

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Spartanburg County  
Roger L. Couch, Cir. Ct. Judge

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The State

Respondent

vs.

John Wayne Brannon # 209650

Appellant

---

APPELLANT'S PRO-SE BRIEF

---

John W. Brannon # 209650  
McCormick Inst. Unit 4  
386 Redemption Way  
McCormick, SC 29899

Attorney For Appellant  
Kathrine A. Hudgins

Other counsel of record

NONE

RECEIVED

MAR 06 2013

SC Court of Appeals

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## Cases

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## Statutes

S.C. Code § 17-25-45

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## STATEMENT OF ISSUES ON APPEAL

(I.) Whether the judge erred in ruling that because the items (evidences) was not fungible items a chain of custody was not required.

(II.) Whether the judge erred in also charging assault and battery of a high and aggravated nature as a lesser included offense of attempted murder, and charging assault and battery second degree, as a lesser included offense of attempted murder.

(III.) Whether the judge erred in sentencing appellant to life without the possibility of

parole pursuant to S.C. Code § 17-25-45  
when the notice to seek life without  
parole states upon a conviction for  
"attempted murder" and the jury acquitted  
appellant of attempted murder and found  
him guilty of assault and battery of a  
high and aggravated nature..

STATEMENT OF THE CASE

For the record of this brief  
Appellant re-state his Appellate  
Defender's statement of her brief.

## ARGUMENT (I)

The trial judge erred in ruling that because the items (evidences) was not fungible items a chain of custody was not required.

Appellant argues that his trial counsel first objected to the towel - State's exhibit 16, on the facts that it was only for identification - it had not been introduced into evidence and the chain has not been established to introduce it into evidence SEE: Tr.p. 111 L2 - p. 112 - L7.

Counsel further objected to the chain as not being established because the evidence technician wasn't there SEE: Tr.p 113 L1 - L15; p 113 L23 - p 114 - L1 Which the trial judge over ruled SEE:

Tr.p 115 L 13 - L 19 Stating that it's not a fungible item. Also see Trp 115 L 23 - L 25.

Counsel further made objections to the jacket - State's evidence, exhibit 17 SEE: Trp 116 L 7 - p 118 - L 14; and the rock - State's evidence, exhibit 18 SEE: Tr.p 118 L 15 - p 122 - L 19.

Counsel objections was on the grounds that the evidence was picked up by Officer Nelson, turned over to the evidence custodian. The evidence custodian hasnt been here to indicate whether or not he has tampered or touched them in anyway.

Appellant argues, although trial counsel did not have a case that says the chain of custody is required on an item

that can be identified by the witness independently. SEE: Tr. p 114 L 2 - Tr 115 - L 19.

Appellant argue although the judge has broad discretion to admit non-fungible evidence merely on the basis of testimony that the item is the one in question and is in a substantially unchanged condition SEE: State v Freiburger 620 SE2d 737. Here, the trial judge abused his discretion, since counsel objections was about the condition of the items.

## ARGUMENT (II)

The judge erred in also charging assault and battery of a high and aggravated nature as a lesser included offense of attempted murder, and charging assault and battery second degree as a lesser included offense of attempted murder.

Appellant argues that his trial counsel asked and was granted a jury instruction of the lesser included offense of attempted murder - "assault and battery second degree" SEE: Tr.p 161 L 23 - p 168 - L 17.

After much argument upon this issue the State also asked and was granted a jury instruction of assault and battery high and aggravated nature as a lesser offense of attempted murder, over counsel's objection SEE: Tr.p 168 L 18 -

P. 171-L13.

Counsel argued that the victim did not suffer a great bodily injury - Great bodily injury indicates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of a function, of a bodily of a member, of a bodily member or organ.

Also counsel argued that, the way the statute is written, the act is accomplished by means of, I guess, likely to produce death or great bodily injury. SEE: Tr. p 170 L15-L18.

Which counsel renewed her objections at the end of the trial judge's jury instructions SEE: Tr. p 211 L11-L18

## ARGUMENT (III)

The trial judge erred in sentencing appellant to life without the possibility of parole pursuant to S.C. Code § 17-25-45 when the notice of intent to seek life without parole states upon a conviction for attempted murder and the jury acquitted appellant of attempted murder and found him guilty of assault and battery of a high and aggravated nature.

