

# Cover Sheet

## The Supreme Court of South Carolina

Lee E. Ellerbee, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-000830

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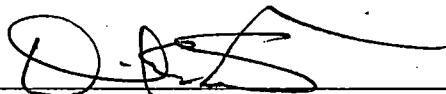
### ORDER

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Petitioner has failed to provide a pro se explanation for filing a notice of appeal as required by Rule 243(c) of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

May 03, 2017

cc:

Lance S. Boozer, Esquire

Valerie Garcia Giovanoli, Esquire

Lee E. Ellerbee #297877

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The Supreme Court of South Carolina

DANIEL E. SHEAROUSE, CLERK OF COURT

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COLUMBIA, SOUTH CAROLINA 29211

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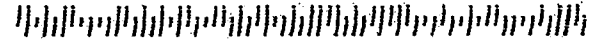
(Reminder)

LEE E. ELLERBEE, 297877  
EVANS CORRECTIONAL INSTITUTION  
610 HIGHWAY #9, WEST  
BENNETTSVILLE SC 29512

MAY 08 2017

Don't ever write me again (Ever)

2951292130 R004



30% Post Consumer



Keep ME  
Don't write  
this letter  
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ARREST WARRANT

I-271623

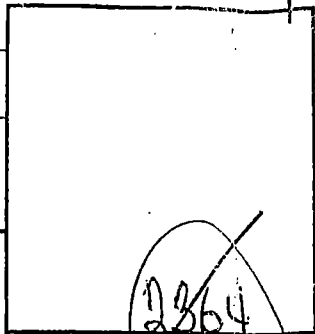
STATE OF SOUTH CAROLINA

County/ Municipality of

PAGELAND

THE STATE

against



JERRY LAMONT HUBBARD

Address: 254 BLACKCREEK CHURCH RD  
MT. CROGHAN SC 29727

Phone: SSN:

Sex: M Race: B Height: 6-0 Weight: 200

DL State: SC DL#: 009563884

DOB: 11/26/1973 Agency ORI#: SC0130500

Prosecuting Agency: PAGELAND POLICE DEPARTMENT

Prosecuting Officer: ANY LAWFUL OFFICER

Offense: POSSESSION FIREARM BY CONVICTED FELON  
Offense Code: 2364

Code/Ordinance Sec. 16-23-0030

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

Date:

RETURN

A copy of this arrest warrant was delivered to defendant JERRY LAMONT HUBBARD

on 08/31/09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

PAGELAND POLICE DEPARTMENT  
310 WEST MCGREGOR STREET  
PAGELAND, SC 29728

STATE OF SOUTH CAROLINA

County/ Municipality of

PAGELAND

Personally appeared before me the affiant SGT NATHAN BRUCKE

being duly sworn deposes and says that defendant JERRY LAMONT HUBBARD

did within this county and state on 05/04/2009

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

in the following particulars:

DESCRIPTION OF OFFENSE: 16-23-0030 / POSSESSION FIREARM BY CONVICTED FELON

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:

DEFENDANT DID ON DATE AND TIME HAVE IN HIS POSSESSION A FIREARM AND IS A CONVICTED FELON ACCORDING TO HIS NCIC RAP SHEET. BEING A CONVICTED FELON PROHIBITS DEFENDANT FROM SUCH POSSESSION.

NP- No underlying conviction for crime of violence as required by statute.

Handwritten signature and date 10/19/09

Signature of Affiant

NATHAN BRUCKE

STATE OF SOUTH CAROLINA

County/ Municipality of

PAGELAND

Affiant's Address 316 W. MCGREGOR STREET

PAGELAND SC 29728

Affiant's Telephone 843-672-6437

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN 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 05/04/2009 defendant JERRY LAMONT HUBBARD

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

County/ Municipality of PAGELAND

DESCRIPTION OF OFFENSE: WEAPONS / SALE OR DELIVERY OF PISTOL TO, AND POSSESSION BY, CERTAIN PERSONS UNLAWFUL; STOLEN PISTOL

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 the 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.

Sworn to and subscribed before me

on 08/31/2009

JINNY R STEELE (L.S.)

Judge Code: 6859

Judge's Address 310 WEST MCGREGOR STREET

PAGELAND SC 29728

Judge's Telephone 843 672 5309

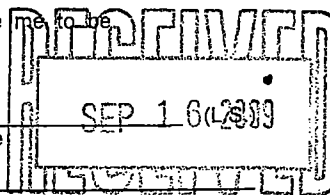
Issuing Court: Magistrate Municipal Circuit

ORIGINAL

Case: 09 08 201

Form Approved by S.C. Attorney General July 28, 1990 SCCA 418

Vertical stamp: Time Copy Affiant, Clerk of Court, CHESTERFIELD



Vertical stamp: 2009 NOV 10 PM 12 18

Handwritten initials CC

YOU TAKE YOUR TIME AND  
READ THIS WARRANT IT DOES  
BELONG TO ME SO YOU SEE HOW  
THEY DID ME AND YOU CAN BET  
A FAT BABY ASS I WANT TO GET



# Marlboro County Fourth Judicial Circuit Public Index



Marlboro County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Switch View

## The State of South Carolina VS Mary Jo Malachi

Case Number:	G831161	Court Agency:	General Sessions	Filed Date:	11/08/2002
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Grand Jury General Sessions
Disposition:	No Billed				
Disposition Date:	12/05/2002	Date Received:	11/08/2002	Arrest Date:	09/18/2002
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	2002GS3402063	Waiver Date:	
Probation Case:					

### Case Parties

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Malachi, Mary Jo	4109 Pitt Circle Wallace SC 29596	Unknown	F	1950	Defendant		

### Charges

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Malachi, Mary Jo	0013-Assault / Assault and battery of a high and aggravated nature (ABHAN)	0013-Assault / Assault and battery of a high and aggravated nature (ABHAN)	12/05/2002

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OK here is another one they charge me and none mine it a dam shame this court is doing me all this time I did for nothing BUT it OK time will tell O D D Bless you

NOT MINE



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**PRETRIAL MATTERS**

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**EXHIBITS**

(NO EXHIBITS INTRODUCED.)

MR WILSON WAS STILL MY LAWYER  
ON OCT 6<sup>TH</sup>

6:12-CV-01064-GRA

1 THE COURT: All right, solicitor, you may call your  
2 case.

3 MR. BLAKE: Your Honor, the state is ready for trial,  
4 docket number 2002-GS-34-2067. The defendant's name is  
5 Lee Edward Ellerbe. The charge is burglary first degree,  
6 and Mr. Ellerbe is representing himself. There was a  
7 hearing on September 2, 2003, in front of Judge Alexander  
8 Macaulay. I think I've handed up a copy of that written  
9 order which says that Mr. Ellerbe wants to represent  
10 himself and that Mr. Ralph Wilson from the Horry County  
11 Bar will be his stand-by counsel. In that order, it makes  
12 it clear that this is not a situation where there is  
13 hybrid representation but that Mr. Ellerbe would be his  
14 own attorney. And I think Your Honor wanted to examine  
15 Mr. Ellerbe on that.

16 THE COURT: Mr. Ellerbe, how are you?

17 MR. ELLERBE: Fine. How are you, Your Honor?

18 THE COURT: All right. I understand that you had a  
19 discussion with the judge on September the 2nd a little  
20 over a month ago and at that time expressed your desire to  
21 represent yourself.

22 MR. ELLERBE: Yes, sir, I did.

23 THE COURT: And he explained to you that that's not a  
24 good idea. You don't have any legal training, do you?

25 MR. ELLERBE: No, sir.

6:12-CV-01064-GRA

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1 THE COURT: Have you been involved in court  
2 proceedings before?

3 MR. ELLERBE: Yes, sir.

4 THE COURT: So, you've been in criminal court before?

5 MR. ELLERBE: Yes, sir.

6 THE COURT: So, you have some knowledge about what  
7 goes on here?

8 MR. ELLERBE: Yes, sir.

9 THE COURT: But you don't have any legal training?

10 MR. ELLERBE: No, sir.

11 THE COURT: And you understand that I can't assist  
12 you as the Court in your defense in this case?

13 MR. ELLERBE: Yes, sir.

14 THE COURT: And I can see you making terrible,  
15 terrible blunders, but if I do see you making it, I can't  
16 call that to your attention?

17 MR. ELLERBE: Yes, sir.

18 THE COURT: I can't warn you about it.

19 MR. ELLERBE: I understand.

20 THE COURT: I can't suggest things that you might do  
21 to make your case clearer to the judge -- to the jury.

22 MR. ELLERBE: Yes, sir.

23 THE COURT: There will probably be a lot of things  
24 that come up that you don't understand that would be  
25 objectionable.

6112-CV-01064-GRA

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1 MR. ELLERBE: Yes, sir.

2 THE COURT: Evidence might come in that if you  
3 objected would not come in. You understand that?

4 MR. ELLERBE: I understand that.

5 THE COURT: And there are also some matters that  
6 might need to be brought out that you don't know to bring  
7 out. Do you understand that?

8 MR. ELLERBE: Yes.

9 THE COURT: You still want to represent yourself?

10 MR. ELLERBE: I do.

11 THE COURT: Now, you understand Mr. Wilson is here.  
12 Mr. Wilson, tell me what knowledge you have about Mr.  
13 Ellerbe's case.

14 MR. WILSON: Your Honor, please the Court? I was  
15 appointed to represent him I think back in February or  
16 March of this year, and I did receive discovery from the  
17 solicitor's office, and I know I've met with this  
18 defendant on at least two occasions and had discussions  
19 with him regarding his case.

