

The Supreme Court of South Carolina

Billy R. King Jr. #249995  
Appellant

vs.

State of South Carolina

Supreme Court of  
South Carolina

Writ of Certiorari  
2018-CP-08-298

Writ of Certiorari

Appeal of P.C.R. Final Order of Dismissal  
Berkeley County 9<sup>th</sup> Circuit Court.  
Honorable Jenifer B. McCoy

RECEIVED

AUG 13 2020

S.C. SUPREME COURT

Prepared By:

Appellant Billy R. King Jr.

SCDC # 249995

Kirkland Corr. Inst. B2-7

4344 Broad River Rd.

Columbia, SC 29210

## Cases

Delaney v. State 269 S.C. 555, 238  
S.E. 2d 679 (1977)

Hood v. Com. Supreme Court of Virginia  
(2010) 280, Va 526

Legare v. State 333 S.C. 225, 509  
S.E. 2d 472 (1998)

Norris v. South Carolina, 18 Fed. Appx.  
171 (4th Cir. 2001)

Norris v. South Carolina, 2001 WL  
34085161 (D.S.C. 2001)

People v. Lopez 251 Cal. App. 2d  
918, 60 Cal. Rptr. 72, 76

State v. James, 107 S.E. 908

State v. James 116 S.C. 243, 107  
S.E. 907 (1921)

State v. Make 412 S.E. 2d 386,

State v. Munyon 365 S.C. 516

State v. Rivers 363 S.E. 2d 125

## Constitutional Law

S.C. Digest

Key 4594 (1) Suppression by prosecution  
of evidence favorable to accused S.C. 2004

Key 4594 (7) S.C. 91

Key 4594 (8) Duty to Preserve

Key 4594 (10) Time & Manner of Disclosure

Key 4754 Fair & impartial jury S.C. 1973

USCA Cont. Amen. 5

USCA Cont. Amen. 6

USCA Cont. Amen. 14

US Const. Art. I Sec 14

42 USC § 1983

42 USC § 1988

## South Carolina Code of Law

17-25-50

56-1-1020

# The Supreme Court of South Carolina

Billy R. King Jr. # 249995  
Appellant

vs.

State of South Carolina

Supreme Court of  
South Carolina

Writ of Certiorari

2018-CP-08-298

The appellant Billy R. King Jr. ask this Honorable Court to overturn the lower Courts ruling to dismiss appellant's P.C.R.

The State has argued that the appellant's P.C.R was successive and beyond time parameters. The fact remains that the appellant has not had these issues before the Court. The Attorney General's office made their argument on technicalities instead of the actual facts. This can be seen in the final order to dismiss where the Attorney General's office states appellant could have presented these issues earlier. This statement lacks proof on their behalf.

The appellant was never given his fair bite of the apple, but instead just small nibbles that did not allow appellant to form a full P.C.R. defence. Appellant had to file Freedom of Information Act request in order to receive issues of evidence. Further lack of attention on behalf of the Attorney General's office can be seen in their Conditional Order to Dismiss. They state appellants argument concerning 14<sup>th</sup> Constitution Violation comes from S.C. Code 56-1-1020 which is misquoted from appellants

Amended Brief Filed May 31, 2018. This brings into question again did the Attorney General's office just seek technicalities to dismiss the case and if they even looked at the filed amendments

and motions. Why do they get a redo and the appellant does not. The appellant feels as though if he would have given false statutes, cases or laws he would be held accountable.

The state has not showed why appellants P.C.R. arguments were dismissed and did not address the Constitutional Violations. The appellant contends his P.C.R. shows how his Constitutional Rights were violated concerning evidence and his right to a fair and just trial.

## Issues of Argument For Review

### I. Sentencing

The appellant was denied and deprived of a fair sentence which violated the appellant's Fifth and Fourteenth amendment Rights to due process that the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair trial or hearing.

