

019CP-110489

Mr. Kenneth Lee Hilton, # 354034
Broad River Correctional Institution
Marion Unit A -277
4460 Broad River Rd.
Columbia, SC 29210

BRANDY W. MCBEE

2019 JUL -8 PM 2:31

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

Date: 6-27-2019

Brandy W. McBee
Cherokee County Clerk of Court
Seventh Judicial Circuit
125 East Floyd Baker Blvd.
Gaffney, South Carolina 29340

RE: Kenneth Lee Hilton, v. State of South Carolina
Case NOS. 2012-GS-11-0226, 2013-GS-11-0017

Enclosed please find for filing and processing with the Cherokee county clerk of court office. Petition for BELATED-APPEAL-REVIEW that being file with the Cherokee county clerk of court office. The defendant has filed seeking appeal from the denial of his post-conviction relief application hearing that was held on March 27, 2015, at the Spartanburg county churthouse. The defendant proceeded pro se. Suzanne H. White, Esquire of the South Carolina office of the Attorney General represented the State. Please file the original, once filing is complete please return the clocked stamped copy to me with file date thereof. Your assistance in this matter will be greatly appreciated.

RESPECTFULLY SUBMITTED,

Sincerely,

Kenneth L. Hilton

Kenneth L. Hilton, # 354034

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM CHEROKEE COUNTY
COURT OF GENERAL SESSIONS
J. DERHAM COLE, CIRCUIT COURT JUDGE

019CP-110489

Case Nos. 2012-GS-11-0226
2013-GS-11-0017

The State of South Carolina Respondent,

VS.

Kenneth Lee Hilton, Appellant.

NOTICE OF APPEAL

Kenneth Lee Hilton, appeals his conviction and sentence in this case. The sentence was imposed by the Honorable J. Derham Cole on January 23, 2013.

SI Kenneth L. Hilton

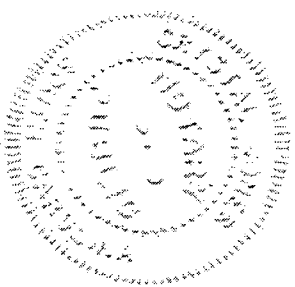
Sworn to and subscribed before me

This 27th day of JUNE 2019

Crystal Jones
Notary Public For South Carolina

My Commission Expires: July 22nd 2020

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2019 JUL - 8 PM 2:31
BRANDY W. MCBEE



THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM CHEROKEE COUNTY
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J. DERHAM COLE, CIRCUIT COURT JUDGE

19CP-110489

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The State of South Carolina Respondent,

VS.

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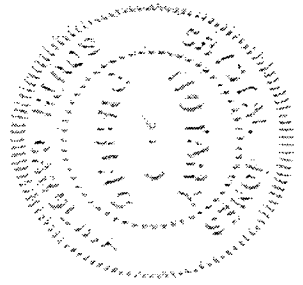
PROOF OF SERVICE

I certify that I have served the notice of Appeal on the Cherokee county clerk of court on this exact date thereof.

s/ Kenneth L. Hilton

Sworn to and subscribed before me
This 27 day of JUNE 2019
Kenneth L. Hilton
Notary Public For South Carolina
My Commission Expires: July 2nd, 2026

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2019 JUL -8 PM 2:31
BRANDY W. MCBEE



FORM 5

STATE OF SOUTH CAROLINA)

County of CHEROKEE)

KENNETH LEE HILTON, # 354034)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

Its Departments and agents,)

Alan Wilson, Attorney)

General For South Carolina)

IN THE COURT OF COMMON PLEAS

019CP-110489

APPLICATION FOR

POST-CONVICTION RELIEF

REQUEST FOR BELATED

APPEAL REVIEW

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2019 JUL - 8 PM 2:56
BRANDY W. MCBRIDE

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence Cherokee County
Clerk of court _____
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Kidnapping (12-GS-11-0226), 25 years
 - (b) Assault with intent to commit criminal sexual conduct

- (c) 2nd degree (13-GS-11-0017)
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 23, 2013,
- (b) 25 years for Kidnapping
- (c) 20 years for criminal sexual conduct 2nd degree
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty yes
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. None
- ii. None
- iii. None
- (b) the result in each such Court to which you appealed:
- i. None
- ii. None
- iii. None
- (c) the date of each such result:
- i. None
- ii. None
- iii. None
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. None
- ii. None
- iii. None
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) My counsel refused to appeal the conviction
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See attachment Ineffective assistance of counsel,
- (b) Jurisdiction venue violation, Due Process,
- (c) Competency hearing violation,
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attachment pages 1-40
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? PCR relief
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? PCR relief application only
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? None
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. None
- ii. None
- iii. None
- iv. None
- (b) the name and location of the Court in which each was filed:
- i. None
- ii. None
- iii. None
- iv. None

(c) the disposition thereof:

i. None

ii. None

iii. None

iv. None

(d) the date of each such disposition:

i. None

ii. None

iii. None

iv. None

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. None

ii. None

iii. None

iv. None

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

None

None

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. Ineffective Assistance of counsel

ii.

iii.

(b) the proceedings in which each ground was raised:

i. PCR relief application

ii. Subject matter jurisdiction

iii.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Due Process, jurisdiction venue violation,
- (b) Competency hearing violation, Exculpatory Evidence violation,
- (c) Counsel failure to raise these issues

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No appeal from the conviction
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
PCR relief application only

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Mr. Don Thompson, Esquire Public defender from Cherokee county
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trail: Mr. Don Thompson,
No post-conviction attorney represented me
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:
Remanded and Reverse

20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)
County of CHEROKEE)

VERIFICATION

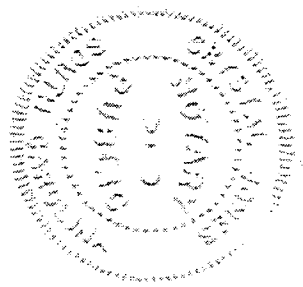
I, Kenneth Lee Hilton, 354034, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Kenneth L. Hilton

SWORN to and subscribed before me this 27th day of JUNE, 2019.

Courtney Davis (L.S.)
Notary Public

My Commission Expires: July 2nd, 2026



**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Kenneth Lee Hilton, 354034, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

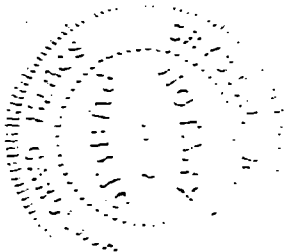
Kenneth L Hilton
Applicant

SWORN or affirmed to and subscribed before me this

27 day of June, 2017.

Cynthia Gans
Notary Public

My Commission Expires: July 22nd, 2020



STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

THE SOUTH CAROLINA COURT OF APPEALS
CASE No. 2013-CP-11-0302

Kenneth Lee Hilton, # 354034)
Petitioner,)

019CP-110489

VS.)

PETITION FOR BELATED APPEAL REVIEW

STATE OF SOUTH CAROLINA)
Respondent.)

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
BRANDY W. MCBEE
2019 JUL -8 PM 2:31

Comes now defendant Kenneth Lee Hilton, # 354034, who requests pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991) He respectfully request that this Honorable court grant him the appropriate appellate review in this case.

The applicant is presently confined at the Broad River Correctional Institution, of the South Carolina Department of Corrections. Pursuant to order of commitment from Cherokee county clerk of court. The applicant was indicted at the March 22, 2012, term of the Cherokee county grand jury for Kidnapping (2012-GS-11-0226) and Assault with intent to commit second-degree criminal sexual conduct (CSC) (2013-GS-11-0017). He was represented by Don Thompson, Esquire, on January 23, 2013, the applicant pled guilty as indicted to the aforementioned charges. The Honorable J. Derham Cole, sentenced applicant to consecutive terms of 25 years for kidnapping and 20 years for assault with intent to commit second-degree CSC. The applicant counsel did not appeal.

The applicant subsequently filed an application for post-conviction relief on May 1, 2013. A evidentiary hearing was held on March 27, 2015, at the Spartanburg county courthouse. The applicant proceeded pro-se Suzane H. White Esquire of the South Carolina office of the Attorney General represented the Respondent.

At the hearing the applicant testified on his own behalf. Also testifying was the applicant's plea counsel, Mr. Don Thompson, Esquire. The court also had before it a copy of the guilty plea transcript, the Cherokee county clerk of court records, the South Carolina Department of Corrections records.

The applicant contends that his counsel was ineffective for not filing an notice of appeal after his conviction on March 27, 2015. Furthermore, the applicant did not knowingly and voluntarily waive his right to appellate review and this therefore entitled him to a belated appeal review of the denial of his direct appeal See Whitehead-v.-State, 352 S.C. 215, 574 S.E. 2d 200 (2002). The applicant's denial of an appeal can be remedied by a petition for Belated review by his current attorney. Applicant informed his counsel that he wanted his counsel to appeal his denial from his conviction Mr. Don Thompson advised applicant that he would file an appeal on the denial from his conviction. Applicant contacted the Honorable Daniel E. Shearouse, clerk of the South Carolina supreme court on June 18, 2019, to find out the following matter is not pending before the court.

The supreme court held that appointed counsel was required to file appeal of denial of post-conviction application, even if counsel did not have a good faith explanation as to why the trial court's denial was improper. Unlike review of a conviction which is by Direct Appeal and is a constitutional right, review of a decision in a post-conviction relief matter is discretionary by way of a writ of certiorari. It is appointed counsel's duty in post-conviction relief matters to serve and file the notice of appeal. Appointed counsel was required to file notice of appeal of denial of defendant's post-conviction relief application, even if good faith argument or explanation as to why the trial court's finding was improper did not exist; in such a case, counsel was required to provide the supreme court with a letter stating that as an officer of the court.

