

RECEIVED

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S.C. SUPREME COURT

Exhibit #1

WITNESSES

Mike Malonis - JCSO

DOCKET NO. 2009-GS-27-00494

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

October Term 2009

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

ARREST WARRANT NUMBER

J367476

ACTION OF GRAND JURY

TRUE BILL

NO BILL

FOREMAN *Arund Steel*

DATE *10/20/09*

Foreperson of Grand Jury
Date:

VERDICT

THE STATE

vs.

Breon Joseph Alexandre

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC

BY: *[Signature]*
DATE: *10/31/09*

Foreperson of Petit Jury
Date:

WITNESSES

Jeff Crosby - JC SO

ARREST WARRANT NUMBER

J367500

ACTION OF GRAND JURY

TRUE BILL

NO BILL

FOREMAN

DATE

[Signature]
10/24/09

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-27-00492

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

October Term 2009

THE STATE

vs.

Breon Joseph Alexandre

Indictment for

**Robbery / Armed Robbery, robbery while armed
or allegedly armed with a deadly weapon**

SC Code: 16-11-0330(A)

CDR Code:0139

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

INDICTMENT

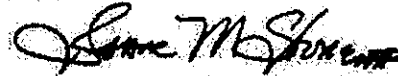
2009-GS-27-00492

At a Court of General Sessions, convened on October 20, 2009 the Grand Jurors of Jasper County present upon their oath:

**Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly
weapon**

That on or about July 18, 2008, in Jasper County, South Carolina, the Defendant, Breon Joseph Alexandre, at 8747 Grahamville Road, by use of force, threats or intimidation and while armed with a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Proctor Robert Bright with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Isaac McDuffie Stone, III, Solicitor

WITNESSES

Jeff Crosby - JCSO

ARREST WARRANT NUMBER:

J367498

ACTION OF GRAND JURY

TRUE BILL

NO BILL

FOREMAN *[Signature]*

DATE *10/20/09*

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-27-00493

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

October Term 2009

THE STATE

vs.

Breon Joseph Alexandre

Indictment for

Burglary / Burglary (After June 20, 1985) - First degree

SC Code: 16-11-0311

CDR Code:0079

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

Exhibit #2

STATE OF SOUTH CAROLINA)
 COUNTY OF Jasper)
 STATE VS.)
 Breon Alexandre)
 AKA:)
 Race: B Sex: M Age: 17)
 DOB: [REDACTED] SS#:)
 Address: [REDACTED] Bees Creek Road)
 City, State, Zip: Ridgeland, SC 29936)
 DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

AW 14
 INDICTMENT/CASE#: 2009GS2700494
 A/W#: J367476
 Date of Offense: 7/18/2008
 S.C. Code § : 16-03-0010; 16-03-0020
 CDR Code #: 0116

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Murder

CONVICTED OF or PLEADS

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws; bearing CDR Code # 0116
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST: Sean P. Thornton 15368 Breon Alexandre Defendant Stephen T. Plevins 012014 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 40 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:

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.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing 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 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

§ 47.12 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ _____

§ 14-1-213 (Drug Court Surcharge) \$100 \$ 23.00

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(D) (Vehicle Assessment) \$40/ca \$ _____

§ 90.7 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ _____

TOTAL \$ 200.00

Clerk of Court/ Deputy Clerk Margaret Bostick

Court Reporter: Brenda Cooley

SCCA/217 (11/2009)

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 Fund

Other: _____

Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge J.P. [Signature]

Judge Clerk _____

Sentence Date: 4/14/2010

TRUE COPY
 MARGARET BOSTICK
 CLERK OF COURT
 JASPER COUNTY, SC

BY: [Signature]
 DATE: 10-3-14

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Jasper
STATE VS.

INDICTMENT/CASE#: 2009GS2700492

AKA: Breon Alexandre

A/W#: J367500

Race: B Sex: M Age: 17

Date of Offense: 7/18/2008

DOB: SS#:

S.C. Code §: 16-11-0330(A)

Address: Bees Creek Road

CDR Code #: 0139

City, State, Zip: Ridgeland, SC 29936

DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly we

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139.
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS

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: Sean Thornton 15968 SC Bar# Defendant
Breon Alexandre Defendant
D. Keith T. P. P. Attorney for Defendant 012014 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 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:
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.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Table with columns for Recipient, *Fine, and amounts. Includes items like § 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, § 56-1-286 (DUI Breath Test) \$25, § 47-12 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$100, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, § 90.7 (SCCA Surcharge) \$5, 3% to County (if paid in installments) \$.

TOTAL: \$ 122.00
Clerk of Court/ Deputy Clerk: Mandy Boston
Court Reporter: Brenda Cooley
SCCA/217 (11/2009)

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 Fund
Other: POSTED BY CLERK DATE 7/14/10

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge: [Signature]
Judge Code: 2019
Sentence Date: 4/10/2010

STATE OF SOUTH CAROLINA
 COUNTY OF Jasper
 STATE VS.
 Breon Alexandre
 AKA:
 Race: B Sex: M Age: 17
 DOB: SS#:
 Address: Bees Creek Road
 City, State, Zip: Ridgeland, SC 29936
 DL#: SID#:

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#: 2009GS2700493
 A/W#: J367498
 Date of Offense: 7/18/2008
 S.C. Code §: 16-11-0311
 CDR Code #: 0079

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Burglary / Burglary (After June 20, 1985) - First degree

CONVICTED OF or PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC 1617-25-45
 w/minor 1st or Lowd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Sean Thornton 15868 SC Bar# Breon Alexandre Defendant Joseph T. Plawi Attorney for Defendant 022014 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 40 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:
 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.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms:
 Set by SCDPPPS _____

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 Fund
 Other: **POSTED**
BY DATE 4/12/10

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
§ 56-1-286 (DUI Breath Test)	\$25
§ 47.12 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$100
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
§ 90.7 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 30.00

Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Margaret Bostick
 Court Reporter: Brenda Coley
 SCCA/217 (11/2009)

Presiding Judge: [Signature]
 Judge Code: 20192
 Sentence Date: 4/12/2010

Exhibit #3

State of South Carolina) Court of General Sessions
County of Jasper) Fourteenth Judicial Circuit
State of South Carolina)
vs.) Case No. 2009-GS-27-0492
Breon Joseph Alexander,) 2009-GS-27-0493
Defendant.) 2009-GS-27-0494

Transcript of Record

April 12, 2010

Ridgeland, South Carolina

BEFORE: The Hon. J. Ernest Kinard, Judge

APPEARANCES:

Duffie Stone, Esq.
Solicitor

Stephen Plexico, Esq.
Attorney for the Defendant

Brenda Cooley
Circuit Court Reporter

I N D E X

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E X H I B I T S

(There were no exhibits.)

1 (On Monday, April 12, 2010, the defendant
2 being present with counsel, the hearing convenes at
3 approximately 10:45 a.m., and the following proceedings
4 were had:)

5 THE COURT: All right.

6 MR. STONE: Your Honor, the state calls Breon
7 Joseph Alexander. May it please the Court, Your Honor.

8 THE COURT: Sure.

9 MR. STONE: Standing before you is Breon
10 Joseph Alexander. He is indicted on three indictments.
11 The first one is 2009-GS-27-492, charging him with armed
12 robbery; 2009-GS-27-493, charging him with burglary in
13 the first-degree; 2009-GS-27-494, charging him with the
14 offense of murder. He is standing here with his
15 attorney, Mr. Steve Plexico. My understanding is that
16 he wishes to enter a plea of guilty at this time to
17 these charges. There is no sentence negotiation at all
18 in this case. And I will hand you up the paperwork.

19 (Documents tendered to the Court.)

20 THE COURT: Okay. You are Breon Alexander;
21 is that right?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And, Mr. Alexander, the acoustics
24 in here are not too good. If you can't hear something,
25 just raise your hand and I'll repeat it. All right?

1 THE DEFENDANT: All right.

2 THE COURT: You are not an old person
3 apparently. How old are you?

4 THE DEFENDANT: Seventeen.

5 THE COURT: Seventeen. And how far in school
6 have you gone?

7 THE DEFENDANT: Ninth grade.

8 THE COURT: Ninth grade. All right. Can you
9 read and write pretty good?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You've got three, of course, very
12 serious charges against you. They all apparently arise
13 out of the same incident. I don't know anything about
14 the case at this point. The solicitor handed up three
15 indictments. The indictments contain allegations. And
16 they allege that you committed the crime of burglary in
17 the first degree which is entering property at nighttime
18 with intent to commit a crime or while armed with a
19 deadly weapon and so forth. It carries a sentence of life,
20 and you understand that, right?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. On that same date
23 another indictment alleges you committed the crime of
24 armed robbery. Armed robbery is taking the property
25 from somebody by use of force while armed with a deadly

1 weapon. And we're talking about Proctor Robert Bright,
2 I guess, is the victim. Armed robbery carries between
3 ten and thirty. Do you understand that's talking about
4 years?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You've heard that about one
7 strike you're out, two strikes you're out. Both of
8 those charges constitute strikes. They require you to
9 serve 85 percent of any penalty that's imposed.

