

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
Court of Common Pleas
The Honorable Casey L. Manning, Circuit Court Judge

Appellate Case No.2014-000786
Lower Court Case No.2011-CP-40-0190

John J. Moore, Jr., #326455,

RECEIVED

Petitioner, AUG 24 2015

v.

S.C. SUPREME COURT

State of South Carolina,

Respondent.

REPLY TO PETITION FOR WRIT OF CERTIORARI

John J. Moore
Petitioner

B.R.C.I. Murray 125
4460 Broadriver Rd.
Columbia, S.C. 29210

PRO SE

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PETITIONER'S QUESTIONS PRESENTED

- I. Is there any evidence of probative value which support the PCR courts conclusion that counsel was not ineffective for failing to request a jury instruction explaining how the jury must evaluate the "use of a vehicle as deadly weapon" in determining the weight of the evidence and credibility of the witnesses in evaluating each self-defense elements previously charged to the jury by the trial judge under the beyond a reasonable doubt standard?
- II. Is there any evidence of probative value which supports the PCR courts conclusion that counsel was not ineffective for failing to object and request voir dire to examine the jurors or otherwise move for mistrial on the basis that several jurors fell asleep during the course of the defendant's trial and in doing so compromised defendant's right to impartial and mentally competent jurors to insure a fair trial?
- III. Is there any evidence of probative value to support the PCR courts conclusion that counsel was not ineffective for failing to properly investigate and prepare Applicant's case where the PCR court proffered Applicant's affidavit evidence into the record but did not consider Applicant's affidavits evidence in its determination of this ineffective assistance of counsel allegation?
- IV. Is there any evidence of probative value which supports the PCR courts conclusion that counsel was not ineffective for failing to object to the jury instruction given an accomplice liability and "jointly at fault in bringing on the difficulty" where there is no evidence in the record the defendant aided, abetted, or acted in concert with Kerwyn Phillips in any of the elements of his conviction?

STATEMENT OF THE CASE

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the April 2006 term of Richland County Grand Jury for Murder, Use of a Firearm During the Commission of a Violent Crime, and Unlawful Possession of a Pistol by a Person Under 21 Years of Age(2006-GS-40-02203,-11738,-11739). Doug Strickler, Esquire, and Greg Collins, Esquire, represented him on the charges. On January 28,2008, Applicant proceeded to a jury trial before the Honorable William P. Keesly. After a five day trial, Applicant was found guilty of the two weapon charges as indicted, as well as the lesser included Voluntary Mans-slaughter. Judge Keesley sentenced Applicant to thirty(30) years imprisonment for Voluntary Manslaughter, five(5) years imprisonment to run concurrently for Possession of a Weapon During the Commission of a Violent Crime, and five(5) years imprisonment to run consecutively for Possession of a Pistol by a Person under 21.

A notice of appeal was filed and on appeal was perfected Applicant was represented by Joseph Savitz,III, Esquire, of the South Carolina Office of Appellate Defense. After briefing , the South Carolina Court of Appeals reversed Applicant's conviction for Possession of a Pistol by a Person under 21. State v. Moore, Op.No. 2010-UP-409(S.C.Ct.App.filed September 16, 2010). The Remittitur was issued October 5, 2010. Appellate Attorney failed to brief any issue(s) on the Voluntary

Manslaughter and use of a Firearm During the Commission of Violent Crimes convictions.

Petitioner then filed an application for post-conviction relief on January 13, 2011. Respondent filed a Return on February 15, 2011. An evidentiary hearing was held on May 23, 2012, at the Richland County courthouse. Petitioner was represented by Rowland P. Alston, III, Esquire. The state was represented by Robert O. Corney of the South Carolina Attorney General's Office. Judge Manning issued an Order of Dismissal on January 8, 2014, denying relief. Petitioner then filed a Motion to Alter or Amend a Judgment on January 15, 2013. Respondent submitted a return on January 24, 2013. Judge Manning issued an order denying the motion on April 7, 2014.

Petitioner filed a notice of appeal on April 14, 2014. A Petition for Writ of Certiorari was submitted by Benjamin J. Tripp, Esquire on January 5, 2015. Petitioner filed a Motion to Relieve Counsel, withdraw the Petition for Writ of Certiorari, and proceed Pro Se. This court issued an Order on February 18, 2015, giving Petitioner twenty(20) days to decide whether he would like to proceed pro se or continue to be represented by Counsel Tripp. This Court issued an Order on March 10, 2015, granting Petitioner's motion to proceed pro se. The Petition for Writ of Certiorari submitted was withdrawn. Petitioner filed his pro se Petition for Writ of Certiorari on May 7, 2015. Respondent filed his Return to Petition for Writ of Certiorari on August 7, 2015. This Reply follows.

