

ORIGINAL

20811

IN THE COURT OF APPEALS
STATE OF SOUTH CAROLINA

APPEAL FROM NEWBERRY COUNTY
EUGENE C. GRIFFITH JR. (Admin. Court Judge)
CASE NO. (2011-CP-36-00176)
APPELLATE CASE NO. (2012-212180)

RONNIE A. MITCHELL

APPELLATE

RECEIVED

AUG 14 2013

THE STATE

VS

RESPONDENT

SC Court of Appeals

RECORD ON APPEAL

THE APPELLATE REQUEST THE FOLLOWING BE FILED
AS RECORD ON APPEAL:

- (1) STATE HABEAS CORPUS EXHIBIT (A)
- (2) LETTER REQUIRING AFFIDAVIT FROM ATTORNEY GENERAL
TO APPELLATE EXHIBIT (B)
- (3) APPELLATE'S AFFIDAVIT STATING HIS WRIT WAS FILED
IN GOOD FAITH AND NON-FRIVOLOUS, (AS REQUIRED) EXHIBIT (C)
- (4) ORG. TRIAL TRANSCRIPT PAGES 1-10 EXHIBIT (D)
- (5) COPY OF ORG. INDICTMENT EXHIBIT (E)
- (6) COPY OF ORG. AMENDED INDICTMENT EXHIBIT (F)
- (7) COPY OF FORM 4 GRANTING MY STATE WRIT
TO PROCEED WITHOUT COST EXHIBIT (G)

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS 2011 CP-36-00176

RONNIE A. MITCHELL 217691
PETITIONER

NOTICE AND MOTION
FOR
STATE WRIT OF HABEAS CORPUS

THE ATTORNEY GENERAL

THE STATE OF SOUTH CAROLINA
RESPONDENT

TO: THE ABOVE NAMED RESPONDENTS, THE STATE
ATTORNEY GENERAL OF SOUTH CAROLINA

PLEASE SEE MOTION AND ARGUMENT(S) OF MY
STATE WRIT OF HABEAS CORPUS

DATE: 7th DAY OF FEBRUARY 2011

S/ Ronnie Allen Mitchell
PETITIONER

EXHIBIT (A)

RECEIVED

AUG 14 2013

SC Court of Appeals

FILED
NEWBERRY COUNTY
2011 MAR 30 AM 8:46
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

RONNIE A. MITCHELL 217691
PETITIONER

STATE OF SOUTH CAROLINA
RESPONDENT

IN THE COURT OF COMMON
PLEAS

2011-CP-36-00176

NOTICE AND MOTION
TO

RECUSE

JACKIE S. BOWERS
CLERK OF COURT

2011 MAR 30 A 8:50

NEWBERRY COUNTY

FILED

NOW COMES THE ABOVE NAMED PETITIONER WHO MOVES
THIS HONORABLE COURT IN THE ABOVE ENTITLED MATTER
PER: FLOYD V. STATE 400 S.E.2D 145 (1991) AND ANY
OTHER APPLICABLE LAWS, CONST. OF THIS STATE, MOVE AND
REQUEST THAT TRIAL JUDGE DAVID H. MARING SR. FIRST
P.C.R. (JUDGE LARRY PATTERSON SECOND P.C.R.) (JUDGE
JAMES W. JOHNSON JR. THIRD P.C.R.) (JUDGE JAMES E
KINARD SR. FOURTH P.C.R.) TO REMOVE THEM FROM
HEARING THIS HABEAS CORPUS, COMING FROM THE SAME
CRIMINAL MATTERS

DATE: 7 DAY OF FEBRUARY, 2011

S/ Ronnie A. Mitchell
PETITIONER

STATE OF SOUTH CAROLINA
Co. OF NEWBERRY

RONNIE A. MITCHELL 217691
PETITIONER

✓
THE ATTORNEY GENERAL

THE STATE SOUTH CAROLINA
RESPONDENT

IN THE COURT OF
COMMON PLEAS
CASE NO. 2011-CP-36-00176
MOTION AND ORDER
FOR TRANSPORTATION

FILED
NEWBERRY COUNTY
2011 MAR 30 A 8:59
JACKIE S. POWERS
CLERK OF COURT

NOW COMES THE ABOVE NAMED PETITIONER WHO
MOVES THIS HON. COURT IN THE ABOVE ENTITLED
MATTER PURSUANT TO S.C. CODE ANN 17-17-80
HEARING BE HELD / HEARD WITHIN 10 DAYS
I MOVE FOR AN ORDER TO BE TRANSPORTED TO ANY
8TH JUDICIAL CIRCUIT AND OR ANY OTHER COURT
THE COURT DEEMS TO ADDRESS MY ISSUES UPON
MY STATE WRIT HABEAS CORPUS, TIME AND DATE TO
BE SET BY THE COURT, WITH A 3 DAY NOTICE TO
ME. I SO MOVE

07 Feb S.C. 2011

IT IS SO ORDERED

J. C. Rankin SC
12.14.2019 2011

Respectfully Submitted
S/ Ronnie A. Mitchell
PETITIONER

S/ Judge

STATE OF SOUTH CAROLINA
CO. OF NEWBERRY

IN THE COURT OF
COMMON PLEAS
CASE NO. 2011-CP-36-00176
MOTION TO PROCEED
IN FORMA PAUPERS

RONNIE A. MITCHELL 217691
PETITIONER

V.
THE ATTORNEY GENERAL

THE STATE SOUTH CAROLINA
RESPONDENT

FILED
2011 MAR 30 A
JACKIE S. BOWEN
CLERK OF COURT

I RONNIE A. MITCHELL 217691 HEREBY APPLY FOR LEAVE
TO PROCEED IN THIS MATTER (HABEAS) WITHOUT
PRE-PAYMENT OF FEES OR COST OR SECURITY THERE
OF IN SUPPORT OF MY MOTION, I DECLARE
UNDER PENALTY OF PERJURY THAT THE FOLLOWING
FACTS ARE TRUE.

- (1) I AM THE PETITIONER IN THIS ACTION AND I
BELIEVE I AM ENTITLED TO REDRESS
- (2) BECAUSE FOR MY POVERTY I AM UNABLE TO PAY
THE COST OF PROCEEDING, OR GIVE SECURITY
THEREOF.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 07 DAY OF FEB 2011

J. A. Rankin

NOTARY PUBLIC

MY COMMISSION EXPIRE:

12-16-2019

S/Ronnie A. Mitchell
PETITIONER

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON
PLEAS

2011-CD-36-00176

RONNIE A. MITCHELL 217691
PETITIONER

SUMMONS

FILED
NEWBERRY COUNTY
2011 MAR 30 A 8:47
JACKIE S. BOWERS
CLERK OF COURT

✓
THE ATTORNEY GENERAL

THE STATE OF SOUTH CAROLINA
RESPONDENT

TO: THE ABOVE NAMED; THE ATTORNEY GENERAL OF
SOUTH CAROLINA:

YOU ARE SUMMONSED AND REQUIRED TO ANSWER STATE
WRIT OF HABEAS CORPUS WITHIN 30 DAYS FROM THE
FIRST DAY AFTER RECEIPT OF THIS SUMMONS. YOU MUST
SERVE YOUR ANSWER WITH THE NEWBERRY CLERK OF
COURT AND TO THE PETITIONER NAMED ABOVE AS
ADDRESSED BELOW, IF YOU FAIL TO ANSWER WITHIN
THE PRESCRIBED TIME, A JUDGEMENT OF DEFAULT WILL
BE RENDERED AGAINST YOU UPON THE RELIEF REQUESTED
IN THE STATE HABEAS CORPUS.

