

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

AUG 04 2016

R. Lawton McIntosh, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2015-002614

The State of South Carolina Respondent,
v. Petitioner
John Garvin Appellant.

APPENDIX

John Garvin, Pro-se
990 Wisacky Hwy.
Bishopville, S.C. 29010
A Party Unrepresented
By Counsel

Other Counsel of Record:
J. Benjamin Aplin, Sr. Asst. Deputy Att'y. Gen.
South Carolina State Att'y. Gen. Office
1000 Assembly Street
Columbia, S.C. 29211
Attorney for Respondent

Alan Wilson, Attorney General
South Carolina State Att'y. Gen. Office
1000 Assembly Street
Columbia, S.C. 29211
Attorney for Respondent

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The South Carolina Court of Appeals

The State, Respondent,

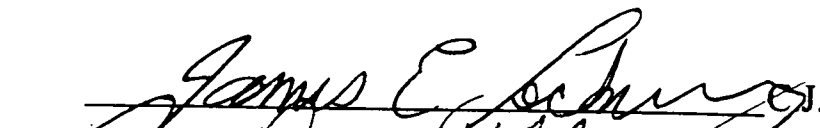
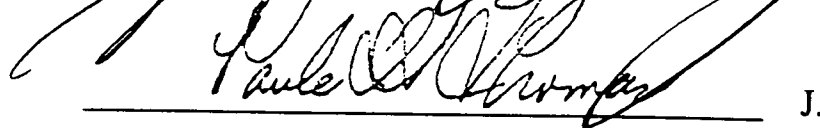
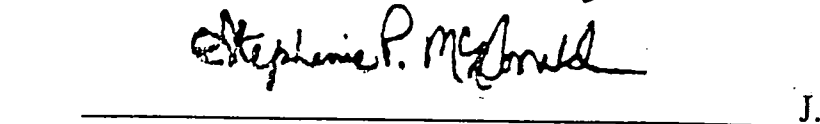
v.

John Garvin, Appellant.

Appellate Case No. 2015-002614

ORDER

This appeal was dismissed due to Appellant's failure to timely serve the notice of appeal on Respondent. Appellant has now filed a motion to reinstate the appeal, which we construe as a petition to rehear the dismissal of the appeal. Because Appellant did not serve the notice of appeal on Respondent within ten days of Appellant's receipt of the circuit court's order, this court properly dismissed the appeal. *See* Rule 203(b)(2), SCACR (providing that the notice of appeal must be served on all respondents within ten days after receipt of written notice of entry of the circuit court's order); Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended . . ."); *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985) (explaining the notice of appeal is a jurisdictional requirement, and the appellate courts have no authority to extend the time in which the notice of intent to appeal must be served). Accordingly, there is no basis for granting a rehearing, and the petition for rehearing is denied.

 J.
 J.
 J.

FILED

July 7, 2016

Columbia, South Carolina

cc:

John D Garvin, 355509

Robert Michael Dudek, Esquire

Alan McCrory Wilson, Esquire

John Benjamin Aplin, Esquire

James Edward Hunter, Esquire

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions**

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-002614

The State of South Carolina Respondent,
v.
John Garvin Appellant.

**REPLY TO RESPONDENT'S RETURN / RESPONSE
TO MOTION TO VACATE AND SET ASIDE DISMISSAL
AND TO REINSTATE ACTION**

This Reply is in response to the Respondent's disparaging Return / Response to Appellant's Motion to Set Aside Dismissal and to Reinstate Action. Initially, for the reason set forth below, Appellant submits that the respondent's condemnation of his motion. Would be to deprive him of his right to judicial recourse to correct an abuse of discretion by his Trial Judge, Honorable R. Lawton McIntosh. However, In the interest of justice the appellant makes this Reply / Response to prevent a Miscarriage-of-Justice. And would respectfully show unto this court:

1. The appellant has only a G.E.D. with no legal education. And is just a layman of the law with no actual skill in the science of law.
2. The respondent would have this court to believe that, petitioner's Motion to Set Aside Dismissal and to Reinstate Action is a nullity. Because "At the time of

filing, Appellant did not serve the Notice of Appeal on the State, either by serving the Solicitor or serving the Attorney General's Office."

3. The Appellant states that Spartanburg County Clerk of Court had determined that his notice of appeal was submitted timely and in good faith and was clock stamped on November 30, 2015, See Exhibit - D1 thru D3, and had advised him to send a copy of it to the Attorney Generals Office in a December 2, 2015, notice letter. See Exhibit - AA (A notice letter from Spartanburg County Clerk of Court; advising him that "copies are enclosed, you also need to send Attorney Generals office a Copy.")

4. On December 8, 2015, Appellant mailed copies of his Notice of Appeal and Certificate of Service that was within ten (10) days of Spartanburg County Clerk of Court notice letter, to Respondent. See Exhibit--AA. To whereas, the respondent has admitted to having received on December 10, 2015. Well within the ten (10) days as required by Rule - 203(b)(2), S.C.A.C.R., in a criminal case an appellant must serve a notice of appeal on all respondents within ten (10) days after the sentence is imposed, or within ten (10) days after receipt of written notice of entry of the order or judgment.

5. The Spartanburg County Clerk of Court and The South Carolina Court of Appeals Clerk has determined that appellant's notice of appeal was submitted timely and in good faith. Those two courts notified appellant about deficiencies with his notice of appeal and his proof of service, with a letter indicating the deficiency. See Exhibit - AA and Exhibit - E. Appellant corrected his mistakes in accordance

with South Carolina Appellant Court Rules well within the ten (10) days after the dates of the Clerk's letters, which was deemed timely.

6. Now, despite the fact that the respondent has misled this court in bad faith with the use of the Appellant Court rules as a subterfuge to deprive appellant of his right to appeal, his trial judge's November 9, 2015, order. Whereas, this court does actually have jurisdiction over Appellant's case and must grant this appeal. See Hill v. South Carolina Dept. of Health and Environmental Control, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (Ct App. 1999) ("The service of a notice of appeal is a jurisdictional requirement"); See also Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992)("[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this court with an orderly mechanism through which to guide appeals in this state."). Thus, Appellant's inadvertent negligence should not be a ruse by the respondent's as a way to deprive him of his right to appeal.

WHEREFORE, having made a Reply / Response to Respondent's Return, the Appellant's Motion to Set Aside Dismissal and to Reinstate Action Should be granted by this court in the interest of justice to prevent a Miscarriage-of-Justice.

Dated: June 7, 2016

Respectfully Submitted,

By: John Garvin
 John Garvin, # 355509, Pro-se
 Lee Correctional Institution
 990 Wisacky Highway
 Bishopville, S.C. 29010

Spartanburg County

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

Phone (864) 596-2591
Fax (864) 596-2259



M. Hope Blackley
Clerk of Court

Gail Moffitt
Assistant Clerk of Court

Date: 12-02-15
Name: John Garvin

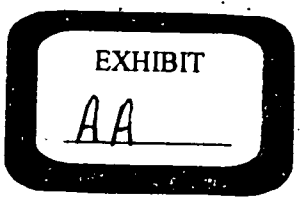
We have received your letter on _____ . The applicable response is checked below.

- I suggest you contact the Probation Office @ 180 Library Street, Spartanburg, SC 29306.
- I suggest you contact the Solicitor's Office @ 180 Magnolia Street, Spartanburg, SC 29306.
- I suggest you contact the Public Defender's Office @ 366 N. Church St., Spartanburg, SC 29306.
- I suggest you contact the Spartanburg County Jail @ 950 California Ave, Spartanburg, SC 29303.
- A copy of your letter has been forwarded to the Public Defender's Office.
- A copy of your letter has been forwarded to the Solicitor's Office.
- I suggest you contact your attorney.
- Please provide us with the original document.
- The reference case is not a General Sessions case.
- Grand Jury proceedings are held in private.
- Please provide us with a warrant or indictment number.
- Due to the large volume of requests, this office no longer conducts criminal records research.
- Case History print-out enclosed.
- A court date has not been scheduled for your case(s).
- A Plea/Trial date has been scheduled for _____ . (This date is subject to change)
- All copies are \$1.00 per page that must be paid in advance. Please submit a cashier's check or money order in the amount of \$ _____ .

Other: copies are enclosed, you also need to send Attorney General's Office a copy

If we can be of further assistance to you please let us know.

LaSmith
General Sessions Clerk



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

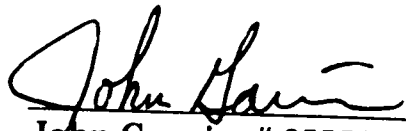
Appellate Case No. 2015-002614

The State of South Carolina Respondent,
v.
John Garvin Appellant.

PROOF OF SERVICE

I, John Garvin, Certify that I have served a Reply to Respondent's Return to Motion to Vacate and Set Aside Dismissal and to Reinstate Action on the respondent, The State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid on June 7, 2016, addressed to every party involved in the appeal. John B. Aplin and Alan Wilson, 1000 Assembly Street, Columbia, South Carolina 29211; V. Claire Allen, 1220 Senate Street, Columbia S.C. 29201; Robert Dudek, 1330 Lady Street, Columbia, S.C. 21211; and James E. Hunter, 180 Magnolia Street, Spartanburg, S.C. 29304-3483

Dated: June 7, 2016


John Garvin, # 355509, Pro-se
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

**John Garvin
Lee Correction Institution
990 Wisacky Highway
Bishopville, S.C. 29010**

**ATTN: Ms. V. Claire Allen, Deputy Clerk
% Jenny A. Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, S.C. 29201**

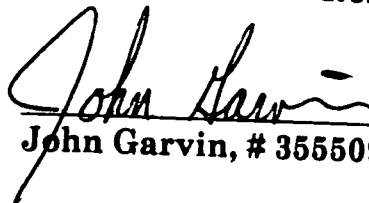
**RE: State v. Garvin, (Reply to Respondent's Return to Motion to Set
Aside Dismissal and to Reinstate Action)
Case No.: 2012-GS-42-5979; Appellate Case No.: 2015-002614**

Dear Ms. Allen,

Enclosed for filing is a **REPLY TO RESPONDENT'S RETURN TO MOTION TO SET ASIDE DISMISSAL AND TO REINSTATE ACTION** in the above case with **A PROOF OF SERVICE** of the **MOTION** on the respondent, in the format shown by Form 7 in Appendix C to part II of the S.C.A.C.R., which involves every party in the appeal.

