

Richard Keith Poe, #259297
Petitioner,

State of South Carolina
County of York,
Court of Common Pleas

VS.

Case Number: 2014-CP-46-2424

State of South Carolina
Respondent

MOTION FOR JUDGEMENT

RECEIVED

APR 20 2015

Statement of Facts

SC Court of Appeals

Now Comes, Richard Keith Poe, filing for Judgement as matter of law, and according to Rule (60)(b)(1)(2)(3), fraud and misrepresentation and other misconduct of the adverse party. This motion is authorized according to the South Carolina Rules of Civil Procedures.

Procedural History

Petitioner, was charged and arrested upon the warrant #J-158013, Description of Offense, Burglary First Degree authorized by the Honorable Lynn Horton Benfield (see exhibit of warrant).

Indictment #2012-GS_46-03771 was marked True-Billed by the Grand Jury of York County, November-15th-2012 (see exhibit).

Indictment #2012-GS-46-03771 was marked (amended) and True-Billed by the Grand Jury, May-16th-2013 (see exhibit).

Petitioner, was sentenced by the Honorable Judge Hayes III on June, 4th-2013 to a term of (13) years imprisonment, petitioner was represented by Sean Francis Cronin (Pro-Bono) by appointment from Judge Hayes.

Facts

The arrest warrant was issued in violation of state statute 16-11-311 and did not contain the elements of Burglary First. nor was there any evidence to prove incident occurred during night-time hours (mere assumptions).

Counsel failed to object to arrest warrant and refused to file motion to squash warrant, Sean F. Cronin did not even request a Preliminary Hearing on arrest warrant either.

There's no language in the body of the warrant that indicates Dwelling, or Residence not curtilage nor appurtenant, pertaining to storage building being attached or connected to

the residence of Kenneth Roy Stiles, located at #3339, Filbert Hwy, Clover South Carolina, 29710.

The state obtained an indictment for Burglary First Degree under statute, §16-11-311, here outside the scope of the elements and from an invalid warrant. There's (no) evidence in the body of the indictment that states, Dwelling or Residence, but merely mentions (storage building).

The question to be determined here did in fact a Grand Jury of York County become impaneled on November, 15th-2012, and True-Bill indictment in violation of state statute, §16-11-311.

Moreover, did the solicitor, Misty Shelton use photo's from the location where property was recovered from to imply that's where the incident occurred, and implying the penalty language of, curtilage and appurtenant.

Furthermore, the state produced an indictment which appeared to have been amended and True-Billed, November, 15th-2012, and signed on May, 16th-2013 by Foreperson of Grand Jury.

Amended indictment is invalid and was prepared in violation of statutes and the laws of this state.

The Circuit Court does not have Subject Matter Jurisdiction to convict a defendant of an offense, unless there's an indictment which sufficiently states offense or, defendant waives presentment here petitioner never sign no waiver of presentment.

According to statute, §17-23-120, requires that a criminal defendant must sign a waiver of indictment before pleading guilty to an indictment which has not been presented to the Grand Jury.

By plain language, a written waiver of presentment of indictment not presented to a Grand Jury mandatory before the trial Judge can accept plea, Summerall v. State, 278 S.C. 255.256.294 S.E.2nd 344 (1982).

Supreme Court held that plea was required to be vocated where defendant was indicted for Burglary and no presentment was made to Grand Jury and, no waiver of presentment was accomplished in accord with statute, §17-23-120-§17-23-140.

Petitioner here again never sign any-type of form of waiver of presentment as required by statute (invalidating his plea).

The plain facts here are Counsel Sean Francis Cronin refused to object to indictments, and failed to file motion to squash indictments. Furthermore refused to perfect appeal for petitioner as requested he do so. Counsel even refused to comply with the Court of Appeals request for the necessary documents pertaining to appeal, causing appeal PRO-SE to be dismissed depriving the petitioner of Appellate review altogether.

Petitioner filed Post Conviction Relief Application in York County, #2013-CP-46-2033 and a evidentiary hearing was conducted on, January-22nd-2014 in front of Judge Baxley where PCR was denied without addressing the indictment issues, but was put on record before the Court.

Counsel Micheal Hemplepp Jr, filed appeal to Supreme Court for writ of certiorari where, Counsel Robert M. Dudek was appointed to represent petitioner in PCR appeal but Dudek failed to address issues arising during hearing January 22nd-2014, requesting to be relieved as Counsel and the writ was denied.

