsel because of an actual conflict of interest.

On September 1, 2005, despite the Petitioner requesting a hearing to represent himself pro'se, judge Keesely appointed Robert Harte to represent the Petitioner as first chair in the Petitioner's capital case. On about February of 2006, judge Keesely appointed second chair counsel David Tarr.

Again, at the Petitioner's first trial, the Petitioner invoked his Six amendment right to self representation to the first judge because of ineffectiveness of counsel death penalty counsels, and as a result of ineffectiveness of counsel, the Petitioner was forced to represent himself. The South Carolina Supreme Court stated in overturning the Petitioner's capital case on self representation grounds the following facts:

> "The judge then inquired into appellant's reasons for wanting to proceed pro se. Appellant answered that his request to proceed pro se was driven by trust

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counsel. The pro se defendant cannot be expected to raise this issue without aid of counsel); State vs. White 409 S.E. 2d 397 (1991) (the state argued an unrepresented defendant failed to preserve the voluntariness of his waiver of Counsel to the trial court, and "this issue cannot be raised for the first time on appeal...The South Carolina Supreme Court disagreed, explaining "the final opportunity [the defendant] has had to raise this issue is on appeal"). Again, both the second trial judge and PCR judge would not allow the Petitioner to raise facts before trial of State interference with the appointment of counsel for the of preservation the Petitioner's speedy trial and IAD issues for Appellate review. Because of the systemic breakdown in the appointment of counsel system, this too falls under both the reason for the delay and prejudice prong of the speedy trial analysis.

[8] Under Rule 29 of the South Carolina Rules of Criminal procedure, the motion is considered as a motion for reconsideration of the judge granting the good faith continuance. The Petitioner motion was never heard by the judge Keesely, along with the Petitioner's Faretta motion to represent himself. This too falls under both the reason for the delay and prejudice prong of the speedy trial analysis because the Petitioner's Faretta motion must be heard before the State interference of that right.

[9] There was a conflict of interest regarding the appointment of Sturkey to the Petitioner's case because of the Petitioner's alleged Co Defendant was represented by Sturkey. Eventually, Edgefield appointed Robert Harte to the Petitioner as first chair capital counsel.

issues, and that he had another attorney or two in mind to use as standby counsel in lieu of his appointed attorneys. *As an example of the disagreement between appellant and his attorneys leading to his loss of trust in them was their decision not to subpoena the Hunsberger brothers because of counsels' belief that the brothers would invoke their Fifth Amendment right not to testify.*[10] Appellant explained that if the brothers did decline to testify, then he would use transcripts of their sworn testimony in the Georgia proceedings under Rule 804(3), SCRE. Appellant also explained his intent to refer to himself in the third person when examining witnesses. Finally, appellant explained that he lost trust in his appointed attorneys because while he had instructed them not to move for a continuance in order to preserve his IAD Act request, he had learned that they had made such requests."

See Appendix (B).

On direct appellate review, the Petitioner was appointed Robert Dudek. After the Petitioner received the trial transcript, the Petitioner noticed upon reading it that the court reporter Carol Thueme intentionally made omissions and alterations of the trial record. For example, The court reporter deleted the Petitioner's speedy trial argument as to the reason for the delay and prejudice prongs in Vermont v. Brillon, 556 US 81(2009). [11] Promptly the Petitioner informed Appellate counsel

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[10] The State Supreme Court later highlighted in the Petitioner's alleged Co Defendant's, Hunsberger, case, the following facts:

> "State admitted it delayed trying Alex in hopes he would agree to be a witness against Barnes in Barnes' South Carolina's capital trial, which itself did not take place until approximately nine years after Sturrup's skeletal remains were found in a South Carolina field. The State's characterization of Alex as a witness needing to be "collected," or "missing" suggests its true reason for delay was its hope that Alex would be coerced by the delay in his trial into testifying against Barnes. The State's desire to have Alex testify against Barnes in South Carolina did not, under the circumstances present here, justify the delay in Alex's trial. Further, that the State placed a higher priority on strengthening its case against Barnes than on bringing Alex's case to trial cannot, alone, justify the delay of Alex's trial. . . This purpose is not served when the constitutional right of a low priority defendant is sacrificed in hopes that defendant will help the State in a higher priority trial. The State's desire to present the strongest case against Barnes, especially when the three other eyewitnesses who had pled guilty to the Georgia charges in 2003 were available and willing to testify against him, does not justify the delay in prosecuting Alex's case."

See Appendix (C).

[11] The Petitioner's trial court arguments of Albi witnesses, of both the IAD and speedy trial prejudice prongs, and of third party guilt and of Brady discovery violation was either deleted and/or altered by the court reporter. An

Dudek about the omissions and alterations in the transcript. The Petitioner was advised by Appellate counsel that once the transcript was transcribed by the court reporter, pursuant to Rule 607 (i) of the South Carolina Rules of Appellate Procedure, the Petitioner's Appellate counsel had thirty (30) days to place objection to it.[12] Because the Petitioner received the trial transcript on about one (1) year after the court reporter Thueme's transcribe it, the transcript was destroyed. As a result of Ineffectiveness of Appellate counsel, the State Supreme Court did not have a chance to review full and accurate facts as to, for example, the Petitioner's IAD and speedy trial arguments in front of the first trial judge. [13]

When the State Supreme Court reversed the Petitioner's conviction on self representation grounds, the Court denied the Petitioner relief on the IAD grounds:

> "Since the Faretta error mandates reversal, we need not reach any of appellant's other issues save that alleging he was entitled to dismissal of all charges under the IAD Act. On the face of this record, it appears appellant waived his speedy trial rights under this Act, and we therefore decline to reverse on this ground. See New York v. Hill, 528 U.S. 110, 120 S.Ct. 659, 145 L.Ed.2d 560 (2000).

