

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
DONALD B. HOCKER, CIRCUIT COURT JUDGE

RECEIVED

DEC 07 2016

SC Court of Appeals

TAMARQUIS ANTWAIN WINGATE,

APPELLANT,

v.

THE STATE,

RESPONDENT.

APPELLATE CASE NO. 2014-002717

APPELLANT'S
SUPPLEMENTAL BRIEF

MR. TAMARQUIS ANTWAIN WINGATE
S.C.D.C. (L.C.I.) F1-2143(B)
990 WISACKY HIGHWAY
BISHOPVILLE, S. CAROLINA 2901
[APPELLANT, PRO SE]

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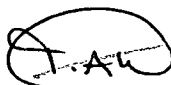

STATEMENT OF SUPPLEMENTAL RECORD ON APPEAL

Whether the court erred by denying the Appellant's Direct Verdict, based on the State's Proof of establishing EVERY element, beyond a Reasonable Doubt Standard to the charge of Criminal Sexual Conduct (CSC) With A Minor (16-3-655)?

Whether the court erred by Denying Appellant's Trial Counsel's "Motion to Suppress Evidence", when clearly the verbal evidence that was submitted SHOULD HAVE BEEN "Excluded" because its Probative Value is Substantially Outweighed by the DANGER of UNFAIR PREJUDICE?

Whether Appellant Counsel was "Ineffective" for failing to Advocate for an "Initial Review" when Appellant sought effective assistance of counsel as guaranteed by the sixth (6th) Amendment and Anders v. California?

Whether accumulation of errors warrants reversal?

2. 

STATEMENT OF THE CASE

Appellant was indicted and found guilty in the (12th) Circuit, originally for criminal sexual conduct with minor, third (3rd) degree and criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - second (2nd) deg. [SEE R.(4)(e)]. His case was called to trial improperly by submitting new Direct Indictments for two (2) counts of first-degree criminal sexual conduct with a minor. [SEE R.(3)]

On, December 10, 2014, the jury found Appellant guilty on both counts and the judge sentenced Appellant to concurrent twenty-year prison terms and upon released committed to the Sexual Violent Predator Proceedings. The Trial counsel, upon Appellant's request appealed the conviction (supposedly). Upon the Trial Counsel's Notice of Intent to Appeal, his conviction and sentenced imposed for the (wrong) two (2) counts of criminal sexual conduct with minor - second degree, in which Appellant is not incarcerated based on those indictments. [SEE R.(7.p.5)]

Chief Appellate Defender, Mr. Robert M. Dudek, was appointed as counsel in the Appellate Court to handle Appellant's case and notified Appellate through legal correspondence dated March 11, 2015. Six (6) months later, Mr. Robert M. Dudek, submitted and filed an Anders Brief (dated Oct. 23, 2015), acknowledging the improper bolstering of the victims testimony by the prejudicial hearsay, and then asked the court to grant his motion to be relieved as counsel because Appellant's appeal is without legal merit.

Deputy Clerk (V. Claire Allen), of the Court of Appeals, notified Appellant of what was indicated by the Appellant Defender, that this appeal is without merit and his intention of being relieved, and that the Appellant have forty-five (45) days to file with the Court a Pro se brief addressing any issues that the Appellant believes the Court should consider in this Appeal, (filed Feb. 08, 2016), Respectfully and with superb Professionalism.

Appellant being "thrust" with self-representation on Appellate Review in this Criminal Case was Risky. Risky because the rules and procedures are complex, the stakes of Liberty or Life is Present before your eyes, and the knowledge that sometimes, Court Personnel and Judges are often hostile toward Self-Represented defendants, even though they may actually be innocent. Many Appropriate References stated even defendants who represented themselves at trial may want to hire an attorney for an appeal. Upon studying and understanding the Law at this critical time on direct appeal, Appellant files a "Motion" for an extension of time (dated March 17, 2016). Deputy Clerk (V. Claire Allen), Granted the motion for the Court.

On, April 26, 2016, Appellant submitted and filed an Appellant Pro se brief, claiming a Constitutional Error in conjunction with errors of law.

In light of the Decision of the South Carolina Supreme Court, the case of State v. Stukes (opinion 27633)(May 04, 2016), Appellant Amended his Pro se brief to include the argument of the

Trial Court's instructions to the jury was erroneous, in which the supreme court deemed Unconstitutional. (Filed May 19,2016)

Still afraid of Life or Liberty being snatched and taken away, Appellant Seeking Effective assistance of counsel from, Mr. Robert M. Dudek, asked for an "initial review" of his conviction the services of an advocate as contrasted with an (Amicus Curiae), which would have been available to an appellant with financial means, (SEE. Anders v. California), and as appointed counsel to ensure Appellant of his rights. (filed Sept. 08,2016).

On, Nov. 02,2016, Honorable Jenny Abbott Kitchings advised all Parties, that this case will be submitted to the Court on the Record and briefs during the November 2016, term without oral arguments. Appellate understands that the Appellate Court decide issues of law and that a silent record is exactly what it is "silent". Appellant then asked the Court for a "Motion for Leave to Supplement Record" (filed Nov. 14,2016), to Supplement the Record on Appeal. The Motion was Granted, and again for the Court by Deputy Clerk (V. Claire Allen)(filed Nov. 30,2016). The Court Personnel Rendered Respectability and Professionalism through - out this Appellate Process, and Appellant is Forever Grateful.

PLEASE NOTE: Through-Out Appellate Review, the State was SILENT and NEVER submitted nor filed ANY briefs to the Court of Appeals in Appellant's Appellate Review. Thus, The Supplemental Brief follows:

ARGUMENT (1)

DID THE TRIAL COURT ERR, IN DENYING THE APPELLANT'S DIRECTED VERDICT, BASED ON THE STATE'S PROOF OF ESTABLISHING EVERY ELEMENT, BEYOND A REASONABLE DOUBT STANDARD TO THE CHARGE OF CRIMINAL SEXUAL CONDUCT (CSC) WITH A MINOR (16-3-655)?

The Florence County Twelveth (12th) Judicial Circuit of South Carolina, did attained, visting judge from Laurens' County Eighth (8th Cir.), Hon. Donald B. Hocker, during Appellant's trial by jury between the dates of [Dec. 09-10, 2014].

