IN SC COURT OF APPEALS

STATE
V
Robert Koon

Hon. J Manic Mayes III
Cherokee CO

MOTION TO PROCEED PRO SE
MOTION FOR REHEARING

The Appellant Reiterates his EARLIER MOTION TO PROCEED PRO SE which was DENIED AND MOVES to REPRESENT HIMSELF upon the PETITION FOR REHEARING AND ASK COUNSEL BE RELIEVED.

AS A INITIAL MATTER, AS SET FORTH IN the MOTION to REMAND Appellant MOVES this COURT to REMAND the CASE to HEAR the testimony OF RICHARD WEAVER, IN REGARD to the PROSECUTORIAL MISCONDUCT AND BRADY CLAIMS THAT WERE RAISED IN the PRO SE Rule 29(b) FILED 10/10/10.

AS the STATE FALSELY REPRESENTED ON RECORD this RETIRED 30 yrs Detective MAJOR COULD NOT BE LOCATED by the SOLICITORS OFFICE to be PRESENT At the Rule 29(b) HEARING ON 6/27/11.

WITHOUT the PRESENCE OF Detective RICHARD WEAVER the APPELLANT COULD NOT PROCEED on his PROSECUTORIAL MISCONDUCT / BRADY ALLEGATIONS (IE)

DET. WEAVER PROVIDED A FALSE AFFIDAVIT to OBTAIN ARREST WARRANTS FOR CUDD-COVELACE AND STYLLETO OFFENSES AND SOLICITOR KNOWINGLY USED FALSE WARRANT AVERMENTS to OBTAIN the INDICTMENT, THIS INVOLVES ANOTHER INSTANCE OF POLICE MISCONDUCT pur to Rule 406 SCRE

APPELLANT objected from the outset OF SCCID Representing him AS A CIVIL SUIT WAS FILED in KOON V. SLADE 99 CP 11 , AND THAT CREATED A CONFLICT of INTREST, w/ Appellate Defense. THIS CONFLICT MANIFESTED ITSELF IN Robert BACHAR Refusing to ~~#~~ BRIEF the POLICE / PROSECUTORIAL MISCONDUCT ISSUES AND his FAILURE/ REFUSAL to MAKE A FACT SPECIFIC MOTION to REMAND.

IN SO FAR AS A Petition For Rehearing Appellant Asserts this Court Misapprehended the Miscarriage of Justice Issue As Well As Crucial Fact Appellant Should have Never been Charged w/ Second Degree Burglary As No Evidence has Ever Existed to Show this Crime occured At Night, And thus Corpus Delecti Of A Nighttime Burglary Did Not Exist. In Fact Solicitor Failed to Set For A Substantial Factual Basis For the plea in Re to Nighttime Element which Appellant Protested His Innocence At the plea See NC v. Alford 90 SCT (1970)

This Court Should take Judicial Notice of Koon UST. 595 SE2d 456 (2001) In which the Supreme Court Reversed opposite Side of Duplex As it Did Not Allege Nighttime Element.

The Simple FACT OF MATTER IS PROSECUTORIAL MISCONDUCT ISSUES WERE NOT able to be PRESENTED W/OUT RICHARD WEAVER testimony.

APPELLATE DEFENSE DEFICIENT REPRESENTATION IN the FAILURE to DELINEATE the POLICE MISCONDUCT COULD HAVE been FORESTALLED HAD the APPELLANT been GRANTED his RIGHT to PROCEED PRO SE AND his FACT SPECIFIC MOTION to REMAND be HEARD by the COURT.

A TERRIBLE INJUSTICE has been COMMITTED AS APPELLANT has LWOP BASED ON A CRIME STATE CANNOT PRODUCE ONE iota OF PROOF EVEN OCCURED

APPELLANT CASE IS ON POINT with STATE v. Wiley 91 SE 382 (SC 1917)

LACK OF Diligence NOT Shown

IN producing EVIDENCE of Witnesses who were at court, where ACCUSED DID NOT KNOW the Witnesses were present At the DIFFICULTY or had personal knowledge thereof.

HANNY COVELACE EXISTENCE WAS NOT KNOWN At the time of trial As DEFENSE ASSUMED COVELACE & CUDE-COVELACE HAD DIED (2) Weeks prior to the offense.

IT is FOR JUDICIAL NOTICE that Riddle V. ORMINT 631 SE2d 70 (2006) INVOLVED SAME Police, SAME solicitor, SAME COUNTY, SAME YEAR (96) AS KOON

Appellant Seeks Rehearing

Respectfully

LCI
PO Box 205
Ridgeville SC 29472

MAY 2?/2016

Certificate of Service

A true copy was served upon Al Al Wilson PO Box 11547 Columbia SC 29211 this 29 day May 2013 by US Mail

pur 28 USC 1746
I affirm under oath

The South Carolina Court of Appeals

The State, Respondent,

v.

Robert H. Koon, Appellant.

Appellate Case No. 2011-200608

ORDER

Appellant's motion to relieve counsel and proceed *pro se* is denied. Because Appellant is represented by counsel, this court declines to consider Appellant's remaining *pro se* filings. *See Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 397 S.E.2d 907 (1989). Appellant is further prohibited from filing any additional *pro so* motions or requests in this matter.

FOR THE COURT

Columbia, South Carolina

cc:
David A. Spencer
Robert M. Pachak
Alan McCrory Wilson
John W. McIntosh
Salley W. Elliott

Robert Koon, 227826
Lieber, C.I. E-B
P.O. Box 205
Ridgeville, S.C. 29472

Re: 2013-000072 (Denial of first PCR).

Hon. Daniel Shearouse
S.C. Sup.Ct. Clerk
P.O. Box 11330
columbia, S.C. 29201

Dear Clerk:

I believe their is a motion to reconsider the enclosed case, but if not, please assign a new case number to clarify a material fact relevant to denial of first PCR due to no transcript of 1986 plea was transcribed in 1992 some five years after the first PCR 87-CP-11-103 when case was remanded fir Austin review #93-MO-308.

Would you please send me a clock stamped copy.

I hereby and through affirm a true copy "Certificate of Service" was mailed to Donald Zelenka, S.C. Att.Gen. Office P.O. Box 11549 Columbia, S.C. 29210 this ___ day of 2013 by U.S. mail.

Very Sincerely Submitted,

, 227826
Robert koon, 227826

IN THE SOUTH CAROLINA SUPREME COURT

Robert Koon, 227826
Case No: 86-GS-11-291,292 - Cherokee County

(2013-000072 DENIAL OF FIRST PCR)

The Petitioner was convicted at a 1986 guilty plea, in which he received four year for (4) four counts of second degree burglary. In 2004 one count of second degree burglary was vacated, Koon v. State,595 SE2d. 456 (2004).

In 1987 Petitioner filed a PCR 87-CP-11-103 that PCR was denied October 1987 and ~~an~~ NO appeal was filed.

On Petitioner's third PCR in 1993 this court remanded to circuit court for a Austen review, 93-MO-308 Koon vs. State.

It has recently been discovered the 1987 PCR Court did not have the 1986pleas transcript (at the time of the PCR,) thus it would be impossible to have 1987 PCR court make a ruling that the 1986 plea was in compliance with Boykin v. Alabama 89 S.Ct. 1709 (1989). In fact the pleas transcripts were not transcribed until 1992, (five years after the PCR hearing,) to complete the record on appeal in 93-MO-308 mentioned above.

86-GS-11-289 is in the Court of Appeals.[2] The 1986 transcripts shows that Petitioner was not advised of his right to Confront his Accuser, see:Moore v. State 732 SE2d. 817. (2012) required Boykin waiver to be on the record, also, petitioner

[1] AND IS NOT BEING ATTACKED IN THIS PETITION.

claimed his innocents at the plea, and trial court did not establish a factual basis for the plea to the point of guilt to the accused, in violation of N.C. v. Alford 90 S.Ct. (1970).

The Petitioner asserts this fact was not recognized by him, and not disclosed by PCR counsel Wade S. Weatherford III (Magistrate judge) or the state of South Carolina (Et.AL). However, this fact presupposes that there could not ever be a first PCR without a transcript of guilty plea in question 87-CP-11-103 thus per Odom v. S.C 523 SE2d. Petitioner has not has his bite at the apple. Attorney Donald Zelenka has his PCR heard without the ~~return~~ TRANSCRIPT, due to this gross procedural irregularity Petitioner was denied due process Washington v. State 478 SE2d. 833 (1996)(EG) PCR.

This court only need review the plea transcript to discern Boykin v. Alabama and N.C. v. Alford violation ON THE RECORD ALONE. WRIT SHOULD ISSUE or case be remanded for further proceeding.

Very Respectfully Submitted,

Robert Koon, 227826
Dated: 5-17- 2013

RE: STATE v. Robert Holland Kool
Hon. J. MARK HAYES II

Clerk of Court
SC Court of Appeals
Po Box 11629
Columbia, SC 29211

6/25/12

Sir PLEASE FIND ENCLOSED MOTION TO PROCEED PROSE, AND MOTION TO REMAND ALONE with PROOF OF SERVICE ON OPPOSING COUNSEL - HANDWRITTEN

ROBERT KOOL (Paralegal)
MCI
386 Redemption Way
McCormick SC
29899

CC: SALLEY W. ELLIOTT (ESQ)

year sentence. The Department erroneously shows two twenty-three year sentences from Chester, with the twenty-three year sentence for "S00004 Armed Robbery" running consecutively to the twenty-three year sentence for "S00001 Armed Robbery."

In addition, case number 82-GS-12-496, also in Chester county, dealt with "Robbery and Grand Larceny." After the Appellant pled guilty, the sentence report states, "The sentence of the Court is that the Defendant Kaizel Jr. Mosley shall be placed in the custody of the Board of Corrections of the State of South Carolina for a term of Ten (10) years-consecutive." Apparently the Department must enter this sentence separately, which implies two ten-year terms, because their summary sheet shows for S00002 Robbery a ten year sentence and for S00003 Grand Larceny another ten year sentence The issue of whether this sentence imposed one ten year sentence or two ten year sentences was not resolved until July 28, 1999. Prior to that date, as explained below, the Department showed these sentences running consecutively to each other.

The Department alleges that the initial sentence in Chester was fifty-six years I find that it is thirty-three years.

Finally, the Department's summary sheet shows that the Appellant has a record in Marlboro county for Assault and Battery of a High and Aggravated Nature The Appellant pled guilty in McCormick county to this charge and was sentenced to the time shown on the summary as from Marlboro I find that these errors call the accuracy of the Department's records into question.

In 1992, the Department's summary sheet showed the following information on the Appellant:

Offense No.TypeDate*SentenceCounty Originating

S00004 Asslt/Bttry-HAAN12/10/19916 mos Greenville

S00003Agr.Asslt-ID Weapon ☐ 06/05/19925 yrsGreenville

S00002Robbery10/25/198210 yrsChester

S00001Armed Robbery10/25/198223 yrsChester

TOTAL TIME SHOWN ON SUMMARY 38 YRS, 6 MOS

*Dates taken from county sentencing records/clerk of court documents

The Department had generally the correct information. (The only error appears to be the type of assault identified in S00003 from Greenville as Aggravated Assault instead of Assault on an Officer.) The sentences from Chester are shown as one twenty-three year sentence and one ten-year sentence. Beginning in June 1999, someone identified as "EER" on the Offender Summary Sheets entered the following notation, "On 6/23/99 entered missing charged [sic] #4 Grand Larceny and restack all charges and modified the consecutive structure EER " The "missing charge #4" apparently refers to the additional twenty three year sentence from Chester. Even if it was necessary to enter this charge to show the additional cases from Chester, then the sentence should be shown as concurrent, not consecutive The effect of "restacking" gave the Appellant a total sentence of seventy-six years, six months.

On July 28, 1999, the notation reads, "Modified the CS structure on #3 per commitment order . EER " This note seems to indicate the change in the consecutive sentence listing which now makes the ten year sentence for Grand Larceny from Chester consecutive only to the twenty three year sentence for Armed Robbery, not the other ten year sentence for Robbery from Chester. This change dropped the total sentence time to sixty-six years, six months

Finally, there are two charges shown from Greenville county for Assault on a Police Officer. The copy of the sentencing sheet from Greenville only shows one count

The net effect of these changes is that the Department is changing the Appellant's sentence structure without proper judicial authority. In addition, the Appellant's counsel has stated that the modifications were done without advance written notice to the Appellant These actions by the Department have increased the Appellant's sentence unnecessarily and unlawfully.

Based on the foregoing, I **FIND AND ORDER** that the Department has violated the Appellant's Due Process rights. The Department's records shall be corrected within ten (10) days of the date of this order to reflect the Appellant's proper sentence as of June 1992 as forty three years, six months, as shown above from the county records.

AND IT IS SO ORDERED.

