SC Supreme Court
Office of Judicial Misconduct
P.O. Box 11330
Columbia, SC 27201

July 12, 2012.

Robert Holland Koon
MCD LIEBERCI
Redemption Way
McCormick, SC 29835
PO Box 205
Ridgeville, SC 29475

Complaint Hon. J. Mark Hayes II
State v. Robert Holland Koon 86GS 11289 (1)

In the matter of State v Koon 86GS 11289 Rule 29(b) motion for a new trial in Cherokee County General Sessions Court, I would like to lodge a formal complaint and request an independent investigation into evidence of trial court Hon. J. Mark Hayes II.

A) Refusing to schedule and hear motion to relieve counsel of conflict of interest with members of the Seventh Circuit Solicitor office when primary thrust of Rule 29(b) is prosecutorial misconduct (and habit, routine pur SC RE 406 of the same) in the prosecution of the Second Degree Burglary (Building/ Nighttime) 16-11-312 (b) where the police/solicitor presented false testimony to magistrate/ grand jury in Re: to Nighttime: See Koon v State 595 SE2d 456 (2004) (2)

B) Allowing counsel to proceed without moving to recuse trial court (Hayes) as set forth in December 30, 2010 letter from Judge Hayes (counsel failure to do so grounded in conflict with the Seventh Circuit Solicitor) of civil action against Judge's law partner Koon v Thompson (Cherokee). The bias of the court is manifested, and the basis of the recusal grounded in the fact, when counsel was to be appointed from outside the Seventh Circuit based upon numerous conflicts, the court appointed counsel from Fort Mill, SC (outside Seventh Circuit) but lo and

RECEIVED
JUL 12 2012
Court of Appeals

behold counsel is formerly a Seventh Circuit Solicitor who allowed the State to hide the whereabouts (at 29(b) hearing) of key Brady/Giglio witness detective Richard Weaver who first presented false information of nighttime to the magistrate / as proven by victim statement / testimony established at June 27, 2011 29(b) hearing. The court had full awareness of counsel Russ Racine's former history as Seventh Circuit Solicitor, to cause hearing to be mere sham and pretense, while actually,

C) trial counsel and court acted to subvert the legal process as direct evidence of prosecutorial misconduct in State v Ernest Riddle (Riddle v Jon Ozmint 2006 SC) was relevant to State v Koon 29(b) as same solicitor, same county, same staff committed misconduct in both Riddle and Koon at the same time period (1985 – 1986) to show SC RE 406, habit, routine, that same people acted in conformity with prior conduct, to wit, prosecutorial misconduct.

Is it any coincidence or relevancy to the fact that now trial Judge Hayes is the trial judge in Riddle, a death penalty case to be tried soon? Judge Hayes understands the nexus between Koon and Riddle , Brady and Giglio claims will in fact affect the retrial of Riddle and thus allowed counsel with a conflict of interest with same parties (ala Seventh Circuit Solicitor) to suppress evidence and misrepresent the factual issues presented and allow State to hide Det. Weaver who falsely claimed could not be located despite his retirement check records from Gaffney P.D. (major 30 days).

I ask for a complete investigation by this office for judicial misconduct in office and that proceedings for the impeachment of Hon. J. Mark Hayes II be initiated.

(1) 1986 conviction at issue is second of three strikes Koon v State 643 SE2d 680 (2007)

(2) Giglio v United States

Under Oath, 7/2/12

Robert Holland Koon
LWOP in SC

Cc: Diana Hoit (Esq) (Counsel for Riddle)
Harry M. Lovelace (Victim – Koon case)
Clerk of Court 86-GS-11-289
News Media (via Network)

AFFIDAVIT

I, Harry M. Lovelace, hereby give the following statement freely and voluntarily that is true and correct, under oath:

The first statement pertains to my attempts to obtain a viable address and phone number for Richard F. Weaver. It is my understanding that Mr. Weaver was the detective who lead the investigation of the break-in at Cudd-Lovelace Agency in March 1986 and Robert Koon believed that his testimony could assist in Mr. Koon's 29(b) hearing and he requested that Mr. Weaver, since retired, be located and subpoenaed. Mr. Koon was advised by his legal defense that Mr. Weaver could not be located and was therefore unavailable to provide testimony.
Mr. Koon subsequently requested that I try to contact a private investigator to locate Mr. Weaver. I asked an associate at work if he happened to know Mr. Weaver and he said remembered him and that his wife's name was Carla. With that item of information, I conducted an internet search on PublicRecords.com, and was able to locate three possible addresses and a phone number in less than thirty minutes from the time I began the search.

The second statement is my attestation that part of the structure that was broken into in March 1986 was an apartment, i.e. dwelling. The structure is a triplex that included the space leased to Cudd-Lovelace Agency, the business that I managed in March 1986. It is my understanding that the fact that a dwelling was located in the structure could have a material impact on Mr. Koon's case as in the decision by the SC Supreme Court in Koon v State (2004). Again, this structure was an apartment dwelling with an office and salon contained therein.

16-11-312(A) NOT STATUTE?

Further AFFIDAVIT sayeth not

Harry M. Lovelace **Daytime Phone: 864-838-1381**

Sworn and Subscribed to me on this 7th day of March, 2012.

My Commission expires:

Linda B Sorrow — 11-28-2017

Notary Public

AFFIDAVIT

Robert Koon V. State of SC 06 CP 11 513

I, Harry M. Lovelace, hereby give the following statement freely and voluntarily that is true and correct, under oath:

I was an employee of Cudd-Lovelace Agency in Gaffney, SC in March 1986. I recall that a break-in occurred at the office location between the close of business on Thursday, March 28, 1986 and the opening of the office on Friday, March 29, 1986. The break-in was discovered by Mr. J.D. Cudd who was assisting the staff of the office at the time. Mr. Cudd is now deceased. My recollection of details about the break-in and subsequent investigation is diminished by the length of time since the event occurred and the fact that my father had passed away a couple of weeks before the break-in. There is some question as to when the break-in occurred and whether or not it would necessarily be considered a "night time" event. I can not present evidence to refute the allegation that it occurred at "night time"; however, I am familiar enough with the routine of opening and closing the office that I can provide a time frame which might, at the least, bring into question whether or not the break-in had to have occurred at "night". For years prior to and subsequent to the break-in, Cudd-Lovelace Agency had posted hours of operation of 9:00 am to 5:00 pm Monday, Tuesday, Thursday, and Friday, and 9:00 am to 12:00 pm on Wednesday. The staff normally arrived no earlier than fifteen minutes before opening (8:54 am), and typically closed the office no late than 5:15 pm. It would have been very unusual for an employee to arrive before 8:30 am or close later than 5:30 pm. I would confidently testify that the break-in could have occurred anytime between 5:30 pm March 28, 1986 and 8:30 am March 29, 1986. I believe that an examination of the investigation report will show an initial contact time from Mr. Cudd that is consistent with the time frame I have referenced. My position is that the break-in may very well have occurred during a time period *other than* "night time".

Further AFFIDAVIT sayeth not

Harry M. Lovelace Daytime Phone: 864-838-1381

Cc: Henry D. McMaster, State Attorney General
Hon. J. Mark Hayes II, Judge

Sworn and Subscribed before me this 8th day of April, 2010.

My Commission expires:

Notary Public

11/29/17

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee

AFFIDAVIT

Personally appeared before me, judge of the Court, one Inv. R. F. Weaver, who being duly sworn, deposes and says that Robert Holland Koon (name of defendant) did within this County and State on or about 3-29-86, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of City of Gaffney] in the following particulars:

DESCRIPTION OF OFFENSE

Burglary, 2nd Degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that such probable cause is based on the following facts:

The defendant, Robert Holland Koon, did break into Stylette located at 219 East Fredrick Street within the city limits of Gaffney, South Carolina, on or about March 29th, 1986, by knocking glass from back door and entering with the intent to commit a felony therein.

Sworn to and Subscribed before me,

This 2nd day of April, 19 86.

James G. Lowe (L.S.)
Signature of Issuing Judge

Address _____

Phone: _____

Richard Weaver
Signature of Affiant

Address Gaffney Police Department
Gaffney, S. C.

Phone: 489-8115

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee

ARREST WARRANT

[or MUNICIPALITY OF City of Gaffney]

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE, COUNTY OR MUNICIPALITY, OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that Robert Holland Koon (name of defendant) did on or about 3-29- 19 86, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of City of Gaffney] as set forth below:

DESCRIPTION OF OFFENSE

Burglary, 2nd Degree

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at Gaffney, S
on April 2nd, 19 86.

