

No. 25-7106

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IN THE  
SUPREME COURT OF THE UNITED STATES

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DUSTIN ROBERT WILLIAMSON, Petitioner

VS

STATE OF SOUTH CAROLINA, Respondent

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ON PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF SOUTH CAROLINA

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DUSTIN ROBERT WILLIAMSON  
BARNWELL COUNTY DETENTION CENTER  
57 WALL STREET  
BARNWELL SC 29802

## **QUESTION PRESENTED FOR REVIEW**

### **QUESTION 1:**

**DID SOUTH CAROLINA VIOLATED BOTH THE PETITIONER'S DUE PROCESS AND EQUAL PROTECTION CLAUSE UNDER THIS COURT CASE LAWS IN LANE V BROWN 372 US 477 (1963), BURNS V OHIO, 360 US 252 (1959) AND SMITH V BENNETT, 365 US 708 (1961) IN NOT ALLOWING THE PETITIONER TO PROCEED INFORMA PAUPERIS IN HIS STATE HABEAS CORPUS RAISING BEFORE TRIAL INEFFECTIVENESS OF TRIAL COUNSEL, CONFLICT OF INTEREST AND STATE INTERFERENCE CLAIMS**

### **QUESTION 2:**

**WHETHER SOUTH CAROLINA HYBRID REPRESENTATION DOCTRINE VIOLATES THE SUPREMACY CLAUSE IN NOT ALLOWING THE PETITIONER TO RAISE INEFFECTIVENESS OF TRIAL COUNSEL BEFORE, DURING, AND ON DIRECT REVIEW**

### **QUESTION 3:**

**WHETHER SOUTH CAROLINA HABEAS CORPUS AND TRIAL COURT PROCEDURES, AND ITS CASE LAWS INTERPRETEING THOSE PROCEDURES, ARE FUNDAMENTALLY UNFAIR, AND/OR BURDENS THE PETITIONER'S FUNDAMENTAL RIGHTS, IN NOT ALLOWING THE PETITIONER TO RAISE BEFORE TRIAL INEFFECTIVENESS OF COUNSEL, CONFLICT OF INTEREST, AND STATE INTERFERENCE WITH COUNSEL ON HABEAS CORPUS, OR IN THE TRIAL COURT, IN VIOLATION OF THE DUE PROCESS CLAUSE**

### **QUESTION 4:**

**IS SOUTH CAROLINA REMEDY OF NOT ALLOWING THE PETITIONER TO RAISE BEFORE TRIAL INEFFECTIVENESS OF TRIAL COUNSEL, CONFLICT OF INTEREST AND STATE INTERFERENCE WITH COUNSEL IN THE TRIAL COURT AND HABEAS CORPUS ARE INADEQUATE UNDER THE DUE PROCESS AND EQUAL PROTECTION CLAUSE DUE TO SOUTH CAROLINA CASE LAWS MANDATING THAT INEFFECTIVENESS OF TRIAL COUNSEL CLAIMS NO MATTER WHAT MUST BE RAISED ON POST CONVICTION RELIEF ON COLLATERAL REVIEW**

## **PARTIES**

Dustin Robert Williamson, 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 (A) to the petition and is reported at Williamson v Chief Administrative Judge of the 2<sup>nd</sup> Circuit et.al. 2025-002049.

## **JURISDICTION**

On January 6, 2026, the South Carolina Supreme Court issued an opinion in the Petitioner's writ of mandamus.

The Jurisdiction of this Court is invoked under 28 USC § 1257 (a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **1<sup>ST</sup> AMENDMENT**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### **6 AMENDMENT**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

### **14 AMENDMENT AND EQUAL PROTECTION CLAUSE**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

## BACKGROUND STATEMENT OF THE CASE

On November 28, 2020, investigator Mike Davis of the Barnwell Sheriff's Department had left from Barnwell County to Calhoun County, in South Carolina, to do a knock and talk without reasonable suspicion at the Petitioner's residence.<sup>1</sup> The Petitioner was leaving his residence in a SUV rental truck and he was immediately pulled over by Calhoun County Police Department without probable cause.

On the same day, Sgt. E. Sox went in front of Calhoun County Magistrate Judge Ruckenbaker with a bare bones search warrant affidavit for the search of the Petitioner's rental truck and residence. Investigator Sox's search warrant affidavit states in pertinent parts:

"REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES" . . . Investigator [Mike] Davis "Gathered Intel and information in reference to the incident. Through Inv. Davis' investigation, a suspect's name was developed being Dustin Williamson. . .

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<sup>1</sup> The Petitioner contends that South Carolina gives him more rights to privacy under the State constitution search and seizure clause regarding knock and talk than the 4<sup>th</sup> amendment. See *State v Counts* 776 S.E 2d 59 (2015); *State v Boston* 857 S.E2d 27 ( S.C. 2021). For example, in *State v Counts* supra, the State Supreme Court stated that:

. . . *we hold that law enforcement must have reasonable suspicion of illegal activity at a targeted residence prior to approaching the residence and knocking on the door.* As with our previous right-to-privacy decisions, we find this rule safeguards the express constitutional right against unreasonable invasions of privacy and does not hamper law enforcement in their investigative efforts.

*Upon Inv. Davis arrival, the vehicle description matching the vehicle from the incident, which was also captured on video surveillance, was located at the residence. Inv. Davis notified Calhoun County Sheriff's office requesting assistance. While awaiting assistance, the vehicle left the residence. Inv. Davis was able to follow the vehicle until Calhoun County Sheriff's deputies were able to intercept the vehicle, and take Mr. Williamson into custody without incident."*

According to the bare bones search warrant affidavit, investigator Davis' reasonable suspicion of illegal activity at a targeted residence prior to approaching the Petitioner's residence and knocking on the door was "Gathered Intel and information in reference to the incident. Through Inv. Davis' investigation, a suspect's name was developed being Dustin Williamson." <sup>2</sup>

After the Petitioner's arrest, he was not indicted within ninety (90) days as required by Rule 3 of the South Carolina Rules of Criminal Procedure, in which states.

