

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

April 17, 2012

REMITTITUR

The Honorable Beverly H. Whitfield
205 W. Main Street
PO Box 678
Walhalla, SC 29691

Re: Temple, Dan Jr. v. The State – 2010-CP-37-00005

Dear Mrs. Whitfield:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,

CLERK

DES/jj

cc: Appellate Defense
Dan Temple Jr #254316
Assistant Attorney General Kaelon E. May

The Supreme Court of South Carolina

Dan Temple, Jr.,

Petitioner,

v.

State of South Carolina,

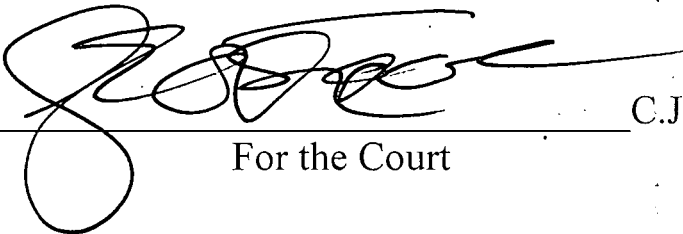
Respondent.

The Honorable J. Cordell Maddox, Jr.
Oconee County
Trial Court Case No. 2010-CP-37-00005

ORDER of DISMISSAL

In the explanation required by Rule 243(c), SCACR, petitioner has failed to show that there is an arguable basis for asserting that the determination by the lower court was improper. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

IT IS SO ORDERED.



For the Court C.J.

Columbia, South Carolina

March 30, 2012

cc: Appellate Defense
Dan Temple Jr #254316
Assistant Attorney General Kaelon E. May

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT.

THIS IS THE EXPLANATION OF THE SUFFICIENT FACTS OF THIS CASE.

CASE#2010-CP-37-0005.

RECEIVED

APR 9 2 2012

S.C. SUPREME COURT

DAN TEMPLE JR.254316

PETITIONER

VS

STATE OF SOUTH CAROLIA

RESPONDENT

CERTIFICATE OF SERVICE

I Certify that a true copy of the petition for writ of certiorari, a copy of the ~~complaint~~ ^{Exhibit 1-18} and supplemental appendix in this case has been served on _____ this _____ day of _____ 20__>

DATED THIS 29th DAY OF March, 2012.

SWORN AND AFFIRMED TO BEFORE ME THIS DAY OF 29th March, 2012
Susan H. Kirby
NOTARY PUBLIC
MY COMMISSION EXPIRES 09-29-2018

RESPECTFULLY SUBMITTED,
Dan Temple
254316

TABLE OF AUTHORITIES.
EXHIBIT.

- (1) A LETTER TO CLERK OF COURT, ASKING FOR MISSING SEARCH WARRANT EXHIBIT PAGE, 1
- (2) DATE. ON 5/19/2000. -----PAGE, 1.
- (3) S.C. COURT OF APPEALS, FINAL ANDERS BRIEF OF APPELLANT, 7/18/2000. PAGE. 1-10
- (4) UNDATED STATES DISTRICT COURT ORDER. 2/26/03-----EXHIBIT, PAGE. 1-2.
- (5) LETTER TO LAW OFFICE OF SCOTT D. ROBINSON. 4/14/03. PAGE. 1-2.
- (6) LAW OFFICE OF SCOTT D. ROBINSON DATE, 8/15/03. ---EXHIBIT. PAGE, 1.
- (7) LAW OFFICE OF SCOTT D. ROBINSON DATE, 9/9/03. EXHIBIT 1-4. PAGE.
- (8) COPY OF LETTER TO SCOTT D ROBINSON FROM DATE, 1/16/2004. PAGE 1.
- (9) TENTH CIRCUIT COURT ASSORTION OF RIGHT TO 3/19/2004. PAGE. 1-
- (10) AFFIDAVIT AS TO MAILING AND SERVICE OF DOCUMENTS FOR MOTION TO
- (11) COMPEL DISCOVERY, DATE, 11/4/2003. PAGE, 1-3.
- (12) TARA DAWN SHURLING PA DATE, 1/2/08. EXHIBIT PAGE, 1
- (14) SUPREME COURT OF THE UNITED STATES. EXHIBIT DATE, 3/30/2010.
- (15) SUPREME COURT OF THE UNITED STATES EXHIBIT DATE 6/1/2010.
- ((16)) SUPREME COURT OF THE UNITED STATES, EXHIBIT DATE 7/20/2010.
- ((17)) SUPREME COURT OF THE UNITED STATES, PROOF OF AFFIDAVIT, DATE
6/15/10. EXHIBIT PAGES, 1.
- (18) AFFIDAVIT OF TRANSCRIPT RECORD OF THE CRITICAL STAGE OF
TRIAL. DATE: 8/29/1997.

11, 8/10

5-19-2000

Dear Sallie C. Smith
I would like to know, if the Court has a
search warrant on record for (Troy)
(Trenty Madelon Bill's) at the following
address, Hotel New, 20, 1997.

Dean Temple Dr.
510 Hunter Street
Geneva, N.C.

Thank you
Don Temple Jr.

FILED FOR RECORD
OCONEE COUNTY
N.C.

MAY 23 9 08 AM '00

SALLIE C. SMITH
CLERK OF COURT

EXHIBIT 1-10

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

H. Dean Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

DAN TEMPLE, JR.,

APPELLANT.

FINAL ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Assistant Appellate Defender

South Carolina Office
of Appellate Defense
1122 Lady Street, Suite 940
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT

*The Briefs fail to
have, Fast of Case
in the Record 17 pages
under Rules 268.*

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Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979) 5

State v. Brown, 267 S.C. 311, 227 S.E.2d 674 (1976)..... 6

State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied, 493 U.S. 895, 110 S.Ct. 246 (1989)..... 5

State v. Littlejohn, 228 S.C. 324, 90 S.E.2d 924 (1955) 5

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to grant a directed verdict to the charges of distribution of crack cocaine and distribution within proximity of a school?

they

STATEMENT OF THE CASE

Appellant was indicted for distribution of crack cocaine and for distribution of the same within proximity of a school at the June 1998 term of the Oconee County Grand Jury. He proceeded to trial on October 28, 1998, before the Honorable H. Dean Hall and a jury. Appellant was found guilty as charged. He was sentenced to twenty (20) years for distribution and was sentenced to fifteen (15) years and was fined \$10,000 for proximity of a school.

This appeal follows.

ARGUMENT

The trial court erred in refusing to grant a directed verdict to the charges of distribution of crack cocaine and distribution within proximity of a park.

Appellant was tried for allegedly selling crack cocaine to an undercover operative, Phillip Scott. Mr. Scott was working off prior charges of his own and was sent in with a hidden video camera to substantiate a buy from appellant. Mr. Scott's prior record and pending charges left him with very little credibility. The video camera did not actually record a buy from appellant.

At the conclusion of the State's case, defense counsel moved for a directed verdict because of insufficient evidence. The trial judge denied the motion. (R. p. 121, line 1 - p. 122, line 2). That ruling was in error.

Due process as guaranteed by the Fourteenth Amendment requires "that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof -- defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979).

Our Court has held:

[T]he trial judge is concerned with the existence of non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonable tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. [Emphasis added].

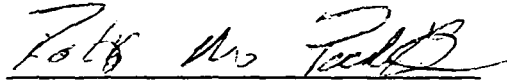
State v. Littlejohn, 228 S.C. 324, 90 S.E.2d 924, 926 (1955); State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied, 493 U.S. 895, 110 S.Ct. 246 (1989).

In applying this standard, our Court has held that evidence which is "sufficient to raise a strong suspicion of the guilt of the accused" is not sufficient to constitute "any evidence from which the guilt of the accused may be fairly and logically deduced." State v. Totherow, 263 S.C. 275, 210 S.E.2d 228, 230 (1974). See, also, State v. Turner, 117 S.C. 470, 109 S.E. 119, 120 (1921). The motion for a directed verdict should be granted, therefore, "where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused's guilt." State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93 (1974), cert. denied, 420 U.S. 945 (1974). "If the evidence is consistent with both innocence and guilt, it cannot support a conviction." United States v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10th Cir. 1971). Guilt is only to be found when there is a "rationally supportable 'state of near certitude.'" Evans-Smith v. Taylor, 19 F.3d 889, 906 (4th Cir. 1994).

CONCLUSION

Because Mr. Scott's credibility was totally lacking and because the alleged buy was never recorded on video, a directed verdict of acquittal should be granted on the charges against appellant.

Respectfully submitted,



Robert M. Pachak
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of July, 2000.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County

H. Dean Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAN TEMPLE, JR.,

APPELLANT.

PETITION TO BE RELIEVED AS APPELLATE COUNSEL
PURSUANT TO ANDERS v. CALIFORNIA

Robert M. Pachak, of the South Carolina Office of Appellate Defense, was appointed to represent appellant in this appeal and states:

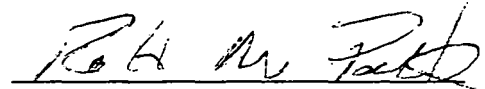
1. Counsel has thoroughly reviewed appellant's lower court records in an effort to discover all arguable errors for presentation to the Court on appellant's behalf. In counsel's opinion, the record fails to demonstrate either preserved errors or other legally substantial issues to present to the Court within the context of this direct appeal.
2. In an effort to protect appellant's right to review, however, counsel has submitted a brief pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). It is counsel's understanding that this brief will prompt a full and thorough review of the record by the Court to determine errors independent of counsel's opinion of the merits of appellant's appeal. Counsel is required under Anders to submit a petition to be relieved as counsel, and

attaches this petition in compliance with that procedure.

3. This office has served appellant with a copy of the Anders brief. Counsel understands that appellant will also be contacted directly by the Court and given forty-five days in which to submit any additional materials which appellant wishes the Court to consider, either by letter, document, or pro-se brief.

WHEREFORE, counsel respectfully asks the Court to accept the foregoing Anders brief and grant the petition to be relieved as appellate counsel.

Respectfully submitted,



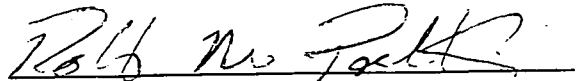
Robert M. Pachak
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of July, 2000.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 210(b), SCACR.



ROBERT M. PACHAK
Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, SC 29201
(803) 734-1330

Attorney for Appellant.

July 18, 2000

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

H. Dean Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAN TEMPLE, JR.,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Charles H. Richardson, Esquire; a copy of the Record on Appeal and Final Anders Brief has been served on Dan Temple, Jr. #254316, Kershaw Correctional Institution, PO Box 518, Kershaw, SC 29067, this 18th day of July, 2000.



Robert M. Pachak
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of July, 2000.


 (L.S.)

Notary Public for South Carolina

My Commission Expires: February 3, 2005.

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	10 th JUDICIAL CIRCUIT
)	
DAN TEMPLE JR. # 254316	)	U.S. CASE # 09-9898
APPLICANT,	)	CASE #2010-CP-37-0005
V.)	
STATE OF SOUTH CAROLINA	)	AFFIDAVIT OF TRANSCRIPT RECORD
RESPONDENT	)	OF THE CRITICAL STAGE OF TRIAL.
	)	DATE: 08/29/1997

- (1) THE TRIAL COUNSEL FAILED TO OBJECT AT THE CRITICAL STAGE OF TRIAL. (SEE PG. 10 LINES 16-25) THE APPLICANT SHOULD HAVE THE Opportunity AS TO THE VIDEO TAPE AND HAVE IT TESTED TO DETERMINE WHETHER OR NOT IT HAS BEEN ALTERED IN ANY WAY.
- (2) (SEE PG.11 LINES 12-25) WE HAVE NOT HAD THE OPPORTUNITY TO REVIEW THAT ONE.
- (3) (SEE PG.12 LINE 13) DENIED CONTINUANCE.
- (4) (SEE PG.13 LINES 17-25) THE STATE FAILED TO TURN OVER A FULL BRADY MOTION.
- (5) (SEE PG.14 LINES 10-25) HERE IS PROOF. LINES 11-12, SLED DRUG REPORT IS MISSING.
- (6) (SEE PG.14 LINES 19-25) WHAT OTHER DRUG REPORT WOULD THEY HAVE OTHER THAN ONE FROM SLED?
- (7) (SEE PG.15 LINES 11-13) WHAT OTHER KIND OF TEST?
- (8) (SEE PG. 15 LINES 8-10) THE ONLY TEST THAT WOULD BE IN A DRUG CASE WOULD BE THE ANALYSIS OF THE SUBSTANCE, WOULD IT NOT?
- (9) (SEE PG.14 LINES 1-5) MR. DAY I WOULD BE GLAD TO LET YOU PUT ALL THESE MOTIONS IN THE RECORD, BUT IF THE STATE HAS NOT GIVEN YOU SOMETHING, "THEY ARE NOT GOING TO BE ABLE TO INTRODUCE IT IN FRONT OF THE JURY." "That's MY RULING"
- (10) (SEE PG.19 LINES 4-6) MR. DAY REQUESTED A DISCOVERY ON MAY 1st, 1997, AND THE LAST REQUEST WAS ON JULY 1st, 1998.
- (11) (SEE PG.25 LINES 1-25) IT IS SIMPLY THE PAPERWORK THAT DOES NOT ADD UP IN THIS CASE FROM THE OCONEE COUNTY GRAND JURY INTO THIS COURT FOR FUTHER PROCEEDINGS.
- (12) (SEE PG.23 LINES 21-25) THE JUDGE WOULD NOT ALLOW THE JURORS TO OPEN UP A NOTE PAD.

 COPY

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FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

12 (SEE PAGE 23) THE JUDGE WOULD NOT ALLOW THE JURORS TO OPEN A NOTE PAD TO LINES 21-25.

THE DEFENDANT SUBMITS THAT THE SUBJECT MATTER JURISDICTION ALLEGATIONS IS WITH MERIT AND SHOULD BE GRANTED AND VACATED, AND THE CIRCUIT COURT HAD A SUBJECT MATTER JURISDICTION TO CONVICT A CRIMINAL DEFENDANT. IF THERE HAS BEEN AN INDICTMENT RETURNED TRUE BILLED BY A GRAND JURY WHICH SUFFICIENTLY STATES THE OFFENSE. THE RECORD WILL SHOW THAT THERE WERE NO WHITE ROCKS IN THE INDICTMENT, 08-30-97 AND 10-10-97 WERE NOT PART OF THE DISCOVERY UNDER RULE 5 AND 6. THERE HAD BEEN A WAIVER OF PRESENTMENT TO THE GRAND JURY INDICTMENT, THERE WAS NONE IN THIS CASE, OR (3) THE CHARGE IS A LESSER INCLUDED OFFENSE OF THE CRIME CHARGED IN THE INDICTMENT. THE DEFENDANT REVIEWED AN ENHANCEMENT OF A COUNT THERE, SEE LUKE V. STATE, 3418 C 54, 533 S.E.2d 324 (2000). CIRCUIT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION TO CONVICT A DEFENDANT OF AN OFFENSE UNLESS THERE HAS BEEN AN INDICTMENT WHICH SUFFICIENTLY STATES THE OFFENSE, THE DEFENDANT HAS WAIVED PRESENTMENT OF THE INDICTMENT, OR THE OFFENSE IS A LESSER INCLUDED OFFENSE OF THE CRIME CHARGED IN THE INDICTMENT. SEE STATE V. TIMMONS, 349 S.C. 389, 563 S.E.2d 657 (2000); STATE V. PRINES, 564, S.E.2d 103 (2002). AN INDICTMENT IS INSUFFICIENT TO COUNTY JURISDICTION IF IT DON'T APPRIZE THE DEFENDANT TO THE NECESSARY ELEMENTS OF THE OFFENSE INTENDED TO BE CHARGED AND INFORMS THE DEFENDANT OF THE CIRCUMSTANCES HE MUST BE PREPARED TO DEFEND. (1) WEIGHT OF DRUGS, DATE, TIME, PLACE AND CONTROL NOT ON THE WARRANTS, SEARCH WARRANTS AND DRUG REPORTS. TO APPRIZE OF THE NECESSARY ELEMENTS TO COUNTY JURISDICTION. SEE STATE V. PARKER, 344 S.C. 250, 254 S.E.2d 255 (CT.APP. 2001). AN INDICTMENT MUST PASS A LEGAL MUSTER IF IT DON'T "CHARGE THE CRIME SUBSTANCIALY IN THE LANGAUGE OF THE STATUTE PROHIBITING THE CRIME OR SO PLAINLY THAT THE NATURE OF THE OFFENSE CHARGED MAY BE EASILY UNDERSTOOD...SEE ALSO RIDDIK V. STATE, 348 S.C. 131, 56.

