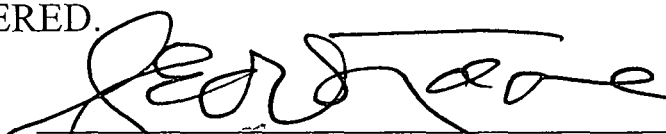


to Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002). Finally, the PCR judge found the issue was not ripe because petitioner was not participating in CSP at the time.


Petitioner filed a pro se notice of appeal and an explanation, pursuant to Rule 243(c), SCACR, why the PCR judge's determination was not proper. By order dated February 5, 2010, the matter was dismissed on the ground that petitioner failed to show an arguable basis for asserting the PCR judge's determination was improper.

Petitioner has now filed a petition for rehearing. The petition is denied. Moreover, we hereby prohibit petitioner from filing any further collateral actions challenging his 2003 convictions in the circuit court without first obtaining permission to do so from this Court.

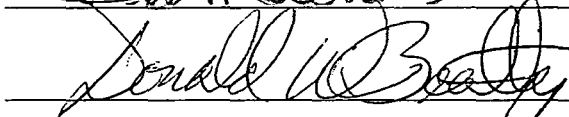
IT IS SO ORDERED.



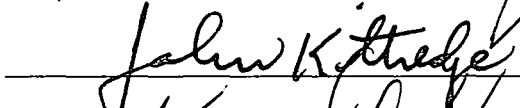
C. J.




J.



J.



J.



J.

Columbia, South Carolina

April 7, 2010

To: The Supreme Court of
South Carolina
Daniel E. Shearouse, Clerk of Court
P.O. Box 11330, Columbia, S.C. 29211

From: Mr. Patrick L. Booker, #297590
Evans Correctional Institution
610 Highway 9 West
Bennettsville, S.C. 29512

Date: September 18

RECEIVED
SEP 20 2012
S.C. SUPREME COURT

Re: Patrick L. Booker vs. State of South Carolina
2012 - CP - 23 - 2384

Dear Clerk of Court:

Enclosed for filing, please find the original Notice of Appeal within which there is my Certificate of Service along with a copy of the two Orders appealed from.

Also, I have provided the Court a copy of the exhibits referred to within the Notice of Appeal because those exhibits are very essential for the Court to allow me to appeal.

CC: My File

RECEIVED

SEP 20 2012

S.C. SUPREME COURT

Thank you,


STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Patrick L. Booker, Appellant - Petitioner,

VS.

State of South Carolina, Appellee - Respondent.

APPEAL FROM GREENVILLE COUNTY
G. EDWARD WELMAKER, CIRCUIT COURT JUDGE
Court of Common Pleas
2012 - CP - 23 - 2384

RECEIVED

SEP 20 2012

S.C. SUPREME COURT NOTICE OF APPEAL

The Appellant - Petitioner Patrick L. Booker (Booker) hereby provide notice of his intent to appeal from the Order of Dismissal rendered by The Honorable G. Edward Welmaker on July 19, 2012 and entered on July 25, 2012. Booker received a written notice of the entry of the Order of Dismissal on July 31, 2012 after which Booker timely filed a Motion to Alter or Amend Judgement on August 7, 2012.

Judge Welmaker denied the Motion to Alter or Amend Judgement by way of a form order denying his Rule 59(e) motion

on August 31, 2012. Booker received written notice of the form order denying his Rule 59(e) motion on September 11, 2012 and Booker hereby provide notice of his intent to appeal from Judge Welmaker's denial of the Motion to Alter or Amend Judgement.

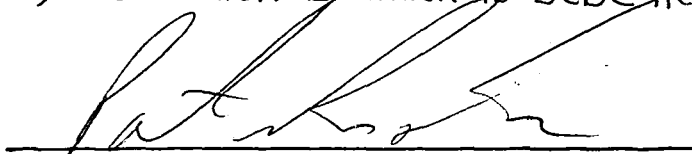
TAKE NOTICE that Judge Welmaker did not dismiss Booker's Application for Post-Conviction Relief (PCR) as successive or as being untimely and therefore, Booker is not required to provide an explanation pursuant to Rule 243(c), SCACR; however, Booker would like to notify this Court that Judge Welmaker misapprehended the nature of Booker's PCR application, to wit: Judge Welmaker apparently believed that Booker was challenging his convictions without having first obtained permission from this Court, in violation of this Court April 7, 2010 order but Booker's application for PCR merely challenged his sentence because of Booker's new discovery of strong, compelling mitigating evidence such that there is a reasonable probability that Booker's sentence would have been different.

Within Booker's Motion to Alter or Amend Judgement he clearly demonstrated how this Court's April 7, 2010 injunction was inapplicable to his PCR application (see attached copy of Motion to Alter or Amend Judgement dated July 31, 2012).

In order to provide this Court a clear picture of the nature of Booker's newly discovered evidence and how it relates to his PCR action in the lower Court, Booker is also attaching

the PCA application along with the exhibits appended thereto.
(see attached copy of Application for PCA; Exhibit A which is
Affidavit of Applicant; Exhibit B which is Commitment Order DJJ;
Exhibit C which is Memo of Law; and Exhibit D which is SCDC Health
Services).

BY:



September 14, 2012
Bennettsville, S.C.

Mr. Patrick L. Booker, #297590
Evans Correctional Institution
610 Highway 9 West
Bennettsville, S.C. 29512

Other Counsel of Record:

Ms. Karen C. Batigan, Esquire
Attorney General Assistant Deputy
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

PROOF OF SERVICE

I, Patrick L. Booker, do hereby certify that I have this date
served the Notice of Appeal upon the State of South Carolina
by depositing a copy there in the U.S. Mail, postage prepaid, and
addressed to:

Karen C. Batigan, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211

9/18/12
(Date)



(Signature)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Patrick Lee Booker,)
 S.C.D.C. No. 297590,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2012-CP-23-2384

ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE, SC
 2012 JUN 25 AM 10:35

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 5, 2012. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Greenville County Grand Jury indicted the Applicant on four counts of armed robbery (2002-GS-23-9233, -9235, -9237, -9239), ABHAN (2002-GS-23-9232), carjacking (2002-GS-23-9234), possession of a weapon during commission of a violent crime (2002-GS-23-9235), and threatening the life of a public official (2003-GS-23-5018). He waived presentment to assault on a correctional facility employee (2003-GS-23-6996). The Applicant was represented by Christopher T. Posey, Esquire.

On November 5, 2003, the Applicant pled guilty. The Honorable Edward W. Miller sentenced him to concurrent terms of twenty (20) years for each count of armed robbery, ten (10) years for ABHAN, twenty (20) years for carjacking, five (5) years for the weapons charge, five (5) years for threatening the life of a public official, and five (5) years for assault on a correctional facility employee. The Applicant did not appeal.

The Applicant filed a timely PCR application on July 29, 2004 (2004-CP-23-4385) and a hearing was held before the Honorable John C. Few on February 17, 2005. Judge Few denied the application by order dated March 17, 2005. The South Carolina Court of Appeals denied the subsequent Johnson petition for writ of certiorari on August 29, 2007.

The Applicant filed PCR applications on March 28, 2006 (2006-CP-23-2081), August 1, 2006 (2006-CP-23-4859), August 1, 2006 (2006-CP-23-4860), October 31, 2007 (2007-CP-23-7283), and October 17, 2008 (2008-CP-23-7865).¹ These applications were all summarily dismissed by the Chief Administrative Judge for the Thirteenth Judicial Circuit. The Applicant was unsuccessful in his attempts to appeal the denial of these applications.

