

EXHIBIT F

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) FOR THE SECOND JUDICIAL CIRCUIT

COUNTY OF AIKEN

)

DOCKET NO: 2009-CP-02-1238

Joshua Forrest (#274525),

)

Applicant,

)

Vs.

)

**AMENDED APPLICATION FOR
POST CONVICTION RELIEF**

State of South Carolina,

)

)

Respondent.

)

)

)

The Applicant, Joshua Forrest (#274525), by and through his undersigned attorney does hereby amend his Application for Post Conviction Relief and would show unto this Honorable Court:

1. That on November 17, 2005, the Applicant herein was given a Ten (10) year sentence by the Honorable Edward W. Miller in Lexington County on the charge of attempted armed robbery under indictment number 98-GS-32-2396. Judge Miller suspended the sentence based on time served and placed the Applicant on probation for Three (3) years.
2. That on December 05, 2005, the Applicant was arrested and charged with murder in Aiken County. This charge was brought to trial in December of 2006. and after a three (3) day trial, ended in a hung jury.
3. That thereafter the Applicant and his attorney believed that they were before the Court on December 07, 2006 fir a hearing to set bond to allow Applicant to remain free pending the retrial or other disposition of those charges for which he had just been tried, resulting in no verdict. Instead, the Court, on its own motion, held an impromptu probation revocation hearing.

FILED 7.20 2009 90
Liz Hodard 830
 C.C.P.&G.S. mm
Liz Hodard (mm)

4. That the Applicant was denied those rights guaranteed to all citizens under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the Constitution of the State of South Carolina when his probation was illegally revoked. Appellant asserts that the probation violation hearing held before the Honorable Doyet A. Early, III, on December 07, 2006 in Aiken, South Carolina was illegal and a nullity, as the Court was without subject matter jurisdiction. As such, this issue is proper for post conviction proceedings pursuant to S.C. Code Section 17-27-20(a)(5). Duckson vs. State, 355 S.C. 596, 586 S.E.2d 576 (2003).

5. That the Applicant herein was denied those rights guaranteed to all citizens under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the Constitution of the State of South Carolina due to the ineffective assistance of counsel provided him by his attorney, Sherri H. Stoney, Esquire, at that probation revocation hearing.

6. That neither the Applicant nor his attorney was served with a warrant for a probation violation as is required under S.C. Code Section 24-21-450 and the Due Process Clauses of the Constitutions of the United States and the State of South Carolina. Further, nor was the Applicant or his attorney served with a citation and attached affidavit in lieu of the required warrant.

7. That the Applicant asserts that his probation was illegally revoked in that the General Sessions Court did not have subject matter jurisdiction to revoke Applicant's probation due to the failure of the South Carolina Department of Probation, Pardon and Parole Services (hereinafter SCDPPS) to properly file with the Court and serve upon the Applicant and his attorney the above referenced warrant or citation with attached

affidavit specifying the particulars of said probation violation and giving Appellant the necessary due process notice of same. State vs., Richburg, 304 S.C. 162, 403 S.E.2d 315 (1991) and Gray vs. State, 276 S.C. 634, 281 S.E.2d 226 (1981) clearly profess that a probation revocation without a warrant constitutes a nullity which cannot be cured by a waiver in an attempt to confer subject matter jurisdiction upon the Court.

8. That Applicant asserts and the transcript of record confirms that his attorney, Sherri H. Stoney, Esquire, failed to make any protestations regarding the Court's lack of subject matter jurisdiction and failed to voice any objection concerning the revocation hearing going forward without a warrant or citation with attached affidavit issued by SCDPPS.

9. That Applicant would further show that his attorney failed to advise Appellant of the lack of subject matter jurisdiction of the probation revocation hearing and the resulting nullity in the revocation of Appellant's probation.

10. Further, that Applicant asserts that his attorney also failed to advise Applicant of his right to appeal, failed to perfect an appeal by filing and serving the requisite notice of intent to appeal and, further, failed to advise the South Carolina Office of Appellant Defense (hereinafter Appellate Defense) to pursue the appeal of the probation revocation due to the Court's lack of subject matter jurisdiction and the resulting nullity of the revocation of Appellant's probation.

11. That Applicant submits that to prove ineffective assistance of counsel, a petitioner must show (1) that counsel's performance was deficient; and (2) that the appellant was prejudiced by such deficiency. Strickland vs. Washington, 466 U.S. 668,

104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), Butler vs. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

12. That Applicant submits that the failure to act on the part of his attorney as above stated, by failing to object to the unlawful probation revocation proceedings and by failing to perfect an appeal on Applicant's behalf was all below the level of reasonable competence expected and required of an attorney and, thus, was deficient per se.