STANDARD OF REVIEW

"On appeal, the PCR court's ruling should be upheld if it is supported by any evidence of probative value in the record." Simuel v. State, 701 S.E.2d 738, 739(2010). Id at 739. "However, if there is no evidence to support the PCR court's ruling the appellate court will reverse." Id.J; also Lounds v. State, 670 S.E.2d 646(S.C.2008) and Pauling v. State, 565 S.E.2d 769 (2002). Bell v. State, 765 S.E.2d 4(S.C.App. 2014).

ARGUMENT

- I. Certiorari is warranted to review the PCR court's conclusion that counsel was not ineffective for failing to request a jury instruction explaining how the jury must evaluate the "use of a vehicle as deadly weapon" in determining the weight of the evidence and credibility of the witnesses in evaluating each self-defense elements previously charged to the jury by the trial judge under the beyond a reasonable doubt standard.

The Respondant's recitation of the PCR court's ruling on this issue is factually inaccurate. The PCR court actually found as a matter of law and fact that there is no sanctioned jury charge existing nor relevant case law in South Carolina jurisprudence upon which trial counsel Greg Collins could have based a jury instruction request to support the legality of a charge to have the vehicle driven by Derrick evaluated as a deadly weapon by the defendant's jury. (See PCR Dismissal App. pg.933 paragraph 2). This PCR court specifically used this erroneous finding of fact and conclusion of law to deny Applicant's post-conviction relief application. The PCR court's finding of fact and conclusion of law is not supported by any evidence of probative value in the record, and actually is contrary to established South Carolina jurisprudence. (State V. Wilds, 584 S.E.2d 138(S.C.App 2003), State V. Hanahan, 96 S.E.667(S.C.1918), and State V. Staggs, 195 S.E.130(S.C.1938).

The Respondent argument that the trial court could not have instructed the jury to evaluate whether or not Derrick's automobile is "a deadly weapon" because such an instruction is an improper charge on the facts of the case and is prohibited by the South Carolina Constitution is a meritless argument.

The Respondent commits a factual mischaracterization when it states in its Return the "Petitioner wanted the trial court to instruct the jury that the victim and Derrick's vehicle was a deadly weapon." (See Return to Petition for Writ of Cert. pg.6,para.1). Not so. The Petitioner has never argued the trial judge should have instructed the jury that Derrick's vehicle was a deadly weapon. The Petitioner is arguing, and has always argued, that trial counsel should have requested the trial judge to instruct the jury that it is permissible for the jury to determine as a factual matter whether or not the evidence presented at trial involving the conduct, manner and circumstances with which Derrick operated his vehicle in relation to the vehicle occupied by the defendant and Kerwyn Phillips placed Derrick's vehicle in the category of dangerous instrumentalities known as a deadly weapon beyond a reasonable doubt. Additionally, if the jury makes a factual finding that Derrick's vehicle is in fact a "deadly weapon" then the jury must evaluate each and every one of Petitioner's self-defense instruction keeping in mind that Derrick is armed with a deadly weapon throughout the confrontations of this case.

The Petitioner went further in his argument in his petition for Writ of Certiorari and quoted actual South Carolina appellate court rulings which have determined that it is permissible under South Carolina's Constitution for a trial judge to allow a jury to say whether an automobile is such a dangerous instrumentality that should be placed in the class of deadly weapon...Yauß v. Baldrige, 134 S.E.2d 248, 251(1964); State v. Caldwell, 98 S.E.2d 259,261(1957); State v. Barnett, 63 S.E.2d 57;

State v. Dixon, 186 S.E.531; Stovall v. Sawyer, 187 S.E.821; State v. Staggs, 195 S.E.130; State v. Sussewell, 146 S.E.697, 703(1929); In re Mcfadden, 99 S.E.838, 839(1919); and also State v. Hanahan, 96 S.E.667(S.C.1918). Although the Respondent takes exception to the case State v. Wilds, 355 S.C. 269, 584 S.E.2d 138(Ct.App.2003) as not relevant to the issue at hand, the Respondent stands silent regarding the above listed body of case law which clearly articulated that when the evidence adduced at trial warrants the evaluation of whether or not an automobile is such a dangerous instrumentality that should be placed in a class of deadly weapon the jury must be instructed by the trial court to undertake this examination of fact regarding the automobile and that such a jury instruction is not an improper charge on the facts of the case.