Date: June 7, 2016

Respectfully,


John Garvin, # 355509, Pro-se

Enclosures

cc: Alan M. Wilson, Esquire
John B. Aplin, Esquire
Robert M. Dudek, Esquire
James E. Hunter, Esquire

STATE OF SOUTH CAROLINA
In the Court Of Appeals

APPEAL FROM SPARTANBURG COUNTY
R. Lawton McIntosh, Circuit Court Judge

Trial Court Case No. 2012-GS-42-05979
Appellate Case No. 2015-002614

THE STATE,

Respondent,

v.

JOHN GARVIN,

Appellant.

**RETURN TO MOTION REQUESTING LEAVE BE GRANTED
BASED UPON AFTER DISCOVERED EVIDENCE**

Initially, for the reasons set for the below, Respondent (the State) submits Appellant’s May 13, 2016, *pro se* “Motion to Set Aside Dismissal and to Reinstate Action” is a nullity and that by responding to said motion, the State is NOT acknowledging its legitimacy or the legitimacy of any future *pro se* filings. However, in the interest of judicial economy the State, through undersigned counsel and making Return to the Motion, would respectfully show unto this Court:

1. Appellant was convicted in Spartanburg County on May 23, 2013, and was sentenced to twenty-five (25) years’ imprisonment. (Order of the Honorable R. Lawton McIntosh dated November 9, 2015).
2. On August 25, 2015, Appellant filed a motion in the Spartanburg County Court of General Sessions for a new trial pursuant to Rule 29(b), SCRCrimP, based upon newly discovered

evidence. In an Order dated November 9, 2015, Judge McIntosh denied Appellant's motion without the necessity of a hearing as untimely and without merit. (Order of the Honorable R. Lawton McIntosh dated November 9, 2015).

3. On November 20, 2015, Appellant filed a Notice of Appeal from the November 9, 2015, order of dismissal with the Clerk of Court for Spartanburg County and the Clerk of Court for the South Carolina Court of Appeals. (November 20, 2015, Notice of Appeal and November 20, 2015, Certificate of Service). At the time of filing, Appellant did not serve the Notice of Appeal on the State, either by serving the Solicitor or serving the Attorney General's Office.

4. In a letter dated December 8, 2015, and received on December 10, 2015, Appellant mailed copies of his Notice of Appeal and Certificate of Service to Respondent.

5. In a letter dated December 23, 2015, this Court advised Appellant it had received his notice of Appeal and assigned it Appellate Case No. 2015-002614). The same day, this Court issued a deficiency letter advising Appellant his proof of service was not in compliance with the appellate court rules.

6. On January 5, 2016, Appellant submitted a new Notice of Appeal and a Proof of Service to the Court whereby he served the State by mailing copies of the Notice of Appeal to both the solicitor and the Attorney General.

7. In an Order dated May 4, 2016, this Court dismissed the Appeal because Appellant failed to timely serve the notice of appeal upon the respondent, as required by Rule 203(b)(2) of the South Carolina Appellate Court Rules.

8. Appellant has now submitted a "Motion to Set Aside Dismissal and to Reinstate Action" dated May 13, 2016, in which he asks that this Court to reinstate his appeal. The Motion was received by the State on May 19, 2016.

9. Pursuant to Rule 203(b)(2), SCACR, in a criminal case an appellant must serve a notice

of appeal on all respondents within ten days after the sentence is imposed, or within ten days after receipt of written notice of entry of the order or judgment. The time period for serving a notice of appeal cannot be extended or shortened by an appellate court. See Rule 263(b), SCACR (“The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rule 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof.”); see also Mears v. Mears, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) (“Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.”). State on May 19, 2016.

10. Since no proper notice of appeal was served within ten days of Appellant’s receipt of written notice of entry of Judge McIntosh’s Order of dismissal of his motion before the court of general sessions, this Court has no jurisdiction over Appellant’s case and properly dismissed his appeal. See Hill v. South Carolina Dept. of Health and Environmental Control, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010) (“The service of a notice of appeal is a **jurisdictional requirement**, and the time for service may not be extended by this Court.”); Canal Ins. Co. v. Caldwell, 338 S.C. 1, 5, 24 S.E.2d 416, 418 (Ct. App. 1999) (in a civil case, pointing out that Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of jurisdiction “and results in dismissal of the appeal”); see also Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (“[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.”).

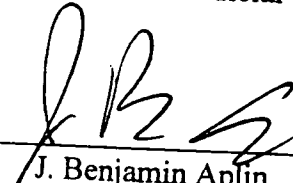
WHEREFORE, having made Return, the State opposes Appellant's motion to reinstate and submits it should be denied and dismissed by the Court.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

BY: 

J. Benjamin Aplin
S.C. Bar No: 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

May 26, 2016

ATTORNEYS FOR RESPONDENT



ALAN WILSON
ATTORNEY GENERAL

May 26, 2016

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. John Garvin, #355509

Dear Ms. Kitchings:

Enclosed for filing are the original and six copies of the Respondent's Return to Motion to Set Aside Dismissal and to Reinstate Action in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General

Enclosures

cc: John Garvin, #355509
Victim Services

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions**

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-002614

The State of South Carolina Respondent,
v.
John Garvin Appellant.

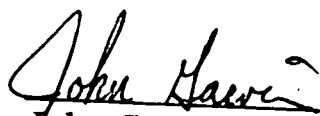
**NOTICE OF MOTION TO VACATE
AND SET ASIDE DISMISSAL
AND TO REINSTATE ACTION**

To: Respondent, John B. Aplin, Assistant Attorney General:

Notice is given that as soon as this motion can be heard, in the Law and Motion Department of the above-entitled court, at The South Carolina Court of Appeals, 1220 Senate Street, Columbia, S.C. 29201, the above-named Appellant will move the court for and order setting aside and vacating the dismissal entered on May 4, 2016, and reinstating the above-entitled cause, for the reason that the dismissal was ordered for failure to timely serve the notice of appeal upon the respondent, as required by Rule - 203(b)(2) of the South Carolina Appellate Court Rules.

This motion is based on this notice, the pleadings records, and files in this action, the attached Memorandum of Law and documentary evidence that may be presented at the hearing of the motion, and the attached affidavit of John Garvin, filed and served with this notice.

Dated: May 13, 2016


John Garvin, # 355509, Pro-se
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions**

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-002614

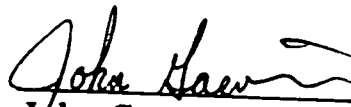
The State of South Carolina Respondent,
v.
John Garvin Appellant.

**MOTION TO VACATE
AND SET ASIDE DISMISSAL
AND TO REINSTATE ACTION**

John Garvin, the Appellant in the above-entitled action proceeding as pro-se, moves the court pursuant to Rule – 260(a), S.C.A.C.R. to set aside its order of May 4, 2016, dismissing this action, for the reason that Appellant has failed to timely serve the notice of appeal upon the respondent, as required by Rule-203(b)(2) of the South Carolina Appellate Court Rules (S.C.A.C.R.).

This motion is based on the notice of motion served on May 13, 2016, on the attached affidavit of John Garvin, sworn to on May 13, 2016, and on all the pleadings, papers, and record in this action.

Dated: May 13, 2016


John Garvin, # 355509, Pro-se
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions**

R. Lawton McIntosh, Circuit Court Judge

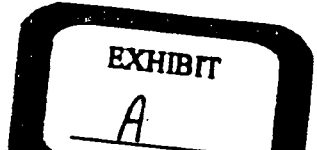
Appellate Case No. 2015-002614

The State of South Carolina Respondent,
v.
John Garvin Appellant.

**AFFIDAVIT IN SUPPORT
OF MOTION TO VACATE
AND SET ASIDE DISMISSAL
AND TO REINSTATE ACTION**

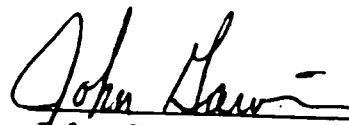
I, John Garvin, being first duly sworn, depose and say:

1. I am the Appellant in the above-entitled action.
2. This affidavit is in support of Appellant's motion for an order setting aside the order of the dismissal entered on May 4, 2016, and reinstating the above-entitled action. (See Exhibit - A & B)
3. This action was commenced on November 20, 2015, by the filing of a notice to appeal the denial of a motion for a new trial order, issued by the Honorable R. Lawton McIntosh on November 9, 2015. Whereas, the written notice of entry of the order was received on November 19, 2015. (See Exhibit - C & D)
4. On December 29, 2015, Appellant received a letter from the Deputy Clerk of Court for the South Carolina Court of Appeals dated December 23, 2015, advising appellant of deficiency or deficiencies with his proof of service that was not in compliance with South Carolina Appellate Court Rules in the Format shown by Form 7 in Appendix C to the rules. (See Exhibit - E)



5. On January 5, 2016, Appellant re-submitted his notice of appeal and corrected proof of service on the respondent, which involves every party in the appeal. (See Exhibit - F)
6. On May 11, 2016, Appellant signed and received his legal mail from Lee Correctional Institution by via U.S. Mail from the Deputy Clerk of Court for The South Carolina Court of Appeals, whereas an order of dismissal was issued for failure to timely serve the notice of appeal upon the respondent.
7. Appellant had served a copy of his notice of appeal with corrected Proof of Service on the respondents, on January 5, 2016, to the South Carolina State's Attorney General's Office, addressed to Alan M. Wilson. (See Exhibit-F)(Proof of Service)
8. Appellant re-asserts that he has complied with the South Carolina Appellate Court Rules and has served the notice of appeal upon the respondents. Because appellant mailed off a corrected proof of service along with the notice of appeal to every party involved in the appeal on January 5, 2016. (See Exhibit - G)(S.C.D.C. Form 10-14 Inmate Debit Account, where a total of \$4.77 was deducted from his account for one (1) being, sent certified mail to the court of appeal clerk for \$3.67 and the other five (5) with additional postage for 0.22¢ was served upon every party involved in the appeal for a total of \$1.10).
9. The exhibits in this affidavit contradicts the clerks claim that respondent has failed to follow South Carolina Appellate Court rules.
10. By reason of the above-specified facts, Appellants Motion to Vacate and Set Aside Dismissal and to Reinstate action should be granted.

