

FORM 5

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

IN THE COURT OF COMMON PLEAS

DARNEILE HUDSON, 227328)

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

2013-CP-23-00993

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2013 FEB 16 AM 11:41

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention LIEBER CORR INST, P.O. BOX 205
RIDGEVILLE S.C. 29472
2. Name and location of Court which imposed sentence GREENVILLE COUNTY
COURT OF GENERAL SESSION
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 95-GS-23-6102, ARMED ROBBERY

(b) 95-GS-23-6103, ABHAN

(c) _____

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

(a) 10-26-1995, SENTENCE TO Y.O.A. 1-6 YRS.-AR

(b) 5 YRS PROBATION, ABHAN

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

8. If you answered Ayes@ to (7), list:

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) APPLICANT LACKED GROUNDS FOR APPEAL

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) NEWLY-AFTER-DISCOVERY EVID, PROSECUTION
- (b) FAILED TO DISCLOSE FAVORABLE EVID, INVOLUNTARY
- (c) GUILTY PLEA; SEE ATTACHMENTS TO SUPPORT CLAIMS.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) CLARK V. STATE 434 SE 2d 266
- (b) GIBSON V. STATE 514 SE 2d 320
- (c) SANCHEZ V. U.S. 50 F. 3D. 1448
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) APPLICANT BY PRO-SE DUE DILLIGENCE JUST
- (b) DISCOVERED THE NEWLY-AFTER-DISCOVERED
- (c) EVID. SEE ATTACHMENT TO SUPPORT CLAIM

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? _____
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. MR. HAL W. ROACH 23 MILLS AVE
GREENVILLE S.C. 29603
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. AT PLEA AND SENTENCING
 - ii. _____
 - iii. _____

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

TO REVERSE CONVICTION AND SENTENCING AND
GRANT APPLICANT A NEW TRIAL

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of GREENVILLE)

I, DARNEILE HUDSON # 227328, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Darneile Hudson

SWORN to and subscribed before me this 7th
day of February, 2003.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2008

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

I, DARNEILE HUDSON # 227328, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Darneile Hudson
Applicant

SWORN or affirmed to and subscribed before me this

7th day of February, 2013.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

2013 FEB 15 PM 11:41
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT
COURT FOR GREENVILLE COUNTY.

DARNEIL E. HUDSON, 227328

APPLICANT,

CAS 2013-CP-23-00993

VS.

STATE OF SOUTH CAROLINA

RESPONDENT.

ATTACHMENT TO P.C.R. APPLICATION
NOTICE OF A HEARING FOR
MOTION FOR NEW TRIAL PURSUANT
TO S.C.R.C.RIMP. RULE 29 (b) WITH
ATTACHED AFFIDAVIT AND
INCORPORATED MEMORANDUM
OF LAW TO SUPPORT CLAIM.

1). I APPLICANT DARNEIL E. HUDSON # 227328, HEREBY MOVES UPON THIS COURT BY P.C.R. APPLICATION AND ATTACHED MOTION PURSUANT TO S.C.R.C.RIMP. RULE 29 (b) INCORPORATED BY MEMORANDUM OF LAW TO SUPPORT CLAIM WITH ATTACHED AFFIDAVIT BY APPLICANT TO SHOW THIS COURT A PRIMA FACIE SHOWING THAT A NEW TRIAL IS WARRANTED DUE TO NEWLY AFTER DISCOVERED EVIDENCE THAT 1). THE PROSECUTION COMMITTED A BRADY V. MARYLAND 373 U.S. 83 RULE (5) DISCLOSURE VIOLATION WHICH 2). RENDER APPLICANT'S 1995 GUILTY PLEA INVALID, VIOLATING APPLICANT'S DUE PROCESS RIGHTS UNDER THE 14TH AMENDMENT OF THE U.S. CONST. AMENDS.

2). THIS COURT OF GREENVILLE COUNTY, COURT OF COMMON PLEAS

3). HAVE JURISDICTION TO HEAR APPLICANT'S P.C.R. APPLICATION AND MOTION FOR NEW TRIAL BASED UPON NEWLY AFTER-DISCOVERED EVIDENCE PURSUANT TO S.C. CODE ANN 17-27-20 (A) (4) GIBSON V. STATE 514 SE.2D 320; THIS GIVES THIS COURT CIRCUIT JURISDICTION THE POWER TO EVALUATE THIS HEREBY P.C.R. APPLICATION/ MOTION FOR NEW TRIAL DUE TO THIS COURT OF GREENVILLE COUNTY GENERAL SESSIONS HAVING JURISDICTION OVER THE CONVICTION IMPOSED UPON APPLICANT, S.C. CODE ANN 17-27-40.

4). ~~PURSUANT TO S.C. CODE ANN 17-27-45 (B) APPLICANT HEREBY FILES THIS P.C.R. APPLICATION/ MOTION FOR NEW TRIAL BASED UPON NEWLY AFTER-DISCOVERED EVIDENCE WITHIN THE (1) YEAR FILING PERIOD OF THIS NEWLY AFTER-DISCOVERED EVIDENCE BEING DISCOVERED.~~

5). APPLICANT AND APPLICANT'S ATTORNEY WAS EXCUSABLY IGNORANT TO THE EXISTANCE OF THIS DISCOVERED EVIDENCE DUE TO THE PROSECUTION FAILING TO DISCLOSE FAVORABLE EVIDENCE TO THE DEFENSE, STATE V. PROCTOR 559 SE 2d 318; THEREFORE APPLICANT COULD NOT PURSUE P.C.R. PURSUANT TO S.C. CODE ANN 17-27-45(A) PELIGUIN V. STATE 469 SE. 2d 606.

6). APPLICANT ATTACHES PERSONAL AFFIDAVIT TO SUPPORT CLAIM PRESENTED IN MOTION FOR NEW TRIAL PURSUANT

TO S.C.R. CRIMP. RULE 29(B) TO SUPPORT P.C.R. APPLICATION AND MOTION FOR NEW TRIAL.

