

To: Jenny Abbott Kitchings
The South Carolina Court of
Appeals, P.O. Box 11629
Columbia S.C. 29211

RECEIVED

JAN 10 2013

S.C. Supreme Court

Appellate Case no: 2012-213408

Dear Clerk,

This matter comes before the court pursuant to an application for post-conviction relief (P.C.R.) filed November 1, 2010. The state made its return and Motion to Dismiss on December 28, 2010, requesting that the application be summarily dismissed. And after reviewing the pleadings in this matter and all of the records attached thereto, this court did issued a Conditional Order of Dismissal that was filed on November 14, 2011. In which the applicant was given twenty (20) days to show why this case should not be Dismiss.

The applicant did not received the Conditional Order of Dismissal until the 18th of November 2011. On December 2, 2011, the applicant did send in a Motion to Supplement post-conviction relief a Memorandum of Law in support of Leave to supplement and his Objection to the Conditional Order of Dismissal that was dated December 5, 2011.

RECEIVED

JAN 09 2013

SC Court of Appeals

(1)

On January 19, 2012 the Court did acknowledge the motions for leave to Amend post-conviction Relief Application dated December 2, 2011 and Applicant's Objection to the Conditional Order of Dismissal dated December 5, 2012. The Judge that did acknowledge the motions was Judge J. L. Jefferson.

On October 29, 2012, the applicant received a Final Order of Dismissal. That was not signed by a judge. Inside this order the Assistant Attorney General Ashleigh P. Wilson states "The grounds for dismissal is that this court, has not received any amendment to the applicant's application for post-conviction relief or any response to the Applicant's Conditional Order of Dismissal."

On November 8, 2012 the applicant received a Final Order of Dismissal that was signed by the Honorable Judge Beadra L. Jefferson. Inside this order the grounds for dismissal is "the applicant did not respond to the Conditional Order of Dismissal." The applicant did send copy of the Decision by the Court that shows that the applicant did respond to the Conditional Order of Dismissal. The applicant did send copy of the Decision by the Court, Objection to the Conditional Order of Dismissal, and copies of all the motions that was filed in January of 2012.

Twenty one (21) days after the applicant sent the copies to the Assistant Attorney General Wilson.

The applicant received an Order of Dismissal that was dated December 17, 2012. In this order the state states "According to the Final Order of Dismissal, the petitioner did not file a response to the Conditional Order of Dismissal."

Ms. Kitchings Court records shows that the applicant did reply to the Conditional Order of Dismissal. The applicant also sent copies of the decision by the court that shows the applicant did reply to the order. Applicant sent that to Chief Justice Tolal asking her to resend the order. The applicant is showing how the Honorable Judge Deadra L. Jefferson did acknowledge the Objection to the Conditional Order of Dismissal on January 19, 2012. But on October 29, 2012 she signed a Order that states the applicant did not reply to the Conditional Order of Dismissal.

The record is also showing how the Assistant Attorney General is trying to defraud the court. Because court records shows the applicant did respond to the Conditional Order of Dismissal. The applicant did send copy of the decision by the court to the attorney General, showing that the applicant did reply to the order. The applicant sent this on November 27, 2012 days before the attorney General sent the Order for Dismissal.

The applicant is also showing how the Assistant Attorney General Ashleigh R. Wilson is violating his USCA 14th Amendment Rights to Due Process. Because if the court records show's that the applicant did reply to the Conditional Order of Dismissal. Why did the Assistant Attorney General is saying that the applicant didn't? The applicant has shown how the attorney General Wilson is defrauding the court with the Order of Dismissal. Court records show's the grounds for the order is not true. the applicant has shown and proven that he did reply to the Conditional Order of Dismissal in a timely matter.

Not letting the Court hear the applicant's Claims will constitute as a gross miscarriage of justice. Court records shows the applicant is telling the truth. All the applicant is asking for is one full bite of the apple. The Order of Dismissal can NOT become final because the ground for the Order is not the truth! And the Court record shows that the Assistant Attorney General Ashleigh R. Wilson has defrauded the court. Thank you,

Can you please respond to this letter!!