In the 2008 PCR matter, the Applicant filed a notice of appeal at the South Carolina Supreme Court. The Supreme Court dismissed the matter by order dated February 5, 2010. The Applicant filed a petition for rehearing. By order dated April 7, 2010, the Supreme Court denied the petition for rehearing and stated the following: “we hereby prohibit petitioner from filing any further collateral actions challenging his 2003 convictions in the circuit court without first obtaining permission to do so from this Court.” A copy of this order is attached.

II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of plea counsel during sentencing:
 - a. Failed to investigate the Applicant’s “life history for ‘mitigating evidence.’”
 - b. Failed to discover the State “by and through its Juvenile Parole Board, had violated a Family Court Judge’s standing order [from

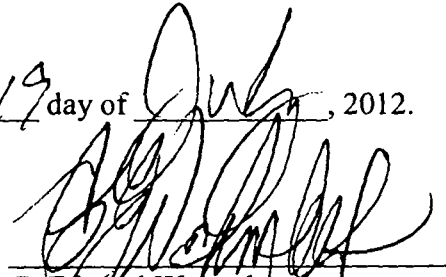
¹ The Applicant also filed a petition for writ of certiorari in the United States District Court for the District of South Carolina (2:10-1098-HMH-RSC). This petition was dismissed.

April 2000] by its failure to provide me the full level of care and treatment ordered by the family court judge.”

III.

This Court notes the Applicant has failed to include any documentation that the South Carolina Supreme Court has granted permission to file a new PCR application. Therefore, pursuant to the Supreme Court’s April 7, 2010 order, this matter must be dismissed.

AND IT IS SO ORDERED this 19 day of July, 2012.



G. Edward Welmaker
Chief Administrative Judge
Thirteenth Judicial Circuit

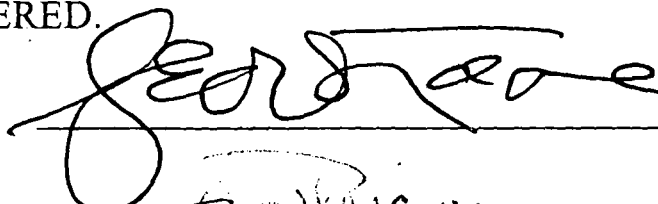

_____, South Carolina.

to Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002). Finally, the PCR judge found the issue was not ripe because petitioner was not participating in CSP at the time.

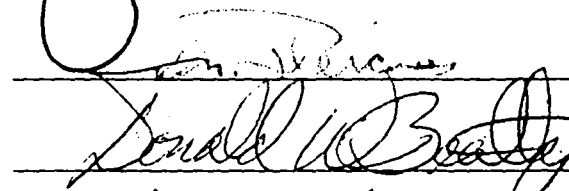
Petitioner filed a pro se notice of appeal and an explanation, pursuant to Rule 243(c), SCACR, why the PCR judge's determination was not proper. By order dated February 5, 2010, the matter was dismissed on the ground that petitioner failed to show an arguable basis for asserting the PCR judge's determination was improper.

Petitioner has now filed a petition for rehearing. The petition is denied. Moreover, we hereby prohibit petitioner from filing any further collateral actions challenging his 2003 convictions in the circuit court without first obtaining permission to do so from this Court.

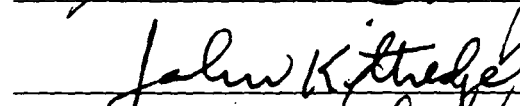
IT IS SO ORDERED.



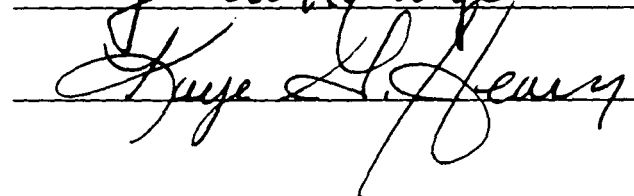
C. J.



J.



J.



J.

Columbia, South Carolina

April 7, 2010

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Patrick L. Booker, # 247590,
Applicant,

- VS -

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-23-2384

MOTION TO ALTER,
OR AMEND JUDGEMENT

FILED
JUL 19 2012
CLERK OF COURT
- 7 PM 2:36

TO: State of South Carolina, Respondent:

PLEASE TAKE NOTICE that the Applicant will move before The Honorable G. Edward Welmaker, Chief Administrative Judge for the Thirteenth Judicial Circuit, for an order altering or amending the Order of Dismissal, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. The basis for this motion is set forth below.

I. STATEMENT OF THE CASE

On April 5, 2012 the Applicant filed an application for post-conviction relief (PCR) to which the Respondent made its Return on July 19, 2012 requesting the application be summarily dismissed based upon an April 7, 2010, order from the South Carolina Supreme Court which enjoined the Applicant from filing any further collateral actions

challenging his 2003 convictions without first obtaining permission to do so from that court.

By Order dated July 19, 2012, and filed July 25, 2012 this Court granted the motion to dismiss stating, "the Applicant has failed to include any documentation that the South Carolina Supreme Court has granted permission to file a new PCR application. Therefore, pursuant to the Supreme Court's April 7, 2010 order, this matter must be dismissed."

For purposes of determining the timeliness of this motion, the Applicant received written notice of the Order of Dismissal on July 31, 2012.

II. ARGUMENT

A. THE APPLICANT WAS WRONGFULLY DENIED HIS RIGHT TO BE HEARD IN OPPOSITION TO DISMISSAL MOTION.

In its' Return to the PCR application, the State incorporated its' Motion to Dismiss the application based on the pleadings ; the State forwarded (to the Court) its proposed Order of Dismissal along with a copy of the April 7, 2010 Supreme Court order.

This Court did not exclude the Supreme Court order but instead the Court considered the Supreme Court order and, indeed, this Court incorporated the Supreme Court order within its Order of Dismissal of this action.

Pursuant to the South Carolina Rules of Civil Procedure (SCRCP), the Applicant was entitled to be given reasonable opportunity to respond because the Court ~~considered~~ converted the motion to dismiss (based on the pleadings) into a motion for summary judgment when the Court considered matter outside the pleadings (i.e., the Supreme Court order) See, Rule 12(c), SCRCP ("After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56'."). (emphasis added).

Not only did the Rules of Court require that the Applicant be allowed to be heard but the Uniform Post-Conviction Procedure Act, ~~the~~ section 17-27-70(b) also required that this Court allow the Applicant to respond to the State's proposal to have this Court dismiss the PCR action. See, S.C. Code Ann., § 17-27-70(b) (stating, in part, "The Applicant shall be given an opportunity to reply to the proposed dismissal.").

Thus, in the interest of justice and in order to uphold the judiciary's appearance of impartiality, this Court should vacate its Order of Dismissal and allow the Applicant to be heard according to law. See, Canon 3(B)(7) of Rule 501, Judicial Conduct ("A judge shall accord to every person who has a legal interest in a proceeding... the right to be heard according to law.").

B. THE SUPREME COURT ORDER DID NOT BAR THE APPLICANT'S PCR ACTION.

Had the Applicant been afforded the opportunity to be heard, he would have shown the Court that the Supreme Court order did not bar, and indeed the order did not even apply to, the Applicant's PCR action for the simple fact the Supreme Court order merely prohibited the Applicant from filing any new PCR applications challenging his 2003 "convictions" without first obtaining permission; and the Applicant would have further shown the Court that his new PCR action was not challenging his convictions but rather the Applicant was merely attacking his "sentence", a challenge which the Supreme Court order does not prohibit.