DATE: 7 DAY OF FEBRUARY, 2011

S/ Ronnie A. Mitchell
McCormick Comm. Trust.

F2-A Side Rm 185
386 REDEMPTION WAY
McCORMICK, S.C. 29899

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON
PLEAS

RONNIE A. MITCHELL #217691
PETITIONER

CASE NO. 2011-CP-36-00176

VS.
THE ATTORNEY GENERAL
THE STATE OF SOUTH CAROLINA
RESPONDENT

PETITION FOR STATE WRIT
OF HABEAS CORPUS

FILED
NEWBERRY COUNTY
MAR 30 A 8:46
JACQUE S. BOWEN
CLERK OF COURT

NOW COMES THE ABOVE NAMED PETITIONER who
MOVES THIS HON. COURT IN THE ABOVE ENTITLED
MATTER PURSUANT TO S.C. CODE ANN 17-17-70, CONST.
ART. 1 SECTION 18 ART. 5 SECTION 5 AND ANY
OTHER APPLICABLE RULES, LAWS AND OR ANY CONST.
IN THE ABOVE ENTITLED MATTER, I THEREBY
FURTHER MOVE PURSUANT TO S.C. CODE ANN
17-17-80 (SEE ATTACHED TRANSPORTATION ORDER)

PROCEDURAL HISTORY

THE APPLICANT IS PRESENTLY CONFINED IN THE
S.C. DEPARTMENT OF CORRECTIONS PURSUANT TO
ORDERS OF COMMITMENT. THE APPLICANT WAS
INDICTED IN THE NOVEMBER, 1994 TERM OF
NEWBERRY Co. COURT, BY GRAND JURY FOR FIRST
DEGREE BURGLARY AND FIRST DEGREE CRIMINAL
SEXUAL CONDUCT (1994-GS-36-564) RAYMOND K.
WICKER ESQ. REPRESENTED APPLICANT.

ON FEBRUARY 6-7, 1995 APPLICANT UNDERWENT TRIAL BY JURY, PURSUANT TO WHICH HE WAS FOUND GUILTY AS CHARGED. THE HON. E. C. BURNETT III, SENTENCED APPLICANT TO (LIFE) FOR FIRST DEGREE BURGLARY AND THIRTY (30) YEARS FOR ASSAULT WITH INTENT TO COMMIT FIRST DEGREE CRIMINAL SEXUAL CONDUCT. APPLICANT'S ATTORNEY DID NOT APPEAL HIS CONVICTION OR SENTENCE

1996-CP-36-031

THE APPLICANT FILED A P.C.R. ON FEBRUARY 1 1996 (1996-CP-36-031) WHICH HE ALLEGED THE FOLLOWING GROUND FOR RELIEF:

- (1) INEFFECTIVE ASSISTANCE OF COUNSEL, DID NOT REQUEST CONTINUANCE ON BURGLARY CHARGE, DID NOT DO A LEGAL AND FACTUAL INVESTIGATION OF CHARGES!
- (2) IMPROPER SENTENCE ON ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT.
- (3) WITHOUT PROPER INDICTMENT COURT HAD NO JURISDICTION

ON DECEMBER 19, 1996 AN EVIDENTIARY HEARING WAS HELD BEFORE HON. DAVID H. MARING AT WHICH THE APPLICANT WAS PRESENT AND WAS REPRESENTED BY CHARLES JOHNSON ESQ. BY ORDER DATED APRIL 19, 1997, JUDGE MARING DENIED AND DISMISSED THE APPLICANT'S P.C.R.

Applicant's lawyer did not appeal the denial of his first P.C.R.

1998-CP-36-089

THEREAFTER THE APPLICANT FILED A SECOND P.C.R. ON MARCH 19, 1998, IN WHICH HE RAISED THE FOLLOWING GROUNDS FOR RELIEF:

- (1) INEFFECTIVE ASSISTANCE OF P.C.R. COUNSEL
P.C.R. COUNSEL FAILED TO FILE NOTICE OF INTENT TO APPEAL AND THE APPEAL ITSELF
- (2) I WAS ABANDONED AFTER DENIAL OF P.C.R. AS TO WHERE I DID NOT KNOW HOW TO FILE AN APPEAL TO THE APPELLATE COURTS, I WAS TOTALLY ABANDONED BY P.C.R. COUNSEL'S NEGLIGENCE IN PERFECTING THE APPEAL

ON FEBRUARY 9, 1999 AN EVIDENTIARY HEARING WAS HELD BEFORE THE HON. HARRY R. PATTERSON AT WHICH THE APPLICANT WAS PRESENT AND WAS REPRESENTED BY WISA G. Echols Esq. BY ORDER DATED MARCH 8, 1999 JUDGE PATTERSON DENIED AND DISMISSED THE P.C.R. A TIMELY NOTICE OF APPEAL WAS FILED, AND APPLICANT'S COUNSEL PETITION FOR WRIT OF CERTIORARI. THE S.C. SUPREME COURT DENIED THE PETITION BY ORDER, DATED MARCH 14, 2001

2002-CP-36-0063

THE APPLICANT FILED A THIRD P.C.R. ON FEBRUARY 8, 2002, IN WHICH HE RAISED THE FOLLOWING ALLEGATIONS:

(1) WAS NOT AWARE OF APPEAL RIGHTS
(2) ATTORNEY DID NOT ADVISE ME OR APPEAL IT
(3) COURT LACKED SUBJECT MATTER JURISDICTION
AN EVIDENTIARY HEARING INTO THE MATTER
WAS CONVENED ON APRIL 17, 2003, LAURENS
CO. COURT HOUSE, THE APPLICANT WAS PRESENT AT
THE HEARING AND WAS REPRESENTED BY DAVID
E. BELDING ESQ. ON MAY 12, 2003 THE HON.
JAMES W. JOHNSON JR. ISSUED AN ORDER OF
DISMISSAL DENYING AND DISMISSING WITH
PREJUDICE.

