

**FOURTEENTH CIRCUIT PUBLIC DEFENDER  
COLLETON COUNTY OFFICE  
319 NORTH LUCAS STREET  
WALTERBORO, SOUTH CAROLINA 29488**

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OCT 05 2017

S.C. SUPREME COURT

**(843) 549-1633 (Office)  
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October 2, 2017

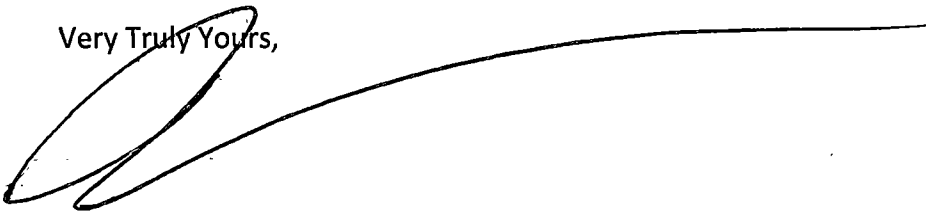
The Supreme Court of South Carolina  
The Honorable Daniel E. Shearouse, Clerk of Court  
P.O. 11330  
Columbia, SC 29211

Re: Walter McQune vs. State of South Carolina  
Case no.: 2013-CP-15-00214

Dear Mr. Shearouse:

My rationale was that Mr. McQune was not competent at the time of his first P.C.R, as I set forth in my proposed order (copy of which I enclosed). Let me know if you need anything else.

Very Truly Yours,



David S. Mathews

Encl.

Cc: Walter McQune (without enclosures)  
Ruston Wesley Neely, Esquire (without enclosures)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF COLLETON )  
  
WALTER J. McQUNE, )  
 )  
Applicant, )  
 )  
Vs. )  
 )  
STATE OF SOUTH CAROLINA, )  
 )  
Respondant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO.:2013-CP-115-00214

*PROPOSED*

ORDER GRANTING RELIEF

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S.C. SUPREME COURT

This matter came before this Court in a previously scheduled hearing in Colleton County on the Defendant's Petition for Post-Conviction Relief, upon consideration of the testimony of the Applicant, I grant the application.

The procedural history of this case is as follows:

During the August, 2003, term of the Colleton County Grand Jury Walter McQune was indicted for Murder in Colleton County. His trial attorney was Everett Bennett. Among the evidence collected at that time was a video-taped statement by McQune. On February 5, 2004, McQune and his attorney appeared before the Hon. Jackson V. Gregory, and McQune pled guilty to voluntary manslaughter, and was sentenced to 25 years in prison. On October 15, 2004, McQune filed a petition for a writ of habeas corpus requesting post-conviction relief, alleging, among other things, that McQune was not competent at the time of his plea, and that his counsel was aware that by McQune had attempted suicide while McQune was in jail awaiting trial, and that his trial attorney was ineffective because he did not move for a Blair hearing and

psychological evaluation to determine McQune's competency. Michelle Suggs, of the North Charleston bar represented McQune in the PCR matter. McQune's PCR attorney did request a psychological evaluation. A partial copy of that evaluation by Randolph Waid, PhD is included within the Court's record. Dr. Waid includes a finding that McQune was not competent at the time of that evaluation, but that there was nothing from the materials that Waid reviewed to convince him that McQune was incompetent at the time of his plea. On August 8, 2007, McQune appeared before Hon. Carmen Mullin for a hearing on McQune's PCR petition, and McQune and his attorney signed a consent order voluntarily withdrawing the PCR application.

On March 19, 2013, McQune filed a subsequent PCR application alleging, among other things, that he was not competent at the time that he waived his first PCR application, and requesting a new hearing. Ruston Nealy, from the South Carolina Attorney General's office, filed a motion to dismiss McQune's PCR petition, alleging that the action was duplicative. On December 15, 2014, Hon. Perry M. Buckner, Jr., issued a conditional order granting the A.G.'s motion to dismiss, and caused to be sent a demand that McQune provide reasons why the conditional order of dismissal ought not to be permanently granted within 20 days of the date of service of the conditional order on him. The Court did not receive a response within the time ordered, and a final order of dismissal was signed and filed on April 21, 2017. Subsequent to the entry of the final order, the court received the Defendant's response objecting to the temporary order, and requesting that his PCR petition be amended to include additional grounds for setting aside his conviction. At hearing, McQune averred, and the A.G.'s office did not contest, that

McQune had not be served with the temporary order of dismissal until months after the order had been issued, apparently because the order had been held at the prison where McQune was being detained, without serving McQune with that order, and that McQune, in a timely fashion after having received the order, did send his response to the Colleton County Clerk's office. David Mathews was appointed to represent McQune in PCR petition, and a hearing was commenced at the Hampton County Courthouse on June 7, 2017. That hearing was continued because McQune's counsel did not have complete discovery, and was recommenced at the Colleton County Courthouse on August 10, 2017.

At that hearing, the Petitioner responded, and the A.G. did not deny, that McQune responded to the Conditional Dismissal with diligence in mailing his objections to the Court's Conditional Order of Dismissal, I found at hearing that it would be it would be fundamentally unfair to enter an order of Final Dismissal under the unique circumstances of this case, and I granted the Petitioner's motion to set aside the Final Order of Dismissal, and I allowed him to proceed to present his case for Post-Conviction Relief.

At hearing, I directed the Defendant to call any witnesses he may have, and he testified that, although he had, at the time of his first PCR application hearing, signed a consent order withdrawing his PCR application, and waiving his right to further application, that he had been evaluated by xxx and found not competent to stand trial. A copy of the evaluation was submitted as an exhibit. The Defendant further testified that his Post-Conviction Relief attorney, Ms. Suggs, had reviewed the videotapes of his confession in that case, and had informed him that the

confession may have been coerced. He further testified that his trial attorney, Everett "Eddie" Bennett, had not discussed the issue of coercion with him, and that he would not have pleaded guilty if that issue had been raised with him. No objection was made to Mr. McQuene's testimony, and the attorney for the Attorney General's office did not cross-examine Mr. McQuene, or call any witnesses on the State's behalf. Consequently, I find that the McQuene's plea to Voluntary Manslaughter was not knowingly made, and Order that the Defendant's conviction by plea to Voluntary Manslaughter on February 5, 2004, be set aside, and the Defendant be brought before the Court during the next scheduled term of Colleton County General Sessions Court for consideration of bond and the Murder charge for which he was indicted.

AND IT IS SO ORDERED, This \_\_\_ day of August, 2017.

*Not signed*  
\_\_\_\_\_  
Hon. Perry M. Buckner, Jr.