

RECEIVED

DEC 31 2014

Mr. Shearouse;

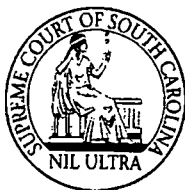
S.C. Supreme Court

December, 12, 2014

I have been writing you since March 2014 concerning the attorney Fulton Casey Dale Cornwell. Mr. Cornwell was appointed as my counsel by the State and his representation and assistance was deficient and ineffective since he was appointed as my counsel. The attachments that I have provided is evidence of Mr. Cornwell's ineffectiveness and can prove that Mr. Cornwell not only was deficient in his representation but has willingly and purposely sabotage my case by failing to present the issue's that I sought relief for. I can also show that in Mr. Cornwell's ineffective and deficient representation he has violated the Rules of Professional Conduct.

On April 18, 2013 my P.C.R. application was filed in the court. According to the SCACR a amendment brief could be filed to the court up until the day of trial or hearing so in April of 2014 I prepared a pro-se brief and mail it to Mr. Cornwell's office and to your office Mr. Shearouse. The brief held every issue in which I seeked my relief and support the P.C.R. application that I had filed. I was expecting the Supreme Court or Mr. Cornwell to file my brief into the court on my behalf so that the presiding judge could make his consideration upon it. Instead, on May 2, 2014 I recieved a letter from your office dated May 1, 2014 stating that no action would be taken on my pro-se filing due to the fact that I was represented by a counsel. (see Exhibit 1) A carbon copy

Exhibit 1



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

TO: Mr. Wayne Wells #314139

FROM: Daniel E. Shearouse, Clerk *DES*

DATE: May 1, 2014

This Court has received your recent correspondence.

_____ This Court cannot provide legal advice or assistance. Therefore, we will not be able to provide legal advice and you should consult an attorney.

Since you are represented by counsel in this matter, no action will be taken on your pro se filing. Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010); Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

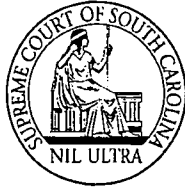
If you believe you have good cause to seek to have your current counsel relieved then you should file a motion in the lower court in which this matter is pending. We are forwarding a copy of your letter to your counsel so he may be aware of your concerns.

_____ Since you are represented by counsel in this matter, we are forwarding a copy of your letter to counsel for any assistance he/she can give you.

_____ Your remedy is in the lower court where this matter is pending.

CC: Fulton Casey Dale Cornwell, Esquire (with enclosure)

Exhibit 2



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

July 21, 2014

Mr. Wayne Wells, Jr., #314139
Turbeville Correctional Institution
P.O. Box 252
Turbeville, SC 29162

RE: *Wells v. State*, 2013-CP-43-00675

Dear Mr. Wells:

This Court has received your letter and *pro se* brief. Since you have not provided a proof of service showing that a copy of these documents have been served on opposing counsel, no action will be taken on them by this Court. This Court cannot act on *ex parte* communications.

If your intent is to appeal the order of Judge Cothran dated July 7, 2014, then you will need to serve and file a notice of appeal in the manner specified by Rules 243 and 203 of the South Carolina Appellate Court Rules (SCACR). A copy of the SCACR should be available to you in your prison library.

I have enclosed a copy of a sample notice of appeal and sample proof of service. I am also providing your counsel with a copy of your letter. *See* Rule 71.1(g), South Carolina Rules of Civil Procedure (duties of counsel regarding appeal in a PCR case).

Sincerely,



Daniel E. Shearouse

Enclosures

cc: Casey Cornwell, Esquire (with copy of letter)
Daniel Gourley, Esquire

Exhibit 3

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA RECORDED

COUNTY OF SUMTER 2014 JUL 23 PM Case No. 2013-CP-43-0675

JAMES C. MITCHELL

CLERK OF COURT

SUMTER COUNTY, S.C.

