

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM FLORENCE COUNTY

CASE NO. 2014-000548

Jimmy D. Meggs Jr., 277400,

APPELLANT,

VS.

State of South Carolina,

RESPONDENT.

RECEIVED

NOV 19 2014

S.C. SUPREME COURT

PRO-SE BRIEF OF APPELLANT

Jimmy D. Meggs Jr. 277400
Turbeville C.I. SA-111
P.O. Box 252
Turbeville SC 29162
PETITIONER PRO-SE

South Carolina Attorney General's Office
Allen Wilson, Attorney General
Post Office Box 11549
Columbia SC 29221
COUNSEL FOR RESPONDENT

ISSUES ON APPEAL

I.

COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE TRIAL AND SENTENCE FOR AN UNCONSTITUTIONAL STATUTE, WHERE THE STATUTE FAILED TO HAVE A MENS REA ELEMENT AS REQUIRED BY FEDERAL LAW AS DETERMINED BY THE UNITED STATES SUPREME COURT.

II.

COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE PROSECUTORS "CLOSE ON THE LAW" AS IT RELATES TO S.C. CODE ANN. 16-3-657.

III.

COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE MULTIPLIOUS / DUPLICIOUS NATURE OF THE CHARGING INSTRUMENTS SPECIFICALLY TWO COUNTS OF 16-3-810.

IV.

COUNSEL WAS INEFFECTIVE FOR NOT INVESTIGATING TO DETERMINE THE ELEMENTS OF THE OFFENSE PRIOR TO GOING TO TRIAL TO ENSURE THAT THE STATES CASE MEET SUCH ELEMENTS.

V.

COUNSEL WAS INEFFECTIVE FOR NOT RAISING A DIRECTED VERDICT, WHERE THE STATE ALLEGATIONS AT TRIAL DID NOT AMOUNT TO THE ELEMENTS OF 16-3-653.

VI.

COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE UNCONSTITUTIONAL NATURE OF 16-3-810 WHERE THE STATUTE READS "IS GUILTY OF" AND THE INDICTMENT NOR THE SENTENCING SHEET INDICATED AND LANGUAGE OR ELEMENTS OF 16-3-653 OFFENSE.

VII.

COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE STATES CHARGING AND THE COURT'S SENTENCING A DEFENDANT FOR AN OFFENSE THAT IS IN CONFLICT WITH THE APPLICATION OF THE CRIMINAL STATUTE BY THE STATE.

IIX.

PETITIONER WAS PREVENTED DUE TO SUCH MENTAL INCAPACITY TO REFUTE COUNSELS THAT THE PETITIONER DID ASK COUNSEL TO TRY AND NEGOTIATE A PLEA.

IX.

COUNSEL WAS INEFFECTIVE, WHERE AT TRIAL THE PROSECUTOR MADE AN ISSUE BEFORE THE TRIAL JURY THAT PETITIONER'S EXPERT WITNESS HAD NOT INTERVIEWED THE ALLEGED VICTIMS BUT INSTEAD MADE HER DETERMINATION BASED ON THE TAPES PRODUCED BY THE PROSECUTION. WHERE PETITIONER MADE A MOTION AND ATTEMPTED TO PAY FOR HIS EXPERT WITNESS TO INTERVIEW SUCH ALLEGED VICTIMS.

X.

PETITIONER, DUE TO SUCH INCAPACITY, WAS UNABLE TO OBJECT TO JUDGE THOMAS RUSSO HEARING THE PCR MATTER WHERE HE (THOMAS RUSSO) WAS A PARTY OF THE PROSECUTION TEAM THAT INSTITUTED THE CHARGES AGAINST THE PETITIONER.

XI.

PETITIONER FUTHER ASSERTS THAT JUDGE THOMAS RUSSO SHOULD HAVE RECUSED HIMSELF DUE TO SUCH CONFLICT.

XII.

COUNSEL WAS INEFFECTIVE FOR NOT FILING FOR A RECONSIDERATION OF SENTENCE, AFTER BEING ASKED TO DO SO, AFTER TRIAL IN WHICH THE PETITIONER RECEIVED THE MAXIUM SENTENCE UNDER THE LAW WHERE THE PETITIOENR COULD NOT HAVE BEEN PREJUDICED FOR SUCH MOTION.

XIII.