Counsel was unable to set forth any arguable basis for asserting that the trial court's finding regarding defendant's post-conviction relief application was improper. This court should find the applicant's allegation that he is entitled to a belated appeal due to his prior Trial attorney's failure to perfected and appeal on defendant behalf is not procedurally barred and is meritorious. Where a post-conviction relief Judge determine the applicant did not freely and voluntarily waive his appellate rights; the applicant may petition the South Carolina supreme court for review of post-conviction relief issues pursuant to Austin-v.-State, 305 S.C. 453 409 S.E. 2d 395 (1991). See also King-v.-State, 308 S.C. 348, 417 S.E. 2d 868 (1992).

An applicant is entitled to seek appellate review of the denial of relief. S.C. code Ann. § 17-27-100 (1985). Applicant must seek appellate review by way of a petition for writ of certiorari with the supreme court. Review of the applicant is discretionary with the court. Austin-v.-State, 305 S.C. 453, 409 S.E. 2d 395 (1991); Knight-v.-State, 284 S.C. 138, 325 S.E. 2d 535 (1985), Although no constitutional right to counsel exists to the discretionary appeal of a collateral attack upon a conviction, the supreme court has provided for the appointment of appellate counsel in seeking appellate review of an application supreme court Rule 50, (6). The supreme court has also adopted procedures from Anders-v.-California, 386 U.S. 738 (1967), to review of an application where appointed counsel does not find any meritorious issues to appeal. Johnson-v.-State, 294 S.C. 310, 364 S.E. 2d 201 (1988). Therefore, if counsel believe that an appeal is frivolous, counsel must raise an arguable issue and move to be relieved, Id. Applicant is entitled to his "one fair bite at the apple and this includes appeal from the denial of post-conviction relief. Austin; Aice-v.-State, 305 S.C.448, 450 409 S.E. 2d 392, 394 (1991). If the applicant request an appeal and none is given, or if the record otherwise shows that the applicant did not knowingly and intellgently waive his right to appeal the (PCR) court in a successive

application may find that the applicant is entitled to a belated appeal of his first application. Odom-v.-State, 337 S.C. 256, 523 S.E. 2d 733 (1999); Austin. Procedures for review are the same as for a belated direct appeal. See SCACR Rule 227 (g). The supreme court has determined that the statute of limitations does not apply to seeking a belated appeal from a (PCR) application. Odom.

The applicant contends due to his illiteracy to the Law he was entitled to rely upon his counsel to make reasonable decision. Pursuant to U.S.-v.-Dewalt, 92 F. 30 1209 Without some authoritative guidance the defendant did not understand the appeal process counsel failure to advised the applicant of his appeal rights. The counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White.v.-State, 263 S.C. 110, 208 S.E. 2d 35 (1974). In the absence of an intelligent waiver by the defendant the counsel must either initiate an appeal or with the procedure required by Anders v.-California, 386 U.S. 738, 87 S.Ct. 1396 (1967); White-v. State, Supra. Where the post-conviction relief Judge determines that the applicant did not freely and voluntarily waive their appellate rights, the applicant may petition the South Carolina supreme court for review of appeal issues pursuant to White v.-State, See Ruel 227 (g) (1) SCACR; Davis-v.-State, 286 S.C. 290 342 S.E. 2d 60 (1986).

[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.

Roe.v.-Flor-es,ortega, 528 U.S. 470, 479 (2000). This test has been adopted for determining whether a criminal defendant who plead guilty has a right to a belated direct appeal. See Turner-v.-State, OP. NC. 26708 (S.C. supp. Ct. filed August 24, 2009) Davis Adv. Sh. No. 37 at 58);

Weathers v. State, 319 S.C. 59, 459 S.E. 2d 838 (1995).

Defense counsel was ineffective for failing to properly advise the applicant of the full scope of appellate review from an appeal of a guilty plea.

In this case this court should find that the applicant was apprised of the constitutional rights he was waiving, including his right to remain silent, right to a jury trial and right to confront his accuser. The court then found that defense counsel was not ineffective because he properly advised the applicant of these rights. However, the court overlooked the applicant argument that defense counsel did not properly advise him of the full scope of appellate review of an appeal from a guilty plea. As defense counsel was required to do so, but failed in this duty, the applicant was entitled to relief on the ground. State v. Truesdale, 278 S.C. 368, 296 S.E. 2d 528 (1982). The cardinal rule when evaluating the voluntariness of guilty pleas is to determine whether or not, they were knowingly and intelligently entered. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). Defense counsel for a criminal defendant must advise his client of the right to appeal following a guilty plea only when there are exceptional circumstances present. Weathers v. State, 319 S.C. 59 459 S.E. 2d 838 (1995).

The defendant was abandoned after his plea trial counsel did not file the direct appeal from the conviction during a critical stage of his case. Counsel was ineffective in failing to file notice of appeal upon the appointed counsel was required to file notice of appeal.

There are time when prejudice is presumed when counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, there has been a denial of sixth Amendment right that makes the adversary process itself presumptively unreliable and prejudice may be presumed. Cronic v. U.S. 466 U.S. 48, 104, S.Ct. 2039, 80 L.Ed. 2d 657 (1984); (Nance v. Ozmint, 367 S. C. 547, 626 S.E. 2d 878 (2006)).

Defendant have suffered a miscarriage of justice and his conviction only stands due to severe denial of due process and equal protection in the state court, in multiple and gross violation of the United States supreme court precedents and the United States constitution, that constitutes an outrage of mockery of Justice that the Federal courts who sworn to uphold the United States constitution should not tolerats.

The defendant sffered prejudice at the hands of trial counsel and the trial court, and the defendant's plead of guilty under North-Carolina-v.-Alford, was entered Involuntarily, unknowingly, unwillingly, and unintelligently, Hill-v.-Lockhart, 106 S.Ct. 366 (1985). See also Jordan-v.-State, 374 S.E. 2d 683 (1988).

Defendant's trial counsel's deficiencies prejudiced the applicant in that applicant would have otherwise proceeded to trial as original insisted upon, and under no circumstances would not have plea guilty under Alford otherwise had it not been for trial counsel's advise. Nevertheless, the allegation of the applicant not having pled guilty knowingly, voluntarily and intelligently probably raises questions of fact which may not be conclusively refuted by the PCR record presently before the court.

COERCED VIOLATION

The trial counsel coerced applicant into entering a guilty plea through deceptive tactics when applicant wished to stand trial by jury. The solicitor Ms. Leskanic: stated before the court that plea is being offered without negotiation or recommendation. When counsel employes an unreasonable trial strateg and make that decision without a full assessment of the facts and evidence at issue, counsel performance is considered ineffective. Cave v. Singletary, 971 F. 2d 1513 (11th cir. 1992). Based of the aforementioned matters, counsel has provided ineffective assistance.

DUE PROCESS VIOLATION

Petitioner's guilty plea failed to comply with the mandates set forth in Boykin-v.-Alabama. Due process of Law requires that before a guilty plea can be entered voluntarily and

intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. A valid waiver of these right cannot be presumed from a silent record. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In State v. Armstrong, 263 S.C. 594, 211 S.E. 2d 889 (1975), this court held that the "essence" of Boykin, was to make the requirement of rule 11 of the federal rules of criminal procedure applicable to the states. In State v. Patterson, 278 S.C. 319, 295 S.E. 2d 264 (1982), this court held that for there to be a valid waiver under the due process clause of the three constitutional right listed in Boykin, the record must clearly establish it.

In Boykin, Supra, the U.S. supreme court held that trial courts were mandated to use the utmost solicitude when canvassing a guilty plea to insure that the plea was given freely and voluntarily with a full knowledge of the circumstances surrounding the plea and the attendant waiver of right occurring with the guilty plea.

Ineffective assistance of counsel, in violation of the fourteenth and sixth Amendments of the United States constitution and Article I, section 13 & 14 of the South Carolina constitution.

Counsel should be afforded reasonable opportunity to prepare to defend the applicant and to confer as often without undue delay to advise his of his rights and to elicit matters of defense or to ascertain that potential defenses are available applicant contends that his trial counsel failed to investigate both factual and legal matter to determine if defense can be developed. It is a definitive objective description of the competency normally demanded of counsel in certain aspects of their services. And with this discretion the court should admonish that if the right to counsel guaranteed by the constitution is to serve its purpose the defendant cannot be left to the mercies of incompetent counsel.

Judge should strive to maintain proper standards of performance by attorney who are representing defendant's in criminal cases in their courts. McMann v. Richardson, 397 U.S. 759, 90 S.Ct. 1441 25 L. Ed. 2d 736 (1970), Marzullo v. State, of M.D. 561 F. R. 2d S. 56 544 Example Coles v. Peyton, 389 F. 2d 224 226 (4th cir. 1968).

Applicant further contends trial counsel was ineffective, as trial counsel's representation fell below an objective standard or reasonableness, and had it not been for trial counsel's error of ineffectiveness, there is more than a reasonable probability the outcome, had applicant gone to trial, would have been different. Trial counsel was ineffective. Glover v. State, 458 S.E. 2d 538 (1995). As a direct result of trial counsel's error and ineffectiveness, the applicant was Denied due process of Law. Denied equal protections of Law. Denied the exclusive right to a fair trial and denied effective assistance of trial counsel; thus violating applicant's 5th, 6th and 14th Amendments to the United States constitution, and in violation of the South Carolina state constitution Article I, section 3 and 14. Trial counsel was ineffective. Boykin v. Alabama, 89 S.Ct. 1709 (1969).

A reading of both of the trial and PCR transcripts in this case shows petitioner did not understand the ramifications of pleading guilty. ~~moreover~~ there is no evidence he knowingly, voluntarily, and intelligently waived his right to a direct appeal of both proceedings. See e,g. Wilson v. State, 348 S.C. 215, 559 S.E. 2d 518 (2002). ("A defendant has the procedural right to one fair bite at the apple. That is every defendant has a right to file and direct appeal and one PCR application.

Applying these principles of Law, it is clear counsel's performance was deficient because petitioner did not understand his rights, including the right to a direct appeal. Petitioner was prejudiced by the deficient performance because, but for counsel's unprofessional errors he would have insisted on going to trial.

