

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

ELKIN PEREZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

AMENDED
APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS
2007-GS-23-3784
2007-GS-23-6267
2007-GS-23-6268
2007-GS-23-8063

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

ELKIN PEREZ,
DEFENDANT.

ORIGINAL

October 10, 2007
Greenville, South Carolina

B E F O R E:

THE HONORABLE J. MARK HAYES, II, JUDGE.

A P P E A R A N C E S:

JULIE J. ANDERS, ESQ.
Assistant Solicitor

H. CHASE HARBIN, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

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THE CLERK: Mr. Interpreter, I need to swear you in before we start.

Please raise your right hand.

(WHEREUPON, the Interpreter was sworn in.)

THE CLERK: Thank you.

Your Honor, this is indictment 2007-GS-23-8063, Elkin Perez indicted for failure to stop for a blue light, pleading to the same. Indictment 2007-GS-23-6267, indicted for providing false information to police, pleading to the same. Indictment 2007-GS-23-3784, indicted for stalking, pleading to aggravated stalking after a restraining order is issued. And indictment 2007-GS-23-6268, indicted for resisting arrest with a deadly weapon, pleading to resisting arrest with assault.

The first is a waiver. The rest are true bills.

THE CLERK: Would you, please, raise your right hand.

WHEREUPON,

ELKIN PEREZ,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

THE COURT: You're Mr. Elkin Perez?

THE INTERPRETER: Yes.

THE COURT: Sir, I've been handed sentencing sheets for failure to stop for a blue light, giving false

1 information to police, resisting arrest with assault, and
2 aggravated stalking after a restraining order.

3 Is that your understanding of what you intend to
4 plead to today?

5 THE INTERPRETER: Yes.

6 THE COURT: Sir, if ever during this process you want
7 to talk to your lawyer, just let me know and I'll allow
8 you to do so privately.

9 How old are you, sir?

10 THE INTERPRETER: 50 years.

11 THE COURT: How far did you go in school?

12 THE INTERPRETER: University studies. I finished
13 business administration.

14 THE COURT: Are you married, single, divorced,
15 widowed?

16 THE INTERPRETER: Married.

17 THE COURT: Do you have any children?

18 THE INTERPRETER: Two children.

19 THE COURT: How old?

20 THE INTERPRETER: One is seven years of age, and the
21 other is three years.

22 He wants to know if he should indicate to the Court
23 that he -- there is another child he has been raising.

24 MR. HARBIN: He claims a third child, Your Honor.

25 THE COURT: And, prior to your arrest, did you have a

1 job outside the home?

2 THE INTERPRETER: Yes.

3 THE COURT: What kind of work were you doing?

4 THE INTERPRETER: I worked in a packing company.

5 THE COURT: Which one?

6 THE INTERPRETER: Spam, S-P-A-M.

7 THE COURT: How long had you been there?

8 THE INTERPRETER: Three or four months.

9 THE COURT: Did you ever serve in the military?

10 THE INTERPRETER: No.

11 THE COURT: How long have you been in jail on these
12 charges?

13 MR. HARBIN: It's 191 days, Your Honor. That's the
14 Solicitor's number.

15 MS. ANDERS: That's the total of all the prior
16 incidents, and then the most recent arrest in May.

17 THE COURT: Within the last 24 hours, have you
18 consumed any type of substance that's adversely effecting
19 your ability to understand what we're doing?

20 THE INTERPRETER: None.

21 THE COURT: Have you ever been treated for any type
22 of drug or alcohol abuse?

23 THE INTERPRETER: No, never.

24 THE COURT: Are you satisfied with the work of your
25 lawyer?

1 THE INTERPRETER: Yes.

2 THE COURT: Have you made the decision to enter this
3 plea freely and voluntarily?

4 THE INTERPRETER: Yes.

5 THE COURT: You do understand that you are presumed
6 innocent of this charge, and have a right to a jury trial?

7 THE INTERPRETER: I understand that, yes.

8 THE COURT: And, at any trial that would take place,
9 the State is the one that has the burden of proof. And
10 they would have to convince all 12 people of a jury that
11 you are guilty beyond a reasonable doubt.

12 Do you understand that you have a right to that
13 trial?

14 THE INTERPRETER: Correct.

15 THE COURT: And do you wish to give up your right to
16 the trial and go ahead and enter a plea?

17 THE INTERPRETER: Correct.

18 THE COURT: Sir, you do understand that there are
19 other very important Constitutional rights that you have
20 to give up to enter a plea. You have to give up your
21 right to confront and cross-examine the State's witnesses.
22 You, also, have to give up your right to present a
23 defense. And you have to give up your right to remain
24 silent.

25 Do you understand all of those rights?

1 THE INTERPRETER: I understand.

2 THE COURT: And do you want to give them all up and
3 enter the plea?

4 THE INTERPRETER: I'm positive.

5 THE COURT: There is no indication whether there is
6 or is not a recommendation.

7 MS. ANDERS: Sir, there's not a recommendation from
8 the State.

9 THE COURT: I'm going to put an "X" in the box with
10 "No Recommendation," and put my initials beside it.

11 MS. ANDERS: Yes, sir.

12 THE COURT: Mr. Perez, please, listen to the
13 Solicitor. She's going to give me the facts.

14 MS. ANDERS: May it please the Court.

15 The Defendant and the victim have children together
16 and they did live together in Greenville County. In the
17 fall of 2006, the victim tried to end the relationship --

18 THE COURT: Okay. You're going to need to slow down,
19 because he's going to need to interpret.

20 MS. ANDERS: Yes, sir.

21 The Defendant refused to leave her alone. He
22 watched --

23 MR. HARBIN: If you don't mind, he can talk over her.

24 MS. ANDERS: I'll read it verbatim, if that's okay
25 with you.

1 THE INTERPRETER: Yes.

2 MS. ANDERS: He watched her home at all hours of the
3 day and night and left threatening messages. On December
4 6th, 2006, the victim sought and was granted a restraining
5 order. The Defendant continued to call and harass the
6 victim.

