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S.C. Supreme Court

The Honorable DANIEL E. SHEAROUSE

CLERK OF THE SOUTH CAROLINA SUPREME COURT

P.O. Box 11330

Columbia, S.C. 29211

RE: RICKY W. LOWERY #281915 V. STATE OF SOUTH CAROLINA

2011-CP-42-2178

DEAR MR. SHEAROUSE,

ENCLOSED PLEASE FIND THE NOTICE OF APPEAL IN THE ABOVE CAPTIONED POST-CONVICTION RELIEF CASE ALONG WITH THE FINAL ORDER OF DISMISSAL, 59th MOTION TO ALTER OR AMEND JUDGMENT, ORDER DISMISSING THE 59th FOR THE ORIGINAL ORDER TO STAND. AND AN EXPLANATION AS TO WHY THE DETERMINATION WAS IMPROPER.

(PLEASE SENT ME A COPY OF THIS APPEAL FOR MY RECORDS)

State of South Carolina
In the Supreme Court

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Certiorari to Spartanburg County
The Honorable J. Derham Cole

S.C. Supreme Court

CASE NO: 2011-CP-42-2178

Ricky W. Lowery, #281915 ----- Appellant,

Versus

State of South Carolina ----- Respondent,

Notice of Intent to Appeal

Ricky Lowery hereby appeals from the order of the Honorable J. Derham Cole, presiding judge of the Seventh Judicial Circuit, filed on November 20, 2014 and received by the appellant in this matter of Ricky Lowery v State of South Carolina. 2011-CP-42-2178.

Ricky W. Lowery

Ricky W. Lowery

Tyger River Correctional Institution

200 Prison Road

Enoree, SC 29335

Dated: March 27, 2015

Other Counsel of Record

Suzanna H. White

Assistant Deputy Attorney General

PO Box 11549 Columbia, SC 29311

State of South Carolina
In the Supreme Court

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Certiorari to Spartanburg County

The Honorable J. Derham Cole

S.C. Supreme Court

CASE NO: 2011-CP-42-2178

Ricky W. Lowery, #281915, Appellant.

Versus

State of South Carolina, Respondent.

Proof of Service

I certify that I have served the notice of appeal on the Respondent by depositing a copy of it in United States mail, postage paid on March 27, 2015 to all of the addresses below:

Suzanna H. White
Assistant Deputy Attorney General
PO Box 11549
Columbia, SC 29311

Spartanburg County Clerk of Court
The Honorable M. Hope Blackley
PO Box 3483
Spartanburg, SC 29304-3483

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
PO Box 11330-1330
Columbia, SC 29211

QUESTIONS PRESENTED FOR REVIEW

1. Did THE COURT HAVE SUBJECT MATTER JURISDICTION TO TRY DEFENDANT WITHOUT THE CORPUS DELICTI OF THE CRIME?
 2. DOES COUNSEL INDUCING A DEFENDANT TO PLEA AN ALFORD PLEA CURE THE FRAUDULENT REPRESENTATION?
 3. WAS DEFENDANT DEPRIVED OF DUE PROCESS AND A FAIR TRIAL WHEN COUNSEL FAIL TO HOLD GOVERNMENT TO ITS BURDEN OF PROOF?
 4. WAS TRIAL COUNSEL INEFFECTIVE FOR RELIED ON GOVERNMENT VERSION OF FACTS AND NOT BASED ON HIS OWN REASONABLE INVESTIGATION?
 5. WAS DEFENDANT ENTITLED TO A DIRECT VERDICT WHEN THERE WAS NO CORPUS DELICTI PRESENT BY THE GOVERNMENT?
(ARGUMENT AND CITATION)
- (A) PETITIONER SUBMITS THE AMENDED SUPPLEMENTAL P.C.R. BRIEF
(B) MOTION TO ALTER OR AMEND JUDGEMENT BRIEF
- THIS HAS ARGUMENT AND CITATION TO LEGAL AUTHORITY TO SHOW THAT THEY ARE AN ARGUABLE BASIS FOR ASSERTING THAT THE DETERMINATION BY THE LOWER COURT WAS IMPROPER. AS STATED IN THE P.C.R. BRIEF, PETITIONER NEVER HAD TIME TO PROPERLY PREPARE FOR HIS CASE BEFORE HIS FIRST P.C.R. HEARING. P.C.R. COUNSEL SHOULD HAVE ALL THE TIME TO PREPARE.