In his handwritten PCR application, the Applicant asserted that his plea counsel was ineffective during "sentencing", as his ground for relief; the Applicant requested that his "sentence" be vacated (and to be re-sentenced in light of newly discovered mitigating evidence), as his prayer for relief; and the Applicant swore under oath that he was attacking his "sentence", in his verification of the PCR application.

It is well-settled that a "sentence" is separate and distinct from a conviction, as a matter of law. See, Easter vs. State, 584 S.E.2d 117, 355 S.C. 79 (S.C. 2003) ("Sentencing, although often combined with admission of guilt in a hearing, is separate an issue from guilt and distinct phase of criminal process."); S.C. State Board

vs. Breeland, 38 S.E.2d 644 (S.C. 1946) ("Conviction' in its legal sense means a final judgement conclusively establishing guilt in a criminal prosecution. ").

Therefore, inasmuch as the Supreme Court order did not prohibit the Applicant from challenging his 2003 "sentence", the Applicant had a statutory right (under the Uniform Post-Conviction Procedure Act) to file his PCR application seeking to have his "sentence" vacated in the interest of justice based on newly discovered evidence that his plea counsel rendered ineffective assistance during the Applicant's "sentencing". See, Section 17-27-20(a)(4) ("Any person who has been convicted of, or sentenced for, a crime and who claims that there exists evidence of material facts, not previously ~~and~~ presented and heard, that requires vacation of the conviction 'or sentence' in the interest of justice" may file for PCR) (emphasis added); section 17-27-45(c) (same); also see, Gardner vs. Florida, 430 U.S. 349, 358, 97 S.Ct. 1197, 51 L.Ed. 2d 393 (1977) ("Even though defendant has no substantive right to ~~particular~~ particular sentence within range authorized by statute, 'sentencing is a critical stage of criminal proceeding at which he is entitled to effective assistance of counsel'. ") (emphasis added); I ABA Standards for Criminal Justice 4-4.1, commentary, p. 4-53 ("The lawyer also has a substantial and important role to perform in raising mitigating factors both to the prosecutor initially and to the court at sentencing. "); State vs. Cantrell, 158 S.E.2d 189, 250 S.C. 376 (S.C. 1967) ("Highly relevant, if not essential, to sentencing judge's election of appropriate sentence is the possession of fullest information possible concerning defendant's life and characteristics. "); Williams vs. Taylor,

120 S.Ct. 1495 (2000) ("Defendant was denied his constitutionally guaranteed right to effective assistance of counsel when his attorney failed to investigate and present substantial mitigating evidence during sentencing phase of [criminal process]").

In addition to sections 17-27-20(a)(4) and 17-27-45(c) above showing that a PCR applicant may attack his "sentence" without necessarily attacking the underlying conviction thereby, section 17-27-80 also makes it clear that a PCR court may grant a PCR applicant relief with respect to the sentence alone. See, S.C. Code Ann., Section 17-27-80 (stating, in part, "If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings...") (emphasis added).

Accordingly, this Court should vacate its Order of Dismissal and allow the Applicant's PCR action to proceed according to law.

C. THE COURT SHOULD NOTE THAT THE STATE WAIVED ITS RIGHT TO RAISE AFFIRMATIVE DEFENSES TO APPLICANT'S PCR ACTION.

A post-conviction action is a civil action generally subject to rules and statutes that apply in civil proceedings. Sutton vs. State, 361 S.C. 644, 606 S.E.2d 779 (S.C. 2004).

In Whitehead vs. State, 352 S.C. 215, 574 S.E.2d 200 (S.C. 2002) the South Carolina Supreme Court held that in a PCR action the State waives its right to raise an affirmative defense where the State neither raises affirmative defenses in its return to a PCR application nor in its motion to dismiss such application.

In the case here, the State neither raised an affirmative defense in its Return to the Applicant's PCR application nor in its Motion to Dismiss such application and therefore, the State waived its right to assert an affirmative defense to the PCR application in this case pursuant to Whitehead vs. State, supra.

D. THE AVERMENTS IN APPLICANT'S PCR APPLICATION ARE ADMITTED BECAUSE THE STATE FAILED TO DENY THEM IN STATE'S RETURN.

As discussed above, a post-conviction action is a civil action generally subject to rules and statutes that apply in civil proceedings. Sutton vs. State, 361 S.C. 644, 606 S.E.2d 779 (S.C. 2004).

Rule 8(d) of SCRCP provides that "averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading." Id.

In the case here, the State did not deny the averments/allegations in the Applicant's PCR application and thus, those averments

within the PCR application are admitted as a matter of law. See, Rule 8(d), SCRCP.

III. CONCLUSION

WHEREFORE, based upon the foregoing reasons and legal authorities cited, the Applicant respectfully moves this Court to vacate its Order of Dismissal and to allow this action to proceed according to law.

By:



July 31, 2012
Bennettsville, South Carolina

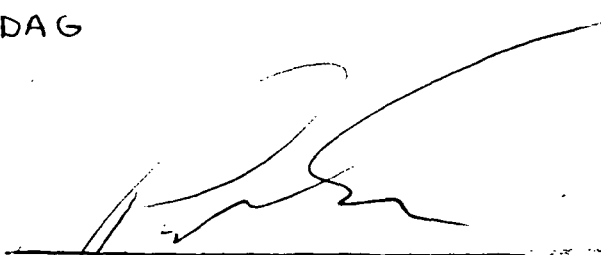
Mr. Patrick L. Booker, #297590
Evans Correctional Institution
610 Highway 9 West
Bennettsville, S.C. 29512

CERTIFICATE OF SERVICE

I, Patrick L. Booker, do hereby certify that I have this date served the within foregoing document upon the State of South Carolina by depositing a copy thereof in the United States Mail, postage prepaid, addressed to:

S.C. Attorney General's Office
Ms. Karen C. Batigan, ADAG
P.O. Box 11549
Columbia, S.C. 29211

8/1/12
(Date)


(Signature)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2302384

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2012 AUG 31 P 4 19

Patrick L Booker vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Rule 12(b), SCRPC; Rule 41(a),
 Other: _____
- ACTION STRICKEN (CHECK REASON):**
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other: _____
 Rule 40(j) SCRPC; Bankruptcy;
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Applicants Motion To Alter Or Amend Judgement Is Respectfully Denied.

Dated at Greenville, South Carolina, this 31st day of August, 2012.

Court Reporter:

PRESIDING JUDGE - G Edward Welmaker

This judgment was entered on the 31st day of August, 2012, and a copy mailed first class this 31st day of August, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Patrick L Booker Evans Corr Instit/F4 A266 601
Hwy 9 West Bennettsville, SC 29512

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Ratigan - Attorney General
ATTORNEY(S) FOR THE DEFENDANT(S) Office

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

C/A No. ~~2012-CP-23~~ 02384

Patrick L. Booker, # 297590,
Applicant,

- VS -

State of South Carolina,
Respondent.

