STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

John C. Hayes, III, Circuit Court Judge

CLIFTON D. LYLES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2011-205286

SUPPLEMENTAL APPENDIX

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INDEX

STATE OF SOUTH CAROLINA

COUNTY OF YORK

COURT OF GENERAL SESSIONS
2002-GS-46-2950, 2951

STATE OF SOUTH CAROLINA)
)
VS.) TRANSCRIPT OF RECORD
)
CLIFTON LYLES)

July 26, 2005
York, South Carolina

B E F O R E:

HONORABLE JOHN C. HAYES, III

A P P E A R A N C E S:

Mr. Kevin Brackett, Assistant Solicitor
For the State

Mr. James Shadd, Attorney at Law
For the Defendant

Michael C. Watkins
Circuit Court Reporter

MR. BRACKETT: Your Honor, this is in reference to 2002-GS-46-2950 and 2951, trafficking and possession of crack cocaine with intent to distribute within proximity of a school. Mr. Clifton Donnell Lyles is charged in these indictments and he was put to the bar and tried in April of 2004 in front of the Honorable Roger Couch. It's my understanding -- I was not the prosecutor in that case, Tesa Weaver was the prosecutor, she's no longer with our office -- it's my understanding that midway through the trial Mr. Lyles absented himself from court -- from the trial proceedings and a conviction was rendered in these cases and Mr. Lyles was sentenced in his absence, a sealed sentence by Judge Couch and since that time Mr. Lyles has been apprehended in North Carolina and extradited back to South Carolina to await receipt of his sentence.

THE COURT: Mr. Shadd, you represent him?

MR. SHADD: Yes, sir.

THE COURT: Did you represent him at trial?

MR. SHADD: I did, Your Honor.

THE COURT: I have Judge Couch's sealed sentence which was sealed 4/8/04 and I will open it at this time. All right. It appears that Mr. Lyles was found guilty of trafficking crack cocaine. Judge Couch sentenced him to 30 years and a fine of $50,000. He also had substance abuse counseling, random drug and alcohol testing, but, of

course, that -- he's not going to be on probation so -- and he would be given credit for any time that he has served.

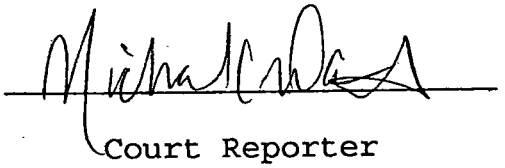
MR. BRACKETT: Thank you, Your Honor.

(END OF THE HEARING.)

I, the undersigned Michael C. Watkins, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurrate, and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 26th day of July, 2005.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 7th, 2005.



Court Reporter

STATE OF SOUTH CAROLINA)
)
County of York)

In the Court of Common Pleas

09-CP-46-1759

Clifton Donell Lyles)
Full name and prison number, if any, of applicant.)
)
v.)
)
State of South Carolina; Warden, LCI)
Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention LEE Correctional Institute

2. Name and location of Court which imposed sentence York, York County Court house Court of General Sessions

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
   (a) 2002-GS-46-2950 Trafficking Crack Cocaine 3rd
   (b)
   (c)

4. The date upon which sentence was imposed and the terms of the sentence:
   (a) April 8th 2004 - 30 Years and $50,000 fine.
   (b)
   (c)

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5. Check whether a finding of guilty was made

   (a) after a plea of guilty _____

   (b) after a plea of not guilty V

   (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes

7. If you answered "yes" to (6), list

   (a) the name of each Court to which you appealed:

   i. South Caroline Court of appeals

   ii. South Caroline Supreme Court

   iii. United States District Court

   (b) the result in each such Court to which you appealed:

   i. Granted appellate counsel's Anders brief

   ii. Declined to review applicants certiorari

   iii. Pending - Held in abeyance until I finish PCR.