Ricky Lowery
SCDC#281915 Unit FlA-272
386 Redemption Way
McCormick, S.C. 29899

August 12, 2011

Honorably M. Hope Blackley
Clerk of Court - Spartanburg County
Post Office Box 3483
Spartanburg, S.C. 29304-3483

Dear Clerk of Court,

I am writing in regards to the enclosed Amended Supplemental P.C.R. brief. I ask that you time stamped this document upon receiving it and send a copy back to me for my records. I would greatly appreciate your assistance in this matter. Thank you for your time and patience in reading this and I look forward to hearing back from you.

Respectfully Submitted,

Ricky Lowery

Ricky Lowery SCDC#281915

Sworn and Subscribed before me
on this 12 day of Aug 2011.

Notary Public of South Carolina
My commission expires: 8-28-2011

Jayne L Young

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) In The Court of Common Pleas
State of South Carolina) Seventh Judicial Circuit
)
County of Spartanburg)
)
Ricky Lowery SCDC#281915,)
)
Pro-Se Applicant,)
)
vs.) Amended (Supplemental)
)
State of South Carolina,) P.C.R. Application Brief
)
Respondent.)

Pursuant to the South Carolina Rules of Civil Procedure, S.C.R.C.P Rule 15(c) Applicant hereby amends his application for post conviction relief. Applicant amends his original brief with the assertion that based on the after mentioned failure by trial counsel; the applicant was prejudiced and denied a fair trial. Wherefore, applicant requested that his previously submitted post conviction relief application brief and subsequent amendments be amend as stated above.

The applicant was denied his sixth and fourteenth amendment right to effective assistance of trial and post conviction relief counsel where counsel failed to amend the applicant pro-se post conviction application to include all grounds presented in this present application.

LAW

South Carolina Supreme Court Rule 50(5) and 71.1(d); makes it mandatory that post conviction counsels make sure that all available grounds are raised in

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1 post conviction proceedings. After filing a pro-se post conviction
2 application and after being given court appointed counsel, a pro-se litigate
3 cannot thereafter file any other pleading and any amendments to his
4 application must be made by counsel. State v. Sanders, 269 S.C. 215, 237 S.E.
5 2d 53 (1977); Foster v. State, 298 S.C. 306, 379 S.E. 2d 907 (1989); Thus, if
6 post conviction counsel does not amend the pro-se application, the applicant
7 has no way to have all grounds heard.
8 State v. Carpenter, 277 S.C. 309, 286 S.E. 2d 384 (1982) and State v.
9 Kornahrens, 290 S.C. 281, 350 S.E.2d 180 (1986); prohibits South Carolina
10 litigants from raising claim of ineffective assistance of trial counsel
11 during their initial direct appeal, the post conviction proceeding must be
12 viewed as the first appeal as of right on the particular claim.
13 The South Carolina Supreme Courts decision in Aice v State, 409 S.E. 2d 392
14 (1991); holding that there is no constitutional right to counsel in state
15 post conviction proceedings is based on a far-fetched reading of the Supreme
16 Court decision in Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.
17 Ed. 2d. 539 (1987); the decision in Finley merely held that there is no
18 constitutional right to counsel in state court discretionary appeals after
19 the appellate stage has been exhausted. Id 107 S.Ct. at 1993, 1994; because
20 the claim of ineffective assistance of counsel cannot be exhausted until a
21 application for post conviction relief is filed, South Carolina litigants and
22 clearly have a right to "effective assistance of trial counsel." Evitts
23 Lucey, 469 U.S. 387, 105 S.Ct. 830, 83, Ed. 2d. 821 (1985); Evitts
24 Thompson, 111 S.Ct. 2546, 2568 (1991); as a result when an applicant
25 assisted by a post conviction counsel in setting forth all grounds to support

