

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Certiorari to Cherokee County  
Honorable Robin B. Stilwell, Circuit Court Judge

Case No. 2017-001777

Alonzo Columbus Jeter, III,

v

PETITIONER

STATE OF SOUTH CAROLINA,

RESPONDENT.

RECEIVED

FILED 02/20/2020  
SC Court of Appeals

CITATION OF  
SUPPLEMENTAL AUTHORITIES **II**

Petitioner provides the following supplemental authorities pursuant to Rule 208(b)(7), SCACR, as they have come to the attention of Petitioner and are relevant as they provide authoritative support regarding the issues he has advanced in this appeal. Petitioner cites the following:

Regarding Improper Sentencing Enhancement

State v McNeil, 314 SC 473, 445 SE2d 461 (1994) - In order to plead to a lesser included offense and thereby waive the right of presentment to a grand jury, the greater offense must include all the legal and factual elements of the lesser offense; if the lesser offense contains an element not in the greater, it is not a lesser included offense.

State v Green, 539 SE2d 419 (2000) - A defendant cannot be convicted of a crime for which he is not indicted if it is not

a lesser included offense to that charged in the indictment  
State v Gentry, 610 SE2d 494 (2005) - Lack of subject matter  
Jurisdiction may not be waived, even by consent of the parties,  
and should be taken notice of by the Supreme Court; See  
also Plante v State, 446 SE2d 437 (1994)

In re Treatment and Care of Luckabaugh, 568 SE2d 338  
(2002) - Supreme Court declines to address constitutional issues  
unless required to do so

Joseph v South Carolina Department of Labor, Licensing and  
Regulation, 417 SC 436, 790 SE2d 763 (2016) - It is the  
duty of the Supreme Court, not the legislature, to  
determine the constitutionality of a statute.

State v White, 348 SC 532, 560 SE2d 420 (2002) -  
Presumption of statute's validity places the initial burden on  
the party challenging the constitutionality of the legislation  
to show it violates a provision of the constitution; if the  
challenging party is able to show the act is invalid, leaving  
no room for reasonable doubt that it violates some  
provision of the constitution, then the burden shifts to  
the state

Martin v Lloyd, 700 F3d 132 (2012) - Where a statute imposes  
criminal penalties, the standard of certainty is higher, and  
the statute can be invalidated on its face as unconstitutionally  
vague under Due Process Clause even if it could conceivably  
have some valid application

Curtis v State, 345 SE 557, 549 SE2d 591 (2001) - A statute  
may be constitutional and valid in part and unconstitutional  
and invalid in part

Seminole Tribe of Florida v Florida, 517 US 44, 116 Sct 1114

(1996) - Court cannot press statutory construction to the point of disingenuous evasion even to avoid a constitutional question

United States v Davis, 2019 WL 2570623 - In our constitutional order, a vague law is no law at all

State v McKnight, 576 SE2d 168 ( ) - A penal statute offends due process only when it fails to give fair notice of the conduct it proscribes

State v Morgan, 352 SC 359, 574 SE2d 203 (2002) -

The determination of legislative intent is a matter of law  
Catawba Indian Tribe of S.C. v State, 372 SC 519, 524,

642 SE2d 751, 753 (2007) - The issue of the interpretation of a statute is a question of law for the court

Learnon v State, 363 SC 432, 611 SE2d 494 (2005) - In a case raising a novel issue of law, the appellate court is free to decide the question of law with no particular deference to the trial court

State v Hornsby, 326 SC 121, 129, 484 SE2d 869, 873

(1997) ("A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of Justice.")

Federal law provides that a plea of guilty is valid if, but only if, it is entered voluntarily and intelligently, as determined by the totality of the circumstances. Brady v United States, 397 U.S. 742, 748 (1970); Boykin v

Alabama, 395 U.S. 238, 242-44 (1969). The determination of whether a plea was intelligently made depends upon

the particular facts and circumstances of each case.  
Johnson v Zerbst, 304 U.S. 458, 463 (1938)

U.S. v Carr, 592 F3d 636 (2010) (4<sup>th</sup> Cir) - (Outlining what the Court considers in determining if each of defendant's convictions arose out of a separate and distinct criminal episode)

Edwards v State, 392 SC 449, 456, 710 SE2d 60, 64 (2011) ("[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.").