   (c) the date of each such result:

   i. April 11th, 2008

   ii. February 19th, 2009

   iii. _____

   (d) if known, citations of any written opinion or orders entered pursuant to such results:

   i. unpublished

   ii. _____

   iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

   (a) _____

   (b) _____

   (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

   (a) Ineffective assistance of counsel - see Attachment

   (b) _____

   (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)
(a) See attachment

(b)

(c)

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

See question 7 of this application

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)

(d) any other petitions, motions or applications in this or any other Court?

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i.

ii.

iii.

iv.

(b) the name and location of the Court in which each was filed:

i.

ii.

iii.

iv.

(c) the disposition thereof:

i.

ii.

iii.

iv.

8

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? _____

14. If you answered "yes" to (13), identify:
(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

yes

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. James Shedd III, 1615 Barnwell Street, P.O Box 1431, Columbia, SC 29202

ii. "

iii. Eleanor Cleary Duffy, Appellate Defense, Columbia, SC. 29202

(b) the proceedings at which each such attorney represented you:

i. Trial

ii. Sentencing

iii. Direct Appeal

18. State clearly the relief you seek in filing this application.

Sentence vacated

19. Are you now under sentence from any other court that you have not challenged?

No

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STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF York)

I, Clifton Donell Lyles, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Clifton Lyles

Sworn to and subscribed before me
This 15 day of April, 2009

Debra Sims L.S.

Notary Public for South Carolina
My Commission Expires 11-4-2015

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Clifton Donell Lyles, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Clifton Lyles
Applicant

Sworn to and subscribed before me
This 15 day of April, 2009

Debra Sims L.S.

Notary Public for South Carolina
My Commission Expires: 11-4-2015

Attachment Table of Contents

Table of Authorities

Statement of the Case

Applicant was indicted by the York County grand jury for the offense of trafficking in crack cocaine. ROA. p. 423. His case was called to trial on April 7, 2004 before the Honorable Roger L. Couch and a jury. James Shadd, III represented Applicant. The solicitors were Teresa Weaver and Lisa Collins.

On April 8, 2004 the jury found applicant guilty of trafficking in ten grams or more, but less than twenty-eight grams, of crack cocaine. ROA p. 409, Lines 3-9.

The sentencing hearing was held on July 26, 2005.[1] Applicant was sentenced to thirty years imprisonment at that time.

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[1] Applicant was present the first day of trial when part of the suppression hearings was held, but was tried in his absence during the second day - the remainder of the trial.

[2] The Honorable John C. Hayes, III read Judge Couch's sentence.

Statement of Issues on Appeal

(A) Whether Trial counsel was ineffective for failing to request for the Trial Judge to make a ruling concerning the hearing to Reveal the confidential informants' identity?

(B) Whether Trial counsel was ineffective for failing to object to the Trial Judges Ruling, Limiting his questioning of the State's witnesses concerning the Confidential informant?

(C) Whether Trial counsel was ineffective for failing to seek a hearing concerning Rule 3109 of the 4th Amendment Knock & Announcement Clause?

(D) Whether Trial counsel was ineffective for failing to object to Exhibits #14 and #15 being put in as evidence, being that the State failed to present a complete Chain of Custody?

(E) Weither Trial counsel was ineffective for failing to request a Brady hearing, due to Solicitor Weaver failing to turn over the evidence from the Control buy?

Ground (I): Abandonment of issues:

(A) Confidential Informant: Applicant avers that Trial counsel failed to compel a ruling from the Trial Judge concerning a Motion in Limine to reveal the Confidential Informant's identity, thereby denying applicant the right to challenge this issue on Direct appeal review, due to it not being properly preserved for Appellate review.

Relevant Facts

After the initial hearing on this issue, the Trial court did not make a ruling. Instead, it took the matter under advisement pending Applicant providing some evidence to support his allegation that the Confidential Informant may have assisted in the execution of the search warrant. (App. 75-77) At no point during the rest of Applicants' Trial does Counsel request a ruling from the court on this matter. Thus the issue here was never ruled upon by the Trial court. Counsel Abandoned the issue.

