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S.C. Supreme Court

RE: APPEAL

DEAR CLERK

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(1) APPEAL AND BY THIS LETTER
I HEREBY GIVE NOTICE THAT I CANNOT SERVE
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TO DOCUMENTS THAT IS HAND GENERATED AND ASK
THAT THIS COURT DO SO PLEASE

THANK YOU

MASON JOHNSON

APPELLANT

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STATE OF SOUTH CAROLINA S.C. Supreme Court

IN THE APPEALS COURT

APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS

HONORABLE JOHN C HAYES III

CASE NO 2011-CP-46-0640

MASON JOHNSON 229175

APPELLANT

STATE OF SOUTH CAROLINA

RESPONDENT

NOTICE OF APPEAL

THE APPELLANT APPEALS THE HONORABLE J C HAYES AUGUST ORDER GRANTING POST-CONVICTION RELIEF IN PART TO THE APPLICANT A COPY OF THE ORDER IS ATTACHED SUCH BEING RECEIVED BY APPELLANT ON NOV 2012

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RESPECTFULLY SUBMITTED

MASON JOHNSON

APPELLANT

LIEBER CORRECTIONAL INST

130 WILBORNE DR

RIDSEVILLE SC 29472

EDISTO UNIT B 53

CERTIFICATE OF SERVICE

THIS IS TO HEREBY CERTIFY THAT I MASON JOHNSON
HAVE CAUSED AN APPEAL TO BE FILED IN THE
HEREIN MENTION ACTION. BY PLACING SAME IN THE UNITED
STATES MAIL HERE AT LIGER CORRECTIONAL INST ON
THIS 17th DAY OF Dec 2012

PERSON SERVED

OFFICE OF ATTORNEY GENERAL

P.O. Box 11549

COLUMBIA SC 29211

Mason Johnson

MASON JOHNSON

APPELLANT

SWORN TO AND SUBSCRIBED BEFORE ME

this _____ DAY OF _____ 2012

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES _____

ISSUES PRESENTED

WHETHER THE APPLICANT WAS DENIED AND DEPRIVED OF DUE-PROCESS OF LAW AND THE EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL WHEN COUNSEL FAILED TO MOVE TO QUASH THE INDICTMENT IN ACCORDANCE WITH SC CODE 17-19-90?

PROCEDURAL BACKGROUND

THE APPLICANT WAS ORIGINALLY ARRESTED FOR BURGLARY IN THE SECOND DEGREE. HOWEVER IN PREPARING THE INDICTMENT THE SOLICITOR'S OFFICE CONSTITUTIVELY AMENDED SUCH BY ADDING AN ELEMENT FROM THE LANGUAGE OF FIRST DEGREE STATUTE BROADENING THE CONSTRUCTION OF SUCH THIS WAS NOT CORRECTED BY THE COURT WHO HAD A DUTY TO NOT ONLY TO DECLARE THE CORRECT AND CORRECT LAW BUT ALSO TO ENSURE THAT THE APPLICANT WAS NOT CONVICTED UNCONSTITUTIONALLY.

APPLICANT COUNSEL LET THIS ERROR GO UNCORRECTED AND UNCHALLENGED BY FAILING TO INVESTIGATE AND DISCOVER THE ELEMENT OF THE OFFENSE THE STATE INTENDED TO CHARGE

LAW ANALYSIS

SUBJECT-MATTER JURISDICTION IS THE POWER OF THE COURT TO HEAR A PARTICULAR CLASS OF CASE TO

WHICH THE PROCEEDINGS BEWARE DOVE V COLDKIST
314 S C 235 442 S E 2d 598 (1994)

THERE ARE THREE (3) DIFFERENT CLASSES OF BURGLARY
IN THE STATE OF SOUTH CAROLINA, BURGLARY FIRST
BURGLARY SECOND AND BURGLARY THIRD. RESPECTIVELY.
EACH REQUIRES AN ESSENTIAL ELEMENT NOT CONTAINED
IN THE OTHER

THE DISTINGUISHING ELEMENT OF FIRST DEGREE
BURGLARY IS THE ASSUMED FACTOR OF ENTERING IN THE
NIGHTTIME CITING STATE V ADAMS 277 S C 115 28 S E 2d
382 WITHOUT SUCH IT IS SECOND. SEE ALSO STATE
V LYNCH CITATION OMITTED.