20 On -- last time I was here back in September, Your  
21 Honor, I asked -- he had asked to represent himself, and I  
22 asked to be excused if he was going to represent himself.  
23 And the Court actually indicated to me at that time in a  
24 report that I was released, so I did no further  
25 preparation.

6:12-CV-01064-GRA

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1           When I got the order to come this morning, actually  
2 the solicitor faxed it over Friday. I was out of town.  
3 When I came in this morning, I got the order showing that  
4 I was left in to sit here with him even though I'm still  
5 not actually representing him. So, that was all new to me  
6 because when I left here on September 2nd, it was my  
7 impression that I was not going to be involved at all.

8           THE COURT: All right, sir.

9           MR. WILSON: So, I didn't do anything else further in  
10 preparation.

11           THE COURT: Of course, Mr. Wilson, you served as  
12 solicitor, I think, in an adjoining circuit.

13           MR. WILSON: Yes, sir.

14           THE COURT: For a number of years, so you are  
15 certainly intimately familiar with the procedures that go  
16 on in the criminal justice system.

17           MR. WILSON: Yes, sir.

18           THE COURT: And you understand that, Mr. Ellerbe?

19           MR. ELLERBE: I do.

20           THE COURT: All right, now, I want to make it real  
21 clear to both you and Mr. Wilson. In my book -- and this  
22 is my court right now, so my book is the only one that  
23 ~~X~~counts -- in my book, standby counsel is to do that.

24           Actually, we could call it sit by counsel because that  
25 means he's to sit by you. He's to answer any questions

6:12-CV-01064-GRB

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1 that you ask him. He's to assist the Court in any way  
2 that he can. In other words, if I need to explain some  
3 legal concept to you or your rights at a particular stage  
4 in the trial for some reason, I might take a recess and  
5 ask Mr. Wilson to do that. But he is to speak only when  
6 spoken to. In other words, he will not offer you any  
7 unsolicited advice. If he sees you making a blunder in  
8 the case, he's not going to tug on your coattails and say,  
9 "Mr. Ellerbe, you're making a blunder. We need to talk  
10 about that." You understand about that?

11 MR. ELLERBE: Yes, sir.

12 THE COURT: He doesn't have any obligation or  
13 responsibility to do that. He is only to respond to any  
14 request that you make to him.

15 MR. ELLERBE: Yes, sir.

16 THE COURT: Do you understand that?

17 MR. ELLERBE: I understand.

18 THE COURT: And that's how you want to proceed?

19 MR. ELLERBE: Yes, sir.

20 THE COURT: And you understand that I will be as kind  
21 to you as I can, but I have to require that you abide by  
22 the same rules of procedure and evidentiary rules that you  
23 would have to abide by if you were an attorney?

24 MR. ELLERBE: Yes, sir.

25 THE COURT: And understanding all of that, you want

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1 to represent yourself?

2 MR. ELLERBE: Yes, sir.

3 THE COURT: All right, sir. Are you ready for trial?

4 MR. ELLERBE: I want to make a motion here, Judge.

5 First, I have to be indicted. I ain't never been

6 indicted.

7 THE COURT: Let me hold the indictment, solicitor.

8 MR. ELLERBE: I don't know who this fellow is.

9 THE COURT: Well, I have the original indictment.

10 MR. ELLERBE: I got a copy of it.

11 THE COURT: All right, and it says the Court of

12 General Sessions convened in December 2002. The Grand

13 Jurors of Marlboro County present upon their oath that Lee

14 Edward Ellerbe did in Marlboro County on or about August

15 the 20, 2002, enter the dwelling of one William McInnis on

16 Whitehall Road during the nighttime with the intent to

17 commit a crime therein, and it's signed by Mr. Hodges as

18 solicitor on the back side. It's actually the Grand Jury.

19 It says dated December the 5, 2002, true billed by Shelby

20 Graham, foreperson of the Grand Jury. It appears to me

21 that this indictment is in order.

22 MR. ELLERBE: Well, I'll say this, Judge, Your Honor.

23 I don't have the rest of the indictment. I have something

24 like eleven more indictments that I ain't received, and

25 all the indictments really trail each other. I really

1 need to see them indictments.

2 THE COURT: Well, you're only being tried on one  
3 indictment.

4 MR. ELLERBE: Yes, sir.

5 THE COURT: And that's the only one that we're  
6 concerned with today. Now, the other ones you are talking  
7 about, are they related to this charge?

8 MR. ELLERBE: Yes, sir, it is.

9 THE COURT: Does he have any other charges pending,  
10 Mr. Solicitor?

11 MR. BLAKE: Your Honor, the defendant does have  
12 charges pending. We're only going to trial as noted on  
13 this particular incident. There were prior incidents at  
14 this residence. That is not part of the trial unless it  
15 becomes an issue in terms of the defendant's defense. I  
16 can certainly provide copies of those indictments that ---

17 THE COURT: So, he has been indicted on the other  
18 charges?

19 MR. BLAKE: Yes.

20 THE COURT: But they're not, although some of the  
21 parties might be the same, they don't bear on his guilt or  
22 innocence in this charge?

23 MR. BLAKE: No, they don't, Your Honor.

24 THE COURT: And you don't intend to get into any of  
25 those?

1 MR. BLAKE: The only reason I would is if -- I really  
2 don't know what Mr. Ellerbe's defense is, and of course  
3 the elements include breaking in as well as attempt to  
4 commit a crime therein. I would be happy to provide Mr.  
5 Ellerbe with those indictments prior to trial, which does  
6 not start until tomorrow.

7 THE COURT: All right, sir, anything you want to say  
8 on the question of the indictments?

9 MR. ELLERBE: Yes, sir, I do. I don't have Rule 5  
10 here. I need a Rule 5. I don't have nothing in the file.  
11 I don't know what I'm up for anyway. I needs to ---

12 THE COURT: Have you ---

13 MR. ELLERBE: --- have a Rule 5.

14 THE COURT: All right, have you provided him all that  
15 information that you have that you're required to provide  
16 under Rule 5?

17 MR. BLAKE: Yes, Your Honor. For this incident, I  
18 have done that. I have a cover letter which indicates  
19 providing that. That of course was originally provided to  
20 the other attorneys, including Mr. Wilson, and then was  
21 provided also to Mr. Ellerbe this last week.

22 THE COURT: All right, sir, he says he's given you  
23 everything he's got, Mr. Ellerbe.

24 MR. ELLERBE: I don't have no witness, state witness.  
25 I don't have none of the state witness. Don't have none

1 of them at all.

2 THE COURT: What do you need?

3 MR. ELLERBE: I got state sending no more paper.

4 THE COURT: I don't know of any requirement that he  
5 has to give you their statements. That's not required  
6 under Rule 5. He has to give you copies of any statements  
7 that you made to law enforcement.

8 MR. BLAKE: And, Your Honor, a copy of Miranda  
9 Warning was given to Mr. Ellerbe. He signed that but gave  
10 no written statement, and there is no oral statement to be  
11 admitted against him that he made to law enforcement.

12 THE COURT: Mr. Ellerbe, what are you looking for?

13 MR. ELLERBE: Sir? I'm looking for Rule 5.

14 THE COURT: Well, I've got it right here. Have you  
15 got a rule book down there? If not, hand him mine. Hand  
16 him this, Mr. Clerk. Show me in there where they're  
17 required to give you witnesses' statements.

18 MR. ELLERBE: I didn't say witness statement. I says  
19 witness, state witness. I didn't say the statement.

20 THE COURT: You mean the names of them?

21 MR. ELLERBE: Yes.

22 THE COURT: I don't think they're required to give  
23 you the names of them.

24 MR. BLAKE: No, Your Honor. I certainly will do that  
25 once we've decided that we're going forward. When we

1 pull the jury, I will provide Your Honor with the names of  
2 witnesses as well as the defendant.

3 THE COURT: Rule 5 doesn't require that, but he'll do  
4 that before we draw the jury, and I would need the names  
5 from you of any witnesses you intend to call, all right,  
6 sir? What other problems do you have?

7 MR. ELLERBE: I got plenty more. I want, I first  
8 want to say this was, this was not my choice. My hand was  
9 forced. I want to say that first on the record, sir.

10 THE COURT: In what regard was your hand forced?

11 MR. ELLERBE: Well, Judge, Your Honor, when you give,  
12 you give money, they take it. They don't give it back to  
13 you. Don't do the work.

14 THE COURT: Are you talking about the charges against  
15 you now?

16 MR. ELLERBE: I'm talking, I'm talking about the  
17 charge against me and I'm talking about lawyers, why I'm  
18 representing myself.

19 THE COURT: You mean you paid some lawyer?

20 MR. ELLERBE: Yes, sir, paid two.

21 THE COURT: Well, that's, that's a matter that you  
22 need to be concerned about, and you may need to take some  
23 action against that attorney if he -- if you paid him and  
24 he's not representing you.

25 MR. ELLERBE: That's right.

1           THE COURT: But doesn't have anything to do with you  
2 representing yourself. The state has offered you Mr.  
3 Ralph Wilson. Now, I can tell you that if I get in  
4 trouble somewhere, I'd be tickled to death to have Mr.  
5 Wilson to represent me. And as I understand it, he's been  
6 appointed by the state. Isn't that right, solicitor?

7           MR. BLAKE: That's correct, Your Honor.

8           THE COURT: So, he's quite a capable lawyer. So, the  
9 fact that some other lawyer might have done you improperly  
10 doesn't have any bearing on your rejecting Mr. Wilson's  
11 services. But I've heard that complaint now, so what's  
12 your next one?

13           MR. ELLERBE: Well, I just want the record to show  
14 this. That's all. I don't have no confidence in the  
15 lawyers no more. I have faith in myself. They don't give  
16 me time. I'll do it myself.