THE PCR APPEAL WAS THE RESULT OF A RECORD THAT WAS DISCOVERED TO BE THE PRODUCT OF A RECORD THAT WAS NOT ACCURATE. PETITIONER FILED UNDER SCACR 607.i , FOR THE COURT REPORTED TO PRODUCE THE TAPE AND BACK-UP TAPE DUE TO SOME DISPUTES ABOUT WHAT THE RECORD SAID.

XIII.

THE PCR COURT SHOULD HAVE GRANTED A NEW HEARING WHERE THE PETITIONER DISCOVERED AFTER THE HEARING, THAT COUNSEL WAS FOUND GUILTY, BY CONSENT, TO VIOLATING THE RULES OF PROFESSIONAL CONDUCT DURING THE TIME PERIOD THAT HE REPRESENTED THE PETITIONER.

XV.

THE PCR COURT AT THE FIRST HEARING WAS IN ERROR FOR CONSIDERING THE REPORT OF DR. NANRYAN , AND FOUND DR. MARTIN'S LIVE TESTIMONY NOT CREDIBLE, WHERE THE PETITIONER DID NOT HAVE THE OPPORTUNITY TO CROSS-EXAMINE DR. NANRYAN ON HIS SUPPOSED FINDINGS.

XVI.

WAS THE PCR COURT IN ERROR IN DISMISSING THE 2009 AND 2013 ACTION UNDER SOUTH CAROLINA RULES OF CIVIL PROCEDURE 12 B, WHERE THE PARTIES WERE THE SAME HOWEVER, THE ISSUES WERE NOT THE SAME.

XVII.

TRIAL COUNSEL WAS INEFFECTIVE WHERE THE LEGISLATURE INTENT AS SET OUT IN THE BILL (R 267) SPECIFICALLY STATES IN THE SUBJECT MATTER "RELATING TO CHILD PORNOGRAPHY" WHERE THE EVIDENCE ELICITED AT TRIAL DID NOT MENTION OR ALLUDE TO ANY EVIDENCE IN THE RECORD THAT A REASONABLE JUROR COULD HAVE CONVICTED OF THIS OFFENSE.

XVIII.

THE 2013 ACTION SHOULD HAVE BEEN ALLOWED DUE TO THE JUNE, 2013 AMENDMENT ALLOWING THE COURT THE DISCRETION TO GIVE INDIVIDUALS CREDIT FOR TIME SPENT ON MONITORED HOUSE ARREST.

STATEMENT OF THE CASE

PETITIONER WAS INDICTED FOR TWO COUNTS OF ENGAGING CHILD FOR SEXUAL PERFORMANCE IN THE APRIL 2001 TERM OF COURT. ON AUGUST 6-9 2001, THE PETITIONER STOOD TRIAL AND A TRIAL JURY CONVICTED THE PETITIONER. PRIOR TO THE JURY COMING BACK WITH THEIR VERDICT, THEY SENT A NOTE OUT TO THE JUDGE AS IT RELATES TO THE OFFENSE. THE WANTED TO KNOW THE LAW AS IT APPLIED TO THIS CHARGE. THE TRIAL JUDGE WOULD NOT INSTRUCT THEM WITH THE MEANING OF THIS CRIMINAL STATUTE. THE TRIAL JURY ULTIMATELY CONVICTED PETITIONER WITH ALL COUNTS AND THE HONORABLE JAMES E. BROGDON SENTENCED PETITIONER TO TWENTY YEARS ON THE FIRST ENGAGING CHARGE AND TWENTY YEARS CONSECUTIVE ON THE REMAINING ENGAGING CHARGE (16-3-810), SUSPENDED THE SECOND CHARGE TO 5 YEARS PROBATION.

PETITIONER PROCEEDED ON DIRECT APPEAL IN WHICH THE COURT OF APPEALS DENIED THE APPEAL STATING THAT THE ISSUES RAISED WERE NOT PROPERLY PRESERVED OR PETITIONER FAILED TO OBJECT IN EITHER REGARD THE COURT (2004-UP-460) THE PETITIONER THEN FILED THESE SAME ISSUES TO THE SOUTH CAROLINA SUPREME COURT, WHICH DENIED THE WRIT OF CERTIORARI.

