

STATE OF SOUTH CAROLINA)
County of GREENVILLE)
Eugene Thomas # 222351)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

RECEIVED

FEB 26 2019

v.

S.C. SUPREME COURT

APPLICATION FOR

State of South Carolina)
)
)
)
)

POST-CONVICTION RELIEF

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 McCORMICK CORR. INST. 386 Redemption Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence GENERAL SESSION Thirteenth Judicial Circuit Court 305 E. North St. Greenville S.C. 29611
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) 2009-GS-2309350 ARMED ROBBERY
 - (b) 2009-GS-2309350 WEAPONS / Poss. DURING VIOLENT CRIME

(c) 2009-GS-23-009349 - Burglary 3rd Degree

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 9-11-2012 - LIFE without PAROLE

(b) 9-11-2012 - FIVE (5) YEARS CONCURRENT - Time Serve

(c) 9-11-2012 - FIVE (5) YEARS CONCURRENT - Time Serve

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty Not Guilty

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. The South Carolina Court of Appeals

ii. IN THE COURT OF COMMON PLEAS

iii. IN THE SOUTH CAROLINA SUPREME COURT

(b) the result in each such Court to which you appealed:

i. CONVICTION AFFIRMED FOR ALL (3) THREE CHARGES

ii. CONVICTION AFFIRMED

iii. WAITING FOR DECISION AS OF 11-26-18

(c) the date of each such result:

i. HEARD SEPTEMBER 09, 2014 - Filed October 15, 2014

ii. DISMISSED Oct. 27, 2016

iii. Waiting For Decision

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. UnPublish Op. No. 2014-UP-360

ii. UnPublish Op.

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) DENIED DUE PROCESS IN VIOLATION OF MY 5th, 6th, 8th AND 14th AMENDMENTS
- (b) NEWLY DISCOVERED EVIDENCE AND FRAUD UPON THE COURT
- (c) THE COURT WAS WITHOUT JURISDICTION TO IMPOSE SENTENCE.
WHICH IS SUBJECT MATTER JURISDICTION.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED MEMORANDUM OF LAW
- (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? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (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. DIRECT APPEAL WHICH WAS DENIED
- ii. PCR DENIED BUT WAITING ON DECISION FOR CERTIORARI IN S.C. SUPREME COURT.
- iii. Ø
- iv. Ø
- (b) the name and location of the Court in which each was filed:
- i. SOUTH CAROLINA COURT OF APPEALS, COLUMBIA S.C.
- ii. THE COURT OF COMMON PLEAS, COLUMBIA S.C.
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Denied
- ii. Dismissed But waiting For decision on writ Certiorari
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. DENIED October 13, 2014
- ii. DENIED NOVEMBER 4, 2016
- iii. _____
- iv. _____

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

- i. Ø
- ii. Ø
- iii. _____
- iv. _____

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?

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- 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) _____
- (b) _____
- (c) _____

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? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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. Scott D. Robinson SC Bar # 65351 P.O. Box 10042 Greenville SC 29603, Trial Counsel.
Timothy Gehret 723 Schuyler Ave SE ATLANTA GA, 30312, Direct Appeal Counsel.
- ii. ROBERT M. DUDEK P.O. Box 11589 Columbia SC 29211-1589 PCR Counsel
ROBERT M. PACHAK P.O. Box 11589 Columbia SC 29211-1589 Writ CERTIORARI Counsel.
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Scott Robinson, Trial Lawyer
Timothy GEHRET, Direct Appeal Lawyer
- ii. ROBERT M. DUDEK, PCR Lawyer
ROBERT M. PACHAK, Writ CERTIORARI Lawyer
- iii. _____

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

TO BE RESENTENCED

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

VERIFICATION

I, Eugene Thomas, 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.

Eugene Thomas

SWORN to and subscribed before me this 20
day of Feb., 2019.

Rudolph Waldeman (L.S.)
Notary Public

My Commission Expires: 9.30.26

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

I, Eugene Thomas, 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.

Eugene Thomas
Applicant

SWORN or affirmed to and subscribed before me this

20 day of Feb, 2019.