HAD COUNSEL CHALLENGE SUCH BY FILING THE PROPER
"TIMELY" MOTION THERE IS A REASONABLE PROBABILITY THAT
THE OUTCOME WOULD HAVE BEEN MORE FAVORABLE IN
APPLICANT'S BEHALF AND DIFFERENT

IN STATE V GRIFFIN 277 S C 193, 199. 285 S E 2d 631, 633 (1987)
THE COURT HAS HELD THAT CONSTRUCTIVE AMENDMENT OR DEFER-
RED INDICTMENT PREJUDICIAL FOR A DEFENDANT MAY ONLY
BE TRIED ON CHARGES ALLEGED IN AN INDICTMENT AND ONLY
GRAND JURY MAY "BROADEN" OR "ALTER" THE CHARGES IN SUCH
CITING US V BOLDEN 325 F 3d 471 4th CIR

LIKEWISE ANY CHALLENGE TO THE INDICTMENT MUST BE DONE
BEFORE THE JURY WAS SWORN AND NOT AFTERWARDS THEREFORE
APPLICANT WAS PREJUDICE BY THE LACK OF HIS COUNSEL
PERFORMANCE SEE WEINHAUSER V STATE 334 S C 327 513 S E 2d

WHETHER THE POST CONVICTION RELIEF ORDER IS SUFFICIENT
AND COUNSEL INEFFECTIVE FOR FAILING TO APPEAL THE
PCR JUDGES RULING DENYING HIM TIME TO PRESENT APPLICANT
AMENDED SUBJECT-MATTER JURISDICTION ISSUE AT PCR
HEARINGS?

PROCEDURAL BACKGROUND

THE APPLICANT FILED FOR POST-CONVICTION RELIEF
FEB 14TH 2011 AND WAS REPRESENTED BY ATTORNEY
BRADFORD A RAWLINSOHN ESQ

THE APPLICANT WROTE HIS COUNSEL AND ADVISED HIM
THAT HE HAD A SUBJECT-MATTER JURISDICTION ISSUE
AND WOULD LIKE FOR HIM TO AMEND SUCH COUNSEL
DID NOT DO SO BUT MADE MENTION OF THE FACT
AT THE POST-CONVICTION RELIEF HEARINGS AND REQUEST
FOR TIME

THE ORDER OF THE P.C.R. JUDGE DOES NOT
REFLECT THAT HE ADDRESS THIS ISSUE OR THE
OTHER CLAIMS FOR RELIEF CONTAINED THEREIN
THEREFORE THE ORDER IS INSUFFICIENT

INCORPORATED BY REFERENCE IS THE AMENDED PCR
HEREIN SUBMITTED FOR REFERENCE.

LAW ANALYSIS.

WHEN AN APPLICANT 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 ADJUDICIAL PROCESS THAT THE HEARINGS CANNOT BE SAID TO RELY UPON AS HAVING PRODUCED A JUST RESULT STICKLAND V WASHINGTON 466 US 668, 104 Sct 2052, 2064 80 LEd 2d 674, 692 (1984)

THE APPLICANT MUST OVERCOME THIS PRESUMPTION IN ORDER TO RECEIVE RELIEF CHERRY V STATE 300 SC 115 386 SE 2d 624 (1989)

UNDER THE TWO PRONG STANDARD IN CHERRY THE P.C.R COUNSEL'S ACTION WAS NOT "REASONABLE" AND AS SUCH PRODUCE THE APPLICANT BECAUSE HE WAS DENIED AND DEPRIVED OF A FULL AND FAIR HEARING ON ALL THE ISSUES PRESENTED AND HIS ONE BITE OF THE APPLE

FURTHERMORE PLAIN ERROR WAS COMMITTED BY THE COURT IN FAILING TO MAKE SPECIFIC FINDINGS OF FACT ON EACH ALLEGATION RAISED SEE PAULT V STATE 310 SC 254 423 SE 2d 127 (1992) BRAYSON V STATE 328 SC 236 493 SE 2d 500 (1997) A REVIEW OF THE ORDER ONLY ADDRESSED THE RELATED APPEAL AND IS SILENT AS TO APPLICANT'S ADDITIONAL CLAIMS HOWEVER INASMUCH AS THE ISSUE OF SUBJECT-MATTER JURISDICTION CAN BE RAISED AT ANYTIME INCLUDING FOR

THE FIRST TIME ON APPEAL THE APPELLANT HEREBY
REQUEST THAT THIS COURT ENTERTAIN SUCH WITHIN THE
INTEREST OF JUSTICE OR IN THE ALTERNATIVE REMAND
TO THE PCR FOR FURTHER HEARING AND DETERMINATION
ON THE ISSUE OF SUBJECT MATTER JURISDICTION
UNDER THE SIXTH AMENDMENT

