

{ THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS }

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{ APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS }

SC Court of Appeals

{ THE HONORABLE R. LAWTON MCINTOSH CIRCUIT COURT JUDGE }

THE STATE,

RESPONDENT,

v

CHRISTOPHER E. RUSSELL,

APPELLANT.

{ APPELLATE CASE No. 2013-000381 }

{ UNPUBLISHED OPINION No. 2015-LP-435
HEARD MARCH 2, 2015 FILED AUGUST 19, 2015 }

{ A PETITION FOR A REHEARING }

THE APPELLANT CHRISTOPHER E. RUSSELL #158892 PETITIONS FOR
A REHEARING IN THE ABOVE REFERENCED MATTER PURSUANT
TO RULE 221 (A) OF THE SOUTH CAROLINA APPELLATE COURT RULE
THIS PETITION IS IN ACCORDANCE WITH RULE 224 AND THE
PETITION COMPLY WITH THE REQUIREMENT OF RULE 238

Dated Sept 1, 2015

Christopher Russell

MSCORMICK #1 F-2-B-134

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{ PROOF OF SERVICE }

I CHRISTOPHER E. RUSSELL 158398 do hereby certify ~~CERTIFY~~ ^{SG COURT OF APPEALS}

THIS DATE _____ SERVED A COPY OF THE PETITION FOR
A REHEARING UPON OPPOSING COUNSEL BY PLACING A COPY
OF THE SAME IN THE UNITED STATES MAIL POSTAGE PREPAID
AND ADDRESSED TO:

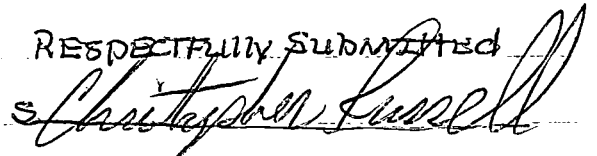
ALAN MCCORMY WILSON ATT. GEN.

POST OFFICE BOX 11549

COLUMBIA, SOUTH CAROLINA

29209

RESPECTFULLY SUBMITTED



MCCORMICK 1/2 F-3-D-134

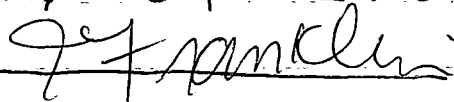
386 REDEMPTION WAY

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SWORN OR AFFIRMED BEFORE ME

29829

THIS 01 day of Sept 2015



NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES 12-16-2019

{ A MEMORANDUM WITH CITATION OF AUTHORITIES }
 IN SUPPORT OF THE MOTION

THE APPELLANT RESPECTFULLY SUBMITS THAT THE COURT OF APPEALS
 ERRED WHEN MAKING A FACTUAL DETERMINATION REGARDING THE
 FOLLOWING:

1.) ALLOWING THE REBUTTAL TESTIMONY OF THE COURTROOM DEPUTY;
 THE APPELLANT WOULD SHOW UNTO THIS HONORABLE COURT THAT
 THIS ISSUE WAS NOT RAISED FOR THE FIRST TIME ON APPEAL
 THE ISSUE WAS RAISED TO THE TRIAL COURT AND RULED UPON
 BY THE TRIAL COURT AND WAS PRESERVED FOR APPELLATE REVIEW
 TR. TR. pg. 407 - L-10-25 - 418 L-1-22

APPELLATE COUNSEL OBJECTED TO DEPUTY SMITH TESTIMONY
 BECAUSE HIS TESTIMONY WAS NOT RELATED TO RUSSELL'S ALIBI
 DEFENSE

TR. TR. pg. 412-14

TR. TR. pg. 504

THE TRIAL COURT SUMMONED THE JURY AND INSTRUCTED THEM:

RUSSELL'S COUNSEL OBJECTED TO THE TRIAL COURT INSTRUCTION

- { STATE V. PAGAN } 369 S.C. 201, 203 621 S.2.2d 362, 265 (2006)
- { STATE V. COMPTON } 366 S.C. 671, 679 623 S.2.2d 601 664 (CAPP 2005)
- { STATE V. HAMILTON } 344 S.C. 344, 353 543 S.2.2d 586, 591 (2001)
- { TURNER V. LOUISIANA } 379 U.S. 466, 474, (1965)
- { STATE V. BRYANT } 354 S.C. 300, 395 581 S.2.2d 157, 160 (2003)
- { GONZALES V. DETO } 405 US 1059 95 S. CT. 1503, 1505 (1972)
- { PEOPLE V. CUMMINGS } 850 F.2d 1 37-38 (CA1 1993)
- { PEOPLE V. GUERRA } 129 F.2d 321, 364 (CA1 2006)
- { PEOPLE V. RUNDLE } 180 P. 3d 284 (CA1 2005)
- { BASS V. STATE } 474 S.2.2d 255, 257-58 (GA 2009)
- { STATE V. POWERS } 408 S.2.2d 391 H.62 (NC 1987)

{ STATE V. NICHOLSON } 366 S.C. 568, 579 627 S.E. 2d 100, 105 (CT APP 2005)

{ SCRIMP RULE (5)(E) (a)

" " RULE (5)(E) (d)

{ STATE V. TROTTER } 317 S.C. 411, 414 453 S.E. 2d 905, 907 (1995)

{ STATE V. BECKHAM } 374 S.C. 203 212-13 S.E. 2d 606 611 (1999)

{ STATE V. POWERS } 331 S.C. 37 43-44 501 S.E. 2d 116, 119 (1998)

2) AS TO WHETHER THE CIRCUIT COURT ERRED IN DENYING RUSSELL'S MOTION TO SUPPRESS EVIDENCE THE APPELLANT SUBMITS THAT THE SEARCH WARRANT CONTAINED FALSE INFORMATION AND THAT IT WAS A CLEAR ERROR.

