

South Carolina Court of Appeals

Att. Clerk of Court

P.O. Box 11629

Columbia, S.C. 29211

RECEIVED

JUL 01 2013

SC Court of Appeals

M. W. Earl Tudor

243378, Attendole Cove. Inst.

P.O. Box 1151

Fawcett, S.C. 29827

RECEIVED

JUL - 3 - 2013

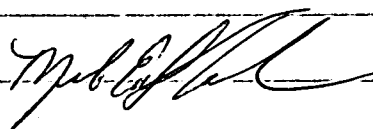
S.C. Supreme Court

RE: RELATED APPEAL PETITION

Dear Clerk of Court,

I have enclosed 2 copies of petition for Related Appeal, please clock stamp them into court records, and return my copy in the self-addressed envelope provided.

Your time and cooperation in this matter would be greatly appreciated. Thank You



June 27, 2013

IN THE STATE OF SOUTH CAROLINA

COURT OF APPEALS

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JUL 01 2013

SC Court of Appeals

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

I, Milo Earl Tudor, hereby apply for leave to proceed in this action without prepayment of fees or costs or security thereof. In support of OBLATED APPEAL PETITION, 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 therefor.
- 3) I am an inmate with the South Carolina Dept. of Corrections - SCDC No. 243378.
- 4) My SCDC E.H. Cooper Trust funds present balance \$ 6.43.

Milo Earl Tudor 4/11/2012  
APPLICANT Milo Earl Tudor (243378)

SWORN or affirmed to and subscribed before me this 11 day of April, 2012.

John P. Freeman  
Notary public  
5/18/14  
My Commission Expires

F3 B38

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MAR 22 2012

MAILROOM  
AGI

FINANCIAL CERTIFICATE  
FOR THE  
DISTRICT OF SOUTH CAROLINA

MAR 15 2012

MAILROOM  
AGI

I request that an authorized officer of the institution in which I am confined, or other person designated to review financial information in relation to inmate trust funds, complete this Certificate.

Milb Earl Tudor  
INMATE NAME (PRINTED)

243378  
INMATE (PRISONER) NUMBER

Milb Earl Tudor  
INMATE SIGNATURE

Alledale Corr. Inst  
PLACE OF CONFINEMENT

- ◆ (1) Average monthly deposits to the inmate's account.....\$ 0
- ◆ (2) Average monthly balance in the inmate's account calculated for the prior six months period. ....\$ 6.43
- ◆ (3) Current Balance .....\$ 6.43
- ◆ (4) Initial Installment Payment (Take 20 percent of the greater of lines 1 or 2).....\$ 0

I hereby certify that as of this date, the above financial information is accurate for the above named inmate.

[Signature]  
Authorized Officer's Signature

3/20/12  
Date

J. Smith Fin. Actg.  
Authorized Officer's Name and Title

SCDC-FINANCIAL ACCTG.  
2012 MAR 19 AM 11:31

RECEIVED

JUL 01 2013

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

A BELATED APPEAL FROM NEWBERRY COUNTY  
Court of General Sessions

James W. Johnson, Jr., Circuit Court Judge

Case No.: 1997-GS-36-00021

Milo Earl Tudor, # 243378..... Appellant,

vs.

The State of South Carolina.....Respondent.

PETITION AND BRIEF FOR BELATED APPEAL

*Milo Earl Tudor 6/21/2013*

Milo Earl Tudor, # 243378  
Allendale Corr. Inst., F-3/B-52  
P.O. Box 1151  
Fairfax, SC 29827  
Pro-Se

cc: Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Attorney for Respondent

Newberry County Solicitor's Office  
P.O. Box 278  
Newberry, SC 29108

The South Carolina Court of Appeals

File

## CASE LAW

Martinez v. Ryan 132 S.Ct 1309, 182 L.Ed. 26 272 (2012)  
Davis v. State 288 S.C 290, 342 SE.2d. 60 (1986)  
White v. State 263 S.C. 110, 208 SE.2d. 35 (1974)  
Anders v. California 386 U.S. 738, 87 S.Ct 1396, 18 L.Ed.2d 493 (1967)  
Austin v. State 409 SE.2d 395 (1991)  
Green v. State 239 SE.2d. 486 (1977)  
Pointer v. State 300 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1967)  
Farretta v. California 422 U.S. 806, 95 S.Ct 2525, 45 L.Ed.2d 562 (1995)  
Long v. McMillan 226 S.C. 598, 86 S.E.2d. 477 (1955)  
Locke v. State 533 S.E.2d. 325 (2000)  
U.S. v. Hoslett 998 F.2d. 648 (1992)  
Mackey v. State 357 S.C. 666, 595 SE.2d. 241 (2004)  
Koon v. State 358 S.C. 259, 595 SE.2d. 456 (2004)  
Charles v. State 183 S.C. 188, 190 SE 466 (1937)  
Gaskin v. State 210 SE.2d. 590 (1974)

## Constitutions

S.C. Constitution Amendment 6 & 14  
U.S. Constitution Amendments 6 & 14

## Evidence

# 1- Indictment # 97-GS36-021  
# 2- Verdict Sheets  
# 3- Sentencing Sheets  
# 4- Notice of Intent to Appeal  
# 5- Kennedy & Price letter & Affidavit  
# 6- Order of Dismissal  
# 7- Remittitur  
# 8- PCR Transcript  
# 9- Arrest Warrant F-015292  
# 10-Indictment # 96-GS36-652  
# 11- Newberry Clerk of Court letters  
# 12- PCR Application

Milo Earl Tudor, pro-se, petitions The South Carolina Court of Appeals, with a Belated Appeal Review.

### ISSUE PRESENTED

Whether this Court should exercise its Jurisdiction to grant a belated appeal review because petitioner, (1) has demonstrated that he is entitled to relief from illegal convictions and sentences that violates petitioners Sixth and Fourteenth Amendment rights, and (2) that extraordinary circumstances exist which justify disregarding any procedural bars.

The petitioner, Milo Earl Tudor, Pro-Se, petitions this South Carolina Court of Appeals, pursuant to Court Order by the Honorable Clifton Newman dated May 21, 2012, case no. 2012-CP36-511 and White v. State, with a petition for belated Appeal review, from convictions and sentences in case no. 1997-GS-36-00021, held August 5-7, 1997, before the Honorable James W. Johnson, Jr., in the Newberry County Court of Common Pleas.

### STANDARD OF REVIEW

Petitioner has been trying to show and establish in the Courts the ineffectiveness of trial counsel, to perfect direct appeal or advise of appeal rights, of post-conviction relief (PCR) counsel, to submit evidence, adequately present or argue issues, consult with petitioner, or advise of appeal rights, and the pcr Judge's error dismissing petitioner's Belated Appeal pcr without ensuring petitioner knowingly and intelligently waived constitutional rights to direct appeal.

An attorney's errors during appeal on direct review, or adequate assistance of counsel at initial-review collateral proceedings, may provide cause to excuse procedural defaults; where prisoner has been denied fair process and the opportunity to comply with the State's procedures and obtain an adjudication on the merits of his claim. Martinez v. Ryan, 132 S.Ct. 1309, 182 L.Ed.2d 272, (Cited as: 2012 WL 912950 (U.S.)), 2012.

The South Carolina Supreme Court held, to waive a direct appeal, defendant must make a knowing and intelligent decision not to pursue appeal. Davis v. State, 288 S.C. 290, 342 SE.2d 60 (1986); White v. State, 263 S.C. 110, 208 SE.2d 35 (1974), and that Anders v. California, 386 U.S. 738, 87 S.Ct 1396, 18 L.Ed 493 (1967), shall continue to apply at PCR, requiring appellate counsel to investigate case, consult with client, to brief arguable issues, despite counsel's belief the appeal frivolous, as a safe guard of the right to appeal. Austin v. State, 409 SE.2d. 395 (1991).

In this case at bar, petitioner had a jury trial August 5-7, 1997, before the Newberry County Court of Common Pleas, was found guilty and sentenced to confinement with the South Carolina Dept. of Corrections. See Exhibit(s) #1- Indictment # 97-GS36-021, #2- Verdicts, #3- Sentencing Sheets.