THE APPLICANT'S ATTORNEY TIMELY SERVED AND FILED
A NOTICE OF APPEAL. ASSISTANT APPELLATE
ATTORNEY ROBERT M. DUCKER REPRESENTED (HIM)
APPLICANT ON CERTIORARI, ON APRIL 24, 2004
MR. DUCKER FILED A JOHNSON PETITION ON
PETITIONER'S BEHALF IN S.C. SUPREME COURT
AND MOVED TO BE RELIEVED AS COUNSEL. THE
S.C. SUPREME COURT DENIED CERTIORARI AND
GRANTED COUNSEL'S REQUEST TO BE RELIEVED IN
AN ORDER FILED ON MARCH 3, 2005, THE
REMITTITUR WAS SENT ON MARCH 22, 2005

SUBSEQUENTLY, THE APPLICANT FILED A PRO-SE PETITION FOR WRIT OF HABEAS CORPUS IN THE FEDERAL DISTRICT COURT, ON JUNE 3, 2005, ON AUGUST 17, 2005, THE RESPONDENT FILED A MOTION FOR SUMMARY JUDGEMENT, THE PETITIONER FILED HIS OPPOSITION TO THE MOTION ON SEPTEMBER 9, 2005, ON DECEMBER 22, 2005 THE MAGISTRATE JUDGE ISSUED A REPORT RECOMMENDING THAT THE RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT BE GRANTED

PLAINTIFF FILED OBJECTIONS TO THE REPORT AND RECOMMENDATION ON JANUARY 17, 2006, ON JANUARY 26, 2006 ISSUED AN ORDER GRANTING THE RESPONDENTS MOTION FOR SUMMARY JUDGEMENT AND DISMISSED THE PETITION WITH PREJUDICE, ON FEBRUARY 23, 2006 THE APPLICANT FILED A NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE 4TH CIRCUIT FROM THE ORDER DENYING PLAINTIFFS HABEAS CORPUS ON JUNE 1, 2006 THE UNITED STATES COURT OF APPEALS DENIED AND DISMISSED THE APPEAL

2007-CP-36-109

THE APPLICANT FILED A FOURTH P.C.R. ON MARCH 21, 2007
THE APPLICANT ALLEGES THE FOLLOWING REASONS:

- (1) THE INDICTMENT FOR FIRST DEGREE BURGLARY IS DEFECTIVE ON ITS FACE
- (2) APPLICANT ARGUES THAT HE HAS NEVER BEEN ARRESTED FOR OR SERVED PROPLEY WITH AN ARREST WARRANT FOR THE OFFENSE OF BURGLARY.
- (3) THE STATE ISSUED TWO INDICTMENTS UPON THE APPLICANT FOR THE SAME OFFENSE AND IMPROPERLY MADE A AMENDMENT TO THE BODY OF THE INDICTMENT IN OPEN COURT. A EVIDENTIARY HEARING WAS HELD ON APRIL 8, 2008, THE APPLICANT WAS REPRESENTED BY RITA METTS ESQ. THE HON. JAMES KINARD JR. ISSUED AN ORDER DATED MAY 12, 2008 DISMISSING AND DENYING THE P.C.R.

THUS; APPLICANT HAS EXHAUSTED ALL OTHER AVAILABLE REMEDIES WHICH HAS BEEN INADEQUATE ..

PENNINGTON V. STATE 441 SE 2d 315; BUTLER V. STATE 397 SE 2d 87

ARGUMENT

Applicant now brings this Petition for State Habeas Corpus under the First and Fourteenth Amendment. Applicant argues that at the start of his trial on February 6-7-1994) the Prosecutor made an Amendment to the indictment in open court. The Applicant will show through the indictment itself and through the trial transcripts, SEE: EXHIBITS (E) ORIGINAL INDICTMENT (F) AMENDED INDICTMENT) that the Prosecutor produced not a proper indictment, but a constructive amendment, which violated Applicant's First and Fourteenth Amendment of the South Carolina and United States Const.

IN U.S. V. ROSIN 892 F.2d 649 (7th Cir 1990) THE DIFFERENCE BETWEEN A VARIANCE AND A CONSTRUCTIVE AMENDMENT, IS THAT A VARIANCE NARROWS THE CHARGES CONTAINED IN THE INDICTMENT. A CONSTRUCTIVE AMENDMENT OCCURS WHERE EVIDENCE PRESENTED AT TRIAL BROADENS THE POSSIBLE BASES FOR A CONVICTION FROM THOSE CONTAINED IN THE INDICTMENT BY PROVING AN OFFENSE NOT FULLY CONTAINED IN THE INDICTMENT. SEE: ORIGINAL INDICTMENT AND AMENDED INDICTMENT EXHIBIT (E) - (F)

A CONSTRUCTIVE AMENDMENT OCCURS WHEN THE TRIAL COURT THROUGH ITS INSTRUCTIONS AND FACTS, IT PERMITS IN EVIDENCE, ALLOWS PROOF OF AN ESSENTIAL ELEMENT OF A CRIME ON AN ALTERNATIVE BASIS PERMITTED BY THE STATUTE, BUT CHARGED IN THE INDICTMENT. U.S. V. ARLEN 947 F.2d 139, 144 (5TH CIR 1991) QUOTING, U.S. V. SLOVACEK 867 F.2d 842, 847 (5TH CIR 1989)

SEE: TRIAL TRANSCRIPT (PP. 9-10) EXHIBITS (D)

U.S. V. MIKOLAJCZYK 137 F.3d 237, 243 (5TH CIR 1998)
THEREFORE WHEN A CONSTRUCTIVE AMENDMENT HAS OCCURED, AND ERROR HAS BEEN PROPERLY PRESERVED, WE HAVE MADE IT CLEAR THAT THE CONVICTION CANNOT STAND; THERE IS NO PREJUDICE REQUIREMENT...

IN U.S. V. DIXON 273 F.3d 636, 639-40 (5TH CIR 2001)
UNDER THIS STANDARD OF REVIEW THE COURTS MAY CORRECT FORFEITED ERRORS ONLY IF (1) THERE WAS A ERROR (2) THE ERROR WAS CLEAR OR OBVIOUS, AND (3) THE ERROR AFFECTED THE DEFENDANT'S SUBSTANTIAL RIGHTS. SEE:
U.S. V. OLANO 507 U.S. 725, 731-34 113 S. CT 1770 123 L Ed 2d 503 (1993) (QUOTING U.S. V. ATKINSON 297 U.S. 157, 160, 56 S. CT 391 80 L Ed 555 (1936))

Applicant can show, not only was he convicted under a constructive amended indictment, but that there was never a proper indictment to begin with. SEE: EXHIBIT (E) ORIGINAL INDICTMENT (which was dismissed) SEE ALSO: EXHIBIT (F) AMENDED INDICTMENT which did not go back to the Grand Jury.

The Applicant argues that once the Solicitor made his motion to amend the original indictment. SEE: TRIAL TRANSCRIPTS EXHIBITS (C) - (D) - (E). Applicant's Attorney made his objection, saying it should go back to the Grand Jury, to see what they say about the change. The Court denied the motion.

The Judge then ask the Solicitor if he plan to prepare a proper indictment deleting the statutory provisions not applicable in this case, the Solicitor said he would do that, my Attorney said we would like that your Honor. The Court said; I will have that done. SEE: TRIAL TRANSCRIPT, EXHIBIT (D) pg. 8 LINE 16-22

Applicant argues that the amended indictment is not only a constructive one; but in fact it has never been presented to a Grand Jury even after the Judge informed the Solicitor to prepare a proper indictment. In fact,

THE JUDGE INFORMED MY ATTORNEY THAT HE WOULD HAVE A PROPER INDICTMENT PREPARED, APPLICANT ARGUES THAT THE ORIGINAL INDICTMENT WAS DISMISSED AND A AMENDED INDICTMENT WAS PRODUCED AT TRIAL, BUT THE COURT "NOR" THE SOLICITOR NEVER PREPARED A PROPER INDICTMENT (SEE: TRIAL TRANSCRIPT.) NO WHERE IN THE TRIAL did IT STOP TO GET A PROPER INDICTMENT.