Wayne Wells Jr, # 314134

Applicant

VS

The State

Respondent

MOTION TO ALTER

OR

AMEND A JUDGEMENT

To The Honorable Presiding Judge

NOTICE: Applicant trust that your Honor will adhere to the Rules of Judicial Conduct and allow him to be fully heard according to law. ACCORD, Canon 3(8)7 of Rule 501, Judicial Conduct ("A judge shall accord to every person who has a legal interest in a proceeding the right to be heard according to law") I would also like to make you aware that this motion is being filed pro se because the state appointed attorney, Fulton Casey Dale Cornwell, is no longer employed at Harrison & Radeker and another counsel has not been appointed to me. Therefore to follow the Court rules and file a motion to alter or amend a judgement, pursuant to SCRPC Rule 59(e), within the statute of limitation the motion is to be file to the court on my own behalf. The Order of Judgement set forth by Judge R. Ferrell Cothran, Jr. is incomplete and all the Applicant allegations were not ruled on by law and allegations is as set forth

Applicant's 6th and 14th Amendment Rights were violated when Trial Court instructions invaded the province of the jury and depriving him of a fair trial.

Trial Court gave an erroneous instruction to the jury concerning questions of facts.

The Trial Court instructed the jury that when determining what the fact are in the case is for them to decide and it was up to them to decide if a witness testimony was believable. It was the Court responsibility to rule as a matter of law as to whether certain testimony was admissible, but once the testimony was admitted it was solely the jurors responsibility to determine what was believable. "Under the 6th Amendment jurisprudence, the two steps that are strictly for the jury is (1) determining the facts as to each element of the crime (2) applying the law as instructed by the judge to those facts. Questions of fact in criminal proceeding are to be tried by the jury. The jurors are the sole and exclusive judge of, or they have the exclusive province to find the facts, and the trial court cannot interfere with their exercise thereof. It is improper for the trial court to take a question of fact away from the jury and decide it itself, or deny the existence of any fact bearing on the issues which is in contest." 23 A C.J.S. Criminal Law § 1275 See also. State v. Robinson, 262 S.E.2d 729, 274 SC 198 (1980) State v. Deas, 23 S.E.2d 830, 202 SC 9 (1943) The victim testified to lying to the Appellant about her actual age and the Appellant testified on his behalf to offer an affirmative defense or theory.

After the jury heard the evidence and was charged by the Court they were sent out to deliberate. The jury then sent out two question to the court asking, "If the Defendant truly believed the victim to be eighteen, would it matter and is his ignorance to her age an excuse?" The Trial Court gave the instruction that, "No it did not matter if the defendant believed the victim to be eighteen and his ignorance is not an excuse." If the jury were referring to the Appellant's ignorance of the law the

trial court instruction would have been correct, but since the jury was inquiring about the Appellant's ignorance of a material fact his instruction was erroneous. It is rooted in the legal maxim "ignorantia facti excusat" that ignorance of a fact is an excuse; whatever is done under a mistaken impression of a material fact is excused or provides grounds for relief." Black's Law Dictionary, 749 (7th ed 1999)

¹⁰⁹ In many jurisdictions, by reason of express constitutional or statutory provisions, or under the common law, in the absence of any constitutional or statutory restrictions, the trial court may, in its charge to the jury, comment on the evidence, or express an opinion on disputed questions of fact, provided such questions are ultimately left to the jury for their decision, without any direction or advice as to how they shall find the facts, and whenever the judge delivers his opinion to the jury on a matter of fact, it should be delivered as a mere opinion, and not as a direction, and jury should be made to understand clearly that they are to decide the facts on their own view of the evidence." 33 A.C.S. Criminal Law § 1294 Under section § 21 of Article V it was intended clearly to leave to the jury all questions of fact, and to prevent the judges from forcing upon juries their own convictions as regards matters of fact. The force and effect of any evidence is for the jury; it is for them to determine what credence they will give to it and what weight it will have with them. The jurors are the judges of all matters of fact, and cannot look to the court for a controlling view; they are to form their own conclusions from the facts submitted to them, and the court cannot employ its influence over the minds of the jurors to force upon them its conclusions in any case, because the judge's position would naturally add great weight to any opinion he might express upon any question of fact arising in a case. State v. Thorne, 116 S.E.2d 854, 237 SC 248 (1960) (The jury should be left free to determine questions of fact. Under Constitution, jury is exclusive judge of facts, and true meaning and real object is that jury must be

