

IN SOUTH CAROLINA SUPREME COURT

Appeal From Admin. Law Court

13-ALS-15-0018

Robert Koon

-VS- SC DPPP

RECEIVED

APR 18 2014

S.C. SUPREME COURT

RECEIVED

NOTICE OF APPEAL FROM DISMISSAL
OF Admin. LAW COURT APPEAL IN

APR 18 2014

RE: TO PAROLE PUR. to 17-25-45(E)

PETITION TO PROCEED W/O COSTS

S.C. SUPREME COURT

The Appellant hereby files a notice of appeal from the April 1, 2014 order from Admin Law Court (Attached) that held the Appellant is not currently eligible for parole (despite 17-25-45(E) that he may be granted parole if he set forth 'extraordinary circumstances')

The order states "17-25-45 outlines the process Appellant must follow to be considered for parole

he has not complied with that process (Id 883)
THE STATUTE SETS FORTH NO SPECIFIC PROCESS.

Appellant and his crime victim HARRY LOVELACE OF CUDDLOVELACE OFFENSE KOON v. STATE 643 S.E.2d 680, 683 (2007) submitted voluminous documents directly to Director Kela Thomas Askiné Appellant be considered for parole as his LWOP was 1) Double Enhanced 2) product of violation of his constitutional rights 3) He received two strikes at one 1986 plea 4) STATE CANNOT

STRIKE
Show CORPUS DELECTI that his SECOND ~~OFFENSE~~ OCCURRED
AT NIGHT (IE) DUPLET OFFICE STAFFLET^① THAT STATE ADMITTED
IN 2013 OCCURRED @ SAME TIME AS CUDD-COULACE w/ NO
EVIDENCE it OCCURRED @ NIGHT AND WITHOUT NIGHTTIME
DESIGNATION CUDD-COULACE OFFENSE WOULD NOT BE A
STRIKE AND S) THAT THE MISDEED OF JUSTICE HAS
CONTINUOUSLY EVASIVED AND ELUDGED APPELLATE REVIEW.

INTER ALIA & ① SEE 595 SE2D 456, 459

IN OTHER WORDS A PRIMA FACIE CASE HAS BEEN
DIRECTLY PRESENTED TO SCOPPPS TO SHOW APPELLANT'S
CASE CONSTITUTES A EXTRAORDINARY CIRCUMSTANCE PER
TO 17-25-45(E) TO WARRANT PAROLE CONSIDERATION.
(SEE ROA)

A MOTION TO RECONSIDER WAS FILED WHEN ALC DID NOT RULE
ON ISSUE SINCE SCOPPPS IS HIS 1998 CRIME VICTIM THEY
COULD NOT BE A IMPARTIAL TRIBUNAL TO DETERMINE IF A
'EXTRAORDINARY CIRCUMSTANCE' HAD BEEN PRESENTED TO SCOPPPS
(AS EVIDENCED BY THEIR MIS-CONSTRUCTION OF 17-25-45(E))
TO INFORM APPELLANT HE COULD NOT BE CONSIDERED FOR PAROLE)
APPELLANT SEEKS TO PROCEED ON THIS APPEAL W/OUT COSTS AS
HE HAS NO MEANS TO PAY ANY COSTS, HE IS INDIGENT AND
THIS APPEAL HAS SUBSTANTIAL MERIT ON A IMPORTANT STATUTORY
INTERPRETATION FOR LWOP PRISONERS IN SC.

APPELLANT SEEKS COUNSEL BE APPOINTED ON THIS
IMPORTANT LEGAL QUESTION.

Respectfully

Rent H. Koal

4-10-14

Proof of service

A TRUE COPY OF ENCLOSED
WAS SENT to SCP PPS (ECU COUNSEL)
PO BOX 50666 COLUMBIA SC 29205
THIS 10th DAY APRIL 2014
BY US MAIL
UNDER OATH
RWT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Robert Koon, 227826,

Docket No. 13-ALJ-15-0018-AP

Appellant,

vs.

ORDER

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Robert Koon ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections. On May 29, 1998, the Appellant was convicted of Burglary in the Second Degree and Grand Larceny. Because the Appellant had previously been convicted of two other "serious" crimes, the Appellant received a life sentence without the possibility of parole. The Appellant appealed to the South Carolina Court of Appeals, but in an opinion issued April 18, 2000, the Appellant's convictions were upheld.

Subsequently, the Appellant wrote the South Carolina Governor's Office and the Chairman of the South Carolina Parole Board ("Board") seeking to have his sentence commuted. On March 21, 2013, Matthew C. Buchanan, General Counsel of the South Carolina Department of Probation, Parole and Pardon Services ("Department") responded to the Appellant by letter explaining that the Appellant's sentence is not eligible for commutation as South Carolina law only permits the commutation of a death sentence to a life sentence. Mr. Buchanan further explained that there are only two types of clemency remedies available in South Carolina, parole and pardon. Because the Appellant was sentenced to life without the possibility of parole, the only remedy available to the Appellant is a pardon.

Mr. Buchanan's letter outlined the guidelines the Board utilizes when considering a request on for a pardon pursuant to S.C. Code Ann. § 24-21-950. The most essential of those guidelines being that the inmate must produce evidence of the "most extraordinary

circumstance” warranting a pardon. Thereafter, on April 22, 2013, the Appellant filed a Notice of Appeal with this Court challenging the Department’s determination that he is not eligible for parole and seeking an order remanding the matter to the Department for a determination of whether an “extraordinary circumstance” exists which would allow the Appellant to be considered for a parole pursuant to S.C. Code Ann. § 17-25-45.