Dated: January 2, 2013

Lawrence Pinckney 337981
Lawrence Pinckney
Lieber Court East Steen B-21
P.O. Box 205
Ridgewill S.C. 29472

(4)



ALAN WILSON
ATTORNEY GENERAL

October 26, 2012

The Honorable Deadra L. Jefferson
100 Broad Street Ste 336
Charleston, SC 29401

Re: Lawrence Pinckney, # 337981 v. The State of South Carolina
2010-CP-10-9071

Dear Judge Jefferson:

Enclosed please find the proposed Final Order of Dismissal in the above-referenced case for your approval and signature.

If this Order meets with your approval, please sign and forward it to the Charleston County Clerk of Court for filing. Thank you for your time and consideration in this matter.

Sincerely,

Ashleigh R. Wilson
Assistant Attorney General

ARW/arh
Enclosure(s)

cc: Lawrence Pinckney, #337981

RECEIVED
JAN 09 2013
SC Court of Appeals

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
)
)
 Lawrence Pinckney, #337981,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2010-CP-10-9071

FINAL ORDER OF DISMISSAL

FILED
 2012 NOV -5 PM 12:36
 JULIE J. ARMSTRONG
 CLERK OF COURT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed November 1, 2010. The Respondent (the State) made its Return and Motion to Dismiss on December 28, 2010, requesting that the Application be summarily dismissed. 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 dated November 9, 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.

On December 29, 2011, the Applicant submitted a "Motion to supplement post-conviction relief" and a "Memorandum of law in support of leave to supplement". On January 19, 2012, the Court granted the Applicant's Motion for Leave to Amend Post-Conviction Relief Applicant.

After the granting of the Applicant's motion to amend his post-conviction relief application, the Court received a letter from the Applicant requesting "appointment of legal

1
 10/3
 [Signature]

counsel". This Court has not received any amendments to the Applicant's application for post-conviction relief or any response to the Applicant's Conditional Order of Dismissal.

This Court has reviewed the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. Further, successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). This Court finds that Applicant has failed to establish sufficient reason why he could not have raised his current allegations in the previous application; thus, he has failed to meet the burden imposed upon him. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

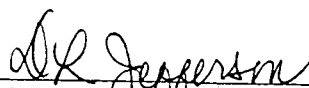
IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

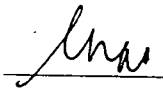
This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203,


2 2013
[Handwritten signature]

SCACR. The Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 29th day of October, 2012.


The Honorable Deadra L. Jefferson
Administrative Judge
9th Judicial Circuit

, South Carolina.

3 303


The Supreme Court of South Carolina

Lawrence Pickney, Petitioner

v.

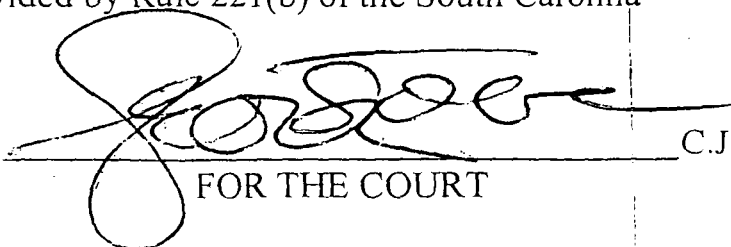
State of South Carolina, Respondent.

Appellate Case No. 2012-213408

ORDER

The circuit court issued a conditional order of dismissal, which gave petitioner twenty days to show cause why the conditional order should not become final. According to the final order of dismissal, petitioner did not file a response to the conditional order. Petitioner has now served and filed a notice of appeal from the final order.

Where, as here, a PCR applicant fails to file a response to a conditional order of dismissal, this Court has held that the applicant cannot appeal. *Edith v. State*, 369 S.C. 408, 632 S.E.2d 844 (2006). Accordingly, the notice of appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.



