

THE STATE OF South Carolina
IN THE COURT OF APPEALS
[IN THE SUPREME COURT]

Appeal from the Court of General Sessions
STATE of South Carolina
IN SECOND JUDICIAL CIRCUIT IN THE COUNTY
of Aiken

The Honorable Dyer A. Early, III
Aiken County
2015 GS0200995

THE STATE, RESPONDENT,
v.

VICTOR EXPOSITO APPELLANT,
APPELLANT CASE No. 2016-000010

MOTION FOR
REHEARING & REHEARING EN BANC
PURSUANT Rule 221 & 240, SCACR

Comes now, VICTOR EXPOSITO, Appellant, [Hereinafter]
Plaintiff moves this Honorable Court of Appeals for the State
of South Carolina pursuant SCACR 221 & 240.

JURISDICTION

PETITIONER/APPELLANT INVOKING THE UNITED STATES
CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EQUAL
PROTECTIONS OF LAWS. [14th AMEND. CONST.] SCACR 220 &
240.

STATEMENT OF CASE

PETITIONER / APPELLANT, VICTOR EXPOSITO HAS HIS PUBLIC DEFENDER WHOSE NAME IS MR. DE GRANT GIBBONS, PUBLIC DEFENDER FOR THE SECOND JUDICIAL CIRCUIT Aiken, South Carolina TO PUT IN APPEAL AFTER HIS APPELLANT SENTENCING ON DECEMBER 15, 2015 BY THE HONORABLE COURT A. EARLE, III.

ON JANUARY 13, 2016, THE APPELLANT / PETITIONER, VICTOR EXPOSITO, 336796, WHILE IN CUSTODY AT KIRKLAND R & E CENTER did receive a letter from Mr. De Grant Gibbons, CIRCUIT PUBLIC DEFENDER for the SECOND JUDICIAL COURT WHICH WILL BE PLACED AS EXHIBIT I, SHOWING MR. GIBBONS did file THE APPEAL.

PRIOR TO THIS MR. DE GRANT GIBBONS DID PUT IN A NOTICE OF INTENT TO APPEAL WAS FILED ON DECEMBER 29, 2015 IN THE STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS FROM Aiken County AND LEXINGTON County, THE HONORABLE COURT A. EARLE, III AND THIS TOOK PLACE FOURTEEN (14) days after sentencing of the APPELLANT, VICTOR EXPOSITO. [EXHIBIT 2]

ALONG WITH EXHIBIT 2 WHICH FOLLOWS WITH EXHIBIT 2A, 2B, AND 2C WHICH ARE ALL LETTERS SENT BY MR. DE GRANT GIBBONS TO ACKNOWLEDGE HE DID FILE THE NOTICE OF INTENT TO APPEAL AND THEN HE ASK THE APPELLANT TO GIVE AN EXPLANATION. ACCORDING TO SCACR 203(B)(3) THE APPELLANT, VICTOR EXPOSITO DID NOT UNDERSTAND THIS DUE TO HIS LACK OF KNOWLEDGE OF THE LAW TO GIVE EXPLANATION IN WHICH MR. GIBBONS REPRESENTS THE APPELLANT UNTIL HE IS PROVIDED WITH AN APPEAL LAWYER BY THE SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE, ATTN: MRS. HORAIN FRENCH, SEE DATED LETTER OF EXHIBIT (2C).

APPELLANT, LEAVES TO ASK FOR THIS REHEARING AND REHEARING EN BANC FOR THE FOLLOWING REASON.

HE STATES HIS EXPLANATION WITH THE CASE (Bowling vs. STATE) TO BACK REASON FOR OBJECTION OF THE SENTENCE IMPEDÉ IS BECAUSE OF THE INEFFECTIVE COUNSEL OF THE COURT APPOINTED LAWYER (Mr. De Grant GIBBONS).

MIS APPROPRIATE ADVICE ON PUTTING Mr. VICTOR EXPÓSITO, THE APPELLANT, UNDER THE JUDGMENT OF THE HONORABLE DOYET A. EARLY, III, IN SAYING TO BRING MONEY TO PAY FOR A FINE AS WELL AS TO BRING PROOF OF EMPLOYMENT.

