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Proof of Service  
The State of South Carolina  
In The Supreme Court

**RECEIVED**

JUN 26 2017

S.C. SUPREME COURT

Appeal From Spartanburg County  
Court of Common Pleas

Re Kenneth Lee Brown v. State  
Appellate Case No. 2017-001193

Proof of Service

I, Applicant Kenneth Lee Brown, pro se, have served a copy of the written explanation on Alicia A. Olive, Esquire in the S.C. Attorney General's office, P.O. Box 11549, Columbia, S.C. 29211. By placing it in the United States mail postage prepaid on June 19, 2017. I certify that I have served a copy of written explanation on Alicia A. Olive, Esquire.

This 19<sup>th</sup> Day of June 2017.

cc: SC Supreme Court Clerk  
cc: Kenneth Lee Brown, pro se.  
cc: Alicia A. Olive, Esquire.

Submitted By:  
Kenneth Lee Brown  
pro se. #56822-004  
FCC Coleman USP #1  
P.O. Box 1633. Coleman, FL

original copy

The Supreme Court of South Carolina

Kenneth Lee Brown, Jr. Se,

v.

Appellate Case No.

2017-001193

State

Lower Court Case

**RECEIVED**

Petition

JUN 26 2017

Written Explanation

S.C. SUPREME COURT

now comes the Applicant Brown, before the South Carolina Supreme Court, by way of the Seventh Judicial Circuit State of South Carolina, County of Spartanburg. The Applicant file for resentencing due to a Court ruling on November 12, 2014, by the South Carolina Supreme Court that held sentences of life without the possibility of parole that were imposed on juveniles violated the Eighth Amendment under Miller and that those individuals are entitled to resentencing pursuant to the United States Constitution.

Page 1 of 2.

## Citation of Authority

Graham vs. Florida, 130 S.Ct. 2011,  
176 L.Ed.2d 825 (2010);  
Aiken v. Byars, 410 S.C. 534, 765 S.E.-  
2d 572 (2014);  
Teague v. Lane, 489 U.S. 288 (1989);  
Noble v. Barnett, 24 F.3d 582 n.6 -  
4th Cir. (1994);  
Ryffelman v. State of West Virginia -  
Department of Corrections, 174 Fed.-  
Appx. 168; 2006 U.S. App. Lexis 8264 (2006);  
Evanston Ins. Co. v. Agape Senior-Frigny  
Care, Inc 636 Fed. Appx. 871 U.S. Court -  
of appeal for the fourth Circuit (2015);  
Miller v. Alabama, — U.S. —, 139 S.Ct. 2455  
(2012); 8th Amendment Violation

Aiken v. Byars, 410 S.C. 534, 765 S.E.2d - 572 (2014). The Supreme Court of South Carolina specifically ordered "any individual affected by our holding may file a motion for resentencing, within one year from the filing of this opinion in the Court of General Session where he or she was originally sentenced. Id. at 545, 765 S.E.2d at 578 (emphasis added).

First Argument: Applicant Brown did file for his resentencing within the one-year, he file on June 10, 2015, that's around (5)-months before the deadline cut-off. Applicant Brown, was 17-year of age at the time his crimes was committed retroactively. In (ALL) states courts applies state court are constitutionally compelled to apply Teague, committed the crime at age 17. Teague v. Lane, 489 U.S. 288 (1989).

See Appendix Exhibit (A) Final order -  
of Dismissal; See Exhibit (B)                       
Conditional order of Dismissal, page 3,

"New law says anyone who was 17 years  
of age and sentence to life imprisonment  
is unconstitutional U.S. Supreme Court."

"Petitioner was 17 years old when crime  
was committed and when he was put  
in jail. didn't turn 18 until January -  
07, 1983."

Applicant Brown was affected by the  
holding and file a motion for his  
resentencing within the one year.

The Court records shows it was file  
June 10, 2015.

The lower court should have construed  
the fee application as motion for the  
resentencing of Applicant Brown  
See Appendix Exhibit (C) fee Application.

The Court must liberally construe, *pro se*, filings as been motion for resentencing. *Noble v. Barnett*, 24 F.3d 582 n.6 (4th Cir. 1994); *Kyllerman v. State of West Virginia Department of Corrections*, 174 Fed. Appx. 168, 2006 U.S. App. Lexis 8264 (2006); *Evanston Ins. Co. v. Ageape Senior Primary Care, Inc.*, 636 Fed. Appx. 871 U.S. Court of Appeal for the Fourth Circuit (2015).

Guided by the foregoing principles Applicant's June 10, 2015 application should properly be construed as timely file motion for his resentencing. At the first conviction stage, the Court can construe the application in the light most favorable to the Applicant. The Applicant clearly requested for resentencing in his fed application nothing else.

## Conclusion

Applicant Kenneth Lee Brown, pro se, ask this Honorable Court to order a new-resentencing hearing for Applicant by construing his fee application as a timely file motion for resentencing hearing.

This 19th, Day of June 2017.

Kenneth Lee Brown #56822-004  
Coleman usp-#1  
P.O. Box 1033  
Coleman, FL 33571

cc: SC Supreme Court Clerk.  
cc: Alicia A. Olive, Esquire.  
cc: Kenneth Lee Brown, pro se.

Page 6 of 1.

Appendix  
Exhibits



Exhibit (A)

ALAN WILSON  
ATTORNEY GENERAL

December 20, 2016

The Honorable J. Mark Hayes, II  
Chief Administrative Judge-CP, 7th Circuit  
180 Magnolia Street  
Spartanburg SC 29306

Re: **Kenneth Lee Brown v. State of South Carolina**  
**2015-CP-42-2548**

Dear Judge Hayes:

Enclosed please find the original proposed **Final Order of Dismissal** in the above-captioned case. For your convenience, I am enclosing a copy of the signed and served Conditional Order of Dismissal for your review.

If this Order meets your approval, please sign and forward to the clerk's office in the enclosed addressed envelope and have her serve the order on all parties. If you have any questions, please feel free to contact me.

Sincerely,

Caitlin B. Hastings  
Assistant Attorney General

CBH/ah  
Enclosure(s)

cc: Kenneth Lee Brown, #56822-004

Exhibit (A)

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )  
Kenneth Lee Brown, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

---

IN THE COURT OF COMMON PLEAS  
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2015-CP-42-2548

**FINAL ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 10, 2015. The Respondent made its return on September 19, 2016, requesting the application be summarily dismissed based upon the expiration of the statute of limitations, the presumption against successive applications, and because Applicant's claim is not properly before the Court of Common Pleas pursuant to the ruling in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014).

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed September 23, 2016, and filed September 23, 2016, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 26, 2016, serving the above mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Requesting Order to Grant Resentencing" and filed on November 9, 2016, Applicant argues that he is entitled to "resentencing due to new law that was made retroactive by the United States Supreme Court."

In a document captioned "Motion Granting Resentencing" that was not filed with the clerk's office, Applicant argues that he is entitled to a resentencing hearing because his PCR application is not time barred due to Aiken.

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant was convicted and sentenced on January 28, 1983. As this action was filed on June 10, 2015, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-2745(a) (Supp.2003). This is the Applicant's third application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on May 23, 1986. See Odom v. State, 337 S.C. 256, 261 523 S.E.2d 753, 755 (1999). ("[A]n Applicant is entitled to a full adjudication on the merits of the original petition, or 'one bite at the apple.'").

*[Remainder of page left intentionally blank]*

**IT IS THEREFORE ORDERED** that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

**AND IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

---

J. MARK HAYES II  
Chief Administrative Judge  
Seventh Judicial Circuit Court

\_\_\_\_\_, South Carolina.