SEE APPENDIX (B).

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example of one of the speedy trial prejudice prong: Charlene thatcher was a witness for the State in the Petitioner's trial in Columbia county Georgia, the Petitioner first capital trial and second trial, in Edgefield South Carolina. In a 2008 Augusta Chronicle Newspaper Article, the Petitioner discovered newly discovered evidence of the lead investigator, Richard Roundtree, who was over the Petitioner's case in Augusta Georgia, had a sexually relationship with the Petitioner's alleged female co Defendant, Charlene Thatcher, in which the Petitioner could have used for impeachment purposes at those trial. See Appendix (D). For fourteen (14) years the Respondent will not provide the Petitioner any Brady discovery materials of the investigation of the inappropriate sexual relationship between the lead investigator, who now turned sheriff, and Charlene Thatcher. The Petitioner suffered many prejudices to his defense under the speedy trial prong such as the Respondent using his charges in Columbia county Georgia to enhance the Petitioner's sentence to life without the possibility of parole in his second trial in South Carolina. It's South Carolina fault that the Petitioner was not transferred to his Georgia habeas corpus hearing, in which has been pending for sixteen (16) years. See Appendix (A).

[12] Again, the Petitioner was not allowed by both the second trial judge and PCR judge to place on the record ineffectiveness of Appellate counsel for failure to do a Ladson reconstruction transcript hearing on both IAD hearing and November of 2010 trial. See Ladson v State 644 S.E.2d 271 (2007).

[13] This Court stated the lower courts must hear accurate information during sentencing process. See United States v. Tucker, 404 U.S. 443, 447-49, (1972); Townsend v. Burke, 334 U.S. 736, 741 (1948); accord Dorszynski v. United States, 418 U.S. 424, 431 n. 7 (1974). The Petitioner believes a due process violation can occur in contexts such as on Appellate review when the Appellate judges hear inaccurate information in the trial record.

STATEMENT OF THE CASE

A) PCR PROCEEDING CHALLENGING IAD CLAIM ON DIRECT REVIEW

Because the Petitioner was granted a new trial but denied relief on direct appeal on his IAD hearing, the Petitioner timely filed a PCR petition, in the Edgefield County clerk of court, to challenge the fact that the Petitioner was unlawfully held after the Petitioner's conviction has expired pursuant to SC CODE 17-27-20 (a) (5). In the Petitioner's PCR petition, he raised the grounds the Petitioner's death penalty counsel, Robert Harte and David Tarr (hereafter death penalty counsel), was ineffective as to the Petitioner's IAD claim.[14] Under South Carolina law, it's the solicitor's responsibility to inform the PCR court whether or not to appoint counsel for the Petitioner on PCR.

Because the Petitioner was not timely appointed collateral review counsel on PCR, and because the PCR judge did not order a timely PCR hearing, on November of 2016, the Petitioner filed an Original Court Jurisdiction writ of mandamus in the South Carolina Supreme Court against trial judge Diana Goodstein and PCR Judge William P Keesely. See Appendix (E). On December 16, 2016, the State Supreme denied the Petitioner's writ. [15]

On March 22, 2017, the Petitioner had filed a writ of certiorari in this court. The grounds the Petitioner raised in his writ of certiorari was the following:

1. Whether the Respondent's failure to process the Petitioner's post conviction relief petition so he can exhaust his State administrative remedy to file writ habeas corpus pursuant to 28 USC 2241 violates his fourteenth amendment due process right.

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[14] The Petitioner later amended his PCR petition to add ineffectiveness of Appellate counsel Dudek and Katherine Hudson and more grounds of ineffectiveness of death penalty counsel.

[15] The Petitioner also filed a writ of habeas corpus against governor Henry McMaster for improperly being held on safekeeper status. Again, the trial judge and PCR judge would not place facts in the record regarding the prejudice prong of the speedy trial analysis. See Appendix (F) and Appendix (L) (Trial transcript page 56, Line 7-18).

2. Whether the Petitioner has a corrective process regarding his Interstate Agreement of Detainer Act claim before trial on post conviction relief. And if no, does this violates his due process rights
3. Did the Respondent in not providing the Petitioner, a pretrial detainee, the same type of corrective process as convicted prisoners in order to exhaust state administrative remedies of federal claim are showing invidious discrimination and arbitrariness according to Griffin v Illinois 351 US 17 (1956)
4. Whether the Respondent is arbitrarily denying the Petitioner meaningful access to the Court by not hearing his post conviction relief petition, Tort Claim Act suit, and civil suit in State court.
5. Whether the Respondent is denying the Petitioner to procedural Due Process to State created rights regarding his habeas corpus, post conviction relief, Tort Claim suit pursuant to Hicks v Oklahoma 447 US 343 (1980)

On March 29, 2017, this Court ordered the Respondent to file a brief in this court. See Appendix (G). [16]

