

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**May 31 2024**

S.C. SUPREME COURT

—————  
Certiorari to Jasper County

Honorable Deadra L. Jefferson, Circuit Court Judge  
—————

BREON ALEXANDRE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001654  
—————

AMENDED APPENDIX  
—————

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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
	)	2009-GS-27-0493
Breon Joseph Alexander,	)	2009-GS-27-0494
	)	
Defendant.	)	
	)	

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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

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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 penalty of  
20 life, 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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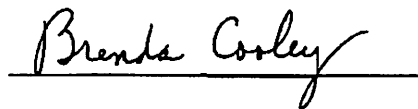
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CERTIFICATE OF THE COURT REPORTER

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

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

February 2, 2013



Brenda Cooley

Circuit Court Reporter (Retired)

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  
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./CWS-2223, 990 Wisacky Hwy  
Blendon, 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-CR-27-00492;
  - (b) S.C. Code of Law §16-310.20/\*09-CR-27-00494

POSTED  
BY pd  
DATE 3/29/12

(c) SC Code of Law §16-11-0311 / 09-05-27-00493

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, as 6<sup>th</sup> & 14<sup>th</sup> 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. \_\_\_\_\_

N/A

(d) the date of each such disposition:

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

N/A

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

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

N/A

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. \_\_\_\_\_

N/A

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

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

N/A

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) PCN remedy also by paper exhaustion
- (b) Requirements, per 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 Plexico, Esquire, Public Defender  
P.O. Box 506, Hampton, SC 29924
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_

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

Reversal 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, Breon 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.

Breon Alexander

SWORN to and subscribed before me this

day of

10  
2010  
Braun Jima (L.S.)  
Notary Public

My Commission Expires: 5-26-11

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

I, Brian J. Alexandre #340229, 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 Alexandre  
Applicant

SWORN or affirmed to and subscribed before me this  
10 day of Feb 2002.  
[Signature]  
Notary Public

My Commission Expires: 5-12-02

2012 MAR 29 PM 12:35  
HARRIS COUNTY CLERK OF COURT  
JASPEN COURT SC

## Memorandum Of Law

Applicant Beon 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 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)(1), 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

1. of 3

2/12/2019 29 PM 12:35  
 JASPER COUNTY SC  
 CLERK OF COURT  
 JASPER COUNTY SC

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 493, 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 failures to file an appeal violates Rule 102(e)(1), SCACR; it requires trial Counsel to represent a defendant until final judgement, 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. Alexandre  
910 Wisacky Hwy.  
Bishopville, S.C. 29010  
Applicant.

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  
 MARCARET BOJER  
 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.

*pd*  
 12.31.12

## 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

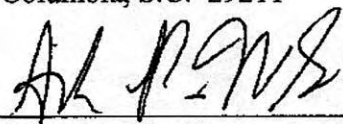
JOHN W. McINTOSH  
Chief Deputy Attorney General

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, 201<sup>2</sup>~~3~~

STATE OF SOUTH CAROLINA )  
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 COUNTY OF JASPER )  
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 BREON J. ALEXANDRE, #340229 )  
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 Applicant, )  
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 vs )  
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 STATE OF SOUTH CAROLINA, )  
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 Respondent. )  
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IN THE COURT OF COMMON PLEAS

2012-CP-27-0218

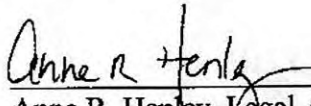
AFFIDAVIT OF SERVICE BY MAIL

2012 DEC 28 AM 11:31  
 MARGARET BOSSICK  
 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 27<sup>th</sup> day of December 2012

  
 \_\_\_\_\_  
 Anne R. Henley, Legal Assistant  
 For Respondent

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

FILED  
2013 OCT 31 AM 9:53  
MARGARET BOSTICK  
CLERK OF COURT  
JASPER COUNTY SC

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.

File 10  
[Signature]

10/31/13  
[Signature]

### 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),<sup>1</sup> Burglary-First Degree (2009-GS-27-0493),<sup>2</sup> and Armed Robbery (2009-GS-27-0492).<sup>3</sup> 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.

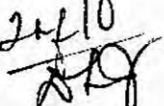
<sup>1</sup> The penalty statute for the offense of Murder provides that

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).

<sup>2</sup> 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).

<sup>3</sup> 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).

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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), SCRPC; Butler v. State, 286 S.C. 441, 442,

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2010

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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RJA

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 of 10  
[Handwritten 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.

8 8/27/10  
AJA

**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.

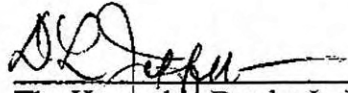
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules 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 *9/21/10*  
*BAJ*

AND IT IS SO ORDERED this 28<sup>th</sup> day of Oct., 2013.

  
\_\_\_\_\_  
The Honorable Deadra L. Jefferson  
Presiding Judge

Ches, South Carolina.  
at chambers

10 10/28/10  
DLJ

Breon J. Alexander 210227  
Lee C.I.  
Che - S - 1213  
990 Wisacky Hwy.  
Bishopville, S.C. 29010

NOVEMBER 22, 2013  
57

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.  
Che - S - 1213  
990 Wisacky Hwy.  
Bishopville, S.C. 29010

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 340229  
Lee C.I.  
Che - 3 - 1213  
990 Wisacky Hwy.  
Bishopville, S.C. 29010

State of South Carolina )  
County of Beaufort )

Breon J. Alexander, )  
Applicant )

v. )

State of South Carolina, )  
Respondent )

---

In The S.C. Supreme Court

Case No.: 2012 - CP - 27 - 218

Affidavit of Breon J. Alexander

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



## 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](http://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:

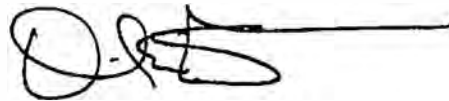
- (1) A proof of service showing that the notice of appeal has been served on opposing counsel, and,
- (2) A written statement of the date on which you received written notice of entry of the order of dismissal dated October 28, 2013.

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](http://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](http://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,

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a series of loops and a long horizontal line extending to the right.

CLERK

Enclosure

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

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

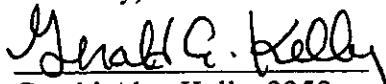
**RECEIVED**  
DEC 23 2013  
S.C. Supreme Court

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 15<sup>th</sup> 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 23 2013

S.C. Supreme Court

December 18, 2013 (12:42pm)

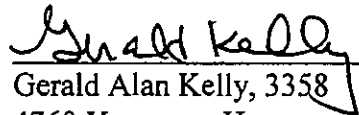
Honorable Daniel E. Shearouse  
Clerk of the South Carolina Supreme Court  
P.O. Box 11330  
Columbia, South Carolina  
29211

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

**RECEIVED**

DEC 23 2013

**S.C. Supreme Court**

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

v.

State of South Carolina .....Respondent

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

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

State of South Carolina .....Respondent

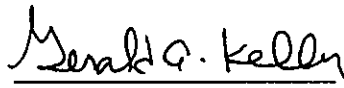
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PROOF OF SERVICE

---

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

# 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

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## 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.

