

1 **MR. BARNES:** Okay. All right. All right. That's
2 fair. All right. Thank you.

3 (Court's Exhibit Number 5 was marked for
4 identification.)

5 **MR. BARNES:** Anything else you need -- want to know?
6 Any questions you have to ask me regarding the evidentiary
7 hearing I'm requesting?

8 **THE COURT:** Yes, sir. I want to know -- you've told
9 me that you want to subpoena Bob Hart, Mr. Hart, Robert
10 Hart, and David Tarr.

11 **MR. BARNES:** Yeah, all the people that I have on the
12 list, and -- and a lot more.

13 **MS. GOLDBERG:** Do you want me to share that --

14 **MR. BARNES:** Yes, please.

15 **THE COURT:** Well, he sent me letters indicating
16 -- different letters indicating people he wants to be
17 present at the evidentiary hearing. The purpose of the
18 evidentiary hearing is going to be in your mind to show
19 that the State of South Carolina has systematically worked
20 to deprive you of the right to counsel --

21 **MR. BARNES:** Interfering with my right, yeah.

22 **THE COURT:** -- even though you're standing there with
23 a lawyer.

24 **MR. BARNES:** See, you -- see, this -- this -- once
25 again --

1 **THE COURT:** How can I deprive --

2 **MR. BARNES:** You just told me that I have to take
3 this documentation that's stamped today and mail it to the
4 Edgefield County clerk's office, so in that it deals with
5 my situation with Ms. Kristy Goldberg. So we -- I mean,
6 I'm kind of confused and I don't want to -- make sure that
7 I'm -- I'm not messing myself up concerning my rights, but
8 you -- you asked me about her and I just gave you the --
9 the paperwork you just told me, okay, it was improperly
10 filed here in this court, so now what I'm gonna do, I'm
11 gonna -- when I get these copies back, I'm gonna send it
12 to the Edgefield County clerk of court like you told me --
13 instructed me to, then you can have that in front of you.

14 **THE COURT:** It's a declaratory judgment request.

15 **MR. BARNES:** And it also has the motion to relieve
16 counsel and all that in there as well according to the --
17 the --

18 **THE COURT:** I thought you'd already filed a motion to
19 relieve counsel?

20 **MR. BARNES:** No, that's -- well, I told you the two
21 courts that you said you don't know what they're gonna do
22 with it, but I also sent it to the State Supreme Court and
23 the South Carolina Court of Appeals.

24 **THE COURT:** If you filed something in the State
25 Supreme Court, you haven't filed it with us.

1 **MR. BARNES:** Okay. Now you just --

2 **THE COURT:** If you file it with the U.S. Supreme
3 Court or the Fourth Circuit or the district court in South
4 Carolina, you haven't filed it with the Edgefield County
5 clerk of court's office. What I'm telling you is, those
6 people don't generally let me know that any of that stuff
7 has been filed. So if you're assuming that I know about
8 all of these things that you're sending to all these
9 different places, I can almost promise you I don't know
10 about it.

11 **MR. BARNES:** I agree with you.

12 **THE COURT:** The way I find out about it is likely,
13 the U.S. Supreme Court thing, when I'm on a weekend
14 starting my vacation and I find out there's a brief due
15 on Thursday about something. That's the first word I have
16 of anybody filing anything with the U.S. Supreme Court,
17 and I immediately set a hearing for that. I think it
18 was Tuesday; I came in, had the hearing, set it up so we
19 could find out what was going on. I'm not trying to delay
20 this. Honest to goodness nothing would please me better
21 than to get -- get us in posture where we can go to court,
22 we can resolve this, and if I'm right, I'm right; if I'm
23 wrong, I'm wrong, and -- and if the courts above me tell
24 me I'm wrong, then I was wrong. But I just -- right now
25 I'm having fundamental problems understanding how I am

1 depriving you of your right to counsel when you have an
2 attorney sitting beside you and she's not the first one.