Carolyn C. Matthews

SC COURT OF APPEALS

HON J. MARK HAYES II

CHEROKEE COUNTY

STATE

V

Robert Holland Kool (PRO SE)

MOTION TO PROCEED PRO SE

THE APPELLANT hereby ASSERTS HIS SC CONSTITUTIONAL RIGHT TO PROCEED PRO SE. SC CONST. ART 1, SECT 3 AND 14.

AND MOVES THIS COURT TO ORDER COUNSEL Robert PACHAK TO HAND OVER HIS ENTIRE FILE; AND SEEKS A ORDER TO COMPEL Cherokee CO. CLERK OF COURT TO PROVIDE HIM W/ A TRUE COPY OF 86-ES-11-289 FILE. AND ALL MATERIAL THEREIN FROM WARRANTS, to Rule 27 (b) ORDER INCLUDING COPIES OF EXHIBITS ENTERED ON 6/27/11. APPELLANT IS A CERTIFIED PARALEGAL @ OLD DOMINION UNIV (1994) AND HAS KNOWledge OF FACTS AND LAW OF HIS CASE he ONLY ASKS he be ALLOWED to SERVE ORIGINAL

As of July 28, 1999, the Department's Offender Summary sheet shows the following under commitment information:

Offense No TypeDate*SentenceCounty Originating

S00008Asslt/Bttry-HAAN5 yrsMarlboro

S00007Asslt/Bttry-HAAN12/10/19916 mos.Greenville

S00006Asslt on Officer12/10/19915 yrsGreenville

S00005Asslt on Officer03/03/19875 yrsGreenville

S00004 Armed Robbery10/25/198223 yrsChester

S00003Grand Larceny10/25/19821 0 yrsChester

S00002Robbery10/25/19821 0 yrsChester

S00001Armed Robbery10/25/198223 yrsChester

* The dates shown are taken from the County records shown above The Department printout submitted to this court does not include sentencing dates

TOTAL TIME SHOWN ON SUMMARY

AS CURRENT SENTENCE:66 YRS, 6 MOS

The Appellant filed his Step 1 grievance in February, 2001 The warden's response was that the time was correctly calculated. The Step 2 grievance was filed and denied in May 2001 This appeal followed

ANALYSIS

The Division's jurisdiction to hear this matter is derived entirely from the decision of the

South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). In Al-Shabazz, the South Carolina Supreme Court held that inmates may seek review of final decisions of the Department in certain "non-collateral" or administrative matters (i.e., those matters in which an inmate does not challenge the validity of a conviction or sentence) by appealing those decisions to the ALJD pursuant to the South Carolina Administrative Procedures Act (APA). Al-Shabazz, 338 S C. at 376, 527 S E 2d at 754. In McNeil v. South Carolina Department of Corrections, a majority of the judges of the ALJD, sitting en banc, held that this tribunal's jurisdiction to hear inmate appeals under Al-Shabazz is limited to: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status, and (2) cases in which the Department has taken an inmate's created liberty interest as punishment in a major disciplinary hearing. McNeil v S.C Dep't of Corrections, No 00-ALJ-04-00336-AP, slip op at 4-5 (S C Admin. Law Judge. Div Sept 5, 2001) (en banc).

When reviewing the Department's decisions in inmate grievance matters, the ALJD sits in an appellate capacity. Al-Shabazz, 338 S C at 377, 527 S.E.2d at 754 Consequently, this tribunal's review of inmate appeals is confined to the record presented, id , and its inquiry into these matters is primarily concerned with ensuring that the Department has granted aggrieved inmates the process they are due when their constitutional rights are implicated Id. at 369, 527 S.E.2d at 750, McNeil, No 00-ALJ-04-00336-AP, at 5 ("[O]ur review is limited solely to the determination of whether the Department granted 'minimal due process' in reaching [its] decisions . ") Further, recognizing that prison officials are in the best position to decide inmate disciplinary matters, this tribunal will adhere to the traditional "hands off" approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the APA. Al-Shabazz, 338 S.C at 382, 527 S E 2d at 757, see also Pruitt v. State, 274 S.C. 565, 266 S E 2d 779 (1980) (stating the traditional "hands off" approach of South Carolina courts regarding internal prison discipline and policy).

However, notwithstanding the deferential standard of review, this tribunal must conduct meaningful review of the Department's actions to ensure that inmate grievances are addressed in a fair, reasonable, and efficient manner. Al-Shabazz, 338 S.C at 383, 527 S E.2d at 757. Recently, in Sullivan, the South Carolina Supreme Court affirmed that the ALJD's subject matter jurisdiction is limited to those cases in which Appellants claim the Department has deprived them of "state created liberty interests " Sullivan v. S C. Department of Corrections (Opinion No. 25704, filed August 25, 2003)

Accordingly, this court may address the Appellant's claims within these parameters. It is clear that the best evidence of the Appellant's convictions and sentences is the record sentencing sheet from the various counties involved. The dispute appears to arise from the Chester county sentences. As shown above, the Appellant was charged with and pled guilty to numerous crimes in Chester county There were five separate cases filed in Chester, and the Appellant pled guilty and was sentenced in each case The primary issue is the four armed robbery cases which resulted in twenty-three year sentences. In one case, 82-GS-12-519, the twenty-three year sentence was listed as "consecutive", the remaining three cases show the sentences as running concurrently I find that this should be read as one twenty-three

INITIAL BRIEF, FINAL BRIEF AND MOTION TO REMAND. AND NOT BE REQUIRED TO PROVIDE COPIES THEREOF DUE TO HIS INDIGENT STATUS

SC CONST. Allows its Citizens to REPRESENT themselves TO PROTECT them FROM ATTORNEYS - BASED ON FACTS SET FORTH IN RECENT MOTIONS (1) TO APPOINT OUTSIDE COUNSEL - Appellant has No choice but to Proceed PRO SE TO PROTECT HIS RIGHTS AND TO RAISE PROSECUTORIAL MISCONDUCT ISSUE - TO SECURE TESTIMONY OF (RET) Detective MAJOR - RICHARD F. WEAVER

Therefore, Appellant Seeks to Proceed PRO SE!

Robert H. Kool
PARALEGAL
MCI
McCormick SC 29835

(1) THAT THIS COURT will NOT ACKNOWLEDGE - MOTION TO APPOINT OUTSIDE COUNSEL BASED ON INHERENT CONFLICT OF INTEREST.

3

SC Administrative Law Court Decisions

CAPTION:
Kaizel Mosley, #113697 vs DOC

AGENCY:
South Carolina Department of Corrections

PARTIES:
Appellant
Kaizel Mosley, #113697

Respondent.
South Carolina Department of Corrections

DOCKET NUMBER:
01-ALJ-04-00808-AP

APPEARANCES:
n/a

ORDERS:

FINAL ORDER AND DECISION
(Grievance Lee129-01)

STATEMENT OF THE CASE

This matter is before the Administrative Law Judge Division (Division) pursuant to the Appellant's Notice of Appeal filed on June 8, 2001, in which the Appellant appealed a final decision issued by the Department of Corrections (Department) The Appellant contends that the Department has incorrectly calculated his sentence. The Department's position is that the sentence is correct as stated in the Department's computer system. This Appeal followed. Having reviewed the record submitted by the Department, the copies of the sentencing sheets from the various counties where the Appellant has been convicted, the applicable law and the briefs submitted by the parties, it is clear that the Appellant is correct and that his sentence should be reduced in the Department's computer system.

BACKGROUND

The case numbers, crimes, dates and sentences of this Appellant are summarized in the following chart with all information taken from the copies of the county sentence reports:

Case No TypeDateSentenceCounty Origin

82-GS-12-519 Armed Robbery10/25/198223 yrs, consecutiveChester

82-GS-12-496 Robbery and Gr Larceny10/25/198210 yrs, consecutiveChester

82-GS-12-521Armed Robbery10/25/198223 yrs, concurrent Chester

82-GS-12-495Armed Robbery10/25/198223 yrs, concurrent Chester

82-GS-12- 475Armed Robbery10/25/198223 yrs, concurrent Chester

87-GS-23-193Asslt on Officer03/03/19875 yrs, consecutiveGreenville

91-GS-23-4848 Not specified on copy12/10/1991 6 mos, consecutive Greenville

92-GS-35-0205Asslt/Bttry-06/05/19925 yrs, consecutiveMcCormick

High & Aggr Nature (HAAN)

TOTAL TIME CALCULATED 43 YRS, 6 MOS

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PEOPLE SEARCH REPORT

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This section lists current and historical people search records that share the same name and state as your search subject. The People Search Sur consolidated view of matching current and historical records for your subjects name across multiple public sources.

	NAME	AGE	ADDRESS / PHONE	PRE
1	**RICHARD F WEAVER** **MORE INFO** **RELATIVES:** ASHLEY F WRIGHT CHARLENE ATKINS WEAVER CARLA L WEAVER ← SPOUSE SIDNEY WEAVER KACEY V TORRES	65	ADDRESS 1: 1540 BALLENGER RD WELLFORD, SC 29385 (864) 574-8960 ADDRESS 2: 129 FAIRVIEW OAKS DR CAMPOBELLO, SC 29322 (864) 574-8960 ADDRESS 3: 2479 COUNTRY CLUB RD SPARTANBURG, SC 29302 (864) 574-8960	WELI CAM SPAI CHE SEE
2	**RICHARD FRANCIS WEAVER** **MORE INFO** **RELATIVES:** HELEN F WEAVER COLLEEN A WEAVER CLAUDE H WEAVER BRITTANY WEAVER MANUELA R RENDL	58	ADDRESS 1: 11765 KIMMIE DR HOLLYWOOD, FL 33026 (954) 437-4095 ADDRESS 2: 2485 KIMMIE DR HOLLYWOOD, FL 33026 (954) 434-0560 ADDRESS 3: 3300 SURF RD HOLLYWOOD, FL 33019	HOLI NOR COO RUTI SEE
3	**RICHARD F WEAVER** **MORE INFO** **RELATIVES:** DANIEL C WEAVER CLAUDETTE L WEAVER	72	ADDRESS 1: 9499 MILLBANK DR SARASOTA, FL 34238 (941) 918-4303 ADDRESS 2:	SAR/ NEW MAT POR SEE

Land transfers for Spartanburg County, Nov. 19-23, 2010

Published: Sunday, November 28, 2010 at 3:15 a.m.

Last Modified: Thursday, December 23, 2010 at 1:59 p.m.

District 1

Bradley & Son Properties,to,Richard & Carla Weaver,$223,000,Lot 39, 1540 Ballenger Rd, Wellford,Carriage Gate Subd,

Ashmore Homes Inc,to,William A & Tammy R Burnett,$160,000,Lot 15, 329 Caxton Farm Ct, Inman,Mitchell Farms Subd

District 2

IN THE COURT OF APPEALS
OF SOUTH CAROLINA
Cherokee COUNTY GENERAL SESSIONS
HONORABLE J. MARK HAYES II

STATE, ---------- RESPONDENT,

-V-

ROBERT HOLLAND KOON
MOTION TO REMAND APPELLANT

IN RE: 1986 CONVICTION FOR BURGLARY SECOND OF CUDD-LOVELACE INSURSUANCE COMPANY ON 3-28-1986
The APPELLANT FILED A MOTION FOR A NEW TRIAL (EX 2) BASED ON AFTER DISCOVERED EVIDENCE PUR TO Rule 29(b) ON OCTOBER 26, 2010 (ONE DAY PRIOR TO the SC Supreme COURT ISSUING A ORDER that STATED NO FURTHER COLLATERAL ATTACKS COU.. be FILED ON the 1986 CONVICTION without PERMISSON FROM the Supreme COURT (OCT 27, 2010)

The Rule 29(b) WAS BASED ON the ATTACHED AFFIDAVIT (EX 1) OF VICTIM HARRY M. LOVELACE which SET FORTH EVIDENCE that the POLICE AND solicitor HAD NO PROBABLE CAUSE TO OBTAIN A WARRANT OR INDICTMENT FOR 1 ENTERING DWELLING IN (EX 3) NIGHTTIME OF CUDD-LOVELACE INSURANCE CO. WITHOUT CONSENT WITH THE INTENT TO COMMIT A CRIME THEREIN 56-GS-11-389.

