

The South Carolina Court of Appeals

Eric T. Burgess #349367

Jenny Abbott Kitchings

ACI - F3(5)B

P.O. Box 11629

1057 Revolutionary Trail

Columbia, S.C. 29211

Fairfax, S.C. 29827

June 3rd, 2014

Re: 2007-GS-39-0665

2012-CP-23-3901

Honorable Jenny Kitchings,

Please take notice and be advised at this time that enclosed you will find the Appellant's Motions to Fully Vacate the sentencing/convictions of the above referenced cases Pursuant to Ineffective Assistance of Counsel and Violations of Due Process of Law. The Defendant, now the Appellant was never made aware anywhere on courts records of the statutory requirements of registering as a criminal sex offender nor the Community Supervision of (2) years upon his release from the South Carolina Department of Corrections.

Defendant respectfully requests a "Full Vacation" of each separate convictions/sentences to remedy the Violations of Clearly established law, see People v. Sparber, 10 NY3d 469 (2008) and Coombes, 159 Wash. App. 1044 (Wash. App. Div. 3, 2011): 2011 WL 240687.

Respectfully submitted,

Eric T. Burgess

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SC Court of Appeals

The State of South Carolina

In The Supreme Court

Eric Todd Burgess

SCDC# 3493-7

Case No. 2012-CP-23-3901

Appellant,

After Newly Discovered Evidence

v.

Motion To Fully Vacate Sentencing

State of South Carolina

Ineffective Assistance of Counsel; Violations

Respondent,

of Due Process of Law.

The Appellant submits to the Courts (FACTS) of sequence of events given rise to his requests of Post Conviction Relief and now his Appeal, attached you will find court documents and/or Exhibits to support and substantiate his claims of Ineffective Assistance of Counsel, Violations of Due Process of Law, and Violations of Rule (3) and Rule (5) of the South Carolina Rules of Criminal Procedures.

I Facts

- 1.) October 20th, 2010 the Appellant was arrested with warrant No. I-483636 of which contains multiple charges listed of: Murder / Attempted Murder on one warrant, violating the Appellants Due Process Rights, see (Exhibit 1).
- 2.) November 17th, 2010 the Indictment was allegedly submitted to Greenville County Clerk of Court, Public Defense Attorney, Larry Holmes Cooke was appointed by the State of South Carolina to represent the Appellant in said case matter, referencing Indictment No. 200-65-23-8937, see (Exhibit 7).
- 3.) Larry Cooke Neglects With Deliberate Indifference to act on the Appellants behalf and best interests after the Appellant requests of Mr. Cooke to file motions requesting a Preliminary Hearing / Fast and Speedy Trial.
- 4.) April 14th, 2011 the Appellant being under the assumption Larry Cooke had filed the requested motions on his behalf / best interests, he requests Mr. Cooke to file a Motion to Dismiss charges based on Violation of Due Process, Rights for the expiration of time live,

violations of the Preliminary Hearing Request and any lawful extension of the Appellant's case as dictated by laws and rules governing this state, see (Exhibit 2).

5.) Pursuant to Article V § Four: The State of South Carolina Consulation is hereby ordered to dispose of "All" criminals/the accused within (180) days from the Defendants arrest or may be extenuated by written order showing just cause of Extenuating Circumstances ordered by Supreme Court's Honorable Judge Finley in (1999).

6.) Attorney, Tim Sullivan of Greenville County, SC. Filed a Motion to Dismiss based solely on this order being violated in, State v. Hicles (2007) and the charges were dismissed Pursuant to this Violation of Due Process of Law, see (Exhibits 3,4).

7.) The alleged term of May 2011, on accumalative (190) days after the Appellant's arrest and being detained at Greenville County Detention Center, the Grand Jury allegedly returns Indictment No. 2010-GS-23-8937, yet the Indictment itself, on its (FACE) is "Not" a (TRUE BILL), having "Not" the date that the Grand Jury Convened, see (Exhibits 7-10).

8.) Assistant Solicitor, Brynna Seay violated the Appellant's Due Process Rights by Filing/ Neglecting with Deliberate Indifference to adhere to Rule (3) and Rule (5) of the South Carolina Rules of Criminal Procedures, stating: that within (90) days after receipt of an arrest warrant from the Clerk of Court, the Solicitor shall take action on those warrants by (1) preparing an Indictment for presentation to the Grand Jury (2) Formally Dismissing the warrant, noted on the Face of the warrant the action taken or (3) making other affirmative Disposition in writing and filing such action with the court.

9.) In this particular case, none of these were accomplished by the Thirteenth Judicial System's Solicitor's office and more than (6) months / (180) days had expired since the Defendants arrest without any action whatsoever being take on the warrants.

