

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

George C. James, Circuit Court Judge

Case No. 2015-CP-23-5901

RECEIVED

OCT 17 2016

S.C. SUPREME COURT

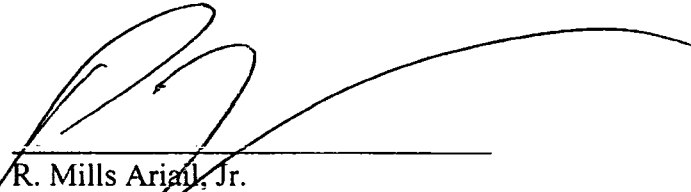
Vincent Missouri,..... Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable George C. James' Order of Dismissal dismissing Appellant's application for post-conviction relief. On August 23, 2016, the Honorable George C. James signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on September 8, 2016. A copy of the Honorable George C. James' Order of Dismissal is attached.



R. Mills Ariail, Jr.
Attorney at Law
11 North Irvine St., Suite 11
Greenville, SC 29601
Telephone (864) 232-9390
Facsimile (864) 232-9392
Attorney for Vincent Missouri

Greenville, South Carolina
September 23, 2016

R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

"Exhibit" Only

11 NORTH IRVINE STREET, SUITE 11 • GREENVILLE, SC 29601
PHONE 864.232.9390 • FAX 864.232.9392 • E-MAIL MILLS@RMALAWOFFICE.COM

September 23, 2016

Via US Mail

Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: *Notice of Intent to Appeal from State of SC v. Vincent Missouri*
C.A. No.: 2015-CP-23-5901

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable George C. James' Order of Dismissal to be challenged on appeal. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Greenville County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law


R. Mills Ariail, Jr.

RMAjr/dl
Enclosures (as stated)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

OCT 17 2016

S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge
Case No. 2015-CP-23-5901

Vincent Missouri..... Appellant,

V.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Vincent Missouri, Petitioner in the above captioned matter, do hereby certify that I have served a true and correct copy of this Motion For Relief of Judgement, pursuant to SCR Civ. P. 60(b), on opposing counsel on this 12 day of October 2016, by placing the same in the inmate system of legal mailing, with adequate postage attached thereto. The envelope is addressed as follows:

Mr. Patrick Schmeckpeper, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211

October 11, 2016

s/ Vincent Missouri
Vincent Missouri, #197996

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

OCT 17 2016

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Geroge C. James, Jr., Circuit Court Judge
Case No. 2015-CP-23-5901

Vincent Missouri..... Appellant,

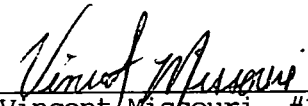
V.

State of South Carolina Respondent.

CERTIFICATION FOR PROSPECTIVE SERVICE

I, Vincent Missouri, Petitioner in the above captioned matter, do hereby certify pursuant to S.C.R. Civ. P. 60(a) and (b), that a copy of the enclosed Motion For Relief of Judgment, as required. Shall be forwarded to the above named Judge, George C. James, Jr., for purpose of notification such motion has been filed, "within ten (10) days" after the motion itself has been filed. The address is as follows:

Geroge C. James, Jr.,
Circuit Judge
305 E. North Street
Greenville, S.C. 29601

s/ 

Vincent Missouri, #197996

October 11, 2016

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

George C. James, Circuit Court Judge
Case No. 2015-CP-23-5901

Vincent Missouri, Appellant,

V.

State of South Carolina, Respondent.

**REQUEST FOR LEAVE TO FILE 60(b)
PURSUANT TO S.C.R. Civ. Procedure, as (Amended).**

By: Vincent Missouri, #197996
BRCI-Wateree Unit
4460 Broad River Road
Columbia, S.C. 29210

JURISDICTION OF THIS HONORABLE COURT

This Court has jurisdiction pursuant to SCACR, Rules 203, 204, 221(b) and 243, where an appeal has been taken from a final judgment in a post-conviction matter.