7 Between December 6th, 2006, and April 26th, 2007, the
8 Defendant stalked the victim by watching her at work and
9 at home. He called her repeatedly and threatened to
10 kidnap the children and harm the victim. The police were
11 called to the home numerous times and filed charges on 11
12 of those different incidents. The Defendant was arrested
13 on scene twice in December, once in January, and once in
14 February.

15 On April 26th, 2007, officers were patrolling at
16 Hillcrest Middle School in Greenville County. The victim
17 drove a bus for the school. Officers located the
18 Defendant there and attempted to arrest him and serve
19 stalking warrants from a previous incident. The Defendant
20 gave the officer a false name. The officer recognized the
21 Defendant and did try to arrest him. The officer reached
22 inside the car to turn it off. The Defendant pushed the
23 gas while the officer had his arm inside the car. The
24 Defendant drove away causing the officer's arm to be hit
25 by the door jam of his car.

1 On April 30th, 2007, the Defendant was driving on
2 Miller Road in Greenville County. Officers recognized the
3 Defendant and his car and did initiate a traffic stop.
4 The Defendant sped up and did not stop for the blue
5 lights. Officers cancelled the chase due to the high
6 speed and a high danger to the community.

7 The Defendant was arrested on May 1st, 2007, when he
8 was located after an anonymous caller notified Crime
9 Stoppers.

10 THE COURT: Mr. Perez, do you believe that, as the
11 Solicitor stated the facts, she is substantially correct?

12 THE INTERPRETER: May I speak with my lawyer for a
13 second?

14 THE COURT: Yes.

15 (Pause.)

16 MR. HARBIN: Judge, I've spoken with my client. And
17 he may object to the particular verbiage of it. But I've
18 explained to him the charges and the fact that he is --

19 THE COURT: He needs to translate.

20 MR. HARBIN: I'm sorry.

21 And, as such, I've explained to him that even what he
22 would object to, when he clarifies it, it still is the
23 crime he's being indicted for and pleading to.

24 THE COURT: Were you able to hear the statements made
25 by your lawyer?

1 THE INTERPRETER: Yes.

2 THE COURT: Do you agree with what your lawyer has
3 just stated to me?

4 THE INTERPRETER: Yes.

5 THE COURT: Sir, you understand the resisting arrest
6 with assault carries up to --

7 MS. ANDERS: 10 years, sir.

8 THE COURT: -- up to 10 years?

9 THE INTERPRETER: Yes.

10 THE COURT: And you understand the aggravated
11 stalking after a restraining order carries --

12 MS. ANDERS: Up to 10.

13 THE COURT: -- up to 10 years as well?

14 THE INTERPRETER: I understand.

15 THE COURT: And the failure to stop for blue light
16 carries up to --

17 MS. ANDERS: Three years.

18 THE COURT: -- three years?

19 THE INTERPRETER: I understand.

20 THE COURT: And the giving false information to law
21 enforcement carries up to --

22 MS. ANDERS: 30 days.

23 THE COURT: -- 30 days?

24 THE INTERPRETER: I understand.

25 THE COURT: Understanding the possible sentences I

1 could impose, do you still want to go ahead and enter the
2 plea?

3 THE INTERPRETER: Correct.

4 THE COURT: Sir, are you guilty as indicted for
5 giving false information to police?

6 THE INTERPRETER: Yes.

7 THE COURT: Are you, also, guilty of failure to stop
8 for a blue light?

9 THE INTERPRETER: Yes.

10 THE COURT: Are you, also, guilty of aggravated
11 stalking after a restraining order?

12 THE INTERPRETER: Positive, yes.

13 THE COURT: Are you, also, guilty of resisting arrest
14 with assault?

15 THE INTERPRETER: Positive, yes.

16 THE COURT: Have you been able to hear all of my
17 questions?

18 THE INTERPRETER: Yes. I have been able to hear.

19 THE COURT: Have all of your answers been truthful?

20 THE INTERPRETER: Yes.

21 THE COURT: Discovery has been shared with the
22 Defense?

23 MS. ANDERS: Yes, sir.

24 THE COURT: Prior record?

25 MS. ANDERS: He has no prior record, Your Honor.

1 THE COURT: Anything from the victim?

2 MS. ANDERS: Well, I met with her. And she says that
3 they will not be reconciling. She's very scared for her
4 safety.

5 THE COURT: You need to be translating.
6 You said she is in fear for her safety?

7 MS. ANDERS: Yes, sir.

8 THE COURT: Anything else?

9 MS. ANDERS: No, Your Honor.

10 THE COURT: Anything else from the State on
11 Mr. Perez?

12 MS. ANDERS: No, sir.

13 THE COURT: Yes, sir, Mr. Harbin.

14 MR. HARBIN: Thank you, Judge.

15 May it please the Court.

16 As you have heard, Mr. Perez is 50 years old. He was
17 married to the victim. And they had previously lived in
18 New York for a number of years, I think 10 years. When
19 they began to have problems, they, actually, went to
20 counseling as a couple. Now, this is a couple of years
21 ago. After some time of counseling in New York, they
22 decided to move to South Carolina. And this was an idea
23 of some kind of new beginning, a new break to move to
24 South Carolina. That was approximately a year ago.

25 He, actually, received doctor's care here in

1 Greenville. He began by seeing Dr. Taylor, Dr. Robert
2 Taylor, and then Dr. Galvarino at Marshall Pickens. He
3 voluntarily checked himself in. And this is throughout.

4 He's being arrested for violating and -- you know,
5 doing things to his wife throughout this. He's trying to
6 seek help while he's, unfortunately, being arrested and
7 doing these acts. The long and short of it, Your Honor,
8 is you have a 50-year-old man that had never been in
9 trouble before and simply could not deal with losing his
10 wife and losing his family.

11 He is, currently, set up to go to Greenville Mental
12 Health whenever he's available to. His family has that
13 set up for him. And they're concerned about his state as
14 well, state of mind.

15 Being that this is his first brush with the law --
16 and he lived in Mauldin, which is a fairly small town.
17 They knew who he was. He was arrested repeatedly. It was
18 easy to find him. They knew exactly where and who he was.

