

Tommy A. Thomas

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PO BOX 88  
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June 12, 2018

RECEIVED

JUN 13 2018

S.C. SUPREME COURT

The South Carolina Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

RE: Allen Bobo #367299 v. State of South Carolina  
Docket No.: 2016-CP-01-0164

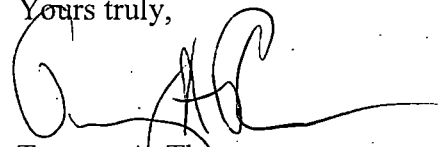
Dear Sir or Madam:

Enclosed please find for filing an original and a copy of a Notice of Appeal and Certificate of Service regarding the above referenced matter.

Please note that I have not been retained to represent Mr. Bobo in this matter. I am forwarding the Office of Appellate Defense Mr. Bobo's Affidavit of Indigency by copy of this letter.

Kindly return a clocked copy of the Notice to me in the enclosed envelope.  
Thank you.

Yours truly,



Tommy A. Thomas,  
Attorney at Law

TAT/jem

cc: Megan Harrigan Jameson, Esq.  
Allen Bobo #367299  
Appellate Defense

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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RECEIVED

JUN 13 2018

APPEAL FROM ABBEVILLE COUNTY  
Court of Common Pleas  
Post-Conviction Relief

S.C. SUPREME COURT

J. Mark Hayes, II, Circuit Court Judge

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Case No.: 2016-CP-01-0164

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Allen Bobo #367299,..... Appellant,

vs.

State of South Carolina, .....Respondent.

---

NOTICE OF APPEAL

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Allen Bobo #367299 appeals the Order of the Honorable J. Mark Hayes, II, dated April 20, 2018 and filed on May 3, 2018. Appellant received written notice of entry of this order on June 5, 2018.



TOMMY A. THOMAS  
Attorney for Appellant  
P.O. Box 88  
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(803) 732-5507

Other Counsel of Record:  
Megan Harrigan Jameson, Esq.  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Attorney for Respondent

Irmo, South Carolina  
June 12, 2018

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

RECEIVED

APPEAL FROM ABBEVILLE COUNTY  
Court of Common Pleas  
Post-Conviction Relief

JUN 13 2018

S.C. SUPREME COURT

J. Mark Hayes, II, Circuit Court Judge

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Case No.: 2016-CP-01-0164

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Allen Bobo #367299,..... Appellant,

vs.

State of South Carolina, .....Respondent.

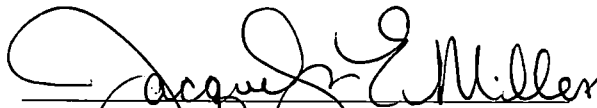
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CERTIFICATE OF SERVICE

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I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant,  
hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal, with postage  
prepaid and the return address clearly shown on said envelope to:

Office of the Attorney General  
Attention: Megan Harrigan Jameson, Esq.  
P.O. Box 11549  
Columbia, SC 29211-1549

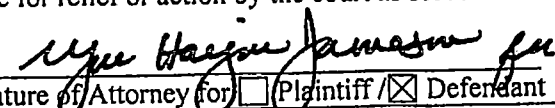


Jacquelyn E. Miller, Secretary  
Tommy A. Thomas, Attorney for Appellant  
P.O. Box 88  
Irmo, SC 29063  
(803) 732-5507

Irmo, South Carolina  
June 12, 2018

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ABBEVILLE )  
 )  
 ALLEN BOBO, #367299 )  
 Plaintiff, )  
 vs. )  
 )  
 STATE OF SOUTH CAROLINA )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 EIGHTH JUDICIAL CIRCUIT  
 CASE NO.: 2016-CP-01-0164  
 MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET

Plaintiff's Attorney: Tommy A. Thomas, Bar No. _____ Address: Post Office Box 88 Irmo, South Carolina 29063 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Justin J. Hunter, Bar No. _____ Address: Post Office Box 11549 Columbia, South Carolina 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant 	Date submitted: April 18, 2018 EMILY A. MCGRAHAN CLERK OF COURT
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