WHEREFORE, it is respectfully requested that the court grant the appellant's motion, so that his appeal to the South Carolina Court of Appeals can be heard in the interest of justice to prevent a total miscarriage of justice. Executed on this 13 day of May, 2016.


John Garvin, # 355509, Pro-se
Lee Correction Institution
990 Wisacky Highway
Bishopville, S.C. 29010

The South Carolina Court of Appeals

The State, Respondent,

v.

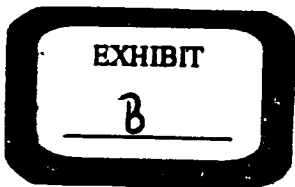
John Garvin, Appellant.

Appellate Case No. 2015-002614

The Honorable R. Lawton McIntosh
Spartanburg County
Trial Court Case No. 2012GS4205979

ORDER

Appellant has failed to timely serve the notice of appeal upon the respondent, as required by Rule 203(b)(2) of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.



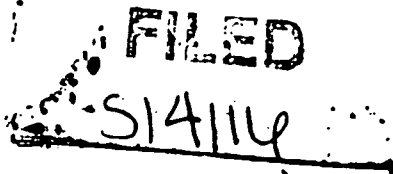
FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

- John D Garvin, 355509
- Robert Michael Dudek, Esquire
- Alan McCrory Wilson, Esquire
- John Benjamin Aplin, Esquire
- James Edward Hunter, Esquire



STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

State of South Carolina,)
Plaintiff,)
-vs-)
John Garvin,)
Defendant.)

ORDER

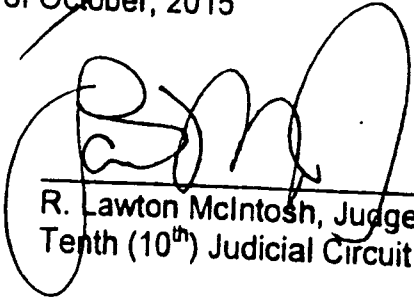
Indictment No. 2012-GS-42-5979

Defendant was convicted on May 23, 2013 and sentenced to twenty five (25) years and Two Hundred Thousand (\$200,000) Dollars. On August 25, 2015, Defendant filed a motion for a new trial pursuant to rule 29(b) S.C.R.Crim.P. based upon newly discovered evidence.

Defendant's Affidavit fails to recite facts sufficient to constitute newly discovered evidence. Further, the grounds recited in the Motion are manifestly without merit. Accordingly, Defendant's Motion is denied without formal hearing.

Defendant's Motion is denied without the necessity of a hearing as untimely and without merit.

IT IS SO ORDERED This 9th ^{Nov ROK} Day of October, 2015


R. Lawton McIntosh, Judge
Tenth (10th) Judicial Circuit

Anderson, South Carolina.

EXHIBIT
C

FILED
CLERK OF COURT
2015 NOV 13 PM 2:42
M. HOPE BLACKLEY

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV 30 AM 10:42
John Garvin - #355509
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010 M. HOPE BLACKLEY

ATTN: Ms. M. Hope Blackley, Clerk of Court
Spartanburg County Clerk of Courts
180 Magnolia Street
Spartanburg, S.C. 29304-3483

RE: State v. Garvin, (Indictment No.: 2012-GS-42-5979)
Motion for New Trial

Dear Ms. Blackley,

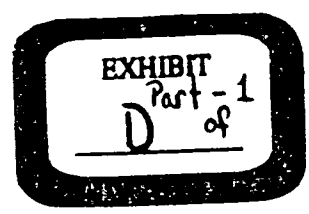
Enclosed please find a NOTICE OF APPEAL and CERTIFICATE OF SERVICED to be filed on this date as given to prison official to be filed with the courts.

Respectfully,
John Garvin
John Garvin, #355509, pro-se.

DATED: November 20, 2015

Enclosures

cc: Ms. Jenny A. Kitching, Clerk of Court of Appeals



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV 30 11:14 AM
M. HOPE BLACKLEY

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Case No. 2012-GS-42-05979

The State of South Carolina.....Respondent,

v.

John Garvin.....Appellant.

NOTICE OF APPEAL

John Garvin appeals the denial of his Motion for New Trial. This appeal is taken from the order of the Honorable R. Lawton McIntosh, dated November 9, 2015, which denied appellant's Motion for a New Trial. Appellant received written notice of entry of this order on November 19, 2015.

DATED: November 20, 2015

John Garvin
John Garvin, #355509, Pro-se.
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, S.C. 29010

EXHIBIT
Part - 2 of
D

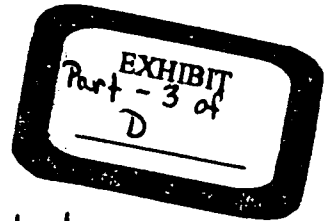
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV 30 AM 11:2
M. HOPE BLACKLEY

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Case No. 2012-GS-42-05979



The State of South Carolina.....Respondent,

v.

John Garvin.....Appellant.

CERTIFICATE OF SERVICE

I, John Garvin, proceeding as pro-se, do hereby swear or declare that on this 20th day of November, 2015, that I have served the enclosed NOTICE OF APPEAL to be filed on this date as given to prison official an envelope containing the above documents in the prison internal mail system via United States mail properly addressed to the party in the above proceeding with first-class postage prepaid to the following names and addresses listed below:

To: Ms. Jenny A. Kitching, Clerk
The South Carolina Court of Appeals
1015 Swater Street
Columbia, S.C. 29201

Ms. M. Hope Blackley, Clerk of Court
To: ~~Mrs. Tonya Camp, Chief Admin. Ass.~~ (J.G.)
Spartanburg County Clerk of Court
180 Magnolia Street
Spartanburg, S.C. 29304-3483

RESPECTFULLY SUBMITTED on this 20th day of November/2015

John Garvin
John Garvin 355509 PM-C



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 23, 2015

John D Garvin, 355509
Lee Correctional Inst.
990 Wisacky Highway
Bishopville SC 29010

Re: The State v. John Garvin
Appellate Case No. 2015-002614

Dear Mr. Garvin:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter, or this appeal may be dismissed:

- The accompanying proof of service is not in compliance with the SCACR. Your proof of service should be substantially in the format shown by Form 7 in Appendix C to part II of the SCACR. Specifically, your proof of service should copy every party involved in the appeal.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire



John Garvin
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

ATTN: Ms. M. Hope Blackley, Clerk of Court
Spartanburg County Clerk of Court
180 Magnolia Street
Spartanburg, S.C. 29304-3483

RE: State v. Garvin, (Notice of Appeal for Motion for New Trial)
Case No.: 2012-GS-42-5979; Appellant Case No. 2015-002614

Dear Ms. Blackley:

Enclosed for filing is a NOTICE OF APPEAL in the above case. Also enclosed are the following:

- (1) A corrected PROOF OF SERVICE of the NOTICE OF APPEAL on the respondent, in the format shown by Form 7 in Appendix C to part II of the S.C.A.C.R., which involves every party in the appeal.
- (2) A copy of the order/judgment which is to be challenged on appeal.
- (3) A copy of your letter instructing me to correct the deficiencies of my PROOF OF SERVICE within ten (10) days of the date of the letter.

DATE: January 5, 2016
Respectfully,

John Garvin
John Garvin, #355509, Pro-se.

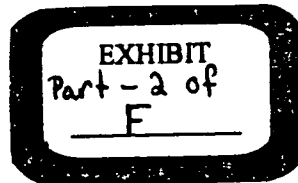
EXHIBIT
Part - 1 of
F

M. HOPE BLACKLEY
2016 JAN 26 AM 10:30
FILED
CLERK OF COURT
SPARTANBURG COUNTY

Other Counsel of Record:
Mr. James E. Hunter, Esquire
Spartanburg County Solicitor's Office
180 Magnolia Street
Spartanburg, S.C. 29304-3483

Enclosures

cc: Jenny A. Kitchings, Clerk of Appellate Court
Hon. R. Lawton McIntosh, Circuit Court Judge
Alan M. Wilson, Esquire
Scott D. Robinson, Esquire



FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 JAN 26 AM 10:30
M. HOPE BLACKLEY

EXHIBIT
Part - 3 of
F

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SPARTAINBURG COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-002614

The State of South Carolina Respondent,

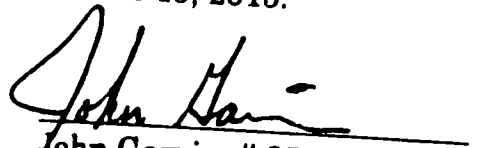
v.

John Garvin Appellant.

NOTICE OF APPEAL

John Garvin appeals the denial of his Motion for New Trial. This appeal is taken from the order of the Honorable Judge R. Lawton McIntosh, dated November 9, 2015. which denied appellant's motion for a New Trial. Appellant received written notice of entry of this order on November 19, 2015.

DATED: January 5, 2016


John Garvin, # 355509, Pro-se
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

M. HOPE BLACKLEY
2016 JAN 26 AM 10:30
FILED
CLERK OF COURT
SPARTAINBURG COUNTY

EXHIBIT
Part - 4 of
F

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SPARTAINBURG COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-002614

The State of South Carolina Respondent,
v.
John Garvin Appellant.