Discussion

Pursuant to State v. Diamond, 312 SE2d 550 (S.C. 1984) (Evidence of entrapment, misidentification, intent or knowledge is available only to persons who actively participate in a transaction.) which is clearly the case in applicants situation in that (1) Petitioner is avering that he was a victim of entrapment; (2) that the informant was an active participant in the Transaction. (App. 73-75) thereby clearly making him available to Applicant.

So, had Trial counsel re-raised this issue to the Trial Judge and acquired a ruling, then this issue would have been preserved for appellate review. which would have come out differently being that the

appeals Court could have reversed applicant's conviction on grounds this his 6th Amendment right to confrontation was violated. so but for counsel's ineffectiveness, applicants' trial and appeal could have come out differently.

Conclusion

Applicant's application for (P.C.R) Post-conviction Relief should be granted.

(B) Right to Confrontation: Applicant Avers that upon trial counsel questioning officer Ligon during the suppression hearing on the search warrant, He asked "Who did you receive this information from," solicitor Weaver objected and stated, "He's not entitled to know any information about any informant," inwhich the trial Judge sustained without any objection or argument from defense counsel, thereby denying applicants right to have this issue preserved for Appellate review. (App. 48)

Discussion

Applicant avers that, since trial counsel was not allowed to question officer Ligon concerning the confidential informant, it was a direct violation of his 6th Amendment "due process rights" to confrontation protected by the united States constitution.

Being that police officers wired a confidential informant with a Tape recorder, and sent this individual into Applicants' residence, is clearly relevant to applicants claim that the drugs was planted. And for the courts to not allow defense counsel to fully question officer Ligon Concerning this individual seriously hampered applicants' defense.

And to further bolster the need for this line of questioning, Petitioner contends that (3) three individuals showed up on the scene of the search who applicant believes to consist of the confidential informant. (App. 255) Applicant contends that upon the officers first showing up at the residence, they were unable to locate any drugs. But after these three individuals showing up and talking to the officers, "Low and behold" they went right back in the residence and located the drugs. which clearly shows that those three individuals had knowledge to the whereabours of the drugs. (App. 257) furthering Applicants' need to question officer Ligon Concerning the informant.

Applicant avers that his case is simular to State v. Jenkins, 474 SE2d 812, where the Appellate courts stated "we understand the trial judges reasoning that since he had already upheld the validity of the search warrant, evidence relating to it's legality was inadmissible. However, the circumstances under which police sent someone into appellants' business to make a drug purchase were clearly relevant to her claim that the drugs were planted. Given the importance of this line of questioning to appellants's defense, the trial court erred in limiting defense counsels' cross-examination of the states witnesses." which applicant considers to be the case in his situation as is explained earlier in this brief.

So, had trial counsel preserved this issue for appellate review, then Applicants' appeal would have come out differently being that the appeals court would have reversed the conviction on a 6th Amendment right to confrontation violation.

Conclusion

Applicant's conviction should be vacated.

(C) Knock & Announce Violation: Applicant avers that Trial Counsel failed to make an motion to have all evidence aqured during the execution of the search warrant suppressed, being that officer's Clark Testified that he never Knocked before entering the residence. (APP. 156)

Relevant Facts

During the Jackson v. Denno hearing concerning Applicant's statements, officer Clark Testified as follows: "when we walked up to the residence, the front door was open. There was a Glass screen door on the front of it. Ms. Collins, Ms. Mitchell, the Older Lady, was sitting in the residence. I opened the door, Police, Search warrant. At that time we entered the Residence."

Discussion

Applicant avers that pursuant to Rule 3109 of the federal "Knock and Announce" statue, officers are required to announce their authority and purpose before entering the premises to execute a warrant."

