IN SC COURT OF APPEALS

APPEAL FROM CHEROKEE CO

STATE v. — 98-CS-11-650 — Respondent

ROBERT KOON — — — — — — — APPELLANT

AMENDED

* NOTICE OF INTENT TO APPEAL *

The APPELLANT hereby FILES A NOTICE OF INTENT TO APPEAL the MOTION TO ARREST SENTENCE IN RE: TO the 1998 SENTENCE IMPOSED MAY 29, 1998

The "ORDER" SUMMARILY DISMISSIVE the MOTION TO ARREST SENTENCE WAS RECIEVED AUG 17 EXHIBIT (A)

This is NOT A APPEAL OF ANY OF 1986 CONVICTIONS but A APPEAL IN RE: TO the 1998-CS-11-650 LWOP SENTENCE

Respectfully

Robert Koon
LCI
Ridgeville SC 29475

CC: ATTORNEY GENERAL

9/7/12

CMT1330D SCDC OFFENDER MANAGEMENT SYSTEM 01/10/98
OMCOMITA RELEASE DATE SCREEN C034686
SCDC# X [redacted] LOC: LIEBER
[redacted] SCDC CLASSIFICATION..: VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY..: N
SEXUAL PREDATOR..: NOT APP
DNA STATUS.....: COMPLETED
GPS REQUIREMENT..: N

CURRENT SENTENCE: 030-00-000 CONSECUTIVE SENTENCE ...: N
030-00-000 CURRENT SENT START DATE: 01/08/2000

PROJECTED COMPLETION DATES
MAXOUT DATE .....: [redacted] CURRENT EWC .: 3 F 5
YDA SIX YEAR DATE: / / CURRENT EEC .: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED .....: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 000686 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS ....: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ..: 000
TOTAL SERVICE TIME EARNED ..: 003882

PFKEYS: 5:HISTORY OF DATE CHANGES

Robert Koon
@ 227826 LCI MA106

Hon. Jenny Kitchins
Clerk of Court
SC Court of Appeals

9/7/12

STATE V. KOON 1998-ES-11-650

NOTICE OF APPEAL OF MOTION TO ARREST SENTENCE

MS. Kitchins | Hon John C. Hayes III

Im SO SORRY FOR my LACK OF SPECIFICS -

THIS is A APPEAL IN RE: TO the 1998 LWOP SENTENCE - NOT the the 1986 CONVICTION REFERENCED IN the ENCLOSED ORDER OF the Supreme COURT -

this APPEAL is on the Summary DISMISSAL OF MOTION TO ARREST the 1998 SENTENCE by "ORDER OF THE COURT" DATED 8/7/12 but RECIEVED ON 8/17/12 AND INITIALLY FILED by YOU ON 8/24/12 (EX. A, B, C Attached)

Im SORRY FOR my LACK OF SPECIFICS AND I WOULD ASK YOU APPOINT COUNSEL FOR me

THIS HAS NOTHING TO DO W/ 1986 ~~SENTENCE~~ CONVICTION but RATHER 1998 SENTENCE 98ES11650

PLEASE SEND ME A CLOCK STAMP COPY

VERY TRULY YOURS

Robert

STATE V. KOON
1998-CS-11-650

PROOF OF SERVICE

I Robert H. Koon. Hereby
ATTEST AND AFFIRMS I MAILED
A TRUE COPY OF AMENDED NOTICE
OF APPEAL TO Sallet Elliott
PO BOX 11549 Columbia SC 29211
This 7th DAY SEPT 2012
BY US MAIL

PUR 28 USC 1746
I AFFIRM UNDER OATH

CC: SC SUPREME COURT

1[redacted]

[redacted]
[redacted]
LIEBER CORRECTIONAL INSTITUTION
P. O. Box 205
Ridgeville, SC 29472-0000

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 28, 2012

Robert H. Koon
Leiber Correctional Institution
P.O. box 205
Ridgeville, SC 29475

Re: The State, v. Koon, Robert H.
Appellate Case No. 2011-200608

Dear Mr. Koon:

The court received your correspondence dated August 17, 2012 entitled "Notice of Intent to Appeal Request to Appoint Counsel". However, pursuant to the enclosed order of the Supreme Court of South Carolina, you are prohibited from filing any collateral actions challenging your 1986 burglary convictions. Therefore, we are returning your filings to you.

Very truly yours,

Jenny A. Kitchings

CLERK

cc: Robert M. Pachak
David Spencer

The Supreme Court of South Carolina

Robert Holland Koon, Petitioner.

Appellate Case No. 2012-212100

ORDER

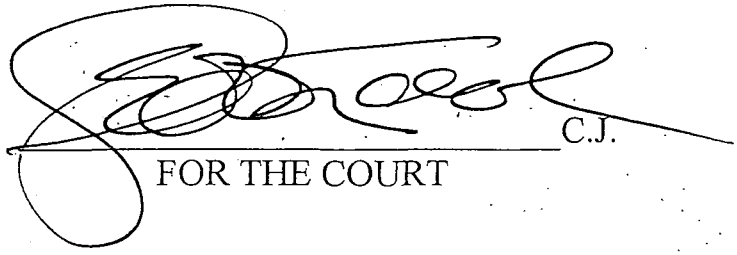
By order dated October 27, 2010, this Court prohibited petitioner from filing any further collateral actions challenging his 1986 burglary convictions in the circuit court without first obtaining permission from this Court. Additionally, this Court has issued several orders regarding petitioner's ability to seek relief from this Court under Rule 245, SCACR.

Petitioner now seeks permission to file a habeas corpus action or a post-conviction relief action in the circuit court challenging the 1986 convictions. This request is denied.

An appeal arising out of the 1986 convictions is currently pending before the South Carolina Court of Appeals, and he is represented by counsel in that matter. Therefore, petitioner's *pro se* requests for leave to file a Rule 29, SCRCrimP, motion, to certify the pending appeal for review by this Court or to remand the case to the circuit court, are improper and are hereby stricken. *Miller v. State,* 388 S.C. 347, 697, S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey,* 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989).

Finally, to the extent petitioner may be seeking any other relief from this Court under Rule 245, SCACR, that request is hereby stricken for noncompliance with the prior

orders placing restrictions on his filings under that rule.



C.J.

FOR THE COURT

Columbia, South Carolina
June 21, 2012

cc: Mr. Robert Holland Koon, #227826
Office of the Attorney General
The Honorable Jenny Abbott Kitchings

Hon Jeanne Kitchins,
Clerk of Court
SC Court of Appeals

8/17/12

STATE v. Robert Koon
1998-GS-11-650 Hon JOHN C. HAYES III

PLEASE FIND ENCLOSED A NOTICE OF INTENT TO APPEAL the DISMISSAL OF MOTION TO ARREST SENTENCE BASED UPON NEW EVIDENCE. IN RE 1998 SENTENCE**

AND MOTION TO APPOINT COUNSEL.
TARA SHUNLINE (ESQ)

Respectfully

Robert Koon
LIEBER CI
PO BOX 205
Ridgeville SC 29472

* MOTION TO ARREST 1998 SENTENCE OF LWOP.
AND DISMISSAL ATTACHED HERETO
PLEASE FWD TO APPOINTED COUNSEL.