THERE IS NO DOUBT THAT THE FIFTH AMENDMENT GUARANTEES A CRIMINAL DEFENDANT THAT HE WILL ONLY BE TRIED ON THE CHARGES THAT HAVE BEEN ALLEGED IN AN INDICTMENT HANDLED DOWN BY A GRAND JURY, WHICH CANNOT BE BROADENED OR ALTERED EXCEPT BY THE GRAND JURY (QUOTING) U.S. V. CHANDLER, 858 F.2d 254, 256 (5th CIR 1988) AS THE SUPREME COURT HAS EXPLAINED TO ALLOW THE PROSECUTOR, OR THE COURT TO MAKE SUBSEQUENT GUESS AS TO WHAT WAS IN THE MINDS OF THE GRAND JURY AT THE TIME THEY RETURNED THE INDICTMENT WOULD DEPRIVE THE DEFENDANT OF A BASIC PROTECTION WHICH THE GUARANTY OF THE INTERVENTION OF A GRAND JURY WAS DESIGNED TO SECURE.

THE APPLICANT ARGUES THAT THIS IS SHOCKING
TO THE UNIVERAL SENSE OF JUSTICE AND
EXTRAORDINARY CIRCUMSTANCES IN IT'S SETTING.
SEE: GIBSON V. STATE 495 SE 2d 426 SEE ALSO:
KEELER V. MAUNEY 506 SE 2d 123 AND ALSO;
SIMPSON V. STATE 495 SE 2d 429

CONCLUSION

FOR THE FOREGOING REASONS I STRONGLY CONTEND
THAT I HAVE CLEARLY SHOWN ACTUAL PREJUDICE
RESULTING FROM CONST. VIOLATIONS CONTAINED
THEREIN WHICH ARE EXTRAORDINARY CIRCUMSTANCES
THAT HAS BEEN BEYOND MY CONTROL, AND A
FUNDAMENTAL DENIAL OF FAIRNESS THAT IS ALSO
SHOCKING TO THE UNIVERAL SENSE OF JUSTICE, THAT
REQUIRES AN EVIDENTIARY HEARING, AND RULING
UPON THE MERIT(S) AND ISSUE(S) IN THIS
PROCEEDING ALONG WITH ANY OTHER RELIEF TO
WHICH I MAY BE ENTITLED TO (FROM CUSTODY)

DATE: 7 day of FEBRUARY 2011

RESPECTFULLY SUBMITTED
S/ Ronnie A. Mitchell
PETITIONER

DECLARATION

I RONNIE A. MITCHELL BEING duly SWORN
UPON MY OATH, DECLARE UNDER PENALTY OF
PERJURY DEPOSE AND SAY THAT I HAVE
SUBSCRIBED TO THE FOREGOING STATE WRIT
OF HABEAS CORPUS, THAT I KNOW THE
CONTENTS THEREOF ARE TRUE AND CORRECT.

SWORN TO AND SUBSCRIBED TO BEFORE ME
This 07 day OF Feb. 2011

J. Franklin

NOTARY PUBLIC

MY COMMISSION EXPIRES 12.16.2019

S/ Ronnie A. Mitchell
PETITIONER

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED MY PETITION
FOR STATE WRIT OF HABEAS CORPUS; EXHIBITS
MOTION/ORDER FOR TRANSPORTATION AND MOTION
TO PROCEED IN FORMA PAUPERIS UPON JACKIE
S. BOWERS, CLERK OF COURT NEWBERRY CO.
AT P.O. DRAWER 10 NEWBERRY S.C. 29108 BY
DEPOSITING THE ABOVE SAID, IN MCCORMICK
CORR. INST. MAIL ROOM TO BE DEPOSITED IN
THE U.S. MAIL, POSTAGE PRE-PAID ON
THIS 7TH DAY OF FEBRUARY, 2011

S/ *Ronnie A. Mitchell*
RONNIE A. MITCHELL 217691
MCCORMICK, CORR, INST.
F 2 A 185
386 REDEMPTION WAY
MCCORMICK, S.C. 29899

FILED
NEWBERRY COUNTY
2011 MAR 30 A 8:47
JACKIE S. BOWERS
CLERK OF COURT

EXHIBIT (B)



ALAN WILSON
ATTORNEY GENERAL

September 21, 2011

Affidavit For
Petition In
Good Faith And
is not Frivolous

The Honorable Jackie S. Bowers
Clerk of Court, Newberry County
Post Office Box 278
Newberry, South Carolina 29108

RE: Ronnie A. Mitchell v. State
2011-CP-36-00176

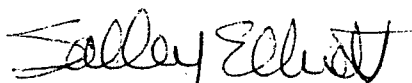
Dear Ms. Bowers:

Our office is in receipt of a pro se summons and Petition for Writ of Habeas Corpus which appear to have been filed in the Newberry Court of Common Pleas. In the petition, Ronnie Allen Mitchell asserts that his conviction and/or sentence are invalid because the indictment for first-degree burglary is defective, was not properly served with an arrest warrant for the offense of burglary and because the indictment was improperly amended. Mr. Mitchell has also recently filed and served a notice and Motion for Judgment on the pleadings because the State has not responded to the habeas corpus petition:

Please find enclosed a May 12, 2008 Order issued by the Honorable J. Ernest Kinard, Jr., respecting Mr. Mitchell's most recent 2007 Post-Conviction Relief action. Pursuant to the State's Motion to Restrict Mr. Mitchell's future filings, Judge Kinard made specific rulings outlining when and how Mr. Mitchell is allowed to pursue actions challenging his convictions and sentences. The Order requires a notarized affidavit from Mr. Mitchell certifying that the petition is made in good faith and is not frivolous. The Chief Administrative Judge must also make a finding whether the allegations are non-frivolous and proper before the petition may be filed. Our office did not receive the requisite affidavit from Mr. Mitchell and I am uncertain whether a review by the Chief Administrative Judge was conducted prior to the filing of this petition.

Therefore, I am writing to inquire whether the procedural steps outlined by Judge Kinard have been followed and whether the State should, therefore, respond to the petition.

Sincerely,

A handwritten signature in dark ink, appearing to read "Salley Elliott". The signature is fluid and cursive, with the first name "Salley" written in a larger, more prominent script than the last name "Elliott".

Salley W. Elliott
Assistant Deputy Attorney General

SWE/ab
Enclosure

cc: The Honorable Eugene C. Griffith, Jr.
Ronnie A. Mitchell, #217691

EXHIBIT

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
RONNIE A. MITCHELL #217691
PETITIONER

VS.