19 So we're here today to plead guilty to what he has
20 been doing over the course of time, aggravated stalking,
21 and then two separate incidents that involved him trying
22 to elude an officer by driving off in another -- when he
23 was already in the car and driving off.

24 All that said, Your Honor, we're not here because he
25 has been violent. Obviously, there's concerns about his

1 state of mind and why he is continuing to contact his
2 wife, soon to be ex-wife. But he has shared with me that
3 he's never intended to hurt his wife, that this was simply
4 acts of uncontrolled passion, that he had love for his
5 wife, that he just didn't know when to stop. I think he
6 knows now. I've seen a difference in him today versus
7 when I first met him many months ago.

8 And I would ask Your Honor that you consider a
9 probationary sentence for Mr. Perez. He hasn't been
10 violent. And I believe if he gets the counseling that he
11 was seeking before -- I think he's ready to receive that
12 now -- you could make that a part of his probation. I
13 believe now that he's had time to distance himself from
14 this. And he understands that having served already
15 nearly two thirds of a year in jail -- or half a year in
16 jail that he simply needs to stop.

17 THE COURT: Excuse me one second.

18 (Pause.)

19 THE COURT: I'm sorry about that. Go ahead.

20 MR. HARBIN: I do believe that Mr. Perez might have
21 something very short to say.

22 And this is his sister, Ruth Perez, who would like to
23 speak on his behalf, Judge.

24 THE COURT: Mr. Perez, do you agree with what your
25 lawyer just told me?

1 THE INTERPRETER: Correct, yes.

2 THE COURT: Does she need an interpreter?

3 MR. HARBIN: I believe she does, Your Honor.

4 THE COURT: Ma'am, if you would, this lady right here
5 in front of me is a court reporter. It's a little bit far
6 back where you are, so be sure you speak up loud enough so
7 both she and I can hear you.

8 Start by giving us your full name, if you would.

9 MS. RUTH PEREZ: Ruth Perez.

10 THE COURT: All right. Yes, ma'am, Ms. Perez.

11 MS. RUTH PEREZ: Okay. I'm sorry. I am nervous.
12 I -- this is my second language. And I am trying to speak
13 slow.

14 But I -- he's my older brother. We come from a big
15 happy family, the same mother and the same father. And I
16 am to worry about my brother. I don't want to see my
17 brother in this courtroom. I never think this happen to
18 him. He tried to recuperate his family. And I understand
19 maybe they -- the way you used -- he's not correct. And
20 he tried to keep all the family together.

21 I had my six brothers and three sisters, all --
22 everybody is not divorced. This is the first divorce.
23 This is the situation that happened to him. He's a good
24 and excellent person in my country. He carrier [sic] in
25 my country. And I see many things, but I -- them living

1 together is not -- the marriage is not for only one
2 person. It is for two persons. He has to understand this
3 situation. I never think this happen to my brother. I
4 never wanted to see my brother in this condition. I know
5 he got two childs [sic]. I know he have two kids. And he
6 love his kids. He love her daughter and his son. And I
7 understand his condition.

8 But it's hard for him leaving when this
9 lady -- and I -- when we went over there, I tried to
10 make -- understand the lady looking for her. And she told
11 me, I am not crazy. I don't need help. I am mother. I
12 am wife. And, you know, I think the woman is very
13 important in the relationship. And, you know, some -- the
14 woman can bring the man up or down. But I feel bad for my
15 brother.

16 THE COURT: Thank you, ma'am.

17 Mr. Perez, do you want to talk to your lawyer?

18 THE INTERPRETER: I merely wish to state to Your
19 Honor that at no time was I trying to commit any
20 infraction. I did not think that I was doing anything bad
21 at that time. I respect the authorities. I have not
22 damaged -- I have not caused damage to anybody. I have
23 always believed in God and continue to believe in God.
24 And I have not wished to cause damage to anybody.

25 I have been through great emotional stress, also.

1 This emotional stress has come from my wife. To the point
2 that we were looking for counseling before, and then I was
3 looking for counseling. And that drove me to the point of
4 trying to get psychological help here.

5 THE COURT: Thank you, sir.

6 Were there any medical records or bills on the
7 resisting arrest with assault?

8 MS. ANDERS: No, sir.

9 THE COURT: Any information from the victim in the
10 stalking case as to what her desire was?

11 MS. ANDERS: When I spoke with her, she was very,
12 very concerned about him getting help and having a
13 productive life in the future and leaving her alone.

14 THE COURT: Mr. Harbin, in your involvement with your
15 client, does he understand that now?

16 MR. HARBIN: Judge, I believe he does. I will say
17 that it has become abundantly clear to me that this man
18 will benefit more than any other client that I've ever had
19 from counseling and doctor services.

20 THE COURT: Prior -- my concern is that prior to him
21 receiving that counseling, is he going to be a danger to
22 his wife? Is he going to repeat what he's done in the
23 past?

24 MR. HARBIN: Judge, if I may. I believe that the one
25 thing he has realized over these many months -- and not,

1 necessarily, that he doesn't any longer care for his wife,
2 but that he understands it is over. I don't think he
3 truly believed that up until maybe a few months ago.

4 THE COURT: Who lives at 607 Willow Creek?

5 THE INTERPRETER: Now, I don't know. I turned in my
6 apartment key. I rented the apartment in February.

7 THE COURT: That's not her address? I don't need to
8 know her address.

9 MS. ANDERS: I don't believe so.

10 THE INTERPRETER: He's planning on staying with his
11 sister for now.

12 THE COURT: Does his sister live in close proximity
13 to the ex-wife?

14 THE INTERPRETER: I believe it to be approximately
15 three or four miles from there.

16 MS. RUTH PEREZ: It's more.

17 MR. HARBIN: Judge, my client wishes for me to tell
18 you that he, at one time, was contemplating moving away.
19 And he understands that your concern is simply that he
20 doesn't have any close proximity with the victim, so he
21 will abide by any condition you set.