- 7). APPLICANT WITHIN THIS VERIFIED P.C.R. APPLICATION / MOTION FOR NEW TRIAL PURSUANT TO S.C.R. CRIMP. RULE 29(B) STATES THE FACTS KNOWN TO HIM AND THE SAID ALLEGATIONS RAISED ARE TRUE AND MUST BE CONSIDERED TRUE BY THIS COURT. LEAMON V. STATE 611 SE 2d 494 (2005) AND BY THE PREPONDERANCE OF THE NEWLY AFTER-DISCOVERED EVIDENCE APPLICANT WILL SHOW THIS COURT THAT THE PROSECUTION VIOLATED APPLICANT'S DUE PROCESS RIGHTS UNDER THE 14TH AMENDMENT OF THE U.S. CONST. AMENDS BY SUPPRESSING FAVORABLE EVIDENCE TO THE DEFENSE, BRADY, SUPRA AT PAGE 88, AND THAT IF A NEW TRIAL WAS GRANTED BY THIS COURT IT WILL CHANGE THE RESULT IN THE CONVICTION IMPOSED, GIBSON V. STATE 334 S.C. 515. STATE V. TROTTER 322 S.C. 537.
- 8). APPLICANT BY THIS HEREBY MOTION FOR NEW TRIAL PURSUANT TO S.C.R. CRIMP. RULE 29(B) REQUEST A EVIDENTIARY HEARING ON THE RECORD TO HEAR TESTIMONY OF THE PARTIES TO DEVELOP ANY FURTHER FACTS KNOWN TO SUBSTANTIATE CLAIM FOR RELIEF. APPLICANT ALLEGES A EVIDENTIARY HEARING IS THE APPROPRIATE VENUE BY THIS COURT TO VIEW THOSE FACTS PRESENTED BY APPLICANT IN HIS P.C.R. APPLICATION / MOTION FOR NEW

TRIAL STATE V. PROCTOR 359 SL 2d 318;

- 9). APPLICANT WAS SENTENCE IN THIS COURT OF GREENVILLE COUNTY GENERAL SESSION IN THE YEAR OF OCTOBER 26, 1995 TO A Y.O.A. 1-6 YEAR SENTENCE FOR (1) COUNT OF ARMED ROBBERY AND (5) YEARS PROBATION FOR (1) COUNT OF ASSAULT AND BATTERY WITH A HIGH AGGRAVATED NATURE BY CIRCUIT COURT JUDGE M. WESTBROOK AFTER A PLEA OF GUILTY.
- ~~10). APPLICANT WAS REPRESENTED BY ATTORNEY HAI W. ROACH BY THE PUBLIC DEFENDER'S OFFICE FOR GREENVILLE COUNTY.~~
- 11). MR. BOB ARIAIL WAS THE PROSECUTOR FOR THE GREENVILLE COUNTY SOLICITOR'S OFFICE IN THE YEAR OF 1995.
- 12). ISSUE PRESENTED
 - 1). NEWLY AFTER-DISCOVERED EVIDENCE THAT THE PROSECUTION COMMITTED A BRADY V. MARYLAND 373 U.S. 83, RULE (5) DISCLOSURE VIOLATION RENDERING
 - 2). APPLICANT'S GUILTY PLEA INVOLUNTARY, VIOLATING APPLICANT'S DUE PROCESS RIGHTS UNDER THE 14TH.

AMENDMENT OF THE U.S. CONST. AMENDS. GUSTINE V. STATE 325 S.C. 123; Hill v. LOCKHART 474 U.S. 52; AND SANCHEZ V. U.S. 50 F. 3RD 1448.

THE PROCEDURAL HISTORY

AND STATEMENT OF FACTS

13). ON THE SAID DATE OF MARCH 13, 1995 A ALLEDGE VICTIM HAWHAWAN K. BROWN REPORTED TO THE GREENVILLE CITY POLICE DEPT "OFC. JT BURGESS" THAT HE WAS ROBED AT GUN POINT AND ASSAULTED BY GETING HIT IN HIS HEAD WITH A GUN BY TWO UNKNOWN BACK INDIVIDUALS. HE "THE VICTIM" GAVE THE GREENVILLE CITY POLICE DEPT A DESCRIPTION OF THE TWO INDIVIDUALS THAT HE ALLEDGED ARMED ROBED HIM AND ASSAULTED HIM. THE VICTIM GAVE A SWORN STATEMENT TO THE GREENVILLE CITY POLICE DEPT AND WAS SHOWN A PHOTO LINE-UP AND IDENTIFIED THE SAID APPLICANT DARNELL E. HUDSON AS ONE OF THE ARMED ROBBERS AND THE ONE WHO ASSAULTED HIM. THE VICTIM NEVER KNOWN OF APPLICANT PRIOR TO HIS STATEMENT AND IDENTIFICATION OF APPLICANT. OFC. JT BURGESS WAS THE OFC. INVOLVED IN THE INVESTIGATION OF THE CASE. ON OR ABOUT MARCH 13-14 1995 THE GREENVILLE CITY POLICE DEPT OBTAINED A SEARCH WARRANT

FOR APT 40-E WOODLAND HOMES WHICH BELONGED TO APPLICANT'S CHILD MOTHER IN GREENVILLE COUNTY AND ON THAT NIGHT BY EXECUTING THE SEARCH WARRANT THE GREENVILLE CITY POLICE DEPT APPREHENDED APPLICANT AND ARRESTED AND CHARGED HIM WITH (1) COUNTY OF ARMED ROBBERY AND (1) COUNT OF ASSAULT AND BATTERY WITH THE INTENT TO KILL. UPON THE SEARCH OF THE APT. THE GREENVILLE CITY POLICE DEPT FOUNDED NO EVIDENCE TO LINK APPLICANT AS THE ALLEDGE ARMED ROBBER AND ASSAULTER. APPLICANT WAS APPOINTED COUNSEL, MR. HAI W. ROACH FROM THE GREENVILLE COUNTY PUBLIC DEFENDERS OFFICE ON THE DATE OF OCTOBER 16, 1995 TO REPRESENT APPLICANT ON ALL CHARGES; SHORTLY AFTER ATTORNEY HAI ROACH WAS APPOINTED TO REPRESENT APPLICANT HE CAME TO THE DETENTION CENTER TO CONSULT WITH APPLICANT. APPLICANT WAS TOLD BY ATTORNEY HAI ROACH THAT IF HE WAS TO GO TO TRIAL ON THE CHARGES (IF) FOUNDED GUILTY HE COULD BE SENTENCE TO (30) YEARS ON THE ARMED ROBBERY CHARGE AND SENTENCE TO (25) YEARS ON THE ASSAULT AND BATTERY WITH A INTENT TO KILL. APPLICANT TOLD ATTORNEY HAI ROACH SEVERAL TIMES THAT HE WAS INNOCENCE OF THE CHARGES. ATTORNEY HAI ROACH TOLD APPLICANT THAT THE VICTIM HAD WROTE A STATEMENT AND PICKED APPLICANT OUT OF A PHOTO-LINE UP AND THAT EVIDENCE ALONE COULD CONVICT HIM BY A JURY. ATTORNEY HAI ROACH TOLD APPLICANT THAT BEING THAT APPLICANT WAS

17 YEARS OLD AT THE TIME OF THE INCIDENT HE COULD GET APPLICANT A Y.O.A. SENTENCE AND PROBATION FOR THE CHARGES IF HE WAS TO PLEA GUILTY SO HE COULD GET BACK TO HIS NEW BORN CHILD AND FAMILY SOONER.