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BY

1 his claim of ineffective assistance of trial counsel in his initial
2 application, he should not be barred there after for submitting a second
3 application to include additional grounds for courts review.
4 In a situation where a post conviction applicant is not assisted by counsel
5 in properly amending his first application to include all grounds all support
6 grounds to underlying a claim of ineffective assistance of trial counsel and
7 does not know how to raise such grounds and is barred from presenting pro-se
8 pleading in light of State v. Sanders, Supra and Foster v. State, Supra. He
9 must be seen to be "without counsel" and in the same position as that of the
10 applicant in Case v. State, Supra. The court in such circumstances should
11 find that second application should be heard despite its successiveness
12 because the first application lacked specificity, unless it can find that the
13 applicant intentionally waived his right to have the grounds stated in the
14 subsequent application heard in the first.

15
16 FACTUAL HISTORY

17 Applicant wrote the clerk of court's Mr. Kitchens on Sept. 5, 2006 for
18 information to see if trial counsel had filed an appeal in applicant's
19 behalf, his rule 5 material including trial transcript and application for
20 post conviction relief. Mr. Kitchens returned a copy of the appeal at trial
21 counsel had filed in his behalf. Applicant then wrote the clerk of court for
22 the second time on May 20, 2007, asking for rule 5 materials, and completed
23 copy of his motion of discovery. Applicant got a response on July 7, 2007
24 telling him that there is a cost of \$1.00 per copy to be paid in advance.
25 However, when your P.C.R. gets to Columbia, they will get this information

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1 for you. Applicant then filed his application for post conviction relief so
2 he could get all of his rule 5 materials because he is indigent. Applicant
3 filed his P.C.R. on June 15, 2007. Applicant then got a letter stating that
4 Hattie D.E. Boyce had been appointed counsel in his post conviction relief on
5 August 17, 2007. Applicant then got a letter from the Attorney General from
6 attorney S. Prentiss Counts on Sept. 30, 2007 with his return of the response
7 and trial transcript. Thereafter, applicant wrote his attorney for her to
8 amend his pro-se application to include supporting grounds of ineffective
9 assistance of trial counsel which appears in present application. However,
10 before post conviction attorney got applicants amendment, applicant was in
11 court on evidentiary hearing. Applicant saw his post conviction attorney the
12 night before the hearing for the first time and she asked what he had.
13 Applicant gave post conviction attorney his claim and argument of ineffective
14 assistance of trial counsel and his attorney failed to raise all grounds in
15 the evidentiary hearing. As a result, the applicant being a layman, he could
16 not amend these present claims in his pro-se application or at the
17 evidentiary hearing because he did not know how and as a result, these
18 grounds were not heard or ruled upon, even though they could have resulted in
19 the applicant being granted a new trial.

SEE EXHIBITS A-B

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21 ARGUMENT

22 State v. Williams, 93 S.E. 1006 (S.C. 1917), in case Subjudice, it is held
23 that a "Substantial Injustice" has been done and that this court has the
24 power, jurisdiction and duty to correct, notwithstanding any other rule of
25 law/case law, but as an "Inherent Part of the Original Jurisdiction of the

