

State of South Carolina  
In The Supreme Court

**RECEIVED**

JAN 26 2018

**S.C. SUPREME COURT**

Freddie Edwards, Jr,

Petitioner

v.

State of South Carolina

Respondent

Appellate Case NO: 2013-CP-42-2483

Freddie Edwards Jr  
Lieber Corr Insti Ashley B  
136 Wilborn Ave  
Ridgerville SC, 29472

This case concern Plaintiff, an inmate in the custody of South Carolina Department of Corrections, who in April, 2011 was seriously deprived of his constitutional rights, which was violated.

The state case presents a next legal theory which entails additional discovery and places a Heavy Burden on Petitioner.

The court abused it discretion by failing to take notice that Petitioner indictment(s) does not alleged accomplice liability and the States amendment was offered during Petitioner's Plea.

## Arguments

1. When indictment don't present place of death, of party killed, time therein, absence of such allegation, such indictment is fatally defective, and should be quashed on motion made, and such a defective indictment is beyond the reach of amendment.

(Blakeney v State 33 S.C. 111, 11 S.E. 637 (1890))

2. The indictment clearly stated the offense with sufficient certainty and particularity to enable the trial court to know judgement to pronounce and respondent to know what he was being called upon to answer.

(Browning v State supra)

3. The variance amendment between pleading and proof here involve was not insignificant and may not dismissed as harmless here error because deprivation petitioner on his substantial right felony charges to presented in indictment return by Grand Jury.

(Stirone v U.S., 361 U.S. 212 (1960))

## Factual Background of Case

According to state's rendition of the facts, read at the plea hearing. Codefendant Drakkarr Crawford contacted Timothy Clayton about where he could purchase marijuana. Clayton contacted Ronnie Metcalf of Crawford's behalf. Since Crawford did not have the money to purchase the marijuana, he contacted co-defendant Fred Pearson. Pearson suggested that they rob Metcalf instead of paying for the marijuana. App. 11, 11-23

The State alleged that later that evening, Freddie Edwards (the Petitioner) and driver, with Pearson in the front seat, and Crawford in the rear, picked up Clayton in a SUV. Clayton directed them to Metcalf's house and was unaware of the robbery plan. They dropped Clayton off, but returned to Metcalf's house and hour and a half later wearing masks. Pearson was "armed with a .22 rifle". Crawford was armed with an Airsoft pistol. When they turned the corner they found five men in and around the garage area. Timothy Clayton, Izel Poates, Richard Benson, Gilbert Cook, and Ronnie Metcalf. App. 11, 1-23, App. 13, 1-7

The State's rendition further detailed; Metcalf and Pearson struggled over the rifle while Petitioner and Crawford were outside with the other victims, whom they had instructed to get on their knees and empty their pockets. Izel Poates opened his wallet to show them he did not have anything. Pearson called for help, at which time Petitioner allegedly hit Metcalf in the head with a red tool box, allowing Pearson to get free. Pearson fired shot as he backed out of the garage, killing Metcalf and wounding Cook. The assailants left, taking the red grinder tool box and some cigarettes with them. Co-defendant Collin Mills hid the red grinder tool box, Airsoft gun, and rifle, which were later recovered by police. App. 13, 1-7, App. 14, 1-18.

There are no recording to support victims gettin robbed at gun point. Neither witness positively identified the purported suspect indentifications.

Drakkarr Crawford and Collin Mills stated they had no knowledge in relation to the purported robbery and shootin of the incident but after the apparent subjection to the psychological pressure of them, Drakkarr and Collin admitted that he did have knowledge of the alleged robbery and homicide and that they had participated in the robbery. Respondent is unequivocally seen articulating the procedural safeguards of the Miranda warning and administering disturbing controversy.

On June 17, 2011 Petitioner was indicted by the Spartanburg County Grand Jury for one count of Murder, one count of attempted murder and four counts of armed robbery. App 3, 13-14

On November 26, 2012, Petitioner entered guilty pleas to 4 counts of Armed robbery and Alford pleas to two counts of attempted murder, all for a negotiated thirty (30) year sentence, Petitioner appeared before the honorable Lee S. Alford, and was sentenced to six concurrent sentences of thirty (30) years, represented by Theo W. Mitchell. App. 17, 1-10, App. 18, 1-5

Appellant's indictment charges [11-GS-42-2778] Murder, S.C. Code Ann 16-3-10 It reads as follows:

1. At a Court of General Sessions, convened on June 17, 2011, the Grand Jurors of Spartanburg County present upon their oath; that Freddie Edwards Jr did in Spartanburg County on or About April 8, 2011, felonious, willfully, and with malice aforethought, kill Ronnie Lee Metcalf, by shooting him with a gun, and he died as a proximate result thereof.

