

Judge - Costa Plecones  
Atty - W. Bedingfield  
Ct. Reporter - Cheri Young

18114

STATE OF SOUTH CAROLINA

County of Barnwell

In the Court of Common Pleas  
C/A# 97-CP-06-106

Robert Mitchell (no. 140920)  
Full name and prison number (if any) of Applicant,

vs.

General  
Name of Respondent.

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 it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lee Correctional Inst. 1204 E. Church St.  
Bishopville S.C 29010

2. Name and location of Court which imposed sentence Barnwell County

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

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

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

- (a) Jan 26, 1997 - 30 yrs - Life sentence
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

5. Check whether a finding of guilty was made

- (a) after a plea of guilty
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_

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

No

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

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

- (a) I was not advised of this right
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) unvoluntary plea
- (b) ineffective assistance of counsel
- (c) \_\_\_\_\_

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

- (a) My lawyer advised me I was pleading to 30 yrs, not life-30 yrs
- (b) Counsel fail below and object level for and attorney
- (c) \_\_\_\_\_

11. Prior to this application have you filed with respect to this conviction
- (a) any petition in a State Court under South Carolina Law? \_\_\_\_\_
  - (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? \_\_\_\_\_
  - (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? \_\_\_\_\_
  - (d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

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

- (a) the specific nature thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (c) the disposition thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (d) the date of each such disposition:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?  
NO

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

(a) which grounds have been presented:

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

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

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

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

- (a) I was not advised of my constitutional rights
- (b) ineffective assistance of counsel
- (c) \_\_\_\_\_

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

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

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

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

- i. Bedingfield and Williams  
post office Box 616
- ii. 2024 Wall Street  
Barnwell, South Carolina 29812
- iii. \_\_\_\_\_

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

- i. General Sessions
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

Reversal of sentence imposed

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

No

STATE OF SOUTH CAROLINA

County of Barnwell

VERIFICATION

I, Robert Mitchell, 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.

Robert Mitchell

SWORN to and subscribed before me this 15<sup>th</sup>

day of APRIL, 19 97.

Thomas U. Juhl (L.S.)  
Notary Public

My Commission Expires: 18 AUG 04

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

I, \_\_\_\_\_, hereby apply for leave to proceed in this action, without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Robert Mitchell  
Applicant

SWORN or affirmed to and subscribed before me this

15<sup>th</sup> day of APRIL, 19 97.

Thomas U. Juhl  
Notary Public

My Commission Expires 18 AUG 04

STATE OF SOUTH CAROLINA  
COUNTY OF BARNWELL

CIRCUIT COURT  
COMMON PLEAS  
97-CP-06-106

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ROBERT MITCHELL, )  
Applicant )  
STATE OF SOUTH CAROLINA, )  
Respondent )

T R A N S C R I P T  
of R E C O R D

POST CONVICTION RELIEF HEARING

before:

THE HONORABLE HOWARD P. KING  
ON  
THURSDAY, AUGUST 5, 1999

APPEARANCES:

Counsel on Behalf of the Applicant:  
Thomas W. Weeks, Esq.  
  
Counsel on Behalf of the State:  
Matthew M. McGuire, Esq.

Cheri L. Young, CCR/RPR  
Certified Court Reporter  
Registered Professional Reporter  
P O Box 5833  
Aiken, South Carolina 29804-5833

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ROBERT L MITCHELL	5	16		
W WALTER BEDINGFIELD	22	29		

E X H I B I T S

NUMBER	DESCRIPTION	PAGE ID/ADMTD
(NO EXHIBITS IDENTIFIED/INTRODUCED.)		

1 ON THURSDAY, AUGUST 5, 1999 AT 3:50 P.M.

2 MR. MCGUIRE: Robert Mitchell.

3 THE COURT: All right. The next matter  
4 before the Court is the matter of the Post  
5 Conviction Relief Application filed by Robert  
6 Mitchell, case number 97-CP-06-106 from Barnwell.

7 Judge Pleicones Trial Judge, represented at  
8 trial by Walter Bedingfield, Esquire, and  
9 represented today in his application by Mr.  
10 Weeks.

11 MR. WEEKS: Thomas W. Weeks, Your  
12 Honor.

13 THE COURT: Mr. Thomas Weeks. State of  
14 South Carolina represented by Matthew McGuire.

15 All right. Mr. Weeks, I'll be glad to hear  
16 from you, a brief statement as to your client's  
17 position and any testimony you might want to  
18 present.

19 MR. WEEKS: Your Honor, thank you very  
20 much. If it please the Court.

21 He's filed an application back in May of '97  
22 in which he advised that counsel was ineffective.  
23 He also indicated in his application that the  
24 plea was involuntary.

