

**STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT**

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Appeal from Horry County  
The Hon. George James, Circuit Court Judge

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Appeal Case No. 2014-001453

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Jeffery Horan,..... Petitioner

V.

State Of South Carolina,.....Respondent

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**MOTION TO RECALL REMITTITUR**

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Pursuant to Rule 240, SCACR, Jeffery Horan, Petitioner in the above-caption Appeal, respectfully request this court to recall from the lower court the remittitur in this Appeal.

S/   
Jeffery Horan

**RECEIVED**

FEB 04 2015

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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FEB 04 2015

\_\_\_\_\_  
Appeal from Horry County  
The Hon. George C. James, Circuit Court Judge

**S.C. SUPREME COURT**

\_\_\_\_\_  
JEFFERY HORAN,

PETITIONER,

V.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

\_\_\_\_\_  
Appellate Case No. 2014-001453

\_\_\_\_\_  
**Petition for Rehearing**  
\_\_\_\_\_

Petitioner respectfully requests from this court for a rehearing on the aboved-captioned appeal. Pursuant to Rule 221, SCACR, Petitioner has 15 days after the final Order to file for a rehearing. However, during the course of litigating this case, Petitioner's attorney, Tristan Michael Shaffer, withdrew do to a conflict of interest.

Petitioner was notified that the court had ruled on September 11, 2014, only after he wrote this Court to inquire on the status of his case on December 30, 2014 (see exhibit 1). Petitioner learned of the dismissal on January 14, 2014. (See exhibit 2) Prior to that Petitioner repeatedly wrote and telephoned Shaffer seeking the status of his case without success. (See exhibit 3) After Petitioner sent Shaffer a copy of the letter he sent to this

Court, he responded with a copy of the perfunctory Brief he filed (see exhibit <sup>5th</sup>4). In other words, Petitioner had no way of knowing the court had ruled. Therefore, Petitioner has timely filed for a rehearing within 15 days of being notified.

Shaffer represented petitioner at the March 2014 hearing where the state was asking for summary judgement. During this hearing Shaffer didn't put forth any of the issues that Petitioner has. Consequently on June 16, 2014, the Honorable George James dismissed the action, and Shaffer mailed Petitioner a copy of the Notice of Appeal that he filed. When the Petitioner received the package he noticed the enclosed letter is on Axlerod and Associates letterhead, and Shaffer's name is on the documents. Petitioner's mother, (Susan Brown) called Shaffer. And was told that he was now working for Axlerod and Associates law firm, and that he would be removing himself from the case due his conflict of interest with Stuart Axlerod. Axlerod was the Petitioner's trial attorney. With that in mind, 85% of the Petitioner's request for relief is based on ineffectiveness and Shaffer knew this when he was hired to represent Petitioner and Shaffer has set fourth three different dates for having started at Axelrod's firm. To that end, it appears that Shaffer is protecting Axlerod as evidenced by his perfunctory Brief. Wherein, He failed to present or preserve Petitioner's issues.

Petitioner has a mental health history beginning as adolescent through his teens. (See exhibit 5). However, Petitioner did not receive a psychiatric evaluation before pleading guilty to manslaughter. Section 555 CJS 22A (Thus defendant whose sanity at the time of the alleged crime is fairly in question, has at a minimum, the constitutional right to at least one psychiatric exam and opinion developed in a manner reasonably calculated to allow adequate review of relevant, available information and at such time will permit counsel reasonable opportunity to utilize the analysis in preparation and conduct of defense.) In the case at bar, the courts and all parties involved also knew of Petitioner's suicide note found during the investigation, yet they still failed to have the him evaluated. AKE v OKLAHOMA, 470 US 68,105 S. CT. 1087, (we hold that when a defendant has made a preliminary showing that his sanity at the time of the offense is likely to be a significant factor at trial, the constitution requires the state to provide access to a psychiatrist's assistance on the issue if the defendant can not otherwise afford one.) 17-24-20 (A) (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.) In fact, on September 10, 2009 during

Petitioner's bond hearing Judge Cottingham ordered the solicitor's office to provide defense counsel a copy of the petitioner's suicide note. Therefore, the court should have used its discretion and ordered an evaluation of the petitioner to safeguard his right to due process, equal protection of the laws and effective assistance of counsel. ( It was the duty of the court to safeguard petitioner's rights, a duty only it could have performed reliably.) Taylor v. Kentucky, 436 US 478, 489 (1977)

Shaffer mentioned Petitioner's withdrawn of his PCR, but failed to present the evidence. Archer was appointed to represent Petitioner on his first PCR, and he tried to extort 2,000 dollars from him. (See exhibit 6) Archer was disciplined for this conduct in another case. IN RE ARCHER, 398, SC 145, 728 SE 2d (2012). ( violated rules of professional conduct 407, SCACR) Rule 1.5 (A) (lawyers shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses.) Rule 8.4 (D) ( it is professional misconduct for lawyers to engage in conduct that is prejudicial to the administration of justice.) Archer admitted he violated the following rules for lawyer enforcement. Rule 413 SCACR : Rule 7 (A) (1) ( it shall be grounds for discipline for lawyers to violate rules of professional conduct) and (7) (A) (5) ( it shall be grounds for discipline for lawyers to engage in conduct tending to pollute the administration of justice

or to bring the courts or legal profession into disrepute or conduct demonstrating an unfitness to practice law.

