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OCT 31 2017

S.C. SUPREME COURT

ALAN WILSON  
ATTORNEY GENERAL

October 27, 2017

The Honorable Daniel E. Shearouse  
Clerk of the South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

Re: Christopher E. Russell, #158392, Respondent v. State, Petitioner  
Case No. 2016-CP-23-3282

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Enclosed are the following:

1. A copy of the order which is to be challenged on appeal.
2. Proof of service of notice of appeal on the Respondent.

Sincerely,

Lindsey A. McCallister  
Assistant Attorney General  
SC Bar No. 79054

cc: R. Mills Ariail, Jr., Esquire  
South Carolina Department of Corrections  
Greenville County Clerk of Court  
Honorable William W. Wilkins, III, Solicitor, Thirteenth Judicial Circuit  
Office of Appellate Defense  
Victim Advocacy Division

STATE OF SOUTH CAROLINA  
In The Supreme Court

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CERTIORARI TO GREENVILLE COUNTY  
Court of Common Pleas  
Perry H. Gravely, Circuit Court Judge

OCT 31 2017

S.C. SUPREME COURT

Case No. 2016-CP-23-3282

Christopher Eric Russell, #158392, .....Respondent,

v.

State of South Carolina, .....Petitioner.

**NOTICE OF APPEAL**

The State of South Carolina appeals the Honorable Perry H. Gravely's order denying the State's motion for relief pursuant to Rule 60(b), SCRCPP, filed October 12, 2017, and received by the State on October 19, 2017. A copy of the Court's order is attached.

October 27, 2017

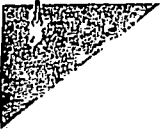
Respectfully submitted,

ALAN WILSON  
Attorney General

LINDSEY A. MCCALLISTER  
Assistant Attorney General  
S.C. Bar No. 79054  
P.O. Box 11549  
Columbia, S.C. 29211  
(803) 734-3737

By:   
Attorneys for the Petitioner

Other counsel of record:  
R. Mills Ariail, Jr.  
Law Office of R. Mills Ariail, Jr.  
11 North Irvine Street, Suite 11  
Greenville, SC 29601  
Attorney for Respondent  
(864) 232-9390



STATE OF SOUTH CAROLINA )  
 COUNTY OF GREENVILLE )  
 Christopher Eric Russell, #158392 )  
 )  
 Applicant, )  
 vs. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 Case No.: 2016-CP-23-3282

**ORDER DENYING STATE'S RULE  
 60(B)(1) MOTION FOR RELIEF**

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 GREENVILLE, SC  
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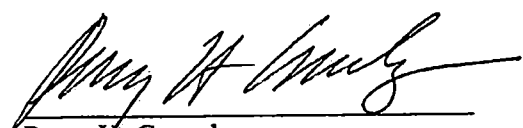
This matter comes before the Court upon the State's Rule 60(B)(1) Motion for Relief of Order issued June 15, 2017, granting the Applicant's PCR. The primary issue at the PCR hearing was whether counsel had communicated any offers to plea to less than Life without Parole.

The State's Motion was primarily based on a misstatement within the original transcript indicating "[the Applicant] has been offered opportunities to plead to life without parole...." The Applicant stated that counsel never communicated any offers, and counsel testified that she could not recall discussing any specific offers with the Applicant although she would normally have done so before trial. Nevertheless, there were no written notes confirming any such communications. In the corrected transcript from the underlying case, Counsel stated on the record that the Applicant "has been offered opportunities to plead without life without parole on the table a number of times. He has consistently maintained his innocence on this case." This confirms that offers were made, but it does not confirm that any offers were communicated to the Applicant. Therefore, the Court denies the State's Motion and affirms the Order of June 15, 2017.

AND IT IS SO ORDERED!

cc: Attorneys



  
Perry H. Gravely  
Presiding Judge

Trilux, South Carolina

October 17, 2017

STATE OF SOUTH CAROLINA )  
 COUNTY OF GREENVILLE )  
 )  
 )  
 )  
 Christopher Eric Russell, #158392, )  
 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE THIRTEEN JUDICIAL CIRCUIT

Case No. 2016-CP-23-3282

**ORDER GRANTING POST-CONVICTION  
 RELIEF IN PART AND DENYING  
 POST-CONVICTION RELIEF IN PART**

Presiding Judge:	Perry H. Gravely
Applicant's Attorney:	R. Mills Ariail, Esquire
Respondent's Attorney:	Lindsey A. McCallister, Esquire
Trial Counsel:	Susannah Ross, Esquire
Date of Hearing:	April 19, 2017
Court Reporter:	Susan W. Hudgins

FILED-CLERK OF COURT  
 PAUL B. WICKES  
 GREENVILLE, SC  
 2017 JUN 15 AM 11:04

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 1, 2016. Respondent made its return on January 12, 2017. An evidentiary hearing on the matter was convened on April 19, 2017, at the Greenville County Courthouse. Applicant was present at the hearing and represented by R. Mills Ariail, Esquire. Lindsey A. McCallister, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

Applicant testified on his own behalf. Susannah Ross, Esquire, also testified. The Court had before it the trial transcript, the Greenville County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the pleadings, and Applicant's appellate records.

**PROCEDURAL HISTORY**

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. Applicant was indicted by the July 2011

term of the Greenville County Grand Jury for conspiracy (2011-GS-23-1118), kidnapping (2011-GS-23-1122), armed robbery (2011-GS-23-1123), and burglary, first degree (2011-GS-23-1124). Susannah Ross, Esquire, represented him. On February 13, 2013, Applicant proceeded to a jury trial and was found guilty as indicted on all charges. The Honorable R. Lawton McIntosh sentenced Applicant to confinement for five years for conspiracy and life without parole for each charge of kidnapping, armed robbery, and burglary, first degree. The sentences are set to run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's convictions. State v. Russell, Op. No. 2015-UP-435 (filed on August 19, 2015). The Remittitur was issued on September 16, 2015.

### ALLEGATIONS

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel- 6<sup>th</sup> Amendment and U.S. and State Constitution" (sic)
  - a. "Trial counsel failed to communicated plea on proper terms"
2. "Due Process- 5<sup>th</sup> and 14<sup>th</sup> Amendment U.S. and State Constitution" (sic)
  - a. "Trial counsel failed to challenge the use of prior conviction with proper argument."
3. "Confrontation Clause- 6<sup>th</sup> Amendment U.S. and State Constitution" (sic)
4. "Illegal search and seizure- 4<sup>th</sup> Amendment U.S. and State Constitution" (sic)

During the hearing, Applicant raised additional issues that were outside the scope of the allegations in his application. Respondent objected to those issues going forward on the basis of prejudice since the issues were raised with no prior notice to the State. This Court ~~granted~~ <sup>plus</sup> sustained Respondent's objection and did not consider any issue unless it was raised in the original application.



## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).<sup>1</sup>

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 300 S.C. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland, 466 U.S. at 688 (1984)). Second, counsel’s deficient performance must have prejudiced the applicant such that

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<sup>1</sup> As noted above, Applicant raised several issues at the evidentiary hearing that were not properly plead in his application or an amendment filed with the court. Accordingly, these findings of facts and conclusions of law relate only to the four issues contained in the application.

“there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

#### A. Ineffective Assistance of Counsel

##### 1. Failure to Convey Plea Offer

In Davie v. State, the court granted relief to the applicant on the basis of counsel’s failure to relay a plea offer made by the State to the applicant. 381 S.C. 601, 675 S.E.2d 416 (2009). The South Carolina Supreme Court held that in order to prevail on claims that defense counsel failed to convey a favorable plea offer, Applicant must show (1) failure to communicate the plea offer was deficient performance, and (2) Applicant was prejudiced by the deficient performance, or there was a reasonable probability Applicant would have accepted the original offer. Id., 381 S.C. at 608, 675 S.E.2d at 420. Generally, “defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.” Bell v. State, 410 S.C. 436, 441, 765 S.E.2d 4, 6 (Ct. App. 2014) (quoting Missouri v. Frye, 566 U.S. 133 (2012)). Failure to communicate a plea offer constitutes deficient performance, although prejudice must be evaluated on a case-by-case basis. Davie, 381 S.C. at 609, 675 S.E.2d at 420. “To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.” Frye, 566 U.S. at 147. The difference in the sentence<sup>ply</sup> received and the plea offer may be sufficient proof of prejudice. See Bell, 410 S.C. at 443, 765 S.E.2d at 7-8 (“In this case, trial counsel testified the plea offer was for ten years imprisonment. Bell was sentenced to twenty years’ imprisonment. The difference is evidence of his prejudice.”); Davie, 381 S.C. at 614, 675 S.E.2d at 423 (“[W]e

conclude that the difference in the sentence Petitioner received and the plea offer is proof of prejudice.).

Applicant and Counsel both testified that at the time of Applicant's arrest on these charges, Counsel had already been appointed to represent him on other matters, so she handled this new case as well. Applicant testified his first meeting with Counsel to discuss these specific charges was in June or July 2011. Applicant testified the case was continued several times, and he spoke with Counsel at court each time. Applicant further testified he and Counsel discussed discovery beginning in August 2011, and they went over the evidence the State had turned over, discussed the issue of the codefendant's testimony, and on multiple occasions, discussed that Applicant was facing life without parole. Applicant testified the only offer ever communicated to him was to plead to life without parole (LWOP), and he was unaware there was an offer of twenty years until he obtained copies of his file through a FOIA request after his conviction. Applicant repeatedly testified he told Counsel he would not plead to LWOP. Although Applicant testified he did not communicate to Counsel a term of years that would be acceptable to him, he testified he would have accepted the twenty-year offer if it had been communicated.

Counsel testified she received a plea offer of twenty years in writing from the solicitor in March 2011. She testified it was her usual practice to convey all plea offers and discuss the ramifications with her clients, but she did not have any specific documentation or notes in her file confirming the practice was followed in this case. Counsel testified, at the time, it was her practice to convey plea offers in person rather than in writing. However, Counsel did not recall any specific discussions of the twenty-year plea offer with Applicant in this case. Counsel testified the LWOP notice was served on December 8, 2011, and her notes reflect she made jail visits on December 5, 2011, and December 7, 2011, which she believed were attempts to

persuade Applicant to avoid LWOP by accepting the plea offer. However, Counsel's notes only reflect that she visited Applicant in jail on those days and do not contain any specific indication that the twenty-year offer was conveyed or discussed at that time. Counsel testified Applicant maintained his innocence throughout the case and did not wish to plead guilty.

This Court finds the trial transcript confirms Applicant's testimony, as Counsel states the following during the sentencing phase: "Judge, I would just say that Mr. Russell, in light of the fact that you have no ability to change the sentence here, is looking at life without parole. Mr. Russell has been offered opportunities to plead to life without parole on the table a number of times. He has consistently maintained his innocence on this case." Counsel testified she misspoke and meant to say Applicant had been offered opportunities to plead without LWOP on the table. Counsel's statement in the transcript is consistent with Applicant's testimony that he was unaware of any offers except to plead to a sentence of LWOP. This Court finds there is no evidence that the offer of twenty years was conveyed to Applicant.

Accordingly, this Court finds Counsel's performance was deficient for failing to relay the plea offer of twenty years to Applicant. Applicant was sentenced to LWOP as a result of his conviction at trial, and Applicant testified he would have accepted the offer of twenty-years had it been conveyed to him. The Court finds this testimony credible, and therefore, this Court finds Applicant has sufficiently proven he was prejudiced by Counsel's deficient performance. See Davie, 381 S.C. at 613, 675 S.E.2d at 422. ("[I]t is not always necessary for a defendant to offer objective evidence to support a claim of actual prejudice. Instead, depending on the facts of the case, a defendant's self-serving statement may be sufficient to establish actual prejudice."). Because Applicant has proven both deficiency and prejudice, Applicant's request for relief on this ground is granted. The appropriate remedy is to send the case back to the trial court for

resentencing as if Applicant had accepted the twenty-year plea offer. Bell, 410 S.C. at 439-40, 765 S.E.2d at 5-6.

**2. Failure to Challenge Use of Prior Conviction**

Applicant alleges his criminal record did not qualify him for LWOP on these charges, and Counsel was deficient for failing to object. In support of this allegation, Applicant introduced the LWOP notice and the first screen of his SCDC records, which he contends do not match. Applicant testified the LWOP notice states he has convictions seven prior burglary – second degree charges, but Applicant’s SCDC record does not show those all of those convictions. Applicant’s record, however, does show a previous conviction for armed robbery..

Counsel testified she would have obtained Applicant’s criminal record as part of the discovery process, and she would have verified the convictions listed on the LWOP notice were correct. Counsel testified the LWOP notice listed seven burglary – second degree convictions and one armed robbery conviction. Counsel testified she had no reason to believe the LWOP notice was incorrect. Further, Applicant testified he never raised this issue to Counsel or told Counsel he did not believe he was eligible, and Applicant’s PCR counsel conceded Applicant was indeed eligible for LWOP based on his previous convictions.

This Court finds Counsel was not deficient for not objecting to the LWOP notice. Although Applicant presented his part of his SCDC record as evidence that he does not have seven prior burglary convictions, he has not alleged or offered any evidence that the previous armed robbery conviction is an error. See, e.g., Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (“This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. . . .). That conviction alone is sufficient for

LWOP. S.C. Code Ann. § 17-25-45 (2016). Further, PCR counsel conceded Applicant was eligible on the basis of his previous record. Accordingly, this Court finds Applicant has failed to prove prejudice. “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” Strickland, 466 U.S. at 691, 104. Therefore, this Court finds Counsel’s performance was not deficient, nor was Applicant prejudiced by any alleged deficiency. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The allegation is denied and dismissed.

**B. Constitutional Violations - Confrontation Clause and Illegal Search and Seizure**

Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). “Errors in a petitioner’s trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings.” Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975). In a PCR action, “when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel.” Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993).

Regarding the search of Applicant’s cell phone, Counsel testified she did object to the phone-download testimony, but her argument was focused on the validity of the search warrant, as she believed that was the stronger argument. Counsel testified her strategy for trial hinged on keeping the cell phone evidence out because the phone had a contact entry for “Mama,” which rang to Applicant’s mother’s house. Counsel testified she contested the validity of the search warrant in a pre-trial motion to suppress, and then renewed her objection to admission of that

evidence during the trial. Counsel testified her opinion was that the identity of the analyst testifying did not make any difference, and she did not believe there was any impropriety in the State running a second analysis after the original officer left the agency. This issue was raised during Applicant's direct appeal. The Court of Appeals affirmed the trial court's ruling on the merits.

Applicant testified he believed his right to confront witnesses against him was unconstitutionally violated when the trial court allowed testimony of a courtroom security officer who established an alias for the State. Counsel testified she raised the Confrontation Clause issue during trial and objected to the testimony of a courtroom security officer on the basis that she was not given any prior notice and the officer was included on the State's witness list. The trial court ultimately overruled her objection, and this issue was raised on appeal. Again, the Court of Appeals affirmed the trial court's ruling on the merits.

This Court finds these allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b), and Applicant in fact raised both issues in his direct appeal. Even construing Applicant's allegations as a claim of ineffective assistance of counsel, this Court finds Counsel's performance was not deficient. Counsel objected both to the admission of the cell-phone evidence and to the testimony of the courtroom security officer, properly preserving both issues for appeal. Counsel further explained her strategy regarding the cell phone was to contest the validity of the search warrant rather than the issue of the second download, as she believed the search warrant issue was a stronger argument. See Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000) (“[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.”) Applicant

has failed to carry his burden on these allegations, and they are denied and dismissed with prejudice.


**CONCLUSION**

Based on all the forgoing, this Court finds Applicant has established a constitutional deprivation which requires this Court to grant relief in regards to his allegation Counsel failed to convey a favorable plea offer. However, this Court finds and concludes Applicant has failed to carry his burden on all other allegations. Therefore, this PCR application is granted as to the allegation Counsel failed to convey a favorable plea offer, and it is denied and dismissed with prejudice as to all other allegations.

**IT IS THEREFORE ORDERED:**

1. The application be granted in part, based on Counsel's failure to relay a favorable plea offer to Applicant;
2. All remaining allegations are denied and dismissed with prejudice;
3. Applicant's sentence shall be vacated and his case remanded to General Sessions court for resentencing;
4. The State shall present Applicant with the original plea offer of twenty years.

AND IT IS SO ORDERED this 12<sup>th</sup> day of June, 2017.

  
\_\_\_\_\_  
HONORABLE PERRY H. GRAVELY  
Presiding Judge  
Thirteenth Judicial Circuit

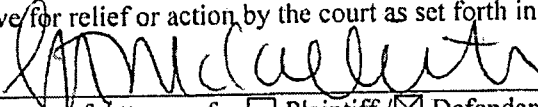
Greenville, South Carolina.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 )  
CHRISTOPHER E. RUSSELL, #158392 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
STATE OF SOUTH CAROLINA )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 THIRTEENTH JUDICIAL CIRCUIT

CASE NO: 2016-CP-23-3282

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Plaintiff's Attorney: R. Mills Ariail, Jr., Bar No. Address: Law Office of R. Mills Ariail, Jr. 11 North Irvine Street, Suite 11 Greenville, SC 29601 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Lindsey A. McCallister, Bar No. Address: Attorney General's Office PO Box 11549 Columbia, SC 29211 Phone: <u>803.734.3737</u> Fax <u>803.734.4113</u> E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	June 2, 2017 Date submitted
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

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 GREENVILLE SC  
 2017 JUN 15 AM 11:04

STATE OF SOUTH CAROLINA  
In The Supreme Court  
CERTIORARI TO GREENVILLE COUNTY  
Court of Common Pleas  
Perry H. Gravely, Circuit Court Judge

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OCT 31 2017  
S.C. SUPREME COURT

Case No. 2016-CP-23-3282

Christopher Eric Russell, #158392, ..... Respondent,

v.

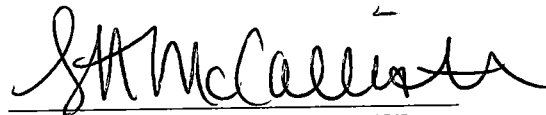
State of South Carolina, ..... Petitioner.

**PROOF OF SERVICE**

I, Lindsey A. McCallister, Counsel for the Petitioner, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

**R. Mills Ariail, Jr.  
Law Office of R. Mills Ariail, Jr.  
11 North Irvine Street, Suite 11  
Greenville, SC 29601**

I further certify that all parties required by Rule to be served have been served this 27th day of October, 2017.



LINDSEY A. MCCALLISTER  
S.C. Bar. No. 79054  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737  
**Attorney for the Petitioner**