Lakrone Butler #303325
Lieber Correction Institutions
136 Wilborn Drive/Edisto A 08
Ridgeville, South Carolina 29472

December 7th, 2018

Honorable Chief Clerk Of Court
South Carolina State Supreme Court
Columbia, South Carolina 29201

RE: Lakrone Butler v. State. 2018-000736
Subject: Stamped filed copy of Pro Se brief

Honorable Chief Clerk

Find enclosed Pro Se Petition. to be filed in this court and ask that court return a stamped filed copy to me

With kind Regards;
/s/ Lakrone Butler
Lakrone Butler / Pro Se

cc: file
encls.

The State Of South Carolina

In The State Supreme Court

Charleston County Courthouse

Ninth Judicial Circuit

Honorable Maite Murphy

Circuit Court Judge

Latrone Butler,

Petitioner,

v.

State Of South Carolina,

Respondent.

2018-000736

Pro Se Petition For Writ Of Certiorari

Latrone Butler #303325
Lieber Correction Institution
136 Wilborn Drive/Edisto A-08
Ridgeville, South Carolina
29472

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Issue Three:

Hearing to quash indictments

Argument

Was Per court ruling trial counsel did not fail to Provide effective Assistance Of Counsel for not quashing indictments error. when at trial there appeared to be Variance between the allegations of the indictment and the evidence offered in Proof thereof.

Statement Of Case

On January 15th, 2014, Petitioner Proceeded to a Jury trial before the Honorable Robert Young, Sr., where he was convicted as indicted of all the offenses. Judge Young sentenced Petitioner to consecutive terms of imprisonment.

Petitioner filed a timely notice of appeal. Appellate Defender Katherine H. Hudgins, esquire Perfected the appeal. Following briefing, the South Carolina Court Of Appeals affirmed Petitioners conviction and Sentence on November 25th, 2015

On September 14th, 2016, Petitioner filed an application for Post conviction relief, and on October 5, 2017 State made its return

An evidentiary hearing was convened on January 31st 2018, and court issued its order denying relief on April 18th, 2018, a timely notice of appeal was filed

After counsel filed Johnson Petition, this Pro Se brief follows

Argument One:

What Parts of a criminal Proceeding has the United States Supreme Court and our State Supreme Court heretofore treated as a "Critical Stage", and what analysis Properly follows from a finding that a Given component of a criminal Proceeding is a "Critical Stage", or is, Prejudice Presumed after engaging in an inquiry for either Prejudice or harmless error?

Petitioner argues before this court that he was denied counsel at a critical stage of his criminal Proceeding.

In 1984, the Supreme Court decided United States v. Cronic, 466 U.S. 648 (1984) a case of special interest to our inquiry. The opinion in this case included a strong statement that no Prejudice need be shown where counsel was absent at a critical stage of a criminal Proceeding. Two Prefatory comments are useful here before we make our extended examination of the decision.

First, this case was not about critical stage, nor did it involve an absent lawyer. Second, Cronic was handed down someday as Strickland v. Washington, 466 U.S. 668 (1984). From time to time, this has caused confusion. Strickland set forth the court's two-part inquiry into ineffective assistance of counsel, requiring that Petitioner show both ineffectiveness and Prejudice. Cronic Specified circumstances of alleged ineffective assistance of counsel understood by the court to require no showing of Prejudice. Chief among these was the absence of counsel at a critical stage. Strickland Prejudice analysis covered all other circumstances.

Common law teaches that the Sixth Amendment views "Critical Stage" of a defendant Pretrial and trial differently from other Parts. The Supreme Court began developing a nationwide critical stage doctrine in earnest in Hamilton v. Alabama, 368 U.S. 52 (1961), in which the court unanimously reversed the Alabama Supreme Court's denial of a criminal defendant writ of error coram nobis in a capital case where the defendants counsel had been absent at his arraignment. The court wrote that:

> "whatever may be the function and importance of arraignment in other Jurisdictions, we have said enough to show that in Alabama it is a critical stage in a criminal Proceeding"
>
> Hamilton, id. at 54,.

It was unnecessary to make a showing that defendant suffered a disadvantage through absence of counsel. Under Alabama law as court held:

> "what happens at arraignment may affect the whole trial. Available defenses may be as irretrievably lost, if not then and there asserted, as they are when an accused represented by counsel waives a right for strategic Purposes"
>
> Hamilton, id. at 53,.