THIS IS NOT A APPEAL OF 1986 CONVICTION

RECEIVED
AUG 24 2012
SC Court of Appeals

IN THE SOUTH CAROLINA
COURT OF APPEALS
1998 GS 11 650
HON. JOHN C. HAYES III

STATE	)	NOTICE OF INTENT
	)	TO APPEAL
V.	)	REQUEST TO APPOINT
ROBERT H. KOON	)	COUNSEL
DEFENANT	)	RE: 98 GS 11 650

ON AUGUST 17, 2012 (EXHIBIT A) THE APPELLANT RECIEVED HIS FIRST NOTICE THAT A ORDER HAD BEEN ISSUED "OF THE COURT" (*) EXHIBIT (B) ON HIS MOTION TO ARREST -1998- SENTENCE OF LWOP BASED UPON NEW EVIDENCE that PRIOR OFFENSE WAS A 16-11-311 (A) OFFENSE AND NOT 17-25-45 STRIKE. EXHIBIT (C) RE: 98-GS-11-650 (GENERAL SESSIONS)

NO ORDER HAS BEEN SERVED UPON DEFENDANT IN RE: TO THE ABOVE MATTER LISTED IN EXHIBITS (A), (B), (C) HOWEVER IT APPEARS the CASE WAS SUMMARILY DISMISSED

AND

THAT THE CIRCUIT COURT ~~HAS~~ REFUSED TO FILE AND INFORMALLY PER ORDER TO CLERK OF COURT DISMISSED THE MOTION EXHIBIT (B) THIS APPEAL FOLLOWS -

~~AND~~ THEREFORE, THE APPELLANT / DEFENDANT HEREBY FILES HIS NOTICE OF INTENT TO APPEAL SAID DISMISSAL BY CIRCUIT COURT OF HIS MOTION (EXHIBIT (B)) TO BE RESENTENCED BASED ON NEWLY DISCOVERED EVIDENCE BY VICTIM THAT 86 ES11 289 WAS IN FACT "AS LISTED IN INDICTMENT" A DWELLING (AND NIGHTTIME WAS A TYPOGRAPHICAL ERROR (SCRIVENERS ERROR) SIMILIAR TO ONE MADE ON STYLLETE INDICTMENT THAT WAS REVERSED - KOON I 595 SE2d 456, 458 (2004) THIS WILL VOID 1998 LWOP SENTENCE.

THE CIRCUIT COURT HAS DISMISSED THE MOTION AND APPELLANT HEREBY FILES HIS APPEAL THEREOF. OF 1998 SENTENCE

IT MUST BE NOTED APPELLANT HAS NEVER RECIEVED A ORDER by CIRCUIT COURT IN RE: TO ATTACHED EXHIBIT (C) MOTION ~~FOR RESENTENCE~~ TO ARREST 1998 SENTENCE BASED ON NEW EVIDENCE.

AND APPEALS Dec AUGUST 17, 2012 FIRST NOTICE that Such A ORDER WAS MADE.

Respectfully

LIEBER CI
PO BOX 205
Ridgeville SC 29475

---

* PROOF OF SERVICE *

A TRUE COPY HAS been SERVED ON MS. SARREY ELLIOTT PO BOX 11549 Colombia SC 29211 this 19 DAY AUG 2012 by US MAIL

UNDER OATH

IN SC COURT OF APPEALS
CHEROKEE COUNTY

STATE v. Robert Koon
98GS11650

MOTION TO APPOINT COUNSEL FOR RULE 29 (b) MOTION

DEFENDANT MOVES THIS HONORABLE COURT OF GENERAL SESSIONS TO APPOINT COUNSEL TO REPRESENT HIM ON the ENCLOSED ~~RULE 29(b)~~ APPEAL AND SUCH COUNSEL NOT BE AFFILIATED WITH SEVENTH CIRCUIT SOLICITORS OFFICE OR PRACTICE WITHIN SEVENTH CIRCUIT SOLICTORS OFFICE

DEFENDANT SEEKS A HEARING IN OPEN COURT ON the MATTER OF APPOINTMENT OF COUNSEL AND WOULD ASK the COURT TO APPOINT TARA DAWN SHUNLINE (ESQ) OF COLUMBIA SC (SEE ATTACHED)

Respectfully
Robert Koon

Robert Koon

8/17/12

LAW OFFICE OF

TARA DAWN SHURLING, PA

Attorney and Counselor at Law
3614 Landmark Drive
Suite A
Columbia, South Carolina 29204

E-Mail: tdslaw@shurlinglaw.com

(803) 738-8622
(Fax) (803) 738-1600

July 12, 2012

Mr. Robert Holland Koon, 227826
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Dear Mr. Koon:

I am in receipt of your letter. In this letter, you inquire about my potential representation of you. Unfortunately, I cannot provide you with a fee quote without some detailed information about your case. I am enclosing a prospective client information form. If you wish to have me represent you, **you need to fill out this form and send it back to me in the enclosed self-addressed envelope**. Please note that this form asks that you give me the name and contact information for someone who may be able to pay your legal fees. I ask this because it is the very, very rare case that I hear from someone who is incarcerated that can afford to pay my fees. Once I receive your information form back, I will write you and your loved one a letter that will provide you with detailed information about my fees and the extent of representation. **I do not take pro bono cases.** For many years, I volunteered for more court-appointed cases than any lawyer I know. I no longer take these cases on a regular basis.

In some cases, I will agree to review a file and give you an opinion letter. The fee to review the average case is $5,000.00. However, some cases are more complex than others, and in rare cases my fee for a review can cost up to $10,000.00. As I stated before the average case can be reviewed for $5,000.00. The fee for a file review **does not cover actually representing you in any legal action.** It simply pays me to give you my legal opinion concerning what has already been done in your case and what appellate avenues might still be available to you. Once I decide what I think might be done to help you, I will quote you a fee, and let you know how much *more* I would charge to proceed with the case. Obviously, the fee you would have paid for the review, and the work already performed, is taken into consideration in deciding how much more to charge to actually proceed.

I thank you for your interest in my firm, and I look forward to hearing from you again soon. For now, I remain,

Sincerely yours,

Tara D. Shurling

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg
Enclosure

EXHIBIT (B)

Office of
CLERK OF COURT
CHEROKEE COUNTY
MS. BRANDY W. McBEE, CLERK
Post Office Drawer 2289
Gaffney, S.C. 29342
Phone: 864-487-2571 • Fax: 864-487-2754

RECEIVED
AUG 24 2012
SC Court of Appeals

Date: 8/7/2012

Name on Document to be filed: Robert H. Koon
Case Number: 98-GS-11-650

Return Address:

The attached document and all remittance are being returned for the reason(s) checked below:

_____ **Insufficient amount of filing fee. Correct amount is: $_____**

_____ **The Judge is no longer in this Circuit. Please forward to him/her directly.**

_____ **This document is a copy-Please file ORIGINAL**

_____ **Not a Cherokee County Case**

_____ **In Correct County/Case Number listed. Please correct and re-submit.**

_____ **Check not signed**

_____ **Case ended: Date:_____ Reason Ended:_____**

_____ **Inmate Litigation must comply with SC Code of Law, Title 24, Chapter 27**

_____ **Case not found matching this caption**

_____ **Cover sheet not included**

_____ **Original Signature is required**

_____ **Document not notarized**

✓ **Other:** Per Order of the Court *

COMMENT:

Motion to Arrest Sentence of LWOP

If you have any questions, please contact _____ at 864-487-2571.

EXHIBIT (C)

STATE OF SOUTH CAROLINA) #98-GS-11-650
COUNTY OF CHEROKEE)
) IN COURT OF GENERAL SESSIONS

STATE,)
) MOTION TO ARREST
V.) SENTENCE OF LWOP
ROBERT HOLLAND KOON) BASED UPON NEW EVIDENCE
DEFENDANT) PRIOR OFFENSES WERE 16-11-312(A) AND NOT 17-25-45 STRIKE.