The questions presented are whether or not the plea of guilty was involuntary or, in the alternative, was based on the inadequate assistance of counsel (discussed B. infra). The Law is equally clear. An involuntary plea is unconstitutional Machibroda v. United States, U.S. 487 (1962). This court has ruled that a plea induced by misrepresentation of defense counsel may be involuntary, Blackledge, Supra. Fn. 8. The court indicated that the question of whether or not the defense attorney misinformed his client concerning the sentencing him to 25 years for kidnapping which did not happen in this state. The incident of kidnapping occurred in North Carolina Gastonia, North Carolina see the victim statement case number 2011-15013, then you will see why defendant were tried in South Carolina for the crime of kidnapping from North Carolina.

where a state obtains a criminal conviction in a trial in which the accused is deprived of the effective assistance of counsel, the state unconstitutionally deprives the defendant of his Liberty. Cuyler, 466 U.S. at 343, 100 S.Ct. at 1175. The right to effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial United States v. Cronin, 466 U.S. 648, 658, 104 S.Ct. 2039, 2046 (1984). A guilty plea is an admission of all the elements of formal criminal charge. It can't be truly voluntary unless the applicant possesses an understanding of the Law in relation to facts. And the colloquy between applicant and his attorney should have been to the fact of the applicant needing to know precisely what he was doing, so that he would be fully aware of the prospect of going to jail or prison and so that he could be treated fairly by the prosecution. VonMalke-McCartny v. U.S., at 1969 394 U.S. 459, 89 S.Ct. 1166, 22 L.Ed 2d 418, 394 U.S. at 466, 89 S.Ct. at 1171, 22 L.Ed. at 425 (2) Arger-Singer v. Hamlin, 1972 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed. 2d 530. See, PCR Tr. P. 59, lines 1-25. and pages through 63,

The defendant is precluded from exhausting all available state Remedies.

State remedies are not deemed exhausted until the applicant utilizes all procedures available under state Law to raise his claim. See Id. § 2254(c). The applicant satisfies the exhaustion requirement by properly pursuing a claim throughout the entire appellate process of the state. See Justices of Boston Mun. Court-v.-Lydon, 466 U.S. 294, 302-03 (1984) (exhaustion requirement satisfied by presentation of claim on appeal to state supreme court from denial of motion to dismiss); See, e.g. McCandless-v.-Vaughn, 172 F. 3d 255, 260 (3d cir. 1999) (exhaustion requirement satisfied only when applicant, has exhausted remedies available in courts of state); Rust-v. Zent, 17 F. 3d 155, 160 (6th cir. 1994) (exhaustion requirement satisfied by filing required application in state appellate and supreme court); Wayne-v.-Missouri, Bd. of probation & Parole, 83 F. 3d 994, 996 (8th cir. 1996) (exhaustion requirement satisfied when petitioner presented federal claims in full round of litigation before state trial and appellate courts even though relitigation in state forum though another procedural device possible);

After appointed post-conviction counsel refused to perfect appeal the applicant began the appeal process, pro se, with notice of intent to appeal and request for appellate defense assistance. Note: Rule 71.1 is based in part on former supreme court Rule 50 (1)-(8), and has no counterpart in the federal Rule 71.1 was added by order of the supreme court on April 17, 1990, and became effective September 1, 1990). South Carolina PCR case Law: Austin-v.-State, 305 S.C. 453, 409 S.E. 2d 395 (1991), states: "The right to seek appellate review of the denial of PCR is expressly authorized by state Law. S.C. code Ann. § 17 27-100 (1985); supreme court 50(g). Whether such review is granted is discretionary with court. Night-v.-State, 284 S.C. 138, 325 S.E. 2d 535 (1985).

While we are aware the constitutional right to counsel does not extend to discretionary appeals on collateral attack, we have ruled that Anders-v.-California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 2d 493 (1976), shall continue to apply to PCR matters. Johnson-v.-State, 294 S.C. 310, 364 S.E. 2d 201 (1988); Compare Pennsylvanis-v.-Finley, 481 U.S.551, 107 S.Ct. 1990, 95 L.Ed. 2d 539 (1987). Anders requires appellate counsel to brief arguable issues despite counsel 's belief the appeal is frivolous, as a safeguard of the right to appeal. In applying Anders on PCR, we recognized a prisoner's right to the assistance of appellate counsel in seeking review of the denial of PCR Supreme court Rule 50(g) expressly provides for the appointment of competent counsel to seek appellate review of PCR. Because the petitioner is entitled to the assistance of appellate counsel on PCR, we find his allegations that counsel failed to seek review in this case sufficiently states a claim of ineffective assistance.

In the Appendix page 59, lines 1-25. Uncontested jurisdiction claims. This is my add in (Sic) filed July 9th, 2014, without objection. The add in (Sic) incorporated all applicant's claims and makes specific findings of facts and conclusions of Law to each claim cited herein all in support of the primary claim. Trial court lacked subject matter jurisdiction to accept applicant's guilty plea and convict him upon guilty pleas that were void.

Trial court's first structural defects withholding factual evidence and failed to order a mental evaluation. paragraphs 1. solicitors failed to follow State mandatory rules and South Carolina Laws for criminal guilty pleas violated applicant's constitutional due process rights to receive a fair impartial and constitutional plea hearing process. Factual evidence submitted after inquiry with almost over.

Paragraph 2. solicitor's unprofessional errors invalidated applicant's guilty plea and created a jurisdictional structural defect by withholding factual evidence of the applicant's psychological, mental history from the trial judge misleading the judge into believing applicant's case was ready for trial.

Withholding factual evidence is a serious offense. paragraph 3. Furthermore, assistant solicitor had applicant's official records. Thus the solicitor's office knew applicant had a history of mental illness dating back into his childhood.

Therefore, before announcing that Mr. Hilton is pleading guilty to indictment, prosecutor had a year to obtain the psychological mental evaluation to determine if applicant was competent enough to make the guilty plea alleged by the Assistant solicitor. See transcript page number 4, lines 12 and 14, see South Carolina constitution 17-24-20(a) (1976). Solicitor had a duty to order evaluation. Appendix C-1. Paragraph four. Although assistant solicitor stated Mr. Hilton is pleading guilty to two indictments the court only produced one written indictment waiver which was the criminal sexual conduct offense. See transcript page number 9.

The COURT: Just one second, Sir.

MS. WHITE: Yeah.

YOUR HONOR: Mr. Hilton has filed numerous documents and I was going through to make sure that your Honor had copies of what -- I was trying to figure out exactly what he was reading from.

THE COURT: uh - huh. (Affirmative).

MR. WHITE: I know that you have documents that were filed March 31st, April, I believe, 7th, and April 14th, and then September 5th, so ingoing through our file, it appears I've found a document that we perhaps need -- that it appears Mr. Hilton is reading from that you --

THE COURT: uh -huh. (Affirmative).

MS. WHITE: -- will need that we can may be make a copy of, but

THE WITNESS: I've got relevant trial transcript. Sir. in my paperwork over there if you would allow me to give it to you. I would be happy to do so.

THE COURT: I have the trial transcript.

THE WITNESS: Okay.

MS. WHITE: I'll bring this up, if I may, your Honor?

THE COURT: I think I've got a copy --

MS. WHITE: Do you?

The one do you think he's reading from?

MS WHITE: Well, it looked -- it sounds like he's reading from one that's dated I've got may 19th, 2014, and I'm trying to make sure that one is put together with --

THE COURT: You can approach the witness and look at the document if you'd like.

MS. WHITE: Okay.

(PAUSE)

MS. WHITE: is this what you're reading from?
that doesn't look exactly the same.

THE WITNESS: No.

MS. WHITE: All right.

THE COURT: But I can give you the relevant trial transcript
if you'd like it. I have copies for the court and the respondent.
I have no problem, Sir. I do have them.

THE COURT: I'm looking at the trial transcript right now.

THE WITNESS: Thank you Sir.

THE COURT: Yes, Sir.

MS. WHITE: And, your Honor, that's -- I'm, sorry
for interrupting.

THE COURT: Has he --

MS. WHITE: I've got several documents that are -- that appears
to be copies and kind of some repetitive. So I'm having a hard
time figuring out exactly where we are. But, I believe the
gist of them is in the documents that we have.

THE COURT: Okay. Well, I'm gonna let -- how much longer do you
have to read, Sir?

THE WITNESS: Just the rest of this right here.

THE COURT: Let's just let him finish.

MS. WHITE: Okay.

THE COURT: Go ahead.

THE WITNESS: Transcript page 9, lines 11 and 12.
plea invalidated by no mental/competency evaluation.
judge stated on the record I have on this indictment this one.

Paragraph 5. Assistant solicitor ---

THE COURT: Just one second. You quoted page what now? I'm looking
at the transcript. page 9. you said.

THE WITNESS: uh-huh. (Affirmative).

THE COURT: Line what?

THE WITNESS: 11 through 12.

THE COURT: 11-through 12. 11 starts but I have on this indictment

THE WITNESS: On this indictment.

THE COURT: What appears to be your initials indicating that you wanted to waive presentment to the Grand Jury.

Is that the question you're referring to ?

THE WITNESS: There was not two indictments. there was only one indictment there.

THE COURT: He's only he's only going over one indictment with you. Criminal sexual conduct.

THE WITNESS: uh-huh. (Affirmative).

THE COURT: Okay. I'm gonna -- I see what you're talking about. Go ahead.

THE WITNESS: Yeah, judge stated on the record I have on this indictment.

THE WITNESS: uh-huh. (Affirmative).

THE WITNESS: Paragraph number 5. Assistant solicitor failed to demonstrate on record the applicant's pleas were submitted in compliance with miranda warning proceeding 383 ---

THE COURT: I compliance with what?

THE WITNESS: Proceedings.

THE COURT: No, No, backup there.

THE WITNESS: Miranda warnings.

THE COURT: Miranda warnings.

THE WITNESS: Proceedings 383 --

THE COURT: Okay. Go ahead, Sir.