James G. Lowe (L
Signature of Judge

Form Approved By
S.C. Attorney General
May 13, 1983

FORM CONTINUES ON BACK

ORIGINAL

ARREST WARRANT

No. B 540174

STATE OF SOUTH CAROLINA

City of Gaffney (County / Municipality) (Circle one)

THE STATE

against

Robert Holland Koon

Address: 510 E. Jefferies Street

Gaffney, S. C.

Phone _____ SSN [redacted]

Sex M Race W Height 5'7" Weight 145

DOB 8-9-66 DL _____

Offense Burglary, 2nd Degree

Code (or Ordinance) § 16-11-310

Date of Offense 3-29-86

Officer R. F. Weaver

Agency Gaffney Police Department

Date of Disposition _____

Disposition _____

Sentence _____

Co-Defendants _____

A copy of this Arrest Warrant was delivered to the following defendant:

Robert Holland Koon

on the 3 day of April, 19 86

D. C. Hawkins

Signature of Constable or Law Enforcement Officer

This warrant is certified for service in _____ (County / Municipality) (Circle one)

The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)

Signature of Judge

PRELIMINARY HEARING held by

Judge _____

on _____, 19____

with _____
Attorney for Defendant

Decision: _____

BAIL

Date Set _____, 19____

Judge _____

Amount _____

Surety _____

RETURN WARRANT TO:

WITNESSES:

Name _____

Address _____

_____ Phone _____

Name _____

Address _____

_____ Phone _____

Name _____

Address _____

_____ Phone _____

Name _____

Address _____

_____ Phone _____

Name _____

Address _____

_____ Phone _____

Name _____

Address _____

_____ Phone _____

JURORS

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C. APR 3 3 30 PM '86 KATIE B. BAINES CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee

AFFIDAVIT

Personally appeared before me, judge of the Court, one Inv. R. F. Weaver who being duly sworn, deposes and says that Robert Holland Koon (name of defendant) did within this County and State on or about 3-29-86, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of City of Gaffney] in the following particulars:

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Sworn to and Subscribed before me,

This 2nd day of April, 19 86.

James G. Lowe (L.S.)
Signature of Issuing Judge

Address _____

Phone: _____

Richard Wooley
Signature of Affiant

Address Gaffney Police Department
Gaffney, S. C.

Phone: 489-8115

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee

[or MUNICIPALITY OF City of Gaffney]

ARREST WARRANT

A copy of this Arrest Warrant was delivered to the following defendant:

Robert Holland Koon

on the 2 day of April, 19 86

Signature of Constable or Law Enforcement Officer

This warrant is certified for service in
_____ County
_____ Municipality

The accused is to be arrested and brought before to be dealt with according to law.

Signature of Judge

PRELIMINARY HEARING held by

Judge _____

on _____, 19__

with _____
Attorney for Defendant

Decision: _____

BAIL

Date Set _____, 19__

Judge _____

Amount _____

Surety _____

RETURN WARRANT TO:

ARREST WARRANT

No. B 540174

STATE OF SOUTH CAROLINA

City of Gaffney County Municipality (Circle one)

THE STATE

against

Robert Holland Koon

Address: 510 E. Jefferies Street

Gaffney, S. C.

Phone _____ SSN [redacted]

Sex M Race W Height 5'7" Weight 145

DOB 8-9-66 DL _____

Offense Burglary, 2nd Degree

Code (or Ordinance) § 16-11-310

Date of Offense 3-29-86

Officer R. F. Weaver

Agency Gaffney Police Department

Date of Disposition _____

Disposition _____

Sentence _____

Co-Defendants _____

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
APR 3 3 30 PM '86
KATIE B. BAINES
CLERK OF COURT
VOL.

WITNESSES:

Name _____

Address _____

_____ Phone _____

Name _____

Address _____

_____ Phone _____

Name _____

Address _____

_____ Phone _____

Name _____

Address _____

_____ Phone _____

Name _____

Address _____

_____ Phone _____

Name _____

Address _____

_____ Phone _____

JURORS

_____ _____

_____ _____

_____ _____

BURTS, TURNER & RHODES
ATTORNEYS AT LAW
260 NORTH CHURCH STREET
SPARTANBURG, S.C. 29306

SAM BURTS (1907 - 1982)
NOEL TURNER (1928 - 2011)
RICHARD H. RHODES
M. NOEL TURNER, III
WILLIAM H. RHODES

RYAN F. McCARTY

MAILING ADDRESS
P.O. BOX 3408 29304
PHONE: 864-585-8166
FAX: 864-583-6927

June 5, 2012

PERSONAL AND CONFIDENTIAL
ATTORNEY/CLIENT PRIVILEGED

Mr. Robert H. Koon 227826
McCormick Correctional Institute
386 Redemption Way
McCormick, SC 29899

(Attached hereto) RHodes

Dear Mr. Koon:

I have received your letter dated May 27, 2012. I will not be able to assist you in your request. As you know, my only involvement began when I volunteered to read the lengthy trial Record in order to give a helping hand to Chuck. I do not practice criminal law, and I certainly have no political connections or aspirations.

After assisting Chuck in reading and outlining the Record, I did a proposed Brief. From there, I simply assisted Chuck in incidental ways.

As you know, I became actively involved as it related to you, individually, and your mom. I called her on occasion to check on her and to let her know the status of your case. I purchased you the leather bound Bible and had your name engraved. I am sorry that it has been lost. Hopefully, the prison system will let you have a Gideon Bible.

Since I am not going to assist you in this endeavor, I am returning your letter and all of your enclosures. Since you stay in touch with Chuck, perhaps he can assist you or designate someone who may.

I wish you the best of luck.

Sincerely,

Richard H. Rhodes

RHR/jc
Enc.

SEE MATT. 23-4 AND LUKE 11: 46

SUNDAY MORNING 5/27/12

MR RHODES,

I HOPE THIS LETTER FINDS YOU WELL AND IN GOOD HEAITH. I JUST WANTED TO WRITE AND SAY hello AND TO SEE HOW YOU ARE DOING? AS FOR ~~WEE~~ ME WELL I AM OK, I GUESS STILL PRAYING FOR A BETTER DAY AND, OFCOURSE, STILL FIGHTING MY CASE, ITS ALL I HAVE LEFT, SOMETIMES I GUESS ITS the FIGHT ITSELF that KEEPS ONE GOING. I WENT IN FRONT OF JUDGE HAYES LAST JUNE ON A Rule 29 (b) in GENERAL SESSIONS ON A MOTION FOR A NEW TRIAL BASED ON AFTER DISCOVERED EVIDENCE ON 1986 CONVICTON FOR CUDD-LOVELACE INSURANCE COMPANY - the VICTIM whom is ALSO A CHRISTIAN TESTIFIED that there WAS NO EVIDENCE AT ALL TO establish Nighttime BURGLARY OR CORPUS DELECTI thereon! SEE! A COPY OF A LETTER FROM him to MR BARNETTE - WELL JUDGE HAYES DENIED the motion STATING basicly I should have DISCOVERED this SOONER than "DUE Diligence"

SEE STATE V. SPAIN 513 SE2d 98 (1999)

WE ALSO RAISED THAT (CIRCA 1986) CAFFALET CITY POLICE DEPARTMENT ENGAGED IN1 PATTERN OF PROSECUTORIAL MISCONDUCT (IE) Riddle v. Ozmint 631 SE2d 70 (2006) (Riddle WAS RELEASED OFF DEATH ROW DUE to the PROSECUTORIAL MISCONDUCT OF C.C.P.D.) AND WE SHOWED A PATTERN FOR MY CASE

(IE) POLICE NEGOTIATED PLEA OUTSIDE PRESENCE OF MY LAWYER / LISTED DIFFERENT OFFENSE DATES FOR STYLETTE (REVERSED IN Woody v. ST 593 SE2d 456 (2004)) AND CUDD-COVELACE though BOTH IN SAME building / DISCOVERED 3/27/86 9AM (etc) JUDGE HAYES STILL W/ NO PROOF OF Corpus Delecti DENIED ME - WELL A BRIEF HAS BEEN FILED IN SC COURT OF APPEALS ST v. Woody Cherokee CO HON MARC HAYES (IT MAY be ONLINE AT SC COURTS . DOT GOV. IF YOU WOULD LIKE TO LOOK)

INTRESTINGLY ENOUGH MY 1986 LAWYER (and other OFFENSES) CAPT PAUL MACLAND SHOWED UP AND STATED POLICE TOLD him BEFORE PLEA the ONLY EVIDENCE to LINK ME to

LINK ME TO 86-CS-11-291, 292 BILL WILLARD P&C MOTION IN KOON V. STATE 595 SE2d 456 (2004) (MUD SAMPLES ON FLOOR OF TRUCK SUPPOSEDLY MATCHING CRIME SCENE FOUND ON MY SHOES WERE INCONCLUSIVE) THIS WAS RAISED AS EVIDENCE OF A PATERN OF MISCONDUCT (SCRE 406)

(EE) POLICE MADE FALSE STATEMENT TO GET A WARRANT IN VIOLATION OF FRANKS V. DELAWARE AND SOLICITOR KNOWINGLY USED THAT SAME FALSE AFFIDAVIT TO GET A INDICTMENT GIGLIO V. US 405 US 150, 153 (1972)

WELL I ATTEMPTED TO FILE A Rule 29 (b) ON THE 11 MUD SAMPLE, USE THEREOF, to SHOW PROSECUTORIAL MISCONDUCT (AND JUST SENT THAT OUT TO JUDGE HAYES) but it MAY be SC SUPREME COURT HAS to GIVE ME PERMISSION TO FILE ANY MORE "COLLATERAL ATTACKS (AND JUST SENT THAT OUT)!!!