The PROSE DEFENDANT WOULD RESPECTFULLY MOVE this HONORABLE COURT TO VACATE the LIFE WITHOUT POSSIBILITY OF PAROLE SENTENCE (LWOP) IMPOSED ON MAY 29, 1998 ON INDICTMENT 98 GS-11-650 SECOND DEGREE BURGLARY FOLLOWING A GUILTY VERDICT

The DEFENDANT WAS GIVEN LIFE WITHOUT PAROLE (LWOP) ON 98-GS-11-650 BASED UPON PRIOR CONVICTIONS FOR SECOND DEGREE BURGLARY UPON INDICTMENT 86-GS-11-289, 291, 292. ST V. KOON 2000 UP 291 (2000) which STATES KOON DID ENTER the DWELLING OF . . . . without CONSENT with the INTENT TO COMMIT A CRIME therein IN the NIGHTTIME

SINCE -291, 292 OCCURED AT ON ABOUT the SAME time it is LAW OF the CASE these OFFENSES CAN be treated AS ONE STRIKE. KOON V. STATE 643 SE2d 680 (2007)

IT is the 86-GS-11-289 OFFENSE KOON SECOND STRIKE that is the BASIS OF this MOTION TO ARREST the LWOP SENTENCE.

The INDICTMENT STATES KOON " DID ENTER DWELLING OF CUDD-LOVELACE with the INTENT TO COMMIT A CRIME therein IN the NIGHTTIME. (86GS11289)

AT the SENTENCING NUMEROUS ARGUMENTS WERE MADE SINCE the INDICTMENT Allege DWELLING that WERE 16-11-312 (A) OFFENSES AND WERE NOT STRIKES PUR 17-25-45-(b) - the COURT STATED that WERE ① [BUILDINGS] Despite FACT INDICTMENTS set FORTH DWELLINGS SEE: ST. v. KOON 2000 UP 291 (CT APP. 2000) (ISSUE III)

The victim OF that 1986 OFFENSE HAS PROVIDED TWO AFFIDAVITS that ARE ATTACHED that,

* ① the STRUCTURE ENTERED AS SET FORTH IN the INDICTMENT (86-289) WERE IN FACT DWELLINGS PUR to 16-11-312(A) STATE v. STEADMAN, 186 SE2d. 712 (1972) AS it WAS A APARTMENT that ALSO CONTAINED TWO OFFICES therein, LEGALLY A DWELLING. AND NOT A BUILDING AS CONSTRUED by COURT.

* ② NO EVIDENCE EXISTED TO SHOW ENTRY OF DWELLING OCCURED AT Nighttime AND thus Nighttime ALLEGATION MUST be treated AS "SURPLUSAGE" AS ONLY WAY OFFENSE COULD be SECOND DEGREE PUR 16-11-312 (A) is if Nighttime is treated AS "SURPLUSAGE"

+ NOTE opposite side OF SAME STRUCTURE REVERSED AS it DID NOT CONTAIN Nighttime Element. KOON v. STATE 595 SE2d. 485 (2004)

BASED UPON the AFFIDAVIT OF the VICTIM himself ATTESTING this STRUCTURE is IN FACT A "DWELLING" KOON SECOND STRIKE is NEGATED. AND he is Entitled to HAVE LWOP SENTENCE ARRESTED AND be RELEASED AS he HAS SERVED 15 YEARS FOR A OFFENSE #98-650 that ONLY CARRIES 15 YEARS.

LEGAL MAIL

① 16-11-312 (b)

Thus, the 86-289 offense which has been deemed Koon second strike is no longer legally a "strike" pur 17-25-45 (b) as 16-11-312 (A) offense is NOT a strike at all and at most Koon has two strikes NOT three strikes and LWOP sentence must be ARRESTED as it has no legal foundation.

Conclusion

Koon is entitled by law to have LWOP sentence arrested and be resentenced to 0-15 years on 98-ES-11-650.

Respectfully.

Robert Koon
MCI
380 Redemption way
McCormick SC 29835

Proof of service

A true copy was mailed to

Barry Barnette 7th Circuit Solicitor
180 Magnolia St.
Spartanburg SC 29306 this 6th day ~~May~~
2012 by US mail postage paid

pur 28 USC 1746
I affirm under oath

R Koon
(Pro se)

LEGAL MAIL

AFFIDAVIT

I, Harry M. Lovelace, hereby give the following statement freely and voluntarily that is true and correct, under oath:

The first statement pertains to my attempts to obtain a viable address and phone number for Richard F. Weaver. It is my understanding that Mr. Weaver was the detective who lead the investigation of the break-in at Cudd-Lovelace Agency in March 1986 and Robert Koon believed that his testimony could assist in Mr. Koon's 29(b) hearing and he requested that Mr. Weaver, since retired, be located and subpoenaed. Mr. Koon was advised by his legal defense that Mr. Weaver could not be located and was therefore unavailable to provide testimony.
Mr. Koon subsequently requested that I try to contact a private investigator to locate Mr. Weaver. I asked an associate at work if he happened to know Mr. Weaver and he said remembered him and that his wife's name was Carla. With that item of information, I conducted an internet search on PublicRecords.com, and was able to locate three possible addresses and a phone number in less than thirty minutes from the time I began the search.

The second statement is my attestation that part of the structure that was broken into in March 1986 was an apartment, i.e. dwelling. The structure is a triplex that included the space leased to Cudd-Lovelace Agency, the business that I managed in March 1986. It is my understanding that the fact that a dwelling was located in the structure could have a material impact on Mr. Koon's case as in the decision by the SC Supreme Court in Koon v State (2004). Again, this structure was an apartment dwelling with an office and salon contained therein.

Further AFFIDAVIT sayeth not

Harry M. Lovelace Daytime Phone: 864-838-1381

Sworn and Subscribed to me on this 7th day of March, 2012.

My Commission expires:

Linda B Sorrow 11-28-2017

Notary Public

AFFIDAVIT

Robert Koon V. State of SC 06 CP 11 513

I, Harry M. Lovelace, hereby give the following statement freely and voluntarily that is true and correct, under oath:

I was an employee of Cudd-Lovelace Agency in Gaffney, SC in March 1986. I recall that a break-in occurred at the office location between the close of business on Thursday, March 28, 1986 and the opening of the office on Friday, March 29, 1986. The break-in was discovered by Mr. J.D. Cudd who was assisting the staff of the office at the time. Mr. Cudd is now deceased. My recollection of details about the break-in and subsequent investigation is diminished by the length of time since the event occurred and the fact that my father had passed away a couple of weeks before the break-in. There is some question as to when the break-in occurred and whether or not it would necessarily be considered a "night time" event. I can not present evidence to refute the allegation that it occurred at "night time"; however, I am familiar enough with the routine of opening and closing the office that I can provide a time frame which might, at the least, bring into question whether or not the break-in had to have occurred at "night". For years prior to and subsequent to the break-in, Cudd-Lovelace Agency had posted hours of operation of 9:00 am to 5:00 pm Monday, Tuesday, Thursday, and Friday, and 9:00 am to 12:00 pm on Wednesday. The staff normally arrived no earlier than fifteen minutes before opening (8:54 am), and typically closed the office no late than 5:15 pm. It would have been very unusual for an employee to arrive before 8:30 am or close later than 5:30 pm. I would confidently testify that the break-in could have occurred anytime between 5:30 pm March 28, 1986 and 8:30 am March 29, 1986. I believe that an examination of the investigation report will show an initial contact time from Mr. Cudd that is consistent with the time frame I have referenced. My position is that the break-in may very well have occurred during a time period *other than* "night time".

Further AFFIDAVIT sayeth not

Harry M. Lovelace Daytime Phone: 864-838-1381

Cc: Henry D. McMaster, State Attorney General
Hon. J. Mark Hayes II, Judge

Sworn and Subscribed before me this 8th day of April, 2010.