The Trial Court unlawfully, willfully, knowingly, and feloniously, [which was inconsistent with S.C. code of laws], and with a premeditated design to effect a wrongful conviction of Appellant, [Tamarquis Wingate], a human being, did then and there, allowed "ERRORS OF CONSTITUTIONAL MAGNITUDE" to be presented a number of four (4) times through-out the trial by jury. The Trial Court erred by improperly amending the elements of (CSC) w/ minor (1st), under section 16-3-655(A)(2), of the S.C. code of laws, 1976 as amended, which is written as follows:

(A) A person is guilty of criminal sexual conduct with a minor in the first degree if:

(2) the actor engages in sexual battery with a victim who is less than sixteen years of age and the actor has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense

listed in section 23-3-430 (c) or has been ordered to be included in the sex offender registry pursuant to section 23-3-430(D); see True-Billed indictment (Tr. Tr. p. 255-256 also see State's opening argument (page)

The Trial Court amended the "charge on the law" of the elements to the jury during Appellant's trial as follows:

- (1) alleged victim is under age of (16)
- (2) defendant committed a sexual battery on victim, and
- (3) the defendant has previously been ordered to be included in the sex offense registry pursuant to section [23-04-430(d)].

see (R. Tr.p 46.1.7 - pg 50.1.18), (R. Tr.p 50.1. 25 - p 51.1.18), (R. Tr.p 196.1's. 5 - 7), & (R. Tr.p 234.1 s. 10 - 16)

The Trial Court allowed the amended elements during the trial, because the Appellant's prior offense being a Lewd Act with a minor (16-15-140), was deleted in 2012, and the crime is not enumerated in section 23-03-0430(c). see (R. Tr.p 46.1 s. 9-19). The court also stated the wrong section and subsection to one of the elements twice, once at the beginning and once towards the end of trial, as if making their own laws and statutes. Saying the defendant be included on the sex registry pursuant to section [23-04-430] subsection (d) see (R.Tr.p.51.ls.4-6) & (R.Tr.p 234.ls. 14-16). The law reads section 23-03-430 subsection (d).

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Therefore, the Trial Court never acquired subject matter jurisdiction over Appellant's case, as the information failed to include the correct elements of the charge Appellant was indicted for. The Court, had an affirmative duty to provide the jury with the "ACCURATE" elements of, [CSC w/m (1st degree)], as listed and failure to do so resulted a Prejudicial Error. If the Trial Court wanted to amend the indictment, He may, if such amendment does not change the nature of the offense charged. The Trial Court first mentioning the amended indictment (to change the elements), during trial was operated as a surprise to the Appellant, in which the Appellant, shall be entitled, upon demand, to a continuance of the cause pursuant to [S.C. code of laws section (17-19-100)].

"Variance between pleading and proof which destroys a defendant's substantial right to be tried only on charges presented in an indictment returned by a Grand Jury is too serious to be treated as nothing more than a variance and dismiss as harmless error". Stiron v. US, (Supreme Court 361 U.S. 212 (1960)).

A defendant must be convicted, if convicted at all, of the particular offense and elements charged in the bill of indictment. In, Arizona v. Ramsey, 467 U.S. 203, 2011, 104 S.Ct (198), The Court explained it was "undisputed" that the trial court misperceived the elements of the offense with which [defendent] was charged and erred by this misinformation. In Appellant's case, such misinformations was critical because the

jury was mislead the entire trial, and this deviation from the "charge on the law", violated Appellant's Due Process of law and Appellant's Constitutional Rights. see (R. Tr.p.226.1.12-p.237.1.18).

Not only did the Trial Court err in amending the elements during trial, (he) also established an element with this stipulation, see; (Appellant's Pro Se Brief Issue). It becomes unnecessary not to consider the contention that the judge inadvertently permitted himself to abandon judicial [impartiality] and to assume the role of the advocate (emphasis added), Holmes v. U.S. 271f.2d635. Due Process Clause and the Sixth (6th) Amendment give to criminal defendants, a right to have the jury determine, beyond a reasonable doubt, guilt of every element of crime which defendant is charged. U.S.C.A. Const.Amend.5,6,&14. A Trial Judge commits error of "Constitutional Magnitude" when he instructs the jury as a matter of law, that a fact essential to conviction has been established by the evidence, thus depriving the jury of the opportunity to make this finding. U.S. v. Johnson, 71F.3d 139 (4th Cir. 1995).

The State Prosecution is required to prove EVERY single element of the crime, beyond a reasonable doubt. The conviction of defendant, when prosecution provided no evidence on essential element of offense, was subject to appeal. U.S. v. Meadows, 91F.3d 526, 633, 851 (7th Cir. 1996). The State did NOT submit evidence or exhibits to the jury to prove EVERY element, beyond a reasonable doubt, but was lended a hand from the Trial Court. see [R.Tr.p.227.1.13 - p.228.1.2]

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[Handwritten signature]

Appellant's Trial Counsel ask to move for a directed verdict, because, the State have not prove enough evidence to support their allegations beyond a reasonable doubt. The Court denied the motion, because, the Court stated there does exist evidence on those three (3) elements. see. [R.Tr.p.195.1.18 - p196.1.9]. The Trial Judge used the "Limiting Instruction" of the element of the sex offender registry, to deny the directed verdict. The Court continued the proceedings and the Jury deliberated for Forty two (42) minutes and came back with two (2) guilty verdicts with the erroneous charge and stipulations given to (them) by the Court, see, (R.Tr.p 239.1.20-p.240.1.11) and also (R.(3)(b) Verdict form). The Court even failed to provide Appellant with a lesser included offense on that said "Verdict Form", in which the [original] charge and [written plea] was improperly enhanced without Appellant knowing. see <(R \ (4)(d) Written Plea & (4)(e) Indictment> A True Verdict was not rendered according to the laws mandated in the [S.C. code of laws].

The Jury's Verdict is not given a "free pass" and, if the evidence, when viewed in the light most favorable to the government, gives equal or nearly equal Circumstantial support to theories of guilt and innocence, Convictions must be Reverse; U.S. v. Martin, 228F.3d 1(1st Cir. 2000). To render a guilty verdict, jury must hear sufficient evidence to avoid resorting to excessively strained inferences or guess work, U.S. v. Peterson, 238F.3d 848(7th Cir. 2001).

In Appellant's Trial, evidence was less than clear and convincing, the danger of Prejudice from the "Limiting Instruction" far outweighed its Probative Value. "The Verdict was based on something that was concededly not an element." (Sullivan v. Louisiana, 508 U.S. 275, 1993).