THE WITNESS: -- U.S. at 467 or that he had been determined by a mental physician to be competent enough to make the guilty plea and stand trial for his offenses.

Paragraph 6. Trial records are silent as to how the court and solicitor determined applicant was competent enough to make a voluntary knowing guilty plea to two indictments as alleged by the assistant solicitor.

Paragraph 7. It's understandable a trial judge has no choice but to depend on solicitor's judgment that the accused is ready for trial. However, the judge erred in accepting the assistant solicitor's erroneous assumption. The Honorable court lacked jurisdiction to assume applicant was competent enough to make knowing, voluntary, independent guilty plea without a mental competency mental evaluation. South Carolina constitution Article 5 section 21. Primary purpose of judicial hearing is to determine the accused is competent enough to stand trial for the charges faced with. See State-v.-Jones, (1985). 285 S.C. 286, 330 S.E. 2d District 286.

Paragraph 8. A prosecution's primary duty is to prepare the accused for trial and ensure the guilty shall not escape punishment or innocent offer in United-States-v.-Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed. 2d 342, (1976).

Paragraph 9. Applicant's conviction must be set aside, void proceeded to the court's lack of jurisdiction to accept the applicant's guilty plea. Anderson-v.-Anderson, 299 S.C. 110, 115 382 S.E. 2d District 897, 900 (1989). The court held we think it's elementary with no need for citation of authority that the acts of the court with respects to a matter which it has no jurisdiction are void. Accord-Lillard-v.-Searson, 170 S.C. 304, Southeast, Southeast second 499, (1933).

Paragraph 10. Both assistant solicitor and trial counsel withheld factual evidence of the applicant's psychological and mental, mental illness history from the trial judge. As a result of assistant solicitor and trial counsel's unprofessional act and omission to canceled evidence of the applicant's psychological mental history from the trial judge, intentional or not, is irrelevant. The errors violated due process, invalidated applicant's guilty plea and deprived the Honorable court of

jurisdiction to accept the applicant's guilty plea because the court should have stopped the proceedings and ordered a mental competency evaluation upon being advised of applicant's history of psychological and mental illness that continue throughout his childhood. Transcript page 20, lines 8 through 23, transcript page 26, lines 17 through 22. See Pate-v.-Rberson, 383 U.S. 375. 385-86, 1966.

Competency hearing was required in light of defendant's history of irrational behavior. U.S.-v.-Jones, 95 F. 3d 274, 277, sixth circuit, (2007). Due process violated by court's failure to order a competent hearing because court ruled defendant competent without a mental evaluation. See transcript page 6, 20, and 26, irrational behavior. Paragraph 11. Assistant solicitor and trial counsel canceled factual evidence created a structural defect, invalidated the guilty plea. Then the court's failure to order an evaluation deprived the court of jurisdiction to accept the applicant's guilty plea. See Anderson-v.-Anderson, 299 S.C. 111, 115 382. Southeast second District 897, 900, (1989) The court held we think it's elementary with no need for citation of authority, that the acts of the court with respects to a matter which it has no jurisdiction are void.

THE COURT: You already read that to me. Sir, you've already read that to me.

Are you going back over things?

THE WITNESS: No, this is still a part of my process here.

13. Assistant solicitor --

THE COURT: Just one second. Don't read the same stuff to me that quote I've heard before.

THE WITNESS: But it's -- Yes, Sir. it's --

THE COURT: Let's move on to something else.

THE WITNESS: 13. Assistant solicitor's actions contitute prosecutor misconduct. Counsel's defective performance constituted ineffective trial counsel in violation of the sixth and fourteenth Amendment. U.S. constitution Article 1, section 3 created a jurisdiction structural defect.

Strickland Id. 466 U.S. at 694, 104 S.Ct. at 2068 (1984).

14. Trial counsel like the assistant solicitor had applicant's North Carolina records and also South Carolina State SLED official records and record provided counsel was acting as if plea negotiate with the assistant solicitor and counsel was ineffective as both counsel and plea negotiator. At 15. At one point applicant shows serious mental pstchological, irrational behavior loosing (sic) control to lack the ability to respond to the judge's questioning . See Transcript page number 6, lines 2 through 15. The trial -- the court repeatedly asked applicant if he had a defense for his actions. Then appeared the court judge appeared to get upset with applicant's irrational behavior. Counsel still canceled applicant's mental history. Paragraph 16. Then the court aked counsel if he could answer the judge. Trial counsel told the court, in relevant part, I was explaining to him, judge, that we really have no defense. Transcript page number 6, lines 15 through 18. the court should have stopped the proceedings and ordered applicant to submit to the Department of mental Health for a psychological evaluation, South Carolina section 44-23-410(1) or, two, South Carolina code of Laws (1976). Section 17-24-28. Code of Laws, (1976), counsel should have motioned the court for the court, instead of canceling applicant's condition from the Honorable judge. Counsel knew applicant needed mental treatment. 17. Counsel's lack of representation to provide a legal defense forced applicant to plead guilty violated due process shifted the burden to applicant to provide an excuse and a defense for his offenses. Counsel repeatedly told applicant, during jail visits, we don't have a defense for your actions. See transcript page number 6. lines 15 through 18.

THE COURT: How much more are you planning on reading.

THE WITNESS: I got 28 issues, Sir.

THE COURT: Oh, I don't doubt you have 28 issues. That's not, that's not, that's not what I asked you.

How much -- if there's a written document that you'd like to submit to the court, I'll let the state look at it and I can have it made a part of the record and I can read it. You don't have to read it to me.

So my question is, if that's a written document that you'd like to have the court consider why don't I let the state take a look at it, if they don't object to it, then I can have it made a part of the record and then I'll be happy to read it.

THE WITNESS: um. when it comes to the PCR hearing, aren't I allowed to be -- I mean as pro se aren't I allowed to have a full meaningful. The court: Oh, absolutely. But there's no need for you to read that to me when I can read it myself. Is there anything wrong with me reading it?

THE WITNESS: No. Sir.

THE COURT: That's the point I'm trying to make.

THE WITNESS: Yes, Sir.

THE COURT: So do you want the state to take a look at it and see you -- if there's any objection to us making that a part of the record?

It goes into the record just like you reading it into the record.

THE WITNESS: Yes, Sir. that's fine, Sir.

THE COURT: All right. you want to step up and take a look at the document he's reading from. Because it's -- look like he's probably got 45 pages or there.

MS. WHITE: Okay.

THE COURT: Some of it is repetitive.

MS. WHITE: The state has no objection your Honor, to any of that because I believe the majority of it probably is in the record based on what--

THE COURT: Allright. will, hand it down to the to the court reporter --

MS. WHITE: Okay.

THE COURT--- and let's have it made then as an applicant's Exhibit.

(whereupon, the documents were marked as applicant's Exhibit no.1 and received into evidence at this time)

THE CHEROKEE COUNTY SOLICITOR'S OFFICE CANCELED FACTUAL EVIDENCE

The solicitor Leskanic and trial counsel Mr. Don Thompson, public defender for Cherokee county, canceled factual evidence from the trial judge until the inquiry was almost over. That was 20 and 26. The punishment stage was ready to start. Solicitor and counsel officials are sworn to honesty and both had custody of all North Carolina state mental history files. Therefore, both knew defendant's mental history dating back throughout his childhood.

THE COURT: Yes, Sir. I've already told you that I'm aware that you're alleging that the attorneys withheld information from the court about defendant's mental history. I've heard you make that allegation several times.

The defendant asserts upon information and belief the court should not have sentenced defendant for the crime. Under the Blair-Hearing, the due process the conviction of a person who is mentally incompetent and this right cannot be waived by a guilty plea. U.S.A. const. Amend. 14 Godinez-v.-Moran, 509 U.S. 389, 113 S.Ct. 2680 (1993). Jeter-v.-State, 308 S.C. 230, 232 417, S.E. 2d 594, 595 (1992). The accused must have sufficient capability to consult with his counsel with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him. Jeter, 308 S.C. at 232, 417 S.E. 2d at 596. Petitioner bears the burden of showing by a preponderance of the evidence that he was incompetent at the time of his plea. The records indicate the petitioner was never taken to William S. Hall Psychiatric Institute for an adequate competency determination as the court issue it order.

The petitioner entered his plea with his attorney failure to obtained an adequate competency determination of defendant understanding of the proceedings against him Jeter, 308 S.C. at 232, 417 S.E. 2d at 596. Petitioner bears the burden of showing by a preponderance of the evidence that he was incompetent at the time of his plea trial.

The trial judge erred by finding defendant could comprehend the seriousness of the trial before a competent hearing could be properly prepared. When ever a judge of the circuit court or county court, or family court has reason to believe that a person on trial before him charged with the commission of a criminal offense, is not fit to stand trial because such person lacks the capacity to understand the proceedings against him or to assist in his own defense a result of a lack of mental capacity the judge shall; order examination of such person by two examiners designeted by the Department of Mental Health or the mental retardation Department or both, such examination shall be made within fifteen days after the court's order such person committed for examination and observation to an appropriate facility for a period not to exceed fifteen (15) days, The report to such examination shall be admissible as evidence in subsequent hearing pursuant to § 44-23-430. The records does not reflects any report from the appointment of defendant from the Mental Health Department of William S. Hall Psychiatric Institute. The records does not reflects any report from William S. Hall psychiatric Institute to prove that the Cherokee county took Mr. Hilton for an examination. There is no observation of the defendant. No date this where made, the premise of the constitutional right to be present is that the defendant has the right to participate in his own defense. Indeed need to participation by the defendant is ordinary essential to assure that witnesses are fully cross-examined, exculpatory facts are presented, courts are challenged when necessary, etc. But if defendant is mentally incapable of participating in his defense, the right to be present is nullity. It follows that it would be fundamendally unfair to try a defendant who is incompetent. Not surprisingly the supreme court has held that the due process clause prohibits the criminal prosecution of a defendant who is not competent to stand trial. Drope-v.-Missouri, 420 U.S. 162 (1975); Pete-v.-Robinson, 383 U.S. 375 (1966).

