

Volume II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dillon County

J. Michael Baxley, Circuit Court Judge

RECEIVED

FEB 11 2014

S.C. Supreme Court

SHAHEEN CABBAGESTALK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212579

APPENDIX

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOSHUA L. THOMAS
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
HEARING TRANSCRIPT OF BOND REDUCTION MOTION DATED MAY 31, 2007	1
HEARING TRANSCRIPT OF SPEEDY TRIAL MOTION DATED JULY 26, 2007	11
GUILTY PLEA TRANSCRIPT DATED AUGUST 27 TH AND 28 TH , 2007	19
<u>STATE V. CABBAGESTALK</u> OP. NO. 2009-UP-528 (S.C. CT. APP. FILED NOVEMBER 19, 2009)	139
APPLICATION FOR POST-CONVICTION RELIEF	141
RETURN	170
HEARING TRANSCRIPT OF MOTION TO RELIEVE COUNSEL DATED SEPTEMBER 14, 2010	177
ORDER DIRECTING APPLICANT TO CEASE CONTACTING CLERK'S OFFICE FILED JANUARY 26, 2011	206
HEARING TRANSCRIPT OF RENEWED MOTION TO RELIEVE COUNSEL DATED SEPTEMBER 12, 2011	207
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 15, 2012	217
APPLICANT'S EXHIBIT # 1	285
MOTION OF RECUSAL OF PCR JUDGE DATED MAY 23, 2012	605
ORDER DENYING POST-CONVICTION RELIEF FILED JUNE 6, 2012	612
INDICTMENT AND SENTENCE SHEET	625

Certificate of Service

This is to show forth on 7-22-10

Dillon County Clerk of Courts Gwen T. Hyatt
 was served with A Summons on the
 writ of Mandamus Mailed from McCormick
 Corrections by me Sheleen Gabbagestalk
 # 295567 on 7-21-10

By: Sheleen Gabbagestalk

Notary: Joyce L Young
 my Commission Expi: 8 / 28 / 2011
 Date: 7 / 23 / 10

✓ Proof
 I filed this
 I regards to Recovering
 my Grand Jury Impanelment
 Documents Cause
 Lawyers wouldn't do Nothing
 Heather M. Cannon or
 David Paul Jordan

502

Request ^{Exhibit}

TO: MAIL ROOM
STAFF MS. Merchant

ONLY for
NO ONE ELSE

PER CASE:

2010-CP-17091

DM: S. Gabbag/estalk
295567 B-Y-1

ATE: 7-24-11

Proof I

Asked David Jordan

and MS. Heather M. Cannon

for Subpoenas for my

PCR

2010-CP-17091

Hi! This is to certify that

This letter was sent to the
South Carolina Court of Administration in
regards of Subpoenas of my PCR
Case and lawyers David Jordan/Heather M.
Cannon

I also would ask you to please have all
debit forms I sent you all with mail back to me
ie sent out like 3 and requests to certify my mail was
sent out I'm sure if you get this request you'll have it sent
back immediately Send me some Debit forms D.K please

Thanks There

Mail Room
lady of Perry
correction

7/25/11 M. Merchant

Certificate of service

I Shaheen Gabbagastalk
 served a writ of mandamus on Dillon
 County clerk of court's per. Evans, state
 and S.C.D.C. policy op-21.09 Inmate Records
 plan asked for grand Jury Impanelment
 Documents and S.C.D.C. produce a valid
 Commitment ORDER / Sham legal process
paperwork

By: Shaheen Gabbagastalk
without prejudice UCC 1-207

Notary: Joyce L Young

Date: 7 / 21 / 10

My Commission EXP: 8 / 28 / 2011

Proof I sent to
 her she had Judge
 Michael J. Bakley
 told her in sham legal process
 to tell me stop filing paperwork
 Lawyers wouldn't answer me
 period

Certificate of service

this is to Advise the Courts
 that I asked Desiree R. Allen of
 S.C. Court Administration to Assure
 Clerk Gwen T. Hyatt does her job properly
 by Advizing the Attorney General's office
 Per. Rule 12 Civil Action # 2010-Cp-17091
 they are at Default and No paper work will be
 Accepted to be filed from them in 2010-Cp-17091
 Action.

By: Shakeen Cabbagestalk
without prejudice UCC1-207

Notary: Joyce L Young
 My Commission Exp: 8 / 28 / 2011

Date: 7 / 21 / 10

EXhibit

State violated
 Rules of Court and at
 Default only Asking
 for what they do to Me
 Lawfully By the Rules
 of Court
 Rule 12 (A)
 Rules of Civil Proc.

I Shaheen Cabbagestalk Notified Dillon
County clerk of Courts That the state
has violated Rule 12 and a Motion for Default
was filed they've passed there 60 days to respond
back in civil action # 2010-CP-17091
Rules Notice of violation filed 7-14-10

By: Shaheen Cabbagestalk
without prejudice ucc 1-207

Notary: Joyce L. Loney

Date: 7-14-10

My Commission Exp: 8/28/2011

Proof of
Violation of
Rules of
Court +
Never Responded
Period until
this very day

This is to certify that I sent Attorney
Mr. David Jordan a Request and asked
his cooperation to comply with Rule 7.1
of Civil Procedure in regards to Discover-
ry materials in Case 2010-Cp-17091

and to respond to the "11" things I request
-d soon as possible. Also I need the
PCR Court Transcript of Sept. 14th 2010 the Day
Ms. Heather M. Cannon Represented me at PCR Courts
in Darlington SC. I also request you send me SCDC Policy
By: Sheheer Cabbageshell

Op-21.09
Crime
Records
plans

without prejudice ucc1-257

10-15-10

Notary: Therany L. Mink

my Commission Exp: Feb 1/28/2015

Date: 10 / 15 / 10

Proof canibit

of Request's
and never
Responded
Back period

Certificate of Service

507

proof

Clerk
Gwen T. Hyatt

Apart of sham legal process
Aiding state Not doing
her job

This is to certify that
PCR paper work was sent in
to the Supreme Courts to Clerk
Daniel E. Shearouse which consisted
of 2 Big Brown Manilla Envelopes
of PCR paperwork labled #1, #2, #3
With an 42¢ stamped Enveloped Enclosed
addressed to Gwen T. Hyatt of Dillon County
Clerk of Courts but was sent to Supreme
Courts for assistance to assure it's filed do
to lack of Responses by Clerk Gwen T.
Hyatt and with holding and not filing paper
work. And letters within Envelopes addressed
to Clerk Daniel E. Shearouse the reason it's sent
to him asking for his assistance in this
matter and 12 on Last 2 pages to the PCR Application.

By: Shaheen Cabbagestalk

without prejudice ucc 1-207

Notary: Jennifer C Franklin

my Commission Expires: 01 / 31 / 2010

Date 03 / December / 2009

Certificate of service

This is to certify Ms. Gwen T. Hyatt Clerk of Courts was asked Did she receive my (PCR) And if not could she contact Daniel E. Shearouse of Supreme Court of S.C. to ask why he hasn't sent it to her yet I sent it to him before Christmas holidays and new year

By: Shahoon Abbaga HAK

Notary: J. C. Franklin

My Commission expires: 12/16/2019

Date: 01/13/10

proof
these officials
held my 1st PCR
and never returned
it probably gave it
to the state Attorney
General's office

Certificate of Service

This certificate of service certifies that Attorney David Jordan and Attorney Heather N. Cannon was served with a Request by Mr. Shaheen Cabbagestalk of 11 things needed to prepare for the next upcoming PCR scheduled hearing which I am to attend according to the judge's decision the day of PCR hearing in which a continuance was granted.

By: Shaheen Cabbagestalk
without prejudice ucc 1-207

Notary: J. A. Rankin
 Date: 9/17/10

My Commission Expires: 12/16/2019

(cc)

Proof
 Sept. 14th 2010
 Went to Court
 Got Continuance
 Asked Both Attorneys
Ignored totally

Certificate of Service

This is to Certify that
 I served the U.S. Attorney
General Eric Holder personally
 with the situation of false imprisonment,
 my Indictments, Sham legal process and being
 in S.C.D.C. and more

By: Shaheen Gabbagestalt

without prejudice u.c.c 1-207

Notary: Joseph L Young

Date: 08 / 04 / 10

My Commission EXP: 8 / 28 / 2011

EXHIBIT
 I served
 U.S. Attorney
 General Eric Holder
 personally in Washington
 D.C.

place / R P Q W, T

Exhibit 511

To: Mrs. Merchant
Mail Room

PCRC Case
2010-CP-17091

From: S. George State
D-X#6 Smu

5/31/11

Please notify me via Review
this letter to Supreme Court
on Rule 240 Appeals Court
Frustrated Appeals By my Appellant
Lawyer Kathrine
Hudgins



Received 1 envelope
9-4-11 re Menden

☒ ONLY FOR
NO ONE ELSE

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS Return Back please
REQUEST TO STAFF MEMBER

TO: NAME: Mail Room ms. MERChant	TITLE: mail free of Charge	DATE: 8-6-11
INMATE'S NAME: S. Cabbagessu IK		SCDC #: 295567
INSTITUTION: PERRY		LIVING QUARTERS: D-X-# 6

Hi! ms. MerChant I ask you certify that
you received these 2 letter to the

Supreme Court's S.C. Court Administration by signing
or stamping this REQUEST

① letter to S.C. Courts Admin. PCR Court's

① letter to S.C. Courts Admin. ON violations of Rule 240
Appellant Courts ms. Kathrine Hudgins Did Not follow

⊗ Please return to certify you received and sent out mail!!

DISPOSITION BY STAFF MEMBER:

Received 2 letters

DATE: 8/8/11	SIGNATURE: MC Merchant
--------------	------------------------

*never
want to court
in mayroll*
Continuance

**Manning Law Firm
of
South Carolina, P.A.**

Attorney and Counselor At Law

G. BLUMENTHAL MANNING

May 25, 2011

VIA EMAIL AND REGULAR MAIL

JBAXLEY1@SCCOURTS.ORG

Hon. Michael J. Baxley
Administrative Judge
531 East Carolina Avenue
Hartsville, South Carolina 29550

RE: Shaheen Cabbagestalk, 295567 vs State of South Carolina
2010-CP-17-0091

Dear Judge Baxley:

As you are aware, I am working with the Solicitor's office in Sumter, South Carolina. I have been PCR'd in the Shaheen Cabbagestalk matter. During that week in Sumter, we have General Session jury trials. Earlier, I had received a call from Tammy Tompkins of Heather Cannon's office, attorney for Cabbagestalk asking if I would consent to it being continued until Wednesday, June 8, 2011. At that juncture, I advised her that I could not comment one way or the other because I am scheduled to try a murder case starting Monday, June 6, 2011 involving three (3) co-defendants. It has been confirmed that that trial will go forward. As such, I ask to be excused from the PCR hearing the week of June 6, 2011. By copy hereof, I am advising Karen Ratigan, Esquire of the Attorney General's Office and Heather Cannon, Esquire, attorney for Shaheen Cabbagestalk.

Sincerely,

MANNING LAW FIRM OF S.C., P.A.

Glenn B. Manning
Attorney At Law

GBM/wg

cc: Karen Ratigan, Esquire
Heather Cannon, Esquire

Bennettsville Office
114 Cheraw Street
Post Office Drawer 1156
Bennettsville, South Carolina 29512
(843) 479-9570
Fax: (843) 479-1390

Dillon Office
106 MLK Boulevard
Post Office Box 1427
Dillon, South Carolina 29536
(843) 774-8495
Fax: (843) 774-6808

REPLY TO:
DILLON

*Request for
Continuance
Didn't even
have a
may it
was scheduled
for June so
what was the
purpose of this
Attorney not being
in court June
or September
2011 there was
no trial then*

IN THE COURT OF COMMON PLEAS

CASE NO. 10-CP-17-071

State of SC
295567

State of SC

PLAINTIFF(S)

DEFENDANT(S)

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. Non-suit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other - _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other - _____

FILED
GIVEN T. HART
2010 SEP 17 PM 10:07
CLERK OF COURT
DILSON COUNTY

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

*Case is continued to next PCR Term
1/2 will be heard @ The next term. Mr. Cabbage stalk
can either represent himself or take advantage of his court
appointed lawyer, Ms. Heather Cannon. Either way the case will be
heard.*

Dated at Darlington, South Carolina, this 11/4 day of Sept, 2010.

[Signature]
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, _____, and a copy mailed first class this _____ day of _____, _____, to attorneys of record or to parties (when appearing pro se) as follows:

David Jordan

Karen Botigan

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
CLERK OF COURT

IN THE courts of Appeals

Appeal from Dillon County

Judge Howard P. King, Circuit Judge

515
file

AUG 28 2008

ATTORNEY GENERAL

James Cabbagestalk

APPELLANT

v.

THE STATE

Respondent

Brief of Appellant

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
Statement of Issue on Appeal	(3)-(4)
Statement of THE CASE	(5)-(6)
ARGUMENT	7, 8, 9, 10, 11
CONCLUSION	(12)

ABLE of AuthoritiesCases

- U.S. v. Rabinowitz, 339 U.S. 56, 60
State v. Golphin, 533 S.E. 2d 168, 352 N.C. 364
Davis v. Mississippi, 394 U.S. 721, 89 S.Ct 1394, 22 L.Ed. 676
Brown v. Illinois, Supra pp 2257 - 2258
Witanda v. Arizona, Supreme Court of U.S. 384 U.S. 436 (1966)
George v. Leonard, 71 F. Supp. 662
George v. Leonard, 84 F. Supp. 205, 178 F.2d 312
West v. Cabell, 153 U.S. 78 145 S.Ct. 752 38 L.Ed 643
Wong Sun v. U.S., 471, 83 S.Ct. 407, 9 L.Ed. 2d 441
United States v. DOE, 703 F.2d 745
Wang v. Bonner, 621 F.2d 675, 682
State of North Carolina v. Dennis "Buckwheat" McEntire, 323 S.E. 2d 439
Cutner v. State, 354 S.C. 151, 155 S.E. 2d 494, 500 (2005)
Santobello v. New York, 92 S.Ct. 495, 404 U.S. 257
McGraw v. Daugherty, 273 U.S. 135, 154-157
State v. Gentry, 363 S.C. 93, 103 610 S.E. 2d 494, 500 (2005)
John v. Tribune Co., 24 Ill. 2d 437, 181 N.E. 2d 105, 107
People v. Mellon, 171, 11 N.Y.S. 2d 786, 790
State v. Neal, 231 La. 1048, 93 So. 2d 554, 556
State v. Abraham, 338 N.C. 315, 451 S.E. 2d 131 (1994)
Mayer v. Galley, 858 F.Supp.
Reed v. Becka, 511 S.E. 2d 396

Statutes

N.C.G. § 15A-923(e)

§ 17-25-10

§ 17-19-10

§ 24-21-560(D)

§ 16-11-330(A)

Constitutional rights

4th amendment of Constitution

5th amendment of Constitution

6th amendment of Constitution

8th amendment of Constitution

14th amendment of Constitution

Statement of ISS'2 ON APPEAL

Did police, Judges violate Mr. Shaheen (n) R. Cabbagestalk Constitutional rights 4th, 5th, 6th, 8th, 14th?

The incident report that police officer MA. Michael Glen Barfield, JR. wrote does not once say Shaheen (n) R. Cabbagestalk name and it does n't say what Mr. Dillard said on Stand which Report is IM peaching to his testimony and as Mr. Barfield states it was done after 24 hrs. which gave him enough time to fix report if it was wrong according to his training in police academy. so is this inconsistent with trials testimony of Mr. Dillard as Mr. Barfield related? it is what he was told?

The incident report has 2 different years on it 2006, 2007 which dates are nearly a full year apart, this incident report was said by Mr. Dillard to be wrong and by officer Barfield exactly what he said is this incident report Reliable?

Did Judge violate Mr. Shaheen (n) R. Cabbagestalk rights and err in making fast and speedy trial motion himself which he admits to and I never consented to or signed any paper work, and was compelled by fast and speedy trial motion which was illegal do to the fact Due process and constitutional rights protect me against Un noticeable offenses and I was never indicted?

Did the Judge err in Compelling Mr. Shaheen (n) R. Cabbagestalk to trial being he was never indicted from start, then amending the indictment after grand jury was already sworn, trial illegally began by changeing the name on the indictment which is a notice document from James Cabbagestalk to Shaheen (n) Ramel Cabbagestalk whom still not me after he accepted Compelled plea on charge not for me?

Solicitor lied in court and told the Judge there were no plea negotiations negotiated and Mr. Shaheen (n) R. Cabbagestalk can produce forth to show Solicitor lied and this could've made big difference did Judge err in taking Solicitor word face value and not asking me or Attorney Do we have anything to show other wise?

As there is nothing on record or transcript which indictment the Judge amended but indictment paperwork show he Amended wrong indictment. Only assault and battery with Intent to kill was amended the actual Indictment which Mr. Shaheen (n) R. Cabbagestalk was sent to prison for isn't amended and is for James Cabbagestalk. There's no aligs on it. The assault and Battery with Intent to kill was not pros. So what was done by this Judge is very fatal and the Commitment/ Sentencing sheet still for James Cabbagestalk which is invalid And is the Armed robbery Indictment. Did Judge err fatally which leaves sentence Invalid and wrong person?



STATEMENT OF ISSUE ON APPEAL Continued

519

- Attorney Glen Manning told judge he seen birth certificate and James Cabbagestalk isn't me, Probation agent ms. Fore told Judge James Cabbagestalk isn't me or in there records, my mom told and showed attorney Manning it's not me did the judge err in continuing trial after finding out this?
- I never consented to the amendment of any indictment and didn't waive grand jury presentment. The judge should've quashed the indictment as insufficient because it didn't say my name and I objected timely. Was this err for judge to continue?
- If the judge amended an indictment because it wasn't the person whom was at trial did he err in putting the same name he amended the indictment from back on sentencing sheet? (See A/B/H/F/K see sentencing sheet)
- We all know an indictment is a Notice document and is connected and sometimes come from warrants info. Would it violate Mr. Cabbagestalk's constitutional rights for warrants and indictments to say 3 different names and neither Mr. Shaheen or R. Cabbagestalk name?

now an plea was accepted on Armed robbery but Indictment wasn't for me, one can't answer to an offense not for him, notifies him, or has his name on it to prepare an defense. Judge King found out James Cabbagestalk wasn't me after he accepted plea and amended an indictment to try to make it me. The catch is he did not amend the indictment on record or on indictment paper work of the offense he gave me time on which was Armed robbery. This judge amended Assault and Battery with intent to kill which already was dropped an dead offense and indictment. Judge Howard P. King Gave James Cabbagestalk 18 years 85% Not Shaheen R. Cabbagestalk. A timely objection was made on the amending of the indictment which judge should've quashed cause I never waived grand jury presentment and was forced to trial by judge making fast and speedy motion without my consent forcing, persuading, compelling, coercing me to fear fully plea unwillingly, unintelligently, unknowledgeably. The indictment I Shaheen R. Cabbagestalk is in prison for isn't for me as Judge, Solicitor, probation agent, ms. fore, Attorney all admits to in trial on record. This there leaves the wrong person imprisoned, kidnapped freedom and rights violated with an invalid sentencing sheet/Commitment form. Also the (US) day time limit has passed per court standard for the state respondent to answer to the brief was filed, also there was no Extension(s) asked for to my knowledge and attorney's knowledge. There for the court's never advised either of us of an extension and what is asked we wish and pray is granted, since June 3rd 2008 this brief was filed and served on Salley W. Elliott Assistant Deputy Attorney General and Mr. Shaheen Cabbagestalk I'm not (James Cabbagestalk) whom is still a free man. Today is 8-10-08 (68) days exact no answer from respondent the state.