#### "Disposition of Arrest Warrants

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<sup>2</sup> Before the Petitioner's acquittal of his criminal charges in Aiken county, in South Carolina, of one counts of murder, ten counts of attempted murder and one count of possession of a weapon during a violent crime, on October 28, 2022, the Petitioner filed a 42 USC § 1983 lawsuit against Barnwell South Carolina officials in the United States District Court of South Carolina. See Williamson v Sox( C/A No. 5:22-4270-SAL-PJG). The District Court stayed the Petitioner's §1983 lawsuit. The District Court requested the parties to the lawsuit to update the court every ninety (90) days regarding the status of the Petitioner's criminal case in Barnwell County. For four (4) years the parties in the §1983 suit has been updating the court regarding the Barnwell County charges.

C) Action on Warrant. Within ninety (90) days after receipt of an arrest warrant from the Clerk of Court, the solicitor shall take action on the warrant by (1) preparing an indictment for presentment to the grand jury, which indictment shall be filed with the Clerk of Court, assigned a criminal case number, and presented to the Grand Jury; (2) formally dismissing the warrant, noting on the face of the warrant the action taken; or (3) making other affirmative disposition in writing and filing such action with the Clerk of Court.”

In 2021, the Petitioner was Court appointed, Andrew Farley, as his counsel for both Aiken County and Barnwell County charges. The Petitioner contends that the Aiken and Barnwell Counties falls under the Second Judicial Circuit.<sup>3</sup> Upon information and belief, the Second Circuit Solicitor’s office is responsible for criminal prosecutions in both Aiken and Barnwell Counties.

The Petitioner’s family and friends contacted attorney Farley and told counsel to visit the Petitioner at Aiken jail, and for counsel to file a motion under 17-23-90, in which states in full:

“If any person committed for treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court the first week of the term to be brought to his trial shall not be indicted

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<sup>3</sup> The Court terms for both Barnwell and Aiken is codified in SC CODE 14-5-610, in which states in part:

(1) The State is divided into sixteen judicial circuits as follows:

(2) The second circuit is composed of the counties of Aiken, Bamberg, and Barnwell.

some time in the next term after such commitment, the judge of the circuit court shall, upon motion made in open court the last day of the term either by the prisoner or anyone in his behalf, set at liberty the prisoner upon bail, unless it appear to him, upon oath made, that the witnesses for the State could not be produced at the same term. And if any person committed as aforesaid, upon his prayer or petition in open court the first week of the term to be brought to his trial, shall not be indicted and tried the second term after his commitment or upon his trial shall be acquitted, he shall be discharged from his imprisonment.”<sup>4</sup>

In the early parts of 2021, attorney Farley came to see the Petitioner at the Aiken County Jail. The Petitioner had told attorney Farley about the facts of the Petitioner’s unlawful arrest, and to file a motion under SC CODE 17-23-90 for an immediate bond because the Solicitor’s office had ninety (90) days to indict the Petitioner.<sup>5</sup>

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<sup>4</sup> SC CODE 14-5-630. Terms of court in second circuit.

The courts of the second judicial circuit shall be held as hereinafter provided.

- 1) Aiken County. – The court of general sessions for Aiken County shall be held at Aiken on the second Monday in January for two weeks, the first Monday in May for three weeks and the first Monday in October for two weeks.
- 2) Barnwell County. – The court of general sessions for Barnwell County shall be held at Barnwell on the second Monday in February for a term of one week, on the fourth Monday in May for a term of one week and on the third Monday in September for a term of one week.

<sup>5</sup> In *State v. Campbell*, 288 SE 2d 395 (1982), the State Supreme Court stated that Rule 3 of the South Carolina criminal procedure requiring the Solicitor to indict the Petitioner within ninety (90) or to dismiss the indictment affords the Petitioner no substantive rights. The Court held that Rule 3 is only an administrative Rule that applies to the Solicitor’s office. In *State v. Culbreath* 316 SE 2d 681 (1984), the State Supreme Court interpreted SC CODE 17-23-90 as a substantive Rule rather than administrative Rule as Rule 3. The Court stated in *Campbell* supra the following:

After the ninety days had expired, the Petitioner had his private investigator check both the Barnwell County and Aiken County Clerk of Court files and there was no grand jury indictment nor any Solicitor's "making other affirmative disposition in writing and filing such action with the Clerk of Court."

The Petitioner specifically informed attorney Farley he believed investigator Mike Davis of Barnwell county Sheriff's Department had committed perjury in the search warrant to the Magistrate Judge. The Petitioner also told Counsel he needed the 911 phone calls of investigator Davis requesting assistance from the Calhoun County Sheriff's Department, and any and all body cams and/or police cars videos participating in the Petitioner's initial arrest, and a complete and accurate copy of the Petitioner's motion to Discovery. Counsel told the Petitioner he had possession of the motion of discovery and Counsel would send the Petitioner a copy it.

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"Section 17-23-90 provides for discharge from imprisonment when a person is committed for a felony, demands to be brought to trial, and is not indicted or tried by the second term following his commitment. In *State v. Fasket*, 39 S.C.L. (5 Rich.) 255, 257 (1852), the statutory reference to discharge was interpreted as requiring the prisoner " ... be as unrestrained as if upon his trial he was acquitted." This phrase merely indicates the prisoner should be released without bail, not discharged from further prosecution. *State v. Williams*, 35 S.C. 160, 14 S.E. 309 (1892). . . We reaffirm the Williams interpretation of language now found in Section 17-23-90.

The Court further stated that "section 17-23-90 mandate for the discharge of the prisoner is peremptory; no discretionary power is reserved to the judge to require bail on the discharge of the prisoner."

Since the date of informing Attorney Farley to file the motion under SC CODE 17-23-90, a reasonable professional attorney would had filed the motion under section 17-23-90 in September in Barnwell, and in October in Aiken. As a result of that, there's a reasonable probability the Petitioner would had been entitled to be released with or without bail.

In Barnwell county alone, the Court terms of February, May and September of 2022, including 2023 February and May Court terms, the Petitioner went without a hearing as to being released without bail pursuant to section 17-23-90.

In the beginning of April of 2021, the Petitioner called attorney Farley 's office several times trying to obtain the Petitioner's motion discovery. Each time the Petitioner spoke to attorney Farley, Counsel told the Petitioner he was going to send the Petitioner a copy of the motion of discovery. The Petitioner did receive incomplete copies of the Aiken County motion to discovery but not the Barnwell County discovery material. The Petitioner and family members informed counsel to file a motion to compel discovery. There's nothing in both Aiken and Barnwell Counties Clerk of Court's offices of attorney Farley filing a motion to compel discovery as required by Rule 5 of the South Carolina Rules of Criminal procedure. On September 28, 2021, the Petitioner had a bond hearing in front of Judge Courtney Clyburn-Pope. At the bond hearing, attorney Farley did not move for the Court to grant the Petitioner's mandatory bond because two terms of Court had passed. The Judge's Order denied the Petitioner's bond on the following grounds:

"The charges stem from allegations that on November 28, 2020, the Defendant, along with others, opened fire with weapons at patrons entering a local nightclub. One person was killed and numerous others were wounded. The Defendant left the scene and is alleged to be involved in other shootings in Barnwell county later that morning.