IT SEEMS FORCES behind the SCENES HAVE TURNED A BLIND EYE TO THESE INJUSTICES CHUCK BASICLY told ME AS MUCH, (I do - SPEAK to him ON OCCASSION)

THATS where IM AT LEGALLY, IN COUNT OF APPEALS where I HAVE TO SHOW JUDGE HAYES "ABUSED his DISCRETION" which is MEAN IMpossible burden OF PROOF, AND WAITING to SEE IF SUPREME COURT / JUDGE HAYES will ALLOW ME to FILE ONE LAST 29(b) ON (2) other 86 CONVICTIONS that both COUNT AS MY FIRST STRIKE KOON v. ST. 643 SE 2d 680

YOU KNOW ME, I ALWAYS PREPARE FOR NEXT BATTLE AND IN THIS CASE THAT WOULD BE TO MOVE FROM LEGAL to POLITICAL AND ATTEMPT TO GET "CONNECTED, INFLUENTIAL people" to PETITION the SCDPPS (PAROLE BOARD) OR the GOVERNOR NIKKI HALEY (SINCE SCDPPPS WAS MY VICTIM (50)) to GRANT ME A COMMUNTATION OF MY LIFE without PAROLE SENTENCE BASED ON FACT established thru VICTIM TESTIMONY @ (1) STRIKE the STATE CANNOT establish Corpus Delecti UPON C the CANNOT EVEN SHOW A NIGHTTIME BURGLARY OCCURED MUCH LESS I COMMITED it)

STATE v. SMITH 483 SE2d 506 (CT APP 1997)

And if not Governor Haley then Barry Barnette

I'd like to ask you to get involved on the political side of this fight, if you truly feel in your heart that a injustice has been done, and contact the victim @ enclosed 864 838-1381 or write to him - that would be two influential people he has the desire to help me but lacks the skills on who to contact, who to petition, for communtation of sentence Chuck would probably put his signature on line for me as well - He supposed to be Barnette Buddy (lobbyst)

I pray to the Lord I can get you on my team w/ mr. Lovelace, oh, tea and Attorney Gary Paul Mallard 33 Donaldson St Greenville SC 29606 (864) 346-7368 He was my 86 plea lawyer and he is highly upset at things were done - (Det Richard Weaver 864 574-8860) Mr. Mallard would for sure sign on with this ~~Project~~ political movement He can tell you how I was tortured as a child at SC State Hospital as well which led to my alcoholism & offenses -> LWOP.

THIS COULD be YOUR PRO BONO project OF the YEAR (AND you WOULD be DOING GOD'S WORK AS MR. LOVELACE SAYS :)) HE IS A FINE UPSTANDING CHRISTIAN MAN WHO (LIKE YOU) HAS TRIED to HELP ME HE HAS WROTE ALOT OF LETTERS but "HE IS NOT IN the LOOP" SALLEY W. ELLIOTT @ ATTORNEY GENERAL OFFICE is 803 734-3970 IS IN LOOP She is OVER my 2255 Appeal pun TO STATE V. MUIDROW 559 SE2d (2002) BURGLARY 2ND CAN BE REDUCED ON APPEAL to BURGLARY 3RD IF NO EVIDENCE OF NIGHTTIME EXISTS THIS ALONE WOULD FREE me.)

ASK MR. LOVELACE TO E. MAIL YOU the ENTIRE "POLICITAL FILE" AND SEE IF YOU CAN GET GARY MAILAND AND CHUCK ON BOARD AND ACT AS A ~~COORDINATOR~~ "COORDINATOR" OF this MOVEMENT BARNETTE, SALLEY ELLIOTT, GOVERNOR IT IS the STATE POSITION I HAVE EXHAUSTED my Remedies ON 1986/1998 CONVICTION which IS PREREQUISITE to A PARDON/COMMUNTATION RIGHT?

"ARE WE NOT OUR BROTHERS KEEPER" GEN 3: MATTHEW 23-4

I've been down on my knees a whole lot lately praying God to help me and he spoke to my heart and told me to reach out to my Christian Brothers you and Mr. Lovelace so I listened - I've grown up alot since my momma passed - I know you tried to help me manage my money she left (and you did) and I'll never forget you were a true friend - All I can say w/ her passing, my 2 years in solitary, my legal battles, then going to camp unit at Lee + having all that $ made me crazy, but God has provided for me each day - I still have my ~~LL~~ law firm ☺ so I'm OK - I have more knowledge, wisdom and understanding and God has a plan for me I just don't know what it is yet there is a prison ministries halfway house (JumpStartYourSon.org) a 40 week program that If I get out and I will I will like to go to, or Hope House in Greenwood

101 Fine Rd Spt. SC

MAYBE POWERS THAT BE WOULD BE INCLINED TO HELP ME IF I HAD A FAITH BASED HALFWAY HOUSE TO GO TO. C BARRY BARNETTE IS QUOTED IN ITS ONLINE AD@ PLEASE LOOK it up)

IM DOING OK IM AT MECONNICLL CF AND I hope I CAN GET you to help COORDINATE the political MOVEMENT to CORRECT this INJUSTICE - IVE SERVED 15 YEARS ON 1998 CONVICTION (OVER the MAX ALLOWED by LAW) MAYBE YOU COULD CONTACT DONNIE Willingham my SOLICTOR (98) OR WILLIAM DUNCAN my 86 Solicitor (CHUCK AND he ARE FRIENDS) (ESQ)

WE NEED (MR COVELACE AND I) you to COORDINATE this WOULD YOU? PLEASE (X3)

ONE OTHER THING CAN YOU SEND me ANOTHER* BIBLE LARGE PRINT KING JAMES my other ONE WAS LOST IN TRANSFER w/ POSSIBLY SOME READING GLASSES OR A PLASTIC MAGNIFIER STRIP (SCPC LOST my GLASSES TO AND WONT REPLACE them)

* CONTACT CHAPLIN BARBER MCCF

whether you DECIDE TO help me w/ this movement on NOT I Appreciate your FRIENDSHIP you Showed TO ME And Im sorry IF I took you FOR GRANTED (I DID) And I WANT to MAKE AMENDS to you (As A.A. teaches us to do)

I WROTE MR WOUELACE And he will expect your CALL - he CAN E'MAIL you the FILE And Im SURE you CAN'T GO FROM there IF GOD TOUCHES your heart to do so - before you SAY Yes OR NO - PRAY ON it And ASK GOD to GUIDE your heart - Whats what I DO And he LEAD me to you - And Mr. WOUELACE.

I hope you ARE IN GOOD health And Spirits

TAKECARE AND GOD BLESS

Robbie

PS I STILL HAVE your letter you WROTE when my mom PASSED I READ it OFTEN when I MISS her (like on SUNDAY MORNINGS You CITED JOHN Ch 14 "MANY MANSIONS"

Governor Mark Sanford
Office of the Governor
PO Box 12267
Columbia, SC 29211

Harry M. Lovelace
31 Bo Lane
Gaffney, SC 29342
(864) 838-1381

Re: Commutation of Sentence - Robert Holland Koon

Dear Governor Sanford,

I am writing as the victim in Mr. Koon's 1986 conviction, which is set forth in the attached letter to the Attorney General of South Carolina. This conviction was obtained by police presenting unsubstantiated information to the magistrate and the grand jury, wherein they stated that the offense occurred at night when in fact the offense of a break-in of an unoccupied building (our insurance agency) occurred between 5:00 pm March 28, 1986 and 9:00 am March 29, 1986; thereby leaving several hours of daylight when this offense could have occurred.