Thereby, the Trial Court Err in denying the Appellant's Directed Verdict based on the STATE'S Proof of EVERY element beyond a reasonable doubt to, [CSC w/m (1st degree)]. "A New Trial will be granted if verdict:

- (1) is against clear weight of evidence
- (2) is based upon evidence which is false (or)
- (3) will result in Mis-Carriage of Justice even though there may be substantial evidence which would prevent direction of a verdict," Cline v. Wal-Mart (4th Cir. 1998).

You CANNOT find a [defendant] guilty Solely on Circumstantial evidence unless the facts proven by the evidence, Exclude EVERY Reasonable Hypothesis of INNOCENCE. Now, Appellant ask, that The Court Of Appeals, Gracefully Grant, the Appellant with a New Trial.

ARGUMENT(II)

DID THE TRIAL COURT ERR BY DENYING THE TRIAL COUNSEL'S MOTION TO SUPPRESS EVIDENCE?

Nine (9) years before trial in (2006), Appellant plead guilty to Lewd Act w/m(16-15-140). After being uncounseled and ignorant to the facts of the case and coerced to believe those events actually happened. [which Appellant is not contesting in this Fine Court], which could've been raised in Appellant's Trial. In (2006) Appellant was incarcerated- not to exceed(5)years and then (6) years under the Youthful Offender's Act. The Charge of Lewd Act [which was repealed 2 years before Appellant's Trial(2014)], upon release from S.C.D.C, placed Appellant on the Sex Offender Registry for a Lifetime starting (Feb. 2007).

Appellant wrote the Darlington County Forth(4th) Circuit Clerk of Court, (Mr. Scott Suggs), in (March 2016), to receive public information regarding this element that was used at Appellant's Trial. see (R.(6), (6)(b), (6)(c), (6)(d), (6)(e).) Upon receiving the information, Appellant found Newly Discovered Evidence (which in fairness), warrants a New Trial. Must the Appellant, remind The Court Of Appeals, that Scrivener's Errors are errors in which may include errors that did not cause harm towards the conviction or guilty plea of the accused. In Appellant's case, the errors were NOT mere Scrivener's Errors. Upon looking into the matter, Appellant sent a legal correspondence (see. R.(5)) to Forth (4th) Circuit Clerk (Scott Suggs), asking for the "Judge's Order" that placed Appellant on the Sex Offender Registry. To the Appellant's surprise there weren't any "Orders" or "Special ~~Provisions~~ ^{Conditions}" listed on the sentencing sheet. see (R.(6)(e))

According to State V. Chance, 304 S.C. 406,407-408 405 S.E.2d 375,376(1991), it is the defendant's burden to prove by a preponderance of the evidence that a prior conviction is constitutionally defective or invalid when objection to the use of the prior conviction to enhanced punishment of a subsequent conviction. Also State v. Payne 332 S.C. 266,269 504 S.E.2d 335,336(Ct.App.1998). The use of an uncounseled conviction resulting in a sentence of imprisonment to enhance the punishment in a subsequent conviction violates the sixth (6th) and fourteenth (14th) Amendments to the United States Constitution.

The Trial Court ERR in failing to conduct an on-the-record Rule 404(b) see State V. Wallace, 384 S.C. 428,433 683 S.E.2d 275,277,78(2009). Even if evidence of other crimes, wrongs, or acts is admissible as evidence of a common scheme or plan, it must be excluded if its Probative Value is Substantially Outweighed by the DANGER of Unfair Prejudice; See [CLASBY, 385 S.C.148(2009)]. This matter at hand goes beyond the Appellant's Trial by Jury. One (1) day before trial on (Dec. 08, 2014), The State offered Appellant An "ALFORD PLEA" of Twelve (12) years in Prison. Upon Rejecting the Verbel Plea, the State, Then improperly enhanced the "Original" charges in Retaliation, from (2nd degree) & (3rd degree) into two (2) counts of (1st degree). [see. R.(4),(4)(b),(4)(c),(4)(d),(4)(e)]. The State Retorted in Opening and Closing Arguments. The State's remarks during Opening Argument improperly infringed into the details of Appellant's prior conviction. (see.R.Tr.p.42.11.14-19) Opening Arguments like Closing, should not refer to matters that are not to be presented as evidence, Prosecutor stated Prior conviction increased the likelihood that the jury convicted defendant, see U.S. v. Aguilar. (also) U.S. v. Taren-Palma,

The U.S. Supreme Court held that suppression of evidence favorable to the accused by the prosecution violates due process

where the evidence is material to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution, Brady v. Maryland

Furthermore, it has been established many times through-out Appellant's Trial by Jury, that there exist many errors that was not harmless that requires a Revocation of the wrongful conviction and sentence. The proceedings involves at least one "Question of Exceptional Importance,". Cumulative effect of multiple errors may require reversal where case is a close one and evidence is not overwhelming. The Trial Judge should have granted a Mistrial when Trial Counsel ask for a Motion to Suppress evidence.

This decision is irreparably Injurious to the Wingate Family. This is a matter involving Basic and Fundamental Constitutional Principals of Property, Liberty, & Life, and is not to be taken lightly or depend on technicalities. The Court's decision is of Exceptional Importance. Wherefore, Appellant would respectfully request that this Honorable Court consider these issues and otherwise grant this Appellant with a New Trial.


ARGUMENT (III)

WAS THE APPELLANT COUNSEL INEFFECTIVE FOR FAILING TO ADVOCATE FOR AN "INITIAL REVIEW", WHEN APPELLANT SOUGHT EFFECTIVE ASSISTANCE OF COUNSEL AND FOR FAILING TO RAISE CLEARLY ERRONEOUS ISSUES THAT WAS NON-PRIVOLOUS ON DIRECT APPEAL?

Appellant recognizes the amount of indigent clients that the South Carolina Commission on Indigent Defense (SCCID), receives on a year to year basis. Appellant also acknowledges that Appellate Counsels are quite busy, but that doesn't exclude the Rights and Laws that operates under "the sixth (6th) Amendment Entitles a criminal defendant to effective assistance of counsel on direct appeal". Mudson v. Hunt, 235 F.3d 892(4thCir.2000). Unfortunately, Appellant in this case wasn't afforded the entitlement of effective assistance of counsel.

Appellant admits that he has never seen, talked verbally, or was EVER effectively assisted by SCCID Chief Appellate Defender, Mr. Robert M. Dudek, even when asked openly before the Court of Appeals. (filed Sept. 08,2016). Appellant sent many legal correspondence to Mr. Robert M. Dudek, in fear of Liberty or Life, left messages with his office to speak with him personally, so that Appellant and Appellate Defender may establish a meaningful Lawyer/Client Relationship. To NO avail, NO Assistance.

