

DATE 1/1/18

Supreme Court  
of South Carolina

Michael J. Cline

#156213

Applicant

Vs.

State of South Carolina

Respondant

Appeal To Final Order

C/A 2014 - CP - 26 - 6889

C/A 2014 - CP - 26 - 7019

**RECEIVED**

FEB. 21 2018

S.C. SUPREME COURT

Under Rule 60 of New Found Evidence A  
Letter AND order of Dismissal by Judge Manning Sr.  
signed Oct of 1996, Dismissing and Vacating a Burg-  
lary that the state used AS A Element to charge  
Unlawfully A 1st Degree Burglary.

This critical piece of Evidence meant by Law there  
should have been no TRIAL or enhancement.

AT TRIAL Judge Young ordered Solitor that we  
must have A official Record after Solitor stated  
at Trial we have no record; in which the state used  
this VACATED sentence AS A (10) yr window to charge  
Respondant this unlawful enhancement.

Enclosed (Page 112) of TRIAL Line 21 to 23 Judge  
Ordered Solitor to show Respondant's Record; in order  
to legally charge with A 1st Degree Burg.  
Respondant CAN assume Solitor seen this VACATED  
sentence but failed to bring to the Judges ATT-  
ention knowing this evidence clearly revealed

(Page 1 of 2)

that AT TRIAL MR. Cline could not be charged with a 1st degree charge, Thereby This MISJUSTICE AND VIOLATION AND MISPROSECUTORIAL CONDUCT, RESPONDANT WAS UNLAWFULLY CONVICTED.

ATTORNEY GENERALS OFFICE AFTER DENIAL AND NOT ACKNOWLEDGING THIS SIMPLE FACT THAT THERE SHOULD NOT HAVE BEEN A TRIAL.

RESPONDANT WAS NOT AWARE UNTIL 2014 IN A LETTER FROM HORRY COUNTY'S CLERK OF THIS ORDER OF DISMISSAL WAS BROUGHT TO HIS ATTENTION, REVEALING THIS MISJUSTICE AND UNLAWFUL CHARGE.

AT NO-TIME WAS THIS BROUGHT UP AS RECORDS WOULD REVEAL ON PREVIOUS P.C.R APPLICATIONS HOWEVER TIME AFTER TIME ATTORNEY ~~DATA~~ GENERALS OFFICE FAILED TO ACKNOWLEDGE & LEGAL BRIEF OF ATTORNEY MATTHEW MCGUIRE PAID ATTORNEY OF RESPONDANT, AFTER RULING AFTER RULING OF A JUDGE OF HORRY COURT HOUSE WHEN VICTIM MRS. PATTI FINE WORKED IN SAME BUILDING, THEREBY NO-ONE WOULD LISTEN TO MY PLEAS OF CONFLICT OF INTEREST ACCUSATIONS.

RESPONDANT ASKS THIS HONORABLE COURT TO LOOK AT LEGAL DOCUMENTS ENCLOSED TO REVEAL HIS INNOCENCE, AND TRULY PRAYS FOR RELIEF AND PATIENTLY AWAITING A ANSWER FROM SUPREME COURT..

X Michael J. Cline 2/21/18

(Page 2 of 2)

Aug 29, 2002 Was charged 2ND degree Burg for steal-  
ing a Telescope. Michael J. Cline #156213.

Oct of 1996 Judge MARRING 15th Circuit "VACATED" A(10)  
yr sentence 2ND degree Burg, that was in fact only a 3rd  
degree Burg. Unlawfully Charged.

April 17, 2003 Mr. Cline's 2ND degree Burg, by a Solitor  
from Spartanburg to Horry Co, charged 2ND to 1ST degree Burg by  
lying to Grand Jury of (2 or more) convictions PRIORS, which is  
FACT, Mr. Cline's PRIOR WAS (VACATED.) See Brief

Thereby AT TRIAL Aug 12, 2003 UNLAWFULLY TRIED, there should  
HAVE NOT BEEN A TRIAL, where Judge Young ordered Solitor  
Cohlee AND TRIAL ATTORNEY O'NEAL LAW FIRM, Trial Transcripts  
p 112 Line 21-23, in which, Solitor omits in open Court, he  
had no record to prove (two or more priors) the only element  
to give Mr. Cline 1ST Degree Burg charge.

No official record was proved only blatant misprose-  
cutorial conduct AND criminal attorney client misconduct,  
because Director of Victims Advocates Mrs. PATTI FINE of Horry  
County Solitors office home it was there telescope..

This Evidence of 100% percent innocence filed with  
Courts May 2014 is still unlawfully being held cap-  
tive, by the Courts using 10yr statute of limitations,  
when in fact under New Found Evidence was filed prop-  
erly, AND paid attorney M. McGuire filed a brief to  
further prove complete innocence against Mr. Cline AND  
careful observance of legal documents prove Mr. Cline  
is being held captive UNLAWFULLY AND UNCONSTITUTIONALLY  
AS OF Feb of 2018, sixteen years later... No One wants to take  
the blame for this UNLAWFUL Prosecution...

