THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions
The Honorable Brian M. Gibbons, Circuit Court Judge

Trial Court Case No. 2001-GS-29-0071, 0072, 0073, 0346
Appellate Case No. 2013-002616

THE STATE,

RESPONDENT,

v.

LAKEITHON M. HALL,

APPELLANT.

INITIAL REPLY BRIEF OF APPELLANT

Tricia A. Blanchette
Bar No. 74904
PO Box 12725
Columbia, SC 29211
(803) 988-0008
Attorney for Appellant

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ARGUMENT

I. THE SOUTH CAROLINA SUPREME COURT'S HOLDING IN JAMISON V. STATE HAS BEEN ERRONOUSLY EXTENDED TO THE INSTANT CASE BY RESPONDENT

On August 30, 2013, the Honorable Brian M. Gibbons heard the underlying Rule 29(b), SCRCrimP, Motion at the Lancaster County Courthouse. On November 12, 2013, the Honorable Brian M. Gibbons issued an Order denying the Motion. A timely Notice of Intent to Appeal was filed by Appellant. On May 12, 2014, Appellant, through counsel, filed the Initial Brief of Appellant. On November 10, 2104, the Initial Brief of Respondent was submitted.

By way of Respondent's Brief, it is acknowledged that the lower court considered and ruled on Applicant's motion under the five prong test set forth in Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983) and State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999). Without addressing matters of retroactivity, Respondent seamlessly argues that the recent two prong test promulgated in Jamison v. State, Op. No. 27454 (S.C. Sup. Ct. filed October 22, 2014) (Shearouse Adv. Sh. No. 42 at 12), is applicable to the instant case. Not only does Respondent fail to address the matter of retroactivity, but Respondent also fails to acknowledge that Supreme Court's reasoning and findings in Jamison are based upon S.C. Code 17-27-20(A)4 of the PCR Act and deal with claims of newly discovered evidence on an "otherwise valid guilty plea." Jamison, *supra*.

Turning first to the matter of retroactivity, the South Carolina Supreme Court issued the decision in Jamison on October 22, 2014.[1] Despite the dissent making findings that the holding should only be applied prospectively, the majority applied the new two

[1] Tricia A. Blanchette, undersigned counsel, represented Matthew Jamison in the case resulting in the recent South Carolina Supreme Court decision. On his behalf, she filed a Petition for Rehearing, which was denied on December 4, 2014.

prong test retroactively to Matthew Jamison. Jamison, *supra*. In so doing, the majority failed to address the retroactive application of the new two prong test to any other similarly situated appellants and/or defendants. See Teague v. Lane,489 U.S. 288, 300, 109 S. Ct. 1060, 1070 (1989) (Reasoning that retroactivity is properly treated as a threshold question). Therefore, Appellant would urge this Court to find that Respondent's application of the new two prong test here is in error since the Supreme Court did not address the retroactive application of it nor was it the test, as noted by Respondent, under which the lower court made his ruling. In issuing his Order in the instant case, Judge Gibbons did not apply nor even consider the two prong rule set forth in Jamison as it did not exist at the time. Therefore, it would be improper for this Court to evaluate the findings made by Judge Gibbons under the two prong test set forth in Jamison.

Not only has Respondent ignored the threshold matter of retroactivity by extending the two prong test set forth in Jamison to the instant case, but it also appears that Respondent has chosen to ignore the "narrow" issue addressed and ruled upon by the Supreme Court. The Supreme Court made the issue on appeal clear by stating: "The narrow issue presented to this Court whether and to what extent an **otherwise valid** guilty plea may be vacated in PCR proceedings on the basis of newly discovered evidence." Jamison, *supra*. In addressing this narrow issue regarding PCR proceedings, the Court analyzed the PCR Act and specifically the following provision:

> [T]he the PCR Act provides that "[a]ny person who has been convicted of, or sentenced for, a crime and who claims… that there exists **material facts**, not previously presented or heard, that requires vacation of the conviction or sentence in the **interest of justice**" is entitled to seek post conviction relief.