The Defendant is a threat to the community and bond shall be denied. IT IS THEREFORE ORDERED that bond shall be denied on the above charges as referenced by the indictment listed.

After the September 28, 2021 bond hearing, the Petitioner wrote attorney Farley a letter on September 30, 2021, in which the Petitioner too filed in the Aiken county Clerk of Court. The letter states in pertinent parts:

“I have been trying to communicate with you, at which I have not been able to. We have not yet went over any of the discovery together. Before I went to the bond hearing, you did know how many charges I had, how many codefendants, or anything pertaining to my case. There’s no way that’s competent at all. Nor should went up for bond. *The standards to meet as you should know is effective assistance. You haven’t met that standard. There are many videos within my discovery as well as documents I would like to go over as soon as possible. . .*”

On March 2, 2022, attorney Farley filed a motion to relieve counsel with the court. The Circuit Judge ordered a hearing on the motion to relieve counsel where the Petitioner explained to the Court basically everything he stated in his September 30, 2021 letter to counsel Farley that the Petitioner filed in the clerk of court’s office in Aiken county. The Petitioner also informed the Judge about he told counsel to file a motion for mandatory bond under section 17-23-90.

On May 11, 2022, Judge Clyburn Pope ordered the appointment of second counsel, Scott Joseph Hayes, upon information and belief, to the Petitioner’s criminal cases in both Aiken and Barnwell Counties. The Judge’s Order states in pertinent parts:

“This matter came before the Court upon the Defendant’s request to have counsel appointed for the above caption charges. *Mr. Williamson was arrested on December 17, 2020 and is being held in the Aiken County Detention Center on the pending charges of two counts of murder, ten counts of attempted murder and one count of possession of a weapon during a violent crime.* In addition, the Defendant has pending charges out of Barnwell county. . .

**IT IS THEREFORE ORDERED** that Scott Joseph Hayes be appointed to represent the Defendant on the above pending charges.

#### **STATEMENT OF THE CASE**

After the Petitioner’s first motion to relieve counsel hearing, the Petitioner had noticed that attorney Farley was still appointed to the Petitioner’s Barnwell county criminal case. On August 21, 2023, the Petitioner filed in the Barnwell Clerk of Court a pro se motion to relieve and substitution of counsel Attorney Farley off his Barnwell case. Along with the Petitioner’s motion to relieve counsel, he filed a petition for writ of habeas corpus due to ineffective assistance of counsel before trial, a pro se motion to proceed without payment of cost for his habeas corpus, and a summons with his habeas corpus in the Barnwell Clerk of Court.<sup>6</sup> The Petitioner had his family members call the Barnwell Clerk of Court to check the status of said motions. The Barnwell Clerk of Court responded that she could not process the

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<sup>6</sup> See Appendix (D).

Petitioner's pro se motion to proceed inform a pauperis on his habeas corpus due to the Petitioner must fill out a court approved motion for inform a pauperis,<sup>7</sup> and that in order for the Petitioner to proceed on habeas corpus he must first pay a one hundred and fifty dollars filing fee. The Petitioner's private investigator went to the Barnwell Clerk of Court's office to obtain the court approved motion for inform a pauperis form. The Petitioner's private investigator came to the Aiken county jail for the Petitioner to sign the form. Once the Petitioner signed the form, the private investigator notarized the form. The form was placed in the mail to the Barnwell Clerk of Court. The Petitioner's family members called the Barnwell Clerk of Court again to check the status of the writ of habeas corpus filed there. The Barnwell Clerk of Court did not process the motion for inform a pauperis form despite the Petitioner complied with the Clerk's request for the Petitioner to fill out the form. On January 24, 2024, the Petitioner had a bond hearing in front of judge McLeod. At the bond hearing, the Petitioner tried to inform the court of both his pending writ of habeas corpus petition and his motion to relieve and substitution of counsel but the Court will not exercise it's jurisdiction to hear the Petitioner's claims of ineffective assistance of trial counsel. At the bond hearing the following events occurred:

THE DEFENDANT: . . . briefly last I asked that the court considered the unique circumstances of my case because in Barnwell, as my attorney, just I have had other

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<sup>7</sup> See Appendix (E).

*attorneys before, so in Barnwell I had filed a writ of habeas corpus and motion to relieve counsel and substitution of counsel in August, 3, 2023. After this, your honor, I was appointed attorney Andrew Farley for both Aiken and Barnwell county cases. Now I understand that in a trial court I cannot raise ineffective assistance of counsel claim but a court can hear a conflict of interest claim and as Mr. Weak has said, he said I was indicted in 2021, but after I was arrested I was not indicted within 90 days. And I asked attorney Farley, previously, and you will see how this affects this quickly I asked attorney—*

THE COURT: Are you making all this orally?

THE DEFENDANT: Yes. Yes, your Honor.

THE COURT: Is this reduced to writing?

THE DEFENDANT: Sir?

THE COURT: Has this motion been reduced to writing or are you just telling me this orally, verbally?

THE DEFENDANT: -- Yeah, I'm telling you this --

THE COURT: Okay. All right.

THE DEFENDANT: -- Now because it's a conflict and I know you're inquired to hear of it and it's brief. You know, inquired to hear I like have like a conflict of interest or anything.<sup>8</sup>

THE COURT: Okay. Well, if you want to -- the record can reflect that you're filing a motion to what, relieve someone? Whose conflict?

THE DEFENDANT: The conflict with attorneys for how to fix this situation right now, of this bond hearing, is that even if I'm discharged from Aiken County today, let's just say that, even if I'm discharged from Aiken County today-- [Counsel Farley] was supposed to be [relieved] from Barnwell and Aiken but he still stayed on my case in Barnwell. So this has affected me here today where I have asked [Farley] to file the same motion pursuant to code section 17-23-90 previously and I'm sure the State of South Carolina is attributed to the appointment of counsel system in the State of South Carolina.

THE COURT: Okay.

