

STATE OF SOUTH CAROLINA

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IN THE COURT OF APPEALS

JAN 17 2017

SC Court of Appeals

Appeal from Richland County

Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT

V.

DEANTE DOMINIC-ALI WITTICH,

APPELLANT

INITIAL BRIEF AND
PETITION TO BE RELIEVED AS COUNSEL

Attorney for Appellant:

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State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980).....3

STATEMENT OF ISSUE ON APPEAL

Was the guilty plea rendered involuntary when the judge failed to consider in imposing sentence that the youthful defendant disagreed with aspects of the factual recitation by the State in establishing the offense charged?

STATEMENT OF THE CASE

The defendant, Deante Dominic-Ali Wittich, was originally indicted by the Richland County Grand Jury for Murder; pursuant to a negotiated plea the defendant was allowed to plead guilty on March 30th, 2016 before the Honorable Ferrell Cothran to the charge of Voluntary Manslaughter with a recommendation of sentence between seventeen and twenty five years. Judge Cothran sentenced Wittich to twenty years. Because the defendant did not make his objection to the sentence known to defense counsel within the allowed statutory period, a timely notice of intent to appeal was not initiated. As a result the undersigned requests that the court consider this matter out of time.

ARGUMENT

The guilty plea was rendered involuntary when the youthful defendant disagreed with some of the underlying factual basis for the charge as proposed by the State; the court insufficiently inquired of the defendant as to these matters especially where it was revealed that the defendant had learning disabilities.

Deante Wittich entered a guilty plea to voluntary manslaughter, a violent and most serious offense under South Carolina law. During the guilty plea it was shown that the client, sixteen and a half years old at the time of the offense in September, 2013, had been evaluated some two years before that, that is the age of fourteen, by the Richland County Family Court as functioning much below his chronological age in reading and math comprehension. "...Deante was evaluated and shown to be reading comprehension level of second grade. His age equivalency at that time reading was a seven year old. His numerical or mathematic comprehension was that of a fourth grader, the age equivalence of a nine year old."


When the defendant was asked if he agreed with the State's factual recitation, he disagreed. (Tr. p 3, lines 2-8). While the court did make an inquiry of the defendant as to the disagreements the colloquy was superficial and failed to comply with due process in that further explanation would have revealed that the defendant was not fully aware of the consequences of his plea. (Tr. p.3, lines 13-22)

The Due Process Clause requires that guilty pleas must be entered into voluntarily, knowingly and intelligently by defendants. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). As noted by the court in Pittman v. State, 337 S.C. 597, 524 S.E. 2d 623 (1999), "In addition to the requirements of Boykin, a defendant entering into a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman at 624, citing State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980); Dover v. State, 304 S.C. 433, 405 S.E. 2d 391 (1991). Under the circumstances made known to the court, the judge failed to establish that Wittich knowingly and intelligently entered a plea of guilty when the defendant showed incomprehension of the matters charged against him.

CONCLUSION

Based on the above argument, Wittich's sentence and conviction should be reversed and the case remanded for trial.

Respectfully Submitted,



John Delgado
Attorney for the Appellant

January 17th, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT

v.

DEANTE DOMINIC ALI-WITTICH,

APPELLANT

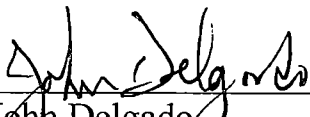
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Deante Dommich Ali-Wittich states:

- 1.) He represents the Appellant, Deante Dommich Ali-Wittich.
- 2.) He has reviewed the record of appellant's guilty plea on March 30th, 2016, held before Circuit Court Judge Ferrell Cothran, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
- 3.) He, has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, (1967) briefed the arguable legal issue which arose during the course of the proceeding.

WHEREFORE, he asks the court to relieve him as counsel for Deante Wittich.

