

RECEIVED

NOV 30 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

S.C. Supreme Court

Appeal from York County

Alison Renee Lee, Circuit Court Judge

---

DAVID BEATSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001266

---

APPENDIX

---

JOHN H. STROM  
Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

JUSTIN HUNTER  
Assistant Attorney General

P. O. Box 11549  
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

**INDEX**

**INDEX.....i**

**APPLICATION FOR POST-CONVICTION RELIEF..... 1**

**RETURN AND MOTION TO DISMISS.....26**

**POST-CONVICTION RELIEF HEARING TRANSCRIPT .....30**

**ORDER OF DISMISSAL .....76**

**ARREST WARRANT .....82**

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 County of York )  
 )  
David R Beatson )  
 Full name and prison number (if any) of Applicant )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )  
 )  
 )  
 )  
 )

IN THE COURT OF COMMON PLEAS

2014CP46-1538

APPLICATION FOR POST-CONVICTION RELIEF

FILED-RECEIVED  
 2014 MAY -9 PM 1:16  
 DAVID HAMILTON  
 C.C. CLERK  
 YORK COUNTY, SC

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 N/A
2. Name and location of Court which imposed sentence Clover Magistrate Court  
201 S. Main st Clover, SC 29710
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) N 231736
  - (b) \_\_\_\_\_

CERTIFIED TRUE COPY  
 2014 MAY 16 AM 9:23  
 DAVID HAMILTON  
 CLERK OF COURT  
 YORK COUNTY, SC

(c) \_\_\_\_\_

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

(a) 8/6/2013 \$400 Fine.

(b) \_\_\_\_\_

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty N/A

(b) after a plea of not guilty Found Guilty at Jury Trial

(c) after a plea of nolo contendere N/A

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

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

(a) the name of each Court to which you appealed:

i. York County Common Pleas

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. Appeal Dismissed

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. 1/15/2014

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Judge stated I could not direct appeal

ii. told me to use post conviction relief.

iii. \_\_\_\_\_

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

(a) N/A

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) N/A

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) N/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? Yes

(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. Direct Appeal

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

i. York County Common Pleas

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

- i. Dismissed
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. 1/14/2014
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Judge dismissed my direct appeal stating I
- ii. need to use post conviction relief to
- iii. continue.
- iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

\_\_\_\_\_ N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. ineffective counsel
- ii. errors made by the court
- iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

- i. Direct Appeal
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) N/A
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? No
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Toni Johnson York County Public Defenders Office.
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Trial only.
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

For the conviction to be reversed.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA )  
County of York )

VERIFICATION

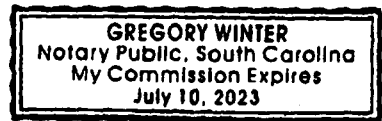
I, David R Beatson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

David R Beatson  
[Signature]

SWORN to and subscribed before me this 9 day of May, 14.

[Signature] (L.S.)  
Notary Public

My Commission Expires: 7/10/2023



**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, David R Beatson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

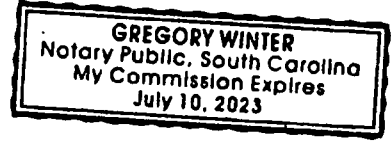
David R Beatson  
Applicant

SWORN or affirmed to and subscribed before me this

9 day of May, 2014.

[Signature]  
Notary Public

My Commission Expires: 7/10/2023



IN THE STATE OF SOUTH CAROLINA  
In the Court of Common Pleas

66  
FILED-RECEIVED

2013 AUG 13 PM 12:53

DAVID HAMILTON  
C.C.P. & G.S.  
YORK COUNTY, SC

State of South Carolina, Respondant

v.

David R Beatson, Petitioner

Case # 2013CP4602431

Appeal of criminal conviction  
in York County, Magistrate Court

I David R Beatson representing myself Pro Se, file this appeal of my conviction by jury trial in the Bethel-Kings Mountain township Magistrate court for Assault & Battery 3rd degree case number N231736 dated August 5th, 2013.

I appeal my guilty verdict both on the basis of errors made by the trial court and for ineffective counsel provided by the court to me through the York County Public Defenders Office.

As to errors made by the trial court, on March 8th 2013, I was charged by the state with the offense of Assault & Battery 3rd degree, later on the same date, I appeared in bond court in York County during the bond hearing I applied for and was granted a Public Defender approximately one week later I was advised my case was assigned to Toni Johnson an attorney with the York County Public Defenders Office. During the months of March and April I communicated with Toni Johnson via email and phone about various aspects of the case, including sending her a video tape I made on my cell phone later admitted by the court into evidence at my trial, furthermore Toni Johnson filed a motion for discovery with the court on April 9th. I was advised by Toni Johnson that I needed to appear at the magistrate court on May 9th for the initial appearance she advised me she would meet me at the courthouse that morning.

At the time of my first appearance on May 9th, 2013 the court was already aware that Toni Johnson was my assigned attorney of record just a few minutes prior to the first appearance while in the courtroom I was told Ms. Johnson had to attend previously scheduled trials at other courts and was unable to appear on my behalf. When the case was called in front of the judge I vigorously requested a continuance be granted so that my attorney of record could be present. the attorney that was sent in her place told me he did not have time to speak to Ms. Johnson about the case in detail he was only aware of the very basics of the case he also advised me he had not viewed the video evidence I had previously provided to Ms Johnson

The judge denied my continuance this was the first appearance no other continuances had been requested or granted denying my request for continuance deprived me of my constitutional rights, as I was required to enter a plea and decide how to move forward in the case without my attorney of record being present, furthermore this denial of my request for continuance could have adversely affected the outcome of my trial, since during the first appearance plea negotiations were held between the state and the substitute counsel in the judges chambers the substitute counsel not being familiar with all of the evidence in the case could not adequately negotiate a plea, furthermore immediately following the initial appearance and plea

negotiations the judge held the jury strike knowing that the trial attorney who was representing me was not present, during the first appearance after my request for continuance was denied some problems with discovery were raised with the court. During these discussions several references were made by the judge, state and substitute counsel as to how Ms. Johnson would proceed this if she was present, if present my attorney may have proceeded differently, including the fact that she probably would have made the motion before the hearing to have Judge Grayson recuse himself from the case, an aspect of my defense the substitute counsel was completely unaware of.

The court also erred in May when a motion finally made to Judge Grayson asking him to recuse himself from the case and assign an alternate judge was denied, the basis for this request was that I as a Pro Se litigant had attempted to file a civil case with Judge Grayson about 6 months prior to this criminal case, the court refused to allow me to file citing lack of jurisdiction, I emailed a complaint to Terry Leverette with the South Carolina Court Administration, who later emailed me back stating he had spoken with the judge and it was agreed he had jurisdiction and I could file my case with this court, upon filing that civil case, the judge immediately had my case transferred to a different court, I was advised by the clerk that Judge Grayson sent the case to the Fort Mill Magistrate and that they should receive my filing within a day or two. After a week went by the Fort Mill Magistrate advised me that they never received the filing that the Clover Magistrate had sent, I called the Clover Magistrate to inquire about the whereabouts of my filing I was put on the phone with Judge Grayson who sounded very annoyed and told me he sent the paperwork and it was not his job to track it down, all of which occurred despite the fact Judge Grayson advised Terry Leverette that I could file the case with his court and that he agreed he would have jurisdiction.

Due to my prior complaint to the Court Administration about the judge and the subsequent phone call a motion was made with Judge Grayson to recuse himself which he denied, stating that the prior incident had no bearing on this case since a jury was deciding the case, not him. However this argument does not indicate that the judge held no animosity towards me, furthermore the judge had already denied my request for a continuance which was reasonable and appropriate, and that the judge has a definite impact on the outcome of the trial even in a jury trial, by ruling in motions and objections and other matters, as an example in this case the judge denied 2 motions made by my counsel for a directed verdict, he also denied the admittance of testimony which could have impacted the jury's decision.

As to the third and final error made by the court, during the states presentation to the jury, both Deputy W. Lowery the prosecutor for the state and Sgt. Clark both of the York County Sheriff's Office testified that there were previous incidents that the Sheriff's Office and specifically Deputy Lowery responded to at my residence and that they were familiar with me because of these incidents, they never elaborated to the jury as to what those incidents were, however it is reasonable to believe that based on their testimony the jury could have inferred that I was previously arrested or at least accused of similar incidents to the case being tried that day, in the Police dash cam audio and video admitted into evidence during the trial included me speaking to Deputy Lowery about a previous incident involving my request for him to transport my son to the hospital for a physiological exam after he had suffered very serious side effects from a new medication, Deputy Lowery in this "Previous Incident" refused to transport my son to the hospital, until I called and spoke to his supervisor at that time Sgt Day.

Part of my defense and strategy at trial was to show that Deputy Lowery acted with malice in arresting me due to at least 2 previous incidents in the preceding 12 months where I had to call a supervisor due to Deputy Lowery's refusal to act on my request for help, both times supervisors were called and I was advised that the incidents would be dealt with internally at the Sheriff's Office. The other previous incident included a request for Deputy Lowery to put an individual on trespass notice who had walked his

testimony would have directly conflicted with the states first witnesses testimony that the baton was fully extended and would have had a direct impact on the jury, but despite my requests Ms. Johnson never questioned this witness about his prior statements he made and never even asked him about whether or not the baton was extended during the trial.

Ms. Johnson provided me with blank paper and a pen so I could write down questions I wanted her to ask of witnesses during trial or issues I wanted her to raise, however everything I wrote down and everything I spoke to her about during trial breaks were ignored by her.

In April I provided Ms. Johnson an electronic file which contained a video of the victim in the case verbally threatening me, charging towards me in an aggressive manner, and the beginning of my retreat from him, at that time she acknowledged, receipt of this electronic file and was able to view it, I considered this key evidence in the case, upon arrival at the court house on the morning of the jury trial, I was advised by Ms. Johnson that she did not have a working copy of this evidence with her, it was later admitted into evidence but the only copy available to the court was a copy that was played directly from my personal YouTube account after I used a court computer to log into the website, the video only played once for the jury and it appeared to me the jury could not really see or hear the video adequately in fact when the next set of video and audio evidence was played on the same computer someone in the court realized the jury could not hear or see the screen and the computer was then moved closer to the jury box again this was done after my video was already played for the court, I asked Ms. Johnson to play this short video again for the jury and also asked her to play it as part of her closing arguments, however she refused and never showed the jury this critical evidence again.

During jury deliberations the jury had access to the same computer and DVD's of audio and video evidence which they did review during their deliberations, however the browser window with my video evidence on it was closed by someone with the court prior to the start of deliberations and was not available to the jury, I immediately raised this concern to Ms. Johnson before deliberations began, but she did nothing about it. Ms. Johnson's failure to bring this evidence with her on the day of trial, and her refusal to ensure the jury had access to it while they were deliberating, and her unwillingness to proceed with trial honoring my wishes, adversely affected the outcome of the trial.

Finally during trial a DVD containing nearly an hour of audio and video evidence from the police dashcam which was entered into evidence in its entirety had only the first 10 minutes played for the jury, despite Ms. Johnson's assurance she would play the entire video for the jury and point out key issues we wanted to raise to the jury, including on the video Deputy Lowery was heard telling me he handled thousands of calls a year and that he did not remember any prior dealings with me, but a few minutes earlier he was heard on the same recording telling the victim that he knew me from several past incidents.