THE APPELLANT NAME WASN'T ON THE DOCKET YET FOR A COURT APPEARANCE WHICH VIOLATES MY RIGHT FOR DUE PROCESS UNDER THE 14th AMENDMENT OF THE UNITED STATES CONSTITUTION AND MIS REPRESENTATION BY THE STATES SOLICITOR IN GIVING WRONG INFORMATION ON THE APPELLANTS CRIMINAL HISTORY.

THIS LED TO Mr. GIBBONS; THE COURT APPOINTED ATTORNEY FOR THE APPELLANT BEING UNPREPARED FOR THE DEFENSE AND LIVING TO THE JUDGE ABOUT A PIECE OF PAPER FOUND THAT THEY ASSUMED WAS A LIST OF NAMES OF PEOPLE WHOM THE APPELLANT SOLD TO BUT FOUND OUT THE LIST OF NAMES WAS PLANTS INSTEAD.

THE APPELLANT STATES HE WAS NOT AWARE OF BEING ABLE TO FILE A "MOTION FOR RECONSIDERATION" TO HELP WITH THE SENTENCE AND WAS NOT ADVISED BY Mr. GIBBONS OF THE JUDGE.

THE APPELLANTS COURT APPOINTED LAWYER, Mr. GIBBONS PROMISED HIM THAT "IF IT LOOKS BAD FOR THE APPELLANT, Mr. EXPÓSITO, HE (Mr. GIBBONS) WOULD PULL OUT, THEN THEY (Mr. GIBBONS AND Mr. EXPÓSITO) COULD I WOULD WAIT FOR HIS ACTUAL COURT APPEARANCE WHICH WAS NOT KNOWN AT THE TIME AND WASN'T LISTED AS BEING ON THE DOCKET FOR DATE OF DECEMBER 15, 2015.

A CIRCUIT PUBLIC DEFENDER IS SUPPOSE TO COUNSEL WITH "THE BEST OF INTEREST" FOR HIS CLIENT(S), AND NOT "THE WORST". (FOR HIS CLIENT AND NOT) THIS IS INEFFECTIVE ASSISTANCE OF COUNSEL ON BEHALF OF THE DEFENDANT THIS

A STRONG LITIGATION TO FILE A "MOTION TO RECONSIDER"
THE SENTENCE IMPOSED BY THE HONORABLE DOYER A. EARLY III.
DISPOSITION AT BAR

Rehearing AND Rehearing EN Banc

THE APPELLANT AT ALL TIME HAS BEEN REPRESENTED BY AN
ATTORNEY IN WHICH HE HIMSELF IS UNTRAINED IN THE LAW NOT
A STUDENT AT LAW OR AN ATTORNEY IN LAW OR ATTORNEY AT
LAW.

THE APPELLANT WOULD LIKE THE COURT TO KNOW THE PRISON
IN WHICH HE RESIDES IN RIDGELAND, CORRECTIONAL INSTITUTION
HERE IN RIDGELAND, S.C. IS SHORT OF STAFF WHICH CAUSES
MUCH DENIAL TO THE LAW LIBRARIES (ETC.).

AGAIN "COURTS" WOULD BE BETTER FIT TO KNOW
PRECISELY WHAT PRISON OBSTACLES ENTAIL TO LITIGATE A
CASE WITHOUT A LAW DEGREE, EFFECTIVE ASSISTANCE OF COUNSEL
ADEQUATE LAW LIBRARIES OR THE BASIC FUNDAMENTAL RIGHTS TO
ACCESS THE LAW LIBRARY ESPECIALLY IN THESE INSTANCES OF
PRISON LOCKDOWNS SUCH AS THE PRISON WING IN WHICH
THE APPELLANT RESIDES.

MOREOVER, WHEN AN ATTORNEY IS APPOINTED OR WITH
COURTS HELP TO HAVE REPRESENTATION PROVIDED TO THE APPELLANT
DUE TO HIS INDIGENCE HERE AT THE PRISON AND THIS WILL HELP
THE APPELLANT HAVE JUSTICE PROPERLY AND FOR THE BEST.