#### A. 14<sup>th</sup> Amendment Violation

Appellant contends that because all of the charges occurred during the same time period, the assaults were said to be committed during the time of the kidnapping, his 14<sup>th</sup> Amendment Right was violated according to South Carolina Code 17-25-50, "Considering closely connected offences as one offence in determining the number of offences for the purpose of imposition of sentence, the court shall treat as one offence, any number of offences which have been committed at times so closely together, connected in a point of time that they may be considered as one offence."

of the State v. Munyon 365 S.C. 516; State v. Woody 359 S.C. 1; Legare v. State 333 S.C. 275; 509 S.E. 2d 472 (1998), display an overwhelming consensus that all of the separate charges should be considered as one charge when it comes to sentencing.

### B. Layout of Sentence

The appellant contends that the layout of his sentence is illegal. The appellant has a ten year sentence with five years probation run consecutive to a twenty year sentence run concurrent with a twenty-five year sentence with five years probation. The issue is that the appellant must complete one sentence (w/ probation in the middle) before he can begin the sentence running consecutive to it. IF the sentence stays the way that the Department of Corrections is interrupting it, the first five year probation is moved to the end of both sentences. IF any part of the sentence has to be moved, then the sentence does not stay true to the legal terms of Consecutive.

### II. Evidence/Constitutional Violation

Determining what is required of the government to satisfy due process (Handling of Evidence) depends upon the particular situation or issue and the interest involved, U.S.C.A. Const. 5<sup>th</sup> & 14<sup>th</sup>; Hood v. Com. Supreme Court of Virginia (2010) 280, Va 526, and the miscarriage of justice exception allowing a Federal Court in a Habeas Corpus proceeding to address a claim of Constitutional error that, although ordinarily unreviewable, is subject to review because of a state court procedural default that rendered the proceedings basically unfair.

S.C. Code 17-27-90 where an appellant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive P.C.R. applications and those facts are not conclusively refuted by the record before P.C.R. court a question of fact is raised which can only be resolved by a hearing. Delaney v. State, 269 S.C. 555, 238 S.E. 2d 679 (1977). This after discovered evidence will support the motion for new sentencing or to re-open for amended findings, referring to evidence of facts based on the facts pursuant to the law of the land, the U.S.C.A. Fifth and Fourteenth amendments, prejudicial Due-Process, miscarriage of Justice exception and perjured testimony.

#### A. Release of Vital Evidence Without Examination (appellant's car)

Key 4594 (1) Suppression by prosecution of Evidence favorable to accused (S.C. 2004). Appellant's car was released to his ex sister-in-law without the appellant's consent. The car was released the second day after the appellant was arrested.

Appellant never had an opportunity for his attorney or investigator to go over the car for evidence. During appellant's trial the title to the car, which was in appellant Billy R. King Jr's name, was presented as evidence showing the car was appellants.

This was a key piece of evidence. Appellant had purchased car from ex sister-in-law and had title in his name.

Since the Sheriff's department gave her legal claim to the car, how was the State allowed to show the car title to the jury, telling them that it proved the car to be the appellants?

Constitution Law (S.C. Digest) Key 4594 (7) displays support

that with the car being released before appellant's defence team had the opportunity to photograph, examine, or obtain material for testing, fully denies the appellant of fairness in adherence to constitution law. S.C. 1991 Due Process which requires that criminal defendant be offered the opportunity to obtain material for testing and examination, U.S.C.A. Const. AMED. Fourteenth, State v. Mabe 412 S.E. 2d 386, 306 S.C. 355.

The petitioner had questions about the content and items in the car. This left him vulnerable to the bias of what the Sheriff and Solicitor felt was relevant.

1. There was no physical evidence placing the victim in the car (e.g. Blood, D.N.A, hair or fingerprints) the only evidence was clothing, which was not tested for D.N.A.
2. The victim stated she was dragged across the console and out of the car. Nothing looked disturbed in the car and no hair was found.

