Re: Cedric Ali Colden #305733 v. State of South Carolina (2016-CP-02-1269)
2016-CP-02-02155

Dear Honorable Doyet A. Early, III.

The attorney general have somehow confused the record by placing the wrong case number on their pleadings (Return and motion to Dismiss and Conditional Order of Dismissal) #2016-CP-02-02155

The correct number that was assigned to this case by the Aiken County Clerk of Court was 2016-CP-02-01269.

Applicant have placed both case numbers on his following pleadings:

1) Applicants sworn affidavit
2) Motion For Appointment of Counsel
3) Affidavit In Support of Motion for Appointment of Counsel
4) Motion For Post-Conviction Hearing
5) Applicant's Opposition and Reply to Respondent's Conditional Order of Dismissal
6) Certificate of Service
7) Issues Present on PCR Application
8) Murder + Kidnapping sentence sheets
9) Conditional order of Dismissal

I, Cedric Ali Colden # certify and verify under the penalty of perjury that the foregoing is true and correct.

7/24/17

8. Applicant raised nine (9) issues pertaining to his Sixth and Fourteenth Amendment rights being violated which denied him a fair trial.
9. Applicant file his PCR application on June 1, 2016
10. Applicant filed a Motion of Default against the Respondents under Rule 12(a) on 12/7/16.
11. Applicant filed a Motion to Dismiss charges, per his Summary Judgment motion that he filed.
12. Applicant have not heard from the Respondent in a whole year, which have violated applicants procedural due process rights.
13. PCR counsel was never appointed to the applicant as the statute state and require.
14. Applicant have suffered from several mental capacities prior to trial and after trial.
15. Applicant's trial attorneys used un-ethical tactics to cause him to waive his Sixth Amendment rights.
16. Applicant request his (one bite of the apple) in the interest of justice.

I, Cedric Ali Colden # 305733 certify and verify under the penalty of perjury that the foregoing is true and correct. 1/24/17

State of South Carolina

County of Aiken

Cedric Ali Colden #305733
Petitioner,

V.

State of South Carolina,
Respondent.

AFFIDAVIT IN SUPPORT OF Applicant's MOTION FOR THE APPOINTMENT OF COUNSEL

C/A. 2016-CP-02-02155
2016-CP-02-1269

Cedric Ali Colden #305733, being duly sworn deposes and say:

1) I am the applicant in the above entitled case. I make this affidavit in support of my motion for appointment of counsel.

2) This is a complex case because it contains several legal claims that have merit.

3) The facts in this PCR proceeding along with the legal merit of the applicants claims support the appointment of counsel to represent the applicant.

4) Wherefore, the applicants motion for the appointment of counsel should be granted.

I, Cedric Ali Colden #305733 certify and verify under the penalty of perjury that the foregoing is true and correct. 28 U.S.C.A. § 1746.

1/24/17

State of South Carolina } Court of Common Pleas
County of Aiken } C/A. 2016-CP-02-02155
2016-CP-02-1269

Cedric Ali Golden #305733
Applicant,

v.

State of South Carolina
Respondent.

Applicant's Opposition and Reply to Respondent's Conditional Order of Dismissal

Comes now, the above captioned applicant, pro-se, respectfully lodging his opposition and reply to the Respondent's Conditional order of Dismissal, which was received by applicant via Institutional legal mail. (see attached copy of envelope)

Applicant is presently confined at the Perry Correctional Institution pursuant to orders of commitment of the Aiken county Clerk of Court. Applicant proceeded to trial Reginald Dale Simmons, Esquire and Carl B. Grant represented Applicant. On October 28, 2004, the Honorable Roger Emerson Edmonds sentenced applicant to concurrent terms of thirty years imprisonment for the armed robbery (2004-GS-02174) and kidnapping (2002-GS-02-1746), which is an illegal sentence, because applicant was sentenced to life

see, also State v. Vick, 384 S.C. 189, 201, 682 S.E. 2d 275, 281 (Ct. App. 2009); Owens v. State, 331 S.C. 582, 585, 503 S.E. 2d 462. See also §16-3-910.

The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the South Carolina Legislature. Applicant was convicted and sentenced for kidnapping the murder victim. If it were not for trial counsel's acts and omissions the outcome of the proceeding/sentencing would have been different. Applicant's conviction and sentence for kidnapping should be vacated.