left to form its own judgement, unbiased by any expression or even intimations of opinion by the judge.) State v Leonard, 292 SC 133, 355 S.E.2d 270 (1987) (The purpose of a jury instruction is "to enlighten the jury and to aid it in arriving at a correct verdict." It is error to give instructions which are calculated to confuse or mislead the jury.) State v Mahaffey, 125 SC 313, 118 S.E. 623, 30 (1923) (The jury is to determine all questions of fact, uninfluenced by the judge and unbiased by his impressions.)

It was the Appellant's Constitutional Right to present any favorable defense that applied to his case at the time of trial. The Appellant testified and presented an affirmative defense that could justify or excuse his conduct as a defense. "An affirmative defense is a matter which, assuming charge to be true, constitutes a defense to it and is to admit to the doing of the act charged, while seeking to justify, excuse, or mitigating it. The defense is not restricted to those negating elements or facts necessary to conviction of the offense charged and may also rely on separate matters consisting of facts wholly disconnected from the body of the particular offense charged, and constituting a distinct affirmative defense." 22 C.S.S. Criminal Law § 36. 22 C.S.S. Criminal Law § 689 (Justification as a defense is two-pronged on admission that a proscribed act was done, and the establishment of an exculpatory excuse that takes the act out of the criminal law. Thus, justification defenses are not based on the nonexistence of any essential element of an offense, but rather on circumstances which make accused's conduct excusable on policy grounds. A justification should, therefore be treated as affirmative defenses is not constitutionally required, but constitutes a separate issue.)

The victim initiated the relationship between herself and the Appellant. She deceived the Appellant about her actual age, in which she admitted, and the

Appellant was unaware of the victim's deception. At the time of the offense the Appellant's act was done under the perception that the victim was an adult of eighteen years. If the Appellant participates in a mutual act of sexual intercourse or relations believing his partner to be beyond the age of consent, with reasonable grounds for such belief, where is his criminal intent? The Appellant did not consciously take any risk, instead he subjectively eliminated the risk by satisfying himself on reasonable evidence that the crime could not be committed. In State v Ferguson, 302 SC 264, 395 S.E.2d 182 (1990) (A defendant may not be convicted of a criminal offense unless the state proves beyond a reasonable doubt that he acted with criminal intent, or mental state required for a particular offense.) The Appellant could not have had the mental capacity to commit the crime charge because he was unaware that his act was criminal due to the victim's contributory negligence. The Appellant was mentally impaired by deception, and did not have the legal capacity to commit the crime. "The criminal law ordinarily requires that the defendant possess both an evil meaning mind and an evil doing hand before liability is imposed." State v Rowell, 326 SC 313, 487 S.E.2d 185 (1997) State v Tuckness, 257 SC 295, 185 S.E.2d 607 (1971) (The question of the intent with which an act is done denotes a state of mind, and can be proved only by expressions or conduct, considered in the light of the circumstances. Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstances from which intent may be inferred.)

Trial Counsel was ineffective when failed to object to Trial Court erroneous instruction that invaded the province of the jury.

Trial Counsel performance was deficient when failed to request that the jury be charged on the mens rea element, M'Naghten rule,

or on the Appellant's theory.