1 Court of General Session to Correct errors, irregularities, and injustice in
2 the proceeding from "Misrepresentation and Trickery" of the state; Does this
3 state condone obtaining a warrant, indictment, for a first degree burglary
4 pursuant to 16-11-311 without a shred of proof, aliunde or corpus delicti
5 that the offense even occurred? State v. Teal, Supra; even while pleading
6 defendant asserted his factual innocence (see plea transcript). Does inducing
7 a defendant to plea an Alford plea cure this fraudulent representation? "When
8 a defendant claims his factual innocence while pleading guilty, a court is
9 constitutionally required to establish a sufficient factual basis for the
10 plea".
11 Farmer v. Trent, 531 S.E. 2d 711 (W.VA.) 2001 citing N.C. v. Alford, 91 S.Ct.
12 160, 167 (1970); Wallace v. Turner, 695 F. 2d 545, 548 (11th 1983); In short,
13 this case continues a "denial of fundamental fairness shocking the universal
14 sense of justice". Butler v. State, 397 S.E. 2d 87, 88 (1990); see dissent in
15 Johnson v. Catoe, 548 S.E. 2d 589 (S.C. 2001); (arguing for grant of new
16 trial) under Butler, the did not, has not and indeed cannot present credible
17 evidence to establish each element of crime charged as required by State v.
18 Smith, 266 S.E. 2d 422 (S.C. 1980); the pleas was not voluntary as it was
19 indeed misrepresentation by the state, RE: entry, firearms, high
20 elements. Bousely v. U.S., 118 S.Ct. 1664 (1998); there sits an inherent
21 power in every court to see that a defendants fundamental rights are
22 protected. Despite the facts that the state could not and did not establish
23 the "corpus delicti" of the offense to which applicant plead guilty the
24 court accepted applicant's plea and defendant was convicted of first degree
25 burglary. "Before a defendant in a criminal trial can be required to present

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1 a defense, the state must present proof of the corpus delicti of the crime."
2 That is, the prosecution must show how the actual commission by someone of
3 the particular offense charges.
4 A conviction based on an "extra judicial" confession by the defendant cannot
5 stand unless corroborated by proof, "aliunde of corpus delicti". State v.
6 Smith, 328 S.C. 622, 493 S.E. 2d 506, 508 (S.C. App 1997); (citations
7 removed); also see State v. Brown, 103 S.C. 437, 88 S.E. 21 (1916); State v.
8 Teal, 225 S.C. 472, 82 S.E. 2d 787 (1954); State v. Williams, 321 S.C. 381,
9 468 S.E. 2d 656 (1996); in this case , the plea should not have been accepted
10 because the state could not prove the entry or nighttime elements of first
11 degree burglary, both of which are necessary elements. The only evidence that
12 the state presented regarding the offense was to elicit a statement of "yes
13 sir" to the court from applicant. However, applicant also told his trial
14 counsel that he was not guilty of the burglary charge but trial counsel still
15 stated that applicant was pleading an "Alford" to the first degree burglary,
16 although not necessarily stated, applicant entered an "Alford plea". It is
17 insufficient factual basis for the state to rely on the defendant's statement
18 to establish the "corpus delicti" of the crime charged. The state must have
19 alternative evidence, even under "Alford", when a defendant is pleading
20 guilty, the state must present enough of a factual basis so that the record
21 before the judge contains strong evidence of actual guilt; see Alford,
22 as is evident by even a cursory review of the transcript of applicant's
23 guilty plea. Review of the transcript of defendant's guilty plea, the state
24 utterly failed to establish the entry and nighttime elements of first degree
25 burglary. At the presentation of the solicitors case, page 6, lines 6-17,

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1 trial transcript, the facts do not support a burglary first. The state
2 presented no evidence supporting the facts. The prosecution stated "entered"
3 this dwelling place to begin with to support it's case, trial counsel was
4 then ineffective for failing to object to charge on insufficiency; see Mason
5 v. Hanks, 97 F. 3d 887, 894 (7th CIR 1996); ineffective assistance of counsel
6 when counsel failed to raise obvious and significant issues without
7 legitimate strategic purpose, U.S. v. Wanson, 943 F. 2d 1070 (9th CIR 1991).
8 Trial counsel conceded that there was no reasonable doubt concerning factual
9 issue in dispute and such conduct by counsel failed to hold. The government
10 to its burden of proof of persuading a jury that the defendant is guilty,
11 thus applicant was deprived of due process and a fair trial. Counsel should
12 have argued legal innocence and factual innocence as a defense; see United
13 States v. Groll, 992 F. 2d 755, 758 (7th CIR 1993); applicant testified that
14 he told his attorney that he was not involved in the burglary and he was not
15 guilty of that charge. Applicant testified that "I wouldn't plead guilty to
16 the burglary charge because I didn't commit the burglary". That is when
17 counsel told me about the Alford plea so it was my understanding that I
18 wasn't pleading guilty to the Alford plea (page 48, lines 14-22). Also see
19 page 56, lines 9-19, in pertinent, which would mean applicant didn't do it;
20 see page 57, lines 20-22, counsel testified that he explained the element to
21 the applicant and advised him that he thought he could be found guilty
22 because he was in possession of stolen goods. Counsel's interpretation of the
23 law was misplaced and his misadvised information caused applicant to plead
24 guilty to a crime that was not committed by applicant. In Tower v. Phillips,
25 979 F. 2d 807 (11th CIR 1992), counsel's misrepresentation of the facts