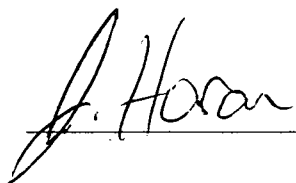
The victim's family sat directly behind Petitioner in the courtroom at his November 15, 2014, PCR hearing. Once seated, Petitioner heard the victim's mother making threatening comments that grew louder and more profane. Petitioner asked Archer to have the victim's family moved but he ignored this request. Petitioner was intimidated and influenced into withdrawing his PCR by the victim's family, and the ineffectiveness of Archer. Petitioner has not had his bite at the apple due to procedural irregularities. WASHINGTON V STATE, 324 SC 232, 478 SE 2d 833 (1996) (allowing successive PCR Application where defendant was denied due process due to numerous procedural irregularities).

When you look at the petitioner's case as a whole, there is no way he has had a fair opportunity to present his case. Petitioner can show his attorney was ineffective and he was denied due process, equal protection of the laws and effective assistance of counsel as guaranteed by Article I, 3, 14, and 23 of the South Carolina Constitution and Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

Respectfully submitted,

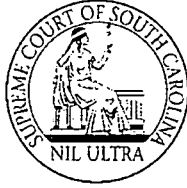
January 29, 2015

Columbia, SC



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Jeffery Horan, Petitioner



# 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](http://www.sccourts.org)

January 09, 2015

Mr. Jeffery Horan, #337449  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia SC 29210

Re: Jeffery Horan v. State  
Appellate Case No. 2014-001453  
Lower Court Case No. 2012CP2603085

Dear Mr. Horan:

This responds to your letter dated December 30, 2014. A notice of appeal was filed in this matter. This matter was subsequently dismissed and the remittitur was sent to the circuit court. A copy of the dismissal order and remittitur is enclosed.

Finally, as to your request for a copy of the final order of the circuit court in this matter, I can provide you with a copy for \$ 1.90. This represents the cost of copying 6 pages at a rate of 25 cents a page plus a mailing fee of 40 cents. If you would like a copy, please send a check or money order in the above amount payable to the South Carolina Judicial Department.

Very truly yours,

CLERK

Exhibit 1 1/2

The Supreme Court of South Carolina  
DANIEL E. SHEAROUSE, CLERK OF COURT  
POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

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MAIL ROOM

JEFFERY HORAN, #337449  
BROAD RIVER CORRECTIONAL INSTITUTION  
4460 BROAD RIVER ROAD  
COLUMBIA SC 29210

29210404799

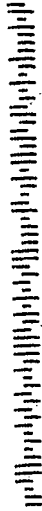


Exhibit 132

7-22-14

Jeffery Horan #337449  
BRCI Mathie 2100  
4460 Broad River Rd  
Columbia, SC 29210

RE:

Mr. Shaffer,

Please send me a complete copy of my case file to include all Motions, Briefs, Appeals, ECT...

Also being that I have to hire a new attorney,  
Your consideration in rapidly refunding the \$1,800 paid  
will be greatly appreciated.

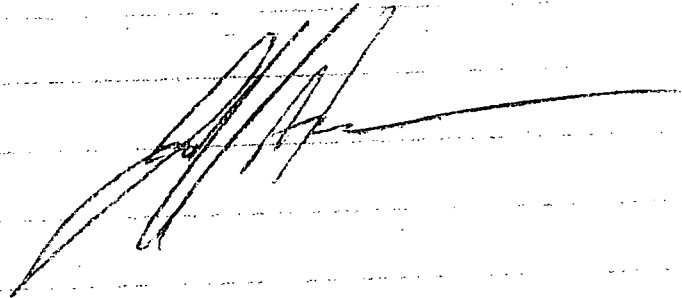
A handwritten signature in black ink, appearing to be 'Jeffery Horan', written over a horizontal line.