THE DEFENDANT: *So this way I am still subject to the conditions meaning that I have ineffective assistance of counsel in Barnwell, which I have --*

THE COURT: All right. I'm moving on from this.

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<sup>8</sup> In *State v. Sims*, 405 SE 2d 377 (1991), the court held that "in evaluating whether the trial judge abused his discretion in denying Sims' motion for substitution of counsel, the Court may consider several factors: timeliness of the motion, adequacy of the trial judge's inquiry into the defendant's complaint, **and whether the attorney-client conflict was so great that it resulted in a total lack of communication, thereby preventing an adequate defense.**

THE DEFENDANT: Okay.

...

THE COURT: Well this is what we can at least agree upon today. If the state attends to bring this case to trial I would ask state to reach out to opposing counsel and try. I'm not the chief administrative judge. At least reach out and get those. Mr. Hayes, your client has several other motions. Do you want to put on the record today? I think the safest. I'll ask that you meet with your client and motions can be reduced to writing and brought forth before the court.

MR HAYES: Judge, those are all motions that we have planned on bringing. I actually thought he was going to talk about his businesses and his ties to the community and his kids and his family so we—

THE COURT: We've talked about what was in writing today.

MR. HAYES: I understand.

THE COURT: So.

MR. HAYES: I mean, as far as setting the bond today. I thought he was going to give you a background sort of like —

THE COURT: Okay.

MR. HAYES: I -- MR. O'Neal's lawyer did. About his ties and that kind of thing because he has extensive ties to the Aiken community and family and businesses.

THE DEFENDANT: I thank you for letting me talk your honor.

THE COURT: Yes, Sir. Well, I'll take this matters under advisement and come up with all decision. Thank you.<sup>9</sup>

On January 29, 2024, Judge Walton J. McLeod denied the Petitioner's bond. Also, the Judge's Order did not address the Petitioner's conflict of interest and ineffectiveness of trial counsel claims dealing with the bond and among other issues.<sup>10</sup>

On April 2, 2025, the Petitioner had a bond hearing in Aiken county. Again, the Petitioner tried to get the court to address before trial the Petitioner's habeas petition and motion to relieve and substitution of counsel on the grounds of ineffectiveness of counsel but the court will not exercise it's jurisdiction to hear the Petitioner's claims.

Before the Petitioner's Aiken trial, the Petitioner discovered that the second circuit solicitor's office and the Petitioner's trial counsel Hayes had a meeting of the minds regarding the appointment of attorney Hayes to the Petitioner's Barnwell case without the Petitioner consent nor an evidentiary hearing. On March of 2025, the trial judge signed off on the consent order. When the Petitioner later found out about it, the Petitioner immediately told trial counsel Hayes to withdrawal off his

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<sup>9</sup> See Appendix (F) Bond hearing transcript pages 29, Line 7-25, pg. 20, L, 1-25, pg. 21, L-1-4, pg. 25, L-25, pg. 26, L-1-25, pg. L-1-3.

<sup>10</sup> The Court order denying the Petitioner's bond states in part:

The Defendant also referred to arguments for serval other motions set to be before the Court. The Court found these arguments to not be relevant to the consideration of bond at this time.

Barnwell case and to get the Petitioner in front of a trial judge regarding his pending habeas corpus on ineffectiveness of counsel in Barnwell county.

On July 14, 2025, the Petitioner had a pretrial scheduling hearing at his Aiken trial in front of the presiding Judge McLeod. At the hearing, the Petitioner filed a pro se motion to relieve trial counsel Hayes. The Petitioner tried to address the court as to both the Petitioner's habeas petition and his pro se motion to relieve and substitution of counsel in Barnwell South Carolina regarding ineffectiveness of trial counsel, especially dealing with Brady discovery and the Petitioner's 4<sup>th</sup> amendment claims. The Petitioner also informed the Court that his then trial counsel Hayes was ineffective under similar circumstances outlined in his habeas corpus. The General sessions court would not exercise the court jurisdiction to rule on the Petitioner's ineffective assistance of counsel claims so the Petitioner can raise that claims, among other issues, on direct review on appeal.

After the Petitioner's acquittal on all charges in Aiken, on August 11, 2025, the Petitioner trial counsel Hayes had put in for a motion to relieve counsel and for a bond hearing in Barnwell County.

On September 23, 2025, the Petitioner had a bond hearing and a hearing on his motion to relieve counsel Hayes off the Petitioner's Barnwell case. At the Petitioner's hearing in front of Judge McLeod, the petitioner tried to address the Court regarding his habeas corpus regarding ineffective assistance of trial counsel in Barnwell, especially the bond and 4<sup>th</sup> amendment claims. Despite the Petitioner's

valid concerns of State interference with counsel and ineffectiveness of counsel before trial, on September 26, 2025, the Petitioner was denied bond.

On September 28, 2025, The Petitioner then filed a writ of mandamus,<sup>11</sup> and on December 8, 2025, he filed a petition for Declaratory judgement,<sup>12</sup> to the State Supreme Court in its Original Court jurisdiction against the Respondents in this case.<sup>13</sup> The State Supreme Court instructed the Respondent, the Second Judicial Circuit Solicitor, David Warren Miller, to file a Return to the Petitioner's writ of mandamus. The Court stated that:

Dear Mr. Miller

Dustin Williamson has filed a petition with this Court, which is being construed as a request for relief under Rule 245, SCACR. A copy is enclosed. Please file a return to this petition and proof of service within ten (10) days from the date of this letter. In your response, please address the current status of the case and Petitioner's allegations of delay.

On October 17, 2025, the Respondent filed a return to the Petitioner's writ of mandamus stating the following:

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<sup>11</sup> See Appendix (B).

<sup>12</sup> See Appendix (C).

<sup>13</sup> Upon information and belief the Petitioner Declaratory Judgment is still pending in the South Carolina Supreme Court despite the fact the clerk stated that the Petitioner Declaratory Judgment was ruled on by the court when it denied the Petitioner's writ of mandamus. See Appendix (A). In the abundance of caution, the Petitioner placed his Declaratory Judgment in this Certiorari to this Court just in case some type of ruse or State interference with the lower court obstructing this Court hearing the Petitioner's issues on this writ.

