

# BLUME FRANKLIN-BEST & YOUNG, LLC

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RECEIVED

July 24, 2017

JUL 26 2017

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse  
Clerk  
South Carolina Supreme Court  
P.O. Box 11330  
Columbia, S.C. 29211

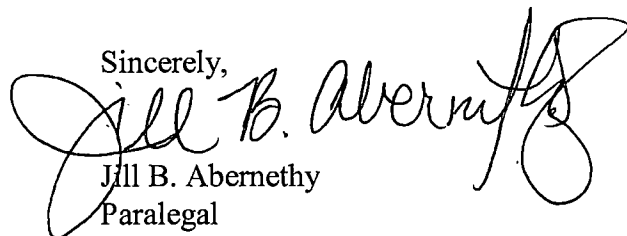
Re: *Eugene Patterson v. State of South Carolina*  
Case No. 2016-001067

Dear Mr. Shearouse:

Please find enclosed for filing, with certificate of service, the original and seven copies of Petitioner's Reply Brief. Please clock-in the extra copy and return it to me in the enclosed self-addressed stamped envelope.

If you should have any questions, please do not hesitate to contact this office.

Sincerely,



Jill B. Abernethy  
Paralegal

Enclosure

cc: Clay Mitchell, Esq.

IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

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JUL 26 2017

S.C. SUPREME COURT

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2016-001067

Eugene Patterson.....Petitioner,

v.

State of South Carolina.....Respondent.

REPLY BRIEF

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## ARGUMENT

Petitioner maintains that he is entitled to relief for the reasons presented in his petition for writ of certiorari, and respectfully asks this Court to grant the writ and allow additional briefing on these issues. Petitioner, however would like to address the issue of the procedural bar that exists with regard to Petitioner's claim that his appellate counsel rendered ineffective assistance of counsel for failing to raise the issue of the trial court's erroneous submission of the mutual combat jury instruction to the jury. Since Petitioner submitted his Petition for Writ of Certiorari, there have been two opinions issued which may impact this Court's decision to grant the writ. First, the United States issued its opinion in *Davila v. Davis*, 582 U.S. \_\_\_, 137 S. Ct. 2058 (2017). And, too, this Court issued its opinion in *Farid A. Mangal v. State of South Carolina*, Op. No. 27726 (filed July 19, 2017).

First, in *Davila*, the Supreme Court has made clear that it will not expand the equitable exception it recognized in *Martinez v. Ryan*, 566 U.S.1, 132 S. Ct. 1309, 182 L. Ed. 2d 272 (2012) to include waiver of default principles for inmates who received ineffective assistance of appellate counsel:

The Court in *Martinez* made clear that it exercised its equitable discretion in view of the unique importance of protecting a defendant's trial rights, particularly the right to effective assistance of trial counsel. As the Court explained, "the limited nature of its holding "reflect[ed] the importance of the right to the effective assistance of trial counsel," which is "a bedrock principle in our justice system." 566 U.S., at 12, 16 (emphasis in opinion). In declining to expand the *Martinez* exception to the distinct context of ineffective assistance of appellate counsel, we do no more than respect that judgement.

*Davila*, 137 S. Ct. at 2066-67.

Relevant to this case, the Court's opinion shows that Petitioner will not likely be able to have the federal court review his claim that he received ineffective assistance of appellate counsel when counsel failed to raise the properly preserved issue of an erroneous jury instruction on the mutual combat charge. Unless this Court reviews the claim, it will never be reviewed.

Secondly, on July 19, 2017, this Court issued its opinion in *Farid A. Mangal v. State of South Carolina*, *supra*. In this case, this Court directed the PCR courts to find "reasonable ways" to "reach the merits of substantial issues." While it is true that PCR counsel did not provide any evidence on this claim at the PCR hearing, current counsel is prepared to do so-- and quickly--, and now respectfully asks this Court to remand this one particular issue back to the PCR court so that the PCR court can rule on the merits on the claim in light of this Court's recent direction to the lower courts:

The Supreme Court's decision in *Martinez* reminds us that the Sixth Amendment guarantee of effective assistance of counsel is a "bedrock principle in our justice system." *Simmons* and *Martinez* counsel us that there are situations where the interests of justice require PCR courts to be flexible with procedural requirements before PCR applicants suffer procedural default on substantial claims. Such flexibility is consistent with the purpose and spirit of our Rules of Civil Procedure.

These considerations should guide PCR courts when struggling to balance procedural requirements against the importance of the issues at stake in PCR proceedings. We encourage trial courts in PCR cases to use the discretion we grant them on procedural matters to find reasonable ways-- within the flexibility of our Rules-- to reach the merits of substantial issues.

*Mangal*, pp. 10-11.

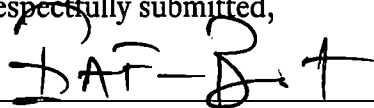
Although counsel believes that an assessment of the claim can be made without additional factual development, it is more consistent with this Court's practice to allow lower courts the first opportunity to pass on a claim. Petitioner respectfully asks this Court for the opportunity to do so.

Petitioner respectfully requests a remand for a brief hearing before the Honorable G. Thomas Cooper, Jr.-- to be held within sixty days-- to allow that court to pass upon this claim so that it is properly preserved and then raised for this Court's review.

### CONCLUSION

For these preceding reasons, Petitioner respectfully asks this Court for a very brief remand. In the alternative, Petitioner respectfully asks this Court to grant his petition for writ of certiorari, and allow additional briefing on these issues.

Respectfully submitted,

  
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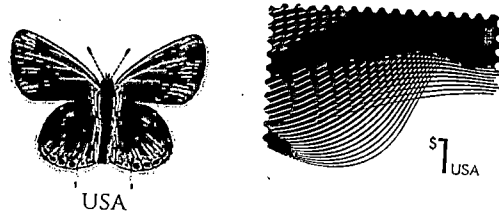
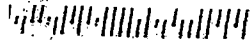
CERTIFICATE OF SERVICE

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The undersigned hereby certifies that a copy of the Petitioner's Reply Brief was served by first class United States mail, postage prepaid, this 24<sup>th</sup> day of July, 2017, upon the following:

Clay Mitchell  
South Carolina Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211

  
Jill B. Abernethy



NON-MACHINEABLE SURCHARGE 2016



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