Continued ARGUMENT page 1

pg. 8, TR, Line 7 which clearly show entrapment, coercion, persuasion, Directing me in an way to illegally violate my 5th and 14th amend ments of the Constitution and eventually 8th cruel and unusual punishment. This has caused me to be witness against myself, incriminate myself by even having to answer to an offense not for me. an do know this was involuntarily if Judge Howard P. King would've NOT made this illegal motion without my consent or attorney consent then my 5th and 14th amend ments would've been honored this is why me and attorney asked for an continuance Line (5) 14-15 TR pg. 6, TR pg. 6, Lines 25, TR pg. 7 Line 1. per 5th amendment no person shall be held to answer for an Capital or other wise infamous crime unless by presentment of grand jury indictment, MARCH 5th 2007 James Cabbage stalk was indicted by Dillon County grand jury not Shahee(n) Rameel Cabbage stalk, 8/27/07 me and Counsel was compelled and coerced, persuaded and entraped to go to trial by this judge and wasn't to be in court room per Constitutional rights and Law period. After being forced to trial by judge illegally coercing, persuading me and attorney out of fear unvoluntarily, unintelligently, unwillingly I knew since my rights weren't honored I had to do something and out of fear of recieving 30 yrs. away from my kids, family, life, Freedom I plead because counsel never objected to my presence in court room and Judge had already forced, compelled, coerced, persuaded us to trial. I never got pretrial any hearing as requested by me and Attorney J. David Watson at the time to central courts I requested this Jan. 28th 2007, he did it Feb 6th 2007, no Bond hearing it mentally scared and scared me how my rights were violated and I was eventually gonna have to do time for an crime I didn't do or know anything about if it happened or not subjecting me to an 8th amendment violation cruel and unusual punishment. Now after I plead my Counsel whom had just came back from one of his family members funerals and straight back into trial in a daze like the judge had to ask him questions more than once or twice be cause of his lack of attention which judge shouldn't have allowed this pg. 48 Lines 22-23 of TR. Show's what I'm saying this is why an Competency hearing should've been held to assure me morning was focused after his cousin Mrs. Maimey's funeral and straight back in court room to trial NO. we all know the feeling of loosing a loved one is an mental break down, and disturbance of focus, which let me be subjected to ineffective assistance of counsel him not telling judge I don't even suppose to be in court room per 5th amendment, which is supported by 14th amendment Equal Due process of law. plus he never interviewed potential witnesses prior to trial which wasn't suppose to been had or chunk up per Law and my rights be failed to take timely steps to bring them to trial, and his interviewing defense witnesses in court, within hearing or interviewing prosecutor with him threatening my alibi alma Jackson with police threatening to lock her up if she came in court room, this reflected serious neglect of my interests, and prejudiced me he should've objected or did something about judge making illegal speedy trial motion see State of North Carolina v. Dennis "Buck wheat" McEntire Cite 5 323 S.E. 2d 439 Counsel showed serious neglect to my interests and violative to U.S.C.A. Const. Amend. 6 half, more than half majority weren't served with subpoenas and Lisa Brown and Randal Brown had be drawn up right atttrial and Alma ray Jackson the Alibi.

ARGUMENT

Constitutional rights were violated by police from arrest, Judges, and solicitor Mr. Redmond. 4th, 5th, 6th, 8th, 14th amendments of the Constitution, this prejudiced me took me away from my family, kids, lost my job, privacy, go on come as I please. U.S. v. Rabinowitz, 339 U.S. 56, 60; and if the arrest was illegal the admission of this evidence was reversible error, also Rule 3 and 4 of the federal Rules of Criminal procedure, State v. Golpin 533 S.E. 2d 168, 352 N.C. 364, Davis v. Mississippi, 394 U.S. 721, 89 S.Ct. 1394, 20 L.Ed. 676; Brown v. Illinois, supra pp 2257-2258, Miranda v. Arizona: Prior to police questioning Constitutional rights, George v. Leonard 71 F. Supp. 662, George v. Leonard, 84 F. Supp. 205, reversed 178 F. 2d 312; for being arrested without authority of law and illegally deprived of liberty. West v. Cabell, 153 U.S. 78 14 S.Ct. 752, 38 L. Ed 643: In this case a warrant was issued for the arrest of (James West) and a man name (Vandy M. West) had never been called or known as James. Like warrants for James Cabbagestalk but, Shaheen R. Cabbagestalk was arrested as law states in defense. The warrants was issued and intended for James Cabbagestalk. Under the Common law, "affirmed into American Constitutions," id at 36, 14 S.Ct. at 754, "a warrant for the arrest of a person charged with crime must truly name him, or describe him sufficiently to identify him." Id at 85, 14 S.Ct. at 753. See Wong Sun v. U.S. 471, 83 S.Ct. 407, 9 L. Ed. 2d 441, see United States v. Doe, 703 F.2d 745: Dealing with warrants not meeting 4th amend. requirement a 3rd circuit court held this, which James Cabbagestalk isn't me so how does warrants meet requirements. Wanger v. Bonner, 621 F.2d 675, 682. I never seen any magistrate judge at all until this very day and The police report Not once mentions my name Shaheen - Ramel Cabbagestalk. This report is very inconsistent and has 2 different years 1-1-07, 1-2-06 also wrote in 2 different pens. It is impossible for one on 1-1-07 to weigh 145 lbs. and on 1-12-07 weigh 200 lbs as county mugshot weight is shown in records for 1-12-07. police report mentions 3 different sets of family's or set of stockhouses whom are white, and another set whom are african, and Cabbagestalk's whom are africans the word (either) is used in the incident report clearly showing unsurecity. Also the address of [redacted] Mr. Cabbagestalk hasn't lived there since 2003 and been in prison all the way up till sept 06 year, the last person lived at [redacted] was Dave Bell month this incident report stated an alias or Name Woody which was never used and Judge ignored at trial and was never used this other name was put in its place (James Cabbagestalk) and you never here anything else about (woody) which definitely shows in consistant sy in incident report. Also it is never mentioned in court or from Mr. Dillard about knowing me from prison and at trial this guy state he knew me from the streets pg. 57 of TR. Lines 22-24, also pg. 65 of TR. Lines 6-10, also Line 15-18 of TR. pg. 65 shows total in consistant testimony than report and what Police Mr. Michael Glen Barfield, JR. say and wrote. Now furtherly my 5th and 4th amendments of the Constitution was violated by Judge Howard P. King Makeing an speedy trial motion for me without my consent compelling me to trial Coerceing and persvadeing and ~~entraping me~~ forcing me to plea unwillinly, unintelligently, unknowingly

Continued ARGUMENT Page 2

hers to. Trial Court never secured a list or asked for a list of missing witnesses
 even as solicitor stated some of his witnesses weren't present cause they had to work
 3rd shift last night pg. 75 TR. Line(s) 14-16 but Judge was bias in excusing these
 witness cause they worked and almaray Jackson was on her way to work forced to court house
 and threatened by police officer Douglas pernell and solicitor if she went in court room they'll
 lock her up is what she told me over phone after trial was over a few days later I called her.
 Counsel waited until after I plead unintelligently, unknowingly, involuntarily, out of fear,
 and told Court's I was never indicted TR. pg 104 Line(s) 15-20, Counsel told Judge
 after trial began he seen my Birth Certificate and James Cabbage stalk is n't my name
 Probation agent ms. fore told Judge this to, pg. 106 TR. Line(s) 16-17, solicitor
 Mr. Redmond agreed it's different names not me pg. 106 Line(s) 20-21 and attorney
 Manning pg. 107 Line(s) 3-5. then Judge asks for my consent and every bodies
 which every body isn't illegally coerced, compelled, persuaded to trial at this moment I am
 pg. 107 Lines 22-23. I told Judge King my name and he amended indictment.
 A bill of indictment may not be amended. N.C.G. § 15A-923(c), § 17-25-10. No person
 shall be punished until legally convicted, Article I § 17-19-10. offense shall be
 prosecuted upon grand jury indictment. I objected to this amending pg. 108
 Line(s) 21-24, pg. 109 of Transcript 1-17 Line(s) the Judge continued any
 way guiding and illegally coercing and persuading me pg. 109 1-8 Line(s)
 when he should've quashed indictment Cutner v. State, 354 S.C. 151, 155, 580
 S.E. 2d 120, 122-23 (2003). An indictment is not sufficient will result in
 the quashing of the indictment unless the defendant waives presentment and pleads
 guilty. And the plea is already explained ahead in brief why it was made, I
 didn't consent to the amendment of the indictment and did not waive grand
 jury presentment the judge should have quashed the indictment as insufficient
 because it did not list appellant's name which is me Shahee (N) Ramel Cabbages
 -talk. Also as this judge amended indictment on the record it never
 was said which on record which one he amended, but on indictment paper
 work it is shown that he amended the Assault and Battery with intent to
 kill indictment which was dropped by Judge and solicitor dealing with plea
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 bargaining in accepting guilty plea must be kept with strict good faith. The solicitor
 lied to Judge telling Judge there were no plea negotiations or an specific
 time negotiated pg. 99 TR. Line(s) 14-18. There's an plea negotiation for 10 yrs. plea
 to Armed robbery and all others concurrent, This specific offense Armed robbery which
 Judge convicted me of isn't for me or states my name. So that makes the
 Sentence invalid and indictment not for me or notifies me of any offenses.
Fatal variance: a variance indictment intending to mislead defendant in making defense or one
 preventing plea of former Jeopardy. A variance occurs when facts proved at trial are different
 not from those alleged in indictment, however variance constitutes grounds for reversal of conviction
 (24)

Continued Argument ③ page

- only when it affects defendants "substantial rights," that is when the variance deprives a defendant of sufficiently specific information to prepare a defense and to be protected against surprises at trial and prevents him from asserting his Constitutional protection against double jeopardy. So when rights are honored and respected and law it is factual that Judge Howard P. King gave James Cabbagestalk 18 yrs. & 5% and not Shaheen) Ramel Cabbagestalk nor was I ever indicted. McGrain v. Daugherty, 273 U.S. 135, 154-157. A person cannot incur the loss of liberty for an offense without notice and meaningful opportunity to defend. All exhibits will be presented with Brief to prove I am not James Cabbagestalk and Government officials messed up put together paper work, Birth certificate will be presented to court's if need be. But I trust that this brief is very supportive and pray that this case is overturned and vacated so I can return to my family and kids and that all law applied is respected and honored. I also ask the court's if anything is misinterpreted interpret it as it suppose to be. State v. Gentry, 363 S.C. 93, 103 610 S.E. 2d 494, 500 (2005) is asked to be applied to brief in reference only that "The indictment is an notice document. A.K.A: Also known as Alias; Term used to indicate another name by which a person is known short for "alia dictus" otherwise known as (A.K.A.) When used in connection with a description of a person, it indicates that he has used or been known by another name. John v. Tribune Co., 24 Ill. 2d 437, 181 N.E. 2d 105, 107. People v. Mellon, 171, 11 N.Y.S. 2d 786, 790, State v. Neal, 231 La. 1048, 93 So. 2d 554, 556. These are cases in support of assumed Aliases. James Cabbagestalk is said to be my real name or known by it as A/K/A Shaheen) Ramel Cabbagestalk An Alias this paper work is totally messed up (I am Shaheen) Ramel Cabbagestalk) I've never been known by either above stated name and ask the court's to relieve me as asked in conclusion. Indictment never states ~~that~~ I was robbed it states some one was robbed in his presence ~~not~~ him. In his presence mean simply in front, visually but not him this indictment is messed up and none of the paper work has my name on it or concerns me. The plea agreement for plea wasn't kept by solicitor and tied about not even spoke of which by law is violative of the range which was negotiated but kept from me and courts And went over plea negotiated time which was 10 yrs. The 5th amendment also bars future prosecution for the same offense which is Double Jeopardy. 14th amendment Due By: Shaheen Cabbagestalk process clause requires a fair trial which if never indicted I'm not suppose to be at trial. If any indictment is amend not by grand jury it's no longer grand jury indictment.

ARGUMENT 4

Also State v. Abraham, 338 N.C. 315, 451 S.E.2d 131; speaks of The Change of names substantially altered the charge set forth in the indictment which occurred in this situation. Also M. Ayers v. Galley, 858 F. Supp. 490, Reed v. Becka, 511 S.E.2d 396: Speaks of Breach of Contract Solicitor Lied to Judge in my case to tell Judge there was no plea agreement After I pled guilty these cases support the Constitution - a violation this was to the 14th Amendment Due process clause which this should be overturned and vacated I did nothing wrong to breach plea agreement made and hidden from me and attorney. Also under 16-11-330(A) Armed Robbery isn't an violent crime it a crime of violence but it's a paroleable statute after 7 years and this goes to show that the government must really don't know law cause that's conflicting statutes Under another statute Armed Robbery may be a violent crime like §16-1-60 and §16-23-490, also Being under 24-21-560(D): it's Double Jeopardy Cause in actuality the Judge said 18 years then it can be doubled at any time leaving it an open sentence still to be added on to And a violation to 8th Amendment being Cruel and unusual Do to the punishment now and After the sentence would be over 2 yrs. parole supervision which Judge never stated part of stipulations at trial during sentencing.

Based on the above argument, I Shaheen (w) Ramel
Cabbagestalk's illegal conviction and sentence
which isn't for Him should be reversed
and vacated so that Relief is granted for
government officials violating his rights and Law.
respectfully submitted,

Shaheen Cabbagestalk
Appellate

This 20th day July 2008

IN THE Courts of Appeals

Appeal from Dillon County

Judge Howard P. King, Circuit Judge

527

AUG 28 2008

James Cabbagestalk

APPELLANT

v.

THE STATE

Respondent

Brief of APPELLANT

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
Statement of Issue on Appeal	(3)-(4)
Statement of THE CASE	(5)-(6)
ARGUMENT	7, 8, 9, 10, 11
CONCLUSION	(12)

ABLE of AuthoritiesCases

U.S. v. Rabinowitz, 339 U.S. 56, 60
State v. Golphin, 553 S.E. 2d 168, 352 N.C. 364
Davis v. Mississippi, 394 U.S. 721, 89 S.Ct. 1344, 22 L.Ed. 676
Brown v. Illinois, Supra pp. 2257 - 2258
Miranda v. Arizona, Supreme Court of U.S. 384 U.S. 436 (1966)
George v. Leonard, 71 F. Supp. 662
George v. Leonard, 84 F. Supp. 205, 178 F.2d 312
West v. Cabell, 153 U.S. 78, 145 S.Ct. 752, 38 L.Ed. 643
Wong Sun v. U.S., 471, 83 S.Ct. 407, 9 L.Ed. 2d 441
United States v. Doe, 703 F.2d 745
Wang v. Bonner, 621 F.2d 675, 682
State of North Carolina v. Dennis "Buckwheat" McEntire, 323 S.E. 2d 439
Cutner v. State, 354 S.C. 151, 155, 580 S.E. 2d 494, 500 (2005)
Santobello v. New York, 92 S.Ct. 495, 404 U.S. 257
McGran v. Daugherty, 273 U.S. 135, 154-157
State v. Gentry, 363 S.C. 93, 103, 610 S.E. 2d 494, 500 (2005)
John v. Tribune Co., 24 Ill. 2d 437, 181 N.E. 2d 105, 107
People v. Mellon, 171, 11 N.Y.S. 2d 786, 790
State v. Neal, 231 La. 1048, 93 So. 2d 554, 556
State v. Abraham, 338 N.C. 315, 451 S.E. 2d 131 (1994)
Mayer v. Galley, 858 F.Supp.
Reed v. Becka, 511 S.E. 2d 396

Statutes

N.C. G. § 15A-923(e)

§ 17-25-10

§ 17-19-10

§ 24-21-560(D)

§ 16-11-330(A)

Constitutional rights

4th amendment of Constitution

5th amendment of Constitution

6th amendment of Constitution

8th amendment of Constitution

14th amendment of Constitution

statement of ISS 2 ON APPEAL

Did police, Judges violate Mr. Shaheen (n) R. Cabbagestalk Constitutional rights 4th 5th, 6th, 8th, 14th?

The incident report that police officer MA. Michael Glen Barfield, JR. wrote does not once say Shaheen (n) R. Cabbagestalk name and it does n't say what Mr. Dillard said on stand which report is I'm peaching to his testimony and as Mr. Barfield states it was done after 24 hrs. which gave him enough time to fix report if it was wrong according to his training in police academy. so is this inconsistent with trials testimony of Mr. Dillard as Mr. Barfield related it is what he was told?

The incident report has 2 different years on it 2006, 2007 which dates are nearly a full year apart, this incident report was said by Mr. Dillard to be wrong and by officer Barfield exactly what he said is this incident report reliable

Did Judge violate Mr. Shaheen (n) R. Cabbagestalk rights and err in making fast and speedy trial motion himself which he admits to and I never consented to or signed any paper work, and was compelled by fast and speedy trial motion which was illegal do to the fact Due process and constitutional rights protect me against unnoticeable offenses and I was never indicted?

• Did the judge err in compelling Mr. Shaheen (n) R. Cabbagestalk to trial being he was never indicted from start, then amending the indictment after grand jury was already sworn, trial illegally began by changing the name on the indictment which is a notice document from James Cabbagestalk to Shaheen (n) Ramel Cabbagestalk whom still not me after he accepted compelled plea on charge not for me?

Solicitor lied in court and told the judge there were no plea negotiations negotiated and Mr. Shaheen (n) R. Cabbagestalk can produce forth to show Solicitor lied and this could've made big difference did judge err in taking Solicitor word face value and not asking me or Attorney do we have anything to show otherwise?

• As there is nothing on record or transcript which indictment the judge amended but indictment paperwork show he amended wrong indictment. Only assault and battery with Intent to kill was amended the actual indictment which Mr. Shaheen (n) R. Cabbagestalk was sent to prison for isn't amended and is for James Cabbagestalk there's no alias on it. The assault and Battery with Intent to kill was not pros. So what was done by this judge is very fatal and the Commitment/Sentencing sheet still for James Cabbagestalk which is invalid and is the Armed robbery indictment. Did Judge err fatally which leaves sentence invalid and wrong person?