When Appellant presented the fundamental errors to counsel

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to get effective assistance, the counsel did not send any correspondence, no lawyer conference calls, not lawyer visitation with the request for effective assistance. Errors that were there printed in black and white, Appellate Defender could at least notified Appellant of ANY strategic purposes. When Appellate Counsel omits a significant and obvious issue without legitimate strategic purpose, his performance will be deemed deficient(incomplete).

U.S. v. Suggins, 191 F.3d 532(4thCir.1999), states, a "defendant has a right to a meaningful appeal based on a complete transcript". A defendant may base an appeal on errors that occurred during the plea bargaining process, at trial or sentencing. If you do not raise these "Record-based" errors on appeal, you may forfeit the right to raise them in later Post-Conviction Proceedings. In which counsel stated he is "doing his best with this record". [R.(7.p.3)] How did Appellant's Counsel do his best when he never acknowledge Appellant's request for Effective Assistance of Counsel, by being a fair and Effective Advocate for this injustice?

Appellant explained to counsel concerning Trial Counsel's ineffectiveness and if the Appellate Defender can assure Appellant of his Rights. "Defendant's rights to effective assistance of counsel applies not just at trial but also on direct appeal." SEE. Bear Steps v. U.S., 339 F.3d 777(8thCir.2003); Harris v. Day, 226 F.3d 361(5thCir.2000); Evitts v. Lucey, 469 U.S. 387, 83 L.Ed2d 821, 105 S.Ct.

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830(1985); and Romero v. Tansy, 46 F.3d 1024(10thCir.1995).

Appellate Review on direct appeal is limited to the record, the burden falls on the shoulders of DIRECT APPEAL COUNSEL, to ensure that the record is sufficiently complete.

Appellant now ask for the Court Of Appeals to analyze the Proper Standard for Ineffective Assistance of Appellate Counsel when Appellant CLEARLY shows this mishap.

ARGUMENT (IV)

ACCUMULATION OF ERRORS CLAIM

Appellate contends that, even if no individual error merits reversal, the cumulative effect of such errors warrants reversal of his conviction.

Appellate, realizes "In criminal case, the Appellate Court sits to review errors of law only." State v. Baccus, 367 S.C. 41,48, 625 S.E.2d 216, 220(2006). That the Appellate Court is bound by the trial court's factual findings unless, the Appellant can demonstrate that the trial courts conclusion either lack evidentiary support or are controlled by an error of law. State v. Laney, 367 S.C. 639, 643-44, 627 S.E.2d 726, 729(2006).

In the current case before the Court, Appellant contends the trial court err atleast five(5) times. (to sum it up)

- 1.) Err by not delclaring a mistrial when highly prejudicial hearsay that impermissibly bolstered the victim's testimony (Anders Brief dated Oct. 23,2015)
- 2.) Err "On-its-own" prejudiced appellant, by instructing the jury without stipulation to established an element for the jury. (Appellate Pro se Brief filed April 26,2016)
- 3.) Err by charging the jury that a victim's testimony need not be corroborated. (Appellate's Amended Pro se brief filed May 16,2016)
- 4.) Err by denying Appellant's Directed Verdict.

5.) Err by denying Appellant's Trial Counsel's motion to suppress evidence.

Johnson v. U.S., 520 U.S. 461(1997); under [olano] test for plain error review before Appellate Court can correct error not raised at trial there must be "error" that is "plain" and that affects Substantial Rights. Fed.Rules.Cr.Proc.Rule52(b). Appellant asserts that those five(5) arguments are Clearly Erroneous and significantly affected the judgement of the jury.

Fundamental Error Review is needed because of these exceptional circumstances so that Appellant's Substantive Rights can be safeguarded. Not only have Appellant been convicted of a crime despite Undisputable Innocence, and these five (5) errors makes this conviction Fundamentally Unfair.

Significant denial of a Constitutional Claim of Fundamental Errors, either under the Federal Constitution of the Constitution of Statutes of South Carolina is prohibited. The Appellant have a right to fair procedure and Equally under the 14th Amendment. "Nor shall any state deprive any person of life, liberty, or property, without due process of law; not deny to any person within its jurisdiction the equal protection of laws. [Amendment XIV (14) section 1.

The proceeding involves five (5) "Questions of Law that are of Exceptional Importance", which is succinctly stated above. Appellant ask the Court to Utilize in this current appeal with

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the Appropriate Standard of the De Novo Judicial Review, and befittingly substitute in its place Appellate Court's Judgement for that of the Trial Courts, because this Review is NEEDED in the Interest of Justice. [Fed.Rul.of.Crim.Proc.33]. The Trial Court abused its discretion, and allowed errors of law, which substantially affected the Appellant's Rights and Abilities to achieve Justice(fairness).

Moreover, the errors, was NOT harmless beyond a Reasonable Doubt because the State's Case relied in large part on Credibility. In Accordance with rules promulgated by the South Carolina Supreme Court's Decision of State v. Stukes (Opinion 27633)(May 04,2016). The Court stated, "Therefore, our ruling is effective in this case and those which are pending on direct review or are not yet final, but not in Post-Conviction Relief." Appellant can use this Unconstitutional Instruction to the Jury on direct appeal. Please Grant this Privilege.

"Cumulative effect of multiple errors may require reversal where case is a close one and evidence is not overwhelming". U.S. v. Frederick, 78 F.3d 1370 (1996).

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CONCLUSION

Therefore, for all the above reasons set forth in this Supplemental Record, with the upmost Respect for the Court and to prevent a miscarriage of Justice, Appellant urge with an innocent spirt, that the judgement of the South Carolina Court of Appeals, be in Appellant's (WINGATE) favor, and that this Court be Heavenly Blessed by benevolently Granting a Written Opinion of REVERSED AND REMANDED.