“On April 13<sup>th</sup> 2021, attorney Andrew Farley was appointed to represent Petitioner in both Aiken County and Barnwell County. On March 2, 2022, Mr. Farley filed a motion to be relieved as counsel for the Petitioner. A hearing was conducted in Aiken County and Mr. Farley was relieved as counsel for petitioner. At the hearing, the court noted that new counsel would be appointed for the Petitioner in both counties. On May 11, 2022, attorney Scott Hayes was appointed to represent Petitioner, but the order appointing counsel only referenced the Aiken County case. Upon information and belief, Mr. Hayes and the State believed Hayes had been appointed to represent the Petitioner in both counties. When it was discovered that the initial appointment did not address both the Aiken and Barnwell cases, Hayes and Farley entered a consent order to substitute counsel that was granted by the Honorable Walton J. McLeod on February 25, 2023.<sup>14</sup>

...

During the pendency of his Aiken County charges, Petitioner was held in the Aiken County Detention Center. Petitioner then proceeded to a jury trial in Aiken County during the July 14, 2025, term of Court with Mr. Hayes as counsel. Petitioner was tried alongside one of his codefendants, and while the codefendant was found guilty, Petitioner was ultimately acquitted. Following the conclusion of the Aiken County trial, Petitioner was transported to the

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<sup>14</sup> The date of the actual consent decree between Farley and Hayes was on March 10, 2025 according to Barnwell County clerk of Court online records.

Barnwell County Detention Center, where he is currently being held.

Thereafter, Mr. Hayes moved to be relieved as counsel for the Petitioner's pending Barnwell County case. A hearing was held on September 16, 2025, and Mr. Hayes was subsequently relieved as counsel. On October 15, 2025, judge McLeod assigned Richard Todd, Jr. to represent Petitioner in his Barnwell County case. . .

. . .

*Petitioner fails to satisfy the first element because there was no duty on the part of the clerk to file the habeas petition. The habeas petition, presented in 2023, was rightfully not accepted by the clerk because the Petitioner was represented by counsel at the time of its filing and hybrid representation is not permitted. See Miller v State, 697 SE.2d 527 (2010); State v Stuckey, 508 SE.2d 564 (1998); Foster v State, 379 SE.2d 907 (1989). While the Petitioner claims he was attempting to relieve counsel, ultimately, he chose not to do so and proceeded to trial with Mr. Hayes as counsel more than two years after his attempted filing. As Petitioner was represented by counsel at the time of his attempted filing, the clerk did not err in refusing to accept pro se pleadings. . .*

. . .

The duties of the clerk while ministerial at times, are not so when exercising authority to refuse filing on permissible grounds. But cf. Barnes v State, 859

SE2d 260, 261 (2021)( Noting that clerks of court have a ministerial duty to file pleading regardless of merit or timeliness). As there were proper grounds for the refusal of the pleading in this matter, Petitioner has failed to establish the second element for relief.

Petitioner also cannot show a specific legal right for which discharge of the duty is necessary. At the time of the filing, petitioner was litigating the nightclub shooting that took place in Aiken County, he was indicted for that crime in Aiken County and house in Aiken County detention center.

Petitioner's habeas petitions was a challenge to a Barnwell prison commitment that did not yet exist, and did not need to exist in order for his arrest and incarceration in Aiken to be proper. As such, he did not possess illegal right to bond or bail. Petitioner conflicts the crimes and the counties responsibilities, and he seeks to use the 2 year old and improper habeas petition as a means of sidestepping the normal bond procedures, now that his Aiken's case has concluded.

Lastly, petitioner must show that he has no other legal remedies available to him. Such is not the case. Petitioner has recently been assigned new counsel. He may confer with counsel and set bond on whatever grounds counsel believe is meritorious.”<sup>15</sup>

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<sup>15</sup> See Appendix (G).

On January 6, 2026, the State Supreme Court denied the Petitioner writ of mandamus and declaratory judgment relief.<sup>16</sup>

## REASON FOR GRANTING WRIT

### A. DUE PROCESS AND EQUAL PROTECTION VIOLATION

The Petitioner contends that South Carolina hybrid representation legal rule indiscriminately interfere with the Petitioner's access to the court, along with his 1<sup>st</sup> amendment right to petition the government, his equal protection rights to be similarly situated as any other pro se litigant exercising his constitutional rights to the courts. South Carolina legal rules to the clerk of court dealing with pro se prisoner filing of habeas and PCR documents in circuit court was made clear in *Barnes v. State*, 859 SE 2d 260 (2021). In *Barnes v State supra*, the State Supreme Court held that:

“We take this opportunity to remind the clerks of court of their ministerial duty to docket filings irrespective of potential procedural flaws that may exist. *Miller v. State*, 659 S.E.2d 492, 493 (2008) (“[I]t is not within the Clerk of Court’s authority to refuse to perform her duty based on her opinion that a filing lacks legal merit or is untimely.”). This duty is not discretionary. *Unless specifically authorized by statute or a court rule, a clerk of court may not exercise any judicial power reserved for a judge. This includes the prohibition*

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<sup>16</sup> Appendix (A).

*of performing any action contingent on deciding a question of law.*

Accordingly, a clerk of court does not have the authority to reject a filing based on ostensible or perceived failures, including whether the document is contained on the proper form. Because the clerk's role is ministerial in this respect, the clerk shall not be "concerned with the merit of the papers or with their effect and interpretation...." Stated differently, "[a] clerk of court may not reject a pleading for lack of conformity with requirements of form; only a judge may do that." Instead, the clerk shall accept the filing, thereby permitting the court to decide any issues the parties may have with it."

In *Lakes v State* 510 SE.2d 228 (SC App. 1998), the court held that the Judge should have allowed Lakes to proceed *informa pauperis* because he was indigent. In *Thompson v State* 479 SE.2d 808 (1997), the court held an application for post conviction relief may proceed without the payment of filing fee regardless of a person financial status. Because the Petitioner is indigent on habeas corpus, he contends he should be similarly situated as *pro se* prisoner proceeding on PCR without payment. Plus, the Petitioner is not being similar situated in not having a Judge determine the Petitioner's *informa pauperis* status. Because SC CODE§ 17-27-30 gives the Circuit Court powers under the PCR Act to hear habeas corpus petitions, the Barnwell clerk of court is erroneously refusing to accept for filing the Petitioner's habeas corpus petition. Plus, this Court case law specifically mandates *informa pauperis* status in cases like the Petitioner. For example, in *Burns v. Ohio*, 360 U.S. 252 (1959), this Court held that a criminal defendant's access to the

appellate courts could not be contingent on his ability to pay a \$20.00 filing fee. In *Smith v. Bennett*, 365 U.S. 708, 709 (1961), this Court held that filing fees could not prevent indigent, convicted prisoners from filing habeas corpus petitions.

