

THE SOUTH CAROLINA COURT OF APPEALS

Harry H. Jones, Petitioner, #140698

v

State of South Carolina, Respondent,

Appellate Case No. 2012-212737

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FEB 24 2015

SC Court of Appeals

MOTION FOR RECONSIDERATION

This Motion for Reconsideration is respectfully submitted following the Court's January 27, 2015 denial of a petition for writ of certiorari and remittitur issued February 13, 2015, received by Petitioner February 18, 2015.

This matter was presented before the Court on petition of writ of certiorari following the Final Order of Dismissal of Petitioner's application for Post Conviction Relief.

The State has contended the Petitioner's argument with regard to his mandatory sex offender registration-registry upon release is without merit, citing Williams v State 378 SC 511, 662 SE 2d 615 (ct App 2008).

Petitioner however refutes this and brings for the rebuttal:

Citing Moore v State, 2012 WL 4464551, the Supreme Court of South Carolina's expressed opinion was "... in order to determine whether a plea agreement is knowing and voluntary the appellate court examines the particular facts and circumstances of the case, including background, experience and conduct of the accused.

It was determined prior to Petitioner's plea appearance of June 14, 2004 that his I.Q. and level of understanding

and comprehension is not of the highest, perhaps even slightly below average in his comprehension, assessment and discernment of facts, especially in the intimidating and complicated field of law and the judicial system and processes. His plea counsel, Mr Ed Chrisko, makes note of this in his testimony, stating on the record of Petitioner's "childhood... he rode the short bus to school, always in special education classes... you've heard from the doctor he did well in art, music, stuff where he didn't have to read or think about some complex problem... they said he's not mentally retarded but he's kind of slow, there's no getting around that he's slow." (APP 17 L 5-17)

Such a lack of comprehension should be considered as a mental deficit impairing his ability to fully understand the depth and scope of the matter and situation that was before him.

Also, our Supreme Court has ruled "in the complexity of cases dictates that a reliable record exist containing the specific terms of any plea agreement. We hold therefore that effective with this decision all plea agreements must be on the record and must recite the scope, offense and individuals involved in the agreement. We also hold that prospectively for all plea agreements entered after the filing of this opinion we will limit our review of a plea agreement only to those terms which are fully set forth on the record. Adherence to this procedure is the shared responsibility of the trial judge and the trial counsel for the State and the defendant. The effect of our opinion today is that neither the State nor the defendant will be able to enforce plea agreement terms which do not appear on the record before the trial judge who accepts the plea." State v Thrift 312 S.E.2d 995-96 440 S.E.2d at 348-49 (1994).

It is well established in many cases what constitutes

an acceptable plea of guilt, that it be made knowingly, intelligently and voluntarily. In the case of State v Armstrong, 263 SC 594, 211 SE 2d 889 (1975), it is clearly and concisely stated "... before accepting a guilty plea the court must give the defendant a adequate warning of consequence of plea and warning should include explanation of defendant's picture of all sentencing possibilities... accuracy is paramount, force, threats or lack of knowledge and understanding by the accused deprive a guilty plea of validity." The court doesn't distinguish or specify advising of "collateral" from "non-collateral" consequences. In it's opinion given here it's all inclusive of both. Armstrong further states "... the abandonment of these rights cannot be due to ignorance or incomprehension, for a guilty plea is more than admission of conduct, it is a conviction. The judge is charged with the responsibility of apprising the accused with the direct consequences that is the direct and immediate result of a guilty plea." The mandatory sex offender registry is a direct result and direct consequence rather than a collateral one.

Also, the South Carolina Supreme Court has ruled in Dover v State, 304 SC 433, 405 SE 2d 391 (1991) to be knowing and voluntary, plea must be entered with awareness of consequences of plea ... "

The Federal Rules of Criminal Procedure, Rule 11 makes clear that "the judge must address the defendant in open court before accepting a guilty plea ... Rule 11 also requires the defendant to understand ① the nature of the charge, ② the mandatory minimum and maximum sentence including any special parole, ③ supervised release ... " The mandatory sex offender registry is nothing less than a supervised release, thereby requiring that the Petitioner be made aware of it's attachment to the offense of CSC prior to a guilty plea or during the plea appearance. Not being advised or made aware of a direct

consequence of a guilty plea constitutes this Petitioner's guilty plea to be unintelligently made, involuntary, and invalid based on materiality. The Court must recognize that a defendant must be fully informed of all consequences, either direct or collateral, of a guilty plea for it to be an informed and intelligent decision.