In researching this case, it appears that the police made unfounded claims to the magistrate to obtain a warrant which resulted in the nineteen year-old defendant's guilty plea to two strikes in one guilty plea. Koon v. State (March 2007 SC Supreme Court). As the victim, I do not condone and stand firmly against such actions, and I ask you to commute his 1986 conviction for Second Degree Burglary (Nighttime) to Third Degree Burglary which would allow the Life Without Parole sentence to be reduced to time served. I believe that Mr. Koon's case is a miscarriage of justice to which he has served over twenty years, and I hope you will agree that he has paid his debt to society. The attached letter to the Attorney General sets forth the relevant facts, but the bottom line, as the victim, I ask the Governor to review the facts of this case and commute Mr. Koon's sentence to time served to correct this injustice so that this man does not spend the rest of his life in prison.

Please contact me if you have any questions. I thank you for in advance for your consideration of this request.

Respectfully yours,

Harry M. Lovelace
With Attachments
Cc: Honorable J. Mark Hayes II, Circuit Court Judge
Chief Justice Jean Toal, SC Supreme Court
Professor Patrick Flynn, USC Law School
Hon. Brandi McBee, Cherokee County Clerk of Court
Governor Mark Sanford
Ray E. Thompson, Jr., Attorney At Law
Trey Gowdy, 7th Circuit Solicitor's Office
60 Minutes, CBS
The Gaffney Ledger

The Hon. J. Mark Hayes, II
180 Magnolia Street
Spartanburg, SC 29306

Harry M. Lovelace
31 Bo Lane
Gaffney, SC 29340
(864) 838-1381

January 6, 2011

Re: Robert Holland Koon
State v. Robert Koon 86-GS-11-289 Rule 29 (b) SCR.Crim.Pro.

Dear Judge Hayes,

I am enclosing a letter to Seventh Circuit Solicitor Harold W. Gowdy, III regarding the Rule 29(b) referenced above. As stated in the letter, I am requesting a status conference between you, Mr. Barnette, Mr. Koon, and myself for the sole purpose of determining whether the 1986 Second Degree Burglary (violent nighttime) should be ***reduced*** to Third Degree Burglary (no nighttime) and the possibility of reducing Mr. Koon's sentence to the statutory maximum of twenty years.

I would very much appreciate your assistance in arranging this conference as soon as possible. Please contact me at the phone number above to advise or if you have any questions.

Respectfully,

Harry M. Lovelace

Cc: Mr. Barry Barnette, Seventh Circuit Solicitor
Mr. Michael Moran,
Mr. Holman C. Gossett, Attorney at Law
The Hon. Roger L. Couch
The Hon. Gary E. Clary
Mr. Ray E. Thompson, Attorney at Law
Mr. Gary P. Mallard, Attorney at Law

Mr. Barry Barnette
Seventh Circuit Solicitor
180 Magnolia Street
Spartanburg, SC 29306

Harry M. Lovelace
31 Bo Lane
Gaffney, SC 29340
(864) 838-1381

August 4, 2011

Re: Resentencing of Robert Holland Koon

Dear Mr. Barnette,

Under the provisions of the Victim Bill of Rights, I would request as Solicitor that you carefully review the case of State v Robert Koon 86-GS-11-289 in which Mr. Koon was indicted for Second Degree Burglary when the State did not have any proof the offense occurred at nighttime as required by 16-11-312 (b) 3) SC Code of Laws (1986). According to Mr. Koon, he entered a plea as part of a package plea deal in 1986 not knowing that he would receive two strikes at the one plea. Koon v State 643 SE2d 680 (2007). The offense that constitutes the 'second strike' was my family's insurance agency Cudd-Lovelace Agency, and as the victim, I would respectfully ask you to allow the 1986 conviction to be reduced to Burglary Third Degree so that Mr. Koon can be resentenced from Life Without Parole to twenty years for his 1998 conviction for a subsequent Second Degree Burglary. 98-GS-11-650. Koon v State Supra.

It is my understanding that the State prosecuted this individual for a nighttime burglary without any proof of Corpus Delecti of the nighttime element, and I feel as the victim that a grave injustice has been done to this man where the State can not show his second strike offense ever occurred. As a citizen of this state, I am opposed to the fact that Mr. Koon was prosecuted for nighttime entry of the insurance office (in which nothing was discovered to have been stolen) when no proof exists that it occurred at night, only that it occurred sometime between 5:00 pm March 28, 1986 and 9:00 am March 29, 1986.

I would like to meet with you to discuss this matter with you in person at your earliest convenience. I may be reached at (864) 838-1381. Thank you in advance for your consideration of this request.

Respectfully Yours,

Harry M. Lovelace

Cc: The Hon. J. Mark Hayes III
Mr. Robin File, Assistant Solicitor

Mr. Barry Barnette, Solicitor
Office of the Seventh Circuit Solicitor
180 Magnolia Street
Spartanburg, SC 29306

Harry M. Lovelace
31 Bo Lane
Gaffney, SC 29340
(864) 838-1381

January 6, 2011

Re: Robert Holland Koon
State v. Robert Koon 86-GS-11-289 Rule 29 (b) SCR.Crim.Pro.

Dear Mr. Barnette,

As the victim in the above referenced case, it is my sincere desire that Mr. Koon's 1986 Second Degree Burglary conviction 86-GS-11-289 Cudd-Lovelace Insurance Agency (3/28/1986) be ***reduced*** to Burglary Third Degree which will allow him to be sentenced to twenty years on his 1998 conviction for Second Degree Burglary 98-GS-11-650 rather than have him serve Life Without Any Possibility Of Parole (LWOP). It is clear to me that the police did not provide sufficient evidence to the magistrate that this offense definitely occurred at nighttime. See State v. Smith 493 S.E.2d 506 (Ct. App 1997). While it is not my place to accuse the detectives or solicitor of falsely swearing under oath; a very serious allegation indeed and I would not impugn their character in doing so, the evidence in this case does indicate that the nighttime element was misrepresented (to the magistrate and the Grand Jury) as stated previously in my affidavit when I contend that it occurred between 5:00 pm on March 28, 1986 (office closing time) and 9:00 am March 29, 1986, when the break-in was discovered. Therefore, it is impossible to swear under oath that this offense occurred at night; it could have just as easily occurred in the intervening daylight hours that were available between 5:00 pm and 9:00 am. I have submitted affidavits to the Attorney General and Judge Hayes in regards to these facts.

As a victim, a citizen, and a Christian, I am very upset and opposed to the fact that Mr. Koon is in jail for LWOP based on ***unsubstantiated*** evidence on my behalf as the victim. Further questions arise about the reliability of the evidence in the fact that a break-in at an adjacent location (Stylette Salon), alleged to have occurred at the same time, did not allege a nighttime element and was therefore held by the Supreme Court to at most be Third Degree Burglary and was vacated by Order Koon v. State 595 S.E.2d 456 (2004). As the copies of the enclosed warrants attest, both warrants allege "on or about", but with differing dates. If the dates themselves are uncertain as stated on the warrants, how can the assertion of nighttime element not also be called into question? This ***unsubstantiated*** allegation of nighttime on the Cudd-Lovelace warrant resulted in Mr. Koon's "second strike" and his current sentence of LWOP would not have applied had he been convicted of the same offense as Stylette. It is my understanding that without the nighttime allegation in the Cudd-Lovelace warrant (number 540173), Mr. Koon would be eligible to receive a twenty year sentence on his 1998 conviction upon resentencing. With credit for time served, he would have already completed or nearly completed his sentence. I therefore believe that a miscarriage of justice has resulted in a LWOP sentence for a

property offense with no theft included, and from my research, it is the solicitor's duty to correct this misrepresentation of the facts.

Mr.Koon has filed a Rule 29 (b) SCR.CRIM.PRO in Court of General Sessions to have this conviction reduced to Burglary Third Degree and I was referred to your office as the Rule 29(b) is on the General Sessions Court docket. Therefore, I ask that the Solicitor's office consent to this motion and allow Mr. Koon to be resentenced, in order that justice might be served. I am also requesting that a status conference between you, the Circuit Court Judge Honorable J. Mark Hayes II, Mr. Koon, and myself be held as soon as possible for the sole purpose of determining whether the 1986 Second Degree Burglary (violent nighttime) should be ***reduced*** to Third Degree Burglary (no nighttime) and if so, reducing the LWOP sentence to statutory maximum of twenty years. To assist with your review, I have enclosed copies of various correspondences regarding this matter.

I strongly and humbly request your urgent attention in correcting this injustice. Thank you for your time and I eagerly await your response.