17           THE COURT: Okay.

18           MR. ELLERBE: Because the way I was did here, I been,  
19 I been locked up fourteen months.

20           THE COURT: All right. Well, Judge Macaulay heard  
21 your request, and I've talked with you about it, and I  
22 believe you have freely, intelligently -- and I would  
23 question whether it's intelligently, but you have freely  
24 and knowingly made the decision to represent yourself.

25           MR. ELLERBE: Yes, sir, I understand.

1 THE COURT: So, I'm not arguing about that anymore.  
2 So, let me hear any other complaints that you have before  
3 we strike this jury for your case.

4 MR. ELLERBE: Okay. I got...

5 THE COURT: Of course you do understand that burglary  
6 carries thirty years in jail. No, burglary carries up to  
7 life.

8 MR. BLAKE: Yes, Your Honor.

9 THE COURT: Burglary first carries up to life.

10 MR. ELLERBE: Yes, sir, I do understand that. I do.

11 THE COURT: Okay. That's a long time, you know.

12 MR. ELLERBE: Yeah. I be sixty-two years old. I  
13 understand that, too.

14 THE COURT: All right, sir.

15 MR. ELLERBE: I needs, see, what I'm saying, Judge,  
16 Your Honor, I need all the pictures. I got pictures, the  
17 photographs, photos needs to be brought to me.

18 THE COURT: All right, tell you what. We're going,  
19 we're going to strike the jury for your case, which means  
20 we're going to select people, twelve people and two  
21 alternates to serve on your jury. We're going to do that  
22 in just about ten minutes. And then I will ask Mr. Blake  
23 to meet with you and go over all the physical evidence  
24 that he has in your case. That would include photographs  
25 and anything of that nature. And if there's anything

1 there that you've never heard of and that you think would  
2 justify a continuance in this case, I'll be glad to hear  
3 you on that before we start tomorrow.

4 MR. ELLERBE: No, I didn't -- I don't want to  
5 continue. I want to go ahead and be tried because I'm  
6 sick and tired enough. I needs -- allow me to bring it to  
7 your attention. I needs a mixed juror. I want that.

8 THE COURT: You need what?

9 MR. ELLERBE: A mixed juror, half and half, white,  
10 black, black.

11 THE COURT: Well, I don't have a thing to do with  
12 that. This clerk over here draws the names out of a hat.

13 MR. ELLERBE: Okay.

14 THE COURT: And the first name they call out -- do  
15 you know how we do it? The first name ---

16 MR. ELLERBE: Draw it out a hat.

17 THE COURT: The first name that's called out of these  
18 -- it's not really a hat. I don't know what they've got.  
19 Some of them have those baskets they turn and other  
20 things. But anyhow, they'll be drawn out, and they'll  
21 call that person's name. And that person will get up out  
22 of their seat and they'll come stand right up here where  
23 you and I and your defense lawyer and everybody can -- I  
24 mean the prosecution, where everybody can see that person.  
25 And the state -- of course in this case it will be ten and

1 five, right?

2 MR. BLAKE: That's correct.

3 THE COURT: The state gets five strikes, which means  
4 out of all those people as they come up, the state can  
5 excuse five of them without giving me any reason at all,  
6 and you can excuse ten of them without giving me a reason.  
7 In other words, if you don't like the looks of the first  
8 one, you can say I want to excuse that juror. I'll say  
9 fine. You can do that ten times.

10 Now, while I said you can do that for any reason you  
11 want to -- you don't have to give any reason -- but you  
12 can't strike a person just because of their race or just  
13 because of their sex. In other words, you can't say I  
14 strike that person because they're white. The solicitor  
15 can't say I struck that person because they were white or  
16 because they were black or because they were Mexican or  
17 Hispanic. That's not a valid reason. You can't say I  
18 struck that person because they were a woman because women  
19 have the right to serve on juries. And so when I say that  
20 you are free to strike for any reason at all, that's true  
21 provided it's not a racial reason or not a sex reason.  
22 You understand that?

23 And so if you were to strike ten black people, the  
24 solicitor might make a motion that I believe Mr. Ellerbe  
25 struck these people just because they were black, or it

1 could be you struck ten white people. Then you could be,  
 2 under those circumstances, called upon to give me a  
 3 racially neutral reason. You understand what I mean by  
 4 that? In other words, you say Judge, I didn't strike that  
 5 person because they were white. I struck that person  
 6 because his great aunt knew my grandfather and they didn't  
 7 get along, and he might hold that against me, some reason  
 8 of that nature which has nothing to do with that person's  
 9 race. It works both ways, both the state and the defense.

10 MR. ELLERBE: Well, I sees in South Carolina it's  
 11 different from North Carolina. I'm not quite familiar  
 12 with South Carolina laws. I live in North Carolina but I  
 13 was raised and born here.

14 THE COURT: That's the reason you ought to have a  
 15 lawyer, but we already crossed that bridge.

16 MR. ELLERBE: Yeah, we crossed that bridge.

17 THE COURT: Once that jury is drawn and you see those  
 18 twelve or fourteen people sitting over there, if you have  
 19 any complaint about that particular jury, I'll hear from  
 20 you at that time.

21 MR. ELLERBE: All right.

22 THE COURT: All right, sir?

23 MR. ELLERBE: Okay. Well, Judge, Your Honor, what I  
 24 -- there's some stuff that need to be brought to your  
 25 attention, some stuff that was token from my house in

1 North Carolina need to be here at the court because that's  
2 -- it have a lot of bearing on, on this case.

3 THE COURT: What stuff?

4 MR. ELLERBE: Okay, I needs a, a coffee table and a  
5 vase.

6 THE COURT: What do they have to do with this case?

7 MR. ELLERBE: Have, have a lot to do with it.

8 MR. BLAKE: Your Honor, if I could give a little  
9 background?

10 THE COURT: Yes, sir.

11 MR. BLAKE: There was a search warrant, consent  
12 search warrant signed by Ms. Ellerbe. In her trailer,  
13 they took a number of items that were then returned to  
14 her. I think there's some dispute about if everything was  
15 returned. None of that is part of this trial.

16 THE COURT: They were returned to who?

17 MR. BLAKE: Returned to Ms. Ellerbe.

18 THE COURT: Are you Ms. Ellerbe?

19 MR. ELLERBE: Yes, sir.

20 THE COURT: Are you complaining that the state has  
21 some of your property?

22 MS. ELLERBE: Yes. They have, they do have some of  
23 my property.

24 THE COURT: Okay. Well, that ---

25 MS. ELLERBE: There was no search warrant. They just

1 came in and took what they wanted.

2 THE COURT: Well, that doesn't have any bearing on  
3 this trial, and so, I mean, if you have a complaint  
4 against the state, I'll be glad to hear that at a later  
5 time if there's some property you think they need to  
6 return, but that's not -- have anything to do with this  
7 trial.

8 MR. ELLERBE: Well, let me say this Judge, Your  
9 Honor, and then you can see where I'm coming from. This  
10 is really -- when they locked me up in 2002.

11 THE COURT: Yes, sir.

12 MR. ELLERBE: They say I broke in this man house.  
13 That's on the 20th. They went to my house in North  
14 Carolina on the 21st and went in there, walked over her,  
15 and took pictures like they was -- the house belonged to  
16 them. Wait a minute. Let me tell you this right here  
17 now. That what brought the whole thing on. Then on the  
18 24th, she was down here to visit me at the jail. They  
19 goes up there with no search warrant, nobody home, goes in  
20 there and takes what they want.

21 THE COURT: Is any of that evidence going to be used  
22 in this trial?

23 MR. BLAKE: No, Your Honor.

24 THE COURT: Okay. If it's not going to be used in  
25 this trial, this is not the time to deal with that.

1 MR. ELLERBE: I don't see why it ain't. That's what  
2 caused the whole thing.

3 THE COURT: Doesn't have anything to do with it.  
4 Move on. What's your next matter? If they were going to  
5 use some of that evidence that came from your house, then  
6 I would be glad to listen to ---

7 MR. ELLERBE: They did use -- that what I'm trying to  
8 tell you now. What they did, they took a drop table, a  
9 coffee table, and a big basin.

10 THE COURT: Okay, what's that got to do with this  
11 case?

12 MR. ELLERBE: That's how the case got on, on -- how  
13 this case got here.

14 THE COURT: You're not answering my question. Why do  
15 you need that stuff for your trial? What does it have to  
16 do with your trial?

17 MR. ELLERBE: Because that's why I were locked up by.  
18 This man say I broke into the house and took his stuff and  
19 they went to go get it and then -- while I wasn't there.

20 THE COURT: All right, what's the next matter you  
21 have to complain about before we strike this jury?

22 MR. ELLERBE: I want to know can my wife, she goes to  
23 college. She's in college. She had a wreck and I want to  
24 know can she give a statement because she won't coming  
25 back. We live 145 miles from here.

1 THE COURT: Can she give what kind of statement?

2 MR. ELLERBE: What happened on the 21st and the 24th.

3 THE COURT: Is she an alibi witness?

4 MR. ELLERBE: She's a witness.

5 THE COURT: Is she an alibi witness? If she is,  
6 she's going to have to be in court to testify in front of  
7 the jury, and the trial's not going to start until in the  
8 morning, and your defense would not come until after the  
9 state puts up its case, which would be the earliest some  
10 time tomorrow afternoon, and she would have to be present  
11 to testify. She cannot make a statement now; she cannot  
12 send in a written statement. She has to be present to be  
13 sworn and placed on the witness stand to testify when  
14 your -- when that time comes. That's the only way she can  
15 testify on your behalf.

