

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

Steven H. John, Circuit Court Judge

RECEIVED

JUL 05 2016

SC SUPREME COURT

DERRICK D. HARRIOTT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002610

APPENDIX

LAURA R. BAER
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

JULIA COLEMAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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FORM 5

STATE OF SOUTH CAROLINA

RECORDED

COUNTY OF Sumter

2014 NOV -3

PM 2:44

IN THE COURT OF COMMON PLEAS

Derrick Damon Harriott #331760

Full name and prison number (if any) of Applicant

SUMTER COUNTY, S.C.

2014-CP-43

2334

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Inst., 4460 Broadriver Road Columbia, S.C. 29210.
2. Name and location of Court which imposed sentence Sumter County Court Of General Sessions
3. Name(s) of co-defendant(s) (if any) (None)
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) (2008-GS-43-257) count one of indictment is Murder and count two
 - (b) of indictment is possession of a firearm during the commission-
 - (c) of a violent crime.
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 13, 2008., Sentenced To Life Without Possibility Of Parole.
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____ (Yes)
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
_____ (Yes)
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court Of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed lower Court's decision
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 18, 2012 decision was filed, Remittitur issued August 3, 2012.,
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Harriott, Opinion Number 2012-UP-427 (S.C. Ct. App.)
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) (See Attached Page)
- (b) (See Attached Page)
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) (See Attached Page)
- (b) (See Attached Page)
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? (NO)
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? (Yes)
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? (NO)
- (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. Application For Post Conviction Relief
- ii. "" "" "" ""
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Sumter County Court Of Common Pleas
- ii. "" "" "" ""
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. Order Of Dismissal was issued
- ii. "" "" "" ""
- iii. _____

(ATTACHED PAGE ONE)

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(A) NOTE: This is an 'AUSTIN PETITION' attacking Post Conviction Relief Attorney's (failure/refusal) to file a Notice Of Appeal of Post Conviction Relief Judge's 'Order Of Dismissal denying Applicant Relief.

GROUND ONE: Applicant was denied his Statutory Right, under the Post Conviction Relief Act, to appeal the Denial/Order Of Dismissal of his initial Post Conviction Relief Action, when his Court Appointed PCR Attorney (failed/refused) to file Notice Of Appeal as the Applicant had requested him to do.

(B) NOTE: Ground two issue is pertaining to procedural denials and violations which occurred in initial Post Conviction Relief proceedings, which allow me to bring them in this instant AUSTIN/ODOM PETITION, which both are 'authorized' by our South Carolina Supreme Court, citing, Austin, 409 S.E. 2d. 395 and Odom, 523 S.E. 2d. 753.

GROUND TWO: The Applicant was constructively denied his Statutory Right to appointment and assistance of Post Conviction Relief Counsel, under Rules Civil Procedure, 'RULE 71.1(D)' of which said procedural errors were recognized by Our S.C. Supreme Court in Whitehead, 426 SE 2d. 315; Case, 289 SE 2d. 413.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

SUPPORTING FACTS OF GROUND ONE (A): During the initial PCR Hearing, after PCR Hearing Judge denied Applicant's oral motion for a continuance, the applicant informed his PCR Attorney that if they were 'not' successful, that he wanted him to file a Notice Of Appeal on his behalf and PCR Counsel said, 'He would', However, PCR counsel never did.....

ALSO, Upon Applicant receiving a copy of PCR Judges 'ORDER OF DISMISSAL', Applicant, timely, wrote PCR Counsel and formally again told him to file the Notice Of Appeal., The Applicant also wrote and filed a copy of these letters with the 'Clerk Of Court for Sumter County.', **SEE ATTACHED SUPPORTING DOCUMENTS**, Listed and marked as Exhibits(A), (B), (C), along with a Certificate Of Authenticity:

Exhibit (A): A one page letter to PCR Counsel and one page letter to Clerk Of Court, which were both clock-stamped and filed in Clerk Of Court's office on August 1, 2014, both of which clearly support Applicant wanted the denial of his initial PCR appealed.

Exhibit (B): A copy of Letter from S.C. Supreme Court Clerk Of Court Daniel E. Shearouse responding to Applicant's letter of desperation wanting the denial of his PCR Action appealed.

Exhibit (C): A copy of the two page letter Applicant sent to S.C. Supreme Court Clerk of Court complaining of his PCR Counsel not filing Notice Of Appeal....

--continued on attached page two----

SUPPORTING FACTS OF GROUND TWO (B): PCR Counsel was appointed to represent applicant around February 19, 2013., PCR Counsel refused applicant's repeated request to meet with him and discuss his PCR case.,, PCR Counsel provided (NO) assistance or representation of any kind as outlined and listed below and supported by documents in support, listed as Exhibits (A), (B), (C), (D), which clearly show that PCR counsel provided no assistance or representation to applicant and blatantly refused all of applicant's request for his assistance.,

- (1). PCR Counsel refused to reply/respond to any of applicant's letters.,
- (2). PCR Counsel refused to meet with applicant prior to PCR Hearing to discuss his PCR case.,
- (3). PCR Counsel refused to amend, alter, modify, and or perfect Applicant's PCR Application as applicant had repeatedly requested him to do.
- (4). PCR Counsel refused to file a Notice Of Appeal of PCR Judge's Order Of Dismissal as Applicant, timely requested him to do so.,
- (5). PCR Counsel refused to file a 59(E) motion as Applicant had, timely, requested him to do.,

NOTE: Clearly, The Court Appointed PCR Counsel's actions and inactions constitute a **Constructive Denial Of Appointment And Assistance Of PCR Counsel**, which constitute a violation of Applicant's **Statutory Rights** under Rules Of Civil Procedures, Rule 71.1(d).

***** See attached supporting documents, listed as Exhibits (A), (B), (C), (D), and Certificate Of Authenticity of documents, verifying their authenticity., which are as follow:**

Exhibit (A1): Which is a letter dated January 13, 2014 to the Clerk Of Court, complaining of PCR Counsel's refusal to communicate with him or his family, in spite of the fact, that counsel at that time had been appointed for almost a year., Letter is notarized and bears the clerk of court's clock stamp.

Exhibit (B2): Which is a letter Applicant wrote to PCR Counsel, asking him why he has not communicated with him or responded to any of his letters.,

Exhibit (C3): Which is a letter, dated October 20, 2013, to PCR Counsel, begging him to meet with him, alter and amend grounds, and complaining to PCR Counsel about him not amending and perfecting his PCR Application as he is required to do under rule 71.1(d).

Exhibit (D4): Which is a copy of a Notarized letter Applicant sent to PCR Attorney, timely, requesting he file Applicant's 59(e) motion because PCR Court failed to address an issue, it bears the clerk of Court's clock-stamp.

******* PLEASE SEE ALL ATTACHED SUPPORTING DOCUMENTS AND CERTIFICATES OF AUTHENTICITY*******

16. If any Ground set forth in Question (10) has not been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented..

- (A)., The issue complained of cannot be brought in any other proceedings than in an Austin Petition as mandated by our S.C. Supreme Court.,
- (B). The issue complained of involves unfair process and Denial Of Statutory Procedural Rights Denied Applicant in initial PCR Proceedings, Therefore, Our S.C. Supreme Court has Ordered that such issues must be addressed in an Odom Petition

(continued on attached page three)

(ATTACHMENT PAGE THREE)

19. State clearly the relief you seek in filing this application?

The Applicant prays that this Court would grant him the Relief that Our, S.C. Supreme Court has guaranteed PCR Applicants whose PCR Attorneys failed to file NOTICE OF APPEAL of the Denial Of Their request for PCR Relief, outlined in Austin v. State, and should this Court find that Applicant was constructively denied his statutory right to appointment and assistance of PCR counsel, because his PCR Counsel provided no assistance whatsoever, then Applicant would pray that he be afforded the relief afforded to Applicants in the cases of Whitehead, 426 SE 2d. 315 and Case, 289 S.E. 2d. 413., which is a new hearing with a court appointed PCR counsel who is willing to assist him as is intended statutorily by rule 71.1(d).

Please See All attached supporting documents and supporting exhibits.

- iv. _____
- (d) the date of each such disposition:
- i. Order was signed July 7, 2014 and filed and recorded on July 11, 2014.,
- ii. "" "" "" ""
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. Case Number 2013-CP-43-168
- ii. "" "" "" ""
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- (NO)
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) NOTE: This is an Austin Petition, pursuant 409 S.E. 2d. 395 and
- (b) Odom Petition, pursuant 523 S.E. 2d. 753, (SEE ANSWER ON ATTACHED
- (c) PAGE)
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? (Yes) Preliminary Hearing
- (b) your trial, if any? (Yes)
- (c) your sentencing? (Yes)
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? (Yes)
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? (Yes)

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. William Oeth Land, Esquire; 29 South Mill Street Manning, S.C. 29102 (Trial/Sentencing)
 - ii. Joseph L. Savitz, III, Appellate Defense; Post Office Box 11589 Columbia, SC 29211 (Appeal)
 - iii. Fulton Casey Dale Cornwell, Esq.; Post Office Box 50143 Columbia, SC. 29250 (Initial P.C.R.)
- (b) the proceedings at which each such attorney represented you:
- i. Preliminary Hearing, Trial, and Sentencing
 - ii. Direct Appeal
 - iii. Initial Post Conviction Relief Proceedings

19. State clearly the relief you seek in filing this application:

(SEE ATTACHED PAGE FOR ANSWER)

20. Are you now under sentence from any other court that you have not challenged?

(NO)

STATE OF SOUTH CAROLINA)

County of Sumter)

VERIFICATION)

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Donald M. Murrell

SWORN to and subscribed before me this 30th
day of October, 2014.

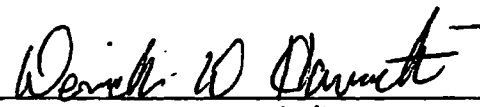
JS Murrell (L.S.)
Notary Public

My Commission Expires: 6/10/2018

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

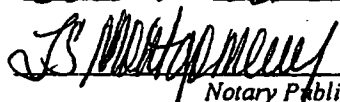
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this

30 day of October, 2014.

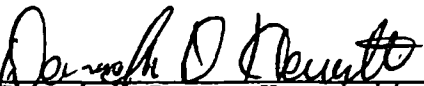


Notary Public

My Commission Expires: 6/10/2018

****(THE SUPPORTING DOCUMENTS AND EXBITS ARE AS FOLLOWS:)****

1. Certificate Of Authentication of supporting exhibits.
2. Exhibit (a),one page notarized letter to PCR Attorney,Fulton, Casey Dale Corwell,date July 30,2014,bearing Clerk Of Court's clock-stamp.,and a one page letter to Clerk of Court.
3. Exhibit (B),which is a letter from S.C. Supreme Court,Clerk Of Court,dated September 23,2014.
4. Exhibit (C),which is a two page letter to S.C. Supreme Court, Clerk Of Court,dated September 12,2014.
5. Exhibit (A1),which is a two page letter to Sumter County Clerk of Court,dated January 13,2014,bearing clerk of court's clock stamp.
6. Exhibit (B2),a one page letter to PCR Counsel,dated and notarized on April 9,2014.
7. Exhibit (C3),a one page letter to PCR Counsel,dated,October 20,2013, and bears the clerk of court's clock stamp.
8. Exhibit (D4),a two page letter to PCR Counsel Cornwell,which was notarized on July 21,2014 and bears the clerk of court's clock-stamp,recieved.,


Derrick Damon Harriott #331760

****SEE ALL ATTACHED EXIBITS:**

STATE OF SOUTH CAROLINA,
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
RECORDED

2014 NOV -3 PM 2:44

Derrick Damon Harriott, #331760)
Applicant,)

-versus-

State Of South Carolina)
Respondents,)

JUDGE L
SUMTER COUNTY, S.C.
Case Number: _____

2014-CP-43

2334

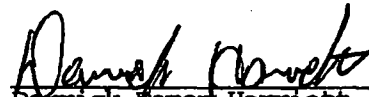
'Certificate Of Authentication Of
Supporting Documents'

PERSONALLY, APPEARED BEFORE ME, Derrick Damon Harriott #331760, who first being duly sworn, deposes and states that the following is true and accurate:

1. I, Derrick Damon Harriott, am the Applicant in the above captioned case and that the attached supporting documents, marked Exhibits (A), (B), (C), and Exhibits (A1), (B2), (C3), (D4) are all authentic copies of letters which exist in Sumter County Clerk Of Court's Office and S.C. Supreme Court Clerk's Office.,
2. I, Derrick Damon Harriott, swear under penalty of perjury that these Exhibit Documents have in (no) way been altered or change in any way, nothing has been taken from or added to them.,
3. These supporting document (exhibits) have only been attached to prove my allegations contained in the instant attached Austin/Odom petition, and are not in any way intended to deceive, misrepresent the facts, or for purposes of harassment or to cause delay., but are submitted in absolute good faith.
4. I, Derrick Damon Harriott, do so swear under the penalty of perjury that the above and all contained statements in this 'certificate of authentication are true and accurate.

10-28-14
Date: _____

"Respectfully Submitted!"


Derrick Damon Harriott #331760
BroadRiver Correctional Institution
4460 BroadRiver Road
Columbia, South Carolina
29210

***** SEE ATTACHED SUPPORTING Exhibits: (A), (B), (C), and Exhibits (A1), (B2), (C3), (D4)*****

RECORDED

Derrick D. Hartt #331760

2014 AUG -1 PM 1:49

B.R.C.I. (Waterloo - Rm. 165)

4460 Broad River Road

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Columbia, S.C. 29210

July 30th, 2014

Fulton Casey Dale Cornwell, Esq.

P.O. Box 50143

Columbia, S.C. 29250

Exhibit (A)

RE: Notice of Appeal

Sir,

This is my formal request that you file an
Notice of Appeal with the clerk of court on
my behalf pursuant to Rule 71.1(g) SCRPC.

Your time and assistance are greatly
appreciated.

