STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

William H. Seals, Jr., Circuit Court Judge

KEVIN WALTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000018

SUPPLEMENTAL APPENDIX

LARA M. CAUDY
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOSHUA L. THOMAS
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P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

STATE of SOUTH CAROLINA
COUNTY of FLORENCE

FILED
2006 AUG 24 P 3:33
CONNIE R. BIRD
CCCP & GS
FLORENCE COUNTY

IN THE Court of General Sessions
INDICTMENT Number:
04-GS-21-1168

THE STATE,

VS.

KEVIN WALTON,
defendant.

MOTION TO DISMISS COUNSEL

Now Comes, KEVIN WALTON, defendant herein and request this Honorable Court dismiss the defendant's Appointed Public Defender from being his Counsel. To Support this request, the defendant States the following;

1) Shortly after defendant's arrival at Florence County Detention Center on August 7, 2003 Ms. KAREN PARROTT, Assistant Public Defender from Florence County Public Defender System was Appointed to represent the defendant in the Above entitled cause of action, Charged with Murder & Grand Larceny.

2) In the Month of February 2006 after spending 917 days at the Detention Center ... 22 hours each. And every day on Lock down in his Room, the defendant wrote his Attorney and

REQUESTED A SPEEDY TRIAL. THE DEFENDANT TOLD HIS PUBLIC DEFENDER HE WAS CONSIDERING WRITING THE SOLICITOR HIMSELF AND REQUESTING A SPEEDY TRIAL.

THE DEFENDANT'S ATTORNEY RESPONDED IN WRITING EXPRESSING THAT "SHE WAS THE ATTORNEY ON RECORD AND BECAUSE OF THAT, THE DEFENDANT COULD NOT REQUEST A SPEEDY TRIAL AND ADDED, THAT SHE WOULD NOT."

THE ABOVEFOREMENTIONED WRITING FROM THE DEFENDANT'S PUBLIC DEFENDER DATED FEBRUARY 2006, WAS THE ONLY FORM OF COMMUNICATION EITHER VERBAL OR WRITTEN THE ATTORNEY HAD OFFERED THE DEFENDANT SINCE OCTOBER 13TH, 2003. INFACT, AFTER THE DEFENDANT WROTE NUMEROUS LETTERS DURING A PERIOD OF "WELL-OVER" TWO YEARS, THIS FEBRUARY 2006 LETTER BY THE DEFENDANT'S ATTORNEY WAS THE FIRST.

THE ABOVEFOREMENTIONED LETTERS FROM THE DEFENDANT WERE DATED: 8-21-03, 10-1-03, 10-13-03, 10-18-03, 11-18-03, 12-19-03, 1-23-04, 2-9-04, 5-21-04, 7-16-04, 8-23-04, 11-1-04, 11-3-04, 8-16-05, 9-10-05, 2-11-06.

THE DEFENDANT AFTER A COUPLE YEARS OF NO RESPONSE FROM HIS PUBLIC DEFENDER BECAME "DISCOURAGED" TO WRITE HER AND ASK QUESTIONS BECAUSE

he never got any answers to his questions he had previously asked her. Infact, over 3 years the defendants Attorney has had extremely limited communication with him. Only these occasions;

A.) An initial meeting on 8-21-03 which lasted approximately fifteen (15) minutes.

B.) A brief conversation on 9-26-03 at a cancelled bond hearing.

C.) A preliminary hearing on 10-13-03 no conversation.

D.) A one page letter dated February 2006.

The defendant has made multiple requests for information pertaining to his Case es investigational efforts by the Public Defender's investigation-team. Investigator, Mr. Frank White, was personally asked by the defendant in May of 2006, four (4) times, to be briefed on WHO and WHAT has been investigated, to no avail. The defendants Attorney has also been asked numerous times about the particulars of the investigation, and the defendant

HAS RECEIVED NO RESPONSE, EXCEPT "IT DIDN'T PAN-OUT."

THE DEFENDANTS ATTORNEY HAS AN OVERAL WORKING KNOWLEDGE OF THE FLORENCE COUNTY - DETENTION CENTER'S "22" HOUR LOCK-DOWN EACH DAY OF THE PRE-TRIAL DETAINEES, WITHIN WHICH THE DEFENDANT HAS BEEN HOUSED FOR OVER THREE 3) YEARS. IT COULD BE SAID, SUCH LONG TERM DETENTION EACH DAY OF BEING LOCKED IN A SMALL ROOM FOR 22 HOURS COULD BE PARAMOUNT TO PUNISHMENT. DISPITE THE DEFENDANT'S CONTINUED CONFINEMENT OF 22 HOURS LOCK-DOWN EACH DAY THE DEFENDANT'S ATTORNEY REFUSES TO FILE A MOTION FOR A SPEEDY-TRIAL.