- Murder indictment does not allege that petitioner acted with codefendant in this crime, fails to charge petitioner with accomplice liability.

2. Ronnie Metcalf, the victim, who is now deceased, came from inside the garage and stepped down, when he did Fred, um Fred Pearson approached Mr. Metcalf in the garage and they began as to struggle over the .22 rifle. Trp 13, 5-9

Fred Pearson was able to break free. He broke free and basically starting uploading the .22 rifle as he backed outta the garage. Ronnie was hit three times in the back, he basically made it two steps right inside of his parents kitchen and passed away inside the kitchen. Tr. p 14, 1-5

- Petitioner alleged that his Murder indictment was constructive amendment and Broad indictment, trial court failure to instruct on a essential element of the charge offense.

3. Before you is Freddie Edwards, he's before the Court on six different charges, four of them are armed robbery, all six charges have been true billed. The armed robberies are under 2011 GS 42 2781, 2783, 2782, 2780, he is also pleading guilty to attempted murder on 2011 GS 42 2779 as charged on 2011 GS 42-2778 he was initially charge under True Bill indictment with Murder, he is pleading guilty to attempted murder on that charge. There a negotiated sentence of thirty years. Trp 4, 7-12

The Clerk: Mr. Edwards, would u raise your right hand please. Freddie Edwards Jr having been first duly sworn, testified as follow:

The Court: Actually he pleading under North Carolina vs Alford or no contest so I guess either way no contest probly the appropriate plea on the murder and attempted murder both those two

-Petitioner allege that his 5<sup>th</sup> amendment being violated.

1. Theo Mitchell stated: That's correct. They even found marijuana in his home.

Mr. Rucker stated: But you-- that was based on a consent search. Is that right?

Theo Mitchell stated: Yeah, he had no knowledge. He was incarcerated at the time.

Mr. Rucker stated: Okay. And that-- those were other family members... there were numerous people that lived at that house. Isn't that right?

Theo Mitchell stated: I have no idea who all went there. But I do know that an investigator for the Solicitor's Office went there.

Mr. Rucker stated: Well, could it be important that they consented to allow a search? It could of been somebody else's marijuana in the home, couldn't it?

Theo Mitchell stated: I have no idea whose marijuana it was. I know they were there to steal marijuana and they stole it.

Mr. Rucker stated: But you didn't check with the-- I mean are you saying that the part of the evidence they had that my client committed this crime was that, based on a consent search, they found the marijuana that was at the scene?

Theo Mitchell stated: I have no idea where that marijuana came from. I know they found marijuana.

Mr. Rucker stated: Okay. Did you discuss challenging the consent with my client, the consent search?

Theo Mitchell stated: NO, because the consent was in writing.

PCR 23, 1-25

-Petitioner alleged that his 4<sup>th</sup> amendment being violated because of illegal searches and seizures.

5. Mr Rucker stated: Your honor, our chief allegation is there was no real investigation in this case. We don't deny that Mr. Mitchell met with my client several times. But my-- they didn't have meaningful meetings. They never went over victim's statements. There was no challenge to the identification. There was no challenge to the search. And my client pled guilty because he didn't understand he had a right to challenge those things and there's a fair chance that the evidence would not have been admitted against him. PCR 26, 10-18

Theo Mitchell stated: The Solicitor's Office charged Mr. Edwards. The magistrate gave a preliminary. The Grand Jury handed down a True Bill and, the gentleman, he never denied that he was not a part of those proceedings, sir. No, I did not question anything about any photo I'd or anything like that.

Mr. Rucker stated: All right. Did you have any statements of codefendants implicating my client? NO

PCR 24, 20-25, PCR 25, 1-2

-Petitioner alleged that his 6<sup>th</sup> amendment being violated.

6. Mr. Edwards was indicted in June of 2011 for Murder, Attempted murder and four counts of armed robbery. PCR 3, 13-14

- Petitioner alleged that his 13<sup>th</sup> amendment being violated.