Respectfully, I am,

s/ Derrick D. Hartt

SWORN TO AND SUBSCRIBED

before me this 31st day

of July, 2014.

Suber N. Frye

Notary Public for South Carolina

My commission Expires: _____

Commission Expires

7/1/2018

Derrick D. Hammett #331760 RECORDED

B.R.C.I. (Waterce - Pm. 1400) AUG - 1 PM 1:49

4460 Broad River Road

Columbia, S.C. 29216

JAMES L. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.July 30th, 2014

James C. Campbell

Clerk of Court

215 N. Main Street, Room 303

Sumter, S.C. 29150

Exhibit (A)

RE: Enclosed Letter

Sir,

Enclosed is a letter I sent to my attorney on July 31st 2014 requesting for him to file a Notice of Appeal with your office. Please file this letter with my case and return a date-clocked stamped copy to me. Your time and assistance are greatly appreciated.

Respectfully I am
s/ Derrick D. Hammett

SWORN TO AND SUBSCRIBED

before me this 31st day of

July, 2014

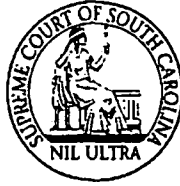
Austen H. Frye

Notary Public for South Carolina

My Commission Expires: _____

Commission Expires

01/15/2018



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

September 23, 2014

Mr. Derrick D. Harriott
B.R.C.I. (Wateree/Rm. 165)
4460 Broad River Road
Columbia, SC 29210

Exhibit (B)

RE: *Harriott v. State*, 2013CP4300168

This responds to your letter dated September 12, 2014. Since I do not know when your counsel received written notice of the entry of the final order in this case, the time to appeal may not have expired. Therefore, I am providing your counsel with a copy of your letter.

If the time to appeal has expired, I can only call you attention to the case of *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

Finally, I have enclosed information on filing an ethical complaint.

Sincerely,



Daniel E. Shearouse

Enclosure

cc: Fulton Casey Dale Cornwell, Esquire (with copy of letter)
Office of the Attorney General (with copy of letter)

Derrick D. Harriott #337160
B.B.C.I (Waterloo-Rm. 145)
4460 Broad River Road
Columbia, S.C. 29210

September 12th, 2014

Exhibit (C)

Daniel E. Shearouse
Clerk's Office - S.C. Supreme Court
Supreme Court Bldg. P.O. Box 11330
Columbia, SC 29211

RE: Notice of Appeal

Sir,

On July 7th, 2014, the Honorable Judge R. Ferrell Cuthran, Jr. signed the Order of Dismissal. It was filed by James E. Campbell, Clerk of Court, Sumter County, S.C. on July 11th, 2014 @ 2:50 P.M. I received my copy on July 18th, 2014 via certified mail at Broad River Correction Institution. I then sent the enclosed letter to my attorney, Fulton Casey Dale Cornwell, on July 31st, 2014. As you can see I requested for my attorney to file a Notice of Appeal with the clerk of court pursuant to Rule 71.1(g), SCRPC. However, he did not file the Notice of Appeal. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel **MUST** serve and file a Notice of Appeal on the Applicant's behalf.

My attorney did not file the proper paperwork

Daniel E. Shearouse
S.C. Supreme Court
September 12th, 2014
Page Two

within the thirty (30) day deadline, which has now expired. Because of his inactions, I have been denied my appropriate appellate review.

I would like to know how to secure the appropriate appellate review under these extraordinary circumstances? Also, who should I contact in order to file a formal complaint against my attorney? If you cannot, or are not, able to assist me, then could you please point me to someone who can.

Please return a date, clocked, stamped copy of this letter & its attachments with your response. Any assistance you can give will be greatly appreciated.

Respectfully, I am,
s/ Daniel E. Shearouse

SWORN TO AND SUBSCRIBED

before me this 15th day of
September, 2014.
Susan N. Frye

Notary Public for South Carolina

My Commission Expires
March 5, 2018

Exhibit (A1)

Derrick D. Harriott

Water # 331760

Broad River Corr. Inst.

4460 Broad River Rd.

Columbia, S.C. 29220

January 13, 2014

Honorable Clerk of Court

RECORDED
2014 JAN 14 PM 3:32
JAMES J. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Re: Post-Conviction Relief Counsel. (2013-GP-43-168)

Dear Honorable Clerk,

Hello, My name is Derrick D. Harriott # 331760.

I was appointed Fulton Casey Cornwell on February 19, 2013.

My family and I have been trying to speak with appointed Counsel's by phone and letters. But to date no contact has been made. Pursuant to Martinez v. Ryan (2012) I'm entitled to effective Assistance of PCR Counsel and S.C.R. Civ. P. 71.1(d).

I am not going to allow this unprofessional conduct to be used. Either he will correspond with me or appoint another counsel. Also tell him my next letter goes to the State Bar.

Respectfully Requested

Derrick D. Harriott

cc/BCLW

Certificate of Notary page 2

sworn and subscribed before me this 13th

day of January, 2014

by Susan N. Frye CS

Notary Public

My Commission Expires

March 5, 2018

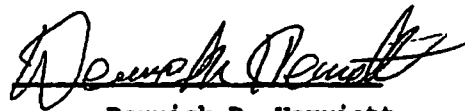
My commission expires:

Derrick D. Harriott
Wateree #165 #331760
Broad River C.I.
4460 Broad River Road
Columbia, S.C. 29210

Dear Mr. Fulton Casey Cornwell,

Hello, I have been trying to get in contact with you since you were appointed to me on my PCR. I haven't received a letter from you. I need for you to get into contact with me, so we can discuss my case.

Sincerely,



Derrick D. Harriott

Sworn to and Subscribed before
me this 9th day April 2014

Susan H. Fine
Notary Public For South Carolina

My Commission Expires
March 5, 2018

Derrick D. Harriott
Doc No: #331760
Wateree #165 #331760
Broad River C.I.
4460 Broad River Road
Columbia, S.C. 29210

Exhibit (B2)

10-20-13

RECEIVED

c/o: Mr Fulton & Cornwell

P.O. Box 50142

OCT 22 2013

Columbia, S.C. 29250

BACI

From: Derrick D. Harriott #331760

B.R.I. Mkt #1042 clcA sic. 29219

RE: p.c.R action #2013-40-43-168

Dear Mr Fulton

I have several questions ~~con~~ concerning my p.c.R hearing and my urgent need, for you please do certain things for my case, way before the actual day of my p.c.R hearing whenever that may be. Issue I is that you have not acknowledge my request instructions, to alter and amend my p.c.R application, which as you already know, I had no choice but to fill out such app, myself, as prose. I now need you to amend my prose p.c.R app, so that it will reflect each and every Issue, which must be done prior to my actual p.c.R hearing. Sir. Please contact me soon and let me know your phone number.

RECORDED

2013 OCT 24 PM 1:32

JAMES H. CAMPBELL
CLERK OF COURT
SUMMER COUNTY, KY

Exhibit (c3)

Mr. Fulton C. Cornwell,

After researching the order I see that Judge R. Ferrell Cothran Jr., didn't rule upon issue (2) on the application. Trial Counsel, was ineffective for failing to object to the courts verdict form, not including all forms of verdict when present to the jury as required by statute S.C. Code Ann. §17-24-30 was prejudicial to the defense, especially when the affirmative defense of a mental defect was sufficiently raised by the defense; see State vs. Rimert, 446 S.E. 2d 400.

I would move for you to file the Rule 59 (e) pursuant to Pruitt, Marlar and Hall, because I want all of my issues raised and ruled upon. I will not be procedurally Barred because of any unfair adjudication. I have also sent you a copy of my attachment to my application, June 3, 2014, so file with the court.

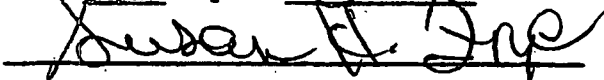
Respectfully,



Mr. Derrick D. Harriott

SUBSCRIBED AND SWORN BEFORE ME

This 21st day of July, 2014



Notary Public for South Carolina

My Commission Expires; March 5, 2018

Exhibit (D4)

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

CASE NO: 2013-cp-43-00168

DERRICK D. HARRIOTT #331760

APPLICANT.

APPLICANT NOTICE OF FILING

Vs.

RULE 59(e) SCRCF Pursuant to Martinez
Pruitt, 423 S.E.2d at 128; Martinez, 653
 S.E. 2d at 267; Hall, 601 SE. 2d at 341

STATE OF SOUTH CAROLINA

RESPONDENT.

RECORD
 2014 JUL 23 F.
 JAMES F. GAI
 CLERK OF COURT
 SUMTER COUNTY

Comes now into court, Derrick D. Harriott, by and through S.C. Rule of Civil Procedure, respectfully informs this Honorable Court that applicant has corresponded to appointed counsel Mr. Fulton C. Cornwell Esq. P.O. Box 50143 Columbia, S.C. 29250 to file a Rule 59 (E) SCRCF on June 3, 2014 pursuant to Martinez vs. Ryan, 132 S.Ct. 1309 (2012); Trevino vs. Thaler, 133 S.Ct. 1911 (2013) in which is required by law 10 days after written notice of entry of the order denying motion; Wilson vs. State, 348 S.C. 215, 218-539 S.E. 2d 581, 582 (2002) the applicant is entitled to his one fair bite of the apple.

Respectfully Submitted,

s/ Derrick D. Harriott

Applicant.

SUBSCRIBED AND SWORN BEFORE ME

THIS 21st day of July, 2014
Lillian H. Zup

Notary Public for South Carolina

My Commission Expires

My Commission Expires;

March 3, 2018

Exhibit (D4)

Date: _____, 2014.

Derrick Damon Harriott, #331760
 BroadRiver Correctional Institution
 4460 BroadRiver Road
 Columbia, South Carolina
 29210

2014-CP-43 2334

Attention:

Clerk Of Court Honorable James C. Campbell
 Sumter County Clerk Of Court
 215 North Harvin Street, Room 303
 Sumter, South Carolina 29150

RECORDED
 2014 NOV -3 PM 2:44
 SUMTER COUNTY, S.C.

Dear Clerk Of Court For Sumter County,

Will you please find enclosed my Austin/Odom petition, which I'm filing under Post
 Conviction Relief Act as is required by our S.C. Supreme Court.,

Will you please file and process the enclosed original copy of my application/petition
 and also find enclosed an extra copy, which I ask you to clock-stamp with assigned
 case number and return to me via U.S. postal mail, please!.

"Thank you very much!"

"Respectfully Submitted!"

10-28-14

Derrick D Harriott
 Derrick Damon Harriott #331760

Original

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Derrick Damon Harriott, #331760,	)	2014-CP-43-2334
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	ALL CLAIMS BEYOND <u>AUSTIN</u>
State of South Carolina,	)	REVIEW
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed November 3, 2014, Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the February 2008 term of the Sumter Grand Jury for Murder and Possession of a Firearm During the Commission of a Violent Crime (2008-GS-43-257). William Land, Esquire represented Applicant. Applicant proceeded to a jury trial and was found guilty but mentally ill on November 13, 2008. The Honorable George C. James, Jr., sentenced Applicant to life imprisonment without parole.

A timely Notice of Appeal was filed. The South Carolina Court of Appeals affirmed lower court's decision. State v. Harriott, Op. No. 2012-UP-427 (S.C. Ct. App. filed July 18, 2012). The Remittitur was issued on August 3, 2012.

Applicant subsequently filed for post-conviction relief on January 31, 2013 (2013-CP-43-168). In his application, Applicant asserted claims of ineffective assistance of counsel. An evidentiary hearing was convened on May 29, 2014, at the Sumter County Courthouse before the

Honorable R. Ferrell Cothran, Jr. Applicant was present at the hearing and was represented by Casey Cornwell, Esquire. By written Order filed July 11, 2014, Judge Cothran denied and dismissed Applicant's post-conviction relief action.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the prior post-conviction relief records, and appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of PCR Counsel
 - a. Failure to file a notice of appeal.

III.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under §17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation . . .

.” Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent requests an evidentiary hearing solely on the matter of the Applicant’s entitlement to an Austin Review.

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, with the exception of Applicant’s allegation that he is entitled to a review of his first PCR application pursuant to Austin v. State, Respondent moves to summarily dismiss the application because it is successive to the Applicant’s prior PCR action and was filed after the statute of limitations had expired. Respondent requests an evidentiary hearing solely on the matter of the Applicant’s entitlement to an Austin Review.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By:


Attorneys for the Respondents
Post Office Box 11549
Columbia, South Carolina 29211

January 6, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

DERRICK D. HARRIOTT, #331760,

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

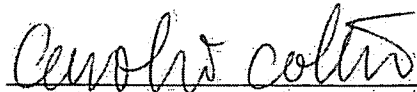
2014-CP-43-2334

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss All Claims Beyond Austin Review** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
 The Boozer Law Firm, LLC
 807 Gervais Street, Suite 203
 Columbia, SC 29201

DATED this 6th day of January, 2015.



Caroline Collins, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	C/A NO: 2014-CP-43-2334
	)	
Derrick Harriott, #331760,	)	
	)	
Applicant,	)	
	)	FIRST AMENDMENT TO PRIOR
v.	)	APPLICATION FOR PCR
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, at his request and through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief filed

November 3, 2014:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(i) "Trial counsel was ineffective for failing to petition the court, prior to the petit jury being sworn, for a 'motion to quash' indictment No: 2008-GS-43-257, as being defective, was prejudicial to the defense.

(ii) "Trial counsel was ineffective for failing to object to the Court's verdict form 'not' including all four (4) forms of verdict, when presented to the jury, as required by statute, was prejudicial to the defense, especially when the affirmative defense of a mental defect was sufficiently raised by the defense."