On August 7, 1997, trial counsel filed a timely Notice of Intent to Appeal. See Exhibit #4- Notice of Intent to Appeal. Petitioner concerned about direct appeal, hired the law firm Kennedy & Price, to investigate appeal and contact trial counsel, on April 14, 1998, Mr. Kennedy informed petitioner that appeal is active and pending in South Carolina Court of Appeals, and that on 4/09/98, they met with that counsel, who stated, in summary, "that he was proceeding with appeal. See Exhibit #5- Kennedy & Price Letter & Affidavit. On May 14, 1998, The South Carolina Court of Appeals dismissed appeal, for failure to serve and file initial brief and designation of matter. Petitioner was not served with a copy. See Exhibit #6- Order of Dismissal.

On May 21, 1998, the South Carolina Court of Appeals, filed a remittitur, for failure to file reinstatement. Petitioner was not served with a copy. See Exhibit #7- Order of Remittitur. PCR filed August 23, 2002, at pcr hearing May 14, 2004, counsel failed to submit evidence, or adequately present and argue issues, consult with petitioner prior to hearing, or advise of appeal rights. See Exhibit(s) #12- PCR Application, # 8- Pcr Transcript.

The evidence presented and court records clearly show the petitioner believed appeal was active and being pursued by trial counsel, and that he did not knowingly and intelligently waive rights to a direct appeal review. That in this case extraordinary circumstances exist to warrant this court to grant this belated appeal, and review the issues on merit of claim.

### ISSUES

As the procedural history of this case is long, complex, and important, petitioner will provide references for the important procedural points in this case, as follows:

- 1.) DUE PROCESS
- 2.) SUBJECT MATTER JURISDICTION
- 3.) DOUBLE JEOPARDY

#### 1. DUE PROCESS

Were the petitioner's constitutional due process rights violated, where tried without notice of charges called upon to answer?

### FACTS

Sept. 2, 1996, Arrest Warrant No. F-015292, offense code Assault & Battery with intent to kill (ABWIK), was issued by Judge Barry Koon, in Newberry County. Sept. 3, 1996, petitioner was served, dated and signed by Lawful Authority, Bond hearing held and Bond set. See Exhibit #9- Arrest Warrant F-015292. October, 1996,

during the Grand Jury term of Court, of General Sessions Court, in Newberry County, the State obtained against the petitioner a true bill indictment, No. 1996-GS36-652 ABWIK, based on information in arrest warrant F-015292, which is noted on face of indictment, and petitioner was served notice. See Exhibit #10- Indictment 1996-GS-652. At trial August 5, 1998, petitioner was represented by Attorney Harry DePew. The Jury was empaneled and sworn, at which time the petitioner was informed that the State was calling him to answer Indictment # 1997-GS-021 (3) counts Kidnapping, ABWIK, and possession of firearm/knife. This indictment was obtained January 1997, without any arrest warrants being issued by a Judge for these charges, and petitioner was never served with a notice by Lawful Authority of Indictment 97-GS36-021 prior to August 5, 1997 trial.

Petitioner's counsel asked the Court for a continuance to prepare for indictment 97-GS36-021, a dismissal, and direct verdict. Judge Johnson denied these motions and trial proceeded. The Jury found the petitioner guilty, and Judge sentenced to confinement with the South Carolina Dept. of Corrections. See Exhibit(s) #1- Indictment 97-GS36-021, #2- Verdict Sheets, #3- Sentencing Sheets.

#### LAW / ANALYSIS

The State of South Carolina Constitution, Amend., 6 & 14, Art.1, specifically mandates, "that in all criminal prosecutions, the accused shall enjoy the right... to be informed of the nature and cause of the accusations and to be informed with witnesses against him," Green v. State, 239 SE.2d 485 (1997), not only these rights guaranteed, they are applicable to state prosecutor under the 14<sup>th</sup> Amendment of the United States Constitution, Pointer v. Texas, 300 U.S. 400, 85 S.Ct 1065, 13 LE.2d 923 (1967) .

Moreover, "It is the accused, not counsel," who must be, "informed of the nature and cause of the accusations", Farretta v. California, 422 U.S. 806, 955 S.Ct. 2525, 45 Led.2d 562 (1995), and in the State of South Carolina, Courts follow the rule that the acts of a court of record are known by it's record along, Long v. McMillan, 226 S.C. 598, 86 SE.2d 477 (1955).

In this case, the court records are clear, the petitioner was not served with an arrest warrant or notice for Indictment # 97-GS36-021; on the charges Kidnapping, ABWIK, and Possession, was not arraigned on these charges for which called upon to answer, at trial August 5, 1997, and convicted and sentenced August 7, 1997, nor was petitioner ever advised by any official or Lawful Authority of these charges against him. The only notice petitioner received was August 5, 1997, at trial, by the trial Court, and through counsel, which is clearly inadequate.

It is the petitioner's belief that the posecutor with all his resources and power was allowed to obtain a reindictment, without serving notice prior to trial, for the sole purpose to hinder the defense and to enhance the possibility that even though innocent petitioner

may be found guilty. Therefore, the petitioner has shown and contends that his State and Federal Constitutional due process rights were violated when called upon to answer, tried, convicted, and sentenced for Indictment 97-GS36-021.

Petitioner respectfully asks this Honorable Court to vacate these convictions and sentences, as it is Just and Proper.

## 2. SUBJECT MATTER JURISDICTION

Did the trial court have Subject Matter Jurisdiction to try, convict, and sentence petitioner on 2<sup>nd</sup> reindictment # 97-GS36-021, where two indictment were issued for the same charge, from a single incident, and 1<sup>st</sup> indictment #96-GS36-652 had subject matter jurisdiction at trial?

Sept. 2, 1996, arrest warrant # F-015292, Code § 16-3-620 ABWIK, was issued by Judge Barry S. Koon, in Newberry County. Sept. 3, 1996, Arrest Warrant # F-015292, was served on petitioner, dated and signed by Lawful Authority. See Exhibit #9- Arrest Warrant F-015292. October 1996, during the Grand Jury Term, of General Sessions Court, in Newberry County, a true bill indictment # 96-GS36-652 ABWIK dated 10/26/96, was obtained by the State against the petitioner, based on information from arrest warrant # F-015292,

Which is noted on the face of Indictment, and petitioner was served notice. See Exhibit #10- Indictment # 96-GS36-652. January 1997, during the Grand Jury Term, of General sessions Court, in Newberry County, a true bill reindictment # 97-GS36-021 dated 1/7/97, was obtained by the State against the petitioner, 3-counts Kidnapping, ABWIK, and Possession, without any arrest warrants being issued for these charges by a judge and petitioner was never served with a notice by any lawfull authority of re-indictment 97-GS36-021 prior to August 5, 1997 trial. See Exhibit(s) #1- Indictment # 97-GS36-021, #11- Newberry County Clerk of Court letter. At trial August 5, 1997, the jury was empaneled and sworn, at which time the petitioner was informed that the State was calling him to answer indictment # 97-GS36-021 3-counts Kidnapping, ABWIK, and Possession. Petitioner's attorney petitioned the trial court for (1) a continuance to prepare for indictment 97-GS36-021, (2) dismissal, and (3) direct verdict. Judge Johnson denied these motions. The Solicitor entered a Nolle Prosequi on 1<sup>st</sup> Indictment # 96-GS36-652, Judge Johnson, accepted Nolle Prosequi and dismissed, then allowed trial to proceed on reindictment # 97-GS36-021, petitioner was found guilty by the Jury and sentenced to confinement with the South Carolina Dept. of Corrections. See Exhibit(s) #1- Indictment # 97-GS36-021, # 10- Indictment # 96-GS36-652, # 2- Verdicts, and # 3- Sentencing Sheets.

### LAW / ANALYSIS

In the State of South Carolina, an indictment is sufficient to convey subject matter jurisdiction on a trial court, if it appraises the accused of the elements of the offense

intended to be charged, informs the accused of the circumstances he must be prepared to defend, and notice is properly served upon accused. Locke v. State, 533 SE.2d. 325 (2000).

The solicitor retains the right to re-indict in the State of South Carolina, a requirement of re-indictment requires the trial court to dismiss charges prior to re-indictment. "Re-indictment occurs when the underlying indictment or charges are dismissed prior to filing of re-indictment". U.S. v. Hoslett, 998 F.2d. 648 (1992).