During the video Deputy Lowery approached the victim 6 different times asking him to press charges each time the victim stated he did not want to press charges he only wanted a Police report, the sixth time Deputy Lowery approached the victim he told the victim if he wanted a Police report he would have to press charges, it was finally after an hour and the sixth conversation with the victim that the victim reluctantly pressed charges, this was evidence Ms. Johnson indicated to me the jury needed to hear, despite the DVD being entered into evidence most of these key parts were never played for the jury. Ms. Johnson did not follow our agreed upon strategy for trial.

It is for all of these reasons I ask and pray for this court to reverse my conviction, order a new trial, assign me a new attorney to represent myself, and require the trial judge to recuse himself from any future hearings concerning this case.



David R. Beason, Pro Se  
1526 Harpers Inlet Dr  
Lake Wylie, SC 29710  
803-810-3722

- Mail
  - Calendar
  - Contacts
  - .....
  - Deleted Items (43)
  - Drafts
  - Inbox (12)
  - Junk E-Mail [62]
  - Sent Items
- Click to view all folders
- Manage Folders...

**RE: David Beatson - Video**

Johnson, Toni [Toni.Johnson@yorkcountygov.com]

You replied on 3/21/2013 5:13 PM.

**Sent:** Thursday, March 21, 2013 4:51 PM

**To:** David Beatson

March 21, 2013

Good Afternoon Mr. Beatson:

I did get a copy of the video and was able to watch it. Can you please let me know the officer that wrote you the ticket?

Toni L. Johnson  
Assistant Public Defender

**From:** David Beatson [mailto:david@w4lry.com]

**Sent:** Wednesday, March 20, 2013 1:49 PM

**To:** Johnson, Toni

**Subject:** David Beatson - Video

<http://db.tt/zKxjwTOe>

This video was taken right before the Deputy arrived, the recording was cut off when the 911 operator called my phone back, I called them twice first to report the kids the second time when the "victim" started threatening me, I was told the "victim" never called police at anytime.

When I get home I will scan and email a copy of the paperwork I was given.

Thank you,

David R Beatson

Sent from my Samsung Galaxy Note™, an AT&T LTE smartphone

- Calendar
- Deleted Items (43)
- Drafts
- Inbox (12)
- Junk E-Mail (62)
- Sent Items
- Click to view all folders
- Manage Folders...

### York County Magistrate Complaint

David Beatson

This message was sent with High importance.  
You forwarded this message on 7/30/2013 1:08 PM.

Sent: Tuesday, July 30, 2013 1:07 PM  
To: tteverette@scourts.org

I make the following complaint with the state court administration. I have a criminal case pending with Judge Grayson in Clover, the case number is **N231736**

This is the same judge that refused to let me file a civil complaint last November, after contacting the Court Administration in that situation, I was assured Judge Grayson would allow me to file the civil case, which I did and immediately Judge Grayson transferred the case to another court and did not handle the case as he said he would, when he transferred the case, the paperwork was lost, when I inquired with him about the paperwork, he was on the phone with me and seemed highly agitated about my inquiry.

In April I had a first appearance date with Judge Grayson, on the above mentioned criminal case, prior to that appearance I had spoken with the public defender assigned to my case several times unannounced to myself she was unable to make my first appearance date a nother attorney was sent in her place who admitted to me he knew nothing of my case I made a request directly to judge Grayson for a continuance due to the fact that my assigned attorney was not present Judge Grayson denied my request and held the first appearance and then proceeded directly to Jury Strike and also oversaw plea negotiations with the state in his chambers, all without my assigned attorney present, after denying my direct request for a continuance.

Later my assigned attorney requested Judge Grayson recuse himself from the case, considering, my recent experience with the filing of the civil case, and his denial of my request for continuance she felt it was a reasonable request, Judge Grayson also denied this request.

My attorney has had issues with the state turning over evidence in the case which was brought to Judge Graysons attention, some evidence has never been turned over yet I am now expected on my second appearance in front of Judge Grayson to proceed with a Jury Trial.

I have asked for my Public Defender to again request a continuance because based on my conversations with her, she is not prepared for trial, but she is busy with trials in the City of Rock Hill all this week, and has not even returned my phone calls.

No continuance request has been granted by Judge Grayson, he has refused to recuse himself, even though there are legitimate concerns of him proceeding over the case.

As from my first appearances I still have concerns over the adequacy of my defense, to which I have made the below complaint to the Indigent Defense Commission, which I am including with this complaint for your reference.

thank you,

David R Beatson  
[Redacted]

To SC Indigent Defense Commission:

I am making the following complaint, that I am being provided and inadequate defense by the York County Public Defenders Office.

- 1) I currently have a case pending in the Clover area magistrate court in Clover, SC. The charge is Assault and Battery 3rd degree brought by the state in March of 2013.
- 2) I am being represented by Toni Johnson with the York County Public Defenders Office.
- 3) My Jury trial is scheduled for next Monday August 5th, 2013
- 4) I last met with Ms. Johnson in June at that meeting, she decided that one more meeting would need to be scheduled to discuss the questions that would be asked during the trial, and review the remaining evidence that we were still waiting for the state to produce which was a statement from a witness for the state.
- 5) I called and spoke to Ms. Johnson the second week of July, during that call she indicated she would call me back the following day to schedule an appointment to review the newly received evidence from the state, and to review some physical evidence that I am providing in my defense, and to do the final preparations for trial, including discussing what questions would be asked at trial.
- 6) Ms. Johnson never called me back to schedule that appointment, I have called her office everyday speaking to both her receptionist and paralegal, I have been told she has no available time to meet with me between now and my trial date and that I just need to show up for my trial date next week, even though we are not apparently ready for trial, I have asked for Ms. Johnson to call me each time I have called the office and she has never returned any of my calls, to date.
- 7) I have asked for the Public Defenders Office to request a continuance, since from their statements, Ms. Johnson has trials all this week, in the City of Rock Hill Municipal court and has no time to adequately prepare for my trial next Monday.
- 8) I have called BJ Barroughdough, Ms. Johnsons direct supervisor since last week asking him to call me back, to address my concerns and to date he has not returned any of my phone call either.
- 9) This is not the first time I have had a concern about my Defense in this case, prior to my first appearance date, I had spoke with Ms. Johnson on the phone and via email about the case, was told she would see me at the first appearance date, upon my arrival at court, I found out for the first time, Ms. Johnson was unable to attend due to trials in other courts she was handling, the attorney that was sent in her place admitted to me, he knew nothing of the case, he did not have enough time to be fully filled in on the case by Ms. Johnson, I felt this was critical, because the state started plea negotiations with this attorney at that time, I then asked the judge for a continuance for a later date when Ms. Johnson would be available and the judge denied my request, and proceeded in this, first appearance to jury strike and again plea negotiations.

Over and over again, I have been told her schedule is full with trials, I have only had one court appearance in my case and now expected to proceed on my second appearance with a Jury trial, with an attorney who is not adequately prepared to defend me.

David R Beatson  
[Redacted]

Sent from Samsung tablet

Sent from Samsung tablet

**Johnson, Toni**

---

**To:** Grayson, Johnny  
**Subject:** RE: Send data from MFP07438251 06/04/2013 12:01 -- David Beatson (Motion to Recuse)

June 4, 2013

Thank you for the quick response Judge Grayson.

Toni L. Johnson  
Assistant Public Defender

-----Original Message-----

**From:** Grayson, Johnny  
**Sent:** Tuesday, June 04, 2013 3:28 PM  
**To:** Johnson, Toni  
**Subject:** RE: Send data from MFP07438251 06/04/2013 12:01 -- David Beatson (Motion to Recuse)

My staff and I are not aware of any restraining order filing or complaints by David R. Beatson. The jurors will determine the verdict in his case. Nothing in your motion indicates an inability by me to be fair in presiding over this case. MOTION DENIED>

-----Original Message-----

**From:** Johnson, Toni  
**Sent:** Tuesday, June 04, 2013 12:08 PM  
**To:** Grayson, Johnny; Lowery, William  
**Cc:** Williams, Cameron; Rhodes, Brooke  
**Subject:** FW: Send data from MFP07438251 06/04/2013 12:01 -- David Beatson (Motion to Recuse)

June 4, 2013

Good Afternoon:

Please find a motion Mr. Beatson requested that I filed. He is concerned that he may have offended Judge Grayson and staff with his complaints regarding a restraining order he wanted filed.

I will wait to hear the court's decision.

Toni L. Johnson  
Assistant Public Defender

-----Original Message-----

**From:** Public Defender Copier [<mailto:copier@yorkcountygov.com>]  
**Sent:** Tuesday, June 04, 2013 12:05 PM  
**To:** Johnson, Toni  
**Subject:** Send data from MFP07438251 06/04/2013 12:01

Scanned from MFP07438251

Date: 06/04/2013 12:01

Pages: 1

Resolution: 200x200 DPI

-----  
\*\*\*\* Please Do Not Reply \*\*\*\*

**Johnson, Toni**

---

**To:** Grayson, Johnny; Lowery, William  
**Cc:** Williams, Cameron; Rhodes, Brooke  
**Subject:** FW: Send data from MFP07438251 06/04/2013 12:01 -- David Beatson (Motion to Recuse)  
**Attachments:** DOC060413-06042013120059.pdf

June 4, 2013

Good Afternoon:

Please find a motion Mr. Beatson requested that I filed. He is concerned that he may have offended Judge Grayson and staff with his complaints regarding a restraining order he wanted filed.

I will wait to hear the court's decision.

Toni L. Johnson  
Assistant Public Defender

-----Original Message-----

From: Public Defender Copier [<mailto:copier@yorkcountygov.com>]  
Sent: Tuesday, June 04, 2013 12:05 PM  
To: Johnson, Toni  
Subject: Send data from MFP07438251 06/04/2013 12:01

Scanned from MFP07438251

Date: 06/04/2013 12:01  
Pages: 1  
Resolution: 200x200 DPI

-----  
\*\*\*\* Please Do Not Reply \*\*\*\*

STATE OF SOUTH CAROLINA	)	
	)	IN THE MAGISTRATE COURT
COUNTY OF YORK	)	OF CLOVER
	)	
Clover Magistrate Court,	)	MOTION FOR JUDGE TO RECUSE
	)	
v.	)	Warrant #: N-231736
	)	
<u>David R. Beatson</u>	)	
	)	
Defendant.	)	

On behalf of my client, David R. Beatson, I am making a motion to have Judge Grayson recuse himself from this case which has a trial date scheduled for August 5, 2013. According to Mr. Beatson, he has made some complaints regarding the paperwork he filed requesting a restraining order from the alleged victim in the pending jury trial and that these complaints would have a negative effect on his trial.

Based on this issue, we would request that Judge Grayson recuse himself from this matter.

