

# Attachment A

## THE SOUTH CAROLINA COURT OF APPEALS

Robert James Miller, Jr. :  
Appellant :

Appellate Case No. 2014-001964

v.

Robert M. Stevenson, III :  
Respondent :

Initial Brief and  
designation of matter

1) Jurisdiction :

A. Name of Court from which review is sought :  
Fairfield County Court of Common Pleas

B. Date of Order for which review is sought :  
September 4, 2014

**RECEIVED**

MAR 11 2015

SC Court of Appeals

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JUL 27 2015

SC Court of Appeals

2) Timeliness of notice of appeal :

Notice of appeal was placed in the institution's internal mailing system for mailing to the Court on September 8, 2014.

3) Issues for review :

I.

ISSUE 1. Appellant was not given a full and fair opportunity to present his claims. The Court dismissed the Habeas Corpus action without a hearing or service on the respondent.

The Court deprived appellant of his Constitutional rights and did not provide appellant a reasonable

## Attachment A

- opportunity to have his federal claims heard.
- Hoffman v. Arave, 236 F.3d 523, 531 (9th Cir. 2001) "[I]f a State procedural rule frustrates the exercise of a federal right, that rule is inadequate..."
- Fontaine v. United States, 411 U.S. 213-15, 93 S.Ct. 1461-63 (1973) (holding that defendant is entitled to a hearing to determine whether or not his guilty plea was voluntary even though he had declared in open court that his plea was given voluntarily and knowingly); See also Machibroda v. United States, 368 U.S. 487, 494, 82 S.Ct. 510, 514 (1962).
- Santobello v. New York, 404 U.S. 257, 262, 92 S.Ct. 495, 499 (1971) (holding that when pleas rest on an implied promise or on an agreement by a prosecutor that he will make no sentencing recommendations, such promises must be fulfilled).
- Johnson v. Beto, 466 F.2d 478, 479-80 (5th Cir. 1972) (holding that... defendant is entitled to resentencing or withdrawal of his guilty plea).
- Roy v. Lampert, (9th Cir. 2006) 465 F.3d 964 (evidentiary hearing proper where sufficient allegations that claims were diligently pursued and extraordinary circumstances existed).
- Appellant is able to demonstrate a sufficient probability that [the Court's] failure to review his federal claim will result in a fundamental miscarriage of Justice." (reaffirmed after the passage of AEDPA in Edwards v. Carpenter, 529 U.S. 446, 451, 120 S.Ct. 1587, 1591 (2000)).

• The requirement of due diligence does not depend on whether the efforts were successful, but on whether "the prisoner made a reasonable attempt, in light of the information available at the time, to investigate and pursue claims in State Court." Michael Wayne Williams v. Taylor, 529 U.S. 420, 435, 120 S.Ct. 1479, 1490 (2000).

\* • If the State or the State Court prevented the development of facts in your case, you will receive a mandatory hearing. See Townsend v. Sain, 372 U.S. 293, 313 (1963); Keeney v. Tamayo-Reyes, 504 U.S. 1, 11 (1992) "fundamental miscarriage of Justice would result from the failure to hold a hearing." See also, Rhoden v. Rowland, 10 F.3d 1457, 1460 (9th Cir. 1993) (remanding for an evidentiary hearing because petitioner took all steps possible...).

\* • Johnson v. Beto, 466 F.2d 478, 479-80 (5th Cir. 1972) (holding that if a prosecutor says he will make a sentencing recommendation in exchange for a guilty plea, but then actually recommends a harsher sentence in court, the plea bargain has been broken and defendant is entitled to resentencing or withdrawal of his guilty plea).

• Juan H. v. Allen, 408 F.3d 1262, 1276 (9th Cir. 2005) (finding that evidence was insufficient to establish defendant's guilt beyond a reasonable doubt); United States v. Desena, 260 F.3d 150, 154-56 (2d Cir. 2001) (reversing a conviction where no evidence linked the defendant...).

• The lower court's error had a "Substantial and Injurious" effect.