Exhibit (B)

ALAN WILSON  
ATTORNEY GENERAL

September 19, 2016


The Honorable J. Mark Hayes, II  
Chief Administrative Judge-CP, 7th Circuit  
180 Magnolia Street  
Spartanburg SC 29306

**Re: Kenneth Lee Brown v. State of South Carolina**  
**2015-CP-42-2548**

Dear Judge Hayes:

Enclosed please find the original proposed **Conditional Order of Dismissal** in the above-captioned case. If this Order meets your approval, please sign and forward to the Clerk's office in the enclosed addressed envelope and have her serve the order on all parties. If you have any questions, please feel free to contact me.

Sincerely,

  
for Johnny E. James, Jr.  
Staff Attorney

JEJ/ah  
Enclosure(s)

cc: Kenneth Lee Brown, #56822-004

2016 SEP 22 11 31 55  
M. HOWARD JAMES, JR.

Exhibit (B)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Kenneth Lee Brown,	)	Case No.: 2015-CP-42-2548
	)	
Applicant,	)	
	)	
v.	)	<b>CONDITIONAL ORDER OF DISMISSAL</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

2015 SEP 3 11 3:55  
 M. MOORE

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed by Kenneth Lee Brown ("Applicant") on June 10, 2015. Respondent made its Return requesting the Application be summarily dismissed.

**I. PROCEDURAL HISTORY**

Applicant is currently confined in the Federal Bureau of Prisons for unrelated convictions. Applicant was indicted at the January 1983 term of the Spartanburg County Grand Jury for the crimes of armed robbery and assault and battery with intent to kill (1983-GS-42-0006); attempted armed robbery (1983-GS-42-0010); three counts of burglary and larceny (1983-GS-42-0019, -0021, and -0031 Counts 1 and 2); burglary (1983-GS-42-0020); burglary, armed robbery, and criminal sexual conduct, first degree (1983-GS-42-0030, Counts 1, 2, and 3). Michael Rudasill, Esquire represented Applicant. On January 28, 1983, Applicant pleaded guilty before the Honorable Paul M. Moore. Judge Moore sentenced Applicant to five consecutive terms of life imprisonment, in addition to consecutive terms of 20 years for attempted armed robbery and 10 years for armed robbery and assault and battery with intent to kill. Applicant did not appeal.

### First PCR Application

Applicant subsequently filed an application for post-conviction relief on October 31, 1985, alleging his continued confinement was unlawful for the following reasons:

1. Ineffective assistance of trial counsel;
2. Involuntary guilty plea; and
3. "Sentencing judge did not comply with Rule 11 of Federal Rules of Criminal Procedure."

Respondent made its Return on May 9, 1986. An evidentiary hearing was convened on May 23, 1986. Petitioner was present and represented by Charles Sanders, Esquire. The Honorable Thomas J. Hughston, Jr., denied and dismissed the application by Order dated July 2, 1986. Petitioner did not appeal the denial of his application.

### Second PCR Application

Applicant filed a second PCR application on October 31, 1985, alleging he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of post-conviction relief counsel.

Respondent made its Return and Motion to Dismiss on March 1, 1989. On October 27, 1989, the Honorable E.C. Burnette, III, issued a Conditional Order of Dismissal, and then a Final Order on January 26, 1990 dismissing the matter with prejudice. Applicant did not appeal the denial of his second PCR application.

### State Habeas Petition: 2001-CP-42-0398

Applicant filed a state petition for writ of habeas corpus in circuit court on February 9, 2001, alleging he was being held in custody unlawfully for the following reasons:

1. "Trial judge was affirmatively misinformed by the Circuit Solicitor and misled into believing that he was required by law to impose life sentences on [Applicant]";
2. "Trial judge imposed sentence out of prejudice and corrupt motive.";
3. Ineffective assistance of trial counsel; and
4. Entitled to a review concerning a belated appeal under White v. State.

Respondent made its Return and Motion to Dismiss on or about February 21, 2003. An evidentiary hearing into the matter was convened on April 10, 2003. At the hearing, Respondent made a motion to dismiss the application because there is no habeas corpus relief in the circuit court and even if the petition were to be construed as a PCR application, it would have been successive and time barred. In an Order dated June 5, 2003, the Honorable J. Derham Cole issued a Final Order dismissing the matter with prejudice. Applicant did not appeal.

### Current Application

In his current application, Applicant alleges he is being held unlawfully for the following reasons:

1. "New law says anyone who was 17 years of age and Sentence to life imprisonment is unconstitutional, U.S. Supreme Court."
  - a. "Petitioner was 17 years old when Crime was Committed and when he was put in jail. didn't turn 18 until January 07, 1983."

Also before this Court are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the records of Applicant's State Habeas application,<sup>1</sup> the PCR application, and the Respondent's return and motion to dismiss.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Miller v. Alabama

The Court finds the allegation related to Miller v. Alabama, \_\_\_ U.S. 132 S. Ct. 2455 (2012) must be dismissed. On November 12, 2014, the South Carolina Supreme Court held sentences of life without the possibility of parole that were imposed on juveniles violated the Eighth Amendment under Miller and that those individuals are entitled to resentencing pursuant to the United States Constitution. Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). The

<sup>1</sup> Respondent's records of Applicant's first and second PCR actions have been destroyed pursuant to agency retention policy and S.C. Code Ann. §§ 30-1-10 to 180, and S.C. Code of Regs. R.12-321.

South Carolina Supreme Court specifically ordered “any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced.” Id. at 545, 765 S.E.2d at 578 (emphasis added). As such, any challenges under Miller are not properly heard in a PCR action and this allegation must be summarily dismissed.

#### Successiveness

To the extent the Applicant raised any additional issues in his current application apart from those raised pursuant to Miller v. Alabama, the Court finds that the current application for PCR must also be summarily dismissed because it is successive to the previous application for PCR.

S.C. Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Successive applications are disfavored, and the Applicant bears the burden of showing that he could not have raised any current allegations in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991).

This Court finds that any allegations apart from those made pursuant to Miller v. Alabama could have been raised in the proceedings based on the Applicant’s prior applications for PCR. Accordingly, the current application is successive and barred under § 17-27-90. The Applicant has failed to establish sufficient reason why he could not have raised those allegations

in his previous applications. Therefore, this Court finds Applicant has failed to meet the burden imposed upon him, Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980), and dismisses this Application with prejudice.

### Statute of Limitations

To the extent the Applicant raises any issues in his current application apart from those made pursuant to Miller v. Alabama, this Court further finds that the application should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act “(the PCR Act”). S.C. Code Ann. §17-27-10 to -160. Section 17-27-45(a) provides:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pleaded guilty to the offenses he challenges in this Application on January 28, 1983. This Application was filed on June 10, 2015, well beyond the expiration of the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consol. Sch. Dist. of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Therefore, this Court summarily dismisses any remaining allegations in the application for PCR for failure to file within the time mandated by the PCR Act.

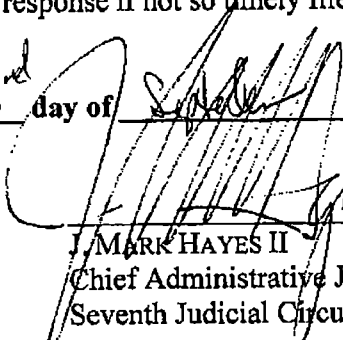
### CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Johnny E. James, Jr., Esquire  
Post-Conviction Relief Division  
P.O. Box 11549  
Columbia, SC 29211

Applicant is cautioned that his response to this order must be actually received by the Spartanburg County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 23<sup>rd</sup> day of September, 2016.

