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August 23, 2013

Hon. Daniel E. Shearouse
Clerk of the SC Supreme Court
P.O. Box 11330
Columbia, SC 29211

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AUG 30 2013

Re: Octavia Middleton v. State
Appellate Case No. 2013 -001713
Lower Court Case No. 2010 XP 40 04866

S.C. SUPREME COURT

Dear Mr. Shearouse:

Thank you for your recent letter regarding Mr. Middleton's *pro se* appeal. I am unsure of the exact date, but I received my copy of Judge Kinard's order in the underlying PCR case on or about February 25 2012.

I have written recently to Mr. Middleton and I enclose a copy of my letter. While I have become aware of AUSTIN and its progeny, I believed at the time that my decision not to file an appeal on Mr. Middleton's behalf was founded in sound judgment.

With best regards, I remain,

Yours,



Robert C. FitzSimons

ROBERT CLELAND FITZSIMONS

Attorney At Law
1001 Beltline Boulevard
Columbia, South Carolina 29205

August 22, 2013

Mr. Octavia Middleton, #00253919
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Dear Mr. Middleton,

I am sorry not to have responded sooner to your recent letter. I did not file an appeal from the judge's order denying your application for Post Conviction Relief. I studied both the record and the judge's order and I do not believe there were any grounds for appealing the judge's decision, other than "I disagree." I do not believe that disagreement would be sufficient to overturn the judge's ruling and get you a new trial.

I realize that you have filed your own appeal, but it is probably not going to be allowed because of the length of time which passed between the judge's decision in 2012 and when you filed it. r

You may wish to file a petition for PCR against me, on the grounds that you are entitled to an appeal, regardless of how useless or unnecessary I believe such an appeal would be. You may wish to consult STATE v Austin, a copy of which I enclose for your review. In light of your sentence, you have little to lose, but I am afraid that even with an appeal from your PCR, you are not likely to get a new trial or otherwise have your conviction overturned. I wish you Good Luck

Yours

/s/ Robert C FitzSimons

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S.C. SUPREME COURT

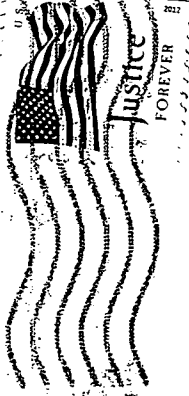
BCC Hon. Daniel E Shearouse

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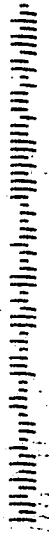
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