PETITIONER THEN TIMELY FILED HIS PCR APPLICATION. THE PETITIONER WENT TO THIS HEARING ON DECEMBER 11 2007. THE

PETITIONER PRESENTED THE TESTIMONY OF DR. THOMAS MARTIN, MARION BROWN, PRIVATE INVESTIGATOR, JIMMY MEGGS, PETITIONER'S FATHER, EMILY MEGGS, PETITIONER'S MOTHER, MARY STRICKLAND, PETITIONER'S AUNT, WHO GAVE TESTIMONY. THE RESPONDENT PRESENTED THE TESTIMONY OF KENNARD REDMOND AND JIM COX AND NO MEDICAL TESTIMONY TO REFUTE THE TESTIMONY OF DR. MARTIN. AS TESTIFIED BY DR. MARTIN AT THE HEARING, HE RE-EVALUATED THE PETITIONER THE DAY OF THE HEARING. HE STATED ON THE STAND AS PART OF HIS TESTIMONY, THAT THE PETITIONER WAS SUFFERING FROM A SERIOUS PSYCHOLOGICAL DISORDER AND THAT HE (PETITIONER) WAS EXHIBITING SIGNS OF THAT RIGHT NOW. IN ALL THE PETITIONER WAS UNABLE TO TAKE THE STAND AT THE FIRST HEARING DUE TO SUCH MENTAL INCAPACITY. FURTHER, THE PETITIONER WAS UNABLE TO OBJECT TO JUDGE THOMAS RUSSO PRESIDING OVER THE HEARING CONSIDERING THAT HE (JUDGE THOMAS RUSSO) AT THE TIME OF THE INSTITUTING OF THE CHARGES AGAINST THE PETITIONER WAS A PART OF THE PROSECUTION TEAM.

PETITIONER THEN PROCEEDED TO PCR APPEAL. UPON RECEIVING THE PCR TRANSCRIPTS BUT PRIOR TO THE EXPIRATION OF THE 30 DAYS, PETITIONER REQUESTED THE TAPE AND BACK-UP TAPE AS PROVIDED IN SOUTH CAROLINA APPELLATE COURT RULES 607 i. MRS. BAKIS-RAY, THE COURT REPORTER WROTE BACK WITH THE INFORMATION THAT THERE WAS NO TAPE AND THEN STATED THAT THE TAPE HAD BEEN

MISPLACED. I HAD WRITTEN HER BEAUSE I HAD SOME SERIOUS DOUBTS ABOUT THE ACCURACY OF THE TRANSCRIPTION. THE PETITIONER'S CASE WENT FORTH IN THE APPEALS PROCESS AND THE SUPREME COURT DISMISSED THE APPEAL (WRIT OF CERTIORARI).

THE PETITIONER THEN WENT FILED HIS FEDERAL HABEAS CORPUS (2254) IN WHICH THE COURT DISMISSED THE PETITON. HOWEVER, THE FOURTH CIRCUIT DID GRANT A CERTIFICATE OF APPEALABILITY BUT THE FOURTH CIRCUIT DISMISSED THE CLAIM.

THE PETITIONER DISCOVERED AFTER THE HEARING THAT COUNSEL REDMOND PLEAD GUILTY AND WAS DISCIPLINED BY THE SOUTH CAROLINA SUPREME COURT IN 2009, BY CONSENT. REDMOND AGREED THAT HE DID VIOLATED THE RUELS OF PROFESSIONAL CONDUCT IN HIS REPRESENTATION OF AT LEAST 9 CASE (FROM 1998 TILL 2005) , PRIOR TO THIS RULING WHICH PROMPTED THE COURT TO NOT JUST GIVE REDMOND A PUBLIC REPRIMAND. DUE TO SUCH INFORMATION ALONG WITH THE DISCOVERY OF THE LEGISLATIVE INTENT OG THE SOUTH CAROLINA GENERAL ASSEMBLY, GAVE THE PETITIONER INFORMATION , THAT HAD HE TESTIFIED AT THE PCR HEARING HE WOULD HAVE HAD EVIDENCE OF MATERIAL; FACT THAT WOULD CHANGE THE OUTCOME OF THE ORIGINAL TRIAL.

COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE TRIAL AND SENTENCE FOR AN UNCONSTITUTIONAL STATUTE, WHERE THE STATUTE FAILED TO HAVE A MENS REA ELEMENT AS REQUIRED BY FEDERAL LAW AS DETERMINED BY THE UNITED STATES SUPREME COURT. (I,IV,)

OUR UNITED STATES SUPREME COURT HAS MANDATED THAT THE MENS REA ELEMENT IS A NECESSARY ELEMENT OF ANY CRIMINAL OFFENSE. SPECIFICALLY, IN FERBER V. NEW YORK 102 S.CT. _____, WHICH REFERS TO NEW YORK'S OFFENSE WHICH IS DIRECTLY IN LINE WITH SOUTH CAROLINA VERSION OF 16-3-810 ENGAGING CHILD FOR SEXUAL PERFORMANCE. IN FERBER THE SUPREME COURT HAS MANDATED THAT IN THE STATUTE'S LANGUAGE IT IS REQUIRED THAT THERE BE ENTAILED A MENS REA ELEMENT, WHICH IN S.C. CODE 16-3-810 DOES NOT HAVE AND FAILS TO PUT A CRIMINAL DEFENDANT OF COMMON KNOWLEDGE ON NOTICE AS TO WHAT HE HAS TO PREPARE TO DEFEND. BECAUSE THIS STATUTE (16-3-810) DOES NOT HAVE THIS SPECIFIC ELEMENT THIS STATE STATUTE IS CONSTITUTIONALLY DEFECTIVE. AS SUCH, THIS CONVICTION SHOULD BE VACATED.

II.

COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE PROSECUTORS' CLOSE ON THE LAW AS IT RELATES TO S.C. CODE 16-3-657.

AT THE CLOSE OF THE TRIAL, THE TRIAL JUDGE TURNED TO THE PROSECUTOR AND SAID HE WOULD CLOSE ON THE LAW FIRST, THE DEFENSE WOULD GIVE CLOSING ARGUMENT AND THEN THE STATE WOULD GIVE THEIR CLOSING ARGUMENT. AS FORTOLD THE SOLICITOR IN HIS CLOSE ON THE LAW STATED SPECIFICALLY, THAT YOU COULD CONVICT JIMMY DONALD MEGGS BASED ON WHAT THOSE BOYS SAID ALONG . INPLICITEDLY ARGUING THE LANGUAGE OF 16-3-657 IN HIS CLOSE ON THE LAW. THE DEFENSE WENT ON TO PRESENT CLOSING ARGUMENT AND THE STATE CAME BACK AGAIN AFTER THAT AND CLOSED.

THE APPELLANT HERE HAS TWO ISSUE AS THIS IS CONCERNED. FIRST, THE STATE GAVE THIS CLOSE ON THE LAW WITH NONE OF THE OTHER SCHUMPERT PROTECTIONS THEREBY MAKING THIS AN IMPERMISSIBLE CHARGE ON THE FACTS WITHOUT THE BENEFITS OF THE SCHUMPERT SAFEGUARDS. LIKEWISE, THE TRIAL JUDGE DID NOT GIVE ANY CURATIONS THAT WOULD HAVE CURED THE ERROR. GIVEN THIS CHARGE ON THE LAW WITHOUT CURATION BY THE TRIAL JUDGE GAVE THE PRESUMPTION TO THE TRIAL JURY THAT THIS WAS PERMISSIBLE.

SECONDLY, EVEN IF THE COURT RULES HERE THAT THIS WAS NOT ERROR FOR SUCH GIVEN INSTRUCTION, THE APPELLANT WOULD CONTEND THIS EVIDENTUARY FACT THAT THE 16-3-657 CHARGE ONLY IS APPLICABLE TO CHARGES OF 16-3-652-658. AS A POINT OF CLARITY THE

APPELLANT WAS NOT CHARGED WITH AN OFFENSE AS ENUNCIATED IN 16-3-657. THE APPELLANT WAS CHARGED WITH 16-3-810 ENGAGING CHILD FOR SEXUAL PERFORMANCE. THEREFOR THE ERROR OF THIS CHARGE ON THE LAW PREJUDICED THE APPELLANT AND PRESENTED A STATDARD THAT WAS CONSIDERED BY THE TRIAL COURT THAT WAS NOT PERMISSIBLE.

III.

COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE MULTIPLIOUS/ DUPLICIOUS NATURE OF THE CHARGING INSTRUMENT SPECIFICALLY TWO COUNTS OF 16-3-810.