BECAUSE OF THE ABOVE FOREMENTIONED, THE DEFENDANT REQUESTED A SPEEDY-TRIAL ON 2-22-06 BY SENDING HIS REQUEST CERTIFIED MAIL TO MR. EDGAR LEWIS CLEMENTS III, THE HONORABLE 12TH CIRCUIT COURT SOLICITOR. IT WAS RECEIVED BY HIS OFFICE ON 2-27-06, THUS, THE START OF THE 180 DAY CLOCK BEGAN ON 2-27-06 AND ENDED ON 8-27-06. APPARENTLY, NEITHER MR CLEMENTS III (OR) MS. PARROTT INFORMED THE COURT OF DEFENDANT'S REQUEST FOR SPEEDY TRIAL. ALSO, MS. PARROTT FAILED TO SUBMIT A MOTION FOR SPEEDY-TRIAL UPON DEFENDANT'S REQUEST, IN FEBRUARY 2006.

THE DEFENDANT'S REQUEST FOR SPEEDY-TRIAL WAS SENT by CERTIFIED "RETURN RECEIPT" MAILING. ARTICLE NUMBER # 7005-1820-0005-7153-8176. RECEIVED by Ms. MARIAN LEE AT THE SOLICITOR'S OFFICE ON 2-27-06.

THE DEFENDANT IS NOW CHALLENGING his CONTINUED CONFINEMENT AND CONSTITUTIONALITY of CONFINEMENT IN FEDERAL DISTRICT COURT of SOUTH CAROLINA IN A "PETITION FOR WRIT of HABEAS CORPUS" UNDER TITLE 28 U.S.C.A. SECTION 2241. (SEE ATTACHMENT "D" PAGES ONE THROUGH TWELVE ENCLOSED HEREIN.)

HOWEVER, FOR THE PURPOSES OF THIS MOTION TO DISMISS COUNSEL, THE DEFENDANT - PRAYERFULLY ASK THIS HONORABLE COURT TO dismiss KAREN PARROTT FROM HIS CRIMINAL CASE AND APPOINT ADEQUITE COUNSEL.

THE DEFENDANT WILL ADD, HE FEELS IRREPARABLE HARM MAY HAVE BEEN DONE TO HIS DEFENSE BECAUSE OF INADEQUATE & INEFFECTIVE COUNSEL AND INVESTIGATION IN HIS CASE, AND ALSO FEELS HE SHOULD NOT HAVE TO SACRIFICE his RIGHT TO EFFECTIVE COUNSEL (OR) A SUFFICIENT MURDER INVESTIGATION (OR) A SPEEDY TRIAL BECAUSE of his POVERTY.

8-28-06

Respectfully Submitted,

Kevin Walton
6719 Friendfield Rd.
F.C.D.C. B-215
Effingham, S.C.
29541-5241

August 28, 2006

FILED

2006 AUG 24 P 3:37

CONNIE R. BELL
CCCP & GS
FLORENCE COUNTY, SC

Dear Clerk of Court,
12th Circuit Court.

Please find the enclosed two copies of my Pro-Se Motion to Remove my Attorney. Please Clock one Copy and return to me in the self addressed stamped envelope I have provided herein for that purpose.

The Honorable Michael G. Nettles has been provided with a Copy by United States Postal Mail already.

Warmest Regards
&
Thank You!

Kevin Walton
F.C.D.C. B-215
6719 Friendfield Rd.
Effingham, S.C.
29541

8

04-1168

FILED

2006 AUG 24 P 3:37

CONNIE R. BELL
CCCP & GS
FLORENCE COUNTY S.C.

August 28, 2006

Dear Your Honor,

Please find the enclosed Pro-Se Motion by me to remove my Attorney, for your consideration.

Yours Very Truly,

Kevin Watson
F.C.D.C. B-215
6719 Friendfield Rd.
Effingham, S.C.