Despite Cronic consistency as the dominant decision in critical stage doctrine. Mitchell v. Mason, 325 F.3d 732 (6th Cir. 2003), signaled a major development in our approach to the doctrine under consideration. The case designated a broad time Period, the season of Pretrial investigation and Preparation, as a critical stage. Habeas Petitioner Charlie Lee Mitchell was appointed a terrible lawyer named Gerald K. Evelyn. This attorney Represented Mitchell at Preliminary Examination and a bail hearing. His law license was then suspended for a little over a month. His Poor Performance continued at trial, where he did

not make an opening argument. Mitchell, id. at 735,.

Trial court denied Mitchell's motion to withdraw Evelyn as counsel, Mitchell, id at 736 The same Judge ruled, at a Special State court hearing convened for the Purpose of adducing evidence on an ineffective assistance of counsel claim, that Mitchell had not shown Prejudice and that he benefitted from effective assistance. Mitchell, id.. The district court Granted Mitchell's federal habeas Petition, and 6th Circuit affirmed this Grant in Mitchell v. Mason, 257 F.3d 554 (6th Cir. 2001). In a one-line order, the Supreme Court vacated decision and remanded to our court for further review in light of its recent decision in Bell v. Cone, 535 U.S. 685 (2002) Mason v. Mitchell, 536 U.S. 901 (2002).

Upon remand, and in light of Bell, Court reaffirmed the district court Granting Mitchell's habeas Petition. Mitchell, id. at 739,. Court held that:

> Evelyn's total absence during his Period of suspension from Practice, his near total absence during the six additional months of his representation, and the fact he only spent six minutes with Mitchell "in the bullpen" constituted a complete denial of counsel during a critical Stage of the Proceedings"
>
> Mitchell, id. at 741,.

Court then characterized the entire "Pre-trial Period" as indeed a "Critical Stage", id at 742,. District Judge James D. Carr, sitting by designation, dissented, writing that the court ought to have undertaken a Strickland analysis and thereby required a showing of Prejudice. id at 748-49,. (Carr, D.J. Dissenting)

The substance of the disagreement between Judge Carr and the Mitchell ma-

Jonity is better understood in light of Bell dispute. In that case, the Supreme Court sought to clear up confusion that stemmed from the simultaneous decisions in Cronic and Strickland. Bell, which was decided 8 to 1, reversed a 6th Circuit decision in Cone v. Bell, 243 F.3d 961 (6th Cir. 2001) Cone was convicted of murder and other crimes in a Tennessee State court. He eventually filed a federal habeas Petition, and the district court issued a Certificate of Appealability. Cone court Granted Petition as to Cones Death Penalty on the Ground that he had received ineffective assistance of counsel at Sentencing.

Like Cronic, this was a case in which the lawyer was Present throughout trial but whose Performance was challenged as deficient. Cones lawyer Put on no evidence and offered no argument at the Penalty Phase. Cone took critical stage doctrine in an apparently unprecedented, and, since then, apparently unduplicated direction. Momentarily melding classic critical stage inquiry. Perhaps Precipitously, with Strickland effective assistance analysis.

Citing Cronic for the Proposition that:

" a Presumption of Prejudice is shown by counsel's "behavior"
So Cone need not show actual Prejudice"
Cone id, at 979

Cone court essentially concluded that:

Cone did not have counsel during sentencing Phase of his trial and thus Prosecutors insistence that Justice required that Cone be Put to death was not subjected to meaningful adversarial testing (quoting Cronic, id, at 656).)

Cone id

The Cone court further held:

> "Counsel abandonment of Cone at possibly the most critical stage of his trial fell below an objective standard of reasonableness and prejudiced him, which resulted in the ineffective assistance of counsel under Sixth Amendment."
>
> Cone, id (quoting and citing Cronic, id. at 659.)

At bottom, Cone decision that having a totally silent lawyer by one's side was tantamount to no lawyer at all. Court undertook two-pronged test of Strickland, but leaned on Cronic to hold that no prejudice need be shown if the alleged "abandonment" by counsel had taken place at critical stage.

Chief Justice Rehnquist, writing for the Supreme Court in its review of Cone opinion, refreshed and explained the difference between the Cronic and Strickland frameworks. Cronic was meant to cover those cases in which prejudice was to be presumed. Strickland would address cases in which prejudiced needed to be shown.