C.J.
FOR THE COURT

Columbia, South Carolina

December 17, 2012

cc: Ashleigh Rayanna Wilson
Lawrence Pickney, 337981

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-9071

Lawrence Pinckney, #337981
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a) SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy, Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

2012 JAN 23 PM 1:09
 JULIE J. ARMSTRONG
 CLERK OF COURT
 FILED

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: This matter comes before the Court on Applicant's Motion for Leave to Amend Post Conviction Relief Application dated December 2, 2011 and Applicant's Objection to Conditional Order of Dismissal dated December 5, 2012 in which Applicant requests for leave to amend his application. Counsel for the State of South Carolina advised the Court it has no objection to Applicant's Motion for Leave to Amend. Therefore, Applicant's Motion is respectfully GRANTED.

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Al J. Jeff
Circuit Court Judge

2128
Judge Code

1/19/12
Date

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
 FAMILY COURT

LAWRENCE Pinckney # 337981

Plaintiff

CASE NO.

2010-CP-10-9071

v.

STATE OF SOUTH CAROLINA

Defendant

MOTION INFORMATION FORM
AND COVER SHEET

check box above indicating submitting party

name, S.C. Bar no. and address of plaintiff's attorney

Lawrence Pinckney,
Lieber Correctional Inst
PO BOX 205
Ridgeville, SC 29472

telephone:

fax:

e-mail:

other:

name, S.C. Bar no. and address of defendant's attorney

ASSISTANT Attorney General
Matthew J Freeman
PO BOX 11549, Columbia, SC 29202

telephone:

fax:

e-mail:

other:

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: LEAVE TO SUPPLEMENT

Estimated Time Needed: 15 min

Court Reporter Needed: YES // NO

SECTION II: Motion Type

Written motion attached

Form Motion --

I hereby move for relief or action by the court as set forth in the attached proposed order.

Lawrence Pinckney
Signature of Attorney for Plaintiff / Defendant

12/29/2011

Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: _____

EXEMPT:

(check reason)

Rule to Show Cause in Child or Spousal Support

Domestic Abuse or Abuse and Neglect

Indigent Status State Agency v. Indigent Party

Sexually Violent Predator Act Post-Conviction Relief

Motion for Stay in Bankruptcy

Motion for Publication Motion for Execution (Rule 69, SCRPC)

Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

Other: _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.

Other: _____

JUDGE _____

CODE: _____

Date: _____

CLERK'S VERIFICATION

DATE FILED _____

Collected by: _____
(print name)

MOTION FEE COLLECTED: _____

CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)
Lawrence Pinckney, # 337981) C/A NO 2010-CP-10-9071
Applicant,)
vs,) NOTICE AND MOTION TO SUPPLEMENT
) POST CONVICTION APPLICATION
STATE OF SOUTH CAROLINA)
respondents)

2012 JAN-3 PM 4:22
JULIE JE ARMSTRONG
CLERK OF COURT

FILED

Comes now Applicant in the above numbered case moves this court for an Order to Supplement his PCR pursuant to Rule 15(a) and 15(d) of South Carolina Rules of Civil Procedure. It is well established that a motion to amend or supplement is addressed to the discretion of the trial judge, and the party opposing the motion has the burden of establishing prejudice.

Rule 15, SCRCP, provides that leave to amend shall be freely given when justice requires and does not not prejudice any other party. See Rule 15 SCRCP.

1. The applicant has a fundamental right to effective assistance of counsel, in that the defendant must either have an explanation of the charge by the trial judge, or at least a representation by defense counsel that the nature of the offense has been explained to the accused, the record is silent therefore applicant was without his fundamental right to effective assistance of counsel.

The fruit of the poisonous tree doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and evidence has been obtained by the exploitation of that illegality. State v Copeland 463 S.E. 2d 620 (SC 1996)(quoting Wong Sun v United States, 371 U.S. 471 (1967)).

