

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

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CASE No. 2015-CP-29-0925

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Phillip Sims, #301566 ..... Petitioner,  
v.

STATE OF SOUTH CAROLINA ..... Respondent,

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NOTICE OF APPEAL

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October 4, 2018

PETITIONER:

Phillip Sims # 301566

MCCI F-1-R

386 Redemption Way

McCormick S.C. 29899

Other counsel of Record:

Mr. DeShawn Mitchell

Assistant Attorney General

Post Office Box 11549

Columbia S.C. 29211-1549

**RECEIVED**

OCT 09 2018

SC Court of Appeals

~~Section III~~ ~~PROCEEDINGS~~

Permission to receive certificate of Appealability on issue of Inadequate Appellate Counsel claim of Fifth Amendment, Sixth Amendment violating causing direct appeal to be filed without issues requested, failure to preserve issues, and establish whether Applicants waiver of trial by jury, conflict free counsel, state plea offer, or preliminary hearing was knowingly and voluntarily at the plea/sentence hearing.

Appellate counsel's errors to not test the constitutionality of restitution awarded by Judge, the procedure Judge used because the court imposed a penal/sanction of restitution that was never proved beyond a reasonable doubt by the government as required by Booker see *United States v Holland* 380 F.Supp. 2d 1264, 1273-75 (N.D. Ala 2005) (App. 26 L. 9-11) (App. 32)

Appellate counsel failed to ensure applicant's judgement of conviction was entered with due process of law and applicant received adequate notice of the offenses in which he pleaded guilty.

charge 2006-65-29-106 was invalid because applicant was tried without counsel, without notice, and in absence 7-17-06  
App. 6 Exhibit # 29

Applicant was deprived of counsel in direct appeal without his knowing waiver of his constitutional right to appellate counsel. (App. 70 "filed appeal turned over to indigent defense")

Applicants Trial counsel and appellate counsel's conduct affected the integrity of post-conviction proceeding, and applicants judgment was obtained by fraudulent acts and in violation of federal law.

Applicant is entitled to writ of error coram nobis to correct errors of law under the All-Writs Act 28 U.S.C. §1651 (a).

Appellate counsel's failure to know Statutory Law S.C. Code Ann § 14-9-210, due process of law that ensure the "Fundamental Fairness" the bedrock procedural elements of due process of law; Applicants Guilty plea was entered unconstitutional because the Court lacked power to adjudicate and convict him without legally produced charging documents to give court proper jurisdiction without these procedural safeguards his conviction is in violation of Due process Clause of the Fifth and Fourteenth Amendment.



The U.S. Supreme Court holds that, as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused. see *Bucio v Sutherland* 674, F. Supp. 2d 882 (S.D. Ohio 2009) It is well established that a criminal defendant has the right to effective assistance of counsel in deciding whether to reject or accept a proposed plea see e.g. *Turner v Tennessee*, 858 F.2d 1201, 1205 (6th Cir 1988) "[a] defense attorney's failure to communicate a plea offer to his or her client constitutes deficient performance as a matter of law" see *Guerrero v United States* 330 F.3d at 737. The first prong of the Strickland test, 383 F.3d at 416. The second Strickland prong the "prejudice requirement" can be shown by applicant in this case "that a substantial disparity between the penalty offered by the prosecution and the punishment called for by the indictments is sufficient to establish a reasonable probability that a properly informed and advised defendant would have accepted the prosecution's offer," *Griffin*, 330 F.3d 737[.]. {see e.g.} *United States v Morris* 470 F.3d 596, 602 (6th Cir 2006) [Applicant was sentenced to twenty-seven years facing 86 years, if known of the alleged 20 year plea offer there is no doubt he would have agreed to it. seeing the fact he believed he was pleading guilty to receive no more than 20 years with treatment and the Court would have probably accepted the plea of 20 years if presented given the multiple errors committed in this case.] U.S. v. Scott 625 F.2d 623 (CA5 1980) (A conviction on a guilty plea tendered solely as a result of faulty advice is a "miscarriage of justice.")