Brannon was tried for attempted murder for hitting his cousin over the head with a rock. The jury found Brannon guilty of the lesser included offense of ABHAA. During sentencing the State sought a sentence of life without parole pursuant to South Carolina Code § 17-25-45. The State introduced the affidavit of notice of intent to seek life without parole, the notice of intent to seek life without parole pursuant to S.C. Code § 17-25-45 and certified copies of prior convictions SEE:

Tr-p 220 L 21 - p 221 L 1-20, Court's Exhibits 2, 3 and 4. Counsel for appellant objected and stated:

In accordance with the notice of life sentence to section 25 or 17-25-45 (a), it indicates that the defendant will receive a life sentence if he is convicted of attempted murder on the above indictment. We did not, according to the statute, you need 10 days notice by the solicitor to the defendant seeking life without parole, Your Honor.

He was not convicted of attempted murder. This is a lesser included offense. This is ABHAN. Therefore, we were not given proper notice of the lesser included offense, and the statute was amended now to require that ten day notice. We weren't given notice. Also attempted murder is a most serious, and ABHAN is serious. So, we would - it is our contention that if they wanted to seek life on the ABHAN, we would of needed specific notice ten

day prior to trial on that lesser included offense. We were not given that. We did not receive that, and. Therefore, we do not believe that he is eligible for an L.W.O.P. sentence today. SEE: Tr. p 222 L3-L10.

After asking for submission of briefs, the judge overruled the objection. The judge stated:

Based upon the cases that I've reviewed in the memorandum and the fact that the statute concerning assault and battery of a high and aggravated nature specifically refers to it being a lesser included offense of attempted murder, I find the notice was sufficient to place him on notice of the State's intention to seek the sentence under the recidivist statute, and that he would have been on notice of not only the original charge, but the lesser included charges as well. So, therefore, the motion in the case is denied. SEE: Tr p 226 L19-p 227 L1-L3

The judge erred, S.C. Code § 17-25-45 (H) provides where the solicitor is required to seek or determines to seek sentencing of a defendant

under this section, written notice must be given by the solicitor to the defendant and defendant's counsel not less than ten days before trial. In State v Burdette 515 SE2d 525, the South Carolina Supreme Court found that the notice requirement of § 17-24-45 did not require listing of the specific prior convictions. The Court wrote:

The indictment, along with the notice that the recidivist statute would apply, satisfied the fully informed requirement of S.C. Const. article 1, sec. 14. Once the indictment informs a defendant of the charges against him, section 17-25-45 (H) only requires the solicitor to inform the defendant that the recidivist sentencing statute will be applied upon conviction. Specifically, listing the triggering charge from the current case is unnecessary because defendant has been fully informed of the charges against him in the indictment, and he has been informed that the State will apply the recidivist statute. Determining

which of the indicted offenses triggers the statute merely requires looking at the list of offenses listed in section 17-25-45  
Burdette 515 SE2d at 528

The challenge in the present case is not to notice of the prior convictions but to notice of the actual charge which, upon conviction, would trigger sentencing pursuant to § 17-25-45. The notice provides upon a conviction for attempted murder and does not include lesser included offenses

Here, in this case at bar Appellant Brannon was found not guilty of attempted murder.  
As argued by Brannon at trial, the State should have included any lesser

included offense in the notice of intention to seek life without parole SEE: attached

Also see: Tr.p 223 L10-L23.

Under section 17-25-45 of the South Carolina Code (the recidivist statute) a person must be sentenced to a term of imprisonment for life without the possibility of parole if the person has a conviction for, among other things, two or more serious offenses or one most serious offense. Prior to the recidivist statute being amended in June 2010 it was mandatory that the state seek a life sentence if a person was convicted of a 2<sup>nd</sup> most serious crime SEE: 17-25-45 (G) (2009). Section 17-25-45 was subsequently amended to remove the mandatory language and made the decision to seek life without parole discretionary SEE: 17-25-45 (G) (2011). The statute also requires that written notice must be given to the defendant and the defendant's counsel not less than ten days before trial SEE: 17-25-45 (H) (2011). The Supreme Court has

indicated that only actual notice of the state's intent to seek LWOP is sufficient under the Statute SEE: James v State 671 SE2d 899.