Where the trial court lacks taking subject matter jurisdiction any subsequent proceedings are void. Mackey v. State, 357 S.C. 666, 595 SE.2d. 241 (2004), and subject matter jurisdiction of a trial court may be raised at any time, including for the 1<sup>st</sup> time on appeal. Koon v. State, 358 S.C. 259, 595 SE.2d. 456 (2004).

Court follows the rule that the acts of a court of records are known by its record alone. Long v. State, 226 S.C. 598, 86 SE.2d 477 (1955).

In this case, the petitioner from an incident Sept. 2, 1996, was served with a arrest warrant # F-015292 ABWIK, and indictment # 96-GS36-652 ABWIK, by lawful authority. The solicitor re-indicted the petitioner, from the same incident Sept. 2, 1996, re-indictment # 97-GS36-021 3-count Kidnapping, ABWIK and Possession. However, there are no warrants issued for these charges, no arraignment, bond, or preliminary hearing was held, and no lawful authority ever served petitioner with notice of these charges prior to August 5, 1997 trial.

The solicitor failed to dismiss charges prior to filing re-indictment, and 8 months later at trial, August 5, 1997, the Court records are very clear, the trial court had subject matter jurisdiction to proceed on 1<sup>st</sup> indictment # 96-GS36-652 ABWIK, and lacked Subject Matter Jurisdiction to proceed to trial on re-indictment # 97-GS36-021, Kidnapping, ABWIK and Possession, thus, rendering the subsequent trial, conviction and sentence: proceedings void.

Therefore, the petitioner respectfully asks this Honorable Court to vacate these convictions and sentences, as it is Just Proper.

### 3. DOUBLE JEOPARDY

Whether the Nolle Prosequi of the 1<sup>st</sup> Indictment # 96-GS36-652 ABWIK, by the solicitor, at trial after the jury was empaneled and sworn, deprived the court from take jurisdiction of re-indictment # 97-GS36-021 count 2- ABWIK, thus rendering any subsequent proceeding void and a violation of petitioner's State and Federal Double Jeopardy Rights?

Sept. 2, 1996, arrest warrant # F-015292 ABWIK, was issued by Judge Barry S. Koon in Newberry County, and was served on petitioner Sept. 3, 1996, dated and signed by lawful authority. See Exhibit #9- Arrest Warrant F-015292. October 1996, during the Grand Jury Term, of General Sessions Court, in Newberry County, a true bill

1<sup>st</sup> Indictment # 96-GS36-652 ABWIK dated 10/26/96, was obtained by the State against the petitioner, and notice served. See Exhibit #10- Indictment 96-GS36-652. January 1997, the Grand Jury Term of General Session Court, in Newberry County, a true bill re-indictment #97-GS36-021 dated 1/7/97, 3-counts Kidnapping, ABWIK, and Possession, was obtained by the State against the petitioner, without any arrest warrants being issued for the charges by a Judge, and no notice was ever served by any lawful authority. SEE #1- Indictment 97-GS36-021.

At trial August 5, 1997, with the jury empaneled and sworn, the prosecutor because of the confusion before the trial court with which indictment the petitioner is being called upon to answer, 1<sup>st</sup> Indictment # 96-GS36-652 or 2<sup>nd</sup> re-indictment # 97-GS36-021, at this time the solicitor entered a Nolle Prosequi to 1<sup>st</sup> Indictment 96-GS36-652 ABWIK, which was later dated and signed by the solicitor, and entered into court records. The petitioner's attorney petition the Court for dismissal, and direct verdict, because Jury empaneled when Nolle Prosequi was entered. The trial Judge denied these motions and accepted Nolle Prosequi and trial proceed on 2<sup>nd</sup> re-indictment # 97-GS36-021, petitioner was found guilty by a Jury and sentenced. See Exhibit(s) #9- Indictment 96-GS36-652 ABWIK, #1- Re-indictment # 97-GS36-021, #2- Verdicts, #3- Sentencing Sheets.

#### LAW ANALYSIS

A Nolle Prosequi is an entering into the court's records of the prosecuting officer's decision that he will not proceed to prosecute a case. It has long been the law of South Carolina that the decision to Nolle Prosequi is a matter within the solicitor's discretion. State v. Charles, 183 S.C. 188, 190 SE. 466 (1937).

If "nolle prosequi" is entered after the jury is empaneled and sworn, it is equivalent to an acquittal, and the defendant cannot be again put in jeopardy for the same offense, Gaskin v. State, 210 SE.2d. 590 (1974), and in the State of South Carolina, Courts follow the rule that the acts of a Court of record are known by it's records alone. Long v. McMillan, 226 S.C. 598, 86 SE.2d.477 (1955).

In this case, the solicitor 1<sup>st</sup> indicted the petitioner, indictment # 96-GS36-652 ABWIK, then re-indicted the petitioner for the same charge, Indictment # 97-GS36-021, from a single incident. At trial with the Jury empaneled and sworn, the solicitor Nolle Prosequi 1<sup>st</sup> Indictment # 96-GS36-652 ABWIK, the trial court dismissed, and trial proceeded on re-indictment # 97-GS36-021, petitioner was found guilty and sentenced at sentencing the trial judge was confused, as to which indictment to enter on sentencing sheets, as the court records clearly show.

It is the petitioner's belief that the prosecutor in this case, was allowed to indict, and re-indict for the same charge, from a single incident, then at trial, after jury empaneled and sworn, pick which indictment to proceed the trial with, nolle prosequi the 1<sup>st</sup> indictment, placing an unfair burden on defense counsel, to prepare a defense, and greatly increase the prosecutor's chances at getting a conviction.


Therefore, the petition contends his State and Federal Constitutional Double Jeopardy

rights were violated, when called upon to answer, tried, convicted, and sentenced, for re-indictment # 97-GS36-021, and respectfully asks this Honorable Court to vacate this conviction and sentence, as is just and proper.

CONCLUSION

This Court has the power to review a Belated Appeal. The great and central office of a belated appeal is to test the legality of current detention, even when all State and Federal remedies are exhausted, because there has been a violation, which in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of Justice. The petitioner has not had any issues to date reviewed on appeal, and prays that this Honorable Court, after reviewing the facts, court records, and with careful consideration, grant a belated appeal review of the issues with merit, as it is just and proper.

Respectfully Submitted,

  
\_\_\_\_\_  
Milo Earl Tudor  
Pro-Se

Date June 27, 2013.  
cc: S.C. Court of Appeals  
S.C. Attorney General's Office  
Solicitor's Office of Newberry County  
file

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM NEWBERRY COUNTY  
Court of General Sessions

James W. Johnson, Jr., Circuit Court Judge

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Case No.: 1997-GS-36-00021

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Milo Earl Tudor # 243378, .....Appellant,

vs.

State of South Carolina, .....Respondent.

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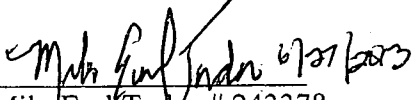
CERTIFICATE OF SERVICE

---

I, Milo Earl Tudor, Pro-Se Appellant, in the above referenced case, hereby certify that I placed in the United States Mail, a copy of Petition And Brief For Belated Appeal with postage prepaid and the return address clearly shown on said envelope to the Office of the Attorney General and Newberry County Solicitor's Office at:

Office of Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Newberry County Solicitor's Office  
P.O. Box 278  
Newberry, SC 29108

  
Milo Earl Tudor # 243378  
Pro-Se

June 29, 2013

EXHIBIT # 1

*Elizabeth*  
(803) 256-4092

*Periodic 9-10-05A*  
THE STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

WITNESSES

S. K. Scott

S Todd Johnson

Yvonne Tudor

COURT OF GENERAL SESSIONS

JANUARY TERM, 19 97

97GS36-21

THE STATE

VS

MILO EARL TUDOR

*By the Court Clerk 1/4/97*

*Complaint 1/4/97*

*BW 1-8-97*

INDICTMENT FOR

- (1) KIDNAPPING
- (2) ASSAULT AND BATTERY WITH INTENT TO KILL
- (3) VIOLATION SECTION 16-23-490

VERDICT

Foreman

Solicitor

*Jan L. Rocky*  
Foreman of Grand Jury

TRUE BILL

I, \_\_\_\_\_ THE DEFENDANT, IN MY OWN PROPER PERSON, COME TO THE BAR OF THIS COURT, WAIVE GRAND JURY ACTION AND FREELY AND VOLUNTARILY PLEAD \_\_\_\_\_ GUILTY TO THE CHARGE(S) OF:

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 19 \_\_\_\_\_

ATTEST:

DEFENDANT'S SIGNATURE \_\_\_\_\_ CLERK OF COURT, NEWBERRY, S. C.