10.) The South Carolina Rules of Criminal Procedures are (Clear) and (Specific), the Appellant would submit that they are written as requirements to be followed for the fair and just Disposition of Criminal Matters and with the intent that accused citizens of the State of South Carolina not to languish in detention without appropriate action being taken to dispose of the Criminal Charges pending against them.

11.) In this particular case, both Rule (3) and Rule (5) of the South Carolina Rules of Criminal Procedures have been violated with Deliberate Indifference / blatantly disregarded for the Appellant's Due Process Rights and/or the Constitution of the United States of America, see (Exhibits 12, 13).

12.) May 18th, 2011 the Appellant attempts to motion courts Pro Se after being Denied/Deprived access to courts and to represent himself in Courts by Judge Edward Miller refusing to allow the Appellant to terminate Mr. Cooke as his Court Appointed Attorney, see (Exhibits 15, 16).

13.) Leavy Cooke receives Assistant Solicitor, Bryna Seag's 2nd Plea Offer of Assault and Battery 1st Degree with the recommendation of (No Contact) with the Victim, having an expiration date of acceptance of August 24th, 2011, same as her first Plea Offer received by Mr. Cooke, yet Mr. Cooke neglected with Deliberate Indifference to inform/advise the Appellant of any such Plea Offers being made, see, (Exhibits 11, 14).

14.) May 19th, 2011 Leavy Cooke files a (Notice To Motion To Dismiss Charges) against the Appellant Pursuant to Violations of Rule (3) and Rule (5) of The South Carolina Rules of Criminal Procedures, yet neglects with "Very Much Indifference" to voice said violations aloud on Courts Records, failing/neglecting to preserve the Appellant's Rights if an Appeal were to become necessary, (Exhibits 12, 13).

15.) August 30th, 2011 on accumulative (6) days after the expiration of Mrs. Seag's Plea Offer, Leavy Cooke releases all documents relevant to the Appellant's case matter and fails/neglects to inform/advise the Appellant of any said Plea Offers until the expiration thereof, see (Exhibit 17).

16.) September 27th, 2011 Leavy Cooke informed the appellant that Assistant Solicitor Bryna Seag had failed to locate/contact her witness, the alleged victim, yet Mr. Burgess remained Detained at Greenville County's Detention Center, Violating Due Process over again... on accumulative (11) months had passed and the Solicitor's Office could not produce/locate the alleged victim, their "star witness" for questioning nor scheduling for a trial.

17.) January 18th, 2012 at the Appellant's Trial, Larry Cooke Neglected with Deliberate Indifference to inform courts on Records of a (Conflict of Interest) for the Defense for the allowance of Public Defense Attorney, Kim R. Verner being submitted to the Jury as Juror No. 203, Mr. Verner having unlimited access and personal/professional relations with all participants/officials present in the courtroom that day, including Assistant Solicitor, Bryan Seay, but Judge Robin B. Stilwell insisted that Mr. Verner be submitted, see (Transcript of Trial dated January 18th, 2012).

18.) Larry Cooke Neglected with Deliberate Indifference to Motion Courts "Aloud" on Courts Records to Dismiss charges against the Appellant pursuant to violations of Rule (3) and Rule (5) of the South Carolina Rules of Criminal Procedures at his Trial dated January 18th, 2012 rendering Mr. Cooke liable for Denying and Depriving his client, the Appellant the right to Appeal his Conviction/Sentencing, see (Transcript).

19.) Larry Cooke Neglected with Deliberate Indifference to challenge the Destruction of Evidence necessary for the Defense to substantiate factual events proving that the statement used to allegedly find "Probable Cause" for the warrant of Murder/Attempted Murder was on its (FACE) a false statement, see (Transcript).

20.) Larry Cooke Neglected with Deliberate Indifference to inform the Appellant that where a Defendant makes a (Substantial Preliminary Showing) that a "False Statement" was knowingly, intentionally, or with reckless disregard was necessary for the findings of Probable Cause, that Due Process was Violated and the issuance of the warrant violated the Defendants, now the Appellant's Constitutional Rights under the Fourth and Fourteenth Amendments.

21.) Larry Cooke failed/neglected to "Impeach" witnesses caught blatantly committing perjury under oath at the Appellant's Trial dated January 18th, 2012, see (Transcript).

22.) On the date of January 18th, 2012 Mr. Burgess was found guilty of the lesser included offense of Attempted Murder, (ABHAN), yet at the date and time of his crime, October 20th, 2010 (ABHAN) was considered a Non-Violent (Misdemeanor),

Honorable Judge Robin Stilwell sentenced the Appellant to (7) years Non-Violent with (303) days jail credit, a Non-Violent sentence at 65% would have left the Appellant approximately (2) years, (6) months, and (9) days to serve/complete with the South Carolina Department of Corrections, thus granting him a Max-Out date of approximately July 1st, 2014.