Petitioner's counsel did not represent him effectively in direct appeal his "first appeal as of right" as in the Strickland Standard in Strickland v. Washington 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed. 2d 674 693 (1984)

failing to file requested appeal by Petitioner see Nabev United States 534 F.3d 87, 91-92 (2d. Cir 2008); see also Ludwig v. U.S. 167 F.3d 456 (CA6 1998)

[A] First appeal as of right therefore is not adjudicated in accord with due process of law if appellant does not have the effective assistance of an attorney " Evitts v. Lucey 469 U.S. 387, 396, 105 S.Ct. 830, 836, 83 L.Ed. 2d 821, 830 (1985), Person v Ohio 488 U.S. 75, 102 L.Ed. 2d 300, 109 S.Ct. 346 (1988); Gray v Greer 778 F.2d 350 (CA7 1985); Williams v Booker 715 F. Supp. 2d (E.D. Mich 2010).

Petitioner was not able to invoke his right to Speedy trial because he never received legally produced indictments from Grand Jury

According to Supreme Court Precedence United States v Marion 404 U.S. 307, 313, 92 S.Ct. 455, 459 30 L.Ed. 2d 468, 474 (1971)

(ruling that the right to a Speedy trial guaranteed by the Sixth Amendment does not apply until you have been accused of crime, which may not occur until receiving Grand Jury indictments.) - (18 U.S.C. 3161(b) 2012 states receive indictments 30 days after arrest) There are no time limits for Speedy Trial violations under the Sixth Amendment of the United States Const.

18 U.S.C. 53773(2012) "(N) Provision of [the Speedy Trial Act] shall ~~be~~ be... bar any claim of denial of Speedy trial as required by Sixth Amend.

Petitioner's appellate counsel filed appeal stating no valid grounds to appeal dated March 3, 2009, stating at evidentiary hearing  $\S$ A No. 2009-CP-29-859 February 28, 2012 he turned appeal over to indigent defense (App. 70), and also admitting deficient performance by not informing client of State plea App. 62, App. 65, App. 69.

At the time Petitioner filed direct appeal, and post-conviction he was unaware of this issue App. 55 L.6-L.11, App. 83 L.10-L.16, so he was denied his Constitutional right whether to plea guilty or proceed to trial knowingly and voluntarily to all facts.....

Petitioner never was informed the procedures of appeal, never received indigent form Rule 602, SCAIR, or advised how to submit issues to the indigent defense nor was contacted by S.C.I.D.

$\S$ A No. 2009-CP-29-0859

On June 11, 2009 petitioner filed post-conviction relief for the following reasons: A. counsel <sup>misinformed</sup> ~~performed~~ client as to sentence he would receive B. that counsel failed to call witness C. counsel failed to mitigate circumstances of kidnapping charges. Sixth Amendment violation Ineffective Assistance of Counsel.

Petitioner received no advice, no notice to hearing date, no documents that pertained to PCR, or any advice by PCR counsel. The Return was served by State October 21, 2009 showing Carrie H.

TANNER, Esquire Speedy, Tanner and Atkinson, P.O. Box Drawer 100,  
Camden S.C. 29020 (App. 45) THE Petitioner did not receive Returns

Petitioner did not receive this return,

because June 14, 2011 he wrote the South Carolina Supreme Court asking whom  
his attorney was, and information on hearing, the return showed that Carrie  
Tanner was petitioner's counsel by the Supreme Court's reply. Petitioner sent  
letter to address given to receive no reply. The return by Clerk of Court  
in Lancaster County from request of documents June 12, 2017, and June 14, 2017  
by petitioner dated July 6, 2017 had order to substitute counsel dated  
November 24, 2009 Case No. 2009-CP-29-0859 clock stamped 2009 Dec-4 P 12:03  
this order substituted Carrie H. Tanner to M. Rita Metts, Esquire, but  
contained no address to contact M. Rita Metts, Esquire nor was it forwarded to  
all parties per Rule 5, SCACR. This order is contrary to letter from S.C.  
Supreme Court June 14, 2011 some two years later showing different counsel.  
Petitioner only spoke to PCR counsel M. Rita Metts for five minutes the  
day of hearing February 28, 2012, she mentioned a 20 year plea cap,  
but petitioner thought she was referring to the fact he was pleading  
guilty to receive no more than 20 years, and was unaware of any  
plea offer from State. App. 55 L.6-L.11, App. 83 L.10-L.16, App. 60 L.11-L.13  
App. 54 L.19-L.21 App. 55 L.2 - ON App. 55 L.2 Petitioner A. "I heard  
that, but I don't know for sure pertaining to Q. by PCR Counsel of  
that since filing PCR application and speaking to her at some point learned  
that previous attorney -- that a plea offer had been communicated to previous  
attorney that you were not told about?" App. 54 L.22-L.24

