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Returned  
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SEP 09 2015

SC Court of Appeals

# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
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V. CLAIRE ALLEN  
DEPUTY CLERK

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September 02, 2015

Mr. William G. Yarborough, III, Esquire  
522 North Church Street  
Greenville SC 29601

Re: The State v. John Bradley Turner  
Appellate Case No. 2015-001560

Dear Counsel:

Upon reviewing your appellant's initial brief, the following deficiencies have 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:

- The initial brief is not accompanied by a designation of matter to be included in the record on appeal. You must serve and file a motion requesting the Court's permission to serve and file the designation of matter out of time.
- You have included an attachment to the initial brief titled "Appendix A" and a separate attachment titled "Appendix". This is not the appropriate time to present this information to the Court; therefore, the appendices are being returned to you.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Patrick Lowell Schmeckpeper, Esquire



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SEP 09 2015

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September 02, 2015

Mr. William G. Yarborough, III, Esquire  
522 North Church Street  
Greenville SC 29601

Re: The State v. John Bradley Turner  
Appellate Case No. 2015-001560

Dear Counsel:

Our records reflect that the time for ordering the transcript has expired. Within ten days of the date of this letter, you must file a copy of the letter showing that you have ordered the transcript from the court reporter, along with a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the SCACR. Your appeal will be dismissed if no motion is made within ten days of the date of this letter.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Patrick Lowell Schmeckpeper, Esquire

5

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

Honorable Judge Eugene C. Griffith, Jr., Common Pleas Court Judge

---

2012-CP-04-02369

---

The State,

v.

John Bradley Turner,

Appellant

*Return  
to  
counsel.*

---

APPENDIX

---

William G. Yarborough, III  
Attorney for Appellant  
522 N. Church Street  
Greenville SC, 29601  
Telephone (864) 331-1612  
Fax (864) 370 0022

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FORM 5



STATE OF SOUTH CAROLINA )  
County of Anderson )

IN THE COURT OF COMMON PLEAS

John B. Turner, #290521 )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina, )  
Respondent. )

2007-04-14-2075  
TRUE CO.  
SEP - 3 A 10:16  
FILED-CLERK'S OFFICE  
ANDERSON COUNTY, SOUTH CAROLINA

APPLICATION FOR

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution, 430 Oaklawn Rd. Pelzer, South Carolina 29669
2. Name and location of Court which imposed sentence General Sessions Court, Anderson County Courthouse, Anderson, South Carolina.
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
 (a) 02-GS-04-2530/02-GS-04-2531/02-GS-04-1907/02-GS-04-1908  
02-GS-04-416

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) February 3, 2003 - 30 years.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty yes.
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

\_\_\_\_\_ no.

8. If you answered "yes" to (7), list:

- (a) the name of each Court to which you appealed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (c) the date of each such result:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) No one advised me of my right to appeal.

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Please see additional page 3(a).
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Please see additional page 3(a).
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

John B. Turner, #290521  
 PCR additional page 3(a)

### Allegations.

(10). The Applicant was denied his Sixth and Fourteenth Amendment rights guaranteed by the United States Constitution and Constitution of the State of South Carolina Article 1, §3 and Article 1, §14 because Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily because of ineffective assistance of counsel.

### Supporting Facts.

(11). The Applicant will submit to this Court that his guilty plea was not entered knowingly, intelligently, or voluntarily and that he received inter alia ineffective assistance of counsel prior to and during his guilty plea before this Court on February 3, 2003. The Applicant will submit the following facts:

(1). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer ~~failed to advise me that if I exercise my right to a jury trial I could challenge my statement made to the police by way of Jackson v. Denno hearing to show that the statement was involuntarily made~~ and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

(2). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer ~~failed to properly investigate the warrants, search warrants, indictments~~ and prepare Applicant's case for trial but instead convinced Applicant to plead guilty and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

(3). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer ~~failed to properly investigate the SLED reports that showed that the bullets did not match but "was inconclusive due to a lack of sufficient corresponding marks of value."~~ and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