On August 23, 2016, Judge George C. James, Circuit Court Judge, entered a final order denying post-conviction relief. Such order was filed with the Clerk of Court, for the Thirteenth Judicial Circuit, September 6, 2016.

Appointed counsel, Mr. R. Mills Ariail, Jr., then filed to the Clerk of this Honorable Court, "Notice of Intent To Appeal", as well as a Certificate thereof for proof of service, on September 23, 2016.

In Accordance with the "letter" to this Honorable Clerk of Court, dated September 23, 2016. Mr. R. Mills Ariail, Jr., clearly indicated "he has relieved himself or completed what he was appointed for". And therefore, the South Carolina Commission of Indigent Defense will handle this case forward.

Thus, at this time of filing, Petitioner is without counsel.

JURISDICTIONAL STATEMENT

In accordance with the South Carolina Rules of Civil Procedure, Rule 60 (b), On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; [In relevant part].

SPECIFIC GROUNDS OUTLINED FOR RELIEF OF JUDGMENT

1). Petitioner in a post-conviction setting has been denied Due Process and a fair proceeding by PCR counsel's "failure to file a requested 59(e)", to preserve all issues that were either omitted within the PCR court's finding of facts. Or, where the PCR court misapplied the law in deciding the case. See Marlar v. State, 653 S.E.2d 266, 267 (S.C. 2007)

The PCR court's ruling was signed on August 23, 2016. Counsel at PCR level attest that he received such on the eighth (9/8/2016) of September, 2016, and rather than file the 59(e) within the allotted ten (10) day period. PCR counsel instead waited until September 23, 2016, some fifteen (15) days after receiving the dismissal, and filed a PCR appeal.

According to Marlar, "counsel must carefully review the final order and address any insufficiency through a 59(e) motion requesting the PCR court to specifically address each issue raised in the application". Moreover, according to statutory directive and rules governing the post-hearing procedure, "even after an order is filed, counsel has an "obligation" to review the order and file a Rule 59(e), SCRCF, motion to alter or amend if the order fails to set forth findings and the reasons for those findings as required by §17-27-80 and Rule 52(a), SCRCF. See Pruitt, 423 S.E.2d at 128; see also Marlar, 653 S.E.2d at 267; and Hall, 601 S.E.2d at 341.¹

1 The PCR court's order on page 3 of 11, referenced Petitioner's letters to PCR counsel on June 27 and 28, 2016. After the June 15, 2016 hearing wherein the "written request" to also file the 59(e) was submitted on sufficient grounds. Therefore, the failure to file should be reviewed as an intentional abandonment of Petitioner's right to mount an effective appeal by PCR counsel's ineffectiveness.

2). Petitioner next takes issue pursuant to 60(b), which PCR counsel should have raised in a 59(e) motion. The court's findings concluding trial counsel provided effective assistance.

Here, the proper standard that "but for counsel's alleged errors, the Petitioner would not have pled guilty and would have instead insisted on going to trial, Hill v. Lockhart, 474 U.S. 52, 59 (1985)", is specifically supported by the record.

That record reveals "letters to this Honorable Clerk of Court, Mr. Daniel Shearouse, of Petitioners "repeated attempts" to relieve Mr. Symmes Culbertson based on his unwillingness to prepare Petitioner's defense, to file proper pre-trial motions, and to gather expert witness testimonial evidence, as well as interview witnesses for the defense". All occurring prior to the September 5, 2014 pre-trial hearing before Judge Verdin, where Judge Verdin erroneously and arbitrarily denied Petitioner "substantial rights to (1) choice of counsel, and (2) proceed to trial pro-se". In which Petitioner "requested Mr. Culbertson's assistance to immediately appeal the September 5, 2014 ruling". But Mr. Culbertson declined to do so, and the record before this Court clearly shows the Applicant attempted an immediate appeal himself. Thus, "the PCR court's findings to the contrary (i.e. that Petitioner did not request an appeal as to Judge Verdin's September 5, 2014 ruling) is not supported by the record. And PCR counsel is ineffective for failing to file the 59(e) on this issue.