22 THE COURT: I find -- I will find that there is a
23 substantial factual basis for the pleas. I will, also,
24 find that the Defendant's decision to enter the pleas has
25 been made freely, voluntarily, knowingly, and

1 intellectually by him, and that he has received services
2 from very competent and able legal counsel, services he's
3 indicated to the Court he's satisfied with and has relied
4 on in reaching the decisions he's made. Therefore, I will
5 accept the plea.

6 On the indictments for resisting arrest with assault
7 and failure to stop for blue light, the sentence of the
8 Court will be that he will be confined to the county
9 detention center for a period of 191 days. On the giving
10 false information, the sentence of the Court is that he'll
11 be sentenced to 30 days. All of those will run
12 concurrent. And he gets credit for the time he has
13 served.

14 MR. HARBIN: Judge, did that, also, include the --
15 did I mis-hear -- the stalking charge as well?

16 THE COURT: Oh, yes.

17 MR. HARBIN: Thank you, Judge.

18 THE COURT: On the stalking after restraining order,
19 the sentence of the Court is that the Defendant will be
20 confined to the State Department of Corrections for a
21 period of five years. That will be suspended on the time
22 that he has served and the service of 36 months of
23 probation, which will run concurrent with the other
24 charges.

25 I have indicated on the sentencing sheet special

1 terms and conditions of probation are going to be that
2 he's going to need to receive his mental health counseling
3 that has been announced to the Court. He's not to have
4 any contact with the victim.

5 You need to stress to him, Mr. Harbin, that's
6 indirect or direct contact.

7 MR. HARBIN: Yes, sir.

8 THE COURT: No letter, no telephone, going by and
9 seeing her, anything at all. The only qualifiers --
10 unless there's a Family Court that has gotten involved and
11 has approved some type of contact, given the fact that
12 there are children involved.

13 Anything else?

14 MS. ANDERS: Not from the State, Your Honor.

15 MR. HARBIN: Nothing from the Defense, Your Honor.

16 THE COURT: Good luck to you, sir.

17 *****END OF TRANSCRIPT OF RECORD*****
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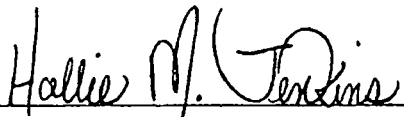
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 10th day of October, 2007.

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

July 21, 2011



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA
County of Greenville, S.C.

In the Court of Common Pleas

Elkin Perez, ID # 225580.
Full name and prison number (if any) of Applicant

vs.

State, South Carolina.
name of Respondent.

APPLICATION FOR
POST CONVICTION RELIEF

2010-CP-23-9/00
31

2010-CP-23-9/00

INSTRUCTION - READ CAREFULLY.

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

Since every Application must be sworn to under oath, any false statement of a material fact serve as the basis of Probation and conviction for Perjury. Applicants should be referred to court answers are true and correct.

If the application is taken from prison, it shall include an affidavit (attached at the back form) setting information which establishes that applicant will be unable to pay the fees and of the proceedings when the application is completed, the original shall be mailed to the clerk of court for the county in which applicant was convicted.

1. Place of detention. Greenville County Detention Center (G.C.D.)

2. Name and location of court which imposed sentence. Greenville County General Sess

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

(a). 2007 GS 23-3784 Aggravated stalking;

(b). _____

(c). _____

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

(a). Oct. 10/07, time determinate: Seven (7) months.

(b). _____

(c). _____

5. Check whether a finding of Guilty was made

(a) after a Plea Guilty. Yes.

(b) after a Plea of not Guilty.

(c) after a Plea of not contendere.

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

None.

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

(a) the name of each court to which you appealed: N/A.

i. N/A.

ii.

iii.

(b) the result in each such court to which you appealed: N/A.

i.

ii.

iii.

(c) the date of each such result: N/A.

i.

ii.

iii.

(d) if known, citations of any written opinion or order entered pursuant to such appeal: N/A.

i.

ii.

iii.

8. If you answered "not" to (6), state your reasons for not so appealing:

(a) Because I was Plea Guilty For negotiation with the Sol

(b)

(c)

9. State concisely the grounds on which you base your allegation that you are in ^{custody on law} custody:

(a) Ineffective Assistance of Counsel

(b) The Judge Fail to warn me that if I should Plea Guilty I

(c) Face Deportation From U.S.A.

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

(a) Counsel and the Judge Fail to warn me that if I

(b) Plea Guilty I could Face Deportation From U.S.A.

(c) Refer: Padilla v. S. Kentucky 559 US - 130 Sct 1473

11. Prior to this application, have you filed with respect to this case...

(a) Any Petition in state court under South Carolina Law? None.

(b) Any Petition in state or federal court for habeas corpus or Post-Conviction relief? None.

(c) Any Petition in the United States Supreme Court for certiorari of either Petitions, if any, already specified? None.

(d) Any other Petitions, motions or applications in this or any other court? None.

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

(a) the specific nature thereof: N/A.

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

(b) the name and location of the court in which each was filed: N/A.

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

(c) the disposition thereof: N/A.

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

(d) the date of the each such disposition: N/A.

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

(e) if known citation of any written opinions or orders entered pursuant to each such... Not citation.

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

13. Has any ground set forth in (9) been previously presented to this or any other court, state or fed... any Petition, motion or application, which you have filed?

None.

14. If you answer "yes" to any of the following questions, list the grounds which have been presented: 1. A.

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

(b) the Proceedings in which each ground was raised: N/A.

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

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

(a) First P.C.R. Application.

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes.

(b) your trial, if any? Yes.

(c) your sentencing? Yes.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No.

(e) preparation, presentation or consideration of any Petition, motion or application with the conviction which you filed? None.

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

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

i. Chase Harbin, N. main street, Greenville, SC. 29601.

Phone: # 864-963-2633. (Carlos Freeman, paralegal).

ii. _____

iii. _____

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

i. See id.

ii. _____

iii. _____

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

Find causal ineffective and the Judge when they fail +
warn me that if I should Plea Guilty I could Face Deportation
D.S.A.

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

Yes. (Immigration Court).

