

DEAR CLERK,

PLEASE FIND ENCLOSED IS RESPONSE TO  
JOHNSON V. STATE MOTION AND ORDER IN APPELLATE  
CASE NO: 2016-002036, BRANDON A. DAVIS V STATE  
PLEASE FILE UPON THIS COURT PETITIONER'S  
RESPONSE. IN THIS APPELLATE COURT MATTER.  
THANK YOU FOR YOUR TIME AND ASSISTANCE.

ON THIS DAY OF  
4-20-2017

S. BRANDON A. DAVIS

**RECEIVED**

APR 25 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY  
HON. J. DERHAM ROSE, C.R. CT.  
JUDGE

RECEIVED

APR 25 2017

APPEAL CASE NO: 2016-002036

S.C. SUPREME COURT

BRANDON A. DAVIS, S.C.D.C. #348800,  
PETITIONER.....

v.

PETITIONER'S TIMELY FILED  
RESPONSE TO MOTION FOR  
DISMISSAL PURSUANT TO  
JOHNSON V. STATE IN  
THIS APPELLATE COURT  
MATTER.....

STATE OF SOUTH CAROLINA .....

RESPONDENT.

PETITIONER BRANDON A. DAVIS HEREBY SERVE TIMELY RESPONSE  
TO COURT ORDER ISSUED ON MARCH 10, 2017 PURSUANT TO  
JOHNSON V. STATE 294 S.C. 310, 364 S.E.2d 201 (1988) WHICH  
GAVE PETITIONER (45) DAYS TO REPLY TO APPELLATE COUNSEL  
MOTION TO BE RELIEVED AS COUNSEL IN THIS ~~APPELLATE~~  
COURT MATTER IN, STATE V. BRANDON A. DAVIS, CASE NO  
2016-002036. THIS COURT HAVE GRANTED PETITIONER HIS  
RIGHT PURSUANT TO JOHNSON V. STATE TO SHOW UPON THIS  
COURT WHY PETITIONER'S APPEAL SHOULD NOT BECOME  
DISMISSED DUE TO APPELLATE COUNSEL FINDINGS THAT

PETITIONER'S APPEAL LACK MERITS TO STAND GROUND FOR APPEAL. HOWEVER APPELLATE COUNSEL FOR THE RECORD DID FILE UPON THIS COURT A JOHNSON PETITION WITH BRIEF AND ARGUMENT ADDRESSING THE FOLLOWING ISSUE ON APPEAL.

THE CIRCUIT COURT LACKED JURISDICTION OVER PETITIONER, WHO WAS SIXTEEN YEARS OLD AT THE TIME OF THE ALLEGED OFFENSE, BECAUSE SECTION 63-19-20 (1) OF THE JUVENILE JUSTICE CODE'S GRANT OF UNFETTERED DISCRETION IN THE SOLICITOR WHETHER TO TRY A JUVENILE IN CIRCUIT COURT OR FAMILY COURT WITHOUT ANY POSSIBILITY OF JUDICIAL REVIEW VIOLATES THE SEPARATION OF POWERS DOCTRINE AND IS UNCONSTITUTIONAL.

THIS JOHNSON PETITION WAS FILED BY APPELLATE COUNSEL ON THE DATE OF MARCH 7, 2017. PETITIONER HEREBY MOVES FORWARD AND PRESENT HIS SUFFICIENT REASONS WHY HIS APPEAL SHOULD NOT BECOME DISMISSED.

2.

STATEMENT OF THE CASE

2.

ON AUGUST 18, 2011 A YORK COUNTY GRAND JURY INDICTED PETITIONER FOR MURDER, THREE COUNTS OF ATTEMPTED MURDER, TWO COUNTS OF ARMED ROBBERY, FOUR WEAPONS CHARGES, AND CRIMINAL CONSPIRACY.

