

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Williamsburg County

Honorable Kristi F. Curtis, Circuit Court Judge

JASON SINATRA EDWARDS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001088

APPENDIX

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	CASE NO. 2004-GS-45-167
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
	)	
JASON EDWARDS, MACEO EDWARDS,	)	
AND JONAI EDWARDS,	)	
	)	
Defendant.	)	
	)	

January 30-31, 2012
Kingstree, South Carolina

B E F O R E:

THE HONORABLE J. MARK HAYES, Judge

A P P E A R A N C E S:

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KRYSTAL J. SMITH
Official Court Reporter

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1 JANUARY 30, 2012

2 (WHEREAS this matter was scheduled for a trial, the
3 defendants appeared along with their counsel of record.
4 The hearing began at 5:05 p.m.)

5 MS. BARR: May it please the Court, Judge. Your Honor,
6 first of all, let me thank you so much for the Court's
7 patience. The next matter before you concerns Indictment
8 Number 2004-GS-167. It is the State versus Jason Sinatra
9 Edwards, who is in the burgundy shirt. Mr. Edwards is charged
10 under this indictment for two counts of murder and possession
11 of a weapon during the commission of a violent crime. Mr.
12 Jason Edwards is being represented by attorney Steve McKenzie
13 and attorney Michael O'Neal.

14 Judge, this is also an indictment against Maceo Latonya
15 Edwards. Maceo Edwards is in the middle in the yellow shirt.
16 He's being represented by Mr. Legrand Carraway. This is an
17 indictment against Maceo Edwards for the murder of Joe Woods.
18 Your Honor, he is entering a guilty plea to accessory after
19 the fact of a felony A offense. He wishes to waive
20 presentment of that charge to the grand jury.

21 Also before you is Mr. Jonais Edwards. Mr. Jonais
22 Edwards is represented by Mr. Guy Ballenger. He is charged in
23 this indictment with accessory after the fact of murder. He
24 is entering a guilty plea to the Count 4, which is the
25 accessory after the fact charge.

1 I also neglected to mention to you, Your Honor, that Mr.
2 Jason Edwards is entering a guilty plea under Counts 1 and 2
3 to the lesser included offense of voluntary manslaughter. We
4 have a sentence recommendation as it relates to each
5 defendant.

6 THE CLERK: Place your left hand on the Bible.

7 MS. BARR: While they're doing that, we would also ask --
8 one of the victim's family members would like to be present
9 for sentencing. Judge, we would ask that Your Honor accept
10 the guilty pleas of the defendants and that we sentence them
11 in the morning. I confirmed that with the lawyers and that's
12 fine with them as well.

13 MR. MCKENZIE: Do you want to do each one of them
14 individually?

15 THE CLERK: Yeah. Well, can all three just ---

16 MR. MCKENZIE: Can all three of you put your hands on
17 here? Your left hands.

18 THE CLERK: Raise your right hands.

19 MR. MCKENZIE: Raise your right hands.

20 THE CLERK: Do each of you solemnly swear to tell the
21 truth, the whole truth, and nothing but the truth, so help you
22 God?

23 (Whereupon, all three defendants indicate in the
24 affirmative.)

25 THE COURT: All right, gentlemen. You are Jason Edwards?

1 JASON EDWARDS: Yes, sir.

2 THE COURT: And you are Maceo Edwards?

3 MACEO EDWARDS: Yes, sir.

4 THE COURT: All right and you're Jonais Edwards?

5 JONAI'S EDWARDS: Yes, sir.

6 THE COURT: All right, gentlemen. I need to let you know
7 that we are making a recording of everything that happens
8 here. This lady that's sitting down here in front of me to my
9 right, she is a court reporter. She's taking down everything
10 that is said. I tell you that because when you speak to me,
11 please speak up loud enough so that both she and I can hear
12 you and if ever during this process if any of you can't hear
13 me, immediately let me know and I will speak up as well.
14 Likewise, if ever during this process if any of you wish to
15 speak to your lawyer, just let me know and I'll allow you to
16 talk to your lawyer in private.

17 I'm now going to ask you a series of questions. If you
18 would, please listen to the questions and many of the
19 questions will be the same for each one of you so I will ask
20 the question and then I'll ask -- say your name and, if you
21 would, respond after I say your name.

22 How old are you, Jason?

23 JASON EDWARDS: Thirty-two.

24 THE COURT: Maceo?

25 MACEO EDWARDS: Thirty-six.

1 THE COURT: Jonais?

2 JONAI EDWARDS: Thirty.

3 THE COURT: Sir?

4 JONAI EDWARDS: Thirty.

5 THE COURT: How far did you go in school, Jason?

6 JASON EDWARDS: College.

7 THE COURT: Did you get a -- graduate?

8 JASON EDWARDS: No, sir.

9 THE COURT: How far did you go?

10 JASON EDWARDS: It was a two year -- it was a two year

11 degree at Williamsburg Tech. I had one more semester before I

12 completed, but I didn't never.

13 THE COURT: Maceo?

14 MACEO EDWARDS: Twelfth.

15 THE COURT: Did you get a diploma?

16 MACEO EDWARDS: Yes, sir.

17 THE COURT: Jonais?

18 JONAI EDWARDS: College, two years.

19 THE COURT: Did you graduate?

20 JONAI EDWARDS: Yes, sir.

21 THE COURT: Where did you do that?

22 JONAI EDWARDS: HVAC, Williamsburg Tech.

23 THE COURT: Presently, are you married, single, divorced
24 or widowed, Jason?

25 JASON EDWARDS: Single.

1 THE COURT: Mr. Maceo?

2 MACEO EDWARDS: Single.

3 THE COURT: Jonais?

4 JONAI EDWARDS: Married, but separated.

5 THE COURT: Do you have any children, Jason?

6 JASON EDWARDS: Yes, sir.

7 THE COURT: How many?

8 JASON EDWARDS: Two.

9 THE COURT: How old are they?

10 JASON EDWARDS: Thirteen and nine.

11 THE COURT: Maceo?

12 MACEO EDWARDS: No, sir.

13 THE COURT: Jonais?

14 JONAI EDWARDS: Three.

15 THE COURT: How old are they?

16 JONAI EDWARDS: Six, seven, nine.

17 THE COURT: And prior to being arrested on these charges,
18 did you have a job outside of the home, Jason?

19 JASON EDWARDS: Yes, sir.

20 THE COURT: What were you doing?

21 JASON EDWARDS: I was a machine operator at Georgia
22 Pacific.

23 THE COURT: Maceo?

24 MACEO EDWARDS: Firestone machine operator.

25 THE COURT: Jonais?

1 JONAI EDWARDS: EMS, Clarendon County.

2 THE COURT: Ever served in the military, Jason?

3 JASON EDWARDS: Sir?

4 THE COURT: Ever served in the military?

5 JASON EDWARDS: No, sir.

6 THE COURT: Maceo?

7 MACEO EDWARDS: No, sir.

8 THE COURT: Jonais?

9 JONAI EDWARDS: No, sir.

10 THE COURT: And on these charges, Jason, you've been in

11 jail since the day of your arrest?

12 JASON EDWARDS: Yes, sir, since 2002.

13 THE COURT: Do you remember that date?

14 JASON EDWARDS: The day in 2002 when I was arrested?

15 THE COURT: Yes.

16 JASON EDWARDS: Yes, sir. I was not in the jailhouse,

17 but I was in the hospital.

18 THE COURT: All right.

19 JASON EDWARDS: June ---

20 MS. BARR: It would have been June 20th, 2002.

21 THE COURT: And Maceo?

22 MACEO EDWARDS: June 20th, 2002.

23 THE COURT: Do you know how much credit you're entitled

24 to, Jason -- uh, Jonais?

25 JONAI EDWARDS: Yes, sir.

1 MS. BARR: Judge, I believe he was arrested on June the
2 22nd of 2002. I'm not sure the date that he was released.

3 MR. BALLENGER: Judge, he bonded out he tells me after
4 his initial arrest, but was then sentenced on February 3rd,
5 2006, and released on January 22nd, 2009.

6 THE COURT: All right, thank you. During the last 24
7 hours, have you consumed any type of substance that is
8 adversely or negatively affecting your ability to understand
9 what we're doing today, Jason?

10 JASON EDWARDS: No, sir.

11 THE COURT: Maceo?

12 MACEO EDWARDS: No, sir.

13 THE COURT: Jonais?

14 JONAI EDWARDS: No, sir.

15 THE COURT: Have you ever been treated for any type of
16 substance abuse or a drug problem or an alcohol problem,
17 Jason?

18 JASON EDWARDS: No, sir.

19 THE COURT: Maceo?

20 MACEO EDWARDS: No, sir.

21 THE COURT: Jonais?

22 JONAI EDWARDS: No, sir.

23 THE COURT: Are you satisfied with the work that your
24 lawyer has done for you, Jason?

25 JASON EDWARDS: I really appreciate it.

1 THE COURT: Maceo?

2 MACEO EDWARDS: Yes, sir.

3 THE COURT: Jonais?

4 JONAI EDWARDS: Yes, sir.

5 THE COURT: Has anybody come to you and made any threats
6 against you or have they promised you anything in order to get
7 you to make the decision to enter the plea, Jason?

8 JASON EDWARDS: No, sir.

9 THE COURT: Maceo?

10 MACEO EDWARDS: No, sir.

11 THE COURT: Jonais?

12 JONAI EDWARDS: No, sir.

13 THE COURT: I am correct in concluding that -- the
14 decision by you to enter the plea I'm correct in concluding
15 that that is a free and voluntary decision on your part,
16 Jason?

17 JASON EDWARDS: Yes, sir.

18 THE COURT: Maceo?

19 MACEO EDWARDS: Yes, sir.

20 THE COURT: Jonais?

21 JONAI EDWARDS: Yes, sir.

22 THE COURT: I need for you to understand that under the
23 law you are presumed innocent of the charge or charges that
24 are presently against you and you are entitled to have a jury
25 trial on any of the charges that are presently against you.

1 At any jury trial that would take place, it would be the State
2 that has the burden of proof and the State would have to
3 convince all twelve members of the jury that you are in fact
4 guilty beyond a reasonable doubt.

5 Now, in order to enter this plea, you have to give up
6 your right to that jury trial, but if you wish to have a jury
7 trial on the charge or charges against you, that is perfectly
8 fine. We will simply schedule a trial for you. Do you wish
9 to have a jury trial on the charges that are against you,
10 Jason?

11 JASON EDWARDS: No, sir.

12 THE COURT: Maceo?

13 MACEO EDWARDS: No, sir.

14 THE COURT: Jonais?

15 JONAI'S EDWARDS: No, sir.

16 THE COURT: I need for you to understand that there are
17 other very important constitutional rights that you are
18 entitled to, but you have to give up in order to enter these
19 pleas. You have to give up your right to confront and cross
20 examine the State's witnesses. You also have to give up your
21 right to present evidence that you and your lawyer may feel
22 would establish some kind of defense to these -- to these
23 charges that are against you and you have to give up your
24 right of subpoena and you have to give up your right to remain
25 silent. Now, do you understand all those rights, Jason?

1 JASON EDWARDS: Yes, sir.

2 THE COURT: Maceo?

3 MACEO EDWARDS: Yes, sir.

4 THE COURT: Jonais?

5 JONAI EDWARDS: Yes, sir.

6 THE COURT: And you wish to give up those rights and
7 proceed with entering a plea at this time, Jason?

8 JASON EDWARDS: Yes, sir.

9 THE COURT: Maceo?

10 MACEO EDWARDS: Yes, sir.

11 THE COURT: Jonais?

12 JONAI EDWARDS: Yes, sir.

13 THE COURT: All right, gentlemen, if you would, I need
14 for you to -- my understanding is the facts are similar as
15 they relate to each one of you and as to each of these charges
16 so, if you would, I ask that each one of you please listen to
17 the solicitor and then I'll have some more questions for you.

18 MS. BARR: May it please the Court, Your Honor. This
19 incident happened back on June the 19th of 2002 in the
20 Greeleyville portion of Williamsburg County. The victims in
21 the case are Mr. Jimmy Robinson and Mr. Joe Woods. The
22 incident occurred at the home of Mr. Joe Woods.

23 Your Honor, essentially how the case came to the
24 attention of law enforcement was that two eyewitnesses were
25 coming down the road in front of Mr. Woods' home, saw Jimmy

1 Robinson running away from Mr. Jason Edwards, observed Jason
2 Edwards shoot Mr. Jimmy Robinson at least twice, once in the
3 shoulder, once in the head. During the course of
4 investigating the murder that happened outside of the house,
5 police officers also found the body of Mr. Joe Woods inside
6 the residence. The body had a single gunshot wound to the
7 forehead. It was determined that Mr. Jason Woods [sic.] -- it
8 was believed anyway -- inflicted that fatal wound to Mr. Joe
9 Woods.

10 Judge, after the shooting, Maceo Edwards and Jonais
11 Edwards, who are the brothers of Jason Edwards, took him from
12 Williamsburg County and took him to Rock Hill as a result of
13 the incident that happened and there is some dispute between
14 the prosecution and the State as to the order in which it
15 happened, but there does not appear to be any dispute that
16 Jimmy Robinson stabbed Mr. Jason Edwards twice in the chest
17 area. The dispute between the defense and the prosecution is
18 at what point in time did that happen.

19 During the trial of the case, Mr. Jason Edwards testified
20 that Jimmy Robinson stabbed him first and then that's when he
21 shot Joe Woods and Jimmy Robinson. Of course, the State's
22 theory of the case is that that came after the shooting of Joe
23 Woods, but in any event, Jonais Edwards drove a vehicle in
24 which his brothers, Jason and Maceo, were passengers. They
25 drove to Rock Hill from Williamsburg County.

1 One of the witnesses in the case testified that both --
2 both Jonais and Maceo, of course, were aware that their
3 brother, Jason, had shot and killed Mr. Woods and Mr. Robinson
4 when they took him and all three of them went to Rock Hill.
5 They checked into a motel in Rock Hill. After having checked
6 into a motel, they then went to Piedmont Medical Center, which
7 is the hospital in Rock Hill. All three of them gave
8 statements to hospital personnel, as well as Rock Hill Police
9 Department, indicating that Jason Edwards had been stabbed by
10 an unknown assailant in -- on Two Notch Road in Columbia,
11 South Carolina.

12 Jason gave the name that his name was Jason Lamont.
13 Jonais and Maceo told security personnel there that they were
14 not -- they didn't know who Jason was. They just happened to
15 be in Columbia and happened to have seen the stabbing and they
16 brought him here. They brought them -- brought him to Rock
17 Hill because they were afraid that the people who had stabbed
18 him were going to come after him.

19 Of course, it didn't quite sound right to hospital
20 personnel. They ran a tag on the vehicle and it was -- I
21 guess a BOLO had came out and the vehicle tag indicated that
22 these defendants were wanted in connection with a homicide --
23 double homicide in Williamsburg County and that's how they
24 ended up being arrested while at the hospital and that's
25 essentially the facts of the case, Your Honor.

1 THE COURT: Were you able to hear the solicitor when she
2 told me the facts, Jason?

3 JASON EDWARDS: Yes, sir.

4 THE COURT: Maceo?

5 MACEO EDWARDS: Yes, sir.

6 THE COURT: Jonais?

7 JONAI EDWARDS: Yes, sir.

8 THE COURT: Do you believe that as she stated the facts
9 to me that she is substantially correct, Jason?

10 JASON EDWARDS: Substantially correct.

11 THE COURT: Maceo?

12 MACEO EDWARDS: Yes, sir.

13 THE COURT: Jonais?

14 JONAI EDWARDS: Yes, sir.

15 THE COURT: And do you -- do you understand that on the
16 charge of voluntary manslaughter that I could sentence you up
17 to thirty years on these charges, Jason?

18 JASON EDWARDS: Yes, sir.

19 THE COURT: And, sir, do you also understand that each of
20 these charges is classified as a most serious offense under
21 the law?

22 JASON EDWARDS: Yes, sir.

23 THE COURT: And you have been able to talk to your lawyer
24 as to the consequences and ramifications of those offenses
25 being classified as most serious?

1 JASON EDWARDS: Yes, sir.

2 THE COURT: Understanding the possible sentences I could
3 impose, as well as the classifications as most serious and the
4 ramifications of those classifications, do you still wish to
5 go ahead and enter these pleas?

6 JASON EDWARDS: Yes, sir.

7 THE COURT: And, sir, do you understand that -- well, sir
8 are you in fact guilty of these -- both of these charges of
9 voluntary manslaughter?

10 JASON EDWARDS: Yes, sir.

11 THE COURT: And Mr. Maceo Edwards, do you understand that
12 on the accessory after the fact of a felony that I could
13 sentence you up to fifteen years today?

14 MS. BARR: Yes, sir.

15 THE COURT: Do you understand that, sir?

16 MACEO EDWARDS: Yes, sir.

17 THE COURT: And you still wish to enter this plea?

18 MACEO EDWARDS: Yes, sir.

19 THE COURT: Sir, are you in fact guilty of this charge
20 accessory after the fact of a felony -- of a Class A felony?

21 MACEO EDWARDS: Yes, sir.

22 THE COURT: Mr. Jonais Edwards, do you understand that on
23 this charge accessory after the fact of a felony -- after the
24 fact of a murder, do you understand that I could sentence you
25 up to fifteen years on this charge today?

1 JONAI EDWARDS: Yes, sir.

2 THE COURT: And understanding the possible sentence I
3 could impose, do you still wish to enter this plea?

4 JONAI EDWARDS: Yes, sir.

5 THE COURT: Sir, are you in fact guilty of this charge of
6 accessory after the fact of murder?

7 JONAI EDWARDS: Yes, sir.

8 THE COURT: Have you been able to hear all of my
9 questions, Jason?

10 JASON EDWARDS: Yes, sir.

11 THE COURT: Maceo?

12 MACEO EDWARDS: Yes, sir.

13 THE COURT: Jonai?

14 JONAI EDWARDS: Yes, sir.

15 THE COURT: Have all of your answers to my questions been
16 truthful and honest, Jason?

17 JASON EDWARDS: Yes, sir.

18 THE COURT: Maceo?

19 MACEO EDWARDS: Yes, sir.

20 THE COURT: Jonai?

21 JONAI EDWARDS: Yes, sir.

22 THE COURT: Discovery with all three of the defendants
23 has been shared by -- with the State to the defense?

24 MS. BARR: They have, Judge.

25 THE COURT: Is there anything that anyone -- since we're

1 going to not sentence them until tomorrow, is there anything
2 that anyone needs to put on the record prior to my accepting
3 the pleas?

4 MR. O'NEAL: No, Your Honor.

5 MR. BALLENGER: No, sir, Judge.

6 THE COURT: I find that there's a substantial factual
7 basis for the pleas. I find that each of the defendants'
8 decisions to enter the pleas has been made freely,
9 voluntarily, knowingly and intellectually by them. I find
10 that each has received the services of a very competent and
11 able counsel, services that they've indicated to the Court
12 they are satisfied with and have relied on in reaching their
13 decisions that they made. Therefore, I will accept the pleas.

14 Now, my understanding is that, Jason and Maceo, that you
15 will remain in custody. Mr. Jonais, my understanding is that
16 you will remain on bond so any requirements or terms and
17 conditions of that bond still are in effect and have to be
18 met. So if you have any questions about that, please speak
19 with your lawyers. Gentlemen, thank you and we will proceed
20 tomorrow.

21 MR. BALLENGER: What time, Your Honor.

22 MR. O'NEAL: What time, Judge?

23 MS. BARR: Nine thirty?

24 THE COURT: Nine thirty.

25 MR. O'NEAL: Very well, thank you.

1 MR. BALLENGER: Thank you, Judge.

2 (Whereupon, the proceedings end for the day at 5:22 p.m.)

3 JANUARY 31, 2012

4 (Whereupon, the proceedings resume at 11:18 a.m.)

5 THE COURT: We'll now go back on the record on the
6 matters of the State versus Jason Edwards, 2004-GS-45-0167.
7 Those are some charges. The State versus Maceo Edwards, 2004-
8 GS-45-0167. Also, the State versus Jonais Edwards, 2004-GS-
9 45-0167. We are now going to proceed with presenting further
10 information related to sentencing and other information
11 related to these cases. May I receive the prior records of
12 the individuals?

13 MS. BARR: Judge, Maceo Edwards does not have a prior
14 criminal record and neither does Jonais Edwards. I believe
15 Jason Edwards was charged in 1999 with driving under
16 suspension, but that's the extent of the record.

17 THE COURT: Thank you. Now, do we have anyone that
18 wishes to address the Court on behalf of the victims?

19 MS. BARR: Yes, sir. I would, Your Honor, as well as
20 Miss -- there are three persons here today who would like to
21 address the Court. Ms. Rose Woods, who is the sister of the
22 deceased, Joe Woods, she'd like to address the Court first,
23 Your Honor. Ms. Woods, come on around, please.

24 THE COURT: Ms. Woods, I just need to let you know we are
25 making a recording. There are microphones here so if you

1 could move right up there. So whenever you speak, please
2 speak up loud enough so that this lady on the other side of
3 the courtroom -- she's the court reporter -- so that both she
4 and I can hear you.

5 MS. WOODS: Yes, sir.

6 THE COURT: And if you would, just start by giving us
7 your full name.

8 MS. WOODS: Good morning, Your Honor. Good morning to
9 you all. My name is Rose Ann Woods. I'm Joe Edward Woods'
10 sister. I'm speaking on behalf of him this morning. Joe
11 Edward, he was our brother, one of my brothers. I had eight
12 brothers, Your Honor, but me and Joe was close. It was like
13 inseparable. He always was there for me no matter what.

14 Joe was a good man. He was a lovable guy. He never hurt
15 nobody. He gave everybody whatever he had. He would give you
16 his life. He would take the clothes off of his back if you
17 needed them and give it to him -- give it to you.

18 Joe is very missable [verbatim]. It may have seemed to
19 be ten years, but to me, it's like it was just happened. My
20 heart stay full all the time, Your Honor, because I miss him
21 very much and I love him very dearly. Me and him always
22 shared holidays together, birthdays together. We did a lot of
23 things together. We had a lot of laughter, a lot of good
24 times. I miss those times. I'll never get those times back,
25 Your Honor.

1 It is hard to even speak because every time I speak
2 there's so much builds up in me, but that's okay. But that's
3 all right. He'll always be loved. I'll never forget him.
4 I'll never forget the things we did together and I'm just so
5 sorry that he's not here with me right now.

6 I think, Your Honor, I feel like they should get the
7 maximum whatever their sentence should be. I feel like Mr.
8 Jason, to whom I'm speaking towards you, Your Honor, that he
9 should get thirty years, if you would. I -- It's hard to say.
10 Whether y'all believe it or not, I forgive y'all. I forgive
11 you for what you done, but I won't forget what happened. I
12 will never forget it. Thank you, Your Honor.

13 THE COURT: Thank you, ma'am.

14 MS. BARR: Kelly Robinson.

15 THE COURT: Mr. Robinson, just come right up here and I
16 just need to also remind you to speak up loud enough so that
17 both the court reporter and I can hear you and just start by
18 giving us your full name, please.

19 MR. ROBINSON: My name is Kelly G. Robinson.

20 THE COURT: Yes, sir, Mr. Robinson.

21 MR. ROBINSON: Yes, Your Honor. My brother was a tragic
22 loss to all of the family and we all miss Jimmy. He was -- he
23 was a good -- a lovely guy and he was one that anything that
24 anybody could help anybody, he would do it. He always helped
25 us all and we -- we're going to always miss Jimmy, but we know

1 that he went. We can't bring him back and we, all of the
2 family, we're going to move on. We move on when tragedies
3 happen, but we're going to move on and whatever happens here
4 today, whatever decision that you make, we're going to be fine
5 with that. That's all I've got to say.

6 THE COURT: Thank you, sir.

7 MS. BARR: Mr. Harold?

8 THE COURT: So, Mr. Harold, if you would also just speak
9 up loud enough so both the court reporter and I can hear you
10 and give us your full name, sir.

11 MR. HARRELL: Judge, Your Honor, my name is Harold Woods.
12 The loss of my brother, Joe Edward Woods, split the family up,
13 the Woods family, like a tsunami hitting land and only you and
14 the judicial system can help build the bridges and the houses
15 that the Woods family need to go on and live as a family.
16 Thank you.

17 THE COURT: Thank you, sir.

18 MS. BARR: Judge, I believe that's all who want to speak
19 on behalf of the victims' families.

20 THE COURT: Thank you.

21 MS. BARR: Judge, I would like to address the Court prior
22 to sentencing.

23 THE COURT: Yes, ma'am.

24 MS. BARR: Judge, I was I guess -- in an odd way, I guess
25 I could say I was fortunate to be involved with the case

1 during the first trial in 2006. The assistant solicitor in
2 charge at that time was from the Greeleyville area, which is
3 where the murder happened, and I spoke with him this morning
4 and he reminded me how this crime had really torn apart a
5 community. He talks about how the defendants' mother and
6 father were good friends of his and everybody knew everybody.
7 The victims knew the defendants and knew their family members.

8 There was some testimony during the trial that two of the
9 eyewitnesses to the shooting of Jimmy Robinson were related in
10 some way to the defendants and it was really a situation where
11 he described it as being really difficult for the community to
12 absorb. He mentioned that it was the first double homicide in
13 Greeleyville and, Judge, in preparing to retry the case, I had
14 the opportunity to review the transcript of the proceedings
15 and, Judge, I'll tell you having been there, this is an
16 emotional journey for this family.

17 I will let the Court know that although Your Honor has
18 accepted guilty pleas to voluntary manslaughter from Mr. Jason
19 Edwards and accessory after the fact for Mr. Maceo Edwards and
20 Mr. Jonais Edwards, Judge, part of the victims' family quite
21 frankly did not want to go through a second trial. That was
22 -- the first trial was very emotional for them and it's like a
23 scab that just never heals and -- and a second trial I think
24 some of them viewed it as just picking, picking, picking at
25 that scab and reopening it and causing it to bleed again.

1 So for that reason, Your Honor, we began plea
2 negotiations and discussions on yesterday. Rose Woods, Mr.
3 Joe Woods' sister, told me on yesterday, she said, well,
4 listen, wait a minute. My brother doesn't get to walk around
5 anymore. He's not alive anymore. I have no problem with the
6 Court sending Maceo Edwards home. I have no problem with the
7 Court sending Jonais Edwards home. I think that they served
8 their time, but I feel that if my brother isn't walking
9 around, then Jason Edwards shouldn't be walking around.

10 And, Judge, what is problematic and disturbing about this
11 case, please let there not be any doubt, the State in 2006 and
12 today viewed the killing of Jimmy Robinson and Joe Woods as a
13 murder and, Judge, in 2006, citizens of Williamsburg County
14 agreed with us. I understand and I expect that the defense
15 will ask for a lesser sentence on behalf of Jason Edwards.
16 Quite frankly, Judge, our plea negotiations and our
17 discussions on yesterday envisioned that Mr. Jason Edwards
18 would receive a thirty year sentence and that Mr. Jonais and
19 Maceo Edwards would receive a time served sentence and I've
20 confirmed with the lawyers that they intend to argue for less
21 than that.

22 Judge, I went back through the file. I looked at the
23 crime scene photos. Joe Edwards [sic.] was killed as a result
24 of a single gunshot wound to the forehead, one shot to the
25 forehead. I remembered that photograph of Joe Woods inside

1 the home and what was so disturbing is because the way that
2 his body was positioned, it looked as if he were on his knees
3 at the time he was shot. It really did.

4 Judge, I wasn't in the house that day, but what I could
5 tell you that is undisputed as I understand it, Jimmy Woods
6 [sic.] got out -- Jimmy Robinson ran out of that house, ran to
7 the roadway, was flagging a vehicle down to get away from
8 Jason Edwards. Jason Edwards shot Jimmy Woods [sic.] while he
9 was fleeing -- Jimmy Robinson while he was fleeing in the
10 shoulder. After he fell down, Jason Edwards fired another
11 shot to the forehead of Jimmy Robinson and what is so
12 disturbing about that, Judge, is because the autopsy report in
13 this case says that it wasn't the shot to the shoulder that
14 killed Jimmy Robinson; it was that second shot to the head
15 that ended his life.

16 When you think about how hard it is to shoot a fleeing
17 person and you look at the circumstances of this case where
18 not one person died, two people died as a result of a gunshot
19 wound to the head, it really, really kept me up at night,
20 Judge, quite frankly. I'll just say that.

21 Your Honor, one of the things that we did not know when
22 we tried the case in 2006 -- we had a suspicion; we had a
23 theory. We didn't have the facts to support our theory of why
24 the crime happened. The defendant, Jason Edwards, at trial
25 testified that it happened. He acknowledges going into the

1 home of Joe Woods with a .357 magnum. He said he went there
2 to collect a debt about a septic tank. He said Joe Woods was
3 supposed to install a septic tank. Two weeks had gone by and
4 he hadn't done it so he went there to get his money. We had
5 our suspicions that this was drug related rather than anything
6 to do with a septic tank.

7 Judge, we since that time spoke with a witness who stated
8 to me that three or four days before Joe Woods was murdered
9 that he acknowledged owing Jason Edwards \$35 for drugs and,
10 Judge, I think when the evidence came in the first time, there
11 was an admission that Jason went to the home of the victim to
12 collect money. Now, he disputes what it was for, but Judge,
13 the fact that I had a witness to tell me and confirm what we
14 thought back in 2006, Judge, I think in order for the Court to
15 impose an appropriate sentence, I think it's important to know
16 all the facts and the circumstances of the case and that's the
17 reason why I'm sharing this with you.

18 Judge, I think given that the State has agreed to reduce
19 the charge from murder, which he was convicted of and was
20 sentenced to a double life sentence, quite frankly, Judge, I
21 think that the defendant, Mr. Jason Edwards, has been given
22 all the consideration, probably more consideration than he
23 deserves. I think he's been given every benefit, probably
24 more of a benefit than he deserves. But, Judge, I think for
25 you to really understand the circumstances of this case

1 because I know they're going to get up there and they're going
2 to say whatever it is they're going to say, I really would
3 love if Your Honor would review the crime scene photos of
4 these victims so you can understand and see for yourself what
5 actually happened in this case.

6 Judge, we would simply urge the Court not to impose a
7 sentence less than thirty years with regard to Mr. Jason
8 Edwards.

9 (Whereupon, ten crime scene photos are handed up to the
10 Court for review, which are then later marked as State's
11 Exhibit Number 1.)

12 THE COURT: I've reviewed the ten ---

13 MS. BARR: Yes, sir.

14 THE COURT: --- photos. We'll have those at the end of
15 the proceeding marked as a State's exhibit as a group, but
16 I've reviewed the ten photos. Anything else from the State?

17 MS. BARR: No, sir, Your Honor. Thank you.

18 THE COURT: Yes, sir, gentlemen?

19 MR. O'NEAL: Judge, I'm Michael O'Neal and I represent
20 Jason Edwards. Your Honor, I came into this case just for the
21 purposes of this possible trial in this case. I wasn't
22 present -- I wasn't there when they tried this case back in
23 2006. As part of my preparation for the trial, I read the
24 transcript of the trial in 2006 and that's my involvement in
25 the case so far.

1 But, Judge, here he stands before you. As you know
2 yesterday, he's 32 years old. He comes from a good family
3 from the Greeleyville area; his parents are here. He's got
4 uncles; he's got cousins here who are willing to speak for
5 him. A good family, a church-going family, and Judge, as you
6 heard yesterday, other than that little driving under
7 suspension traffic offense, no previous criminal record. His
8 brothers also have no previous criminal record.

9 Judge, as you heard, he worked hard all his life. He had
10 a job before this tragedy happened. He was employed. He had
11 gone to school. His brothers had gone to school. He was
12 engaged to be married at the time that this tragedy happened.
13 Judge, I want you to give him consideration for that, for the
14 fact that he had no previous criminal record.

15 I'll go ahead and tell you, Judge, that he tells me and
16 I'm sure if it wasn't correct, we'd all know about it, that
17 since he's been in prison for the last ten years, he's been a
18 model prisoner. He hasn't gotten in any trouble whatsoever.
19 In fact, he's attended classes, religion classes. He's gotten
20 a certificate for his religious instruction while he's been in
21 the prison system.

22 Now, Judge, this case was tried back in 2006. The
23 verdict went against Jason Edwards. He was sentenced to two
24 life terms, but obviously something was constitutionally wrong
25 with that conviction because the Supreme Court of South

1 Carolina reversed the conviction and sent it back for a new
2 trial. We appeared yesterday, intended to try this case, but
3 as a result of the State's gracious consideration, the case is
4 going to be resolved in this way by a plea of guilty by Jason
5 Edwards to two counts of voluntary manslaughter.

6 Now, we heard yesterday Jason Edwards said that the facts
7 as described by the solicitor were substantially correct and I
8 know it's true that Jason Edwards, if he could do it again, he
9 wouldn't have gone over there at all or at the very least, he
10 certainly wouldn't have carried a firearm over there. Now,
11 Judge, as you know, he pled to voluntary manslaughter. He had
12 no intention when he went over to the house to kill anybody,
13 to shoot anybody. He brought the firearm along for
14 protection, but conflict happened, people got angry, people
15 got tense, people -- I mean he was stabbed. He was stabbed
16 and almost died. He was stabbed and ended up in a hospital in
17 Florence because of his brothers' actions in taking him up
18 there.

19 MS. BARR: Rock Hill.

20 MR. O'NEAL: Rock Hill. I'm sorry, not Florence, but
21 Rock Hill, but the fact remains is that, Judge, he was stabbed
22 to the point of almost losing his life. Now, he is sorry that
23 two men are dead and, Judge, he also should get credit. He
24 should get some consideration for being willing to withdraw
25 his not guilty plea and enter a plea to these two charges to

1 save the State from the time and expense of a jury trial and
2 to save both families -- both families, Your Honor -- from the
3 heartache and the strain of another trial.

4 Judge, the reason I tell you these things about him, the
5 reason that I explained to you about his family, about his
6 history, about his record, is because I -- he deserves
7 consideration for that. He deserves mercy. As I said, Judge,
8 he knows he shouldn't have gone over to that house. He knows
9 he shouldn't have brought that gun over there, but because of
10 anger, because of conflict, two men are dead.

11 Judge, he deserves a chance. He's got two children. He
12 deserves a chance when he pays his debt to society, which he
13 needs to do and he understands that, to live out the rest of
14 his life. If he could take it back, he would, but we can't
15 and for that reason, Judge, he deserves some consideration on
16 the sentence.

17 Steve McKenzie, co-counsel, may have some things to say
18 and, Judge, members of Jason's family are here that want to
19 speak to the Court.

20 MR. MCKENZIE: Thank you, Your Honor. Your Honor, and
21 seated in the -- in the jury box to your far left is: Maceo
22 Edwards, Sr., who is Jason's father; Sadrina Swearinger, who
23 is a cousin of Jason's; then you have an uncle, Jerry Edwards;
24 and an uncle, Willie Edwards. They're all seated here, Your
25 Honor. They may have something they want to say to the Court,

1 Your Honor, and I'm not going to go into a whole lot of
2 detail.

3 I was here for the 2006 trial. I represented Jason at
4 that trial and I represented all three of the defendants in
5 the action in front of the Supreme Court and the Court of
6 Appeals. Your Honor, I've heard what Ms. Barr said about her
7 theory would be that this would be a drug transaction and --
8 and had gone bad basically.

9 What you've heard from her also is that we have -- the
10 only record that my client and Mr. O'Neal's client has is a
11 driving under suspension charge and what I wanted to tell you,
12 Your Honor, is if that theory was correct, I think that we
13 would have seen some indicative nature from this family. I
14 mean we have three young men. Two of these young men were
15 working at Georgia Pacific. I'm not -- I can't recall where
16 Jonais was working.

17 JONAI EDWARDS: EMS.

18 MR. MCKENZIE: He was working for EMS at the time. These
19 people had very good jobs. They were family people. They had
20 -- they come from a very good family. Johnnie Mae Edwards,
21 who is Jason's mother, is seated back here. These are -- this
22 is not the kind of family that does this kind of conduct and
23 this is very, very unusual to see this kind of family standing
24 in front of Your Honor.

25 I mean -- and Ms. Barr is right about one thing: this

1 tore the Greeleyville community apart and because no one can
2 -- could believe what had happened in this case and it was a
3 double homicide -- or a double homicide at this time, Your
4 Honor, at the time this case was tried. Your Honor, the
5 problem that everybody sees in this case is we have three
6 young men who have no prior history of being in trouble with
7 the law and all of a sudden, here we have not only trouble
8 with the law, but the -- probably the most serious problems
9 you can have with the law.

10 It just is out of character for this family. It's not
11 how these boys were raised. It's not -- if they were -- if
12 they had no job, Your Honor, if they were in part of the drug
13 deal, had prior histories, that's not what we saw here and so
14 I understand the State's theory. Your Honor, I didn't buy it
15 in 2006 and I'm not sure I buy it today either and the only
16 testimony we have here was in regards to -- at trial was that
17 my client went over there because he had not been paid or he
18 had paid someone to do some work for him and that person
19 didn't do the work for him.

20 Again, the biggest concern -- and I echo what Mr. O'Neal
21 said to the Court, he should never have gone over there with a
22 gun because if you're upset with somebody and you go and you
23 bring a dangerous instrumentality like a gun into a situation,
24 things can happen, but Mr. O'Neal was correct. My client, Mr.
25 Edwards, Jason Edwards, was stabbed and almost mortally

1 stabbed.

2 What happened that day, Your Honor, I don't think we ever
3 will know exactly what happened, but as a result of what
4 happened, two men died and this family over here on my right,
5 they are grieving and they should grieve and this is a tragedy
6 and everybody here recognizes this is a tragedy and all we're
7 asking, Your Honor, is is that Jason Edwards has come before
8 you today. e's taken responsibility for what he has done.

9 He does not want to put either one of these families back
10 through this tragedy again to relive it and it's terrible that
11 we're both -- all of us having to do this again and it wasn't
12 resolved in 2006, but here we are and we would ask the Court
13 to fashion a remedy that allows Mr. Edwards to be punished and
14 he's already served ten years, Your Honor, and as Mr. O'Neal
15 said, it's been an exemplary service in SCDC. No blemishes on
16 his record whatsoever and, Your Honor, that's indicative of
17 the way he was raised and that's a testament to his father and
18 to his mother and all of these boys that when they were in
19 SCDC, no problems whatsoever. Jonais made parole right away.
20 First time he was eligible for it, he made parole.

21 These are not -- this is -- this is so out of their
22 character to be standing before you. That is -- Your Honor,
23 I've been doing this for a long time and I know you've seen a
24 lot of these pleas. Normally, I'm sitting here trying to
25 mitigate somebody's record and I can't even find a blemish to

1 mitigate in these guys' records.

2 It's terrible what happened. It is a tragedy what
3 happened, but I would ask the Court to consider some sentence
4 less than thirty years for Mr. Jason Edwards and I'm going to
5 ask if his father would like to say anything, if Your Honor
6 would indulge him?

7 THE COURT: All right. Does the family intend to speak
8 on behalf of all three of the defendants?

9 MR. MCKENZIE: Yes, sir. I -- yes, sir, I think so.

10 MR. O'NEAL: Yes, Your Honor.

11 THE COURT: Let's get the comments from the lawyers first
12 and then I'll hear from the family since they're going to be
13 speaking on all three.

14 MR. O'NEAL: Thank you, Your Honor.

15 MR. MCKENZIE: Very well, Judge.

16 MR. BALLENGER: Thank you, Judge. Guy Ballenger on
17 behalf of Jonais Edwards. Judge, there's some additional
18 facts for the Court's consideration. The State has graciously
19 offered or is recommending a time served sentence, Judge.

20 Mr. Edwards was sentenced on February 3rd, 2006. Judge,
21 he was released on January 22nd, 2009. Judge, that was
22 actually about ten months before the appeal was even
23 overturned and sent back for a new trial, Your Honor. So he's
24 kind of been just tangentially pulled along in this appellate
25 process, Judge, and frankly has never wanted a new trial after

1 he's been released, but be all that as it may, he is back
2 before the Court.

3 Judge, he's told me from the moment we met around October
4 of 2011 that he did not want a new trial, Judge, that he
5 wanted this matter behind him, that he wanted to try to move
6 on with his life, that he was sorry that it happened, but
7 again just wanted closure.

8 Your Honor, he felt that he had done his time and that
9 that time was sufficient as to his involvement in this case.
10 Judge, as you know, factually the only allegations were that
11 he drove his brothers to Rock Hill from Williamsburg and
12 provided a false name to law enforcement, Your Honor.

13 Judge, I do share the same sentiment that a seven year
14 sentence is -- is more than enough punishment for his
15 involvement in this case, Judge. Absolutely no allegations
16 that he was involved in any violent conduct or any harmful
17 conduct. Judge, you've heard several times that he has no
18 prior record. Judge, since he's been released from prison,
19 he's not been convicted of any crimes or had substantial
20 problems with the law, Your Honor.

21 He is gainfully employed, was employed at the time this
22 happened. Judge, he's currently employed with the Clarendon
23 County EMS. He drives the ambulance and he's actually taking
24 classes to get his emergency medical technician certificate,
25 Judge, an EMT certificate. He's paying child support -- child

1 support for his three children by way of wage withholding,
2 Your Honor. They scratch it out of his check every two weeks.

3 Judge, I don't see -- and again, graciously the victims'
4 families have recognized this. They too don't see any point
5 in sending Jonais Edwards back to the Department of
6 Corrections, Judge, and I just don't think it will serve any
7 purpose in this case and, Your Honor, we'd ask that the Court
8 would respectfully accept the recommendation of the State and
9 impose a time-served sentence. Thank you.

10 THE COURT: Thank you.

11 MR. CARRAWAY: Your Honor, Legrand Carraway and I
12 represent Maceo Edwards and I represented him back in 2006. I
13 represented him even before then I think in 2002 when this
14 happened or whatever. I represented him then.

15 All he -- I've never seen three brothers tighter than
16 these three brothers in my whole life. He asked yesterday, he
17 said is there any way I can do my brother's time for him and
18 let him come home. Can I go do Jason's time for him? All he
19 knows on the day of this incident, all he saw was his -- he
20 heard gunshots in the house. He was waiting on the outside
21 and he saw his brother come out bloody and had been stabbed in
22 a tussle with Jimmy Robinson and then whatever. I don't know
23 that he even saw that because they ran on past and they ran
24 out to the road or whatever, but that's what he saw and what
25 he aided his brother -- he is guilty of aiding his brother. I

1 think they called Jonais Edwards and they drove up to Rock
2 Hill is what they did and they gave somewhat of an evasive
3 story about what happened at that point or whatever.

4 But I don't think anyone has suggested and I don't think
5 Ms. Barr has suggested that he had a hand -- ever had a weapon
6 or had a hand in subduing or holding or doing anything to --
7 to hold either Joe Woods or Jimmy Robinson or to hold or to
8 get in their way or to block their way or to obstruct them in
9 any way. I don't think anyone has suggested that he had a
10 weapon, that he used a weapon, or that he threatened anyone
11 with or physically had anything to do with this with the
12 actual -- the deaths of Mr. Woods and Mr. Robinson and I would
13 ask these -- these -- as far as I know, they have no record
14 and beyond that, I think they are very good guys. I think he
15 is a very good guy.

16 I think -- you know, I don't know if I want somebody to
17 go through my whole life story or whatever. My whole life
18 story or whatever and everything I've done might not hold up
19 as well as their whole life story. If everything that they
20 have done in their life were known and brought to light here,
21 it would probably be a pretty exemplary story except for this
22 particular day and this particular incident here.

23 So I would for all of those reasons -- and when these
24 boys were found guilty back in 2006, I didn't hear any whining
25 out of any of them or whatever. They said, well, that is

1 God's will or whatever and we will go off and do whatever
2 time. I didn't see any trembling or any fear. Now, he did
3 physically pass out or whatever. I do remember that at that
4 time, but as far as any reaction about that this is terrible
5 or whatever, I think it was just a -- it was -- it was quite a
6 moment there or whatever and he just physically passed out or
7 whatever and he had to be revived, but as far as him crying or
8 being angry or upset, all three of these guys were as stoic as
9 any guys I've ever seen or whatever. This is God's will or
10 whatever and we'll do whatever we've got to do. We've had
11 this trial. We've been found guilty here and we will go do
12 this and I've seen him over at the jail numerous times since
13 he's come back or whatever and he's always been the same
14 straight, steadfast guy or whatever.

15 And I would ask that you go along with the
16 recommendation, the very gracious recommendation of the
17 Solicitor's Office, and go along with what I believe and I
18 asked Ms. Barr to make sure. I asked her, I said are y'all
19 just not opposing a time-served sentence. She said, no, we
20 are recommending a time-served sentence for both Maceo and for
21 Jonais and I would ask -- and you come from Spartanburg down
22 here and you come to a place here. Mr. Saab was -- has lived
23 in the Greeleyville community all his life.

24 He knew these families very, very well. He knew them
25 very, very well and I think even though Ms. Barr is not from

1 here, I think she was intimately involved back in 2006 with
2 the families and everything and I think she has a very good
3 feel for this, for exactly who these people are, who both
4 sides are, and everyone here.

5 This is -- I think we know all this. She knows all this
6 very well and knows the boys very well here and for all of
7 those reasons, Your Honor, I would say this is a very informed
8 recommendation from the Solicitor's Office for a time-served
9 sentence for Maceo Edwards. He has served nine years, a
10 little over, about nine and a half years off at -- whether
11 it's been in the Williamsburg County Detention Center or the
12 Department of Corrections or when he's come back to the
13 Detention Center. As far as I know, he hasn't seen the light
14 of day in nine and a half years here or whatever and he had no
15 -- not being charged with having a weapon or doing anything or
16 even really being in the house or participating in any way in
17 this or whatever, but just merely by being present there is
18 what is -- is really what I think the facts would show here.

19 So I would for all of these reasons ask that you go along
20 with the very generous recommendation of the Solicitor's
21 Office and I believe the Woods and Robinson family are not --
22 I think what was stated is they would not oppose a time-served
23 sentence for Maceo and Jonais and, of course, I represent
24 Maceo and I would ask that you, the Court, show mercy on Maceo
25 here and give him a time-served sentence here for accessory

1 after the fact, which is what he's pleading to.

2 THE COURT: Thank you, sir. At this time, the Court
3 would welcome any comments from the family members on behalf
4 of the various defendants.

5 MR. MCKENZIE: Thank you, Your Honor. Your Honor, first
6 would be Maceo Edwards, Sr., the father of all three boys.

7 THE COURT: Sir, I just need to let you know as well that
8 we are making a recording of everything that happens so please
9 speak up loud enough so the court reporter and I can hear you
10 and please start with giving us your full name.

11 Mr. MACEO EDWARDS, SR.: All right, Your Honor. I give
12 honor to the Court. I raised three sons and I raised them in
13 the church. I raised them like our God told me to raise them.
14 They never give me any trouble, just anything I tell them to
15 do they would do it. It was just two wrongs that day. I
16 don't know. I wasn't there. There was two wrongs and it's
17 nobody getting no victory out of this. It just -- it hurts.

18 The last ten years, I've been without my sons, up and
19 down from prison, but one thing about every prison I went to
20 and they were there, the guards, everyone said what a good job
21 they're doing. That give me a little encouragement. I never
22 had nobody went no place and said they done anything wrong and
23 I just ask you to have mercy and give a little mercy for them
24 because they -- especially Jason to go back home to his sons.
25 One son he have never hold or else. He was in prison when the

1 baby was born. He never had him in his arms.

2 I love Joe's family and the Robinson family. I want
3 y'all to remember that and y'all just forgive for what
4 happened because, you know, God is in charge of all of it. We
5 love y'all and nothing will never change that. I just ask you
6 to have mercy on my sons.

7 MR. MCKENZIE: That was Maceo Edwards, Sr., Your Honor.

8 THE COURT: Thank you, sir.

9 MR MCKENZIE: And the next person would be Sedrina
10 Swearinger.

11 MS. SWEARINGER: My name is Sedrina Swearinger. I am
12 cousin, like sister to all three of the boys here. We've --
13 I've known them all my life. I didn't grow up with brothers,
14 but these were who I called my brothers. We've always been
15 really, really close and always been there for each other.
16 When I would be going through my difficulties, they would
17 always be there to just encourage me and tell me to hold on
18 and not give up and I mean everything.

19 Even from the time that they've been in -- in the prisons
20 or in the jails, if I've been going through anything, they
21 always had -- whether it was a letter of an encouraging word
22 or the scriptures just to help build me back up and although I
23 would think that I'm trying to encourage them, they would
24 always end up, regardless of the circumstances or the
25 situations that they were in, managing to encourage me and try

1 to build me up and tell me to hold on and not to give up on
2 faith and on God.