RHH

AND THAT the VICTIM AFFIDAVIT Showed Solicitor/ POLICE PRESENTED FAISE TESTIMONY to the MAGISTRATE to obtain the WARRANIT AND GRAND JURY TO OBTAIN the INDICTMENIT. AND that SOLICITORS REPRESENTATION At the PLEA that OFFENSE OCCURED At Nighttime WAS 'KNOWING USE OF FAISE TESTIMONY.' (EX 2, Rule 29(b) MOTION FILED PROSE by KOON)

HOWEVER, based ON FACT that NIETHER the Solicitor OR KOON COUNSEL (who himself was A EX-SEVENITH CIRCUIT SOLICITOR) COUID LOCATE (EX 6) DETECTIVE RICHARD WEAVER the INITIAL PRIMARY ALLEGATIONS OF 'PROSECUTORIAL MISCONDUCT' COULD NOT be PRESENTED At Rule 29(b) HEARING - (IE.) That POLICE/ Solicitor PRESENTED FAISE TESTIMONY TO MAGISTRATE, GRAND JURY AND PLEA JUDGE IN RE: TO the CUDD-LOVELACE OFFENSE OCCURING At Nighttime, AND this CONSTITUTED PROSECUTORIAL MISCONDUCT. Riddle v. Ozmint 631 S.E.2d

However, Detective RICHARD WEAVER has NOW been LOCATED AND thus the ORIGINAL Allegations OF PROSECUTORIAL MISCONDUCT CA NOW be FULLY PRESENTED. the AFFIDA TESTIMONY OF the VICTIM CLEARLY PR

the ISSUE IF the VICTIMS themSELVES COVID NOT STATE that OFFENSE OCCURED AT NIGHT ONLY that it OCCURED between 5pm - 9 AM how COULD POLICE SWEAR UNDER OATH that the OFFENSE OCCURED at NIGHT.

This is the DISPOSITIVE QUESTIONS OF this APPEAL.

① DID POLICE submit FAISE TESTIMONY TO MAGISTRATE TO OBTAIN WARRANT FOR NIGHTTIME BURGLARY

AND

② DID Solicitor TAKE that SAME ARREST AFFIDAVIT TO GRAND JURY TO OBTAIN A INDICTMENT FOR Nighttime BURGLARY KNOWING IT to be FAISE

AND AGAIN these ISSUES COULD NOT be PROVEN WITHOUT the testimony OF DETECTIVE RICHARD WEAVER. AND APPELLANT OFFERED Numerous INSTANCES PUR TO SCRE 406, that POLICE/ Soliciton commited MISCONDUCT, MADE FAISE STATEMENTS, (etc) to Show A Habit OR ROUTINE OF MISCONDUCT to SUPPORT ALLEGATION OF NIGHTIME WAS merely A CONTINUATION OF Habit OR ROUTINE OF MISCONDUCT SEE SCRE 406

IN ADDITION, the VICTIM HAS been IN CONTACT WITH DETECTIVE WEAVER who HAS STATED he IS "WILLING TO HELP APPELLANT!" (EX 4) (WEAVER TESTIMONY CRUCIAL TO THIS CASE)

The APPELLANT ASKS THIS COURT TO REMAND THIS CASE TO ALLOW HIM TO PROCEED ON ALLEGATIONS SET FORTH IN his ORIGINAL Rule 29(b) MOTION AS DETECTIVE RICHARD WEAVER has NOW been LOCATED. AND HAS STATED he IS WILLING TO ASSIST the APPELLANT.
IN ADDITION, @ the 29(b) hearing VICTIM TESTIFIED the STRUCTURE WAS A "TRIPLEX" with A APARTMENT w/ TWO OFFICES therein" AND has SUBMITTED A AFFIDAVIT Attesting to the SAME (EX 5)

The APPELLANT SEEKS A REMAND TO CLARIFY THIS ISSUE

1 WAS STRUCTURE ENTERED IN CUDD-LOVELACE INDICTMENT A ACTUAL DWELLING PUR 16-11-310 AS ORIGINALLY ALLEGED IN INDICTMENT - OR WAS STRUCTURE A building AS CONSTRUED by the COURT IN KOON V. STATE 518 SE2d 4156 (2004)

APPELLANT ASSERTS PUR TO STATE V. STEADMAN 257 SC 528, 186 SE2d. 712 (1972)

(EX 1)

AFFIDAVIT

Robert Koon V. State of SC 06 CP 11 513

I, Harry M. Lovelace, hereby give the following statement freely and voluntarily that is true and correct, under oath:

I was an employee of Cudd-Lovelace Agency in Gaffney, SC in March 1986. I recall that a break-in occurred at the office location between the close of business on Thursday, March 28, 1986 and the opening of the office on Friday, March 29, 1986. The break-in was discovered by Mr. J.D. Cudd who was assisting the staff of the office at the time. Mr. Cudd is now deceased. My recollection of details about the break-in and subsequent investigation is diminished by the length of time since the event occurred and the fact that my father had passed away a couple of weeks before the break-in. There is some question as to when the break-in occurred and whether or not it would necessarily be considered a "night time" event. I can not present evidence to refute the allegation that it occurred at "night time"; however, I am familiar enough with the routine of opening and closing the office that I can provide a time frame which might, at the least, bring into question whether or not the break-in had to have occurred at "night". For years prior to and subsequent to the break-in, Cudd-Lovelace Agency had posted hours of operation of 9:00 am to 5:00 pm Monday, Tuesday, Thursday, and Friday, and 9:00 am to 12:00 pm on Wednesday. The staff normally arrived no earlier than fifteen minutes before opening (8:54 am), and typically closed the office no late than 5:15 pm. It would have been very unusual for an employee to arrive before 8:30 am or close later than 5:30 pm. I would confidently testify that the break-in could have occurred anytime between 5:30 pm March 28, 1986 and 8:30 am March 29, 1986. I believe that an examination of the investigation report will show an initial contact time from Mr. Cudd that is consistent with the time frame I have referenced. My position is that the break-in may very well have occurred during a time period *other than* "night time".

Further AFFIDAVIT sayeth not

Harry M. Lovelace Daytime Phone: 864-838-1381

Cc: Henry D. McMaster, State Attorney General
Hon. J. Mark Hayes II, Judge

Sworn and Subscribed before me this 8th day of April, 2010.

My Commission expires:

Notary Public 11/28/17

Ex 4

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

July 16, 2012

Mr. Robert H. Koon. #227826
Lieber Correctional Institution
PO Box 205
Ridgeville, SC 29472

Re: Your case

Dear Mr. Koon:

I got your new address. I have written Detective Weaver and I have asked for him to give me an affidavit concerning the Cudd-Lovelace arrest warrant. It needs to be in his words not mine because he may be subject to cross-examination. Mr. Lovelace went to see him the other day but Weaver's wife said he has been in the hospital for the past two weeks following heart surgery. She said she was familiar with your case and her husband wants to help.

Sincerely,

RMP

Robert M. Pachak
Appellate Defender

RMP/tkb

EX 4

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

August 20, 2012

Mr. Robert H. Koon, #227826
Lieber Correctional Institution
PO B ox 205
Ridgeville, SC 29472

Re: Your case

Dear Mr. Koon:

Mr. Lovelace did speak to Mr. Weaver's wife on July 9, 2012, and she said Mr. Weaver had been in intensive care the past two weeks following heart surgery. I checked again on August 3, 2012, and he said he had not heard anything and would try to call. On August 15, 2012, Mr. Lovelace emailed and said he left several cell messages and has gotten no response. He did say he mailed him a letter on August 13, 2012. I am mailing a letter to Mr. Weaver asking that he submit a notarized affidavit concerning what he knows about the Cudd-Lovelace burglary and the circumstances surrounding the arrest warrant concerning the nighttime allegation. Hopefully, he is doing better. Our office does not have an investigator.

Sincerely,

RMP

Robert M. Pachak
Appellate Defender

RMP/pcm

To Whom It May Concern:
Attorneys

Re: Child tortured at S.C. State Hospital coerced into plea in 1986 used as basis for Natural Life Sentence for property crime seeks justice after thirty (30) years.

In 1982, a group of eight (8) children who were patients of the S.C. Department of Mental Health (SCDMH) were tortured and abused, forcibly injected against their will with high dosages of psycotropic drugs, being kept naked in a strip cell, four pointed to beds and forced to drink fruit juice infused with psycotropic drugs. A nurse concerned about the abuse reported the maltreatment of these children to the State Law Enforcement Division (SLED) prompting their investigation. Others became involved in the investigation, including Attorney W. Gaston Fairey, a renowned author on S.C Law; South Carolina Protection and Advocacy for the Handicapped; Child Advocate Attorney John D. Elliott; and Attorney Gary Mallard. As a result of the investigation, a federal civil rights action was filed in the U.S. District Court **Robert K. (Child) v Robert Bell, SC Dept of Mental Health.** The case was settled out of court for in excess of $200,000. In 1983, Robert K. was Robert Holland Koon (RK). He was fourteen (14) years old at the time he experienced the abuse. After the abuse at the State Hospital, RK received absolutely no follow up care, counseling, or any other treatment for the abuse and torture he incurred and seems to have suffered from severe Post Traumatic Stress Disorder (PTSD) as a result. He began to manifest symptoms of PTSD: In 1984, RK stole the Mayor of Gaffney's daughter's vehicle and drove it to Myrtle Beach, SC for a high school graduation party. He was arrested and sentenced to probation, whereupon he stole the Mayor of Gaffney's wrecker and crashed into a S.C.H.P. patrol car – within two weeks of being released on probation! At that time, RK was sentenced to one to six years under the Youthful Offender Act. Upon his release in March 1985, RK received the proceeds from the $6,000 settlement – the remaining balance after his mother purchased a car and home furnishings for the house that his father set on fire in January of 1984. During the time period between his release from the S.C. Department of Mental Health and Juvenile Custody in December 1983, RK began to consume large quantities of alcohol and became a black-out alcoholic. He had still received no treatment or counseling for the abuse suffered at the SCDMH. In May, 1985 he was cited for Driving Under Suspension and was placed in the custody of the S.C. Department of Corrections (SCDC). While in SCDC, he attempted to commit suicide several times and was placed in the Gilliam Psychiatric Hospital at Kirkland under the care of Dr. Mansoor Daniels. RK was released from SCDC in December of 1985. He continued to consume large quantities of alcohol as a means of coping with the PTSD.

On March 14, 1986, RK was arrested in Jonesville, SC where he was located approximately five miles from a truck stolen from Gaffney with no evidence whatsoever to connect him to the stolen truck or keys taken from a business. RK was charged with two (2) counts of Second Degree Burglary and Larceny of the truck. The charges were made by Morgan Doug Harvey of the Gaffney City Police Department. While in jail, he retained Gary Paul Mallard as his counsel and was subsequently released on bond which his mother posted.

On April 2, 1986, RK was rearrested and charged without any proof whatsoever of two more nighttime Second Degree Burglaries which allegedly occurred sometime between 5:00pm on March 28 and 9:00am on March 29, 1986 but listed only as occurring at night. Following RK's

arrest, his $10,000 bond was revoked. Interestingly enough, he was also charged with a Third Degree Burglary of the law office of Lt. Governor Mike Daniel who was running for Governor at that time. These charges were made by Chief of Detectives Richard Weaver. Again, no proof has ever been presented that RK committed any of these offenses. None. Large quantities of alcohol were allegedly stolen from Mr. Daniel's office according to Det. Weaver at the preliminary hearing, and these charges were dismissed as they were "not conducive to the Governor's race" and no evidence existed to show RK committed the break in.

In May 1986 while in jail awaiting trial on these charges, police left a ten foot ladder on the recreation field and RK was conveniently (according to Gary Mallard's testimony) allowed to escape from the charges for which the Gaffney City Police had no evidence. Several weeks later RK was captured. During the next term of General Sessions Court, Chief of Police Chris Skinner entered RK's jail cell and encouraged him to take a ten (10) year plea; this was done in spite of the fact that RK's attorney Gary Mallard had previously explicitly told Chief Skinner not to speak with RK about the case without him (Mallard) being present (testimony at June 27, 2011 hearing) **State v Koon** 86-GS-11-289 motion for a new trial. After his conversation with Chief Skinner, RK was escorted to the Cherokee County Courthouse to enter a ten year plea. RK's decision prompted by Skinner's statement that if he did not plea, he would receive a forty (40) year sentence. It was only after this action that Attorney Mallard was contacted in Greenville and informed of his client's plea and he was advised to come to Gaffney. Mr. Mallard represented RK on the March 14, 1986 offense involving the stolen truck. Public Defender Harry Cline represented RK on the March 28-29, 1986 charges. RK proceeded to enter a plea, but the court without any evidence to convict of the offenses could not and did not "establish a factual basis" for the plea as required by **NC v Alford.** In fact, during the plea, RK stated "I did not do these crimes" but the court still accepted the plea without establishing a factual basis. Stating that he wanted to give RK a forty year sentence, The Hon. Jonathan McKown gave RK ten years. RK immediately filed a P.C.R. alleging his plea was involuntary and the result of coercion and the ineffective assistance of counsel, the police's failure to disclose that alleged mud samples that Morgan Harvey portrayed to RK connecting him to the stolen truck / March 14th burglary were inconclusive, and the fact that the plea was negotiated without counsel present. AND RK WAS NOT ADVISED OF HIS RIGHT TO CONFRONTATION OF ACCUSER. (1)
In October 1987, RK was denied relief in the P.C.R. hearing in which he was represented by Wade S. Weatherford. Mr. Weatherford would not file an appeal and the transcript of the hearing wass subsequently destroyed. In 2004 (17 years later) the SC Supreme Court granted a review of the 1987 P.C.R. **Koon v State** 595 SE2d 456 (2004), holding that Weatherford was ineffective for failing to file an appeal. The March 29, 1986 offense was vacated as it did not allege nighttime element. The basis of the Second Degree Burglary is that it allegedly occurred at night. In 2010, Harry Lovelace, the owner of Cudd-Lovelace Agency that was the location of the March 28, 1986 offense, came forward with a sworn affidavit stating that no evidence existed that the break-in offense occurred at night as required to establish Second Degree Burglary. The Cudd-Lovelace Agency and Stylette Salon offenses which were alleged to have occurred on separate dates actually occurred at the same time between 5:00 pm March 28th and 9:00 am March 29th. However, the police misrepresented the date of the offenses and of nighttime occurrence.