- Petitioner's case is one of clear and plain manifest injustice not only of his plea trial but there after to a gross degree. Petitioner's plea trial was extremely unfair.

An attorney's performance is deficient if it is not reasonable under prevailing professional norms. Id. When a defendant pleads guilty in exchange for trial counsel's promise of certain sentence, and does not receive that sentence, his guilty plea is invalid. Craddock v. State, 327 S.C. 303, 499 S.E. 2d 251 (1997). This is true even where the defendant has admitted factual guilty. Petitioner reasonable believed based on counsel representation, that he would receive a fair sentence for his guilty pleas.

In Rodriguez-Penton v. United States, No. 15-6306 (6th cir. 2018), the United States court of Appeals for the sixth circuit held the petitioner had to meet the Strickland standard in order to prevail on a claim of ineffective assistance of counsel, a standard tailored to the guilty plea context in Lafler v. Cooper, U.S. 156, 162-63 (2012). The court held that the first prong of the test was met because counsel had been objectively unreasonable.

Here, the court discussed the second prong within the context of guilty pleas, first citing Hill v. Lockhart, 474 U.S. 52 (1985) Hill entered sixth Amendment ineffective assistance of counsel claims to the guilty plea context, but held that Strickland prejudice requires a showing of a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial. The court noted that Missouri v. Frye expanded this holding "Frye thus clarified that individuals who allege ineffective assistance of counsel during the plea process may satisfy the prejudice prong even without a showing that they would have gone to trial were it not for counsel's deficient performance.

INEFFECTIVE ASSISTANCE OF COUNSEL

The defendant have suffered a miscarriage of Justice and his conviction only stands due to denial of the due process and equal protection in the state court in multiple and gross violation of the United States supreme court precedents and United States constitution, that constitutes an outrage of mockery of Justice that the Federal courts wno sworn to uphold the United States constitution should not tolerate.

The proper standard for attorney performance is that of reasonable effective assistance. Sosebee-v.-Leaks, 293 S.C. 531, 362 S.E. 2d 22 (1987). Citing Strickland-v.-Wasington, 466 U.S. 668 (1984). See also Butler-v.-State, 286 S.C. 941, 334 S.E. 2d 813 (1985). Under this evidence defendant had no defense prepared at all, and received ineffective assistance of counsel. Martinez-v.-State, Supra. Frett-v.-State, 298 S.C. 54, 56, 378 S.E. 2d 249 (1988). Under these circumstances, he is entitled to relief. When it is clear that where even a single error on the part of defense counsel which affected the rights of defendant is shown to be the product of neglect or ignorance a denial of effective assistance of counsel has been established. Salie-v.-North-Carolina, 587 F. 2d 636 (4th cir. 1978).

If the defense attorney makes a serious mistake which could effect the trial reversal is required even if the attorney was generally competent. Trombly-v.-Anderson, 439 F. Supp. 1250, 1256 (1977). Aff'd 584 F. 2d 807 (6th cir. 1978); Hyman-v. Aiken, 824 F. 2d 1405 (4th cir. 1987).

The United States supreme court has recently recognized that defense counsel must conduct a reasonable investigation to discover all reasonable available mitigation evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor.

Wiggins v. Smith, 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed. 2d 471 (2003) citation omitted). Particularized prejudice inquiry unnecessary, Frett v. State, 298 S.C. 54, 56, 378 S.E. 2d 249, 251 (1988).

The U.S. supreme court stated that representing a criminal defendant entails certain basic duties. Counsel's function is to assist the defendant, and hence counsel owes the petitioner a duty of loyalty, and duty to avoid conflicts of interest... from counsel's function as assistance to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decision and to keep the defendant informed of important developments in the course of the prosecution. Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process. These basic duties neither exhaustively define the obligations of counsel nor form a check list for judicial evaluation of attorney performance. In any case presenting an ineffective claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances. Strickland v. Washington, Supra.

SUBJECT MATTER JURISDICTION VIOLATION

A applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown-v.-State, 343 S.C. 342, 540 S.E. 2d 846 (2001), overrule in part by Gentry, 610 S.E. 494, However, '[c]ircuit courts obviously have subject matter jurisdiction to try criminal matter. "Gentry, 610 S.E. 2d 494; See also S.C. const. Art V § 7. Thus, the applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The applicant's conviction involved a criminal charge in General Sessions court Thus, the circuit court had subject matter jurisdiction.

One of our South Carolina court's primary functions in the interpreting of a statute is to ascertain the direct intention of the Legislative intent and apply the statute according to its literal meaning. In construing such a statute, the words or its language must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute operation. statute 24(1). The literal meaning and Legislation intent of our common Law statute, section 17-19-30 (1976) is quite clear cut by its language. The common Law requirements in South Carolina remain the same on every particular they stood at common Law of olden times State-v. Judges, 208 S.C. 497, 38 S.E. 2d 715, 7119 (1946).

As stated in State-v.-Smalls, 364 S.C. 343, 613 S.E. 2d 754 (2005), Although, an indictment does not confer subject matter jurisdiction, due process requires that a criminal defendant be properly served with a valid indictment, State-v.-Coleman, 17 S.C. 473, 1882 WL5605 (18882). The indictment in question here, the Kidnapping was not valid and the circuit court lacked subject matter jurisdiction in this particular case. State-v. Perry, 70 S.E. 304 (1911).

The applicant is entitled to vacation of the conviction and sentence as a matter of pure Law and Justice in this instant case. State-v.-Smalls, 613 S.E. 2d 754 (2005).

See page 16, lines 9-25. The defendant contends that the state of South Carolina did not have subject matter jurisdiction to try him on the Kidnapping charge. Because this Kidnapping occurred in Gastonia, North Carolina when defendant's pick up the victim Katherine Hawkes, around six o'clock in the evening on July 11th 2011. It started in Gastonia, North Carolina that is where Kathy Hawkes, was living at the time. It was about six o'clock in the evening. She was walking from where she and her father were staying to get a check cashed. The defendant pulled up in his jeep. She thought she recognized him as a man that had given she and father a ride on a couple of prior occasions. He asked her if she needed a ride where she was going. She told him she was going to get this check cashed and she would take a ride. She thought she recognized him she got into his vehicle with him. Where he was supposed to turn to take her to the check cashing place, he turned in the opposite direction she told him that he was going the wrong way and he began to tell her that he was going to have his way with her.

Tr. P. 17, lines 1-25. page 18, page 19, page 20, and page 21. See this part of the transcript?

He get on I-85 from Gastonia North Carolina and headed toward Cherokee county South Carolina. During this time Kathy had her purse with her she had her phone with her. She told defendant that she had asthma and her inhaler was in her purse. She was able to dial 911. There was an open line with Gastonia County 911 that recorded the conversation going on in the vehicle. I have it to play for the court at a later time.

The jeep was a rag top jeep, so there is some noise with it, but you hear her tell him to "please pull over and let me out."

Ms. Leskanic: Your Honor, the only thing further from the state, as far as presentation, the defendant does have a prior record. It include four convictions for second degree sexual offense and three convictions for indecent liberties with a child. Those are North Carolina convictions that occurred from offense dates of June and July of 1995. I have marked those convictions as court's Exhibit 5.

Se Tr. 24, lines 13-25. Mr. Hilton: Judge, he says that he met this young lady about two an a half weeks before this incident. He says, he was coming home from work one day. There was traffic on the interstate. He cut through Gastonia North Carolina.

He says that since his wife had died, he had been in the habit of picking up prostitutes. And he says this young lady is on the side of the road. He picked her up. They went back to the Knights Inn Hotel there in Gastonia North Carolina where she had a room with her father and that they -- defendant paid her forty dollars for sex that day. He says for about the next two weeks that continued on almost a daily basis, that he would go by and pay forty dollars for sex. He says that after about two weeks she told him that she needed four hundred dollars. And that if he gave her four hundred dollars, that he could have all the sex he wanted. He tells me that he didn't have that , but he got her two hundred the next day, and then got her the additional two hundred a day or two later. He says after that, though, he would go by there and she wouldn't be there, and several days later he went by with him going by and her not being there.

Tr. P. 25, lines 1-25. Obviously there is -- there is two things that -- I think the truth is always somewhere in the middle.

There is two things that I think may point to a little bit of truth in this. one is if you look at her statement, she identified the defendant as Bobby. She knew him as Bobby. And he and I talked about that and he said that he don't never give a prostitute his real name. He always just gives them a made up name. He says "that's the name I gave her. not Kenneth, but Bobby, and she identified defendant as Bobby.

Anyway he went by the Hotel and the dad was there and the dad told defendant she just left walking. She's down the road. He said he went down there. He said she was walking through the parking lot at a Curtis Mathis store. He says she came over and got in his car with him and they talked a little bit. He says she was drinking. And all of this happened in Gastonia North Carolina. She had been drinking and the toxicology report from that day does indicate she had alcohol in her system. He says that they talked a little bit. He said finally he raised the four Hundred dollars she told him she had his money and there is nothing he could do about it. He said when that happened he got angry and lost it. And from that point it went as you have heard on the tape that was.