(4). Applicant's guilty plea was not entered knowingly,

John B. Turner, #290521  
PCR additional page 3(a) continues

intelligently, or voluntarily, inasmuch as my lawyer lied to me and my family in order to induce me to plead guilty. ~~He told me and my family that prison was like motel six I would have my own keys and I could come and go anytime I pleased and he told my family I would never see them again if I didn't plead guilty. But for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.~~

(5). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer failed to spend time with me to ~~explain~~ fully all ~~the material in the Rule (5) Brady motion material~~ because I did not know about all the ~~hearsay statements or the ballistic reports~~ failing to match or ~~how my statement had been changed~~ or that I could challenge my statement but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

(6). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch my lawyer failed to fully advise me of the ~~witnesses and evidence the state had~~ available to present at trial to prove my guilt and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

(7). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer failed to discuss with me ~~any possible legal defense or mitigation~~ issues that might be available to me should I go to trial and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

(8). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch my lawyer failed to object to the Solicitor manipulating my trial in order to put pressure on me to plead guilty because ~~the Solicitor skillfully but unfairly removed my case away from Judge Madden and forced me to plead guilty before Judge Nicholson~~ and but for my lawyer's unprofessional errors, I would have not pled guilty but would have insisted on my jury trial.

(9). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch my lawyer failed to file an affidavit with the Clerk of Court and motion the Court for a ~~change of venue~~ but instead my lawyer persuaded me to plead

John B. Turner, #290521  
PCR additional page 3(a) continues

guilty and waive all my rights to my jury trial and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

(10). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer failed to do a proper ~~investigation of the facts and law~~ where he misadvised me ~~concerning my rights to separate jury trials~~ by telling me and my family I could not have separate trials therefore coercing or inducing me to waive my rights to my jury trials and plead guilty and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

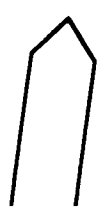
(11). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer failed to ~~investigate the witnesses or summaries of what they would say, no case law; no outline or strategy for conduct of the case~~ for trial; no outlines or notes for examinations of witnesses; no summaries of evidence; no copies of photographs; There were no witnesses to the shooting; and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

(12). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer misadvised me concerning my sentence and the amount of time I would have to do. ~~My lawyer told me I would do 85% of my sentence~~ but the law states that I have to do 30 years day for day and nothing I can do to reduce my sentence, and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial. S.C. Code §16-3-20.

(13). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer failed to object to the Court misadvising me concerning my sentence. ~~The Court told me that I would do 85% of my sentence when in fact the law says that I have to do 30 years day for day~~ and nothing I can do to reduce my sentence, and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial. S.C. Code §16-3-20.

\*\*\*\*\*

Applicant leaves this application open so he may amend after appointment of counsel or by leave of the Court.



CIRCUIT

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF ANDERSON )

