Antonio Gordon, #259798
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4848 Goldmine Hwy
Kershaw, South Carolina 29067

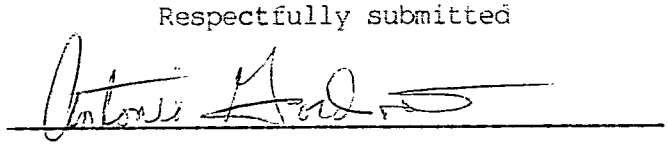
January 13, 2016

RE: Antonio Gordon v. State of South Carolina
Appellate Case N.: 2015-001014

Dear Clerk:

Please find a copy of Petitioner's Motion to supplement Explanation/Petition for writ of certorari currently pending in your court jurisdiction. The opposing counsel has been served with a copy of the same.

Respectfully submitted



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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From York County

Court of Common Pleas

John C. Hayes,III,Presiding Judge

Antonio Gordon, Appellate Case No.2015-001014 Petitioner,

v.

State of South Carolina, Respondent.

Motion to Supplement Explanation/

Petition for Writ of Certorari

The Petitioner filed a Rule 60(b)(5),SCRCP motion dated April 13,2015 filed April 27,2015 in York County,asserting that the judgment in Antonio Gordon v. State,Case No.:2000-CP-46-1414,should be reopen because PCR Counsel Tara D. Shurling,ESQ committed fraud upon him and the court,when she in the record informed the PCR court Petitioner asked her to assert several jurisdictional claims and constitutional challenges to S.C. Code Ann § 20-7-6605(1)(supp.1998) Title Definition of "[C]hild" statutory,but instead of presenting the claims Petitioner ask her to present,she waived the claims without Petitioner's consent and then recharacterized them as "[i]neffective assistance of counsel",namely,"Plea counsel failed to make a concerted effort to convince the solicitor to remand his case to family court",thereby,depriving Petitioner his statutory right to present all his claims in one PCR ("one full bite at the apple") pursuant to Odom v. State,523 S.E.2d 753 (S.C.1999). See Appendix pages 570-576. The Honorable John C. Hayes,III,dismissed the Petition based upon Petitioner failed to file his Rule 60(b) motion within a reasonable time pursuant to Rule 60(b). See Appendix page 590.

On June 22,2015 the Petitioner filed in this Court his "Explanation pursuant to Rule 243(c) and Petition for writ of certorari with appendix". Petitioner presented the following claims in his statement of issues on appeal:

(1)..Whether the lower court erred when it found Petitioner did not file his motion within a reasonable time under Rule 60(b) when he asserted a Odom v. State claim?

(2)..Whether this court should exercise its original jurisdiction because of the unusual procedural history of the underlying criminal matter and post-conviction matter and determine if Petitioner is entitled to have a second PCR under section 17-27-90?

(3)..Whether the lower court erred when it found Petitioner did not file his Rule 60(b) motion within a reasonable time where he presented reliable evidence the fraud upon him and the court had recently came to light and that he acted well within due diligence in discovering the fraud in light of his limited I.Q. in that he have been consistently pursuing his rights and filed his motion within a reasonable time after discovering the fraud upon him and the court?

(4)..Whether judge Hayes had the authority to issue an order in the instant case where he signed a order previously recusing his self and changing venue to Richland County?

The public interest is important that resolution is required for future guidance concerning when "[F]amily Court/General Sessions Court" acquires jurisdiction over a person sixteen years of age "[C]harged with" a class A,B,C, or D felony as defined in section 16-1-20 or a felony which provide for a maximum term of imprisonment of fifteen years or more under S.C. Code Ann § 20-7-6605(1) (supp.1998) Title Define "[C]hild" statutory. See FnA Section 20-7-6605(1) provides in relevant part:

FnA Section 20-7-6605(1) is formally cited as 63-19-30 "Juvenile Justice Code".

"[C]hid" means a person less than seventeen years of age. "Child" does not mean a person sixteen years of age or older who is "[c]harged with" a class A, B,C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more.