There's no doubting that officer Clark Testified that him and other officers never complyed with Rule 3109 due to them opening a close but Unlocked screen door without first Knocking. Gould v. Davis, 165 F. 3d 265 (4th Cir. 1998) In Sabbath, the Supreme Court held that use of force was not necessary for a violation of 3109 and ruled that unlatching a closed, unlocked door was an "unannounced intrusion" in violation of the statue. 391 U.S. at 590; see, e.g. U.S. v. Dicesare, 765 F.2d 890, 896 (9th Cir.) (3109 Violated during execution of arrest warrant because officers failed to announce identity and purpose or did so while entering through open outer door, and closed but unlocked inner screen door) Also, officer Clark failed to

give any testimony which would have excused them from complying with Rule 3109 such to suggest exigent circumstances. U.S. V. Sewell, 60 F.3d 20, 23 (1st Cir. 1995) (Forcible entry without knocking reasonable because officer had personal knowledge suspect owned pit bull.) U.S. V. Gay, 240 F.3d 1222, 1229 (10th Cir. 2001) (Entry 2-3 seconds after knock and announce reasonable due to information from 4 informants that defendant always armed, dealt drugs and in previous shootouts with police.)

Being that neither of these officers offered any exigent circumstances for not complying with Rule 3109 then all evidence and statements acquired during the search should have been suppressed. U.S. v. Hidalgo, 747 F. Supp. 815 (D. mass. 1990) (failure of officers to comply with knock-and-announce statue before entering apartment required exclusion of all evidence obtained as result of illegal entry, including post-arrest statements made by person in apartment.)

Applicant assumes that the state would argue that pursuant to Hudson v. Michigan, 547 U.S. 586 (2006) that the exclusionary clause don't apply. But Applicant would aver that because "Hudson" had not been decided until 2006, and applicant's charges occured in 2002, so because of the "Ex Post Facto" clause "Hudson" doesn't apply in applicant's particular situation. Thereby keeping the 4th Amendment exclusionary rule alive, making all evidence obtained from the search warrant "fruits of the poisonous tree."

So being that trial counsel failed to make a motion on this issue, it was not preserved for appellate review, thereby denying the appellate

courts a the rights to reverse Applicant's conviction thereby denying applicant's 6th Amendment right to Effective assistance of counsel and access to the courts.

Conclusion

Applicants Conviction should be vacated.

(D) Chain of Custody: Applicant avers that the trial counsel was ineffective due to him not objecting to the admission of exhibits 14 and 15 into evidence. (App. 355-357)

Relevant Facts

At trial, officer Lovelace testified that she placed the crack cocaine she found in the trash can in an evidence package. (App. 230) At trial, the package was introduced as state's Exhibit #14. Id. Lovelace explained the procedure by which she catalogued and separated the crack cocaine from the outside bag and smaller baggies in which the crack cocaine was found. (App. 230-31). After placing the crack cocaine into the evidence package, Lovelace filled out the appropriate paperwork, signed it over to the York County Evidence Drop Locker, and put her initials and date over the seal of the package. (App. 231). Officer Lovelace also testified that Smittel signed over the crack cocaine that he found at the house to her. (App. 233-34) This was state's Exhibit #15. (App 233). Smittel had already sealed the bag following the procedure used by Lovelace for the other crack cocaine. (App. 233-34).

He turned it over to Lovelace because she was the evidence custodian for the case. (App. 234) Lovelace testified that both evi-

dence packages were in her control from the time she received them until they were dropped in the evidence drop box. (App. 232,234).

Cynthia McCorkle, a drug chemist with the York County Sheriff's department, testified that she retrieved State Exhibits #14 and 15 from the evidence drop box. (App. 353-54). She noted that neither bag appeared to have been subject to tampering, and she stated that those two exhibits were in her control from the time they were signed out until she tested their contents. (App. 354) McCorkle testified that she tested the materials inside each package. Exhibit #14 contained 20.34 grams of crack cocaine, and just a trace amount of crack cocaine in Exhibit #15. (App. 354-55, 356-57). McCorkle testified that Gary Rollins who was Evidence Custodian had possession of all of the evidence until it's signed out for court. (App. 364). McCorkle testified that because Gary Rollins was not working on the day of trial, that he could not come in and testify that the evidence was in his care and custody since October 17th 2002 until trial on April 7th and 8th, 2004. (App. 366)

Discussion

A complete chain of evidence, tracing possession from the evidence's initial control to it's final analysis, must be established as far as practible. State v. Carter, 544 S.E.2d 835 (2001). A missing link in a chain of custody creates an issue of admissibility. Id If a substance has passed through multiple custodians, it must not be left to conjecture concerning who had the evidence and what was done with it between the taking and the analysis. State v. Joseph, 491 S.E.2d 275 (Ct. App. 1997).