23.) On the date of August 13th, 2012 Assistant Solicitor, Bryna Seag Illegally Motioned Courts to Amend Mr. Burgess' Sentencing Sheets to reflect that (ABHAN) is a Violent Offense Pursuant to 16-1-60 and a Serious offense Pursuant to S.C. Code 17-25-45, yet neglects with Deliberate Indifference/Disregard that Mr. Burgess' alleged crime occurred on October 20th, 2010, at that date and time there was no statute for the crime of (ABHAN) in June of 2011 a statute for (ABHAN) was Enacted by the General Counsel to reflect that (ABHAN) is to be a Violent - Most Serious crime.

24.) Assistant Solicitor, Bryna Seag convicted the Appellant of a Non-Statutory Offense which violates Due Process of Law, being that the alleged crime took place before the enactment took place in June of 2011, this now statutory offense for a lesser included offense Violates Due Process of Law, see State v. Coleman, 530 S.E., 2d. 387.

25.) Mr Burgess' alleged crime occurred before June of 2011, therefore his sentence should reflect such of the old law of (ABHAN), yet Assistant Solicitor, Bryna Seag's Deliberate Acts now has him classified as Violent (Most Serious) instead of his (7) year Non-Violent Sentence, making Mr. Burgess serve an additional (2) years (11) months than he was originally sentenced to serve.

26.) During the proceedings of court, courts failed to inform/advise the Appellant of any and all Statutory Restrictions/Requirements of the sentence imposed that day on courts records anywhere, including (Community Supervision) upon his release from (SCDC), see People v. Sperber, (2008) Supreme Courts deem that the Defendant is entitled to a (Full Vacation) of his Conviction/Sentencing to (Remedy) the Violation of Due Process of Law.

27.) The State of South Carolina has failed to fulfill its Constitutional Obligation to provide the Appellant with Effective Assistance of Counsel at (Both) his Trial dated January 18th, 2012 and his (Post Conviction Relief Hearing) dated December 17th, 2013, each failing to act separate from the state / conduct investigations of factual events / contact or questioning any witnesses / alleged victims, Each Court Appointed Attorney acted only as a (Rubber Stamp) for the state, never giving their client "Full Loyalty" nor having their clients best interests in mind.

28.) These Violations of the First, Fourth, Sixth, and Fourteenth Amendments and Violations of the requirements for Effective Assistance of Counsel described, articulated, and set forth by the United States Supreme Court in Gideon v. Wainwright 372 U.S. 335 (1963) violates Due Process of Law Many times over again.

Conclusion: The Appellant respectfully requests of the Court to Fully Vacate his Conviction / Sentencing, immediately causing him to be released from the South Carolina Department of Corrections. This is requested to "Remedy" the "Many Violations" of Due Process of Law discussed within these documents and attached exhibits.

Respectfully submitted,
Eric A. Burgess
June 3rd, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville

STATE VS.

Eric Todd Burgess

AKA: _____

Race: WHITE Sex: M Age: 27

DOB: 10-09-1984 SS#: _____

Address: _____

City, State, Zip: _____

DL#: 011344187 SID#: _____

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Assault and Battery of a High and Aggravated Nature

in violation of § 16-3-600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

TEST: Bryna J. Seay 65398
Seay, Bryna Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 7 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: with any OTHER CHARGES.
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 363 DAYS
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$ 25.00
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$
TOTAL		\$

Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul Wickens
Court Reporter: W. Williams
SCCA/217 (03/2011)

Presiding Judge _____
Judge Code: 2138
Sentence Date: 18 JAN 2012

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

April 23, 2014

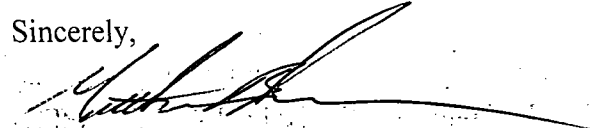
Eric Burgess, #349367
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, South Carolina 29827

Dear Mr. Burgess:

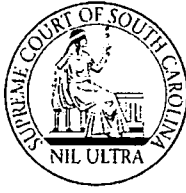
I am responding to your recent letter sent to our Greenville County Office concerning Section 24-13-150, whether you will be required to participate in the Community Supervision Program (CSP). Section 24-13-150 requires that the Department operate a Community Supervision Program (CSP) for the supervision of offenders released from a sentence for a "no parole" offense. No parole offenses are defined in § 24-13-100 of the Code. The Section defines a "no parole" offense as any class A, B, or C felony. This section is more commonly referred to as the 85% rule. According to the South Carolina Department of Corrections Automated Records System, you were sentenced on January 18, 2012, for the offense of Assault and Battery of a High and Aggravated Nature and this offense is a class C felony. Therefore, you were convicted of a "no parole" offense and will be required to serve at least 85% of your sentence before release. If you are released before satisfying 100% of your term of incarceration, you will be released to the Community Supervision Program (CSP).