  
I, MARK HAYES II  
Chief Administrative Judge  
Seventh Judicial Circuit

Spartanburg, South Carolina

# Spartanburg County

Spartanburg County Court House  
180 Magnolia Street  
P. O Box 3483  
Spartanburg, SC 29304-3483

Phone (864) 596-2591  
Fax (864) 596-2239



**M. Hope Blackley**  
Clerk of Court

*Q-23-16*

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

*Kenneth Lee Brown*

7<sup>TH</sup> JUDICIAL CIRCUIT

Applicant

CASE # *2015042-2548*

*vs.*  
*Steel*

CERTIFICATE OF SERVICE

Respondent

I certify that, on this date, I served a copy of the *Original Ad. of Dismissal*  
In this action dated *9-23-2016* on *9-23-16*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

*Ashley Hannah*

*Alvia Olive*

*Kenneth Brown*

*Q-23-16*  
(Date)

*[Signature]*  
(Signature)



*Exhibit (c)*

ALAN WILSON  
ATTORNEY GENERAL

December 20, 2016

The Honorable J. Mark Hayes, II  
Chief Administrative Judge-CP, 7th Circuit  
180 Magnolia Street  
Spartanburg SC 29306

Re: **Kenneth Lee Brown v. State of South Carolina**  
**2015-CP-42-2548**

Dear Judge Hayes:

Enclosed please find the original proposed **Final Order of Dismissal** in the above-captioned case. For your convenience, I am enclosing a copy of the signed and served Conditional Order of Dismissal for your review.

If this Order meets your approval, please sign and forward to the clerk's office in the enclosed addressed envelope and have her serve the order on all parties. If you have any questions, please feel free to contact me.

Sincerely,

Caitlin B. Hastings  
Assistant Attorney General

CBH/ah  
Enclosure(s)

cc: Kenneth Lee Brown, #56822-004

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )  
Kenneth Lee Brown, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2015-CP-42-2548

**FINAL ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 10, 2015. The Respondent made its return on September 19, 2016, requesting the application be summarily dismissed based upon the expiration of the statute of limitations, the presumption against successive applications, and because Applicant's claim is not properly before the Court of Common Pleas pursuant to the ruling in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014).

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed September 23, 2016, and filed September 23, 2016, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 26, 2016, serving the above mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Requesting Order to Grant Resentencing" and filed on November 9, 2016, Applicant argues that he is entitled to "resentencing due to new law that was made retroactive by the United States Supreme Court."

In a document captioned "Motion Granting Resentencing" that was not filed with the clerk's office, Applicant argues that he is entitled to a resentencing hearing because his PCR application is not time barred due to Aiken.

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant was convicted and sentenced on January 28, 1983. As this action was filed on June 10, 2015, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-2745(a) (Supp.2003). This is the Applicant's third application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on May 23, 1986. See Odom v. State, 337 S.C. 256, 261 523 S.E.2d 753, 755 (1999). ("[A]n Applicant is entitled to a full adjudication on the merits of the original petition, or 'one bite at the apple.'")

*[Remainder of page left intentionally blank]*

**IT IS THEREFORE ORDERED** that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

**AND IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

---

J. MARK HAYES II  
Chief Administrative Judge  
Seventh Judicial Circuit Court

\_\_\_\_\_, South Carolina.

Exhibit (D)

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF SPARTANBURG ) FOR THE SEVENTH JUDICIAL CIRCUIT  
Kenneth Lee Brown, ) Case No.: 2015-CP-42-2548  
Applicant, )  
v. ) **RETURN AND MOTION TO DISMISS**  
State of South Carolina, )  
Respondent. )

---

Respondent, in making its Return to the application for post-conviction relief ("PCR") filed by Kenneth Lee Brown ("Applicant") on June 10, 2015, would respectfully show this Court:

I.

Applicant is currently confined in the Federal Bureau of Prisons for unrelated convictions. Applicant was indicted at the January 1983 term of the Spartanburg County Grand Jury for the crimes of armed robbery and assault and battery with intent to kill (1983-GS-42-0006); attempted armed robbery (1983-GS-42-0010); three counts of burglary and larceny (1983-GS-42-0019, -0021, and -0031 Counts 1 and 2); burglary (1983-GS-42-0020); burglary, armed robbery, and criminal sexual conduct, first degree (1983-GS-42-0030, Counts 1, 2, and 3). Michael Rudasill, Esquire represented Applicant. On January 28, 1983, Applicant pleaded guilty before the Honorable Paul M. Moore. Judge Moore sentenced Applicant to five consecutive terms of life imprisonment, in addition to consecutive terms of 20 years for attempted armed robbery and 10 years for armed robbery and assault and battery with intent to kill. Applicant did not appeal.

### First PCR Application

Applicant subsequently filed an application for post-conviction relief on October 31, 1985, alleging his continued confinement was unlawful for the following reasons:

1. Ineffective assistance of trial counsel;
2. Involuntary guilty plea; and
3. "Sentencing judge did not comply with Rule 11 of Federal Rules of Criminal Procedure."

Respondent made its Return on May 9, 1986. An evidentiary hearing was convened on May 23, 1986. Petitioner was present and represented by Charles Sanders, Esquire. The Honorable Thomas J. Hughston, Jr., denied and dismissed the application by Order dated July 2, 1986. Petitioner did not appeal the denial of his application.

### Second PCR Application

Applicant filed a second PCR application on October 31, 1985, alleging he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of post-conviction relief counsel.

Respondent made its Return and Motion to Dismiss on March 1, 1989. On October 27, 1989, the Honorable E.C. Burnette, III, issued a Conditional Order of Dismissal, and then a Final Order on January 26, 1990 dismissing the matter with prejudice. Applicant did not appeal the denial of his second PCR application.

### State Habeas Petition: 2001-CP-42-0398

Applicant filed a state petition for writ of habeas corpus in circuit court on February 9, 2001, alleging he was being held in custody unlawfully for the following reasons:

1. "Trial judge was affirmatively misinformed by the Circuit Solicitor and misled into believing that he was required by law to impose life sentences on [Applicant]";
2. "Trial judge imposed sentence out of prejudice and corrupt motive.";
3. Ineffective assistance of trial counsel; and
4. Entitled to a review concerning a belated appeal under White v. State.

Respondent made its Return and Motion to Dismiss on or about February 21, 2003. An evidentiary hearing into the matter was convened on April 10, 2003. At the hearing, Respondent made a motion to dismiss the application because there is no habeas corpus relief in the circuit court and even if the petition were to be construed as a PCR application, it would have been successive and time barred. In an Order dated June 5, 2003, the Honorable J. Derham Cole issued a Final Order dismissing the matter with prejudice. Applicant did not appeal.

### **Current Application**

In his current application, Applicant alleges he is being held unlawfully for the following reasons:

1. "New law says anyone who was 17 years of age and sentenced to life imprisonment is unconstitutional. U.S. Supreme Court."
  - a. "Petitioner was 17 years old when crime was committed and when he was put in jail. [Applicant] didn't turn 18 until January 07, 1983."

Attached to and incorporated herein are the Spartanburg County Clerk of Court records regarding the subject convictions, the records of Applicant's State Habeas application,<sup>1</sup> the PCR application, and the return. Respondent reserves the right to amend this Return upon receipt of relevant information.

