

OCT 14 2019

MARION BREWSTER,  
Appellant,

S.C. SUPREME COURT

v.

Appellate Case No. 2019-001646  
Lower Court Case No. 2017CP3204136STATE OF SOUTH CAROLINA,  
Appellee,APPEAL FROM GUILTY PLEA, ALFORD PLEA, OR PLEA OF  
NOLU CONTENDERE, PURSUANT TO RULE 203(d)(1)(B)(iv)

The Appellant Marion Brewster, pro se, respectfully submit to this Honorable Court his SCACR Rule 203(d)(1)(B)(iv) required explanation in the above styled matter, and in support of his appeal states as follows:

## PROCEDURAL HISTORY

1. On March 4, 2002, the Honorable L. Casey Manning, a Richland County Court Circuit Judge sentenced the appellant ("Brewster") to concurrent terms of 17 years for each carjacking and armed robbery offenses carjacking (2001-GS-40-57694), armed robbery (2001-GS-40-57693) and carjacking (2001-GS-40-57699). Brewster was sentenced pursuant to a guilty plea. He was represented by attorney Robert N. Boarda Esq. No appeal was taken.
2. Brewster filed an application for post-conviction relief (2002-CP-40-4529), September 16, 2002, where he alleged
  1. Ineffective Assistance of Counsel, and
  2. Involuntary Guilty Plea.
3. An evidentiary hearing was conducted on July 27, 2004, at the Richland County Courthouse, the Honorable Alison Renee Lee presided, Brewster was present, represented by counsel Tara D. Shurling Esq.

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and counsel Lakesha Jeffries represented the South Carolina Attorney General's office (the state).

4. On February 3, 2005, Judge Lee ordered the dismissal, denying Brewster's application for post-conviction relief. Brewster appealed the denial, he was represented on appeal by Aileen P. Clare, Esq. of the South Carolina Commission on Indigent Defense - office of appellate defense, Counsel filed a *JOHNSON V. STATE*, 294 S.C. 310, 374 S.E. 2d 201 (1988) petition for a writ of certiorari. Brewster filed a *pro se* petition for a writ of certiorari. On July 20, 2006, the Supreme Court of South Carolina denied the petition, Remittitur was issued on August 7, 2006.

5. On October 5, 2017, Brewster filed the current "second" application for post-conviction relief (2017-CP-40-6018), which is the subject of this appeal. Where he alleged in his application

1. Ineffective Assistance of Counsel in violation of my 5<sup>th</sup> and 6<sup>th</sup> Amend. Rights.

a. The day of my sentencing, directly after, I asked my lawyer to file a direct appeal she simply didn't file as I asked. post-conviction application at (p.3's 2-3).

6. On May 1, 2018, chief Administrative Judge Roberto Hood found that Brewster's application must be summarily dismissed, for failure to comply with the filing procedures of the Uniform- Post Conviction Procedure Act, S.C., Code Ann § 17-27-10 to -160.

Brewster is represented by Ashley A. McMahan, Esq. Brewster was forwarded, the (conditional order of dismissal) from the Attorney For the Respondent Megan Harrigan James May 22, 2018.

7. On September 16, 2019, Ashley A. McLahan Counsel for Brewster, forwarded him notice that a final order of dismissal was entered in Brewster v. State, 2017-CP-32-04136. Brewster filed with the court his pro se Notice of Appeal. <sup>1</sup>.

### ISSUES RAISED ON APPEAL

(1)(a) The court below erred in dismissing and denying Appellants application for post-conviction relief without a hearing to find whether or not Appellant was denied his 5<sup>th</sup> and 6<sup>th</sup> Amend rights to effective assistance of counsel upon appeal March 4, 2002, Backdated / 11/15/2002...

(2)(b) The appellants guilty plea was not knowingly and voluntary.

2.(c) The appellants guilty plea to the Lexington County offense was uncounseled and violated his U.S. constitutional rights.

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1. Marion Q. Brewster, the Appellant is confined at U.S.P. Lee, a Federal Prison in Jonesville Va., the Prison is as of October 5, 2019, on full (LOCK DOWN), prisoners are not allowed out of their cells at all to access law materials nor for any other reason. The lock down is expected to last (30) days or more.

## ARGUMENT (1) (a)

8. Brewster did not waive his right to effective assistance of counsel for his direct appeal. Brewster asked his attorney to file an appeal and she said she would, but never did, nor did she consult with him about issues to be raised upon appeal.
9. Counsel does have a constitutional duty to consult with a 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 non-frivolous grounds for appeal), or (2) that the particular defendant reasonably demonstrated to counsel that he was interested in appealing. Brewster "vehemently" contested the factual issues that led to his guilty plea because Brewster's offenses were prosecuted in different counties two in Richland County and one in Lexington. Brewster had refused to plead guilty in Lexington County and when it came time for his Richland County offense's to be adjudicated, he pleaded guilty and the Sentencing Court back dated and joined the Lexington County offense to the Richland County offenses for sentencing.
10. Brewster did not agree nor consent to change of venue and no court order was entered for change of venue. There were arguable issues for appeal had Counsel filed an appeal or consulted with Brewster.
11. *U.S. v. Poindexter*, 492 F.3d 263, 267-73 (4<sup>th</sup> Cir. 2007) (Counsel's assumed failure to file a timely notice of appeal after "being unequivocally instructed to do so" was ineffective assistance because effectively stripped defendant of right to appeal).
12. The Court below has not taken into account that Brewster was in fact and at law denied his U.S. Constitutional rights, that would void the process all together if found to be true.