7. Petitioner alleged that his 14<sup>th</sup> amendment being violated by his Murder indictment being a defective warrant. [11-GS-42-2778]

8. The Court stated: Alright, without an objection we'll make those, uh, court exhibits. Trp 11, 9-10

- Petitioner alleged that Judge Lee S. Alford showed abuse of discretion during plea hearing.

9. Solicitor Ms. Jordan stated: Drakkar woulda testified at trial that once they parked the vehicle Freddie Edwards got outta the back, opened up the hatch, pulled out a .22 rifle. (Trp 12, 14-16)

Solicitor Ms. Jordan stated: Izel described to me how he didnt have anything for them to, for them to take at that point, that he even opened up his wallet and showed them that he had nothing. Trp 13, 13-15

- Didnt present any evidence of facts of these allegations of the case.

10. Petitioner shall not be held to answer for a capital otherwise infamous crimes unless a presentment or indictment of a grand jury.  
(U.S. Const Amend V)

11. Amendment of the indictment without presentment by the grand jury deprived the court of subject matter jurisdiction. [11-65-42-2778]  
(Clair vs State 478 S.E.2d 54) (S.C. 1994)

2. Defects in the indictment which are such a fundamental character to make indictment wholly invalid are subject to waiver by a defendant. [11-65-42-2778]

3. Subject to a certain minor exceptions not present, the trial court lacks subject matter jurisdiction to convict a defendant for an offense where NO INDICTMENT charging him with offense when jury is sworn. (State vs Beachum. 288 S.C. 325, 342)  
- Mr. Edwards was indicted in June of 2011 for Murder, attempted murder, and four counts of armed robbery. Mr. Theo Mitchell represented him at a plea at which time he pled, pursuant to North Carolina versus Alford, two counts of attempted murder and pled guilty to the four counts of armed robbery. PCR 3, 13-18  
MS. White stated:

4. [11-65-42-2778]

- In the present case the affidavit of Lorin William testified under oath in the name of God that on April 8, 2011 in Spartanburg County petitioner (acted as one in by himself) did with malice aforethought cause death of victim Ronnie Lee Metcalf by shooting him with a gun.  
(Pursuant to US vs Cronin, 466 U.S. 648 (1984) or 104 S.Ct. 2039, 80 S.ed 657  
specific errors and omission may be the focus of a claim of ineffective assistance)

5. My understanding is you wish to enter a plea of no contest to the two attempted murder charges, is that correct, sir? Yes, sir. It's also my understanding that you wish or how do you plead then to the four armed robbery charges guilty or not guilty? Uh guilty. Trp 7, 12-14  
The Court stated:  
- Petitioner posits the concern with the plea transcript, held on November 26, 2012 before the Honorable Lee S. Alford, that such plea fails to be consistent with facts of the case, when comparing "the facts against the requisite indictment."

17. In other words, the Fourteenth Amendment right to due process and the Sixth Amendment right to trial by jury, taken together, entitles a criminal defendant to a jury determination that he is guilty "of every element of the crime with which he is charged." E.g.

In *re Winship*, 397 U.S. 358, 90 S.Ct. 1048. This historical foundation extends down centuries into common law. Although in this case and point, the Appellant did not take his allegations to trial. Such does eliminate the due process concerns "that a criminal defendant must admit he's guilty to the charges," in which must conform with the indictment and facts of the case, in which he is charged. And if the facts fail to fall consistent with the charged instrument. The Court is without authority to accept such a plea.

In Criminal Law, it is well settled that "Guilt" can be established either by proving the facts to a jury beyond a reasonable doubt; or by admission by the defendant of every essential facts necessary to constitute "the crime charged within the indictment."

*Sullivan vs Louisiana*, 508 U.S. 275, 113 S.Ct. 2078, (1992) and *United States vs Gaudin*, 515 U.S. 506, 115 S.Ct. 2310 (1995)

18. Under South Carolina Law, in order for a indictment to be deemed sufficient (i.e. § 17-19-20), Every indictment shall be judged sufficient and in good Law which, in addition to allegations as to time and place, as required by Law, charges substantially in the language of the common law or the Statute prohibiting the crime "so plainly" that the "nature of the offense charged may easily be understood," and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided."