3). Petitioner next takes issue pursuant to Rule 60(b) for relief of judgment whereas a 59(e) should have been filed. Where Petitioner after the PCR hearing but prior to the August 23, 2016 ruling. Forwarded PCR counsel R. Mills Ariail, Jr., a detailed letter that (inter alia) included "authenticated State Solicitor's Office documents", that essentially exposed Mr. Culbertson's PCR test-

imony as being an intentional falsehood. Orchestrated to bolster the State's position in regards to Petitioner's claim, "he opted for trial by jury once Pickens County recommended withdrawal of the five (5) year plea offer", and instead wanted Petitioner to serve "three times more imprisonment for a single bank larceny". When Solicitor George Campbell, of Greenville Solicitor's Office, gave a written agreement for five (5) years 'concurrent', for the two pending Greenville robberies.

A recall of the testimony by Symmes Culbertson as outlined on page 9 of 11, within the PCR court's dismissal. In which the PCR court based its decision on. Cites as reason for denying a claim of Due Process and malicious prosecution Petitioner raised against Pickens. Was that plea counsel testified; "the five year offer was withdrawn when the case was assigned to a new assistant solicitor and it came to light that Applicant had additional charges".

As noted, the beginning of this article (3); Petitioner forwarded copies of Mr. George Campbell's (Solicitor Campbell) written plea offer for the five (5) years; a letter to Doug Richardson of Pickens mailed thereafterwards; and Mr. Richardson's response, demanding three (3) times more prison time in the return written plea offer. To which, "George Campbell's signature appears on the subsequent fifteen year offer". These items was forwarded to PCR counsel for the sole purpose "of correcting the record before the court".

Moreover, Petitioner was arrested in Greenville County Detention Center on January 16, 2013. The Pickens bank incident occurred in June of 2012; the subsequent Greenville incidents occurred within days of each other, in November of 2012. The Solicitor's Office were in constant contact with one another involving these cases. And it's unreasonable to conclude, once the evidence which was forwarded to PCR counsel by Petitioner. That (1) the case has been

reassigned to another solicitor, and on that basis,(2) a new solicitor would have been unaware of exactly the extent of criminal matters involving the Petitioner. As a sufficient basis to "up the ante" on the sentencing recommendation.

Thus, Mr. Symmes Culbertson's testimony was patently false as well as misleading. Because George Campbell forwarded Petitioner Picken's subsequent recommendation personally; as well as a detailed letter outlining; "Mr. Missouri, based on the five (5) year offer wants to move forward without counsel, and resolve both the Pickens and Greenville charges at the same time". And after the PCR hearing, Petitioner forwarded these items to PCR counsel, insisting he file the 59(e) to this and any other insufficiency in the decision.

Wherefore, the PCR court failed to rule on "whether Petitioner's Due Process rights were violated by a finding Equal Protection had been deprived", based on unconstitutional considerations as race of the offender. When the evidence clearly demonstrated, "Pickens received all its bank money back". Whereas, Greenville County did not. And Pickens had "one less bank incident attributable to the offender", whereas, Greenville County had "two such incidents".

Not only that, Petitioner had other evidence consistent with (1) the firing of the Sheriff of Pickens County for continuous use of the "N-Word" towards Afro-Americans; (2) the failure of the new Sheriff to fly its flag at half-staff on the Executive Request of the President. Out of respect for activist Nelson Mandela; and (3) more recently, a firing of a police officer that shot a Afro-American, who was confined to a wheel chair.

Thus, Pickens County law enforcement personnel being involved with overtones of racism is not a new Phenomenon. Yet the PCR court omitted Petitioner's claim on this issue and ruled according to the false testimony of Mr. Symmes

Culbertson. When it appears, "the court had received the June 27 and 28 2016 letters" which clearly contradicted the testimony. Therefore, such was and is a reason for a 59(e) motion, because the PCR court's findings of fact as to this issue is incorrect, based on plea counsel's testimony.