The courts wording of this first example bears close scrutiny. The Chief Justice's opinion gave "complete denial of counsel" as the first example, full stop. The sentence ends there. The next sentence introduces the phrase "Critical Stage" for the first and only time in the opinion. it reads

> A trial would be presumptively unfair, we said in Cronic, where the accused is denied the presence of counsel at a critical stage..... a phrase we

used in Hamilton v. Alabama... and White v. Maryland... to denote a step of a criminal Proceeding, such as an arraignment, that held significant consequences for the accused."

Bell, id. at 695-96 (citing and quoting Cronic, id. at 659)

Three instances were cited where Cronic Prevailed:

1) if defendant suffers complete denial of counsel

2) if "counsel entirely fails to subject the Prosecutions case to meaningful adversarial testing, no Prejudice need be shown."

3) "Where counsel is called upon to render assistance under circumstances where competent counsel very likely could not, the defendant need not show that the Proceedings were affected"

Bell, id

It is likely, but it is not obvious or necessary to conclude, that the second sentence in the eyes of the Bell court, modified the substance of the first. Depending on how one reads the import of the second sentence, either complete denial of counsel at any stage of the criminal Proceeding would qualify for Cronic review, or only those complete denials that took Place at critical stages would meet the standard. The reason one can not simply dismiss the first interpretation is that other two examples offered by Bell court as to when Cronic analysis Governs are not limited to critical stages.

Argument One:

Does trial court commit reversible error under South Carolina Code Ann. Sec. 17-25-50 by imposing consecutive sentences, if so, can "So closely connected in Point of time that they may be considered as one offense" be interpreted as Permitting trial court to impose consecutive sentences, or did, trial court commit error when rejecting counsel request for concurrent Sentences, if not, is Section 17-25-50 unquestionably ambiguous in its use of the language "So closely connected in Point of time that they may be considered as one offense" requiring interpretation from this court?

Per court ruled counsel was not ineffective for not quashing indictments before trial (App. Pg 484). Petitioner contends, this ruling is flawed.

Since this case involves statutory construction, it thus involves a question of law for this court. See, Catawba Indian Tribe Of South Carolina v. State, 372 S.C. 519 (2007). The Primary rule of statutory construction is to ascertain and Give effect to the intent of legislature. See, Mid-State Auto Auction Of Lexington, Inc. v. Altman, 324 S.C. 65 (1996) In construing a statute, a court can not read into the statute something not within the manifest intention of the legislature as Gathered from the statute itself. See. Laird v. Nationwide Insurance Co., 243 S.C. 388 (1964) If a statutes language is clear and unambiguous and conveys a definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning. See, Strother v. Lexington County Recreation Commission, 322 S.C. 54 (1998)

Petitioner attempted murder, carjacking, and kidnapping offenses are inextricably connected and share an immediate temporal Proximity, based on intent of legislature does not Provide a sure answer herein. Because the "so closely connected in Point of time" language of section 17-25-50 is ambiguous, it follows that section 17-25-50 does not lend itself to a bright-line rule. This court so held in Koon v. State, 372 S.C. 531 (2007).

Hence, since a Genuine ambiguity exists as a result of the Proposed application of Section 17-25-50 to facts herein, the rule of lenity requires that the doubt must be resolved in defendant's favor. See, State v. Blackmon, 304 S.C. 270 (1991) (recognizing settled rule that Penal statutes must be strictly construed in defendant's favor")

All things considered, this case does not involve Section 17-25-45(7) as was case in State v. Gordon, 356 S.C. 143(2003); Bryant v. State, 384 S.C. 525 (2009) In sum Section 17-25-50 reads as follows:

"In determining the number of offenses for the Purposes of imposition of sentence, the court shall treat as one offense any number of offenses which have been committed at times so closely connected in Point of time that they may be considered as one offense"

S.C. Ann. Sec. 17-25-50

Two Prefatory comments are useful to understand, the substance of the disagreement between Bryant majority, is better understood in light of Bryant dissent. where Justice Beatty held that:

"Section 17-25-50 focuses on how a conviction should be treated for sentencing Purposes under certain circumstances"

"there is no requirement under Section 17-25-50 that multiple offenses occur at the same time or in some transaction"

Therefore, when counsel asked court to impose concurrent sentences (APP. PG 350; lines 24-25; PG 351; line 1) and court imposed consecutive sentences (APP. PG 352; lines 13-17) was not within meaning of statutory language. As Justice Beatty opinion suggests, in 2004, State v. Woody, 359 S.C. 1 (2004), illustrates a Proper application of Section 17-25-50 to Preclude imposition of consecutive sentences. The state's Position was rejected because the armed robberies constituted, as a matter of law, one offense for Purposes of Section 17-25-50. Woody, id. at 4. The two armed robberies arose from a single incident at the same time and same location.