The Petitioner also contends the public interest is important that resolution is required where language in section 20-7-6605(1) term "[c]harged with" is vague and conflict with other sections of the children code of laws,therefore,raising serious important constitutional and jurisdictional questions under S.C. Const Art III.,§ 34(x) and the 14th amendment to the United States Constitution.See ATC V. Charleston City,669 S.E.2d 337,341 (S.C.2008)(Where this court exercised its jurisdiction because the public interest is important its resolution is required for future guidance).

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(1)..Whether family court acquired first jurisdiction over the subject matter and the petitioner's person upon him being taken into custody,which warrant his guilty plea judgment in General Sessions void ab initio because proceedings under the Children code of laws was not instituted?

(1)(a)..Whether the term "[c]harged with" in section 20-7-6605(1) is unconstitutionally vague,which render the statute unconstitutional?

(2)..Whether section 20-7-6605(1) is void as being in violation of South Carolina Constitution Article III., § 34(x) and the equal protection clause of the 14th amendment to the United States Constitution?

ARGUMENT

Family Court acquired first jurisdiction over the subject matter and the Petitioner's person upon him being taken into custody,which warrant his guilty plea judgment in General Sessions void ab initio because proceedings under the Children code of laws was not instituted

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In State v. Graham,532 S.E.2d 262 (S.C.2000),this court held murder committed by a sixteen year old person was properly in the circuit court and that the circuit court had jurisdiction to accept his guilty plea. The Court predicated its decision based upon family court were a statutory court created by the legislature and,therefore,is of limited jurisdiction. Its jurisdiction is limited to that expressly or by necessary implication conferred by statute. The jurisdictional authority of the court is set forth in the children code.South Carolina Dep't of Mental Health v. State,301 S.C. 75,390 S.E.2d 185 (1990). The court also found that S.C. Code Ann § 20-7-390 definition of a "[C]hild" statutory was repealed to be section 20-7-6605(1) which "exclude" those persons sixteen years of age "[Charged with]" classes A,B,C, or D felonies punishable by a maximum term of imprisonment of fifteen years or more.

However,this court in Graham did not address whether or not S.C. Code Ann § 20-7-7205(a)(supp.1998) Title "Taking into custody,release,notification",place all persons less than seventeen years of age who have violated or alleged to violate any state or local law or municipal ordinance prior to become seventeen years of age in family court's exclusive original jurisdiction. Section 20-7-7205(a) provides in relevant part:

> "When a child found violating a criminal law or ordinance is taken into custody,the taking into custody is not an arrest.The jurisdiction of the court attaches from the

time of the taking into custody".See Fn1

Also in graham this court did not address S.C. Code Ann § 20-7-400(a),(3)(Supp.1998) Title "Exclusive original jurisdiction of family court",which provides in relevant part:

> (a) Except as otherwise provided herein,the court shall have exclusive original jurisdiction and shall be the sole court for initiating action:
>
> (3) Concerning any child seventeen years of age or over, living or found within the geographical limits of the courts jurisdiction,"Alleged to have violated any state or local law or ordinance prior to having become "[s]eventeen" years of age such person shall be dealt with under this chapter relating to children.

Although the constitution specifically authorized the legislature to provide the circuit court jurisdiction for sixteen year old persons "charged with" certain felonies,the legislature instead retained the language of section 20-7-400(a),(3),supra,placing all persons **less than seventeen years of age**in family court's exclusive original jurisdiction,who have violate or alleged to have violated any state or local law or ordinance prior to having become seventeen years of age and such person shall be dealt with under this chapter relating to children upon being taken into custody pursuant to section 20-7-7205(a),supra. See State v. England,245 S.E.2d 608 (S.C.1978)(Finding defendant was a person less than seventeen years of age and since jurisdiction had not been relinquished by family court,he should have been dealt with under the children code).