RELIEF

MR. VICTOR EXPOSITO, THE APPELLANT IS ASKING THE APPELLATE
COURT TO RECONSIDER TO GIVE HIM TIME TO COMPLETE
THE INITIAL BRIEF ACCORDING TO SEACH RULE 208 ALONG
WITH TIME TO RECEIVE TRANSCRIPTS ACCORDING TO RULE
207 SEACH AND THIS WILL HELP HIM HAVE COMPLETE
JUSTICE AS HE RECEIVES HELP FROM THE LAW LIBRARIES (ETC.).
THE APPELLANT ALSO ASK THAT COURT APPOINT HIM AN APPEAL
ATTORNEY OR HE WOULD HAVE TO BE CONSIDERED "PRO SE".

RESPECTFULLY
SUBMITTED,

Victor M. Exposito

VICTOR EXPOSITO, 336 796

GA 24 RCI

PO BOX 2039

RIDGELAND, SC 29936-2039

ENCLOSURE: EXHIBIT (1) & EXHIBIT (1A) & (1B)

LETTER FROM SECOND
JUDICIAL CIRCUIT PUBLIC DEFENDER

EXHIBIT (2)

NOTICE OF INTENT TO APPEAR

EXHIBIT (2A)

EXPLANATION

EXHIBIT (2B)

CERTIFICATE OF SERVICE

EXHIBIT (2C)

LETTER TO South Carolina
Commission on Indigent Defense
ATTN: MRS. HORIENE FRENCH

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 21 DAY OF June,

20 16 Virginia Robinson

NOTARY PUBLIC
STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES May 26, 2021

CERTIFICATE OF SERVICE

I, VICTOR EXPÓSITO, the Appellant, 336796, CERTIFY
THAT I have deposited in U.S. Mail via prepaid postage
(1) one ORIGINAL AND SIX (6) COPIES (TO THE) OF MOTION TO
REHEAR AND REHEARING EN BANC UPON The South Carolina
Court of Appeals, South Carolina Commission of Appellate
Defense, Clerk of Court Aiken County Judicial Circuit,
to JOHN WILLIAM WEEKS, Deputy Solicitor, Second Judicial Circuit,
AND to ROBERT MADSEN, 11th Circuit Public Defender by
PLACING SAME IN THE UNITED STATES MAIL PROPERLY
ADDRESSED AND WITH CORRECT POSTAGE AFFIXED THERE TO:

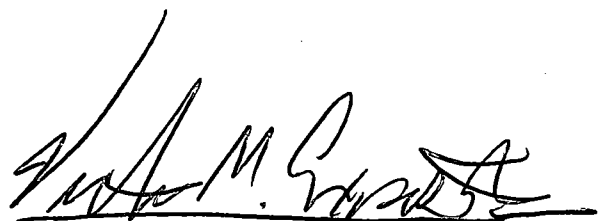
South Carolina Court of Appeals
POST OFFICE BOX 11629
Columbia, SC. 29211

South Carolina Commission
of Appellate Defense
PO BOX 11589
Columbia, SC. 29211

Clerk of Court
Aiken County Judicial Circuit
Post Office Box 583
Aiken, South Carolina 29802

John William Weeks
Deputy Solicitor
PO BOX Drawer 3368
Aiken, South Carolina 29802

Dated: JUNE 20, 2016


VICTOR EXPÓSITO, 336796
GA 24 RET
PO BOX 2039
RIGELAND, SC. 29936-
2039

Public Defender for the Second Judicial Circuit

410 Barnwell Avenue N.W.
Post Office Drawer 2247
Aiken, South Carolina 29802

De Grant Gibbons, Circuit Public Defender

January 8, 2016

Mr. Victor Exposito, 00336796
Kirkland Correctional Inst.
4344 Broad River Road
Columbia, South Carolina 29210

Re: The State of South Carolina vs. Victor Exposito
Appellate Case No. 2016-000010

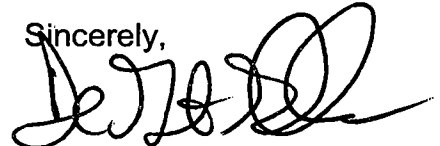
Dear Mr. Exposito:

Please find enclosed my explanation for your appeal. You have twenty (20) days from the date of this letter to inform the Court of Appeals in writing of any arguable basis that there are issues preserved for appeal. The address to which you should direct your correspondence is:

South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

You must use the appellate case number on all correspondence with the court relating to this matter.