APPLICANT THOUGHT ABOUT THE (30) YEAR SENTENCE PLUS THE (25) YEAR SENTENCE AND SPENDING ALL THAT TIME IN PRISON AND THAT THE STATEMENT FROM THE VICTIM AND THE PHOTO LINE-UP COULD HAVE HIM FOUNDED GUILTY BY A JURY IF HE WENT TO TRIAL SO APPLICANT TOLD ATTORNEY HAI ROACH THAT HE WOULD PLEA GUILTY FOR THE Y.O.A. 1-6 AND PROBATION. ABOUT (10) DAYS AFTER ATTORNEY HAI ROACH WAS APPOINTED TO REPRESENT APPLICANT OF ALL THE CHARGES HE TOOK APPLICANT IN FRONT OF JUDGE M. WESTBROOK AT A GUILTY PLEA HEARING. AT THE PLEA HEARING JUDGE WESTBROOK QUESTION APPLICANT ON THE RECORD HOW DO YOU PLEA AND APPLICANT STATED TO THE JUDGE, YOUR HONOR I DID NOT COMMIT THE CHARGES AGAINST ME. THE JUDGE THEN TOLD APPLICANT THAT IF YOU WAS TO GO TO TRIAL FOR THESE CHARGES HE COULD SENTENCE APPLICANT TO (30) YEARS FOR THE ARMED ROBBERY AND (25) YEARS FOR THE ASSAULT AND BATTERY WITH THE INTENT TO KILL. SO THE APPLICANT TOLD THE JUDGE THAT HE WOULD PLEA JUST TO GET IT OVER WITH SO HE COULD GET BACK TO HIS CHILD AND LOVES ONES SOON SO ON THE DATE OF OCTOBER 26, 1995 JUDGE WESTBROOK ACCEPTED APPLICANT'S PLEA AND HAD APPLICANT SIGN THE WAIVER AND SENTENCE SHEET AFTER

HE SENTENCED APPLICANT TO A Y.O.A. (1-6) YEAR SENTENCE FOR THE ARMED ROBBERY CHARGE AND (5) YEARS PROBATION FOR ASSAULT AND BATTERY WITH A HIGH AGGRAVATED NATURE.

AT NO TIME PRIOR TO THE GUILTY PLEA HEARING DID THE PROSECUTION (PROSECUTOR BOB ARIAIL OR OFC. JT BURGESS) DISCLOSE TO THE DEFENSE IN THE RULE (5) BRADY MOTION THAT THE VICTIM HAS A MENTAL DISABILITY AND THAT THE VICTIM HAD SUFFERED FROM BRAIN DAMAGE AFFECTS THAT AFFECTS HIS MEMORY WHICH WAS CAUSED BY THE VICTIM SHOOTING HIMSELF IN THE HEAD IN A ATTEMPT TO COMMIT SUICIDE INWHICH THEY "THE PROSECUTION" KNEW OF DUE TO THEIR INVESTIGATION OF THE INCIDENT AND THE VICTIM'S BACK GROUND HISTORY. ON THE DATE OF 1-23-2013 APPLICANT DISCOVERED THIS EVIDENCE ABOUT THE VICTIM SHOOTING HIMSELF IN HIS HEAD PRIOR TO THE ALLEDGE ARMED ROBBERY AND ASSAULT AND THAT THE VICTIM SUFFERED FROM A BRAIN DAMAGE AFFECT THAT AFFECTED HIS MEMORY AND THAT THE VICTIM HAS A MENTAL DISABILITY. APPLICANT DISCOVERED THIS INFORMATION BY TALKING TO THE VICTIM CLOSE FRIEND JERMAN BARTON WHICH IS FROM GREENVILLE S.C., APPLICANT NEVER SEEN THE VICTIM NOR KNEW ANYTHING ABOUT THIS ALLEDGE VICTIM PRIOR TO THIS NEWLY AFTER-DISCOVERED EVIDENCE BEING DISCOVERED. THIS APPLICATION/MOTION FOLLOWS.

THE P.C.R. APPLICATION ATTACHMENT TO SUPPORT
MOTION

14) APPLICANT NOW MOVES UPON THIS COURT BY P.C.R. APPLICATION AND MOTION AND STATE EACH AND EVERY ALLEGATION SET FORTH IN THE ATTACHMENT OF THIS MOTION IS INCORPORATE HEREIN AND MADE A PART OF THE RECORD TO SUPPORT CLAIMS PRESENTED IN THE P.C.R. APPLICATION AND MOTION FOR NEW TRIAL. APPLICANT HEREBY SHOW THIS COURT A PRIMA FACIE SHOWING THAT A NEW TRIAL IS WARRANTED DUE TO NEWLY AFTER-DISCOVERED EVIDENCE BY DEMONSTRATING THE PROSECUTION COMMITTED A RULE(5) BRADY VIOLATION RENDERING APPLICANT'S GUILTY PLEA INVALID, VIOLATING APPLICANT'S DUE PROCESS RIGHTS UNDER THE 14TH AMENDMENT OF THE U.S. CONST AMENDS.

ISSUE 1

BRADY VIOLATION

EVIDENCE WAS FAVORABLE TO THE ACCUSED.