4). Petitioner next takes issue pursuant to Rule 60(b), which PCR counsel should have most certainly filed a 59(e), is where the court misapprehends as well as misapplies the governing law, and rules in regards to Failure to File Interlocutory Appeal, at page 4 and 5 of 11, within the PCR court's order.

First, the PCR court omitted (1) "whether counsel was ineffective by failing to file the requested immediate appeal". And instead only considered "whether Petitioner requested an appeal after conviction". And (2) in denying relief on this ground, "the court attempts to take an unfair advantage of squarely contradicting positions", which is inconsistent with the fair and impartial administration of justice.

On the one hand, the PCR court concludes; "No appeal (other than the Applicant's improper pro-se appeal discussed below) from that ruling was filed.² I conclude that any properly filed immediate appeal from that ruling would have been interlocutory". On the otherhand (i.e. page 5 of 11), beginning with the second paragraph, the PCR court squarely contradicts what he had previously concluded (i.e. "that a properly filed immediate appeal from that ruling would have been interlocutory"), with the following entry: [pg. 5 of 11 2nd para].

The trial court's order denying Applicant's request to proceed pro-se was not immediately appealable because it was not an "issue on the merits" of his underlying case, and it did not "determine the action" or otherwise prevent a judgment from which an appeal might have been taken. If Applicant wanted to challenge the

2. Outlining Petitioner pro-se immediate appeal filed from Judge Verdin's September 5, 2014 denial of (1) choice of counsel and (2) the right to proceed pro-se and relieving counsel.

trial court's ruling, the proper procedure was to proceed to trial and appeal if convicted. Instead, Applicant chose to plead guilty, thus waiving all prior claims of constitutional rights or deprivations thereof.

Again, Petitioner first argues the misapplication of law because the PCR court's application of the law is contradictory. And PCR counsel should have noticed the error and filed a 59(e). Next, this Court had the 59(e) been filed by counsel, would not have to determine whether counsel was ineffective for failing to file the 59(e).

But moreover, under §14-3-330(2), this Court's decision (with vivid explanations) makes clear that "the denial of a party's substantial rights to a particular mode or trial in an adversarial system, is immediately appealable". See Flagstar v. Royal Surplus Lines Inc., 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000), and Haygood v. Summerville, 363 S.C. 191, 607 S.E.2d 707 (2005).

The explanation this Court expounded upon is found in Flagstar, where the Court stated:

"Turning to South Carolina jurisprudence, as a well established general rule". This Court has repeatedly held; "the denial of a party's right to a particular mode of trial is immediately appealable as a substantial right under §14-3-330 (2)". *Id.*

As far as the PCR court's assessment and misapplication of the law in regards "to the Applicant proceeding to trial and if convicted then appeal". This Court expounded on such a finding by stating:

That an appeal "after final judgment would not adequately protect a party's interest because it would be difficult or even impossible for a litigant or an appellate court to ascertain whether prejudice resulted from the lack of a preferred attorney". (Citing Goldston v. American Motors Corp., 326 N.C. 723, 392 S.E.2d 735, 737 (1990)).

5). Petitioner now takes issue pursuant to Rule 60(b) to request relief from judgment based on number (4) herein. But moreover, no Court or lower courts are at any conflict relating to the "failure of a attorney to file a requested appeal". Or file a appeal when it is apparently obvious based on a perceived error to which any competent attorney should be aware of.

In otherwords, Faretta v California, 422 U.S. 806, 95 S. Ct. 2525 (1975), has set the standard for considering a defendant's request to waive counsel and proceed to defend himself when he freely and voluntarily chooses to do so prior to trial. Petitioner had done such even prior to the September 5, 2014 hearing into the matter, more than a single time.