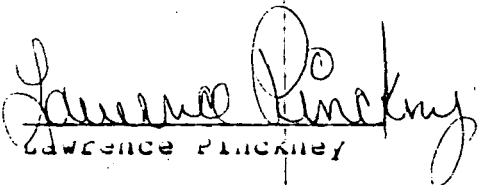
The warrantless arrest of the defendant requires an suppression hearing to determine the extent of the illegal actions pursuant to §17-13.40 of the South Carolina Code of Laws. The record shows the defendant was pick-up. The defendant says he was arrested at his resident an taken away by the officer.

CONCLUSION

Based on the foregoing, defendant prays for leave to supplement his PCR application.

Respectfully submitted

12/29/ 2011

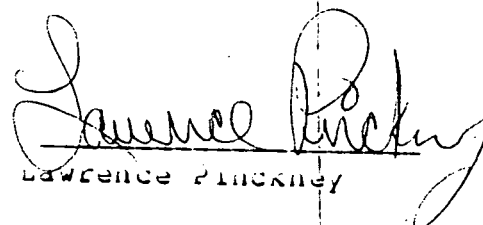

Lawrence Pinkney

Julie J Armstrong, Clerk
100 Broad Street, suite 100
Charleston S.C. 29401

RE: Lawrence Pinckney vs State of South Carolina
C/A NO: 2010-CP-10-9071

Dear Clerk,

Enclosed for filing is a copy of motion for leave to supplement that is served upon you for filing.


Lawrence Pinckney

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
LAWRENCE PINCKNEY, #337981)
Applicant,)
vs,)
STATE OF SOUTH CAROLINA)
Respondent.)

IN THE COURT OF COMMON PLEAS
C/A NO 2010-CP-10-9071
MEMORANDUM OF LAW IN SUPPORT
OF LEAVE TO SUPPLEMENT

JULIE J. ARMSTRONG
CLERK OF COURT

2012 JAN -3 PM 4: 22

FILED

The burden is on the applicant in a post-conviction proceeding to prove allegations in his applications. Butler v State, 286 S.C. 441, 334 S.E. 2d 313 (1985).

The right to counsel is a fundamental right of criminal defendant, it assures the fairness and thus legitimacy of our adversary process. Kimmelman v Morrison, 477 U.S. 370 (1986).

The record of the plea contains either an explanation of the charges by the trial Judge, or at least a representation by defense counsel that the nature of the offense has been explained to the accused. Henderson v Morgan, 426 U.S. 637, 649 (1975).

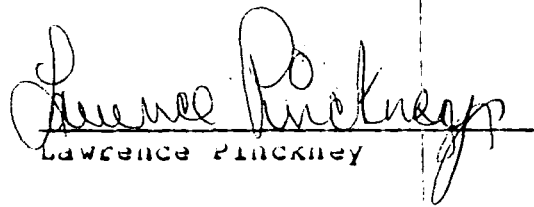
In this case the record is silent of the nature of the charge, as a matter of fact, the Judge never explained what the defendant is charge with.

2. The applicant has a fundamental right to effective assistance of counsel to do adequate investigation of his client warrantless arrest and suppression of evidence that came to light out for the illegal actions of the police. The applicant was without his fundamental right of effective assistance of counsel.

These are the supplemental amendment of the PCR. (The State failed to send the applicant a copy of his transcript when they a filed a Return. (The Return shall include the transcript of the challenged proceedings. S.C. Code §17-27-70(a),) the PCR is not successive because the State did not send me the challenged proceeding. The burden is on the State to established prejudice.