15). APPLICANT ALLEGES THAT 1). THE MENTAL HEALTH RECORDS OF THE ALLEDGE VICTIM (WHICH WOULD OF REVEALED) THE VICTIM SUFFERING FROM A MENTAL DISABILITY WAS RELEVANT AND MATERIAL TO APPLICANT'S DEFENSE BECAUSE IT WOULD OF DESCRIBED THE VICTIM'S PARTICULAR ILLNESS AND DISABILITY AND WOULD OF PROVEN THE VICTIM TRAIN OF THOUGHTS ARE ILLRATIONAL AND SUBJECTED TO INCOMPETENT,

THE MENTAL HEALTH RECORDS INCLUDES ANY AND ALL (REPORTS, EXAMINATIONS AND TEST) DESCRIBING THE ILLNESS AND DISABILITY OF THE ALLEGED VICTIM PURSUANT TO RULE (5)(A)(1)(D) OF S.C.R. CRIMP. 2). THE HOSPITAL MEDICAL RECORDS OF THE VICTIM (WHICH WOULD BE REVEALED) THE TYPE OF DAMAGE CAUSED BY THE BULLET TO THE PARTICULAR PART OF THE VICTIM BRAIN WAS RELEVANT AND MATERIAL TO APPLICANT'S DEFENSE BECAUSE IT WOULD BE PROVEN THE VICTIM SUFFERED FROM A GUNSHOT WOUND TO HIS HEAD WHICH AFFECTED THE VICTIM MEMORY WHICH IS SUBJECTED TO INCOMPETENT. THE HOSPITAL RECORDS INCLUDES ANY AND ALL (REPORTS, EXAMINATIONS AND TEST) DESCRIBING THE DAMAGE OF THE VICTIM BRAIN AND DISABILITY AFFECTS, PURSUANT TO RULE (5)(A)(1)(D) OF S.C.R. CRIMP. AND 3). THE POLICE INVESTIGATION RECORDS (WHICH WOULD BE REVEALED) THE DATE, TIME, AND DESCRIPTION OF GUN USED BY THE VICTIM IN WHICH THE VICTIM SHOT HIS SELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE, PRIOR TO THE ALLEGED INCIDENT WHICH THE VICTIM ALLEGES APPLICANT ARMED ROB HIM AND ASSAULTED HIM WAS RELEVANT AND MATERIAL TO APPLICANT'S DEFENSE BECAUSE IT WOULD BE PROVEN THE VICTIM'S CHARACTER AND REPUTATION TO ACT IRRATIONAL AND SUICIDAL

AND THAT THE VICTIM DID CAUSE INJURY TO HIMSELF WAS EVIDENCE SUBJECTED TO INCOMPETENT. APPLICANT ALLEGES THAT THE (3) FACTORS OF EVIDENCE COULD OF BEEN FAVORABLE TO THE DEFENSE FOR REASON

1). CHALLENGING THE VICTIM'S COMPETENCY TO STAND TRIAL AND TESTIFY AGAINST APPLICANT.

16). IF THE VICTIM'S MENTAL DISABILITY AND BRAIN DAMAGE AFFECTS WAS CHALLENGED BY THE DEFENSE IN A COMPETENCY HEARING (WHICH IS QUESTIONABLE) IT WAS THE DUTY OF THAT TRIAL COURT TO EVALUATE THE ALLEGED VICTIM'S CONDUCT, PRESENT ABILITY TO THINK AND ACT RATIONAL WITH A LEVEL OF UNDERSTANDING TO FACTUAL QUESTIONING ABOUT TRUTH WHICH QUESTIONS WOULD OF BEEN IMPOSED BY THE DEFENSE, PROSECUTION OR COURT, AND ALSO TO DETERMINE THE VICTIM'S MENTAL ABILITY TO AFFER HIS TESTIMONIAL EVIDENCE SURROUNDING THE CIRCUMSTANCE OF THE ALLEGED INCIDENT BY HIS VERSION OF EVENTS CONCERNING THE ARMED ROBBERY AND ASSAULT WHICH THE VICTIM ALLEGINGLY ACCUSED APPLICANT OF COMMITTING THESE OFFENSE AGAINST HIM. IN PENNSYLVANIA V. GOIDBIUM 498 P.A. 455, 447 A. 2d. 234, THAT COURT HELD. IN ORDER TO BE COMPETENT TO TESTIFY, A WITNESS MUST HAVE

THE ABILITY TO 1). PERCEIVE THE EVENT WITH A SUBSTANTIAL DEGREE OF ACCURACY 2). REMEMBER IT, 3). COMMUNICATE ABOUT IT INTELLIGENTLY AND 4). BE MINDFUL OF THE DUTY TO TELL THE TRUTH UNDER OATH. SO HAD THE DEFENSE WOULD OF CHALLENGED THE VICTIM'S COMPETENCY TO STAND TRIAL IT WAS THE DUTY OF THE TRIAL COURT TO DETERMINE WAS THE VICTIM COMPETENT TO STAND TRIAL, STATE V. CAMELE, 293 S.C. 302; 360 SE 2d. 307 (1987) STATE V. PITTS 256 S.C. 420; 183 SE 2d. 738 (1971) IN RE ROBERT M; 294 S.C. 69, 362 SE 2d 639 (1987) THUS IF THAT COURT WOULD OF FOUNDED THE VICTIM INCAPABLE OF UNDERSTANDING THE DUTY OF A WITNESS TO TELL THE TRUTH OR TO ACT RATIONAL UNDER OATH, THE TRIAL COURT WOULD OF HAD TO DISQUALIFIED THE VICTIM PURSUANT TO S.C.R. EVID. RULE 601(B) DISQUALIFICATION OF A WITNESS; STATE V. GREEN 267 S.C. 599, THE VICTIM'S TESTIMONY IDENTIFYING APPLICANT AS THE ALLEDGE ARMED ROBBER AND ASSAULTER WAS THE ESSENCE OF THE STATES CASE, HE WAS ESSENTIAL TO IT'S INVESTIGATION AND INDEED MADE THE CASE AGAINST APPLICANT. SO IF HEID INCOMPETENT BY THE COURT APPLICANT FACED ACQUITTAL OF THE ALLEDGE CHARGES, THAT MENTAL HEALTH RECORD WAS FAVORABLE BECAUSE IT WAS MATERIAL EVIDENCE THAT IF WAS DISCLOSED TO THE DEFENSE "CASE" "BY THE PROSLCUTION" IT WAS A