THE STATE SOUTH CAROLINA
RESPONDENT

IN THE COURT OF COMMON PLEAS

2011-CP-36-00176

SWEARN AFFIDAVIT
OF
PETITIONER

TO: HON. JACKIE S. BOWERS CLERK OF COURT:
NOW COMES THE ABOVE NAMED PETITIONER WHO PERSONALLY
APPEARED BEFORE ME, WHO BEING DULY, STATES AS FOLLOWS:
I AM THE PETITIONER IN THE PENDING STATE WRIT OF
HABEAS CORPUS AS NUMBERED ABOVE, MY PETITION IS MADE IN
GOOD FAITH, AND IS NOT FRIVOLOUS, FURTHER MY PETITION IS
SUBMITTED IN THE INTEREST TO CORRECT THE FUNDAMENTAL
MISCRIBE OF JUSTICE, AS SET OUT IN MY STATE WRIT
HABEAS CORPUS

SWEARN TO AND SUBSCRIBED BEFORE ME

THIS 28 DAY OF September 2011:
Terry G. Minton

~~NOTARY~~ PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES Feb 28, 2018

JACKIE S. BOWERS
CLERK OF COURT

2011 SEP 29 A 10:52

FILED
NEWBERRY COUNTY

Ronnie Mitchell
PETITIONER

CERTIFICATE OF SERVICE

THE UNDERSIGNED PETITIONER HEREBY CERTIFIES THAT A TRUE AND CORRECT COPY OF THE ENCLOSED SWORN AFFIDAVIT OF PETITIONER, HAS ON THIS 28 DAY OF September 2011 BEEN SERVED UPON THE RESPONDENTS BY UNITED STATES MAIL, POSTAGE PRE-PAID AND ADDRESSED TO THE RESPONDENTS AS FOLLOWS

JACKIE S. BOWERS
CLERK OF COURT, DRAWER #10
NEWBERRY S.C. 29108

ATTORNEY GENERAL OF
SOUTH CAROLINA
P.O. Box 11549
COLUMBIA S.C. 29211

JUDGE EUGENE C. GRIFFITH JR.
P.O. Box 375, 1226 College St.
NEWBERRY, S.C. 29108

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 28 DAY OF September 2011
Terry G. Minton
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES Feb 28, 2018

JACKIE S. BOWERS
CLERK OF COURT

2011 SEP 29 A 10:52

FILED
CLERK OF COURT

S/ Terry G. Minton
PETITIONER

Exhibits

(D.)

ORIGINAL

Read ✓

17

1 BUT I'M GOING TO SEND YOU BACK INTO YOUR ROOM. I'LL
2 HAVE YOU BACK IN JUST AS QUICKLY AS I CAN. THANK YOU
3 KINDLY.

4 (JURY TO THE JURY ROOM.)

5 THE COURT: YOU, LADIES AND GENTLEMEN, NOT NOW
6 INVOLVED IN THIS CASE, I WELCOME YOU TO STAY AND LISTEN
7 IF YOU WISH. IF YOU DO NOT WISH TO DO THAT, THEN I WILL
8 EXCUSE YOU, BUT I WILL NEED YOU TO BE BACK HERE IN THE
9 COURTROOM AT 9:30 TOMORROW MORNING. IF YOU WISH TO
10 LEAVE, I'LL ASK EVERYONE TO REMAIN SEATED WHILE YOU DO
11 SO. THANK YOU, FOLKS. I'LL SEE YOU IN THE MORNING.

12 THE COURT: ANY BATSON MOTIONS?

13 MR. WICKER: OH, NO, YOUR HONOR.

14 THE COURT: OKAY. ALL RIGHT, SIR. YOU HAVE SOME
15 MOTIONS TO PUT ON THE RECORD. DO YOU NOT, MR. WICKER?

16 MR. WICKER: MY UNDERSTANDING WAS THAT THE STATE WAS
17 PLANNING ON AMENDING THE INDICTMENT.

18 THE COURT: ALL RIGHT, SIR. I'LL HEAR YOUR MOTION.

19 MR. COLTER: THANK YOU, YOUR HONOR. THE STATE, YOUR
20 HONOR, AT THIS POINT WOULD MOVE TO AMEND THE INDICTMENT
21 BASED ON THE WAY THE INDICTMENT WAS PRESENTED TO THE
22 GRAND JURY, ALTHOUGH THE OFFENSE REMAINS THE SAME AS WE
23 WERE PLANNING TO GO FORWARD WITH AT TRIAL. THERE IS
24 SIMPLY SOME WORDING THAT WOULD BE INCORRECT AS FAR AS THE
25 ALLEGATIONS WE CONTEND OCCURRED ON SEPTEMBER 18, 1994,

(1)

1 LEADING TO THE CRIME OF CRIMINAL SEXUAL CONDUCT IN THE
2 FIRST DEGREE WHICH THE DEFENDANT IS CHARGED WITH.

3 THE STATE WOULD MOVE TO HAVE THE INDICTMENT AMENDED
4 TO READ, THAT RONNIE ALLEN MITCHELL DID IN THE COUNTY AND
5 STATE AFORESAID ON OR ABOUT THE 18TH DAY OF SEPTEMBER,
6 1994, WILLFULLY AND UNLAWFULLY DID COMMIT CRIMINAL SEXUAL
7 CONDUCT IN THE FIRST DEGREE BY ACCOMPLISHING SEXUAL
8 BATTERY UPON THE PERSON CINDY KOON UNDER CIRCUMSTANCES
9 WHERE CINDY KOON WAS ALSO THE VICTIM OF A BURGLARY AT THE
10 HANDS OF RONNIE ALLEN MITCHELL.

11 THAT IS ESSENTIALLY WHAT THE STATE HAD CONTENTED AND
12 *Read* → CONTENTED ALL ALONG THAT THE BASIS FOR THIS CRIMINAL
13 SEXUAL CONDUCT IN THE FIRST DEGREE WAS THAT IT WAS
14 COMMITTED IN CONJUNCTION WITH BURGLARY. AND YOUR HONOR, >
15 I WOULD PRESENT TO THE COURT I HAVE A LETTER WHICH
16 CONTAINS THE WORDING THAT I'VE JUST READ IN COURT, < A
17 < LETTER THAT I HAD SENT TO MR. WICKER LAST FRIDAY. >

18 THE COURT: OH, YOU SENT IT TO HIM LAST FRIDAY?

19 MR. COLTER: YES, SIR.

20 THE COURT: IF YOU WOULD LIKE, YOU CAN MARK IT AND
21 PLACE IT IN THE RECORD.

22 DID YOU GET THAT LETTER, MR. WICKER?

23 MR. WICKER: YES, I DID, YOUR HONOR. I BELIEVE IT
24 WAS FAXED TO ME IN MY OFFICE. I DID RECEIVE THE FAX.

25 THE COURT: DO YOU HAVE ANY RESPONSE TO THAT AS ON

1 YOUR RECEIPT OF IT?

2 MR. WICKER: I'LL BE GLAD TO SAY I RECEIVED IT BY
3 FAX IN MY OFFICE LAST FRIDAY NIGHT.

4 THE COURT: DID YOU RESPOND TO IT?

5 MR. WICKER: I DID NOT RESPOND, NO, SIR.

6 THE COURT: OKAY. ANY OBJECTION?

7 MR. WICKER: I MIGHT ADD THE OFFICE WAS CLOSED UP IN
8 GREENWOOD, BUT I DIDN'T INTEND TO RESPOND TO IT EITHER.

9 THE COURT: OH, I UNDERSTAND. ANY OBJECTION?

10 MR. WICKER: YES. I WOULD LIKE TO OBJECT TO THE
11 AMENDMENT OF THIS INDICTMENT WITHOUT SENDING IT BACK TO
12 THE GRAND JURY, YOUR HONOR. BECAUSE I THINK IT WOULD
13 PREJUDICE MY CLIENT TO CHANGE THE WORDING IN THE
14 INDICTMENT AFTER WE GET HERE IN COURT TO TRY IT.