3 **MR. BARNES:** You're saying it right. I said the
4 State of South Carolina interfering with my right to
5 counsel. Now if you want to say that you've got something
6 to do with that or not, I'm not -- I'm not speaking to that
7 extent because you appointed her as my counsel, but as for
8 the record, you know, you're saying -- okay, I'm giving you
9 the documentation now, so the documentation is in front of
10 you right now, so if you want to, you know, take a recess
11 and look at it, I mean, so you can see why I'm saying about
12 Kristy Goldberg, that she's ineffective on a PCR hearing;
13 although you can't raise ineffective assistance of counsel
14 on a PCR counsel -- at a PCR hearing, so --

15 **THE COURT:** If you want to make that a court's
16 exhibit for purposes of this hearing, we'll make a copy
17 of it, but what I'm telling you is that's not the same as
18 filing it.

19 **MR. BARNES:** Okay. This is -- this is Court's
20 Exhibit Number --

21 **THE COURT:** It will be the in the exhibit file at
22 the clerk's office, but it's not gonna be in the file
23 where they put motions on their roster.

24 **MR. BARNES:** Yeah, so -- you already instructed me on
25 that, so when I get back to the --

1 **THE COURT:** Give that to the bailiff.

2 **MR. BARNES:** -- when I get back to the prison, I'm
3 gonna immediately mail it you.

4 **THE COURT:** And so you've told me either in these
5 documents or now what your position is. You want to fire
6 her -- you want to fire her and you want to have a full
7 evidentiary hearing representing yourself where you --
8 you explain to me how it is that I'm supposed to appoint
9 somebody else and I'm trying to figure out if this is
10 somebody that you get to pick or how that process goes.

11 **MR. BARNES:** See, Your Honor, I'm not -- I mean, I
12 wrote everything down.

13 **THE COURT:** Well, just tell me. What am I supposed
14 to do, Mr. Barnes? That's what I'm trying to find out
15 from you.

16 **MR. BARNES:** Let me -- let me explain to you again.

17 **THE COURT:** What would -- what is it that you think
18 that I am supposed to do to protect your rights, which I
19 think I'm bending over backwards to protect your rights,
20 what is it you think I'm supposed to do that -- that I'm
21 not doing to protect your right to have an attorney?

22 **MR. BARNES:** Your Honor --

23 **THE COURT:** And if you're challenging the overall
24 procedure like the funding, that the funding is
25 inadequate --

1 **MR. BARNES:** No, not --

2 **THE COURT:** -- that part I understand, but you're
3 saying no.

4 **MR. BARNES:** Your -- Your Honor, once again, you
5 know, I went through the procedural history concerning
6 multiple instances of State and defense counsel -- I just
7 gave you the documentation regarding Kristy Goldberg that
8 you said that you was not aware of, and I apologize for
9 not sending it to Edgefield County clerk's office, and --
10 or -- or whatever the case may be, I violated court
11 procedures on that, I marked it as an exhibit, it's in
12 front of you right now. May the Court forgive me for not
13 going through court procedures on that because you was not
14 aware of -- with situation with Kristy Goldberg and now
15 since you're aware of it and it has everything in there --

16 **THE COURT:** Well, I'm not aware of it because I
17 haven't read -- it looks like over a hundred pages. I
18 haven't read it. It's handwritten, single spaced. It's
19 gonna take me a while to read it --

20 **MR. BARNES:** Yeah, I understand.

21 **THE COURT:** -- and right now I've got a death penalty
22 thing I've been working on for a year that I've got to get
23 done and -- and it seems like every time I go through that
24 document -- those documents I have another question come
25 up. I'll read all this stuff, Mr. Barnes, but can you just

1 not tell me today what it is that you're gonna ultimately
2 want me to do?