Rule 5, SCRimp

Rule 5(a)(1)(B), SCRimp - Defendant's Prior Record. Upon request of the defendant, the prosecution shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution.

U.S. v Smith, 640 F3d 580 (2011) - Mere convenience cannot counterbalance a defendant's right to counsel at a critical stage of the proceedings.

The negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel. Missouri v Frye, 132 Sct 1399 (2012); Padilla v Kentucky, 559 US

356 (2010)

Defendant's Sixth Amendment right to counsel extends to the plea-bargaining process. Lafley v Cooper, 132 Sct 1376 (2012)

Sentencing Entrapment

Proof of Sentencing Factor Manipulation and Sentencing Entrapment

American Jurisprudence Proof of Fact 3d

175 Am. Jur. Proof of Facts 3d 479, June 2019 update

Brady v U.S., 397 U.S. 742, 90 Sct 1463 (1970) - Agents of the state may not produce a guilty plea by actual or threatened physical harm or by mental coercion overbearing the will of the defendant

Regarding Mental Competency and Duress

Iowa v Tovar, 541 U.S. 77, 124 Sct 1379 (2004) - The entry of a guilty plea, whether to a misdemeanor or a felony charge, ranks as a "critical stage" at which the Sixth Amendment right to counsel adheres

Rule 407, SCACR, Rules of Professional Conduct, Rule 1.14

Rule 1.14 - Client with Diminished Capacity

Rule 1.14(b) - When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken...

the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client.

(Paragraph (b) permits the lawyer to take protective measures deemed necessary. In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

### Regarding the PCR Court's Denial of Motion For Discovery

Johnson v Avery, 393 U.S. 483, 89 Sct 747 (1969) - For indigent as well as for affluent prisoner, postconviction proceedings must be more than a formality

State v Hornsby, 326 SC 121, 129, 484 SE2d 869, 873 (1997) ("A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice.")

Pursuant to S.C. Code Ann. § 17-27-80, the PCR Court must make findings of fact based upon all of the probative evidence presented.

Garren v State, 423 SC 1, 813 SE2d 704 (2018) self-serving statements as far as incompetency during guilty plea was accepted

Davie v State, 381 SC 601, 675 SE2d 416 (2009) -

Depending on the facts of the case, a defendant's self-serving statement may be sufficient to establish actual prejudice

White v State of S.C., 708 F.Supp. 1465 (1988) (D.S.C.) -

State, rather than some other agency, must have deprived [Petitioner] of his right to fair trial to implicate due process clause of Fourteenth Amendment

State v Hawkins, 300 SC 225, 387 SE2d 251 (1989)

(South Carolina Supreme Court cautions trial courts that the sitting Judge must conduct all adversarial proceedings with fairness and impartiality. The wide discretion accorded presiding Judges, embedded in the law of South Carolina, is essential to the orderly administration of Justice. When, however, this discretion is exercised with abuse, to the prejudice of a party-litigant, . . . the result is legal error requiring a new trial

Rule 501, SCACR, Code of Judicial Conduct, Canon 3

A Judge must perform judicial duties impartially and fairly, A Judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the Judiciary into disrepute.

State v Carleson, 363 SC 586, 611 SE2d 283 (2005); Harkins

v Greenville County, 340 SC 606, 533 SE2d 886 (2000) -  
The burden is on the [Applicant] to provide a sufficient  
record for review.

## Regarding Proximity of Church

Rollison v State, 552 SE2d 290 (2001) - A finding that  
is without evidentiary support must be reversed

Edwards v State, 392 SC 449, 456, 710 SE2d 60, 64  
(2011) ("[C]riminal defense attorneys have a duty to  
undertake a reasonable investigation, which at a  
minimum includes interviewing potential witnesses  
and making an independent investigation of the  
facts and circumstances of the case.")