RESPECTFULLY SUBMITTED,

S/ Dan Samples

SWORN to and subscribed before me this
16th day of December, 20 11.
Eugene H. Hines (L.S.)
Notary Public for South Carolina

My Commission Expires: 4-27-2016



COPY

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FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

FILED

FEB 26 2003

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCKHILL DIVISION**

LARRY W. PROPPS, CLERK
COLUMBIA, S.C.

lod
2/26/03

Daniel Temple, Jr., #254316,	)	C.A. No. 0:02-458-25BD
)	
Petitioner,)	
)	
vs.	)	ORDER
)	
Mr. Rickie Harrison; and Charles M.)	
Condon, Attorney General)	
of the State of South Carolina,)	
)	
Respondents.)	
_____)	

This matter is now before the undersigned for review of the Report and Recommendation ("the Report") filed by United States Magistrate Judge Bristow Marchant, to whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.). In his Report, Magistrate Judge Marchant recommends that this case be dismissed, without prejudice, because petitioner has failed to exhaust his state court remedies. The Magistrate Judge's report was filed on June 24, 2002.


This Court is charged with conducting a de novo review of any portion of the Magistrate Judge's Report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636. No objections have been filed to the Report.¹ In the absence of objections to the Report and Recommendation of

¹The petitioner filed a response to the Report on July 1, 2002 in which he agreed with Judge Marchant's recommendation that his case be dismissed without prejudice for failure to exhaust state court remedies. Specifically, the petitioner writes that he does, "agree with the Magistrate Judge to exhaustion [sic] State Court Remedies, and will go Back."

13

the Magistrate Judge, this Court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

A review of the record indicates that the Report accurately summarizes this case and the applicable law. For the reasons articulated by the Magistrate Judge, it is hereby **ORDERED** that the Magistrate Judge's Report be **ACCEPTED**, and this case be **DISMISSED** without prejudice.


TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE

February 24, 2003
Florence, South Carolina

EVANS INSTITUTION
APR 11 4 2003
MAIL ROOM
Letter 4/14/03

To: Law Office of Scott D. Robinson
Attorney and Counselor at Law
209 E. Main st.
Pickens, S.C. 29657

From Mr. Dan Temple Jr.
Evan's C.I.
Bennettsville S.C. 29512-02
F2A-264

Re: Temple Vs. State

Case No. 01-CP-37-290

Dear Mr. Robinson

I received your letter dated April 8, 2003. I read your letter very carefully and I see, that you received the information that I sent to judge Nicholson. This information is very important to my case, and I would like to incorporate all my past Motion and P.C.R. hearings and amendments to my case. My request is to get all my issues on the record, into my P.C.R. hearing. I sent you a letter dated 2/6/03 requesting audio, video tape, the words from the audio, video is deleted from the transcription.

On March 6, 2003, I made a request to you to file a motion for the authorization for funds, audio and video tape, and to show defection on transcribe. I have also sent you my case file and some of my important grounds. My question to you, Mr. Robinsaon have you file a motion for authorization funds to court and have the attorney generals office turnover the audio, video tape to you, also I sent Mr. Sprouse a list of people to testify in my P.C.R. hearing. I need them subpoena to court.

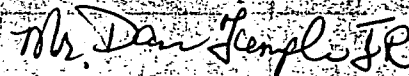
Mr. Robinson, I read the part of your letter about how do I contact you, and I will correspond by mail, but a lot of things can't be corresponded by mail, as you know. I have a very special case with D.S.S. and this case connects to it. Oh yes Mr. Robinson I didn't plea, I went to trail. There is a few more important facts you need to know.

Chain of custody broken by Kenneth Washington. See state Exhibit (3). The state must prove a chain of custody for a blood or drug sample from the time it is drawn until it is tested. State V. Smith, 326 S.C. 39 482 S.E. 2d 777 (1997). A complete chain of evidence must be established as far as practicable, tracing possession from the time the specimen is taken from the body to the final custody to be analyzed. State V. Cribb, 310 S.C. 518 426 S.E. 2d 306 (1992). also there is a variance between an allegation in the indictment and the proof is immaterial the unproved allegation.

Also the tape will prove that C.I. was ask what is that you have on your side, and C.I. stated a little something I got from Michael B. Craig; the tape will show this fact, also look at the indictment on the back the name Michael Craig, as witness for the state grand jury. Mr. Robinson read tp Page 13 line 4-7. Mr. Day stated: I want to make sure that we have exchanged rule five and rule six. Also see tp page 14 line 11. Court, move what is it that you think you're missing. Mr. Day see tp page 14 line 20. What other drug report would they have other then the one from S.L.E.D.? See page 116-120. The judge and Mr. Chappel and Mr. Day all three of them fail to check exhibit (3). Mr. Robinson, I thank you for your time in this matter, and I look forward to hearing from you soon.

Yours Truly

Mr. Dan Temple Jr.



CC. JUDGE NICHOLSON
 CC: COURT ADMINISTRATOR
 CC: FILE



Date Action Completed

Date Received

Signed



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

J. C. "BUDDY" NICHOLSON, JR.
JUDGE

100 SOUTH MAIN STREET
POST OFFICE BOX 8002
ANDERSON, SOUTH CAROLINA 29622-8002
TELEPHONE: (864) 260-4059
FAX: (864) 224-6320
E-MAIL: jnicholsonj@scjd.state.sc.us

August 15, 2003

Law Office of Scott D. Robinson, Esquire
209 East Main Street
Pickens, SC 29671

Re: Temple v. State (PCR)

Dear Mr. Robinson:

Judge Nicholson received the attached letter from Dan Temple regarding his post conviction relief hearing. Judge Nicholson requests that you respond to Mr. Temple accordingly, and he asks that you send a carbon copy of your response to him.

Thank you for your attention to this matter. If I can be of any help, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "L. Brenn Watson".

L. Brenn Watson
Law Clerk to The Honorable J.C. Nicholson, Jr.

Sept 9 2003

To: Law Office of Scott D. Robinson
Attorney and Counsel at Law
209 East Main Street
Pickens, South Carolina 29671

From: Mr. Dan Temple, Jr. #254316
McCCI FlB-132
Rt. #2 Box #100
McCormick, S.C. 29899

September 9, 2003

RE: Temple Vs. State Case No. 01-CP-37-290

Dear Mr. Robinson,

I received your recent letter dated Sept. 3, 2003, and I am sorry to hear about your sisters illness with cancer. I know how you feel, first hand, as I also have family who are fighting this serious disease. I would like to point out that I am also fighting for my life in this case and it is a very serious matter to me. Mr. Robinson, I know that you have responded to each of my letters, which is better than most attorneys do in a PCR case. However, the fact remains that these serious matters remain unresolved and the court is not going to continue to put off this matter indefinitely.

As you recall, when you became involved in this case, I had motioned the court to authorize funds to have the audio/vedio tape analized for missing portions and blowups made of certain frames. Frames of the video demonstrate that the informant did, in fact have something with him when he came to my home. Audio portions were not heard in the original trial and as there was no transcription made of the audio, the appeals court never heard this important evidence. The State used parts of this evidence to convict me (their exhibit 1.), but now they are withholding it. Why have you not gotten this important evidence? Has the court refused to authorize funds as discussed? It has been nine (9) months! The money I referred to was not bribe money or to try to get you to do a better job. My family is willing to pay to have this evidence analized if the court will not authorize these funds. These tapes are very, very important to my case as they demonstate

that the Two (2) officers lied on several key points in court. On tape the informant admits that he brought drugs to my home with him. There are portions of the tape that have not been heard by the court that may contain other important and useful information. As you should be able to understand the importance of this to my cause, I find it difficult to believe that you have not gotten this tape. These things can not be analyzed overnight, and as I said the court will not put up with much more delay.

In your letter you stated that you had reviewed all the documents from the solicitors office, but fail to mention if you got a copy of the search warrant dated 11/14/97 which was withheld at trial and that I specifically asked about. You also say that I was directly indicted by the grand jury but I fail to understand what that has to do with the failure to have the requested preliminary hearing or why this indictment was never recorded? You should be aware that I was held in jail from Feb. 26, 98 until June 10, 98. Did the State get an extension under Rule 3A on my indictment as required under the 90 day Rule. Also consider, that probable cause was not proven at a critical stage of prosecution prior to general sessions court, thus violating Const. Art. 1-3 Art 1-14 and pursuant to Art. 1. sec. 11 and under statute 22-5-710. Which states, any court under the provisions of Chap. 9 title 14. shall issue warrant and hold preliminary examination in all criminal cases; as this was not done the trial judge should have granted a directed verdict on the two distribution offences.

Please notice the essential elements of the offence of distribution of crack cocaine which the court charged the jury state that it must be proved : (1) Temple had actual control or the right to exercise control over the crack cocaine. (the audio/video is crucial) (2) He knowingly distributed or delivered the cocaine. (again the tape analysis is crucial) (3) the substance upon analysis was in fact cocaine. (we have discussed this many times, the serious problems with state exhibit #3. Have you looked in to any of this?) (4) that the offence took place in Oconee

County. If the State fails to prove any of these elements in :44-53-375 their case fails. There are several other important matters which you seem to have overlooked from my previous letters, please review them and get all the documentation together so that we can fully discuss these matters and get everything ironed out before the hearing. As I stated in my previous letter, these important issues cannot wait until the day of the hearing! As stated in my first paragraph of this letter; this is my life we are dealing with and it is serious.

You requested a list of people that need to be subpoenaed for the hearing and or that we need depositions from. I sent you a list in my letter of 5/12/03, over 90 days ago? I have readdressed this ✓ and have cut down the list somewhat. It has been five (5) years and I'm sure some of them will not be easy to find, but I have provided the best info I have on them: please do your best. ✓

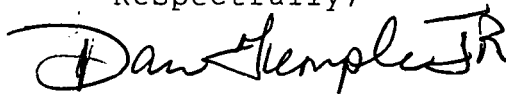
- 1) Danial Day P.O. Box 1587 Seneca, S.C. 29678
- 2) Maurice Taylor Maurice's Furniture Inc. 1738 Columbia Dr. Decatur, Ga. 30032 (404-288-4000) He will testify to the amount of money paid to Mr. Day and that we discussed the preliminary hearing at that time.
- 3) Robert M. Pachak Court of Appeals Attny. P.O. Box 11629 Columbia, S.C. 29211 He can testify that he never received the search warrant and that it was not contained in the record on appeal, there are many matters concerning his representation that need to be brought to the court.
- 4) Officer Nealy Kershaw Trans. Off. 4848 Gold Mine Hwy. Kershaw, S.C. Testimony or deposition to the fact that Danial Day did not give him copies of my file as Mr. Day testified to.
- 5) Lee Williams Seneca Police Dept. Concerning his testimont as to the drugs allegedly gotten from me, as to composition, number, color etc.
- 6) Steven Watkins, Oconee Sheriff's Dept. concerning Preliminary Hearing and issuance of warrant on 4/21/98
- 7) Bridgett Robinson P.O. Box 904 Seneca, S.C. 29678 (864-822-1086) concerning her court testimony about out of state witnesses that the court ignored. She knew these potential witnesses. (see #10 Gail McCain)
- 8) Kenny Holder East Side 6 St. Housing Project, Seneca, S.C. To testify the he was in my home working on my stove when Philip Scott (CI) allegedly came into my home and bought drugs.

He can testify that the C.I. never entered my home, but was in the back yard looking at tires. He lived next door to Theodore David a police officer involved in the case.

- 9) Gary Smith Trustee Anderson County Jail, Can testify that I Requested a preliminary hearing in writing while in jail.
- 10) Gail McCain Jasper, Alabama To testify that Phillip Scott (CI) was in the back yard looking at tires and not in my home.
- 11) Phillip Scott SCDC Inmate Ridgeland, S.C. Star witness of the State, who is now doing time for selling drugs.
- 12) Susan S. Chappel, Prosecutor of the original case. Address unknown.

There are several more people with pertinent testimony, but these are the most important. Much of this could quite possibly be handled by affidavit or deposition, but their testimony would need to be discussed by us in detail for it to be of any real benefit to the case: again this could not be handled the day of the hearing, but weeks in advance to allow question preparation, find them etc. Personally, I don't feel this can be properly handled without a face to face meeting to prepare these important matters for hearing. I again must request such a meeting at your earliest convenience.

Respectfully,



Dan Temple, Jr. # 254316
McCCI Flb-132
Rt. #2 Box #100
McCormick, S.C. 29899

CC: Hon. J.C. Nickolson
P.O. Box 8002
Anderson, S.C. 29622

File



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

J. C. "BUDDY" NICHOLSON, JR.
JUDGE

100 SOUTH MAIN STREET
POST OFFICE BOX 8002
ANDERSON, SOUTH CAROLINA 29622-8002
TELEPHONE: (864) 260-4059
FAX: (864) 224-6320
E-MAIL: jnicholsonj@scjd.state.sc.us

January 16, 2004

Scott D. Robinson, Esq.
Law Office of Scott D. Robinson
P.O. Box 678
Liberty, SC 29657

Re: Dan Temple v. State of South Carolina

Dear Mr. Robinson:

Judge Nicholson is in receipt of Dan Temple's January 8, 2004 letter. The judge requests that you communicate with Mr. Temple regarding his case. Please explain to him that all Motions will be heard at the PCR hearing. Also, please advise him that all direct communication with the court without sending the communication to the other parties is improper ex parte communication. If I can be of any assistance please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "L. Brenn Watson".

L. Brenn Watson
Law Clerk to the Honorable J.C. Nicholson, Jr.

cc: Dan Temple

COURT OF COMMON PLEAS
COUNTY OF OCONEE

Tenth Circuit Court

Dan Temple, Jr. #254316	)	Case No: 2001-CP-37-290
Applicant)	
vs.	)	ASSERTION OF RIGHT TO SELF
The State of South Carolina	)	REPRESENTATION
Respondant)	

This court is directed to notice the fact that this PCR matter has been before the court of the Tenth Circuit for, in excess of thirty-three (33) months; during which time this applicant has been virtually unrepresented by counsel. Previously, Judge Alexander McCauley appointed several attorneys who were relieved for various reasons and served varying amounts of time, but none of whom provided any meaningful representation. Notice that attorney Robert Sprouse was attorney of record for approximately one (1) year, he was totally ineffective and was relieved citing conflict of interest as to other litigation involving this applicant. Supprisingly this other litigation also involved Judge McCauley; said case, as with this PCR matter, had received negligent mishandling and unlawful delays.

This PCR matter was then transferred to Anderson with Judge J.C. Nicholson presiding and Attorney Scott Robinson was assigned. Again a pattern of attorney procrastination and negligence is demonstrated in that he failed to get the attorney/ client file from trial attorney Danial Day, failed to get the requested states evidence exhibits, failed to file motions sent to him, failed to contact defense witnesses, failed to meet with his client to develop issues and grounds and has, in essence provided no meaningful representation or any semblance of professional expertise. The Court must notice that it has been equally negligent in this case. Judge Nicholson had instructed this applicant to keep him informed as to progress and problems in this matter. This applicant diligently provided the judge with constructive notice of the lack of progress but he has failed to compel any reasonable proformance from the attorney of record and failed to hold timely

hearing of this unlawfully delayed case. In view of Mr. Robinson's continued negligence and or misconduct, counsel and the applicant are so at odds as to prevent presentation of an adequate case. See U.S. v. Walker-9 F.3d 1245 (1994)-Therefore on March 3, 2004 this applicant motioned this court for Mr. Robinson's dismissal.

Notice that the 6th. Amendment is made applicable to the states by the 14th. Amendment and guarrantees the applicant the independant constitutional right to self-representation and that he may proceed to defend himself without counsel when he voluntarily and intelligently elects to do so. See U.S. v. Lorick, 753 F.2d. 1295 4th. Cir 1984). In that this court has fully proven itself to be unwilling or unable to provide comptent and professional representation and has been totally ineffectual in inforcing any meaningful complience as to duty, responsibility or lawful conduct by it's officers; this applicant reasonably believes his interests would have to be better and more professionally served by self-representation. It certainly could not be any further damaged. He does therefore waive his right to representation and assert his constitutional right to present his own cause to the court as attorney of record pursuant to Statev. Foster, 379 SE 2d 907 (1989) citing Faretta v. California, 95 S.Ct. 2525 (1975).

This Court is asked, that in view of it's continued denial of timely hearing of this case; that it promptly set date for hearing of this request and that order be issued for this applicants attendance so that proper determination of competency of waiver can be made as per Fitzpatrick v. Wainwright, 800 F2d 1057 (1986) or see criteria in State v. Morris Cash ,Op. No. 1839 (SC Ct. App. June 22, 1992) This Court's prompt attention is required as it's willful neglect of this legal matter has already demonstrated failure to protect the due process rights of this applicant. See 28 U.S.C. § 2254 (b).

