

The STATE of South Carolina  
IN the Supreme Court

APPEAL From York County  
Court of Common Pleas  
John C. Hayes, III Circuit Court Judge  
Case No. 2015-CP-46-3132

Antonio T. Boyd #234274 . . . . . Appellant

V.

State of South Carolina . . . . . Respondent

Notice of Appeal

Applicant Antonio T. Boyd #234274 hereby appeals from the order of  
Honorable John C. Hayes III presiding Judge for the 16<sup>th</sup> Judicial Circuit  
dated June 25<sup>th</sup> 2017 and Received by Applicant on July 5<sup>th</sup> 2017 in the  
matter of Antonio T. Boyd V. State of South Carolina Case No. 2015-CP-46-3132

**RECEIVED**

JUL 14 2017

S.C. SUPREME COURT

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF YORK  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2015CP4603132

|                |  |                         |  |
|----------------|--|-------------------------|--|
| Antonio T Boyd |  | South Carolina State Of |  |
|----------------|--|-------------------------|--|

|                                |  |
|--------------------------------|--|
| <b>PLAINTIFF(S)</b>            | <b>DEFENDANT(S)</b>  |
| Submitted by: Justin J. Hunter | Attorney for: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant<br><input type="checkbox"/> Self-Represented Litigant |

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Rule 43(k), SCRPC (Settled);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:

**CONDITIONAL ORDER OF DISMISSAL**

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|--|--|--|
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If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

S/Daniel D. Hall  
 Circuit Court Judge

2753  
 Judge Code

11-14-2016  
 Date

**For Clerk of Court Office Use Only**

This judgment was entered on **November 29, 2016**, and a copy mailed first class or placed in the appropriate attorney's box on **November 29, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

**Antonio T Boyd** Kershaw Correctional Institution 4848  
Goldmine Hwy Kershaw, SC 29067

**Justin James Hunter** PO Box 11549 Columbia, SC  
29211-1549

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
*David Hamilton*

**Court Reporter**

\_\_\_\_\_  
**David Hamilton - Clerk of Court**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
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FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF YORK  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2015CP4603132

|                |  |                         |  |
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| Antonio T Boyd |  | South Carolina State Of |  |
|----------------|--|-------------------------|--|

|               |   |
|---------------|---|
| PLAINTIFF(S)  | DEFENDANT(S)  |
| Submitted by: | Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant<br><input type="checkbox"/> Self-Represented Litigant |

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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  - Rule 43(k), SCRPC (Settled);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk: FINAL ORDER OF DISMISSAL

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|--|--|--|
|  |  |  |
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If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

*s/ John C. Hayes, III.*  
 John C. Hayes, III.  
 Circuit Court Judge

2049  
 Judge Code

6/28/2017  
 Date

**For Clerk of Court Office Use Only**

This judgment was entered on June 29, 2017, and a copy mailed first class or placed in the appropriate attorney's box on June 29, 2017, to attorneys of record or to parties (when appearing pro se) as follows:

Antonio T Boyd Kershaw Correctional Institution 4848  
Goldmine Hwy Kershaw, SC 29067

Justin James Hunter PO Box 11549 Columbia, SC  
29211-1549

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

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**ATTORNEY(S) FOR THE DEFENDANT(S)**

David Hamilton

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**Court Reporter**

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**David Hamilton - Clerk of Court**

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 Antonio Tremaine Boyd, )  
 S.C.D.C. No. 234274, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2015-CP-46-3132

FINAL ORDER OF DISMISSAL

FILED-RECEIVED  
 2017 JUN 29 PM 4:31  
 DAVID HAMILTON  
 C.C. CP. & GS  
 YORK COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed October 15, 2015. Respondent made its return on or about November 8, 2016, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the rule against filing successive applications.

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 November 14, 2016 and filed November 29, 2016, provisionally denying and dismissing this action, while giving Applicant twenty 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, serving the above mentioned Conditional Order of Dismissal on Applicant December 9, 2016.


On December 12, 2016, Applicant filed a response to the Conditional Order of Dismissal. In this response, Applicant argues that he was advised that he would be eligible for parole but he recently learned that he is not eligible for parole. He argues that this entitles him to file his fourth PCR application. This Court finds that Applicant has failed to show that his application should

not be dismissed. Documents attached to Applicant's response include transcript excerpts from his plea hearing and a letter from the Department of Probation, Parole, and Pardon Services, both of which indicate that he is required to serve at least 85% of his sentence prior to release. After review of Applicant's response to the Conditional Order of Dismissal, along with the pleadings, this Court finds that Applicant has failed to show that his application should not be dismissed.

