

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JAN 04 2018

SC Court of Appeals

Certiorari to Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

ROBERT A. YOUNG

PETITIONER,

v.

THE STATE

RESPONDENT

APPELLATE CASE NO 2017-001544

SUPPLEMENTAL APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

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Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

COUNTY OF *Spartanburg*

Name of applicant and Inmate number (if applicable)

OR *ROBERT YOUNG #326594*

IN THE INTEREST OF

Juvenile

v.

State of South Carolina

) IN THE COURT OF (Select one)
) GENERAL SESSIONS
) FAMILY COURT
) JUDICIAL CIRCUIT

) APPLICATION FOR
) FORENSIC DNA TESTING

) ORIGINAL INDICTMENT NO.
) *07-GS-42-0998, 07-GS-42-0996*
) -GS- -

) ORIGINAL PETITION NO.
)
) -GS- -

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 MAY 25 PM 1:11
M. HOPE BLACKLE

INSTRUCTIONS – READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may continue an answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the end of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted or adjudicated.

I understand that DNA testing is only available if I have been convicted or adjudicated of an offense listed in S.C. Code Ann. § 17-28-30, that I am currently incarcerated for that offense, and that I am asserting that I am innocent of the offense. Further, if the conviction or adjudication was the result of a plea of guilty or nolo contendere, the application must be filed within seven years of the date of sentencing.

- 1. Identify the proceedings in which the applicant was convicted or adjudicated: *Trial by jury*

2. Give the date of the entry of the judgment and sentence:
 February 4-6 2008 jury found me guilty of armed robbery, ABWIK, and not guilty of grand larceny, sentenced to 50 years and current place of incarceration: Lieber Correctional Institution
3. Identify all previous or ongoing proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or adjudication:
- (a) Direct appeal - basically ineffective of trial counsel
- (b) PCR - basically - ineffective of trial counsel
- (c) Federal habeas corpus - ineffective of trial counsel
4. Make a reasonable attempt to identify the physical evidence or biological material that should be tested: pants and shirt

Identify specific type of DNA testing being sought: D.N.A

FILED
 CLERK OF COURT
 SPARTANBURG COURT
 2016 MAY 25 PM 1:10
 M. HOPE BLACKLICK

5. Explain why the identity of the applicant was or should have been a significant issue during the original court proceedings, notwithstanding the fact that the applicant may have pled guilty or nolo contendere or made or is alleged to have made an incriminating statement or admission as to identity:
 Should have been a significant issue during trial I was placed away from scene when crime was committed. I had witnesses placing me on the other side of town when the crime happen. In the car they found another man fingerprints. Even the victim witnesses placed me away when the shooting happen. The victim admitted at trial that he got me mix up with another man that be in the same area as me. At trial he stated he was confused on the house he pick the person up from.
6. Explain why the physical evidence or biological material sought to be tested was not previously subjected to DNA testing, or if the physical evidence or biological material sought to be tested was previously subjected to DNA testing, provide the results of the testing and explain how the requested

- DNA test would provide a substantially more probative result: would provide a substantially more probative result because. As stand now the test is showing two male individuals, one which is unidentified. Only one test spot show victim as major contributor. All other spots show mixtures, major contributor is from an unidentified male individual. If all spots tested is mixtures how is it accurate. When it's an individual that's not identified. The identity of the unidentified person would make a probative result. They stated victim was shot point blank from behind no D.N.A was found on front of my shirt the shooter would of had blood on front of shirt.
- 7. Explain why if the DNA testing produces exculpatory results, the testing will constitute new evidence that will probably change the result of the applicant's conviction or adjudication if a new trial is granted and is not merely cumulative or impeaching: It will show I did not commit crime I was on other side of town when the shooting happen. They came up with the victim D.N.A and another person D.N.A at the crime scene which was not mine.

8. I assert that I am actually innocent of the listed offense, that this offense is listed in S.C. Code Ann. § 17-28-30 and that I am currently incarcerated for the listed offense. I attest that this application is made to demonstrate innocence and not solely to delay the execution of a sentence or the administration of justice.