REASONABLE PROBABILITY THE MENTAL HEALTH RECORDS
COULD OF UNDERMINED THE OUTCOME IN TRIAL, KYLES V.
WHITNEY 514 U.S. 419, STATE V. CAIN 377 SE 2d 556,
WHICH STATE, A REASONABLE PROBABILITY IS A PROBABILITY
TO UNDERMINE CONFIDENCE IN THE OUTCOME OF THE
PROCEEDING. APPLICANT ALSO ALLEGES THAT 2). DUE TO
THE VICTIM'S BRAIN DAMAGE AFFECTS THAT AFFECTED
HIS MEMORY WOULD OF ALSO BEEN ONE OF THE QUESTION
THE TRIAL COURT WOULD OF HAD TO DETERMINE IN
THE COMPETENCY HEARING, IN SHERLEY V. SEABOARD
929 F 2d 272, THAT COURT HELD THE WITNESS
IDENTIFICATION UNRELIABLE BECAUSE VICTIM SUFFERED
FROM MEMORY LOSS, THE HOSPITAL RECORDS WAS ALSO
FAVORABLE TO THE DEFENSE BECAUSE IT WAS MATERIAL
EVIDENCE THAT IF WAS DISCLOSED TO THE DEFENSE,
"BY THE PROSECUTION" IT WOULD OF UNDERMINED CONFIDENCE
IN THE OUTCOME OF THE PROCEEDING. NEIL V.
BIGGER 409 U.S. 188, STOVALL V. DENNO 388 U.S. 293.
UNRELIABLE IDENTIFICATION SUPPRESSED BY THE
COURT. ONCE AGAIN IT WAS THE DETERMINATION OF
THE COURT TO ALLOW THE WITNESS TO TESTIFY UNDER
S.C.R. EVID. RULE 601(A) STATE V. SMITH 199 S.C. 279.
APPLICANT ALSO ALLEGES THAT 3). THE POLICE
INVESTIGATION REPORTS OF THE ALLEGED VICTIM
ATTEMPT TO COMMIT SUICIDE WAS ALSO FAVORABLE
BECAUSE IT WAS MATERIAL EVIDENCE THAT IF WAS

DISCLOSED TO THE DEFENSE" BY THE PROSECUTION"
IT HAD A REASONABLE PROBABILITY TO UNDERMINE
CONFIDENCE IN THAT PROCEEDING BECAUSE IT WAS
EVIDENCE TO SUPPORT THE DEFENCE AT THE COMPETENCY
HEARING TO SHOW THE VICTIM IRRATIONAL TRIAN OF
THOUGHTS TO STAND TRIAL AGAINST APPLICANT. APPLICANT
ALLEGES THAT IF THE COURT WOULD OF FOUNDED THE VICTIM
COMPETENT TO STAND TRIAL THE (3) FACTOR'S OF EVIDENCE
WAS STILL FAVORABLE TO THE DEFENSE DUE TO IMPEACHMENT
PURPOSES PURSUANT TO S.C.R. EVID. RULE 405 (B) THUS
PURSUANT TO THE 6TH AMENDMENT OF THE U.S. CONST AMENDS
THE APPLICANT HAD THE RIGHT TO CONFRONTATION AND
CROSS EXAMINATION, POINTER V. TEXAS 380 U.S. 400;
AND BY THE PRESECUTION FAILING TO DISCLOSE THAT
FAVORABLE EVIDENCE WHICH WAS 1). THE MENTAL HEALTH
RECORDS, 2). THE HOSPITAL RECORDS, AND 3). THE POLICE
INVESTIGATION REPORTS OF THE ALLEDGE VICTIM SHOOTING HIMSELF
IN HIS HEAD IN A ATTEMP TO COMMIT SUICIDE PREJUDICED
APPLICANT DUE TO 1). THE PROSECUTION DENYING APPLICANT
TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL TO CHALLENGE
THE VICTIM'S COMPETENCY TO STAND TRIAL AND TESTIFY AGAINST
APPLICANT, 2). THE PROSECUTION DENIED APPLICANT TO
CHARACTER EVIDENCE THAT FALLS UNDER S.C.R. EVIDENCE
PURSUANT TO RULE 405 (B) INWHICH THE VICTIM ATTEMP
TO COMMIT SUICIDE WAS SUBJECTED TO IMPEACHMENT TO SHOW
HIS CHARACTER AND REPRETATION WAS NOT STABLE OR

COMPETENT; 3) THE PROSECUTION DENIED APPLICANT THE RIGHT TO CONFRONTATION UNDER THE U.S. CONST, 6TH AMENDS, "BY FAILING TO DISCLOSE" FAVORABLE EVIDENCE, DAVIS V. ALASKA 415 U.S. 308; 4) THE PROSECUTION DENIED APPLICANT TO FAVORABLE EVIDENCE WHICH COULD OF BEEN USED IN CHALLENGING THE VICTIM'S IDENTIFICATION OF APPLICANT, NEIL V. BIGGER 409 U.S. 188, STOVALL V. DENNO 388 U.S. 293, AND SHERLEY V. SEABOARD 929 F 2d 272. 5) THE PROSECUTION DENIED APPLICANT TO THE RIGHT TO A FAIR TRIAL BY FAILING TO DISCLOSE FAVORABLE EVIDENCE, VIOLATION OF THE 14TH AMENDMENT UNDER THE U.S. CONST AMENDS. BRADY V. MARYLAND 373 U.S. 83, GIBSON V STATE 334 S.C. 515; STATE V. PROCTOR 559 SE 2d 318; APPLICANT ALLEGES THAT HAD THE FAVORABLE EVIDENCE BEEN DISCLOSED TO THE DEFENSE ITS A REASONABLE PROBABILITY THE OUTCOME IN THE PROCEEDING WOULD OF BEEN DIFFERENT, DAVIS V. ALASKA 415 U.S. 308, KYLES V. WHITNEY 514 U.S. 419. APPLICANT ALLEGES THAT HAD THE EVIDENCE WOULD OF BEEN DISCLOSED TO THE DEFENSE HE WOULD OF NEVER PLEAD GUILTY TO THE CHARGES AND WOULD OF INSISTED TO STAND TRIAL, GIBSON V. STATE 334 S.C. 515; Hill V. LOCKHART 474 U.S. 52;

2) THE EVIDENCE WAS IN THE POSSESSION OF OR KNOWN TO THE PROSECUTION.