THE APPELLANT WOULD CONTEND THAT THE SOLICITOR INSERTED TH E WORD "A" IN THE CAPTION OF THE INDICTMENT THAT IS NOT APART OF THE ACTUAL CRIMINAL STATUTE. THE ACTUAL CRIMINAL STATUTE STATES AS FOLLOWS:

ENGAGING CHILD FOR SEXUAL PERFORMANCE

THE STATE INSERTES AN "A" INTO THE LANGAUGE TO TRY AN INDIVIDUALIZE THE CHARGES. THE APPELLANT SPECIFICALLY CONTENDS THAT THIS CASE DEMONSTRATES THE BEST CASE FOR DOUBLE JEOPARDY IN THE HISTORY OF CRIMINAL LAW IN SOUTH CAROLINA. COMPARE

BLOCKBURGER SUPRA. THE STATE ASSERTED AT TRIAL THAT THE APPELLANT THOROUGH COERCION CAUSES TWO MINORS TO ENGAGE IN A SEXUAL PERFORMANCE. SPECIFICALLY IN ORDER TO OBTAIN A CONVICTION FOR THIS OFFENSE THERE MUST BE A SEXUAL PERFORMANCE. THE STATE ASSERTED THAT THE APPELLANT CAUSED TWO MINORS TO ENGAGE IN THIS ONE PERFORMANCE. THE OFFENSE MAKES IT UNLAWFUL FOR ANY PERSON TO ENGAGE FOR THE SEXUAL PERFORMANCE. IT IS OBVIOLSLY NOT A CRIME FOR AN INDIVIDUAL'S AGE. HOWEVER, THE CRIME IS RELATING TO THE ACTUAL PERFORMANCE.

SPECIFICALLY, UNDER THE BLOCKBURGER ANALYSIS, IT WOULD BE IMPOSSIBLE FOR A PERSON TO BE CONVICTED OF THE SEXUAL PERFORMANCE WITHOUT THE PARTICIPATION OF THE OTHER PARTICIPATE. IN SHORT, THE STATE WOULD NOT BE ABLE TO SECURE THE CONVICTION WITHOUT THE INCLUSION OF THE OTHER VICTIM IN THIS CASE. THIS CASE PRESENTS THE EVIDENTUARY FACT THAT THE STATE WOULD BE UNABLE TO SECURE THE CONVICTION AND MEET THE ELEMENTS OF THE ONE WITHOUT THE INCLUSION OF THE OTHER. AND THEN CHARGE THE APPELLANT AGAIN WITH THE OTHER VICTIM AND INCLUDE THE OTHER TO MEET THE ELEMENT OF THE OTHER. IN CLOSING THE STATE CANNOT MEET THE ONE CRIME WITHOUT THE INCLUSION OF THE OTHER VICTIM. FUTHER, THE APPELLANT WOULD BE ABLE TO SHOW THAT HE RECEIVED CONSECUTIVE SENTENCES FOR THESE TWO CHARGES

WHICH COULD NOT STAND INDEPENDENTLY WITHOUT THE OTHER. THE APPELLANT WOULD RESPECTFULLY ASK FOR A VACATION OF ONE OF THE 16-3-810 DUE TO THE DOUBLE JEOPARDY VIOLATION.

III.

THE APPELLANT WOULD INCORPORATE THE ISSUES (IV, V, VI, VII, XVII)

AFTER TRIAL, DIRECT APPEAL AND PCR, THE APPELLANT DISCOVERED THAT THE TRIAL COUNSEL, AND, DIRECT APPEAL COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE FOR NOT RAISING THE PROPER ISSUES AT TRIAL, APPELLANT COUNSEL FAILED TO RAISE ISSUE THAT WERE PRESERVED FOR APPELLANT REVIEW. AS THIS ISSUE WOULD GO EQUALLY TO TRIAL COUNSEL'S INEFFECTIVENESS AND DIRECT APPEAL COUNSEL'S INEFFECTIVENESS.

TRIAL COUNSEL'S INEFFECTIVENESS:

APPELLANT HIRED COUNSEL MR. JAMES McBRATNEY, ESQ., WHO PRIOR TO TRIAL HAD TO BE RELIEVED DUE TO HIS NEGLIGENCE. THE APPELLANT WENT ON TO HIRE MRS. DESA BALLARD, WHO FILED A DISCIPLINARY COMPLAINT, WHICH THE BOARD MADE A FINDING THAT COUNSEL OWED THE APPELLANT \$10,000.00 AND THIS COUNSEL RECEIVED OFFICIAL DISCIPLINE FOR HIS CONDUCT. AFTER DISMISSAL OF MR. McBRATNEY APPELLANT RETAINED MR. KENNARD REDMOND, AND, JIM COX, A PRIVATE ATTORNEY WHO WAS LATER DISCOVERED TO BE A CITY