March 19, 2004

Submitted, Pro Se,



Dan Temple, Jr. #254316
SCDC FlB -132
386 Redemption Way
McCormick, S.C. 29899

Motion
11/4/03

THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

Concerning Matters From OCONEE County
GENERAL SESSIONS Court

Dean Hall Presiding Judge

Case Number(s):

2001-CP-37-290-

Dan Temple, Jr. Applicant

Vs.

State of S.C. Respondant

AFFIDAVIT AS TO MAILING AND SERVICE OF DOCUMENTS

I do hereby swear and affirm under penalty of perjury, that on the 4 day of NOV 2003 I did turn over to mailroom personell at the U.S. Postal Service branch at McCormick Correctional Inst., postage prepaid, documents and or papers involved in the above cited case and concerning matters of Motion to Compel Discovery and other documents

before this Honorable Court. This so done in accordance with SCRCivP Rule 5 and all other known rules of Court and law. These same said documents are being sent to the below listed parties at their last known addresses. As follows:

Judge Nickolson P.O. Box 8002 Anderson, S.C. 29622

Scott Robinson Esq. P.O. Box 2745 Easley, S.C. 29641

AG Office P.O. Box 11549 Columbia, S.C. 29211

Respectfully Submitted,

Dan Temple Jr

Dan Temple, Jr. Pro Se
#254316 McCCI FlB-132
Rt. #2 Box #100
McCormick, S.C. 29899

Sworn to and affirmed before me on this 4 day of November 2003.

Signed Edward R. Martin
Notary Public of South Carolina

Exp. Date: October 15, 2013

direct appeal level and are still being unlawfully and immorally withheld by the State and its officers. These illegal denials have now continued in excess of five (5) years). The court is asked to notice that the materials requested are not obscure documents or unreasonable irrelevant materials; they are the evidence the State used to convict the applicant in open court. He has failed to receive such important and essential evidence as, States Exhibit #1 the Video tape nor the audio only tape, He has not received States Exhibit #3 the SLED drug analysis, nor the criminal records on the States confidential informer and main prosecution witness, nor has he received the search warrants and accompanying documentation; the applicant has not even received his attorney/client file from his trial attorney, Daniel Day Esq. or many other pertinent documents. Some of these denied discovery material form the very basis of the States whole case and by withholding them have caused undeniable, intentional and substantial harm to the applicants cause. Notice that requested grand jury records have already been destroyed.

Futhermore, the applicant directs the courts attention to the fact that these discovery materials are fundamentally essential to allow him to properly and adequately prepare his case. This continuing denial makes it virtually impossible for him to prepare any sort of rebuttal to the allegations of the State. This obvious harm and prejudice to his cause meet all requirements for obstruction of justice charges by the State and its officers. In light of these heinous, intentional and continuing failures by the State to adhere to discovery rules/law and, sadly the courts failures to compel; the applicant must herein demand the only logical and reasonable resolution to this serious problem.

The applicant requests this Honorable Court to issue a

court order to all offending parties that they send to the applicant, his attorney of record and this court (to insure compliance) any and all information, documents and or materials in any way pertaining to this applicant and or his case and cause before this court. He would also request an affidavit from each of these offending parties as to their explanation of why they have failed to lawfully provide these discovery materials. It is requested that if full compliance with such order is not received within thirty (30) days of such order that they will be held in contempt and held in jail and fined \$1000.00 dollars per day until they fully comply. While this action may seem extraordinary, in view of the continuing negligent and unlawful withholding of these materials and the demonstrated harm to the applicants cause: it is deemed appropriate, proper and necessary.

This Court is reminder that this case was previously submitted to the Federal court and was returned to the lower courts for resolution. (see attached document) Whereas there has been a total and complete failure to even attempt to resolve this case, the applicant must demand this court to issue the requested Order to Compel within fifteen (15) days of receipt of this Motion or he will be forced to return to the Federal level to seek the necessary relief.

Respectfully Submitted,

Written and signed by
the applicant on this

4 day of November
2003.

Edward R. Martin

Signed and affirmed by
attorney of record on this
___ day of _____ 2003.

Scott D. Robinson, Esq.
Attorney of Record
P.O. Box 2745
Easley, S.C. 29641

and

Dan Temple

Dan Temple, Jr. #254316
McCCI F1B-132
Rt. #2 Box #100
McCormick, S.C. 29899

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorney and Counselor at Law

3614 Landmark Drive

Suite D

Columbia, South Carolina 29204

Jeremy A. Thompson

Associate Attorney

(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@bellsouth.net

January 2, 2008

Dan Temple, 254316
Tyger River Correctional Institution
Lower Yard 100 Prison Road
Enoree, SC 29335-9308

RE: Dan Temple, 254316 v. State of South Carolina; 01-CP-37-290.
Client No.: 06-08-00-2178

Dear Mr. Temple:

I am in receipt of your letter dated December 12, 2007. The recent federal sentencing guidelines changes only affect sentences which were imposed as a result of a federal conviction. As you were convicted of a state offense, the federal guidelines changes do not affect your state sentence. If you have any other questions, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in cursive script that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/jat

cc: Barbara Clark

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

EXHIBIT (9)

William K. Suter
Clerk of the Court
(202) 479-3011

March 30, 2010

Mr. Dan Temple
Prisoner ID 254316
P.O. Box 252
Turberville, SC 29162

Re: Dan Temple, Jr.
v. Timothy Riley, Warden
No. 09-9898

Dear Mr. Temple:

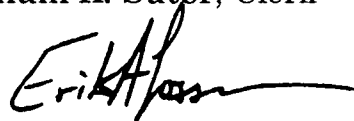
The petition for a writ of certiorari in the above entitled case was filed on January 15, 2010 and placed on the docket March 30, 2010 as No. 09-9898.

A form is enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

William K. Suter, Clerk

by



Erik A. Fossum
Case Analyst

Enclosures

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Exhibit (A)

William K. Suter
Clerk of the Court
(202) 479-3011

June 1, 2010

Mr. Dan Temple
Prisoner ID 254316
P.O. Box 252
Turberville, SC 29162

Re: Dan Temple, Jr.
v. Timothy Riley, Warden
No. 09-9898

Dear Mr. Temple:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



William K. Suter, Clerk

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

July 20, 2010

Dan Temple
#254616
P.O. Box 252
Turbeville, SC 29162

RE: Temple v. South Carolina DOC
No: 09-9898

Dear Mr. Temple:

The petition for rehearing in the above-entitled case was postmarked July 14, 2010 and received July 20, 2010 and is herewith returned as out-of-time.

The petition for rehearing in the above-entitled case was received again on July 20, 2010 and is herewith returned. As a corrected petition was not submitted within 15 days of the June 23, 2010 letter from this office, the petition is out-of-time. Rule 44.6.

Sincerely,
William K. Suter, Clerk

By:



Erik Fossum
(202) 479-3392

Enclosures

ISSUES FOR CONSIDERATION

(1) WHETHER THE COURT OF COMMON PLEAS OF THE TENTH JUDICIAL CIRCUIT AND THE OFFICE OF THE ATTORNEY GENERAL HAVE, THROUGH THEIR NEGLIGENCE AND DELIBERATE INDIFFERANCE TO THEIR DUTIES, RESPONSIBILITIES, AND THE RULES OF LAW; SO ADVERSELY AFFECTED THE PETITIONER'S CAUSE IN NO: 09-6701L9:08-CV-00692-TLW AS TO SUFFICIENTLY DEMONSTRATE VIOLATIONS OF PETITIONER'S DUE PROCESS, FAIR HEARING AND EQUAL PROTECTION RIGHTS GUARANTEED BY THE RULES OF LAW AND BY THE S.C. AND U.S. CONSTITUTION ?

(2) WHETHER THE ACT OR OMISSION BREACH OF DUTY AND NEGLIGENCE BY ~~ASSIGNED~~ ATTORNEY'S OF THE RECORD IN THIS MATTER HAVE BEEN SO ~~INEFFECTIVE~~ AS TO HAVE AFFECTED THE OUTCOME OF TRIAL, APPEAL, AND POST CONVICTION RELIEF PROCEEDINGS, SO AS TO DEMONSTRATE THAT THIS PETITIONER HAS BEEN ESSENTIALLY UNCOUNSELED, AND HAS THIS FAILURE OF REPRESENTATION BEEN SUFFICIENT TO DEMONSTRATE VIOLATIONS OF RIGHTS TO DUE PROCESS, FAIR HEARING, AND EQUAL PROTECTION BY THE S.C. AND U.S. CONSTITUTION ?

(3) WHETHER THE VIOLATION OF S.C. SUPREME COURT ORDER OF AUGUST 17TH, 1983, AND THE PASSAGE OF TIME IN EXCESS OF THE THREE (3) YEARS WITHOUT ANY MEANINGFUL PROGRESS IN C/A NO: 2001-CP-37-290, CREATE THE PRESUMPTION OF INEFFECTIVENESS OF THE STATE'S JUDICIAL PROCESS IN THE LOWER COURT AND WARRANTS CONSIDERATION AND RESOLUTION OF THIS CASE BY THE S.C. SUPREME COURT ?

(4) WHETHER THE TRIAL COURT IN REFUSING TO GRANT A DIRECT VERDICT OF THE CHARGE OF DISTRIBUTION OF CRACK COCAINE AND DISTRIBUTION WITHIN PROXIMITY OF A PARK, DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT REQUIRES "THAT NO PERSON SHALL BE MADE TO SUFFER THE ONUS OF CRIMINAL CONVICTION EXCEPT UPON SUFFICIENT PROOF DEFINED AS EVIDENCE NECESSARY TO CONVINCING A TRIAL OF FACTS BEYOND A REASONABLE DOUBT OF THE EXISTENCE OF EVERY ELEMENT OF THE OFFENSE ?

(5) WHETHER THE LOWER COURT VIOLATED THE "TIME STANDARD ORDER" BY NOT ALLOWING THE EXCULPATORY EVIDENCE TO BE DISCOVERY, AND NOT GRANT A FULL DISCOVERY. A TIME STANDARD ORDER THE COURT WITHHOLD THE APPELLANT CASE IN THE LOWER COURT OF MORE THAN FIVE (5) YEARS, THE APPELLANT CONSTITUTIONAL RIGHTS WERE VIOLATED ON SEVERAL GROUNDS OF THE PROCEDURAL DUE PROCESS. THE FIRST GROUND WAS A DIRECT CONFLICT OF INTEREST AND ABUSE OF ATTORNEY CLIENTS CONFIDENTIALITY ?

PROCEDURAL VIOLATIONS:

THE PROCEDURAL PROCESS WAS VIOLATION OF THE CONSTITUTIONAL DUE PROCESS BY THE COURT, BY THE FAILURE TO ADDRESS THE ISSUES OF THE NOTICE OF THE "TIME STANDARD ORDER" / OF THE SUPREME COURT OF AUGUST 17TH, 1983, WHICH MANDATES COMMON PLEA (PCR) CASE BE RESOLVED WITHIN ONE YEAR, THE VIOLATION COME INTO PLAY BY ALLOWING THE COURT TO DRAG ON THE PROCESS FOR MORE THAN THREE (3) TO FIVE (5) YEARS, AND FAIL TO ALLOW A FULL DISCOVERY, [ARE PURSUANT TO SECTION 4 ARTICLE V OF THE SOUTH CAROLINA CONSTITUTION, A CONSTITUTIONAL VIOLATION OF THE APPELLANT, RIGHT MUST BE SEEN AS TRULY VIOLATIONAL AND AS A VIOLATION OF DUE PROCESS. , Rule 6 (B) Rules 29.

PURSUANT TO ANDERSON VS. DOUGLAS COUNTY, 4 F.2d 574 (1991) AND NEILBURGER VS. HAULHIM, 239 F.SUPP.2d 1140 (2002) VIOLATION OF A SUPREME COURT ORDER IS GROUNDS FOR DISCIPLINE UNDER SCACR, RULE 502. JUDICIAL CONDUCT AS TO THE JUDGE IN THIS CASE, AND UNDER SCACR 413 AS TO ATTORNEY GENERAL AND THE LAWYERS INVOLVED.

NOTICE THAT DURING THIS EXCESSIVE TIME PERIOD, THIS APPELLANT GAVE THE COURT AND THE ATTORNEYS "CONSTRUCTIVE NOTICE" OF THE PROBLEM AND FAIR WARNING THAT THEIR ACTS AND OMISSIONS WERE IN VIOLATION OF HIS RIGHTS. THE COURT WAS NOTIFIED TWELVE (12) TIMES AND THE VARIOUS ATTORNEYS WAS NOTIFIED EIGHT (8) TIMES, PROVING AMPLE "DUE DILIGENCE". IT IS CLEAR THAT THESE PROBLEMS WITH ASSIGNING COMPETENT COUNSEL, PROVIDING DISCOVERY; AND SCHEDULING COURT HEARINGS ARE THE RESPONSIBILITY OF THE COURT, BUT THROUGH GROSS NEGLIGENCE AND/OR DELIBERATE INDIFFERENCE THE LOWER-COURT VIOLATED THE DUE PROCESS, EQUAL PROTECTION AND TIMELY HEARING RIGHT OF THE APPELLANT. SEE HEURICH VS. SWEET, 62 F.SUPP.2d 282 (1999).

INEFFECTIVE ASSISTANCE OF APPELLANT COUNSEL

ROBERT M. PACHAK WAS INEFFECTIVE IN HIS FAILURE TO CONFER WITH HIS CLIENT AND TO PROPERLY PREPARE HIS CAUSE BEFORE HE COURT OF APPEALS. MR. PACHAK FILED AN ANDERS BRIEF ON ONLY ONE (1) WEAK ISSUE; AS TO THE COURT FAILURE TO GRANT DIRECT VERDICT. HIS FAILURE TO GET FULL DISCOVERY OR TO RESEARCH THE CASE RECORD AND TO PROPERLY CONFER WITH HIS CLIENT MEANT THAT SUCH MERITORIOUS ISSUES AS THE COURTS FAILURE TO GRANT CONTINUANCE TO ALLOW FOR WITNESSES, DEFECTIVE INDICTMENTS, USE OF FALSE EVIDENCE, PROSECUTOR BRADY VIOLATIONS AND UNLAWFUL ENHANCEMENT TO SECOND OFFENSE WERE NOT PRESENTED TO THE COURT OF APPEALS. THESE IMPORTANT ISSUES WERE THEREFORE NEVER CONSIDERED BY THE APPEAL COURT. SEE HIGGINS VS. SMITH, 539 U.S. 510 (2003) (TRIAL COUNSEL LIMITED INVESTIGATION OF EVIDENCE VIOLATION), SEE ALSO ROMPILLA VS. BEARD, 125 S.Ct. (2005), (MITIGATING EVIDENCE); POWELL VS. COLLINS, 332 F.3d 376 (6TH CIR 2003); CARPENTER VS. VAUGHOR, 296 F.3d 138 (3RD CIR. 2002) (COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT TO HIGHLY MISLEADING SLED REPORT).

SUPREME COURT OF THE UNITED STATES

No: 09-9898

DAN TEMPLE, Jr., Petitioner,

v.

S.C.D.C., TIMOTHY RILEY, WARDEN, Respondent.

PROOF OF AFFIDAVIT

I, am the Petitioner in this case. On June 07, 2010, I received a WRIT OF CERTIORARI of denial. On this date June 15, 2010, the Petitioner filed OBJECTION - MOTION TO DENIAL TO THE WRIT OF CERTIORARI, to the Clerk of Court, and Respondent, by serving a copy of MOTION of the above-captioned Matter, on the following persons by depositing same in the United States Mail, postage prepaid.

To: CLERK OF COURT,
SUPREME COURT OF THE U.S.
1 FIRST STREET, N.E.,
WASHINGTON, DC 20543.

To: Respondent,
SOLICITOR GENERAL, U.S.,
DEPARTMENT OF JUSTICE,
950 Pennsylvania Avenue, N.W.,
WASHINGTON, DC 20530-0001.

DATED: 6-15-10

s/ Dan Temple Jr
DAN TEMPLE, Jr., #254316.

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 15th DAY OF JUNE, 2010.