10 The final indictment alleges that on that
11 same date, July the 18th of '08, you killed Proctor
12 Robert Bright, that you shot him with a .22 rifle and
13 stabbed him and so forth. That constitutes the crime of
14 murder, and that carries like 30 years to life. It's
15 not an 85-percenter. It's whatever you get sentenced
16 to, you serve every day. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, you're looking at, of
19 course, thirty years and two life sentences maximum
20 exposure. Since all three indictments allege the
21 commission of crimes that occurred at the same time, the
22 state could actually try everything in one trial. Do
23 you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You could, of course, plead

1 guilty to one of the charges and not guilty to the
2 others or any combination of those and you'd be entitled
3 to a trial on the charge that you pled not guilty to.
4 If you pled not guilty to all three charges you would be
5 entitled, of course, to one trial. You understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Since you only finished the ninth
8 grade, I don't know about your ability to comprehend
9 everything here. You're represented by Mr. Plexico?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you discussed the charges
12 against you in detail with him?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: He went over with you this
15 Advisement of Rights form, I'm sure.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: The situation is, the Advisement
18 of Rights form advises you of all your constitutional
19 rights that you could exercise if you pled not guilty
20 during a trial, and it has other information on there
21 about whether you've taken any medications or have any
22 health problems and things like that. Are all your
23 answers correct on this Advisement of Rights form?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: In a trial you are presumed

1 innocent. You do understand that, don't you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And there's absolutely no burden
4 on your part to prove that you're not guilty. In fact,
5 you get to participate with your attorney and you get so
6 many strikes if the state starts calling jurors. So
7 does the state. Eventually, twelve jurors are seated,
8 and from that point forward the burden of proof is on
9 the state in order to obtain a conviction on any of the
10 charges in these indictments. You, of course, would
11 have to be found guilty unanimously by twelve jurors
12 beyond a reasonable doubt. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: During a trial you get to sit
15 with your attorney, observe all that transpires. You
16 can through your attorney question the state's witnesses
17 in detail. You can make various motions. You can move
18 to exclude testimony. You can move to exclude other
19 evidence. I don't know anything about the facts, but
20 you waive your right to make any motions if you plead
21 guilty. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, apparently you made some
24 statement to law enforcement; is that right?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: If you elected not to testify,
2 which is your option in a jury trial, the state cannot
3 make you testify. If you elected not to testify, the
4 state could not automatically put any statement that you
5 made to them in evidence. Before a statement out of
6 court made by you could be presented, the state would
7 have to convince the trial judge that any statement you
8 gave was freely and voluntarily given after you had been
9 advised of your Miranda rights and given your Miranda
10 warnings. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, your rights are: You don't
13 have to say anything. If you do say something, the
14 warning what you say can and would be used against you.
15 They have to tell you you have a right not to speak.
16 They have to tell you if you can't afford an attorney
17 one will be appointed for you, and they have to say you
18 have the right to hire an attorney, get one appointed,
19 before you state anything or don't state anything. But
20 if you plead guilty, you waive your rights to keeping
21 that statement out, so they can just read it to me, any
22 statement you made. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, of course, you can take the
25 stand and testify. That's up to you. You can testify

1 and say, you know, I was not even the one that was in
2 Jasper County on this date, I was somewhere else. You
3 might have other defenses to the charges. Again, I
4 don't know anything about the facts, but if you plead
5 guilty you waive any particular defenses you might have.
6 Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If you had witnesses who could
9 assist you in presenting evidence in a trial and they
10 were within the jurisdiction of the court, we could
11 compel them to come to court, probably make them
12 testify. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, again, you don't have to put
15 up a defense because you don't have to prove you're not
16 guilty. The state has to convince twelve jurors
17 unanimously beyond a reasonable doubt the fact that you
18 are guilty. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. On the charge of
21 murder, a potential defense could be I acted in
22 self-defense, but if there was evidence of self-defense
23 out there the state would have to prove beyond a
24 reasonable doubt that you didn't act in self-defense.
25 You wouldn't have to prove that you did. Do you

1 understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: It's possible -- again, just to
4 reiterate, I don't know anything about the facts. The
5 solicitor is going to tell me in a little bit. In a
6 murder trial, sometimes a jury can consider lesser
7 included offenses. It may be that a jury after
8 listening to the facts could find you guilty of
9 voluntary manslaughter. They, of course, could find you
10 not guilty, but voluntary manslaughter does not carry
11 all the way up to life. It carries a maximum of thirty
12 years. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: If you plead guilty to these
15 three charges, they carry the maximum sentences that I
16 went over with you. Do you have any question about
17 that?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right. Now, I asked you if
20 your answers were correct on the Advisement of Rights
21 form. You said that they were. You're not taking any
22 medications today; is that right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Nobody's threatened you in any
25 manner to get you to plead guilty?

1 THE DEFENDANT: No, sir.

2 THE COURT: Do you have any question about
3 any trial rights that you give up by pleading guilty?

4 THE DEFENDANT: No, sir.

5 THE COURT: Of course, if I sentence you to
6 these charges, you pick up, of course, three violent
7 crimes. If you ever get out, commit any crime, probably
8 be life without parole, whether it's violent or not. If
9 it's a violent crime, clearly the state could ask for
10 life without parole. And some, some crimes are
11 classified as violent that you wouldn't think are
12 violent, like trafficking in drugs. Some of them just
13 first offense just carry three to ten years, but since
14 they're classified as violent the state could ask for
15 life without parole, if you ever got out. Do you
16 understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Solicitor.

19 MR. STONE: May it please the Court, Your
20 Honor.

21 Your Honor, on July the 18th, 2008, Breon
22 Alexander was scheduled for a family court hearing for a
23 rule to show cause to determine whether he had violated
24 the probation he was currently on. This was scheduled
25 sometime in the morning of the 18th.

1 Earlier that morning, somewhere around three
2 o'clock in the morning, is when this event took place
3 and it took place on Grahamville Road which is literally
4 right down the street from this courthouse.

5 This is a crime scene sketch that just shows
6 you, and that way I can give you a better idea exactly
7 what happened. (Refers to exhibit board.)

8 This is a home actually that Proctor Bright
9 built and lived in by himself. About three o'clock in
10 the morning on the 18th -- there was a window back in
11 this back bedroom area -- the defendant took a cooler, a
12 blue cooler, set it down at the bottom of the window.
13 He had gloves on. He goes inside the window. He finds
14 Proctor Bright asleep in the living room area. He wakes
15 him up by beating him in the face. He then beats him
16 through the house to this back area.

17 And we know that, Your Honor, because the
18 crime scene technicians that arrived at the scene, these
19 markings here, these letters going through this back
20 room, are all blood marks. It appears that it starts,
21 the bleeding starts primarily right next to the kitchen
22 door and then in toward in sort of a circular fashion
23 through the room.

24 What is -- and not only the science tells us
25 but also Breon Alexander's statement is that he beat

1 him. He at one point knocked him down to the point that
2 the pathologist says that there was enough blunt force
3 trauma at that point to the back of the brain that he
4 would have died regardless.

5 Breon Alexander got him over to this area
6 where he ended up dying and shoots him with a .22 rifle
7 that Proctor Bright had in the house. And when he shot
8 him with the rifle, he literally took the end of the gun
9 and put it to Proctor Bright's chin before he pulled the
10 trigger. That at that point severed his C-3 which would
11 have paralyzed him as well as cause the death at that
12 point, but he had a few moments that he was still alive.
13 During Breon Alexander's statement, he said that he
14 could -- he was still gurgling, and at that point
15 Alexander took a knife that he had and slit his throat.

16 This is how Theresa Brown, Proctor Bright's
17 daughter, found him. She found him the next morning.
18 She lives right down the street and periodically checks
19 on him to see -- to see if he's okay. Noticed the car
20 was missing.

21 THE COURT: All right. How old was he? See,
22 I don't know anything about the case.

23 MR. STONE: He was 85.

24 THE COURT: Okay.

25 MR. STONE: He was 85. And he -- like I

1 said, he lived in this house, and because of his age and
2 living by himself his daughter continuously checked on
3 him. And she's here with us today. She goes to the
4 house and finds him, calls 9-1-1.

5 They locate the car and the gun in Clarendon
6 County. Breon Alexander is taking the car down the
7 interstate, he's heading to North Carolina, the car
8 catches on fire. They have to call a tow truck. The
9 tow truck driver gets the car and the gun, and Breon
10 Alexander gets a bus ticket to Greensboro, North
11 Carolina where he is apprehended. Alexander is caught
12 in Greensboro. He doesn't give a statement on the way
13 back but then gives one to the police once he gets back.

14 These are just the pathology photos of -- or
15 the drawings of the damage, obviously a lot in the mouth
16 area where Proctor Bright was beat, the gunshot, and the
17 slash marks on the neck.

18 What is particularly telling in this,
19 however, Your Honor, is that there were no defensive
20 wounds. He was 85, I think he was healthy, but I quite
21 frankly think he was asleep when he was attacked and as
22 a result he never had the opportunity to fight back.

23 We have some family members here, Your Honor,
24 that would like to address the Court, and we have some
25 information about his prior.

1 He was originally charged in juvenile court
2 because of his age at fifteen. We went through a waiver
3 hearing to have him waived to General Sessions because
4 of this crime and the severity of it.

5 His prior record is that rule to show cause.
6 He was out on bond -- or, excuse me, he was on probation
7 for going to an elderly man's house, that man was 87,
8 asking for water in the bathroom and then stealing the
9 man's car and his gun.

10 When Proctor Bright was -- was dead, Breon
11 Alexander then reached in his pocket and got his car
12 keys and \$35, and that's what the robbery is all about.

13 I would ask Your Honor at the appropriate
14 time to hear from the family members.

15 THE COURT: Well, let's hear from them now
16 before we let the defense speak.

17 MS. MARY ANN BRIGHT: My name is Mary Ann
18 Bright, and I'm the daughter of Proctor Bright. And I
19 would like to thank the Court for this ability to speak,
20 thank all the law enforcement, and I'd like to say just
21 a little bit about my father.

22 My father as a man was the type person who
23 took \$300 of his money and bought a Sunday school bus
24 and painted it and began a Sunday school route for
25 children that would not have had an opportunity to go to

1 church.

2 He was the type father who not only provided
3 for us but he made sure we understood integrity, he made
4 sure that he taught us how to work, and he made sure
5 that we remain citizens in the county that he could be
6 proud of. He gave his life for everything that he
7 believed in.

8 And as a father, we spent many Thanksgiving
9 days with my mother and father making dinner for the
10 community and us children driving around different cars
11 and delivering food to the neighbors. He was also the
12 type person who when a neighbor needed something, he was
13 one of the first people to respond.

14 He housed 35 immigrant farmers who had broken
15 down on a bus, and he took them in, took care of them
16 for over 30 days until they could get themselves back
17 together again. He was the type person that would
18 literally give you everything he had.

19 As his awards, he had lived his life and he
20 was fortunate enough to receive the Proctor Bright Day
21 award and the key to the city in 2007. March 29th was
22 deemed Proctor Bright Day for all time to come, because
23 of his citizenship, because of his love for his
24 community and for his country. He was a World War II
25 veteran with a Bronze Star, and he was much decorated

1 for other accolades.