3 So as I said before, these are -- and they still are, not
4 biologically but first cousins, but these are my brothers.
5 Like I said, I've know them all my life and I'm a teacher.
6 I've been teaching for twelve years and I constantly talk to
7 my students and it's like, you know, I always tell them make
8 wise choices. Life is a series of choices; make wise choices.

9 And I'm sure all of us here -- my heart is heavy for the
10 Woods family and the Robinson family because we've all been
11 just in a small community and we all love each other and I
12 mean just nothing but love. Our families were always just
13 close like that and I'm sure that if any of us --

14 I mean I look back at my life. I'm not perfect either,
15 but if any of us was given a chance or were like a computer
16 and had an undo button or a delete button to press, we would
17 all at some point in our lives choose to do that because none
18 of us are perfect and if we could go back to that one
19 particular day, I'm sure things would be a totally different
20 turn about the situation. It just would not be the same.

21 So I'm asking that you be lenient, have a little mercy on
22 them because as they've been away, they -- they've been in the
23 Department of Corrections, the local jails, and they've been
24 actually even helping people while they've been there,
25 encouraging them and telling them to trust in God and just no

1 prior records and still managing to encourage and help others
2 along the way. So please have mercy on them.

3 THE COURT: Thank you, ma'am.

4 MR. MCKENZIE: Thank you, Your Honor. I think this is --
5 this would be Willie Edwards who wants to speak next.

6 MR. WILLIE EDWARDS: Good afternoon, Your Honor. Good
7 afternoon to the Robinson and Woods family. I am very sorry
8 what happened, but my nephew was -- I know them since babies,
9 you know. Coming up, they worked hard, Your Honor, never got
10 in trouble and they -- they were like role models in the
11 community. If someone was in trouble, they would go out there
12 and help them and do anything they can for them and I'm sorry
13 this happened.

14 Even, Your Honor, right here now, I work. I'm a
15 supervisor; he work for me for the ambulance service and he's
16 doing good. I would love to see the rest of them come and
17 work for me also and be with their families. If you can, have
18 lenience with them, please, sir, Your Honor.

19 MR. MCKENZIE: Jerry, do you want to say anything?

20 MR. JERRY EDWARDS: Yes.

21 MR. MCKENZIE: Jerry Edwards, Your Honor, an uncle.

22 MR. JERRY EDWARDS: Good afternoon, Your Honor. My name
23 is Elder Jerry Edwards. I'm the pastor of New Hope Friendship
24 -- New Hope Christian Church in Greeleyville. I've known
25 these -- these are my nephews and I've known them all my life.

1 I honor the Woods and the Keels family because we're all just
2 like family. That's what she was saying; it's a tight
3 community.

4 Jason and Jonais -- a long time ago I told Jason that the
5 devil was going to destroy him. He was trying to destroy him.
6 These two guys have a music ministry that's untouchable. He
7 played the lead guitar; he played the bass for the church.
8 Even the Robinson family took them up north to play for them
9 and I knew that they had an anointing on their life that the
10 devil was going to try to take away and I prayed for them day
11 and night that God would take them through this.

12 Now, what happened that day, he was working with me at
13 Georgia Pacific and I was looking for him and they told me
14 what happened. I couldn't believe it. I kept waiting for
15 Jason to come to work and then it dawned on me maybe it is
16 true what had just happened. It was like a nightmare because
17 these guys were raised in the church. They were trained up in
18 the church. My dad was a deacon. My mom was a mother. We
19 all were raised in the church. I am now a pastor of a church.
20 So they had the Word in them and we went up and down the road
21 as a brotherhood choir singing from place to place and I knew
22 that there was a gift in them. No matter what happened, no
23 matter where they go, the Word is still in them.

24 I visit with them in prison from one prison to another.
25 In Broad River, Brother Maceo prayed with a guy that had AIDS

1 and he recovered. Jason, in Lieber they call him Jason the
2 Baptist. The word of God is still in them and I know if they
3 could take this back, it would have never happened.

4 Jason was stabbed severely before he shot anyone and I
5 hope and trust that y'all would find forgiveness because we
6 can never -- the healing process will never completely mend
7 itself until we stop looking back and look forward because no
8 matter what we do here today, the final say is in God's hands.
9 He is the true and righteous judge no matter what they do. If
10 they go free or not, in the last day they've got to stand
11 before a just God and he -- and he is the just reward for the
12 crime that was committed. Thank you, Your Honor.

13 THE COURT: Thank you, sir.

14 MR. MCKENZIE: Thank you, Your Honor.. That would be all
15 of our mitigating witnesses, Your Honor.

16 MR. O'NEAL: That's correct, Your Honor.

17 THE COURT: At this time, I would like to hear from
18 Jonais Edwards if there is anything that you would like to say
19 or want me to know at this time.

20 JONAIIS EDWARDS: Yes. It's kind of hard, you know. It's
21 kind of hard, but I love my brothers, you know. You know,
22 since they taught me so much. That's all. That's it. That's
23 it.

24 THE COURT: Thank you, sir. Mr. Maceo Edwards, is there
25 anything that you would like to say or would like for me to

1 know or consider?

2 MACEO EDWARDS: Yes. I would like for the -- the Court
3 to have mercy on my brother, Jason.

4 THE COURT: Thank you, sir, and Mr. Jason Edwards, is
5 there anything that you would like to say or like for me to
6 know or consider?

7 JASON EDWARDS: Yes, sir. First of all, I want to give
8 God thanks for me being here and being the head of my life and
9 the second thing, most important, I want to ask the Robinson
10 family and the -- and the ---

11 MR. MCKENZIE: Woods.

12 JASON EDWARDS: --- and the Woods family for forgiveness.
13 Just like Rosa -- Ms. Rosa Woods actually said that she
14 forgives us and I truly believe that she really forgives us
15 and that's -- that's -- God is working and this -- just like
16 we said earlier, we was a close family, we was a close
17 community, and -- and I would say if I could have turned back
18 the hands of time, I would never would have ever take a gun
19 over there to even try to get a septic tank situated or
20 straightened out for me to get my house pulled for me to get
21 married and I -- and I also would say that if I could have
22 turned back the hands and it was forced me to go over there, I
23 would rather have me died and let them stand here, Mr. Joe
24 Woods and Mr. Robinson to stand here before you, Your Honor.

25 Not only that, but I just want you to have mercy upon me.

1 My character tells it all about how I was raised, who I am
2 within me. I went to prison. We were found guilty in 2006.
3 I never cried about it; I never weep about it because I
4 understand God's will. I went to prison. I went to prison
5 ministry. I accomplished multiple degrees there: a Master's
6 degree in religion, a Doctorate of Biblical studies, degrees
7 in theology, degrees in counseling, degrees in sociology. I
8 accomplished that much not only just for me to have or to be
9 seen, but it's something within me.

10 My character will speak for itself. I'm not -- I'm not a
11 person that -- that goes around creating trouble as Kimberly
12 Barr said and I appreciate her gracious words and my lawyers
13 stated that I have no criminal record, only a driving under
14 suspension. It tells a lot about who I am. I'm not just --
15 don't believe what I say, but just believe the things that you
16 can see that is bring -- that is brought forth today before
17 you, Your Honor.

18 I'm the only one to say it, but I just constantly,
19 constantly I pray and I ask God that -- that there will be
20 healing back within the family. Just like I said in 2006, I
21 love y'all with all my heart. I don't change. I'll still --
22 if you need help, I will still help you because that's my duty
23 and that's my job and that's my purpose in life and I truly
24 want y'all to find forgiveness. Ms. Keels, Sheila Keels, we
25 went to school together, we graduated together, and we had a

1 great friendship, but when this situation happened it created
2 a barrier between us. But I pray that God will bring it back
3 together and make it stronger than it ever been before because
4 just like Mr. Saab say --

5 Mr. Ronnie Saab know who I was. He know my character.
6 He know everything about me as well as my brothers. He know
7 everything about Mr. Robinson and Mr. Woods because he lived
8 there. He was a great idol within Greeleyville showing you
9 how to be successful in life, as well as my uncles and my dad
10 and my sister -- my sisters and my mom and all my cousins that
11 is here today. We growed up and we was taught how to be a
12 great idol and how to be a great person that would be able to
13 help other people, influence them to change, to change the
14 whole world, change their community, and that's what this
15 community, our community, was based on by we helping one
16 another within the -- within the community and then we can go
17 out to other communities and create a positive atmosphere that
18 young guys will not be on the corner and doing all things, but
19 they would be able to be successful in life and that's what it
20 was all about, Your Honor, and I just -- I just pray today
21 that -- that God will be able to show you what really happened
22 in that house because there was no --

23 I hate I took that gun over there. I hate I take that
24 gun. I wish I would have passed away than me standing here
25 today because it's a very painful thing for both sides of the

1 family and I'm truly sorry and I'm truly sorry for that night.

2 I truly believe that everyone that in the sound of my voice
3 understands that I'm truly sorry for this. This is not me.

4 I'm not a person that creates trouble and creates
5 negativity everywhere I go, but in prison you can call a
6 chaplain where I was at. I started a ministry there in the
7 dorm that I was in. I started a lot of multiple programs
8 coming into the prisons with gospel choirs and not only that,
9 when I came back from prison, my county sent me to Effingham.
10 You can call the chaplain down there. He can also vouch for
11 me because he had it set up for me to go back into the prisons
12 with my music ministry and my singing ministry with me, along
13 with me and my brothers and New Hope Ministry to go back into
14 the prisons to be able to bring encouragement. As my cousin
15 said earlier, to bring encouragement and inspire those
16 brothers that they have no hope, those that wants to give up.
17 I mean that's my duty, Your Honor.

18 I just pray today that God will touch our hearts and we
19 will find forgiveness and understand that the past, it hurts,
20 but we got -- we got to continue to move forward and I
21 understand because if it was my brother, Ms. Rosa, I would
22 probably say the same thing that you said and I understand
23 that. I have no disregards for what you said or Mr. Kelly
24 Robinson or Mr. Harold, I have no regards, but I truly wanted
25 to say that there was no me having -- going over and doing

1 anything. It was just because it just happened.

2 I stabbed -- I got stabbed up and I ended up shooting
3 both guys and I hate it happened. I truly hate it happened
4 and I just pray that there will be some way that I will not be
5 sentenced to thirty years. I want to be home with my two
6 sons, but I know if it's God's will for me to go back to
7 prison, then it's God's will. I will accept that, but I pray
8 today that God will touch our hearts and that we will be able
9 to understand and see what is the facts and the reality of all
10 things.

11 I'm not -- I'm not -- I'm not a bad guy. I'm not.
12 That's not me. Sheila Keels, she can also say that as well.
13 We went to school. I was never a person in school that would
14 create trouble. I was always a person to keep people
15 laughing. She can stand up and testify to that today, Your
16 Honor, and I just -- I just ask you again and constantly
17 reminding you that you will find forgiveness, you will find
18 mercy, that you will be able to grant me whatever God wants me
19 to have today and I'll be -- I'll be acceptable to that, but I
20 just -- I just want you to just find mercy upon me and I
21 understand.

22 I'm glad to see my brothers, that you find mercy on them
23 for them to be home, but, Your Honor, I just pray that -- I
24 pray that I'll be home to be there with my two sons and be
25 able to start the boxing program that I -- the dreams that I

1 have and start a new class with communities and try to bring
2 out the young brothers, white, black, Mexican, whatever color,
3 whatever race. That's my job is to be able to bring people
4 together to teach one -- reach one and teach one that we can
5 change everywhere that we go and that's all I want. That's
6 all I am, Your Honor, and I know and I pray that God will give
7 you the eyes that you will see who I am, who I really am, and
8 not just what I'm saying, but my character, Your Honor. I'm
9 finished.

10 MR. MCKENZIE: Thank you, Your Honor.

11 THE COURT: Thank you.

12 (Whereupon, there is a pause in the proceedings.)

13 THE COURT: I have already -- I have already accepted the
14 plea in these three cases and I've already found the
15 constitutional requirements that this Court has to find in
16 order to accept the pleas. Just briefly, a few comments from
17 the Court before I announce the sentences.

18 I have never had the privilege of being in your county
19 before. I've never had the honor of being placed here in this
20 courtroom to serve in an official capacity as a judge in the
21 State of South Carolina. So the people in this courtroom,
22 these families, the defendants, the victims' families, y'all
23 would have no reason to know me. I pray every day for victims
24 of crimes, for defendants that appear in front of me, for the
25 families that are touched by defendants and the victims, for

1 family that are touched by what I have to do because I am
2 given what I consider a tremendous responsibility, frequently
3 a burden, and I've heard a lot today about God and seeking God
4 and relying upon Him and I do that in trying to do this job
5 and trying to decide the decisions that I have to make and I
6 searched for guidance in making these decisions as well.

7 I'll just -- the family, they -- you have my condolences.
8 You have demonstrated to me great mercy always. You're moving
9 along and trying to get by this very burdensome and difficult
10 part of your life. I want to let you know that I see that and
11 I acknowledge that and I commend you for that.

12 To the family of these defendants, you -- my -- what a
13 blessing it is to have these young men to have family like you
14 to have stood and be part of their lives before they reached
15 this point, before this very tragic day, and you've continued
16 to love them and want to be part of their lives and to give
17 them direction. What a blessing that is to them as well as to
18 everybody else that they come in contact with. Thank you.

19 I heard a lot -- I heard a couple of times the comment
20 that the State made a gracious recommendation. I might
21 disagree with that. The State made a just recommendation.
22 There is nothing gracious about that. My work -- a lot of my
23 work that I have to do sitting up here in my official capacity
24 was done already by the State and by the defense lawyers who
25 need to be commended for doing your job. Y'all worked very

1 hard at getting this case to be where it is today to see that
2 justice is done in this case. I want to thank the lawyers for
3 their hard work.

4 SENTENCE OF THE COURT

5 In my capacity though, I am going to sentence Mr. Jonais
6 Edwards to a fifteen year sentence. I will suspend that to
7 the service of seven years. I have been told and I've also
8 verified with the Department of Corrections that that
9 satisfies -- that the time that you have served satisfies that
10 seven year sentence so yours will be a time-served sentence.

11 Mr. Maceo Edwards, yours is a fifteen year sentence.
12 Based upon what I've been told by the State, as well as
13 provided by the Department of Corrections, I will suspend that
14 upon the service of nine years and that will be a time-served
15 sentence. You will receive credit for -- for that time.

16 Mr. Maceo Edwards [sic.], I've considered the entire
17 facts of the case and the change of position that has been
18 made by the State. I -- based on what I've heard, I am going
19 to impose a thirty year sentence to run concurrent on both of
20 these charges. I've indicated my desire that you receive
21 credit from June the 20th of 2002.

22 MR. CARRAWAY: That's Jason Edwards.

23 JASON EDWARDS: Jason.

24 THE COURT: I'm sorry, Jason Edwards. Yes, sir. Jason
25 Edwards on two thirty year sentences that will run

1 concurrently. Good luck to you, all three of you. Good luck
2 to you.

3 MR. BALLENGER: Thank you, Judge.

4 MR. MCKENZIE: Thank you, Judge.

5 (Whereupon, the proceedings ends at 12:25 p.m.)

6 --- END REQUESTED TRANSCRIPT ---

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1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4

5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 General Sessions for Williamsburg County, South Carolina, on
12 the 30th and 31st days of January, 2012.

13 I do further certify that I am neither of kin, counsel,
14 nor interest to any party hereto.

15

16

Krystal Smith

17

Court Reporter

18

19 Florence, South Carolina

20 December 12, 2012

21

22

23

24

25

WITNESSES

WCSD

Rudv Tisdale

ARREST WARRANT NUMBER

G 231470, G 231236 & G 231237

D/A: 6/22/02

ACTION OF GRAND JURY

True Bill

John R. Myers
Foreperson of Grand Jury

Date: *11-07-2004*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2004-GS-45- 167

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

OCTOBER TERM 2004

THE STATE

vs.

JASON SINATRA EDWARDS

MACEO LATONYA EDWARDS

JONAS EDWARDS

Indictment for

**MURDER - TWO COUNTS,
POSSESSION OF A WEAPON DURING
VIOLENT CRIME AND ACCESSORY
AFTER THE FACT**

C. KELLY JACKSON, SOLICITOR

04 OCT -7 PM 1:28

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG) INDICTMENT FOR
) MURDER - TWO COUNTS, POSSESSION OF A
) WEAPON DURING VIOLENT CRIME AND
) ACCESSORY AFTER THE FACT

At a Court of General Sessions, convened on October 11, 2004, the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE – MURDER

That **JASON SINATRA EDWARDS** and one **MACEO LATONYA EDWARDS** did in Williamsburg County on or about June 19, 2002, feloniously, wilfully and with malice aforethought either express or implied kill one **Joe Woods** by shooting him in the head causing his death, as prohibited by the Code Section 16-03-10, South Carolina Code of Laws (1976), as amended.

COUNT TWO – MURDER

That **JASON SINATRA EDWARDS** and one **MACEO LATONYA EDWARDS** did in Williamsburg County on or about June 19, 2002, feloniously, wilfully and with malice aforethought either express or implied kill one **Jimmy Robinson** by shooting him in the head and shoulder causing his death, as prohibited by the Code Section 16-03-10, South Carolina Code of Laws (1976), as amended.

COUNT THREE – POSSESSION OF A WEAPON DURING VIOELNT CRIME

That **JASON SINATRA EDWARDS** and one **MACEO LATONYA EDWARDS** did in Williamsburg County on or about June 19, 2002, possess or visible displayed a firearm during the commission or attempted commission of a violent crime, to wit: Murder of Joe Woods and/or Jimmy Robinson in Greeleyville, South Carolina armed with a handgun, in violation of Code Section 16-23-490, South Carolina Code of Laws (1976), as amended.

COUNT FOUR – ACCESSORY AFTER THE FACT

That **JONAS EDWARDS** did in Williamsburg County on or about June 19, 2002, knowing of the commission and completion of the felony aid, abet, counsel or procure the commission of a felony of Murder by aiding and harboring Jason Sinatra Edwards and/or Maceo Latonya Edwards, in violation of Code Section 16-1-55, South Carolina Code of Laws, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

C. Kelly J. [Signature]

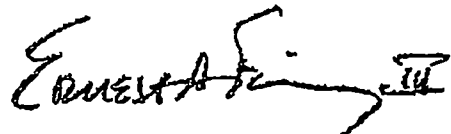
SOLICITOR

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR MURDER (TWO COUNTS), POSSESSION OF A WEAPON DURING A VIOLENT CRIME, AND ACCESSORY AFTER THE FACT THE AFORESAID NAME(S) OF MACEO EDWARDS SHOWN THEREON:

COUNT FIVE – ACCESSORY AFTER THE FACT OF FELONY A

That MACEO EDWARDS did in Williamsburg County on or about June 19, 2002 violate section 16-1-55 of the Code of Laws of the State of South Carolina in that he did after having knowledge that a Class A Felony was committed, aid, assist or harbor the principal felon, Jason Sinatra Edwards, or assist him in escaping detection or criminal prosecution.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ERNEST A. FINNEY, III,
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATEWilliamsburg
VS.

Jason Sinatra Edwards

AKA:

Race: 2 Sex: M Age: 32

DOB: SS#:

Address: Road

City, State, Zip: Greeleyville, SC 29056

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Voluntary Manslaughter

in violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 217

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTORNEY: Kimberly V. Barr, Kimberly V.

8443 Jason D. Edwards Defendant

Attorney for Defendant 4280 SC Bar# 6715

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 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. June 20, 2012☐ 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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 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 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2004-GS-45-0167

A/W#: G231470

Date of Offense: 6/19/2002

S.C. Code § : 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 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.

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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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
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3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

days/hours Public Service Employment

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.

Presiding Judge

Judge Code: 2132

Sentence Date: 01-31-2012

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

61

COUNTY OF Williamsburg
 STATE VS.
Jason Sinatra Edwards
 AKA:
 Race: 2 Sex: M Age: 32
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED] Road
 City, State, Zip: Greeleyville, SC 29056
 DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2004-GS-45-0167
 A/W#: G760563
 Date of Offense: 6/19/2002
 S.C. Code §: 16-03-0010
 CDR Code #: 0116

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Voluntary Manslaughter

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-3-60 of the S.C. Code of Laws, bearing CDR Code # 217
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTORNEY

Kimberly V. Barr 8443 Jason D. Edwards 4280
 Barr, Kimberly V. SC Bar# Defendant Attorney for Defendant SC Bar# 6719

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 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. Start June 20, 2002

☐ 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 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(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

PTUP _____

_____ days/hours Public Service Employment

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

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2132

Sentence Date: 01-31-2012

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Williamsburg)
)
Jason Edwards #313642)
 Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
 POST-CONVICTION REMEDY

12 JUL 16 AM 11:37
 CLERK OF COURT
 KING TREE, SC

FILED

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, 4460
Broad River Rd., Columbia, SC 29210
2. Name and location of Court which imposed sentence
Williamsburg County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Maceo L. Edwards & Jonas Edwards
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) (2004-GS-45-0167)
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 31, 2012
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty plea of guilty
- (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. n/a
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. n/a
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. n/a
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. n/a
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) counsel failed to file direct appeal
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of counsel
- (b) involuntary guilty plea
- (c) due process violation
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attached memorandum in support
- (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? no
- (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 (previous)
- ii. petition for certiorari, wherein South Carolina Supreme
- iii. Court vacated sentence and conviction and remand for new
- iv. trial.
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Court of Appeals
- ii. South Carolina Supreme Court
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. denied
- ii. granted and remand for new trial
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. unknown
- ii. unknown
- iii. _____
- iv. _____

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

- i. unknown
- ii. unknown
- 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, first filing for PCR

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

(a) which grounds have been presented:

- i. n/a
- ii. _____
- iii. _____

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

- i. n/a
- 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) first filing for PCR
 (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? n/a to this application
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? n/a to this application
 (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. ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
Steven McKenzie, esq. 2 North Brooks St, Manning SC.
 ii. Michael O'Neal, Esq., Suite D, 2165 Ashley Phosphate Rd.,
North Charleston SC 29406
 iii. ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
same as above (i)
 (b) the proceedings at which each such attorney represented you:
 i. plea
 ii. _____
 iii. sentencing

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG
IN THE COURT OF COMMON PLEAS

Indict.No. 2004-GS-45-0167

Jason Edwards -- Applicant,

-Vs-

State of South Carolina -- Respondent,

**MEMORANDUM IN SUPPORT OF APPLICATION FOR
POST CONVICTION RELIEF PURSUANT TO
§§17-27-20 THROUGH §17-27-160**

Respectfully Submitted,

/s/

Jason D. Edwards
Jason Edwards

SCDC# 313642

BRCI

4460 Broad River Rd.
Columbia, SC. 29210

Jason Edwards) Indict.No. 2004-GS-45-0167
Applicant,)
-V-) **MEMORANDUM OF LAW IN SUPPORT OF**
State of South Carolina) **APPLICATION FOR POST**
Respondent,) **CONVICTION RELIEF PURSUANT TO**
) **\$17-27-20 THROUGH \$17-27-160**

COMES NOW, above captioned Applicant respectfully seeking relief in this Honorable Court pursuant to S.C. Code Ann. §§17-27-20 through §17-27-160, claiming that his rights were violated in a number of ways including but not limited to his Sixth Amendment right to the effective Assistance of Counsel and his Fourteenth Amendment right to Due Process of Law that is protected under the Federal Constitution of the United States.

Through the issue presented, statement of facts and citations of authorities relied on Applicant will show unto this Honorable Court his entitlement to the requested relief sought herein.

Respectfully Submitted,
/s/ Jason D. Edwards
Jason Edwards

**BRIEF PROCEDURAL HISTORY and
STATEMENT OF FACTS**

Applicant was originally indicted for murder on or about June 19, 2002. Wherein Applicant proceeded to trial by jury and a judge. The jury ultimately convicted Applicant as indicted and Applicant was sentenced to life in prison (LWOP).

A timely appeal was filed and perfected and the South Carolina Court of Appeals affirmed the conviction and sentence. Applicant petitioned the South Carolina Supreme Court for writ of certiorari which was ultimately granted on BATSON violations and the sentence and conviction was vacated and remand for new trial.

Therein after Applicant's counsel approached him with a plea offer of 2 to 30 years for voluntary manslaughter, and further advised Applicant that if he pled guilty he would be looking at the middle range of 15-years.

Applicant took counsel's advice and entered a plea of guilty and the Plea Judge ultimately sentenced Applicant to the maximum term of 30-years.

Applicant asserts that he was denied the effective assistance of counsel when counsel failed to object and move the court to enforce the oral agreement based on the detrimental reliance exception, thus rendering Applicant's plea involuntary.

Argument

The Sixth Amendment provides in part: "[i]n all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defense," U.S. Const. amend VI.

It is well established that the Sixth Amendment right to counsel cannot be satisfied by mere formal appointment, *Avery v. Alabama*, 308 U.S. 444, 446 (194). Rather, the Sixth Amendment guarantees criminal defendants the assistance of "a reasonably competent attorney," *McMann v. Richardson*, 397 U.S. 759, 770-71 n.14 (1970).

The Supreme Court defined the Sixth Amendment right to effective assistance of counsel in *Strickland v. Washington*, 466 U.S. 668, 686 (1984). In *Strickland*, the court established a two-part test for reviewing claims of ineffective assistance of counsel, *Id* at 690.

The Supreme Court extended the Strickland test to apply even in the context of guilty plea cases under *Hill v. Lockhart*, 474 U.S. 57 (1985).

In the instant matter Applicant asserts that he was denied the effective assistance of counsel and that counsel's performance was deficient in failing to object and move to enforce the oral agreement when the plea court sentenced Applicant to maximum term of 30-years. Counsel had two options, (1) counsel could have objected on the detrimental reliance standard, or (2) moved to allow Applicant to withdraw his plea when the Plea Court sentenced Applicant to the maximum. In

essence Applicant gained nothing for surrendering his constitutional right to a trial by jury.

The detrimental reliance doctrine on the enforceability of oral plea agreements was discussed in *Reed v. Becka*, 511 S.E.2d 396. In a more recent decision in *Custodio v. State*, 644 S.E.2d 36 (S.C.2007), a case where counsel was found ineffective in a burglary and grand larceny case for failing to have defendant's plea agreement enforced on detrimental reliance.

In *Thompson v. State*, 531 S.E.2d 294 (S.C.2000), counsel was found ineffective following a plea to voluntary manslaughter for failing to object to the State's request for the maximum sentence of 30-years. Although in *Thompson* the Court sentence Thompson to 25-years, the Supreme Court held the defendant was prejudiced even though the defendant was sentenced within the range previously stated because the relevant question for prejudice was whether the defendant would have entered the plea knowing that the prosecutor would recommend the maximum punishment. The Court found a reasonable probability that the defendant would not have pled guilty based on the defendant's indecision to plead just prior to trial and reliance on the agreement. The Court remand for resentencing.

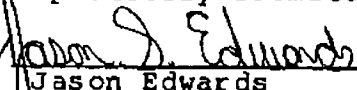
Applicant herein asserts that from the onset of his arrest he was always adamant on going to trial, which is supported by the procedural history of this case. Applicant asserts that he only agreed to enter a plea of guilty to voluntary manslaughter is because his counsel advised him he would receive a sentence in the range of 15-years. Had Applicant known he was going to

receive the maximum penalty he would not have pled guilty but would have insisted on going to trial, which is easily seen as Applicant received nothing in exchange for his plea.

Applicant is informed and believes he is entitled to a specific sentence performance to comply with his detrimental reliance or in the alternative vacate the sentence and conviction and remand for new trial.

Respectfully Submitted,

/s/



Jason Edwards

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

specific sentence performance or vacate and remand for new trial

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

no

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Richland)

I, Jason Edwards, 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.

Jason J. Edwards

SWORN to and subscribed before me this 25th day of June, 2012.

Susan H. Frye (L.S.)
Notary Public

My Commission Expires March 5, 2018

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

I, Jason Edwards, 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.

Jason D. Edwards
Applicant

SWORN or affirmed to and subscribed before me this

25th day of June, 2012.

Susan H. Frye

Notary Public

My Commission Expires

March 5, 2018

My Commission Expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2012-CP-45-0369

Jason Edwards, #313642,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

(Appointment of Counsel Requested)

FILED
12 NOV 29 AM 11:12
CLERK OF COURT
WILLIAMSBURG, S.C.

In response to the post-conviction relief application filed July 16, 2012, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Williamsburg County. The Applicant was indicted at the October 2004 term of the Williamsburg County Grand Jury for two counts of Murder and Possession of a Weapon During a Violent Crime (2004-GS-45-167). Applicant was represented by Steven McKenzie, Esquire. On January 30, 2006, the Applicant proceeded to a jury trial before the Honorable Howard P. King. Applicant was found guilty, and on February 3, 2006, Applicant was sentenced to life imprisonment for each count of murder and five years for possession of a weapon during a violent crime. All sentences were to be served concurrently.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the appeal. State v. Jason Sinatra Edwards, Op. No. 4261 (S.C. Ct. App. filed June 21, 2007). Counsel for the Applicant filed a timely Petition for Rehearing on June 30, 2007. The State made its Return to Petition for Rehearing on July 12, 2007. The South Carolina

Court of Appeals issued an Order Denying the Petition for Rehearing on August 27, 2007. A Petition for Writ of Certiorari was filed on October 15, 2007 with the South Carolina Supreme Court. The Return to Petition for Writ of Certiorari was filed by the State on November 15, 2007. The South Carolina Supreme Court reversed the Court of Appeals' opinion and remanded for a new trial. State v. Jason Sinatra Edwards, Op. No. 26711 (S.C. Sup. Ct. filed August 31, 2009). The Remittitur was sent September 17, 2009.

On January 31, 2012, the Applicant pled guilty to two counts of voluntary manslaughter. He was represented by Michael S. O'Neal, Esquire. The Applicant was sentenced by the Honorable J. Mark Hayes, II, to thirty years imprisonment for each count, with the sentences to be served concurrently. The Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Williamsburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections and the appellate records. The guilty plea hearing transcript has been ordered and will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "...counsel failed to object and move the court to enforce the oral agreement based on the detrimental reliance exception, thus rendering Applicant's plea involuntary."
2. Involuntary guilty plea.
3. Due process violation.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises

questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that: (1) counsel was ineffective; and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signatures on following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: Megan E. Harrigan
Attorneys for the Respondents

November 27, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS

2012-CP-45-0369

JASON EDWARDS, 313642,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

FILED
12 NOV 29 AM 11:12
CLERK OF COURT
KING STREET, S.C.
WILLIAMSBURG

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Jason Edwards, #313642
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210**

DATED this 27th day of November, 2012.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent



ALAN WILSON
ATTORNEY GENERAL

July 9, 2018

Pamela Ozment- Cartee, Court Reporter – *via electronic mail*
retiredcr@sccourts.org

Re: State of South Carolina v. Jason S. Edwards
2012-CP-43-0369

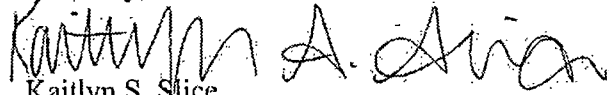
Dear Ms. Ozment- Cartee:

Please prepare a Post-Conviction Relief hearing transcript taken March 21, 2013, of the above named individual, before the Honorable W. Jeffrey Young, for the term in Sumter County. If you have already typed it once for Appellate Defense, let me know before you send me a copy. If this transcript no longer exists, please send a letter to that effect.

Please note that Rule 243(f)(3), SCACR, now requires as detailed an index for PCR hearings as for trial transcripts filed in the Supreme Court. The index should include all exhibits. If exhibits were not introduced, then please note that no exhibits were submitted at the hearing. Please prepare the transcript in accordance with the format requirements as set forth in the Court Reporter Manual.

If the cost of this transcript will exceed \$500, please inform me in writing before you complete the transcript. If you will prepare this transcript and forward it to me along with your statement, I will arrange for payment. Please note that all statements are to be signed

Sincerely,


Kaitlyn S. Slice
Legal Assistant

cc: Court Administration – *via electronic mail*
Jason S. Edwards, #3-13642 – *via electronic mail*



South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

TONNYA K. KOHN
INTERIM DIRECTOR

1220 SENATE STREET,
SUITE 200
COLUMBIA, SOUTH
CAROLINA 29201
PHONE: (803) 734-1800
FAX: (803) 734-0269

July 17, 2018

Kaitlyn S. Slice
Office of Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

In re: State of South Carolina v Jason S. Edwards, 2012CP4300369

Dear Ms. Slice:

This is in response to your letter dated July 9, 2018, addressed to Pamela Ozment-Cartee, a court reporter previously employed by this office, requesting a transcript from proceedings heard on March 21, 2013. In maintaining court reporter records, we adhere strictly to Rule 607, which requires that court reporter records be kept for five years. Therefore, the records to prepare a transcript from proceedings heard before **July 2013** are no longer available. I am sorry that I cannot assist you further.

Sincerely,


Desjree R. Allen
Court Reporter Manager

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Jason Edwards, #313642,
Applicant,

Case No. 2012-CP-45-0369

v.

ORDER OF DISMISSAL

State of South Carolina,
Respondent.

13 APR 18 PM 12:09
CLERK'S OFFICE

PROCEDURAL HISTORY

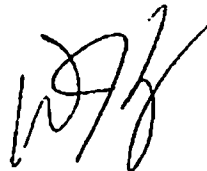
This matter comes before the Court by way of an application for post-conviction relief filed July 16, 2012. The Respondent made its Return on November 27, 2012. An evidentiary hearing into the matter was convened on March 21, 2013, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by James D. Dotson, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was indicted during the October 2004 term of the Williamsburg County Grand Jury for two counts of murder and possession of a weapon during a violent crime (2004-GS-45-167). Applicant was represented by Steven S. McKenzie, Esquire. On January 30, 2006, the Applicant proceeded to a jury trial before the Honorable Howard P. King. Applicant was found guilty, and on February 3, 2006, Applicant was sentenced to life imprisonment for each count of murder and five years for possession of a weapon during a violent crime. All sentences were to be served concurrently.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the appeal. State v. Jason Sinatra Edwards, Op. No. 4261 (S.C. Ct. App. filed June 21, 2007). Counsel for the Applicant filed a timely Petition for Rehearing on June 30, 2007. The State made its Return to Petition for Rehearing on July 12, 2007. The South Carolina Court of Appeals issued an Order Denying the Petition for Rehearing on August 27, 2007. A Petition for Writ of Certiorari was filed on October 15, 2007 with the South Carolina Supreme Court. The Return to Petition for Writ of Certiorari was filed by the State on November 15, 2007. The South Carolina Supreme Court reversed the Court of Appeals' opinion and remanded for a new trial. State v. Jason Sinatra Edwards, Op. No. 26711 (S.C. Sup. Ct. filed August 31, 2009). The Remittitur was sent September 17, 2009.

On January 31, 2012, the Applicant pled guilty to two counts of voluntary manslaughter. He was represented by Michael S. O'Neal, Esquire, and Steven S. McKenzie, Esquire. The Applicant was sentenced by the Honorable J. Mark Hayes, II, to thirty years imprisonment for each count, with the sentences to be served concurrently. Applicant did not appeal his conviction and sentence.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the allegation that "counsel failed to object and move the court to enforce the oral agreement based on the detrimental reliance exception, thus rendering Applicant's plea involuntary. At the evidentiary hearing, Applicant moved to orally amend his application to include new allegations; Respondent objected, citing a lack of notice and prejudice to the State if Applicant was allowed to amend during the hearing. The Court denied Applicant's motion to amend and Applicant proceeded forward on the allegations as specifically pled in his application.



SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from plea counsels, Steven S. McKenzie, Esquire (herein "McKenzie") and Michael O'Neal, Esquire (herein "O'Neal"). This Court also had before it a copy of the Applicant's guilty plea transcript, the records of the Williamsburg County Clerk of Court, Applicant's appellate records, and the Applicant's records from the South Carolina Department of Corrections.

Applicant testified first in support of his application for post-conviction relief. Applicant testified that he was originally charged with, and convicted of, two counts of murder, for which he received life sentences. Applicant testified that he pled guilty because he did not want to risk once again receiving life sentences that could potentially be served consecutive. Applicant testified that he recalled agreeing with the State's version of facts at his guilty plea and that he recalled admitting that he was guilty while under oath. Applicant testified that he is indeed guilty of two counts of voluntary manslaughter.

Applicant testified that he recalled informing the plea court that he was satisfied with the services of his attorneys. However, Applicant testified that he now believes McKenzie was ineffective for failing to enforce an oral agreement that he would receive either a time served or fifteen year sentence if he pled guilty. Applicant elaborated that prior to his guilty plea, he met with counsels to discuss the State's plea offer. Applicant testified that his family members were present, along with his co-defendants and brothers, Macco Edwards, III, and his attorney, as well as Jonias Edwards and his attorney. Applicant testified that McKenzie informed him that the State offered for him to plead guilty to two counts of voluntary manslaughter for a recommendation of concurrent sentences. Applicant testified that McKenzie explained to him



that this meant that he could receive a sentence of between two to thirty years imprisonment, which he understood was the statutory sentence range for voluntary manslaughter. Applicant testified that McKenzie explained to him that they planned to present mitigation evidence to the court and that it was McKenzie's hope and opinion that he would receive a sentence of fifteen years or time served. Applicant testified that his attorneys informed him he would also receive credit for any time he served prior to his plea, which was approximately ten years at the time of his guilty plea. Applicant testified that he understood this was not a negotiated sentence and that there was no promise from the State, or from his counsels, that he would receive any specific sentence. Applicant testified he recalled the prosecuting assistant solicitor requesting the plea court sentence him to thirty years imprisonment during his guilty plea. Additionally, Applicant remembered telling the plea court while under oath that he was aware he could receive up to thirty years imprisonment on each count of voluntary manslaughter. Applicant acknowledged that he understood he could receive up to a thirty year sentence, but that he was surprised when he was sentenced to thirty years imprisonment, because McKenzie's opinion was that he hoped Applicant would receive a more lenient sentence.

Following Applicant's testimony, the Applicant presented testimony from his father, Maceo Edwards, Jr. Applicant's father testified that he was present for the plea discussions prior to Applicant's guilty plea and that he heard McKenzie discuss the State's plea offer with his son. He testified that he understood that the State's offer was for his son to plead guilty to two counts of voluntary manslaughter. He testified that McKenzie explained to his son and family members that his son would receive a sentence between two to thirty years imprisonment. Applicant's father testified that McKenzie informed Applicant and his family that he hoped Applicant would receive a sentence of less than thirty years. He testified that he understood that there was no

negotiation or promise from the State or his son's counsel that he would receive any particular sentence or any less than thirty years imprisonment. Applicant's father testified that it was "his belief in his heart" that his son would receive a sentence of fifteen years and that he was "disappointed" when his son received a sentence of thirty years because "a promise was broken" to his son. However, Applicant's father acknowledged again that he knew there was no negotiation or promise that his son would receive a sentence of less than thirty years imprisonment, and that it was merely McKenzie's hope and opinion that he would receive a lesser sentence.

Next, Applicant presented testimony from his mother, Johnnie Mae Edwards. Mrs. Edwards testified that she was also present for the pre-plea discussions with Applicant and the rest of her family. She testified that McKenzie informed Applicant the State's offer was for Applicant to plead guilty to two counts of voluntary manslaughter. She testified that McKenzie informed her son, as well as present family members, that he could receive a sentence of anywhere from two to thirty years imprisonment. She testified that McKenzie stated his opinion was that her son would receive a sentence of time served or fifteen years imprisonment. However, she testified that she understood the "deal is two to fifteen years to time served."

Following testimony from Applicant's parents, Applicant called his brother, Maceo Edwards, III, to testify. He testified that he was originally charged with two counts of Murder for his participation in this crime, was convicted a trial, and was sentenced to thirty years imprisonment before the South Carolina Supreme Court reversed and remanded for a new trial. He testified that he was represented by Williamsburg County Public Defender LeGrand Carraway, Esquire, and that he pled guilty to accessory after the fact to murder the same day as Applicant for a sentence of fifteen years imprisonment, suspended upon nine years

imprisonment. He elaborated that he was given credit for time served and was able to walk out of the courthouse the day of the plea. He testified that his brother was the shooter during the incident and admitted to his involvement in the crime. He testified that he was present for the pre-plea conference with Applicant, Applicant's counsels, his attorney, and the rest of his family. He testified that McKenzie informed Applicant and his family that Applicant could receive a sentence between two to thirty years imprisonment for voluntary manslaughter, but that it was McKenzie's opinion and hope that Applicant would receive a sentence of around fifteen years. He testified that he understood there was no negotiation or promise from the State as to what sentence Applicant would receive.

Jonias Edwards, also Applicant's brother and co-defendant, testified next in support of his brother's application of post-conviction relief. He testified that he was originally indicted for accessory after the fact to murder, was convicted as indicted at trial, and received a sentence of fifteen years imprisonment suspended to seven years imprisonment followed by five years of probation before the South Carolina Supreme Court reversed and remanded the matter. He testified that he also pled guilty the same day as his brothers and received a sentence of fifteen years imprisonment suspended upon the service of seven years imprisonment with credit for time served. He testified that he also was able to leave the courthouse the day of the plea without any additional incarceration. He testified that he was present for the pre-plea meeting with his brothers, Applicant's counsels, his counsel, and his family. He testified that he understood that there was no promise or negotiation for a specific sentence from the State. He testified that McKenzie stated during this meeting that his opinion and hope was that Applicant would receive a sentence of between "time served to fifteen years." He stated that he never heard either of



Applicant's counsels state that Applicant could receive a sentence for up to thirty years imprisonment.

Applicant's trial and plea counsel Steven McKenzie, Esquire ("McKenzie") testified next. McKenzie testified that he has been practicing law since 1994. He testified that he grew up in Williamsburg County and has known Applicant and his family for many years. He testified that he was retained to represent Applicant in 2006 and has met with him and members of his family countless times. He testified that when he was retained, Applicant and his co-defendant brothers had been incarcerated in the Williamsburg County Detention Center for a few years and that he filed "a few speedy trial motions" on Applicant's behalf. He testified that Applicant was true bill indicted for two counts of murder and possession of a weapon during the commission of a violent crime. McKenzie testified that prior to these charges, Applicant had no criminal record. McKenzie testified that he reviewed all aspects of Applicant's charges with him, as well as potential sentences if convicted at trial.

McKenzie testified that he represented Applicant during his first trial alongside his brothers and co-defendants, which lasted five days and involved three lawyers, with each co-defendant having separate counsel. McKenzie testified that he and the State each made Batson motions during jury selection and the trial court denied his motion. He testified that Applicant took the stand in his defense at trial and testified that he was the shooter. McKenzie testified that his defense at trial was that Applicant was acting in self-defense, as he was stabbed multiple times during the incident and both victims had drugs and alcohol in their systems. McKenzie testified that Applicant was convicted at trial and received two life sentences to be served concurrently. McKenzie testified that the South Carolina Supreme Court reversed Applicant's convictions and sentence and remanded for a new trial based on error involving the Applicant's

Batson motion. McKenzie testified that he was counsel for Applicant's appeals to both the South Carolina Court of Appeals and Supreme Court.

McKenzie testified that after the case had been remanded, he and Applicant's father were able to locate a witness who was unable to be found during the trial. McKenzie testified that he hoped this witness, Tex, would be able to support Applicant's theory of self-defense. McKenzie testified that Tex's testimony would not be favorable to Applicant, and that when he advised Applicant of this, Applicant asked that he negotiate a plea deal with the State. McKenzie testified that the prosecuting Assistant Solicitor, Kimberly Barr, offered for Applicant to plead guilty to two counts of voluntary manslaughter for a recommendation of concurrent time. McKenzie testified that he explained the parameters of the State's plea offer to Applicant and members of his family. McKenzie testified that he explained that the plea was not pursuant to any negotiations with the State and that Applicant could receive a sentence of between two to thirty years imprisonment. McKenzie testified that he and co-counsel O'Neal informed Applicant and his family that he would receive credit for any time he had served pre-trial and while in the South Carolina Department of Corrections (SCDC), which was approximately ten years. McKenzie testified that he and O'Neal also informed Applicant that voluntary manslaughter was classified as a "most serious offense" and a "violent offense", which would require Applicant to serve at least eighty-five percent of any sentence he received before being eligible for community supervision. McKenzie testified that he and co-counsel calculated that if Applicant were to receive the maximum sentence of thirty years imprisonment, eighty-five percent of his sentence would be approximately twenty-five and a half years, which after credit for time served (approximately ten years) would require Applicant to serve an additional fifteen years imprisonment. McKenzie testified that he believes this is the calculation and estimation

that Applicant and his family members are recalling when they state that he informed them Applicant would receive a sentence of fifteen years imprisonment. McKenzie testified that he never promised or informed Applicant or his family that Applicant would receive any particular sentence.

McKenzie testified that in addition to Applicant's guilty plea, his brothers and co-defendants also pled guilty to accessory after the fact to murder. In exchange for their pleas, both of Applicant's brothers received sentences that amounted to time served and allowed them to leave the courthouse the day of the plea. McKenzie testified that he considered Applicant's guilty plea to be a sacrifice on behalf of his brothers and allowed them both to return to their families and lives.

Following McKenzie's testimony, co-counsel O'Neal testified. O'Neal testified that he is a member of the Charleston County Bar and he has been practicing law since 1984. He testified that he was appointed to represent Applicant after the case was remanded and that he worked alongside McKenzie, who was essentially *pro bono* at this time. He testified that he and McKenzie thoroughly explained to Applicant that he was entitled to a trial and that Applicant requested counsel secure a favorable plea deal on his behalf. O'Neal testified that the State made a plea offer for Applicant to plead guilty to two counts of voluntary manslaughter for a recommendation of concurrent sentences. O'Neal testified that he and co-counsel McKenzie explained to Applicant and his family that the plea was without any negotiation and that Applicant could receive any sentence from two to thirty years imprisonment. O'Neal testified that he calculated that if Applicant were to receive the maximum sentence of thirty years imprisonment, eighty-five percent of his sentence would be approximately twenty-five and a half years, which after credit for time served (approximately ten years) would require Applicant to

serve fifteen years additional imprisonment. He testified that he and McKenzie informed Applicant and his family that based on this calculation, the worst case scenario would result in Applicant serving an additional fifteen years imprisonment. He testified that he never informed Applicant or Applicant's family that Applicant would receive a specific sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that Counsels' testimony is very credible while Applicant's testimony, and that of Applicant's family members, is less credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable



professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. This Court finds that the Applicant's allegation that counsel was infective for failing to enforce a plea agreement based on detrimental reliance is without merit. This Court finds that the extensive guilty plea record, as well as the testimony from both Counsel McKenzie and O'Neal, Applicant, and Applicant's family, reveals the proficient competency of counsels. Both counsels McKenzie and O'Neal testified that they never informed Applicant or his family that Applicant would receive a particular sentence and clearly communicated that Applicant could receive a sentence between two to thirty years imprisonment. All testifying witnesses conclusively revealed that there was no plea negotiation or promise from the State for a particular sentence and that it was merely counsels' hope or opinion that Applicant might

receive a sentence for less than fifteen years. Additionally, counsels McKenzie and O'Neal testified that they informed Applicant that if he were to receive the maximum possible sentence, he would likely be required to serve an *additional fifteen years imprisonment*, not that he would receive a sentence from the court of fifteen years imprisonment in exchange for his guilty plea. This Court finds that the Applicant's attorneys demonstrated a normal degree of skill, knowledge and professional judgment that is expected of an attorney who practices criminal law. Additionally, this Court finds that the Applicant has not met the burden of proof with respect to the prejudice requirement, as Applicant stated that he did not want to proceed to trial and that he was indeed guilty. Therefore, this Court finds this application must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

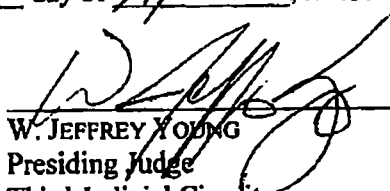


IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 11 day of April, 2013.

Sumter, South Carolina


W. JEFFREY YOUNG
Presiding Judge
Third Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

JASON EDWARDS #313642 3 MAY -8 PM 2:16

V.