FILED  
 STATE OF SOUTH CAROLINA  
 COUNTY OF ABBEVILLE  
 2018 MAY 3 AM 8 44

STATE OF SOUTH CAROLINA )  
 COUNTY OF ABBEVILLE )  
 )  
 Allen Bobo, )  
 S.C.D.C. No. 367299, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 OF THE EIGHTH JUDICIAL CIRCUIT

2016-CP-01-0164

ORDER OF DISMISSAL

**TRUE COPY**  
 BY *M. Mandy*  
 ABBEVILLE COUNTY CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed June 9, 2016. Respondent made its Return on or about November 7, 2016. An evidentiary hearing into the matter was convened on Thursday, March 1, 2018, at the Laurens County Courthouse in Laurens County, South Carolina. Applicant was present at the hearing and represented by Tommy Thomas, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General’s Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant’s trial counsel, Yasha Patel, Esquire, and his girlfriend Nakeila Johnson testified. This Court had before it a copy of Applicant’s records from the Abbeville County Clerk of Court, Applicant’s records from the South Carolina Department of Corrections, the plea transcript, Applicant’s PCR Application, and Respondent’s Return.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Abbeville County Clerk of Court. Applicant was indicted at the January 2016 term of the Abbeville County Grand Jury for pointing or presenting a firearm (2016-GS-01-0009), unlawful neglect of a child (2016-GS-01-0011), and domestic violence of a high and aggravated nature (DVHAN) (2016-GS-01-0012). Applicant was indicted at the April

2016 term for possession of marijuana with intent to distribute (2016-GS-01-0122). Applicant was represented by Yasha Patel, Esquire. On March 1, 2016, Applicant appeared before the Honorable R. Scott Sprouse, and pled guilty as indicted. Judge Sprouse sentenced Applicant to imprisonment for five years for pointing or presenting a firearm, ten years for unlawful neglect of a child, ten years for DVHAN, and ten years for possession of marijuana with intent to distribute. Applicant did not file a notice of appeal.

### PCR Application

In his application for post-conviction relief, Applicant alleged the following grounds of relief:

1. Ineffective Assistance of Counsel

- a. "Because Yasha Patel wasn't truthful to me and I was forced to plea, falsify statements."

At the PCR hearing, Applicant additionally alleged Counsel was ineffective for failing to prepare for trial, including that Counsel never went over his case with him and did not fully investigate the victim, Nakeila Johnson, who said the incident was a misunderstanding.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendment, the exhibits received at the PCR hearing, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

Relevant Testimony

Applicant alleged Counsel was ineffective for failing to fully investigate and discuss his case. He testified he only met Counsel three times for three to four minutes prior to pleading guilty. He testified they did not go over discovery. Applicant testified Counsel did not speak to the victim, Ms. Johnson, who claimed the incident was a misunderstanding. Applicant presented Ms. Johnson's voluntary statement given where she explains Applicant pulled a gun on her, but Applicant testified it does not state that he pointed the gun at her. Applicant testified he had a gun in his lap while he was in his car but he did not point the gun at Ms. Johnson. He testified the victim walked up to his car to see the gun. Applicant also testified the dispatch call did not mention an altercation involving a gun. Applicant testified Counsel should have looked at all of Ms. Johnson's statements.

Ms. Johnson testified Applicant did not point a gun at her and said in her statement that Applicant pulled a gun out while she had her child in her arms. She testified her statement was misconstrued and she told the plea court the incident was a misunderstanding. Ms. Johnson testified she was not able to talk to Counsel prior to the plea. She testified Counsel's assistant contacted her and Ms. Johnson told the assistant she did not want any involvement in the prosecution. Ms. Johnson further testified she was not able to tell anyone her side of the story, that Applicant did not commit the crime.