Even assuming arguendo that section 20-7-6605(1) does place Petitioner in circuit court jurisdiction when he is "charged with" a class A,B,C, or D felony as defined in section 16-1-20 or a felony which provide for a maximum term of imprisonment of fifteen years or more,petitioner's interpretation

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Fn1 Pursuant to § 20-7-6605(2) the court means the family court.

of the term "[c]harged with" in section 20-7-6605(1),means until he was formally charged by bill of information or grand jury indictment. See State v. Perique,439 So.2d 1060 (1983);State v. Lacour,398 So.2d 1129 (La.1981);State ex rel.CoCo,363 So.2d 207 (La.1981),where Louisiana Supreme Court found the term "charged with" in a similar statute that of South Carolina section 20-7-6605(1) to mean by bill of information or grand jury indictment and or Petitioner contends that the term "[c]harged with" means informed of the accusation at the initial appearance before a judicial officer at which a defendant is told of the formal accusation against him and restrictions are imposed on his liberty.See Fn2 See Michigan v. Jackson,475 U.S. 625,629,106 S.ct 1404;Brewer v. Williams,430 U.S. 387,398-399,97 S.ct 1232.See Fn3 Petitioner argue to this court that upon him being "[t]aken into custody on July 23,1998 he was not [c]harged with any crime until he went to his initial appearance before a judicial officer at which he was

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Fn2 Petitioner contends that the use of the term **"charged with"** in § 20-7-6605(1) of the statute are vague and indefinite because it is subjected to a wide range of different meanings dependent upon a person 16 years of age being excluded from the definition of child and family court jurisdiction when being "charged with" a class A,B,C, or D felony as defined in section 16-1-20. According to the Petitioner,the language used does not convey a sufficient definite warning of the conduct proscribed,and persons of common intelligent must necessarily guess at its meaning and differs as to its application which renders the provision unconstitutional.Smith v. Goguen,94 S.ct 1242 (1974);Curtis v. State,549 S.E.2d 591,598 (2001),cert.denied 535 U.S. 926,122 S.ct 1295 (2002),quoting City of Beaufort v. Baker,432 S.E.2d 470,472 (1993).

Fn3 Petitioner ask this court to take judicial notice of Detective John Thicken's testimony at appendix page 274 line 16-page 275 line 15 detailing Petitioner was not informed or **"charged with"** any criminal offenses.

told of the formal accusation against him and or by bill of information or grand jury indictment,therefore,Petitioner remained in family court exclusive original jurisdiction.State ex rel. CoCo,supra.

Unfortuntently Petitioner could have not been indicted by the York County grand jury until proceedings had been instituted under the provisions of the South Carolina Children Code of Laws pursuant to section 20-7-400(a),(3),supra,State v. England,supra. Even if Petitioner was indicted by the Grand Jury or received a bill of information,or charged with a crime at the initial appearance before a judicial officer at which he was told of the formal accusation against him,"as a general rule,jurisdiction once acquired is not defeated by subsequent events,even though they are of such a character as would have prevented jurisdiction from attaching in the first instance". 21 C.J.S.,Courts § 93 Butler v. White,95 S.E.2d 496 (1956);also see Minneapolis and St L.R. Co. v. Peoria and P.U. Ry. Co,270 U.S. 580,46 S.Ct 402,70 L.Ed 743. For once jurisdiction of a court attaches it exists for all time until the cause is fully and completely determined.Michigan Trust Co. V. Ferry,228 U.S. 346,33 S.Ct 550,552,57 L.Ed 867,where Justice Holmes,writing for the court,stated; "Ordinarily jurisdiction over a person is based on the power of the sovereign asserting it to seize that person and imprison him to await the sovereign's pleasure. But when that power exists and is asserted by service at the beginning of a cause,or if the party submits to the jurisdiction in whatever form may be required,we dispense with the necessity of maintaining the physical power,and attribute the same force to the judgment or decree whether the party remain within the jurisdiction or not. This is one of the decencies of civilization that no one would dispute".

Likewise,family court acquired "[f]irst" jurisdiction over Petitioner's person and the subject matter upon him being taken into custody pursuant to section 20-7-7205(a),supra,and section 20-7-400(a),(3),supra,which renders Petitioner's indictments that was true billed October 19,1998 a nullity void ab initio pursuant to State v. McClure,289 S.E.2d 158 (S.C.1982) where this court held "No indictments may be true billed by the grand jury when