COURT OF GENERAL SESSIONS

3  
4

5 STATE OF SOUTH CAROLINA, )  
6 PLAINTIFF, )  
7 VERSUS )  
8 JEFFREY BRADLEY TURNER, )  
9 DEFENDANT. )  

---

TRANSCRIPT OF RECORD  
2002-GS-04-2530/2531

10

FEBRUARY 3, 2003  
ANDERSON, SOUTH CAROLINA

11  
12  
13

14 B E F O R E:

15 THE HONORABLE J.C. NICHOLSON, JR., JUDGE

16

17 A P P E A R A N C E S:

18 DRUANNE D. WHITE, SOLICITOR  
19 ATTORNEY FOR THE STATE

20 RICHARD W. WARDER, ESQUIRE  
21 ATTORNEY FOR THE DEFENDANT

22  
23

24

DONNA M. BRADY  
CIRCUIT COURT REPORTER

25

1 THE COURT: ANYTHING ELSE, MR. WARDER?

2 MR. WARDER: NO, SIR. IT'S MY UNDERSTANDING THIS  
3 CLEARS HIM UP WITH EVERYTHING.

4 MS. WHITE: YEAH, WE JUST TIC'D---

5 THE COURT: THE SOLICITOR JUST SAID SHE'D NOLL  
6 PROSS ONE CASE. IS THAT CORRECT?

7 MS. WHITE: YES, SIR. THAT CLEARS UP EVERYTHING I  
8 KNOW IS PENDING.

9 THE COURT: THERE'S NOTHING ELSE PENDING AGAINST  
10 HIM?

11 MS. WHITE: NOT THAT I KNOW OF, YOUR HONOR.

12 THE COURT: ALL RIGHT. MR. TURNER, DO YOU  
13 UNDERSTAND THAT THE STATE MAKES A RECOMMENDATION TO THE  
14 COURT, THE COURT CAN ACCEPT IT OR REJECT IT. IN THIS  
15 PARTICULAR CASE I'LL TELL YOU NOW I WILL ACCEPT THE  
16 RECOMMENDATION OF A CONCURRENT SENTENCE. DO YOU UNDERSTAND?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: I'LL TELL YOU THAT UP FRONT. OKAY?

19 DO YOU ALSO UNDERSTAND THAT YOU WILL HAVE TO SERVE 85  
20 PERCENT OF WHATEVER SENTENCE YOU RECEIVE UNLESS YOU RECEIVE  
21 LIFE FOR THE MURDER. YOU COULD RECEIVE ANYWHERE FROM 30  
22 YEARS TO LIFE FOR MURDER. DO YOU UNDERSTAND?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: AND IF YOU RECEIVE SOMETHING LESS THAN  
25 LIFE FOR MURDER, YOU'LL HAVE TO SERVE 85 PERCENT OF IT. DO

1 YOU UNDERSTAND?

2 THE DEFENDANT: YES, SIR.

3 THE COURT: THERE'S NO PAROLE FOR THAT CHARGE. DO

4 YOU UNDERSTAND?

5 THE DEFENDANT: YES, SIR.

6 THE COURT: AND THERE'S NO PAROLE FOR THE  
7 TRAFFICKING EITHER. DO YOU UNDERSTAND?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: SO, THOSE TWO IT'S 85 PERCENT. DO YOU  
10 UNDERSTAND?

11 THE DEFENDANT: YES, SIR.

12 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT IT?

13 THE DEFENDANT: NO, SIR.

14 THE COURT: ARE YOU SATISFIED WITH THE SERVICES OF  
15 YOUR ATTORNEY?

16 THE DEFENDANT: YES, SIR.

17 THE COURT: HAVE YOU HAD ENOUGH TIME WITH YOUR  
18 ATTORNEY TO TELL HIM YOUR SIDE OF YOUR CASES?

19 THE DEFENDANT: YES, SIR.

20 THE COURT: HAS HE EXPLAINED THE LAW TO YOU?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: DO YOU HAVE ANY MORE QUESTIONS  
23 WITH YOUR ATTORNEY?

24 THE DEFENDANT: NO, SIR.

25 THE COURT: (A B Y N E T I F G R A B O L I T Y



State of South Carolina  
The Circuit Court of the Tenth Judicial Circuit

J. C. "BUDDY" NICHOLSON, JR.  
JUDGE

100 SOUTH MAIN STREET  
POST OFFICE BOX 8002  
ANDERSON, SOUTH CAROLINA 29622-8002  
TELEPHONE: (864) 260-4059  
FAX: (864) 224-6320  
E-MAIL: jnicholsonj@scjd.state.sc.us

August 2, 2007

John Turner, #290521  
Perry Correctional Institute  
Q4 B-203  
430 Oaklawn Rd.  
Pelzer, SC 29669

Dear Mr. Turner:

Judge Nicholson is in receipt of your letter dated July 6, 2007, in which you state that Judge Nicholson told you, prior to your guilty plea, that you would serve only 85% of your sentence. Pursuant to state law, anyone convicted of murder must serve 100% of the sentence or, in other words, serve the sentence day for day. Anyone who told you that you would serve 85% of your sentence for murder misspoke; as mandated by state law, you must serve 100% of the thirty-year sentence. Should you have any further questions or concerns, please contact your attorney. Good luck.

Sincerely,

Law Clerk  
The Honorable J.C. Nicholson, Jr.

H. H. ... H. ... with ... the ... 85%

THE STATE OF SOUTH CAROLINA  
IN THE CIRCUIT COURT

State of South Carolina  
County of Anderson

John Bradley Turner#290521

WRIT OF MANDAMUS

v.

PETITION

State of South Carolina

Defendant.

