

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF Hampton )  
 )  
 Paul Brown, #263009 )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 State of South Carolina )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 14 JUDICIAL CIRCUIT

CASE NO.: 2012-CP-25-0201

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

*Exhibit* **RECEIVED**

AUG 25 2014

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Ashleigh R. Wilson, Bar No. _____ Address: _____ PO Box 11549, Columbia, SC 29211 Phone: 803734-3734 Fax _____ E-mail: arwilson@scag.gov Other: _____
---	--

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: \_\_\_\_\_  
 Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed:  YES/ NO

**SECTION II: Motion/Order Type**

- Written motion attached  
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

*AMNS*

Signature of Attorney for  Plaintiff /  Defendant

March 13, 2014  
 Date submitted

**SECTION III: Motion Fee**

- PAID - AMOUNT: \$ \_\_\_\_\_  
 EXEMPT: (check reason)
  - Rule to Show Cause in Child or Spousal Support
  - Domestic Abuse or Abuse and Neglect
  - Indigent Status  State Agency v. Indigent Party
  - Sexually Violent Predator Act  Post-Conviction Relief
  - Motion for Stay in Bankruptcy
  - Motion for Publication  Motion for Execution (Rule 69, SCRPC)
  - Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions  
 Name of Court Reporter: \_\_\_\_\_
  - Other: \_\_\_\_\_

**JUDGE'S SECTION**

- Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_  
 Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

- Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

1. "The state violated applicant's rights guaranteed by the Sixth, Fifth, and Fourteenth amendments of the U.S. Constitution and South Carolina law."
2. "Petitioner's case presents an applied challenge. Petitioner challenges the guidelines enhancements that, based on fact finding by a judge alone, raised his sentence above the range legally mandated for sentence enhancement purposes, determined by reference to the jury verdict."
3. "That the statute for Burglary, first degree under 16-11-311(A)(2) as applied to him violated his rights protected by the ex post facto clause prohibited by the United States and the South Carolina Constitution."

The State submits this matter should be dismissed because the Court of Commons Pleas is not the proper Court to file a post-trial motion from a matter handled in the Court of General Sessions. The State respectfully requests this Court dismiss the Plaintiff's Petition for Re-sentencing pursuant to Rule 29(B) based on its improper filing in the Hampton County Court of Common Pleas. The State also asks this Court to dismiss this Petition filed in Hampton County because it includes a challenge to convictions from Allendale County.

WHEREFORE, the State asks this Court to grant this motion and deny and dismiss the Plaintiff's Petition for filing in the improper court.

[Signature on the following page.]

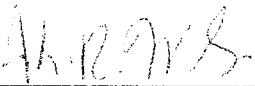
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON  
Assistant Attorney General

BY:   
Ashleigh R. Wilson

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737

ATTORNEYS FOR RESPONDENT

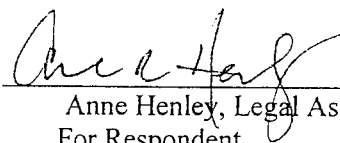
March 12, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	)	
	)	
	)	2012-CP-25-0201
	)	
PAUL BROWN, #263009	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Motion to Dismiss SCRCrim.P.29(B) Petition** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Paul Brown, #263009  
Turbeville Correctional Institution  
PO Box 252  
Turbeville, SC, 29162

DATED this 13th day of March, 2014

  
\_\_\_\_\_  
Anne Henley, Legal Assistant  
For Respondent

PCR 12-201

The Honorable Mylinda D. Nettles  
Hampton Clerk of Court  
P.O. Box 7  
Hampton, S.C. 29924

Exhibit (3)

RE: Paul Brown #263009 v. State of South Carolina

Dear Ms. Nettles:

Enclosed please find the original motion to "Alter or Amend" Petition for Re-sentencing Pursuant to Rule 59(c)(5) SCRPC, in the above-referenced case for filing in your office. Please send a stamped filed copy back. Thank you for your time and consideration in this matter.

Sincerely,

Paul Brown

Paul Brown #263009

Petitioner

Enclosure:

cc: Ashleigh R. Wilson

Assistant Attorney General

MYLINDA D. NETTLES  
CLERK OF COURT  
HAMPTON COUNTY, S.C.

2014 APR 25 PM 3:45

FILED

The Honorable Perry M. Buckner  
P.O. Drawer 470  
101 Hampton Street  
Walterboro, S.C. 29488

EXHIBIT (3)

RE: Paul Brown #263009 v. State of South Carolina

Dear Judge Buckner:

Enclosed please find a motion to "Alter or Amend" Petition for Re-sentencing Pursuant to Rule 59 (E) S.C.R.P. in the above-referenced case. Requesting reconsideration of the matters properly encompassed in the Petition Based on the merits. Moreover, the Petition for Re-sentencing Pursuant to Rule 29 (B) S.C.R. Crim.P. Based on "After-discovered evidence", was timely filed on June 6, 2012 with the Clerk, to be placed on the docket for General Sessions Court.