PROOF OF SERVICE

I, John Garvin, Certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid on January 5, 2016, addressed to every party involved in the appeal. James E. Hunter, Spartanburg County Solicitors Office, 180 Magnolia Street, Spartanburg, S.C. 29304-3483; Scott D. Robinson, 9 East Ave., Greenville, S.C. 29603; M. Hope Blackley, Spartanburg County Clerk of Court, 180 Magnolia Street, Spartanburg, S.C. 29304-3483; Jenny A. Kitchings, S.C. Clerk of Court of Appeals, 1220 Senate Street, Columbia, S.C. 29201; Hon. R. Lawton McIntosh, 100 South Main Street, Anderson, S.C. 29622-8002; and Alan Wilson, 1000 Assembly Street, Columbia S.C. 29211.

DATED: January 5, 2016

John Garvin
John Garvin, # 355509, Pro-se
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

M. HOPE BLACKLEY

2016 JAN 26 AM 10:30

FILED
SOUTH CAROLINA
SPARTANBURG COUNTY

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions**

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-002614

The State of South Carolina Respondent,
v.
John Garvin Appellant.

**MEMORANDUM OF LAW
IN SUPPORT OF MOTION
TO VACATE AND SET
ASIDE DISMISSAL AND
TO REINSTATE ACTION**

This memorandum is submitted in support of appellant's Motion to Vacate and Set Aside Dismissal and to Reinstate Action pursuant to Appellant Practice Rules, Rule – 260 (a), S.C.A.C.R., claiming that Appellant has failed to timely serve the notice of appeal upon the respondent, as required by Rule – 203 (b)(2) of the South Carolina Appellate Court Rules (S.C.A.C.R.).

PROCEDURAL HISTORY

Appellant, John Garvin and his Co-Defendant, Jonathan Perez was arrested on July 17, 2012 and was charged with Trafficking in Heroin (S.C. Code Ann. § 44-53-370(e)). On December 6, 2012, the Spartanburg County Grand Jury indicted Garvin in Indictment No.: 2012-GS-42-5978 and 2012-GS-42-5979. However, at trial, the state elected to proceed only with Indictment No.: 2012-GS-42-5979 and choosing to try the appellant at a later date on Indictment No.: 2012-GS-42-5978.

Appellant was convicted as charged on Indictment No.: 2012-GS-42-5979 after a jury trial that was held on May 21-23, 2013, in Spartanburg County General Session Court and was sentenced on May 23, 2013 to a term of twenty-five (25) years in prison and fined \$200,000.00 (McIntosh, L. at trial and Sentence).

A notice of appeal was timely filed, On June 6, 2013 the court of appeals granted appellant permission to appeal. And on October 10, 2013, Indictment No.: 2012-GS-42-5978 was nolle prosequi. On November 26, 2014 the Court of Appeals affirmed appellant's conviction.

On June 15, 2015, Appellant inadvertently discovered evidence that is actually relevant and relates to his case. On August 25, 2015, appellant filed a motion for new trial, based on after - discovered evidence with supporting affidavit in the Spartanburg County General Sessions Court, which was filed September 2, 2015.

On November 9, 2015, the Honorable R. Lawton McIntosh denied appellant motion for a new trial. On November 20, 2015, appellant filed notice of appeal on this court and with Spartanburg County General Sessions Court. On December 29, 2015 appellant received a letter from the deputy clerk of Court for The South Carolina Court of Appeals dated December 23, 2015, advising appellant of deficiency or deficiencies with his proof of service that are not in compliance with South Carolina Appellate Court Rule in the format shown by Form 7 in Appendix C to the rules.

On January 5, 2016, appellant re-submitted his notice of appeal and a corrected proof of service on the respondent, which involved every party in the appeal. On May 4, 2016, the deputy clerk of Court issued an order of dismissal for failure to timely serve the notice of appeal upon the respondent. Appellant files this motion to reinstate his appeal.

ISSUE PRESENTED

WHETHER CAN AN APPEAL BE REINSTATED FROM AN ORDER OF DISMISSAL ISSUED BY THE CLERK OF THE SOUTH CAROLINA COURT OF APPEALS FOR THE VIOLATION OF RULE - 203(b)(2) OF THE SOUTH CAROLINA APPELLATE COURT RULE.

STANDARD OF REVIEW

In the Appellate Court, "Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of [Appellate Court Rules], the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. See Rule - 260(a), S.C.A.C.R.; Wise v. South Carolina Dept. of Correction, 372 S.C. 173, 174 (2007).

ARGUMENT

REASON FOR GRANTING MOTION TO VACATE AND SET ASIDE DISMISSAL AND TO REINSTATE ACTION

Whenever it appears that an appellant has failed to comply with the requirement of the S.C.A.C.R., an order of dismissal shall be issued. (See Rule - 260(a), S.C.A.C.R.). The Clerk of Court shall remit the case to the lower court in accordance with Rule - 221, S.C.A.C.R., unless a motion to reinstate the appeal has been actually received by the court with fifteen (15) days of filing of the order of dismissal. See Wise v. South Carolina Dept. of Corrections, 372 S.C. 173, 174 (2007).

"The South Carolina Appellate Court Rules are not mere technicalities but provide [] parties and this court with an orderly mechanism through which to guide appeals in this state." See Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992).

In Henning v. Kaye, the respondent moved to dismiss the appeal on grounds that appellant failed to comply with Appellate Court rules. But South Carolina Supreme Court held that failure to comply with appellate court rules with regard to initial brief did not require dismissal, but rather, appellant was required to serve and file initial brief complying with court rules.

Here, in Appellants case the Deputy Clerk dismissed his case for failure to timely serve the notice of appeal upon the respondent, as required by Rule – 203 (b)(2), S.C.A.C.R., (See Exhibit – B). His action was commenced on November 20, 2015, by the filing of a notice to appeal a denial of a motion for a new trial order, issued by the Honorable R. Lawton McIntosh on November 9, 2015. Whereas, the written notice of entry of the order was received on November 10, 2015. (See Exhibit – C & D).

On December 29, 2015, Appellant received a letter from the Deputy Clerk of Court for The South Carolina Court of Appeals dated December 23, 2015, advising appellant of deficiency or deficiencies with his proof of Service that are not in compliance with South Carolina Appellant Court Rule in the format shown by Form 7 in Appendix C to the rules. (See Exhibit – E). On January 5, 2016, Appellant re-submitted his notice of appeal and a corrected proof of service on the respondent, which involves every party in the appeal. (See Exhibit – F).

On May 11, 2016, Appellant signed and received his legal mail from Lee Correctional Institution by via U.S. Mail from the Deputy Clerk of Court for The South Carolina Court of Appeals, whereas an order of dismissal was issued for failure to timely serve the notice of appeal upon the respondent. Appellant has served a copy of his notice of appeal with corrected proof of service on the respondents as required by appellant court rules on January 5, 2016, to the South Carolina State's Attorney General's Office, address to Alan M. Wilson. (See Exhibit – F)(Proof of service).

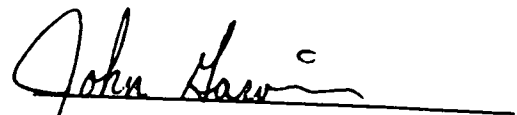
Appellant re-asserts that he has complied with the South Carolina Appellate Court Rules and has served the notice of appeal to every party involved in the appeal on January 5, 2016. (See Exhibit – G)(S.C.D.C. Form 10-14 Inmate Debit Account, whereas, a total of \$4.77 was deducted from his account for one (1) being sent certified mail to the court of appeals clerk for \$3.67 and the other five (5) was sent regular mail with additional postage for 0.22¢ a piece to every party involved in the appeal for a total of \$1.10). The exhibit in this affidavits contradicts the clerks claim that respondent has failed to follow South Carolina Appellant Court Rules.

This memorandum having shown that appellant has complied with South Carolina Appellate Court Rules, as set forth in Henning, Supra., is applicable and should be used as the basis for granting this motion. This court should adhere to Henning, Supra., and Rule – 260(a), S.C.A.C.R., because failure to comply with rules of appellate procedure does not require the dismissal of a valid and meritorious cause of action.

CONCLUSION

For the reasons set out above, appellant respectfully requests that this Honorable Court grants this Motion to Vacate and Set Aside Dismissal and Reinstate Action.

Dated: May 13, 2016



**John Garvin, # 355509, Pro-se
Lee Correction Institution
990 Wisacky Highway
Bishopville, S.C. 29010**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions**

R. Lawton McIntosh, Circuit Court Judge

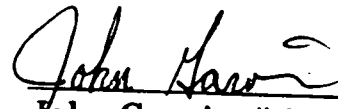
Appellate Case No. 2015-002614

The State of South Carolina Respondent,
v.
John Garvin Appellant.

PROOF OF SERVICE

I, John Garvin, Certify that I have served a Motion to Vacate and Set Aside Dismissal and to Reinstate Action on the respondent, The State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid on May 13, 2016, addressed to every party involved in the appeal. John B. Aplin and Alan Wilson, 1000 Assembly Street, Columbia, South Carolina 29211; V. Claire Allen, 1220 Senate Street, Columbia S.C. 29201; Robert Dudek, 1330 Lady Street, Columbia, S.C. 21211; and James E. Hunter, 180 Magnolia Street, Spartanburg, S.C. 29304-3483

Dated: May 13, 2016


John Garvin, # 355509, Pro-se
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

John Garvin
Lee Correction Institution
990 Wisacky Highway
Bishopville, S.C. 29010

ATTN: Ms. V. Claire Allen, Deputy Clerk
% Jenny A. Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, S.C. 29201

RE: State v. Garvin, (Motion to Set Aside Dismissal and to Reinstate Action)
Case No.: 2012-GS-42-5979; Appellate Case No.: 2015-002614

Dear Ms. Allen,

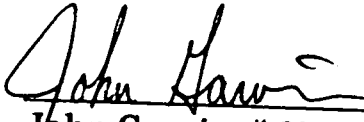
(16)
MOTION

Enclosed for filing is a ~~NOTICE~~ **TO SET ASIDE DISMISSAL AND TO REINSTATE ACTION** in the above case. Also enclosed are the following:

- (1) A Notice of Motion to Vacate and Set Aside Dismissal and to Reinstate Action to respondents.
- (2) An affidavit in support of Motion
- (3) A Memorandum of Law in Support of Motion.
- (4) A **PROOF OF SERVICE** of the **MOTION** on the respondent, in the format shown by Form 7 in Appendix C to part II of the S.C.A.C.R., which involves every party in the appeal.
- (5) A copy of the order dismissing the appeal.