Importantly, *Smith* extended indigents' protections to collateral proceedings which attack the validity of detention as opposed to simply the correctness of the conviction. *Id.* In *Lane v. Brown*, 372 U.S. 477 (1963), this Court evaluated Indiana's procedure of providing indigent prisoners in post-conviction proceedings with trial transcripts. This Court held that the Indiana law, which only allowed indigent defendants to procure transcripts for *coram nobis* hearings through the Indiana Office of the Public Defender, was unconstitutional and, in so doing, reiterated that *Griffin's*<sup>17</sup> protections apply in collateral proceedings. *Id.* at 484-85. The Petitioner contends that the hybrid representation rules as applied to the Petitioner is indiscriminately violating the Petitioner equal protection rights and due process rights to access to the court, and other fundamental rights as outlined *infra*.

## **B. SOUTH CAROLINA'S UNCONSTITUTIONAL HYBRID**

### **REPRESENTATION DOCTRINE VIOLATES THE SUPREMACY CLAUSE**

Selectively incorporated in the 14<sup>th</sup> amendment, the 6<sup>th</sup> amendment guarantees the Petitioner the right to effective assistance of counsel and a fair trial. There's no fair

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<sup>17</sup> *Griffin v Illinois* 351 US 12 (1956).

trial without the guiding hands of counsel. The Petitioner contends that South Carolina application of the hybrid representation doctrine to the Petitioner before trial erodes his 6<sup>th</sup> amendment right to counsel. See *Trevino v Thaler* 569 US 413, 428 (2013) (“The right involved—adequate assistance of counsel at trial—is similarly and critically important.”). South Carolina can not make a legal rules that violates the Supremacy clause of the United States Constitution. The 6<sup>th</sup> amendment right to effective assistance of counsel and the 14 amendment right to a fair trial are the law of the land. The Petitioner believes that South Carolina courts has misconstrued this Court’s interpretation of the hybrid representation doctrine. For example, in *State v Stuckey supra*, the South Carolina Supreme Court stated that:

“The United States Supreme Court has not expressly stated whether the Sixth Amendment also provides a right to hybrid representation. However, “*Faretta*<sup>18</sup> does not require a trial judge to permit ‘hybrid’ representation.... A defendant does not have a constitutional right to choreograph special appearances by counsel.” *McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984). Since the matter of hybrid representation is left to the discretion of the trial judge, then, by implication, there is no Sixth Amendment right to hybrid representation.

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<sup>18</sup> *Faretta v. California*, 422 U.S. 806 (1975)

Furthermore, this Court has previously held that there is no right under the South Carolina Constitution to hybrid representation. *Since there is no right to hybrid representation, substantive documents filed pro se by a person represented by counsel are not accepted unless submitted by counsel.*

Here, appellant, who is represented by counsel, attempted to file a substantive document relating to his case. Since this document was not submitted through counsel, it is not appropriate for consideration by this Court. *Nothing in this order shall be construed to limit any party's right to file a pro se motion seeking to relieve his counsel. . ."*

### **C. SOUTH CAROLINA'S VIOLATION OF THE FUNDAMENTAL FAIRNESS DOCTRINE**

The Petitioner contends that SC Const., Article V Section 11 states that "Jurisdiction of Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, *except those cases in which exclusive jurisdiction shall be given to inferior courts*, and shall have such appellate jurisdiction as provided by law." Also, South Carolina PCR statute, SC CODE §17-27-20(B), states that "[PCR] remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them." And SC CODE 17-27-30, Jurisdiction of court, states that:

“The court in which, by the Constitution and statutes of this State, original jurisdiction in habeas corpus is vested, may entertain in accordance with its rules a proceeding under this chapter in the exercise of its original jurisdiction and in that event this chapter, to the extent applicable, governs the proceeding.”

The Circuit Court of South Carolina has jurisdiction to hear the Petitioner’s pro se habeas corpus dealing with his ineffectiveness of counsel before trial but the Circuit court has failed to exercise it’s Jurisdiction. The ambiguity in South Carolina procedures burdens the Petitioner fundamental rights to federal habeas corpus, in which is mandated in the United States Constitution. This in turn is fundamentally unfair. For example, the Petitioner contends that he cannot raise ineffective assistance of counsel before trial on post conviction relief, nor to a certain extent before trial the same claim on State habeas corpus unless the remedy deals with the Petitioner receiving mandatory bond pursuant to SC CODE 17-23-90.<sup>19</sup> In order to prove this point, according to Gibson v. State 495 S.E.2d 426, 428 (1998), the Petitioner must exhaust the PCR remedy in order for the Petitioner to file a State

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<sup>19</sup> In State v. Fasket, 39 S.C.L. (5 Rich.) 255, 257 (1852), the Court stated that:

“ It was the express object of the statute to protect the citizen from a lawful or oppressive imprisonment, by enforcing on the part of all parties who might have the custody of him, in prison, a prompt obedience to the writ of habeas corpus: And upon all concern in the prosecution of the crime, promptness and bringing the prisoner to trial.”

habeas corpus dealing with ineffectiveness of trial counsel. In *Gibson v. State* 495 S.E.2d 426, 428 (1998), the South Carolina Supreme Court held:

The availability of habeas corpus has been severely limited by the [PCR Act]. The [PCR] Act “takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.” S.C. Code Ann. § 17-27-20(B). Thus, this Act supersedes and encompasses the habeas corpus procedure provided by statute.