2 He also received Humanitarian Award -- of the
3 Year award in 2007. He became a Palmetto Patriot,
4 deemed so by Lieutenant Governor Andre Bauer, and he was
5 presented with the Media Award for 2007 for the book
6 that he had written. It won the state Media Award, and
7 he had the privilege of traveling to the statehouse in
8 South Carolina on May 8th, 2008, just two months before
9 his murder, to receive that award from the lieutenant
10 governor on the state capitol rotunda steps.

11 On July 15th my father traveled to my house
12 in Rincon, Georgia, and at that time we shot a
13 commercial for the book that he had written and we were
14 getting ready to make a national tour with the book. I
15 said to him as we completed the commercial, I said,
16 "Dad, who knows, by next Tuesday you may be all over the
17 news." And sure enough, next Tuesday he was all over
18 the news, but it was for his murder and not for his
19 book. We shot the commercial on that Tuesday night, it
20 would have aired that Sunday, and we were to begin a
21 national book tour, and he was killed on Thursday night.

22 As far as a Christian and what my father
23 believed, my father believed that as a Christian -- and
24 I believe, as well -- that God sees us all in this
25 courtroom and in this community, in the state and in the

1 United States, and in the entire world as the same. The
2 scripture says all have sinned and come short of the
3 glory of God, and I would like to remind this young man
4 that if he gave his life to the Lord that God would
5 receive him just as quickly and just as forgivingly as
6 he has done so, and I pray to God that before he leaves
7 this earth that he finds that peace and that place with
8 God so that he can seek forgiveness and so that he could
9 sit with us in heaven at my family's table.

10 And I'd like to say what was taken from us.
11 What was taken from us? I divorced when my children
12 were young. They had no mentor, no leader, no father.
13 My father, when my son was 13 years old, he brought him
14 over to South Carolina to work for that summer, and he
15 made him pay rent, he taught him how to work, he made
16 him open his own little car wash business, and he
17 required him to be responsible. He had to do his own
18 laundry, he had to do his own food, and he had to pay to
19 be there. And he taught us integrity.

20 What was taken from us was a man who loved
21 his community enough to buy groceries out of his Social
22 Security check and put them on the door of people who he
23 knew did not have enough, and he'd knock on the door and
24 leave the groceries, and they said that they would see
25 him leaving as he left the groceries.

1 He was the type person who when he went
2 fishing, which was his true passion, he would catch
3 enough fish, and he would come in and clean them, and he
4 would take them to his neighbors and friends who were
5 too old and too indigent to get out to get fresh fish.

6 What was taken from us was the man who
7 provided leadership for this entire family, he provided
8 love for his community and his state, he was a citizen
9 that was forthright and upstanding, he was a man of
10 moral character, and he was a loving man with a kind
11 heart.

12 Before he died, he and I had begun a
13 nonprofit organization called He Whispered A Dream.
14 That organization was to provide Bibles for troubled
15 teenagers just like the one here. It is just so sad
16 that this young man did not give him the time to
17 approach him with the love of God and with his
18 mentorship. It would have been so truly a blessing in
19 his life to have gotten to know the man whose life he
20 took. I pray that God has mercy on his soul, and I
21 thank the Court.

22 MS. WILMA BRIGHT: My name is Wilma Bright.
23 I am Proctor Bright's third daughter. I am the one that
24 spent a lot of time with him in his garage when I was
25 growing up, and he taught me a lot of things about cars,

1 believe it or not. To this day I can still change a
2 tire if I get a flat, to this day I can tell if my
3 battery is not doing what it's supposed to do, and to
4 this day I can still tell if my oil level is at an
5 appropriate place. That's my dad. He taught me that.
6 So I wanted to be like him. I didn't mind getting my
7 hands dirty, because he got his hands dirty and it was
8 all right.

9 But he also taught me fishing, because that
10 was his passion. I didn't like fishing, but he did.
11 But I came to like it because I saw how passionate he
12 was about it. And he would go out sometimes at dusk.
13 When everybody else was folding up and coming home, he'd
14 go out at dusk and come back with some of the biggest
15 fish you've ever seen, and you'd say how did you do
16 that. But he was fisherman that shared his craft. That
17 was my dad. He loved us.

18 I thank you.

19 MS. THERESA BROWN: Hello. My name is
20 Theresa Brown, but I'm also known as Tracy Brown in the
21 community. I am the oldest daughter of Proctor and
22 Madeline Bright. And I am not speaking for the family.
23 I'm very nervous trying to do this.

24 I'm the daughter that lived next door to him.
25 And I would check on him on a regular basis, daily. And

1 I would call him in the morning before -- I work on
2 Hilton Head, and even when I was working in Savannah I
3 would call him on a regular basis, meaning every day and
4 every morning before I would leave for work.

5 And on July 17th I called him and he didn't
6 answer the phone. I called a second time and he didn't
7 answer the phone, and I left a message on his phone
8 saying, okay, I'm coming right over. And I went over,
9 and things had looked very quiet. The curtains were
10 drawn. His car was missing, and I said that was very
11 strange because he doesn't usually leave unless he says
12 something to me.

13 The day that I actually saw him alive for the
14 last time was the 17th which was Thursday morning. He
15 actually called me and said I have something for you.
16 And I had something for him. We exchanged recipes
17 (phonetic) and things, so I just brought some things in.
18 And I saw him alive that morning. Usually I don't even
19 go and pick it up in the morning because I wait till I
20 come back from work so I can, you know, process and that
21 kind of thing.

22 The next morning I called and he didn't
23 answer the phone, which would have been Friday, Friday
24 the 17th -- Friday the 18th, and he didn't answer the
25 phone that morning. I went over. His car was gone.

1 His curtains were drawn. I came back early that
2 afternoon, and it was still in the same situation. The
3 curtains were drawn. The car was missing. I called his
4 house. He didn't answer. I went on to bed, because
5 sometimes he would go out to church at night or
6 something like that.

7 And the next morning I called his house and
8 he still didn't answer, so I went over and I found him
9 sprawled out in a back room across a window, bludgeoned
10 to death. I didn't recognize him at first. I
11 recognized his hair and his clothes. I didn't know
12 whether he was breathing. I looked at him real hard,
13 and I couldn't figure it out. I didn't know whether he
14 was sleeping. I saw blood everywhere, everywhere. It's
15 the worst scene I have ever seen in my life.

16 I went and dialed 9-1-1. And it seems like
17 it was 30 minutes, but it probably took probably less
18 than five minutes, and everything in Ridgeland came
19 down. And when I said "everything," I'm talking about
20 the police and that kind of thing. They asked me to
21 step out of the house because it was then a crime scene,
22 and to this day I haven't been really back in that house
23 since.

24 But he was full of life. He was 85 years
25 old, but he was full of life, and he didn't deserve to

1 die like this.

2 He, in our -- on my 50th birthday he took me
3 fishing, and I had -- I didn't like to go, really didn't
4 like to go fishing or anything like that. But he would
5 put the bait on the hook, and I would toss it in, and
6 before he could get his line baited I would have
7 something on my hook and I'm just screaming all over the
8 place, just happy. And he had done a series of that
9 every -- since that particular time, every year we would
10 go fishing together, just he and I. And he just liked
11 to hear me scream and just have a good time fishing.

12 He was a fanatic about fishing. He loved it
13 immensely. I'm going to miss all of that. As a matter
14 of fact, June was the last time we ever went fishing
15 together, and we'll never go fishing again together.
16 But he was a fishing fanatic.

17 I really appreciate all that has been done.
18 I appreciate the Court, SLED, the Jasper County
19 Sheriff's Department, and I thank everybody for all you
20 have done in this effort.

21 I'm just very emotional at this point.

22 THE COURT: Yes, ma'am.

23 MS. THERESA BROWN: And I really can't say --
24 say anything else. But he didn't deserve to die like
25 this.

1 MR. STONE: That's all we have, Your Honor.
2 As I told you earlier, there is no sentence negotiation
3 in this case.

4 THE COURT: Yes, sir.

5 MR. PLEXICO: Thank you, Judge.

6 Your Honor, he was 15 when this happened.
7 He's been at DJJ since then. He's done very well there
8 and reached his education on a standing level, Judge.
9 When he turned 17, transported him here to Jasper. He
10 hasn't been a problem with anybody, Judge. I think he
11 was just -- he certainly had inappropriate responses,
12 Judge, to a crisis that he felt like he was facing,
13 Judge. He told me that he didn't go there intending
14 to -- to murder Mr. Bright, Your Honor. Things unfolded
15 and developed. That's just -- just what happened,
16 Judge. If he had to do it over again, this certainly
17 would not have happened.

18 This is always troubling. He's a young man,
19 Judge. He has a full life ahead of him. He's here
20 today with his mother and his father, Judge. I don't
21 know if they want to say anything.

22 I don't think his mother can speak now.
23 Could you please hear from his father now?

24 THE COURT: Okay.

25 (Defendant's father faces away from the

1 microphone and addresses the victim's family members
2 sitting in the audience:)

3 DEFENDANT'S FATHER: I'd like to say to
4 everybody, first of all, I'm really sorry that that
5 happened, about what happened. I know it's not right.
6 (Inaudible) -- but he was very young at that time.

7 And I tried to show -- (inaudible.) Then
8 when I heard that happened -- well, me and her don't
9 live together, we're separated, me and his mother.
10 (Inaudible) -- but I had to come today -- (inaudible.)

11 But that hurt me, you know. But anyway, yes,
12 I want to -- (inaudible.) I know it probably isn't
13 right, but who knows -- (inaudible.) He's my son --
14 (inaudible.) But there's nothing I can do about that.
15 It's already happened. (Inaudible.)

16 He was 15. He really has a lot of life in
17 him. And I'd like to ask the family, please forgive him
18 because sometimes -- (inaudible.) I ask you to forgive
19 him, not punishment, forgive him from your heart.
20 (Inaudible.)

