

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

RECEIVED

AUG 30 2017

S.C. SUPREME COURT

RE: Leroy Archie v. State
Appellate Case No. 2017-001664

Dear Clerk:

I received a letter from this Court for explanation pursuant to Rule 243, SCACR as to the why this action is barred by the circuit court.

I am with little education, but on July 24, 2017, the applicant did not knowing and intelligent waived his right to counsel and he did not knowing and intelligently waived his right to presentment to the grand jury.

The test to be applied in determining whether a fundamental right, such as the right to effective counsel has been waived is well settled. The State can established a waiver only by proving an intentional, relinquishment or abandonment of the right. Hoffman v. Leek, 903 F.2d 280, 288 (4th Cir. 1990) quoting Johnson v. Zerbst, 304 U.S. 458, 464 (1933). To be a valid waiver must not be involuntary, it must be done knowing and intelligently. Brady v. United States, 397 U.S. 742, 748 (197

Whether there has been a waiver depends on the particular facts of each case and the Court must make an through and long an inquiry as necessary to determine whether the accused is voluntary, knowingly, and intelligently waving his rights.

In Holden v. State, 713 S.E.2d 611 (S.C. 2011) the Court said, to find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Roddy v. State 528 S.E.2d 418, 421 (2000). A defendant's knowing and voluntary waiver of the Constitutional rights which accompany a guilty plea, may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel or both. Pittman v. State 534 S.E.2d 623, 625 (1999)(quoting State v. Ray, 427 S.E.2d 171, 174 (1993)).

The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternatives courses of action open to the defendant. Hill 474 U.S. at 56, (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)).

In determining guilty plea issue, it is proper to consider the guilty plea transcript, as well as, evidence at the PCR hearing. Suber v. State 640 S.E.2d 884 (2007). Specifically, the voluntariness of a guilty plea is not determined by examination of a specific inquiry made by the sentencing Judge alone, but is determined from both the record made at the time of entry of the guilty plea and also from the record of the PCR hearing. Roddy 528 S.E.2d at 420.

The Due Process Clause require guilty pleas be entered into voluntarily, knowingly and intelligently. Anderson v. State, 535 S.E.2d 649 (S.C. 2000)(quoting Boykin v. Alabama 395 U.S. 238 (1969)).

The Respondent has alleged that I waived my right to counsel, waived my fundamental right to have a grand jury indictment, and waived my right to a jury trial to the offense. And all the Respondent have is a stamp on the indictment that states I waived this and that.

The Defendant has never been custodian of the records of a guilty plea. If the State don't have any record to show a valid waiver, as with this case, then they shouldn't be allowed to used the conviction for enhancement, because there is no way to challenge the conviction which violates due process.

Subject matter jurisdiction can be raised at anytime. State v. Bryan 591 S.E.2d 637 (S.C. App. 2013). A trial court acquires subject matter jurisdiction to hear a criminal case by way of a legally sufficient indictment or a valid waiver thereof.

Where an applicant alleges facts that would established an exception to either statute of limitation or the prohibition of successive applications and those facts are not conclusively refuted by the record before PCR Court. A question of fact is raised which can only be resolved by a hearing. McCoy 737 S.E.2d at 626.

CONCLUSION

The Petitioner prays this Court would Order a PCR hearing.

Dated

August 25 2017


Leroy Archie #317590

The State of South Carolina

County of ANDERSON

INDICTMENT FOR ASSAULT AND BATTERY WITH INTENT TO KILL AND CARRYING CONCEALED WEAPON

16-3-620 - 014

At a Court of General Sessions, convened on the 5TH day of APRIL,
1988, the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE—ASSAULT AND BATTERY WITH INTENT TO KILL

That LEROY ARCHIE
did in ANDERSON County on or about the 13th day of AUGUST,
1987, with malice aforethought commit an assault and battery upon one
ETRULIA ARCHIE
with intent to kill the said ETRULIA ARCHIE

~~COUNT TWO—CARRYING CONCEALED WEAPON~~

That _____
did in _____ County, on or about the _____ day of _____,
19____, carry concealed about his person a deadly weapon, to wit: _____

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

George M. Duenworth
TENTH CIRCUIT

Solicitor

CERTIFICATE OF SERVICE

The undersigned hereby certify that he mail Explanation pursuant To Rule 243(c), SCACR to Daniel E. Shearouse, Clerk of the Supreme Court of South Carolina this 25 day of August 2017 by depositing same in the U.S. mail postage prepaid.

Leroy Archie
Leroy Archie,

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