

Daniel E. Shearouse, Clerk of Court
Post Office Box 11330
Columbia, SC 29211

Re: James R. Rose v. State of South Carolina
Appellate Case No. 2017-002052

May 7, 2018.

Dear Honorable Shearouse:

I would like to petition for bail pending appellate review (South Carolina Appellate Court Rules: Rule 243(K), SCACR). "Since there is no right to 'hybrid representation' that is partially pro se and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed pro se by a person represented by counsel are not to be accepted unless submitted by counsel. [citations omitted]. Because petitioner was represented by counsel, the pro se motion was not proper, should not have been accepted, and should not have been ruled upon. The motion was essentially a nullity.... we also take this opportunity to remind judges and clerk's of court of our directive in Foster not to accept substantive documents, with the exception of motions to relieve counsel, filed pro se by a party who is represented by counsel." (Miller v. State, 388 S.C. 347, 697 S.E. 2d 527 (2010)). also see: Foster v. State, 298 S.C. 306, 379 S.E. 2d 907 (1989); State v. Stuckey, 333 S.C. 56, 508 S.E. 2d 564 (1998); Jones v. State, 348 S.C. 13, 558 S.E. 2d 517 (2002). In my opinion, wholly representation, minus the participation of the accused, would enable lawyers to pursue their own objectives. It would also allow attorneys to disregard the client's endeavors and the means to be used to accomplish the client's goals.

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S.C. SUPREME COURT

e.g. (PLEASE SEE EXHIBITS 1-3). A lawyer, being a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive law and procedural law. The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. The text of each rule is authoritative. Rules of Professional Conduct, Rule 1.2. (a), RPC, Rule 407, SCACR (Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued). The client has the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. A lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client lawyer relationship (Rules of Professional Conduct, Rule 6.2., RPC, Rule 407, SCACR). Rules of Professional Conduct, Rule 8.4. (a) (d), RPC, Rule 407, SCACR (It is professional misconduct for a lawyer to : (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another ; (d) engage in conduct involving dishonesty, fraud, deceit or misrepresentation). Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct. . . . A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice.

South Carolina Appellate Court Rules: Rule 243(K), SCACR, (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 224. 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. Counsel's decision to deny me of this privilege is inconsistent with the stipulations provided for in this rule.

The judge erred in denying my PCR application as trial counsel was ineffective for failing to request alibi jury instructions. At the evidentiary hearing, trial counsel testified, State's witness Clarence Hush testified at my trial and stated he was in a car with me at BP purchasing gas until 11:30 pm, then dropped me off at my girlfriend's Amber Wiley home during the time the crime was committed at approximately 11:30 pm. (PCR Tr. p. 40-41). Trial counsel acknowledged she did not argue alibi in her closing and did not remember why. (PCR Tr. p. 20-21). Trial counsel testified, "an alibi defense was not viable" based on her review of the evidence and her investigation, and accordingly, she did not request a jury instruction on alibi. (PCR Tr. 31-32). also see: (exhibits #4 and #5).

The PCR court found that I failed to establish any constitutional deprivations or other grounds entitling me to relief and denied and dismissed my application with prejudice.

"It is well settled that counsel's rejection of an alibi charge when the defendant claims that he was in another place at the time of the commission of the criminal act constitutes deficient representation under an objective standard of reasonableness. Riddle v. State, 308 S.C. 361, 418 S.E.2d 308 (1992). Accordingly, the PCR judge erred in ruling that counsel's rejection of the alibi instruction was reasonable." Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994).

For the foregoing, Petitioner prays this Court grant the requested relief. He further prays for any other and further relief which the Court may deem just and proper under the circumstances.

Respectfully submitted,

James R. Rose

James R. Rose, # 293938

MCCI

386 Redemption Way

MCCormick, SC 29899

Petitioner.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 27, 2018

Mr. James R. Rose, #293938
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Dear Mr. Rose:

Thank you for your recent letter dated February 20, 2018, updating our office with your current address. I did receive your correspondence which also referenced an appeal bond. Since you did not win in the lower court an appeal bond would not be given serious consideration. Further, you are indigent and would not be able to pay a substantial appeal bond. I simply cannot file a motion that I do not believe has substantial merit. I trust that while this is not the response you hoped for that you understand.

Sincerely,

A handwritten signature in black ink, appearing to read "R M Dudek".

Robert M. Dudek
Chief Appellate Defender

RMD/cp

Dear Mr. Dudek:

I found your letter dated February 27, 2018, offensive, discriminatory, and unethical. You have no right making distinctions nor expressing personal inconveniences. Your job is to simply pursue matters on my behalf ~~dis~~ despite your oppositions. I want you to ~~consult~~ petition for an appeal bond as my objective remains the same to endeavor. I want you to consult with me before doing so. I also want you to consult with me before petitioning the Supreme Court for a writ of certiorari to establish my objectives. If you find such efforts unavailing and believe that we have a fundamental disagreement, with respect to your professionalism, by all means, please withdraw from representation. Anything ~~to the~~ contrary to what I have imposed, shall and will be reported to Disciplinary Counsel. Good day to you sir.