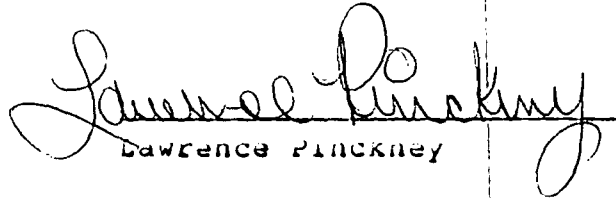
Respectfully submitted

December 28, 2011


Lawrence Pinckney

CERTIFICATE OF SERVICE

The undersigned hereby certify that he cause to be mail the foregoing Motion For Leave to Supplement his PCR to Julie Armstrong, Clerk of Court and Matthew J. Freeman, Assist Attorney General this 29 day of December 2011 by depositing same in the U.S. mail.


Lawrence Pinckney

JULIE J. ARMSTRONG
CLERK OF COURT

2012 JAN -3 PM 4: 22

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
LAWRENCE PINCKNEY, #337981)
Applicant,)
vs,)
STATE OF SOUTH CAROLINA)
respondent.)

IN THE COURT OF COMMON PLEAS
C/A NO 2010-CP-10-9071
MEMORANDUM OF LAW IN SUPPORT
OF LEAVE TO SUPPLEMENT

2012-JAN-3 PM 4:22
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

The burden is on the applicant in a post-conviction proceeding to prove allegations in his applications. Butler v State, 260 S.C. 441, 334 S.E. 2d 513 (1985).

The right to counsel is a fundamental right of criminal defendant, it assures the fairness and thus legitimacy of our adversary process. Kimmelman v Morrison, 477 U.S. 370 (1986).

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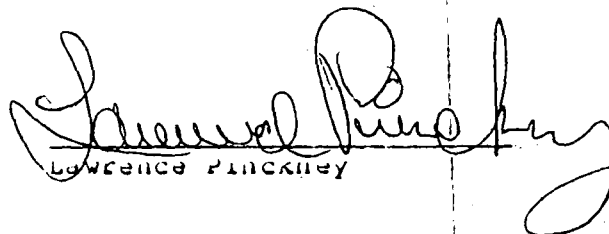
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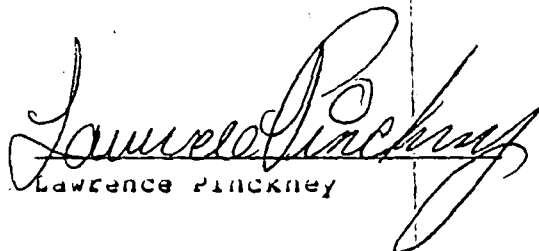
Respectfully submitted

December 28, 2011


Lawrence Pinckney

CERTIFICATE OF SERVICE

The undersigned hereby certify that he cause to be mail the foregoing Motion For Leave to Supplement his PCR to Julie Armstrong, Clerk of Court and Matthew J. Freeman, Assist Attorney General this 29 day of Decemoer 2011 by depositing same in the U.S. mail.


Lawrence Pinckney

2012 JAN -3 PM 4:22
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

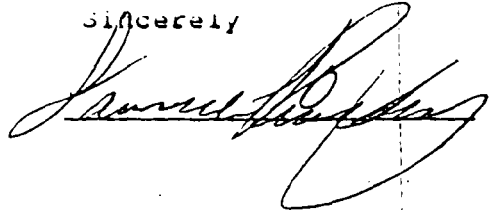
Julie J Armstrong, Clerk
100 Broad Street, suite 106
Charleston, S.C. 29401

Dear Clerk,

Enclosed for filing are transcript of guilty plea, motion for leave to amend, and objections to the conditional order of dismissal to be served on the honorable Kristi L. Harrington.

Also, for filing is a copy of objection to the conditional order of dismissal and motion for leave to amend, please return stamp filed copy to me.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel R. [unclear]", written over a horizontal line. The signature is cursive and somewhat stylized.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
LAWRENCE PINCKNEY, 337981

IN THE COURT OF COMMON PLEAS
 FAMILY COURT

Plaintiff

CASE NO.

