

p. andrew anderson

kristina.m. anderson\*

\*Licensed in SC & GA

anderson anderson LLP

trial attorneys and counselors at law

April 25, 2016

RECEIVED

APR 28 2016

The Supreme Court of South Carolina  
Attn: Daniel E. Shearouse, Clerk  
P.O. Box 11330  
Columbia, South Carolina 29211

S.G. SUPREME COURT

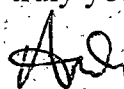
RE: Eric L. Spann, Petitioner v. State of South Carolina, Respondent  
Appellate Case No.: 2016-000661

Dear Sir:

Enclosed for filing please find the original and one copy of the Explanation Pursuant to 243(c) and Proof of Service in this matter. This Explanation is provided in response to the Court's letter of April 13, 2016.

Please return a filed copy of this filing in the pre-addressed, stamped envelope I have enclosed for your convenience.

Very truly yours,



P. Andrew Anderson

PAA/twm  
Enclosures

cc: Daniel Francis Gourley, II, Esquire  
Eric L. Spann

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Doyet A. Early, Circuit Court Judge

Appellate Case Number: 2016-000661

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APR 28 2016

**S.C. SUPREME COURT**

ERIC L. SPANN ..... Petitioner,  
-v-  
STATE OF SOUTH CAROLINA ..... Respondent.

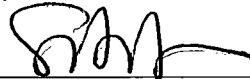
Explanation Pursuant to 243(c)

Pursuant to the Court's letter of April 13, 2016, Petitioner contends that the lower Court's determination that the PCR in question was barred as successive and/or untimely is improper. Petitioner originally filed a DNA PCR on October 9, 2012. A Hearing on the DNA PCR was held before the lower Court on August 27, 2014. It was determined as a part of that action, that the SLED reports at the time of Petitioner's original plea indicated the presence of no blood and no DNA.

Petitioner maintained that he would have never entered a guilty plea on the underlying murder case, which was a stabbing death, had he been aware that there was no blood or DNA evidence. Further, counsel for Petitioner at the time of the original plea was contacted and stated that she could not recall if she had shared the SLED DNA results with Petitioner. The lower Court entered an Order in the DNA PCR on September 22, 2014. That Order is attached hereto and indicates that Petitioner is withdrawing the DNA PCR after colloquy with the Court since there was no remedy available without the presence of DNA. The Order further states that Petitioner would pursue the matter as a PCR regarding the failure of counsel at the time of the plea to provide Petitioner with the DNA test results, or the lack of a result.

This PCR was filed on November 6, 2014, and was Dismissed by the Court in Orders dated January 19, 2016, and again on February 22, 2016. Since the lack of blood or DNA evidence was revealed as a part of the recent DNA PCR, Petitioner contends that this PCR is neither successive nor untimely.

Respectfully submitted this 25 day of April, 2016.



P. Andrew Anderson  
Anderson & Anderson, LLP  
211 York Street, NE  
Aiken, South Carolina 29801  
803.648.6000 - phone  
Attorney for Petitioner

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**S.C. SUPREME COURT**

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

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ERIC L. SPANN ..... Petitioner,

-v-

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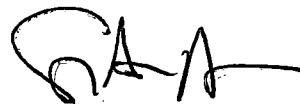
**CERTIFICATE OF SERVICE**

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This is to certify that I have this day served counsel for the Respondent State of South Carolina in the foregoing matter, Daniel Francis Gourley II, Esquire, with a copy of the foregoing EXPLANATION, by depositing in the United States Mail, a copy of the same in a properly addressed envelope with adequate postage addressed as follows:

Daniel Francis Gourley II, Esquire  
South Carolina Attorney General's Office  
P.O. Box 11549  
Columbia, South Carolina 29211-1549

THIS 25 DAY OF APRIL, 2016.