13. That Applicant submits that he was prejudiced thereby in that he was deprived of his conditional freedom without a lawful warrant and a lawful revocation hearing providing due process. Nichols vs. State, 308 S.C. 334, 417 S.E.2d 860 (1992).

14. That Applicant asserts that he was unconstitutionally deprived of his statutory right to a direct appeal, as he was never advised of his right to appeal by his attorney and his case was never submitted to the Appellate Defense for appeal. He is, therefore, entitled to a belated appeal of the revocation of his probation pursuant to the purported probation violation hearing held before the Honorable Doyet A. Early, III, on December 07, 2006 in Aiken, South Carolina. In White vs. State, 263 S.C. 110, 208 S.E. 2d 35 (1974), the Supreme Court held that the Court will review the trial record and pass upon all issues properly raised and argued as if a direct appeal had been perfected, where an applicant establishes in a post-conviction relief proceeding that he was unconstitutionally deprived of his statutory right to a direct appeal. The Appellant herein was unconstitutionally deprived of his statutory right to a direct appeal by his attorney's ineffective assistance of counsel in failing to advise the Applicant of his right to appeal, in failing to perfect an appeal by filing and serving the requisite notice of intent to appeal and, further, by failing to notify Appellant Defense that Applicant's probation revocation

hearing was fatally flawed and to transfer the matter to Appellant Defense to pursue the appeal.

WHEREFORE, having fully set forth its his Application and Amended Application for Post Conviction Relief, the Applicant prays that this Honorable Court inquire into these matters as set forth herein and issue its order for judgment requiring:

- a. That the Applicant's Application for Post Conviction Relief be granted and that he be released from custody and that the probation violation hearing held before the Honorable Doyet A. Early, III, on December 07, 2006 in Aiken, South Carolina be declared illegal and a nullity, as the Court was without subject matter jurisdiction because no probation violation warrant was ever served on the Applicant or his attorney in violation of 24-21-450, nor was the Applicant or his attorney served with a citation and affidavit in lieu of the required warrant;
- b. That the Applicant's Application for Post Conviction Relief be granted and that he be released from custody in that the failure on the part of Applicant's attorney to object to the Court's lack of jurisdiction to revoke Applicant's probation, failure to advise Applicant of his right to appeal, failure to perfect an appeal by filing and serving the requisite notice of intent to appeal and, further, failure to transfer the matter to Appellant Defense to pursue the appeal all constituted the ineffective assistance of counsel;
- c. That the Applicant must be granted a belated appeal of the revocation of his probation, pursuant to White vs. State, 263 S.C. 110, 208 S.E. 2d 35 (1974). The Applicant was not advised of his right to appeal his probation

revocation and was thereby unconstitutionally deprived of his statutory right to a direct appeal by his attorney's ineffective assistance of counsel in her failure to advise the Applicant of his right to appeal, failure to perfect an appeal by filing and serving the requisite notice of intent to appeal and, further, failure to notify Appellant Defense that Applicant's probation revocation hearing was fatally flawed and to transfer the matter to Appellant Defense to pursue the appeal ; and

- d. For such other and further relief as this Honorable Court may deem just and proper.

HANSON LAW FIRM, P.A.

July 16, 2009

Kenneth C. Hanson

Kenneth C. Hanson, Esquire
6156 St. Andrews Road, Suite 101
Columbia, South Carolina 29212
Phone: (803) 798-9446
Fax: (803) 750-0203

ATTORNEY FOR APPLICANT

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Joshua Forrest (#274525),

Applicant,

Vs.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SECOND JUDICIAL CIRCUIT
)

DOCKET NO: 2009-CP-02-1238

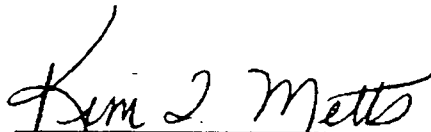
CERTIFICATE OF SERVICE

I, the undersigned employee of Hanson Law Firm, P.A., do hereby certify that I have this date served counsel in the above referenced matter with the following by depositing same in the United States Mail, postage paid and addressed as follows:

DOCUMENTS: (1) Amended Application For Post Conviction Relief

COUNSEL SERVED: Mary S. Williams, Esquire
Assistant Attorney General
Office of the South Carolina Attorney General
Post Office Drawer 11549
Columbia, South Carolina 29211

July 16th, 2009



Kim T. Metts, Secretary for
HANSON LAW FIRM, P.A.
6156 St. Andrews Road, Suite 101
Columbia, South Carolina 29212
Phone: (803) 798-9446
Fax: (803) 750-0203