APPLICATION FOR POST-
CONVICTION RELIEF

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
2012 SEP 11 AM 1:01

TO: STATE OF SOUTH CAROLINA

NOW COMES the Applicant Patrick L. Booker who file this Application for Post-Conviction Relief ("PCR") pursuant to Section 17-27-45(c) (i.e., newly discovered evidence section), and, in support thereof, Applicant plead, allege, and show unto the Court:

- 1). Place of detention: I am presently detained within the SCDC at Broad River Correctional Institution located in Columbia, South Carolina.
- 2). Name and location of Court which imposed sentence: Greenville County Court of General Sessions.
- 3). The indictment numbers upon which and the offenses for which sentence was imposed: 2002-GS-23-9232; 2002-GS-23-9233; 2002-GS-23-9234; 2002-GS-23-9235; 2002-GS-23-9239; 2003-GS-23-6996-; 2003-GS-23-5018, consisting of Armed Robbery (x4); Carjacking; Assault and Battery of a High and Aggravated Nature; Possession of a Weapon During the Commission of a

Violent Crime; Threatening the Life of a Public official; and Assault Upon a Correctional Facility Employee, respectively.

4). The date upon which sentence was imposed and the terms of the sentence: I was sentenced to a total of twenty (20) years' imprisonment on November 5, 2003.

5). A finding of guilty was made: after a plea of guilty.

6). Did you appeal from the judgement of conviction or the imposition of sentence? Answer: No.

7). If you answered "yes" to question (6), list: N/A.

8). If you answered "no" to question (6), state your reason for not so appealing: My plea counsel failed to file a Notice of Appeal.

9). State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel during sentencing

10). State concisely and in the same order the facts which support each of the grounds set out in nine (9):

(a) Less than one (1) year ago I discovered strong, compelling mitigating evidence which would have more likely than not

affected the sentencing judge's determination of my level of culpability regarding the offenses I committed. See, Affidavit of Applicant attached as Exhibit A. My plea counsel failed to properly investigate my life history for "mitigating evidence" to present and argue during my sentencing; my plea counsel failed to discover the fact that the State, by and through its Juvenile Parole Board, had violated a Family Court Judge's standing order by its failure to provide me the full level of care and treatment ordered by the family court judge. See, DJJ Commitment Order attached as Exhibit B; see also, Affidavit, supra; Memorandum of Law In Support of Application for Post-Conviction Relief, attached as Exhibit C.

Had my plea counsel discovered the existence and provision of the family court judge's order, he could have presented it, and the fact of its violation, to the Solicitor and ^{to} the sentencing judge as "mitigating circumstances" warranting a determination that I was less culpable because of the simple fact that I had been wrongfully denied, and prohibited from receiving, the full level of care and treatment that the family court judge had considered best for me; had the State complied with the family court judge's order by placing me in a Marine Institute or another group setting upon my release from the DJJ in December, 2001, I would not have even been on the street in June

of 2002 (i.e., six (6) months later) to have committed the criminal offenses, or even if were on the street it is more likely than not that I would have had better disciplined, sensitivity to the rights of others, including better coping and life skills which more likely than not would have diminished my impulsivity and propensity to forcibly steal the property of others.

Indeed, it is very plausible that, had my plea counsel made the discovery of this new evidence, he may have negotiated an agreement with the Solicitor to the effect that I would be returned to the DJJ for a violation of my juvenile parole which, due to my age then and the nature of the acts committed constituting the parole violation, would have permitted me to be transferred to SCDC (giving me a dose of prison life thereby) after which I would go into the Marine Institute upon release by the Juvenile Parole Board, or I would go into the JobCorps program or the U.S. Armed Forces ... anything that would have allowed me to have an opportunity to serve time in a more constructive, productive setting while allowing me to be there for my little girl, the successful completion of which would be for the Solicitor to nolle process the criminal offenses.

- 11). Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes

(b) any petition in State or Federal Courts for habeas corpus or post-conviction relief? **Yes.**

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in seven (7)? **NO.**

(d) any other petitions, motions or applications in this or any other Court? **Yes**

12). If you answered "Yes" to any part of eleven (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Post-conviction relief (x6)
- ii. Motion for Relief from Judgment under Rule 60(b), SCACP
- iii. Petition for Writ of Certiorari
- iv. Petition for Writ of Federal Habeas Corpus

(b) the name and location of the Court in which each was filed:

- i. Greenville County Court of Common Pleas
- ii. Greenville County Court of Common Pleas
- iii. South Carolina Supreme Court
- iv. United States District Court for the District of South Carolina.

(c) the disposition thereof:

- i. Denied
- ii. Denied
- iii. Denied
- iv. Denied

(d) the date of each such disposition:

- i. Unknown

(same)

(same)

(same)

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Unknown

ii. (same)

iii. (same)

iv. (same)

13). Has any ground set forth in nine (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? **Yes**, but this ground - ineffective assistance of counsel - has not been previously presented to this Court, or any court, under these newly discovered facts.

14). If you answered "yes" to thirteenth (13) identify:

(a) which grounds have been presented:

i. Ineffective assistance of counsel

(b) the proceeding in which each ground was raised:

i. Post-conviction relief; Petition for Writ of Federal Habeas Corpus

15). If any ground set forth in nine (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Not applicable

(b) (same)

(c) (same)

16). Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? **Yes**

(b) your trial, if any? **Not Applicable**

(c) your sentencing? **Yes**

(d) your appeal, if any, from the judgement of conviction or the imposition of sentence? **Not Applicable**

(e) preparation, presentation or consideration of my petitions, motions or applications with respect to this conviction, which you filed? **Yes**

17). If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you:

i. Randall L. Chambers, 308 West Stone Avenue, Greenville, S.C. 29601

ii. Christopher T. Posey, 315 West Stone Avenue, Greenville, S.C. 29601

iii. Maurice McNab, P.O. Box 5631, Greenville, S.C. 29606

(b) the proceedings at which each such attorney represented you:

i. Arraignment

ii. Guilty plea and sentencing

iii. Post-Conviction Relief

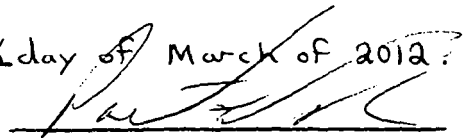
18). State clearly the relief you seek in filing this application: I am seeking to have my sentence vacated and to be resentenced thereafter in light of the newly discovered mitigating evidence.

19). Are you now under sentence from any other court that you have not challenged? **No**

Patrick L. Booker vs. State of South Carolina

C/A No. 2012-CP-23-02384

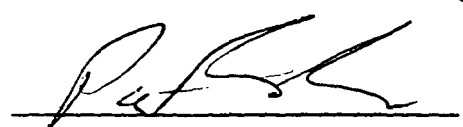
Executed at Columbia, South Carolina this 26 day of March of 2012:



STATE OF SOUTH CAROLINA }
COUNTY OF GREENVILLE }

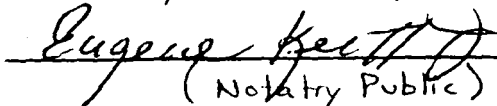
VERIFICATION

I, Patrick L. Booker, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground know to me for vacating, setting aside or correcting the sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this

26 day of March, 2012

 (L.S.)
(Notary Public)

My Commission Expires: April 4, 2016.

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Patrick L. Booker, hereby apply for leave to proceed in this action

without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



SWORN to or affirmed to and subscribed
before me this 26 day of March, 2012.