However, if Petitioner is unjustly denied by the Circuit Court order, Petitioner will timely Appeal as provided by the S.C. Appellate Court rules. Thank you for your time and consideration in this matter.

Sincerely,  
Paul Brown

Paul Brown #263009

Enclosure:  
cc: Ashleigh R. Wilson  
Assistant Attorney General

FILED  
2014 APR 25 PM 3:45  
BY \_\_\_\_\_  
PERRY M. BUCKNER  
CLERK OF COURT  
HAMPTON COUNTY, S.C.

Exhibit (2)

State of South Carolina  
County of Hampton  
Paul Brown #263009  
Petitioner  
VS  
ALAN Wilson, Attorney  
General for South Carolina  
Respondent

IN the Court of General Sessions  
for the Fourteenth Judicial Circuit  
Ind. No: 99-65-65-176, 304  
99-85-03-183, 184, 185, 186  
59(E) SCRPC, Motion to "Alter or Amend" Petition  
for Re-sentencing Pursuant to Rule 29(B) S.C.R. Crim.P;  
Based on "After-discovered evidence"

Now Comes Petitioner, pro-se, on A motion to Amend Petition for Re-sentencing Pursuant to Rules 59(E) SCRPC, and Rule 29(B) S.C.R. Crim.P; Based on "After-discovered evidence", that was timely filed by the Above referenced Petitioner on June 6, 2012 in the Court of General Sessions.

The Provisions of Rule 29(B) Place no limitation on A Post-trial motion for new trial Based on "After-discovered evidence, but do require that it be filed within A reasonable time After discovery of the evidence. Furthermore, Rule 59(E) SCRPC, the Application may be "Amended" to conform the Argument to the evidence presented.

• This Petition is Based on the following grounds:

1. Ineffective Assistance of trial counsel
2. Involuntary Guilty plea
3. Prosecutorial Misconduct

Pursuant to Plain error review, State and federal Appellate courts may only correct error not raised At trial if there is: (1) error, (2) that is Plain, and (3) that effects substantial rights, in which case Appellate court may exercise its discretion to notice error, but only if (4) error seriously affects fairness, integrity or Public reputation of judicial proceedings.

FILED  
MAY 25 PM 3:45  
CLERK OF COURT  
HAMPTON COUNTY, SC

Fed. Rules Cr. Proc. Rule 52(B) 18 U.S.C.A. See Also Rule 29(B) S.C.A. Crim. P.; or if Petitioner can show that a fundamental miscarriage of Justice would result from failure to hold such a hearing. See Mccleskey V. ZANT, 499 U.S. At 494, 111 S.Ct. At 1470; (1991).

### Argument And memorandum of LAW

Petitioner was denied effective Assistance of trial counsel, when counsel abandoned meritorious objections to the guidelines calculations in favor of an alternative calculation of the guidelines range. Strickland V. Washington, 466 U.S. 668, 104 S.Ct. 652, 80 L.Ed. 2d 674 (1984).

Petitioner also contends that the Sentence-Appeal waiver in his Plea Agreement should not be enforced and that his Sentence is unreasonable because the trial court applied a presumption of reasonableness to a within-guideline Sentence and failed to properly consider relevant mitigating factors. When there has been a guilty plea, Petitioner must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability he would not have pled guilty and would have insisted on going to trial. Hill V. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 99 L.Ed. 2d 803 (1985).

Petitioner argues in his second Allegation that his guilty pleas in both (Hampton and Allendale) was not voluntary because he was not informed of and did not understand every element of the offense. and because the factual basis was insufficient to prove every element of the offense. Petitioner did not raise this issue At trial or on direct Appeal, However, this review is for Plain error. See Puckett V. United States, 129 S.Ct. 1423, 1429 (2009). To be knowing and voluntary, A Plea must be entered with a full understanding of the charges and the consequences of the

Plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1769, 23 L.ed.2d 274 (1969); Dover v. State, 364 S.C. 433, 405 S.E.2d 391 (1991) (Tr.p. 1 Lines 9-15); (Tr.p. 20 Lines 1-7); (Tr.p. 21 Lines 7-17); (Tr.p. 22 Lines 15-19); (Tr.p. 33-34). IN determining guilty Plea issues, it is proper to consider the guilty plea transcript as well as evidence at the hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Petitioner was not informed of and did not understand every element regarding his prior Burglaries under 16-11-311(A)(2), and thus, the absence of a beyond-a-reasonable-doubt finding will require reduction of the enhanced sentence. Apprendi v. New Jersey, 530 U.S. 466 (2000); United States v. Cotton, 535 U.S. 625, 631, 632 (2002); Johnson v. United States, 520 U.S. 461, 467 (1997); United States v. Doe, (8th Cir. 2002); United States v. Yu, 285 F.3d. 192 (8th Cir. 2002). The court did not inform Petitioner of this element of the offense. see United States v. Johnson, 381 F.3d. 506, 508 (5th Cir. 2004); see also United States v. Hooker, 999 F.2d. 67, 74 (5th Cir. 1993).