21 Now, please forgive me. I'm not saying I'm a
22 bad father -- (inaudible.)

23 Thank you.

24 MR. PLEXICO: My client would like to address
25 the Court, too, Your Honor.

1 THE COURT: Sure. You need to step to the
2 microphone.

3 THE DEFENDANT: I'd really like to say
4 something to the family, that I'm sorry and I apologize.
5 I was young. My situation had -- when I get out of
6 prison -- I'm sorry. When I get out, I'm going to try
7 to pay my debt to society for what happened.

8 That's all I've got to say.

9 MR. PLEXICO: I think to finish, Your Honor,
10 you know, someday he will get out. Of course, you know,
11 we were all blessed here in Jasper County to have a man
12 like Proctor Bright here, and I'm asking you to sentence
13 him with his understanding of young people, his -- you
14 know, Mr. Bright was known to forgive. And, Your Honor,
15 we would ask that you consider a minimum sentence which
16 is thirty years day-for-day in regards to this matter,
17 Judge.

18 This is the first day that the case was
19 called. He has not played any games, Judge. We've gone
20 through the process. It's been a lengthy process. And
21 even recently, Your Honor, it's just been finishing
22 touches with the Solicitor's Office.

23 He's here. He's admitting that he's guilty,
24 Judge. He's truly remorseful. He's developed greatly.
25 There's no one else since then, Judge. I mean, he stole

1 something before then and then he did this crime, which
2 doesn't necessarily mark him for life, Judge. He's
3 going to have a severe, severe penalty to pay, but he
4 was 15, and as a society I think we could have some
5 forgiveness and leniency as far as the thirty years
6 which is a phenomenal amount of time. That would have
7 been twice as long as he's lived, roughly, the year that
8 this happened in his life. We're just asking you to
9 sentence him to thirty years, Judge, because of his
10 remorse and his youth.

11 Thank you very much, Judge.

12 THE COURT: All right. Solicitor, what's
13 your opinion on thirty years to life? Thirty or life
14 or...

15 MR. STONE: You know, the difficult thing
16 about this case, Your Honor, is I can't find anything
17 personal about it. There was nothing. It's as if he
18 didn't -- he didn't know Proctor Bright.

19 And I have read portions of his book, I
20 haven't read the whole thing, but it's amazing that a
21 man lives to be 85 years old, he lives through serving
22 his country, guarding German prisoners of war in France,
23 serving his country in the Philippines, actually
24 survives a typhoon in the ship coming back to America.

25 To die because this man goes through his

1 window for a bus ticket to North Carolina and \$35, I
2 don't know that I can tell you what an appropriate
3 sentence, Your Honor, is, but I guarantee you that if he
4 was 18 years old and if it were legal this would be a
5 death penalty case.

6 THE COURT: Yep.

7 Okay. Mr. Alexander, I'm the longest serving
8 circuit judge by about six years of the active ones, and
9 I'm generally in metropolitan areas so I've sentenced --
10 I would hate to think. One year in Richland I sentenced
11 84 homicide cases. They weren't all murder cases. Some
12 of them were car wrecks where somebody got killed. Some
13 of them were felony DUI. But I've sentenced more people
14 who've killed people than anybody. It's never easy.
15 You add to it, I mean, we're talking about a needless
16 killing. Just from what I've heard, Proctor Bright
17 would have given you the shirt off his back plus all his
18 money and wished you well on your way. And then the
19 killing was brutal for an 85-year-old person in pretty
20 good health, but you were fifteen.

21 So balancing all that -- even though I've
22 done this a long time, I don't know about justice, see.
23 It just depends. I only know about consistency. And
24 somebody as young as you were, they couldn't have asked
25 for the death penalty against you.

1 Everything is concurrent. I sentence you to
2 forty years on the burglary, forty years on the murder,
3 and thirty years which is the max on the armed robbery.

4 MR. PLEXICO: Thank you, Your Honor.

5 THE COURT: Okay.

6 MR. STONE: Thank you, Your Honor.

7 (Whereupon, the hearing is concluded at
8 approximately 11:23 a.m.)

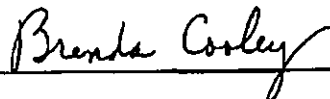
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1 CERTIFICATE OF THE COURT REPORTER
2

3 I, the undersigned, Brenda Cooley, Court
4 Reporter for the Ninth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the
6 foregoing is a true and accurate transcript of record
7 of the proceedings had and the evidence introduced in
8 the hearing of the captioned case, pages 3 through 29,
9 inclusive, relative to appeal, in the Court of General
10 Sessions for Jasper County, Ridgeland, South Carolina,
11 on the 12th day of April 2010.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14

15
16 February 2, 2013

17
18 

19 Brenda Cooley

20 Circuit Court Reporter (Retired)
21
22
23
24
25

Exhibit #4

FORM 5

STATE OF SOUTH CAROLINA)

County of Jasper)

Brian Joseph Alexandre)
Full name and prison number (if any) of Applicant)
340229)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2012-CP-27-218

APPLICATION FOR
POST-CONVICTION RELIEF

2012 MAR 29 PM 12:35
CLERK OF COURT
STATE OF SOUTH CAROLINA

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee C.I./C.S. 2223, 990 Wisacky Hwy
Benning, W. S.C. 29010
2. Name and location of Court which imposed sentence Jasper County General
Sessions Court
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) S.C. Code of Law §16-11-0330(a) / 09-05-27-00492
 - (b) S.C. Code of Law §16-310.20 / 09-05-27-00494

POSTED
BY pd
DATE 3/29/12

(c) SC. Code of Law 516-11-0311 / 09-GS-27-00493

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 4/12/10 + Burglary 1st = 40 years Concur.

(b) 4/12/10 + Armed Robbery = 30 years Concur.

(c) 4/12/10 to Murder = 40 years Concur.

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

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

(a) the name of each Court to which you appealed:

i. _____

ii. N/A

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. N/A

iii. _____

(c) the date of each such result:

i. _____

ii. N/A

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. N/A

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Record Attorney failed to file an appeal and by not appealing case violated my rights. See Memo

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel, no 14th Amend
- (b) Illegal Sentence as reduction eligible wasn't done
- (c) Due process & Equal protection violations.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Memorandum of Law attached
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction: none
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. N/A
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. N/A
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) 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) PC-R remedy as by paper exhaustion
- (b) Requirements, Pet Ex parte Royall;
- (c) _____

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

- (a) your arraignment and plea?
- (b) your trial, if any? _____
- (c) your sentencing?
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

- (a) the name and address of each attorney who represented you:
 - i. Steve Plaxico, Esquire, Public Defender
P.O. Box 506, Hampton, SC 29924
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. N/A
 - ii. N/A
 - iii. _____

19. State clearly the relief you seek in filing this application:

Redoing of plea proceedings, Reverse and Demand with Appellate Court's instructions.

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)

County of Lee)

VERIFICATION

I, Brian J. Alexander #340229, 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 known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Brian Alexander

SWORN to and subscribed before me this 10 day of July 2010

[Signature]
Notary Public (L.S.)

My Commission Expires: 5-1-11

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

I, Brian J. Alexander #340799, 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.

Brian Alexander
Applicant

SWORN or affirmed to and subscribed before me this

10 day of Feb 2002
Brian J. Alexander
Notary Public

My Commission Expires: 5-12-02

2012 MAR 29 PM 12:35
MARSHALL COUNTY CLERK OF COURT
JASPER COUNTY, MO

Memorandum Of Law

Applicant Breon J. Alexandre, 340229, raises issues ineffective assistance of Counsel because he did not file the notice of Intent To Appeal his convictions within ten (10) days after sentence. See Applicant sentenced by Judge E. Kinard, Jr., on 4/12/2010, Counsel should have filed the notice of Intent To Appeal by 4/22/2010; See SCRA-217 (sentencing sheets); Applicant's contentions are clear and simple as stated; See the record showing the Applicant did not voluntarily, knowingly and intelligently waived his rights to a direct appeal to his convictions.

Applicant moves in this Court for a review pursuant to the *White v. State*, 263 SC 110, 208 S.E.2d 35 (1974), as to Rule 243, SCACR, Rule 602(c)(6), SCACR, and also see also Rule 208, SCACR, as ineffective to filing an appeal to guilty pleas by Attorneys of Criminal Cases; Applicant's positions by the following authorities are explicitly stated and clear. Applicant will first show the Court that he was under the factual influences as was advised by his Counsel that he will first file a Reconsideration to Sentence Motion once he received Sentence Sheets from the Clerk of Court, and afterwards the appeal will be filed if not successful with the Motion; Upon the Applicant doing his own information intakes about his case, from the Clerk of Court's office in Jasper Co., Applicant learned

that his Attorney did not file any post-trial motions nor did he file the Notice of Appeal as is required, according to S.C. Law, the Court has addressed such issues about appeals well before this present case, and Applicant's case is no different from ones that has been corrected prior to his case; Applicant contends that the Court must see that an Attorney must initiate an appeal or comply with the procedures in Anders v. State of Cal., 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 499, with absence of an intelligent waiver by Applicant in this case matter the Applicant's Counsel made assumptions and this violated his rights to an appeal, and by Counsel's failure to file an appeal violates Rule 102(e)(1), S.C.A.R.; it requires trial Counsel to represent a defendant until final judgment, including any proceeding on direct appeal, Applicant will show the Court that he did not waive his rights to an appeal voluntarily knowingly and intelligently, the probable evidence proffered by Applicant to the Court are exclusively by the Court records as they reveals the no activities by actions of the Counsel Applicant's case. Adjudications are mandatory to review issues:

The Question of Law presented as:

Did the Applicant knowingly voluntarily and intelligently waived his rights to a direct appeal?

2012

✓

Brian J. Alexander
910 Wisacky Hwy.
Bishopville, S.C. 29010
Applicant.

Exhibit #5

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

Breon J. Alexandre,
S.C.D.C. No. 340229,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-27-0218

**PARTIAL RETURN AND
MOTION TO DISMISS**

2012 DEC 28 AM 10:05
MARGARET BOGGS
CLERK OF COURT
JASPER COUNTY SC

In response to the post-conviction relief application filed March 29, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Jasper County Clerk of Court's orders of commitment. Applicant was indicted at the October 2009 term of the Jasper County Grand Jury for murder (2009-GS-27-0494), first degree burglary (2009-GS-27-0493), and armed robbery (2009-GS-27-0492). Steve Plexico, Esquire represented the Applicant.

