

STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SUMTER COUNTY
Court of General Sessions

MAR 22 2017

SC Court of Appeals

George C. James, Jr., Circuit Court Judge

Appellate Case No. 2013-002735
Lower Court Case No. 1999-GS-43-00756

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

KEVIN CHOICE,

APPELLANT.

PETITION FOR REHEARING

JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
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(803) 779-2555
(803) 779-2556 FAX

ATTORNEY FOR APPELLANT.

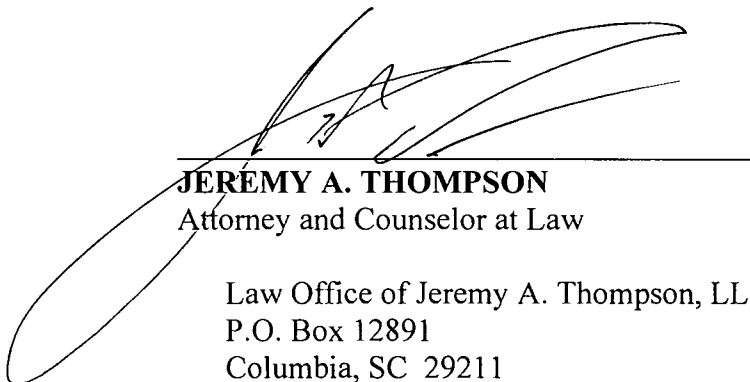
NOW COMES the Appellant in the above-captioned action, acting by and through undersigned counsel, respectfully petitioning this Court to rehear his appeal and reconsider its decision in State v. Choice, Op. No. 2017-UP-109 (S.C. Ct. App. filed March 8, 2017). The Appellant would assert that the following critical matters of fact and law were overlooked or misapprehended by the Court in its decision:

The Appellant raised one issue on appeal—whether or not the lower court improperly denied the Appellant’s motion for a new trial based on after-discovered evidence pursuant to Rule 29(b), SCRCrimP. Specifically, the Appellant argued that the lower court improperly applied Rule 29(b) because it did not use the standard of review set forth in State v. Mercer, 381 S.C. 149, 672 S.E.2d 556 (2009), which requires that the trial court look beyond the issue of credibility to determine whether a witness who “lack[s] persuasive credibility” may “still create reasonable doubt.” 381 S.C. at 170, 672 S.E.2d at 567. The Appellant further argued that if Mercer’s proper standard of review had been utilized then relief would have been granted. See Brief of Appellant at 10-11. In this Court’s decision affirming the lower court’s ruling, the Court did not address this argument, nor did the Court cite to Mercer. Instead, this Court focused on the recanting witness’ credibility without examining his recantation in the context of the entire case. Stated differently, the Appellant submits that this Court committed the same error as the lower court by not evaluating the recantation utilizing Mercer’s standard of review. Consequently, the Appellant respectfully requests rehearing since this Court did not address the Appellant’s central contention on appeal and did not apply the correct standard of review. See Rule 221(a), SCACR.

CONCLUSION

WHEREFORE, having set forth his grounds, the Petitioner respectfully petitions this Court to rehear its opinion issued in this matter. See State v. Choice, Op. No. 2017-UP-109 (S.C. Ct. App. filed March 8, 2017).

Respectfully submitted,



JEREMY A. THOMPSON
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ATTORNEY FOR APPELLANT.

This 22nd day of March, 2017.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of General Sessions

George C. James, Jr., Circuit Court Judge

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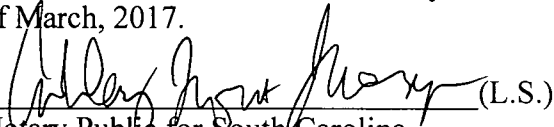
CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petition for Rehearing has been served upon opposing counsel, Donald J. Zelenka, Senior Assistant Deputy Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by hand-delivery this 22nd day of March, 2017.



JEREMY A. THOMPSON
ATTORNEY FOR THE APPELLANT

SWORN TO BEFORE me this 22nd day
of March, 2017.



Notary Public for South Carolina
My Commission Expires: 2/22/18



LAW OFFICE OF
JEREMY A. THOMPSON
LLC

March 22, 2017

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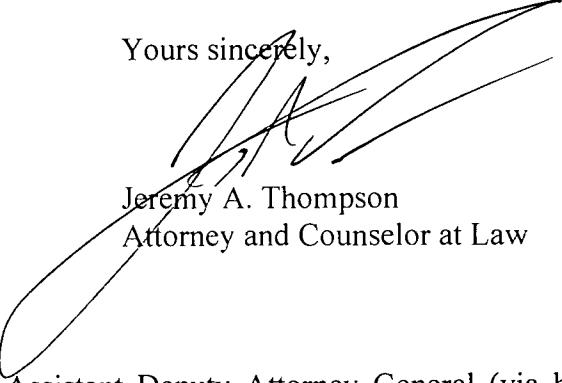
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: State of South Carolina v. Kevin Choice; 1999-GS-43-00756
Appellate Case Number: 2013-002735

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven copies of my Petition for Rehearing in the above-captioned matter. I would appreciate your filing the original and six copies of the Petition for Rehearing, clocking the remaining copy, and returning the clocked copy to me. Please do not hesitate to contact me with any questions or concerns. With my thanks for your assistance in this matter, and my best regards, I am,

Yours sincerely,


Jeremy A. Thompson
Attorney and Counselor at Law

JAT/
Enclosure

cc: Donald J. Zelenka, Senior Assistant Deputy Attorney General (via hand-delivery) (w/ enclosure)
Kevin Choice, #257223 (via U.S. mail)