The failure is not harmless beyond a reasonable doubt. At Petitioner's trial the trial judge charged the jury on at least sixteen(16) legal self-defence principles and concepts under South Carolina law that would require the jury to return a verdict of acquittal for murder and manslaughter. For example, the trial judge charged the jury, "for situations where a defendant is in imminent danger, the circumstances facing the defendant must have been such to warrant a person of ordinary prudence, firmness and courage to strike back in the manner the defendant allegedly did." (See App.751, lines 11-23). The fatal flaw is trial counsel never requested the trial judge to instruct the jury to first determine whether or not Derrick's automobile is a deadly weapon and if they do find that Derrick's

automobile is a deadly weapon then the jury must determine each element of self-defense principles and concepts while uniquely understanding each element of self-defense must be viewed under the lens that Derrick was armed with a deadly weapon equivalent to Derrick being armed with a deadly firearm weapon throughout the underlying incident of this case. The jury would then be required to examine the Petitioner's state of mind of the presence of an imminent danger from Derrick capable of inflicting actual death or serious bodily harm with the automobile. The jury would be required to examine each of Petitioner's self-defense defenses in this manner. The jury did not undertake this evaluation because they weren't instructed by the trial judge that such an evaluation is permissible to undertake to resolve Petitioner's innocence or guilt beyond a reasonable doubt.

The Respondent's assertions that because trial counsel made specific arguments on this point is factually incorrect and preposterous when the correct body of law on this point is reviewed.

First, the record of this case does not reflect that the trial counsel specifically told the jury that is it permissible in South Carolina for the jury to make a factual determination whether or not Derrick's vehicle should be placed in the category of dangerous instrumentalities known as a deadly weapon beyond a reasonable doubt and if the jury does decide Derrick's vehicle is a deadly weapon then the jury must evaluate each and every one of Petitioner's self-defense instructions keeping in mind

that Derrick is armed with a deadly weapon throughout the confrontations of this case. The Petitioner challenges the Respondent to produce the segment of the trial record where trial counsel made these specific arguments to the jury. It is simply not in the record because trial counsel did not speak on this point neither did he request the trial judge to instruct the jury on this point.

Secondly, the jury's conviction of the Petitioner is proof that the jury found all elements of Petitioner's self-defense defenses to be lacking beyond a reasonable doubt, including Petitioner's assertions of Derrick's vehicle being a deadly weapon which actually placed the Petitioner in imminent death or serious bodily harm is preposterous. The manner in which this jury returned its conviction of Petitioner is proof of the danger of constitutional violations of a defendant's right to a fair trial when the jury is not properly instructed on their duties in evaluating the evidence in the American Judicial System the "juries are presumed and bound to follow instructions of the trial judge." (See Evans v. Michigan, 133 S.Ct.1069, 185 L.Ed 2d 124 (quoting Blueford v. Arkansas, 132 S.Ct. 2044, 182 L.Ed.2d 937)). Also, "a jury is presumed to follow its instructions and is presumed to understand a judge's answer to its question." (See Weeks v. Angelone, 528 U.S. 225, 120 S.Ct. 727, 145 L.Ed.2d.727).

The jurors in this case were not instructed at all that it is permissible for the jury to determine as a factual matter whether or not the evidence presented at trial involving the

conduct, manner, and circumstances with which Derrick operated his vehicle in relation to the vehicle occupied by the defendant and Kerwyn Phillips placed Derrick's vehicle in the category of dangerous instrumentalities known as a deadly weapon beyond a reasonable doubt, therefore there is no presumption, as a matter of law, that the jury evaluated this specific point and then resolved it negatively against the Petitioner by virtue of the jury's verdict of guilty. The Respondent's reasoning is contrary to logic and precedent case law. If anything, the fact the jurors were not instructed at all on this specific point tends to lead the logical mind to find that it is more probable than not that the jury did not evaluate whether or not Derrick's vehicle is a deadly weapon in determining the weight of the evidence and credibility of the witnesses in evaluating each self-defense element previously charged to the jury by the trial judge under the beyond a reasonable doubt standard, because jury's are only presumed to follow and understand those things they are instructed. (See Evans, Blueford and Weeks, Id.). The harm is inherent, the Petitioner was deprived of his ability to have each element of his complete defense of self-defense properly determined under applicable law and evaluated by the beyond a reasonable doubt standard thereby depriving Petitioner of a fair trial and due process. (See U.S. v. Gaudin, 515 U.S.506,115 S.Ct. 2310(1995)). The trial counsel is ineffective under both prongs of Strickland v. Washington, 104 S.Ct. 2052, the PCR court's denial on this issue must be reversed. (See Simuel v. State, 701 S.E.2d 738,739

(2010)). Certiorari is warranted to review the PCR court's decision.