Date: June 4, 2013

Toni L. Johnson

Assistant Public Defender

Lines across from Mr. Phammer  
says was emergency,

They gave conflicting statements

Sartner told it was not extended

McDivitt said it was extended

---

Did he see

White Female

---

Did he see a Adult  
female come out of  
Mr. Phammers house

She came out and was  
yelling at me calling  
me a child molester

He has only been  
his supervisor for  
8 months as per  
his testimony. Clark  
was transferred recently

9 y/a pitbull

~~When we were at the jail Deputy Lowery  
compared me to George Zimmerman~~

~~Just now the deputies were talking about  
that case and Lowery said this case almost  
turned into the Zimmerman case.~~

~~Assault and battery makes sense that there  
was a physical altercation~~

~~No physical contact occurred between any  
parties to case~~

he was cared but never called Police  
he never called Police

Never said anything threatening to him

I have never been convicted of anything  
other than speeding tickets and other  
traffic offenses

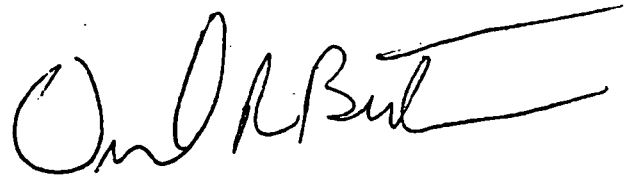
Case # 2013CP4602431 21

AFFIDAVIT OF SERVICE

I David R Beatson, Pro se filed a true copy of my appeal of criminal conviction with the Bethel-Kings Mountain magistrate court on August 13, 2013 at 11:51am and it was clocked in and filed by Brooke.

I also served the state by providing a true copy of the appeal to Ann Pursley who accepted service on behalf of Deputy Lowery at the York County Sheriff's Office Clover station located at 1474 Hwy 55 Clover, SC 29710 on August 13<sup>th</sup>, 2013 at 11:40 am.

Finally I served a true copy of my appeal to the York County Public Defender's Office located at the Moss Justice Center on August 13<sup>th</sup>, 2013 at 12:15pm.



David R Beatson, Pro Se

1526 Harpers Inlet Dr

Lake Wylie, SC 29710

803-810-3722

FILED-RECEIVED  
2013 AUG 13 PM 12:53  
DAVID HAMILTON  
C.C.P. & S.S.  
YORK COUNTY, SC

FORM 4

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2013CP4602431

South Carolina State Of

2014 Jan 14 AM 8:29  
5  
C.C.P. & GS  
YORK COUNTY, SC

David R Beatson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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: \_\_\_\_\_

*Appeal Dismissed*

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. If 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.

*John H. Hays*

Circuit Court Judge

2049  
Judge Code

*1/13/14*  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 14 day of January, 2014, and a copy mailed first class or placed in the appropriate attorney's box on the 14 day of January, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Officer William Lowery York County Sheriffs Office 1675-  
2A York Highway York, SC 29745  
Kristie Hannah Jordan 1675-2A York Hwy. York, SC  
29745-7422

David R Beatson 1526 Harpers Inlet Dr Lake Wylie, SC  
29710

---

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

---

**ATTORNEY(S) FOR THE DEFENDANT(S)**

David Hamilton

---

**Court Reporter: Wanda Nelson**

---

**David Hamilton - 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.

---

---

---

---

---

---

---

---

---

---

Bethel / Kings Mountain Magistrate

CASE HISTORY FOR CASE N231736

The State of South Carolina Vs David R Beatson

FILED DATE: 3/28/2013

CASE TYPE: CR

STATUS: Disposed

JUDGE: Grayson, Johnny Hicks

ARRESTING AGENCY: York County Sheriff

CASE PARTIES:

Defendant Beatson, David R

29710

Officer Lowery, W

Moss Justice Center, 1675-2a York Highway, York, SC 29745-7428

Bond Entity Beatson, David R

1526 Harpers Inlet Dr, Clover, SC 29710

Public Defender Johnson, Toni Lynn

Moss Justice Center, 1675-1E York Hwy., York, SC 29745

CASE HISTORY FOR CASE N231736

Beatson, David R

Age: 41

DOB: [REDACTED]

DL#: [REDACTED]

SSN: [REDACTED]

Clover, SC 29710

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
3414 Assault / Assault & Battery 3rd degree	3/8/2013	Guilty Jury Trial	8/6/2013

SENTENCING

Fine or Jail Time

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Assault / Assault & Battery 3rd degree				
Fine to General Fund	\$166.27	\$0.00	\$166.27	999
Victim Services Asm 38.0013% / 5.783	19.95	0.00	19.95	999
Victim Conviction Surcharge \$100 / \$2:	25.00	0.00	25.00	999
Law Enforcement Funding Surcharge \$:	25.00	0.00	25.00	999
SC Criminal Justice Academy Training	5.00	0.00	5.00	999
State Assessment	158.78	0.00	158.78	999
<b>Total:</b>	<b>\$400.00</b>	<b>\$0.00</b>	<b>\$400.00</b>	

DATE	TIME	EVENT DESCRIPTION
3/8/2013	8:00 PM	Court event: Bond Hearing
5/14/2013	9:00 AM	Court event: Criminal/Traffic Court
3/8/2013	8:02 PM	Filing recorded: Bond Comment To Notes Screen
5/14/2013	9:00 AM	Court event: Criminal/Traffic Court
Print Date:	05/09/2014	
Print Time:	1:45:45PM	
Requested By:	C46CWILLIA	

This is a true and certified copy  
 Clover Magistrate  
 York County  
 Judge J. Grayson  
 Bethel/Kings Mountain Township

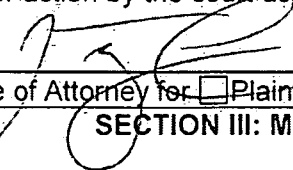
*Grayson*  
 5-12-14

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 David Beatson )  
 Plaintiff )  
 )  
 v. )  
 )  
 State Of South Carolina )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.  
 2014-CP-46-1538

MOTION AND ORDER INFORMATION  
 FORM AND COVER SHEET

Plaintiff's Attorney: David R Beatson, Bar No. Address: 1526 Harpers Inlet Dr. Lake Wylie, SC 29710 phone:            fax: e-mail:           other:	Defendant's Attorney: J. Rutledge Johnson, Bar No. 78871 Address: PO Box 11549 Columbia, SC 29211-1549 phone: 803-734-3737 fax: 803-734-4113 e-mail:            other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Estimated Time Needed:            Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	August 13, 2014 Date submitted
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE  CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Date Filed: _____	
Collected by: _____  <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
David R. Beatson,	)	2014-CP-46-1538
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN AND MOTION TO DISMISS</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed May 9, 2014, would respectfully show this Court:

I.

The Applicant is not currently confined. The Applicant was charged with Assault and Battery, 3<sup>rd</sup> degree on or around March 8, 2013. On August 6, 2013, the Applicant proceeded to a jury trial in magistrate’s court, pursuant to which he was found guilty. The Honorable Johnny Grason sentenced Applicant to a fine of \$400 or jail time. The Applicant appealed this verdict to the Sixteenth Judicial Circuit Court. The Honorable John C. Hayes, III denied this appeal on January 13, 2014.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction and the application. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current application for post conviction relief the Applicant fails to allege any reason(s) why his convictions are unconstitutional or why is being held unlawfully pursuant to sections 9, 10

and 11 on the Post-conviction relief application.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. *Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*

[Emphasis supplied.] S.C. Code Ann. § 17-27-20 (1976).

These facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Therefore, the Court should summarily dismiss this application for post-conviction relief.

III.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

IV.

WHEREFORE, having made its Return and Motion to Dismiss, the State requests that the Applicant's current application for PCR be summarily denied and dismissed.

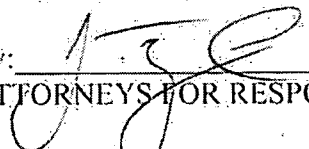
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

*August 13*, 2014

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 )  
 )  
 )  
 DAVID R. BEATSON )  
 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

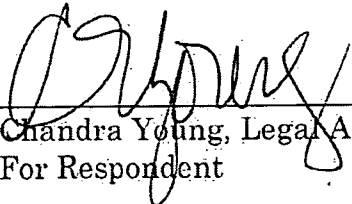
2014-CP-46-1538

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

David R Beatson  
 1526 Harpers Inlet Dr.  
 Lake Wylie, SC 29710

DATED this 13<sup>th</sup> day of August, 2014.

  
 \_\_\_\_\_  
 Chandra Young, Legal Assistant  
 For Respondent

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF SOUTH CAROLINA

-----x

DAVID BEATSON,

Petitioner,

Case No.

-against-

2014-CP-46-1538

STATE,

Respondent.

-----x

November 19, 2014

York, S.C.

B E F O R E:

HONORABLE ALISON RENEE LEE, Judge.

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

LEAH MOODY, Esquire

Attorney for the Petitioner

J. RUTLEDGE JOHNSON, Esquire

Attorney for the Respondent

Aileen Butler

Official Court Reporter

I N D E X

1					
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	David Beaston				
4	Ms. Moody	8			
5	Mr. Johnson		26		
6					
7	Toni Johnson				
8	Mr. Johnson	27			
9	Ms. Moody		32		39
10	The Court		36		
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

EXHIBITS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
4	Petitioner's 1 Motion	13	35

1 MR. JOHNSON: May it please the Court, Your Honor.

2 THE COURT: Yes, sir.

3 MR. JOHNSON: This is case of David Beatson  
4 versus the State of South Carolina, case number  
5 2014-CP-46-1538.

6 Mr. Beatson was charged with assault and battery,  
7 third degree, on or around March 8, 2013. On August 6,  
8 2013 he proceeded to a trial in Magistrate's Court  
9 pursuant to the which he was found guilty. The  
10 Honorable John Greyson sentenced him to a fine of \$400  
11 or jail time. He appealed his verdict to the 16th  
12 Circuit Judicial Appellant Court and the Honorable John  
13 C. Hayes denied that appeal on January 14, 2014. He  
14 filed this application May 9, 2014 and the State filed  
15 its return and motion to dismiss for failure to state a  
16 claim in sections nine, ten and eleven of the  
17 application.

18 On August 13, 2014 I believe there is a Conditional  
19 Order of Dismissal. However looking at his application  
20 it looks like he states ineffective assistance of  
21 counsel. He just did not do it in the right place. He  
22 puts it in number 15 instead of the proper place of  
23 nine, ten or eleven. So we will go forward on that  
24 allegation, Your Honor.

25 I will turn this over to Miss Leah Moody.

1 MS. MOODY: Your Honor, as it relates to the  
2 sections where he filled out his application, on section  
3 nine it says if you answer no to seven state your reason  
4 for not so appealing. He did appeal. On ten it states  
5 state precisely the grounds on which you base your  
6 allegation that you were being held in custody  
7 unlawfully. He has been out. This is a Magistrate's  
8 case. He was never taken into custody. In the typical  
9 -- like in the typical case you are taken into custody  
10 of the Department of Corrections. That was not his  
11 situation. In number 11 it states state precisely the  
12 facts which support each ground set out in ten. Since  
13 he was never taken into custody there was nothing to  
14 state concisely in 11. I think he was reading his  
15 application literally.

16 If you go over to page four of his application he  
17 talks about his appeal, I believe from the proceeding  
18 page. It was dismissed by the Court and he gives the  
19 date of the disposition in the appeal. It -- on "E" it  
20 says if known citations or written opinions or orders  
21 pursuant to each such disposition. He says, "The judge  
22 dismissed my direct appeal stating I needed to file just  
23 post conviction relief to continue."