"Generally, the sufficiency of instructions must be determined by the facts in each case. Instructions should be full, clear, and explicit, giving to the jury all the law so far as it relates to the issues proved or claimed to be proved, if such issues are substantiated by any evidence or by any legitimate inference therefrom, and be given in such a manner that the jury will not be misled or fail to understand the real issues. Moreover, the instructions should be a safeguard of fairness and impartiality and a guaranty of judicial indifference to individuals. An instruction that does not embody a correct statement of the law is erroneous, although a miscarriage of justice will occur only if such error pertains to a basic and controlling issue of the case." (23 A.C.J.S. Criminal Law § 1305) The Trial Court erroneous instruction controlled the outcome of the trial by removing any reasonable doubt that the jurors may have had and by withdrawing the Appellant's theory which was a trier issue of a fact that was presented and supported by the evidence. "It is proper for, and generally the duty of, the court to state correctly in the charge the theories which the evidence for both the prosecution and the defense respectively tends to establish, so it is improper for it to give an instruction which in effect withdraws a theory of the case supported by the evidence, or to refuse to instruct on a theory which the evidence tends to support. The court, in its instructions, is not confined to the theories advanced by the parties; nor are the theories of the defense limited by the personal evidence of accused, but defendant is entitled to an instruction on any issue fairly raised by the evidence, whether or not consistent with defendant's theory of the case." 23 A.C.J.S. Criminal Law § 1306

When the jury sent out the questions asking if it would matter if the

Appellant truly believed the victim to be 18 and was his ignorance to her age an excuse the Trial Court instruction was erroneous because it did not reflect the law, it was pertaining to a controlling issue, and it withdrew the Appellant's theory from the jury consideration. The Trial Court gave the Appellant's counsel an opportunity to object to the instruction before it was admitted to the jury and counsel's failure to object shows the counsel's incompetent representation. Trial Counsel performance prejudice Appellant because he was not afforded the opportunity to allow the jury to determine his theory of mistake and ignorance of age.

Trial Counsel was ineffective and his representation of the Appellant fell well below the bar of competency when the Appellant presented his defense that was supported by the facts and counsel failed to object to the Trial Court erroneous instruction that deprived the Appellant of his right to a fair trial and the opportunity to allow the jury to consider his theory. If the judge had wanted to deliver his opinion to the jury on the matter of fact, it should have been delivered as a mere opinion and not as a direction and the jury should have been made to understand clearly that they were to decide the facts on their own view of the evidence. In State v. DuBont, 87 SC 532, 70 S.E. 306, 307 "The requirement of the Constitution that the judge shall declare the law means that he shall explain so much of the criminal law as is applicable to the issues made by the evidence adduced on the trial." If the Trial Counsel was competent he would have objected to the Trial Court instruction and request that, the correct law be applied to the case, or that the jury be charged on the Appellant's theory defense. If he had the (Trial Court would have been required to charge the jury on that defense, and failure to do so would be a reversible error.) State v. Rye, 375 SC 119, 651 S.E.2d 321 (2007) The jury was not allowed to determine the evidence presented on their own view or consider the facts or the Appellant's defense which is how the Trial Counsel performance prejudice

the Appellant.

It is alike the general rule of law and the dictate of natural justice that to constitute guilt, there must be not only a wrongful act, but a criminal intention. (It is ordinarily, the basic premise in criminal law that in order to establish guilt criminal intent of some form is required. This premise is rooted in the legal maxim *actus non facit nisi mens sit rea* meaning an act does not make [the doer of it] guilty, unless the mind be guilty that is unless the intention be criminal.) Black's Law Dictionary 34 (5th ed 1979) The Appellant was entitled to a jury charge on the mens rea element because the Appellant did not knowingly commit a crime. The mens rea is the yardstick that measures criminal intent. U.S. v Bailey, 444 U.S. at 402, 100 S.Ct. at 630-31, 62 L.Ed2d at 586 (The required mens rea for a particular crime can be classified into a hierarchy of culpable states of mind in descending order of culpability, as purposes, knowledge, recklessness, and negligence. Criminal liability is normally based upon the concurrence of two factors, "an evil meaning mind [and] an evil doing hand.") The 22 C.J.S. Criminal Law § 36 states "To act knowingly with respect to conduct or to a circumstance described by a statute defining an offense a person must be aware that his conduct is practically certain to cause the result. An act is done knowingly if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason. Ordinarily, one is not guilty of a crime unless he is aware of the existence of all those facts which make his conduct criminal. Without guilty knowledge criminal intent cannot exist." If criminal intent is the state of mind at the time of action, when the act was admitted and the Appellant claimed innocence on the basis of some mitigating factor intent became the material issue in the criminal prosecution, and the Appellant's intent was to be determined from his words, acts, and conduct. State v. Helsey, 502 S.E.2d 63, 331 S.C. 50 (1998) (A trial court is not required to give an instruction on mistake of fact unless and until the defendant introduces some evidence, direct or circumstantial, of a