DATE 11/16/17

No-Response

To: Honorable:  
Larry B. Hyman Jr.  
Chief Judge For Common Pleas  
Fifteenth Judicial Circuit  
om: Michael J. Clive  
C/A 2014-CP-26-6989 AND  
C/A 2014-CP-26-7019  
Merged by Judge

APPEAL to -  
OBJECTION TO CONDITIONAL ORDER  
AND RULE 59 Lawyer Abandonment

Under Law Rule 60 in New Found evidence in  
which the Courts can clearly see CONFLICT OF INTEREST  
of Victim working in Solitors office AS Acting Judges and  
clerks completely ~~is~~ clear cut evidence that the  
Solitor by LAW After Judge Jung ordered on TRIAL Trans-  
ipt page 112 Line 21-23.

That we must have a official Record in order to  
give a 1st degree Burglary charge, Vindictively seeing the  
time Sentence was clearly VACATED...

They meant by LAW Applicant CANNOT be legally  
charged since The STATE lost the element of 1st Degree  
Burglary.

No-where on prior Post Conviction Applications has  
Applicant raised that the state "Unlawfully" used  
A VACATED sentence that No-longer exists but  
Attorney Exhibit (D) on objection to Conditional Order  
of Dismissal by Matthew M. McGuire S.C. BART# 66586  
Abandonment on Law Rule 59 AND The Court Refused  
by LAW to properly Rule And Attorney General's office  
UNLEGAL Brief NOT Acknowledging that this Critical  
evidence meant plainly Applicant NEVER served Prison  
time for Burglary only GRAND LARCENY since Judge  
AERING Oct 17th 1996 Br. VACATED Applicant prior Burglary  
earning Clive only served LARCENY Time No Burglary Time.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Fifteenth Circuit

FEBRUARY Term, 19 89

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,

vs.

INDICTMENT FOR

MICHAEL JAMES CLINE

Age DOB: W/M

Color W/M

VACATED

89-GS-26-337 CI: BURGLARY 3RD

CII: GRAND LARCENY

89-GS-26-339 BURGLARY 2ND (NON-VIOLENT)

89-GS-26-164 BURGLARY 3RD

89-GS-26-207 BURGLARY 3RD & GRAND LARCE

89-GS-26-208 BURGLARY 3RD

VERDICT 89-GS-26-340 BURGLARY 3RD

PLED GUILTY AS CHARGED ON ALL INDICTMENTS

SENTENCE

The sentence of the law as pronounced by the court is that the within named defendant

MICHAEL JAMES CLINE pay a fine of

Dollars

be confined upon the

public works of Horry County for a term of TEN (10) YEARS IND 89-GS-26-337 or a like ON COUNT II CONSECUTIVE TO IND 89-GS-26-339 period in the state penitentiary.

FEBRUARY 15

A. D. 19 89

FRANK EPPES

Presiding Judge.

COUNT I: FIVE (5) YEARS CONCURRENT TO COUNT II.

89-GS-26-339 - TEN (10) YEARS CONSECUTIVE TO INDICTMENT 89-GS-26-337.

89-GS-26-164 - FIVE (5) YEARS CONCURRENT

89-GS-26-207 - FIVE (5) YEARS CONCURRENT

89-GS-26-208 - FIVE (5) YEARS CONCURRENT

89-GS-26-340 - FIVE (5) YEARS CONCURRENT

CERTIFIED COPY

STATE OF SOUTH CAROLINA

County of Horry

Pat Conington

I, Billie G. Richardson, Clerk of the Court of General Sessions for Horry County, State aforesaid, do hereby certify that the foregoing is a true copy of the sentence pronounced by the court in the case above entitled.

GIVEN under my hand and the Seal of the said Court at Conway, S. C., this 15TH day of FEBRUARY 89

A. D. 19

Billie G. Richardson

Billie G. Richardson, Clerk of Court.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

INDICTMENT

At a Court of General Sessions, convened on April 17, 2003, the Grand Jurors of Horry County present upon their oath:

**BURGLARY, FIRST DEGREE**  
**(DWELLING)**

The Defendant, Michael J. Cline, did in Horry County, on or about August 29, 2002, wilfully and unlawfully enter the dwelling of [REDACTED] located at [REDACTED] Conway, South Carolina without consent and with the intent to commit a crime therein to wit: the defendant did enter the home of the victim, [REDACTED], and did carry away a telescope intending to deprive the owner of the said property, and/or the defendant has (2) two or more prior convictions for Burglary and/or housebreaking in violation of Section 16-11-311, Code of Laws of South Carolina (1976, as amended).