- Attorney Glen Manning told judge he seen birth certificate and James Cabbagestalk isn't me, Probation agent m.s. Fore told Judge James Cabbagestalk isn't me or in there records, my mom told and showed attorney Manning it's not me did the judge err in Continuing trial after finding out this?
- I never consented to the amendment of any indictment and didn't waive grand jury presentment. The judge should've quashed the indictment as insufficient because it didn't say my name and I objected timely. Was this err for judge to continue?
- If the Judge amended an indictment because it wasn't the person whom was at trial did he err in putting the same name he amended the indictment from back on sentencing sheet? (see 11302 KK see sentencing sheet)
- We all know an indictment is a Notice document and is connected and sometimes come from warrants info. Would it Violate Mr. Cabbagestalk Constitutional rights for warrants and indictments to say 3 different names and neither Mr. Shaheef's R. Cabbagestalk name?

now an plea was accepted on Armed robbery but Indictment wasn't for me, one can't answer to an offense not for him, notifies him, or has his name on it to prepare an defense. Judge King found out James Cabbagestalk wasn't me after he accepted plea and amended an indictment to try to make it me. The catch is he did not amend the indictment on record or on indictment paper work of the offense he gave me time on which was Armed robbery. This judge amended Assault and Battery with intent to kill which already was dropped an dead offense and indictment. Judge Howard P. King Gave James Cabbagestalk 18 years 85% Not Shaheen (n) Ramel Cabbagestalk. A timely objection was made on the amending of the indictment which judge should've quashed cause I never waived grand jury presentment and was forced to trial by judge making fast and speedy motion without my consent forcing, persuading, compelling, coercing me to fear fully plea unwillingly, unintelligently, unknowledgeably. The indictment I Shaheen R. Cabbagestalk is in prison for isn't for me as Judge, Solicitor, probation agents, fore, attorney all admits to in trial on record. This here leaves the wrong person imprisoned, kidnapped freedom and rights violated with an invalid sentencing sheet/Commitment form. Also the (45) day time limit has passed per court standard for the state respondent to answer to the Brief was filed, also there was no Extension(s) asked for to my knowledge and attorney's knowledge. There for the Court's never advised either of us of an extension and what is asked we wish and pray is granted, since June 3rd 2008 this brief was filed and served on Salley W. Elliott Assistant Deputy Attorney General and Mr. Shaheen Cabbagestalk I'm not (James Cabbagestalk) whom is still a free man. Today is 8-10-08 (68) days exact no answer from respondent the state.

Continued ARGUMENT page ①

pg. 8, TR, Line 7 which clearly show entrapment, coercion, persuasion, directing me in an way to illegally violate my 5th and 14th amendments of the Constitution and eventually 8th cruel and unusual punishment. This has caused me to be witness against myself, incriminate myself by even having to answer to an offense not for me. and I know this was involuntarily if Judge Howard P. King would've not made this illegal motion without my consent or attorney consent then my 5th and 14th amendments would've been honored this is why me and attorney asked for a continuance Line (ss) 14-15 TR, pg. 6, TR, pg. 6, Lines 25, TR, pg. 7 Line 1. per 5th amendment no person shall be held to answer for a capital or other wise infamous crime unless by presentment of grand jury indictment, MARCH 5th 2007 James Cabbage stalk was indicted by Dillon County grand jury not Shaheen Ramel cabbage stalk, 8/27/07 me and Counsel was compelled and coerced, persuaded and entraped to go to trial by this judge and wasn't to be in court room per Constitutional rights and Law period, After being forced to trial by judge illegally, coercing, Persuading me and attorney out of fear unvoluntarily, unintelligently, unwillingly I knew since my rights weren't honored I had to do something and out of fear of receiving 30 yrs. away from my kids, family, life, Freedom I plead because counsel never objected to my presence in court room. and Judge had already forced, Compelled, Coerced, persuaded us to trial. I never got preliminary hearing as requested by me and Attorney J. David Watson at the time to central court I requested this Jan. 28th 2007, he did it Feb 6th 2007, no Bond hearing it mentally scared and scared me how my rights were violated and I was eventually gonna have to do time for a crime I didn't do or know anything about if it happened or not subjecting me to an 8th amendment violation cruel and unusual punishment. Now after I plead my Counsel whom had just came back from one of his family members funerals and straight back into trial in a daze like the judge had to ask him questions more than once or twice because of his lack of attention which Judge shouldn't have allowed this pg. 48 Lines 22-23 of TR. Shows what I'm saying this is why a Competency hearing should've been held to assure me nothing was focused after his cousin's Mrs. Maimie's funeral and straight back in court room to trial "NO" we all know the feeling of losing a loved one is an mental break down, and disturbance of focus, which let me be subjected to ineffective assistance of Counsel him not telling Judge I don't even suppose to be in court room per 5th amendment, which is supported by 14th amendment Equal Due process of law, plus he never interviewed potential witnesses prior to trial which wasn't suppose to been had or crunk up per. Law and my rights, he failed to take timely steps to bring them to trial, and his interviewing defense witnesses in court, with in hearing or interviewing prosecutor with him threatening my alibi alma Jackson with police threatening to lock her up if she came in court room, this reflected serious neglect of my interests; and prejudiced me he should've objected or did something about judge making illegal speedy trial motion see State of North Carolina v. Dennis "Buck wheat" McEntire Cite S 323 S.E. 2d 439 Counsel showed serious neglect to my interests and violative to U.S.C.A. Const. Amend. 6 half, more than half majority weren't served with subpoenas and 15. Lisa Brown and Randal Brown had be drawn up right at trial and Alma Ray Jackson the ALIBI

ARGUMENT

Constitutional rights were violated by police from arrest, Judges, and solicitor Mr. Redmond. 4th, 5th, 6th, 8th, 14th amendments of the Constitution, this prejudiced me took me away from my family, kids, lost my job, privacy, go on come as I please. U.S. v. Rabinowitz, 339 U.S. 56, 60; and if the arrest was illegal the admission of this evidence was reversible error. also Rule 3 and 4 of the federal Rules of Criminal procedure, State v. Golphin 533 S.E. 2d 168, 352 N.C. 364, Davis v. Mississippi, 394 U.S. 721, 89 S.Ct. 1394, 23 L.Ed. 676; Brown v. Illinois, supra pp 2257-2258, Miranda v. Arizona: prior to police questioning Constitutional rights, George v. Leonard 71 F. Supp. 662; George v. Leonard, 84 F. Supp. 205, reversed 178 F. 2d 312; for being arrested without authority of law and illegally deprived of liberty. West v. Cabell, 153 U.S. 78 14 S.Ct. 752, 38 L. Ed 643: In this case a warrant was issued for the arrest of (James West) and a man name (Vandy M. West) had never been called or known as James, like warrants for James Cabbagestalk but, Shaheen R. Cabbagestalk was arrested as law states in defense. The warrants was issued and intended for James Cabbagestalk. Under the Common law, "affirmed into American Constitutions," id at 86, 14 S.Ct. at 754, "a warrant for the arrest of a person charged with crime must truly name him, or describe him sufficiently to identify him." Id at 85, 14 S.Ct. at 753. See Wong Sun v. U.S. 471, 83 S.Ct. 407, 9 L.Ed. 2d 441, See United States v. Doe, 703 F.2d 745: Dealing with warrants not meeting 4th amend requirement a 3rd circuit court held this, which James Cabbagestalk isn't me so how does warrants meet requirements. Wanger v. Bonner, 621 F.2d 675, 682. I never seen any magistrate judge at all until this very day and The police report Not once mentions my name Shaheen - Ramel Cabbagestalk. This report is very inconsistent and has 2 different years 1-1-07, 1-2-06 also wrote in 2 different pens. (It is impossible for one on 1-1-07 to weigh 145 lbs. and on 1-12-07 weigh 200 lbs as county mugshot weight is shown in records for 1-12-07. police report mentions 3 different sets of family's and set of stock houses whom are white, and another set whom are african, and Cabbagestalk's whom are africans the word (either) is used in the incident report clearly showing uncoreity. Also the address of [redacted] Mr. Cabbagestalk hasn't lived there since 2003 and been in prison all the way up till sept 06 year, the last person lived at [redacted] was Dave Bellman this incident report stated an alias or Name Woody which was never used and Judge ignored at trial and was never used this other name was put in its place (James Cabbagestalk) and you never here anything else about (Woody) which definitely shows in consistantcy in incident report. Also it is never mentioned in court or from Mr. Dillard about knowing me from prison and at trial this guy state he knew me from the streets pg. 57 of TR. Lines 22-24, also pg. 65 of TR. Lines 6-10, also Line 15-18 of TR. pg. 65 shows total inconsistent testimony than report and what police Mr. Michael Glen Barfield, JR. say and wrote. Now furtherly my 5th and 4th amendments of the Constitution was violated by Judge Howard P. King making an speedy trial motion for me without my consent compelling me to trial Coercing, and persuaing, and entering me foreing me to plea unwillimally, unintelligently, unknowingly

Continued ARGUMENT Page 2

hers to. Trial Court never secured a list or asked for a list of missing witnesses
 even as solicitor stated some of his witnesses weren't present cause they had to work
 3rd shift last night pg. 75 TR. Lines 14-16 but judge was bias in excusing these
 witness cause they worked and alma ray Jackson was on her way to work forced to court house
 and threatened by police officer Douglas pennell and solicitor if she went in court room they'll
 lock her up is what she told me over phone after trial was over a few days later I called her.
 Counsel waited until after I plead unintelligently, unknowingly, involuntarily, out of fear,
 and told Court's I was never indicted TR. pg. 104 Lines 15-20, Counsel told judge
 after trial began he seen my Birth Certificate and James Cabbage stalk is it my name
 Probation agent ms. fore told judge this to, pg. 106 TR. Lines 16-17, solicitor
 mr. Redmond agreed it's different names not me pg. 106 Lines 20-21 and attorney
 manning pg. 107 Lines 3-5. then judge asks for my consent and everybody's
 which everybody isn't illegally coerced, compelled, persuaded to trial at this moment I am
 pg. 107 Lines 22-23 I told judge king my name and he amended indictment.
 A bill of indictment may not be amended, N.C.G. § 15A-923(c), § 17-25-10. No person
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Continued Argument ③ page

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Based on the above argument, I Shaheen(w) Ramel
Cabbagestalk's illegal conviction and sentence
which isn't for Him should be reversed
and vacated so that Relief is granted for
government officials violating his rights and Law.
respectfully submitted,

Shaheen Cabbagestalk
Appellate

This 20th day July 2008

Shaneen Cabbagestalk
AppellantState of South Carolina
RespondentORDER Granting
Applicant PCR

This matter comes before the Court by way of the Applicant for post conviction Relief filed March 9th 2010. The Applicant Shaneen Cabbagestalk met James Cabbagestalk who is an actual person, this is not Judge King. Amended the indictment for A/B/W/E/K although without consent of Mr. Cabbagestalk nor did he have presentment of the indictment. The Respondents made no return to Attorney Heather M. Cannon period whom represented Mr. Shaneen Cabbagestalk for this action at hand. According to S.C. Rules of Civ. Proc. Rule 12(A) and Evidentiary hearing was conducted on Sept. 14th 2010 to no avail of progress and Rules of Court being seriously violated and Mr. Shaneen Cabbagestalk Due process rights. The Appellant Applicant of the Above Captioned Case represented by Ms. Heather M. Cannon and the state MS. Karen C. Rottgen for the state, the Court has before it Transcripts, and all other paperwork filed and derived from and Dropped Charge Assault and battery with intent to kill which is misinterpreted and holds Shaneen Cabbagestalk falsely imprisoned, the records of the Dillon County Clerk's office, Appeal stage records and documents speak for itself, as well SCDC's policy up-21-09 To make Records plan 11-25, 27, 28 which speaks of initial commitment orders SCDC not to accept you within their custody. Applicant's Birth Certificate speaks and proves otherwise as Probation Agent ins. fore stated, and Solicitor Redmond agreed the people are different, the Judge presented the A/B/W/E/K indictment not the Armed Robbery Indictment which illegally holds Shaneen Cabbagestalk imprisoned, 07-GS-17-0364 is for James Cabbagestalk.

The Solicitor's office never indicted him. an indictment was amended on the record for A/B/W/E/K, Armed Robbery for James Cabbagestalk Mr. Shaneen Cabbagestalk was never given any prison time James Cabbagestalk was given 18 yrs. Appellant Attorney Katherine W. Hudgins corresponded to Mr. Shaneen Cabbagestalk in a letter dated April 27, 2007 saying the same exact thing the only indictment was amended was A/B/W/E/K and the sentencing sheet is invalid there's also other correspondences by case Kenneth A. I insisted that expenses the Appellant Courts and shows forth why this case should have been overturned, also the Solicitor and attorney Manning failed to communicate negotiations which leaves him to being ineffective (see Jeffrey Eugene Davis v State Reversed and Remanded filed March 9th 2009 submitted November 19th 2008 opinion NO. 266 A that is negotiated plea which was withheld (see May 31st 2007 Transcript pg 8 lines 15-17): Solicitor Adm. re. for go-plan agreement. An E. on Criminal Sentencing was made

1001 Transcript presiding judge was The Honorable Paul M. Burch, Judge and Attorney J. David WATSON represented me. There's proof Mr. Shaheen Cabbagestalk Attorney notified Solicitor Redmond timely the indictment was massed up (March 7th 2007) T.C. pg. 4 lines 24 - pg. 5 lines 5: the preliminary hearing issue not ruled on, and Notice of Alibi, alibi was not allowed inside the Court's and the solicitor had well enough time to fix indictments. Until this very day Mr. Shaheen Cabbagestalk has not been charged for any crime to lawfully be an defendant of General sessions (See State v. Rector et al., 155 S.E. 385). Gentry don't apply to this do to facts Mr. Shaheen Cabbagestalk wasn't indicted which is a requirement to be held to answer for a capital or otherwise infamous crime. Wong Sun v. United States, 371 U.S. 471 (1963) is an important part of this case as we can clearly see in the (March 7th 2007 transcript) that warrants weren't for him, indictments, no preliminary hearing cause of an Assumption it was indicted from arrest this case was (the fruit of the poisonous tree) and all occurred afterwards is (the fruit of the poisonous tree). All attorneys within this case, Judges, The Criminal docketing committee which is headed by Associate Justice Costa Pilecones of the state supreme court and former prosecutor Dudley Saleeby of Florence whom this committee consist of run the process as chief justice Paul said they've included solicitors who control the call of cases; judges who under her direction have the responsibility for setting the term of court; lawyers; and clerks of courts are responsible for this as well the Grand Jurors share the blame their duty is to listen to evidence of criminal allegations presented by prosecutors and witnesses and to act as a screen against vindictive prosecutions or unfounded charges. This case is an identification case which until this very day the charge Mr. Shaheen Cabbagestalk is imprisoned for don't concern him or isn't for him period, it is plain to see no action was taken on any indictments for Mr. Shaheen Cabbagestalk clearly violated Rule 38 S.C. Rules of Criminal Proc. (March 7th 2007 transcript states: the judge Burch said magistrates as slow on the preliminary hearings (pg. 14 lines 24 - pg. 15 lines 1-6) facts of this case are easily shown S.C. Code § 14-17-530 (2) requires the clerk of courts to mark each original indictment with the date it was filed, this never occurred on the 02-05-17-0364 indictment and this indictment is not supported by evidence. (Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 2064; Butler v. State, 386 S.C. 441, 442, 334 S.E.2d 513, 514 (1985); Ineffective assistance of Counsel is proved by all attorneys touched this case and there standards weren't reasonable within professional norms for a criminal defense attorney where ineffective assistance of counsel is alleged as a ground for relief the Applicant must prove that the Counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result the (two) prong test (first) the applicant must prove Counsel's performance was deficient under the prong, a lawyer's performance is measured by its reasonableness under prevailing professional norms (second) Counsel's deficient performance must have prejudiced the Applicant such that there's a reasonable probability that, but for Counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial (See Strickland 466 U.S. at 690; 104 S.Ct. at 2066, see Cherry v. State 300 S.C. 115, 118, 386 S.E. 2d 624, 635 (1989), Cherry v. State 300 S.C. at 117, 386 S.E. 2d at 625 (quoting Strickland, 466 U.S. at 688; 104 S.Ct. at 2065) (see Cherry v. State, 300 S.C. at 117-18, 386 S.E. 2d at 625. (Johnson v. State, 323 S.C. 122, 126, 480 S.E. 2d 733, 735 (1997) (Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Mr. Watson never proceeded to have those charges that, not for Mr. Shaheen Cabbagestalk dominant or dominant which would be an professional normal thing to do which would make a big difference and the real crime of this entire situation would be never made it to trial

HE would be seen ~~disregard~~ all these Charges and not the preliminary

hearing if the judge Rogers would be properly done his job instead of being bias and prejudice toward ^{Applicant} then he would be seen that Mr. Shabaz Cabbagestalk was never indicted from day one so he still enjoys the right of receiving a preliminary hearing which he demands lawfully and was tried (3) times. For before the case ever made it to trial which Judge James F. Rogers Ignored all request and all timely measures were made by Mr. Shabaz Cabbagestalk to assure his rights won't be violated but fatally were. Once the accused is represented by an Attorney he's only allowed to present a certain limited amount of stuff to the Court's ~~see~~ (See Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 530, 83 L.Ed.2d 821 (1985); Coleman v. Thompson, U.S. 111 S.Ct. 2546, 2568 (1991) A lawyer must do a professional job with skill and knowledge and Mr. J. David Watson allowed the case to continue never filed a motion to Quash or Dismiss Charges, and knew they were not addressed to his client Shabaz Cabbagestalk and addresses the Court's March 7th 2007 (Indictments not for client) but client insists instead of him filing for a Dismissal of these Charges he's only asking him to take a plea never showed client any plea offer or agreements only said "plea and you won't get no more than (10) yrs. if that your not to be in the Court room period per the 5th Amend. of the Constitution the Court's have no jurisdiction over the subject matter your not even a legal defendant of General Sessions (but yet never filed or pushed for Dismissal of Charges, never bring forth that indictments are still not for ~~him~~ to Judge Burch as of March 7th 2007 So as Judge Burch stated March 7th 2007 About if your indictment the issue is (Must) if a preliminary hearing was irrelevant and frivolous and don't apply to Applicant's case at all (This could be resolved if Attorney Watson would be pushed forth to let Judge Rogers know the client ~~isn't~~ the alleged the indictments for so he hereby lawfully demands his preliminary hearing right see § 22-5-320 Code of laws of S.C., Rule (2) S.C. Rules of crim. proc., S.C. Code Ann. § 17-19-10: A defendant in a criminal case may not be tried for an offense for which he has not been indicted, also at this stage of this case no plea was stated March 7th 2007 Still this Rollison v. State, 346 S.C. 506, 552 S.E.2d 290 (2001) Applies seems follows: A defendant may as part of a plea bargain agree to "plead guilty to a crime for which he has been indicted for but of which he's not guilty." ~~the applicant~~ not guilty nor charged for these alleged crimes until the very day is the reason a plea can't be accepted or it would be Invalid which leaves Attorney Watson very ineffective for knowing this but relieving himself off the case to free he actually ask for a Dismissal of Charges or Quashing of Charges, not limited to Exercising clients rights Review Grand Jury Impenement Documents per Covins v. State, 611 S.E.2d 510: gives the applicant the right to review the state's petition supporting materials, and the impenement order ensuring protection of applicants due process rights, however it is clear after reviewing Supreme Court decision in Evans v. State, 611 S.E.2d 510: Applicant has a Constitutional right to demand that a Grand Jury which is properly established and constituted under the law consider the criminal allegations against him. see S.C. Const. Art. I, II and V, 22: "One who demands and is refused the right to be tried for crime charged against him only upon an indictment presented by a legal Grand Jury, in instances where such indictment is required may thereafter take the position that he has been deprived of life, liberty, or property without due process of law, in violation of the state constitution. Furthermore the Courts concludes impenement documents, including the state's petition, supporting materials, and the impenement judges order. May he released by defendant prior to trial) previously request in for an application a per proceeding. This is of course reflect information that related to a particular defendant the of information concerning other persons or matters.