16 MR. ELLERBE: I got one more question, Judge.

17 THE COURT: All right.

18 MR. ELLERBE: Hang on a minute.

19 THE COURT: Yes, sir.

20 MR. ELLERBE: This is a voluntary statement by  
21 William Sidney McClennon. I want to know if this man  
22 going to be here.

23 MR. BLAKE: This man's here right now.

24 THE COURT: He's here to testify, yes, sir.

25 MR. ELLERBE: Thank you, Judge.

1 THE COURT: All right, now, Mr. Ellerbe, do you  
2 understand the procedure when we get ready to draw this  
3 jury? First, I'll need the names of -- of course the  
4 state, I'll need the names of your, I need your witness  
5 list and any questions you want me to ask. Give it to me  
6 right now.

7 MR. BLAKE: Give me one second, Your Honor.

8 THE COURT: If you have any witnesses that you intend  
9 to call, I need their names. See, I need to ask the jury  
10 if they know any of these people. I need to ask them if  
11 they know any of the state's witnesses; I need to ask them  
12 if they know any of your witnesses so we can find out if  
13 they have some information that might keep them from  
14 serving on this jury. You understand that? Because if  
15 there's somebody out there that knows you and that knows  
16 you've been in trouble or something in the past, I'll  
17 probably excuse them for cause, which means you don't even  
18 have to use a strike against you.

19 Or if somebody's out there and their house was  
20 burglarized and they tell me, well, you know, somebody  
21 went in my house and I'm going to find this man guilty  
22 whether or not, then I wouldn't let that person serve on  
23 the jury. If there's some witness that's going to testify  
24 and that witness's wife or first cousin is sitting on the  
25 jury, then I may not let that juror sit on this case.

1 That's the reason I need the names of any witnesses that  
2 you might have.

3 MR. BLAKE: Okay, Judge, let me see.

4 THE COURT: That's the state's witness list. I'll  
5 ask, I'll call those names in front of the jury to see if  
6 the jury knows any of them. Do you have a list for me?  
7 Mr. Ellerbe.

8 MR. ELLERBE: Yes, sir?

9 THE COURT: You can look at that in a minute.

10 MR. ELLERBE: Okay.

11 THE COURT: Do you have a witness list for me?

12 MR. ELLERBE: A witness list?

13 THE COURT: Yes, sir. Who do you think you might  
14 call?

15 MR. ELLERBE: I, I sent Mr. Bexler a list. I ain't  
16 make out none for you, but I will have one.

17 THE COURT: Well, I may not let them testify. I can  
18 just tell you that now. I'm asking you now to tell me who  
19 you would anticipate calling as witnesses on your behalf.

20 (A PAUSE.)

21 THE COURT: Mr. Blake, do you have any list that he  
22 gave you?

23 MR. BLAKE: Your Honor, he sent us a number of  
24 letters. I did subpoena two different witnesses for him.

25 THE COURT: Okay.

1 MR. BLAKE: And I can ---

2 THE COURT: Well, if there's anybody else ---

3 MR. ELLERBE: Yeah, Your Honor, I needs Richland  
4 Memorial Hospital, too -- I mean, Sandhill Hospital,  
5 Ridgeland, Sandhill Ridgeland Hospital in Hamlet, Dr.  
6 McQueen.

7 THE COURT: Dr. Green?

8 MR. ELLERBE: Queen.

9 THE COURT: Queen?

10 MR. WILSON: Dr. McQueen.

11 MR. BLAKE: Your Honor, this goes to Mr. Ellerbe's  
12 assertion that he was in the area because he had a  
13 hospital appointment the next morning, and I told him that  
14 we would stipulate to the fact that he had a doctor's  
15 appointment at the Hamlet hospital on October 21st.

16 MR. ELLERBE: I had to be to the hosp -- I had to be  
17 in the hospital on September the 20th -- on August the  
18 20th.

19 MR. BLAKE: October -- August, I'm sorry.

20 MR. ELLERBE: August the 20th.

21 MR. BLAKE: It's my -- my ---

22 MR. ELLERBE: I was, I was -- I would had to be in  
23 the hospital at 6:00 October -- I mean ---

24 THE COURT: Do you have any witnesses prepared to  
25 testify that you were in the hospital?

1 MR. ELLERBE: I wasn't, I wasn't in the hospital,  
2 Judge, Your Honor. I was down here to go to hospital on  
3 the 20th.

4 THE COURT: Okay, but he's willing to stipulate that  
5 you were supposed to go on the 20th, which means I will  
6 tell the jury as a fact that you were supposed to go to  
7 the hospital on that date. So, you won't need any doctor  
8 to testify to that if I tell the jury that.

9 MR. ELLERBE: Well, I want, I want proof because --  
10 and then I need, I want them to see that I was supposed to  
11 go into the hospital at 6:00. That's -- I was -- that's  
12 my reason for being there.

13 THE COURT: Well, I'll talk with you about that.  
14 I'll take with you about that later. Dr. McQueen. Who  
15 else do you want to add to this list?

16 MR. ELLERBE: I want to add Bennettsville Park  
17 Hospital, too.

18 MR. BLAKE: That's Marlboro Park.

19 MR. ELLERBE: Marlboro Park Hospital, the rescue  
20 squad.

21 THE COURT: The rescue squad?

22 MR. ELLERBE: Yes, sir.

23 THE COURT: What are they going to testify to, and  
24 who on the rescue squad? You know, I can't bring the  
25 rescue squad in here. I got to bring people. That means

1 I need names.

2 MR. ELLERBE: At my condition, Judge, Your Honor, at  
3 my condition, these, these the witness I got at my  
4 condition at the time I was arrested.

5 THE COURT: Was he treated by some EMT or something  
6 when he ---

7 MR. BLAKE: No, Your Honor. He was transported to  
8 the sheriff's office. He was not treated. I see no  
9 report of any treatment on August 20th.

10 THE COURT: Who -- when did they treat you?

11 MR. ELLERBE: Something like -- when, who? The  
12 doctors?

13 THE COURT: Well, whoever you're talking about.

14 MR. ELLERBE: Oh, yeah, they treat me in August, you  
15 know, because I couldn't walk. My wife will tell you.  
16 She was there.

17 THE COURT: You mean after you were arrest?

18 MR. ELLERBE: Before I were arrested.

19 THE COURT: Well, what does this have to do with this  
20 case? If you'll give Mr. Blake the names of the  
21 individuals that you want, we'll try to subpoena them and  
22 get them here. But you've got to make more sense than  
23 you're making now.

24 MR. ELLERBE: Okay, Judge, if I had my photos,  
25 twenty, about twenty-one photos that the sheriff's

1 department had got ---

2 THE COURT: Your twenty-one what?

3 MR. BLAKE: Photos.

4 MR. ELLERBE: Pictures.

5 MR. BLAKE: Photographs.

6 MR. ELLERBE: Yeah, photographs. I need them because  
7 they took out my house -- they got me taken out my house  
8 on my back. I couldn't walk with a walking cane. I just  
9 had got off of, off a walker.

10 MR. BLAKE: Your Honor.

11 THE COURT: Yes.

12 MR. BLAKE: As you has previously indicated, we will  
13 certainly let him see any and all photographs that have  
14 been taken.

15 MR. ELLERBE: I need them photographs that belong to  
16 me and my wife they took off my table.

17 MR. BLAKE: Oh.

18 THE COURT: Well, if they were taken pursuant to a  
19 legal search, then you may be ---

20 MR. ELLERBE: It wasn't no legal search.

21 THE COURT: Well, that's not -- unless they're going  
22 to use some of it in this trial, I'm not going to deal  
23 with that now. We can deal with that later on. If  
24 they've got some property they need to return to you,  
25 we'll deal with that later on. But I don't -- I'm not

1 going to deal with that before this trial starts.

2 Now, if they're going to use some evidence that they  
3 took from that search, we'll deal with that before that  
4 evidence is admitted into this court, but I'm not getting  
5 into all these other matters. They don't have anything to  
6 do with your guilt or your innocence in this case. So,  
7 the only witness you want me to add is Dr. McQueen?

8 MR. ELLERBE: And Hamlet Hospital.

9 THE COURT: And what?

10 MR. ELLERBE: In August.

11 THE COURT: I can't subpoena a hospital. What you  
12 want me to do? Bring the hospital, drag it over here  
13 somehow or another, get some housemover? I can't subpoena  
14 a hospital.

15 MR. ELLERBE: Can't they fax you a hospital bill? I  
16 just want to fax there.

17 THE COURT: What is it you want from the hospital?

18 MR. ELLERBE: My -- the record why I supposed to be  
19 at the hospital on the 20th. That's what I want.

20 THE COURT: When you did what?

21 MR. BLAKE: He's saying that he wants some record of  
22 his appointment on the 20th at the hospital.

23 MR. ELLERBE: At the hospital.

24 MR. BLAKE: I said I stipulate to it.

25 MR. ELLERBE: Like I said, I want my alibi being down

1 here for going to the hospital.

2 THE COURT: All right, we'll take care of that. What  
3 else? Ms. Ellerbe, has he been this stubborn all his  
4 life?

5 MS. ELLERBE: Yes.

6 THE COURT: Ma'am?

7 MS. ELLERBE: Yes, sir.

8 THE COURT: Oh, he has? Okay, he didn't just get  
9 this way? All right, what else have you got? I'm ready  
10 to draw this jury. What else have you got before I draw  
11 this jury?

12 MR. ELLERBE: I ain't got nothing else.

13 THE COURT: All right. Now, have you discussed with  
14 the solicitor any type of offer he might give you if you  
15 decided to plead guilty?

16 MR. ELLERBE: No, sir. I never talked to him about  
17 no, no...

18 THE COURT: Has there been any offer made?

19 MR. BLAKE: Yes, Your Honor. A cover letter was sent  
20 and has been discussed with them, and the offer was  
21 burglary first, thirty years.