My Commission expires:

Notary Public 11/28/17

Mr. Barry Barnette
Seventh Circuit Solicitor
180 Magnolia Street
Spartanburg, SC 29306

Harry M. Lovelace
31 Bo Lane
Gaffney, SC 29340
(864) 838-1381

August 4, 2011

Re: Resentencing of Robert Holland Koon

Dear Mr. Barnette,

Under the provisions of the Victim Bill of Rights, I would request as Solicitor that you carefully review the case of State v Robert Koon 86-GS-11-289 in which Mr. Koon was indicted for Second Degree Burglary when the State did not have any proof the offense occurred at nighttime as required by 16-11-312 (b) 3) SC Code of Laws (1986). According to Mr. Koon, he entered a plea as part of a package plea deal in 1986 not knowing that he would receive two strikes at the one plea. Koon v State 643 SE2d 680 (2007). The offense that constitutes the 'second strike' was my family's insurance agency Cudd-Lovelace Agency, and as the victim, I would respectfully ask you to allow the 1986 conviction to be reduced to Burglary Third Degree so that Mr. Koon can be resentenced from Life Without Parole to twenty years for his 1998 conviction for a subsequent Second Degree Burglary. 98-GS-11-650. Koon v State Supra.

It is my understanding that the State prosecuted this individual for a nighttime burglary without any proof of Corpus Delecti of the nighttime element, and I feel as the victim that a grave injustice has been done to this man where the State can not show his second strike offense ever occurred. As a citizen of this state, I am opposed to the fact that Mr. Koon was prosecuted for nighttime entry of the insurance office (in which nothing was discovered to have been stolen) when no proof exists that it occurred at night, only that it occurred sometime between 5:00 pm March 28, 1986 and 9:00 am March 29, 1986.

I would like to meet with you to discuss this matter with you in person at your earliest convenience. I may be reached at (864) 838-1381. Thank you in advance for your consideration of this request.

Respectfully Yours,

Harry M. Lovelace

Cc: The Hon. J. Mark Hayes III
Mr. Robin File, Assistant Solicitor

✓ COPY FRONT/BACK

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Robert Holland Koon, Respondent,

v.

State of South Carolina, Petitioner.

ON WRIT OF CERTIORARI

Appeal From Cherokee County
J. Mark Hayes, II, Circuit Court Judge

Opinion No. 26295
Submitted December 7, 2006 – Filed March 26, 2007

REVERSED

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Assistant Attorney General Molly R. Crum, of Columbia, for Petitioner.

Deputy Chief Attorney Wanda H. Carter, of South Carolina Commission on Indigent Defense, Division of Appellate Defense, of Columbia, Robert Holland Koon, of Bishopville, for Respondents.

JUSTICE WALLER: We granted the state's petition for a writ of certiorari to review the grant of Post-Conviction Relief (PCR) to Respondent,

Robert Holland Koon. The PCR court found Koon was improperly sentenced to life imprisonment without parole (LWOP). We reverse.

FACTS

In May 1998, Koon was convicted of grand larceny and second degree burglary. Based upon Koon's 1986 guilty plea to four counts of second-degree burglary, he was sentenced as a recidivist to LWOP. His direct appeal was affirmed by the Court of Appeals. State v. Koon, Op. No. 2000-UP-291 (Ct. App. April 18, 2000).[1] His first application for PCR was dismissed after a hearing. After Koon's first PCR hearing, but prior to dismissal of his application, we issued our opinion in State v. Gordon, 356 S.C. 143, 588 S.E. 2d 105 (2003). Koon filed a second PCR application asserting that, pursuant to Gordon, his prior second-degree burglary crimes should have been treated as one crime for purposes of sentencing under the recidivist statute. The PCR court agreed with Koon and vacated the LWOP sentence.

ISSUE

Did the PCR court err in holding Koon was improperly sentenced to LWOP based upon his 1986 second-degree burglary convictions?

DISCUSSION

In State v. Gordon, we addressed the interplay between S.C. Code Ann. § 17-25-45 and § 17-25-50. There, we recognized that § 17-25-45 requires defendants who are convicted of three "most serious" offenses[2] to be sentenced to LWOP, while § 17-25-50 requires that for purposes of

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[1] Koon asserted at the Court of Appeals that the offenses were not "serious offenses" which triggered the recidivist statute, S.C. Code Ann. § 17-25-45 (C)(2)(b). The Court of Appeals found three of the four offenses were "serious offenses." In 2004, this Court vacated one of the four convictions, finding the indictment alleged only third-degree burglary, such that the trial court did not have subject matter jurisdiction to accept the plea to second-degree burglary. Koon v. State, 358 S.C. 359, 595 S.E.2d 456 (2004). However, our holding in Koon I has been overruled by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). The PCR court did not consider the conviction which was vacated by this Court in Koon I.

[2] Second-degree burglary under S.C.Code Ann. § 16-11-312 (b) falls into this category. S.C. Code Ann. § 17-25-45(C)(2).

sentencing, "the court shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense, notwithstanding under the law they constitute separate and distinct offenses." In Gordon, we overruled prior precedent[3] which had held § 17-25-50 was inapplicable in a "three strikes rule" analysis and held, instead, that §§ 17-25-45 and 17-25-50 must be construed together in determining whether crimes committed at points close in time qualify for a recidivist sentence.

Koon contends that, under Gordon, he should not have been sentenced to LWOP. We disagree. Although Gordon stands for the proposition that two offenses committed closely in point of time should be considered as one for purposes of sentencing, Gordon did not establish a bright-line rule as to what constitutes "two offenses committed so closely in point of time." We find the 1986 offenses committed here simply do not fall under § 17-25-50.

The cases which have found "one continuous course of conduct" under § 17-25-50 have been cases in which, for example, the defendant had two convictions arising out of a single incident, see State v. Woody, 359 S.C. 1, 596 S.E.2d 907 (2004) (two previous armed robbery convictions stemmed from a single incident but involved two different victims: Woody robbed a convenience store and was convicted of armed robbery of both the store's clerk and the store itself); or situations which involve crimes closely connected in point of time, State v. Gordon (where trafficking and conspiracy to traffic crack cocaine occurred within a one week period, the offenses were, although separate and distinct offenses for which Gordon was properly sentenced, "so closely connected in point of time" as to properly be treated as one offense for purposes of recidivist sentencing); or apply to a single, continuous crime spree, State v. Benjamin, 353 S.C. 441, 579 S.E.2d 289 (2003), overruled by State v. Gordon, infra (two armed robberies and murder committed within a four-hour period).

Here, the second-degree burglaries which qualified Koon for sentencing as a recidivist were the March 13, 1986 nighttime burglary of the office of P&G Motors; the March 14, 1986 nighttime burglary of the office or

[3] State v. Benjamin, 353 S.C. 441, 579 S.E.2d 289 (2003).

dwelling of Bill Willard; and the March 28, 1986 nighttime burglary of Cudd-Lovelace insurance Company.

We need not address whether the March 13th and March 14th crimes could or should have been treated as one for purposes of sentencing. We find the March 28th burglary of a different building, in a different location, which occurred two weeks later, clearly constitutes a separate burglary. Accordingly, Koon had, at the very least, two prior serious convictions such that the present conviction constituted his third, and he was therefore properly sentenced as a recidivist.

REVERSED.

TOAL, C.J., MOORE and PLEICONES, JJ., concur.

III.

THE TRIAL COURT ERRED IN DESIGNATING APPELLANT'S 1986 SECOND-DEGREE BURGLARY CONVICTIONS AS PREDICATE OFFENSES UNDER S.C. CODE § 17-25-45.

Appellant was convicted of second-degree burglary and grand larceny. The state sought a life sentence without parole pursuant to S.C. Code § 17-25-45, using as predicate offenses several second-degree burglary convictions from 1986. Appellant objected to the admission the 1986 convictions on the basis that they did not qualify as predicate offenses. The court overruled his objection and imposed a life sentence. ROA. p. 352, line 12 - p. 370, line 14. This ruling was error.