By not informing Petitioner of this element of the offense, the court erred by failing to inform Petitioner of, and ensuring that he understood, the nature of the charge, in violation of federal Rule of Criminal procedure 11(B)(1)(B); Additionally, the court erred in accepting Petitioner's guilty plea because there was an insufficient factual basis to support Petitioner's guilty plea as to this element of the offense. see fed. R. crim. P. 11(B)(3); United States v. Adams, 961 F.2d. 505, 508 (5th Cir. 1992). The factual basis cannot be implied from the fact that the defendant entered a plea, but must appear on the face of the record and must be precise enough and sufficiently specific to demonstrate that the accused committed the charged criminal offense. IN light

ANALYSIS, A new trial may be warranted if the prosecutor withholds material evidence favorable to the defendant, and there is a "reasonable probability" that with the favorable evidence the defendant would have obtained a different result at trial. see Kyles, 514 U.S. At 432-33. Petitioner further contends that the Brady test applies when evidence that is favorable to the defense is in the government's hands at the time of trial and is later discovered by the defense. see Kyles, 514 U.S. At 431, 432-33.

This standard applies here, Petitioner reiterates the fact that at sentencing when the solicitor introduced certified records of his earlier prior convictions used as a "sentencing factor" to be found by a preponderance of the evidence. The prosecutor's inactions constituted misconduct which denied him a fair trial. State v. King, 222 S.C. 108, 71 S.E. 2d 793 (1952). Hence, Petitioner argues, that "there is a reasonable probability that, but for the error, the result of the proceeding would have been different." Moreover, defendant need only show that "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine ~~the~~ confidence in the verdict." Kyles 514 U.S. At 434.

Additionally, these errors are clear or obvious, further these errors affected Petitioner's substantial rights. The error seriously affected the fairness, integrity, or public reputation of judicial proceedings. IN light of Rule 62 (B), for the court to deny Petitioner an evidentiary hearing from his 1999 conviction to notice a forfeited error will result in a miscarriage of Justice. See

(Tr.P.15-16); (Tr.P.32 Lines 9-15) Trial Counsel never objected to the certified records that revealed Petitioner had two or more prior convictions for burglary further, Petitioner urged that the prosecutor's inaction constituted misconduct which denied him a fair trial. State v. King, 222 S.C. 103, 71 S.E.2d 793 (1952).

This evidence, Petitioner argues, "showed that there is a reasonable probability that, but for the error, he would not have entered the plea. In addition, the trial court erred by enhancing his sentence by the preponderance of the evidence, rather than beyond a reasonable doubt. In fact, the error was (1) plain, and (2) affected Petitioner's substantial rights.

Wherefore, Petitioner moves this court for a new sentencing trial on the basis of "after discovered evidence." Hence, for determining whether "newly-discovered" evidence warrants a new trial, under this test a new trial may be granted if five factors are satisfied by demonstrating that the evidence:

1. would probably change the result if a new trial is had;
  2. has been discovered since the trial.
  3. could not have been discovered before trial;
  4. is material to the issue of guilt or innocence;
- And

5. is not merely cumulative or impeaching.

Petitioner argues that the proper test to be applied in this case is the one originally set out in Brady v. Maryland, 373 U.S. 83 (1963), and later clarified in United States v. Agurs, 427 U.S. 97 (1976), see also United States v. Bagley, 473 U.S. 667 (1985), and Kyles v. Whitley, 514 U.S. 419 (1995). Under Brady,

of the record as a whole. And Johnson, And Hooker, these errors are clear or obvious, further, these errors affected Petitioner's substantial rights, see United States v. Dominguez Benitez, 542 U.S. 74, 80-83 (2004); And there is a reasonable probability that, but for the error, he would not have entered the plea. The prejudice to the Petitioner in this case is clear... That the error must have been (1) prejudicial, and (2) it must have affected the outcome of the trial court's proceedings" see United States v. Olano, 509 U.S. 725 (1993). See also Marshall v. Lonberger, 459 U.S. 422, 431 (1982) "A guilty plea... cannot be truly voluntary if the defendant has such an incomplete understanding of the charge that his plea cannot stand as an intelligent admission of guilt." (quoting Henderson v. Morgan, 426 U.S. 632, 645 n.13 (1975)).

Petitioner has made a prima facie showing that a new trial is warranted, on the basis of the newly discovered evidence, that the error affected his "substantial rights" and that the error is the type of error that "seriously affects the fairness, integrity, or public reputation of judicial proceedings."