19. Sufficiency of the indictment "requires that an indictment be a plain concise, and definite written statement of the essential facts constituting the offense charged." *U.S. vs Resendiz*, 549 U.S. 102, 109 (2007). In *United States vs Guadin*, and *Sullivan vs Louisiana*, "The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every essential fact necessary to the crime with which he is charged." There is NO Exclusionary Provision extended to any of the 50 States of the United States regarding this fundamental constitutional rule.

20. An Indictment is deemed or considered amended "when the prosecution or the court either "literally or constructively" alters the terms of an indictment after its been returned by the grand jury." [U.S. vs Thomas, 274 F.3d 655, 671] 2<sup>nd</sup> Cir. 2001) In facts, the only exclusion to the inclusion in *Apprendi vs New Jersey*, 530 U.S. 466 120 S.Ct. 2348 (2000), where the Supreme Court held; other than the fact or a prior conviction; any fact necessary for the conviction or punishment, must be charge by indictment, submitted to a jury, and proven beyond a reasonable doubt, or, admitted by the accused to exist beyond a reasonable doubt."

21. Thus, on November 26, 2012, The South Carolina Circuit Court Judge, was without authority to accept a guilty or no contest plea from the Appellant, where the facts "some other element" (i.e. accomplice liability), "in which the indictment failed to charge." Thereby eliminating any admission to such offense.

On November 26, 2012, relied on "the hands of one, hands of all theory." Such would also fail in comparison as resulting in a "Impermissible Constructive Amendment of the indictment," *United States vs Syme*, 276 F.3d 131, 151 (3<sup>rd</sup> Cir. 2002); *Stirone vs U.S.* 361 U.S. 212 (1960).

Since the United States infers the word "fact." A "theory" as used in South Carolina to describe "hands of one, hands of all" Cannot, Abridge this obligation under a accused Fifth, Sixth, and Fourteenth Amendment Rights. Whereas, a close look at the PCR Transcript (PCR 8, 21-22 Stated by Mr. Rucker)

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FEDERAL HABEAS CORPUS

JAN 26 2018

A. STATUTE OF LIMITATIONS:

S.C. SUPREME COURT

1. **The Rule:** The AEDPA places a one-year limitations on the filing of federal petitions for writs of habeas corpus by state prisoners seeking relief under 28 U.S.C. § 2254, and federal prisoners seeking relief under 28 U.S.C. § 2255. The one-year limitations period begins to run from the latest of four dates: (1) the date judgment is final; (2) the date on which an impediment to filing, created by government action in violation of the federal constitution or laws, is removed; (3) the date on which a federal constitutional right (both constitutional and statutory rights for federal prisoners) is newly recognized and made retroactively applicable by the Supreme Court; or (4) the date on which the factual predicate of the claim presented could have been discovered through the exercise of due diligence. 28 U.S.C. § 2244(d)(1); 28 U.S.C. § 2255, ¶ 6.

For state prisoners, the limitations period is statutorily tolled for the time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending. 28 U.S.C. § 2244(d)(2).

The limitations period may be equitably tolled for state and federal prisoners if the petitioner diligently pursues his claims and demonstrates that the failure to timely file was caused by extraordinary circumstances beyond his control. Each of these topics is discussed in greater detail below.

**Compare:** Chapter 154 of AEDPA provides a state with certain procedural benefits in federal habeas cases filed by capital defendants if the state has "opted in" to its provisions. 28 U.S.C. §§ 2261-2266. One benefit is that the capital defendant must file his federal habeas petition within "180 days after final State court affirmance of the conviction and sentence on direct review or the expiration of the time for seeking such review." 28 U.S.C. § 2263(a).

2. **Applicability:**

- a. **State And Federal Prisoners:** Both state and federal prisoners are subject to a one-year limitations period. See 28 U.S.C. § 2244(d)(1) (state prisoners); 28 U.S.C. § 2255, ¶ 6 (federal prisoners).