Respectfully Submitted,



John Delgado
Attorney for the Appellant

This 17th day of January, 2017.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

COURT OF GENERAL SESSIONS

State of South Carolina,)
)
PLAINTIFF,)
)
v.)
)
Deante Wittich,)
)
DEFENDANT.)
_____)

TRANSCRIPT OF PLEA
2014-GS-40-02277

Richland County Courthouse
March 30, 2016

BEFORE:

HONORABLE R. FERRELL COTHRAN, PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor Hans Pauling
Attorney for The State of South Carolina

John Delgado, Esquire
Attorney for Deante Wittich

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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Certificate of Service

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EXHIBITS

(There were no exhibits marked during this plea)

1 Mr. Pauling: Your Honor, The State calls Deante
2 Wittich.

3 Bailiff: Raise your right hand please. Do you swear
4 to tell the truth, the whole truth, and nothing but the
5 truth so help you God?

6 Mr. Wittich: Yes, I do.

7 Bailiff: Thank you.

8 The Court: Yes sir?

9 Mr. Pauling: Thank you very much Your Honor.
10 Standing before you is Deante Dominic-Ali Wittich. He is
11 joined by his attorney John Delgado of the private bar.
12 Mr. Wittich was originally charged and indicted with
13 murder, Your Honor. The State has negotiated a plea for
14 voluntary manslaughter with a sentencing range of
15 seventeen to twenty-five years. In support of the victim
16 today is her mother and her father Quinton McKinney. And
17 at the appropriate time, Mr. McKinney would like to
18 address the Court and also read a letter from the
19 victim's mother.

20 The Court: Okay. Mr. Wittich, you want to plead
21 guilty?

22 Mr. Wittich: Yes, sir.

23 The Court: Have you had enough time to talk to your
24 lawyer about this decision?

25 Mr. Wittich: Yes, sir.

1 The Court: Are you satisfied with his
2 representation?

3 Mr. Wittich: Yes, sir.

4 The Court: And outside of the negotiations with the
5 State and your attorney, has anybody promised you
6 anything or threatened you in any way to get you to plead
7 guilty?

8 Mr. Wittich: No, sir.

9 The Court: You understand that this is a non parol
10 able offense, you have to serve at least eighty-five
11 percent (85%) of whatever sentence you get?

12 Mr. Wittich: Yes, sir.

13 The Court: And it is a violent offense and a most
14 serious felony. If you get another most serious felony
15 against you, you'll be looking at life without the
16 possibility of parole. Do you understand that?

17 Mr. Wittich: Yes, sir.

18 The Court: Are you under the influence of alcohol or
19 drugs today?

20 Mr. Wittich: No, sir.

21 The Court: Do you have any mental diseases that
22 would keep you from understanding what you're doing here
23 today?

24 Mr. Wittich: No, sir.

25 The Court: By pleading guilty, you're giving up your

1 constitutional rights to remain silent under the
2 Fifth Amendment because you're telling me you're guilty.
3 Do you understand?

4 Mr. Wittich: Yes, sir.

5 The Court: You're also giving up your right to a
6 jury trial where you could be presumed innocent and the
7 State would have the burden of proving you guilty beyond
8 a reasonable doubt before all twelve jurors. You would
9 be able to sit in the courtroom and confront each and
10 every witness that would testify against you. Your
11 lawyer could cross examine those witnesses and he could
12 subpoena witnesses to testify on your behalf, but when
13 you plead guilty, you're giving all of that up. Do you
14 understand?

15 Mr. Wittich: Yes, sir.

16 The Court: And you're giving up any appeals that
17 could come out of that trial when you plead guilty, do
18 you understand that?

19 Mr. Wittich: Yes, sir.

20 The Court: Have you had an opportunity to go over
21 the discovery that the solicitor's office has provided to
22 your attorney? Have you had a chance to sit down with him
23 and look at everything that they intend to use against
24 you?

25 Mr. Wittich: Yes, sir.

1 The Court: Are you satisfied with that. Is there
2 anything that you think that you're entitled to see that
3 they haven't shown you?

4 Mr. Wittich: Yes, sir.

5 The Court: There is? What?

6 Mr. Wittich: Oh, no, sir.

7 The Court: They've shown you all the discovery?

8 Mr. Wittich: Yes, sir.

9 The Court: Have you had any problems with your
10 attorney as far as him showing you things?

11 Mr. Wittich: No, sir.

12 The Court: If you would want to appeal this guilty
13 plea, you or your lawyer must file that appeal with the
14 Clerk of Court's office within ten days from today's date
15 or you give that right up. Do you understand?