IN RE : John Bradley Turner

Plaintiff petitions this Circuit Court for this case to be heard by Honorable Judge J.C. "Buddy" Nicholson Jr. for reasons, that Judge Nicholson has Jurisdiction to hear this petition, for he was the sentencing Judge at plaintiff's trial.

Plaintiff seeks relief that this Court will correct his sentence, and or withdraw plaintiff's guilty plea and vacate his sentence and allow him his due process rights of The Fourteenth Amendment of The United States Constitution in order for plaintiff to defend himself in a New Trial against a sentence of thirty (30) years day for day, in which plaintiff has never been afforded the due process to do so.

Plaintiff presents the Issue following : That plaintiff pled guilty at the advice of his attorney Richard Warder. Attorney told plaintiff that he would only serve eighty five (85%) percent of whatever sentence the Judge gave. Judge Nicholson clearly stated on record that plaintiff would only serve 85% percent of the sentence he would give plaintiff. (See Exhibit One-page 11 out of Trial Transcript.)

After entering the Department of Corrections at plaintiff's classifications review he found out he would have to serve his sentence day for day instead of the 85% percent that he was promised by Judge Nicholson. Immediately plaintiff wrote the Judge asking him to correct his sentence with the classifications of the Department of Corrections (See Exhibit Two-an answer to his letter from the office of the Judge.)

Copy

Plaintiff will have to serve four and a half more years than what he agreed to at the time of his plea. Therefore, had plaintiff known this fact he would have never pled guilty, but would have insisted on going to a jury trial.

The record clearly reflects that Judge Nicholson and Trial Attorney for plaintiff both stated to him if he would plead guilty he would serve only 85% percent of whatever sentence plaintiff got, and with the after trial changing facts that instead he would have to serve thirty (30) years day for day, which is a substantial amount of time more than he agreed to. Therefore, this Court clearly has to correct this violation of plaintiff's due process rights.

#### ARGUMENT

The sentencing Judge has Jurisdiction to correct this sentence for plaintiff and should so in a fair and just way.

It's Fundamental that every Court has the power and duty to determine whether or not it has jurisdiction of a cause presented to it for determination. Bridges v. Wyandotted Worsted Co. 243 S.C. 1, 8, 132 S.E.2d 18, 21 (1962).

In a series of cases, perhaps lead by the U.S. Supreme Court decision in Santobello v. New York (1971) 404 U.S. 257, 92 S.Ct. 495 30 L.Ed. 2d 427, Negotiated pleas and the issue of compliance of same have been determined to be Mandatory.... When a plea rest in any significant degree on a promise or agreement of the Judge, Lawyer, or Prosecutor, so that it can be said to be a part of the inducement or consideration such a promise MUST be fulfilled (Emphasis added) Santobello v. New York (Supra) at 262.

Direct consequences of a plea must be known for a plea to be Valid. Once a defendant enters a guilty plea, and the plea is accepted by the Court, Due Process requires the plea bargain to be honored U.S.C.A. Const. Amend. 14, Reed v. Becka 511 S.E.2d. 396, 333 S.C. 676 (S.C. app. 1999).

A guilty plea is Knowing and Voluntary when entered with an awareness of its consequences. Boykin v. Alabama 395 U.S. 238, 89 S.Ct. 1709 (1969). Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)

copy

FACTS

To obtain a Writ of Mandamus requiring the performance of an act, an applicant must and does show.

1. Plaintiff shows a duty of Judge Nicholson to perform the act.
2. It's clearly the Judge's responsibility to correct his wrong.
3. This is necessary in order to give plaintiff his due process.
4. There is no other legal remedy for plaintiff to get his amount of time to serve corrected.

Judge Nicholson has a duty to perform this specific act and the plaintiff is asking this Court to direct. It is clear the trial judge cannot promise a specific amount of time that plaintiff must serve and later plaintiff finds out he has to serve four and a half more years than he was promised by the judge prior to his agreeing to plead guilty.

Had plaintiff known he was serving thirty (30) years day for day, he would have insisted on a jury trial.

For these reasons and facts above mentioned,  
THE WRIT SHOULD ISSUE.