(1) MOORE V. STATE 399 SC 641, 732 SE2d. 871 (9/26/2012) ("REQUIRES ON THE RECORD WAIVER")

(2)

During the June 27, 2011 motion for a new trial, Mr. Mallard testified that no evidence existed to connect RK to any of these crimes and the plea transcript sets forth no factual basis as required by law. In spite of this, the court denied the motion for a new trial, determining that RK should have discovered earlier that the police misrepresented the facts and that no evidence existed to show the crime occurred at nighttime. In **Koon v State** 643 SE2d 680 (2007), it was held the RK received two strikes (under three strike law) at this one 1986 plea and thus he was properly sentenced to Life Without Parole for his 1986 conviction. RK's life sentence is predicated on his 1986 plea. He did not receive a mental evaluation before his 1986 plea despite the fact that his attorney knew he had a history of mental problems, including suicide attempts, and possibly PTSD stemming from his abuse and torture at the State Hospital prior to his plea. This is a major constitutional issue that has never been addressed, and a viable issue under S.C. law. Even after the plea and while serving the ten year sentence, RK was twice placed in SCDC's Gilliam Psychiatric Hospital for attempted suicide. In fact, RK's SCDC history from 1986 to 1993 shows extreme behavioral problems toward authority, likely a result of his childhood torture and abuse at the State Hospital and resentment from being coerced into a plea that placed him in a maximum security prison due to his escape.

At his 1998 competency hearing, the State Hospital found RK competent but could not review the 1982 records of torture and abuse as those records are "sealed by the court" and remain sealed. In 2008, the SC Supreme Court held that no statute of limitations exists on the issue of competency to stand trial. Therefore, RK has a viable issue on failure to be evaluated prior to his plea. RK is now attempting to present this to the SC Supreme Court, which stated in an October 27, 2010 order that he could not file any collateral attack on the 1986 conviction without their permission. Chief Justice Jean Toal (for the court) stated that the 1982 State Hospital records of RK's torture and abuse should be unsealed so that he can show that "suffering from untreated and undiagnosed Post Traumatic Stress Disorder that he was unduly susceptible to being encouraged by an authority figure to enter a plea to offenses he was not guilty of due to his fear and intimidation grounded in his abuse at the State Hospital and no evidence existed then or now to show that RK should have been charged or indicted and his first two strikes are the result of police misconduct by contacting a represented defendant without counsel present despite specific instructions not to do so, and presenting false evidence to the magistrate in order to obtain a warrant and indictment when no proof existed to connect him to the crimes and he only pleaded guilty due to his PTSD and fear of authority figures as a result of the documented torture and abuse he suffered while at the State Hospital. The court records of **Robert K. v Robert Bell et al** Establish that eight (8) children were tortured and abused. Two committed suicide within three years of suffering the abuse, two are now serving life sentences. The status of the other four is unknown. RK was never treated or diagnosed and, more importantly, was never given a mental evaluation prior to his coerced 1986 plea.

In the interest of justice, RK is seeking to have his 1986 plea **vacated** to remove two of the three strikes under the three strike Life Without Parole law. He has served seven (7) years on the 1986 plea and had served fifteen (15) years on the 1998 trial for Second Degree Burglary. In all he has served over twenty-three (23) years and has paid his debt to society without question. However, the torture and abuse he suffered as a child has never been addressed and should play a key role in his being resentenced. Since the S.C. Supreme Court has "estopped" RK from an appeal without their permission, RK seeks to have an attorney: procure his mental health records from

the State Hospital that are sealed as well as his SCDC mental health records; prepare a petition asking the S.C. Supreme Court to allow him assent that he should have had a mental evaluation before his 1986 plea was accepted based on their recent decision and the fact that his record of torture and abuse has been sealed and no factual basis was established at plea and no evidence connects him to the offenses. If you are interested in assisting RK correct a terrible injustice that began with a child being tortured and abused by the State and culminated in him serving natural life for offenses that the State has no proof he committed, please contact him or me as follows:

Robert Koon 227826
Lieber C.I.
PO Box 205
Ridgeville, SC 29472

Harry M Lovelace
PO Box 71
Gaffney, SC 29342
(864) 838-1381

RK is also seeking Gov. Nikki Haley recommend to the S.C. Parole and Pardon Board that his sentence be commuted to time served.

In between his 1986 and 1998 sentence, RK earned a paralegal degree from Old Dominion University in Virginia. However, due to his untreated PTSD and problem as a blackout alcoholic he could not adapt to society without professional treatment / counseling for his childhood torture and abuse. Since 1986, RK has continuously protested and fought the coerced plea to no avail – to no avail because the issue of his mental competency has never been addressed.

Robert Koon
S/ LCI
PO Box 205
Ridgeville SC 29472

June 3, 2012

Re: Miscarriage of Justice in the case of Robert Holland Koon

To Whom It May Concern:

Please find enclosed numerous items of correspondence I have sent to the courts, solicitors, and the Governor on behalf of Robert Koon. Mr. Koon is serving Life Without Parole under the 'three strikes' law for a 1998 second degree burglary conviction. His sentence was enhanced from fifteen (15) years to natural life based upon his two previous 1986 convictions. As the victim of his 1986 offense, I have for the past several years attempted to help Mr. Koon obtain his freedom as I will attest that there is absolutely no evidence that his second 'strike' occurred during the nighttime and should therefore not be considered a strike under SC law. After a hearing in June 2011, Judge Mark Hayes denied Mr. Koon's motion for a new trial on his 1986 conviction, stating in essence that Mr. Koon should have discovered this fact earlier and failed to address the fact that the State never had any evidence to even charge much less induce a plea of nighttime burglary. As part of the plea, Mr. Koon (nineteen years old at the time) received two (2) strikes at one plea and pleaded guilty to an offense the State can not show even occurred as there is no evidence of nighttime entry. Mr. Koon has served over fifteen (15) years for the 1997 office burglary and, without the unjust enhancement; he would be released for time served.

We are seeking concerned citizens, attorneys, judges, and Christians to petition Solicitor Barry Barnette to consent to the pending motion for arrest of judgment the Life Without Parole sentence filed with the trial judge The Honorable John C. Hayes III (York county) and to allow Mr. Koon to be released to a Christian-based halfway house – possibly Jumpstart of Spartanburg or Hope House of Greenwood. Mr. Koon has given his life to God, and, despite the hardships, he has kept his faith in God. Having developed a relationship with Mr. Koon over the past several years, I believe that he would be a law-abiding and productive citizen upon his release.

I would encourage all interested persons to contact the following individuals to assist Mr. Koon in obtaining his release:

Ms. Salley W. Elliott, Office of the Attorney General, PO Box 11549 Columbia, SC 29211. (803) 734-3737. She is the attorney overseeing the appeal.

Mr. Barry Barnette, Solicitor, Seventh Judicial Circuit, 180 Magnolia Street, Spartanburg, SC 29304. (864) 596-2575. He is the solicitor over the pending motion for arrest of judgment.

Governor Nikki Haley, Office of the Governor, 1205 Pendleton Street, Columbia, SC 29201. (803) 734-2100. Gov. Haley could pardon Mr. Koon or at least commute his sentence.

Please call and/or write these officials and ask them to review Mr. Koon's case and correct what amounts to a travesty of justice. We are also looking for someone who will create a website to inform the public of Mr. Koon's situation. No citizen should be subjected to Life Without Parole when there is no evidence to support the underlying offense and evidence of courts refusing to render equal justice under the law.

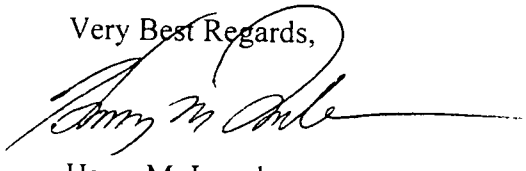
If you would like further information or have any questions, please contact me:

Harry M. Lovelace
PO Box 71
Gaffney, SC 29342

Or

Robert Koon 227826
MCI
386 Redemption Way
McCormick, SC 29899

Very Best Regards,



Harry M. Lovelace

Enclosures (Copies of):
- Letter to Governor Sanford
- Affidavits (2) April 8, 2010 and March 7, 2012
- Letter to Judge J. Mark Hayes II (January 6, 2011)
- Letter to Detectives Skinner and Weaver
- Letter to Solicitor Barry Barnette (January 6, 2011)
- Letter to Solicitor Barnette (August 4, 2011)
- Letter to SC Parole and Pardon Services (cover letter for this letter)
- Jumpstart info sheet

Governor Mark Sanford
Office of the Governor
PO Box 12267
Columbia, SC 29211

Harry M. Lovelace
31 Bo Lane
Gaffney, SC 29342
(864) 838-1381

Re: Commutation of Sentence - Robert Holland Koon

Dear Governor Sanford,

I am writing as the victim in Mr. Koon's 1986 conviction, which is set forth in the attached letter to the Attorney General of South Carolina. This conviction was obtained by police presenting unsubstantiated information to the magistrate and the grand jury, wherein they stated that the offense occurred at night when in fact the offense of a break-in of an unoccupied building (an insurance agency) occurred between 5:00 pm March 28, 1986 and 9:00 am March 29, 1986; thereby leaving several hours of daylight when this offense could have occurred.

In researching this case, it appears that the police made unfounded claims to the magistrate to obtain a warrant which resulted in the nineteen year-old defendant's guilty plea to two strikes in one guilty plea. Koon v. State (March 2007 SC Supreme Court). As the victim, I do not condone and stand firmly against such actions, and I ask you to commute his 1986 conviction for Second Degree Burglary (Nighttime) to Third Degree Burglary which would allow the Life Without Parole sentence to be reduced to time served. I believe that Mr. Koon's case is a miscarriage of justice to which he has served over twenty years, and I hope you will agree that he has paid his debt to society. The attached letter to the Attorney General sets forth the relevant facts, but the bottom line, as the victim, I ask the Governor to review the facts of this case and commute Mr. Koon's sentence to time served to correct this injustice so that this man does not spend the rest of his life in prison

Please contact me if you have any questions. I thank you for in advance for your consideration of this request.

Respectfully yours,

Harry M. Lovelace
With Attachments
Cc: Honorable J. Mark Hayes II, Circuit Court Judge
Chief Justice Jean Toal, SC Supreme Court
Professor Patrick Flynn, USC Law School
Hon. Brandi McBee, Cherokee County Clerk of Court
Governor Mark Sanford
Ray E. Thompson, Jr., Attorney At Law
Trey Gowdy, 7th Circuit Solicitor's Office
60 Minutes, CBS
The Gaffney Ledger

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Mr. C. David Baxter, Chair
SC Board of Paroles and Pardons
PO Box 50666
Columbia, SC 29210

June 3, 2012

Dear Mr. Baxter,

Mr. Robert Holland Koon is serving a Life Without Parole (LWOP) sentence. As you can see from the enclosed letters that I have sent to numerous officials, Mr. Koon's sentence has been enhanced by prior convictions that the State can not show occurred, i.e. Nighttime burglary. As the victim of the 1986 break-in, I can assure you that nobody could prove that the crime occurred at night. I am requesting as the victim of Mr. Koon's second strike, that you would commute his 1998 conviction from LWOP to a maximum of fifteen (15) years. Mr. Koon's 1998 conviction is for breaking into the Cherokee County probation office, so if this creates a conflict with this board's ability to fairly consider commutation of Mr. Koon's sentence then please forward this request for commutation to the Governor's office. A severe injustice has been done to give this man LWOP for an office break-in when the predicate offense can not be deemed worthy of any trust, as the victim even I can not say the offense (1986) occurred at night. Mr. Koon has served over fifteen years (date of offense February 1, 1997) and should be considered for commutation of his sentence. Mr. Koon plans to enter the Jumpstart faith-based program upon his release. As the victim, I make this request.