### **II.**

Respondent submits the allegation related to Miller v. Alabama, \_\_\_ U.S. \_\_\_, 132 S. Ct. 2455 (2012) must be dismissed. On November 12, 2014, the South Carolina Supreme Court held sentences of life without the possibility of parole that were imposed on juveniles violated the Eighth Amendment under Miller and that those individuals are entitled to resentencing pursuant to the United States Constitution. Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). The

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<sup>1</sup> Respondent's records of Applicant's first and second PCR actions have been destroyed pursuant to agency retention policy and in compliance with the mandates of S.C. Code Ann. §§ 30-1-10 to 180, and S.C. Code of Regs. R.12-321.

in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. at 246, 262 S.E.2d at 737.

With the exception of the Miller v. Alabama claim, the Applicant could have raised any new grounds for relief in his prior PCR applications. The Applicant has failed to present any reasons why he could not have raised such allegations in his previous PCR application. Accordingly, to the extent the Applicant raised any additional issues in his application, Respondent moves for a summary dismissal of the application as successive.

#### IV.

Furthermore, to the extent Applicant raises any issues aside from the Miller v. Alabama claim, Respondent submits this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act ("the PCR Act"). S.C. Code Ann. §17-27-10 to -160. Subsection 17-27-45(a) provides:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pleaded guilty to the offenses he challenges in this Application on January 28, 1983. This Application was filed on June 10, 2015, well beyond the expiration of the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consol. Sch. Dist. of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994).

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
KENNETH LEE BROWN, #56822-004, )  
 )  
Applicant, )  
 )  
vs )  
 )  
STATE OF SOUTH CAROLINA, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

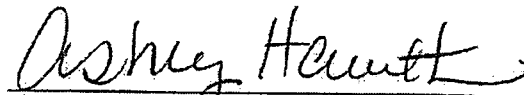
2015-CP-42-2548

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Kenneth Lee Brown, #56822-004  
USP Coleman I  
U.S. Penitentiary  
P.O. Box 1033  
Coleman, FL 33521**

DATED this 19<sup>th</sup> day of September, 2016.



Ashley Hawthorn, Legal Assistant  
For Respondent

FORM 5

Exhibit (E)

STATE OF SOUTH CAROLINA

County of Spartanburg

Kenneth Brown # 114440  
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

**2015-CP-42-2548**

APPLICATION FOR  
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention FCC. Coleman USP 1. P.O. Box 1033  
Coleman, FL 33521
2. Name and location of Court which imposed sentence Spartanburg  
County Courthouse, Spartanburg, South Carolina
3. Name(s) of co-defendant(s) (if any) None  
None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 83-65-42-6-10-19-20-21-30-31
  - (b) Burglary, larceny, burglary, larceny, burglary

- (c) larceny, receiving stolen goods, Criminal Sexual Conduct 1st degree.
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 28, 1983
- (b) 5 life sentence, 20 years
- (c) \_\_\_\_\_

6. Check whether a finding of guilty was made:
- (a) after a plea of guilty
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?
- NO

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) my attorney said not to
- (b) \_\_\_\_\_

- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- New law says anyone who was 17 years of
  - age, and sentence to life imprisonment
  - is unconstitutional. U.S. Supreme Court.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- Petitioner was 17 years old when crime was
  - committed, and when he was put in jail.
  - did not turn 18 until January 02, 1983.
12. Prior to this application have you filed with respect to this conviction: yes
- any petition in a State Court under South Carolina Law? yes
  - any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes
  - any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
  - any other petitions, motions or applications in this or any other Court? yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- the specific nature thereof:
    - lost conviction relief in Spartanburg
    - County Court house. ineffective
    - assistant of counsel
    - \_\_\_\_\_
  - the name and location of the Court in which each was filed:
    - Spartanburg County Court house
    - Spartanburg South Carolina
    - \_\_\_\_\_
    - \_\_\_\_\_

(c) the disposition thereof:

- i. denied
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. Don't know
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Don't know
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented: It was not law then that being

- (a) Sentence at 17 as a juvenile who was under
- (b) 18 years of age when he committed his crimes.
- (c) Policy of United States Supreme Court says it is unconstitutional, it is

17. Were you represented by an attorney at any time during the course of: See Attachment

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Charlie Sanders Spartanburg County (PDF).
  - ii. Michael Ludasill Attorney Spartanburg South Carolina.
  - iii. \_\_\_\_\_

- (b) the proceedings at which each such attorney represented you:
  - i. Guilty Plea / Michael Ludasill
  - ii. for hearing Charlie Sanders (PDF)
  - iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

To have my life Sentences all (5) of them overturned and resentenced.

20. Are you now under sentence from any other court that you have not challenged?

I'm under sentence now in Federal Prison. FCC-Coleman vs p. Coleman, FL 33521

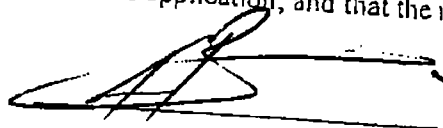
STATE OF SOUTH CAROLINA

County of

Spaulding

VERIFICATION

I, Kenneth Lee Brown #114440, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_, (L.S.)  
Notary Public

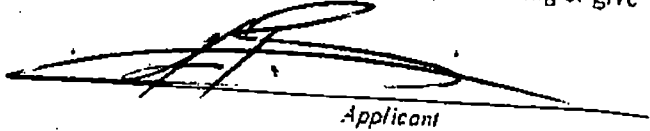
My Commission Expires: \_\_\_\_\_

original copy

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Kenneth Lee Brown #114440, hereby apply for leave to  
proceed in this action without prepayment of fees or costs or security therefor. In support of my  
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

  
Applicant

SWORN or affirmed to and subscribed before me this  
\_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA  
County of Spartanburg, SC

Kenneth Lee Brown #114440  
Petitioner,

Indictment  
83-65-42-6-10-  
19-20-21-30-31

vs.

State of South Carolina

Memorandum In Support of Petition  
for Post Conviction Relief

J. Moore  
H. Cassett  
M. Ludasill

Trial Judge  
Solicitor  
Attorney

Cover Sheet

## Introduction

Kenneth Brown (hereinafter) petitioner Brown, is a 50 year old male, who has been incarcerated in the South Carolina Department of Correction (SCDC) for 19 1/2 years. The petitioner is now presently confined in Federal Prison, Federal Correctional Complex Coleman unit, Coleman, Florida. In this post conviction relief petition, the petitioner in his bid to have his January 28, 1983 conviction overturned due to new law that was made "retroactive" by the United States Supreme Court, in the ruling of: *Graham vs. Florida*, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) juvenile who was under 18 years of age, when he committed his crime. Ple against mandatory life without parole sentence for juvenile non homicide offenders is retroactive on collateral review.

Around June or July of 1982 when  
petitioner Brown was only 17 years  
old when said crimes was committed,  
in which he received 5-life sentence.  
It wasn't until January 28, 1983  
after his 18th Birthday which was  
January 07, 1983. Did his guilty plea  
trial took place. on January 28, 1983,  
petitioner Brown plea guilty to the crimes  
for which he was convicted of.  
now, petitioner Brown is requesting for  
review and release of his 5-life sentence  
while he was a juvenile in (1982).  
juveniles that committed rap while  
they was a juvenile cannot receive a  
"life sentence, it constitute cruel and  
unusal punishment which is a violation  
of the 8th Amendment. New law  
handed down from the united states  
supreme court (2011) and they made  
it "retroactive" on collateral review.

In *Graham v. Florida*, 560 U.S. \_\_\_, \_\_\_, 2010 holding that the 8th Amendment prohibits a sentence of life without parole for a nonhomicide crime committed while the defendant was a juvenile, the defendant's sentence of life imprisonment for sexual offenses he committed while a juvenile is quashed and the case is remanded for resentencing.