Ernie Hobbs
NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES: April 27, 2016

Mr. Dan Temple RB #254316
Turbeville Correctional Inst.
P.O. Box 252 T.B. 15B
Turbeville S.C. 29162

UNITED STATES POSTAGE

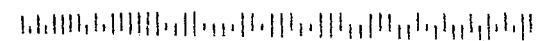
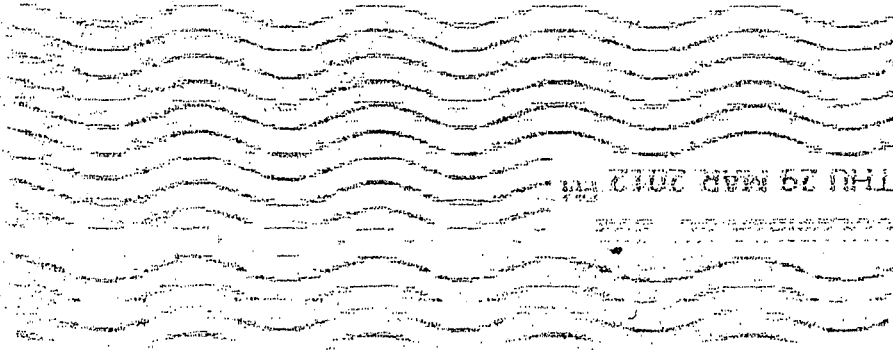
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MAR 29 2012

MAILROOM
TURBEVILLE CI

To: Supreme Court of South Carolina
Supreme Court Bldg, 1231 Mervais St
Box 11330, Columbia S.C. 29211.



THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

DAN TEMPLE JR. #254316
PETITIONER.

v.

STATE OF SOUTH CAROLINA
RESPONDANT

THIS IS THE EXPLANATION OF THE
SUFFICIENT FACTS OF THIS CASE.

THIS EXPLANATION MUST CONTAIN SUFFICIENT
FACTS, ARGUMENT AND CITATION TO LEGAL AUTHORITY TO SHOW THAT THERE
IS AN ARGUABLE BASIS FOR ASSERTING THAT THE DETERMINATION BY THE
LOWER COURT WAS IMPROPER. . WEIGHT OF EVIDENCE, COURT MAY COMMENT
ON WEIGHT ON WEIGHT OF EVIDENCE AND EXPRESS IT OPINION AS TO
CREDIBILITY, QUEERCIA V. UNITED STATE
289, U.S. 466, 469-70. 1933): HOWEVER DEFENDANT HAS RIGHT TO HAVE JURY
RESOLVE ALL QUESTION OF FACT AND IT IS ERROR FOR JUDGE TO
WITHDRAW FACTUAL DISPUTES FROM JURY UNITED V. WALKER 677, F.2d
1014. (4th CIR 1982),

ON WRIT OF CERTIORARI

APPEAL FROM OCONEE COUNTY
HONORABLE H. DEAN HALL, CIRCUIT COURT JUDGE

CASE #2010-CP-37-005
SUBMITTED MARCH 21, 2012 - FILED

ON APPEAL

OFFICE OF THE ATTORNEY GENERAL
ATTN: KAULON E. MAY, ESQUIRE
P.O. BOX 11549
COLUMBIA, S.C. 29211

RECEIVED
MAR 28 2012
S.C. SUPREME COURT

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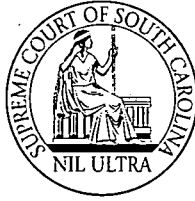
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SWORN to and subscribed before me this
21st day of March, 2012.
[Signature] (L.S.)
 Notary Public for South Carolina

Respectfully Submitted
[Signature]

My Commission Expires: 4-27, 2016



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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March 1, 2012

Dan Temple Jr #254316
Turbeville Correctional Inst.
P.O. Box 252
Turbeville, SC 29162

Re: Temple, Dan Jr. v. The State

Dear Mr. Temple:

This Office has received a notice of appeal in the above post-conviction relief action. Since the order of the circuit court determined that this action is barred as being successive and as being untimely under the statute of limitations, Rule 243(c), SCACR, requires you to provide a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. The failure to make a sufficient showing may result in the dismissal of this matter.

I ask that you provide the explanation required by Rule 243(c) within twenty (20) days of the date of this letter.

Very truly yours,

Daniel E. Shearouse
65

CLERK

DES/jj

cc: Appellate Defense
Assistant Attorney General Kaelon E. May

THE SUPREME COURT OF SOUTH CAROLINA.

DAN TEMPLE JR #254316-----PETITIONER.

Vs,

STATE OF SOUTH CAROLINA _____ RESPONDENT.

THIS IS EXPLANATION OF THE
SUFFICIENT FACT OF THIS CASE.

CASE:NO#2010-CP-37-0005.

ON DATE 3/5/12,PETITIONER RECEIVED THE ORDER OF THE
CIRCUIT COURT DETERMINED THAT THIS ACTION IS ALLEGAL TO BE BARRED
AS BEING SUCCESSIVE AND AS BEING UNTIMELY UNDER THE STATUTE OF
LIMITATIONS,RULE 243 (c) SCACR,REQUIRES YOU TO PROVIDE A WRITTEN
EXPLANATION AS TO WHY THIS DETERMINATION WAS IMPROPER. THIS EXPLA-
TION MUST CONTAIN SUFFICIENT FACTS,ARGUMENT AND CITATION TO LEGAL
AUTHORITY TO SHOW THAT THERE IS AN ARGUABLE BASIS FOR ASSERTING
THAT THE DETERMINATION BY THE LOWER COURT WAS IMPROPER.

ARGUMENT OF STATUTE OF
LIMITATION,AS BEING PROPER

THE PETITIONER HAD BEEN PROPER IN THE UNITED STATE
SUPREME COURT, IN WASHINGTON D.C. IN THIS CASE. THE RECORD OF THE
U.S.S.C, WILL SHOW THE APPLICANTS FOLLOW THE COURT RULE,AND THE
PROCESS OF THE COURT,TO THE HIGH COURT IN THE COUNTY AND REFILE
HE CASE BACK IN THE LOWER COURT.AFTER THE JUDGEMENT OF THE COURT
OF UNITED STATE SUPREME COURT,TO CORRECT THE ERROR OF THE LOWER
COURT,IN A MANDATE ISSUE AFTER ENTRY OF THE JUDGMENT.THE
PETITIONER FILE A P.C.R APPLICATION ON 1/5/2010. AFTER THE
JUDGMENT OF COURT,THE PETITIONER IS WELL INSIDE THE STATUTORY
FILING PERIOD HAS NOT EXPIRED.

ARGUMENT AS TO BEING
TIMELY RULE 45 & 46
PROCESS OF MANDATES.

U.S.S.C. RULE 45. (1) ALL PROCESS OF THIS COURT, ISSUE IN THE NAME OF THE PRESIDENT OF THE UNITED STATE, A COPY OF THIS CASE NO: #09-9898 WAS SUBMITTED TO THE DEPARTMENT OF JUSTICE, BASE UPON A NUMBERS OF ERROR IN THE LOWER COURT, MAILING ADDRESS OF THE SOLICITOR GENERAL OF THE UNITED STATE, (see; RULE 29 (4) ROOM 5614 DEPARTMENT OF JUSTICE 950 PENNSYLVANIA AVENUE, N.W. WASHINGTON, DC 20530-0001

RULES 45(3) IN A CASE ON REVIEW FROM ANY COURT OF THE UNITED STATES AS DEFINED BY 28 USC § 451, A FORMAL MANDATE DOES NOT ISSUE UNLESS SPECIALLY DISECTED INSTEAD, THE CLERK OF THIS COURT WILL SEND THE CLERK OF THE LOWER COURT A COPY OF THE OPINION OR ORDER OF THIS COURT, AND A CERTIFIED COPY OF THE JUDGMENT, IT WAS SEND DOWN IN 2010. 17-25-45(a) AN APPLICATION FOR RELIEF FILED PURSUANT TO THIS CHAPTER MUST BE FILED WITHIN ONE YEAR AFTER THE ENTRY OF JUDGEMENT OF CONVICTION OR WITHIN (1) ONE YEAR. AFTER THE SENDING OF THE REMITTITUR TO THE LOWER COURT, FROM APPEAL, OR THE FILING OF THE FINAL DECISION UPON AN APPEAL. THE APPLICANT ARGUMENT TO THIS HONORABLE COURT, THAT THE STATE FINDING OF THE HISTORY OF THIS CASE, WAS IMPROPER AND IN ERROR, AND THE APPLICATION WAS ENTITLED TO A (1) ONE YEAR.

AFTER THE EFFECTIVE DATE OF THE STATUTE IN WHICH TO FILE, GILLESPIE V, PICKEN COUNTY 197. SC. 217, 14 SE, 2nd 900 (1941). STODDERD V. OWINGSS 42, SC. 88. 20, SE, 25 (1884) 16 A.C.J.C. CONSTITUTIONAL LAW,

THE PETITIONER ARGUMENT
ON THE SECOND OFFENSE.

THE PETITIONER RAISED THIS ISSUE IN THE FIRST P.C.R. HEARING, BECAUSE THERE IS A CONFLICT BETWEEN THE POWDER COCAINE V. CRACK COCAINE S.C. CODE ANN §44-53-375(B) AND THE GENERAL SECOND OFFENSE STATUTE S.C. CODE ANN. §44-53-470, THE LATER MORE SPECIFIC CRACK COCAINE STATUTE MUST PREVAIL; THEREFORE, A TRIAL COURT WAS CORRECT IN FINDING THAT DEFENDANT WAS NOT A SECOND OFFENDER UNDER S.C. CODE ANN §44-53-375(B) AND SHOULD NOT HAVE BEEN SENTENCED AS ONE BECAUSE HE DID NOT HAVE A PRIOR CRACK COCAINE CONVICTION AND § 44-53-375(B) DID NOT APPLY TO HIS POWDER COCAINE OFFENSES. IN THE STATE OF ROCKVILLE MARYLAND. IN (1990-91 RELATED OFFENSE, RAINEY V. STATE, 307 S.C. 150, 414 S.E.2nd 131, 1992 S.C. LEXIS 26 (S.C. 1992). SUBJECT MATTER JURISDICTION THAT MAY BE RAISE AT ANY TIME THE STATE PROPOSITION THAT AN INDICTMENT WHICH IS DEEMED TO BE NULLITY BECAUSE IT WAS ISSUED BY AN ILLEGAL GRAND JURY IMPLICATEES AS ISSUE ON 10/10/97, THE DEFENDANT CHALLENGS TO SUFFICIENCY OF A GRAND JURY DONE NOT IMPLICATE SUBJECT MATTER JURISDICTION OF TRIAL COURT, LOTTIS V. MANNING, 242 S.C. 316, 130 S.E. 2nd 847. STATE V. HANN, 196 S.C. 211, 12 S.E.2nd 720 (1930). STATE V. RECTOR, 158 S.C. 212, 155 S.E. 385 (1930): STATE V. EDWARDS, 68 S.C. 318, 47 S.E. 395 (1904). AND STATE V. RAFF, 56 S.C. 379, 34 S.E. 660 (1900). STATE V. GUTHRIE, SUPRA, AND B BENNET V. COMMONWEALTH, 374 S.E. 2nd 303 (1988) "AMBUSH, DEFENSE TRICKERY, STEALTH" HAVE NO LIGITIMATE ROLE TO PLAY IN A PROPERLY CONDUCTED TRIAL. THE PRESIDING JUDGE VIOLATED NUMEROUS CANON OF SCACR 501 BY FAILING TO FOLLOW PROCEDURES AND PROSCRIBED LAW IN THIS CASE WHICH GROSSLY PREJUDICED THE PETITIONER CASE. THE JUDGE MANIFESTED DISREGARDS OF APPLICABLE LAW RENDERED THE TRIAL OUTCOME FUNDAMENTAL UNFAIR AND DEMONSTRATE PARTIALITY. SEE: STATE V. PACE, 447 S.E. 2nd 186 (S.C. 1994).

THE PETITION ARGUMENT, THAT
THIS ACTION IS NOT BARRED AS
BEING SUCCESSIVE BASE ON THE
MANDATE SET FORTH IN TILLEY V,
STATE OF SOUTH CAROLINA.

THE PETITIONER SUBMITS THIS SECESSIVE APPLICATION PURSUANT TO THE MANDATES THAT ARE SET FORTH IN TILLEY V. STATES. 511, S.E, 2nd. 688 (1999). IN WHICH TILLEY FILED FOUR PCR, APPLICATION. THE APPLICANT SUBMITTS THAT SOUTH CAROLINA SUPREME COURT RULES 50 (5) AND 71.1 (d) MAKE IT MANDATORY THAT POST CONVICTION ATTORNEY MAKE SURE THAT ALL AVAILABLE GROUNDS ARE RAISE IN POST CONVICTION PROCEEDING, WHICH WAS NOT DONE IN THE APPLICANTS INITIAL P.C.R HEARING. BY HIS ATTORNEY. AFTER FILING A PRO, SE P.C.R. APPLICATION AND AFTER BEING GIVEN COURT APPOINTED COUNSEL, A PRO, SE LITIGANT CANNOT THEAFTER FILE ANY FURTHER PLEADING, AND ANY AMENDMENT TO HIS APPLICATION MUST BE MADE BY COUNSEL. SEE, STATE V. SANDERS 237 S.E. 2nd. 53 (1977). FOSTER V. STATE, 379 S.C. 2nd, 907 (1989). THUS IF POST CONVICTION COUNSEL DOES NOT AMEND THE PRO, SE. APPLICATION THE APPLICANT HAS NO WAY TO HAVE ALL SUPPORTING GROUNDS HEARD. THE APPLICANT ASKED HIS ATTORNEY TO AMEND THE GROUNDS THAT ARE ALLEGED IN THIS APPLICATION BUT THE APPLICANT ATTORNEY IN THE LOWER COURT WOULD NOT AMEND THE ISSUES. THE BRADY MOTION WAS ASK FOR A NUMBER OF TIME BY THE STATE FAILED TO TURN IT OVER, "CASE-BY-CASE APPROACH, UNDER RULE 60(b)(6) MUST SHOW "EXTRAORDINARY CIRCUMSTANCES" "THE PROPER COURSE WHEN ANALYZING A RULE 60(b)(6) MOTION PREDICATED ON INTERVENING CHANGE IN THE LAW IS TO EVALUATE THE CIRCUMSTANCES SURROUNDING THE SPECIFIC MOTION BEFORE THE COURT". AS A RESULT WHEN AN APPLICANT IS NOT ASSISTED BY A POST CONVICTION ATTORNEY IN SETTING FORTH ALL GROUNDS TO SUPPORT HIS CLAIM OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN HIS INITIAL APPLICATION TO INCLUDE ADDITIONAL GROUNDS FOR A COURTS REVIEW.

STATEMENT OF THE CASE

PETITIONER DAN TEMPLE, JR. WAS INDICTED FOR DISTRIBUTION OF CRACK COCAINE AND DISTRIBUTION OF CRACK COCAINE WITHIN PROXIMITY OF A SCHOOL IN OCONEE COUNTY. A JURY TRIAL HELD OCTOBER 28, 1998, RESULTED IN CONVICTION. THE HONORABLE H. DEAN HALL, PRESIDING JUDGE, IMPOSED A 20-YEAR SENTENCE AND A 15-YEAR SENTENCE, RESPECTIVELY. AFTER REVIEW PURSUANT TO ANDERS VS. CALIFORNIA, THE SOUTH CAROLINA COURT OF APPEALS AFFIRMED. STATE VS. TEMPLE, OP. NO. 2000-UP-729 (S.C. Ct. APP., FILED NOV 29, 2000).

THE PETITIONER FILED AN APPLICATION FOR POST CONVICTION RELIEF ON JUNE 14, 2001. AN EVIDENTIARY HEARING WAS CONVENED ON OCTOBER 31, 2005, BEFORE THE HONORABLE JAMES C. WILLIAMS, JR., PRESIDING JUDGE. BY WRITTEN ORDER DATED JANUARY 18, 2006, THE COURT DENIED AND DISMISSED THE APPLICATION WITH PREJUDICE. NOTICE OF APPEAL WAS SERVED FEBRUARY 2, 2006. AFTER THAT DATE, THE PETITIONER SERVED A PRO-SE MOTION TO AMEND THE JUDGEMENT. BY WRITTEN ORDER DATED MARCH 6, 2006, THE COURT DENIED THE MOTION AS UNTIMELY SERVED AFTER JURISDICTION HAD BEEN TRANSFERRED TO THE APPELLATE COURT. A NOTICE OF APPEAL WAS TIMELY SERVED.

PETITIONER'S PCR APPELLATE COUNSEL, TARA DAWN SHURLING, ESQUIRE, FILED A PETITION FOR A WRIT OF CERTIORARI ON PETITIONER'S BEHALF. ON JANUARY 10, 2008, THE SOUTH CAROLINA SUPREME COURT DENIED THE PETITION AND A REMITTITUR WAS ISSUED ON JANUARY 28, 2008.