On April 12, 2010, the Applicant pled guilty as indicted. The Honorable J. Ernest Kinard, Jr. sentenced the Applicant to concurrent sentences of forty (40) years imprisonment for murder and first degree burglary, and thirty (30) years imprisonment for armed robbery. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Jasper County Clerk of Court regarding the subject convictions and the South Carolina Department of Corrections records.

Handwritten signature and date: 12/28/12

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. Failure to file an appeal.
2. Illegal sentence.
3. Due Process and Equal Protection violations.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective for failure to file an appeal. The Applicant claims he was denied effective assistance of counsel because his trial counsel did not appeal his conviction after being requested to do so. The Respondent submits that trial counsel was diligent in his representation of the Applicant and performed "within the wide range of reasonable professional assistance." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In Strickland v. Washington, supra, the United States Supreme Court held that a convicted defendant's claim that counsel was so defective as to require a reversal of his conviction requires that the defendant show first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defendant so as to deprive him of a fair trial.

The decision of the South Carolina Supreme Court in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), holds even though a post-conviction court finds an Applicant did not voluntarily and intelligently abandon his right to direct appeal of his criminal conviction, the court has no jurisdiction to grant a belated appeal. However, when an Applicant establishes that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina

Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues raised and argued as if the direct appeal had been perfected.

The Respondent submits this allegation is wholly frivolous and demands strict proof thereof. Nevertheless, the allegation raises a question of fact which cannot be conclusively refuted by the record and requires an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent submits that the remaining allegations in this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this Application on April 12, 2010. This Application was filed on March 29, 2012, which was almost one years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a

motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

VI.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VII.

WHEREFORE, having made its Partial Return and Motion to Dismiss, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant on the sole issue of whether counsel was ineffective for failing to file an appeal. The Respondent also requests that this Court summarily dismiss the remaining allegations in the application for failing to comply with the filing requirements under Uniform Post-Conviction Procedure Act.

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

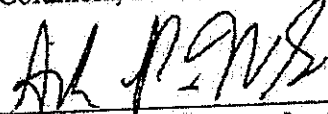
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Deputy Attorney General

Ashleigh R. Wilson
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

December 27, 2018²

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

BREON J. ALEXANDRE, #340229

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-27-0218

AFFIDAVIT OF SERVICE BY MAIL

2012 DEC 28 AM 11:31
MARGARET BOSTON
CLERK OF COURT
JASPER COUNTY SC

FILED

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Partial Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Kelvin Wright, Esquire
PO Box 801
Walterboro, SC 29488

DATED this 27th day of December 2012

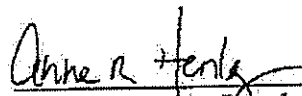

Anne R. Henley, Legal Assistant
For Respondent

Exhibit #6

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

Breon Alexandre, #340229,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-27-0218

ORDER OF DISMISSAL

MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY SC

2013 OCT 31 AM 9:53

FILED

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Plea Counsel:
Date of Hearing:
Court Reporter:

The Honorable Deadra L. Jefferson
Gerald A. Kelly, Esquire
Ashleigh R. Wilson, Esquire
Stephen T. Plexico, Esquire
August 27, 2013
Susan "Mia" Perron

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 29, 2012. The Respondent made its Return on December 27, 2012. An evidentiary hearing into the matter was convened on August 27, 2013 at the Beaufort County Courthouse. The Applicant was present at the hearing and represented by Gerald A. Kelly, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Applicant's plea counsel, Stephen T. Plexico, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Jasper County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

10/10
2013

10/31/13

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Jasper County. The Applicant was indicted at the October 2009 term of the Jasper County Grand Jury for Murder (2009-GS-27-0494),¹ Burglary-First Degree (2009-GS-27-0493),² and Armed Robbery (2009-GS-27-0492).³ Stephen T. Plexico, Esquire, represented the Applicant. The Applicant pled guilty as indicted. On April 12, 2010, the Honorable J. Ernest Kinard sentenced the Applicant to confinement for forty (40) years for Murder and Burglary and thirty (30) years for Armed Robbery. The sentences were to run concurrently. The Applicant did not appeal his convictions and sentences.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel failed to file a direct appeal.
2. Due process and equal protection violations.
3. Illegal sentence.

¹ The penalty statute for the offense of Murder provides that

A person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life. . . . For purposes of this section, "life" or "life imprisonment" means until death of the offender without the possibility of parole, and when requested by the State or the defendant, the judge must charge the jury in his instructions that life imprisonment means until the death of the defendant without the possibility of parole. . . . No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. No person sentenced to a mandatory minimum term of imprisonment for thirty years to life pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years to life required by this section.

S.C. CODE ANN. § 16-3-20(A) (2003).

² The penalty statute for the offense of Burglary-First Degree provides that "Burglary in the first degree is a felony punishable by life imprisonment. For purposes of this section, "life" means until death. The court, in its discretion, may sentence the defendant to a term of not less than fifteen years." S.C. Code Ann. § 16-11-311(B) (2003).

³ The offense of Armed Robbery is a felony by which a convicted defendant "must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence." S.C. CODE ANN. § 16-11-330(A) (2003).

At the hearing, the Applicant argued his plea attorney should have filed his post-conviction relief application. Subsequently, the State moved to dismiss all allegations other than ineffective assistance of counsel for failure to file an appeal as untimely because the Applicant's application was filed outside of the one year statute of limitations. See S.C CODE ANN. § 17-27-45(A) (2003) (providing a one year filing limitation for post-conviction relief applications to be filed within one year of conviction or final disposition); Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996) (one year statute of limitations applies to all applications filed after July 1, 1996). Accordingly, this Court grants the State's motion to dismiss and dismisses all allegations other than the issue of counsel's ineffective assistance for failing to file a direct appeal for the Applicant. This Court finds the Applicant presented no persuasive argument to explain the failure to file his application within the statute of limitations. At the hearing, the only issue under consideration by this Court was whether counsel was ineffective for failing to file a direct appeal for the Applicant after his guilty plea. This Court had before it the guilty plea transcript, the records of the Jasper County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17-27-80

(2003).

The Applicant testified that he met with counsel once or twice prior to his guilty plea. He testified he asked his attorney to appeal his plea after he was sentenced in the back of the courthouse. He further testified that counsel represented he would and failed to file the direct appeal that he requested. On cross examination, the Applicant admitted that he signed Judge Kinard's standard form advising him of his constitutional rights including his right to appeal.

Plea counsel, Stephen T. Plexico, Esquire, testified he has been engaged in the practice of criminal law for twenty-three (23) to twenty-five (25) years. He testified that at the time of Applicant's plea he was employed as a Public Defender. Plea counsel testified he advised the Applicant of his right to appeal and all other constitutional rights. Counsel testified he did not recall speaking with the Applicant after his guilty plea. Counsel testified the Applicant never indicated he wanted an appeal. He testified he received correspondence from the Applicant requesting a copy of his file after the plea, but he never received any letters requesting a direct appeal after the plea. He testified he did not recall any issues with the guilty plea that would have been meritorious on appeal. Counsel further testified that had there been any issues with the guilty plea, he would have filed a post-plea motion to correct the issue. He testified that, had the Applicant requested an appeal, he would have filed a Notice of Appeal on his behalf. Additionally, counsel testified that Judge Kinard's routine practice is to incorporate a defendant's signed advisement of rights form into the record of any guilty plea.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application by a preponderance of the evidence. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442,

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334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). When there has been a guilty plea, the applicant must prove that counsel's representation

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was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 52, 106 S. Ct. 366, 366 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Lockhart, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000). See Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may be attacked through only a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (1999)).

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds counsel's testimony credible and the Applicant's testimony not credible. This Court finds that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S.

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6/21/10
[Signature]

Ct. 2052, 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds counsel adequately advised the Applicant of his right to appeal. "[C]ounsel has a constitutionally-imposed duty to consult with defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or . . . (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1037 (2000). This Court finds credible counsel's testimony that he advised the Applicant of his right to appeal and that the Applicant never indicated he wanted an appeal. This Court also finds credible counsel's testimony that there were no meritorious issues for appeal of the Applicant's guilty plea, and, upon review of the record, any appeal would have been dismissed pursuant to Anders v. California, 386 S.C. 738, 744-45, 87 S. Ct. 1396, 1400 (1967). This Court finds counsel properly advised the Applicant of his right to appeal and that the Applicant failed to indicate to counsel his desire for an appeal.

Although the Applicant argues he did not voluntarily and intelligently abandon his right to direct appeal of his criminal conviction, this Court finds that the Applicant failed to meet his burden of proof by a preponderance of the evidence that counsel did not file an appeal based on the Applicant's request. This Court finds Jones v. State, 382 S.C. 589, 677 S.E.2d 20 (2009),

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[Signature]

dispositive. In Jones, the PCR judge granted the applicant a belated direct appeal pursuant to White v. State, 263 S.C. 110, 118–19, 208 S.E.2d 35, 40 (1974). See Jones, 382 S.C. at 594, 677 S.E.2d at 22. However, the South Carolina Supreme Court found that because the applicant failed to establish any meritorious issue ripe for appellate review and failed to ask counsel to file a direct appeal on his behalf, the applicant failed to meet his burden of proof entitling him to a belated appeal. See id. at 597, 677 S.E.2d at 24 (quoting Roe, 528 U.S. at 480, 120 S. Ct. at 1036); see also Turner v. State, 380 S.C. 223, 224–25, 670 S.E.2d 373, 374 (2008) (without evidence of “extraordinary circumstances” obligating counsel to advise the applicant of his right to appeal, the South Carolina Supreme Court found “the PCR judge erred in finding petitioner was entitled to a belated appellate review of his guilty plea”). Therefore, this Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to file a notice of appeal. Accordingly, this Court declines to grant the Applicant a belated direct appeal.

Ultimately, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S. C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that counsel’s performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by counsel’s representation. See id. The Applicant’s complaints concerning counsel’s performance are without merit and are denied and dismissed.

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RJA

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof. Therefore, all other allegations are hereby denied and dismissed.