16 Mr. Wittich: Yes sir.

17 The Court: Okay. The solicitor is going to tell me
18 about the facts. We'll come back and talk with you about
19 it.

20 Mr. Pauling: Thank you very much Your Honor. If it
21 please the Court. September 22, 2013 at 100 West
22 Campanella Drive in Richland County at approximately 1:00
23 in the morning the victim Amanda McKinney was a passenger
24 in her own vehicle driven by Alexander McMillan. As the
25 vehicle rounded the corner from Farrow Road turning into

1 the Greenville Subdivision on West Campanella, the
2 Defendant was seen exiting the passenger door of his
3 mother's white BMW. There had been some bad blood
4 between Mr. McMillan and both this defendant, Deante
5 Wittich along with his elder brother, Donald Wittich, who
6 was driving the white BMW at the time. As the victim
7 vehicle passed these two suspects, Alexander McMillan saw
8 the defendant raise a pistol with an extended clip
9 towards the victim car. McMillan heard a single shot
10 fired but it did not hit the victim vehicle. As McMillan
11 sped up, a second shot rang out and struck the back
12 window glass, shattering it in the victim's vehicle and a
13 bullet fragment struck the victim, Amanda McKinney, in
14 the head. McMillan called 911 as he raced through the
15 neighborhood. He provided a description of the shooter,
16 the vehicle that the suspects were using, and his
17 destination to meet an ambulance at the Obama gas station
18 on North Main Street. As McMillan pulled into the gas
19 station a few minutes after the shooting, police were
20 already in the parking lot. The victim was taken to the
21 hospital where she died later from a single gun shot
22 wound to the head. The victim was approximately twenty-
23 three years old and had been dating Mr. McMillan at the
24 time of the incident for about six months. Law
25 enforcement was able to gather information as to the

1 identity of the suspects from Mr. McMillan. Both Mr.
2 Wittich and his brother were known to law enforcement
3 community from prior dealings. There was some video
4 evidence that was obtained that showed the suspect white
5 BMW operating on Garners Ferry Road approximately thirty
6 minutes after the shooting. And the suspects were going
7 to the apartment of Donald Wittich's girlfriend. The
8 police were able to detain the two suspects on the
9 afternoon of the 23rd. The defendant was sixteen years
10 old at the time of the shooting and was housed in the
11 juvenile wing of Alvin S. Glenn Detention Center. It is
12 there that the defendant revealed to a fellow inmate that
13 he did kill a white female and he described the gun as a
14 Glock 17 with an extended clip. This information was
15 only available to the shooter at that time since the
16 Solicitor's office had not received any case material nor
17 had any information been forwarded to previous defense
18 counsel prior to Mr. John Delgado's retention. In the
19 summer of 2015, another inmate did come forward to reveal
20 a conversation with the defendant in which he did, in
21 fact, admit to killing the victim. The victim family
22 members are present, Your Honor, and would like to
23 address the Court at the appropriate time.

24 The Court: Okay. Those facts correct, sir?

25 Mr. Wittich: No sir.

1 The Court: Say that again.

2 Mr. Wittich: No sir. Some of them are not.

3 The Court: Okay. Tell me what's not.

4 Mr. Wittich: It was, he say about, I did it, you
5 know what I'm saying, he say on Garners Ferry. That's not
6 correct.

7 The Court: Okay. So the ...

8 Mr. Wittich: ... didn't happen on Garners Ferry.

9 The Court: Okay. So it didn't happen on Garners
10 Ferry?

11 Mr. Pauling: Your Honor, it may have been on Two
12 Notch Road.

13 The Court: I really don't care what road it happened
14 on.

15 Mr. Wittich: Yes sir.

16 The Court: I just want to know whether you shot
17 into the back of the vehicle, striking the victim in the
18 back of the head.

19 Mr. Wittich: Yes, sir.

20 The Court: Okay, so you're guilty of voluntary
21 manslaughter?

22 Mr. Wittich: Yes, sir.

23 The Court: Okay. Then I find there's a factual
24 basis to your plea. It's freely and voluntarily entered
25 into and you had advice of competent counsel who you tell

1 me you're satisfied and I'll accept your plea.