29541

sent copies 8/28/06

State of South Carolina The State, -vs- Kevin Walton, defendant.	In the Court of General Sessions Indictment Number: #04-GS-21-1168 Defendant's "Addendum" To His Motion to Dismiss Counsel

Now Comes Kevin Walton, Pro-se defendant and submits herein the forthcoming "Defendants Addendum" to his "Motion to Dismiss Counsel" filed August 24, 2006 and States the newly found facts as follows;

That on November 3rd, 2006 at Approximately 1:50pm in the General Session Court Room, Defendants' Attorney Karan Parrott told him as his was leaving to Court Room:

Mr. Walton You better start working on your own Case!

The defendant was in the Court Room to be heard on his Motion to Dismiss Karen Parrott, However his Motion was not heard because after the Court heard all the other Cases ahead of his, there wasn't a time allowance-

TO BE HEARD SO THE COURT RESCHEDULED FOR THE DECEMBER 2006 COURT SESSION, TO HEAR THE MOTION.

THE DEFENDANT UNDERSTOOD MS. PARROTS ONE-LINE STATEMENT TO MEAN, "SHE WOULD NO LONGER WORK ON HIS CASE."

MS. PARROT HAS REFUSED TO FILE FOR A FAST AND SPEEDY TRIAL FOR THE DEFENDANT AS A RESULT THE DEFENDANT HAS SPENT 1,363 DAYS AWAITING TRIAL ON 22 HOUR LOCK-DOWN AT THE FLORENCE COUNTY DETENTION CENTER. NOW SHE REFUSES TO WORK ON THE DEFENDANTS CASE "PRIOR TO" A COURT DECISION ON THE MERITS OF THE DEFENDANTS MOTION TO DISMISS - COUNSEL. (SEE ATTACHMENT "H" HEREIN A COPY OF THE DEFENDANTS MOTION.)

MEMORANDUM OF LAW

THE SIXTH AMENDMENT GUARANTEES A RIGHT TO COUNSEL AND COMPETENT REPRESENTATION BY COUNSEL. E.G., MCMANN V. RICHARDSON, 397 U.S. 759, 90 S.CT. 1441, 25 L.ED. 2d. 763 (1970)

GIDEON V. WAINWRIGHT, 372 U.S. 335, 83 S. CT 792, 9 L. ED. 2d 799 (1963)

ALTHOUGH UNDER STATE V. STUCKEY, 333 S.C. 56, 508 S. ED. 2d 564, 1998 S.C. LEXIS 154 (1998) THE SUPREME COURT OF SOUTH CAROLINA HELD THAT PERSONS REPRESENTED BY ATTORNEYS HAVE NO RIGHT TO FILE PRO SE MOTIONS.

HOWEVER, THE DEFENDANT HEREIN HAS A RIGHT TO FILE A PRO SE MOTION SEEKING TO RELIEVE HIS COUNSEL.

THE DEFENDANT ALSO HAS A RIGHT TO A SPEEDY AND PUBLIC TRIAL THAT WAS MADE APPLICABLE TO THE STATES IN 1948 SEE IN RE OLIVER, 333 U.S. 257, 273 (1948)

THE ABOVE OLIVER CASE AND GIDEON CASE SHOULD GIVE THE DEFENDANT WHO IS POOR, AN ATTORNEY WHO WILL FILE FOR A SPEEDY-TRIAL FOR HIM ESPECIALLY SINCE THE STUCKEY CASE DOESN'T ALLOW HIM TO FILE ONE ON HIS OWN, EVEN THOUGH HIS APPOINTED ATTORNEY REFUSES TO FOR HIM.

Relief

THE DEFENDANT IS NOT A TRAINED ATTORNEY. HE ONLY BELIEVES HE HAS RIGHTS THAT ARE AFFORDED TO EVERYONE WHO IS AN AMERICAN CITIZEN, AND POOR WHO FACES CRIMINAL CHARGES.

If HE HAS NO RIGHT TO A SPEEDY TRIAL THAN HE OWES MS. PARROTT AN APOLOGY AS WELL AS THE COURT. WHY MS PARROTT FEELS THE DEFENDANT SHOULD START WORKING ON HIS OWN CASE PRIOR TO THE COURTS RULING IS PERHAPS A LITTLE TOO PRESUMPTUOUS IN KNOWING THIS COURT WONT APPOINT ANOTHER - COUNSEL?