SHARON W. STAGGERS
CLERK OF COURT
WINGSTREE, S.C.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

CASE NO: 12-CP-45369

MOTION TO AMEND AND TO MAKE
SPECIFIC FINDINGS OF FACTS AND
CONCLUSIONS OF LAW PURSUANT TO
RULE 59 AND SC CODE OF
LAW §17-27-80

The Applicant Jason Edwards, #313642 respectfully motion this honorable court to amend the order in the post-conviction relief case 12-CP-45369 to reflect specific findings of facts and conclusions of law as required by S.C. Code of Law §17-27-80 as to the following issues:

- 1). Ineffective Assistance of Trial Counsel Steven McKenzie due to his failure to object to the state solicitor's recommendations when the plea agreement called for no recommendation of sentencing preference from the state. Thompson v. State, 531 SE 2d 294 (S.C. 2000).
- 2). Ineffective Assistance of Trial Counsel Steven McKenzie due to his failure to his failure to move to enforce the plea agreement provision of "no recommendation" of sentence from the state. Thompson v. State, 531 SE 2d 294 (S.C. 2000).
- 3). Ineffective Assistance of Trial Counsel Steven McKenzie due to his failure to move to enforce the plea agreement of a fifteen (15) years range of sentencing. Reed v. Becka, 511 SE 2d 396 and Custodia v. State, 644 SE 2d 36 (S.C. 2007).
- 4). Ineffective Assistance of Trial Counsel Steven McKenzie due to his failure to conduct reasonable pretrial investigation and develop an adequate defense strategy and mitigating evidence regarding Applicant, and being assaulted by the victim and being stabbed numerous times by the victim such that Applicant was comatose for a lengthy time. Ard v. Catoe, 642 SE 2d 590 (S.C. 2000), Lands v. State, 670 SE 2d 646 (S.C. 2008).
- 5). Due Process Violation for state solicitor's breach of plea agreement. Sprouse v. State, 585 SE 2d 278 (S.C. 2003) and Santobello v. New York 92 S.Ct. 495.

6). Involuntary Guilty Plea for Trial Counsel Steven McKenzie misadvising and misinterpreting the law to Applicant that "malice may be inferred" for murder because Applicant used a deadly weapon against the victim and based on this it would be more favorable to Applicant to negotiate a plea to Manslaughter, Counsel McKenzie's advise on the law is legally incorrect. Hill v. Lockhart, 106 S.Ct. 366 (1985) and Belcher v. State, 685 SE 2d 802 (S.C. 2009), Ostrander v. Green, 46 F3d 347 (4th Cir. 1995)

7). Involuntary Guilty Plea for state solicitor inducing Applicants detrimental reliance on the terms of the plea agreement but withholding the benefits of the plea agreement. Sprouse v. State, 585 SE 2d 278 (S.C. 2003), Thompson v. State, 531 SE 2d 294 (S.C. 2000).

WHEREFORE this Applicant moves this court to fully comply with SC Code law §17-27-80 and Marlar v. State, 653 SE 2d 266 (S.C. 2007). This Applicant also moves this court to grant the post-conviction relief action on all grounds within the PCR application and its accompanying Memorandum of Law, within the testimony and evidence presented at the evidentiary hearing in this case, and within the Rule 59 motion.

Respectfully Submitted,

Date: 4-1-13

James D. Edwards

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Jason Edwards, #313642,
Applicant,

Case No. 2012-CP-45-0369

**RETURN TO APPLICANT'S *pro se*
"MOTION TO AMEND AND TO MAKE
SPECIFIC FINDINGS OF FACTS AND
CONCLUSIONS OF LAW PURSUANT
TO RULE 59 AND SC CODE OF LAW
§ 17-27-80"**

v.

State of South Carolina,
Respondent.

Respondent, by and through undersigned counsel, making its Return to Applicant's *pro se* "Motion to Amend and to Make Specific Findings of Fact and Conclusions of Law Pursuant to Rule 59 and SC Code of law § 17-27-80" would respectfully show unto this Court:

I.

The Applicant was indicted during the October 2004 term of the Williamsburg County Grand Jury for two counts of murder and possession of a weapon during a violent crime (2004-GS-45-167). Applicant was represented by Steven S. McKenzie, Esquire. On January 30, 2006, the Applicant proceeded to a jury trial before the Honorable Howard P. King. Applicant was found guilty, and on February 3, 2006, Applicant was sentenced to life imprisonment for each count of murder and five years for possession of a weapon during a violent crime. All sentences were to be served concurrently.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the appeal. State v. Jason Sinatra Edwards, Op. No. 4261 (S.C. Ct. App. filed June 21, 2007). Counsel for the Applicant filed a timely Petition for Rehearing on June 30,

2007. The State made its Return to Petition for Rehearing on July 12, 2007. The South Carolina Court of Appeals issued an Order Denying the Petition for Rehearing on August 27, 2007. A Petition for Writ of Certiorari was filed on October 15, 2007 with the South Carolina Supreme Court. The Return to Petition for Writ of Certiorari was filed by the State on November 15, 2007. The South Carolina Supreme Court reversed the Court of Appeals' opinion and remanded for a new trial. State v. Jason Sinatra Edwards, Op. No. 26711 (S.C. Sup. Ct. filed August 31, 2009). The Remittitur was sent September 17, 2009.

On January 31, 2012, the Applicant pled guilty to two counts of voluntary manslaughter. He was represented by Michael S. O'Neal, Esquire, and Steven S. McKenzie, Esquire. The Applicant was sentenced by the Honorable J. Mark Hayes, II, to thirty years imprisonment for each count, with the sentences to be served concurrently. Applicant did not appeal his conviction and sentence.

II.

Applicant filed an application for post-conviction relief on July 16, 2012, alleging that he is being held in custody unlawfully based on the allegation that "counsel failed to object and move the court to enforce the oral agreement based on the detrimental reliance exception, thus rendering Applicant's plea involuntary." The Respondent made its Return on November 27, 2012. An evidentiary hearing into the matter was convened on March 21, 2013, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by James D. Dotson, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. By written order signed on April 11, 2013 and filed on April 18, 2013, the Court denied and dismissed Applicant's post-conviction

relief application with prejudice. A copy of this Order was served on Applicant's counsel of record, James D. Dotson, Esquire, on April 23, 2013.

On May 8, 2013, Applicant filed a *pro se* "Motion to Amend and to Make Specific Findings of Fact and Conclusions of Law Pursuant to Rule 59 and SC Code of law § 17-27-80". This *pro se* document was received by Respondent on May 14, 2013.

III.

Applicant's motion is not timely filed and should be summarily dismissed. "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC. Applicant's counsel of record, James D. Dotson, Esquire, was mailed a copy this Court's Order of Dismissal on April 23, 2013. Applicant's *pro se* motion was filed on May 8, 2013. As this motion was not properly filed by counsel until after the ten day statutory period had expired, this motion should be dismissed as untimely.

V.

This Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits that this Court properly ruled on all issues presented at the post-conviction relief hearing and Applicant's "Motion to Amend and to Make Specific Findings of Fact and Conclusions of Law Pursuant to Rule 59 and SC Code of law § 17-27-80" should be denied.

Additionally, in this motion, Applicant requests that this Court "grant the post-conviction relief action on all ground within the PCR application and its accompanying Memorandum of Law." Applicant is not requesting an alteration or amendment to the Order. Rather, Applicant is

asking the Court to reconsider its ruling and grant Applicant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court). Applicant has failed to raise an allegation that was properly raised but not ruled upon by this Court.

IV.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

BY:

Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

June 21, 2013

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS

2012-CP-45-0369

JASON EDWARDS, #313642,

Applicant,

vs.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return to Applicant's *Pro Se* "Motion to Amend and to make Specific Findings of Fact and Conclusions of Law Pursuant to Rule 59 and SC Code of Law § 17-27-80" in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James D. Dotson, Esquire
Dotson Law Firm
PO Box 370
Lake City, SC 29560

DATED this 21st day of June, 2013.


Caroline Kaiser, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Jason Edwards, #313642,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2012-CP-45-0369

**ORDER DENYING APPLICANT'S *pro se*
"MOTION TO AMEND AND TO MAKE
SPECIFIC FINDINGS OF FACTS AND
CONCLUSIONS OF LAW PURSUANT
TO RULE 59 AND SC CODE OF LAW
§ 17-27-80"**

This matter comes before this Court by way of Applicant's *pro se* "Motion to Amend and to Make Specific Findings of Fact and Conclusions of Law Pursuant to Rule 59 and SC Code of law § 17-27-80," asking this Court to alter or amend its Order of Dismissal of his application and to grant him post-conviction relief.

I.

The Applicant was indicted during the October 2004 term of the Williamsburg County Grand Jury for two counts of murder and possession of a weapon during a violent crime (2004-GS-45-167). Applicant was represented by Steven S. McKenzie, Esquire. On January 30, 2006, the Applicant proceeded to a jury trial before the Honorable Howard P. King. Applicant was found guilty, and on February 3, 2006, Applicant was sentenced to life imprisonment for each count of murder and five years for possession of a weapon during a violent crime. All sentences were to be served concurrently.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the appeal. State v. Jason Sinatra Edwards, Op. No. 4261 (S.C. Ct. App. filed June 21, 2007). Counsel for the Applicant filed a timely Petition for Rehearing on June 30, 2007. The State made its

Return to Petition for Rehearing on July 12, 2007. The South Carolina Court of Appeals issued an Order Denying the Petition for Rehearing on August 27, 2007. A Petition for Writ of Certiorari was filed on October 15, 2007 with the South Carolina Supreme Court. The Return to Petition for Writ of Certiorari was filed by the State on November 15, 2007. The South Carolina Supreme Court reversed the Court of Appeals' opinion and remanded for a new trial. State v. Jason Sinatra Edwards, Op. No. 26711 (S.C. Sup. Ct. filed August 31, 2009). The Remittitur was sent September 17, 2009.

On January 31, 2012, the Applicant pled guilty to two counts of voluntary manslaughter. He was represented by Michael S. O'Neal, Esquire, and Steven S. McKenzie, Esquire. The Applicant was sentenced by the Honorable J. Mark Hayes, II, to thirty years imprisonment for each count, with the sentences to be served concurrently. Applicant did not appeal his conviction and sentence.

Applicant filed an application for post-conviction relief on July 16, 2012, alleging that he is being held in custody unlawfully based on the allegation that "counsel failed to object and move the court to enforce the oral agreement based on the detrimental reliance exception, thus rendering Applicant's plea involuntary." The Respondent made its Return on November 27, 2012. An evidentiary hearing into the matter was convened on March 21, 2013, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by James D. Dotson, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. By written order signed on April 11, 2013 and filed on April 18, 2013, the Court denied and dismissed Applicant's post-conviction relief application with prejudice. A copy of this Order was served on Applicant's counsel of record, James D. Dotson, Esquire, on April 23, 2013.

On May 8, 2013, Applicant filed a *pro se* "Motion to Amend and to Make Specific Findings of Fact and Conclusions of Law Pursuant to Rule 59 and SC Code of law § 17-27-80."

II.

This Court finds that Applicant's motion is not timely filed and must be dismissed. "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC. Applicant's counsel of record, James D. Dotson, Esquire, was mailed a copy this Court's Order of Dismissal on April 23, 2013. Applicant's *pro se* motion was filed on May 8, 2013. As this motion was not properly filed until after the expiration of the statutory filing period, this motion must be dismissed as untimely.

III.

This Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

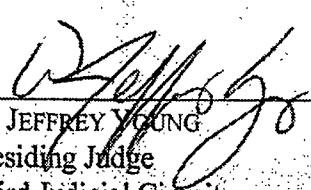
Additionally, in this motion, Applicant requests that this Court "grant the relief that applicant is entitled to." Applicant is not requesting an alteration or amendment to the Order. Rather, Applicant is asking the Court to reconsider its ruling and grant Applicant post-conviction relief on these five grounds. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court). Applicant has failed to raise an allegation that was properly raised but not ruled upon by this Court. Having carefully reviewed the entire record in this matter, this Court finds that no basis for altering or amending its prior ruling.¹ Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes that if the Petitioner desires to secure appellate review of this Order and the Order

¹ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRPC.

of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Petitioner is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 25 day of June, 2013



W. JEFFREY YOUNG
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina

FILED

2014 NOV 10 AM 8:42

Clerk of Court
125 West Main Street
Kingstree, S.C. 29556

November 6, 2014

SHARON V. STAGGERS
CLERK OF COURT
KINGSTREE, S.C.

In re: Jason Edwards, 313642 v. State
2012-CP-45-0369

Dear Clerk:

Enclosed please find a true and correct copy of the State's answer in regards to a pending (or what I perceived to be) motion before this court pursuant to State rules of Civil Procedure, 59 (e).

What should be "evident" in this situation is where the petitioner has never previously been kept appraised of the results of that motion as required by law. In order that he may appeal the PCR ruling after the 59(e) ran its course.

In such circumstances, the denial should serve as the triggering document in order for the petitioner to retain his appeal rights for the PCR application. Moreover, in Martinez, where counsel failed to notify the petitioner concerning his appellate rights. Or as here, once the 59(e) was denied. Such will constitute "ineffective assistance of counsel".

Thus, petitioner request that the State's October 30, 2014, response, indicating the 59(e) was denied "over a year ago" serves as notice from which this petitioner may not appeal. Enclosed, please find petitioner's intent to appeal the PCR and 59(e) ruling.

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG
IN THE COURT OF COMMON PLEAS

Jason S. Edwards, #313642,

Petitioner,

Vs.

Case No: 2012-CP-45-0369

State of South Carolina,

Respondent. /

Intent to Appeal PCR Ruling

Comes now, Jason S. Edwards, appearing in pro-se capacity, to hereby give formal notice of his intent to appeal the PCR ruling and subsequent ruling of the 59(e), in regards to such case rendered on June 26, 2013.

Because the Petitioner "did not" receive any copy notifying the petitioner of such rulings until "November 4, 2014", after inquiring about the unreasonable delay. Petitioner requests that his 30 days begins at the time for which he was made privy in regards to the court's rulings. Again, for which was November 4, 2014. (See also enclosed first page)

For this reason, Petitioner request this belated intent to appeal be granted, and any further relief this Honorable Court deems just and proper.

Sincerely,

/s/

Jason D. Edwards

Jason Sinatra Edwards, #313642
Broadriver Correc. Institution
4460 Broadriver Road
Columbia, S.C. 29210

cc: off. attor. gen
J. dotson
filed
11/6/2014

(3 of 3)

CERTIFICATE OF SERVICE

I, Jason S. Edwards, do hereby certify that I have mailed a true and correct copy of this appeal and clarification as to the reason for its tardiness. Such copy was forwarded to the below listed addresses, on the 6th day of November 2014, with adequate postage attached thereto.

James Darrell Dotson, Esquire
Dotson Law Firm
P.O. Box 370
Lake City, S.C. 29560

S.C. Attorney General's Office
PCR Division-Megan Herrigan, AAG
P.O. Box 11549
Columbia, S.C. 29211

/s/ Jason S. Edwards
Jason S. Edwards, 313642

cc: filed

(i)

Mr. James Dotson, Esquire
104 South Acline Street
P.O. Box 370
Lake City, South Carolina 29560

October 27, 2014

In re: State v. Jason S. Edwards

Dear Mr. Dotson:

Its been quite some time since the last time we talked. But I wanted to keep you totally in the loop of things to come. Enclosed you will find I filed a motion for "status" involving the 59(e) I filed that haven't been ruled upon. Even in light of the State's proposed order of dismissal.

If you have any questions, please do not hesitate to contact me here.

Sincerely,

/s/

Jason S. Edwards
Jason S. Edwards, #313642
Broadriver Corr. Institution
4460 Broadriver Road
Columbia, S.C. 29210

cc: filed
10/27/2014

(1 of 1)

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

In The Court of Common Pleas
For The Third Judicial Circuit

Jason Sinatra Edwards,
Applicant,

Vs.

Case NO: 2012-CP-45-0369

State of South Carolina,
Respondent. /

MOTION REQUESTING STATUS OF 59 (e).

This matter comes before this Honorable Court, by way of this pro-se Applicant's concern with a pending motion before this Court. At all times herein, the Applicant posits Haines v. Kerner, 404 U. S. 519 (1972), and request liberal consideration of its contents.

According to the record before this Court. The Applicant appeared in PCR Court on March 21 2013, at the Sumter County Courthouse, and was represented by James D. Dotson, Esquire. By written order signed and filed by April 18, 2013, this Court denied and dismissed the Applicant's PCR application with prejudice.

However, the Applicant himself after returning "to prison", on April 1, 2013. Just days after the March 21, 2013 PCR hearing. Noted that PCR counsel's representation lacked a measure of effectiveness demanded. Which omitted several key issues needed to be

addressed, but was not during the hearing. Thus, the Applicant filed the only "timely remedy" within the statutory time frame allotted, within the ten (10) day time period.

The State however, suggests that the 59(e) is untimely. When in fact, "if anything", it was premature. Because "pro-se" applicant's filing are to be held to less stringent standards than those of license professionals in the field of political science. Court's should construe them "liberally". See Haines v. Kerner.

Moreover, the State filed on June 21, 2013, "a proposed order of dismissal" based solely on the time restraint discussed above. But according to Houston v. Lack, 487 U.S. 266, 108 S. Ct. 2379 (1988), prisoner's pro-se motion for relief is deemed filed on the date it was placed in the prison's mailbox as opposed to its receipt by the clerk of court.

The State further incorrectly assumes the Applicant isn't requesting a amendment of the order where in fact "he actually is". The pro-se 59(e) based on its character may have caused a misapprehension. However, "the no recommendation agreement" and a breach of such failed to be foreclosed by the finding of the PCR Court. And based on that assessment by the Applicant, did he file a Rule 59(e) no sooner than he returned to prison. See Enclosed copy.

Wherefore, for these reasons, the Applicant moves for a status report as well as to include this clarifying memorandum, and any further relief this Honorable Court concludes just and proper.

Respectfully Submitted,

/s/

Jason D. Edwards

Jason Sinatra Edwards, #313642
Broadriver Corr. Institution
4460 Broadriver Road
Columbia, S.C. 29210

cc: m. harrigan, assist. att. gen.
filed
10/28/2014

(3 of 3)

CERTIFICATE OF SERVICE

I, Jason S. Edwards, do hereby certify that I have mailed a true and correct copy of my "status request" to the Assistant Attorney General, for the State of South Carolina, at the below listed address, with adequate postage attached thereto, on this 27 day of October 2014.

/s/ Jason S. Edwards
Jason S. Edwards #313642

Ms. Megan Harrigan
Assistant Att. General
P.O. Box 11549
Columbia, S.C. 29211

cc: filed
10/28/2014

(1)

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG
IN THE COURT OF COMMON PLEAS

JASON EDWARDS, #313642,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order Denying Applicant's Pro Se "Motion to Amend and to make Specific Findings of Facts and Conclusions of Law Pursuant to Rule 59 and SC Code of Law § 17-27-80"**, has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

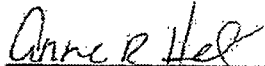
James Darrell Dotson, Esquire
Dotson Law Firm
PO Drawer 370
Lake City, SC 29560

This 26th day of August, 2013.



Caroline Kaiser
Legal Assistant for Respondent

SWORN to before me this 26th day August, 2013.



Notary Public for South Carolina/
My Commission Expires: 9/15/2014

STATE OF SOUTH CAROLINA)
 COUNTY OF WILLIAMSBURG)

In The Court of Common Pleas
 For The Third Judicial Circuit

Jason Sinatra Edwards,
 Applicant,

Vs.

Case NO: 2012-CP-45-0369

State of South Carolina,
Respondent. /

MOTION REQUESTING STATUS OF 59 (e).

This matter comes before this Honorable Court, by way of this pro-se Applicant's concern with a pending motion before this Court. At all times herein, the Applicant posits Haines v. Kerner, 404 U. S. 519 (1972), and request liberal consideration of its contents.

According to the record before this Court. The Applicant appeared in PCR Court on March 21 2013, at the Sumter County Courthouse, and was represented by James D. Dotson, Esquire. By written order signed and filed by April 18, 2013, this Court denied and dismissed the Applicant's PCR application with prejudice.

However, the Applicant himself after returning "to prison", on April 1, 2013. Just days after the March 21, 2013 PCR hearing. Noted that PCR counsel's representation lacked a measure of effectiveness demanded. Which omitted several key issues needed to be

addressed, but was not during the hearing. Thus, the Applicant filed the only "timely remedy" within the statutory time frame allotted, within the ten (10) day time period.

The State however, suggests that the 59(e) is untimely. When in fact, "if anything", it was premature. Because "pro-se" applicant's filing are to be held to less stringent standards than those of license professionals in the field of political science. Court's should construe them "liberally". See Haines v. Kerner.

Moreover, the State filed on June 21, 2013, "a proposed order of dismissal" based solely on the time restraint discussed above. But according to Houston v. Lack, 487 U.S. 266, 108 S. Ct. 2379 (1988), prisoner's pro-se motion for relief is deemed filed on the date it was placed in the prison's mailbox as opposed to its receipt by the clerk of court.

The State further incorrectly assumes the Applicant isn't requesting a amendment of the order where in fact "he actually is". The pro-se 59(e) based on its character may have caused a misapprehension. However, "the no recommendation agreement" and a breach of such failed to be foreclosed by the finding of the PCR Court. And based on that assessment by the Applicant, did he file a Rule 59(e) no sooner than he returned to prison. See Enclosed copy.

Wherefore, for these reasons, the Applicant moves for a status report as well as to include this clarifying memorandum, and any further relief this Honorable Court concludes just and proper.

Respectfully Submitted,

/s/ Jason D. Edwards
Jason Sinatra Edwards, #313642
Broadriver Corr. Institution
4460 Broadriver Road
Columbia, S.C. 29210

cc: m. harrigan, assist. att. gen.
filed
10/28/2014

(3 of 3)

CERTIFICATE OF SERVICE

I, Jason S. Edwards, do hereby certify that I have mailed a true and correct copy of my "status request" to the Assistant Attorney General, for the State of South Carolina, at the below listed address, with adequate postage attached thereto, on this 27 day of October 2014.

/s/ Jason S. Edwards
Jason S. Edwards #313642

Ms. Megan Harrigan
Assistant Att. General
P.O. Box 11549
Columbia, S.C. 29211

cc: filed
10/28/2014

(i)

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS

Jason S. Edwards, #313642,
Petitioner,

Vs.

Case No. 12-CP-45-0369

State of South Carolina,
Respondent. /

MOTION FOR RELIEF FROM JUDGMENT
PURSUANT TO SCRPC, RULE 60(b).

Comes now, Petitioner Jason S. Edwards, appearing in pro-se capacity under the liberal notation outlined in Haines v. Kerner, 404 U.S. 519 (1972), to move this Honorable Court, by way of this motion for relief under 60(b).

Accordingly, a Rule 60(b) can be instituted whenever it appears from the record that there is a mistake, inadvertent, excusable neglect, newly discovered evidence, fraud, etc.

Petitioner moves under this rule for more than a single specific reason, of which he will demonstrate a entitlement to proceed and which, relief may be granted.

BACKGROUND HISTORY OF CASE

After being held in the County Jail for over 800 days, for a June 19, 2002 incident. The Petitioner here was finally indicted, or allegedly indicted on "October 11, 2004", at a Court of General Sessions, of Williamsburg County. Charging the Petitioner and two of his siblings with two (2) Counts of murder.

On or about January 30, 2006, the case proceeded to trial. The Petitioner was represented by Steven S. McKenzie. On February 3, 2006 the Petitioner was convicted and sentenced to life imprisonment on each count, to be ran concurrently.

A notice of appeal was filed and perfected. The S.C. Court of Appeals affirmed the appeal. State v. Jason S. Edwards, Op. No 4261 (S.C. Ct. App. filed June 21, 2007). Counsel for the Petitioner filed a timely Petition for Rehearing on June 30, 2007. The State made its Return thereafter. The Rehearing was denied on August 15, 2007.

A Petition for Writ of Certiorari was filed on October 15, 2007 with the South Carolina Supreme Court. The South Carolina Supreme Court reversed the Court of Appeals opinion and remanded the case for a new trial. State v. Jason Sinatra Edwards, Op. No. 26711 (S.C. Sup. Ct. filed August 31, 2009).

On January 31, 2012, "based on counsel's advise", the Petitioner pled guilty to two counts of voluntary manslaughter. Petitioner was represented by Michael S. O'Neal, and Steven S. McKenzie. The Petitioner was sentenced by the Honorable J. Mark Hayes, II, to thirty years imprisonment for each count, with the sentences to be served concurrently. Petitioner was advised "not to appeal the sentences".

Thereafter, Petitioner filed a application for relief under the Uniform Post-Conviction Statute on July 16, 2012, alleging that "counsel failed to object and move the court to enforce the oral agreement based on the detrimental reliance exception, thus rendering Petitioner's plea involuntary".

The State made its return on November 27, 2012. An evidentiary hearing was convened on March 21, 2013, at the Sumter County Courthouse. The Petitioner was present and represented by James D. Dotson, Esquire. The State was represented by Assistant Attorney General Megan E. Harrigan.

By written order signed on April 11, 2013 and filed April 18, 2013, the Court denied and dismissed Petitioner's post-conviction application. A copy was said to be served upon Petitioner's counsel, James D. Dotson, Esquire, on April 23, 2013. Yet nobody informed Petitioner of such denial, in order that "he would be afforded the opportunity to appeal".

The State records Petitioner's application under Rule 59(e) was filed on May 8, 2013, and therefore, should be "time barred" because it was filed outside the statute of limitation for filing a 59(e). However, if anything, Petitioner's motion under Rule 59 (e) filed pro-se was executed "no sooner than he returned from Sumter Courthouse", back to S.C.D.C.", on April 1, 2013, or days thereafter. See included copy.

Moreover, the attorney for the Petitioner "never informed him of the results of the PCR hearing", to which he would have been entitled to a appeal.

ARGUMENT IN SUPPORT OF RULE 60(b).

Here, the Petitioner is not instituting a brand new, nor a successive application under the S.C. Uniform Post-Conviction Act, but instead, merely seeking to correct "a erroneous procedural ruling, premised on the statute of limitations". See Gonzalez v. Sec'y for Dept. of Corr., 366 F3d 1253, 1281 (11th Cir. 2004) and Gonzalez v. Crosby, 545 U.S. 524, 538 (2005)(Rule 60(b) motion not successive or second when motion did not reassert claims of error in conviction and only challenged previous ruling on statute of limitations).

Such is necessary based on Due Process entitlement to have appealed the PCR ruling to the South Carolina Supreme Court. After it was dismissed on or about April 18, 2013. Whereas, Petitioner had filed a 59(e) prematurely, on April 1, 2013 (See Houston v. Lack, 487 U.S. 266, 270 (1988)(notice of appeal deemed filed on date of delivery to prison authorities for forwarding to the court).

Because the 59(e) was not resolved on the merits, but instead denied based on "the statute of limitations for filing the 59(e)", does Petitioner move to have that judgment vacated, and revisited based on the merits of the claims within the 59(e). Or, vacated in order to afford the Petitioner the "fair opportunity" to appeal the PCR ruling,

Even taking the 59(e) dismissal in light most favorable to the State. With the State recognizing the 59(e) was filed on May 8, 20-

13, outside of the ten (10) day statute of limitation. Such would still have been timely under the thirty (30) days, for which the Petitioner would have been afforded a writ of certiorari, to the South Carolina Supreme Court.

And finally, even if counsel for the Petitioner did forward a 59(e) in which [he] constructed on May 8, 2013, outside of the statute's limitation period of ten (10) days. And it was denied by virtue of counsel's error. Such would remain to be addressable under Martinez, based on ineffective assistance of PCR counsel.

Wherefore, Petitioner moves to have the 59(e) judgment vacated, along with the PCR judgment. To reinstate the PCR judgment in order to afford the Petitioner the right to have (1) either the 59(e) motion reviewed on the merits; or (2) to afford the right to petition the South Carolina Supreme Court, in furtherance of the PCR ruling. And any further relief this Honorable Court deems just and proper.

Respectfully Submitted,

/s/

Jason S. Edwards
Jason Sinatra Edwards #313642
Broadriver Corr. Institution
4460 Broadriver Road
Columbia, S.C. 29210

cc: assis. att. gen.
filed
2/11/2015

CERTIFICATE OF SERVICE

I, Jason S. Edwards, do hereby certify that I have provided the State's Attorney with a true and correct copy of this motion pursuant to S.C.R.Civ. P., Rule 60(b), by placing the same in the system of mailing for inmates at Broadriver Correctional Institution. On the ~~22~~ 11th day of February 2015. To the below listed address.

Office of the Attorney General
Ms. Megan E. Harrigan
Post Office Box 11549
Columbia, S.C. 29211

/s/ Jason S. Edwards
Jason S. Edwards, #313642

cc: filed

(1)

STATE OF SOUTH CAROLINA
 COUNTY OF WILLIAMSBURG
 JASON EDWARDS #313642

v.

STATE OF SOUTH CAROLINA

2015 FEB 13

SHARON
 CLERK
 KINGS

IN THE COURT OF COMMON PLEAS
 CASE NO: 12-CP-45369

NOTION TO AMEND AND TO MAKE
 SPECIFIC FINDINGS OF FACTS AND
 CONCLUSIONS OF LAW PURSUANT TO
 RULE 59 AND SC CODE OF
 LAW §17-27-80

The Applicant Jason Edwards, #313642 respectfully motion this honorable court to amend the order in the post-conviction relief case 12-CP-45369 to reflect specific findings of facts and conclusions of law as required by S.C. Code of Law §17-27-80 as to the following issues:

- 1). Ineffective Assistance of Trial Counsel Steven McKenzie due to his failure to object to the state solicitor's recommendations when the plea agreement called for a recommendation of sentencing preference from the state. Thompson v. State, 531 SE 2d 294 (S.C. 2000).
- 2). Ineffective Assistance of Trial Counsel Steven McKenzie due to his failure to his failure to move to enforce the plea agreement provision of "no recommendation" of sentence from the state. Thompson v. State, 531 SE 2d 294 (S.C. 2000).
- 3). Ineffective Assistance of Trial Counsel Steven McKenzie due to his failure to move to enforce the plea agreement of a fifteen (15) years range of sentencing. Reed v. Becka, 511 SE 2d 396 and Custodia v. State, 644 SE 2d 30 (S.C. 2007).
- 4). Ineffective Assistance of Trial Counsel Steven McKenzie due to his failure to conduct reasonable pretrial investigation and develop an adequate defense strategy and mitigating evidence regarding Applicant and being assaulted by the victim and being stabbed numerous times by the victim such that Applicant was comatose for a lengthy time. Ard v. Catce, 642 SE 2d 590 (S.C. 2000), Lands v. State, 670 SE 2d 646 (S.C. 2008).
- 5). Due Process Violation for state solicitor's breach of plea agreement. Sprouse v. State, 505 SE 2d 270 (S.C. 2003) and Santobello v. New York 92 S.Ct. 495.

6). Involuntary Guilty Plea for Trial Counsel Steven McKenzie misadvising and misinterpreting the law to Applicant that "malice may be inferred" for murder because Applicant used a deadly weapon against the victim and based on this it would be more favorable to Applicant to negotiate a plea to Manslaughter, Counsel McKenzie's advise on the law is legally incorrect, Hill v. Lockhart, 106 S.Ct. 366 (1985) and Belcher v. State, 685 SE 2d 802 (S.C. 2009), Ostrander v. Green, 46 F3d 347 (4th Cir. 1995)

7). Involuntary Guilty Plea for state solicitor inducing Applicants detrimental reliance on the terms of the plea agreement but withholding the benefits of the plea agreement, Sprouse v. State, 585 SE 2d 278 (S.C. 2003), Thompson v. State, 531 SE 2d 294 (S.C. 2000).

WHEREFORE this Applicant moves this court to fully comply with SC Code law §17-27-80 and Marlar v. State, 653 SE 2d 266 (S.C. 2007). This Applicant also moves this court to grant the post-conviction relief action on all grounds within the FCR application and its accompanying Memorandum of Law, within the testimony and evidence presented at the evidentiary hearing in this case, and within the Rule 55 motion.

Respectfully Submitted,

Date: 4-1-13

James D. Edwards



ALAN WILSON
ATTORNEY GENERAL

February 12, 2015

James Darrell Dotson, Esquire
Dotson Law Firm
Post Office Drawer 370
Lake City, South Carolina 29560

Re: Jason Edwards, 313642 v. State of South Carolina
2012-CP-45-0369

Dear Mr. Dotson:

Enclosed please find the *pro se* "Motion for Relief from Judgment Pursuant to SCRPC, Rule 60(b)" I received from your client, Jason Edwards. As you are representing Mr. Edwards in this matter, our office will take no further action on this *pro se* filing.

If you have any questions with regard to this matter, please let me know.

Sincerely,

Megan E. Jameson
Assistant Attorney General

MEJ/cc

Enclosures (as stated)

cc: The Honorable Sharon W. Staggers (letter only)
Jason Edwards, #313642

FILED
2015 FEB 17 PM 2:30
CLERK OF COURT
JAMES HEE, S.C.

STATE OF SOUTH CAROLINA

131

COUNTY OF

IN THE COURT OF COMMON PLEAS

Jason S. Edwards # 313642
Plaintiff(s)

CIVIL ACTION COVERSHEET

vs.

To be Assigned:

Robert M. Stevenson, Warden
Defendant(s)Submitted By: Same
Address: SameSC Bar #:
Telephone #:
Fax #:
Other:
E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings and other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Construction (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -NI- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☒ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstatement Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCIDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)			
☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (610)			

Submitting Party Signature:

Jason S. Edwards

Date: 8/20/2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

RICHLAND COUNTY
FILEDSTATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

2015 AUG 21 PM 2:25

IN THE COURT OF COMMON PLEAS

JEANETTE W. McCLURE
C.C.P. & G.S.

Jason Sinatra Edwards, #313642

Petitioner,

Vs.

Case No.: 2015 CP 405738Robert M. Stevenson, III,
Warden of Broadriver Corr. Institution,Respondent. /APPLICATION FOR HABEAS CORPUS RELIEF

This matter is being brought to the attention of this honorable court, by way of a pro-se applicant, which at this time, is without counsel. The applicant is confined "in custody" at the Broadriver Correctional Institution, located at 4460 Broadriver Road, Columbia South Carolina 29210. At the time this application is instituted for process. For which the applicant asserts his confinement based on the issues herein, is in violation of the Constitution and laws of this state. And thereby entitled to redress pursuant to habeas corpus, Article I., Section §18 of S.C. Constitution.

Pro Se Standard for Relief.

The Applicant herein contends that pro-se litigants pleadings are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers; if the court can reasonably read the pleading to state a valid claim on which the litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or the litigant's unfamiliarity with pleading requirements. See Haines v. Kerner, 404 U.S. 519 (1972); and also see Boag v. MacDonald, 454 U.S. 364, 102 S. Ct. 700 (1982).

REQUIREMENT FOR REQUESTING HABEAS CORPUS RELIEF.

Procedurally, a petitioner seeking habeas corpus relief must first exhaust all available PCR remedies. Pennington v. State, 441 S.E.2d 315, 316 (S.C. 1994). Exhaustion includes the filing of an application, the rendering of an order adjudicating the issues, and petitioning for or "knowingly waiving" appellate review. See Gibson v. State, 495 S.E.2d 426, 428 (S.C. 1998). If a petitioner has exhausted PCR remedies, he may file a petition for habeas corpus. The petition must allege (a) that the petitioner has exhausted all other remedies, and (b) it must set out a constitutional claim that meets the Butler standard. See Butler v. State, 397 S.E.2d 87, 88 (S.C. 1990). And (c), it must allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate.

Further, (d) the petition must make a "prima facie showing" that petitioner is entitled to relief, including sufficient factual allegations to support the petition. If not, the court may treat the habeas corpus as a PCR application. See Hunter v. State, 447 S.E.2d 203 (S.C. 1994).

PETITIONER'S INITIAL GROUND FOR RELIEF (1).

For beginners, petitioner first contends that the PCR Act, under the circumstances of this case was "inadequate or unavailable" where otherwise, the statute commands it to be "broadly inclusive" to be both adequate and available to test the legality of a petitioner's detention. See Butler, supra. Noting however, that "every constitutional error at trial will not justify issuance of a writ of habeas corpus". But such will issue when the petitioner's claim meets the Butler standard—meaning that a violation has occurred "which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice". See Butler v. State, 397 S.E.2d at 88.

Thus, in order for this Court to be fully appraised of the errors which constitute granting the habeas corpus petition here. Petitioner must defer to the somewhat lengthy but concise history as this case unfolded.

HISTORIC FACTS OF THIS CASE.

On June 19, 2002, while being an invited guess at the home of "Joe Woods". It was unknown to the applicant at the time, "he was the target devised by his own family member, 'Jimmy Robertson', to be lured into a robbery trap.

Upon entering the home of Joe Woods, petitioner immediately noticed that both his cousin "Jimmy Robertson" and "Joe Woods" both were smoking crack cocaine. Joe Woods was known by petitioner's family (his mother and father) from doing septic tank work in the area.

The petitioner's cousin, then asked the petitioner "to borrow some money", in which the petitioner stated he did not have money to lend for buying crack cocaine. Jimmy, petitioner's cousin became enraged calling petitioner a liar. As witnesses testified at trial, "they witnessed Jimmy Robertson come out of the house and open up a knife". That at the time, the witnesses had no reason to conclude foul play was afoot.

Upon re-entering the home, petitioner was viciously attacked by his cousin Jimmy Robertson, where the petitioner was rushed and repeatedly stabbed, while simultaneously knocking the petitioner over a china cabinet onto the floor. Where the stabbing continued. The petitioner "did have his side arm in his possession", however, could not get to it because his arms were being used to defend himself from the vicious knife attack.

At first, Joe Woods stood shocked and didn't assist. Up until

petitioner's cousin, Jimmy Robertson, ordered Joe Woods to retrieve the contents (suspected money) from petitioner's pants pockets. At this juncture, the petitioner's gun had fallen out of his waist, and Jimmy went for the firearm.

Petitioner realizing "had they got to the firearm before he did". He would not survive the attack. Raced while losing a lot of blood, to try and get to the gun first. Prior to obtaining the gun, the petitioner had been stabbed approximately twelve (12) times. Even once the petitioner had the gun in his possession, because Jimmy Robertson, tussled with petitioner for possession. The petitioner could not at first, use the gun to defend himself.

Once the applicant got a grip of the firearm and was able to point it in the general direction of one of his attackers. Petitioner pulled the trigger which struck Joe Woods in the head. The petitioner attempted to "get out of the house, where he could get help from his brother sitting in the vehicle outside, while listening to CD's on the car audio system".

The door petitioner exited was around the corner from his vehicle, and because he (the petitioner) had lost so much blood, he stumbled and was again attacked by Jimmy Robertson, on the side of the home, where petitioner shot twice at Jimmy to escape the attack with the knife.

The aftermath of this violent attack resulted in two (2) deceased. And petitioner arriving at the hospital in critical condition where doctors told petitioner's family "they had lost him

once while in surgery, and that he (the petitioner) was not expected to make it out alive".

Miraculously the petitioner did make it out of the hospital, but not without extreme complications. Petitioner went through numerous operations, and was transferred from jail to jail, seeking one that could accommodate his injuries. Petitioner while in county jail custody had to undergo numerous rehabilitation efforts, to learn to walk correctly again. Below, is the procedural stages the case took as recited by the state.

PROCEDURAL HISTORY OF THE CASE.

From the incident date of June 19, 2002, up until the trial date of January 20, 2006. The petitioner sat in county jail. During a preliminary hearing, the charge of murder was once thrown out against the petitioner in reference to Joe Woods. The indictment was not secured until October 2004.

On January 20, 2006, the petitioner was represented by Steven S. McKenzie, Esquire, and proceeded to trial before the Honorable Howard P. King. The petitioner was found guilty and on February 3, 2006, was sentenced to life imprisonment for each count of murder and five years for possession of a weapon during the commission of a violent crime. All sentences were to be served concurrently.

A notice of appeal was timely filed and a appeal perfected. The S.C. Court of Appeals affirmed the appeal. State v. Jason S. Edwards, Op. No. 4261 (S.C. Ct. App. filed June 21, 2007). Appellate counsel filed a petition for rehearing and the state made its return by July 12, 2007.

The Court of Appeals issued an Order denying the Petition for Rehearing on August 27, 2007. A Petition for Writ of Certiorari was filed on October 15, 2007, with the South Carolina Supreme Court. The South Carolina Supreme Court reversed the Court of Appeals Opinion and remanded the case for a New Trial. (S.C. Sup. Ct. filed August 31, 2009). The remittur was sent September 17, 2009.

Approximately one week after the South Carolina Supreme Court Ordered a "New Trial". Petitioner was 'again' transferred to the county jail from the South Carolina Department of Corrections, where he had been serving the life sentences. Petitioner had been looking forward "to the new trial". But such would not be afforded in the almost thirty (30) months it took counsel, and the State to coerce Petitioner into taking a unreasonable plea deal.

On January 31, 2012, such unreasonable plea was secured, after a county jail stay of over 30 months. Which was very similar to the extreme county jail stay (unreasonable prosecutorial delay) petitioner experienced when initially charged.

The plea deal on January 31, 2012 was not abided by. Where the petitioner was lead to believe "he would receive no more than 15 years, but instead received the maximum 30 years sentence, as if he had proceeded to trial and convicted of voluntary manslaughter".

The most important question comes into play for which the Petitioner respectfully appeals to this Court's sense of logic, and attention, while applying such to the issues raised herein.

"IF PETITIONER WAS BENT ON INTENTIONALLY KILLING HIS OWN COUSIN, AND JOE WOODS THE NIGHT OF THE INCIDENT AS OPPOSED TO DEFENDING HIMSELF FROM A VICIOUS KNIFE ATTACK, HOW COULD THE PETITIONER HAVE ALMOST LOST HIS OWN LIFE AS A RESULT OF SUSTAINING APPROXIMATELY 12 STAB WOUNDS"?

In otherwords, Petitioner reiterates the above question in order that this Court obtain a clear view of the relevant facts surrounding this case. In the alternative to the above question, "had the Petitioner attacked his cousin, Jimmy Robertson and Joe Woods first, or initially and without provocation. Petitioner certainly could not have been attacked".

Then we must reconsider the amount of time for which the State took to obtain an indictment in this case. The incident occurring on June 19, 2002, the initial trial of which occurred on January 20, 2006. For which the Petitioner remained in County Jail.

On or about June 21, 2007. Although reluctant to overturn Petitioner's conviction and sentence. The S.C. Court of appeals did indicate it was concerned about the pre-indictment delay, that lasted over three years. While the defendant remained in custody. But that, "such rules governing the indictment, (i.e.

S.C. Rules of Criminal Procedure 3(c)), was not jurisdictional. However, the Court in its assessment, "never considered whether the delay violated Due Process", rather than simply not placing a mandatory obligation on the State to secure the indictment within ninety (90) days. Opinion No. 4261 S.C. Ct. App. 6/21/07.

The South Carolina Supreme Court "did however" overturn the conviction and sentence on a Batson issue. And remanded the case back for a "New Trial". Filed August 31, 2009.

And again, the identical delay occurred a second time while Petitioner sat in County Jail custody awaiting resolution of the Supreme Court's Order. Which hopefully, brings this Honorable Court specifically up to speed on the surrounding facts.

THE APPLICATION AND BASIS FOR PCR.

As a result of the "breached plea deal" that was obtained after the Petitioner had sat in County Jail almost thirty (30) months after the Supreme Court remanded the case. Petitioner's attorney, Mr. Steven McKenzie, of 2 North Brooks Street, in Manning, S.C. assured Petitioner the State's offer was "two (2) to thirty (30) years for voluntary manslaughter, and further advised Applicant that if he pled guilty he would be looking at the middle range of fifteen (15) years". And such was obviously based on the circumstances surrounding the case.

Petitioner took counsel's advice and entered the plea deal and the judge ultimately sentenced Applicant to the maximum term of 30 years. Whereas, "the State brokered the deal on the promise

it would not recommend the "higher sentencing range" but, during re-sentencing, the State did exactly what it promised not to do. And such was the basis of the PCR application.

THE INADEQUACIES OF THE PCR.

Within the PCR application filed by Petitioner on July 16, 2012. For the most part, Petitioner alleged counsel was ineffective "for failing to object to the higher recommended sentence imposed", as such 'breached the oral plea agreement', where at minimum, counsel should have requested to withdraw such plea when the State recommended the maximum penalty be imposed".

To support his grounds for PCR relief. The Petitioner relied in part on the Supreme Court decision in State v. Custodio, 644 S.E.2d 36 (S.C. 2007), where in this case the Supreme Court found counsel ineffective in a burglary and grand larceny case for failing to have defendant's plea agreement enforced on 'deterimental reliance'.

Petitioner also relied on Thompson v. State, 531 S.E.2d 294 (S.C. 2000), where counsel was found ineffective following a plea to voluntary manslaughter "for failing to object to the State's request for the maximum sentence of thirty (30) years". For which mirrors the instant case at bar.

In Thompson, although the sentencing court imposed a sentence of twenty-five (25) years, the Supreme Court nevertheless held;

"Thompson was still prejudiced even though he was sentenced within the range previously stated because the relevant question for prejudice was whether the defendant would have entered the plea knowing the prosecutor would recommend the maximum punishment".

Thus, there exist no distinguishable difference in Thompson, and the instant case at hand. The Court there, found a reasonable probability that the defendant would not have plead guilty based on the defendant's "indecision" to plead just prior to trial and reliance on the agreement. Thus, the Supreme Court remanded for resentencing.

More of an exposed "reluctance and indecision" as was found in Thompson. Is the circumstance of Petitioner here having to spend approximately thirty (30) months in the county jail, after the Supreme Court of South Carolina, remanded the case for a "New Trial". Thus, there exist here a reasonable probability, comparable with Thompson, that Petitioner Edwards "would not have plead guilty", had he known the prosecutor would recommend the maximum penalty, especially after the extended stay already mounted in the county jail. But because of the "oral agreement" of not more than fifteen years, "did Petitioner Edwards agree to plead guilty".

HABEAS CORPUS ISSUES AND EXHIBITS

Comes now, Petitioner Edwards still attempting to exhaust his State Court remedies, "however, PCR has become ineffective and/or

inadequate to test the legality of his detention. The recorded exhibits within the PCR case (i.e. 2012-Cp-45-0369) will clearly demonstrate (1) counsel's abandonment at a critical stage of the proceedings; (2), and incompetence by failing to "object or move to withdraw the plea", once the state reneged on the "oral agreement".

Further facts will demonstrate the PCR hearing was held on March 21, 2013. Whereas, Petitioner "did file a timely motion under 59(e) on April 1, 2013". Where the state suggests that Counsel's 59(e) was late. Yet the Petitioner's April 1, 2013 59(e) was not late. And therefore, should have been ruled on.

Moreover, in the State's response to the 59(e). The State asserts that "the Applicant's request that this Court grant relief which he is entitled to", is not requesting an alteration or amendment to the Order denying PCR. Thus, the five grounds raised in the 59(e) "is more properly addressed through the appellate process". Citing Wilder Corp. v. Wilke, 330 S.C. 171, 497 S.E.2d 731, 734 (19-98).

Here again is where "ineffective assistance of counsel" plays a pivotal role which directly exposes an abandonment by counsel, knowing his client wanted and requested an appeal from the PCR ruling". But did nothing to perfect such appeal. Where no evidence exist to expose a "voluntary and intentional waiver of applicant's appellate rights". See Frasier v. State, 410 S.E.2d 572 (S.C. 19-91), where the Court draws no distinction between the failure of

counsel to file a direct appeal when requested. And the failure to perfect an appeal from an adverse PCR ruling when requested. In fact, the exhibits in this case clearly expose the Petitioner here was anything except satisfied with the resolution of his case in lower court. Coupled with the stark reality that; "until his conviction and sentence appeared before the South Carolina Supreme Court previously", the circuit (or lower courts) had refused to grant relief.

Thus, Petitioner as well as counsel "knew or should have known to file a appeal to the PCR court ruling". Where "it was counsel's duty even if he seen no merit, to move under Johnson, to brief any issue for appeal arguably challengeable along with the motion to withdraw. Because such was not done, Petitioner here was denied a fair opportunity of review under the PCR Act. And thereby request to be afforded the only available remedy mandated by law.

Remembering the State's assessment; "that the 59(e) issues raised are more properly addressed through the appellate process". Leads a intelligent minded person to comprehend "PCR Counsel should have filed the pro-se 59(e) issues to the Supreme Court". See State's Response to the 59(e), at page 3 part III.

And in Conclusion, the Petitioner under penalty of perjury, 28 U.S.C. §1746, "did not receive a y copy of the denial of the 59(e) personally, as the State forwarded such directly to counsel of the PCR hearing. The Petitioner only found out the results after requesting "a status" report from the 59(e), and subsequently

move under 60(b), to attempt to vacate the previous order, for a judgment to reinstate and permit the Petitioner "a fair bite at the apple" under the PCR Act.