the circuit court lacks jurisdiction". Its clear the grand jury lacked the authority to indict petitioner because the jurisdiction of the subject matter and his person remained within family court's exclusive original jurisdiction pursuant to sections 20-7-7205(a);20-7-400(a),(3);State v. England,supra,and it is also contended by Petitioner his guilty plea judgment is void because the subject matter jurisdiction over his offenses rested exclusively with the juvenile court.State v. Mayfield,241 Kan 555,561,738 P.2d 861 (1987) Provides: Thus,we think it is abundantly clear that the Kansas juvenile code (and now the Kansas juvenile offenders code) established an exclusive procedure for those subject to its provisions..To obtain such jurisdiction the proceedings had to be instituted under the provisions of the Kansas juvenile code. Failure of the State to proceed in accordance with the code deprived the court of jurisdiction to accept appellant's plae.

In Mayfeild,the defendant was charged as an adult,pled guilty as an adult,and was sentenced as an adult. But,he was a juvenile when he committed the crime. The Supreme Court reversed his conviction based upon the trial court lacking subject matter jurisdiction. The Court held:

"At the outset we note that subject matter jurisdiction cannot ordinarily be waived. In In re Estate of Freshour,177 Kan.492,Syle 3,280 P.2d 642 (1955),we held the "jurisdiction of the subject matter of an action is vested by statute and cannot be conferred on a court by consent,waiver or estoppell".241 Kan,at 558,738 P.2d 861.

Just as Mayfield,the Petitioner was charged as an adult,pled guilty as an adult,and was sentenced as an adult. But,he was a child when he committed the crime for which he pled to and the proceedings in sections 20-7-7205(b)(supp.1998) Title "Taken into custody",20-7-7215(a),(b)(supp.1998) Titled "Detention hearings;psychological screening,20-7-7415(a),(b),(c),(d)(supp.1998)Title "Pre-hearing inquiry and investigation;notice and 20-7-7605(1),(4),(6) and (10)(supp.1998) Title "Transfer of Jurisdiction",was not instituted and failure of the State to proceed in accordance with children code of laws deprived the General Sessions Court of jurisdiction to accept Petitioner's plea.State v. Mayfield,supra;State v. England,supra. The acts of a court with respect

to a matter as to which it has no jurisdiction are void.Guthrie,352 S.C at 107,572 S.E.2d at 312.

Finally,the jurisdiction of a court over the subject matter of a proceeding is fundamental.Anderson v. Anderson,299 S.C. 110,115,382 S.E.2d 897,900 (1989)."Lack of subject matter jurisdiction may not be waived,even by consent of the parties,and should be taken notice of by this court". Id. It is well-settled that issues related to subject matter jurisdiction may be raised at any time,including for the first time on appeal in this Court.Carter v. State,329 S.C. 355,495 S.E.2d 773 (1998);State v. Funderburk,259 S.C. 256,191 S.E.2d 520 (1972).See Fn4

S.C. Code Ann § 20-7-6605(1)(supp.1998) Title Define "[C]hild" statutory is void as being in violation of South Carolina Const Art III., §34(x) and the equal protection clause of the 14th amendment to the United States Const

Petitioner next attacks section 20-7-6605(1) definition of "[C]hild" statutory under Article III.,§ 34(x) of the South Carolina Constitution which states; "The General Assembly shall forthwith enact general laws concerning said subjects for said purposes,which shall be uniform in their operation".South Carolina Constitution Art III.,§ 34(x).

Fn4 PCR Counsel's Action of recharacterizing Petitioner's subject matter jurisdiction claim during the PCR hearing as ineffective assistance of counsel claim,clearly violate this court ruling in Anderson v. Anderson that of,subject matter jurisdiction may not be waived,even by consent of the parties,and should be taken notice of by this court. Id.

Petitioner contends that section 20-7-6605(1) of the children code of laws violates this provision by creating a scheme that treats one class of children charged with a class A,B,C, or D felony as defined in section 16-1-20 or a felony which provide for a maximum term of imprisonment of fifteen years or more,differently then another class children charged with the same crimes. Petitioner define the different "classes" created by the statute as (1) those less than seventeen years of age who remain in family court exclusive original jurisdiction regardless of the felony charge;(2) those sixteen year old persons or older charged with a class A,B,C, or D felony as defined in section 16-1-20 or a felony which provide for a maximum term of imprisonment of fifteen years or more excluded from family court exclusive original jurisdiction but may be remanded to family court for disposition of the charge at the discretion of the solicitor.