3 **MR. BARNES:** Well, once again, the position, what
4 I've been repeatedly stating on the record --

5 **THE COURT:** You haven't repeatedly stated. I'm not
6 stupid. I know that you're upset. I understand to some
7 degree. I'm not putting myself in your shoes. I
8 understand why you're upset. I understand that you were
9 brought over from South -- from Georgia, you were left in
10 that jail all that time, I understand that you're upset
11 because your attorneys in the initial trial, what they
12 did, I understand that you're upset with the Indigent
13 Defense for what they did in the hearing when they came
14 and they said that they had competent counsel in the
15 capital defense division to -- to represent you and
16 objected to having Elizabeth Franklin Best appointed for
17 you. I understand you're upset that they took that appeal
18 to the Supreme Court. I understand all those things.

19 My question is very simple. What is it -- if I
20 agreed with you on every single thing, if I agreed that
21 the State of South Carolina had systematically worked to
22 interfere with your right to counsel, what is it that
23 you're wanting me to do?

24 **MR. BARNES:** Your Honor, like I've been stating on
25 the record for a little while and you just stated some of

1 it, but to the point of what you're saying as being angry,
2 you know, I have a constitutional right, and -- and if
3 being black and utilizing my constitutional right is all
4 about being angry, then I don't know what to tell you, but
5 as long as I've got a constitutional right --

6 **THE COURT:** You've got to be able to tell me what it
7 is --

8 **MR. BARNES:** -- as long as I have got a constitutional
9 right --

10 **THE COURT:** No, we're gonna take a break. I want you
11 to ponder telling me --

12 **MR. BARNES:** I can tell you -- I can tell you
13 precisely right now without you even taking a break. I'm
14 asking you to do what I've been asking you from the
15 beginning. I am asking you specifically to order an
16 evidentiary hearing so I can show and prove that the State
17 of South Carolina has been continuously interfering with
18 my right to counsel, and I'm not changing my mind, and
19 that's my position.

20 **THE COURT:** And if I had --

21 **MR. BARNES:** I'm gonna state position. We ain't
22 going nowhere. I'm asking you to utilize -- to not be
23 arbitrary, to -- to allow me to put facts in front of you
24 such as witness testimony, evidence and documentation to
25 show and prove to you a continuous pattern of State

1 interference with my right to counsel. I'm not changing
2 it, that is my position, and it's stated to you. Whether
3 you deny it or not, I'll appeal it to the next level.
4 That's my position.

5 **THE COURT:** We're not getting anywhere. If you can't
6 tell me what it is --

7 **MR. BARNES:** I just told you.

8 **THE COURT:** You have -- we're done. Thank you.

9 **MS. GOLDBERG:** Thank you, Your Honor.

10 **THE COURT:** We'll make copies of this before he
11 leaves.

12 (Whereupon, the proceedings were concluded at
13 11:06 AM.)
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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 12th day of February, 2019.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

April 8, 2019

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER



EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

2019 FEB 27 PM 1:15

Charles L. Reel

EDGEFIELD COUNTY CLERK OF COURT

P. O. BOX 34

EDGEFIELD, SC 29824

PHONE: (803) 637-4080

FAX: (803) 637-4117

February 28, 2019

Steven Louis Barnes #327117
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Mr. Barnes,

We are in receipt of your Motion requests dated 02/25/2019. We will forward the Motion to Proceed In Forma Pauperis to the 11th Judicial Circuit Common Pleas Chief Administrative Judge for Approval / Denial.

A case / docket number cannot be issued until the Admin Judge has approved the above motion.

When, and if, we receive an approval from the Admin Judge, a case number will be issued, but we need ALL Original Motions with Original Signatures to file. Currently, the following in our possession are original:

- Motion to Proceed In Forma Pauperis
- Summons
- Civil Cover Sheet
- Motion for Declaratory Judgement (page 1 only)

The Proof of Service is an original, but cannot be used as the Summons, Complaint, Motions, etc. have not been filed first (It states you served the Attorney General, but with documents that have not yet been filed).

Once filed, we will send you certified copies of the original filings for you to serve on Respondents.

Charles L. Reel
Clerk of Court for Edgefield County

STATE of SOUTH CAROLINA
County of EDGEFIELD

IN THE COURT of Common Pleas

Steven Louis Barnes

petitioner

C/A #

vs

State of South Carolina

Respondent

DECLARATORY JUDGMENT COMPLAINT

The petitioner pursuant to Rule 57 of the South Carolina civil Rules of procedure Request this Court to issue a Declaratory Judgment that the South Carolina post conviction Relief (PCR) statute on its face and/or as applied to the petitioner is unconstitutional.