A PCR hearing should be held because applicant's allegations for PCR is premised on fundamental statutory rights. The PCR court must assume facts presented by the applicant as true and view those facts in the light most favorable to the applicant. Wilson v. State, 559 S.E. 2d 581 Applicant is entitled to one fair "bite of the apple" because of ineffective assistance of counsel.

and statutorily provided mechanism to address a denial of fundamental fairness shocking to the universal sense of justice.

The applicant object to the Respondents' Conditional Order of Dismissal because it involve an unreasonable application of clearly established ~~state~~ law when it intended to apply S.C. Code Ann. §17-27-90 and Pelaquin v. State, 331 S.C. 468, 469 S.E. 2d 606 (1996). Respondent's Conditional Order of Dismissal is based upon an unreasonable determination of the facts in light of the evidence submitted to this Honorable Court. See attached sentence sheet for murder + kidnapping.

Applicant asserts the instant PCR application should not be dismissed because of statute of limitation, but rather an evidentiary hearing should be convened to determine whether or not applicant has a statutory created liberty interest in South Carolina PCR actions, Rule 71.1(d), SCRCP. Appointment of Counsel. The present PCR application should not be dismissed because of statute of limitations. It is the state who bears

Reason why these claims were not filed and raised with the prescribed time period.

Applicant was required to file this application on or before October 28, 2005 because he was sentenced on October 28, 2004. Applicant did not file this application until June 1, 2016 for the following reasons:

Prior to the applicant's jury trial, the advice from both counsel's was that the state would ~~not seek~~ the death penalty if applicant waive any right to further review, including direct appeal, PCR, or habeas corpus proceedings. Unbeknownst, a direct appeal was filed on behalf of the applicant.

Applicant did not know that a Direct Appeal was filed on his behalf. Applicant was disuaded from filing a timely PCR application out of fear that the death penalty would be put back on the table. Applicant's attorney advice cause him to waive further review.

Applicant argue that his entering into an agreement with his attorneys was not knowing and voluntary because his lawyers did not adequately provide truthful advice. Counsel's advice was wrong and in violation of the 6th Amendment and 14th amendment.

A waiver cannot be determined from a silent record. A PCR proceeding cannot act as a trap for the unwary or unknowing applicant. As the record does not reflect that the applicant knowingly and voluntarily waived the current grounds and his claims are not subject to any statutory bar.

Discovery Rule

Applicant state that he learned of the existence of these claims on or about January 12, 2016 when an inmate law clerk reviewed his trial transcript and warrants, indictment and sentencing sheets. Applicant found out through the personal experience that the law library clerk had, when he was sentenced for kidnapping and murder. His kidnapping conviction was reversed. Applicant case is identical to the Clerk's case. Applicant argues that he is not procedurally barred from raising his present claims.

Shortly after making this discovery after further research of the law, applicant filed his first initial PCR application on June 1, 2016 pursuant to the "Discovery Rule" in

The critical inquiry remains whether the circumstances preventing applicant from making a timely filing was both beyond the applicant's control and unavoidable despite due diligence. Com. v. Cornell, 274 S.W. 3d 420 (Ky. 2008); Nara v. Frank, 264 F. 3d 310 (3d Cir. 2001); Corey v. Saffold, 536 U.S. 214, 122 S. Ct. 2134, 153 L. Ed. 2d 260 (2002) mental health/incompetence may warrant equitable tolling where alleged mental incompetence has affected applicant's ability to file. State v. Nix, 40 S.W. 3d 459 (Tenn. 2001) (due process requires tolling of PCR statute of limitations only as in the case at bar, applicant is unable to manage his affairs or understand his legal rights and liabilities; Seals v. Tennessee, 23 S.W. 3d 272, 277 (Tenn. 2000) due process considerations may toll statute of limitation if mentally incompetent applicant, as in the case at bar was denied the opportunity to bring a claim in a meaningful time and manner.

In the context of mentally incompetent PCR applicants, case law warrants a holding that in circumstances in which an applicant demonstrated in this case that the failure

to stand trial deprives him of his due process right to a fair trial. Failure of the state court to invoke the statutory procedures deprived the applicant of the inquiry into the issue of competence to stand trial to which, on the facts of the case, applicant was constitutionally entitled.

