

Robert L. Dean # 337033
McCormick Corr. Inst.
386 Redemption Way
McCormick, S.C. 29899

RECEIVED

MAR 08 2016

S.C. SUPREME COURT

Dear Clerk:

Could you please send me a date-stamped
copy of this appeal upon receipt, for my record. Thank you in
this regard.

Warmest regard

Robert L. Dean # 337033

STATE OF SOUTH Carolina
In The Supreme Court
Appeal From Pickens County
Court of Common Pleas
Robin B. Stilwell
Chief Administrative Judge
Thirteen Judicial Circuit
Case NO: 2015-CP-39-0794

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MAR 08 2016

S.C. SUPREME COURT

Robert Lee Dean #337033. APPELLANT

vs.


STATE OF SOUTH Carolina. Respondent

Notice of Appeal

Robert Lee Dean #337033 Appeals the order of the
Honorable Robin B. Stilwell dated: 02-08-2016
Appellant received notice of entry of this order on:
02-22-2016

Respectfully Submitted,

Other counsel of Record
Karen C. Ratigan
Asst. Attorney General
P.O. Box 11549
Columbia, S.C. 29211

 #337033
Robert Lee Dean #337033
McCormick Corp. Inst.
386 Redemption Way
McCormick, S.C. 29899

DATED: 2/25/2016

STATE of SOUTH Carolina
IN The Supreme Court

Robert Lee Dean #337033. Appellant

vs.

State of South Carolina. Respondent

Case NO: 2015-CP-39-0194

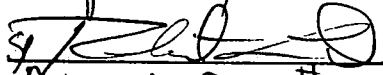
Certificate of Service

RECEIVED

MAR 08 2016

The undersigned hereby certifies that a notice of Appeal has been served on opposing counsel, Karen C. Ratigan, Asst. Attorney General and also on the Clerk of Court for Pickens County and on the Honorable Daniel E. Shearouse, Clerk of the Supreme Court by mailing three copies in envelopes properly addressed with postage prepaid this 025 day of Feb 2016. To the addresses below. S.C. SUPREME COURT

Daniel E. Shearouse
Clerk of Supreme Court
P. O. Box 11330
Columbia, S.C. 29211

Respectfully Submitted,

Robert Lee Dean #337033
McCormick Corr. Inst.
386 Redemption Way
McCormick, S.C. 29899

Karen C Ratigan
Asst. Attorney General
P. O. Box 11549
Columbia, S.C. 29211

Clerk of Court
305 East North Street
Greenville, S.C. 29601

STATE OF SOUTH CAROLINA) AM 10 13
) IN THE COURT OF COMMON PLEAS
 COUNTY OF PICKENS) CLERK) 2015-CP-39-0794
) PICKENS COUNTY
) SOUTH CAROLINA
 Robert Lee Dean,)
 S.C.D.C. No. 337033,)
)
 Applicant,)
)
 v.) **CONDITIONAL ORDER OF DISMISSAL**
)
 State of South Carolina,)
)
 Respondent.)
 _____)

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 29, 2015. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant was indicted at the February 2007 term of the Pickens County Grand Jury for second-degree criminal sexual conduct (CSC) with a minor (2007-GS-39-0346) and lewd act upon a child (2007-GS-39-0347). He was represented by John W. DeJong, Esquire.

Trial

After the State called the case to trial, the Applicant was found guilty. On September 23, 2009, the Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of 20 years for second-degree CSC with a minor and 15 years for lewd act upon a child.

Appeal

A notice of appeal was filed at the South Carolina Court of Appeals. Wanda H. Carter, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense

perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Dean, Op. No. 2012-UP-097 (S.C. Ct. App. filed February 22, 2012).

First PCR and Appeal

The Applicant filed a PCR application on August 31, 2012 (2012-CP-39-1273). The Applicant raised the following issues:

1. Prosecutorial misconduct:
 - a. Illegal enhancement of charges.
 - b. Threats and attempted coercions to induce a guilty plea.
 - c. Brady violation with State witnesses.
 - d. Improper interrogation proceedings.
 - e. Improper trial tactics:
 - i. Bolstering witnesses.
 - ii. Closing arguments.
2. Ineffective assistance of trial counsel:
 - a. Failure to request Brady materials.
 - b. Failure to properly investigate.
 - c. Failure to raise proper objections and preserve relevant issues for appellate review during trial and closing arguments.
 - d. Failure to move for mistrial.
3. Ineffective assistance of appellate counsel:
 - a. Failure to present appropriate issues for appellate review.
 - b. Failure to ensure Applicant's right to present pro se Anders brief.
4. Due process violations:
 - a. Abuse of discretion with preliminary hearing judge.
 - b. Abuse of discretion with trial judge.
 - c. Failure of South Carolina Court of Appeals in granting forty-five days to submit a pro se Anders brief.