Please contact me in regards to this petition:
Harry M. Lovelace
PO Box 71
Gaffney, SC 29342
P: (864) 838-1381

Kindest Regards,

Harry M. Lovelace

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Mr. Barry Barnette
Seventh Circuit Solicitor
180 Magnolia Street
Spartanburg, SC 29306

Harry M. Lovelace
31 Bo Lane
Gaffney, SC 29340
(864) 838-1381

August 4, 2011

Re: Resentencing of Robert Holland Koon

Dear Mr. Barnette,

Under the provisions of the Victim Bill of Rights, I would request as Solicitor that you carefully review the case of State v Robert Koon 86-GS-11-289 in which Mr. Koon was indicted for Second Degree Burglary when the State did not have any proof the offense occurred at nighttime as required by 16-11-312 (b) 3) SC Code of Laws (1986). According to Mr. Koon, he entered a plea as part of a package plea deal in 1986 not knowing that he would receive two strikes at the one plea. Koon v State 643 SE2d 680 (2007). The offense that constitutes the 'second strike' was my family's insurance agency Cudd-Lovelace Agency, and as the victim, I would respectfully ask you to allow the 1986 conviction to be reduced to Burglary Third Degree so that Mr. Koon can be resentenced from Life Without Parole to twenty years for his 1998 conviction for a subsequent Second Degree Burglary. 98-GS-11-650. Koon v State Supra.

It is my understanding that the State prosecuted this individual for a nighttime burglary without any proof of Corpus Delecti of the nighttime element, and I feel as the victim that a grave injustice has been done to this man where the State can not show his second strike offense ever occurred. As a citizen of this state, I am opposed to the fact that Mr. Koon was prosecuted for nighttime entry of the insurance office (in which nothing was discovered to have been stolen) when no proof exists that it occurred at night, only that it occurred sometime between 5:00 pm March 28, 1986 and 9:00 am March 29, 1986.

I would like to meet with you to discuss this matter with you in person at your earliest convenience. I may be reached at (864) 838-1381. Thank you in advance for your consideration of this request.

Respectfully Yours,

Harry M. Lovelace

Cc: The Hon. J. Mark Hayes III
Mr. Robin File, Assistant Solicitor

The Hon. J. Mark Hayes, II
180 Magnolia Street
Spartanburg, SC 29306

Harry M. Lovelace
31 Bo Lane
Gaffney, SC 29340
(864) 838-1381

January 6, 2011

Re: Robert Holland Koon
State v. Robert Koon 86-GS-11-289 Rule 29 (b) SCR.Crim.Pro.

Dear Judge Hayes,

I am enclosing a letter to Seventh Circuit Solicitor Harold W. Gowdy, III regarding the Rule 29(b) referenced above. As stated in the letter, I am requesting a status conference between you, Mr. Barnette, Mr. Koon, and myself for the sole purpose of determining whether the 1986 Second Degree Burglary (violent nighttime) should be ***reduced*** to Third Degree Burglary (no nighttime) and the possibility of reducing Mr. Koon's sentence to the statutory maximum of twenty years.

I would very much appreciate your assistance in arranging this conference as soon as possible. Please contact me at the phone number above to advise or if you have any questions.

Respectfully,

Harry M. Lovelace

Cc: Mr. Barry Barnette, Seventh Circuit Solicitor
Mr. Michael Moran,
Mr. Holman C. Gossett, Attorney at Law
The Hon. Roger L. Couch
The Hon. Gary E. Clary
Mr. Ray E. Thompson, Attorney at Law
Mr. Gary P. Mallard, Attorney at Law

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The Hon. J. Mark Hayes, II
180 Magnolia Street
Spartanburg, SC 29306

Harry M. Lovelace
31 Bo Lane
Gaffney, SC 29340
(864) 838-1381

January 6, 2011

Re: Robert Holland Koon
State v. Robert Koon 86-GS-11-289 Rule 29 (b) SCR.Crim.Pro.

Dear Judge Hayes,

I am enclosing a letter to Seventh Circuit Solicitor Barry Barnette regarding the Rule 29(b) referenced above. As stated in the letter, I am requesting a status conference between you, Mr. Barnette, Mr. Koon, and myself for the sole purpose of determining whether the 1986 Second Degree Burglary (violent nighttime) should be ***reduced*** to Third Degree Burglary (no nighttime) and the possibility of reducing Mr. Koon's sentence to the statutory maximum of twenty years.

I would very much appreciate your assistance in arranging this conference as soon as possible. Please contact me at the phone number above to advise or if you have any questions.

Respectfully,

Harry M. Lovelace

Cc: Mr. Barry Barnette, Seventh Circuit Solicitor
Mr. Michael Morin, Assistant Solicitor
Mr. Holman C. Gossett, Attorney at Law
The Hon. Roger L. Couch
The Hon. Gary E. Clary
Mr. Ray E. Thompson, Attorney at Law
Mr. Gary P. Mallard, Attorney at Law

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Mr. Barry Barnette, Solicitor
Office of the Seventh Circuit Solicitor
180 Magnolia Street
Spartanburg, SC 29306

Harry M. Lovelace
31 Bo Lane
Gaffney, SC 29340
(864) 838-1381

January 6, 2011

Re: Robert Holland Koon
State v. Robert Koon 86-GS-11-289 Rule 29 (b) SCR.Crim.Pro.

Dear Mr. Barnette,

As the victim in the above referenced case, it is my sincere desire that Mr. Koon's 1986 Second Degree Burglary conviction 86-GS-11-289 Cudd-Lovelace Insurance Agency (3/28/1986) be ***reduced*** to Burglary Third Degree which will allow him to be sentenced to twenty years on his 1998 conviction for Second Degree Burglary 98-GS-11-650 rather than have him serve Life Without Any Possibility Of Parole (LWOP). It is clear to me that the police did not provide sufficient evidence to the magistrate that this offense definitely occurred at nighttime. See State v. Smith 493 S.E.2d 506 (Ct. App 1997). While it is not my place to accuse the detectives or solicitor of falsely swearing under oath, a very serious allegation indeed and I would not impugn their character in doing so. the evidence in this case does indicate that the nighttime element was misrepresented (to the magistrate and the Grand Jury) as stated previously in my affidavit when I contend that it occurred between 5:00 pm on March 28, 1986 (office closing time) and 9:00 am March 29, 1986, when the break-in was discovered. Therefore, it is impossible to swear under oath that this offense occurred at night; it could have just as easily occurred in the intervening daylight hours that were available between 5:00 pm and 9:00 am. I have submitted affidavits to the Attorney General and Judge Hayes in regards to these facts.

As a victim, a citizen, and a Christian, I am very upset and opposed to the fact that Mr. Koon is in jail for LWOP based on ***unsubstantiated*** evidence on my behalf as the victim. Further questions arise about the reliability of the evidence in the fact that a break-in at an adjacent location (Stylette Salon), alleged to have occurred at the same time, did not allege a nighttime element and was therefore held by the Supreme Court to at most be Third Degree Burglary and was vacated by Order Koon v. State 595 S.E.2d 456 (2004). As the copies of the enclosed warrants attest, both warrants allege "on or about", but with differing dates. If the dates themselves are uncertain as stated on the warrants, how can the assertion of nighttime element not also be called into question? This ***unsubstantiated*** allegation of nighttime on the Cudd-Lovelace warrant resulted in Mr. Koon's "second strike" and his current sentence of LWOP would not have applied had he been convicted of the same offense as Stylette. It is my understanding that without the nighttime allegation in the Cudd-Lovelace warrant (number 540173), Mr. Koon would be eligible to receive a twenty year sentence on his 1998 conviction upon resentencing. With credit for time served, he would have already completed or nearly completed his sentence. I therefore believe that a miscarriage of justice has resulted in a LWOP sentence for a

property offense with no theft included, and from my research, it is the solicitor's duty to correct this misrepresentation of the facts.

Mr.Koon has filed a Rule 29 (b) SCR.CRIM.PRO in Court of General Sessions to have this conviction reduced to Burglary Third Degree and I was referred to your office as the Rule 29(b) is on the General Sessions Court docket. Therefore, I ask that the Solicitor's office consent to this motion and allow Mr. Koon to be resentenced, in order that justice might be served. I am also requesting that a status conference between you, the Circuit Court Judge Honorable J. Mark Hayes II, Mr. Koon, and myself be held as soon as possible for the sole purpose of determining whether the 1986 Second Degree Burglary (violent nighttime) should be ***reduced*** to Third Degree Burglary (no nighttime) and if so, reducing the LWOP sentence to statutory maximum of twenty years. To assist with your review, I have enclosed copies of various correspondences regarding this matter.

I strongly and humbly request your urgent attention in correcting this injustice. Thank you for your time and I eagerly await your response.

Respectfully,

Harry M. Lovelace

Cc: The Hon. J. Mark Hayes, II, Circuit Court Judge
Mr. Michael Morin, Assistant Solicitor
Mr. Holman C. Gossett, Attorney at Law
The Hon. Roger L. Couch
The Hon. Gary E. Clary
Mr. Ray E. Thompson, Attorney at Law
Mr. Gary P. Mallard, Attorney at Law

February 1, 2008

The Honorable J. Mark Hayes III
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, SC 29304

Dear Judge Hayes,

My letter concerns the matter of inmate Robert Koon's conviction of burglary for a break-in occurring in March, 1986 and the resulting life sentence under the "three strikes" law. It is my understanding that the severity of Mr. Koon's sentence is predicated upon the allegation that the burglary occurred at "night" and that, in the absence of an assignment to that time of day, a more lenient sentence would have been imposed. Assuming that is correct, please permit me to address a few points regarding this matter.

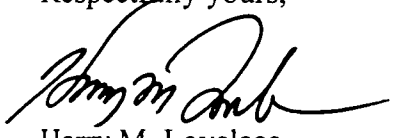
First of all, I do not know Mr. Koon personally and my only connection to this case is that I was an employee of Cudd-Lovelace Agency, location of the break-in, at the time it occurred. I did not discover or report the break-in to the authorities; unfortunately, the gentleman who did, Mr. J.D. Cudd, is now deceased. My recollection of details about the break-in and the subsequent investigation is diminished by the length of time since the event occurred and the fact that my father had passed away a couple of weeks prior to the break-in. Therefore, I can not present any concrete evidence to refute the allegation that the crime occurred at "night time". I am, however, familiar enough with the routine of opening and closing the office that I can provide a time frame which might, at the least, bring in to question whether or not the break-in had to have occurred at "night". For years prior to and subsequent to the break-in, Cudd-Lovelace Agency had posted hours of operation as 9:00am to 5:00pm Monday, Tuesday, Thursday, and Friday, and 9:00am to 12:00pm on Wednesday. The staff normally arrived at the office no earlier than fifteen minutes before opening (8:45am), and typically closed the office no later than 5:15pm. It would have been *very* unusual for an employee to arrive before 8:30 am or close later than 5:30pm on any given day. I do not know what specific times are used to define "night time" in this case, but I would confidently testify that the break-in could have occurred anytime between the hours of 5:30pm March 28, 1986 and 8:30am March 29, 1986. I believe a retrieval of the investigation report will show an initial contact time from Mr. Cudd that is consistent with the time frame that I have referenced.

It is not my place to question the validity of a sentence rendered by the court, and my opinion rightfully has no bearing on the matter. With that stated, I believe the consequences of the conviction of a "night time" burglary are too severe when so much apparent uncertainty exists as to when the break-in actually occurred. If the provision of my information helps to broaden the time frame in which the break-in could have

occurred and bring in to question the validity of the "night time burglary" charge, then I will gladly testify to that effect.

I welcome any comments you may have in response to my letter and will avail myself of the court as needed.

Respectfully yours,



Harry M. Lovelace

Cc: Mr. John McIntosh, Deputy Attorney General
Mr. William Winter, Esq.
Mr. Robert Koon

Mr. Robin File, Asst. Solicitor
7th Circuit Solicitor's Office
180 Magnolia Street
Spartanburg, SC 29306-2359

Harry M. Lovelace
31 Bo Lane
Gaffney, SC 29340
(864) 838-1381

April 14, 2011

Re: State v. Robert Koon 86-GS-11-289
Article 1, Section 24 SC Constitution (Victim's Bill of Rights) and pending Rule 29 (b) SC Rules Crim.Pro.

Dear Mr. File,

I am the victim in the March 28, 1986 Second Degree Burglary of Cudd-Lovelace Agency to which Mr. Koon (based upon my affidavit) has filed for a motion for a new trial based on after discovered evidence. Rule 29 (b) SCR Crim Pro.

First, I would like to formally request, as victim per Article 1, Section 24 paragraph 11 (of Victim's Bill of Rights) "a reasonable disposition in this case", that Second Degree Burglary (Nighttime) be reduced to by consent of the Solicitor's office to third Degree Burglary (no Nighttime). As based upon the facts of this case (and my affidavit), the state did not have any evidence to even allege a nighttime burglary occurred at all. It seems the Police Detective Richard Weaver, who signed the warrant made a mistake in alleging nighttime on our (Cudd-Lovelace) side of the building while the opposite side of the duplex (Stylette) did not allege nighttime. It is clear that the break-in of both sides of the duplex occurred at the same time, yet the alleged different offense date – 28th for Cudd-Lovelace (with nighttime) and 29th for Stylette (no nighttime).