THE DEFENDANT PRAYS THIS COURT REMOVE MS. PARROTT AS DEFENDANT'S COUNSEL AND APPOINT AN ADEQUATE ONE. ALSO, THE DEFENDANT ASK PRAYERFULLY THAT THIS COURT MAKE JUDGMENT WHETHER MS. PARROTT'S ACTIONS (OR) INACTIONS HAVE DENIED THE DEFENDANT HIS - RIGHT TO A SPEEDY TRIAL.

04-11618

FILED

2006 NOV 17 P 2:38

CONNIE R. BELL
CCCP & GS
FLORENCE COUNTY SC

November 3rd, 2006

Kevin Walton #0275713
F.C.D.C.
6719 Friendfield Rd. (B-217)
Effingham, S.C. 29541-5241

Clerk of Court
Connie Bell
City/County Complex
180 North Irby St.
Florence, S.C. 29501-3456

RE: The State v. Kevin Walton Case No: #04-GS-21-1168

Dear Clerk, Please find enclosed herein "Defendant's Addendum" to his Motion to Dismiss Counsel" and "Attachment A" which is his "Motion to Dismiss Counsel" that was filed August 24th 2006.

I have enclosed the Original and two Copies. Also I have enclosed a Self Addressed Stamped envelope for my request that one of those Copies be Clocked and returned to me.

Thank You.

Kevin Walton

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

Honorable Thomas Anthony Russo

Case No. 2004-GS-21-1168

State of South Carolina, ...Respondent,

v.

Kevin Walton, ...Appellant,

FINAL ANDERS BRIEF OF APPELLANT

Patrick J. McLaughlin
WUKELA LAW FIRM
P.O. Box 13057
Florence, SC 29504-3057
Telephone: 843-669-5634
Attorney for Appellant

Other Counsel of Record:
The Honorable Edgar L. Clements III
Office of the Solicitor
Florence City County Complex, MSC-Q
180 N. Irby St.
Florence, SC 29501

The Honorable Henry McMaster
Attorney General
P.O. Box 11549
Columbia, S.C. 29211

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUES

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR AS A MATTER OF LAW IN DENYING APPELLANT'S MOTION TO DISMISS FOR VIOLATING APPELLANT'S RIGHT TO A SPEEDY TRIAL?

2. DID THE TRIAL JUDGE ERR BY FAILING TO RECUSE HIMSELF FROM THE TRIAL?

STATEMENT OF THE CASE

On September 9, 2004 the Appellant, Kevin Walton was indicted on the charges of murder and grand larceny. These charges arose from an alleged incident on or about March 28, 2003 which resulted in the death of one Shannon Burelson Carter. It was alleged that Ms. Carter had died by means of strangulation and that her 1996 Chevrolet Cavalier had been stolen as a result of the incident. Arrest warrants were issued for the Appellant soon after the events in March 2003. Subsequent to the events described above, the Appellant turned himself in to law enforcement in Chesterfield County, Virginia and was subsequently extradited back to Florence County, South Carolina.

The Appellant was originally appointed counsel from Florence County Public Defender's Office, Attorney Karen Parrott. On February 9, 2007 the Florence County Court of General Sessions held a hearing on the Appellant's motion for relief of counsel. According to the transcript of that hearing, Attorney Parrott also joined in that motion asking that she be relieved as counsel. The court granted the motion and appointed Patrick J. McLaughlin as Appellant's trial counsel. It should be noted that Mr. McLaughlin has also now been appointed to represent the Appellant on his appeal.

Subsequent to the events described above, a jury trial commenced in this matter on April 23, 2007. On April 26, 2007, the jury returned a verdict of guilty on both the charge of murder and the charge of grand larceny in the amount over $1,000.00 and less than $5,000.00. The Honorable Thomas T. Russo sentenced the appellant to a period of five (5) years on the grand larceny charge. In regards to the charge of murder, after having been presented with evidence during the sentencing hearing that the appellant had a prior conviction for a violent most serious offense and that the appellant and the attorney had been properly served with notice by the state to seek life without parole, Judge Russo found that the court had no discretion and had to sentence the Appellant to a term of incarceration for his natural life without the ability for parole.

On May 2, 2007, Appellant filed a timely post trial motion for new trial. A hearing was held on that motion on December 13, 2007 by Judge Russo. After hearing arguments from the Defendant and the state, the Court denied Defendant's motion for a new trial. That ruling was documented by Order signed and filed by the Court on December 27, 2007. Appellant timely preserved his right to appeal with the filing of a timely Notice of Appeal and Notice of Indigency on or about December 27, 2007. That filing officially ended Attorney McLaughlin's initial involvement in this matter.