DISCUSSION

The ALC’s jurisdiction to review a final decision of the Department is derived from the South Carolina Supreme Court’s decisions in Al-Shabbaz v. State, 338 S.C. 334, 527 S.E.2d 724 (2000) and Furtick v. South Carolina Department of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2002). In Al-Shabbaz, the court held that inmates have the right to appeal final decisions rendered by state agencies in matters that are “non-collateral” and related to an inmate’s conviction or sentence to the ALC pursuant to the Administrative Procedures Act. The court recognized that these matters typically arise (1) when an inmate is disciplined and a punishment is imposed, and also, (2) when an inmate believes prison officials have erroneously calculated his sentence; sentence-related credits or custody status. Al-Shabbaz, at 369. In Furtick the South Carolina Supreme Court held that an allegation that the Department has erroneously determined that an inmate is not eligible for parole is appealable under the second prong in Al-Shabbaz. The court also held that permanent denial of parole implicates a liberty interest sufficient to require at least minimal due process and review by the ALC. Furtick, at 149.

Additionally, the court determined in Furtick that although an inmate has a liberty interest in parole *eligibility* pursuant to S.C. Code Ann. § 24-21-620, this statute creates no such liberty interest in the granting of parole itself. Furtick, fn 4, see also Sullivan v. South Carolina Dep’t of Corrections, 355 S.C. 437, 586 S.E.2d 124, 127 (2003) (explaining the nature of the right to ALC review).

In his appeal, the Appellant seeks review of the Department’s determination that he is not eligible for parole. The Appellant argues that even though he is serving a “life sentence without the possibility of parole,” the Parole Board is obligated to consider the Appellant for parole pursuant to S.C. Code Ann. § 17-25-45. Appellant contends that information provided to this Court establishes “extraordinary circumstances” warranting review of his case and subsequent

release on parole and that the case should be remanded to the Department for said review.¹

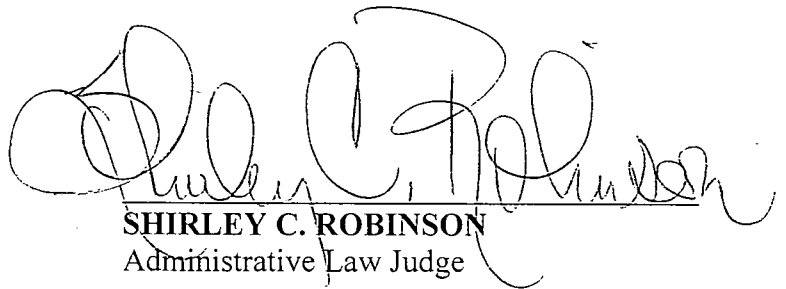
However, the Appellant is currently not eligible for parole and while S.C. Code Ann. § 17-25-45 outlines the process Appellant must follow prior to being considered for parole, he has not complied with that process. Appellant's request that this Court remand the matter to the Department with instructions to review the case for compliance with section 17-25-45 is not within the Court's review authority as outlined in Al-Shabazz.²

What process?

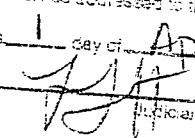
ORDER

Based upon the foregoing reasons, **IT IS HEREBY ORDERED** that the matter is **DISMISSED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

April 1, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order on the above entitled action upon the parties to this cause by depositing a copy thereof in the United States mail postage paid or in the "Agency Mail Service" addressed to the party (es) or their attorney(s).
this 1 day of April 2014
By:  Judicial Law Clerk

¹ The Department filed the Record on Appeal with the Court on May 23, 2013, and on June 13, 2013, the Appellant filed a Motion requesting that the Record be expanded. Appellant included numerous documents along with the Motion, and on June 28, 2013 Appellant filed his own Record on Appeal. Appeals to this Court are governed by ALC Rules 58 and 61, and those matters not considered by the agency during its review will not be considered by this Court.

² Appellant filed a Motion with the Court on June 28, 2013 asking that the Court appoint counsel to represent Appellant in this matter, however there is no provision providing for the appointment of counsel in appeals to this Court.

FILED

APR 01 2014

CLOSED

SC ADMIN. LAW COURT

TSR

Robert Koof

227826 LCI

PO Box 205

Ridgewood SC 29472

Clerk of Court

SC Admin. Law Court

RE: ROBERT KOOF v. SCD PPPS

13-ALJ-15-0018

PLEASE FIND ENCLOSED SUPPLEMENTAL EXHIBIT / Proof of service
THE ABOVE ALC APPEAL WAS FILED

MAY 23, 2013 WOULD YOU PLEASE INFORM ME

AS TO THE STATUS OF THE MOTION TO APPOINT

COUNSEL JOHN B. SHUPPER (ESQ) AND THE

BUCHANAN STATUS OF THIS CASE.

I HAVE WRITTEN TO YOUR OFFICE SEVERAL TIMES
BUT HAVE NEVER RECEIVED ANY TYPE OF RESPONSE

PLEASE ALSO CITE ME THE COST OF OBTAINING A
COPY OF MY ENTIRE FILE FOR APPEAL TO SC
COURT OF APPEALS

Respectfully

RMK

CC: MATTHEW BUCHANAN SCD PPPS

CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will send notice of such filing to the registered CM/ECF users listed below, and served a copy of the foregoing by overnight Federal Express at the following address:

William Edgar Salter, III
Donald John Zelenka
Office of the Attorney General of South Carolina
Rembert C. Dennis Office Building
1000 Assembly Street
Columbia, SC 29201

/s/ Richard D. Dietz

Richard D. Dietz
KILPATRICK STOCKTON LLP
1001 West Fourth Street
Winston-Salem, NC 27101
Telephone: (336) 607-7300
RDietz@KilpatrickStockton.com

Counsel for Appellant

Memorandum

RECEIVED

APR 18 2014

TO: APPELLANT
FROM: CLERK'S OFFICE
DATE: 4-9-2014

S.C. SUPREME COURT

The information you filed with the administrative Law Court is being returned to you for the following reason(s):

___ A fee of \$5.00 is required for copies of 10 pages or less. For copies of 10 or more pages is \$.50 per page. Number of pages 215 x \$.50 = \$107.50.