{ STATE V. BACCUS } 367 S.C. 41 48 625 S.E. 2d 216 230 (2006)

{ STATE V. JONES } 342 S.C. 124, 128 536 S.E. 2d 675, 679 (2000)

TR. TR. PG. 41-43

" " PG. 44-47

" " PG. 48-50

" " PG. 253

" " PG. 255-259

" " PG. 260

STATE EXHIBIT #43

TR. TR. PG. 266-267

" " PG. 307

{ S.C. CODE ANN 17-13-140 (2003)

{ FRANKS V. DELAWARE 433 U.S. 154 (17-72 (1978)

TR. TR. PG. 258-259

" " PG. 207

{ STATE V. JENKINS } 308 S.C. 215 224 727 S.E. 2d 701, 706 (2012)

{ STATE V. JONES } 342 S.C. 121, 129 536 S.E. 2d 675, 679 (2000)

{ STATE V. SAMPSON } 317 S.C. 422, 427 S.E. 2d 721, 723 (1994)

3) AS TO WHETHER THE CIRCUIT COURT ERRED IN DENYING RUSSELL'S

{ STATE V. RUCIA } 355 S.C. 543, 548 556 S.E. 2d 153, 156 (2003)

{ STATE V. SWEET } 342 S.C. 843 847-48 S.E. 2d 93-94 (2000)

TR. TR. PG. 456 - 58

TR. TR. PG. 459 - 460

{ SCR. CRIMP RULE 5(C)

TR. TR. PG. 461 - 463

{ SCR. CRIMP RULE 5(C)

REQUEST NO. 8 TR. TR. PG 476 CT EX 5 PP 2-3

TR. TR. PG. 496-497 CT. EX PP 5. P. 2

TR. TR. PG. 500 - 503

THIS DENIED APPELLANT DUE PROCESS OF LAW

{ STATE V. PRIMUS } 349 S.C. 576 584 564 S.E. 2d 103, 108 (2002)

{ DOUGLAS V STATE } 222 S.C. 67, 71 504 S.E. 2d 307, 309 (1998)

THE APPELLANT SUBMITS THE INSTRUCTION GIVEN WAS NOT ADEQUATE CURATIVE INSTRUCTION AND THE PROPER REMEDY WAS A MISTRIAL, THE COURT FAILURE TO PROVIDE ADEQUATE CURATIVE INSTRUCTION INFECTED RUSSELL'S TRIAL WITH UNFAIRNESS AND HIS CONVICTION WAS A DENIAL OF DUE PROCESS. THE APPELLANT DECLARES UNDER PENALTY OF PERJURY THAT TO THE BEST OF HIS KNOWLEDGE THE ABOVE IS TRUE AND CORRECT.

MCCORMICK, SOUTH CAROLINA

DATED Sept 1, 2015

RESPECTFULLY SUBMITTED
Christopher Russell

MCCORMICK #1 F-2-B-134

386 REDEMPTION WAY

MCCORMICK, SOUTH CAROLINA

28899



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

August 20, 2015

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SC Court of Appeals

Christopher E. Russell, #158392
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Your case

Dear Mr. Russell:

Enclosed is a copy of the opinion of the Court of Appeals affirming your conviction. Please be advised that our office will be closing your case along with this letter.

Please be aware that there is a **one year statute of limitations for filing an application for post-conviction (PCR) relief**. This is one year from the date of the enclosed opinion. This statute of limitations is **very strictly enforced**, so please be sure that you comply with it. Please understand *it is your responsibility alone to be sure this PCR application is timely filed*. **This application must be filed with the clerk of court in the county of your conviction**. There is also now a **one year statute of limitations for filing for federal habeas**. However, you must **exhaust** your **PCR claims** in state court, before raising them in federal court.

Please be aware that the time between your direct appeal becoming final, and the date your PCR application is filed **will count against your federal habeas statute of limitations in the future**. I do wish you the best. Feel free to contact me if you have any questions.

Sincerely,

Susan B. Hackett
Appellate Defender

SBH/smf

Enclosure: Post-Conviction Relief Application

CHRISTOPHER E. RUSSELL 1583 92

MCCORMICK 1/2 F-2-B-134

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SOUTH CAROLINA COURT OF APPEALS

1015 SUMNER STREET

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SC Court of Appeals

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MAIL ROOM

THE DEPARTMENT OF CORRECTIONS HAS NOT
INSPECTED OR CENSORED THIS ITEM; THEREFORE,
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

MCCORMICK CORRECTIONAL INST.
S.C. DEPARTMENT OF CORRECTIONS

SEP 30 2015