See case number 2011-15013

JURISDICTION DEFECTS

Did the trial court have subject matter jurisdiction to enter a conviction or impose a sentence upon indictment number 12-GS-11-0226, Kidnapping that involved a different jurisdiction North Carolina. The victim: Katherine Lucas Hawkes, have given a statement on the incident on July 11, 2011, Cherokee county 911 received a call from the victim stating that she had been taken from North Carolina against her will, brought to Cherokee county South Carolina, and sexual assaulted by an unknown male. The victim was not familiar with the area and could not provide the operator with her exact location. Through the victim providing landmarks to the operator, deputies located the victim in a cemetery in the 500 block of quarry Road in the Blacksburg area of Cherokee county. The victim was discovered nude from the waist down only wearing a shirt covering the top half of her torso. Detective Harvey Owens responded to the scene as well as crime scene investigators Jimmy Henson, and

Billy Anthony. Detective Owens observed the victim to be visibly shaken and vomiting. EMS was called to the scene. While waiting on medical personal, the victim stated to Detective Owens that she was walking down Franklin Blvd. Which is in Gastonia North Carolina when a white male driving a white in color jeep pulled into the parking lot of Badcock Furniture store and offered her a ride. The victim stated that she though the individual defendant had given her and her dad a ride in the past and that he told her his name was "Bobby" the victim stated that the suspect was driving a white jeep with a soft top. The victim described the suspect as a white male with short faded red hair, blue/green eyes red freckled shin, and 6'foot tall approximately 250 pounds (see Detective Owens investigative notes). The victim was transported by EMS to Upstate Carolina medical Center where a sexual assault kit and examination was performed. While a UCMC Detective Owens interviewed the victim further and took a formal statement. The victim stated that after the suspect picked her up on Franklin Blvd. In North Carolina that he was supposed to take her to a checking Advance to cash her father's benefit check. The victim stated the suspect took a wrong turn and merged on to interstate I-85. headed south it was at this time the victim dialed 911 on her cell phone while it remained in her purse. The victim stated that suspect would not let her out of the vehicle. She stated that while traveling down the interstate that the suspect began grabbing between her legs and punching her in the side.

(See Katherine Lucas Hawkes, statement) The crime was processed by C.S.I. Anthony and Henson. Recovered from the crime scene, were the victim's blue jean shorts and contents from her purse (see crime scene report and photos). the following morning July 12, 2011, Detective Owens contacted Jennie Hyman with the Gastonia North Carolina 911 Center in reference to attempting to locate a possible 911 call made by the victim while she was in the vehicle with the suspect.

Ms. Hyman emailed Detective Owens an audio file containing a 15 minute and 4 second audio of the victim being assaulted by the suspect (see Gastonia North Carolina 911 Disk). Detective Owens also was provided an audio disc from Cherokee county 911 of a econd 911 call made by the victim after she escaped from the supect (see Cherokee 911 Disk). Detective Owens sopke with the victim again on July 12, 2011 Over the phone. The victim wanted the detective to kown that she remembered the suspect was wearing prescription eye glasses with gold/balck brown frames on that same date Detective Owens also spoke with the manager of the Badcock Furniture store located in North Carolina on Franklin Blvd.

Detective Owens was advised that there was no video footage covering the parking lot. Detective was told by the victim that she was possible picked up in the Aaron's rental store parking lot beside Badcock Furniture store there in Gastonia North Carolina. On July 12, Detective Owens and Burgess viewed video footage from Aaron's rental store but were not able to obtain suitable footage covering the parking lot. Detective Owens also sent audio files of abduction and assault to Joe West, of the state Law Enforcement Division for enhancement. Mr West advised if an arrest is made in this matter that he could provide audio equipment to enhance the recording for court purposes. On July 22, 2011, the victim met with Debbie Golf, a forensic artist with the state Law Enforcement Division. After meeting, Detective Owens was provide a sketch of the suspect besed off the victim's description. On January 23, 2012, Detective Owens placed Hiltion in a line up for the victim. The line up was presented 6. Months after the attack. The victim was unable to pick out the suspect in the line up. Detective Owens signed warrants for Kidnapping from North Carolina which the Kidnapping occurred in North Carolina and not in the State of South Carolina the sexual assault took place in South Carolina. Not the Kidnapping because that offense occurred in Gastonia, North Carolina was out of the State of South Carolina jurisdiction this Kidnapping happened in North Carolina this should been a North Carolina issue. South Carolina does not have subject matter jurisdiction over North Carolina cases.

Under the South Carolina constitution, no person may be tried for any crime in circuit court except on a presentment of an indictment of a grand jury of the county where the crime has been committed or unless he waives presentment of is tried for an offense whose elements are included within a properly indicted S.C. const. Art I § 11. Joseph-v.-State, 351 S.C. 571 S.E. 2d 280 (2003). Additionally, a person may be convicted with irrelevant, prejudicial evidence of uncharged had act. Rule 404 (b)SCRE. State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

JURISDICTION DEFECTS OUTSIDE THE STATE

A defendant may move to dismiss an indictment or information because of lack of jurisdiction. Jurisdiction relates to several concepts. A court may lack jurisdiction over the subject matter. Examples include a felony tried in a court of inferior jurisdiction, a crime occurring outside the state, or a federal crime tried in state court the court may also lack jurisdiction over the defendant.

Jurisdiction of the sovereign over the offense

The jurisdiction of a state to define and punish offenses is limited only by the state and federal government may assert exclusive jurisdiction over particular offenses and thereby deprive the state of jurisdiction. However, unless the federal government has clearly preempted state action in this manner, jurisdiction over offenses. Unless federal Legislation regulating a particular crime manifests a clear intention to preempt the field, the offense is considered to be within the concurrent power of both sovereignties.

In order for a state to have jurisdiction over an offense, some part of the criminal transaction must have occurred within its geographical boundaries. Some offenses committed within the state are not crime because the crime is against the federal government and not against the state. However, some offenses committed in the state may be punished by both the state and federal government. Where the situs of the crime is within the state, exclusive jurisdiction over the land may be that of the federal government and thus preclude state prosecution of an act committed on federal land. It is within the power of the federal government to assimilate state criminal Laws into the federal Law governing such enclaves. On the other hand, the federal government may define and punish offenses committed in a federal enclave which are entirely at odds with the Law of the state in which the enclave is situated.

A state only has jurisdiction of offenses committed within its borders. Some part of the criminal transaction must have occurred within the geographical boundaries of the state. This jurisdictional concept is often confused with venue which refers to the local jurisdiction of where an offense is tried. So long as a criminal act has been committed in the state. Jurisdiction over the offense does not depend upon the physical presence of the actor at the time of his commission. Neither does the consummation elsewhere of a criminal act which was commenced in the state deprive that state of jurisdiction over the offense.

Likewise, there is no requirement that the consequences of a criminal act occur in the state in order to give it jurisdiction over the offense. The one indispensable element necessary for jurisdiction over the offense is the commission of some portion of the criminal transaction within the physical boundaries of the state.

Look of jurisdiction over the offense can be raised in a motion to dismiss. It may also be raised after trial since it relates to subject matter jurisdiction, where a court acts without jurisdiction its proceedings are void and cannot be raised as double jeopardy.

Jurisdiction over a person

Jurisdiction over a person is essentially the physical power of a sovereignty to subject the person to its will. The creation of personal jurisdiction by force or other illegal acts has been repeatedly upheld. In a few instances, a person may be within the physical reach of the sovereignty without creating personal jurisdiction. For example, the doctrine of federal supremacy might possibly preclude the assertion of personal jurisdiction over a person who is physically within reach of the sovereignty if he has diplomatic immunity.

As a general rule, however, personal jurisdiction exists when ever a person is found within the boundaries of the state or is otherwise within the reach of its judicial process. The person need not be a resident or a citizen to be subject to the personal jurisdiction of a sovereignty. So long as the person participated in the commission of some criminal act in the state his physical absence from the state when it was committed does not preclude the exercise of personal jurisdiction over him thereafter.

Personal jurisdiction is the physical power of the sovereign over a person, and thus may be conferred by waiver or consent. However, subject matter jurisdiction is the power of the court over the subject matter of the action and cannot be created or waived by parties to the action. venue, or local jurisdiction, can be waived. Assuming that a court has jurisdiction over a certain class of cases, the prosecution must prove that the necessary elements of the crime charged were perpetrated in the place alleged to be the situs of the offense. This establishes local jurisdiction of the offense, and is called venue is said to be jurisdiction, but lack of venue does not deprive a court of jurisdiction to adjudicate the case. Its judgments are merely voidable rather than void.

Art. 111 § 2 of the United Staes constitution provides that criminal trials "shall be held in the state where the said crimes shall have been committed" this safeguard is reinforced by the command of the sixth Amendment vicinage clause which been deemed to provide the defendant, at least in federal trials, with a right to venue before an impartial jury of "the state and district wherein the crime shall have been committed. Johnston v. United States, 351 U.S. 215 (1958). State constitutions sometimes provide parallel provisions.

Ordinarily a crime is committed in one place. However, because some offenses may be committed in more than one place, venue may be proper in any location where the crime began, continued, or was completed some offenses are said to be continuing in nature because the elements of the offense repeat themsevles,

and the offense therefore recurs over a period of time in several different places. For example, the offense of Kidnapping begins when the defendant takes the victim into custody, and the offense continues in each place where the victim is moved. Embezzlement requires both the conversion of the property and duty to Account for the property, which may occur in different places, some statutes, such as 18 U.S.C. § 3237, permit venue in any place where the crime was begun or where criminal acts or the forbidden result occurred.

PROOF OF VENUE

Venue is a matter to be proved during trial. The court has the obligation to decide as a matter of Law whether the incidents which occurred in the place were sufficient to say that the crime was committed there. The factfinder must then decide whether those events actually did occur within that place. Circumstantial evidence may be relied upon to establish the place in which the offense was committed. If venue is in two or more places, the place in which process is first issued may have exclusive venue during the pendency of the prosecution.

As a practical matter, venue is seldom contested in a pretrial motion to dismiss unless the lack of venue is evidence from the face of the indictment or information. The defendant raises lack of venue in a motion for a directed verdict or in a motion for a new trial, where the claim is that the prosecution failed to prove venue. Venue jurisdiction may be waived by the intentional or inadvertent failure to raise the issue.

DUE PROCESS CLAUSE VIOLATION

The United States constitution guarantees a criminal defendant the right to present a complete defense through the due process clause of the fourteenth Amendment and the sixth Amendment. Crane v. Kentucky, 476 U.S. 683, 690 (1986); State v. Schmidt, 288 S.C. 301, 303, 342, S.E. 2d 401, 402 (1986)(holding the sixth Amendment "constitutionalizes" the right to present a defense in a criminal trial). [T]he constitution guarantees criminal defendants a meaningful opportunity to present a complete defense, Crane, 476 U.S. 683, 690 (quoting California v. Trombetta, 467 U.S. 479, 485 (1984)). South Carolina's constitution provides similarly. "Any person charged with an offense shall enjoy the right ... to be fully heard in his defense ... "S.C. const. Art. I, § 14; see also S.C. code Ann. § 17-23-60 ("Every person accused shall, at his trial, be allowed to produce witnesses and proofs in his favor ...).