On June 20 2017, the Honorable judge Keesely had ordered an evidentiary hearing to inquire into the Petitioner's writ of certiorari in the United States Supreme Court about the Petitioner's IAD issue on PCR. At the hearing, there was substantial conflict of interest between the Petitioner and one of the Petitioner's trial counsel, Jeff Bloom. Attorney Bloom's position at the hearing was the following:

BLOOM: I would as a footnote—and this is not to disparage the state at all, prior to filing of the PCR or shortly after, we attempted to negotiate with the state for consent order where Mr Barnes' IAD issue would be preserved because it does kind of fall into a catch 22 as you've noticed. The South Carolina Supreme Court denied his IAD claim on appeal, but reversed everything else. We saw – well, Mr Barnes wanted to preserve that issue for litigation later if he's convicted again and the State would not consent to preserving that and, in fact, indicated their intent to move that it would be time barred. So the only way we thought to get a foot in the courthouse before the door slammed was to file a PCR. *Of course, Mr Barnes, as is his right, filed pro se writs and motions to add to that, but that is kind of the dilemma we're at.*

[16] On June 21, 2017, the Respondent filed a brief in opposition to the Petitioner's writ of certiorari. See Appendix (H).

. . .

MR BLOOM: *In all candor, too, I will note to the Court, and I discussed this with Mr Barnes, we intend to file a motion on the IAD claim in the current pending general sessions case. Obviously, again, in candor, judge Goodstein is likely to deny that because she's bound by the South Carolina Supreme Court on the issue, but that motion will be filed at some point, as well.* I didn't want to leave this hearing and then in two or three weeks when we're at the July 7th status hearing with judge Goodstein when she asks us what motions are coming and we tell her there's one on IAD, I didn't want you to be out of the loop on that and think oh, Mr Bloom didn't tell me that and I saw him just two weeks ago. So we intend to do that and, again, in complete candor to preserve this issue for him in that regard. So she be compelled to rule on that and make it a part of the record. So that issue will be there, as well.

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The Petitioner's position on the IAD issue on PCR was as follows:

THE COURT: . . . So you wanted to say something else?

THE APPLICANT: Yeah, first, I want to object to some of the things my attorney just said and I want to place on the record the writ of certiorari, page 22 and 23. The writ of certiorari that's in the United States Supreme Court, pages 22 and 23, I'm going to read for the record number one, two and three. *This is my position and I stand by this position. I understand my attorney has stated some things on the record. I'm just going to read to you my position.* That since the IAD, the Interstate Agreement on Detainer Act deals with the dismissal of the indictment on the grounds of state intentional interference with the IAD Act that under the PCR act is restraint or unlawfully held provision under South Carolina code section 17-27-20 (a) (b) provided that Petitioner shows prejudice. Okay, with that right there, what I'm saying is that under South Carolina code section 17-27-20 (a) (b), that if I can show restraint or lawfully held, you have jurisdiction. It also falls under the exception of the PCR act where it's non collateral. South Carolina code section 17-27-20 (a) (b).

THE COURT: All right. Now, I read the PCR statue again today and I'm not ruling on that right now.

THE APPLICANT: I know. I just wanted to place on the record something he said so you'll understand my position going forward

Number two, if the Petitioner would have to prove ineffective assistant of counsel on the IAD issue if granted relief on PCR, the Petitioner could raise the IAD issue in the pretrial stage of Petitioner capital case as to state interference with the IAD claim to show prejudice as a result of that. Okay. My position on number two is that I'm trying to bring forth the IAD issue preserved. I want a hearing on the IAD issue in the stage that I'm in now. And if granted relief, to be able to raise it again in my trial, my capital trial.

THE COURT: All right.

THE APPLICANT: That's my position. Number three.

THE COURT: I understand now but I didn't understand that before.

THE APPLICANT: No, but he was saying some facts that was inconsistent with my position, so I'm just placing it on the record because I object to what he stated.

THE COURT: I understand your position now, but up until Saturday, I was under the impression that all y'all were trying to do was basically have a stay in this until such time there was a resolution.

THE APPLICANT: No sir.

THE COURT: NOW, I understand what your position is now, but go ahead.

. . .

THE APPLICANT: *If anybody come to you and say anything contrary, whether it's my attorney, the state –*

THE COURT: *Well, he can't speak for you on the PCR.*

THE APPLICANT: *But he's not –*

THE COURT: *He's not appointed and he's not speaking for you on the PCR. He is here not because he's representing you on the PCR. He is here because he's representing you on a capital murder trial and I would feel real uncomfortable having you in here talking to me without him being present.*

THE APPLICANT: *This is the position, what I'm trying to get [is]. He stated something about bringing an IAD claim by motion to judge Goodstein in the court. That's inappropriate because a lawyer cannot bring an action, a motion in the when*

it's non frivolous – excuse me, when it's frivolous. When it's frivolous, he cannot bring it. It' collateral estoppel. It's res judicata. It's the law in the cases. It's already been decided. How you going to bring a motion to the court , to the court, to the trial court when it's already been decided?

THE COURT: I think y'all need to be talking about that in private.

THE APPLICANT: No, what I'm saying, he said –

THE COURT: I really don't want you to put something on the record that they're going to turn around and use against you.

THE APPLICANT: He just stated it on the record.

THE COURT: I know, but he said he's going to talk to you later and he's going to talk to you between now and trial. He may explain something to you that makes you think well, I've got two bites at this apple.