2 Mr. Wittich: Yes, sir.

3 The Court: I'd be glad to hear from anybody you want
4 me to.

5 Mr. Pauling: Yes sir, Your Honor, the father of
6 Amanda McKinney, Quinton McKinney, would like to address
7 the Court, Your Honor.

8 The Court: Yes, sir.

9 Mr. McKinney: Thank you Your Honor. If the Court
10 will please. My name is Quinton McKinney, father of the
11 victim in this case. I have a letter here written by the
12 mother. I will read that first and then I have something
13 that I want to say to the Court. As her mother states:
14 Amanda was born on October 2nd, 1990; taken from us on
15 September 22nd, 2013. No words can describe the loss
16 that I feel everyday. Our family and I now say "remember
17 when" or "Amanda would have". Amanda was always helpful,
18 enjoyed helping family and friends, her sister and three
19 brothers and cousins. She touched so many. At the end
20 of her life, the last moment, she was still helping as
21 she was an organ donor and was able to touch four other
22 lives and save them by her organ donation. She was born
23 five days after her mother's birthday and died five days
24 before that birthday. We had a memorial service for her
25 at that time and it was on her mother's birthday. She

1 states she's not asking for the death sentence. She
2 knows his family can always visit him or see him in a
3 prison but we can no longer visit or see Amanda. She was
4 sixteen at the time of her death. Today she would've
5 been twenty-five. She says she doesn't want this person
6 to be able to ever hurt anyone else. She also wants
7 everyone to know that even though our family has been
8 devastated by this loss, that she believes that it is a
9 loss that no one else should ever have to endure. I'm
10 not asking or questioning in any way for any type of
11 capital punishment. We want Mr. Wittich to live. We
12 want him to have, to be here so his family can see him
13 and talk to him and eventually be able to touch and hold
14 him. No family deserves to feel this type of loss not
15 even his.

16 As for myself, I question for nine hundred and
17 twenty days now since this incident occurred in both
18 directions as to my feelings and concerns, the tragedy of
19 the circumstances that allowed a sixteen year old to be
20 in the possession of a gun and to pull the trigger twice
21 with no concern for the outcome of using that weapon. I
22 feel that it touches on a broader failing by our culture
23 and our society in this country today that we see this
24 time and time again and over the last two and a half
25 years it's been on the news in different parts of this

1 country where someone's life is taken needlessly. Is
2 there justice? Can there be a definition of what justice
3 will be in this case? There is no measure, no
4 compensation, no way to replace that which has been taken
5 from us. The effect of this is never ending. Time
6 continues to pass and the sorrow seems to be no less.
7 Each day there are moments when some reminder swells by
8 my eyes with tears. I go on with my life. I handle my
9 responsibilities but my view of the world has changed.
10 That which seemed important no longer seems to have the
11 same meaning. There are no words in any language to
12 describe a parent who has lost a child. Simply because
13 there is no way to describe this feeling. I also believe
14 that no one else should ever have to endure this type of
15 loss. No matter what the circumstances may be, the
16 result is tragic. It's always unforeseen and unexpected.
17 In the blink of an eye, there's a phone call or a knock
18 on the door and instantly your entire existence is
19 changed. Your Honor, I would only ask that the Court see
20 fit to place this individual out of harms way and away
21 from the public for as long as possible. I would hope
22 that during his incarceration that the system that he
23 will be in will allow him the opportunity to learn and
24 discern right from wrong and that once he is given his
25 life back, his freedom that he would use that time to be

1 a positive influence on the people and the community in
2 which he resides. Thank you.

3 The Court: Thank you, sir.

4 Mr. Pauling: Your Honor, The State shares its
5 sentiment.

6 The Court: Mr. Delgado?

7 Mr. Delgado: Your Honor, and I share those
8 sentiments. I think they were very honest, provocative,
9 sincere response by this gentlemen. As a father, I can
10 understand that with my three children. Him saying there
11 are no words to express that certainly is the case. My
12 heart goes out to him and his family. Perhaps, Your
13 Honor, perhaps there is something I might be able to say
14 during this colloquy with you that might be able to
15 pierce a bit of the very honestly expressed sentiment by
16 the family that perhaps can give the victim an
17 understanding as to how and why as he stated how could a
18 sixteen year old be in possession of a weapon.
19 Absolutely.