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543

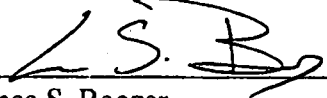
July 1, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	C/A NO: 2014-CP-43-2334
	)	
Derrick Harriott, #331760,	)	
	)	
Applicant,	)	
	)	AFFIDAVIT OF SERVICE
v.	)	
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing First Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Daniel Gourley
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
July 1, 2015

State of South Carolina	)	Court of Common Pleas
	)	Third Judicial Circuit
County of Sumter	)	Case No. 2014-CP-43-02334
	)	
Derrick Damon Harriott,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

July 14, 2015
Sumter, South Carolina

B E F O R E:

The Honorable Steven H. John, Judge

A P P E A R A N C E S:

Lance Boozer, Esquire
Attorney for the Plaintiff

Daniel Gourley, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

I N D E XWITNESS/DESCRIPTIONPAGE NUMBER

Motion to Amend..... 7

Rulings..... 10

Court Reporter Certification..... 13

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
P-1	Letter		7
P-2	Arguments/Brief		8

1 JULY 14, 2015

2 (WHEREAS this matter was scheduled for a post-conviction
3 relief hearing, the applicant appeared along with his
4 counsel of record. The hearing began at 9:55 a.m.)

5 THE COURT: All right. What's the next matter, Mr.
6 Attorney General?

7 MR. GOURLEY: Derrick Harriott, Your Honor.

8 THE COURT: All right. Very good. All right. Mr.
9 Attorney General?

10 MR. GOURLEY: Yes, Your Honor. May it please the Court.
11 This is Derrick Harriott versus the State of South Carolina,
12 Docket Number 2014-CP-43-2334. He's presently confined in the
13 South Carolina Department of Corrections pursuant to orders of
14 commitment of the Sumter County Clerk of Court.

15 He was true-bill indicted at the February 2008 term of
16 the Sumter County Grand Jury for murder and possession of a
17 firearm during the commission of a violent crime. Mr. Land
18 represented him. He proceeded to a jury trial and was found
19 guilty but mentally ill on November 13th, 2008, and the
20 Honorable George C. James Jr. sentenced the applicant to life
21 imprisonment without parole.

22 A timely notice of appeal from the South Carolina Court
23 of Appeals affirmed the lower court's decision. A remittitur
24 was issued on August 3rd, 2012.

25 He subsequently filed a timely application for a PCR on

1 January 31st, 2013. Your Honor, that docket number is 2013-CP-
2 43-168. In this application, he asserted claims of
3 ineffective assistance of counsel.

4 An evidentiary hearing was convened on May 29th, 2014, at
5 the Sumter County Courthouse before the Honorable R. Ferrell
6 Cothran Jr. The applicant was present at the hearing and was
7 represented by Mr. Cornwell. And by written order filed July
8 11th, 2014, Judge Cothran denied and dismissed the applicant's
9 post-conviction relief application.

10 The applicant subsequently filed another second
11 application for PCR on November 3rd, 2014, alleging that he did
12 not knowingly and intelligently waive his right to appeal the
13 denial of his PCR application. He subsequently filed an
14 amended application on July 1st, 2015, alleging ineffective
15 assistance of counsel.

16 Your Honor, the State filed its return and motion to
17 dismiss all claims beyond the Austin claim on January 6th,
18 2015. He's represented in this matter by Mr. Boozer.

19 THE COURT: All right.

20 MR. GOURLEY: And, Your Honor, I have spoken with Mr.
21 Cornwell in this matter. It does appear that the notice of
22 appeal was not filed on his behalf. In support of his
23 application, Mr. Harriott has attached various letters where
24 he wrote the Supreme Court asking for an appeal. Under
25 adequate representation, those letters were not considered.

1 So, Your Honor, based off of that and my discussions with
2 Mr. Cornwell, I do believe Mr. Harriott is entitled to an
3 Austin appeal and so, Your Honor, the State would consent to
4 that.

5 THE COURT: All right. Very good. All right. Mr.
6 Boozer, I'd be glad to hear from you, sir.

7 MR. BOOZER: Thank you, Your Honor. If it please the
8 Court, Judge, just for some housekeeping issues, I wanted to
9 make sure that Mr. Harriott -- when he filed this PCR
10 application, he had a number of letters that were attached as
11 exhibits. They were attached as various exhibits going from
12 A, B, C, D, and then there were A-1, B-2, C-3, and D-4. I
13 just wanted to make sure they were in the clerk's file. If
14 not, I'll go ahead and mark those as exhibits.

15 THE COURT: The documentation that I have does set forth
16 -- let me go through them -- Exhibit A, Exhibit B, Exhibit --
17 there's a C-3, D-4. I think B actually has several pages.
18 There's a C. So yes, it does appear that those matters are
19 reflected in the documentation that I have.

20 MR. BOOZER: Great. And, Judge, just for the record and
21 for Mr. Harriott, the Exhibit A was a request to his previous
22 PCR lawyer for an appeal. I understand that they're
23 consenting and this is just for the record.

24 The second was a response from the Supreme Court
25 basically saying that they were not aware that an appeal had

1 been filed. The third exhibit, which is Exhibit C, is his
2 letter to the Supreme Court basically asking how to file an
3 appeal. I just -- Mr. Harriott wanted that on the record.

4 Additionally, Your Honor, Mr. Harriott has just handed me
5 a copy that he wants to make a part of his record as well,
6 which is a letter dated June 3rd, 2014, addressed to his prior
7 PCR lawyer requesting that he file a 59(e), which obviously
8 was not done. I've show this to the Attorney General. He
9 does not object to being this made a part of the record.

10 THE COURT: All right, sir. Have it marked by the court
11 reporter, please.

12 MR. BOOZER: Thank you.

13 (WHEREUPON, Plaintiff/Applicant's Exhibit Number 1, a
14 letter, was marked.)

15 MR. BOOZER: And that would be Applicant's Exhibit 1.

16 THE COURT: All right, sir.

17 MR. BOOZER: Judge, another matter is he requested that I
18 file an amended application, and we've certainly discussed
19 what is possible or viable in a PCR. I've explained to him
20 that Your Honor may not hear his amended claims. They deal
21 with his actual trial counsel.

22 Judge, those are attached and were filed with the clerk
23 on July 2nd, 2015. There were basically two claims which he
24 wanted to amend, one of which just for records purposes was
25 trial counsel was ineffective for failing to petition the

1 Court prior to the petit jury being sworn for a motion to
2 quash Indictment 2008-GS-43-257 as being defective and
3 prejudicial to his defense.

4 Judge, a second claim which he had was trial counsel was
5 ineffective for failing to object to the Court's verdict form
6 not including all forms of verdict when presented to the jury
7 as required by statute. It was prejudicial to the defense,
8 especially when the affirmative defense of a mental defect was
9 sufficiently raised by the defense.

10 Those are the items he wanted to amend. Judge, he's also
11 handed me in support of those amendments three -- three
12 separate items. Basically, he's framed those as arguments in
13 what I guess you would call a brief, and he wants those marked
14 just for the record, Your Honor.

15 THE COURT: All right, sir.

16 MR. BOOZER: And I would move to have these marked as
17 Applicant's collective Exhibit 2.

18 THE COURT: All right, sir. Any objection from the
19 State?

20 MR. GOURLEY: No, Your Honor.

21 THE COURT: All right, sir. You may do so.

22 (WHEREUPON, Plaintiff/Applicant's Exhibit Number 2, the
23 arguments/brief, was marked.)

24 MR. BOOZER: Your Honor, pending the Court's further
25 rulings, Mr. Harriott has requested that he address the Court.

1 I'm not sure if that would be appropriate at this time or not.

2 THE COURT: What is the nature of the matter that he
3 wishes to address the Court about?

4 MR. BOOZER: Your Honor, may we approach?

5 THE COURT: Absolutely.

6 MR. BOOZER: Thank you.

7 (WHEREUPON, a bench conference was held off the record.)

8 (WHEREUPON, there was a pause in the proceedings for
9 counsel to confer.)

10 MR. BOOZER: Your Honor, may we approach?

11 THE COURT: Absolutely.

12 MR. BOOZER: Thank you.

13 (WHEREUPON, a bench conference was held off the record.)

14 THE COURT: All right. All right. Gentlemen, I
15 appreciate you speaking to your respective sides about the
16 issue and, Mr. Harriott, I understand there might have been
17 some wish to make some statement, but you understand that any
18 statement you make could have the potential effect of
19 affecting anything that you might proceed with in the -- in
20 the future. And I believe that you've talked to your counsel
21 about that.

22 And regarding any of the other matters, we are here today
23 to hear the issues and whatever time that takes, that's --
24 that's what we are about. So -- all right.

25 First, it appears, Mr. Boozer, that the State is in

1 agreement that an Austin review is proper in this particular
2 matter and, therefore, that relief is so granted. All right.

3 Now, as to the amendments to the prior application for
4 PCR, I understand that they were filed. Is it -- so that I'm
5 clear about this, does Mr. Harriott want a ruling on that from
6 the Court regarding the amendments to the application as far
7 as does he want to proceed on those today or does he want to
8 proceed with his Austin review?

9 MR. BOOZER: Judge, he -- he wants an Austin review of
10 his PCR claim. I believe he's adamant about that. That he
11 wants the belated appeal. As far as the other two, he's
12 indicated he does want a ruling on -- on those issues.

13 THE COURT: All right, sir. Very good. Thank you.
14 What's the State's position regarding the request regarding
15 the first amendment to the prior application?

16 MR. GOURLEY: Your Honor, I would just submit to the
17 Court that they're barred by the statute of limitations and
18 successiveness. Mr. Harriott had the opportunity to present
19 any and all allegations at his first PCR hearing -- at his
20 first evidentiary hearing and his failure to do so, now he
21 can't subsequently bring up new allegations in a successive
22 application. So for those reasons, Your Honor, I would ask
23 that those allegations be denied and dismissed with prejudice
24 for failure to comply with procedural bars.

25 THE COURT: All right. Mr. Boozer, do you want to make

1 an argument about that particular issue?

2 MR. BOOZER: Yes, sir, Your Honor. On behalf of Mr.
3 Harriott, Judge, his position is that these were not raised in
4 his first application and he believes he feels he is entitled
5 to raise them in this application. He feels that there was
6 ineffectiveness for not raising them in his prior application
7 and he feels that he wasn't given a full bite of his -- of the
8 apple on the first go-round, which is why he wants to raise
9 these today.

10 THE COURT: All right, sir. And I appreciate that and I
11 understand his position, but the fact of the matter is that he
12 did have a post-conviction relief application previously heard
13 by the Court. Whether or not these two grounds that are in
14 this amendment dated July 1, 2015, and I think filed with the
15 Clerk of Court July 2nd, 2015, were heard or not or addressed
16 or not, they could have been, and that is the point.

17 That Mr. Harriott had a post-conviction relief
18 application that alleged ineffective assistance of trial
19 counsel. That's what these are addressed to. And they should
20 have been -- if he intended for them to be heard, they should
21 have been raised in the first application. You know, they
22 weren't. For whatever reason, they weren't, and that may or
23 may not be an issue in the Austin review. I don't know, but
24 he's had his opportunity in the post-conviction relief
25 application previously filed.

1 This application is successive and, therefore, his
2 request is, therefore, denied except for the Austin review.
3 That review is so granted.

4 Anything further, Mr. Boozer?

5 MR. BOOZER: Nothing further, Your Honor.

6 THE COURT: All right. Very good.

7 MR. GOURLEY: Thank you, Your Honor.

8 THE COURT: All right. Thank you, gentlemen.

9 (WHEREUPON, the proceedings ended at 10:12 a.m.)

10

11 --- END REQUESTED TRANSCRIPT ---

12

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23

24

25

1	State of South Carolina	)	
2		)	Certificate
3	County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 12 constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Sumter County, South Carolina, on the 14th day of July, 2015.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.

17 S/Krystal J. Smith

18	Court Reporter
----	----------------

20	Florence, South Carolina
----	--------------------------

21	January 28, 2016
----	------------------

6-3-14

Derrick D. Harriott
Waterloo #165 #331760
Broad River C.J.
4460 Broad River Road
Columbia, S.C. 29210

Dear Mr. Fulton Casey Corwell
Hello, I am send you a copy of
my attachment to my Application
and I also need you to file my
attachment with the courts and
I need you to file me a 59E

Sworn to and Subscribed before
me this 3rd day June 2014

Susan A. Dye
Notary Public for South Carolina

My Commission Expires

March 5, 2018



FOURTH PARTICULAR

TRIAL COUNSEL WAS INEFFECTIVE AT TRIAL FOR FAILING TO PETITION THE COURT, PRIOR TO THE PETIT JURY BEING SWORN, FOR A "MOTION TO QUASH" INDICTMENT NO: 2008-GS-43-257, AS BEING DEFECTIVE, WAS PREJUDICIAL TO THE DEFENSE.

RE: INDICTMENT NO: 2008-GS-43-257 "MURDER, POSSESSION OF A FIREARM DURING COMMISSION OF A VIOLENT CRIME"

ARGUMENT IN SUPPORT



Part One

The crime of murder is a composite one. It includes the assault upon a person with intent to kill, and the resulting death from that assault. The State must prove not only the assault and the death, but the "time" of the assault and the "time" of the death, as "time" is recognized in the law.

These necessary elements of the crime of murder must not only be proved, before a person accused may be lawfully convicted, but they must be properly alleged in the charging of the indictment returned against the accused by the grand jury. The provisions of the Constitution recognizing and following these principles, require the indictment to contain allega

to those effects.

Applicant asserts that the amendments, to said indictment, by the Court/prosecution, were material elements of the crime charged, and where it is necessary to prove every element of an offense, amending the time of the assault and the time of the death, enters into the altering the nature of the offense. These amendments were accomplished without applicant's knowledge or consent (despite the notations made by the Court on said indictments);... nor was the defense put on notice to such amendments;... nor was said indictment, after being amended, re-submitted to the grand jury.

Applicant asserts the State will not be able to produce any record to this effect;... nor did applicant's trial counsel have knowledge to any November 3, 2008 hearing to amend said indictments. SEE: CORRESPONDENCE from counsel to Applicant, dated _____ relevant to this matter.