On or about November 20, 2009, Attorney McLaughlin received correspondence from the South Carolina Court of Appeals informing him that he had once again been appointed to represent the Appellant by Order of Appointment from the Court of Appeals dated November 16, 2009. Subsequent to receiving that correspondence, Attorney McLaughlin communicated with original appointed counsel Robert Dudek to obtain the Office of Indigent Defenses files in this matter.

Appellant counsel has had the opportunity to review the record and meet with the Appellant.

FACTS

Early in the morning on March 28, 2003, Shannon Burelson Carter was discovered dead in her bedroom by her young daughter, Brittany Burelson. (R. 538) Brittany immediately ran to a neighbor's house where 911 was called and law enforcement soon arrived.

Missing from the residence that morning was the Appellant Kevin Walton. Mr. Walton had been living with Ms. Carter and her daughter since sometime early February of that same year. (R. p. 203) Also absent from the residence that morning was Ms. Carter's 1996 Chevrolet Cavalier. (R. p. 542)

According to testimony from Brittany, she had last seen her mother late in the evening on March 27, 2003 when her mother had been in her bedroom with Mr. Walton. (R. p. 537)

Ms. Carter's automobile was eventually recovered in Boca Raton, Florida on or about June 21, 2003. After getting in contact with Florence County Law Enforcement, Boca Raton Law Enforcement tested keys, found near the scene of a reported stolen vehicle, with Ms. Carter's car. One of those keys operated Ms. Carter's vehicle. The keys were found in close proximity to the site where a 2003 silver Lexus had been reported stolen on April 16, 2003. That Lexus was eventually recovered in Chesterfield County, Virginia on April 23, 2003. Mr. Walton had turned himself in to Chesterfield County Law Enforcement on or about April 22, 2003.

STANDARD OF REVIEW

If counsel finds a client's case to be wholly frivolous, after a conscientious examination of the case, he should so advise the Court and request permission to withdraw. Such a request must be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of the brief should be furnished to the indigent client and time allowed for that client to raise any points that he chooses. Then after a full examination of all the proceedings, the Court decides whether the case is wholly frivolous. If the Court so finds, it may grant counsel's motion and dismiss the appeal in so far as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires. However, if the Court finds any of the legal points arguable on their merits, it must afford the indigent client the assistance of counsel to argue the appeal. Anders v. California, 386 U.S. 738 (1967).

ARGUMENT

I. THE COURT ERRED IN FAILING TO GRANT THE APPELLANT'S MOTION TO DISMISS THE INDICTMENT DUE TO PREJUDICE DUE TO THE DEFENDANT'S RIGHT TO A SPEEDY TRIAL.

Prior to the start of the jury trial in this matter the court entertained Mr. Walton's motion to dismiss the indictments with prejudice do to Mr. Walton's right to a speedy trial. In that motion Mr. Walton argued that his right to a speedy trial was violated due to the extraordinary delay in bringing his case to trial. The Appellant was brought into the

custody of this jurisdiction on August 7, 2003. His case was scheduled to start April 23, 2007. This is a delay of approximately 3 years and 8 months.

The South Carolina Court of Appeals has found a twenty-six month delay in bringing a criminal case to trial to be presumptively prejudicial. State v. Kennedy, 339 S.C. 243, 538 S.E.2d 700 (2000). Additionally, the Supreme Court of South Carolina has found that a delay of three (3) years and five months in prosecuting a murder charge, though not dispositive on the issue of whether the speed trial right was violated, was sufficient to trigger review of other factors in speedy trial analysis. State v. Brazell, 325 S.C. 65, 480 S.E. 2d 64 (1997). In the present case, we are dealing with a delay of approximately 3 years and 8 months. On its face, the defendant believes such a delay is certainly troubling enough to trigger further inquiry.

The State attempted to explain that the delay was the result of the Appellant's own conduct. The Appellant believes the State attempted to argue that the Appellant's attempts to fight extradition from Virginia to South Carolina attributed to the delay in bringing the Appellant to trial. However, the Appellant would note that he had been in custody in Florence County's jurisdiction since August 7, 2003. In other words, notwithstanding the period of time from when the Appellant turned himself in to Virginia authorities until the Appellant was taken into custody by this jurisdiction (approximately five (5) months), the State still delayed bringing the Appellant to trial for a period of 3 years and 8 months.