15 THE COURT: AND TELL ME HOW YOU WOULD BE PREJUDICED.

16 MR. WICKER: WELL, BASICALLY, BECAUSE WE HAVE BEEN
17 READING THIS INDICTMENT FOR SOME TIME NOW AND PLANNING TO
18 DEFEND ON THE WORDING IN THE INDICTMENT NOW. AND WE HAD
19 ALWAYS PLANNED TO ADMIT THAT HE CAME INTO THE HOUSE, YOU
20 KNOW. BUT WE WERE NOT GOING TO ADMIT THAT HE USED FORCE,
21 AND THIS INDICTMENT HAS TO DO WITH HIM USING FORCE AND
22 NAMING A BUNCH OF WEAPONS WHICH WE THINK WERE
23 NONEXISTENT, EVEN THOUGH THEY DID SEARCH TO SEE IF THEY
24 COULD FIND THEM. I DON'T THINK THEY EVER FOUND ANY
25 WEAPONS, AND WE WOULD OBJECT TO AMENDING THIS INDICTMENT

1 AFTER WE GET HERE TO COURT TO TRY THE CASE, BECAUSE WE
2 THINK IT NEEDS TO GO BACK TO THE GRAND JURY AND SEE WHAT
3 THEY SAY ABOUT IT.

4 THE COURT: WHAT DO YOU SAY ABOUT IT, MR. COLTER?

5 MR. COLTER: THANK YOU, YOUR HONOR. IT'S MY
6 UNDERSTANDING THAT, AND I'M REFERRING TO A CASE CAPTIONED
7 HOPKINS VERSUS THE STATE OF SOUTH CAROLINA, A 1994 CASE.
8 IT PERMITS THE AMENDMENT OF AN INDICTMENT PROVIDED THE
9 NATURE OF THE OFFENSE CHARGED HAS NOT CHANGED. AND, OF
10 COURSE, WE WOULD IN OUR AMENDMENT CONTEND THAT THIS DOES
11 NOT, IN FACT, CHANGE THE NATURE OF THE OFFENSE
12 WHATSOEVER. IT REMAINS CRIMINAL SEXUAL CONDUCT, FIRST
13 DEGREE. IT IS ONLY THE WORDING OF THE INDICTMENT ITSELF
14 THAT WE WOULD BE CHANGING, ESSENTIALLY. THE FACTS WOULD
15 SUPPORT THE CHARGE ITSELF, AND YOUR HONOR, THERE ARE NO
16 ADDITIONAL PENALTIES THAT THE DEFENDANT WOULD FACE, AND
17 IT'S SIMPLY THE STATE'S POSITION THAT IT DOES NOT, IN
18 FACT, CHANGE THE NATURE OF EVENTS, AND WE RESPECTFULLY
19 REQUEST THAT IT BE AMENDED.

20 THE COURT: I WOULD THINK, MR. WICKER, THAT WERE HE
21 CHARGED ONLY WITH CRIMINAL SEXUAL CONDUCT AND THE FACTS
22 OF THE COMMISSION OF IT WERE IN ERROR THAT YOUR MOTION
23 WOULD HAVE A BASIS, BUT INASMUCH AS HE IS CHARGED CLEARLY
24 SUFFICIENTLY WITH THE CRIME OF BURGLARY, THAT THERE IS NO
25 DISCERNABLE PREJUDICE TO HIM, AND UNDER THE CASE LAW AS -

1 -- PRIMARILY STATE V. HAMM, 1972 OPINION OF OUR STATE
2 SUPREME COURT, IT SETS OUT THE SUFFICIENCY OF THE
3 INDICTMENT. THE TEST OF IT IS NOT WHETHER IT COULD BE
4 MORE DEFINITE BUT WHETHER IT CONTAINS THE NECESSARY
5 ELEMENTS OF THE OFFENSE INTENDED TO BE CHARGED AND
6 SUFFICIENTLY APPRISES THE DEFENDANT OF WHAT HE MUST BE
7 PREPARED TO MEET. SO, BASED UPON THAT, I DENY YOUR
8 MOTION.

9 ANY OTHER MOTIONS?

10 MR. COLTER: YOUR HONOR, I DID NOT APPROACH MR.
11 WICKER ABOUT THIS PRIOR TO TRIAL. HOWEVER, MY EXPERIENCE
12 WITH MR. WICKER HAS ALWAYS BEEN THAT, AND I PUT THIS
13 FORWARD, THAT HE WOULD USUALLY ALLOW A STIPULATION TO
14 VENUE, AND WE WOULD ASK THAT, IN FACT, THAT BE STIPULATED
15 TO SHOWING THAT NEWBERRY COUNTY WAS, IN FACT, WHERE THIS
16 OFFENSE WAS COMMITTED.

17 MR. WICKER: WE WOULD BE GLAD TO STIPULATE THAT THE
18 ALLEGED OFFENSE WOULD HAVE BEEN IN NEWBERRY COUNTY, YOUR
19 HONOR.

20 THE COURT: ALL RIGHT. ANY OTHER MATTERS?

21 MR. COLTER: FINALLY, YOUR HONOR, I DID PRESENT TO
22 DEFENSE COUNSEL LAST FRIDAY AN INVENTORY OF THE STATE'S
23 EXHIBITS THAT THEY WOULD INTEND TO INTRODUCE THROUGHOUT
24 THE COURSE OF THE TRIAL. IT HAD BEEN MY UNDERSTANDING
25 LAST FRIDAY, AND MR. WICKER CAN CORRECT ME IF I'M WRONG,

1 THAT HE WAS WILLING AT THAT TIME TO STIPULATE TO THESE
2 PIECES OF EVIDENCE AND ENTER THEM INTO EVIDENCE AT THIS
3 TIME.

4 MR. WICKER: I AM WILLING TO STIPULATE THAT WITH THE
5 PROVISION I WOULD LIKE TO SHOW THOSE TO MY CLIENT AT THIS
6 TIME IF THEY'RE AVAILABLE.

7 THE COURT: DO YOU HAVE THE EXHIBITS? AS YOU REVIEW
8 THEM, AND AS SUZIE MARKS THEM, THE DEFENDANT CAN LOOK AT
9 THEM. THAT'S WHAT YOU NEEDED TO DO. JUST HAVE HIM LOOK
10 A THEM.

11 MR. WICKER: I'LL BE GLAD TO DO IT THAT WAY, YOUR
12 HONOR.

13 THE COURT: ALL RIGHT. THAT WOULD BE FINE. LET'S
14 DO THAT, AND WE'LL TAKE A TEN MINUTE RECESS, UNLESS YOU
15 HAVE SOME OTHER MATTERS THAT WE CAN RESOLVE NOW.

16 MR. COLTER: NO. I THINK THAT WILL BE ALL.

17 THE COURT: OKAY. WELL, LET'S DO IT THAT WAY THEN.
18 TEN MINUTES.

19 (SHORT BREAK AT THIS TIME.)

20 (STATE'S EXHIBITS ONE THROUGH THIRTY MARKED FOR
21 IDENTIFICATION AND MADE A PART OF THE RECORD.)

22 THE COURT: MR. COLTER AND MR. WICKER, IN VIEW OF
23 THE HOUR, I THINK I'M GOING TO BRING THE JURY IN AND
24 EXCUSE THEM UNTIL FIFTEEN TILL TWO, UNLESS THEY HAVE
25 SOMETHING ELSE, AND WE MAY HAVE TO DO IT UNTIL TWO

1 O'CLOCK, AND THEN BEGIN THE CASE AT TWO O'CLOCK. ANY
2 OBJECTION?

3 MR. COLTER: NO, SIR.

4 MR. WICKER: NONE BY THE DEFENSE, YOUR HONOR.

5 THE COURT: ALL RIGHT. BRING THE DEFENDANT BACK IN
6 IN THIS CASE --- MR. MITCHELL.

7 BRING THE JURY IN, PLEASE, SIR.

8 (JURY TO THE COURTROOM.)