II. Certiorari is warranted to review the PCR court's conclusion that counsel was not ineffective for failing to object and request voir dire to examine the jurors or otherwise move for mistrial on the basis that several jurors fell asleep during the course of the defendants's trial and in doing so compromised the defendant's right to impartial and mentally competent jurors to ensure a fair trial.

The Respondent's assertions that Petitioner's claim of the PCR court erred in failing to find counsel ineffective in not requesting the jurors be subject to voir dire is not preserved for this court's appellate review is flatly contradicted by the record of this case.

The Petitioner timely filed a motion pursuant to S.C.R.C.P. Rule 59 titled "Notice of Motion and Motion to Alter or Amend a judgment" in the PCR case 2011-CP-40-0190; this motion was filed January 15, 2013 in the Richland County Court of Common Pleas and was served on the Hon. L. Casey Manning and State attorney general Robert Corney, esq., on January 15, 2013. The S.C.R.C.P. Rule 59 motion specifically motion the court in the following quoted language:

"The undersigned asks this court to rule upon/Reconsider the argument made at the hearing, and in supporting memorandum that the applicant's public defender failed to request specific inquiry by the court of jurors who appeared to be sleeping or somnolent, pursuant to State v. Hurd, 325 S.C. 384, 480 S.E.2d 94 (Ct.App.1996)."

The Petitioner has attached a copy of the S.C.R.C.P. Rule 59 motion document as an Exhibit #1 to this Reply to Respondent's Return to Petition for Writ of Certiorari. This issue is ripe for appellate review. (See Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (S.C. 2007)).

The jurors fell asleep and were otherwise somnolent, the Respondent's assertion that Hurd is inapplicable and is meritless. Hurd is controlling in this Petitioner's case and the Petitioner is entitled to relief on this issue, because the trial is infected with unfairness because in actuality the prosecution's burden of proof was presented to less than twelve (12) competent jurors to determine by a beyond a reasonable doubt standard and this practice is prohibited by constitution of South Carolina and the United States. (See U.S. Constitution Amendment V and U.S. Constitution Amendment XIV; Sullivan v. Louisiana, 508 U.S. 275, 277-278, 113 S.Ct. 2078, 2080, 124 L.Ed.2d 182 (1993); also Sandstrom v. Montana, 442 U.S. 510, 512, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979)).

Certiorari should be granted on this issue and the PCR court's denial must be reversed. The Petitioner is entitled to grant of PCR relief for ineffective assistance of counsel.

III. Certiorari is warranted to review the PCR court's conclusion that counsel was not ineffective for failing to properly investigate and prepare Applicant's case where the PCR court proffered Applicant's affidavit evidence into the record but did not consider Applicant's affidavits evidence in its determination of this ineffective assistance of counsel allegation.

The affidavit of Dr. Robert Bennett is introduced into the

PCR record as Plaintiff's Exhibit Number 3. (See App.pg.851, line 17- line 19). The Respondent objected to the introduction on one specific ground, that the Respondent "don't have an opportunity to cross-examine him (Dr. Robert Bennet) on the affidavit or where this information came from, what investigation he did, how he came up with these findings." (See App.pg.857, line 8-line 11). The PCR court noted this one specific objection by the Respondent, yet did not issue a clear ruling on this specific objection. (See App.pg.857, line 12). The Respondent did not obtain a specific ruling from PCR court Judge Manning on this specific objection before the close of the record in this case, therefore the objection is not reviewable because it was not contemporaneously objected to during the actual proceedings. (See Parr v. Gaines, 309 S.C. 477, 424 S.E.2d 515). The Respondent's arguments that Respondent did not have an opportunity to cross-examine or challenge the doctor's qualification, that the affidavit document is admissible hearsay and that Petitioner failed to lay the proper foundation for expert opinion testimony to be heard are all barred from appellate review as unpreserved issues.