reasonable basis for having made the mistake.) in which was the Appellant's testimony.

South Carolina has adopted the M'Naghten test to determine insanity. "A defendant is insane if, at the time of the commission of the act constituting the offense, as a result of mental disease or defect, he lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong." SC Code Ann. § 17-24-10(A) (Supp. 2012) "The general principle of the insanity defense is that an actor is excused for his conduct constituting an offense if, as a result of a mental disease or defect, the actor does not perceive the physical nature or consequences of his conduct does not know his conduct is wrong or criminal. Under the M'Naghten type of insanity rule an accused is excused for his conduct if, as a result of a mental disease or defect, he did not know the nature and quality of the act he was doing, or if he did know it, he did not know what he was doing was wrong. Under the M'Naghten test, there exist two distinct and independent bases upon which a verdict of not guilty by reason of insanity might be returned; defendant may be found insane either if he did not know the nature and quality of his act or if he did not know the act to be morally wrong." 22 CJS Criminal Law § 99 see also. State v. Lewis, 338 SC 273, 494 S.E.2d 115 (1997)

If the Appellant act was done under deception and he is unaware that his conduct is criminal he could not recognize that his act was legally wrong. This does not imply that the Appellant was ignorant to the law, but ignorant to a material fact that would have assisted him in distinguishing his act from right or wrong and correcting his conduct accordingly to law.

The Appellant's mental capacity was defected due to the victim's deception and the Appellant lacked the power to distinguish right from wrong in the act itself

and he could not recognize the act complained of as either morally or legally wrong. The Appellant testified to present his excusable or justification theory, that was supported by the evidence, and was the Applicant's sole purpose of going to trial. Under the constitution a defendant is entitled to a fair trial and should be allowed to present any favorable defense to his case. Trial Counsel was aware of the Applicant's defense and counsel's representation was incompetent. Under Rule 1.1, R.P.C., Rule 407, S.C.A.C.R. a counsel should provide competent representation to a client and a competent representation requires legal knowledge, skill, thoroughness and preparation reasonably necessary for representation. Trial Counsel's performance was deficient and prejudiced the Applicant's defense in which deprived the Applicant of a fair trial, protected by the 6th and 14th Amendment, and by allowing the Trial Court to invade the province of the jury without objecting. Ignorance and Criminal Intent are general rules of law and a competent counsel would have made a request that the court charge the jury to the issues or theories raised by the Applicant after evidence was presented that supported his defense, and an affirmative defense was offered. The Applicant did not have criminal intent or the mental state to be aware of the consequences of his act due to the victim's contributory negligence. If the jury would have been afforded the opportunity to consider the Applicant's mistake as to the victim's age or his ignorance theory of the facts and the correct law was applied to the case the results of the proceeding would have been different.

AMENDED CLAIMS

1.) Applicant hereby allege, plead, and contend his trial counsel rendered ineffective assistance during trial counsel's course of representation of Applicant in the criminal proceeding underlying this action because: (A) Trial Counsel failed to attack the validity of the criminal statute S.C. Code Ann. § 16-3-655 (b) 2 on the ground that the statute is unconstitutional on its face or "as applied to Applicant" because the statute operation,

enforcement or application to Applicant does not (or did not) comport with prevailing notions of fundamental fairness. See State v. Hutton, 595 SE.2d. 876, 358 SC. 622 (S.C. App. 2004) ("Pursuant to the Due Process Clause, Criminal prosecutions must comport with prevailing notions of fundamental fairness.")