For these reasons, Petitioner respectfully request that this Court grant Habeas corpus relief with instructions to remand the case back to the PCR Court, in order to reinstate the Petitioner's appeal right from the adverse PCR ruling. And any further relief this Honorable Court deems just and proper.

Respectfully Submitted,

/s/ Jason D. Edwards
Jason Sinatra Edwards, #313642
Broadriver Corr. Institution
4460 Broadriver Road
Columbia, S.C. 29210

cc: filed
8/10/2015

(14 of 14)

COUNTY OF RICHLANDJason Sinatra Edwards

Plaintiff(s)

vs.

Larry Cartledge

Defendant(s)

CIVIL ACTION COVERSHEET

2016 - CP - 40 - 5283Submitted By: Plaintiff

SC Bar #:

Address: S.C.D.C.

Telephone #:

Broad River Correctional Inst.

Fax #:

4460 Broad River Road

Other:

Columbia, S.C. 29210

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

- *If Action is Judgment/Settlement do not complete
- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

☐ Contracts	☐ Torts - Professional Malpractice	☐ Torts - Personal Injury	☐ Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Conversion (310)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Motor Vehicle Accident (320)	☐ Condemnation (410)
☐ General (130)	☐ Medical Malpractice (220)	☐ Premises Liability (330)	☐ Foreclosure (420)
☐ Breach of Contract (140)	Previous Notice of Intent Case #	☐ Products Liability (340)	☐ Mechanic's Lien (430)
☐ Fraud/Bad Faith (150)	20 -NI-	☐ Personal Injury (350)	☐ Partition (440)
☐ Failure to Deliver/Warranty (160)	☐ Notice/ File Med Mal (230)	☐ Wrongful Death (360)	☐ Possession (450)
☐ Employment Discrim (170)	☐ Other (299)	☐ Assault/Battery (370)	☐ Building Code Violation (460)
☐ Employment (180)		☐ Slander/Libel (380)	☐ Other (499)
☐ Other (199)		☐ Other (399)	
☐ Inmate Petitions	☐ Administrative Law/Relief	☐ Judgments/Settlements	☐ Appeals
☐ PCR (500)	☐ Reinstate Drv. License (800)	☐ Death Settlement (700)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Judicial Review (810)	☐ Foreign Judgment (710)	☐ Magistrate-Civil (910)
☒ Habeas Corpus (530)	☐ Relief (820)	☐ Magistrate's Judgment (720)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Permanent Injunction (830)	☐ Minor Settlement (730)	☐ Municipal (930)
	☐ Forfeiture-Petition (840)	☐ Transcript Judgment (740)	☐ Probate Court (940)
	☐ Forfeiture-Consent Order (850)	☐ Lis Pendens (750)	☐ SCDOT (950)
	☐ Other (899)	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Worker's Comp (960)
☐ Special/Complex /Other		☐ Confession of Judgment (770)	☐ Zoning Board (970)
☐ Environmental (600)	☐ Pharmaceuticals (630)	☐ Petition for Workers Compensation Settlement Approval (780)	☐ Public Service Comm. (990)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)	☐ Other (799)	☐ Employment Security Comm (991)
☐ Medical (620)	☐ Out-of-State Depositions (650)		☐ Other (999)
☐ Other (699)	☐ Motion to Quash Subpoena in an Out-of-County Action (660)		
☐ Sexual Predator (510)	☐ Pre-Suit Discovery (670)		
☐ Permanent Restraining Order (680)			

Submitting Party Signature: Jason S. EdwardsDate: 8-22-16

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA,
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

SUMMONS

Jason Sinatra EDwards Plaintiff,

vs.

Larry Cartledge Defendant.

FILE NO.

2016 CP40052RB

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

, South Carolina

Jason D. Edwards
Plaintiff/Attorney for Plaintiff

Dated:

Address:

Larry Cartledge
Broad River Correctional Inst.
4460 Broad River Road
Columbia, S.C. 29210

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Jason Sinatra Edwards, #313642,
 Petitioner,

Vs.

Case No.:

Robert M. Stevenson, III,
 Warden of Broad River Corr.
 Institution.

Respondent.

RICHLAND COUNTY
 FILED
 2016 AUG 30 PM 3:57
 JEANETTE W. MCBRIDE
 C.C.P. & G.S.

MOTION REQUESTING HABEAS RELIEF
BY JUDGMENT OF DEFAULT AND STATE'S NON RESPONSE.

This matter is being brought to the attention of this Honorable Court, by way of this inmate appearing in pro-se capacity, under the liberal notation outlined in Haines v. Kerner, 404 U.S. 519 (1972).

Petitioner moves for the relief he sought in the originally filed habeas corpus, pursuant to Article I., Section §18 of the South Carolina Constitution; and Article I., Section §3, as such pertains to Due Process of law.

The above captioned Petitioner has filed a proper habeas petition on or about August 10, 2015. And until date, the Respondents has made absolutely "no attempt" to acknowledge such an im-

portant petition which concerns the legality of of priosners de-
tention. Which should draw some important ethical admonishment.

In State v. Edwards, Op. No. 4261 (S.C. Ct. App. filed June 21, 2007), the appeal in this case was initially denied. However, on August 31, 2009, the South Carolina Supreme Court reversed the case for a new trial.

Petitioner was then transferred back to the county jail, and waited for approximately thirty (30) months based on his decision to go through a second trial rather than plead guilty to a lesser offense of voluntary manslaughter, (when the case was actually a self-defense case), and a State offered thirty (30) year sentence.

Counsel for the defendant, on or about January 31, 2012, finally got Petitioner to give-in. Based on the promise by the State "he would receive no more than 15 years". Based on the fact the case appeared to be one of self-defense. Coupled with the States promise "it would make no increased sentence recommendation".

Such did not occur, and the State actually did make a recommendation for a increased sentence. Petitioner requested counsel to file a motion based on the "breach of agreement". Such has not been heard through numerous attempts by the Petitioner.

In case number 2012-CP-45-0369, the Petitioner attempted to obtain relief by post-conviction application. And was represented by Attorney James Darrell Dotson. Since the case resulted in several missing "fact findings and conclusions of law". The Petitioner was legally entitled to a 59(e). Requested such to be fi-

led, yet Mr. Dotson never honored his obligation. However, the Petitioner himself, actually did file a 59(e). Which was ignored by the court.

Since that time leading up to this, Petitioner has clearly demonstrated an entitlement to relief in the form of a (1) 59(e); (2) a 60(b) in an attempt to vacate the prior error in judgment, and finally on August 10, 2015, this habeas corpus. Which at minimum, should have been screened rather than ignored under the Butler standard. See Butler v State, 397 S.E.2d 87, 88 (S.C. 1990).

Wherefore, Petitioner makes this request for judgment by default because the State has totally failed to answer the habeas corpus petition as commanded by Constitutional law. For these reasons, the Petitioner respectfully prays for the relief sought, and any further relief deemed just and proper by this Honorable Court.

Respectfully Submitted,

/s/ Jason D. Edwards
Jason Sinatra Edwards #313642
Broad River Corr. Institution
4460 Broad River Road
Columbia, S.C. 29240

cc: s.c. att. gen.
l: cartledge
filed
7/24/2016

(3 of 3)

indictment for both murders and the weapons charge, while the Grand Jury indicted a third brother and co-defendant, Jonas Edwards, for accessory after the fact of murder. (2004-GS-45-167).

Petitioner and his brothers received a joint trial before the Honorable Howard P. King and a jury on January 30-February 3, 2006. The jury found Petitioner and his brothers guilty of the indicted offenses. Judge King sentenced Petitioner and Maceo Edwards to life imprisonment for each murder and to a concurrent five year sentence for possession of a weapon during a violent crime. He sentenced Jonas Edwards to fifteen years, suspended to seven years imprisonment and five years probation.

Petitioner and his brothers timely served and filed a notice of appeal. Mr. McKenzie represented all three brothers on direct appeal. With counsel's assistance, Petitioner and his brothers filed a Final Brief of Appellants on February 12, 2007. They raised the following issues on direct appeal:

- I. The trial court committed legal error when it quashed the first jury panel. The trial court's handling of the Batson hearing in effect placed the burden on the appellants to prove the absence of purposeful discrimination even after the appellants' articulated race-neutral reasons for their strikes.
- II. The Trial Court violated the SIXTH AND THE FOURTEENTH AMENDMENTS TO THE U.S. CONST. AND ARTICLE 1, SECTION 14 OF THE SOUTH CAROLINA CONSTITUTION by not dismissing the case against the appellants because of the State's failure to provide a speedy trial to the Appellants.
- III. The Trial Court erroneously held that South Carolina Rules of Criminal Procedure Rule 3(c) [does] not require the State (respondent) to act on a warrant even though the State (respondent) gave no explanation as to why it waited over eight hundred days to indict the appellants.

Senior Assistant Attorney General William Edward Salter, III, filed the State's Final Brief of Respondent on February 15, 2007.

¹ Both of these actions were not forwarded to the Attorney General's Office until May of 2017.

Following oral arguments, the South Carolina Court of Appeals filed a published Opinion on June 21, 2007, affirming the convictions and sentences of Petitioner and his brothers. State v. Edwards, 374 S.C. 543, 649 S.E.2d 112 (Ct. App. 2007), rev'd, 384 S.C. 504, 682 S.E.2d 820 (2009). The Petitioners filed a Petition for Rehearing on May 18, 2004. On July 3, 2007, the Court of Appeals filed an Order directing Respondent to file a Return addressing their rehearing petition. Respondent submitted a Return to Petition for Rehearing on July 12, 2007, and the Court of Appeals filed an Order denying the petition for rehearing on August 27, 2007.

Petitioner and his brothers filed a Petition for Writ of Certiorari (through counsel) on October 15, 2007. They presented the following issues to the South Carolina Supreme Court:

Did the Court of Appeals commit error when it concluded the trial court did not violate the Constitutionally mandated procedures as set forth in Batson v. Kentucky, 476 U.S. 79, 86 (1986)?

The State filed a Return to Petition for Writ of Certiorari on November 15, 2007.

On July 10, 2008, the Supreme Court of South Carolina filed an Order granting certiorari. Petitioner filed a Brief of Petitioner on October 25, 2008. The State filed its Brief of Respondent on January 14, 2009. The Supreme Court filed an Opinion reversing the Court of Appeals' decision and granting all three Petitioners a new trial on August 31, 2009, because it found that Petitioners' proffered reasons for striking prospective jurors were sufficiently race-neutral to survive the State's Batson² challenge. State v. Edwards, 384 S.C. 504, 682 S.E.2d 820 (2009). The Remittitur was sent to the Williamsburg County Clerk of Court on September 17, 2009.

On January 30, 2012, Petitioner pled guilty to two counts of voluntary manslaughter before the Honorable J. Mark Hayes, II. Michael S. O'Neal, Esquire, and Steven S. McKenzie, Esquire, represented Petitioner at the plea. Also on the 30th, Maceo Edwards waived Grand Jury presentment

on a charge of accessory after the fact of a felony offense and Judge Hayes accepted his guilty plea to that offense. Finally, Jonais Edwards pled guilty to accessory after the fact on the same day.

On January 31, 2012, Judge Hayes sentenced Petitioner to two concurrent sentences of thirty years imprisonment. Both of his brothers received time-served sentences and walked out of their pleas free men. Petitioner did not appeal his convictions or sentence.

Petitioner filed a *pro se* Post-Conviction Relief (PCR) Application (2012-CP-45-0369) on July 16, 2012. He alleged the following grounds for relief in his Application:

1. Ineffective assistance of counsel:
 - a. "...counsel failed to object and move the court to enforce the oral agreement based on the detrimental reliance exception, thus rendering Applicant's plea involuntary."
2. Involuntary guilty plea.
3. Due process violation.

The State filed its Return on November 27, 2012.

The Honorable W. Jeffery Young held an evidentiary hearing into the matter on March 21, 2013, at the Sumter County Courthouse. Petitioner was present at the hearing and James D. Dotson, Esquire, represented him. Assistant Attorney General Megan E. Harrigan (now Jameson, current undersigned counsel) represented the State. Petitioner testified on his own behalf at the hearing and he presented testimony from his parents, Johnnie Mae and Maceo Edwards, Jr., as well as his co-defendant brothers, Jonias Edwards and Maceo Edwards, III. The State presented testimony from plea counsel, Mr. McKenzie and Mr. O'Neal.

Judge Young denied relief and dismissed the Application with prejudice in an Order of Dismissal that was filed on April 18, 2013. The Order of Dismissal addressed Petitioner's claim that

² See Batson v. Kentucky, 476 U.S. 79 (1986).

counsel was ineffective for failing to enforce a plea agreement based on detrimental reliance. The State served a copy of the Order of Dismissal on Petitioner's counsel of record, James D. Dotson, Esquire, on April 23, 2013.

On May 8, 2013, counsel for Petitioner filed a "pro se Motion to Amend and to Make Specific Findings of Fact and Conclusions of Law Pursuant to Rule 59 and SC Code of law § 17-27-80" on Petitioner's behalf. This pleading is dated April 1, 2013, which was before the Order of Dismissal was filed or served. The State filed a Return to this motion on June 21, 2013.

On June 23, 2013, Judge Young signed an "Order Denying Applicant's *pro se* 'Motion To Amend And Make Specific Findings of Facts And Conclusions Of Law Pursuant To Rule 59 And SC Code Of Law § 17-27-80.' " Judge Young found that the Rule 59(e), SCRCP, motion was untimely. The Certificate of Service shows that the State served this Order on Petitioner's attorney, Mr. Dotson, on August 26, 2013. Although page 4 of this Order stated that "if the Petitioner desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order" and directed Petitioner to Rules 203, 206, and 243, SCACR, Petitioner did not timely serve a notice of appeal as required by Rule 203(a), SCACR.

Petitioner did not timely serve a notice of appeal. Instead, he sent a "Motion Requesting Status of 59(e)" to the Attorney General's Office on October 28, 2014. In this pleading, he requested a status report on his *pro se* Rule 59(e), SCRCP, motion. The State forwarded this letter to his attorney, Mr. Dodson on October 30, 2014. On November 10, 2014, Petitioner filed a *pro se* notice of intent to appeal with the Williamsburg County Clerk of Court that he had served on the State on November 6, 2014. However, he did not file this with the Supreme Court of South Carolina.

Next, Petitioner filed an untimely motion pursuant to Rule 60(b)(1), SCRCP, on February 17,

2015. In his Rule 60(b) motion, Petitioner alleged that his PCR counsel, Mr. Dotson, failed to inform him that the Order of Dismissal had been filed on April 18, 2013, and counsel "never informed him of the results of the PCR hearing," so that he could appeal that Order. See Rule 60(b)(1), SCRCP, motion p. 3. He further asserted that the Rule 59(e), SCRCP, motion should not have been untimely because the counsel filed motion within thirty days of service of the Order of Dismissal on counsel. *Contra* Rule 59(e), SCRCP. Again, Mr. Dotson still represented him in connection with the 2012 Application. So, the State served counsel with a copy of that motion.³ The State did not file a response to the *pro se* motion because counsel represented him, id., and no Order has been entered on the motion.

Petitioner then filed an "Application for Habeas Corpus" filed on August 21, 2015, in the Richland County Court of Common Pleas (2015-CP-40-5138) and a "Motion Requesting Habeas Relief by Judgment of Default and State's Non Response" filed on August 30, 2016, in the Richland County Court of Common Pleas (2016-CP-40-5283), which are the subject of this return and will be discussed in more detail below.

On August 14, 2017, while the two current state court habeas petitions were pending in the Richland County Court of Common Pleas, Petitioner subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 (C.A. No. 6:17-cv-01570-DCN-KFM). In his Petition, Petitioner set forth the following grounds for relief:

GROUND ONE: Ineffective [Assistance] of Counsel, in violation of Petitioner's Sixth

³ Even though the Rule 60(b), SCRCP, motion was prepared by Petitioner, the State properly served counsel with the Order. See Rule 4.2 of the Rules of Professional Conduct, Rule 407, SCACR, ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order"). See also Comment [3] to Rule 4.2 ("The Rule applies even though to represented person initiates or consents to the communication").

Amendment rights.

SUPPORTING FACTS:

Petitioner relies upon "due process" and was "denied opportunity to appeal his Post-Conviction Relief hearing in State court". Based on ineffective assistance of counsel, a 59(e) motion and appeal was not filed.

The evidentiary hearing was held, where Petitioner at this time was represented by James D. Dotson. Where Petitioner argued to his attorney to file a 59(e), because the court [failed] to make specific findings of fact and conclusions of law with regard to the concerned issues.

Unbeknownst to Petitioner during such time, Mr. Dotson was undergoing his own troubles with the South Carolina Supreme Court, in an ongoing investigation of his person, professionally, for misconduct. Needless to say, Mr. Dotson received an unfavorable ruling by the High Court, and was suspended from practicing law.

The State replied to Petitioner's pro-se 59(e) alleging it was untimely. When in fact, "it was premature to the final ruling (April 1, 2013)," when such ruling was not mailed until April 23, 2013. The reference of any May 8, 2013 59(e), was not a product generated by Petitioner, it was a motion filed by Mr. Dotson, finally after repeated request to do the 59(e) prior to the expiration of the 10 days.

As was mentioned above, "it was unknown to Petitioner during those times about Mr. Dotson's trouble with the Court, but such remains a legitimate conclusion why Mr. Dotson never communicated effectively concerning the timely filing of the 59(e)".

PREJUDICIAL RESULTS OF THE FAILURE TO FILE 59(e).

Under South Carolina Rules, the 59(e) serves essentially the same function as the "contemporaneous objection rule", when appealing a final decision from the PCR Court. Because Mr. Dotson failed to timely file the 59(e), Petitioner was prevented from raising the strict or detrimental reliance of the plea agreement rule on appeal. In *Aice v. State*, 409 S.E.2d at 395, explains that "every PCR applicant is entitled to a full adjudication on the merits of the PCR application, or 'on bite

at the apple', which includes the right to appeal the denial of the PCR, and the right to assistance of counsel in that appeal.

Because Petitioner was deprived of "his one bite", he is respectfully requesting this court to intervene, as he has continually attempted to obtain relief in state court. Until just recently, the State Court forwarded Petitioner a Federal Habeas Relief Application.

For these reasons, Petitioner humbly request[s] that relief is granted, by remanding this cause to state court recommending that Petitioner is given the right to file his 59(e) and subsequent appeal to the highest state court, or for any further relief deemed just and proper, "based on being actually innocent".

Under *Martinez v. Ryan*, Attorney James D. Dotson, Esquire, abandoned Petitioner's State PCR 59(e) and subsequent appeal of meritorious Due Process Claims involving the State's breach of agreement. Petitioner was [misled] to [believe] "an action" was pending in the State Court to address these matters, only to learn after January 17, 2017. The State had either dismissed the attempt to L. regain his appeal, or failed to respond.

On November 2, 2017, Respondent filed its Return and Memorandum of Law in Support of Motion for Summary Judgment and Motion for Summary Judgement, seeking summary dismissal of Petitioner's action, but acknowledge that Petitioner may be entitled to a belated appellate review of his initial post-conviction relief proceeding pursuant to Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991). In his response to the motion for summary judgement, Petitioner agreed to a stay of the federal habeas corpus action to allow him pursue an Austin appeal. On April 16, 2018, the Honorable Kevin F. McDonald, United States Magistrate Judge for the District of South Carolina, issued a Report and Recommendation, recommending "respondent's motion for summary judgement be denied and that the case be stayed while the petitioner pursues his state court remedy."

II. Facts Giving Rise to the Convictions

The Assistant Solicitor proffered the following facts in support of the guilty pleas entered by

Petitioner and his co-defendant brothers:

May it please the Court, Your Honor. This incident happened back on June the 19th of 2002 in the Greeleyville portion of Williamsburg County. The victims in the case are Mr. Jimmy Robinson and Mr. Joe Woods. The incident occurred at the home of Mr. Joe Woods.

Your Honor, essentially how the case came to the attention of law enforcement was that two eyewitnesses were coming down the road in front of Mr. Woods' home, saw Jimmy Robinson running away from Mr. Jason Edwards, observed Jason Edwards shoot Mr. Jimmy Robinson at least twice, once in the shoulder, once in the head. During the course of investigating the murder that happened outside of the house, police officers also found the body of Mr. Joe Woods inside the residence. The body had a single gunshot wound to the forehead. It was determined that Mr. Jason Woods [sic.] -- it was believed anyway -- inflicted that fatal wound to Mr. Joe Woods.

Judge, after the shooting, Maceo Edwards and Jonais Edwards, who are the brothers of Jason Edwards, took him from Williamsburg County and took him to Rock Hill as a result of the incident that happened and there is some dispute between the prosecution and the [defense] as to the order in which it happened, but there does not appear to be any dispute that Jimmy Robinson stabbed Mr. Jason Edwards twice in the chest area. The dispute between the defense and the prosecution is at what point in time did that happen.

During the trial of the case, Mr. Jason Edwards testified that Jimmy Robinson stabbed him first and then that's when he shot Joe Woods and Jimmy Robinson. Of course, the State's theory of the case is that that came after the shooting of Joe Woods, but in any event, Jonais Edwards drove a vehicle in which his brothers, Jason and Maceo, were passengers. They drove to Rock Hill from Williamsburg County.

One of the witnesses in the case testified that ... both Jonais and Maceo, of course, were aware that their brother, Jason, had shot and killed Mr. Woods and Mr. Robinson when they took him and all three of them went to Rock Hill. They checked into a motel in Rock Hill. After having checked into a motel, they then went to Piedmont Medical Center, which is the hospital in Rock Hill. All three of them gave statements to hospital personnel, as well as Rock Hill Police Department, indicating that Jason Edwards had been stabbed by an unknown assailant in -- on Two Notch Road in Columbia, South Carolina.

Jason gave the name that his name was Jason Lamont. Jonais and Maceo told security personnel there that ... they didn't know who Jason was. They just happened to be in

Columbia and happened to have seen the stabbing and they brought him here. They brought them -- brought him to Rock Hill because they were afraid that the people who had stabbed him were going to come after him.

Of course, it didn't quite sound right to hospital personnel. They ran a tag on the vehicle and it was -- I guess a BOLO had [come] out and the vehicle tag indicated that these defendants were wanted in connection with a ... double homicide in Williamsburg County and that's how they ended up being arrested while at the hospital and that's essentially the facts of the case, Your Honor.

Tr. pp. 12-14.

Petitioner agreed that those facts were "[s]ubstantially correct." His brothers agreed that the facts were correct. *Tr. p. 15.*

III. Current Richland Co. Common Pleas filings ((2015-CP-40-5138) & (2016-CP-40-5283))

Petitioner filed an Application for Habeas Corpus Relief with the Richland County Clerk of Court on August 2, 2015, in which he sought to challenge his Williamsburg County convictions (2015-CP-40-5138). In the state habeas petition, he asserted that:

- [1]. For beginners, petitioner first contends that the PCR Act, under the circumstances of this case was "inadequate or unavailable" where otherwise, the statute commands it to be "broadly inclusive" to be both adequate and available to test the legality of a petitioner's detention. Comes new, Petitioner Edwards still attempting to exhaust his State Court remedies, "however, PCR has become [ineffective and/or inadequate to test the legality of his detention. The recorded exhibits within the PCR case (i.e. 2012-cp-45-0369) will clearly demonstrate (1) counsel's abandonment at a critical stage of the proceedings; (2), and incompetence by failing to "object or move to withdraw the plea", once the state reneged on the "oral agreement".
- [2]. As a result of the "breached plea deal" that was obtained after the Petitioner had sat in County jail almost thirty (30) months after the Supreme Court remanded the case[.], Petitioner's attorney, Mr. Steven McKenzie, of 2 North Brooks Street, in Manning, S.C. assured Petitioner the State's offer was "two (2) to thirty (30) years for voluntary manslaughter, and further advised Applicant that if he pled guilty he would be looking at the middle range of fifteen (15) years". And such was obviously based on the circumstances surrounding the case.

Petitioner took counsel's advice and entered the plea deal and the judge

ultimately sentenced Applicant to the maximum term of 30 years. Whereas, "the State brokered the deal on the promise it would not recommend the "higher sentencing range" but, during re-sentencing, the State did exactly what it promised Hot to do. And such was the basis of the PCR application.

- [3.] [PCR counsel did not timely perfect an appeal from the PCR court's adverse ruling, even though counsel was aware that Petitioner wanted to take an appeal].

Thereafter, on August 30, 2016, Petitioner filed a second action in the Richland County Court of Common Pleas, a "Motion Requesting Habeas Relief by Judgment of Default and State's Non Response." In this pleading, he moved "for judgment, by default because the State has totally failed to answer the habeas corpus petition as commanded by Constitutional law. For these reasons, the Petitioner respectfully prays for the relief sought, and any further relief deemed just and proper by this Honorable Court."

Attached to this Return, Motion for Merger, and Motion to Dismiss Petition for Writ of Habeas Corpus and incorporated by reference herein are the records of the Williamsburg County Clerk of Court regarding the subject convictions, Petitioner's records from the South Carolina Department of Corrections, Petitioner's appellate records, Petitioner's records from his first post-conviction relief matter, Petitioner's records from his federal habeas action, and his current filings before this Court: his "Application for Habeas Corpus" filed on August 21, 2015, in the Richland County Court of Common Pleas (2015-CP-40-5138) and a "Motion Requesting Habeas Relief by Judgment of Default and State's Non Response" filed on August 30, 2016, in the Richland County Court of Common Pleas (2016-CP-40-5283).

IV. Motion to Merge Current Filings

Applicant has filed collateral challenges to his Williamsburg County convictions in the Richland County Court of Common Pleas; the first of those was filed August 21, 2015 (2015-CP-40-

5138). Applicant then filed another collateral attack on his convictions on August 30, 2016 (2016-CP-40-5283). Both actions are an attempt to collaterally attack the same Williamsburg County convictions. An applicant is not generally allowed to have two post-conviction relief or collateral proceedings in regard to the same conviction. Alice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. § 17-27-90. Therefore, Respondent hereby moves to have the two proceedings merged and that initial Richland County collateral attack filed August 21, 2015 (2015-CP-40-5138) be the surviving case, and that the second action filed August 30, 2016 (2016-CP-40-5283) be considered an amendment to the 2015 filing and be closed by the Richland County Clerk of Court.

V. These Actions Should be Dismissed for Lack of Subject Matter Jurisdiction

This Court lacks subject matter jurisdiction of this matter under Rule 12(b)(1), SCRCP. Petitioner has filed a writ of habeas corpus in the Court of Common Pleas. However, a state habeas petition must be filed in the original jurisdiction of the South Carolina Supreme Court. See Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Cl. App. 1998)⁴. Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court. State v. Guthrie, 352 S.C. 103, 107, 572 S.E.2d 309, 311-12 (Cl. App. 2002) (citing State v. Brown, 351 S.C. 522, 570 S.E.2d 559 (Cl. App. 2002)). Furthermore, lack of subject matter jurisdiction may not be waived, even by consent of the parties. Id. (citing State v. Brown, 343 S.C. 342, 346, 540 S.E.2d 846, 848 (2001)). "The acts of a court with respect to a matter as to which it has no jurisdiction are void." Id.

⁴ Before a petitioner may proceed in the original jurisdiction of the Supreme Court, the petition must set out a constitutional claim that meets the standard delineated in Butler v. State, 302 S.C. 466, 397 S.E.2d 87 (1990). In Butler, the South Carolina Supreme Court held that the writ of habeas corpus will only be issued when there has been a constitutional violation "which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice." Butler, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (citing State v. Miller,

Moreover, "[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a [post-conviction relief] action." Keeler, 330 S.C. 568, 500 S.E.2d 123. In fact, *any* matter that is cognizable under the Uniform Post-Conviction Procedure Act may not be raised by a petition for a writ of habeas corpus before the circuit or lower courts of this State. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998); Gibson v. State, 329 S.C. 37, 495 S.E.2d 426 (1998); Keeler, 330 S.C. 568, 500 S.E.2d 123. The Uniform Post-Conviction Procedure Act is broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention. Gibson, 329 S.C. 37, 495 S.E.2d 426. A petitioner may allege constitutional violations in post-conviction relief proceedings, unless the issue could have been raised on direct appeal. Id.; Keeler 330 S.C. 568, 500 S.E.2d 123.

A habeas corpus petition must support the requested relief. Gibson, 329 S.C. 37, 495 S.E.2d 426; Hunter v. State, 316 S.C. 104, 447 S.E.2d 203 (1994). Although the allegations in the petition are to be treated as true, a petitioner must make out a *prima facie* case showing he is entitled to relief, and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Gibson, 329 S.C. 37, 495 S.E.2d 426.

To warrant a hearing, the petition must include two specific allegations. First, the petition must allege the petitioner has exhausted all available post-conviction relief remedies. Gibson, 329 S.C. 37, 495 S.E.2d 426; Hunter, 316 S.C. 104, 447 S.E.2d 203; Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994). Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review. Gibson, 329 S.C. 37, 495 S.E.2d 426. Second, the petition must allege sufficient facts to show why other remedies, such as post-conviction relief, are unavailable or inadequate. Gibson, 329 S.C. 37, 495

84 A.2d 459 (N.J. Super. Ct. App. Div. 1951)).

S.E.2d 426.

Here, the Petition must be dismissed because it is procedurally barred, leaving this Court without jurisdiction. Relief must be sought in the original jurisdiction of the South Carolina Supreme Court or in an application for post-conviction relief.⁵ The Petition wholly fails to meet the standards required for the issuance of this extraordinary writ. In fact, Petitioner wholly fails to provide this Court with any reasons as to why other remedies are unavailable or inadequate. In addition, Petitioner provides no reason as to why these allegations could not have been raised in an application for post-conviction relief. If Petitioner desires an appeal of his initial post-conviction relief action (2012-CP-45-0369), the available remedy for him to pursue is filing a second application for post-conviction relief in Williamsburg County seeking belated appellate review pursuant to Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991)—not the filing of state habeas corpus petitions in the Richland County Court of Common Pleas.

Because these two actions were improperly filed in the Richland County Court of Common Pleas, this Court is without jurisdiction. The failure to file this action in the proper venue requires dismissal of the actions for lack of subject matter jurisdiction. Thus, these claims cannot be raised in a petition for habeas corpus in the Circuit Courts of South Carolina. Accordingly, the Petition should be summarily dismissed.

VI. Conclusion

WHEREFORE, having made its Return and Motion to Dismiss, Respondent requests the matter be summarily dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 3, 2018

5 If this Court construes the Petition as an application for post-conviction relief, the State reserves the right to file an appropriate return and to raise any applicable defenses.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JASON S. EDWARDS, #313642,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2015-CP-40-5138 & 2016-CP-40-5283

AFFIDAVIT OF SERVICE BY MAIL

2018 MAY -4 AM 11:08
FILED
RICHLAND COUNTY
JENNIFER W. MCBRIDE
C.C.P. & G.S.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return, Motion for Merger, and Motion to Dismiss Petitions for Writ of Habeas Corpus in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jason S. Edwards, # 313642
TB-0275-T
Turbeville Correctional Institute
1578 Clarence Coker Highway
Turbeville, South Carolina 29162

DATED this the 3rd day of May, 2018.



Carmen A. Nord, Legal Assistant
For Respondent

**Richland County Court of Common Pleas
Richland County Judicial Center
1701 Main Street
Columbia, SC 29201**

March 23, 2018

**Jason S#313642 Edwards
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210**

**RE: 2015CP4005138, Jason S #313642 Edwards vs. South Carolina Dept of
Corrections**

We would like to inform you that a review of the file in the above captioned case indicates that there is no filed Affidavit of Service. The Chief Administrative Judge has requested that we advise you that a proof of service must be filed within thirty (30) days or this case will be dismissed.

Please do not respond to this letter via telephone. Please respond in writing, via facsimile at (803) 576-1926 or email at gunterp@rcgov.us regarding this case.

Sincerely

Jeanette W. McBride
Richland County Clerk of Court

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4005138

Jason S #313642 Edwards

South Carolina Dept of
Corrections

Robert M Stevenson III

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☒ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; 11 Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

Order No Affidavit of Service on File since case was filed August 25, 2015 ; Case Dismissed pursuant to Rule 41(a)(2)

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

R. Hood

Circuit Court Judge

2164
Judge Code4/26/18
Date**For Clerk of Court Office Use Only**

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on 27 April 2018 to attorneys of record or to parties (when appearing pro se) as follows:

Jason S#313642 Edwards Broad River Correctional
Institution 4460 Broad River Road Columbia, SC 29210

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

Court Reporter

Jeanette W. McBride - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

**Richland County Court of Common Pleas
Richland County Judicial Center
1701 Main Street
Columbia, SC 29201**

December 4, 2018

**Jason Sinatra Edwards #313642
Broad River Correctional Institution
4460 Broad River Rd
Columbia, SC 29210**

RE: 2016CP4005283, Jason Sinatra Edwards #313642 vs. Larry Cartledge

We would like to inform you that a review of the file in the above captioned case indicates that there is no filed Affidavit of Service. The Chief Administrative Judge has requested that we advise you that a proof of service must be filed within thirty (30) days or this case will be dismissed.

Please do not respond to this letter via telephone. Please respond in writing, via facsimile at (803) 576-1926 or email at gunterp@regov.us regarding this case.

Sincerely

Jeanette W. McBride
Richland County Clerk of Court

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4005283

Jason Sinatra Edwards #313642

Larry Cartledge

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☒ Rule 41(a), SCRPC (Vol. Nonst.); ☐ Rule 43(k), SCRPC (Settled); ☐ Other.
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other.
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court.

ORDER INFORMATION

This order ends. **No Affidavit of Service on File; Case Dismissed Pursuant to Rule 41(a)(2)**

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge Joely Newman Judge Code 2757 Date January 16, 2019

For Clerk of Court Office Use Only

This judgment was entered on the 17 day of Jan, 2019 and a copy mailed first class or placed in the appropriate attorney's box on this 17 day of Jan, 2019 to attorneys of record or to parties (when appearing pro se) as follows:

Jason Sinatra Edwards #313642

Larry Cartledge

Jason Sinatra Edwards #313642

Larry Cartledge

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

Janette W. Knide

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Jason Sinatra Edwards, #313642,	)	C/A No. 6:17-1570-DCN-KFM
	)	
Petitioner,	)	
	)	
vs.	)	
	)	<u>ORDER</u>
Warden Dennis Bush,	)	
	)	
Respondent.	)	
	)	

This is an action seeking habeas corpus relief under 28 U.S.C. § 2254. The petitioner is a prisoner. Therefore, in the event that a limitations issue arises, the petitioner shall have the benefit of the holding in *Houston v. Lack*, 487 U.S. 266 (1988) (prisoner's pleading was filed at the moment of delivery to prison authorities for forwarding to District Court). Under Local Civil Rule 73.02(B)(2) (D.S.C.), pretrial proceedings in this action have been referred to the assigned United States Magistrate Judge.

By order dated June 21, 2017, the petitioner was given a specific time frame in which to bring this case into proper form. The petitioner has complied with the Court's order, and this case is now in proper form.

PAYMENT OF THE FILING FEE:

The petitioner has paid the full filing fee.

TO THE CLERK OF COURT:

The Clerk of Court shall serve the 28 U.S.C. § 2254 petition and this order upon the respondent. Rule 4 of the Rules Governing Section 2254 Cases also requires service on "the attorney general or other appropriate officer of the state." The Attorney General of the State of South Carolina and the General Counsel of the South Carolina Department of Corrections shall each receive a copy of this order and a copy of the 28 U.S.C. § 2254 petition through the Electronic Case Filing System.

TO THE RESPONDENT:

The respondent shall file an answer or other response to the petition as soon as reasonably possible but no later than **fifty (50) days** from the date of service. Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, requires that "the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order" for petitions that are not dismissed upon initial review. See *Wyant v. Edwards*, 952 F. Supp. 348 (S.D.W. Va. 1997)

(court has discretionary authority to fix time for response to habeas corpus petition). As a courtesy to the Court, please identify any pages missing from relevant portions of the state court record submitted in response to the petition and advise (1) whether an attempt has been made to locate the missing pages, and (2) the result of the attempt to locate. See Rule 5, Rules Governing Section 2254 Cases in the U.S. District Courts.

The respondent shall file all dispositive motions no later than **forty-five (45) days** after the answer is filed. With respect to dispositive motions by the respondent, this order shall serve as a scheduling order.

TO THE PETITIONER:

Pursuant to Rule 5 of the Federal Rules of Civil Procedure, any documents filed subsequent to the initial pleading must be served on parties. Unless otherwise ordered, service of subsequently filed documents on a respondent represented by an attorney is made on the attorney. Service on attorneys who have made an appearance in this Court is effected by the Court's Electronic Case Filing system through a computer generated notice of electronic filing. However, prior to the respondent's attorney making an appearance in this Court, the petitioner must serve the respondent with any documents the petitioner files subsequent to the initial pleading and file a certificate of service that states who was served, what document was served, and how the document was served.

IT IS SO ORDERED.

s/ Kevin F. McDonald
United States Magistrate Judge

August 14, 2017
Greenville, South Carolina

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PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District:
Name (under which you were convicted): Jason Sinatra Edwards		Docket or Case No.:
Place of Confinement : Broad River Correctional Institution	Prisoner No.: #313642	
Petitioner (include the name under which you were convicted) Jason Sinatra Edwards		Respondent (authorized person having custody of petitioner) v. Warden Dennis Bush
The Attorney General of the State of: South Carolina		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
General Sessions Court, State of South Carolina
- (b) Criminal docket or case number (if you know): 2004-GS-45-0167
2. (a) Date of the judgment of conviction (if you know): February 3, 2006
- (b) Date of sentencing: Same
3. Length of sentence: Life Imprisonment
4. In this case, were you convicted on more than one count or of more than one crime? ☒ Yes ☐ No
5. Identify all crimes of which you were convicted and sentenced in this case: Murder, (Two Counts)
Possession of weapon
6. (a) What was your plea? (Check one)

☒ (1) Not guilty	☐ (3) Nolo contendere (no contest)
☐ (2) Guilty	☐ (4) Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? Entered "Not Guilty" Self-Defense.

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: S.C. Court of Appeals

(b) Docket or case number (if you know): State v. Edwards Op. No. 4261

(c) Result:

(d) Date of result (if you know): June 21, 2007

(e) Citation to the case (if you know): N/A

(f) Grounds raised: Batson Issue

(g) Did you seek further review by a higher state court? ☒ Yes ☐ No

If yes, answer the following:

(1) Name of court: S.C. Supreme Court

(2) Docket or case number (if you know): Op. No. 26711

(3) Result: Reversed and Remanded for New Trial

(4) Date of result (if you know): August 31, 2009

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(5) Citation to the case (if you know): N/A(6) Grounds raised: Batson Issue, Prosecutorial Delay, Due Process
Violations(h) Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know): N/A(2) Result: N/A(3) Date of result (if you know): N/A(4) Citation to the case (if you know): N/A10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: S.C. Court of Common Pleas (Post-Convic. Application)(2) Docket or case number (if you know): 2012-CP-45-369(3) Date of filing (if you know): July 16, 2012(4) Nature of the proceeding: Post Conviction Proceedings(5) Grounds raised: Ineffective Assistance of Counsel; Involuntary
Guilty Plea; Due Process Violations.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☒ Yes ☐ No(7) Result: Denied(8) Date of result (if you know): March 21, 2013

(1) Name of court: 59(e) within 10 days to the Court of Common pleas

(2) Docket or case number (if you know): Same

(3) Date of filing (if you know): April 1, 2013

(4) Nature of the proceeding: Motion To Amend Judgment

(5) Grounds raised: Court failed to make specific findings of fact and Conclusion of law; "to determine whether the State was obligated to stand by the 'no recommendation upon resentencing". After the S.C. Supreme Court reversed and remanded for a new trial". Where during the resentencing "the State moved for the MAXIMUM PENALTY". And the Court imposed such, "based on a clear case of self de-fesne".

☐ Yes ☒ No Not this 59(e), PCR Counsel was in Disciplinary Trouble with the S.C. Supreme Court, which caused injury

(8) Date of result (if you know): **N/A**

(1) Name of court: See Attached for clear explanation.

(2) Docket or case number (if you know): **N/A**

(3) Date of filing (if you know): **N/A**

(4) Nature of the proceeding: N/A

(5) Grounds raised: **N/A**

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No(7) Result: N/A(8) Date of result (if you know): N/A(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion? N/A(1) First petition: ☒ Yes ☐ No(2) Second petition: ☐ Yes ☒ No Counsel prevented appeal(3) Third petition: ☐ Yes ☒ No Counsel prevented Appeal

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

Under S.C. Rules, Petitioner could not engage in Hybrid representa-
tion. Mr. James D. Dotson, was involved with disciplinary action with the Ct.

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Ineffective Assistance of Counsel, in Violation of Petitioner's
Sixth Amendment rights.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

"See Attached Sheets".(b) If you did not exhaust your state remedies on Ground One, explain why: Attempted such in StateCourt by filing a 60(b) to recall a judgment because of procedural irregulari-
ties, the court forwarded the instant application back to Petitioner.

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(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No(2) If you did not raise this issue in your direct appeal, explain why: Wasn't available during the direct appeal stage. The resentencing exposed the constitutional errors.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: PCR, 59(e) and 60(b).Name and location of the court where the motion or petition was filed: Court of Common Pleas
Williamsburg County, South Carolina. (2012-CP-45-0369)

Docket or case number (if you know): _____

Date of the court's decision: 10-28-2014Result (attach a copy of the court's opinion or order, if available): N/A(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Appealed Back to the Court of
Common plea by way of a 60(b) to recall judgmentDocket or case number (if you know): (2012-CP-45-0369)Date of the court's decision: N/A Did not Answer the 60(b)

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

GROUND TWO:

(a) **Supporting facts** (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Two, explain why:

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

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Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two:

GROUND THREE:

- (a) **Supporting facts** (Do not argue or cite law. Just state the specific facts that support your claim.):

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(b) If you did not exhaust your state remedies on Ground Three, explain why:

~~_____~~
~~_____~~
~~_____~~
~~_____~~

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

~~_____~~
~~_____~~
~~_____~~

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

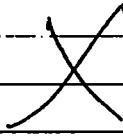
Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

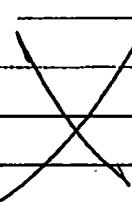
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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

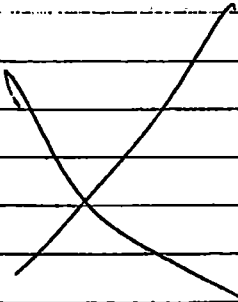


(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

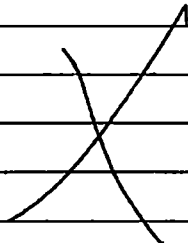


GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):



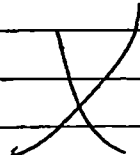
(b) If you did not exhaust your state remedies on Ground Four, explain why:



(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:



(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

N/A

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Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

☐ Yes☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☐ Yes ☐ No Counsel abandoned Petitioner at appeal stages of PCR.

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: Again, counsel failed to perfect the 59(e) to pre-

serve very meritorious issues involving the resentencing hearing,

for which Mr. James D. Dotson, was experiencing disciplinary is-

ssues during the time out of the S.C. Supreme Court.

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

None

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. The 60(b) does not have an official ruling on the record.

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Steven McKenzie, Esquire

(b) At arraignment and plea: Same

(c) At trial: Same

(d) At sentencing: Same

(e) On appeal: Michael O'Neal, Esquire

(f) In any post-conviction proceeding: James D. Dotson,

(g) On appeal from any ruling against you in a post-conviction proceeding: Failed to perfect.

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☒ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

See Attached Sheets for timeliness

This motion should be timely based on Petitioner's right to have filed
through appointed counsel, "his appeal from the PCR decision".

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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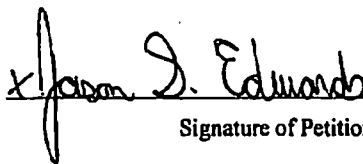
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: To reverse the State Court on
Due Process and effective assistance of counsel (failing to afford the appeal)
violations. Which occurred during the resentencing hearing.
or any other relief to which petitioner may be entitled.

_____
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on X 6-12-17 (month, date, year).

Executed (signed) on X 6-12-17 (date).

_____
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Jason Sinatra Edwards, #313642,
Petitioner,

Vs.

Case No.: _____

Warden Dennis Bush, of Broad River
Correctional Institution,

Respondent. /

ATTACHED SHEETS TO 28 U.S.C. §2254

Comes now, Petitioner in the above captioned matter, to hereby move this Honorable Court for the United States, to grant Petitioner relief pursuant to 28 U.S.C. §2254.

The only grounds to which Petitioner relies upon is "Due Process" concerns whereas "he was denied the opportunity to appeal his Post-Conviction Relief Hearing in State court". Based on ineffective assistance of counsel (i.e. Mr. James D. Dotson), that during such time counsel should have filed a 59(e) and appeal. He was being investigated for misconduct under Rule 407, by the S.C. Supreme Court. Which ultimately resulted in counsel's suspension.

2017 JUN 14 AM 11:08

Next, based on these Due Process concerns, "ineffective assistance of counsel is inevitable", whereas, counsel because of his troubles was prevented from adequately protecting the Petitioner's right to appeal.

LEGAL ANALYSIS

Under South Carolina Laws, a final decision under the PCR Act is reviewable by the S.C. Supreme Court upon a petition for a writ of certiorari by either party. S.C. App. Ct. R. 243(a). To appeal from the denial of PCR relief, 'counsel' must serve a notice of appeal on opposing party within thirty days after receipt of written notice of entry of the order denying relief. See S.C. App. Ct. R. 243(b); S.C. App. Ct. R. 203(b)(1).

Even after an order is filed, counsel has an 'obligation' to review the order and file a Rule 59(e), SCRCP, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by §17-27-80, and Rule 52(a), SCRCP, see also Marlar, 653 S.E.2d at 267; Hall, 601 S.E.2d at 341.

A Rule 59(e) motion must be filed within ten days of receiving written notice of the entry of the order denying post-conviction relief. S.C.R. Civ. P. 59(e). Filing the 59(e) also tolls the time for filing a notice of intent to appeal. S.C.R. Civ. P. 59(f).

HISTORY AND CHAIN OF EVENTS WARRANTING RELIEF

On or about June 19, 2002, Petitioner was invited to the home of "Joe Woods", by a family member "Jimmy Robertson", in which Petitioner was unaware of the "plot to rob him". As he was known to carry large sums of money. And both "Joe Woods" and "Jimmy Robertson" were smoking crack-cocaine when Petitioner arrived.

The cousin (Jimmy) asked Petitioner to borrow some money, in which Petitioner stated "he did not have money to lead anybody to purchase crack". The cousin became irrate, calling Petitioner a liar. Petitioner also always carried his firearm because it protected him from these type circumstances.

Jimmy went outside the house, "Petitioner had other witnesses that testified during trial, they seen Jimmy come out and open up what appeared to be a knife". Remember, "Petitioner was carrying his firearm".

The witnesses (Petitioner's brother) while inside the vehicle, had no reason to expect foul-play simply because Jimmy opened a knife outside the house. So Petitioner's brother remained put inside the vehicle, listening to music.

Upon re-entering the home, Petitioner was viciously attacked by his own cousin, in the robbery attempt. Petitioner was rushed and repeatedly stabbed, knocking Petitioner over a china cabinet onto the floor, where the stabbing continued. While Petitioner did have his side-arm in his possession, he could not get to it be-

cause his "hands and arms" were being used to defend himself from the brutal onslaught.

At first, Joe Woods didn't assist, that was until Petitioner's cousin summoned him to join in, and go through Petitioner's pockets. At this juncture, the firearm was dislodged and Jimmy went for the gun. Petitioner using what strength he had while losing a lot of blood (after being stabbed about twelve times) got to the firearm first.

Once the firearm was firmly in Petitioner's grip, he took aim at his attackers and shot once, hitting Joe Woods in the head. Because Petitioner's brothers had the car music turned up outside, they were unaware of what had transpired inside the residence.

With the door now opened, Petitioner headed outside to get some assistance. But because of the blood loss, Petitioner stumbled and was again attacked on the side of the house by his cousin Jimmy. Petitioner shot Jimmy twice, to escape another knife attack.

At the hospital as an aftermath. Petitioner arrived "in critical condition, where at one point and time the doctors came out and told Petitioner's family they had lost him". But regained a pulse, but that Petitioner was not expected to make it out alive.