2010-CP-10-9071

v.
STATE OF SOUTH CAROLINA

Defendant

MOTION INFORMATION FORM
AND COVER SHEET

check box above indicating submitting party

name, S.C. Bar no. and address of plaintiff's attorney	name, S.C. Bar no. and address of defendant's attorney
Lawrence Pinckney, 337981 PO BOX 205 Ridgeville, S.C. 29472	Assist Attorney General Matthew Freeman PO BOX 11549, Columbia, SC 29201
telephone: _____ fax: _____ e-mail: _____ other: _____	telephone: _____ fax: _____ e-mail: _____ other: _____

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Leave to Amend

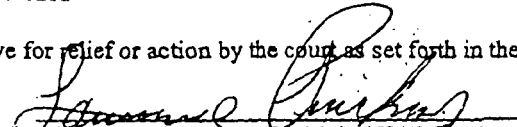
Estimated Time Needed: 15 min.

Court Reporter Needed: YES / NO

SECTION II: Motion Type

- Written motion attached
 Form Motion -

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for Plaintiff / Defendant

12-2-11
Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: _____
 EXEMPT: (check reason) Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court, or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

- MOTION FEE COLLECTED: _____
 CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

LAWRENCE H. PINCKNEY, #337981
Applicant,

vs,

STATE OF SOUTH CAROLINA
Respondent.

) IN THE COURT OF COMMON PLEAS

)
) C/A NO: 2010-CP-10-9071

) NOTICE AND MOTION FOR LEAVE
) TO AMEND POST CONVICTION
) APPLICATION

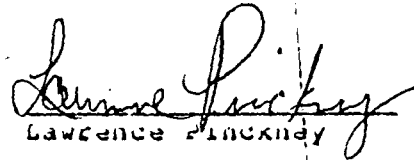
This matter comes before this court by the applicant for leave to amend his post conviction application filed on November 1, 2010. This motion is made pursuant to SCRCP 15(a) and 917-27-00 of the South Carolina Code of Laws.

The applicant now move to Amend:

1. That his guilty plea was involuntary and unintelligently made to the Court and violated Due Process.
2. That applicant counsel was ineffective during the sentencing phase of his plea, whereas counsel never filed motions after sentencing to bring to the court attention that applicant never plea guilty to manslaughter according to *Boykins v Alabama*, 395 U.S. 238 (1969) and *Follett v Henderson*, 411 U.S. 253, 257 (1973). In *Boykin* the record must show the charges against the applicant. In *Henderson*, Due Process is satisfied by the defendant's own solemn admission "in open court that he is in fact guilty of the offense with he is charged.

3. Counsel was ineffective because of negotiate sentence which exceeds the maximum minimum sentence for manslaughter, which the prosecutor had no authority to negotiate, counsel failed to file motions after sentencing.

December 2 2011.


Lawrence Finckney

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Lawrence Pinckney, #337981

Applicant

C/A NO 2010-CP-10-9071

vs,

STATE OF SOUTH CAROLINA

Respondent

OBJECTION TO CONDITIONAL ORDER
OF DISMISSAL

This matter is before this Court by way of an application for post conviction relief filed November 1, 2010. The Applicant was indicted at the June 2008 term of the Charleston County Grand Jury for murder (2008-GS-10-4528). Mark Peper, Esquire represented the Applicant. On November 16, 2009, the Applicant pled guilty under Alford to the lesser-included offense of voluntary manslaughter. The Honorable J.J. Nicholson, Jr. sentenced him to confinement for twenty-two (22) years pursuant to a negotiated sentence.

The applicant filed his first application for post conviction relief on April 30, 2010, which was filed without the transcript of guilt plea. This PCR hearing was held September 13, 2010 and an Order denying relief has been filed on September 25, 2010.

On October 5, 2010 William Runyon, Jr sent me the guilty plea transcript and it was read for the first time after that date.

(Then the Applicant filed his current PCR C/A 2010-CP-10-9071) on November 14, 2011. (After review of the application for PCR it appears that the issues raised was not genuine for the Post Conviction Act, and pursuant to 15 (a) Applicant moves to amend his PCR application.)