March 7th, 2018

South Carolina

Your client,
James Reginald Rose
James Reginald Rose, # 293938
McCormick Corr. Inst.
386 Redemption Way
McCormick, SC 29599

CC: Lady Simmons
Constable / witness
of client.
3377 Old Ridge Road
North Charleston, SC 29418

J.R.R. - /client



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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 19, 2018

Mr. James R. Rose, #293938
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Dear Mr. Rose:

Thank you for your letter dated March 7, 2018. If you are not satisfied with my representation you can make a motion for the Court to relieve me as your attorney. I will not oppose your motion. That is your legal avenue for relief. In my opinion, an appeal bond for a person who lost their PCR case would be a frivolous motion. I will not make a frivolous motion as it would be unethical. Again, if you file a motion to relieve me I will not oppose that motion.

Sincerely,

A handwritten signature in black ink, appearing to read "RMD", with a large, stylized flourish at the end.

Robert M. Dudek
Chief Appellate Defender

RMD/cp

INCIDENT SUPPLEMENT

CHARLESTON COUNTY SHERIFF'S OFFICE
3505 PINEHAVEN DRIVE, CHARLESTON HEIGHTS, S.C. 29405-7789 • (843) 202-1700

J. Al Cannon, Jr.
Sheriff

SC0100000	DISPATCH NUMBER N/A	ORIGINAL CASE NUMBER 2012-001550-B	PAGE 1 OF 2 PAGES	NCIC ENTRY	INQ.	ENT.
<input type="checkbox"/> ORIGINAL REPORT	<input checked="" type="checkbox"/> SUPPLEMENTAL REPORT	<input type="checkbox"/> ADDITIONAL VICTIMS	<input type="checkbox"/> ADDITIONAL WITNESSES	<input type="checkbox"/> ADDITIONAL STOLEN PROPERTY		
<input type="checkbox"/> MODIFIES ORIGINAL	<input type="checkbox"/> CASE STATUS CHANGE	<input type="checkbox"/> ADDITIONAL OFFENDERS	<input type="checkbox"/> ADDITIONAL SUBJECTS	<input type="checkbox"/> ADDITIONAL RECOVERED PROPERTY		

INCIDENT TYPE: ASSAULT - AGGRAVATED ASSAULT
BURGLARY

Incident Location: 805 West Carolina Avenue, Lincolville
Incident Date: 01/24/12

On January 25, 2012, Detective Smith and I, Det Wilson, conducted a follow-up investigation for Detective Perkins in reference to interviewing possible alibis established by James Rose.

At about 10:00 a.m. Det. Smith and I located Brandon Cantrell at Strafford High School. Cantrell provided a statement that he went to "O" and solicited him to buy marijuana. Cantrell stated that he, "O" and another black male he knows only as "Unc" went to a residence in Lincolville to purchase marijuana. Cantrell stated he had been to this residence on several different occasions with "O" to purchase marijuana. Cantrell describe the residence and it was established to be the incident location. Cantrell stated "O" asked "Unc" for a ride because his vehicle was leaking oil. Cantrell stated at about 9:45 pm they arrive at the residence and "O" went inside while he and "Unc" waited in the car. Cantrell stated that "O" was taking too long, so "Unc" went to the door to get him. "Unc" came back to the car and "O" came out about five minutes later. Cantrell stated when "O" came back he seemed angry. Cantrell stated after they left the residence they went to the BP gas station on College Park Rd near I-26 to get gas. Cantrell stated they drove back to the mobile home park where they live and dropped him off at about 11:15 or 11:30 p.m. Cantrell describe "Unc's" vehicle as a 4-door sedan, dark in color, which looked like a ford focus. See Cantrell's written statement for detailed information.

At about 1:20 p.m. Det. Smith and I followed up with the BP and viewed the surveillance video. A black car believed to be "Unc's" was seen getting gas. I obtained CD a copy of the video and later released it to Det. Perkins. See video for detailed information.

At about 2:30 p.m. Det. Smith and I canvassed the mobile home park where "Unc" is believed to live. While checking the park we noticed a car at 2123 Cindy Dr. that resembled the one in the BP video. We made contact with the occupant, Clarence Hush, and explained why we were there. Hush stated he did give a white male and a black male, who he knows as "black" a ride to Lincolville. Hush stated he drove them to a residence and upon arrival "black" got out and when inside for about 45 minutes. Hush stated "black" was taking too long so he went to the

NARRATIVE

ADMINISTRATIVE PROPERTY EST.