State v. Winkler, 388 S.C. 574, 698 S.E.2d 596 (2010), and State v. Barnes, 407 S.C. 27, 753 S.E.2d 545 (S.C. 2014), explained that the lower court are to undertake the "traditional Faretta concerns when considering whether a defendant qualifies to proceed pro-se". The Syllabus of Faretta straight-forwardly explains what occurred in Petitioner's instant situation, where it reads as follows:

The Sixth Amendment as made applicable to the States by the Fourteenth guarantees that a defendant in a state criminal trial has an independent constitutional right of self-representation and that he may proceed to defend himself without counsel when he voluntarily and intelligently elects to do so; and in this case the state courts erred in forcing petitioner against his will to accept a state-appointed public defender and denying his request to conduct his own defense. Pp. 812-836. Faretta, supra, .

Thus, the failure of plea counsel to have filed (1) the immediate appeal where Petitioner had to do it himself is "per-se" ineffective assistance of counsel; and (2) after being requested to have filed the immediate appeal, and did not file a appeal after the October 31, 2014 sentencing, based on the above,

borderlines "legal malpractice", considering well-settled principles of law that the September 5, 2014 ruling violated.

6). Petitioner also moves pursuant to 60(b) for relief of judgment whereas a 59(e) should have been filed to the PCR court's misapplication of the law, and erroneous findings of facts involving its attempt to show that Petitioner (1) either waived his challenge by pleading guilty or (2), any error as a result would be harmless.

Petitioner avers that the logic of the court's reasoning is misplaced when identifying the type of error which was committed on September 5, 2014, to expose "the exact date of the error". Which the State and the PCR court sought to avoid during the June 15, 2016 hearing.

Here, there is no mistake that a decision to waive counsel and represent oneself is "a choice of counsel" under Gonzales-Lopez v. U.S., 548 U.S. 140 (2006), that represents a "substantial right". That by that choice being oneself, it triggers yet another "substantial right" under Faretta v. California, 422 U.S. 806 (1975).

Any deprivation of those above "substantial rights" done arbitrarily, capricious, mistakenly or otherwise. The "violation is complete", and "no additional showing is required". Thus, the PCR court's attempt to interject the October 31, 2014 guilty plea is improper. Such, according to the United States Supreme Court, is why.

In Arizona v. Fulminante, 499 U.S. at 310, this Court concludes "errors subject to review for harmlessness are known as trial errors". Fulminante, supra. Conversely, "structural errors", defects that fundamentally undermine the

reliability and fairness of the trial--require "reversal" and are not subject to harmless error review". 499 U.S. at 309-310.

In the language of Gonzales-Lopez, the Court held; the guarantee does not ensure a fair trial but that the correct measure of fairness is extended, to wit, "that the accused be represented by the attorney he feels to be the best".

In McKaskle v. Wiggins, 465 U.S. 168, 177 n. 8 (1984)(the denial of right to proceed pro-se is either respected or denied and not subject to harmless error analysis but requires reversal per-se_.

"STRUCTURAL ERRORS"

Structural errors include: (1) the denial of the right to a jury trial; (2) racial discrimination in jury or grand jury selection; (3) improper removal of potential jurors, for cause in capital trials; (4) improper amendment of an indictment; (5) **denial of right to counsel; (6) denial of the right to "choice of counsel", due to erroneous disqualification; (7) denial of the right to represent oneself; (8) denial of the right to an impartial judge; (9) denial of the right to a public trial; (10) egregious violation of the right to a fair trial; (11) certain discovery violations; (12) erroneous jury instructions regarding reasonable doubt.**

The above errors defy the 'excuse' extended by the PCR court concerning any waiver subsequently occurring to the "substantial rights which were erroneously violated". And a 59(e) should have been filed to point these errors the court made within its August 23, 2016 order.

The Faretta Court concluded; "to force a lawyer on a defendant can only lead him to believe that the law contrives against him. Moreover, it is not in-

conceivable that in some rare instances, the defendant might in fact present his case more effectively by conducting his own defense. Personal liberties are not rooted in the law of averages. The right to defend is personal; for it is he who suffers the consequences if the defense fails. Faretta, supra.