Applicant request a PCR hearing should be held.

7/4/17

Issues Presented

LEGAL CITATION

The applicant allege and can prove that he was denied effective assistance of trial counsel. The applicant submits that the extensive record speaks for itself as to the competency of counsel. Trial counsel for the applicant was not diligent in his representation of the applicant and did not perform well within the range of competence demanded of attorneys in criminal matters and did not perform within the wide range of reasonable professional assistance.

In Strickland v. Washington, 466 U.S. 668, the United States Supreme Court held that a convicted defendant's claim that counsels assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and, second that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. 104 S.Ct. 2064. The applicant submits that counsel's performance was deficient and hi performance prejudiced him.

Counsel's performance prejudiced the applicant to the point where there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. The applicant is requesting an evidentiary hearing and a new trial.

Applicant contend and can show that his conviction and sentence was in violation of the U.S. Constitution, S.C. Constitution and the laws of this state.

The applicant is asserting a 5th, 6th and 14th Amendment violation which sets fourth a prima facie violation of his constitutional rights. Applicant's grounds for relief are constitutional dimension. The fundamental defects alleged are standards that require establishment of a complete miscarriage of justice and an omission inconsistent with the rudimentary demands of fair procedure.

The following acts and omissions by counsel constituted ineffective assistance of counsel.

Q All right, were there any promises made by investigator Ghant or investigator Perry?

A Investigator Ghant?

Q What did he promise you?

A In so many words he pretty much said, you know, we pretty much know you know more than what you're telling us. You don't cooperate with us. We're trying to work with you. If you don't cooperate with us, you pretty much are looking at the death penalty, and if you cooperate with us, you know, and we can talk with the solicitors and so forth, and we can get the death penalty off the table, but you don't want to cooperate with us, after we leave here today all options will be off the table. See trial transcript pgs. #82 - pg. #86.

On cross examination of investigating officer, see the following colloquy. Subsequent to this conversation with the officers, the applicant gave the challenged statement. In the courts view, trial counsel is ineffective for failure to challenge and allow the applicant's statement because the officer was in a position of apparent authority, and his comments are tantamount to a promise not to seek the death penalty if the applicant gave a statement.

The test for determining the admissibility of a statement is whether it was knowingly, intelligently, and voluntarily given under the totality of the circumstances. State v. Rabon, 275 S.C. 459, 272 S.E.2d 634 (1980). A statement induced by a promise of leniency is involuntary if so connected with the inducement as to be a consequence of the promise. See, State v. Broome, 268 S.C. 99, 232 S.E.2d 324 (1977); The state bears the burden of proving beyond a reasonable doubt the statement given was voluntary. State v. Goolsby, 268 S.E.2d 31, 101 S.Ct. 616. The state cannot meet it's burden of showing the applicant's statement was voluntary and not the product of the officer's promise of leniency. The statement should have been excluded.

counsel raised the issue well before trial.

The trial court denied the applicant Due Process of Law and procedural Due Process of Law while abusing it's discretion by refusing to order a mental examination. Applicant should receive a new trial for the following reasons:

3) Trial Counsel Failed To Object To The Trial Court's Abuse Of Discretion.

On page #91 L. 12-22, Trial counsel request a psychological evaluation in which he stated on line 16 that the statement given on the audiotape clearly indicates that there may be something going on with regards to his cognitive ability with regards to his ability to understand and to respond to questioning. page #92 L. 10-12. The trial court stated that he strikes me as somebody who is capable of understanding as well as answering questions from his conduct on the witness stand. See page #92 L. 8-25 & pg. #93 L. 1-13. In Medina v. Singletary, 116 S.Ct. 2505, Due Process [Also] requires that a hearing be held whenever evidence raises a sufficient doubt about the mental competency of an accuse to stand trial. This procedural competency principle operates as a safeguard to ensure that the substantive competency principle is not violated. Claims involving these principles raise similar but distinct issues: The issue is a substantive claim is whether the defendant was in fact competent to stand trial, but the issue in a procedural competency claim is whether the trial court should have conducted a competency hearing. See, e.g. Sheley v. Singletary, 955 F.2d 1434, 1438; United States v. Day, 949 F.2d 973, 982. A denial of either of these rights as in the case at bar should provide the basis for relief. Weisberg v. Minnesota, 29 F.3d at 1276. Applicant have made a substantive competency claim by alleging he was tried and convicted while mentally incompetent. Due Process prohibits the conviction of a person who is mentally incompetent. Bishop v. U.S., 350 U.S. 961, 76 S.Ct. 44, 100 L.Ed 835, Godines v. Moran, 509 U.S. 389, 113 S.Ct. 2680, Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836, Jeter v. State, 417 S.E.2d 594.