In James the petitioner alleged that his trial counsel was deficient for not objecting to the life Notice under the recidivist statute Id. In determining the issue, the Court noted that there was testimony during the preliminary motions that the State provided written notice to the Defense Counsel several months prior and the Defense counsel stipulated that the defense had received notice Id. at 290. The Court noted that this was adequate notice Id. In so doing, the Court noted that under the recidivist statute, the life sentence was mandatory, citing 17-25-45 (g) therefore, the Court noted it could not find any prejudice even if the Notice was defective. That is, even if the Court found the attorney deficient for failing to object to the fact that defendant had not been served, the State could simply retry the case and if found guilty again, the Court would have no choice but to sentence to life Id. at 292. In looking

at the Supreme Court cases that have determined actual notice is all that is necessary, each involved a most serious offense, requiring a mandatory life sentence SEE: James v State 641 SE2d 899 Also see Harris v State 659 SE2d 140.

Here, the situation is different. In the above cited case James and Harris, there was no issue as to whether a lesser included offense would be encompassed by a very specific Notice of Life, as is the case here. Thus, to determine what is adequate, it is important to note that the recidivist statute is now discretionary. Hence, a life sentences on a second conviction for a most serious offenses is no longer mandatory. Therefore, the State may now choose to not seek life on a most serious offense or it could choose to seek life on a most serious, but not a serious offense. Consequently, because it is now discretionary, it is incumbent on the State to specifically address what specific qualifying conviction they intend to seek life to

comply with the Notice provision of the recidivist statute....

Here, the only Notice the Defense received was for the Attempted Murder, a "most serious offense". There is no mention of whether it was going to use its discretion to also seek a life sentence on a "serious offense", like ABHAN. Thus, to sentence Mr. Brannon under this Notice violates not only the recidivist statute, but also does not comport with the requirements of the Due Process Clause of the United States.

Additionally, it is apparent that the State did not intend for its Notice to include any qualifying lesser included offenses, which in this case ✓ would be the "serious offense" of ABHAN. That is, if the State intended to seek life on an ABHAN verdict, it had a duty to request the charge at the time the Judge initially requested them. However, the State did not request any at the time in which the Judge ask for any jury charges. It was

the Defense who initiated looking at the lesser included charge of Assault and Battery 2<sup>nd</sup>. And, even after counsel opened the door, the State still did not request an ABHAN charge. In fact, it opposed any lesser included charges being considered and the Judge took the respective positions under advisement. Therefore, it is apparent that the State was only seeking a conviction for the Attempted Murder Charge so as to sentence Mr. Brannon to life without parole and therefore, did not intend the Notice to encompass ABHAN. For the State now to say it "meant" for all qualified lesser included convictions to be included in the Notice is disingenuous at best.

And, assuming arguendo that this Court believes the Notice encompassed all qualifying convictions and not just "attempted murder" and further, that Defense counsel had

adequate notice, Mr. Brannon, unlike the Defendant, in James v State, supra, has suffered prejudice. In Summary, while the State eventually decided to ask for the ABHAN charges at the last minute, it does not negate the fact it never intended to seek a conviction on the charge initially.

Therefore, it is apparent that the State did not intend for the Notice to encompass any lesser included charges and does not qualify as adequate notice. The trial judge erred in sentencing Brannon to life without parole when the State failed to meet the notice requirement of S.C. Code § 17-25-45. Also see Ex. A'.

The Appellant further argue that from the records, it does not appear that the trial judge reviewed BOTH counsel's and the State's brief as he alleged he did. SEE: Exhibit A' A<sup>2</sup> and B, Also

See: Tr. p 222 L1 - p 227 - L3.

## CONCLUSION

Based on the foregoing arguments, Counsel's motion to be relieved as Appellant's counsel should be denied. And, Counsel should be instructed to fully brief her issue and Appellant's arguments upon his pro-se brief. Where Appellant's case should be remanded for a new trial. If not a new, a new sentencing outside of § 17-25-45.

Date: 2/28/13

Respectfully Submitted  
John W. Brunner  
Appellant.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Spartanburg County  
Roger L. Couch, Cir. Ct. Judge

---

The State

Respondent

VS

John Wayne Brannon # 209650

Appellant

---

APPELLANT'S DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL

---

Appellant proposes the following to be included in the record on appeal.