In *Petitioner Brown Case*, he was 17 years old at the time he was charged with crime of Criminal Sexual Conduct 1st degree by having a female perform oral sex on him. See dates on indictments and the year. Petitioner Brown was sentenced to 5 consecutive life sentences plus 25 years. Charges were "attempted robbery, attempted armed robbery, burglary, larceny, burglary and larceny, burglary and larceny, receiving stolen goods."

In the case of Kenneth Young, who was sentenced to 4-life sentence, the United States Supreme Court ruled that inmates cannot be given life sentences for crimes committed while they were juveniles. The only exemption to the ruling is a murder conviction.

This new ruling gives juveniles throughout the country a second chance. United States Supreme Court rule it's unconstitutional to impose life imprisonment to juveniles who committed nonhomicide crimes "before" their 18th birthday. Petitioner Brown's indictment and record show he was only 17 years old still a juvenile. Petitioner Brown's life sentence is unconstitutional in violation of his 8th Amendment right. I ask this Court to let the law work, after 33 years. Petitioner Brown conviction and sentence demanded for resentencing.

Petitioner Brown's Sentence of (5- life Sentence, was grossly disproportionate in violation of his eighth Amendment right. Because sentencing a juvenile to life imprisonment for nonhomicide offense is unconstitutional. Yes, Brown committed serious offenses, for which he deserves serious punishment, but he was only 17 years of age, and under Court's precedents his youth is one factor among others, that should be considered in deciding whether his punishment was unconstitutional excessive. I ask this Court to agree that petitioner age at the time of crimes 17 years old, with the nature of his criminal activity, and the unusual severity of his sentence- tip the constitutional balance. This Court in fairness of justice undo the 33 years the violation of Brown's Eighth Amendment right.

## Conclusion

Petitioner Brown prays that the relief sought may be granted.  
Resentencing order.

This 10th, Day of June 2015

Kenneth Brown #56822-004  
FCC. Coleman usp 1  
P.O. Box 1033  
Coleman, FL 33501

605882  
605883

Form 11

The State of South Carolina  
Spartanburg  
County of \_\_\_\_\_

INDICTMENT FOR  
BURGLARY AND LARCENY

At a Court of General Sessions, convened on the 17th day of January,  
1983, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE — BURGLARY

That Kenneth Lee Brown  
did in Spartanburg County on or about the 25th day of October  
1982, in the nighttime, break and enter the dwelling house of another, to wit:  
Caroleen J. Banks

with intent to commit a felony therein.

COUNT TWO — LARCENY

That Kenneth Lee Brown  
did in Spartanburg County on or about the 25th day of October  
1982, feloniously take and carry away the personal goods of Caroleen J. Banks  
less than \$200  
of the value of ~~more than fifty~~ dollars, described as follows:  
A sum of money and car keys and a 1976 Datsun

with intent to deprive the owner(s) permanently of such property.

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

*Holman*  
Solicitor

T-1 (G)

83-15-42-31

The State of South Carolina

County of Spartanburg

COURT OF GENERAL SESSIONS

JANUARY 17 Term, 19 83

THE STATE

vs. Kenneth Lee Brown

INDICTMENT FOR

Burglary and Larceny

Claude A. Taylor, Jr.

Foreman of Grand Jury

Miriam Seaf

John B. B.

Witnesses

H. C. Parker

Verdict

Foreman

I, Kenneth Lee Brown hereby appear in my own proper person and plead guilty to Burglary & Grand Larceny

On the within indictment. Witness: Kenneth Lee Brown K.P. Wickliffe Clerk of Court Gaile Wray CC

The sentence of the Court is that you Kenneth Lee Brown be confined in the S. C. Department of Corrections for a period of 1 year Natural Life if consecutive

Presiding Judge

1-28-83 (Date)

FORM 8

**The State of South Carolina**  
 County of Spartanburg

**INDICTMENT FOR**

Burglary, Armed Robbery &  
 Criminal Sexual Conduct, 1st. Deg.

At a Court of General Sessions, convened on the 17th day of January

1983, the Grand Jurors of Spartanburg County present upon their oath:

That Kenneth Lee Brown

did in Spartanburg County on or about the 21th day of August

19 82, in the nighttime, break and enter the dwelling house of another, to-wit:

Beatrice Murphy with intent to commit a felony therein.

Count II - Armed Robbery

That Kenneth Lee Brown did in Spartanburg County on or about the 20th day of August 1982 did willfully and unlawfully, while armed with a deadly weapon, to-wit: a knife, ~~commit the offense of armed robbery by feloniously and forcibly taking a sum of money~~ from Beatrice Murphy by putting her in fear of losing her life or sustaining serious bodily harm in violaion of Section 16-11-330 (1) of the 1976 Code of Laws of S. C.

Count III - Criminal Sexual Conduct, 1st Deg.

That Kenneth Lee Brown did in Spartanburg County on or about the 20th day of August 1982 willfully and unlawfully commit first degree criminal sexual conduct against Beatrice Murphy in that he caused her to perform oral sex with him in violation of Section 16-3-651 and more specifically Section 16-3-652 of the 1978 Cumulative Supplement to the Code of Laws of S. C., 1976.

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

*Hobman Barrett*  
 Solicitor

**Witnesses**

W. O. Strickland  
C. W. Greer  
R. D. Schultz  
C. W. Wolfe

**Verdict**

Foreman

T-1 (G)

83-115-42-30

**The State of South Carolina**

County of Spartanburg

**COURT OF GENERAL SESSIONS**

JANUARY 17 Term, 19 83

**THE STATE**

VS.

Kenneth Lee Brown

Julie Seymour, Ct.

**INDICTMENT FOR**

Burglary,  
Armed Robbery  
Criminal Sexual Conduct,  
1st Degree

Claude A. Taylor, Jr.

Foreman of Grand Jury

Miriam Seay

McCAW PRINTERS

COLUMBIA, S. C. 29205

John Ray

I, Kenneth Lee Brown, hereby appear in my own proper person and plead

guilty to Burglary, Armed Robbery, & Criminal Sexual Conduct 1st Degree

On the within indictment.

Witness: Kenneth Lee Brown

K. D. Smealley  
Clerk of Court  
Hail Koffert cc

This sentence of the Court is that you

Kenneth Lee Brown  
be confined in the S. C. Department of  
Corrections for a period of year and a half

John Ray  
Presiding Judge

1-28-83  
(Date)

The State of South Carolina

County of Spartanburg

INDICTMENT FOR  
BURGLARY AND LARCENY

At a Court of General Sessions, convened on the 17th day of January,  
1983, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE — BURGLARY

That Kenneth Lee Brown  
did in Spartanburg County on or about the 26th day of October,  
1982, in the nighttime, break and enter the dwelling house of another, to wit:  
Robert McFarlin.

with intent to commit a felony therein.

COUNT TWO — LARCENY

That Kenneth Lee Brown  
did in Spartanburg County on or about the 26th day of October,  
1982, feloniously take and carry away the personal goods of Robert McFarlin  
of the value of more than 50 <sup>\$200</sup> dollars, described as follows:  
a sum of money, a watch and a Visa card

with intent to deprive the owner(s) permanently of such property.

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

Holman Causey  
Solicitor

83-45-42-21  
The State of South Carolina

County of Spartanburg

COURT OF GENERAL SESSIONS

JANUARY 17 Term, 1983

THE STATE

vs.

Kenneth Lee Brown

INDICTMENT FOR

Burglary and Larceny

Claude A. Taylor, Jr.

Foreman of Grand Jury

Miriam Sery

[Signature]

Witnesses

H. C. Parker

Verdict

Foreman

I, Kenneth Lee Brown, hereby appear in my own proper person and plead

guilty to Burglary & Grand Larceny

On the within indictment.