ATTORNEY FOR DARLINGTON COUNTY. THE APPELLANT WENT TO TRIAL WITH THESE ATTORNEY'S. THE APPELLANT WENT TO TRIAL FOR TWO COUNTS OF ENGAGING CHILD FOR SEXUAL PERFORMANCE. THE TRIAL JURY CONVICTED THE APPELLANT AFTER A TRIAL BY JURY, HOWEVER, PRIOR TO THE JURY RENDERING IT'S VERDICT IT DID SEND A LETTER TO THE COURT FOR AN EXPLANATION AS TO THE MEANING OF THIS CRIMINAL STATUTE. THE TRIAL JUDGE DID NOT FUTHER INSTRUCT THE JURY AS IT RELATES TO THE ELEMENTS OF THIS NEW, UNTESTED CRIMINAL STATE STATUTE.

AFTER TRIAL AND DIRECT APPEAL, THE APPELLANT DISCOVERED THAT THIS STATE STATUTE HAD A DIFFERENT MEANING THAN THAT INTERPRETATION AS APPLIED TO THE APPELLANT. THE STATE CHARGED APPELLANT WITH 16-3-810: ENGAGING CHILD FOR SEXUAL PERFORMANCE. THE STATE SPECIFICALLY PURPORTED AT TRIAL THAT THE APPELLANT CAUSED TWO MINORS TO ENGAGE IN A SEXUAL PERFORMANCE AT THE DIRECTION OF THE APPELLANT. UPON RESEARCH, (R 267) SPECIFICALLY STATES IN THE SUBJECT MATTER FROM THE SOUTH CAROLINA LEGISLATURE "RELATING TO CHILD PORNOGRAPHY". BLACKS LAW DICTIONARY DEFINES THIS AS "MATERIALS" SUCH AS PICTURES, MOVIES AND OTHER TANGABLE ITEMS. AS A POINT OF CLARITY THE STATE NEVER ALLEGED IN ANY WAY ANYTHING THAT THE TRIAL JURY COULD

CONSTRUE WHAT THE LEGISLATURE INTENDED TO BE THE MEANING OF THIS STATE STATUTE.

SECONDLY, AS DISCUSSED BEFORE, S.C. CODE ANN. 16-3-810 REFERS SPECIFICALLY TO 16-3-653 OR CRIMINAL SEXUAL CONDUCT SECOND DEGREE. 16-3-810 SPECIFICALLY STATE IN SUBSECTION (B) SAYS ANY PERSON VIOLATING THE PROVISION OF SUBSECTION (A) OF THIS SECTION **IS GUILTY OF CRIMINAL SEXUAL CONDUCT OF THE SECOND DEGREE.**

FUTHER, AS THERE IS NOT CASE LAW AS TO THE CONSTITUTIONAL NATURE OR THE APPLICABILITY OF 16-3-810 COUPLED WITH THE EVIDENTUARY FACT THAT THE ATTORNEY GEENRAL IN 1991 SPECIFICALLY DECLARED AS IT RELATES TO 16-3-810 THAT "ANOTHER EXAMPLE OF 16-3-653" IS 16-3-810. THE APPELLANT WAS NOT PUT ON CONSTITUTIONAL NOTICE AS TO WHAT HE HAS TO PREPARE TO DEFEND, NOR DID THE STATE MEET THE ELEMENTS OF THIS OFFENSE . AS THE COURT KNOWS AS DISCUSSED IN BOTH ELLIOTT AND NICHOLSON THE ONLY WAY THAT A PERSON CAN BE CONVICTED OF ANY TYPE OF CRIMINAL SEXUAL CONDUCT, AN ACTOR MUST ENGAGE IN SEXUAL BATTERY WITH THE VICTIM. THE ATTORNEY GENERAL IN 1991 DECLARED THAT IT WAS THE SAME AND THE STATE STATUTE STATES IF A PERSON IS GUILTY OF 16-3-810 THEN THAT PERSON IS GUILTY OF CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE. THE STATE LEGISLATURE HAS SPECIFICALLY STATED THAT A PERSON IS GUILTY OF A CRIMINAL

CONDUCT THEREFORE, THE STATE MUST MEET THE ADDITIONAL ELEMENT OF SEXUAL BATTERY BY THE ACTOR AS REQUIRED BY 16-3-653. FOR THE FOREGOING REASONS, THE APPELLANT WOULD ASK THIS COURT TO VACATE THE TWO COUNTS OF 16-3-653 ON THE GROUNDS OF BEING UNCONSTITUTIONALLY VAGUE, OR, FAILING TO MEET THE NECESSARY ELEMENTS OF THIS CRIMINAL OFFENSE AS MEANT BY THE SOUTH CAROLINA LEGISLATURE.