The charging language of said indictment was amended by the prosecution, without notice to the defense, to suit its own notion of what the charging language ought to have been, or what the grand jurors may have made it, assuming their attention would have been called upon such amendments - became no longer the indictment sworn upon and returned by the grand jury.

When an indictment is sworn upon and returned by a grand

Jury, then filed with the Court, no changes may be made in the body of the instrument, by order of the Court, or by the prosecuting attorney, without re-submission of the case to the grand jury; and the fact that the Court may deem the change immaterial - makes no difference. The instrument, as thus changed, is no longer the indictment of the grand jury which presented it - and - to the imperative requirement of the constitution, which would be of little avail if an indictment once found can be changed by the prosecuting attorney, to conform their views to the necessity of the case - would place the rights of the accused, at the mercy of control to those in charge, was prejudicial to the defense.

REVIEW: EX PARTA BAIN, 121 U.S. 1 (March 28, 1887)(U.S. Sup. Ct.); ALSO REVIEW: STATE -vs- RECTOR, 155 S.E. 385 (SC. Sup.Ct.)(Sept. 19, 1930).

Part Two

Bills of Indictments -- charging felonies -- where there has been an omission of [a] specific criminal section number, within the charging language itself ... reinforces a "finding" that the prisoner was never provided "NOTICE" of the specific statutory criminal offense, appraising him of each and every essential element necessary to constitute the criminal offense

being charged - NOR - does this omission ensure -- without a reasonable doubt -- that the grand jurors whom sworn upon these findings, had knowledge to the actual "Corpus Delicti" before them to find and consider all the essential elements of the offense being charge, to validly TRUE BILL the indictment.

The indictment having failed to include a specific criminal offense number, in the charging language, to appraise and put the prisoner on "Notice" of the specific criminal offense he was being held to answer, "Failed" to satisfy the constitutional guarantee that: NO PERSON SHALL BE HELD TO ANSWER FOR AN INFAMOUS CRIME UNLESS ON INDICTMENT BY A GRAND JURY was prejudicial to the defense. S.C. Const. Art. I, § 11. SEE: UNITED STATES -vs- DANIELS, 973 F.2d 272 (4th Cir.1992)(en banc); also: UNITED STATES -vs- HOOKER, 841 F.2d 1225 (4th Cir.)(en banc).

CONCLUSION

THEREFORE, ... Counsel's failure to moved before the Court, prior to the jury being sworn, for a MOTION TO QUASH, said indictment was unreasonable and prejudicial to the defense. U.S. Const. VI Amendment. STRICKLAND -vs- WASHINGTON, ____ U.S. ____, ____ S.Ct. 2052 (1984).

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER) MURDER, POSSESSION OF A FIREARM
 DURING COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on February 21, 2008, the Grand

Jurors of SUMTER County present upon their oath:

CERTIFIED TRUE COPY
 OF ORIGINAL FILE
Barbara Stanga
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

COUNT ONE - MURDER

That DERRICK DAMON HARRIOTT did in Sumter County on or about March ¹⁶~~17~~ 2007, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one Quanna Cooper by means of shooting her with a rifle, and that the said Quanna Cooper did die as a proximate result thereof.

COUNT TWO - POSSESSION OF A FIREARM DURING COMMISSION OF A VIOLENT CRIME

That DERRICK DAMON HARRIOTT in Sumter County on or about March ¹⁶~~17~~ 2007, was in possession of and did visibly display a firearm during the commission of a violent crime as defined in Section 16-1-60, to-wit: SKS 7.62 semi-automatic rifle, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Amended on the record with defendant's consent.

Herbert P. King
Presiding Judge
Nov 3, 2008.

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

C. Kelly Jackson
 SOLICITOR

STATE v. RECTOR et al.
No. 12976.Supreme Court of South Carolina.
Sept. 19, 1930.

1. Homicide §7.

Crime of "murder" includes assault committed upon person with intent to kill, and resulting death from assault; assault or death alone does not constitute crime.

[Ed. Note.—For other definitions of "Murder," see Words and Phrases.]

2. Homicide §142(1).

In murder prosecution, state must prove not only assault and death, but also time of assault and time of death.

3. Homicide §142(1).

In murder prosecution, state must prove place of assault and place of death.

4. Homicide §127.

Indictments for murder must allege both assault and death and also time and place of assault and death (Code Cr. Proc. 1922, §93).

5. Indictment and Information §98.

In construing effect of one count in indictment, court must look to words of such count alone.

6. Indictment and Information §98.

In determining intention and effect of any one count of indictment, court must look to all words contained therein.

7. Homicide §132.

Indictment stating county where shooting occurred, and alleging that defendants "then and there * * * did kill and murder," sufficiently showed place of deceased's death (Code Cr. Proc. 1922, § 93).

The indictment alleged defendants "on the twelfth day of June, in the year of our Lord one thousand nine hundred twenty-seven, * * * at G., in the County of G., * * * in and upon one Sam D. W., * * * did make an assault; and that the said * * * him the said Sam D. W., then and there * * * did shoot and wound; giving to the said Sam D. W. * * * one mortal wound; of which said mortal wound the said Sam D. W. did then die. * * * That the said * * * him the said Sam D. W. then and there * * * did kill and murder."

8. Jury §52.

Term "qualified elector," within constitutional provision, regarding jurors, means "registered elector" (Const. art. 5, § 22).

Const. art. 5, § 22, provides, among other things, that each juror must be a qualified elector under provisions of Constitution, between ages of 21 and 65 years and of good moral character.

[Ed. Note.—For other definitions of "Qualified Elector" and "Registered Qualified Elector," see Words and Phrases.]

9. Grand jury §5.

Jury §52.

A juror, grand as well as petit, must be registered elector of county in which he is called to serve (Const. art. 5, § 22).

10. Grand jury §41.

Trial judge could take no step looking to obtaining of information regarding number of grand jurors concurring in indictment, and whether necessary number who did concur included members not qualified.

11. Constitutional law §15.

In seeking true meaning of section of Constitution, or any of language thereof, court may examine any other section or language pertaining to subject.

12. Indictment and Information §10.

Indictment to be preferred by grand jury, as required by Constitution, must be one returned by legal grand jury (Const. art. 1, § 17).

13. Grand jury §5.

When defendant insists at proper time, he is entitled, as matter of constitutional right, to have grand jury, which indicts him, composed only of persons which Constitution has plainly declared may act thereon (Const. art. 1, § 17).

Const. art. 1, § 17, provides that no person shall be held to answer for any crime where punishment exceeds fine of \$100 or imprisonment for 30 days, with or without hard labor, unless on presentment or indictment by grand jury of county where crime shall have been committed, except in cases mentioned.

14. Grand jury §5.

Constitutional provision that only qualified elector may be member of grand jury is mandatory (Const. art. 1, §§ 17, 29).

Const. art. 1, § 29, provides that Constitution shall be taken, deemed, and construed to be mandatory and not merely directory, except where expressly made directory by its own terms.

15. Constitutional law §265.

One demanding but refused right to be tried only upon indictment presented by legal grand jury, where such indictment is re-

quired, is "deprived of life, liberty or property without due process of law" (Const. art. 1, §§ 5, 17).

[Ed. Note.—For other definitions of "Due Process of Law," see Words and Phrases.]

16. Constitutional law §17.

Language and provisions of state Constitution must be understood and construed with reference to principles of common law.

17. Constitutional law §17.

When there is no conflict between the two, Constitution is presumed to intend to preserve rules, rights, remedies, and principles of common law.

18. Indictment and information §137(2).

Court properly quashed indictment where at least 2 of 17 grand jurors who participated in finding it were not registered electors, and were disqualified to act (Const. art. 1, §§ 5, 17, 25, 29; art. 5, § 22; Code Civ. Proc. 1922, § 548).

Appeal from General Sessions Circuit Court of Greenville County; W. H. Townsend, Judge.

C. A. Rector, J. Harmon Moore, and another were charged with murder, and on motion of defendants named, the indictment was quashed, and the State appeals.

Affirmed.

J. G. Leatherwood, Sol., and C. G. Wyche, both of Greenville, for the State.

D. W. Smoak, W. D. Workman, J. Frank Eppes, J. D. Lanford, and Mann & Plyler, all of Greenville, and Claude N. Sapp, of Columbia, and Mendel L. Smith, of Camden, for respondents.

BLEASE, J.

On motion of the defendants Rector and Moore, the indictment in this case was quashed, and, from the order to that effect, the state has appealed.

The indictment contained three counts, all revolving around the alleged murder of Sam D. Willis. In the first, it was sought to charge the defendants, Rector, Moore, and Blair Rooks, as principals, with murder; in the second, Blair Rooks, as principal, and Rector and Moore as accessories before the fact; and, in the third, to charge Rooks, as principal, and the other defendants as accessories after the fact.

The first ground on which the order of the circuit judge was based was because, in his opinion, the indictment failed to allege, in either of the counts, the place of the death of the deceased, Willis; and that matter we shall first consider.

Our General Assembly has sought to simplify indictments in criminal cases, and to do away with much of the useless phraseology known to those instruments of pleading under the rules of the common law. See sections 89 and 93 of the Code of Criminal Procedure 1922, and *State v. Alexander*, 140 S. C. 325, 138 S. E. 835. But those statutory enactments must be so construed as to harmonize them with the provision of section 18, article 1 of our Constitution, which declares, "In all criminal prosecutions the accused shall * * * be fully informed of the nature and cause of the accusation." *State v. Jeffcoat*, 54 S. C. 196, 32 S. E. 298.

[1-4] The crime of murder is a composite one. It includes the assault committed upon a person with intent to kill, and the resulting death from that assault. The assault alone does not constitute the crime. Neither does the death of the person of itself make the crime. The crime cannot become complete until after the death of the assaulted person has occurred. The State must prove not only the assault and the death occurring from it, but the time of the assault and the time of the death, as time is recognized in the law. In addition, the state must prove the place of the assault and the place of death. These necessary elements of the crime of murder must not only be proved, before a person accused may be lawfully convicted, but they must be alleged in the indictment returned against the accused by the grand jury. The provisions of the Constitution, recognizing and following the principles of the common law, require the indictment to contain allegations to those effects. The provisions of the Criminal Code of Procedure, section 93, recognize that indictments for murder shall comply with the constitutional requirements, for in that section it is stated that an indictment for that crime shall set forth "the time and place" of the murder alleged to have been committed. See the recent case of *State v. Platt*, 154 S. C. 1, 151 S. E. 209, where we went fully into the necessity of alleging and proving the place of death of the person alleged to have been murdered.

[5, 6] The law being so plain, it is only necessary for us to inquire if the indictment in this case contained an allegation as to the place of the death of the deceased. In construing the effect of any one count in an indictment, we are required to look to the words of such count alone, for resort cannot be had to any other count to supply any deficiency in the count under consideration, or to explain the intention of that count. *State v. Banks*, 84 S. C. 543, 68 S. E. 999. In determining the intention and effect of any one count, however, we must look to all the words contained therein, in whatever paragraph they may be found, or whatever position they may occupy.

§ For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes

of the deceased had not been alleged. The circuit judge agreed with that view and allowed the solicitor to amend the indictment. After conviction, Blakeney appealed to the Supreme Court because of the rulings of the presiding judge on the indictment. This court held that the lower court committed error in allowing the amendment. But the conviction was affirmed on the ground that the amendment was not necessary, since by the use of the words "then and there" in the indictment, just as they were used in the indictment in the case at bar, there was a sufficient allegation that the death of the deceased had occurred at the same place where the assault was alleged to have been committed. The case of *State v. Platt*, supra, not only approves the holding of the Blakeney Case, but tends also to support the sufficiency of the indictment in this case as to the attack for failure to allege the place of death. In the Platt Case, we held that the words "then and there died," used in the first paragraph of the count where only the words "did then die" were used in this indictment, showed not only that the assault alleged in the Platt indictment occurred in Marion county, but that the death of the deceased was also alleged to have occurred in that county. The difference between this case and the Platt Case is that the words "then and there" were used here in the second paragraph, while in the Platt Case they were used in the first paragraph of the count. In the Platt indictment, prior to the use of the words "then and there," the only place mentioned was Marion county, so we concluded the place of death was alleged to have been Marion county. In this case, the only place mentioned, prior to the use of the words "then and there," was Greenville county, and those words must have referred to that particular place.

The other ground for quashing the indictment related to the ineligibility of certain grand jurors who passed upon it. It is conceded that of the full panel of eighteen jurors, one had been excused from attendance upon the court, and at least two of the seventeen in attendance were not registered electors of the county, either when they were drawn for service or when they acted on the bill.

Section 22 of article 5 of the Constitution is as follows:

"All persons charged with offence shall have the right to demand and obtain a trial by jury. The jury in cases civil or criminal in all Municipal Courts inferior to Circuit Courts shall consist of six. The grand jury of each county shall consist of eighteen members, twelve of whom must agree in a matter before it can be submitted to the Court.

"Petit Jury.—The petit jury of the Circuit Courts shall consist of twelve men, all of whom must agree to a verdict in order to render the same.

"Qualifications of jurors.—Each juror must be a qualified elector under the provisions of this Constitution, between the ages of twenty-one and sixty-five years and of good moral character."

[8, 9] It is undisputed since the decision of this court in *Mew v. Charleston & Savannah Railway Co.*, 55 S. C. 90, 32 S. E. 828, decided in 1899, that the term "qualified elector," in the Constitution, means a "registered elector"; and that a juror, grand as well as petit, must be a registered elector of the county in which he is called to serve. The holdings mentioned in that case have been repeatedly approved by this court. See *State v. Rafe*, 56 S. C. 379, 34 S. E. 660; *State v. Brownfield*, 60 S. C. 509, 39 S. E. 2; *State v. Mittle*, 120 S. C. 526, 113 S. E. 335.