The state first presented the testimony of Lovelace who testified to her handling of the evidence until she put it in the evidence drop box, in which officer Taylor testified that she retrieved the evidence from that drop box and maintained custody until she tested its contents. From her, there is no mention of who or where she placed the Exhibits. She later testified that officer Rollins who is a evidence custodian, could not come in and testify that all the evidence was in his custody and control because he was not at work on the day of trial.

But also, The state never complyed with South Carolina Rules of Criminal procedure, Rule 6(b), which provides an alternate means of establishing a chain of custody. This rule allows for the admission of sworn statements in lieu of the appearance of chain of custody witnesses and provided that:

"A certified or sworn statement signed by each successive person having custody of the evidence that he or she delivered into the person stated is evidence that the person had custody and made delivery as stated without necessity of the person who signed the statement being present in court provided: (1) the statement contains a sufficient description of the substance or its container to distinguish it; and (2) the statements says the substance was delivered in substantially the same condition as when received."

There should not be any dispute that the state did not present the testimony of each individual (Gary Rollins) who handled the evidence, nor did the state comply with Rule 6(b) which clearly was

a violation of S.C.Rule 7 but also a direct violation of applicant's due process rights to equal protection which is provided and protected by the 14th Amendment of the U.S. constitution. State v. Chisolm, 584 SE.2d 401. So, had trial counsel objected to the drug evidence being presented at trial, this matter would have been preserved for appellate review, which could have come out differently being the drug evidence should have been suppressed.

Conclusion

Applicant's application should be granted and his conviction should be vacated.

(E) Brady Violation: Applicant avers that trial counsel was ineffective for failing to present a motion to the courts to be heard concerning the states failure to turn over to the defense, the "fruits" acquired during the alleged control buy: Tape Recordings, Drug analysis, Chain of custody of both the drugs and Governmental funds.

Relevant Facts

Officer Ligon testified during the suppression hearing on the search warrant that he conducted a control buy, inwhich he provided a confidential informant with Government funds, and placed a wire on this informant, and recorded the Conversations. (App. 44). Officer Ligon testified that he did not provide any of this physical evidence to Magistrate Benfield, nor did he offer it, or nor did she request it. (App. 49-50, 53).

Discussion

Applicant contends that all materials acquired during the execution of the control buy was "highly relevant" evidence being that it goes directly to the establishment of officer Ligon's credibility, especially with Applicant's defense of entrapment.

Applicant Avers that had the state been required to turn over to the defense all of these requested materials, it would have shown that officer Ligon merely perjured himself concerning the control buy, in that the buy never took place at all.

Applicant supports this statement by the circumstantial evidence that has taken place in this matter: (1) The officer perjured himself concerning warrants for applicant's arrest being sworn out for distribution of crack cocaine, due to the falsely alleged control buy. (App. 54, 60-61). (2) Officer Ligon failed to state in his Affidavit to support his request for the search warrant: any amount of Governmental funds supplied to make the purchase; No amount of drugs purchased; No analysis on those drugs; No time of occurance of controlled buy; (3) officer Ligons failure to present, or at least, offer to present the physical evidence of this controlled buy to magistrate Benfield. (4) The states failure to charge Applicant with this crime. (5) failure of the state to present a chain of custody for the alleged drugs or Governmental funds. (6) the fact that on the day in question, Applicant after appearing in court on a marijuana charge, left straight from the York County court house and went straight back to High Point, North Carolina and did not return until Friday August 16th, 2002.

Clearly officer Ligons' credibility is in question, and had Trial Counsel made a motion to supress on the Grounds of the state violating the Brady

rule, Applicant contends that it would have compelled the truth to come forward, showing that the controlled buy never took place. which would have made applicant's trial come out differently being that the "fruits" of the search warrant would have had to be suppressed.