State v Adams, 409 S.C. 641, 763 SE2d 341 (2014) - There  
would be a "fundamental unfairness [in] holding  
citizens to 'the traditional rule that ignorance of the  
law is no excuse', while allowing those 'entrusted to  
enforce' the law to be ignorant of it." United States  
v Chanthasouvat, 342 F3d 1271, 1280 (11<sup>th</sup> Cir) (2003)

Smith v Daniel Const. Co., 253 SC 248, 169 SE2d 767  
(1969) - There should be no blind adherence to a  
precedent which, if it is wrong, should be corrected  
at the first practical moment.

Rule 217, SCACR - Motion to Argue Against Precedent;  
Permission of the appellate court shall not be required

to argue against precedent in the brief

Rule 8(f), SCRCP, - All pleadings shall be so construed as to do substantial Justice to all parties

Robinson v State, 422 SC 78, 810 SE2d 32 (2018) -

The Supreme Court reviews questions of law de novo in a post conviction relief case; The Supreme Court will reverse the decision of the post conviction relief court when it is controlled by an error of law

Pursuant to SC Code Ann. § 17-27-80, the PCR Court must make findings of fact based upon all of the probative evidence presented

### Regarding the Reopening the PCR Record

State v Hornsby, 326 SC 121, 129, 484 SE2d 869, 873 (1997);

A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of Justice

White v State of S.C., 708 F. Supp. 1465 (1988) - State, rather than some other agency, must have deprived [Petitioner] of his right to fair trial to implicate due process clause of Fourteenth Amendment.

State v Hawkins, 300 SC 225, 387 SE2d 251 (1989) - (South Carolina Supreme Court cautions trial courts that the sitting Judge must conduct all adversarial proceedings with fairness and impartiality. The wide discretion

accorded presiding Judges, embedded in the law of South Carolina, is essential to the orderly Administration of Justice. When, however, this discretion is exercised with abuse, to the prejudice of a party - litigant, ... the result is legal error requiring a new trial.

Rule 501, SCACR, Code of Judicial Conduct, Canon 3  
A Judge must perform Judicial duties impartially and fairly, a Judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the Judiciary into disrepute.

Land v State, 274 SC 243, 262 SE2d 735 (1980) -  
Applicant bears the burden of showing the allegations could not have been previously raised

Townsend v Burke, 334 US 736, 68 Sct 1252 (1948) -  
(Sentenced on the basis of assumptions concerning his criminal record which were materially untrue.)

### Regarding Ineffective Assistance of PCR Counsel

Mangal v State, 421 SC at 99, 805 SE2d at 575  
( ) - "the Sixth Amendment guarantee of effective assistance of counsel is a 'bedrock principle in our Justice system'" (quoting Martinez v Ryan, 566 US 1, 12, 132 Sct 1309 (2012)).

Strickland v Washington, 466 U.S. 668, 684, 104 Sct 2052  
Page 10 of 13

(1984) - "the Sixth Amendment right to counsel exists, and is needed, in order to protect the fundamental right to a fair trial."

Johnson v Zerbst, 304 US 458, 462, 58 Sct 1019

(1938) - "The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, Justice will not 'still be done'."

Fishburne v State, 2019 WL 3437787 - "The United States Constitution's Sixth Amendment guarantee to a defendant's right to effective assistance of counsel is engrained in PCR cases..."

Robertson v State, 418 SC 505, 513, 795 SE2d 29, 33

(2016) - "The South Carolina Legislature enacted the Uniform Post-Conviction Procedure Act to govern all aspects of PCR..." It is this statutory scheme that affords the right to counsel in PCR, not the constitution.

Turner v State, 384 SC 451, 682 SE2d 792 (2009) -

"[T]he right to PCR counsel arises from Rule 71.1, SCRCP, and not from the constitution.

Turner, id. - "[T]he right to counsel may arise pursuant to the Due Process Clause under the Fifth and Fourteenth Amendments.

State v Hornsby, 326 SC 121, 129, 484 SE2d 869, 873 (1997) - "A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of Justice."