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2010-CP-23-9100
COUNTY OF GREENVILLE)	
)	
Elkin Perez,)	
)	
Applicant,)	
)	RETURN AND MOTION TO DISMISS
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post-conviction relief filed November 4, 2010 would respectfully show this Court:

I.

The Applicant is confined in a federal deportation facility in Livingston, Texas. The Applicant was indicted at the April 2007 term of the Greenville County Grand Jury for stalking (2007-GS-23-3784) and at the August 2007 term for providing false information to police (2007-GS-23-6267) and resisting arrest with a deadly weapon (2007-GS-23-6268). The Applicant also waived presentment to the Grand Jury for failure to stop for a blue light (2007-GS-23-8063). He was represented by H. Chase Harbin, Esquire.

On October 10, 2007, the Applicant pled guilty. He was sentenced by the Honorable J. Mark Hayes, II to concurrent terms of five (5) years suspended on time-served and thirty-six (36) months probation for aggravated stalking, thirty (30) days for proving false information to police, one hundred ninety-one (191) days for resisting arrest with assault, and one hundred ninety-one (191) days for failure to stop for a blue light. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville

County Clerk of Court regarding the subject convictions.

II.

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

1. Ineffective assistance of counsel.
2. "The judge fail to warn me that if I should plea guilty I could face deportation from U.S.A."

III.

The Respondent submits this application for post-conviction relief 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, et. seq. (2003). South Carolina 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 the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty to the offenses he challenges in this application on October 10, 2007. The Applicant was therefore required to file his application before October 10, 2008. This application was filed on November 4, 2010, which was over two (2) years beyond the time the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) 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.

IV.

Regarding the allegation about deportation consequences, the Applicant appears to be referring to a recent United States Supreme Court case. In Padilla v. Kentucky, ___ U.S. ___, 130 S. Ct. 1473 (2010), the United States Supreme Court found that attorneys who fail to advise or misadvise non-citizen clients about potential deportation consequences have provided deficient representation. The Respondent submits, however, that this holding does not apply in the instant case because it is not meant to be applied retroactively. See United States v. Hernandez-Monreal, No. 10-4777, 2010 WL 5027195 at *1 (4th Cir. Dec. 6, 2010) (noting “nothing in the Padilla decision indicates that it is retroactively applicable to cases on collateral review”). The holding in Padilla is clearly a new rule, but not a watershed rule. As such, the Respondent submits the Applicant is not entitled to disregard the one-year statute of limitations and proceed to an evidentiary hearing.

V.

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

VI.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests the matter be summarily dismissed.

Respectfully submitted,


ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

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

By: 
Attorneys for Respondent

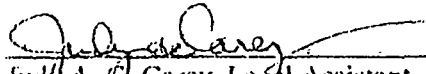
February 16, 2011

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	
)	
)	2010-CP-23-9100
)	
ELKIN PEREZ)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

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 in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Elkin Perez, ID#A-099-286-880
IAH Secure Adult D.C.
3400 FM 350 South
Livingston TX 77351**

DATED this 16th day of February, 2011.


Judy A. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

ELKIN PEREZ,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

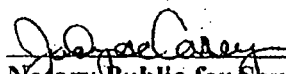
The undersigned hereby certifies that a true copy of the Conditional Order of Dismissal has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Elkin Perez, ID#A-099-286-880
IAH Secure Adult D.C.
3400 FM 350 South
Livingston TX 77351

This 2nd day of March, 2011.


KAREN C. RATIGAN
ATTORNEY FOR RESPONDENT

SWORN to before me this 2nd day of March, 2011.


Notary Public for South Carolina.
My Commission Expires: May 11, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Elkin Perez,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2010-CP-23-9100

CONDITIONAL ORDER OF DISMISSAL

RECEIVED
 CLERK OF COURT
 GREENVILLE COUNTY
 SOUTH CAROLINA
 NOV 11 2010

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 4, 2010. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in a federal deportation facility in Livingston, Texas. The Applicant was indicted at the April 2007 term of the Greenville County Grand Jury for stalking (2007-GS-23-3784) and at the August 2007 term for providing false information to police (2007-GS-23-6267) and resisting arrest with a deadly weapon (2007-GS-23-6268). The Applicant also waived presentment to the Grand Jury for failure to stop for a blue light (2007-GS-23-8063). He was represented by H. Chase Harbin, Esquire.

On October 10, 2007, the Applicant pled guilty. He was sentenced by the Honorable J. Mark Hayes, II to concurrent terms of five (5) years suspended on time-served and thirty-six (36) months probation for aggravated stalking, thirty (30) days for proving false information to police, one hundred ninety-one (191) days for resisting arrest with assault, and one hundred ninety-one (191) days for failure to stop for a blue light. The Applicant did not appeal.

RP

II.

In the PCR application, the Applicant makes the following allegations:

1. Ineffective assistance of counsel.
2. "The judge fail to warn me that if I should plea guilty I could face deportation from U.S.A."

III.

This Court finds this matter should be summarily dismissed because the Applicant failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, section 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 Applicant pled guilty to the offenses he challenges in this application on October 10, 2007. The Applicant was therefore required to file his application before October 10, 2008. This application was filed on November 4, 2010, which was more than two (2) 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. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) 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 that the moving party is entitled to judgment as a matter of law."

IV.

This Court notes the Applicant has raised an issue about whether he was properly advised

2
137

of potential deportation. In Padilla v. Kentucky, ___ U.S. ___, 130 S. Ct. 1473 (2010), the United States Supreme Court found that attorneys who fail to advise or misadvise non-citizen clients about potential deportation consequences have provided deficient representation. This Court finds, however, that this holding does not apply in the instant case because it is not meant to be applied retroactively. See United States v. Hernandez-Montreal, No. 10-4777, 2010 WL 5027195 at *1 (4th Cir. Dec. 6, 2010) (noting "nothing in the Padilla decision indicates that it is retroactively applicable to cases on collateral review"). The holding in Padilla is clearly a new rule, but not a watershed rule. As such, this Court finds the Applicant is not entitled to disregard the one-year statute of limitations and proceed to an evidentiary hearing.

V.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 22 day of FEB, 2011.