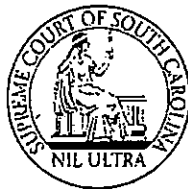
Based on petitioner's failure to show that either notice of appeal has been timely served on opposing counsel as required by Rules 243(b) and 203(b)(1) of the South Carolina Appellate Court Rules (SCACR), this matter is dismissed. *See* Rule 263(b), SCACR (time to serve notice of appeal cannot be extended); *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



# 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

## 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 1/2 SMLI-N-51 990 Wsacky Hwy  
Portcharville 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 00498/SS 16-11-0330
  - (b) 09 GS 27 00494/SS 16-3-10,20

1

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

(c) 09-GS-27-00493 / 9316-11-0311

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 to 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 PCR 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. \_\_\_\_\_

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) 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. Steve Plexico, Public Defender's office  
P.O. Box 506 Hampton, SC 29924
- ii. Cerald A. Kelly, D.D. Attorney at Law 4760  
Ye. Masses 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, ~~Brandon Alexander~~, 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 Brandon Alexander

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

Debra Sims (L.S.)  
Notary Public

My Commission Expires: 11-4-2015

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

I, ~~Robert D. 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 Robert Alexander  
Applicant

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

Debra J. Jones  
Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
	)	
Breon Joseph Alexandre, #340229,	)	2014-CP-27-0375
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN AND MOTION TO</b>
	)	<b>DISMISS ALL CLAIMS EXCEPT</b>
	)	<b><u>AUSTIN REVIEW</u></b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

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-1<sup>st</sup> 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

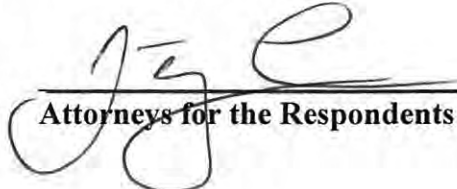
JOHN W. McINTOSH  
Chief Deputy Attorney General

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

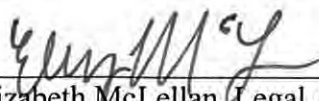
2014-CP-27-0375

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 19<sup>th</sup> day of August, 2015.

  
 \_\_\_\_\_  
 Elizabeth McLellan, Legal Assistant  
 For Respondent

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In the Court of Common Pleas for the  
State of South Carolina, County of Jasper

Case No.: 2014CP270375

Breon Alexandre,  
Plaintiff(s),

vs. Transcript of Record

State of South Carolina,  
Defendant(s).

**POST-CONVICTION RELIEF HEARING TRANSCRIPT**

October 20, 2015

Beaufort, South Carolina

BEFORE:

The Honorable Roger L. Couch

## 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.)

23

24

25

## PROCEEDINGS

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

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

8

DATED this 29th day of May, 2020.

9

10

11

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

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FILED  
JASPER COUNTY  
CLERK OF COURT

STATE OF SOUTH CAROLINA )	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER )	FOR THE FOURTEENTH JUDICIAL CIRCUIT
2022 OCT 14 AM 9:44 )	
Breon Alexandre, SCDC #340229, )	Case No. 2014-CP-27-00375
)	
Applicant, )	
)	
v. )	<b>CONSENT ORDER GRANTING RIGHT</b>
)	<b>TO SEEK BELATED APPELLATE</b>
)	<b>REVIEW PURSUANT TO <i>AUSTIN V. STATE</i><sup>1</sup></b>
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

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

TRUE COPY  
MARGARET BOSTICK  
CLERK OF COURT  
JASPER COUNTY, SC  
BY: *[Signature]*  
DATE: 10-14-2022

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.

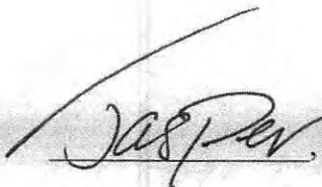
After review of the facts and circumstances surrounding Applicant’s right to appeal the denial of his initial post-conviction relief application, the parties below have consented to the granting of an appeal of Applicant’s first post-conviction relief application (2012-CP-27-00218) pursuant to *Austin*. 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.

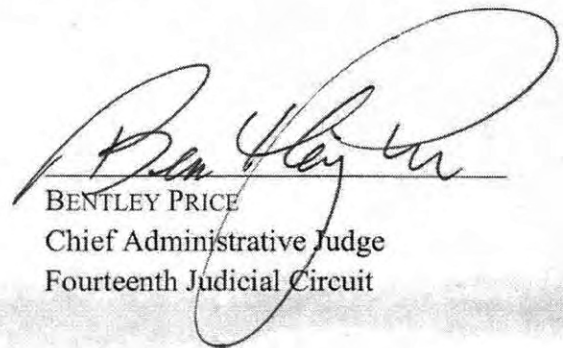
Based upon the foregoing, this Court finds granting Applicant's request to seek belated appellate review of his first PCR (2012-CP-27-00218) pursuant to *Austin*, is warranted. Counsel for the State and Applicant's PCR counsel consented to the granting of leave to pursue a PCR appeal in this matter. 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 11<sup>th</sup> day of October, 2022.

 Jasper, South Carolina

  
BENTLEY PRICE  
Chief Administrative Judge  
Fourteenth Judicial Circuit

# The Supreme Court of South Carolina

Breon Alexandre, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2022-001654

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## ORDER


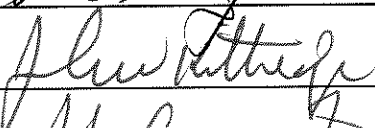
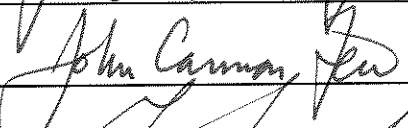
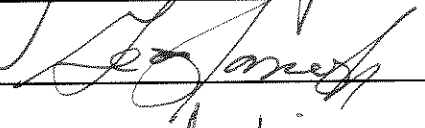

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This matter is before the Court by way of a notice of appeal from an order of the post-conviction relief (PCR) court finding Petitioner is entitled to an appeal of the denial of his first PCR application pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Because the record of Petitioner's 2013 PCR hearing is not available, Petitioner asks this Court to remand the matter to the PCR court to reconstruct the record of his 2013 PCR hearing. The State does not oppose a reconstruction hearing.

We hereby hold this matter in abeyance and remand the matter to the PCR court to reconstruct the record of Petitioner 2013 PCR hearing. *See Koon v. State*, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004) (holding where a transcript has been lost or destroyed, this Court may remand the matter to have the record reconstructed), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). The PCR court may consider affidavits of PCR counsel, the Assistant Attorney General who represented the State at the hearing, the court reporter, the PCR judge, and any other person who may assist in determining what transpired at the hearing. *See China v. Parrott*, 251 S.C. 329, 333–34, 162 S.E.2d 276, 278 (1968) (holding the trial court properly considered affidavits of the plaintiff's counsel and the court reporter in determining what transpired at a hearing).

Petitioner's counsel shall contact counsel for the State and the PCR court within ten days of the date of this order to schedule such hearings as the PCR court deems appropriate. Petitioner's counsel shall provide an update to the Clerk of this Court not later than thirty days from the date of this order, and every thirty days

thereafter, with copies of the update provided to counsel for the State. If the PCR court determines reconstruction is not possible, the court shall immediately notify this Court and the parties of that determination. If the record is reconstructed, Petitioner's counsel shall notify this Court, and the matter will proceed on Petitioner's receipt of the transcript from the reconstructed hearing.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina  
April 21, 2023

cc:  
Megan Harrigan Jameson, Esquire  
Joanna Katherine Delany, Esquire

STATE OF SOUTH CAROLINA ) IN THE SOUTH CAROLINA  
COUNTY OF CHARLESTON ) C.A. NO. 2014-CP-27-00375  
CIRCUIT COURT 9

Breon Alexandre, )  
 )  
 )  
 Plaintiff, )  
 Vs. )  
 )  
 )  
 The State of South Carolina, )  
 )  
 )  
 Defendant. )

H E A R I N G

PRESENT:

DATE: August 8, 2023

TIME:

LOCATION: South Carolina Circuit Court 9  
100 Broad Street, Suite 336  
Charleston, SC 29401-2236

JUDGE: Deadra L. Jefferson

REPORTED BY:

LEGAL EAGLE  
Post Office Box 5682  
Greenville, South Carolina 29606  
864-467-1373  
depos@legaleagleinc.com

## APPEARANCES:

Joanna Delany, Esquire  
South Carolina Commission on Indigent Defense  
PO Box 11433  
Columbia, SC 29211-1433

Attorney for the Plaintiff.