Based on the above, and once Petitioner did recover, the State charged Petitioner and his brother with "Two Counts" of murder and possession of a firearm during the commission of a violent crime.

On January 20, 2006, after almost a four-year County Jail stay, Petitioner's case proceeded to trial. From the 2002 arrest, the indictment was not secured until October 2004.

January 20, 2006, marked the trial and conviction by jury, where Petitioner was represented by Steven S. McKenzie, Esquire. The Petitioner was found guilty on February 3, 2006, and was given a life sentence for each death, and five years for the firearm, all sentences running concurrently.

Next, as a question posited for this Court's special attention. "How does a person carrying a firearm manage to get critically stabbed (over twelve times) within inches of his life", if the chain of events did not occur as Petitioner described them? Based on the question posited, any objective mind would consider the Petitioner in the case "actually, factually innocent".

PETITIONER'S STATE PCR ISSUES

In accordance with the procedural history of this case. Such conviction and sentences were remanded by the South Carolina Supreme Court on the Batson issue, (Op. No. 26711, S.C. Sup. Ct.) on August 31, 2009. And again, the State held Petitioner in County Jail custody from "soon after the reversal" (August 31, 2009). Until January 31, 2012 (excessive delay tactic), where the Petitioner finally relented and plead guilty; "on the State's promise, it would not make a sentence recommendation on the voluntary manslaughter

ghter charge. In which the sentencing range is from 15 to 30 years.

"No sooner than it was the State's turn to speak during the resentencing hearing, the Assistant Attorney General moved for the 'maximum penalty to be imposed'. When the plea bargain was for "a no recommendation from the State".

Wherefore, Petitioner's PCR was primarily based on ineffective assistance of counsel in violation of his Sixth Amendment rights, where counsel ill-advised him coupled with his failure "to move to have the plea withdrawn or strictly enforced". See Santobello v. New York, 404 U.S. 257, 92 S. Ct. 495 (1971)("when a plea rest in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled"). See United States v. Kennedy, 522 F. Supp. 2d 6 (2007); U.S. v. Kramer, 499 F. Supp 2d 300 (E.D. New York 2007); and Connors v. United States, 365 F.2d 503 (Ct. App. Dist of Cola., 1996)

The PCR application was then mounted to contest the legality of the plea. Under State law such cases as; State v. Custodio, 644 S.E.2d 36 (S.C. 2007), and Thompson v. State, 531 S.E.2d 294 (S.C. 2000), supports Petitioner's claims.

The evidentiary hearing was held, where Petitioner at this time was represented by James D. Dotson. Where Petitioner argued to his attorney to file a 59(e), because the court failed to make specific findings of fact and conclusions of law with regard to the concerned issues.

Unbeknownst to Petitioner during such time, Mr. Dotson was undergoing his own troubles with the South Carolina Supreme Court, in an ongoing investigation of his person, professionally, for misconduct. Needless to say, Mr. Dotson received an unfavorable ruling by the High Court, and was suspended from practicing law.

The State replied to Petitioner's pro-se 59(e) alleging it was untimely. When in fact, "it was premature to the final ruling (April 1, 2013)" when such ruling was not mailed until April 23, 2013. The reference of any May 8, 2013 59(e), was not a product generated by Petitioner, it was a motion filed by Mr. Dotson, finally after repeated request to do the 59(e) prior to the expiration of the 10 days.

As was mentioned above, "it was unknown to Petitioner during those times about Mr. Dotson's trouble with the Court, but such remains a legitimate conclusion why Mr. Dotson never communicated effectively concerning the timely filing of the 59(e)".

PREJUDICIAL RESULTS OF THE FAILURE TO FILE 59(e).

Under South Carolina Rules, the 59(e) serves essentially the same function as the "contemporaneous objection rule", when appealing a final decision from the PCR Court. Because Mr. Dotson failed to timely file the 59(e), Petitioner was prevented from raising the strict or detrimental reliance of the plea agreement rule on

appeal. In Aice v. State, 409 S.E.2d at 395, explains that "every PCR applicant is entitled to a full adjudication on the merits of the PCR application, or 'on bite at the apple', which includes the right to appeal the denial of the PCR, and the right to assistance of counsel in that appeal.

Because Petitioner was deprived of "his one bite", he is respectfully requesting this court to intervene, as he has continually attempted to obtain relief in state court. Until just recently, the State Court forwarded Petitioner a Federal Habeas Relief Application.

For these reasons, Petitioner humbly request that relief is granted, by remanding this cause to state court recommending that Petitioner is given the right to file his 59(e) and subsequent appeal to the highest state court, or for any further relief deemed just and proper, "based on being actually innocent".

Respectfully Submitted

/s/ 
Jason S. Edwards, #313642
BRCI-Marion Unit
4480 Broad River Road
Columbia, S.C. 29210

cc: filed

(8 of 8)

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Jason Edwards, #313642,
Applicant,

Case No. 2012-CP-45-0369

**RETURN TO APPLICANT'S *pro se*
"MOTION TO AMEND AND TO MAKE
SPECIFIC FINDINGS OF FACTS AND
CONCLUSIONS OF LAW PURSUANT
TO RULE 59 AND SC CODE OF LAW
§ 17-27-80"**

v.

State of South Carolina,
Respondent.

Respondent, by and through undersigned counsel, making its Return to Applicant's *pro se* "Motion to Amend and to Make Specific Findings of Fact and Conclusions of Law Pursuant to Rule 59 and SC Code of law § 17-27-80" would respectfully show unto this Court:

I.

The Applicant was indicted during the October 2004 term of the Williamsburg County Grand Jury for two counts of murder and possession of a weapon during a violent crime (2004-GS-45-167). Applicant was represented by Steven S. McKenzie, Esquire. On January 30, 2006, the Applicant proceeded to a jury trial before the Honorable Howard P. King. Applicant was found guilty, and on February 3, 2006, Applicant was sentenced to life imprisonment for each count of murder and five years for possession of a weapon during a violent crime. All sentences were to be served concurrently.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the appeal. State v. Jason Sinatra Edwards, Op. No. 4261 (S.C. Ct. App. filed June 21, 2007). Counsel for the Applicant filed a timely Petition for Rehearing on June 30,

2007. The State made its Return to Petition for Rehearing on July 12, 2007. The South Carolina Court of Appeals issued an Order Denying the Petition for Rehearing on August 27, 2007. A Petition for Writ of Certiorari was filed on October 15, 2007 with the South Carolina Supreme Court. The Return to Petition for Writ of Certiorari was filed by the State on November 15, 2007. The South Carolina Supreme Court reversed the Court of Appeals' opinion and remanded for a new trial. State v. Jason Sinatra Edwards, Op. No. 26711 (S.C. Sup. Ct. filed August 31, 2009). The Remittitur was sent September 17, 2009.

On January 31, 2012, the Applicant pled guilty to two counts of voluntary manslaughter. He was represented by Michael S. O'Neal, Esquire, and Steven S. McKenzie, Esquire. The Applicant was sentenced by the Honorable J. Mark Hayes, II, to thirty years imprisonment for each count, with the sentences to be served concurrently. Applicant did not appeal his conviction and sentence.

II.

Applicant filed an application for post-conviction relief on July 16, 2012, alleging that he is being held in custody unlawfully based on the allegation that "counsel failed to object and move the court to enforce the oral agreement based on the detrimental reliance exception, thus rendering Applicant's plea involuntary." The Respondent made its Return on November 27, 2012. An evidentiary hearing into the matter was convened on March 21, 2013, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by James D. Dotson, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. By written order signed on April 11, 2013 and filed on April 18, 2013, the Court denied and dismissed Applicant's post-conviction

relief application with prejudice. A copy of this Order was served on Applicant's counsel of record, James D. Dotson, Esquire, on April 23, 2013

On May 8, 2013, Applicant filed a *pro se* "Motion to Amend and to Make Specific Findings of Fact and Conclusions of Law Pursuant to Rule 59 and SC Code of law § 17-27-80" This *pro se* document was received by Respondent on May 14, 2013.

III.

Applicant's motion is not timely filed and should be summarily dismissed. "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC. Applicant's counsel of record, James D. Dotson, Esquire, was mailed a copy this Court's Order of Dismissal on April 23, 2013. Applicant's *pro se* motion was filed on May 8, 2013. (As this motion was not properly filed by counsel until after the ten day statutory period had expired, this motion should be dismissed as untimely.

V.

This Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits that this Court properly ruled on all issues presented at the post-conviction relief hearing and Applicant's "Motion to Amend and to Make Specific Findings of Fact and Conclusions of Law Pursuant to Rule 59 and SC Code of law § 17-27-80" should be denied.

Additionally, in this motion, Applicant requests that this Court "grant the post-conviction relief action on all ground within the PCR application and its accompanying Memorandum of Law." Applicant is not requesting an alteration or amendment to the Order. Rather, Applicant is

asking the Court to reconsider its ruling and grant Applicant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court). Applicant has failed to raise an allegation that was properly raised but not ruled upon by this Court.

IV.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

June 21, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF WILLIAMSBURG	)	CASE NO: 12-CP-45369
	)	
JASON EDWARDS #313642	)	MOTION TO AMEND AND TO MAKE
	)	SPECIFIC FINDINGS OF FACTS AND
V.	)	CONCLUSIONS OF LAW PURSUANT TO
	)	RULE 59 AND SC CODE OF
STATE OF SOUTH CAROLINA	)	LAW §17-27-80
	)	

The Applicant Jason Edwards, #313642 respectfully motion this honorable court to amend the order in the post-conviction relief case 12-CP-45369 to reflect specific findings of facts and conclusions of law as required by S.C. Code of Law §17-27-80 as to the following issues:

- 1). Ineffective Assistance of Trial Counsel Steven McKenzie due to his failure to object to the state solicitor's recommendations when the plea agreement called for no recommendation of sentencing preference from the state. Thompson v. State, 531 SE 2d 294 (S.C. 2000).
- 2). Ineffective Assistance of Trial Counsel Steven McKenzie due to his failure to his failure to move to enforce the plea agreement provision of "no recommendation" of sentence from the state. Thompson v. State, 531 SE 2d 294 (S.C. 2000).
- 3). Ineffective Assistance of Trial Counsel Steven McKenzie due to his failure to move to enforce the plea agreement of a fifteen (15) years range of sentencing. Reed v. Becka, 511 SE 2d 396 and Custodia v. State, 644 SE 2d 30 (S.C. 2007).
- 4). Ineffective Assistance of Trial Counsel Steven McKenzie due to his failure to conduct reasonable pretrial investigation and develop an adequate defense strategy and mitigating evidence regarding Applicant and being assaulted by the victim and being stabbed numerous times by the victim such that Applicant was comatose for a lengthy time. Ard v. Catoe, 642 SE 2d 590 (S.C. 2000), Lands v. State, 670 SE 2d 646 (S.C. 2008).
- 5). Due Process Violation for state solicitor's breach of plea agreement. Sprouse v. State, 565 SE 2d 276 (S.C. 2003) and Santobello v. New York 52 S.Ct. 495

- 6). Involuntary Guilty Plea for Trial Counsel Steven McKenzie misadvising and misinterpreting the law to Applicant that "malice may be inferred" for murder because Applicant used a deadly weapon against the victim and based on this it would be more favorable to Applicant to negotiate a plea to Manslaughter, Counsel McKenzie's advise on the law is legally incorrect. Hill v. Lockhart, 106 S.Ct. 366 (1985) and Elcher v. State, 685 SE 2d 802 (S.C. 2009), Ostrander v. Green, 46 F3d 347 (4th Cir. 1995)
- 7). Involuntary Guilty Plea for state solicitor inducing Applicants detrimental reliance on the terms of the plea agreement but withholding the benefits of the plea agreement. Sprouse v. State, 585 SE 2d 278 (S.C. 2003), Thompson v. State, 531 SE 2d 294 (S.C. 2000).

WHEREFORE this Applicant moves this court to fully comply with SC Code law §17-27-80 and Marlar v. State, 653 SE 2d 266 (S.C. 2007). This Applicant also moves this court to grant the post-conviction relief action on all grounds within the PCR application and its accompanying Memorandum of Law, within the testimony and evidence presented at the evidentiary hearing in this case, and within the Rule 59 motion.

Respectfully Submitted,

Date: 4-1-13

James D. Edwards

DCN:KFM Date Filed 08/14/17 Entry Number 11-1

James S. Edwards # 38742
Bk II Motion Unit 240
4160 Broad River Road
Columbia, SC 29210

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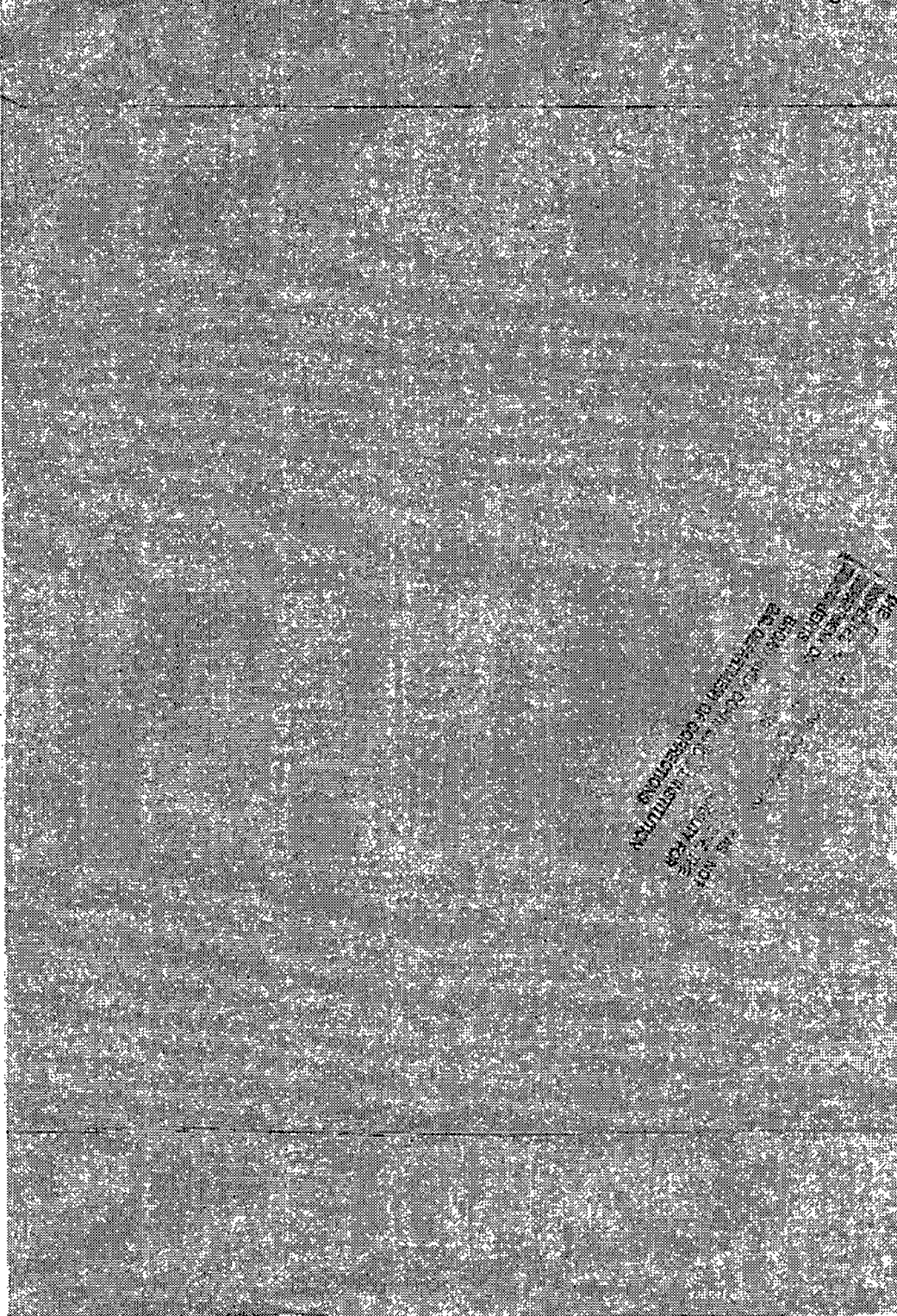
United States District Court
Clerk's Office 901 Railroad St.
Columbia, SC 29201

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cv-01570-DCN-KEM Date Filed 08/14/17 Entry Number 11-1 Page 31



DAO 241 (Rev 10/07)

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USDC, CLERK GREENVILLE, SC Page 2

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District:	
Name (under which you were convicted): Jason Sinatra Edwards #313642		Docket or Case No.: 6:17-cv-01570	
Place of Confinement: Broad River Correctional Institution		Prisoner No.: 313642	
Petitioner (include the name under which you were convicted) Jason Sinatra Edwards		Respondent (authorized person having custody of petitioner) v. Warden Bush	
The Attorney General of the State of South Carolina			

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging:
Williamsburg, South Carolina, Court of General Sessions.
- (b) Criminal docket or case number (if you know): 2004-GS-45-0167
- (a) Date of the judgment of conviction (if you know): January 31, 2012
- (b) Date of sentencing: Same
- Length of sentence: 30 Years
- In this case, were you convicted on more than one count or of more than one ☒ Yes ☐ No
- Identify all crimes of which you were convicted and sentenced in this case: Two Counts of Voluntary manslaughter.
- (a) What was your plea? (Check one)

☐ (1) Not guilty	☐ (3) Nolo contendere (no contest)
☒ (2) Guilty	☐ (4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

" See Initial Application "

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(c) If you went to trial, what kind of trial did you have? (Check one)

☐ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☐ No

8. Did you appeal from the judgment of conviction?

☐ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you seek further review by a higher state court? ☐ Yes ☐ No

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

" See Initial Application for this page "

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(h) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes ☐ No

If yes, answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☐ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

" See Initial Application "

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

- (1) First petition: ☐ Yes ☐ No
- (2) Second ☐ Yes ☐ No
- (3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: "Ineffective Assistance of Initial PCR Counsel".

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Under Martinez v. Ryan, Attorney James D. Dotson, Esquire, abandoned Petitioner's State PCR 59(e) and subsequent appeal of meritorious Due Process Claims involving the State's breach of agreement. Petitioner was misled to believe "an action" was pending in the State Court to address these matters, only to learn after January 17, 2017. The State had either dismissed the attempt to regain his appeal, or failed to respond. See Attached exhibits.

(b) If you did not exhaust your state remedies on Ground One, explain why:

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

See Initial

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Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground _____

GROUND TWO: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

" See Initial "

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the

☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

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(1)
"See Initial"

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you :
have used to exhaust your state remedies on Ground Two _____

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) If you did not exhaust your state remedies on Ground Three, explain _____

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? _____

☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

" See Initial "

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground

Three: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

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" See Initial "

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

" See Initial "

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☐ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☐ No

*A(1) 2-1 (Rev. 10/07)

Page 13

11 "See Initial" 11

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☐ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the raised.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

(b) At arraignment and plea:

(c) At trial:

(d) At sentencing:

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

AO 211 (Rev 10/17)

Page 14

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☐ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

The time consideration in this matter for federal relief, should be the
January 2017 date when the State Court dismissed Petitioner's 59(e) and
60(b), in which Petitioner (based on no communication from attorney James
D. Dotson) learned of the decision from the court.

James D. Dotson (In the Matter of James D. Dotson) was suspended from the
practice of law during the times "he would have normally responded". And
Petitioner is of firm belief, "this contributed to Mr. Dotson's failure
to inform him of the 'status' of his case". And for failing to file his
appeal from the PCR denial. In which case, should have been remanded to
the State for screening of a successive application. As opposed to the
State court forwarding this 28 U.S.C. §2254 application.

In any event, Petitioner timely filed within one-year of the decision
being known by him, which he could not have do so at any earlier time.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme if the right has been newly recognized by the Supreme Court and made retroactively applicable cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- Court, to
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

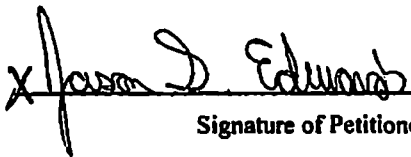
Therefore, petitioner asks that the Court grant the following relief: _____

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition Writ of Habeas Corpus was placed in the prison mailing system on 7/14/2017 (month, date, year).

Executed (signed) on 7/14/2017 (date).

A handwritten signature in black ink, appearing to read "James D. Edwards", is written over a horizontal line.

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

FORM 5

12 CP45 36 9

STATE OF SOUTH CAROLINA)

County of Williamsburg)Jason Edwards #313642)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEFFILED
12 JUL 16 AM 11:37
CAROLYN F. WILLIAMS
CLERK OF COURT
KINGS TREE, N.C.**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, 4460
Broad River Rd, Columbia, SC. 29210
2. Name and location of Court which imposed sentence Williamsburg County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Marco L. Edwards & Jonas Edwards
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) (2004-GS-45-0167)
 - (b) _____

A CERTIFIED TRUE COPY
Carolyn F. Williams
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 31, 2012
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty plea of guilty
- (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. n/a
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. n/a
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. n/a
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. n/a
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) counsel failed to file direct appeal
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of counsel
- (b) involuntary guilty plea
- (c) due process violation
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attached memorandum in support
- (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? no
- (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 (previous)
- ii. petition for certiorari, wherein South Carolina Supreme
- iii. Court vacated sentence and conviction and remand for new
- iv. trial.
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Court of Appeals
- ii. South Carolina Supreme Court
- iii. _____
- iv. _____

(c) the disposition thereof:

i. denied

ii. granted and remand for new trial

iii. _____

iv. _____

(d) the date of each such disposition:

i. unknown

ii. unknown

iii. _____

iv. _____

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

i. unknown

ii. unknown

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, first filing for PCR

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

(a) which grounds have been presented:

i. n/a

ii. _____

iii. _____

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

i. n/a

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) first filing for PCR
- (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? n/a to this application
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? n/a to this application
- (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. ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
Steven McKenzie, esq. 2 North Brooks St, Manning SC.
- ii. Michael O'Neal, Esq., Suite D, 2165 Ashley Phosphate Rd.,
North Charleston SC 29406
- iii. ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
same as above (i)
- (b) the proceedings at which each such attorney represented you:
- i. plea
- ii. _____
- iii. sentencing

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG
IN THE COURT OF COMMON PLEAS

Indict.No. 2004-GS-45-0167

Jason Edwards -- Applicant,

-Vs-

State of South Carolina -- Respondent,

MEMORANDUM IN SUPPORT OF APPLICATION FOR
POST CONVICTION RELIEF PURSUANT TO
§§17-27-20 THROUGH §17-27-160

Respectfully Submitted,

/s/



Jason Edwards

SCDC# 313642

BRCI

4460 Broad River Rd.
Columbia, SC. 29210

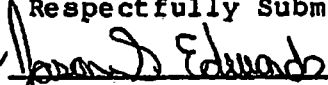
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG)

Jason Edwards) Indict.No. 2004-GS-45-0167
Applicant,)
-V-) MEMORANDUM OF LAW IN SUPPORT OF
State of South Carolina) APPLICATION FOR POST
Respondent,) CONVICTION RELIEF PURSUANT TO
_____) §17-27-20 THROUGH §17-27-160

COMES NOW, above captioned Applicant respectfully seeking relief in this Honorable Court pursuant to S.C. Code Ann. §§17-27-20 through §17-27-160, claiming that his rights were violated in a number of ways including but not limited to his Sixth Amendment right to the effective Assistance of Counsel and his Fourteenth Amendment right to Due Process of Law that is protected under the Federal Constitution of the United States.

Through the issue presented, statement of facts and citations of authorities relied on Applicant will show unto this Honorable Court his entitlement to the requested relief sought herein.

Respectfully Submitted,

/s/ 
Jason Edwards

**BRIEF PROCEDURAL HISTORY and
STATEMENT OF FACTS**

Applicant was originally indicted for murder on or about June 19, 2002. Wherein Applicant proceeded to trial by jury and a judge. The jury ultimately convicted Applicant as indicted and Applicant was sentenced to life in prison (LWOP).

A timely appeal was filed and perfected and the South Carolina Court of Appeals affirmed the conviction and sentence. Applicant petitioned the South Carolina Supreme Court for writ of certiorari which was ultimately granted on BATSON violations and the sentence and conviction was vacated and remand for new trial.

Therein after Applicant's counsel approached him with a plea offer of 2 to 30 years for voluntary manslaughter, and further advised Applicant that if he pled guilty he would be looking at the middle range of 15-years.

Applicant took counsel's advice and entered a plea of guilty and the Plea Judge ultimately sentenced Applicant to the maximum term of 30-years.

Applicant asserts that he was denied the effective assistance of counsel when counsel failed to object and move the court to enforce the oral agreement based on the detrimental reliance exception, thus rendering Applicant's plea involuntary.

Argument

The Sixth Amendment provides in part: "[i]n all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defense," U.S. Const. amend VI.

It is well established that the Sixth Amendment right to counsel cannot be satisfied by mere formal appointment, *Avery v. Alabama*, 308 U.S. 444, 446 (194). Rather, the Sixth Amendment guarantees criminal defendants the assistance of "a reasonably competent attorney," *McMann v. Richardson*, 397 U.S. 759, 770-71 n.14 (1970).

The Supreme Court defined the Sixth Amendment right to effective assistance of counsel in *Strickland v. Washington*, 466 U.S. 668, 686 (1984). In *Strickland*, the court established a two-part test for reviewing claims of ineffective assistance of counsel, *Id* at 690.

The Supreme Court extended the Strickland test to apply even in the context of guilty plea cases under *Hill v. Lockhart*, 474 U.S. 57 (1985).

In the instant matter Applicant asserts that he was denied the effective assistance of counsel and that counsel's performance was deficient in failing to object and move to enforce the oral agreement when the plea court sentenced Applicant to maximum term of 30-years. Counsel had two options, (1) counsel could have objected on the detrimental reliance standard, or (2) moved to allow Applicant to withdraw his plea when the Plea Court sentenced Applicant to the maximum. In

essence Applicant gained nothing for surrendering his constitutional right to a trial by jury.

The detrimental reliance doctrine on the enforceability of oral plea agreements was discussed in *Reed v. Becka*, 511 S.E.2d 396. In a more recent decision in *Custodio v. State*, 644 S.E.2d 36 (S.C.2007), a case where counsel was found ineffective in a burglary and grand larceny case for failing to have defendant's plea agreement enforced on detrimental reliance.

In *Thompson v. State*, 531 S.E.2d 294 (S.C.2000), counsel was found ineffective following a plea to voluntary manslaughter for failing to object to the State's request for the maximum sentence of 30-years. Although in *Thompson* the Court sentence Thompson to 25-years, the Supreme Court held the defendant was prejudiced even though the defendant was sentenced within the range previously stated because the relevant question for prejudice was whether the defendant would have entered the plea knowing that the prosecutor would recommend the maximum punishment. The Court found a reasonable probability that the defendant would not have pled guilty based on the defendant's indecision to plead just prior to trial and reliance on the agreement. The Court remand for resentencing.

Applicant herein asserts that from the onset of his arrest he was always adamant on going to trial, which is supported by the procedural history of this case. Applicant asserts that he only agreed to enter a plea of guilty to voluntary manslaughter is because his counsel advised him he would receive a sentence in the range of 15-years. Had Applicant known he was going to

receive the maximum penalty he would not have pled guilty but would have insisted on going to trial, which is easily seen as Applicant received nothing in exchange for his plea.

Applicant is informed and believes he is entitled to a specific sentence performance to comply with his detrimental reliance or in the alternative vacate the sentence and conviction and remand for new trial.

Respectfully Submitted,

/s/ 
Jason Edwards

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

specific sentence performance or vacate and remand for new
trial

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

no

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Richland)

I, Jason Edwards, 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.

Jason J. Edwards

SWORN to and subscribed before me this 25th
day of June, 2012.

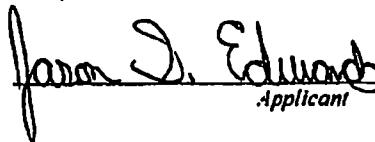
Susan H. Frye (L.S.)
Notary Public

My Commission Expires
My Commission Expires: March 5, 2018

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

I, Jason Edwards, 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.


Applicant

SWORN or affirmed to and subscribed before me this

25th day of June, 2012.


Notary Public

My Commission Expires
March 5, 2018

My Commission Expires: _____

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

RECEIVED
USDC CLERK, COLUMBIA, SC

2017 JAN 17 PM 1:59

Donald Sinatra Edwards, #313642,
Petitioner,

Vs.

Case No.: 12-CP-45-0269

Robert M. Stevenson, III,
Warden of Broad River Corr.
Institution.

Respondent. /

MOTION REQUESTING HABEAS RELIEF
BY JUDGMENT OF DEFAULT AND STATE'S NON RESPONSE.

This matter is being brought to the attention of this Honorable Court, by way of this inmate appearing in pro-se capacity, under the liberal notation outlined in Haines v. Kerner, 404 U.S. 519 (1972).

Petitioner moves for the relief he sought in the originally filed habeas corpus, pursuant to Article I., Section §18 of the South Carolina Constitution; and Article I., Section §3, as such pertains to Due Process of law.

The above captioned Petitioner has filed a proper habeas petition on or about August 10, 2015. And until date, the Respondents has made absolutely "no attempt" to acknowledge such an im-

portant petition which concerns the legality of of priosners de-
tention. Which should draw some important ethical admonishment.

In State v. Edwards, Op. No. 4261 (S.C. Ct. App. filed June 21, 2007); the appeal in this case was initially denied. However, on August 31, 2009, the South Carolina Supreme Court reversed the case for a new trial.

Petitioner was then transferred back to the county jail, and waited for approximately thirty (30) months based on his decision to go through a second trial rather than plead guilty to a lessor offense of voluntary manslaughter, (when the case was actually a self-defense case), and a State offered thirty (30) year sentence.

Counsel for the defendant, on or about January 31, 2012, finally got Petitioner to give-in. Based on the promise by the State "he would receive no more than 15 years". Based on the fact the case appeared to be one of self-defense. Coupled with the States promise "it would make no increased sentence recommendation".

Such did not occur, and the State actually did make a recommendation for a increased sentence. Petitioner requested counsel to file a motion based on the "breach of agreement". Such has not been heard through numerous attempts by the Petitioner.

In case number 2012-CP-45-0369, the Petitioner attempted to obtain relief by post-conviction application. And was represented by Attorney James Darrell Dotson. Since the case resulted in several missing "fact findings and conclusions of law". The Petitioner was legally entitled to a 59(e). Requested such to be fi-

led, yet Mr. Dotson never honored his obligation. However, the Petitioner himself, actually did file a 59(e). Which was ignored by the court.

Since that time leading up to this, Petitioner has clearly demonstrated an entitlement to relief in the form of a (1) 59(e); (2) a 60(b) in an attempt to vacate the prior error in judgment, and finally on August 10, 2015, this habeas corpus. Which at minimum, should have been screened rather than ignored under the Butler standard. See Butler v State, 397 S.E.2d 87, 88 (S.C. 1990).

Wherefore, Petitioner makes this request for judgment by default because the State has totally failed to answer the habeas corpus petition as commanded by Constitutional law. For these reasons, the Petitioner respectfully prays for the relief sought, and any further relief deemed just and proper by this Honorable Court.

Respectfully Submitted,

/s/ Jason D. Edwards
Jason Sinatra Edwards #313642
Broad River Corr. Institution
4460 Broad River Road
Columbia, S.C. 29210

cc: s.d. att. gen.
l. cartledge
filed
7/24/2016

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS

Jason S. Edwards, #313642,
Petitioner,

Vs.

Case No. 12-CP-45-0369

State of South Carolina,
Respondent. /

MOTION FOR RELIEF FROM JUDGMENT
PURSUANT TO SCRCP, RULE 60(b).

Comes now, Petitioner Jason S. Edwards, appearing in pro-se capacity under the liberal notation outlined in Haines v. Kerner, 404 U.S. 519 (1972), to move this Honorable Court, by way of this motion for relief under 60(b).

Accordingly, a Rule 60(b) can be instituted whenever it appears from the record that there is a mistake, inadvertent, excusable neglect, newly discovered evidence, fraud, etc.

Petitioner moves under this rule for more than a single specific reason, of which he will demonstrate a entitlement to proceed and which, relief may be granted.

BACKGROUND HISTORY OF CASE

After being held in the County Jail for over 800 days, for a June 19, 2002 incident. The Petitioner here was finally indicted, or allegedly indicted on "October 11, 2004", at a Court of General Sessions, of Williamsburg County. Charging the Petitioner and two of his siblings with two (2) Counts of murder.

On or about January 30, 2006, the case proceeded to trial. The Petitioner was represented by Steven S. McKenzie. On February 3, 2006 the Petitioner was convicted and sentenced to life imprisonment on each count, to be ran concurrently.

A notice of appeal was filed and perfected. The S.C. Court of Appeals affirmed the appeal. State v. Jason S. Edwards, Op. No 4261 (S.C. Ct. App. filed June 21, 2007). Counsel for the Petitioner filed a timely Petition for Rehearing on June 30, 2007. The State made its Return thereafter. The Rehearing was denied on August 15, 2007.

A Petition for Writ of Certiorari was filed on October 15, 2007 with the South Carolina Supreme Court. The South Carolina Supreme Court reversed the Court of Appeals opinion and remanded the case for a new trial. State v. Jason Sinatra Edwards, Op. No. 26711 (S.C. Sup. Ct. filed August 31, 2009).

On January 31, 2012, "based on counsel's advise", the Petitioner pled guilty to two counts of voluntary manslaughter. Petitioner was represented by Michael S. O'Neal, and Steven S. McKenzie. The Petitioner was sentenced by the Honorable J. Mark Hayes, II, to thirty years imprisonment for each count, with the sentences to be served concurrently. Petitioner was advised "not to appeal the sentences".

Thereafter, Petitioner filed a application for relief under the Uniform Post-Conviction Statute on July 16, 2012, alleging that "counsel failed to object and move the court to enforce the oral agreement based on the detrimental reliance exception, thus rendering Petitioner's plea involuntary".

The State made its return on November 27, 2012. An evidentiary hearing was convened on March 21, 2013, at the Sumter County Courthouse. The Petitioner was present and represented by James D. Dotson, Esquire. The State was represented by Assistant Attorney General Megan E. Harrigan.

By written order signed on April 11, 2013 and filed April 18, 2013, the Court denied and dismissed Petitioner's post-conviction application. A copy was said to be served upon Petitioner's counsel, James D. Dotson, Esquire, on April 23, 2013. Yet nobody informed Petitioner of such denial, in order that "he would be afforded the opportunity to appeal".

The State records Petitioner's application under Rule 59(e) was filed on May 8, 2013, and therefore, should be "time barred" because it was filed outside the statute of limitation for filing a 59(e). However, if anything, Petitioner's motion under Rule 59 (e) filed pro-se was executed "no sooner than he returned from Sumter Courthouse", back to S.C.D.C.", on April 1, 2013, or days thereafter. See included copy.

Moreover, the attorney for the Petitioner "never informed him of the results of the PCR hearing", to which he would have been entitled to a appeal.

ARGUMENT IN SUPPORT OF RULE 60(b).

Here, the Petitioner is not instituting a brand new, nor a successive application under the S.C. Uniform Post-Conviction Act, but instead, merely seeking to correct "a erroneous procedural ruling, premised on the statute of limitations". See Gonzalez v. Sec'y for Dept. of Corr., 366 F3d 1253, 1281 (11th Cir. 2004) and Gonzalez v. Crosby, 545 U.S. 524, 538 (2005)(Rule 60(b) motion not successive or second when motion did not reassert claims of error in conviction and only challenged previous ruling on statute of limitations).

Such is necessary based on Due Process entitlement to have appealed the PCR ruling to the South Carolina Supreme Court. After it was dismissed on or about April 18, 2013. Whereas, Petitioner had filed a 59(e) prematurely, on April 1, 2013 (See Houston v. Lack, 487 U.S. 266, 270 (1988)(notice of appeal deemed filed on date of delivery to prison authorities for forwarding to the court).

Because the 59(e) was not resolved on the merits, but instead denied based on "the statute of limitations for filing the 59(e)", does Petitioner move to have that judgment vacated, and revisited based on the merits of the claims within the 59(e). Or , vacated in order to afford the Petitioner the "fair opportunity" to appeal the PCR ruling.

Even taking the 59(e) dismissal in light most favorable to the State. With the State recognizing the 59(e) was filed on May 8, 20-

13, outside of the ten (10) day statute of limitation. Such would still have been timely under the thirty (30) days, for which the Petitioner would have been afforded a writ of certiorari, to the South Carolina Supreme Court.

And finally, even if counsel for the Petitioner did forward a 59(e) in which [he] constructed on May 8, 2013, outside of the statute's limitation period of ten (10) days. And it was denied by virtue of counsel's error. Such would remain to be addressable under Martinez, based on ineffective assistance of PCR counsel.

Wherefore, Petitioner moves to have the 59(e) judgment vacated, along with the PCR judgment. To reinstate the PCR judgment in order to afford the Petitioner the right to have (1) either the 59(e) motion reviewed on the merits; or (2) to afford the right to petition the South Carolina Supreme Court, in furtherance of the PCR ruling. And any further relief this Honorable Court deems just and proper.

Respectfully Submitted,

/s/ Jason D. Edwards
Jason Sinatra Edwards #313642
Broadriver Corr. Institution
4460 Broadriver Road
Columbia, S.C. 29210

cc: assis. att. gen.
filed
2/11/2015

CERTIFICATE OF SERVICE

I, Jason S. Edwards, do hereby certify that I have provided the State's Attorney with a true and correct copy of this motion pursuant to S.C.R.Civ. P., Rule 60(b), by placing the same in the system of mailing for inmates at Broadriver Correctional Institution. On the 9th day of February 2015. To the below listed address.

Office of the Attorney General
Ms. Megan E. Harrigan
Post Office Box 11549
Columbia, S.C. 29211

/s/ Jason S. Edwards
Jason S. Edwards, #313642

cc: filed

(1)

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Jason Edwards, #313642,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2012-CP-45-0369

**ORDER DENYING APPLICANT'S *pro se*
"MOTION TO AMEND AND TO MAKE
SPECIFIC FINDINGS OF FACTS AND
CONCLUSIONS OF LAW PURSUANT
TO RULE 59 AND SC CODE OF LAW
§ 17-27-80"**

This matter comes before this Court by way of Applicant's *pro se* "Motion to Amend and to Make Specific Findings of Fact and Conclusions of Law Pursuant to Rule 59 and SC Code of law § 17-27-80," asking this Court to alter or amend its Order of Dismissal of his application and to grant him post-conviction relief.

I.

The Applicant was indicted during the October 2004 term of the Williamsburg County Grand Jury for two counts of murder and possession of a weapon during a violent crime (2004-GS-45-167). Applicant was represented by Steven S. McKenzie, Esquire. On January 30, 2006, the Applicant proceeded to a jury trial before the Honorable Howard P. King. Applicant was found guilty, and on February 3, 2006, Applicant was sentenced to life imprisonment for each count of murder and five years for possession of a weapon during a violent crime. All sentences were to be served concurrently.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the appeal. State v. Jason Sinatra Edwards, Op. No. 4261 (S.C. Ct. App. filed June 21, 2007). Counsel for the Applicant filed a timely Petition for Rehearing on June 30, 2007. The State made its

Return to Petition for Rehearing on July 12, 2007. The South Carolina Court of Appeals issued an Order Denying the Petition for Rehearing on August 27, 2007. A Petition for Writ of Certiorari was filed on October 15, 2007 with the South Carolina Supreme Court. The Return to Petition for Writ of Certiorari was filed by the State on November 15, 2007. The South Carolina Supreme Court reversed the Court of Appeals' opinion and remanded for a new trial. State v. Jason Sinatra Edwards, Op. No. 26711 (S.C. Sup. Ct. filed August 31, 2009). The Remittitur was sent September 17, 2009.

On January 31, 2012, the Applicant pled guilty to two counts of voluntary manslaughter. He was represented by Michael S. O'Neal, Esquire, and Steven S. McKenzie, Esquire. The Applicant was sentenced by the Honorable J. Mark Hayes, II, to thirty years imprisonment for each count, with the sentences to be served concurrently. Applicant did not appeal his conviction and sentence.

Applicant filed an application for post-conviction relief on July 16, 2012, alleging that he is being held in custody unlawfully based on the allegation that "counsel failed to object and move the court to enforce the oral agreement based on the detrimental reliance exception, thus rendering Applicant's plea involuntary." The Respondent made its Return on November 27, 2012. An evidentiary hearing into the matter was convened on March 21, 2013, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by James D. Dotson, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. By written order signed on April 11, 2013 and filed on April 18, 2013, the Court denied and dismissed Applicant's post-conviction relief application with prejudice. A copy of this Order was served on Applicant's counsel of record, James D. Dotson, Esquire, on April 23, 2013.

On May 8, 2013, Applicant filed a *pro se* "Motion to Amend and to Make Specific Findings of Fact and Conclusions of Law Pursuant to Rule 59 and SC Code of law § 17-27-80."

II.

This Court finds that Applicant's motion is not timely filed and must be dismissed. "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRCP. Applicant's counsel of record, James D. Dotson, Esquire, was mailed a copy this Court's Order of Dismissal on April 23, 2013. Applicant's *pro se* motion was filed on May 8, 2013. As this motion was not properly filed until after the expiration of the statutory filing period, this motion must be dismissed as untimely.

III.

This Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. ' 17-27-80 (1976) and Rule 52(a) SCRCP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

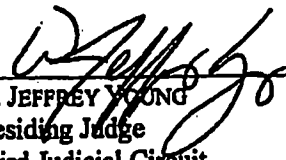
Additionally, in this motion, Applicant requests that this Court "grant the relief that applicant is entitled to." Applicant is not requesting an alteration or amendment to the Order. Rather, Applicant is asking the Court to reconsider its ruling and grant Applicant post-conviction relief on these five grounds. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court). Applicant has failed to raise an allegation that was properly raised but not ruled upon by this Court. Having carefully reviewed the entire record in this matter, this Court finds that no basis for altering or amending is prior ruling.¹ Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes that if the Petitioner desires to secure appellate review of this Order and the Order

¹ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Petitioner is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 25 day of June, 2013


W. JEFFREY YOUNG
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

RECEIVED
USDC, CLERK GREENVILLE, SC
2017 JUL 19 PM 3:00

U.S. District Court
Clerk's Office
300 E. Washington Street, Room 239
Greenville, S.C. 29601

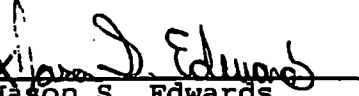
J. Edwards v. Warden Bush
6:17-cv-01570-DNC-KFM

Dear Clerk;

As directed by this Clerk's 6/21/2017 order. Petitioner has brought his application up to specification. And the accompanying memorandum will clearly demonstrate the one main issue as outlined in the application. All other concerns are addressed within the initial filing of the above enumerated case.

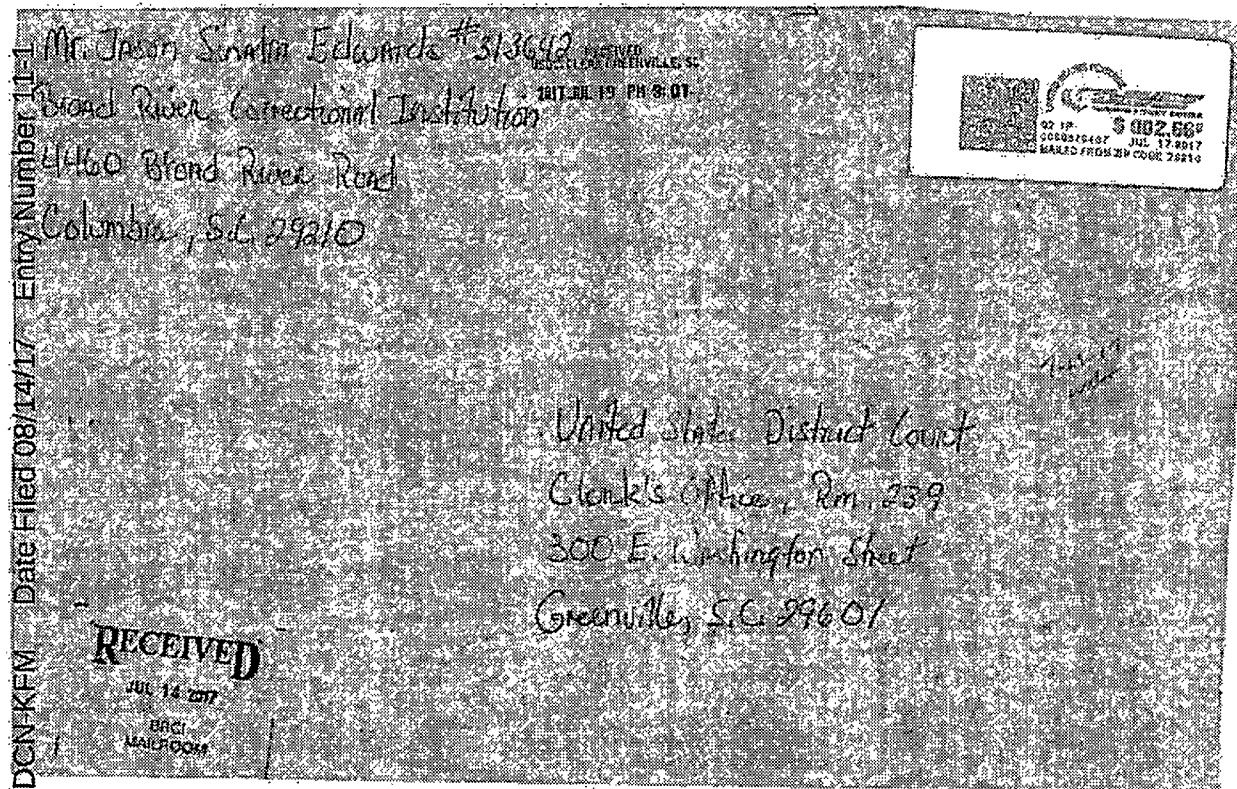
Thanks for your time and attention in this matter.

Respectfully,

/s/ 
Jason S. Edwards
BRIC- Wateree Unit
4460 Broad River Rd.
Columbia, S.C. 29210

cc: filed
7/14/2017

(i)



THE DEPARTMENT OF CORRECTIONS HAS NOT
CENSORED THIS ITEM. THEREFORE, THE DEPARTMENT
DOES NOT ASSUME RESPONSIBILITY FOR ITS CONTENTS.
BIRMINGHAM CORRECTIONAL INSTITUTION
SAC, DEPARTMENT OF CORRECTIONS

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Jason Sinatra Edwards, #313642,	)	C/A No. 6:17-1570-DCN-KFM
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Warden Dennis Bush,	)	RETURN AND MEMORANDUM
	)	OF LAW IN SUPPORT OF MOTION
	)	FOR SUMMARY JUDGMENT
Respondent.	)	

Respondent hereby makes Return to the August 14, 2017 Rule to Show Cause [ECF # 11] filed by the Honorable Kevin F. McDonald, United States Magistrate Judge, and responds to the allegations in the *pro se* Petition for Writ of Habeas Corpus. Respondent is entitled to summary judgment because the Petition is barred by the statute of limitations in 28 U.S.C. 2244(d)(1). Alternatively, the Court may wish to stay and abey this unique case under *Rhines v. Weber*, 544 U.S. 269, 125 S.Ct. 1528 (2005), because while the only claim in his Petition (that his state PCR attorney was ineffective for not perfecting an appeal of the Order of Dismissal) is not a cognizable claim in federal habeas corpus, *see* 28 U.S.C. § 2254(i),¹ Petitioner may have a state court remedy available that would permit him to exhaust a cognizable claim, unless he made a knowing and intelligent waiver of his right to appeal the state PCR judge's adverse ruling. *See Austin v. State*, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991). Respondent would show the Court as follows:

I. PROCEDURAL HISTORY

¹ Respondent submits that dismissal without prejudice would not be an appropriate remedy because the claim in his Petition is not cognizable and it would be cognizable even if exhausted.