CONCLUSION

Based on the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations occurring before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

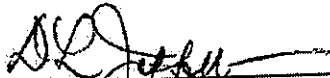
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

9/22/10
[Signature]

AND IT IS SO ORDERED this 28th day of Oct., 2013.


The Honorable Deadra L. Jefferson
Presiding Judge

Ches, South Carolina.
at chambers

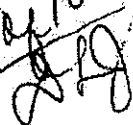
10/28/10


Exhibit #7

NOVEMBER 20, 2013

Breon J. Alexander 510227
Lee C.L.
Che - S - 1213
990 Wisacky Hwy.
Bishopville, S.C. 29010

PCR

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

RECEIVED

NOV 22 2013

S.C. SUPREME COURT

RE: Breon J. Alexander v. State of South Carolina
Case No.: 2012 - CP - 27 - 218

Dear Mr. Shearouse,

Enclosed for filing is a notice of appeal in the above

case. Also enclosed are the following:

- 1) Proof of service of the notice of appeal.
- 2) A copy of the order which is to be challenged on appeal.
- 3) Affidavit of Breon J. Alexander.

Sincerely,

s/ Breon Alexander

The State of South Carolina
In The Supreme Court

Appeal From Beaufort County
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No.: 2012 - CP - 27 - 218

Breon J. Alexander 340229 Applicant
State of South Carolina Respondent

Notice of Appeal

Breon J. Alexander appeals the order/judgment of the Honorable
Deadra L. Jefferson dated October 28, 2013. Applicant received written notice
of entry of this order on November 12, 2013.

November 20, 2013

Breon Alexander
Breon J. Alexander 340229
Lee C.I.
Ct. - S-1213
990 Wisacky Hwy.
Bishopville, S.C. 29010

The State of South Carolina
In The Supreme Court

Notice of Appeal
Court of Common Pleas.

Deadra L. Jefferson, Circuit Court Judge.

Case No.: 2012 - CP - 27 - 218

Breon J. Alexander 340229 Applicant
v.
State of South Carolina Respondent

Proof of Service

I certify that I have served this notice of appeal on
Daniel E. Shearouse, Clerk, Supreme Court of South Carolina,
by depositing a copy of it in the U.S. Mail, postage prepaid, on
November 20, 2013, addressed to his office at P.O. Box 11330,
Columbia, South Carolina 29211.

S/Breon Alexander
Breon J. Alexander 3402
Lee C.I.
che - 3 - 1213
990 Wisacky Hwy.
Bishopville, S.C. 29010

State of South Carolina)	In The S.C. Supreme Court
County of Beaufort)	Case No.: 2012 - CP - 27 - 218
Breon J. Alexander, Applicant)	
v.)	
State of South Carolina,)	Affidavit of Breon J. Alexander
Respondent)	

The Affiant, Breon J. Alexander, declares under penalty of perjury:

- 1) That at all times relevant herein, I am an inmate incarcerated at Lee Correctional Institution (Lee C.I.). That I make this declaration with a sound mind, free from coercion.
- 2) That this notice of appeal is authentic which was written and submitted to the S.C. Supreme Court Clerk of Court, by the Affiant.
- 3) That this notice of appeal was deposited in the U.S. mail here at Lee C.I. on

Respectfully Submitted,

s/Breon Alexander

Breon J. Alexander 340229
Lee Correctional Institution
Chesterfield South #1213
990 Wisacky Highway
Bishopville, S.C. 29010

Agency

Supreme Court of South Carolina

Honorable Daniel E. Shearouse

Clerk of Court

P. O. Box 11330

Columbia, S.C. 29211

LEGAL MAIL ONLY

Exhibit #8

GERALD A. KELLY, J.D.
ATTORNEY AT LAW
4760 Yemassee Hwy
Varnville, South Carolina 29944
803-943-0510 office and fax

December 18, 2013 (1:17pm)

Janet Johnson
Attorney at Law
South Carolina Supreme Court
P.O. Box 11330
Columbia, South Carolina
29211

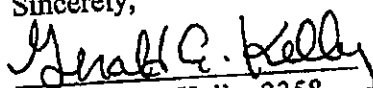
RECEIVED
DEC 23 2013
S.C. Supreme Court

RE: Breon J. Alexandre, 340229 v. State of South Carolina, 2012-CP-27-0218; Appellate Case
No. 2013-002567

Dear Janet:

Thank you for speaking with me by telephone last week on the 15th and granting me an extension of ten (10) days to perfect the appeal in Alexandre v. State. Today I have mailed the appropriate documents to all parties to perfect the appeal begun by Breon J. Alexandre.

Sincerely,



Gerald Alan Kelly, 3358
4760 Yemassee Hwy.
Varnville, South Carolina 29944
803-943-0510, office and fax

GERALD A. KELLY, J.D.

ATTORNEY AT LAW
4760 Yemassee Hwy
Varnville, South Carolina 29944
803-943-0510 office and fax

RECEIVED

DEC 29 2013

S.C. Supreme Court

December 18, 2013 (12:42pm)

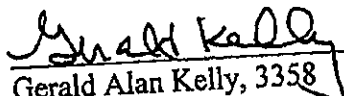
Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
P.O. Box 11330
Columbia, South Carolina
29211

RE: Breon J. Alexandre, 340229 v. State of South Carolina, 2012-CP-27-0218; Appellate Case
No. 2013-002567

Dear Sir:

Please accept for filing the enclosed documents to perfect appeal in the cited case.

Sincerely,



Gerald Alan Kelly, 3358
4760 Yemassee Hwy.
Varnville, South Carolina 29944
803-943-0510, office and fax

Enclosures:

1. Order of Dismissal
2. Notice of Appeal
3. Proof of Service

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Hon. Deadra L. Jefferson, Circuit Court Judge

Case No. 2012-CP-27-0218

Breon J. Alexandre, 340229.....Petitioner

v.

State of South CarolinaRespondent

RECEIVED

DEC 28 2013

S.C. Supreme Court

NOTICE OF APPEAL

Breon J. Alexandre, 340229 appeals the order of Hon. Deadra L. Jefferson executed on October 28, 2013, and filed October 31, 2013. Petitioner received notice of filing of the Order of Dismissal on November 15, 2013, by receiving a filed copy of the Order from the Clerk of Court of Jasper County, South Carolina.

December 18, 2013

Gerald A. Kelly
Gerald Alan Kelly, 3358
4760 Yemassee Hwy
Varnville, SC 29944
803-943-0510, office and fax
Attorney for Petitioner

Other Counsel of record:
Ashleigh R. Wilson
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
803-734-3970

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Hon. Deadra L Jefferson, Circuit Court Judge

Case No. 2012-CP-27- 0218

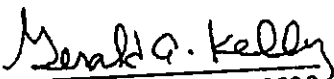
Breon J. Alexandre, 340229..... Petitioner
v.

State of South CarolinaRespondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Ashleigh R. Wilson , Assistant Attorney General, by depositing a copy of it in the United States Mail, postage prepaid, on December 18, 2013, addressed to her at Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211-15490.

December 18, 2013


Gerald Alan Kelly, 5538
4760 Yemassee Hwy
Varnville, SC 29944
803-943-0510, office and fax
Attorney for Petitioner

Kelly, Attorney at Law
1760 Yemassee
Varnville, SC
29944



Hon. Daniel E. Shearouse
Clerk of South Carolina Supreme Ct.
P.O. Box 11330
Columbia, SC
29211

2921131330

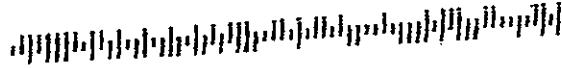
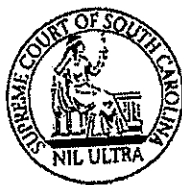


Exhibit #9



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

December 05, 2013

Mr. Gerald Alan Kelly
4760 Yemassee Hwy.
Varnville SC 29944

Re: Breon Alexander v. State
Appellate Case No. 2013-002567
Lower Court Case No. 2012-CP-27-00218

Dear Counsel:

This Court has received the enclosed pro se notice of appeal in this matter. I remind you that under Rule 71.1(g) of the South Carolina Rules of Civil Procedure and Rule 264(a), SCACR, that you remain his counsel of record before this Court.

For this matter to proceed, you will need to provide this Court with the following within ten (10) days of the date of this letter:

- (1) A proof of service showing that the notice of appeal has been served on opposing counsel, and,
- (2) A written statement of the date on which you received written notice of entry of the order of dismissal dated October 28, 2013.

This case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,



CLERK

Enclosure

cc: Ashleigh Rayanna Wilson, Esquire
Mr. Breon Alexandre, 340229

Exhibit #10

The Supreme Court of South Carolina

Breon Alexander, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-00.2567

The Honorable Deadra L. Jefferson
Jasper County
Trial Court Case No. 2012CP2700218

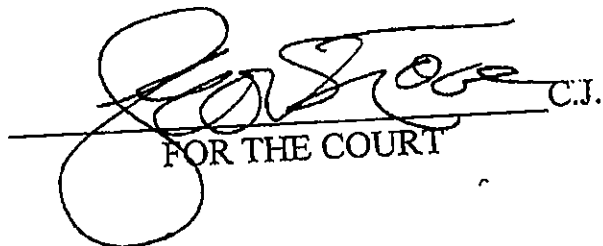
ORDER

In this post-conviction relief case, petitioner filed a *pro se* notice of appeal dated November 20, 2013. This notice of appeal was not accompanied by a proof of service showing that a copy of the notice of appeal had been served on opposing counsel.

By letter dated December 5, 2013, petitioner's counsel was asked to provide a proof of service showing that the notice of appeal had been served on opposing counsel and to provide the date on which he received written notice of entry of the order under appeal. In response, petitioner's counsel has served and filed a second notice of appeal dated December 18, 2013. In this notice of appeal, counsel indicates that written notice of entry of the order on appeal was received on November 15, 2013. The proof of service shows that this notice of appeal was served on opposing counsel on December 18, 2013.