March Eugene Keitt
(Notary Public)

My Commission Expires : April 4, 2016

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Patrick L. Booker, # 297590,
Applicant,

— VS —

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS

C/A No. 2012-CP-23-02384

AFFIDAVIT OF APPLICANT

PERSONALLY APPEARED BEFORE ME the affiant, Patrick L. Booker, who, being duly sworn, deposes and says that:

- 1). I am over eighteen years of age and I am competent to testify to the matter set forth herein.
- 2). In June of 2011 I was given a copy of the Commitment Order DJJ dated April 13, 2000, Family Court Judge Amy Sutherland (which is attached as Exhibit B) by Attorney Janet B. Holmes during court hearing at the Greenville County Courthouse regarding a civil action that I brought against the SC DJJ. This was on June 6, 2011, in case Booker vs. SC DJJ, C/A No. 10-CP-23-7158.
- 3). Prior to receiving a copy of the Commitment Order DJJ at the June 2011 court hearing, I had absolutely no knowledge of its existence or provision that I was to be placed in a Marine Institute or another group setting upon my release from the DJJ. I first became aware of this fact in June, 2011, and I could not have discovered it prior thereto through the exercise

of reasonable diligence because the document was sealed in a confidential record.

4). Six months prior to my crimes I was released from the DJJ back into the custody of my mother Janice Booker on December 14, 2001; the State (i.e., the DJJ and/or the Juvenile Parole Board) violated Judge Sutherland's standing order that I be placed in a Marine Institute or another group setting upon my release from the DJJ because the State did not place me in a Marine Institute or another group setting when it released me from the DJJ.

5). Judge Sutherland's order that I be placed in a Marine Institute or another group setting was the care and treatment that she considered to be best for me which she was authorized to do pursuant to § 20-7-7805 [now § 63-19-1410]. Indeed, that provision of Judge Sutherland's order was an integral part of the rehabilitation that I needed as a adolescent/juvenile delinquent being raised by crack addicted mother in a drug infested, high-crime community without my father or brothers to influence and help guide me. However, the care and treatment Judge Sutherland ordered for me was unlawfully prohibited and denied to me.

6). It is a strong likely hood that I would not have committed the crimes for which I pleaded guilty to having committed if I would have been placed in a Marine Institute or another group setting upon my release from the DJJ. Likewise, it is a strong probability that the sentencing judge would have realized that the "system" had failed me, to the extent it denied me the care and treatment thought/considered best for me by one of his colleagues, and thus, may have sentenced me to ten (10) years concurrent (i.e., the mandatory minimum), or to fifteen (15) years so that I would be able to receive

a measure of punishment along with a period of rehabilitation but nevertheless be released soon enough to be a part of ^{my} a little girl's life while she is yet young.

7). My plea counsel was unaware of the existence and provision of Judge Sutherland's Commitment Order because he failed to investigate my background, juvenile correctional experience, and other circumstances for mitigating evidence.

8). I discovered this particular error of my plea counsel on June 6, 2011, because prior thereto I did not know that I had been prematurely released from the State's protection, custody, treatment and care, in violation of a Family Court judge's standing order.

FURTHER THE AFFIANT SAYETH NOT.



SWORN TO BEFORE ME this
26 day of March, 2012
Eugene Keeth
(Notary)

My Commission Expires: April 4, 2016.

EXHIBIT B

STATE OF SOUTH CAROLINA)

IN THE FAMILY COURT

COUNTY OF GREENVILLE)

IN THE INTEREST OF:)

Patrick Booker)

100 Pierce Ave.)

19F Woodland Holmes)

Greenville, SC 29607)

DOB: 12/3/84 AGE: 15)

COMMITMENT ORDER

DJJ

970R 231045

2000 J4 23 82

HEARING DATE: 4/13/00

JUDGE: Sutherland

COURT REPORTER: McDivitt

ARRESTING AGENCY: 200

ATTORNEY FOR SOLICITOR: J. Weston

ATTORNEY FOR DEFENDANT: R. Chambers

GUARDIAN AD LITEM: ~~C. Mack (Am)~~

Janice Booker

On the 16 day of February, ~~1999~~²⁰⁰⁰ a verified Petition was filed in this Court by the Office of the Thirteenth Judicial Circuit Solicitor alleging that said juvenile was a delinquent child in that he/she did in Greenville County commit the offense (s) of:

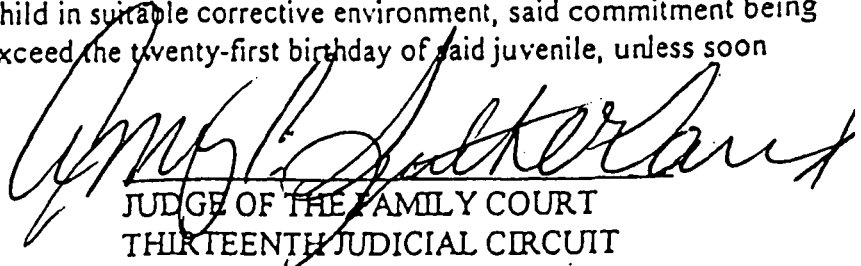
| OFFENSE(S) | LAW SECTION | OFF. DATE: | FILING DATE | PET.# |
|---------------------|-------------|------------|-------------|---------------|
| Probation Violation | | | | 970R 231045 |
| RSG > #5,000 | | 11/23/99 | 2/16/00 | 2000 J4 23 82 |

AN ADJUDICATORY HEARING was held on the 16 day of March, ~~1999~~²⁰⁰⁰ and pursuant to either X plea of guilty or _____ a hearing on the merits, the above named child was found upon proof beyond a reasonable doubt to the delinquent, for having committed the offense(s) of: Probation Violation and Receiving Stolen Goods

A DISPOSITIONAL HEARING was held on the 13 day of April, ~~1999~~²⁰⁰⁰ and as a result thereof I find that said respondent is a suitable person to be committed to the South Carolina Department of Juvenile Justice.

THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that the within named juvenile is hereby committed to the South Carolina Department of Juvenile Justice which shall arrange for placement of this child in suitable corrective environment, said commitment being for an indeterminate period not to exceed the twenty-first birthday of said juvenile, unless soon released by property authority.

Date: 4/13/00
Greenville, S.C.


JUDGE OF THE FAMILY COURT
THIRTEENTH JUDICIAL CIRCUIT

Juvenile is to be placed in Marine Institute or another group sett upon release from the Department of Juvenile Justice.

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Patrick L. Booker, # 297590,
Applicant,

- VS -

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS

C/A No. 2012-CP-23-02384

MEMORANDUM OF LAW IN SUPPORT
OF PCR APPLICATION

TO: State of South Carolina, Respondent:

NOW COMES the Applicant Patrick L. Booker, in support of the Application for Post-Conviction Relief ("PCR"), and submit this Memorandum of Law:

FACTS AND PROCEDURAL HISTORY

The Applicant Patrick Booker ("Mr. Booker") was arrested in June of 2002 and subsequently was indicted for various felony offenses by the Greenville County Grand Jury in October of 2002 and in July of 2003. In November of 2003 Mr. Booker, by and through the advice of court appointed counsel, pleaded guilty as charged. Since the entry of his guilty plea, Mr. Booker has filed and unsuccessfully sought multiple applications for PCR in state court including one application for federal relief. Mr. Booker has a twenty year sentence.

During a civil proceeding (Booker vs. DJJ, 2010-CP-23-7158) to which Mr. Booker was a party - plaintiff in an action against the South Carolina Department of Juvenile Justice ("DJJ"), a legal document was introduced and submitted

to the court as an exhibit by the DJJ's attorney of record, Janet Brook Holmes, at a court hearing on June 6, 2011. The document referred to is a Commitment Order to DJJ from the Greenville County Family Court Judge Amy C. Sutherland dated April 13, 2000. In the Commitment Order it is shown that Judge Sutherland ordered that Mr. Booker was to be placed in a Marine Institute or another group setting upon his release from the DJJ; Mr. Booker, however, was not placed in a Marine Institute or any other group setting when he was released from the DJJ in December of 2001 but instead Mr. Booker was placed back into the custody of his mother who, prior to Mr. Booker's commitment to the DJJ, had just lost custody of Mr. Booker by an order^{of} Judge Sutherland due to Mr. Booker's mother's admitted addition to crack cocaine.