Exhibit 3

# AXELROD & ASSOCIATES, P.A.

Attorneys and Counselors at Law

*"Success is all that matters"*

Stuart Mark Axelrod†  
W. Christopher Castro\*  
Tristan M. Shaffer  
Emily M. Sordian‡

4701 Oleander Drive  
Myrtle Beach, SC 29577  
Phone: (843) 916-9300  
Fax: (843) 916-9311

†Certified Family Court Mediator  
\*Currently on Active Military Leave  
‡Certified Guardian Ad Litem

January 21, 2015

Jeffery Todd Horan #337449  
BRCI/Moultrie 2100  
4460 Broad River Road  
Columbia, SC 29210

**RE: Jeffrey Horan #337449 v. State of South Carolina  
Appellate Case No.: 2014-001453**

Dear Mr. Horan:

Enclosed please find a copy of the Rule 243(c) Explanation and Order with regard to the above-referenced matter.

With kindest regards, I am

Sincerely yours,



Tristan M. Shaffer

TMS/cdc  
Encl.

COPY

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

AUG - 7 2014

Appeal from Horry County  
The Hon. George C. James, Circuit Court Judge

S.C. Supreme Court

JEFFERY HORAN,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2014-001453

Rule 243(c) Explanation

Petitioner, through his undersigned counsel, asserts that his PCR was improperly summarily dismissed by the circuit court. To support this assertion Counsel will show the following:

1. Petitioner pled guilty to voluntary manslaughter on October 15, 2009.
2. Despite his history of mental illness, Petitioner pled guilty without being evaluated.
3. On May 18, 2010, Petitioner filed his first application for post-conviction relief (PCR). Petitioner was appointed Paul Archer to represent him.
4. Petitioner was not evaluated for competence or criminal responsibility for his first PCR hearing.
5. At the hearing, Petitioner withdrew his first PCR Application.
6. On April 17, 2012, Petitioner filed a second PCR application. In his second PCR application and the subsequent *pro se* filings, Petitioner alleged that he did not


Exhibit 4

knowingly, voluntarily, and intelligently withdraw his first PCR application. Petitioner claimed that he had mental illness and withdrew his first PCR application because he was intimidated by the victim's family in the courtroom.

7. The State moved to summarily dismiss Petitioner's second PCR application.
8. During a hearing to determine whether to summarily dismiss the second PCR application, Counsel argued that there is at least some evidence from the filings that would justify a hearing on the merits.
9. Petitioner alleges that his first PCR application was involuntarily withdrawn. Additionally, Petitioner's mental illness may have made it more likely that Petitioner was easily influenced into withdrawing his first PCR application. Moreover, Petitioner argued that his mental illness may have contributed to the delay in filing the second PCR application.
10. Petitioner now seeks remand for a hearing on the merits of his second PCR application.
11. Petitioner's *pro se* filings raise disputed issues of fact which should have been decided at a hearing on the merits. *See State v. McCoy*, 491 S.C. 363, 369, 737 S.E.2d 623, 626 (2013) ("Where an application alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing.").
12. Therefore, the Circuit Court erred in finding that he was not entitled to a hearing on the merits.

Based on the above referenced facts, arguments and cases, Counsel respectfully requests that this Court consider Petitioner's appeal from his second PCR application.

Respectfully submitted,



---

Tristan M. Shaffer  
**AXELROD & ASSOCIATES**  
4701 Oleander Drive  
Myrtle Beach, SC 29577  
Phone: (843) 916-9300  
SC Bar #: 77565

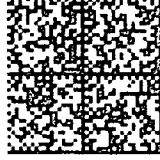
August 6, 2014

**AXELROD**  
& ASSOCIATES  
ATTORNEYS AT LAW

4701 Oleander Drive • Myrtle Beach, SC 29577

cdc

COLUMBIA  
SC 290  
22 JAN '15  
PM 1 L



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0001950239 JAN 21 2015  
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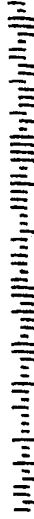
Jeffery Todd Horan #337449  
BRCI/Moultrie 2100  
4460 Broad River Road  
Columbia, SC 29210

**RECEIVED**

JAN 26 2015

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MAILROOM**

29210401260



*Exhibit 4*

## DISCHARGE SUMMARY SHEET

1.a. PATIENT'S NAME AND I.D.#

HORAN, JEFFERY #9824923

b. DATE SERVICE BEGAN

3/9/98

c. DATE SERVICE ENDED

7/18/98

2. SUMMARY OF SERVICE RENDERED (Include list of psychotropic medications with dose, response and complications)

CONSUMER WAS PRESCRIBED RITALIN 15 MG POQ 7AM, 11AM, AND 2 PM. CONSUMER REPORTED A CHANGE IN IMPULSE CONTROL BUT REPORTED NOT TAKING MEDICATION ON A CONSISTENT BASIS. HE WAS ALSO INVOLVED IN INDIVIDUAL AND GROUP THERAPY.