25 And he bases the ineffective assistance of

TESTIMONY: R MITCHELL/DIRECT

1 I was locked up in December of '94 and got  
2 indicted in May of '95. I didn't go to court until  
3 January of '97. All of '96 went by and only reason I  
4 went in '97 was because I pleaded guilty.

5 He keep throwing that HIV and all of this,  
6 you're dying. The Solicitor said, you're wasting  
7 taxpayer money. That's the way I feel like I was  
8 prejudiced and the Judge didn't object to none of  
9 that during the time of the plea.

10 I just gave up on it, just went along with  
11 them. So I just wish to appeal my case.

12 Q Now you've just indicated something about  
13 your speedy trial rights?

14 A Yeah. I put in for a speedy trial. They  
15 had me Broad River Correctional Institution on  
16 safekeeping.

17 Q Right. Right. Now, I think after your  
18 plea there was an appeal entered which later was  
19 dismissed for failure to prosecute; isn't that  
20 correct?

21 A After that, because when I got the time  
22 they sent to R and E, from R and E they took me to  
23 W.S. Hall which is psychiatric hospital, suicidal  
24 watch.

25 I ain't have no accesses to no law material

1 being in observation cell you ain't allowed to have  
2 nothing. They take your clothes, everything, and ten  
3 days they left you.

4 Q Now, you've indicated Mr. Bedingfield  
5 failed to discuss with you the statements that he had  
6 requested under Brady and under Rule One-O-Five; is  
7 that correct?

8 A The more I speak with happened between me  
9 and Lieutenant Ed Carol which, that he made me a  
10 promise that if I take him to the body he'd get me to  
11 the State Hospital.

12 And I was willing to take a polygraph on  
13 everything I said but he didn't pursue none of that.  
14 So, and I couldn't trust my lawyer and I couldn't  
15 trust them that treat me in the past.

16 So I ain't really had nobody that I really  
17 could sit down and trust and tell about this, about  
18 my situation without getting laughed at or made a  
19 joke of.

20 They found out I HIV positive and that's  
21 basically about the end of it; you're dying, you're  
22 wasting money and all of that stuff.

23 Q Why do you believe that your plea was  
24 involuntary?

25 A Because the fact that I'm HIV. And he say

STATE OF SOUTH CAROLINA )  
COUNTY OF BARNWELL }

FORM 9

Martha Rivers

IN THE COURT OF COMMON PLEAS

Judge: Costam Plicione

ROBERT MITCHELL #140920

Full name and prison number  
(if any) of Applicant,

EXHIBIT 'I' PAGE 1 OF 17

Atty: Walter Beck

SUCCESSIVE  
APPLICATION FOR

Ct Rept: Cheri Yuen  
2003-CP-06-125

-vs-

POST-CONVICTION RELIEF

AS IS PURSUANT

TO BUTLER-VS-STATE, 397 S.E.2d

87 (S.C. 1997) AND COURTS KEY 37(2)

FROM STATE-VS-BRIM, 533 S.E.2d 329

Instructions - Read Carefully

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

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

- Place of detention BROADRIVER CORR. INST. # 4460  
BROADRIVER ROAD, COLUMBIA, S.C. 29210-4012
- Name and location of Court which imposed sentence BARNWELL COUNTY  
COURT OF GENERAL SESSIONS
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - 95-GS-06-110 MURDER
  - 95-GS-06-111 GRAND LARCENY OF A VEHICLE
  - 95-GS-06-113 ROBBERY

FILED IN RECORDED  
03 JUN 11 PM 10:46  
BARNWELL COUNTY, S.C.

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

JANUARY 31, 1997 (a) 95-GS-06-110 MURDER - LIFE IMPRISONMENT;  
(b) 95-GS-06-111 - LARCENY OF A VEHICLE 10 YEARS  
(c) CONSECUTIVE; 95-GS-06-113 ROBBERY  
30 DAYS CONCURRENT WITH THE OTHER 2 SENTENCE

5. Check whether a finding of guilty was made

- (a) after a plea of guilty
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_

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

NO, NO ONE EXPLAINED TO ME HOW I COULD  
APPEAL MY GUILTY PLEA, EVEN THOUGH I ASKED.

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

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

- i. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

(c) the date of each such result:

- i. N/A
- ii. N/A
- iii. N/A

EXHIBIT I PAGE 2 OF 17

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

- i. N/A
- ii. N/A
- iii. N/A

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

(a) I ASKED FOR A DIRECT APPEAL AND MY APPOINTED TRIAL COUNSEL WALTER BEDINGFIELD, FAILED TO DO IT WITHIN A 10 DAY PERIOD.