STATEMENT OF THE CASE CONTINUES :

THE PETITIONER THEN FILED HIS FEDERAL WRIT OF HABEAS CORPUS WITH THE SOUTH CAROLINA UNITED STATES DISTRICT COURT PURSUANT TO U.S.C. § 2254 ON FEBRUARY 27, 2008. THE HONORABLE JUDGE BRISTOW MARCHANT, UNITED STATES MAGISTRATE JUDGE PRESIDED OVER THE MATTER. RESPONDENTS FILED THEIR RETURN ON AUGUST 11, 2008. ON SEPTEMBER 16, 2008, PETITIONER FILED A MEMORANDUM IN OPPOSITION TO THE RESPONDENT RETURN. ON FEBRUARY 12, 2009, THE HONORABLE BRISTOW MARCHANT ISSUED HIS REPORT AND RECOMMENDATION GRANTING RESPONDENT'S SUMMARY JUDGEMENT AND DISMISSING PETITIONER'S WRIT OF HAEBEAS CORPUS. ON APRIL 24, 2009, PETITIONER FILED HIS OBJECTION AND OPPOSITION TO THE HONORABLE BRISTOW MARCHANT FEBRUARY 12, 2009, REPORT AND RECOMMENDATION. PETITIONER OPPOSITION AND OBJECTIONS WAS DENIED ON MARCH 19, 2009.

THEREFORE, ON AUGUST 13, 2009, PETITIONER TOOK AN APPEAL TO THE FOURTH CIRCUIT COURT OF APPEALS. ON NOVEMBER 3, 2009, THE FOURTH CIRCUIT COURT OF APPEALS HEARD PETITIONER'S APPEAL, AND ISSUED AN DISMISSED BY UNPUBLISHED PER CURIAM OPINION. PETITIONER IMMEDIATELY FILED FOR AN REHEARING EN BANC ON DECEMBER 15, 2009. ON JANUARY 26, 2010, THE FOURTH CIRCUIT COURT OF APPEALS ISSUED JUDGEMENT DENYING A CERTIFICATE OF APPEALABILITY AND DISMISSING PETITIONER'S APPEAL.

THE IS SHOWING A HISTORY AS
BEING IN A TIMELY ORDER.

U.S V. ALVARADO SALDIVAR.62 F.3d 697 (5th cir 1995). "AN APPELLANT WHO RAISES AN ISSUE FOR THE FIRST TIME ON APPEAL HAS THE BURDEN TO SHOW THAT THERE IS ACTUALLY AN ERROR, THAT IF IS PLAIN AND THAT IT AFFECTS SUBSTANTIAL RIGHT. IF THESE FACTORS ARE ESTABLISHED THE DECISION TO CORRECT THE FORFEITED ERROR SERIOUSLY AFFECTS THE FAIRNESS, INTEGRITY OR PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS". SEE, ALSO CANDRA V. SULLIVAN, 837 F.2d 56 (2nd CIR 1988) WHEN A PETITION ALLEGES A CLAIM OF A CONSTITUTIONAL DIMENSIONS THAT IS ARGUABLE ON ITS MERITS THE PETITIONER SHOULD NORMALLY BE GIVEN SOME CHANCE TO ARGUE IT"

- (1), THE APPENDIX FILED WITH THE PETITION FOR WRIT OF CERTIORARI;
- (2). THE RECORD ON APPEAL FILED WITH THE FINAL ANDER BRIEF OF APPELLANT, WE JUST DISCOVERY WE FOUND COUNSEL FAIL TO PUT THE FACT OF THE CASE INSIDE THE RECORD OF ANDERS BRIEF, BY THAT ACTION IT PREJUDICE HIS CASE, SEE THE TRANSCRIPT OF THE PETITIONER'S OCTOBER 28, 1998, TRIAL AND THE INDIVTMENT.
- (3) THE RE-FILED DECISION IN STATE V. DAN TEMPLE JR, 2000-UP-720 (S.C. CT.APP., JAN, 2001).
- (4) THE JANUARY 17, 2000 ORDER WITHDRAWING ORIGINAL OPINION, SUBSTITUTING NEW OPINION AND DENYING PETITION FOR REHEARING;
- (5). PETITION FOR WRIT OF CERTIORARI DATED FEBRUARY 21, 2001,
- (6). ADDITIONAL AMENDMENT TO PETITION FOR WRIT OF CERTIORARI DATE FEBRUARY 21, 2001;
- (7). RETURN TO PETITION FOR WRIT OF CERTIORARI DATE MAY 4, 2001.
- (8) REMITTITUR FROM DIRECT APPEAL;
- (9). JUDGE MACAULAY'S ORDER RECUSING HIMSELF FILE ON SEPTEMBER 13, 2004;
- (10) PRO, SE RULE 59(e), SCRPC MOTION;
- (11). RETURN TO AMEND JUGMENT PURSUANT TO RULE 69, DATED MARCH 2, 2006;
- (12) ORDER DENYING PRO SE MOTION;
- (13) THE PETITION FOR WRIT OF CERTIORARI;
- (14). THE JUNE 11, 2007 RETURN TO PETITION FOR WRIT OF CERTIORATI;
- (15). THE STATE SUPREME COURT'S SOUTH CAROLINA UNPUBLISHED ORDER DENYING, CERTIORARI FILED ON JANUARY 10, 2008.
- (16), THE JANUARY 28, 2008 REMITTITUR.

QUESTION(S) PRESENTED

WHETHER PETITIONER WAS DEPRIVED OF HIS SIXTH AND FOURTEENTH (AMENDMENT) RIGHT TO THE UNITED STATES CONSTITUTION PURSUANT TO STRICKLAND VS. WASHINGTON, 104 S.Ct. 2052 (1984), AND BRADY VS. MARYLAND, 373 U.S. (1963), WHEN PETITIONER TRIAL COUNSEL FIRST MADE AN ERROR IN FAILING TO FILE FOR A RULE FIVE (5) BRADY MOTION; AND SUCH BRADY VIOLATION ERROR, PREJUDICED PETITIONER'S CAUSE TO A FAIR TRIAL, BECAUSE HE WAS ALLOWED TO ENTER INTO A ROYAL BATTLE UNARMED AND WITHOUT COMPETENT DEFENSE OR STRATEGY ?

WHETHER PETITIONER WAS DEPRIVED OF HIS FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION, PURSUANT STRICKLAND VS. WASHINGTON, 104 S.Ct. 2052 (1984), AND STATE VS. GENTRY, 610 S.E.2d 494 (2005), WHEN PETITIONER'S TRIAL COUNSEL ERROR IN FAILING TO FILE FOR A RULE FIVE (5), BRADY MOTION, PURSUANT TO BRADY VS. MARYLAND, PREJUDICED PETITIONER'S CAUSE TO A FULL AND FAIR TRIAL, BECAUSE TRIAL COUNSELS LACK OF KNOWLEDGE DUE TO THE FAILURE TO FILE FOR THE BRADY MATERIAL, ALLOWED PETITIONER TO BE CONVICTED AND SENTENCE ON DEFECTIVE INDICTMENT THAT SHOULD HAVE BEEN QUASHED AND SUPRESSED ?

WHETHER THE PETITIONER WAS DEPRIVED OF HIS FOURTH, FIFTH, AND FOURTEENTH AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION, PURSUANT TO UNITED STATES VS. AGURS, 427 U.S. 97, 103, 96 S.Ct. 2392, 2397, 49 L.Ed.2d (1976), WHEN STATE COURT'S PROSECUTION KNOWINGLY USED PERJURED TESTIMONY TO GAIN A WARRANT, INDICTMENT, AND CONVICTION, AND FURTHER FAILED TO CORRECT IT, ONCE PROSECUTION LEARNED THAT IT WAS FALSE TESTIMONY ?

WHETHER PETITIONER WAS DEPRIVED OF HIS FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF LAW, PURSUANT TO 28 U.S.C. 2101(E), AND MOURSE VS. BLACKDRUM, 748 F.2d 958 (5TH CIR. 1984), CERT DENIED, 476 U.S. 1145 (1986), AND HEIURICH VS. SWEET, 62 F.SUPP.2d 282 (1999), WHEN THE STATE COURTS AT POST CONVICTION RELIEF LEVEL, INTENTIONALLY, WILLFULLY, UNLAWFULLY, AND WITH DELIBERATE INDIFFERENCE DISREGARDED ALLOTTED TIME LIMITS TO HAVE PCR CLAIMS ADDRESSED, BUT INSTEAD SAT STAGNANT FOR THREE TO FIVE YEARS, BEFORE ADDRESSING THE ISSUES OF PETITIONER'S CASE, WHICH IS VIOLATIVE OF THE UNITED STATES SUPREME COURT "TIME STANDARD ORDER", DATED AUGUST 17, 1983 ?



THE QUESTIONS PRESENTED,
FOR REVIEW, BY THE COURT.

THE COURTS ORDER FROM THE STATES MOTION TO DISMISS IN THEIR ENTIRELY IN CONJUNCTION WITH THE ORIGINAL PLEADINGS, AND FINDS THAT A SUFFICIENT REASON HAS NOT BEEN SHOWN WHY THE CONDITIONAL ORDER OF DISMISSAL SHOULD NOT BECOME FINAL, THEY ALSO STATED THE APPLICANT HAS SHOWN NO REASON FOR THE FIVE (5) YEAR DELAY BETWEEN THE AFFIRMATION OF HIS APPEAL, AND THE FILING OF THIS (PCR) APPLICATION FURTHERMORE, THE APPLICANT HAS SHOWN NO REASON WHY THESE GROUNDS COULD NOT HAVE BEEN RAISED OR WERE NOT PROPERLY RAISED BY THE APPLICANT IN HIS PREVIOUS (PCR) APPLICATION.

(1) ISSUE: THE RECORD OF THE COURT SHOULD BE REVIEWED THE PRE-DELAY WAS CAUSED BY THE INEFFECTIVENESS OF THE TRIAL COUNSEL, WHEN COUNSEL FAILED TO TURN OVER THE APPLICANT'S TRIAL CASE FILE TO THE APPELLANT'S COUNSEL, TO SET FORTH THE FINDINGS OF FACTS IN THE FILING OF FINAL ANDER'S BRIEF FROM THE APPELLANT IT WAS A PLAIN ERROR BY THE LOWER COURT AS REQUIRED PURSUANT TO S.C. CODE ANNOTATED 17-27-80 (1985). THE APPELLANT COUNSEL MR. PACHAK SENT A LETTER TO THE LOWER COURT OF OCONEE COUNTY ASKING MR DAY TO TURN OVER THE APPELLANT'S CASE FILE. THE APPLICANT WAS PREJUDICED BY THE COURT IN SUBMITTING A FINAL ANDER'S BRIEF TO THE COURT, BECAUSE ~~THE TRIAL'S TRANSCRIPT RECORD~~ WILL SHOW A CONSPIRACY BY THE LOWER COURT BECAUSE OF WITHHOLDING THE DISCOVERY RECORD FOR THE COURT.

(2) ISSUE: WHETHER THE APPELLANT COUNSEL WAS INEFFECTIVE FOR FAILING TO INVESTIGATE THE PRE-DELAY OF THE TRIAL COUNSEL COUNSEL FAILED TO FOLLOW THE RULES OF COURT TRIAL COUNSEL MR, DAY, FAILED TO DO AN INVESTIGATION INTO THE LACK OF SUBJECT MATTER JURISDICTION BY NOT HAVING A PROPER INDICTMENT DATED 8/30/1997. THE APPLICANT WAS ARRESTED ON FEBRUARY 26, 1998. THE INDICTMENT FOR THIS CASE WENT TO THE GRAND JURY ON JUNE 2. 1998. THIS IS WELL OVER THE (90) DAY TIME LIMIT REQUESTED BY THE LAWS UNDER SCARC, CRIM. RULES 3 (c)(d). THE RECORD OF THE COURT WILL SHOW THAT (96) DAYS HAD ACTUALLY ELAPSED. THE STATE MUST PROVE THEY RECEIVED AN EXTENTION OF TIME UNDER THIS RULE IT PROVIDES THAT THE SOLICITOR MAY PETITION THE CIRCUIT COURT TO SHOW GOOD CAUSE SPECIFICALLY FOR SUCH A DELAY FOR EACH SUCCESSIVE (90) DAY PERIOD SEE, STATE V. ROSS K. BARGGEL.

PA(10)

THE QUESTION PRESENTED,
FOR REVIEW BY THE COURT.

WHETHER THE APPLICANT CONTENDS THAT HE WAS HELD UNCONSTITUTIONALLY FOR (96) DAYS WITHOUT A REQUESTED PRELIMINARY HEARING. THE APPLICANT SPECIFICALLY REQUESTED A PRELIMINARY HEARING WITHIN THE REQUIRED (10) DAY PERIOD ACCORDING TO THE LAW.

(3) ISSUE: WHETHER THE COUNSEL FROM BOTH COURTS HAVE PREJUDICED THE APPLICANT BY NOT INCLUDING THE FACTS IN THE CASE, IN EITHER CASE, THE BRIEF MUST CONTAIN REFERENCES TO WHERE THE SALIENT FACTS CAN BE FOUND IN THE MANNER SPECIFIED BY RULE 208 (b)(4) SCACR. THE APPELLANT COUNSEL FAILED TO HAVE THE TRANSCRIPT PAGE AND LINES OF THE FACTS FROM THE ANDER'S BRIEF, RULE 211, (b) (1) SCACR.

(4) ISSUE: WHETHER THE LOWER COURT VIOLATED THE "TIME STANDARD ORDER " BY NOT ALLOWING THE EXCULPATORY EVIDENCE TO BE DISCOVERED AND NOT GRANT A FULL DISCOVERY .A TIME STANDARD ORDER OF THE COURT WITHHELD THE APPELLANT'S CONSTITUTIONAL RIGHT THE APPELLANT'S RIGHT WERE VIOLATED ON SEVERAL GROUNDS OF THE PROCEDURAL DUE PROCESS IN THE LOWER COURT FOR MORE THAN (5) FIVE YEAR.

(5) ISSUE: WHETHER THE VIOLATION OF THE SOUTH CAROLINA SUPREME COURT ORDER OF AUGUST 17th, 1983, THROUGH THE PASSAGE OF TIME IN EXCESS OF THE (3) THREE YEAR WITHOUT ANY MEANINGFUL PROGRESS FROM C/A NO: 2001-CP-37-290. CREATING THE PRESUMPTION OF INEFFECTIVENESS FROM THE STATES JUDICIAL PROCESS BY THE LOWER COURT, AND WARRANT FULL CONSIDERATION AND RESOLUTION FROM THIS CASE IN THE SOUTH CAROLINA COURTS.

(6) ISSUE: WHETHER THE APPELLANT GAVE NOTICE THAT DURING THIS EXCESSIVE TIME PERIOD THE APPELLANT GAVE THE LOWER COURT, AND THE RESPONDANT ATTORNEY. "CONSTRUCTIVE NOTICE" OF THE PROBLEM AND FAIR WARNING THAT THERE ACTS AND OMISSIONS WERE IN VIOLATION OF HIS RIGHTS. THE COURT WAS NOTIFIED TWELVE (12) TIME, AND THE VARIOUS ATTORNEY'S WERE NOTIFIED EIGHT (8) TIMES. PROVIDING AMPLE "DUE DILLIGENCE" IT IS CLEAR THAT THESE PROBLEMS IN ASSIGNING COMPETENT COUNSEL PROVIDING DISCOVERY, AND SCHEDULING COURT HEARINGS. THEY ARE THE RESPONSIBILITY OF THE ATTORNEY GENERALS OFFICE AND THE COURTS.

(7) ISSUE: WHETHER THROUGH GROSS NEGLIGENCE AND / OR DILIBERATE INDIFFERENCE FROM THE LOWER COURT THEY VIOLATED THE DUE PROCESS AND EQUAL PROTECTION AND TIMELY HEARING RIGHTS OF THE APPELLANT .SEE, HEINRICH V. SWEET. 62 F SUPP. 2nd 282 (1999).

Pa: 6/11

THE QUESTION PRESENTED,
FOR REVIEW BY THE COURT.