"Few rights are more fundamental than that of an accused to presently witnesses in his own defense". Taylor v. Illinois, 484 U.S. 400, 408 (1988)(citing Chambers v. Mississippi, 410 U.S. 284, 302 (1973)).

The need to develop all relevant facts in the adversary system is with fundamental and comprehensive.

The ends of criminal justice would be defeated if judgments were to be funded on a partial or speculative presentation of the facts. Id. at 408-409 (quoting United States v. Nixon, 418 U.S. 683, 709 (1974)). The right to offer the testimony of witnesses ... is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Id. at 409 (quoting Washington v. Texas, 388 U.S. 14, 19 (1967)). Without question or hesitation, the United States supreme court declared [t]his right is a fundamental element of due process of Law. Id. Undermining the "ostensible

integrity of the investigation" is one method by which a defendant may present a defense. See Kyles v. Whitley, 514 U.S. 419, 448 (1995). "Evidence is relevant if it tends to establish or to make more or less probable some matter in issue upon which it directly or indirectly bears." Schmidt, 288 S.C. at 303, 342 S.E. 2d at 403 (citing Assoc. Mgmt. v. E.D. Sauls constr. Co., 279 S.C. 219, 305 S.E. 2d 286 (1983)); see also Rule 401, SCRE (defining relevant evidence). Further, "[e]vidence which assists a jury at arriving at the truth of an issue is relevant and admissible unless otherwise incompetent." Id. citing Toole v. Salter, 249 S.C. 354, 154 S.E. 2d 434 (1967)); see also Rule 402, SCRE ("All relevant evidence is admissible, except as otherwise provided Evidence which is not relevant is not admissible.

In State v. Page, 406 S.C. 272, 287, 750 S.E. 2d 623, 631 (Ct. App. 2013), this court held the trial judge abused his discretion by finding the proffered testimony offered by the defendant was not relevant.

EQUAL PROTECTION OF THE LAW

Equal protection clause protects all persons the equal protection of the Laws extends to the guilty as well as the innocent, and to the criminal as well as the Law abiding citizen. State-v. Middleton, 207 S.C. 478, 36 S.E. 2d 742 (1946). The equal protection clause of the fourteenth Amendment was passed originally to secure the rights of new negro citizen, but it is obviously applicable to all citizens. Eslinger-v.-Thomas, 340 F. supp. 886 (DSC 1972), aff'd 476 F. 2d 225 4th cir. 1973).

STATUTE ISSUES

It is well established that interpreting a statute, the court's primary function is to ascertain the intention of the Legislature when the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning. Furthermore, in construing a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Finally when a statute is penal in nature, it must be construed strictly against the state and in favor of the defendant. State-v. Blackman, 304 S.C. 270, 273, 403 S.E. 2d 660, 662 (1991), accord, Kerr-v.-State, 345 S.C. 183 547 S.E. 2d 494 (2001).

C O N C L U S I O N

WHEREFORE, applicant respectfully prays this Honorable court will allow him to have his fair bite at the apple to exhaust all available state remedies through the appropriate appellate procedures available under state Law.

RESPECTFULLY SUBMITTED,

s/ *Kenneth Lee Hilton*

Kenneth Lee Hilton, # 354034

EXCULPATORY EVIDENCE VIOLATION

The trial record clearly shows that there were questions concerning the kidnapping charged that occurred in North Carolina In United-states-v.-Huggs, 713 F. 2d 39, at 42 (3rd cir. 1983), cert denied 104 S.Ct. 725 (1984), the court held that exculpatory evidence "applies both to materials going to the heart of a defendant's guilt of innocence and to materials that might well alter the jury's judgment of the credibility of a criminal prosecution witness." (citing Giglio-v.-United-States, 405 U.S. at 154). Conviction must be set aside if false testimony was not corrected by prosecutor that could have effected the judgment of the jury. Hernandez-v.-Estelle, 624 F. 2d 313 (5th cir. 1981).

The defendant contends that the Cherokee county solicitor for the seventh judicial circuit court and trial counsel Don Thopson, Esquire for the Cherokee county Public Defender office, canceled factual evidence from the trial judge. Until the inquiry was almost over. The solicitor and defense counsel officials are sworn to honesty and both had custody of all North Carolina state mental history records of defendant therefore, both of them knew defendant's mental history records dating back throughout defendant's childhood. And also the records of the victim Katherine Lucas Hawkes, her North Carolina, Authorized criminal Justice Agency use only. Contact contributing Agency for specific/more Data about charges and/or Dispositions. because additions or deletions may be made at any time, a new copy should be requested when needed for subsequent use.

Page - 01 Date 12/10/2013.

PLEASE ENCLOSED FIND THE CRIMINAL RECORDS OF THE VICTIM KATHERINE LUCAS HAWKES, FROM NORTH CAROLINA, CRIMINAL JUSTICE AGENCY.

Brady-v.-Maryland, 373 U.S. 83 (1963), prohibits the State from withholding evidence that is material and exculpatory of an accused. where a specific request for exculpatory evidence is made, reversal is required if the evidence might have effected the outcome of the trial. United-States-v.-Agurs, 429 U.S. 97 (1976).



19CP-110489

ICHR 003FD41B85 from SCCH

SPTSL416
.ICHR.003FD41B85.SCCH.20121210 11:50:24
TO: SPTSL416-42383 20121210 11:50:24 003FD41B85
FROM: SCCH-13900677 20121210 11:50:23

ICHR REQUEST FOR RAP SHEET
ORI-SC042015A FBI-300278TB3 PUR-C
ATN-TRENT, D

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING
AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-12/10/2012 TIME-11:42:29
REQ ORI-SC042015A 7TH JUDICIAL CIRCUIT
SID-SC01373996 FBI-300278TB3
NAME-HAWKES, KATHERINE LUCAS SEX-F RACE-W
HEIGHT-505 WEIGHT-150 EYES-BLU HAIR-BRO SKIN- BORN-WV
FPC- HENRY-
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFFIS

DATE RECORD ENTERED--07/05/2001 DATE OF LAST UPDATE--10/24/2005

ADDITIONAL IDENTIFIERS
NAME BIRTH DATES MARKS SOC SEC MISC NUM
HAWKES, KATHERINE LORINE
HAWKS, KATHERINE LORINE TAT ABDOM

CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC

HAWKES, KATHERINE LUCAS 06/20/2001
SC0460000 YORK CNTY SO
ATN-
WARR-G796016

ARREST CHARGE 01-ASSAULT AND
BATTERY
OFFENSE DATE-06/20/2001
PHOTOGRAPH AVAILABLE

CIT-C/L, 22-05-150-MISDEMEANOR
DOC-R84
WARR-G796016

COURT CHARGE 01-SIMPLE ASSAUL
T AND BATTERY
COURT DISP-CONVICTED; SENTENCE
UNKNOWN
COURT DATE-07/11/2001
ATN-

HAWKS, KATHERINE LORINE 06/06/2002
SC0460000 YORK CNTY SO
ATN-
WARR-15762CE
CIT-56-5-2940(1)-MISDEMEANOR

Exhibit E-1 of 3 .pg

CIT-56-5-2940 (1) -MISDEMEANOR
DOC-R84
WARR-15762CE

ARREST CHARGE 01-DRIVING
UNDER THE INFLUENCE 1ST
OFFENSE
OFFENSE DATE-06/06/2002
PHOTOGRAPH AVAILABLE

COURT CHARGE 01-DRIVING UNDER
THE INFLUENCE 1ST OFFENSE
COURT DISP-CONVICTED;30 DAYS
OR \$737 COMMITMENT
COURT DATE-07/10/2002
ATN-

HAWKES, KATHERINE LUCAS
SC0460000 YORK CNTY SO
ATN-
WARR-G389554
CIT-16-11-620-MISDEMEANOR

11/20/2002

ARREST CHARGE 01-ENTERING
PREMISES AFTER WARNING
OFFENSE DATE-11/20/2002
PHOTOGRAPH AVAILABLE

WARR-G389555
CIT-N/A-MISDEMEANOR

ARREST CHARGE 02-SIMPLE ASSAU
LT AND BATTERY
OFFENSE DATE-11/20/2002

CIT-16-11-610-UNCLASSIFIED
DOC-R84
WARR-G389554

COURT CHARGE 01-TRESPASSING
COURT DISP-NON-CONVICTION;
NOT GUILTY
COURT DATE-02/04/2003
ATN-

CIT-N/A-MISDEMEANOR
DOC-R84
WARR-G389555

COURT CHARGE 02-SIMPLE ASSAU
LT AND BATTERY
COURT DISP-NON-CONVICTION;
NOT GUILTY
COURT DATE-02/04/2003

HAWKES, KATHERINE LUCAS
SC0460000 YORK CNTY SO
ATN-
WARR-H061065
CIT-44-53-375 (A) -FELONY

12/19/2002

ARREST CHARGE 01-POSS LESS
THAN ONE GRAM ICE/CRACK
COCAINE 1ST
OFFENSE DATE-12/19/2002
PHOTOGRAPH AVAILABLE
COURT CHARGE 01-POSS LESS
THAN ONE GRAM ICE/CRACK
COCAINE 1ST
COURT DISP-CONVICTED;TIME
SERVED
COURT DATE-03/06/2003
ATN-