This arbitrary classification scheme is not reasonably related to any state interest,Petitioner argue,because the legislation is devoid of any reason for permitting identical situated children to receive disparate treatment,resulting in one group that is eligible for rehabilitation in the juvenile system and another that faces the very different circumstances of the adult system. Petitioner argue that no state interest is served by allowing such unreasonable disparity.

Petitioner's claim,as set out above,that section 20-7-6605(1) of the South Carolina Children code of laws,plainly states that a certain class of children will be treated in one way (remain in family court jurisdiction) while another class of like accused children will be treated in another,singled out when (charged with certain felonies). See S.C. Code Ann § 20-7-6605(1). Petitioner contends that because he was tried as an adult for the same crimes that some of his peers less than seventeen years of age "charged with" and handled under the children code of laws,he was treated disparately. The Act treats a certain subclass of children nonuniformly. Children sixteen years of age "charged with" class A,B,C, or D felonies as defined in section 16-1-20 or a felony which provide for

a maximum term of imprisonment of fifteen years or more,statutorily indistiguishable from those remain in juvenile jurisdiction,15,14,13 and 12 year old children "charged with" the same felonies.

By the very terms of the statute,they are accused and charged with the same offenses and fall into the same age ranges,less than seventeen years of age. There is absolutely nothing in the statute to identify the juveniles to be tried as adults,it describes no distinctive characteristics to set them apart from children in the other statutory class who remain in juvenile jurisdiction "charged with" the same felonies. However,there are critically important differences in the treatment of those children sixteen years of age "charged with" class A,B,C or D felony as defined in section 16-1-20 or a felony which provide for a maximum term of imprisonment of fifteen years or more ultimately tried as an adult compared to those "less than seventeen years of age,15,14,13 and 12 year old children "charged with" the same felonies left in family court exclusive original jurisdiction". for instance,cases tried in the juvenile court are considered civil rather than criminal proceedings.See Kent v. United States,86 S.ct 1045 (1966). This has significant ramifications for petitioner's future criminal record. Moreover,any juvenile committed to a secure facility under the children code must be released at age twenty-one pursuant to S.C. Code Ann § 20-7-7810(b)(supp.1998) Title "Commitment". Therefore,because section 20-7-6605(1) applies only to individual fifteen years of age or less charged with class A,B,C, or D felonies as defined in section 16-1-20 or a felony which provide for a maximum term of imprisonment of fifteen years or more,in the statutory class is left in the juvenile system faces a maximum potential sentence of nine (9) years or less.

The foregoing scenario is a dramatic contrast to that facing another juvenile in the same statutory class who is charged as an adult,specifically sixteen year old children "charged with" class A,B,C, or D felonies as defined in section 16-1-20 or a felony which provide for a maximum term of imprisonment of fifteen years or more. The effect of certification is to conduct the proceedings in every way as if the juvenile were an adult.State v. Graham,supra. Aside from acquiring a permanent criminal record,Petitioner

faced a potential life sentence,obviously a much greater deprivation of personal liberty than that risked by his counterpart who is tried as a child.Therefore,the statute permits two identical situated children,faced radically different penalties and consequences without any statutory guidelines for distinguishing between them this amounts to unequal treatment.See State v. Owens,103 N.M. 121,703 P.2d 898,901 (1984)("[S]tatute which permit the state to subject one person to the possibility of greater punishment than another who has committed an identical act violate the equal protection clauses of the state and federal constitutions".) Cited in Hughes v. State,653 A.2d at 251 (1994). Therefore,section 20-7-6605(1) violates South Carolina Constitution Art III., § 34(IX)(X),Special legislation and Uniform operation law,South Carolina Constitution Art I., § 3 and the equal protection clause of the 14th amendment to the United States Constitution.