S \_\_\_\_\_

Date : \_\_\_\_\_

COPY

STATE OF SOUTH CAROLINA  
IN THE CIRCUIT COURT

Writ of Mandamus to Anderson County

Honorable J.C."Buddy"Nicholson Jr.

Circuit Court Judge

John Bradley Turner #290521

Plaintiff

v.

State of South Carolina

Respondent

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for Writ of Mandamus in this case has been served to Anderson County Clerk of Court, also a copy was sent to Honorable Judge J.C."Buddy"Nicholson Jr. This \_\_\_\_\_ day of March 2012.

s/ \_\_\_\_\_

John Bradley Turner #290521  
Q 1 B 216 Perry Corr.Inst.  
430 Oaklawn Rd.  
Pelzer, SC 29669

Sworn To Before Me This \_\_\_\_\_ day of March 2012.

\_\_\_\_\_  
Notary Public For South Carolina

My Commission Expires : \_\_\_\_\_

State of South Carolina  
County of Anderson

*copy*

VERIFICATIONS

I \_\_\_\_\_, Being Duly Sworn upon My Oath, Depose and say that I have subscribed to the foregoing petition, That I know the contents thereof, that it includes every ground known to me for vacating, setting aside or correcting my sentence attacked in this petition, and that matters and facts therein set forth are true.

s/ \_\_\_\_\_

Application to proceed without prepayment of cost and affidavit in support thereof.

I \_\_\_\_\_, Hereby apply for leave to proceed in this action without prepayment of fee's or cost or security therefor. In support of my application I declare under penalty of perjury that the following facts are true :

1. I am the Plaintiff in this action and I believe I am entitled Redress :
2. Because of my poverty I am unable to pay cost of said proceeding or give security thereof.

s/ \_\_\_\_\_

Sworn or Affirmed to and Subscribed Before Me This \_\_\_\_\_ day of March 2012.

\_\_\_\_\_  
Notary Public For South Carolina

My Commission Expires : \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

John Bradley Turner, #239626,

Petitioner,

The Honorable J.C. Nicholson,

Respondent.

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

2012-CP-04-02369

**ORDER DENYING PETITION  
FOR WRIT OF MANDAMUS**

This matter comes before the Court by way of a document filed on or about July 3, 2012, captioned "Writ of Mandamus Petition." Respondent filed a Return and Motion to Dismiss Petition for Writ of Mandamus.

**PROCEDURAL HISTORY**

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. Petitioner was indicted at the September 2002 term of the Anderson County Grand Jury for murder (2002-GS-04-2531).<sup>1</sup> He was represented by Richard Harold Warder, Esquire. On February 3, 2003, Petitioner pled guilty to each charge as indicted. Petitioner was sentenced by the Honorable J.C. Nicholson, Jr., to confinement for a period of thirty (30) years for murder.<sup>2</sup>

**First PCR Application (2003-CP-04-2715)**

Petitioner subsequently filed an application for post-conviction relief (PCR) on September 4, 2003, in which he alleged he was being held in custody unlawfully for the following reasons:

<sup>1</sup> Petitioner was also indicted for possession of a firearm during the commission of a violent crime (2002-GS-04-2530); and at the July 2002 term of the Anderson County Grand Jury for trafficking methamphetamine (2002-GS-04-1907), and manufacturing methamphetamine (2002-GS-04-1908). Petitioner waived presentment to the grand jury on an additional charge of manufacturing methamphetamine (2002-Gs-04-0416). These indictments (and subsequent guilty pleas) are not contested or challenged in the current Petition.

<sup>2</sup> Judge Nicholson ordered Petitioner's sentence for murder be run concurrently with his additional sentences for violation of the weapons provision and drug charges. Applicant's aggregate sentence is thirty (30) years.

1. Ineffective assistance of counsel; and
2. Involuntary guilty plea.

Respondent made its Return. An evidentiary hearing was convened on February 6, 2006, at the Anderson County Courthouse. Petitioner was present and represented by Theo Mitchell, Esquire. Respondent was represented by Daniel Grigg, of the South Carolina Office of Attorney General.

The Honorable Alexander S. Macaulay denied and dismissed Petitioner's application by written Order on March 24, 2006. Petitioner subsequently filed a motion for reconsideration pursuant to SCRCR Rule 59(e), which was denied by Order dated December 19, 2006. Petitioner filed a timely Notice of Appeal, and on October 18, 2007, the South Carolina Supreme Court denied Petitioner's appeal. The Remittitur was issued on November 6, 2007.