24 If you skip down to 15 -- well, 14 says has any  
25 ground set forth in ten been previously presented to

1 this Court or any other Court; State or Federal in  
2 petition -- in any petition, motion or application which  
3 you have filed and his answer is N/A. I guess his  
4 answer should be no, because his answer from number ten  
5 was N/A, as well as number 15. If you answered yes to  
6 14, identify. And here he puts which grounds are being  
7 presented which would be his reasons as the Court  
8 instructed him that he needed to use post conviction  
9 relief. He cites ineffective assistance of counsel,  
10 errors made by the Court and the proceedings in which  
11 each ground was raised. He did it in a direct appeal.  
12 The Court at that time in his direct appeal which was to  
13 common pleas -- excuse me, to the Circuit Court level  
14 indicated that he needed to go through a post conviction  
15 relief act and that's how he proceeded. I'm not sure  
16 whether the Court felt like the errors that he alleged  
17 were problems with the Court, the Magistrate Court, was  
18 something that would fall under the ineffective  
19 assistance of counsel and based on that, Your Honor, we  
20 would ask that my client be allowed to present testimony  
21 as to those allegations as well as the ineffective  
22 assistance. The ineffective assistance goes to  
23 specifically evidence that was taken in -- excuse me --  
24 evidence that was taken in during the trial, as well as  
25 evidence that was not viewed by the jury, which was in

1 the case.

2 I would say in his case portion -- well, his  
3 presentation of his case, as well as there was a matter  
4 that was dealing with the judge's recusal of his hearing  
5 the case and his attorney presenting that to the judge.

6 THE COURT: And he was represented in the  
7 Magistrate Court; is that correct?

8 MR. MOODY: Yes, ma'am, by Toni Johnson of the  
9 York County Public Defender's Office.

10 THE COURT: I think I have in the record a copy of  
11 the appeal that he filed on this criminal conviction and  
12 I think there is some attachments to it. They are  
13 really kind of poor copies. It is really very small  
14 print so I had some difficulty reading it. I also saw  
15 the motion -- there is also here a motion for the judge  
16 to recuse and then there are some hand written notes  
17 that are attached to the information, as well as the  
18 decision of the Circuit Court dismissing his appeal.  
19 All it says is just appeal dismissed. So based upon the  
20 fact that in his appeal of criminal conviction he does  
21 state that he appeals his guilty verdict on the basis of  
22 errors made by the trial court and ineffective  
23 assistance -- ineffective counsel, provided by the Court  
24 to me through the public defender's office. So, based  
25 upon that information I think there is at least

1 sufficient information to be able to go forward with  
2 the application today at this time.

3 MS. MOODY: Thank you, Your Honor.

4 At this time I would like to call Mr. Beatson to  
5 the stand.

6 THE COURT: Step forward sir to be sworn.

7 MR. BEATSON: Yes, Your Honor.

8 DAVID BEATSON, called as a witness, having been  
9 duly sworn by the clerk, was examined and testified as  
10 follows:

11 THE COURT: State your full name for the record,  
12 please.

13 THE WITNESS: David R. Beatson.

14 THE COURT: Yes, ma'am.

15 MS. MOODY: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MS. MOODY:

18 Q Mr. Beatson, you are here obviously for your post  
19 conviction relief hearing?

20 A Yes, ma'am,

21 Q Okay. What was your original charge that you were  
22 charged with?

23 A Assault and battery in the third degree.

24 Q And at the time that you were charged this was a  
25 Magistrate case?

1 A Yes, ma'am.

2 Q Who represented you in this case?

3 A Miss Toni Johnson from the public defender's office.

4 Q And how did Miss Johnson come to be your attorney?

5 A During the volunteering -- I was taken into custody  
6 initially and I with went to a bond hearing and the bond court  
7 judge assigned the public defender's office to represent me  
8 based on the fact that at the time I was not working.

9 Q And so did you have opportunity to meet Miss Johnson at  
10 that time that you got assigned?

11 A No. We spoke via telephone and e-mail prior to the  
12 first appearance and basically it was stated that we would meet  
13 prior to the first appearance that morning and discuss the case  
14 before we went in front of the judge.

15 Q Did you go to meet with Miss Johnson?

16 A At that time at the first appearance?

17 Q Before the first appearance?

18 A No, I don't believe that we met. At that time it was  
19 all over the phone and via e-mail.

20 Q Okay, and when you talked to her over the phone and  
21 through e-mail what specifically did you tell Miss Johnson about  
22 your case?

23 A I raised some concerns about the fact that the officer  
24 -- I had an issue with the officer involved and that there was a  
25 situation where the -- I was a neighbor with the victim and that

1 the victim had come to my house and was harassing me and she  
2 advised me to notify the sheriff's department about that. Which  
3 is what I did. I notified the sheriff's department and made a  
4 police report.

5 Q And so your assault and battery of the third degree  
6 with the victim, can you explain to the Court what was the --  
7 basically the facts?

8 A I was getting ready to go work and I saw some kids  
9 vandalizing my neighbor's mailbox and I went to -- I called the  
10 sheriff's department immediately and after I got off the phone  
11 the kids started to leave the area. I went to follow them to  
12 see where they were going so I could let the sheriff's deputies  
13 know when they got there. And as I got closer to the house a  
14 man came out of the house who identified himself as the father  
15 of the children. Came out and wanted to know what was going on  
16 and I started to explain to him but he got angry and started  
17 threatening me. So I started to go back to my residence.

18 On the way back he went to the mail boxes that were where  
19 the kids were and I had pulled out my camera and started  
20 videotaping what he was doing and he had immediately turned  
21 around as I was making the video and said don't -- with some  
22 expletives record me and he started to charge at me and threaten  
23 me and I basically turned around and ran back to my residence.  
24 And he continued to follow me. When I got back to the residence  
25 I pulled out an ASP paton. I was working part time as a

1 security guard at that time and that was something I carried  
2 with me as part of my job.

3 A few minutes later I went-- he had stopped chasing me. I  
4 went back into my residence. The sheriff's deputies pulled up  
5 and I went to explain to the deputy what had happened and the  
6 deputy I kind of felt had given me an attitude and -- a few  
7 months earlier I had adopted a child who had some behavioral  
8 problems. And my son had made some remarks about wanting to  
9 hurt himself so I called the sheriff's department. I called 911  
10 to have him transported to the hospital --

11 Q Okay.

12 A Okay, I'm sorry.

13 Q And so, lets separate it from the officer. Let's just  
14 leave it at the officer you felt he had attitude towards you?

15 A Correct, because of the previous incident.

16 Q Okay, and so with that was that the time the officer  
17 arrested you or you told him your version of what happened?

18 A I wasn't arrested. I did ask for supervisor. We  
19 waited for about an hour. There was no supervisor available at  
20 the time. And the victim in the case was saying that he wanted  
21 to make a police report and we all wanted to go home and the  
22 deputy was pressuring him to make a statement and I think on the  
23 video it shows over six times the deputy made six different  
24 attempts of approaching him in trying to get him to make a  
25 report stating that he knew who I was and that I was a

1 | troublemaker based on that previous incident that I was starting  
2 | to mention about my son. And after the supervisor arrived I  
3 | told him my side of the story and -- but the original deputy who  
4 | had the I issue with then arrested me for the assault and  
5 | battery third degree.

6 | Q And so you gave that information to Miss Johnson?

7 | A Correct.

8 | Q Okay. Now, at your initial appearance did you meet  
9 | with Miss Johnson?

10 | A No, I did not.

11 | Q And why is that?

12 | A She was not there. When I arrived at court she was not  
13 | there.

14 | Q And why was she not there?

15 | A Another lawyer was there and called my name. I spoke  
16 | with him and he told me that she had trials in the city of Rock  
17 | Hill Court and could not be there for the first appearance. I  
18 | asked him if he could ask for a continuance.

19 | I asked him if he knew anything about the case because I  
20 | asked him if he had reviewed the video of the victim threatening  
21 | me and --

22 | Q Okay. So Miss Johnson was not there on the day of the  
23 | first appearance?

24 | A Correct.

25 | Q And the you wanted a continuance because she was not

1 there?

2 A Correct, because we had already spoken about the case,  
3 although briefly, but she said we would go into deeper detail  
4 that morning.

5 Q Okay. And so when you wanted a continuance for initial  
6 appearance.

7 What, if anything, did you think was going to happen that  
8 day?

9 A Well, because it was the first time anybody was  
10 requesting a continuance and because my attorney of record was  
11 not there and because I had already spoken to her about the case  
12 I thought that it was logical that the judge would grant a  
13 continuance to allow her to be there.

14 Q Well, I understand that part, but what was suppose to  
15 happen on that day? Explain to the Court what was suppose to  
16 happen on the initial appearance? Was there suppose to be a  
17 plea or a trial?

18 A I believed that we were going to talk about the video  
19 that I had because I had e-mailed her the video and I believe  
20 that she would talk to the court, the officer about whether if  
21 there is a plea or how to proceed at that point. We were going  
22 to decide how to proceed and if there was a plea and that type  
23 of information.

24 Q Okay. And the continuance was denied?

25 A Correct.

1 Q And what, if anything, happened after the continuance  
2 was denied?

3 A The judge immediately -- the judge stated immediately  
4 that he wanted to go straight into jury strike.

5 Q Okay, and did you go into jury strike with the attorney  
6 that appeared that day?

7 A Correct, we did.

8 Q Okay, and so did you participate with that attorney?

9 A Yes.

10 Q Okay, and how did you participate with the attorney?

11 A We were -- I was provided a list of names, addresses --  
12 it had the names, addresses, age, and the race of the  
13 individuals on the list and each name was called out by the  
14 judge and the lawyer would ask me if I knew the person or if I  
15 objected in any way to that individual. And there was some  
16 names that were called that he did not ask me. He just objected  
17 to without asking me and not explaining to me why.

18 Q So, did anything else happen on that day?

19 A After that not that I was directly involved in, but my  
20 understanding was that the lawyer did speak -- well, the lawyer  
21 did come back to me and did state that they did discuss a plea.

22 Q Okay, and do you recall what that plea was?

23 A The plea was just to plead guilty and pay the maximum  
24 fine and not spend thirty dates in jail.

25 Q And what, if anything, did you discuss with that other

1 lawyer?

2 A That considering the facts of the case I felt that I  
3 had a good case and that I wanted to plead not guilty and I  
4 wanted to have, you know, Miss Johnson, the attorney, to  
5 represent me and to come back to continue with the case.

6 Q Okay. So on that day you turned down the offer that  
7 was made to you and that was based off of your understanding of  
8 the -- well, your version of the facts and then what you  
9 discussed with Miss Johnson?

10 A Correct. The attorney that was there I guess my -- the  
11 big thing for me was I felt that Miss Johnson was going to have  
12 have the video to use as leverage in the plea agreement and the  
13 attorney that showed up did not have the video, nor had he seen  
14 the video and does not -- he told me he had not seen it and was  
15 not aware of its content.

16 Q So after that that day did you have another court  
17 appearance?

18 A The next court appearance was the actual jury trial.  
19 There was no other hearings in between.

20 Q Did you have opportunity to meet with Miss Johnson  
21 between that timeframe?

22 A I did. The next time that I spoke with her we meet and  
23 discussed some concerns I had about the judge and whether or not  
24 we should ask the -- request that the judge recuse himself.