\* • Even if the error's were harmless, I would still be entitled to relief because the error's were per se prejudicial violations that affected my substantial rights.  
\*  
\*

- II. Issue 2. Appellant was denied Due Process and Equal protection of law, repeatedly.
- Gravley v. Mills, 87 F. 3d 779 (6th Cir. 1996) holding that a prosecutor violated due process by repeatedly making references to petitioner's post-arrest silence...
  - Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-97 (1963)  
"the suppression by the prosecution of evidence favorable to an accused upon request violates due process..."
  - United States v. Garza, 435 F. 3d 73, 75-76 (1st Cir. 2006)  
...destruction of evidence is a violation of due process... See also United States v. Bagley, 473 U.S. 667, 678, 105 S.Ct. 3375, 3381-82 (1985); Kyles v. Whitley, 514 U.S. 419, 435, 115 S.Ct. 1555, 1567 (1995)
  - \* If a court holds a trial without jurisdiction, it violates the Due Process Clause of the 5th and 14th Amendments. Lowery v. Estelle, 696 F.2d 333, 336-38 (5th Cir. 1983); Butler v. King, 781 F.2d 486, 490 (5th Cir. 1986); Sunal v. Large, 332 U.S. 174, 178-79 (1947).
  - Requirements of due process include notice, an opportunity to be heard in a meaningful way and judicial review. Ogburn-Matthews v. Loblolly Partners (Ricefields Subdivision), (S.C. App. 1998) 332 S.C. 551, 505 S.E. 2d 598.
  - \* Bracy v. Gramley, 520 U.S. 899, 908-09 (1997) (finding that it is the duty of the courts to provide the necessary facilities and procedures for an adequate inquiry if petitioner's allegations when fully developed may demonstrate that the petitioner is entitled to relief).
  - Neder v. United States, 527 U.S. 1, 7, 119 S.Ct. 1827, 1833 (1999)  
Stating that there is a "limited class of fundamental

# Attachment A

Constitutional errors that... are so intrinsically harmful as to require automatic reversal (i.e. 'affect substantial rights') without regard to their effect on the outcome."

## III. ISSUE 3. The State Court applied federal law in an objectively Unreasonable manner.

- Williams v. Taylor, 529 U.S. 362, 406 (2000) "A State-court decision will also be contrary to this Court's clearly established precedent if the state court confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from our precedent." See also Ramdass v. Angelone, 530 U.S. 156, 165-66 (2000); Lockyer v. Andrade, 538 U.S. 63, 73 (2003)
- Wiggins v. Smith, 539 U.S. 510, 528 (2003) finding that a "clear factual error" in a state court's analysis "highlight[ed] the unreasonableness" of the court's decision. See also Rampilla v. Beard, 545 U.S. 374, 389 (2005); Boss v. Pierce, 263 F.3d 734, 742 (7th Cir. 2001).
- The State Court decision would have been different if the court had properly considered and applied all of the relevant facts. A failure to find facts is actually an unreasonable determination of facts. see Taylor v. Maddox, 366 F.3d 992, 1000-01 (9th Cir. 2004) (finding that a state court's determination of facts is unreasonable if no finding was made and the court "should have made a finding of fact but neglected to do so"). Nunes v. Mueller, 350 F.3d 1045, 1055 (9th Cir. 2003) (finding

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that the state courts' "factual" findings were unreasonable when the Court made the findings without holding an evidentiary hearing); Mask v. McGinnis, 233 F.3d 132, 140 (2d Cir. 2000) (refusing to give the state court's "factual findings" a presumption of correctness because they were not factual findings but only conclusions).

- The lower court ignored legally relevant facts that it needed to consider in order to reach the correct result.
- The fact finding procedure the court used was inadequate. See Caliendo v. Warden of Cal. Men's Colony, 365 F.3d 691, 698 (9th Cir. 2004) and Nunes v. Mueller, 350 F.3d 1045, 1055 (9th Cir. 2003).
- The lower court's determination of facts was unreasonable and not at all supported by the record.
- \* The state has provided no corrective procedures at all to redress the fourth amendment violations. Capellan v. Riley, 975 F.2d 67, 70 (2d Cir. 1992). I was clearly denied my "full and fair opportunity" to litigate my claims.
- \* My restitution order is contrary to clearly established Federal law: I was NEVER arrested, indicted or convicted for the offense in which restitution was ordered !!!  
"restitution to be tied to the loss caused by the offense of conviction." Hughey v. United States, 495 U.S. 411, 418 (1990) (citing 18 U.S.C. § 3580(a) (1982 ed.)). That is, restitution may not be imposed for losses caused by any other crime or any other defendant.
- \* State court remedies are "unavailable" and "ineffective".