1. The original state court murder trial and successful direct appeal.

Petitioner, Jason Sinatra Edwards, #313642 (Petitioner), is currently confined in the Broad River Correctional Institution, of the South Carolina Department of Corrections (SCDC), as a result of his Williamsburg County, South Carolina, convictions and sentence that stemmed from the June 19, 2002 killings of Joe Woods and Jimmy Robinson. The Williamsburg County Grand Jury indicted him in October 2004 for two counts of murder and possession of a weapon during a violent crime (2004-GS-45-167). Steven S. McKenzie, Esquire, represented him these charges. His brother and co-defendant, Maceo Latonya Edwards, was similarly charged in the same indictment for both murders and the weapons charge, while the Grand Jury indicted a third brother and co-defendant, Jonas Edwards, for accessory after the fact of murder. (04-GS-45-167). *R. pp. 1-3.*²

Petitioner and his brothers received a joint trial before the Honorable Howard P. King and a jury on January 30-February 3, 2006. The jury found Petitioner and his brothers guilty of the indicted offenses. Judge King sentenced Petitioner and Maceo Edwards to life imprisonment for each murder and to a concurrent five year sentence for possession of a weapon during a

² Legrand Carraway, Esquire, represented Maceo Latonya Edwards; and Reuben Goode, Esquire, represented Jonas Edwards. Assistant Solicitors Ronnie Sabb and Kimberly Barr, of the Third Circuit Solicitor's Office, prosecuted the case. Also, "*R. pp.*" is a citation to the Record on Appeal filed in conjunction with Petitioner's direct appeal of his murder conviction. *See* Rule 210, SCACR (governing the timing, filing and content of the Record on Appeal). In Petitioner's case, his counsel designated that the entire trial transcript be included as part of the Record on Appeal. *See* Rule 209(a) & (b), SCACR. Accordingly, virtually the entire trial transcript is included in the Record on Appeal. The files of the Attorney General's Office do not contain a separate, original trial transcript(s). As will be seen, however, that is a moot point because the South Carolina Supreme Court granted Petitioner and his brothers a new trial on direct appeal.

violent crime. He sentenced Jonas Edwards to fifteen years, suspended to seven years imprisonment and five years probation. *R. pp. 9-421*.

Petitioner and his brothers timely served and filed a notice of appeal. Mr. McKenzie represented all three brothers on direct appeal. With counsel's assistance, Petitioner and his brothers filed a Final Brief of Appellants on February 12, 2007. They raised the following issues on direct appeal:

- I. The trial court committed legal error when it quashed the first jury panel. The trial court's handling of the *Batson* hearing in effect placed the burden on the appellants to prove the absence of purposeful discrimination even after the appellants' articulated race-neutral reasons for their strikes.
- II. The Trial Court violated the SIXTH AND THE FOURTEENTH AMENDMENTS TO THE U.S. CONST. AND ARTICLE 1, SECTION 14 OF THE SOUTH CAROLINA CONSTITUTION by not dismissing the case against the appellants because of the State's failure to provide a speedy trial to the Appellants.
- III. The Trial Court erroneously held that South Carolina Rules of Criminal Procedure Rule 3(c) [does] not require the State (respondent) to act on a warrant even though the State (respondent) gave no explanation as to why it waited over eight hundred days to indict the appellants.

The undersigned filed the State's Final Brief of Respondent on February 15, 2007.

Following oral arguments, the South Carolina Court of Appeals filed a published Opinion on June 21, 2007, affirming the convictions and sentences of Petitioner and his brothers. *State v. Edwards*, 374 S.C. 543, 649 S.E.2d 112 (Ct. App. 2007), *rev'd*, 384 S.C. 504, 682 S.E.2d 820 (2009). The Petitioners filed a Petition for Rehearing on May 18, 2004. On July 3, 2007, the Court of Appeals filed an Order directing Respondent to file a Return addressing their rehearing petition. Respondent submitted a Return to Petition for Rehearing on July 12, 2007, and the Court of Appeals filed an Order denying the petition for rehearing on August 27, 2007.

Petitioner and his brothers filed a Petition for Writ of Certiorari (through counsel) on October 15, 2007. They presented the following issues to the South Carolina Supreme Court:

Did the Court of Appeals commit error when it concluded the trial court did not violate the Constitutionally mandated procedures as set forth in *Batson v. Kentucky*, 476 U.S. 79, 86 (1986)?

The State filed a Return to Petition for Writ of Certiorari on November 15, 2007.

On July 10, 2008, the Supreme Court of South Carolina filed an Order granting certiorari. Petitioner filed a Brief of Petitioner on October 25, 2008. The State filed its Brief of Respondent on January 14, 2009. The Supreme Court filed an Opinion reversing the Court of Appeals' decision and granting all three Petitioners a new trial on August 31, 2009, because it found that Petitioners' proffered reasons for striking prospective jurors were sufficiently race-neutral to survive the State's *Batson*³ challenge. *State v. Edwards*, 384 S.C. 504, 682 S.E.2d 820 (2009). The Court of Appeals sent the Remittitur to the Williamsburg County Clerk of Court on September 17, 2009.

2. Petitioner's guilty plea to two counts of voluntary manslaughter.

On January 30, 2012, Petitioner pled guilty to two counts of voluntary manslaughter before the Honorable J. Mark Hayes, II. Also on the 30th, Maceo Edwards waived Grand Jury presentment on a charge of accessory after the fact of a felony A offense and Judge Hayes accepted his guilty plea to that offense. Finally, Jonais Edwards pled guilty to accessory after the fact on the same day. *Tr. pp. 3-18*.

On January 31, 2012, Judge Hayes sentenced him to two concurrent sentences of thirty years imprisonment. Both of his brothers received time-served sentences and walked out of their

³ See *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712 (1986).

pleas free men. Michael S. O'Neal, Esquire, and Steven S. McKenzie, Esquire, represented Petitioner at the plea. *Tr. pp. 19-54*. Petitioner did not appeal his convictions or sentence.

3. State Post-Conviction Relief proceedings.

However, he filed a *pro se* Post-Conviction Relief (PCR) Application (2012-CP-45-0369) on July 16, 2012. He alleged the following grounds for relief in his Application:

1. Ineffective assistance of counsel:
 - a. "...counsel failed to object and move the court to enforce the oral agreement based on the detrimental reliance exception, thus rendering Applicant's plea involuntary."
2. Involuntary guilty plea.
3. Due process violation.

The State filed its Return on November 27, 2012.

The Honorable W. Jeffery Young held an evidentiary hearing into the matter on March 21, 2013, at the Sumter County Courthouse.⁴ Petitioner was present at the hearing and James D. Dotson, Esquire, represented him. Assistant Attorney General Megan E. Harrigan represented the State. Petitioner testified on his own behalf at the hearing and he presented testimony from his parents, Johnnie Mae and Maceo Edwards, Jr., as well as his co-defendant brothers, Jonias Edwards and Maceo Edwards, III. The State presented testimony from plea counsel, Mr. McKenzie and Mr. O'Neal. *See Order of Dismissal, pp. 3-10*.

⁴ A transcript of the PCR hearing was not previously requested because Petitioner did not timely perfect an appeal from the Order of Dismissal and the judgment entered thereon. Because of the position Respondent asserts in this Return, however, the undersigned requested a copy of the PCR transcript on October 9, 2017, in order to prevent the destruction of the Court Reporter's tapes of the hearing in accordance with Rule 607(i), SCACR (requiring Court Reporters to retain tapes of proceedings for "at least five (5) years after the date of the proceeding, and the court reporter may reuse or destroy the tapes after the expiration of that period.")

Judge Young denied relief and dismissed the Application with prejudice in an Order of Dismissal that was filed on April 18, 2013. The Order of Dismissal addressed Petitioner's claim that counsel was ineffective for failing to enforce a plea agreement based on detrimental reliance. *See Order of Dismissal, pp. 10-12.* The State served a copy of the Order of Dismissal on Petitioner's counsel of record, James D. Dotson, Esquire, on April 23, 2013.

On May 8, 2013, counsel for Petitioner filed a "pro se Motion to Amend and to Make Specific Findings of Fact and Conclusions of Law Pursuant to Rule 59 and SC Code of law § 17-27-80" on Petitioner's behalf. This pleading is dated April 1, 2013, which was before the Order of Dismissal was filed or served. The State filed a Return to this motion on June 21, 2013.

On June 23, 2013, Judge Young signed an "Order Denying Applicant's *pro se* 'Motion To Amend And Make Specific Findings of Facts And Conclusions Of Law Pursuant To Rule 59 And SC Code Of Law § 17-27-80.'" Judge Young found that the Rule 59(e), SCRCP, motion was untimely. The Certificate of Service shows that the State served this Order on Petitioner's collateral attorney, Mr. Dotson, on August 26, 2013. Although page 4 of this Order stated that "if the Petitioner desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order" and directed Petitioner to Rules 203, 206, and 243, SCACR, Petitioner did not timely serve a notice of appeal as required by Rule 203(a), SCACR.

Petitioner did not timely serve a notice of appeal. Instead, he sent a "Motion Requesting Status of 59(e)" to the Attorney General's Office on October 28, 2014. In this pleading, he requested a status report on his pro se Rule 59(e), SCRCP, motion. The State forwarded this letter to his attorney, Mr. Dodson on October 30, 2014. On November 10, 2014, Petitioner filed a

pro se notice of intent to appeal with the Williamsburg County Clerk of Court that he had served on the State on November 6, 2014. However, he did not file this with the Supreme Court of South Carolina.

Next, Petitioner filed an untimely motion pursuant to Rule 60(b)(1), SCRPC, on February 17, 2015. In his Rule 60(b) motion, Petitioner alleged that his PCR counsel, Mr. Dotson, failed to inform him that the Order of Dismissal had been filed on April 18, 2013, and counsel "never informed him of the results of the PCR hearing," so that he could appeal that Order. *See Rule 60(b)(1), SCRPC, motion p. 3.* He further asserted that the Rule 59(e), SCRPC, motion should not have been untimely because the counsel filed motion within thirty days of service of the Order of Dismissal on counsel. *Contra* Rule 59(e), SCRPC. Again, Mr. Dotson still represented him in connection with the 2012 Application. So, the State served counsel with a copy of that motion.⁵ The State did not file a response to the *pro se* motion because counsel represented him, *id.*, and no Order has been entered on the motion.

Further, Petitioner filed an Application for Habeas Corpus Relief with the Richland County Clerk of Court on August 2, 2015, in which he sought to challenge his Williamsburg County convictions. In the state habeas petition, he asserted that:

- [1]. For beginners, petitioner first contends that the PCR Act, under the circumstances of this case was "inadequate or unavailable" where otherwise, the statute commands it to be "broadly inclusive" to be both adequate and available to test the legality of a petitioner's detention.

⁵ Even though the Rule 60(b), SCRPC, motion was prepared by Petitioner, the State properly served counsel with the Order. *See* Rule 4.2 of the Rules of Professional Conduct, Rule 407, SCACR, ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order"). *See also* Comment [3] to Rule 4.2 ("The Rule applies even though to represented person initiates or consents to the communication").

Comes new, Petitioner Edwards still attempting to exhaust his State Court remedies, "however, PCR has become [ineffective and/or inadequate to test the legality of his detention. The recorded exhibits within the PCR case (i.e. 2012-cp-45-0369) will clearly demonstrate (1) counsel's abandonment at a critical stage of the proceedings; (2), and incompetence by failing to "object or move to withdraw the plea", once the state reneged on the "oral agreement". [*Application for Habeas Corpus Relief*, pp. 3, 11-12].

- [2]. As a result of the "breached plea deal" that was obtained after the Petitioner had sat in County jail almost thirty (30) months after the Supreme Court remanded the case[.]. Petitioner's attorney, Mr. Steven McKenzie, of 2 North Brooks Street, in Manning, S.C. assured Petitioner the State's offer was "two (2) to thirty (30) years for voluntary manslaughter, and further advised Applicant that if he pled guilty he would be looking at the middle range of fifteen (15) years". And such was obviously based on the circumstances surrounding the case.

Petitioner took counsel's advice and entered the plea deal and the judge ultimately sentenced Applicant to the maximum term of 30 years. Whereas, "the State brokered the deal on the promise it would riot recommend the "higher sentencing range" but, during re-sentencing, the State did exactly what it promised Hot to do. And such was the basis of the PCR application. [*Application for Habeas Corpus Relief*, pp. 9-10].

- [3.] [PCR counsel did not timely perfect an appeal from the PCR court's adverse ruling, even though counsel was aware that Petitioner wanted to take an appeal]. [*Application for Habeas Corpus Relief*, pp. 12-14].

Again, the State served counsel with a copy of that motion; the State did not file a response to the *pro se* motion because counsel represented him; and no Order has been entered on the motion.

On August 30, 2016, Petitioner filed a second Application for Habeas Corpus Relief with the Richland County Clerk of Court. In this pleading, he moved "for judgment, by default because the State has totally failed to answer the habeas corpus petition as commanded by Constitutional law.. For these reasons, the Petitioner respectfully prays for the relief sought, and

any further relief deemed just and proper by this Honorable Court.” Once again, the State did not file a response to the *pro se* motion and no Order has been entered on the motion.

Respondent attaches the following documents to this Return and incorporates these documents by reference:

1. The Record on Appeal filed in connection with the direct appeal of Petitioner’s January 30 - February 3, 2006 murder trial, the Honorable Howard P. King, Circuit Court Judge, presiding (includes the following: arrest warrants, indictment and sentencing sheets for Petitioner, Maceo Edwards and Jonias Edwards; Notice of Motion and Motion to Dismiss Criminal Charges; Memorandum in Support of Motion to Dismiss Criminal Charges Notice of Motion and Motion to Object; Criminal Record of Joe Edwards; and virtually the entire transcript of the jury trial);
2. The Final Brief of Appellants filed on February 12, 2007;
3. The State’s Final Brief of Respondent filed on February 15, 2007;
4. The June 21, 2007 published Opinion of the South Carolina Court of Appeals in *State v. Edwards*, 374 S.C. 543, 649 S.E.2d 112 (Ct. App. 2007);
5. The Petition for Rehearing filed on May 18, 2004;
6. Respondent’s Return to Petition for Rehearing dated July 12, 2007;
7. The Court of Appeals Order denying the petition for rehearing filed on August 27, 2007;
8. The Petition for Writ of Certiorari filed on October 15, 2007;
9. The Return to Petition for Writ of Certiorari filed on November 15, 2007;
10. The Brief of Respondent filed on January 14, 2009;
11. The Opinion of the Supreme Court of South Carolina filed on August 31, 2009 in *State v. Edwards*, 384 S.C. 504, 682 S.E.2d 820 (2009);

12. The transcript of Petitioner's January 31, 2012 guilty plea to two counts of voluntary manslaughter;
13. The PCR Application 2012-CP-45-0369 filed on July 16, 2012;
14. The State's Return filed on November 27, 2012;
15. The Order of Dismissal filed on April 18, 2013 by the Honorable Jeffery W. Young;
16. The May 8, 2013, "Pro se Motion to Amend and to Make Specific Findings of Fact and Conclusions of Law Pursuant to Rule 59 and SC Code of law § 17-27-80" filed by counsel;
17. The State's Return to this motion dated June 21, 2013;
18. The June 23, 2013 "Order Denying Applicant's *pro se* 'Motion To Amend And Make Specific Findings of Facts And Conclusions Of Law Pursuant To Rule 59 And SC Code Of Law § 17-27-80;' "
19. The untimely November 6, 2014 notice of intent to appeal that he subsequently filed with the Williamsburg County Clerk of Court on November 10, 2014;
20. Petitioner's *pro se* untimely motion pursuant to Rule 60(b)(1), SCRPC, filed on February 17, 2015;
21. The Application for Habeas Corpus Relief filed with the Richland County Clerk of Court on August 2, 2015; and
22. The Application for Habeas Corpus Relief filed with the Richland County Clerk of Court on August 30, 2016.

II. STATEMENT OF FACTS

The Assistant Solicitor proffered the following facts in support of the guilty pleas entered by Petitioner and his co-defendant brothers:

May it please the Court, Your Honor. This incident happened back on June the 19th of 2002 in the Greeleyville portion of Williamsburg County. The victims in the case are Mr. Jimmy Robinson and Mr. Joe Woods. The incident occurred at the home of Mr. Joe Woods.

Your Honor, essentially how the case came to the attention of law enforcement was that two eyewitnesses were coming down the road in front of Mr. Woods' home, saw Jimmy Robinson running away from Mr. Jason Edwards, observed Jason Edwards shoot Mr. Jimmy Robinson at least twice, once in the shoulder, once in the head. During the course of investigating the murder that happened outside of the house, police officers also found the body of Mr. Joe Woods inside the residence. The body had a single gunshot wound to the forehead. It was determined that Mr. Jason Woods [sic .] -- it was believed anyway -- inflicted that fatal wound to Mr. Joe Woods.

Judge, after the shooting, Maceo Edwards and Jonais Edwards, who are the brothers of Jason Edwards, took him from Williamsburg County and took him to Rock Hill as a result of the incident that happened and there is some dispute between the prosecution and the [defense] as to the order in which it happened, but there does not appear to be any dispute that Jimmy Robinson stabbed Mr. Jason Edwards twice in the chest area. The dispute between the defense and the prosecution is at what point in time did that happen.

During the trial of the case, Mr. Jason Edwards testified that Jimmy Robinson stabbed him first and then that's when he shot Joe Woods and Jimmy Robinson. Of course, the State's theory of the case is that that came after the shooting of Joe Woods, but in any event, Jonais Edwards drove a vehicle in which his brothers, Jason and Maceo, were passengers. They drove to Rock Hill from Williamsburg County.

One of the witnesses in the case testified that ... both Jonais and Maceo, of course, were aware that their brother, Jason, had shot and killed Mr. Woods and Mr. Robinson when they took him and all three of them went to Rock Hill. They checked into a motel in Rock Hill. After having checked into a motel, they then went to Piedmont Medical Center, which is the hospital in Rock Hill. All three of them gave statements to hospital personnel, as well as Rock Hill Police Department, indicating that Jason Edwards had been stabbed by an unknown assailant in -- on Two Notch Road in Columbia, South Carolina.

Jason gave the name that his name was Jason Lamont. Jonais and Maceo told security personnel there that ... they didn't know who Jason was. They just happened to be in Columbia and happened to have seen the stabbing and they brought him here. They brought them -- brought him to Rock Hill because they were afraid that the people who had stabbed him were going to come after him.

Of course, it didn't quite sound right to hospital personnel. They ran a tag on the vehicle and it was -- I guess a BOLO had [come] out and the vehicle tag indicated that these defendants were wanted in connection with a ... double homicide in

Williamsburg County and that's how they ended up being arrested while at the hospital and that's essentially the facts of the case, Your Honor.

Tr. pp. 12-14.

Petitioner agreed that those facts were "[s]ubstantially correct." His brothers agreed that the facts were correct. *Tr. p. 15.*

III. ALLEGATIONS

Petitioner raises the following allegations in his *pro se* Petition for Writ of Habeas Corpus and the attachment thereto:

GROUND ONE: Ineffective [Assistance] of Counsel, in violation of Petitioner's Sixth Amendment rights.

SUPPORTING FACTS: Petitioner relies upon "due process" and was "denied opportunity to appeal his Post-Conviction Relief hearing in State court". Based on ineffective assistance of counsel, a 59(e) motion and appeal was not filed.

The evidentiary hearing was held, where Petitioner at this time was represented by James D. Dotson. Where Petitioner argued to his attorney to file a 59(e), because the court [failed] to make specific findings of fact and conclusions of law with regard to the concerned issues.

Unbeknownst to Petitioner during such time, Mr. Dotson was undergoing his own troubles with the South Carolina Supreme Court, in an ongoing investigation of his person, professionally, for misconduct. Needless to say, Mr. Dotson received an unfavorable ruling by the High Court, and was suspended from practicing law.

The State replied to Petitioner's pro-se 59(e) alleging it was untimely. When in fact, "it was premature to the final ruling (April 1, 2013)," when such ruling was not mailed until April 23, 2013. The reference of any May 8, 2013 59(e), was not a product generated by Petitioner, it was a motion filed by Mr. Dotson, finally after repeated request to do the 59(e) prior to the expiration of the 10 days.

As was mentioned above, "it was unknown to Petitioner during those times about Mr. Dotson's trouble with the Court, but such remains a legitimate conclusion why Mr. Dotson never communicated effectively concerning the timely filing of the 59(e)".

PREJUDICIAL RESULTS OF THE FAILURE TO FILE 59(e).

Under South Carolina Rules, the 59(e) serves essentially the same function as the "contemporaneous objection rule", when appealing a final decision from the PCR Court. Because Mr. Dotson failed to timely file the 59(e), Petitioner was prevented from raising the strict or detrimental reliance of the plea agreement rule on appeal. In *Aice v. State*, 409 S.E.2d at 395, explains that "every PCR applicant is entitled to a full adjudication on the merits of the PCR application, or 'on bite at the apple', which includes the right to appeal the denial of the PCR, and the right to assistance of counsel in that appeal.

Because Petitioner was deprived of "his one bite", he is respectfully requesting this court to intervene, as he has continually attempted to obtain relief in state court. Until just recently, the State Court forwarded Petitioner a Federal Habeas Relief Application.

For these reasons, Petitioner humbly request[s] that relief is granted, by remanding this cause to state court recommending that Petitioner is given the right to file his 59(e) and subsequent appeal to the highest state court, or for any further relief deemed just and proper, "based on being actually innocent".

Under *Martinez v. Ryan*, Attorney James D. Dotson, Esquire, abandoned Petitioner's State PCR 59(e) and subsequent appeal of meritorious Due Process Claims involving the State's breach of agreement. Petitioner was [misled] to [believe] "an action" was pending in the State Court to address these matters, only to learn after January 17, 2017. The State had either dismissed the attempt to L. regain his appeal, or failed to respond.

IV. DISCUSSION

SUMMARY JUDGMENT STANDARD

“Summary judgment is appropriate when ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” *Emmett v. Johnson*, 532 F.3d 291, 297 (4th Cir. 2008) (quoting Fed. R. Civ. P. 56). “[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986). To defeat a summary judgment motion, the non-moving party must “do more than simply show that there is some metaphysical doubt as to the material fact.” *Matsushita Elect. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 1356 (1986). Here, the records before the Court by way of this Return and Memorandum show that Petitioner is not entitled to any relief for the reasons discussed below.

The present habeas corpus petition was filed after the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). Accordingly, the provisions of the AEDPA apply to this case. *Lindh v. Murphy*, 521 U.S. 320, 117 S.Ct. 2059 (1997).

A. THE PETITION IS BARRED BY THE STATUTE OF LIMITATIONS, 28 U.S.C. § 2244(d).

Respondent initially submits that the Petition must be dismissed because Petitioner did not file it within the federal habeas corpus statute of limitations period in 28 U.S.C. § 2244(d)(1). Section 2244(d) provides that:

A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d).

State collateral review tolls the one-year statute of limitations under § 2244(d)(1)(A) for “properly filed” PCR pleadings. *Artuz v. Bennett*, 531 U.S. 4, 121 S.Ct. 361 (2000). However, it does not establish a right to file within one year after completion of collateral review. *Harris v. Hutchinson*, 209 F.3d 325 (4th Cir 2000). Also, the tolling period for state collateral review does not include the time for filing a petition for certiorari in the United States Supreme Court following the denial of post-conviction relief by the state courts. § 2244(d)(2); *Lawrence v. Florida*, 549 U.S. 327, 331-35, 127 S.Ct. 1079, 1082-84 (2007).

In *Gonzalez v. Thaler*, 565 U.S. 134, 150, 132 S.Ct. 641, 653-54 (2012), the United States Supreme Court ruled that:

We now make clear ... [that] [t]he text of § 2244(d)(1)(A), which marks finality as of “the conclusion of direct review or the expiration of the time for seeking

such review,” consists of two prongs.... For petitioners who pursue direct review all the way to this Court, the judgment becomes final at the ‘conclusion of direct review’—when this Court affirms a conviction on the merits or denies a petition for certiorari. **For all other petitioners, the judgment becomes final at the ‘expiration of the time for seeking direct review in this Court, or in state court, expires.**

(Emphasis added).

1. *The Petition is untimely under § 2244(d)(1).*

Applying the above criteria to the present case, it is clear that Petitioner did not timely file his Petition within the one-year limitations period in § 2244(d)(1)(A). Under *Gonzalez*, his state court convictions became final on Thursday, February 9, 2012, or ten days after sentence was imposed, because this was the tenth day following the imposition of sentence and the last day on which he could timely serve a notice of appeal. *See* Rule 203(b)(2), SCACR (establishing ten day limit for serving notice of appeal following conviction resulting from guilty plea or trial). Accordingly, absent tolling, he had one year from February 10, 2012, within which to file his Petition for Writ of Habeas Corpus.

By the time that he filed his original PCR Application (2012-CP-45-0369) on July 16, 2012, only one hundred fifty-eight (158) days of un-tolled time had elapsed.⁶ The 2012 Application was a “properly filed” application for relief under *Artuz* and tolled the statute of limitations for the period during which that Application was pending. § 2244(d)(2). The

⁶ *See Gary v. State*, 347 S.C. 627, 557 S.E.2d 662 (2001) (mailing of a PCR application does not constitute filing, for statute of limitations purposes. Rather, application is filed when received by the Clerk of Court). *See also Mose v. State*, 803 S.E.2d 718 (2017) (declining to overrule *Gary* but holding that equitable tolling of the statute of limitations may be applied where the filing of a PCR application is delayed due to the processing of documents by prison authorities, if prisoner raises the “defense to the statute of limitations,” and the PCR judge determines tolling is warranted).

proceedings in the 2012 action concluded thirty days after August 26, 2013, the day that Judge Young's Order of Dismissal was served on Petitioner's counsel, or on Tuesday, September 24, 2013, since this was the last day on which Petitioner could timely serve his notice of appeal from that Order. *See* Rule 203(b)(1), SCACR.⁷

Using the date that SCDC officials stamped the envelope containing the Petition [*ECF #11-1, p. 74*] as the *Houston v. Lack*, 487 U.S. 266, 108 S.Ct. 2379 (1988) "delivery" date, Petitioner did not file his Petition for Writ of Habeas Corpus until July 14, 2017. This was one thousand, three hundred ninety (1390) days after the conclusion of the PCR proceedings on his 2012 Application and one thousand, five hundred forty-eight (1548) days after his state court convictions became final. Accordingly, the statute of limitations bars his Petition.

As demonstrated in the "Procedural History," Petitioner's counsel submitted a Rule 59(e), SCRCP, motion on Petitioner's behalf and Petitioner filed a *pro se* Rule 60(b), SCRCP, motion. However, both of these motions were untimely. His Rule 59(e) motion was not filed until May 8, 2013. This was clearly more than ten days after April 23, 2013, which was the day on which the State served the Order of Dismissal on counsel. *See* Rule 59(e), SCRCP ("A motion to alter or amend the judgment must be served not later than ten days after receipt of written notice of the entry of the order"). Accordingly, his motion was not timely and the PCR case was concluded thirty days after the Order of Dismissal was served on counsel. *See* Rule 203(b)(1), SCACR

⁷ Rule 203(b)(1), SCACR provides, in relevant part, that "*Appeals From the Court of Common Pleas*. A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment."

Likewise, his February 17, 2015 Rule 60(b), SCRCF, motion was untimely. Petitioner filed this motion pursuant to Rule 60(b)(1), SCRCF. Rule 60(b) states, “The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken.” *See also Southeastern Housing Foundation v. Smith*, 380 S.C. 621, 639, 670 S.E.2d 680, 690 (Ct. App. 2008) (“The one-year limit is non-discretionary, whereas the “reasonable time” limit is discretionary and should be determined under the facts and circumstance of each case”); *Stearns Bank Nat’l Ass’n v. Glenwood Falls, LP*, 375 S.C. 423, 426, 653 S.E.2d 274, 275 (2007) (“An appeal from a 60(b) denial does not stay the original judgment”); Rule 60(b) (“A motion under [Rule 60](b) does not affect the finality of a judgment or suspend its operation.”).

Petitioner’s Rule 60(b), SCRCF, motion was filed one year, four months and twenty-five days (or 512 days) after the State served counsel with the Order of Dismissal. Thus, this motion was untimely as well. *Id.*; *Tench v. S.C. Dep’t of Education*, 347 S.C. 117, 121, 553 S.E.2d 451, 453 (2001) (“The 60(b)(1) motion was untimely since it was filed in April 1998, well more than a year after the 1996 orders were filed”).

Moreover, he was represented by counsel when the Rule 60(b), SCRCF, motion was filed. The South Carolina Supreme Court has long refused to recognize a right to hybrid representation either at trial or on appeal, and this pleading should not have been filed by the Williamsburg County Clerk of Court. *See State v. Rivera*, 402 S.C. 225, 239, 741 S.E.2d 694, 701 (2013) (“ ‘There is no constitutional right to hybrid representation either at trial or on appeal’ ”) (citation omitted); *Foster v. State*, 298 S.C. 306, 307, 379 S.E.2d 907, 907 (1989) (holding that there is no right to hybrid representation at trial). And, as a matter of firmly

established and regularly applied state court procedure, the Court will not accept *pro se* pleadings from a party who is represented by counsel. *E.g.*, *Miller v. State*, 388 S.C. 347, 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel”); *State v. Devore*, 416 S.C. 115, 120–21, 784 S.E.2d 690, 693 (Ct. App. 2016) (observing there is no right to hybrid representation under either the United States or South Carolina constitution and explaining substantive documents submitted *pro se* by litigants who are represented by counsel should not be accepted by the clerk of court for filing); *State v. Stuckey*, 333 S.C. 56, 58, 508 S.E.2d 564, 564 (1998) (“[Because] there is no right to hybrid representation, substantive documents filed [*pro se*] by a person represented by counsel are not accepted unless submitted by counsel”); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002) (counsel cannot serve as a mere conduit for *pro se* documents in an effort to avoid the prohibition against hybrid representation and the displeasure of his client); *Koon v. Clare*, 338 S.C. 423, 424, 527 S.E.2d 357, 357 (2000) (where petitioner was represented by counsel in the lower court, Supreme Court of South Carolina declined to take action on *pro se* petition submitted in the Court’s original jurisdiction based upon cases barring hybrid representation on appeal: “The rationale behind those decisions applies equally to situations where a litigant who is represented by counsel before the Court of Appeals seeks review of action taken by the Court of Appeals pending a final decision on the matter by that court. Should similar petitions be filed in the future, the Clerk of this Court is instructed to inform the petitioner that no action will be taken on the petition”).

Accordingly, neither post-hearing motion extended the tolling of the statute of limitations. Likewise, the two pending state habeas petitions that were filed in the Richland County Circuit Court did not toll the limitations period. “A person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application. Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court.” *Keeler v. Mauney*, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct.App.1998). *See also Simpson v. State*, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998) (holding “a matter which is cognizable under the Act may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts”). Also, the crimes to which he pled guilty occurred in Williamsburg County.

2. *Petitioner is not entitled to tolling based upon the likely probability that he may be granted Austin review of the 2011 PCR action.*

It is clear from the claim stated in the Petition [ECF #11-1, pp. 5; 13; 15] and the attachment to his Petition [ECF #11-1, pp. 21-23; 36], that Petitioner’s only complaint is that he was entitled to appellate review of the PCR judge’s adverse Order of Dismissal. As more fully discussed below, it appears that he may be entitled to a belated appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), based upon his original PCR counsel’s ineffectiveness in failing to perfect an appeal, which would provide him with appellate review of the Order of Dismissal, but not appellate review of the other untimely motions discussed above.

Petitioner has not yet filed a successive PCR Application seeking *Austin* relief. Even if he does seek *Austin* relief in the future and even if the state courts grant *Austin* review, Respondent submits that he is not entitled to tolling of the un-tolled time between the conclusion of the 2012

proceedings and the filing of his future Application. Specifically, Respondent submits that the United States Supreme Court's decision in *Jimenez v. Quarterman*, 555 U.S. 113, 129 S.Ct. 681, 683-87 (2009), does not affect the analysis here.

In *Jimenez*, the Court held that "where a state court has in fact reopened *direct review* ... [by] grant[ing] a criminal defendant the right to file an out-of-time direct appeal during state collateral review, ... [the] judgment is not yet 'final' for purposes of § 2244(d)(1)(A)." *Id.* at 120 n. 4, 129 S.Ct. at 686 n. 4 (emphasis added). The Court in *Jimenez* specifically relied upon the fact that under prevailing state law "the 'order granting an out-of-time appeal restored the pendency of the *direct appeal*.'" *Id.* at 120 & n. 4, 129 S.Ct. at 686 & n. 4 (quoting *Ex parte Torres*, 943 S.W.2d 469, 472 (Tex.Crim.App.1997)) (emphasis added).

Importantly, the Court specifically emphasized that:

Our decision today is a narrow one. We hold that, where a state court grants a criminal defendant the right to file an out-of-time *direct appeal* during state collateral review, but before the defendant has first sought federal habeas relief, his judgment is not yet "final" for purposes of § 2244(d)(1)(A).

555 U.S. at 121, 129 S.Ct. at 686 (emphasis added).

Section 2244(d)(2) provides that "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim *is pending* shall not be counted toward any period of limitation under this subsection." (Emphasis added). Courts construing this provision have relied upon the plain wording of the statute, *i.e.*, periods of time when no collateral matter is pending do not toll the statute of limitations. In other words, the filing of multiple applications for post-conviction relief does not result in a new starting of the statute of limitations, nor does it render the entire time from the first filing to final resolution a tolling period. See *Moore v. Crosby*, 321 F.3d 1377, 1381 (11th

Cir. 2003) (a motion seeking a belated appeal in Florida state court did not revive an expired AEDPA); *Melancon v. Kaylo*, 259 F.3d 401, 407 (5th Cir. 2001) (after the appeal period has lapsed, an application for further appellate review ceases to be "pending" for purposes of calculating federal habeas corpus tolling provision); *Gibson v. Klinger*, 232 F.3d 799, 804-808 (10th Cir. 2000) (concluding that a "state court's grant of leave to appeal out of time cannot erase the time period during which nothing was pending before a state court); *Fernandez v. Sternes*, 227 F.3d 977, 981 (7th Cir. 2000) (while a state process may be reviewed after the time to seek further review has expired, "the prospect of revival does not make a case 'pending' in the interim"); *Small v. Norris*, No. 08-273, 2009 WL 1529463 at *2 (E.D.Ark., filed June 1, 2009) (the time period between the expiration of time to file an appeal and the filing of a motion for a belated appeal is not tolled under § 2244). *See also Streu v. Dormire*, 557 F.3d 960, 967 n. 2 (8th Cir. 2009) ("When a conviction becomes 'final' for purposes of § 2244(d)(1)(A) is distinct from when an application for post-conviction review is 'pending' for purposes of § 2244(d)(2)"); *Clemons v. Kansas*, 384 Fed.Appx. 734, 736-37, 2010 WL 2543148, 2 (10th Cir. 2010); *Drew v. Superintendent, MCI-Shirley*, 607 F.Supp.2d 277, 282 n.3 (D.Mass. 2009); *Siniscalchi v. MacEachern*, 2010 WL 1930567, 1 (D.Mass. May 12, 2010) ("*Jimenez* is not applicable, as there is no indication that the state courts ever reopened petitioner's direct appeal process"). Further, although the Fourth Circuit does not appear to have addressed the issue, a number of courts in this District have adopted this rationale in cases where the South Carolina courts have ordered an *Austin* review. *See, e.g., McHoney v. South Carolina*, 518 F.Supp.2d 700, 705 (D.S.C. 2007); *Coleman v. Hagan*, 2009 WL 2900698, *4 (D.S.C., Sept. 9, 2009); *Smith v. Warden*, 2010 WL 5672090, *2-3 (D.S.C., Aug. 25, 2010); *Golden v. McCall*, No. 9:08-3469-TLW-BM, 2010 WL

146164, 5 n. 16 (D.S.C., Jan. 8, 2010); *Gambrell v. Warden*, MCCI, 2010 WL 883008, 13-14 n. 8 (D.S.C., Mar. 8, 2010) (Report and Recommendation) (unpublished); *Anderson v. Bodison*, 2010 WL 5777551, 4 & n. 16 (D.S.C., Nov. 16, 2010) (Report and Recommendation) (unpublished); *Jones v. Warden of Broad River Correctional Inst.*, 2010 WL 1791369, 7 & n. 4 (D.S.C., April 16, 2010) (Report and Recommendation) (unpublished).

Additionally, Respondent notes that when an inmate is granted *Austin* review of the earlier PCR Order, the reviewing court does not and cannot “open up” the original PCR proceedings for purposes of hearing an appeal from the earlier Order because the timely service of a notice of appeal was necessary to give the appellate court jurisdiction of the original action and the time for serving a notice of appeal in that case has expired. *See Sadisco of Greenville, Inc. v. Greenville Cty. Bd. of Zoning Appeals*, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000). (“This Court has consistently stated that service of the Notice of Appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the Notice of Appeal must be served”); *State v. Devore*, 416 S.C. 115, 124 n. 5, 784 S.E.2d 690, 695 n. 5 (Ct. App. 2016) (“failure to comply with procedural requirements for an appeal divests this court of appellate jurisdiction”), *reh'g denied* (Apr. 21, 2016), *cert. denied* (Nov. 9, 2016).

Rather, *Austin* review is a limited exception to the general rule in South Carolina barring successive PCR applications and refusing to entertain claims that PCR counsel was ineffective. It is the grant of appellate review of an earlier Order denying relief and it is based upon the ineffective assistance of original collateral counsel, as the procedural history in this case demonstrates. *See Aice v. State*, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) (“This Court is not empowered to expand its jurisdiction and grant Austin additional time to petition for review.

Hence, merely as a method of enforcing Rule 50(6), and of enforcing Austin's entitlement to a PCR proceeding, complete with a petition for *certiorari* to this Court, we held that Austin could attack his PCR counsel as ineffective”) (emphasis in original); Rules 203(a) & (b), 205, SCACR; *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985) (timely service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served).

As a result, the granting of a belated appeal under *Austin* does not retroactively toll the statute back to the filing date of the original PCR Application, and Petitioner is not entitled to tolling of the limitations period for the time period in which he did not have an Application pending after service of the Order of Dismissal of his 2012 PCR Application. *Id.* Therefore, the Petition is barred by the limitations period in § 2244(d)(1).

3. *Petitioner is not entitled to equitable tolling.*

Petitioner may only avoid the statute of limitations bar if he can show that he is “actually innocent,” see *McQuiggin v. Perkins*, 133 S.Ct. 1924, 1931 (2013), or that he has diligently pursued a judicial remedy but extraordinary circumstances beyond his control prevented him from meeting the deadline. See *Pace v. DiGuglielmo*, 544 U.S. 408, 418, 125 S.Ct. 1807 (2005).

Section 2244(d) is not a jurisdictional limitation on the power of the district court but a statute of limitations. As a result, it is subject to the doctrine of equitable tolling. *Holland v. Florida*, 560 U.S. 631, 130 S.Ct. 2549 (2010); *Harris*, 209 F.3d at 330. Nevertheless, both the Supreme Court and the Fourth Circuit Court of Appeals have underscored that equitable tolling

will be permitted only in **very limited circumstances**. See *Lawrence, supra*; *Rouse v Lee*, 339 F.3d 238 (4th Cir. 2003) (en banc).⁸

“To be entitled to equitable tolling, [Petitioner] must show ‘(1) that **he has been pursuing his rights diligently**, and (2) that **some extraordinary circumstance stood in his way**’ and **prevented timely filing**.” *Lawrence*, 549 U.S. at 336, 127 S.Ct. 1079 (citation omitted) (emphasis added); see also *Holland*, 560 U.S. at 649, 130 S.Ct. at 2562. Further, equitable tolling is “the exception rather than the rule ... [and] resort to its prophylaxis is deemed justified only in extraordinary circumstances.” *Trapp v. Spencer*, 479 F.3d 53, 59 (1st Cir. 2007) (internal citation omitted). The respondent bears the burden of asserting the AEDPA’s statute of limitations. *Hill v. Braxton*, 277 F.3d 701, 705-06 (4th Cir. 2002). The petitioner then bears the burden of establishing that his petition is timely or that he is entitled to the benefit of the equitable-tolling doctrine. *Rouse*, 339 F.3d at 246.⁹ Whether equitable tolling is warranted is a fact-intensive inquiry best left to the district courts. See, e.g., *Holland*, 560 U.S. at 653-54, 130 S.Ct. at 2565.

As the Fourth Circuit Court of Appeals explained in *Harris*, 209 F.3d at 330:

[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would lose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation. We believe, therefore, that **any resort to equity must be reserved for those rare instances where**—due to circumstances external to the party’s own conduct—it

⁸ The limits on equitable tolling stem from the fact that “Congress enacted AEDPA to reduce delays in the execution of state and federal criminal sentences, particularly in capital cases ... and to further the principles of comity, finality, and federalism.” *Woodford v. Garceau*, 538 U.S. 202, 206 (2003) (internal citations and quotation marks omitted).

⁹ An argument for tolling must be made in the district court or it is waived; it may not be raised for the first time on appeal. *United States v. Monreal*, 301 F.3d 1127, 1131 (9th Cir. 2002).

would be unconscionable to enforce the limitation period against the party and gross injustice would result.

Harris, 209 F.3d at 330 (emphasis added).

The merits of his Petition are not relevant to equitable tolling. Rather, Petitioner must show extraordinary circumstances relating to the filing of the petition, itself. *Helton v. Secretary, Department of Corrections*, 259 F.3d 1310, 1314-15 (11th Cir. 2001); *Runyan v. Burt*, 521 F.3d 942, 945-46 (8th Cir. 2008) (rejecting appellant's argument that " 'the courts would never get to hear the arguments' " was an "extraordinary circumstance" requiring equitable tolling, and explaining that adopting the appellant's position "would invalidate Congress's judgment that one year represents a fair and appropriate limitations period and, in effect, nullify the limitation").

Petitioner asserts in ¶18 of the Petition that:

The time consideration in this matter for federal relief, should be the January 2017 date when the State Court dismissed Petitioner's 59(e) and 60(b), in which Petitioner (based on no communication from attorney James D. Dotson) learned of the decision from the court,

James D. Dotson (In the Matter of James D. Dotson) was suspended from the practice of law during the times "he would have normally responded". And Petitioner is of firm belief, "this contributed to Mr. Dotson's failure to inform him of the 'status' of his case". And for failing to file his appeal from the PCR denial. In which case, should have been remanded to the State for screening of a successive application. As opposed to the State court forwarding this 28 U.S.C. §2254 application.

In any event, Petitioner timely filed within one-year of the decision being known by him, which he could not have do so at any earlier time.

ECF #11-1, p. 44.

The requirement that Petitioner prove that he was prevented from timely filing by extraordinary circumstances that were beyond his control or external to his own conduct does not include the failure of his attorney to advise him of the statute of limitations or misadvice from

counsel, as opposed to grossly outrageous and incompetent conduct by counsel discussed in *Holland*. See *Lawrence*, 549 U.S. at 336-37, 127 S.Ct. 1079 (“Attorney miscalculation is simply not sufficient to warrant equitable tolling, particularly in the postconviction context where prisoners have no constitutional right to counsel”); *Harris*, 209 F.3d at 330-31 (no equitable tolling when counsel erroneously advised petitioner as to the statute of limitations). Compare *Holland*, 130 S.Ct. at 2564 (a “serious instance[] of attorney misconduct” may rise to the level of an extraordinary circumstance necessary to justify equitable tolling).

Notwithstanding Petitioner’s assertion that his PCR counsel, Mr. Dotson, “was suspended from the practice of law during the times ‘he would have normally responded,’ ” Respondent has not found any indication that his assertion is correct.¹⁰ While it is true that Mr. Dotson has been suspended from the practice of law and is currently under interim suspension, his suspension did not occur until October 13, 2016, which was over three years after the conclusion of his representation of Petitioner. See *In the Matter of Dotson*, 418 S.C. 253-54, 792 S.E.2d 1, 1 (2016). See also South Carolina Supreme Court’s April 20, 2017 Order Re: *Administrative Suspensions for Failure to Comply with Continuing Legal Education Requirements*, <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2017-04-20-01> (observing that Mr. Dotson is on interim suspension).

To the extent that this Court determines that PCR counsel’s negligence contributed to this late filing, Petitioner is still not entitled to equitable tolling because - whatever level of attorney negligence the Court finds - Petitioner had not “been pursuing his rights diligently.” See *Lawrence*, 549 U.S. at 336, 127 S.Ct. 1079. Whatever PCR counsel allegedly did or failed to do,

¹⁰ Of course, if Petitioner is referring to a grievance that he filed against his attorney, Respondent would not have any knowledge of that proceeding.

Petitioner could not sit back for over a year without attempting to seek *Austin* relief, and then claim that he was entitled to equitable tolling of the limitations period in § 2244(d). *See Johnson v. United States*, 544 U.S. 295, 310, 125 S.Ct. 1571, 1582 (2005) (lack of diligence will defeat an otherwise meritorious claim for equitable tolling); *United States v. Sosa*, 364 F.3d 507, 512 (4th Cir. 2004) (“[E]ven in the case of an unrepresented prisoner, ignorance of the law is not a basis for equitable tolling”); *Seich v. Cartledge*, No. CV51602464PMDKDW, 2017 WL 1183959, at *7 (D.S.C. Feb. 24, 2017), *report and recommendation adopted*, No. 5:16-CV-2464-PMD-KDW, 2017 WL 1163055 (D.S.C. Mar. 29, 2017).

Moreover, there can be no equitable tolling without wrongful conduct attributable to Respondent, which he cannot show. *See Shannon v. Newland*, 410 F.3d 1083, 1090 (9th Cir. 2005).

4. *Petitioner has not and cannot make out a colorable claim of actual innocence.*

To the extent that Petitioner claims his actual innocence as a gateway to the consideration of his claim by this Court, his argument would also fail. The Supreme Court in *McQuiggin* did hold that a habeas corpus petitioner’s failure to comply with the statute of limitations may be excused if he presents newly-discovered, reliable evidence of his actual innocence, *McQuiggin*, 133 S.Ct. at 1928. However, the Court explained that:

actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, as it was in [*Schlup v. Delo*, 513 U.S. 298, 115 S.Ct. 851 (1995)] and [*House v. Bell*, 547 U.S. 518, 126 S.Ct. 2064 (2006)], or, as in this case, expiration of the statute of limitations. **We caution, however, that tenable actual-innocence gateway pleas are rare: “[A] petitioner does not meet the threshold requirement unless he persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt.”** *Schlup*, 513 U.S., at 329, 115 S.Ct. 851; *see House*, 547 U.S., at 538, 126 S.Ct. 2064

(emphasizing that the *Schlup* standard is “demanding ” and seldom met). And in making an assessment of the kind *Schlup* envisioned, “the timing of the [petition]” is a factor bearing on the “reliability of th[e] evidence” purporting to show actual innocence. *Schlup*, 513 U.S., at 332, 115 S.Ct. 851.

McQuiggin, 133 S.Ct. at 1928 (emphasis added).

The Court further explained that “a federal habeas court, faced with an actual-innocence gateway claim, should count unjustifiable delay on a habeas petitioner’s part, not as an absolute barrier to relief, but as a factor in determining whether actual innocence has been reliably shown.” *Id.* Thus, a district court may address otherwise time-barred claims if the habeas petitioner can satisfy the *Schlup* miscarriage of justice standard. Yet, the Court in *McQuiggin* repeatedly emphasized the very narrow class of cases where petitioners present newly discovered evidence that raises a colorable claim of actual innocence. *See McQuiggin*, 133 S.Ct. at 1933 (“[t]he miscarriage of justice exception, we underscore, applies to a severely confined category: cases in which new evidence shows ‘it is more likely than not that no reasonable juror would have convicted [the petitioner].’ *Schlup*, 513 U.S., at 329, 115 S.Ct. 851 (internal quotation marks omitted)”);¹¹ *see also McQuiggin*, 133 S.Ct. at 1935; *id.* at 1936.

The Court in *McQuiggin* likewise repeatedly stated that “untimeliness, although not an unyielding ground for dismissal of a petition, does bear on the credibility of evidence proffered to show actual innocence.” *Id.* *See also id.* at 1928; *id.* at 1935 (“While we reject the State’s argument that habeas petitioners who assert convincing actual-innocence claims must prove diligence to cross a federal court’s threshold, we hold that the Sixth Circuit erred to the extent that it eliminated timing as a factor relevant in evaluating the reliability of a petitioner’s proof of

¹¹ *Schlup* makes clear that the actual innocence requirement is not merely a showing of reasonable doubt in light of new evidence, but rather that it is more likely that no reasonable juror would have found the defendant guilty beyond a reasonable doubt. *Id.* at 328.

innocence. To invoke the miscarriage of justice exception to AEDPA's statute of limitations, we repeat, a petitioner 'must show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence.' *Schlup*, 513 U.S., at 327, 115 S.Ct. 851. Unexplained delay in presenting new evidence bears on the determination whether the petitioner has made the requisite showing. Perkins so acknowledges").