Based on petitioner's failure to show that either notice of appeal has been timely served on opposing counsel as required by Rules 243(b) and 203(b)(1) of the South Carolina Appellate Court Rules (SCACR), this matter is dismissed. See Rule 263(b), SCACR (time to serve notice of appeal cannot be extended); *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004) ("The

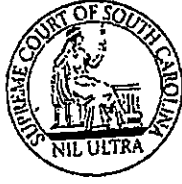
requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."). The remittitur will be sent as provided by Rule 221, SCACR.


C.J.
FOR THE COURT

Columbia, South Carolina
January 3, 2014

cc: Gerald Alan Kelly, Esquire
Ashleigh Rayanna Wilson, Esquire

Exhibit #11



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

January 22, 2014

The Honorable Margaret Bostick
PO Box 248
Ridgeland SC 29936-0248

REMITTITUR

Re: Breon Alexander v. State
Lower Court Case No. 2012CP2700218
Appellate Case No. 2013-002567

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,


CLERK

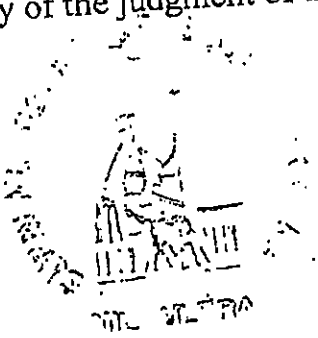

cc: Ashleigh Rayanna Wilson, Esquire
Gerald Alan Kelly, Esquire
Breon Alexandre, 340229

Exhibit #12

FORM 5

STATE OF SOUTH CAROLINA)

County of Jasper)

Breon Joseph Alexandre)

Full name and prison number (if any) of Applicant)
340229)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014CP27375

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee #1E SMU-N-51 990 Wilsack Hwy
Parishville, S.C. 29010
2. Name and location of Court which imposed sentence Jasper County
General Session Court
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 09 GS 27 00492/3316-11-0330
 - (b) 09 GS 27 00494/3316-3-10,20

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: Margaret Bostick
DATE: 9/10/14

(c) 09-GS-27-00493/8916-11-0311

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 4/12/10 / 40 years

(b) 4/12/10 / 30 years

(c) 4/12/10 / 40 years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Counsel failed to file appeal and advise of PCR remedies.

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ~~Constitutional grounds of habeas corpus~~
- (b) Due process
- (c) Equal protection
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel for ~~app~~ failed to file appeal
- (b) Denial of the appellate process.
- (c) _____
12. 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-convictions relief? YES
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? YES
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. (PCR) White Review.
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Beaufort County Court of Common Pleas
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Dismissed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. 28th October 2013
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____

16. If any ground set forth in (10) 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) was not possible til after hearing.
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? _____
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

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

- (a) the name and address of each attorney who represented you:
 - i. Shere Plexico Public Defender's office
P.O. Box 506 Hampton, SC 29924
 - ii. Ronald A. Kelly, D.D. Attorney at Law 4760
Yemassee Hwy Varnville, S.C. 29944
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea/Sentence
 - ii. PCR
 - iii. _____

19. State clearly the relief you seek in filing this application:

Austin V. Stake, 305 S.C. 453, 409 S.E.2d 395
Review.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

I, ~~XXXXXXXXXXXX~~, 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 known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

X Brown Alexandre

SWORN to and subscribed before me this 4 day of SEP, 2014.

[Signature] (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

I, ~~Donald Alexander~~, 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.

X ~~Donald Alexander~~
Applicant

SWORN or affirmed to and subscribed before me this
4 day of Sept, 2014.

~~John Jones~~
Notary Public

My Commission Expires: 11-4-2015

Exhibit #13

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)
))
))
Breon Joseph Alexandre, #340229,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2014-CP-27-0375

**RETURN AND MOTION TO
DISMISS ALL CLAIMS EXCEPT
AUSTIN REVIEW**

The Respondent, making its Return and Motion to Dismiss the current application for post-conviction relief filed September 10, 2014, respectfully submits the following:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Jasper County. The Applicant was indicted at the October 2009 term of the Jasper County Grand Jury for murder (2009-GS-27-0494), burglary-1st degree (2009-GS-27-0493), and armed robbery (2009-GS-27-0492). Stephen T. Plexico, Esquire, represented the Applicant. The Applicant pled guilty as indicted. On April 12, 2010, the Honorable J. Ernest Kinard sentenced the Applicant to confinement for forty (40) years for murder and burglary and thirty (30) years for armed robbery. The sentences were to run concurrently. The Applicant did not appeal his convictions and sentences.

2012-CP-27-0218

The Applicant filed his first application for Post-Conviction Relief (PCR) on March 29, 2012. The Respondent made its Return on December 27, 2012. An evidentiary hearing

into the matter was convened on August 27, 2013 at the Beaufort County Courthouse. The Applicant was present at the hearing and represented by Gerald Kelly, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

In his first PCR application, he alleged that he was being held in custody unlawfully for the following reasons:

1. 1. Ineffective assistance of counsel.
 - a. Counsel failed to file a direct appeal.
2. Due process and equal protection violations.
3. Illegal sentence.

The Honorable Deadra L. Jefferson denied and dismissed the Applicant's application by written Order on October 28, 2013.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Due Process"
 - a. "Counsel for PCR failed to file appeal"
2. "Equal Protection"
 - a. "Denial of the appellate process"

For the purpose of this Return, the Respondent incorporates the Clerk of Court's records for the Applicant's convictions, the application and the prior PCR Order of Dismissal. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Except for Applicant's claim that he was denied an appeal from his first PCR application, the Court should summarily dismiss the current Application because it is

successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

Except for Applicant's claim that he was denied an appeal from the denial of his first PCR application, the Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on April 12, 2010. The Applicant was therefore required to file his application before April 13, 2011. This application was filed on September 10, 2014, almost two years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, “the contention that prior PCR counsel was ineffective is not *per se* a ‘sufficient reason’ warranting a successive PCR application under ‘17-27-90.’” Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin “is limited to its particular factual situation” Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent requests an evidentiary hearing solely on the matter of the Applicant’s entitlement to an Austin Review.

VI.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, with the exception of Applicant’s allegation that he is entitled to belated review of his first PCR application, Respondent moves to summarily dismiss the

application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

Respectfully submitted,

ALAN WILSON
Attorney General

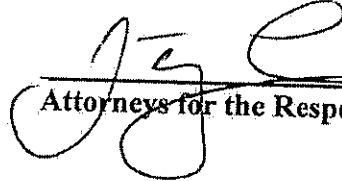
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy
Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

Columbia, South Carolina

August 19, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)
BREON JOSEPH ALEXANDRE, #360229)
Applicant,)
vs)
STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS

2014-CP-27-0375

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss All Claims Except Austin Review** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Breon Joseph Alexandre, #340229
Perry Correctional Institution
430 Oaklawn Rd.
Pelzer, SC 29669**

DATED this 19th day of August, 2015.

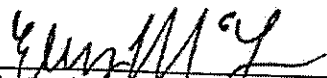

Elizabeth McLellan, Legal Assistant
For Respondent

Exhibit #14

APPEARANCE PAGE

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APPEARANCES

REPRESENTING PLAINTIFF(S):

James K. Falk, Esquire

PO Box 1058

Charleston, SC 29402

843-606-6007

jfalklaw@gmail.com

REPRESENTING DEFENDANT(S):

J. Rutledge Johnson, Esquire

Alicia A. Olive, Esquire

Office of the Attorney General

PO Box 11549

Columbia, SC 29211

fourteenthcircuitpcr@scag.gov

803-734-5844

PROCEEDINGS

1 PROCEEDINGS

2 MS. OLIVE: Your Honor, the first case today
3 is Breon Alexandre.

4 THE COURT: Alexandre?

5 MR. FALK: James Falk, Your Honor, for
6 Mr. Alexandre.

7 MS. OLIVE: May it please the Court, Your
8 Honor.

9 THE COURT: Yes, ma'am. This case is Breon
10 Joseph Alexandre v. State, 2014CP27375. Mr.
11 Alexandre filed this PCR on September 10th, 2014.
12 The State made its return on August 18th, 2015.
13 Mr. Alexandre also filed a motion to hold the State
14 in default. The State filed its return on that
15 motion on August 19th, 2015, just arguing that the
16 State should not be held in default under Rule 55B
17 because the applicant failed to show prejudice in
18 the delay of filing the return.

19 Mr. Alexandre was indicted at the October 29th,
20 2009 term of the Jasper County grand jury for murder,
21 burglary in the first degree and armed robbery. He was
22 represented by Stephen T. Plexico on those charges. He
23 plead guilty as indicted before the Honorable J. Ernest
24 Kinard. Judge Kinard sentenced him to 40 years for
25 murder and burglary, and 30 years for armed robbery.

PROCEEDINGS

1 Those sentences to be served concurrently.

2 He did not appeal those convictions and sentences.
3 He filed his first PCR in -- I am sorry, he -- yes, I
4 apologize. He filed his first PCR on March 29th, 2012.
5 An evidentiary on that was held -- I am sorry, the
6 evidentiary hearing into the 2009 matter was held on
7 August 27th, 2013, and that was before the Honorable
8 Deadre Jefferson.

9 He was represented by Gerald Kelly at that
10 hearing. And ultimately Judge Jefferson denied that
11 PCR by written order October 28th, 2013. Mr. Alexandre
12 then filed a pro se notice of appeal dated
13 November 20th, 2013. That notice of appeal was not
14 accompanied by a proof of service showing that a copy
15 had been served on opposing counsel. Mr. Alexandre's
16 counsel was then asked to provide a notice of service.
17 And he filed a second notice of appeal dated
18 December 18th, 2013.

19 Ultimately the appeal was denied as untimely. We
20 are going forward today on the -- just the Austin --
21 the Austin V State claim, which the State does not
22 contest that he's entitled to an Austin review.

23 THE COURT: You say that he's not --

24 MS. OLIVE: I am sorry, the State does not
25 contest. We agree that he's entitled to an Austin

PROCEEDINGS

1 review.

2 THE COURT: Okay. All right.

3 MS. OLIVE: And I'll turn it over to Mr. Falk
4 at this time.

5 MR. FALK: Obviously that is why we are here
6 on this case, is so that my client can appeal his
7 underlying conviction. I mean, his PCR.