In a pro se document captioned "Amendment to Application for Post-Conviction Relief" dated February 14, 2013, the Applicant made the following allegations:

1. Trial judge erred in denying motion for directed verdict.
2. Ineffective assistance of counsel:
 - a. Counsel failed to "properly and timely raise the Corpus Delict issue during trial base on lack of corroborating evidence."

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967).

An evidentiary hearing was convened on April 21, 2014 at the Pickens County Courthouse. R. Mills, Ariail, Jr., Esquire represented the Applicant. The Honorable D. Garrison Hill denied and dismissed the PCR application by order filed May 30, 2014.

The Applicant filed a notice of appeal. Kathrine H. Hudgins, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of a Johnson² petition. The South Carolina Supreme Court denied the petition for writ of certiorari on May 7, 2015. The remittitur was sent on May 26, 2015.

II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. PCR counsel failed to “address or preserve amended P.C.R. issues.”
2. Trial counsel “failed to properly and timely raise the corpus delict issue during trial base on lack of corroborating evidence.”
3. PCR counsel failed to “file a 59(E) motion to preserve for appellate review and denied the petitioner the rights to properly exhaust his available state remedies.”

III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

² Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

The Applicant was convicted of the offenses he challenges in this application on September 23, 2009 and the South Carolina Court of Appeals dismissed the appeal on February 22, 2012. The Applicant was therefore required to file his application before February 22, 2013. This application was filed on June 29, 2015, which was more than two years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.”

IV.

This Court further finds the current application should also be dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a “sufficient reason” why new grounds for relief were not raised or were

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CLERK, 450, 409 S.E. 2d 392

PICKENS COUNTY
SOUTH CAROLINA

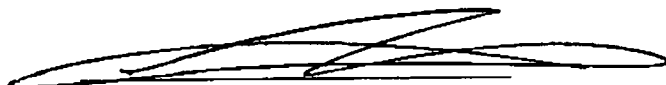
not properly raised in previous applications. Aice v. State, 305 S.C. 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” Id. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the application is dismissed.

V.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Pickens County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 13 day of OCT, 2015.



Robin B. Stilwell
Chief Administrative Judge
Thirteenth Judicial Circuit

COLUMBIA, South Carolina.

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF PICKENS

2015 OCT 16 AM 10 13 CASE NO: 2015CP3900794

IN THE COURT OF COMMON PLEAS

CLERK OF COURT
PICKENS COUNTY

Robert L Dean vs. South Carolina The State of

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.
- 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; Statement of Judgment by the Court:

Dated at Pickens, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

✓ *us mailed*
Robert L Dean 337033 McCormick Corr Inst. 386
Redemption Way McCormick, SC 29899

✓ *emailed*
Karen Christine Ratigan PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Harold P Welborn, Jr.

Harold P Welborn, Jr. - Clerk of Court

ms

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

2015 OCT 16 AM 10:13

IN THE COURT OF COMMON PLEAS

Robert Lee Dean, 337033

Plaintiff

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

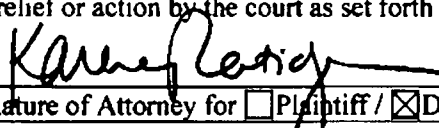
CASE NO.
2015-CP-39-0794

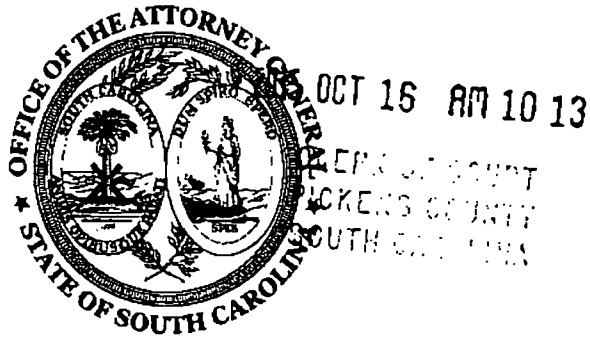
v.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

State Of South Carolina

Defendant.

Plaintiff's Attorney: Robert Lee Dean, 337033, Bar No. Address: MCI 386 Redemption Way McCormick SC 29899 phone: fax: e-mail: other:	Defendant's Attorney: Karen C. Ratigan, Sadag, Bar No. 68331 Address: Post Office 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 type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" 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	September 17, 2015 Date submitted
SECTION III: Motion Fee	
<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:	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	_____ JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Date Filed: _____ Collected by: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	



ALAN WILSON
ATTORNEY GENERAL

September 17, 2015

The Honorable Robin B. Stilwell
Chief Administrative Judge – 13th Judicial Circuit
305 East North Street; Suite 315
Greenville SC 29601

Re: Robert Lee Dean, 337033 v. State of South Carolina
2015-CP-0794

Dear Judge Stilwell:

Enclosed please find the proposed original **Conditional Order of Dismissal** in the above-captioned case. If this order meets with your approval, please sign and forward to the Pickens Clerk of Court to be filed and served.