9. If DNA testing is conducted and results are determined to be inculpatory by the Court, I understand that:

- (a) The Court may hold me in contempt of court if it determines that my assertion of actual innocence was intentionally false;
- (b) The Court may assess the cost of any DNA testing against me;
- (c) The South Carolina Department of Corrections may use this determination to deny good conduct credit; and,
- (d) The Department of Probation, Parole, and Pardon Services can use this determination to deny parole.

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2016 MAY 25 PM 1:27
 M. HOPE BRACKLEY

Robert Young
 Print Applicant Name

Robert Young
 Signature of Applicant

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I Robert Young, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; and that the matters and allegations set forth are true.

Robert Young

Signature of Applicant

SWORN to and subscribed before me this 13th
day of May, 2016

Yvette Blome
Notary Public

(L.S.)

My Commission Expires: 8/20/2016

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 MAY 25 PM 1:57
M. HOPE BLACKLEY

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I Robert Young, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true.

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Robert Young

Signature of Applicant

SWORN to and subscribed before me this 13th
day of May, 16.

Yvonne B. Blome
Notary Public

(L.S.)

My Commission Expires: 8/20/2016

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 MAY 25 PM 1:58
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Robert A. Young, #326594,

Name of applicant and Inmate number (if applicable)

OR

IN THE INTEREST OF JUSTICE

Juvenile

v.

State of South Carolina

Respondent,

) IN THE COURT OF (Select one)

) GENERAL SESSIONS

) FAMILY COURT

) 7th. JUDICIAL CIRCUIT

) APPLICATION FOR

) FORENSIC DNA TESTING

) ORIGINAL INDICTMENT NO.

) #2007 -GS-42 -998

) OR

) ORIGINAL PETITION NO.

) -JU-

INSTRUCTIONS – READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may continue an answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the end of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted or adjudicated.

I understand that DNA testing is only available if I have been convicted or adjudicated of an offense listed in S.C. Code Ann. § 17-28-30, that I am currently incarcerated for that offense, and that I am asserting that I am innocent of the offense. Further, if the conviction or adjudication was the result of a plea of guilty or nolo contendere, the application must be filed within seven years of the date of sentencing.

1. Identify the proceedings in which the applicant was convicted or adjudicated:

Trial by jury and Judge J. Derham Cole.

2. Give the date of the entry of the judgment and sentence: Feb. 4th-6th, 2008.
(30) years for armed robbery, (20) years (ABWIK) consecutive.
 and current place of incarceration: LIEBER CORRECTIONAL INSTITUTION.
3. Identify all previous or ongoing proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or adjudication:
- (a) Petitioner had an Direct Appeal, Post-Conviction Relief,
 (b) Writ of Certiorari, Writ of Habeas Corpus all denied.
 (c) Petition for Sentence Modification currently pending.
4. Make a reasonable attempt to identify the physical evidence or biological material that should be tested: Blood, Hair tissue, tee shirt, fingerprints,
alleged weapon, footprint, clothing, gun power residue, or
any other physical evidence or biological material used to
convict.
 Identify the specific type of DNA testing being sought:
Serology Testing or DNA Analysis
5. Explain why the identity of the applicant was or should have been a significant issue during the original court proceedings, notwithstanding the fact that the applicant may have pled guilty or nolo contendere or made or is alleged to have made an incriminating statement or admission as to identity:
According to Tr.p.50, lines 7-9, the Petitioner is labeled
as the perpetrator. The identity is an issue and is also
material. Therefore, should have been an issue in the
original proceeding. The State has shifted the burden of
proof upon the Petitioner, to prove his innocence. There
may have been incriminating statements made, but it does
not prove robbery. Rule#6 of the SCRCrimP, allows for the
accused to present evidence that may contradict any evidence.
6. Explain why the physical evidence or biological material sought to be tested was not previously subjected to DNA testing, or if the physical evidence or biological material sought to be tested was previously subjected to DNA testing, provide the results of the testing and explain how the requested DNA test would provide a substantially more probative result:
The DNA testing of the Petitioner's physical evidence or
biological material sought to be tested was not sought by
counsel because counsel lack understanding of significance
scientific knowledge and failed to seek DNA expert opinion.

The test requested would challenged the State's credibility for the offense charged. Armed robbery was just an theory.