[Signature]
Notary Public

My Commission Expires: 9-30-26

STATE OF SOUTH CAROLINA)
County of Greenville)
)
Eugene Thomas, #222351)
Applicant,)
)
v.)
)
The State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
In The 13th Judicial Circuit

C/A _____

MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR POST CONVICTION
RELIEF

Come now, the Applicant presents his Memorandum of Law, and would show the following unto this Honorable Court:

STATEMENT OF THE CASE

PROCEDURAL HISTORY

Petitioner is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court of Greenville County. During its May, 2010 Term, the Greenville County Grand Jury indicted Petitioner for third-degree Burglary (2000-GS-23-9349), Armed Robbery (2000-GS-23-9350, Count 1), and Possession of a Weapon During the Commission of a Violent Crime (2000-GS-23-93580, Count 2). Scott D. Robinson, Esq., represented Petitioner.

On September 10, 2012, Petitioner proceeded to trial before the Honorable R. Markley Dennis, Jr. and a jury. The jury convicted Petitioner of third-degree burglary, possession of a weapon during the commission of a violent crime, and the lesser included offense of attempted armed robbery. Judge Dennis sentenced Petitioner to life imprisonment without the possibility of parole for attempted armed robbery pursuant to S.C. Code Ann. §17-25-45. He received a concurrent five (5) years imprisonment for the third-degree burglary and weapon convictions.

A Notice of Appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Thomas, O.P. No. 2014-UP-360 (S.C. Ct. App. Filed October 15, 2014). The Remittitur was sent on November 3, 2014.

On May 7, 2015, Petitioner filed an Application for Post Conviction Relief. Respondent made its Return on November 30, 2015 requesting an evidentiary hearing be convened. An evidentiary hearing was held initially on August 24, 2016 at the Greenville Courthouse before the Honorable John C. Hayes, III. At the conclusion of the hearing, the record was left open because Petitioner's alibi witness was not available to testify. The hearing reconvened on August 27, 2016. Petitioner was present at the hearing and was represented by Brian P. Johnson, Esquire. Respondent was represented by Patrick L. Schmeckpeper, Esquire, of the South Carolina Attorney General's Office. Petitioner testified at the hearing. Additionally, trial counsel Scott D. Robinson, Esquire, Demeco Thomason, and Yvonne McBee also testified. Thereafter, Petitioner filed his Petition for Writ of Certiorari and Appendix that is now waiting for judgement.

ARGUMENT

Now comes Applicant to show the Court that Applicant was sentenced illegally in violation of Applicant's 5th, 6th, 8th, and 14th Amendments of the U.S. Constitution and the State Law of the State of South Carolina.

Applicant was sentenced by the Honorable Markley Dennis, Jr. in Greenville County on September 11, 2012 to concurrent terms of (5) five years for third degree burglary, (5) five years for possession of a weapon during the commission of a violent offense, and life without parole for attempted armed robbery.

Under the law, Section §16-1-60 of the 1976 Code, as last amended by Act No.184 of 1995, is further amended to read:

"Section 16-1-60": For the purposes of definition under South Carolina law: A violent crime includes the offenses of murder (Section 16-3-10), and armed robbery (a) and attempted armed robbery (b) (Section 16-11-330). These offenses specifically enumerated in this section are considered violent offenses.

Applicant argues that it was unconstitutional for the State of South Carolina to sentence Applicant to life without parole because of Applicant's out-of-state conviction of 2nd degree murder in the State of Florida. In which is defined in the State of South Carolina as "manslaughter" (Section 16-1-50). And Applicant's attempted armed robbery conviction under (Section 16-11-330).

The State of South Carolina used both convictions, (Section 16-1-50), as an out-of-state conviction and Applicant's attempted armed robbery conviction in the State of South Carolina to sentence Applicant to life without parole under S.C. Code of Laws Title 17, Chapter 25-Judgement and Execution of (17-25-45) of (1) most serious offense; (2) A serious offense; and (3) any combination of the offenses listed in items (1) and (2).

By classifying bothe convictions as violent offense and defining (16-11-330) to section 16-1-60 of the 1976 Code and amending Applicant's out-of-state conviction (16-1-50) to Section 16-1-60 under Act No.184 H.B. No.3151; as to require all new offenses to be classified pursuant to Sections (16-1-10) and 16-1-20; to amend Sections 16-1-40 and 16-1-50.