(8) ISSUE: WHETHER THE ACT OR OMISSION BREACH OF DUTY AND NEGLIGENCE BY THE ASSIGNED ATTORNEYS OF RECORDS IN THIS MATTER HAVE BEEN SO INEFFECTIVE AS TO HAVE AFFECTED THE OUTCOME OF THE TRIAL, APPEAL, AND THE POST CONVICTION RELIEF PROCEEDINGS SO AS TO DEMONSTRATE THAT THE APPELLANT HAS BEEN ESSENTIALLY UNCOUNSELED, AND HAS THIS FAILURE OF REPRESENTATION BEEN SUFFICIENT TO DEMONSTRATE THE VIOLATION OF RIGHT TO DUE PROCESS FAIR HEARINGS AND EQUAL PROTECTION BY THE SOUTH CAROLINA AND UNITED STATES CONSTITUTION SEE: EXHIBIT (d) 1/1/18

(9) ISSUE: WHETHER THE TRIAL COURT IN REFUSING TO GRANT A DIRECT VERDICT OF THE CHARGE OF DISTRIBUTION OF CRACK COCAINE AND DISTRIBUTION WITHIN PROXIMITY OF A PARK, SCHOOL OR PLAYGROUND. THE DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT REQUIRES: "THAT NO PERSON SHALL BE MADE TO SUFFER THE ONUS OF CRIMINAL CONVICTION EXCEPT UPON SUFFICIENT PROOF DEFINED AS EVIDENCE NECESSARY TO CONVINCE A TRIAL OF FACTS BEYOND A REASONABLE DOUBT OF THE EXISTENCE OF EVERY ELEMENT OF THE OFFENSE.

(10) ISSUE : WHETHER THIS CASE IS BASED ON THREE INDICTMENT, SEE. INDICTMENTS SHOWN, F-679071, F-679072, F-679073. THE ORIGINAL DATE ON THE INDICTMENT SHOWED, 8/30/1997. BUT THE STATE USED S.L.E.D. DRUG ANALYSIS REPORT STATING THAT THE PLASTIC BAG CONTAINING A BIAGE ROCK-TYPE SUBSTANCE THE RECORD OF COURT IN OCONEE COUNTY SOLICITORS OFFICE USED A SUBSTITUTION INDICTMENT THAT WAS NOT PRESENTED TO THE GRAND JURY THAT SUBSTITUTION IS A VIOLATION OF THE APPELLANTS CONSTITUTIONAL RIGHT'S. THE STATED USED THE S.L.E.D. REPORT OF THE DRUGS DATED 10/10/1997. THAT STATING ONE PLASTIC BAG CONTAINING TWO ROCK-LIKE SUBSTANCES. ASHLEY HARRIS, THE S.L.E.D. DRUG ANALYST TESTIFIED IN THE REPORT. "THAT THE APPELLANT HAS A COPY OF 'SHE FOUND THE WEIGHT OF THE SUBSTANCE TO BE 0.28 GRAMS, OR 4.23 GRAINS. BUT THE STATE FAILED TO TURNOVER THE REPORT IN THE APPELLANTS DISCOVERY REQUEST.

(6) CRININAL LAW KEY 577.16(10).

WHEN MOTION TO DISMISS FOR DENIEL OF SPEEDY TRIAL IS BASED ON ALLEGATIONS NOT CONJECTRAL AND CONCLUSORY IN NATURE, EVIDENTIARY HEARING IS REQUIRED AND TRIAL COURT MUST ENTER FINDINGS TO RESOLVE ANY FACTUAL DISPUTES AND MAKE CONCLUSIONS IN SUPPORT OF ITS ORDER:WHEN THERE IS NO OBJECTION EVIDENCE AT HEARING MAY CONSIST OF ORAL STATEMENTS BY ATTORNEYS IN OPEN COURT IN SUPPORT AND IN OPPOSITION TO MOTION TO DISMISS.U.S.C.A. CONST.AMENDS.6.14.CONST.ART.1,§18.

THE PETITIONER ASK THE LOWER COURT TO GRANT A NEW EVIDENTIARY HEARING TO FULLY RESOLVE PETITIONER MERITS OF HIS CASE.THERE IS NUMBERS OF ERROR IN THIS CASE,AND THE LOWER COURT HAVE JURISDICTION,OVER THIS MATTTER, WE ARE GIVING THE LOWER COURT A OPPORTUNITY TO ADDRESS THESE ISSUE.BEFORE MOVING BACK TO THE UNITED STATE SUPREME. LAW S.C. 2001 STATE CONSTITUTION REQUIRES A PERSON BE INDICTED BY THE GRAND JURY BEFORE STANDING TRIAL FOR A CRIME.ART 1§ 11.STATE V.OWENS 522.SE,2ND 754,346,SC.637.(2) CRIMINAL LAW KEY 577.10(1) NO SINGLE FACTOR IS REGARDED AS EITHER NECESSARY OR SUFFICIENT CONDITION TO FINDING OF DEPRIVATION OF RIGHT TO SPEEDY TRIAL.INSTEND.FACTORS AND OTHER CIRCUMSTANCES ARE TO BE BALANCED BY COURT WITH AWARENESS THAT IT IS DEALING WITH FUNDAMENTAL RIGHT OF ACCUSED WHICH IS SPECIFICALLY AFFIRMED IN CONSTITUTION. U.S.C.A. CONST.AMENDS 6.14.CONST ART.1,§18.

THE AFFECTION OF THE PETITIONER CLAIM, 4th AMENDMENT AND 6th AMENDMENT AND ALSO THE 5th AMENDMENT AND 14th AMENDMENT RIGHT TO THE UNITED STATE CONSTITUTIONAL WAS VIOLATED BECAUSE THE APPLICANT WAS NOT INFORMED OF THE NATURE OF THE CHARGE BECAUSE THE STATE INTERDUCTION OF A SUBSTITUTION OF INDICTMENT IN THE MIDDLE OF THE TRIAL,AND CAUSE OF THE ACCUSATION AGAINST HIM WHICH IS THE FIRST AND MOST UNIVERSALLY RECOGNIZED REQUIREMENT OF DUE PROCESS OF LAW. SMITH V. O.GRGDY,312.U.S. 329,613 CT.572.(1941).

REASONS FOR GRANTING THE PETITION

THE SOLICITOR WITHHELD EXCULPATORY EVIDENCE UNDER BRADY VS. MARYLAND, 373 U.S. (1963), AND THE SOUTH CAROLINA RULES OF CRIMINAL PROCEDURES, RULE FIVE AND SIX. MAJOR EVIDENCE WITHHELD UNDER BRADY VS. MARYLAND, AND RULE FIVE, SUCH AS SEARCH WARRANTS INVENTORY WHICH PROVED THAT NO DRUGS, MARKED MONEY, OR ANYTHING OF AN ILLEGAL NATURE HAD BEEN FOUND IN THE PETITIONER'S POSSESSION OR HOME. THE DEFENSE WAS NEVER GIVEN A COPY OF THE VIDEO TAPE AND ONLY ALLOWED TO VIEWING LESS THAN TWENTY-FOUR (24) HOURS BEFORE TRIAL AND NOT TEN (10) DAYS REQUIRED BY LAW. THE VIDEO SHOWED NO "BUY". AN AUDIO ONLY TAPE WAS WITHHELD AND NEVER HEARD BY THE DEFENSE. AS TO RULE SIX, THE SLED DRUG ANALYSIS GIVEN TO THE DEFENSE WAS NOT THE SAME ANALYSIS TESTIFIED TO BY THE SLED PERSONAL IN COURT, NOT HAS A COMPLETE CHAIN OF CUSTODY FOR THE DRUGS EVER BEEN SUBMITTED TO THE DEFENSE. THE TRIAL TRANSCRIPT SHOWS THAT THE SOLICITOR WAS AWARE OF THIS SITUATION AND WHEN FALSE EVIDENCE IS ALLOWED TO GO UNCORRECTED IT VIOLATES DUE PROCESS. SEE STATE VS. CLARK, 531 S.E.2d 482 (2000), AND U.S. VS. JOHNSON, 649 F.2d 617 (1981). THE SOLICITOR PRESENTMENT OF A DEFECTIVE INDICTMENT, THE WITHHOLDING OF EXCULPATORY EVIDENCE, THE FAILURE TO PROVIDE DISCOVERY MATERIAL WITHIN LAWFUL TIME LIMITS AND ALLOWING FALSE EVIDENCE TO STAND IN COURT CLEARLY AND SUBSTANTIALLY PREJUDICED THE DEFENSE SO AS TO RENDER THE TRIAL FUNDAMENTALLY UNFAIR. SEE DONNELLY VS. DECHRISTOFARO, 614 U.S. 637, 94 S.Ct. 1868 (1974)

THE RECORD AND THE TRAIL TRANSCRIPT DEMONSTRATE THAT THE PRESIDING JUDGE COMMITTED PLAINT ERROR BY HIS REFUSAL TO ALLOW THE DEFENSE A CONTINUANCE UNDER RULE 7(b). THE JUDGE WAS AWARE THE STATE HAD NOT MET THE TEN (10) DAY TIMELINE REQUIRED IN DISCOVERY. THE TRANSCRIPT PROVES THAT THE JUDGE WAS AWARE THE DEFENDANT HAD ESSENTIALLY MATERIAL WITNESSES WHICH HE HAD BEEN GIVING SUFFICIENT TIME TO NOTIFY OR SUBPEON. HE SPECIFICALLY NOTIFIED THE JUDGE, AS DID ANOTHER PARTY THAT HE COULD NOT GO SAFELY TO TRIAL WITHOUT SUCH TESTIMONY, SCRPC 40(i)(2). THE RIGHT TO PRESENT WITNESSES IS CONSTITUTIONAL IN NATURE AND UNDER THE CIRCUMSTANCES HIS RIGHTS WAS VIOLATED BY THE PRESIDING JUDGE. SEE § 17-23-60 RIGHT. THE FUNDAMENTAL ERROR WAS GROSSLY PREJUDICIAL, SUCH WITNESS TESTIMONY WOULD HAVE DIRECTLY CONTRADICTED STATEMENTS MADE BY THE CONFIDENTIAL INFORMANT. THE JUDGE SHOULD HAVE NO JURISDICTION WITHOUT AMENDMENT OF THE INDICTMENT. SEE § 17-25-10 AND STATE VS. JOHNSON, 510 S.E.2d 423 (S.C. 1999). THE TRANSCRIPT ALSO INDICATES THAT THE PRESIDING JUDGE WAS AWARE OF THE PRESENTATION OF FALSE EVIDENCE AS IT WAS BROUGHT TO HIS ATTENTION BY THE DEFENSE ATTORNEY AND SOLICITOR. TWICE DURING THE TRIAL THE JUDGE WAS MADE AWARE OF THIS SITUATION BUT PROCEEDED. THE JUDGE FAILED TO NOTICE THAT HE COULD NOT LAWFULLY ENHANCE THE DEFENDANT'S SENTENCE TO SECOND OFFENSE AS PER STATE VS. CHANCE, SUPRA. AND U.S. VS. NICHOLS, SUPRA, HE WAS FULLY AWARE THAT SUCH ENHANCEMENT HAD BEEN A SURPRISE TO THE DEFENSE. SEE

VIOLATION OF SIXTH (6TH) AMENDMENT RIGHT(S).

SUBJECT MATTER JURISDICTION. THE PETITIONER... WILL SHOW THIS HONORABLE COURT THAT THE STATE OF SOUTH CAROLINA PCR/APPEAL COURT UNJUSTIFIABLY DELAYED AND DENIED PETITIONER'S PCR/APPEAL APPLICATION, WHEN IN FACT PETITIONER DESERVED RELIEF... PETITIONER'S ACTION WAS IN SOUTH CAROLINA PCR/APPEAL COURTS FOR SIX (6) YEARS. HENCE, SOUTH CAROLINA DOES NOT TRULY HAVE A VEHICLE FOR RELIEF THAT IS FAIR AND UNBIAS[ED].

ISSUE (1): THE PETITIONER ASSERT[S] THAT THE STATE UNLAWFULLY USED A NOLLE PROSSE[ED] INDICTMENT/CHARGE TO SECURE A CONVICTION IN PETITIONER'S CASE.

ISSUE (2): THE PETITIONER FURTHER ASSERT[S] THAT DEFENSE COUNSEL FAILED TO DO RESEARCH OR INVESTIGATIONS OF STATE'S CASE. THE GRAND JURY FOREMAN COMMITTED PERJURY WHEN HE SIGNED THE FRAUDULENT GRAND JURY. THIS FURTHER PROVES A CIVIL CONSPIRACY OF THE STATE ACTORS TO VIOLATE THE PETITIONER'S CIVIL AND CONSTITUTIONAL RIGHTS.

ISSUE (3): [A] THE PETITIONER ALSO ASSERT[S] THAT THE STATE'S CASE PRIMARILY HINGED ON THE ILLEGAL SEARCH WARRANT USED TO ILLEGALLY SEARCH THE PETITIONER'S HOME... [B] DEFENSE COUNSEL FAILED TO OBJECT TO THE STATE'S INTRODUCTION OF THIS ILLEGAL SEARCH WARRANT THAT WAS WITHHELD FROM THE DEFENSE AND NOT

PROVIDED IN THE BRADY DISCOVERY REQUEST PURSUANT TO RULES 5 AND 6, S.C.R.C.P.

ISSUE (4): THE TRIAL COURT REFUSED TO ALLOW THE PETITIONER TO DISMISS THE PETITIONER'S TRIAL COUNSEL, FOR FAILURE TO TEST THE AUTHENTI[C]ITY AND CHAIN OF CUSTODY OF THE STATE'S VIDEO/AUDIO TAPE.. COUNSEL ALSO FAILED TO REVIEW ANY EXCULPATORY EVIDENCE INVOLVING MISSING DIALOGUE ON THE AUDIO TAPE.

PETITIONER ASSERTS CLAIMS OF "CRUEL AND UNUSUAL PUNISHMENT" BASE UPON HIS SENTENCE, AND HE ASSERTS HIS "ACTUAL INNOCENCE."

THE JUDGE WAS AWARE OF THE MISSING DRUG REPORTS. THE JURY DID NOT HAVE KNOWLEDGE OF THE BLACK BOX, OR THE MISSING DRUG REPORT. THIS CASE REQUIRES THE COURT TO APPLY THE RULE OF APPRENDI VS. NEW JERSEY, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435. JURY KEY 21.1 THE SIXTH AMENDMENT RIGHT TO TRIAL JURY IS NO MERE PROCEDURAL FORMALITY, BUT RATHER IS A FUNDAMENTAL RESERVATION OF POWER IN OUR CONSTITUTION AND STATUTE MEANT TO UNSURE THE PEOPLE ULTIMATE CONTROL IN THE JUDICIARY. (1) DOES TODAY DECISION APPLY IN FULL FORCE TO THE FEDERAL SENTENCING GUIDELINES ? (2) IF SO MUST THE INITIAL INDICTMENT CONTAINS ALL SENTENCING FACTORS CHARGED AS ELEMENTS OF THE CRIME ? (3) WHAT THEN ARE THE EVIDENTIARY RULES, CAN THE PROSECUTION CONTINUE TO USE, SAY,

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

INEFFECTIVE ASSISTANCE OF COUNSEL. THE PETITIONER HEREBY UPON ALLEGATIONS THAT PETITIONER'S TRIAL COUNSEL WAS INEFFECTIVE. THE PETITIONER SET FORTH THE GROUNDS TO ESTABLISH THAT TRIAL COUNSEL WAS INEFFECTIVE, AND IS PARTLY THE REASON THAT PETITIONER IS BEING HELD IN CUSTODY UNLAWFULLY :

(A) THE PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 14 OF THE SOUTH CAROLINA CONSTITUTION

VIOLATION OF DUE PROCESS. THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT WAS VIOLATED...AT TRIAL AND THE PCR HEARING..[A] IN AN ABUSE OF FAIRNESS, SEVERAL ISSUES WERE INTRODUCED AT THE PCR HEARING HELD AND GRANTED TO THE STATE, BUT THE PCR/STATE COURT FAILED TO HAVE ANY OF THE APPLICANT/PETITIONER[S] MOTIONS RELATED TO WITNESSES AT THE PCR HEARING. THE PETITIONER HAS PUT FORTH SEVERAL MORE MOTIONS WHICH WERE DENIED BY THE TRIAL/PCR COURT. THE PETITIONER WAS ALSO DENIED MOTION FOR AUTHORIZATION OF FUNDS TO TEST THE AUTHENTICITY OF THE STATE'S TAPE/VIDEO EVIDENCE.