- (1) Appellant's whole trial transcript pgs 1 - 230 .
- (2) Notice of life sentence dated Aug 16, 2011 ✓
- (3) Ex. A' - Trial counsel's memorandum in opposition to a life sentence dated Dec 14, 2011 - filed by Clerk of Ct. Dec 15, 2011 .
- (4) Ex. A<sup>2</sup> letter to Solicitor's Office dated
- (5) Ex. B - letter from Circuit - P.D. Clay T. Allen - regarding trial counsel's brief in Ex. A' and the State's brief.

I certify that this designation contains no matter that is irrelevant to his appeal.

Date: 2/28/13

s/ John W. Brannon

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE COURT OF GENERAL SESSIONS  
FOR THE SEVENTH JUDICIAL CIRCUIT

THE STATE )

v. )

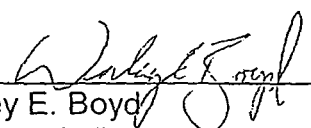
JOHN WAYNE BRANNON, )  
Defendant. )

Notice of Life Sentence  
Pursuant to Section 17-25-45(A)

Indictment: 11-GS-42-4694

TO: THE DEFENDANT AND HIS ATTORNEY, Tanya Jones

YOU WILL PLEASE TAKE NOTICE that pursuant to Section 17-25-45(A) and (H) of the South Carolina Code of Laws, 1976, as amended, the Defendant will receive a life sentence if he is convicted of Attempted Murder on the above listed indictment. This mandatory sentence is based on a prior conviction for Armed Robbery, a most serious offense, on January 31, 1980, and/or a prior conviction for Attempted Armed Robbery, a most serious offense, on January 31, 1980, and/or a prior conviction for Armed Robbery, a most serious offense, on February 14, 1994.

  
\_\_\_\_\_  
Wesley E. Boyd  
Assistant Solicitor  
Seventh Judicial Circuit

August 16, 2011

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2011 AUG 16 PM 3:10  
M. HOPE BLACKLEW

AUG 19 2011

PUBLIC DEFENDER

Ex. A #

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
vs. )  
 )  
John Wayne Brannon, )  
Defendant )

IN GENERAL SESSIONS COURT  
SEVENTH JUDICIAL CIRCUIT

Indictment No. 11-GS-42-4694

Memorandum in Opposition to a Life Sentence

Defendant, John Wayne Brannon, by and through, his attorney of record, Tanya R. Jones, hereby presents this Memorandum in Opposition to a Life Sentence. This Memorandum is based upon the attached Exhibit, the trial transcript as recalled by Defense counsel, and applicable case law.

**FACTS**

Mr. John Wayne Brannon was charged with Attempted Murder on or about April 23, 2011. Mr. Brannon was subsequently served with a Life Notice pursuant to Section 17-25-45(A). See Exhibit A. Specifically, the State was seeking a life sentence if he was convicted of "Attempted Murder" on the above indictment. Id. Mr. Brannon was subsequently tried on December 12-13, 2011. The Defense requested a lesser included jury charge on Assault and Battery 2<sup>nd</sup> degree, under section 16-3-600 (D)(1). The State objected to that charge. After hearing arguments from both the sides and taking the matter under advisement, the Court decided to charge on the lesser included offense and Assault and Battery 1<sup>st</sup> degree. The State again opposed. It was then decided to charge only the Assault and Battery 2<sup>nd</sup> degree. The State then requested a charge on ABHAN, to which the Defense objected. The Court decided to charge on that as well. The jury came back with a guilty verdict on the ABHAN, and State still sought a Life Sentence. The Defense objected, indicating no Notice was given for ABHAN and the State did not seek the lesser included ABHAN when Judge Couch initially asked for requested jury instructions. Judge Couch took the issue under advisement and this Memorandum in Opposition to a Life Sentences follows.

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SPARTANBURG COUNTY  
2011 DEC 15 AM 8:58  
M. HOPE LANKLEY

Ex. A #

ARGUMENT

Under section 17-25-75 of the South Carolina Code, ("the recidivist statute") a person must be sentenced to a term of imprisonment for life without the possibility of parole if the person has a conviction for, among other things, two or more serious offenses or one most serious offense. Prior to the recidivist statute being amended in June 2010, it was mandatory that the State seek a life sentence if a person was convicted of a 2<sup>nd</sup> most serious crime. See § 17-25-45-(G) (2009). Section 17-25-75 was subsequently amended to remove the mandatory language and made the decision to seek life without parole discretionary. See § 17-25-45(G) (2011). The statute also requires that written notice must be given to the defendant and the defendant's counsel not less than ten days before trial. See § 17-25-45(H) (2011).