APPELLANT COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE:

AS SUCH THE SAME APPLIES TO APPELLANT COUNSEL IN THAT HE PRESENTED ISSUES THAT WERE NOT PRESERVED FOR APPELLANT REVIEW. AND FAILED TO ADDRESS THE DEAD BANG WINNER ISSUES AS ADDRESSED HEREIN. BECAUSE THE ISSUES RAISED IN THE APPELLANT'S DIRECT REVIEW WERE NOT PRESERVED OR HARMLESS ERROR THE APPELLANT CONTENDS THAT HE NEVER HAD A MERITORIOUS ISSUE BEFORE THE COURT FOR APPELLANT REVIEW.

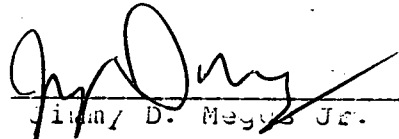
TRIAL COUNSEL WAS INEFFECTIVE FOR NOT FILING FOR A RECONSIDERATION OF HIS SENTENCE AFTER RECEIVING THE MAXIMUM SENTENCE UNDER THE LAW:

THE APPELLANT WOULD CONTEND THAT COUNSEL WAS INEFFECTIVE FOR NOT FILING FOR A SENTENCE RECONSIDERATION AFTER THE COURT GAVE THE APPELLANT THE MAXIMUM SENTENCE AFTER A TRIAL BY

PROOF OF SERVICE:

I Jimmy D. Meggs Jr. do certify that I have served a copy of my Pro-Se Brief of Appellant on Respondent's Counsel of Record at: South Carolina Attorney General's Office, Alan Wilson, Attorney General's Office, Post Office Box 11549, Columbia, SC 29221 by depositing the same in the United States Mail, Postage Prepaid on:

This 14th Day of November, 2014.


Jimmy D. Meggs Jr.

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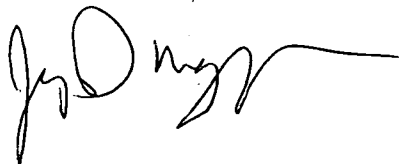
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S.C. SUPREME COURT

JURY. THE APPELLANT WOULD ASSERT THAT THERE WAS ABSOLUTELY NO POSSIBLE HARM OR PREJUDICE DUE IN PART TO THE DECISION BY THIS COURT IN HIGGENBOTTOM V STATE SUPRA, THE APPELLANT WOULD ESSENTIALLY BE PUT IN NO JEOPARDY DUE TO SUCH MOTION FOR RECONSIDERATION. IN LIGHT OF THE COURTS GIVING THE APPELLANT THE MAXIMUM SENTENCE FOR THIS OFFENSE, WHERE THE APPELLANT DID NOT HAVE A CRIMINAL RECORD, HAD COMPLIED WITH ALL THE COURTS ORDERS. THERE IS A REASONABLE LIKELIHOOD THAT THE COURT WOULD GIVE APPELLANT A SENTENCE IN LIGHT AFTER THE HEAT OF TRIAL AND UPON REFLECTION WOULD HAVE GIVEN THE APPELLANT A SENTENCE THAT WAS LESS THAN THE MAXIMUM UNDER THE LAW.

CONCLUSION:

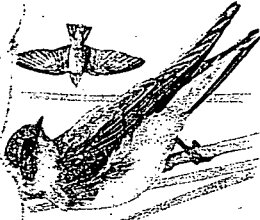
BASED ON THE FOREGOING, THE APPELLANT WOULD HUMBLY ASK FOR THIS COURT TO VACATE HIS TWO CONVICTIONS FOR ENGAGING CHILD FOR SEXUAL PERFORMANCE, ALLOW APPELLANT TO ADDRESS THE COURT FOR A RECONSIDERATION OF SENTENCE,

A handwritten signature in black ink, appearing to read "John D. [unclear]", is written in a cursive style.

JIMMY D. MEYERS JR. # 277400
TURBEVILLE, S.C. 29711
P.O. BOX 252
TURBEVILLE, SC 29162



The South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211



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MAILROOM
TURBEVILLE, SC

LEGAL MAIL