Applicability or nonapplicability of Section 17-25-50 may be readily apparent in most circumstances, which leads to concern and is ambiguous when applied to Petitioner case. Nevertheless, Section 17-25-50 imprecise language has Generated uncertainty. When trial courts are faced with multiple offenses, or as herein, state seeks consecutive sentences for offenses Section 17-25-50 has deemed "one offense". Which, as in Woody State could now deem them to be multiple offenses for enhancement of Sentence. Pending clarification of legislative intent, Petitioner attempt is to discern intent of legislature.

Argument Three:

Was Per court ruling trial counsel did not fail to Provide effective assistance of counsel for not quashing indictments error, when at trial there appeared to be variance between the allegations of the indictment and the evidence offered in Proof thereof. If so, do the indictments state with sufficient certainty and Particularity for court to know what Judgment to Pronounce, and defendant know what he is called upon to answer?

Petitioner contends, that Per court ruling counsel was not ineffective for quashing indictments (App. Pg 484) before Jury was sworn. See, Gentry v. State, 363 S.C. 93 (2005) This ruling is wrong for three reasons:

First, the court in State v. Lynch, 344 S.C. 635 (2001) held that:

"Where an amendment to an indictment changes an offense to one with increased Punishment, the circuit court is deprived of subject matter Jurisdiction...
The appropiate analysis for determining whether an indictment (amendment) deprives the trial court of subject matter Jurisdiction is whether the amendment changed the nature of the offense charged"

State v. Lynch, supra

Therefore, the trial court ereed in denying defense motion to amend or as counsel requested for trial court to charge lesser included offense of ABITAN. Since defendant did not Plead Guilty, ABITAN is a lessee included offense of Attempted Murder.

For instance, ABITAN second, third degree does not increase Penalty of Attempted Murder, and as a matter of law, would not change nature of offense charged was Permissible.

Second, resolution of this requires court to examine legislative history of Section 16-3-29, scrutinize the interplay between Section 16-3-600(B)(1)b(3). Further, statutes which are Part of the same legislative scheme should be read together. See, Great Games, Inc. v. South Carolina Department Of Revenue, 339 S.C. 79 (2000)

Accordingly, whether counsel failure to punish indictments should be Judged under Strickland two-Prong analysis, or Cronic "Entheal State" doctrine. Lets be clear, that counsel as alleged by Petitioner failed to conduct a factual and legal investigation of offenses. Which led counsel to deny full adversarial testing of Prosecution case, and leading counsel to make uninformed decisions as a result of inadequate investigation. See, Cobbs v. State, 305 S.C. 299 (1991)

Furthermore, because of the ambiguous language of Section 16-3-29 the trial court was wrong, it is likewise asserted trial court stating

> "You would be entitled to these charges if there was some way to construe the evidence as filling all these elements without intent to kill, but there is no way to view this evidence, as I see it, other than with an intent to kill because he did it until she passed out and then he started to do it again and then another car come along"...
>
> App. Pg 298; lines 1-7

Because counsel failed to conduct a legal investigation, trial counsel was unaware of the Section 16-3-600(B)(1)b(3) which states that:

> Assault and battery in the second degree is a lesser included offense of assault and battery in the first degree, as defined in subsection (c)(1) and assault and battery of a high and aggravated nature as defined in subsection (B)(1) and attempted murder as defined in Section 16-3-29
>
> South Carolina Code Ann. Sec. 16-3-600(B)(1)b(3) (Cum. Supp. 18)

As counsel requested A&Bhon on all A.B charges, when the evidence Pre and Post trial clearly indicated as subsection (b)(1)(a) states

> (1) A person commits the offense of assault and battery in the second degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and:
>
> (a) moderate bodily injury to another person results or moderate bodily injury to another person could have resulted;