22 THE COURT: Thirty? Well, you're not interested in  
23 that?

24 MR. ELLERBE: No, sir.

25 THE COURT: Okay, I can understand that. That's

1 fine. Have a seat. We're going to bring the jury in.

2 Now, let me tell the spectators. You can have a seat  
3 right over there, or you can sit right there so you can  
4 see the jury. That will be fine. Let me tell the  
5 spectators in this courtroom. These matters that we've  
6 taken up, we've taken up outside the presence of the jury.  
7 We take them up outside the presence of the jury because  
8 they are not any business of the jury. It would not be  
9 proper for the jury to hear anything that's gone on in  
10 this courtroom while they're standing out there in this  
11 hall. So, if you know somebody on that jury, or if you  
12 happen to run into somebody on that jury after we leave  
13 this courtroom, you don't discuss anything that you heard  
14 in this courtroom with any members of that jury.

15 If you don't understand that, how about raise your  
16 hand and I'll explain it to you more carefully because I  
17 can tell you right now. If some juror tells me that  
18 somebody's told them something that went on in this  
19 courtroom, then I'm going to get to the bottom of that  
20 and, you know, it means we would have a very difficult  
21 trial in this case. And whoever caused that problem would  
22 have to sit out in the jail and wait until I come in  
23 December and we would discuss it more fully.

24 So, we just don't make any contact with any members  
25 of the jury panel about what goes on in this courtroom if

1 they are not in the courtroom to hear it themselves. All  
2 they need to know about this case they'll hear from me or  
3 they'll hear while they are sitting in that witness stand,  
4 so please understand that.

5 All right, anything else from the state before we  
6 bring in the panel?

7 MR. BLAKE: No, Your Honor.

8 THE COURT: Anything else from, Mr. Ellerbe, from  
9 you?

10 MR. ELLERBE: No, sir.

11 THE COURT: All right, you want to go over there and  
12 sit closer to Mr. Wilson so if you need to ask him a  
13 question you'll be a little close and you can sit between  
14 he and your wife. If you don't want to sit over there,  
15 that's fine. But, you know, if you want to ask him any  
16 questions, why, you need to be close enough to do that.

17 Bring our panel back in please, sir. Solicitor, I'll  
18 ask you to call the case once the jury gets in.

19 (THE JURY PANEL ENTERS.)

20 THE COURT: All right, ladies and gentlemen, we are  
21 ready to get started at this time. Solicitor, you may  
22 call your case.

23 MR. BLAKE: Thank you, Your Honor. State calls *State*  
24 *vs. Lee Edward Ellerbe*. The charge is burglary in the  
25 first degree, docket number 2002-GS-34-2067. The state is

1 ready for trial, Your Honor.

2 THE COURT: Thank you, sir. All right, ladies and  
3 gentlemen, as you've heard, the state has called a trial  
4 against Mr. Lee Edward Ellerbe, who's been charged with  
5 the crime of burglary. Ladies and gentlemen, under our  
6 law both the state and the defense is entitled to what we  
7 call a fair and impartial jury, and what that means is not  
8 what you might think it means. It really means simply a  
9 jury that can make its decision in this case based solely  
10 on the evidence and the testimony that you hear in this  
11 courtroom and nothing that you hear outside of this  
12 courtroom, and that you will not be influenced by any  
13 experience or something that has happened to you outside  
14 of this courtroom. And a lot of times we have experiences  
15 in our life that might make it difficult for us to make  
16 our decision based solely on what we hear in the  
17 courtroom. We might be influenced by something that has  
18 happened to us or some friend or relative of ours or some  
19 information that we have that came outside the courtroom,  
20 and so I have a number of questions to ask you to  
21 determine your qualification to serve on the jury. There  
22 are no right or wrong answers. I'm just seeking  
23 information.

24 Please remember that you are under oath. Please  
25 remember that you must respond if the question applies to

1 you. Again, if you think your answer would be of a  
2 personal nature that you don't want to share with  
3 everyone, then I can ask you, allow you to approach the  
4 bench. But you must respond to the question if it applies  
5 to you, so please remember that.

6 Now, ladies and gentlemen, Mr. Ellerbe has been  
7 charged with the crime of burglary. He's charged in this  
8 indictment with that crime. I'm going to read you this  
9 indictment, but this indictment is not evidence. The  
10 evidence that you would use if you were sitting on this  
11 jury would be the testimony of witnesses who are placed  
12 under oath and will seated in this witness stand who will  
13 testify. All this indictment is is a piece of paper drawn  
14 up to advise Mr. Ellerbe of the charge that he's facing so  
15 he can prepare a proper defense to these charge. I'm  
16 going to read it to you so that you will know what the  
17 charges are, and then I'm going to ask you some questions  
18 relating to your ability to serve on this jury.

19 The indictment alleges that Lee Edward Ellerbe did in  
20 Marlboro County on or about August the 20, 2002, enter the  
21 dwelling of one William McInnis at 126 Whitehall Road,  
22 Bennettsville, South Carolina, during the nighttime with  
23 intent to commit a crime.

24 Solicitor, approach the bench and, Mr. Ellerbe, you  
25 approach the bench.

1 (OFF-THE-RECORD BENCH CONFERENCE.)

2 THE COURT: Ladies and gentleman, some poet said that  
3 the best laid plans of mice and men often go astray, and  
4 one's just gone astray. So, we're not going to try this  
5 case this week. I'm going to excuse you at this time.

6 This is very unexpected for everybody, so we're not  
7 sure how we're going to pick up and go from here. I'm  
8 going to ask you to call back that call-in number sometime  
9 after 7:00 tonight. Does everybody have the call-in  
10 number? If you don't have the call-in number, please  
11 stand at this time.

12 (NO ONE STANDS.)

13 THE COURT: All right, please call in that number.

14 (END OF TRANSCRIPT OF RECORD.)

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YOU USE SEARCH LOOK AND  
READ THIS YOU MAY  
LIKE IT

1 (OFF-THE-RECORD BENCH CONFERENCE.)

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9 after 7:00 tonight. Does everybody have the call-in  
10 number? If you don't have the call-in number, please  
11 stand at this time.

12 (NO ONE STANDS.)

13 THE COURT: All right, please call in that number.

14 (END OF TRANSCRIPT OF RECORD.)

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Be sure to give this  
page to Judge William

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO COURT OF COMMON PLEAS FOURTH JUDICIAL CIRCUIT

William B. Funderburk

LEE E. ELLERBE #297877 MARLBORO COUNTY 2013-CP-34-00120

APPLICANT,

v.

NOTICE OF MOTION AND MOTION TO APPOINT LEGAL COUNSEL.

STATE OF SOUTH CAROLINA, RESPONDENT.

FILED 2013 JUL 10 AM 11:45 WILLIAM B. FUNDERBURK CLERK OF COURT MARLBORO COUNTY SC

TO: MR. WILLIAM B. FUNDERBURK, Marlboro County Clerk of Court.

YOU WILL PLEASE TAKE NOTICE, THAT LEE E. ELLERBE, #297877, NOW COMES BEFORE THE HONORABLE COURT, TO PETITION THE COURT TO APPOINT LEGAL COUNSEL TO ASSIST HIM IN PURSUIT OF THE ACTION HE HAS INITIATED IN THIS COURT, AND WILL NOW STATE THE FACTS THAT SUPPORT HIS PETITION FOR COMPETENT LEGAL ASSISTANCE.

Applicant is entitled to redress under both State and Federal Constitutional Law.

Applicant believes all Allegations in PCR #2013-CP-34-00120 are true and can be established as such if given a true and just opportunity to state and present his case before the court.

Applicant has only a third grade education and has thus far been woefully deficient in being able to properly present himself and his case to the courts at a Constitutional level of sufficiency.

For the above causes, the Applicant prays the Honorable

Court will move to address this issue by appointing legal counsel to justly and rightly give guidance and competent advice in accordance with U.S. Constitutional Amendment Six, and be appointed such counsel to be proper and effective.

WHEREFORE, the undersigned prays for the granting of this motion to appoint legal counsel.

Respectfully Submitted,  
Lee E. Ellebe  
LEE E. ELLEBE, #297877

SWORN TO AND SUBSCRIBED BEFORE ME  
this 8th day of July, 2013.  
s/ Susan A. Dye  
(Notary Public for South Carolina)

My Commission Expires: March 5, 2018

2013 JUL 10 AM 11 46  
WILLIAM B. FOHL, JR.  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

FILED

STATE OF SOUTH CAROLINA  
COUNTY OF MARLBORO

COURT OF COMMON PLEAS  
FOURTH JUDICIAL CIRCUIT

LEE E. ELLERBE, # 297877, )  
APPLICANT, )

2013-CP-34-00120

v. )

AFFIDAVIT OF SERVICE

STATE OF SOUTH CAROLINA, )  
RESPONDENT. )

BY MAIL. A CERTIFIED  
TRUE COPY

William B. Fundetburk  
CLERK OF COURT  
MARLBORO COUNTY

I, LEE E. ELLERBE, # 297877, am the Applicant in this matter and have this date served my NOTICE OF MOTION AND MOTION TO APPOINT LEGAL COUNSEL ON THE FOLLOWING PERSONS by depositing same in the United States mail, postage prepaid:

Mr. William B. Fundetburk  
Marlboro County Clerk of Court  
COURTHOUSE SQUARE, 105 MAIN ST.  
P.O. DRAWER 996  
BENNETTSVILLE, S.C. 29512

2013 JUL 10 AM 11 45  
WILLIAM B. FUNDETBURK  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

FILED

Lee Ellerbe  
LEE E. ELLERBE, # 297877

SWORN TO AND SUBSCRIBED BEFORE ME  
this 8th day of July, 2013.