ON NOVEMBER 3, 2011 A PLEA HEARING WAS HELD BEFORE THE HONORABLE LEE S. AIFORD. PETITIONER PLED GUILTY PURSUANT TO A NEGOTIATED PLEA TO VOLUNTARY MANSLAUGHTER, THREE COUNTS OF ATTEMPTED MURDER, TWO COUNTS OF ARMED ROBBERY, TWO WEAPONS CHARGES, AND CONSPIRACY. THE NEGOTIATED SENTENCING RANGE WAS 25 TO 40 YEARS. APPELLANT WAS SEVENTEEN YEARS OLD AT THE TIME OF THE PLEA. SENTENCING WAS DEFERRED UNTIL NOVEMBER 30, 2011 AT WHICH TIME JUDGE AIFORD RENDERED A TOTAL SENTENCE OF FORTY YEARS IMPRISONMENT. ON SEPTEMBER 4, 2013, THE COURT OF APPEALS AFFIRMED PETITIONER'S CONVICTION. STATE V. DAVIS 2013-UP-344 (S.C.T. APP. SEPT 4, 2013).

ON DECEMBER 2, 2013 PETITIONER FILED A P.C.R. APPLICATION. ON JANUARY 21, 2015, THE HON. J. DEHAM COLE HELD A HEARING. ON AUGUST 24, 2016 JUDGE COLE DENIED PETITIONER'S P.C.R. APPLICATION. THIS APPELLATE APPEAL FOLLOWED.

3.

PETITIONER'S REASON WHY APPEAL SHOULD NOT BE DISMISSED.

3.

THE P.C.R. COURT ERRED IN FINDING THAT PETITIONER'S  
GUILTY PLEA WAS KNOWINGLY, VOLUNTARY AND  
INTELLIGENTLY ENTER. AND THAT PLEA COUNSEL  
DID NOT RENDER INEFFECTIVE ASSISTANCE OF  
COUNSEL, VIOLATING PETITIONER'S DUE PROCESS  
AND EQUAL PROTECTION CLAUSES OF THE 5TH &  
14TH AMENDMENTS OF THE U.S. CONSTITUTION AND  
UNDER S.C. CONST ART 1 § 3 ...

### FACTS

PETITIONER FILED AN APPLICATION FOR POST-CONVICTION RELIEF [P.C.R.] ON THE DATE OF NOVEMBER 27<sup>TH</sup> 2013 ASSERTING THAT HE IS BEING HELD IN CUSTODY UNLAWFULLY AND UNCONSTITUTIONALLY AND THAT HIS U.S. CONSTITUTIONAL RIGHTS PURSUANT TO THE 5<sup>TH</sup>, 6<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENTS WERE VIOLATED. WITHIN HIS APPLICATION HE ASSERTED A CLAIM OF INVOLUNTARY GUILTY PLEA AND INEFFECTIVE ASSISTANCE OF COUNSEL. PETITIONER ASSERTED THAT HIS CONVICTIONS AND SENTENCES SHOULD BE VACATED AND REMAND FOR NEW TRIAL.

PETITIONER DECLARED BEFORE A NOTARY PUBLIC UNDER OATH OF PENALTY OF PERJURY THAT THE FOREGOING ALLEGATIONS ABOVE WERE TRUE AND CORRECT AND

Signed His NAME IN THE PROVIDED SPACE FOR SIGNATURE.

A P.C.R. HEARING WAS HELD ON JANUARY 21<sup>ST</sup>, 2015 BEFORE THE HON. J. DERHAM COLE CONCERNING HIS P.C.R. APPLICATION.

THE P.C.R. COURT HAD REVIEWED THE TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING, OBSERVED THE WITNESSES PRESENTED AT THE HEARING, PASSED UPON THEIR CREDIBILITY, WEIGHED TESTIMONY.

THE COURT ALSO REVIEWED THE CLERK OF COURT RECORDS REGARDING THE SUBJECT CONVICTIONS, THE GUILTY PLEA TRANSCRIPT, THE APPLICATION FOR POST-CONVICTION RELIEF AND LEGAL ARGUMENTS MADE BY THE ATTORNEYS. SEE ORDER OF DISMISSAL

IN DAVIS V. STATE, P.C.R. APPLICATION CASE NO:

2013-CP-46-3646 FILED WITHIN THIS APPELLATE COURT MATTER ON APPEAL, P. 103 - 107, OF APPELLANT'S TRANSCRIPT OF RECORD. THE P.C.R. COURT

GAVE ITS FINDING OF FACTS AND CONCLUSION OF LAW PURSUANT TO S.C. CODE ANN. § 17-27-80 DENYING PETITIONER POST-CONVICTION RELIEF.