The Appellant is informed and believes that the State also argued the Appellant caused the delay through his various court filings. The State asserted they had to file responses to the Appellant's filings and that had contributed to the delay. The Appellant

would note that his initial *Habeus* petition, filed in June of 2004, was dismissed in June of 2005. In fact, the Appellant's attorney was served with a Notice of Intention to Seek Life Without Parole on February 14, 2005. The Appellant believes this is evidence that the State was certainly moving forward on his case and not being "delayed" by his Federal Court filings. As to the Appellant's second *Habeus* petition filed on August 24, 2006, the State was never required to file a response, per the United States Magistrate Judge's *Report and Recommendation* and the subsequent *Order* adopting that report and recommendation.

The State also attempted to argue that the delay was due to the complexities of the case, most notably the location of the witnesses, and piecing together the circumstantial evidence. This case involved law enforcement agents and witnesses from three separate jurisdictions: South Carolina, Florida and Virginia. However, South Carolina's Supreme Court has held such reasons do not excuse lengthy delay. State v. Brazell at 76. Due to the above, the Appellant does not believe the State had an excusable reason for the lengthy delay in bringing his case to trial.

Admittedly, the Appellant never filed a formal motion for a speedy trial. However, the Appellant argues a formal motion requesting a speedy trial is not the lone determination in whether or not a defendant has asserted his speedy trial right. Specifically, the Appellant would argue that the Supreme Court of South Carolina has stated, "the failure to assert the right to a speedy trial will make it difficult for a defendant to prove that he was denied a speedy trial." State v. Waites, 270 S.C. 104, 240 S.E.2d 651 (1978) quoting from Barker v. Wingo, Warden, 407 U.S. 514 (1972). In the Barker case, the United States Supreme Court explained whether and now a defendant asserts his right

is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The Appellant would note the above cases do not *bar* a finding that a defendant's speedy trial right was violated due to failure to file a motion for speedy trial. The Courts in those cases simply state failure will make it difficult for Defendants to *prove* a speedy trial violation.

The Appellant would argue that his original *Petition for Writ of Habeus Corpus* was in fact an assertion by him for a speedy trial. It is clear from the argument set forth in that petition, failure to follow the deadline on bringing him to trial, per the Interstate Agreement on Detainers Act, is an attempt by the Appellant to assert his right to a speedy trial. Further, the Appellant sent correspondence to both his own attorney and the solicitor's office in February 2006 attempting to assert his right to a speedy trial. His failure to enjoy this right is documented in his *Motion to Dismiss Counsel* as one of the main issues contributing to that very request. The Appellant's August 24, 2006 *Petition for Writ of Habeus Corpus* was yet another attempt to assert this right. While the Appellant can certainly be found to have not had a formal motion for speedy trial filed on his behalf, he can most certainly also be found to have attempted to have such a motion filed on his behalf. It is the Appellant's position that his actions described above document his attempts to assert his right to a speedy trial.

As to the prejudice to the Appellant, the Appellant would have a hard time pinpointing specific ways in which he had been prejudiced. The main reason for this is that at the call of his case, the Appellant had been in custody for almost four (4) years.

Due to being in custody that entire time, the Appellant was unable to adequately prepare his defense. Specifically, had the Appellant not been in custody, he could have attempted to locate witnesses who could have a) established an alibi for the Defendant, and/or b) provided information concerning other possible suspects.

The Appellant understands this is somewhat of general assertion. The Appellant would note that in denying a Defendant's motion to dismiss due to a speedy trial violation, the South Carolina Supreme Court has explained that a bare assertion of prejudice is insufficient. State v. Wilkes, 270 S.C. 104, 240 S.E. 2d 651 (1978). However, the Appellant would note that the Wilkes court specifically mentioned the Defendant had not been incarcerated. Wilkes at 654. The Appellant argues the Wilkes court made that point, because it is inherently obvious that incarceration will interfere with a Defendant's ability to participate in his defense. In the present case, the Appellant believes the lengthy pre-trial incarceration he has suffered has subjected him to the exact prejudice the Wilkes court had in mind when it singled out incarceration for special mention.