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

(a) THAT MY TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO FILE MY DIRECT APPEAL AS I TOLD HIM TO DO, AS IS PURSUANT TO ROE-VS-FLORES-ORTEGA, 120 S.C.T. 1029 (2000); U.S.-VS-NETHER-

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

(a) MY TRIAL COUNSEL, WALTER BEDINGFIELD, RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL THAT WAS PREJUDICIAL TO ME, BY FAILING TO FILE A DIRECT APPEAL TO MY GUILTY PLEA AS I

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- 1. DIRECT APPEAL: STATE-VS-ROBERT MITCHELL, 95-GS-06-110
- 2. APPLICATION FOR P.C.R.: R.L. MITCHELL-VS-STATE, 97-CP-06-106

Form 5

RULES OF CIVIL PROCEDURE

(a) the specific nature thereof:

- i. DIRECT APPEAL OF GUILTY PLEA.
- ii. APPLICATION FOR POST-CONVICTION RELIEF.
- iii.
- iv.

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

- i. SUPREME COURT OF SOUTH CAROLINA
- ii. COURT OF COMMON PLEAS OF BARNWELL COUNTY
- iii.
- iv.

(c) the disposition thereof:

- i. DISMISSED ON MARCH 21<sup>ST</sup>, 1997
- ii. DISMISSED ON OCTOBER 26<sup>TH</sup>, 1999
- iii.
- iv.

(d) the date of each such disposition:

- i. DISMISSED AS IS PURSUANT TO RULE 221(B)(2) OF SCALR.
- ii. DID NOT PROVE INEFFECTIVE ASSISTANCE OF COUNSEL OR PREJUDICE.

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

EXHIBIT "I" PAGE 5 OF 17

RULES OF CIVIL PROCEDURE

Form 5

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

NO

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

(a) which grounds have been presented:

i. N/A  
ii. N/A  
iii. N/A

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

i. N/A  
ii. N/A  
iii. N/A

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

(a) LACK OF SUBJECT MATTER JURISDICTION DUE TO NON-ADHERENCE TO SECTION 16-3-26 (B) (1) FROM THE SC CODE OF LAWS.

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 petitions, motions or applications with respect to this conviction, which you filed? YES

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

KAREN FRYAR, FORMER CHIEF PUBLIC DEFENDER OF BARNWELL COUNTY, SOUTH CAROLINA.

WALTER BENTINGFIELD, DECEASED

THOMAS WEEKS, ESQUIRE

EXHIBIT "I" PAGE 6 OF 17

Form 5

RULES OF CIVIL PROCEDURE

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

i. KAREN FRYAR, ADDRESS UNKNOWN

ii. WALTER BEDINGFIELD, DECEASED

iii. THOMAS WEEKS, BARNWELL COUNTY BAR

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

i. ARRAIGNMENT ONLY

ii. GUILTY PLEA / DISMISSED DIRECT APPEAL

iii. APPLICATION FOR P.C.R.

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

VACATION OF SENTENCE / REVERSAL AND REMANDING OR ANY RELIEF THE COURT DEEMS APPROPRIATE

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

NO.

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

VERIFICATION

i. ROBERT MITCHELL, 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.

Robert Mitchell

SWORN to and subscribed before me this 04th day of June, 2003.

John Linnam (L.S.)  
Notary Public

My Commission Expires: October 26, 2008

EXHIBIT "I" PAGE 2 OF 17

RULES OF CIVIL PROCEDURE

Form 5

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

I, ROBERT MITCHELL, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
(2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Signature of Robert Mitchell

Applicant

SWORN or affirmed to and subscribed before me this

04th day of June 2003

Notary Public Signature

My Commission Expires October 20, 2008

## ADDENDUM TO P.C.A.

SPORN, 231 F.3d 923 (4<sup>TH</sup> CIR. 2000); FRASTER-VS-STATE, 410 S.E.2d 572 (S.C. 1991); MATTER OF ANONYMOUS MEMBER OF THE BAR, 400 S.E.2d 483 (S.C. 1991); AND WEATHERS-VS-STATE, 459 S.E.2d 838 (S.C. 1995).

1) A) INSTRUCTED HIM TO DO.