S.C. Code § 17-25-45 mandates a life sentence after convictions for three "serious" or two "most serious" offenses. Second-degree burglary under S.C. Code § 16-22-310(B) is a serious offense. S.C. Code § 17-25-45(C)(2)(b). A person is guilty of second-degree burglary under subsection (B) when he enters a building without consent, with the intent to commit a crime therein, and at least one enumerated aggravating circumstance is present: the offender has been convicted of two or more burglary or housebreaking charges; the burglary takes place during the nighttime; or the offender either is armed with a deadly weapon or explosive, injures an innocent party, uses or threatens to use a dangerous instrument, or displays or appears to display a knife or firearm.

Second-degree burglary under § 16-22-310(A) is neither a serious or most-serious offense. A person is guilty under subsection (A) when he enters a dwelling without consent and with the intent to commit a crime therein.

Appellant's 1986 indictments do not specify a subsection. Indictment 86-GS-289 alleges that appellant "did enter the *dwelling* of *Cudd-Lovelace Insurance Company* without

defendant's direct examination." U.S. v. Havens, 446 U.S. 620, 627, 100 S.Ct. 1912, 1916 (1980).

None of the solicitor's questions were "plainly within the scope" of appellant's direct testimony, which dealt almost exclusively with his alibi. The solicitor's clear intention was to use appellant's initial responses as "prior inconsistent statements" through which the state would later present the Sarratt Creek evidence in the guise of impeachment evidence. The strategy was a willful subversion of the Fifth Amendment excused by neither Hass nor Havens. The lower court erred in allowing it.

consent and with the intent to commit a crime therein, *entering in the nighttime.*" Indictment 86-GS-291 alleges that appellant "enter[ed] the *dwelling of Bill Willard during the nighttime* and without consent and with intent to commit a crime therein." Indictment 86-GS-11-292 alleges that appellant "did enter the *dwelling of P & G motors* without consent and with intent to commit a crime therein *during the nighttime.*" ROA. p. 383 - 390.

Criminal statutes are construed strictly against the state, and any ambiguity in them must be resolved in favor of the accused. State v. Rainey, 307 S.C. 150, 414 S.E.2d 131 (1992); Williams v. State, 306 S.C. 89, 410 S.E.2d 563 (1991); State v. Guy Mobile Home Corp., 248 S.C. 386, 149 S.E.2d 913(1966) This principle applies not only to the "substantive ambit" of criminal prohibitions, but also to the penalties they impose. Bifulco v. U.S., 447 U.S. 381, 100 S.Ct. 2247 (1980). Appellant does not argue that S.C. Code § 17-25-45 is ambiguous. In fact, that section is very precise in its language. Rather, appellant asserts that the application of § 17-25-45 to his prior indictments creates an ambiguity that should be resolved in his favor.

The indictments are insufficient to support a life sentence because they do not specify subsection (B). The lower court held that specification was unnecessary because the language of the indictments alleged facts comprehended subsection (B). Appellant asserts that the language of the indictments is ambiguous at best. Each of the indictments includes an allegation that the offense occurred in the nighttime, a subsection (B) allegation. All three, however, allege that appellant entered a "dwelling" rather than a building: this, despite that two of the "dwellings" were places of business (Cudd-Lovelace Insurance and P & G

Motors). Breaking into a dwelling is a subsection (A) allegation. Contrary to the court's ruling, it is not at all clear that the indictments allege subsection (B) violations.

Moreover, the recidivist statute specifies that a prior second-degree burglary conviction must fall under subsection (B) to support a life sentence. The statute does not allow any judicial interpretation in this respect. However, if the predicate offenses were obtained in a foreign jurisdiction, the trial judge may interpret their facts under South Carolina law. S.C. Code § 17-25-45(A)(2); 17-25-45(B)(3). The legislature specifically provided for judicial interpretation of foreign convictions. It did not provide for judicial interpretation of local prior offenses. The lower court erred in taking this liberty. Strict construction of the statute precludes the use of appellant's prior offenses.

Because appellant's prior convictions were insufficient to support a life sentence under S.C. Code § 17-25-45, his case should be remanded for re-sentencing.

State's Cross-Examination of Koon Concerning Excluded Evidence

Koon argues the trial judge erred in allowing the State to cross-examine him about excluded evidence. We do not reach this issue as any error in the trial judge's ruling is harmless.

Koon took the stand and testified he visited the parole office shortly before it was burglarized. During that visit, he claims to have handled the payment ledger card on which his fingerprints were later recovered. On cross-examination, the trial court allowed the State to ask Koon if he remembered seeing any of the stolen items during the visit or at any other time because Koon's direct testimony "opened the door" to such an inquiry. Koon denied he saw any of the items. Koon contends the cross-examination violated United States v. Havens, 446 U.S. 620, 627 (1980), which limits the cross-examination of a criminal defendant concerning excluded evidence to questions which were "reasonably suggested by the defendant's direct examination . . . ." Even if we were to find a Havens' violation in the trial court's ruling, Koon fails to demonstrate any resulting prejudice from the allegedly deficient ruling.

A trial judge's error is harmless if no prejudice results from it. State v. McWee, 322 S.C. 387, 472 S.E.2d 235 (1996). Here, Koon was not prejudiced by the latitude afforded the State's cross-examination because nothing incriminating resulted from it.

Predicate Offenses Pursuant to S.C. Code §17-25-45

Koon argues the trial court erred in designating his earlier second-degree burglary convictions as predicate offenses under South Carolina's recidivist statute, S.C. Code Ann. §17-25-45 (Supp. 1998). We disagree.

Not every second-degree burglary conviction is a predicate offense for purposes of the recidivist statute. Only convictions obtained pursuant to subsection B of the second-degree burglary statute, S.C. Code Ann. §16-11-312, are designated "serious offense[s]" by the recidivist statute. S.C. Code Ann. §17-25-45(C)(2)(b) (Supp. 1998). This designation is critical because the third conviction for a "serious offense" enhances the maximum sentence that can be imposed to a "term of imprisonment for life without possibility of parole . . . ." S.C. Code Ann. §17-25-45(B) (Supp. 1998). On the other hand, repetitive burglary convictions pursuant to subsection 16-11-312(A) do not trigger the sentencing enhancement of the recidivist statute. S.C. Code Ann. §17-25-45.

In 1986, Koon pled guilty to four indictments which were captioned "Burglary Second Degree." None of the four referenced a specific code section. At trial, Koon argued his 1986 pleas could not be serious offenses under the recidivist statute because they did not reference S.C. Code Ann. §16-11-312(B). The trial court disagreed and

looked to the textual portion of the indictments to determine if the convictions were made pursuant to either 16-11-312(A) or -312(B). The court held that "all four are in fact serious offenses under section 17-25-45."

A proper indictment must set forth an offense "with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer . . . ." Browning v. State, 320 S.C. 366, 368, 465 S.E.2d 358, 359 (1995). "The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense . . . ." Id. It has long been recognized in this State that an "offense should be so plainly stated in the indictment as to enable the court looking alone to the indictment and the verdict to impose the sentence prescribed by law." State v. Perry, 87 S.C. 535, 539, 70 S.E. 304, 305 (1911) (proposition cited in State v. Ervin, 333 S.C. 351, 510 S.E.2d 220 (Ct. App. 1998)). Here, the indictments in question were clearly sufficient to allow the trial court to identify which subsection of the second-degree burglary statute Koon pled to.