THE APPLICANT: *I just want to place on the record specifically so there's no misunderstanding, none whatsoever, my position, how I would like for this case to move forward. I filed this document pro se. He didn't help me with none of the cases. None of that. This is all what I did from the top of my head, same way I'm talking to you now. I did all this work on my own pro se. And I don't want no state interference regarding what I'm filing. Now, one more thing, Your Honor, please just let me.*

THE COURT: Okay.

THE APPLICANT: *Number three, it's the third position... Assuming arguendo that the Petitioner doesn't have any remedy under South Carolina law under the facts of this case, the Petitioner would be res judicata, collateral estoppel from raising the IAD issue in the pretrial stage of his capital case. Furthermore, that is prejudiced by not having meaningful access to the court and/or of a remedy in order to address his claim in state court. And I was just arguing that position. That's my third position. Because if I – if I cannot adjudicate the IAD issue and I'm res judicata or collateral estoppel from raising that issue in the trial court right now, I'm talking about in front of judge Goodstein, it is violating my access to the court and other due process rights because I don't have a remedy to address the IAD concern and I would like to have that addressed first before—I would like it in front of the court first.*

THE COURT: *I understand.*

THE APPLICANT: Because –

THE COURT: *You're saying the IAD claim is reversed on PCR and it goes back, then – and it gets affirmed, then they can't prosecute you.*

THE APPLICANT: *(Nods in the affirmative).*

THE COURT: *I understand. I understand your position now.*

See Appendix (I) (PCR TRANSCRIPT PAGE (23-32)

Before the Petitioner's trial, On September 28, 2017, PCR judge Keesely, issued a conditional order that stated in part:

> The Court grants the State's request for a conditional order of discharge and denies the appointment of counsel at this time because the application for post- conviction relief (PCR) is not based on any conviction or sentence. However, in light of the unique posture of this case and the agreement of Mr Barnes and the State, a copy of this order is to be sent to professor Miller W. Shealy of the Charleston School of Law, an expert in post-trial writs. *If he is willing, he is asked to provide input, referrals, or suggestions, as he seems proper to assist the court in evaluating whether post-conviction relief is appropriate mechanism, whether counsel should be appointed for the applicant (if Mr Barnes is willing to accept counsel), and whether the conditional order of dismissal should be made final.* Because the applicant is pro se and incarcerated, any input from professor Shealy is requested to be in writing, with a copy to the Attorney office, the applicant, and the attorneys who have been appointed for the underlying criminal cases.

See Appendix (J).

On December 2, 2017, this court denied the Petitioner's writ of certiorari. See Appendix (K).

B) TRIAL COURT'S RECORD CHALLENGING IAD AND SPEEDY TRIAL CLAIMS

On December 9, 2017, the Petitioner had a speedy trial and IAD hearing in front of the Honorable Judge Diana Goodstein. Presence at the hearing was the Petitioner, the Petitioner two trial counsel, Bill McGuire, and Jeffrey Bloom, and the 11th circuit solicitor. Because of the conflict of interest between the Petitioner and trial

counsel as shown supra in details at the PCR hearing, the Petitioner moved the trial court on multiple grounds such as ineffectiveness of counsel and State interference with counsel and conflict of interest.[17] Despite the Petitioner's diligent efforts in pursuing an evidentiary on ineffective of constitutional counsel, judge Goodstein would not allow the Petitioner to pro se speak, although the Petitioner was pro se on PCR. The trial court record shows the following of being denied an evidentiary hearing in the trial court:

THE COURT: Mr Barnes, I want to share with you—Mr Barnes is raising his hand. Hold on a second. Here's what we're gonna a do. Here's what we're gonna do. I know that you are proactive and – no, no, no. Just—just hear me out. And I know that unless you have a health concern, and just tell Mr McGuire, but I want to stop you and I want you to understand this. I am not going to put you in a position where you do not have an opportunity to participate in talking to your lawyers.

THE DEFENDANT: In the state action—

THE COURT: Let me stop you.

THE DEFENDANT: I object on the grounds of the state action because I specifically—

THE COURT: I want you to listen to me.

DEFENDANT: And my objection is state action—

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[17] In State v. Felder, 351 SE 2d 852 (1986) the South Carolina Supreme Court stated in part:

> "This Court usually will not consider an ineffective assistance of counsel issue on appeal from a conviction. See, e.g., State v. Carpenter, 277 S.C. 309, 286 S.E. (2d) 384 (1982). *This is especially true where, as here, the issue below was not presented to the trial court and, therefore, there is nothing in the record for us to review.* "The effect of efforts to raise this point [ineffective assistance of counsel claim] is to request this Court to hear the matter in our original jurisdiction. This is an appellate court for the correction of errors of law committed at the trial level. *This question was not pursued at the trial level, and we decline to try it now.*" State v. Williams, 266 S.C. 325, 337, 523 223 S.E. (2d) 38, 44 (1976)."

The Petitioner raised the ineffectiveness of counsel at the trial level but the trial judge failed to exercise her discretion in hearing the claim.

THE COURT: What I'm not gonna do is that we do not have hybrid representation in South Carolina—

THE DEFENDANT: I understand that.

THE COURT: -- and I'm going to enforce that. Having said that—

THE DEFENDANT: Okay. So I object—

THE COURT: Hold on a second.

THE DEFENDANT: Can I at least put it on the record?