Counsel testified she met with Applicant three to four times prior to the plea for forty-five minutes to one hour each time. She testified she received discovery and discussed with Applicant the charges, potential sentences, and his version of the facts. She testified she discussed with Applicant what would happen at a trial. Counsel testified the incident involved an

altercation at a vehicle where Applicant pointed a gun at Ms. Johnson, and when Applicant left the scene he shot at Ms. Johnson.

Counsel testified she had her investigator reach out to Ms. Johnson, but Ms. Johnson denied speaking to her. Counsel testified Ms. Johnson ultimately told her she did not want Applicant to do five to ten years but would come to the plea hearing if he received a couple years. Counsel testified Ms. Johnson did not want to come to the plea hearing. Counsel testified she discussed Ms. Johnson's statement and told Applicant the State would not drop the charges simply because Ms. Johnson said the incident was a misunderstanding. Counsel testified she told the solicitor about Ms. Johnson's recantation, and the solicitor told her he had a letter from Applicant to Ms. Johnson where Applicant told Ms. Johnson to tell the State it was a misunderstanding.

#### Applicable Law

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

#### Findings

This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective for failing to discuss and investigate his case, and to fully investigate Ms. Johnson. This Court finds Counsel appeared very knowledgeable about the underlying case and appeared well-prepared and was credible. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). This Court finds Counsel met with Applicant sufficiently and to discuss his case. This Court finds Counsel employed a private investigator to contact Ms. Johnson and ultimately was able to contact her. This Court finds Counsel was not deficient in investigating Ms. Johnson's

version of events or her recantation, and she fully discussed with Applicant that the solicitor still had control of the prosecution. Even though this Court can conclude the victim remains loyal to Applicant and wishes he was not in prison, she did not state that she did not want him prosecuted at the plea hearing. Additionally the decision to prosecute the applicant for the DVHAN was for the solicitor to make, not his attorney. This Court finds Applicant has failed to meet his burden of proving Counsel was deficient in her investigation or preparation. Furthermore, this Court finds Applicant has failed to meet his burden of proving he would not have pled guilty but proceeded to trial but for Counsel's actions. Accordingly, this allegation must be dismissed.

**B. Involuntary Guilty Plea**

Relevant Testimony

Applicant alleges that his plea was given involuntarily. Applicant alleged he accepted the plea because his attorney said he was guaranteed to lose at trial because of Ms. Johnson's statement. He testified he did not know he was pleading guilty but thought he was going to court for a bond hearing. Applicant testified he was only offered a cap of twelve years. Applicant testified his plea was not made freely and voluntarily because he was told he would get a large amount of time and there was a lot of negativity given to him around the plea. He testified Counsel told him prior to the plea hearing not to say anything that could mess up the plea.

Counsel testified she explained to Applicant the State was recommending a twelve year cap for sentencing. She testified she explained to Applicant the potential sentences he faced, whether they were violent or non-violent, and the parole eligibility. She testified they talked before his plea and told Applicant he did not have to plead guilty yet, but Applicant's family wanted him to plead. Counsel testified Applicant knew he was pleading guilty the day of the plea.

### Applicable Law

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

"A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise

independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486).

#### Findings

This Court finds, and the record reflects, Applicant was fully advised that he was pleading guilty. Although Applicant claims he never pointed the gun at Ms. Johnson, there is evidence to counter his position, including his agreement on the record at the plea with the State’s presentation of the facts that he produced and pointed a handgun at Ms. Johnson. There is also evidence that bullet holes were found in the vehicle. At the PCR hearing, Applicant contended that his lawyer was not ready for trial; however, the record does not support the conclusion that that the plea was anything other than a free and voluntary decision by him. The plea came with a recommendation of a cap of twelve years to a potential twenty year sentence. He received a ten year sentence. Applicant complained at the PCR hearing of the “negativity” that was “thrown at him” at the time of his plea. On cross-examination he acknowledged that Counsel told him, “you are not going get that much time.” She was correct as Applicant received less than the twelve years the State recommended.

