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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 2016-CP-26-1614

**RECEIVED**  
DEC 19 2018  
SC Court of Appeals

Robert Palmer ..... Appellant

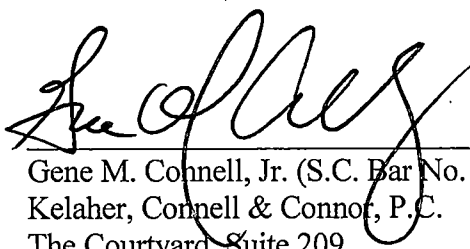
vs.

State of South Carolina, Horry County and David Weaver ..... Defendants

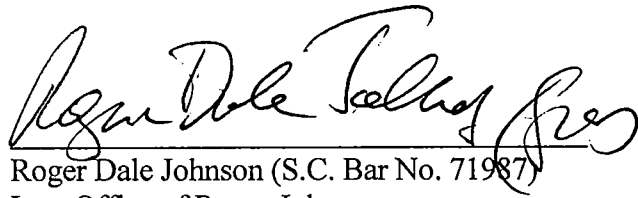
Of which State of South Carolina is the ..... Respondent

MOTION FOR CERTIFICATION

The Appellant moves the Court for an order certifying this matter to the South Carolina Supreme Court. The basis of this motion is the oral argument heard by this Court on December 5, 2018 along with the briefs and the significant public interest involved in this matter, i.e., whether or not there is a constitutional remedy for wrongful convictions under either the South Carolina Constitution or The United States Constitution.



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December 18, 2018

**Attorneys for Appellant**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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CASE NO. 2016-CP-26-1614

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Robert Palmer ..... Appellant

vs.

State of South Carolina, Horry County and David Weaver..... Defendants

Of which State of South Carolina is the..... Respondent

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MEMORANDUM OF LAW IN SUPPORT  
OF MOTION FOR CERTIFICATION

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The Appellant appeared before this Court on December 5, 2018 for oral argument in this case. The Appellant believes that this Court is now aware of the significant public interest surrounding this legal issue, i.e., whether or not there is a remedy in South Carolina for wrongful conviction. Previously, the South Carolina Supreme Court had denied the State's motion that the appeal be certified pursuant to South Carolina Rule of Civil Procedure 204(b), SCACR. Now that this Court has heard the appeal, the Appellant respectfully requests that this Court certify this matter to the South Carolina Supreme Court pursuant to Rule 204(b), SCACR. That particular rule provides in pertinent part:

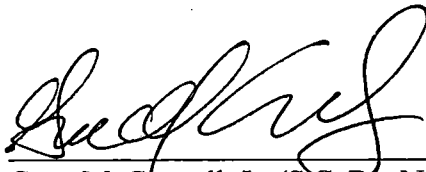
In any case which is pending before the Court of Appeals, the Supreme Court may, in its discretion, on motion of any party to the case, on request by the Court of Appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the Court of Appeals. Certification is normally appropriate where the case involves an issue of significant public interest or legal

principle of major importance. The effect of such certification shall be to transfer jurisdiction over the case to the Supreme Court for all purposes.

Appellant believes that this Court is now aware of the significant public interest in this issue: Is there a constitutional remedy for wrongful convictions in this state? Certainly, this matter is appropriate in this Court's discretion to advise the Supreme Court that in this Court's discretion this matter is a matter of significant public interest. Counsel for Appellant in this case is aware of this happening in the past in one of his cases. In the case of *Clint A. Chestnut, et al. v. AVX Corporation*, Appellate Case No. 2012-212143, the Court of Appeals requested certification prior to the oral argument scheduled for May 2013. Further, because the Court of Appeals had requested certification, the Supreme Court approved certification in an Order in that same case dated May 3, 2013. (See Exhibits A and B attached hereto).

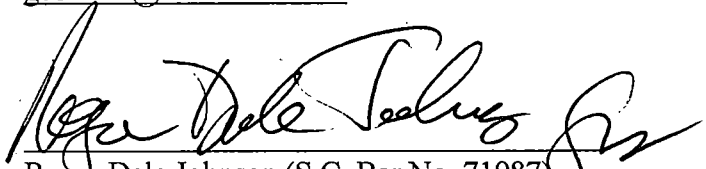
While Appellant is aware that this case has been argued to the Court, it is apparent from the argument that the judges of this Court recognize the significant nature of this case. The oral argument in this case highlighted the significant nature of this case, i.e., wrongful arrest convictions and whether there was a constitutional remedy. Appellant respectfully requests that this Court send a request to the South Carolina Supreme Court to certify this matter in light of the issues involved. The purpose of Appellant's request is to serve the ends of justice and obtain a definitive opinion from the Supreme Court on this significant issue. Accordingly, the Appellant moves this Court to certify this case to the South Carolina Supreme Court in light of the oral arguments, the briefs and the record currently pending on appeal.

(SIGNATURES ON FOLLOWING PAGE)



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December 18, 2018

**Attorneys for Appellant**

EXHIBIT A



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
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V. CLAIRE ALLEN  
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POST OFFICE BOX 11629  
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[www.sccourts.org](http://www.sccourts.org)

April 25, 2013.

