

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

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

RECEIVED

MAY 16 2016

SC Court of Appeals

Appellate Case No.2014-000165

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 to deny his appeal on April 6, 2016.

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

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### 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 court of Appeals error in not ruling that the trial Court committed reversible error when it instructed the jury that specific intent to kill was not an element of attempted murder statute S.C. Code B16-3-29?

## 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 12-13)

The record also reveals that Defense counsel timely objected to the 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 the review by this Court.

In King, this Court ruled for the first time that S.C. Code B16-3-29, which was enacted in 2010, was a specific intent crime requiring a finding that the Defendant acted with the specific intent to kill. In this 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 same exact instruction given in this case. This Court's decision in King makes clear that the record contains reversible error of law for which I request the opportunity to be heard.

CONCLUSION

The Court of Appeals should grant this petition for a rehearing.

Respectfully submitted,

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

PROOF OF SERVICE OF A PETITION FOR REHEARING

RECEIVED

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

MAY 16 2016

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SC Court of Appeals

The State, Respondent

v.

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

Earnest M. Allen Pickett (Inmate#310134)  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, SC 29899

May 10, 2016

**RECEIVED**

MAY 16 2016  
SC Court of Appeals

The Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

Dear Ms. Kitchings:

I am writing you in regards to a motion I received from my former lawyer dated May 3, 2016 to make me aware of the fact that he has indeed filed a motion to relieve himself as counsel. Along with that motion was a cover letter informing me that if I wanted the Court to consider my Petition for Rehearing, I would need to re-submit it to the Court of Appeals, so I am sending additional copies to the Court of Appeals and to the Attorney General's Office.

I hope that because the Court has now received the motion from my former lawyer stating that he wishes to relieve himself as counsel, that my petition will be considered.

Respectfully submitted,

Earnest M. Allen Pickett