Robin B. Stilwell
Chief Administrative Judge
Thirteenth Judicial Circuit

COLUMBIA, South Carolina.

STATE SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2010-CP-23-9100
COUNTY OF GREENVILLE)	
)	
Elkin Perez,)	
)	
Applicant,)	MOTION TO CONSIDER
)	
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	
)	

With regards of my, P.C.R. No 2010-CP-23-9100, and according to Ms. Karen C. Ratigan, Respondent's Attorney, I would like explain the reasons why I did not claim my rights to present my P.C.R. application in the time frame that the law requires it.

1st- I was not advise that I should present any application by the court, nor the lawyer H. chase Harbin, who represented me in this case, and with I haven't had any communicate him, but not able to.

2nd-That I was spec ting that the sentence should be presented to the probation's Judge to be reconsidered, with it was revoked on February 13th, 2009, and by order of the honorable Judge Patterson, who give a new sentence, who require from me seven month's of time serve, he also gave me credit for time serve on those seven months that I have already serve, and I have a copy of this new sentence.

3rd-The Honorable Judge Patterson, gave me a new sentence until Nov.4, 2010, I have been detained, with out any legal help, and with out funs and knowledge on my behalf.

4th-As a support on my case, see;

Padilla v. Kentucky, 130 S. CT. 1473; 176 L.Ed.2nd284 (2010), people v. Caban, 5 N.Y. 3rd 143;800 N.Y.S. 2nd 70 (2005), Strickland. Washington. 466 U.S. 668; 1045.CT. 2052 (1984). Pending Collateral Challenges or post- Conviction-Motion do not affect the finality of conviction for deportability or inadmissibility purposes. Paredes v. Attorney General U.S., 528 F. 3rd 196 (3rd. Cir. 2008). Aguilera-Enriquez v. Immigration and Naturalization Service, 516 F.2nd 565 (6th Cir. 1975); Okabe v. Immigration and Naturalization Service, 671 F. 2nd 863 (5th Cir. 1982). However, a collateral attack which results in a vocation of the


C.A. No. 20. CP-23-9100
March 02, 2011.
Page 2.

Judgment eliminates the conviction altogether for purpose of Immigration and Nationality Act. Sawkov v. Immigration and Naturalization Service, 314 F. 2nd 34 (3rd Cir. 1963). Cruz- Sanchez v. Immigration and Naturalization Service, 438 F. 2nd 1087 (7th Cir. 1971); Matter of Ibarra-Obando, 12 I. and N. Dec. 576, 1966 WL 14403 (B.I.A. 1966); matter of sirhan, Et Al. ,13 I. and N. and Dec. 592, 1979 WL 18744 (B.I.A. 1970).

5th-That in those time I don't have any problem with Immigration and Naturalization Service.

I want to thank you for taking my letter in consideration, and for understanding the emergency of my request in my case, specifying the P.C.R. to be granted on behalf of the Honorable Judge Robin B. Stilwell, Administrative Judge thirteenth judicial circuit.

Respectfully submitted , this March 02.2011.


Erkin Perez
A# 099-286-880.

Motion to Consider
C. A. No. 2010-CP-23-9100
March 02, 2011
Page 3.

CERTIFICATE OF SERVICE

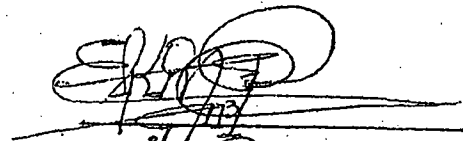
I hereby certify that one (1) copy of the attached document was served upon respondent (or office) by placing it in a sealed envelope via U.S. Postal Service, addressed as follows:

Defendant's Attorney;
Karen C. Ratisson, Bar No.
P. O. Box 11549
Columbia, SC 29211-1549.

And Fax: (803) 734-4113.

Date: March 02, 2011.

Signed:



Elin Pérez

P.C. No 2010-CP-23-9100

C.A. No. 2010-CP-23-9100

March 02, 2011.

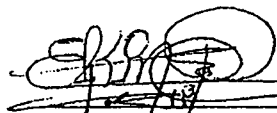
Page 4.

Annexed to Motion to Consider C.A. No. 2010-CP-23-9100.

6th - That from Oct. 20, 2006, until Present time, my mental health, and physical health condition, has been devastated; facing length depressed periods, caused by my family separation.

I have records with this matter in the Greenville mental health hospital; Greenville, SC. mental health department; Dr. Mario Galvarino, mental health clinic, Greenville, SC.; and S.C.D.C. records.

Respectfully,


 Elkin Perez.
 A# 099-286-880.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Elkin Perez,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2010-CP-23-9100

FINAL ORDER OF DISMISSAL

FILED
 2011 FEB 28 11 11 AM
 CLERK OF COURT
 GREENVILLE, SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 4, 2010. The Respondent made its return on February 16, 2011, requesting the application be summarily dismissed based upon the expiration of the statute of limitations.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed February 22, 2011 and filed February 28, 2011, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is a Certificate of Service dated March 2, 2011, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Motion to Consider" and dated March 2, 2011, the Applicant appears to argue he was not advised he could file a PCR application. The Applicant appears to argue for the first time that he is challenging the probation revocation hearing (held on February

1
 133

13, 2009) from related to the convictions he pled guilty to on October 10, 2007, and not the convictions themselves. The Applicant cites the case of Padilla v. Kentucky.

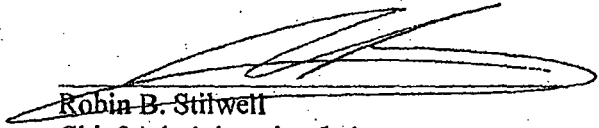
This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

The Uniform Post-Conviction Procedure Act specifically states the statute of limitations for the filing of a PCR application is "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." S.C. Code § 17-27-45(a) (Supp. 2003) (emphasis added). Therefore, as the Applicant's probation was revoked on February 13, 2009, the one-year time limit expired on February 13, 2010. See id. The Applicant, however, filed this PCR application on November 4, 2010.