Respectfully,

Harry M. Lovelace

Cc: The Hon. J. Mark Hayes, II, Circuit Court Judge
Mr. Michael Morin, Assistant Solicitor
Mr. Holman C. Gossett, Attorney at Law
The Hon. Roger L. Couch
The Hon. Gary E. Clary
Mr. Ray E. Thompson, Attorney at Law
Mr. Gary P. Mallard, Attorney at Law

Mr. Robin File, Asst. Solicitor
Cherokee County Courthouse
125 E, Floyd Baker Blvd
Gaffney, SC 29340

Harry M. Lovelace
31 Bo Lane
Gaffney, SC 29340
(864) 838-1381

March 30, 2011

Re: State v. Robert Koon 86-GS-11-289
Article 1, Section 24 SC Constitution (Victim's Bill of Rights) and pending Rule 29 (b) SC Rules Crim.Pro.

Dear Mr. File,

I am the victim in the March 28, 1986 Second Degree Burglary of Cudd-Lovelace Agency to which Mr. Koon (based upon my affidavit) has filed for a motion for a new trial based on after discovered evidence. Rule 29 (b) SCR Crim Pro.

First, I would like to formally request, as victim per Article 1, Section 24 paragraph 11 (of Victim's Bill of Rights) "a reasonable disposition in this case", that Second Degree Burglary (Nighttime) be reduced to by consent of the Solicitor's office to third Degree Burglary (no Nighttime). As based upon the facts of this case (and my affidavit), the state did not have any evidence to even allege a nighttime burglary occurred at all. It seems the Police Detective Richard Weaver, who signed the warrant made a mistake in alleging nighttime on our (Cudd-Lovelace) side of the building while the opposite side of the duplex (Stylette) did not allege nighttime. It is clear that the break-in of both sides of the duplex occurred at the same time, yet the alleged different offense date – 28th for Cudd-Lovelace (with nighttime) amd 29th for Stylette (no nighttime).

Mr. Koon should have never been charged with Nighttime offense as there was no proof Aliunde of the Corpus Delecti as required by State v. Smith 493 S.E.2d 506 (SC App 1997) and State v. Osborne 516 S.E.2d. 201 (1999). As the victim, I believe that I have a constitutional right pur. Art.1, Sect. 24, Para. 11, to seek a "reasonable disposition" to have Mr. Koon's charge reduced to Third Degree Burglary 16-11-313. As a citizen, a Christian, and the victim, I believe it is my duty to request this reduction. I contend justice requires this reduction as offense occurred sometime between 5:00pm on March 28, 1986 (office closing time) and 9:00 am March 29, 1986 with no proof that it occurred at night.

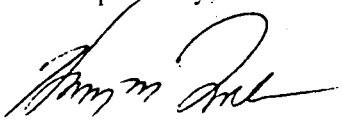
Secondly, per Art. 1, Sect. 24, Para.8 of Victim's Bill of Rights, I am formally requesting "reasonable access" to Solicitor's file and evidence in regards to the March 28, 1986 break-in of Cudd-Lovelace #86-GS-11-289. Specifically, I would like to be provided with the proof that this offense occurred at night (Corpus Delecti of Nighttime Burglary). Please mail this information to me at the above address.

Thirdly, per Art.1, Sect.24, Para. 3, I would respectfully request to be notified of any hearings and other proceedings in this case in writing ten days prior to the hearing. E.G. (Rule 29(b)).

Finally, I would like to formally request a conference with you to discuss the above matters at your earliest convenience.

Thank you for your time, and I await your response to this letter.

Respectfully,



Harry M. Lovelace

Cc: The Hon. J. Mark Hayes, II, Circuit Court Judge
Mr. Russ Racine, Attorney at Law

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF GENERAL SESSION

STATE OF SOUTH CAROLINA) # 86-GS-11-289

v.) RULE 29(B)

ROBERT HOLLAND KOON) MOTION FOR A NEW TRIAL - BASED UPON AFTER DISCOVERED EVIDENCE

DEFENDANT

TO: HENRY D. McMASTER
ATTORNEY GENERAL
HAROLD 'TREY' GOWDY III, Solicitor

The DEFENDANT, PRO SE, would hereby MOVE the COURT OF GENERAL SESSIONS to GRANT A NEW TRIAL - based upon AFTER DISCOVERED EVIDENCE - PUR. to SC RULES OF CRIM. PRO. 29(b)

PROCEDURAL HISTORY

The DEFENDANT WAS INDICTED by the CHEROKEE COUNTY GRAND JURY IN APRIL 1986 FOR SECOND DEGREE BURGLARY 16-11-312(B)3) WHICH Alleged ROBERT HOLAND KOON DID IN CHEROKEE COUNTY ON OR ABOUT the 28th DAY OF MARCH 1986 DID ENTER DWELLING OF CUDD-LOVELACE INSURANCE CO. WITHOUT CONSENT AND WITH the INTENT to commit A CRIME therein, ENTERING IN the Nighttime.

BASED upon the RECENT AFFIDAVIT OF the victim HARRY L. LOVELACE IT IS NOW KNOWN, AND CAN be PROVEN, that the SOLICITOR AND POLICE DETECTIVE RICHARD WEAVER MADE FAISE REPRESENTATION

TO the GRAND JURY TO obtain the INDICTMENT, AND to the MAGISTRATE to obtain the ARREST WARRANT, AS NO EVIDENCE HAS EVER EXISTED to show that this OFFENSE OCCURED AT NIGHTTIME. (1)

IN FACT, it CAN ALSO be shown SOLICITORS REPRESENTATION AT PLEA this OFFENSE OCCURED AT Nighttime WAS 'KNOWING USE OF FALSE TESTIMONY' which has been held to be INCOMPATIBLE with RUDIMENTARY DEMANDS OF DUE PROCESS. MOONEY V. HOLOHAN, 294 U.S. 103 (1935) SEE ALSO: Giglio v. US, 405 U.S. 150, 153 (1972) BANKS V. DRETKE, 540 U.S. 668 (2004)

IN FACT, DET. WEAVER REPRESENTATION TO the MAGISTRATE that this OFFENSE WAS A Nighttime BURGLARY WAS A KNOWN FALSE PRESENTMENT OF EVIDENCE IN VIOLATION OF MOONEY V. HOLOHAN SUPRA, AND its PROGENY.

IT IS FURTHER Alleged the SOLICITOR commited A BRADY VIOLATION when he FAILED to DISCLOSE TO DEFENSE COUNSEL that POLICE AND Victim DISCOVERED this OFFENSE AT 9 AM the FOLLOWING DAY 3/29/86 AND that OFFICE CLOSED AT 5pm the DAY BEFORE 3/28/86 LEAVING SEVERAL DAYlight hours when this OFFENSE COULD HAVE OCCURED AND SHOWING AFFIRMATIVELY that NOBODY COULD POSSIBLY ASSERT UNDER OATH this OFFENSE OCURED AT NIGHTTIME!

(1) WITHOUT The Nighttime ELEMENT this OFFENSE WOULD be AT MOST BURGLARY THIRD DEGREE 16-11-313

Thus, it is CLEAR STATE WITHHELD EVIDENCE MATERIAL to Guilt, FAVORABLE to the ACCUSED BRADY V. MARYLAND, 373 U.S. 83, 87 SCR (1963) IN U.S. V. AGURS, 427 U.S. 97 (1976). NONDISCLOSED EVIDENCE OF PERJURED TESTIMONY About which the PROSECUTOR KNEW OR SHOULD HAVE KNOWN Id.

IN Gibson V. STATE 514 SE2d. 320 (1999) S.C. Supreme COURT held that STATE WITHHOLDING OF EXCULPATORY EVIDENCE CAN RENDER GUILTY PLEA INVOLUNTARY.

DEFENDANT ASSERTS he CAN MEET the (5) ELEMENTS IN ORDER TO OBTAIN RELIEF NEWLY DISCOVERED EVIDENCE!

(1) EVIDENCE Will PROBABLY CHANGE the OUTCOME IF A NEW TRIAL IS GRANTED (2) the EVIDENCE HAS been DISCOVERED SINCE the TRIAL (3) the EVIDENCE COULD NOT HAVE been DISCOVERED PRIOR to TRIAL by EXERCISE OF DUE DILIGENCE. (4) the EVIDENCE is MATERIAL (5) the EVIDENCE IS NOT MERELY CUMMULATIVE OR IMPEACHING. Id. STATE V. NEEDS, 508 SE2d. 857 (SC 1998).

SEE: STATE V. SPANN, 513 S.E.2d. 98 (SC 1999).

(NEW TRIAL GRANTED PUR Rule 29(b) SCR. CRIM. PRO.)

RELIEF!

DEFENDANT SEEKS TO HAVE COUNSEL APPOINTED. AND to be HEARD IN OPEN COURT

NEW TRIAL.