*For getting in trouble again does -  
NOT WARRANT AN ACT OF VIOLENCE.  
\* No-Violence \**

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

*Robert Cline*  
ASSISTANT SOLICITOR

EXHIBIT (A)

EWED MOTION TO DISMISS BY DEFENSE

112

111

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ESTABLISH AN ELEMENT OF BURGLARY FIRST. I WOULD  
PECTFULLY SUBMIT TO YOU THAT IT'S NOT MUCH MORE, IT'S  
A STRETCH THEN TO SIMPLY INSTRUCT THE JURY THE FOUR  
ADDITIONAL BURGLARY CHARGES THAT HE'S BEEN CONVICTED OF  
THAT THEY HEAR ABOUT DURING CROSS EXAMINATION OF HIM. THEY  
WOULD JUST SIMPLY LIMIT THOSE THE SAME WAY THEY'RE GOING TO  
HAVE TO LIMIT THE TWO THAT COME IN TO ESTABLISH BURGLARY  
FIRST.

THE COURT: THOSE ARE ALSO 1989 CONVICTIONS?

MR. COLER: YES, SIR.

THE COURT: DO WE HAVE IN FACT SOMETHING ON THE  
RECORD SHOWING THAT HIS TIME OF INCARCERATION WAS NOT, HE  
WAS STILL INCARCERATED ON THOSE CHARGES IN 1992 WHEN THIS  
CRIME OCCURRED OR 10 YEARS BEFORE THIS CRIME OCCURRED?

MR. COLER: [ ] WE CHECKED WITH THE PROBATION AGENT  
AND MY UNDERSTANDING IS AND I'M NOT SURE IF WE'VE GOT IT  
WITH US RIGHT NOW [ ] HIS PROBATION ON THOSE SIX CHARGES WAS  
REVOKED IN 1994. THAT WOULD MEAN HE WAS CONFINED ON THOSE  
CHARGES IN 1994; THAT'S IN THE 10 YEARS WINDOW. THAT'S  
EIGHT YEARS PRIOR TO THIS INCIDENT DATE.

THE COURT: ALL RIGHT, WELL PRIOR TO PUTTING IN  
ANYTHING WE NEED TO HAVE SOMETHING OF AN OFFICIAL RECORD IN  
ORDER TO GET THAT. NOW AS FAR AS GIVING YOU THE RIGHT TO  
ENTER IN ANYTHING OTHER THAN THOSE TWO BURGLARIES THAT WILL  
BE ADMITTED FOR THE PURPOSES OF THE AGGRAVATING

1st degree

EXHIBIT C7

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS

96-CP-26-139

96 OCT 11 PM 12:52

Michael J. Cline, 156213. )  
Applicant, )  
vs. )  
State of South Carolina, )  
Respondent. )

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief filed January 12, 1996. The Respondent made its Return on April 5, 1996. An evidentiary hearing into the matter was convened on June 26, 1996 at the Horry County Courthouse. The Applicant was present at the hearing and was represented by Kirk Truslow, Esquire. The Respondent was represented by Allen Bullard of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Horry County Clerk of Court and the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Horry County. The Applicant was indicted at the February 1989 term of the Court of General Sessions for Horry County for three counts of Burglary Third Degree (89-GS-26-164, 207 and 208) and Grand Larceny

*[Handwritten initials]*

*[Handwritten signature]*

(89-GS-26-207). He was represented by Jeff Bloom and Gregory McCollom, Esquire. On February 15, 1989, the Applicant waived grand jury presentment on two additional counts of Burglary Third Degree (89-GS-26-337 and 340), Burglary Second Degree (89-GS-26-339) and Grand Larceny (89-GS-26-337) and pled guilty as charged on all indictments. He was sentenced by the Honorable Frank Eppes to confinement for a period of five (5) years on each count of Burglary Third Degree, five (5) years for Grand Larceny (89-GS-26-207), ten (10) years consecutive to 89-GS-26-339 for Grand Larceny (89-GS-26-337) and ten (10) years consecutive to 89-GS-26-337 for Burglary Second Degree (89-GS-26-339).

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Supreme Court affirmed Applicant's conviction and sentence. State v. Cline, Op. No. 90-MO-167 (S.C. Sup. Ct. filed July 2, 1990).

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

1. Ineffective assistance of counsel.
  - a. Defense counsel permitted the Applicant to plead guilty to Burglary in the Second Degree on Indictment No. 89-GS-26-339, which only alleges Burglary in the Third Degree.

At the hearing the Applicant amended his application and raised the following additional ground, without objection:

- b. Defense counsel permitted the Applicant to plead guilty to Grand Larceny on Indictment No. 89-GS-26-339, which only alleges Petit Larceny.