Respondent submits that Petitioner has not made the requisite showing under *McQuiggin* because he has not presented any evidence that was not known at the time of his guilty plea that would prove his factual innocence and the unjustifiable delay on his part further demonstrates that "actual innocence has [not] been reliably shown." *Id.* at 1928.

5. No actual innocence under *McQuiggin* in light of Petitioner's guilty plea.

Moreover, some courts have held that *McQuiggin*'s actual innocence exception does not apply where, as here, the Petitioner pled guilty. *See e.g., Jackson v. United States*, No. 13-CV-818, 2013 WL 5295701, *3 (E.D.Wis. Sept. 18, 2013) (*McQuiggin*'s actual innocence exception does not apply where the petitioner pled guilty); *United States v. Cunningham*, 2013 WL 3899335 (S.D.Tex. July 27, 2013) (same); *Sidener v. United States*, No. 11-CV-3085, 2013 WL 4041375, *3 (C.D.Ill. Aug. 8, 2013) (same). At the very least, his guilty plea is inconsistent with *McQuiggin*'s actual innocence exception. As a result, any actual innocence claim fails. *Goosby v. Trammell*, 515 Fed.Appx. 776, 777, 2013 WL 2350330, *1 (10th Cir. 2013) ("Mr. Goosby maintains he's actually innocent, contending that, as of 2012, the state court did not have the victim's autopsy report on file. This, according to Mr. Goosby, casts doubt on the medical examiner's testimony about his autopsy findings at Mr. Goosby's certification hearing. Given Mr. Goosby's guilty plea and his failure to address other evidence that contributed to his plea, he fails

to carry the heavy burden of ‘show[ing] it is more likely than not that no reasonable juror would have convicted, him, *McQuiggin v. Perkins*, — U.S. —, 133 S.Ct. 1924, 185 L.Ed.2d 1019, 2013 WL 2300806, at *9 (May 28, 2013) (quotations mark omitted), a showing that is necessary to invoke the miscarriage of justice exception to AEDPA's statute of limitations. *Id.* Given all this, we cannot say that ‘jurists of reason would find it debatable whether the district court was correct in its procedural ruling.’ *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000)’’); *Gonzalez-Castro v. Marshall*, 2015 WL 269038, *4 (M.D.N.C., Jan. 21, 2015) (“In this case, Petitioner provides nothing beyond his conclusory allegations of innocence. Furthermore, Petitioner's guilty plea undercuts his argument that he ‘claimed his [i]nnocence from day one....’ Simply, Petitioner does not present the ‘rare’ case required by *McQuiggin*”) (record citation omitted); *Cruz v. Marshall*, 2015 WL 136089, *5 (M.D.N.C., Jan. 9, 2015) (“In this case, Petitioner provides nothing beyond his conclusory allegations of innocence. Furthermore, Petitioner's guilty plea undercuts his argument that he ‘claimed his innocence from day one.’ Simply, Petitioner does not present the ‘rare’ case required by *McQuiggin*”); *Bradshaw v. McCall*, 2014 WL 463142, *4-*5 & n. 1 (D.S.C., Feb. 04, 2014); *Johnson v. Rogers*, 2015 WL 858078, *4 (E.D.La., Feb. 26, 2015) (“By entering her unconditional plea, petitioner has already conceded under oath that she in fact committed and was guilty of the crimes of which she stands convicted. Moreover, even if *McQuiggin* applies in the context of a guilty plea, a point which is by no means clear, petitioner does not invoke *McQuiggin* and, in any event, has not made a colorable showing that she is actually innocent in light of “new evidence”).

Therefore, Petitioner is not entitled to equitable tolling, he cannot avail himself of *McQuiggin*’s “actual innocence” exception and the Petition is barred by § 2244(d)(1).

B. ALTERNATIVELY, THE COURT SHOULD EITHER DISMISS THE CASE FOR FAILING TO STATE A COGNIZABLE CLAIM OR STAY AND ABEY IT BECAUSE PETITIONER HAS A POTENTIAL STATE COURT REMEDY AVAILABLE OF APPELLATE REVIEW OF THE DENIAL OF PCR RELIEF PURSUANT TO AUSTIN V. STATE.

1. Petitioner has not exhausted the claim before this Court.

Should the Court reject Respondent's argument that the Petition is barred by the statute of limitations, however, the present case presents a rather unusual anomaly: the claim on which Petitioner seeks relief is not cognizable in federal habeas corpus, but he does have a state court remedy available for it: *i.e.*, appellate review of the PCR court's adverse ruling pursuant to *Austin*, which is based upon the ineffective assistance of his PCR counsel in failing to perfect an appeal of the Order of Dismissal. Also, if successful in state court, he could perfect a claim that is cognizable in habeas or perhaps receive a new trial. Therefore, Respondent alternatively submits that the Court should either dismiss the case for the failure to state claim that is cognizable in federal habeas corpus, or stay and abey the case.

"[A] state prisoner must exhaust available state remedies before presenting his claim to a federal habeas court. §2254(b)(1)(A). The exhaustion requirement is designed to avoid the 'unseemly' result of a federal court 'upset[ing] a state court conviction without' first according the state courts an 'opportunity to . . . correct a constitutional violation.' " *Davila v. Davis*, 137 S.Ct. 2058, 2064 (2017) (citing *Rose v. Lundy*, 455 U. S. 509, 518 (1982) (internal quotation marks omitted by Court)).

South Carolina provides two basic remedies after conviction -- direct appeal and post-conviction relief (PCR). *See e.g.*, S.C. Code Ann. § 14-3-330 (providing for appellate jurisdiction for correction of errors of law); S.C. Code Ann. § 17-27-20 (setting out cognizable claims in

PCR and providing, for collateral actions, that PCR “comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them”); Rule 201(a), SCACR (recognizing right to appeal from final judgment); *see also Stewart v. Warden of Lieber Corr. Inst.*, 701 F. Supp. 2d 785, 790 (D.S.C. 2010) (“To exhaust a claim in state court, a person in custody has two primary means of attacking his conviction: filing a direct appeal and/or filing an application for relief under the South Carolina Post Conviction Procedure Act.”). Petitioner has neither of these remedies available to him.

Petitioner did not timely pursue his direct appeal remedies from his guilty plea and sentence, and the time for him to serve a notice of appeal from that plea has long expired. *See generally* Rule 203(b)(2), SCACR. As a result, he has no direct appeal remedies available. *See State v. Lawrence*, 266 S.C. 423, 427, 223 S.E.2d 856, 858 (1976) (“[W]e have no jurisdiction over ... an appeal in the absence of notice of appeal having been given and timely served”); *White v. State*, 263 S.C. 110, 119, 208 S.E.2d 35, 39 (1974) (“[I]t is well settled that in the absence of a notice of appeal having been given and timely served this Court has no jurisdiction over such an appeal”). *See also Sadisco of Greenville, Inc.*, 340 S.C. at 59, 530 S.E.2d at 384.

Petitioner timely filed his one PCR action as a matter of right, but he failed to exhaust this remedy because he has never presented his claim to the South Carolina Supreme Court on certiorari. *See Wade v. State*, 348 S.C. 255, 264, 559 S.E.2d 843, 847 (2002) (“An individual under PCR effectively is granted one chance to argue for relief and must do so within a year of his final appeal”); *Gibson v. State*, 329 S.C. 37, 42, 495 S.E.2d 426, 428 (1998) (exhaustion of state PCR remedies requires “filing of an application, the rendering of an order adjudicating the

issues, and petitioning for, or knowingly waiving, appellate review.”); *Robertson v. State*, 418 S.C. 505, 516, 795 S.E.2d 29, 34 (2016) (“... [W]e hold that *Martinez* does not afford Petitioner a right to file a successive PCR application by merely alleging ineffective assistance of prior PCR counsel”). *But see Terry v. Byars*, 2012 WL 6102938, *6 (D.S.C. 2012) (“The State of South Carolina allows a second or subsequent application in limited circumstances. [A]lthough successive PCR cases are disfavored by courts of the State of South Carolina, they are not absolutely precluded”); *Williams v. Ozmint*, 380 S.C. 473, 477, 671 S.E.2d 600, 602 (2008) (“Although successive PCR applications are disfavored, they are not prohibited”).

Here, the Petition only contains one claim: that he was denied appellate review of the PCR judge’s Order of Dismissal as the result of his PCR attorney’s ineffectiveness in failing to appeal. He cannot obtain relief on his claim in federal habeas corpus. However, he has a state court remedy for this claim. *See O’Sullivan v. Boerckel*, 526 U.S. 838, 842, 119 S.Ct. 1728, 1731 (1999).

In *Austin*, the South Carolina Supreme Court reversed the summary dismissal of a second PCR application and remanded for an evidentiary hearing, where the petitioner alleged in his second application that his first PCR counsel was ineffective for failing to seek appellate review. The Court found that the petitioner’s “allegation that counsel failed to seek review in this case sufficiently states a claim of ineffective assistance [of PCR counsel].” *Austin*, 305 S.C. at 454, 409 S.E.2d at 396. Therefore, the Court remanded the case “for an evidentiary hearing on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review.” *Id.*

Accordingly, “[u]nder *Austin*, a defendant can appeal a denial of a PCR application after the statute of limitations has expired if the defendant either requested and was denied an opportunity to seek appellate review, or did not knowingly and intelligently waive the right to appeal.” *Odom v. State*, 337 S.C. 256, 260, 263, 523 S.E.2d 753, 755, 756 (1999) (“The one-year statute of limitations for PCR applications is not applicable to appeals filed pursuant to *Austin v. State*”); see also *Whitehead v. State*, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002) (“We have held that the PCR statute of limitations found in S.C. Code Ann. § 17-27-45(A) (Supp.2001) does not apply to *Austin* claims”). In *Aice*, which was submitted in conjunction with *Austin*, the Court further explained that “[t]his Court is not empowered to expand its jurisdiction and grant *Austin* additional time to petition for review. Hence, merely as a method of enforcing Rule 50(6), and of enforcing *Austin*’s entitlement to a PCR proceeding, complete with a petition for *certiorari* to this Court, we held that *Austin* could attack his PCR counsel as ineffective.” *Aice*, 305 S.C. at 452, 409 S.E.2d at 395 (emphasis in original).

2. *Petitioner’s claim is not cognizable in federal habeas corpus.*

Furthermore, Petitioner’s one claim before this Court is that his state PCR attorney was ineffective and the remedy he seeks is appellate review of the Order of Dismissal. Obviously, this is not a cognizable claim in federal habeas corpus, since § 2254(i) specifically states that “[t]he ineffectiveness ... of counsel during ... State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.” See also *Mackall v. Angelone*, 131 F.3d 442, 449 (4th Cir. 1997) (en banc); *Longworth v. Ozmint*, 377 F.3d 437, 448 n. 2 (4th Cir. 2004). However, Petitioner has the *Austin* remedy available to him in state court.

3. *The Court could stay and abey the case.*

Respondent submits that this Court does not need to address the question of whether Petitioner will be able to overcome the procedural default in this case. Rather, the Court could stay and abey the case, even though he does not now present a cognizable claim, because he has a state court remedy available that may allow him to perfect a claim upon which he may or may not ultimately prevail.

In *Rose v. Lundy*, 455 U.S. 509, 510, 102 S.Ct. 1198, 1199 (1982), the Supreme Court held that “a district court must dismiss such ‘mixed petitions,’ ” and that the petitioner is left “with the choice of returning to state court to exhaust his claims or of amending or resubmitting the habeas petition to present only exhausted claims to the district court.” The Court explained that:

A rigorously enforced total exhaustion rule will encourage state prisoners to seek full relief first from the state courts, thus giving those courts the first opportunity to review all claims of constitutional error. As the number of prisoners who exhaust all of their federal claims increases, state courts may become increasingly familiar with and hospitable toward federal constitutional issues. See *Braden v. 30th Judicial Circuit Court of Kentucky*, *supra*, 410 U.S. at 490, 93 S.Ct. at 1127. Equally as important, federal claims that have been fully exhausted in state courts will more often be accompanied by a complete factual record to aid the federal courts in their review. Cf. 28 U.S.C. § 2254(d) (requiring a federal court reviewing a habeas petition to presume as correct factual findings made by a state court).

Rose v. Lundy, 455 U.S. at 518-19, 102 S.Ct. at 1203-04.

The Court subsequently changed this hard and fast rule in *Rhines v. Weber*, 544 U.S. 269, 125 S.Ct. 1528 (2005). In *Rhines*, the Court began by observing that “[w]hen we decided *Lundy*, there was no statute of limitations on the filing of federal habeas corpus petitions. As a result, petitioners who returned to state court to exhaust their previously unexhausted claims could come back to federal court to present their perfected petitions with relative ease.” *Rhines*, 544

U.S. at 274, 125 S.Ct. at 1533. However, the Court found that the 1996 enactment of AEDPA, complete with both a total exhaustion requirement and a one-year statute of limitations, “dramatically altered the landscape for federal habeas corpus petitions.” *Id.*

The Court explained that:

As a result of the interplay between AEDPA's 1-year statute of limitations and *Lundy's* dismissal requirement, petitioners who come to federal court with “mixed” petitions run the risk of forever losing their opportunity for any federal review of their unexhausted claims. If a petitioner files a timely but mixed petition in federal district court, and the district court dismisses it under *Lundy* after the limitations period has expired, this will likely mean the termination of any federal review. For example, if the District Court in this case had dismissed the petition because it contained unexhausted claims, AEDPA's 1-year statute of limitations would have barred Rhines from returning to federal court after exhausting the previously unexhausted claims in state court. Similarly, if a district court dismisses a mixed petition close to the end of the 1-year period, the petitioner's chances of exhausting his claims in state court and refiling his petition in federal court before the limitations period runs are slim. The problem is not limited to petitioners who file close to the AEDPA deadline. Even a petitioner who files early will have no way of controlling when the district court will resolve the question of exhaustion. Thus, whether a petitioner ever receives federal review of his claims may turn on which district court happens to hear his case.

Rhines, 544 U.S. at 275, 125 S.Ct. at 1533-34.

The Court “recognize[d] the gravity of this problem and the difficulty it has posed for petitioners and federal district courts alike.” *Id.* at 275, 125 S.Ct. at 1534. To solve the problem, it altered the rule that it had established in *Lundy*. Because too frequent use of stay and abeyance has the potential to undermine AEDPA's purposes of “of encouraging finality by allowing a petitioner to delay the resolution of the federal proceedings” and “of streamlining federal habeas proceedings” since it would decreas[e] a petitioner's incentive to exhaust all his claims in state court prior to filing his federal petition,” the Court emphasized that “stay and abeyance should be available only in limited circumstances.” *Rhines, Id.* 269, 277, 125 S.Ct. 1528, 1534-35.

The Court then that to obtain a stay, a petitioner must show (1) good cause for his failure to exhaust his state court claim[s], (2) that his unexhausted claim[s] is [are] potentially meritorious, and (3) that there is no indication that he “engaged in intentionally dilatory litigation tactics.” *Rhines*, 544 U.S. at 277-78, 125 S.Ct. at 1535.

Even where stay and abeyance is appropriate, the district court's discretion in structuring the stay is limited by the timeliness concerns reflected in AEDPA. A mixed petition should not be stayed indefinitely. Though, generally, a prisoner's “principal interest ... is in obtaining speedy federal relief on his claims,” *Lundy, supra*, at 520, 102 S.Ct. 1198 (plurality opinion), not all petitioners have an incentive to obtain federal relief as quickly as possible. In particular, capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of the sentence of death. Without time limits, petitioners could frustrate AEDPA's goal of finality by dragging out indefinitely their federal habeas review. Thus, district courts should place reasonable time limits on a petitioner's trip to state court and back. See, e.g., *Zarvela*, 254 F.3d, at 381 (“[District courts] should explicitly condition the stay on the prisoner's pursuing state court remedies within a brief interval, normally 30 days, after the stay is entered and returning to federal court within a similarly brief interval, normally 30 days after state court exhaustion is completed”).

Rhines, 544 U.S. at 277-78, 125 S.Ct. at 1535.

The procedural posture of this case is very different from most cases where habeas petitioners seek a stay under *Rhines*, for the previously explained reasons. However, Respondent concedes that he can satisfy the “good cause” and “potentially meritorious” requirements of *Rhines*, since the state courts will provide an avenue for him to obtain appellate review of the Order of Dismissal. Also, because that is the only claim currently in his Petition, a stay would permit him to perfect another claim that is cognizable in habeas corpus, as opposed to the claim now before the Court, because the PCR judge ruled on his claim that that counsel was ineffective for failing to enforce a plea agreement based on detrimental reliance. See *Order of Dismissal*, pp. 10-12. Further, even though Petitioner has filed a number of frivolous motions in state court,

Respondent does not claim that he has “engaged in intentionally dilatory litigation tactics,” since his various *pro se* filings have resulted from his efforts to obtain appellate review of the Order of Dismissal. *Rhines*, 544 U.S. at 278, 125 S.Ct. at 1535. Therefore, the Court may find that a stay under *Rhines* is appropriate.

V.

Each and every allegation contained within the Petition not previously admitted, qualified or explained is hereby denied.

CONCLUSION

WHEREFORE, having made Return, Respondent requests that the Court either (1) dismiss the case because it is barred by the limitations period in § 2244(d)(1) or because it fails to state a claim that is cognizable in federal habeas corpus; or, in the alternative, (2) stay and abey the case under *Rhines*.

Respectfully submitted,

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petitioner was represented by Steven S. McKenzie at trial (app. 20). The jury found the petitioner and his brothers guilty of the indicted offenses. Judge King sentenced the petitioner and Maceo Edwards to life imprisonment for each murder and to a concurrent five year sentence for possession of a weapon during a violent crime (app. 19). He sentenced Jonais Edwards to fifteen years, suspended to seven years imprisonment and five years probation (app. 18).

Underlying Case Facts

The following facts were proffered by the Assistant Solicitor and agreed to by the petitioner at his guilty plea hearing on January 30, 2012 (see doc. 17-12).² On June 19, 2002, the petitioner and Jimmy Robinson ("Robinson") were outside the home of Joe Woods ("Woods"), in the Greeleyville area of Williamsburg County, South Carolina. Two eyewitnesses were coming down the road in front of Woods' home and saw Robinson running away from the petitioner and saw the petitioner shoot Robinson at least twice—once in the shoulder and once in the head, resulting in fatal injuries. When police came to investigate the murder of Robinson, they found Woods' body inside his home; Woods had a single gunshot wound to the forehead. It was determined that the petitioner had also fatally shot Woods (doc. 17-12 at 12-13).

At some point prior to petitioner shooting Robinson, Robinson had stabbed the petitioner twice in the chest area. After the shooting, Jonais Edwards drove Maceo Edwards and the petitioner to Rock Hill. One of the witnesses at trial testified that both Jonais and Maceo were aware that the petitioner had shot and killed Woods and Robinson when they went to Rock Hill. The three brothers checked into a motel in Rock Hill and then went to Piedmont Medical Center. All three of them gave statements to hospital personnel,

² As discussed more fully below, on August 31, 2009, petitioner and his brothers were granted a new trial by the Supreme Court of South Carolina. Thereafter, petitioner entered a plea of guilty to two counts of voluntary manslaughter.

as well as the Rock Hill Police Department, stating that the petitioner had been stabbed by an unknown assailant on Two Notch Road in Columbia, South Carolina (doc. 17-12 at 13-14).

The petitioner provided a false surname to the authorities, and his brothers told security personnel at the hospital that they did not know who the petitioner was. They just happened to be in Columbia and happened to have seen the stabbing, and they brought him to the hospital. They went to Rock Hill because they were afraid that the people who had stabbed the petitioner were going to come after him (doc. 17-12 at 14). Apparently suspicious of the story, hospital security officers traced the license tag on the vehicle, and it was determined that the three men were wanted in connection with a double homicide in Williamsburg County. The petitioner and his brothers were arrested at the hospital (doc. 17-12 at 14).

At the hearing, the petitioner agreed that the facts recited by the Assistant Solicitor were “[s]ubstantially correct” (doc. 17-12 at 15), and his brothers agreed with that assessment (*id.*).

Direct Appeal

The petitioner’s trial counsel, Mr. McKenzie, timely filed a notice of appeal on behalf of the petitioner and represented the petitioner on direct appeal.³ The petitioner filed his counseled final brief on February 12, 2007, raising the following issues:

- I. The trial court committed legal error when it quashed the first jury panel. The trial court’s handling of the *Batson* hearing in effect placed the burden on the appellants to prove the absence of purposeful discrimination even after the appellants’ articulated race-neutral reasons for their strikes.
- II. The Trial Court violated the SIXTH AND THE FOURTEENTH AMENDMENTS TO THE U.S. CONST. AND ARTICLE 1, SECTION 14 OF THE SOUTH CAROLINA

³ Mr. McKenzie represented all three brothers on direct appeal. This report will refer to petitioner’s case and will only mention the brothers as necessary.

CONSTITUTION by not dismissing the case against the appellants because of the State's failure to provide a speedy trial to the Appellants.

III. The Trial Court erroneously held that South Carolina Rules of Criminal Procedure Rule 3(c) [does] not require the State (respondent) to act on a warrant even though the State (respondent) gave no explanation as to why it waited over eight hundred days to indict the appellants.

(Doc. 17-2). The State filed its final brief on February 15, 2007 (doc. 17-3). After oral argument, the South Carolina Court of Appeals filed a published opinion on June 21, 2007, affirming the petitioner's convictions and sentences (doc. 17-4). *See State v. Edwards*, 649 S.E.2d 112 (S.C. Ct. App. 2007), *rev'd*, 682 S.E.2d 820 (S.C. 2009). The petitioner filed a petition for rehearing on May 18, 2007 (doc. 17-5). On July 3, 2007, the Court of Appeals filed an order directing the State to file a return addressing the petition for rehearing. The State complied on July 12, 2007 (doc. 17-6), and the Court of Appeals filed an order denying the petition for rehearing on August 27, 2007 (doc. 17-7).

On October 15, 2007, the petitioner, again represented by Mr. McKenzie, filed a petition for a writ of certiorari that presented one issue to the Supreme Court of South Carolina:

Did the Court of Appeals commit error when it concluded the trial court did not violate the Constitutionally mandated procedures as set forth in *Batson v. Kentucky*, 476 U.S. 79, 86 (1986)?

(Doc. 17-8 at 2). The State filed its return to the petition for writ of certiorari on November 15, 2007 (doc. 17-9).

On July 10, 2008, the Supreme Court of South Carolina filed an order granting certiorari.⁴ The petitioner filed a brief on October 25, 2008, the State filed its brief in response on January 14, 2009, and on August 31, 2009, the Supreme Court filed an

⁴ The order does not appear in the record before the court.

opinion reversing the Court of Appeals' decision and granting the petitioner and his brothers a new trial on the grounds that the petitioner's proffered reasons for striking prospective jurors were sufficiently race-neutral to survive the State's *Batson* challenge. (doc. 17-11).

Guilty Plea

On January 30, 2012, the petitioner, represented by Michael S. O'Neal and Steven S. McKenzie, appeared before the Honorable J. Mark Hayes, II, and pleaded guilty to two counts of voluntary manslaughter (doc. 17-12). On January 31, 2012, after hearing testimony from members of the victims' families and from the petitioner's family, reviewing crime scene photographs, and hearing from the petitioner, Judge Hayes sentenced the petitioner to two concurrent sentences of 30 years imprisonment, with credit from June 20, 2002 (doc 17-12 at 53). The petitioner did not appeal his convictions or sentences.

PCR

On July 16, 2012, the petitioner filed a *pro se* application for post-conviction relief ("PCR") (2012-CP-45-0369), which raised the following claims:

1. Ineffective assistance of counsel
 - a. counsel failed to object and move the court to enforce the oral agreement based on the detrimental reliance exception, thus rendering Applicant's plea involuntary.
2. Involuntary guilty plea
3. Due process violation.

(Doc. 17-13 at 3). The State filed its return on November 27, 2012 (doc. 17-14). On March 21, 2013, an evidentiary hearing was held before the Honorable W. Jeffrey Young. The petitioner was present at the hearing and represented by James D. Dotson, and the State was represented by Assistant Attorney General Megan E. Harrigan. The petitioner testified on his own behalf at the hearing and presented testimony from his parents, Johnnie Mae Edwards and Maceo Edwards, Jr., who had been present at the pre-plea discussions with

counsel (doc. 17-15 at 4-5). The petitioner also presented testimony from his co-defendant brothers (doc. 17-15 at 5-6). The State presented testimony from the petitioner's plea counsel, Mr. McKenzie and Mr. O'Neal (see doc. 17-15 at 7-10).

In an order filed on April 18, 2013, Judge Young denied the petitioner's claims and dismissed the application with prejudice (doc. 17-15). Judge Young specifically found counsel's testimony to be more credible than the testimony of petitioner's family members (doc. 17-15 at 10). Judge Young's order of dismissal also addressed the petitioner's claim that counsel were ineffective for failing to enforce a plea agreement based on detrimental reliance and held this claim to be "without merit" (doc. 17-15 at 10-12). The State served a copy of the order of dismissal on the petitioner's counsel of record, Mr. Dotson, on April 23, 2013.

Pro Se Rule 59 Motion

On May 8, 2013, the petitioner, proceeding *pro se*, filed a "Motion to Amend and to Make Specific Findings of Fact and Conclusions of Law Pursuant to Rule 59 and SC Code of Law § 17-27-80" ("Rule 59 motion") (doc. 17-16 at 2). The State filed a return to the petitioner's Rule 59 motion on June 21, 2013, which appears to have been served only on petitioner's PCR counsel, Mr. Dotson (doc. 17-17 at 5). In its return, the State argued that petitioner's Rule 59 motion was not timely filed; the State also addressed the merits of the Rule 59 motion, arguing that Judge Young's order contained the requisite findings of fact and conclusions of law as required by S.C. Code § 17-27-80 (doc. 17-17 at 3).

In an order signed on June 23, 2013, and filed on July 1, 2013,⁵ Judge Young denied the petitioner's *pro se* Rule 59 motion on the grounds that it was untimely (doc. 17-18). The order stated that "if the Petitioner desires to secure appellate review of this Order

⁵ See <http://publicindex.sccourts.org/Williamsburg/PublicIndex/PISearch>, enter case number 2012CP4500369.

and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order” and directed the petitioner to Rules 203, 206, and 243, SCACR (doc. 17-18 at 4-5). The certificate of service shows that the State served this order on the petitioner’s PCR counsel, Mr. Dotson, on August 26, 2013 (doc. 17-19 at 11). The petitioner did not timely serve a notice of appeal.

On October 28, 2014, the petitioner filed a “Motion Requesting Status of 59(e)” with the Clerk of Court in Williamsburg County and sent a copy to the Attorney General’s Office (doc. 17-19 at 5-8). In this pleading, the petitioner requested a status report on his *pro se* Rule 59 motion, and argued (1) it had not been filed late, but had been filed as soon as he had returned to prison, and (2) while it may have been filed before the court entered its order denying relief on the PCR application, petitioner filed his Rule 59(e) motion to address certain key issues that had been omitted by his attorney, Mr. Dotson, at the hearing (doc. 17-19 at 5-6). On November 6, 2014, the petitioner served the State with a *pro se* notice of intent to appeal, and on November 10, 2014, petitioner filed the notice of intent to appeal with the Williamsburg County Clerk of Court. He did not file the notice of intent to appeal with the Supreme Court of South Carolina.

Pro Se Rule 60(b) Motion

On February 9, 2015, the petitioner filed a “Motion for Relief from Judgment pursuant to SCRCP, Rule 60(b)” (“Rule 60(b) motion”) with the Clerk of Court in Williamsburg County and sent a copy to the Attorney General’s Office (doc. 17-20). In his Rule 60(b) motion, the petitioner alleged that his PCR counsel, Mr. Dotson, “never informed him of the results of the PCR hearing,” so that he could appeal that order (doc. 17-20 at 3). Mr. Dotson still represented the petitioner in connection with the 2012 PCR,

and the State served Mr. Dotson with a copy of that motion.⁶ The State did not file a response to the *pro se* Rule 60(b) motion because the petitioner was represented by counsel, and no order has been entered on the motion.

Richland County Habeas Corpus Petitions

On August 2, 2015, the petitioner filed an application for habeas corpus relief with the Richland County Clerk of Court to challenge his Williamsburg County convictions (doc. 17-22). In his petition, he asserted:

(1) For beginners, petitioner first contends that the PCR Act, under the circumstances of this case was "inadequate or unavailable" where otherwise, the statute commands it to be "broadly inclusive" to be both adequate and available to test the legality of a petitioner's detention. . . . Comes now, Petitioner Edwards still attempting to exhaust his State Court remedies, "however, PCR has become [ineffective and/or inadequate to test the legality of his detention. The recorded exhibits within the PCR case (i.e. 2012-cp-45-0369) will clearly demonstrate (1) counsel's abandonment at a critical stage of the proceedings; (2), and incompetence by failing to "object or move to withdraw the plea", once the state reneged on the "oral agreement"

(2) As a result of the "breached plea deal" that was obtained after the Petitioner had sat in County Jail almost thirty (30) months after the Supreme Court remanded the case[,] Petitioner's attorney, Mr. Steven McKenzie, of 2 North Brooks Street, in Manning, S.C. assured Petitioner the State's offer was "two (2) to thirty (30) years for voluntary manslaughter, and further advised Applicant that if he pled guilty he would be looking at the middle range of fifteen (15) years". And such was obviously based on the circumstances surrounding the case.

⁶ The State asserts (doc. 17 at 7, n.5) that even though the Rule 60(b) motion was prepared by the petitioner, the State's service of the April 18, 2013, order on counsel was appropriate pursuant to Rule 4.2 of the Rules of Professional Conduct, Rule 407, SCACR, ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order"). See also Comment [3] to Rule 4.2 ("The Rule applies even though to represented person initiates or consents to the communication").

Petitioner took counsel's advice and entered the plea deal and the judge ultimately sentenced Applicant to the maximum term of 30 years. Whereas, "the State brokered the deal on the promise it would not recommend the "higher sentencing range" but, during re-sentencing, the State did exactly what it promised not to do. And such was the basis of the PCR application.

[3.] [PCR counsel did not timely perfect an appeal from the PCR court's adverse ruling, even though counsel was aware that Petitioner wanted to take an appeal].

Petitioner . . . request[s] that this Court grant Habeas corpus relief with instructions to remand the case back to the PCR Court, in order to reinstate the Petitioner's appeal right from the adverse PCR ruling.

(Doc. 17-21 at 3, 9-14). The State asserts that it did not file a response to the *pro se* habeas petition because petitioner was represented by counsel. No order has been entered on the petition.

On August 30, 2016, petitioner filed a second application for habeas corpus relief with the Richland County Clerk of Court (doc. 17-22). In this pleading, he moved "for judgment by default because the State has totally failed to answer the habeas corpus petition as commanded by Constitutional law. For these reasons, the petitioner respectfully prays for the relief sought, and any further relief deemed just and proper by this Honorable Court" (doc. 17-22 at 5). The State did not file a response to this *pro se* petition, and no order has been entered on the petition.

FEDERAL PETITION

On June 14, 2017, petitioner filed his *pro se* Section 2254 petition in this court.⁷ On November 2, 2017, the respondent filed a motion for summary judgment (doc. 18) and a return and memorandum (doc. 17). By order filed on November 3, 2017,

⁷ See *Houston v. Lack*, 487 U.S. 266, 270 (1988) (a state prisoner's *pro se* petition for habeas corpus relief is deemed "filed" at the moment of delivery to prison authorities for forwarding to the district court).

pursuant to *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 1975), petitioner was advised of the summary judgment procedure and the possible consequences if he failed to adequately respond to the motion (doc. 19). On December 1, 2017, petitioner filed his response in opposition to the motion for summary judgment (doc. 25).

In his federal habeas corpus petition, petitioner claims that his PCR counsel, Mr. Dotson, was ineffective for failing to file a Rule 59(e) motion and failing to appeal the PCR action in his case:

Ground One: Ineffective Assistance of Counsel in violation of Petitioner's Sixth Amendment rights (doc. 1 at 5).

Supporting Facts: Petitioner . . . was "denied opportunity to appeal his Post-Conviction Relief hearing in State court." Based on ineffective assistance of counsel (i.e. Mr. James D. Dotson) that during such time counsel should have a filed a 59(e) and appeal (doc. 1 at 16).

....

The evidentiary hearing was held, where Petitioner at this time was represented by James D. Dotson. Where Petitioner argued to his attorney to file a 59(e), because the court failed to make specific findings of fact and conclusions of law with regard to the concerned issues (doc. 1 at 21).

Unbeknownst to Petitioner during such time, Mr. Dotson was undergoing his own troubles with the South Carolina Supreme Court, in an ongoing investigation of his person, professionally, for misconduct. Needless to say, Mr. Dotson received an unfavorable ruling by the High Court, and was suspended from practicing law (doc. 1 at 22).

The State replied to Petitioner's pro-se 59(e) alleging it was untimely. When in fact, "it was premature to the final ruling (April 1, 2013)," when such ruling was not mailed until April 23, 2013. The reference of any May 8, 2013 59(e), was not a product generated by Petitioner, it was a motion filed by Mr. Dotson, finally after repeated request to do the 59(e) prior to the expiration of the 10 days (doc. 1 at 22).

As was mentioned above, "it was unknown to Petitioner during those times about Mr. Dotson's trouble with the Court, but such remains a legitimate conclusion why Mr. Dotson

never communicated effectively concerning the timely filing of the 59(e)" (doc. 1 at 22).

PREJUDICIAL RESULTS OF THE FAILURE TO FILE 59(e).

Under South Carolina Rules, the 59(e) serves essentially the same function as the "contemporaneous objection rule", when appealing a final decision from the PCR Court. Because Mr. Dotson failed to timely file the 59(e), Petitioner was prevented from raising the strict or detrimental reliance of the plea agreement rule on appeal. In *Aice v. State*, 409 S.E.2d at 395, explains that "every PCR applicant is entitled to a full adjudication on the merits of the PCR application, or 'on[e] bite at the apple', which includes the right to appeal the denial of the PCR, and the right to assistance of counsel in that appeal (doc. 1 at 22-23).

Because Petitioner was deprived of "his one bite", he is respectfully requesting this court to intervene, as he has continually attempted to obtain relief in state court. Until just recently, the State Court forwarded Petitioner a Federal Habeas Relief Application.

For these reasons, Petitioner humbly request[s] that relief is granted, by remanding this cause to state court recommending that Petitioner is given the right to file his 59(e) and subsequent appeal to the highest state court, or for any further relief deemed just and proper, "based on being actually innocent."

(Doc. 1 at 22).

APPLICABLE LAW AND ANALYSIS

Summary Judgment Standard

Federal Rule of Civil Procedure 56 states, as to a party who has moved for summary judgment: "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). As to the first of these determinations, a fact is deemed "material" if proof of its existence or nonexistence would affect the disposition of the case under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue of material fact is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. *Id.* at 257. In determining

whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the district court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings; rather, he must demonstrate that specific, material facts exist that give rise to a genuine issue. *Id.* at 324. Under this standard, the existence of a mere scintilla of evidence in support of the plaintiff's position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 252. Likewise, conclusory allegations or denials, without more, are insufficient to preclude the granting of the summary judgment motion. *Id.* at 248. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Id.*

Exhaustion

Before seeking habeas corpus relief, the petitioner first must exhaust his state court remedies. 28 U.S.C. § 2254(b)(1)(A). In South Carolina, a person in custody has two primary means of attacking the validity of his conviction: (1) through a direct appeal, or (2) by filing an application for PCR. State law requires that all grounds be stated in the direct appeal or PCR application. Rule 203, SCACR; S.C. Code Ann. §§ 17-27-10–90; *Blakely v. Rabon*, 221 S.E.2d 767, 770 (S.C.1976). If the PCR court fails to address a claim as is required by South Carolina Code § 17-27-80, counsel for the applicant must make a motion to alter or amend the judgment pursuant to Rule 59(e),

SCRCP to preserve the issue for appellate review. *Marlar v. State*, 653 S.E.2d 266, 267 (S.C. 2007).⁸

The South Carolina Supreme Court has held that the presentation of claims to the state court of appeals without more is sufficient to exhaust state remedies for federal habeas corpus review. *State v. McKennedy*, 559 S.E.2d 850 (S.C. 2002); see also *In re State Remedies in Criminal and Post-Conviction Relief Cases*, 471 S.E.2d 454 (S.C. 1990). In *McKennedy*, the South Carolina Supreme Court specifically held that *In re Exhaustion* had placed discretionary review by the South Carolina Supreme Court “outside of South Carolina’s ordinary appellate review procedure pursuant to *O’Sullivan [v. Boerckel]*, 526 U.S. 838 (1999).” 559 S.E.2d at 854. Accordingly, a claim would not be procedurally barred from review in this court for failure to pursue review in the South Carolina Supreme Court after an adverse decision in the South Carolina Court of Appeals, either after a direct appeal or after pursuing relief in a PCR petition.

A habeas petitioner must first present his claim to the court in a manner in which it may be reviewed on the merits. *Harris v. Reed*, 489 U.S. 255, 262 (1989); *Coleman v. Thompson*, 501 U.S. 722, 735 (1991). It is well settled in South Carolina that “[i]ssues not raised and ruled upon in the trial court will not be considered on appeal.” *State v. Dunbar*, 587 S.E.2d 691, 693-94 (S.C. 2003). Moreover, it is not enough that the argument presented stems from the same factual scenario; rather, the legal argument must be the same as the argument presented below. See, e.g., *State v. Haselden*, 577 S.E.2d 445, 448 (S.C. 2003) (finding differing ground for objection did not preserve issue presented for review: defendant’s objection on relevancy did not preserve argument the evidence was improper character evidence); *State v. Caldwell*, 662 S.E.2d 474, 482 (S.C.

⁸ In *Bostick v. Stevenson*, 589 F.3d 160, 162-65 (4th Cir. 2009), the Fourth Circuit found that, prior to the Supreme Court of South Carolina’s November 5, 2007, decision in *Marlar*, South Carolina courts had not been uniformly and strictly enforcing the failure to file a motion pursuant to Rule 59(e), SCRCP, as a procedural bar. Accordingly, for matters in which there was a PCR ruling prior to November 5, 2007, the court will not consider any failure to raise issues pursuant to Rule 59(e) to effect a procedural bar.

Ct. App. 2008) ("Because the argument raised on appeal does not appear to have been specifically raised below, it may not be preserved on appeal.").

Procedural Bar

Procedural bypass, sometimes referred to as procedural bar or procedural default, is the doctrine applied when a petitioner who seeks habeas corpus relief on an issue after he failed to raise that issue at the appropriate time in state court and has no further means of bringing that issue before the state courts. In such a situation, the person has bypassed his state remedies and, as such, is procedurally barred from raising the issue in his federal habeas petition. Procedural bypass of a constitutional claim in earlier state proceedings forecloses consideration by the federal courts. See *Smith v. Murray*, 477 U.S. 527, 533 (1986). Bypass can occur at any level of the state proceedings if the state has procedural rules that bar its courts from considering claims not raised in a timely fashion.

If a prisoner has failed to file a direct appeal or a PCR and the deadlines for filing have passed, he is barred from proceeding in state court. If the state courts have applied a procedural bar to a claim because of an earlier default in the state courts, the federal court honors that bar. As the Supreme Court has explained:

[State procedural rules promote] not only the accuracy and efficiency of judicial decisions, but also the finality of those decisions, by forcing the defendant to litigate all of his claims together, as quickly after trial as the docket will allow, and while the attention of the appellate court is focused on his case.

Reed v. Ross, 468 U.S. 1, 10-11 (1984). "[A] federal court ordinarily may not consider claims that a petitioner failed to raise at the time and in the manner required under state law unless 'the prisoner demonstrates cause for the default and prejudice from the asserted error.'" *Teleguz v. Pearson*, 689 F.3d 322, 327 (4th Cir. 2012) (quoting *House v. Bell*, 547 U.S. 518, 536 (2006)). To show cause, a petitioner must "show that some objective factor external to the defense impeded counsel's efforts to comply with the State's procedural rule," *Murray v. Carrier*, 477 U.S. 478, 488 (1986), or that "the factual

or legal basis for the claim was not reasonably available to the claimant at the time of the state proceeding.” *Roach v. Angelone*, 176 F.3d 210, 222 (4th Cir. 1999). “Alternatively, Petitioner may prove that failure to consider the claims will result in a fundamental miscarriage of justice.” *McCarver v. Lee*, 221 F.3d 583, 588 (4th Cir. 2000) (citing *Coleman*, 501 U.S. at 750). A fundamental miscarriage of justice equates to the conviction of someone who is actually innocent. However, “actual innocence” requires “factual innocence, not mere legal insufficiency.” *Bousley v. United States*, 523 U.S. 614, 623 (1998).

Austin Appeal

The State argues (doc. 17 at 14-31) that the petition should be dismissed as untimely under the one-year statute of limitations provided in the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). See 28 U.S.C. § 2244(d)(1). However, the State also concedes that the petitioner may be entitled to a belated state court appeal pursuant to *Austin v. State*, 409 S.E.2d 395 (S.C. 1991):

[T]he present case presents a rather unusual anomaly: the claim on which Petitioner seeks relief is not cognizable in federal habeas corpus, but he does have a state court remedy available for it: i.e., appellate review of the PCR court’s adverse ruling pursuant to *Austin*, which is based upon the ineffective assistance of his PCR counsel in failing to perfect an appeal of the Order of Dismissal. Also, if successful in state court, he could perfect a claim that is cognizable in habeas or perhaps receive a new trial.

(Doc. 17 at 32). The petitioner argues that he wanted his attorney, Mr. Dotson, to appeal the PCR court’s adverse decision, but he was not informed of the court’s decision by Mr. Dotson. Under *Austin*, the petitioner may obtain a grant of appellate review of the PCR order based upon ineffective assistance of collateral counsel. Thus, in the alternative to dismissal based upon the untimeliness of the petition, the State argues that the court should either dismiss this action for failure to state a cognizable claim or stay and abey this action because the petitioner has a potential state court remedy available pursuant to an *Austin* appeal (doc. 17 at 32-39). The petitioner states in his response to the

motion for summary judgment that he agrees with a stay of this action while he pursues his state court remedy (doc. 25 at 7). For the reasons set forth below, the undersigned recommends that the district court stay this action based upon this alternative ground.

In the present case, the petitioner did not timely pursue his direct appeal remedies from his guilty pleas and sentences, and the time to serve a notice of appeal from those pleas has expired. See generally Rule 203(b)(2), SCACR. Consequently, the petitioner does not have any direct appeal remedies available. See *State v. Lawrence*, 223 S.E.2d 856, 858 (S.C. 1976) (per curiam) (“[W]e have no jurisdiction over . . . an appeal in the absence of notice of appeal having been given and timely served”); *White v. State*, 208 S.E.2d 35, 39 (S.C. 1974) (“[I]t is well settled that in the absence of a notice of appeal having been given and timely served this Court has no jurisdiction over such an appeal”).

The petitioner timely filed his PCR action as a matter of right, but he failed to exhaust this remedy because he has never presented his claim to the South Carolina Supreme Court on certiorari. See *Gibson v. State*, 495 S.E.2d 426, 428 (S.C. 1998) (exhaustion of state PCR remedies requires “filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review.”); but see *Terry v. Byars*, C.A. No. 4:12-1798-SB-TER, 2012 WL 6102938, at *6 (D.S.C. 2012) (“The State of South Carolina allows a second or subsequent application in limited circumstances. . . . [A]lthough successive PCR cases are disfavored by courts of the State of South Carolina, they are not absolutely precluded”); *Williams v. Ozmint*, 671 S.E.2d 600, 602 (S.C. 2008) (“Although successive PCR applications are disfavored, they are not prohibited”).

In the present case, the petition contains one claim: he was denied appellate review of the PCR judge’s order of dismissal as the result of his PCR attorney’s ineffective assistance when he failed to file a Rule 59(e) motion and appeal. As a result, the petitioner claims that he was prevented from raising on appeal the claim that his plea

counsel was ineffective for failing to enforce a plea agreement based on detrimental reliance (doc. 1 at 22-23). In *Austin*, the Supreme Court of South Carolina reversed the summary dismissal of a second PCR application and remanded the case for an evidentiary hearing after the petitioner alleged in his second application that his first PCR counsel was ineffective for failing to seek appellate review. 409 S.E.2d at 396. The court found that the petitioner's "allegation that counsel failed to seek review in this case sufficiently states a claim of ineffective assistance [of PCR counsel]." *Id.* Therefore, the court remanded the case "for an evidentiary hearing on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review." *Id.* "Under *Austin*, a defendant can appeal a denial of a PCR application after the statute of limitations has expired if the defendant either requested and was denied an opportunity to seek appellate review, or did not knowingly and intelligently waive the right to appeal." *Odom v. State*, 523 S.E.2d 753, 755, 756 (S.C. 1999) ("The one-year statute of limitations for PCR applications is not applicable to appeals filed pursuant to *Austin v. State*"); see also *Whitehead v. State*, 574 S.E.2d 200, 202 (S.C. 2002). ("We have held that the PCR statute of limitations found in S.C. Code Ann. § 17-27-45(A) (Supp.2001) does not apply to *Austin* claims"). *Austin* was issued in conjunction with *Aice v. State*, 409 S.E.2d 392 (S.C. 1991), where the Supreme Court explained: "Austin's counsel failed to timely seek review [of a PCR order]. This Court is not empowered to expand its jurisdiction and grant Austin additional time to petition for review. Hence, merely as a method of enforcing [South Carolina Supreme Court] Rule 50(6), and of enforcing Austin's entitlement to a PCR proceeding, complete with a petition for *certiorari* to this Court, we held that Austin could attack his PCR counsel as ineffective." *Aice*, 409 S.E.2d at 395.

The State submits that the undersigned need not address the question of whether the petitioner will be able to overcome the procedural default in this case, because the court may stay and abey this case, even though the petitioner does not now

present a cognizable claim, so that the petitioner may pursue his state court remedy and exhaust his previously unexhausted claim (doc. 17 at 36). The “stay and abey” procedure originated as a means to address a mixed petition, which contained both exhausted and unexhausted claims. *Rhines v. Weber*, 544 U.S. 269, 277-78 (2005). The Supreme Court in *Rhines* explained:

As a result of the interplay between AEDPA's 1-year statute of limitations and *Lundy's*⁹ dismissal requirement, petitioners who come to federal court with “mixed” petitions run the risk of forever losing their opportunity for any federal review of their unexhausted claims. If a petitioner files a timely but mixed petition in federal district court, and the district court dismisses it under *Lundy* after the limitations period has expired, this will likely mean the termination of any federal review. For example, if the District Court in this case had dismissed the petition because it contained unexhausted claims, AEDPA's 1-year statute of limitations would have barred Rhines from returning to federal court after exhausting the previously unexhausted claims in state court. Similarly, if a district court dismisses a mixed petition close to the end of the 1-year period, the petitioner's chances of exhausting his claims in state court and refiling his petition in federal court before the limitations period runs are slim. The problem is not limited to petitioners who file close to the AEDPA deadline. Even a petitioner who files early will have no way of controlling when the district court will resolve the question of exhaustion. Thus, whether a petitioner ever receives federal review of his claims may turn on which district court happens to hear his case.

Id. at 275. One week after *Rhines* was issued, the Supreme Court, in *Pace v. DiGuglielmo*, 544 U.S. 408 (2005), suggested that the stay and abeyance procedure endorsed in *Rhines* applied to unmixed petitions. *Pace*, 544 U.S. at 416. In an unpublished opinion, the Fourth Circuit held that in *Pace*, the Supreme Court “subsequently extended the *Rhines* rationale beyond mixed § 2254 petitions.” *Hyman v. Keller*, No. 10-6652, 2011 WL 3489092, at *10 (4th Cir. Aug. 10, 2011) (per curiam).

The undersigned is mindful that *Rhines* cautioned that “stay and abeyance should be available only in limited circumstances,” but that a court should grant the stay

⁹ *Rose v. Lundy*, 455 U.S. 509 (1982).

and hold the case in abeyance “if the petitioner had good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics.” 544 U.S. at 278. The State concedes that the petitioner can satisfy the “good cause” and “potentially meritorious” requirements of *Rhines*, because the state courts will provide an avenue for him to obtain appellate review of the order of dismissal (doc. 17 at 38). Moreover, because the petitioner’s claim is the only claim advanced in his federal petition, “a stay would permit him to perfect another claim that is cognizable in habeas corpus, as opposed to the claim now before the Court, because the PCR judge ruled on his claim that counsel was ineffective for failing to enforce a plea agreement based on detrimental reliance” (*id.*) (citing order of dismissal [doc. 17-15] at 10-12). In addition, the State specifically “does not claim that [the petitioner] has ‘engaged in intentionally dilatory litigation tactics,’ since his various *pro se* filings have resulted from his efforts to obtain appellate review of the Order of Dismissal” (*id.* at 38-39) (citing *Rhines*, 544 U.S. at 278). Accordingly, the undersigned recommends that this case be stayed so that the petitioner may pursue a belated appeal pursuant to *Austin*.