The State has the burden to prove or disprove guilt or innocence.

7. Explain why if the DNA testing produces exculpatory results, the testing will constitute new evidence that will probably change the result of the applicant's conviction or adjudication if a new trial is granted and is not merely cumulative or impeaching:

Because of the testing used against the Petitioner did not ~~prove armed robbery. The jury was persuaded to believing negative results of the SLED report. If test is subjected to testing, it would produce exculpatory results that would constitute new evidence and would also change the results of the conviction. Would not be merely cumlative or impeaching.~~

8. I assert that I am actually innocent of the listed offense, that this offense is listed in S.C. Code Ann. § 17-28-30 and that I am currently incarcerated for the listed offense. I attest that this application is made to demonstrate innocence and not solely to delay the execution of a sentence or the administration of justice.

9. If DNA testing is conducted and results are determined to be inculpatory by the Court, I understand that:

- (a) The Court may hold me in contempt of court if it determines that my assertion of actual innocence was intentionally false;
- (b) The Court may assess the cost of any DNA testing against me;
- (c) The South Carolina Department of Corrections may use this determination to deny good conduct credit; and,
- (d) The Department of Probation, Parole, and Pardon Services can use this determination to deny parole.

Robert A. Young, #326594
Print Applicant Name

Robert Young
Signature of Applicant

STATE OF SOUTH CAROLINA

)
)
)

VERIFICATION

County of SPARTANBURG

I Robert A. Young, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; and that the matters and allegations set forth are true.

Robert Young

Signature of Applicant

SWORN to and subscribed before me this 12th
day of May, 2017.

Gracie K. B.

(L.S.)

Notary Public

My Commission Expires: 6-20-26

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Robert A. Young, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Robert Young
Signature of Applicant

SWORN to and subscribed before me this 12th
day of May, 2017.

Linda K. B. (L.S.)
Notary Public

My Commission Expires: 6-30-26



BLACKSTONE CAREER INSTITUTE

1011 BROOKSIDE RD., SUITE 300, ALLENTOWN, PA 18106

January, 2012 *Petitioner's Exhibit - A*

Dear Prospective Student,

Recently, you requested some information about the accredited Legal Assistant/Paralegal Certificate Program offered through Blackstone Career Institute. Now is the time for you to make the investment in yourself and start expanding your opportunities. With paralegal training, you can move into a position of substantial responsibility within your institution and beyond.

Looking for new opportunities? Here are four reasons why you should enroll now in Blackstone's Paralegal Studies and take advantage of our New Year's Special:

Reason #1: Affordability. You can enroll in the highest quality, lowest tuition cost home study paralegal program with interest-free payments and no shipping fees. Our tuition cost is only \$699, for a limited time! You must enroll by March 12, 2012, in order to receive this special offer. Please see your Enrollment Agreement for details.

Reason #2: Knowledge. Our paralegal program will give you the opportunity to enhance your knowledge of the law, help others, and acquire new skills you can use immediately and in the future. In addition to our Modern American Law series, research, ethics and job search skills complete our 915 clock hour program—a substantial program at an incredible value!

Reason #3: Value. Along with the items in our current offer, including the FREE Black's Law Pocket Dictionary, we are extending to you a special bonus offer for a limited time. Enroll before **March 12, 2012**, and you will receive either *Chicken Soup for the Prisoner's Soul* or *Serving Productive Time* when you have completed the program. Please see the enclosed blue sheet for details on this special bonus!

Reason #4: Milestone Program. On January 25, 2010, the government signed a law granting qualified inmates a reduction of their time of incarceration for actively participating in and completing components of in-prison rehabilitation programs such as educational training. Ask your counselor whether you are eligible for this program.

Learn in your spare time, acquire important knowledge in the legal field, and build "real world" skills. Seize this opportunity now!

Invest in yourself—an investment that could pay back many times over! I am confident that our educational training will provide you the means to a better future. Enroll today for a brighter tomorrow.