Three of the four indictments clearly set forth the elements of §16-11-312(B), to wit, that Koon was alleged to have entered a "dwelling" in the nighttime without consent and with the intent to commit a crime therein. At trial, and now on appeal, Koon argues the indictments failed to specify all the elements of 16-11-312(B) because the indictments alleged he entered a "dwelling," but the statute requires the entry of a "building." The trial judge correctly disposed of this argument by pointing out that "a dwelling is in essence a part of a building" pursuant to S.C. Code Ann. §16-11-310 (Supp. 1998). See also State v. Coffin, 331 S.C. 129, 502 S.E.2d 98 (1998) (recognizing that "building" encompasses the term "dwelling" in the context of the burglary statute).

We agree, the trial judge erred by ruling that all four of the 1986 convictions were serious offenses. As mentioned earlier, only three of the four indictments set forth the elements of §16-11-312(B). The fourth indictment contained the elements of -312(A) which is not recognized as a serious offense. Nevertheless, this error is harmless as only two serious offenses are necessary to trigger the sentence enhancement of the recidivist statute and Koon committed three. State v. McWee, 322 S.C. 387, 472 S.E.2d 235 (1996) (holding an error which does not prejudice a criminal defendant is harmless). Accordingly, the trial judge did not err in enhancing Koon's sentence to life without possibility of parole.

Accordingly, the conviction and sentence of the trial court is

AFFIRMED.

CURETON, ANDERSON and HUFF, JJ., concur.

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

July 16, 2012

Mr. Robert H. Koon, #227826
Lieber Correctional Institution
PO Box 205
Ridgeville, SC 29472

Re: Your case

Dear Mr. Koon:

I got your new address. I have written Detective Weaver and I have asked for him to give me an affidavit concerning the Cudd-Lovelace arrest warrant. It needs to be in his words not mine because he may be subject to cross-examination. Mr. Lovelace went to see him the other day but Weaver's wife said he has been in the hospital for the past two weeks following heart surgery. She said she was familiar with your case and her husband wants to help.

Sincerely,

RMP

Robert M. Pachak
Appellate Defender

RMP/fkb

June 3, 2012

Re: Miscarriage of Justice in the case of Robert Holland Koon

To Whom It May Concern:

Please find enclosed numerous items of correspondence I have sent to the courts, solicitors, and the Governor on behalf of Robert Koon. Mr. Koon is serving Life Without Parole under the 'three strikes' law for a 1998 second degree burglary conviction. His sentence was enhanced from fifteen (15) years to natural life based upon his two previous 1986 convictions. As the victim of his 1986 offense, I have for the past several years attempted to help Mr. Koon obtain his freedom as I will attest that there is absolutely no evidence that his second 'strike' occurred during the nighttime and should therefore not be considered a strike under SC law. After a hearing in June 2011, Judge Mark Hayes denied Mr. Koon's motion for a new trial on his 1986 conviction, stating in essence that Mr. Koon should have discovered this fact earlier and failed to address the fact that the State never had any evidence to even charge much less induce a plea of nighttime burglary. As part of the plea, Mr. Koon (nineteen years old at the time) received two (2) strikes at one plea and pleaded guilty to an offense the State can not show even occurred as there is no evidence of nighttime entry. Mr. Koon has served over fifteen (15) years for the 1997 office burglary and, without the unjust enhancement; he would be released for time served.

We are seeking concerned citizens, attorneys, judges, and Christians to petition Solicitor Barry Barnette to consent to the pending motion for arrest of judgment the Life Without Parole sentence filed with the trial judge The Honorable John C. Hayes III (York county) and to allow Mr. Koon to be released to a Christian-based halfway house – possibly Jumpstart of Spartanburg or Hope House of Greenwood. Mr. Koon has given his life to God, and, despite the hardships, he has kept his faith in God. Having developed a relationship with Mr. Koon over the past several years, I believe that he would be a law-abiding and productive citizen upon his release.

I would encourage all interested persons to contact the following individuals to assist Mr. Koon in obtaining his release:

Ms. Salley W. Elliott, Office of the Attorney General, PO Box 11549 Columbia, SC 29211. (803) 734-3737. She is the attorney overseeing the appeal.

Mr. Barry Barnette, Solicitor, Seventh Judicial Circuit, 180 Magnolia Street, Spartanburg, SC 29304. (864) 596-2575. He is the solicitor over the pending motion for arrest of judgment.

Governor Nikki Haley, Office of the Governor, 1205 Pendleton Street, Columbia, SC 29201, (803) 734-2100. Gov. Haley could pardon Mr. Koon or at least commute his sentence.

Please call and/or write these officials and ask them to review Mr. Koon's case and correct what amounts to a travesty of justice. We are also looking for someone who will create a website to inform the public of Mr. Koon's situation. No citizen should be subjected to Life Without Parole when there is no evidence to support the underlying offense and evidence of courts refusing to render equal justice under the law.

If you would like further information or have any questions, please contact me:

Harry M. Lovelace
PO Box 71
Gaffney, SC 29342

Or

Robert Koon 227826
MCI
386 Redemption Way
McCormick, SC 29899

Very Best Regards,

Harry M. Lovelace

Enclosures (Copies of):
- Letter to Governor Sanford
- Affidavits (2) April 8, 2010 and March 7, 2012
- Letter to Judge J. Mark Hayes II (January 6, 2011)
- Letter to Detectives Skinner and Weaver
- Letter to Solicitor Barry Barnette (January 6, 2011)
- Letter to Solicitor Barnette (August 4, 2011)
- Letter to SC Parole and Pardon Services (cover letter for this letter)
- Jumpstart info sheet

Mr. C. David Baxter, Chair
SC Board of Paroles and Pardons
PO Box 50666
Columbia, SC 29210

June 3, 2012

Dear Mr. Baxter,

Mr. Robert Holland Koon is serving a Life Without Parole (LWOP) sentence. As you can see from the enclosed letters that I have sent to numerous officials, Mr. Koon's sentence has been enhanced by prior convictions that the State can not show occurred, i.e. Nighttime burglary. As the victim of the 1986 break-in, I can assure you that nobody could prove that the crime occurred at night. I am requesting as the victim of Mr. Koon's second strike, that you would commute his 1998 conviction from LWOP to a maximum of fifteen (15) years. Mr. Koon's 1998 conviction is for breaking into the Cherokee County probation office, so if this creates a conflict with this board's ability to fairly consider commutation of Mr. Koon's sentence then please forward this request for commutation to the Governor's office. A severe injustice has been done to give this man LWOP for an office break-in when the predicate offense can not be deemed worthy of any trust, as the victim even I can not say the offense (1986) occurred at night. Mr. Koon has served over fifteen years (date of offense February 1, 1997) and should be considered for commutation of his sentence. Mr. Koon plans to enter the Jumpstart faith-based program upon his release. As the victim, I make this request.

Please contact me in regards to this petition:
Harry M. Lovelace
PO Box 71
Gaffney, SC 29342
P: (864) 838-1381

Kindest Regards,

Harry M. Lovelace

Mr. Barry Barnette, Solicitor
Office of the Seventh Circuit Solicitor
180 Magnolia Street
Spartanburg, SC 29306

Harry M. Lovelace
31 Bo Lane
Gaffney, SC 29340
(864) 838-1381

January 6, 2011

Re: Robert Holland Koon
State v. Robert Koon 86-GS-11-289 Rule 29 (b) SCR.Crim.Pro.