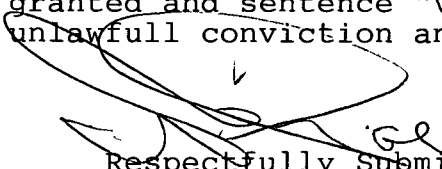
Petitioner filed a second PCR and the State made its return requesting application be dismissed, however the Honorable Judge Lee S. Alford signed Order September, 29th-2014 "stating this Order does not end this case". The Attorney Generals Office has not responded as yet to date to PCR, #2014-CP-46-2424.

Petitioner filed third Post Conviction relating to Judge Baxleys failure to address indictments, and Counsel Hemplepps failure to address the issue of Sean Francis Cronin refusing to perfect appeal, causing direct appeal to be dismissed.

Judge Hayes III, made the ruling in PCR application #2014-CP-46-2656 denying the application date of, February, 18th-2015, although he was the sentencing Judge who in fact, sentenced petitioner to (13) years June, 4th-2013.

Conclusion

Petitioners motion should be granted and sentence "VOCATED". Exhibits and record supports unlawfull conviction and sentence.



Respectfully Submitted,

April, 17-2015.

ARREST WARRANT

J-158013

STATE OF SOUTH CAROLINA

County/ Municipality of

York

THE STATE

2012-1050

against

Richard Keith Poe

Address 1526 Eaves Rd

Shelby, NC 28152

Phone _____ SSN 215-88-8804

Sex M Race W Height 5 5 Weight 145

DL State SC DL # 003490248

DOB 1/10/1969 Agency ORI # SC0460000

Prosecuting Agency York County Sheriff

Prosecuting Officer R J Gurganus - G0626

Offense Burglary / Burglary (After June 20, 1985) - First degree

Offense Code 0079

Code/Ordinance Sec 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law

(L.S)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to defendant Richard Keith Poe on 6-11-12

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions
1675 York Hwy
York, SC 29745

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA

County/ Municipality of

York

Personally appeared before me the affiant R J Gurganus

being duly sworn deposes and says that defendant Richard Keith Poe

did within this county and state on or about 01/10/2012

State of South Carolina (or ordinance of County/ Municipality of York

in the following particulars

DESCRIPTION OF OFFENSE Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts

The defendant did wilfully and unlawfully violate the laws of this state by entering a locked storage building at 3339 Filbert Highway, Clover, York County, South Carolina, with the intent to commit the crime of Larceny. The storage building was located directly behind victim's house. While inside the building the defendant stole the victim's air compressor, battery charger, numerous hand tools, and fishing gear. The crime was committed during the nighttime hours. This being against the peace and dignity of this state and all such laws made and provided for

Probable cause is based on Police Investigation, Defendant's Verbal Statement, Witness Statement, and Recovery of Evidence

Signature of Affiant

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

York

Affiant's Address Moss Justice Center

York, SC 00000--000

Affiant's Telephone (803)628-3059

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY.

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/10/2012 defendant Richard Keith Poe

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of York

) as set forth below

DESCRIPTION OF OFFENSE Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 01/18/2012

Signature of Issuing Judge Lynn Horton Benfield (L.S.)

Signature of Issuing Judge

Judge Code 5806

Judge's Address Moss Justice Center

York, SC 29745-7423

Judge's Telephone (803)628-3029

Issuing Court Magistrate Municipal Circuit

WITNESSES
YCSO/ Gurganus

vk
ARREST WARRANT NUMBER
J-158013

ACTION OF GRAND JURY
True Billed 11-15-2012
/s/ Paul Vehaun TRUE BILL
Kathryn Lee Neal
Foreperson of Grand Jury
Date 5-16-13

VERDICT

Foreperson of Petit Jury
Date.

