

MR. CLISTON JOHN BELLAMY #343259

McCI F-4 A-side  
386 Redemption Way  
McCormick, South Carolina 29899

January 4, 2019

RECEIVED

JAN 28 2019

S.C. SUPREME COURT

Daniel E. Shearouse  
South Carolina Supreme Court Clerk  
PO Box 11330  
Columbia, South Carolina 29211

RE: Pro-se Response  
Appellate Case No.: 2018-000279

Dear Clerk:

Please find enclosed for filing the Pro-se Response of the Petitioner in this matter pursuant to the Johnson Petition filed in this case by Petitioner's appellate attorney, Taylor D. Gilliam.

Please return to me a clock-stamped copy of the enclosed documents at your earliest convenience.

Thank you for your attention and assistance in this very important matter.

Kind regards,

Mr. Cliston John Bellamy

RECEIVED

JAN 28 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

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CLISTON JOHN BELLAMY,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE No.: 2018-000279

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PETITIONER'S PRO-SE RESPONSE TO  
APPELLATE COUNSEL'S JOHNSON  
PETITION FOR WRIT OF CERTIORARI

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Mr. Cliston John Bellamy,  
#343259  
McCormick Correctional Inst.  
386 Redemption Way  
McCormick, SC 29899

Petitioner, pro-se

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ISSUE PRESENTED

WAS PETITIONER'S GUILTY PLEA KNOWINGLY AND VOLUNTARILY MADE WHEN THERE WAS NO FACTUAL BASIS FOR THE PLEA WHERE THE STATE RELIED ON HEARSAY IN DESCRIBING WHAT ALLEGEDLY WAS ON A VIDEO TAPE THAT WAS NEVER AUTHENTICATED, WHICH DENIED THE PETITIONER DUE PROCESS OF LAW.

## STATEMENT OF THE CASE

The Petitioner, Cliston John Bellamy, was indicted in Horry County on September 17, 2015, by the Horry County Grand Jury. See App. 88-89. Petitioner proceeded to court on May 17, 2016, and pled guilty to voluntary manslaughter before the Honorable Thomas W. Cooper. App. 1; App. 5, lines 22-23. Assistant Solicitor Stephen Grooms appeared on behalf of the state and Johnny McCoy, Esquire represented the Petitioner.

The facts alleged by the State at the guilty plea hearing went as follows: The State alleges that a brawl occurred on May 4, 2014, at Smokehouse Billiards. App. 7, line 6 - App 8, Line 14. Petitioner allegedly shot and killed a man from a rival gang.

Petitioner's plea was accepted by Judge Cooper, which was a negotiated plea of twenty years imprisonment. App. 1, lines 6-11.

Petitioner filed an application for post-conviction relief on or about October 19, 2016. App. 12-13. In his application, the Petitioner alleged ineffective assistance of counsel, the claims consisted of counsel's failure to file a notice of appeal, failed to advise Petitioner of the right to self-defense, counsel also failed to provide Petitioner with the discovery material prior to pleading guilty. App. 15. The State made its Return on or about August 9, 2017. App. 24-31.

An evidentiary hearing in this matter was held before the Honorable William H. Seals on September 20, 2017. App. 32.

Johnny E. James, Jr., Esquire and Steven W. Fowler both appeared on behalf of the State. Petitioner and plea counsel both testified at the hearing.

An order of dismissal was issued by the Honorable Judge Seals on January 12, 2018. App. 78, 87. The judge found that the Petitioner failed to prove any deficiency on plea counsel's behalf and Petitioner's post-conviction relief action was dismissed.

Petitioner appealed the judge's dismissal of his post-conviction relief action, appellate counsel filed a Johnson petition, this Court gave the Petitioner forty-five (45) days to respond, this petition follows:

## ARGUMENT

The Petitioner's guilty plea was not knowingly and voluntarily made when there was no factual basis for the plea where the state relied on hearsay in describing what allegedly was on a video tape that was never authenticated, which denied the Petitioner due process of law.

### Relevant facts:

The attorney for the State, Attorney Grooms, made the following remarks at the Petitioner's guilty plea hearing to establish that the Petitioner committed the crime he is charged with:

MR. GROOMS: Thank you, Your Honor. On May 4, 2014 at Smokehouse Billiards, there is a bar there that is connected to it called Teasers. This defendant was there, along with other gang members. The victim in this case was also involved in a gang rival gang. There was words exchanged. There was bad blood between the parties. It is believed that this defendant did bring a gun in through the back, although that is hearsay. We do know there was security at the front of the bar and that everyone was checked on the way in. This defendant did have a gun.