Susan H. Frye  
(Notary Public for South Carolina)

My Commission Expires: \_\_\_\_\_  
My Commission Expires March 5, 2018

10-30-13

LEE E, ELLERBE #297877  
UNIT WATERNEE. 168  
BROAD RIVER C.I.  
4460 BROAD RIVER RD.  
COLUMBIA, S.C. 29210.

TO, WHOM THIS MAY CONCERN,

I AM ASKING FOR A UP DATE STATUS ON HWO MAY ATTONEY  
IS IN MY PCR CASE, # 2013-CP-34-00120. I FILE A  
PCR APPLICATION JUNE 7TH 20, 2013,  
I AM ASKING IF YOU WOULD BE SO KIND TO SEND ME THE  
INFO, OF HWO IT IS IT WILL BE A BIG HELP TO ME,

I THANK YOU IN THE ABOVE MATTER,

Lee Ellerbe

SWORN TO AND SUBSCRIBED BEFORE ME,  
THIS 30 DAY OF OCT 2013,  
S/ Eugene Reiff  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES, : My Commission Expires April 4, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Marlboro  
 STATE VS.  
Lee Edward Ellerbe  
 AKA: Everett Cornell Smith  
 Race: B Sex: M Age: \_\_\_\_\_  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_  
 DL# \_\_\_\_\_ SID# \_\_\_\_\_

INDICTMENT/CASE#: \_\_\_\_\_  
03 -GS- 34 - 1129  
 A/W#: MAR 0691  
 Date of Offense: 8-20-02  
 S.C. Code §: 16-11-311  
 CDR Code #: 0101719  
 CASE RESTORED  
 SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Burglary 1st degree  
 in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0101719  
 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: Elizabeth Murrelyn Solicitor Defendant Pro Se Attorney for Defendant Ralph Wilson AS Stand-

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 25 ~~months~~ years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ 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.

SPECIAL CONDITIONS:

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

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 \$100.00
§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 \$25.00
§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)	\$3.75 \$ _____
TOTAL	\$128.75

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

William B. Sunderland  
 Clerk of Court/ Deputy Clerk  
 Court Reporter: Jinda McCall

PRESIDING JUDGE James Williams  
 Judge Code: \_\_\_\_\_  
 Sentence Date: 11-13-03

STATE OF SOUTH CAROLINA )  
County of Marlboro )

INDICTMENT #03GS34-1129

At a Court of General Sessions, convened on October 06, 2003 the Grand Jurors of Marlboro County present upon their oath:

COUNT: BURGLARY IN THE FIRST DEGREE  
(DWELLING) 16-11-311

That Lee Edward Ellerbe in the County of Marlboro on or about August 20, 2002, did enter the dwelling of William McInnis located at 126 Whitehall Road, Bennettsville, SC, without consent and with the intent to commit a crime therein and said defendant entered or remained in said dwelling in the nighttime, in violation of Section 16-11-311, South Carolina Code of Laws (1976), as amended.

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

SOLICITOR:

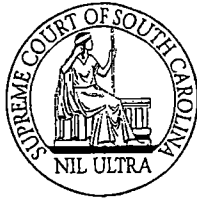
*[Handwritten signature]*

*All this is mess up*

WILLIAM S. FUNNERSHIP  
CLERK OF COURT  
MARLBORO COUNTY

03 NOV -7 A9:17

FILED



4  
KR

# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 9, 2012

Appellate Defender Robert M. Pachak  
South Carolina Commission on Indigent Defense  
P O Box 11589  
Columbia, SC 29211

Re: Ellerbe, Lee Edward v. The State

Dear Counsel:

The Court has issued the following Order on your Petition for a Writ of Certiorari in the above entitled matter:

“Petition for Writ of Certiorari Denied.


s/ Jean H. Toal C.J.

For the Court

March 9, 2012.”

The remittitur will be sent to the lower court as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,



CLERK

DES/jj

cc: Assistant Attorney General Karen Ratigan

STATE OF SOUTH CAROLINA

COUNTY OF Marlboro  
STATE VS.

Lee Edward Ellerbe  
AKA: Everett Cornell Smith  
Race: B Sex: M Age: \_\_\_\_\_  
DOB: \_\_\_\_\_ SS#: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
DL# \_\_\_\_\_ SID# \_\_\_\_\_

A CERTIFIED TRUE COPY

IN THE COURT OF GENERAL SESSIONS

William B. Sunderland  
CLERK OF COURT  
MARLBORO COUNTY  
INDICTMENT/CASE#: 1129  
AR#: 03 - 34  
Date of Offense: 8-20-02  
S.C. Code §: 16-11-311  
CDR Code #: 0101719  
 CASE RESTORED SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: Burglary 1st degree  
in violation of §16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0101719  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS

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: Elizabeth Murrelyn  
Solicitor

Defendant

FILED  
2013 JUN 11 AM 11:25  
WILLIAM B. SUNDLAND  
CLERK OF COURT  
MARLBORO COUNTY  
Pro Se  
Ralph Wilson, AS Stand-by  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 25 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ 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.  
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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: \_\_\_\_\_

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\*Fine: \$ \_\_\_\_\_  
§14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_  
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3% to County (if paid in installments) \$ 3.75  
TOTAL \$ 128.75

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

William B. Sunderland  
Clerk of Court/ Deputy Clerk  
Court Reporter: Sinda McCall

PRESIDING JUDGE James Williams  
Judge Code: \_\_\_\_\_  
Sentence Date: 11-13-03

STATE OF SOUTH CAROLINA )  
 )  
County of Marlboro )

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the Grand Jurors of Marlboro County present upon their oath:

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and said defendant entered or remained in said dwelling in the nighttime, in  
violation of Section 16-11-311, South Carolina Code of Laws (1976), as amended.

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

SOLICITOR: *[Signature]*

WILLIAM S. FUNDENBURG  
CLERK OF COURT  
MARLBORO COUNTY

03 NOV -7 A9:17

FILED

STATE OF SOUTH CAROLINA )  
 COUNTY OF Marlboro )  
 STATE VS. )  
Lee Edward Ellerke )  
 AKA: Everett Cornell Smith )  
 Race: B Sex: M Age: )  
 DOB: SS#: )  
 Address: )  
 City, State, Zip )  
 DL# SID# )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 03 -GS- 34 - 1129  
 A/W#: MAR 06 01  
 Date of Offense: 8-20-02  
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 CDR Code #: 0101719  
 CASE RESTORED  
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 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.  
 ATTEST: Elizabeth Munsterlyn Solicitor Pro Se Defendant Ralph Wilson AS STA Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 25 ~~months~~ years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
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William B. Sunderland  
 Clerk of Court/ Deputy Clerk  
 Court Reporter: Jinda McCall

PRESIDING JUDGE James Williams  
 Judge Code: 811114  
 Sentence Date: 11-13-03

Lee Edward Ellerbee  
 #297877  
 BROAD RIVER CORRECTIONAL INSTITUTION  
 4460 Broad River Road  
 Columbia, SC 29210-0000

- 
- 1) ABUSE OF TRIAL COURT'S DISCRETION  
 Facts - The trial court judge abused the court's discretion by permitting ~~and~~ stated by counsel to interfere with petitioner's trial strategy.
- 2) PCR Counsel was ineffective for failure to amend applications (see Rule 91.1(d), SCRPC) where counsel was entitled to direct appeal.  
 Facts - Pursuant to *Martinez v. Ryan*, 132 S.Ct. 1309 (2012), the U.S. Supreme Court ruled that PCR counsel renders IAC under the Strickland standard when initial PCR counsel neglects to raise constitutionally guaranteed rights to procedural due process & equal protection claims. Fed. Habeas U.S. — 5<sup>th</sup>, 6<sup>th</sup> & 14<sup>th</sup> Amend.

- 
- 3) Fatally Flawed Indictment (the Court lacked subject matter jurisdiction)  
 Facts - Without presentment of the particulars to a newly impanelled grand jury the Court allowed the State to quash and then reindict petitioner on the same trial date.

10-30-13

LEE E, ELLERBE #297877  
UNIT WATERNEE. 168  
BROAD RIVER C.I.,  
4460 BROAD RIVER RD.,  
COLUMBIA, S.C. 29210.

TO, WHOM THIS MAY CONCERN,

I AM ASKING FOR A UP DATE STATUS ON HWO MAY ATTORNEY  
IS IN MY PCR CASE, # 2013-CP-34-00120. I FILE A  
PCR APPLICATION JUNE 7TH 20, 2013,  
I AM ASKING IF YOU WOULD BE SO KIND TO SEND ME THE  
INFO, OF HWO IT IS IT WILL BE A BIG HELP TO ME.

I THANK YOU IN THE ABOVE MATTER

Lee Ellerbe

SWORN TO AND SUBSCRIBED BEFORE ME,  
THIS 30 DAY OF OCT 2013.

S/ Eugene Beatty

NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES, April 4, 2018

We will appoint the attorney when the  
Attorney General's office sends us a  
letter & instructs us to do the  
appointment.

major question's to ensure the competency of his waiver. Judge Macaulay and Judge Williams failed to do so. His waiver was unconstitutional Inadequate.