Prior to the June 6, 2011, court hearing, Mr. Booker had never seen the Commitment Order nor had Mr. Booker ever been^{informed} of its provisions, particularly with respect to the provision ordering special solicitous care and regenerative treatment in the form of a Marine Institute or another group setting placement for Mr. Booker's aftercare.

STANDARD FOR PCR

In a Post-Conviction Relief proceeding, the burden is on the applicant to prove the allegations in his application. Arnd vs. Catoe, 372 S.C. 318, 642 S.E.2d 590 (S.C. 2007). In order to prove that counsel was ineffective, the PCR applicant must show that: (1) counsel's performance was deficient; and (2) there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different; Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding. Id.

Criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation. Id. For purposes of claim of ineffective assistance while the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to make an "independent investigation" of the facts and circumstances of the case. Id. Counsel at every stage have an obligation to conduct thorough and "independent investigation" relating to the issues of both guilt "and penalty". Id., 372 S.C. at 332. (emphasis added)

ARGUMENT

APPLICANT'S PLEA COUNSEL RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO INVESTIGATE, DISCOVER AND PRESENT POWERFUL MITIGATING EVIDENCE DURING SENTENCING OF APPLICANT.

The Applicant ("Mr. Booker") has filed this application for PCR under Section 17-27-45 (c) (i.e., "newly discovered evidence") contending there exist evidence of material fact not previously presented and heard which requires the vacation of his sentence because of the ineffective assistance his plea counsel rendered in failing to investigate Mr. Booker's social history for mitigating evidence which, as a result, caused Mr. Booker's plea counsel to fail to discover strong, compelling mitigating evidence that well may have affected the sentencing judge's appraisal of Mr. Booker's personal/moral culpability regarding his participation in the commission of the crimes for which he entered a guilty plea to having committed.

In particular Mr. Booker discovered on June 6, 2011 a copy of a Commitment Order to DJJ by Greenville County Family Court Judge Amy C. Sutherland dated

April 13, 2000 wherein it is shown that Judge Sutherland adjudged Mr. Booker to be a delinquent juvenile whereupon she committed Mr. Booker to the DJJ for an indeterminate period not to exceed his twenty-first (21st) birthday; the Order also show that Judge Sutherland, in ordering specific care and treatment as she considered best for Mr. Booker, further ordered that Mr. Booker were to be placed in a Marine Institute or another group setting upon his release from the DJJ. See, Affidavit of Applicant a copy of which is attached as **Exhibit A**; see also, Commitment Order DJJ a copy of which is attached as **Exhibit B**. On December 14, 2001, Mr. Booker were released (conditionally) from the DJJ to the custody of his mother; the DJJ and/or the Juvenile Parole Board failed to place Mr. Booker in a Marine Institute or any other group setting upon his release from the DJJ. See, Affidavit of Applicant, supra.

Mr. Booker's mother was addicted to crack cocaine which caused Judge Sutherland to take away her custody of Mr. Booker the month prior to the Commitment Order. See, Affidavit of Applicant. Moreover, Mr. Booker were raised up in a drug-infested, high-crime environment and without any father or brothers to provide Mr. Booker any influence or guidance during his adolescent-juvenile delinquency. Id. Consequently, in her good-faith attempt to provide measures of guidance and rehabilitation for Mr. Booker's correction and education, Judge Sutherland ordered solicitous care and regenerative treatment for Mr. Booker in the form of placement in a Marine Institute or another group setting whereby Mr. Booker would have been positively influenced and encouraged progressively in matters of discipline, patience, respect (for myself and for the rights of others), coping and life skills prior to his reintegration into society.

It is reasonable to believe that the reason Judge Sutherland ordered for the afore-said treatment to occur "upon Mr. Booker's release from the DJJ" and prior

to his re-entry into society, was due to the simple fact it was judicially known that Mr. Booker's commitment to the DJJ would more likely be ineffective in altering his delinquent behavior due to the large, centralized facilities provided by the DJJ in relation to a community-based program such as a Marine Institute or another group setting whereby individualized treatment and care is more focused on the juvenile. See, Alexander S. vs. Boyd, 876 F.Supp. 773 (D.S.C. 1995) ("The S.C. Juvenile Justice Task Force Report - a blue-ribbon commission composed primarily of prosecutors, police officers, and family court judges, and headed by South Carolina Associate [now Chief] Supreme Court Justice Jean Toal - strongly advocated the decentralization of correctional facilities and the use of innovative community based corrections approaches in an effort to stem the rising tide of juvenile crime in South Carolina. The Task Force concluded that, 'large, centralized facilities . . . are inherently less effective than smaller, regional facilities in altering juvenile behavior.'"); also see, Marian Wright Edelman, Young, Black and Locked Up: America's Cradle to Prison Pipeline Report (found @ childrensdefense.org/cradle-to-prison) ("Under the caring youth-focused leadership of Mark Steward, its former Youth Services Director, in 1983 Missouri closed all of its youth prisons and divided the state into five regions so that confined youth would be within driving distance of their homes. Each region has two facilities housing no more than 40 young people. This Department of Youth Services focuses on intensive individual counseling, academic and vocational education, and positive behavior modification..."); Alexander S., supra ("... court could [send juveniles] to 'community based' facilities to assist them with their reintegration into society.") (emphasis in original).

X Judge Sutherland's Commitment Order and all of its provisions were "standing orders" and thus, the Juvenile Parole Board's release of Mr. Booker to his mother and not to a Marine Institute or another group setting was illegal/void and/or was a disservice to Mr. Booker. See, Golden vs. St. Bd. of Juvenile Placement, 223 S.E.2d 777 (S.C. 1976) ("The Board did not have the authority to release

[juvenile]; therefore, such release was void. "'); Alexander S. vs. Boyd, supra ("... an outright release of juveniles to their homes ... would disserve juveniles who would then receive ... less rehabilitation")

After having been wrongfully and prematurely released from the State's *parens patriae* protection, Mr. Booker foolishly participated in a string of various felony offenses (primarily armed theft) over a three-day period with an older individual whom Mr. Booker had met and befriended in the DJJ. See, Affidavit of Applicant.

Mr. Booker submit it is reasonable to infer that his participation in the commission of the crimes was highly attributable to Mr. Booker's impulsivity and defiance of authority (i.e., lack of self-discipline) which the State allowed to prevail over Mr. Booker unabated because of the State's failure to ensure Mr. Booker received the solicitous care and regenerative treatment found in a Marine Institute or another group setting as ordered by the family court. See, SCDC Health Services; Medical Summary, Encounter 15 Mental Health Clinic dated 12/31/03 @ 15:25 By Stephen F. Compton, Clinical Corrections Counselor/Human Services Coordinator-I, regarding Mr. Booker's lack of self-discipline (" [Mr. Booker] appeared to be... very impulsive and immature [His] impulsivity and defiance of authority may lead to problems. ") (attached as Exhibit D).