The Supreme Court has indicated that only actual notice of the State's intent to seek LWOP is sufficient under the Statute. See James v. State, 372 S.C. 287, 94-95, 671 S.E.2d 899, 903 (2007). In James, the petitioner alleged that his trial counsel was deficient for not objecting to the Life Notice under the recidivist statute. Id. In determining the issue, the Court noted that there was testimony during the preliminary motions that the State provided written notice to the Defense Counsel several months prior and the Defense Counsel stipulated that the defense had received notice. Id. at 290. The Court noted that this was adequate notice. Id. In doing so, the Court noted that under the recidivist statute, the life sentence was mandatory, citing 17-25-45-(g). Therefore, the Court noted it could not find any prejudice even if the Notice was defective. That is, even if the Court found the attorney deficient for failing to object to the fact that defendant had not been served, the State could simply retry the case and if found guilty again, the Court would have no choice but to sentence to life. Id. at 292. In looking at the Supreme Court cases that have determined actual notice is all that is necessary, each involved a most serious offense, requiring a mandatory life sentence. See James v. State, 372 S.C. 287, 641 S.E.2d 899, See Harris v. State, 659 S.E.2d 140 (2008).

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MADRID ST. CLERK

Ex. A #

Here, the situation is different. In the above cited case, there was no issue as to whether a lesser included offense would be encompassed by a very specific Notice of Life, as is the case here. Thus, to determine what is adequate, it is important to note that the recidivist statute is now discretionary. Hence, a life sentences on a second conviction for a most serious offenses is no longer mandatory. Therefore, the State may now choose to not seek life on a most serious offense or it could choose to seek life on a most serious, but not a serious offense. Consequently, because it is now discretionary, it is incumbent on the State to specifically address what specific qualifying conviction they intend to seek life to comply with the Notice provision of the recidivist statute.. Here, the only Notice the Defense received was for the Attempted Murder, a "most serious offense." There is no mention of whether it was going to use its discretion to also seek a life sentence on a "serious offense", like ABHAN. Thus, to sentence Mr. Brannon under this Notice violates not only the recidivist statute, but also does not comport with the requirements of the Due Process clause of the United States.

Additionally, it is apparent that the State did not intend for its Notice to include any qualifying lesser included offenses, which in this case would be the "serious offense" of ABHAN. That is, if the State intended to seek life on an ABHAN verdict, it had a duty to request the charge at the time the Judge initially requested them. However, the State did not request any at the time in which the Judge asked for any jury charges. It was the Defense who initiated looking at the lesser included charge of Assault and Battery 2nd. And, even after Counsel opened the door, the State still did not request an ABHAN charge. In fact, it opposed any lesser included charges being considered and the Judge took the respective positions under advisement. Therefore, it is apparent that the State was only seeking a conviction for the Attempted Murder Charge so as to sentence Mr. Brannon to life without parole and therefore, did not intend the Notice to encompass ABHAN. For the State now to say it "meant" for all qualified lesser included convictions to be included in the Notice is disingenuous at best.


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M. HOPE LAMLEY

Ex. A #

And, assuming arguendo that this Court believes the Notice encompassed all qualifying convictions and not just "attempted murder" and further, that Defense counsel had adequate notice, Mr. Brannon, unlike the Defendant in James v. State, supra, has suffered prejudice. That is, it was Defense counsel that ultimately opened the door to a lesser included offenses to be considered and ultimately, the conviction of ABHAN. Thus, this should be a factor to be considered in determining whether to sentence Mr. Brannon under the recidivist statute.

In summary, while the State eventually decided to ask for the ABHAN charge at the last minute, it does not negate the fact it never intended to seek a conviction on the charge initially. Therefore, it is apparent that the State did not intend for the Notice to encompass any lesser included charges and does not qualify as adequate notice. Indeed, the Defense would not have opened the door for the State to ask for an ABHAN charge if it fully realized the State would seek life on a qualified serious or most serious conviction. Therefore, we request that Mr. Brannon not be sentenced under the recidivist statute.