4. Judge Williams described the role of a standby Counsel to Mr. Wilson and the petitioner. Judge Williams stated that a standby counsel was to answer questions the petitioner ask him. To assist the court in any way he can, and to explain legal concepts to the petitioner.
5. Therefore Mr. Wilson committed hybrid representation by filing an appeal. On November 17, 2003 Mr. Wilson filed a certificate of service, notice of intent to Appeal and forged the name Robert Lee Ellerbee, Exhibits A & B...
6. February 12, 2004 Mr. Wilson filed another certificate of service, corrected Notice of intent to appeal and forged my name again. Also forward a letter to the Court Exhibit C certificate of service.
7. February 25, 2004 Mr. Wilson filed certificate of service, Motion for leave to file notice of intent to appeal outside of time.
8. March 26, 2004 the Court of appeals writes Mr. Wilson then April 7, 2004 Mr. Wilson writes me a final letter stating his office is no longer handling my affairs.

# The Supreme Court of South Carolina

Lee Edward Ellerbe,

Petitioner,

v.

---

State of South Carolina,

Respondent.

---

## ORDER

---

Counsel has submitted a petition pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 210 (1988), and moves to be relieved. We deny the petition to be relieved and direct the parties to address the following question:

Did the PCR judge err in finding a claim of ineffective assistance of standby counsel is not proper for PCR?

Petitioner shall serve and file a petition on this question within thirty (30) days of the date of this order. Thereafter, respondent shall have thirty (30) days to serve and file its return.

IT IS SO ORDERED.



C. J.  
FOR THE COURT

Columbia, South Carolina

August 26, 2011

① Under South Carolina law, S.C.C.L. § 14-7-1610, a Defendant "can attack the Grand Jury's subject matter jurisdiction by challenging the sufficiency of the evidence presented at the Grand Jury proceeding before the jury is sworn. State v. Green, 337 S.C. 67, 522 S.E. 2d 602 (1999).

② S.C.C.L. § 14-17-530, under "Filing and endorsement of papers,"

"The original papers of record in each cause wherewith judgment may be signed or confessed or decree may be entered shall be filed according to the number of enrollment in the book of abstracts of judgments.....

"Other papers required to be returned to or kept in the office shall be endorsed with the character, date of filing and number on file.....

"On every execution before it leaves the Clerk's office, shall be endorsed, near the top, the number roll or, if in the sessions, the term under which the case is filed."

③ S.C.C.L. § 14-1-70 expressly states "The various undertakings required to be given by this Title (Title 14) must be filed with the Clerk of the Court, unless the Court expressly provides for a different disposition thereof."

④ S.C.C.L. § 14-5-310: The circuit courts may (indeed) make and establish all necessary rules for the orderly conducting of business in said courts, provided (however)

such rules ARE NOT REPUGNANT TO THE LAWS OF THE STATE OR THE RULES PRESCRIBED BY THE JUSTICES OF THE SUPREME COURT."

⑤ S.C.C.L. § 14-5-20: THE COURTS OF COMMON PLEAS SHALL, AT THE EXPENSE OF THE STATE, HAVE A SEAL FOR EACH COUNTY..... SUCH SEALS SHALL ALWAYS BE AFFIXED TO SUCH PROCEEDINGS OF THE RESPECTIVE COURTS AS MAY REQUIRE THE SAME."

A close and thorough examination of Indictment # 2003-GS-34-1129 will show the obvious lack of the Clerk of Court's insignia/seal prior the presentment of said Indictment to the Grand Jury, therefore showing the Grand Jury lacked subject matter jurisdiction to act on said Indictment.

For the above cause, this Applicant prays for the relief of vacated conviction and sentence and to be remanded back to Manabara County for proper due process and retrial.

Respectfully Submitted,  
s/ Lee E. Elerbe 297877  
Lee Edward Elerbe # 297877

① Never Re Indicted

② Names of lawyers hired never requested so that appropriate notification could be made. This should have been requested by the judge.

③ illegal search & seizure of property outside the states jurisdiction. ~~and~~ Knowledge of information gained from this illegal search is fruit of the poisonous tree.

RECORDED  
INDEXED  
JUL 10 2007  
ATTORNEY GENERAL'S  
OFFICE  
*Ardis*  
*SE*  
*file*

STATE OF SOUTH CAROLINA

In the Court of Appeals

\_\_\_\_\_

Appeal from Marlboro County

Wyatt T. Saunders, Jr., Circuit Court Judge

\_\_\_\_\_

THE STATE,

RESPONDENT,

v.

LEE EDWARD ELLERBE,

APPELLANT.

\_\_\_\_\_

PETITION FOR REHEARING

\_\_\_\_\_

Pursuant to Rule 221(a), SCACR, appellant, Lee Edward Ellerbe, respectfully requests rehearing on this Court's decision in Unpublished Opinion No. 2007-UP-287, filed June 7, 2007. The opinion rejects appellant's argument that the trial judge court erred by accepting his position to represent himself during trial. This Court opined appellant's "waiver" to represent himself was knowingly, voluntary and freely consented thereto.

Appellant request rehearing as the Court may have misapprehended the following arguments and supportive facts:

The Court agrees for a First Degree Burglary to be warranted, there must be an intention to commit an felony therein. However the facts that transpired while Appellant represented himself do not support that essential element. That is not the case. In the present case, there was no intent to commit any crime therein.

The central issue is that Appellant did not waive his fundamental right to Effective Assistance of Counsel according the the United States Constitution Sixth Amendment. The wavier was not constitutionally adequate. Appellant asserts that said waiver was not competent. Faretta v. California, 95 S.Ct. 2525 (1975); State v Smith, 405 SE 2d 377 (1991).

Appellant's alleged waiver was constitutionally grossly inadequate.

A constitutional right may be waived be waived only following elaborate warnings. United States v. Wenger, 58 F. 3rd 280, 281 (7th Cir. 1995). [C]ourts must "indulge every reasonable presumption against waiver of fundamental constitutional rights." Doe v. Marsh, 105 F. 3rd 106, 111 (2nd Cir. 1997) (citations omitted).

In addition, Appellant was forced to represent himself as stated within the Anders Brief, page 6, paragraph Four. Appellant plainly advised the judge, "this was not my choice". Therefore, Appellant's plea was not freely given. According to Johnson v Zerbst, 58 S. Ct. 1019 (1938) and State v Dixon, 236 SE 2d 419 (1977) It is the responsibility of the trial judge to determine if a waiver of counsel is freely and intelligently give. Appellant did not waive right to the assistance of counsel. Without doubt, a knowingly and voluntarily waiver of

7 the basic right to trial counsel was indeed not freely given. 18

Furthermore, the judge made no specific inquiry to Appellants mental state, nor required a competency hearing or preserve a record for Appellant to meaningfully represent himself. The fact Appellant has a third grade education. Sixty-two (62) years of age at time of trial cries out for scrutiny. Appellant is 67. No sufficient background or full right was afforded which severally and prejudicially limited Appellant to stand through a fair trial.

As a result, Appellant's right to counsel being denied, issue-preservation analysis is foregone and prejudice is automatically presumed. See McKnight v. State, 465 SE 2d 352 (1995).

The trial judge had plenty time to indulge about Appellant's mental stability.

Judge Alexander Macaulay did not uphold our Constitution to fully establish the nine prongs of Faretta on record. Nor did he, in the least point Appellant in right direction "how" to proceed in handling the procedure of the two previously retained attorneys that abandoned Appellant. For instance, simply relayed the contact address to the Supreme Court Disciplinary Counsel and the Lawyer Dispute Resolution Board in Columbia.

#### CONCLUSION

Appellant respectfully request the Court consider rehearing this matter base on the foregoing argument, and re-consider the grant of a new trial and appoint Appellant competent counsel to Justly adjudicate this case in a fair and reasonable manner, rather have Appellant die with a twenty-five year sentence in which no one was physically harmed and restitution was afforded.

Appellant prays for some relief.

Respectfully submitted, E. H. Lee

STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal from Marlboro County

Wyatt T. Saunders, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

v.

LEE EDWARD ELLERBE,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned forcefully Pro Se hereby certifies that a true copy of the PETITION FOR HEARING of Appellant in the above reference case has been served upon Salley W. Elliot, Esquire, of the Attorney General's Office, this 19th day of June, 2007.

SUBSCRIBED AND SWORN TO before me this 19th day of June, 2007.

*Lee Edward Ellerbe*

Lee Edward Ellerbe  
Pro Se (forcefully)

*Donald J. Quibell*  
Notary Public for South Carolina

My Commission Expires: August 25, 2015

# The South Carolina Court of Appeals

The State,

Respondent,

v.

Lee Edward Ellerbe,

Appellant.

The Honorable James C. Williams, Jr.  
Marlboro County  
Trial Court Case No. 2003-GS-34-01129


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## ORDER DENYING PETITION FOR REHEARING

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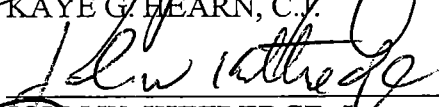
**PER CURIAM:** After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.



---

KAYE G. HEARN, C.J.



---

JOHN W. KITTREDGE, J.



---

JASPER M. CURETON, A.J.

August 27, 2007

cc: Appellate Defender Aileen P. Clare  
Lee Edward Ellerbe # 297877  
Attorney General Henry Dargan McMaster  
Chief Deputy Attorney General John W. McIntosh  
Assistant Deputy Attorney General Salley W. Elliott  
I. McDuffie Stone



**RECEIVED**

OCT 05 2007

*Clare  
SE*

The South Carolina Court of ~~APPEALS~~ **ATTORNEY GENERAL'S  
OFFICE**

KENNETH A. RICHSTAD  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

October 3, 2007

REMITTITUR


The Honorable William B. Funderburk  
105 Main St  
PO Drawer 996  
Bennettsville, SC 29512-0996

Re: The State v. Ellerbe, Lee Edward  
2003-GS-34-01129

Dear Mr. Funderburk:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

  
Kenneth A. Richstad  
Clerk of Court

KAR/rj

cc: Appellate Defender Aileen P. Clare  
Lee Edward Ellerbe # 297877  
Assistant Deputy Attorney General Salley W. Elliott  
I. McDuffie Stone

The Honorable Kenneth A. Richstad  
Clerk/Court of Appeals  
1015 Sumter Street  
P.O. Box 11629  
Columbia, SC 29211

Dear Mr. Richstad:

Please find enclosed for filing my Pro Se Brief. I have also served the Respondent with the same.

