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AUG 10 2015

State of South Carolina  
In the Court of Appeals

SC Court of Appeals

Appeal from Fairfield County  
Brian M. Gibbons, Circuit Court Judge

Appellate case No. 2014-001964

Robert James Miller, Jr.,

Appellant,

VS.

Robert M. Stevenson, III

Respondent.

## TRAVERSE

Appellant files this response to respondent's Initial Brief to correct the attorneys mistakes.

1) The lower court did not dismiss "Appellant's Petition for Writ of Habeas Corpus because it was not properly filed in the original Jurisdiction of the Supreme Court".

A) The Circuit Court Judge stated that my claims were Federal claims and therefore needed to be raised in Federal Court, not State Court.

B) Appellant did file a Petition for a Writ of Habeas Corpus in The Supreme Court of South Carolina which was dismissed pursuant to Key v. Currie, 305 S.C. 115, 406 S.E. 2d 356 (1991) (No extraordinary reason for this Court to entertain this matter in its original Jurisdiction) See Case No. 2014-0030, also: 2014-1029, 2014-1620, 2014-1740 and 2014-2310.

2) Appellant's third 10-year sentence is suspended to probation for 3-years, not "provided that upon the service of three (3) years, the balance would be suspended with probation."

3) Applicant Did appeal. See S.C. Court of Appeals case number 2012-211446.

4) Appellant was NOT permitted to raise his claims in his PCR case (see PCR transcript pg 4 and 5)  
"... you understand that the only things that Judge Young is going to be listening to are allegations about your lawyer's performance. We can't really hear about the solicitor's office's performance, or law enforcement. Those allegations are brought up in other causes of action, these other things that you filed. You understand that, do you not?"

A Yes.

Q Okay. And that's not a question of desire. Judge Young doesn't have the authority to rule on those issues."

Also see page 2, last paragraph, of Order of Dismissal of PCR:

"Applicant testified that he understands PCR is solely for attacking the representation of his plea counsel.

Based on the foregoing, Appellant's Initial Brief and the Record on Appeal in this matter, Appellant requests that this Court grant relief for the Appellant.

Dated: August 5, 2015

R. James Miller, Jr.

R. James Miller, Jr.

## Certificate of Service

I certify that I have served the Appellant's Traverse on the attorneys for the Respondent by depositing a copy in the U.S. Mail, postage prepaid, this 5<sup>th</sup> day of August 2015, addressed to:

J. Croom Hunter, Esq.

Office of the Attorney General

P.O. Box 11549

Columbia, SC 29211

R. James Miller, Jr.

R. James Miller, Jr.

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AUG 10 2015

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

SC Court of Appeals

APPEAL FROM FAIRFIELD COUNTY  
Court of General Sessions

2012 APR 11 P 4: 09

L. Casey Manning, Circuit Court Judge

FAIRFIELD COUNTY  
CLERK OF COURT  
BETTY JO BECKHAM

Case No(s): 2011-GS-20-035, 2011-GS-20-036, 2011-GS-20-037

The State of South Carolina,

Respondent.

v.

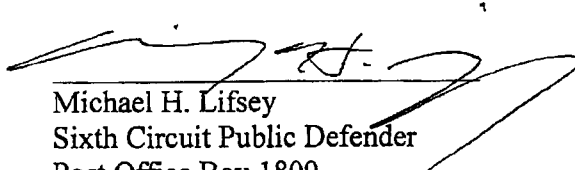
Robert James Miller, Jr.

Appellant.

**NOTICE OF APPEAL**

Robert James Miller, Jr. appeals his conviction and sentence in this case. The sentence was imposed by the Honorable L. Casey Manning on April 03, 2012.

Date: April 11, 2012



Michael H. Lifsey  
Sixth Circuit Public Defender  
Post Office Box 1809  
Lancaster, SC 29721  
Attorney for Appellant  
(803) 285-5585

Other Counsel of Record:  
Riley J. Maxwell, Esq.  
Assistant Solicitor  
Post Office Box 1085  
Winnsboro, South Carolina 29180  
Attorney for Respondent  
(803) 712-1735

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Fairfield  
STATE VS.

INDICTMENT/CASE#: 2011-GS-20-36

Robert James Miller Jr

A/W#: M400780

AKA: \_\_\_\_\_

Date of Offense: 9/2/10

Race: WHITE Sex: M Age: 40

S.C. Code §: 16-1-510

DOB: 1971 SS#: 7228

CDR Code #: 2813

Address: 6974 Lito Rd

City, State, Zip: Mc Connellsburg, PA 17233

DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or  PLEAS

TO: FinanTC / Financial identity fraud, obtains/records identify. info., access/att. access finan. records of other unlawfully

in violation of § 16-13-0510 of the S.C. Code of Laws, bearing CDR Code # 2813  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: Maxwell, Riley J 74878 SC Bar# Robert James Miller Defendant Attorney for Defendant 015157 SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 10 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for 3

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 4/3/12 2011GS2037 & 2011GS2035

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP

Total: \$ 30,000 plus 20% fee: \_\_\_\_\_ \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \_\_\_\_\_ \$ \_\_\_\_\_

§ 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_

Proviso 47.9 (Public Def/Prob) \$500 \$ 500.00

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_

§ 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 18.90

TOTAL \$ 648.90

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge \_\_\_\_\_

Judge Code: 2061

Sentence Date: 4-3-12

Clerk of Court/ Deputy Clerk Betty J Beckhar

Court Reporter: Mike Wathens

SCCA/217 (03/2011)

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SENTENCE SHEET  
SC Court of Appeals

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The Supreme Court of South Carolina

The State, Respondent

v.