#### **Second PCR Application (2007-CP-04-3661)**

Petitioner then filed a second application for post-conviction relief on November 16, 2007, where alleged the following grounds for relief:

1. Ineffective assistance of counsel;
2. Due Process violation, Judge gave incorrect sentence information; and
3. Newly discovered evidence or prosecutor misconduct.

Respondent subsequently filed a Return and Motion to Dismiss. On December 4, 2007, a conditional order of dismissal was issued by the Honorable J. Cordell Maddox, Jr. Petitioner made his response. On March 17, 2008, the Honorable Alexander S. Macaulay issued an Order denying the application. Petitioner filed a Notice of Appeal. On October 7, 2009, the South Carolina Supreme Court dismissed Petitioner's appeal. The Remittitur was issued on October 23, 2009.

**Third PCR Application (2009-CP-04-4709)**

Petitioner filed his third application for post-conviction relief on December 2, 2009, where he alleged the following grounds for relief:

1. Ineffective assistance of PCR Counsel;
2. Newly discovered evidence of prosecutor misconduct;
3. Trial Judge gave incorrect sentence information.

Respondent subsequently filed a Return and Motion to Dismiss. On March 3, 2010, the Honorable Alexander S. Macaulay issued a conditional order, provisionally denying Petitioner's application. Petitioner made his response. On June 17, 2010, the Honorable R. Lawton McIntosh issued a final order denying the application. Petitioner filed a Notice of Appeal. On August 11, 2010, the South Carolina Supreme Court dismissed Petitioner's appeal. The Remittitur was issued on May 4, 2010.

**Federal Habeas Corpus Petition (1:10-cv-02433-TMC)**

Petitioner subsequently filed a Petition for Habeas Corpus on February 9, 2011, in Federal District Court in the Federal District of South Carolina. On January 17, 2012, the Honorable Timothy M. Cain dismissed the petition. In April, 2012, the Fourth Circuit Court of Appeals dismissed the subsequent appeal. Turner v. Warden of Perry Correctional Institute, No. 12-6171, Mandate and Judgment, Case No. 1:10-2433-TMC, Dkt.#s 60, 60-1 (4th Cir. April 25, 2012).

**Current Petition for Writ of Mandamus**

Petitioner most recently submitted this petition on or about July 3, 2012, captioned "Writ of Mandamus Petition." Petitioner requests this Court compel the Honorable J.C. Nicholson, Jr., who presided over his guilty plea, to issue an order "correcting" his term of imprisonment to

eighty-five percent (85%) of his current sentence. In the alternative, Petitioner seeks to have his pleas withdrawn, sentences vacated, and a new trial granted.

A hearing was convened on June 3, 2015, at the Anderson County Courthouse, before the Honorable Eugene C. Griffith, Jr. Petitioner was present and represented by Robert Lusk, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office. At the hearing, Petitioner stated that Judge Nicholson informed him prior to his guilty plea that he would only serve eighty-five percent of his thirty (30) year sentence for murder. Petitioner sought to enforce what he alleged to be an oral promise by Judge Nicholson. Petitioner also stated that Judge Nicholson wrote a letter to him saying he misspoke regarding the eighty-five percent (85%) language. Finally, Petitioner contended that he never got to introduce evidence of his incorrect sentence in prior post-conviction relief proceedings and never got his full "bite at the apple."

#### **Standard of Review**

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Rule 12(b)(6) SCRPC; Ashley River Properties I, LLC v. Ashley River Properties II, LLC, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007); Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). Dismissal of a complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure is appropriate where, as here, the allegations set forth on the face of the complaint and inferences reasonably deducible therefrom, even when viewed in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, fail to state any valid claim for relief. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874