COUNT THREE

(3) That MILO EARL TUDOR

state aforesaid  
did in Newberry County on or about the 2nd day of September,  
19 96,

possess a firearm or visibly displayed what appeared to be a  
firearm, or visibly displayed a knife during the commission of violent  
offenses, to wit: Kidnapping and Assault and Battery With Intent to Kill,  
said offenses being defined as violent offenses in Section 16-1-60 of the  
1976 Code of Laws of South Carolina, as amended, and the said MILO EARL  
TUDOR was convicted of committing or attempting to commit the said  
violent crimes, Kidnapping and Assault and Battery With Intent to Kill

2010 CP36-154

2010CP36-1514

INDICTMENT FOR:

The State of South Carolina

County of Newberry

- (1) KIDNAPPING
- (2) ASSAULT AND BATTERY WITH INTENT TO KILL
- (3) VIOLATION SECTION 16-23-490

At a Court of General Sessions, convened on the 6th day of January,  
 1997, the Grand Jurors of Newberry County present upon their oath:

COUNT ONE

(1) That MILO EARL TUDOR

did in the county and state aforesaid, on or about the 2nd day of September,  
 19 96, wilfully and unlawfully with criminal intent, seize, confine,  
 inveigle, decoy, kidnap, abduct or carry away Yvonne Tudor without  
 authority of law

COUNT TWO

(2) That MILO EARL TUDOR

did in the county and state aforesaid, on or about the 2nd day of September,  
 19 96, in and upon one Yvonne Tudor feloniously, wilfully and of his  
 malice aforethought, did make an assault with certain deadly weapons,  
 to wit: a knife and/or a razor blade, a rope and his hands and/or fists,  
 and him the said MILO EARL TUDOR with the said knife and/or razor blade,  
 rope and hands and/or fists did stick, cut, stab, choke, hit, beat and



7  
STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )

IN THE COURT OF GENERAL SESSIONS  
EIGHTH JUDICIAL CIRCUIT

THE STATE, )  
vs. )  
MILO EARL TUDOR, )  
DEFENDANT. )

---

**VERDICT**

INDICTMENT NO.: 97-GS-36-21

I. NOT GUILTY

---

FOREPERSON

II. GUILTY OF ASSAULT AND BATTERY WITH INTENT TO KILL

*[Handwritten signature]*  
FOREPERSON

III. GUILTY OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

---

FOREPERSON

DATE 7/15/97

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE,  
PLEASE NOTIFY THE BAILIFF.

2010CP26-154

2010CP36-184

STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )

IN THE COURT OF GENERAL SESSIONS  
EIGHTH JUDICIAL CIRCUIT

THE STATE, )  
vs. )  
MILO EARL TUDOR, )  
DEFENDANT. )

**VERDICT**

INDICTMENT NO.: 97-GS-36-21

I. NOT GUILTY

\_\_\_\_\_  
FOREPERSON

II. GUILTY OF POSSESSION OF A KNIFE DURING THE  
COMMISSION OF A VIOLENT CRIME

*[Signature]*  
\_\_\_\_\_  
FOREPERSON

DATE 8/17/97

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE,  
PLEASE NOTIFY THE BAILIFF.

SENTENCE

97 -21

STATE OF SOUTH CAROLINA

Newberry COUNTY

Case # 97-36-0000 -GS-

PLED/CONVICTED: \_\_\_\_\_

KIDNAPPING

2010CP36-154 EXHIBIT #3

The defendant M. L. E. Tudor is committed to the State Department of Corrections for a term of 30 months years and/or pay a fine of \$ \_\_\_\_\_; provided upon the service of 15 months years and/or payment of \$ \_\_\_\_\_; plus pay/waive costs and assessments as applicable the balance suspended with probation for 5 months years.

Restitution For physical injury \$ \_\_\_\_\_  
Yes/No Property damage \$ \_\_\_\_\_  
to be paid \_\_\_\_\_

to clerk for \_\_\_\_\_  
other conditions: 1) No contact, direct or indirect, with victim. 2) Consecutive

Date: August 7, 1997

[Signature]  
Presiding Judge

Costs and Assessments:  
B.A. Test \$ \_\_\_\_\_  
Non-waivable \$ \_\_\_\_\_  
Not waived \$ \_\_\_\_\_  
Total \$ \_\_\_\_\_

\_\_\_\_\_  
Deputy/Clerk of Court

S E N T E N C E

STATE OF SOUTH CAROLINA

Newberry COUNTY

Case #

97  
GS-36-21

PLED, CONVICTED:

ASSAULT AND BATTERY  
WITH INTENT TO KILL

20100936-154

The defendant MIL E. TUDOR is committed to the State Department of Corrections for a term of 20 months/years and/or pay a fine of \$ \_\_\_\_\_; provided upon the service of \_\_\_\_\_ months/years and/or payment of \$ \_\_\_\_\_; plus pay/waive costs and assessments as applicable the balance suspended with probation for \_\_\_\_\_ months/years.

Restitution

For physical injury \$ \_\_\_\_\_

Yes/No

Property damage \$ \_\_\_\_\_

to be paid \_\_\_\_\_

to clerk for \_\_\_\_\_

other conditions: Credit for time served since Feb. 16, 1997

Date: August 7, 1997.

[Signature]  
Presiding Judge

Costs and Assessments:

B.A. Test \$ \_\_\_\_\_  
Non-waivable \$ \_\_\_\_\_  
Not waived \$ \_\_\_\_\_  
Total \$ \_\_\_\_\_

\_\_\_\_\_  
Deputy/Clerk of Court

S E N T E N C E

STATE OF SOUTH CAROLINA  
Newberry COUNTY

Case # 97 -GS-36-21  
PLED/CONVICTED: USE OF KNIFE  
IN COMM. OF A VIOLENT CRIME

The defendant M. LO E. TUDOR is committed to the State Department of Corrections for a term of 5 ~~months~~ years and/or pay a fine of \$ \_\_\_\_\_; provided upon the service of \_\_\_\_\_ months/years and/or payment of \$ \_\_\_\_\_; plus pay/waive costs and assessments as applicable the balance suspended with probation for \_\_\_\_\_ months/years.

Restitution For physical injury \$ \_\_\_\_\_  
Yes/No Property damage \$ \_\_\_\_\_  
to be paid \_\_\_\_\_

to clerk for \_\_\_\_\_  
other conditions: Concurrent

Date: August 7, 1997

[Signature]  
Presiding Judge

Costs and Assessments:  
B.A. Test \$ \_\_\_\_\_  
Non-waivable \$ \_\_\_\_\_  
Not waived \$ \_\_\_\_\_  
Total \$ \_\_\_\_\_

\_\_\_\_\_  
Deputy/Clerk of Court

8010 CP36-154

Harry C. DePew

ATTORNEY AND COUNSELOR AT LAW  
2229 Decker Boulevard, Suite C  
Columbia, South Carolina 29206

Telephone  
803-865-0111

Post Office Box 11171  
Columbia, S.C. 29211-1171

August 17, 1997

The Honorable Jackie S. Bowers  
Clerk of Court of Newberry County  
Post Office Box 278  
Newberry, South Carolina 29108

Re: State of South Carolina vs. Milo E. Tudor  
Docket Number: 97-GS-36-021

Dear Ms. Bowers:

Enclosed for filing is a notice of intent to appeal in the above referenced matter as well as a copy of that document. Would you be so kind as to file the original and return the clocked copy to me in the self addressed, stamped envelope provided for your convince.