Hence, there is evidence in record indicating defense counsel failure to investigate law. It is

undisputed that victim never testified Petitioner threatened her with a weapon. The victim testified she suffered whiplash (App. Pg 104; lines 23-25; Pg 112; lines 1-14) Victim testified she had abrasions and was Pretty sore (App. Pg 110-112) Despite medical services coming to Mizell house on the evening of incident victim did not Go to hospital (App. Pg. 111; line 24; Pg 112; lines 1-8)

There is no evidence in record to support attempted murder, and counsel confusion along with State is readily apparent from colloquy after State rested (App. Pg 294; lines 9-23). Because the facts which Gave rise to Petitioner arrest for attempted murder, information was readily discoverable from Rule 5 obtained from State which included victim statement and medical reports. Under Cobbs, counsel would be ineffective when she failed to and or overlooked critical evidence minimizing Penalty imposed.

All things being equal, the record does not support the Pcr Judges finding that counsel was not ineffective for not quashing indictments, when counsel explanation (App. Pg 438; lines 18-25; Pg 439; lines 1-8) only exemplifies her lackdaisical efforts for investigation and does not exempt her not doing so. Moreover, her argument at trial only Proves Petitioner argument of statutory language being susceptible to multiple interpretations.

In the abstract, the Policy rationale of the State v. King, 422 S.C. 47 (2017) majority is entirely defensible. But the desired Policy of the king majority is at odds with the unambiguous language in Section 16-3-29. Petitioner does not make this finding lightly, as Petitioner recognizes that a rigid application of Section 16-3-29 by trial court has led to harsh results (App. Pg 293; lines 1-22; Pg 294; 5-7; 24-25; Pg 295; lines 5-7; 21-25; Pg 296; lines 22-25)

Petitioner Perception of the Potential for continued harsh results, however, should serve as a license to construe the statute in a manner inconsistent with clear language of Section 16-3-600(B)(1) D(3). Moreover, Section 16-3-600(B)(1) serves as a meaningful safeguard to the Perceived unfair imposition of a felony conviction otherwise construed as a misdemeanor offense. See, State v. Sutton, 340 S.C. 393 (2000); What Constitutes Attempted Murder, 54 A.L.R. 3d 612.622 (1993)

Section 16-3-29 is required to be read together with Section 16-3-600(B)(1). To do so in no way means Section 16-3-29 should be read to the exclusion of 16-3-600; nor does it mean that Section 16-3-600 acquired a new meaning or should be interpreted differently. These sections

should be interpreted in a manner that Gives effect to both. This is accomplished by recognizing that Section 16-3-29 focuses on elements of attempted murder and Section 16-3-600 focuses on what constitutes as attempted murder under certain circumstances.

Third, as noted that language of Section 16-3-29 is unclear and absent clarity from this court on section 16-3-29 discerning legislatures intent, will continue to create uncertainty in lower courts ability to Pronounce Judgment. For instance, in State v. Michaud, 355 S.C. 73 (2003) ruled that:

> "Indictment is adequate if offense is stated with sufficient certainty and Particularity to enable court to know what Judgment to Pronounce, defendant to know what he is called upon to answer, and acquittal or conviction to be Placed in bar to any subsequent conviction."
>
> Michaud

As herein, the court, state, and defense counsel struGGled with language of statute and its language, as it related to the facts Presented at trial.

> "So if You were to say his intent was not to kill her but to cause her Just to Pass out, well, he accomplished that, so he do it aGain makes no sense. If You want to say, well, all he wanted to do was cause her to Pass out so that he could rob her and take her stuff, he had the opportunity to do that. I'm Just trying to think, how is there any view of the evidence that we have that he had anything other than the intent to kill her"
>
> App. Pg 297; lines 4-12

While section 16-3-29 lends Petitioner no support, the outcome of this issue turns on the applicability of Section 16-3-600(B)(1)(c)(a) as it relates to the facts Presented at trial. Language of section 16-3-29 may become ambiGuous as applied to certain situations. Accordingly, when construing statutes forming Part of the same legislative scheme, court must examine the statutes toGether as a whole. See, Bryant v. State, 384 S.C. 525 (2009)

When a Genuine ambiGuity exists as to the Proposed application of Section 16-3-29 to a Given situation, the rule of lenity requires that the doubt be resolved in defendants favor. See, State v. Blackmon, 304 S.C. 270 (1991) Bryant, id,.