Sincerely yours,

Kevin J. McCloskey
President



A Direct Learning Systems School

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email: info@blackstone.edu • www.blackstone.edu

Lieber Correctional Institution

Faith Based Living Unit

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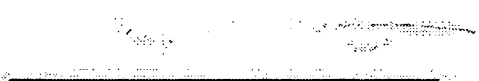
Hereby respectfully acknowledges:


Robert Young

As a Participant of the below faith-based and pro-social character development program(s) for January 2016 – March 2016:

GED
The Peaceful Solution

Basic Electricity


James Cullino, Senior Chaplain


Timothy Clark, Unit Manager


Fred Thompson, Associate Warden

Given this 5th Day of May 2016

PALMETTO UNIFIED SCHOOL DISTRICT

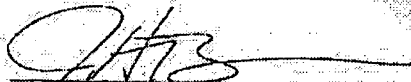
PRESENTS

TO

ROBERT YOUNG

IN RECOGNITION OF THE SATISFACTORY
COMPLETION OF 200 HOURS OF
ON-THE-JOB TRAINING
CUSTODIAL SERVICES I


Given on this 12 day of August, 2015



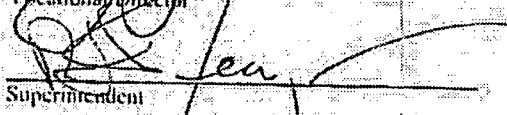
Supervisor / Instructor



Division Director / School Leader



Vocational Director



Superintendent

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT
) INDICTMENT NO.#2007-GS-42-996,998
Robert A. Young,#326594,)
Petitioner,)
))
- vs -) "NOTICE OF SENTENCE MODIFICATION"
))
THE STATE OF SOUTH CAROLINA,)
Respondent,)

TO: The Honorable Judge J. Derham Cole
And: Sclicitor Trey Dowdy 7th. Judicial Circuit

Now comes Robert A. Young,#326594, the Petitioner, who hereby moves this Honorable Court of General Sessions with his petition for "SENTENCE MODIFICATION", based upon several mitigating factors in this case that were not considered during the original proceedings. Request is also made for an hearing and appointment of counsel as a matter of law. Petitioner would present to the Court the following:

PROCEDURAL HISTORY

On Feb. 4th,- 6th,2008, the Petitioner proceeded to trial by jury, before the Honorable J. Derham Cole, Circuit Court Judge. Attorney for the Petitioner, William H. McPherson, Esquire, and the State was represented by Derrick A. Bulsa, Esq. and Lauren Barnwell, Esquire.

Faced with the indictments for the offenses of armed robbery, #2007-GS-42-998, and the offense of assault and battery with the intent to kill (ABWIK), #2007-GS-42-996 and grand larceny #2007-GS-42-997. After, an plea of not guilty, the Petitioner, proceeded to trial, and was found guilty for the offenses of armed robbery, and the (ABWIK). Found not guilty for grand larceny. Judge Cole, sentenced the Petitioner to thirty (30) years imprisonment for armed robbery and sentenced to twenty (20) years for the offense of (ABWIK) to run consecutively.

Petitioner filed an timely appeal and was represented by Appellate Defender Elizabeth A. Franklin-Best.

On June 28th, 2010, the South Carolina Court of Appeals affirmed the Petitioner's conviction and sentence and finding that the Petitioner's issues had not been preserved for an proper appeal. The Remittitur was sent down on July 14th, 2010.

On October 18th, 2010, Petitioner filed an application for post-conviction relief in the state circuit court Young v. State of South Carolina, No. #2010-CP-42-5566. Evidentiary hearing was convended and the Petitioner was represented by his appointed counsel J. Kenneth Robertson, Esq. on Dec 5th, 2011. An order of dismissal dated for March 16th, 2012, but was filed on March 19th, 2012, dismissing the application in its entirety. Petitioner filed an timely appeal of the PCR's court order. He was appointed an Appellate Defender Lanells C. Durant. On Dec. 12th, 2014, the South Carolina Supreme Court denied the petition for writ of certiorari. Appellate Case No. 2012-212591.

Remittitur was sent down on Dec. 30th, 2014. Petitioner filed an petition for writ of habeas corpus in the United States District Courts on January 21st, 2015. On October 21st, 2015, an Summary judgment of dismissal was granted and the petition was dismissed with prejudice. Appeals as follows:

MITIGATING FACTORS

I. Petitioner respectfully asked the Court for an sentence modification based upon the lack of evidence in light of the allegations that were presented at trial. Petitioner contends that the burden of proving himself to be innocent has been shifted upon the Petitioner. Major factors in law states that the person accused of a crime is presumed to be innocent until proven guilty. This shift of being guilty until proven innocent has violated the Petitioner's constitutional rights under the 14th Amendment Art.#1 Section §10 of the due process clause.