Sincerely,



De Grant Gibbons
Circuit Public Defender

DGG:tpc
ENCLOSURE

Telephone: (803) 642-1732

Fax: (803) 642-1739

EXHIBIT 1

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

INDICTMENT #: 2015 GS 02 00995

VS.

VICTOR EXPOSITO

DEFENDANT

RULE 203(B) EXPLANATION

Pursuant to Rule 203(B)(iv), the undersigned asserts that he does not have a good faith basis to believe that any issues are properly before the Court of Appeals, and the undersigned did not object to the sentence or file a motion to reconsider the sentence. The Defendant then did make contact with an attorney in the Public Defender's Office telling him that he wanted an appeal filed on his case. The undersigned has filed the instant appeal at the request of the Appellant because the Sixth Amendment requires counsel to follow the Appellant's request. See *Frazier v. South Carolina*, 430 F.3d 696, 706 (4th Cir.2005) ("A defendant has a right to pursue a direct appeal, even if frivolous, which counsel must assist as 'an active advocate on behalf of his client.'") (quoting *Anders v. California*, 386 U.S. 738, 744 (1967)).

Respectfully Submitted,

De Grant Gibbons
Circuit Public Defender
Post Office Drawer 2247
Aiken, South Carolina 29802
803-642-1732

December 29, 2015

EXHIBIT 1A

Second Judicial Circuit
Public Defender
P.O. Box 2247
Aiken, South Carolina 29802

31

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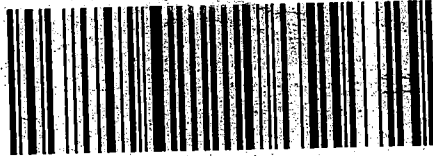
JAN 13 2016

KIRKLAND ROE OLIVER
MAILROOM

Mr. Victor Exposito, 00336796
Kirkland Correctional Inst.
4344 Wood River Road
Columbia, South Carolina 29210

29210+4098

CERTIFIED MAIL™



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NOTICE OF INTENT TO APPEAL
THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
FROM AIKEN COUNTY AND LEXINGTON COUNTY
THE HONORABLE Doyet A. Early, III
December 29, 2015

Indictment # 2015 GS 02 00995

THE STATE OF SOUTH CAROLINA -- Respondent

VS.

VICTOR EXPOSITO -- Appellant

NOTICE OF INTENT TO APPEAL

Victor Exposito pled guilty and was convicted of Possession With Intent to Distribute Controlled Substance on December 15, 2015 before the Honorable Doyet A. Early, III in Aiken, South Carolina. He appeals his conviction and sentence.


De Grant Gibbons
Attorney for Defendant

Other Counsel of record is:

John William Weeks
Deputy Solicitor
Post Office Box 3368
Aiken, South Carolina 29802

NOTICE OF INTENT TO APPEAL

Copy
FILED December 30 15
Tracy Hodard
CCP&GS
Pauline Finney

EXHIBIT 2

2015-GS-02-00995

STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

INDICTMENT #: 2015 GS 02 00995

vs.

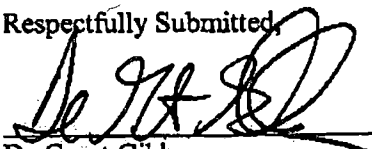
VICTOR EXPOSITO

DEFENDANT

RULE 203(B) EXPLANATION

Pursuant to Rule 203(B)(iv), the undersigned asserts that he does not have a good faith basis to believe that any issues are properly before the Court of Appeals, and the undersigned did not object to the sentence or file a motion to reconsider the sentence. The Defendant then did make contact with an attorney in the Public Defender's Office telling him that he wanted an appeal filed on his case. The undersigned has filed the instant appeal at the request of the Appellant because the Sixth Amendment requires counsel to follow the Appellant's request. See *Frazier v. South Carolina*, 430 F.3d 696, 706 (4th Cir.2005) ("A defendant has a right to pursue a direct appeal, even if frivolous, which counsel must assist as 'an active advocate on behalf of his client.'") (quoting *Anders v. California*, 386 U.S. 738, 744 (1967)).

