

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Feb 03 2023

SC Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of General Sessions

The Honorable Kristi F. Curtis, Circuit Court Judge

Case No.: 2019-GS-18-00496

State of South Carolina,

Respondent,

v.

Torrance McCrea,

Appellant.

MOTION TO FILE OUT OF TIME

That the Appellate, Torrance McCrea would respectfully move to file a Notice of Appeal out of time. The original Notice was mailed to the Court on September 14, 2022 and was lost in the mail.

Procedural History

An Order denying Appellant's Motion for New Trial was signed by the Honorable Kristi F. Curtis on April 7, 2022, was filed on April 13, 2022 and received by the Appellate on April 25, 2022. A Motion to Alter or Amend Judgement was timely filed and an Order Denying Defendant's Motion to Alter or Amend Judge was signed by the Honorable Kristi Curtis on August 30, 2022 and received by Appellant on September 6, 2022.

A Notice of Intent to Appeal was prepared and mailed both to the South Carolina Court of Appeals as well as the Williamsburg County Clerk of Court's Office. In addition, a

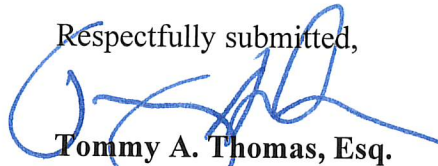
Certificate of Service indicating that Warren Anderson, Esq. with the Williamsburg County Solicitor's Office was served with a copy of the Notice of Appeal. Clocked copies from Williamsburg County were received indicating that they were filed on September 16, 2022. A copy of both of these documents are attached and incorporated by reference.

Argument

Counsel was not retained to represent the Appellant on the appeal, and as a courtesy, the appeal was filed on his behalf. The Appellant was instructed to obtain separate counsel, which he indicated that he was going to do. Only recently was a letter received by counsel asking about the status of his Appeal. Upon checking with the Court of Appeals it was discovered that the Notice of Intent to Appeal along with the Certificate of Service had not been received by the Court. This Motion was immediately filed with the court.

For the above reason, the Appellant would respectfully request that the Court allow the filing of the Notice of Appeal and Certificate of Service.

Respectfully submitted,



Tommy A. Thomas, Esq.

S.C. Bar No.: 005536

Attorney for Appellant,

February 3, 2023

P. O. Box 88
Irmo, SC 29063

FILED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals 2022 SEP 16 AM 11:13

SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY, SC

APPEAL FROM WILLIAMSBURG COUNTY
Court of General Sessions

The Honorable Kristi F. Curtis, Circuit Court Judge

Case No.: 2019-GS-18-00496

State of South Carolina,

Respondent,

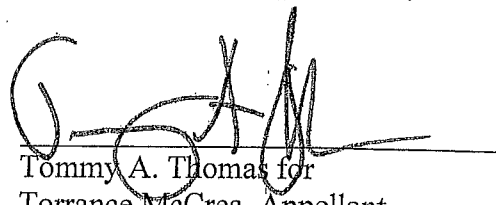
v.

Torrance McCrea,

Appellant.

NOTICE OF APPEAL

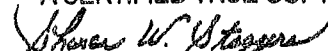
Torrance McCrea appeals the Order Denying Defendant's Motion for a New Trial, signed by The Honorable Kristi F. Curtis on April 7, 2022. Filed on April 13, 2022 and received by Appellant on April 25, 2022. A Motion to Alter or Amend Judgment was timely file and an unclocked Order Denying Defendant's Motion to Alter or Amend Judgement, signed by The Honorable Kristi F. Curtis on August 30, 2022 was received by Appellant on September 6, 2022.



Tommy A. Thomas for
Torrance McCrea, Appellant
Kershaw Correctional Institution
4848 Goldmine Hwy
Kershaw, SC 29067

Warren Anderson, Esq.
Williamsburg County Solicitor's Office
3rd Circuit Assistant Solicitor
Kingstree SC, 29556
843-355-9321 Ext: 7200

A CERTIFIED TRUE COPY


SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY, SC

FILED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

2022 SEP 16 AM 11:13

APPEAL FROM WILLIAMSBURG COUNTY
Court of General Sessions

SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY, S.C.

The Honorable Kristi F. Curtis, Circuit Court Judge

Case No.: 2019-GS-18-00496

State of South Carolina,

Respondent,

v.

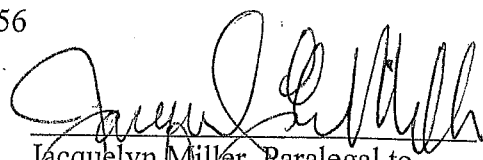
Torrance McCrea,

Appellant.


CERTIFICATE OF SERVICE

I, Jacquelyn Miller, Paralegal to Tommy A. Thomas for Torrance McCrea, Appellant, certify that I have served a copy of a Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid and the return address clearly shown on said envelope to:

Warren Anderson, Esq.
Williamsburg County Solicitor's Office
125 West Main Street
Kingstree, SC 29556


Jacquelyn Miller, Paralegal to
Tommy A. Thomas, Esq. for
Torrance McCrea

September 14, 2022

A CERTIFIED TRUE COPY

SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

STATE OF SOUTH CAROLINA,

vs.

