

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS



Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOMINIQUE JARARD SHUMATE,

APPELLANT

RECEIVED

Appellate Case No. 2012-212057

FEB 9 2015

SC Court of Appeals

Motion to Recall Remittitur

Counsel for Dominique J. Shumate respectfully moves this Court to recall the Remittitur issued in this case on February 17, 2015, and received by the Office of Appellate Defense on February 17, 2015, and by counsel on February 19, 2015.

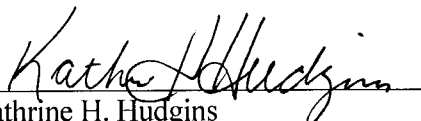
- 1.) On November 19, 2014 this Court, after hearing oral argument on October 7, 2014, affirmed the conviction and sentence in a per curiam unpublished Opinion, No. 2014-UP-410. A timely petition for rehearing was filed on December 1, 2014. On December 10, 2014, the State filed a Return to the Petition for Rehearing.
- 2.) The petition for Rehearing was denied on December 17, 2014. Counsel, however, did not receive a copy of the Order Denying the Petition for Rehearing. As a result, counsel did not timely file a petition for writ of certiorari with the South Carolina Supreme Court. On February 17, 2015, the Office of Appellate Defense received a copy of the Remittitur and

as a result, on February 19, 2015, Counsel realized that she had not received a copy of the Order Denying the Petition for Rehearing.

- 3.) Counsel fully intended to file a petition for writ of certiorari and advised her client of the same in a letter dated December 1, 2014. A copy of the letter is attached and made a part of this motion. Additionally, attached and made a part of this motion is an affidavit from counsel stating that she did not receive a copy of the Order Denying the Petition for Rehearing.
- 4.) Counsel conferred with Assistant Attorney General Mary Williams Leddon who confirmed that, based on the mail log at the South Carolina Attorney General's Office, her office also did not receive a copy of the Order Denying the Petition for Rehearing. Assistant Attorney General Mary Williams Leddon does not oppose the motion to recall the Remittitur and leaves the decision in the Court's discretion.

Based on the above factors counsel respectfully asks this Court to recall the Remittitur to allow counsel to move to file a petition for writ of certiorari, out of time, with the South Carolina Supreme Court. Counsel submits that good cause has been shown to recall the Remittitur and the failure to file a timely petition for writ of certiorari was not the fault of petitioner but rather the result of appellate counsel not receiving a copy of the Order Denying the Petition for Rehearing..

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender
E-Mail: khudgins@sccid.sc.gov
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1343

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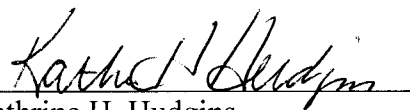
AFFIDAVIT IN SUPPORT OF MOTION TO RECALL REMITTITUR

PERSONALLY appeared before me, Kathrine H. Hudgins, who being duly sworn, deposes and says that:

- (1) I am an Appellate Defender with the South Carolina Office of Appellate Defense, and I represent Dominique J. Shumate.
- (2) On November 19, 2014, the Court of Appeals affirmed the conviction and sentence. State v. Shumate, Op. No. 2014-UP-410 (S.C.Ct.App. Filed November 19, 2014).
- (3) On December 1, 2014, I filed a timely Petition for Rehearing in Mr. Shumate's case. On December 10, 2014, the State filed a Return to the Petition for Rehearing.

- (4) The Court of Appeals denied the petition for Rehearing on December 17, 2014. My office did not receive a copy of the Order Denying the Petition for Rehearing. As a result, I did not timely file a petition for writ of certiorari with the South Carolina Supreme Court. On February 17, 2015, the Office of Appellate Defense received a copy of the Remittitur and as a result, on February 19, 2015, I realized that I had not received a copy of the Order Denying the Petition for Rehearing.
- (5) My assistant, Bailey Reed, her supervisor, Kimberly McCall, and I have checked our files thoroughly and found no copy of the Order denying the Petition for Rehearing. When the Office of Appellate Defense receives mail, the mail is stamped received with the date and then routed to the appropriate person. After a diligent review of the procedures in place at Appellate Defense and a thorough review of the file, I can only conclude that my office did not receive a copy of the Order Denying the Petition for Rehearing.

FURTHER AFFIANT SAYETH NOT.


Kathrine H. Hudgins
Appellate Defender
E-Mail: khudgins@sccid.sc.gov
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1343

SUBSCRIBED AND SWORN TO before
me this 19th day of February, 2015

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.

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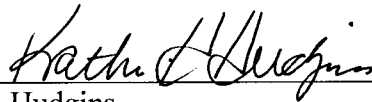
DOMINIQUE JARARD SHUMATE,

APPELLANT

APPELLATE CASE NO. 2012-212057

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of Motion to Recall Remittitur in the above referenced case has been served upon Mary Williams Leddon, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 20th day of February, 2015.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of February, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
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Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 1, 2014

Dominique J. Shumate, # 319438
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Re: Your case

Dear Mr. Shumate:

Enclosed is a copy of the opinion of the Court of Appeals affirming your conviction. The Court found that the affidavit in support of the search warrant was sufficient and that the trial court did not err in refusing to direct verdicts of acquittal based on mere presence and the failure to prove a distribution of crack cocaine. I will be filing a petition for rehearing with the Court of Appeals and if denied, I will file a petition for writ of certiorari asking the South Carolina Supreme court to review the decision by the Court of Appeals. I will send you a copy of the petition for rehearing when it is filed.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH/br

Encl.