10/10/10

Respectfully,

PRO SE

EXHIBIT 2(E) 595 SE2d 456 (Book)

COPY

STATE OF SOUTH CAROLINA)) COUNTY OF CHEROKEE)	IN THE FAMILY COURT FOR THE SEVENTH JUDICIAL CIRCUIT CASE NO.: 1993-CP-11-109 1999-CP-11-260 1999-CP-11-280
ROBERT H. KOON,)) Plaintiff,)) v.)) STATE OF SOUTH CAROLINA,)) Defendant.)	**AMENDMENT TO APPLICATION AND INCORPORATED MEMORANDUM OF LAW**

2005 SEP 22 A 11:13

The Applicant, by and through counsel, would hereby amend his Application for Post Conviction Relief.

PROCEDURAL HISTORY

1. Applicant was indicted by the Cherokee county Grand Jury on April 21, 1986, for four (4) counts of Second Decree Burglary and one (1) count of Grand Larceny. (#86-GS-11-289, 290, 291, 292).

2. Applicant was represented by Harry Kline, Esquire (deceased); and Gary Paul Mallard, Esquire; and on June 17, 1986 pled guilty, in a plea recommendation before the Honorable Jonathan Z. McKown and was sentenced to four ten-year sentences concurrent to each of the Second Decree Burglaries. No direct appeal was filed.[1]

3. Applicant filed a Post Conviction Relief February, 1987 alleging, inter alia, the plea was involuntary and the State withheld favorable evidence, and plea was coerced. The Respondent filed its Return and Motion to Dismiss

[1] 86-GS-11-290 was overturned by the Supreme Court (S.C.) on April 5, 2004, Koon v. State, 595 S.E.2d 456 (2004)

EXHIBIT A-5

on October 9, 1987. A Evidentiary Hearing was held on October 26, 1987. Applicant was represented by Wade S. Weatherford, III. Following the hearing, the Honorable Dan F. Laney, Jr. issued an Order denying relief and dismissing the application. Koon v. State, 87-CP-11-103. Wade S. Weatherford, III did not file a Notice of Appeal.

4. On November 27, 1991, Applicant filed a Writ of Habeas Corpus that was construed as a P.C.R. Application, alleging, inter alia, he was not advised of right to appeal his first PCR (87-CP-11-103). This PCR (91-CP-11-539) was summarily dismissed November 27, 1992. A Notice of Appeal was filed (pro se); and the South Carolina Supreme Court remanded the PCR for a Evidentiary Hearing to determine whether the Applicant "knowingly and willingly waived his right to Appellate Review of his first PCR Application."[2] Koon v. State, (1993-MO-308)(filed October 12, 1993).

5. The 1991-CP-11-539 Remand Hearing pursuant to Order of the Supreme Court (93-MO-308) was initially scheduled October 25, 1994, but the Applicant was incarcerated in Virginia on misdemeanor offense, and the PCR was dismissed without prejudice by Order of the HonorableThomas Ervin dated December 10, 1994. The Applicant was represented by Thomas Shealy of Cherokee County Public Defender's Office. (Same office the represented Applicant at his plea).

6. On March 14, 2001, the PCR 1991-CP-11-539 was heard before the Honorable Paul Short, Jr. (under revised case number 2000-CP-11-623).

---

[2] Under Austin v. State, 409 S.E.2d 395 (1991)

EXHIBIT A

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---

[2] Under Austin v. State, 409 S.E.2d 395 (1991)

B. Allen Bullard, Esquire "Former Assistant Attorney General" was assigned to represent the Applicant. Applicant decided to proceed pro se. The PCR Court addressed two issues:

a. Subject matter jurisdiction; and

b. Whether the Applicant knowingly waived his right to appeal the denial of the first PCR in 87-CP-11-103.

By Order dated August 10, 2001, the Court dismissed the application and denied relief.

7. A Notice of Appeal was filed, and the writ of certiorari was perfected by Andrew Grimes, Esquire of Summerville. The Supreme Ccurt granted certiorari and reversed in part, affirmed in part; Koon v. State, 595 S.E.2d. 456 (April 5, 2004), and overturned the 1986-GS-11-290 Second Degree Burglary for lack of subject matter jurisdiction; and held Applicant was entitled to Appellate Review of his 1987 PCR allegations by the Supreme Court as he did not "knowingly" waive his right to appeal of his first PCR (1987-CP-11-103) and ordered the issues of that PCR to be fully briefed by appellate counsel Andrew Grimes, Esquire.

8. At that time, appellate counsel Grimes was informed by the State the 1987 PCR transcripts were "lost or destroyed" (by the State), and Mr. Grimes, therefore, moved for a "reconstruction hearing" pursuant to China v. Parrott, 162 S.E. 2d. 276 (1968), and Whitehead v. State, 574 S.E. 2d 200 (2002), stating that he was unable to brief the appeal without the 1987 transcripts.

(5)

AFFIDAVIT
& VICTIM
04-08-10

The Supreme Court denied the "Motion to Remand for a Reconstruction of the 1987 PCR Record", holding that "In his brief, Petitioner failed to allege any specifics regarding the allegation (that the guilty plea was involuntary, and that the State withheld Brady material), id 595 S.E.2d. 457. (Footnote [7] Petitioner failed to include a copy of the 1987 Order (1987-CP-11-103) denying relief and has provided no reason why the Order could not be included in the Appendix).

9. Thus, the Applicant has never been afforded appellate review of the substance of his 1987 PCR allegations as provided by 17-27-100 (South Carolina Code of Laws) and Austin v. State, 409 S.E.2d. 395 (1991), Odom v. State, 523 S.E.2d. 753 (1999).

ISSUE ONE

10. Applicant was denied "Appellate Review" of his 1987 PCR application due to a procedural irregularity in the PCR/Appellate process when Exhibit (A) (in 1991-CP-11-339)(revised as 2000-CP-11-623), which contained the 1987 PCR Order (referenced in Koon v. State, 595 S.E.2d. 456, 457 (2004) Footnote [7]) was not provided to appellate counsel to be made a part of the Appendix in the Austin review proceedings of 595 S.E.2d. 456 as mandated by S.C.A.C.R. 227(c),(e) which requires the Appendix contain the entire lower court record of the PCR court. And 17-27-70 (SC Code of Laws) states, "If the Application is not accompanied by the record of the proceedings challenged therein the Respondent shall file with its answer the record or portions thereof that are material to the questions

raised in the application. Based on violations of SCACR 227(c),(e) and 17-27-70 the Appellate has not received "His full bite at the apple" in re: to 1987 PCR.

ARGUMENT
(Timeliness/Successiveness)

11. As a initial matter Austin reviews are not subject to 17-27-45 (a) Statute of Limitations Odom v. State, 523 S.E.2d 753 (1999).
Secondly, this is not a successive application, but merely a continuation of the 1987 PCR proceedings and Appellate Review thereon, pursuant to Austin and Odom Guidelines. More cogently, the issue of a procedural irregularity in the PCR process through the lack of a complete record of the lower court id SCACR 227, Section 17-27-70, could not have been raised at the Mach 14, 2001 PCR Hearing, as those facts were not yet in existence, but rather came into knowledge of the Applicant after the decision in Koon v. State, 595 S.E. 2d. 456(2004). And, therefore 17-27-45(c) provided Applicant one year from the date of these "material facts not previously presented or heard that requires the vacation of the conviction or sentence; the application must be filed under this chapter (17-27-45(c)) after the actual discovery of these facts by the Applicant or the date these facts could have been ascertained by the exercise of reasonable diligence.
*See SCARCR 205 which states "Upon the service of the Notice of Appeal, the Appellate Court shall have exclusive jurisdiction over the appeal. Thus. SCACR 205 prevented the Applicant from raising these claims (and the jurisdiction of the PCR Court) until the appeal in Koon v. State, 595 S.E.2d. 495 (2004) was decided April 5, 2005.

12. As a related matter, it must be noted this matter was initially raised and preserved within four (4) months of the decision in Koon v. State, 595 S.E.2d. 456 (April 5, 2004) by the July 30, 2004 filing of Koon v. State 2004-CP-11-412.

(3)

On February 15, 2005 the 2004-CP-11-412 PCR was dismissed on SCRCP Form 4, Rev. 2/96. Since that form order did not state a dismissal with prejudice under South Carolina Law, that dismissal is assumed to be without prejudice.

Nevertheless, the South Carolina Supreme Court vacated this dismissal Form 4 Order as it did not purport with 17-27-80 Factual Findings and a Motion to Withdraw the Motion for Dismissal is pending before the Honorable J. Mark Hayes, II. The 2004-CP-11-412 is as a matter of law is still pending, and the 2004-CP-11-412 Factual Issues are amended into this PCR (as amended) which precedes the filing date.