Jamison, *supra*. Based upon this statutory provision contained in the PCR Act, the Supreme Court fashioned a new test and made the following ruling:

> Guided by the language of section 17-27-20(A)(4) of the PCR Act, we hold that when a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where the applicant presents evidence showing that 1) the newly discovered evidence was discovered after the entry of the plea and in the exercise of reasonable diligence could not have been discovered prior to the entry of the plea; and 2) the newly discovered evidence is of such a weight and quality that under the facts and circumstances of the particular case the "interest of justice" requires the guilty plea to be vacated.

Jamison, *supra*. Due to findings regarding the materiality of the newly discovered evidence, the Supreme Court determined that Jamison's relief granted by the lower court should be reversed.

Here, Appellant brought his motion alleging newly discovered evidence under Rule 29(b), SCRCrimP, which provides:

> A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence. A motion for a new trial based on after-discovered evidence may not be made while the case is on appeal unless the appellate court, upon motion, has suspended the appeal and granted leave to make the motion. Leave of the appellate court is not required if no appeal has been taken or if the appeal has been finally decided in the appellate court.

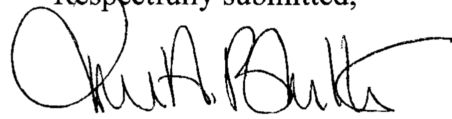
Clearly, Rule 29(b), SCRCrimP, does not include the interest of justice or materiality requirements set forth in the PCR Act regarding newly discovered evidence. As a result, Appellant contends that Respondent's blanket application of Jamison to the instant case is absolute error. Furthermore, the Supreme Court made it clear that they were addressing a very narrow issue in Jamison and their ruling did not encompass Rule 29(b), SCRCrimP. Simply put, Respondent, not the Court, is taking the step to extend the narrow ruling in

Jamison to Rule 29(b), SCCrimP, and to find that it should be applied retroactively to Appellant. Therefore, Appellant would urge this Court to find that such is not proper.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court find that Respondent's application of the two prong test set forth in Jamison v. State is in error since such is not properly applied to the instant case.

Respectfully submitted,



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December 19, 2014

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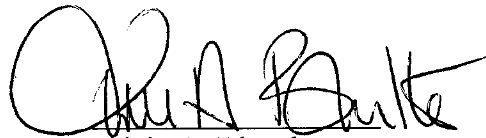
APPELLANT.

CERTIFICATE OF SERVICE

I certify that I have served by placing in the United States Mail this 19th day of December 2014 a copy of an Initial Reply Brief of Appellant to J. Anthony Mabry, Assistant Attorney General at:

Office of the Attorney General
Att: J. Anthony Mabry, Assistant Attorney General
PO Box 11549
Columbia, SC 29211



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December 19, 2014

LAW OFFICE OF TRICIA A. BLANCHETTE

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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: State v. Lakeithon M. Hall;
Appellate Case No.: 2013-002616

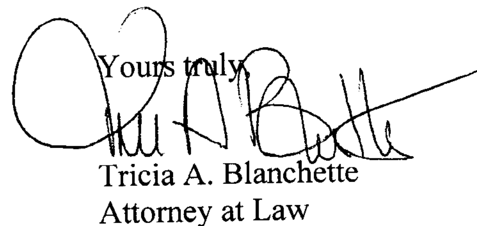
Dear Madam Clerk:

In the above referenced case, I filed a Motion for Extension of Time to Serve and File Reply Brief on November 20, 2014, which the State did not oppose. I have checked with the assigned Clerk regarding the status, and I have not received an Order on the Motion. On December 1, 2014, I filed a Motion for Abeyance on Time to Serve and File Reply Brief, which the State did not oppose. I have checked with the assigned Clerk regarding the status, and I have not received an Order on the Motion.

The matter which was the basis of my Abeyance request has been resolved. Therefore, I have completed the attached Reply Brief, and I am submitting it for filing.

Thank you for your assistance with this matter. Please contact me if any additional information is needed.

Yours truly,



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Attorney at Law

cc: J. Anthony Mabry, Assistant Attorney General
Lakeithon M. Hall

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