

PROOF OF SERVICE OF A PETITION FOR REHEARING

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

Appellate Case No. 2014-000165

RECEIVED

The State, Respondent

APR 22 2016

v.

SC Court of Appeals

Earnest Maurice Allen, Appellant

PROOF OF SERVICE

I certify that I have served the notice of A Petition for Rehearing on the Court of Appeals by depositing a copy of it in the United States Mail, postage prepaid, on April 20, 2016 addressed to Jenny Abbott Kitchings Clerk of Court P.O. Box 11629 Columbia, SC 29211.

I certify that I have served the notice of A Petition for Rehearing on the State by depositing a copy of it in the United States Mail, postage prepaid, on April 20, 2016 addressed to Alan McCrory Wilson P.O.Box 11549 Columbia SC 29211-1549.

April 20, 2016

s/ Earnest M. Allen  
Earnest M. Allen  
386 Redemption Way  
McCormick SC 29899

PETITION FOR REHEARING FOR A SENTENCE  
AFFIRMED BY THE COURT OF APPEALS

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

RECEIVED

APR 22 2016

Appellate Case No.2014-000165

SC Court of Appeals

The State, Respondent

v.

Earnest Maurice Allen, Appellant.

PETITION FOR REHEARING OF APPELLANT  
EARNEST M. ALLEN

Earnest Maurice Allen appeals the decision of the Court of Appeals to affirm his conviction for attempted murder without ruling on newly supplemented evidence that was submitted by former lawyer on February 24, 2016 in regards to specific intent, before the decision was made by the Court on April 20, 2016 to deny his appeal.

s/ Earnest M. Allen, Pro Se  
Earnest M. Allen  
386 Redemption Way  
McCormick SC 29899

April 20, 2016

Other Counsel of Record:

Attorney General Alan McCrory Wilson, Assistant  
Attorney General Mark Reynolds Farthing, Assistant  
Attorney General Jennifer Ellis Roberts  
and Solicitor Daniel Edward Johnson, all of Columbia  
for Respondent.

Thomas Jarrett Bouchette  
Johnny Gardner Law, P.A.  
212 Main Street  
Conway, SC 29526  
Former Attorney for Appellant

TABLE OF CONTENTS

QUESTIONS PRESENTED.....3  
ARGUMENT.....4  
CONCLUSION.....5  
PROOF OF SERVICE.....6

ADDITIONAL INFORMATION:

Attached to this petition is a copy of the envelope that I received from my former lawyer that gives proof it arrived at the MCCI Mail Room on April 14, 2016 which should explain the reason this petition was not submitted to the Court at an earlier date.

Also attached is a copy of the actual letter from my lawyer informing me that my case would be closing with his office when I received this letter, which should explain the reason I am submitting this petition on my own behalf.

## QUESTIONS PRESENTED

1. Did the Court of Appeals error in affirming conviction without ruling also on issue regarding specific intent that was raised in a supplemented brief and submitted to the Court before decision was made to affirm based on other issues raised in initial brief?
2. Did the trial Court commit reversible error when the Court instructed the jury that specific intent to kill was not an element of attempted murder statute S.C. Code §16-3-29?

## ARGUMENT

1. The Court of Appeals committed error when it made the decision to affirm my conviction for attempted murder without ruling on supplemented evidence regarding specific intent that was submitted to the Court after submission of initial brief due to new ruling of law in State v. King(S.C. App. 2015).
  
2. The trial Court committed reversible error when it instructed the jury that:

"a specific intent to kill is not an element or attempt of attempted murder, but there must be a general intent to commit serious bodily injury."Tr.tr.p.268(Line 12 and 13)

The record also reveals that Defense counsel timely objected to instruction at trial:

"Your honor did read from what you told us you would. I would disagree that specific intent is not an element of attempted murder. I'd ask you to correct that but I understand the Court's position on that. I just make my objection noted."Tr.tr.p.278 (Line 7-10)

As such the issue is otherwise preserved for review by this Court.

In King, this Court ruled for the first time that S.C. Code §16-3-29, which was enacted in 2010, was a specific intent crime requiring a finding that the Defendant acted with the specific intent to kill. In the case, the trial Court charged the jury that:

"A specific intent to kill is not an element of attempted murder but it must be a general intent to commit serious bodily harm."Id.

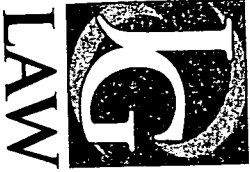
This instruction is the exact same instruction given in this case. This Court's decision in King makes clear that the record contains a reversible error of law for which I request the opportunity to be heard.

CONCLUSION

The Court should make an exception and grant this petition for rehearing.

Respectfully submitted,

s/ Earnest M. Allen, Pro Se  
Earnest M. Allen  
386 Redemption Way  
McCormick SC 29899

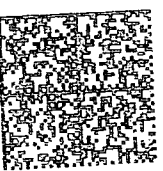


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Mr. Earnest M. Pickett (Inmate # 310134)  
386 Redemption Way  
McCormick SC 29899

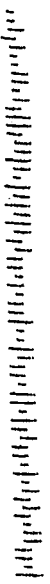
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JOHNNY GARDNER  
HEATHER MOORE  
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ADAM SZYSZKOWSKI

RECEIVED

APR 22 2016

SC Court of Appeals

April 11<sup>th</sup>, 2016

Mr. Earnest M. Pickett (Inmate # 310134)  
386 Redemption Way  
McComick SC 29899

Re: State v. Ernest M. Allen: Appellate Case No: 2014-000165

Dear Mr. Pickett (Allen):

Enclosed is a copy of the opinion of the Court of Appeals in your case. Unfortunately, the Court affirmed the trial Court's ruling and denied our request for a new trial. Please be advised that our office will be closing your case along with this letter.

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

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

Sincerely,

T. Jarrett Bouchette, Esq.

TJB

Enclosure: Post-Conviction Relief Application

*Wherever life takes you, we'll be there.*