Date: May 13, 2016

Respectfully,



 John Garvin, # 355509, Pro-se

Enclosures

cc: Alan M. Wilson, Esquire
 John B. Aplin, Esquire
 Robert M. Dudek, Esquire
 James E. Hunter, Esquire

The South Carolina Court of Appeals

The State, Respondent,

v.

John Garvin, Appellant.

Appellate Case No. 2015-002614

The Honorable R. Lawton McIntosh
Spartanburg County
Trial Court Case No. 2012GS4205979

ORDER

Appellant has failed to timely serve the notice of appeal upon the respondent, as required by Rule 203(b)(2) of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

John D Garvin, 355509
Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
James Edward Hunter, Esquire

FILED
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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SPARTAINBURG COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-002614

The State of South Carolina Respondent,

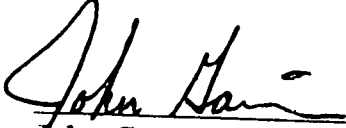
v.

John Garvin Appellant.

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DATED: January 5, 2016


John Garvin, # 355509, Pro-se
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

M. HOPE BLACKLEY
2016 JAN 26 AM 10:30
FILED
CLERK OF COURT
SPARTAINBURG COUNTY

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SPARTAINBURG COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

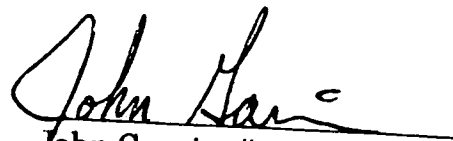
Appellate Case No. 2015-002614

The State of South Carolina Respondent,
v.
John Garvin Appellant.

PROOF OF SERVICE

I, John Garvin, Certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid on January 5, 2016, addressed to every party involved in the appeal. James E. Hunter, Spartanburg County Solicitors Office, 180 Magnolia Street, Spartanburg, S.C. 29304-3483; Scott D. Robinson, 9 East Ave., Greenville, S.C. 29603; M. Hope Blackley, Spartanburg County Clerk of Court, 180 Magnolia Street, Spartanburg, S.C. 29304-3483; Jenny A. Kitchings, S.C. Clerk of Court of Appeals, 1220 Senate Street, Columbia, S.C. 29201; Hon. R. Lawton McIntosh, 100 South Main Street, Anderson, S.C. 29622-8002; and Alan Wilson, 1000 Assembly Street, Columbia S.C. 29211.

DATED: January 5, 2016


John Garvin, # 355509, Pro-se
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

M. HOPE BLACKLEY
2016 JAN 26 AM 10:30

FILED
CLERK OF COURT
SPARTAINBURG COUNTY

John Garvin
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

ATTN: Ms. M. Hope Blackley, Clerk of Court
Spartanburg County Clerk of Court
180 Magnolia Street
Spartanburg, S.C. 29304-3483


RE: State v. Garvin, (Notice of Appeal for Motion for New Trial)
Case No.: 2012-GS-42-5979; Appellant Case No. 2015-002614

Dear Ms. Blackley:

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- (1) A corrected PROOF OF SERVICE of the NOTICE OF APPEAL on the respondent, in the format shown by Form 7 in Appendix C to part II of the S.C.A.C.R., which involves every party in the appeal.
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DATE: January 5, 2016
Respectfully,


John Garvin, #355509, Pro-se.

M. HOPE BLACKLEY
2016 JAN 26 AM 10:30
FILED
CLERK OF COURT
SPARTANBURG COUNTY

Other Counsel of Record:
Mr. James E. Hunter, Esquire
Spartanburg County Solicitor's Office
180 Magnolia Street
Spartanburg, S.C. 29304-3483

Enclosures

cc: Jenny A. Kitchings, Clerk of Appellate Court
Hon. R. Lawton McIntosh, Circuit Court Judge
Alan M. Wilson, Esquire
Scott D. Robinson, Esquire

M. HOPE BLACKLEY
2016 JAN 26 AM 10:30
SPARTANBURG COUNTY
CLERK OF COURT
FILED



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 23, 2015

John D Garvin, 355509
Lee Correctional Inst.
990 Wisacky Highway
Bishopville SC 29010

Re: The State v. John Garvin
Appellate Case No. 2015-002614

Dear Mr. Garvin:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter, or this appeal may be dismissed:

- The accompanying proof of service is not in compliance with the SCACR. Your proof of service should be substantially in the format shown by Form 7 in Appendix C to part II of the SCACR. Specifically, your proof of service should copy every party involved in the appeal.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire

John Benjamin Aplin, Esquire
James Edward Hunter, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 23, 2015

John D Garvin, 355509
Lee Correctional Inst.
990 Wisacky Highway
Bishopville SC 29010

Re: The State v. John Garvin
Appellate Case No. 2015-002614

Dear Mr. Garvin:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter should read as follows:

The State, Respondent,

v.

John Garvin, Appellant.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
James Edward Hunter, Esquire

Spartanburg County

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

Phone (864) 596-2591
Fax (864) 596-2259



M. Hope Blackley
Clerk of Court

Gail Moffitt
Assistant Clerk of Court

Date: 12-02-15
Name: John Garvin

We have received your letter on _____. The applicable response is checked below.

- I suggest you contact the Probation Office @ 180 Library Street, Spartanburg, SC 29306.
- I suggest you contact the Solicitor's Office @ 180 Magnolia Street, Spartanburg, SC 29306.
- I suggest you contact the Public Defender's Office @ 366 N. Church St., Spartanburg, SC 29306.
- I suggest you contact the Spartanburg County Jail @ 950 California Ave, Spartanburg, SC 29303.
- A copy of your letter has been forwarded to the Public Defender's Office.
- A copy of your letter has been forwarded to the Solicitor's Office.
- I suggest you contact your attorney.
- Please provide us with the original document.
- The reference case is not a General Sessions case.
- Grand Jury proceedings are held in private.
- Please provide us with a warrant or indictment number.
- Due to the large volume of requests, this office no longer conducts criminal records research.
- Case History print-out enclosed.
- A court date has not been scheduled for your case(s).
- A Plea/Trial date has been scheduled for _____. (This date is subject to change)
- All copies are \$1.00 per page that must be paid in advance. Please submit a cashier's check or money order in the amount of \$_____.

Other: Copies are enclosed, you also need to send Attorney General's Office a copy

If we can be of further assistance to you please let us know.

LaSmith
General Sessions Clerk

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV 30 11:15 AM
M. HOPE BLACKLEY

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Case No. 2012-GS-42-05979

The State of South Carolina.....Respondent,

v.

John Garvin.....Appellant.

NOTICE OF APPEAL

John Garvin appeals the denial of his Motion for New Trial. This appeal is taken from the order of the Honorable R. Lawton McIntosh, dated November 9, 2015, which denied appellant's Motion for a New Trial. Appellant received written notice of entry of this order on November 19, 2015.

DATED: November 20, 2015

John Garvin
John Garvin, #355509, Pro-se.
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, S.C. 29010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV 30 AM 10:42
M. HOPE BLACKLEY

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Case No. 2012-GS-42-05979

The State of South Carolina Respondent,

v.

John Garvin Appellant.

CERTIFICATE OF SERVICE

I, John Garvin, proceeding as pro-se, do hereby swear or declare that on this 20th day of November, 2015, that I have served the enclosed NOTICE OF APPEAL to be filed on this date as given to prison official an envelope containing the above documents in the prison internal mail system via United States mail properly addressed to the party in the above proceeding with first-class postage prepaid to the following names and addresses listed below:

To: Ms. Jenny A. Kitching, Clerk
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, S.C. 29201

Ms. M. Hope Blackley, Clerk of Court
To: ~~Mrs. Tonya Camp, Chief Admin. Ass.~~ (I.G.)
Spartanburg County Clerk of Court
180 Magnolia Street
Spartanburg, S.C. 29304-3483

RESPECTFULLY SUBMITTED on this 20th day of November 2015

John Garvin
John Garvin, #355509, Pro-Se.

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 John Garvin - #355509
 Lee Correctional Institution
 990 Nisacky Highway
 Bishopville, S.C. 29010
 2015 NOV 30 AM 10:22
 M. HOPE BLACKLEY


ATTN: Ms. M. Hope Blackley, Clerk of Court
 Spartanburg County Clerk of Courts
 180 Magnolia Street
 Spartanburg, S.C. 29304-3483

RE: State v. Garvin, (Indictment No.: 2012-GS-42-5979)
 Motion for New Trial

Dear Ms. Blackley,

Enclosed please find a NOTICE OF APPEAL and CERTIFICATE
 OF SERVICED to be filed on this date as given to prison official to
 be filed with the courts.

DATED: November 20, 2015

Respectfully,

 John Garvin, #355509, Pro-se.

Enclosures

cc: Ms. Jenny A. Kitching, Clerk of Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV 30 11:11 AM
M. HOPE BLACKLEY

State of South Carolina,)
Plaintiff,)
-vs-)
John Garvin,)
Defendant.)

ORDER

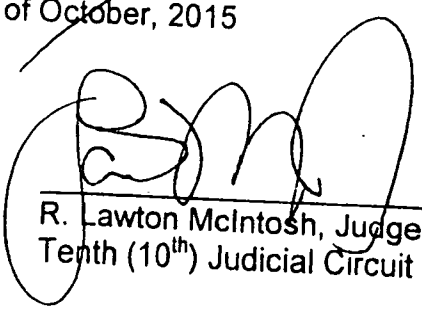
Indictment No. 2012-GS-42-5979

Defendant was convicted on May 23, 2013 and sentenced to twenty five (25) years and Two Hundred Thousand (\$200,000) Dollars. On August 25, 2015, Defendant filed a motion for a new trial pursuant to rule 29(b) S.C.R.Crim.P. based upon newly discovered evidence.

Defendant's Affidavit fails to recite facts sufficient to constitute newly discovered evidence. Further, the grounds recited in the Motion are manifestly without merit. Accordingly, Defendant's Motion is denied without formal hearing.