PARTIES

- 1). Respondent the state of South Carolina (state) is a state of the united states of America embodying and exercising the sovereign powers of the people.
- 2). petitioner Steven Louis Barnes is a citizen of the united states and is incarcerated at the JAILMICK Correctional Institution, in JAILMICK South Carolina.

JURISDICTION

3) This Court is vested with subject matter jurisdiction with regard to matters raised by virtue SC code § 17-27-10 et al; and SC code § 15-53-10 et al

FIRST CAUSE OF ACTION

Article I, section 15, of South Carolina Constitution

REMEDY

- 4). In September of 2018 the petitioner was appointed attorney Kristy Crawford Goldberg as the petitioner post conviction relief (PCR) counsel.
- 5). Because of various forms of state interferences with counsel, the petitioner PCR counsel is trying to deprive the petitioner of his federal causes of actions or PCR.
- 6). South Carolina PCR statute does not have a Remedy like Austin v State 409 S.E.2d 375 (1991) (Austin Hearing) where the petitioner can raise the deprivations by PCR counsel of the petitioner federal causes of action.
- 7). These matters present a Real and justiciable issue which is presently ripe for decision. Therefore, petitioner respectfully Request a declaratory judgment that the PCR statute is unconstitutional under Article I, section 15 of SC constitution.

— — — — —
SECOND CAUSE OF ACTION
EQUAL PROTECTION CLAUSE TO BE
SIMILAR SITUATED TO A REMEDY
— — — — —

8). The petitioner crave reference to and incorporate the facts in paragraphs one (1) through seven (7) in this section for relief.

9). In *Austin v State* 409 S.E.2d 795 (1991) pro counsel did not put in for an appeal to the South Carolina supreme court for counsel client, Austin, in that case.

10. The supreme court held in *Austin* the following:

i. "The right to appellate review of the denial of pro is expressly authorized by state law. SC Code Ann. § 17-27-100

ii. "Because petitioner is entitled to the assistance of appellant counsel on pro and because we must find a remedy to correct the unfairness which has occurred, we find his allegation that counsel failed to seek review in this case specifically states a claim of ineffective assistance."

11). The petitioner is not being similarly situated to an *Austin* hearing because there is no difference between being denied an appeal to the state highest court and being denied a federal cause of action at the pro hearing.

— — —
THIRD CAUSE of ACTION
DUE PROCESS VIOLATION
— — —

12). The petitioner leave reference to and incorporate the facts in one (1) through seven (7), and eight (8) through eleven (11), in this section for relief.

13). The petitioner has both a liberty and property interests under the South Carolina per statute.

14). This Court should declare that when the petitioner shows that per counsel deprived the petitioner of a federal cause of action on per that the same Austin Hearing should apply to the petitioner:

(A) Remand for an evidentiary hearing on the issue of whether in fact the petitioner was denied a federal cause of action on per;

(B) If per counsel did denied per claimant the right to federal cause of action, the per court must review whether the petitioner was prejudiced by the failure to obtain review of a Meritorious issue; and

(C) The per court must construe paragraph (2) under the standard of Washington test; and

(D) The supreme Court would apply the "any evidence standard to all cases where the petitioner was deprived of a federal cause of action by per counsel.

RELIEF

15). The petitioner prays for such other and further Relief that Court sees
just and proper

Date:

Steven Louis Barnes
STEVEN LOUIS BARNES

327117

Alconix C-I
386 Relington way
Alconix SC

STATE of SOUTH CAROLINA
IN THE COURT of Appeals

Appeal from Edgefield County
Honorable Diane Schaffer Goodstein, Circuit Judge

THE STATE

VS

STEVEN LOUIS BARNES

Appellee - Respondents

Appellant - PETITIONER

Appellate Case No. 2017-002140

Proof of Service

The petitioner declares that he have served the South Carolina Attorney General at p.o. Box 11549, Columbia, SC 29211, the following Motion to Stay and Abeyance until motion to Relieve Appellate Counsel in this Appeal is heard and/or To Remand the ineffective assistance of Appellate Counsel to the post conviction relief stage for an Evidentiary Hearing; Motion for Evidentiary Hearing; and motion to Relieve Counsel, and Exhibits (3) - (13) by depositing said documents in the United States mail with sufficient postage.