A review of the plea transcript indicates that Applicant waived all of his rights, including his right to a jury trial. Tr. 5-6. Applicant also acknowledged that no one had coerced or forced him to plea to the charges. Tr. 5. He also told the judge he was not under the influence of anything that was affecting his judgment. Tr. 5. He told the judge he was pleading guilty because he was guilty of the charges. Moreover, after the solicitor stated the facts behind the case, including the fact that he produced the gun and pointed the gun at the victim while she held their seven-month-old child, Applicant told the court he heard those facts and that he agreed with those facts. Tr. 6-7. Additionally, Applicant acknowledged to the judge that he was completely

satisfied with his Counsel's representation of him. Tr. 6. Given the totality of what he was pleading to, including the probation violations, and the sworn statements made by Applicant to the court, this Court finds Applicant's plea was freely, voluntarily and knowingly entered. This Court also finds that Applicant has presented no evidence that he did not understand the plea proceeding or that his plea was not freely, voluntarily, or intelligently made. Accordingly, this allegation must be dismissed.

### III. CONCLUSION

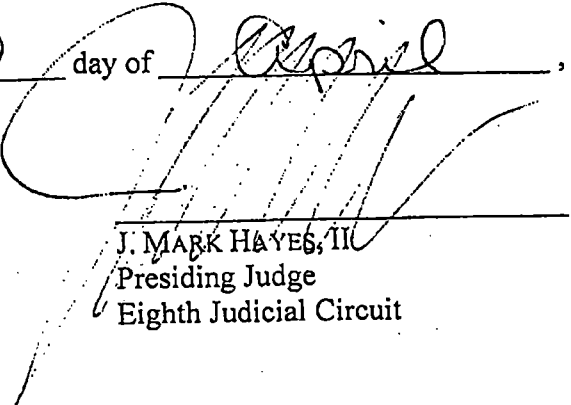
Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 20 day of April, 2018.

  
J. MARK HAYES, III  
Presiding Judge  
Eighth Judicial Circuit

Abbeville, South Carolina

FILED  
STATE OF SOUTH CAROLINA  
COUNTY OF ABBEVILLE  
2018 MAY 3 PM 8 44  
EMILY Y MCMAHAN  
CLERK OF COURT

STATE OF SOUTH CAROLINA, )  
 )  
COUNTY OF ABBEVILLE. )

IN THE COURT OF COMMON PLEAS.

Allen Bobo #367299, )  
 )  
Applicant, )  
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v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
 )

CERTIFICATE OF SERVICE BY MAIL

16-CP-01-00-164

The undersigned, an employee of the Abbeville County Clerk of Court's Office, does hereby certify that a copy of Order of Dismissal in the above-referenced matter was made upon the following persons by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 31<sup>st</sup> day of May, 2018, addressed as follows:

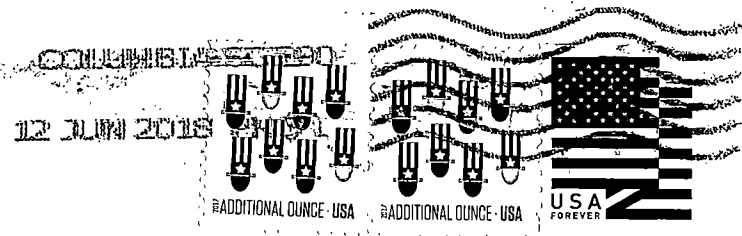
Megan Harrigan Jameson  
Office of the Attorney General  
Post Conviction Relief  
Post Office Box 11549  
Columbia, SC 29211-1549

Solicitor's Office (hand delivered)  
ATTN: Yates Brown/Micah Black  
P.O. Box 516  
Greenwood, SC 29648

Allen Bobo #367299  
Wateree River Correctional Inst.  
Dorm 4A  
P.O. Box 189  
Rembert, SC 29128

  
\_\_\_\_\_  
Melinda Kennedy, Common Pleas Clerk

Tommy A. Thomas, P.C.  
ATTORNEY AND COUNSELOR AT LAW  
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The South Carolina Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

29211-133030