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1 rendered his guilty in voluntary and constitutes ineffective assistance of
2 counsel. Applicant continually claimed his innocence of the crime of burglary
3 1st. Counsel also know applicant withdrew his prior guilty plea because prior
4 counsel advised him that the state had insufficient evidence to convict him
5 of burglary 1st. Counsel's advise showed a conflict of interest and failed to
6 adequately advise him of all the elements of the offense, which had to be
7 proven. There where no facts shown by the state to support applicant entering
8 a dwelling place or whether it was day or night. No factual basis for the
9 plea was established. Banks v. Reynolds, 54 F. 3d 1508, 1515-16 (10th CIR
10 1995) states that counsel's advise to allow applicant to plea to
11 unsubstantiated facts shows ineffectiveness; see United States v. Hansel, 70
12 F. 3d 6,8 (2nd CIR 1995); also see Griffen v. United States, 109 F. 3d 1217,
13 1219 (7th CIR 1997). Further, it was admitted by counsel that he did not do
14 any individual investigation to support applicant's alibi that someone else
15 picked him up in this vehicle that he was only driving the vehicle. United
16 States v. Matos, 905 F. 2d 30 (2nd CIR 1990); trial counsel's version of the
17 facts purported by government which was expected by counsel and failed to
18 file any motion because he relied on the government version of facts and not
19 based only on his own reasonable investigation, calls counsel's
20 representation in serious question of inadequacy. Also see Holsclaw v. Smith,
21 822 F. 2d 1041 (11th CIR 1987); trial counsel's failure to raise issue of
22 insufficient evidence or move for dismissal based on insufficient evidence,
23 constitutes ineffective assistance of counsel. Further, counsel must
24 understand the elements of the offense with which client is charged in order
25 to provide effective assistance. Scarpa v. Dubois, 38 F. 3d (1st CIR 1994);

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1 had counsel fully discussed the elements he would not have allowed his client
2 to plead to burglary or advised applicant to do so. Further, as to the Alford
3 plea, applicant's plea was flawed. He pleads to Alford but refused to admit
4 conduct that demonstrates a factual basis for the plea; see United States v.
5 Tunning, 69 F. 3d 107 (6th CIR 1995); also see Sawyer v. Whitley, 112 S. CT.
6 2514 (6th CIR 1992); applicants plea on the advise of his attorney which
7 provided him erroneous information which he made his decision from. Applicant
8 has clearly shown prejudice. The state argues that applicant has shown no
9 evidence of consequence that counsel failed to uncover that would have
10 materially affected the decision to plead guilty. This reasoning by the state
11 is flawed; applicant has claimed actual and legal innocence of the charge
12 burglary 1st, withdrew his original guilty plea because his first counsel told
13 him that they had insufficient evidence. Counsel knew this but insisted that
14 if applicant went to trial, he would get a life sentence. Applicant was
15 prejudiced by not being able to present his defense that another individual
16 stole the vehicle and committed the burglary 1st. Receiving stolen goods 16-
17 13-180, it is unlawful to buy, receive, or possess stolen goods, chattels, or
18 other property if the person knows or has reason to believe the goods,
19 chattels, or property is stolen. See State v. Page, 425 S.E. 2d 73 (1992);
20 State v. Collins, 225 S.E. 2d 189 (1976); Applicant testified he thought the
21 individual owned the vehicle; if counsel's arguments are to be believed that
22 applicant could be found guilty of possession of stolen goods without knowing
23 they were actually stolen, then counsel's trial strategy is flawed and
24 erroneous. Prior counsel had applicant to withdraw his earlier guilty plea
25 for insufficient evidence. Counsel should know that law and if he allowed