For state prisoners, § 2244(d)(1) provides a one-year limitations period for all petitions for writs of habeas corpus filed by individuals "in custody pursuant to the judgment of a State court." The majority of courts have concluded that § 2244(d)(1) is not limited to petitions contesting the judgment of a state court, but also includes challenges to administrative decisions by prisoners in custody pursuant to a state-court judgment, at least those affecting parole or imposing discipline. *Dulworth v. Evans*, 442 F.3d 1265, 1267-68 (10th Cir. 2006); *Shelby v. Bartlett*, 391 F.3d 1061, 1062 (9th Cir. 2004); *Cook v. New York State Div. of Parole*, 321 F.3d 274, 279-80 (2d Cir. 2003); accord *Wade v. Robinson*, 327 F.3d 328, 331 (4th Cir. 2003) (§ 2244(d) applied to prisoner's challenge to state's rescindment of prisoner's good conduct credits upon his parole revocation; the statute is not limited to habeas petitions that actually challenge state court judgments, but rather

encompasses all applications for writs of habeas corpus); *Kimbrell v. Cockrell*, 311 F.3d 361, 362 (5th Cir. 2002) (when a prisoner is eligible for mandatory supervised release, and when prison disciplinary proceedings result in a change in good-time earning status that extends the prisoner's release date, the prisoner's petition challenging such proceedings falls within § 2244(d)); *cf. McAleese v. Brennan*, 483 F.3d 206, 213 n.9 (3d Cir. 2007) (indicating that application of § 2244(d)(1) to all challenges to administrative decisions by prisoners in custody pursuant to a state-court judgment "seems reasonable, at least with respect to a decision denying parole"). *Contra Cox v. McBride*, 279 F.3d 492, 493-94 (7<sup>th</sup> Cir. 2002) (declining to apply limitations period to petition contesting an administrative decision by a prison disciplinary board that sentenced prisoner to lose two years' of good time credits).

For federal prisoners, § 2255 ¶ 6 provides a one-year limitations period that applies to any "prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack . . ." 28 U.S.C. § 2255, ¶ 1.

- b. **Effective Date:** The one-year limitations period applies to all federal petitions filed after the effective date of the AEDPA (April 26, 1996). *Lindh v. Murphy*, 521 U.S. 320, 326-27 (1997); see, *supra*, Cases Governed By AEDPA, page 94.
- c. **Mischaracterizing Basis For Relief:** A state prisoner cannot avoid the § 2244(d) statute of limitations by mischaracterizing his federal petition as a request for habeas corpus relief under 28 U.S.C. § 2241 or *coram nobis* under the All-Writs Act, 28 U.S.C. § 1651(a). Section 2244(d)(1) applies to every "application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court." If the relief the prisoner seeks falls within this provision, the one-year limitations period applies, regardless of how the prisoner has characterized his action. *Owens v. Boyd*, 235 F.3d 356, 360 (7th Cir. 2001); *cf. Moore v. Reno*, 185 F.3d 1054, 1055 (9th Cir. 1999) (petitioners cannot use § 2241 to escape the successive petition bar); see, *supra*, State Prisoners, page 17 (discussing differences between § 2241 and § 2254).

**Petition for Relief From a Conviction or Sentence  
By a Person in State Custody**

(Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus)

**Instructions**

1. To use this form, you must be a person who is currently serving a sentence under a judgment against you in a state court. You are asking for relief from the conviction or the sentence. This form is your petition for relief.
2. You may also use this form to challenge a state judgment that imposed a sentence to be served in the future, but you must fill in the name of the state where the judgment was entered. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file a motion under 28 U.S.C. § 2255 in the federal court that entered the judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
6. You must pay a fee of \$5. If the fee is paid, your petition will be filed. If you cannot pay the fee, you may ask to proceed in forma pauperis (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you. If your account exceeds \$ \_\_\_\_\_, you must pay the filing fee.
7. In this petition, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different court (either in the same state or in different states), you must file a separate petition.
8. When you have completed the form, send the original and \_\_\_\_ copies to the Clerk of the United States District Court at this address:

**Clerk, United States District Court for  
Address  
City, State Zip Code**

If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.