17) APPLICANT ALLEGES THAT THE PROSECUTION HAD THIS FAVORABLE EVIDENCE OF THE VICTIM SHOOTING HIS SELF IN HIS HEAD IN A ATTEMP TO COMMIT SUICIDE DUE TO THE POLICE REPORTS AND THIER INVESTIGATION OF THAT INCIDENT THAT TOOK PIACE AND BY THEIR EXERCISE OF DUE DILIGENCE IN THIS INVESTIGATION IN WHICH THE VICTIM ALLEDGINGLY CLAIM HE WAS ARMED ROBBED AND ASSAULTED OPENED THE DOOR TO THE VICTIM'S BACK GROUND HISTORY AND DUE TO THAT EVIDENCE OF THE VICTIM'S BACK GROUND HISTORY THE INVESTIGATOR (JT BURGESS) KNEW OF THE SHOOTING INCIDENT AND SHOUID OF TURNED THAT INFORMATION OVER TO THE PROSECUTOR SO THE PROSECUTOR COUID OF DID HIS INVESTIGATION BY THE EXERCISE OF DUE DILIGENCE TO PREPARE FOR DISCLOSURE PURSUANT TO S.C.R. EVID. RULE (S). THE PROSECUTOR, WHO WAS ASSIGNED TO THE CASE WAS RESPONSIBIE TO MAKE DISCLOSURE OF THAT SUCH EVIDENCE WHEN ITS A REASONABIE PROBABILITY THAT EVIDENCE DISCOVERED BY THE PROSECUTION "INVESTIGATION PARTY" IS SUBJECTED TO UNDERMINE CONFIDENCE IN THE OUTCOME OF TRIAL, MOREOVER, THAT RESPONSIBILIITY REMAINS REGARDLESS OF ANY FAILURE BY THE POLICE TO BRING FAVORABIE EVIDENCE TO THE PROSECUTOR'S ATTENTION. BECAUSE IT IS THE PROSECUTOR'S DUTY TO LEARN OF ANY FAVORABIE EVIDENCE KNOWN TO THE OTHER'S, WHILE ACTING ON THE GOVERNMENT'S BEHAIF INCLUDING THE POLICE. IN UNITED STATES V. AGURS 427 U.S. 97 THAT COURT

HEID THAT THE PROSECUTOR HAS A OBLIGATION TO DISCLOSE FAVORABLE EVIDENCE TO THE DEFENSE EVEN IF NOT REQUESTED BY THE DEFENSE WHERE THERE IS EVIDENCE SUBJECTED TO A REASONABLE PROBABILITY THAT SUCH EVIDENCE WOULD PRODUCE A DIFFERENT RESULT IN THE OUTCOME OF A PROCEEDING, SO THE PROSECUTION HAD THAT EVIDENCE IN THEIR POSSESSION, GIBSON V. STATE 334 S.C. 515, STATE V. VON DOKIEN 322 S.C. 240. THE POLICE INVESTIGATION REPORTS OF THE ALLEDGE VICTIM SHOOTING HIS SELF IN THE HEAD IN THE A ATTEMP TO COMMIT SUICIDE, THE MENTAL HEALTH RECORDS AND ALSO THE HOSPITAL RECORDS WHICH DESCRIBED IN EVIDENCE FAVORABLE TO THE APPLICANT SHOULD OF BEEN DISCLOSED TO THE DEFENSE. BRADY. SUPRA. THE PROSECUTOR AND THE OFC. JT BURGESS WAS PRESENT AT APPLICANT'S GUILTY PLEA HEARING SO THEY SHOULD OF DISCLOSED THAT EVIDENCE TO THE DEFENSE THEN AND THERE PRIOR TO APPLICANT PLEADING GUILTY TO CHARGES.

3). THE EVIDENCE WAS SUPPRESSED BY THE PROSECUTION

18). APPLICANT ALLEDGE THAT THE PROSECUTION SUPPRESSED THE FAVORABLE EVIDENCE WHEN IT FAILED TO DISCLOSE THE EVIDENCE TO THE DEFENSE IN THE BRADY RULE (5) DISCLOSURE. THE PROSECUTION HAD THIS FAVORABLE EVIDENCE IN ITS POSSESSION AND WITHHELD IT AND BY DOING SO THE FAILURE TO DISCLOSE PREJUDICED

APPLICANT BECAUSE THE PROSECUTION WITHHELD EVIDENCE THAT IF DISCLOSED TO THE DEFENSE IT HAD A REASONABLE PROBABILITY TO UNDERMINE CONFIDENCE IN THE PROCEEDING. KYLES V. WHITLEY 514 U.S. 433 STATE V. VONDOHLEN 322 S.C. 240 IT WAS THE PROSECUTOR'S DUTY TO DISCLOSE PURSUANT TO S.C. RULES OF PRO. CONDUCT, RULE (3.4) FAIRNESS TO OPPOSING PARTY AND COUNSEL (A) A LAWYER SHALL NOT, "IN PART"; CONCEAL A DOCUMENT OR OTHER MATERIAL HAVING POTENTIAL EVIDENCE VALUE, AND (D) IN PRETRIAL PROCEDURES, "IN PART" FAIL TO MAKE A REASONABLE DILIGENT EFFORT TO COMPLY WITH A LEGALLY PROPER DISCOVERY REQUEST BY OPPOSING PARTY. THUS THE PROSECUTOR VIOLATED S.C.R. PRO. CONDUCT RULE (3.4.) BY FAILING TO DISCLOSE 1). THE MENTAL HEALTH RECORDS REVEALING TO THE DEFENSE THE VICTIM SUFFERED FROM A MENTAL DISABILITY, 2). THE HOSPITAL RECORDS REVEALING THE VICTIM SUFFERED FROM A GUN SHOT WOUND TO HIS BRAIN THAT AFFECTED THE VICTIM'S MEMORY AND 3). THE POLICE INVESTIGATION REPORTS CONCERNING THE INCIDENT WITH THE VICTIM SHOOTING HIMSELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE. THAT EVIDENCE WAS INDEED MATERIAL TO THE DEFENSE AND DUE TO RULE (5) OF S.C.R. EVID. APPLICANT WAS ENTITLED TO IT. GIBSON V. STATE 334 S.C. 515, U.S. V. BAGLEY 473 U.S. 667 EVEN IF NOT REQUESTED BY THE DEFENSE, AGURS, 427 U.S. 97, WHEN A PROSECUTOR KNOW OF FAVORABLE EVIDENCE

WHICH CAN CHANGE THE OUTCOME OF THE PROCEEDING ITS
HIS DUTY TO DISCLOSE AND THAT EVIDENCE THE PROSECUTOR
SUPPRESSED DID HAVE A REASONABLE PROBABILITY TO UNDERMINE
CONFIDENCE IN THAT PROCEEDING. BECAUSE 1), THE EVIDENCE
WAS MATERIAL TO APPLICANT'S GUILT, AND OR COULD OF BEEN
USED IN IMPEACHMENT OR EXCULPATORY CIRCUMSTANCE.
"SEE EVIDENCE WAS FAVORABLE TO THE DEFENSE",