___ This office cannot assist you with this request. For assistance, please contact your Inmate Grievance Coordinator.

___ Please note that the ALC have no waiver forms for DOC appeals. You can only file 3 appeals in a calendar year, after that a \$25.00 fee is required for the 4th appeal.

___ Please sign, date, and return the enclosed Notice of Appeal.

___ The Administrative Law Court does not have statutory authority to hear Tort Claim actions. Pursuant to the South Carolina Tort Claims Act, S.C. Code Ann.15-78-10 et seq., the appropriate venue for filing this type of action is in circuit court.

___ This office cannot assist you with your request. For transcripts, contact the S. C. Court Administration, Court Reporting Section, 1015 Sumter St., Suite 200, Columbia, S.C. 29201

___ Any questions concerning appeals to the Court of Appeals, please contact the Court of Appeals Clerk's Office:

The S. C. Court of Appeals
Tanya A. Gee
PO Box 11629
Columbia, S.C. 29211

STATE OF SOUTH CAROLINA

JUDICIAL ADMINISTRATION COURT

DOCKET # 13-ALJ-15-0018

ROBERT KOON

v.

SCD PPPS

SUPPLEMENTAL EXHIBIT

APPELLANT SUBMITS THE ATTACHED HABEAS PETITION FILED WITH THE SC SUPREME COURT THAT SETS FORTH FACTS, CIRCUMSTANCES AND LAW THAT ~~SET~~ CONSTITUTE A EXTRAORDINARY CIRCUMSTANCE PER 17-25-45(E) TO GRANT PAROLE TO APPELLANT WHO HAS SERVED 17 YEARS FOR SECOND DEGREE OFFICE BURGLARY, BASED UPON PRIOR CONVICTIONS THAT ARE FUNDAMENTALLY FLAWED TO EXTENT THEY SHOULD NOT BE RELIED UPON TO CONFINE APPELLANT FOR LWOP

AS WELL AS FACT APPELLANT WAS SUBJECT TO DOUBLE ENHANCEMENT OF BOTH HIS OFFENSE AND SENTENCE BASED UPON SAME FACT (IE)

TWO OR MORE PRIOR CONVICTIONS (6-11-312 b)2) FOR BURGLARY. (643 SE 2d 680) KOON V STATE

THIS COURT SHOULD ORDER SCDPPPS TO

GRANT PAROLE PUR. to 17-25-45 (E)
AS A EXTRAORDINARY CIRCUMSTANCES (REASON)
HAS MANIFESTED ITSELF (SEE ATTACHED HABEAS)
In Addition, the Question Remains Since
SCDPSS WAS VICTIM OF APPELLANTS CURRENT
OFFENSE CAN THAT TRIBUNAL be IMPARTIAL
to Decide whether IN FACT A EXTRAORDINARY
REASON EXISTS.

Relief

Immediate PAROLE OUT OF STATE

Respectfully
Reut Kass (use)

PROOF OF SERVICE

A TRUE COPY WAS SERVED UPON SCDPSS
MATHEW BUCHANAN PO BOX 50666 COLUMBIA SC
29205 THIS 1ST APRIL 2014 BY RE US MAIL
under oath

FILED

APR 01 2014

SC ADMIN. LAW COURT



Gov. Nikki Haley, Governor
Mr. C. David Baxter, Chairman of the Board
✓ Ms. Kela E. Thomas, Director
SC Dept. of Probation, Parole, and Pardon Services (SCDPPPS)
P.O. Box 50666
Columbia, SC 29211

Re: Consideration of Robert Holland Koon

Dear Gov. Haley, Mr. Baxter, and Ms. Thomas,

It has come to my attention that since January 2011, several persons, including the victim of my Second Strike (1) Harry Lovelace of Cudd-Lovelace Agency and Detective Richard Weaver, who signed the warrants for Cudd-Lovelace and Stylette Salon (2) have petitioned the SCDPPPS to commute my life sentence to time served or to grant me parole under the 'extraordinary circumstances' provision of 17-25-45.

First, I would respectfully request that you provide me copies of that documentation mentioned above along with this agency's decision on that matter.

Second, pursuant to the 'extraordinary circumstances' clause of 17-25-45, which states that under section(E) "...a person sentenced pursuant to this section may be paroled if: (d) the person can produce evidence comprising the most extraordinary circumstances.", I would ask that a formal hearing be scheduled as soon as possible based upon the deteriorating health of Mr. Weaver who has suffered from debilitating medical conditions within the past year and that extraordinary circumstances exist that would warrant the granting of a commutation of the life sentence to 'time served' of sixteen (16) years on the 1998 conviction for the 2/01/97 offense of Second Degree Burglary. 16-11-312 (B) based upon the fact, inter alia, that my second strike (Cudd-Lovelace) conviction is fundamentally flawed as evidence exists that the State had "no evidence to establish the corpus delicti of a nighttime burglary existed", and without nighttime allegation Cudd-Lovelace would at most be 'Burglary Third Degree' and not a Strike (see attached).

Third, I did not receive a mental evaluation prior to the plea in 1986 in which I received 'two Strikes out of one plea'. This, despite prior documented evidence of mental and psychological problems resulting from my maltreatment at the SC State Hospital and the misuse of psychotropic medication as detailed in the attachment.

Additionally, I would like to assert the following: that since the 1998 conviction for which I am serving LWOP was for the burglary of the SCDPPS branch office in Cherokee County, there is therefore a conflict of interest whereby the SCDPPPS staff would be conflicted in making a determination as to whether extraordinary reasons exist to commute/reduce the sentence to time served or grant parole pur to 17-

25-45 as SCDPPPS is the "victim" of this offense. Thus, this matter should be transferred to the Governor's office for disposition based upon the inherent conflict of interest.