13 In Aice v. State, 409 S.E.2d. 392 (1991), in re: to 17-27-90 held "Any new grounds raised in a subsequent application is limited to those grounds that could not have been raised in the previous application."

Thus, under the PCR Statute successive post convictions are forbidden unless a Applicant can point to a sufficient reason why the new grounds for relief were not raised or were not properly raised in previous applications Aice v. State supra.

14 It is beyond obvious that the violations of 17-27-70 (in not providing records material to PCR) and Rule 227(c),(e) (not providing entire lower court record in Appendix) could not have been raised in prior PCR Application or until after April 5, 2004 pursuant to SCACR 205 (a jurisdiction lied with Supreme Court). And is sufficient reason for this PCR which is not successive, but merely a continuation of the original Austin claim 91-CP-11-539, remanded by Supreme Court 93-MO-308, (given a revised case number 2000-CP-11-623) and not fully ruled upon due to incomplete Appendix barred review by Supreme Court in Koon v. State, 595 S.E.2d. 456 (2004). While Koon v. State, 595 S.E.2d 456 (2004) granted a Austin review, that review has yet to take place on the substance of the 1987 PCR issues.

15 Thus, this PCR is not successive under 17-27-90 Aice v. State, supra, Land v. State, supra. id 17-27-45(c), held statute of limitations do not apply to Austin claims.

ISSUE ONE

ARGUMENT

16 It is clear beyond doubt Applicant entered Exhibit (A) into the lower court record on March 14, 2001 (2000-CP-11-623, Appendix page 000019, line 6-25). First, Mr. Shealy was examined at 000024, line 7-20 (etc) – second, the 1987 PCR order contained in Exhibit (A) was used to examine 1987 PCR counsel Wade Weatherford appendix of 2000-CP-11-623 (page 115 of Exhibit A) at 000030 app. Line 3 – 000037 line 25.

This conclusively shows that the 1987 PCR order inter alia, was contained within Exhibit (A) of the March 14, 2001 hearing.

Yet, this Exhibit (A) – 1987 PCR order was not provided to the Supreme Court (see: Footnote 7 of 595 S.E.2d. 456 Koon v. State). This is a procedural violation of Rule 227(c),(e) which requires the Appendix contain the entire lower court record.

In Washington v. State, 478 S.E.2d. 833 (SC 1996) held "procedural irregularities in PCR process denied Applicant due process." Likewise, Odom v. State, supra, held Applicant "entitled to one full bite at the apple", with PCR and Appellate Review.

The prejudice from this gross procedural irregularity (incomplete lower court record) is that Applicant was denied a Reconstruction Hearing because the 1987 PCR order was "mysteriously" missing from the record.

17. Notwithstanding Exhibit (A) and it contents, 17-27-70 has a mandatory requirement that "Respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application." However, the State failed to do so.

18. Thus, had the State complied with the mandatory requirements of 17-27-70, the 1987 PCR Order would have been in the record and Applicant

would in all probability received a Reconstruction Hearing in Koon v. State; 595 S.E.2d. 456 (2004).[3]

Applicant asserts this "procedural irregularity" deprived him of due process. Washington v. State, supra, and denied him Appellate Review of his Austin claim, Odom v. State, supra.

1987 PCR ISSUES

Applicant plea was involuntary as the State withheld favorable evidence, Rule 5 and Brady material, that had Applicant been apprised of this evidence (a), he would not had plead guilty (b) been able to challenge the indictment as a product of false testimony to the Grand Jury pursuant to 17-19-20, 17-19-90, 17-19-100, and 14-7-1140 SC Code of Laws and it companion statutes relevant hereto.[4]

19. (A) Guilty plea was involuntary as the State withheld the fact that there was absolutely no evidence available to show that the offense was committed at nighttime in re: 86-GS-11-289 March 28, 1986 Burglary of CUDD-Lovelace Insurance Company Gibson v. State. (The withholding of this favorable evidence prejudiced the defendant's right to show that without any evidence at all, that the burglary occurred at nighttime a True Bill Indictment could not have been properly obtained, and that some type

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[3] It must be noted initial PCR counsel was B. Allen Bullard (Esquire) the former counsel for the Attorney General's Office, who at the March 14, 2001 PCR Hearing was back at the Attorney General's Office – 2000-CP-11-623 Appendix page 000007 (line 16-21) – and he (as counsel for Applicant) allowed the State to violate 17-27-70 (in not providing the lower court records) while Applicant asserts he was not entitled to effective assistance of PCR counsel, he was entitled to counsel "free from conflict" of interests. In addition to the above conflict, Mr. Bullard was subject to a malpractice/conspiracy to violate civil rights lawsuit Koon v. Slade, 1999-CP-11-489. (Applicant asserts these two conflicts affected the adequacy of his representation, and suggests collusion of government officials with the Attorney General's Office (i.e.) 17-27-70 violations inter alia. This is a procedural error in violation of 17-27-60 appointment of counsel).

[4] While the Applicant recognizes under Austin v. State, supra, the Supreme Court would review the reconstructed record in this proceedings to determine if the 1987 PCR Order should be affirmed or reversed in regard to the Brady violation. Due to the procedural posture of this case, the Applicant respectfully request the court to make a factual finding as to whether or not a Brady violation occurred based on evidence and credibility of the witness at the hearing. Foye v. State, 335 S.C. 586 (1999)

(5)

of false testimony obviously was presented by State to obtain a indictment on this element when no evidence was available to support the indictment. Especially as the indictment was obtained in violation of State v. Capps with the prosecution officer as the sole witness before the Grand Jury. See: State v. Anderson.

More cogently, had defendant been apprised under Brady that no evidence existed to show the offense occurred at nighttime, Defendant would not have plead guilty to that element and would not have accepted package (plea).

(B) The guilty pleas to 1986-GS-11-289, 291, 292 were involuntary as there

was no evidence to show that the defendant committed these offenses; no witnesses, no fingerprints, no confession, no physical evidence or circumstantial evidence. Again, without any evidence to connect defendant to the offense, it is suspicious as to how the State obtained the indictment as a True Bill with no evidence to support its finding. Again, the prosecuting officer was the sole witness before the Grand Jury see Capps. and Anderson, supra.

Habit / Pattern of misconduct SCNE 1/06

20. More cogently, had the defendant been apprised under Brady that there was no evidence to connect him to these three (3) offenses, he would not have plead guilty, and he would have been able to challenge the manner in which the indictment was obtained (i.e.) by false testimony of the sole witness. In Evans v. State, 611 S.E.2d. 510 (2005) at 518, Footnote [7]. [11] Although this case involves the State Grand Jury, we similarly conclude that challenges to the legality and sufficiency of the process of a County Grand Jury also must be made before the jury renders a verdict in order to preserve the error for Appellate Review. 17-19-90,14-7-1140 SC Code of Laws.

21. The State withholding of favorable evidence (that no evidence existed the 86-289 Burglary occurred at night, or that defendant committed 86-289, 291, 292) deprived him of the right to show this indictment process was

tainted, (i.e.) how can a True Bill be returned with no evidence to support offense.

13th 14th offenses

22

More cogently, the defendant was induced to plead by fabricated evidence on "mud samples" on shoes that was represented as conclusive match by S.L.E.D. when no tests had been conducted. This is a Brady violation that rendered plea involuntary.

Patent Scire 406

23. The (19 year old) Applicant had been informed by police that a conclusive match had been made between his shoes, crime scene, and stolen truck in that the mud from the crime scene existed in all three places and his shoe print was a positive match. This was the only evidence in 86-GS-11-291, 86-GS-11-292. Bill Willard/P&G Motors Office offense.

24. It is asserted that had the 19 year old Applicant (or his counsel) been informed the mud sample evidence was inconclusive (or unavailable), he would not have entered the plea. See State v. Kennerly, 503 S.E.2d. 214, Kyles v. Whitley, 514 U.S. 519 (1995): Rule 5, SC Rules of Criminal Procedures.

25. It is noted in 86-GS-11-289, 290 offense of CUDD-Lovelace and Stylette Offices:, the Stylette offense did not allege a nighttime element and was reversed by the Supreme Court in Koon v. State, 595 S.E.2d. 456 (2004).

EVIDENCE NOW AVAILABLE

26. The police alleged the Stylette and Cudd-Lovelace offenses occurred at the same time, this is supportive of the theory no evidence existed of the crucial nighttime element in either Stylette or Cudd-Lovelace offenses and had this been disclosed, no evidence existed to prove nighttime, he would not have plead guilty. Thus, there is a reasonable probability the result of the trial would have been different if the suppressed evidence had been disclosed to the defense. Strickler v. Greene, 119 S.Ct. 1936 (1999) See U.S. v. Bagley, 105 S.Ct. 3375 (1985) "Favorable evidence is material under Brady only if there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different." Gibson v. State, held that prosecution withholding of

(E)

favorable evidence can render a plea involuntary, as it effects decision whether to plead or go to trial based on the evidence (paraphrased).