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction

relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing and to closely pass upon their credibility and has weighed their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

The Applicant first alleges counsel was ineffective for allowing him to plead guilty to Burglary Second Degree on Indictment No. 89-GS-26-339 when the body of the Indictment only made out a charge for Burglary Third Degree. This Court finds that the Applicant's plea was voluntarily and intelligently entered. Said voluntary and intelligent plea results in a waiver of any non-jurisdictional defects and defenses, including the alleged defect of ineffective assistance of counsel. Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); LoPiano v. State, 270 S.C. 563, 243 S.E.2d 448 (1978). However, after reviewing the indictment, this Court is finds that the trial court was without jurisdiction to accept a plea to Burglary on Indictment No. ~~89-GS-26-339~~. ~~Therefore, this Court orders that the Applicant's sentence for Burglary Second Degree on Indictment No. 89-GS-26-339 is hereby vacated.~~

The Applicant also claims counsel was ineffective for allowing him to plead guilty to Grand Larceny on Indictment No. 89-GS-26-339 when the body of the Indictment only made out a charge for Petit Larceny. The Applicant testified that the value of the items stolen from the Dutch Deli did not equal or exceed two hundred dollars. This Court finds that the Applicant's argument goes to

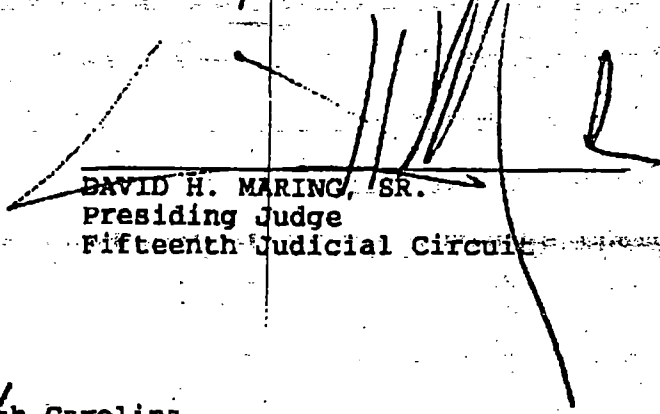
the weight of the State's evidence, not to subject matter jurisdiction. The language of the Grand Larceny count in Indictment No. 89-GS-26-339 properly charges the Applicant with Grand Larceny. A guilty plea, freely and voluntarily entered, is an admission of matters of fact contained in the indictment. Once given, the State is not required to produce evidence to prove the offense charged. State v. Allen, 261 S.C. 448, 200 S.E.2d 684 (1973). Thus, the Applicant waived his right to challenge the sufficiency of the evidence against him when he entered his plea. Furthermore, he cannot challenge the sufficiency of the State's evidence at post conviction relief. S.C. Code Ann. § 17-27-20(a)(6) (1985). Therefore, this allegation is denied and dismissed.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Applicant's conviction for Burglary Second Degree on Indictment 89-GS-26-339 is vacated.
2. That the remaining allegations in this application for post-conviction relief must be denied and dismissed; and
3. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7 day of Oct, 1996.



DAVID H. MARING, SR.  
Presiding Judge  
Fifteenth Judicial Circuit

Greenwood Carolina.

# ERVIN & MCGUIRE LAW FIRM, LLC

1824 BULL STREET  
COLUMBIA, SC 29201  
(803) 708-8471  
(803) 708-4771 FAX

Matthew M. McGuire, Esquire  
[matt@ervinandmcguire.com](mailto:matt@ervinandmcguire.com)

James M. Ervin, Esquire  
[james@ervinandmcguire.com](mailto:james@ervinandmcguire.com)

October 20, 2015

Mr. Michael J. Cline, #156213  
RIC Post Office Box 2039 G-B-08  
Ridgeway, SC 29936

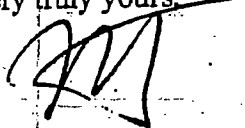
RE: Michael Cline, #156213 v. State of South Carolina  
Case Number: 2014-CP-26-7019

Dear Michael:

Please find enclosed a clocked copy of the **Objection to Conditional Order of Dismissal** in connection with the above-referenced matter.

No hearing has been set in this case yet, when a hearing has been set I will notify you and then come to see you at that time.

Very truly yours,



Matthew M. McGuire

MMM:jo

Enclosure

EXHIBIT (D)

COPIES  
MAILED

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )  
  
Michael Cline, #156213, )  
 )  
Applicant, )  
 )  
vs. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-26-7019

~~OBJECTION TO CONDITIONAL  
ORDER OF DISMISSAL~~

*Mr. Ruke*

TO: AAG JESSICA E. KINARD, ATTORNEY FOR RESPONDENT:

Pursuant to S.C. Code § 17-27-70(b), Applicant hereby objects to the Court's

Conditional Order of Dismissal filed July 24, 2015 and served upon Applicant on August 19, 2015. Applicant asserts that the Court's Order disregarded material issues of fact, to wit:

The subject Burglary 1<sup>st</sup> Degree indictment (2003-GS-26-1055) was obtained by proffering to the Grand Jury evidence of Applicant's 1989 convictions for Burglary 2<sup>nd</sup> Degree (one count) and Burglary 3<sup>rd</sup> Degree (multiple counts). The State used these alleged convictions as elements allowing to Grand Jury to "True Bill" an indictment for Burglary 1<sup>st</sup> Degree as opposed to Burglary 2<sup>nd</sup> Degree. However, the State failed to advise that Applicant's Burglary 2<sup>nd</sup> Degree conviction was overturned in 1996 (Cline v. State, 1996-CP-26-139), leaving only Applicant's Burglary 3<sup>rd</sup> Degree convictions.

