

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734 1080

FAX (803) 734 1499

June 29, 2011

John H. Blume, III, Esquire
Blume Weyble & Norris, LLC
P O Box 11744
Columbia, SC 29211

Re Roberts, Tyree, a/k/a Alkebulanyahh v State

Dear Counsel

The following Order has been endorsed on your Motion to Exceed Page Limits for the Reply to Return to Petition for a Writ of Certiorari in the above entitled case on appeal

“Granted

Jean H. Toal C J
For the Court

By s/ Daniel E. Shearouse
Clerk

June 29, 2011 ”

By copy of this letter we are advising opposing counsel of the action of the Court in this matter

Roberts, Tyree, a/k/a Alkebulanyahh v State

Page Two

June 29, 2011

Very truly yours,

David E. Shearman
ES

CLERK

DES/dmh

cc Assistant Attorney General Alphonso Simon, Jr

5

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUN 28 2011

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Supreme Court

Carmen T Mullen, Circuit Court Judge

Case No 06-CP-11-223

Abdiyyah ben Alkebulanyahh, #6012, *Petitioner*,

v

State of South Carolina

MOTION TO EXCEED PAGE LIMITS

Petitioner, through undersigned counsel, hereby moves to exceed the fifteen page limit set by SCRAP 243 (h) for Petitioner's Reply to Respondent's Return to the Petition for Writ of Certiorari in the above captioned matter. Given that motions were granted to exceed the page limits for both the Petition and the Return, petitioner submits that his request to exceed the page limits by four pages is reasonable and appropriate.

Respectfully submitted,

GRANTED

Jean H. Toal CJ
For the Court

By: [Signature] Clerk
June 29, 2011

June 28, 2011

[Signature]
JOHN H. BLUME
Cornell Law School
112 Myron Taylor Hall
Ithaca, NY 14853
(607) 255-1030

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T Mullen, Circuit Court Judge

Case No 06-CP-11-223

Abdiyyah ben Alkebulanyahh, #6012, *Petitioner*,

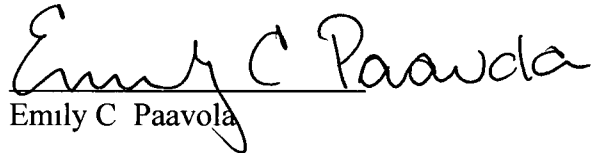
v

State of South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Petitioner's Motion to Exceed Page Limits has been served upon Respondent's counsel by first class mail, postage prepaid, this 28th day of June, 2011, upon the following

Alphonso Simon, Jr
Assistant Attorney General
P O Box 11549
Columbia, SC 29211


Emily C Paavola

The Supreme Court of South Carolina

Tyree Roberts, a/k/a Abdiyyah
Alkebulanyahh,

Petitioner,

V

State of South Carolina,

Respondent

The Honorable Carmen T Mullen
Beaufort County
Trial Court Case No 2007-CP-07-00715

ORDER

The request for an extension to serve and file the Reply to Return to
Petition for a Writ of Certiorari is granted and extended until June 28, 2011

IT IS SO ORDERED

JEAN H TOAL, CHIEF JUSTICE

BY

CLERK

Columbia, South Carolina

June 14, 2013

cc John H Blume, III, Esquire
Assistant Attorney General Alphonso Simon, Jr

BLUME WEYBLE & NORRIS, LLC

ATTORNEYS AT LAW

JOHN H. BLUME
KEIR M. WEYBLE
TERESA L. NORRIS
DAVID I. BRUCK *OF COUNSEL*

1247 SUMTER STREET, SECOND FLOOR
COLUMBIA, SOUTH CAROLINA 29201
MAILING ADDRESS
POST OFFICE BOX 11744
COLUMBIA, SC 29211
PHONE (803) 765 1044
FAX (803) 765 1143

June 13, 2011

The Honorable Daniel E. Shearouse
Clerk
South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

RE *Abdiyyah ben Alkebulanyahh v. State of South Carolina*

Dear Mr. Shearouse:

I am writing to request an extension of ten (10) days in which to file Petitioner's Reply to the Return to Petition for Writ of Certiorari in the above referenced case. The Reply is currently due to be filed, June 18, 2011. I am currently preparing for the competency to be executed hearing in the case of *James Wilson v. State of South Carolina*, which is scheduled to begin on June 15, 2011 in Spartanburg County.

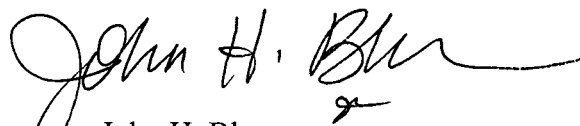
I am informing opposing counsel of my request by copy of this letter. If you should have any questions, please do not hesitate to contact me.