Respectfully Submitted,


De Grant Gibbons
Circuit Public Defender
Post Office Drawer 2247
Aiken, South Carolina 29802
803-642-1732

December 29, 2015

Copy
December 30 15
Lin Hodard
E.C.P.&G.S.
Pauline Finner

EXHIBIT (2A)

2015-GS-02-00995

State of South Carolina

Vs:

Victor Exposito

2015 GS 02 00995

CERTIFICATE OF SERVICE

I, Tesa Culbertson, do hereby certify that I have this day served the original of Appellate's Notice to Appeal upon the South Carolina Court of Appeals, and copies of Appellate's Notice of Intent to Appeal to the Clerk of Court of Aiken County and to John W. Weeks, Deputy Solicitor, Second Judicial Circuit and to Robert Madsen, 11th Circuit Public Defender by placing same in the United States Mail properly addressed and with correct postage affixed thereto:

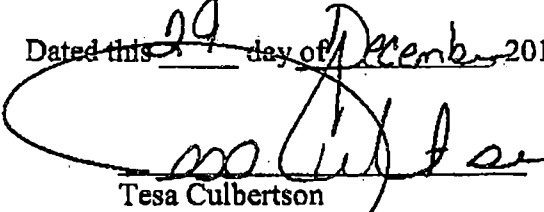
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

South Carolina Commission
Of Appellate Defense
P. O. Box 11589
Columbia, SC 29211

Clerk of Court
Aiken County Judicial Circuit
Post Office Box 583
Aiken, South Carolina 29802

J. William Weeks
Deputy Solicitor
Post Office Drawer 3368
Aiken, South Carolina 29802

Dated this 29 day of December 2015


Tesa Culbertson
Secretary to Appellant's Attorney
Post Office Drawer 2247
Aiken, SC 29802
803-642-1732

Copy Wadsworth 30 15

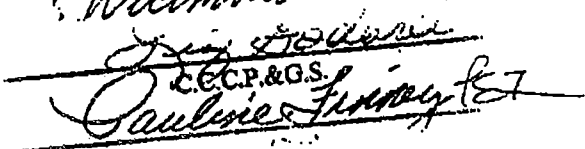

P.C.P. & G.S.

EXHIBIT (2B)

2015-05-02-00995

OFFICE OF THE SECOND JUDICIAL CIRCUIT PUBLIC DEFENDER

**410 Barnwell Avenue N.W.
Post Office Box 2247
Aiken, South Carolina 29802**

December 29, 2015

South Carolina Commission
On Indigent Defense
Attention: Loriene French
P. O. Box 11589
Columbia, SC 29211

RE: NOTICE OF INTENT TO APPEAL
Victor Exposito
2015 GS 02 00995 / 2015 A02.102 00437

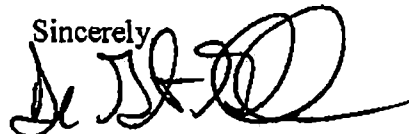
Dear Mrs. French:

Please find enclosed copies of Notice of Intent to Appeal, Indictments 2015 GS 02 00995, Arrest Warrant, Sentence Sheet, defendant's affidavit of indigency and the Rule 203 (B) Explanation.

Victor Exposito pled guilty and was convicted of Possession With Intent to Distribute Controlled Substance and was sentenced on December 15, 2015 before the Honorable Doyet A. Early, III. Ms. Bethanie Creppon served as the Court Reporter. Her address is P. O. Box 85411, Lexington, South Carolina 29073.

I am available to discuss this case if you so desire.

Sincerely



De Grant Gibbons
Circuit Public Defender

DGG:tpc
Enclosure

Copy
December 30 15
King Hodara
C.C.P. & G.S.
Pauline Finney

EXHIBIT (2C)

2015-GS-02-00995