Without the original legislative Bill H. 4323 of 1994 (Ratification No.585 of 1994; H.B. No.3151 Act No.184, and 1995 Act No.7 Section 164 in the S.C. Archives Department without signatures or Great Seal as is required by the S.C. Constitution Art. 3, Section 18, rendering it unconstitutional.

Because of newly discovered evidence and fraud upon the Court; Applicant was denied due process which is constitutionally guaranteed fundamentally fairness in all stages. The Court of General Sessions in Greenville County did not have Subject matter Jurisdiction to sentence Applicant to L.W.O.P. and therefore Applicant Applicant seekes relief to be resentenced.

Issues of subject matter jurisdiction may be raised anytime. (State v. Ray, Rice 1, 24 SC L. 1 1838 WL 1714 (SC Appl)).

The Court of General Sessions of Greenville County during the year of 2012 (the year that personally affected Applicant) was operating under unconstitutional laws enacted by S.C. legislature that violated the S.C. Constitution, Art.3, Section 18; especially the 1993 Act No.184 and Act No.7 of 1995. (See Letter from Deputy Director Steven Tuttle of the S.C. Archives). Also The Constitutionality of the 1993 Act No. 184 also renders any subsequent Acts enacted by the S.C. Legislature that seeks to amend any section or statute or case-law with any further chances such as the 1996 Antiterrorism Death Penalty Act adopted whole by S.C. which change the sentence structure of violent crimes to mean life without parole for a conviction of violent crimes pursuant to Section 17-25-45 upon Applicant's out-of-state murder conviction, and conviction for "attempted armed robbery", in the State of South Carolina

that affected and harmed Applicant as unconstitutional as well because the language used by the legislature is specific in that it seek to amend the 1993 Act No.184 sentencing structure, It is impossible to amend something to an unconstitutional Act as it must be treated as if it never existed.

"The Provisions of the Constitution must be give effect even if in doing so a statute is held to be inoperable." State ex rel. West v. Butler, 70 Fla. 102, 69 So. 771; Marbury v. Madison, 5 US 130 (1803), Chief Justice John Marshall declared that in any conflict between the Constitution and a law passed by Congress, the Constitution must always take precedent. Thus, these gross constitutional violations, both U.S. Const. Amendments 4,5,6,8, and 14 due process violations, state law, and S.C. Constitution Art.1, §§3,10,11,12,14, and 15 have harmed and prejudiced Applicant.

The Court of General Sessions of Greenville County did not have Subject Matter Jurisdiction to offer a sentence of life without parole as its only option. Thus, once again proving prejudice and harm to the Applicant. F.R.C.P. 630.15 Sentence Information needs to be accurate. United States v. Pugliese, 805 F.2d 1117 (CA7 1986); requires info. on sentence be reliable and accurate. Townsend v. Purke, 333 U.S. 736, 68 S.Ct. 1252, 92 L.Ed. 1690 (1948) recog. due process requires that a person not be sentence on materially untrue "assumptions or misinformation."

Please see the following documents as Exhibits to help prove Applicants case.

- (1) Exhibit (2) Notice to Seek L.W.O.P. for Out-of-State Conviction
- (2) Exhibit (2) Letter from Steven D. Tuttle dated January 22,2019 of Archives and Records
- (3) Exhibit (3) Commitment Order or Sentencing Sheet showing violent and most serious
- (4) Exhibit (4) Copy of Letter from Stephen T. Draffin, Code Commissioner and Director to Mr. Spencer Hewitt, Secretary of State's Office.
- (5) Exhibit (5) Violent crimes defined: Section 3, Section 16-1-60 of the 1976 Code as last amended by Act No.184 of 1993.

Under newly discover evidence; it has been determined that the 1993 Act No.184 and the 1995 Act No.7 do not carry the Great Seal. Nor signed by the President of the Senate and the Speaker of the House of Representatives to constitute a bind law of the land.

If "attempted armed robbery" Section (16-11-330(B)) and out-of-state

conviction for 2nd degree murder Section (16-3-10); in which both are defined in Section 3 of Section 16-1-60 of the 1976 Code as last amended by Act No.184 of 1993 and Act No.7 of 1995 does not have an impression of the Great Seal. Then t hose statutes lacks the force of law as stated in the S.C. Const. Art.III, section 18 and violates Due Process of the South Carolina Constitution Article I section 3, and the 14th Amendment of the United States Constitution therefore void. The Court lacks authority.