Sincerely,

*Harry C. DePew*

Harry C. De-Pew  
2229 Decker Boulevard, Suite "C"  
Columbia, South Carolina 29206  
(803) 865-0111  
Attorney for Appellant

cc: Michael T. Caulter, Esquire  
Office of the Solicitor of the  
Eighth Judicial Circuit  
Post Office Box 516  
Greenwood, South Carolina 29648  
Attorney for Respondent

HCD/ts  
enclosures

*Copy Returned 8/21/97*

FILED  
AUG 21 1997  
CLERK OF COURT

TUDOR APPENDIX PAGE  
2010CP36-154

EXHIBIT #4

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM NEWBERRY COUNTY  
Court of General Sessions

James W. Johnson Jr., Circuit Court Judge

Case No. 97-GS-36-021

State of South Carolina.....Respondent,

v.

Milo E. Tudor.....Appellant.

NOTICE OF INTENT TO APPEAL

Milo E. Tudor appeals his conviction and sentence in this case. The sentence was imposed by the Honorable James W. Johnson, Jr., dated August 7, 1997.

FILED  
1997 AUG 21 AM 11:44  
CLERK OF COURT

August 17, 1997

Harry C. DePew  
Harry C. DePew  
2229 Decker Boulevard, Suite "C"  
Columbia, South Carolina 29206  
(803) 865-0111  
Attorney for Appellant

Other Counsel of Record:

Michael T. Caulter, Esquire  
Office of the Solicitor of the  
Eighth Judicial Circuit  
Post Office Box 516  
Greenwood, South Carolina 29648

# Kennedy & Price

Attorneys at Law

Robert G. Price

Catherine P. Egan

‡ Also admitted in AZ,  
DC

1321 Lady Street, Suite 702  
P.O. Drawer 12157  
Columbia, South Carolina 29211-2157

Telephone: (803) 799-2121  
Facsimile: (803) 799-3131

April 17, 1998

Richard M. Kennedy, Jr. ‡

Of Counsel

‡ Also admitted in FL

Milo Earl Tudor, Jr.  
Kerci Sycamore East 34  
P.O. Box 518  
Kershaw, S.C. 29067  
inmate # 243378

*Personal & Confidential  
Attorney-Client Communication*

Joyce Price  
P.O. Box 121  
FairHaven, Vt. 05743

Re: *State of South Carolina vs. Milo Earl Tudor*  
97-GS-36021  
K & P File No.: 464.000

Dear Milo and Joyce:

We received a call earlier in the week from Joyce. Several attempts to return her call however, have been unsuccessful. I wanted to take this opportunity to advise you of our efforts to date as well as the information we have obtained on the status of the appeal.

On April 9, 1998, both Mr. Price and I met with Harry DePew, Milo's trial attorney. This was the earliest date Mr. DePew was available to meet with us. He assured us during our meeting that Mr. Tudor's appeal was active and that he had ordered and was waiting for a transcript of the proceedings prior to filing his opening brief.

Based upon his recollection of the proceedings, Mr. DePew is prepared to address and argue a number of issues in that appeal. Obviously, once he has had an opportunity to review the transcript, he will be in a better position to clarify these issues. Without having reviewed the transcript of the proceedings ourselves, we cannot comment at this time on the number of issues which should be presented for appeal, if any, as well as their likelihood for success.

I have researched the status of the appeal. As of April 16, 1998, the appeal is pending in the South Carolina Court of Appeals under Case No. 97-GS-36021 pursuant to an Order signed by Judge James W. Johnson Jr., dated August 7, 1997. Their records indicate that Mr. DePew would be awaiting receipt of the transcript at this time. This concurs with what Mr. DePew advised us during our meeting.

2010CP36-164

EXHIBIT #5

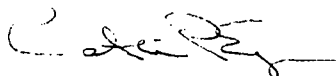
2010CP36-154

It was Mr. DePew's understanding that he was to proceed with the appeal and, absent instructions from you otherwise, he intends to continue accordingly. In that regard, and in accordance with our retainer agreement, we will not pursue this matter further unless and until you request otherwise and we have had the opportunity to discuss it with you. Mr. DePew has assured us that he is receptive to discussing the status of the appeal and his continued representation with either of you if you wish to contact him at (803) 865-0111. Milo may want to try contacting Mr. DePew via a collect call if he has not communicated with him recently.

Milo advised us that he had paid a sizable retainer to the Law Firm Koon and Cook here in Columbia. If you would like us to make efforts on your behalf to obtain any remaining funds held by that firm, please advise us as soon as possible. A copy of the retainer agreement Milo signed would be helpful to determining the amount, if any, he may be entitled to. If no written agreement was signed, please provide a written detail of your recollection of the financial arrangement. I am sure that any funds he may be entitled to would be helpful in funding the appeal.

I have enclosed a self-addressed, stamped envelope for any response or questions Milo may have. I look forward to hearing from you at your convenience.

Very Truly Yours,



Catherine P. Egan

enclosures

29

2010CP36-154

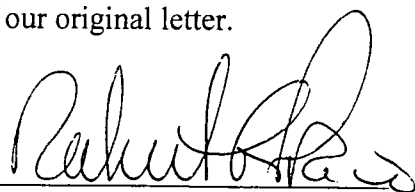
STATE OF SOUTH CAROLINA )  
 )

AFFIDAVIT

PERSONALLY appeared before me the undersigned, Robert G. Price, who being duly sworn, deposes and says:

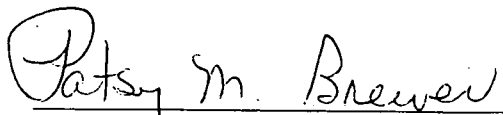
THAT Attorney Catherine P. Egan and I performed the work outlined in our letter of April 17, 1998, concerning the case of the State of South Carolina. vs. Milo Earl Tudor.

THAT the letter attached is a reproduction of our original letter.

  
Robert G. Price, Attorney

SWORN to before me this

1<sup>st</sup> day of September, 2010

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: 2-12-2010

14

MAY 05 1998

The South Carolina Court of Appeals ATTORNEY GENERAL'S OFFICE

no atty  
Instruction

The State,

Respondent,

*[Handwritten signature]*

v.

Milo E. Tudor,

Appellant.

The Honorable James W. Johnson, Jr.  
Newberry County  
Trial Court Case No. 97-GS-36-021

EXHIBIT # 6

2010CP36-154  
OVER REFERENCE PAGE

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of appellant to timely serve and file the Appellant's Initial Brief and Designation of Matter in the above matter, as provided for in Rule 207 and 208 of the South Carolina Appellate Court Rules.

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in the case will be sent to the Clerk of Court for Newberry County after (15) days, exclusive of the date of filing this Order.

*[Handwritten signature: Kenneth S. Richards]*  
For The Court

RECEIVED  
CLERK OF COURT  
NEWBERRY COUNTY  
MAY 15 4 11:53

Columbia, South Carolina

May 5, 1998

Received: 5-22-98

Instructions: *no entry*

# The South Carolina Court of Appeals

~~Respondent~~

*Had until 6/12 to see if we get petition to reinstate then close*  
Respondent, Appellant.

The State,

v.

Milo E. Tudor,

Appellant.

The Honorable James W. Johnson, Jr.  
Newberry County  
Trial Court Case No. 97-GS-36-021

EXHIBIT #7  
2010CP36-161  
ISSUE RETURN PAGE

## REMITTITUR

No Petition for Reinstatement having been filed in the above matter since issuance of this Court's Order dated May 5, 1998,

IT IS SO ORDERED that the above appeal be and hereby is remitted to the Clerk of Court for Newberry County.

*Kenneth A. Nicholas*, Clerk  
For The Court

Columbia, South Carolina

May 21, 1998

Original to: The Honorable Jackie S. Bowers

cc: Harry Clayton DePew, Esquire  
Assistant Deputy Attorney General Salley W. Elliott

RECEIVED  
JUN 15 11:53  
CLERK OF COURT  
NEWBERRY COUNTY

85

2010CP26-154

STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

COURT OF COMMON PLEAS  
2002-CP-36-357

EXHIBIT #8

MILO EARL TUDOR,  
Plaintiff,  
-vs-  
STATE OF SOUTH CAROLINA,  
Defendant.