under consideration by the State Grand Jury. Release of the documents may be appropriate because (a) Section 814-7-1770 is not a complete prohibition on the release of the information (b) release of the documents usually is not prohibited by secrecy provisions or other concerns following the issuance of a true bill of indictment, and (c) a defendant has a right to review the documents to determine whether to timely challenge the legality of the State Grand Jury which indicted him or County. Requirement that defendant receive notice of the charge against him is noted in due process. (See State v. Butler, 227 S.C. 452, 456, 240 S.E.2d 1, 3 (1982). Looking alone Applicant was not put on notice of committing no crime to have violated any laws of this State or County of South Carolina which the alleged was said to have occurred also (See Fewell v. State, 267 S.C. 17, 225 S.E.2d 853 (1976). (See also Tibbory, 262 S.C. 136, 202 S.E.2d 81 (1974)). Generally once convicted a criminal defendant can be sentenced (only) upon charges set forth or necessarily included in the terms of the indictment and not for a greater offense. (TO Sanction Applicant whom isn't to even be a defendant of General Session is a greater of the greatest offenses to charge him with and SCDC Policy op-21.09 Inmate Records Plan: 11252.6, 2.7, 2.8 States SCDC wasn't even to have accepted him within there custody with a valid Commitment Order As the Courts see Applicant attorney Kathrine Hudgins Correspondence dated April 27th 2009 to Applicant clearly proves all from trial until now isn't for him and still isn't and she recognized it but never addressed it in the Courts she didn't even have all the Court transcripts to properly defend Mr. Shaheen Cabbage stalk effectively which comes from failure of duties of an attorney to properly investigate a case and study it so a defense strategy be set and not Careless rushings of people into a Courts whom plainly self explanatory technically and lawfully don't suppose to be there (In Re Corey B. v. State, 291 S.C. 108, 352 S.E.2d 470 (1987)). The Supreme Court held that a criminal defendant cannot be found guilty of a greater offense than that alleged in the petition set forth against him, see also Jason T. v. State, 531 S.E.2d 544 (S.C. 2000): It applies to applicant being was charged with nothing to imprison him for a crime he's not until this day charged with is way pass fatal, Invalid, insufficient and damages his life, liberty and property. Fairness and due process require a criminal defendant receive sufficient notice of the charges against him to enable him to prepare a defense. See Butler v. State, 227 S.C. 452, 240 S.E.2d 1, 3 (1983); S.C. Const. Art. I § 14. Also see Rickey Fewell v. State, 267 S.C. 17, 225 S.E.2d 85 (1976). We can lawfully see S.C. Rules of Court, S.C. Rules of crim. proc. Rule (3)(c) was not followed and was violated there for relief should be granted in Applicant's favor. Also allegations made in a Complaint that are not denied in the answer are deemed admitted (Motors Ins. Corp. v. State by and through Dept. of Highways and Public Transp. (S.C. App. 1993) 313 S.C. 279, 437 S.E.2d 555, rehearing denied, certiorari denied: This frivolous return no were near addresses the Application that is filed with the Courts there for all not addressed is admitted as the supporting case state and (A party or the party's attorney may be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there's good ground to support it. Ex parte Gregory (S.C. 2008) 378 S.C. 430, 563 S.E.2d 46. This case is an identification case see trial pg. 8 lines 21-22, see pg. 106 lines 20-21 names/people are different admitted by Solicitor (see pg. 32 lines 17; Burden of proof is on state of South Carolina, see reasonable doubt lines 12-15 pg. 32. If Applicant is not charged and nothings for him it's way more reasonable doubt, past reasonable doubt you got the wrong person (see pg. 11 lines 24-25; she is charged with proving charges beyond reasonable doubt, Trial pg. 11 lines 9-10: Case built down to who believes who). Not the fact evidence was presented in the Grand Jury period. (Trial pg. 107 lines 7-12; Judge on it and then found it - I have - Times 2008 pg. 107 lines 5 - pg. 109 lines 17 Trial pg.

Judge illegally Amended the indictment without waiver of Mr. Shaheen Cabbagestalk or his consent. Applicant didn't agree to the judge Amending indictment illegally outside of his authority and jurisdiction. Judge King proceeded and amended it anyway. Applicant is wrongfully incarcerated never charged with anything and Judge King instead of Amending the Armed Robbery Charge Amended a Dropped charge (See pg. 112 Lines 22 - pg. 113 Line 3: Assault and battery with intent to kill was Amended, and then Dropped against the Armed Robbery left as if No A.R.R. and the Assault and Battery indictment has writing to the Bottom by Judge King why he amended it and its signed and dated by Judge King. Then he turns around gives James Cabbagestalk 15 yrs. Not Shaheen Cabbagestalk (you can't accept a plea for something one is charged for to be called upon to have to Answer for.) Attorney Manning, Attorney Catherine Higgins, etc. had in full observation of this case to present to the courts which seriously violated my 6th and 14th Amendments of the Constitution. neither attorneys had either transcript May 31st 2007 Honorable J. Mark Hayes Jr. Judge, July 26th 2007 Judge Howard P. King, March 17th 2007 Honorable Paul M. Burch Judge and Attorney J. David Winters received no copy of an True Billed Indictment personally to Not push forth for Quashing or Dismiss of the Charges. (pg. 14 Lines 8-23: Indictment copy not true Billed (March 17th 2007) Transcript. This clearly shows ineffectiveness to advise the solicitors office your clients name isn't on the indictments No attempt to Quash or Dismiss them as you told him personally and you fully know per. Cutner v. State, 354 S.C. 151, 155, 580 S.E. 2d 120, 122-23 (2003) Overruled on by other grounds by Gentry. The resulting of an indictment not sufficient will result in the quashing of the indictment unless the defendant waives presentment and pleads guilty. presentment was never waived by Mr. Shaheen Cabbagestalk and a plea can't be Accepted on something you not charged for in the beginning. Gentry only applies as (the indictment being a notice document) which No Notice document ever was addressed to Mr. Shaheen Cabbagestalk to have to challenge. So Contesting to it before a jury is sworn in provided by § 17-19-90 is irrelevant. The Const. 5th Amend. states: No person shall be held for an capital or other wise in famous Crime unless on presentment of a grand Jury indictment (Gentry is in conflict with the Constitution and my Due process rights of the 5th Amend. of the Const. and 14th Amend. and of the S.C. Const. Therefore if one can't be held to answer your not legally even an defendant of General Sessions. see State v. Rector, 12 S.C. 325, 3 S.E. 2d 597 (1956). A conviction without the presentment of a Grand jury will be void on appeal. State v. Hanie, 12 S.C. 2d 720 (6) Indictment and information (key 1): A presentment of grand jury is Condition precedent to trial for crime except for certain minor offenses as grand jury is Constituent part of Court, which has no jurisdiction of Cause without such presentment. see S.C. Code Ann. § 12-19-10 (1985): A defendant in a Criminal Case may Not be tried for an offense for which he has not been indicted.

Conclusion:

Applicant asks that Case be over turned immediately

and sentence of 15 yrs. be removed. Applicant was never

charged with anything and was never charged with anything in this state and never convicted

of anything.

Case is so ordered this _____ day of _____ 2012

Certificate of Service

This is to Certify

The ORDER of Granting

PCR Action # 2010-CP-17091

Was served amongst the
Presiding Judge and Courts
for the 4th Judicial
Circuit Consisted of 5 pages

Attorney:

3y: Shaheen Gabbagstall
With out prejudice 11/01-2017

Notary: Stewart Melanthly
My Commission Exp: December 2016
Date: December 30, 2011

Shakeen Cabbagestalk
ApplicantState of South Carolina
RespondentORDER Granting
Applicant PCR

This matter comes before the court by way of the Applicant for post-conviction Relief filed March 9th 2010. The Applicant Shakeen Cabbagestalk Not James Cabbagestalk whom is an actual person, this is not Judge Kince Amended the indictment for A/B/W/E/K although without consent of Mr. Cabbagestalk nor did he have presentment of the indictment. The Respondents made no return to Attorney Heather M. Cannon period whom represented Mr. Shakeen Cabbagestalk for this action at hand. According to S.C. Rules of Civ. Proc. Rule 12(A) and Evidentiary hearing was convened on Sept. 14th 2010 to no avail of progress and Rules of Court being seriously violated and Mr. Shakeen Cabbagestalk Due process rights. The Appellant of the Above Captioned Case represented by Ms. Heather M. Cannon and the state Ms. Karen C. Raligan for the state, the court has before it Transcripts, and all other paperwork filed and derived from and Dropped Charge Assault and battery with intent to kill which is misinterpreted and holds Shakeen Cabbagestalk falsely imprisoned, the records of the Dillon County Clerks office, Appeal stage records and documents speak for itself, as well SCDC's policy up-21.09 inmate records plan 11.36, 2.7, 2.8 which speaks of Evaled Commitment orders SCDC is to accept you within there custody. Applicant's Birth Certificate speaks and proves otherwise as Probation Agent ms. fore stated, and Solicitor Redmond Agreed the people are different, the Judge presented the A/B/W/E/K indictment Not the Armed Robbery Indictment which illegally holds Shakeen Cabbagestalk imprisoned, 07-GS-17-0364 is for James Cabbagestalk.

The Solicitor office never indicted him an indictment was amended on the record for A/B/W/E/K Armed Robbery for James Cabbagestalk Mr. Shakeen Cabbagestalk was never given any prison time James Cabbagestalk was given 18 yrs. Appellant Attorney Kathrine H. Hudgins corresponded to Mr. Shakeen Cabbagestalk in a letter dated April 29, 2009 saying the same exact thing the only indictment was amended was A/B/W/E/K and the sentencing sheet is Evaled there's also other correspondences by clerk Kenneth A. Richsted that exposes the Appellant Courts and shows for the why this case should have been over turned. Also the Solicitor and attorney Manning failed to communicate negotiated plea which leaves him to being ineffective (See Jeffrey Eugene Davie v. State Reversed and Remanded filed March 9th 2009 submitted November 19th 2008 opinion No. 26. A that Mr. negotiated plea which was withheld (see May 31st 2007 Transcript pg. 8 lines 15-17): Solicitor Adm. for got plea agreement. An Even Criminal Dealings was made.

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under consideration by the State Grand Jury. Release of the documents may be appropriate because (a) Section 54-7-1770 is not a complete prohibition on the release of the information (b) release of the documents usually is not prohibited by secrecy provisions or other concerns following the issuance of a true bill of indictment; and (c) a defendant has a right to review the documents to determine whether to timely challenge the legality of the State Grand Jury which indicted him or County. Requirement that defendant receive notice of the charge against him is rooted in due process. (See State v. Butler, 227 S.C. 452, 456, 290 S.E.2d 1, 3 (1982). Looking alone Applicant was not put on notice of committing no crime to have violated any laws of this State or County of South Carolina which the alleged was said to have occurred also (See Fewell v. State, 267 S.C. 17, 225 S.E.2d 853 (1976), (See also Tubory, 262 S.C. 136, 202 S.E.2d 85 (1974)). Generally once convicted a criminal defendant can be sentenced (only) upon charges set forth or necessarily included in the terms of the indictment and not for a greater offense. (To Sanction Applicant who isn't to even be a defendant of General Session is a greater of the greatest offenses to charge him with and S.C.D.C. Policy op-21.009 Inmate Records Plan: 11252-6, 2.7, 2.3. States S.C.D.C. wasn't even to have accepted him within there custody with a invalid Commitment Order. As the Courts see Appellant Attorney Katherine Hudgins Correspondence dated April 27th 2009 to Applicant clearly proves all from trial until now isn't for him and still isn't and she recognized it but never addressed it in the Courts she didn't even have all the Court transcripts to properly defend Mr. Shaker Abbagostale effectively which comes from failure of duties of an attorney to properly investigate a case and study it so a defense strategy he set and not careless rushings of people into a Courts whom plainly, self explanatory technically and lawfully don't suppose to be there (In Re Corey B. v. State, 291 S.C. 108, 352 S.E.2d 470 (1987)). The Supreme Court held that a criminal defendant cannot be found guilty of a greater offense than that alleged in the petition set forth against him, see also Jasany T. v. State, 531 S.E.2d 544 (S.C. 2000). It applies to applicant being he's charged with nothing to imprison him for a crime has not until this day charged with is way pass fatal, invalid, insufficient and damages his life, liberty and property. Fairness and due process require a criminal defendant receive sufficient notice of the charges against him to enable him to prepare a defense. See Butler v. State, 227 S.C. 452, 290 S.E.2d 1, 3 (1983); S.C. Const. Art. I § 14. Also see Rickey Fewell v. State, 267 S.C. 17, 225 S.E.2d 853 (1976). We can lawfully see S.C. Rules of Court, S.C. Rules of crim. proc. Rule (3)(c) wasn't followed and was violated there for relief should be granted in Applicant's favor. Also allegations made in a Complaint that are not denied in the answer are deemed admitted (Motors Ins. Corp. v. State by and through Dept. of Highways and Public Transp. (S.C. App. 1993) 313 S.C. 279, 437 S.E.2d 553, rehearing denied, certiorari denied. This frivolous return No were near addresses the Application that's filed with the Courts there for all not addressed is admitted as the supporting case state and (A party or the party's attorney may be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there's good ground to support it. Ex parte Gregory (S.C. 2008) 378 S.C. 430, 663 S.E.2d 46. This case is an identification case see trial RA pg 8 Lines 21-22, see pg. 106 Lines 20-21 names/people are different admitted by solicitor (See pg. 32 Lines 17: Burden of proof is on state of South Carolina, no reasonable doubt Lines 12-15 pg. 32: If Applicant is not charged and nothing for him it's way more reasonable doubt, Pass reasonable doubt you got the wrong person (See pg. 11 Lines 24-25: State is charged with proving charges beyond Reasonable Doubt, Trial pg. 111 Lines 7-10: Case pulls down to who believes who). Not factual evidence or evidence presented by the grand jury period, (Trial pg. 107 Lines 9-12: Judge reported an illegal plea and then found out In no- (pg. 107 Lines 22-pg. 109 Lines 17 Trial RA.

Judge illegally amended the indictment without order of Mr. Shaheen Gabbagstark or his consent. Applicant didn't agree to the judge amending indictment illegally outside of his authority and jurisdiction. Judge King proceeded and amended it anyway. Applicant is wrongfully incarcerated never charged with anything and Judge King instead of Amending the Armed Robbery charge Amended a Dropped charge (See pg. 113 Line 3: Assault and Battery with Intent to Kill was Amended and then Dropped against the Armed Robbery left as if no A.R.R. and the Assault and Battery indictment has writing to the Bottom by Judge King why he amended it and it's signed and dated by Judge King. Then he turns around gives James Gabbagstark 15 yrs. Not Shaheen Gabbagstark (you can't accept a plea for something one is charged for to be called upon to have to answer for) Attorney Manning, Attorney Cathrine Hughes, neither had in full observation of this case to present to the courts which seriously violated my 6th and 14th Amendments of the Constitution. neither attorneys had either transcript May 31st 2007 Honorable J. Mark Hayes FF Judge, July 26th 2007 Judge Howard P. King, March 7th 2007 Honorable Paul M. Birch Judge and Attorney J. David Luntan received no copy of an TRUE Billed Indictment personally to not push forth for Quashing or Dismissal of the Charges (pg. 14 Lines 8-23: Indictment copy not true Billed (March 7th 2007) transcript. This clearly shows ineffectiveness to advise the solicitors office your clients name isn't on the indictments no attempt to Quash or Dismiss them as you told him personally and you fully know per. Cutler v. State, 354 S.C. 151, 155, 580 S.E. 2d 120, 122-23 (2003) overruled on by other grounds by Gentry. The result of an indictment not sufficient will result in the quash of the indictment unless the defendant waives presentment and pleads guilty) presentment was never waived by Mr. Shaheen Gabbagstark and a plea can't be accepted on something you not charged for in the beginning. Gentry only applies as (the indictment being a notice document) which no notice document ever was addressed to Mr. Shaheen Gabbagstark to have to challenge so contesting to it before a jury is sworn in provided by § 17-19-90 is irrelevant. The Const. 5th Amend. states: No person shall be held for an capital or other wise in famous crime unless on presentment of a grand jury indictment. (Gentry is in conflict with the Constitution and my Due process rights of the 5th Amend. of the Const. and 14th Amend. and of the S.C. Const. Therefore if one can't be held to answer your not legally even defendant of General Sessions. see State v. Rector, see State v. Beuchum, 223 S.C. 325, 3 S.E. 2d 597 (1986). A conviction without the presentment of a Grand jury will be void on appeal State v. Hanie, 12 S.C. 2d 720 (6). Indictment and information (key 1): A presentment of grand jury is condition precedent to trial for crime except for certain minor offenses as grand jury is constituent part of court, which has no jurisdiction of cause without such presentment. see S.C. Code Ann § 12-19-10 (1985): A defendant in a criminal case may not be tried for an offense for which he has not been indicted.

Conclusion:

Applicant asks that case be over turned immediately

and released (acknowledged) in the fact Applicant was never

charged with anything only 1000 in this state and been

in custody for 1000

Ordered this _____ day of _____ 2012

Certificate of Service

This is to Certify

The ORDER of Granting

PCR Action # 2010-CP-17091

Was served amongst the
Presiding Judge and Courts
for the 4th Judicial
Circuit consisted of 5 pages

Attorney:

3y: Shaheen Cabbagista Ik
Without prejudice ucc1-207

Notary: Steven T. Milantly
My Commission Exp: June 2 2016
Date: December 30, 2011

Indictment Issue

preliminary hearing

STATE OF SOUTH CAROLINA)

COUNTY OF DILLON)

COURT OF GENERAL SESSION)

WARRANT NO. K129668)

K129669, K129670)

STATE OF SOUTH CAROLINA)
PLAINTIFF)

vs.)

SHAHEEN CABBAGESTALK)
DEFENDANT)

TRANSCRIPT OF RECORD)

March 7, 2007
Dillon, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

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

DAVID WATSON, PUBLIC DEFENDER
Attorney for the Defendant

HATTIE O. GORDON
Circuit Court Reporter

misconduct @ Rule 3 (c): 90 days January to March

Proof as chief justice to ORDER 3510
Indictment was returned in Court Newer

given to MEOR Glenis B. Manning
see transcript of trial said hearing pref

J. David Watson proof 90 days not true 31
Indictment said he know it's true 31

had to be
Amended
warrant
why?
this?

Indictment

for me (sectr
transcript)

* Proof I could
been home a
I should be
my premin
hearing the a
Come would be
been differ.

NO
Gunn

Police

Report

All transcript

Trial transcript

All testimony

Add up to all

Magistrate

is not new

is no preliminary

hearing

No Indictment

former was

Indicted

I N D E X

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2	Colloquy	4
3	Certificate of Reporter	17
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EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

COLLOQUY

MR. WATSON: May it please the Court. This is on the docket a number of cases. The caption is Shaheen Cabbagestalk which my client tells me is the incorrect name. He's charged under Warrant K19 -- 129668 with armed robbery. 129669 with assault and battery with intent to kill. And 129670 with petit larceny.

I was -- I received notice of this appointment in January of 2007. I've had it for about five weeks or so. During that time I would characterize my relationship with Mr. Cabbagestalk as turbulent. He has written me a number of times, and the last letter I received purports to say that I have an unethical relationship with the Solicitor and the lady who runs the jail.

I've had a very candid conversation with Mr. Cabbagestalk this morning. I told him that I was going to ask the Court to be relieved based upon his assertions to me that the basis of my work is flawed and improper. After we had that conversation he said that he wanted to withdraw his comments, and I said, "I don't know if you can unring the bell." But the comment suggests just so ripe for the Grievance Committee should he be convicted as to make it perilous.

I pursued this case vigorously having filed Rule Five. Notified the Solicitor that the name on the

Handwritten notes:
*
I don't know
they don't know
that before
the excuse

1 indictment was wrong. Requested a preliminary hearing.

