

JUNE 23, 2017

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DANIEL E. SHEAROUSE, CLERK OF COURT
IN THE SUPREME COURT OF SOUTH CAROLINA
POST OFFICE BOX 11330
COLUMBIA, SO. CAR. 29211

JUL 31 2017

S.C. SUPREME COURT

RE: STEVEN W. LITTLEJOHN, PETITIONER V. STATE OF SOUTH CAROLINA, RESPONDENT
APPELLATE CASE NO. 2017-001054
LOWER COURT CASE NO. 2015-CP-11-0242

Dear Clerk,

PLEASE FIND ENCLOSED AN ORIGINAL COPY OF THE MOTION TO RECONSIDER WITH EXHIBITS AND PROOF OF SERVICE ON THE ATTORNEY GENERAL'S OFFICE.

ALSO, PLEASE FIND ENCLOSED A SELF ADDRESSED STAMPED ENVELOPE CONTAINING THE COVER LETTER AND PROOF OF SERVICE IN THE ABOVE CAPTIONED CASE TO BE "CLOCKED-DATE-STAMPED", FILED BY YOUR OFFICE AND CLOCKED IN COPY OF THE SAME RETURNED TO ME PURSUANT TO RULE 602 SCACR, AS SOON AS FEASIBLE.

CC: VALERIA GIOVANNOLI
BRANDY McBEE

Respectfully Submitted,
Steven W. Littlejohn
SCDC NO. 321946

July 23, 2017

J. Mark Hayes, II, Judge
Circuit Court Judge, At Large, Seat 5
180 Magnolia Street, 2nd Floor
Spartanburg, South Carolina 29306

Re: Steven W. Littlejohn Petitioner V. State of South Carolina Respondent
Appellate Case No. 2017-001054
Lower Court Case No. 2015-CP-11-0242

Dear Judge Hayes:

Please find enclosed a copy of the original letter I received from your office stating your ruling that agreed with the State's position that the lower court lacked jurisdiction in this matter concerning the Applicant's timely filed Rule 52 Motion (SCRCP) regarding an amendment to correct an obvious error in the conditional order of dismissal that (R) falsely alleged that the (A) inappropriately used a SCACR Rule 224 that was placed in reserved by the South Carolina Supreme Court, to file a supplemental appendix, when it was in fact the (R)'s who deliberately presented known false evidence (Washington vs. State 478 S.E. 833)

In Part SCACR Rule 203(b) states: "When a timely motion to alter or amend the judgment (Rule 52 and 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of the entry of the order granting or denying such motion." A motion is timely if it is served not

1-OR-4

✓

Later than 10 days After receipt of written notice of the entry of the order." (Conard Hund Const Co. v. Ball Corp. 336 S.C. 518 S.E. 2d 56, 57 (Ct. App. 1999), Canal Ins. Co. v. Caldwell 338 S.C. 15, 524 S.E. 2d 416, 418 (Ct. App. 1999), Otten v. Otten 287 S.C. 166, 167, 337 S.E. 2d 207, 208 (1985), Gardner v. Newsome Chevrolet-Buick Inc. 304 S.C. 328, 404 S.E. 2d 200 (1991)).

Here, the (A) received the order denying his motion to reconsider on April 17, 2017 (Exhibit No. 2) and filed his Rule 52 motion to amend on April 26, 2017 (9 days after receipt) of the order (Exhibit No. 1A, 2A) (A) submits that his Rule 52 motion was timely filed and the Court had jurisdiction therefore this ruling is controlled by an error of law that deprived the (A) of a mode of trial to correct an obvious error in the conditional order of dismissal of a false allegation by the (R) to which the (A) is entitled to as a matter of right, the order is immediately appealable and reversible (Cobb v. S.C. Dept. of Trans. 365 S.C. 360)

Also, this letter dated July 10, 2017 indicates that a carbon copy was sent to Valerie Giovanetti Esq. Assistant Attorney General, with attachments. However, the (A) did not receive these same attachments. Pursuant to Rule 5(b)(3) SCRPC (A) request these same documents to be sent to him ASAP.