The Petitioner contends that South Carolina case law is ambiguous concerning the Petitioner raising before or during trial, or after trial in the South Carolina Supreme Court Original Court Jurisdiction, ineffectiveness of trial counsel. See *State v Williams* 223 SE.2d 38 (1976) *State v Felder* 351 S.E.2d 852 (1986) Cf. In *Matter of Chapman* 796 S.E.2d 843 (2017). Technically, Trial counsel does not file ineffective assistance claims on himself which makes a remedy not probable before, during, and after trial, especially in light of the hybrid representation doctrine blocking the Petitioner federal claims of ineffectiveness of counsel and State interference with counsel before trial. This Court case laws has repeatedly stated that under agency and principal laws the Petitioner is binded by the actions of trial counsel unless counsel is ineffective. Primarily because a “principal” such as the prisoner, “bears the risk of negligent conduct on the part of his agent,” the attorney. *Maples v. Thomas*, 565 U.S. 266, 280-281(2012) (quoting *Coleman*, *supra*, at 753-754, 111 S.Ct. 2546). *Holland v Jackson* 542 US 649, 653 (2004) (Attorney

negligence...is chargeable to the client). The Petitioner contends that it's fundamentally unfair to bind the Petitioner's trial counsel actions to the Petitioner when the Petitioner is requesting repeatedly for an evidentiary hearing before trial in order to prove his federal cause of action claims of ineffectiveness trial counsel. The Solicitor's assertion that Petitioner has "recently been assigned new counsel. He may confer with counsel and set bond on whatever grounds counsel believe is meritorious" does not have merit when there's State interference with the Petitioner's trial counsel professional judgement/opinion in the Petitioner's case, especially when there's a concerted effort by the State and trial counsels agreeing to mandate the Petitioner's incarceration indefinitely until the Respondents obtain an invalid conviction and sentence of the Petitioner. This is where a remedy becomes crucial before trial in order to purge the taint of conspiracy between public defenders office and the Respondents.<sup>20</sup> As a result of this fact, this leaves the Petitioner without any remedy to challenge before trial State interference with counsel, conflict of interest, and ineffectiveness of trial counsel, especially where constitutional rights such as 1<sup>st</sup> amendment rights to petition the government, and 6<sup>th</sup> amendment right to assistance of counsel, and due process rights to access to the Court and the right to be heard are being infringed on by the South Carolina hybrid

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<sup>20</sup> In *United States v Morrison* 449 U.S. 361, 364, 101 S.Ct. 665, 66 L.Ed.2d 564 (1981), the remedy for a Sixth Amendment violation must be "tailored to the injury suffered" by the defendant and should not "unnecessarily infringe on competing interests." Those competing interests are: (1) the constitutional right to the assistance of counsel, "fundamental to our system of justice to assure fairness in the adversary criminal process," and (2) society's interest in the administration of criminal justice. Thus, the Supreme Court emphasized in *Morrison* that its preferred approach "has thus been to identify and then neutralize the taint by tailoring relief appropriate in the circumstances to assure the defendant the effective assistance of counsel and a fair trial."

representation doctrine. In *Trevino v Thaler* 569 US 413, 428 (2013), this Court held that a distinction between (1) a State that denies permission to raise the claim on direct appeal and (2) a State that in theory grants permission but, as a matter of procedural design and systemic operation, denies a meaningful opportunity to do so is a distinction without a difference. ). See *Massaro v United States* 538 US 500, 505 (2003). See *Matter of Chapman*, 796 S.E.2d 843, 847 (2017) (“Thus, on direct appeal, [appellate courts] will not consider claims involving ineffective assistance of counsel.”). The same can be said under the Petitioner’s current situation of not having a remedy before trial to raise State interference with counsel and so-on.

In *District Attorney’s Office v. Osborne*, 557 US 52 (2009) this Court held that:

State’s procedures for postconviction relief “offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,” or “transgresses any recognized principle of fundamental fairness in operation.” *Medina v. California*, 505 U.S. 437, 446, 448 (1992).

The Petitioner contends, for example, that the not only his 6 amendment right to effective assistance of counsel but also his right to federal habeas corpus are “so rooted in the traditions and conscience of our people as to be ranked as fundamental.” As stated in details supra and infra, the Petitioner contends that South Carolina procedures for raising ineffectiveness of counsel after trial on PCR is inadequate.

#### **D. INADEQUATE POST CONVICTION RELIEF REMEDY**

This Court defines constitutional counsel as the Petitioner's right to assistance of trial counsel, See *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Garza v Idaho* 586 US 242 (2019) (Sixth Amendment right to counsel includes the right to effective assistance of counsel) and his right to counsel on direct appeal. See *Douglas v. California*, 372 U.S. 353 (1963); *Evitts v Lucey*, 469 US 387 (1985) (First appeal as of right not adjudicated in accord with due process of law if the appellant does not have effective assistance of attorney). In these two contexts, the Petitioner has a constitutional right to effective assistance of counsel. Outside of the constitutional right to counsel contexts, this Court repeatedly has stated that the Petitioner does not have a constitutional right to effective assistance of counsel outside of the criminal trial process. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987); See *Garza v Idaho*, 586 US 232 (2019) ( There's no right to counsel in postconviction proceedings).<sup>21</sup> The Petitioner contends that South Carolina Courts procedures of forcing the Petitioner to have before trial ineffectiveness of counsel, and forcing him, if he's convicted and sentenced due to ineffectiveness of constitutional counsel, to collateral review to raise such a claim is unconstitutional as applied to the Petitioner because, for one, the South Carolina PCR appointment of counsel procedures are inadequate because the PCR procedures doesn't allow effective assistance of PCR counsel; however, in other non constitutional counsel cases the South Carolina appointment of counsel procedures allows effective assistance of

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<sup>21</sup> The Petitioner contends that federal habeas corpus statute, 28 USC §2254 (i) states:

"The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254."

counsel. In order to prove this fact, in *Matter of Chapman*,<sup>22</sup> the State Supreme Court interpreted SC CODE § 44-48-10-44-48-180 to not only provide the sexual violent predator (SVP) prisoner a statutory right to SVP counsel in first tier SVP civil commitment proceeding but also the right to effective assistance of counsel. Basically, the Petitioner is facing inadequate procedures to raise ineffectiveness of constitutional counsel claims before, during, and after trial on both direct review and PCR. This in turn is burdening the Petitioner fundamental rights to federal habeas corpus and setting the Petitioner up to fail in raising ineffectiveness of constitutional counsel claims under inadequate State procedures. See *District Attorney's Office v. Osborne*, 557 US 52 (2009).

The Petitioner contends that both SVP and PCR proceeding are not part of the criminal proceeding itself, and it is in fact considered to be civil in nature. The South Carolina legislature and case law invidiously discriminate on the Petitioner to have effective assistance of PCR counsel similarly situated with other prisoners statutory right to effective assistance of counsel. For example, in *Matter of Chapman supra*, the State Supreme Court in providing SVP prisoner a remedy to raise ineffectiveness of SVP counsel, the Court stated:

“Thus, as a practical matter, a person committed as an SVP would ordinarily be required to assert an ineffective assistance of counsel claim in a habeas proceeding without the assistance of counsel. We find this result would be not

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<sup>22</sup> 796 S.E.2d 843 (2017).

only inequitable, but also the functional equivalent of denying SVPs the right to effective assistance of counsel. . . the General Assembly provides persons subject to commitment under the Act with a right to counsel at “all stages of the proceedings.” S.C. Code Ann. § 44-48-90. Due to the unique unfairness of requiring SVPs to pursue ineffective assistance of counsel claims without the assistance of counsel, this language must be construed as providing persons committed under the Act with a right to counsel during their first habeas proceeding.”