Petitioner Moore was allowed to give his opinion testimony regarding the effects of the drug combination of methamphetamine aka "crystal meth", cocaine and alcohol on a user in general and on Derrick's behaviour in particular. This allowance of Petitioner Moore to testify on this scope of his opinion implicates the body of South Carolina law which entitles a person giving opinion testimony the ability to also reveal the source

of his knowledge to remove any perception that the opinion is mere conjecture. (See Bowers v. Bowers, 349 S.C. 85, 561 S.E.2d 610). Petitioner obtain his knowledge of the drug combination of "crystal meth", cocaine and alcohol on a user in general and on Derrick's behavior in particular from Dr. Bennett and Dr. Bennett's affidavit. The affidavit is clearly competent admissible evidence to substantiate the source of Petitioner Moore's knowledge is indeed grounded in reputable information and perspectives and not mere conjecture or superfluous nonsense. (See Arnold v. Life Ins. Co. of Ga., 83 S.E.2d 553).

The entire exclusion of the affidavit in the analysis of the ineffective assistance of counsel claim is an abuse of discretion and deprived Petitioner procedural due process. Certiorari should be granted on this issue and the PCR court's denial must be reversed. The Petitioner is entitled to grant of PCR relief for ineffective assistance of counsel.

IV. Certiorari is warranted to review the PCR court's conclusion that counsel was not ineffective for failing to object to the jury instruction given an accomplice liability and a "jointly at fault in bringing on the difficulty" where there is no evidence in the record the defendant aided, abetted, or acted in concert with Kerwyn Phillips in any of the elements of his convictions.

This issue is properly ruled upon and preserved when Petitioner timely filed a motion pursuant to S.C.R.C.P. Rule 59 titled "Notice of Motion and Motion to Alter or Amend Judgment" in the PCR case 2011-CP-40-0190. The Respondent's argument that this is preserved is wholly without merit. (See

Marlar v. State, 375 S.C. 407, 653 S.E.2d 226 (S.C.2007)).

The Petitioner has clearly articulated why this charge is improper and has thoroughly expounded upon this point in his Petition for Writ of Certiorari brief. There is no evidence adduced at trial which identifies the purported overt act Petitioner did in aiding, abetting or assisting Kerwyn Phillips in shooting Ms. Dover to death to warrant the accomplice liability instruction. The record is absolutely void of any evidence of Petitioner performing any overt act in rendering assistance, or aiding or abetting Kerwyn Phillips in any elements of the offense for which Petitioner was convicted. It was error for the trial court to instruct the jury on accomplice liability when the evidence developed during the trial is devoid of any conduct of Petr's which meet the prerequisite conduct of aiding, abetting, or assisting a confederate to accomplish an illegal purpose and common design to warrant an accomplice liability charge. (See Wilds v. State, 756 S.E.2d 387 (Feb. 5, 2014)).

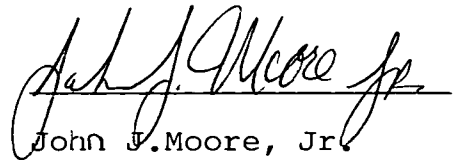
Furthermore, Respondent's conclusory statement that there is overwhelming evidence of Petitioner's guilt in its brief is not followed by any case law and therefore must be discarded by the appellate court as frivolous and unreviewable. Respondent's brief cited no authority in support of its overwhelming evidence of guilt claim, therefore the issue is abandoned on appeal and cannot be considered by this Appellate Court at all. (See Potter v Spartanburg Sch. Dist., 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011), ("An issue is deemed abandoned if the argument in the brief is not supported by

'authority or is only conclusory.');" Rule 208(b)(1)(D), S.C.A.C.R.,
(requiring citation to authority in the argument section of an
appellant's brief); Holly Woods Ass'n of Residence Owners v. Hiller,
392 S.C. 190, 708 S.E.2d 787, 797 (Ct. App. 2011) (holding an issue
is deemed abandoned and will not be considered by the appellate
Court if the argument is raised in a brief but not supported by
authority)).

CONCLUSION

For the reasons stated above, this court should grant the Petition for Writ of Certiorari and reverse the PCR court's ruling as there is a lack of evidence of probative value to support the PCR court's denial of Petitioner's application. Petitioner respectfully requests that this court grant his Petition for Writ of Certiorari to allow full briefing on this issue.

Respectfully Submitted,



John J. Moore, Jr.