Dear Mr. Barnette,

As the victim in the above referenced case, it is my sincere desire that Mr. Koon's 1986 Second Degree Burglary conviction 86-GS-11-289 Cudd-Lovelace Insurance Agency (3/28/1986) be ***reduced*** to Burglary Third Degree which will allow him to be sentenced to twenty years on his 1998 conviction for Second Degree Burglary 98-GS-11-650 rather than have him serve Life Without Any Possibility Of Parole (LWOP). It is clear to me that the police did not provide sufficient evidence to the magistrate that this offense definitely occurred at nighttime. See State v. Smith 493 S.E.2d 506 (Ct. App 1997). While it is not my place to accuse the detectives or solicitor of falsely swearing under oath, a very serious allegation indeed and I would not impugn their character in doing so, the evidence in this case does indicate that the nighttime element was misrepresented (to the magistrate and the Grand Jury) as stated previously in my affidavit when I contend that it occurred between 5:00 pm on March 28, 1986 (office closing time) and 9:00 am March 29, 1986, when the break-in was discovered. Therefore, it is impossible to swear under oath that this offense occurred at night; it could have just as easily occurred in the intervening daylight hours that were available between 5:00 pm and 9:00 am. I have submitted affidavits to the Attorney General and Judge Hayes in regards to these facts.

As a victim, a citizen, and a Christian, I am very upset and opposed to the fact that Mr. Koon is in jail for LWOP based on ***unsubstantiated*** evidence on my behalf as the victim. Further questions arise about the reliability of the evidence in the fact that a break-in at an adjacent location (Stylette Salon), alleged to have occurred at the same time, did not allege a nighttime element and was therefore held by the Supreme Court to at most be Third Degree Burglary and was vacated by Order Koon v. State 595 S.E.2d 456 (2004). As the copies of the enclosed warrants attest, both warrants allege "on or about", but with differing dates. If the dates themselves are uncertain as stated on the warrants, how can the assertion of nighttime element not also be called into question? This ***unsubstantiated*** allegation of nighttime on the Cudd-Lovelace warrant resulted in Mr. Koon's "second strike" and his current sentence of LWOP would not have applied had he been convicted of the same offense as Stylette. It is my understanding that without the nighttime allegation in the Cudd-Lovelace warrant (number 540173), Mr. Koon would be eligible to receive a twenty year sentence on his 1998 conviction upon resentencing. With credit for time served, he would have already completed or nearly completed his sentence. I therefore believe that a miscarriage of justice has resulted in a LWOP sentence for a

property offense with no theft included, and from my research, it is the solicitor's duty to correct this misrepresentation of the facts.

Mr.Koon has filed a Rule 29 (b) SCR.CRIM.PRO in Court of General Sessions to have this conviction reduced to Burglary Third Degree and I was referred to your office as the Rule 29(b) is on the General Sessions Court docket. Therefore, I ask that the Solicitor's office consent to this motion and allow Mr. Koon to be resentenced, in order that justice might be served. I am also requesting that a status conference between you, the Circuit Court Judge Honorable J. Mark Hayes II, Mr. Koon, and myself be held as soon as possible for the sole purpose of determining whether the 1986 Second Degree Burglary (violent nighttime) should be ***reduced*** to Third Degree Burglary (no nighttime) and if so, reducing the LWOP sentence to statutory maximum of twenty years. To assist with your review, I have enclosed copies of various correspondences regarding this matter.

I strongly and humbly request your urgent attention in correcting this injustice. Thank you for your time and I eagerly await your response.

Respectfully,

Harry M. Lovelace

Cc: The Hon. J. Mark Hayes, II, Circuit Court Judge
Mr. Michael Morin, Assistant Solicitor
Mr. Holman C. Gossett, Attorney at Law
The Hon. Roger L. Couch
The Hon. Gary E. Clary
Mr. Ray E. Thompson, Attorney at Law
Mr. Gary P. Mallard, Attorney at Law

State of South Carolina
The Circuit Court of the Sixteenth Judicial Circuit

John C. Hayes, III
Judge

Moss Justice Center, 2nd Floor
1675-1H York Highway
York, SC 29745-7434
Phone: (803) 628-3047
Fax: (803) 628-3055
jhayesj@sccourts.org

May 11, 2012

Mr. Robert Koon, #227826
McCormick Correction Inst.
386 Redemption Way
McCormick, SC 29899

Dear Mr. Koon:

I am returning to you the material you sent entitled "Motion to Arrest LWOP Sentence." I am not a depository for motions.

Yours very truly,

John C. Hayes, III

JCHIII/fjk
Enclosures

Cc: Barry J. Barnette, Solicitor

State of South Carolina)
County of Cherokee)

General Sessions Court
Seventh Judicial Circuit
Case #86-GS-11-289
Warrant # B-540173

State

v.

Robert Holland Koon
Defendant

Affidavit of Detective Major Richard F. Weaver

I, Richard F. Weaver, a former Detective with the Gaffney City Police Department, hereby swear and attest to the following:

That I responded to the break-in of Cudd-Lovelace Agency at 217 E. Frederick Street in Gaffney, SC at approximately 9:00 am on March 29, 1986. This structure was a triplex containing an apartment with adjoining spaces occupied by Cudd-Lovelace Agency and Stylette Salon. It was discovered and reported by J.D. Cudd (deceased) that the section occupied by Cudd-Lovelace Agency had been entered without consent with no evidence of theft. Mr. Cudd ascertained that the break-in occurred sometime between 5:00pm March 28th (closing time) and approximately 8:30 am on March 29th. Specifically, there was no probative evidence that the entry was in the nighttime. The allegation of nighttime as alleged in the Cudd-Lovelace arrest affidavit was likely a scrivener's error mistakenly made when the warrant was prepared by police secretaries and overlooked by myself at the time the warrant was signed.

This is the first time that I was made aware of this error and would like to set the record straight – again, there was absolutely no evidence to establish *corpus delecti*

for the offense of nighttime burglary for the Cudd-Lovelace offense of March 28, 1986.

Further Affidavit sayeth not.

Under Oath I Affirm

S/_____
Richard F. Weaver

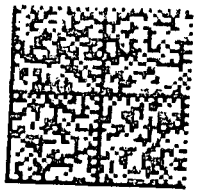
Sworn and Subscribed to me on this ____ day of _____, 2012.

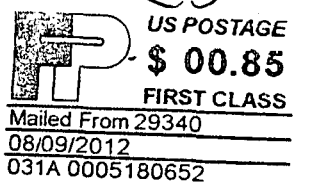
My Commission expires:

_____ _____
Notary Public

EXHIBIT (A)

After 5 Days Return:
Mrs. Brandy W. cBee
Clerk Of Court, erokee County
Post Office Draw r 2289
Gaffney, S.C. 29 42





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MAIL ROOM
LIEBER C.I.

MA 106 Lieber MA 106

R bert Koon #227826
McCormick Correction Ins
355 Redemption Way
McCormick, SC 29899

RECEIVED
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MCCI
MAIL ROOM

EXHIBIT (A)

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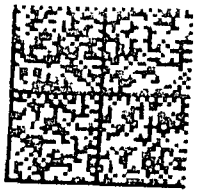
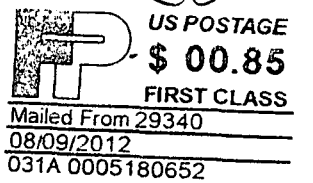
Clerk Of Court, erokee County
Post Office Draw r 2289
Gaffney, S.C. 29 42





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MA 106 Lieber MA 106

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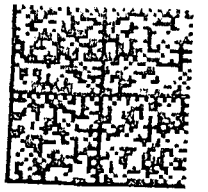

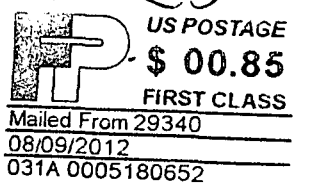

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LIEBER C.I.