The counsel for the appellant contend, however, that the indictment here was valid, since there was on the grand jury, when the same was considered and concurred in, at least twelve competent grand jurors. The argument is that so long as twelve grand jurors, competent to act as such, participated in the finding of a true bill, the indictment is good, even if one or more disqualified grand jurors took part in the finding. To support this position, four cases, previously determined by this court, are cited; and, upon examination, it seems that some, if not all, of them appear to do so. The last decided case to which we have been cited is *State v. Bazan*, 89 S. C. 260, 71 S. E. 779. In the lower court, the defendant sought unsuccessfully to have an indictment quashed because of the alleged disqualification of one grand juror, on account of his being above the age of sixty-five years. On appeal to this court, his contention was denied, as stated in the opinion, for two reasons: First, because there was nothing in the record showing proof of the alleged disqualification; and, second, because the disqualification of a single grand juror will not invalidate an indictment, unless it appears the grand jury was composed of only twelve men. The first ground was, of course, entirely sufficient upon which to rest an affirmation of the ruling of the lower court; for the presumption always obtains that one, acting in the capacity of a grand juror, is qualified to do so, until proof to the contrary appears. While it was not necessary for the court to announce the second ground, upon which it rested its conclusion, we are faced with the fact that it made the declaration mentioned, although there was a vigorous dissent to the proposition on the part of Associate Justice Hydrick. To sustain the second holding, the court pointed to the cases of *State v. Rafe*, 56 S. C. 379, 34 S. E. 660, 661, and *State v. Graham*, 79 S. C. 116, 60 S. E. 431, 432, both of which have been cited by the appellant.

In Graham's Case, the defendant moved to quash the indictment because one of the

trial. All we have quoted from the opinion, taken in connection with everything said therein, and the facts of the case, applied to the one question involved, convince us, and the syllabi of the digesters support the conclusion, that the court held, and intended to hold, briefly stated, the following: A motion for a new trial, after conviction, on the sole ground that a member of the grand jury returning the indictment was not a qualified elector, will be denied, though the defendant did not know of the disqualification earlier, for by the exercise of ordinary diligence the fact of the disqualification could have been discovered before trial. While the court did not directly so decide, the point not being involved, it did indicate that a new trial might be granted if the defendant showed that he was prejudiced because a grand juror returning the indictment was disqualified, "if it appeared in the record that every juror on the panel was disqualified, or that the true bill was found by a grand jury composed of only twelve men, one of whom was disqualified," for it was said from either of those sets of facts, "the court would necessarily conclude that the bill was not found by a legal grand jury."

We are unable after a most careful study of all the language of the opinion in the Rafe Case to find therein any words which show that the court held, or intended to hold, that an indictment should not be quashed because of the disqualification of a grand juror who participated in the finding, when it appeared that as many as twelve competent grand jurors may have concurred in the finding. It follows that the apparent approval of that position in the succeeding cases of *State v. Graham* and *State v. Bazen* was based upon a former holding supposed to have been made, but which, in our opinion, had not been declared. As indicated before, however, the *Graham* Case by itself, without reference to any other case, supports that holding. It is our opinion, though, that the holding to that effect, found in the *Graham* Case, was not sustained by authority, it was not in harmony with older cases in this state, it was against the general rule on the subject, it conflicted with other decisions of this court made about the same time, it has been weakened considerably by declarations in more recent cases, and, as we think, it was opposed to sound reasoning—all of which we shall endeavor to demonstrate.

As long as the grand jury has been known to our judicial system, and that body came with the organization of our first courts, their acts and proceedings have been regarded almost sacredly secret. The oath that each and every member of the grand jury has taken in open court in South Carolina for many years includes the swearing on his part that "the State's counsel, your fellows, and your own,

you shall well and truly keep secret." Miller's compilation, published in 1948; Earle's South Carolina Form Book, 336, published in 1911.

In 1834, the court of last resort said: "The nature of the grand juror's oath sufficiently indicates that they are not to communicate to others that which passes among the jurymen in their consultation, and I think the juror who made the affidavit in the present instance was guilty of a violation of duty." *State v. Boyd*, 2 Hill (20 S. C. L.) 288, 27 Am. Dec. 376.

The quashing of an indictment in a murder case in 1870 was approved by the Supreme Court, when it appeared that an attorney, employed to assist a solicitor in the prosecution of the case, had entered the room of the grand jury, when they were deliberating on a bill, and advised them in reference to their duty. *State v. Addison*, 2 S. C. 356.

In *State v. McNinch*, 12 S. C. 89, this court, while holding that the solicitor of the circuit, at the request of the foreman of the grand jury, might direct him how to write the findings of that body, indicated that not even that sworn high officer of the court, and recognized adviser of the grand jury, should be in the room while the case of a prisoner was under consideration.

The rule, generally, throughout all jurisdictions in the United States is well expressed by the writer of the article on the "Grand Jury" in *Buling Case Law* as follows:

"It has long been the policy of the law, in furtherance of justice, that the investigation and deliberations of a grand jury should be conducted in secret, and that for most intents and purposes all its proceedings are legally sealed against divulgence. The grand jurors are sworn to keep secret the state's, their fellows' and their own counsel. * * * And, apparently aside from the violation of any oath, it has been declared that the disclosure of the proceedings before the grand jury in a certain state of the case might render a grand juror liable to a criminal charge as an accessory after the fact. So it seems that the duty of secrecy is not founded primarily on the oath of the juror, but on deep-seated principles of public policy of which the common form of oath is merely an expression." 12 R. C. L. 1037. In line with these principles, see, also, 20 Cyc. 1351; 28 C. J. 812.

[10] From the pronouncements of the given authorities, it is plain that the general rule observed in all jurisdictions, to which there is no exception, except where made by proper legislation, forbids any inquiry into the proceedings of the grand jury. Our decisions show that our courts have adhered strictly to that rule. No one, not even the presiding judge, may invade the secrecy of the grand jury's deliberations, to inquire what influences moved them in their acts, or to ascertain how any member may have voted. So, the

his attorney consented, could afterward raise the question that he had not been convicted of crime according to the Constitution of this state, and, upon his demand therefor, be tried again before he could be made to undergo punishment. *State v. Hall*, 137 S. C. 261, 101 S. E. 662.

[15] We are inclined to think also that one who demands and is refused the right to be tried for crime charged against him only upon an indictment presented by a legal grand jury, in instances where such indictment is required, may thereafter justly take the position that he has been "deprived of life, liberty or property without due process of law," in violation of the provisions of section 5 of article 1 of the Constitution, where the people of this state have made their "Declaration of Rights."

In passing upon questions relating to the right of jury trial, which great right "shall be preserved inviolate," as the people of our state have said (article 1, § 25 of the Constitution), including the right to demand before that trial shall be begun, the other right to be indicted by a legal grand jury, Sir William Blackstone, tracing the history of jury trial, which has come down to us from our English forefathers, has used certain language which we think we should be constantly reminded of. This was said by the great commentator:

"But the founders of the English law have, with excellent forecast, contrived that no man shall be called to answer to the King for any capital crime, unless upon the preparatory accusation of twelve or more of his fellow-subjects, the grand jury; and that the truth of every accusation, * * * should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbors, indifferently chosen and superior to all suspicion. So that the liberties of England cannot but subsist so long as the palladium * * * remains sacred and inviolate; not only from all open attacks * * * but also from all secret machinations, which may sap and undermine it; by introducing new and arbitrary methods of trial, by justices of the peace, commissioners of the revenue, and courts of conscience. And however convenient these may appear at first (as doubtless all arbitrary powers, well executed, are the most convenient), yet let it be again remembered, that delays and little inconveniences in the forms of justice, are the price that all free nations must pay for their liberty in more substantial matters; that these inroads upon this sacred bulwark of the nation are fundamentally opposite to the spirit of our constitution; and that though begun in trifles, the precedent may gradually increase and spread, to the utter disuse of juries in questions of the most momentous concern." *Cooley's Blackstone* (4th Ed.) Book IV, 350.

In speaking of the qualifications of members of the grand jury in his day, Blackstone said: "They ought to be freeholders. * * * However, they are usually gentlemen of the best figure in the county." At that time, the ownership of land, knighthood, and chivalry had much to do with the standing of a man in his community. The people then did not have the right of suffrage now given to us. There was no requirement that a grand juror must be a qualified elector. The number of grand jurors, according to Mr. Blackstone, were not to be less than twelve nor to exceed twenty-three.

From time to time there were changes as to the qualifications of jurors. Under the act of our Legislature of 1799, it was unnecessary for a juror to be a freeholder, but it was required that he show that he had paid in the preceding year a tax of at least three shillings. *State v. Massey*, 2 Hill (20 S. C. L.) 379. In that case, objection was made to a juror on the ground that he was not a freeholder. On account of the change in the law, Judge O'Neill, who spoke for the court, held that the objection was not well taken, but indicated, however, that if the juror had not paid the tax required, it would have been good cause to challenge him.

In *State v. Blackledge*, 7 Rich. (41 S. C. L.) 327, decided in 1854, the prisoner, after his conviction and sentence to death, in an attempt to arrest the judgment, raised the question that one of the grand jurors was disqualified. The Court of Appeals said his objection came too late, but intimated that if it had been presented in time, the prisoner's complaint would have been just. The court used this language:

"It must be conceded, however, as a part of our fundamental law, that 'no man's life can be taken away by judicial proceeding, but by the judgment, on oath, of twenty-four men; at the least;' a grand jury must accuse, twelve, at least, of whom, must concur in finding the bill of indictment; a petit jury, consisting of twelve, must concur in finding the truth of the fact of which the prisoner is accused, before a verdict of guilty can be rendered. These, with other protections which are thrown around the prisoner by the law, must be held inviolate. So, too, it is to be conceded that grand, as well as petit jurors, ought to be *probi et legales homines* [*persons competent in point of law to serve on juries*]. Well-founded objections, impugning these essential safeguards, are entitled to, and must receive just consideration, when presented at the proper time." (Italics added.)

In *State v. Clayton*, 11 Rich. (44 S. C. L.) 581, decided in 1858, the court considered the matter of the grand jury consisting of only thirteen members when the true bill was found and returned. It was held that under

and the question there concerned the quashing of the whole array of petit jurors, because of alleged irregularities in preparing the jury box. The court held that the irregularities were not sufficient on which to base the motion. It is right significant, we think, in view of the many cases cited, that *State v. Rafe*, decided just a few years previously was not in the list. Did Mr. Justice Woods intend to imply that even after conviction, if the defendants could have shown that they had been indicted by grand jurors not "competent to act as jurors", that the appeal would have been sustained? We doubt this very much, for the cases cited by him show that, generally, objections to grand jurors, after rendition of verdict, come too late. What then was meant? We are inclined to the opinion it was that if the objections could be sustained by proof, and had been advanced at the proper time, they, in all likelihood, would have resulted in reversing the judgment.

Turning away from our own decisions for a little, we look at the interesting case of *Crowley v. United States*, 194 U. S. 461, 24 S. Ct. 731, 738, 48 L. Ed. 1075. The Federal Supreme Court quoted with approval from the case of *Vanhook v. State*, 12 Tex. 252, the following:

"The better opinion, to be deduced from the authorities to which we have access, seems to be that irregularities in selecting and impaneling a grand jury, which do not relate to the competency of individual jurors, can, in general, only be objected by a challenge to the array. But that the incompetency, or want of the requisite qualifications, of the jurors, may be pleaded in abatement to the indictment. And this doctrine and distinction seems founded on principle. It is the right of the accused to have the question of his guilt decided by two competent juries before he is condemned to punishment. It is his right, in the first place, to have the accusation passed upon, before he can be called upon to answer to the charge of crime, by a grand jury, composed of good and lawful men. If the jury be not composed of such men as possess the requisite qualifications, he ought not to be put upon his trial upon a charge preferred by them, but should be permitted to plead their incompetency to prefer the charge and put him upon his trial, in avoidance of the indictment. Otherwise he may be compelled to answer to a criminal charge preferred by men who are infamous, or unworthy to be his accusers."

After determining that several of the grand jurors who were not qualified to serve had participated in the finding of the indictment, and that the defendant had moved in time to protect his rights, Mr. Justice Harlan, who spoke for the court, concluded his opinion with this statement:

"For the reasons stated, * * * we adjudge only that the presence on the grand jury

of persons summoned after the local statute took effect, and who were disqualified by that statute,—those facts having been seasonably brought to the attention of the court by a plea in abatement filed before arraignment,—vitiates the indictment."

Upon the authority of many cases cited from the courts of the United States, and eighteen states of the Union, this general principle has been stated:

"It is well settled that the incompetency or want of the requisite qualifications of one or more grand jurors may be set up as an objection to an indictment found by a grand jury of which such grand jurors were members, however many unexceptionable persons may have concurred in finding such indictment." 17 A. & E. Encyclopedia of Law (2d Ed.) 1268.

In *Corpus Juris*, we find, pertaining to the subject, the following:

"There is no harmony between the decisions as to whether the disqualification of an individual grand juror is ground for a motion to quash or set aside the indictment. *It is so regarded in some jurisdictions, especially where defendants have had no opportunity to challenge*, decisions to this effect being sometimes based on express statutes. *The rule is subject to the limitation that the disqualified juror shall have taken part in the consideration of the charge against defendant, or the deliberations of the grand jury therein.* In other jurisdictions a contrary rule prevails, frequently by reason of express statutory provision. * * * And it is held that the disqualification of a single grand juror does not invalidate an indictment, unless the grand jury was composed of only twelve men." (Emphasis added.) 31 C. J. 806.