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- Simmons v. Blodgett, 910 F. Supp. 1519, 1524 (W.D. Wash. 1996)  
"Because petitioner's ability to prove his claim continues to diminish rapidly over time, and is at risk of being lost, Justice requires that his habeas petition be heard expeditiously."

IV. Issue 4. Appellant was denied his constitutional right to Counsel on his direct appeal. See

- Douglas v. California, 372 U.S. 353, 356-58, 83 S.Ct. 814, 816-17.
- Halbert v. Michigan, 545 U.S. 605, 125 S.Ct. 2582, 2583.
- Evitts v. Lucey, 469 U.S. 387, 396, 105 S.Ct. 830, 836.
- Swenson v. Bosler, 386 U.S. 258, 259, 87 S.Ct. 996-97.
- Mason v. Hanks, 97 F.3d 887, 902 (7th Cir. 1996).
- Roe v. Flores-Ortega, 528 U.S. 470, 484, 120 S.Ct. 1029, 1038.
- Also Alston v. Garrison, 720 F.2d 812, 816 (4th Cir. 1983)  
(holding that "the content of an appeal is heavily controlled by Counsel, and where... the defendant's trial lawyer also prosecuted the appeal, it is obvious that ineffective assistance of Counsel is not likely to be raised at trial or to appear among the assignments of Constitutional error" on appeal).

4) Relief requested:

Vacation of Conviction, Sentence, and illegal restitution  
Order and orders disposing of appellants personal property  
and grant any additional relief this Court deems Just,  
proper and equitable.

Executed at Columbia, South Carolina  
on March 9, 2015

Robert James Miller, Jr.  
Robert James Miller, Jr.

# Attachment A

MAR 20 2015

IN THE SOUTH CAROLINA COURT OF APPEALS <sup>SC Court of Appeals</sup>

Robert James Miller, Jr., :

Appellant,

Appellate Case No.

: 2014-001964

v.

: Designation

Robert M. Stevenson, III,

of Matter

Respondent. :

I certify that this designation contains no matter which is irrelevant to this application. Designation of matter to be included in the record of appeal:

- 1) Declaration in support of Petition
- 2) Supplement to pending claims
- 3) Copy of Petition for Writ of Error Coram Nobis
- 4) Affidavit of Defendant for guilty plea
- 5) Arrest warrants: M400779, 80, 81 and M400917
- 6) Indictments: 2011-GS-20-035, 036, 037 and 045
- 7) Sentencing sheets
- 8) Rap sheet dated November 18, 2010
- 9) Guilty plea transcript pgs. 3, 15, 22-25, and 37
- 10) Court Orders dated 3/7/11, 10/14/11, and 4/5/12

Dated: March 17, 2015

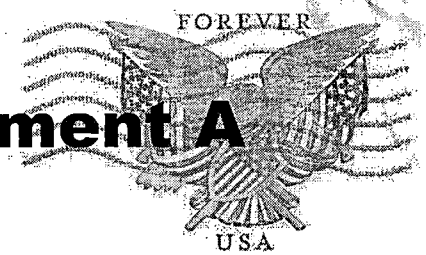
*Robert James Miller, Jr.*  
Robert James Miller, Jr.

R. James Miller, Jr. #316047  
Manning Corr. Inst. WA  
502 Beckman Drive  
Columbia, SC 29203

COLUMBIA SC 290

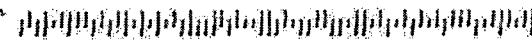
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**Attachment A**



John Croom Calvin Hunter, Esq.  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549

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**Attachment B**  
DEC 18 2014

ATTORNEY GENERALS  
**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  
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December 17, 2014

Robert James Miller, Jr., 31604  
PO Box 252  
TA 126  
Turbeville SC 29162

Re: Robert Miller v. Robert Stevenson  
Appellate Case No. 2014-001964

Dear Mr. Miller:

You have appealed from the denial of your motion for habeas corpus. You have stated there was no hearing and, thus, no transcript. Please file the written explanation required by Rule 203(d)(1)(B)(vi), SCACR, within ten days of the date of this letter.