The evidence submitted during trial through his attorney on behalf of the applicant entitle him to a hearing on this issue. This evidence raises a "bona fide" doubt as to the applicant's competency to stand trial. The record shows that counsel inquired that his present sanity was in issue which should have been fully addressed.

Mental alertness and understanding displayed by the applicant in colloquies with the trial court did not justify ignoring applicant's history with his attorney of pronounced irrational behavior while the applicant's demeanor at trial might be relevant to the ultimate decision as to his sanity,

applicant with effective assistance without a continuance. They offered to appear in December 2004, just two months away, rather than October pg. 42, l. 17 - pg. 50, l. 20. The trial court denied the motion for continuance tr. 10-06-04, 4. 3-11. This was an abuse of discretion.

In State v. Tanner, 385 S.E.2d 832, our Supreme Court ruled that the trial court abused it's discretion by denying the defendant a continuance in order to obtain an expert to analyze biological evidence that had been held in police custody until ten minutes before trial. It held that the scientific analysis was critical to the defense, and the prejudice was compounded because the solicitor had previously told defense counsel that the evidence had been lost Id.

Applicant's case is analogous. He was charged with multiple violent felonies. Unlike Tanner, applicant did not accuse the solicitor of misrepresenting or withholding evidence, but his defense, nevertheless, had not received critical items. See Tanner and State v. Burns, 294 S.C. 338, 368 S.E.2d 465 (1988)(where a continuance request is occasioned by the state's untimely compliance with a discovery request, defendant is entitled to sufficient time to ascertain the full evidentiary value of the evidence; this is true even when the state's failure to comply is inadvertent. The long distance investigation of possible evidence and witnesses in Atlanta was an additional, time consuming hurdle for the defense.

Lastly defense counsel did not request an indefinite continuance, but offered to appear within two month's time. Under the circumstances the trial court abused it's discretion and violated his Due Process rights by not delaying the trial. Applicant renewed his motion prior to, throughout, and after his trial. Tr. p. 91, l. 12 - p. 93, l. 14; p. 538; l. 25 - p. 539, l. 8; p. 620, l. 3 - p. 1.5. Whipple does not apply.

5.) Trial Counsel Failed To Request A Lesser Included Offense Jury Charge Of Murder.

On page #462 L. 9 - 12 the applicant gave an allege incriminating statement. He took one of the rags and put it in his pocket and the other rag he was cleaning his shotgun off and he stated that he turned to go back to the truck and he said that the shotgun went off at this time. This was testified by the SLED officer Harold Michael Perry on direct examination.

Officer Ghant testified on page #497 L. 21 that applicant said that "I didn't mean to kill him.

In the statement on the tape, according to Mr. Colden in that statement was not one of I'm going to kill anybody. He went on to say in that statement that it was an accident as I was backing up. It was a freak

Court's ruling and mandates in State v. Heyward, supra; State v. Lambright, supra and State v. Drafts, supra. The very same constitutional equal protection rights...should have been afforded to the applicant.

Applicant asserts that he was denied a substantial constitutional right to effective assistance of counsel in violation of the 6th Amendment of the U.S. Constitution.

6.) The Applicant Was Denied The Right To Effective Assistance Of Trial Counsel By Counsel's Failure To Object To The Judge's Instruction On The Facts Of His Murder-Offense That Reduced The State's Burden Of Proof.

To establish claims of ineffective assistance of counsel, an applicant for post-conviction relief must prove that counsel's performance was deficient and that deficient performance prejudiced his case. Satterwhite v. State, 481 S.E.2d 709 (S.C. 1997).

The applicant submits that after the close of the evidence and arguments by counsels, the judge charged the jury on the inference of malice, in relevant part, Court; #599 L. 21 - 25:

Now, malice aforethought does not require that malice exist for any particular time before the act is committed but malice must exist in the mind of the defendant just before and at the time of the act is committed.