Petitioner argues in his third allegation a claim of prosecutorial misconduct. In this post-trial motion Petitioner alleges the following facts. In 1999 Petitioner pled guilty on December 6th, And 8th, to all charges stemming from both (Hampton And Allendale Counties), and was sentenced to thirty (30) years concurrent on all counts. (Tr. p. 1 lines 9-15); (Tr. 20 lines 1-9); (Tr. 21 lines 7-17); (Tr. 22 lines 15-19); (Tr. 23-34). At sentencing the solicitor introduced certified records of Petitioner's earlier prior convictions used as a "sentencing factor" to be found by the preponderance of the evidence.

Jones v. United States, 529 U.S. 373, 389 (1999); United States v. Olano, 507 U.S. 725, 731 (1993); United States v. Cotton, 535 U.S. 625, 631-632 (2002); Johnson v. United States, 520 U.S. 461, 467 (1997); United States v. Young, 470 U.S. 1, 15 (1985).

### CONCLUSION

Based upon all of the foregoing reasons, this court should grant Petitioner an evidentiary hearing and to vacate sentence for re-sentencing to correct a gross miscarriage of justice.

Petitioner advises the court that if he is aggrieved by the denial of the circuit court order, he shall file a notice of intent to appeal within thirty (30) days from the receipt of the order to secure the appropriate appellate review. Pursuant to South Carolina Appellate Court Rules 203(B)(1), and 227, (SCACR), for appropriate procedures after notice has been timely filed.

Respectfully Submitted,  
Paul Brown

Paul Brown #263009 Petitioner  
Turbeville, C.I. SB-291  
P.O. Box 252  
Turbeville, S.C. 29162

Sworn To And Subscribed before me  
This 23<sup>rd</sup> Day of April 2014  
Paul H. Hargis

Notary Public for South Carolina

My Commission Expires: 4-27-2016

State of South Carolina  
County of Hampton  
Paul Brown #263009  
Petitioner

VS

Alan Wilson, Attorney  
General for South Carolina  
Respondent

IN the Court of General Sessions  
for the fourteenth Judicial Circuit

Ind. NO: 99-GS-25-170, 304  
99-GS-03-183, 184, 185, 186

Certificate of Service by mail

I, Paul Brown, hereby certify that a true copy of the foregoing  
Above-styled Rule 59(E) SCRPC, motion to "alter or amend" Petition  
for Re-sentencing Pursuant to Rule 29(B) S.C.R. Crim.P; Based on  
"After-discovered evidence", has been deposited with the proper  
S.C.D.C. official for mailing through the U.S. Postage prepaid, to the  
following: Asheigh R. Wilson

Assistant Attorney General  
Post office Box 11549  
Columbia, S.C. 29211

Respectfully Submitted,  
/s/ Paul Brown

Paul Brown #263009 Petitioner  
Turbeville C.J. SB-291  
P.O. Box 252  
Turbeville, S.C. 29162

~~CA - Sworn to and subscribed before me~~

~~this 23<sup>rd</sup> day of April 2014~~

~~*Emily Huff*  
Notary Public for South Carolina~~

~~My commission expires: 4-27-2016~~

EXHIBIT (4)

STATE OF SOUTH CAROLINA  
COUNTY OF HAMPTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP2500201

Paul Brown	Alan Wilson
------------	-------------

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: CLERK OF COURT	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
------------------------------	---

DISPOSITION TYPE (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.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- 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; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk: ORDER GRANTING STATES MOTION TO DISMISS FILED 05-06-2014 SIGNED BY JUDGE BUCKNER

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled: (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Paul Inmate #263009 Brown P.O. Box 252 Turbeville, SC  
29162-0252

Ashleigh Rayanna Wilson PO Box 11549 Columbia, SC  
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*My Linda A Nettles*

Court Reporter

My Linda Nettles - Clerk of Court

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

STATE OF SOUTH CAROLINA )  
COUNTY OF HAMPTON )  
PAUL BROWN, #263009 )  
Plaintiff, )  
v. )  
STATE OF SOUTH CAROLINA, )  
Defendant. )

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IN THE COURT OF COMMON PLEAS  
Civil Action No. 2012-CP-25-201

2014 MAY -3 AM 11:52  
FILED  
CLERK OF COURT  
HAMPTON COUNTY, S.C.

**ORDER GRANTING STATE'S  
MOTION TO DISMISS**

This matter comes before the Court by way of a "Petition for Re-Sentencing" pursuant to SCRCrim. P. 29(B) and "Memorandum in Support of Petition," both filed by the Plaintiff on June 6, 2012. The State moved to dismiss the Petition on the grounds that it was improperly filed in the Hampton County Court of Common Pleas.