I hope I have adequately addressed your concerns.

Sincerely,


Matthew C. Buchanan
General Counsel

MCB:dn



The Supreme Court of South Carolina

OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

William C. Campbell
Assistant Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

April 22, 2014

PERSONAL AND CONFIDENTIAL

Eric T. Burgess #349367
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, SC 29827

RE: Lawyer: [REDACTED] Esquire
Matter Number: [REDACTED]

Dear Mr. Burgess:

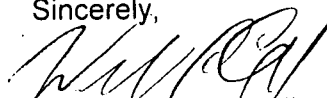
We have received your complaint against [REDACTED]. We will conduct an investigation into the matters you have reported. You will not necessarily be contacted prior to a decision regarding your complaint; therefore, you should submit any additional information or documentation to support your allegations at this time.

The authority of this office and the jurisdiction of the Commission on Lawyer Conduct are limited to issues of whether a lawyer is subject to discipline pursuant to the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR. Where misconduct is found, sanctions may be imposed ranging from a confidential letter of caution or admonition, public reprimand, suspension, or disbarment. If our investigation does not reveal evidence of lawyer misconduct, your complaint will be dismissed.

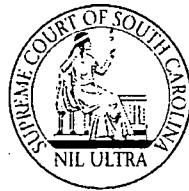
We take this opportunity to advise you of the limited role of this office and the Commission so that you will be aware that we cannot provide you with assistance or advice. You should promptly seek assistance or advice that you might need from legal counsel or other sources. If you do not have an attorney and believe that you need one, you should contact the South Carolina Bar Lawyer Referral Service at 1(800) 868-2284.

You will be notified of the final disposition of your complaint. It is often many months after receipt of a complaint before a final decision is made. Feel free to contact me if you have any questions or concerns.

Sincerely,


William C. Campbell

WCC/clg



The Supreme Court of South Carolina

OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

William C. Campbell
Assistant Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

April 22, 2014

PERSONAL AND CONFIDENTIAL

Eric T. Burgess #349367
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, SC 29827

RE: Lawyer: _____ Esquire
Matter Number: _____

Dear Mr. Burgess:

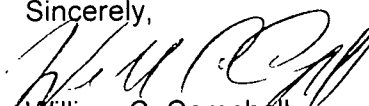
We have received your complaint against _____ Esquire. We will conduct an investigation into the matters you have reported. You will not necessarily be contacted prior to a decision regarding your complaint; therefore, you should submit any additional information or documentation to support your allegations at this time.

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We take this opportunity to advise you of the limited role of this office and the Commission so that you will be aware that we cannot provide you with assistance or advice. You should promptly seek assistance or advice that you might need from legal counsel or other sources. If you do not have an attorney and believe that you need one, you should contact the South Carolina Bar Lawyer Referral Service at 1(800) 868-2284.

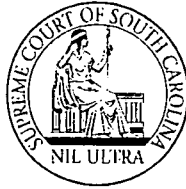
You will be notified of the final disposition of your complaint. It is often many months after receipt of a complaint before a final decision is made. Feel free to contact me if you have any questions or concerns.

Sincerely,



William C. Campbell

WCC/clg:



The Supreme Court of South Carolina

OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

William C. Campbell
Assistant Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

April 22, 2014

PERSONAL AND CONFIDENTIAL

Eric T. Burgess #349367
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, SC 29827

RE: Lawyer: [REDACTED] Esquire
Case Number: [REDACTED]

Dear Mr. Burgess:

We have received and reviewed your complaint against [REDACTED], Esquire. The authority of this office and the jurisdiction of the Commission on Lawyer Conduct concerning complaints against lawyers are limited to issues of whether a lawyer has committed misconduct or is incapacitated within the guidelines of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, adopted by the Supreme Court of South Carolina.

These rules do not apply to matters related to whether or not the outcome of a case handled by a lawyer was fair. We do not have authority to intervene in any matter presently pending before a court or to change the outcome of the decision of a court. These are legal matters that must be addressed by you to the court or raised by you on appeal using appropriate appellate procedures.

In addition, this office does not seek to get a lawyer to do something a person wants done. We cannot give advice about your case or the legal system in general. This is not a place for an individual to seek relief, but a place where institutional values are promoted for the good of everyone who has dealings with our legal system.

Eric F. Swygoc #319367
ACI - FB(B)5
1057 Revolutionaries Trial
Fairfax, S.C. 29827

Interdepartmental Mail
S.C. Court of Appeals
Jenny Abbott Kitchings
P.O. Box 11629
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ACI