As Applicant simultaneously entered his pleas to the subject Burglary 3<sup>rd</sup> Degree convictions, the Grand Jury should have been instructed to treat the pleas as a single conviction as defined under S.C. Code § 17-25-50 (In determining the number of offenses for the purpose of imposition of sentence, the court shall treat as one offense any

COB V

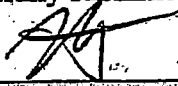
number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense, notwithstanding under the law they constitute separate and distinct offenses).

Thus, the Grand Jury should not have found that Applicant "had" (2) two or more prior convictions for Burglary and/or housebreaking in violation of Section 16-11-311, Code of Laws of South Carolina, (1976, as amended) and Applicant's indictment should not have been enhanced to Burglary 1<sup>st</sup> Degree.

Likewise, at trial, without objection from counsel, the State used both the vacated Burglary 2<sup>nd</sup> Degree conviction and the Burglary 3<sup>rd</sup> Degree convictions to persuade the Court to provide the jury a charge for Burglary 1<sup>st</sup> Degree. Counsel's failure to object to the unlawful enhancement clearly constitutes ineffective assistance of counsel.

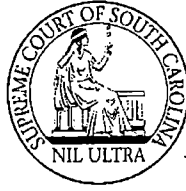
Accordingly, Applicant believes he is entitled to a successive PCR hearing to determine whether the imposition of his current sentence was unlawful.

Respectfully submitted



Matthew M. McGuire, SC Bar #66586  
Ervin & McGuire Law Firm, LLC  
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Columbia, SC 29201  
803.708.8471  
803.708.4771 FAX  
matt@ervinandmcguire.com

Columbia, South Carolina  
September 4, 2015



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

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29211  
1231 GERVAIS STREET  
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FAX: (803) 734-1499  
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January 16, 2018

Mr. Michael Cline, # 156213  
Turbeville Correctional Institution  
1578 Clarence Coker Hwy.  
Turbeville, SC 29162

RE: Cline v. State, 2014CP2606989  
Cline v. State, 2014CP2607019

Dear Mr. Cline:

This responds to your letter entitled "Appeal of Final Order" with various enclosures. Please be advised that this Court cannot consider this *ex parte* communication about the above cases.

If you desire to seek appellate review in the above cases, you will need to serve and file a notice of appeal in the manner specified by Rules 243 and 203 of the South Carolina Appellate Court Rules (SCACR).<sup>1</sup> I have enclosed a copy of these rules, along with a sample notice of appeal and proof of service for a notice of appeal. Please note that the time to serve the notice of appeal on the opposing counsel is limited and this time cannot be extended. Rule 263(b), SCACR.

---

<sup>1</sup> A copy of the SCACR should be available to you in your prison library, and is also available at [www.sccourts.org/courtreg](http://www.sccourts.org/courtreg).

Finally, as to 2014CP2606989, the public case index for Horry County indicates, that while a conditional order of dismissal has been filed in that case, it does not indicate that a final order has been filed. Until a final order is filed, any appeal in that case would appear to be premature. *Lewis v. State*, 368 S.C. 630, 630 S.E.2d 464 (2006) ("Under Rule [243], SCACR, and S.C. Code Ann. § 17-27-100 (2003), only a final decision or judgment in a post-conviction relief action is subject to review. . . .In our opinion, a conditional order of dismissal is not the final judgment in a post-conviction relief case since there is another act to be done before the rights of the parties are finally determined-the issuance of an order following the filing of a reply or the issuance of an order based on the default in filing a reply.")

Since you apparently were represented by counsel in 2014CP2606989, I am providing that counsel with a copy of your letter and enclosures.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel E. Shearouse', with a long horizontal flourish extending to the right.

Daniel E. Shearouse

Enclosures

cc: Office of the Attorney General (with copy of letter and enclosures)  
Matthew Martin McGuire, Esquire (with copy of letter and enclosures)  
The Honorable Renee Elvis

**RULE 243**  
**CERTIORARI TO REVIEW POST-CONVICTION RELIEF ACTIONS**

**(a) Review by Writ of Certiorari.** A final decision entered under the Post-Conviction Relief Act shall be reviewed by the Supreme Court upon petition of either party for a writ of certiorari, according to the procedure set forth in this Rule.

**(b) Notice of Appeal and Ordering Transcript.** In the same manner and under the same time limitations as provided for appeals from the Court of Common Pleas in Rules 203 and 207, the petitioner shall serve and file a notice of appeal and shall obtain from the court reporter a transcript of the proceedings in the lower court.

**(c) Explanation Required.** If the lower court has determined that the post-conviction relief action is barred as successive or being untimely under the statute of limitations, the petitioner must, at the time the notice of appeal is filed, provide an explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. If the petitioner fails to make a sufficient showing, the notice of appeal may be dismissed.