THE P.C.R. COURT FINDINGS AND FACTS ARE IN ERROR BY LAW BECAUSE ITS INACCURANT.  
VIOLATING S.C. CODE ANN § 17-27-80.

AT THE P.C.R. HEARING PETITIONER SWORE UNDER OATH AND TESTIFIED THAT THE PLEA JUDGE OR COUNSEL NEVER ADVISED HIM OF THE CRITICAL ELEMENTS OF HIS CHARGES. SEE P.C.R. TRANS. P. 8 L, 18-20. ADDITIONALLY HE TESTIFIED THAT HE WAS NOT ADVISED OF PAROLE ELIGIBILITY. SEE P.C.R. TRANS. P. 11 L 11-25, P. 12, L 4-12.

PETITIONER TESTIFIED THAT WHEN HE GOT INCARCERATED, HE FOUND OUT ABOUT HAVING TO DO 85% OF HIS TIME IN PRISON. SEE P.C.R. TRANS. P. 12, L 13-15. AND THAT HE WOULD OF NEVER TOOK THE GUILTY PLEA TO HIS SENTENCES OF 25-40 YEARS IN PRISON AND WOULD HAVE PROCEEDED TO STAND TRIAL, SEE P.C.R. TRANS P. 11 L 18-21.

DUE TO PETITIONER TESTIFYING UNDER OATH, HIS TESTIMONY HAD PROBATIVE VALUE. BECAUSE HE SWORE BEFORE THE COURT AND THE P.C.R. COURT SHOULD HAVE TREATED PETITIONER'S TESTIMONY AS EVIDENCE, THE P.C.R. COURT DIDNT. IN THIS MATTER.

PLEA COUNSEL TESTIFIED AT THE HEARING THAT HE EXPLAINED TO PETITIONER WHAT HE WAS BEING

CHARGED WITH AND THE POTENTIAL SENTENCES HE FACED AND THE CRITICAL ELEMENTS OF PETITIONER'S CHARGES. SEE P.C.R. TRANS. P 17, L 14-25, P 19, L 17-25, P 20, L 1-8 HOWEVER, PLEA COUNSEL NEVER ONCE TESTIFIED THAT HE ADVISED PETITIONER OF THE NO PAROLE ELIGIBILITY. THAT PETITIONER HAD TO SERVE UNDER 85% OF HIS TIME. SEE P.C.R. TRANS. P 16 L 13-25, P 26, L 1-2.

NOW IN REVIEWING THAT GUILTY PLEA TRANSCRIPT THE RECORD CLEARLY SHOWS THAT PETITIONER WAS NEVER ONCE ADVISED BY THE PLEA COURT OR PLEA COUNSEL OF THE NATURE OF THE CHARGES PETITIONER WAS PLEADING GUILTY TO OR THE CONSEQUENCES OF 85% OF HIS TIME. SEE PLEA TRANS. P. 6, L 5-25, P 7, L 1-25, P 8 L 1-25 THE TRIAL COURT ONLY ADVISED PETITIONER OF THE VIOLENT OFFENSES, MOST-SERIOUS OFFENSES AND NO-PAROLE, BUT NEVER WHY NO PAROLE IS ELIGIBLE PURSUANT TO 85% LAWS. ADDITION, THE TRIAL COURT NEVER TOLD PETITIONER THAT HE WOULD BE SENTENCED UNDER 85%. IF HE PLED

Guilty TO THE CHARGES.

P.C.R. COURT ERRED IN FINDING THAT  
PETITIONER DID KNOWINGLY, VOLUNTARILY AND  
INTELLIGENTLY PLEA GUILTY.