Then ON App. 55 L.3-L.4. Q. But that was one of reasons you also filed

this application? Petitioner's Answer was Yes, ma'am L. 5 App. 55 but is not correct because it is clear he was unaware of issue and was not one of the reasons he filed application because he only learned that day some three years after filing application of this new issue.

(Exhibit #29) copy of #06-GS-29-106)

On App. 58 L. 20-L. 23 the mentioned prior record ~~and~~ and probation being revoked was about #06-GS-29-106 And App. 59 L. 8-L. 10 shows the Judge never spoke of facts to order civil judgement or legally revoke probation without first holding preliminary hearing and reason probation officer requested to return back for hearing App. 26 The charge #06-GS-29-106 was heard in Petitioner's absence without Attorney, To revoke and order civil judgement without a Fact-Finding Hearing invalid.

**TAE PCR** Judge ordered both State Attorney and petitioner's attorney to submit briefs in greater detail about the testimony of failure to inform in terms of what specifically their veins where - giving them opportunity to flesh that out - stating to send orders by E-mail and it needed to respond to each other's ~~and~~ order giving few days extra Today is the 28<sup>th</sup> Is 15 day enough time? (alecj@scjd.state.sc.us) To determine whether to grant relief (App. 93-95)

Petitioner never received copy of this briefs or address to PCR attorney M. Rita Metts for information. The Judge sent order to dismiss April 2, 2012 - M. Rita Metts filed notice for appeal April 30, 2012 - Petitioner never received order to dismiss until Sept. 20, 2012 with transcripts. Petitioner received copy of appeal notice by M. Rita Metts with the return July 6, 2017 when he asked Clerk of Court for all documents.

Exactly eighteen days after hearing February 28, 2012 Petitioner's cell was searched by SDC officer March 18, 2012 the first impediment to petitioner by state

ON February 17, 2013 SDC officer Dillard searches petitioner's cell at PCI Q3-A-206 confiscating his legal folder because it contained a Fantasy Football sign-up sheet - charging him with Gambling - Petitioner asked officer to just confiscate only Fantasy form and leave legal work and Folder but he did not. second impediment

CA No. 2012-212295

Writ of Certiorari by Lanelle Caray Durant dated February 22, 2013, Petitioner was never properly advised how to pursue issues - Remittitur issued July 29, 2013

CA No. 5:13-CV-02991

Filed August 23, 2013 - Sixth Amendment violation - ineffective assistance of counsel failure to inform client of 20 year plea.

ON September 20, 2013 Officer Martin searches inmates cell at PCI Thursday 7:30 A.M. finding wine his cellmate Gary Childers was holding. Petitioner was given BHAC test by Officer Peay and Officer Fish test showed three rings meaning alcohol present but petitioner ask for another test because he was ~~was~~ asleep and had not been drinking. The officers refused sending him to lock-up. Third impediment.

ON September 25, 2013 petitioner received property when released from lock-up to Q4-117 missing several items and all his paperwork was messed up. DURING This Appeal of 5:13-CV-02291

THE Petitioner was sent to Richland Memorial hospital for nerve test ~~five~~ five times only to be seen by Doctor the last visit May 12, 2014.

The dates coincide with petitioners time extensions for appeal 5:13-CV-02291 the dates he was sent to Hospital are November 7, 2013, (60 days after filing)

January 7, 2014, January 30, 2014, March 17, 2014, and May 12, 2014.