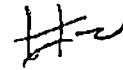
**IT IS THEREFORE ORDERED** that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

**AND IT IS SO ORDERED** this 26<sup>th</sup> day of June, 2017.



JOHN C. HAYES, III  
Chief Administrative Judge  
Sixteenth Judicial Circuit



g/mt, South Carolina.

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

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2016 NOV 29 PM 2:21  
COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Antonio Tremaine Boyd, #234274,

DAVID HAMILTON  
C.C.P. & GS  
YORK COUNTY, SC

2015-CP-46-3132

Applicant,

v.

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before this Court by way of an application for post-conviction relief filed October 15, 2015.

**Procedural History**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the April 1996 term of the York County Grand Jury for Attempted Armed Robbery (1996-GS-46-1278), Attempted Burglary, 1<sup>st</sup> Degree (1996-GS-46-1279), Assault with Intent to Kill (AWIK) (1996-GS-46-1280), Discharging a firearm into a dwelling (1996-GS-46-1281), Criminal Conspiracy (1996-GS-46-1282), Possession of a firearm (1996-GS-46-1284), Possession of a sawed-off shotgun (1996-GS-46-1285), and Contributing to the delinquency of a minor (1996-GS-46-1286)<sup>1</sup>. Henry T. Woods, Esquire, represented the Applicant. On June 3-6, 1996, the Applicant was found guilty by a jury. The Honorable Marc H. Westbrook sentenced the Applicant to confinement for twenty (20) years for Attempted Armed Robbery, thirty (30) years, concurrent for Attempted Burglary, 1<sup>st</sup> degree, ten (10) years, concurrent for AWIK, ten (10) years, concurrent, for Discharging a firearm into a

<sup>1</sup> The Applicant was also indicted for Burglary, 1<sup>st</sup> degree, Grand Larceny, Criminal Conspiracy, and Possession of a firearm. After he was found guilty of the above charges, the Applicant pled guilty to these four charges.

dwelling, five (5) years, concurrent, for Criminal Conspiracy, five (5) years, concurrent, for Possession of a sawed-off shotgun, five (5) years, consecutive, for Possession of a firearm during commission of a violent crime, and three (3) years, concurrent, for contributing to the delinquency of a minor.

A notice of appeal was filed and an appeal was perfected on the Applicant's behalf pursuant to Anders v. California. The South Carolina Supreme Court dismissed the Applicant's appeal on October 14, 1997 for failure by the Applicant to serve and file the initial brief and corresponding materials.

**1998-CP-46-1156**

The Applicant filed his first application for post-conviction relief on June 1, 1998. The Applicant raised the following issues in his first application:

1. Ineffective assistance of counsel
  - a) Failure to investigate allegations
  - b). Failure to prepare for trial
  - c) Failure to interview witnesses
  - d) Failure to put continuance in at the proper time

An evidentiary hearing was convened on March 6, 2000. The Applicant was represented by James C. Galmore, Esquire. The Honorable Kenneth G. Goode granted the Applicant's application by Order dated September 13, 2001.

A timely Notice of Appeal was filed on the State's behalf and an appeal perfected. The South Carolina Supreme Court reversed the PCR court's decision by Order dated May 19, 2003. Mem. Op. No. 2003-MO-034 (filed May 19, 2003).

**2012-CP-46-4301**

Applicant filed his second PCR application on December 17, 2012. In his application, Applicant claimed "Ineffective Assistance of Counsel" as a ground for relief. Respondent filed its

Return and Motion to Dismiss on March 20, 2013. The Honorable John C. Hayes, III issued a Conditional Order of Dismissal on May 8, 2013. After a thorough review of Applicant's response to the Conditional Order of Dismissal, Judge Hayes denied and dismissed his application.

**2014-CP-46-0877**

Applicant filed his third PCR Application March 24, 2014. In this Application, Applicant claimed "Ineffective Assistance of Counsel" as a ground for relief. Respondent filed its Return and Motion to Dismiss on September 8, 2014. The Honorable Lee S. Alford issued a Conditional Order of Dismissal that was filed September 26, 2014. After a thorough review of Applicant's response to the Conditional Order of Dismissal, Judge Hayes denied and dismissed his application.

#### **Current Application**

In his fourth and current Application, the Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "After discovered evidence (8-18-2015)"
  - a. "erroneous sentencing advice, counsel advised me to accept a plea for parole eligibility. I don't have parole at all."
  - b. "Trial Judge error in advising me on the firearm charge."

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

##### **Successiveness**

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding 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 burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

#### Statute of Limitations

This Court additionally finds that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement 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). The Applicant was convicted of the offense(s) he challenges in this Application on June 6, 1996. The

Applicant unsuccessful appeal was dismissed on October 14, 1997. Therefore, the Applicant was required to file his application by October 15, 1998. This Application was filed on October 15, 2015, which was well after the statutory filing period had expired.