The Plaintiff filed the post-trial Petition pursuant to SCRCrim. P. 29(B) in the Hampton County Court of Common Pleas. The Clerk of Court then gave the matter a common pleas docket number.

#1  
PMB

In its Petition, the Plaintiff challenges two sets of guilty pleas entered in 1999. The Plaintiff was indicted in May 1999 and August 1999 for burglary, first degree (1999-GS-25-0304), and criminal sexual conduct, first degree (1999-GS-25-0170)<sup>1</sup>. On December 6, 1999, the Plaintiff pled guilty to both indictments and was sentenced to thirty years for each indictment, sentences to run concurrently.


The Court finds that this matter is dismissed for improper filing in the Hampton County Court of Common Pleas. The Court finds that the Plaintiff's post-trial motion pursuant to SCRCrim.

<sup>1</sup> In its Petition, Plaintiff also challenges three indictments from a guilty pleas in Allendale County (1999-GS-03-183, -184, and -185). Because these are Allendale indictments, any challenges to those indictments should have been filed in Allendale.

P. 29(B) challenges a criminal matter resolved in the Hampton County Court of General Sessions and should therefore have been filed by the Plaintiff in that Court.

IT IS THEREFORE ORDERED that The State of South Carolina's Motion to Dismiss is hereby GRANTED.

AND IT IS SO ORDERED.

  
Perry M. Bickner  
Presiding Judge, Fourteenth Judicial Circuit

#2

Walterboro, South Carolina

April 23, 2014

STATE OF SOUTH CAROLINA  
COUNTY OF HAMPTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP2500201

Paul Brown	Alan Wilson
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: CLERK OF COURT	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (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.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- 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.

**S ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk: ORDER GRANTING STATES MOTION TO DISMISS FILED 05-06-2014 SIGNED BY JUDGE BUCKNER

RECEIVED  
 CLERK OF COURT  
 HAMPTON COUNTY  
 SOUTH CAROLINA  
 MAY 14 2014

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled: (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

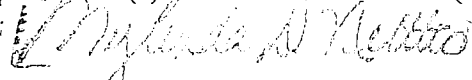
This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Paul Inmate #263009 Brown P.O. Box 252 Turbeville, SC  
29162-0252

Ashleigh Rayanna Wilson PO Box 11549 Columbia, SC  
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Mylinda Nettles - Clerk of Court

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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ALAN WILSON  
ATTORNEY GENERAL

April 30, 2014

The Honorable Mylinda Nettles  
Hampton County Clerk of Court  
P.O. Box 7  
Hampton, SC 29924

**Re: Paul Brown v. State, 2012-CP-25-0201**

Dear Ms. Nettles:

Enclosed please find the original Order Granting the State's Motion to Dismiss in the above referenced case for filing in your office. Please date stamp and return to us the enclosed copy for our file.

Sincerely,

Ashleigh R. Wilson  
Assistant Attorney General

Cc: Paul Brown, #263009

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HAMPTON )  
 )  
 PAUL BROWN, #263009 )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Defendant. )

---

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-25-201

**ORDER GRANTING STATE'S  
 MOTION TO DISMISS**

FILED  
 2014 MAY 13 AM 11:52  
 CLERK OF COURT  
 HAMPTON COUNTY, S.C.

This matter comes before the Court by way of a "Petition for Re-Sentencing" pursuant to SCRCrim. P. 29(B) and "Memorandum in Support of Petition," both filed by the Plaintiff on June 6, 2012. The State moved to dismiss the Petition on the grounds that it was improperly filed in the Hampton County Court of Common Pleas.

The Plaintiff filed the post-trial Petition pursuant to SCRCrim. P. 29(B) in the Hampton County Court of Common Pleas. The Clerk of Court then gave the matter a common pleas docket number.

#1  
 PWB  
 In its Petition, the Plaintiff challenges two sets of guilty pleas entered in 1999. The Plaintiff was indicted in May 1999 and August 1999 for burglary, first degree (1999-GS-25-0304), and criminal sexual conduct, first degree (1999-GS-25-0170)<sup>1</sup>. On December 6, 1999, the Plaintiff pled guilty to both indictments and was sentenced to thirty years for each indictment, sentences to run concurrently.

The Court finds that this matter is dismissed for improper filing in the Hampton County Court of Common Pleas. The Court finds that the Plaintiff's post-trial motion pursuant to SCRCrim.


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<sup>1</sup> In its Petition, Plaintiff also challenges three indictments from a guilty pleas in Allendale County (1999-GS-03-183, -184, and -185). Because these are Allendale indictments, any challenges to those indictments should have been filed in Allendale.

P. 29(B) challenges a criminal matter resolved in the Hampton County Court of General Sessions and should therefore have been filed by the Plaintiff in that Court.

IT IS THEREFORE ORDERED that The State of South Carolina's Motion to Dismiss is hereby GRANTED.

AND IT IS SO ORDERED.