The Applicant could not have known the error in excepting his Alford plea before now because the plea transcript was withheld by PCR attorney William Runyon, Jr. See letter dated October 5, 2010].

In Applicant motion for leave to amend his states three claims:

1. That his guilty plea was involuntary and unintelligently made to the court and violates Due Process.
2. That applicant counsel was ineffective during the sentencing phase of his plea, whereas counsel never filed motions after sentencing to bring to court attention that applicant never plead guilty to manslaughter according to Boykins v Alabama, 395 U.S. 289 (1969) and Follett v Henderson, 411 U.S. 253, 267 (1973). In Boykins the record must show that charges against the applicant.

In Henderson Due Process is satisfied by the defendant's own solemn admission "in open court that he is in fact guilty of the offense with he is charged. The record is void of this admission

3. Counsel was ineffective during the sentencing phase because of the negotiate sentence which exceeds the maximum minimum sentence for manslaughter, which the prosecutor had no authority to negotiate for or secure a sentence that exceeds the statutory minimum for the offense of which a accused will be convicted.

The Applicant object that this court finds the current PCR application must be dismissed because it is successive to the Applicant's prior application, because the record of the guilty plea was withheld by substituted counsel William Runyon, Jr. until October 5, 2010 long after the first PCR hearing.

(The Applicant object that successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application citing Alice v State, 305 S.C. 448, 409 S.E.2d 392 (1991) because the Applicant had not had one full bite at the apple.) Its a well known fact that the client's file belongs to the client. (Matter of Haddock, 321 S.E.2d 601, and this court's refusal to hear the claims would constitute a gross miscarriage of justice. Fundamental fairness entitles indigent Applicant to an adequate opportunity to present their claims fairly within the adversary system.

It is the States return that shall include the transcript of the challenged proceedings S.C. Code Ann. §17-2770(a). Why

Applicants transcript was not given is beyond the applicant's control.

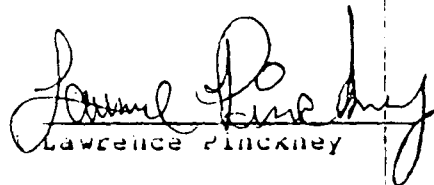
The Respondent alleges that the court find that Applicant has failed to established sufficient reason why he could not have raised his current allegations in the previous application, the Applicant objects because the current application is not genuine for for PCR hearing, it is the motion for leave to amend this PCR application hat is before this Court.

The Respondent states that based upon its view of the pleadings in this matter, this Court does not see the need to appoint counsel to represent the Applicant, Applicant objects, because if the Court grant leave to amend, then the claims that will be heard need counsel, after all, the Henderson court states "a guilty plea for federal purpose is a judicial admission of guilt conclusively establishing a defendant's factual guilty citing Lefkowitz v Newsome, 420 U.S. 282, (1975) and this record is void of those facts.

Having objected to the Respondent conditional order of dismissal Applicant pray this Court would grant leave to amend.

Dated

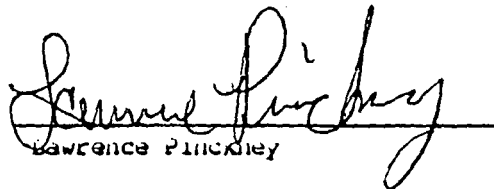
December 5, 2011


Lawrence Pinckney

CERTIFICATE OF SERVICE

The undersigned hereby certify that cause to be mail the foregoing motion for leave to Amend and Objection to conditional order of dismissal to Kristi L. Harrington, Administrative Judge 9th Judicial Circuit and Matthew Freeman, Assist. Attorney General this 4 day of December, 2011 by depositing same in the U.S. mail postage prepaid.

Assist. Attorney General
Matthew Freeman
PO BOX 11549
Columbia, S.C. 29201


Lawrence Pinckney

RECEIVED

JAN 10 2013

S.C. Supreme Court

JK

JA.

SC Court