I would ask that these documents be submitted to the full parole board for a decision as to the scheduling of a hearing, and the disclosure of the documents presented by the victim Mr. Lovelace and Det. Weaver.

Thank you for your kind attention.

With Kindest Regards,



Robert Holland Koon

Lieber CI

P.O. Box 205

Ridgeville, SC 29472

Enclosures

Cc:

Gov. Nikki Haley

Donald Zelenka, Attorney General's office

Harry Lovelace

Det. (Retired) Richard Weaver

Solicitor Barry Barnette

W. Gaston Fairey, Esq. (Ret)

Nelson & Mullins, Attorneys at Law

(1) Koon v State 643 SE2d 680(2007)

(2) Reversed by SC Supreme Court Koon v State 595 SE2d 495(2004)

To Whom It May Concern:
Attorneys

Re: Child tortured at S.C. State Hospital coerced into plea in 1986 used as basis for Natural Life Sentence for property crime seeks justice after thirty (30) years.

The following account is written in order to provide evidence of the adverse effect of medication misuse, childhood physical and psychological torture, and judicial misconduct that resulted in a Life Without Parole sentence for the victim of said abuse. The pattern of abuse began when subject was prescribed and administered Ritalin and Mellaril from age five to age thirteen and remained in a continuously medicated state on psychotropic drugs as school records will attest: from 1971-1973 (Leroy Gordon Cooper School, Cliffwood Beach, NJ), 1974-1975 (West End Elementary School, Gaffney, SC), and 1975-1979 (Central Elementary School, Gaffney, SC).

In 1982, subject was one of eight (8) children who were patients of the S.C. Department of Mental Health (SCDMH) who were tortured and abused, forcibly injected against their will with high dosages of psychotropic drugs, kept naked in a strip cell, four pointed to beds and forced to drink fruit juice infused with psychotropic drugs. A nurse concerned about the abuse reported the maltreatment of these children to the State Law Enforcement Division (SLED) prompting their investigation. Others became involved in the investigation, including Attorney W. Gaston Fairey, a renowned author on S.C Law; South Carolina Protection and Advocacy for the Handicapped; Child Advocate Attorney John D. Elliott; and Attorney Gary Mallard. As a result of the investigation, a federal civil rights action was filed in the U.S. District Court **Robert K. (Child) et al. v Robert Bell, et al. SC Dept of Mental Health. (Case No. 3:83cv287, Filed 02/02/83).** The case was settled out of court for in excess of \$200,000. In 1983, Robert K. was Robert Holland Koon (RK). He was fourteen (14) years old at the time he experienced the abuse. After the abuse at the State Hospital, RK received absolutely no follow up care, counseling, or any other treatment for the abuse and torture he incurred and seems to have suffered from severe Post Traumatic Stress Disorder (PTSD) as a result. He began to manifest symptoms of PTSD: In 1984, RK stole the Mayor of Gaffney's daughter's vehicle and drove it to Myrtle Beach, SC for a high school graduation party. He was arrested and sentenced to probation, whereupon he stole the Mayor of Gaffney's wrecker and crashed into a S.C.H.P. patrol car – within two weeks of being released on probation! At that time, RK was sentenced to one to six years under the Youthful Offender Act. Upon his release in March 1985, RK received the proceeds from the \$6,000 settlement – the remaining balance after his mother purchased a car and home furnishings for the house that his father set on fire in January of 1984. During the time period between his release from the S.C. Department of Mental Health and Juvenile Custody in December 1983, RK began to consume large quantities of alcohol and became a black-out alcoholic. In spite of patently obvious symptoms, RK still received no treatment or counseling for the abuse suffered at the SCDMH. In May, 1985 he was cited for Driving Under Suspension and was placed in the custody of the S.C. Department of Corrections (SCDC). While in SCDC, he attempted to commit suicide several times and was placed in the Gilliam Psychiatric Hospital at Kirkland under the care of Dr. Mansoor Daniels. RK was released from SCDC in December of 1985. He continued to consume large quantities of alcohol as a means of coping with the PTSD.

On March 14, 1986, RK was arrested in Jonesville, SC where he was located approximately five miles from a truck stolen from Gaffney with no evidence whatsoever to connect him to the stolen truck or keys taken from a business. RK was charged with two (2) counts of Second Degree Burglary and Larceny of the truck. The charges were made by Morgan Doug Harvey of the Gaffney City Police Department. While in jail, he retained Gary Paul Mallard as his counsel and was subsequently released on bond which his mother posted.

On April 2, 1986, RK was rearrested and charged without any proof whatsoever of two more nighttime Second Degree Burglaries which allegedly occurred sometime between 5:00pm on March 28 and 9:00am on March 29, 1986 but listed only as occurring at night. Following RK's arrest, his \$10,000 bond was revoked. No proof has ever been presented that RK committed any of these offenses. None.