## II SUCCESSIVE

The Petitioner ask the Court to reconsider it's position and decision of untimeliness, and Petitioner's failure to comply with S.C. Code Ann. §17-27-45(a), regarding the one (1) year statute of limitations. Petitioner's continuous ongoing filings and submissions throughout the past eight (8) years seeking relief through the South Carolina Courts have caused the "tolling of the clock" to pause/stop with each action filed. Therefore, as the tolling of the clock begins and stops with each action filed, the operative statement within SC Code Ann. §17 27 45(a) is "... within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal which-ever is later." As of this filing for Post Conviction Relief has not yet occurred. Therefore Petitioner submits he is within compliance of the said limitation of S C Code Ann. §17 27 45(a).

## III NEWLY DISCOVERED EVIDENCE

The Petitioner's diligent pursuit attempting to obtain his Rule 5 discovery information was persistantly hampered, ignored and delayed by his plea Counsel, in his failure to submit the information as requested numerous times.. Petitioner exhausted all means known to him to acquire this information, as he has no formal Judicial training or education,

The Petitioner came into receipt of his discovery Rule 5 information on October 12, 2011 from the Public Defender's Office, Attorney Ed Chrisco. This is verified by the stamp of receipt on the envelope by the mail room facility of the Broad River Correctional Institution, receiving it as legal mail addressed to Petitioner, and the date of Counsel's correspondence (enclosed/Attached EX-3).

Within this discovery material was a search warrant totally irrelevant and unrelated to Petitioner or his charged and alleged offense. Only the Police Officer's name was the only common factor with Petitioner. Petitioner's plea Counsel based his decision of the Petitioner not having a strong valid defense on the information contained within the body of the warrant, which also involved evidence found and collected at a CSC Crime scene, involving other individuals, a victim other than the alleged victim of Petitioner, and a completely unrelated address as a crime scene. Also the date the search warrant was sworn, signed by the issuing judge and executed was four (4) days prior to the Petitioner's alleged committal of offense. The warrant was sworn signed and executed June 4, 2002; and the Petitioner was allegedly to have committed his offense on June 8, 2002 and arrested on June 8, 2002.

Petitioner's Counsel insisted that Petitioner plead guilty based on this incorrect data and information and decided not to formulate a defense or strategy as he felt Petitioner was guilty and had little or no chance of acquittal of the charges against him.

In the interest of justice, the Petitioner request that this Court reconsider it's decision and consider the arguments brought forth in

this Motion of Reconsideration; and find favorably allowing the Petitioner's writ of certiorari be granted and petitioner's application for Post Conviction Relief to go forth to afford him due process.

Respect fully submitted,

HARRY JONES

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Harry H. Jones, # 140698

Attachments/Exhibits: 3

February 19<sup>th</sup> 2015

EXHIBIT 1

Mo162

Harry H. Jones #140698  
B.R.C.I. MO-162  
4460 Broad River Rd.  
Columbia, SC 29210

PUBLIC DEFENDER OF Horry COUNTY  
203 LAUREL ST.  
CONWAY, SC 29526

**RECEIVED**

OCT 12 2011

BRCI  
MAILROOM

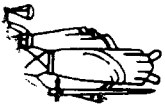


EXHIBIT 2  
**Fifteenth Circuit Public Defender**

HORRY  
*Edward "Ed" Chrisco*  
CHIEF PUBLIC DEFENDER  
203 LAUREL STREET  
P.O. BOX 1666  
CONWAY, SC 29526

TEL: 843-915-5385  
FAX: 843-915-6385

October 7, 2011

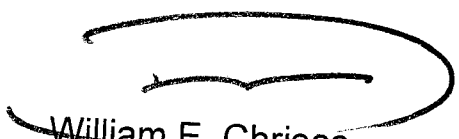
Harry Jones #140698  
B.R.C.I. MO-162  
4460 Broad River Rd.  
Columbia, SC 29210

Dear Harry Jones #140698:

I am in receipt of your letter. Per your request, I have enclosed all documents received from the Solicitor's Office regarding your case.

I hope this information is helpful in your endeavour.

Sincerely,

  
William E. Chrisco  
Public Defender

WEC/wd

Enclosures

HORRY & GEORGETOWN COUNTIES



*Orrie E. West*  
CIRCUIT PUBLIC DEFENDER

WWW.HGCDEFENDER.ORG

GEORGETOWN  
*Richard F. Colvin*  
SENIOR TRIAL ATTORNEY  
401 CLELAND STREET  
P.O. BOX 289  
GEORGETOWN, SC 29444

TEL: 843-545-3677  
FAX: 843-545-3677

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**SC Court of Appeals**

# EXHIBIT 3

STATE VS. HARRY HENRY JONES

No. 67702-01

In accordance with your Brady Motion and S.C. Criminal Practice Rule 5, the State hereby furnishes the following evidence. Please verify receipt of same by signing on the designated line at the bottom of this form and returning the original to Lisa M. Hatley, Asst. Solicitor, Post Office Box 1276, Conway, SC 29528.