RESPECTFULLY SUBMITTED

MASON JOHNSON 229175

APPELLANT

LIEBOW CORRECTIONAL INST

136 WILBORNE DR

ROSEVILLE SC 29472

EDISTO UNIT B 53

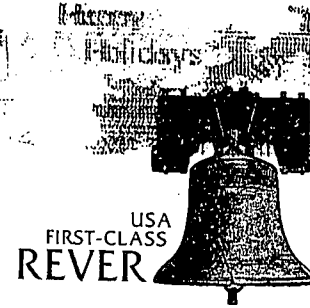
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Lieber Correctional Inst
Ridgeway SC 29472
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SC Court of Appeals

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON
COUNTY OF YORK) PLEAS S.C. Supreme Court

MASON JOHNSON 229175) AMENDED APPLICATION
v) POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA) 2011-CP-46-00640
ET AL) S C R I C P 15

NOW HERE COMES THE APPLICANT WHO PURSUANT TO THE APPLICABLE STATUTORY LAW AND HIS COURT APPOINTED COUNSEL MOVES BEFORE THIS COURT TO AMEND HIS POST-CONVICTION RELIEF ACTION TO INCLUDE THESE ADDITIONAL GROUNDS FOR RELIEF

THEY ARE AS FOLLOWS

1) ILLEGAL SEIZURE AND CONFINED IN VIOLATION OF U.S.C.A. 4. SOUTH CAROLINA CONSTITUTION ARTICLE I § 10 AND STATE STATUTE 16-3-910

FACTS IN SUPPORT

THE EXHIBIT WARRANT K 614537 WOULD REFLECT THAT THE PERSON ISSUING THE WARRANT WAS NEGLIGENT IN DOING SO IN THAT SUCH WAS ISSUE WITHOUT AN INDEPENDANT FINDING BY SOMEONE WHO WAS NEUTRAL AND DETACHED

IT WAS ALSO REFLECTED THAT THE APPLICANT WAS ARRESTED 'WITHOUT' A WARRANT BY AN OFFICER WHO DID NOT WITNESS HIM COMMITTING A CRIME IN HIS PRESENCE.

THE AFFIDAVIT SECTION OF THE WARRANT REFLECTS THAT THE AFFIANT SWORE OUT THE WARRANT ON THE BASIS OF ANOTHER OFFICERS AFFIDAVIT A PRACTICE THAT IS 'PROHIBITED' BY LAW

(1)

THESE UNLAWFUL PROCEDURES VIOLATED THE APPLICANTS CONSTITUTIONAL AND CIVIL RIGHTS THEREFORE HE IS ENTITLED TO RELIEF AND COMPENSATORY DAMAGES ON THIS CLAIM

INEFFECTIVE ASSISTANCE OF COUNSEL

② COUNSEL FOR APPLICANT WAS INEFFECTIVE IN HIS REPRESENTATION WHEN HE FAILED TO PROPERLY INVESTIGATE THE APPLICANTS CASE AS IT RELATES TO APPLICABLE LAW TO BE APPLIED IN RELATION TO THE OFFENSE OF BURGLARY SECOND DEGREE

FACTS AND LAWS

BURGLARY IN THE SECOND DEGREE 16-3-312(C) IS A FELONY PUNISHABLE BY IMPRISONMENT FOR MORE THAN FIFTEEN YEARS (15) AS OF (1991) IT WAS NOT CLASSIFIED AS A VIOLABLE CRIME AND PROVIDES FOR PAROLE ELIGIBILITY AFTER $\frac{1}{3}$ OF THE SENTENCE

THE INDICTMENT IN THIS CASE APPLICANTS EXHIBIT # 2 PUTS THE APPLICANT AND THE COURT ON NOTICE OF A 1976 CODE AND NO SUBSECTION INCLUDED WHICH DIFFERENTIATES THE OFFENSE AS TO ITS CLASSIFICATION AND DECREE NOTWITHSTANDING THE PUNISHMENT TO BE INCLUDED HAD HE INVESTIGATED AND SAWS THE STATES CHARGING INSTRUMENT HE WOULD HAVE FOUND THAT THE CHARGE AS WRITTEN DOES NOT CONSTITUTE BURGLARY IN THE SECOND DEGREE. AND COULD HAVE FILED A MOTION TO QUASH THE INDICTMENT SEE HAIR V STATE SC 1991) 315 SC 77, 406 SE2d 332

HE WOULD HAVE FOUND THAT THE STATUTE OPERATION WAS BROADEN BY USING THE WORDS "INTENT TO COMMIT A CRIME THEREIN" WHICH IS NO LONGER AN INGREDIENT OF BURGLARY SEE STATE V BROOKS SC 1981) 277 SC 111 283 SE 2d 830