Witness: Kenneth Brown

K.R. Nichols  
Clerk of Court

Paul Hoggins cc

The sentence of the Court is that you Kenneth Lee Brown

be confined in the S. C. Department of Corrections for a period of four years  
Natural Life Concurrent

[Signature]  
Presiding Judge

1-28-83  
(Date)

Form 11

The State of South Carolina  
County of Spartanburg

INDICTMENT FOR  
BURGLARY AND LARCENY

At a Court of General Sessions, convened on the 17th day of January  
1983, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE — BURGLARY

That Kenneth Lee Brown  
did in Spartanburg County on or about the 25th day of October  
1982, in the nighttime, break and enter the dwelling house of another, to wit:  
Annie McDowell  
with intent to commit a felony therein.

COUNT TWO — LARCENY

That \_\_\_\_\_  
did in \_\_\_\_\_ County on or about the \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_, feloniously take and carry away the personal goods of \_\_\_\_\_  
of the value of more than fifty dollars, described as follows: \_\_\_\_\_  
with intent to deprive the owner (s) permanently of such property.

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

Hobson  
Solicitor

83-MS-42-20

The State of South Carolina

County of Spartanburg

COURT OF GENERAL SESSIONS

JANUARY 17

Term, 19 83

THE STATE

VS.

Kenneth Lee Brown

INDICTMENT FOR

Burglary and Larceny

Claude A. Taylor, Jr.

Foreman of Grand Jury

William S. ...  
Clerk of Court

Witnesses

H. C. Parker

Verdict

Foreman

I, Kenneth Lee Brown  
hereby appear in my own proper person and plead

guilty to Burglary  
On the within indictment.

Witness: Kenneth Lee Brown

K. L. ...  
Clerk of Court  
Paul ... CC

The sentence of the Court is that you

Kenneth Lee Brown

be confined in the S. C. Department of

Corrections for a period of 1 year

Not a legal document

Paul ...  
Presiding Judge

1-28-83  
(Date)

The State of South Carolina

County of Spartanburg

INDICTMENT FOR  
BURGLARY AND LARCENY

At a Court of General Sessions, convened on the 17th day of January,  
1983, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE — BURGLARY

That Kenneth Lee Brown  
did in Spartanburg County on or about the 30th day of October,  
1982, in the nighttime, break and enter the dwelling house of another, to wit:  
Martha Simuel  
with intent to commit a felony therein.

COUNT TWO — LARCENY

That Kenneth Lee Brown  
did in Spartanburg County on or about the 30th day of October,  
1982, feloniously take and carry away the personal goods of Martha Simuel  
of the value of more than \$200 dollars, described as follows:  
a purse and contents  
with intent to deprive the owner(s) permanently of such property.

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

Holman Gesselt  
Solicitor

T-1 (G)

83-MS-42-19

**The State of South Carolina**

County of Spartanburg

**COURT OF GENERAL SESSIONS**

JANUARY 17 Term, 1983

**THE STATE**

vs.

Kenneth Lee Brown

**INDICTMENT FOR**

**Burglary and Larceny**

Claude A. Taylor, Jr.

Foreman of Grand Jury

Miriam Slay  
John Bill

**Witnesses**

H. C. Parker

**Verdict**

Foreman

I, Kenneth Lee Brown  
hereby appear in my own proper person and plead  
guilty to Burglary & Grand Larceny

On the within indictment.

Witness: Kenneth Lee Brown  
K.R. Stuchaly  
Clerk of Court  
Paul Hopp

The sentence of the Court is that you

Kenneth Lee Brown  
be confined in the S. C. Department of  
Corrections for a period of Year  
Natural Life Consecutive

Claude A. Taylor, Jr.  
Presiding Judge

1-28-83  
(Date)

The State of South Carolina

INDICTMENT FOR

County of Spartanburg

AND

Attempted Armed Robbery

At a Court of General Sessions, convened on the 17th day of January,  
1983, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE

That Kenneth Lee Brown

did in Spartanburg County on or about the 6th day of October,  
1982,

did willfully and unlawfully while armed with a deadly weapon, to-wit: a pistol, attempt to rob Buddy Murray in violation of Section 16-11-330 (2) of the 1976 Code of Laws of S. C.

COUNT TWO

That \_\_\_\_\_

did in \_\_\_\_\_ County on or about the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_,

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

Robert Lawrence D.  
Solicitor

**Witnesses**

E. W. Wolfe  
G. W. Greer  
W. G. Strickland

**Verdict**

Foreman

83-15-42-10 T-1 (C)  
**The State of South Carolina**  
County of Spartanburg

**COURT OF GENERAL SESSIONS**  
JANUARY 17 Term, 1983

**THE STATE**

VS.  
Kenneth Lee Brown

**INDICTMENT FOR**

and  
Attempted Armed Robbery

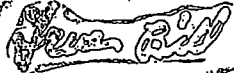
Claude A. Taylor, Jr.

Foreman of Grand Jury

*Miriam Slay*

McGAW PRINTERS,

COLUMBIA, S. C.



I, Kenneth Lee Brown  
hereby appear in my own proper person and plead  
guilty to Attempted Armed Robbery  
On the within indictment.

Witness: Kenneth Lee Brown

K. R. Huchelak  
Clerk of Court  
Gail Wofford & c

The sentence of the Court is that you  
Kenneth Lee Brown  
be confined in the S. C. Department of  
Corrections for a period of 20 yrs.  
Consecutive

Paul M. Moore  
Presiding Judge

1-28-83

FORM 6

**The State of South Carolina**County of Spartanburg**INDICTMENT FOR**Armed Robbery & A & B W/Intent to Kill

At a Court of General Sessions, convened on the 17th day of January,  
 1983, the Grand Jurors of Spartanburg County present upon their oath:

That Kenneth Lee Brown

did in Spartanburg County on or about the 14th day of October,  
 1982, did willfully and unlawfully, while armed with a deadly weapon, to-wit: a  
 pistol, commit the offense of armed robbery by feloniously and forcibly taking  
 a sum of money, a billfold with contents and a watch from Weldon Burnett by putting  
 him in fear of losing his life or sustaining serious bodily harm in violation of  
 Section 16-11-330 (1) of the 1976 Code of Laws of S. C.

~~Count - EL - A & B W/I/Kill~~

That Kenneth Lee Brown did in Spartanburg County on or about the 14th day of October  
 1982, with malice aforethought commit an assault and battery upon one Weldon Burnett  
 with intent to kill the said Weldon Burnett by beating him in the head with a cement  
 block.

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

Holman Lewis  
 Solicitor

Exhibit (F)

T-1 (G)

83-15-42-6

The State of South Carolina

County of Spartanburg

COURT OF GENERAL SESSIONS

JANUARY 17 Term, 19 83

THE STATE

vs.

Kenneth Lee Brown

INDICTMENT FOR

Armed Robbery & A & B W/Intent to Kill

Claude A. Taylor, Jr.

Foreman of Grand Jury

*Miriam Seay*

McCAW PRINTERS, COLUMBIA, S. C. 29205

Witnesses

K. D. Schultz  
W. C. Strickland  
G. W. Greer  
C. W. Wolfe  
Weldon Burnett  
518 Huston St.  
Spartanburg, SC

Verdict

Foreman

I, Kenneth Lee Brown  
hereby appear in my own proper person and plead  
guilty to Armed Robbery

On the within indictment.

Witness: Kenneth Lee Brown

K.R. McChesney  
Clerk of Court  
Hail Mottet

After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury.  
Sign Kenneth Lee Brown

The sentence of the Court is that you  
Kenneth Lee Brown

be confined in the S. C. Department of  
Corrections for a period of 10 yrs.