Danielle Dixon, Esquire  
SC Attorney General's Office  
PO Box 11549  
Columbia, SC 29211

Attorney for the Defendant.

Also Present:

Ms. Wilson  
Mr. Plexico

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## EXHIBITS

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS  
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

## EXAMINATION

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Timothy Plexico	21	23
Ashley Wilson	27	
Joe Kelly	29	

## 1 PROCEEDING

2 THE COURT: Okay. This is the State of South Carolina  
3 versus Breon Alexandre, b-r-e-o-n, Alexandre, a-l-e-x-a-n-d-r-e.  
4 I hope I spelled that correctly. We are before the Court this  
5 morning pursuant to an order from the Supreme Court. Mr.  
6 Alexandre was granted a belated appeal in this matter, and it's  
7 my recollection that -- bear with me one second.

8 I'm going to go kind of go backwards order, if you all  
9 can bear with me. I heard a PCR for Mr. Alexandre on August 27  
10 of 2013. At that time our court reporter was Susan Perrin  
11 (phonetic), who is no longer -- she is retired, long retired.  
12 Mr. Kelly was the applicant's attorney. Ms. Ashley Wilson was  
13 the state's attorney.

14 Mr. Plexico was his plea counsel, and again, the date  
15 of the hearing was August 27 of 2013. His hearing was limited  
16 to whether he had affected assistance on the filing of the  
17 appeal of his guilty plea, which was heard by Judge Kinerd  
18 (phonetic) on April 12 of 2010. And at that time Judge Kinerd  
19 sentenced him to 40 years for murder and burglary and 30 years  
20 for armed robbery. The sentences were to run concurrently  
21 And at that time what was granted, the only claim he  
22 was allowed to proceed upon was failure to file an appeal  
23 untimely because his application was filed outside of the one  
24 year statute of limitations.

25 And at that time the state's motion was granted. All

1 allegations other than the issue of counsel's ineffective  
2 assistance for failing to file a direct appeal were dismissed,  
3 and the Court proceeded on that issue and took testimony. And  
4 at that time the Court found Mr. Plexico's testimony credible on  
5 the issue that his client never raised any issues regarding a  
6 direct appeal.

7           And at that time the Court found that he failed to  
8 meet his burden of proof and dismissed his PCR application,  
9 finding that he had failed to meet his burden of proof by a  
10 preponderance of the evidence, and failing to meet even the  
11 first prong of the Strickland test. So his application was  
12 denied and dismissed with prejudice and that order was signed on  
13 October 28, 2013, and was filed on October 31, 2013, and I'm  
14 assuming they had to mail it to Jasper and they had to file it.

15           And subsequently we received an order from the Supreme  
16 Court allowing him a belated appeal pursuant to Austin versus  
17 State (indiscernible) 2013, those records, and this order was  
18 issued April 21, 2023, and of course I'm sure everyone would  
19 know that records -- court reporters are only required to keep  
20 their records for five years, and this would have far exceeded  
21 that limitation as Ms. Perrin would have only have had to kept  
22 her records until 2018.

23           And upon her retirement she would have turned all of  
24 her records over to court administration and I believe they have  
25 already searched those records and found that they no longer

1 existed. So the Supreme Court issued an order again on April 21  
2 of 2023, holding the direct appeal in abeyance until such time  
3 as the -- told him that the transcript had been destroyed and/or  
4 otherwise was unavailable, and remanding the matter to have the  
5 record reconstructed.

6 And it says the PCR court may consider affidavits of  
7 PCR counsel. The assistant attorney general who represents the  
8 state at the hearing, the court reporter, the PCR judge and any  
9 other person you may assist in determining what transpired at  
10 the hearing. Shonda, is this the first time we have tried to  
11 schedule this matter?

12 SHONDA: Yes, ma'am.

13 THE COURT: The first time we scheduled it or the  
14 first date we attempted to schedule it?

15 SHONDA: The first date.

16 THE COURT: Let me double check. I don't think this  
17 is the first time we tried to schedule it. I think it's the  
18 first time we were actually able to schedule it due to  
19 everybody's schedules. Okay. I don't know that it really  
20 matters. (Indiscernible) the affidavit of Stephen T. Plexico.  
21 Was this filed electronically? Why can't she file things  
22 electronically because it's a PCR and it's not online. Has this  
23 been filed with the Court?

24 MS. DELANY: No, judge, and to be candid with you,  
25 this is my first time doing a PCR reconstruction virtually so I

1 just emailed it to opposing counsel and to you to see if you  
2 would want to proceed that way, but I wasn't sure how to give it  
3 to a court reporter to make it as an exhibit.

4 THE COURT: Well, with nonjury, we don't use court  
5 reporters anymore. I mean sometimes we do, but in most  
6 instances now we don't.

7 MS. DELANY: Okay.

8 THE COURT: So either you come to the courthouse and  
9 sit in front of a computer screen or you sit in front of a  
10 computer screen. I just don't see the -- I don't see the -- I  
11 think it's sort of an exercise in futility to have somebody  
12 drive two hours to sit in front of a computer screen.

13 MS. DELANY: Sure. I'm happy to submit it. However -  
14 -

15 THE COURT: Yeah, and I've done lots of virtual  
16 hearings and they flow the same way as if you had a Court  
17 reporter. WebEx is just as effective. I think you're required  
18 to file that document so it can be made a part of the file. So  
19 you'll need to send that to Jasper.

20 MS. DELANY: Okay. I will do it.

21 THE COURT: Or you can make it an exhibit, but the  
22 problem with that is with WebEx there is -- you know, the only  
23 keeper of the record is this virtual recording which will be  
24 sent to court administration and if you all request that it be  
25 transcribed they will assign someone to transcribe it. So I

1 think the better way to handle it is to send it to Jasper and  
2 get you back a filed copy. Serves the same purpose either way.

3 MS. DELANY: All right. We will file it today, Your  
4 Honor.

5 THE COURT: Okay. And just to be on the safe side, I  
6 probably would send enough copies so that you can distribute  
7 that filed copy to all of those concerned.

8 MS. DELANY: Yes, Your Honor.

9 THE COURT: And for the record, Ms. Danielle Dixon is  
10 representing -- oh, let me just make sure right quick that I'm  
11 not missing anybody. Ms. Dixon is appearing on behalf of the  
12 state, correct?

13 MS. DELANY: Right, Your Honor.

14 THE COURT: Ms. Wilson is present -- I'm sorry. Go  
15 ahead.

16 MS. DIXON: I was just going to say for the record,  
17 we've reviewed the affidavit and don't have any objections to  
18 it.

19 THE COURT: And Ms. Wilson is present. Is she was the  
20 original assistant attorney general who handled the PCR, right  
21 Ms. Wilson?

22 MS. WILSON: Good morning, Your Honor. Yes, ma'am,  
23 good morning.

24 THE COURT: Good morning. Hope you're well.

25 MS. WILSON: Thank you.

1 THE COURT: And Mr. Plexico was present and he was  
2 plea counsel and testified at the original hearing in 2013. And  
3 Ms. Delany, you're representing the state, correct?

4 MS. DELANY: I'm representing Mr. --

5 THE COURT: I'm sorry. The applicant. I apologize.

6 MS. DELANY: Yes.

7 THE COURT: I apologize. The applicant. I don't know  
8 why I was thinking something. Okay. Now, we can do this one of  
9 several ways. I find that reconstructing the record, and it is  
10 sort of an anomaly that our system allows for. I find the most  
11 practical way to do it, and I've done them before in the past,  
12 is to proceed as if you had the original PCR and called those  
13 witnesses and questioned them and then have any annotations from  
14 those who were present at the hearing, that being Ms. Wilson and  
15 then who represented the state at the time, Ms. Wilson? I mean  
16 who -- am I missing somebody? Who represented -- do we have  
17 applicant's original counsel?