THE INDICTMENT ALSO GIVES NOTICE THAT SUCH OCCURED DURING THE "HOURS OF DARKNESS" WHICH IS AN ELEMENT OF FIRST DEGREE BURGLARY AND AN ELEMENT OF THE 1985 CODE SUBSECTION B (3) HOWEVER THE CHARGING INSTRUMENT DOES NOT GIVE NOTICE OF SUCH

THEREFORE JUDGEMENT BY THE COURT IN THIS CASE AMOUNTED TO PLAIN ERROR IN VIOLATION OF S C CONST ARTICLE 5 § 21 WHICH REQUIRES THE COURT DECLARE THE CURRENT AND CORRECT LAW TO AMOUNTING TO NEGLIGENCE ON THE PART OF THE SOLICITORS OFFICE. THE JUDGE THE CLERK OF COURT AND COUNSEL FOR DEFENDANT SEE ADAMS V HUNTER 343 F SUPP 1284 AFFD WITHOUT OPINION CA SOUTH CAROLINA 471 F.2d 648 "IT WAS HELD IN ADAMS THAT A VIOLATION OF A STATUTE IN SOUTH CAROLINA CONSTITUTES ACTONABLE NEGLIGENCE AND ARE EVIDENCE OF RECKLESSNESS

FURTHERMORE "CONSTITUTIONAL LAW" SOUTH CAROLINA CONSTITUTIONAL ARTICLE 1 CLAUSE FOURTEEN PROVIDES FOR SUFFICIENT NOTICE OF CHARGES TO ENABLE THE COURT TO KNOW WHAT JUDGEMENT TO PRONOUNCE, AND THE DEFENDANT TO KNOW WHAT HE IS BEING CALLED UPON TO ANSWER OR HOW TO DEFEND

THE APPLICANT COULD NOT PROPERLY DEFEND DUE TO THESE DEFECTS. AND THE COURT SHOULD NOT

(3)

HAVE PRONOUNCE JUDGEMENT AGAINST THE APPLICANT DUE TO THE INSUFFICIENCY OF THE NOTICE OF THE STATES CHARGE.

IN CLOSING THIS ARGUMENT. THE APPLICANT CITE STATE V TABORY 262 S Ct AT 140, 202 SE2D AT 854. SEE ALSO INDICTMENT AND INFORMATION Key 21, 108. IT WAS HELD IN TABORY THAT A COURT MAY NOT SUSTAIN A CONVICTION BY RELYING ON A CAPTION TO THE EXCLUSION OF LANGUAGE OF THE STATUTE.

A FAILURE TO CITE RELEVANT STATUTE AND SUBSTANTIALLY CHARGE AND GIVE NOTICE OF ALL THE ELEMENTS OF THE OFFENSE CONSTITUTES A DEMAND OF A FAIR TRIAL AND EQUAL PROTECTION OF THE LAWS. HAD COUNSEL PROPERLY INVESTIGATED AND CAUSED THE CHARGE AND THE "CHARGING INSTRUMENT" AND PRESENT SUCH TO THE COURT BY MOTION AT THE CRITICAL STAGE OF THE PROCEEDINGS, THERE IS A REASONABLE PROBABILITY THAT THE 'OUTCOME' OF THE PROCEEDINGS WOULD BE DIFFERENT.

(3) THE COURT LACKED SUBJECT-MATTER JURISDICTION TO ACT

THE APPLICANT BY AND THROUGH HIS APPOINTED COUNSEL HEREBY STATES THAT THE TRIAL COURT DID NOT HAVE 'POWER' TO

- (1) PREPARE AND FILE INDICTMENT
- (2) TO PRESENT AND INDICTMENT TO THE GRAND JURY.
- (3) THE GRAND JURY DID NOT HAVE AUTHORITY TO RETURN A TRUE-BILL OF INDICTMENT IN THE HEARING MENTIONED ACTION.

SUBJECT MATTER JURISDICTION IS THE POWER TO DECLARE THE LAW IN A PARTICULAR CLASS OF CASE TO WHICH THE PROCEEDING BELONGS, AND WHEN IT CEASES TO EXIST, THE ONLY THING REMAINS FOR THE COURT TO DO IS ANNOUNCE THE FACT AND DISMISS THE CAUSE.