As a procedural matter, based upon the rules, a timely filed motion stays the appeal for all parties, tolling the time until a written notice is received. In this case, the rule 52 motion denial was received May 23, 2017 dated May 17, 2017 from the Supreme Court, therefore, this ruling by the lower court is in error as there is no known order from the High Court

that Authorizes this irregular Procedure thereby Procedurally Defaulting the (A) Claim (Exhibit No. B) and Violating his Due Process.

The (R) would not be prejudiced by this motion because by the rules, this court did have Jurisdiction due to the 52 Motion being timely Filed. It is prejudicial to (A) for the Court to Allow this FALSE Allegation to go uncorrected due to the (R) Attempt to white WASH the issue of their use of SCACR Rule 224 while placed in reserve by the S. C. Supreme Court. The (R) Are without Any evidence to support their claim that has no merit. (A) has Provided Creditable evidence that the (R) used this rule (Exhibits No. 1, 1A, 2, 3, 4, 4A, 4B).

CONCLUSION

Pursuant to the holding in Matthew V. Ewart 105 F 3d 907 and the Procedural Irregularities that occurred in this case of the Denial of (A)'s 52 motion SCRC request and the irregular Procedures in this process that allowed this false Allegation to go uncorrected, Violating (A) Due Process rights.

(A) Prays that this Court will reverse its order or Any other remedy that the Court Deems just and Proper. (A) HAS Provided Irrefutable evidence and has not Violated Any rules. (A) Due Process right must be Protected.

Respectfully submitted,
Steven W. ~~Silley~~

Proof of Service

3 - OF 4

I Certify that I have served a copy of this "motion
To Reconsider" on Respondents Counsel of Record:
Valerie Giovanoli, Esq. S.C. Attorney General's Office,
P.O. Box 11549, Columbia, So. Car. 29211-1549 by
depositing the same in the United States mail,
postage prepaid on this July 23, 2017 with exhibits
A, B - exhibits 1A, 2A, 1 - Conditional Order of Dismissal -
1A, 3, 4, 4A, 4B - previously provided.

STEVEN W. Littlejohn No. 321946
T.C.I. SIA NO. 124B
1578 CLARENCE COKER HWY.
TURBEVILLE, S.C. 29162

CC: BRANDY MCBEE
DANIEL SHEAROUSE
VALERIE GIOVANOLO

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State of South Carolina
Circuit Court Judge, At-Large, Seat 5

J. MARK HAYES, II
JUDGE

180 MAGNOLIA STREET, 2ND FLOOR
SPARTANBURG, SOUTH CAROLINA 29306
TELEPHONE: (864) 562-4144
FAX: (864) 562-4142
E-MAIL: mhayesj@sccourts.org

July 10, 2017

Steven Littlejohn #321946
Turbeville Correctional Institution
1578 Clarence Coker Highway
Turbeville, South Carolina 29162

Re: Littlejohn v. State 2015-CP-11-0242

Dear Mr. Littlejohn:

Please be advised that I agree with Ms. Giovanoli's position that this court lacks jurisdiction over your case due to the matter being on appeal. Therefore, this court will not take any further action until directed by the appellate courts.

Respectfully,

J. Mark Hayes, II

CC: Valerie Giovanoli, Esq. w/attachments
Assistant Attorney General
SC Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211-1549

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JMHII/smw

EXHIBIT NO. A

The Supreme Court of South Carolina

Steven W. Littlejohn, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001054

Lower Court Case No. 2015CP1100242\

FILED IN THE OFFICE
CLERK OF COURT
2017 MAY 19 A 11:03
SHERIFF M. J. JOHNS
CHEROKEE COUNTY, SC

ORDER

The request for leave to file a motion under Rule 52 of the South Carolina Rules of Civil Procedure with the circuit court is denied.¹



C.J.
FOR THE COURT

Columbia, South Carolina
May 17, 2017

cc: Valerie Garcia Giovanoli, Esquire
Steven W. Littlejohn, 321946
The Honorable Brandy W. McBee

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¹ It does appear that the order denying the motion to reconsider does erroneously refer to the final order as being dated December 29, 2015. Instead, the final order is dated December 29, 2016, and was filed with the clerk of the circuit court on January 3, 2017. Because this error is so obvious, it is unnecessary for this Court to remand this case to the circuit court to correct this clerical error under Rule 60(a), SCRPC.