2 Mr. Cabbagestalk asked me to serve under Rule Five in
3 writing a Notice of Alibi which I have done. I can't do
4 any more in this case than I'm doing. Mr. Cabbagestalk
5 believes that I can.

6 * And he was curious as to whether or not I had paid
7 Pam at the jail money to help abridge his constitutional
8 rights. And in his most recent letter to me he says I
9 have violated certain portions of the constitution --
10 certain constitutional protections available to him. When
11 I contrast that with his conversation this morning it's
12 like two separate individuals.

13 He said, "Oh, I want to take it back. I want you to
14 go ahead. I know you're a good lawyer." What he reduces
15 to writing is something that is totally different. I've
16 been an orphan for most of my life. I take what people
17 tell me very seriously. I have -- my client has brought
18 to me at the office. And I can tell you that the last
19 time Mr. Cabbagestalk and I met he told me not to do
20 anything else in this case. Not one thing.

21 The personal comments made to me about me are
22 inextricable from how I would have to prepare his case. I
23 told Mr. Cabbagestalk that I thought it best that I be
24 relieved cause should he be convicted then we would go
25 back and he would simply say, "I told you Mr. Watson was

1 dishonest. I told you he was not to be trusted." And he
2 said, "Oh, I would never do that," but I can tell you what
3 he has done thus far is nothing but fuel for the Office of
4 Disciplinary Council. It is just as clear as the lights
5 are on in this room.

6 The most disturbing thing, the last time
7 Mr. Cabbagestalk was at my office, when he left he looked
8 at my paralegal and the deputy that brought him and said,
9 "I've got my paper trail here." That just takes what
10 ability I have to work with him and just throws it away.
11 I don't think the Court has ever seen me do but work
12 compassionately with all the Public Defender clients. I
13 have. I mean I work arduously for them, But I can't go
14 forward with Mr. Cabbagestalk's case.

15 It is nothing in writing but I'm setting you up, as
16 he said in his last letter, "to sue you and to take our
17 license."

18 MR. CABBAGESTALK: That -- I didn't say all that. I
19 didn't send no letter. If you can show that to the Judge.

20 MR. WATSON: I'll be glad to.

21 MR. CABBAGESTALK: I told you that you weren't doing
22 me right probably as far as if you filed -- if -- since
23 you've been appointed to me on January 25th you ain't --
24 I mean if you're supposed to file for my Rule Five and
25 I've been sitting here in 30 days time, I thought you were

*Imposed
12/25/83
12/25/83
12/25/83*

1 supposed to file for a Motion of Dismissal if they didn't
2 give me my Rule Five. And then I didn't get a preliminary
3 hearing.

4 MR. WATSON: And what did we discuss about the
5 preliminary hearing?

6 MR. CABBAGESTALK: I mean you got the letters right
7 there.

8 MR. WATSON: What did I say. I filed for his
9 preliminary hearing before, on February the 7th. I showed
10 him the letter. I showed him the letter asking for Rule
11 Five that Brady Motion and the Affidavit of Service.
12 There are still no question but that everything I do is
13 not good enough, and I am working diligently in this case.

14 But to tell me that I'm going to sue you and take
15 steps to cost me my license while at the same time, oh,
16 don't take this letter as a threat, it's nothing but used
17 to make me fear anything he says to me. And that is just
18 wrong. The purpose of the Public Defender is to help
19 people who are indigent. That's exactly what I did in
20 this case. Mr. Cabbagestalk is trying to say otherwise,
21 in deed or in action.

22 It's just impossible for me to go forward when he
23 says, "I'm going to give you one more chance," and that's
24 how he starts out his letter.

25 MR. CABBAGESTALK: I mean in order for me to know --

1 like right now I'm being held for something that I did not
2 do, sir. This is my life. I just came from prison. Only
3 thing I want him to realize is that, you know, it's
4 serious as far as me with my life. You know what I'm
5 saying. I'm in here for -- I'm in here under my uncle's
6 name. They gave me some warrants that have my uncle's
7 name on it. ~~(X) Warrants got Uncle Name on it~~ Indictments to

8 I wonder why he don't have the Rule Five. Why didn't
9 I go to Magistrate Court. For a petit larceny charge that
10 ain't nothing but a 30 day charge, and I didn't go there
11 yet. I'm wondering why I didn't go there cause then --
12 and then they gave me someone else's bond, and I mean
13 it's -- I mean it don't make sense what I'm in here for.

14 (X) MR. WATSON: First, we informed the Solicitor about
15 the name being wrong. (He told me when we met out there
16 that he had served the 30 days for the petit larceny. I
17 showed him the Rule Five request, and I showed him what we
18 have received thus far. But out of the 400 and some cases
19 I have pending I wish that Mr. Cabbagestalk was the only
20 case, but it's not. But I have met with him twice at my
21 office since he was arrested, and I have done everything
22 he has asked me to do.

23 And in return the last conversation we had up until
24 today he stood up in my office and said, "You are a fool.
25 Do not do another thing in my case. I'm going to hire me

1 a private lawyer."

2 MR. CABBAGESTALK: I never told you that.

3 MR. WATSON: How can I move forward with that.

4 MR. CABBAGESTALK: I never told him I was going to
5 get a private lawyer. If I -- yeah, I told him that if I
6 could get a P.R. bond if I could get out I would work to
7 get my own lawyer.

8 MR. WATSON: But he does not deny he called me a
9 fool.

10 MR. CABBAGESTALK: I mean the things you were doing
11 were foolish because you arguing with me, and that's all
12 we're doing. We're arguing. I mean I'm asking you per
13 the law, I mean what's going on with my Rule Five, my
14 Brady material, my Brady v. Maryland. What's gone on with
15 my preliminary hearing if I filed for that. And then at
16 the jailhouse you got Miss Pam that's over appointing
17 those attorneys over there. And then ---

18 X MR. WATSON: She didn't have anything to do with the
19 appointing counsel. That goes to the Clerk of Court. She
20 is -- Madam Clerk of Court, under the Rules of
21 Appointment, is the only person because the Court rules
22 provide, and I've shown the defendant my Order of
23 Appointment.

24 And the only person that can appoint a lawyer is the
25 Clerk of Court, and it has to be a signed Order of

1 Appointment on a form by the South Carolina Court
2 Administration. And this was signed on January 25th and
3 received on January 26th. Miss Pam that he's speaking of
4 has nothing to do with that.

5 MR. CABBAGESTALK: Okay, so when I went to go get
6 appointed the attorney that's the office I had to go into,
7 Miss Pamela Johnson's Office.

8 MR. WATSON: But she has nothing to do with the
9 appointment of the lawyers.

10 MR. CABBAGESTALK: But that's what I'm saying.

11 MR. WATSON: The Clerk of Court has nothing to do
12 with the appointment of the lawyers.

13 THE COURT: Mr. Cabbagestalk.

14 MR. CABBAGESTALK: Yes, sir.

15 THE COURT: Other than your private conversations and
16 your communication with Mr. Watson have you complained to
17 anyone else?

18 MR. CABBAGESTALK: I mean, yes, sir, because the
19 reason why I complained to someone else, sir, is because
20 the law as far as me having my Brady v. Maryland material
21 I haven't gotten it, and its been over 30 days I've been
22 in. I've been in the Dillon County Jail since
23 January 12th.

24 THE COURT: Who did you complain to?

25 MR. CABBAGESTALK: Oh, I wrote the lawyer conduct

1 people. I complained to him with several letters.

2 THE COURT: Well, that pretty well seals the fate of
3 that. I'm going to have to grant your motion. I'm going
4 to have to -- let me ask you something very candid. Is
5 there somebody over there at the jail helping you or any
6 of the other inmates file these letters with the
7 Disciplinary Council or anyone else?

8 MR. CABBAGESTALK: No, sir. Me, personally, like I
9 said I went to prison and I studied that because the last
10 time -- matter of fact I was in front of you, 2002 or 2003
11 or something, when I got gypped and was told that Hot Spot
12 Number Two was in Riverdale Community. You can look out
13 the window and see it right there. Right there and
14 Jacksonville is across the street right there.

15 So I felt that I been beat. So I took upon my time,
16 you know what I'm saying, to study that when I was there.
17 But at the same time I'm not saying I know everything, but
18 I took it among myself to study so I could know somewhat
19 of the law so I won't be ignorant to it. I mean I don't
20 know everything.

21 THE COURT: Have you been advising other inmates over
22 there to do similar things?

23 MR. CABBAGESTALK: No, sir. That is -- I be -- I
24 mean I couldn't even think right. If that's the case I
25 can't even sleep knowing I'm in here for somebody

1 else's -- for somebody else name on it and it's not me. I
2 mean I wouldn't -- I don't have time for that. This is my
3 life.

4 MR. WATSON: But my issue is we had -- he says,
5 "Continue, continue, continue, continue, continue," before
6 we came in here. And yet he's telling you he filed a
7 grievance against me to have my license taken. How can I
8 go forward?

9 *THE COURT: I mean you can't once that was done.

10 MR. CABBAGESTALK: Yeah, I respect that.

11 MR. WATSON: But that is another part and parcel. He
12 was sitting there this morning saying, "Go forward. I
13 withdraw it. Go forward. I withdraw it."

14 THE COURT: Have we got a conflict with Mr. Manning?
15 Any codefendants or anything?

16 MR. WATSON: I don't know if there are co-defendants.

17 MR. CABBAGESTALK: I don't have no co-defendants.

18 THE COURT: Okay.

19 MR. CABBAGESTALK: That's what I'm saying to you. If
20 everything had went the right way then I would know that.
21 I would know that what type of paperwork I have against
22 me. I mean it's been over 30 days. I was supposed to
23 been received my Rule Five or preliminary hearing. The
24 reason that I say that something must be going on between
25 them, with Miss Pam and them, is, okay, when she called me

No Bond
no
preliminary
hearing

1 to appoint me my lawyer the bond hearing was set. The
2 bond hearing from Judge Davis was set on January the 15th,
3 okay.

4 When you get a bond hearing that leaves you to
5 receive your preliminary hearing form at that time. So at
6 that time they tell you on the preliminary hearing form,
7 on the Notice to Preliminary Hearing Form, that you've got
8 ten days to file for it. So how can I have ten days to
9 file for it if he was being appointed to me on the 25th,
10 January 25th. And then he ain't filed for it until
11 January the 28th or whatever. Whatever day he filed for
12 it he knows.

13 Okay, from January the 15th to January the 25th
14 that's 10 days. So how can I file for a preliminary
15 hearing when I was never brought in front of a bond
16 hearing. Well, I was never brought into a bond hearing or
17 if I never got a chance to get my preliminary hearing
18 form. But, luckily, somebody I see -- a jailer gave me a
19 preliminary hearing form and I filed it out and wrote the
20 central courts the letter.

21 And I sent the letter to him, but at the same time he
22 can go. I mean --

23 Grand Jury
THE COURT: I understand that once that grand jury
24 presents the indictment with the true bill the issue of
25 preliminary hearing becomes moot then.

Okay, now the grand jury never indicted me and that was sealed so how is it moot

1 MR. CABBAGESTALK: Okay. So I filed for it. Okay,
2 so January the 15th I had my bond hearing. January the
3 28th I filed my preliminary hearing form. I got it --
4 matter of fact I got that right here. I filed for my
5 preliminary hearing form and all that. Here is the letter
6 and the form. This is the letter I wrote to them. This
7 is the form or a copy.

8 *Important* THE COURT: *Copy of Indictment*
9 You have a copy of the indictment,
Mr. Watson?

(10) MR. WATSON: I do.

11 MR. CABBAGESTALK: That's what I sent to him.

12 MR. WATSON: He was indicted on ---

13) MR. CABBAGESTALK: So how come ---

14 MR. WATSON: --- March 1st, I think. I don't have a
15 true billed copy of the indictment, but I know it's been
16 true billed. (The Clerk keeps those.) ← Clerk of
Courts fault.

17) THE COURT: What day do you think it was?

18 MR. WATSON: March the 1st, I think.

19 THE COURT: 1/28, three days later. March the 1st?

20) MR. WATSON: Yes, sir.

21) THE COURT: One day later.

22 MR. WATSON: But, see, he was arrested on January the
23 12th of 2007.

24 ~~44~~ THE COURT: Well, some of the magistrates here are
25 slow on the preliminary hearings, and maybe because of

Proof
This was
its 2nd
- with
- when
- wire 7th
is double
- sleep

VERY IMPORTANT!

1 Supreme Court rules that once you're true billed then
 2 they -- you don't have to have a preliminary hearing. So
 3 we're checking on that, but that's not Mr. Watson's fault,
 4 okay. (But, anyway, bottom line is once you're true billed
 5 the preliminary hearing is not an issue anymore. That's
 6 been ruled upon. You.

7 All right. Now, you want to represent yourself or
 8 you want me to look into appointing someone else?

9 MR. CABBAGESTALK: I'd rather have somebody else
 10 appointment for me that's not from Dillon, South Carolina.
 11 I mean or if that's the case, okay. Let me see this.
 12 Yeah, I'd rather have someone else appointed to me that's
 13 not from Dillon, South Carolina. Not from Dillon because
 14 I mean -- like I said I don't understand.

15 MR. WATSON: I'm not from Dillon.

16 MR. CABBAGESTALK: Well, I mean your office is here.
 17 You've got the police and everybody else that works with
 18 each other. I mean I want to have a fighting chance
 19 that -- what I'm innocent of.

20 THE COURT: Mr. Manning is from Bennettsville?

21 MR. WATSON: Yes, sir.

22 * MR. CABBAGESTALK: I don't want nobody that going to
 23 keep coming to me to plea and plea and plea and I got to
 24 argue with them about -- I mean the paperwork is
 25 self-explanatory. I mean it shows itself. This is not

As has been told
 proper paperwork
 has never been
 collected
 (Rule Billed)
 Revised

1 me.

2 THE COURT: Mr. Manning's main office is in
3 Bennettsville?

4 MR. WATSON: Yes, sir.

5 THE COURT: Okay.

6 MR. WATSON: Thank you, Your Honor. Have a good
7 afternoon.

8 MR. CABBAGESTALK: No problem with that.

9 END OF TRANSCRIPT OF RECORD

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)

I, HATTIE O. GORDON, Official Court Reporter for the
4th 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
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Dillon County, South Carolina, on the 7th day of March,
2007.

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

November 25, 2011



HATTIE O. GORDON, Court Reporter

No Guiz

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF DILLON) FOURTH JUDICIAL CIRCUIT
2007-GS-17-00362, 00363, & 00364

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

VS.)

TRANSCRIPT OF RECORD

JAMES CABBAGESTALK,)

DEFENDANT.)

"MAY 31, 2007"

DILLON, 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:

KERNARD E. REDMOND, ESQ.
ATTORNEY FOR THE STATE

GLENN B. MANNING, ESQ.
ATTORNEY FOR THE DEFENDANT

BONNIE H. KELLY
CIRCUIT COURT REPORTER

I N D E X

	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
1		
2		
3	CASE CALLED/MR. REDMOND	4
4	MOTION BY MR. MANNING	6
5	RULING OF THE COURT	7
6	MOTION BY MR. MANNING	8
7	RULING OF THE COURT	8
8	CERTIFICATE PAGE	9

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID</u>
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- NO EXHIBITS -

1 MR. REDMOND: May it please the Court, Your Honor.

2 THE COURT: Yes, sir.

3 MR. REDMOND: Before you at this time is James
4 Cabbagestalk. He's before you on 2007-GS-17-364, that
5 being for armed robbery; 363 -- and if the Court would
6 indulge me. I'm looking for the copies of the indictments,
7 so I can accurately read these -- 364 is for armed robbery;
8 363 is for assault and battery with intent to kill; and 362
9 is for petty larceny.

10 Your Honor, he is here before you. Mr. Manning has
11 indicated he wishes to make a motion to reduce his bond. I
12 don't have right in front of me what his current bond is
13 set at, but I can tell the Court at the appropriate time
14 that I have made attempts to comply with the Victim's Bill
15 of Rights. and at the appropriate time, I can give the
16 Court this -- that particular portion of it.

17 I can tell the Court that at this point, as is my
18 policy, I would oppose a reduction in bond at this point.
19 And I think once I give you the brief factual background,
20 hopefully the Court will see why the State takes that
21 position.

22 THE COURT: I didn't hear what the bond is.

23 MR. MANNING: \$30,000 -- 36,000.

24 MR. REDMOND: All right.

25 THE COURT: Mr. Redmond, if you'd tell me --

1 MR. REDMOND: Yes, sir. Yes, sir, Your Honor. If it
 2 please the Court, on the first -- (January 1st, this
 3 occurred in Nichols,) The victim in this case had pulled
 4 into the driveway. And he -- it looks like the -- he
 5 stopped to ask -- somebody -- this defendant was with
 6 someone else. The victim stopped. I think they had
 7 actually acted as if there was a problem with the car. And
 8 so, when they got out -- they were three males that got out
 9 with guns and two shotguns; two had shotguns and one had a
 10 pistol.

11 * (He recognized the suspect that didn't have a gun.) *
 12 because there were four people here; three of them had
 13 guns. * (The person that he recognized was the defendant.) * We
 14 don't have the other people in custody at this time.

15 And anyway -- Judge, so he recognized him. * (They --
 16 they actually told him to give up his money and his cell
 17 phone.) * (One of the suspects hit him in the face.) * (The gun
 18 was also pointed at his son's face.) I do not have the age
 19 of his son.

20 As they drove off, one of them shot one time. * (He
 21 doesn't know -- according to this -- what direction the
 22 bullet went. But he did hear the gunshot as they were
 23 leaving.)

24 (The victim in this case is Russell Dillard.) He had
 25 given a description of the vehicle that was involved, and

* This is reported. I never kept in a prop. lineup and I never seen this guy, at least for the 1st time ever

1 (he had actually recognized this defendant as being one of
2 the parties involved.) * No gun from solicitor mouth from alleged
3 victim mouth. * But he indicated he did not have a

4 Again, (we do not have the other people who were
5 involved in custody) at this time. And for the reasons of
6 the nature of the incident, we would ask the Court to
7 consider -- (because obviously, it was a premeditated
8 situation) in the sense that he was basically lured into the
9 situation and was robbed.

10 I did not tell the Court what amount of money he was
11 robbed of. As I indicated, the cell phone was robbed and
12 (looks like about \$235) was taken from the victim.

13 Record * THE COURT: Mr. Cabbagestalk have any record?
of me

14 MR. REDMOND: Yes, sir, Judge. If the Court would
15 indulge me. In 2002, possession of a stolen vehicle. He
16 had two years probation on that. Looks like -- I thought
17 he violated that. * (Doesn't look like he violated that.) *
18 * (And then, Judge, in 2003, he had a distribution of
19 crack charge. He got five years on that.) *

20 And that is the extent of his -- looks like that was
21 actually two counts as it relates to the drug charges, two
22 counts of distribution. He got five years on that active
23 incarceration.

24 MR. MANNING: Yes, Your Honor. Your Honor, may it
25 please the Court. I was appointed to represent Mr.

1 Cabbagestalk on -- several weeks ago, and I don't have his
2 file in front of me, Your Honor. But I would tell the
3 Court that he has been in jail for certainly more than 30
4 days. And (I would ask the Court to consider a reduction in
5 bond.) *Bond Reduction ✓ Glenn B. Manning*
Lawyer

6 He has not been able to -- to make the \$36,000 bond,
7 and based on the nature of the things that have just been
8 presented to the Court, I see no reason why, Your Honor, he
9 should not be entitled to a bond that would be one that he
10 would be able to make. Certainly he can't make this. If
11 he could, he would have been out by now. And I'd ask the
12 Court to -- to -- to seriously consider reducing the bond
13 for this individual.