THIS GROUND ARE HEREBY BEING INCORPORATED JOINTLY, AND SEVERALLY BY APPLICANT FOR THE COURT NOW REQUIRES THAT THIS CLAIM BE RAISED UNDER THE GROUND OF "INEFFECTIVE ASSISTANCE OF COUNSEL" COURTS KEY 40 "THE ACTS OF A COURT IN A MATTER OF TO WHICH IT HAS NO JURISDICTION ARE VOID

JURISDICTION IS DERIVED FROM THE CONSTITUTION AND STATUTES

"BY LAW" IN ORDER FOR THE APPLICANT TO BE CONVICTED OF BURGLARY SECOND PURSUANT TO 16-1-312

THE STATE WAS REQUIRED TO SHOW AND PROVE EACH AND EVERY ELEMENT OF THAT OFFENSE AND CHARGE THE LAW THAT IS IN EFFECT AT THE TIME OF APPLICANTS ARREST

THE STATUTE AND CODE GIVEN NOTICE OF IN THE CHARGING INSTRUMENT IS NOT THE CURRENT AND "CORRECT LAW" TO BE APPLIED IN THIS CASE THEREFORE THE COURT LACKED SUBJECT MATTER JURISDICTION, TO INDICT TRY CONVICT AND SENTENCE APPLICANT

THIS CHARGE WAS AMENDED BY THE SOLICITORS OFFICE AND HAD COUNSEL PROPERLY INVESTIGATED AND MOVED BEFORE THE COURT BY MOTION TO 'QUASH' THE OUT COME OF THE PRIOR PROCEEDINGS WOULD HAVE BEEN MORE

FAVORABLE TO APPLICANT SEE EXHIBIT IE
INDICTMENT. SEE ALSO APPLICABLE STATUTE AND
CODE. QUOTE " A PERSON IS GUILTY OF BURGLARY
IN THE SECOND DEGREE IF THE PERSON ENTERS A
DWELLING WITHOUT CONSENT AND WITH INTENT TO
COMMIT A CRIME THEREIN RELATIVES TO SUBSECTION
HOWEVER A BREAK IN IS NO LONGER REQUIRED. OR
INTENT TO COMMIT A FELONY. SEE STATE V. KOAHNH
RENS SC (1986) 29 SC 281 350 SE 2d 180 STATE V
BROOKS SC 1981 277 SC 111 283 SE 2d 830

IN CLOSING

A GENUINE ISSUE EXIST WARRANTING A HEARING
AND A DETERMINATION ON ALL GROUNDS PRESENTED
FOR RELIEF AND THE APPLICANT HEREBY REQUEST
THAT MY COUNSEL PRESENT SUCH. SO AS TO HAVE
THEM PRESERVED ON THE RECORD IN CASE I HAVE
TO APPEAL THE DECISION OF THE POST CONVICTION
RELIEF COURT.

HAVING MADE THIS MOTION THE APPLICANT
PRAY THAT SUCH GROUNDS BE INCLUDED IN
HIS APPLICATION FOR POST-CONVICTION RELIEF
AND A DETERMINATION MADE ON EACH GROUND
ALLEGED

RESPECTFULLY SUBMITTED
APPLICANT
MASON JOHNSON

CERTIFICATE OF SERVICE

THIS IS TO HEREBY CERTIFY THAT I
MASON JOHNSON THE APPLICANT HAS CAUSED
AN AMENDED APPLICATION FOR POST CONVICTION
RELIEF TO BE FILED WITH MY APPOINTED
COUNSEL TO FILE SUCH WITH THE COURT
TO BE INCLUDED WITH MY ORIGINAL
APPLICATION BY PLACING SUCH IN THE UNITED
STATES MAIL HERE AT LIEBER CORRECTIONAL
INSTITUTION ON THIS _____ DAY OF _____
2012

PERSON SERVED
APPOINTED ATTORNEY.

~~_____~~
MASON JOHNSON
229175

SWORN TO AND SUBSCRIBED BEFORE ME
this _____ DAY OF _____ 2012

NOTARY OFFICIAL FOR SOUTH CAROLINA
my COMMISSION EXPIRES _____

MASON JOHNSON 229175
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S.C. Supreme Court

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
 MASON JOHNSON, #299175)
 Applicant,)
 vs)
 STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS

C/A NO: 2011-CP-46-0640

MOTION FOR AUTHORIZATION OF FUNDS
FOR THE PAYMENT OF EXPERT WITNESS

Applicant, Mason Johnson, # 229175, by and through his undersigned attorney of record, hereby files this Motion for Authorization of Funds for Payment of Expert Witness pursuant to §17-3-50(a) of the South Carolina Code of Laws. Applicant would respectfully show unto this Court:

That prior to trial, counsel become aware that Applicant was unable to read or write and had an I.Q. of 60, which registers as "mildly retarded." However, counsel failed to request a competency hearing to determine Applicant competency to stand trial. Applicant has a history of mental problems for this Court.