EVIDENCE FURNISHED BY THE STATE:

02-06-1376/EC/J

- |                                   |         |
|-----------------------------------|---------|
| 1. Warrant/Ticket H-186397 ✓      | 4 pages |
| 2. Solicitor's Case Report        | 3 pages |
| 3. Investigative Follow Up Report | 9 pages |
| 4. Incident Report                | 8 pages |
| 5. Voluntary Statements           | 8 pages |
| 6. Medical Records                | 8 pages |
| 7. Defendant Lineup               | 6 pages |
| 8. Booking Report                 | 1 page  |
| 9. Your Rights                    | 1 page  |
| 10. Crime Scene Field Report      | 2 pages |
| 11. Property Evidence Report      | 5 pages |
| 12. Search Warrant                | 4 pages |
| 13. Yachtsman Resort Hotel        | 2 pages |
| 14. NCIC                          | 6 pages |

**ALSO ENCLOSED AND SERVED UPON YOU IS COPY OF A MUTUAL RECIPROCAL DISCOVERY MOTION RELATIVE TO THIS CASE.**

**PURSUANT TO RULE 609(b) OF THE SOUTH CAROLINA RULES OF EVIDENCE, THE STATE ALSO GIVES ADVANCE, WRITTEN NOTICE OF THE STATE'S INTENTION TO USE ALL CONVICTIONS OF CRIMES IN EXCESS OF TEN YEARS OLD TO IMPEACH THE DEFENDANT IN THIS MATTER. THOSE CRIMES ARE LISTED ON THE DEFENDANT'S NCIC REPORT OF CRIMINAL ACTIVITY. THIS WILL BE THE ONLY NOTIFICATION YOU WILL RECEIVE IN THIS REGARD.**

I hereby certify that I have received the above listed documents, copies of which are attached.

Date: \_\_\_\_\_

6/26/02

W. EDWARD CHRISCO, ESQUIRE  
PUBLIC DEFENDER'S OFFICE

OUR OFFICE IS IN POSSESSION OF THREE AUDIO TAPES REGARDING THIS CASE.  
PLEASE CALL 915-8639 TO SCHEDULE APPT. TO REVIEW.

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JUN 26 2002

THE SOUTH CAROLINA COURT OF APPEALS

Harry H. Jones Petitioner, #140698

State of South Carolina, Respondent  
Appellate Case No. 2012-212737

CERTIFICATE OF SERVICE

I, Harry H. Jones, hereby certify that on the 19<sup>th</sup> day of February, 2015 I have served by U.S. Postal Service, First Class Postage prepaid, a copy of Petitioner's Motion For Reconsideration, to: Tyson Andrew Johnson Sr., Esquire, at Rembert Dennis Bldg., 1000 Assembly St., Rm 519, Columbia SC 29201, Assistant Attorney General, with attachments/exhibits -

Harry Jones February 19, 2015

Harry H. Jones, #140698

Kershaw Corr. Inst.

MA-16

4848 Goldmine Hiway

Kershaw SC 29067

Harry H. Jones, #140698  
MA-16, Kershaw Corr Inst,  
4848 Goldmine Hiway  
Kershaw SC 29067

Feb. 19, 2015

The Honorable Jenny Abbott-Kitchings  
Clerk of Court.  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia SC 29211

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**SC Court of Appeals**

Re: Appellate Case 2012-212737, Filing of  
Motion For Reconsideration.

Dear Honorable Clerk:

Please find enclosed a Original filing of Motion  
for Reconsideration for the above captioned case.

Please file the enclosed Motion with attachments  
and return certified, true and correct copies of same  
to me. I make this request for authenticated copies  
pursuant to Rule 90 / SCRE .. I intend to introduce  
the authenticated copies into evidence at any  
future hearings or appearances which may arise

Also included is Certificate of Service to Assistant  
Attorney General Tyson Andrew Johnson, Jr.

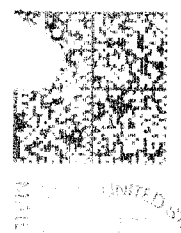
Thank you for your assistance in this matter.

Sincerely,

Harry Jones  
Harry H. Jones, #140698

Encl.

Kershaw Corr. Inst., MAIL  
4848 Goldmine Hwy  
Kershaw SC 29067



South Carolina Court of Appeals  
The Honorable Jenny Abbott Kitchings  
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