So but for trial counsel's failure to request a "Brady hearing," Applicant's trial or Appeal would have come out differently.

Conclusion

Applicant's conviction should be vacated.

State of South Carolina
County of York
Clifton Dorell Lyles, #294076
Applicant
V.
State of South Carolina,
Respondent.

In The Court of Common Pleas
Sixteenth Judicial Circuit
Case No: 2009-CP-46-175

Motion To Amend or Alter Judgment Pursuant To SCRCP 59(e).

Applicant makes this motion on the following Grounds: (A) Trial Judge failed to make a ruling on Any of the five (5) specific issues That were raised in my Application. He simply allowed The Attorney General To send To him a proposed order That Re-arranged The wording of The Issues presented, supported itself with (both) falsely alleged testimony, as well as false contextually used Testimony, and signed it as if he had made Those findings on his on.

Applicant contends That The PCR Judge Violated S.C. Code Ann. § 17-27-80 (1985) and Rule 52(a) S.C.R.C.P. because he has failed To make a specific finding of facts and conclusions of Law with regard To each issue raised in his application. Pruitt v. State, 310 S.C. 264, 423 S.E.2d 127 (1992); McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Petitioner asks The Court To remand This matter To The Post-Conviction relief Judge To make proper findings of fact and Conclusions of Law.

(B) After being informed by Applicant That he was not comfortable With PCR Attorney being That before The actual date of The hearing, applicant had never had any communication with This Attorney, made The Statement That "He doesn't care about Whether

applicant is comfortable, and that applicant can't pick and choose any attorney that he wanted." After [redacted] asking and being confirmed by P.C.R. Attorney that he had infact never had any contact with Applicant, P.C.R Judge then instructed Applicant that he would allow him and P.C.R. counsel to go and confer [redacted] for a moment, and that in the mean time he would allow applicant's trial attorney to go ahead and give his testimony being that he had other things to take care of.

Applicant then informed the Judge that he thought that that idea was prejudicial to him because he had other issues that needed to be Amended to his P.C.R. Application, that would require further testimony from trial attorney. The Judge then concurred with applicant, and stated that he would just continue the hearing until the next term.

After being excused and escorted out of the Courtroom, Applicant was later informed by P.C.R. counsel that the hearing would be held the following day.

Applicant then called his brother (Stanthony Lyles) who was in the Audience along with his wife (Elizabeth Montgomery Lyles) and her daughter (Alexis Montgomery), who informed applicant that when he was taken out of the courtroom, that a conference insued between the Attorney General, P.C.R. counsel, and the trial Attorney, inwhich the Attorney General stated to them that it was very important that applicant's hearing took place in front of Judge Alford. She confered too them that she was gonna ask Judge Alford to allow the hearing to be held the next day,

inwhich they both agreed. After informing Judge Alford of this request, he stated that if P.C.R. counsel was okay with it, then he would grant the request.

Applicant contends that this was a violation of both his 6th Amendment right to "Equal Protection" and his 14th Amendment right to "Due Process of Law" due to the failure of him being provided with the proscribed protections under Rule 71.1 §(D) S.C.-R.C.P., in that he was not afforded a reasonable amount of time to confer with his counsel, thereby denying him a fair opportunity to present his claims to the court.

(C) P.C.R. applicant avers that he was not afforded the protections proscribed pursuant to Rule 56, S.C.R.C.P. §17-27-70 of the Uniform Post-Conviction Relief Act, which instructs that a Response to P.C.R. application be made, and that it not be more than 30 days, unless an extension is granted by the courts.

Applicant avers that, instead of P.C.R. Judge holding the state accountable for it's failure to comply with Rule 56, IT simply allowed the state to by-pass It's failure, by submitting to the court a proposed order that falsely stated that the state made a return on November 12, 2009, and that his honor made a ruling denying the motion for summary Judgment at the hearing.