#### B. Missing Evidence, S.C. Digest Key 4594(8) Duty to Preserve

The Sheriff's report mentions appellant being in his underwear, pictures were taken showing this. Once appellant was taken to jail for booking and holding, the appellants underwear were taken as evidence (DNA) then they seemed to disappear, and were never entered into evidence. Pictures of appellant wearing the underwear were shown during the trial. The underwear should have been checked for physical evidence. The Sheriff's department had to have discarded the underwear, because they were not with the other materials sent to S.L.E.D. for forensic testing.

## Amendment Fifth and Fourteenth State v. Singleton -

if evidence possesses exculpatory value that is apparent before its destruction, its disposal constitutes denial of Due Process.

### C. Evidence Left Behind

When the car was processed it was said to have contained clothes and a cigarette case in it. There was no DNA trace or fingerprints on these items. The cigarette case was given to my ex sister-in-law when she picked up the car. Key 4594 (10)

#### Time and manner of Disclosure:

1. The cigarette case was said to belong to the victim. The appellant had no chance to have it examined. It was said to have no D.N.A. or fingerprints on it. The appellant cannot be sure because it seemed to be cleaned before examination.

Duty to preserve advises that all evidence prevalent to a criminal case must be preserved

2. There were sodas in the console cup holders in the pictures shown in court, but they were never checked for fingerprints or D.N.A. to identify if anyone else was involved. They were left in the car when it was released. This called into question how someone was dragged across the console from one side of the car, out the other side of the car, without disturbing the sodas. These questions could not be answered because the appellant's Constitutional Right to Due Process was denied by not being allowed to have the evidence examined, nor was the evidence preserved. South Carolina Digest Key 4594

### III. Sixth Amendment Violation - Miscarriage of Justice

Decision or outcome of legal proceeding is prejudicial or inconsistent

with substantial rights of appellant. As used in constitutional standard of reversible error, "miscarriage of Justice" means a reasonable probability of a more favorable outcome. People v. Lopez 251 Cal. App. 2d 918, 60 Cal Rptr. 72, 76. The appellant contends that his 6<sup>th</sup> Amendment Constitutional Right was violated due to him not being a part of a ruling of the court during trial. Appellant's right to due process was violated when a jury member came forth after recognizing that she had been an employee of the appellant's brother, who was a witness. She had been dismissed from her job by the brother. Neither the brother nor the appellant was notified of the discussion or decision by the court. The decision to leave the juror on the jury should be considered a bias move, denying the appellant due process throughout the proceedings brought against him.

A defendant in a criminal proceeding has the right to be present at every phase of his or her criminal trial. The right is rooted in the confrontational clause of the United States Constitution and the corresponding sections of the South Carolina U.S. Const. Amend. VI.; S.C. Const. Art. I Sec. 14. A fair and just trial was prevented because of absence of appellant during a critical stage of trial, where judge addressed a juror (Snyder v. Massachusetts, 291 U.S. 97, 105-108, 1934). Conversations between a judge and juror while the jury is out, and without the defendant, or at least his knowledge, constitute a critical stage in which the appellant had the right to be present. The judge speaking with the juror, constituting a modified or supplemental charge, in response to a jury's note is a critical stage (Norris v. South

Carolina, 2001 WL 34085161 (D.S.C. 2001) (Order vacated on other grounds, Norris v. South Carolina, 18 Fed. Appx. 171, 4<sup>th</sup> Cir. 2001)); State v. James, 116 S.C. 243, 107 S.E. 907 (1921).

The South Carolina Supreme Court has specifically noted that "nothing can be done by the court in a trial for a felony, after the jury is sworn and impaneled, unless the defendant is personally present." (State v. James, 107 S.E. 908.) The denial of a defendant's right to be present during a critical stage of a trial, mandates reversal. In State v. James, the court concluded that the defendant's absence from additional jury instructions given by the trial judge in response to a note from the jury, violated the defendant's right to be present, and reversed the conviction.

The South Carolina Supreme Court has unequivocally stated that a defendant has the right to be present during everything that happens in a criminal case, especially when a juror's potential bias is being explored, (State v. Rivers, 363 S.E. 2d 125; State v. James, 107 S.E. 908).