May 14, 2004

B E F O R E:  
HONORABLE JAMES E. LOCKEMY

A P P E A R A N C E S:  
DOANLD B. HOCKER, Esquire  
Attorney for the Plaintiff  
JULIE M. THAMES, Esquire  
SALLEY WOODS ELLIOTT  
Attorney for the Defendant

Henry P. Young  
Court Reporter

(7) Pages

108

P-R-O-C-E-E-D-I-N-G-S

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MS. THAMES: Your Honor, the State calls Milo Tudor versus the State.

THE COURT: All right, we're in the matter of my Milo Tudor. Background, Miss Thames?

MS. THAMES: Yes, sir. Mr. Tudor was tried on August 7th, 1997, for kidnapping, assault and battery with intent to kill, possession of a firearm during commission of a violent offense. He was found guilty of the charges and sentenced by Judge Johnson to thirty years, suspended to fifteen years and five years probation. Notice of appeal was filed and was dismissed on May 5th, 1998, and this is here on the State's motion to dismiss.

THE COURT: All right, what is the basis of your motion?

MS. THAMES: Yes, sir. The State argues that the application should be dismissed for failure to comply with the provisions of the Post Conviction Relief Act, which requires applications to be filed within one year of conviction. Mr. Tudor was sentenced on August 7th, 1997, he filed his application on June 21st, 2002, well past the filing period.

He is alleging that his attorney allowed his

Wrong Sentence →

Statute of Limitations →



2010 CP36-154

Harry DeFoe  
did not file a re-instate  
petition.  
Was not over money  
this is not true.

1 appeal to be dismissed. His appeal, the notice of  
 2 intent to appeal was filed and was dismissed, his  
 3 attorney filed a motion to re-open that file and it  
 4 was again dismissed. He was retained and the  
 5 family did not pay him any money, they kept  
 6 promising him money and did not pay him, so the  
 7 appeal was never perfected.

8 The State would argue that even if the  
 9 attorney is at fault, the application should still  
 10 be dismissed for Statute of Limitations. The State  
 11 also argues that the application is barred by the  
 12 Doctrine of Laches. He has neglected to file for  
 13 an unreasonable and unexplained amount of time.  
 14 The state is prejudiced because due to the length  
 15 of time, it appears that there is no transcript  
 16 available since it was a 1997 case, and we  
 17 respectfully request the application be dismissed.

18 THE COURT: Okay. Mr. Hocker?

19 MR. HOCKER: If it please the Court, Your  
 20 Honor, we don't really have anything to add as far  
 21 as the Statute of Limitations is concerned. The  
 22 only thing we would add as far as Laches, that he  
 23 did go through, attempt federal habeas way before  
 24 now, attempt a federal habeas which was dismissed  
 25 on the Magistrate Court's recommendation.

#108

1 So he has taken action since that time.  
2 Obviously we have some factual issues as far as the  
3 appeal is concerned but that is something we  
4 wouldn't raise until you ruled on the motion to  
5 dismiss.

6 THE COURT: Let me ask this. Is he alleging  
7 ineffective assistance of counsel at trial?

8 MR. HOCKER: At the trial and for the appeal.

9 THE COURT: But the State is under a  
10 difficult burden here without the transcript.

11 MR. HOCKER: Yes, sir, we understand that.

12 THE COURT: When did he file this?

13 MS. THAMES: He filed the application, Your  
14 Honor, June 21st, 2002.

15 THE COURT: What's the statutory time they  
16 have to keep the transcript, I thought it was six  
17 years?

18 MS. ELLIOTT: May I, Your Honor?

19 THE COURT: Yes.

20 MS. ELLIOTT: It is my understanding for a  
21 period of time the Court reporters were told they  
22 only needed to retain the transcript and the  
23 records for three years and a lot of records have  
24 been destroyed, so I think now they are required to  
25 keep them a little bit longer, for five years, but

24 as fair as I can, regardless, but the law  
25 prohibits, whether one wants to or not, making

#109

#110

#110

#110

EXHIBIT #9

Form Approved by SC Attorney General July 28 1980 SCSA 518

ARREST WARRANT  
F-015292

STATE OF SOUTH CAROLINA  
 County/ Municipality of  
NEWBERRY COUNTY

THE STATE  
against

TUDOR, MILO E.  
Address: 515 SPRING BRANCH ROAD  
NEWBERRY, SC 29108

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_  
Sex: M Race: W Height: \_\_\_\_\_ Weight: \_\_\_\_\_  
DL State: \_\_\_\_\_ DL #: \_\_\_\_\_

DOB: \_\_\_\_\_ Agency ORI #: SC0360000  
Prosecuting Agency: NEWBERRY CO. SHERIFF  
Prosecuting Officer: ANY LAWFUL OFFICER  
Offense: MISC. CRIM. MAXIMUM ASSAULT  
Offense Code: 94CM  
Code/Ordinance Sec. 16-3-620

This warrant is CERTIFIED FOR SERVICE in the  
 County/ Municipality of \_\_\_\_\_

The accused  
is to be arrested and brought before me to be  
dealt with according to law.

Signature of Judge \_\_\_\_\_ (L.S.)

Date: \_\_\_\_\_  
RETURN

A copy of this arrest warrant was delivered to  
defendant TUDOR, MILO E.  
on 09-02-96

Signature of Constable/Law Enforcement Officer  
*Robert D. James*

RETURN WARRANT TO:  
NEWBERRY COUNTY SHERIFF'S OFFICE  
CENTRAL COURT  
3239 LOUIS RICH RD  
NEWBERRY, SC 29108

STATE OF SOUTH CAROLINA  
 County/ Municipality of  
NEWBERRY COUNTY

Personally appeared before me the affiant INV. SHERRI SCOTT  
being duly sworn deposes and says that defendant TUDOR, MILO E.  
did within this county and state on 09/02/96  
State of South Carolina (or ordinance of  County/ Municipality of NEWBERRY )  
in the following particulars: violate the criminal laws of the

DESCRIPTION OF OFFENSE: MISC. CRIM. MAXIMUM  
ASSAULT & BATT. W/INTENT KILL  
16-3-620

I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:  
ON 9-2-96 AT APPROXIMATELY 19:42 HOURS THE DEFENDANT, MILO E. TUDOR DID  
COMMIT THE OFFENSE OF ASSAULT & BATTERY WITH THE INTENT TO KILL IN THAT HE  
CUT THE VICTIM ON BOTH FOREARMS AND BEHIND LEFT EAR. DEFENDANT ALSO TRIED  
TO CHOKE THE VICTIM, YVONNE TUDOR. TO WIT: VICTIM WAS HOSPITALIZED RECEIVING  
200 STITCHES FROM CUTS. THIS INCIDENT OCCURRED ON BRANCH ROAD IN NEWBERRY  
COUNTY, S.C.

Sworn to and subscribed before me  
on \_\_\_\_\_ )  
Signature of Affiant *Sherry Scott*  
Affiant's Address: 3239 LOUIS RICH DRIVE  
NEWBERRY, SC 29108  
Signature of Issuing Judge \_\_\_\_\_ (L.S.)  
Affiant's Telephone: 803-221-2144

STATE OF SOUTH CAROLINA  
 County/ Municipality of  
NEWBERRY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there pre (reasonable grounds to believe that  
on 09/02/96 defendant TUDOR, MILO E. )

did violate the criminal laws of the State of South Carolina (or ordinance of  
 County/ Municipality of NEWBERRY ) as set forth below:  
DESCRIPTION OF OFFENSE: MISC. CRIM. MAXIMUM  
ASSAULT & BATT. W/INTENT KILL  
16-3-620

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before  
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the  
defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address: 3239 LOUIS RICH DRIVE  
NEWBERRY, SC 29108  
Judge's Telephone: 803-221-2144  
Signature of Issuing Judge \_\_\_\_\_ (L.S.)  
Judge Code: 432  
Judge: SHERRY ST. KOON  
Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL

TUDOR APPENDIX PAGE 2010102

The State of South Carolina

WITNESSES

S. K. Scott  
Todd Johnson  
Yvonne Tudor

VERDICT

Foreman

County of NEWBERRY

COURT OF GENERAL SESSIONS

OCTOBER Term, 1996

96GS36 - GS2

THE STATE  
VS.