Under that authority, in jurisdictions where defendants have had no opportunity to challenge, the indictment may be quashed because of the disqualification of an individual juror. It is true that in our state our circuit judges, when they know of any good reason why a grand juror should not participate in the consideration of an indictment, very properly direct him to retire from the grand jury while that particular matter is being considered. There is no statute which gives a person the right to challenge a grand juror before the indictment is returned, and there is no requirement of law that he shall do so. In fact, one is not a defendant in the court of general sessions, according to our practice and custom, until he has been charged by the grand jury in an indictment with the violation of law. As it is well known, in this state a grand jury may indict one for crime without any previous notice whatever to such individual. A statute might, perhaps, be passed giving one, who has been properly notified that the grand jury will be called upon to examine into an accusation against him, the right to challenge an individual juror before the grand jury considers the indictment, and

lecting and drawing men for service on juries, how easy this court could make it for them to do so by sanctioning their disregard of the laws of the state, especially constitutional provisions, regarding the qualification of jurors, grand and petit. In *State v. Kilcrease*, 6 S. C. 444, where the Supreme Court held, under the law then existing, that an indictment should be quashed if a witness before the grand jury, upon a bill of indictment, was not sworn in open court, the opinion concluded with these words:

"If the forms and sanctions which have heretofore been recognized as the bulwarks of the trial by jury are not rigidly adhered to, the constitutional requisition that 'it shall remain inviolate' will fail to accomplish the great objects it was intended to secure. No matter how strong the edifice may be, if the pillars on which it rests one by one are weakened, the great work, consecrated by time, must at last crumble into dust. It is safest to retain it in its pristine form and vigor."

In our system of jurisprudence, there have always been some prerequisites for jury service. They have been, and always will be, necessary, for the preservation of jury trial and to safeguard the rights of the people. Without some definitely fixed qualifications for jurors, people, who have causes in the courts, involving not only property, but liberty, and even life, might be put upon the mercy of those charged with the duty of selecting the jurors. We could hardly imagine a more dangerous thing to the rights of free men. The people, through their representatives, in constitutional convention, and in the Legislature, declare, as they should, the qualifications of the people's jurors. The courts have never sought this power; they cannot exercise it. The courts may only see, as they should, that the people's laws as to their jurors' qualifications are properly observed.

Our laws as to certain qualifications of jurors, including the one that they must be qualified electors, were made thirty-five years ago by the people in their constitutional convention. They were construed by the Supreme Court of this state thirty-two years ago. *Mew v. Railroad Co.*, supra. So far as we are advised, there has not been the slightest effort by the people, or any one of their representatives, to change these laws. The people must be satisfied with them.

Our constitutional provisions as to jurors' qualifications need no defense at our hands. Those who are informed on the subject know full well some of the reasons why the framers of our organic law so wrote those provisions. They desired in the jury boxes, both to accuse, and to try, for criminal offenses, and for the general duties of grand jurors, so im-

portant to the welfare of the state, only men who are residents of the state and county, men who loved the commonwealth, men interested and informed enough to qualify themselves for citizenship, men of character and standing—in short, "The men who make a State"—that those whose lives, liberties, and property might be at stake would feel that their causes, if just, would be justly decided. Jury commissioners, if they will observe the laws, plainly laid down for their guidance in the statutes, can prevent in almost every instance the necessity of any court having to quash an indictment on account of the disqualification of a grand juror, and especially for the disqualification of a juror on the ground that he is not a registered elector, for the registration books, giving information as to who are registered electors, are easily accessible to them. If the commissioners neglect to perform their duties, and one, accused of crime, demands at the proper time his constitutional right to be indicted only by a legal grand jury, the courts will endeavor to give him that right, for all the judges, like the jury commissioners, have sworn to "preserve, protect and defend the Constitution."

[18] While we hold that the circuit judge committed error in quashing the indictment in this case because of the supposed failure of the instrument to allege the place of the death of the deceased, we conclude that he was correct in his holding that the indictment should be quashed because of the disqualifications of persons, who participated in finding it, to act as grand jurors; and, accordingly, the order appealed from is affirmed.

COTHRAN, STABLER, and CARTER, JJ.,
and GRAYDON, A. A. J., concur.

COTHRAN, J. (concurring).

I concur in the opinion of Mr. Justice BLEASE in this case. In addition to the very clear disposition of the first ground upon which the motion to quash the indictment was made, it may be observed that a common use of the word "then" authorized by Webster is in the sense of "immediately"; if the deceased was shot in Greenville county and did immediately die, he necessarily died in Greenville county.

As to the second ground, I may add the consideration that one who may be drawn, sworn in, and acts as a grand juror in passing upon an indictment, when he is not legally qualified to do so, is a stranger to the proceedings, as much as if he had never been drawn; his participation would therefore be illegal; it would be impossible to gauge the extent of his influence upon the qualified members of the jury.

SECOND PARTICULAR

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE COURT'S VERDICT FORM "NOT" INCLUDING ALL FOUR (4) FORMS OF VERDICT, WHEN PRESENTED TO THE JURY, AS REQUIRED BY STATUTE, WAS PREJUDICIAL TO THE DEFENSE, ESPECIALLY WHEN THE AFFIRMATIVE DEFENSE OF A MENTAL DEFECT WAS SUFFICIENTLY RAISED BY THE DEFENSE

ARGUMENT IN SUPPORT

S.C. CODE ANN. § 17-24-30 (Supp.1993) reads:

In a prosecution for a crime when the affirmative defense of insanity is raised sufficiently by the defendant, or when sufficient evidence of a mental disease or defect of the defendant is admitted into evidence, the trier of facts shall find under the applicable law, and the verdict must so state, whether the defendant is:

GUILTY

NOT GUILTY

NOT GUILTY BY REASON OF INSANITY; or

GUILTY BUT MENTAL ILL.

A criminal defendant who claims he suffered from a

mental disease, at the time of the offense must establish that defense by a preponderance of the evidence.

Following the prosecution's case, defense called a Dr. Richard Frierson, a Forensic Psychiatrist, which testified that Mr. Harriott, in his professional evaluation, suffered from a "mental infirmity", a delusional condition that prevented him, at the time of the act, to conform his conduct with the requirements of the law, even though he knew right from wrong. SEE: APPENDIX, page 364, line 25 through page 368, line 9. ALSO REVIEW The South Carolina Department of Mental Health Forensic Evaluation Services of Forensic Division Report, dated January 16, 2008, page 4 (four) "DIAGNOSTIC FORMULATION" and page 5 (five), "CONCLUSION REGARDING CAPACITY TO CONFORM."

Our State Supreme Court has established that once a defendant has raised the issue of insanity, §17-24-30 requires the submission of all 4 (four) forms of verdicts must be included on the Verdict Form that's submitted to the jury for consideration; and the defendant, nor the prosecution may waive any of the forms of verdict to be submitted to the jury.

This statute is designed to protect the accused's right to a fair trial by a due process determination of the prisoner's conduct in such criminal matters; ... even when there was evidence submitted that the defendant was legally sane; ... the jury could have found the prisoner guilty of the act.

Because the provisions of §17-24-30 are "MANDATORY" and MAY NOT BE WAIVED, the Court was not free to omit, the "NOT GUILTY BY REASON OF INSANITY" Verdict from the Verdict Form that was submitted to the jury.

THEREFORE Trial Counsel's effectiveness was unreasonable and prejudicial to the defense, by failing to "OBJECT" to an improper Verdict Form, being submitted, that failed to complying with the language of S.C. Code Ann. § 17-24-30, was reversible error. SEE STATE -vs- CAMPEN, 469 S.E.2d 619 (1996) (S.C. Court of Appeals); STATE -vs- RIMERT, 446 S.E.2d 400 (1994) (S.C. Court of Appeals) ... Resulting in the outcome of defendant's criminal trial to be "UNRELIABLE" and "FUNDAMENTALLY UNFAIR." - and Counsel's stewardship ineffective. SEE: STRICKLAND -vs- WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052 (1984).

SEE: VERDICT FORM ATTACHED

you HAVE
the Verdict
form.

VERDICT FORM

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

State of South Carolina,)

Plaintiff,)

vs.)

Derrick Damon Harriott,)

Defendant.)

) IN THE COURT OF GENERAL SESSIONS

) CASE NO. 2008-GS-43-257

CERTIFIED TRUE COPY
OF ORIGINAL FILED*James C. Campbell*CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA**VERDICT**

1. As to the charge of Murder, we the jury unanimously find the defendant:

_____ Not Guilty

☒ _____ Guilty But Mentally Ill

_____ Guilty

If you have found the defendant **NOT GUILTY** of Murder, **stop** and deliberate no further.
If you have found the defendant **GUILTY BUT MENTALLY ILL** or **GUILTY**, **proceed** to
QUESTION #2.

2. As to the charge of Possession of a Firearm During Commission of a Violent Crime, we the jury unanimously find the defendant:

_____ Not Guilty

☒ _____ Guilty But Mentally Ill

_____ Guilty

I certify this is the unanimous decision of the jury.

Juliette C. Hill
Foreperson

Juliette C. Hill

11-13-08
Date

469 S.E.2d 619 (1996)

The STATE, Respondent;
v.
Danny Lee CAMPEN, Appellant.

No. 2497.

Court of Appeals of South Carolina.

Heard March 5, 1996.

Decided April 15, 1996.

620 *620 Assistant Appellate Defender Robert M. Dudek, of the South Carolina Office Of Appellate Defense, Columbia, for appellant.

Attorney General Charles Molony Condon, Deputy Attorney General John W. McIntosh and Assistant Deputy Attorney General Salley W. Elliott, Columbia; and Solicitor Randolph Murdaugh, III, Hampton, for respondent.

CURETON, Judge:

Danny Lee Campen was indicted for assault with intent to kill, taking of hostages, and kidnapping. The kidnapping charges were dismissed and Campen was convicted for assault with intent to kill and taking of hostages. Campen raises two issues on appeal. First, he argues the trial court erred in allowing him to represent himself at trial without first warning him of the hazards of self-representation. Secondly, he argues the trial court erred in charging the jury only that it could return verdicts of guilty, not guilty or not guilty by reason of insanity; the error being the court failed to inform the jury it could find him guilty but mentally ill. Based on the latter issue, we reverse Campen's conviction.

On April 21, 1993, Campen, an inmate at Allendale Correctional Institution, entered the office of Mary Moody, the deputy warden's administrative assistant.^[1] Once inside the office, Campen displayed a "shank" (a homemade knife resembling an ice pick) to Moody, told her he did not intend to hurt her, and ordered her to lock the office door. Before Moody did as Campen asked, another inmate entered the office and attempted to assist Moody. While Campen struggled with the other inmate, Moody telephoned the deputy warden for assistance. The deputy warden and other personnel arrived immediately thereafter and eventually subdued Campen. Both the deputy warden and the inmate lending assistance sustained injuries, including knife wounds, during the struggle.

I. Self-Representation

Prior to trial, Campen moved to be allowed to represent himself with appointed standby counsel. He explained to the trial judge that he had been studying the case for seventeen months and felt self-representation would be the better course. The State took no position on the motion. The trial court granted the motion after advising Campen he would not be allowed to disrupt the proceedings.

On appeal, Campen argues the trial court erred in proceeding to trial without first warning him of the dangers and disadvantages of self-representation. We find no reversible error.

To establish a valid waiver of the right to counsel, the accused must be made aware of the right to counsel and of the dangers of self-representation. *Bridwell v. State*, 306 S.C. 518, 413 S.E.2d 30 (1992). A specific inquiry by the trial judge expressly addressing the disadvantages of a *pro se* defense is preferred; however, the paramount consideration is not
621 the trial judge's advice to the accused but the accused's understanding. *Id.* Thus, in the absence of an *621 inquiry by the judge, this court will look to the record to determine if the accused had sufficient background to understand the disadvantages of self-representation or was apprised of his rights by some other source. *Id.*; *State v. Cash*, 309 S.C. 40,

evidence, the trier of fact shall find under the applicable law, and the verdict must so state, whether the defendant is: (1) guilty; (2) not guilty; (3) not guilty by reason of insanity; or (4) guilty but mentally ill.^[2]

In State v. Rimer, ___ S.C. ___, 446 S.E.2d 400 (1994), our Supreme Court held that once a defendant has raised the issue of sanity, § 17-24-30 requires the submission of all four verdict forms and a defendant may not waive a guilty but mentally ill verdict form.

The State takes the position that the trial court did not err in failing to charge the jury it could find Campen guilty but mentally ill because Campen failed to present any evidence putting his sanity at issue. In essence, the State contends the provisions of § 17-24-30 were never invoked because, based on the lack of evidence tending to show Campen may be or may have been insane, Campen was never entitled to an insanity charge. We think, however, that Campen's own testimony, together with that of Dr. Morgan, sufficiently raised the issue of Campen's sanity so as to trigger application of § 17-24-30. The fact that Dr. Morgan ultimately concluded Campen had the capacity and ability to differentiate right from wrong at the time of the incident and had the capacity to conform his conduct accordingly is not dispositive, inasmuch as the jury could have elected to disregard his opinion as to Campen's mental state in April of 1993. State v. Milian-Hernandez, 287 S.C. 183, 336 S.E.2d 476 (1985) (a jury may properly disregard expert testimony); State v. Smith, 304 S.C. 129, 403 S.E.2d 162 (Ct.App.1991) (a jury is free to believe one portion of a witness's testimony and disbelieve another).

Because the provisions of § 17-24-30 are mandatory and may not be waived, the court was not free to omit guilty but mentally ill from its submission of verdict forms to the jury. As such, the court's failure to submit the proper verdict form constitutes reversible error.

REVERSED.

HOWELL, C.J., and GOOLSBY, J., concur.

[1] Campen was serving a life sentence and twenty five years from a 1991 conviction for murder and armed robbery.

[2] Pursuant to S.C.Code Ann. § 17-24-20 (Supp. 1995):

A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.

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446 S.E.2d 400 (1994)

STATE of South Carolina, Respondent,

v.

Gary Allen RIMERT, Appellant.

No. 24093.

Supreme Court of South Carolina.

Heard April 5, 1994.

Decided June 13, 1994.

Rehearing Denied July 28, 1994.

David I. Bruck, Columbia and David G. Belser, Asheville, NC, for appellant.

Attorney Gen. T. Travis Medlock, Chief Deputy Atty. Gen. Donald J. Zelenka, Senior Asst. Atty. Gen. Harold M. Coombs, Jr., and Asst. Atty. Gen. Alexandria Broughton Skinner, Columbia, and Sol. Larry F. Grant, York, for respondent.