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1 that applicant to plead guilty, this was misadvised. Insufficient evidence to
2 support conviction raises a constitutional issue. Buggs v. United States, 153
3 F. 3d 439 (7th CIR 1998); also see State v. Legette, 330 S.E. 2d 293 (S.C.
4 1985). Counsel's claim that the plea was in applicant's best interest is not
5 supported by testimony. If the court reviews the entire record, it will show
6 applicant's plea was not knowing and voluntary based on misadvised counsel.
7 Counsel's performance was deficient by the fact that his actions were not
8 "reasonable under standard norms"; Cherry, 386 S.E. 2d at 625 and Washington,
9 104 S.C.T. 2052 (1984); secondly, counsel's deficient performance prejudiced
10 applicant that there is a reasonable probability that, but for counsel's
11 unprofessional errors, the result of the proceeding would have been
12 different; Cherry, 386 S.E. 2d at 25. Applicant claims he has satisfied the
13 requirements of Strickland and has shown a violation of his right to
14 effective assistance of counsel. Applicant objects to grounds that his plea
15 knowingly and voluntary because he was unaware he was pleading to burglary.
16 Both of these grounds have been argued in this brief. Applicant contends that
17 the state made an unreasonable application of clearly established law. The
18 state court decision was based on an unreasonable determination of the facts
19 in light of the evidence presented at the hearing. Applicant did not concede
20 to the factual basis of the charges of burglary 1st and refused to acknowledge
21 the fact that he committed the burglary. The applicants testimony clearly
22 showed he would have proceeded to trial if not for the erroneous advise of
23 counsel; Alexander v. State, 402 S.E. 2d 484 (1991); due process of law
24 mandates court's to enforce it's own order that support P.C.R. relief (page
25 58) as shown in the P.C.R. transcript, counsel testified there was a lot of

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CERTIFICATE OF SERVICE

This is to certify that Ricky Lowery did mail his amended (supplemental) post conviction relief brief to the Honorable M. Hope Blackley, clerk of court of Spartanburg County at P.O. Box 3483, Spartanburg, S.C. 29304-3483 and also the office of the Attorney General at Rembert C. Dennis Building, P.O. Box 11549, Columbia, S.C. 29211-1549 in the United States Mail, postage prepaid.

Dated this 9th day of August, 2011

Ricky Lowery

Ricky Lowery
Pro-Se Applicant
McCormick C.I. F1A-272
386 Redemption Way
McCormick, S.C. 29899

Sworn and Subscribed before
me on this ___ day of ___ 2011

Notary Public of South Carolina
My Commission Expires: _____

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NEWTON KITCHENS

EXHIBIT A

W-004

I am writing for information for a
 application for Post Conviction relieve.
 and I would also like a copy or copies
 of my motion of Discovery and transcript
 of my trial. also I would like to know
 if my lawyer has file a appeal. I wrote him
 the day I was sentence to do so and I would
 like to know if he did.

Thank you for your time.