14 I don't think that he's a flight risk. I don't think
15 he would be in the position to harm or injure anyone. And
16 I certainly know that that would be one of the conditions
17 of the bond. So, I'd ask if the Court would consider
18 reducing the bond.

19 THE COURT: Based on the alleged facts and the prior -
20 - prior -- Mr. Cabbagestalk's prior record, I'm going to
21 leave the bond at \$36,000.

22 MR. MANNING: Thank you.

23 MR. REDMOND: Thank you, Your Honor.

24 THE COURT: Motion to reduce is denied.

25 *Denied Bond Reduction*

MR. MANNING: Your Honor, also, make a motion for a speedy trial as well.

THE COURT: Well, how -- how long -- when -- how long is -- what was the date of the incident?

MR. REDMOND: The date of the incident was New Year's Day, Judge. And he was arrested on the 12th.

THE COURT: Of May?

MR. REDMOND: Of -- 12th of January. I'm sorry. It's been since January.

* THE COURT: Well, I'm not going to require the State to try him at any particular time at this point. * (The case is still fresh.) * I'll -- just without prejudice, you can make a motion -- (you can renew your motion at any time.) *

MR. MANNING: Thank you, Your Honor.

MR. REDMOND: We'd actually made a -- (I had made an offer in this case) that (I forgot to give to Mr. Manning.) So, I do have an offer sheet as well.

THE COURT: All right.

MR. REDMOND: And we have complied with Rule 5 up to this point, Judge.

*** THE COURT: (To the defendant) I'd -- I'd be glad to hear from you, but I don't want to be rude. But anything you say can be used against you if you go to trial. You understand that?

THE DEFENDANT: Yeah. I understand that.

Denied my motion for speedy trial said case is fresh still 2 mon away from trial by Supr Court + 2 months for disposal of case.

Never got it from my period I would have taken some time for the 18 yrs.

Abuse of discretion Indictments could've been allowed here my the Newer hears Indictment same; cabbage talk was I'm not allowed to hear from the defendant.

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THE COURT: Well, I think it best if you deal through

your attorney. Thank you.

MR. REDMOND: Thank you, Your Honor.

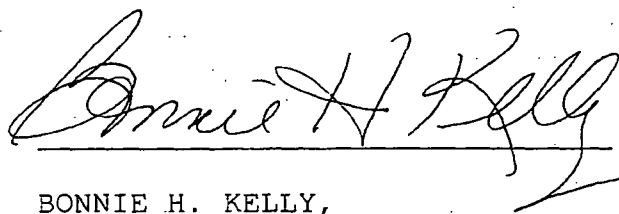
--- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, THE UNDERSIGNED BONNIE H. KELLY, OFFICIAL
COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE
STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT
OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE
INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE,
RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR DILLON
COUNTY, SOUTH CAROLINA, ON THE 31ST DAY OF MAY, 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



BONNIE H. KELLY,

COURT REPORTER

COLUMBIA, SOUTH CAROLINA

JUNE 23, 2011

STATE OF SOUTH CAROLINA
COUNTY OF DILLON

IN THE COURT OF GENERAL SESSIONS
07-GS-17-0362/0363/0364

STATE OF SOUTH CAROLINA,

vs.

JAMES SHAHEEN CABBAGESTALK.

TRANSCRIPT OF RECORD

See name

JULY 26, 2007¹²
DILLON, SOUTH CAROLINA

BEFORE:

THE HONORABLE, HOWARD P. KING, JUDGE

APPEARANCES:

BY: KERNARD E. REDMOND, ESQ.
ATTORNEY FOR STATE

BY: GLENN B. MANNING, ESQ.
ATTORNEY FOR (JAMES CABBAGESTALK)

*See well different names
different names*
BRENDA R. BABB
Circuit Court Reporter

*No Gun
made plea
offer in
February
Say the Compliance
with Rule 5
Pg 6 line 18-21
See March 5
2007 Not
Bill
End
one*

Imposed
10-21-08 Held
Aug. 27-28 07

GUILTY PLEA - JUNE 24, 2008

2

ARGUMENT BY MR. MANNING

3

ARGUMENT BY MR. REDMOND

4

RULING OF COURT

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CERTIFICATE OF REPORTER

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MOTION FOR SPEEDY TRIAL/BOND REDUCTION - JULY 26, 2007

3

1 MR. REDMOND: MAY IT PLEASE THE COURT, YOUR
2 HONOR?

3 THE COURT: YES, SIR, GIVE ME JUST ONE MINUTE.

4 MR. REDMOND: THANK YOU, YOUR HONOR, MAY IT
5 PLEASE THE COURT, BEFORE YOU AT THIS TIME IS JAMES SHAHEEN
6 CABBAGESTALK. HE'S BEFORE YOU UNDER INDICTMENT NUMBERS
7 2007-GS-17-362, THAT BEING PETTY LARCENY;

8 363 ASSAULT AND BATTERY WITH INTENT TO KILL; AND
9 364 THAT BEING ARMED ROBBERY.

10 MR. MANNING HAS A COUPLE MOTIONS HE WOULD LIKE TO
11 MAKE AT THIS TIME SO I'LL YIELD TO HIM AND THE STATE WOULD
12 RESPOND AT THE APPROPRIATE TIME.

13 THE COURT: ALL RIGHT, YES, MR. MANNING?

14 MR. MANNING: YES, YOUR HONOR, MAY IT PLEASE THE
15 COURT, (THE FIRST MOTION IS ONE FOR A SPEEDY TRIAL AND THE
16 SECOND MOTION IS ONE FOR BOND REDUCTION.)

17 (*) I WAS APPOINTED TO REPRESENT MR. CABBAGESTALK BY
18 JUDGE BURCH, I THINK IT WAS BACK IN, I DON'T HAVE THE FILE
19 WITH ME, APRIL OF THIS YEAR AS I RECALL CORRECTLY, AND (HIS
20 BOND WAS SET BY THE MAGISTRATE AT \$36,000) AND HE'S BEEN
21 INCARCERATED EVER SINCE AND WE'D ASK THE COURT FOR A BOND
22 REDUCTION IN THIS MATTER.

23 AND ALSO MOVE THE COURT FOR ORDER FOR SPEEDY
24 TRIAL.

25 THE COURT: MR. REDMOND?

- JULY 26, 2007

4

MR. REDMOND: JUDGE, THIS CASE WAS INITIALLY
HANDLED BY MR. WATSON. (I BELIEVE THERE WAS A CONFLICT AT
SOME POINT.) I DON'T KNOW THE NATURE OF IT BECAUSE IF I
REMEMBER CORRECTLY I THINK THERE WAS AN IN CAMERA HEARING
AT WHICH TIME MR. WATSON WAS RELIEVED AND MR. MANNING WAS
APPOINTED SUBSEQUENT TO THAT.

JUDGE, I CAN TELL THE COURT THAT AS IT RELATES TO
REDUCTION OF BOND I HAD PREVIOUSLY TALKED WITH THE VICTIM,
HE'S MOVED AND I HAVEN'T HAD THE OPPORTUNITY TO TALK WITH
HIM TODAY, BUT I HAD TALKED WITH HIM PREVIOUSLY IN DETAIL
CONCERNING THE ALLEGATIONS IN THIS MATTER; AND WITHOUT
GETTING TOO MUCH INTO THE FACTUAL BASIS I CAN TELL THE
COURT THAT WE WOULD BE OPPOSED FOR REDUCTION OF BOND.

I CAN TELL THE COURT THAT THE DEFENDANT IS KNOWN
TO THE VICTIM SO THE STATE FEELS THIS CASE IS STRONG BASED
ON THE ALLEGATIONS AND FURTHER, YOUR HONOR, BASED ON THE
FACT THE REASON, AND AGAIN BEING BRIEF, BUT TO GIVE THE
COURT AN IDEA OF THE FACTUAL BASIS.

^{Solicitor Testimony of Case} THIS WAS A SITUATION WHERE THE DEFENDANT WAS IN A
CAR WITH THREE OTHER INDIVIDUALS (AT WHICH TIME HE PULLED
OVER ON THE, THE CAR THAT THE DEFENDANT WAS IN WAS PULLED
OVER ON THE SIDE OF THE ROAD.) (THE VICTIM GOT OUT THE CAR
TO HELP.) (THE DEFENDANT CAME OVER AND THE DEFENDANT, THE
VICTIM KNOWS THE DEFENDANT, WELL (THE OTHER THREE IN THE CAR
THEN GET OUT AND ROB HIM.))

That's a Conspiracy to Armed
Robbery then not actual
armed robbery

Conspiracy to Armed Robbery

Solicitor testimony

I had no gun

by Wayne Dillard

5

1 HE DID INDICATE THAT THE DEFENDANT DID NOT HAVE A
 2 GUN BUT THE OTHER PARTIES DID. ONE OF THOSE OTHER PARTIES
 3 FIRED A GUN IN THE DIRECTION OF THE VICTIM'S TRUCK. HIS,
 4 HIS HANDICAPPED CHILD WAS IN THE CAR. THE CHILD WAS STRUCK
 5 BY ONE OF THE BULLETS IN THE HAND, THAT'S WHERE THE ASSAULT
 6 AND BATTERY CHARGE COMES FROM. AND SO, JUDGE, BECAUSE OF
 7 THAT WE REGARD THIS AS A VERY SERIOUS SITUATION AND WE
 8 WOULD RESPECTFULLY REQUEST (THAT BOND NOT BE SET AT THIS
 9 TIME.)

10 THE COURT: TELL ME WHEN IT HAPPENED, WHAT WAS
 11 THE DATE OF THE INCIDENT?

12 MR. REDMOND: THE DATE OF THE INCIDENT WAS NEW
 13 YEARS DAY, JUDGE. HE WAS ARRESTED ON THE 12TH OF JANUARY,
 14 BUT THE INCIDENT OCCURRED ON NEW YEARS DAY.

15 THE COURT: AND HE WAS REPRESENTED BY SOMEONE
 16 ELSE PRIOR TO MR. MANNING BEING INVOLVED IN IT?

17 MR. REDMOND: THAT'S CORRECT.

18 THE COURT: AND THEN MR. MANNING GOT IN IN APRIL
 19 I BELIEVE, YOU WERE APPOINTED IN APRIL, MR. MANNING?

20 MR. MANNING: I THINK, I'M ALMOST SURE, BY JUDGE
 21 BURCH. Don't know what's going on.

22 MR. REDMOND: AND, JUDGE, I FORGOT TO MENTION TO
 23 FURTHER SUPPORT OUR REQUEST NOT TO HAVE HIS BOND REDUCED,
 24 WE'VE GOT INVESTIGATOR JOHN WILLIE BROWN OF THE SHERIFF'S
 25 DEPARTMENT WHO ACTUALLY IS INVOLVED IN THE INVESTIGATION OF

His is a
see May 31st
2007 transcript
Judge says
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MOTION FOR SPEEDY TRIAL/BOND REDUCTION - JULY 26, 2007

6

1 THIS CASE AND HE ADVISED ME THAT AT THE TIME THEY ARRESTED
2 HIM ON THE 12TH HE ACTUALLY ATTEMPTED TO RUN AWAY AND THEY
3 HAD TO ACTUALLY CATCH HIM. AS A MATTER OF FACT, WHEN THEY
4 ENCOUNTERED HIM HE TRIED TO RUN BUT THEY WERE ABLE TO CATCH
5 HIM.

6 THE COURT: TELL ME WHAT YOUR, WHAT YOUR COURT
7 SCHEDULE IS? HOW OFTEN DO YOU HAVE COURT, MR. REDMOND?

8 MR. REDMOND: WE HAVE COURT ON AVERAGE ONCE A
9 MONTH. NOW THIS TERM WE WENT TWO MONTHS IN BETWEEN BUT
10 NORMALLY IT AVERAGES TO ABOUT ONCE A MONTH, ONCE EVERY
11 MONTH AND A HALF. WE'VE GOT THREE TERMS LEFT AFTER THIS
12 TERM, THE 27TH OF AUGUST, THE 15TH OF OCTOBER, AND THE 26TH
13 OF NOVEMBER.

14 THE COURT: LET ME SEE THAT, MADAM CLERK?

15 MR. REDMOND: AND, JUDGE, I DIDN'T MENTION BUT
16 IT APPEARS IN REVIEWING THE FILE I ACTUALLY MADE AN OFFER
17 BACK IN FEBRUARY WHILE MR. WATSON WAS STILL REPRESENTING
18 HIM AND WE HAD COMPLIED WITH RULE 5 THAT WE HAD AT THAT
19 TIME AND I DON'T SEE WHERE IT HAS BEEN SUPPLEMENTED OR
20 NEEDS TO BE SUPPLEMENTED AT THIS PARTICULAR TIME. WE'VE
21 COMPLIED WITH RULE 5.)

22 THE COURT: OKAY, ALL RIGHT. BASED UPON WHAT
23 I'VE HEARD AND THE BASIC FACTS OF THIS CASE I CANNOT SAY
24 THAT THE BOND IS UNREASONABLE AT \$36,000. I'M GOING TO
25 DENY THE MOTION TO REDUCE THE BOND.

what happened
to Mr. offer
Accepted or rejected

Obvious
Tried
See
8/1/07
J. Day
Watson
Never
Showed
with

(Motion for Bond
Reduction
denied)

MOTION FOR SPEEDY TRIAL/BOND REDUCTION - JULY 26, 2007

7

1 I'LL ALSO NOTE THAT THE MOTION FOR SPEEDY TRIAL
2 HAS BEEN MADE AND I'VE REQUIRED THE STATE TO ADDRESS THIS
3 CASE AND ^{IN}DISPOSE OF IT WITHIN 120 DAYS OF TODAY'S DATE. ** NATHAN 180 days from*
4 THAT WILL CARRY IT THROUGH THE THREE TERMS THIS YEAR. ** IF SC. Super Court*
5 IT IS NOT TAKEN CARE OF BY THE END OF THOSE TERMS THEN THE *Justice*
6 COURT WILL ENTERTAIN A MOTION FOR A BOND REDUCTION FOR *funney*
7 PERSONAL RECOGNIZANCE AT THAT TIME. *See R.O.*

8 MR. REDMOND: THANK YOU, YOUR HONOR.

9 MR. MANNING: THANK YOU, YOUR HONOR.

10 THE COURT: ALL RIGHT.

11 END OF REQUESTED TRANSCRIPT - - - -
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED BRENDA R. BABB, OFFICIAL COURT REPORTER THE SOUTH CAROLINA COURT ADMINISTRATION, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR DILLON COUNTY, SOUTH CAROLINA.

I DO FURTHER CERTIFY THAT I AM NEITHER KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

February 21, 2010

Brenda R. Babb

BRENDA R. BABB, CVR

OFFICIAL REPORTER

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DILLON COUNTY

Howard P. King, Circuit Court Judge

Envelopes:
 Supplemental
 Record on Appeal
 Put Sentencing
 Sheet Instead of
 Indictment
 (See April 27, 2009)
 Correspondence to me

THE STATE,

fixed
 Dropped
 Charge
 N/B/W/F/K

RESPONDENT,

V.

JAMES CABBAGESTALK
 A/K/A
 SHAHEEM R. CABBAGESTALK,

APPELLANT

SUPPLEMENTAL RECORD ON APPEAL

KATHRINE H. HUDGINS
 Appellate Defender

South Carolina Commission on Indigent Defense
 Division of Appellate Defense
 PO Box 11589
 Columbia, SC 29211-1589
 (803) 734-1330

Attorney for Appellant

HENRY DARGAN MCMASTER
 Attorney General

JOHN W. MCINTOSH
 Chief Deputy Attorney General

SALLEY W. ELLIOTT
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 Office of the Attorney General
 PO Box 11549
 Columbia, SC 29211
 (803) 734-3727

WILLIAM B. ROGERS, JR.
 Solicitor, Fourth Judicial Circuit
 110 Liberty Street
 Bennettsville, SC 29512
 (843) 479-6516

Attorneys for Respondent

JB 12:12 8438413795

For James
Cabbage stalk
No fine

10-30455

STATE OF SOUTH CAROLINA

COUNTY OF Dillon
STATE VS.AKA: James Cabbage stalkRace: W Sex M Age: DOB: 194 SS#: Address: City, State, Zip Dillon, SC 29536DL# SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

2007 GS 17 364A/MR: K1296600Date of Offense: 12-11-330(A)S.C. Code #: 011319CDR Code #: ☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: James Cabbage stalk 10-30455in violation of 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 011319☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommended by the State

AT TEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 18 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 §16-15-130

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114 (EUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County of paid in installment

TOTAL

\$100.00

\$100.00

\$12.00

\$500.00

\$25.00

\$100.00

\$50.00

\$40.00

\$325.00

\$428.75

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

PRESIDING JUDGE

Judge Code: 2111017Sentence Date: 8/28/07

SCCA/217 (2/2006)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

Indictment notice

preliminary hearing

420-jur

see all transcript
names on front

STATE OF SOUTH CAROLINA)

COUNTY OF DILLON)

COURT OF GENERAL SESSION

WARRANT NO. K129668

K129669, K129670

STATE OF SOUTH CAROLINA)

PLAINTIFF)

vs.)

TRANSCRIPT OF RECORD

SHAHEEN CABBAGESTALK)

DEFENDANT)

March 7, 2007
Dillon, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

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

DAVID WATSON, PUBLIC DEFENDER
Attorney for the Defendant

HATTIE O. GORDON
Circuit Court Reporter

I N D E X

Colloquy	4
Certificate of Reporter	17

EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

COLLOQUY

MR. WATSON: May it please the Court. This is on the docket a number of cases. The caption is Shaheen Cabbagestalk which my client tells me is the incorrect name. He's charged under Warrant K19 -- 129668 with armed robbery. 129669 with assault and battery with intent to kill. And 129670 with petit larceny.

I was -- I received notice of this appointment in January of 2007. I've had it for about five weeks or so. During that time I would characterize my relationship with Mr. Cabbagestalk as turbulent. He has written me a number of times, and the last letter I received purports to say that I have an unethical relationship with the Solicitor and the lady who runs the jail.

I've had a very candid conversation with Mr. Cabbagestalk this morning. I told him that I was going to ask the Court to be relieved based upon his assertions to me that the basis of my work is flawed and improper. After we had that conversation he said that he wanted to withdraw his comments, and I said, "I don't know if you can unring the bell." But the comment suggests just so ripe for the Grievance Committee should he be convicted as to make it perilous.

I pursued this case vigorously having filed Rule Five. Notified the Solicitor that the name on the

Handwritten notes:
12. I don't know
13. I don't know
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25. I don't know

1 indictment was wrong. Requested a preliminary hearing.

2 Mr. Cabbagestalk asked me to serve under Rule Five in
3 writing a Notice of Alibi which I have done. I can't do
4 any more in this case than I'm doing. Mr. Cabbagestalk
5 believes that I can.

6 * And he was curious as to whether or not I had paid
7 Pam at the jail money to help abridge his constitutional
8 rights. And in his most recent letter to me he says I
9 have violated certain portions of the constitution --
10 certain constitutional protections available to him. When
11 I contrast that with his conversation this morning it's
12 like two separate individuals.