  
Perry M. Backner  
Presiding Judge, Fourteenth Judicial Circuit

#2

Walterboro, South Carolina

April 23, 2014

EXHIBIT (1)

1-Copy

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA

2012-CP-25-201

State of South Carolina ]  
County of Hampton ]  
Paul Brown, 263009 ]  
Petitioner ]  
Vs. ]  
Allan Wilson, Attorney ]  
General for South Carolina ]  
Respondent ]

In the Court of General Sessions  
for the Fourteenth Judicial Circuit  
Ind. No: 99-GS-25-170,304  
99-GS-03-183,184,185,186

Petition for Re-sentencing  
Rule 29(B) S.C.R.Crim.P.; Rule 65(F)  
(1) SCRCP;  
Rule 237 SCACR; Rule 32(C) fed.R.  
Crim.P.  
Rule 52(A) SCRCP.

Please take notice that, upon the annexed affirmation of Petitioner, and all the prior proceedings, the undersigned Petitioner, Pro-se, will move this court of General Sessions; Hampton County during the March, June term at the opening of court on that day or as soon thereafter as counsel can be heard, for an order vacating the sentence imposed by the court on December 6<sup>th</sup>, and 8<sup>th</sup>, 1999, by Judge Smoak, and Re-sentence defendant Pursuant to the provisions of Rule 29(B) S.C.R.Crim.P.; based on, "After-discovered evidence." See also South Carolina Rules, Rule 65(F) (1) SCRCP; Rule 237 SCACR; Rule 32(C) (1) fed.R.Crim.P., Rule 52(A) SCRCP; and granting such other relief as the court may deem proper.

This Petition is based on the following grounds:

1. The state violated applicant's rights guaranteed by the sixth, fifth, and fourteenth amendment of the United States Constitutions and South Carolina law.
2. Petitioner's case presents an as applied challenge that, Petitioner challenges the guidelines enhancement that, based on fact-finding by a judge alone, raised his sentence above the range legally mandated for sentence enhancement purposes, determined by reference to the jury verdict.
3. That the statute for Burglary, first-degree under 16-11-311(A) (2) as applied to him violated his rights protected by the ex-post-facto clause prohibited by the United States and the South Carolina Constitution.

This Petition is based upon the pleadings filed in this case; the rules of the court; and any other matters to be presented to this court.

Please also accept this as an application for appointment of counsel, in this matter Pursuant to S.C. Code 17-3-10 to 17-3-80. See also Powell V. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.ed. 158 (1932); Johnson V. Zerbst, 304 U.S. 458, 462, 58 S.Ct. 1019, 1022, 82 L.ed. 1461 (1938).

FILED  
2012 JUN -6 AM 10:54  
HYLINDA D. NETTLES  
CLERK OF COURT, S.C.  
HAMPTON COUNTY, S.C.  
BY 2012-07-09-255-201

EXHIBIT (1)

In accordance with rule 29(B), the Petitioner is not submitting a memorandum of law in support of this Petition/motion because a full explanation of the Petition is contained herein and a memorandum would serve no useful purpose.

Respectfully Submitted,

s/ Paul Brown  
Paul Brown, Petitioner  
Turbeville C.I. SB-291  
P.O. Box 252  
Turbeville, S.C. 29162

Sworn to and subscribed before me

This 16<sup>th</sup> day of May, 2012

Emily Holt  
Notary Public of South Carolina

My Commission expires: 4-27-2016

Exhibit A

2012-CP-25-201

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA

State of South Carolina  
County of Hampton  
  
Paul Brown, 263009  
Petitioner  
  
Vs.  
Allan Wilson, Attorney  
General for South Carolina  
Respondent

In the Court of General Sessions  
for the Fourteenth Judicial Circuit  
Ind. No: 99-GS-25-170,304  
99-GS-03-183,184,185,186

Affirmation  
Hampton County

FILED  
JUN -6 AM 10:54  
MYLINDA D. NETTLES  
CLERK OF COURT  
HAMPTON COUNTY, S.C.

Petitioner Paul Brown; hereby affirms, under Penalty of Perjury, that the following statements are true.