MOORE, Justice:

Appellant was found guilty but mentally ill (GBMI) on four counts of murder and sentenced to four concurrent life sentences. We affirm.

FACTS

In June 1990 appellant was hospitalized and diagnosed as a paranoid schizophrenic in Indiana where he lived with his parents. On July 11, 1990, he was released from the hospital in Indiana although he was actively hallucinating. He left his medication in Indiana and drove all night to his grandparent's house near Rock Hill. Shortly after arriving at his grandparent's house, appellant killed his grandparents and their neighbors by stabbing them with a kitchen knife.

401 Appellant *401 pled not guilty by reason of insanity (NGBRI).

ISSUES

- 1) Did the trial judge err in denying appellant's motion for a directed verdict?
- 2) Did the trial judge err in denying appellant's motion to charge the jury on the disposition of defendants found NGBRI and those found GBMI?
- 3) Did the trial judge err in submitting possible verdicts of guilty and GBMI?

DISCUSSION

1) Directed Verdict Motion

Appellant moved for a directed verdict of NGBRI on the ground the evidence did not support a finding of sanity. The trial judge held there was some evidence of sanity. Appellant citing State v. Milian-Hernandez, 287 S.C. 183, 336 S.E.2d 476 (1985), argues the trial judge should have granted a directed verdict because the State did not present sufficient evidence that appellant was sane. We disagree.

Appellant then argues he could waive the GBMI verdict form because there is no practical difference between guilty and GBMI and by submitting all of the verdict forms, the jury reached a compromise verdict of GBMI.^[1] Since we hold all four verdict forms in § 17-24-30 must be submitted, appellant cannot waive a GBMI verdict form once he has raised the issue of sanity. See *People v. Ritsema*, 105 Mich.App. 602, 307 N.W.2d 380 (1981) (GBMI verdict must be submitted because statute mandates it and it cannot be waived by defendant). Therefore, this argument is also without merit.

AFFIRMED.

CHANDLER, Acting C.J., TOAL, J., and WILLIAM H. BALLENGER, Acting Associate Justice, concur.

FINNEY, J., dissents in separate opinion.

FINNEY, Justice, dissenting:

I respectfully dissent. In my opinion, appellant was entitled to a directed verdict of not guilty by reason of insanity (NGBRI).

A defendant is NGBRI if, at the time of the commission of the act, he, as the result of mental disease or defect, lacks the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong. S.C.Code Ann. § 17-24-10(A) (Supp.1993). Here, the majority relies on three pieces of evidence which allegedly negate appellant's showing of insanity: (1) a police officer's testimony that, shortly after the killings, appellant looked like he knew he had done something wrong; (2) the finding of a knife which appellant could have washed, which could have been used to stab the victims; and (3) appellant's question, hours after the deaths, as he was being read the warrants, how he "could get out of this". Viewed in context, none of this evidence is sufficient to present a jury issue on appellant's sanity. Compare *State v. Milian-Hernandez*, 287 S.C. 183, 336 S.E.2d 476 (1985) (apparent evidence of sanity not inconsistent with appellant's insanity defense).

[1] On appeal, appellant seems to be attacking the constitutionality of the GBMI verdict itself. This issue was not raised nor ruled on below and is therefore barred. *State v. Williams*, 303 S.C. 410, 401 S.E.2d 168 (1991).

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EVALUATION SERVICE OF FORENSIC DIVISION

DATE OF EVALUATION: January 16, 2008

PRESIDING: Richard L. Frierson, M. D., Professor of Psychiatry
University of South Carolina School of Medicine

SECOND EXAMINER: Carol David, LISW

OTHERS PRESENT: Jamae Campbell, M. D., Resident in Psychiatry,
University of South Carolina School of MedicineDIAGNOSES: AXIS I: Delusional Disorder, Persecutory Type.
AXIS II: No Diagnosis.
AXIS III: No Diagnosis.

CRIMINAL RESPONSIBILITY: Yes.

CAPACITY TO CONFORM: No.

DISPOSITION: Mr. Harriott has been returned to Sumter County to await disposition of his charges.

PERTINENT STATEMENTS: Derrick Harriott is a 28-year-old African American male who was seen at our hospital pursuant to a court order from the Sumter County Court of General Sessions. This court order requested an evaluation of his criminal responsibility and capacity to conform conduct to the requirements of the law on or about March 16, 2007 pursuant S.C. Code Ann. § 17-24-10 (1976). He is currently charged with Murder.

This evaluation consisted of the following:

1. Review of the court order requesting the evaluation.
2. Review of arrest warrant J-295385 for Murder.
3. Review of an investigative report.
4. Review of the incident report related to the alleged offense dated March 16, 2007 at 5:20 p.m.
5. Review of the Sumter County Detention Center arrest record.
6. Review of a death certificate on the alleged victim.
7. Review of the defendant's National Crime Information Center (NCIC) record.
8. Review of a postmortem report on Quanna Cooper.
9. Review of a document entitled "New Years Resolution -- Jaquanna Cooper."

HARRIOTT, DERRICK
942-0308

OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE 11706 1

RECORDED

2008 NOV -3 AM 8:30

JAMES C. CAMPBELL
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SUMTER COUNTY, S.C.CERTIFIED TRUE COPY
OF ORIGINAL FILEDCLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

EXHIBIT

Court
#1 11-3-08 OK

10. Review of a document entitled "New Years Resolution -- Derrick Harriott."
11. Review of a statement given by Shaneka Haynesworth.
12. Review of a statement given by Susie Bracey.
13. Review of a statement given by Officer J. Barnbill.
14. Review of a statement given by Marla Scott.
15. Review of a statement given by Marquis Westley.
16. Review of a statement given by Geraldine Westley.
17. Review of a statement given by Shenae Haynesworth.
18. Review of a statement given by Antonio Chapman.
19. Review of a statement given by T. Brewer.
20. Review of a statement given by W. Lyons.
21. Review of a statement given by Heath Gardner.
22. Review of SLED Toxicology Reports on the defendant and the alleged victim.
23. Review of a SLED Gunshot Residue Test.
24. Review of a statement given by Eugene Finkbeiner.
25. Review of articles from *The Sumter Daily Item*.
26. Review of a Sumter County Family Court Order awarding guardianship of Mr. Harriott to Danny and Joyce Witherspoon dated July 11, 1991.
27. Review of school records from Sumter School District Seventeen.
28. Review of a Psychoeducational Report conducted on the defendant by the school district when he was 13 years of age.
29. Review of a transcript from the Sumter Magistrate Court dated August 22, 2007.
30. Review of medical records from the Sumter County Detention Center.
31. Review of medical records from the Santee-Wateree Mental Health Center.
32. Review of medical records from Sumter Urological Associates.
33. Review of medical records from Doctor's Care of Sumter.
34. Review of a social history obtained from Mr. Harriott's maternal aunt, Joyce Witherspoon.
35. Telephone interview with Eugene Finkbeiner of fifteen minutes duration on January 16, 2008.
36. Telephone interview with Investigator Dean Plute for fifteen minutes duration on January 17, 2008.
37. Telephone interview with Joyce Witherspoon on January 17, 2008.
38. Telephone interview with Officer Heath Gardner on January 18, 2008.
39. Review of two recorded police interviews with Derrick Harriott.
40. A two hour clinical forensic interview with the defendant on January 16, 2008.

Mr. Harriott has a limited psychiatric history. He was seen for three or four months at the Santee-Wateree Mental Health Center in Sumter at age 14 for Oppositional Defiant Disorder. Mr. Harriott had a history of disrespectful and argumentative behaviors towards the teachers in school and was seen at the mental health center as an intervention. He was not prescribed medication at that time. He has no other history of inpatient or outpatient psychiatric treatment. He states that he has never been prescribed medicines for psychiatric reasons. He was not in treatment at the time of the alleged offense. He is currently not prescribed medication in the jail.

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Mr. Harriott gives a history of heavy consumption of alcohol prior to 2004. He did not describe physiological tolerance or withdrawal upon the cessation of alcohol use. He stopped using alcohol after getting in a car accident with his uncle's truck. He states has not used alcohol since. He has a distant history of experimentation with cannabis and cocaine, but no history of regular use.

Mr. Harriott's medical history is remarkable for a fractured arm in elementary school. More notably, he was hit by a car at age 8. At that time, he was hospitalized for over one week for treatment. He denied losing consciousness after being hit by the car and there is no history of known head injury. On February 23, 2006 Mr. Harriott was evaluated at Doctor's Care and diagnosed with prostatitis. On June 11, 2006 Mr. Harriott was evaluated at Doctor's Care and diagnosed with a urinary tract infection (UTI) and prostatitis. He returned to Doctor's Care on September 7, 2006 where he was diagnosed with recurrent prostatitis. At that time he was referred to an urologist. Medical records from Sumter Urological Associates indicate that he was evaluated there on September 19, 2006. Dr. Robert Lee diagnosed recurrent cystitis and possible urethral stricture disease. There was a plan to eventually perform a cystoscopy exam.

Mr. Harriott's upbringing is described as somewhat chaotic prior to adoption by his maternal aunt. His mother was allegedly a heavy user of alcohol and drugs. She has served prison time for selling drugs to undercover officers. He has only seen his biological father on one occasion around age 14 or 15, but had no ongoing relationship with his father. There is a family history of mental illness in his biological father's family which would indicate that Mr. Harriott may have a genetic predisposition to develop mental illness. His biological uncle allegedly was hospitalized at the State Hospital. He also has an additional uncle and an aunt on his father's side who have a history of treatment for mental illness (diagnosis not known). He was adopted by his aunt, Joyce Witherspoon, around age 11. According to his aunt, he was born at seven months gestation and weighed four pounds. Despite being born prematurely, there was no noted delay in developmental milestones. He was allegedly physically abused by his mother. He had to repeat the first and fourth grades and according to school records, he was placed in learning disabled classes. He was suspended several times for disturbing classes. He reports that he was expelled on one or two occasions but this is not confirmed in the school records. He completed high school, but received a certificate rather than a high school diploma. School records also indicate a psychoeducational evaluation that was conducted at age 13. According to that report, he tested with a Full Scale IQ of 69, a Verbal IQ of 75, and a Performance IQ of 66. While his measured Full Scale IQ would fall in the range of Mild Mental Retardation, Mr. Harriott's adaptive functioning, his ability to hold long term employment, and his use of language and vocabulary would all be inconsistent with someone with mental retardation. It is our opinion that his school psychoeducational evaluation IQ measurement is likely a low estimate of his true intellectual abilities.

After completing school, he held a series of jobs. He worked as a machine operator at the Gold Kist Hatchery. Most recently, he had been working at Monti, a company that makes electrical insulation.

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He was earning \$9.25 an hour. He was running a shear at that plant. According to his boss at work, Mr. Finkbeiner, Mr. Harriott was a good employee.

Mr. Harriott has never been married. He had been in a three year relationship with the alleged victim. Prior to that, he had had an eight year relationship with another woman "off and on." He has no children.

MENTAL STATUS EXAM: Mr. Harriott was neatly groomed and cooperative with the interview. He made good eye contact. He was alert and oriented to person, place, day, date and time. He was able to register three objects and he recalled two of them after five minutes. He was able to recall the third object with a prompt. He was able to recall significant past personal information. He found no evidence of clinically significant long or short term memory impairment. He demonstrated a capacity for abstract thinking as evidenced by his interpretation of both proverbs and similarities. His ability to think abstractly was much higher than expected; given his measured IQ. He was able to perform a calculation with difficulty. He performed a test of concentration well. He was able to recall past presidents to Ronald Regan. His fund of knowledge was in the average range and his intelligence was judged to be in the average to low average range. He described his mood as "depressed during the day" but his affect was bright throughout our interview. He denied suicidal or homicidal ideas. He reports his appetite is currently good. He reports that other people state that he talks in his sleep and he reports that he has not been sleeping well. He denied hallucinations. His thinking was logical and goal directed without flight of ideas or looseness of associations. His thought content was remarkable for paranoid delusions regarding the alleged victim. These delusions appear to be well circumscribed. His insight into the fact that they may not be true was poor.

DIAGNOSTIC FORMULATION: Although Mr. Harriott has no formal psychiatric history, information contained in the police reports and witness statements would be consistent with Mr. Harriott having persecutory delusions about the alleged victim. A delusion is a fixed, false belief held to be true even when confronted with evidence to the contrary. He told his employer, several weeks prior to the alleged offense, that the decedent was drugging him and allowing other men to come into the apartment and sexually assault him while he was sleeping. His medical complaint of rectal pain which led to his diagnosis of prostatitis may have reinforced his delusional beliefs as it appears that his rectal pain was misidentified as evidence of the sexual assaults. He also believed that she had made videos of this and had possibly placed them on the internet. He believed that other people, even in other towns outside of Sumter, were laughing at him because they knew about this. He repeated this information to police investigators at the time of the arrest. He continues to believe that the alleged victim had been doing this to him. These thoughts are consistent and typical of paranoid delusions. He has never had hallucinations, disorganized thinking, or other symptoms consistent with Schizophrenia. His functioning was not markedly impaired and his behavior was not observed by others to be obviously odd or bizarre as evidenced by his continual high functioning in the work environment. He did not report mood symptoms (depression or mania) that occurred with these thoughts, and it would appear that his delusional thinking was not due to the direct physiological

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effects of an illicit substance or an underlying medical condition. Therefore, he would meet diagnostic criteria for Delusional Disorder, Persecutory Type.