Mr. Koon should have never been charged with Nighttime offense as there was no proof Aliunde of the Corpus Delecti as required by State v. Smith 493 S.E.2d 506 (SC App 1997) and State v. Osborne 516 S.E.2d. 201 (1999). As the victim, I believe that I have a constitutional right per. Art.1, Sect. 24, Para. 11, to seek a "reasonable disposition" to have Mr. Koon's charge reduced to Third Degree Burglary 16-11-313. As a citizen, a Christian, and the victim, I believe it is my duty to request this reduction. I contend justice requires this reduction as offense occurred sometime between 5:00pm on March 28, 1986 (office closing time) and 9:00 am March 29, 1986 with no proof that it occurred at night.

Secondly, per Art. 1, Sect. 24, Para.8 of Victim's Bill of Rights, I am formally requesting "reasonable access" to Solicitor's file and evidence in regards to the March 28, 1986 break-in of Cudd-Lovelace #86-GS-11-289. Specifically, I would like to be provided with the proof that this offense occurred at night (Corpus Delecti of Nighttime Burglary). Please mail this information to me at the above address.

Thirdly, per Art.1, Sect.24, Para. 3, I would respectfully request to be notified of any hearings and other proceedings in this case in writing ten days prior to the hearing. E.G. (Rule 29(b)).

Finally, I would like to formally request a conference with you to discuss the above matters at your earliest convenience.

Thank you for your time, and I await your response to this letter.

Respectfully,

Harry M. Lovelace

Cc: The Hon. J. Mark Hayes, II, Circuit Court Judge
Mr. Russ Racine, Attorney at Law

Robert Koon
LCI
Ridgeville SC

Hon. J. MARK HayesII
CIRCUIT COURT Judge

KOON V. STATE 87-CP-11-103
Rule 15 (c)

PLEASE FIND ENCLOSED A Rule 15 (c) MOTION IN RE: TO 87-CP-11-103 which your ORDER 2011 Relates BACK TO, (1E) you STATED COUNSEL FAILED to EXERCISE DUE DILIGENCE IN RE: to DISCOVERY OF HANNY COVELACE AND STATES LACK OF EVIDENCE TO SUPPORT CRITICAL ELEMENT OF OFFENSE NIGHTTIME WAS NOT MATERIAL TO whether I would HAVE PLEADED YOU STATED IN your ORDER the "nighttime" ISSUE DID NOT become IMPORTANT until 11 YEARS AFTER KOON WAS SERVING HIS LIFE SENTENCE ! THE 1987 PCR ORDER will AFFIRM THIS WAS A ISSUE FROM the VERY OUTSET OF FIRST PCR 1987-CP-11-103 IN which I Alleged I.A.C., I AGAIN Alleged I.AC in 06-CP-11-513 W/ MR. COVELACE AFFIDAVIT which you SUMMARILY DENIED IN 2010 - THEN the VERY NEXT ~~YEAR~~ MONTH ~~2010~~ you ALLOWED ME to FILE A Rule 2d (b) but held COUNSEL DID NOT EXERCISE DUE DILIGENCE - SIN IF he DID NOT EXERCISE DUE DILIGENCE VIS-A VIS HE DID NOT PROVIDE EFFECTIVE ASSISTANCE OF COUNSEL SEE 87-CP-11-103. YOUR 2011 ORDER RELATES BACK TO ORIGINAL PCR ISSUE

My Rule 15(C) motion "Relates back" to 87-CP-11-103 ORIGINAL "INEFFECTIVE ASSISTANCE OF COUNSEL ISSUE" ON TRIAL COUNSELS FAILURE TO INVESTIGATE NIGHTTIME ELEMENT (AND DISCOVER ANNA LOVELACE) which would have established prejudice in that state DID NOT ESTABLISH COULD NOT Corpus Delecti of a NIGHTTIME Burglary!

IT IS "LAW OF THE CASE" 15(C) that COUNSEL DID NOT EXERCISE DUE DILIGENCE ~~THAT~~ LAW OF CASE FINDING MUST be APPLIED IN EQUITY to 1987-CP-11-103 PUR. TO Rule 15(C) which ~~RELIED FROM SAME~~ AROSE OUT OF THE CONDUCT, TRANSACTION OR OCCURENCE SET FORTH IN the ORIGINAL PLEADING, the AMENDMENT Relates BACK to DATE OF ORIGINAL PLEADING. (87-CP-11-103)

I ASK TO BE HEARD in OPEN COURT ON MY MOTION, AND THIS IS NOT A NEW COLLATERAL ATTACK ON MY CONVICTION WHEREAS I WOULD HAVE to HAVE PERMISSION but RATHER A 15(C) MOTION IN EQUITY upon 87-CP-11-103 CASE # TO which your 2011 Ruling IMPACTS I will REPRESENT MYSELF.

PLEASE PLACE THIS ON COMMON PLEAS DOCKET.

Robert K

cc:
Sallet Elliott (ESQ)

Robert Koon
CCI
Ridgeville SC 29472

Clerk of Court
PO Drawer 2289
Gaffney SC 29340

Koon v. State 87-CP-11-103
Rule 15(c) Motion

F.Y.I. THIS IS NOT A NEW CASE Filing that I would have to Recieve permission TO FILE but Rather it is A MOTION in A CASE that has ALEADY been FILED the Rule 15(c) Relates BACK to original AMENDMENTS. 87-CP-11-103

I HAVE ON "Numerous OCCASSIONS" ASKED YOU to PROVIDE ME W/ Public RECORDS IN RE:
TO 1) 87-CP-11-103 PCR, AMENDMENT AND ORDER OF DISMISSAL

2) Supreme Court Order 93-MO-308 in 91-CP-11-539

(3) ORDER CHANGING 91-CP-11-539 to 00-IP-11-623 (2000)

I would ASK YOU ATTACH these PLEADINGS TO ENCLOSED MOTION AND PLACE this MOTION ON DOCKET TO be heard

Robert K

CC: Sally Elliott
How I MANY PAGES IT

STATE OF SOUTH CAROLINA) C/A 87-CP-11-103
COUNTY OF CHEROKEE) IN THE COURT OF COMMON PLEAS

ROBERT KOON)
) Rule 15(c) RELATING BACK
) TO AMENDMENTS
V.)
)
STATE)

I IN 1987 APPLICANT FILED THE ABOVE CAPTIONED PCR. ATTACKING, INTER ALIA, THE 1986 GUILTY PLEA OF CUDD-COVELACE INSURANCE CO. IN WHICH HE ALLEGED, INTER ALIA, TRIAL COUNSEL HARRY KLINE PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO INVESTIGATE STATE LACK OF PROOF RE: TO NIGHTTIME ELEMENT. (THE 1987 PCR, AMENDMENTS AND FINAL ORDER ARE INCORPORATED HEREIN BY REFERENCE) THE 1987 PCR COURT HON. DAN LANEY HELD COUNSEL PROVIDED EFFECTIVE ASSISTANCE OF COUNSEL IN THAT HE DID INVESTIGATE.

HOWEVER, THAT ORDER WAS NOT APPEALED, AND AS SUCH APPLICANT DID NOT RECIEVE HIS "FULL BITE AT THE APPLE" AS SC SUPREME COURT NEVER REVIEWED THE ORIGINAL PCR TRANSCRIPTS AS STATE DESTROYED TRANSCRIPT DESPITE A AUSTIN APPEAL BEING FILED 91-CP-11-539. ODOM V. STATE 523 SE2d 733 (1999)

1 of 4

II IN 2004 SC SUPREME COURT HELD KOON FIRST PCR COUNSEL TO BE INEFFECTIVE FOR THE FAILURE TO FILE A APPEAL OF PCR KOON V. STATE 595 SE2d 456 (2004)

[but did NOT REMAND FOR A RECONSTRUCTION HEARING AS APPEAL COUNSEL DID NOT PLACE PCR ORDER IN ~~THE~~ APPENDIX.]

THUS, KOON FIRST PCR WAS NOT SUBJECT TO ANY FORM OF APPELLATE REVIEW. RICHARD WEAVER TESTIFIED AT THAT TIME BUT WAS HIDDEN BY STATE IN 2011. IN 2005 AND 2006 KOON FILED PCR ASSERTING (BASED ON NEW EVIDENCE) TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL① THIS COUNT DENIED MOTIONS PUR TO Rule 60(B)(1) IN 2010 AFTER KOON SUPPLIED AFFIDAVITS OF THE VICTIMS THEMSELVES SHOWING AFFIRMATIVELY POLICE HAD NO EVIDENCE TO SUPPORT NIGHTTIME ALLEGATIONS AND COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL. BY FAILURE TO INVESTIGATE LACK OF CORPUS DELECTI. IN 2010 THIS COUNT AFTER DENYING PCR BASED ON INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS APPOINTED COUNSEL ON "AFTER DISCOVERED EVIDENCE" OF VICTIM AFFIDAVIT THAT SHOWED PROSECUTORIAL MISCONDUCT IN FAILURE TO CORRECT AT PLEA USE OF FALSE AFFIDAVIT TO SECURE NIGHTTIME BURGLARY INDICTMENT. IN A Rule 29(b) MOTION ST v. KOON.

IN 2011 THIS COURT Ruled ~~THAT~~ TRIAL COUNSEL

① IN RE: TO NIGHTTIME ELEMENT OF CUDD-LOVELACE OFFENSE

HANNY KLINE II FAILED TO EXERCISE "DUE DILIGENCE" IN THE DISCOVERY OF FACT WITNESS HANNY LOVELACE (VICTIM) - AND THAT NIGHTTIME ISSUE ONLY BECAME IMPORTANT AFTER KOON WAS YEARS INTO SERVING HIS LIFE SENTENCE. (2) TESTIMONY WAS PROVIDED BY VICTIM HANNY LOVELACE THAT SHOWED CONCLUSIVELY STATE DID NOT AND COULD NOT ESTABLISH THE NIGHTTIME ELEMENT AS EVEN THE VICTIMS DID NOT KNOW WHEN THE CRIME OCCURED EXCEPT between 5 PM - 9 AM (3/29/86) NO CORPUS DELECTI EXISTED !

ARGUMENTS

IT IS NOW "LAW OF THE CASE" THAT COUNSEL FAILED TO EXERCISE DUE DILIGENCE IN THE INVESTIGATION AND LOCATING MR HANNY LOVELACE. THAT IS A ESTABLISHED FACT NOT SUBJECT TO DEBATE AS LAW OF CASE.

VIS-A VIS IF COUNSEL DID NOT EXERCISE DUE DILIGENCE HE WAS THEREFORE INEFFECTIVE PUR TO STRICKLAND V. WASHINGTON 104 SCT 1052 (1984) AS COURT HELD HE FAILED TO EXERCISE EVEN DUE DILIGENCE IN HIS INVESTIGATION.

Rule 15(C)

THIS LAW OF THE CASE RULING RELATED BACK TO 1 CLAIM ASSERTED IN THE AMENDED PLEADING AROSE OUT OF THE

(2) THIS ISSUE HAS BEEN HOTLY DISPUTED SINCE FIRST 1987 PCR

CONDUCT, (OF COUNSEL) TRANSACTION (PLEA) ON OCCURENCE (INDICTMENT) SET FORTH IN the ORISINAL PLEADING (PCR 87-103) the AMENDMENT RELATE BACK to DATE OF ORIGINAL PLEADING (86-CS-11-289) PUR TO Rule 15(c) SCRCP.

SINCE THIS COUNT HAS established by TESTIMONY COUNSEL DID NOT EXERCISE "DUE DILIGENCE" SHOW that LAW OF THE CASE RULING MUST be APPLIED IN EQUITY to ORISINAL 87-CP-11-103 ISSUE OF INEFFECTIVE ASSISTANCE OF COUNSEL IN RE: TO FAILURE TO INVESTIGATE NIGHTIME ELEMENT ESPECIALLY IN LIGHT OF the FACT THIS COUNT WOULD NOT ALLOW A INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM to be HEARD IN 06-CP-11-513 AND DENIED Rule 60(B)1 IN 2010 ON INEFFECTIVE ASSISTANCE OF COUNSEL BASED ON VICTIM AFFIDAVIT. Rule 15(c) MANDATES APPLICATION OF RULING to ALLEGATIONS.

Relief

TO HAVE LACK OF DUE DILIGENCE FINDING APPLIED TO INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM ON 87-CP-11-103 RE CUDDLOVELACE NIGHTIME ELEMENT.
NEW TRIAL

Robert Koon
LCI
Ridgeville SC
29472

1/7/13

Koon

Proof of Service

I Robert Cook do hereby ATTEST AND AFFIRM A TRUE COPY HAS BEEN MAILED TO

SAMEY W. ELLIOTT (ESQ)
PO BOX 11549
Columbia SC 29211

this 8th day of JAN 2013

BY US MAIL
28 USC 1746 UNDER OATH

SI

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

15 (a) Amendments. A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fifteen days after service of the named amended pleading, whichever period may be the longer, unless the court otherwise orders.