CONCLUSION

Applicant's sentence should be vacated and remanded for resentencing.

1st Eugene Thomas

Eugene Thomas, #222351

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Honorable John C. Hayes, Circuit Court Judge

Eugene Thomas, #222351

Petitioner

v.

State of South Carolina

Respondent.

PROOF OF SERVICE

I, Eugene Thomas, hereby certify that a true copy of Petitioner's Memorandum of Law along with five (5) documents as Exhibits in Support of Petitioner's PCR Application has been served upon Chief Clerk of Court Daniel E. Shearouse, Post Office Box 11330, Columbia, South Carolina, 29211 by the U.S. Postal Service provided by McCormick Corr. Inst. Mailroom Service.

Sincerely,

1s/ Eugene Thomas

1s/ Eugene Thomas

SUBSCRIBED AND SWORN before me this 20
day of February, 2019.

Reed Y. Wideman

Notary Public for South Carolina

My Commission expires: 93026

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT
IND. #: 2009-GS-23-9348, -9349, -9350
M 380128, 129, 130, 131

Vs.)

SECOND NOTICE OF INTENTION TO SEEK
SENTENCE OF IMPRISONMENT FOR LIFE
WITHOUT THE POSSIBILITY OF PAROLE

Eugene Thomas,
Defendant.)

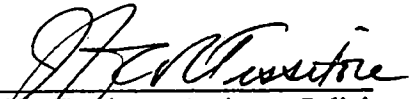
To: Scott Robinson, Attorney for the Defendant.

PLEASE TAKE NOTICE that the State, through the office of the Solicitor for the Thirteenth Judicial Circuit, will seek a sentence of imprisonment for life without the possibility of parole should the Defendant suffer conviction on the charge of:

- 1) Armed Robbery or
- 2) Attempted Armed Robbery

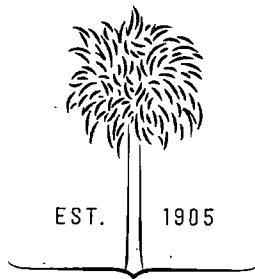
The State will seek this sentence pursuant to S.C. Code of Laws § 17-25-45 based upon the Defendant's prior convictions as follows:

- 1. Murder in the 2nd degree
Fla. Stat. § 782.04
Case # 80-1111-CF-C
Date of Conviction: June 12, 1981


Jennifer Cassitore Assistant Solicitor
Thirteenth Judicial Circuit

Greenville, South Carolina
Dated: 2-9-2011

Exhibit #(2)



SOUTH CAROLINA DEPARTMENT OF
ARCHIVES & HISTORY

22 January 2019

Mr. Eugene Thomas #222351
McCormick Correctional Institution F1-A-271
386 Redemption Way
McCormick, SC 29899

Dear Mr. Thomas:

I checked the following acts that you requested but could not locate a visible impression of the Great Seal: 1993 Act No. 184 and 1995 Act No. 7.

Sincerely,

A handwritten signature in black ink that reads "Steven D. Tuttle". The signature is written in a cursive style with a prominent initial "S".

Steven D. Tuttle
Deputy Director
Archives & Records Management

STATE OF SOUTH CAROLINA

Exhibit # (3)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS. Eugene Thomas
AKA:
Race: BLACK Sex: M Age: 51
DOB: SS#:
Address: Old Cedar Lane Road
City, State, Zip: Greenville, SC 29617
DL#: SID#:

INDICTMENT/CASE#: 2009GS2309350 Count 1
A/W#: M380128
Date of Offense: 7/22/2009
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

CONVICTED OF or PLEADS
ATTEMPTED ARMED ROBBERY

in violation of § 16-11-0330(A)(B) of the S.C. Code of Laws, bearing CDR Code #
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Tessoro, Jennifer SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of life w/parole days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$.