AFTER I PLED GUILTY AND DISCOVERED THAT I HAD A NATURAL LIFE SENTENCE INSTEAD OF THE 30 YEARS THAT HAD BEEN PROMISED TO ME, I TOLD MY TRIAL COUNSEL (HEREINAFTER CITED AS "COUNSEL BEDINGFIELD.") TO DO A DIRECT APPEAL OF MY GUILTY PLEA. I CAN PROVE THIS THROUGH THE ATTACHED CORRESPONDENCE FROM COUNSEL BEDINGFIELD TO ME DATED JANUARY 31<sup>ST</sup>, 1997. (PLEASE SEE EXHIBIT "A") UNFORTUNATELY UPON MY ARRIVAL AT LIEBER CORR. INST., I WAS SHIPPED TO THE GILLIAM CENTER AND PLACED ON SUICIDE WATCH. ALL MY CLOTHING AND WRITING UTENSILS WAS TAKEN FROM ME AND I WAS PLACED ON AN ANTI DEPRESSANT. WHEN I GOT TO LIEBER OR LEE COUNTY I WAS ABLE TO WRITE COUNSEL BEDINGFIELD AND HE FINALLY FILED A NOTICE OF APPEAL IN MY CASE ON MARCH 11<sup>TH</sup>, 1997. (SEE EXHIBIT "B") ON MARCH 21<sup>ST</sup>, 1997, THE SOUTH CAROLINA SUPREME COURT ISSUED AN ORDER OF DISMISSAL OF MY DIRECT APPEAL. (SEE EXHIBIT "C")

TRIAL COUNSEL BEDINGFIELD'S FAILURE TO FILE MY DIRECT APPEAL, AS I TOLD HIM TO DO, IS INEFFECTIVE ASSISTANCE OF COUNSEL AS IS PURSUANT TO ROE-FLORES-ORTEGA, 120 S. CT. 1029 (2000); U.S.-VS-WITHER-SAMM; 231 F.3d 923 (4<sup>TH</sup> CIR. 2000); WEATHERS-VS-STATE, 459

# ADDENDUM TO P.C.R.

THE REASON I WANTED A DIRECT APPEAL DONE ON MY GUILTY PLEA WAS TO HAVE THE ISSUE OF THE COURT LACKING SUBJECT MATTER JURISDICTION TO ACCEPT MY GUILTY PLEA DUE TO MY ONLY HAVING ONE LAWYER REPRESENT ME DURING A CAPITAL CASE. IN VIOLATION OF THE SOUTH CAROLINA CODE OF LAWS, SECTION 16-3-26 (B)(1) AND THE RULING IN STATE-US-DIDDLEMEYER, 371 S.E.2d 739 (S.C. 1998).

EXHIBIT "I" PAGE 9 OF 17

ADDENDUM TO P.C.R.

PETITIONER NOW WISHES TO TURN TO ROE-VS-FLORES-ORTEGA, SUPRA, U.S.-VS-WITHERSPOON; SUPRA, AND BUTLER-VS-STATE, SUPRA TO PROVE THE BOTH PREJUDICIAL AND INEFFECTIVE ASSISTANCE THAT HE RECEIVED FROM COUNSEL BEDINGFIELD BY BEDINGFIELD'S FAILURE TO FILE MY DIRECT APPEAL AS I TOLD HIM TO DO.

STRICKLAND-VS-WASHINGTON, 104 S. CT. 2052, PROVIDES THE PROPER FRAMEWORK FOR EVALUATING A CLAIM THAT COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO FILE A NOTICE OF APPEAL UNDER STRICKLAND A DEFENDANT MUST SHOW (1) THAT COUNSEL'S REPRESENTATION "FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS" AND (2) THAT COUNSEL'S DEFICIENT PERFORMANCE PREJUDICED THE DEFENDANT.

A LAWYER WHO DISREGARDS A DEFENDANT'S SPECIFIC INSTRUCTIONS TO FILE A NOTICE OF APPEAL ACTS IN A PROFESSIONALLY UNREASONABLE MANNER. SEE RODRIGUEZ VS-U.S., 89 S. CT. 1715.

IN ROE-VS-FLORES-ORTEGA, SUPRA, UNDER CRIMINAL LAW KEY 64.13(7) IT STATES THE FOLLOWING:

"WHEN COUNSEL'S CONSTITUTIONALLY DEFICIENT PERFORMANCE DEPRIVES DEFENDANT OF APPEAL THAT HE OTHERWISE WOULD HAVE TAKEN. DEFENDANT HAS MADE BUT SUCCESSFUL

# ADDENDUM TO P.C.R.

33

INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM  
ENTITLING HIM TO AN APPEAL.  
U.S.C.A. CONST. AMEND. 6. EXHIBIT "I" PAGE 11 OF 17