**(d) Service and Filing of Petition and Appendix.** Within thirty (30) days of receipt of the transcript, petitioner shall serve a copy of the Appendix and petition for writ of certiorari on opposing counsel and shall file with the Clerk of the Supreme Court an original plus six (6) copies of the petition, two (2) copies of the Appendix, and proof of service showing the Appendix and petition have been served. As provided by Rule 267(d), one copy of the Appendix filed with the Supreme Court shall be filed unbound.

**(e) Content of Petition.** The petition shall contain:

- (1)** The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail.
- (2)** A concise statement of the case, containing the facts material to the consideration of the questions presented.
- (3)** A direct and concise argument in support of the petition. The argument on each question shall include citation of authority and specific reference to pertinent portions of the lower court record. The total length of a petition shall not exceed twenty-five pages.

**(f) Content of Appendix.** The Appendix shall contain:

- (1)** The entire lower court record.
- (2)** A copy of the final order entered after the post-conviction proceeding.
- (3)** An index setting forth the principal matters contained in the Appendix. This index shall be in the same form required for a Record on Appeal under Rule 210(e).

**(g) Return of Respondent.** Within thirty (30) days after service of the petition and Appendix, respondent shall serve a copy of his return on opposing counsel, and shall file with the Clerk of the Supreme Court an original and six (6) copies of his return and proof of service showing that the return has been served. The return may rephrase the questions, offer additional sustaining grounds, and present a concise counter-statement. The total length of a return shall not exceed twenty-five (25) pages.

**(h) Reply.** The petitioner shall have ten (10) days from the date of service of the return to file with the Clerk of the Supreme Court an original and six (6) copies of a reply and proof of service showing that the reply has been served. The total length of the reply shall not exceed fifteen (15) pages.

**(i) Special Procedures Where a White v. State Review Is Sought.** Where the petition seeks review under White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), the following procedure shall be followed:

**(1)** When the post-conviction relief judge has affirmatively found that the right to a direct appeal was not knowingly and intelligently waived, the petition shall contain a question raising this issue along with all other post-conviction relief issues petitioner seeks to have reviewed. At the same time the petition is served, petitioner shall serve and file a brief addressing the direct appeal issues. This brief shall, to the extent possible, comply with the requirements of Rule 208(b). Respondent's return to the petition shall address the post-conviction relief issues, including whether the direct appeal was knowingly and intelligently waived. At the same time the return is due, respondent shall also serve and file a brief addressing the direct appeal issues. Within ten (10) days after service of respondent's brief, petitioner may file a reply brief on the direct appeal issues.

**(2)** When the post-conviction relief judge has found that the applicant is not entitled to a White v. State review, the petition shall raise the question of waiver of the right to a direct appeal along with all other post-conviction relief issues petitioner seeks to have reviewed. The petition shall also contain a "Statement of Issues on Appeal" listing the issues to be raised if a White v. State review is granted; this statement of issues shall comply with the requirements of Rule 208(b)(1)(B). Briefing of the direct appeal issues will not be allowed unless certiorari is granted on the issue.

**(j) Procedure Upon Grant of Certiorari.** Upon the concurrence of any two justices, the petition may be granted on any question presented. The petition will be considered by the Supreme Court without oral argument. If the petition is granted, the Clerk shall notify each party or his attorney, specifying the question or questions to be considered, and the parties shall prepare briefs addressing the question(s). Petitioner shall have thirty (30) days from the date the petition is granted to serve a copy of his brief on all parties to the appeal, and file with the Clerk of the Supreme Court fifteen (15) copies of his brief, along with proof of service. At the time he files his brief, petitioner shall also file thirteen (13) additional copies of the Appendix. Within thirty (30) days after service of petitioner's brief, respondent shall serve a copy of his brief on all parties to the appeal, and file with the Clerk of the Supreme Court fifteen (15) copies of his brief, along with proof of service. Petitioner may file a reply brief. If a reply brief is prepared, petitioner shall, within ten (10) days after service of respondent's brief, serve a copy of his reply brief on all parties to the appeal and file with the Clerk of the Supreme Court fifteen (15) copies of his reply brief, along with proof of service. The briefs shall, to the extent possible, comply with the requirements of Rule 208(b). Oral argument shall not be permitted unless ordered by the Supreme Court.

**(k) Bail Pending Appellate Review.** A post-conviction relief applicant may be admitted to bail after the service of the notice of appeal by either the applicant or the State. Where the sentence originally imposed did not exceed imprisonment for ten (10) years, the petition for bail shall be made to the lower court. In all other cases, the petition for bail shall be made to the Supreme Court. The petition and any return or reply shall comply with the requirements of Rule 240. The authority to grant bail will be exercised with caution and only in exceptional cases. In deciding whether to exercise the discretionary authority to admit an applicant to bail, the following factors will be considered: the probability the applicant will prevail on appellate review and the nature of the relief he or she will receive; the seriousness of the criminal offense committed; the danger

the applicant may pose to the community if he or she is released; the likelihood that the applicant may flee if released; and the character and circumstances of the applicant. If bail is granted, the court may require the posting of a bond and impose other conditions. A party aggrieved by the decision of the lower court regarding bail may petition the Supreme Court for review of that decision.