18 MS. WILSON: That would be Mr. Gerald Kelly. And Mr.  
19 Kelly, if I may, Mr. Kelly, I've spoken to him on the phone  
20 several times and he is going to join by telephone. He is  
21 locked out of his computer currently.

22 THE COURT: That's fine. What we can do is -- Shonda,  
23 do you see -- let me see if we have got any dial-in users.

24 MS. DIXON: He tried he tried earlier and we told him  
25 to try back every 10 minutes.

1 THE COURT: Because he's not logged on. Do you have a  
2 number for him so that we can contact him?

3 MS. DIXON: I do, and my assistant will go call him  
4 and ask him to call in. She's going to do that right now, Your  
5 Honor.

6 THE COURT: Perfect. Thank you. So is that an  
7 acceptable way to proceed? Is everybody good with that or are  
8 there any other suggestions?

9 MS. DIXON: I'm happy to proceed how the Court wishes,  
10 Your Honor.

11 THE COURT: I find that it's best if we can to  
12 reconstruct it as it happened at the time and I know that that's  
13 not -- may not be possible because I mean (indiscernible).

14 MS. DIXON: So are you saying the lawyers -- the old  
15 lawyers will ask the witnesses what they (indiscernible) or will  
16 ask him?

17 THE COURT: You would. You would ask them questions.  
18 Uh-huh.

19 MS. DIXON: Okay. I mean I don't know what the  
20 questions are so I think if I'm --

21 THE COURT: I think my orders are very specific and  
22 very detailed. It would have followed the testimony exactly.  
23 So if you read my order you will pretty much know the questions  
24 that were asked.

25 MS. DIXON: I was intending to ask the witness what

1 did, you know, PCR counsel ask you what did the attorney for the  
2 state ask you and what were your responses.

3 THE COURT: Yeah, I think you should ask him as best  
4 as you can recall what questions would have been elicited at the  
5 time of the hearing regarding his sole issue of his belated  
6 appeal because my order will pretty much tell you what he was  
7 asked and how he responded. Because I don't want him under the  
8 misapprehension that this is like a second bite at the apple to  
9 create something that didn't happen.

10 MS. DIXON: I understand that, Your Honor. And I'm  
11 not trying to be difficult. I just wasn't present so I --

12 THE COURT: I understand.

13 MS. DIXON: Is what I've read in your order and so if  
14 we're just reciting what's in the order I don't know that that -  
15 -

16 THE COURT: Bear with me one moment because I would  
17 have my notes and my notes would -- let's see here.

18 MS. DIXON: And I do believe Ms. Wilson, among the  
19 witnesses, Ms. Ashley Wilson told me that she had notes. Ms.  
20 Wilson, were you able to get your notes, too?

21 MS. WILSON: I have a copy of my notes and they just  
22 reflect that the hearing was pretty brief and what questions are  
23 asked.

24 THE COURT: Yeah, it was really brief because my  
25 records reflect that he was only asked a couple of questions and

1 the gist of his testimony was after his sentence he asked his  
2 attorney file and if you and then the next witness that was  
3 called was Mr. Plexico. Who was that? Was that Ms. Dixon?

4 MS. DIXON: Yes, I apologize. I was going to say from  
5 Ms. Wilson's notes it does appear that she did the direct  
6 examination of Mr. Plexico, and I do believe if you would like  
7 me to try to formulate the questions she may have asked on  
8 direct, I can do that.

9 THE COURT: And we can also, like I said, supplement  
10 the record with his affidavit because it appears -- and I also  
11 asked Mr. Plexico a question it looks like during his -- after  
12 the cross examination and my question was was there a basis for  
13 the appeal and his response to me there was no meritorious  
14 reason for an appeal.

15 MS. WILSON: Your Honor, I'm good with proceeding by  
16 Ms. Dixon questioning Mr. Plexico and me questioning Mr.  
17 Alexandre if that's what the Court had in mind.

18 THE COURT: Have I been mispronouncing his name? I  
19 apologize. Is that acceptable to everybody and then we can also  
20 let Ms. Wilson chime as to her recollection and Mr. Kelly as  
21 well. Is that acceptable to everybody?

22 MS. DELANY: It is with us, Your Honor, and I believe  
23 Mr. Kelly --

24 THE COURT: And I would assume that you would do the  
25 direct of Mr. Alexandre and then Ms. Dixon would do any cross

1 and the Ms. Dixon would do the direct of Mr. Plexico and hen you  
2 could do any cross, and then I will also ask him the same  
3 questions that I asked, but it was a very short hearing. It  
4 lasted from 9:50 to 10:17.

5 MS. DIXON: That works for me.

6 THE COURT: I keep real detailed notes just for things  
7 like this. Just in case I ever have to recollect anything that  
8 I have. So it was a very short hearing. It was 27 minutes.  
9 All right. Are we ready?

10 MS. DIXON: Yes, Your Honor.

11 MS. WILSON: Your Honor, we did call Mr. Kelly and he  
12 should be calling in any moment.

13 THE COURT: He hasn't logged in yet. My secretary  
14 will bring him when he actually arrives.

15 MS. WILSON: I'll tell you, I have spoken to him on  
16 the phone and he's had some serious health problems and he did  
17 not recall -- he did not recall this case.

18 THE COURT: If he wants to -- I mean if you want him  
19 to state that for the record, that's fine. I think certainly --  
20 and I thought somewhere in the back of my mind that was the  
21 case, you know, but if something here sparks a memory, you know,  
22 I think it's appropriate to have him present in case he wants to  
23 add anything to the record.

24 MS. WILSON: Yes, Your Honor.

25 THE COURT: All right. Are we ready?

1 MS. DIXON: Ready, Your Honor.

2 MS. WILSON: Yes, ma'am.

3 THE COURT: Do you want to call your client first, Ms.  
4 Delaney?

5 MS. DELANY: Yes. So the applicant would call  
6 himself.

7 THE COURT: Sir, if you would raise your right hand to  
8 be sworn. I need you to sit up straight and speak directly into  
9 the monitor so that we can take down everything you're saying.  
10 Can you hear me, sir?

11 THE WITNESS: Say again?

12 THE COURT: I said I need need to set up straight for  
13 me. I need you to speak directly into the computer so that we  
14 can hear everything that's being said, okay, so that we can  
15 record all of your answers clearly. All right? Can you hear me  
16 clearly?

17 THE WITNESS: I hear you.

18 THE COURT: I can barely hear you. I need you to get  
19 closer to that microphone on that computer.

20 THE WITNESS: I hear you?

21 THE COURT: I'm sorry?

22 THE WITNESS: I hear you.

23 THE COURT: That's much better. All right. Raise  
24 your right hand for me. Do you swear or affirm the testimony  
25 you give will be the truth?

1 THE WITNESS: I swear the testimony will be the truth.

2 THE COURT: I still can't hear you, sir.

3 THE WITNESS: I swear the testimony will be the truth.

4 THE COURT: Thank you, sir. If you would tell me your  
5 name for the record?

6 THE WITNESS: Breon Alexandre.

7 THE COURT: And spell your first name for me, sir?

8 THE WITNESS: B-r-e-o-n.

9 THE COURT: And spell your last name for me?

10 THE WITNESS: A-l-e-x-a-n-d-r-e.

11 THE COURT: You may proceed, Ms. Delaney.

12 MS. DELANY: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 EXAMINATION BY MS. DELANEY:

15 Q. Mr. Alexandre, how often did you meet with your  
16 lawyer, Mr. Plexico, prior to your guilty plea?

17 A. As far as any enter in the county?

18 Q. After you got charged, how many times did you meet  
19 with him do you think?

20 A. Between one to three times.

21 Q. Okay. Did you -- after you were sentenced, did you  
22 talk to Mr. Plexico?

23 A. That's in the old school that they were doing  
24 reconstruction on the courthouse so after I got sentenced, yes,  
25 he did come back and speak to me. We did have a conversation.