Date:

Steven Louis Barnes
Signature

STATE of SOUTH CAROLINA	)	IN THE Court of Common Pleas
County of EDGEFIELD	)	
	)	
Steven Louis Barnes	)	
Petitioner	)	CL # 2015-CP-19-35
vs	)	
State of South Carolina	)	
Respondent	)	
	)	

MOTION for DECLARATORY JUDGMENT IN ORDER TO CHALLENGE THE CONSTITUTIONALITY of THE POST CONVICTION RELIEF STATUTE AS UNCONSTITUTIONAL for NOT HAVING A REMEDY IN ORDER for THE PETITIONER TO RAISE THE INEFFECTIVENESS of PCR Counsel

The petitioner, Steven Louis Barnes, file this motion in order to challenge the Constitutionality of the post conviction relief (PCR) Act statute as unconstitutional due to the statute doesn't have a remedy in order for the petitioner to challenge PCR Counsel Kristy Grafton Goldberg, and/or any other PCR attorney appointed by this Court, abandonment of federal issues, see *Maples v Thomas* 132 S.Ct 912 (2012) on PCR where ineffective assistance of trial and appeal counsels are raised for the first time on PCR. see *Martinez v Ryan* 526 US 1 (2012)

The petitioner asks this Court three (3) Constitutional questions:

- 1 WHETHER THE MATHEW V ELDRIDGE LEGAL STANDARD SHOULD APPLY WHERE THE PETITIONER CAN SHOW PCR COUNSEL DEPRIVING THE PETITIONER OF A LIBERTY AND PROPERTY INTEREST RIGHTS
- 2 SHOULD THIS COURT ADOPT THE SAME LEGAL STANDARD OF AUSTIN V STATE 409 S.E.2D 395 (1991) IN DETERMINING WHEN PCR COUNSEL HAS DEPRIVED THE PETITIONER OF A LIBERTY AND PROPERTY INTEREST RIGHT
- 3 IS THE SUCCESSIVE PCR STATUTE UNCONSTITUTIONAL IN LIGHT OF MARTINEZ V RYAN 566 US 1 (2012)

The petitioner base this motion on the following facts :

QUESTION 1 FACTS

MATHEW V ELDRIDGE DUE PROCESS STANDARD

On June 8, 2018, Judge William P. Keesley had issued an order regarding appointment of counsel and not finalizing conditional order of dismissal of the petitioner post conviction Relief (PCR) petition because of "unique factors" . . . leave the court with lingering concerns about dismissing the PCR case . . . and wants to evaluate whether there are pitfalls in summary dismissal of this PCR case that would prevent the applicant from being able to pursue these claims. It is typically said

that an applicant has one bite at the pcr apple. The court wants to allow the applicant to be able to avail himself of any opportunity to maintain possible claims of ineffective assistance of counsel concerning the IAD from the first trial. The section in judge Goodstein's order quoted above refers to two factors: (1) that the supreme court decided the issue in 2014; and, (2) that no new IAD action and no new evidence was submitted."