Petitioner

Murray 125
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August 17, 2015

Pro Se

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
The Honorable Casey L. Manning, Circuit Court Judge

JOHN J. MOORE, JR., #326455

PETITIONER,

V.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Reply to Petition for Writ of Certiorari has been served upon and on Megan Harrigan, Esquire, at Pembert + Dennis Building, 1000 Assembly Street, Room 519, Columbia, S.C. 29201 and Daniel E. Shearouse, Clerk of the Supreme Court of S.C. P.O. Box 11330, Columbia, S.C. 29211 this 17th day of August, 2015.

Sworn and subscribe to
me before me this day
17th of August 2015
Dwight H. Zipp (L.S.)

Notary Public for South Carolina

my Commission Expires
March 5, 2018

John J. Moore, Jr.
John J. Moore, Jr.

PRO SE
Petitioner

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

John J. Moore, Jr., #326455,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

C/A No.: 2011-CP-40-0190

**NOTICE OF MOTION
AND MOTION TO ALTER
OR AMEND A JUDGMENT**

PLEASE TAKE NOTICE that the Applicant, by and through his undersigned attorney, will move before the Presiding Judge of the Court of Common Pleas, Fifth Judicial Circuit, on the tenth (10th) day after service hereof or at such time and place as is convenient to the Court and counsel for an Order granting the Applicant's Motion to Alter or Amend a Judgment of the Order of Dismissal, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, as to the within action. The Court entered an Order of Dismissal, filed on January 8, 2013, denying and dismissing with prejudice the Applicant's application for post-conviction relief. This Order was received by the undersigned on January 11, 2013 (less than ten (10) days from the filing of this motion).

The undersigned asks this Court to rule upon/reconsider the argument made at the hearing, and in supporting memorandum, that the applicant's public defender failed to request a specific inquiry by the Court of jurors who appeared to be sleeping or somnolent, pursuant to State v. Hurd, 325 S.C. 384, 480 S.E.2d 94 (Ct. App. 1996).

The undersigned asks this Court to rule upon/reconsider the following grounds, which were pled and not waived and, upon information and belief, not addressed in the order:

- a. That public defender never objected to or moved for a mistrial given the prosecution's failure to provide exculpatory evidence under Rule 5, especially including, but not limited to, statements of witnesses Rhett Alger, Mike Lankford, Beth Lankford, Crime Stoppers, and an article from "The State" newspaper;
- b. That public defender did not ensure Applicant's right under the Constitution to confront the witnesses against the Applicant;
- c. That public defender failed to object to and properly preserve for appeal the prosecution's bolstering the witness Kerwyn Phillips;
- d. That public defender failed to effectively cross-examine the witness Kerwyn Phillips;
- e. That public defender failed to request a jury charge regarding the intoxication of Eugene Derrick, the driver of the other vehicle, in which condition was relevant to the nature of the threat and the need of force;
- f. That public defender failed to object to and properly preserve for appeal the Court's voluntary manslaughter charge;

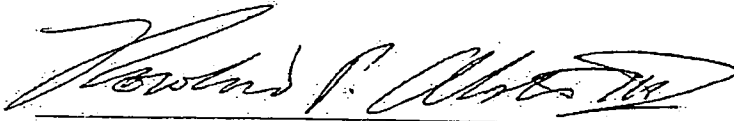
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RICHLAND COUNTY

- g. That public defender failed to properly take exception to the Court's comments on the facts of the case; and
- h. Any other particulars demonstrated at the hearing.

The undersigned also asks this court to reconsider all rulings contained in the Order.

This motion is based upon the pleadings, any memorandum previously or subsequently submitted, the common and statutory laws of the State of South Carolina, and any other matter considered by the Court.

Respectfully submitted,



Rowland P. Alston III
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January 15, 2013

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

John J. Moore, Jr., #326455,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

C/A No.: 2011-CP-40-0190

CERTIFICATE OF SERVICE

2013 JAN 15 AM 10:40
FILED
JEANETTE W. ROBB
C.C.P. & G.S.
RICHLAND COUNTY

I, the undersigned, do hereby certify that I have served the NOTICE OF MOTION AND MOTION TO ALTER OR AMEND A JUDGMENT in the above-captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, with the return address clearly visible, postage prepaid, addressed to the Court and attorney(s) of record as indicated below:

The Hon. L. Casey Manning
P.O. Box 192
Columbia, SC 29202

Robert Corney, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

Rowland P. Alston III
Attorney for the Applicant

January 15, 2013

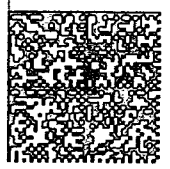
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