To make petitioners ability to reply in Habeas action impossible the Prison was locked down for Flu quarantine the first week of February 2014 til the second week of March 2014 - (see medical run dates 1-30-14 + 11 3-17-14)

Petitioner sent letter to Lonelle Conry Durant asking for assistance S.C.I.D. March 6, 2014 - Also sent letter to wrong court March 24, 2014 asking to make issue part of and need for assistance CA No. 5:13-CV-02991. De Novo review June 2, 2014 with dismissal.

Petitioner did not appeal because he was ~~not~~ told the issue needed to be first heard by lower Court in order to fully receive fair review.

CA No. 2015-CP-29-0925

Petitioner filed action July 1, 2015, amending application September 22, 2015 because he was unable to fairly present new issue to State Court because lack of record, unable to access law library, and due to SCE-Filing he never properly received Judge's fact of findings in first PCR, N.O.A., and other documents pertaining to new issue Guideline 2 of S.C. electronic filing policy states that past convictions are exempt for SCE-Filing. And Rule 5 SCACR

States clerk of court must serve all parties upon submission this was not the case in #2009-CR-29-0859. ~~Application~~

Petitioner submitted Application to correct record and present new issue not known until after filing direct appeal and First initial pcc. presenting the claims of:

- 1) "Fourteenth Amendment, Due process, and Equal protection at law violation"
  - (a) trial counsel failed to inform client of plea offer
  - (b) "trial counsel denied effective assistance of counsel"
- 2) "Sixth Amendment violation"
  - (a) trial counsel denied effective assistance of counsel
  - (b) "trial counsel failed to inform client of plea offer"
- 3) After discovered evidence
  - (a) "counsel failed to inform defendant of plea offer"

Amending application Sept. 22, 2015 quoting Missouri v Frye 132 S.Ct. 1399  
182 L.Ed. 2d 379 80 US LW 4253 (2012); Lafler v Cooper 132 S.Ct. 1376  
182 L.Ed. 2d 398 80 US LW (2012); Strickland v Washington 466 U.S. 668, 687,  
104 S.Ct. 2052, 2064, 80 L.Ed. 2d 674 693 (1984). Supreme Court ruling  
the time he learned of failure to inform by counsel at PCR hearing  
February 28, 2012 Quoting that defense counsel have duty to communicate.

Motion to dismiss with Conditional Order was served to Petitioner August 15,  
2016 given him 20 day to reply. Petitioner was transferred August 30,  
2016 to McCormick Prison, causing him the inability to properly submit  
why dismissal was improperly determined and material facts to show  
illegal conviction. Petitioner's legal box was misplaced when he received property.

This prison has been consistently locked down through three different Wardens, Carledge, Stepton, and now Williams. The staffing levels cause inability to get to law library, get copies, or mailroom.

Petitioner wrote the following parties to get full discovery, E-mails, briefs, Court Calendars, and other documents: Mr. Cook plea/sentence attorney May 2017, M. Rita Metts June 2017, Lanell Conry Durant SDIC June 2017, Lancaster County Clerk of Court June 14, and 17, 2017, Sixth Circuit Solicitor June 2017, District Court June 2017, and S.C. Court of Administrations June 2017.

C/A No 17-7666 (5:13-cv-02291)

Petitioner filed appeal to United States Court of Appeals Fourth Circuit by way of informal preliminary brief 12-29-17, dismissal statute of limitations by unpublished opinion May 14, 2018

Matter #17-DE-L-1113

Petitioner filed complaint to S.C. Sup. Ct. Office of Disciplinary Counsel September 13, 2017 for violation of RPC, Rule 413 SCACR - Court found not dismissed by NOTICE OF FINAL DISPOSITION OF MATTER #17-DE-L-1113 MAY 24, 2018

Petitioner filed Application of Fee dispute to S.C. Bar per Rule 416 SCACR April 9, 2018 to Fee dispute Coordinator Michelle Dennis (mdennis@scbar.org) no reply

Petitioner sent request to Appeal to Attorney General Attn: J. Croom Hunter, Esquire P.O. Box 11549 Columbia SC. 29211 ~~File~~ June 11, 2018 (no reply)

Petitioner sent Motion to appeal CA No 2012-212295 to S.C. Sup. Ct. July 2, 2018  
reply date July 9, 2018 no action will be taken.