**(l) Transfer of Cases to the Court of Appeals.** The Supreme Court may transfer a case filed under this rule to the Court of Appeals. If transferred, the Court of Appeals shall proceed with the case in the same manner as the Supreme Court would have done under this rule with the exception that a petition for a writ of certiorari may be granted by one judge of a three-judge panel. Review of any final decision of the Court of Appeals shall be by a petition for a writ of certiorari under Rule 242, SCACR.

Last amended by Order dated January 29, 2009, effective April 29, 2009, by order of the same date.

**RULE 203  
NOTICE OF APPEAL**

**(a) Notice.** A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules. Service and filing are defined by Rule 262.

**(b) Time for Service.**

**(1) Appeals From the Court of Common Pleas.** A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

**(2) Appeals From the Court of General Sessions.** After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed. In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment. When a timely post-trial motion is made under Rule 29(a), SCRCrimP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion. In those cases in which the State is allowed to appeal a pre-trial order or ruling, the notice of appeal must be served within ten (10) days of receiving actual notice of the ruling or order; provided, however, that the notice of appeal must be served before the jury is sworn or, if tried without a jury, before the State begins the presentation of its case in chief.

**(3) Appeals From the Family Court.** A notice of appeal in a domestic relations action shall be served in the same manner provided by Rule 203(b)(1). A notice of appeal in a juvenile action shall be served in the same manner as provided by Rule 203(b)(2).

**(4) Appeals From Masters and Special Referees.** The notice of appeal from an order or judgment issued by a master or special referee shall be served in the same manner as provided by Rule 203(b)(1).

**(5) Appeals From Probate Court.** When a direct appeal is authorized by S.C. Code Ann. § 62-1-308(g), the notice of appeal shall be served in the same manner as provided by Rule 203(b)(1).

**(6) Appeals From Administrative Tribunals.** When a statute allows a decision of the administrative law court or agency (administrative tribunal) to be appealed directly to the Supreme Court or the Court of Appeals, the notice of appeal shall be served on the agency, the administrative law court (if it has been involved in the case) and all parties of record within thirty (30) days after receipt of the decision. If a timely petition for rehearing is filed with the administrative tribunal, the time to appeal for all parties shall be stayed and shall run from receipt of the decision granting or denying that motion. If a decision indicates that a more full and complete decision is to follow, a party need not appeal until receipt of the more complete decision.

**(c) Cross-Appeals.** A respondent may institute a cross-appeal by serving a notice of appeal on all adverse parties, or in the case of an appeal from the administrative tribunal, by serving a notice of appeal on the agency, the administrative law court (if it has been involved in the case) and all parties of record, within five (5) days after receipt of appellant's notice of appeal, or within the time prescribed by Rule 203(b), whichever period last expires.

**(d) Filing.**

**(1) Appeals from the Circuit Court, Family Court and Probate Court.**

**(A) Where to File.** The notice of appeal shall be filed with the clerk of the lower court and with the Clerk of the Supreme Court in the following cases:

**(i)** Any final judgment from the circuit court which includes a sentence of death.

**(ii)** Any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is one of the constitutionality of the law or ordinance; provided, however, in any case where the Supreme Court finds that the constitutional issue raised is not a significant one, the Supreme Court may transfer the case to the Court of Appeals.

**(iii)** Any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the State, its agencies, political subdivisions, public service districts, counties, and municipalities, or any other indebtedness now or hereafter authorized by Article X of the Constitution of this State.

**(iv)** Any final judgment from the circuit court pertaining to elections and election procedure.

**(v)** Any order limiting an investigation by a State Grand Jury under S.C. Code Ann. § 14-7-1630.

**(vi)** Any order of the family court relating to an abortion by a minor under S.C. Code Ann. § 44-41-33.

In all other cases, the notice of appeal shall be filed with the clerk of the lower court and the Clerk of the Court of Appeals.

**(B) When and What to File.** The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served. The notice filed with the appellate court shall be accompanied by the following:

**(i)** Proof of service showing that the notice has been served on all respondents;

**(ii)** A copy of the order(s) and judgment(s) to be challenged on appeal if

they have been reduced to writing;

(iii) A filing fee as set by order of the Supreme Court;[1] this fee is not required for criminal appeals or appeals by the State of South Carolina or its departments or agencies;

(iv) If the appeal is from a guilty plea, an Alford[2] plea or a plea of nolo contendere, a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal. If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed;

(v) If the notice of appeal is from a post-conviction relief case and the lower court determined that the post-conviction relief action is barred as successive or being untimely under the statute of limitations, the written explanation required by Rule 243(c), SCACR; and,

(vi) If the notice of appeal is from a habeas corpus proceeding and the lower court determined that habeas corpus relief was improper because the issues could have been raised in a timely application under the Post-Conviction Relief Act (see Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998)), a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed.