AMENDED
DOCKET NO. 2012-GS-46-03771

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS
May 16, Term 2013

THE STATE
vs.
RICHARD KEITH POE

Indictment for
BURGLARY IN THE FIRST DEGREE

SC Code 16-11-312
CDR Code. 079

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury

Defendant
Richard Keith Poe
hereby appear in my own proper person and plead guilty to the within indictment or to

[Signature]
Defendant

Witness
Regina Rutledge-G. Spec.
CC C PLS AND G S

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on May 16, 2013, the Grand Jurors of York County present upon their oath:

BURGLARY IN THE FIRST DEGREE

The Defendant, Richard Keith Poe, did in York County, South Carolina, on or about January 10, 2010, willfully and unlawfully enter a locked storage building which is located on the curtilage of and appurtenant to the residence belonging to Kenneth Roy Stiles and Sharon Stiles, located at 3339 Filbert Highway, Clover, South Carolina, without consent and with the intent to commit a crime therein and the defendant did commit the offense during the nighttime. Said defendant has two prior burglary convictions. All in violation of Section 16-11-312, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided



ASSISTANT SOLICITOR

DOCKET NO. 2012-GS-46-03771

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury

The State of South Carolina
County of York

Defendant

COURT OF GENERAL SESSIONS

November 15, Term 2012

I hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

Defendant

VS.

Witness

RICHARD KEITH POE

C.C.C. PLS AND G.S.

Indictment for
BURGLARY 1ST DEGREE

SC Code 16-11-311
CDR Code 079

WITNESSES

O/Gurganus

vk

ARREST WARRANT NUMBER

J-158013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date 11/15/12

VERDICT

Foreperson of Petit Jury

Date

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on November 15, 2012, the Grand Jurors of York County present upon their oath:

BURGLARY 1ST DEGREE

The Defendant, Richard Keith Poe, did in York County, South Carolina, on or about January 10, 2010, willfully and unlawfully enter a locked storage building which is located on the curtilage of and appurtenant to the residence belonging to Kenneth Roy Stiles, located at Filbert Highway, Clover, York County, South Carolina, without consent and with the intent to commit a crime therein and the defendant did commit said offense during the nighttime, all in violation of Section 16-11-311, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DEPUTY SOLICITOR

Richard Poe - Direct by Mr. Hemlepp

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1 A No, sir, it happened on on 6:45 to 6:50 a.m..

2 Q Is there anything else about this, about your trial or
3 your plea and your relationship with Mr. Cronin that you believe
4 that Judge Baxley might need to know in making his decision?

5 A During the course of the testimony of Detective
6 Gurganus Shawn never challenged him. He never objected because
7 the whole truth was not put forth. There was allegations made
8 with no truth behind it as well as from Ms. Shelton. He never
9 objected to nothing that she said. I have no -- me, personally,
10 I was not involved in no food stamp fraud in North Carolina.
11 Why that was brought up. She brought that up. I don't know
12 what else, but he never objected to anything that she stood up
13 in front up in Judge Hayes and mentioned, which was quite a bit.
14 And I was told if I didn't want to take a plea that I most
15 likely end up with 20 to 25 years on June the 4th and the jury
16 will in fact find my guilty of first degree burglary.

17 MR. HEMLEPP: Your Honor, the burglary first
18 degree charge that was contained in the warrant was
19 indicted by the Grand Jury in York County. Then there
20 was amended indictment before the Grand Jury, both of
21 which appear to be true billed. The first one on May
22 16th -- I am sorry, the first on November 15th of 2012
23 the second on May 16th of 2013. The purposes of this
24 hearing, I would like to have them marked. The witness
25 didn't identify them. I would like to have them

Richard Poe - Direct by Mr. Hemlepp

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1 that's the reason why in Miss McDonald's statement she says I do
2 not want to hear from the state or no more phone calls regarding
3 my past relationship with Richard Keith Poe because she told me
4 herself they kept calling her. What about this. I never
5 threatened to harm her.

6 Q Richard, we are getting a little bit far afield of
7 where we need to be.

8 At the time of the trial you then elected to plead guilty
9 in front of Judge Hayes, is that true?

10 A Yes.

11 Q And Judge Hayes put you under oath and you testified
12 that you had decided to plead guilty and you testified that you
13 were in fact guilty, why did you do that?

14 A I didn't really understand what I was actually going to
15 plead to.

16 Q What did you believe you were going to plead to?

17 A I knew it was 2nd degree, but I didn't know it was a
18 violent crime. I was not informed it was violent.

19 Q What is the difference between violent and non-violent
20 in your understanding now and your understanding then?

21 A Well, when I got down yonder and I am reading there is
22 a 2nd degree burglary violent and there is one non-violent and
23 me personally I take it I guess that you would have to prove
24 that the crime happened at night to be violent.

25 Q And did the crime happen at night?

Richard Poe - Direct by Mr. Hemlepp

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1 considered to be a Court exhibit. I need to argue from
2 them later on. I just ask the Court's guidance on how
3 to proceed.