On August 29, 2018, Judge Neesley had denied the petitioner an Evidentiary Hearing Regarding state interference with counsel. on September 14, 2018, the petitioner had filed a Rule 52(b) and Rule 59(c) of the South Carolina Civil Rules of procedure regarding Judge Neesley order denying the petitioner Evidentiary Hearing before the petitioner pcr Regarding state interference with counsel. on September 29, 2018 Judge Neesley issued a memorandum denying the petitioner Rule 52(b) and Rule 59(c) motions on frivolous grounds inconsistent to state and federal law. The petitioner then filed a petition for writ of certiorari to the South Carolina Supreme Court Regarding an Evidentiary Hearing, and appointment of non state sponsored counsel for the Evidentiary hearing.

furthermore, on September 14, 2018, the petitioner had filed a supplemental pcr petition raising various grounds such as ineffective assistance of Appellate Counsel, Katherine Hugins, and William McGuire and Shane Lockman, Regarding the former appellate Representation on current direct appeal and latter Appellate Counsel Regarding their actions in the Administrative law court proceeding where trial Judge Diana S Goodstein had subject matter jurisdiction over the Administrative Court actions.

The petitioner was appointed by the Court Kristy Grafton Goldberg as the petitioner's counsel because South Carolina Civil Rules of procedure Rule 71.1(d) mandates the following:

"(d) Appointment of Counsel for Hearing. If, after the state has filed its Return, the application presents question of law or fact which will require a hearing, the Court shall promptly appoint counsel to assist the applicant if he is indigent. Counsel shall be given a reasonable time to confer with the applicant. Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary."

The petitioner contends that the mandatory language "shall" in Rule 71.1(d) creates a liberty interest, see *Born v Calderon* 59 F.3d 815 (1999) ("protected liberty interest may be created by state law but only in limited circumstances" - to create liberty interest protected by due process state law must contain substantive predicates specifying the outcome that must be reached if substantive predicates have been met); *Snipes v McAndrew* 313 S.E.2d 294, 297 (1984) (citing Bd of Regents of State Coll. v Roth, 408 US 564 (1972) ("To determine if the expectation of entitlement is sufficient will depend largely upon the extent to which the statute contains mandatory language that restricts the discretion of the [agency] ..."); *Tns Mills Inc v SC Dept of Revenue* 503 S.E.2d 471, 476 n. 3 (1998) (finding the use of the word "shall" in a statute ordinary means the action referred to is mandatory); see e.g. *Washington v Washington* 419 S.E.2d 779 (SC 1992) ("a due process right to counsel generally involves the deprivation of a

liberty interest), and property interest right to a federal or state cause of action. see *Zippack v City of Fort Myers* 41 F.3d 619 (1995) (The Supreme Court has specifically held that "a cause of action is a species of property interest protected by the fourteenth Amendment Due process clause"); *Labree v Payne* 329 S.E.2d 533 (1983) (In *Logan E v Zimmerman Brush Co.*, 455 US 422 (1982)) the Supreme Court held that a state court cause of action did constitute a property interest under the fourteenth Amendment so that the state would not terminate the cause of action due to failure of state officials to comply with a statutorily mandated procedure).

Rule 71.1 and the PCR statute doesn't have a remedy to challenge in state court the petitioner PCR Counsel deprivation of his federal and state cause of action where the petitioner must mandatorily raise for the first time on PCR ineffective assistance of trial counsel. see *Martinez v Ryan* supra. The mandatory language shall in Rule 71.1 (d) gives the petitioner two interests: property and liberty. The liberty interest is the right to PCR counsel once the petitioner shows a valid "question of law or fact which will require a hearing". The property interest is a federal cause of action when Rule 71.1 (d) mandates "counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary."

furthermore, the South Carolina Constitution mandates a hearing when a person is deprived of life, liberty, and property interests. see SC Article section 3 (The privileges and immunities of citizens of this

State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law . . .), SC Article Section 23 (The provision of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its term) The South Carolina Constitution too gives the petitioner a liberty interest right to a remedy by itself.

once the petitioner shows a deprivation of a liberty and/or property interest rights, this court must then apply the three standards of *Mathew v Eldridge* 424 US 319 (1976):

(1) the private interest that is at stake; (2) the effect on governmental interests of incorporating a particular procedural safeguard in the decision-making process; and (3) the safeguard value and the risk of an erroneous deprivation of the private interest at stake if the safeguard were not put in place.