Applicant asks that the Audio Transcripts be perserved, and that this hearing be remanded back down for the Judge to make a specific finding of facts and Conclusion of Law.

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

Case No.:2009-CP-46-1759

Clifton Donell Lyles, #294075 ..... Appellant,

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Clifton Donell Lyles, #294075 appeals the Order Dismissal of The Honorable Lee S. Alford dated January 25, 2010. Appellant received a copy of the proposed Order of Dismissal on or about January 26, 2010, however never received a copy of the signed and filed Order. A copy of the Order, which was signed by The Honorable Lee S. Alford on January 25, 2010 and filed with the Clerk of Court for York County, South Carolina on February 26, 2010, was mailed to counsel for the Appellant, however, he did not realize that he had been provided a copy of the Order until May 12, 2010. Counsel for the Appellant has filed a Motion to Be Allowed to File Notice of Intent to Appeal Out of Time.

May 14, 2010

F. Craig Wilkerson, Jr.
242 Oakland Avenue
Rock Hill, SC 29730
Attorney for Appellant

Other Counsel of Record:
~~Suzanne H. White~~
Jennifer A. Kinzeler
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

Case No.:2009-CP-46-1759

Clifton Donell Lyles, #294075 ..... Appellant,

v.

State of South Carolina, ... Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on May 14, 2010, addressed to: Suzanne H. White and Jennifer A. Kinzeler, South Carolina Attorney General's Office, P.O. Box 11549, Columbia, SC 29211.

F. Craig Wilkerson, Jr.
242 Oakland Avenue
Rock Hill, SC 29730
Attorney for Appellant

May 14, 2010

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

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Clifton Donell Lyles, #294075 . . . . . .Appellant,

v.

State of South Carolina, ... Respondent.

MOTION TO BE ALLOWED TO FILE
NOTICE OF INTENT TO APPEAL
OUT OF TIME

Appellant, Clifton Donell Lyles, #294075, respectfully requests that this Court grant a Motion allowing him to file a Notice of Intent to Appeal Out of Time on the following grounds:

Appellant did not receive a copy of the Order of Dismissal which had been signed by the Trial Judge and filed with the Clerk of Court for York County, South Carolina, on February 26, 2010. The clocked in Order was mailed to counsel where it was erroneously filed and not forwarded to Lyles/Appellant. This was through no fault of the Appellant. Therefore, Appellant was unaware that the time frame within which to file a Notice of Intent to Appeal had expired.

Due to the fact that the Appellant was not provided with a copy of the signed and filed Order of Dismissal and was unaware that the time for filing a Notice of Intent to Appeal had expired, Appellant would respectfully request that he be allowed to file a Notice of Intent to Appeal out of time.

WHEREFORE, the Appellant prays that this Court allow him to file a Notice of Intent to Appeal out of time.

F. Craig Wilkerson, Jr.
242 Oakland Avenue
Rock Hill, SC 29730
Attorney for Appellant

May 14, 2010

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

Case No.:2009-CP-46-1759

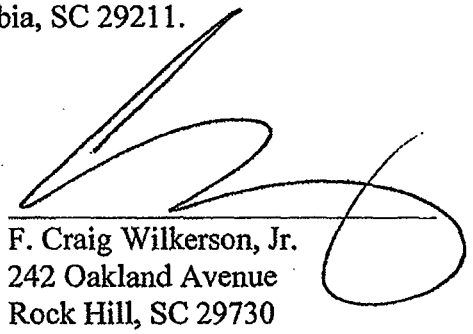
Clifton Donell Lyles, #294075 ..... Appellant,

v.

State of South Carolina, ... Respondent.

PROOF OF SERVICE

I certify that I have served the Motion To Be Allowed To File Notice Of Intent To Appeal Out of Time on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on May 14, 2010, addressed to: Suzanne H. White and Jennifer A. Kinzeler, South Carolina Attorney General's Office, P.O. Box 11549, Columbia, SC 29211.



F. Craig Wilkerson, Jr.
242 Oakland Avenue
Rock Hill, SC 29730
Attorney for Appellant

May 14, 2010