Robert Miller, Petitioner.

Appellate Case No. 2014-000030  
Lower Court Case Nos. 2011-GS-20-00035 thru 2011-  
GS-20-00037.

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ORDER

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By order filed on July 18, 2013, the South Carolina Court of Appeals dismissed the appeal in this matter.<sup>1</sup> When no petition for rehearing or reinstatement was received, the Court of Appeals sent the remittitur on August 13, 2013. Petitioner has now filed a motion seeking a writ of certiorari, a writ of habeas corpus, a vacation of his criminal convictions, monetary damages, and such other relief as may be appropriate.

The motion must be dismissed because petitioner has failed to provide an affidavit or proof of service showing that a copy of the motion has been served on opposing counsel. Rule 240(c)(1) of the South Carolina Appellate Court Rules (SCACR).

To the extent the motion is seeking review of the decision of the Court of Appeals, the motion must be dismissed for several other reasons. First, under Rule 242(a) of the South Carolina Appellate Court Rules (SCACR), this Court will only review a final decision of the Court of Appeals, and a decision is not final for the purposes of review until a petition for rehearing or reinstatement has been acted on by the Court of Appeals. Rule 242(c), SCACR. Since no petition for rehearing or reinstatement has been ruled on by the Court of Appeals in this matter, there is no final decision for this Court to review.

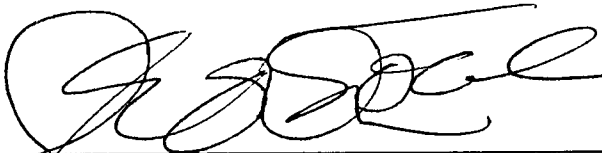
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<sup>1</sup> Before the Court of Appeals, the Appellate Case Number was 2012-211446.

Second, when no petition for rehearing or reinstatement was received by the Court of Appeals, the Court of Appeals properly sent the remittitur. Rule 221, SCACR. The sending of the remittitur ended appellate jurisdiction over this case, and no further motion or petition can be considered in the case. *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007).

To the extent petitioner may be requesting relief from this Court under Rule 245, SCACR, that request must be dismissed not only for the failure to provide a proof of service, but also because there is no extraordinary reason for this Court to entertain this matter in its original jurisdiction. *Key v. Currie*, 305 S.C. 115, 406 S.E.2d 356 (1991).

Accordingly, the motion is dismissed.

  
\_\_\_\_\_  
FOR THE COURT C.J.

Columbia, South Carolina  
January 15, 2014

cc: Salley W. Elliott, Esquire  
The Honorable Jenny Abbott Kitchings  
**Robert Miller**  
The Honorable Betty Jo Beckham

Applicant was sentenced to a consecutive term of ten (10) years, provided that upon the service of ~~the~~ ~~years~~, the balance would be suspended with probation. Restitution of \$30,000.00 was also ordered. The Applicant did not appeal.

**ALLEGATIONS**

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on the following grounds:

1. Ineffective assistance of counsel.
  - a. Counsel misled the Applicant by telling him he would receive a lesser sentence than he did.
  - b. Counsel failed to hire a forensic accountant and did not present defendant's request for a restitution hearing.
2. Lack of subject matter jurisdiction.
  - a. The solicitor and the court lacked authority because the offense happened outside the state of South Carolina.
3. Involuntary guilty plea.
  - a. "Defendant pled guilty with the expectation that the solicitor would refrain from making a recommendation to the judge and that he would not oppose any request for leniency by the defendant."

**SUMMARY OF TESTIMONY PRESENTED**

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Mike Lifsey, Esquire (Counsel). This Court also had before it a copy of the plea transcript, the Fairfield County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

During the evidentiary hearing, Applicant testified that he was represented at his plea by Mike Lifsey, Esquire. Applicant testified he has filed a lawsuit against the solicitor and the investigators involved in his case. Applicant testified that he understands PCR is solely for attacking the representation of his plea counsel. Applicant testified he was initially appointed another attorney before Counsel took his case. Applicant testified he did not remember all of the charges he faced prior to his plea. Applicant testified there were initially ten charges filed against

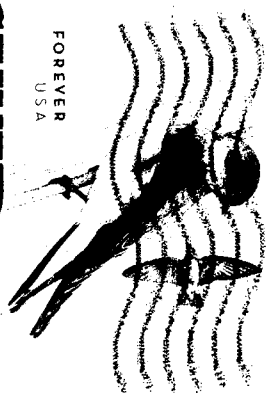


R. James Miller, Jr. # 316047  
Manning Corr. Inst. W9 20A  
502 Beckman Drive  
Columbia, SC 29203

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

COLUMBIA SC 290

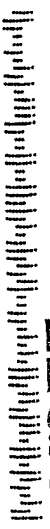
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