(2006); Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

### Discussion

#### I.

This Court finds Petitioner's claim is entirely without merit. First, a Writ of Mandamus is an inappropriate vehicle for Petitioner's claim. Instead, these allegations fall under the Uniform Post-Conviction Procedure Act (PCR Act). S.C. Code Ann. §§ 17-27-10 to -160 (2014). The PCR Act "comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence," and "shall be used exclusively in place of them." § 17-27-20(B); see also Simpson v. State, 329 S.C. 43, 46-47, 495 S.E.2d 429, 430-31 (1998) (holding state habeas corpus petition was properly dismissed where the allegations were clearly cognizable under the PCR Act). Petitioner's claims are clearly cognizable under the PCR Act, as evidenced in part by their inclusion in several of Petitioner's prior PCR applications. Moreover, his claim that his guilty plea was involuntary based on misrepresentations by Judge Nicholson, as well as his plea counsel, are clearly cognizable under the PCR Act. § 17-27-20(A)(1) (Including claims that "the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State."). Accordingly, this claim is not properly before this Court as a Writ of Mandamus.

#### II.

Further, after examining the merits of Petitioner's allegations, this Court finds that Petitioner has failed to state a claim upon which relief may be granted.

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the

plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Rule 12(b)(6), SCRPC; see also Ashley River Properties, I, LLC. v. Ashley River Properties II, LLC., 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007); Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Dismissal of a complaint pursuant to Rule 12(b)(6) is appropriate where, as here, the allegations set forth on the face of the complaint and inferences reasonably deducible therefrom, even when viewed in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, fail to state any valid claim for relief. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006); Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999); Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999).

This Court finds that this Petition is entirely without merit, and is nothing more than an attempt to circumvent the well established procedures for challenging a conviction or sentence by direct appeal, or post-conviction relief. The action fails to state facts sufficient to constitute a cause of action, and must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

1. Failure to State Facts Sufficient to Alter Sentencing

Petitioner's claim seeks relief that is not authorized by law and outside of this Court's authority to grant. Murder is a no-parole offense with a "mandatory minimum term of imprisonment for thirty years to life." S.C. Code Ann. §§ 24-13-100, 16-1-10(D), 16-3-20(A). "[A]n inmate convicted of a 'no parole' offense . . . is not eligible for early release, discharge, or community supervision as provided in § 24-1-560, until the inmate has served at least eighty-five percent (85%) of the actual term of imprisonment." S.C. Code Ann. § 24-13-150(A). Furthermore, inmates convicted of murder are not eligible for work release, early release, discharge, or community supervision. Id.

Judge Nicholson sentenced Petitioner to thirty (30) years imprisonment for murder. Petitioner argues that he was misinformed and led to believe that he would only have to serve eighty-five (85%) of his sentence. However, under the current law of South Carolina, Petitioner received the *absolute minimum* sentence for murder. Additionally, because murder is a “no-parole” offense, he is not eligible for work release, early release, discharge, or community supervision, as a matter of law, and thus is statutorily required to serve the entire sentence. Even assuming this Court was able (and willing) to issue an order requiring Judge Nicholson to alter Petitioner’s sentence, such an alteration below the minimum sentence is not within the power and authority vested with a Circuit Court Judge.<sup>3</sup>

2. Failure to State Facts Sufficient to Grant a Writ of Mandamus

“The writ of mandamus is the highest judicial writ known to the law and according to long approved and well established authorities, only issue in cases where there is a specific legal right to be enforced or where there is a positive duty to be performed.

A mandamus will be issued only to compel a public official to perform a mandatory duty. State v. Ansel, 76 S.C. 395, 414, 57 S.E. 185 (1906); Lombard Iron Works v. Town of Allendale, 187 S.C. 89, 196 S.E. 513 (1938). The primary purpose of a writ of mandamus is to enforce an established right, and to enforce a corresponding imperative duty created or imposed by law. Charleston County School District v. Charleston County Election Commission, 336 S.C. 174, 519 S.E.2d 567 (1999). To obtain a writ of mandamus requiring performance of an act, a Petitioner must show that the opposing party has an indisputable and plainly defined duty to perform the act, the ministerial nature of the act, the opposing party’s specific legal right for

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<sup>3</sup> Nor would Judge Nicholson have jurisdiction to alter Petitioner’s sentence. See State v. Campbell, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008) (noting the “long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires,” except for post-trial motions filed within ten days pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure).

which discharge of the duty is necessary, and the lack of other legal remedy. Id. at 282. The writ of mandamus lies solely within the discretion of the court of which it is requested. In Interest of Lyde, 284 S.C. 419, 327 S.E. 70 (1985). Moreover, mandamus is unavailable where the legal right is doubtful. Id.