CA No. 2018-CP-29-0836

Petitioner filed application June 28, 2018 for the following reasons:

- 1) Guilty plea involuntary, unknown because never received real notice of the charges against him - Due process Clause, Fifth Amendment, Arts V & 22 of S.C. Const violations see Evans v State 611 S.E. 2d 510 (S.C. 2005); Marshall v Lonberger 459 U.S. 422, 436, 103 S.Ct. 843, 852, 74 L.Ed. 2d 646, 660 (1983)
- 2) Prosecutorial Misconduct ~~for~~ failure to comply to request violation of Sixth Amendment right, Fourteenth Amendment right to prepare defense and fair hearing in due process of law Kyles v Whitley 514 U.S. 419, 131 L.Ed. 2d 490, 115 S.Ct. 1555 (1995); United States v Agurs, U.S. 97 (1976) Brady, et. al.
- 3) Sixth Amendment claim of due process violation because Appellate counsel failed to file requested appeal . . . . .
- 4) State failed to comply with Statutory law Jurisdictional in nature depriving the Court of Subject Matter Jurisdiction and the power to legally adjudicate case without legally produced indictment in due process to give notice of charges For guilty plea to be knowing and voluntary is impossible and the reason petitioner's plea was not knowingly and voluntarily entered . . .

- 5) Due Process claim of Attorney unprofessional conduct, negligence of duty to advise, inform defendant falling below the objective standard required by Strickland showing deficient performance and prejudice by not claiming multiple State and Federal law violations rendering hearing fundamentally unfair U.S. v Moore 159 F.3d 1154 (CA9 1998)
- 6) Guilty Plea is unconstitutional and petitioner's right to Sixth Amendment assistance to effective counsel and fair hearing has been denied at every State Court level and the Judgment is entered unreliable because Attorney's failure to perform duty of informing and communicating all facts to client. Prejudicial to petitioner because without adequate assistance and attorney admitting to negligence, violations of RPC then guilty plea by petitioner can not possibly be knowingly and voluntarily to all facts and his judgment needs to be set aside for a fair hearing with Due process.

All Exhibits can be found entered in 2018-29-CP-0836

Petitioner received Final order of dismissal CA No. 2015-CP-29-0925 with Affidavit, Proof of Service 8-15-16 giving him 30 days to secure appeal by Rule 203 SCACR August 30, 2018 (received MCCI Mailroom Sept 4, 2018)

Petitioner sent explanation why dismissal was improper, not successive, and not in violation of time limits, with Motion for discovery, and Affidavit proof of Service of Notice of Appeal September 11, 2018 to Clerk of Court requesting to serve all parties per Rule 5 because of Florence hurricane unable to make copies, lockdown. sent SASE also.  
Sent letter to Attorney General also with SASE.

On September 19, 2018

Petitioner filed Motion for discovery pursuant Rules 26, 29, 37 of SCRCP and § 17-27-150 (A), Injunction § 175, 175, S.C. F.O.I.A. § 30-4-10 to 165 with Affidavit and Proof of Service to Clerk of Court requesting the following:

- 1) Calendars for Terms of Court July 2008 and August 2008 Sixth Circuit General Sessions. local Rule 29.01, 37.01
- 2) Jury list and name of presiding Judge for Sixth Circuit Terms July 2008 and August 2008 per Rule 26, 37-42, 5(d)
- 3) Any order of continuance or motion for extension for good cause filed in case # 2008-GS-29-0976-0980 signed by Chief Judge pursuant § 14-5-910, Rule 3 SCR CrimP, and Rule 7 S.C.R. Crim P
- 4) E-discovery of Judges order for briefs (App. 93-95) ¶ No. 2007-CP-29-0859 2-28-12 Email: alleej@scjd.state.sc.us.

Unprofessional errors by trial counsel and appellate counsel at plea hearing, direct appeal, and post-conviction review are cause to undermine the outcome of Petitioner's Judgment. Without fair process and opportunity to address claim the State can not fairly adjudicate for review.