NEW DISCOVERY EVIDENCE.
PRE_DELAY IN THE ACTION

TTHE LOWER COURT RECORD WILL SHOW THE STATE FAILED TO PROVE THE ELEMENT OF DISTRIBUTION CRACK COCAINE.NO MONEY WAS EXCHANGED AND NO DRUGS WAS EXCHANGED TO PROVING ELEMENTS BEYOND A REASONABLE DOUBT.THE DUE PROCESS CLAUSES REQUIRES THE GOVERNMENT,PROVE BEYOND A REASONABLE DOUBT EVERY ELEMENT OF THE CRIME WITH WHICH A DEFENDANT IS CHARGED.THE SUBJECT MATTER JURISDICTION ID THE POWER OF A COURT TO HEAR AND DETERMINE CASE OF THE GENERAL CLASS TO WHICH THE PROCEEDING IN QUESTION:(1) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL.QUESTION NUMBER TWO (2) INEFFECTIVE ASSISTANCE OF THE APPELLATE COUNSEL. AND NUMBERS THREE (3) LACK OF SUBJECT MATTER JURISDICTION,AND ALSO NUMBER FOUR (4) DUE PROCESS VIOLATION AND PRE-DELAY.AND NUMBER FIVE (5) CONSPIRACY BY THE DEFENSE TRIAL COUNSEL AND THE APPELLANT COURT.

THE RECORD WILL SHOW A TIMELY NOTICE OF APPEALS WAS FILE ON THE APPLICANT'S BEHALF.IN THIS CASE THE APPLICANT DUE PROCESS WAS VIOLATED AND WITHHELD FROM APPLICANT FROM VERY BEGINNING OF THIS CASE.THE BRADY MOTION WAS IGNORE BY THE RESPONDENT IN THIS FRIST PCR,HEARING.THE CLERK OF COURT,RECORD OF MOTION TO COURT, OF OCONEE COUNTY.THE APPLICANT DID NOT WAIVER HIS CONSTITUTIONAL RIGHT. IN THE COURT TO A DIRECT PRESENTMENT TO COURT. IN THE SEARCH WARRANT OF THE INDICTMENT EVIDENCE THAT BY FOR THE CONSTITUTIONAL ERROR THAT WE ARE CHALLENGING THAT NO REASONABLE JURY WOULD HAVE FOUND THE APPLICANT QUILTY OF THE OFFENSE WITH WHICH APPLICANT WERE CHARGED,
(5) CRIMINAL LAW KEY 577.16(8).

SHOWING OF PARTICULARLY LENGTHY DELAY ESTABLISHES PRIMS FACIE CASE THAT DELAY WAS DUE TO NEGLECT OR WILFULNESS OF PROSECUTION IN VIOLATION OF DEFENDANT'S SPEEDY TRIAL RIGHT,AND REQUIRES PROSECUTION TO OFFER EVIDENCE FULLY EXPLAINING RESONS FOR DELAY SUFFICIENT TO REBUT U.S.C.A. CONST AMENDS 6,14, CONST,ACT.1,§18. LAW:S.C 1987.TRIAL COURT LACKS SUBJECT MATTER JURISDICTION TO CONVICT DEFERDANT FOR AN OFFENSE, WHERE THERE WAS NO INDICTMENT CHARGING HIS WITH THAT OFFENSE AT TIME JURY IS SWORN TO THE GRAND JURY ON THE WRONG DATE OF 10/10/97.

NEW DISCOVERY EVIDENCE,
PRE-DELAY OF THE FACT
OF CASE.

SOUTH CAROLINA APPELLETE COURT FAILED TO INCLUDE THE FACTS OF THE ANDER'S BRIEF INSIDE THE APPELLATES BRIEF. FACTS, COUNSEL MAY WISH TO SET OUT THE FACTS RELEVANT TO THE ARGUMENTS AT THIS POINT IN THE BRIEF. THIS HOWEVER, IS OPTIONAL, AND THE RELEVANT FACT MAY BE INCLUDED IN THE DISCUSSION OF EACH ARGUMENT. IN EITHER CASE. THE BRIEF MUST CONTAIN REFERENCES TO WHERE THE SALIENT FACTS CAN BE FOUND IN THE RECORD ON APPEAL. IN INITIAL BRIEFS, THESE REFERENCES SHALL BE MADE IN THE MANNER SPECIFIED BY RULE 208(b)(4), SCACR. IN THE FINAL BRIEFS, THESE REFERENCES SHALL BE TO THE PAGE AND LINE NUMBER OF THE RECORD ON APPEAL (ie. R.P. 14 line, 1-5. RULE 211(b)(1) SCACR. THE RECORD OF THE COURT WILL SHOW ATTORNEY ROBERT PACHACK SENT A NUMBER OF LETTERS TO THE LOWER COURT ASKING FILE ATTORNEY MR. DAY FAIL TO TURN OVER THE CASE FILE. OF THE CASE FILE OF THE LOWER COURT TO THE APPELLATE COURT. BY THE FAILURE OF MR, DAY THE ANDERS BRIEF WAS AB ERROR BY WITHHELDING THE INFORMATION FROM THE CASE FOR ABOUT (6) MONTHS TO A YEAR, THAT CAUSED A PRE-DELAY IN HAVING A INPROPER BRIEF PLACED UPON THE COURT. BASED ON THE FACT THAT MR. ROBERT PACHACK FAILED TO PUT THE FACT OF THE CASE INSIDE THE BRIEF, THERE WAS A COURT ERROR, ALSO BY NOTE HAVING THE TRANSCRIPTS PAGES OF THE ERRORS OF THE JUDGE INSIDE THE BRIEF. ALSO THE DEFENDANT ASKED FOR CONTINUES. HE ALSO ASKED FOR HIS WITNESSES AND HE ALSO ASK FOR MR, DAY TO BE TERMINATED OR FIRED AT THE TIME OF THE TRIAL. ALL OF THIS INFORMATION SHOULD OF BEEN A MERIT BRIEF AND NOT A ANDERS BRIEF AND NOT A ANDER'S BRIEF. TRIAL COUNSEL WAS ALSO INEFFECTIVE FOR FAILING TO MOTION TO DISMISS ON THE INDICTMENT OF DISTRIBUTION OF CRACK COCAINE CASE #98-GS-37-671 AND 672 AND ALSO 673, AND WARRANT NO: # F679044, NO# F679045. BECAUSE THE AMOUNT WAS LESS THAN A GRAM. 100. THE DEFENDANT WAS ENTITLED TO A CHARGE OF SIMPLE POSSESSION. WHERE THE AMOUNT WAS ESTABLISHED A PRESUMPTION OF POSSESSION WITH INTENT TO DISTRIBUTE. SEE STATE V. ADAMS, 291, S.C, 132, 352, S.E. 2nd 483.

THIS EXPLANATION,
MUST CONTAIN
SUFFICIENT FACTS, VIOLATION
~~SIXTH AMENDMENT RIGHT.~~

THE TRIAL COURT RECORD TRANSCRIPT WILL SHOW THE TRIAL COUNSEL WAS INEFFECTIVE FROM THE START OF THE CASE, BECAUSE HE NEVER HAD A FULL DISCOVERY FROM THE STATE. TRIAL COUNSEL STATED TO COURT HE WAS MISSING A DRUG REPORT AT TRIAL. THE COURT WAS IN ERROR BY NOT ALLOW THE PETITIONER TO FIRE HIS PAID COUNSEL. THE COURT WAS WELL AWARE OF THE MISSING DRUG REPORT SEE; TP, PAGE 14 LINE, 1-12 COURT, "THEY ARE NOT GOING TO BE ABLE TO INTRODUCE IT IN FRONT OF THE JURY. THAT IS MY RULING. THE COURT ALSO STATED, IF YOU DON'T HAVE IT. THEY CAN'T USE IT, BUT THE COURT WENT BACK ON IT RULING, BY ALLOW IT TO BE INTRODUCE, (SEE; TP. PAGE 120, LINE, 1-25. THAT ALLOW THE STATES TO USED SUBSTITUTED REPORT AND INDICTMENT THAT REPLACED DRUG ANALYSIS REPORTS THAT DID NOT REFLECT THE DISCOVERY OF THE STATE. WHICH STATES WAS USED TO SECURE PETITIONER CONVICTION, IT IS UNDISPUTED THAT A PETITIONER HAD A CONSTITUTIONAL RIGHT TO PARTICIPATE IN THE MAKING OF CERTAIN DECISIONS WHICH ARE FUNDAMENTAL TO HIS DEFENSE, THE COURT TOOK PETITIONER RIGHT TO A FAIR COUNSEL, BY NOT ALLOW HIM TO FIRE HIS PAID ATTORNEY, AND COURT DENIED HIM WITNESSES AND EACH MOTION THE PETITIONER MADE TO COURT, INCLUDED AMONG THE FUNDAMENTAL CHOICES ARE THE DECISIONS TO FORGO THE ASSISTANCE OF COUNSEL. (see; JONE V. BARNES, 463, U.S. 745, 751, 103, S. CT, 3308, 3312, 77. L ED. 2nd. 987. (see; FARETTA V. CALIFORNIA, 422. U.S. 806. 834. 95 S. CT 2525, 2540, 451, ed. 2d, 562 (1975)).

THERE IS NO DOUDT THAT THE SIXTH AMENDMENT'S GUARANTEE OF A RIGHT TO COUNSEL MUST NECESSARILY INCLUDE THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. U.S. V. CRONIC, 466. U.S. 654, 104 S. CT, 2039, 2044, 80. 1, ED. 2nd, 657 (1984). CUYLER V. SULLIVAN, 446 U.S. 335, 344, 100 S. CT. 1708, 1716, 64, L. ED, 2nd 333. (1980). POWELL V. ALABAMA, 287, U.S. 45, 53 S. CT. 55, 58, 77 L. ED. !%* (1932). SEE: STRICKLAND V. WASHINGTON, 466 U.S, 668, 104 S. CT 2052, 80 L. ED. 2nd 674 (1984).

THE JURY WAS ENTITLED TO
KNOW ALL THE INFORMATION
TO BE PRESENT AT TRIAL.

GRAND JURY KEY,(2) 193 k2 MOST CITED,A DEFENDANT HAD A
RIGHT UNDER THE STATE CONSTITUTION TO DAMAND THAT A GRAND JURY
WHICH IS PROPERLY ESTABLISHED AND CONSTITUTED UNDER THE LAWS
CONSIDER THE CRIMINAL ALLEGATION AGAINST HIM CONST ART 1.§ 11.art
5 §22. THE OCONEE COUNTY JURY WAS ENLITLED TO KNOW ALL THE FACTS
AND INFORMATION TO BE PRESENT AT TRIAL,THAT THE SEARCH WARRANT
WAS MISSING IN THE DISCOVERY, AND STATE USED A SUBSTITUTED OF THE
DRUG REPORT AND ALSO THE INDICTMENT AT TRIAL,AND THE MISSING DRUG
REPORT AND THE STATE FAIL TO TURNOVER AT TRIAL OR IN THE BRADY
MOTION EVIDENCE THAT WOULD HAVE SHOWN A REASONABLE DOUBT.THE
SUPREME COURT ARTICULATED THE TEST WE ARE TO APPY IN WEIGHING THE
MERITS OF A PETITIONER ALLEGING OF INEFFECTIVE ASSISTANCE OF
COUNSEL. HILL V. LOCKHART,U.S. 106
S,CT.366,370,88.L,ED.203(1985).(APPLYING STRICKLAND TEST"TO
INEFFECTIVE ASSISTANCE CLAIM ARISING OUT OF THE PLEA
PROCESS").TRIAL COUNSEL PERFORMANCE AND REPRESENTATION FELL BELOW
AN OBJECTIVE STANDANT OF REASONABLENESS (1) COUNSEL FAILED TO GET
A COMPLETE DISCOVERY OF ALL THE SLED REPORT.(2) NO ORIGINAL
SEARCH WARRANT CAME IN THE DISCOVERY (3) NO CHAIN OF CUSTODY ON
THE DRUG REPORT,AND ALSO ON THE AUDIO AND VEDIO TAPE,THE STATE
FAIL TO TURNOVER THE SECOND VEDIO TAPE TO DEFENDANT,(See;PAGE
11,LINE 6-13 THAT SHOW THERE WAS TWO TAPE THE STATE FAIL TO
TURNOVER THE OTHER TAPES,THE DEFENDANT MUST SHOW THAT THERE IS A
REASONABLE PROBABILITY THAT BUT FOR COUNSEL'S UNPROFESSIONAL
ERROR,THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT
ID,AT 694,104 s.CT,AT 2068.THIS ADDITIONAL "PREJUDICE"
REQUIREMENT WAS BASED ON OUR CONCLUSION THAT"AN ERROR BY
COUNSEL,EVEN PROFESSIONALLY UNREASONABLE TO AND COURT.

CONCLUSION

IT IS CLEARLY ESTABLISHED THAT THE LOWER COURT AND IT'S OFFICERS HAVE VIOLATED NUMEROUS STATUTORY LAWS AND PROCEDURAL RULES IN THE PRESENT CASE. THEY HAVE IGNORED MORE THAN THE LAW, THEY HAVE GROSSLY AND REPEATEDLY VIOLATED THE BASIC PRINCIPLES OF FAIRNESS AND JUSTICE ON WHICH OUR VERY LEGAL SYSTEM IS BASED. THE TOTAL DISREGARD OF ANY SEMBLANCE OF PROPER COURT ADMINISTRATION AND THE LOWER COURT'S DELIBERATE INDIFFERENCE TO THIS PETITIONER'S RIGHTS ARE TOO BLANTANT TO BE REASONABLY VIEWED AS ANYTHING, BUT WILLFUL HARM, INTENTIONALLY INFLICTED ON THIS PETITIONER'S CAUSE. THE HISTORY OF THIS CASE SHOWS A DISTINCT PATTERN OF ABUSE THAT CANNOT BE EXPLAINED BY MERE NEGLECT OR PROCRASTINATION. THE VIOLATIONS OF LAWS AND THIS PETITIONER'S SUBSTANTIVE AND PROCEDURAL DUE PROCESS RIGHTS GO WELL BEYOND THE " EXTRAORDINARY CIRCUMSTANCES" OF KEY VS. CURRI, 406 S.E.2d 356 (S.C. 1991) AND ARE DIRECT ACCORD WITH NEIBURGER VS. HAWKINS, 239 F.SUPP.2d 1140 (2002) "CONSCIENCE-SHOCKING BEHAVIOR IS MOST LIKELY TO BE FOUND WHERE THERE IS AN INTENT TO DO HARM THAT IS NOT JUSTIFIED BY ANY GOVERNMENTAL INTEREST, IN THE CONTEXT OF SUBSTANTIVE DUE PROCESS, CONSTITUTIONAL AMENDMENT FOURTEEN (14). THE PETITIONER IS BEING HELD UNLAWFULLY SEIZED AND IN VIOLATION OF PETITIONER'S RIGHTS. THE VIOLATIONS OF THE FOURTH, FIFTH, SIX, AND FOURTEENTH AMENDMENT RIGHTS. THE LOWER COURTS WAS WITHOUT JURISDICTION TO IMPOSE SENTENCE, ALSO "TIME STANDARD ORDER" WAS VIOLATED BY THE COURT. THE STATE LACK OF DISCOVERY TO ADDRESS THE ISSUES TO SEARCH WARRANTS, DATED NOVEMBER 14TH, 1997, AND THE CHAIN OF CUSTODY OF THE EVIDENCE.

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

DAN TEMPLE JR 254316
APPLICANT,

V.

STATE OF SOUTH CAROLINA,
RESPONDENT

IN THE COURT OF COMMON PLEAS

CASE # 2010-CP-37-0005.

CERTIFICATE OF SERVICE BY MAIL

1. I AM THE ABOVE NAMED DAN TEMPLE JR, #254316. IN THE ABOVE CAPTIONED ACTION.
2. REGULAR COMMUNICATION BY MAIL EXISTS THROUGHOUT THE STATE OF SOUTH CAROLINA AND THAT THIS IS A PROPER CIRCUMSTANCE OF SERVICE BY MAIL.
3. I HAVE THIS DAY SERVED A COPY OF THE EXPLANATION OF THE SUFFICIENT FACTS, ON THE RESPONDENT, AND CLERK OF COURT. IN THE ABOVE-CAPTIONED MATTER ON THE FOLLOWING PERSON(S) BY DEPOSITING IN THE UNITED STATES MAIL, POSTAGE PREPAID:

CLERK OF THE S.C. SUPREME COURT.
DANIEL E, SHEAROUSE, CLERK.
POST OFFICE BOX 11330.
COLUMBIA, SOUTH CAROLINA.
29211.

ATTORNEY GENERAL
DENNIS BLDG. BOX
11549 COLUMBIA S.C.
29211.