Consentual

Paul M. 210  
Presiding Judge

1-28-83

(Date)

Exhibit (C)

original copy

State of South Carolina  
County of Spartanburg

In the Court of  
Common Pleas for  
the Seventh Judicial  
Circuit

Kenneth Lee Brown, Pro Se,  
Applicant,

Case No.: 2015-CF-42-2548

vs.

State of South Carolina,  
Respondent.

Requesting order to  
Grant Resentencing

Comes the Applicant before the Court by way of an application for relief that is stated in post-conviction application for resentencing due to new law that was made retroactive by the United States Supreme Court, and the South Carolina Supreme Court on November 12, 2014 held sentences of life without the possibility of parole that were imposed on juveniles violated the Eighth Amendment under Miller and that those individuals are entitled to resentencing pursuant to the United States Constitution. Miller v. Bryan 410 S.C. 534, 765 S.E.2d 572 (2014).

Respondent acknowledge in its Conditional order of Dismissal on page 3:

"Petitioner was 17 years old when Crime was committed and when he was put in jail didn't turn 18 until January 07, 1983."

Respondent also acknowledge in its Conditional order of Dismissal on page 1:

("fel") filed by Kenneth Lee Brown ("Applicant") on June 10, 2015.

2016-09-09 PM 11:54

Applicant, fel request, clearly for a resentencing, due to new law that was made retroactive, this new law as known now wasn't available 33 years ago.

The only challenges been made is what South Carolina Supreme Court, on November 17, 2014, entitle me to, and it was timely file on June 10, 2015, that's five months before one year deadline.

the material and language in the post-conviction PCR application should be construed as a motion for resentencing. See Gooden v. Leake, 574 F.2d 1147, 1151 (4th Cir. 1977). This Court is charged with liberally construing a pleading filed by a pro se litigant to allow for the development of a potentially meritorious claim. See Boyd v. MacDougal, 454 U.S. 364, 365, 102 S.Ct. 700, 702, 42 L.Ed.2d 551 (1982). This Court should construe the Applicant's post-conviction motion liberally as a resentencing motion. The Applicant had one year to file, and before November 12, 2015, Applicant's file on June 10, 2015, was properly raised on time. Applicant requests that this Honorable Court construe (PCR) applicant as his timely file motion for resentencing. Liberally construe Applicant's motion in (PCR) to challenge the validity of his conviction, which is his Constitutional rights. On November 12, 2015, the South Carolina Supreme Court held sentences of life without the possibility of parole that were imposed on juveniles violated the

original copy

Eighth Amendment, under Miller and that those individuals are entitled to resentencing pursuant to the United States Constitution. Aiken v. Byers, 410 S.C. 534, 765 S.E.2d 572 (2014). The South Carolina Supreme Court specifically ordered "any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the Court of General Sessions where he or she was originally sentenced."

2016 NOV -9 PM 1:54

Kenneth Lee Brown 56822-004  
FCC Coleman esp-1  
P.O. Box 1033  
Coleman, FL 33521-1033

This 31<sup>st</sup> day of October 2016.

Page 4 of 4.

original copy

The Honorable J. Mark Hayes, II  
Chief Administrative Judge-Ct, 7th Circuit  
180 Magnolia Street  
Spartanburg, SC 29306

Re: Kenneth Lee Brown v. State of South Carolina  
2015-CF-42-2548

2016 NOV -9 PM 1:54

Dear Judge Hayes:

Enclosed please find the original proposed  
conditional order to grant in the above-  
case. If this order meets your approval, please  
sign and forward to the Clerk's office.  
All other parties have been served by Applicant.

Respectfully Submitted  
KLB  
Kenneth Lee Brown, Sr. SC

October 31, 2016.

cc: SC Attorney General's office  
Johnny E. James, Jr. Staff Attorney  
Clerk of Court office

The Honorable J. Mark Hayes, II  
Chief Administrative Judge - CP, 7th Circuit  
150 Magnolia Street  
Spartanburg, SC 29306

From: Kenneth Lee Brown, Pro Se  
FCC Coleman vsp-1  
P.O. Box 1033  
Coleman, FL 33521

20161001-9 PM 1:53

Re: Kenneth Lee Brown v. State of South Carolina  
2015-CP-42-2548


Dear Honorable Judge Mark Hayes, II.

Once you review my fee application, you will clearly see that I am motion the Courts for resentencing due the South Carolina Supreme Court ruling on Nov. 12, 2014, which stated sentences of life without the possibility of parole that were imposed on juveniles violated the eighth Amendment under Miller and that those individuals are entitled to resentencing pursuant to the United States Constitution.

The Court's record show that applicant Kenneth Lee Brown file on June 10, 2015 five months before his deadline of November 12, 2015. The office of the attorney General Johnny G. James, Jr., Staff Attorney had reasonable amount of time to inform applicant to re-file motion for resentencing they had five months your Honor, Sir. I am pleading for the full of mercy for the Court to construe applicant (KLB) application as a timely file motion for resentencing.

2016 NOV -9 PM 1:54

Respectfully Submitted

  
Kenneth Lee Brown 56822-004  
FCC Coleman usf-1  
P.O. Box 1033  
Coleman, IL 33521

This 31, Day of October 2016.

2 of 2.

clerk in mail back  
to petitioner

Exhibit (H)

State of South Carolina  
County of Spartanburg

Kenneth Brown, Jr. Sr.  
114440 petitioner,

7th Judicial Circuit  
Spartanburg County  
Court House

vs.

83-6542-16-10-19-

20-21-30-31

State of South Carolina

Writ of error Coram nobis

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2016 OCT 14 AM 9:57  
M. HOPE BLACKLEY

A writ calling the attention of the trial court to facts which do not appear on the record despite the exercise of reasonable diligence by the defendant and which if known and established at the time a judgment was rendered would have resulted in a different judgment. This petition for Writ of error Coram nobis on the ground that the United States Supreme Court ruling of *Cabern vs. Florida*, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010); and *Montgomery vs. Louisiana*, 2016. 8L 18277, U.S., no. 14-280, 01-25-2016.

the petitioner in this case Kenneth Brown, was  
 convicted in Spartanburg County Court House  
 January 28, 1983 for Burglaries, Criminal  
 Sexual Conduct 1st degree See Attachment's.  
 these crimes was committed while the  
 petitioner was 17 years of age. In Graham,  
 juvenile who was under 18 years of age  
 when he committed his crime. petitioner  
 Brown, turn 18 years of age on January 07, 1983  
 In Graham, vs. Florida, 560 U.S. \_\_\_\_\_, 2010  
 holding that the 8th Amendment prohibits  
 sentence of life without parole for a  
 nonhomicide crime committed while the  
 defendant was a juvenile, the defendant's  
 sentence of life imprisonment for sexual  
 offenses he committed while a juvenile  
 is quashed and the case is remanded for  
 resentencing. petitioner Brown was 17 when  
 crimes was committed, he received 5 life-  
 sentences for Burglaries and Criminal  
 Sexual Conduct 1st degree by having a  
 female perform oral sex on him. See Dates  
 on Indictment's.

FILED IN  
 CLERK OF COURT  
 SPARTANBURG COUNTY  
 SOUTH CAROLINA  
 2010 OCT 14 AM 9:57  
 MARGARET BLAIR  
 CLERK

the petitioner is now 51 years of age. the Graham Case, the Teague Case, and the Montgomery Case are retroactively in "All" states Courts Applies state Courts are Constitutionally Compelled to apply Teague, Committed the Crime at age 17. under Teague Vs. Lane, 489 U.S. 288 (1989).