MILLO-EARL TUDOR

*Milto-Earl Tudor*  
DEP. SOL. CLERK  
8/7/97

Indictment for Assault and  
Battery With Intent to Kill

TRUE BILL

*[Signature]*  
Foreman of Grand Jury

F-015292

I, \_\_\_\_\_ THE DEFENDANT, IN MY OWN PROPER PERSON, COME TO THE BAR OF THIS COURT, WAIVE GRAND JURY ACTION, AND FREELY AND VOLUNTARILY PLEAD \_\_\_\_\_ GUILTY TO THE CHARGE(S) OF:

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 19 \_\_\_\_\_

ATTEST:

DEFENDANT'S SIGNATURE

CLERK OF COURT, NEWBERRY, S. C.

NOLLE PROSEQUI ~~AND DEFERRED~~ AS  
DEFENDANT ~~PO~~ WAS CONVICTED OF  
THIS CHARGE ON 97-65-36-21 AND  
IS PRESENTLY SERVING AN ACTIVE  
SENTENCE.

*[Signature]*  
DEP. SOL. CLERK  
8/7/97

*[Handwritten initials]*

The State of South Carolina

County of Newberry

At a Court of General Sessions, Begun and holden in and for the County of Newberry  
in the State of South Carolina, at Newberry Court House, in the County and State aforesaid, on  
the fourth Monday of October in the year of our Lord one thousand nine hundred  
and ninety-six

The Jurors of and for the County aforesaid, in the State aforesaid, upon their oath, Present:

That MILO EARL TUDOR

late of the County and State aforesaid, on or about the 2nd day of September in the  
year of our Lord one thousand nine hundred and ninety-six with force and arms, at  
Newberry Court House in the County and State aforesaid, in and upon one

Yvonne Tudor

feloniously, wilfully and of his malice aforethought, did make an assault with a certain deadly weapon, to  
wit: a knife, a rope and his hands and fists

and him the said MILO EARL TUDOR

with the said his hands and fists

with the said knife, rope and/ did stick, cut, stab, choke, hit

beat and knock

and wound with intent the said

Yvonne Tudor

then and there feloniously, wilfully and of malice aforethought, to kill and murder against the form  
of the Statute, in such case made and provided, and against the peace and dignity of the State.

W. Townes Jones

Solicitor

EXHIBIT # 11

EXHIBIT # 5  
1 of 2

AFTER 5 DAYS RETURN TO  
**JACKIE S. BOWERS**  
Clerk of Court Newberry County  
P. O. Drawer 10  
Newberry, S. C. 29108

212

MILO EARL TUDOT #243378  
FSA-212 ALLENDALE CORRECTION INST.  
PO BOX 1151  
FAIRFAX, SC 29827

RECEIVED  
JUL 18 2010  
MAILROOM  
ACI

FAIRFAX, SC 29827  
JUL 18 2010  
MAILROOM  
ACI

Memorandum

CLERK OF COURT'S OFFICE, NEWBERRY COUNTY  
Jackie S. Bowers, Clerk of Court  
Post Office Drawer 10  
Newberry, S.C.

TO: MILO EARL TUDOR

DATE: JULY 15, 2010

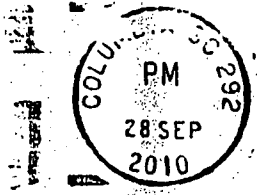
FROM: BETH P. FOLK  
DEPUTY CLERK OF COURT

ENCLOSED YOU WILL FIND SOME OF THE COPIES WHICH YOU REQUESTED. AS FOR WARRANTS ON INDICTMENT #97GS36-21, THOSE WERE ON INFORMATION. I HAVE ENCLOSED A COPY OF THAT INDICTMENT WHICH SHOWS INFO AT THE BOTTOM. WHEN YOU REQUEST COPIES TO BE MAILED, YOU NEED TO START SENDING A STAMPED SELF ADDRESSED ENVELOPE BEFORE THE COPIES WILL BE MAILED.

20100715-154

TUDOR APPENDIX PAGE  
2010CP36-154

Jackie S. Bowers  
Clerk of Court  
P.O. Drawer 10, 1226 College St  
Newberry, SC 29108



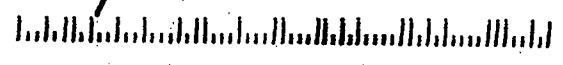
212

RECEIVED

SEP 29 2010  
ROOM  
AGI

Wilo Earl Tudor # 243378  
F 5A - 212 Allendale Cor. Inst.  
PO Box 1151  
Fairfax SC 29827

2982731151



Memorandum

CLERK OF COURT'S OFFICE, NEWBERRY COUNTY  
Jackie S. Bowers, Clerk of Court  
Post Office Drawer 10  
Newberry, S.C.

TO: MILO EARL TUDOR

DATE: SEPTEMBER 27, 2010

FROM: BETH P. FOLK  
DEPUTY CLERK OF COURT

AS I WROTE TO YOU ON JULY 15, 2010 WHEN YOU REQUESTED COPIES OF THE WARRANTS ON CASE NO 97GS36-21, THIS INDICTMENT WAS DONE ON INFORMATION. THEREFORE THERE ARE NO WARRANTS. (SEE ATTACHED) ALSO I RECEIVED YOUR LETTER REQUESTING COPIES OF DOCUMENTS IN INDICTMENT NUMBER 96GS36-652. I HAVE ATTACHED COPIES OF THE WARRANT AND INDICTMENT. AS FOR ANY OTHER DOCUMENTS CONCERNING THIS CASE YOU WILL NEED TO CONTACT THE ARRESTING AGENCY OR YOUR ATTORNEY.

TUDOR APPENDIX PAGE  
2010 CP36-154

STATE OF SOUTH CAROLINA

County of Newberry

In the Court of Common Pleas

Milo Earl Tudor, 243378  
Full name and prison number (if any) of Applicant,

2002 CP36-357

Vs.

State of South Carolina  
Name of Respondent,

APPLICATION FOR  
POST-CONVICTION RELIEF

2002 AUG 21 A 11:15

FILED  
NEWBERRY COUNTY

CLERK OF COURT

2010DCP36-154

EXHIBIT 12

EMR 011 - 1  
(7) Pages

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention:

MS Cormick Correctional Institution

2. Name and location of Court which imposed sentence:

Court of General Sessions for the Eighth Judicial Circuit.  
Newberry, SC

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3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

- (a) ABWIK
- (b) Kidnapping
- (c) Poss. of Knife during Violent Crime

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

- (a) August 4, 1997 - ABWIK: 20yrs; Kidnapping - 30yrs.
- (b) - Poss. Knife - 5yrs.
- (c) \_\_\_\_\_

5. 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 \_\_\_\_\_

6. Did you appeal from the judgement of conviction or the imposition of sentence?

yes

7. If you answered "yes" to (6), list

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

- i. SC Court of Appeals
- ii. United States District Court Writ of Habeas Corpus
- iii. \_\_\_\_\_

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

- i. Dismissed
- ii. Dismissed
- iii. \_\_\_\_\_



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(c) the date of each such result:

- i. May 5, 1998 - dismissed
- ii. August 1, 2002
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Ineffective Assistance of Counsel
- (b) Denial of Direct Appeal
- (c) \_\_\_\_\_

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

- (a) Applicant's Attorney allowed his appeal to be
- (b) dismissed.
- (c) \_\_\_\_\_

11. Prior to this application have you filed with respect to this conviction:

- (a) any petition in the State Court under South Carolina Law? \_\_\_\_\_
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? \_\_\_\_\_  
yes, federal Habeas



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(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? \_\_\_\_\_

(d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

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

(a) the specific nature thereof:

i.  Habeas Petition - Denial of Right to Appeal

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i.  US District Court, Columbia, SC

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i.  dismissed

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i.  8/1/02

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

- i. written Order entered 8/1/02
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion, or application which you have filed?

yes

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

(a) which grounds have been presented:

- i. Denial of Appeal
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. Federal Habeas
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? yes

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(d) your appeal, if any, from the judgement 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

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

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

i. Harry DePew - plea + sentencing - unknown

ii. Wesley Locklair, Federal Habeas - 3575 Hwy 17 B.W.S.  
Murrells Inlet, SC 29576

iii. \_\_\_\_\_

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

i. Plea + sentencing

ii. Federal Habeas

iii. \_\_\_\_\_

18. State clearly the relief you seek in filing this application.

Direct Appeal

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

No

County of Newberry

I, Milo Earl Tudor, 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.