Assuming arguendo Petitioner's class of like are not "less than seventeen years of age. Petitioner contends section 20-7-6605(1) violates South Carolina Constitution Art III., § 34(x) because the statutorily-unfettered grant of authority to the solicitor to decide which persons sixteen years of age "charged with" class A,,B,C, or D felonies as defined in section 16-1-20 or a felony which provide for a maximum term of imprisonment of fifteen years or more will be remanded to family court exclusive original jurisdiction implicates particular concerns about special legislation and constitutional guarantee of equal protection of the laws under the 14th amendment to the United States Const and S.C. Const Art III.,§ 34(IX,(x)

For example,if two juveniles sixteen years of age in the same county or in two different counties commit essentially the same class ,A,B,C, or D felonies,and are essentially alike in terms of their "personal factors",one juvenile could be remanded to Family Court and one will remain in General Sessions Court-depending solely upon the decision or different philosopies of that one solicitor or two different solicitors.

The equal protection concerns which arises from such a grant of (staturily) unreviewable and standardless authority to a prosecuting attorney led the the Supreme Court of Utah to hold that a Utah statute which gave prosecutors the role of determining which minors would be treated as adults in the criminal justice system violated Utah's State Constitution guarantee of "Uniform of the laws".State v. Mohi,901 P.2d 991 (Utah.1995).

The Court in Mohi applied the traditional equal protection "reasonabl relationship test" to the Utah statute. The court found that the prosecutor's decision as to which juveniles to file adult charges against was arbitrary and standardless and in the sole discretion of prosecutor's who have no guidelines as to how it is to be exercised. Id. at 999 The Mohi court noted that:

> It is ironic that the act sets out in thirteen full paragraphss all of the factors that a court must consider to certify a juvenile into adult system...but contains no guideline for a prosecutor who may choose for any reason or no reason to place that juvenile into adult system.

Id. at 999 (citation omitted).

Similarly,section 20-7-6605(1) poses no obstacle to the prosecutor's considering an unrestrained spectrum of personal and other factors about a child offense and offender,in deciding whether to remand the case of a sixteen year old person "charged with" a class A,B,C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more to be handled as a juvenile offender or try him/Petitioner as an adult. And the prosecutor's consideration is according to the statute in question entirely one-sided,private and unreviewable.hughes v. State,653 A.2d 241 (Del.1994);State v. Mohi,901 P.2d 991 (Utah 1995);State v. Robert Mcl,496 S.E.2d 887 (1997).

The court in Mohi also persuasively refutes the argument that the discretion historically afforded to prosecutorial charging decisions carries over to the....discretion to choose which juveniles to prosecute in adult rather than in juvenile court...The scope for prosecutor sterotypes,prejudices and biases of all kinds is simply to great..The challenged statute [unconstitutionally] permits prosecutors to treat different sixteen year old children accused of the same criminal offenses differently. 901 P.2d at 1003-1004.State v. Owens,supra. Thus,section 20-7-6605(1) violates the

uniform operation of laws under South Carolina Constitution Art III., § 34(x),which is also similar to the statute in Mohi,thereby effecting the guilty plea judgment in the instant case and should be vacated.

Should this Court decline the issues because of some sort of procedural irregularities,the issues could permanently escape this court consideration. This case presents a classic example of a situation which could be capable of repetition,yet evading review.Nebraska Press Ass'n v. Stuart,427 U.S. 539,96 S.ct 2791 (1976);Roe v. Wade,410 U.S. 113,93 S.ct 705 (1973);Moore v. Ogilvie,394 U.S. 814,89 S.ct 1493 (1969);South Pacific Terminal Co. v. I.C.C.,219 U.S. 498,31 S.ct 279 (1911).

Conclusion

It is respectfully asked this Court exercise its original jurisdiction and solve these important jurisdictional and constitutional questions and or whatever this court deem necessary and good in law.

Antoni Gordon

1-13-2016

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Court of Common Pleas

John C. Hayes,III,Presiding Judge

Appellate Case No.:2015-001014

Antonio Gordon, Petitioner,

v.

State of South Carolina, Respondent.

Certificate of Service

I,Antonio Gordon,hereby certify that I did serve Petitioner's Motion to Supplement Explanation/Petition for writ of Certorari on:

Attorney General Office

Justin James Hunter,Esquire

P.O. Box 11549

Columbia,South Carolina 29211

by depositing a copy in the mail with sufficient funds this 13 day of January,2016

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