THE FOURTH CIRCUIT COURT OF APPEALS HAS JOINED IN ACCEPTING THE LEGAL LOGIC OF THE ROE-VS-FLORES-ORTEGA, COURT AND HAS PRODUCED TWO PROGENY OF THIS CASE IN THE YEAR 2000. THE TWO CASES ARE HUNSON-VS-HUNT, 235 F.3d 392 (4<sup>TH</sup> CIR. 2000) AND U.S.-VS-WITHERSPOON 231 F.3d 923 (4<sup>TH</sup> CIR. 2000). IN THE U.S.-VS-WITHERSPOON DECISION THE 4<sup>TH</sup> CIRCUIT CREATED A **PER SE RULING** CONCERNING FAILURE TO FILE AN APPEAL AFTER BEING INSTRUCTED TO DO SO BY A DEFENDANT. THIS PER SE RULING IS CONTAINED IN CRIMINAL LAW KEY 641.13(7) AND STATES THE FOLLOWING:

ATTORNEY WHO FAILS TO FILE AN APPEAL AFTER BEING INSTRUCTED BY HIS CLIENT TO DO SO IS **PER SE INEFFECTIVE**.  
U.S.C.A. CONST. AMEND. 6.

AND THE SOUTH CAROLINA HAS LONG HELD THAT FAILURE TO FILE A DIRECT APPEAL AFTER BEING INSTRUCTED TO DO SO BY A DEFENDANT TO BE INEFFECTIVE ASSISTANCE OF COUNSEL. IN FRASIER-VS-STATE, 410 S.E.2d 572 (S.C. 1991) UNDER CRIMINAL LAW KEY 641.13(7) IT STATES THE FOLLOWING:

DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE BY TRIAL COUNSEL'S FAILURE TO PERFECT APPEAL; WHEN

ADDENDUM TO P.C.R.

DEFENDANT TOLD COUNSEL THAT HE COULD NOT AFFORD COST OF OBTAINING TRANSCRIPT, TRIAL COUNSEL ADVISED DEFENDANT TO TRY TO QUALIFY FOR INDIGENT STATUS AND HENCE, STATE-PROVIDED APPELLATE COUNSEL, AND TRIAL COUNSEL TOOK NO FURTHER STEPS TO PERFECT APPEAL. U.S.C. CONST. AMEND. 6; SUP. CT. RULES, RULE 51, SUBD. E(4) (REPEALED); APPELLATE COURT RULE 602(E)(4)"

THE STATE SUPREME COURT IN **WEATHERS-VS-STATE** 459 S.E.2d 838 (S.C. 1995) SAID THAT THERE MUST BE PROOF OF "EXTRAORDINARY CIRCUMSTANCES" FOR A GUILTY PLEA DEFENDANT TO HAVE BEEN ADVISED OF THE RIGHT TO APPEAL. AND UNDER **CRIMINAL LAW KEY 641.13(5)** THAT "EXTRAORDINARY CIRCUMSTANCE" TO BE **A DEFENDANT INQUIRING INTO THE RIGHT TO APPEAL AFTER HAVING PLED GUILTY.**

**CRIMINAL LAW KEY 641.13(5):** DEFENDANT'S INQUIRY REGARDING RIGHT TO APPEAL FROM CONVICTION BASED ON GUILTY PLEA WAS "EXTRAORDINARY CIRCUMSTANCE" REQUIRING COUNSEL TO INFORM DEFENDANT OF HIS APPELLATE RIGHTS U.S.C.A. CONST. AMEND. 6.

AS IS ABUNDANTLY CLEAR FROM THE ATTACHED EXHIBITS I ASKED FOR, BUT NEVER RECEIVED, A DIRECT APPEAL. THE ISSUE I WOULD HAVE ASKED THE COURT TO REVIEW IS WHETHER THE COURT LACKED SUBJECT MATTER JURISDICTION TO ACCEPT MY GUILTY PLEA DUE TO A VIO-

ADDENDUM TO P.C.R.23.4 IT STATES THE FOLLOWING:

"MORE RECENT AND SPECIFIC STATUTE, WHICH PROVIDES EXCLUSIVE PROCEDURE FOR APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS CHARGED WITH MURDER, SUPERSEDED IN CAPITAL CASES EARLIER ENACTED STATUTE PROVIDING THAT IN CAPITAL CASE, TRIAL COURT UPON REQUEST OF DEFENDANT SHALL ASSIGN COUNSEL TO THAT PERSON. CODE 1976, §§ 16-3-26 (B), 17-23-70."