4). THE EVIDENCE WAS MATERIAL TO APPLICANT'S GUILT AND IT
APPLIED UNDER IMPEACHMENT EVIDENCE

19). APPLICANT ALLEGES THAT THE ESSENCE OF THE STATE CASE
WAS THE VICTIM CLAIMING HE WAS ARMED ROBBED AND
ASSAULTED BY APPLICANT, AND BY THE VICTIM WRITING
A STATEMENT AND PICKING APPLICANT OUT OF A PHOTO
LINE-UP, THAT EVIDENCE WAS POINTED TO APPLICANT'S GUILT,
APPLICANT ALLEGES THAT THE FAVORABLE EVIDENCE
SUPPRESSED BY THE PROSECUTION COULD OF BEEN USEFUL
TO THE DEFENSE TO CHALLENGE THE VICTIM VERSION OF
EVENTS AND COMPETENCE TO STAND TRIAL AGAINST
APPLICANT. APPLICANT ALSO ALLEGES THAT THE EVIDENCE
SUPPRESSED BY THE PROSECUTION COULD OF BEEN USEFUL
IN IMPEACHMENT PURPOSES UNDER S.C.R. EVID. RULE 405 (B)
"SEE FAVORABLE EVIDENCE TO THE DEFENSE", THUS, THE VICTIM'S
VERSION OF EVENTS IS QUESTIONABLE DUE TO HIS MENTAL
DISABILITY (WHICH WAS NOT DISCLOSED) AND HIS BRAIN DAMAGE

AFFECTS THAT AFFECTED HIS MEMORY DUE TO THE VICTIM SHOOTING HIMSELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE (WHICH ALSO WAS NOT DISCLOSED). TO THE DEFENSE. GIBSON V. STATE 334 S.C. 515,

INVOLUNTARY GUILTY PLEA.

- 20). APPLICANT ATTACK HIS 1995 GUILTY PLEA AS INVOLUNTARY AND NOT KNOWINGLY AND INTELLIGENTLY ENTER DUE TO THE PROSECUTION FAILING TO DISCLOSE THE FAVORABLE EVIDENCE TO THE DEFENSE. GIBSON V. STATE 334 S.C. 515, SANCHEZ V. U.S. 50 F. 3D. 1448 AND GUSTINE V. STATE 325 S.C. 123; WAIVERS OF CONSTITUTIONAL RIGHTS NOT ONLY MUST BE VOLUNTARY BUT MUST ALSO BE KNOWING AND INTELLIGENT ACTS DONE WITH SUFFICIENT AWARENESS OF THE RELEVANT CIRCUMSTANCES AND LIKELY CONSEQUENCES. IN SANCHEZ WHEN A DEFENDANT LACKS KNOWLEDGE OF MATERIAL EVIDENCE IN THE PROSECUTION'S POSSESSION THE WAIVER OF CONSTITUTIONAL RIGHTS CAN NOT BE DEEM KNOWINGLY AND VOLUNTARY. WHITE V. U.S. 858 F 2D. 416; MILLER V. ANGLIKER 848 F 2D. 1312; APPLICANT ALLEGE THAT HAD THE PROSECUTION WOULD OF DISCLOSED THE FAVORABLE EVIDENCE TO THE DEFENSE OF THE VICTIM'S MENTAL DISABILITY AND SHOOTING HIMSELF IN HIS HEAD AND SUFFERING FROM A BRAIN DAMAGE AFFECTS THAT AFFECTED THE VICTIM'S MEMORY APPLICANT WOULD NOT HAD PLEAD GUILTY TO THE CHARGES BUT INSISTED TO STAND TRIAL. HILL V. LOCKHART 474 U.S. 52.

APPLICANT ALLEGES THAT THE EVIDENCE SUPPRESSED BY THE PROSECUTION HAD A REASONABLE PROBABILITY TO UNDERMINE CONFIDENCE IN THE STATES CASE AND BY THE PROSECUTION FAILING TO DISCLOSE THE EVIDENCE TO THE DEFENSE, APPLICANT WAS PREJUDICED, VIOLATING APPLICANT'S 14TH AMENDMENT OF THE U.S. CONST AMENDS.

THE RELIEF REQUESTED

- 1). APPLICANT ASK THIS COURT TO GRANT APPLICANT 1). A EVIDENTIARY HEARING TO HEAR FURTHER TESTIMONY AND EVIDENCE CONCERNING THE ALLEGATION RAISED AND
- 2). GRANT APPLICANT A NEW TRIAL IN THIS MOTION.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 7th
DAY OF February 2013

Darnell Hudson

SIGNATURE OF APPLICANT

Sylvia Jones
NOTARY

EXP: 1/24/2013

2013 FEB 19 PM 4:41
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON
PLEAS FOR THE 13TH CIR.

DARNEIL E. HUDSON # 227328

ATTACHED TO MOTION...

SWORN AFFIDAVIT OF
APPLICANT PURSUANT TO
S.C.R. CRIM P. RULE 29(B)

v.

MOTION FOR NEW TRIAL

STATE OF SOUTH CAROLINA

2013-CP-23- 00993

THE SWORN AFFIDAVIT OF DARNEIL E. HUDSON

I AFFIANT, DARNEIL E. HUDSON 227328, DECLARES UNDER PENALTY OF PERJURY THAT ON THIS SAID DATE OF 1-23-2013 THE FOLLOING STATEMENT ALLEDGED WITHIN THIS AFFIDAVIT IS TRUE AND CORRECT.

THAT ON THE DATE OF 1-23-2013 I AFFIANT DISCOVERED NEWLY AFTER-DISCOVERED EVIDENCE THAT THE PROSECUTION OF GREENVILLE COUNTY IN THE YEAR OF 1995 WITHHELD FAVORABLE EVIDENCE FROM AFFIANT DEFENSE BY FAILING TO DISCLOSE SUCH EVIDENCE UNDER RULE (5) OF S.C.R. EVID. UNDER (A)(1)(C) AND (D), THE VICTIM'S MENTAL HEALTH RECORDS, REVEALING THE VICTIM SUFFERING FROM A MENTAL DISABILITY, 2) THE HOSPITAL RECORDS REVEALING THE VICTIM SUFFERING FROM MEMORY LOSS THAT WAS CAUSED BY THE VICTIM SHOOTING HIS SELF IN HIS HEAD AND 3), THE POLICE INVESTIGATION RECORDS CONCERNING THE VICTIM ATTEMPT TO COMMIT