CONCLUSION

Applicant prays that the Court will grant motion for authorization of funds for the payment of expert services.

1.

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AMENDED ISSUES

ISSUES (A) Counsel was ineffective for failing to request a competency hearing to determine if Applicant was competent to stand trial.

ISSUE (B) counsel was ineffective for failing to request a hearing to determine if there was an unlawful search and seizure violation.

Respectfully submitted

July__2012

Mason Johnson, #229175

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
MASON JOHNSON,, #229175)
Applicant)
vs,)
STATE OF SOUTH CAROLINA)
Respondent.)

IN THE COURT OF COMMON PLEAS
C/A NO: 2011-CP-46-0640
AMENDED APPLICATION FOR POST
CONVICTION AND MEMORANDUM OF
LAW IN SUPPORT OF APPLICATION
FOR (PCR).

Applicant, Mason Johnson, #229175, by and through his attorney, hereby files this amended PCR application and memorandum pursuant to rule 15 (a) SCRPC, with attachments thereto in support of his application for PCR relief. Applicant would respectfully show unto this Court:

Applicant hereby reiterate, reallege, re-plead and do incorporate herein the entire content of the original filed application for post-conviction relief verbatim.

Applicant hereby amends subsection 10 entitled "STATE CONCISELY THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATION THAT YOU ARE BEING HELD IN CUSTODY UNLAWFULLY: Applicant incorporates the following:

- (a) 4th Amendment violation; S.C. Const. Art. 1, section 10
- (b) 6th Amendment violation
- (c) 14th Amendment violation

Respectfully submitted

July__2012

Applicant hereby amends subsection II entitled "STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET IN (10);" of the originally filed application to allege' plead and incorporate the following:

- (a) Counsel was ineffective for failing to request a hearing to determine if there was an unlawful search and seizure violation.
- (b) Counsel was ineffective for failing to request a competency hearing to determine if Applicant was competent to stand trial.

FACT (A)

Applicant contends that he is mentally incompetent and his trial counsel was ineffective for failing to request a competency hearing to determine if Applicant was competent to stand trial.

Prior to trial, counsel become aware that Applicant was unable to read or write and had an I.Q. of 60, which registers as "mildly retarded." However, counsel failed to request a competency hearing to determine if Applicant was competent to stand trial.

Counsel's failure to request a competency hearing prejudice Applicant under Jeter Standard because there was, at minimum, a "reasonable probably that Applicant was incompetent at the time of his trial.

MASOW JOHNSEN #229195
Lieber Connecticut Inst
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Ridgewille S.C. 29472

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S.C. Supreme Court

DEAR CLERK

PLEASE FIND FOR FILING
NOTICE OF APPEAL AND MOTION FOR
NEW HEARING PURSUANT TO RULE 59(E)

THANK YOU

MARION JOHNSON

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IN THE COURT OF APPEALS

S.C. Supreme Court

APPEAL FROM YOUR COUNTY

COURT OF COMMON PLEAS

HONORABLE JOHN C HUGHES III

CASE NO 2011-CP-46-0640

MASON JOHNSON 229175

APPELLANT

STATE OF SOUTH CAROLINA

RESPONDENT

NOTICE OF APPEAL

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SC Court of Appeals

ISSUE. WHETHER THE ORDER WAS SUFFICIENT
AND SPECIFIC ON EACH AND EVERY ALLEGATION RAISED?

DISCUSSION. THE APPLICANT RECEIVED COMMUNICATION
FROM THE CLERK OF COURT ON DEC 14TH 2012
THAT AN ISSUE ORDER WAS ENTERED ON DEC 10TH
2012 AND A MOTION TO BE REVIEWED AS
COUNSEL

COUNSEL DID NOT FILE ANY MOTION REQUESTING
CLARIFICATION OF THE ORDER PURSUANT TO RULE
(59E)

ATTACHED IS THE MOTION TO BE REVIEWED
AS COUNSEL AND NOTICE AS TO THE THE
ORDER HEREIN SUBMITTED AS REFERENCE
RELIEF

APPELLANT REQUEST A REMAND FOR A NEW
P.C.R HEARING SO THAT ALL HIS ISSUES CAN
CAN BE ASCERTAIN AND RULED ON ON THE MERITS
CIVILS PRUIT V STATE 310 SC 254, 423 SE 2d 127
1992)

Respectfully Submitted
MASON JOHNSON
APPELLANT

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP4600640

Mason Johnson	South Carolina State Of
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
---------------	---

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

MOTION & ORDER TO BE RELIEVED AS COUNSEL

ORDER INFORMATION

This order ends does not end the case. Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
na	na	na