25 Q All right. Can you tell the Court what the concerns

1 were?

2 A I had a few month earlier I had filed -- attempted to  
3 file a civil lawsuit against my home owners association at the  
4 Magistrate Court. Judge Greyson when I went to file it came out  
5 of the office and refused to allow me for file it. Wanted me to  
6 file it in the town of Fort Mill, also in York County, even  
7 though I lived in the City of Clover and HOA was located in  
8 Clover. He seemed upset.

9 I left the courthouse. Didn't want to pursue that further  
10 and contacted Terry Leverate (phonetics) with the state court  
11 administration and filed a complaint both via phone and e-mail  
12 to Mr. Leverate about Judge Grayson not accepting my civil  
13 filing.

14 Q Okay. And now did you have you opportunity to relay  
15 that information to Miss Johnson?

16 A I did, yes.

17 Q Okay. And you relayed that specific information that  
18 you just stated to Miss Johnson?

19 A I did and I was concerned because Mr. Leverate did  
20 contact Judge Grayson and they had an e-mail conversation which  
21 was then forwarded to me where Judge Greyson did admit to the  
22 court administration --

23 MR. JOHNSON: Objection to hearsay, Your, Honor.

24 THE WITNESS: Okay.

25 Q Don't say what Judge Greyson admitted to. Overall you

1 filed a complaint?

2 A I was told I could file -- yeah, I was told I could  
3 file the civil action at Judge Greyson's court although that  
4 never did happen.

5 Q Okay. Now you indicated you told Miss Johnson,  
6 correct?

7 A Correct.

8 Q Okay. And what, if anything, did Miss Johnson do on  
9 your behalf with regard to the recusal?

10 A She told me that she would contact Judge Greyson via  
11 e-mail based on the fact that I had filed a complaint against  
12 him with the court administration.

13 Q And she filed -- what if anything did she file?

14 A She told me she was doing it have via e-mail but I had  
15 never saw the e-mail until after the trial. So I didn't know  
16 what she filed, but she indicated to me that she was filing --  
17 asking him to recuse himself through the e-mail based on the  
18 fact that I had filed a complaint with the court administration  
19 and then a week later I think she e-mailed back or called me  
20 back and said Judge Greyson denied the motion to recuse himself.

21 Q Okay, so she made a motion, correct?

22 A Through e-mail. She told me it wasn't official. She  
23 told me it was an e-mail, but I guess if that is considered a  
24 motion then yes.

25 MS. MOODY: Okay. Your Honor, may I approach the

1 witness?

2 THE COURT: Yes

3 MS. MOODY: Your Honor, I would like to just mark  
4 this for identification.

5 THE COURT: Okay.

6 (Plaintiff's Exhibit one, motion, marked for  
7 identification as of this date.)

8 Q Mr. Beatson, I am going to hand you what has been  
9 marked as Petitioner's Exhibit one, for identification and can  
10 you please identify that document?

11 A This was provided to me after the trial from the public  
12 defender's office when I requested a copy of the file.

13 Q What is it?

14 A It is a motion to ask the judge to recuse himself.

15 Q Okay, and whose signature is on the bottom?

16 A Toni Johnson.

17 Q Okay. And what does that motion -- what is basis of  
18 that motion?

19 A The basis of the motion is stating that Judge Greyson  
20 had denied a request that I made to the court -- to his court  
21 for a Restraining Order.

22 Q The Restraining Order for --

23 A I've never requested a Restraining Order from Judge  
24 Greyson so I have no idea that was referencing.

25 Q Okay. Going back to what you indicated to Miss

1 Johnson, the purpose of you wanting to have Mr. -- excuse me,  
2 Judge Greyson recuse was what?

3 A The fact that I filed a complaint against him with the  
4 state court administration, Terry Leverate specifically.

5 Q Okay, and in that document there is a motion for a  
6 recusal. That is not what you told Miss Johnson you needed a  
7 recusal?

8 A Correct. That was never discussed and I never  
9 approached the Court for the a Restraining Order, and so I was  
10 confused by this when I saw this. I didn't understand why this  
11 was -- the contents of this -- why that was in the content.

12 Q Okay. So in essence, your attorney did not file the  
13 motion for recusal based off of information you gave her?

14 A That is correct.

15 Q Okay and did you have a problem with that?

16 A Yes, because in the response that I was provided also  
17 from the public defender's office it was stated that the motion  
18 was dismissed on the grounds that the judge didn't know what she  
19 was talking about in the motion, which I didn't know either so I  
20 could understand why the judge might feel that way. Why he  
21 would have dismissed that because he didn't have the proper  
22 facts in front of him.

23 Q All right. Was there -- okay, that is the one thing as  
24 far as the motion for recusal.

25 Now you indicated there was a video in the matter and you

1 discussed your case with Miss Johnson?

2 A Correct, and I provided a -- I think I e-mailed her a  
3 copy of the video.

4 Q And what happened to that video?

5 A At one point prior to the trial while speaking she told  
6 me she had copied it to DVD and was going to bring it with her  
7 to court to present during the trial and the jury. When I  
8 arrived at court this morning five minutes before the trial was  
9 going to begin she came in and she said that she did not have  
10 the video with her. That she had forgot it at home and did not  
11 have it with her.

12 Q Okay, and in this video what did the video contain?

13 A The video was the video that I mentioned earlier of the  
14 victim in the case when I was trying to video tape him going to  
15 the mail boxes, him turning around. He says in the video, don't  
16 "f-in" record me. He started to charge at me and was making  
17 threats, calling me names, and I had turned and started to  
18 retreat to my residence and the video kind of cuts off there.

19 I had received a call back from the 911 center which cuts  
20 the recording off, but you can see him coming at me and me  
21 turning and trying to get away from him.

22 Q Now, so, you wanted to present that video. Let me  
23 rephrase it.

24 What did you want to do with that video at trial?

25 A I wanted to have that video heavily emphasized because

1 in the video he says he is going to find out where I live and it  
2 is going to be the worse day of my life, and in the video I  
3 never made any threats to him. I just tried to get away from  
4 him. And so I felt that was probably the most critical -- one  
5 of the most critical pieces of evidence in the trial because --  
6 the problem with the video is it was short and you kind of  
7 needed to watch it a couple of times to really understand and to  
8 see everything everything that is going on. So I felt that that  
9 should be emphasized in the trial because I felt that it was a  
10 key piece of evidence and anybody who would see it I felt would  
11 understand the circumstances of the day.

12 Q So at the trial Judge Greyson presided over the trial,  
13 and during your case where you presented your evidence, what, if  
14 anything, did you have to present by way of that video?

15 A I had to log in. I was given an opportunity to log in.  
16 I had uploaded the video to a private account on youtube.  
17 Because it was private account I had to go to a computer and log  
18 in to show the video. So I went to log in to show the video,  
19 and then I was -- the court immediately logged me back out of  
20 the computer so that the video was played only once and after I  
21 logged out it wasn't available any more because the court had  
22 logged me out of the computer.

23 Q And when you say it wasn't available, why was it  
24 important to be available again after being seen by the jury?

25 A I expected because of the contents of the video that it

1 might be used during closing arguments to emphasis to the jury  
2 and the sheriff's department had videos that were on DVD and  
3 when we left for the jury trial the video was still left. The  
4 TV was in the courtroom with the sheriff department's videos.  
5 My video was not there. There was no DVD and I was logged out  
6 of the account and we can all see through the doorway that the  
7 jury had entered the courtroom and started reviewing the videos  
8 on the TV.

9 I expressed concern to Miss Johnson that they were there  
10 watching the video and my video was not there available to them,  
11 and I was just told to not worry about it.

12 Q Now, what were the videos that the sheriff's department  
13 had?

14 A They were dash cam videos from the first responding  
15 deputy, another video from the supervisor and several audio  
16 recordings of the 911 calls to the dispatcher.

17 Q Okay. And you indicated that Miss Johnson said not to  
18 worry about it?

19 A Correct.

20 Q So were those videos from the sheriff's department  
21 entered into evidence?

22 A Yes, they were during the trial. Yes.

23 Q And so in essence you are saying your video that you  
24 presented was not entered into evidence?

25 A It was entered into evidence but the Court had no copy

1 of it, physical copy of it, nor did the jury have a copy of it  
2 to review during their deliberations like they did all the  
3 state's evidence and that was not because she did not bring the  
4 video that day even though she had it.

5 Q Was it provided later -- at a later point?

6 A No, not to my knowledge.

7 Q And you indicated that she had video on a disc?

8 A I had e-mailed the video originally and she had  
9 indicated to me she was able to put it on to a disc so she could  
10 bring it to Court with her during trial. That was in our  
11 discussion prior to the day of trial.

12 Q So is this all that you make your basis -- as your  
13 basis for ineffective assistance of counsel?

14 A No, because part of the frustration even though we did  
15 get to communicate, a lot of times when we would start to  
16 communicate she would indicate that she was very busy. I tried  
17 to contact her office and I was told she was at trial in Rock  
18 Hill. And I was told several times that she did not because of  
19 her schedule and trial in Rock Hill that she just did not have  
20 the time to prepare for the case and considering the fact that  
21 Judge Greyson was not granting any continuances at all I felt  
22 kind of under pressure.

23 I -- she did state she wanted to meet with me another time  
24 in person prior to the trial and I was given one date and one  
25 time where we could do that, but however I had a -- I was

1 scheduled for surgery the week after the trial and I had a  
2 pre-surgical appointment at the VA in Columbia, and I explained  
3 that to them and I said there is no way to cancel that  
4 appointment because if I have it would have put my surgery off.  
5 So, she -- the compromise was that she would call me the  
6 weekend, the Saturday before. The trial was on Monday. She  
7 would call me on Saturday we would speak on the phone and go  
8 over the facts of the case and how to proceed during trial. And  
9 she did call me and after talking for a short time she said she  
10 had a family situation and that she would call me back and got  
11 off the phone abruptly, and I waited for her to call me back and  
12 she never called me back and I never heard from her again until  
13 the morning of the trial.

14 Q So, in essence, you felt your attorney was not  
15 prepared?

16 A Correct, and I did make a complaint about that too as  
17 well.

18 Q Okay. And so the relief that -- well, so you feel that  
19 you were prejudiced in some way. How were you prejudiced?

20 A The fact that she -- based on everything I was told  
21 that she did not have -- I was told over and over again that  
22 because of her schedule and her case load she did not have time  
23 to prepare and the judge wasn't granting any continuances so  
24 that didn't help the situation and the fact that the video  
25 wasn't made available to the jury, and the fact that the video

1 because it wasn't there on a disc it was difficult to play it  
2 over again. So it was only shown the one time and not really  
3 emphasized like I thought it would be in the trial. And I made  
4 my concerns pretty clear leading up to the trial. I was told  
5 that there was nothing they could do. That was just because  
6 that was just the way it worked.

7 Q And so, what relief are you seeking from the Court?

8 A I am seeking to have -- ideally, I would like to have  
9 have a new trial with a judge that I had not filed a complaint  
10 against before because I felt that the judge -- if someone filed  
11 a complaint against me I might have some problems with that  
12 person. So I would -- I would understand and expect why Judge  
13 Greyson might have had a problem with me.