SO, SINCE 1986, THE STATE SUPREME COURT HAS SAID THAT IN MURDER CASES, **WHERE THE DEATH PENALTY IS BEING SOUGHT**, SECTION 16-3-26(B) OF THE STATE CODE OF LAWS IS TO BE THE CONTROLLING STATUTE IN THE APPOINTMENT OF COUNSEL. **SECTION 16-3-26(B)(1)** STATES THE FOLLOWING:

"WHENEVER ANY PERSON IS CHARGED WITH MURDER AND THE **DEATH PENALTY IS SOUGHT**, THE COURT, UPON DETERMINING THAT SUCH PERSON IS UNABLE FINANCIALLY TO RETAIN ADEQUATE LEGAL COUNSEL, **SHALL APPOINT TWO ATTORNEYS TO DEFEND SUCH PERSON** IN THE TRIAL OF THE ACTION. ONE OF THE ATTORNEYS SO APPOINTED SHALL HAVE AT LEAST FIVE YEARS EXPERIENCE AS A LICENSED AND AT LEAST THREE YEARS EXPERIENCE IN THE ACTUAL OF FELONY CASES, AND ONLY ONE OF THE ATTORNEYS SO APPOINTED SHALL BE THE PUBLIC DEFENDER OR A MEMBER OF HIS STAFF. IN ALL CASES WHERE NO CONFLICT EXISTS THE PUBLIC DEFENDER OR A MEMBER OF HIS STAFF SHALL BE APPOINTED IF QUALIFIED. IF A CONFLICT EXISTS,

## ADDENDUM TO P.C.R.

THE COURT SHALL THEN TURN FIRST TO THE CONTRACT PUBLIC DEFENDERS ATTORNEYS, IF QUALIFIED, BEFORE TURNING TO THE OFFICE OF INDIGENT DEFENSE."

IN MY CASE THE DEATH PENALTY WAS SOUGHT AS CAN BE PROVEN BY EXHIBIT "D" A COPY OF THE NOTICE TO SEEK DEATH PENALTY SIGNED ON MAY 2<sup>ND</sup>, 1995 BY SOLICITOR BARBARA R. MORGAN.

I HAD KAREN FRYAR, THEN CHIEF PUBLIC DEFENDER OF BARNWELL COUNTY S.C. AS MY LEAD COUNSEL AND THEN ON JUNE 9<sup>TH</sup>, 1995 I HAD WALTER BEDINGFIELD APPOINTED AS CO-COUNSEL IN MY CASE. (PLEASE SEE EXHIBIT "E")

CHIEF PUBLIC DEFENDER FRYAR RETIRED FROM THE PUBLIC DEFENDERS OFFICE OF BARNWELL COUNTY AND THAT ONLY LEFT TRIAL COUNSEL BEDINGFIELD AS MY APPOINTED COUNSEL. MR. BEDINGFIELD WAS MY **SOLE REPRESENTATIVE** AS LEGAL COUNSEL DURING MY GUILTY PLEA. THIS PROVEN IN THREE DIFFERENT MANNERS.

1.) ORDER ISSUED BY JUDGE PAUL E. SHORT JR. ON NOVEMBER 30<sup>TH</sup>, 1995. (SEE EXHIBIT "F".)

2.) THE COVER PAGE OF THE TRANSCRIPT OF RECORDS OF THE STATE-VS-ROBERT MITCHELL, 95-GS-06-110, 111, 112, 113, AND 114. (SEE EXHIBIT "G".)

3.) AND THE TESTIMONY OF TRIAL COUNSEL BEDINGFIELD GIVEN DURING MY P.C.R. HEARING HELD ON AUGUST 5<sup>TH</sup>, 1995 (SEE EXHIBIT "H".)

STNCE TRIAL COUNSEL BEDINGFIELD WAS MY SOLE LEGAL

# ADDENDUM TO P.C.R. EXHIBIT 1 PAGE 15 OF 17

WAS VIOLATED, I WAS PREJUDICED, AND THE STATE  
LOST SUBJECT MATTER JURISDICTION TO ACCEPT  
MY GUILTY PLEA IN LIGHT OF THE MANDATORY  
LANGUAGE CONTAINED IN SECTION 16-3-26(B)(1)  
REQUIRING THE DEFENDANT TO HAVE TWO LAWYERS  
APPOINTED TO REPRESENT HIM IN A CAPITAL CASE.