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

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sl Lee S. Alford

Circuit Court Judge

2113

Judge Code

12/07/2012

Date

DEC 21 2012

For Clerk of Court Office Use Only

This judgment was entered on **December 10, 2012**, and a copy mailed first class or placed in the appropriate attorney's box on **December 10, 2012**, to attorneys of record or to parties (when appearing pro se) as follows:

Mason Johnson Lieber Correctional Institution Po Box 205 Ridgeville, SC
29472

Bradford A Rawlinson Schiller Law Firm PO Box 36365 Rock Hill, SC
29732

J Rutledge Johnson Office Of Attorney General Po Box 11549 Columbia,
SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
MASON JOHNSON # 00229175 ,)
Versus)
STATE OF SOUTH CAROLINA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

MOTION TO RELIEVE COUNSEL

CASE NO: 2011-CP-46-0640

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DAVID H. KANTON
C.C.P. & G.S.
YORK COUNTY, SC

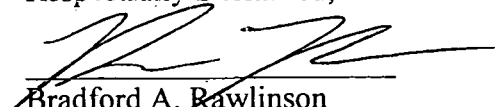
TO: ASSISTANT ATTORNEY GENERAL RUTLEDGE JOHNSON, THROUGH HIS ATTORNEY, BRADFORD A. RAWLINSON, MOVES TO RELIEVE COUNSEL AS SOON AS HE MAY BE HEARD

Plaintiff's current counsel, Bradford A. Rawlinson, hereby moves that he be relieved from representation in the above-captioned Post-Conviction Relief matter for the Plaintiff, Mason Johnson

Plaintiff's counsel is no longer with the Schiller Law Firm, and has accepted a position with the Office of General Counsel of the South Carolina Department of Corrections. As a duty of this position, Defendant's counsel may have to prosecute matters in the Court of General Sessions as well as deal with internal institutional matters that concern the Plaintiff. Defendant has voiced no objection.

NOW THEREFORE, Bradford A. Rawlinson requests an Order relieving him as Counsel or, in the alternative, a hearing as soon as the Court can schedule it on his request to be relieved as Plaintiff's current counsel.

Respectfully Submitted,


Bradford A. Rawlinson
303 Lake Carolina Blvd
Columbia, SC 29229
803-370-2289

Columbia, SC
This 26 day of November, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
MASON JOHNSON # 00229175,)
Versus)
STATE OF SOUTH CAROLINA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

ORDER RELIEVING COUNSEL

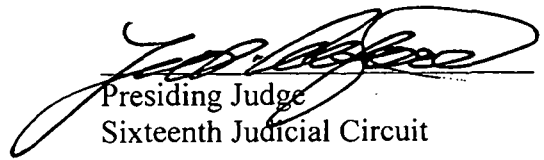
CASE NO.: 2011-CP-46-0640

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DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

This matter came before the Court pursuant to a motion by Bradford A. Rawlinson, attorney for the Defendant seeking to be relieved as counsel of record on the above-named Post-Conviction Relief matter. After examining the Counsel's Motion and the Court's file, it appears that Counsel has a conflict of interest which calls into question his continued representation of the Plaintiff. Defendant has voiced no objection.

IT IS THEREFORE ORDERED, AJUDGED AND DECREED that Bradford A. Rawlinson is hereby relieved as attorney of record for Mason Johnson.

AND IT IS SO ORDERED.


Presiding Judge
Sixteenth Judicial Circuit

December 7, 2012
York, South Carolina

MASON JOHN Q. 229175
LeeBA Correctional Inst
Ridgeville SC 29472
Edisto Unit B54

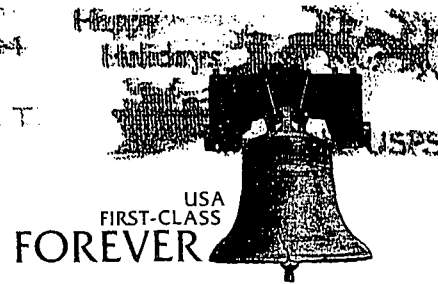
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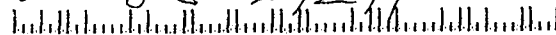
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SC Court of Appeals

Columbia SC 29211



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S.C. Supreme Court

MEMORANDUM OF LAW

The law is clear in this field, a defendant may not be criminally prosecuted while incompetent, and state must give him access to procedures for determining his competency. The judge must conduct a competency hearing whenever evidence before him raises a bona fida doubt about the defendant's competency to stand trial, even if the defense does not ask for one. See, Media v California, 505 U.S. 437, 449, 112 S.Ct. 2572 (1992) citing Drope v Missouri, 420 U.S. 162, 172-73, 95 S.Ct. 896 (1975); Pate v Robinson, 383 U.S. 375, 386, 86 S.Ct. 336 (1966).