13. Knowing and voluntary waiver of constitutional right cannot be presumed from a silent record and the court below has committed a reversible error because the record is silent and therefore the court is not intitled to presume that Brewster's guilty plea was knowing and voluntary, and nor that he waived his right to effective assistance of counsel on appeal. The court below has not disputed that Brewster has a U.S. constitutional right to effective assistance of counsel on appeal (First direct appeal), nor has the court said that Brewster did not have the right to appeal his guilty plea or sentence.

14. For the sake of correctness, the court even failed to enquire if Brewster's, first post-conviction application Attorney knew that Brewster had been denied effective assistance of counsel on appeal.

Tara D. Shurling appointed July 27, 2004 (2002-CR-40-4529), or with weather the appellate attorney Aileen P. Clare, informed Brewster, or provided notice to him.

15. The court below has raised the doctrine of laches, where the new ground raised by Brewster of a constitutional violation such as his cannot be barred, because it goes directly to the satisfaction of his trial rights, (Criminal prosecution). He could not have raised the issue if counsel nor the court informed him of the rights he retained upon pleading guilty. And as a pro se litigant he has been diligently pursuing his constitutional rights.

16. This court should find that the court below has erred, for the reasons stated and any other reasons the court deems fit.

## ARGUMENT (2)(b) + (2)(c)

17. Brewster seeks direct appeal, (first direct appeal of his guilty plea, where he was denied effective assistance of counsel in order to appeal the guilty plea that was presumed in the Lexington County offense. The court in its May 1, 2018 conditional order of dismissal (2017-CP-40-6018), says that,

Robert N. Boorda, represented Applicant on these charges. On March 4, 2002, Applicant appeared in Richland County Court of General Sessions before Honorable L. Casey Manning Circuit Judge, where he pleaded guilty as indicted.

Judge Manning sentenced Applicant to imprisonment for concurrent terms of 17 years for each conjuncting and armed robbery.

18. Brewster did not plead guilty to the Lexington County offense in Richland county, because the Richland County Court did not have jurisdiction of the offense and Brewster was unrepresented. Robert N. Boorda was appointed for the Richland County offenses and not the Lexington County offense. The Richland County Court could not except a guilty plea for the Lexington County offense absent consent to ~~the~~ change of jurisdiction and venue, or a court order that granted Richland such. Further, Robert N. Boorda, could not advise Brewster on how to plea to an offense he knew nothing about. This is why he asked for an appeal, any plea excepted by the court was not knowing

or voluntary. The verbatim record is used to assess a subsequent attack on the guilty plea. See *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005).

19. Production of complete record of factors relevant to determining whether Brewster understood charges and consequences of plea to eliminate any need to resort to later fact-finding should have been the course in Brewster's case, had the court enquired it would have found that Brewster never agreed to plead guilty in Richland County to a Lexington County offense and if so it would have been a form of Double ~~Jeopardy~~ Jeopardy which is unconstitutional. Richland County sentenced Brewster, but could not except his plea. The sentencing order from Lexington County was back dated to appear as if he pleaded in said County. Brewster did not understand nor was it explained to him what effects his guilty plea would have upon his constitutional rights or any future prosecutions if he broke the 1a-W, or possessed a firearm. <sup>Lexington charges & Richland County charges, were in conjunction.</sup>

20. He was not advised that he was not allowed to own a firearm nor vote.

21. Brewster advised his Lexington County attorney and the Richland County attorney that he wished to appeal the presumption that he pleaded guilty to all counts, knowing and voluntary. It was and is reversible error, for a court to except an uncounseled guilty plea and where Brewster had a counsel/attorney other than Robert M. Boarda for his Lexington County offense pleading guilty in Richland County without his appointed Lexington County attorney was unconstitutionally sound. There exists no evidence that he waived counsel in Lexington County. <sup>See Evidence of Case Summary Pg 10. These crimes were in conjunction of one another...</sup>

22. This court must find that the court below has erred for the reason stated or any reasons the court deems fit.

## LOWER COURT'S RULING

23. The lower court has not ruled upon the issues raised, with the exception of the denial of the post-conviction Application, where Brewster raised his Ineffective assistance of counsel claim regarding his first direct appeal.

## THE ISSUES RAISED ARE REVIEWABLE ON APPEAL

24. Because neither the Richland county nor the Lexington county trial attorney complied with the U.S. Supreme Courts authority in *Anders v. California*, Brewsters issues are ripe for review upon appeal. Brewster has been denied his basic Constitutional rights in a criminal prosecution, and without an observance of those rights his criminal case is not final and should be vacated, as void.