Submitted this 14 day of December, 2011.

By:   
Tanya R. Jones  
Assistant Public Defender  
Seventh Judicial Circuit

FILED  
CLERK OF COURT  
SEVENTH JUDICIAL CIRCUIT  
HOPE BLACKLEY  
2011 DEC 15 AM 8:58

Solicitor's Office  
180 Magnolia St.  
Spartanburg, SC 29306-2335

Ex A<sup>2</sup>

copy

Re: State v John W. Brannon  
Ind# 2011-GS-42-4694

Date: 1, 29, 13

Dear Chief Solicitor

Please be advised, that my Appellate Defender, Kathrine H. Hudgins has filed an Anders brief upon the above said case. (Which the Court of Appeals has given me 45 days from Jan 7, 13 to file my pro-se brief. Although, in order for me to properly file and argue the issue, that the State only served me notice to seek life on the attempted murder charge = NOT ABHAM. Thus, I will need the States memorandum brief in opposition, that Judge Couch took under advisement, before I was sentenced. That your Office filed. Please reply immediately to this imperative matter before my dead line is up.

Thanking you in advance, I am

cc: Personal file

(Proof of service on back)

Sincerely

John Brannon

# PROOF OF SERVICE

I John W. Brannon certify that I have served my letter / regarding States memorandum brief - in opposition to attempted murder vs. ACHAN WARD upon the below solicitor's office. By placing the above said in the McCarr. Inst. mail room on this 29 day of Jan 2013 to be placed in the U.S. mail w/ postage prepaid.

Solicitor's Office / 180 Magnolia St.  
Spartanburg SC 29306-2335

S W O R N to and subscribed before me  
this 29 day of Jan 2013

J. C. Miller  
Notary Public

My Commission Expires

cc: Personal File 12-16-2019

John W. Brannon  
John Brannon

SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER

CLAY T. ALLEN  
CIRCUIT PUBLIC DEFENDER

Ex-B

366 NORTH CHURCH STREET  
SUITE 3000  
SPARTANBURG SC 29303



TELEPHONE (864) 596-2561

FAX (864) 596-2284

January 22, 2013

Mr. John W. Brannon  
SCDC # 209650  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, South Carolina 29899

Re: State v. John W. Brannon  
Indictment No. 2011-GS-42-4694

Dear Mr. Brannon:

Because Tanya Jones is no longer with the Public Defender's Office, your letter dated January 6, 2013, has been referred to me for response. Enclosed is a copy of the Memorandum in Opposition to a Life Sentence, which Ms Jones prepared and filed before you were sentenced. I have reviewed the file we have on your case, and I could not find a copy of a brief or memorandum prepared by the prosecutor. I have also reviewed the Clerk of Court's records on your case, and I did not find a brief or memorandum from the prosecutor in those records either. It appears to me, therefore, that the State did not file a brief or memorandum on this issue in your case.

I wish you the best of luck on your appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Clay T. Allen".

Clay T. Allen  
Circuit Public Defender

CTA:

Enclosure

The Hon. S.C. Ct. of Appeals Clerk  
Jenny A. Kitchings  
PO BOX 11629  
Colo SC 29201

Date 2/28/13

Re: PRO-SE BRIEF

Dear Clerk

Please find enclosed for filing  
my pro-se brief and designation of  
matter in the above case.

Would you be so kind as to  
return me back a filed copy. Because  
I am sending you the only org. I  
have.

Thanking you in advance. I am

RECEIVED

MAR 06 2013

SC Court of Appeals

Sincerely

John W. Brannon

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Spartanburg County  
Roger L. Couch, Cir. Ct. Judge

---

The State

Respondent

VS

John Wayne Brannon #209650

Appellant

---

PROOF OF SERVICE

---

I John W. Brannon certify that I have served the S.C. Ct. of Appeals, Hon. Clerk, Jenny A. Kitchings at P.O. BOX 11629 Col. SC 29201 my designation of matter. By placing the above said in the ME Corr. Inst. mailman this 28 day of Feb 2013 to be placed in the U.S. mail with postage prepaid.

RECEIVED

MAR 06 2013

SC Court of Appeals

SWORN to and subscribed before me  
this 28 day of Feb 2013

Debra L Young sp John W. Brannon  
Notary Public  
My Commission Expires 10-11-2021