

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Lancaster County

Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

SEP 11 2013

COURT of Appeals

THE STATE,

RESPONDENT,

v.

DERRICK A. MCILWAIN,

APPELLANT

APPELLATE CASE NO. 2013-000373

**RETURN AND MOTION TO DISMISS
RESPONDENT'S MOTION TO DISMISS**

In response to the respondent's "Motion to Dismiss Appeal Pursuant to State v. Isaac" filed in the above titled case, this return and motion to dismiss respondent's motion to dismiss is supported by the following facts.

1.) The respondent moves to dismiss State v. Derrick A. McIlwain under appellate case no. 2013-000373 per Isaac. However, appellate case no. 2013-000373 is the appeal in the case of Derrick A. McIlwain who was convicted during the February 2012 term of the Lancaster County General Sessions Court before Judge Brooks Goldsmith on the drug charges of possession with intent to distribute marijuana and cocaine under indictments 2012-GS-30-60 and 61.

2.) The respondent's motion to dismiss referred to indictments 2012-GS-30-508 and 509, which applies to the case of Derrick L. McIlwain (appellate case number unknown) wherein the castle doctrine and State v. Isaac, Op. No. 27302 (S.C. filed August 21, 2013) are at issue.

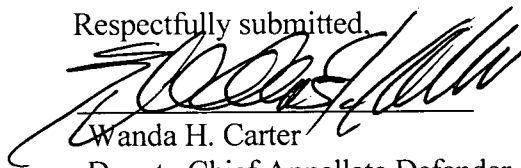
3.) Derrick L. McIlwain filed a motion to dismiss per S.C. Code Ann. 16-11-450 on February 28, 2013, and a hearing was held in the matter before Judge Goldsmith on March 21, 2013, regarding the castle doctrine.

4.) Derrick L. McIlwain has not been tried and convicted. However, Derrick A. McIlwain has been tried and convicted on drug charges, and is presently represented on appeal in case number 2013-000373 by the undersigned counsel. Derrick A. McIlwain (case no. 2013-000373) has no castle doctrine or Isaac issues.

5.) Thus, the respondent's motion to dismiss per Isaac is not applicable to Derrick A. McIlwain's appeal, but rather applicable to Derrick L. McIlwain's appeal (appellate case number unknown).

WHEREFORE, the undersigned counsel for Derrick A. McIlwain (case no. 2013-000373) via this return moves to dismiss the respondent's "Motion to Dismiss Appeal Pursuant to State v. Isaac."

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

This 11th day of September 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Lancaster County
Brooks P. Goldsmith, Circuit Court Judge

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SEP 11 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA,

PETITIONER,

V.

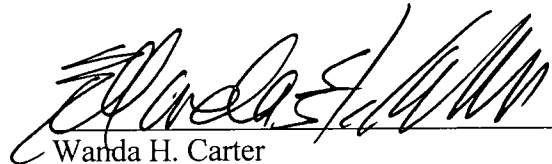
DERRICK MCILWAIN,

RESPONDENT

Appellate Case No. 2013-000373

CERTIFICATE OF SERVICE

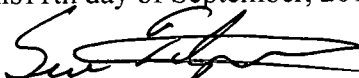
I certify that a true copy of the return and motion to dismiss respondent's motion to dismiss appeal pursuant to State v. Isaac in this case have been served on Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of September, 2013.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
This 11th day of September, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.