Page #600 L. 24 - 25 & page #601 L. 1 - 5:

If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction this inference would simply be an evidentiary fact to be taken into consideration by you as the jury along with all of other evidence in this case and you may give it the weight that you believe as a jury it should receive.

The applicant submits that this portion of the judge's charge amounted to a charge on the facts in violation of State Constitutional Law, S.C. Const., Art. 5 § 21. A trial judge may not become a participant in the verdict of the jury by indicating an opinion at any stage of the trial on issuable facts, Johns v. Elbert, 34 S.E.2d 796 (1945). A comment which could have been considered by a reasonable jury that the judge felt that the state had met it's burden of proving defendant's guilt of charged offense, coupled with the judge's denial of defendant's request for instruction, constitutes reversible error. See, State v. Smith, 342 S.E.2d 600 (S.C. 1986).

If an instruction relieves the state of the necessity of proving every element of the crime beyond a reasonable doubt, it is constitutionally deficient, may not be treated as a harmless error, and will always invalidate the conviction. See, Sullivan v. Louisiana, 113 S.Ct. 2078, 2081. In reliance on Sullivan, the applicant submits that his counsel's failure to object to the judge's factual jury charge, and failure to request a clarifying instruction from the judge, was ineffective assistance of counsel that was

a mandatory presumption and impermissibly shifts the burden of proof to the defendant, as in the case at bar. See, Sandstrom v. Montana, 442 U.S. 510, 524 (1979) holding that burden-shifting presumptions or conclusive presumptions deprive a defendant of the due process of law and are therefore unconstitutional; Mullaney v. Wilbur, 421 U.S. 684, 703-04 (1975) holding that the Due Process Clause forbids a state from placing the burden on the accused to prove his actions reduced the crime from murder to manslaughter.

Under this court's policy-making role in the common law, the court held that the use of a deadly weapon implied malice instruction has no place in a murder prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing. This charge is confusing and prejudicial in light of the evidence. A jury charge is no place for purposeful ambiguity. Evidence of an accident was presented, thereby highlighting the prejudice resulting from the charge. It is entirely conceivable that the only evidence of malice was Colden's use of a shotgun.

Trial counsel failed to object to the erroneous jury charge.

In the Belcher case, this court's decision represents a clear break from their modern president. The ruling is effective in this case and for all cases which are pending on direct review or not yet final. Griffith v. Kentucky, 479 U.S. 314, 328 (1987) holding that a new rule for the conduct of criminal prosecution's is to be applied retroactively to all cases pending on direct review or not yet final; Harris v. State, 543 S.E.2d 716, 717-18 (Ga. 2001) reversing a murder conviction and overruling precedent that had approved inference of intent to kill from use of a deadly weapon and applying the new rule "to all cases in the pipeline as in this case at bar and cases which were pending on direct review or not yet final. Applicant's 6th Amendment rights and Due Process rights were violated by counsel's failure to object to the erroneous jury charge that shifted the burden of proof.

8.) Trial Counsel Was Ineffective For Failure To Challenge And Preserve The Erroneous Standard The Trial Court Used For Determining Waiver Of Right To Counsel.

Trial counsel failed to challenge and preserve the erroneous standard that the trial court used in failing to suppress applicant's statement/confession. After being arrested for murder and kidnaping and after being informed of his rights as required by Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, applicant was questioned by police on 12/23/05 CAC until he said that he wanted an attorney. Questioning then ceased for awhile. After coercion by the interviewing officers, the applicant finally gave a statement

EXCESSIVE SENTENCE

(8) Trial Counsel Was Ineffective During The Sentencing Phase For Allowing The Trial Court To Sentence Applicant For The Kidnaping Of A Victim Whom He Was Convicted Of Murdering.

The applicant contend his thirty-year kidnaping sentence should be vacated inasmuch as he was sentenced for murder and the kidnaping sentence was therefore improper pursuant to S.C. Code Ann. §16-3-910. Trial counsel failed to object to the sentence when imposed, and the law requires a challenge to sentencing must be raised at trial in order to be preserved for appellant review. Trial counsel's error denied applicant's due process rights.