20 Your Honor, when the solicitor stated to you that
21 Deante Wittich was known to law enforcement there's an
22 incident, it's a bit of a mistake. I think his brother,
23 Donald Wittich, was at his side that night, was known to
24 law enforcement. This was the teenage tag-along brother.
25 Donald is some six years older than Deante. Deante, in

1 September of 2013 was sixteen and a half years old. He
2 had no prior records, one family adjudication for
3 disturbing the schools. He agreed to some evaluation
4 that was accomplished on him through evaluators and a
5 diagnosis and some medication that was given to him, but
6 perhaps, let me back up and say this to the Court. The
7 United States Supreme Court Roper vs. Simmons declared as
8 a violation of the Eighth Amendment. That individuals
9 under the age of eighteen could not be subject to the
10 death penalty. I think that is a standard that is fair.
11 But before that time, I think we have not under seen some
12 of the scientific under penage for what was stated by the
13 United States Supreme Court.

14 Your Honor, as a younger lawyer, I did not know
15 intellectual capacity. I didn't know mental retardation,
16 I didn't know fetal alcohol syndrome, and I specifically
17 did not know frontal lobe electro dysfunction. At the
18 age of sixteen, Your Honor, the United States Supreme
19 Court indicated anything below the age of eighteen, an
20 individual's frontal lobes of their brain had not
21 developed to the state where they are able to execute
22 with moderation and judgement when a brain develops to
23 the age of twenty-four. I made this argument in passing
24 with some of my colleagues that old soldiers never die,
25 it's just the young ones. Well the reason for that might

1 be exactly what Roper vs. Simmons was in some way talking
2 about. Not an excuse; I'm not saying that. I'm simply
3 saying that my theory of mitigation and sentencing for
4 the Court, maybe seventeen years as a result of being
5 sixteen. Your Honor, two years before, a little over two
6 years prior to this time as a result of his adjudication,
7 the Richland County Family Court, this was in May of
8 2011, that would be twenty-eight months earlier, Deante
9 was evaluated and shown to be reading comprehension level
10 of second grade. His age equivalency at that time
11 reading was as a seven year old. His numerical or
12 mathematic comprehension was that of a fourth grader, the
13 age equivalence of a nine year old. In short, the
14 Richland County Family Court evaluated and saw evidence
15 that he is many years and grades below his chronological
16 age at the age of fourteen years and a half. Well, some
17 two years later, I don't think there's going to be any
18 major significance over that sometime chronologically, of
19 course, but he is functioning as an individual as much
20 below his age, at sixteen and a half years old. Your
21 Honor, he has been diagnosed with a learning disorder
22 since the second grade in the public schools here in
23 Richland County. As a result, a battery of testing that
24 was given to him, was prescribed Ritalin for attention
25 deficit hyperactivity disorder. He was also diagnosed

1 with an Oppositional Defiant Disorder. He possessed a
2 low average cognitive function of eighty-two, I think it
3 is. No excuse, no justification. But the age of
4 sixteen, sixteen and a half, at one o'clock in the
5 morning --- and I've said this to him. What are you
6 doing out at night, at one o'clock in the morning. A
7 sixteen year old. You wouldn't allow that. I wouldn't
8 allow it, this family don't allow it. But Deante is.
9 There might be a reason for that. Because he may have
10 been operating under the guidance and influence of his
11 twenty-two year old brother, Donald, who was standing
12 right beside him. And it may be that that gun that was
13 used while it has never been recovered by law
14 enforcement, that gun may have been stolen by somebody in
15 this courtroom and not the defendant and used that night.
16 No justification. And possibly that answers a bit of Mr.
17 McKinney's statement. Your Honor, he, Deante comes from
18 a family that has been shattered by his blood father's
19 domestic violence against the mother. Michelle Wittich
20 who is seated on the third row here in black with a
21 silver chain around her neck. It got to the point when,
22 Deante is the youngest of three brothers, when he was two
23 years old, Ms. Wittich had to seek another place to live
24 because she was being battered and the older two boys
25 were being assaulted as well. For two years, they lived