8 THE COURT: His PCR.

9 MR. FALK: And, you know, I have a copy of the
10 Supreme Court order to that effect. And we would
11 ask that the Court permit him to file it.

12 THE COURT: You are not opposing this, is what
13 I'm hearing?

14 MS. OLIVE: Correct, Your Honor, we are not
15 opposing.

16 THE COURT: Okay. All right. I'll sign an
17 order allowing him to do so.

18 MR. FALK: Okay, thank you.

19 THE COURT: Are you going to submit an order?

20 MR. FALK: Yes, Your Honor.

21 THE COURT: All right. Thank you very much.

22 (Proceeding concluded.)

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PROCEEDINGS

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 29th day of May, 2020.

Mona L. Manley /s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
(850) 893-6662
mmanley@scccourts.org

Exhibit #15

FILED
JASPER COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Breon Alexandre, SCDC #340229,)

Case No. 2014-CP-27-00375

Applicant,)

**CONSENT ORDER GRANTING RIGHT
TO SEEK BELATED APPELLATE
REVIEW PURSUANT TO *AUSTIN V. STATE*¹**

v.)

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 10, 2014, by Applicant Breon Alexandre, seeking belated appellate review of the denial of his initial post-conviction relief action. In response, Respondent filed a return on August 19, 2015. An evidentiary hearing was convened on October 20, 2015, before the Honorable Roger L. Couch, at the Beaufort County Courthouse. The sole issue before the Court was whether Applicant was entitled to seek belated appellate review of the denial of his first post-conviction relief action pursuant to *Austin*. The State consented to Applicant's limited requested relief. At the conclusion of the hearing, Judge Couch granted relief and asked Applicant's counsel to submit a proposed order for the Court's review. Applicant's counsel submitted a proposed Order via email on November 23, 2020, to Judge Couch. However, Judge Couch ceased serving as an active retired circuit court judge before the proposed order was signed.

Accordingly, this Court is issuing this order pursuant to Rule 63, SCRCP, with the consent of both parties. As provided in Rule 63, SCRCP, this Court has been provided with and thoroughly reviewed the entire record, including the transcript of the evidentiary hearing before Judge Couch. After review of the record, this Court certifies familiarity with the record and determines that the

¹ *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: Cone
DATE: 10-14-2023

matter may be completed based on the record without prejudice to the Applicant or Respondent. Moreover, this Court determines both parties consent that Applicant is entitled to seek belated appellate review of the denial of his first post-conviction relief proceeding. Specific findings of fact and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted by the Jasper County Grand Jury at the October 2009 term for murder (2009-GS-27-00494), burglary-1st degree (2009-GS-27-00493), and armed robbery (2009-GS-27-00492). Stephen T. Plexico, Esquire, represented Applicant. On April 12, 2010, Applicant pled guilty as indicted before the Honorable J. Ernest Kinard. Judge Kinard sentenced Applicant to concurrent sentences of forty years for murder, forty years for the burglary charge, and thirty years for armed robbery. Applicant did not appeal his convictions and sentences.

First PCR Application: 2012-CP-27-00218

Applicant filed his first application for post-conviction relief on March 29, 2012. Respondent made its return on December 27, 2012. An evidentiary hearing into the matter was convened on August 27, 2013, before the Honorable Deadra L. Jefferson at the Beaufort County Courthouse. Applicant was present at the hearing and represented by Gerald Kelly, Esquire. Assistant Attorney General Ashleigh R. Wilson of the South Carolina Attorney General's Office represented Respondent. Judge Jefferson denied and dismissed Applicant's application by written Order on October 28, 2013.

Applicant then filed a *pro se* notice of appeal dated November 20, 2013. That notice of appeal was not accompanied by any proof of service showing that a copy had been served on opposing counsel. Applicant's counsel was then asked to provide a notice of service. Applicant subsequently filed a second notice of appeal dated December 18, 2013. On January 3, 2014, the Supreme Court of South Carolina entered an order in Appellate Case No. 2013-002567 denying the appeal as untimely filed.

Allegations in Current PCR Action: 2014-CP-27-00375

In his current application for post-conviction relief Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Due Process"
 - a. "Counsel for PCR failed to file appeal"
2. "Equal Protection"
 - a. "Denial of the appellate process".

On August 19, 2015, the State filed a return, requested an evidentiary hearing be held solely on the matter of Applicant's ability to seek belated appellate review pursuant to *Austin*, and moved to summarily dismiss all other allegations as untimely and successive to Applicant's prior PCR action. Attached to that return were the records from Applicant's general sessions matter, prior post-conviction relief action and subsequent appeal records, and the records from this current action.

Subsequently, an evidentiary hearing was held October 20, 2015, before the Honorable Roger L. Couch, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James K. Falk. Assistant Attorney General J. Rutledge Johnson of the South Carolina Attorney General's Office represented Respondent. At the call of the case, the State advised the court it did not contest Applicant's claim for relief pursuant to *Austin v State*.

Thereafter, Judge Couch indicated he would "sign an order allowing [Applicant] to do so" – file a belated appeal from his prior post-conviction relief application.

This Court has reviewed all these records in addition to the transcript from the proceeding before Judge Couch in accordance with Rule 63, SCRCP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, including the transcript from the evidentiary hearing. After this thorough review of the record as required under Rule 63, SCRCP, this Court finds no additional proceedings are necessary and a ruling can be rendered based on the record. Furthermore, this Court determines Applicant has established he is entitled to seek belated appellate review of the denial of his first post-conviction relief proceeding. Specific findings of fact and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80.

Applicant alleges he was denied the right to seek an appeal following the dismissal of his previous post-conviction relief application. Pursuant to *Austin*, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his or her PCR application.

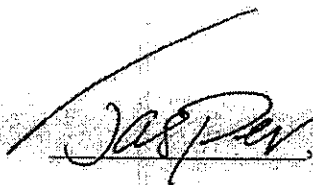
After review of the facts and circumstances surrounding Applicant's right to appeal the denial of his initial post-conviction relief application, the parties below have consented to the granting of an appeal of Applicant's first post-conviction relief application (2012-CP-27-00218) pursuant to *Austin*. This Court finds both parties consent to the denial of all claims in Applicant's application for post-conviction relief except Applicant's allegation he is entitled to a belated PCR appeal pursuant to *Austin v. State*. Therefore, this application for post-conviction relief is granted only as to Applicant's right to seek a belated appeal of his previous application for post-conviction relief and is denied and dismissed as to all other claims for relief.

Based upon the foregoing, this Court finds granting Applicant's request to seek belated appellate review of his first PCR (2012-CP-27-00218) pursuant to *Austin*, is warranted. Counsel for the State and Applicant's PCR counsel consented to the granting of leave to pursue a PCR appeal in this matter. Thus, Applicant's PCR counsel is instructed to file a Notice of Appeal with the South Carolina Supreme Court pursuant to Rule 243, SCACR.

IT IS THEREFORE ORDERED:

1. Applicant is granted belated appellate review of his first post-conviction relief action, captioned 2012-CP-27-00218, pursuant to *Austin v. State*;
2. All other allegations for post-conviction relief are denied and dismissed with prejudice;
3. Applicant shall remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 11th day of April 2022.


South Carolina

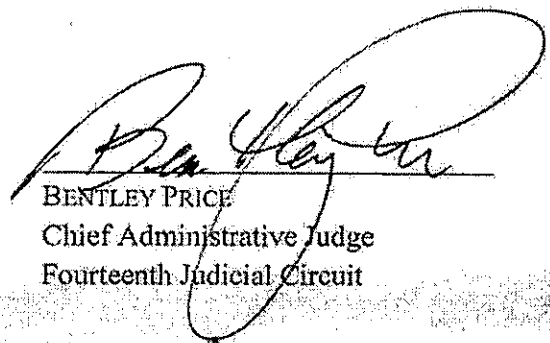

BENTLEY PRICE
Chief Administrative Judge
Fourteenth Judicial Circuit

Exhibit #16

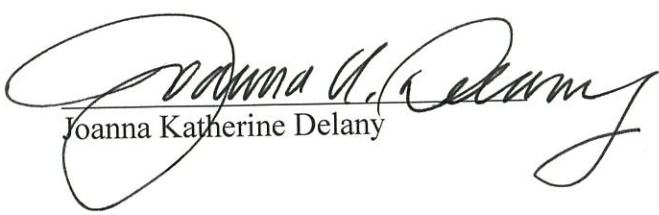
STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)
)
BREON ALEXANDRE,)
)
Petitioner,)
)
v.)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)
_____)

IN THE SOUTH CAROLINA SUPREME COURT
APPELLATE CASE NO. 2022-001654


AFFIDAVIT OF JOANNA KATHERINE DELANY

PERSONALLY appeared before me, Joanna Katherine Delany, who being duly sworn, deposes and says:

1. I am an appellate defender at the South Carolina Commission on Indigent Defense, Division of Appellate Defense.
2. The above-captioned case was assigned to me, and on December 9, 2022, I reviewed the Consent Order Granting Right to Seek Belated Appellate Review Pursuant to *Austin v. State*, and requested that an employee of our office obtain, among other things, a copy of the August 27, 2013, PCR hearing transcript. I received all of the other requested documents besides the PCR hearing transcript, which was not obtained.
3. On January 30, 2023, I asked an employee of our office, Della White, to contact the Court Reporter Section of the South Carolina Judicial Branch and request a transcript of the August 27, 2013, PCR hearing, and she did so. On January 31, 2023, Ms. White also contacted Tammie Holmes, the Court Reporter Manager for the South Carolina Judicial Branch, and requested a transcript of the August 27, 2013, PCR hearing.
4. On February 15, 2023, an employee of the Court Reporter Section informed us that the files we requested had been destroyed, and the same day, the Court Reporter Manager, Ms. Holmes, confirmed to us that the transcript was not obtainable.
5. I have reviewed the October 31, 2013, Order of Dismissal addressing Petitioner's August 27, 2013, PCR hearing, and I believe that a copy of the PCR hearing transcript is necessary for meaningful appellate review.


Joanna Katherine Delany

SWORN TO before me this 31st
day of March, 2023.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: 08.20.2031