Mr. Gene McCain Connell, Jr.  
PO Drawer 14547  
Surfside Beach SC 29587

Mr. Lawrence Sidney Connor, IV  
PO Drawer 14547  
Surfside Beach SC 29587

Mr. Richard E. Morton  
One Wells Fargo Ctr., Ste. 3500  
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Charlotte NC 28202

Brad A. DeVore  
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Mr. Samuel W. Outten  
PO Box 10208  
Greenville SC 29603-0208

Mr. Todd Billmire, Esq  
One Wells Fargo Ctr. Suite 3500  
301 S. College Street  
Charlotte NC 28202

Re: Clint A. Chestnut v. AVX Corp.

Appellate Case No. 2012-212143

Dear Counsel:

The Court of Appeals has requested certification in the above matter from the Supreme Court. **Therefore, oral argument scheduled for the May 2013 term of court is cancelled.** Counsel will be notified of the action is taken by the Supreme Court on the certification request.

Very truly yours,

*V. Claire Allen*

DEPUTY CLERK

# The Supreme Court of South Carolina

Clint A. Chestnut, Rebatt Frankie Jefford, Mary Lou Nance, Margaret Ramsey, Nicholas Ramsey, Harold Cushman, Julia Edwards, Don Emery, Eula Cooke, and Glenda Rabon Harper, Individually, and as Class Representatives, Appellants,

v.

AVX Corporation; Respondent.

Appellate Case No. 2012-212143

**RECEIVED**

MAY 06 2013


**SC Court of Appeals**

\_\_\_\_\_  
ORDER  
\_\_\_\_\_

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by the South Carolina Supreme Court.

Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court.

IT IS SO ORDERED.

  
\_\_\_\_\_  
C.J.  
FOR THE COURT

Columbia, South Carolina

May 3, 2013

cc:

Gene McCain Connell, Jr., Esquire  
Lawrence Sidney Connor, IV, Esquire  
Richard E. Morton, Esquire  
Brad A. DeVore, Esquire  
Samuel W. Outten, Esquire  
Todd Billmire, Esquire  
The Honorable Jenny Kitchings

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APPEAL FROM HORRY COUNTY  
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The Honorable Benjamin H. Culbertson, Circuit Court Judge

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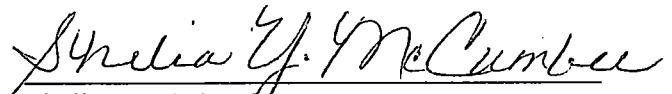
PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., and that she has served a copy of the **Motion for Certification and Memorandum of Law in Support of Motion for Certification** on the Respondent, on the 18<sup>th</sup> day of December, 2018, by depositing a copy of same in the United States Mail, postage prepaid, to:

Andrew F. Lindemann, Esquire  
Lindemann, Davis & Hughes, PA  
P. O. Box 6923  
Columbia, SC 29260

J. Emory Smith, Jr, Deputy Attorney General  
Robert D. Cook, Solicitor General  
Alan Wilson, Attorney General  
Office of Attorney General  
P. O. Box 11549  
Columbia, SC 29211

Lisa A. Thomas, Esquire  
Thompson & Henry, P.A.  
P. O. Box 1740  
Conway, SC 29528

  
Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,  
this 18<sup>th</sup> day of December, 2018.

Donna H. Hand  
Notary Public for South Carolina  
My Commission Expires: 3-28-26

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER\*  
GENE M. CONNELL, JR.  
L. SIDNEY CONNOR, IV  
LISA POE DAVIS

\* OF COUNSEL

AREA CODE 843  
238-5648  
FAX: 238-5050

December 18, 2018

The Honorable Jenny Abbot Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

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SC Court of Appeals

Re: Appellate Case No. 2017-000567  
*Robert Palmer vs. State of South Carolina, Horry County and David Weaver*  
C/A No. 2016-CP-26-1614  
Our File No. 2015-0325C

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of a Motion for Certification, Memorandum of Law in Support of Motion for Certification and Proof of Service in the above-captioned case. I also enclose a check for \$50.00 for the filing fee. Please return a filed copy to me in the self-addressed, stamped envelope enclosed for your convenience.

By copy of this letter, we hereby serve a copy of the above-stated documents on counsel of record.

With best regards, I am


Sincerely yours,

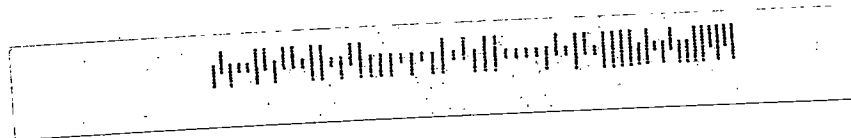
  
Gene M. Connell, Jr.

GMC,Jr.:sm  
Enclosures

cc w/enc.: Lisa A. Thomas, Esquire  
Andrew F. Lindemann, Esquire  
J. Emory Smith, Jr., Esquire  
Robert D. Cook, Esquire  
Roger Dale Johnson, Esquire



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**KELAHER, CONNELL & CONNOR, P.C.**

ATTORNEYS AT LAW

P. O. DRAWER 14547

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