4 THE COURT: Is there an objection to?

5 MR. JOHNSON: No, Your Honor.

6 THE COURT: Go ahead and mark it as an applicant's
7 exhibit.

8 MR. HEMLEPP: Thank you.

9 (Applicant's Exhibit 3, Indictment, received in
10 evidence as of this date.)

11 THE COURT: Anything further for direct
12 examination?

13 MR. HEMLEPP: No, sir, thank you. Answer any
14 questions the Attorney General may have.

15 THE COURT: Cross examination.

16 MR. JOHNSON: Yes, sir. May it please the Court,
17 Your Honor.

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION

20 BY MR. JOHNSON:

21 Q Mr. Poe, I guess going back to the beginning one last
22 thing you said that you did not understand what you were
23 pleading to. That counsel did not explain to you this would be
24 a violent offense, isn't that correct?

25 A Yes, I remember saying that, but no.

1 Q You said he didn't explain it was going to be a violent
2 offense?

3 A No, sir.

4 Q Okay, but would you agree with me that the Court
5 explained that to you at your guilty plea?

6 A To be honest I can not remember exactly what transpired
7 on June the 4th. It happened so fast. I was under a lot of
8 stress and duress, as well I was dealing with depression at the
9 time, so, no sir, I can not recollect that.

10 Q But at no time did you stop the proceeding and say
11 Judge Hayes, I don't understand what is going on. I'm under
12 some pressure. You know, I don't really what to do this, did
13 you?

14 A No, sir because when I -- when we -- when Miss Shelton
15 had stepped over for the second time to the table where you and
16 Mr. Hemlepp are at today he and her had talked and the next
17 thing I know both of them got up, went out one of these doors
18 and left me sitting yonder. They dismissed the jury. Came back
19 with these papers and he is saying sign, sign here, sign here
20 and I say, well, what is this? This is the plea agreement sign
21 here. That's what I done.

22 Q But you never told Judge's Hayes about that, did you?

23 A I didn't know. I didn't say anything to him about it.
24 I trusted them to do this plea and it's suppose to be non-
25 violent.

1 Q And that is not actually before the Court right now.
2 However, the procedural matter that he had written to ask that
3 you be relieved, and you just testified that you were going to
4 seek to have a hearing on that. Was a hearing conducted?

5 A No, because we patched pit up and he wanted me to
6 continue as counsel.

7 Q Were there any hearings in front of Judge Alford in
8 this case?

9 A I don't recall.

10 Q Okay. Now, you testified that at your initial
11 discussion with Mr. Poe that he had brought up the issue about
12 being mischarged?

13 A Uh-huh.

14 Q And you had seen --

15 MR. HEMLEPP: May I, Your Honor?

16 THE COURT: You may.

17 Q You had seen in the Discovery the copy of the warrants
18 in this case?

19 MR. JOHNSON: Which warrant is this, Mike?

20 MR. HEMLEPP: Burglary first, the one that was
21 admitted into evidence as Petitioner's one.

22 MR. JOHNSON: All right. Thanks.

23 A What was the question?

24 Q You got that as part of Discovery?

25 A I believe so, yes.

Shawn Cronin - Cross by Mr. Hemlepp

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1 Q What was your rationale for that?

2 A I didn't see where it would benefit the defense.

3 Q Okay.

4 A Because the things that he wanted me to investigate
5 were collateral matters to this. They had to do with other
6 crimes committed by other witnesses.

7 Q Okay. Okay. Mr. Poe when he testified testified that
8 you always -- the conversations that you had, that your
9 relationship was difficult from the beginning. Would you agree
10 with that?

11 A No. I mean, it was difficult to make sure that he was
12 understanding me. As far as a bad relationship, there was one.
13 He had written a letter to me asking me to apply to be removed
14 from his case. I said we can apply to do that. We will go
15 ahead and do that and he kept calling, calling, calling, and I
16 was going to get him before the judge so I can be relieved of
17 counsel and go on and there was one conversation where he was
18 shouting at me and I believe I raised my voice at him and I
19 said, fine, if you want a new lawyer get a new damn lawyer.
20 Something like that. And I admit that was a -- you know, I
21 shouldn't have done that. Then I went to go see him. We
22 patched things up and he agreed to go on with the defense and he
23 wanted to keep me as his lawyer so I agreed.