### Regarding Conclusion

Boykin v Alabama, 395 US 238 (1969) - The due process clause requires a defendant's plea to be given voluntarily and intelligently.

Simpson v State, 317 SC 506, 455 SE2d 175 (1995) - An appellate court will review the totality of the circumstances to discern if a plea was entered into knowingly and intelligently.

Boykin v Alabama, 395 US 238, 242, 89 Sct 1709, 1711 (1969) - A trial judge should not accept a guilty plea without an affirmative showing that it was intelligent and voluntary.

Tolled v Henderson, 411 US 258, 263 (1973) - A guilty plea is constitutionally valid, only to the extent that it is voluntary and intelligent, with the advice of competent counsel.

U.S. v Cronin, 466 US 648, 104 Sct 203 (1984) - If counsel entirely fails to subject the prosecution's case

to meaningful adversarial testing, then there has been a denial of the defendant's sixth amendment rights that makes the adversarial process, itself, presumptively unreliable.

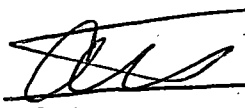
Frett v State, 298 SC 54, 378 SE2d 249 (1988) -

If counsel's ineffectiveness was so pervasive, an applicant may be exempted from proving actual prejudice.

Cherry v State, 300 SC 115, 386 SE2d 624 (1989) -

Prejudice to a defendant arises when "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

Respectfully submitted,

  
Alonzo C. Jeter, III  
APPELLANT/Prose

Tyger River Correctional Institution  
200 Prison Road  
Enoree, SC 29335

This <sup>24<sup>th</sup></sup> day of July, 2020

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Certiorari to Cherokee County  
Honorable Robin B. Stilwell, Circuit Court Judge

Case No. 2017-001777

Alonzo Columbus Jeter, III,

PETITIONER,

STATE OF SOUTH CAROLINA,

RESPONDENT.

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JUL 30 2020

SC Court of Appeals

CERTIFICATE OF SERVICE

I, Alonzo C. Jeter, III, hereby certify that I have served a true copy of the CITATION OF SUPPLEMENTAL AUTHORITIES II, and MOTION FOR JUDICIAL NOTICE; on Respondent by placing the same inside of a postage prepaid envelope and placing said envelope in the hands of Tiger River Correctional Institution's mail room personnel on this 24<sup>th</sup> day of July, 2020, for mailing via the United States Mail, addressed as follows: Vann Henry Gunter, Jr., Esquire, Assistant Attorney General, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211.

s/ Alonzo C. Jeter, III  
Alonzo C. Jeter, III  
PETITIONER / Pro se

Tiger River Correctional Institution  
200 Prison Road  
Enoree, South Carolina 29335

Sworn and Subscribed before me  
this 24<sup>th</sup> day of July, 2020

Donna E. Berry  
Notary Public for South Carolina  
My Commission Expires: 1/31/30  
SC Code Ann § 26-1-10 et seq  
Matter of Celso, 330 SC 497, 499 SE2d 809 (1998)

July 24, 2020

Alonzo C. Jeter, III  
Tyger River Correctional Institution  
200 Prison Road  
Enoree, SC 29335

The Honorable Jerry A. Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

RE: Alonzo C. Jeter, III, v State of South Carolina

Appellate Case No. 2017-001777

RECEIVED

JUL 30 2020

SC Court of Appeals


Dear Honorable Kitchings:

Enclosed for filing, please find the CITATION OF SUPPLEMENTAL AUTHORITIES II, MOTION FOR JUDICIAL NOTICE, and Certificate of Service for the same.

Enclosed, please also find an additional copy of the same along with a self-addressed stamped envelope.

Please return to me, file-stamped copies of these documents by way of the enclosed SASE.

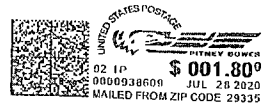
Thank you for your assistance in this matter.

Sincerely, 

Alonzo C. Jeter, III

cc: Vann Henry Gunter, Jr., Esquire

Alonzo C. Jeter, III, #282902  
Tiger River Correctional Institution  
200 Prison Road  
Enoree, SC 29335



The Honorable Jerry A. Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

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