

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUN 09 2026

APPEAL FROM SPARTANBURG COUNTY
Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2023-001693

SC Court of Appeals

THE STATE

RESPONDENT

v.

IN RE TIMOTHY J. MCKINNEY,

APPELLANT.

PETITION FOR REHEARING
OR SUGGESTION FOR REHEARING
EN BANC

Timothy J. McKinney
Sedco #287844
Lieber-Carrs Inst.
Post Office Box 205
Ridgewood, SC 29472
Appellant.

S.C. Attorney General's Office
Lembert C. Dennis Building
Post Office Box 11549
Columbia, SC 29211
Respondent.

FOR LEGAL USE ONLY

REHEARING REASONS FOR GRANTING APPEAL

On August 02, 2024, Appellate Counsel of Record Robert M. Dudek filed and Anders brief, petitioned to be removed as counsel, and Designates of matter to be included on appeal, without informed consent by Appellant in which had the ultimate authority to make certain fundamental decisions regarding his case.

At some point the case was contacted to Appellate Counsel David Alexander and the Appellant case file before Counsel Alexander, he elected to do nothing. After careful consideration, Appellant filed a supplemental brief in propria persona including issues to press non-trivial claims and moved to amend the Anders brief.

The Appellant aver that if an appointed attorney finds a proposed appeal to be "wholly frivolous" the attorney may request to withdraw from the case without including valid issues preserved at trial. To not first inform the client of the attorney's intention and give their client the opportunity to either withdraw the appeal or allow to review the attorney's brief and proceed to file the client's own briefs constitutes a clearly established law violation found in *Martinez v. Court of Appeals of California, Fourth Appellate District*, 528 U.S. 152 (2000) (quoting *Farette v. California*, 422 U.S. 800

The Appellant take affirmative steps to suggest
a) affirmative vote of the full court pleading for votes of 5/10/60
members of the Court of Appeals to hear or rehear appeal & Anders
proceeding en banc. See S.Ct.EL Ltr 219(a) & (b)

The Appellant raise to the Court of Appeals grounds
presenting the proceeding involves a question of exceptional importance. The
Appellant asserts the court of appeals overlooked that the Anders procedure
is only one method of satisfying the Constitution's requirements for indigent
criminal appeals and are free to adopt different procedures so long as
those procedures adequately safeguard a defendant's right to appellate counsel.
See *Smith v. Robbins*, 528 U.S. 259 (2000). The Appellant aver that the
Court of appeals should have:

(1) conduct an independent review of the entire record
for non-frivolous issues finding

(A) there exist within the record a lack of a written
summary of the factual and procedural history of
the case with citations to the record, to the
appellant and the court known as a Wende brief.
See *People v. Wende*, 25 Cal. 3d 386, 600 P.2d 1071;
A standard for a procedure that is adequate and
effective to establish a Fourteenth Amendment, U.S.
Const. violation.

FOR LEGAL USE ONLY

(2) The three judge panel erred when holding Appellant to the Standard of Anders when considering his Fourteenth Amendment Rights that was not wholly frivolous ruling contrary to Smith v. Robbins, 528 U.S. 259 (2000).

(3) The three judge panel liberally construed Appellants claim under the Anders analysis and misapplied the application when denying Appellant's briefs and dismissing the appeal in error.

(A) The three judge panel was tasked to satisfy itself that the attorney fees provided the client with a diligent and thorough search of the record for any arguable claims that might support the clients appeal. Second, determine whether Counsel has correctly concluded that the appeal is frivolous.

(B) Had the three judge panel held Appellate Counsel David Alexander accountable, in *Leffers*'s review the entire record the Court should have found Appellant preliminary hearing was cancelled to establish probable cause and the action on the arrest warrant was no action taken within ninety days (90), and there is no record Appellant was indicted for murder.

(B)(1) The Appellant learned on May 28, 2026, that his preliminary hearing was cancelled without his consent that was not a tactical strategy because it deprive Appellant of the right to call into question potential jurisdiction. The Appellant have the right to raise grand jury abuse under the underlying claim of prosecutorial misconduct for the first time on Appeal. *Evans v. State*, 363 S.C. 495, 611 S.E. 2d 510, "whether the Appellant constitutionally right to have the criminal allegations against him weighed by a properly constituted grand jury has been violated."

FOR LEGAL USE ONLY

CONCLUSION

Based on the above foregoing recore set forth the Appellant ask the Court to determine whether the Court satisfied itself of the properly presented claims to establish if a merit brief is necessary for the Appellant to avoid himself of a (a) unconstitutional conviction and illegal sentence. The Appellant further ask the Court to remand in part or in whole to ensure a fundamental miscarriage of justice does not occur and plead for the Court to rehear en banc.

Done This 09th Day of June, 2026,
Respectfully Submitted,

By Timothy J. McKinney

Timothy J. McKinney

Sec# 287894

Liefer Carr. Zeh

Post Office Box 205

Lidgeville, SC 29472

Appellant.

FOR LEGAL USE ONLY

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUN 09 2026

APPEAL FROM SPARTANBURG COUNTY
Honorable L. Keith Kelly, Circuit Court Judge SC Court of Appeals
Appellate Case No.: 2023-001693

The State of South Carolina,

Respondent,

v.

In re Timothy J. McKinney,

Appellant.

PROOF OF SERVICE

I, Timothy J. McKinney, do hereby certify that on this day of June, 2026, served the foregoing instrument & petition for rehearing upon Alan M. Wilson, at South Carolina Attorney General's Office, Leander C. Dennis Building, Post Office Box 11549, Columbia, SC 29211, by depositing a true copy of the same in the internal mailing system at Lieber Correctional Institution.

St. Timothy McKinney
Timothy J. McKinney
SCDC# 287844
Lieber Corr. Inst.
Post Office Box 205
Ridgewood, SC 29472

FOR LEGAL USE ONLY

Timothy J. McKinney
S.C. # 287894
Lieber Correctional Institution
Post Office Box 205
Ridgeway, SC 29172

June 04, 2026

RECEIVED

JUN 09 2026

SC Court of Appeals

Clerk Terry Abbott Kitchens
South Carolina Court of Appeals
Office of the Clerk
Post Office Box 11629
Columbia, SC 29211

Re: The State of South Carolina v. Timothy J. McKinney
Case Action No. 2023-001693
Petition For Rehearing

Dear Madam Kitchens:

ENCLOSED PLEASE WILL YOU FIND one (1) Petition
for rehearing or suggestion for rehearing En Banc. Would you please
file the enclosed petition within this office and Court. I ask further
would you please forward me a copy for my records a stamp - clocked
filed furnished copy of this correspondence. I thank you in advance and
again for your prompt attention to this legal matter, cooperation, and service.

Yours Truly:

Timothy McKinney
Timothy J. McKinney

FOR LEGAL USE ONLY

Timothy J McKinney 287844
Lieber, Corr. Inst MA 107
Po Box 205
Ridgeville SC 29472

RECEIVED

JUN 09 2026

SC Cou of Appe

Clerk Jenny Abbott Hitchings
South Carolina Court of Appeals
Office of the Clerk
Po Box 11629
Columbia SC 29211

RECEIVED

JUN 05 2026

MAIL ROOM
LIEBER C.I.