15 (b) Amendments to conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The Court shall upon motion grant a continuance reasonably necessary to enable the objecting party to meet such evidence. In the event the Court should try issues not raised by the pleading, it shall state in the record all such issues tried and the reason thereof.

15 (c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relate back to the date of the original pleading.

An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him the party to brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

15 (d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented, wnether or not the original pleading is defective in its statement of a cause of action or defense. If the court deems it advisable that the adverse party plead thereto, it shall order, specifying the time therefor.

15(a) Dockside Ass'n v. Detyens, Simmons & Carlisle, 297 S.C. 91, 374 S.E.2d 907 (Ct. App. 1988) upon remand to the trial court a party could amend the complaint to allege new matter or join party.

15(b) Amendment's to conform to the evidence even after judgment. Arnold v. State, 309 S.C. 151, 420 S.E.2d 834 (1992); Pool v. Pool, 329 S.C. 324, 494 S.E.2d 820 (S.C. 1998).

15(d) party moving to file and serve supplemental complaint was not required to present evidence in support of his allegation at hearing or supplementation. Tanner v. Florence County Treasurer 336 S.C. 552, 521 SE2d 153 (S.C. 1999)

15(d) requires leave of the court Helm v. Helm, 289 S.C. 169, 345 S.E.2d 720 (S.C. 1986)

15(b) If an issue not raised by the pleading is tried by express or implied consent of the parties, the Court may permit amendment of the pleading to reflect the issue.

15(b) There is no time limit for amendments to conform to the evidence, and they may be made at any time the trial court has jurisdiction of the case, even after judgment. However, the amendment at that point conforms the pleading to teh evidence and is not a means of asserting new and different claims. Arnold v. State, supra.

("Prejudice occurs when the amendment state a new claim or defense which would require the opposing party to introduce additional or different evidence to prevail in the amended action"). See Ball, 314 S.C. at 275, 442 SE2d at 622.

Honorable Brandi McBee
Clerk of Court
PO Drawer 2289
Gaffney, SC 29342

Robert Holland Koon V. State
06-CP-11-513
Supplement to Rule 60 (B) 1)

Ms. McBee,

Please find enclosed supplement to Rule 60 (B) 1) with Affidavits of Robert Koon and Harry M. Lovelace with Proof of Service upon the Attorney General. A copy has been sent to Hon. J. Mark Hayes, II.

As Always, Thank you.

Robert Holland Koon, *Pro Se*
MCI
386 Redemption Way
McCormick, SC 29899

Cc: Suzanne H. White
Hon. J. Mark Hayes, II

State of South Carolina)
County of Cherokee)
)

Court of Common Pleas
#06-CP-11-513

)
)
Robert Holland Koon,) Supplement to Rule 60 (B) 1)
Applicant) SCRCP.
V.)Motion to Set Aside Judgement (filed 6/8/10)
)

State,
Respondent

The *Pro Se* Applicant would hereby move to supplement the Rule 60 (B)1) motion pending before this Honorable Court, as follows:

Applicant asserts based upon Mistake, Inadvertence, Surprise, or Excusable Neglect He is entitled to Relief from Judgment, as set forth,

* Rule 60 (B) (1)*

Applicant *Pro Se* asserts he committed a Mistake in failing to set forth the Affidavit of victim Harry M. Lovelace to the court during his PCR hearing January 18, 2008. (However, said Affidavit did not become available until April 8, 2010).

This Affidavit of Harry M. Lovelace shows that neither J.D. Cudd nor original "Mr. Lovelace" (Loyd H. Lovelace) was available at the time of trial and/or first PCR hearing October 1987. It was not discovered until recently that Loyd H. Lovelace and Harry M. Lovelace were two different persons. It was believed that "Mr. Lovelace" (Loyd H. Lovelace) was deceased, which he was. Harry M. Lovelace's Affidavit as set forth in the Rule 60 (B) 1) shows that the police did not (and could not) have probable cause to obtain an Arrest Warrant for Nighttime Burglary pur

16-11-312 (B) of Cudd-Lovelace Agency, as offense was not discovered until 9:00 am March 28, 1986 following closing at 5:00 pm March 28, 1986. And this was not disclosed to defense (Affidavit of Koon). This is consistent with Koon v. State 595 SE2d 456 (2004) where the other side of the same duplex did not allege Nighttime and was reversed by Supreme Court due to lack of Nighttime element (see Original Rule 60 (B) 1).

The existence of Harry M. Lovelace statement was not discovered through "due diligence" as two "Mr. Lovelaces" existed – Loyd H. Lovelace and Harry M. Lovelace. It was not until within one year of the filing of the PCR 06CP11513 the existence of the second "Mr. Lovelace" (Harry M. Lovelace) was discovered and this is a critical aspect of this case, not heretofore recognized by the Court in its Order, due to Mistake @ 60 (B) 1).

(I) * Prosecutorial Misconduct *

In United States Supreme Court case Banks v. Dretke 125 SCT 1256 (2005) citing Giglio v. US , Napue v. Illinois, Mooney v. Holohan US Sup CT (1935) "the knowing use of perjured testimony is incompatible with rudimentary demands of due process". Id. (Prohibits Knowing Use of False Testimony).

The Arrest Warrant and Indictment that set forth Under Oath that this offense occurred at Night (to cause it to be Second Degree Burglary 16-11-213 (B) as opposed to Third Degree Burglary 16-11-313) was a Known False Averment by Government. Where, years later, through happenstance, a second "Mr. Lovelace" appears to offer Affirmative Proof that despite a Warrant alleging Under Oath (and

an Indictment) that this offense occurred at Nighttime.

The Police/Solicitor knew that Break-In was not discovered until 9:00 am the following day. Thus, NO one can say this offense occurred at Night. This is Prosecutorial Misconduct.

(II) * Brady Violation *

The Police, by extension, knew when this crime was reported March 29, 1986 at 9:00 am, and in violation of Gibson v. State 514 SE2d 320 (1999) failed to disclose same. Thus, a material factual dispute exists to preclude Summary Judgment of this Brady Violation that would render Plea Involuntary if Proven pur Anderson v. Liberty Lobby 477 U.S. 242,248 (1986). This issue can not be summarily dismissed without a hearing as this evidence was in Possession of Police, Favorable to Accused and Withheld by the State and Material to Nighttime Element, and False Evidence in re: to Nighttime Element presented to Magistrate/Grand Jury.

(III) * Ineffective Assistance of Counsel*

Cronic v. US

The Affidavit of Mr. Lovelace opens the door to the third claim that trial counsel was ineffective pur Cronic v. US 104SCT 2039 (1984) as this Affidavit is Affirmative Proof trial counsel conducted No investigation into Nighttime Element in order to be able to advise his client whether (or not) to plea to Second Degree Burglary (Nighttime) or Third Degree (No Nighttime). This is proof in support of Original PCR Allegation 87-CP-11-103 that trial counsel failed to investigate. Pur 17-27-20 (A) 4) Interests of Justice requires Applicant be heard on this allegation.

* Affidavits*

In accord with Bowers v. Bowers, 403 SE2d 127 (SC App1991) I Movant (pur to Rule 60 (B)) seeking to have Judgment set aside has burden of presenting evidence proving facts essential to entitle him to Relief. Such evidence is usually proved by Affidavits. Id.

Applicant asserts that due to his *Pro Se* status coupled with his mistake in failing to present the Affadavit of the Harry M. Lovelace at the PCR with a citation of how the mistake of two "Mr. Lovelaces" caused confusion in the presentment of these issues, this Court should set aside the Judgment pur to Rule 60 (B) 1) and allow Applicant a Hearing upon,

(A) Prosecutorial Misconduct in setting forth Under Oath to obtain a (1) Warrant (2) Indictment that 86-GS-11-289 occurred at Nighttime when No Evidence has ever existed to show when this offense occurred.

(B) Brady Violation,

Police withheld Favorable Evidence material to Nighttime Element rendering please involuntary pur Gibson v. State.

(C) Ineffective Assistance of Counsel pur Cronic v. US, Re: Failure to investigate Nighttime Element. Ard v. Catoe (SC 3/07).

Applicant seeks a Hearing upon the same.

Respectfully,

Robert H. Koon
MCI
McCormick, SC 29899

AFFIDAVIT

Robert Koon V. State of SC 06 CP 11 513

I, Harry M. Lovelace, hereby give the following statement freely and voluntarily that is true and correct, under oath:

I was an employee of Cudd-Lovelace Agency in Gaffney, SC in March 1986. I recall that a break-in occurred at the office location between the close of business on Thursday, March 28, 1986 and the opening of the office on Friday, March 29, 1986. The break-in was discovered by Mr. J.D. Cudd who was assisting the staff of the office at the time. Mr. Cudd is now deceased. My recollection of details about the break-in and subsequent investigation is diminished by the length of time since the event occurred and the fact that my father had passed away a couple of weeks before the break-in. There is some question as to when the break-in occurred and whether or not it would necessarily be considered a "night time" event. I can not present evidence to refute the allegation that it occurred at "night time"; however, I am familiar enough with the routine of opening and closing the office that I can provide a time frame which might, at the least, bring into question whether or not the break-in had to have occurred at "night". For years prior to and subsequent to the break-in, Cudd-Lovelace Agency had posted hours of operation of 9:00 am to 5:00 pm Monday, Tuesday, Thursday, and Friday, and 9:00 am to 12:00 pm on Wednesday. The staff normally arrived no earlier than fifteen minutes before opening (8:54 am), and typically closed the office no late than 5:15 pm. It would have been very unusual for an employee to arrive before 8:30 am or close later than 5:30 pm. I would confidently testify that the break-in could have occurred anytime between 5:30 pm March 28, 1986 and 8:30 am March 29, 1986. I believe that an examination of the investigation report will show an initial contact time from Mr. Cudd that is consistent with the time frame I have referenced. My position is that the break-in may very well have occurred during a time period *other than* "night time".

Further AFFIDAVIT sayeth not

Harry M. Lovelace Daytime Phone: 864-838-1381

Cc: Henry D. McMaster, State Attorney General
Hon. J. Mark Hayes II, Judge

Sworn and Subscribed before me this 8th day of April, 2010.

My Commission expires:

Notary Public

11/28/17

AFFIDAVIT

I, Harry M. Lovelace, hereby give the following statement freely and voluntarily that is true and correct, under oath:

The first statement pertains to my attempts to obtain a viable address and phone number for Richard F. Weaver. It is my understanding that Mr. Weaver was the detective who lead the investigation of the break-in at Cudd-Lovelace Agency in March 1986 and Robert Koon believed that his testimony could assist in Mr. Koon's 29(b) hearing and he requested that Mr. Weaver, since retired, be located and subpoenaed. Mr. Koon was advised by his legal defense that Mr. Weaver could not be located and was therefore unavailable to provide testimony.
Mr. Koon subsequently requested that I try to contact a private investigator to locate Mr. Weaver. I asked an associate at work if he happened to know Mr. Weaver and he said remembered him and that his wife's name was Carla. With that item of information, I conducted an internet search on PublicRecords.com, and was able to locate three possible addresses and a phone number in less than thirty minutes from the time I began the search.

The second statement is my attestation that part of the structure that was broken into in March 1986 was an apartment, i.e. dwelling. The structure is a triplex that included the space leased to Cudd-Lovelace Agency, the business that I managed in March 1986. It is my understanding that the fact that a dwelling was located in the structure could have a material impact on Mr. Koon's case as in the decision by the SC Supreme Court in Koon v State (2004). Again, this structure was an apartment dwelling with an office and salon contained therein.

Further AFFIDAVIT sayeth not

Harry M. Lovelace Daytime Phone: 864-838-1381

Sworn and Subscribed to me on this 7th day of March, 2012.

My Commission expires:

Notary Public 11-28-2017

State of South Carolina)
County of Cherokee)
)

Court of Common Pleas
#06-CP-11-513
In the Court of Common Pleas
)
)
) Affidavit of Applicant Robert Koon
) In Support of Rule 60 (B)
)
)

Robert Holland Koon,
Applicant
V.

State,
Respondent

The Affidavit Robert Holland Koon 227026 does attest and affirm I received the Order of Dismissal by US Mail, at MCI McCormick, SC 29899 on May 14, 2010.

The Rule 60(B) is being filed by applicant on today's date of June 2, 2010 after photocopying services to bring the 60 (B) into proper form (1) to be served/filed in accord with the rules of court. (2) That on April 8, 2010, I received the affidavit of Harry Lovelace that I did not have access to at the time of the state's motion to dismiss January 18, 2008. (3) Had I known that the Nighttime element could not be proved by the state, and the statement to the contrary in the Arrest Affidavit being speculation as to the time this offense allegedly committed (e.g. Nighttime) and knowledge of statement from the victim that offense was discovered at 9:00 am on March 29, 1986 and office had closed the previous day at 5:00 pm, I would not have pled guilty to the Nighttime element period (which would have caused State to charge Third Degree Burglary) as was charged in the other side of the duplex Stylette Salon Warr: 86GS11290 3/29/68 (which did not allege Nighttime) was reversed by Supreme Court Koon v. State, 595 SE2d 456, 457 (2004).