II. Petitioner asserts that he was provided inadequate legal representation from all stages of his appeals. For the lack of effective assistance which violated the Petitioner's Sixth Amendment of the United States Constitution. This allegation should be placed under consideration based upon the facts of this case that were never presented during the original proceedings.

III. Petitioner now bears the burden of standing guilty until proven innocent. He comes by way of challenging the State to an meaningful adversarial testing by requesting DNA Testing for the offense of armed robbery under the statute of the S.C. Code of laws eff as of January 1st, 2009, Section §17-28-30(A) Testing is available and there is no statute of limitations.

IV. There is no physical evidence or biological material that substantiate the claim for the offense of armed robbery. In the case of * State v. Mitchell, 675, S.E.2d. 435, 437, (S.C. 2009), noting that armed robbery (strong armed) robbery and larceny are all related offenses; larceny is a lesser included offense of robbery and robbery is the lesser included offense of armed robbery. In Mitchell, the Court made it clear that South Carolina now adopts the continuous offense theory, this theory provides that a robbery has occurred not only if the perpetrator uses force or intimidation to take possession of the property but also, if force or intimidation is used to retain possession immediately after the taking or the carry away of the property. Robbery and attempted robbery while armed with a deadly weapon by S.C. Code Ann §16-11-330(B). The State alleged that the Petitioner was the perpetrator whom was armed with an deadly weapon. Does not have the alleged weapon or physical evidence nor biological material that proves beyond reasonable doubt and shall not be able to sustain their conviction.

V. According to the S.C. Code Ann §16-11-330(B) A person convicted under subsection (B) must be imprisoned not more than twenty (20) years. The State has failed to meet all elements required for the offense in subsection (A) that a person convicted under this subsection must be imprisoned for thirty (30) years a class A felony.

VI. Mistake of Fact- when one commits a crime based on a mistake of fact guilt or innocence must be determined as if the facts perceived them were correct. Alibi defense in the case of * State v. Simmons, 308 S.C. 80, 83-84, 417, S.E.2d. 92, 94, (1992) The State bears the burden of establishing the identity of the perpetrator.

VII. Mistake of Law- mistake admits knowledge, but implies a wrong conclusion. Mistake of law may be offered as a defense if the mistake negates a specific intent required for a crime.

VIII. Petitioner is an first time offender incarcerated for an violent offense. Petition is based upon the Sentencing Reform Act. passed in 2010. Also, the Petitioner is requesting a "Sentence Modification based upon the proposed bill H3235 Art.#7 Section #2 of the S.C. Code Ann § 24-27-600(C), This section applies only to inmates who has complied or completed a rehabilitative program or an educational program or who has exhibited exemplary conduct. Petitioner has provided the Court with copies of his certificates as proof of his participation in an education or rehabilitated program.

IX. Under the statute of §17-25-50 the State recommended an concurrent sentence based upon that statute. In determining the number of offenses for the purpose of imposition of sentence the Court shall treat as one offense, any number of offenses which have been committed at the same time or so closely connected as one offense, notwithstanding under the law they constitute separate and distinct offenses. Trial Court has discretion to impose an consecutive sentence for armed robbery and the offense of assault and battery with the intent to kill (ABWIK). Petitioner is requesting that his sentences be ran concurrent. His request is based upon new law as amended in the pursuant to 2010 Act. No.273 §7 B effective June 2nd,2010.

The common law offense of assault and battery with the intent to kill is herefore, abolished and therefore, as a new topic to mean attempted murder S.C. Ann § 16-3-29, in which the S.C. Legislature passed the Omnibus Crime Reduction and Sentencing Reform Act of 2010.