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P. ANDREW ANDERSON  
ANDERSON & ANDERSON, LLP  
211 York Street, NE  
Aiken, South Carolina 29801  
803.648.6000 - phone  
Attorney for Petitioner

C/AZ  
9/22/2014

STATE OF SOUTH CAROLINA )

) IN THE COURT OF GENERAL SESSIONS

COUNTY OF AIKEN )

) FOR THE SECOND JUDICIAL CIRCUIT

ERIC L. SPANN, #245840, )

) Applicant. )

vs. )

Case No.: 1996-GS-02-01545 (F186395)

STATE OF SOUTH CAROLINA, )


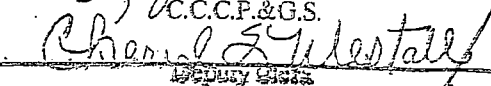
) Respondent. )

ORDER

Date of Hearing:	August 27, 2014
Presiding Judge:	Doyet A. Early, III
Court Reporter:	Bethanie Patterson
Attorney for Applicant:	P. Andrew Anderson
Attorney for Respondent:	David Warren Miller

This matter came before the Court pursuant to Applicant's Application for Forensic DNA testing pursuant to South Carolina Code Ann. § 17-28-10, *et. seq.* Applicant was charged with a stabbing death and pled guilty to murder in 1997. At the Hearing, Applicant appeared with his attorney and the State was represented by the 2<sup>nd</sup> Circuit Solicitor's Office. Applicant's attorney and the State's attorney confirmed that evidence from Applicant's case has been preserved by the Aiken Department of Public Safety, but the evidence contained no DNA. The S.L.E.D. report in this matter indicates that there is no DNA to be re-tested. This Court also reviewed the extensive file in this matter. The parties agreed for this matter to be heard in Lexington County as the Judge over this matter was just reassigned to hold court in Lexington after this matter had been scheduled to be heard. Applicant also agreed for the Judge to hear this matter, despite the fact that Applicant had previously filed a complaint against the Judge in 2012.

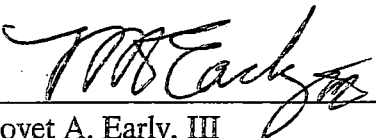
C. Copies - Mr. Spann  
Solicitor Miller  
Andy Anderson

September 22 2014  
  
 Lij Godard  
 C.C.C.P.&G.S.  
 Deputy Clerk  
  
 Cheryl Gulestare  
 Deputy Clerk  
 ASW

Once counsel for the Applicant began his presentation in this matter, the Court stopped the proceedings and the parties engaged in a colloquy regarding the issues before the Court. The Court indicated that given the fact that it is undisputed that there is no DNA present on the evidence in this matter, there was really no relief that the Court could grant to Applicant. There was no DNA present for forensic testing. Based upon this discussion, Applicant agreed to withdraw his PCR for DNA testing and pursue instead a traditional PCR. Applicant insists that his attorney never provided him with the S.L.E.D. report indicating that none of the victim's DNA was found on his clothes. Applicant contends that this information would have changed his decision to enter a plea of guilty at that time.

Now, therefore, based upon the above, Applicant's Application in this matter having been withdrawn by Applicant before the Court, is Hereby Dismissed.

IT IS SO ORDERED, this 16 day of Sept, 2014.

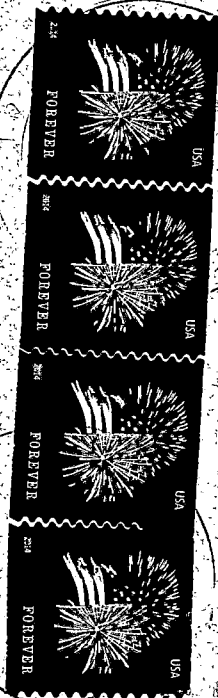
  
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Doyet A. Early, III  
Judge, Second Judicial Circuit

anderson anderson  
and  
llp

trial attorneys and counselors at law

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aikén, south carolina 29801

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Attn: Daniel E. Shearouse, Clerk  
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