Surely, the fact that Mr. Booker had been wrongfully and prematurely released from the State's *parens patriae* protection, custody and care without first having received all of the care and treatment the Family Court had deemed best — was a relevant factor which should have been presented and considered at Mr. Booker's sentencing for crimes he committed shortly after his premature release from care and treatment. See, Perry vs. Lynaugh, 492 U.S. 302, 319, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989) (" Underlying Lockett and Eddings is the principle that punishment should be directly related to the person culpability of the criminal

defendant. If the sentencer is to make an individualized assessment of the appropriateness of the ... penalty, evidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse."); California vs. Brown, 479 U.S., at 545, 107 S.Ct., at 841 (O'CONNOR, J., concurring) ("...the sentence imposed at the penalty stage should reflect a reasoned 'moral' response to the defendant's background, character, and crime.") (emphasis in original); Williams vs. New York, 337 U.S. 241, 247, 69 S.Ct. 1079 (1949) ("Highly relevant - if not essential - to [the] selection of an appropriate sentence is the possession of the full information possible concerning the defendant's life and characteristics.")

Mr. Booker was eighteen, at the time of sentencing, for crimes he committed shortly after he had just turned seventeen and had been recently released from the State's protection, custody, care and treatment, prematurely and illegally. Although his plea counsel gave some general detail about who Mr. Booker were including expounding upon the degree to which Mr. Booker participated in the foolish acts, the plea counsel nonetheless unreasonably and inexplicably failed to investigate, discover and present to the trial court at sentencing powerful mitigating evidence which, if properly presented, might have influenced the judge's appraisal of Mr. Booker's culpability. This omission by the plea counsel was outside the wide range of professional competence and constituted constitutionally deficient performance during Mr. Booker's sentencing phase of the guilty plea hearing resulting in prejudice. See, Williams vs. Taylor, 120 S.Ct. 1495 (2000) ("Defendant was denied his constitutionally guaranteed right to effective assistance of counsel when his attorneys failed to investigate and present substantial mitigating evidence during sentencing phase of trial; ... and counsel's error prejudiced defendant since the omitted evidence might have influenced [sentencer's] appraisal of defendant's moral culpability.").

The gist of the plea counsel's ineffectiveness, in this regard, was his failure to ^{do} any investigation, or a reasonable investigation, into Mr. Booker's background/social history for mitigating evidence which violated defense work articulated by the American Bar Association (ABA) - standards to which courts long have referred as "guides to determining what is reasonable." Wiggins vs. Smith, 123 S.Ct. 2527 (2003). The ABA Guidelines provide that investigations into mitigating evidence "should comprise efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor." Id. Among other topics counsel should consider presenting are medical history, educational history, employment and training history, family and social history, prior adult and juvenile correctional experience, and religious and cultural influences. Id. 1 ABA Standards for Criminal Justice 4-4.1, commentary, p. 4-55 ("The lawyer also has a substantial and important role to perform in raising mitigating factors both to the prosecutor initially and to the court at sentencing.... Investigation is essential to fulfillment of these functions."); ABA Standards for Criminal Justice, Prosecution Function and Defense Function 4-4.1 (3d ed. 1993) ("It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and 'the penalty' in the event of conviction.") (emphasis added).

Our Supreme Court recently held a criminal defendant's trial counsel to be ineffective in sentencing for failing to adequately investigate and present mitigation evidence, in Council vs. State, 670 S.E.2d 356 (S.C. 2008), where the Council court stated, "not only did counsel delay investigating [the defendant's] background, he failed to conduct an adequate investigation.... [W]e believe it was unreasonable for trial counsel not to obtain ... family records."; Rompilla vs. Beard, 125 S.Ct. 2456 (2005) ("Defense counsel's failure to examine file on defendant's prior conviction at sentencing phase of trial fell below the level of reasonable performance and such failure was prejudicial to defendant, warranting [post-conviction] relief on grounds of ineffective

assistance of counsel."); Wiggins vs. Smith, 123 S.Ct. 2527 (2003) ("The mitigating evidence counsel failed to discover and present in this case is powerful [1]" concluding defense counsel's failure to investigate petitioner's life history for mitigating evidence fell short of prevailing professional standards and inadequate investigation by counsel prejudiced petitioner).

APPLICANT'S PRESENT PCR APPLICATION IS NOT TIME-BARRED OR SUCCESSIVE BUT IS PROPERLY FILED.

i. Statute of Limitations

Under the PCR Act, an applicant must initiate a PCR proceeding within one year after one of three enumerated events, whichever is later: (1) the entry of a judgment of conviction; (2) the sending of the remittitur to the lower court from an appeal; or, (3) the final decision upon an appeal. S.C. Code Ann. § 17-27-45(A)(2003).

There are two exceptions to the general one-year statute of limitations. First, when the South Carolina Supreme Court or a court whose decisions are binding upon the South Carolina Supreme Court announces a new substantive standard or right that is intended to be applied retroactively, a PCR applicant has one year from the date on which the new standard or right was determined to commence a PCR application. S.C. Code Ann. § 17-27-45(B)(2003).

Secondly, if a PCR applicant has newly discovered evidence, he or she may benefit from a more lenient statute of limitations.

Specifically,

[i]f the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of

the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. § 17-27-45(c)(2003).

This exception is commonly known as "the discovery rule." In Coats vs. State, 575 S.E.2d 557 (S.C. 2003), PCR applicant Roger Coats alleged his trial attorney was ineffective for improperly advising him that he would be eligible for parole if he pled guilty to conspiracy to trafficking marijuana. Id. at 558. Coats ultimately pled guilty, and he was sentenced to seven years imprisonment. Id. at 557. Coats did not pursue a direct appeal. Id. After the general one-year statute of limitations had expired, Coats learned he was not eligible for parole. Id. The lower court denied Coats' PCR application. Id. at 558. The South Carolina Supreme Court reversed, holding that Coats' claim fell within the "discovery rule." Id. The Coats court observed that Coats' understanding of "his parole eligibility may have affected the validity of the underlying plea." Id. Because Coats filed his claim within one year after discovering his trial attorney's error, his petition was timely and he was entitled to an evidentiary hearing to determine if his trial counsel was in fact ineffective. Id. at 559.

Like Coats, Mr. Bocker has filed his present claim within one year after discovering his plea counsel's error and thus his application for PCR is timely and he is likewise entitled to an evidentiary hearing to determine if his plea counsel was in fact ineffective during sentencing. Coats vs. State, 575 S.E.2d at 559 (S.C. 2003); see also, Tilley vs. State, 511 S.E.2d 689 (S.C. 1999) ("Inmate's fourth application for post-conviction relief (PCR) ... was not "successive"; inmate learned [of claim on October 26, 1995], he filed his fourth application less than one month later,

and he could not have raised his claim in my earlier application because he was then unaware of such claim.").

CONCLUSION

Based upon the foregoing reasons and legal authorities cited, Mr. Booker hereby respectfully request this Honorable Court to grant him an evidentiary hearing so as resolve the claim of ineffective assistance.

Respectfully Submitted,



Patrick L. Booker, #297590

Broad River Correctional Inst.