24 Q And of course in criminal cases feelings run high?

25 A Right.

1 Q Did you request a preliminary hearing on any of these
2 charges?

3 A No.

4 Q And would that strategic decision? Was it a timing
5 decision? Why is that?

6 A It may have you been a timing decision.

7 Q Okay.

8 A I don't recall off the top of my head here today.

9 Q You remember that you did not request a preliminary
10 hearing, but you really can't testify why?

11 A Correct.

12 Q Okay. The -- the research that you had done with
13 regards to the elements of the burglary. The warrant says
14 burglary first. There is no language in the body of the warrant
15 that indicates that the building was anything other than a
16 storage building. There is no language about appurtenant or
17 curtilage or connection, did that strike you?

18 A Yes. I researched it and there was I found law that
19 stated that as far as the definition goes it could be a building
20 where goods are stored.

21 Q All right. Okay.

22 A Which seemed to fit the definition to me.

23 Q Okay. Of a building for the purposes of burglary
24 first.

25 Are you familiar with direct indictment?

1 A Yes.

2 Q What is a direct indictment?

3 A It's when they indict him without presenting it to the
4 Grand Jury.

5 Q Okay. Okay. When they present the case to the Grand
6 Jury without an underlying warrant and in a direct indictment
7 some times there is an arraignment?

8 A Correct.

9 Q Had you ever done that prior to this hearing?

10 A No.

11 Q I want to talk to you about the offers in the case.
12 You testified the first offer was 12?

13 A Twelve violent.

14 Q Yes, and is it the practice in the York County
15 Solicitor's Office that usually the Discovery comes with an
16 offer.

17 A Uh-huh.

18 Q It's not negotiated, it's just their initial offer.
19 Had you and Miss Shelton discussed that offer or was that just
20 presented to you?

21 A I am not sure, but if memory serves me it was via an
22 e-mail as part of turning over the Discovery. There were more
23 materials she wanted to get me. The offer is X, Y, Z. That is
24 my recollection.

25 Q Was it a formal document or was it just an e-mail?

Shawn Cronin - Cross by Mr. Hemlepp

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1 A I believe it was an e-mail, that's my recollection.

2 Q Okay. Some times there is is actual document that
3 encapsulates the terms of the plea offer.

4 A There was no plea offers, like these are the terms.

5 Q Okay. He ended up pleading as we discussed on June 4th
6 to a sentence of 13 years. Between those two offers, you
7 testified that there was an offer of five years?

8 A There was an e-mail or contact from Miss Shelton she
9 might be willing to do something in the range of five years and
10 that is again just from my memory.

11 Q Okay. And did you all have a conversation about that
12 either prior to or following that e-mail, you and Miss Shelton,
13 or was that just something that she offered?

14 A I don't remember. I don't remember.

15 Q Okay. Okay. And where did you communicate that offer
16 to your client?

17 A I don't remember.

18 Q Okay.

19 A But I do know I got a letter saying, you know, we are
20 going to trial. I just want to go to trial.

21 Q Okay. Did the letter refer to the offer of five years?

22 A I don't know.

23 Q Okay.

24 A When I went to see him in late May or when they were
25 calling it for trial he was adamant about going to trial..

1 Q And when he communicated that he was adamant about
2 going to trial I believe you already had testified that it had a
3 lot to do with the crime scene being a building, not a
4 residence?

5 A Him wanting to go trial?

6 Q Yes.

7 A He thought he was improperly charged. That's all he
8 kept saying.

9 Q Okay. And really just to -- to the best of your
10 knowledge he was arrested in June of 2012, I believe. He went
11 to court in 2013. And I apologize, tell me again when you were
12 appointed?

13 A Off the top of my head I don't know.

14 Q But it was some time after June?

15 A September maybe.

16 Q So the fall of 2012 would that be a good guess?

17 A Somewhere.

18 Q So the initial offer of 12 years for assistant
19 solicitor Shelton would have been somewhere in the fall of 2012?

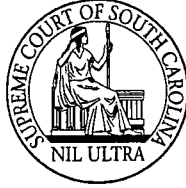
20 A I don't know. It came with the Discovery as far as I
21 know.