The appellant is seeking a fair bite on an even field.

Conclusion:

The appellant has provided specific, factual, and legal reasoning to show that his case has merit. He knows that extreme prejudice occurs when one's legal rights to due process, as well as the right to correct sentencing, is denied.

The before mentioned issues could not be argued earlier, because they were obtained after filing through the Freedom of Information Act to receive information that the appellant never received. The United States Supreme Court set forth

the Fifth and Fourteenth Amendments that due process is the embodiment of the concept that the government is required to do, or refrain from doing. Certain things must be done if it is to exercise the authority that it derives from the consent of the governed justly and without prejudice. Concerning Constitutional Rights issues, there is no statute of limitations contained within the language of 42 U.S.C. 1983. The United States Supreme Court has directed that 42 USC 1988 requires court to borrow and apply to all 1983 claims the one most analogous State statute of limitations.

For the foregoing reasons the appellant is asking the court to grant his petition of questions and arguments that have violated his rights.

Respectfully,

Billy R. King Jr # 249995

KCI B2-7

4344 Broad River Rd

Columbia, SC 29210

State of South Carolina )  
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County of Berkley )  
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Billy Randolph King Jr. #249995 )  
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 v. )  
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State of South Carolina )  
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IN THE COURT OF COMMON PLEAS

Motion to Amend PCR Brief  
Questions #10 & #11

2018-CP-08-298

**Re: Applicant never had an opportunity to examine evidence (SLED Report) against him. This violated his 5<sup>th</sup> and 14<sup>th</sup> Constitutional Right.**

The applicant contends that the United States Supreme Court set forth the 5<sup>th</sup> and 14<sup>th</sup> amendments that due process is the embodiment of the concept that the government is required to do, or refrain from doing. Certain things must be done if it is to exercise the authority that it derives from the consent of the governed justly and without prejudice. There is no statute of limitations contained within the language of **42 USC § 1983**. The United States Supreme Court has directed that **42 USC § 1988** requires court to borrow and apply to all § 1983 claims the one analogous state statute of limitations.

Determining what is required of the government to satisfy due process depends upon the particular situational issue and the interest involved. **U.S.C.A Const.5<sup>th</sup> & 14<sup>th</sup>; Hood v. Com. Supreme Court of Virginia** (2010) 280, Va 526. And the Miscarriage of Justice exception which allowing a federal court in a Habeas Corpus proceeding to address a claim of constitutional error that, although ordinarily unreviewable is subject to review because of a state-court procedural default that rendered the proceedings basically unfair.

The appellant contends that on May21, 1998, a SLED report was concluded containing such items as: Finger prints, Fabric Samples, Blood Samples and DNA samples. With this report being finished on the 21th of May there was not ample time for the appellant's defense to examine the report. The appellant's trial began on May 25, 1998. The defense's trial attorney never received a copy of the SLED report. It was put straight into evidence during the trial. When the appellant received all of his legal paper work from the trial attorney there was not a copy of the report. The issue with the report being used as evidence was that due to the lack of fairness the appellant was never allowed to refute any of the finding from the report. The report was used in the trial against the appellant but there was no factual evidence, DNA wise to connect the appellant to the case.

With out an actual copy of the report the appellant could not fight against it. During the appellant's first PCR hearing that the PCR attorney Waring Parker was allowed to ask the solicitor about the DNA blood testing. He stated on the stand as a witness that he never had SLED do any testing; there is a Order to Submit Forensic Evidence that was requested and signed by Solicitor Alston Badger for testing to be done. This order is in contrast to what he

testified under oath during the PCR hearing. With him an officer of the court stating that there was no testing done there was no need to pursue the issue. It was not until the applicant went through the process of filing a Freedom of Information Act request from SLED that he was able to receive a copy of the report. It took him some time to come up with the funds to pay for the information because SLED would not recognize his indigent status as an inmate with no financial income.

