

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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JAN 7 6 2015

**S.C. SUPREME COURT**

THE STATE,

RESPONDENT,

V.

WAYNE DANIEL MCCOMBS,

PETITIONER.

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Appeal from Dorchester County

Kristi Lea Harrington, Circuit Court Judge

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Appellate Case No.: 2014-002194

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**MOTION TO ABATE PETITIONER'S CASE AND WITHDRAW OPINION NO.  
5265**

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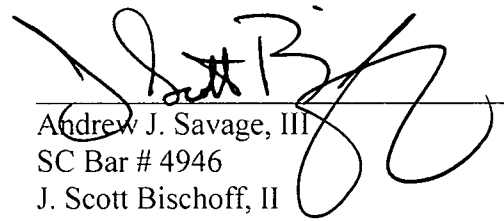
Petitioner Wayne McCombs ("McCombs") died on November 23, 2014, while awaiting a response from the Supreme Court regarding his Petition for Writ of Certiorari that was filed on October 16, 2014. A copy of McCombs' death certificate with redacted Social Security number is attached to this Motion as Exhibit A. For the reasons set forth herein, counsel for McCombs respectfully asks this Court to abate his case and withdraw its most recently published opinion in this matter.

1. Wayne Daniel McCombs was indicted by the Dorchester County grand jury for Lewd Act on a Minor (Indictment No. 2009-GS-18-1493) and the case was called for trial on March 5, 2012, before the Honorable Kristi L. Harrington. In a pretrial hearing on evidentiary and other matters, Judge Harrington took up the State's Motion in Limine seeking to admit evidence of a prior bad act of McCombs pursuant to SCRE 404(b). After a hearing and arguments of defense counsel and the State, Judge Harrington denied the State's request to introduce the 404(b) evidence. The State appealed, and after briefing and oral argument, the Court of Appeals reversed the evidentiary ruling of the circuit court. See State v. McCombs, Opinion No. 5265 (S.C. Ct. App. Filed August 20, 2014). After McCombs' timely Petition for Rehearing was denied on September 18, 2014, a Petition for Writ of Certiorari was timely filed on October 16, 2014. The State filed its Return to Petition for Writ of Certiorari on November 13, 2014. McCombs did not file a Reply to the State's Return. As of the filing of this motion, McCombs has not received a response from the Supreme Court regarding his Petition for Certiorari.

2. Granting this request to abate the appeal and withdraw the opinion is mandated by the South Carolina Supreme Court's orders in State v. Anderson, 281 S.C. 198, 199, 314 S.E.2d 597, 597 (1984) ("We hold that the death of a criminal appellant, prior to the disposition of his appeal, abates that appeal and constitutes grounds for its dismissal.") and State v. Bixby, 397 S.C. 154, 723 S.E.2d 841 (2011) (granting request to abate the appeal and withdraw the opinion in light of fact that "Appellant passed away while her petition for rehearing was pending.").

3. The undersigned submits that, since the Petitioner McCombs has died while awaiting a response to his Petition for Certiorari, abatement of his case and withdrawal of S.C. Court of Appeals Opinion Number 5265 is warranted in light of the opinions issued in Anderson and Bixby. Id.

Respectfully submitted,



Andrew J. Savage, III  
SC Bar # 4946  
J. Scott Bischoff, II  
SC Bar # 74285  
Savage Law Firm  
15 Prioleau Street  
Charleston, South Carolina 29401  
(843) 720-7470  
Attorneys for Petitioner

January 9, 2015

Exhibit A

STATE OF SOUTH CAROLINA  
CERTIFICATION OF VITAL RECORDS

DEATH CERTIFICATION

STATE FILE NUMBER : 139-14-039442

DECEDENT'S NAME: \*WAYNE DANIEL MCCOMBS\*  
 AKA's: NA  
 ARMED FORCES: YES  
 DATE OF BIRTH: APRIL 20, 1941  
 TYPE OF PLACE OF DEATH: HOSPITAL- INPATIENT  
 NAME AND ADDRESS OF PLACE OF DEATH: TRIDENT MEDICAL CENTER, NORTH CHARLESTON, SC 29406-9104  
 PLACE OF DISPOSITION: PLANTATION MEMORIAL GARDENS  
 DISPOSITION LOCATION: MONCK'S CORNER, SOUTH CAROLINA  
 METHOD OF DISPOSITION: ENTOMBMENT  
 DECEDENT'S RESIDENCE: 121 WARING ROAD, SUMMERVILLE, DORCHESTER COUNTY, SC, 29483  
 PLACE OF BIRTH: NORTH CAROLINA

SEX: MALE  
 SOCIAL SECURITY NUMBER: [REDACTED]  
 AGE: 73 YEARS  
 COUNTY OF DEATH: CHARLESTON  
 MARITAL STATUS: WIDOWED (AND NOT REMARRIED)