22 Q Okay. Okay. Would it have been as late as 2013?

23 A I don't know.

24 Q Okay.

25 A I don't want to speculate.



The Supreme Court of South Carolina
OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

William C. Campbell
Assistant Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone (803) 734-2038
Fax (803) 734-1964

March 19, 2015

PERSONAL AND CONFIDENTIAL

Richard K. Poe #259297
Evans Correctional Institution
610 Highway 9 West
Bennettsville, SC 29512

RE. NOTICE OF FINAL DISPOSITION

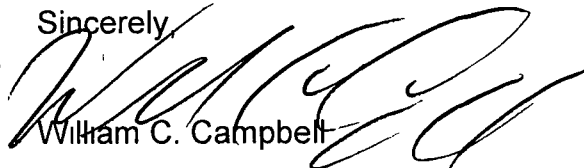
Lawyer: Sean Francis Cronin, Esquire
Matter Number: 14-DE-L-0788

Dear Mr. Poe:

You previously filed a complaint with the Commission on Lawyer Conduct concerning Sean Francis Cronin, Esquire. This matter was concluded on March 18, 2015. Your complaint was not dismissed, but the disposition is confidential under the provisions of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR.

This constitutes final disposition of the proceedings in this matter. Your cooperation with the Commission and this office is appreciated.

Sincerely,



William C. Campbell

The Law Offices of
MICHAEL L. BROWN, JR.

223 Main Street, Suite 550, Rock Hill, SC PO Box 1025, Rock Hill, SC 29731

Telephone: (803)328-8822

Facsimile: (803)328-0523

August 22, 2014

Ms Jenny Abbot Kitchings
Clerk of Court
The South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

Re *The State of South Carolina vs Richard Keith Poe*, Appellate Case Number 2014-001239

Dear Ms Kitchings,

Enclosed for filing is a motion for correction of the record in the above case and six copies. Also enclosed, please find the affidavit in support of the motion, the redacted sentencing sheets for Richard K. Poe, and the proof of service.

Sincerely,



Sean F. Cronin

Encl /9

cc: Richard Keith Poe
Robert Michael Dudek
Salley W Elliot
Misti Shelton

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS

John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2013- 001239

The State of South Carolina,

Respondent,

v

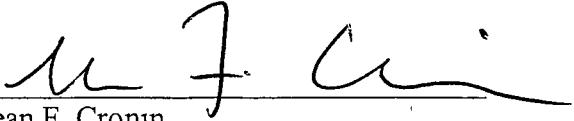
Richard Keith Poe,

Appellant.

MOTION FOR CORRECTION OF THE RECORD

Richard K. Poe filed a Notice of Appeal with this Court appealing his guilty pleas on the charges of Burglary in the 2nd Degree, Petit Larceny, and Conspiracy which were accepted by the Honorable John C. Hayes, III in the Court of General Sessions on June 4, 2013. Movant, Poe's attorney Sean F. Cronin, moves this Court for a correction of the record. The basis for this motion is as follows: The ORDER dismissing appellant's appeal states that Mr. Cronin never responded to the letter from the Court and that he promised to send the necessary documents to the Court. Movant would show that in response to the letter Mr. Cronin spoke with the Clerk's office via telephone on more than one occasion; that Mr. Cronin informed the Clerk that he did not have copies of the sentencing sheets, that the sentencing sheets are not routinely provided to attorneys and that the sentencing sheets are available to attorneys upon request from the Clerk's office. Movant would also show that he informed the Clerk's office that because he did not file the appeal he made no attempts at service for this appeal, and therefore he could not certify service for Mr. Poe's appeal or provide the requested documents. Movant respectfully requests that this Court correct the record in accordance with the above-stated facts.

August 22, 2014


Sean F. Cronin
The Law Offices of Michael L. Brown, Jr
P.O. Box 1025
Rock Hill, SC 29731
(803)328-8822 p (803)328-0523 f
Attorney for Appellant

COPY

Other Counsel of Record

Richard Keith Poe, #259297
Evans Correctional Institution
610 Highway 9 West
Bennettsville, SC 29512

Mrs Misti Shelton, Esquire
Assistant Solicitor, 16th Judicial Circuit
1675-1A York Highway
York, SC 29745
(803) 628 - 3020

Mr. Robert Michael Dudek, Esquire
P.O. Box 11589
Columbia, SC 29211

Ms Salley W. Elliott, Esquire
P O. Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS

John C Hayes, III, Circuit Court Judge

Appellate Case No. 2013- 001239

The State of South Carolina,

Respondent,

v.