Defendant's Motion is denied without the necessity of a hearing as untimely and without merit.

IT IS SO ORDERED This 9th ^{Nov} Day of October, 2015


R. Lawton McIntosh, Judge
Tenth (10th) Judicial Circuit

Anderson, South Carolina.

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State of South Carolina
The Circuit Court of the Tenth Judicial Circuit

R. Lawton McIntosh
Judge

November 9, 2015

Post Office Box 8002
100 South Main Street
Anderson, SC 29622-8002
Phone: (864) 260-4059
Fax: (864) 224-6320
lmcintoshj@sccourts.org

The Honorable M. Hope Blackley
Post Office Box 3483
Spartanburg, South Carolina 29304-3483

Dear Madame Clerk:

Please find enclosed an original Order which has been signed by Judge McIntosh in the following case:

State of SC v. John Garvin
CA No. 2012-GS-42-5979

Please file this in your office and provide certified copies as appropriate to the attorneys of record pursuant to your customary procedure.

Thank you for your assistance in this matter.

Sincerely,

Susan Stanfield, Admin Assistant to
R. Lawton McIntosh, Judge
Tenth (10th) Judicial Circuit

M. HOPE BLACKLEY

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sfs

Enclosure

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
)
 State of South Carolina,)
 Plaintiff,)
)
 v.)
)
 John Garvin,)
 Defendant.)

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2015 NOV 10 PM 2:56
 M. HOPE BLACKLEY
 IN THE GENERAL SESSIONS COURT
 SEVENTH JUDICIAL CIRCUIT
 MEMORANDUM OF LAW
 IN SUPPORT OF MOTION
 FOR NEW TRIAL, BASED ON
 AFTER - DISCOVERED EVIDENCE
 Indictment No.: 2012-GS-42-5979

This memorandum is submitted in support of defendant's, Motion for New Trial, Based on After-Discovered Evidence pursuant to Criminal Practice Rules, Rule - 29 (b) and Civil Practice Rules, Rule - 60 (b), claiming that subsequent to the conclusion of the trial, defendant discovered existing evidence, which evidence is not merely cumulative or impeaching, but is relevant and material to the issues involved in this case, and is of such a character that it would probably result in a different verdict at a new trial, and which evidence the defendant could not in the exercise of due diligence have discovered before the trial.

PROCEDURAL HISTORY

Defendant, John Garvin and his Co-Defendant, Jonathan Perez was arrested on July 17, 2012 and was charged with Trafficking in Heroin (S.C. Code Ann. § 44-53-370(e)). On December 6, 2012, the Spartanburg County Grand Jury indicted Garvin in Indictment No.: 2012-GS-42-5978 and 2012-GS-42-5979. However, at trial, the state elected to proceed only with Indictment No.: 2012-GS-42-5979 and choosing to try the defendant at a later date on Indictment No.: 2012-GS-42-5978. Defendant was convicted as charged on Indictment No.: 2012-GS-42-5979 after a jury trial that was held on May 21- 23, 2013, in Spartanburg County General Session Court and was sentenced on May 23, 2013 to a term of twenty-five (25) years in prison and fined \$200,000.00 (McIntosh, L. at trial and Sentence).

A notice of appeal was timely filed, On June 6, 2013 the court of appeals granted defendant permission to appeal. And on October 10, 2013, Indictment No.: 2012-GS-42-5978 was nolle prosequi. On November 26, 2014 the Court of Appeals affirmed defendant's conviction.

STATEMENT OF FACTS

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on July 17, 2012, for

M. HOPE BLACKLEY
That was conducted

Defendant Garvin and his co-defendant, Jonathan R. Perez was arrested on July 17, 2012, for trafficking in heroin, from an on going investigation, titled operation "Fire-Man". That started on June 25, 2012 and continued until July 17, 2012. For alleged drug trafficking of heroin with an A. T. F. confidential Informant No. 380 on July 7, and July 17, 2012.

Spartanburg County Sheriff's Officer Ken Hancock, made out four (4) arrest warrants then had two (2) different judges sign off on those arrest warrant; Hon. Judge James B. Paslay on Arrest Warrant No.: N158303 and Hon. Judge Jason T. Wall on Arrest Warrant No.: N158322, N158323, and N158324 all dated July 17, 2012. Also on July 17, 2012, Defendant was coerced into signing a falsified inculpatory statement that the defendant did not make or even write. Defendant Garvin was denied bail on July 18, 2012. At that bond hearing Garvin, demanded for a preliminary hearing.

On August 16, 2012, defendant had a preliminary hearing scheduled and was never called to appear in court. The courts rescheduled it for October 25, 2012. On September 27, 2012, approximately 72 days after defendant's July 17, 2012 arrest, Defendant Garvin had a scheduled initial appearance hearing, but was never called to appear in court. Approximately 21 days after the initial appearance hearing, his October 25, 2012, preliminary hearing was subsequently waived for failure to appear.

The defendant was then subsequently indicted on December 6, 2012, and never received any type of notification from the solicitor or his attorney about this indictment. An "indictment that was based on the warrants. It wasn't a direct indictment." (Tr. p. 11 Ln. 23-24). On December 17, 2012, defendant Garvin's co-defendant pled guilty and was sentenced to both trafficking charges.

During the month of January on or about the 13th, 2013, defendant Garvin filed a complaint against both the solicitor and his attorney, with the Supreme Court of South Carolina Office of Disciplinary Counsel (ODC). Because of the general improprieties that have occurred in the defendant's state criminal proceedings. The continued deprivation of his constitutional rights has forced him to seek relief by filing a § 2241 habeas petition, as a pre-trial detainee, on February 12,

2013, for the violation of his constitutional rights during his state criminal proceedings. (See Garvin v. Wright et. al. Case No.: 2:13-cv-00442-DCN)

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On or about the 5th of April, 2013, defendant Garvin informed Counsel Robinson that he would like another attorney and would no longer like for him to handle his case. Due to the complete breakdown in communication, his lack of performance, his abandonment at the preliminary hearing, his misrepresentation, and him trying to get defendant Garvin to accept the solicitor's plea offer.

On April 10, 2013, Counsel Robinson filed a motion to be relieved as counsel. But then "withdrew that motion after talks with the solicitor". (See Garvin v. Wright et. al., Case No.: 2:13-cv-00442-DCN, Respondent's Return and memorandum of Law pg. 4) (Dkt. No. 27). Defendant Garvin then filed a motion to relieve Counsel Robinson as counsel on May 12, 2013. On May 14, 2013, defendant's motion to relieve counsel was denied in state court by his Honorable Judge McIntosh. On May 21, 2013, defendant Garvin again tried to relieve Counsel Robinson as counsel and again his Honorable Judge McIntosh denied his motion. (See Tr. p. 7-13, Ln. 16-3)

Despite defendant Garvin's objections at trial, Counsel Robinson was still allowed to proceed as his attorney. Also, at trial, the state elected to proceed only with Indictment No. 2012-GS-42-5979 and choosing to try the defendant at a later date on Indictment No. 2012-GS-42-5978. Then on May 23, 2013, defendant Garvin was erroneously convicted by a jury trial and was sentenced to a term of twenty-five (25) years in prison and fined \$200,000.00.

A notice of appeal was timely filed, On June 6, 2013 the court of appeals granted defendant permission to appeal. And on October 10, 2013 Indictment No.: 2012-GS-42-5978 was dismiss. Then on November 26, 2014 the Court of Appeals affirmed defendant's conviction.

ISSUE PRESENTED

WHETHER THE NEWLY DISCOVERED EVIDENCE IS OF SUCH A WEIGHT AND QUALITY THAT, UNDER THE FACTS AND CIRCUMSTANCES OF THIS PARTICULAR CASE, THE INTEREST OF JUSTICE REQUIRES THE DEFENDANT'S CONVICTION TO BE VACTED?

STANDARD OF REVIEW

In the criminal court, the only post verdict fact-based remedy available is a motion for a new

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trial. State v. Taylor, 348 S.C. 152, 158, 558 S.E.2d 917, 919 (Ct. App. 2001) (citing State v. Miller, 287 S.C. 280, 285, 337 S.E.2d 883, 886 (1985) (Ness, J., concurring in part and dissenting in part citation omitted). The granting or refusal of a motion for a new trial is within the discretion of the trial judge and will not be disturbed absent a clear abuse of discretion. See State v. Simmons, 279 S.C. 16, 166, 303 S.E.2d 857, 858 (1983)(Citation omitted).

ARGUMENT

**REASON FOR GRANTING MOTION FOR NEW TRIAL BASED ON AFTER-
DISCOVERED EVIDENCE**

The interest of justice requires a defendant's conviction to be vacated, based upon newly discovered evidence that is of such a weight and quality, under the facts and circumstances of the case.

"Any person who has been convicted of, or sentenced for, a crime and who claims...that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice" is entitled to seek post-conviction relief. See S.C. Code Ann. § 17-27-20(A)(4)(2014).

This court is guided by the language of Criminal Practice Rules, Rule - 29(b) and Civil Practice Rules, Rule - 60(b), a defendant may seek relief on the basis of newly discovered evidence following a jury guilty verdict, relief is appropriate only where the defendant presents evidence showing that (1) the newly discovered ^{evidence} was discovered after the jury's guilty verdict and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the jury guilty verdict; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of this particular case, the "interest of justice" requires the [defendant's guilty verdict] to be vacated. See Jamison v. State, 410 S.C. 456, 765 S.E.2d 125 (S.C., 2014)

"A motion for a new trial based on after-discovered evidence is address to the sound discretion of the trial judge." State v. Harris, 391 S.C. 539, 706 S.E.2d 526 (S.C. App., 2011). "The credibility of the [after]-discovered evidence is for the trial court to determine." Id. "In this post-trial setting, [South Carolina] Jurisprudence recognizes the gate keeping role of the trial court in making a

credibility assessment." See State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009). A COURT FILED SPARTANBURG COUNTY 2015 NOV 10 PM 2:55

motion for a new trial based on after-discovered evidence must be made within a reasonable period of time after the discovery of the evidence...." See Rule - 29(b), S.C.R.Crim.P.