In this instant case, Applicant's competency is in question as seen from the record, and Applicant's request a competency hearing first to determine if he was competency to stand trial and to determine if he was competency at the time if the alleged crime. Matthews v.State, 358 S.C. 2456, 596 S.E.2d 49 (2004) citing Jeter v State, 308 S.C. 230, 417 S.E.2d 594 (1992).

CONCLUSION

Based on the foregoing, Applicant is entitled to have his sentence and conviction vacated.

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SC Court of Appeals

ISSUE (B) Counsel was ineffective for failing to request a hearing to determine if there was an unlawful search and seizure violation.

Applicant contends that his 4th Amendment and South Carolina Constitution Art. 1, section 10 rights to be free from unreasonable searches and seizures was violated and his trial counsel was ineffective for failing to request a hearing to determine if there was an unlawful search and seizure violation.

At the time of Applicant's warrantless arrest, applicant was never implicated or identified as a suspect in the crime he allegedly committed. As a result, there was no nexus (connection) of the Applicant to the crime for which he was arrested.

In addition, the arrest warrants supporting affidavit was merely an oath of the officer. The state of South Carolina has a higher standard requirement for the issuance of search and arrest warrant providing that they be issued upon a sworn statement.

Applicant was located in a room that he was renting at his alleged co-defendant's house and arrested as a participant in a burglary 2nd and grand larceny.

Applicant contends that the police officers lacked probable cause to arrest him for the crimes charged.

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SC Court of Appeals

Counsel was aware of this evidence prior to trial, but failed to request a hearing to determine if there was an unlawful search and seizure violation.

Counsel's failure to request a 4th Amendment and South Carolina Constitution Art. 1, section 10 violation prejudice applicant because there was a "reasonable probability" that the trial Judge would have found that there was a lack of probable cause to arrest applicant, therefore, Applicant's case would have been dismissed and/ or illegal evidence would have been suppressed. U.S. Const. IV and S.C. Const. Art. 1. sec 10.

In this case, probable cause was never established for Applicant's arrest for burglary 2nd and grand larceny. Counsel failed to request a hearing to determine if a S.C. Const. Art 1, sec 10 violation of unlawful search and seizure. S.C. Constitution Article 1, section 10.

Based on the foregoing, Applicant is entitled to have his sentence and conviction vacated.

CONCLUSION

Based on the foregoing, Applicant's conviction and sentence should be vacated with time served.

Respectfully submitted

July__2012

CERTIFICATE OF SERVICE

The undersigned hereby certify that he mail the motion for authorization for payments of expert service and amended PCR application to Counsel of record Bradford A. Rawlinson this ___ dat of July 2012, by depositing same in the U.S. mail postage prepaid at Lieber mail-room.

Mason Johnson, 226175

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SC Court of Appeals

Dear Mr. Rawlinson,

Enclosed would you please find for filing, motion for authorization of payment for expert services and amended PCR application. Please file and return a stamp filed copy to me.

Yours truly

Mason Johnson

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
 FAMILY COURT

MASON JOHNSON, #299175

Plaintiff

CASE NO.

v.

2011-CP-40-0640

STATE OF SOUTH CAROLINA

Defendant

MOTION INFORMATION FORM
AND COVER SHEET

check box above indicating submitting party

name, S.C. Bar no. and address of plaintiff's attorney

name, S.C. Bar no. and address of defendant's attorney

telephone:

fax:

telephone:

e-mail:

other:

e-mail:

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Authorization of funds for expert

Estimated Time Needed: 30 min. Court Reporter Needed: YES / NO

SECTION II: Motion Type

- Written motion attached
 Form Motion --

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant

Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: _____

EXEMPT:

(check reason)

- Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRCF)
 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: _____
 Other:

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____

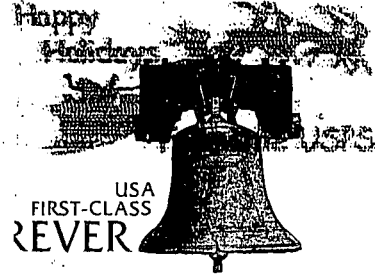
(print name)

MOTION FEE COLLECTED: _____

CONTESTED - AMOUNT DUE: _____

MASON Johnson #229175
Lieber Connecticut Inst
P.O. Box 270 Edisto B 54
Ridgely, SC 29472

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c/o Clerk of Court
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P.O. Box 11629

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