This Court finds Petitioner has failed to show the required elements necessary to consider the issuance of a Writ of Mandamus. Specifically, as stated above, Petitioner has no right to a reduction in sentence where he has already received the mandatory minimum term of imprisonment for his offense. It also does not appear that the Respondent – Judge Nicholson – has either the duty *or even the power* to take the action requested by Petitioner. Finally, there are well-established methods for challenging a conviction or sentence, through direct appeal and post-conviction relief. Petitioner also has Federal avenues for relief, where he may be able to raise claims that are procedurally barred in State court. See Martinez v. Ryan, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012) (“Where, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.”).

*[Signature block on following page]*

**Conclusion**

Accordingly, the petition is dismissed because it is not supported by the facts alleged by Petitioner and fails to support the requested relief.

**IT IS THEREFORE ORDERED** that the "Writ of Mandamus Petition" must be denied and dismissed with prejudice.

**AND IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
EUGENE C. GRIFFITH, JR.  
Presiding Judge

\_\_\_\_\_, South Carolina

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON  
IN THE COURT OF COMMON PLEAS

FILED-CLERK'S OFFICE JUDGMENT IN A CIVIL CASE  
ANDERSON SC CASE NUMBER 2012CP0402369

John Bradley Turner

2015 JUN - 5 South Carolina State Of

A TRUE COPY

COMMON PLEAS AND  
GENERAL SESSIONS

JUN - 5 2015

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: JPruitt/Docket

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j) SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk: Writ of Mandamus denied; Mr. Schmeckpeper to provide supplemental order to the Court.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2154

Judge Code

6/3/2015

Date

CPFORM4Cm  
SCCA SCRPC Form 4C (Revised 3/2013)

**For Clerk of Court Office Use Only**

This judgment was entered on 6-3-15  
attorney's box on 6-5-15

, and a copy mailed first class or placed in the appropriate  
, to attorneys of record or to parties (when appearing pro se) as follows:

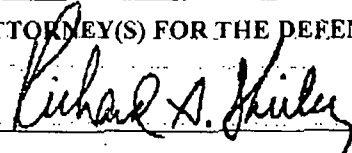
**John Bradley Turner #290521** Tyger River Correctional  
Institution 200 Prison Road Enoree, SC 29335-9308

**John Walter Whitmire** PO Box 11549 Columbia, SC  
29211-1549

**Floy Kenyon Anderson** PO Box 1286 Anderson, SC 29622

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



**Court Reporter: Vivian Cross**

**Richard A. Shirley - Clerk of Court**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# **EXHIBIT A**



State of South Carolina  
The Circuit Court of the Tenth Judicial Circuit

J. C. "BUDDY" NICHOLSON, JR.  
JUDGE

100 SOUTH MAIN STREET  
POST OFFICE BOX 8002  
ANDERSON, SOUTH CAROLINA 29622-8002  
TELEPHONE: (864) 260-4059  
FAX: (864) 224-6320  
E-MAIL: jnicholsonj@scjd.state.sc.us

August 2, 2007

John Turner, #290521  
Perry Correctional Institute  
Q4 B-203  
430 Oaklawn Rd.  
Pelzer, SC 29669

Dear Mr. Turner:

Judge Nicholson is in receipt of your letter dated July 6, 2007, in which you state that Judge Nicholson told you, prior to your guilty plea, that you would serve only 85% of your sentence. Pursuant to state law, anyone convicted of murder must serve 100% of the sentence or, in other words, serve the sentence day for day. Anyone who told you that you would serve 85% of your sentence for murder misspoke; as mandated by state law, you must serve 100% of the thirty-year sentence. Should you have any further questions or concerns, please contact your attorney. Good luck.

Sincerely,

Law Clerk  
The Honorable J.C. Nicholson, Jr.



South Carolina Court of Appeals

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WILLIAM G. YARBOROUGH, III  
522 NORTH CHURCH STREET

**RECEIVED**

SEP 09 2015

SC Court of Appeals