Petitioner was never afforded a chance to properly raise claim with the Guaranteed right of effective counsel to guide him on direct appeal of the issue mentioned on App. 54-55, App. 62, App. 70, App. 93-95 and the sole purpose of filing post-conviction application ¶ No. 2015-CP-29-0925 After discovered evidence failure to inform caused petitioners guilty plea to be entered unknowingly and involuntarily and judgement of convictions in violation of the Fourteenth Amendment, Sixth Amendment

without due process of law and without the Equal protection of law.

And the ~~concentration of~~ Judge's decision to not grant relief in the Lower Courts was so lacking in justification that there was an error of well understood and comprehended in existing law beyond any possibility for fairminded disagreement of petitioner's conviction being legal.

Petitioner's amendment Sept 22, 2015 shows Judge's decision to not grant relief was contrary to Supreme Court ruling at the time in Missouri v Frye 132 S.Ct. 1399 182 L.Ed. 2d 379 80 USLW 4253 (2012) Ruling that defense counsel have a ~~to~~ duty to inform clients, It is a general rule and anything ~~less~~ need not be discussed, and prejudice will be presumed if an attorney fails to inform or communicate a lesser plea offer to client. see Boria v Keane 99 F.3d 492 (2nd Cir 1996)

Missouri v Frye 132 S.Ct. 1408 "This Court now holds that as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.

When defense counsel allowed the offer to expire without advising the defendant or allowing him to consider it, defense counsel did not render the effective assistance the Constitution requires - The American Bar Association recommends defense counsel "promptly communicate and explain to the defendant all plea offers made by prosecution attorney." ABA Standards For Criminal Justice, Pleas of Guilty 14-3.2(a) (3d ed. 1999) see also Johnson v Duckworth 793 F.2d 898 (CA7 1986)

Failure to convey a plea offer constitutes ineffective assistance see

Griffin 553 F.3d at 734. In Blaylock 20, F.3d 1458

(CA9 1994) failure to communicate government offer to client constitutes unreasonable conduct under ~~the~~ prevailing professional standard Strickland

~~RECORDS~~

~~MEMORANDUM~~

Permission to receive certificate of Appealability of New claim that petitioners indictments are forged and, that the petitioner was never properly before the State Trial Court's Jurisdiction. Counsel could not be faulted for not raising claim and the abuse of Writ did not apply under this type of circumstances which would have been concealed by the State see Hamilton v. McCotter 772 F.2d. 171 (5th Cir. 1985)

Guilty Plea unconstitutionally entered without adequate notice of the offense of charges in compliance with due process of law. The States failure to comply with Statutory Law Jurisdictional in Nature deprived the Court of Subject Matter Jurisdiction and power to legally adjudicate case.

Guilty plea was not entered voluntarily and knowingly, in violation of the Due Process Clause and is therefore void.

United States v. Morgan 346 U.S. 502, 512, 74 S.Ct. 247, 253, 58 L.Ed 2d 248 (1954) The United States Supreme Court held that Writ of error coram nobis is available to correct errors "of the most fundamental character". Morgan held the district Court had power, under the All-Writs Act, 28 U.S.C. §1651 (a) to issue a writ of error coram nobis to vacate a conviction on ground that defendant had been deprived of counsel without

his knowing waiver of his constitutional right to counsel.  
This writ is a "extraordinary remedy [available] only  
under circumstances compelling such action to achieve  
justice" 346 U.S. at 511.

Trial counsel and appellate counsel's conduct affected  
the integrity of direct appeal, and post-conviction proceeding  
the judgement was obtained by fraudulent acts in violation  
of Federal Law and State Law.

~~Appellate~~ ~~submits~~ ~~Petition~~ with claim, in Section ~~243~~  
pg. ~~23~~ to ~~support~~ ~~claim~~

In Austin v State 305 S.C. 453 (1991) an applicant has  
a right to an appellate counsel's assistance in seeking review  
of the denial of PCR.

And Rule 71.1(g), SCRPC, provides  
that if Petitioner wishes to seek appellate review, PCR  
counsel must serve and file N.O.A. on Petitioner's behalf  
directing his attention to SCACR 243 for review.