3. REASON FOR TERMINATION OF SERVICE

CONSUMER REJECTED SERVICES

4. RESULTS OF SERVICE AND CONDITION ON DISCHARGE

UPON DISCHARGE, CONSUMER HAD NOT PASSED TO THE 7TH GRADE. HE WAS ALSO UNABLE TO ATTEND SUMMER SCHOOL TO ADVANCE WITH HIS PEERS.

5. DISCHARGE DIAGNOSIS

314.00 ATTENTION DEFICIT HYPERACTIVITY DISORDER

6. RECOMMENDATIONS AND FOLLOW-UP PLANS (REFERRALS, ETC.)

REOPEN CASE AS NEEDED

7. SIGNATURE, TITLE & DATE OF PROVIDER CLOSING RECORD

*Julie A. Holder MS* 7/18/98

PHYSICIAN'S MEDICATION ORDERS AND SERVICE NOTES

PATIENT'S NAME AND I.D.#

Aoran, Jeffery

98-24923

MEDICATIONS PRESCRIBED THIS VISIT BY CENTER PHYSICIAN

7:00

8:00

noon

3:25

Ritalin 15mg po q 7 AM, 11 AM + 2 PM  
10mg tabs #135

PHYSICIAN'S SERVICE NOTES 13yo WM c hx of ADHD. Was previously tx c Ritalin from 1st-4th grade 20 to ↓ attention, fidgety, focking. Med noted med was helpful c no noted S.E. (at 0.15 mg po bid). New school year pt has had ↓ academic performance = grades = F's + D's. Repeated 1st grade (was started on Ritalin well into year). Some behav problems: talking, being late, talking back to teacher, fighting once in new school this year in 6th grade. Has 8 year old 50 ADDSx. No similar hx in parents. No problems c sleep, appetite, NO mood difficulties.

1. SIGNATURE AND DATE

2. MEDICATIONS PRESCRIBED THIS VISIT BY CENTER PHYSICIAN

Med Hx: unremarkable Fam Hx: (F): ETOH / Depressive

Med All: PCN → nausea

Dev Hx: NSVD; no labor; nl motor dev. milestones; Has had

PHYSICIAN'S SERVICE NOTES trouble c essential S's + P's → getting speed therapy. Potty trained at 2 1/2. MSF: A/c appearing. good hygiene, engaging. PMA/R: Losp c prominence of S's + P's. Mood: enthusiastic c bright affect: TC: d SI/HZ / p/psicosis TD: Lender A/O I/B: fair. A/P: ADHD; v/o ODD: Restart Ritalin as above. Advise (M) to keep pt on med thru this school year + into next. R/B/c of med discussed.

d. SIGNATURE AND DATE

Carl Kelly

4-4-98

**PAUL ARCHER**

*Attorney at law*

**Phone/FAX: (843) 979-4000**

**Email: archerlawfirm@gmail.com**

*Certified as Lead Counsel for Death Penalty Defense*

*Member N.Y. Bar since 1966*

*Member S.C. Bar 1994*

*Federal Bar since 1967*

*United States Supreme Court 1976*

*8231 Ocean Highway*

*Pawleys Island, South Carolina 29585*

Mr. Jeffery Horan # 337449

Broad River Correctional

4460 Broad River Rd.

Columbia, SC 29211

September 9, 2010

Dear Mr. Horan:

The State Legislature has cut off funds for PCR's therefore I will not be paid to handle your case. I will continue to represent you however but I will not be going to the Prison to see you for it takes me all day.

If you want me to come to the Prison my fee would be \$2,000.

If you do not have the money, I will see you in Court the day of the PCR hearing.

Let me know.

Very truly yours,

  
Paul Archer

*Exhibit 6*

**STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT**

Appeal from Horry County  
The Hon. George James, Circuit Court Judge

Appeal Case No. 2014-001453

Jeffery Horan,..... Petitioner

v.

State Of South Carolina,.....Respondent


**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the documents listed below have been sent by US mail to :

Supreme court of SC  
Po box 11330  
Cola, SC 29211

SC Attorney General Office  
Josh Thomas, Esquire  
Po Box 11545  
Columbia, SC 29211

Horry County Clerk of Court  
Po box 1201  
Conway, SC 29526

  
Jeffery Horan

Motion to Recall Remittitur

Petition For Rehearing

Exhibit 1, Letter from SC Supreme Court

Exhibit 2, Letter from SC Supreme Court

Exhibit 3, Letter Petitioner sent to Attorney Sheffer

Exhibit 4, Attorney Sheffer's letter and brief to petitioner

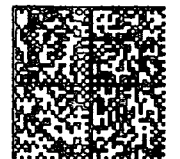
Exhibit 5, Petitioner's mental health record

Exhibit 6, Letter From Attorney Archer

Selfery Horan #33244  
BRCI \ Moultrie 2050  
4460 Broad River Rd  
Columbia, SC 29210

South Carolina Supreme Court  
Po Box 11330  
Columbia, SC 29211

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