In May 1986 while in jail awaiting trial on these charges, police left a ten foot ladder on the recreation field and RK was conveniently (according to Gary Mallard's testimony) allowed to escape from the charges for which the Gaffney City Police had no evidence. Several weeks later RK was captured. During the next term of General Sessions Court, Chief of Police Chris Skinner entered RK's jail cell and encouraged him to take a ten (10) year plea; this was done in spite of the fact that RK's attorney Gary Mallard had previously explicitly told Chief Skinner not to speak with RK about the case without him (Mallard) being present (testimony at June 27, 2011 hearing) State v Koon 86-GS-11-289 motion for a new trial. After his conversation with Chief Skinner, RK was escorted to the Cherokee County Courthouse to enter a ten year plea. RK's decision prompted by Skinner's statement that if he did not plea, he would receive a forty (40) year sentence. It was only after this action that Attorney Mallard was contacted in Greenville and informed of his client's plea and he was advised to come to Gaffney. Mr. Mallard represented RK on the March 14, 1986 offense involving the stolen truck. Public Defender Harry Cline represented RK on the March 28-29, 1986 charges. RK proceeded to enter a plea, but the court without any evidence to convict of the offenses could not and did not "establish a factual basis" for the plea as required by NC v Alford. In fact, during the plea, RK stated "I did not do these crimes" but the court still accepted the plea without establishing a factual basis. Also, per the 1986 plea transcript, RK plead guilty to the break-in at Stylette Salon for nighttime burglary, a conviction later reversed by the SC Supreme Court. The court asked RK if he committed the crime on April 29th to which he consented. This could not have occurred as RK was in jail on April 29th! Stating that he wanted to give RK a forty year sentence, The Hon. Jonathan McKown gave RK ten years. RK immediately filed a P.C.R. alleging his plea was involuntary and the result of coercion and the ineffective assistance of counsel, the police's failure to disclose that alleged mud samples that Morgan Harvey portrayed to RK connecting him to the stolen truck / March 14th burglary were inconclusive, and the fact that the plea was negotiated without counsel present.

In October 1987, RK was denied relief in the P.C.R. hearing in which he was represented by Wade S. Weatherford. Mr. Weatherford would not file an appeal and the transcript of the hearing was subsequently destroyed. In 2004 (17 years later) the SC Supreme Court granted a review of the 1987 P.C.R. Koon v State 595 SE2d 456 (2004), holding that Weatherford was ineffective for failing to file an appeal. The March 29, 1986 offense was vacated as it did not allege Nighttime element. The basis of the Second Degree Burglary is that it allegedly occurred at

night. In 2010, Harry Lovelace, the owner of Cudd-Lovelace Agency that was the location of the March 28, 1986 offense, came forward with a sworn affidavit stating that no evidence existed that the break-in offense occurred at night as required to establish Second Degree Burglary. The Cudd-Lovelace Agency and Stylette Salon offenses which were alleged to have occurred on separate dates actually occurred at the same time between 5:00 pm March 28th and 9:00 am March 29th. However, the police misrepresented the date of the offenses and of nighttime occurrence.

During the June 27, 2011 motion for a new trial, Mr. Mallard testified that no evidence existed to connect RK to any of these crimes and the plea transcript sets forth no factual basis as required by law. In spite of this, the court denied the motion for a new trial, determining that RK should have discovered earlier that the police misrepresented the facts and that no evidence existed to show the crime occurred at nighttime. In Koon v State 643 SE2d 680 (2007), it was held the RK received two strikes (under three strike law) at this one 1986 plea and thus he was properly sentenced to Life Without Parole for his 1986 conviction. RK's life sentence is predicated on his 1986 plea. He did not receive a mental evaluation before his 1986 plea despite the fact that his attorney knew he had a history of mental problems, including suicide attempts, and possibly PTSD stemming from his abuse and torture at the State Hospital prior to his plea. This is a major constitutional issue that has never been addressed and a viable issue under S.C. law. Even after the plea and while serving the ten year sentence, RK was twice placed in SCDC's Gilliam Psychiatric Hospital for attempted suicide. In fact, RK's SCDC history from 1986 to 1993 shows extreme behavioral problems toward authority, likely a result of his childhood torture and abuse at the State Hospital and resentment from being coerced into a plea that placed him in a maximum security prison due to his escape.

At his 1998 competency hearing, the State Hospital found RK competent but could not review the 1982 records of torture and abuse as those records are "sealed by the court" and remain sealed. In 2008, the SC Supreme Court held that no statute of limitations exists on the issue of competency to stand trial. Therefore, RK has a viable issue on failure to be evaluated prior to his plea. RK is now attempting to present this to the SC Supreme Court, which stated in an October 27, 2010 order that he could not file any collateral attack on the 1986 conviction without their permission. Chief Justice Jean Toal (for the court) stated that the 1982 State Hospital records of RK's torture and abuse should be unsealed so that he can show that "suffering from untreated and undiagnosed Post Traumatic Stress Disorder" left him unduly susceptible to being influenced by an authority figure to enter a plea to a crime he was not guilty of and can not even be shown to have occurred, due to his fear and intimidation grounded in his abuse at the State Hospital (see lawsuit on torture) and no evidence existed then or now to show that RK should have been charged or indicted and his first two strikes are the result of police misconduct by contacting a represented defendant without counsel present despite specific instructions not to do so, and presenting false evidence to the magistrate in order to obtain a warrant and indictment when no proof existed to connect him to the crimes and he only pleaded guilty due to his PTSD and fear of authority figures as a result of the documented torture and abuse he suffered while at the State Hospital. The court records of Robert K. v Robert Bell et al establish that eight (8) children were tortured and abused. Two committed suicide within three years of suffering the abuse, two are now serving life sentences. The status of the other four is unknown. RK was never treated or

diagnosed and, more importantly, was never given a mental evaluation prior to his coerced 1986 plea.

In the interest of justice, RK is seeking to have his 1986 plea vacated to remove two of the three strikes under the three strike Life Without Parole law. He has served seven (7) years on the 1986 plea and had served fifteen (15) years on the 1998 trial for Second Degree Burglary. In all he has served over twenty-three (23) years and has paid his debt to society without question. However, the torture and abuse he suffered as a child has never been addressed and should play a key role in his being resentenced. Since the S.C. Supreme Court has "estopped" RK from an appeal without their permission, RK seeks to have an attorney: procure his mental health records from the State Hospital that are sealed as well as his SCDC mental health records; prepare a petition asking the S.C. Supreme Court to allow him assent that he should have had a mental evaluation before his 1986 plea was accepted based on their recent decision and the fact that his record of torture and abuse has been sealed and no factual basis was established at plea and no evidence connects him to the offenses. If you are interested in assisting RK correct a terrible injustice that began with a child being tortured and abused by the State and culminated in him serving natural life for offenses that the State has no proof he committed, please contact him or me as follows:

Robert Koon 227826
Lieber C.I.
PO Box 205
Ridgeville, SC 29472

Harry M Lovelace
PO Box 71
Gaffney, SC 29342
(864) 838-1381

RK is also seeking Gov. Nikki Haley recommend to the S.C. Parole and Pardon Board that his sentence be commuted to time served.