9 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
10 I'VE GOT A FEW MORE THINGS THAT I'VE GOT TO DO, NOT IN
11 THIS CASE BUT IN ANOTHER CASE, AND SO, I'M GOING TO LET
12 YOU GO AHEAD AND GO TO LUNCH A LITTLE EARLY. I NORMALLY
13 BREAK ABOUT ONE, BUT I'M GOING TO LET YOU GO AHEAD AND GO
14 TO LUNCH A LITTLE EARLY TO BE BACK AT TWO O'CLOCK THIS
15 AFTERNOON IN THE JURY ROOM.

16 NOW, I DO REQUIRE THAT WHILE YOU'RE AWAY FROM US
17 THAT YOU NOT TALK ABOUT THE CASE AMONG YOURSELVES. DON'T
18 PERMIT ANYBODY TO TALK TO ANY OF YOU OR EVEN TRY TO TALK
19 TO YOU ABOUT THE CASE. IT WOULD JUST BE WRONG FOR THAT
20 TO HAPPEN. Y'ALL ENJOY YOUR LUNCH. BE BACK IN YOUR ROOM
21 AT TWO O'CLOCK, AND THEN I'M GOING TO PUT YOU TO WORK.

22 THANK YOU. SEE YOU IN A BIT.

23 (JURY LEAVES FOR LUNCH.)

24 (COURT IN RECESS.)

25 (COURT RECONVENES.)

1 THE COURT: READY TO BEGIN?

2 MR. WICKER: DEFENSE IS READY, YOUR HONOR.

3 MR. COLTER: JUST VERY BRIEFLY, YOUR HONOR. I
4 HANDED THE COURT A COPY OF THE INVENTORY OF EVIDENCE. I
5 PRESENTED DEFENSE COUNSEL WITH A COPY AS WELL. WE WOULD
6 MOVE TO INTRODUCE THOSE ITEMS LISTED.

7 THE COURT: ANY OBJECTION?

8 MR. WICKER: WE HAVE NO OBJECTIONS AT THIS TIME. I
9 JUST WANTED MY CLIENT TO LOOK AT THEM AS THEY'RE GOING
10 IN, AND WE'RE NOT PLANNING ON HAVING ANY OBJECTION.

11 THE COURT: OKAY. WELL, THE REASON WE PRE-MARK THEM
12 IS THAT WE DON'T WASTE A LOT OF TIME CARRYING THEM OVER
13 TO YOU AND BRINGING THEM BACK.

14 MR. WICKER: WE WON'T WASTE ANY TIME. WE DO THIS IN
15 A VERY QUICK FASHION.

16 THE COURT: ALL RIGHT. AND I'LL ASK YOU IF ---
17 SOLICITOR, DO YOU PLAN TO PREPARE A PROPER INDICTMENT
18 DELETING THE STATUTORY PROVISIONS NOT APPLICABLE IN THIS
19 CASE?

20 MR. COLTER: I WILL DO THAT.

21 MR. WICKER: WE WOULD LIKE THAT, YOUR HONOR..

22 THE COURT: I WILL HAVE THAT DONE. OKAY. ANYTHING
23 ELSE BEFORE I BRING THE PANEL?

24 MR. COLTER: ONE FINAL THING, YOUR HONOR, TO SAVE
25 TIME.

1 THE COURT: YES, SIR.

2 MR. COLTER: I HAVE --- WE HAVE THE TAPE RECORDED
3 STATEMENT BY THE DEFENDANT THAT'S ALREADY BEEN MARKED
4 INTO EVIDENCE, AND WE'VE MADE TRANSCRIPTS OF THAT TAPE.
5 I HAVE 14 COPIES HERE, ONE FOR THE COURT, 13 FOR THE JURY
6 TO BE PASSED OUT. ONE OF THE TRANSCRIPTS HAS BEEN
7 ENTERED INTO EVIDENCE. WHAT I INTEND TO DO IS AT THAT
8 POINT HAND OUT TO THE JURY THESE TRANSCRIPTS AND THEN
9 COLLECT THEM AFTER THAT'S FINISHED, AND THEY'LL HAVE ONE
10 TO REFER BACK TO IN THE JURY ROOM.

11 THE COURT: ANY OBJECT TO THAT PROCEDURE?

12 MR. WICKER: I DON'T HAVE ANY OBJECTION, BUT I COULD
13 NOTE THAT THERE'S SOME DIFFERENCES BETWEEN THE TRANSCRIPT
14 AND THE TAPE. FOR EXAMPLE THE NAME COOPER IS TRANSCRIBED
15 WHERE, I BELIEVE, WHEN I HEARD THE TAPE, MY CLIENT'S NAME
16 IS THERE NOW. I HAVE NOT NOTICED ANY OTHER DIFFERENCES,
17 BUT I WILL BE READING MINE WHEN THE TAPE IS PLAYED, AND
18 I KNOW THAT, BASICALLY, IT SAYS THE SAME THING.

19 THE COURT: THERE IS NO ISSUE OF VOLUNTARINESS OF
20 THE STATEMENT?

21 MR. WICKER: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT.

23 MR. COLTER: I WILL ALSO TRY TO COMPLETE THE RECORD
24 AS TO JACKSON V. DENO VOLUNTARINESS AND MIRANDA BEING
25 GIVEN AS THROUGH THE COURSE OF THE TESTIMONY.

1 THE COURT: ALL RIGHT, AND OF COURSE, MR. WICKER,
2 YOU ARE SATISFIED THAT THE REQUISITES OF JACKSON V. DENO
3 HAVE BEEN MET, AND THERE IS NO NEED TO HAVE THAT ISSUE
4 HEARD BY THE COURT, NOR BY THE JURY?

5 MR. WICKER: THAT'S CORRECT, YOUR HONOR.

6 THE COURT: ALL RIGHT, SIR. AND YOU CAN PUT BEFORE
7 THE JURY WHATEVER YOU LIKE. JUST AVOID TANGENTIAL
8 QUESTIONS IN THEIR MIND.

9 MR. COLTER: YES, SIR.

10 THE COURT: ANYTHING ELSE?

11 MR. WICKER: NOTHING ELSE, YOUR HONOR.

12 (JURY TO THE COURTROOM.)

13 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
14 BEFORE WE GO AHEAD, SINCE YOU'VE BEEN AT LUNCH, I WOULD
15 LIKE TO KNOW IF DURING THE TIME YOU'VE BEEN AWAY FROM US
16 IF ANYBODY HAS TALKED TO YOU OR TRIED TO TALK TO YOU
17 ABOUT THE CASE?

18 (NO RESPONSE.)

19 THE COURT: HAS ANYTHING AT ALL HAPPENED TO ANY OF
20 YOU WHICH MIGHT AFFECT YOUR ABILITY TO BE FAIR IN THIS
21 CASE?

22 (NO RESPONSE.)