THE COURT: Hold on a second. Yes, you can, but hold going to have opportunities in this process this day to talk with your lawyers. I'm not gonna put you in a position of not feeling like you have time to share with them your concerns.

THE DEFENDANT: My lawyers are not representing the issues on – on – I object on the grounds of the first amendment. I have the right of freedom to speak. I object on the due process ground, the fourteenth amendment. State action. I object on the ground that—on the right to put up a defense because you're not hearing all the factual matters for the record. I'm trying to give you all the factual matters for the record, but you're not trying to hear it. First of all, under –

THE COURT: Stop. I need you to stop. I need you to stop. I'm not going to have hybrid representation.

THE DEFENDANT: This is not hybrid representation.

THE COURT: It is. Yes, it is.

THE DEFENDANT: I have a right to speak. I have a first amendment right to speak.

THE COURT: I'm not gonna fuss with you – I'm not gonna debate with you.

THE DEFENDANT: Okay.

THE COURT: Having said that, you have your hand, have paper. I want you to make notes.

THE DEFENDANT: How am I gonna be able to do that? You have the writ of certiorari from the United States Supreme Court that specifically states that my

issue is that under the Interstate Agreement of Detainer Act that I wanted to litigate that issue.

THE COURT: I'm with you. I know.

THE DEFENDANT: Okay. You have that paperwork.

THE COURT:. I know that.

THE DEFENDANT: *So under agency-principle law—*

THE COURT: Hold on, hold on.

THE DEFENDANT: -- *I am liable to anything he says in court.*

THE COURT: Hold on. Hold on.

THE DEFENDANT: I'm saying understand he's ineffective right now. I'm telling you he's ineffective.

THE COURT: Mr. Barnes – Mr Barnes, what I'm gonna do is I'm going to be absolutely sure that you have time to meet with your attorneys –

THE DEFENDANT: I already talked to them. You already know the record. You're saying that you don't understand what my issues are.

THE COURT: Oh, no, I - no, sir, I'm just – you've got to hold on until the end. I'm not making a decision –

THE DEFENDANT: All I'm asking is to address the court and let me explain to you –

THE COURT: No, sir, I'm not gonna do that. I'm not gonna do that.

THE DEFENDANT: Okay. So, therefore, you're denying me the right to put up –

THE COURT: That's hybrid representation.

THE DEFENDANT: -- a defense, the right to a speedy – that's my objection.

THE COURT: All right. Mr Barnes, I'm not gonna do this.

THE DEFENDANT: It's for appellate review and I have a right to raise all of that.

THE COURT: Stop. Stop. Hold on. Here's what we're gonna do. We're gonna take a little of a break. I'm gonna let you go back and I'm gonna let you talk –

THE DEFENDANT: You already know my position. The United States Supreme Court.

THE COURT: I'm gonna let you go talk to your lawyers a little bit –

THE DEFENDANT: You know my position.

THE COURT: -- So they can talk to you a little bit about this trial.

THE DEFENDANT: This is state action.

THE COURT: Mr Barnes –

THE DEFENDANT: I object for the record.

THE COURT: Mr Barnes – Mr Barnes, Mr Bloom can share with you a little bit about how I flesh out the issues.

THE DEFENDANT: I have a right to speak.

THE COURT: No, you – actually you don't in –

THE DEFENDANT: I have a first amendment right to speak. If you're saying that hybrid representation is gonna override my first amendment right to speak—

THE COURT: Mr Barnes. Mr Barnes.

THE DEFENDANT: -- to explain to you factual matters that's essential to my defense for my case, I object on the grounds of the fourteenth amendment, and I object on the grounds that this is a state action because you allowed my counsel to proceed against my interest.

THE COURT: Mr Barnes.

THE DEFENDANT: It's a state action.

THE COURT: *Mr Barnes, if you don't keep yourself under control, I'm going to excuse you from the court room.*

THE DEFENDANT: No, I'm gonna be – I'm gonna be quiet. I'm gonna be quiet after this. I just want to put on record my objection.

THE COURT: I am excited that you care, that you are involved. I think it's really important, but you cannot continue to do that. We do not have hybrid representation in South Carolina.

THE DEFENDANT: Okay. Fine.

THE COURT: I want you to have lots of opportunities to talk to your lawyers.

THE DEFENDANT: *As long as afterwards I can put on the record my objections.*

THE COURT: *No, sir.*

THE DEFENDANT: No, no. Not here. If the – if the court –

THE COURT: No, we don't have hybrid –

THE DEFENDANT: -- do not allow me to put on the record factual matters –

THE COURT: We don't have hybrid representation.

THE DEFENDANT: Okay. So I told you my objections on the record, so I'm done with that. You know my position.

THE COURT: All right. Do you need a break and talk with your lawyers?

THE DEFENDANT: No, no. What's to talk about? I told you my objections. It's a state action.

THE COURT: Do you – it's a yes or no. Are you good?

THE DEFENDANT: I told you my position. It's on the record. I'm done with it.

See Appendix (L).

C) STATE'S INTERFERENCE WITH PETITIONER'S DEFENSE ON IAD, SPEEDY TRIAL AND ASSISTANT OF COUNSEL

The Petitioner's trial counsel McGuire had placed in the Court's record the Petitioner's objections regarding the conflict of interest between the Petitioner's trial counsels regarding the IAD and speedy trial claim issues that trial attorney Bloom did not want the court to hear.