Ricky Lowery

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NEWTON KITCHENS

EXHIBIT B

TO, MARG KITCHENS
CLERK OF COURT,
SPARTANBURG COUNTY
POST OFFICE BOX 3483
SPARTANBURG, SOUTH CAROLINA
29304-3483

MR RICKY LOWERY # 281915
McCormick C.I.
386 Redemption Way
McCormick, SC. 29899.
FIA-282

TO THIS HONOURABLE CLERK OF COURT, I AM IN NEED OF MY
RULE 5 BRADY MATERIALS CONCERNING MY CASE, UNDER #'S
06-65-42-802 / 06-65-42-0804, / 2005-65-42-4608, / 2005-65-
4610 DUE TO THE DEFENDANT MR LOWERY FILING A POST-
CONVICTION RELIEF APPLICATION DEALING WITH HIS SENTENCES
AND INVOLUNTARY GUILTY PLEA, HE NEEDS A COMPLETE COPY OF
HIS MOTION OF DISCOVERY UNDER RULE 5, BRADY. RESPECTFULLY
POLICE STATEMENTS, INCIDENT REPORTS, SUPPLEMENT REPORT
ARREST WARRANTS / AFFIDAVITS, COPIES OF ALL THE INDICTMENT'S
AND THE VICTIMS POLICE STATEMENTS ect.

*6-7-07

Dear Sir,

This is a cost of \$1.00
per copy and this has
to be paid in advance.
When the PCR is sent to
Columbia they will get
this information for you.

Sincerely,
Clerk of Court's Office

Thank you with THE
REGARDS "I AM..."

PLEASE FORWARD ALL LEGAL DOCUMENTS
TO THE ABOVE SAID NAME MR RICKY
LOWERY, SCDC # 281915, MCCORMICK
386 REDEMPTION WAY, MCCORMICK
SC 29899. FIA-282

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MARG KITCHENS
CLERK OF COURT
SPARTANBURG COUNTY

EXHIBIT C

STATE OF SOUTH CAROLINA)
COUNTY OF Spartanburg)

IN THE COURT OF (Select one.)

COMMON PLEAS FAMILY COURT

~~Seventh JUDICIAL CIRCUIT~~

Ricky Lowery #281915,,
Plaintiff(s),

CASE NO.: 2007-CP-42- 2091

-vs-

APPOINTMENT OF COUNSEL OR GAL

(Select one.)

State of South Carolina,
Defendant(s).

ORDER

AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

Post-Conviction Relief (PCR)/habeas case

Adoption

Juvenile

SVP case

Custody and/or Visitation

Abuse and Neglect

Minor Name Change

Other:

It appears that Ricky Lowery, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other:

Therefore, it is ordered that Hattie Boyce, hereby is appointed as (Select one)

counsel lead counsel (if capital PCR case) guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 14th DAY OF August, 2007.

Mace Kitchens
 Circuit Judge Clerk of Court
Hail Moffitt, Asst. Clerk

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

Exhibit.D



HENRY MCMASTER
ATTORNEY GENERAL

September 28, 2007

The Honorable Marcus W. Kitchens
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg, South Carolina 29304-3483

RE: Ricky Lowery v. State of South Carolina
2007-CP-42-2091

Dear Mr. Kitchens:

Enclosed please find the original Return of the Respondent, in the above-captioned case, Lowery v. State, for filing in your office. I am also sending you copies of the following documents to accompany our Return:

- 1) PCR Application
- 2) Clerk Records: 2005-GS-42-4608; -4610; 2005-GS-42-0802; -0804
- 3) SCDC Records
- 4) Transcript
- 5) Direct Appeal Records: Notice of Appeal; Affidavit; Order of Dismissal; Remittitur

With highest regards,

S. Prentiss Counts
Assistant Attorney General

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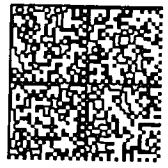
SPC/aam
Enclosures

cc: Hattie E. Boyce, Esquire (w/enclosures)

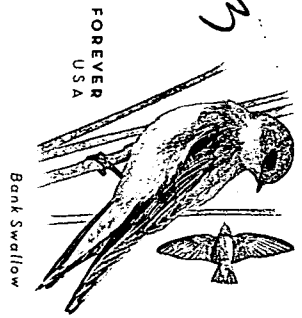
Rickey Lowery 4881915
Tiger River Court Inst
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The Honorable Daniel Shearouse
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P.O. Box 11330-1330
Columbia, S.C. 29211



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