2.) Applicant hereby challenges the validity of the statute, § 16-3-655 (b) 2, on grounds that;

(A) the statute is unconstitutional on its face because it deprives one charged with the crime of a defense (e.g., "mistake of fact") available according to law (i.e., the case law / secondary authorities) at the time that the act was committed. See, Helton v. Faurer, 930 F.2d 1040 (3rd Cir. 1991) ("Law is unconstitutional if it deprives one charged with the crime of a defense available according to law at the time that the act was committed.")

(B) the statute is unconstitutional on its face because it lacks an essential element of criminal jurisprudence, to wit: "mens rea". See, Actio non facit reum nisi mens rea. ("An act does not make a person guilty unless the mind is guilty.") [Criminal Law key No. 20; 22 C.S.S. Criminal Law § 31-33, 35-39.]

Conclusion

Therefore, the Applicant is respectfully requesting that this court would alter or amend judgement and rule upon all allegations set forth through motion and Post conviction application or grant Applicant a new hearing so that all his allegations, evidence, and testimony can be heard, and ruled upon according to law.

Wayne Wells, Sr. 314139
Turberville Corr. Inst.
Seloc A-241
Post Office Box 252
Turberville SC 29162

July 21, 2014

Hon. James C. Campbell
Clerk of Court
Sumter County Judicial Center
215 N. Harvin Street
Sumter S.C. 29150

Re: C/A No: 2013-CP-43 0678

Dear Hon. Campbell

Please, upon receipt of, please find enclosed, an original motion of a 54(e), a motion to proceed in Forma Pauperis and a certificate of service, to be "clocked-date-stamped", filed by your office, and a clocked in copy of the same returned to me as soon as feasible.

With the kindest regards,

Wayne Wells Jr

Wayne Wells Sr, 314139

State of South Carolina
County of Sumter

Wayne Wells, Sr.
Applicant

vs.
The State
Respondent

RECORDED

2014 JUL 23 PM 1:10

JAMES E. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

In The Court of Common Pleas

Case No: 2013-CP-43-0675

Certificate of Service

That I, Wayne Wells, Sr., Certify and declare under the penalty of perjury that I have served on the following address below; on this 22 day of July 2014; for a Motion to Alter and Amend Judgement, with a motion to proceed In Forma Pauperis, and a Certificate of Service, by depositing such in the Turberville Corr. Inst Mailroom Office.

Has sworn to and subscribed

before me this _____ day of _____

_____ 2014

Notary

Exp: _____

RECEIVED

JUL 22 2014

MAILROOM
TURBEVILLE CI

Wayne Wells Jr

Wayne Wells Jr, 314134

Turberville Corr. Inst.

Saloc A - 241

Post Office Box 252

Turberville, SC 29162

Orig: Hon. James E. Campbell
Clerk of Court Sumter County
215 N. Harrin Street
Sumter SC 29150

I have submitted such on this 22 day of July 2014 under the penalty of perjury pursuant to 28 U.S.C. 1746

State of South Carolina
County of Sumter

Wayne Wells, Jr.

Applicant

v.

The State,

Respondant

In The Court of Common Pleas

Case No: 2013-CP-43-0675

Motion w/ affidavit in
Support to proceed in
Forma Pauperis, upon leave
of Court

That I, Wayne Wells, Jr. being duly sworn first state that I do not have the funds to secure the said cost of filing of this motion in this action and do hereby offer up an affidavit in support to proceed without cost.

Wayne Wells Jr

Wayne Wells, Jr.