14 Q So you want a new trial?

15 A Yes. Yes, ma'am.

16 Q Let me ask you one question. Were you able to talk to  
17 Miss Johnson about the plea offer that was made?

18 A I spoke -- I spoke to the attorney the day of that  
19 hearing, the initial appearance and the jury strike.

20 I don't know that we spoke later because I think at that  
21 time the state was very adamant that that they weren't going to  
22 offer any type of plea. So I think later on it was expressed to  
23 me that they weren't going to offer a plea.

24 MS. MOODY: No further witnesses. Please answer  
25 any questions Mr. Johnson may have.

1 THE WITNESS: Yes, ma'am.

2 THE COURT: Any cross?

3 MR. JOHNSON: Briefly Your Honor.

4 CROSS EXAMINATION

5 BY MR. JOHNSON:

6 Q Mr. Beatson, at this trial, since we do not have a  
7 transcript of it, did the victim in this case testify against  
8 you?

9 A He did.

10 Q And did you get to testify on your own behalf?

11 A I did.

12 Q Okay. And so the jury heard both sides of the story,  
13 correct?

14 A They did.

15 Q Okay. And the jury also saw your video, I'll be it  
16 once, they saw the video?

17 A They did.

18 Q And they also got to see all the evidence that the  
19 sheriff's office put in?

20 A They did.

21 Q And they still found you guilty?

22 A They did.

23 MR. JOHNSON: Okay. No further questions, Your  
24 Honor.

25 THE COURT: Any redirect?

1 MS. MOODY: No, ma'am.

2 THE COURT: You may step down.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Any further witnesses?

5 MS. MOODY: No, ma'am.

6 THE COURT: Anything from the State?

7 MR. JOHNSON: Yes, the State would call Toni  
8 Johnson, please.

9 TONI JOHNSON, called as a witness, having been  
10 duly sworn by the clerk, was examined and testified as  
11 follows:

12 THE COURT: State your name, please.

13 THE WITNESS: Toni Lynn Johnson.

14 DIRECT EXAMINATION

15 BY MR. JOHNSON:

16 Q Miss Johnson, do you remember becoming involved in this  
17 case?

18 A Yes, I do.

19 Q And were you appointed?

20 A Yes, I was.

21 Q As your role as public defender?

22 A That's correct.

23 Q And when is the first time you ever met with Mr.  
24 Beatson?

25 A I actually received some e-mails from Mr. Beatson prior

1 to his court date and actually did speak with him briefly. He  
2 had some questions for me prior to his case that I did speak  
3 with him about, prior -- I think to the appointment of -- prior  
4 to receiving Discovery on his case.

5 Q So you filed for and received Discovery?

6 A I did receive Discovery on that, yes.

7 Q And you remember what all was contained in the  
8 Discovery?

9 A I know that I had copies of the incident report, and he  
10 also did indicate to me, Mr. Beatson, that he had a video that  
11 he did send it to me via the e-mail and I was able to take a  
12 look at it at that time.

13 Q Did you ever review the video with Mr. Beatson?

14 A I looked at it and then at some point he did make an  
15 appointment and did come to my office and he brought the video  
16 with him there as well.

17 Q And what, if any, trial strategy or defenses did you  
18 have in this case?

19 A When I spoke with Mr. Beatson he did indicate to me  
20 that he wanted to go forward with a trial on this matter. So we  
21 did discuss the video, the issues that he had with the officer  
22 and the issue that had gone on with him at the alleged victim in  
23 the case.

24 Q Did you ever discuss issues about the judge?

25 A He did discuss issues about the judge with me, yes.

1 Q And based on that information did you file any motions?

2 A Yes, I did. Based on the information that he provided  
3 I did make a motion to the judge, to Judge Greyson to recuse  
4 himself from the trial.

5 Q And what was basis of that motion?

6 A The basis of the motion is exactly what he told me, I  
7 think that was provided for the court. But based on the  
8 information he gave me that's the reason that I filed the motion  
9 that I did.

10 Q He is claiming that you filed a completely different  
11 basis then what is in that motion?

12 A No.

13 Q So you based the motion off the information that Mr.  
14 Beatson provided?

15 A That's correct..

16 Q And ultimately the judge denied that motion?

17 A Correct. And I don't want to go into what the judge  
18 said, but the judge said that he dealt with many people in  
19 essence, and he didn't recall any problem with Mr. Beatson for a  
20 reason for him to recuse himself.

21 Q And going back to the question -- a few questions ago  
22 -- what was the defense strategy in this case?

23 A The defense strategy was to prove that he did not  
24 assault the victim alleged in this particular case even though  
25 he had taken out the ASP that he never brandished it towards him

1 and therefore hoping that the jury would find him not guilty of  
2 the charge.

3 Q And was this strategy based on your experience as a  
4 criminal defense attorney?

5 A That's correct.

6 Q And based on fact as relayed by Mr. Beatson?

7 A That's correct.

8 Q Turning to the trial itself, were you involved with the  
9 jury qualification?

10 A I was not.

11 Q So the jury was already selected before you got to  
12 court?

13 A By a co-worker of mine, that's correct.

14 Q Did you see any issues with the jury?

15 A No.

16 Q If you had seen issues would you have filed any motion?

17 A Yes, I would have.

18 Q Did you put up a defense in the jury trial?

19 A Mr. Beatson did testify in reference to this case, yes.

20 Q Were you able to cross examine all the state's  
21 witnesses?

22 A Yes, I was.

23 Q And did the jury view the video that Mr. Beatson  
24 provided to you?

25 A Yes, they did. When I spoke with Mr. Beatson in my

1 office I did indicate to him that the video that he sent to me  
2 from his device that I could no longer get that to come up. So  
3 prior to the trial date I did ask him to bring his video with  
4 him to court and he didn't do that.

5 Q In your closing argument did you emphasis this video?

6 A I definitely did talk about the video, and one of the  
7 things that they do when it comes to the evidence, if there is  
8 anything else that the jury wishes to see that we need to pull  
9 up, all they need to do is ask and they are told just to ask if  
10 there is other things that you want to see in reference to that.  
11 And it can be played as many times as they would like to see  
12 that played.

13 Q And based on your recollections did the jury ask to see  
14 this video again?

15 A They did not.

16 MR. JOHNSON: Beg the Court's indulgence, Your  
17 Honor.

18 Q Do you feel you had sufficient time to prepare this  
19 case?

20 A Yes, I do.

21 Q And want all preparation did you do in this case?

22 A I met with Mr. Beatson. We e-mailed one another. I  
23 looked at the videos. I talked to the officers. I made the  
24 motion for the judge to recuse himself. I did cross examine the  
25 witnesses involved in the case.

1 MR. JOHNSON: That is all questions I have at this  
2 time. Thank you Miss Johnson. Please answer any  
3 questions Miss Moody has.

4 THE COURT: Any cross?

5 MS. MOODY: Yes, ma'am.

6 CROSS EXAMINATION

7 BY MISS MOODY:

8 Q Miss Johnson, the motion that you filed for the recusal  
9 you indicated this was filed based off of what Mr. Beatson  
10 informed you of?

11 A That's correct.

12 Q And the allegations of the victims in a pending jury  
13 trial was that this jury trial?

14 A I am sorry, can you repeat the question.

15 Q The victims that you were speaking of, was that this  
16 jury trial that you are talking about?

17 A No.

18 Q Okay. So it was another jury trial?

19 A It was another trial, yes, that is correct.

20 Q And can you give us some information as to what that  
21 trial was?

22 A No. No. Uh-huh, sorry --

23 Q I guess let me state it like this. Mr. Beatson  
24 informed you that he had a problem?

25 A That's correct.

1 Q Okay. And he informed you that the problem was with a  
2 trial that Judge Greyson served on?

3 A That Judge Greyson was involved in, yes.

4 Q And so you are saying it wasn't the victim in this  
5 particular assault?

6 A No, no, no, no. No, not this -- not the person  
7 involved in that case.

8 Q Okay. So --

9 MS. MOODY: May I approach the witness, Your  
10 Honor?

11 THE COURT: Yes, ma'am.

12 Q I will hand you what has been marked as petitioner's  
13 number 1. Is that the motion that you filed that related to  
14 another trial for recusal?

15 A You know what, it actually is, because he had indicated  
16 that the alleged victim was coming to his residence. Not only  
17 the victim but the victim's wife were coming kind of outside of  
18 his residence and he had requested a restraining order on  
19 that, that's correct.

20 Q All right, so let me make sure I am clear. The victim  
21 in this assault and battery third case --

22 A Yes.

23 Q -- is the victim that came to his house?

24 A Yes, the wife was coming to the residence.

25 Q Okay, and so you filed a motion for the judge to recuse

1 himself related to the restraining order that had something to  
2 do with this case?

3 A And that the complaint would have a negative effect --  
4 the complaint that he was making about the judge would have a  
5 negative effect.

6 Q So was there another motion to recuse that was filed?

7 A No.

8 Q So it was only one?

9 A Just the one motion, that's correct.

10 Q Okay, and so, did Mr. Beatson ever give you information  
11 that there was other issues with the judge? Let me rephrase  
12 that.

13 Mr. Beatson basically told you that he had filed a  
14 complaint against the judge with the State, correct?

15 A That's correct.

16 Q You didn't feel that that was necessary to file a  
17 motion to recuse on that alone?

18 A No, I did not and I think I might have sent an e-mail  
19 in addition to sending the motion itself to the judge and the  
20 judge really had no recollection of those issues at all in  
21 reference to that and he felt that there was no need for him to  
22 recuse himself in reference to this case.

23 Q Okay. So as to --

24 MS. MOODY: Your Honor, I would ask to move in  
25 petitioner's exhibit one?

1 THE COURT: Any objection?

2 MR. JOHNSON: No, Your Honor.

3 THE COURT: It is admitted.

4 (Petitioner's Exhibit 1, Document, received in  
5 evidence as of this date.)

6 Q So as to preparing for the case you indicated you  
7 talked to officers -- the officers involved in the case,  
8 correct?

9 A That's correct.

10 Q Did you view their videos that they had?

11 A Yes, I did and when Mr. Beatson talks about the videos  
12 that I didn't have, it was not his video because we had  
13 discussed that video. It was the video that the officers  
14 provided to me in Discovery.

15 Q Okay. So, when you say you came to court and he was  
16 suppose to bring his video, you did not have the disc with his  
17 video on it?

18 A No. When I went to try and copy the video that he sent  
19 to me via e-mail it was no longer for some reason in my system.  
20 I could not get it to open. So that's why I had asked him to  
21 bring his video and he agreed to do that.

22 Q And then on the day of the trial you didn't bring the  
23 videos from the officers?

24 A The video that the officer provided to me, that's  
25 correct.

1 Q Okay. You had an opportunity to review them all?

2 A Yes, I did and they provided their video, the same  
3 video that was provided to me, they had it and that was played  
4 for the jury.

5 Q Okay. And you indicated how many times did you meet  
6 with Mr. Beatson?

7 A I met with Mr. Beatson I want to say, three, or four  
8 times in person and then we talked via telephone and he had  
9 e-mailed me the initial part of his case.

10 Q So the Saturday that you talked to Mr. Beatson prior to  
11 the trial, did you feel that you were ready to go forward on the  
12 trial?