7): Finally, Petitioner moves pursuant to Rule 60(b) for relief of judgment for two distinct reasons because a 59(e) should have been filed. First, as discussed above, the PCR court's take on Petitioner's trial defense, had he been extended the right. Is not within the province of the trial court to have determined whether to believe the evidence introduced. Such evidence would have been for the petit jurors. And because the Faretta Court spoke on the point of a case in which the defendant could have possibly prevailed. Such is not a reason for counsel "not to have gather the defendants trial materials, to go over expert testimony on the subject, to interview witnesses in defendants favor, and then make such a determination".

However, what the PCR ruling stands for; "is on any given day, a trial attorney may disregard any defense in which he (the attorney) may have to actually have to work to get the point across ". At the time Mr. Culbertson explained (1) I could not afford such a defense and (2), Carolina judges would not allow such a defense, and (3) I was the wrong race to forward such a defense. My response was that of a knee-jerk. Just to see on national television a teenage caucasian child kill four (4) people while driving under the influence, and because of "his rich status", he couldn't determine right from wrong.

My defense was and is a very plausible one, but such was stripped away arbitrarily. Mr. George Campbell understood my plight, and recommended I get


less jail time and a sentence based on mitigating factors, premised on a uncontrollable disease. Pickens County, South Carolina wasn't having it. And because nobody could show me where "that decision by Pickens was not racially motivated". I opted for trial as opposed to accepting the plea in Pickens. But the same deprivation of my right to represent myself in Pickens, occurred on December 19, 2013 by the same judge, Judge L. Verdin. And again, I immediately appealed, but appointed counsel did not over my request.

Should not a Judge sitting on the bench in a General Session Court, not know fundamental law. And where they do not. Can such a judge be impartial. If not, counsel should have filed a 59(e) to the PCR court's finding that Judge Verdin was impartial in her September 5, 2014 ruling.

IN CONCLUSION

In conclusion, Petitioner moves under 60(b) for relief of judgment to have (1) either a new PCR hearing or (2) an order directing the PCR court to set aside its August 23, 2016 judgment, re-enter such judgment to permit the Petitioner to file his 59(e), to protect his Due Process rights under the Uniform Post-Conviction Act. Or grant leave that the 60(b) can proceed forward as grounds pursuant to 59(e). And any other relief this Honorable Court deems just and proper.

Respectfully Submitted,

/s/ 

Vincent Missouri #197996
BRCI-Wateree Unit
4460 Broad River Road
Columbia, S.C. 29210

cc: filed
10/11/2016

R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

11 NORTH IRVINE STREET, SUITE 11 • GREENVILLE, SC 29601
PHONE 864.232.9390 • FAX 864.232.9392 • E-MAIL MILLS@RMALAWOFFICE.COM

October 6, 2016

LEGAL MAIL

Vincent Missouri SCDC# 197996
Broad River Correctional Institute
4460 Broad River Road
Columbia, SC 29212

RE: State of SC v. Vincent Missouri
Case No: 2015-CP-23-5901

Dear Vincent Missouri:

My paralegal told me that you had called and inquired as to why I did not file a Rule 59(e) in your case. I did not file a Rule 59(e) Motion to Alter or Amend the Order of Dismissal because it contained all of the issues you raised at trial. Therefore, there was no need to file a Rule 59(e) Motion.

Thank you for your consideration of this letter.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law

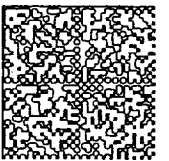


R. Mills Ariail, Jr.

RMAjr/dl

Mr. Vincent Missouri # 199996
Broad River Correctional Institution
4460 Broad River Road
Greenville, S.C. 29210

South Carolina Supreme Court
Clerk of Court
P.O. Box 11330
Columbia, S.C. 29211



UNITED STATES POSTAGE
EAGLE
FIRST CLASS PERMIT NO. 5000 COLUMBIA, SC
02 1P \$ 001.570
0000879467 OCT 12 2016
MAILED FROM ZIP CODE 29210

RECEIVED

OCT 12 2016

BRCI
MAILROOM