#### **Newly Discovered Evidence**

Additionally, this Court finds that the current application for post-conviction relief must be summarily dismissed because it fails to make a prima facie showing that he is entitled to relief. See Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965).

Generally, an applicant may raise a newly discovered evidence claim within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence could have been ascertained. S.C. Code Ann. § 17-27-45(c) (2014). The credibility of newly discovered evidence is for the trial court to determine. State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977). The granting of a new trial of after-discovered evidence is not favored, and the Court of Appeals will affirm the trial court's denial of such a motion unless the trial court abused its discretion. State v. Harris, 391 S.C. 539, 706 S.E.2d 526 (Ct.App. 2011).

Applicant failed to file this PCR application within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence could have been ascertained, as required by S.C. Code Ann. § 17-27-45(c) (2014). The use of his prior convictions for purposes of sentence enhancement was known to applicant at the time of sentencing, and thus Applicant's newly discovered evidence claim is without merit. The evidence was actually available to Applicant and his counsel at his sentencing. Although Applicant claims no prior knowledge of this existing evidence, Applicant has failed to show that by exercise of due diligence, he could not have discovered such evidence sooner.

Applicant has failed to set forth any credible evidence and how its weight and quality require

his guilty conviction and sentence to be vacated in the interests of justice. Before the circuit court will hold an evidentiary hearing, Applicant must make a prima facie showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant failed to make a prima facie showing that he is entitled to relief based on the information set forth and, therefore, is not entitled to an evidentiary hearing in the matter. Accordingly, this matter shall be summarily dismissed with prejudice.

### CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The 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. The Applicant shall file any reasons he may have with the York County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Justin J. Hunter, Esquire  
P.O. Box 11549  
Columbia, S. C. 29211

AND IT IS SO ORDERED this 4<sup>th</sup> day of November, 2016.



DANIEL DEWITT HALL  
Chief Administrative Judge  
Sixteenth Judicial Circuit

York, South Carolina

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated T. Summers (*Server*) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA )  
COUNTY OF Concater )

AFFIDAVIT OF PERSONAL SERVICE

On this 9<sup>th</sup> day of December 2016, I served the Conditional Order of Dismissal, on Inmate Antonio Boyd, SCDC Inmate #234274, by delivering personally and leaving a copy of the same at Kershaw Correctional Institution. Deponent is not a party to this action.

s/ T. Summers

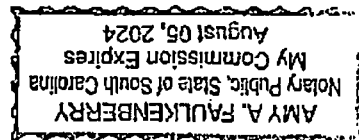
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 9<sup>th</sup> day of December, 2016

Amy A. Faulkenberry (L.S.)  
Notary Public for South Carolina

My Commission Expires: 8-5-24



ADMISSION OF SERVICE

Service of a copy of the within Conditional Order of Dismissal is admitted at the South Carolina Department of Corrections (Kershaw Correctional Institution), Kershaw County, SC this 9<sup>th</sup> day of December, 2016.

s/ Antonio Boyd  
Inmate  
SCDC Inmate #: 234274



The State of South Carolina  
IN the Supreme Court

Appeal from York County  
Court of Common Pleas  
John C. Hayes III Circuit Court Judge

Case No. 2015-CP-46-3132

Antonio T. Boyd # 234274, . . . . . Appellant

V.

State of South Carolina . . . . . Respondent

Proof of Service

I Antonio T. Boyd X on this 12 day of 8 2017, I  
served the notice of Appeal to the South Carolina Supreme Court

sworn to and subscribed before me  
this 12<sup>th</sup> day of July 2017

Cathrine A. Amos X

Notary Commissioner expires: December 23, 2018

**RECEIVED**

JUL 14 2017

S.C. SUPREME COURT

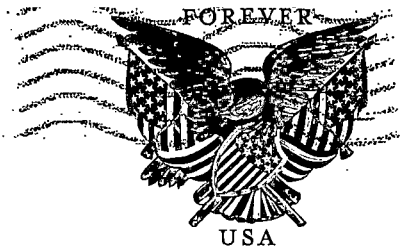
Antonio T. Boyd # 2591214  
Mag B-14

Kershaw Correctional Inst.  
4848 Goldmine Highway  
Kershaw S.C. 29067

Daniel E. Shearouse  
P.O. Box 11330  
Columbia, S.C. 29211

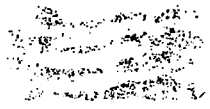
COLUMBIA SC 29211

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THE DIRECTOR OF THE  
 CENTRAL INTELLIGENCE  
 AGENCY  
 ATTENTION: [illegible]  
 1600 [illegible]  
 WASHINGTON, DC 20505

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