Milo Earl Tudor  
8/13/2002

SWORN to and subscribed before me this 13<sup>th</sup>

Day of August, 19 2002

Janella [Signature] (L.S.)  
Notary Public

My Commission Expires: 3-30-2009

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

I, \_\_\_\_\_, 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 therefor.

\_\_\_\_\_  
Applicant

SWORN or affirmed to and subscribed before me this

\_\_\_\_\_ Day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

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(87)

TJDDP APPENDIX PAGE  
2010CP36-154

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> Agent  <input checked="" type="checkbox"/> Addressee</p>
<p>1. Article Addressed to:</p> <p>Donato B. Hacker            PO Box 972            Laurens SC            29360</p>	<p>B. Received by (Printed Name)            Donato B. Hacker</p> <p>C. Date of Delivery            7/8/10</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes            If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>2. Article Number            (Transfer from service label)</p>	<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>PS Form 3811, February 2004</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> <p>7009 2250 0002 1323 8259</p> <p>Domestic Return Receipt</p> <p>102505-02-M-1540</p>

EXHIBIT # 3  
(5) Pages

UNITED STATES POSTAL SERVICE

GREENVILLE SC 29601

08 JUL 2010 PM

First Class Mail  
 Postage & Fees Paid  
 USPS  
 Permit No. 6-10

• Sender: Please print your name, address, and ZIP+4 in this box •

212  
 MILO E Tudor # 243378  
 FSA-22 Allendale C.I.  
 PO Box 1151  
 Fairfax SC 29827

127

127

Ronald B. Hocker  
P.O. Box 972  
Laurens, S.C. 29360

10002 APPENDIX PAGE  
2010CP36-154

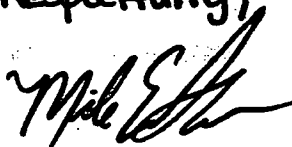
RE: Tudor v. State  
PCR 2002CP36-357  
Date MAY 14, 2004.

Dear Mr. Hocker,

I am respectfully writing to request a complete copy of my case file. You represented me at the above mentioned PCR. Having never consulted with you prior to the PCR hearing, I wanted to know when you received my case?, and how you came to represent me?.

Your assistance in this matter would be greatly appreciated.  
Thank you.

Respectfully,



June 28, 2010.

Milo Earl Tudor # 243378  
PSA-212 Allendale Corr. Inst.  
P.O. Box 1151  
Fairfax, S.C. 29827

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Donald B. Hocker,

I am writing to respectfully request that you answer the following questions, to the best of your knowledge, pursuant to Tudor v. State Case No 2010CP36-154;

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2010CP36-154

- (1) State your full name (Print)
- (2) Are you a Licensed attorney to practice Law, in the state of S.C.?
- (3) Have you ever visited or consulted with Milo Tudor #243378, an inmate with S.C.D.C.?
- (4) Have you ever visited Milo Tudor, at Kershaw Corr. Inst., between 1999-2001?
- (5) Have you ever visited Milo Tudor, at McCormick Corr. Inst., between 2001-2008?
- (6) Have you ever visited Milo Tudor, at Allendale Corr. Inst, between 2008-present?
- (7) Have you ever consulted with State Solicitor, concerning Tudor v. State 2002CP36-357?
- (8) Have you ever consulted with attorney Harry DePew, concerning Tudor v. State Case No 97GS36-021?
- (9) Have you ever interviewed, advised, or consulted with Milo Tudor #243378, concerning Tudor v. State 2002CP36-357?
- (10) Have you ever conducted an investigation for the case Tudor v. State 2002CP36-357?
- (11) Have you ever informed, advise, or consulted with Milo Tudor, concerning per issued to be raised and argued, the procedure of a per, or appeal rights Pursuant to state statute for Tudor v. State 2002CP36-357?

Your true and cooperation with these questions would be greatly appreciated. Thank You

Milo Eal Tudor

(17)

TUDOR APPENDIX PAGE  
2010CP86-154

DONALD B. HOCKER

ATTORNEY AT LAW

235 WEST LAURENS STREET  
POST OFFICE BOX 972  
LAURENS, SOUTH CAROLINA 29360

GREENVILLE SC 296

13 JUL 2010 PM 1 T



212

Milo Earl Tudor, # 243378  
PSA-212 Allendale Corr. Inst.  
Post Office Box 1151  
Fairfax, South Carolina 29827

RECEIVED

29827+1151



212

ALD B. HOCKER

CERTIFIED CIVIL COURT MEDIATOR AND ARBITRATOR

ATTORNEY AT LAW

235 WEST LAURENS STREET  
POST OFFICE BOX 972  
LAURENS, SOUTH CAROLINA 29360

(864) 984-4574  
FAX (864) 984-0114  
dbhattomey@backroads.net

TUDOR APPENDIX PAGE  
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July 13, 2010

Milo Earl Tudor, # 243378  
PSA-212 Allendale Corr. Inst.  
Post Office Box 1151  
Fairfax, South Carolina 29827

Re: Tudor v. State  
02-CP-36-357

Dear Mr. Tudor:

I am in receipt of your letter dated June 28, 2010. I have no record of ever representing you, no record of ever having been appointed to represent you, nor do I have a file in your case. I believe that you have confused me with someone else. It appears that you had a Newberry County PCR case and possibly your attorney was from Newberry.

Cordially,



Donald B. Hocker

DBH/ras

\*130

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas  
James E. Lockemy, Circuit Court Judge

Case No. 02-CP-36-357

Milo Earl Tudor, #243378, ..... Appellant,  
v.  
The State of South Carolina, ..... Respondent.

NOTICE OF APPEAL

Milo Earl Tudor appeals the Order of the Honorable James E. Lockemy dated June 24, 2004. Appellant received written notice of entry of this Order on July 1, 2004.

July 19, 2004

Respectfully submitted,

JOYE & LOCKLAIR, PA

By: 

Wesley Locklair  
Attorney for the Plaintiff  
3575 Highway 17 Business  
Murrells Inlet, SC 29576  
(843) 357-6454

Other Counsel of Record:  
Julie M. Thames  
Attorney General's Office  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803)734-3970

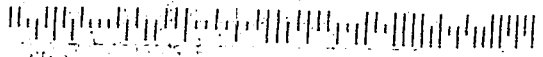
2004 JUL 23 A 11:49

FILED  
NEWBERRY COUNTY

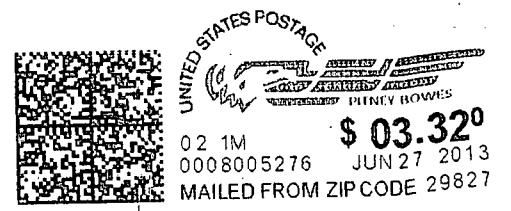
Notes:

- (1) I hired attorney W. Locklaw, as legal counsel for per., Mr. Locklaw filed per August 21, 2002 exhibit # 12
- (2) Per hearing held May 14, 2004, attorney of Record, D. Hocker. exhibit # 8
- (3) Attorney W. Locklaw filed notice of Appeal July 24, 2004, appealing order dismissing per. exhibit # 12
- (4) I never discussed case with attorney D. Hocker prior to per hearing. exhibit # 12
- (5) Per counsel present or argued any issues at per hearing. exhibit # 8

It is the petitioner's belief that the per hearing held May 14, 2002 was not a fair opportunity for the presentation and argument of issue because counsel was ineffective. Today, I do not know how attorney D. Hocker came to represent me at my per.



Box 1151  
Columbia, SC 29827



02 1M \$ 03.32<sup>0</sup>  
0008005276 JUN 27 2013  
MAILED FROM ZIP CODE 29827

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JUN 27 2013  
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South CAROLINA Court of Appeals

Attn: Clerk of Court  
P.O. Box 11629

Columbia, S.C 29211

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S.C. Court of Appeals