X. Consecutive Sentences v. Concurrent Sentences

In the case of * Oregon v. Ice, 555, U.S. 160, 172, L.Ed.2d. 517, 129, S.C.T. 711, (2009), This case concerns the scope of the Sixth Amendment's jury trial guarantee as construed in the case of * Apprendi v. New Jersey, 530, U.S. 466, and Blakely v. Washington, 542, U.S. 296 (omitted) Those decisions are rooted in the historic jury function determining whether the prosecution has proved each element of an offense beyond a reasonable doubt.

The question here presented concerns a sentencing function in which the jury traditionally played no part. When a defendant has been tried and convicted of multiple offenses, each involving discrete sentencing prescriptions, does the Sixth Amendment mandate jury determination of any fact declared necessary to the imposition of an consecutive, in lieu of concurrent sentence?

Absent clear language to the contrary, it is presumed that sentences imposed on more than one offense at the same time, or at different times, will run concurrently. Counsel for the Petitioner has failed to seek or present any mitigating circumstances in this case. His attorney's performance at sentencing fell below the standards of professional conduct of an criminal defense lawyer and violated the Petitioner's Sixth Amendment right to receive effective assistance of counsel.

The Petitioner asserts that because of his troubling history, it is therefore, declared relevant to assessing the Petitioner's moral culpability, along with his diminished mental capacity at the time offense. Counsel failed to seek an mental evaluation.

~~¶~~ In the case of * Apprendi v. New Jersey, 500, U.S. 466 (2000) the Court held that exposing the defendant to a greater punishment than that authorized by the jury's guilty verdict is an element that must be submitted to a jury. The Supreme Court further wrote that in the case of * Ring v. Arizona, 575 U.S. 135 S.Ct. 1531, 191, L.Ed.2d. 558 (2015). Sentencing schemes violated the Apprendi rule because the State allowed a Judge to find the facts necessary to sentence the accused to an consecutive sentence.

Because of this sentencing scheme, the Petitioner believes that it should be applied retroactively. Petitioner also contends that there may have been an violation of the Ex Post Facto Clause in his case citing Weaver v. Graham, explained that a prisoner's eligibility for reduced imprisonment is a significant factor.

In the case of * Walton v. Arizona, 497 U.S. 639, 650, -51 (1990), overruled on other grounds by Ring v. Arizona, 536, U.S. 584, (2002), In Walton a plurality of four justices found that nothing in Lockett, precludes the State from specifying how mitigating circumstances are to be proved.

In the case of * Pepper v. U.S., 131 S.Ct. 1229, 1241 (2011), Judges may consider facts of defendant's rehabilitation after appeal have overturned first and second rounds of sentencing.

In the case of * Francis v. Franklin, 471, U.S. 307, 325, (1985), jury instruction shifting the burden of proof on the intent element to the defendant is unconstitutional. Due process prohibits use of presumption that relieves the State of its burden of persuasion on essential element of intent. Petitioner bears the burden of challenging the jury instruction.

CONCLUSION

WHEREFORE, the Petitioner, Robert A. Young, #326594, respectfully asks this Honorable Court to consider his request for an "Sentence Modification", and prays that this Court finds in favor of the Petitioner and grant an hearing of relief sought.

Respectfully submitted,

/s/ *Robert Young*

Robert A. Young, #326594

LCI. Wando-B#243

136 Wilborne Ave.

P.O. Box 205

Ridgeville, S.C. 29472

Pro-Se Petitioner

Other Counsel of Record:

Office of the Solicitor

7th Judicial Circuit

180 Magnolia St. 3rd. Floor

Spartanburg, S.C. 29306

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT
) INDICTMENT #2007-GS-42-996,998
Robert A. Young, #326594,)
Petitioner,)
))
- vs -) "VERIFICATION"
))
THE STATE OF SOUTH CAROLINA,)
Respondent,)

VERIFICATION

PERSONALLY appeared before me Robert A. Young, #326594,
being duly sworn upon my oath, depose and say that he is the
Petitioner, whom has subscribed to the foregoing "PETITION FOR
SENTENCE MODIFICATION", that he knows the contents therein;
and that the matters and allegations set forth are true and
correct to the best of his knowledge.

Robert Young
Robert A. Young, #326594

SWORN to and subscribed to before me this 12th
day of May, 2017.

Lydia K. B (L.S.)
NOTARY PUBLIC

My Commission Expires: 6-20-26.