23 THE COURT: GOOD. PANEL IS PRESENT. SWEAR THEM,
24 PLEASE, MA'AM.

25 CLERK OF COURT: PLEASE STAND AND RAISE YOUR RIGHT

EXHIBIT (E)

Witnesses

Charles E. Counts

Max Pickelsimer

Cindy Koon

Verdict

Foreman

ORIGINAL INDICTMENT

The State of South Carolina,

County of NEWBERRY

94GS36 NOVEMBER 564 Term, 19 94

THE STATE

vs.

RONNIE ALLEN MITCHELL

offense code - 794157
commitment 2-8-95

INDICTMENT FOR

- (1) BURGLARY, 16-11-311(A) (1) (2)
(a) (b) (c) (d) (3)
(2) VIOLATION SECTION 16-3-652

W. Townes Jones

Solicitor

TRUE BILL

Michael Kevin Carter 11-28-94
Foreman of Grand Jury

D-841892

I Hereby Appear In My Own Proper Person, Waive Grand Jury Action and Plead Guilty To The Within Indictment

W. Townes Jones

SOLICITOR
NOV 1994

The State of South Carolina

County of Newberry

INDICTMENT FOR

(1) BURGLARY, 16-11-311 (A) (1) (2) ~~AND~~
(a) (b) (c) (d) (3)
(2) VIOLATION SECTION 16-3-652

At a Court of General Sessions, convened on the 28th day of November,
1994, the Grand Jurors of Newberry County present upon their oath:

COUNT ONE

That RONNIE ALLEN MITCHELL

did in the county and state aforesaid, on or about the 18th day of September,
19 94, wilfully and unlawfully enter a dwelling without consent and
with intent to commit a crime therein, and either when in effecting entry
or while in the dwelling or in immediate flight therefrom, he or another
participant in the crime: was armed with a deadly weapon or explosive;
or caused physical injury to a person who was not a participant in the
crime; or used or threatened the use of a dangerous instrument; or
displayed what was or appeared to be a knife, pistol, revolver, rifle,
shotgun, machine gun or other firearm, or the entering or remaining
occurred in the nighttime, the said dwelling being occupied by Cindy Koon

COUNT TWO

That RONNIE ALLEN MITCHELL

did in the county and state aforesaid, on or about the 18th day of September,
19 94, wilfully and unlawfully commit criminal sexual conduct in
the first degree by wilfully and unlawfully using aggravated force
to accomplish sexual battery upon the person of Cindy Koon

Against the peace and dignity of the State, and contrary to the statute in such cases made and
provided.

W. Townes Jones
Solicitor

EXHIBIT (F)
~~AMENDED INDICTMENT~~

WITNESSES

Charles E. Counts

Max Pickelsimer

Cindy Koon

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

November TERM, 19 94

94GS36-564

THE STATE

VS

Ronnie Allen Mitchell

INDICTMENT FOR

(1) Burglary, 16-11-311

(2) Violation Section 16-3-652

Solicitor

True Bill Michael Kevin Carter

Foreman of Grand Jury

11-28-94

The State of South Carolina

County of NEWBERRY

(1) Burglary, 16-11-311

(2) Violation of Section 16-3-652

At a Court of General Sessions, convened on the 28th day of November,
19 94, the Grand Jurors of Newberry County present upon their oath:

COUNT ONE

That Ronnie Allen Mitchell

did in Newberry state aforesaid
County/on or about the 18th day of September,

19 94 wilfully and unlawfully enter a dwelling without consent and
with the intent to commit a crime therein, and the entering or
remaining occurred in the nighttime, the said dwelling being occupied
by Cindy Koon

COUNT TWO

That Ronnie Allen Mitchell

did in Newberry state aforesaid on
County/or about the 18th day of September,

19 94 wilfully and unlawfully commit criminal sexual conduct in the
first degree by accomplishing sexual battery upon the person of
Cindy Koon under circumstances where Cindy Koon is also the victim
of Burglary at the hands of Ronnie Allen Mitchell

Against the peace and dignity of the State, and contrary
to the Statute in such cases made and provided.

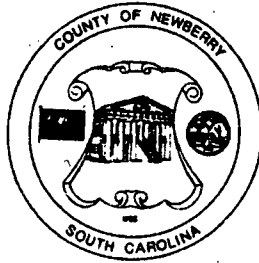
Solicitor

EXHIBIT (G)

OFFICE OF CLERK OF COURT
COUNTY OF NEWBERRY

Jackie S. Bowers
Clerk of Court

P.O. Drawer 10
(803) 321-2110
Fax (803) 321-2111



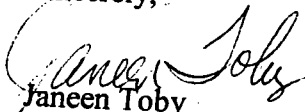
March 30, 2011

Ronnie Allen Mitchell # 217691
SCDC
F2A-185R
386 Redemption Way
McCormick, SC 29899

Mr. Mitchell,

Enclosed you will find a clocked copy of your Motion for Writ of Habeas Corpus and a Form 4 Order granting you to proceed without costs. Please note the Common Pleas Case number assigned to this document and reference this number on any future correspondence dealing with this matter.

Sincerely,


Janeen Toby
Common Pleas Clerk
Newberry County

CC: Harrison D. Brant, Assistant Attorney General

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO:

2011-CP-36-00176

Ronnie Allen Mitchell vs. State

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):

SCRPC (Vol. Nonsuit);

☐ Rule 43(k), SCRPC (Settled);

☐ Rule 12(b), SCRPC;

☐ Other:

☐ ACTION STRICKEN (CHECK REASON):

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;

☐ Other:

☐ Rule 40(j) SCRPC;

☐ Bankruptcy;

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed;

☐ Reversed;

☐ Remanded;

☐ Other:

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

IT IS ORDERED AND ADJUDGED:

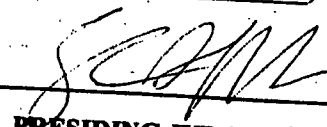
☐ See attached order;

☐ Statement of Judgment by the Court:

MOTION to proceed without costs is granted.

Dated at Newberry, South Carolina, this 29th day of March, 2011.

Court Reporter:


PRESIDING JUDGE - Eugene C. Griffith, Jr.

This judgment was entered on the 30th day of March, 2011, and a copy mailed first class this 30th day of March, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Ronnie A. Mitchell #217691 SCDC F2A-185R 386
Redemption Way McCormick, SC 29899

Harrison D. Brant, Assistant Attorney General
PO Box 11549, Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

S/ Jackie S. Bowers

Jackie S Bowers - Clerk of Court

PROOF OF SERVICE

I RONNIE A. MITCHELL CERTIFY THAT I HAVE SERVED THE ATTORNEY GENERAL'S OFFICE AND THE COURT OF APPEALS CLERK A COPY OF MY RECORD ON APPEAL BY DEPOSITING IN THE U.S. MAIL POSTAGE PRE-PAID AND ADDRESS TO THE FOLLOWING

HON. JENNY A. KITCHINGS
CLERK OF S.C. APPEALS COURT
P.O. BOX 11629
COLUMBIA, S.C. 29211

ALAN WILSON
ATTORNEY GENERAL OF
SOUTH CAROLINA
P.O. BOX 11549
COLUMBIA, S.C. 29211-1549

SWORN TO AND SUBSCRIBED BEFORE ME,
THIS 01 DAY OF AUGUST 2013
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES
42-16-2019

RECEIVED

AUG 14 2013

SC Court of Appeals

Spencer D. Mitchell
PETITIONER