TYPE (GROUP)	NA	NA	NA	NA	NA	TOTAL VALUE	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY
STOLEN						0	NA
DAMAGED						0	
BURNED						0	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY
RECOVERED						0	NA
SEIZED						0	
SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		SUBJECT LOCATED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED <input type="checkbox"/> UNFOUNDED		<input type="checkbox"/> ARREST UNDER 18 <input type="checkbox"/> ARREST 18 AND OVER	
						<input type="checkbox"/> EX-CLEARED UNDER 18 <input type="checkbox"/> EX-CLEARED 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE <input type="checkbox"/> OFFENDER DEATH <input type="checkbox"/> NO PROSECUTION <input type="checkbox"/> EXTRADITION DENIED <input type="checkbox"/> VICTIM DECLINES COOPERATION <input type="checkbox"/> JUVENILE NO CUSTODY							
REPORTING OFFICER(S)		DATE	BADGE NUMBER	APPROVING OFFICER		DATE	BADGE NUMBER
WILSON, MITCHELL		3/8/2012	10056	BOYD, DEREK J.		3/8/2012	8885
FOLLOW UP INVESTIGATION <input type="checkbox"/> YES <input type="checkbox"/> NO							

INCIDENT SUPPLEMENT

CHARLESTON COUNTY SHERIFF'S OFFICE
3505 PINEHAVEN DRIVE, CHARLESTON HEIGHTS, S.C. 29405-7789 • (843) 202-1700

J. Al Cannon, Jr.
Sheriff

SC0100000	DISPATCH NUMBER N/A	ORIGINAL CASE NUMBER 2012-001550-B	PAGE 2 OF 2 PAGES	NCIC ENTRY	INO.	ENT.
<input type="checkbox"/> ORIGINAL REPORT	<input checked="" type="checkbox"/> SUPPLEMENTAL REPORT	<input type="checkbox"/> ADDITIONAL VICTIMS	<input type="checkbox"/> ADDITIONAL WITNESSES	<input type="checkbox"/> ADDITIONAL STOLEN PROPERTY		
<input type="checkbox"/> MODIFIES ORIGINAL	<input type="checkbox"/> CASE STATUS CHANGE	<input type="checkbox"/> ADDITIONAL OFFENDERS	<input type="checkbox"/> ADDITIONAL SUBJECTS	<input type="checkbox"/> ADDITIONAL RECOVERED PROPERTY		

door and spoke to a black male who stated he would get "black". Hush stated he went back to the car and about five minutes later "black" came out, at which time they left and went to the BP to get gas. Afterwards they all drove back to the park where he dropped off the white male and "Black" at their residence. Hush stated he doesn't know "black's" real name, but provided he lives in the park in a green and tan trailer. After further questioning Hush stated that "black" made the comment that "he was disrespected and he was going to get his respect back". Hush stated that he dropped them off at about 11:30 p.m. and never heard from either of them again. Hush stated the listed vehicle is registered to his wife, Lillie Wilson. See hush's written statement for detailed information.

Lillie Wilson was also present at the residence and stated that her husband arrived home around 11:30 p.m. and didn't leave the residence after that.

Nothing further to report at this time.

NARRATIVE

PROPERTY EST.	TYPE (GROUP)	NA	NA	NA	NA	NA	TOTAL VALUE	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY
	STOLEN						0	NA
	DAMAGED						0	
	BURNED						0	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY NA
	RECOVERED						0	
SEIZED						0		
ADMINISTRATIVE	SUBJECT IDENTIFIED	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	SUBJECT LOCATED	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> UNFOUNDED	<input type="checkbox"/> ADM. CLOSED	<input type="checkbox"/> ARREST UNDER 18 <input type="checkbox"/> ARREST 18 AND OVER	<input type="checkbox"/> EX-CLEARED UNDER 18 <input type="checkbox"/> EX-CLEARED 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE	<input type="checkbox"/> OFFENDER DEATH	<input type="checkbox"/> NO PROSECUTION	<input type="checkbox"/> EXTRADITION DENIED	<input type="checkbox"/> VICTIM DECLINES COOPERATION	<input type="checkbox"/> JUVENILE NO CUSTODY		
	REPORTING OFFICER(S)	DATE	BADGE NUMBER	APPROVING OFFICER	DATE	BADGE NUMBER		
	WILSON, MITCHELL	3/8/2012	10056	BOYD, DEREK J.	3/8/2012	8885		
				FOLLOW-UP INVESTIGATION <input type="checkbox"/> YES <input type="checkbox"/> NO	OFFICER			

James R. Rose, #293938
MCCI
386 Redemption Way
McCormick, SC 29899

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

RE

MAY 08 2018

MGCI
MAIL ROOM

THE DEPARTMENT OF
THE BOARD OF
FOR ITS COMMISSIONERS
SACRAMENTO, CALIFORNIA
S.G. DEPARTMENT OF COMMERCE