And shall continue to represent the  
applicant on appeal unless automatically relieved under Rule  
602 SCACR, or allowed to withdraw under Rule 264, SCACR

Appellate must order transcript within 30 day of N.O.A. Rule  
207 SCACR - delivered by Reporter within 60 days, if not

received by 60 days then Party needs to file extension in writing  
Rule 240 SCACR - Appellant shall contemporaneously furnish all  
counsel of record, the Office of Court Administration, and  
clerk of appellate Court with copies of all correspondence  
with Court Reporter, Unless otherwise agreed in writing.

Extension shall be no longer than 90 day approved by  
Chief Justice.

### Rule 602 SCACR (under Act. No. 309)

Rule 602(a) Every person arrested for the commission of  
a crime within the jurisdiction of the Court of General Sessions  
on any charge for which he may be imprisoned, and every  
person charged with the violation of probationary sentence  
shall be taken as soon as practicable before the Clerk  
of Court of General Sessions in the County where the  
charges are preferred for purpose of securing to  
the accused the right to counsel.

In cases involving criminal  
charges within the jurisdiction, if a prison sentence is likely to  
be imposed following any conviction, the presiding Judge  
of the Court in which the matter is to be determined  
shall inform the accused as provided in Rule 2 when the  
case is called for disposition.

*Gritlin v Delo* 961 F.2d 793 (8th Cir 1992) Failure to properly present constitutional claim issues by habeas counsel

U.S. Const. amend. XIV § 1 "No person shall be... deprived of life, liberty, or property without due process of law" applies to State gov. action. The 5<sup>th</sup> Amend contains the same identical prohibition and applies to the Federal Government.

(App. 55 L. 6-11) Ms. Metts direct examination of Mr. Sims "And at the time when you appealed did you know the possibility of any plea offer that wasn't communicated to you" (A.) No. Ma'am. So that issue was not addressed in your appeal (D.) No. Ma'am.

Applicant Guilty plea was unknowingly entered.

App. 83 L. 10-16 "Not knowing of Mr. Cook admission of the twenty year cap and so it wasn't something that could have been addressed on appeal whether he should have had a right to make that determination."

This case is similar to *Washington v State* 478

where defendant was entitled to new trial in a successive per app. State declared there was no deal and there was testimony there was, defendant had not received due process due to a number of procedural abnormalities, including his attorney's failure to adequately

file direct appeal brief, PCR courts passing the buck to the Supreme Court

Appellate counsel failed to show plea was entered involuntarily and unknowingly after his trial attorney admits to applicants' guilt at plea colloquy when Judge ask if he agrees to charges, and statement of facts. Applicant answers "more or less" then attorney intercepts admitting guilt element of charges against clients interest then mentions he explained to client Alford plea (see App. 12, App. 18 L. 21 Alford plea)

According to North Carolina v Alford 400 U.S. 25 37-38 91 S.Ct. 160, 167-68 27 L.Ed 2d 162 171-72 (1970) (defendant received lesser charge by agreeing to plea guilty)

Applicants plea was open even though he was "out of mind" at the time of offense was committed, "he had no recollection of the events", and was clearly pleading guilty for lesser sentence and treatment due to his past history and conversations with attorney.

App. 12 L. 16 "out of mind" App. 13 L. 16-17 "not know what was going on or facts"

If the Judge is aware of such defense given the facts, the Judge must inform defendant of it and determine that he knowingly waives

the defense (see People v Costanza 244 A.D. 2d 988, 989, 665 N.Y.S. 2d 487, 488 (4th Dept. 1997); see also People v Braman 136 A.D. 2d <sup>382 384</sup> ~~487, 488~~

527 N.Y.S. 2d 104, 105 (3rd Dept. 1988) Vacating guilty plea in part because

a defendant's statement... He was so "loaded" at the time of offense was committed he had no recollection of the events, ~~and~~

Petitioner's due process rights under the Fourteenth Amendment of the U.S. Const. had been violated as he was not informed of, and consequently was unaware of S.C. Code Ann. § 23-3-430 (c) (15) at the time he entered his guilty plea. As a direct result of Circuit Courts error

~~By failing to inform him of the consequence~~ By failing to inform him of the consequence of his conviction and sentence for kidnapping would require him to register a sex offender upon release and designate him ~~as~~ classified as a sex offender ~~when~~ when the Circuit Court fails to make a finding regarding the sexual nature of kidnapping charges. Petitioner's Guilty plea is involuntarily entered without the knowledge of the direct consequences, or any immediate and harmful ramifications.

he ask this court to appoint him counsel to help prepare Writ of Certiorari per Rule 227 SCACR as the dismissal stated he received September 4, 2018. Also, please forward to all parties per Rule 5 SCACR.