Has sworn to and subscribed

before me this _____ day of _____

2014

RECEIVED

JUL 22 2014

MAILROOM
TURBEVILLE CI

Exp. _____
Notary

Order

Leave. (Granted) (Denied) to proceed In Forma Pauperis

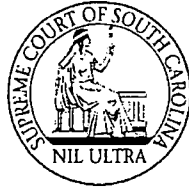
_____ 2014 _____

_____ S.C. Circuit Court Judge

Note: Am a Ward of the State

Ex parte: John W. Rice, 415 S.E.2d 819 (Filing)

Exhibit 4



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

August 13, 2014

Fulton Casey Dale Cornwell, Esquire
448 Deerwood Street
Unit 9A
Columbia SC 29205

Re: Wayne Wells v. State
Appellate Case No. 2014-001722
Lower Court Case No. 2013-CP-43-00675

Dear Counsel:

Your client has filed a *pro se* notice of appeal from the order dated July 7, 2014. I remind you that under Rule 71.1(g) of the South Carolina Rules of Civil Procedure that you remain his counsel of record before this Court. A copy of this notice of appeal and proof of service is enclosed.

This case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.


The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals.

The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

Finally, your client has filed the enclosed *pro se* motion to stay. Since you represent him in this matter, no action will be taken on this *pro se* motion. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989).

If it is appropriate to dismiss this case due to the pendency of a timely and proper post-trial motion (*see Hudson v. Hudson*, 290 S.S. 215, 349 S.E.2d 341 (1986)), that request will have to be made by you as his counsel.¹

Very truly yours,



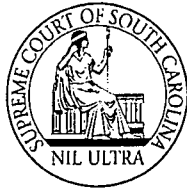
CLERK

Enclosures

cc: Daniel Francis Gourley, II, Esquire
Mr. Wayne Wells, Jr., #314139

¹ From the information that has been provided, I cannot tell if this post-trial motion was filed by you or by your client *pro se*. Therefore, I cannot tell if this motion has any effect on this appellate proceeding. *See Miller v. State, supra* ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel. [citations omitted]. Because petitioner was represented by counsel, the *pro se* [Rule 59] motion was not proper, should not have been accepted, and should not have been ruled upon. The motion was essentially a nullity. . . . We also take this opportunity to remind judges and clerks of court of our directive in *Foster* not to accept substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a party who is represented by counsel.").

Exhibit 5



South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

ROSALYN FRIERSON
DIRECTOR

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201

MEMORANDUM

TO: Daphne D. Helms
FROM: Court Reporting Section
RE: Request for transcript
DATE: October 31, 2014

I have enclosed a letter from Mr. Wayne Wells who is requesting a transcript from proceedings heard by the Honorable R. Ferrell Cothran, Jr., on May 29, 2014. Our records reflect that you were assigned to Judge Cothran in a term of Florence County Common Pleas Non-Jury/PCR court on that day. Please determine if this proceeding was recorded by you and contact Mr. Wells to make arrangements for payment for preparation and delivery of the transcript. Kindly copy this office on the correspondence. Thank you for your attention to this matter.

Enclosure

cc: Wayne Wells #314139
TCI
P. O. Box 252
Turbeville, SC 29162

Oct 26, 2014

Honorable James C. Campbell

On July 23, 2014 a motion to Alter or Amend a Judgment was clocked - date stamped into the Court files. This motion was also timely filed. The case No is 2013-LP-43-0675. I am writing you to ask for your assistance in helping me to learning the results or the status of my case. The reason I came to you was because the counsel that was appointed to me by your office, Fulton Casey Dale Cornwell, has failed to have any type of correspondence with me concerning any of the matters dealing with my case. This behavior is a clear violation of the Rules of Professional Conduct pursuant to Rule 407, SCACR Rule 1.4. This complaint will be address to the proper authorities but my main concern is that ever since my Post-trial motion was filed I haven't yet recieved an order of either granting or denial of my motion. According to the SCACR, Rule 203 (b)(1) when a Rule 59, SCRLP has been made a receipt of written notice of entry of the order either granting or denying the motion should have been returned to me. It has been well over three months and no such order has been returned. This matter is of a great concern to me and due to the absence of communication from Mr. Cornwell I am unaware of the results or status of the motion that was filed in the Court. I would also like for it to be noted that on top of requesting my attorney to file my Rule 59(e) I also request that a Motion to Stay and a Notice of Appeal be filed on my behalf, since I have not recieved any response I was hoping that you could tell me the verdict of the post-trial motion.