13 He said, "Oh, I want to take it back. I want you to
14 go ahead. I know you're a good lawyer." What he reduces
15 to writing is something that is totally different. I've
16 been an orphan for most of my life. I take what people
17 tell me very seriously. I have -- my client has brought
18 to me at the office. And I can tell you that the last
19 time Mr. Cabbagestalk and I met he told me not to do
20 anything else in this case. Not one thing.

21 The personal comments made to me about me are
22 inextricable from how I would have to prepare his case. I
23 told Mr. Cabbagestalk that I thought it best that I be
24 relieved cause should he be convicted then we would go
25 back and he would simply say, "I told you Mr. Watson was

1 dishonest. I told you he was not to be trusted." And he
2 said, "Oh, I would never do that," but I can tell you what
3 he has done thus far is nothing but fuel for the Office of
4 Disciplinary Council. It is just as clear as the lights
5 are on in this room.

6 The most disturbing thing, the last time
7 Mr. Cabbagestalk was at my office, when he left he looked
8 at my paralegal and the deputy that brought him and said,
9 "I've got my paper trail here." That just takes what
10 ability I have to work with him and just throws it away.
11 I don't think the Court has ever seen me do but work
12 compassionately with all the Public Defender clients. I
13 have. I mean I work arduously for them, But I can't go
14 forward with Mr. Cabbagestalk's case.

15 It is nothing in writing but I'm setting you up, as
16 he said in his last letter, "to sue you and to take our
17 license."

18 MR. CABBAGESTALK: That -- I didn't say all that. I
19 didn't send no letter. If you can show that to the Judge.

20 MR. WATSON: I'll be glad to.

21 MR. CABBAGESTALK: I told you that you weren't doing
22 me right probably as far as if you filed -- if -- since
23 you've been appointed to me on January 25th you ain't --
24 I mean if you're supposed to file for my Rule Five and
25 I've been sitting here in 30 days time, I thought you were

Temporary
Rule 5
5/11/71

1 supposed to file for a Motion of Dismissal if they didn't
2 give me my Rule Five. And then I didn't get a preliminary
3 hearing.

4 MR. WATSON: And what did we discuss about the
5 preliminary hearing?

6 MR. CABBAGESTALK: I mean you got the letters right
7 there.

8 MR. WATSON: What did I say. I filed for his
9 preliminary hearing before, on February the 7th. I showed
10 him the letter. I showed him the letter asking for Rule
11 Five that Brady Motion and the Affidavit of Service.

12 There are still no question but that everything I do is
13 not good enough, and I am working diligently in this case.

14 But to tell me that I'm going to sue you and take
15 steps to cost me my license while at the same time, oh,
16 don't take this letter as a threat, it's nothing but used
17 to make me fear anything he says to me. And that is just
18 wrong. The purpose of the Public Defender is to help
19 people who are indigent. That's exactly what I did in
20 this case. Mr. Cabbagestalk is trying to say otherwise,
21 in deed or in action.

22 It's just impossible for me to go forward when he
23 says, "I'm going to give you one more chance," and that's
24 how he starts out his letter.

25 MR. CABBAGESTALK: I mean in order for me to know --

1 like right now I'm being held for something that I did not
2 do, sir. This is my life. I just came from prison. Only
3 thing I want him to realize is that, you know, it's
4 serious as far as me with my life. You know what I'm
5 saying. I'm in here for -- I'm in here under my uncle's
6 name. They gave me some warrants that have my uncle's
7 name on it. Warrants got Uncle Name on it, Indictments to

8 I wonder why he don't have the Rule Five. Why didn't
9 I go to Magistrate Court. For a petit larceny charge that
10 ain't nothing but a 30 day charge, and I didn't go there
11 yet. I'm wondering why I didn't go there cause then --
12 and then they gave me someone else's bond, and I mean
13 it's -- I mean it don't make sense what I'm in here for.

14 MR. WATSON: First, we informed the Solicitor about
15 the name being wrong. (He told me when we met out there
16 that he had served the 30 days for the petit larceny. I
17 showed him the Rule Five request, and I showed him what we
18 have received thus far. But out of the 400 and some cases
19 I have pending I wish that Mr. Cabbagestalk was the only
20 case, but it's not. But I have met with him twice at my
21 office since he was arrested, and I have done everything
22 he has asked me to do.

23 And in return the last conversation we had up until
24 today he stood up in my office and said, "You are a fool.
25 Do not do another thing in my case. I'm going to hire me

1 a private lawyer."

2 X MR. CABBAGESTALK: I never told you that.

3 MR. WATSON: How can I move forward with that.

4 MR. CABBAGESTALK: I never told him I was going to
5 get a private lawyer. If I -- yeah, I told him that if I
6 could get a P.R. bond if I could get out I would work to
7 get my own lawyer.

8 MR. WATSON: But he does not deny he called me a
9 fool.

10 MR. CABBAGESTALK: I mean the things you were doing
11 were foolish because you arguing with me, and that's all
12 we're doing. We're arguing. I mean I'm asking you per
13 the law, I mean what's going on with my Rule Five, my
14 Brady material, my Brady v. Maryland. What's gone on with
15 my preliminary hearing if I filed for that. And then at
16 the jailhouse you got Miss Pam that's over appointing
17 those attorneys over there. And then ---

18 X MR. WATSON: She didn't have anything to do with the
19 appointing counsel. That goes to the Clerk of Court. She
20 is -- Madam Clerk of Court, under the Rules of
21 Appointment, is the only person because the Court rules
22 provide, and I've shown the defendant my Order of
23 Appointment.

24 And the only person that can appoint a lawyer is the
25 Clerk of Court, and it has to be a signed Order of

1 Appointment on a form by the South Carolina Court
2 Administration. And this was signed on January 25th and
3 received on January 26th... Miss Pam that he's speaking of
4 has nothing to the with that. *Yea*

5 MR. CABBAGESTALK: Okay, so when I went to go get
6 appointed the attorney that's the office I had to go into,
7 Miss Pamela Johnson's Office.

8 MR. WATSON: But she has nothing to do with the
9 appointment of the lawyers.

10 MR. CABBAGESTALK: But that's what I'm saying.

11 MR. WATSON: The Clerk of Court has nothing to do
12 with the appointment of the lawyers.

13 THE COURT: Mr. Cabbagestalk.

14 MR. CABBAGESTALK: Yes, sir.

15 THE COURT: Other than your private conversations and
16 your communication with Mr. Watson have you complained to
17 anyone else?

18 MR. CABBAGESTALK: I mean, yes, sir, because the
19 reason why I complained to someone else, sir, is because
20 the law as far as me having my Brady v. Maryland material
21 I haven't gotten it, and its been over 30 days I've been
22 in. I've been in the Dillon County Jail since
23 January 12th.

24 THE COURT: Who did you complain to?

25 MR. CABBAGESTALK: Oh, I wrote the lawyer conduct

1 people. I complained to him with several letters.

2 THE COURT: Well, that pretty well seals the fate of
3 that. I'm going to have to grant your motion. I'm going
4 to have to -- let me ask you something very candid. Is
5 there somebody over there at the jail helping you or any
6 of the other inmates file these letters with the
7 Disciplinary Council or anyone else?

8 MR. CABBAGESTALK: No, sir. Me, personally, like I
9 said I went to prison and I studied that because the last
10 time -- matter of fact I was in front of you, 2002 or 2003
11 or something, when I got gypped and was told that Hot Spot
12 Number Two was in Riverdale Community. You can look out
13 the window and see it right there. Right there and
14 Jacksonville is across the street right there.

15 So I felt that I been beat. So I took upon my time,
16 you know what I'm saying, to study that when I was there.
17 But at the same time I'm not saying I know everything, but
18 I took it among myself to study so I could know somewhat
19 of the law so I won't be ignorant to it. I mean I don't
20 know everything.

21 THE COURT: Have you been advising other inmates over
22 there to do similar things?

23 MR. CABBAGESTALK: No, sir. That is -- I be -- I
24 mean I couldn't even think right. If that's the case I
25 can't even sleep knowing I'm in here for somebody

1 else's -- for somebody else name on it and it's not me. I
2 mean I wouldn't -- I don't have time for that. This is my
3 life.

4 MR. WATSON: But my issue is we had -- he says,
5 "Continue, continue, continue, continue, continue," before
6 we came in here. And yet he's telling you he filed a
7 grievance against me to have my license taken. How can I
8 go forward?

9 *THE COURT: I mean you can't once that was done.

10 MR. CABBAGESTALK: Yeah, I respect that.

11 MR. WATSON: But that is another part and parcel. He
12 was sitting there this morning saying, "Go forward. I
13 withdraw it. Go forward. I withdraw it."

14 THE COURT: Have we got a conflict with Mr. Manning?
15 Any codefendants or anything?

16 MR. WATSON: I don't know if there are co-defendants.

17 MR. CABBAGESTALK: I don't have no co-defendants.

18 THE COURT: Okay.

19 MR. CABBAGESTALK: That's what I'm saying to you. If
20 everything had went the right way then I would know that.
21 I would know that what type of paperwork I have against
22 me. I mean it's been over 30 days. I was supposed to
23 been received my Rule Five or preliminary hearing. The
24 reason that I say that something must be going on between
25 them, with Miss Pam and them, is, okay, when she called me

*No Bond
no
Preliminary
Hearing*

1. to appoint me my lawyer the bond hearing was set. The
2. bond hearing from Judge Davis was set on January the 15th,
3. okay.

4. When you get a bond hearing that leaves you to
5. receive your preliminary hearing form at that time. So at
6. that time they tell you on the preliminary hearing form,
7. on the Notice to Preliminary Hearing Form, that you've got
8. ten days to file for it. So how can I have ten days to
9. file for it if he was being appointed to me on the 25th,
10. January 25th. And then he ain't filed for it until
11. January the 28th or whatever. Whatever day he filed for
12. it he knows.

13. Okay, from January the 15th to January the 25th
14. that's 10 days. So how can I file for a preliminary
15. hearing when I was never brought in front of a bond
16. hearing. Well, I was never brought into a bond hearing or
17. if I never got a chance to get my preliminary hearing
18. form. But, luckily, somebody I see -- a jailer gave me a
19. preliminary hearing form and I filed it out and wrote the
20. central courts the letter.

21. And I sent the letter to him, but at the same time he
22. can go. I mean --
23. *Grand Jury*
24. *Important* THE COURT: I understand that once that grand jury
25. presents the indictment with the true bill the issue of
preliminary hearing becomes moot then.

A okay now the grand jury never indicted me period and that was Counselor So how is it about

1 MR. CABBAGESTALK: Okay. So I filed for it. Okay,
 2 so January the 15th I had my bond hearing. January the
 3 28th I filed my preliminary hearing form. I got it --
 4 matter of fact I got that right here. I filed for my
 5 preliminary hearing form and all that. Here is the letter
 6 and the form. This is the letter I wrote to them. This
 7 is the form or a copy.

8 ** Important* THE COURT: *⊗ Copy of indictment* You have a copy of the indictment,
 9 Mr. Watson?

10 MR. WATSON: I do.

11 MR. CABBAGESTALK: That's what I sent to him.

12 MR. WATSON: He was indicted on ---

13 MR. CABBAGESTALK: So how come ---

14 MR. WATSON: --- March 1st, I think. ** I don't have a*
 15 true billed copy of the indictment, but I know it's been
 16 true billed. *(The Clerk keeps those.)* *← Clerk of Court's fault. She never put the True Billed indictment in my file.*

17 THE COURT: What day do you think it was?

18 MR. WATSON: March the 1st, I think.

19 THE COURT: 1/28, three days later. March the 1st?

20 MR. WATSON: Yes, sir.

21 THE COURT: One day later.

22 MR. WATSON: But, see, he was arrested on January the
 23 12th of 2007.

24 ** Important* THE COURT: Well, some of the magistrates here are
 25 slow on the preliminary hearings, and maybe because of

Proof
This is in
its 21
month
one
why?
is this
just

15th is so
closed

Very Important!

1 Supreme Court rules that once you're true billed then

2 they -- you don't have to have a preliminary hearing. So

3 we're checking on that, but that's not Mr. Watson's fault,

4 okay. (But, anyway, bottom line is once you're true billed

5 the preliminary hearing is not an issue anymore. That's

6 been ruled upon. You.

7 All right. Now, you want to represent yourself or
8 you want me to look into appointing someone else?

9 MR. CABBAGESTALK: I'd rather have somebody else
10 appointment for me that's not from Dillon, South Carolina.

11 I mean or if that's the case, okay. Let me see this.

12 Yeah, I'd rather have someone else appointed to me that's

13 not from Dillon, South Carolina. Not from Dillon because

14 I mean -- like I said I don't understand.

15 MR. WATSON: I'm not from Dillon.

16 MR. CABBAGESTALK: Well, I mean your office is here.

17 You've got the police and everybody else that works with

18 each other. I mean I want to have a fighting chance

19 that -- what I'm innocent of.

20 THE COURT: Mr. Manning is from Bennettsville?

21 MR. WATSON: Yes, sir.

22 (62) MR. CABBAGESTALK: I don't want nobody that going to

23 keep coming to me to plea and plea and plea and I got to

24 argue with them about -- I mean the paperwork is

25 self-explanatory. I mean it shows itself. This is not

3 his job to do
4 copy paperwork
5 or new, green
6 dictated or
7 Rye Billed
8 revised

1 me.

2 THE COURT: Mr. Manning's main office is in
3 Bennettsville?

4 MR. WATSON: Yes, sir.

5 THE COURT: Okay.

6 MR. WATSON: Thank you, Your Honor. Have a good
7 afternoon.

8 MR. CABBAGESTALK: No problem with that.

9 END OF TRANSCRIPT OF RECORD

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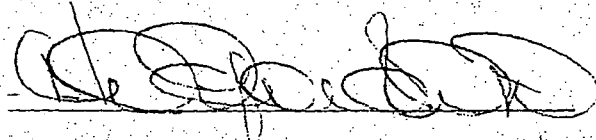
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

I, HATTIE O. GORDON, Official Court Reporter for the
4th 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
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Dillon County, South Carolina, on the 7th day of March,
2007.

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

November 25, 2011



HATTIE O. GORDON, Court Reporter

①

Notice of Recusal

Dear, Honorable J. Michael Baxley

Hi! This is Mr. Shaheen Cabbagertalk

I'm personally contacting you in regards
to letting you know you know you know you
weren't to here my per case 2010-cv-17091
you a defendant in a now pending lawsuit in
U.S. Courts of Appeals 4th Circuit Case # 13-11-cv-

00508-TMC No. 12-6336 I ask you over

Turn your illegal 5/15/12 Temporary order
and Renew for me a New Hearing for per
Courts really new Trial do to all this illegality
within the 4th Circuit Courts. Please do Note
this is documented and if ignored taken imme-
diately to higher officials I ask you follow
what I'm asking of you at this very moment
and Contact me back immediately

By: Shaheen Cabbagertalk
without prejudice see 1-207

Certificate of service this certifies I Notified
Chief Administrative Judge J. Michael Baxley of Refusing
himself and over turning his illegal Temporary order
of 5/15/12.

Notary: JC Hankle
my commission EXP: 12-16-2019
Date: 05/23/12

Shahen Cabbagestalk
V.
State of South Carolina

Courts of Common Pleas
for the 4th Circuit

THIS DOCUMENT
RECEIVED BY
COURT AND
SENT TO

Motion for
Recusal
of Judge
J. Michael Baxley
and Change of Venue
of Case

CLERK TO
BE FILED.

2121

This honorable Courts is
addressed by me Mr. Shahen Cabbagestalk
the Applicant, In regards to Honorable J. Michael Baxley whom is a defendant to a now Active Law
suite in Courts for the 4th circuit of Appeals in
Virginia. J. Michael Baxley your asked to overturn
your illegal ORDER of denial of PCR action
: 2010-cp-17091, you were not to here this
Case do to Conflict of Intrest, Bigness and
me being prejudiced for you to be seated as an
Judge over my freedom knowing I'd never get an
fair and Impartial hearing which I'm lawfully
Entitled to. You are lawfully demanded to Recuse yourself
off my Case and as well overturn your illegal
Judgement in search of an total view and All my
PCR issues be ruled on as presented with in the
PCR Application and motions addressed which
are a part of my hearing and Relief which should be
been addressed first the lawsuit # pending is: 3:11-cv-00508-
TMC the Appeal Case # is: (NO. 12-6336) of U.S. Court of Appeals
for 4th circuit: 1100 East Main Street, Suite 501 Richmond Virginia 23219-3517
telephone: 804-916-2100. Clerk "P. S. Connor" I hereby ask you immediate
-ly do as asked in regards of me being granted a new PCR or trial or
Accept 10 yr. plea. Carson 3 (E) (1), CJC, Rule 501, SCA CR Floyd v. State
303 S.C. 298, 400 S.E.2d 145 (1991). Also see Mattok v. U.S. 146 U.S. 140 (1892)

Continued →

⑤

This case is also in need of a change of venue seriously
Jordan v. Massachusetts 225 U.S. 167 (1912),
Turner v. Louisiana 379 U.S. 466 (1965),
Donnelly v. Dechristoforo 416 U.S. 637 (1974),
Arizona v. Fulminante 499 U.S. 279 (1991).

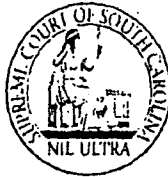
All of this also relates to this appeal in
 this case which honorable James E. Lockery heard
 which a few years before this he put me on probation
 for some drug charges and which he personally knows me and
 my family members and his family member had previous drug
 problems and prejudiceness and biasness is reflected he
 automatically dismissed my appeal which was filed on a
 dropped charge which need be over turned and Honorable
 James E. Lockery heard knowing he should've recused
 himself immediately do to previous dealings of General
 Session Court's and now he's moved up to S.C. Courts of
 Appeals therefore I ask Honorable J. Michael Bailey get off
 my case over turn his illegal order case remand for a new
 hearing rather trial and preliminary hearing do to
 conflicts of interest, violation of due process rights, and

Unfair and Impartiality Certificate of Service

This certifies Chief Administrative Judge J. Michael Bailey
 has been served with this notice of Recusal and upliftment
 overturning of his illegal temporary order 5/15/12.

By: Shahen Calhagrestalt
without prejudice uccr-2017

Notary: J. Pinkler
 my Commission Exp. 12/16/2019
 Date: 05/23/12



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 1133
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE (803) 734-1000
FAX (803) 734-1459

February 27, 2012

Mr. Shaheen Cabbagestalk #295567
McCormick Correctional Institution
386 Redemption Way
SMU B#2
McCormick, SC 29899

Re: Cabbagestalk

Dear Mr. Cabbagestalk:

This will acknowledge your letter received in this office on February 27, 2012, and addressed to Chief Justice Toal. In view of this Court's order issued under In re Maxton, no further action will be taken on any other materials submitted in this connection.

Further, ^{if} if you feel that you have grounds to have a judge recuse himself from your case, that is a matter that you should address to that judge by appropriate motion.

Very truly yours,


CLERK

bs

Exhibit for
I asked to have
Judge J. Michael
Baxley Recused
With Chief Justice
J. Toal. Hrip He is a
Defendant in an on
Going Lawsuit in the
U.S. Courts of Appeals
4th Circuit
(3:11-cv-00508-TMC)
No. 12-6336

STATE OF SOUTH CAROLINA

County of Dillon

COURT OF COMMON PLEAS

Case # 2010 CP- 17 - 0091

Sharon Calhoun #293547
Applicant / Petitioner

vs.