The Applicant's argument that the recent Padilla opinion supports his claim for relief is without merit. In Padilla v. Kentucky, ___ U.S. ___, 130 S. Ct. 1473 (2010), the United States Supreme Court found that attorneys who fail to advise or misadvise non-citizen clients about potential deportation consequences have provided deficient representation. This Court finds, however, that this holding does not apply in the instant case because it is not meant to be applied retroactively. See United States v. Hernandez-Monreal, No. 10-4777, 2010 WL 5027195 at *1 (4th Cir. Dec. 6, 2010) (noting "nothing in the Padilla decision indicates that it is retroactively applicable to cases on collateral review"). The holding in Padilla is clearly a new rule, but not a watershed rule. See Teague v. Lane, 489 U.S. 288, 109 S. Ct. 1060 (1989). As such, this Court finds the Applicant cannot circumvent the one-year statute of limitations.

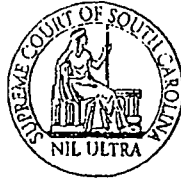
IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 26 day of April, 2011.



Robin B. Stilwell
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.



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

(803) 734-1000

FAX (803) 734-1499

June 14, 2011

Elkin Perez
3400 FM 350 South
Livingston, TX 77351

Re: Perez, Elkin v. The State

Dear Mr. Perez:

This Office has received a notice of appeal in the above post-conviction relief action. Since the order of the circuit court determined that this action is barred as being untimely under the statute of limitations, Rule 243(c), SCACR, requires you to provide a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. The failure to make a sufficient showing may result in the dismissal of this matter.

I ask that you provide the explanation required by Rule 243(c) within twenty (20) days of the date of this letter.

Very truly yours,



CLERK

DES/jj

cc: Assistant Attorney General Karen Ratigan



RECEIVED

JUN 28 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

 APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

 Robin B. Chief Administrative Judge Thirteenth Judicial Circuit

 Case No 2010-CP-23-09100

Elkin Perez

Petitioner

V.

States South Carolina

Respondent

Dear Honorable Supreme Court
Atte: The Honorable Judge Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211
Phone No (803) 734-1080; Fax No (803) 734-1499.

I am responding to your letter received on June 17, 2011, and dated on June 14, 2011; I am telling you that lower Court determination was incorrect, I would believe that because I was originally sentenced in case indictment # 2007-GS-2303784, and was given a suspended sentence on October 10, 2007, but my sentence was revoked on February 13, 2009; and I received new sentence of seven months time served; with this sentence, and subsequent incarceration until November 4, 2010, I was without (no professional) legal representation, and was never notified of the consequences of my pleading guilty to resentencing.

Subsequently, my Sixth Amendment Constitutional Right, to be notified of consequences by my lawyer as per case law of Padilla V.S Kentucky 130 S. CT. 1473; 176 L. Ed. 2nd 284 (2010). I would not even be entertaining this Motion for Appeal, if I had been given competent legal advice about my possibility of deportation which was not a first sentence, and probation. I looking for a P.C.R. for original charge, and more to the fact that I was never made aware of statute of limitations of Appeal process; also I did not know of my legal right to Appeal. I would pray that you given me an extension of six months from June 27, 2011, so that I may explore getting pro-bono help in preparing this Appeal. I am writing the state bar of the great State of S.C., for a list of people or groups, which may help me. I can only pray that you grant my request, for I feel was subject to several inadequate representations, I am working as hard as is possible to meet your lines.

THE STATE OF SOUTH CAROLINA
 In the Supreme Court
 June 26, 2011
 Page 2 of 2


Case No 2010-CP-23-09100

My detainment in Livingston, Texas by Immigration and Enforcement (I.C.E.) custody limits my ability to defend my self. I would ask for an equal and fair chance for you to hear my case.

I would like you to fax me back, an address of state bar of S.C., and also an address, and phone number of any pro-bono legal aid organization, and an address for State laws school of S.C.

I want to thank you, for taking my letter in consideration, and for understand the emergency of my case.

Respectfully your;



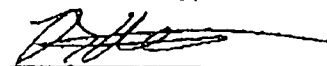
Elkin Perez
 3400 Fm 350 South
 Livingston, Texas 77351
 Phone No: (936) 967-8000 ext: 246
 Fax No: (936) 967-8841

C.C. Assistant Attorney General Karen C. Ratigan

Date: June 26, 2011

Note: This letter was written by my co-detainee Byron Hodgson (100 River meadow's Rd. Wimberley, Texas 78676), because I do not have a completed, and functioning understand of the English language, which make's my case even more difficult to explain.

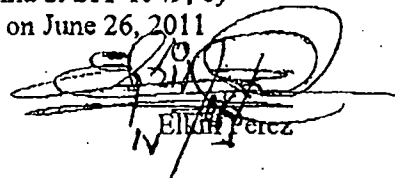
Sincerely;



Byron Hodgson

PROOF OF SERVICE

I certify that I have served this letter on the Defendant's Attorney Karen C. Ratigan, Bar No. Post Office Box 11549, Columbia, South Carolina 29211-1549; by depositing a copy of it in the United States Mail, portage prepaid on June 26, 2011
 Respectfully;



STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE VS.)
 Elkin Perez)
 AKA:)
 Race: H Sex: M Age: 50)
 DOB: 06-23-1957 SS#:)
 Address:)
 Simpsonville, SC 29081)
 DL#: 011504751 SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS2303784
 A/W#: H824743
 Date of Offense: 12/6/2006 - 4/26/2007
 S.C. Code § : 16-03-1730(B)
 CDR Code #: 2407

SENTENCE SHEET

0-10

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Aggravated Stalking - AFTER A RESTRAINING ORDER IS ISSUED

in violation of § 16-03-1730(B) of the S.C. Code of Laws, bearing CDR Code # 2407
 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 initial)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Solicitor: [Signature] Defendant: [Signature] Attorney for Defendant: [Signature]

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 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 30 days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 36 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. 191 days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, 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: NO contact with Victim unless Family Court Approved
Mental Health Counseling
 Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

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	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Paul B. Wiseman
 Clerk of Court/ Deputy Clerk