Failure to provide the written explanation will result in dismissal of the appeal.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Alan McCrory Wilson, Esquire  
Salley W. Elliott, Esquire

# Attachment C

The State of South Carolina  
In the Court of Appeals

Robert James Miller, Jr., :  
Appellant, : Appellate Case No.:  
V. : 2014 - 001964  
Robert M. Stevenson, III, :  
Respondent. :

## EXPLANATION PURSUANT TO RULE 203(d)(1)(B)(v)

Appellant, having three pending matters before the Fairfield County Court of Common Pleas, was given a hearing on Motions on September 4, 2014 before the Honorable Judge Gibbons. Appellant was granted "In Forma Pauperis" status in his Tort action and the Claim and Delivery action but Appellant's Habeas Corpus action was denied without explanation or the respondent being served or involved. However, the Honorable Judge Gibbons did allow Appellant to make a Statement (preserve issues for Appeal). At that time, Appellant advised the Court:

RECORDED  
BY CLERK OF COURT

## Attachment C

- 1) Alleged offenses occurred outside the territorial Jurisdiction of the State of South Carolina. Solicitor lacked authority to initiate prosecution and the convicting Court lacked authority to try the offenses.

Appellants conviction and sentence was obtained in violation of the law. Appellant was denied his Sixth Amendment Constitutional Right to a trial in the "State and district wherein the crime shall have been committed."

Additionally, the Court lacked Subject Matter Jurisdiction and this claim may be raised at any time.

See Hooks v. State, (S.C. 2003) 353 S.C. 48, 577 S.E. 2d 111

Also Butler v. King, 781 F.2d 486, 490 (5th Cir. 1986)

(finding that defendant was entitled to writ of habeas Corpus because State district court lacked Jurisdiction...)

- 2) Appellant is able to "demonstrate a sufficient probability that [the Court's] failure to review his federal claim will result in a fundamental miscarriage of Justice."

See Edwards v. Carpenter, 529 U.S. 446, 451, 120 S.Ct. 1587, 1591 (2000). See ALSO Herrera v. Collins, 506

U.S. 390, 404-405 (1993) "... a prisoner... may have

his federal constitutional claim considered on the merits if he makes a proper showing of actual

innocence." *Id.*, at 404 (citing Sawyer v. Whitley, 505 U.S. 333 (1992)).

## Attachment C

- 3) Appellants restitution order is contrary to clearly established Federal Law. Appellant was ordered to pay restitution (and had a vehicle and thousands of dollars in cash seized) for an alleged offense in NEW YORK in which the Appellant was NEVER arrested, charged, indicted or convicted of and clearly outside this States Jurisdiction. The restitution order is illegal,  
"restitution to be tied to the loss caused by the offense of conviction." Hughey v. United States, 495 U.S. 411, 418 (1990) (citing 18 U.S.C. § 3580(a) (1982 ed.); emphasis added). That is, restitution may not be imposed for losses caused by any other crime or any other defendant.
- 4) The Appellants guilty plea was unconstitutional because he pled guilty involuntarily; See Fontaine v. United States, 411 U.S. 213-15, 93 S.Ct. 1461-63 (1973) holding that defendant is entitled to a hearing to determine whether or not his guilty plea was voluntary even though he had declared in open court that his plea was given voluntarily and knowingly. See also Machibroda v. United States, 368 U.S. 487, 494, 82 S.Ct. 510, 514 (1962).
- 5) The plea agreement was broken by the state. See Santobello v. New York, 404 U.S. 257, 262 (1971)

## Attachment C

(holding that when pleas rest on an implied promise or on an agreement by a prosecutor that he will make no sentencing recommendations, such promises must be fulfilled). Also, Johnson v. Betts, 466 F.2d 478, 479-80 (5th Cir. 1972).

- 6) The Solicitor violated due process by repeatedly making references to Appellants post-arrest silence. see Gravley v. Mills, 87 F.3d 779 (6th Cir. 1996) And: Franklin v. Duncan, 70 F.3d 75 (9th Cir. 1995)

Prosecutor's reference in closing argument to post-Miranda silence... violated 5th Amendment right to remain silent.