The pres. judge, the South Carolina Attorney General, Melody Brown, and state sponsored Goldberg are trying to deprive the petitioner of a federal cause of actions or federal habeas corpus, if necessary. In order to prove this the petitioner states the following:

On August 29, 2018, Judge Keestey had issued an order denying the petitioner an evidentiary hearing in order to show state interference with

the petitioner right to counsel. on september 14, 2018, the petitioner had filed both a Rule 52(b) and Rule 59(c) regarding the petitioner motion to relieve counsel to the extent that an extraordinary hearing and the appointment of non state sponsored counsel for the extraordinary hearing so the petitioner can show state interference with counsel. Also, the petitioner on the same day, had filed a supplemental pra petition in which he'd stated various grounds for relief such as ineffective assistance of appellate counsel, Nathaniel Hudgins, who currently represent the petitioner on direct review. on september 24, 2018 Judge presley had issued an order denying the petitioner Rule 52(b) and Rule 59(c) and supplemental pra petition on Hybrid Representation grounds. The Petitioner then appealed the Rule 52(b) and Rule 59(c) to the South Carolina supreme court via writ of certiorari. on november 1, 2018 pra counsel Goldberg had filed a response to the state motion to dismiss the petitioner pra petition. The petitioner did give state sponsored counsel permission to file a response to the state motion to dismiss because the petitioner stands firm of proving before the petitioner pra hearing state interference with counsel. furthermore, the South Carolina Attorney General, the pra judge, and state sponsored pra counsel all know that the petitioner have pending a writ of certiorari in the state supreme court. plus, the petitioner reasonable relied on the pra judge June 8, 2018 order regarding not finalizing conditional order of Dismissal of the petitioner pra. Lastly, the sole purpose of the pra judge, the state sponsored pra counsel, and attorney General in denying the petitioner of a federal cause of action on pra so they can direct the petitioner

On Appellate Review. To justify their action for this pursuant to their conspiracy, those state officials are trying to use Rule 71.1 (b) of the SCRP that states "An application for post conviction Relief cannot be made while an appeal from the conviction or sentence is pending or during the time in which an appeal may be perfected" in order to dismiss the petitioner pro. To using state sponsored pro counsel as the petitioner agent, under agent and principle law, the state of South Carolina is trying to force the petitioner through pro counsel to give up his federal cause of action for habeas corpus review regarding all the issues in the petitioner supplemental pro petition.

furthermore, the state of South Carolina is utilizing procedural rules to violate the petitioner constitutional rights in order to raise his federal claims in federal court. see *Henry v Mississippi*, 379 US 443, 447 (1965) (declaring that in every case the court must inquire whether a state procedural law serves a legitimate state interest before it undertakes review of whether that procedural right impinges a federal right) In the utilization of Rule 71.1 (b) pursuant to the conspiracy of the pro judge, state sponsored pro counsel, and the attorney general in order to dismiss the petitioner pro constitutes unconstitutional conduct because the state of South Carolina is forcing the petitioner to give up his fundamental rights to access to the courts and to petition the government on direct appeal for raising his underlying federal causes of actions of ineffective assistance of both trial and appellate counsels on pro where South Carolina mandates the latter claims to be raised at. see *Dolan v City of Tigard* 512 US 374 (1994) (Requiring that courts determine

whether an essential nexus exist between the legitimate state interest and the conditions imposed by the government); *Johnson v Tampa Sports Authority* 530 F.3d 1320 (2008); *Bourgeois v Peters* 387 F.3d 1303 (2004) (City Requirement that protestors submit to magnetometer searches prior to participating in protest against Military school constituted an unconstitutional condition that violated the first Amendment; the protestors were required to surrender a Constitutional Right freedom from unreasonable searches and seizures not merely to receive a discretionary benefit but to exercise two other fundamental Rights freedom and assembly)

Since the petitioner has shown a deprivation of liberty and property interest by South Carolina officials, the petitioner contends that this court should apply the procedural safeguards in *Austin v State* 409 S.E.2d 795 (1991) in question 2 below in showing state sponsored per counsel deprivation of the petitioner federal cause of actions or per.