In between his 1986 and 1998 sentence, RK earned a paralegal degree from Old Dominion University in Virginia. However, due to his untreated PTSD and problem as a blackout alcoholic he could not adapt to society without professional treatment / counseling for his childhood torture and abuse. Since 1986, RK has continuously protested and fought the coerced plea to no avail – to no avail because the issue of his mental competency has never been addressed.

John D. Elliott

ATTORNEY AT LAW

THE NBSC BUILDING
1122 LADY STREET, FIFTH FLOOR
Post Office Box 607
Columbia, South Carolina 29202

phone (803) 252-9236
fax (803) 799-2079
email jayel@mindspring.com

July 1st, 2013

Robert Koon
No. 227826
Lieber Correctional Institute
P.O. Box 205
Ridgeville SC 29472

RE: Legal Matters

Dear Mr. Koon:

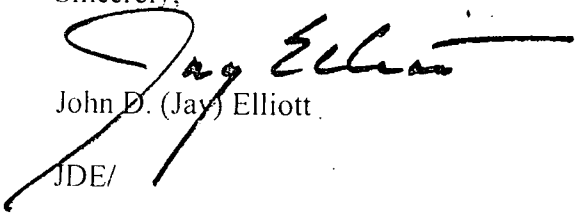
I have reviewed your correspondence and packages of materials. I regret that I am fully booked with work and cannot take on your matters.

I have your request for the *Robert K. vs. Bell* file. Unfortunately that file was purged many years ago, as it has been nearly 30 years since that case was concluded.

As to the lawsuit regarding the use of Ritalin on children, I have no expertise in that area of law, and recommend that you contact any lawyer for the members of the class of plaintiffs to see if you can be included.

I wish you the best of luck with your cases. I am returning the documents and materials to you..

Sincerely,



John D. (Jay) Elliott

JDE/

ENCL.

John D. Elliott

ATTORNEY AT LAW

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January 4th, 2014

Harry M. Lovelace
Correll Insurance
P.O. Box 71
Gaffney SC 29342

RE: Robert Koon


Dear Mr. Lovelace:

I have the materials you forwarded regarding Robert Koon, and his request that I provide something on his behalf with the Parole and Pardon Board.

I haven't seen Mr. Koon in over 30 years, and know very little about him, other than my involvement in a legal matter regarding his welfare which concluded around that time. I regret that I am not in a position to assist him.

Accordingly, I am returning the materials to you in the hopes that someone else might be of more help.

Sincerely,



John D. (Jay) Elliott

JDE/

ENCL.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

April 26, 2013

Mr. Robert H. Koon, #227826
Lieber Correctional Institution
PO Box 205
Ridgeville, SC 29472

Re: Your letter

Dear Mr. Koon:

I received your letter about the same time I got a phone call from Harry Lovelace. He said Mr. Weaver's wife feels Mr. Weaver is not up to the stress right now to do anything. Your case is scheduled to be looked at by the Court of Appeals this month, but I do not know when they will decide it. It is too early to tell if I will petition for rehearing and go cert. if we lose. I will have to wait and see how the decision is worded.

Sincerely,

Robert M. Pachak
Appellate Defender

RMP/pcm

June 9, 2013

The Hon. Ralph K. Anderson, III
Chief Administrative Law Judge
SC Administrative Law Court
1205 Pendleton Street
Columbia, SC 29201

Mr. Harry M. Lovelace
31 Bo Lane
Gaffney, SC 29340

Dear Judge Anderson,

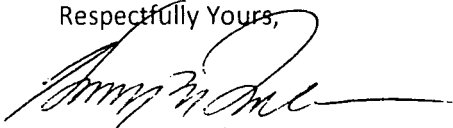
Enclosed please find documents related to the case for Robert Holland Koon who is currently serving a LWOP sentence under the SC 'three strikes' law. Included is his request to the SCDPPPS for their consideration of pardon under the 'extraordinary circumstances' clause of 17-25-45. Per the enclosed letter of March 21, 2013 from the SCDPPPS citing SC Section 24-21-950(A)(4), in addition to the provision for consideration due to 'extraordinary circumstances', I am further petitioning the court under SC Code 24-21-950(A)(5) which states that "*the victim of a crime...may petition for a pardon for a person who has completed supervision or has been discharged from a sentence.*" As indicated in the enclosed documents, I was a "victim" of one of Mr. Koon's offenses which led directly to his LWOP sentence, and I am by this letter formerly petitioning the court to pardon Mr. Koon for time served. It is my contention that Mr. Koon should have never received the conviction of Second Degree Burglary when the state did not produce any evidence that the offense occurred in nighttime, which was the basis for Second Degree, as opposed to Third Degree; and, thus, constituted his third strike.

Additionally, I have personally spoken with the investigating officer, Det. Richard Weaver (retired) and he stated that it was his desire that Mr. Koon be pardoned for time served. Mr. Weaver told me that he sent a letter to a member of the Board of Probation, Parole, and Pardons that he knew requesting the member's consideration of Mr. Koon's pardon. He did not indicate to me which member was so addressed. Unfortunately, since that time, Mr. Weaver's health has significantly deteriorated – to the point that the assistance he stated so clearly to me that he wished to provide for Mr. Koon cannot now be counted upon with any reliability. Mr. Weaver's wife has respectfully requested that he not be contacted until further notice, again due to the swiftness and severity of his declining health. This fact alone should constitute ample evidence of an extraordinary circumstance meriting consideration for pardon, and when apprised with the circumstances noted in the enclosed letter regarding Mr. Koon's childhood experience at the state hospital, etc., there should be no doubt that the provisions of SC Section 24-21-950(A)(4) should be applied.