DOC-03GS4600733
WARR-H061065

HAWKES, KATHERINE LUCAS
SC0460000 YORK CNTY SO

02/10/2004

Exhibit E, -2 of 3, pg

CASE-200400000655
 ATN-
 WARR-71658BH
 CIT-56-1-440-MISDEMEANOR

ARREST CHARGE 01-DRIVING
 WITHOUT A LICENSE
 OFFENSE DATE-02/10/2004
 PHOTOGRAPH AVAILABLE
 PALM PRINTS AVAILABLE

WARR-F916263
 CIT-16-13-30(B) (2)-FELONY

ARREST CHARGE 02-GRAND LARCEN
 Y, VALUE \$5,000 OR MORE
 OFFENSE DATE-02/10/2004

CIT-16-13-30(B) (2)-FELONY
 DOC-00GS46
 WARR-F916263

COURT CHARGE 01-GRAND LARCENY
 , VALUE \$5,000 OR MORE
 COURT DISP-NON-CONVICTION;
 NOLLE PROSSED
 COURT DATE-03/25/2004
 ATN-

BASED ON SEARCH OF SCLED CJIS CCH FILE USING FBI/300278TB3
 REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SCLED CJIS RECORD INDICATES SUBJECT HAS OUT OF STATE ARREST INFORMATION
 REQUEST FORWARDED TO NCIC FOR OUT-OF-STATE INFORMATION
 INFORMATION FROM OTHER STATES TO FOLLOW THRU NLETS VIA YOUR TERMINAL

INQUIRY WILL BE FORWARDED TO: N C I C W A N T E D P E R S O N S

 INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
 PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
 CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
 THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
 FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
 DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

** S C CJIS END OF RECORD **

Exhibit - E, -3 of 3, pg



CR 000840F7FD from NLETS

019CP-110489

SPTS416
.CR.000840F7FD.NLETS.20121210 11:50:34
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FROM: NLETS-4257789 20121210 11:50:33
CR.NCIII0000
09:49 06792
12/10/2012 04638 SC042015A

*1D43007AFF

TXT

HDR/2L011D43007AFF2QR

ATN/TRENT, D

***** CRIMINAL HISTORY RECORD: *****

***** Introduction *****

This rap sheet was produced in response to the following request:

Subject Name(s) HAWKES, KATHERINE LUCAS
FBI Number 300278TB3
State Id Number [REDACTED]
Request Id UNKNOWN
Purpose Code C
Attention TRENT, D

The information in this rap sheet is subject to the following caveats:

BASED ONLY ON SID NUMBER (NC)
THIS CRIMINAL HISTORY IS FOR A MULTI-STATE RECORD. (NC)
THIS RESPONSE CONTAINS ONLY NORTH CAROLINA CHARGES. (NC)
A MULTI-STATE NCIC RESPONSE WILL BE PROVIDED BY THE FBI. (NC)
THIS CRIMINAL HISTORY RECORD INFORMATION ON THE ABOVE-NAMED INDIVIDUAL
IS A CERTIFIED COPY SUBSTANTIATED BY FINGERPRINTS, AS IT APPEARS IN THE
SBI/DCI FILES. STATE/FEDERAL REGULATIONS REQUIRE A ONE-YEAR RECORD OF
DISSEMINATION. * * * CAUTION * * * CHANGES TO THIS RECORD MAY OCCUR AT
ANY TIME AND A NEW INQUIRY SHOULD BE MADE FOR SUBSEQUENT USE. THIS
RECORD MUST NOT BE USED AFTER 2013-03-10 (NC)

***** IDENTIFICATION *****

Subject Name(s)

HAWKES, KATHERINE LUCAS
HAWKES, KATHERINE LORINE LUCAS (AKA)
LUCAS, KATHERINE (AKA)

Subject Description

FBI Number 300278TB3 State Id Number NC0955841A (NC)
Social Security Number [REDACTED] Driver's License Number [REDACTED]

Exhibit F 1 of 4 pg

Sex Female	Race White	Skin Tone Fair
Height 5'06"	Weight 155	Date of Birth [REDACTED]
Hair Color Brown	Eye Color Brown	
Place of Birth North Carolina		

***** CRIMINAL HISTORY *****

==== Cycle 1 =====

Tracking Number	01
Earliest Event Date	2002-01-15 Incident Date 2002-01-15

Arrest Date	2002-01-15
Arrest Case Number	172422
Arresting Agency	NC0361200 RANLO PD
Subject's Name	HAWKES, KATHERINE LUCAS
Offender Id Number	KM9434T
Charge	01
Charge Literal	SIMPLE ASSAULT
Statute	(14-33(A); NC)
Severity	Misdemeanor
Charge	02
Charge Literal	FIRST DEGREE TRESPASS
Statute	(14-159.12; NC)
Severity	Misdemeanor

Court Disposition	(Cycle 1)
Court Case Number	2002CR 050690
Court Agency	NC036025J GASTON CO DIST COURT - GASTONIA
Charge Literal	FIRST DEGREE TRESPASS
Statute	(14-159.12; NC)
Severity	Misdemeanor
Disposition	(2002-05-22; Dismissal Without Leave (By DA))
Court Comment	Special Condition: NOT GO ON PREMISES OF AMERICAN METAL FABRICATORS

Court Disposition	(Cycle 1)
Court Case Number	2002CR 050689
Court Agency	NC036025J GASTON CO DIST COURT - GASTONIA
Charge Literal	SIMPLE ASSAULT
Statute	(14-33(A); NC)
Severity	Misdemeanor
Disposition	(2002-05-22; Dismissal Without Leave (By DA))

==== Cycle 2 =====

Tracking Number	02
Earliest Event Date	2004-09-25 Incident Date 2004-09-14
Arrest Date	2004-09-25
Arrest Case Number	212217
Arresting Agency	NC0360600 GASTONIA PD COMMUNICATIONS

Exhibit F, 2 of 4 pg

Subject's Name HAWKES, KATHERINE LUCAS
 Offender Id Number TA1576C
 Charge 01
 Charge Literal INJURY TO REAL PROPERTY
 Statute (14-127; NC)
 Severity Misdemeanor

Booking Case Number
 Booking Agency NC0360600 GASTONIA PD COMMUNICATIONS

Court Disposition (Cycle 2)
 Court Case Number 2004CR 065393
 Court Agency NC036025J GASTON CO DIST COURT - GASTONIA
 Charge Literal INJURY TO REAL PROPERTY
 Statute (14-127; NC)
 Severity Misdemeanor
 Disposition (2004-12-20; Dismissal Without Leave (By DA))
 ===== Cycle 3 =====

Tracking Number 03
 Earliest Event Date 2011-06-23 Incident Date 2001-08-13

Arrest Date 2011-06-23
 Arresting Agency NC0360600 GASTONIA PD COMMUNICATIONS
 Subject's Name HAWKES, KATHERINE LUCAS
 Offender Id Number 7382CKY
 Charge 01
 Charge Literal TRESPASS, 2ND DEGREE
 Statute (14-159.13; NC)
 Severity Misdemeanor
 Charge 02
 Charge Literal ASSAULT, SIMPLE
 Statute (14-33(A); NC)
 Severity Misdemeanor
 Charge 03
 Charge Literal ASSAULT, SIMPLE
 Statute (14-33(A); NC)
 Severity Misdemeanor

Booking Case Number
 Booking Agency NC0360600 GASTONIA PD COMMUNICATIONS

Court Disposition (Cycle 3)
 Court Case Number 2001CR 054327
 Court Agency NC023025J CLEVELAND CO DIST COURT - SHELBY
 Charge Literal SIMPLE ASSAULT
 Statute (14-33(A); NC)
 Severity Misdemeanor
 Disposition (2011-07-01; Dismissal Without Leave (By DA))
 Court Comment Special Condition: -
 Court Comment Special Condition: WOULD NOT ACCEPT

Court Disposition (Cycle 3)
 Court Case Number 2001CR 054328
 Court Agency NC023025J CLEVELAND CO DIST COURT - SHELBY
 Charge Literal SIMPLE ASSAULT

Exhibit F, 3 of 4 pg

Statute (14-33(A); NC)
 Severity Misdemeanor
 Disposition (2011-07-01; Dismissal Without Leave (By DA))
 Court Comment Special Condition: -
 Court Comment Special Condition: SFF DEPT WOULD NOT ACCEPT.

----- Cycle 4 -----
 Tracking Number 04
 Earliest Event Date 2012-07-02 Incident Date 2012-07-02

 Arrest Date 2012-07-02
 Arrest Case Number 201203923
 Arresting Agency NC0550000 LINCOLN CO SO
 Subject's Name HAWKES, KATHERINE LORINE LUCAS
 Offender Id Number YJ8801M
 Charge 01
 Charge Literal ASSAULT WITH A DEADLY WEAPON
 Statute (14-33(C)(1); NC)
 Severity Misdemeanor

 Booking Case Number
 Booking Agency NC0550000 LINCOLN CO SO

 Court Disposition (Cycle 4)
 Court Case Number 2012CR 052236
 Court Agency NC055025J LINCOLN CO DIST COURT LINCOLNTON
 Charge Literal ASSAULT WITH A DEADLY WEAPON
 Statute (14-33(C)(1); NC)
 Severity Misdemeanor
 Disposition (2012-07-16; Dismissal Without Leave (By DA))
 ***** INDEX OF AGENCIES *****

Agency RANLO PD; NC0361200;

 Agency GASTONIA PD COMMUNICATIONS; NC0360600;

 Agency LINCOLN CO SO; NC0550000;

 Agency GASTON CO DIST COURT - GASTONIA; NC036025J;

 Agency CLEVELAND CO DIST COURT - SHELBY; NC023025J;

 Agency LINCOLN CO DIST COURT LINCOLNTON; NC055025J;

* * * END OF RECORD * * *

Exhibit F, 4 of 4 pg

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2019 JUL -8 PM 12:11

BRANDY W. MCBEE



Mr. Kenneth Lee Hilton, # 354034
Broad River Correctional Institution
Marion Unit A - 277
4460 Broad River Rd.
Columbia, SC 29210

Cherokee county clerk of court
Brandy W. McBee
Seventh Judicial Circuit court
125 East Floyd Baker Blvd.
Gaffney, South Carolina 29340