13 A Yes, I did.

14 Q Did you feel Mr. Beatson was ready to go forward?

15 A Yes, I did.

16 MS. MOODY: I beg the Court'S indulgence. No  
17 further questions for this witness, Your Honor.

18 THE COURT: Any redirect?

19 MR. JOHNSON: No, Your Honor.

20 EXAMINATION BY

21 THE COURT:

22 Q Miss Johnson, I don't know what the allegations were  
23 against Mr. Beatson. Can you tell what -- I understand that he  
24 was charged with assault and battery, third degree, but what  
25 were the allegations? What is it that the State alleged that he

1 did?

2 A Yes, ma'am, and I have a copy of the incident report  
3 involved in the case. The allegation is that the officer asked  
4 Mr. Beatson if Mr. Plummer ever came on to his property or posed  
5 a threat and he stated that he did not and he informed -- the  
6 officer indicates that he informed Mr. Beatson that when Mr.  
7 Plummer was no longer in a confrontation and retreated that Mr.  
8 Beatson became the aggressor when he took out the ASP baton and  
9 presented that so to speak to Mr. Plummer.

10 Q I am confused about the motion to recuse. In the  
11 formal motion that was made you reference -- and I am reading  
12 verbatim -- "According to Mr. Beatson he has made some complaint  
13 regarding the paper work he filed requesting a Restraining Order  
14 from the alleged victim in a pending jury trial and that these  
15 complaints would have a negative effect on his trial." And so  
16 specifically could you explain exactly what that was about?

17 A Yes. My understanding in speaking with Mr. Beatson was  
18 that the Plummers; Plummer, husband and wife in the case had  
19 been -- they all lived in the same community; neighborhood, that  
20 they would be coming to his residence and because of that he was  
21 seeking a Restraining Order involved in that case.

22 Mr. Beatson took his request to Judge Greyson and Judge  
23 Greyson indicated that it was not the appropriate venue for the  
24 Restraining Order. That he needed to go to Fort Mill Court and  
25 he, Mr. Beatson, did not look kindly towards that and he thought

1 that because of that situation Judge Greyson would be negative  
2 towards him in a trial and I think I explained to Mr. Beatson  
3 that Judge Greyson is a judge of the law. In a jury trial the  
4 jury would be making the decision and that's why I had asked.  
5 Even with that I did ask Judge Greyson to recuse himself from  
6 that trial.

7 Q And at that particular time had there been a formal  
8 complaint made with court administration about Judge Beatson --  
9 about Judge Greyson?

10 A Mr. Beatson didn't present any of that to me. I just  
11 go by what was told to me by Mr. Beatson.

12 Q And so was the basis that Mr. Beatson had gotten in to  
13 a disagreement with the judge or the judge's staff about the  
14 Restraining Order?

15 A Yes. In that he felt that that may have negative  
16 thoughts or opinions by Judge Greyson as to Mr. Beatson.

17 Q And then just so on the other issue with respect to the  
18 video, so there was a CD or DVD of the actual video that was  
19 presented to the Court that Mr. Beatson brought to Court to  
20 play or ---

21 A No. We were able to hook up to his instrument that he  
22 brought in to court so that it could be played for the jury.

23 Q So it was on his computer or whatever device he used?

24 A Yes, ma'am, it was a handheld device that he had with a  
25 fairly large screen.

1 THE COURT: I don't have anything further. Any  
2 further questions.

3 MS. MOODY: Yes, ma'am.

4 RE CROSS EXAMINATION

5 BY MS. MOODY:

6 Q In terms of the incident report, the allegations that  
7 were alleged against Mr. Beatson, isn't correct that Mr. Beatson  
8 observed the victim's children smear feces on a mailbox?

9 A That's correct.

10 Q And isn't it true that Mr. Beatson basically ran those  
11 kids off from smearing feces on the mailbox?

12 A I don't think he necessarily ran them off, but he did  
13 follow them back to their residence.

14 Q And was there any video or evidence that the kids were  
15 running back crying and yelling?

16 A No.

17 Q And when Mr. Plummer came out of his residence he did  
18 speak to Mr. Beatson?

19 A Yes, there was a little bit of confusion there as to  
20 whether Mr. Plummer was driving up or Mr. Plummer came out of  
21 the residence.

22 Q From the video -- did the video show Mr. Plummer on a  
23 video?

24 A No. Not at that point, no.

25 Q But the video showed Mr. Plummer at the --

1 A At the mailbox, yes, ma'am.

2 Q So at the time of the incident Mr. Plummer had actually  
3 come near Mr. Beatson's residence?

4 A He was at the mailbox and Mr. Beatson came not all the  
5 way up to the mailbox but within enough distance of that to  
6 record.

7 Q But that is in fact in front of Mr. Beatson house?

8 A It is across the street from his residence. It is kind  
9 of there's his house and then there is like a grass area where  
10 the mailboxes are, so there is some distance. It is not --

11 Q But I guess essentially what I am saying he was at his  
12 house. He wasn't at the Plummers?

13 MR. JOHNSON: Objection. This outside the scope  
14 of reply to your question. She is trying to argue the  
15 facts of the case and that was for the jury to decide  
16 and not for this Court.

17 MS. MOODY: I was just trying to give the Court  
18 more information that is in the narrative because the  
19 narrative goes through Mr. Plummer comes to -- he comes  
20 outside of the residence yelling at Mr. Beatson and  
21 there is an exchange there, but at the time they did the  
22 video which is what Mr. Beatson indicated, that video  
23 was not at Mr. Plummer's house. He was not down there  
24 being aggressive.

25 I am just giving more information to the Court as

1 to the allegations.

2 THE COURT: I'll allow it. I will allow it  
3 because I am trying to understand -- I don't have the  
4 incident report. I looked back through the material. I  
5 do have an arrest warrant and the arrest warrant  
6 basically says that the defendant was offering to injure  
7 the victim Mr. Plummer with a baton when he had the  
8 present ability to carry out this threat and this  
9 incident occurred in the Roadway on Shady Pond Drive,  
10 and that there are statements.

11 So I was just trying to understand what he was  
12 charged with and whether he was actually charged with  
13 the battery. It appears it is just an assault.

14 Q So getting back to my question as to the video that Mr.  
15 Beatson presented to you, at the time that Mr. Plummer was near  
16 Mr. Beatson and allegedly he had the present ability to, I  
17 guess, injure or harm Mr. Plummer were the children around on  
18 that video?

19 A No. No. No.

20 Q And on the video did it show any kind of threat or was  
21 that -- with a baton, was that baton viewing was that on the  
22 officer's video?

23 A No.

24 Q So was it on Mr. Beatson's video?

25 A The baton?

1 Q Yes.

2 A The thing with the video was that in between parts of  
3 this Mr. Beatson is calling the police and recording. But then  
4 at certain points when the police are calling him back for some  
5 reason it knocked out the ability to continue to record, so it's  
6 hit and miss in certain spots because the police are contacting  
7 him back.

8 Q What I am saying is the baton on that video anywhere?

9 A No, not to my recollection. I know that he goes into  
10 the trunk of the car. There is some cursing back and forth  
11 between them and issues with the baton.

12 Q But all of this arose out of him seeing the kids smear  
13 feces on a mailbox?

14 A Correct.

15 Q When you spoke with the -- when you spoke with the  
16 officers about the particular incident did they indicate who the  
17 other witnesses or any other witnesses that were present to see  
18 all this?

19 A They did make mention of those witnesses, yes.

20 Q Were those witnesses present at the trial?

21 A At least one of the witnesses was present at trial. It  
22 might have been both of them present at trial, but there were  
23 witnesses, yes.

24 Q Were you able to talk to that witness?

25 A Yes, I was.

1 Q And based on that, did that help you develop your trial  
2 strategy?

3 A A little bit in reference to that because one of the  
4 witnesses he didn't see. He could hear, but he did not see and  
5 the other one indicated that he could see from where he was,  
6 yes.

7 MS. MOODY: I beg the Court's indulgence.

8 No further questions.

9 THE COURT: Anything further?

10 MR. JOHNSON: No, Your Honor. I just point out,  
11 as you were just mentioning, the arrest warrant I am  
12 looking at the defense code and the code section  
13 16-3-600 (E)2 and looking it up it states " A person  
14 commits the offense of assault and battery in third  
15 degree if the person unlawfully injures another person,  
16 or offers or attempts to injure another person with the  
17 present ability to do so."

18 I know you asked about the assault and the battery,  
19 but that is what the statute says.

20 THE COURT: Yes, sir. You may I step down.

21 THE WITNESS: Thank you.

22 MR. JOHNSON: The state has no further witnesses.

23 THE COURT: Anything further from the parties?

24 MS. MOODY: No, ma'am.

25 THE COURT: Any argument?

1 MS. MOODY: Beg the Court's indulgence.

2 THE COURT: Sure.

3 MS. MOODY: No argument, Your Honor. We just ask  
4 the Court it take it under advisement.

5 THE COURT: Anything from the State?

6 MR. JOHNSON: Just briefly, Your Honor. The State  
7 would ask you to deny this application based on  
8 counsel's testimony alone, you can take Mr. Beatson  
9 testimony account certainly you must do so, but counsel  
10 testified that she received this case. She received  
11 e-mails, spoke with Mr. Beatson, met with Mr. Beatson,  
12 filed and reviewed Discovery, copies of the incident  
13 report, the video, stated that she filed a motion to  
14 recuse based on information provided by Beatson. Direct  
15 quote from Strickland versus Washington, 466 U.S. 688  
16 (1984) at 691, Strickland states "Counsel's actions are  
17 usually bases, quite properly, on informed strategic  
18 decisions made by the defendant and on information  
19 supplied by the defendant.

20 She made that motion to recuse based on information  
21 supplied by Mr. Beatson. She is quite properly able to  
22 do so and should not in hind site be seen as ineffective  
23 on that issue.

24 As far as the video, her not having a copy, she  
25 requested Mr. Beatson to bring a copy. He did so. The

1 jury saw that and the jury was also able to review it if  
2 they wanted to. According to counsel's testimony they  
3 did not want to review that video. They made their  
4 decision. Found Mr. Beatson guilty and I think that  
5 verdict should stand and that counsel should not be held  
6 ineffective for not bringing a copy of her video. She  
7 also stated that when she tried to pull it up on her  
8 computer system it simply did not sync, but the jury was  
9 able to see that video and therefore there is no  
10 prejudice in her not having a copy of that.

11 THE COURT: I will review the matter further. I  
12 need to reread a portion of the record that has been  
13 provided, specifically the appeal that was filed by Mr.  
14 Beatson in light of the testimony that has been given  
15 and then I will issue an Order on that.

16 MR. JOHNSON: Thank you, Your Honor.

17 MS. MOODY: Thank you, Your Honor.

18 (END OF TRANSCRIPT)  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, the undersigned Aileen Butler, Official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 19th day of February, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 23, 2015

Aileen Butler

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

2015 MAY 14 PM 4: 41

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

David R. Beatson,

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

Case Number: 2014-CP-461538

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED-RECEIVED  
MAY 14 PM 4: 18  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

This matter came before the Court by way of an Application for Post-Conviction Relief filed May 9, 2014. The Respondent made its Return on August 13, 2014. An evidentiary hearing into the matter was convened on November 19, 2014, at the Moss Justice Center in York, South Carolina. Leah B. Moody, Esquire, represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Toni Johnson, Esquire, Applicant's trial counsel (Counsel), also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, the Application, and the State's Return.