27. Applicant subject the prosecution's failure to disclose that (1) no evidence existed on 86-GS-11-289 that the offense occurred at nighttime would have cause him not to plead to Second Degree Burglary or accept the package pea of ten (10) years; (2) no evidence existed to place defendant at offenses 86-GS-11-289, 290, 291, 292; and (3) most crucially, that the State had no physical evidence of claimed mud samples that would connect him to the offense.

EVIDENCE NOW AVAILABLE →

28. And the result of the proceedings would have been different U.S. v. Bagley, supra, as (A) he would have had a basis to challenge and quash the indictment as there was no evidence to support its true bill and (b) defendant would have plead not guilty and been acquitted.

RELIEF: New Trial.

Respectfully Submitted:

Michael R. Jeffcoat
MICHAEL R. JEFFCOAT,
ATTORNEY AT LAW, P.A.
407 West Main Street
Post Office Box 1860
Lexington, South Carolina 29071
Phone: 803-808-9600
Facsimile: 803-808-2240

ATTORNEY FOR THE
PLAINTIFF/APPLICANT

Lexington, South Carolina

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JUMPSTART

Faith-Based Prison Rehabilitation

Former convict now leads prison ministry program.

By Andrew Doughman andrew.doughman@shj.com

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Michael Justus@michael.justus@shj.com Terran Mosley, right, talks with Tim Terry and Chris Phillips at Sun Surveillance. Mosley is active in Terry's JumpStart Ministries, which provides in-prison classes for prisoners, transitional housing for people who have been recently released from prison and employment opportunities for ex-offenders.

Meet Timothy Lee Terry: age 47, a father, a Christian, a leader of a local, faith-based prison ministry program, and an ex-convict guilty of voluntary manslaughter.

Sentenced to 30 years in 1987, Terry said his life changed when he found God in prison.

"For the first time in my life, I felt the weight lift off of my shoulders," he said of his experience in McCormick Correctional Institution. "I knew I was saved."

He was released on parole in 2002. Now he directs JumpStart Ministries, a prison ministries program for reforming inmates through God.

Terry thinks the problem is that the state's correctional system too often fails to correct behavior. There are 22,666 incarcerated men and women in South Carolina's prison system; one in three of these inmates would end up back in prison within three years if current trends continue.

"I have seen people come through the system that I've dealt with before, and obviously I'm not happy when I see them," said Barry Barnette, Seventh Circuit solicitor.

Taxpayers pay for them to return to prison again and again, at the cost of $16,000 a year.

Locally, Greenville and Spartanburg counties commit more people to prison than other counties in the state.

But Terry says almost no one who goes through his program goes back to prison. Here's how it works:

-- Inmates attend an in-prison ministry class for 40 consecutive weeks.

-- They live in transitional housing with strict rules upon release.

-- JumpStart connects them with local churches and employers for spiritual and financial support.

BEHIND BARS

When Terry talks about the night he killed his wife and his eventual journey to God, he tells prisoners that he was "tore up from the floor up."

"I tell people I used to be a dope dealer, now I'm a hope dealer," he says.

His story always addresses his youth. He often says that 99 percent of inmates are behind bars because of unresolved childhood issues.

For Terry, his problems began when he was a 14-year-old boy enrolled in a Christian school.

"I had a mama who loved God," he said. "And all of the sudden, out of the blue, this woman, she took my little .22 pistol and stuck it to her chest."

After his mother's suicide, he said he shook his fist at God and sought comfort in alcohol and drugs.

"That sent my life into a tailspin," he said. "It went from smoking marijuana to drinking liquor to doing an ounce of cocaine a night because of that raging monster inside of me."

Terry hears similar stories through JumpStart's 40-week in-prison program.

At the chapel inside Livesay Correctional Institute in Spartanburg in November, Terry's class was in its 39th week. Dozens of inmates listened to stories of bad childhoods and mistakes. Grown men broke down in tears, sang songs, read poetry.

After they told their stories and their reasons for being behind bars — most for stealing and dealing drugs — the room grew quiet when Terry revealed his voluntary manslaughter conviction.

Terry told the crowd that, following his mother's death, he dropped out of school, got married to his high school sweetheart and had a daughter and a son. Through it all, he said he kept using and selling cocaine and marijuana.

But his marriage soured, and he killed his wife one night in anger. He tried to overdose immediately after. His 3-year-old daughter and 1-year-old son were in a nearby bedroom. "I didn't want to live anymore," he said.He ended up with a 30-year sentence at McCormick Correctional.

In prison, he found lucrative ways to keep dealing marijuana.

Then he met Paul Gray.

Gray arrived at McCormick via Kairos Ministries — a national prison ministry — and took Terry to the prison library, where Terry collapsed in tears and reconciled with God.

"That event in the library took a 29-year-old man trapped in a 14-year-old's body and set him free," he said.

He got rid of the marijuana and cleaned up.

"At (the) expense of people calling me names, I said, 'Listen, y'all, I've done this stuff for 29 years, and the best it's gotten me is 30 years in this penitentiary. I'm going to try things another way,' " he said.

From living in prison to living in Spartanburg

In 2002, Terry walked free, having served 15 years of a 30-year sentence.

In his 15 years, he'd seen inmates leave prison only to repeatedly return. He set out to change that through programs that help ex-offenders make a successful transition back to society.

Terry uses pastor Rick Warren's "Purpose-Driven Life" as his lesson plan for the 40-week course for inmates who are up for parole or release within two years.

The duration helps "whittle out the riffraff," he said.

Tommy E. Timms Jr., 37, stuck with Terry's program and is now awaiting release next March. This is his third stint in prison. All of his charges are drug-related.

He says he's ready to make a change this time. He's now a team leader in Terry's in-prison program at Livesay Correctional Institution in Spartanburg.

"My real test is coming in just a few months," he said to the class. "So I ask that you all keep me in your prayers."

He's asked Terry to help him find a good church and a room in JumpStart's transitional housing, a strategy that prison officials support.

"It's very beneficial to have someone on the outside who is willing to mentor them and keep them accountable," said Lloyd Roberts, chief chaplain with the S.C. Department of Corrections.

JumpStart manages seven units of transitional housing in Spartanburg County and several other parts of the Upstate. After inmates serve their time, Terry shepherds them into JumpStart's housing, where they must abide by strict curfews and visitation limits.

Levonne Jamison, 34, served seven years for a lewd act on a minor and was released Sept. 30. He's living in one of the JumpStart houses in Spartanburg County and has recently found full-time employment.

Jamison said he grew up in the Midlands but chose to stay in Spartanburg because he knew he had to stay away from his childhood neighborhood.

"You have to leave the old behind," he said.

In prison, he said he saw people from his neighborhood get out and quickly return to prison.

"It's a revolving door," Jamison said. "They go right back to the same thing they did before. ... They go and come back and get more time."

State corrections officials say Terry's program helps break that cycle.

"The product that Tim is putting out on the table is a very good product because what they do is very much needed," said Gary Boyd, director of inmate services for the corrections department.

Boyd said the state doesn't track the percentage of JumpStart's clients who end up back in prison, but he said that rate is very low for a similar program called Changing the Way.

BREAKING THE CYCLE

The final part of JumpStart's program involves finding full-time employment for ex-felons. Terry partners with several local employers who are willing to hire people with a criminal background.

One of his employees is James Fowler, 42, who went through JumpStart's in-prison and transitional housing programs.

He recently bought a house. He also is a registered sex offender.

He said he has changed, and JumpStart is what helped him progress.

"Often, people who have been incarcerated never get that second chance from society. They cannot move forward," he said. "They're stuck. ... JumpStart provides a way out of that cycle."

For Terry, a big part of moving forward came in 2004, when he reconciled with his son and daughter.

He'd left them as toddlers when he killed their mother and tried to overdose.

Since that 2004 meeting, they've worked on their relationship, he said.

When he talks about all the woes he caused for his own children, he goes back to his own childhood.

"Ninety-nine percent of people are in prison because of childhood issues that are not dealt with, and more and more mistakes happen because of them," Terry said. "Why not stop that cycle?"

But some cycles are hard to break, and Terry knows that firsthand.

Terry's son, Jacob Lee Terry, 26, was charged with murder in August. His daughter, Jacolyn Jacobus, 28, was charged with accessory after the fact of murder.

Both are awaiting trial.