QUESTION 2: AUSTIN REMEDY PROCEDURES

In *Austin v State* 409 S.E.2d 795 (1991) per counsel did not put in for an appeal to the South Carolina supreme court for counsel client, Austin, in that case. The supreme court held in *Austin* supra the following:

"The right to seek appellate review of the denial of per is expressly authorized by state law: SC Code Ann. § 17-27-100

"Because petitioner is entitled to the assistance of appellant counsel on per and because we must find a remedy to correct the unfairness which has

occurred, we find his allegation that counsel failed to seek review in this case specifically states a claim of ineffectiveness assistance."

There is no difference between being denied an appeal to the state highest court and being denied a federal cause of action at the pica hearing.

AUSTIN REMEDY

The supreme court in *Austin v. State Super.* had fashioned a remedy for the pica court to deal with any and all issues concerning pica counsel failure to appeal to the state supreme court. The remedy the supreme court had fashioned for failure to appeal:

- (1) Remand for an evidentiary hearing on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review;
- (2) If pica counsel did deny pica claimant the right to appeal, the pica court must review whether the petitioner was prejudiced by the failure to obtain review of a Meritorious issue; and
- (3) The pica court must construe paragraph (2) under the *Strickland v. Washington* test; and
- (4) The supreme court would apply the "any evidence standard" to all cases where the petitioner never in fact sought discretionary review.

This standard too shall apply to the petitioner according to the due process standard of determining whether or not a remedy or hearing is mandated

for a deprivation of liberty and/or property according to *Mathew v Eldridge* *supra*.

QUESTION 3 UNCONSTITUTIONAL SUCCESSIVE PCR STATUTE

In *Martinez v Ryan* *supra* the Supreme Court had held where a state mandates that trial counsel ineffectiveness be raised on the first time on Collateral Review then *Martinez* *supra* carves out a narrow exception where the petitioner can show cause and prejudice because of Collateral Review Counsel was ineffective at the PCR proceedings. In light of the fact that the petitioner is contending that the PCR statute is unconstitutional for not having a remedy where PCR Counsel deprives the petitioner of a federal Cause of action, in which is a property interest under the due process clause, see *Hicks v Oklahoma* 447 US 343, 346 (1980) the successive PCR statute is unconstitutional in light of *Martinez v Ryan* *supra*. Furthermore, A PCR statute that blocks a federal Constitutional Rights by not having a remedy regarding PCR Counsel deprivation of federal claims at the PCR hearing is not an independent and adequate state law where this Court will be protected under the doctrine from procedurally barring the petitioner from raising federal claims in federal Court. An example of inadequate PCR process where the laws has not been consistently applied see *Mangal v State* 421 SE 55 (2017) (These considerations should guide PCR courts when struggling to balance procedural requirements against the importance of the issues at stake in PCR proceedings, we encourage trial courts in PCR cases to use the discretion we grant them on procedural matters - within the flexibility of our Rules - to reach the merits

of substantial issues). Comrade Kelly v state 745 s.e. 2d 377 (2013) (Martinez
L v Ryan 7 is limited to federal habeas corpus review and is not applicable to
state post conviction relief actions)

CONCLUSION

The petitioner prays for Evidentiary Hearing and for this Court to grant
this motion and/or such other and further relief this Court seem just and
proper.

Date: 2/12/19


Steven Louis Barnes #327117
McCormick LZ
386 Redemption Way
McCormick, SC 29555



State of South Carolina
The Circuit Court of the Eleventh Judicial Circuit

WILLIAM P. KEESLEY
JUDGE

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MEMORANDUM

Date: August 26, 2019

To: Mr. Steven Louis Barnes, 327117
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Steven Louis Barnes v. State
Case Number: **2015CP1900035**

You sent a motion for an emergency post-conviction relief hearing. My law clerk is trying to come up with a date when your motion may be heard. We plan to be in touch. Thank you.

cc: Melody Brown, Office of the Attorney General (via email)
Elizabeth Franklin-Best, Esquire (via email)
Edgefield County Clerk of Court's file



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