MR MCGUIRE: Judge, if I could just raise one matter before we take a break. It's very, very short. *As you can see, I've been sitting next to Mr Barnes and communicating with him, and this kind of goes back to his exchange with the court. He's passed over to me five succinct objections to the IAD speedy trial argument and I think we could avoid maybe any more back and forth with Mr Barnes and the court if you'd just accept these five objections on this piece of paper from Mr Barnes?*

THE COURT: *Sure. Sure.*

THE DEFENDANT: And I want to apologize. I mean, I wasn't trying to be dis—may I speak now? No, I'm just—

THE COURT: I understand.

THE DEFENDANT: But understand I wasn't trying to be disrespectful. I was really trying to inject my grounds on the record just to make that clear and I wasn't trying to be disrespectful. You have been a wonderful judge since I've met you, *but you've got to understand the law is the law and if you have a judge that is not gonna listen to you, you've got to do the best you can to get it on the record,* you know what I mean, and then, you know, on appeal I can do what I need to do, you know what I mean? It's nothing personal.

THE COURT: Well, here's what I want you to know.

THE DEFENDANT: Forgive me.

THE COURT: Here's what I want you to know and I want to be absolutely clear with you. It is my intention that you have as fair a trial as I know how to give any human being because I think you are 100 percent entitled to that. If you need to take more breaks because you need to communicate with your lawyers, I want you to feel real free to pass him a note and if I can take a break at that time, I'm gonna to do that assuming we go forward, and I haven't – I've got a little bit of work I've got to do. Assuming we do that, since I'm addressing you, I want you to know that. I want you to understand that. I really mean that to you. You are engaged, you have been engaged, you have been fighting for yourself and that is evident in this record.

However, we do not in South Carolina have hybrid representation. We don't. So when I have someone who's like you, who is, A, bright and, two, you have an opinion, you are participating, I have to honor the fact that we don't have hybrid representation, and the way that I think I can accommodate you in that way, to give you – if you need more frequent breaks, ask for them. You have no idea how fine that is. That is so completely and totally okay with me because I need you to be able to feel like through this process that you are having an ability to communicate with your lawyers and you don't feel the frustration where you feel like you've got to stand up and say it yourself. That's because that's hybrid representation, so I want you to know that I'm gonna do that.

THE DEFENDANT: ... *the only position that we differ from is what I'm trying to present to the court and I laid it out in the objections if you're about to read the other things and –*

THE COURT: *I'm going to read it – Yes.*

. . .

THE COURT: If you need more breaks because you feel like you need to communicate with your attorney – and let me tell you why? Because I don't want you to do it in front of the jury, assuming we go forward, but I don't want you to do that in front of the jury. *Send a note that you need to take a break and they'll Let me know and we'll take that break, okay?*

THE DEFENDANT: *I think that's fair.*

SEE APPENDIX (L) (TRIAL TRANSCRIPT PAGE 64-67, 68 Line 6-14).

. . .

MR BLOOM: ... *the Defendant's handed me a three-page pro-se letter. If I could mark it as a court exhibit.*

THE COURT: *All right. You may mark it.*

MR BLOOM: *And I understand your honor can or cannot consider them. I just would like to make them a court exhibit.*

THE COURT: *We can certainly do that. I don't intend to review it or look at it, but certainly it's fine. And please understand once it is marked as exhibit, it is – the solicitor, of course, is free to take a look it. If the solicitor or anyone in their office*

wishes to view it, they are authorized. All right. Now I – that's all? Anything from the state?

MR HUBBARD: *No, your honor. And, your honor, I will say I think this is probably the second time they put something in for the Defendant. I know there is some case law out there, so I'd just make an objection to preserve anything on appeal for that under State v Jones, but I certainly understand why you're making it a court's exhibit and I think your honor said you're not gonna review it, so – so there shouldn't be any harm. Thank you, your honor.*

THE COURT: *Very well. I'm not going to look at it or review it. And obviously, I just want it to be clear that once it's in, I don't know what's in it –*

MR HUBBARD: *Right.*

THE COURT: -- *certainly it's for your perusal if you wish to do so.*

MR HUBBARD: Thank you, your honor.

See Appendix (L).

D) APPELLATE PROCEEDING ON DIRECT REVIEW

On direct review the Petitioner requested for an evidentiary hearing on ineffectiveness of Appellate counsel because Appellate counsel was not adjudicating the Petitioner's issues such as conflict of interest, State interference with counsel, and ineffectiveness of counsel as to the Petitioner's IAD and speedy trial claims for Appellate review. See Appendix (M). Again, the State of South Carolina abridged and hindered the Petitioner's fundamental rights such as speedy trial and conflict of interest grounds on appellate review. The South Carolina Court of Appeals denied the Petitioner's motion.

In agreeing with the Petitioner's State sponsored Appellate counsel's brief, in which is not the Petitioner issues on direct review, and the Respondent's briefs, despite the Petitioner's objections on appellate review of Appellate counsel ineffectiveness, the Court of Appeals stated in its order denying the Petitioner's direct appeal as to the speedy trial ground.