Respectfully,
SIGNED THIS 6th DAY OF DEC, 2016, T.A. Wingate

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
DONALD B. HOCKER, CIRCUIT COURT JUDGE

TAMARQUIS A. WINGATE

APPELLANT

VS

THE STATE

RESPONDENT

APPELLATE CASE NO: 2014-002717

SUPPLEMENTAL APPENDIX
TO THE
RECORD ON APPEAL

Appellant proposes the following to be included in the record on appeal:

- (1) True-Billed indictments
- (2) Entire Trial Transcript (Dec. 09-10, 2014)
- (3) Correspondence(03/30/2016)(12th cir. clerk)
- (3)(b) Verdict Form case no.(2014-GS-21-01378)
- (4) Correspondence(04/05/2016)(Trial Counsel)
- (4)(b) Arrest Warrant [ORIGINAL] #2014A2110200349
- (4)(c) Arrest Warrant [ORIGINAL] #2014A2110200351
- (4)(d) Written Plea Offer [Solicitor] (Aug. 21, 2014)
- (4)(e) Indictments [ORIGINAL] Convened(Aug. 28, 2014)
- (5) FOIA Form sent to 4th Cir. Scott Suggs(clerk)
- (6) Correspondence envelope (Rcv'd from 4th cir)(3/08/1
- (6)(b) Arrest Warrant(H-092823)(2003)(4th cir)
- (6)(c) True-Billed indictment signed (Aug. 21, 2003)
- (6)(d) Indictment(#03GS16-1589) Convened(Aug. 25, 2003)
- (6)(e) Sentencing sheet(03-Gs-16-1589)(03/20/2006)
- (7) LEGAL PACKAGE (7PAGES)

I, Certify that this Supplemental Appendix contains no matter which is irrelevant to this Appeal. Since Appellate Review on Direct Appeal is limited to the Record, the burden falls on the defense to ensure that the Record contains everything that it can contain, which may constitute a basis for Appellant Relief. It is the Appellants burden to ensure that a sufficient record is provided.

sign this 10th day of Dec, 2016



Mr. Tamarquis Antwain Wingate
Lee Correc. Inst (FLA-2143(b))
990 Wisacky Highway
Bishopville, S. Carolina,
29010

29010

3/5

R.(3)

CONNIE REEL-SHEARIN

**Clerk of Court
180 N. Irby St
MSC-E
Florence, SC 29501**

Date: March 30, 2016

To: Tamarquis Wingate

Information Requested:

I have enclosed copies of all the paperwork you requested except for copies of the warrants. There are no paper warrants on your charges. They were direct indictments, which means the indictment number was used to generate warrant numbers.

Deputy Clerk for General Sessions

19-15

R.(3)(b)

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

State of South Carolina)

vs.)

Tamarquis Antwain Wingate)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
TWELFTH JUDICIAL CIRCUIT

VERDICT FORM

2014-GS-21-01378

PLEASE ANSWER THE QUESTIONS BELOW:

1) As to the First Count of Indictment No. 2014-GS-21-01378, which charges the Defendant with First Degree Criminal Sexual Conduct with a Minor, (oral sex) we the jury find the Defendant:

GUILTY
 NOT GUILTY

2) As to the Second Count of Indictment No. 2014-GS-21-01378, which charges the Defendant with First Degree Criminal Sexual Conduct with a Minor, (anal sex) we the jury find the Defendant:

GUILTY
 NOT GUILTY

CERTIFIED: A TRUE COPY
Maie Reel Spain
CLERK OF COURT C.A. & G.S.
FLORENCE COUNTY, S.C.

Quinnie S. Jones
Foreperson

FLORENCE, South Carolina
December 10, 2014

R.(4)

The Law Office of Daniel T. Jordan, LLC

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Daniel T. Jordan, Esq.
Emily S. Jordan, Esq.
Of Counsel

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Facsimile: (843) 665-5511

April 5, 2016 (Tuesday)

Tamarquis Wingate, SCDC ID: 00315016
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina 29010

RE: State of South Carolina v. Tamarquis Wingate

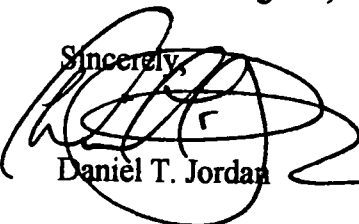
Dear Tamarquis:

Pursuant to your request, please find enclosed a copy of your Rule 5 information in regard to the above-captioned matter which was tried the week of December 8, 2014.

Please let my office know if you are in need of any additional information at this time.

With kindest regards, I am,

Sincerely,


Daniel T. Jordan

Enclosures

ARREST WARRANT

2014A2110200349

STATE OF SOUTH CAROLINA

County/ Municipality of

Florence

THE STATE
against

Tamarquis Antwain Wingate

Address: ~~611 SA Ave~~
Pamplico, SC 29568

Phone: _____
Sex: M Race: B Height: 5 5 Weight: 130
DL State: SC DL #: _____
SSN: 2-12-57-3430

DOB: 01/19/84 Agency ORI #: SC0210000

Prosecuting Agency: Florence County Sheriff
Prosecuting Officer: RENEA JENCO

Offense: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under

Offense Code: 3661
Code/Ordinance Sec.: 16-03-06559C

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

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

(L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Tamarquis Antwain Wingate on 4-14-14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions Court
M S C-E 180 North Irby Street
Florence, SC 295013456

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Florence

Personally appeared before me the affiant being duly sworn deposes and says that defendant did within this county and state on or about State of South Carolina (or ordinance of County/ Municipality of

RENEA JENCO

Tamarquis Antwain Wingate

12/13/2012

Florence

violate the criminal laws of the

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)

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

The def. did commit the CSC 3rd by willfully and lewdly committing lewd and lascivious acts upon the body of a 14 yr. old child victim by fondling the child's penis with his hands and exciting him into an erection. The def. then directed the child to stick his penis inside the def.'s buttocks. The def. placed the child's penis in his mouth and performed oral copulation. The child stated that the incidents occurred more than twenty times from December 13, 2012 through October 1, 2013. A forensic interview on the child was completed at the Care House on 3/28/2014. These incidents took place at 429 River Road Apt. 5 & 716 McElveen St. Pamplico, S.C. both which are located in Florence County. This case has been investigated by the Pamplico Police Department case number 2014-03-0020 and the FCSO case number 2014-03-0647.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Florence

Affiant's Address 6719 Friendfield Road
Effingham, SC 29541-
Affiant's Telephone (843)665-2121

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/13/2012

defendant Tamarquis Antwain Wingate

did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of

Florence) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his arrest, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 4/11/2014 (Thursday)
Signature of Issuing Judge Belinda B Timmons (L.S.)

Belinda B Timmons
Judge Code: 7065

Judge's Address 6719 Friendfield Rd
Effingham, SC 29541-

Judge's Telephone (843)665-6690

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

CERTIFIED TRUE COPY
CLERK OF COURTS & G.S.
FLORENCE COUNTY, S.C.