9. **CAUTION:** You must include in this petition all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
10. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District: SEVENTH JUDICIAL CIRCUIT
Name (under which you were convicted): FREDDIE EDWARDS JR.		Docket or Case No.: 2013-CP-42-2483
Place of Confinement: LIEBER CORR. INST.	Prisoner No.: # 353276	
Petitioner (include the name under which you were convicted) FREDDIE EDWARDS JR. # 353276	Respondent (authorized person having custody of petitioner) v. STATE OF SOUTH CAROLINA	
The Attorney General of the State of: SOUTH CAROLINA		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

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

(b) Criminal docket or case number (if you know): 2013-CP-42-2483

2. (a) Date of the judgment of conviction (if you know): November 26, 2012

(b) Date of sentencing: November 26, 2012

3. Length of sentence: 30yrs

4. In this case, were you convicted on more than one count or of more than one crime?  Yes  No

5. Identify all crimes of which you were convicted and sentenced in this case:

count of attempted murder  
count of attempted murder  
count of armed robbery  
count of armed robbery  
count of armed robbery  
count of armed robbery

6. (a) What was your plea? (Check one)

- (1) Not guilty  (3) Nolo contendere (no contest)  
 (2) Guilty  (4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? Plead Guilty to 4 counts of Armed Robbery  
Plea Alford to 2 counts of Attempted Murder

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury  Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes  No

8. Did you appeal from the judgment of conviction?

Yes  No

9. If you did appeal, answer the following:

(a) Name of court: SPARTANBURG COUNTY COMMON PLEAS 7<sup>TH</sup> JUDICIAL CIRCUIT

(b) Docket or case number (if you know): 2013-CP-42-2483

(c) Result: DENIED

(d) Date of result (if you know): JULY 9<sup>TH</sup>, 2014

(e) Citation to the case (if you know): \_\_\_\_\_

(f) Grounds raised: INEFFECTIVE ASSISTANCE OF COUNSEL, INVOLUNTARY GUILTY PLEA, ILLEGAL SENTENCE

(g) Did you seek further review by a higher state court?  Yes  No

If yes, answer the following:

(1) Name of court: SUPREME COURT OF SOUTH CAROLINA

(2) Docket or case number (if you know): 2015-001961

(3) Result: DENIED

(4) Date of result (if you know): FEBRUARY 10<sup>TH</sup>, 2017

(5) Citation to the case (if you know): \_\_\_\_\_

(6) Grounds raised: INEFFECTIVE ASSISTANCE OF COUNSEL; DUE  
PROCESS VIOLATION; SUBJECT MATTER JURISDICTION.

(h) Did you file a petition for certiorari in the United States Supreme Court?  Yes  No

If yes, answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?  Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes  No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court: \_\_\_\_\_
- (2) Docket or case number (if you know): \_\_\_\_\_
- (3) Date of filing (if you know): \_\_\_\_\_
- (4) Nature of the proceeding: \_\_\_\_\_
- (5) Grounds raised: \_\_\_\_\_  
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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

- Yes     No

- (7) Result: \_\_\_\_\_
- (8) Date of result (if you know): \_\_\_\_\_

(c) If you filed any third petition, application, or motion, give the same information:

- (1) Name of court: \_\_\_\_\_
- (2) Docket or case number (if you know): \_\_\_\_\_
- (3) Date of filing (if you know): \_\_\_\_\_
- (4) Nature of the proceeding: \_\_\_\_\_
- (5) Grounds raised: \_\_\_\_\_  
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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes     No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition:     Yes     No

(2) Second petition:     Yes     No

(3) Third petition:     Yes     No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:  
\_\_\_\_\_  
\_\_\_\_\_

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.**

GROUND ONE:

Facts attached

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
\_\_\_\_\_  
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(b) If you did not exhaust your state remedies on Ground One, explain why: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post Conviction Relief  
Name and location of the court where the motion or petition was filed: In the Court of Common Pleas 7<sup>th</sup> Judicial Circuit, Spartanburg County Court House, 180 Magnolia St. P.O. Box 3483  
Docket or case number (if you know): 2013-CP-42-2483  
Date of the court's decision: July 9, 2014  
Result (attach a copy of the court's opinion or order, if available): Denied

(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: The Supreme Court of South Carolina Post Office Box 11330 Columbia South Carolina 29211  
Docket or case number (if you know): 2015-001961  
Date of the court's decision: February 10, 2017  
Result (attach a copy of the court's opinion or order, if available): Denied

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: \_\_\_\_\_

**GROUND TWO:**

Facts attached

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Two, explain why: \_\_\_\_\_

**(c) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

**(d) Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post Conviction Relief

Name and location of the court where the motion or petition was filed: In the Court of Common Pleas