PROOF OF SERVICE

I certify that on this day 18 of October, 2018 have sent Notice of Appeal to dismissal #2015-CP-29-0925 to South Carolina Court of Appeals Clerk of Court Honorable Jenny Abbott Kitching by United State Mail system at McCormick Prison.

Phillip Sims

DATE 10-4-2018

Sworn to before me this

4 day of Oct, 2018

Robert J. Wademan

NOTARY PUBLIC, STATE OF SOUTH CAROLINA

My Commission expires: 9-30-26

Phillip Sims #301566

MCCI F-1-A

386 Redemption Way

McCormick S.C. 29899

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OCT 09 2018

SC Court of Appeals

I Phillip Sims #301566 certify and verify under the penalty of perjury that the foregoing is true and correct to the best of my knowledge 28 U.S.C.A. §1746

Phillip Sims #301566

October 4, 2018

Enclosed is a Self addressed Stamped Envelope for return, thanking you in advance for your help,

October 4, 2018

**RECEIVED**

OCT 09 2018

SC Court of Appeals

THE Honorable Jenny Abbott Kitchings  
Clerk, SOUTH CAROLINA COURT OF Appeals  
POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211

RE: Phillip Sims #301566 v. STATE OF SOUTH CAROLINA  
2015-CP-29-0925, NOTICE OF Appeal to return Final  
dismissal received September 4, 2018.

DEAR, Honorable Clerk Jenny Abbott Kitchings,

Enclosed is reasons why determination of dismissal was improper  
Explanation of Case, and informing the Court of Appeal that Mr. Sims filed  
Notice of Appeal to Clerk of Court in Lancaster County P.O. Box 1809,  
Lancaster SC 29721 September 11, 2018 requesting Clerk to forward to all  
parties because due to Hurricane Florence MCLC was on lockdown and unable  
to make copies. Mr. Sims sent a NOTICE of Appeal to the South Carolina  
Supreme Court Clerk Daniel Shearouse P.O. Box 11330, Columbia SC 29211,  
October 3, 2018 ~~to~~ to ensure the 30 day limit was not violated. And he  
received the address to S.C. Court of Appeals from law Clerk today, and to  
make sure the Courts of Appeal receive Notice of Appeal he is sending  
another N.O.A. with reasons why improper dismissal and with this Notice

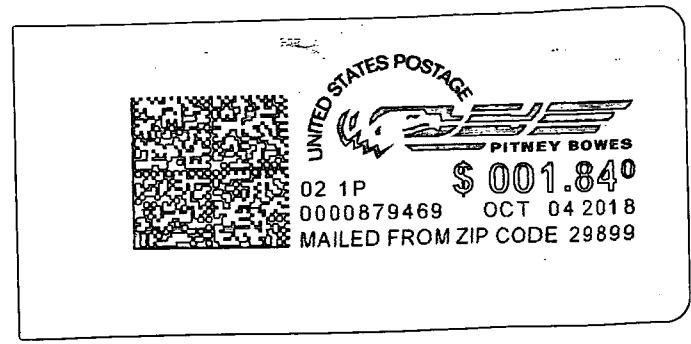
Phillip



MCCI F-1-A

386 Redemption Way

McCormick S.C. 29899



~~Phillip~~  
~~McCormick Courtrooms~~  
~~29899~~  
~~386 Redemption Way~~  
~~McCormick S.C. 29899~~

RECEIVED  
OCT 09 2018  
SC Court of Appeals

THE Honorable Jenny Abbott Kitchings Clerk  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia S.C. 29211

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OCT 04 2018

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