CONCLUSION AND RECOMMENDATION

Wherefore, based upon the foregoing, it is recommended that the respondent’s motion for summary judgment (doc. 18) be denied and that this case be stayed while the petitioner pursues his state court remedy.

IT IS SO RECOMMENDED.

s/ Kevin F. McDonald
United States Magistrate Judge

April 16, 2018
Greenville, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Jason Sinatra Edwards,	)	C/A No.: 6:17-cv-1570 DCN
	)	
Petitioner,	)	<u>ORDER</u>
	)	
vs.	)	
	)	
Warden Dennis Bush,	)	
	)	
Respondent.	)	
	)	

The above referenced case is before this court upon the magistrate judge's recommendation that respondent's motion for summary judgment be denied and that this case be stayed while petitioner pursues his state court remedy.

This court is charged with conducting a de novo review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. Thomas v Arn, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).¹ **No objections**

¹In Wright v. Collins, 766 F.2d 841 (4th Cir. 1985), the court held "that a pro se litigant must receive fair notification of the consequences of failure to object to a magistrate judge's report before such a procedural default will result in waiver of the right to appeal. The notice must be 'sufficiently understandable to one in appellant's circumstances fairly to appraise him of what is required.'" Id. at 846. Plaintiff was advised in a clear manner that his objections had to be filed within ten (10) days, and he received notice of the consequences at the appellate

have been filed to the magistrate judge's report and recommendation.

A de novo review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's report and recommendation is **AFFIRMED**; respondent's motion for summary judgment is **DENIED**, and this case is **STAYED** while petitioner pursues his state court remedy.

AND IT IS SO ORDERED.



David C. Norton
United States District Judge

May 14, 2018
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.

level of his failure to object to the magistrate judge's report.

STATE OF SOUTH CAROLINA)
WILLIAMSBURG COUNTY)

2018-CP-45-00267
COURT OF COMMON PLEAS

Jason Sinatra Edwards,

Petitioner,

Vs.

State of South Carolina,

Respondent. /

FILED

5/4/2018
Williamsburg County
Clerk of Court
Kingstree SC

APPLICATION FOR AN AUSTIN APPEAL

Comes now, the "Petitioner" in the above captioned matter to respectfully apply and request leave to proceed under Austin v. State, 305 S.C. 453 (1991), for the relief afforded him under the Uniform Post Conviction Act, for the State of South Carolina. See §17-27-45(A).

BACKGROUND OF THE CASE.

Here, Petitioner finds his way into this honorable court as a result of the April 18, 2018 ruling by the United States Magistrate, of the district of South Carolina, in case number 6:17-1570. In that case submitted by Petitioner, on a application for relief pursuant to 28 U.S.C. §2254. The Petitioner requested federal intervention after continuously petitioning the state for relief because of meritorious claims that was dismissed by the initial PCR court. For which he had no opportunity to appeal from the erroneous denial.

This Court has allowed successive PCR applications where the applicant

has been denied complete access to the appellate process. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple." Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). This "bite" includes an applicant's right to appeal the denial of a PCR application, and the right to assistance of counsel in that appeal. See Aice, 305 S.C. at 448, 409 S.E.2d at 392. The federal magistrate in the instant case art bar has found the qualifying criteria in its record before the court to warrant such relief. Whereas, it held its ruling in abeyance to afford the state the opportunity to correct its own errors.

THE ISSUE FOR APPELLATE REVIEW

The cognizable claim involved the failure of PCR counsel Mr. Dobson, to file a requested 59(e), and the subsequent appeal. Involving the State's breach of plea agreement during Petitioner's resentencing, which he was statutorily entitled. Under Austin, Petitioner was entitled to appellate review from the circuit court's PCR ruling. The federal magistrate agreed. And the specificity of the factual background is adequately stated therein (6:17-1570), which warrants relief in this case.

Wherefore, based on the foregone, the Petitioner respectfully request the appointment of counsel and the relief required by remanding for further proceedings consistent with the magistrate's finding in this case. And any further relief deemed just and proper by this honorable court.

Respectfully Submitted,

/s/ Jason Edwards 313642

Jason Sinatra Edwards

T.C.I TB-275
1578 Clarence Coker Hwy
Turbeville, SC 29162

(3 of 3)

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2018-CP-45-00267

Jason Edwards, #313642,

Applicant,

v.

State of South Carolina,

Respondent.

**RETURN AND CONSENT TO
AUSTIN¹RELIEF**

In response to the “Applicant for Austin Appeal” which Respondent interprets as an application for post-conviction relief filed May 4, 2018, Respondent would show this Court:

I. PROCEDURAL HISTORY

Jason Edwards (“Applicant”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. Applicant was indicted at the October 2004 term of the Williamsburg County Grand Jury for two counts of murder and possession of a weapon during a violent crime (2004-GS-45-167) that stemmed from the June 19, 2002, killings of Joe Woods and Jimmy Robinson. Steven S. McKenzie, Esquire, represented Applicant on the charges. Assistant Solicitors Ronnie Sabb and Kimberly Barr, of the Third Circuit Solicitor’s Office, prosecuted the case. His brother and co-defendant, Maceo Latonya Edwards, was similarly charged in the same indictment for both murders and the weapons charge, while the Grand Jury indicted a third brother and co-defendant, Jonas Edwards, for accessory after the fact of murder. (2004-GS-45-167). On January 30 through February 3, 2006, Applicant and his brothers proceeded to a joint jury trial before the Honorable Howard P. King and Applicant was found guilty as indicted. On February 3, 2006, Judge King

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

sentenced Applicant to life imprisonment for each count of murder and five years for possession of a weapon during a violent crime. All sentences were to be served concurrently.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the appeal. State v. Jason Sinatra Edwards, Op. No. 4261 (S.C. Ct. App. filed June 21, 2007). Counsel for the Applicant filed a timely Petition for Rehearing on June 30, 2007. The State made its Return to Petition for Rehearing on July 12, 2007. The South Carolina Court of Appeals issued an Order Denying the Petition for Rehearing on August 27, 2007. A Petition for Writ of Certiorari was filed on October 15, 2007 with the South Carolina Supreme Court. The Return to Petition for Writ of Certiorari was filed by the State on November 15, 2007. The South Carolina Supreme Court reversed the Court of Appeals' opinion and remanded for a new trial. State v. Jason Sinatra Edwards, Op. No. 26711 (S.C. Sup. Ct. filed August 31, 2009). The Remittitur was sent September 17, 2009.

On January 31, 2012, Applicant pled guilty before the Honorable J. Mark Hayes, II to two counts of voluntary manslaughter. Michael S. O'Neal, Esquire, and Steven S. McKenzie, Esquire, represented him at the plea. Judge Hayes sentenced Applicant to two concurrent sentences of thirty years' imprisonment. Applicant did not appeal his conviction or sentence.

2012-CP-45-0369

Applicant filed his first application for post-conviction relief on July 16, 2012, alleging he was being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel.
 - a. "...counsel failed to object and move the court to enforce the oral agreement based on the detrimental reliance exception, thus rendering Applicant's plea involuntary."
2. Involuntary guilty plea.
3. Due process violation.

An evidentiary hearing was convened on March 21, 2013 at the Sumter County Courthouse before the Honorable W. Jeffrey Young. Applicant was present at the hearing and represented by James D. Dotson, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan² of the South Carolina Attorney General's Office. At the evidentiary hearing, Applicant moved to orally amend his application to include new allegations; Respondent objected, citing a lack of notice and prejudice to the State if Applicant were allowed to amend during the hearing. The PCR court denied Applicant's motion to amend and Applicant proceeded forward on the allegations as specifically pled in his application. Petitioner testified on his own behalf at the hearing and he presented testimony from his parents, Johnnie Mae and Maceo Edwards, Jr., as well as his co-defendant brothers, Jonias Edwards and Maceo Edwards, III. The State presented testimony from plea counsel, Mr. McKenzie and Mr. O'Neal.

Judge Young denied the application in an Order of Dismissal signed on April 11, 2013 and filed April 18, 2013. The Order of Dismissal addressed Petitioner's claim that counsel was ineffective for failing to enforce a plea agreement based on detrimental reliance. The State served a copy of the Order of Dismissal on Petitioner's counsel of record, James D. Dotson, Esquire, on April 23, 2013.

On May 8, 2013, Applicant filed a *pro se* "Motion to Amend and to Make Specific Findings of Fact and Conclusions of Law Pursuant to Rule 59 and SC Code of law § 17-27-80." This pleading is dated April 1, 2013, which was before the Order of Dismissal was filed or served. Respondent made its return to the motion on June 21, 2013. On June 23, 2013, Judge Young signed an "Order Denying Applicant's *pro se* "Motion To Amend And Make Specific Findings of Facts And Conclusions Of Law Pursuant To Rule 59 And SC Code Of Law § 17-27-80.'" Judge Young found that the Rule 59(e), SCRPC, motion was untimely. The Certificate of

² Now Senior Assistant Deputy Attorney General Megan Harrigan Jameson.

Service shows that Respondent served this Order on Applicant's attorney, Mr. Dotson, on August 26, 2013. Although page 4 of this Order stated that "if the Petitioner desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order" and directed Applicant to Rules 203, 206, and 243, SCACR, Applicant did not timely serve a notice of appeal as required by Rule 203(a), SCACR.

Applicant did not timely serve a notice of appeal. Instead, he sent a "Motion Requesting Status of 59(e)" to the Attorney General's Office on October 28, 2014. In this pleading, he requested a status report on his *pro se* Rule 59(e), SCRCR, motion. Respondent forwarded this letter to his attorney, Mr. Dodson on October 30, 2014. On November 10, 2014, Applicant filed a *pro se* notice of intent to appeal with the Williamsburg County Clerk of Court that he had served on the State on November 6, 2014. However, he did not file this with the Supreme Court of South Carolina.

Next, Applicant filed an untimely motion pursuant to Rule 60(b)(1), SCRCR, on February 17, 2015. In his Rule 60(b) motion, Applicant alleged that his PCR counsel, Mr. Dotson, failed to inform him that the Order of Dismissal had been filed on April 18, 2013, and counsel "never informed him of the results of the PCR hearing," so that he could appeal that Order. *See* Rule 60(b)(1), SCRCR, motion p. 3. He further asserted that the Rule 59(e), SCRCR, motion should not have been untimely because the counsel filed motion within thirty days of service of the Order of Dismissal on counsel. *Contra* Rule 59(e), SCRCR. Again, Mr. Dotson still represented him in connection with the 2012 Application. Respondent served counsel with a copy of the

motion.³ Respondent did not file a response to the *pro se* motion because counsel represented him, *id.*, and no Order has been entered on the motion.

State Habeas Corpus Actions

Applicant then filed an “Application for Habeas Corpus” filed on August 21, 2015, in the Richland County Court of Common Pleas (2015-CP-40-5138) and a “Motion Requesting Habeas Relief by Judgment of Default and State’s Non Response” filed on August 30, 2016, in the Richland County Court of Common Pleas (2016-CP-40-5283). Respondent made its Return, Motion for Merger, and Motion to Dismiss Petitions for Writ of Habeas Corpus on May 3, 2018. As of the date of this filing, the actions are still pending.

Federal Habeas Corpus Action

On August 14, 2017, while the two state court habeas petitions were pending in the Richland County Court of Common Pleas, Applicant filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 (C.A. No. 6:17-cv-01570-DCN-KFM). In his Petition, Applicant set forth the following grounds for relief:

GROUND ONE: Ineffective [Assistance] of Counsel, in violation of Petitioner’s Sixth Amendment rights.

SUPPORTING FACTS: Petitioner relies upon “due process” and was “denied opportunity to appeal his Post-Conviction Relief hearing in State court”. Based on ineffective assistance of counsel, a 59(e) motion and appeal was not filed.

The evidentiary hearing was held, where Petitioner at this time was represented by James D. Dotson. Where Petitioner argued to his attorney to file a 59(e), because the

³ Even though the Rule 60(b), SCRPC, motion was prepared by Applicant, Respondent properly served counsel with the Order. See Rule 4.2 of the Rules of Professional Conduct, Rule 407, SCACR, (“In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order”). See also Comment [3] to Rule 4.2 (“The Rule applies even though to represented person initiates or consents to the communication”).

court [failed] to make specific findings of fact and conclusions of law with regard to the concerned issues.

Unbeknownst to Petitioner during such time, Mr. Dotson was undergoing his own troubles with the South Carolina Supreme Court, in an ongoing investigation of his person, professionally, for misconduct. Needless to say, Mr. Dotson received an unfavorable ruling by the High Court, and was suspended from practicing law.

The State replied to Petitioner's pro-se 59(e) alleging it was untimely. When in fact, "it was premature to the final ruling (April 1, 2013)," when such ruling was not mailed until April 23, 2013. The reference of any May 8, 2013 59(e), was not a product generated by Petitioner, it was a motion filed by Mr. Dotson, finally after repeated request to do the 59(e) prior to the expiration of the 10 days.

As was mentioned above, "it was unknown to Petitioner during those times about Mr. Dotson's trouble with the Court, but such remains a legitimate conclusion why Mr. Dotson never communicated effectively concerning the timely filing of the 59(e)".

PREJUDICIAL RESULTS OF THE FAILURE TO FILE 59(e).

Under South Carolina Rules, the 59(e) serves essentially the same function as the "contemporaneous objection rule", when appealing a final decision from the PCR Court. Because Mr. Dotson failed to timely file the 59(e), Petitioner was prevented from raising the strict or detrimental reliance of the plea agreement rule on appeal. In *Aice v. State*, 409 S.E.2d at 395, explains that "every PCR applicant is entitled to a full adjudication on the merits of the PCR application, or 'on bite at the apple', which includes the right to appeal the denial of the PCR, and the right to assistance of counsel in that appeal.

Because Petitioner was deprived of "his one bite", he is respectfully requesting this court to intervene, as he has continually attempted to obtain relief in state court. Until just recently, the State Court forwarded Petitioner a Federal Habeas Relief Application.

For these reasons, Petitioner humbly request[s] that relief is granted, by remanding this cause to state court

recommending that Petitioner is given the right to file his 59(e) and subsequent appeal to the highest state court, or for any further relief deemed just and proper, "based on being actually innocent".

Under *Martinez v. Ryan*, Attorney James D. Dotson, Esquire, abandoned Petitioner's State PCR 59(e) and subsequent appeal of meritorious Due Process Claims involving the State's breach of agreement. Petitioner was [misled] to [believe] "an action" was pending in the State Court to address these matters, only to learn after January 17, 2017. The State had either dismissed the attempt to L. regain his appeal, or failed to respond.

On November 2, 2017, Respondent filed its Return and Memorandum of Law in Support of Motion for Summary Judgment and Motion for Summary Judgement, seeking summary dismissal of Applicant's action, but acknowledging that Applicant may be entitled to a belated appellate review of his initial post-conviction relief proceeding pursuant to Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991). In his response to the motion for summary judgement, Applicant agreed to a stay of the federal habeas corpus action to allow him pursue an Austin appeal. On April 16, 2018, the Honorable Kevin F. McDonald, United States Magistrate Judge for the District of South Carolina, issued a Report and Recommendation, recommending "respondent's motion for summary judgement be denied and that the case be stayed while the petitioner pursues his state court remedy."

II. CURRENT ACTION

Applicant filed the current application for post-conviction relief on May 4, 2018. In his application, Applicant requests leave "to proceed under Austin v. State, 305 S.C. 453 (1991), for the relief afforded him under the Uniform Post Conviction Act, for the State of South Carolina. See §17-27-45(A)." Applicant alleges:

The cognizable claim involved the failure of PCR counsel Mr. Dobson, to file a requested 59(e), and the subsequent appeal. Involving the State's breach of plea agreement during Petitioner's resentencing, which he was statutorily entitled. Under Austin, Petitioner was entitled to appellate review from the circuit court's PCR ruling. The federal magistrate agreed. And the specificity of the factual background is adequately stated therein (6:17-1570), which warrants relief in this case.

Wherefore based on the forgone, the Petitioner respectfully request the appointment of counsel and the relief required by remanding for further proceedings consistent with the magistrate's finding in this case. And any further relief deemed just and proper by this honorable court.

Attached herewith and incorporated herein are the records of the Williamsburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, the guilty plea transcript, the records from Applicant's first PCR action, and his state and federal habeas corpus records. Due to the length of time between the hearing and the filing of this application, the transcript from the first PCR hearing no longer exists and will need to be reconstructed upon order of the South Carolina Supreme Court. See SCACR 607 (requiring court reporter records be kept for only five years). Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. RESPONSE TO REQUEST FOR AUSTIN REVIEW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Here, Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application.

Based on Applicant's claims, as well as the facts and circumstances of this case and Applicant's previous unsuccessful *pro se* attempts to appeal his first PCR action, Respondent

concedes Applicant is entitled to Austin relief and consents to the granting of a belated review of the denial of his first PCR action. Respondent does not request a hearing over this matter and consents to the grant of relief through written order of the Court.

IV. RESPONSE TO ANY AND ALL OTHER ALLEGATIONS

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V. CONSENT TO AUSTIN REVIEW

WHEREFORE, having made its Return, the State consents to the grant of Austin relief for a belated review of the denial of Applicant's first post-conviction relief action.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211

By: 
Attorneys for Respondent

October 2, 2018.

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS

2018-CP-45-00267

JASON EDWARDS, #313642,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC
Post Office Box 1058
Charleston, South Carolina 29402

DATED this the 2nd day of October, 2018.


Kaitlyn S. Slice, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
2) COMMON PLEAS
3 COUNTY OF WILLIAMSBURG) OF THE THIRD
4) JUDICIAL CIRCUIT
5)
6 JASON SINATRA EDWARDS,)
7)
8 Plaintiff,) TRANSCRIPT OF RECORD
9 vs.) 2018-CP-45-00267
10)
11 THE STATE OF SOUTH CAROLINA,)
12)
13 Defendant.)
14)

March 28, 2019
Sumter, South Carolina

B E F O R E:

HONORABLE KRISTI F. CURTIS, Judge.

A P P E A R A N C E S

JAMES K. FALK, ESQUIRE
For The Petitioner

MEGAN HARRIGAN JAMESON, ESQUIRE
For Defendant

Proceedings recorded by DCRP,
Digital Courtroom Recorder Project

Transcribed by:
Julie A. Cendroski,
Circuit Court Reporter
Seventh Judicial Circuit

I N D E X

WITNESSPAGE

ANNOUNCEMENT OF CASE

By Ms. Jameson

4

PROCEDURAL HISTORY

By Ms. Jameson

4

REPLY

By Mr. Falk

8

ORDER OF THE COURT

11

CERTIFICATE OF COURT REPORTER

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EXHIBITS

MARKEDENTERED

NO EXHIBITS PROFFERED

1 JASON SINATRA EDWARDS VERSUS THE STATE OF SOUTH CAROLINA

2 MS. JAMESON: May it please the Court?

3 THE COURT: Yes, ma'am.

4 MS. JAMESON: Your Honor, the next matter is
5 Jason Sinatra Edwards versus the State of South
6 Carolina, Docket Number 2018-CP-45-00267. It's quite a
7 lengthy procedural history, so if you'll bear with me.

8 During the October 2004 term, the Williamsburg
9 County Grand Jury indicted Mr. Edwards for two counts of
10 murder and possession of a weapon during the commission
11 of a violent crime for the June 19th, 2002, killings of
12 Joe Woods and Jimmy Richardson.

13 Steve McKenzie represented him on these charges.
14 Assistant solicitors, Ronnie Sabb and Kimberly Barr
15 prosecuted the case. His two brothers were also
16 indicted for their involvement in the murders. Him and
17 his brothers received a joint trial before the Honorable
18 Howard P. King, and a jury, January 30th through
19 February 3rd, 2006.

20 The jury found Mr. Edwards and his brothers
21 guilty of the indicted offenses and Judge King sentenced
22 Mr. Edwards to life imprisonment for each murder and a
23 concurrent five-year sentence for the weapons charge.
24 Mr. Edwards and his brothers sought a direct appeal.
25 The Court of Appeals affirmed his convictions and

1 sentences in a published opinion.

2 He then sought re-hearing and eventually
3 certiorari from the South Carolina Supreme Court. The
4 Supreme Court reversed the Court of Appeals decision and
5 granted Mr. Edwards and his brothers a new trial on
6 August 31st, 2009, because it found his proffered
7 reasons for striking protective jurors who were
8 sufficiently race neutral to survive the State's Batson
9 challenge.

10 The remittitur was sent back to the Williamsburg
11 County Grand Jury on September 17th, 2009. On January
12 30th, 2012, Mr. Edwards appeared before the Honorable J.
13 Mark Hayes, II, where he pled guilty to two counts of
14 the lesser included offense of voluntary manslaughter.

15 He was again represented by Steve McKenzie, as
16 well as Michael O'Neal. Judge Hayes accepted his guilty
17 plea, and on January 31st, 2012, sentenced him to 30
18 years imprisonment. Mr. Edwards did not pursue a direct
19 appeal of these guilty pleas or sentences.

20 He did file a prose application for
21 post-conviction relief on July 16th, 2012, alleging
22 ineffective assistance of counsel for failing to move to
23 enforce an oral agreement of a 15-year plea offer,
24 involuntary guilty plea, and due process violation. The
25 State filed its return on November 27th, 2012.

1 And the evidentiary hearing into this application
2 was held on March 21st, 2013, at the Sumter County
3 Courthouse before the Honorable Jeffrey Young. He was
4 represented by James D. Dotson.

5 He testified on his own behalf at the hearing,
6 and testimony was also presented from his mother and
7 father, as well as his two co-defendant brothers. The
8 State presented testimony from both plea counsels, Mr.
9 McKenzie and Mr. O'Neal.

10 Judge Young denied and dismissed the application
11 by a written order that was filed April 18th, 2013. The
12 order addressed his claim that counsel was ineffective
13 for failing to enforce a plea agreement based on
14 detrimental reliance. And the State served a copy of
15 the order on his counsel of record, James Dotson, on
16 April 23, 2013.

17 Thereafter, Mr. Edwards attempted to file several
18 prose motions challenging this order. He filed a prose
19 motion to alter or amend pursuant to Rule 59, which was
20 denied by Judge Young. He subsequently filed a 60(b)
21 motion prose, which was denied by Judge Young, but did
22 not file a notice of appeal. Mr. Dotson did not file a
23 notice of appeal on his behalf either.

24 He then filed two different actions in Richland
25 County in 2015, which were both summarily dismissed. On

1 August 14th, 2017, he filed a prose petition for habeas
2 corpus in the Federal District Court, and one of his
3 claims was that he was entitled to initial belated
4 appellate review of his first PCR action.

5 The State filed a return in memorandum of law in
6 support, acknowledging -- seeking summary dismissal,
7 although it claims, but acknowledging, he may be
8 entitled to a belated appellate review pursuant to
9 Austin v. State. And the United States Magistrate
10 issued a report and recommendation recommending that his
11 -- the Motion for Summary Judgment be denied and a stay
12 be issued so that he can pursue his state court remedies
13 pursuant to Austin V. State.

14 He filed this instant action on May 4th, 2018,
15 seeking that belated appellate review pursuant to
16 Austin v. State. The State filed a return on October
17 2nd of 2018, consenting to an *Austin* review. Mr. Falk
18 was appointed to represent him.

19 The State is consenting at this time to the
20 granting of Mr. Edward's belated appellate review of his
21 initial post-conviction relief action pursuant to
22 Austin v. State because it's clear from the record that
23 Mr. Edwards did not knowingly and voluntarily waive his
24 right to appellate review of his first PCR action. So
25 we'd ask the Court after an order granting him the right

1 to his appellate review.

2 THE COURT: Mr. Falk, anything you want to say,
3 sir?

4 MR. FALK: No, Your Honor. And we wanted to
5 bring Mr. Edwards in here so that he could get an
6 understanding of what, what's going on, because I think
7 the next step in the process is gonna be complicated
8 because we're gonna have to have a reconstruction
9 hearing in this matter.

10 And I've spoken with Appellate Defense, I've
11 spoken with the Attorney General's office, we're trying
12 to figure out the best way to accomplish that because we
13 do foresee some challenges for the reconstruction
14 hearing because there's no transcript. So, I mean, one
15 notion was you could order from the bench to try and
16 reconstruct here.

17 I've spoken with Appellate Defense. I think
18 they're probably better equipped to do it, so that if
19 you were to sign the order granting the Austin relief,
20 then they'll seek -- they'll do their thing and file a
21 motion for to reconstruct the transcript and then they
22 will take it over.

23 THE COURT: So why is there no transcript of the
24 PCR hearing?

25 MS. JAMESON: Because he didn't file for Austin

1 relief until more than five years after the initial PCR
2 hearing. It was never ordered because he never sought
3 *Austin* relief.

4 And we reached out to Court Administration
5 several times. We finally received a letter back from
6 Desiree Allen, and she informed us that because it was
7 more than six years and the court reporter was retired,
8 they unfortunately don't have any records to produce a
9 transcript.

10 We also reached out to, as Your Honor knows,
11 former judge, Jack Young, is no longer on the bench.
12 He's actually our chief deputy now. We reached out to
13 the court reporter to see if she personally had retained
14 any of her records and she did not.

15 THE COURT: Okay.

16 MS. JAMESON: So we unfortunately are gonna have
17 to reconstruct it at some point.

18 THE COURT: Okay. Well, of course, I'll
19 certainly sign the order regarding the belated appeal.
20 I don't know what I can do as far as assisting you with
21 the reconstruction, except to say Mr. Edwards, it's not
22 gonna happen overnight. This is a process. So I hate
23 to tell you to be patient, but there's just a process
24 that we've got to go through to try to reconstruct as
25 best we can.

1 Do you know, I mean, has Court Administration
2 given you any guidance as to how we go about that?

3 MS. JAMESON: Normally we can reconstruct in two
4 ways. We can either do it in a Circuit Court, which is
5 what Mr. Falk and I discussed, or we have a consent
6 order issued by Your Honor, another Circuit Court judge,
7 and then someone from Appellate Defense will take over
8 the case, once Mr. Falk files his notice of appeal. And
9 at that point, then they would notice that there is no
10 transcript. They would attempt to order it or, in this
11 case, I'll just send them a copy of the letter letting
12 them know there's no transcript and then they will move
13 to reconstruct.

14 In a situation like this, I will consent to
15 reconstruction. And normally the Supreme Court will
16 issue an order giving us a tight timeline to try to
17 reconstruct it. The hope is that potentially they can
18 order it to be assigned to a Circuit Court judge in the
19 Third Circuit, since we -- traditionally we try to do
20 those in front of the judge who heard the proceeding.
21 As Judge Young is no longer on the bench, it will need
22 to be in front of a different Circuit Court judge,
23 potentially with him coming and testifying as a witness,
24 if need be.

25 THE COURT: Okay.

1 MR. FALK: There was one I wasn't gonna try.
2 I've only done one before and I wasn't gonna try and
3 tackle one this complicated, so I thought Appellate
4 Defense might be best suited for it.

5 MS. JAMESON: The Court has been -- the Supreme
6 Court has been fast tracking these and putting tight
7 timelines, so I'm hopeful within the next few months, to
8 be ambitious, that we can get this accomplished.

9 THE COURT: Okay, very good. Well, I'll be glad
10 to sign and order. If you want to submit that to me by
11 e-mail, that's perfectly fine.

12 MS. JAMESON: Wonderful. I'll do that. Thank
13 you, Your Honor.

14 THE COURT: Just copy him,

15 MS. JAMESON: Your Honor, that is it for the
16 term.

17 THE COURT: Okay.

18 MS. JAMESON: Thank you.

19 THE COURT: Thank you.

20 (Hearing concluded at 10:50 a.m.)
21
22

23 --- THIS ENDS REQUESTED TRANSCRIPT ---
24
25

1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Cendroski, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that to the
6 best of my ability from the Digital Court Reporter
7 Program, the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings and evidence
9 introduced in the hearing and/or trial of the captioned
10 case, relative to appeal, in the Court of Common Pleas
11 for Sumpter County, South Carolina, on the 28th day of
12 March, 2019.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto. This was
15 transcribed from the Digital Court Reporter Program.
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21 s/Julie A. Cendroski
22 Julie A. Cendroski
23 Circuit Court Reporter
24 Seventh Judicial Circuit
25

CERTIFIED TRUE COPY
Sharon W. Staggars
SHARON W. STAGGARS
CLERK OF COURT
WILLIAMSBURG COUNTY

Jason Sinatra Edwards, #313642,
 Applicant,

v.

State of South Carolina,

Respondent.

1 of 12

IN THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2018-CP-45-00267

**ORDER OF DISMISSAL AND GRANT
 OF AUSTIN¹ RELIEF**

2019 JUN 4 PM 4:44
 SHARON W. STAGGARS
 CLERK OF COURT
 WILLIAMSBURG COUNTY
FILED

This matter comes before this Court by way of an application for post-conviction relief filed on May 4, 2018, by Jason Sinatra Edwards (Applicant) seeking belated appellate review of his initial application for post-conviction relief pursuant to Austin. On May 9, 2016, the State (Respondent) served its return and consented to Applicant's request for belated appellate review pursuant to Austin. A hearing into the matter was convened March 28, 2019, at the Sumter County Courthouse. Applicant was present at the hearing and represented by James K. Falk, Esquire. Senior Assistant Deputy Attorney General Megan Harrigan Jameson from the South Carolina Attorney General's Office appeared on behalf of the State. At the start of the hearing, Respondent again consented to Applicant's request for an Austin review of his initial post-conviction relief action, noting the record established he had not knowingly and voluntarily waived his right to appellate review from the denial of his first post-conviction relief action. This Court finds Applicant is entitled to an Austin review and grants him such belated appellate review.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. During the October 2004 term, the Williamsburg County Grand Jury indicted Applicant for two counts of murder and

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

2 of 12

possession of a weapon during a violent crime (2004-GS-45-167) that stemmed from the June 19, 2002, killings of Joe Woods and Jimmy Robinson. Steven S. McKenzie, Esquire, represented Applicant on the charges. Assistant Solicitors Ronnie Sabb and Kimberly Barr of the Third Circuit Solicitor's Office, prosecuted the case. His brother and co-defendant, Maceo Latonya Edwards, was similarly charged in the same indictment for both murders and the weapons charge, while the Grand Jury indicted a third brother and co-defendant, Jonais Edwards, for accessory after the fact of murder. (2004-GS-45-167). On January 30 through February 3, 2006, Applicant and his brothers proceeded to a joint jury trial before the Honorable Howard P. King, circuit court judge. The jury convicted Applicant and his brothers as indicted. On February 3, 2006, Judge King sentenced Applicant to life imprisonment for each count of murder and five years for possession of a weapon during a violent crime. All sentences were to be served concurrently.

Applicant and his brothers timely served and filed a notice of appeal. Mr. McKenzie represented all three brothers on direct appeal. With counsel's assistance, Applicant and his brothers filed a Final Brief of Appellants on February 12, 2007. They raised the following issues on direct appeal:

- I. The trial court committed legal error when it quashed the first jury panel. The trial court's handling of the Batson hearing in effect placed the burden on the appellants to prove the absence of purposeful discrimination even after the appellants' articulated race-neutral reasons for their strikes.
- II. The Trial Court violated the SIXTH AND THE FOURTEENTH AMENDMENTS TO THE U.S. CONST. AND ARTICLE 1, SECTION 14 OF THE SOUTH CAROLINA CONSTITUTION by not dismissing the case against the appellants because of the State's failure to provide a speedy trial to the Appellants.
- III. The Trial Court erroneously held that South Carolina Rules of Criminal Procedure Rule 3(c) [does] not require the State (respondent) to act on a warrant even though the State (respondent) gave no explanation as to why it waited over eight hundred days to indict the appellants.

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Senior Assistant Attorney General William Edward Salter, III, filed the State's Final Brief of Respondent on February 15, 2007.

Following oral arguments, the South Carolina Court of Appeals filed a published Opinion on June 21, 2007, affirming the convictions and sentences of Applicant and his brothers. State v. Edwards, 374 S.C. 543, 649 S.E.2d 112 (Ct. App. 2007), rev'd, 384 S.C. 504, 682 S.E.2d 820 (2009). Applicant filed a Petition for Rehearing on May 18, 2004. On July 3, 2007, the Court of Appeals filed an Order directing Respondent to file a Return addressing their rehearing petition. Respondent submitted a Return to Petition for Rehearing on July 12, 2007, and the Court of Appeals filed an Order denying the petition for rehearing on August 27, 2007.

Applicant and his brothers filed a Petition for Writ of Certiorari (through counsel) on October 15, 2007. They presented the following issues to the South Carolina Supreme Court:

Did the Court of Appeals commit error when it concluded the trial court did not violate the Constitutionally mandated procedures as set forth in Batson v. Kentucky, 476 U.S. 79, 86 (1986)?

The State filed a Return to Petition for Writ of Certiorari on November 15, 2007.

On July 10, 2008, the Supreme Court of South Carolina filed an Order granting certiorari. Applicant filed a Brief of Petitioner on October 25, 2008. The State filed its Brief of Respondent on January 14, 2009. The Supreme Court filed an Opinion reversing the Court of Appeals' decision and granting all three Applicants a new trial on August 31, 2009, because it found that Applicants' proffered reasons for striking prospective jurors were sufficiently race-neutral to survive the State's Batson² challenge. State v. Edwards, 384 S.C. 504, 682 S.E.2d 820 (2009). The Remittitur was sent to the Williamsburg County Clerk of Court on September 17, 2009.

On January 30, 2012, Applicant pled guilty to two counts of voluntary manslaughter before

² See Batson v. Kentucky, 476 U.S. 79 (1986).

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the Honorable J. Mark Hayes, II. Michael S. O'Neal, Esquire, and Steven S. McKenzie, Esquire, represented Applicant at the plea. Also on the 30th, Maceo Edwards waived Grand Jury presentment on a charge of accessory after the fact of a felony offense and Judge Hayes accepted his guilty plea to that offense. Finally, Jonais Edwards pled guilty to accessory after the fact on the same day.

On January 31, 2012, Judge Hayes sentenced Applicant to two concurrent sentences of thirty years imprisonment. Both of his brothers received time-served sentences and walked out of their pleas free men. Applicant did not appeal his convictions or sentence.

Applicant filed a *pro se* post-conviction relief application (2012-CP-45-0369) on July 16, 2012. An evidentiary hearing was held on March 21, 2013, before the Honorable W. Jeffery Young, circuit court judge, at the Sumter County Courthouse. Applicant was present at the hearing and James D. Dotson, Esquire, represented him. Assistant Attorney General Megan E. Harrigan (now Jameson) represented the State. Applicant testified on his own behalf at the hearing and he presented testimony from his parents, Johnnie Mae and Maceo Edwards, Jr., as well as his co-defendant brothers, Jonais Edwards and Maceo Edwards, III. The State presented testimony from plea counsel, Mr. McKenzie and Mr. O'Neal. Judge Young denied relief and dismissed the Application with prejudice in an Order of Dismissal that was filed on April 18, 2013. The Order of Dismissal addressed Applicant's claim that counsel was ineffective for failing to enforce a plea agreement based on detrimental reliance. The State served a copy of the Order of Dismissal on Applicant's counsel of record on April 23, 2013.

On May 8, 2013, counsel for Applicant filed a "pro se Motion to Amend and to Make Specific Findings of Fact and Conclusions of Law Pursuant to Rule 59 and SC Code of law § 17-27-80" on Applicant's behalf. This pleading is dated April 1, 2013, which was before the Order of

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Dismissal was filed or served. The State filed a Return to this motion on June 21, 2013.

On June 23, 2013, Judge Young signed an “Order Denying Applicant’s *pro se* ‘Motion To Amend And Make Specific Findings of Facts And Conclusions Of Law Pursuant To Rule 59 And SC Code Of Law § 17-27-80.’ ” Judge Young found that the Rule 59(e), SCRCP, motion was untimely. The Certificate of Service shows that the State served this Order on Applicant’s attorney, Mr. Dotson, on August 26, 2013. Although page 4 of this Order stated that “if the Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order” and directed Applicant to Rules 203, 206, and 243, SCACR, Applicant did not timely serve a notice of appeal as required by Rule 203(a), SCACR.

Applicant did not timely serve a notice of appeal. Instead, he sent a “Motion Requesting Status of 59(e)” to the Attorney General’s Office on October 28, 2014. In this pleading, he requested a status report on his *pro se* Rule 59(e), SCRCP, motion. The State forwarded this letter to his attorney, Mr. Dodson on October 30, 2014. On November 10, 2014, Applicant filed a *pro se* notice of intent to appeal with the Williamsburg County Clerk of Court that he had served on the State on November 6, 2014. However, he did not file this with the Supreme Court of South Carolina.

Next, Applicant filed an untimely motion pursuant to Rule 60(b)(1), SCRCP, on February 17, 2015. In his Rule 60(b) motion, Applicant alleged that his PCR counsel, Mr. Dotson, failed to inform him that the Order of Dismissal had been filed on April 18, 2013, and counsel “never informed him of the results of the PCR hearing,” so that he could appeal that Order. See Rule 60(b)(1), SCRCP, motion p. 3. He further asserted that the Rule 59(e), SCRCP, motion should not have been untimely because counsel filed the motion within thirty days of service of the Order of

Dismissal on counsel. *Contra* Rule 59(e), SCRCP. Because Mr. Dotson still represented him in connection with the 2012 Application, the State served Dotson with a copy of that motion.³ The State did not file a response to the *pro se* motion because counsel represented Applicant, and no Order has been entered on the motion.

Applicant then filed an “Application for Habeas Corpus” on August 21, 2015, in the Richland County Court of Common Pleas (2015-CP-40-5138) and a “Motion Requesting Habeas Relief by Judgment of Default and State’s Non Response” filed on August 30, 2016, in the Richland County Court of Common Pleas (2016-CP-40-5283), both of which were summarily dismissed.

On August 14, 2017, while the two current state court habeas petitions were pending in the Richland County Court of Common Pleas, Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 (C.A. No. 6:17-cv-01570-DCN-KFM). In his Petition, Applicant set forth the following grounds for relief:

GROUND ONE: Ineffective [Assistance] of Counsel, in violation of Applicant’s Sixth Amendment rights.

SUPPORTING FACTS: Applicant relies upon “due process” and was “denied opportunity to appeal his Post-Conviction Relief hearing in State court”. Based on ineffective assistance of counsel, a 59(e) motion and appeal was not filed.

The evidentiary hearing was held, where Applicant at this time was represented by James D. Dotson. Where Applicant argued to his attorney to file a 59(e), because the court [failed] to make specific findings of fact and conclusions of

³ Even though the Rule 60(b), SCRCP, motion was prepared by Petitioner, the State properly served counsel with the Order. See Rule 4.2 of the Rules of Professional Conduct, Rule 407, SCACR, (“In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order”). See also Comment [3] to Rule 4.2 (“The Rule applies even though the represented person initiates or consents to the communication”).

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law with regard to the concerned issues.

Unbeknownst to Applicant during such time, Mr. Dotson was undergoing his own troubles with the South Carolina Supreme Court, in an ongoing investigation of his person, professionally, for misconduct. Needless to say, Mr. Dotson received an unfavorable ruling by the High Court, and was suspended from practicing law.

The State replied to Applicant's pro-se 59(e) alleging it was untimely. When in fact, "it was premature to the final ruling (April 1, 2013)," when such ruling was not mailed until April 23, 2013. The reference of any May 8, 2013 59(e), was not a product generated by Applicant, it was a motion filed by Mr. Dotson, finally after repeated request to do the 59(e) prior to the expiration of the 10 days.

As was mentioned above, "it was unknown to Applicant during those times about Mr. Dotson's trouble with the Court, but such remains a legitimate conclusion why Mr. Dotson never communicated effectively concerning the timely filing of the 59(e)".

PREJUDICIAL RESULTS OF THE FAILURE TO FILE 59(e).

Under South Carolina Rules, the 59(e) serves essentially the same function as the "contemporaneous objection rule", when appealing a final decision from the PCR Court. Because Mr. Dotson failed to timely file the 59(e), Applicant was prevented from raising the strict or detrimental reliance of the plea agreement rule on appeal. In *Aice v. State*, 409 S.E.2d at 395, explains that "every PCR applicant is entitled to a full adjudication on the merits of the PCR application, or 'one bite at the apple', which includes the right to appeal the denial of the PCR, and the right to assistance of counsel in that appeal.

Because Applicant was deprived of "his one bite", he is respectfully requesting this court to intervene, as he has continually attempted to obtain relief in state court. Until just recently, the State Court forwarded Applicant a Federal Habeas Relief Application.

For these reasons, Applicant humbly request[s] that relief is granted, by remanding this cause to state court

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recommending that Applicant is given the right to file his 59(e) and subsequent appeal to the highest state court, or for any further relief deemed just and proper, "based on being actually innocent".

Under *Martinez v. Ryan*, Attorney James D. Dotson, Esquire, abandoned Applicant's State PCR 59(e) and subsequent appeal of meritorious Due Process Claims involving the State's breach of agreement. Applicant was [misled] to [believe] "an action" was pending in the State Court to address these matters, only to learn after January 17, 2017. The State had either dismissed the attempt to L. regain his appeal, or failed to respond.

On November 2, 2017, Respondent filed its Return and Memorandum of Law in Support of Motion for Summary Judgment and Motion for Summary Judgment, seeking summary dismissal of Applicant's action, but acknowledged that Applicant may be entitled to a belated appellate review of his initial post-conviction relief proceeding pursuant to *Austin v. State*, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991). In his response to the motion for summary judgment, Applicant agreed to a stay of the federal habeas corpus action to allow him to pursue an *Austin* appeal. On April 16, 2018, the Honorable Kevin F. McDonald, United States Magistrate Judge for the District of South Carolina, issued a Report and Recommendation, recommending "respondent's motion for summary judgment be denied and that the case be stayed while the Applicant pursues his state court remedy." An order adopting the report and recommendation, denying the motion for summary judgment, and staying the action so Applicant could exhaust his state remedies was filed May 14, 2018.

SUMMARY OF FACTS GIVING RISE TO THE CONVICTIONS

The Assistant Solicitor proffered the following facts in support of the guilty pleas entered by Petitioner and his co-defendant brothers:

May it please the Court, Your Honor. This incident happened back on June the 19th of 2002 in the Greeleyville portion of Williamsburg County. The victims in the case

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are Mr. Jimmy Robinson and Mr. Joe Woods. The incident occurred at the home of Mr. Joe Woods.

Your Honor, essentially how the case came to the attention of law enforcement was that two eyewitnesses were coming down the road in front of Mr. Woods' home, saw Jimmy Robinson running away from Mr. Jason Edwards, observed Jason Edwards shoot Mr. Jimmy Robinson at least twice, once in the shoulder, once in the head. During the course of investigating the murder that happened outside of the house, police officers also found the body of Mr. Joe Woods inside the residence. The body had a single gunshot wound to the forehead. It was determined that Mr. Jason Woods [sic .] -- it was believed anyway -- inflicted that fatal wound to Mr. Joe Woods.

Judge, after the shooting, Maceo Edwards and Jonais Edwards, who are the brothers of Jason Edwards, took him from Williamsburg County and took him to Rock Hill as a result of the incident that happened and there is some dispute between the prosecution and the [defense] as to the order in which it happened, but there does not appear to be any dispute that Jimmy Robinson stabbed Mr. Jason Edwards twice in the chest area. The dispute between the defense and the prosecution is at what point in time did that happen.

During the trial of the case, Mr. Jason Edwards testified that Jimmy Robinson stabbed him first and then that's when he shot Joe Woods and Jimmy Robinson. Of course, the State's theory of the case is that that came after the shooting of Joe Woods, but in any event, Jonais Edwards drove a vehicle in which his brothers, Jason and Maceo, were passengers. They drove to Rock Hill from Williamsburg County.

One of the witnesses in the case testified that ... both Jonais and Maceo, of course, were aware that their brother, Jason, had shot and killed Mr. Woods and Mr. Robinson when they took him and all three of them went to Rock Hill. They checked into a motel in Rock Hill. After having checked into a motel, they then went to Piedmont Medical Center, which is the hospital in Rock Hill. All three of them gave statements to hospital personnel, as well as Rock Hill Police Department, indicating that Jason Edwards had been stabbed by an unknown assailant in -- on Two Notch Road in Columbia, South Carolina.

Jason gave the name that his name was Jason Lamont. Jonais and Maceo told security personnel there that ... they didn't know who Jason was. They just happened to be in Columbia and happened to have seen the stabbing and they brought him here. They brought them -- brought him to Rock Hill because they were afraid that the people who had stabbed him were going to come after him.

Of course, it didn't quite sound right to hospital personnel. They ran a tag on the vehicle and it was -- I guess a BOLO had [come] out and the vehicle tag indicated that these defendants were wanted in connection with a ... double homicide in

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Williamsburg County and that's how they ended up being arrested while at the hospital and that's essentially the facts of the case, Your Honor.

Tr. pp. 12-14.

Applicant agreed that those facts were "[s]ubstantially correct." His brothers agreed that the facts were correct. Tr. p. 15.

CURRENT ACTION

Applicant filed the current application for post-conviction relief on May 4, 2018. In his application, Applicant requests leave "to proceed under Austin v. State, 305 S.C. 453 (1991), for the relief afforded him under the Uniform Post Conviction Act, for the State of South Carolina. See §17-27-45(A)." Applicant alleges:

The cognizable claim involved the failure of PCR counsel Mr. Dotson, to file a requested 59(e), and the subsequent appeal. Involving the State's breach of plea agreement during Petitioner's resentencing, which he was statutorily entitled. Under Austin, Petitioner was entitled to appellate review from the circuit court's PCR ruling. The federal magistrate agreed. And the specificity of the factual background is adequately stated therein (6:17-1570), which warrants relief in this case.

Wherefore based on the forgone, the Petitioner respectfully request the appointment of counsel and the relief required by remanding for further proceedings consistent with the magistrate's finding in this case. And any further relief deemed just and proper by this honorable court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Successive applications such as the one before this Court are disfavored. S.C. Code Ann. § 17-27-90. However, Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application. Inherent in this allegation is a claim that former post-

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conviction relief counsel was ineffective. The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, (1991). Therefore, “the contention that prior PCR counsel was ineffective is not *per se* a ‘sufficient reason’ warranting a successive PCR application under [S.C. Code Ann.]§ 17-27-90.” Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 454, 409 S.E. 2d 395, 396 (1991). Austin provides for a belated appeal where prior post-conviction relief counsel fails to timely appeal the denial of the application. Id. at 454, 409 S.E.2d at 396; see S.C. Code Ann. § 17-27-100 (right to appeal final judgment by post-conviction relief court). But Austin “is limited to its particular factual situation.” Aice, 305 S.C. at 452, 409 S.E.2d at 394.⁴ Pursuant to Austin, an evidentiary hearing may be conducted in regards to a successive post-conviction relief application “on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review.” Austin, 305 S.C. at 454, 409 S.E.2d at 396. “If the circuit court finds that the petitioner never in fact sought discretionary review, the petitioner may appeal that finding.” Id. at 455, 409 S.E.2d at 396. Austin, therefore, allows an applicant to petition the Supreme Court of South Carolina for discretionary review of the dismissal of his initial post-conviction relief application, and may do so outside of the ordinary time limits for bringing such an appeal.

In the present case, it is apparent from the record before this Court that Applicant desired appellate review from the denial of his initial post-conviction relief action. Accordingly, this Court

⁴ Aice was issued in conjunction with Austin, limiting the reach of Austin and holding “that once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel.” 305 S.C. at 454 n.1, 409 S.E.2d at 396 n.1.

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finds Applicant is entitled to file a notice of appeal seeking belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin.

CONCLUSION

Based on all the foregoing, this Court finds Applicant is entitled to seek belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin. Applicant's current PCR counsel is instructed to file a Notice of Appeal with the South Carolina Supreme Court pursuant to Rule 243, SCACR.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Applicant remain in the custody of the South Carolina Department of Corrections; and
2. Applicant is granted the right to seek a belated appellate review of the denial of his initial post-conviction relief action (2012-CP-45-0369) pursuant to Austin.

AND IT IS SO ORDERED this 18th day of June, 2019

Kristi F. Curtis
KRISTI F. CURTIS
Presiding Judge
Third Judicial Circuit

Sunder, South Carolina

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S.C. SUPREME COURT