K. (4XV)

ARREST WARRANT

2014A2110200351

STATE OF SOUTH CAROLINA

County/ Municipality of

Florence

THE STATE against

Tamarquis Antwan Wingate

Address: 6719 Friendfield Road, Effingham, SC 29541

Phone: SSN: 249-97-5430 Sex: M Race: B Height: 5 5 Weight: 130

DL State: SC DL #: Agency ORI #: SC0210000

Prosecuting Agency: Florence County Sheriff

Prosecuting Officer: RENEA JENCO

Offense: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive -

Offense Code: 0396 Code/Ordinance Sec: 16-03-0655(B)

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

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

(L.S.)

Signature of Judge

Date: APR 16 2014

RETURN

A copy of this arrest warrant was delivered to

defendant Tamarquis Antwan Wingate on 4-14-14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions Court M S C-E 180 North Irby Street Florence, SC 295013456

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Florence

Personally appeared before me the affiant

RENEA JENCO

being duly sworn deposes and says that defendant

Tamarquis Antwan Wingate

did within this county and state on or about 12/13/2012

State of South Carolina (or ordinance of County/ Municipality of

Florence

violate the criminal laws of the

DESCRIPTION OF OFFENSE:

Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

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

The def. did commit the CSC 2nd by fondling the 14 yr. old child victims penis with his hands and exciting him into an erection. The def. then directed the child to stick his penis inside the def.'s buttocks. The def. also placed the child's penis in his mouth and performed oral copulation. The child stated that the incidents occurred more than twenty times from December 13, 2012 through October 1, 2013. A forensic interview on the child was completed at the Care House on 3/28/2014. These incidents took place at 429 River Road Apt. 5 & 716 McElveen St. Pamplico, S.C. both which are located in Florence County. This case has been investigated by the Pamplico Police Department case number 2014-03-0020 and the FCSO case number 2014-03-0647.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Florence

Affiant's Address 6719 Friendfield Road Effingham, SC 29541-

Affiant's Telephone (843)665-9121

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/13/2012

defendant Tamarquis Antwan Wingate

did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Florence

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his execution, or as soon thereafter as is practicable. Sworn to and subscribed before me

on 4/11/2014

Signature of Issuing Judge Belinda B Timmons (L.S.)

Belinda B Timmons

Judge Code: 7065

Judge's Address 6719 Friendfield Rd Effingham, SC 29541-

Judge's Telephone (843)665-6690

Issuing Court: [X] Magistrate [] Municipal [] Circuit

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 516

CERTIFIED TRUE COPY CLERK OF COURT P. S. G. S. FLORENCE COUNTY, S.C.

R.(4)(d)

OFFICE OF SOLICITOR
TWELFTH JUDICIAL CIRCUIT

PLEA OFFER

IN RE: STATE V. [REDACTED]

Dear _____:

Your client, [REDACTED], has been charged with the following crimes that have yet to be indicted:

Warrant No.: 2014A2110200349

Charge: CRIMINAL SEXUAL CONDUCT WITH A MINOR THIRD DEGREE

Warrant No.: 2014A2110200351

Charge: CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE

Warrant No.: _____

Charge: _____

Warrant No.: _____

Charge: _____

After a review of this file, we are willing to allow your client to plead as follows:

As to Charge 1: plead as charged - 15 yrs


As to Charge 2: plead as charged - 15 yrs concurrent

As to Charge 3: _____

As to Charge 4: _____

Please discuss this offer with your client and advise me at your earliest convenience as to what they are willing to plead to before I prepare an indictment on this case. I look forward to hearing from you soon.

Sincerely,


David A. Richardson, Jr.
Assistant Solicitor

DOCKET APPEARANCE: 8-21-14 - *WRS*

R. (5)

COPY

TO: SCOTT SUGGS
C/o Clerk of Court
Post Office Box 1177
Charleston, SC 29540

Date: 02/18/16

RE: .. [FREEDOM OF INFORMATION ACT REQUEST
[TAMARQUIS WINGATE
[03-GS-16-1589
[

Dear SCOTT SUGGS:

I, TAMARQUIS WINGATE, SCDC
the below information under the State's
Act, pursuant to S.C. Code Ann. section
Please provide to me at the below:
following documents:

request
tion
4-165.
of the

Any "ORDER" or other document(s) under Indictment 03-GS-16-
1589 MANDATING [E] WAS TO "REGISTER" WITH THE STATE'S
SEX OFFENDER REGISTRY ACT PURSUANT TO § 23-3-430

The (FOIA) provides for waiver of search and duplication fees,
where the disclosure of the requested information is in the public
interest.

I feel this information will contribute significantly to the
public understanding of treatment provided.

S.C. Code Ann. section 30-4-30 provides for a fifteen (15)
day response.

I declare under the penalty of perjury that the foregoing is true and
correct to the best of my understanding and belief.

With kind regards, I'm,

Respectfully entrusted

TAMARQUIS WINGATE #315016
LEE CORRECTIONAL INST.
990 WISNERBY HIGHWAY
Bishopville, SC 29010

After Five Days Return To
SCOTT B. SUGGS
CLERK OF COURT
POST OFFICE BOX 1177
DARLINGTON, SC 29540



U.S. POSTAGE >> PITNEY BOWES



ZIP 29532 \$ 000.48⁵
02 1W
0001379673 MAR 03 2016

31506

F5-211

RECEIVED

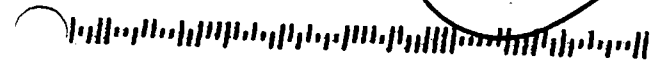
MAR 8 2016

LEE CI MAIL ROOM

Tamarquis Wingate
Lee C.I. (FSC.211)
Bishopville, SC 29010

Received
3/09/16

2901039999



R.(6)

ARREST WARRANT

H-092823

STATE OF SOUTH CAROLINA

County/ Municipality of HARTSVILLE

THE STATE against

WINGATE, TAMARQUIS

Address: 625 MARLBORO AVENUE

Phone: SSN:

Sex: M Race: B Height: 5'05 Weight: 150

DL State: DL#:

DOB: 03/04/1974 Agency ORI#: SC0160200

Prosecuting Agency: POLICE DEPT

Prosecuting Officer: KELLY, WILLIAM

Offense: LEWD ACT ON A MINOR

Offense Code: 2468

Code/Ordinance Sec. 16-15-140

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

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

Signature of Judge (LS.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant WINGATE, TAMARQUIS on 5-25-03

Signature of Constable/Law Enforcement Officer

RE: JRN WARRANT TO: CARL SALEEBY 133 W CAROLINA AVENUE HARTSVILLE, SC 29550

STATE OF SOUTH CAROLINA County/ Municipality of HARTSVILLE

AFFIDAVIT

Form Approved by S.C. Attorney General July 26, 1990 SCCA 516

Personally appeared before me the affiant KELLY, WILLIAM being duly sworn deposes and says that defendant WINGATE, TAMARQUIS did within this county and state on 05/14/03 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of HARTSVILLE) in the following particulars:

DESCRIPTION OF OFFENSE: LEWD ACT ON A MINOR 16-15-140

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

DET. STAN KELLY STATES THAT THE DEFENDANT DID IN THE CITY OF HARTSVILLE, DARLINGTON COUNTY ON OR ABOUT AUGUST 7, 2002 COMMIT THE OFFENSE OF LEWD ACT ON A MINOR TO WIT: THAT TAMARQUIS WINGATE AN ADULT MALE DID TAKE A MINOR MALE OF 8 YEARS OF AGE, AND DID LAY NUDE WITH THE VICTIM AND PLACED HIS PENIS UPON THE BUTTOCKS OF THE MINOR WITH THE INTENT OF AROUSING OR GRATIFYING THE SEXUAL PLEASURE OF HIMSELF OR SAID MINOR. THIS OFFENSE OCCURRED AT 315 MARLBORO AVENUE. PROBABLE CAUSE IS BASED ON STATEMENTS FROM THE DEFENDANT AND INVESTIGATION.

Sworn to and subscribed before me on MAY 29, 2003

Signature of Affiant: William S. Keef Affiant's Address: 135 W CAROLINA AVENUE HARTSVILLE, SC 29550 Affiant's Telephone: 843 383-3030

Signature of Issuing Judge (LS.)

STATE OF SOUTH CAROLINA County/ Municipality of HARTSVILLE

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY: It appearing from the above affidavit that there are reasonable grounds to believe that on 05/14/03 defendant WINGATE, TAMARQUIS did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of HARTSVILLE) as set forth below:

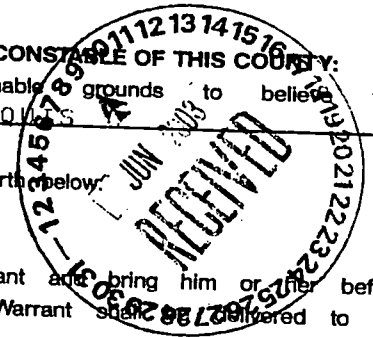
DESCRIPTION OF OFFENSE: LEWD ACT ON A MINOR 16-15-140

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

Signature of Issuing Judge (LS.)

Judge's Address: 133 W CAROLINA AVENUE HARTSVILLE, SC 29550 Judge's Telephone: 843 383-3003 Issuing Court: Magistrate Municipal Circuit

Judge Code: 001 CARL SALEEBY



(9)(6)(6) # K. (6)(6)

K.(6)(C)

WITNESSES

William Kelly
Hartsville Pd

William Kelly

ARREST WARRANT #:

H092823

Arrested on May 28, 2003

ACTION OF GRAND JURY

TRUE BILL AUG 21 2003

Foreman:

[Signature]
Grand Jury

VERDICT

Foreman:

Petit Jury

Date:

DOCKET #: 03GS16-1589

THE STATE OF SOUTH CAROLINA
County of Darlington

COURT OF GENERAL SESSIONS

Term: August, 2003

THE STATE

vs.

Tamarquis Wingate

I N D I C T M E N T F O R

2468

LEWD ACT/ATTEMPTING OR COMMITTING UPON

A CHILD 16-15-140

R. (u)(d)

STATE OF SOUTH CAROLINA)
County of Darlington)

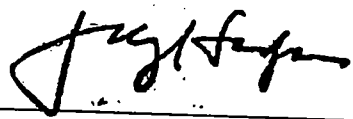
INDICTMENT #03GS16-1589

At a Court of General Sessions, convened on August 25, 2003
the Grand Jurors of Darlington County present upon their oath:

COUNT: LEWD ACT/ATTEMPTING OR COMMITTING UPON
A CHILD 16-15-140

That Tamarquis Wingate, a person over the age of fourteen (14) years, did
in Darlington County, on or about May 14, 2003, willfully and lewdly commit or
attempt to commit a lewd or lascivious act upon or with the body, or any part or
member thereof, of a child under the age of sixteen (16) years, to wit: Marquis
Hawkins, 8 years old, with the intent of arousing, appealing to, or gratifying
the lust or passions or sexual desires of himself or of said child, in violation
of Section 16-15-140, S.C. Code of Laws.

Against the peace and dignity of the State, and contrary to the statute
in such cases made and provided.

SOLICITOR: 

R. (6)(e)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Darlington VS. Jamarquis Wengate
STATE: _____
AKA: _____
Race: B Sex: M Age: _____
DOB: 7/7/84 SS#: 249-62-3450
Address: _____
City, State, Zip _____
DL# _____ SID# _____

INDICTMENT/CASE#: 03 -GS- 16 - 1589
A/W#: H093823
Date of Offense: 5-10-03
S.C. Code §: 16-15-140
CDR Code #: 2 4 1 6 1 8
 CASE RESTORED SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Grand Act/Attempt or Commitment of
in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2, 4, 1, 6, 1, 8
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST: [Signature] Solicitor Jamarquis Wengate Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of _____ days/months/years or under the Youthful Offender Act not to exceed 5 years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 188 days

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS _____

SPECIAL CONDITIONS:

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Recipient: _____
*Fine: _____
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ ✓
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$ 35.13 (Public Def/Prob) \$500 \$ _____
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ ✓
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ _____
TOTAL \$ 128.75

Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

Joma Carter Clerk of Court/ Deputy Clerk
Court Reporter: Pamela Carter

PRESIDING JUDGE [Signature]
Judge Code: _____
Sentence Date: 01/11/04
3120104

R. (7) (7 pages)

Ag 1/7



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

Received
09/09
Sgt. Petty

September 3, 2015

Mr. Tamarquis Antwain Wingate, #315016
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Your letter

Dear Mr. Wingate:

I am in receipt of your letter dated August 27, 2015. I will be filing a brief in your case in the South Carolina Court of Appeals in the near future. Everything needed to support the legal arguments I make will be included in the Record on Appeal. Also, your transcripts were sent to you on March 12, 2015. Regarding your inquiry of the number of clients I represented last year, I could only estimate that number to be about seventy-five.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/pcm

Tamara Wingate 315016
LEE Correa. F5A-159
990 WISACKY Highway
Bishopville, SC 29010

(Form 643)

Pg 2/7

October 30, 2015

Mr. Robert M. Deder (Chief Appellate Defender)
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, S. Carolina 29201
oct

RE: ~~your~~ your letter

Dear Mr. Deder

I am in receipt of your letter dated October 23, 2015. I see that you are filing an Anders Brief; you are still my Court-Appointed Attorney, until the Petition to be Relieved is final.