In my attempts to assist Mr. Koon as a victim, I have thus far been met with indifference, resistance, and/or hostility by officers of the court representing the state. Perhaps they are not accustomed to

dealing with a victim working as an advocate on behalf of a defendant, but their response has resulted in much frustration on my part. It is my sincere hope going forward that the proceedings will allow for a fair assessment of Mr. Koon's and my petition for consideration of pardon. I make myself available, and indeed welcome any opportunity to further augment any of the attestations set forth in the enclosed documents.

Respectfully Yours,



Harry M. Lovelace

Enclosures (note: several of the documents from Robert Koon do not contain his signature. They were all previously submitted to the recipients with his signature, but due to the difficulty in getting photocopies from him, I am sending without the signatures)

Cc:

Gov. Nikki Haley

Mr. C. David Baxter, Chairman – SC Board of Pardons and Paroles

Ms. Kela E. Thomas, Director – SC Dept. of Probation, Parole, and Pardon Services

Mr. Robert H. Koon

August 11, 2012

Ms. Tara Dawn Shurling
Attorney and Counselor at Law
3614 Landmark Drive
Suite A
Columbia, SC 29204

Harry M. Lovelace
PO Box 71
Gaffney, SC 29342
(864) 838-1381

Dear Ms. Shurling,

Please find attached a file containing information about the case for Robert Holland Koon.

Permit me to state the reason for my personal involvement in Mr. Koon's case. My father owned Cudd-Lovelace Agency, the insurance agency in which Mr. Koon was convicted of second degree burglary resulting from the break-in in March 1986. At that time, I was a manager of Cudd-Lovelace and later became owner of the agency. My father passed away two weeks prior to the break-in. My attached affidavit provides more detail which I will not repeat here, but it is my understanding that one word in the arrest warrant (attached) is the difference between Mr. Koon being released for time served and spending the rest of his life in prison. That word is nighttime. A break-in which occurred at the Stylette Salon in the adjacent leased space within the same building but discovered later did not contain that word; therefore resulting in a third degree burglary conviction. It is my understanding that a similar conviction in the Cudd-Lovelace incident would not have counted in the "three strike" law that resulted in his life sentence. As my affidavit states, the nighttime element can not be proved. Mr. Koon was nineteen years old at the time and, in my opinion, through inadequate legal representation was encouraged to plea without proper due diligence. I was never questioned prior to his conviction and only became aware of his plight about four years ago. I testified at his June 2011 hearing as to the possibility that the Cudd-Lovelace break-in could very well have occurred during the daytime, but the sentence was not modified as the state determined this did not meet the new evidence standard.

In June of this year, I spoke with retired Detective Richard Weaver who signed the original arrest warrant for both the Cudd-Lovelace and Stylette Salon break-ins. Mr. Weaver is sympathetic to Mr. Koon's situation and told me he would be willing to assist as he could. He even offered to speak with former solicitor and now congressman Trey Gowdy who is his neighbor to encourage him to speak with Governor Haley on Mr. Koon's behalf. We were attempting to secure an affidavit from Mr. Weaver, but he has subsequently been hospitalized with a heart condition and his ability and availability to assist in very much in jeopardy at present.

Mr. Koon has diligently tried every legal means to obtain a reduction in the Cudd-Lovelace conviction and thereby secure his release for time served, but his options are quickly dwindling. It is my understanding that the state has filed their brief and we are awaiting the court's decision.

I appreciate the need for appropriate compensation for your involvement, and we are undertaking measures to secure the necessary funding. I would ask your consideration of this case at a reduced rate given the circumstances. It appears that this may well be the last opportunity to avoid a lifetime sentence – a sentence which I personally, even as the victim of the crime, believe to be unjust.

I would welcome the opportunity to speak with you further regarding this matter. I can be reached at (864) 838-1381 or emailed at hlovelace@correllinsurance.com. Thank you for your time and consideration.

Very Best Regards,

A handwritten signature in black ink, appearing to read "Harry M. Lovelace", with a long horizontal flourish extending to the right.

Harry M. Lovelace

Mr. Barry Barnette
Seventh Circuit Solicitor
180 Magnolia Street
Spartanburg, SC 29306

Harry M. Lovelace
31 Bo Lane
Gaffney, SC 29340
(864) 838-1381

August 4, 2011

Re: Resentencing of Robert Holland Koon

Dear Mr. Barnette,

Under the provisions of the Victim Bill of Rights, I would request as Solicitor that you carefully review the case of State v Robert Koon 86-GS-11-289 in which Mr. Koon was indicted for Second Degree Burglary when the State did not have any proof the offense occurred at nighttime as required by 16-11-312 (b) 3) SC Code of Laws (1986). According to Mr. Koon, he entered a plea as part of a package plea deal in 1986 not knowing that he would receive two strikes at the one plea. Koon v State 643 SE2d 680 (2007). The offense that constitutes the 'second strike' was my family's insurance agency Cudd-Lovelace Agency, and as the victim, I would respectfully ask you to allow the 1986 conviction to be reduced to Burglary Third Degree so that Mr. Koon can be resentenced from Life Without Parole to twenty years for his 1998 conviction for a subsequent Second Degree Burglary. 98-GS-11-650. Koon v State Supra.