Court Reporter: Judith
prob begins today

PRESIDING JUDGE [Signature]
 Judge Code: 2 1 13 8
 Sentence Date: 10-10-07

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS. Elkin Perez
AKA:
Race: H Sex: M Age: 50
DOB: 06-23-1957 SS#:
Address: Simpsonville, SC 29681-
DL#: 101044760 SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS2306267
A/W#: 1567735
Date of Offense: 4/26/2007
S.C. Code § : 16-17-0725(B)
CDR Code #: 1223

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Giving false information to law enforcement

In violation of § 16-17-0725(B) of the S.C. Code of Laws, bearing CDR Code # 1223
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.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
Solicitor:
Defendant:
Attorney for Defendant:

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 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

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
set by SCDPPPS
Recipient:
*Fine:
§ 14-1-206 (Assessments 107.5 %)
§ 14-1-211(A)(1) (Conv Surchage) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surchage) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 35.13 (Public Def/Prob) \$500 \$
§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
§ 33.7, 1B TP (Drug Court Surchage) \$100 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$
TOTAL \$

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk
Court Reporter: Julius

PRESIDING JUDGE
Judge Code: 2 11 13 12
Sentence Date: 10-10-07

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
 STATE VS.
Elkin Perez
 AKA: _____
 Race: H Sex: M 50
 DOB: 06-23-1957 SS#: _____
 Address: _____
Simpsonville, SC 29001-
 DL#: 101044760 SID#: _____

INDICTMENT/CASE#: 2007GS2306268
 A/W#: 1567737
 Date of Offense: 4/26/2007
 S.C. Code § : 16-03-0625
 CDR Code #: 2352

SENTENCE SHEET

6-10

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: RESISTING ARREST WITH ASSAULT

in violation of § 16-09-0320(B) of the S.C. Code of Laws, bearing CDR Code # 0256
 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 initial)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: _____
 Solicitor: _____ Defendant: _____ Attorney for Defendant: _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 90 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. 191 days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, 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 \$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§ 56-5-2995 (DUI Assessment)	\$12 \$ _____
§ 35.13 (Public Def/Prob)	\$500 \$ _____
§ 73.3, 1B TP (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§ 50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ _____
TOTAL	\$ _____

Appointed PD or appointed other counsel, §35.13, TP Requires \$500 be paid to Clerk during probation.

Paul B. Wiersma
 Clerk of Court/ Deputy Clerk

PRESIDING JUDGE _____
 Judge Code: 2 1 13 12
 Sentence Date: 10-10-07

Court Reporter: Jushin

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Greenville)
 STATE VS.)
 Elkin Perez)
 AKA:)
 Race: H Sex: M Age: 50)
 DOB: 06-23-1957 SS#:)
 Address:)
 DL#: 011504751 SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 07-8063
 A/W#: 11824396
 Date of Offense: 4/30/2007
 S.C. Code § : 56-05-0750(B)(1)
 CDR Code #: 0065

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Traffic, Failure To Stop For Blue Light

In violation of § 56-05-0750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065
 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 initial)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
 Solicitor: [Signature] Defendant: [Signature] Attorney for Defendant: [Signature]

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 90 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

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, 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	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea	\$	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation.

Paul B. Wiseman
 Clerk of Court/ Deputy Clerk
 Court Reporter: [Signature]

PRESIDING JUDGE [Signature]
 Judge Code: 2 11 13 12
 Sentence Date: 10-10-07

The Supreme Court of South Carolina

Elkin Perez,

Petitioner,

v.

State of South Carolina,

Respondent.

ORDER

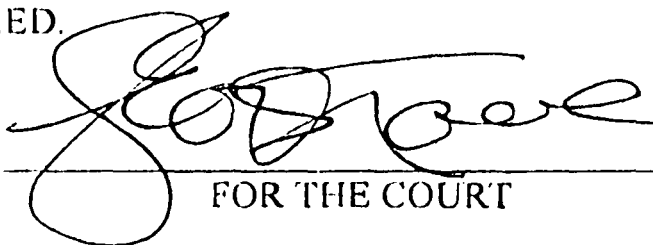
The Division of Appellate Defense is hereby appointed to represent the petitioner in this matter. The petition for a writ of certiorari and appendix shall be served and filed within forty (45) days of the date of this order.

In addition to any other questions that Appellate Defense may raise in the petition, the parties shall also address the following questions:

- (1) Is the decision of *Padilla v. Kentucky*, __ U.S. __, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010), to be applied retroactively in a post-conviction relief action? See *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989).
- (2) If *Padilla* is to be applied retroactively on collateral review, did the post-conviction relief judge err in determining that

this claim is barred by the statute of limitations? *See* S.C. Code Ann. § 17-27-45(B) (Supp. 2010).

IT IS SO ORDERED.



FOR THE COURT C. J.

Columbia, South Carolina

July 7, 2011

cc: Division of Appellate Defense
Assistant Attorney General Karen Ratigan
Mr. Elkin Perez

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
Robin B. Stilwell, Circuit Court Judge

RECEIVED

NOV 3 2011

S.C. Supreme Court

ELKIN PEREZ,

PETITIONER,

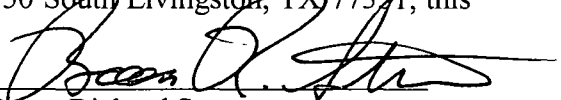
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

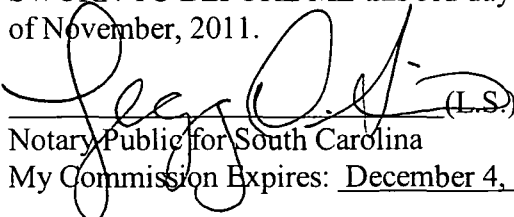
CERTIFICATE OF SERVICE

I certify that a true copy of the amended appendix in this case have been served on Karen Ratigan, Esquire and Elkin Perez at 3400 FM 350 South Livingston, TX 77351, this 3rd day of November, 2011.


Breen Richard Stevens
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 3rd day
of November, 2011.


(L.S.)
Notary Public for South Carolina
My Commission Expires: December 4, 2017.