EXHIBIT B

April 26, 2017

The Honorable J. MARK HAYES, II
Chief Administrative Judge - CP, 7th Circuit
180 MAGNOLIA STREET
SPARTANBURG, So. CAR. 29306

RE: STEVEN W. LITTLEJOHN V. STATE OF SOUTH CAROLINA
2015-CP-11-0242

Dear Judge Hayes:

Sir, In your Final Order Dated April 7, 2017, it indicated that my Final Order of Dismissal was signed by the Court December 29, 2015. However, the Order indicates that it was December 29, 2016. Enclosed I have a copy of the Order and the Final Order of Dismissal which shows the correct signature date. (Exhibits NO. 1 + 2)

Your honor, As you know this needs to be corrected for Statute of Limitation purposes. I ask that you please amend the Order to reflect that (The Final Order of Dismissal in this matter was signed by this Court on December 29, 2016) in part.

Also, the Conditional Order of Dismissal Dated Sept 23, 2015 Page 5 of 9 (i) reflects that: Applicant inappropriately used a Rule, when it was the Respondent who used SCACR Rule 224 that had been placed

is Reserved. I would also ask that it be changed to reflect "Respondent" instead of "Applicant".

Enclosed is Page 5 of 9 (i.) of the Conditional Order of Dismissal and Exhibits NO. 3-7 Pages 24, 25, 26, and 27 of 29 - for your inspection and review from the Applicant original application.

I want to thank you for your thoughtful consideration in this matter.

With Kind Regards,
Steven W. Long
SCDC NO. 321946

CC: Daniel E. Shearouse, Clerk of So. Car. Supreme Court
Valerie Giouanoli, Assistant Attorney General
Brandy McBee, Clerk of Court, Cherokee County

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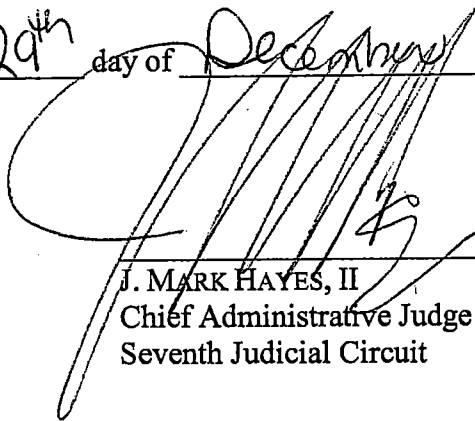
APR 26 2017

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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 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 29th day of December, 2016.



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

Cherokee, South Carolina.

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CHEROKEE COUNTY, SC

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STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

Steven W. Littlejohn, #321946,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2015-CP-11-0242

ORDER

This matter comes before the Court by way of Applicant's *pro se* document titled "Motion to Reconsider." The Respondent made its Return to this Motion requesting it be dismissed.

The Final Order of Dismissal in this matter was signed by this Court on December 29, 2015. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's response and objections, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the original Order of Dismissal, which was signed and then filed January 3, 2017, shall stand as it was written.

AND IT IS SO ORDERED this 7th day of April, 2017.



J. Mark Hayes, II
Seventh Judicial Circuit

Cherokee, South Carolina

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2017 APR 12 A 11:04
CHEROKEE COUNTY, SC



STATE OF SOUTH CAROLINA)
 COUNTY OF CHEROKEE)
 Steven W. Littlejohn, # 321946,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

2015-CP-11-0242

CONDITIONAL ORDER OF DISMISSAL

FILED IN THE OFFICE
 CLERK OF COURT
 15 SEP 23 P 6:11
 BRANDY W. MOORE
 CHEROKEE COUNTY, GA

This matter comes before this Court on an application for post-conviction relief (PCR) filed by Steven W. Littlejohn (Applicant) on March 17, 2015. The State (Respondent) made its return, requesting the application be summarily dismissed for failure to file within the time period mandated by the statute of limitations; and because it is barred by the doctrine of *laches*.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Cherokee County. Applicant was indicted at the May 2006 term of the Cherokee County Grand Jury for two counts of Possession with Intent to Distribute (PWID) Cocaine near School and/or Playground (06-GS-11-412; -414), one count of Possession with Intent to Distribute Crack Cocaine (06-GS-11-415 and one count of Trafficking in Cocaine, 28-100 g; third offense (06-GS-11-416). He was represented on the charges by Roger J. Poole, Esquire. On May 21, 2007, Applicant pleaded guilty to two counts of PWID cocaine near School and/or Playground, PWID Cocaine, and Trafficking in Cocaine, second offense. He was sentenced by the Honorable J. Derham Cole to confinement for a period of ten (10) years on each count of the PWID Cocaine near School or Playground, fifteen (15)