The State argued that the period of delay should begin upon the date of remittitur in 2014 because Barnes waived his speedy trial rights in the first trial. The State noted that Barnes failed to preserve the issue for appeal in Barnes I by not raising it to the circuit court.[18] *When asked whether the speedy trial claim from the first trial was preserved, Barnes's counsel responded, "I don't have any response to that because the record is what it is. It did not get argued to the trial court, it did not get raised again, and quite obviously it did not get raised on appeal []in the 2010 case.".* . Barnes argues the circuit court erred in failing to consider the period of delay associated with his first trial in its speedy trial analysis. Barnes asserts the appropriate period of delay for the court's speedy trial analysis began on January 25, 2002, the date his South Carolina arrest warrant was issued. The State argues the circuit court properly determined that the appropriate period of delay for its speedy trial analysis began on January 31, 2014, the date the case was remitted to the circuit court following Barnes I. We agree with the State.

We find two rationales in support of the circuit court's conclusion that Barnes's speedy trial rights attached in his retrial on January 31, 2014, the date of remittitur. First, Barnes waived his speedy trial rights in the previous case by failing to raise the issue to the circuit court or the supreme court... Barnes's argument that the circuit court erred in not considering the entire period between 2002 and 2017 ignores one crucial fact: Barnes received a trial in November 2010. . . *Further, Barnes conceded that he never filed a motion or otherwise challenged the eight-year period between the issuance of his arrest warrant and his trial while before the circuit court or the supreme court. Thus, we conclude that Barnes's failure to challenge the period of delay in his previous trial while before the circuit court or the supreme court constitutes a waiver of his right to challenge the delay as unreasonable... Accordingly, we find that a defendant should not be permitted to waive an alleged violation of his speedy trial rights while before the supreme court only to load the deck with the alleged violation in his subsequent retrial. . . The*

[18] The Petitioner tried to raise both the death penalty counsel in his first trial, and Appellate counsel Dudek in his first direct appeal was ineffective on Petitioner's PCR, in which the PCR court in 2017, before the Petitioner's trial, had ordered professor Shealy, an expert in writs to inform the PCR court whether or not 1) to appoint counsel and 2) to proceed on PCR with the Petitioner's IAD claim. See Appendix (I)-(J).
Furthermore, the Petitioner had tried to inform trial judge Goodstein of the conflict of interest between the Petitioner and his counsel regarding both the IAD and speedy trial claims as to the inaccurate information that trial counsel was ineffective in presenting to the court but the trial judge would not allow the Petitioner to address the court on the grounds of hybrid representation. See Appendix (L).

circuit court found that the proper period of delay to consider in Barnes's speedy trial analysis began on January 31, 2014, the date the case was remitted to the circuit court. The circuit court determined the remittitur represented the supreme court's final disposition of the issues in Barnes I, including the issue of Barnes's speedy trial rights which could have been ruled on by the supreme court had Barnes preserved the issue for appellate review and raised it before the supreme court.

See Appendix (N); See Appendix (L).

REASON FOR GRANTING WRIT

A) INADEQUATE STATE'S REMEDY ON RAISING BEFORE TRIAL INEFFECTIVENESS OF CONSTITUTIONAL COUNSEL, CONFLICT OF INTEREST, AND STATE INTERFERENCE WITH THE PETITIONER'S RIGHT TO ASSIST COUNSEL REGARDING THE PETITIONER'S IAD AND SPEEDY TRIAL CLAIMS

In Medina v California 505 US 437, this Court requires a lower court to ask whether a Petitioner was exposed to a State's criminal procedure offensive to a fundamental principle of justice, or when the Respondent violates the fundamental fairness in operations doctrine. This court stated this is the appropriate framework for when assessing the validity of State's procedural Rules that are part of criminal process. (quoted from Nelson v Colorado, 137 SCT 1249 (2017). This Court in District Attorney's office for Third Judicial v Osborne 557 US 52 (2009) applied the due process legal standard in Medina v California supra in the PCR settings. In Osborne supra, this court stated that "federal courts may upset a State's Post Conviction Relief procedure only if they are fundamentally inadequate to vindicate the substantial rights provided." In Martinez v Ryan, this Court implicitly stated that States like South Carolina who moves raising ineffectiveness of constitutional counsel from direct review, where the constitution guarantees counsel, to collateral

review, where counsel is not guarantee, is an inadequate remedy. This Court in Martinez stated:

> "Thus, there are sound reasons for deferring consideration of ineffective-assistance-of-trial-counsel claims until the collateral-review stage, but this decision is not without consequences for the State's ability to assert a procedural default in later proceedings. *By deliberately choosing to move trial-ineffectiveness claims outside of the direct-appeal process, where counsel is constitutionally guaranteed, the State significantly diminishes prisoners' ability to file such claims. It is within the context of this state procedural framework that counsel's ineffectiveness in an initial-review collateral proceeding qualifies as cause for a procedural default.*"

Id.

The Petitioner's case is a rare case where the Petitioner diligently pursed before he was convicted State court's remedies for an evidentiary hearing to raise ineffectiveness of constitutional counsel. This takes the Petitioner outside the procedural default doctrine per se, especially when a State court's trial and PCR remedies are inadequate. See Osborne v. Ohio 495 U.S. 103 (1990); Douglas v. Alabama 380 U.S. 415 (1965). Both the trial and PCR records shows the State of South Carolina intentionally interfered with those remedies for a full and fair evidentiary hearing to prevent the preservation of the Petitioner's IAD and speedy trial claims for federal review. This per se proves that the Petitioner's fundamental right to both speedy trial and federal habeas corpus pursuant to 28 USC 2241 was capriciously denied to him the fundamentals fairness in operations to a meaningful right to be heard. See In re Oliver, 333 U. S. 257, 273 (1948); Grannis v. Ordean, 234 U. S. 385, 394 (1914). South Carolina law, as applied to the Petitioner, was capriciously denied to him regarding evidentiary hearing before trial and conviction of showing ineffectiveness of constitutional counsel in the trial and PCR court.