Sincerely,

Karen C. Ratigan
Senior Assistant Deputy Attorney General

KCR/jacc
Enclosure(s)

cc: Robert Lee Dean, 337033

ETC 10 13
2015 OCT 16 AM 10 13



CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
State of South Carolina
The Circuit Court of the Thirteenth Judicial Circuit

Robin B. Stilwell
Judge

Greenville County Courthouse
305 East North Street, Suite 315
Greenville, SC 29601-2113
Phone: (864) 487-8406
Fax: (864) 235-3625
rstilwellj@sccourts.org

October 13, 2015

The Honorable Pat Welborn
Pickens County Clerk of Court
Post Office Box 215
Pickens, SC 29671

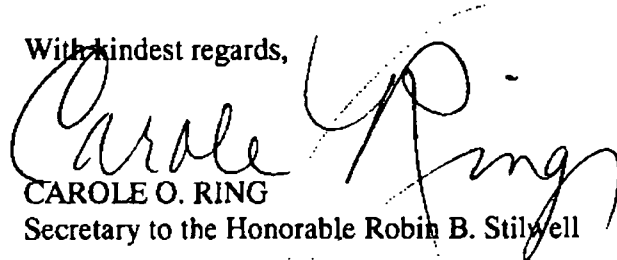
RE: Robert Lee Dean v. State
In the Matter of the Care and Treatment of Christopher Carver

Dear Mr. Welborn:

Enclosed herewith please find two Orders which have been executed by Judge Stilwell in connection with the above-referenced matters. The Judge has asked me to send them to you for filing and distribution to the interested parties. Please let me know if you should need anything else regarding these matters.

Thank you very much for your assistance.

With kindest regards,


CAROLE O. RING
Secretary to the Honorable Robin B. Stilwell

cor
Enclosures

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS)
2016 FEB 18 PD 4: 23015-CP-39-0794

Robert Lee Dean,
S.C.D.C. No. 337033,

Applicant,

v.

State of South Carolina,

Respondent.

FINAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 29, 2015. The Respondent made its return on September 17, 2015, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed October 13, 2015 and filed October 16, 2015, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated November 17, 2015, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

The Applicant submitted a document captioned "Notice of Motion and Motion for Rehearing Pursuant to Rule 59(a) and 59(e)" and dated November 10, 2015. This Court finds this motion is premature.

1


This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant was convicted and sentenced on September 23, 2009 and the South Carolina Court of Appeals dismissed the subsequent appeal on February 22, 2012. As this action was filed on June 29, 2015, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant's second application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on April 21, 2014. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“[A]n applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

This Court notes the Applicant's contention that he received ineffective assistance of counsel on his prior PCR application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S. Ct. 1990 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991). Therefore, “the contention that prior PCR counsel was ineffective is not per se a ‘sufficient reason’ warranting a successive PCR application under § 17-27-90.” Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

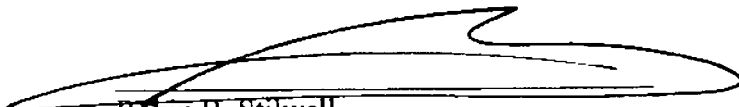
IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's

²
 3

Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

AND IT IS SO ORDERED this 9 day of Feb, 2016.



Robin B. Stilwell
Chief Administrative Judge
Thirteenth Judicial Circuit

Cherokee, South Carolina.

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF PICKENS

CASE NO: 2015CP3900794

IN THE COURT OF COMMON PLEAS

Robert L Dean vs. South Carolina The State of

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.
- 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; Statement of Judgment by the Court:

Dated at Pickens, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the , and a copy mailed first class this 02/25/2016 , to attorneys of record or to parties (when appearing pro se) as follows:

Robert L Dean 337033 McCormick Corr Inst. 386
Redemption Way McCormick, SC 29899

ATTORNEY(S) FOR THE PLAINTIFF(S)

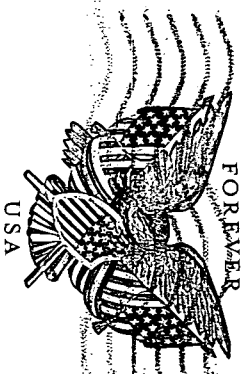
Karen Christine Ratigan PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Harold P Welborn, Jr.
Harold P Welborn, Jr. - Clerk of Court

ROBERT L. DEAN
SCDC # 332033
F-1-A/Room 168
MCEI
382 REDEMPTION WAY
MCCORMICK, S.C.
29599

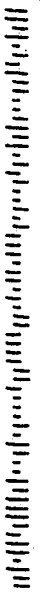
AUGUSTA GA 309
04 MAR 2016 PM 11



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MAIL
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DANIEL SHEARHOUS
CLERK OF SUPREME COURT
P.O. BOX 11330
COLUMBIA S.C.
29211

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