RECEIVED

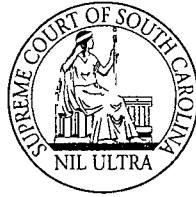
JUN 14 2011

S.C. SUPREME COURT

Sincerely,


John H. Blume

cc Alphonso Simon, Jr.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA SOUTH CAROLINA 29211

(803) 734 1080

FAX (803) 734 1499

June 13, 2011

Assistant Attorney General Alphonso Simon, Jr
Office of the Attorney General
P O Box 11549
Columbia, SC 29211

Re Roberts, a/k/a Alkebulanyahh v State

Dear Counsel

The following Order has been endorsed on your Motion to Exceed Page Limit on the Return to Petition for Writ of Certiorari in the above entitled case on appeal

“Granted

s/ Jean H. Toal C J
For the Court

June 13, 2011 ”

By copy of this letter we are advising opposing counsel of the action of the Court in this matter

Very truly yours,



CLERK

DES/dmh

Roberts, a/k/a Alkebaranyahh v State
Page Two
June 13, 2011

cc John H Blume, III, Esquire

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari from Beaufort County
Court of Common Pleas
Honorable Carmen T. Mullen, Circuit Court Judge

Case No. 2007-CP-07-715

RECEIVED

JUN - 9 2011

SC Supreme Court

TYREE ROBERTS, SK 6012
AKA ABDIYYAH BEN ALKEBULANYAHH,

Petitioner,

v

STATE OF SOUTH CAROLINA,

Respondent

MOTION TO EXCEED PAGE LIMIT

The above-named Respondent hereby makes a motion to this Court, pursuant to Rule 208(b)(5), SCACR, to file a Return in excess of the page limit. This capital case is very long and complex. For example, the Order of Dismissal presently being appealed is 54 pages long. The Appendix is 5308 pages long. Further, Petitioner was granted permission to file a Petition for Writ of Certiorari in excess of the page limit. Petitioner has raised three primary issues, with several sub-issues, in a petition that is forty pages long. Respondent therefore respectfully requests that it be allowed to file a Return not to exceed forty pages in order to properly respond to Petitioner's arguments.

Wherefore, Respondent respectfully requests to file a Return not to exceed forty pages in order to properly respond to Petitioner's arguments

Respectfully submitted,

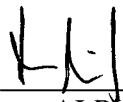
ALAN WILSON
Attorney General

JOHN W McINTOSH
Chief Deputy Attorney General

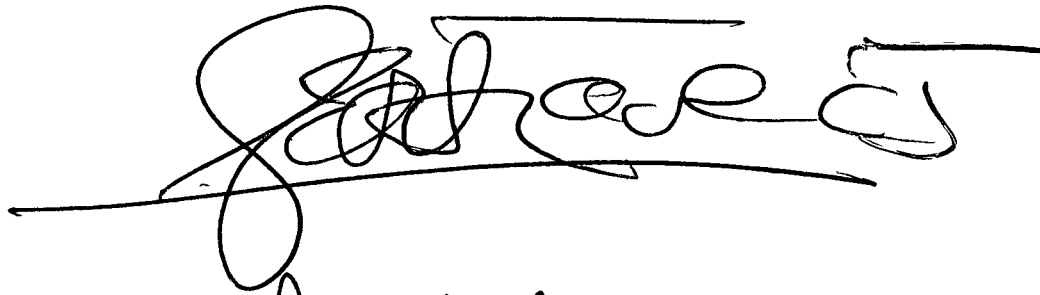
DONALD J ZELENKA
Assistant Deputy Attorney General

ALPHONSO SIMON, JR
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

BY 
ALPHONSO SIMON, JR

June 9, 2011



June 13, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari from Beaufort County
Court of Common Pleas
Honorable Carmen T Mullen, Circuit Court Judge

Case No 2007-CP-07-715

TYREE ROBERTS, SK 6012
AKA ABDIYYAH BEN ALKEBULANYAHH,

Petitioner,

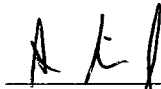
v

STATE OF SOUTH CAROLINA,

Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of June, 2011, two copies of the Respondent's Motion to Exceed Page Limits were served on counsel for the Petitioner, John H Blume, Esq , Blume, Weyble & Norris, LLC, P O Box 11744, Columbia, SC 29211



ALPHONSO SIMON, JR

June 9, 2011



ALAN WILSON
ATTORNEY GENERAL

June 6, 2011

RECEIVED

JUN 09 2011

SC SUPREME COURT

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re Tyree Roberts, SK 6012 aka Abdiyyah ben Alkebulaiyah v State of
South Carolina
Return to Petition for Writ of Certiorari

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the Respondent's Return to Petition for Writ of Certiorari in the above-referenced matter. I am also enclosing an original and six (6) copies of a Motion to Exceed the page limit.