SURVIVING SPOUSE'S NAME: NA  
 FATHER'S NAME: ALVIN KENNETH TABOR  
 MOTHER'S NAME PRIOR TO FIRST MARRIAGE: NANCY KATHRYN HUNT  
 INFORMANT'S NAME: TERESA F THORNLEY  
 MAILING ADDRESS: 100 DAISY CIRCLE, SUMMERVILLE, SC, 29483  
 FUNERAL HOME: PARKS FUNERAL HOME, INC., 130 W. 1ST NORTH ST., SUMMERVILLE, SC, 29483  
 FUNERAL DIRECTOR: JOHN B. PARKS III  
 EMBALMER'S NAME: JOHN B. PARKS III  
 ACTUAL OR PRESUMED DATE OF DEATH: NOVEMBER 23, 2014  
 ACTUAL OR PRESUMED TIME OF DEATH: 2352  
 CAUSE OF DEATH - PART I:  
 METASTATIC MELANOMA

RELATIONSHIP: FAMILY MEMBER  
 LICENSE NUMBER: 1615  
 LICENSE NUMBER: 1355  
 MANNER OF DEATH: NATURAL

OTHER SIGNIFICANT CONDITIONS - PART II:  
ACUTE RENAL FAILURE

CORONER CONTACTED? NO  
 DATE OF INJURY: NA  
 PLACE OF INJURY: NA  
 LOCATION OF INJURY: NA  
 HOW THE INJURY OCCURRED?  
 NA

AUTOPSY PERFORMED? NO  
 TIME OF INJURY: NA

AUTOPSY AVAILABLE? NA  
 INJURY AT WORK? NA

CERTIFIER NAME AND TITLE: MD ROBERT M. SILGALS  
 CERTIFIER'S ADDRESS: 9295 MEDICAL PLAZA DR, SUITE C, CHARLESTON, SC, 29406  
 DATE FILED: NOVEMBER 25, 2014  
 DATE OF ISSUANCE: NOVEMBER 26, 2014  
 SPECIAL INSTRUCTIONS:  
 NA

LICENSE NUMBER: 11792

SC04035378

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

*Catherine Templeton*  
 Catherine Templeton  
 Director and State Registrar

*Barbara E. Derrick*  
 Barbara E. Derrick  
 Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.  
 Revision Date: 01/24/2014



STATE OF SOUTH CAROLINA  
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Appeal from Dorchester County

The Honorable Kristi L. Harrington, Circuit Court Judge

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THE STATE,

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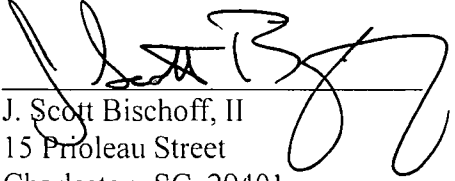
Petitioner.

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CERTIFICATE OF SERVICE

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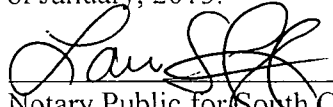
The undersigned attorney hereby certifies that a true copy of the Motion to Abate Petitioner's Case and to Withdraw Opinion No. 5265 in the above-entitled case has been served upon David Spencer, Esquire, of 1000 Assembly Street, Room 519, Columbia, SC, 29201, by mailing a copy in the United States mail, postage prepaid, this 9<sup>th</sup> day of January, 2015.



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J. Scott Bischoff, II  
15 Prioleau Street  
Charleston, SC 29401  
ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 9<sup>th</sup> day  
of January, 2015.



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(L.S.)  
Notary Public for South Carolina  
My Commission Expires: 12/12/2023

**SAVAGE LAW FIRM**  
15 PRIOLEAU STREET  
CHARLESTON, SC 29401  
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<http://www.savlaw.com>  
Video Conferencing Address: 165.166.223.197

ANDREW J. SAVAGE, III  
Certified Criminal Trial Advocate - NBTA

J. SCOTT BISCHOFF, II  
CAMERON J. BLAZER

January 9, 2015

The Honorable Daniel E. Shearhouse  
Clerk of Court  
The Supreme Court of South Carolina  
PO Box 11330  
Columbia, SC 29211

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**S.C. SUPREME COURT**

**RE: State v. Wayne McCombs**  
**Appellate Case Number: 2014-002194**

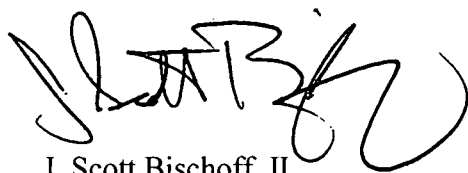
Dear Mr. Shearhouse:

I have enclosed an original and six copies of our Motion to Abate Petitioner's Case and Withdraw Opinion No. 5265, with attached Exhibit and Certificate of Service, for the above-referenced case.

By copy of this letter to Assistant Attorney General David Spencer, I am providing him with a copy of our Motion.

With best wishes, I remain

Sincerely,



J. Scott Bischoff, II

JSB,II/hch

Enc: Original and Six Copies: Motion to Abate Petitioner's Case and Withdraw Opinion No. 526/Exhibit A/Certificate of Service (6 pages each)

cc: David Spencer, Esquire, Assistant Attorney General, with enclosure