(3) The State did not pur to Brady disclose this favorable evidence to me or my counsel and this strategy to reduce charge to Third Degree Burglary was not discussed (by the

failure of State to comply with Rule 5, Brady). We did not know the March 28, 1986 allegation was not discovered until 9:00 am on March 29, 1986. Had I known of this statement, I would not have pled guilty.

(4) The discovery of this evidence pur. 17-27-45 (c) within one year of the filing of the PCR was through fact my mother Sarah Koon (deceased) went to the same church as the Cudd family and the time of discovery of offense was relayed to me and I investigated and discovered Mr. J.D. Cudd (deceased) worked with the son of his partner Mr. Loyd Lovelace (who died before the offense) and the son Mr. Harry Lovelace was the Lovelace who was witness to the time of discovery of offense.

(5) Had I known State could not possibly prove Nighttime or the Intent to Commit a Crime (none committed within offense) I would not have entered a plea to Nighttime, or Second Degree Burglary period.

(6) I have exercised extreme diligence and failure to submit affidavit was due to mistake, etc. pur Rule 60(B) and the Pro Se status.

Under Oath I Do So Swear,

Robert H. Koon
MCI
McCormick, SC 29899

Hon. Brandi McBee
Clerk of Court
Cherokee County

Robert Koon
227026
MCI
McCormick, SC 29899

Robert Holland Koon V. State
06-CP-11-513

Brandi,
Please find enclosed a Rule 59(E) Rule 60 (B) 1) In the above case alone with the attachments and proof of service on Attorney General. A copy has been sent to Judge Hayes.

Please send me a clock copy which I have provided.
Thank you.

Robert Koon

State of South Carolina)
County of Cherokee)
)

In the Court of Common Pleas
#06-CP-11-513
In the Court of Common Pleas
)
)
)
) Rule 60 (b) 1)
)
) Motion to Set Aside Judgment, SCRCP 60B) 1)

Robert Holland Koon,
Applicant
V.

State,

_____
Respondent

The Applicant who has appeared *Pro Se* throughout these proceedings asserts that there are several substantial factual matters and legal contentions that were either taken out of context, misconstrued or omitted in the final order (FN1)

This PCR was heard before the Honorable J. Mark Hayes II on January 18, 2008 upon the states motion to dismiss per Rule 12 (b)6, 56 SCRCP. A conditional order was received by Applicant and Applicant's direct objections to the conditional order were filed with the court.

(FN 1) The Judgment was not received by Applicant until _____

The court, Hon. Judge Hayes returned the objections with a letter that the objections could be considered at a later point. (Letter and Objections Attached)

The Applicant has yet, at the time of this motion, to receive a final copy of the order denying PCR relief on # 86-GS-11-289. On April 14, 2010, Honorable Ms. Brandi McBee, Clerk of Court Cherokee County, sent order restricting future filings 07-CP-11-208 PCR Order 07-CP-11-208 and while order denying PCR relief was referenced, it was not within the envelope received (clerical error). Applicant has again requested the Clerk

of Court to provide a copy of the order (06-CP-11-513). The Applicant, however, has been notified orders of dismissal have been signed and filed, and Applicant *Pro Se* asserts that "Errors of Fact" exists within the order (FN 2) to warrant a hearing on the Rule 60(B)1) motion that applicant advances at this time, as factual issues are in dispute. SCRP 12 (B)6.

(FN 2) Applicant assumes the court's order unseen by him is that of the conditional order which was returned to Applicant by the court.

Standard of Review

Motions under Rule 60 (B) 1) are within the trial court's discretion, and this court (S.C. Supreme Court) will not reverse the trial court absent abuse of discretion Tri-County Ice and Fuel Co. v Palmetto Ice Co. 399 SE 2d. 799 (1990) Coleman v Dunlap 402 SE 2d.181, 183 (Ct Apps 1983)

Rule 60 (B)1) provides that this court may relieve a party from a final judgment or order if the judgment or order was induced by mistake, inadvertence, surprise, or excusable neglect. (FN 3)

To justify relieve from judgment, party must establish that he has (1) meritorious defense and (2) judgment was taken against him by mistake, inadvertence, or excusable neglect. Complainant does not have to establish that he would prevail but only his defense is meritorious. Thompson v Hammond, 382 SE 2d, 900 (SC 1989)

In Order to Receive a 60 (B) Hearing

FN 3 Since learned counsel can be excused for mistake (etc) it is axiomatic that the *Pro Se* Litigant should also find protection in 60(B) even more so than counsel. Haines v

Kerner SCT (1972), which held a *Pro Se* pleadings must be construed liberally for the broadest possible claim. It is asserted in 60(B) that the court misconstrued some of the key issues.

In Jenkins v Jones 38 SE 2d. 255 (1940), the power conferred by the code (section) upon courts to relieve parties from judgments taken against them by their mistake, inadvertence, surprise, or excusable neglect should be exercised in the same liberal spirit in which the code was designed in furtherance of justice...Id.

- Code amended as SCRCP 60 (B) 1)

Applicant attempts to apply rule 60 to prevent a manifest injustice.

Issue Subjudice

Before the Honorable Court is a 1986 conviction # 86 GS 11289 Second Degree Burglary that reads, "Did in Cherokee County on or about 28th day in March 1986 did enter the dwelling of Cudd-Lovelace Insurance Company without consent and with the intent to commit a crime herein, entering in the night time. Upon the warrant affidavit Richard Weaver (Detective) alleges more specifically that the crime occurred at 217 E. Frederick Street (Gaffney, SC) on or about March 28, 1986 by kicking the side door open and entering during the night time, with the intent to commit a felony".

It must be noted as fact and law of the case that 219 E. Frederick St was the Stylette Salon which was within the same structure as part of a duplex building with Cudd-Lovelace, was alleged as March 29, 1986 without a night time element allegation. In Koon v State, 595 SE 2d. 456 (2004), the S.C. Supreme Court reversed the Stylette conviction (86 GS 11 290) because it did not contain the night time element allegation. (Again, this is the same structure/building that housed Cudd-Lovelace. See Koon v State

643 S.E. 2d. 680 (2007) (86-289 2nd Strike).

Warrants Indictments attached.

Applicant has obtained a sworn affidavit of victim Harry M. Lovelace who affirms under oath that the offense was discovered around 9:00 am March 29th, 1986 which is affirmative evidence, newly discovered within one year of filing (with only evidence of trespassing existing) of the PCR 06 CP 11 513.

This affidavit which is attached hereto is direct evidence that the police Det. Richard Weaver did not have a factual basis to swear out a warrant, under oath, and for probable cause to arrest, as only evidence of trespassing existed with affirmative evidence that element of night time could not possibly (much less probably) be proven as set forth in the affirmative under oath to the magistrate. As victim asserts, the crime could have happened in the daylight hours between 5:00 pm March 28th and 9:00 am March 29th.

Noting in Koon v State the Supreme Court did reverse the burglary of right side of same duplex 595 SE 2d. 456, 457 (2004). The police in essence entered a false averment under oath to obtain a warrant for a night time burglary when no evidence has even existed as to when the offense occurred. 16-11-312 b) 2) requires that burglary be in night time. Predicate 17-27-25(c) CWOP offense must allege night time.

In this case, the victim has offered direct evidence the police could not have known the offense occurred at night. Based upon the arrest affidavit of Richard Weaver (see Grand Jury witness), the Cherokee County Grand Jury indicted for night time burglary. Sans evidence of intent to commit crime or night time with again proof of night time element, could not possibly even be proven. Thus, a material misrepresentation of the evidence (of

night time) to secure a warrant incal go further obtain an indictment for night time burglary, which as set forth in the attached affidavit of victim Harry Lovelace of Cudd-Lovelace, no evidence of night time ever existed, for either the warrant or the indictment. With no *corpus delicti* of the night time element, the plea should not have been accepted. (See 86 transcripts)

The State can not obtain an arrest warrant through an accompanying indictment for a night time offense, then induce a plea upon the same. Neither the U.S. Constitution nor common law excuses such blatant abuse, when no evidence existed, at that time to support the night time allegation.

What there is now affirmative evidence upon is that the victim affirms the offense happened between 5:00 pm and 9:00 am March 28th and March 29th. That affidavit, coupled with the law of the case application to Koon v State is affirmative proof a false averment was made to obtain arrest warrant/ indictment in violation of Gigilo v U.S.

Prohibition of false statements by police in arrest warrants, search warrants, and indictments are well founded in case law – Gigilo v U.S. Banks v Dretke

It is Applicant's position that prosecutorial and police misconduct in obtaining the warrants and indictments and a plea can not be accepted without any proof of the *corpus delicti* of intent or night time.

(A) That this was a burglary as opposed to trespassing.

(B) Affirmative proof has been established by the victim Harry Lovelace that there was no evidence this offense ever occurred at night.

In the post hearing brief (prior to the objections to the proposed order) Applicant gave a

representative sample of how Assistant Solicitor at trial on 1988 conviction (LWOP) had to concede to the jury that based upon closing time of 5:00 pm and opening time of 9:00 am, the night time element was withdrawn , that element which could not be proven – night time 16-11-312 b) 2) Koon v State 595 SE 2d 456 (2004). This can be equally applied to the facts of this case. That sample above with the victim Harry Lovelace's affidavit as timely under 17-27-45 (c) as it was discovered within the last year (affidavit dated April 8, 2010 – see affidavit of Koon).

March 29, 1986 sunset scheduling showing past 8:00 pm, that's several hours of day light and the neighboring conviction did not even allege night time 595 SE 2d 457 Id

Hearing

Applicant asserts there are "compelling reasons" to reexamine the judgment under Rule 60 B) 1) mistake inadvertence (etc) by *Pro Se*Applicant who should be afforded a liberal application of 60 B) 1) as he was *Pro Se* and as unresolved meritorious issues are involved, Applicant has a meritous action where he can present Detective Richard Weaver to show affirmatively the crime had no burglary *corpus delicti*, no larceny or evidence of another crime period, and can not be distinguished from a trespassing.

Plus affidavit of victim showing that the police had no basis for allegation of burglary or especially the affirmative proof positive no night time existed opened, under (3) elements of 17-27-45 (c), An issue of presentment of false representation of fact to magistrate upon

(A) whether it was a burglary or trespassing as no *corpus delicti* existed.

(B) affirmation there was no evidence of night time.

Thus pur to Thompson v Hammond , 382 SE 2d. 900 (SC 1989), Applicant should be granted leave to be heard in open court upon the issues raised herein, especially in light

of the fact that this court has restricted future filings.

I verify these facts,

Respectfully,

S/_____

Robert Holland Koon

State of South Carolina)
County of Cherokee)
)

Court of Common Pleas
#06-CP-11-513
In the Court of Common Pleas
)
)
)
) Rule 59 (E)
)
) Motion to Alter or Amend Judgment

Robert Holland Koon,
Applicant
V.

State,

Respondent

The *Pro Se* Applicant asserts that this court must alter or amend the judgment pur SC Rule Civ. Pro. 52 (A) 59(E) and attached 60 (B) 1)

As an initial matter the Applicant swears to the court, under oath and penalty of perjury, I have not yet received as of this date a copy of the PCR Order; however, assuming the Final Order is that of Proposed Order, then the following objections to the content, form, procedure and rulings or omitted rulings.

The Order fails to adhere to the main issues, that new evidence discovered within the last year pur to 17-27-45 (c) is affirmative proof positive that no evidence existed to show (A) this was a burglary as opposed to trespassing as no evidence of felony existed. (B) direct proof police misrepresented evidence to the magistrate to obtain a night time burglary warrant. B) The Solicitor in spirit of prosecutorial misconduct obtained an indictment off the same warrant Richard Weaver sole witness before the Grand Jury. The affidavit attached is incorporated into the objection to the proposed order which was

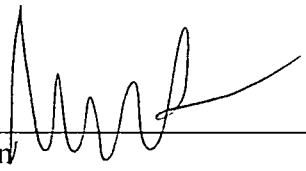
returned and to the 59(E) 60 B.

The court failed to address

1) Brady Violation, in that the police knew of said statement and failed to disclose the same. See: State V Kennedy 503 SE 2d (1999).

Thus, Court should amend its Order.

Respectfully,



Robert Holland Koon

Proof of Service

I, Robert Holland Koon, do hereby attest and affirm that I mailed a True Copy to

Suzanne White
Asst. Attorney General
PO Box 11549
Columbia, SC 29211

This 10 day of June, 2010

20 USC 1746
I Affirm Under Oath

S/ _____