7<sup>th</sup> Judicial Circuit Spartanburg County Court House

180 Magnolia Street P.O. Box 3483 Spartanburg SC, 29304

Docket or case number (if you know): 2013-CP-42-02483

Date of the court's decision: July 9, 2014

Result (attach a copy of the court's opinion or order, if available): Denied

(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: The Supreme Court of South Carolina  
Post Office Box 11330, Columbia South Carolina 29211

Docket or case number (if you know): 2015-001961

Date of the court's decision: February 10, 2017

Result (attach a copy of the court's opinion or order, if available): Denied

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two : \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**GROUND THREE:** Facts attached

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) If you did not exhaust your state remedies on Ground Three, explain why: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post Conviction Relief

Name and location of the court where the motion or petition was filed: In the Court of Common Pleas

7<sup>th</sup> Judicial Circuit Spartanburg County Court house, 180 Magnolia St, P.O. Box 3483

Docket or case number (if you know): 2013-CP-42-2483

Date of the court's decision: July 9, 2014

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

Denied

(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: The Supreme Court of South Carolina

Post Office Box 11330, Columbia South Carolina 29211

Docket or case number (if you know): 2015-001961

Date of the court's decision: February 10, 2017

Result (attach a copy of the court's opinion or order, if available): Denied

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**GROUND FOUR:**

Facts attached

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) If you did not exhaust your state remedies on Ground Four, explain why: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post Conviction Relief

Name and location of the court where the motion or petition was filed: In the Court of Common Pleas  
7<sup>th</sup> Judicial Circuit, Spartanburg County Court house, 180 Magnolia St, P.O. Box 348  
Docket or case number (if you know): 2013-CP-42-2483  
Date of the court's decision: July 9, 2014  
Result (attach a copy of the court's opinion or order, if available): Denied

- (3) Did you receive a hearing on your motion or petition?  Yes  No  
(4) Did you appeal from the denial of your motion or petition?  Yes  No  
(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No  
(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: The Supreme Court of South Carolina  
Post Office Box 11330, Columbia South Carolina 29211  
Docket or case number (if you know): 2015-001961  
Date of the court's decision: February 10, 2017  
Result (attach a copy of the court's opinion or order, if available): Denied

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction?  Yes  No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

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- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

NO

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14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition?  Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

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15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging?  Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Theo Walker Mitchell  
9 Bradshaw St Greenville SC, 29601

(b) At arraignment and plea: Theo Walker Mitchell  
9 Bradshaw St Greenville SC, 29601

(c) At trial: \_\_\_\_\_

(d) At sentencing: Theo Walker Mitchell  
9 Bradshaw St Greenville SC, 29601

(e) On appeal: \_\_\_\_\_

(f) In any post-conviction proceeding: John Brandt Rucker  
522 N. Church St Greenville SC, 29601

(g) On appeal from any ruling against you in a post-conviction proceeding: Laura Baer  
Division of Appellate Defense P.O. Box 11589  
Columbia SC, 29211

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?  Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

\_\_\_\_\_

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future?  Yes  No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

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or any other relief to which petitioner may be entitled.

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Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on \_\_\_\_\_ (month, date, year).

Executed (signed) on \_\_\_\_\_ (date).

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Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

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# UNITED STATES DISTRICT COURT

for the

_____ )	
<i>Plaintiff/Petitioner</i> )	
v. )	Civil Action No.
_____ )	
<i>Defendant/Respondent</i> )	

## APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS (Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: \_\_\_\_\_  
If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

My gross pay or wages are: \$ \_\_\_\_\_, and my take-home pay or wages are: \$ \_\_\_\_\_ per  
(specify pay period) \_\_\_\_\_.

3. *Other Income.* In the past 12 months, I have received income from the following sources (check all that apply):

- |  |                              |                             |
|--|------------------------------|-----------------------------|
| (a) Business, profession, or other self-employment | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (b) Rent payments, interest, or dividends          | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (c) Pension, annuity, or life insurance payments   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability, or worker's compensation payments  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts, or inheritances                         | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other sources                              | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

4. Amount of money that I have in cash or in a checking or savings account: \$ \_\_\_\_\_.

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (*describe the property and its approximate value*):

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (*describe and provide the amount of the monthly expense*):

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

8. Any debts or financial obligations (*describe the amounts owed and to whom they are payable*):

*Declaration:* I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Applicant's signature*

\_\_\_\_\_  
*Printed name*