M. HOPE BLACKLEY

In order to warrant the granting of a new trial on the ground of after-discovered evidence, the movant must show the evidence (1) is such as will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial by the exercise of due diligence; (4) is material to the issue; and (5) is not merely cumulative or impeaching. See McCoy v. State, 401 S.C. 363, 368, 737 S.E.2d 623, 625 n.1(2013).

The issues in this case comes down to a matter of the credibility of the evidence and the witnesses, which will be left to the trial court's discretion. A motion for a new trial is the proper vehicle for exploring these issues when the trial record does not fully reflect the circumstances surrounding the alleged premise. The trial court may determine, through testimony of the defendant, the solicitor, and other parties with knowledge of the facts, and the circumstances of the alleged premise. To whereas a decision can then be made on the basis of the facts as they are determined to be, not on the basis of speculation. See State v. Hinson, 293 S.C. 406, 361 S.E.2d 120, 121(S.C.,1987).

Here in defendant's case, Perez's falsified statement, Agent Asbill, and Agent Pait Report of Investigation constitutes after-discovered evidence that satisfies the five-pronged test for newly discovered evidence. That was set in McCoy, Supra. Id. The question here is whether the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of this particular case, the "interest of justice" requires the defendant's conviction to be vacated.

As I apply the standard analytical framework of the McCoy, Supra. The following evidence supports a finding that Perez's falsified statement (see Exhibit No. 2), and Agent Asbill (see Exhibit No. 2) and Agent Pait's (see Exhibit No. 3) Report of Investigation constitutes after-discovered evidence: (1) On July 17, 2012, S.L.E.D. Agent Asbill claims to have conducted an interview with Jonathan Perez at the Spartanburg County Sheriff's Office following his arrest. He stated in his Report of Interview that, after Perez was read his Miranda warnings, Perez stated that he wanted to cooperate

with Agent Asbill, but stated he refused to provide a written statement. (Exhibit No. 2) Agent Paul also made the same assertion in his July 17, 2012, Report of Investigation. (Exhibit No. 3)

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At defendant's trial, Jonathan Perez testified that he didn't give a statement at all to police. (Tr. p. 239-240, Ln. 21-25, 1-8). The defendant testified that he was coerced into signing a statement that he did not make (Tr. p. 214, Ln. 8) and that the statement he gave related to events that transpired in Pennsylvania and New Jersey. (Tr. p. 203 and 213, Ln. 18-19 and 15-21), Here the evidence is such that will change the result if a new trial is granted; (2) Defendant inadvertently discovered Perez's falsified statement after the entry of the jury guilty verdict; (3) Defendant was excusably ignorant and could not have discovered the falsified statement before his trial because he was forced to rely on insidious counsel; (4) Perez's falsified statement is material because it corroborates defendant's testimony about being coerced into signing a statement that he did not make (Tr. p. 214, Ln. 8) and it contradicts testimony given at trial; and (5) Perez's falsified statement is not merely cumulative or impeaching because he testified that he didn't give a statement at all to police. (Tr. p. 239-240, Ln. 21-25, 1-8). See McCoy, 401 S.C. At 368, 737 S.E.2d at 625n.1 (outlining the five factors to determine whether a [defendant] is entitled to a new trial on the basis of after-discovered evidence).

Employing this standard analysis, I feel that this court should find the newly discovered evidence is of such a weight and quality that under the facts and circumstances of this particular case, the interest of justice warrants the defendant's conviction to be vacated.

Having shown the standard five-pronged newly discovered evidence test, as set forth in McCoy, Supra., is applicable and should be used as the basis for granting this motion. This court should adhere to the five factor test set forth in McCoy, because the evidence establishes sufficient doubt about the defendant's guilt to justify the conclusion that his conviction would be a miscarriage of justice.

CONCLUSION

For the reasons set out above, petitioner respectfully requests that this
this Motion for A New Trial, Based on After-Discovered Evidences.

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SPARTANBURG COUNTY
Honorable Court grants
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M. HOPE BLACKLEY

DATED: October 29, 2015

John Garvin

John Garvin #355509, Pro-se.
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

State of South Carolina,
Plaintiff,

v.

John Garvin,
Defendant.

IN THE GENERAL SESSIONS COURT
SEVENTH JUDICIAL CIRCUIT

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SPARTANBURG COURT

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M. HOPE BLACKLEY

CERTIFICATE OF SERVICE

Indictment No.: 2012-GS-42-5979

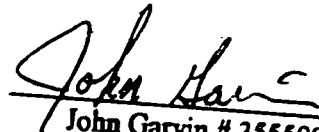
I, John Garvin, proceeding as pro-se, do hereby swear or declare that on this 29th day of October, 2015, that I have served the enclosed MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR NEW TRIAL, BASED ON AFTER-DISCOVERED EVIDENCE to be filed on this date as given to prison official an envelope containing the above documents in the prison internal mail system via United States mail properly addressed to the party in the above proceeding with first-class postage prepaid to the following names and addresses listed below:

To: Mrs. Tonya Camp, Chief Admin. Asst
c/o Ms. M. Hope Blackley, Clerk of Court
Spartanburg County Clerk of Court
180 Magnolia Street
Spartanburg, S.C. 29304-3483

To: Mr. James E. Hunter, Asst. Solicitor
Spartanburg County Solicitor's Office
180 Magnolia Street
Spartanburg, S.C. 29304-3483

To: Hon. R. Lawton McIntosh, Circuit Court Judge
Judge of The Tenth Circuit, Seat 1
P.O. Box # 8002
Anderson, S.C. 29622

RESPECTFULLY SUBMITTED on this 29th day of October, 2015


John Garvin # 355509, Pro-se.
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, S.C. 29010

John Garvin #355509
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina 29010

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M. HOPE BLACKLEY

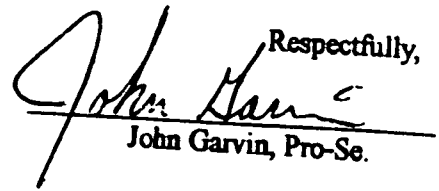
ATTN: Mrs. Tonya Camp, Chief Admin. Asst.
c/o Ms. M. Hope Blackley, Clerk of Court
Spartanburg County Clerk of Court
180 Magnolia Street
Spartanburg, South Carolina 29304-3483

RE: State v. Garvin, (Indictment No.: 2012-GS-42-5979)
Motion for New Trial

Dear Mrs. Camp,

Enclosed please find a Memorandum of Law in support of Motion for New Trial and Certificate of Service to be filed on this date as given to prison official to be filed with the courts.

DATE: October 29, 2015

Respectfully,

John Garvin, Pro-Se.

Enclosures

cc: Mr. James E. Hunter, Asst. Solicitor
Hon. R. Lawton McIntosh, Circuit Court Judge

4. The defendant has at all times maintained his innocence. The essence of the defense evidence was the testimony of the defendant, John Garvin and co-defendant, Johnathan Perez. The defense produced the following witnesses: John Garvin and Johnathan Perez.

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5. Since the completion of the trial and the entry of judgment on May 23, 2013, and the appellant court's affirming of the conviction on November 26, 2014, I inadvertently discovered evidence that relate to my case. The after-discovered evidence refers to evidence of facts existing at time of trial of which I was excusably ignorant to. Because of my being force to rely on insidious counsel.

6. On July 17, 2012, S.L.E.D. Agent, Ashley Asbill claims to have conducted an interview with Johnathan Perez at the Spartanburg Sheriff's Office following his arrest. He stated in his Report of Interview that, after Perez was read his Miranda warnings, Perez stated that he wanted to cooperate with Agent Asbill, but stated he refused to provide a written statement. (Exhibit No.2). Agent Pait also made the same assertion in his July 17, 2012, Report of Investigation. (Exhibit No.3).

At defendant's trial, Johnathan Perez testified that he didn't give a statement at all to police. (Tr. p.239-240, Ln.21-25, 1-8). I, the defendant, testified that the statement I gave related to events that transpired in Pennsylvania and New Jersey. (Tr. p.203 & 213, Ln.18-19 & 15-21).

These facts supports the claim that information provided by the after-discovered evidences corroborates defendant's testimony and contradicts testimony given at trial by the State witnesses, Agent Asbill and Agent Pait.

7. On July 7, 2012, Deputy Officer Hancock's had stated in his Report for Incident that, "The CRI did not know the driver, Other than he was a relative of Brills." (Exhibit No.4) J.G. But at the defendant's trial, Fredrick Jerman testified



Spartanburg County Sheriff's Office

Deputy Report for Incident 12070363

Nature: Narc Complaint
Location: 19

Address: 140 CANDLENUT LN
BOILING SPRINGS SC 29316

Offense Codes: NTD
 Received By: Mullinax A How Received: T Agency: SCSO
 Responding Officers:
 Responsible Officer: Hutchins M Disposition: ACT 07/07/12
 When Reported: 20:32:00 07/07/12 Occurred Between: 19:00:00 07/07/12 and 20:32:00 07/07/12

Assigned To: Detail: Date Assigned: **/**/**
 Status: Status Date: **/**/** Due Date: **/**/**

Complainant: NARCOTICS
 Last: NARCOTICS First: Mid:
 DOB: **/**/** Dr Lic: Address: 8045 HOWARD ST
 Race: Sex: Phone: (864)503-4500 City: SPARTANBURG, SC 29303

Offense Codes

Reported: Observed: NTD Drugs, Trafficking
 Additional Offense: NTD Drugs, Trafficking

Circumstances

LT18 LOC-Parking Lot or Garage

Responding Officers:

Unit :

Responsible Officer: Hutchins M Agency: SCSO
 Received By: Mullinax A Last Radio Log: **:**:** **/**/**
 How Received: T Took over phone Clearance:
 When Reported: 20:32:00 07/07/12 Disposition: ACT Date: 07/07/12
 Judicial Status: Occurred between: 19:00:00 07/07/12
 Misc Entry: and: 20:32:00 07/07/12

Modus Operandi:
Zones

Description :
Zone/Tract Method :
19

Involvements

Date	Type	Description
------	------	-------------

07/30/12

Exhibit - # 3

Deputy Report for Incident 12070363

07/10/12	Name	PEREZ, JONATHAN	Suspect
07/10/12	Name	GARVIN, JOHN DWAYNE	Suspect
07/10/12	Name	NARCOTICS,	Complainant
07/10/12	Vehicle	GLD 2000 NISS PTH GA	Involved
07/10/12	Property	HEROIN 0	Evidence
07/09/12	Evidence	best bag s156338	Evidence Incident
07/09/12	Evidence	best bag s156340	Evidence Incident
07/09/12	Evidence	brown box, lic plate HMJ5130	Evidence Incident

2011 - tidinx 3

Narrative

.....(lwmain13144209072012).....

On 7/7/12 Agent Asbill (SLED), Agent Pait (ATP), SGT. Pharis, and I met with a confidential reliable informant working for the Spartanburg County Sheriff's Office in reference the CRI making a purchase of heroin from a subject known as "Brills". "Brills" agreed to meet the CRI at a location to sell the CRI a quantity of heroin. The CRI was searched along with CRI's vehicle and no illegal contraband was located. The CRI was equipped with an audio and video recording device. The CRI went the the incident location to meet with "Brills". "Brills" arrived at the location in a tan Nissan Pathfinder GA tag# BTZ-1834. "Brills" was the passenger in the vehicle. The CRI did not know the driver other than he was a relative of "Brills". The CRI discussed the heroin trade with both subjects. "Brills" reached into a black back pack in the back seat and gave the CRI a yellow wax envelope containing a tan powder substance as a sample of the larger quantity of heroin the CRI would be buying. The CRI told "Brills" and the passenger that he/she would go pick up the money for the larger quantity and would be back. Sgt. Pharis and Agent Asbill was conducting surveillance on the incident location. The CRI then left the location and met with Agent Pait and I. I recovered a yellow wax envelope that contained a tan powder substance. The tan powder substance weighed approx. 0.1 grams and field tested positive for heroin. The tan powder substance was placed into best bag# S156338 for analysis. The CRI and CRI's vehicle was again searched with no illegal contraband being located. The CRI was provided with \$2600 of recorded Spartanburg County Sheriff's office funds. The CRI was again equipped with an audio and video recording device. The CRI went back to the incident location. The passenger in the Pathfinder that the CRI knows as "Brills" got into the CRI's vehicle. "Brills" told the CRI that he only had Seven bricks of heroin. "Brills" had told the CRI a brick of heroin contained (5) bundles of yellow wax envelopes of powder and that each bundle contained (10) yellow wax envelopes of powder. The CRI gave "Brills" \$260 per brick for a total of \$1820 of recorded Sheriff's Office funds. "Brills" then gave the CRI a brown box that contained small square brick shapes wrapped in paper and loose bundles of yellow wax envelopes. The CRI then left the location and met back with Agent Pait and I. I recovered the Brown box containing the square shaped bricks wrapped in paper and the loose bundles of yellow wax envelopes. Also in the bottom of the box were grains of rice and (18) small black rubber bands. Once the square brick shaped items were opened there were a total of (34) bundles of yellow wax envelopes that contained tan powder substance. The tan powder substance field tested positive for heroin and weighed approx. 0.1 grams per yellow wax envelope for a total of approx. 34 grams. The (34) bundles of yellow was envelopes were placed into evidence in best bag# S156340 for analysis. Surveillance units followed the Nissan Pathfinder after it left the deal location. The Pathfinder was observed getting onto Interstate 85 northbound. Deputy J. Horton conducted a traffic stop on the vehicle. Upon stopping the vehicle the driver was identified as John D. Garvin. The passenger "Brills" did not have an identification but told Deputy Horton that his name was Jonathan Perez DOB 9-5-92. Upon searching the vehicle deputy Horton located a sum of U.S. Currency in the console and confirmed the money through serial numbers to be the recorded funds used in the U/C buy. Deputy Horton located a black back pack in the back seat that contained grains of rice in the pocket. Deputy Horton also located two other license plates in the vehicle one being suspended and one expired that were registered to John Garvin. Deputy Horton issued a warning citation 04665212 to JOHN GARVIN for an illegal tag border and release the subject. Further investigation is needed.

VNI Issued = NO

.....(lwmain13144209072012).....

Deputy Report for Incident 12070363

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Responsible LEO:

Approved by:

Date

Deputy Report for Incident 12070363

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Supplement

.....(lwmain22185007072012).....
 On 07/07/12 I conducted a traffic stop at I-85 North bound at Hwy. 221 on a 2000 Nissan Pathfinder (GA BTZ-1834) for a tag violation. Contact was made with driver, John Garvin and advised for the reason of the stop. Mr. Garvin provided his drivers license and insurance. While checking with dispatch Mr. Garvin was asked to step out of the vehicle. Once he was at the rear of the vehicle Mr. Garvin was shown the reason for the stop and then questioned about where they were coming from and where they were going. Mr. Garvin stated that they were coming from Georgia and going to visit some family in North Carolina, however they had no luggage in the vehicle. Mr. Garvin was extremely nervous and fidgety with his hands. Mr. Garvin was asked for consent to search his vehicle where he refused. At that time the front passenger, Jonathan Perez was asked to step out of the vehicle where he was then terry frisked. Corporal Henderson, K-2, along with PSD Bruno responded to run a sniff of the vehicle. Upon search of the vehicle no illegal items were recovered. Located in the rear of the vehicle were two tags one GA and one PA. Both tags were ran through dispatch and both came back to Mr. Garvin. Both tags were seized due to being expired or suspended.

Mr. Garvin was issued a warring ticket for the license plate frame and released.
 IssuingOfficerSignatureDate = 07/07/2012

.....(lwmain22185007072012).....

Deputy Report for Incident 12070363

Supplement

.....(lwmain13144209072012).....
**-----
IssuingOfficerSignatureDate = 07/07/2012

.....(lwmain13144209072012).....

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Supplement

SUPPLEMENTAL REPORT:

On 7/17/12 Judge Wall issued the following warrants in this case:

Johnathan Perez: N-158324 Trafficking Heroin

John Garvin: N-158303 Trafficking heroin

Name Involvements:

Suspect # 214298
Last: GARVIN
DOB: 11/21/70
Race: B Sex: M

First: JOHN
Dr Lic: 057030681
Phone: (-)

Mid: DWAYNE
Address: 10449 GRAY FOX WAY
City: SAVANNAH, GA 31406

Suspect # 214295
Last: PEREZ
DOB: 09/05/92
Race: B Sex: M

First: JONATHAN
Dr Lic:
Phone: (919)567-5606

Mid:
Address: 508 CHARLES ST.
City: SAVANNAH, GA 31406

Complainant: NARCOTICS
Last: NARCOTICS
DOB: **/**/**
Race: Sex:

First:
Dr Lic:
Phone: (864)503-4500

Mid:
Address: 8043 HOWARD ST
City: SPARTANBURG, SC 29303

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
Vs.)
JOHN GARVIN,)
DEFENDANT.)

FILED
IN THE GENERAL SESSIONS COURT
SEVENTH JUDICIAL CIRCUIT
SPARTANBURG

2015 SEP -2 AM 11:27

M. HOPE BLACKLEY
C E R T I F I C A T E
O F
S E R V I C E


Indictment No.: 2012-GS-42-5979

I, John Garvin, proceeding as pro-se, do hereby swear or declare that on this 25 day of August, 2015, that I have served the enclosed MOTION FOR NEW TRIAL with supporting affidavit to be filed on this date as given to prison official an envelope containing the above documents in the prison internal mail system via United States mail properly addressed to the party in the above proceeding with first-class postage prepaid to the following names and addresses listed below:

Mrs. Tonya Camp, Chief Admin. Asst.
C/o Ms. M. Hope Blackley, Clerk of Court
Spartanburg County Clerk of Court
180 Magnolia Street
Spartanburg, S.C. 29304-3483

Mr. James E. Hunter, Asst. Solicitor
Spartanburg County Solicitors Office
180 Magnolia Street
Spartanburg, S.C. 29304-3483

RESPECTFULLY SUBMITTED this 25 day of August, 2015.


John Garvin, #355509
Pro se
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, S.C. 29010

Spartanburg County

70

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



Phone (864) 596-2591
Fax (864) 596-2259

M. Hope Blackley
Clerk of Court

Gail Moffitt
Assistant Clerk of Court

September 2, 2015

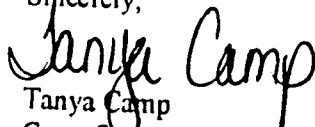
Mr. John Garvin #355509
Lee Correctional Institution (F5A-161)
990 Wisacky Hwy
Bishopville, SC 29010

RE: Motion (2012GS4205979)

Dear Mr. Garvin,

We are in receipt of your Motion for New Trial based on after discovered evidence pursuant to criminal practice rules 29(b) and civil practice rule 60(b). Please be advised that your motion has been forwarded the sentencing judge, Judge R.L. McIntosh for his review. Please note that if/when your motion is scheduled, you will be notified by mail of your court date.

Sincerely,


Tanya Camp
Court Supervisor

John Garvin, #355509
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2015 SEP -2 AM 11:26

M. HOPE BLACKLEY

Mrs. Tonya Camp, Chief Admin. Asst.
C/o Ms. M. Hope Blackley, Clerk of Court
Spartanburg County Clerk of Court
180 Magnolia Street
Spartanburg, S.C. 29304-3483

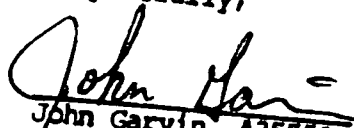
RE: State Vs. John Garvin
Indictment No.: 2012-GS-42-5979

Dear Mrs. Camp,

Enclosed please find a Motion For New Trial with supporting affidavit and Certificate of Service to be filed on this date as given to prison official to be filed with the courts.

DATE: August 25, 2015.

Respectfully,


John Garvin, #355509
Pro se

cc: File
Mr. James E. Hunter, Asst. Solicitor