There exists no evidence that Brewster;

- (a) Waived his right to first direct appeal or counsel for said appeal
- (b) Plea to all counts was knowing and voluntary
- (c) He was advised of all of the consequences of his plea, then and future

## CONCLUSION

For the reasons stated herein, *pro se*, this court should liberally construe appellants pleadings, and find that the court below has erred, and for any other reason the court deems fit, should reverse the lower courts final order, and remand for a hearing upon the issues.

DATE: 10, 7, 2019.

Respectfully Submitted  
By Marion Brewster  
Marion Brewster *pro se*  
31710-171  
U.S.P. Lee  
U.S. Penitentiary  
P.O. Box 305  
Sonesville VA, 24263

## CERTIFICATE OF SERVICE

I the under sign hereby certify that a true and exact copy of the foregoing instrument has been mailed postage pre-paid to:

Magan Harrigan Jameson Esq,  
South Carolina's Attorney General's office  
P.O. Box 11549  
Columbia, SC, 29211-1549

on this 7<sup>th</sup> day of October 2019

Marion Brewster  
Marion Brewster, *pro se*  
#31710-171

RICHLAND COUNTY SHERIFF'S DEPARTMENT

CASE SUMMARY

Type of offense: Carjacking Date of offense: 11-7-00  
 Location of offense: Case Number: 00110754  
 Case Officer: Smith No. of hours to prepare case: 25  
approx.  
 Review by Solicitor: Campbell Approval by Lieutenant:  
 Victim: Jacquelin Richburg Phone: 754-6257  
 Address: 130 Saddlefield Rd. Age: 38  
 Emergency Contact: N/A Phone:

Address:  
 Subjects:  
 1. Marion Quinton Brewster <sup>82</sup> Address: 3938 Webb Ct. Phone: 691-0992  
 2. James Edward Clark <sup>102</sup> Address: 2314 Ervin St. Phone: N/A  
 3. Address: Phone:

Date of Arrest:  
 1. 11-21-00 2. 11-22-00 3.

Bond:  
 Judge: Hudnell Amount: \$200,000.00 concurrent Type: SB  
 Judge: Hudnell Amount: \$25,000.00 Type: SB  
 Judge. Amount: Type:

Amount of property stolen: \$16,000.00 Amount of property recovered: nearly the same minus some contents

Chain of custody: 1. N/A 2. 3.  
 Type of evidence: 1. photo line-up 2. statements 3.  
 Evidence retained at: 1. RCSD 2. 3.

SPECIAL ATTENTION SOLICITOR  
 Case officer wants to be present at all pleadings: Yes: X No  
 Is suspect a career criminal? Yes: X No:

Victim Richburg had her 1996 Toyoya Forerunner carjacked from her by a black male with dreadlocks from the pk. lot of the Toys R Us on 11-7-00. The vehicle was recovered the same night behind the house at 2314 Ervin St. in conjunction of an Infiniti which was carjacked the same night from Cayce jurisdiction by a black male with dreadlocks. On 11-17-00 another victim had his Lexus carjacked from the pk. lot of the Fort Jackson Federal Credit Union on Parklane Rd., which is in close proximity to the Toys R Us. Continued....

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON  
STATE \_\_\_\_\_

VS. MARION Q. BREWSTER

AKA: \_\_\_\_\_  
Race: B Sex: M Age: 24  
DOB: \_\_\_\_\_ SS#: \_\_\_\_\_  
Address: SCDC

DL# \_\_\_\_\_ SID# \_\_\_\_\_

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2002-GS-32-984

A/W#: STR. FND.

Date of Offense: 11/07/2000

S.C. Code §: 16-11-380 (A)

CDR Code #: 011319

CASE RESTORED

SENTENCE

PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: ARMED ROBBERY

in violation of § 16-11-330 (A) of the S.C. Code of Laws, bearing CDR Code # 011319

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

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: \_\_\_\_\_  
Solicitor

Marion Brewster  
Defendant

Walter Alton  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 10 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.

The Defendant is to be given credit for time served days/months jail time.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: .....\$  
\$14-1-206 (Assessments 100%) .....\$  
\$14-1-211(A)(1) (Surcharge) .....\$ 100.00  
\$14-1-211(A)(2) (Surcharge) .....\$  
\$56-5-2995 (DUI Assessment) .....\$  
3% to County (if paid in installments) .....\$  
TOTAL .....\$ 100.00

PTUP \_\_\_\_\_  
\_\_\_\_\_ days/hours Public Service Employment  
Obtain GED \_\_\_\_\_  
Attend Voc Rehab. or Job Corps \_\_\_\_\_  
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: Backdate sentence to 3/4/02

Thomas H. Conroyford  
Clerk of Court/ Deputy Clerk

Court Reporter: R. Debrae Roon  
White - Clerk Green - Corrections

PRESIDING JUDGE: [Signature]  
Judge Code: 01016A  
Sentence Date: 11/13/02

Canary - Probation ACB 11-15-02 Pink - Defendant

Mr. Marion Q. Brewster # 31710-171  
U.S.P. Lee  
U.S. Penitentiary  
P.O. Box 305  
Jonesville - VA 24263



office of the Clerk,  
The Supreme Court of South Carolina  
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Columbia South Carolina,

Legal Mail

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