Richard Keith Poe,

Appellant.

**AFFIDAVIT OF SEAN F. CRONIN IN SUPPORT OF MOVANT'S
MOTION FOR CORRECTION OF THE RECORD**

Affiant, being duly sworn, states the following:

1. I, Sean F. Cronin, am a resident of York County, South Carolina, and I am 46 years of age.
2. I am licensed to practice law in the state of South Carolina and I have been so licensed since September 17, 2009
3. I was appointed to represent defendant Richard Keith Poe on June 26, 2012.
4. Mr. Poe pled guilty to Burglary in the 2nd degree, Petit Larceny, and Conspiracy on June 4, 2013
5. At the time of his sentencing I informed Mr. Poe that he had 10 days to appeal his conviction and told him to contact my office if he wished to do so
6. Mr. Poe did not contact me within the 10 days following his sentencing.

7. I spoke with the clerk's office in the Court of Appeals via telephone in response to their deficiency letter.

8. I informed the clerk's office that I did not have Mr. Poe's sentencing sheets, that I was not provided with Mr. Poe's sentencing sheets after his plea, and that sentencing sheets were not routinely provided to defense attorneys unless they were requested.

9. I also told the clerk's office that I could not provide the required Proof of Service in this appeal because I did not initiate this appeal, I was not asked to initiate this appeal, and that I would not certify that service had been completed because, up until that point, I had no involvement in this appeal other than being listed as counsel of record in the trial court

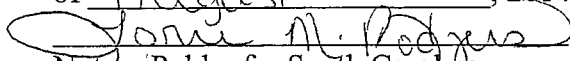
10. The clerk's office asked that I provide something in writing to the Court stating those facts

11. To the best of my knowledge and recollection, I was not asked to get copies of the sentencing sheets although I stated that I was able to do so if they requested it. I was not asked to do so and I did not promise to do so.



Sean F. Cronin

SWORN BEFORE ME this 22 day
of August, 2014


Notary Public for South Carolina

My commission expires. February 28, 2023



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

August 27, 2014

Mr. Sean Francis Cronin, Esquire
PO Box 1025
Rock Hill SC 29731

Re: The State v. Richard Keith Poe
Appellate Case No. 2013-001239

Dear Counsel:

This office is in receipt of your "Motion for Correction of the Record". Please be advised that the Remittitur was issued in this case on June 26, 2014. The issuance of this Remittitur ended the case and the Court of Appeals no longer has jurisdiction. Therefore, no action will be taken on your motion.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Richard Keith Poe, 00259297
Robert Michael Dudek, Esquire
Salley W. Elliott, Esquire

THE STATE OF SOUTH CAROLINA

Case Number:2014-CP-46-2424
Certificate of Service

Richard Keith Poe, #259297
Petitioner

vs.

State of South Carolina,
Respondent

RECEIVED
APR 20 2015
SC Court of Appeals

As of this day of, 4-17-2015, I have placed in US, Regular
Mail upon the following agencies, (1) motion for Judgement with
exhibits according to Rule, (60).


Signature,

Ms, Salley W. Elliott
PO. BOX #11549
Columbia SC, 29211

Jenny A. Kitchings
PO. BOX #11629
Columbia SC, 29211

David Hamilton
PO. BOX #649
York County Clerk
York SC, 29745

STATE OF SOUTH CAROLINA

RECEIVED

APR 20 2015

SC Court of Appeals

Cover Letter

Case:2014-CP-46-2424

Dear Sir, or Maddam:

Please find inclosed Certificate of Service,
and (1) motion for Judgement under rule (60)(1)(2)(3) with
exhibits to be filed and ruled upon.

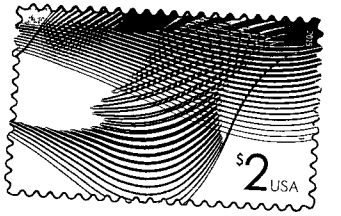

Signature,

Date, 4-17-2015

Return a Clocked Stamped Copy:

Richard Keith Poe, 259297
Catawba Pre-Release
1030, Milling Rd
Rock Hill SC, 29730

Richard K. Poe #259297
Catawba Pro Release
1030, Milling rd
Rock Hill SC, 29730



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APR 20 2015
SC Court of Appeals

Clerk of Court
Jenny A. Kitchens
PO Box # 11629
Columbia SC, 29211