If it isn't too much trouble I would also like for you to send me a copy of any Writs, Notice of Appeals, or briefs that were file to the Court on my behalf pursuant to this case. I would also like to put in a request for my evidentiary hearing transcript that was held on the 29 day of May 2014 with Judge R. Ferrel Cochran, Jr. as the presiding judge. I would also like to request for a blank P.C.R. Application. My address is as enclosed below and I will be looking forward to hearing from you and receiving the documents that I have requested soon. I would like to apologize for any inconvenience that I may have cause but if there is anything that I have requested that is not in your power to receive please send me what you can with the name and address of whom can help me with what you can't. I would like to thank you for your assistance and it is greatly appreciated.

Enclosures

cc:

Sincerely,

Wayne Wells Jr

Wayne Wells Jr. 314139

YLC Seloc A-241

P.O. Box 252

Yurbeville SC 29162

October 26, 2014

Court Reporter

215 N. Harrin Street, Room 303

Sumter, SC 29150

RE: Wayne Wells Sr. vs. State, Case No. 2013-LP-43-0675

Dear Campbell;

On May 29, 2014, the above case was heard before the Honorable R. Ferrell Cothran, Sr., Circuit Court Judge, in Sumter County. My records indicate that you were the court reporter for this case.

I request that you provide me with a transcript of the proceedings. Please transcribe the entire record.

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

CC: S.C. Court Administration
Clerk, Court of Appeals

Sincerely,

Wayne Wells Sr.

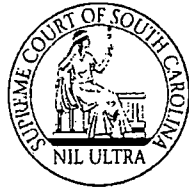
Wayne Wells Sr. 314134

T.C. Saloc A-241

P.O. Box 252

Turberville, SC 29162

Exhibit 6



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

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COLUMBIA, SOUTH CAROLINA 29201

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www.sccourts.org

November 14, 2014

The Honorable James C. Campbell
Sumter County Judicial Center
215 N Harvin St Rm 303
Sumter SC 29150-4974


REMITTITUR

Re: Wayne Wells v. State
Lower Court Case No. 2013CP4300675
Appellate Case No. 2014-001722

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,



CLERK

cc: Daniel Francis Gourley, II, Esquire
Fulton Casey Dale Cornwell, Esquire
Wayne Wells, Jr., #314139

The Supreme Court of South Carolina

Wayne Wells, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-001722

Lower Court Case No. 2013CP4300675

ORDER

Petitioner has failed to provide this Court with correspondence showing that the transcript has been ordered as required by Rules 243(b) and 207 of the South Carolina Appellate Court Rules.¹ Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

October 29, 2014

cc: Daniel Francis Gourley, II, Esquire
Fulton Casey Dale Cornwell, Esquire

¹ The Division of Appellate Defense has advised this Court that it has not received any request to provide representation in this matter. *See* Rule 71.1(g) of the South Carolina Rules of Civil Procedure ("If an applicant represented by counsel desires to appeal, counsel shall serve and file a Notice of Appeal as required by Rule 243, SCACR, and shall continue to represent the applicant on appeal unless automatically relieved under Rule 602, SCACR, or allowed to withdraw under Rule 264, SCACR. If the applicant is indigent, counsel shall assist the applicant in obtaining representation by the Division of Appellate Defense of the Office of Indigent Defense.").

Wayne Wells 314134
J.C.T. Seloc A-234
P.O. Box 252
Turbeville SC 29162



RECEIVED
DEC 23 2014
MAILROOM
TURBEVILLE CI

The Supreme Court of S.C.
Daniel E. Shearouse
P.O. Box 11330
Columbia, SC 29211