MA 106 Lieber MA 106

R bert Koon #227826
McCormick Correction Ins
386 Redemption Way
McCormick, SC 29899

RECEIVED
AUG 1 3 2012
MCCI
MAIL ROOM

COUNTY OF Cherokee

AFFIDAVIT

Personally appeared before me, judge of the Court, one Inv. R. F. Weaver, who being duly sworn, deposes and says that Robert Holland Koon (name of defendant) did within this County and State on or about 3-28-86, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of City of Gaffney] in the following particulars:

DESCRIPTION OF OFFENSE

Burglary, 2nd Degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that such probable cause is based on the following facts:

The defendant, Robert Holland Koon, did break into the office of Cudd-Lovelace Insurance Company located at 217 East Fredrick Street within the city limits of Gaffney, South Carolina, on or about March 28th, 1986, by kicking side door open and entering during the nighttime with the intent to commit a felony therein.

Sworn to and Subscribed before me,

This 2nd day of April, 19 86.

James T. Lowe (L.S.)
Signature of Issuing Judge

Address

Phone:

Richard Weaver
Signature of Affiant

Address Gaffney Police Department
Gaffney, S. C.

Phone: 489-8115

STATE OF SOUTH CAROLINA

ARREST WARRANT

COUNTY OF Cherokee

[or MUNICIPALITY OF City of Gaffney]

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE, COUNTY OR MUNICIPALITY, OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that Robert Holland Koon (name of defendant) did on or about 3-28- 19 86, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of City of Gaffney] as set forth below:

DESCRIPTION OF OFFENSE

Burglary, 2nd Degree

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at Gaffney,
on April 2nd, 19 86.

James T. Lowe
Signature of Judge

Form Approved by
S.C. Attorney General
May 13, 1983

FORM CONTINUES ON BACK

ORIGINAL

COUNTY OF Cherokee

AFFIDAVIT

Personally appeared before me, judge of the Court, one Inv. R. F. Weaver, who being duly sworn, deposes and says that Robert Holland Koon (name of defendant) did within this County and State on or about 3-28-86, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of City of Gaffney] in the following particulars:

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Burglary, 2nd Degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that such probable cause is based on the following facts:

The defendant, Robert Holland Koon, did break into the office of Cudd-Lovelace Insurance Company located at 217 East Fredrick Street within the city limits of Gaffney, South Carolina, on or about March 28th, 1986, by kicking side door open and entering during the nighttime with the intent to commit a felony therein.

Sworn to and Subscribed before me,

This 2nd day of April, 19 86.

James T. Lowe (L.S.)
Signature of Issuing Judge

Address

Phone:

Richard Weaver
Signature of Affiant

Address Gaffney Police Department
Gaffney, S. C.

Phone: 489-8115

STATE OF SOUTH CAROLINA

ARREST WARRANT

COUNTY OF Cherokee

[or MUNICIPALITY OF City of Gaffney]

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE, COUNTY OR MUNICIPALITY, OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that Robert Holland Koon (name of defendant) did on or about 3-28- 19 86, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of City of Gaffney] as set forth below:

DESCRIPTION OF OFFENSE

Burglary, 2nd Degree

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at Gaffney,
on April 2nd, 19 86.

James T. Lowe
Signature of Judge

Form Approved by
S.C. Attorney General
May 13, 1983

FORM CONTINUES ON BACK

ORIGINAL

COUNTY OF Cherokee

AFFIDAVIT

Personally appeared before me, judge of the Court, one Inv. R. F. Weaver, who being duly sworn, deposes and says that Robert Holland Koon (name of defendant) did within this County and State on or about 3-28-86, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of City of Gaffney] in the following particulars:

DESCRIPTION OF OFFENSE

Burglary, 2nd Degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that such probable cause is based on the following facts:

The defendant, Robert Holland Koon, did break into the office of Cudd-Lovelace Insurance Company located at 217 East Fredrick Street within the city limits of Gaffney, South Carolina, on or about March 28th, 1986 by kicking side door open and entering during the nighttime with the intent to commit a felony therein.

Sworn to and Subscribed before me,

This 2nd day of April, 19 86.

James T. Lowe (L.S.)
Signature of Issuing Judge

Address

Phone:

Richard Weaver
Signature of Affiant

Address Gaffney Police Department
Gaffney, S. C.

Phone: 489-8115

STATE OF SOUTH CAROLINA

ARREST WARRANT

COUNTY OF Cherokee

[or MUNICIPALITY OF City of Gaffney]

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE, COUNTY OR MUNICIPALITY, OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that Robert Holland Koon (name of defendant) did on or about 3-28- 19 86, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of City of Gaffney] as set forth below:

DESCRIPTION OF OFFENSE

Burglary, 2nd Degree

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Done at Gaffney,
on April 2nd, 19 86.

James T. Lowe
Signature of Judge

Form Approved by
S.C. Attorney General
May 13, 1983

FORM CONTINUES ON BACK

ORIGINAL

COUNTY OF Cherokee

AFFIDAVIT

Personally appeared before me, judge of the Court, one Inv. R. F. Weaver, who being duly sworn, deposes and says that Robert Holland Koon (name of defendant) did within this County and State on or about 3-28-86, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of City of Gaffney] in the following particulars:

DESCRIPTION OF OFFENSE

Burglary, 2nd Degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that such probable cause is based on the following facts:

The defendant, Robert Holland Koon, did break into the office of Cudd-Lovelace Insurance Company located at 217 East Fredrick Street within the city limits of Gaffney, South Carolina, on or about March 28th, 1986, by kicking side door open and entering during the nighttime with the intent to commit a felony therein.

Sworn to and Subscribed before me,

This 2nd day of April, 19 86.

James T. Lowe (L.S.)
Signature of Issuing Judge

Address

Phone:

Richard Weaver
Signature of Affiant

Address Gaffney Police Department
Gaffney, S. C.

Phone: 489-8115

STATE OF SOUTH CAROLINA ARREST WARRANT

COUNTY OF Cherokee

[or MUNICIPALITY OF City of Gaffney]

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE, COUNTY OR MUNICIPALITY, OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that Robert Holland Koon (name of defendant) did on or about 3-28- 19 86, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of City of Gaffney] as set forth below:

DESCRIPTION OF OFFENSE

Burglary, 2nd Degree

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at Gaffney,
on April 2nd, 19 86.

James T. Lowe
Signature of Judge

Form Approved by
S.C. Attorney General
May 13, 1983

FORM CONTINUES ON BACK

ORIGINAL

ARREST WARRANT

No. B 540173

STATE OF SOUTH CAROLINA

City of Gaffney — County / Municipality (Circle one)

THE STATE

against

Robert Holland Koon

Address: 510 East Jefferies Street

Gaffney, S. C.

Phone _____ SSN [redacted]

Sex M Race W Height 5'7" Weight 145

DOB 8-9-66 DL _____

Offense Burglary, 2nd Degree

Code (or Ordinance) § 16-11-310

Date of Offense 3-28-86

Officer R. F. Weaver

Agency Gaffney Police Department

Date of Disposition _____

Disposition _____

Sentence _____

Co-Defendants _____

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C.
APR 3 3 30 PM '86
VOL PAGE
KATIE W. BAINES CLERK OF COURT

A copy of this Arrest Warrant was delivered to the following defendant:

Robert Holland Koon

on the 2 day of April, 1986

J. W. Hamilton

Signature of Constable or Law Enforcement Officer

This warrant is certified for service in _____ County / Municipality (Circle one)

The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

PRELIMINARY HEARING held by

Judge _____

on _____, 19____

with _____
Attorney for Defendant

Decision: _____

BAIL

Date Set _____, 19____

Judge _____

Amount _____

Surety _____

RETURN WARRANT TO:

WITNESSES:

Name _____

Address _____

_____ Phone _____

Name _____

Address _____

_____ Phone _____

Name _____

Address _____

_____ Phone _____

Name _____

Address _____

_____ Phone _____

Name _____

Address _____

_____ Phone _____

Name _____

Address _____

_____ Phone _____

JURORS

_____ _____

_____ _____

_____ _____