1 Q. And what did you say to him at that time?

2 A. I didn't say anything to him at first. He asked me  
3 only he thought things would go a different way, which I  
4 thought, too, but it didn't. They asked me about the appeal,  
5 that I wanted one, because he had to go to another case right  
6 after mine, so I told him, yeah, I wanted an appeal. Why  
7 wouldn't I want an appeal.

8 Q. Okay. And what did he say in response?

9 A. Nothing but okay and left. They put me back on the  
10 wagon and took me back to the county and that was it. There was  
11 nothing else. No more conversations about anything.

12 Q. Okay.

13 MS. DELANY: I think, Judge, looking at your order, I  
14 would turn it over to Ms. Dixon at this time.

15 THE COURT: Sir, is there somebody in there with you?  
16 Is there an officer or someone from Richland in that room with  
17 you?

18 THE WITNESS: No, ma'am.

19 THE COURT: Can you get someone's attention. I need  
20 them to turn up the volume on that device. I need to make sure  
21 everything we're saying is getting recorded so it can be  
22 transcribed.

23 THE WITNESS: It's turned up. It's just far away.

24 THE COURT: How far away are you from it?

25 THE WITNESS: A couple of feet, I guess.

1 THE COURT: Okay. Is there any way someone can come  
2 in so that they can bring the device closer to you? Can you get  
3 their attention?

4 THE WITNESS: I don't see nobody at the moment.

5 THE COURT: Shonda, do me a favor. Call over to --  
6 yeah, bear with me one second, sir. Shonda, call the  
7 institution and tell them what we need some assistance in the  
8 room with Mr. Alexandre.

9 SHONDA: Yes, ma'am.

10 THE COURT: Thank you. I appreciate your patience and  
11 just bear with me. I need to make sure that everything he is  
12 saying is being clearly recorded. These devices are very  
13 sensitive. They are digital and they do pick up everything, but  
14 I just want to make sure. I don't want us having to do this  
15 again.

16 THE COURT: Ms. Dixon, you may proceed.

17 MS. DIXON: May it please the Court?

18 THE COURT: Yes, ma'am.

19 CROSS EXAMINATION BY MS. DIXON:

20 Q. Mr. Alexandre, how are you doing today?

21 A. I'm fine. How are you?

22 Q. Good. Can you hear me okay?

23 A. Yes, I hear you. Can you hear me?

24 Q. Okay. I just have a couple of quick questions for  
25 you. First of all --

1 THE COURT: Mr. Alexandre, you went back to talking  
2 soft for me. I need you to talk like you're at a football game  
3 and you're excited and your team is winning. Go ahead.

4 THE WITNESS: I'm doing (indiscernible). Can you hear  
5 me?

6 THE COURT: Much better. Go ahead.

7 BY MS. DIXON:

8 Q. Do you recall signing a form that advised you of your  
9 rights?

10 A. Yes.

11 Q. Okay. And in addition to that, do you recall being at  
12 the plea itself?

13 A. Yes.

14 Q. And do you recall the judge advising you of your  
15 rights at the plea?

16 A. Yes, after I signed the plea.

17 MS. DIXON: Okay. Nothing further.

18 THE COURT: Any redirect, Ms. Delaney?

19 MS. DELANY: No, Your Honor.

20 THE COURT: Okay. Any further witnesses from the  
21 applicant?

22 MS. DIXON: I'm not sure whether -- I'm not sure by  
23 Mr. Kelly, Your Honor. I was just --

24 THE COURT: Let's see. I mean we can always come out  
25 of order, but I'm not seeing him.

1 MS. DIXON: If it would be please the Court's  
2 indulgence, Your Honor.

3 THE COURT: Uh-huh.

4 MS. WILSON: I might see if my assistant can actually  
5 call in for him somehow and three way him in.

6 THE COURT: But he was on before and as I was bringing  
7 him in he hung up. So he just needs to dial back in.

8 MS. WILSON: Yes, ma'am. We've asked him to. She's  
9 going to try again, something a little different.

10 THE COURT: Okay. All right.

11 MS. DIXON: I am, Your Honor. May it please the  
12 court?

13 THE COURT: Yes, ma'am.

14 MS. DIXON: The state would call Stephen Plexico.

15 THE COURT: Mr. Plexico, if you would raise your right  
16 hand for me. Do you swear or affirm the testimony you give will  
17 be the truth?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: You may proceed. You can put your right  
20 hand down. If you would tell us your full name and spell your  
21 last name for the benefit of the record?

22 THE WITNESS: Stephen with a p-h, Timothy Plexico, p-  
23 l-e-x-i-c-o.

24 THE COURT: You may proceed, Ms. Dixon.

25 DIRECT EXAMINATION BY MS. DIXON:

1 Q. Mr. Plexico, can you hear me okay?

2 A. Fine. Yes, ma'am.

3 Q. All right. Good. How are you today?

4 A. Just fine.

5 Q. Good. And I have just a couple of quick questions for  
6 you today regarding your representation of Mr. Alexandre. Do  
7 you recall whether you advised Mr. Alexandre of his rights, of  
8 his constitutional rights?

9 A. This has been, you know, over a dozen years ago. I  
10 would have had a file. He's a murder case and it was a  
11 complicated, big the case. You know, I've worked with the kid a  
12 lot and he was a child and, yeah, there is no way I would not  
13 have advised him of his rights.

14 And I don't specifically remember sitting down and  
15 advising him of his rights, so I would have had a notation in  
16 the file about possible penalties which are severe for his  
17 situation.

18 Q. Okay. And so typically, do you recall whether you  
19 advised him of his right to appeal?

20 A. Yes, I did, and it's also on Judge Kinerd's form. He  
21 was a real stickler about his forms. Everyone complained about  
22 it but it certainly is an extremely wise thing to do.

23 Q. Okay. Did Mr. Alexander ever indicate to you that he  
24 wanted to appeal?

25 A. No, if he had -- you know, it's just a filing. It's

1 just a piece of paper and you just write somebody's name on it  
2 than their case number and it's not like you're doing a weeks  
3 worth of work that you couldn't find time to do for some off  
4 (indiscernible) brief or something. I mean it's a simple  
5 procedure that the office is trained to do automatically.

6 Q. Gotcha. And to your recollection, do you recall any  
7 issues from that guilty plea that you would have wanted to  
8 appeal?

9 A. Nothing. The judge gave him like 40 years. I was  
10 hoping he would give him the minimum, but it was a pretty brutal  
11 killing of an elderly guy. I mean the kid was trying to avoid -  
12 - he had a family court hearing where he would of got a short  
13 amount of time at DJJ, which is why he ran away, stole a car and  
14 killed the old man and stole his car, et cetera, but I mean it  
15 was a pretty brutal, unnecessary crime and, you know, it didn't  
16 help him that he came in with this full facial beard.

17 He was doing mean, manly things and you don't want to  
18 look like a man. When you're a young teenager you want to look  
19 like a child. But anyway, my advice went in one ear with him  
20 and out the other apparently because that's the way he appeared  
21 in front of the judge, but I think his demeanor impressed the  
22 judge as an adult doing mean, adult things.

23 So he got an adult sentence. Not life. That's what  
24 we were shooting for. I was shooting for like to get hopefully  
25 30 years or something but, you know, that's the minimum, but I

1 mean it is what it is. At least he didn't get life.