1. That after a plea of guilty for criminal sexual conduct, (CSC) first-degree, (99-GS-25-170); And burglary, first-degree, (99-G5-25-304); in Hampton County on December 6, 1999, before the Honorable Gerald C. Smoak. The court sentenced Petitioner to imprisonment of thirty (30) years, concurrent on both counts. Subsequently, on December 8, 1999, Petitioner waived appearance in Allendale County and again appeared before Judge Smoak and pled guilty for attempted, (CSC), second-degree, (99-G5-03-183); two counts of kidnapping, (99-G5-03-184,185); and Burglary, first-degree, (99-G5-03-186). Petitioner received sentences of thirty (30) years for burglary first, twenty (20) years for attempted (CSC), second, and two ten (10) year sentences of thirty (30) years for Burglary first, twenty (20) years for attempted (CSC), second, and two ten (10) year sentences in Hampton County with full credit for all time Petitioner remained confined since April 27, 1999.
2. That Petitioner is presently incarcerated at the Turbeville Correctional Institution.
3. That the Judge found those facts by a preponderance of the evidence, rather than beyond a reasonable doubt standard and enhanced Petitioner's sentence.
4. That Petitioner seeks to be Re-sentenced under the system set forth in today's opinions.
5. That Petitioner is filing this Petition to correct the sentence in accordance with both the sixth amendment holding and the remedial interpretation of the sentencing act on direct review.
6. That for the above-stated reasons, Petitioner believes that (he) is eligible to be Re-sentenced Pursuant to the

Exhibit (1)

provisions of Rule 29(B) S.C.R. Crim. P; based on, "after-discovered evidence". See also South Carolina Rules; Rule 65 (F) (I) SCRCF; Rule 237 SCACR; Rule 32(C) (I) fed.R.Crim.P; Rule 52(A) SCRCF; and Petitioner thus, moves for such relief.

- 7. That after review of the pleadings and the file, of the Hampton County clerk of court regarding the subjects convictions and the applicants records from the South Carolina Department of corrections; the petition to Re-sentence; the guilty plea transcripts, and the (PCR), post-conviction, transcripts; Pursuant to S.C. Code 24-27-200 (supp.1998).
- 8. That Petitioner is filing this Petition now to protect his liberty interest of the 6<sup>th</sup>, 5<sup>th</sup>, and 14<sup>th</sup> amendment of the U.S. constitution under the provisions of rule 29(B) S.C.R.Crim.P; The Provisions of Rule 29(B) place no limitation=s on a motion for new trial based on after-discovered evidence, but do require that it be filed within a reasonable time after discovery of the evidence.

Nevertheless, defendant requests the opportunity to supplement this Petition and provide the court with a memorandum of law in support of the Petition to Re-sentence.

Wherefore, petitioner respectfully requests that the court grant his Petition to Re-sentence.

Respectfully Submitted,

S/ Paul Brown

Paul Brown, Petitioner  
Turbeville C.I. SB-291  
P.O. Box 252  
Turbeville, S.C. 29162

Sworn to and subscribed before me  
This 16<sup>th</sup> day of May, 2012

Ernie Holz  
Notary Public of South Carolina

My Commission expires: 4-27-2016

EXHIBIT (1)

2012-CP-25-201

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA

State of South Carolina  
County of Hampton  
Paul Brown, 263009  
Petitioner  
Vs.  
Allan Wilson, Attorney  
General for South Carolina  
Respondent

In the court of General Sessions  
for the fourteenth Judicial Circuit  
Ind. No: 99-GS-25-170, 304  
99-GS-03-183, 184, 185, 186  
Affidavit of Service  
Hampton County

FILED  
2012 JUN -6 AM 10:54  
MYLINDA D. HESTLES  
CLERK OF COURT  
HAMPTON COUNTY S.C.  
BY

Paul Brown, being duly sworn, deposes and says that motion is supported by affidavits and memorandum of Law in support of Re-sentencing based on "after-discovered evidence". This evidence which existed at the time of trial, but of which the Petitioner was "excusably ignorant".

The Petitioner submits declaring first, "that he did not know of the existence of such evidence. At the time of the trial and that he used due diligence to discover the evidence or that he could not have discovered it by the exercise of due diligence. Second, Petitioner believes that he has carried his burden of proof as to each element of five (5) part test. Third, whether to grant the motion is placed within the discretion of the trial Judge, and he or she has the obligation to resolve any conflicts in the evidence. And, as a corollary matter, the trial court's decision will not be reversed on appeal unless the Petitioner can demonstrate that the trial Judge abused its discretion.

Respectfully Submitted,

s/ Paul Brown  
Paul Brown, Petitioner  
Turbeville C.I. SB-291  
P.O. Box 252  
Turbeville, S.C. 29162

Sworn to and subscribed before me

This 16<sup>th</sup> day of May, 2012

Ernie Wade  
Notary Public of South Carolina

My Commission expires: 4-27-2016

Exhibit (1)

2012-CP-25-26

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF SOUTH CAROLINA

State of South Carolina County of <u>Hampton</u>  Paul Brown, 263009 Petitioner  Vs. Allan Wilson, Attorney General for South Carolina Respondent	] In the court of General Sessions ] for the fourteenth Judicial Circuit ] Ind. No: 99-GS-25-170, 304 ] 99-GS-03-183, 184, 185, 186  ] Certificate of Service ] Rule 29(B) S.C.R. Crim. P.; Rule 65(F) (I) SCR ] CP; Rule 23 SCACR; Rule 32(C) (I) fed. R. Cri ] m. P; Rule 52 (A) SCRCP;
--	---

Petitioner, Paul Brown, pro-se does hereby certify that service of this application of Petition to Re-sentence, affirmation, memorandum of law in support of petition to Re-sentence, affidavits of service, and certificate of service in the above-captioned action was sent directly to the clerk of court.