State of South Carolina,

Respondent.

TEMPORARY ORDER

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

1. The application for post-conviction relief is hereby: ☒ denied ☐ granted ☐ under advisement; a formal order will be filed (see below - No.6)

2. Motion(s) was/were heard in this case and the court orders:

☐ The motion to dismiss and/or for summary judgment is hereby ☐ granted ☐ denied ☐ under advisement based upon the ☐ statute of limitations and/or ☐ the successive nature of the application or ☐ other reason as follows:

3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:

☐ Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.

☐ The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or ☐ no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.

4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed ☐ with prejudice ☐ without prejudice.

5. Other:

6. The court further orders:

☒ The ☒ Attorney General ☐ Applicant's counsel is/are directed to submit to the court a proposed order and to serve the order on opposing counsel within 30 days. The court reserves the right to issue an order prior to the submission of any proposed orders.

☐ The court does not request proposed orders.

IT IS SO ORDERED.

Date: 5, 15, 2012

J. Michael Baxley
Presiding Judge

Court Reporter Pamela CaskieAttorney for Applicant Heather M. Cannon, Esq.Attorney for Respondent Andrew Johnson, Esq.

Filed: February 28, 2012

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INFORMAL BRIEFING ORDER

*E. J. [unclear]
of suite
Honorable
J. Michael
Baxley Jr.*

No. 12-6336, Shaheen Cabbagestalk v. Sergeant Terry
3:11-cv-00508-TMC

This case has been placed on the court's docket under the above-referenced number, which should be used on papers subsequently filed in this court.

The case shall proceed on an informal briefing schedule pursuant to Local Rule 34(b). The Informal Brief Form is attached. Informal briefs shall be served and filed within the time provided in the following schedule. Only the original informal brief is required; no copies need be filed unless requested by the court.

Informal opening brief due: 03/23/2012

Informal response brief permitted within 17 days of filing of informal opening brief (filing of an informal response brief is not required)

Informal reply brief permitted within 13 days of filing of informal response brief, if any.

If the informal opening brief is not served and filed within the scheduled time, the case will be subject to dismissal pursuant to Local Rule 45 for failure to prosecute. Extensions of briefing deadlines are not favored by the court and are granted only for good cause stated in writing.

The court will not consider issues that are not specifically raised in the informal opening brief. If a transcript is necessary for consideration of an issue, appellant must order the transcript. Parties who qualify to proceed without prepayment of fees and costs may apply for preparation of the transcript at government expense. A motion for transcript at government expense should be filed in the district court in the first instance. A motion for transcript at government expense filed in the Court

of Appeals should be filed together with and will be considered in light of the informal opening brief.

The record is filed in the Court of Appeals in informally briefed cases. Therefore, no appendix is necessary. Any party wishing to review the record in the clerk's office must make advance arrangements to do so.

If appellant was represented by appointed counsel below, counsel's appointment does not continue on appeal unless an order is entered by this court appointing counsel on appeal. The court will not appoint counsel or schedule a case for oral argument unless it concludes, after having reviewed the informal opening brief, that the case cannot be decided on the basis of the informal briefs and the record.

Counsel filing an informal brief on behalf of appellee must also complete and file an Appearance of Counsel form.

Parties in civil and agency appeals **must** file a Disclosure of Corporate Affiliations within **14 days** of the informal briefing order, except that a disclosure statement is **not** required from the United States, from indigent parties, or from state or local governments in pro se cases. Parties are responsible for ensuring that social security numbers, juvenile names, dates of birth, and financial account numbers are redacted from any documents filed with the court and that any sealed materials are filed in accordance with the enclosed Memorandum on Sealed and Confidential Materials. Attorneys are required to file electronically in the Fourth Circuit. Information on obtaining an electronic filer account is available at www.ca4.uscourts.gov.

/s/ PATRICIA S. CONNOR, CLERK
By: Cyndi Halupa, Deputy Clerk

Copies: Shaheen Cabbagestalk
MCCORMICK CORRECTIONAL INSTITUTION
386 Redemption Way
McCormick, SC 29899-0000

Alissa Robyn Collins
STUCKEY LAW OFFICES, PA
123 Meeting Street
Charleston, SC 29401

Mr. James Albert Stuckey Jr.
STUCKEY LAW OFFICES, PA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2010-CP-17-91
COUNTY OF DILLON	)	
	)	
Shaheen Cabbagestalk, 295567	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER DENYING
	)	POST-CONVICTION RELIEF
State of South Carolina,	)	<i>Don T. Hyatt</i>
	)	
Respondent.	)	CLERK OF COURT
	)	DILLON COUNTY

FILED
GWEN T. HYATT
2012 JUN -6 AM 10:01
CLERK OF COURT
DILLON COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 9, 2010. Respondent made its Return on May 21, 2010. The Court convened an evidentiary hearing into the matter on May 15, 2012, at the Darlington County Courthouse. The Applicant was present at the hearing and was represented by Heather M. Cannon, Esquire. Tyson Andrew Johnson, Sr., Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's uncle, James Cabbagestalk, and Applicant's trial attorney Glenn B. Manning, Esquire. This Court also had before it the records of the Dillon County Clerk of Court, the guilty plea transcript, and Applicant's records from the South Carolina Department of Corrections.

Subsequent to the PCR hearing, after the Court had issued a temporary Order denying this PCR claim and requesting a proposed final Order from the Attorney General, Applicant sent an ex-parte letter to this Court demanding that the Court recuse and vacate the temporary order denying PCR based upon the fact that this Court is now a Defendant in what appears to be a recently filed

civil federal lawsuit by Applicant. The Court declines to respond to this missive for several reasons.

First, the motion is not properly filed with the Clerk; second, hybrid representation is not permitted and Applicant is represented by counsel for PCR purposes, Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010); third, the Court is not aware of this federal lawsuit and has not been served any process related thereto; fourth, the existence of this lawsuit, if such does currently exist, does not impact the Court's ability to be fair and impartial in the PCR case that has already been heard; fifth, to grant this relief would defeat notions of judicial economy; and, sixth and foremost, the motion has no merit and is interposed solely for delay and vexation.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Dillon County Clerk of Court's orders of commitment. The Dillon County Grand Jury indicted the Applicant at the March 2007 term of General Sessions for armed robbery (2007-GS-17-0364). Glenn B. Manning, Esquire represented Applicant.

gmb
The State called the case to trial on August 27, 2007. On August 28, 2007, however, during the course of the trial, Applicant pled guilty as indicted. The Honorable Howard P. King sentenced Applicant to eighteen years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Kathrine H. Hudgins, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Cabbagestalk, Op. No. 2009-UP-528 (S.C. Ct. App. filed November 19, 2009). The Court of Appeals denied the petition for rehearing on January 21, 2010 and the Remittitur was issued February 25, 2010.

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

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

1. Ineffective assistance of plea counsel.
2. Ineffective assistance of appellate counsel.
3. Involuntary guilty plea.
4. Prosecutorial misconduct.
5. Judicial misconduct.
6. Illegal grand jury proceedings.
7. Brady issue.
8. Lack of a preliminary hearing.
9. Lack of subject matter jurisdiction.
10. Not indicted within ninety (90) days.
11. Sentencing judge does not determine parole eligibility.
12. Erroneous judgment.
13. Numerous constitutional rights violated.

In an amendment filed on April 29, 2010, Applicant makes the following additional allegations:

1. Double jeopardy.
2. Violation of Fifth Amendment.
3. Not the defendant listed in the indictment (James Cabbagestalk).

Sub
3

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Ineffective Assistance of Plea Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a

preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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First, Applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pled guilty and would have insisted on going to [or continuing with] trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence put forth at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to [or continuing with] trial, Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Given Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's alternative claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

Applicant testified his counsel was ineffective because he only met "two or three times" with his counsel and he felt he did not have enough time to prepare. Attorney Manning testified that he met "numerous times" with Applicant, and that he felt he had spent adequate time in preparing the case. Counsel also testified that his role in defending Applicant was made more difficult because he "felt [Applicant] wasn't telling him the truth."

Applicant testified that he did not have a copy of his Rule 5 material before the plea. Applicant admitted on cross examination that he and counsel did discuss potential alibi defenses and other defenses. Counsel indicated he went over the Brady material, in that "I went over everything I

had" and that he was "confident the state turned over everything they had." Counsel indicated that Applicant never gave him the names or addresses of potential alibi witnesses.

Applicant complained that his counsel was ineffective for failing to have a preliminary hearing set for him, but counsel testified that by the time he was involved in the case, Applicant had already been indicted.

Applicant claimed his plea was given involuntarily, and that he was just following the advice of counsel. He went on to testify that he was forced and coerced into entering his plea. On this point, Counsel testified that Applicant did not express an interest in a plea, and maintained his innocence, until that point in the trial where an eyewitness to the crime identified Applicant as the perpetrator and that he know Applicant as "Woody." Tr. 89, Line 9. With this eyewitness identification in evidence, Applicant then indicated to his counsel he wished to enter a plea. The Court finds this evidence is pivotal because Applicant has maintained throughout this PCR claim that his conviction was a case of mistaken identity; that he has never gone by the name "James"; that he didn't commit the crime and knows nothing of it; and, consequently, he has never been properly indicted, and the Court lacks jurisdiction over him. These issues were all appropriately resolved by the trial judge.

Upon review, this Court finds that Applicant found himself in a difficult situation and chose to plead guilty, admitting his guilt to change the direction of his case and perhaps in the hope to receive leniency, and the Court is not moved by any of his present complaints. This Court finds that none of Applicant's allegations of ineffective assistance of counsel entitle him to relief. Counsel spent adequate time preparing Applicant's case, discussed discovery with Applicant, and could not get a preliminary hearing for Applicant as it was too late. See State v. Hawkins, 310 S.C. 50, 425

S.E.2d 50 (1992). The Court further finds that Applicant decided to plead guilty of his own decision, and counsel did not coerce or unduly influence Applicant in making this decision.

The Court finds that counsel's performance was not deficient under these circumstances. Further, Applicant refused to cooperate with his counsel. Applicant has failed to prove that his counsel's conduct fell below the standard of care or that he was prejudiced by counsel's performance. Applicant has also failed to prove his plea was not knowing or voluntary. The Court further finds that Applicant has failed to produce any credible evidence that would have affected his decision to plead guilty. Therefore, this Court finds the Applicant's claims to be without merit, and they are therefore dismissed.

Ineffective Assistance of Appellate Counsel

Ind 7 Applicant claims he received a "bogus appeal" on the assault and battery with intent to kill charge, as it was a "dropped charge." Appellate counsel clearly and correctly detailed in her statement of the case that the State agreed to dismiss the assault and battery with intent to kill. See Final Anders Brief of Appellant, page 4. This Court finds that the Applicant's testimony does not entitle him to relief on this ground, and therefore is dismissed.

Breach of Contract

Applicant testified that counsel told him if he pled that he would get "no more than ten years -if that." Applicant felt he should have been sentenced to a term of imprisonment somewhere on the lower end of the possible spectrum. Applicant has failed to prove there was any plea agreement in this case whatsoever. Counsel indicated that although there had been other discussions before the trial began, the mandatory minimum time under Applicant's plea was ten years imprisonment. The court indicated a sentence on the lower end of the range was indeed a possibility, but because

Applicant had shown no remorse, nor offered any apology, that possibility of a sentence at the lower end of the range would not be available to Applicant. Tr. 115, Lines 1-3. Applicant failed to prove a factual scenario where contract principles would apply and failed to prove there was any type of a plea deal. Thus, the Court finds his "breach of contract" PCR claim is without merit and is therefore dismissed.

Venue Improper

Applicant claimed his trial should not have occurred in Dillon in that he could not have gotten a fair trial. Applicant fails to explain why this would have been necessary. Counsel testified that Applicant never asked him to change venue, nor did counsel believe in his experience that such a request would have been warranted under the circumstances, or even successful. Counsel discussed his past experience with motions to change venue and in comparison this case would not have been appropriate for such a request. These reasons, plus Applicant's ultimate guilty plea, confirm that Applicant failed to show prejudice to his case from venue in Dillon County. Therefore this claim must be dismissed.

Constitutional Rights Violations

Applicant alleged his warrants were improper under a "fruit of the poisonous tree" theory but failed to provide competent evidence or applicable testimony to further develop or even explain this claim. Applicant has failed to meet his burden of proof or to establish a cognizable claim for a constitutional rights violation, and therefore this claim is dismissed.

Prosecutorial Misconduct

Applicant alleges the Solicitor committed perjury by saying he "never negotiated anything." The Court finds no misconduct and concludes that this claim must be dismissed. The reference

Applicant makes is to that point in Applicant's trial where counsel for Applicant had completed jury selection and the first witness had been called, at which time Applicant decided to enter a plea of guilty, presumably after the first witness identified him as "Woody." Tr. 89, Line 9. Applicant then indicated to his counsel he wished to enter a plea.

Upon inquiry by the trial court, Solicitor Redmond indicated, "That the State does not oppose a lower-end sentence in this regard. Um, we have not negotiated a specific time, and, of course, I've made sure to make it clear that the court has the final say in any sentence but that the State would not oppose a sentence on the lower end of that spectrum." Tr. 99, Lines 16-20. In addition, Solicitor Redmond *not* proffered the remaining assault and battery with intent to kill charge, which he was not obligated to do, as there was no agreement to do so. Tr. 99, Lines 22-24.

Sub 9 In this case, the Solicitor, instead of insisting on a higher-end sentence, did not object to a lower-end sentence and agreed to dismiss the remaining charge. Applicant's conjured version of the facts is not supported by the transcript. Applicant's decision to enter a plea was not based on any negotiations and was not based on any offers made by the State. Applicant decided to plead guilty based on his own personal assessment of his poor chances of success had he moved forward with his trial.

Applicant's allegation of perjury is further misplaced as the Solicitor was not in the position of a sworn witness against whom the allegation of perjury would potentially apply. Applicant was actually placed in a better position because the Solicitor did not object to a sentence on the lower end of the spectrum, but the sentence was less than favorable due to Applicant's lack of remorse or apology. For the above reasons, this Court finds that this claim is meritless and should be dismissed.

Judicial Misconduct

Applicant testified "certain things are required" but did not otherwise explain the nature of his judicial misconduct claim, other than to say he had a cousin apparently on the Grand Jury Panel, Juror 9, Kenneth Brown. Applicant did not call Brown as a witness in his PCR hearing, or explain how that may have prejudiced his case. Even if he had called Brown, it is unclear how this could have possibly prejudiced Applicant. More importantly, he did not bring his complaint to the attention of his trial counsel or the court at any point in the proceedings leading up to his guilty plea, so neither the court nor counsel could have taken action at that time. This Court finds that this claim is without merit and should be dismissed.

Errors in the Indictment

JMB
10 Applicant claims he has never been indicted, as previously mentioned. The essence of his claim goes to the name which appears on the face of the indictment, "James Cabbagestalk." Applicant claims his legal name is "Shaheen Ramel Cabbagestalk" and that this error in the indictment creates a fatal flaw that entitles him to relief. An individual named "James Cabbagestalk" appeared at the PCR hearing and testified he had nothing to do with this crime. The court finds Applicant's claim on this point to be without merit for the following reasons.

First, if the indictment has been signed by the Grand Jury foreperson and indicates that it is "true-billed," any challenges to the sufficiency of the indictment must be made before a jury is sworn. See Gentry, 363 S.C. at 101, 610 S.E.2d at 499. S.C. Code Ann § 17-19-90 (2003). Even if there are defects in the indictment, they do not affect the jurisdiction of the court as the indictment is a notice document. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

In this case, counsel believed Applicant would not have an objection to the indictment being

amended, and so advised the court in the presence of Applicant, without objection from Applicant. Tr. 107 Lines 16-18. Counsel testified that subject matter jurisdiction was not an issue and that he and Applicant did not discuss it.

Applicant pled guilty, admitting he was the person described in the indictment and that he committed the acts described in the indictment. Applicant waited until well into his plea to object to amending to correct his name on the indictment, after the court had already announced it would accept his plea. Tr. 104, L 12. Counsel testified that Applicant waited until trial to raise the name issue. "I rely on my client...he did not make this an issue with me." It was only after the acceptance of the plea, and after silently observing his counsel indicate approval of the amendment to the indictment, that Applicant indicated he did not agree with the amendment. Tr. 108 L 22; Tr. 108, L 25-109, L 10.

James
11
THE COURT: Well, I'm putting your real name on the indictment. I'm trying to give you what you say your real name is. The State - The State shows that it is James Cabbagestalk. You're saying that it is Shaheem Ramel Cabbagestalk. I'm willing to put that down there as the two names that you have been known by. ...Doesn't that solve the problem?

MR. CABBAGESTALK: No. I mean, I don't - - I don't - - I don't agree.

Id. After Gentry, the primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense to allow him to decide whether to plead guilty or stand trial, and to allow the circuit court to know what judgment to pronounce if the defendant is convicted. Gentry at 44-45. *See also Evans v. State*, 363 S.C. 495, 611 S.E.2d 510 (2005).

Applicant called as a witness a relative named James Cabbagestalk, who testified that his first name is James, and that Applicant's first name is Shaheen. It was not alleged either in the court below, or in the PCR hearing, that the relative named James engaged in wrongdoing or had criminal

culpability, or that Applicant was blamed for something his relative actually did.

Applicant indicated that he understood the allegations in the indictment. Tr. 95, Lines 11-12.

The trial court made a specific finding: "I find that the indictment in this case does apprise this defendant of the charges against him." Tr. 113, Lines 7-8. At the PCR hearing of this matter, upon cross examination by counsel for the State, Applicant was asked if he knew what crimes were on the indictments he was presented with, to which he testified that he did. Applicant failed to show a valid claim for relief. Accordingly this Court finds that this claim is without merit and is hereby dismissed.

Other Allegations

JMB
12 No other allegations were raised or testified to at the PCR hearing. Therefore, any additional allegations raised in the PCR Application or amendment are deemed waived because no evidence was presented.

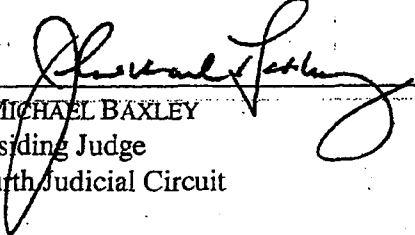
CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post conviction relief is denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief is DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must remain in the custody of Respondent for the completion of his sentence.

AND IT IS SO ORDERED this 4th day of June, 2012.



J. MICHAEL BAXLEY
Presiding Judge
Fourth Judicial Circuit

Hartsville, South Carolina

WITNESSES

John Willie Brown

Dcso

ARREST WARRANT #:

K129668

Arrested on January 12, 2007

ACTION OF GRAND JURY

TRUE BILL

Foreman:

Ashley Hill
Grand Jury

3-1-07

VERDICT

Foreman:

Petit Jury

Date:

DOCKET #: 07GS17-0364

THE STATE OF SOUTH CAROLINA

County of Dillon

COURT OF GENERAL SESSIONS

Term: March, 2007

THE STATE

vs.

James Cabbagestalk

INDICTMENT FOR

0139

ARMED ROBBERY

16-11-330 (A)

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

VS.

AKA:

Race:

Sex:

Age:

SS#:

Address:

City, State, Zip

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO:

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The pleas: ☐ 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 18 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 §16-15-13.

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)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

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.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

SCCA/217 (2/2006)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant