



ALAN WILSON  
ATTORNEY GENERAL

January 3, 2018

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JAN 05 2018

S.C. SUPREME COURT

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

**Re: Samuel Earl Jeter v. State of South Carolina**  
**Appellate Case No. 2017-000116**  
**Lower Court Case No. 2015-CP-44-0225**

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the **Motion to Consent to Remand** in the above mentioned case.

Sincerely,

Justin J. Hunter  
Assistant Attorney General  
SC Bar No. 101254

JJH/cc

cc: David Alexander, Esquire

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Union County  
Honorable Roger L. Couch, Circuit Court Judge  
Appellate Case No. 2017-000116

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S.C. SUPREME COURT

SAMUEL EARL JETER,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**MOTION TO CONSENT TO REMAND**

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Respondent, through its undersigned counsel, would respectfully show unto the Court as follows:

**I.**

Samuel Earl Jeter (Petitioner) was indicted at the November 2010 term of the Union County Grand Jury for second-degree criminal sexual conduct with a minor (2009-GS-44-261). Petitioner was also indicted at the January 2011 term of the Union County Grand Jury for Lewd Act Upon a Child Under the Age of Sixteen Years (2011-GS-44-190). Petitioner proceeded pro se and on February 2, 2011 underwent a bench trial before the Honorable John C. Hayes, III. He was found guilty on both charges and sentenced to imprisonment for twenty years for criminal sexual conduct and a concurrent term of imprisonment for fifteen years for lewd act. Petitioner did not appeal his sentence or conviction.

## II.

Thereafter, Petitioner filed an application for post-conviction relief on December 3, 2014, alleging ineffective assistance of counsel, in that Counsel failed to protect Petitioner's rights when counsel moved before the court to be relieved as counsel. App. 119. Petitioner also alleged he did not waive his right to a direct appeal and move for belated appellate review pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Respondent made its Return and Motion to Dismiss on or about May 11, 2016 arguing the action should be dismissed for being filed beyond the one-year statute of limitations. App. 130. A Conditional Order of Dismissal was signed by the Honorable Daniel D. Hall on May 24, 2016 and filed June 6, 2016 finding the action should be dismissed for being filed over three years beyond the expiration of the one-year statute of limitations. On November 7, 2016, a hearing was held at the Moss Justice Center in York, South Carolina. App. 133. Petitioner was present and represented by Beth Faulkner, Esquire. Justin Hunter, of the South Carolina Office of the Attorney General represented Respondent. At this hearing, Respondent made a motion to dismiss, based on the expiration of the statute of limitations.

The PCR court issued an order of dismissal signed December 2, 2016 and filed December 15, 2016. App. 144. The PCR court found Petitioner's action was dismissed for being filed three years beyond the statute of limitations. App. 146. The PCR court also dismissed Petitioner's allegation that he be afforded belated review pursuant to White v. State, finding Petitioner represented himself and neither the trial judge nor Petitioner's former counsel was under any duty to inform him of his right to counsel. App. 147.

## III.

Petitioner timely appealed the order of dismissal, and filed a Petition for Writ of

Certiorari on August 18, 2017. In his Petition, Petitioner argues the PCR court erred in summarily dismissing his application as it should have conducted an evidentiary hearing based on White v. State. Petitioner asks this Court to remand the case for an evidentiary hearing.

#### IV.

While preparing the State's Return to the Petition for a Writ of Certiorari, undersigned counsel discovered the post-conviction relief court's order of dismissal contained an error of law. Specifically, the post-conviction relief court erred as a matter of law in summarily dismissing Petitioner's application pursuant to the statute of limitations without assessing through an evidentiary hearing whether Petitioner knowingly and voluntarily waived his right to a direct appeal. Accordingly, the post-conviction relief court's finding Petitioner's application should be summarily dismissed was incorrect as a matter of law. See Wilson v. State, 348 S.C. 215, 218–19, 559 S.E.2d 581, 583 (2002) (reversing the PCR court's ruling that Wilson's PCR application was barred by the one year statute of limitations and remanding to the PCR court to conduct an evidentiary hearing to determine if Wilson knowingly and intelligently waived his right to direct appeal).

#### V.

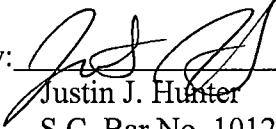
Because Petitioner was wrongly denied the opportunity to present evidence and testimony to the PCR court regarding whether he knowingly and intelligently waived his right to a direct appeal, this Court should remand Petitioner's case to the PCR court for an evidentiary hearing.

**WHEREFORE**, Respondent prays this Court remand this case to the PCR court for a determination whether Petitioner knowingly and intelligent decision not to pursue a direct appeal.

Respectfully submitted,

ALAN WILSON  
Attorney General

JUSTIN J. HUNTER  
Assistant Attorney General

By:   
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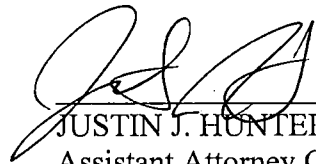
Respondent.

**PROOF OF SERVICE**

I, Justin J. Hunter, certify that I have served the within Motion to Consent to Remand by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

David Alexander, Esquire  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.  
This 3rd day of January, 2018.

  
JUSTIN J. HUNTER  
Assistant Attorney General

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Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737