2 Q. And I think you mentioned a form by Judge Kinerd. Do  
3 recall reviewing that form with him?

4 A. Yes, I do, because that's a pretty monotonous thing to  
5 do. It's multi pages. You have to go over and explain it to  
6 him because, you know, we have other judges that do that and  
7 sometimes they'll just have the client explain to them what it  
8 means. Explain to the judge what it means.

9 So, you know, you've got to put some time into it for  
10 sure. Sometimes the issues that he asked about aren't even  
11 relevant. For instance, an ID issue or something, but you still  
12 have to go over that aspect, all right? Whether it's relevant  
13 to that particular case or not.

14 Q. That's it. And one final question, if he had asked  
15 you to file a guilty plea -- or I'm sorry, an appeal, would you  
16 have filed it?

17 A. Yes.

18 MS. DIXON: Nothing further.

19 THE COURT: Any cross examination of the witness?

20 MS. DELANY: The only thing I saw, and this may have  
21 been covered, that was in the order, but just to double check.  
22 I'm not sure if Ms. Dixon asked.

23 CROSSE EXAMINATION BY MS. DELANY:

24 Q. Mr. Plexico, do you remember whether you talked to Mr.  
25 Alexandre after the plea?

1           A.    I don't remember talking to him after the plea.  You  
2 know.

3           Q.    Okay.

4           A.    If he had asked me for an appeal, I mean it's, you  
5 know, I just tell the secretary, you know, hit the print button  
6 sort of like and, you know, give it to me to sign.  I mean  
7 that's not a big deal.

8           MS. DELANY:  That's all, Your Honor.

9           THE COURT:  Any redirect?

10          MS. DIXON:  Nothing further, Your Honor.

11          MS. DELANY:  And Your Honor, we do have Mr. Kelly on  
12 the phone now with me.  One second, please.

13          THE COURT:  The record should reflect that my summary  
14 of Mr. Plexico's testimony is accurate and reflects my notes  
15 from the testimony that he gave at the time of this original  
16 hearing in 2013.  While at this time he does not directly recall  
17 whether he went over all of his rights with him, my notes  
18 reflect that on direct exam he answered affirmatively that he  
19 went over all of the defendant's rights with that and his rights  
20 with him including the right to appeal, and he had been the  
21 practice of law for 23 to 24 years, all in a criminal practice  
22 and was the public defender at the time of the plea, that his  
23 client never indicated that he wanted to appeal.

24                 That he went over Judge Kinerd's form with him  
25 thoroughly and which outlined his rights, including his right to

1 appeal, and that it should be a part of the applicant's original  
2 record. That on cross examination that the applicant never  
3 asked for an appeal of his plea.

4 That he sent him a letter asking for a copy of his  
5 file but he never asked him for, nor did he request, that Mr.  
6 Plexico file an appeal of the plea on his behalf. In addition,  
7 my notes reflect that I asked Mr. Plexico if there was any basis  
8 for the appeal and his response to the Court was that there was  
9 no meritorious reason for an appeal. Now, you were saying,  
10 he?

11 MS. DELANY: Yes, Your Honor. My assistant has him --  
12 she called him on her cell phone and she has him on  
13 speakerphone, if you would be inclined to --

14 THE COURT: Sure. I don't know how clear that's going  
15 to be.

16 MS. DELANY: I'm going to ask her to come over here  
17 and put her phone near our microphone, which is over on the  
18 left. So I'm going to hold his phone up to our microphone,  
19 Judge. Mr. Kelly, are you there?

20 THE COURT: I can barely hear him. That's not going  
21 to work. I'm going to need my secretary to walk him through  
22 logging on.

23 MS. DELANY: Okay. Mr. Kelly, we're going to have  
24 somebody call you. The Judge's secretary is going to call you  
25 and talk you through some instructions to call in either way.

1 MS. DELANY: In the meantime, Your Honor, I guess I  
2 would just see if Ms. Wilson has anything to add based on her  
3 notes.

4 THE COURT: Well, I'm going to go through all of that,  
5 but I need to know if there are any further witnesses that Ms.  
6 Dixon needs to call.

7 MS. DIXON: Your Honor, the only potential witness I  
8 would call would be Ms. Wilson. As far as the hearing itself,  
9 it does not appear that the State called any other witnesses.

10 THE COURT: Would you like to call Ms. Wilson at this  
11 time?

12 MS. DIXON: Yes, Your Honor.

13 THE COURT: If you would raise your right hand to be  
14 sworn. Do you swear or affirm the testimony you give will be  
15 the truth?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: You can put your right hand down. Tell us  
18 your full name for the record?

19 THE WITNESS: Ashley r. Wilson.

20 THE COURT: And if you would spell your last name for  
21 the benefit of the record?

22 THE WITNESS: W-i-l-s-o-n.

23 THE COURT: You may proceed, Ms. Dixon.

24 DIRECT EXAMINATION BY MS. WILSON:

25 Q. Ms. Wilson, can you hear me okay?

1 A. Yes.

2 Q. All right. And were you the Attorney General at the  
3 time of this PCR hearing?

4 A. Yes.

5 Q. And did you take notes of the hearing?

6 A. I did.

7 Q. And do you have a copy of your notes today?

8 A. I do.

9 Q. And based on your notes and any recollection you may  
10 have, do you believe that the testimony today is consistent with  
11 what occurred at the PCR hearing?

12 A. Yes, the testimony that's been conveyed today from the  
13 applicant, his PCR counsel at the time and the Court reflects my  
14 notes from the hearing at that time.

15 Q. And do your notes reflect the Court's ruling?

16 A. Yes.

17 Q. And can you relay to the Court or relay for the record  
18 what the ruling was based on your notes?

19 A. Yes, according to my notes, the Court ruled that the  
20 applicant failed to carry the burden of proof on his claim, that  
21 his guilty plea counsel failed to file an appeal and that based  
22 on the applicant's record, record testimony, the Court found  
23 that it wasn't incredible and that there was no support in the  
24 record that the defendant asked trial counsel to file an appeal,  
25 and that also based on the record there was no meritorious issue

1 for the Court to review. And then the Court denied his PCR and  
2 requested a proposed order in 15 days.

3 Q. All right. And just for clarification, what did the  
4 Court find not credible based on your notes?

5 A. The applicant's testimony.

6 MS. DIXON: Gotcha. Nothing further, Your Honor.

7 THE COURT: Any questions for Ms. Wilson, Ms. Delany?

8 MS. DELANY: No, Your Honor.

9 THE COURT: And Ms. Dixon, anything further you wish  
10 to place on the record?

11 MS. DIXON: Nothing further, Your Honor.

12 THE COURT: And I would assume his original plea  
13 transcript is available since I would had the ability to have  
14 access to it at the time of the original PCR and that is in this  
15 file, in his PCR file.

16 MS. DIXON: Should be, Your Honor. If it isn't, let  
17 me know and I will make sure you get it, but it should be.

18 THE COURT: I would think for the benefit of the  
19 appellate court it needs to be made available to them because it  
20 would have been -- because the Court would have -- well,  
21 actually it's limited to the appeal issue, so it really doesn't  
22 matter. Never mind. Strike that.

23 MS. WILSON: We have a copy of it, Your Honor, and it  
24 will be submitted to the appellate court as part of the appendix  
25 when this appeal does go back up to the Court.

1 THE COURT: Okay. All right. Now, have we been able  
2 to successfully conference in Mr. Kelly?

3 MS. DELANY: I believe we have.

4 THE COURT: Mr. Kelly, tell us your name for the  
5 record?

6 THE WITNESS: (Indiscernible) Kelly.

7 THE COURT: Do either of you want to question Mr.  
8 Kelly?

9 MS. DELANY: Mr. Kelly, this is Joanna Delany.

10 DIRECT EXAMINATION BY MS. DELANY:

11 Q. Do you remember anything about Breon Alexandre's PCR  
12 hearing in 2013?

13 A. Very little.

14 MS. DELANY: Your Honor, may I ask him to just testify  
15 what he recalls?

16 THE COURT: Mr. Kelly, if you would raise your right  
17 hand for me, please, to be sworn. Do you swear or affirm the  
18 testimony you give will be the truth?