## **(2) Appeals from Administrative Tribunals.**

**(A) Where to File.** Appeals from a decision of the Public Service Commission setting public utility rates pursuant to Title 58 of the South Carolina Code of Laws shall be filed with the Clerk of the Supreme Court. Unless otherwise required by statute, all other appeals from administrative tribunals shall be filed with the Clerk of the Court of Appeals.

**(B) When and What to File.** The notice of appeal shall be filed with the clerk of the appellate court within the time required to serve the notice of appeal under Rule 203(b)(6). The notice filed with the appellate court shall be accompanied by the following:

(i) Proof of service showing that the notice has been served on the agency, the administrative law court (if it has been involved in the case), and all parties of record;

(ii) A copy of the decision(s) to be challenged on appeal; and

(iii) A filing fee as set by order of the Supreme Court;[3] this fee is not

required for criminal appeals or appeals by the State of South Carolina or its departments or agencies.

**(3) Effect of Failure to Timely File.** If the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 260.

**(e) Form and Content.** The notice of appeal shall be substantially in the form designated in the Appendix to these Rules.

**(1) Appeals from the Circuit Court, Family Court and Probate Court.** In appeals from lower courts, the notice of appeal shall contain the following information:

- (A)** The name of the court, judge, and county from which the appeal is taken.
- (B)** The docket number of the case in the lower court.
- (C)** The date of the order, judgment, or sentence from which the appeal is taken; and if appropriate for the determination of the timeliness of the appeal, a statement of when the appealing party received notice of the order or judgment from which the appeal is taken, or, if a cross-appeal, when the respondent received appellant's notice of appeal.
- (D)** The name of the party taking the appeal.
- (E)** The names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each.

**(2) Appeals from Administrative Tribunals.** In appeals from administrative tribunals, the notice of appeal shall contain the following information:

- (A)** The name of the agency and the name of the administrative law judge (if applicable).
- (B)** The docket number of the case before the administrative law court, or if the appeal is from an agency, the docket number before the agency.
- (C)** The date of the decision from which the appeal is taken; and if appropriate for the determination of the timeliness of the appeal, a statement of when the appealing party received the decision from which the appeal is taken, or, if a cross-appeal, when the respondent received appellant's notice of appeal.
- (D)** The name of the party taking the appeal.
- (E)** The names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each.

Last amended by Order dated January 29, 2009, effective April 29, 2009, by Order of the same date.

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[1] By order dated April 17, 1990, this filing fee was set at one hundred (\$100.00) dollars.

[2] North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)

[3] By order dated April 17, 1990, this filing fee was set at one hundred (\$100.00) dollars.

**FORM 1**  
**NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

George E. Brown, Circuit Court Judge

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Case No. 2000-CP-00-0000

---

Stephen L. Doe, as Personal  
Representative of the Estate of  
John B. Doe, Respondent,

v.

Jane C. Roe, Appellant.

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NOTICE OF APPEAL

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Jane C. Roe appeals the order [judgment] of the Honorable George E. Brown dated September 1, 2000. Appellant received written notice of entry of this order [judgment] on September 3, 2000.

September 15, 2000

s/ John E. Smith  
John E. Smith  
Post Office Box 123  
Greenville, South Carolina 29000  
(864) 000-0000  
Attorney for Appellant

Other Counsel of Record:  
Mary P. Jones  
Post Office Box 456  
Greenville, South Carolina 29000  
Attorney for Respondent  
(864) 000-0000

**FORM 7**  
**PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

---

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

George E. Brown, Circuit Court Judge

---

Case No. 2000-CP-00-0000

---

Stephen L. Doe, as Personal  
Representative of the Estate of  
John B. Doe,

Respondent,

v.

Jane C. Roe,

Appellant.

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**PROOF OF SERVICE**

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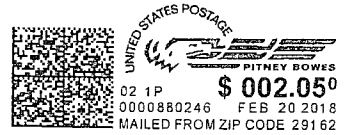
I certify that I have served the Notice of Appeal on Stephen L. Doe by depositing a copy of it in the United States Mail, postage prepaid, on September 15, 2000, addressed to his attorney of record, Mary P. Jones, Post Office Box 456, Greenville, South Carolina 29000 [by personally delivering a copy of it to his attorney of record, Mary P. Jones, at her office at 123 Oak Street, Greenville, South Carolina 29000, on September 15, 2000].

September 15, 2000

s/ John E. Smith  
John E. Smith  
Post Office Box 123  
Greenville, South Carolina 29000  
(864) 000-000-0000  
Attorney for Appellant

TURBEVILLE C.I.  
MAIL ROOM  
1578 CLARENCE COKER HWY.  
TURBEVILLE, SC 29162

Michael Cline #156213  
S-A-108



Supreme Court  
Clerk of Court  
1231 Gervais St.  
Columbia S.C.

(Appeal  
Enclosed)

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FEB 20 2018

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