By law, A CRIMINAL DEFENDANT MUST BE INFORMED OF THE NATURE AND CONSEQUENCES OF CHARGE AND SENTENCE BEFORE ENTERING A PLEA OF GUILTY. TURNER V. STATE 517 SE2d 442 (SC. 1999) HINSON V. STATE 377 SE2d 338 (SC. 2009) MATHEW V. STATE, SUPRA. IN ADDITION,

A CRIMINAL DEFENDANT MUST BE ADVISED ON THE RECORD OF HIS RIGHTS BEFORE PLEASING GUILTY TO A CHARGE. BOYKIN V. ALABAMA 395 U.S. 238, 89 S. CT 1709 (1969). THIS RIGHT MUST BE ESTABLISHED ON THE RECORD A DEFENDANT HAD A FULL UNDERSTANDING OF WHAT IS BEING PLEASING GUILTY TO AND THE CONSEQUENCES OF SENTENCES. RODDY V. STATE 339 S.C. 29, 528 SE2d 418 (2000)

IN THIS PRESENT CASE THE TRIAL COURT FAILED TO INFORM PETITIONER OF THE NATURE AND CONSEQUENCES OF 85% OF PETITIONER'S TIME IF PETITIONER DECIDED TO PLEA GUILTY TO

charges. Petitioner **PLEA** guilty to charges only because his Defense Attorney told him he would get life if found guilty by jury.

Plea Counsel rendered **INEFFECTIVE ASSISTANCE** of Counsel by failing to inform petitioner of the 85% law and what time he faced if found guilty and sentenced.

By Counsel testimony at the P.C.R. Hearing, clearly this is the first prong of

STRICKLAND v. WASHINGTON 466 U.S. 668

104 S.Ct 2052 (1984)... Plea Counsel

testified that he told petitioner that he would get anywhere from 25 years up to 40 years in prison... never once anything about petitioner was informed that he had to do 85% of his time.

Plea Counsel erroneous advice was prejudice because it rendered petitioner to plea guilty to charges not knowing nothing about serving 85% of his time.

At the P.C.R. Hearing petitioner testified that had he would of known about him

HAVING TO SERVE 85% OF HIS TIME IN PRISON, HE WOULD OF NEVER PLED GUILTY TO CHARGES AND WOULD HAVE WENT TO TRIAL. HILL V. LOCKHART, 474 U.S. 52 (1985) SEE P.C.R. TRANS. P. 11 L 16-21.

P.C.R. COURT ERRED IN FINDING THAT PLEA COUNSEL WAS NOT INEFFECTIVE WHEN PLEA COUNSEL ADMITTED THAT HE INFORMED PETITIONER OF THE 25-40 YEARS SENTENCES BUT FAILED TO INFORM PETITIONER OF THE 85% OF TIME IF CONVICTED FOR A VIOLANT CRIME. VIOLATING PETITIONER'S 6<sup>TH</sup> AMEND. OF THE U.S. CONSTITUTIONAL RIGHTS. HILL V. LOCKHART SUPRA. THUS, WHEN THE P.C.R. COURT ERRORED BY ITS FINDINGS OF FACT OR LAW THIS COURT MUST REVERSE. PERCIE V. STATE, SUPRA.

### CONCLUSION

PETITIONER IS ENTITLED TO REVIEW OF CLAIM AND OR WRIT OF CERTIORARI GRANTED.

S/ Brandon A. Davis  
PROSE PETITIONER

THIS 20<sup>TH</sup> DAY OF APRIL 2017

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO YORK COUNTY

HON. J. DEERHAM COLE, CIR CT

JUDGE

---

BRANDON A DAVIS #S.C.D.C. 348800,  
PETITIONER

PROOF OF SERVICE

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

**RECEIVED**

APR 25 2017

S.C. SUPREME COURT

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF  
RESPONSE TO JOHNSON PETITION HAS BE PLACED IN THE  
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P.O. BOX 205, RIDGEVILLE S.C. 29472 AND HAVE BE SERVED  
UPON THE SOUTH CAROLINA SUPREME COURT AT THE SAID  
ADDRESS OF P.O. BOX 11330, COLUMBIA SOUTH CAROLINA  
29211 ON THIS DAY OF APRIL 20<sup>TH</sup>, 2017.

ON THIS DAY OF  
4-20-2017

Brandon A. Davis

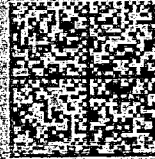
PRO SE PETITIONER

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DANIEL E. SHEAROUSE, CLERK OF COURT  
P.O. BOX 11330  
COLUMBIA S.C. 29211