B) FUNDAMENTAL FAIRNESS RIGHT TO A HEARING DOCTRINE

This Court has stated repeatedly the importance of an evidentiary hearing in both the trial court, See Crane v. Kentucky, 476 US 683 (1986) (an essential component of procedural fairness is an opportunity to be heard), and the civil proceeding setting. District Attorney's Office for Third Judicial v Osborne 557 US 52 (2009). For example, in Cuyler v Sullivan 446 U.S. 335 (1980), this Court stated that when the Petitioner object to the trial judge of a conflict of interest, the judge must hold a hearing on that issue or it's automatic reversible error. The record in this petition shows the Petitioner was denied the hearing required by Sullivan supra as to the conflict of interest between the Petitioner and trial counsel.

In the PCR setting, this Court observed the liberty interest involved in PCR proceeding. The right to a fair hearing, along with other procedures associated with in District Attorney's Office for Third Judicial v Osborne 557 US 52 (2009) is what made those procedures adequate. The procedures employed by PCR judge in the Petitioner's case was inadequate because it denied the Petitioner to a timely PCR hearing, and other procedures South Carolina legislator codified in the PCR Act that the Petitioner is/was entitled to. This is too fundamentally unfair because the trial judge, the solicitor's office, and the Petitioner's trial counsel defied the PCR judge's order to allow professor Shealy to determine whether or not the Petitioner is entitled to PCR hearing and the appointment of counsel before the Petitioner was convicted. Regardless of professor Shealy decision, the Petitioner had a right to PCR appeal to the State Supreme Court pursuant to SC CODE 17-27-100. After complete exhaustion, the Petitioner could of filed a federal habeas relief pursuant to 28 USC 2241. If denied there, the Petitioner was allowed to appeal to both the United States 4th circuit court of appeals and then this Court for a final review. The Petitioner was arbitrarily denied those Statutory remedies by South Carolina applying State Court rules to the Petitioner in a capricious fashion, in which the Petitioner sustain substantial injury as a result of a second incarceration for a crime the State of South Carolina know the Petitioner did not commit but they are trying to cover up

their misdeeds by abusing State law so the federal courts can not get wind of the multiple outrageous government misconduct the Petitioner was subjected to in two trials that will shock the American people conscience. See Appendix (A)-(O).

A direct and collateral review proceeding is inadequate if State's procedure is arbitrarily enforced against the Petitioner. The Petitioner tried everything he could possible do under State law to raise ineffectiveness of constitutional counsel before he was convicted of a crime, but regardless of the remedies that the Petitioner pursued he was blocked from preservation of issues on both direct and collateral review. Is there a distinction between the 6th amendment liberty interest right to trial and State created liberty interest in PCR procedure when raising ineffectiveness of constitutional counsel in the Petitioner's factual scenario? This Court has repeatedly stated in due process cases there's no distinction between those liberty interest when fundamental fairness is involved such as an evidentiary hearing in raising ineffectiveness of constitutional counsel, conflict of interest and/or State interference with counsel whatever court proceeding the constitutional violation to counsel exist. Although this court in Strickland v Washington was balancing the interest that emerges in the post conviction context, this court stated in Laffler v. Cooper, Sixth Amendment remedies should be "tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests." ___ U.S. ___, 132 S.Ct. 1376, 1388 (2012) (quoting United States v. Morrison, 449 U.S. 361, 364 (1981). The Respondent infringe on competing interest in not providing the Petitioner remedy before trial of raising ineffectiveness of constitutional counsel, State interference with counsel, and conflict of interest claim as to IAD and speedy trial claim. Luckily for this Court review is a case where the Petitioner before he was convicted pursued two State court's remedies that was inadequate. For the trial judge to deny to hear a legitimate conflict of interest between the Petitioner and his counsel regarding inaccurate and insufficient facts as to the speedy trial elements such as the reasons for the delay because of the institutional breakdown in the appointment of counsel system and State's

interference as a result of counsel weighs extremely heavily on the State, especially when the Respondent was the absolute cause of the delay of both the Petitioner's first and second trial. See Vermont v. Brillon, 556 US 81 (2009) (The general rule attributing to the defendant delay caused by assigned counsel is not absolute. Delay resulting from a systemic "breakdown in the public defender system," could be charged to the State.) Cf. Polk County, 454 U.S., at 324-325.

CONCLUSION

WHEREFORE, the Petitioner prays that this court vacate his conviction to the extent of ordering the court to hold an evidentiary hearing on ineffectiveness of constitutional counsel. If the Petitioner proves such an violation, the Petitioner slate should be wipe clean to raise speedy trial, and among issues highlighted supra. The Petitioner should have a right to raise ineffectiveness of constitutional counsel before trial where the 6 amendment right to counsel is allowed, and where on direct appeal the 14 amendment right to Appellate counsel is allowed, so the Petitioner can avoid the trap of Shinn v Ramirez because the PCR procedure in South Carolina is inadequate. See Appendix (O). The Petitioner prays for such other and further relief this Court seems just and proper.

Respectfully submitted,

Steven L. Bonner

Date: June 29, 2022