RKK

~~Exhibit NO. 1A~~

- i. Applicant inappropriately used a rule of Appellate procedures that was no longer applicable and was reserved by the Supreme Court; being rule 224 SCACR, thus prejudicing Applicant and defaulting his claim.

2. Ineffective assistance of appellate counsel.

Before this Court are the Cherokee County Clerk of Court records regarding the subject guilty plea, records from the South Carolina Department of Corrections, records from Applicant's prior PCR proceedings, and Respondent's Return and Motion to Dismiss.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

This Court finds the present application for post-conviction relief should be summarily dismissed because it successive to Applicant's previous PCR application. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). The relevant statute provides

[a]ll 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.

S.C. Code Ann. § 17-27-90 (2014). Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application

RKK

~~Exhibit NO. 17-1A~~

Exhibit "A"

Rule 224 SCACR,

Inapplicable, based

On Reserved /

Erroneous motion submitted

past the statute of limitation

On Writ of Certiorari

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CHEROKEE COUNTY, S.C.
2015 MAR 11 AM 11 20
BRANDY W. MCBEE

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CHEROKEE COUNTY, S.C.
2015 JAN 23 AM 11 16
BRANDY W. MCBEE
CLERKED IN ERROR

Exhibit "A"

Mary McCabe

From: Chris Florian
Sent: Wednesday, May 23, 2012 9:32 AM
To: Mary McCabe
Subject: RE: Scan from a Xerox WorkCentre

Reserved means that there is no Rule 224, they are keeping it as a placeholder. This was done by way of Supreme Court Order dated 5/3/2007.

Chris

-----Original Message-----

From: Mary McCabe
Sent: Tuesday, May 22, 2012 6:14 PM
To: Chris Florian
Subject: RE: Scan from a Xerox WorkCentre

We need to know what this means: "Reserved" in 2009. And what month did it take effect?
mhm

-----Original Message-----

From: Chris Florian
Sent: Tuesday, May 22, 2012 9:02 AM
To: Mary McCabe
Subject: RE: Scan from a Xerox WorkCentre

Rule 224 was marked "RESERVED" in 2009.

Chris

-----Original Message-----

From: Mary McCabe
Sent: Monday, May 21, 2012 6:07 PM
To: Chris Florian
Subject: FW: Scan from a Xerox WorkCentre

Mr. Florian, here's another I need answered. Thanks in advance. mhm

-----Original Message-----

From: DoNotReply@doc.state.sc.us [mailto:DoNotReply@doc.state.sc.us]
Sent: Monday, May 21, 2012 7:09 PM
To: Mary McCabe
Subject: Scan from a Xerox WorkCentre

Please open the attached document. It was scanned and sent to you using a Xerox WorkCentre.

Attachment File Type: PDF

WorkCentre Location: Tyger River CI UY Education (DC015106) 896-3527

For more information on Xerox products and solutions, please visit <http://www.xerox.com>

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CHEROKEE COUNTY, S.C.
2015 MAR 17 AM 11 20
BRANDY W. MCBEE

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CHEROKEE COUNTY, S.C.
2015 JAN 23 AM 11 15
BRANDY W. MCBEE

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25 OF 29

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35 OF 40

EXHIBIT 10-3

10

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO CHEROKEE COUNTY
Court of Common Pleas

The Honorable Kenneth G. Goode, Circuit Court Judge
2007-CP-11-495

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
BRANDY W. MOBBE
2015 APR 17 PM 11:20
APR 11 15

Steven Wayne Littlejohn, 321946.....

v.

State of South Carolina,.....

Petitioner
Respondent

MOTION TO CORRECT THE RECORD AND FILE A SUPPLEMENTAL APPENDIX

Pursuant to Rule 224 of the South Carolina Appellate Court Rules, counsel for Respondent moves for

this Court to allow the Respondent to correct the record and file a supplemental Appendix in this case. It has come to the Respondent's attention that the guilty plea transcript found in the appellate record contains a material typographical error.