Section 16-3-910 of the S.C. Code provides as follows:

Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years unless sentenced for murder.

This case present an exceptional circumstance because the trial court committed error by imposing an excessive sentence; which trial counsel failed to object to. This exceptional circumstance warrant a remand for resentencing. See, also State v. Vick, 384 S.C. 189, 201, 682 S.E.2d 275, 281 (Ct. App. 2009); Owens v. State, 331 S.C. 582, 585, 503 S.E.2d 462, 463. See, also, §16-3-910.

The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature. Applicant was convicted and sentenced on counts of kidnaping for the murder victim. If it were not for trial counsel's acts and omissions the outcome of the proceeding/sentencing would have been different.

Kidnaping conviction and sentence should be vacated.

08/08/2013	MCCORMICK	INCARCERATED	ADMINISTRATIVE
08/08/2013	KIRKLAND	INCARCERATED	MEDICAL
07/08/2010	MCCORMICK	INCARCERATED	ADMINISTRATIVE
07/07/2010	KIRKLAND	INCARCERATED	MEDICAL
12/04/2008	MCCORMICK	INCARCERATED	ADMINISTRATIVE
12/03/2008	KIRKLAND	INCARCERATED	MEDICAL
11/17/2004	MCCORMICK	INCARCERATED	ADMINISTRATIVE
11/01/2004	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
WARDKEEPER ASSISTANT	04/07/2015	-		3F5
WARDKEEPER ASSISTANT	04/22/2008	02/28/2015	INSTIT TRANSFER	3F5
GENERAL WORKER	04/10/2007	01/16/2008	PLACED IN ST/SP CUSTODY	3F5
CUSTODIAN HELPER	06/14/2005	10/26/2005	PLACED IN ST/SP CUSTODY	3F5
FOOD SERVICE AIDE	12/02/2004	02/08/2005	UNSAT JOB PERFORM	3F5

HISTORY OF EARNED EDUCATION CREDITS:

NO SCHOOL ASSIGNMENTS

********** END OF REPORT **********

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STATE OF SOUTH CAROLINA

COUNTY OF Aiken

IN THE COURT OF GENERAL SESSIONS

STATE VS. Cedric Golden

AKA: Cedric Colden

Race: B Sex: M Age: 23

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip [redacted]

DL# [redacted] D# SC 000374579

FBI/664008WA7

INDICTMENT/CASE#: 2004 GS 02 1747

A/W#: DT

Date of Offense: 12/21/03

S.C. Code §: 16-3-910

CDR Code #: 9 1 3 1 9 1 5

☐ CASE RESTORED

SENTENCE

☐ PLEA ☑ TRIAL

In disposition of the said indictment comes now the Defendant who was ☑ CONVICTED OF or ☐ PLEADS TO: Kidnapping

In violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0 1 0 1 9 1 5

☐ NON-VIOLENT ☑ VIOLENT ☐ SERIOUS ☑ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

John W Weeks
Solicitor

Defendant

Reginald Simmons / Carl G
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☑ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed ____ years and/or to pay a fine of $_____; provided that upon the service of ____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with probation for ____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: all other sentences 12/13/11

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $_____ beginning _____ paid to Public Defender

$_____

Other:

☐ Appointed PD or appointed other counsel, $35.13 TP Requires $500 be paid to Clerk during probation.

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: $_____ plus 20% fee: $_____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:		
§14-1-206 (Assessments 107.5%)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§ 35.13 (Public Def/Prob)	$500	$
§73.3, 1B TP (Law Enforce. Funding)	$25	$ 25.00
§33.7, 1B TP (Drug Court Surcharge)	$100	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$125.75

Sherry Langley
Clerk of Court/ Deputy Clerk

Court Reporter: Kama Hunt

PRESIDING JUDGE

Judge Code: 2 1 3 1 3

Sentence Date: 10-28-04

White – Clerk Green – Corrections Canary – Probation Pink – Defendant SCCA/217 (7/2003)

CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Aiken County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Julie A. Coleman, Esquire
Rasheeda Cleveland, Esquire
PCR Division – 2nd Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Aiken County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this _____ day of _____, 2017.

_____
DOYET A. EARLY III
Chief Administrative Judge
Second Judicial Circuit

_____, South Carolina