To ensure that the Petition is filed properly and that a motion hearing will be set in accordance with the rules and procedures of the court system. Also, copies were made and was served upon all parties in this case, by placing same in the United States mail, first class postage prepaid, at the below listed addresses as follows:

1. Allan Wilson  
General for South Carolina  
P.O. Box 11549  
Columbia, SC 29211
2. Honorable Perry M. Buckner  
Chief Administrative Judge  
for the fourteenth Judicial Circuit  
101 Hampton Street  
Post Office Drawer 470  
Walterboro, S.C. 29488
3. Mylinda D. Nettles  
Clerk of Court  
P.O. Box 7  
Hampton, S.C. 29924

4. Honorable Larry W. Propes,  
Clerk, U.S. District Court  
District of South Carolina  
901 Richland Street  
Columbia, South Carolina 29201

**FILED**  
 2012 JUN -6 AM 10:55  
 MYLINDA D. NETTLES  
 CLERK OF COURT  
 HAMPTON COUNTY, S.C.  
 BY \_\_\_\_\_

EXhibit (A)

Respectfully Submitted,

s/ Paul Brown

Paul Brown, Petitioner  
Turbeville C.I. SB-185  
P.O. Box 252  
Turbeville, S.C. 29162

Sworn to and subscribed before me

This 16<sup>th</sup> day of May, 2012

Ernie Stone  
Notary Public of South Carolina

My Commission expires: 4-27-2016

EXHIBIT (D)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA

2012-CP-25-201

State of South Carolina	]	In the court of General Sessions
County of <u>Hampton</u>	]	for the fourteenth Judicial Circuit
Paul Brown, 263009	]	Ind. No:99-GS-25-170,304
Petitioner	]	99-GS-03-183,184,185,186
Vs.	]	
Allen Wilson, Attorney	]	<u>Motion and Affidavit</u>
General for South Carolina	]	<u>to proceed in form A</u>
Respondent	]	<u>Pauperis</u>

I, Paul Brown, 263009, being duly sworn, state that I am the Petitioner and that I do not have the funds available to pay the cost of filing and service in the present matter. I hereby request that the Petition for Re-sentencing be filed and service made without cost. See In RE: Procedures in criminal and civil actions filed by prisoner Pro-se Litigants, 3:07-MC-5014-JFA (D.S.C.Sept.18, 2007). Attached at the back of this form the Petitioner has submitted an application to proceed without prepayment of fees and affidavit (form A0240) and a financial certificate, which are construed as a motion to proceed in form A pauperis. See 28 U.S.C.1915 (A) (I),2.

Therefore, this case is in proper form.

Respectfully Submitted,

S/ Paul Brown

Paul Brown, Petitioner  
Turbeville C.I. SB-296  
P.O. Box 252  
Turbeville, S.C. 2916

Sworn to and subscribed before me

This 16<sup>th</sup> day of May, 2012

Emily D. Hertz  
Notary Public of South Carolina

My Commission expires: 4-27-2016

2012 JUN -6 AM 10:55  
HAYLINDA D. NETTLES  
CLERK OF COURT  
HAMPTON COUNTY, S.C.

FILED

Exhibit (a)



ALAN WILSON  
ATTORNEY GENERAL

March 13, 2014

The Honorable Perry M. Buckner  
PO Drawer 470  
101 Hampton Street  
Walterboro, SC 29488

**RE: Paul Brown, # 263009 v. State of South Carolina**  
**2012-CP-25-0201**

Dear Judge Buckner:

Enclosed please find a **Proposed Order Granting State's Motion to Dismiss** in the above-referenced case for your approval and signature. Thank you for your time and consideration in this matter.

Sincerely,

Ashleigh R. Wilson  
Assistant Attorney General

ARW/arh  
Enclosure

cc: Paul Brown, # 263009

Exhibit  
(2)



ALAN WILSON  
ATTORNEY GENERAL

March 13, 2014

The Honorable Mylinda D. Nettles  
Hampton Clerk of Court  
PO Box 7  
Hampton, SC 29924

**Re: Paul Brown, #263009 v. State of South Carolina**  
**2012-CP-25-0201**

Dear Ms. Nettles:

Enclosed please find the original **Motion to Dismiss SCRCrim. P.29(B) Petition** of the Respondent in the above-captioned case for filing in your office.

Sincerely,

Ashleigh R. Wilson  
Assistant Attorney General

ARW/arh

**Enclosures**

Petition  
SCDC Records  
Hampton records

cc: Paul Brown, #263009