It is my understanding that the State prosecuted this individual for a nighttime burglary without any proof of Corpus Delecti of the nighttime element, and I feel as the victim that a grave injustice has been done to this man where the State can not show his second strike offense ever occurred. As a citizen of this state, I am opposed to the fact that Mr. Koon was prosecuted for nighttime entry of the insurance office (in which nothing was discovered to have been stolen) when no proof exists that it occurred at night, only that it occurred sometime between 5:00 pm March 28, 1986 and 9:00 am March 29, 1986.

I would like to meet with you to discuss this matter with you in person at your earliest convenience. I may be reached at (864) 838-1381. Thank you in advance for your consideration of this request.

Respectfully Yours,



Harry M. Lovelace

Cc: The Hon. J. Mark Hayes III
Mr. Robin File, Assistant Solicitor

March 10, 2014

Mr. Bobby Frederick
S.C. Association of Criminal Defense Lawyers
PO Box 8353
Columbia, SC 29202



Robert H. Koon 227826
Lieber C.I.
PO Box 205
Ridgeville, SC 29472

Miscarriage of Justice

Dear Mr. Frederick,

I am writing to earnestly request your help. I am the victim of gross prosecutorial misconduct. Please see Koon v State 595-SE2d-456 (2004); Koon v State 643-SE2d-680 (2007); State v Koon 29(b) Appeal (Russ Racine); Cherokee County 86-GS-11-289 (Robert Pachak, App Def). Appeal denied 5/23/13 SC Court of Appeals (Prosecutorial misconduct not ruled upon).

The police lied to get a warrant and the solicitor lied to get indictment for **Nighttime Burglary** (2nd Degree). The victim of the Cudd-Lovelace break-in Harry Lovelace testified that there was **NO** evidence that the crime occurred at nighttime; only that it occurred between 5:00pm March 28, 1986 and 9:00 am March 29, 1986, with over five hours of daylight in the interim period. Please see enclosed documents where victim Mr. Lovelace has fought to expose this injustice (e.g. to have 86-GS-11-289 reduced to Burglary 3rd Degree and void my 2nd Strike at 643-SE2d-680, 682.

(AG) Fraud upon the Court and Barratry even by Donald Zelenka who conducted my 1987 PCR without a plea transcript (see attached Writ of Habeas Corpus). Fraud was also committed in my case as evidenced in the 29(b) transcripts (i.e. opposite side of duplex 86-GS-11-290 was reversed by SC Supreme Court as it DID NOT allege nighttime 595-SE2d-459. This was the same solicitor, same county, and same year as Riddle v Ozment 631-SE2d-70 (2006) – a landmark Cherokee County prosecutorial misconduct case.

Mr. Frederick, I have served seventeen years on 3 Strike LWOP and I do not wish to die in prison based on unchecked and unchallenged prosecutorial misconduct. Please send me copies of **any** letters you have sent regarding prosecutorial misconduct; perhaps you can ask Solicitor Barnette to agree to reduce 86-GS-11-289 to Burglary 3rd Degree and I will be released for time served. Please review enclosed with an eye towards justice...maybe S.C. can establish a Commission on Miscarriages of Justice similar to N.C.

As stated previously, the victim Mr. Lovelace is willing to assist in any efforts undertaken to ensure that this injustice is corrected. I have a paralegal certificate from Old Dominion University (1994) and will gladly assist as I am able.

Respectfully Yours,

Robert Koon (typed and submitted by Harry M. Lovelace)

A handwritten signature in black ink, appearing to read "Harry M. Lovelace", with a long horizontal flourish extending to the right.

Enclosures (note: several of the documents from Robert Koon do not contain his signature. They were all previously submitted to the recipients with his signature, but due to the difficulty in getting photocopies from him, I am sending without the signatures). Harry Lovelace can be reached at (864) 838-1381 or emailed at hlovelace@correllinsurance.com.

Cc:

Mr. Robert H. Koon

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Robert H. Koon, Appellant.

Appellate Case No. 2011-200608

Appeal From Cherokee County
J. Mark Hayes, II, Circuit Court Judge

Unpublished Opinion No. 2013-UP-216
Submitted March 1, 2013 – Filed May 22, 2013

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Deputy Attorney General David A. Spencer, both of
Columbia, for Respondent.

PER CURIAM: Affirmed¹ pursuant to Rule 220(b), SCACR, and the following authorities: Rule 29(b), SCRCrimP ("A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence."); *State v. Spann*, 334 S.C. 618, 619-20, 513 S.E.2d 98, 99 (1999) ("In order to prevail in this new trial motion, appellant must show the after-discovered 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. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) ("The granting of a [motion for a] new trial because of after-discovered evidence is not favored, and this court will affirm the trial court's denial of such a motion unless the trial court abused its discretion." (internal quotation marks and citation omitted)); *id.* ("The credibility of newly-discovered evidence is for the trial court to determine."); *State v. Mercer*, 381 S.C. 149, 167, 672 S.E.2d 556, 565 (2009) ("On review, we may not make our own findings of fact."); *id.* ("The deferential standard of review constrains us to affirm the trial court if reasonably supported by the evidence.").²

AFFIRMED.³

FEW, CJ., and GEATHERS and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

² As to any argument regarding alleged police misconduct: *Langehans v. Smith*, 347 S.C. 348, 352, 554 S.E.2d 681, 683 (Ct. App. 2001) ("In order for an issue to be properly presented for appeal, the appellant's brief must set forth the issue in the statement of issues on appeal."); *id.* ("Further, it is error for the appellate court to consider issues not properly raised to it.").

³ The South Carolina Supreme Court's order of October 27, 2010, barring Appellant from further collateral actions challenging his 1986 burglary convictions does not affect our consideration of this appeal because Koon filed this case in the circuit court on October 10, 2010.

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SC SUPREME COURT

PO BOX 11350

COLUMBIA SC 29222

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APR 15 2014

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LIBBER C.L.

RJ

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