TORRANCE MCCREA,

DEFENDANT/MOVANT.

IN THE COURT OF GENERAL SESSIONS
FOR THE THIRD JUDICIAL CIRCUIT

CASE NO.: 2002-GS-45-0072

ORDER DENYING DEFENDANT'S
MOTION FOR A NEW TRIAL

THIS MATTER came before the Court on March 1st, 2022. After reviewing Defendant's Motion, as well as all the supporting testimony and evidence, the Motion for a New Trial is DENIED. Defendant has failed to satisfy the criteria as set forth by the Court in State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999), all of which must be met in order for a new trial to be granted. The evidence must be: (1) such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. First, the testimony of Crystal Shelton could have been discovered before trial with reasonable diligence. Both Crystal Shelton and Jerome McCrea testified at the hearing, and both indicated Jerome McCrea knew Shelton's address and her phone number, and therefore could have readily procured her testimony for trial. Shelton testified at the hearing before this Court that she never saw Torrance McCrea with a gun on the night of the shooting. However, in his own written statement which was admitted at trial, he admitted that he was in possession of a ".357 magnum" at the time of the shooting. This admission directly contradicts Shelton's testimony, and as such the Court finds that the subsequent testimony would likely not change the result if a new trial were granted.

A CERTIFIED TRUE COPY
A CERTIFIED TRUE COPY
Sharon W. Staggers
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY, SC
WILLIAMSBURG COUNTY, SC

IT IS THEREFORE ORDERED THAT: Defendant's Motion for a New Trial is denied.

AND IT IS SO ORDERED this 7th day of April, 2022.

Kristi F. Curtis

KRISTI F. CURTIS
Presiding Judge
Third Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

STATE OF SOUTH CAROLINA,

vs.

TORRANCE MCCREA,

DEFENDANT/MOVANT.

IN THE COURT OF GENERAL SESSIONS
FOR THE THIRD JUDICIAL CIRCUIT

CASE NO.: 2002-GS-45-0072

ORDER DENYING DEFENDANT'S
MOTION TO ALTER OR AMEND
JUDGMENT

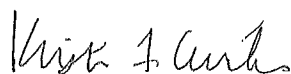
THIS MATTER came before the Court on March 1st, 2022 for a hearing on Defendant's Motion for a New Trial. The motion was denied, and Defendant thereafter filed this motion to alter or amend this court's previous order. After reviewing Defendant's Motion, as well as the transcript from the hearing on Defendant's Motion for a New Trial, the Motion to Alter or Amend the Judgment is DENIED.

As set forth by the Court in Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998), "there are three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." First, in this case, there is no change in controlling law. Second, there is no new evidence that was not available at trial or evidence that could not have been discovered with reasonable diligence. Defendant knew Crystal Shelton by name. He knew where she lived. He knew that she was present on the night of the shooting and was a witness to the events. He picked her up in North Carolina before the shooting and he drove her back home to North Carolina after the shooting. Under these circumstances, her testimony does not fall into the category of "newly discovered evidence. Finally, the Court does not find any errors of law that must be corrected to prevent manifest

injustice. After reviewing the transcript from the hearing on March 1, 2022 and reviewing the Motion to Alter or Amend the Judgment, the motion is DENIED.

AND IT IS SO ORDERED this 30th day of August, 2022.

At chambers
Sumter, South Carolina



KRISTI F. CURTIS
Presiding Judge
Third Judicial Circuit

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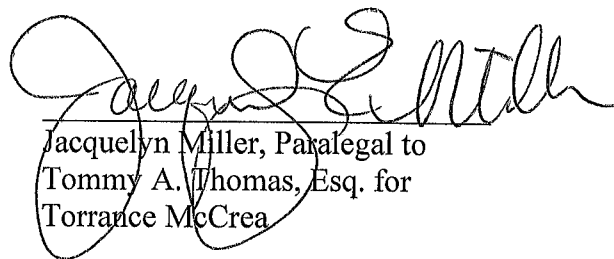
Torrance McCrea,

Appellant.

CERTIFICATE OF SERVICE

I, Jacquelyn Miller, Paralegal to Tommy A. Thomas for Torrance McCrea, Appellant,
certify that I have served a copy of a Motion to File out of Time by email to:

Warren Anderson, Esq.
Williamsburg County Solicitor's Office
Warren.anderson@wc.sc.gov


Jacquelyn Miller, Paralegal to
Tommy A. Thomas, Esq. for
Torrance McCrea

February 3, 2023



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Feb 03 2023

SC Court of Appeals

February 3, 2023

Email and U.S. Mail

Court of Appeals
V. Clare Allen, Deputy Clerk
P.O. Box 11629
Columbia, SC 29211

RE: The State v. Torrance McCrea
Lower Court Case No.: 2019-GS-18-00496

Dear Sir or Madam:

Please find enclosed an original and a copy of a Motion to File out of Time, with attachments as well as a Notice of Appeal in the above referenced matter for filing. Please be advised that I have not been retained to represent Mr. McCrea in this matter.

Please return a clocked copy to me in the enclosed envelope. Thank you.

Yours truly,

Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Warren Anderson, Esq. - Email