The Appellant would note one specific problem in which the delay has prejudiced his defense. The Appellant is informed and believes that the victim's computer was no longer in evidence. The Appellant was aware that the victim in this case kept a daily diary on said computer. Given his knowledge of how often the victim updated this diary, the Appellant believes this diary could have provided him with exculpatory evidence. Unfortunately, the Appellant was been informed that the State returned this evidence to someone. Even if the computer could be located now, the integrity of the files on the computer could not be established, as the chain of custody has been broken.

For the above reasons, the Appellant argues the extraordinary delay in this case prejudiced his defense. The trial court denied the Appellant's Motion to Dismiss. In making that ruling, the trial court noted that Mr. Walton could not show the court any specific prejudice he had suffered as a result of his lengthy pre-trial incarceration. Although the Appellant had brought up the issue of the computer, the Court noted that Mr. Walton could not show the court where he had ever brought the computer to anyone's attention prior to his Motion to Dismiss. The trial Court basically found that such prejudice would be the result of the Appellant's own failure to notify trial counsel of the potential evidence. (R. p. 69)

While Appellant counsel does believe that any defendant is inherently prejudiced by such lengthy pre-trial incarceration, he also believes that a valid appeal on the issue must offer a specific prejudice, which Appellant counsel does not believe is possible in the present case.

Appellant counsel would note that part of the record that he currently has in his possession, that he was not privy to at trial, is the transcript of the hearing where the court granted the Motion to relieve Ms. Parrott as trial counsel. The Appellant notes that there is an admission in the transcript by Ms. Parrott that Mr. Walton did in fact discuss with her that he wanted her to request a speedy trial. Appellant counsel does not find that having the transcript and proof of the admission concerning Appellant's request changes the effectiveness of the speedy trial argument. Appellant counsel believes that the argument failed at trial, not because of the issue with asserting the right, rather it failed because of the specific prejudice element. Appellant counsel believes that the Appellant did present a strong enough argument before the trial court concerning his asserting his

speedy trial right via Section III of the written Motion that was presented to the Court. In other words, Appellant counsel simply believes the testimony memorialized in the transcript further supports the original arguments that he made to the court, which the Appellant counsel believes the court accepted as to asserting the right, but the trial court still found the overall argument unpersuasive because of the lack of the specific prejudice element.

II. THE TRIAL JUDGE ERRED BY NOT RECUSING HIMSELF FROM THE TRIAL.

The Appellant has discussed with Appellant counsel the fact that the Appellant believes Judge Russo should have recused himself from the trial. The Appellant has explained to Appellant counsel he feels that comments the Judge made during the Motion to be Relieve hearing indicate a personal prejudice the trial judge had against the Appellant. As such the Appellant believes Judge Russo should have recused himself from the trial. Appellant counsel would note that at no time during his involvement at the trial level, was this issue raised. In reviewing all the transcripts the Appellant counsel does not see where Judge Russo made any ruling that demonstrates any personal prejudices against the Defendant. In short, Appellant counsel does not believe this to be a valid issue nor does he believe was any such issue preserved for appeal.

CONCLUSION

After reviewing the record and consulting with the appellant, appellant counsel does not believe there exists any preserved or legally substantial issues for appeal. Appellant counsel has served a copy of this brief as well as the motion to be relieved on

the appellant and appellant counsel would ask the Court to grant the appellant time to respond. After examining all the proceedings, if the Court finds no preserved or legally substantial issues for appeal, appellant counsel would respectfully move the Court grant appellant counsel's motion to be relieved.

Respectfully submitted,

Patrick J. McLaughlin
WUKELA LAW FIRM
P.O. Box 13057
Florence, Sc 29504-3057
Telephone No. 843-669-5634
Facsimile: 843-669-5150
Email: Patrick@wukelalaw.com

Attorney for the Appellant

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

Honorable Thomas Anthony Russo

Case No. 2004-GS-21-1168

State of South Carolina, ...Respondent,

v.

Kevin Walton, ...Appellant,

Certificate of Compliance with Rule 211(b), SCACR

I certify that to the best of my knowledge, the Appellant's Final Brief complies with Rule 211(b), SCACR and Order of the South Carolina Supreme Court dated August 13, 2007.

Patrick J. McLaughlin
Attorney for Respondent/Appellant
WUKELA LAW FIRM
P.O. Box 13057
Florence, SC 29504-3057
Telephone: 843-669-5634

March _____, 2010