There was a motion for a mistrial in my case when the objections to this prejudicial hearsay testimony were sustained. As well as a number of ~~other~~ ^{other} errors of law. I will like to talk to you (face to face) in an interview on such matters

I am entitled a fair procedure and ^{right to} equally, under the fourteenth Amendment see (Anders v. Cal.)

Sincerely
~~Respectfully Submitted~~

T.A. Wingo



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

Received
11/10/15

Pg 3/7

November 3, 2015

Mr. Tamarquis Antwain Wingate, #315016
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Your Letter

Dear Mr. Wingate:

I received your letter regarding the Anders brief in your case. If you think there was a proper mistrial motion you can put that in your pro se brief or memorandum to the Court. If you think there were "other errors of law" you can also include that in your pro se brief or memorandum to the Court under the Anders procedure. I did the absolute best with the record I inherited in this case. You should point out potential issues you believe exist in your case to the Court under the Anders procedure, and not to me. I would suggest you follow the Anders procedure with the Court that has been set up for your protection.

Finally, as to the lack of mistrial motion I think this is an issue that will have to be explored later in post-conviction relief. The PCR court will want to know if your attorney had a strategic reason not to move for a mistrial such as (he was satisfied with the jury) in your case. Finally, and again, please follow the Anders procedure with the Court since I have done my best with this record.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/blw



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Pg 4/7

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

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

March 17, 2016

Mr. Tamarquis Antwain Wingate, #315016
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Your Letter

Dear Mr. Wingate:

I received your letter dated March 10, 2016. I am enclosing the documents we have in your file that you requested. Most of the documents you requested are trial level documents. As they are not needed for your appeal, I do not have them in my file. You may wish to contact your trial counsel to obtain these documents.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/ssd

NOTICE OF INTENT TO APPEAL
THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM FLORENCE COUNTY

Pg 5/7

THE HONORABLE DONALD B. HOCKER, PRESIDING JUDGE

NO. 2014-GS-21-01378

The State of South Carolina,

Respondent.

against

[REDACTED]

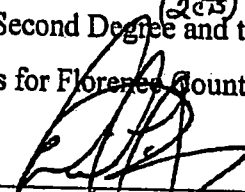
Appellant.

2014 DEC 17 PM 3:33
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

FILED

NOTICE OF INTENT TO APPEAL

[REDACTED] appeals from his conviction of Criminal Sexual Conduct With
Minor- Victim Under 16 Years of age – Second Degree ^(2cs) and the sentence imposed on December
10, 2014 in the Court of General Sessions for Florence County, South Carolina.


Daniel T. Jordan
Assistant Public Defender
Box N, City-County Complex
Florence, South Carolina 29501
(843) 665-3055

Attorney for Appellant

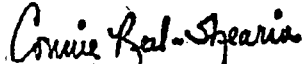
December 17, 2014

Wednesday

Other Counsel of Record

David A. Richardson, Jr.
Assistant Solicitor
Twelfth Judicial Circuit
Box Q, City-County Complex
Florence, South Carolina 29501
(843) 665-3091

CERTIFIED: A TRUE COPY



CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Copy 2
Copy 1 send

Tamara's Wings 31501
PSC. all L.A.I.
990 Wackerly Hwy
B/ille, sc 29010

8/6/7

Date July 7, 2016

Robert M. Duda
Chief Appellate Defender
P.O. Box 11589
Columbia, SC 29201-1589
[RS: 2014-002717]

Robert Duda

In writing this etc you are
currently my Court Appointed Attorney until you
refuse to be relieved have been granted.
I've called you numerous of times and to no
avail no response.

I have filed my Pro-se brief as
well as amended Pro-se & you haven't written
to me. How can you assume me of my rights if
can not assist me at all.

The Respondents did not put in
neither initial or final brief concerning my case
I want to make sure the Court of Appeals needs
and decides on my case fair to me. Because of my
Compliance. Also Motion for En Banc?
Respectfully Submitted

July 7/16

Robert M. Duda
31501



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11689
Columbia, South Carolina 29211-1689
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

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

Pg 7/7

August 10, 2016

Mr. Tamarquis Antwain Wingate
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Your Letter

Dear Mr. Wingate:

I am in receipt of your letter regarding the Anders brief in your case. The state does not file a responsive pleading in an Anders brief or Johnson petition case. If you have sent in your *pro se* brief then you have complied with the Anders procedure. You do not have to send in any *pro se* response in an Anders case. As to your reference to hearing your case *en banc*, that is reserved for rehearing in very few cases and an Anders brief case would not qualify. I trust this addresses your concern.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/ssd

STATE OF SOUTH CAROLINA
In The Court Of Appeals

RECEIVED

DEC 07 2016

SC Court of Appeals

APPEAL FROM FLORENCE COUNTY

Donald B. Hocker, Circuit Court Judge

THE STATE,

Respondent,

- - VS - -

TAMARQUIS ANTWAIN WINGATE,

Appellant

APPELLATE CASE NO: 2014-002717

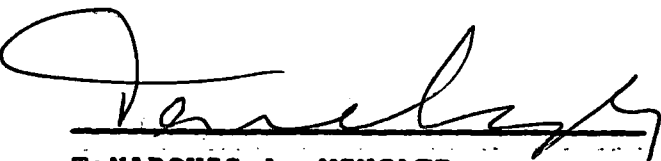
CERTIFICATE OF SERVICE

I, Tamarquis A. Wingate, the appellant in the above appeal; do hereby declare under the penalty of perjury, that on this day, I have served a copy of Appellant's SUPPLEMENTAL BRIEF & APPENDIX by placing a copy of same, in prison mailroom officials hands, for depositing the United States Mail, requesting First Class Postage affixed, and addressed as indicated below:

OFFICE OF THE ATTORNEY GENERAL
State of South Carolina
P.O. Box 11549
Columbia, SC. 29211

RESPONDENT

SIGN THIS 6th DAY OF Dec, 2016


TAMARQUIS A. WINGATE
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC. 29010

AMAROUS HONORABLE WINGATE 315016
LEE CORRECTIONAL INSTITUTION
990 WISACHY HIGHWAY
Bishopville, SC. 29010

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SC Court of Appeals

South Carolina Court of Appeals
HONORABLE JENNY ABBOTT KITCHINGS CLERK
Post Office Box 11629
Columbia, South Carolina

29211

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