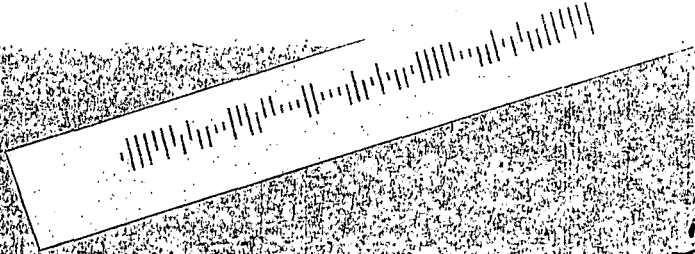
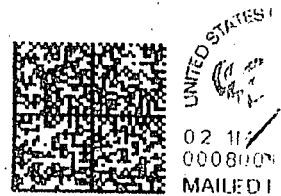
DATED THIS 19th DAY OF March, 20 12.

SWORN to and subscribed before me this 19th day of March, 20 12.
Carolyn White (L.S.)
Notary Public for South Carolina

RESPECTFULLY SUBMITTED,
Dan Temple JR
#254316.

My Commission Expires: 4-27-2016

Mr. Dan Temple JR #254316
Tuskegee Correctional Inst
P.O. Box 252 T.C.-B-158.
Tuskegee SC. 29162.

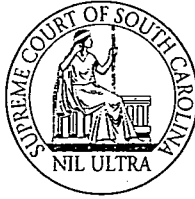


To: The Supreme Court of South Carolina
Daniel F. Shearman Clerk of Court
Post Office Box 11330
Columbia, South Carolina
29211

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TUSKEGEE



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 1, 2012

Dan Temple Jr #254316
Turbeville Correctional Inst.
P.O. Box 252
Turbeville, SC 29162

Re: Temple, Dan Jr. v. The State

Dear Mr. Temple:

This Office has received a notice of appeal in the above post-conviction relief action. Since the order of the circuit court determined that this action is barred as being successive and as being untimely under the statute of limitations, Rule 243(c), SCACR, requires you to provide a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. The failure to make a sufficient showing may result in the dismissal of this matter.

I ask that you provide the explanation required by Rule 243(c) within twenty (20) days of the date of this letter.

Very truly yours,

Daniel E. Shearouse
65

CLERK

DES/jj

cc: Appellate Defense
Assistant Attorney General Kaelon E. May

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

RECEIVED

FEB 27 2012

DAN TEMPLE JR. 254316
APPLICANT,

V.

STATE OF SOUTH CAROLINA,
RESPONDENT

S.C. SUPREME COURT

IN THE COURT OF COMMON PLEAS

CASE # NO:2010-CP_37-0005.

CERTIFICATE OF SERVICE BY MAIL

1. I AM THE ABOVE NAMED DAN TEMPLE JR, IN THE ABOVE CAPTIONED ACTION.

2. REGULAR COMMUNICATION BY MAIL EXISTS THROUGHOUT THE STATE OF SOUTH CAROLINA AND THAT THIS IS A PROPER CIRCUMSTANCE OF SERVICE BY MAIL.

3. I HAVE THIS DAY SERVED A COPY OF THE A TRUE COPY OF NOV. 21 2011, ON THE RESPONDENT,

IN THE ABOVE-CAPTIONED MATTER ON THE FOLLOWING PERSON(S) BY DEPOSITING IN THE UNITED STATES MAIL, POSTAGE PREPAID:

CLERK OF COURT, THE SUPREME
COURT OF SOUTH CAROLINA
DANIEL E. SHEAROUSE P.O. Box
11330 COLUMBIA, S.C. 29211.

Empty box for additional recipient information.

DATED THIS 23rd DAY OF February, 2012.

SWORN to and subscribed before me this
23rd day of February, 2012.
[Signature] (L.S.)
Notary Public for South Carolina

RESPECTFULLY SUBMITTED,
[Signature]

My Commission Expires: 4-27-2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Dan Temple, Jr., #254316,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

COPY

IN THE COURT OF COMMON PLEAS
 Case No.: 2010-CP-37-0005

CONDITIONAL ORDER
 RECEIVED

FEB 27 2012

S.C. SUPREME COURT

FILED OCONEE, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2011 NOV 21 PM 3 59

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed January 5, 2010. Respondent made its Return and Motion to Dismiss on March 3, 2010.

I.

The records before this Court reflect that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Oconee County. The Applicant was indicted at the June 1998 term of the Oconee County Grand Jury for Distribution of Crack Cocaine (98-GS-37-0672), and Distribution of Crack Cocaine within Proximity of a School (98-GS-37-0673). The Applicant was represented by Daniel Day, Esquire. On October 29, 1998, the Applicant underwent trial, pursuant to which he was found guilty as charged. He was sentenced by the Honorable H. Dean Hall to confinement for a period of twenty (20) years on the distribution charge, and a concurrent period of fifteen (15) years on the distribution within proximity charge.

A timely Notice of Appeal was filed on the Applicant's behalf and an Anders brief was submitted. The South Carolina Court of Appeals subsequently dismissed the appeal via unpublished opinion filed November 29, 2000. (State v. Dan Temple, Jr., 2000-UP-729). The

Applicant filed a pro se Petition for Writ of Certiorari in the South Carolina Supreme Court, which was denied.

The Applicant subsequently filed an application for PCR on June 14, 2001. The Respondent made its Return on November 7, 2002. An evidentiary hearing into the matter was convened on October 31, 2005. By Final Order filed January 26, 2006, Judge James C. Williams, Jr., dismissed the matter. The Applicant appealed the decision, and the South Carolina Supreme Court subsequently denied the petition. Remittitur was received on January 28, 2008.

Before this Court are the records of the Oconee County Clerk of Court regarding the subject convictions; the Applicant's records from the South Carolina Department of Corrections; the transcript of the proceedings against the Applicant; the Applicant's prior Application for PCR; the State's Return thereto; the order denying the Applicant's prior Application for PCR; and the Supreme Court order denying certiorari.

II.

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

1. "Subject Matter Jurisdiction, Successive Application"
2. "Ineffective Assistance of Counsel"
3. "Suppression of Evidence"

III.

This Court finds that the current Application for post-conviction relief must be summarily dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. 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 not properly raised in previous applications. | Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. 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. Land, Id.

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior applications for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

IV.

This Court finds, further, that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq.

S.C. 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.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application in 1998. The South Carolina Court of Appeals dismissed Applicant's direct appeal on November 29, 2000. This Application was filed on January 5, 2010, well after the one year statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §(17-27-70(c)) (1985) 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 the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post conviction relief is summarily dismissed for failure to file within the time mandated by the Post Conviction Procedure Act and for being successive.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice, unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed 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. The Applicant shall file any reasons he may have with the Oconee County Clerk of Court and shall serve opposing counsel at the following address:

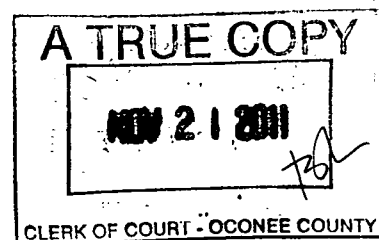
Office of the Attorney General
Attn: Kaelon E. May, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2011 NOV 21 PM 3 59

AND IT IS SO ORDERED this 15 day of November 2011.


R. Lawton McIntosh
Administrative Judge
Tenth Judicial Circuit

Anderson, South Carolina

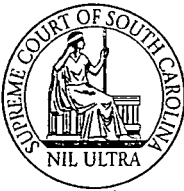


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The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

TO: Dan Temple SCDC# 254316
DATE: 2-17-12

We are in receipt of your notice of appeal. It will be necessary for you to provide this office with the following required documents within **ten (10)** days of the date of this notice. Failure to provide the requested documents may result in dismissal of this matter.

_____ proof of service showing notice of appeal was served on opposing counsel,
(Attorney General's Office)

_____ a copy of the final order of dismissal

_____ a copy of the conditional order of dismissal (if one was issued)

a copy of the conditional order of dismissal dated 11-21-11

2010-CP-37-00005

Copy of all orders on appeal.

Please return this sheet with the requested documents. Thank you!

28123

1-11-2

1-11-2

2010-09-28 - 00000
Copy of all orders in 2010

MR, DAN TEMPLE JR. 254316.
Turberville Correctional Inst.
P.O. Box 252 T-C-B-158.
Turberville S.C. 29162.

COLUMBIA SC 29101

24 FEB 2012 PM 3:17

USA
FIRST-CLASS
FOREVER

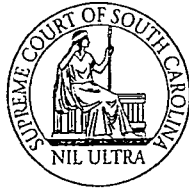


To: The SUPREME COURT OF THE STATE
SOUTH CAROLINA. DANIEL
SHEAROUSE, CLERK OF COURT, P.O. BOX
11330. COLUMBIA. S.C. 29211.

UNITED STATES POSTAGE
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The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

TO: Dan Temple SCDC# 254316

DATE: 2-17-12

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a copy of the conditional order of dismissal dated 11-21-11

2010-CP-37-00005

Copy of all orders on appeal.

Please return this sheet with the requested documents. Thank you!

RECEIVED

FEB 17 2012

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE COUNTY.

S.C. SUPREME COURT

Mr. Dan Temple Jr, #254316
APPLICANT,

IN THE COURT OF COMMON PLEAS

CASE # 2010-CP-37-0005.

Vs.

STATE OF SOUTH CAROLINA
RESPONDENT

CERTIFICATE OF SERVICE BY MAIL

1. I AM THE ABOVE NAMED Dan Temple Jr, IN THE ABOVE CAPTIONED ACTION.
2. REGULAR COMMUNICATION BY MAIL EXISTS THROUGHOUT THE STATE OF SOUTH CAROLINA AND THAT THIS IS A PROPER CIRCUMSTANCE OF SERVICE BY MAIL.
3. I HAVE THIS DAY SERVED A COPY OF THE NOTICE OF APPEAL AND WRIT OF CERTIORARI, TO THE RESPONDENT,
4. IN THE ABOVE-CAPTIONED MATTER ON THE FOLLOWING PERSON(S) BY DEPOSITING IN THE UNITED STATES MAIL, POSTAGE PREPAID:

Beverly H. Whitfield, Clerk
of Court Oconee County.

P.O. Box 678.

Walhalla, South Carolina 29691.

Office of Attorney
General. Att; Kaelon Mays.

P.O. Box 11549.

Columbia S.C. 29204

DATED THIS 15th DAY OF February, 20 12.

SWORN AND AFFIRMED TO BEFORE ME
THIS DAY OF February 15, 20 12

Earl H. [Signature]
NOTARY PUBLIC
MY COMMISSION EXPIRES 4-27-2016

RESPECTFULLY SUBMITTED,
Dan Temple Jr

STATE OF SOUTH CAROLINA,

COUNTY OF OCONEE COUNTY.

MR. DAN TEMPLE JR, 254316.

APPLICANT, PRO SE,

V.

STATE OF SOUTH CAROLINA
RESPONDENT

IN THE COURT OF COMMON PLEAS

10 th JUDICIAL CIRCUIT

CASE # 2010-CP-37-0005.

**NOTICE OF APPEAL
WRIT OF CERTIORARI**

Notice of appeal, under Rule 203,
and Under Rule.243. SCRAP.

The Applicant is file a Notice of Appeal and the Ordering of the transcript. The applicant received Final Decision was entered on date on 2/10/12, but the Applicant's received the Order on 2/14/12. The Respondent, and the court main argument and stated, Applicant has shown no reason for the five year delay between the affirmation of his appeal and the filing of his PCR. Application. Furthermore, the Applicant by him in his previous PCR application. The Applicant gave the court and his attorney a Constructive Notice of this problem and fair warning that their act and Omissions were in violation of his right. The Court was notified twelve (12) time and various attorney that was court appointment was notified eight (8) time. these are ground that was raised in the court to judge by letter and motion to court. and have copy of proof of the record, file in the court.

The Applicant's is directed to Rule 243, SCRAP, Rule 203, for the procedures following the filing and service of the notice of appeal.

RESPECTFULLY SUBMITTED,

Dan Temple JR

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-37-0005

Dan Temple, Jr., #254316,

State of South Carolina

FILED O'CONNOR, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2012 FEB 10 AM 11:36

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Kaelon E. May

Attorney for : Plaintiff
or
 Self-Represented Litigant
 Defendant

DISPOSITION TYPE (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(i), 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 (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

A TRUE COPY 2131
FEB 10 2012
CLERK OF COURT - OCONEE COUNTY

Judge Code
Date

2/6/12

For Clerk of Court Office Use Or

This judgment was entered on the 10th day of Feb, 20 12 and a copy mailed first class or placed in the appropriate attorney's box on this 10th day of Feb 20 12 to attorneys of record or to parties (when appearing pro se) as follows:

Dan Temple, Jr., #254316

Eaelon E. May

Attorney General's Office

PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield
CLERK OF COURT

Court Reporter:

FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 FEB 10 AM 11:36

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

Dan Temple, Jr., #254316)

Plaintiff)

v.)

State Of South Carolina)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2010-CP-37-0005

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Dan Temple, Jr., #254316, Bar No.

Address:

Turbeville C.I. P.O. Box 252

Turbeville, SC 29162

phone: fax:

e-mail: other:

Defendant's Attorney:

Kaleon E. May, Bar No. 80469

Address:

Post Office Box 11549 Columbia SC 29211-1549

phone: (803) 734-3747 fax: (803) 734-4113

e-mail: other:

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached

Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Kaleon E. May
Signature of Attorney for Plaintiff / Defendant

January 9, 2012
Date submitted

SECTION III: Motion Fee

PAID - AMOUNT:

- EXEMPT: Rule to Show Cause in Child or Spousal Support (check reason)
- Domestic Abuse or Abuse and Neglect
- Indigent Status State Agency v. Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRCP)
- 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:

Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.

Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: Exempt

Date Filed:

FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 FEB 10 AM 11 36

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Dan Temple, Jr., #254316,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-37-0005

FINAL ORDER

FILED OCONEE, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2012 FEB 10 AM 11 37

This matter comes before this Court by way of an Application for post-conviction relief (PCR) filed January 5, 2010. Respondent made its Return and Motion to Dismiss on or about March 3, 2010, requesting that the application be summarily dismissed. 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 filed November 21, 2011, provisionally denying and dismissing this action, while giving 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 the acknowledgement of receipt form dated December 8, 2011, of the above-mentioned Conditional Order of Dismissal from the Applicant.

In a document captioned "Objections to Conditional Order of Dismissal," filed December 19, 2011, Applicant argues that his application should not be summarily dismissed based on the statute of limitations and doctrine of successiveness because of newly discovered evidence in the form of "previously unavailable rule of constitutional law." Applicant reiterates his claims of ineffective assistance of trial counsel, lack of subject matter jurisdiction, and defective search warrant. Attached

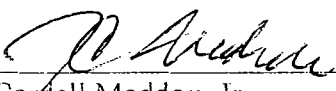
to this Final Order is the Order of Dismissal from Applicant's first PCR action (2001-CP-37-290), containing the same claims Applicant currently asserts.

This Court has reviewed Applicant's responses to the State's motion to dismiss in their entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. Applicant has shown no reason for the five year delay between the affirmation of his appeal and the filing of this PCR application. Furthermore, the Applicant has shown no reason why these grounds could not have been raised or were not properly raised by him in his previous PCR application. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of service on this Order to secure appellate review. *See* Rule 203, SCACR. The Applicant's attention is directed to Rule 243, SCRAP, for the procedures following the filing and service of the notice of appeal.

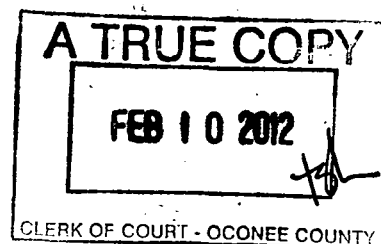
AND IT IS SO ORDERED this 6 day of February, 2012



J. Cordell Maddox, Jr.
Chief Administrative Judge
Tenth Judicial Circuit

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 FEB 10 AM 11 37

Anderson, South Carolina.



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FEB 10 10 11 33
COMMUNICATIONS SECTION
FEB 10 1953

A TRIPLE COPY
FEB 10 1953

U.S. DEPARTMENT OF COMMERCE

Mr. Dan Temple Jr #254316
Turbeville Correctional Inst
P.O. Box 252 T.C. 152
Turbeville, S.C. 29162

COLUMBIA SC 290

27 FEB 16 2012 PM 11

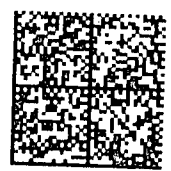


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FEB 16 2012

Clerk of Court
Supreme Court S.C.
Supreme Court Bldg.
1231 Bernal St
P.O. Box 11330

Columbia S.C. 29211



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