THIS ISSUE OF SECTION 16-3-26(B) NOT BEING  
FOLLOWED HAS BEEN PRESENTED TO THE STATE SUPREME  
COURT BEFORE IN STATE-VS-DIDDLEMEYER, 371 S.E.2d 793  
S.C. 1988) IN STATE-VS-DIDDLEMEYER. SUPRA, UNDER  
CRIMINAL LAW KEY 641.13(4) IT STATES THE FOLLOWING:

"COURTS FAILURE TO FOLLOW MANDATE OF STATUTE, WHICH  
REQUIRES APPOINTMENT OF ATTORNEY WITH THREE YEARS'  
EXPERIENCE IN FELONY CASES TO REPRESENT DEFENDANT  
IN CAPITAL MURDER PROSECUTION, DENIED DEFENDANT  
FAIR TRIAL; ONE OF ATTORNEYS WHO REPRESENTED DEFEN-  
DANT HAD TRIED ONE CAPITAL CASE AND ASSISTED ON  
TWO OTHER CAPITAL CASES, AND SECOND ATTORNEY HAD TRIED  
ONLY ONE FELONY NON-CAPITAL MURDER CASE, AND TRIAL  
RECORD WAS REplete WITH INSTANCES OF IMPROPER TESTI-  
MONY AND UNPRESERVED EXCEPTIONS. U.S.C.A. CONST. AMEND  
6; CODE 1976, § 16-3-26(B)

ALSO IN STATE-VS-DIDDLEMEYER. SUPRA, ON PAGE 795, PARAGRAPH  
NO. SENTENCE TWO IT STATES THE FOLLOWING:

**"WE CONCLUDE THAT THE TRIAL COURT'S FAILURE TO  
FOLLOW THE MANDATES OF SECTION 16-3-26(B)  
DENIED APPELLANT A FAIR TRIAL. S.C. CODE ANN. § 16-3-26(B)  
(1985)"** EMPHASIS PROVIDED BY APPLICANT.

APPLICANT BEGS THE COURT TO HAVE THIS MERITORIOUS  
CASE HEARD UNDER TWO DIFFERENT REASONS, ONE IS **COURTS**

## ADDENDUM TO P.C.R.

KEY 32(7) FROM STATE VS GRIM, 533 S.E.2d 329 (S.C. 2000) WHICH STATES:

**" SUBJECT MATTER JURISDICTION CAN BE RAISED AT ANY TIME. "**

(EMPHASIS PROVIDED BY APPLICANT.)

AND THE SECOND IS HABEAS CORPUS KEY 447 FROM BUTLER VS STATE 397 S.E. 2d 87 (S.C. 1990) WHICH STATES THE FOLLOWING:

**" NOT EVERY INTERVENING DECISION, OR EVERY CONSTITUTIONAL ERROR AT TRIAL WILL JUSTIFY ISSUANCE OF WRIT OF HABEAS CORPUS; RATHER, WRIT WILL ISSUE ONLY UNDER CIRCUMSTANCES WHERE THERE HAS BEEN VIOLATION, WHICH IN THE SETTING, CONSTITUTES DENIAL OF FUNDAMENTAL FAIRNESS SHOCKING TO THE UNIVERSAL SENSE OF JUSTICE. "**

I FEEL THAT I MEET THIS HIGH STANDARD DUE TO <sup>AT</sup> THE TIME OF MY GUILTY PLEA I WAS DIAGNOSED BY LARRY H. MONTGOMERY M.D. AS HAVING BORDERLINE INTELLECTUAL FUNCTIONING AND WHAT I FEEL **" CONSTITUTES DENIAL OF FUNDAMENTAL FAIRNESS SHOCKING TO THE UNIVERSAL SENSE OF JUSTICE "** IS THAT AT MY GUILTY PLEA NO ONE TOLD ME THAT I WAS BASICALLY WAIVING MY RIGHT TO COUNSEL, A RIGHT GUARANTEED ME BY THE 6<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENTS OF THE U.S. CONSTITUTION.

IN PITT VS MAC DOUGALL, 138 S.E.2d 840 (S.C. 1964) UNDER

IT STATES THE FOLLOWING:

**" DEFENDANT CANNOT WAIVE HIS RIGHT TO COUNSEL UNLESS HE HAS BEEN ADVISED BY THE TRIAL COURT OF HIS RIGHT TO COURT APPOINTED COUNSEL. "**

ALSO FROM PITT VS MAC DOUGALL, SUPRA, UNDER IT STATES THE FOLLOWING:

**" AN ACCUSED'S FAILURE TO REQUEST THE ASSISTANCE**

# ADDENDUM TO P.C.R.

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RIGHT TO THE ASSISTANCE OF COUNSEL AND IT MAY NOT BE PRESUMED FROM A SILENT RECORD THAT HE INTELLIGENTLY AND UNDERSTANDINGLY WAIVED HIS CONSTITUTIONAL RIGHT TO THE ASSISTANCE OF COUNSEL.