SUICIDE. THE PROSECUTION WAS IN POSSESSION OF THE INVESTIGATION REPORTS OF THE INCIDENT INVOLVING THE VICTIM SHOOTING HIMSELF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE, AND BY THEIR INVESTIGATION OF THE VICTIM BACK GROUND HISTORY KNEW OF THAT FAVORABLE EVIDENCE AND FAILED TO DISCLOSED THAT EVIDENCE TO THE DEFENSE. AFFIANT ALLEGES THAT THE VICTIM WROTE A STATEMENT AND PICKED HIM OUT OF A PHOTO LINE-UP INWHICH THE VICTIM ALLEDGINGLY CLAIM THAT AFFIANT ARMED ROBBERED HIM AND ASSAULTED HIM ON MARCH 13, 1995. ON THE DATE OF OCTOBER 26, 1995 AFFIANT PLEAD GUILTY TO CHARGES AND WAS SENTENCE TO A 10(11-12) YR. SENTENCE AND (15) YR. PROBATION. AT NO TIME DID ATTORNEY HAI ROACH KNEW OF THE VICTIM SHOOTING HISSELF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE PRIOR TO THE GUILTY PLEA HEARING AND BY THE PROSECUTION FAILING TO DISCLOSE THAT EVIDENCE TO ATTORNEY HAI ROACH, ATTORNEY HAI ROACH WAS EXCUSABLY IGNORANT TO THE EXISTENCE OF SUCH EVIDENCE AND COULD NOT BY DUE DILIGENCE COULD HAVE DISCOVERED THAT EVIDENCE. AFFIANT ALLEGES THAT HE NEVER KNEW OF THE VICTIM IN NO WAY AND COULD NOT HAVE DISCOVERED THE THAT FAVORABLE EVIDENCE IN NO WAY WHAT SO EVER DUE TO THE LACK OF KNOWLEDGE OF THE VICTIM. ON THE DATE OF 1-25-2013 WHILE TALKING TO ANOTHER PRISONER FROM GREENVILLE COUNTY S.C. JERMAN BARTON HE DISCOVERED THOSE FACTS ABOUT THE VICTIM SHOOTING HIS SELF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE AND THAT THE VICTIM SUFFERED FROM A MENTAL DISABILITY AND BRAIN DAMAGE AFFECTS THAT AFFECTED HIS MEMORY.

AFFIANT DECLARES UNDER PENALTY OF PERJURY THAT THE FACTS IS TRUE AND CORRECT.

2013 FEB 19 PM 4:40

STATE OF SOUTH CAROLINA
THE COUNTY OF GREENVILLE

FILED-CLERK
GREENVILLE
PAUL S. [unclear]

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIR

DARNELL E. HUDSON #227328

APPLICANT

PROOF OF SERVICE

v.

2013-CP-23- 00993

STATE OF SOUTH CAROLINA

RESPONDENT.

I DARNELL E HUDSON #227328, CERTIFY THAT I HAVE THIS DAY SERVED UPON THE GREENVILLE COUNTY CLERK OF COURT OFFICE A APPLICATION FOR P.C.R. AND MOTION, BY DEPOSITING ONE ORIGINAL COPY IN THE U.S. MAIL, BY AND THROUGH LIEBER CORR INST. LEGAL MAIL SYSTEM. THE NOTARIZED SIGNATURE SEEN HEREON INDICATES THE ABOVE IS NOW IN THE POSSESSION OF INST LEGAL MAIL. HOUSTON V. LACK 487 U.S. 266 (1988).

Darnell Hudson

SIGNATURE

SWORN TO AND SUBSCRIBED

BEFORE ME THIS 7th DAY
OF February 2013

Sylvia Jones
NOTARY

EXP: 1/24/2018

David Hudson

SIGNATURE

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Darnell East Hudson,
S.C.D.C. No. 227328,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2013-CP-23-0993

RETURN AND MOTION TO DISMISS

FILED
CLERK OF COURT
COUNTY OF GREENVILLE
SOUTH CAROLINA
2013 JUN 15 PM 1:35

The Respondent, making its Return to the application for post-conviction relief filed February 19, 2013, would respectfully show this Court:

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant waived presentment to the Greenville County Grand Jury for armed robbery (1995-GS-23-6102) and assault and battery with intent to kill (1995-GS-23-6103). He was represented by Hal W. Roach, Esquire.

On October 26, 1995, the Applicant pled guilty to armed robbery and assault and battery of a high and aggravated nature (ABHAN). He was sentenced by the Honorable Marc Westbrook under the Youthful Offender Act to concurrent terms not to exceed six years for armed robbery and not to exceed six years suspended to five years probation for ABHAN. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions and the Applicant's records from the

South Carolina Department of Corrections.

II.

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

1. "Newly-after-discovered evid."
2. "Prosecution failed to disclose favorable evid."
 - a. Brady Violation.
3. "Involuntary guilty plea."

III.

The Respondent submits this application for post-conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on October 26, 1995. This application was filed on February 19, 2013, which was several years after the statutory filing period had expired.

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

“grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

IV.

The Respondent submits the Applicant’s claim of newly- or after-discovered evidence is without merit. For an applicant to be granted a new trial based on after-discovered evidence, he must show the evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citation omitted).

This Court notes the Applicant has failed to articulate the exact nature of the “new evidence” and has not attached any documentation of such to the PCR application. The Applicant has not shown that the alleged evidence meets any of the requirements for after-discovered evidence. Most importantly, the “new evidence” offered by the Applicant is not material to the issue of guilt or innocence, and probably would not change the result if a new trial was had. See id. The Respondent submits the Court should summarily dismiss this allegation.

State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) (“The credibility of newly-discovered evidence is for the trial court to determine.”).

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

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

By:


Attorneys for Respondent

8/5, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
)
)
DARNELL EAST HUDSON, 227328)
)
)
Applicant,)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

2013-CP-23-0993

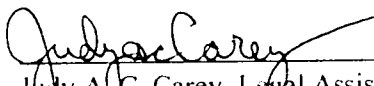
AFFIDAVIT OF SERVICE BY MAIL

FILED
CLERK OF COURT
GREENVILLE, SC
2013 AUG 15 PM 1:36

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Darnell East Hudson, 227328
Lieber Correctional Institution
Post Office Box 205
Ridgeville SC 29472**

DATED this 5th day of August, 2013.



Judy A.C. Carey, Legal Assistant
For Respondent

DANIEL E WARDSON # 227328
LIEBER CORE EAST USMC COL AM
PO Box 205
Ridgely, SC 29472

RECEIVED
FEB 28 2014
MAIL ROOM
LIEBER Q1

THE HON. DANIEL E. SHAROUSE, CLERK
SOUTH CAROLINA COURT OF APPEALS
P.O. Box 11330
COLUMBIA S.C. 29411