Petitioner Kenneth Brown states this new ruling gives juveniles throughout the Country a second chance. the United States Supreme Court rule it's unconstitutional to impose life imprisonment to juveniles who committed nonhomicide crime "before their 18th Birthday. It's been 33 years. Since petitioner Brown sentenced which he receive 5 life sentence nonhomicide crime, even though 51 years old he is entitle to some 33 years later due to the retroactively in all state Courts. the petitioner Brown eighth Amendment Right was violated

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 CLERK OF COURT  
 MARTINEBURG COUNTY  
 2016 OCT 14 AM 9:57  
 MARY BRACKLEY

It Comes Some 33 years later, petitioner Brown's Sentence of 5 life Sentence was grossly disproportionate in Violation of his 8th Amendment Right. Sentencing a juvenile to life imprisonment for nonhomicide offense is unconstitutional.

the petitioner request for time served in his 1982 Criminal Case. And Court Issue new order to Clerk of Court to be sent out... to South Carolina Department of Corrections

See Attachment of Indictment's

Conclusion

petitioner seeks relief in the interest of

this 6th, Day of September 2016.

FILED  
CLERK OF COURT  
SOUTH CAROLINA COUNTY  
2016 OCT 11 AM 9:57  
M. HOPE BLACKLEY

Kenneth Brown #56822-004  
Coleman usp-1  
P.O. Box 1033  
Coleman, FL 33521

Exhibit (I)

State of South Carolina  
County of Spartanburg

Kenneth Lee Brown, pro se,  
Applicant;

Case No. 2015-CF-42-2548

v.

Motion To Grant  
Resentencing

State of South Carolina,  
Respondent.

Applicant Kenneth Lee Brown, who is a pro se, applicant is making this Motion for the Court to Grant him his Resentencing hearing. Because his Pet application was not time barred, it was made before November 12, 2015, because on November 12, 2014, the South Carolina Supreme Court held sentences of life without the possibility of parole that were imposed on "juveniles" violated the eighth amendment under Miller and that these individuals are "entitled" to "Resentencing pursuant to the United States Constitution. Aiken v. Byars, 410 S.C. 554, 765 S.E.2d 572 (2014).

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SPARTANBURG COUNTY  
AM10:12  
HOPE BLACKLEY

the South Carolina Supreme Court specifically ordered "any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the Court of General Sessions where he or she was originally sentenced."

In all fairness the applicant wasn't giving no-notice or did he receive notice from his attorney Michael Ludasill who represented the applicant on January 28, 1983, or did the Courts give applicant notice under these extraordinary circumstances this Honorable Court in the interest of Due Process of Law should constitute the fee application as the motion for resentencing, and also the fee application was file timely within the one year limit which started on November 12, 2014, and the applicant fee application was filed in June of 2015. This case marked a far-reaching step in the advance of human liberties.

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2016 OCT -4 AM 10:12  
M. HOPE BLACKLEY

The Respondent acknowledged in their Return and Motion to Dismiss, that the Applicant was 17 years of age at the time his crimes was committed and didn't turn 18 until January 02, 1983, and sentenced to five consecutive life-terms with an additional 30 years. It's now 33 years later and this Constitutional law was made retroactive in "All" States Courts.

Accordingly, on the basis of the decision of the United States Supreme Court, and the South-Carolina Supreme Court held sentences of life without the possibility of parole that were imposed on juveniles violated the eighth-amendment, and that these individuals are entitled to resentencing pursuant to the United States Constitution. The Applicant Kenneth Lee Brown, was sentenced and the crimes were nonhomicide, and Applicant was under the age of 18. The above made finding of fact, the Court should grant the Applicant's motion to the extent of ~~deleting~~

FILED  
CLERK OF COURT  
SPRINGFIELD COUNTY  
20th OCT -4 AM 10:12  
HOPE BLACKLEY

the sentences that he is now serving and  
thereupon bringing him before the Court  
for the imposition of new sentences.

this is the course of action the Court  
should follow if the facts are found in the  
applicant's favor.

Additionally § 17-27-70 (c) authorizes the Court  
to "grant a motion by either party for summary  
disposition of an application when it appears  
from the pleadings... that there is no genuine  
issue of material fact and the moving party  
is entitled to judgment as a matter of law".

therefore, to the injustice of the applicant,  
this Court should grant the ~~for~~ application  
as a timely motion for resentencing, and  
it was file timely within the one-year.

Review the Court records, it took the  
Respondent almost a year to reply back.  
they are the one who are time barred.

Retrospectively in all states Courts applies state  
Court's are constitutionally compelled to apply  
Teague, committed the crime at age 17

MADEPEBLACKLEY

2016 OCT -4 AM 10:12

CLERK OF COURT  
DELAWARE COUNTY

Applicant file his fee application on June 10, 2015. The one year deadline wasn't until November 12, 2015, so there was five months in-between then for the office of the Attorney General Post-Conviction Relief Division to inform the applicant what steps needed to be made, but they didn't, so therefore the Court should construe the fee-application as a timely file motion for resentencing, in the interest of Due Process of Law.

The applicant motion should be granted on the facts. Fourteenth Amendment, Due Process.

Respectfully Submitted:  
Kenneth Lee Brown, Sr.  
Applicant

Coleman vsp #1  
P.O. Box 1033  
Coleman, Florida 33521

This 26<sup>th</sup>, Day of September, 2016.

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2016 OCT -4 AM 10:12  
M. HOPE BLACKLEY

Page 5 of 5.

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JUN 26 2017

State of South Carolina  
County of Spartanburg

S.C. SUPREME COURT

Kenneth Lee Brown #56822-004  
Applicant,

In the Court of  
Common Pleas  
2015-CP-42-2548

v.

State of South Carolina - Affidavit of  
Respondent. Service by Mail

1. I am an inmate in Federal Prison Columbia, Florida.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of applicant motion to grant resentencing on the respondent in the matter, by depositing same in the United States mail postage prepaid.

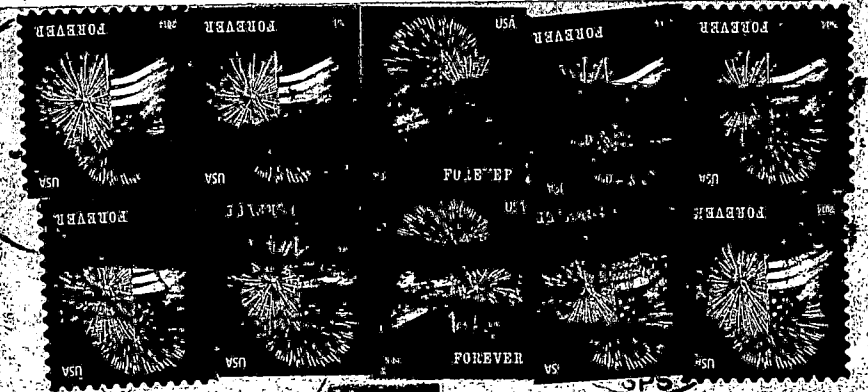
Office of the Attorney General  
Johnny A. James Jr.  
Attorney for the Respondent  
P.O. Box 11549  
Columbia, S.C. 29211

CLERK OF COURT  
SPARTANBURG COUNTY  
2016 OCT -4 AM 10:12  
M. HOPE BLACKLEY



This 26th Day of September, 2016.

Case # 56822-004 / Court  
and Complex asp #1

33521-1033



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The Supreme Court of South Carolina  
Daniel E. Shearouse, Clerk of Court  
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129211 SC 29211