IND FINALLY FROM PITT-VS-MACDOUGALL, SUPRA, UNDER IT STATES THE FOLLOWING:

"WHERE THE DENIAL OF THE CONSTITUTIONAL RIGHT TO THE ASSISTANCE OF COUNSEL IS ASSERTED, IT BECOMES THE DUTY OF THE COURT TO MAKE A CAREFUL EXAMINATION OF THE RECORD TO DETERMINE WHETHER A PERSON CHARGED WITH CRIME DID, IN FACT, INTELLIGENTLY, UNDERSTANDINGLY AND EFFECTIVELY WAIVE HIS RIGHT TO THE ASSISTANCE OF COURT APPOINTED COUNSEL.

THE STATE SUPREME COURT HAS REVERSED AND REMANDED BOTH PITT-VS-MACDOUGALL, SUPRA, AND STATE-VS-COWART, 138 S.E.2d 840 (S.C. 1964) FOR THIS VIOLATION OF RIGHT TO COUNSEL. FOR THE ABOVE STATED REASONS APPLICANT PRAYS THAT AN EVIDENTIARY HEARING IS CONVENED IN THIS MATTER.

EXHIBIT "I" PAGE 17 OF 17

STATE OF SOUTH CAROLINA )

County of BARNWELL )

Robert Mitchell #140920 )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

2010-CP-06-189

APPLICATION FOR

POST-CONVICTION RELIEF

Seeking

White vs State Review. 2010

S.C. 110, 208 S.E. 2d 35 (1977).

For denial of Right to direct appeal

**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 Broad River Corr. INST, 4460 Broad River Rd, Columbia S.C. 29210

2. Name and location of Court which imposed sentence Barnwell County, Court of General Sessions

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) 95-GS-06-110, Murder.

(b) 95-GS-06-111, Grand Larceny of Vehicle

(c) 95-65-06-113, Robbery

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

- (a) January 31, 1997) Murder, Life Imprisonment  
(b) Larceny of Vehicle, 10 years, consecutive,  
(c) Robbery 30 days concurrent with other (2) sentences

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?

Asked Trial Counsel to Appeal, But he failed to Timely Appe.

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

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

- i. South Carolina Supreme Court  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

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

- i. Appeal was dismissed For being untimely  
ii. filed, By my Trial Counsel, Thus Direct  
iii. Appeal was never obtained.

(c) the date of each such result:

- i. Appeal Filed on March 11, 1997  
ii. Appeal Dismissed on March 21, 1997  
iii. \_\_\_\_\_

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

- i. Appeal Dismissed as being untimely, filed  
ii. as provided for in Rule 203 (b) (2) of The  
iii. South Carolina Appellate Court Rules.

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) Appeal was never had, Because my Trial Counsel  
(b) Walter Bedingfield, failed to file Appeal within -

(c) 10 days. Thus appeal was dismissed, untimely.

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

- (a) petitioner was denied his Right to Direct
- (b) Appeal, That he never knowingly or intelligently
- (c) waived his Rights to a direct Appeal.

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

- (a) petitioner told his Trial Counsel, To Appeal Guilty plea
- (b) Trial Counsel filed Notice of Appeal untimely, Thus
- (c) Appeal was dismissed. See Attached "ADDENDUM" To

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

- (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)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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. Direct Appeal of Guilty plea
  - ii. Application for post-conviction Relief
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. Supreme Court of South Carolina
  - ii. Court of Common pleas Barnwell County
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

(c) the disposition thereof:

- i. Dismissed on March 21st, 1997
- ii. Dismissed on October 26th, 1999
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. Dismissed as is pursuant to Rule 221(B)(2)
- ii. OF SCAR.
- iii. II Did not prove ineffective Assistance
- iv. of Counsel or prejudice

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

- i. \_\_\_\_\_
- ii. N/A
- 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?

N/A

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. N/A
- 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) \_\_\_\_\_
- (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? 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 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. Karen Fryar, former chief public defender of Barnwell County South Carolina
  - ii. Walter Bedingfield, deceased  
Thomas Weeks, Esquire
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Arrest only
  - ii. Guilty plea / dismissed direct appeal
  - iii. Application for p.c.r.

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

petitioner seeks a "white-w-state" review from This Court, on whether he knowingly and intelligently waive his Right to a direct appeal from Guilty plea Conviction and sentence,

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

NO.

STATE OF SOUTH CAROLINA )  
 )  
County of Barnwell )

VERIFICATION

I, Robert Mitchell, 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.

Robert Mitchell

SWORN to and subscribed before me this 11 day of Aug 2010.

Eugene Keith (L.S.)  
Notary Public

My Commission Expires April 4, 2016

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

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

I, Robert Mitchell, 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.

Robert Mitchell  
Applicant

SWORN or affirmed to and subscribed before me this  
11 day of Aug, 2010.

Eugene Smith  
Notary Public

My Commission Expires April 4, 2018

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