19 THE WITNESS: I do.

20 THE COURT: You can put your right hand down. Tell us  
21 your name for the record?

22 THE WITNESS: Joe Kelly.

23 THE COURT: And if you and spell your last name for  
24 us?

25 THE WITNESS: Kelly, k-e-l-l-y.

1 THE COURT: You may proceed, Ms. Delaney.

2 EXAMINATION BY MS. DELANY:

3 Q. Mr. Kelly, would you mind just telling the Court what  
4 you remember about a PCR hearing involving Breon Alexandre in  
5 2013, please? And if you don't remember, that's --

6 A. The thing that I remember is that I visited the scene  
7 of the crime and attempted to speak with the family of the  
8 victim. And then I believe that the client that I represented  
9 was delivered to the jail and I either met with him in the jail  
10 or I met with him in the courthouse previous to the hearing.

11 Q. Do you have any recollection --

12 A. Other than that -- no, I don't have any recollections  
13 of anything other than that.

14 Q. All right. Thank you.

15 MS. DELANY: Judge, I don't have any further questions  
16 for him.

17 THE COURT: Do you have any questions for him, Ms.  
18 Dixon?

19 MS. DIXON: Nothing from the state, Your Honor.

20 THE COURT: Mr. Kelly, thank you so much, and even  
21 though I can't see you, it's good to hear your voice. I hope  
22 all is well with you.

23 THE WITNESS: As with you, ma'am. Thank you so much.

24 THE COURT: I haven't seen you in a long time. We  
25 spent a lot of time together.

1 THE WITNESS: Yes, I would very much like to speak  
2 with you again someday.

3 THE COURT: Yes. I hope everything is well and I hope  
4 you're feeling better.

5 THE WITNESS: I'm improving. Thank you so much.

6 THE COURT: You're welcome. All right. Is there  
7 anything further we need to place on the record from the  
8 applicant?

9 MS. DELANY: Your Honor, I would ask that the Court  
10 consider granting Mr. Alexandre a new PCR hearing?

11 THE COURT: I don't think you can do that. This is  
12 just the reconstructive record. I've already ruled. It's for  
13 the Court of Appeals and the Supreme Court to now review that  
14 and to rule on it. This is not a do over.

15 MS. DELANY: All right.

16 THE COURT: The only reason we're having this hearing  
17 is because we requested the transcript (indiscernible). I've  
18 already ruled on it. I'm steadfast in what I found. There is  
19 nothing I heard today that would change it.

20 MS. DELANY: I don't have anything further from the  
21 applicant, Your Honor.

22 THE COURT: Ms. Dixon, anything further from the  
23 state.

24 MS. DIXON: Nothing further. I am sure Your Honor  
25 will do this, but I would just ask if your notes reflect your

1 ruling that you also put it on the record, which I'm sure you're  
2 going to do, but that would be all.

3 THE COURT: I'll just say for the record that my  
4 ruling is in the order and accurately reflects my notes.

5 MS. DIXON: Thank you, Your Honor.

6 THE COURT: And at that time the rulings that are in  
7 my order, I would have made those specific findings on the  
8 record.

9 MS. DIXON: Thank you.

10 THE COURT: You're welcome. All right. Is there  
11 anything else we need to cover today. Ms. Delany?

12 MS. DELANY: No, Your Honor.

13 THE COURT: Ms. Dixon?

14 MS. DIXON: Nothing, Your Honor.

15 THE COURT: Mr. Plexico, is there anything else you  
16 need to share with us?

17 MR. PLEXICO: No, Your Honor.

18 THE COURT: Ms. Wilson?

19 MS. WILSON: No, Your Honor.

20 THE COURT: Mr. Kelly, is there anything else you need  
21 to share with us today?

22 MS. DELANY: He's not on, Your Honor.

23 THE COURT: So what I will do is when this recording  
24 is sent to court administration you all will need to send a  
25 request to court reporting indicating the date of this hearing,

1 the judge, and that it was a WebEx hearing so that they can go  
2 ahead and get it transcribed and send it on to you all, and then  
3 your appeal can go ahead and go forward.

4 MS. DIXON: We'll do it.

5 THE COURT: And as soon as y'all get it to them, they  
6 should be able to turn it around fairly quickly for you.

7 MS. DIXON: So you found the record is reconstructed  
8 and we're ready to proceed?

9 THE COURT: Yes. Uh-huh.

10 MS. DIXON: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 MS. DELANY: Thank you.

13 THE COURT: Y'all have a great day. Stay safe.

14 (There being nothing further, the hearing was concluded.)

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**CERTIFICATE OF TRANSCRIBER**

I, BARBARA J. ENNEKING, CVR-M, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 9, Charleston, South Carolina, on the 8th day OF August, 2023.

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

August 28, 2023

*Barbara J. Enneking, CVR-M*  
-----

Barbara J. Enneking, CVR-M  
Transcriber



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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# COPY

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

August 08, 2023

The Honorable Margaret Bostick  
Clerk of Court, Jasper County  
265 Russell Street  
P.O. Box 248  
Ridgeland, SC 29936

FILED  
JASPER COUNTY  
CLERK OF COURT  
2023 AUG 14 A 9:50

Re: Breon Alexandre v. The State  
2014-CP-27-00375

Dear Ms. Bostick:

Enclosed for filing in the above-referenced case are two copies of the Affidavit of Stephen T. Plexico dated August 7, 2023. Please return a clocked copy of this letter and the Affidavit of Stephen T. Plexico acknowledging receipt of the enclosed.

If you have any questions or need any additional information, please let me know.

Thank you for your time and attention to this matter

Sincerely,

Joanna K. Delany  
Appellate Defender  
Counsel for Breon Alexandre

JKD/kpw

RECEIVED

AUG 16 2023

APPELLATE DEFENSE

STATE OF SOUTH CAROLINA ) IN THE SOUTH CAROLINA SUPREME COURT  
COUNTY OF JASPER ) JASPER COUNTY ) APPELLATE CASE NO. 2022-001654  
CLERK OF COURT )

BREON ALEXANDRE, )  
2023 AUG 14 ) A 9:50

Petitioner, )

v. )

AFFIDAVIT OF STEPHEN T. PLEXICO

STATE OF SOUTH CAROLINA, )

Respondent. )

**COPY**

PERSONALLY appeared before me, Stephen Plexico, who being duly sworn, deposes and says:

1. During the October 2009 term, a Jasper County Grand Jury indicted Breon Alexandre, the above-captioned petitioner, for murder, first-degree burglary, and armed robbery.
2. I am employed by the Fourteenth Circuit Public Defender. I represented Mr. Alexandre on these charges.
3. On April 12, 2010, Mr. Alexandre appeared before the Honorable J. Ernest Kinard and pled guilty as indicted. The court sentenced Mr. Alexandre to concurrent terms of imprisonment of forty years for murder, forty years for first-degree burglary, and thirty years for armed robbery.
4. On August 27, 2013, I appeared as a witness at Mr. Alexandre's post-conviction relief hearing. To the best of my recollection, my testimony at the hearing was as follows:
  - a. At the time of Mr. Alexandre's plea, I had been practicing law for approximately 23 – 25 years, and was employed as a public defender.
  - b. During the course of my representation, I advised Mr. Alexandre of his right to appeal and his other constitutional rights.
  - c. I did not recall speaking with Mr. Alexandre after his guilty plea.
  - d. Mr. Alexandre did not indicate he wanted an appeal.
  - e. I received correspondence from Mr. Alexandre requesting a copy of his file after the plea, but I did not receive any letters requesting a direct appeal after the plea.