In providing the SVP prisoner a standard of review for effective assistance of civil commitment counsel on habeas corpus, the State Supreme Court stated:

Chapman finally argues the ordinary standard for granting habeas relief should not apply to ineffective assistance of counsel claims arising from SVP proceedings. We agree, and hold the more appropriate standard in these instances is the two-prong Strickland standard used to vindicate a criminal defendant’s Sixth Amendment right to counsel. . . Thus, in our state and others, Strickland is a well-known standard applied in an extensive body of case law in the criminal and civil contexts. Indeed, the Strickland standard is the one most familiar to judges and attorneys, and thus results in a more consistent application in our state courts. Accordingly, we find using the Strickland standard to evaluate ineffective assistance claims — regardless of the fact these claims must be asserted in habeas proceedings — will most

consistently ensure an SVP's ability to exercise his right to the effective assistance of counsel.

In *Turner v. State*,<sup>23</sup> the State Supreme Court again interpreted the statutory right to counsel in first tier probation revocation hearing to effective assistance of counsel. The State Supreme Court in *Turner supra* in fashioning a standard of review and remedy stated that:

“Unlike a parolee, we have held that, pursuant to court rule, a probationer has a right to counsel. A parolee’s statutory right to have counsel present is not comparable to a probationer’s absolute right under state law to appointed counsel. We now hold that because a probationer has a right to counsel, albeit not a Sixth Amendment right, the same analysis for ineffectiveness that applies in other PCR proceedings involving claims against counsel should, by analogy, apply in PCR proceedings involving claims against probation counsel. In our view, this approach does not elevate form over substance by, for example, allowing a probationer to proceed on a due process violation but not allowing him to proceed on an ineffective assistance claim despite the fact that both claims stem from the failure to be informed of his right to appeal. Additionally, this approach eases confusion as well as the burden on the lower courts by providing a uniform standard.”

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<sup>23</sup> 682 S.E.2d 792 (2009)

South Carolina case laws dealing with Courts fashioning a remedy and the standard of review in determining ineffectiveness of non constitutional counsel such as PCR, probation revocation, and SVP counsel has shown invidious discrimination to federal constitutional claims. South Carolina gives more preference to its own laws than federal law. For example, in *Austin v State* <sup>24</sup> PCR counsel for Austin did not put in for an appeal to the South Carolina Supreme Court. In that case, the Court in *Austin* fashioned the following remedy and standard of review dealing with ineffectiveness of PCR counsel for deprivation of Austin statutory right to appeal:

- A) “Remand for an evidentiary hearing on the issue of whether in fact the Austin requested and was denied an opportunity to seek appellate review.
- B) If the circuit court finds this to be true, [the PCR] Court shall review whether the Austin was prejudiced by the failure to obtain review of a meritorious issue. In deciding this question, the Court shall use an analysis akin to that of *Strickland v. Washington*, 466 U.S. 668 (1984).
- C) If the circuit court finds that the Austin never in fact sought discretionary review, Austin may appeal that finding and [State Supreme Court] shall review the appeal based on the normal “any evidence” standard.”

In *Robertson v State*, <sup>25</sup> the State Supreme Court found that Robertson had a state created right under section 17-27-160(B) because his prior “PCR counsel was not qualified and the court held this constitute sufficient reason to permit a successive

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<sup>24</sup> 409 S.E.2d 395 (1991)

<sup>25</sup> 795 S.E.2d 29 (2016)

application under section 17 -27-90. In fashioning a remedy for lack of qualified PCR counsel under section 17 -27- 169(B), the Court based the legal standard of Martinez Strickland test in showing ineffectiveness of PCR counsel as the appropriate test.

On the other hand, where constitutional counsel ineffectiveness is being raised by PCR counsel on PCR, the State Supreme Court in *Aice v State*<sup>26</sup> would not fashion a remedy in that case because of the following:

- A) Aice filed his first application for PCR. Aice PCR petition was denied by the PCR court. Aice then petitioned State Supreme Court for certiorari to review raising three additional grounds for post-conviction relief. The State argued that Aice were procedurally barred, since they had not been raised before the lower PCR court. The State Supreme Court denied Aice relief on appeal. After unsuccessful on federal habeas corpus, Aice filed a second PCR Petition that was the same raised in Aice first PCR that could have been raised then and there because those claims were known to Aice.
- B) The Supreme Court did not apply the sufficient reason test in Aice because Aice three grounds was already known to him in his first PCR. Plus those grounds were not substantial for relief.
- C) The Court in Aice never fashioned a remedy and a standard of review of the deficient/ prejudice prongs of Strickland of finding ineffectiveness of non

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<sup>26</sup> 409 S.E.2d 392 (1991)

constitutional PCR counsel because Aice claims lacked merit. As a result of Aice claims lacking merit, the Supreme Court held that the contention that prior PCR counsel was ineffective is not per se a "sufficient reason" allowing for a successive PCR application under § 17-27-90.

In Mack State<sup>27</sup> and Austin cases, non constitutional PCR counsel violated the PCR appeal statute. Because of the applicants in those cases did not have knowledge of PCR counsel not filing the appeal, this Court stated that Mack and Austin met the substantive components of not knowing. Then in both Austin and Mack, the State Supreme court adopted the standard of review in Strickland v Washington in determining that PCR counsel was ineffective. But in Aice v State something more is required in order for State Supreme Court to fashion a remedy and apply Strickland standard of review test to ineffectiveness of PCR counsel failure to adequately raise ineffectiveness of constitutional counsel claims.

This Court should make a ruling that South Carolina before, during and after trial procedures on direct and collateral review to raise a claim of ineffectiveness of constitutional counsel claims are unconstitutional as applied to the Petitioner and/or on its face.

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<sup>27</sup> 858 S.E.2d 160 (2021)

CONCLUSION

The Petitioner prays that this Court grant this petition and such other and further relief this Court seems just and proper.

DATED *2/16/26*

*Dustin Williamson*

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