- 7) Prosecutor's "repeated and clearly intentional misrepresentations"... rendered trial fundamentally unfair in violation of Due Process clause.

- 8) Solicitor Violated Due Process by suppressing evidence. See United States v. Bagley, 473 U.S. 667, 678, 105 S.Ct. 3375, 3381-82 (1985) And Kyles v. Whitley, 514 U.S. 419, 421-22, 435 (1995) And Brady v. Maryland, 373 U.S. 83, 87 (1963), Walker v. Lockhart, 763 F.2d 942 (8th Cir. 1985) 478 U.S. 1020 (1986)

## Attachment C

Appellant is able to demonstrate actual innocence, miscarriage of Justice, Jurisdictional defects, denial of due process of law, ineffective assistance of counsel, obstruction of Justice, the wholesale suppression of exculpatory evidence by the Solicitor and Sheriff's office, prosecutorial and law enforcement misconduct (held of nearly \$100,000.00: See Fairfield Co. Ct. of Cmm. Pleas C/A 2014-CP-20-332, 2014-CP-20-333) and numerous other Constitutional Violations which resulted in a case that was corrupted from start to finish.

Appellant's claims have merit, he is entitled to a hearing and relief "on the law" and it is more likely than not that no reasonable Juror would have convicted the Appellant.

The denial of my Habeas Corpus without a hearing or reason, and to my actual and substantial disadvantage, is an error of Constitutional dimensions. This Court has Jurisdiction and Appellant moves the court to review his claims, appoint counsel for Appellant, and grant any additional relief this Court deems Just, proper and equitable.

Dated: December 21, 2014

*R. James Miller, Jr.*  
R. James Miller, Jr.

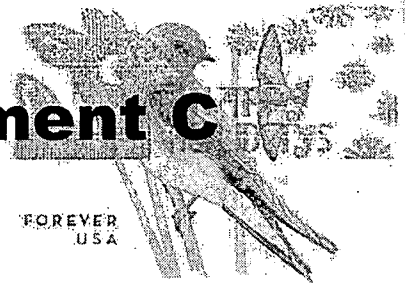
R. James Miller # 316047  
Turbeville Corr. Inst.  
P.O. Box 252  
Turbeville, SC 29162

COLUMBIA SC 290

23 DE

**Attachment C**

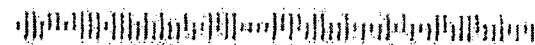
FOREVER  
USA



Bank Swallow

Office of the Attorney General  
Alan McCrory Wilson, Esq.  
Sally Elliott, Esq.  
1000 Assembly street, Suite 518  
Columbia, SC 29201

29201311725





# Attachment D

## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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July 22, 2015

Robert James Miller, Jr., 316047  
Manning Correctional Institution  
502 Beckham Drive  
Columbia SC 29203

Re: Robert Miller v. Robert Stevenson  
Appellate Case No. 2014-001964

Dear Mr. Miller:

Upon reviewing your motion to allow late filing, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The Court has received the proof of service for the appellant's initial brief and designation of matter that was provided, however a proof of service for the motion to allow late filing has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR. Furthermore, a proof of service must be filed with all correspondence with the Court.

Very truly yours,

Handwritten signature of Jenny Abbott Kitchings in cursive script.  
CLERK

cc: Alan McCrory Wilson, Esquire  
John Croom Colvin Hunter, Esquire



# Attachment E

## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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July 23, 2015

Mr. Alan McCrory Wilson, Esquire  
PO Box 11549  
Columbia SC 29211-1549

Mr. John Croom Colvin Hunter, Esquire  
PO Box 11549  
Columbia SC 29211

Re: Robert Miller v. Robert Stevenson  
Appellate Case No. 2014-001964

Dear Counsel:

Our records reflect your respondent's initial brief and designation of matter should have been filed with the Court. Within ten days of the date of this letter, you must file your respondent's initial brief and designation of matter along with a motion requesting permission to file the document out-of-time. The Court will proceed without consideration of your document if no motion is made within ten days of the date of this letter.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Robert James Miller, Jr., 316047