1 in a transitional home so that they could stay away from
2 the father. Two years. He would have been four or five
3 by the time the family reunites. Eventually the father
4 leaves the country and now lives in Europe, where he
5 works. Probably the best thing that happened to this
6 family in some ways. But his mother's played a very very
7 essential role in his behavior. However, there are
8 certain things that parents can do. And certain things
9 that parents cannot control. They cannot control an
10 individual who is running around with a gun given to him
11 by someone else at one o'clock in the morning. What may
12 have happened, Your Honor, was that the brother and the
13 driver of this car had a falling out and Deante shot the
14 gun, twice and killed Amanda. Not firing at Amanda, but
15 of course, malice follows the bullet and her life was
16 taken. And as Mr. McKinney said your life changes all in
17 one phone call. I ask the Court under those
18 circumstances seventeen years as a result of being
19 sixteen and probably emotionally and psychologically
20 functioning at a level much less than that, I ask the
21 Court to sentence him to the minimum range recommended by
22 the State. Thank you, sir.

23 The Court: Thank you. I wish I could do something
24 that would give you justice and give the family justice.
25 I understand losing a child is the toughest thing that a

1 parent could ever go through especially something as
2 senseless. Unfortunately, I see this week after week all
3 over the State. And I wish I had some answers. I've
4 taken into consideration the fact that he was sixteen and
5 at that point you're absolutely right, I guess their
6 brain isn't fully developed. It especially seems that
7 way in male children. Most of the crime I see happens
8 between fourteen, fifteen, sixteen year olds until they
9 get to be least twenty-five. I don't know what the answer
10 is. Families are torn apart. Maybe we can do something
11 to fix that in this country. Teach ethics in the school
12 system. There's got to be some way to teach them right
13 from wrong.

14 Anyway, the sentence of the Court is you are
15 committed to the State Department of Corrections for a
16 term of twenty (20) years. Good luck to you.

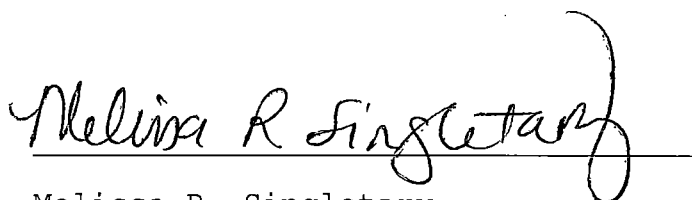
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CERTIFICATE

This is to certify that the hearing transcript in the matter of State vs. Deante Wittich, consisting of Eighteen (18) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal
this 16th day of August, 2016

A handwritten signature in cursive script that reads "Melissa R. Singletary". The signature is written in dark ink and is positioned above a horizontal line.

Melissa R. Singletary
Certified Court Reporter

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Ferrell Cothran, Circuit Court Judge

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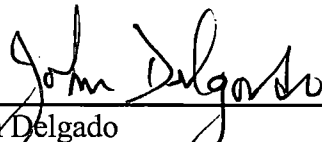
APPELLANT

PROOF OF SERVICE

I certify that I have served the Initial Brief and Petition to Be Relieved as Counsel by depositing a copy of it in the United States Mail, postage prepaid, on January 17, 2017, addressed to the following persons on record:

Mr. Deante Dominic-Ali Wittich #367605
Lee Correctional Institution
900 Wisacky Highway
Bishopville, South Carolina 29010

January 17, 2017



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Attorney for Appellant

STATE OF SOUTH CAROLINA
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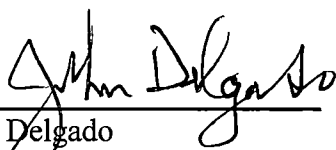
APPELLANT

PROOF OF SERVICE

I certify that I have served the Initial Brief and Petition to Be Relieved As Counsel by depositing a copy of it in the United States Mail, postage prepaid, on January 17, 2017, addressed to the following persons on record:

Ms. Sally W. Elliott
South Carolina Attorney General's Office
Rembert Dennis Building
1000 Assembly Street
Columbia, SC 29201

January 17, 2017



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