There is clear video that shows at the time of the actual incident that the victim in this case, Laquan Price, is involved in a fight with members of

a rival gang, but leading up to that, this defendant is shown on tape several times leading up to it flashing gang signs, as others were in the bar also. As the incident leads up to the actual shooting, you see the defendant talking to a female. As you see the other parties approaching each other, you see him push her out of the way. You see him with his hand in his pocket, and as the fight begins, Laquan punches one of the rival parties. I don't know whether he was in a gang or not. You see this defendant walk up, shoot him one time roughly right in this area, and that is the shot that killed him, Your Honor. He then went on the run after that and was located a year later in Columbia.

See Appendix page 7, lines 6-25 - page 8, lines 1-8.

**Discussion:**

In the instant case, there is no factual basis for the Petitioner's plea. The Petitioner's plea is based on what counsel allegedly saw on a video tape. There is nothing in the record authenticating the alleged video tape, no video was played at the guilty plea hearing, the assistant solicitor never made any comments about a video tape as being evidence in this case. Petitioner never testified at the plea hearing that he did in fact shoot the alleged victim in this case, and the judge never asked him did he shoot the victim.

Nothing was said at this plea hearing to indicate what caliber of gun the alleged victim was shot with, Petitioner did not really know what was going on with his case prior to, and at the hearing because he did not have his discovery material to find out what the State allegations were against him.

The plea hearing was held on May 17, 2016, Petitioner did not receive his discovery material until around August 4, 2016

See Exhibit - A, attached, which is a cover letter dated August 4, 2016, the month Petitioner received his discovery material, clearly after his guilty plea hearing.

Counsel never said where he got the video of the incident, or who filmed the altercation that allegedly led up to the alleged victim's death.

Before entering judgment, the court must determine that there is a "factual basis" for the plea. The factual basis requirement protects a defendant from pleading guilty without realizing that his or her conduct is not within the charge. See McCarthy v. U.S., 394 U.S. 459, 467 (1969). In the McCarthy case the United States Supreme Court found that the judge failure to confirm factual basis for plea when the judge failed to directly address the defendant in court.

In the instant case, the judge failed to address the Petitioner in court and ask Petitioner if he did in fact shoot the alleged victims in this case, the Petitioner pled guilty to the charges, but he never said he actually committed the crimes.

State counsel never stated anything that would authenticate the video tape that he claimed he viewed, there is no evidence in the record that shows that the video tape even existed, or that it was taken on the day or night in question.

South Carolina Rules of Evidence - Rule 901(a):  
General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

Well, Petitioner does not know whether the video tape is what the assistant solicitor say it is. In fact, Petitioner believes that it was perjury when the assistant solicitor claims that he has video tape clearly showing me commit a crime, if he had that type of evidence, why would he consider a guilty plea from the Petitioner.

Also, the assistant solicitor refuses to release the video tape to me, I am entitled to view it, its part of my discovery.

For the foregone reasons, the Petitioner believes he was denied his Sixth Amendment right to effective assistance of counsel and his Fourteenth Amendment right to due process of law.

CONCLUSION

This response, along with the issues raised in counsel's Johnson petition shows that Petitioner received ineffective assistance of counsel and was denied due process of law during the course of his guilty plea proceedings, therefore, he ask that this Court vacate his guilty plea and remand this case back to the lower court for further consideration.

This \_\_\_\_\_ day of JANUARY, 2019

Respectfully submitted,

Cliston J. Bellamy #343259

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386 Redemption Way  
McCormick, SC 29899

Petitioner, pro-se

LAW OFFICE OF JONNY D. MCCOY, LLC

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August 4, 2016

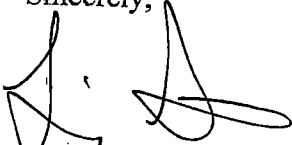
Cliston Bellamy 343259  
MCCIF4A 186  
386 Redemption Way  
McCormick, SC 29899

RE: Requested Discovery

Dear Cliston,

Enclosed is the requested discovery by you on 7/28/16. There are 2 packages as it was too large to mail in 1 envelope.

Sincerely,



Liz Suter

Paralegal to Jonny D. McCoy, Esq.

Exhibit - A

Exhibit

Mr. Cliston J. Bellamy #343259  
McCI F-4 A-side  
386 Redemption Way  
McCormick, South Carolina 29899

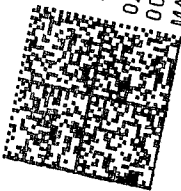
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