Furthermore, the carjacking indictment reads as follows

"...the defendant, did take or attempt to take a motor vehicle from Betty Martin by force, violence or intimidation while Betty Martin was operating the vehicle or inside of the vehicle..."

App. Pg 486

Whereas, at trial the victim testified. After Parking her vehicle (a 1996 Acura 3.2TL) in the carport adjacent to her trailer, victim began to unload her belongings (App. Pg 94-97) After removing the items from her car. Victim noticed a man coming between her carport and her home. (App. Pg 96) Victim observed his face before turning around to lock her car. While her back was turned, the man came behind her, Grabbed her left arm and Put something that he said was a Gun against her ribs. He told her not to scream or fight or he would shoot (App. Pg 96-97). The man then demanded she unlock her car and hand over her car keys, cell phone, and money. He also instructed victim to Get into Passenger seat (App. Pg 97-99)

Consequently, there is likewise no Proof of kidnapping. Victim Spent Several minutes reviewing the lineup and Studying the Subjects individual faces before Selecting Petitioner as the Perpetrator, circling his Photograph and Stating that he most looked like the Perpetrator. (App. Pg 116-118. Pg 170; Pg 193-94)

Victim also testified she had seen Petitioner earlier on the day of the attack knocking on her neighbor's door (App. Pg 133) Victim also testified that she had Given a black man around Petitioners age a ride to work at Harvest Moon Grill, the same Restaurant Petitioner worked earlier in the Year but could not recall if it was Petitioner (App. Pg 135-36)

Law enforcement obtained buccal Swabs and fingerprints from Petitioner and victim (App. Pg 171-73; Pg 240-41) Charleston County Police (Sheriffs) office sent the fingerprint lifts and known fingerprint samples from Petitioner to be tested by a latent Print analyst (App. Pg 225) Petitioners Prints matched numerous Prints found in victims vehicle (App. Pg 249-50)

Additionally, Charleston County Sheriffs office sent the DNA Swabs from victims vehicle and the known DNA Samples from victim and Petitioner to South Carolina Law Enforcement Division (SLED) for testing (App. Pg 175; Pg 234; 239)

The analyst who tested DNA swabs concluded that a third Person DNA was found on the steering wheel, and it did not belong to Petitioner or victim (App. Pg 278).

Therefore, it means that there had been a third Person driving the car, despite Petitioner being a major contributor, as testified by analyst. Simply stated, he was Just last Person who had Possession of vehicle, and during those 55 hours no evidence shows Petitioner had anything to do with crime.

Conclusion

Based on the argument in issue one, the court should order full briefing. Based on issue two, the multiple convictions should be reversed and remanded for resentencing. Based on issue three, attempted murder, carjacking, and kidnapping indictments should be reversed.

Respectfully Submitted:

/s/ Latrone Butler

Latrone Butler / Pro Se

Notary Ludreon Bryant

07 day of December, 2018.

Exp: May 26, 2020

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Correctional Inst.
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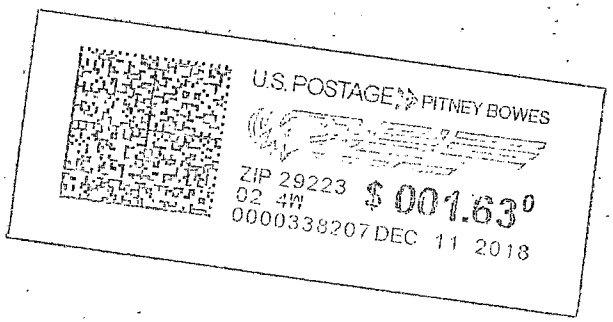
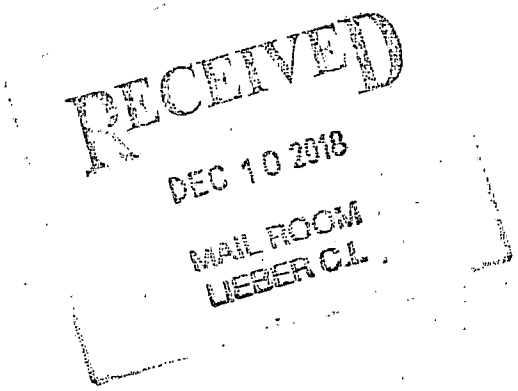
lle, SC. 29472





To: Supreme Court of South Carolina
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