COMPETENCY TO STAND TRIAL SCREENING: Prior to completion of the criminal responsibility and capacity to perform evaluations, Mr. Harriott was screened for competency to stand trial. He was aware of the charge against him and understood the potential sentence he could receive if convicted. He understands the role of his attorney in assisting him with a defense. He states that he has met with his attorney on two occasions and can tell his attorney everything he knows about his case. He understood the role of the judge and the adversarial role of the solicitor. He is aware of the role and function of a jury including the number of jurors on a jury and the unanimous requirement for a jury verdict. He is aware of the pleas available to him and he has a basic understanding of the concepts involved with plea bargaining. He would be competent to accept a plea offer in his case. He was able to discuss potential evidence in his case and he appreciates the importance of appropriate courtroom behavior. In short, we found that Mr. Harriott has a rational and factual understanding of the proceedings against him and can assist his attorney in the preparation of a defense. While he remains delusional, his delusions would not interfere with his ability to work with an attorney and he is not insisting that his attorney prove that they are true.

CONCLUSION REGARDING CRIMINAL RESPONSIBILITY: Mr. Harriott was delusional about the alleged victim, believing that she had been poisoning him at night when he slept and allowing men to sexually assault him. He alleges that she was also placing videos of this activity on the internet. These delusions were a strong motivating factor in his behavior during the time of the alleged offense. However, in looking at the incident report, Mr. Harriott repeatedly said, "I know what I did; I know that I shot her." He also stated, "I killed the bitch -- now call police." The statement requesting that witnesses call the police would certainly indicate that Mr. Harriott was aware that he had committed an act that would be the grounds for police involvement. It is our opinion that although he was delusional about the alleged victim, his delusions did not rise to a level as to impair knowledge of legal and moral right from legal and moral wrong or prevent his from recognizing the alleged offense as legally or morally wrong. Therefore, it is our opinion that he would have been criminally responsible pursuant to S.C. Code Ann. § 17-24-10 (1976).

CONCLUSION REGARDING CAPACITY TO CONFORM: However, although we opine that Mr. Harriott would have been criminally responsible, it is our opinion that Mr. Harriott was compelled and felt justified to kill the alleged victim due to his delusions that the alleged victim was drugging him and having him sexually assaulted. He maintains these beliefs even when confronted by police that he may have simply been misinterpreting symptoms of his prostate infection. He made statements that if he were to go to police that the victim would have put out videos of him (or more videos of him) on the internet which he would have found humiliating. He reported that persons that he did not know on Broad Street in Sumter would point at him when he drove by. He had begun to sleep at work after his shift to avoid the alleged victim. His aunt reports he was sleeping more around the time of the alleged offense and he says that is because his sleep was disrupted at the alleged victim's apartment. He stated on police interview that "I did what I had to do." This is contained in the

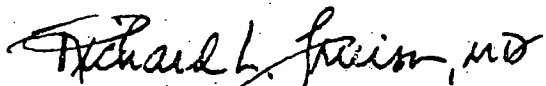
HARRIOTT, DERRICK
942-0308

OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT
FORENSIC EVALUATION SERVICE

statement given by Officer W. Lyons. It is our opinion that Mr. Harriott saw no way to escape his perceived torture other than to kill the alleged perpetrator of his torture. It is our opinion that Mr. Harriott's delusional disorder substantially impaired his ability to conform his conduct to the requirements of the law on or about March 16, 2007.

RECOMMENDATIONS: Mr. Harriott would benefit from a trial of antipsychotic medication to see if his delusions could be successfully treated. However, we note that they appear to be less intense now than they were at the time of the alleged offense, which is not uncommon when the subject of a person's delusions is no longer involved in their life.



Richard L. Frerson, M.D.
Professor of Psychiatry
University of South Carolina School of Medicine

RLF/cj

D: 01/21/08
RT/EM: 01/22/08
F/EM: 01/24/08 (RLF)

HARRIOTT, DERRICK
942-0308
OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE 11706 6

572

PAMELA M. CRAWFORD, M.D.
FORENSIC PSYCHIATRIST

6615 CROSSFIELD ROAD
COLUMBIA, SOUTH CAROLINA 29206

(803) 479-0286 PHONE
(803) 954-2681 PAGER
(803) 790-4633 FACSIMILE

pmcrawfordmd@mac.com

September 7, 2008

William Ceth Land
Land, Parker & Welch, P.A.
Attorneys at Law
Post Office Box 138
Manning, South Carolina 29102

Dear Mr. Land:

As you requested, I have performed a clinical forensic evaluation of your client, Derrick Harriott. I interviewed Mr. Harriott on 12, 2008. I reviewed the case file that included information about Mr. Harriott's offense. I also had the opportunity to interview his aunt, Joyce Witherspoon. In addition, I reviewed the forensic psychiatric evaluation performed by Richard Frierson, M.D.

Mr. Harriott was open and communicated well in the interview. His disclosures of the events that led to his charges are consistent with the supporting information provided.

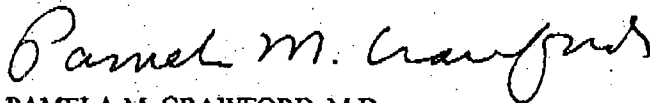
Mr. Harriott has two diagnoses that have relevance to his current charges. He suffers from a delusional disorder of the persecutory type and he has borderline intellectual functioning. According to family members, Mr. Harriott's mother abused alcohol heavily during her pregnancy with Mr. Harriott. Mr. Harriott's impulsivity, low intelligence, and learning difficulties may be related to his prenatal exposure to alcohol.

Mr. Harriott was significantly psychiatrically impaired at the time of the events that led to his charges. He was delusional about the victim. I concur with Dr. Frierson, that while Mr. Harriott would have been criminally responsible for his actions at the time of the events that led to his charges, his ability to conform his conduct to the requirements of the law was substantially impaired.

Despite his mental illness, it is my opinion that Mr. Harriott is, at present, competent to stand trial.

If I can be of any further assistance with Mr. Harriott's case, please do not hesitate to contact me.

Sincerely,



PAMELA M. CRAWFORD, M.D.
Forensic Psychiatrist



STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Derrick Damon Harriott, #331760,)

2014-CP-43-2334

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

**ORDER GRANTING AN APPEAL
PURSUANT TO AUSTIN V. STATE**

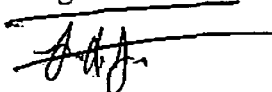
RECORDED
2015 SEP 17 PM 1:42
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated November 3, 2014. The Respondent made its return and motion to dismiss all claims except for failure to file an appeal from the denial of his PCR action on January 6, 2015. An evidentiary hearing on the matter was convened on July 15, 2015 at the Sumter County Courthouse. The Applicant was present at the hearing and represented by Lance Boozer, Esquire. Daniel Gourley, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Court had before it the Sumter County Clerk of Court records, and the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's return, and the prior PCR records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the February 2008 term of the Sumter Grand Jury for Murder and Possession of a Firearm During the Commission of a Violent Crime (2008-GS-43-257). William Land, Esquire represented Applicant. Applicant proceeded to a jury trial and was found guilty but mentally ill



on November 13, 2008. The Honorable George C. James, Jr., sentenced Applicant to life imprisonment without parole.

A timely Notice of Appeal was filled. The South Carolina Court of Appeals affirmed lower court's decision. State v. Harriott, Op. No. 2012-UP-427 (S.C. Ct. App. filed July 18, 2012). The Remittitur was issued on August 3, 2012.

Applicant subsequently filed for post-conviction relief on January 31, 2013 (2013-CP-43-168). In his application, Applicant asserted claims of ineffective assistance of counsel. An evidentiary hearing was convened on May 29, 2014, at the Sumter County Courthouse before the Honorable R. Ferrell Cothran, Jr. Applicant was present at the hearing and was represented by Casey Cornwell, Esquire. By written Order filed July 11, 2014, Judge Cothran denied and dismissed Applicant's post-conviction relief action.

ALLEGATIONS

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

1. Ineffective Assistance of PCR Counsel
 - a. Failure to file a notice of appeal.

Applicant filed his first amendment to his PCR application on July 1, 2015 alleging that he was being held in custody unlawfully based on the following allegations:

1. Trial Counsel was ineffective for failing to petition the court, prior to the petit jury being sworn, for a 'motion to quash' indictment No: 2008-GS-43-257, as being defective, was prejudicial to defense.
2. Trial Counsel was ineffective for failing to object to the Court's verdict form 'not' including all four forms of verdict, when presented to the jury, as required by the statute, was prejudicial to the defense, especially when the affirmative defense of a mental defect was sufficiently raised by the defense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant alleges that he was denied the right to appeal the dismissal of his previous

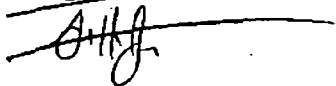
post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application.

After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of allegations in the Applicant's post-conviction relief application, the parties have consented to the granting of an appeal pursuant to Austin v. State of the Applicant's first post-conviction relief application (2013-CP-43-168). The parties agree that the Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of the Applicant's application for post-conviction relief. Prior PCR Counsel, Casey Cornwell, indicated the Applicant did not freely and voluntarily waive the right to appeal his first application for post-conviction relief and that he failed to file a timely Notice of Appeal of the application.

As to Applicant's amended allegations, this Court finds the allegations must be summarily dismissed because they are successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305



S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

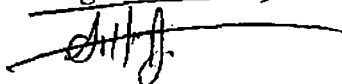
This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court additionally finds that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 . S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on November 13, 2008. The South Carolina Court of Appeals affirmed his conviction on August 3, 2012. Therefore, the Applicant was required to file his application by August 4, 2013. This Application was filed on November 3, 2014, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of



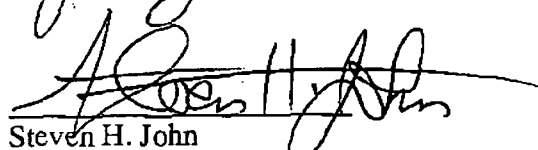
limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the allegations raised in his amended application for post-conviction relief are summarily dismissed for failure to file within the time mandated by statute and for being successive.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first PCR (2013-CP-43-168) pursuant to Austin v. State is warranted. This Court further finds that the allegations raised in the amended application are successive and barred by the statute of limitations.

IT IS THEREFORE ORDERED:

1. That the Applicant remain in the custody of the South Carolina Department of Corrections; and
2. That the Applicant be granted an appeal of case 2013-CP-43-168 pursuant to Austin v. State.
3. The remaining allegations filed in Applicant's amended application are successive and barred by the statute of limitations.

AND IT IS SO ORDERED this 27th day of July, 2015.


Steven H. John
Presiding Judge
Third Judicial Circuit

 South Carolina.

STATE OF SOUTH CAROLINA)
) MURDER, POSSESSION OF A FIREARM
 COUNTY OF SUMTER) DURING COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on February 21, 2008, the Grand
 Jurors of SUMTER County present upon their oath:

CERTIFIED TRUE COPY
 OF ORIGINAL FILE
Barbara Shaffer
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA 16

COUNT ONE – MURDER

That DERRICK DAMON HARRIOTT did in Sumter County on or about March ~~14~~ 2007, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one Quanna Cooper by means of shooting her with a rifle, and that the said Quanna Cooper did die as a proximate result thereof.

COUNT TWO – POSSESSION OF A FIREARM DURING COMMISSION OF A
 VIOLENT CRIME

That DERRICK DAMON HARRIOTT in Sumter County on or about March ~~14~~ 2007, was in possession of and did visibly display a firearm during the commission of a violent crime as defined in Section 16-1-60, to-wit: SKS 7.62 semi-automatic rifle, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

amended on the record with defendant's consent.

Howard P. King
 Presiding Judge
 Nov 3, 2008.

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

C. Kelly Jackson
 SOLICITOR

WITNESSES

SPD

Culick

ARREST WARRANT NUMBER

J295385

D/A: 03/17/07

ACTION OF GRAND JURY

True Bill

William Sanders

Foreperson of Grand Jury

Date: 2/21/08

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-43- 257

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

THE STATE

vs.

DERRICK DAMON HARRIOTT

Indictment for

MURDER, POSSESSION OF A
FIREARM DURING COMMISSION OF A
VIOLENT CRIME

C. KELLY JACKSON, SOLICITOR

580
STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

STATE VS.

DERRICK D. HARRIOTT

AKA:

Race: Black

Sex: Male

Age:

DOB:

SS#:

Address:

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-43-0257

A/W#: J295385

Date of Offense: March 17, 2007

S.C. Code §: 16-03-0010, 0020

CDR Code #: 0116

CERTIFIED TRUE COPY
OF ORIGINAL FILE
SENTENCE SHEET

Barbara D. Hays
DEPUTY CLERK OF COURT

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: MURDER

in violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)

☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

W H Conner
Solicitor

Defendant

Seth Land
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of Life w/o parole days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§56-5-2995 (DUI Assessment)	\$12 \$
§35.13 (Public Def/Prob)	\$500 \$
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$
§50-21-114 (BUI Breath Test Fee)	\$50 \$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	plus 500 \$390
TOTAL	\$13390

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

517-24-70

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

James C. Campbell
Clerk of Court/Deputy Clerk

Court Reporter:

Baron Tracy
Keisha Reed

PRESIDING JUDGE

Judge Code:

Sentence Date:

21143

11/13/08

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER

STATE

VS. DERRICK HARRIOTT

INDICTMENT/CASE#: 2008-BS-43-25

581

AKA:
Race: BLACK
DOB:Sex: Male Age:
SS#:

AW#:

Date of Offense: 3-16-07

S.C. Code §: 16-23-490

CDR Code #: 0549

CERTIFIED TRUE COPY
OF ORIGINAL FILE

Address:

DL#

SID#

SENTENCE SHEET

DEPUTY CLERK OF COURT

SUMTER COUNTY

SOUTH CAROLINA

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: POSSESSION of A FIREARM DURING a CRIME of Violence

in violation of § 16-23-49 of the S.C. Code of Laws, bearing CDR Code# 0151419

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SENTENCE N/A - Defendant sentenced to Life

Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$3.90
§90.11 TP (SCCJA Surcharge)	\$5	\$5.00
TOTAL		\$133.90

James C. Campbell

Clerk of Court/ Deputy Clerk

Court Reporter:

Karna Traub
Keshia Reed

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2111413
11/13/08