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickensamer
Court Reporter: A. Herron
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 20601
Sentence Date: 7/11/12

South Carolina Legislative Council

DAVID H. WILKINS, CHAIRMAN
SPEAKER OF THE HOUSE OF REPRESENTATIVES

GLENN F. MCCONNELL
CHAIRMAN, SENATE JUDICIARY COMMITTEE
THE SENATE

JAMES H. HARRISON
CHAIRMAN, HOUSE JUDICIARY COMMITTEE
THE HOUSE OF REPRESENTATIVES

ROBERT L. PEELER
PRESIDENT OF THE SENATE

JIM HILES
SECRETARY OF STATE



STATE HOUSE, FIRST FLOOR
AND
DENNIS BUILDING, SUITE 434
1000 ASSEMBLY STREET
P.O. BOX 11488, COLUMBIA, S.C. 29211-1489
TELEPHONE: (803) 734-2145
FAX: (803) 734-2425

STEPHEN T. DRAFFIN
CODE COMMISSIONER AND DIRECTOR

October 21, 2002

Mr. Spencer Hewitt
Secretary of State's Office
Edgar Brown Building
Columbia, South Carolina 29211

Dear Spencer:

You asked us recently to help locate the original of H.4323 of 1994 (Ratification Number 585 of 1994 and Act Number 7 of 1995) which became law on January 12, 1995, without the signature of the Governor. As we indicated in our telephone conversation, the Governor's office sends acts directly to the Secretary of State's office without transmitting them back through any office of the General Assembly. It is our best guess if you have no record of it that the original was lost during the changeover from the Campbell administration to the Beasley administration in January 1995, especially since the Governor didn't sign it. We asked Steve Tuttle at Archives to go through the boxed materials of these administrations, and he indicated that after doing so the original of this act could not be found. We did not check with Governor Hodges' office but it may be worth trying to follow up there although this would be a long shot.

In order that you can have a record of this act in the Secretary of State's office, we have prepared a duplicate from the computer files maintained by Legislative Printing. This is the same procedure we follow from time to time when bills are misplaced while under the consideration of the General Assembly. This should provide you with a sufficient record of what was ratified by the General Assembly and what became law without the signature of the Governor. If we can be of further help, please let us know.

Very truly yours,

Stephen T. Draffin

STB/ek
Enc

"Section 16-1-57. A person convicted of an offense for which the term of imprisonment is contingent upon the value of the property involved must, upon conviction for a third or subsequent offense, be punished as prescribed for a Class E felony."

Violent crimes defined

SECTION 3. Section 16-1-60 of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read:

"Section 16-1-60. For purposes of definition under South Carolina law a violent crime includes the offenses of murder (Section 16-3-10); criminal sexual conduct in the first and second degree (Sections 16-3-652 and 16-3-653); criminal sexual conduct with minors, first and second degree (Section 16-3-655); assault with intent to commit criminal sexual conduct, first and second degree (Section 16-3-656); assault and battery with intent to kill (Section 16-3-50); kidnapping (Section 16-3-910); voluntary manslaughter (Section 16-3-50); armed robbery (Section 16-11-330); drug trafficking as defined in Sections 44-53-370(e) and 44-53-375(C); arson in the first degree (Section 16-11-110(A)); burglary in the first degree (Section 16-11-311); and burglary in the second degree (Section 16-11-312(B)), engaging a child for a sexual performance (Section 16-3-810); accessory before the fact to commit any of the above offenses (Section 16-1-40); and attempt to commit any of the above offenses (Section 16-1-80). Only those offenses specifically enumerated in this section are considered violent offenses."

Mandatory minimum terms

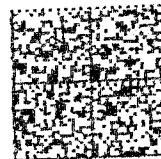
SECTION 4. Section 16-11-330 of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read:

"Section 16-11-330. (A) A person convicted for the crime of robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon must be imprisoned for a mandatory minimum term of not less than ten years nor more than thirty years, no part of which may be suspended or probation granted. A person convicted under the provisions of this subsection is not eligible for parole until he has served at least seven years of his sentence.

(1) A person under the age of twenty-one sentenced under the provisions of Chapter 19 of Title 24 (Youthful Offenders Act) convicted of armed robbery shall receive and serve a minimum sentence of at least three years, no part of which may be suspended. The person is not eligible for parole or probation until he has served a three-year minimum sentence.

(2) A person between the ages of twenty-one and twenty-five, who is convicted of armed robbery, may not be sentenced under the provisions of Chapter 19 of Title 24 (Youthful Offenders Act).

#222351
THOMAS FI-A271
CORR. INST.
OPTION WAY
SC 29899



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