**PROCEDURAL HISTORY**

The Applicant was charged with Assault and Battery, 3<sup>rd</sup> degree, on or around March 8, 2013. On August 6, 2013, the Applicant proceeded to a jury trial in magistrate's court and was found guilty. The Honorable Johnny Grason sentenced Applicant to a fine of \$400 or jail time. The Applicant appealed this verdict to the Sixteenth Judicial Circuit Court. The Honorable John C. Hayes III denied this appeal on January 13, 2014. The Applicant is not currently confined. At the hearing, Applicant proceeded on his claims of ineffective assistance of trial counsel.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. The Court has also reviewed all relevant documents to assist in judging credibility. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80.

*ml*

### Summary of Testimony

At the evidentiary hearing, Applicant testified that he was convicted of Assault and Battery, 3<sup>rd</sup> degree in Magistrate's Court. He was represented by Counsel and communicated with Counsel by phone and email. Applicant told Counsel about the officer involved and that Victim was his neighbor. Applicant testified about his version of the facts of the case. Applicant claimed he was getting ready for work when he saw some kids vandalizing a mailbox, so he followed the kids. Applicant stated Victim came out of his house and threatened Applicant. Applicant then stated he pulled out his camera phone, which Victim did not appreciate. Applicant ran back to his house, pulled out a baton, and struck Victim. Applicant testified the officer who arrived on the scene gave Applicant attitude because of a previous incident. Applicant claims the video on his phone shows the officer threatening Victim to make a report. Applicant was then arrested for Assault and Battery, 3<sup>rd</sup> degree.

Applicant testified he did not meet with Counsel at the initial appearance because Counsel was not there, so he asked for another attorney. Applicant stated he thought he was supposed to speak with Counsel about the video and the officer and to discuss a plea or trial. Applicant stated when his case was called for trial, the judge denied a continuance and instructed him and the attorney that appeared with him to strike a jury. Applicant testified he discussed a plea to pay the fine and not spend 30 days in jail. Applicant believed he had a good case and rejected the offer. Applicant testified his next court appearance was for trial. Prior to trial, Applicant, through Counsel, filed a motion for the judge to recuse himself, which was denied. Applicant stated he emailed a copy of the video to Counsel prior to trial, and Counsel copied the video onto a DVD. Applicant claims Counsel did not bring the video to trial and that he wanted this video to be "heavily emphasized" at trial, which Counsel did not do. Applicant testified because the video was short, he wanted it played a couple of times. Applicant also testified he expected the video to be used during Counsel's closing argument and that he expressed this concern to Counsel.

Applicant further testified the Sheriff's Office possessed a "Dashcam" video and a video from the officer's supervisor, along with several audio recordings, which were entered into evidence. Applicant stated his video was also entered into evidence. Lastly, Applicant testified that he believes Counsel did not have sufficient time to prepare for trial, that the video was not available for the jury during deliberations, and that the video was not emphasized during his trial.

On cross-examination, Applicant admitted that both he and Victim testified at his trial. Applicant admitted that the jury saw all of the videos during his trial and still found him guilty.

Counsel testified she was appointed to Applicant's case as a public defender. Counsel stated she received Applicant's emails and spoke with him on the phone. Counsel stated she filed and received discovery, including the incident report and the videos. Counsel testified she reviewed the videos with Applicant. Counsel then testified Applicant wanted a trial. Counsel stated she discussed with Applicant the issues concerning the officer, Victim, and the presiding judge. Counsel also stated she filed a motion for the judge to recuse himself based on the information Applicant supplied to her.

Counsel testified the defense strategy was that Applicant did not assault Victim even though Applicant presented a baton. She based this defense theory on her experience as an attorney and the facts of the case. Counsel testified that at trial the defense put up its case, and Applicant testified. Counsel stated she cross-examined all of the witnesses, and the jury viewed the video. Counsel stated she requested Applicant provide a copy of the video, which he did. Counsel further testified she emphasized the video during her closing argument, and if the jury wanted to see the video again, it could have requested to do so, but it did not. Counsel lastly testified she had sufficient time to prepare this case and did prepare it by meeting with Applicant, talking to the officer, viewing the video, filing the motion and cross-examining the witnesses.

On cross-examination, Counsel testified she filed the motion for the judge to recuse himself based on information from Applicant that the judge presided over a previous case in which Applicant was involved. The information that Applicant supplied was that Victim had been coming to Applicant's residence and that Applicant wanted a restraining order against Victim. Counsel stated she did not have a copy of the video because Applicant had emailed the video and she could not copy it, but Applicant brought a copy to trial. Counsel also stated she did not bring copies of the officers' videos, but they brought copies to trial. Additionally, Counsel testified she met with Applicant three to four times and communicated via email and phone prior to trial. Counsel stated she felt prepared for trial and that Applicant was prepared.

Upon questioning from the Court, Counsel testified the Magistrate Judge told Applicant the restraining order was not filed in the proper venue and because of this, Applicant thought the judge would be against him at trial. Therefore, Counsel filed the motion for the judge to recuse himself

based on this information supplied by Applicant.

#### **Ineffective Assistance of Counsel**

Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, supra. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland, supra). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court finds that Applicant’s allegation that Counsel did not conduct an adequate pre-trial investigation is without merit. The “brevity of time spent in consultation, without more, does not establish that counsel was ineffective.” Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel’s alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); United States v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Here, the Applicant did not point to any specific matters Counsel failed to discover that would change the outcome of his trial. Additionally, Counsel testified she had adequate time to prepare for trial, met with Applicant on multiple occasions, reviewed all of the State’s evidence, including the various videos, and prepared Applicant for trial. This Court finds Counsel’s testimony

concerning her preparation for trial credible and Applicant's testimony concerning Counsel's preparation not credible. Therefore, this Court finds this allegation meritless.

Regarding the use of the video, Counsel stated she did not forget to bring the video to the trial. She stated that she knew Applicant was going to bring his video. She said there was a video she neglected to bring to trial, but it was a different video, from the officers, and it was not necessary for their defense. The jury did watch Applicant's video, and Counsel stated she emphasized the video in her closing statements. It is the jury's decision whether they wanted to rewatch the video during deliberations, and they did not choose to do so. Based on this information, there is no basis to the allegations that Counsel acted ineffectively with respect to using the video at trial.

Last, Appellant claims that Counsel submitted the motion for recusal of the judge on the wrong basis. Counsel testified she submitted the motion based upon her understanding of the situation between Appellant and the presiding judge as Appellant had described it. Appellant testified that in his opinion, the basis for the recusal should have been his filing a complaint against the presiding judge for not allowing him to file a civil lawsuit in the past. The basis in the motion instead was about the restraining order. Counsel testified that she did not think the basis Appellant preferred for the motion was sufficient, and used a different, accurate basis for the motion. This Court finds that Applicant has not proven that he was sufficiently prejudiced by Counsel's actions. Regardless of the reason, Counsel did move for the presiding judge to recuse himself, and the judge declined to do so. This Court does not find that Applicant has successfully proven ineffective assistance of counsel on this allegation.

### CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South


all  
#5

Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

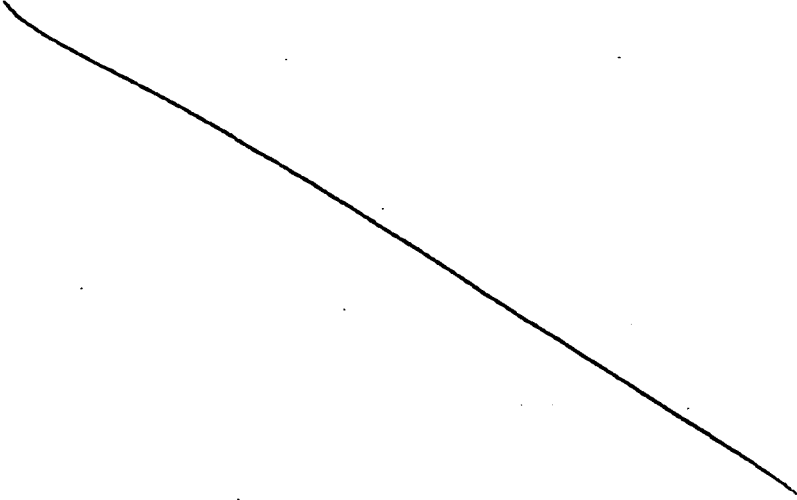
**ORDER**

**IT IS THEREFORE ORDERED** that the Application for Post-Conviction Relief must be denied and dismissed with prejudice.

**AND IT IS SO ORDERED.**

  
\_\_\_\_\_  
Alison Renee Lee  
Presiding Judge

May 8, 2015  
Columbia, South Carolina



arl  
#6

ORIGINAL

AFFIDAVIT

STATE OF SOUTH CAROLINA

York County/  Municipality of

York

Personally appeared before me the affiant

W Lowery

and says that defendant

David R Beatson

did within this county and state on or about

03/08/2013

County/  York

Municipality of

York

violate the criminal laws of the

State of South Carolina (or ordinance of

in the following particulars:

DESCRIPTION OF OFFENSE Assault / Assault & Battery 3rd degree

REPORT # 201300007445

OFFICE OF THE ATTORNEY GENERAL  
DETENTION DIVISION  
YORK, SOUTH CAROLINA

RECEIVED

2013 MAR 8 PM 6:54

who

STATE OF SOUTH CAROLINA

York County/  Municipality of

York

Signature of Affiant

Affiant's Address Moss Justice Center

York, SC 29745-7428

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/8/2013 defendant David R Beatson

did violate the criminal laws of the State of South Carolina (or ordinance of

York County/  Municipality of

York

as set forth below:

DESCRIPTION OF OFFENSE: Assault / Assault & Battery 3rd degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or

her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as

soon thereafter as is practicable

Sworn to and subscribed before me

on 03/08/2013

Judge's Address 1675-3C York Highway

York, SC 29745-

Judge's Telephone (803)628-3095

Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL ORIGINAL ORIGINAL

ARREST WARRANT

N-231736

STATE OF SOUTH CAROLINA

York County/  Municipality of

York

THE STATE 201300007445

against

David R Beatson

Address: [Redacted]

Clover, SC 29710-

Home: [Redacted] SSN: [Redacted]

ex: M Race: W Height: 6 3 Weight: 250

L State: SC DL #: [Redacted]

Agency ORI #: SC0460000

rescuing Agency: York County Sheriff

rescuing Officer: W Lowery - L4277

Offense: Assault / Assault & Battery 3rd degree

Offense Code: 3414

Order/Ordinance Sec: 16-03-0600 (E)(2)

This warrant is CERTIFIED FOR SERVICE in the

York County/  Municipality of

York

The accused

to be arrested and brought before me to be

held with according to the law.

Signature of Judge.

(L-S.)

RETURN

copy of this arrest warrant was delivered to

defendant David R. Beatson

3-8-13

Signature of Constable/Notary Public

400.00

Bethel / Kings Mountain Magistrate 254994

201 South Main Street 8.9.13-14-13

Clover, SC 29710

5/4-13 169

0800 AM

ORIGINAL ORIGINAL ORIGINAL