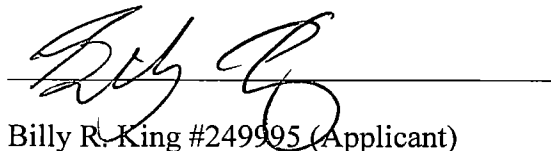
**S.C. 1991 Due Process require that criminal defendant be offered opportunity to obtain material for testing and examination. USCA Const. Amend 14, State v. Mabe 412 S.E. 2d 386, 306 S.C. 355.**

Due to the above mentioned issues that the appellant's constitutional rights were violated not allowing him to have a fair shake at Due Process during his trial, PCR or within the time restraints of refileing. It is only due to the Constitutional Rights that he has as a United States citizen that affords him the right to have the violation of his Constitutional Rights revisited due to the fact that there is no statute of limitations on Constitutional Right violations.

Constitutional Rights Violation are covered under S.C. code Ann. § 17-27-90 where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before PCR court a question of fact is raised which can only be resolved by a hearing. **Delaney v. State, 269 S.C. 555, 238 S.E. 2d 679, (1977).** This after discovered evidence such as will support the motion for new sentencing or to re-open for amended findings, referring to evidence of facts based on the facts pursuant to the law of the land, the U.S.C.A. fifth and fourteenth amendments, prejudicial Due Process, Miscarriage of Justice exception and perjured testimony.

The SLED document was placed into evidence before the petitioner's defense team had the opportunity to examine or obtain material for evaluation that fully denied the applicant fairness in adherence to **S.C. 1991 Due Process** which requires that criminal defendant be offered opportunity to obtain material for testing and examination; **USCA Const. Amed 14, State v. Mabe 412 S.E. 2d 386, 306 S.C. 355.**

The applicant was denied Due Process violating the 14<sup>th</sup> Amendment of the US Constitution when he could not have the SLED report examined before his Trial or his PCR hearing, yet leaving him vulnerable to the bias of what the Solicitor felt relevant. This bias violated the applicants Constitutional Right.



Billy R. King #249995 (Applicant)  
KCI B-2-7  
4344 Broad River Rd.  
Columbia, SC 29210



**Inmate A**

35 yr. Sentence Violent Charge 85%  
Prison start date 08/05/1997

- \*inmate has several charges in prison
  - \*illegal cell phone
  - \*weapons
  - \*fighting
  - \*disobeying an order

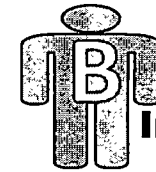
- \*Education when entering DOC: No HS Diploma.
- \*Inmate has not pursued any education.

\*No Certificates

\*No volunteer activities

\*No job within the system

\*Max Out date 04/1/2027



**Inmate B**

35 yr. Sentence Violent Charge 85%  
Prison start date 08/05/1997

\*inmate has no charges (21 years)

- \*Education when entering DOC: HS Diploma.
  - \*Received A.A. degree from CIU
  - \*Received A.A.S. from Ashworth College
  - \*Received Th.B. from Grace Bible College
  - \*Received B.S. CIU
  - \*Second year of M.S. program at CCU
  - \*SC Work-keys

\*Numerous certificates  
 \*CIU, Palmetto School District, Character Awards.

\*Volunteer Activities  
 \*IRC, Bible study classes, Chaplain set up,  
 Spanish Church, ESL, Dorm Ministry, etc.

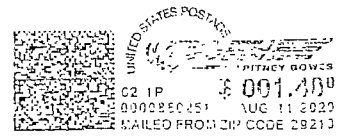
\*Has only had four jobs in 21 years (HVAV tech, Canteen, CIU student, CIU teacher's aide)

\*Max Out date 04/1/2027

Both get out the same day, which would you rather have as a neighbor?

Both of them did their 85% sentence, but one chooses to rehabilitate himself, because the system does not see the difference between the two inmates, they both are doing the same amount of time whether they stay in trouble or do the right thing.