Your help and assistance with this matter is appreciated.

Sincerely,

S/ *Lee E Ellerbe*

Lee Edward Ellerbe, #297877

Broad River Correctional Inst.

4460 Broad River Road

Columbia, SC 29210

RECEIVED  
OCT 12 2006  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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Appeal from Marlboro County

Wyatt T. Sanders, Jr., Circuit Court Judge

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THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

LEE EDWARD ELLERBE,

APPELLANT.

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PRO SE BRIEF OF APPELLANT

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Lee Edward Ellerbe  
Appellant Pro Se  
Broad River Correctional Inst.  
4460 Broad River Road  
Columbia, SC 29210

STATEMENT OF THE CASE

Appellant with the statement of the case as presented in his appellant counsel's Anders Brief, and incorporates by reference the same.

ISSUE PRESENTED

I. Did the Court conduct an adequate waiver hearing concerning Appellant's right to counsel?

## ARGUMENT

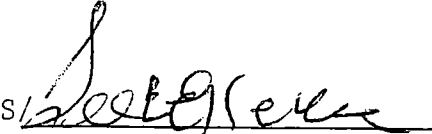
The competency standard for waiving the right to counsel is the same standard for competency for standing trial. Godinez v. Moran, 509 U.S. 389 (1993). Under South Carolina law, if a judge has reason to believe that a criminal defendant lacks the capacity to understand the proceedings against him the judge should order a competency hearing. State v. Blair, 273 S.E.2d 536 (S.C. 1981). A criminal defendant's failure to request such a hearing is not a waiver to the hearing. Blair, supra.

In the instant case, the record is replete with irrational and incomprehensible comments that were made by the appellant. For example: When asked by the court what he needed, the appellant responded, "I got state sending no more paper." ROA p. 516, 2.3. At other times the appellant seemed to make irrational connections and conclusions concerning the facts and evidence in his case; as when he expressed his belief that a search conducted after his arrest somehow caused or initiated the charges against him. ROA p. 522, lines 23-25; p. 523, lines 1-25; p. 524, lines 1-25; p. 525, lines 1-19. In addition, at one point during Appellant's trial, Appellant tried to subpoena an entire hospital rescue squad. ROA p. 530, lines 16-25; p. 531, lines 1-25. Appellant also complained that his sugar level was affecting him. T.Tr. p. 133, lines 3-16. The court should also take note that Appellant was 62 years old at the time of his trial, and had only a 4th grade education. All of these reasons should have been a clear indication to the trial judge that Appellant needed a competency hearing before being allowed to represent himself. Appellant request that this court take all of these factors into consideration.

CONCLUSION

For the reason stated, this Court should reverse the judgment of the trial court.

Respectfully submitted,

  
S/ Lee Edward Ellerbe

Lee Edward Ellerbe, #297877

Broad River Correctional Inst.

4460 Broad River Road

Columbia, SC 29210

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Appeal from Marlboro County  
Wyatt T. Sanders, Jr., Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

LEE EDWARD ELIERBE,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of his Pro Se Brief has been served upon the Respondent by mailing a copy properly addressed with sufficient postage affixed thereto this 10<sup>th</sup> day of October, 2006, to: MC Master Attorney General, P.O. Box 11549, Columbia, S.C. 29204.

Sworn to and subscribed before me  
this 10<sup>th</sup> day of October, 2006.

S/ Lee E Elierbe  
Appellant

Elizabeth Lison  
Notary Public for South Carolina

My Commission expires: July 29, 2007

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.**

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**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,  
  
v.  
  
Lee Edward Ellerbe, Appellant.

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Appeal From Marlboro County  
James C. Williams, Jr., Circuit Court Judge

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Unpublished Opinion No. 2007-UP-287  
Submitted June 1, 2007 – Filed June 7, 2007

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**APPEAL DISMISSED**

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Appellate Defender Aileen P. Clare, South Carolina  
Commission on Indigent Defense, of Columbia, for  
Appellant.

Attorney General Henry Dargan McMaster, Chief  
Deputy Attorney General John W. McIntosh,

Assistant Deputy Attorney General Salley W. Elliott,  
Office of the Attorney General, all of Columbia; and  
Solicitor I. McDuffie Stone, of Hampton, for  
Respondent.

**PER CURIAM:** Lee Edward Ellerbe appeals his conviction and sentence for first degree burglary. Ellerbe argues he did not knowingly and voluntarily waive his right to counsel. We disagree. “The Sixth Amendment guarantees criminal defendants a right to counsel.” State v. Gill, 355 S.C. 234, 243, 584 S.E.2d 432, 437 (Ct. App. 2003). This right, however, can be waived. Dearybury v. State, 367 S.C. 34, 39-40, 625 S.E.2d 212, 215 (2006). “The right to proceed pro se must be clearly asserted by the defendant prior to trial.” Id. “The trial judge has the responsibility to ensure that the accused is informed of the dangers and disadvantages of self-representation, and makes a knowing and intelligent waiver of the right to counsel.” Id.

On multiple occasions, Ellerbe clearly asserted his right to proceed pro se. Not one, but two judges clearly informed Ellerbe of the dangers and disadvantages of self-representation. On September 2, 2003, Judge Macaulay expressly told Ellerbe that he was entitled to an attorney and that it would be dangerous for Ellerbe to proceed without one; on October 6, 2003, Judge Williams expressly told Ellerbe that he was entitled to an attorney and that it would be dangerous for Ellerbe to proceed without one. Nevertheless, Ellerbe proceeded pro se. He did so knowingly and voluntarily. Accordingly, after a thorough review of the record, counsel’s brief, and Ellerbe’s pro se brief, pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss this appeal and grant counsel’s motion to be relieved.

**APPEAL DISMISSED.**

**HEARN, C.J., KITTREDGE, J., and CURETON, A.J., concur.**

RECEIVED

MAY 11 2017

Case No.

6:12-CV-01064-G

S.C. SUPREME COURT

Mr. Lee Ellerbee, #297877

B.R.C.I. Mon. 168

4460 Brood River Rd

Columbia, S.C. 29210

Re: State v. EllerbeeRe: Objections to Report

I am in receipt of your letter dated January 7<sup>th</sup> 2013 which I received January 11<sup>th</sup> 2013. Enclosed you will find Objections and exhibits that hybrid representation was done.

Now comes petitioner hereby makes a return object for the following reasons:

1. Did not knowingly, intelligently waive his right to have counsel represent him. The right to self-Representation however is not absolute. The Constitution allows State to prohibit defendant's from waiving their right to Counsel if they are not competent to conduct trial proceedings by themselves. See *Indiana v. Edwards* 554 U.S. 164, 128 S. Ct. 2379, 171 L. Ed. 2d 345 (2008).
2. Although evaluation is required the court must consider the record as a whole, including the defendant's background capabilities, literacy, mental capacity and etc. Not understanding fully the danger and disadvantages of self representation.
3. It is the responsibility of the trial Judge to determine if a waiver of Counsel is freely and intelligently given. *Johnson v. Zerbst*, 304 U.S. 458, 58 Ct 1019 (1938) *State v. Dixon* 269 S.C. 707, 236 S.E. 2nd 419 (1977) The trial Judge et. 11 - 11



ALAN WILSON  
ATTORNEY GENERAL

December 2, 2013

The Honorable William B. Funderburk  
Clerk of Court, Marlboro County  
Post Office Drawer 996  
Bennettsville SC 29512-0996

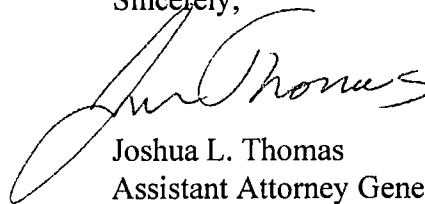
**Re: Lee Edward Ellerbe, 297877 v. State of South Carolina  
2013-CP-34-0120**

**Daniel B. Mishoe, 336764 v. State of South Carolina  
2013-CP-34-0104**

Dear Mr. Funderburk:

Enclosed please find the original **Return and Motion to Dismiss** of the Respondent, in the above-captioned cases, for filing in your office.

Sincerely,

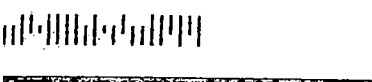


Joshua L. Thomas  
Assistant Attorney General

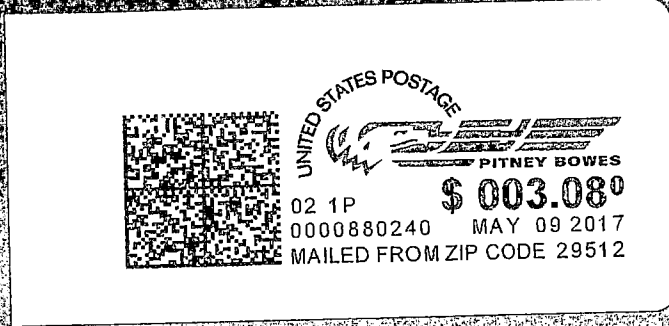
JLT/jacc  
Enclosures

cc: Lee Edward Ellerbe, 297877  
David E. Belding, Esquire

90-277-315/20



29512



Supreme Court of SC  
201 E. Broad St. 1st Fl. of Court  
Box 11330  
COLUMBIA SC 29211