- f. I did not recall any legal issues with the plea that would have been meritorious on appeal. If there had been any issues with the plea, I would have filed a post-plea motion to correct the issue.
- g. Had Mr. Alexandre requested an appeal, I would have filed a notice of appeal on his behalf.
- h. Judge Kinard's routine practice was to incorporate a defendant's signed advisement of rights form into the record of any guilty plea.

Stephen T. Plexico, Esquire  
 Stephen T. Plexico

SWORN TO before me this 07  
 day of AUG, 2023.

Lanya Brewer (L.S.)  
 Notary Public for South Carolina  
 My Commission Expires: 10/28/29

WITNESSES

N. Malonis - JCSO

DOCKET NO. 2009-GS-27-00494

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

October Term 2009

ARREST WARRANT NUMBER

J367476

ACTION OF GRAND JURY

THE STATE

vs.

Breon Joseph Alexandre

TRUE BILL

NO BILL

FOREMAN

DATE

Foreperson of Grand Jury

Date:

VERDICT

Indictment for

Murder / Murder

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

CDR Code:0116

Foreperson of Petit Jury  
Date:

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.

TRUE COPY  
MARGARET BOSTICK  
CLERK OF COURT  
JASPER COUNTY, SC  
BY: *[Signature]*  
DATE: 10/31/09

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF JASPER )

INDICTMENT

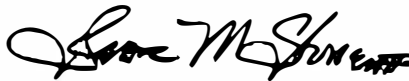
2009-GS-27-00494

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

**Murder / Murder**

That in Jasper County on or about July 18, 2008, with malice aforethought, Breon Joseph Alexandre did kill and murder Proctor Robert Bright by means of shooting the victim with a 22 rifle, beating him about his face and head, and stabbing or cutting the victim with a knife, and that Proctor Robert Bright did die in Jasper County as a proximate result thereof on July 18, 2008; in violation of Section 16-3-10 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

TRUE COPY  
 MARGARET BOSTICK  
 CLERK OF COURT  
 JASPER COUNTY, SC

BY:   
 DATE: 10-31-09

WITNESSES

Jeff Crosby - JCSO

DOCKET NO. 2009-GS-27-00492

The State of South Carolina

County of Jasper

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

Defendant

COURT OF GENERAL SESSIONS

October Term 2009

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

ARREST WARRANT NUMBER

J367500

*[Handwritten signature]*

THE STATE

ACTION OF GRAND JURY

vs.

TRUE BILL

NO BILL

FOREMAN

DATE

Foreperson of Grand Jury

Date:

Breon Joseph Alexandre

Defendant

VERDICT

Indictment for

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

Witness:

SC Code: 16-11-0330(A)  
CDR Code:0139

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

Foreperson of Petit Jury

Date:

13

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF JASPER )

INDICTMENT

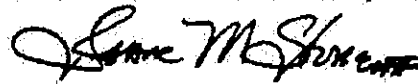
2009-GS-27-00492

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 [REDACTED] 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

DOCKET NO. 2009-GS-27-00493

The State of South Carolina

County of Jasper

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

Defendant

COURT OF GENERAL SESSIONS

October Term 2009

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

ARREST WARRANT NUMBER

J367498

THE STATE

vs.

ACTION OF GRAND JURY

Breon Joseph Alexandre

TRUE BILL

NO BILL

FOREMAN

DATE

Foreperson of Grand Jury

Date:

VERDICT

Indictment for

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

Defendant

Witness:

SC Code: 16-11-0311  
CDR Code:0079

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

Foreperson of Petit Jury

138  
Date:

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF JASPER )

INDICTMENT

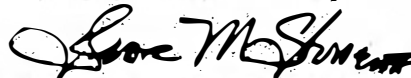
2009-GS-27-00493

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

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

That in Jasper County, South Carolina, on or about July 18, 2008, the Defendant, Breon Joseph Alexandre, did enter the dwelling of Proctor Robert Bright, located at [REDACTED] Grahamville Road, without consent and with the intent to commit a crime therein.; in violation of Section 16-11-311 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

8438152002

09:43:50 a.m. 04-05-2010

2/8

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

AW 14

COUNTY OF Jasper VS. STATE

INDICTMENT/CASE#: 2.09GS2700494

Breon Alexandre

A/W#: J367476

AKA:

Date of Offense: 7/18/2008

Race: B Sex: M Age: 17

S.C. Code §: 16-03-0010; 16-03-0020

DOB: -1992 SS#:

CDR Code #: 0116

Address: Bees Creek Road

City, State, Zip: Ridgeland, SC 29936

DL#: SID#:

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Murder

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 w/minor 1st or Lewd Act) §17-25-45

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

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

ATTEST: Thornton, Sean Becca Alexandre Defendant; Stephen Plevins 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 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 PTUP Total: \$ plus 20% fee: \$ 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:

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 \$ 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 \$ 25.00, § 14-1-213 (Drug Court Surcharge) \$100 \$, § 50-21-114 (DUI Breath Test Fee) \$50 \$, § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$, § 90.7 (SCCJA Surcharge) \$5 \$ 5.00. TOTAL \$ 200.00

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

Clerk of Court/Deputy Clerk Margaret Bostick Court Reporter: Brenda Godley SCCA/217 (1/1/2009)

Presiding Judge Judge Civic: Sentence Date: 4/12/2010

TRUE COPY MARGARET BOSTICK CLERK OF COURT JASPER COUNTY, SC BY: DATE: 10/3/14

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Jasper  
STATE VS.

INDICTMENT/CASE#: 2009GS2700492

Breon Alexandre

A/W#: J367500

AKA:

Date of Offense: 7/18/2008

Race: B Sex: M Age: 17

S.C. Code §: 16-11-0330(A)

DOB: -1992 SS#:

CDR Code #: 0139

Address: Bees Creek Road

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  CONVICTED OF or  PLEADS 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  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

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 15363 SC Bar# Breon Alexandre Defendant Steph T. Plebey 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 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 PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED   
 Set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_

\*Fine: \$ \_\_\_\_\_ Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_ prmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_ \$ \_\_\_\_\_ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_ Other: **POSTED**

§ 47-12 (Public Def/Prob) \$500 \$ \_\_\_\_\_ BY DATE 4/11/10

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 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 (SCCJA Surcharge) \$5 \$ 5.00

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

TOTAL \$ 122.00

Clerk of Court/ Deputee Clerk Mary Beth Bostick

Court Reporter: Brenda Cooley

SCCA217 (11/2009) Presiding Judge [Signature]  
Judge Code: 3019  
Sentence Date: 4/12/2010

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Jasper  
STATE VS.  
Breon Alexandre

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

AKA:  
Race: Sex: M Age: 17  
DOB: 992 SS#:  
Address: Beas Creek Road  
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: 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  §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:  
Thornton, Sean SC Bar# 15868 Breon Alexandre Defendant  
S. Dept. T. Pleau Attorney for Defendant SC Bar# 012014

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: \_\_\_\_\_

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 \$ 25.00  
§ 14-1-213 (Drug Court Surcharge) \$100 \$ \_\_\_\_\_  
§ 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
§ 56-5-2942(I) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_  
§ 90.7 (SCCA Surcharge) \$5 \$ 5.00  
3% to County (if paid in installments) \$ \_\_\_\_\_  
TOTAL \$ 130.00

POSTED  
BY DATE 4/12/2010

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

Clerk of Court/ Deputy Clerk: \_\_\_\_\_  
Court Reporter: Brenda Cholely

Presiding Judge \_\_\_\_\_  
Judge Code: \_\_\_\_\_  
Sentence Date: 4/12/2010