Billy King 249995  
KEI B-2-1  
4344 Broad River Rd  
Col. SC 29210

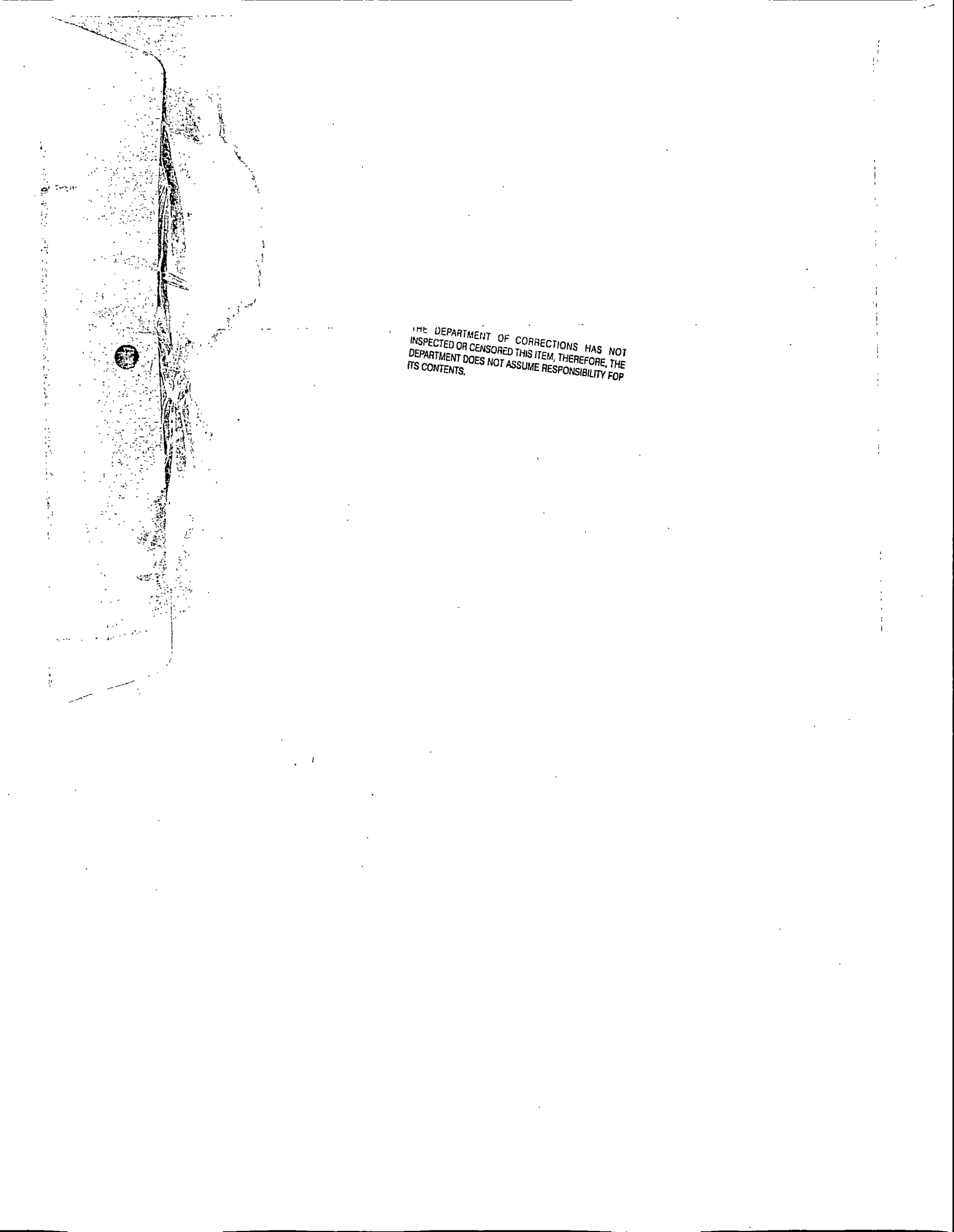


**SCDC**

AUG 11 2020  
MAIL ROOM

Supreme Court of S.C.  
Daniel Shearouse, Clerk of Court  
P.O. Box 11330  
Col. SC 29211

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ONLY**



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