4460 Broad River Road

Columbia, S.C. 29210

March 17, 2012

Columbia, South Carolina

EXHIBIT D

MDCI880D
OMINMDCA

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
SCDC HEALTH SERVICES: MEDICAL SUMMARY

08/08/1
C04556

SCDC# 297590 BOOKER, PATRICK LEE

PAGE 8

** ENCOUNTER: 17 DOCTOR'S CLINIC 01/16/04 10:42 LIEBER COMP
FLUOXETINE 20MG
SIG:1TAB PO DAILY OR HS X30DAYS; 2REFILLS.
SIG:
START DATE: 01/16/04 TOTAL DAYS: 90
MD:CUSAK, JOHN -
DIPHENHYDRAMINE 50MG
SIG:1TAB PO DAILY OR HS X30DAYS; 2REFILLS. (EPS)
SIG:
START DATE: 01/16/04 TOTAL DAYS: 90
MD:CUSAK, JOHN -
PERPHENAZINE 2MG
SIG:1TAB PO HS X30DAYS; 2REFILLS.
SIG:
START DATE: 01/16/04 TOTAL DAYS: 90
MD:CUSAK, JOHN -
DISCONTINUE: VALPROIC ACID.
J. R. CUSACK, D.O.
SIGNED OFF ON 01/16/04 @ 10:44 BY JOHN CUSACK, PHYSICIAN I
NOTED TRANSCRIBED TO MAR...VPA DC'D TJ JOHNSON RN
SIGNED OFF ON 01/16/04 @ 11:16 BY THOMAS K JOHNSON, UNCLASSIFIED

** ENCOUNTER: 16 SICK CALL 01/08/04 11:05 LIEBER COMP
S> MY OFFICER SENT ME UP SO YOU WILL GIVE ME A SHAVE PASS CAUSE I HAVE A RASH
ON MY FACE.
O> TEMP=097.3 PULSE= 68 RESP=16 BP=116/ 78 WEIGHT=160
HAS A PATCH OF PIMPLES ON FACE.
P> NURSE UNABLE TO GIVE PASS REF TO MD. J.SCHNEE LPN.
SIGNED OFF ON 01/08/04 @ 11:09 BY MARTHA L GEDERT, NURSE ADMINISTRATOR/MGR II
NOTED
SIGNED OFF ON 01/09/04 @ 8:30 BY RYAN B HUTCHISON, PHYSICIAN II

** ENCOUNTER: 15 MENTAL HEALTH CLINIC 12/31/03 15:25 LIEBER COMP
D-ASSESSMENT INTERVIEW: THIS IS A 19 YEAR OLD SINGLE BLACK MALE FROM GREENVILLE, SC WHO HAS RECEIVED A 20 YEAR SENTENCE FOR A VARIETY OF CONVICTIONS, INCLUDING ARMED ROBBERY, ASSAULTING A CORRECTIONAL EMPLOYEE, AND THREATENING THE LIFE OF A PUBLIC OFFICIAL. HE HAS BEEN ON VARIOUS MEDS, TODAY IDS ONLY ON DEPAKOTE. HE SAID HE WAS SAD WHEN FIRST ARRESTED AND IS PRESENTLY FRUSTRATED, BUT IS NOT HAVING SERIOUS SYMPTOMS. HE ACKNOWLEDGED USE OF CANNABIS AND ALCOHOL, LIVING A CRIMINAL LIFE-STYLE WHERE HE CARRIED WEAPONS, SOLD DRUGS, BUT ALSO WORKED IN A FACTORY (HITACHI). THERE WAS NO OBJECTIVE EVIDENCE OF DEPRESSION, CONFUSION, DISTRACTION BY INTERNAL STIMULI. HE APPEARED TO BE ABOVE AVERAGE INTELLIGENCE AND VERY IMPULSIVE AND IMMATURE, BUT WITH FAIR TO GOOD SOCIAL SKILLS.
A-ANTISOCIAL TRAITS, R/O ANTISOCIAL PERSONALITY DISORDER, R/O DEPRESSION, NOS. SCHEDULED FOR MEDICATION EVALUATION WITH DR. CUSACK 1-16-04, SEE AGAIN 1-7-04. LIKELY HE WILL ADJUST WELL ONCE HE LEARNS PRISON ROUTINES AND MAKES CONTACT WITH FAMILY. IMPULSIVITY AND DEFIANCE OF AUTHORITY MAY LEAD TO PROBLEMS.

MDCI880D
OMINMDCA

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
SCDC HEALTH SERVICES: MEDICAL SUMMARY

08/08/11
C045560

SCDC# 297590 BOOKER, PATRICK LEE

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STEVE COMPTON, CCC

SIGNED OFF ON 12/31/03 @ 15:34 BY STEPHEN F COMPTON, HUMAN SERVICES COORD I

- ** ENCOUNTER: 14 LAB CLINIC 12/30/03 21:50 LIEBER COMP
VALPROIC ACID AND AST DRAWN W/OUT DIFFICULTY. PER PSYCH CLINIC PROTOCOL.
SIGNED OFF ON 12/30/03 @ 21:51 BY SARAH F CHISOLM, MEDICAL ASSISTANT TECH I
- ** ENCOUNTER: 13 MENTAL HEALTH CLINIC 12/19/03 9:07 LIEBER COMP
VPA/AST PER PROTOCOL REQUEST SENT TO LAB... TJ JOHNSON RN
SIGNED OFF ON 12/19/03 @ 9:08 BY THOMAS K JOHNSON, UNCLASSIFIED
J.R. CUSACK, D.O.
SIGNED OFF ON 12/19/03 @ 10:45 BY JOHN CUSACK, PHYSICIAN I
- ** ENCOUNTER: 12 FOLLOW-UP DENTAL 12/12/03 12:47 LIEBER COMP
I/M RESCHEDULED FOR EXAM DUE TO DORM LOCKDOWN.
SIGNED OFF ON 12/12/03 @ 12:48 BY CANDACE A WIGFALL, MEDICAL ASSISTANT TECH I
- ** ENCOUNTER: 11 NARRATIVE 12/10/03 19:26 LIEBER COMP
NEW ARRIVAL TO LIEBER CI INMATE HX OF AGGRESSIVE BEHAVIOR, CANNABIS DEP. &
ETON ABUSE NO VALPROIC ACID 250MG 1 PO Q D AND 2 PO Q PM. ALLERGIES TO FISH
REFERRALS TO MENTAL HEALTH CLINIC.
SIGNED OFF ON 12/10/03 @ 19:37 BY SARAH F CHISOLM, MEDICAL ASSISTANT TECH I
SIGNED OFF ON 12/10/03 @ 21:33 BY TEGAN EGGER, REGISTERED NURSE I

To: Greenville County Clerk of Court
305 East North Street
Greenville, S.C. 29601

From: Patrick L. Booker, #297590
Broad River Correctional Inst.
4460 Broad River Road
Columbia, S.C. 29210

Date: March 27, 2012

Re: Patrick L. Booker vs. State of South Carolina (PCR)

Subject: Submission of PCR Application and Supporting Documents for Filing

Dear Sir/Madam:

Enclosed for filing, please find the original Application for Post-Conviction Relief along with supporting documents regarding the above-referenced matter. Return to me a copy with assigned case number.

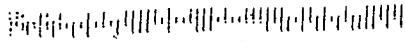
(NOTE: In addition to file-stamping the PCR application, please file-stamp the "Affidavit of Applicant" as well as the "Memorandum of Law In Support of PCR Application".)

Thank you for your prompt attention and assistance with this matter.

Best regards



cc: My File



Mr. Patrick L. Booker #297590
 Evans Correctional Institution (Ft. 251)
 610 Highway 9 West
 Bennettsville, S.C. 29512

Florence, SC 29502
 TUE 19 SEP 2011



Supreme Court of South Carolina
 The Hon. Daniel E. Shearouse, Clerk of Court
 P.O. Box 11330
 Columbia, S.C. 29211