The Petitioner claims he was not informed of a five-year plea deal prior to his pleading. This claim is based on the appearance of the word "five" on page 3 of his guilty plea transcript. (App. p. 109). The court reporter has sworn by an attached affidavit that the word "five" should actually be the word "fifteen." Page 109 of the Appendix reflects page 3 of the guilty plea transcript. Lines 15-17 currently read, "The state and his attorney, Mr. Roger Poole, have negotiated a sentence of five years to run concurrent on all of these charges." These lines should be corrected to read, "The state and his attorney, Mr. Roger Poole, have negotiated a sentence of fifteen years to run concurrent on all of these charges."

The Petitioner did not raise his allegation of a five-year plea offer in his post-conviction relief

1
26 OF 29
~~26 OF 29~~

Exhibit NO. 4

~~ATTACHMENT 76~~ GROUND 2
~~36 OF 40~~

application. He briefly raised it at his post-conviction relief hearing, noting that he had not heard anything about a five-year offer until he read his guilty plea transcript. Though the Petitioner mentioned it in his testimony, the record indicates it was not the focus of the PCR hearing. It was not until his Petition for Writ of Certiorari that the Petitioner made substantial argument on the appearance of the word "five" in his guilty plea transcript.

The Petitioner enumerated 31 allegations in his post-conviction relief application, but none of them related to the typographical error discussed herein. The Respondent did not investigate the appearance of the word "five" in the transcript prior to the post-conviction relief hearing because the Petitioner failed to notify the Respondent he intended to raise this issue. At the time of the PCR hearing, the Respondent believed the brief mention of a five-year negotiation was a misstatement by the solicitor. It was clear in following paragraphs that all parties appearing in the record understood the plea negotiation to be for fifteen years rather than five years.

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CLERK OF COURT
CHEROKEE COUNTY, S.C.
APR 11 20
BRADY, MBBE

The claim regarding the five years was merely mentioned by the Petitioner and was not the focus of his PCR claim. Further, the PCR Court did not make a finding on this issue and the Petitioner failed to request a finding on this issue through a 59 (e) motion. Rather, the Petitioner raised the issue for the first time in a significant way during his Petition for Writ of Certiorari.

In preparing the State's response to the petition, the Respondent realized the guilty plea transcript possibly contained a significant typographical error. After speaking with the court reporter, Linda Moffitt, it became clear that where the record reflects the solicitor mentioning a five-year negotiation, the solicitor actually stated it was a fifteen-year negotiation. Linda Moffitt was able to conclusively determine a typographical error had been made and the record is erroneous.

The Respondent requests this Court hold time in abeyance to allow for the correction of the error in the record. The Respondent moves to correct the record and supplement the appendix.

An accurate transcript is required for a full and fair review of the lower court's findings. Inasmuch as

2

27 OF 29
37 OF 40

EXHIBIT NO. 4A

the above records are relevant and pertinent material under Rule 227(e), SCACR that should be included in the Appendix, counsel moves this Court to allow the Respondent to include a corrected guilty plea transcript in a Supplemental Appendix.

WHEREFORE, as the Appendix is incorrect, counsel for Respondent requests this Court: (1) grant the motion to allow the Respondent to correct and supplement the Appendix and (2) hold time limits for the filing of the Return to Petition for Writ of Certiorari in abeyance until the motion is ruled upon.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MICHELLE PARSONS KELLEY
Assistant Attorney General
Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2015 MAR 17 AM 11 20
BRANDY W. MOBEE

By: Michelle Parsons Kelley
ATTORNEYS FOR RESPONDENT

September 9, 2009.

3 28 OF 29
38 OF 40

Exhibit 4B

STEVEN W. LITTLE JOHN NO. 321946

T.O.I. S/A No. 124 B

1578 CLARENCE COKE'S HWY.

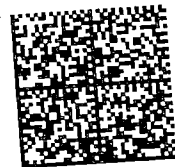
TURBEVILLE, SO. CAR.

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UNITED STATES POSTAGE

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In The Supreme Court of South Carolina
Post Office Box 11330
Columbia, So. Car.

29211