Thank you for your assistance in this matter.

Sincerely,

Alphonso Simon, Jr.
Assistant Attorney General

AS/dmd

Enclosures

cc John H. Blume, Esq. (w/ two (2) copies of encls.)
Ms. Sandi Wolford, Victim Services (w/copy of encls.)

The Supreme Court of South Carolina

Tyree Roberts, a/k/a Abdiyyah
Alkebulanyahh,

Petitioner,

V

State of South Carolina,

Respondent

The Honorable Carmen T Mullen
Beaufort County
Trial Court Case No 2007-CP-07-00715

ORDER

Respondent seeks a third extension of time to serve and file the Return to Petition for a Writ of Certiorari in the above entitled matter. The request for an extension is granted and extended until June 6, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED

JEAN H TOAL, CHIEF JUSTICE

BY

CLERK

Columbia, South Carolina

May 18, 2011

cc Chief Appellate Defender Robert M Dudek
John H Blume, III, Esquire
Assistant Attorney General Alphonso Simon, Jr



ALAN WILSON
ATTORNEY GENERAL

May 16, 2011

RECEIVED

MAY 18 2011

S.C SUPREME COURT

The Honorable Daniel E Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re *Third* Extension Request
Tyree Roberts a/k/a Abdiyyah Alkebulanyahh vs State of South Carolina
Appeal from Beaufort County

Dear Mr Shearouse

I hereby request an extension of twenty-one (21) days in which to file the Return to Petition for Writ of Certiorari in the above-referenced case. The Return is currently due to be served and filed today, May 16, 2011. However, because of my involvement in other matters in state and federal court, I have been unable to timely complete the Return.

Therefore, I am enclosing an original and six (6) copies of a Petition for Extension of Time to File Return to Petition for Writ of Certiorari. I have notified opposing counsel of this request and by copy of this letter I am enclosing copies of same to Mr Blume.

Sincerely,

Alphonso Simon, Jr
Assistant Attorney General

AS dmd
Enclosures
cc John H Blume, Esq (w/two (2) copies of encls)

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Beaufort County
The Honorable Carmen T. Mullen, Circuit Court Judge

ABDIYYAH BEN ALKEBULANYAHH, #6012,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

**PETITION FOR EXTENSION OF TIME TO FILE
RETURN TO PETITION FOR WRIT OF CERTIORARI**

The Respondent above-named, by and through the undersigned attorney, would respectfully move this Court, for an extension of time within which to make return or otherwise plead. The response of Respondent in the above action is due to be filed today May 16, 2011. The undersigned attorney for the above Respondent moves that the time for return be extended by twenty-one (21) days up to and including June 6, 2011.

The undersigned attorney for the Respondent has had and is scheduled to have a number of state and federal matters to attend to in the past thirty (30) days. Specifically, counsel prepared and filed Respondent's Memorandum of Law Regarding Treatment of Mental Retardation Claims in Post-Conviction Relief Actions after Franklin v. Maynard on April 18, 2011 in Kevin Mercer, #6021 v. State of South Carolina, 2009-CP-32-5465 a

RECEIVED

MAY 18 2011

Page 1 of 4

S C SUPREME COURT

Lexington County capital post-conviction relief action Counsel also prepared for and attended the argument on this brief which was heard by the PCR Court on Tuesday, April 26, 2011 Counsel has also spent a significant amount of time preparing part of the proposed order in this case, which is being submitted this week Counsel reviewed the Record on Appeal in preparation for one (1) deposition in Norman Starnes v State of South Carolina, 2011-CP-32-830, a capital post-conviction relief action pending in Lexington County Counsel also prepared and filed the Return to Application for Post-Conviction Relief in Starnes v State

Counsel has also drafted and filed the Returns and Memoranda of Law in Support of Motions for Summary Judgment in John Bradley Turner, #290521 v Warden, Perry Correctional Institution, C/A No 1 10-2433-HFF-SVH, Damon L. Doyle, #282794 v A J Padula, Warden, C/A No 6 10-3242-JMC-KFM, Jahmell Williams, #320676 v Anthony Padula, Warden of Lee Correctional Institution, C/A No 8 11-0255-CMC-JDA on April 29, 2011, and Jason Kelly, #287190 vs Leroy Cartledge, Warden, C/A No 0 10-3136-SB-PJG all federal habeas actions pending before the United States District Court for the District of South Carolina

Counsel prepared and filed the Return to Petition for Writ of Certiorari to the Court of Appeals in the matter of State vs. Adams Gibson, a direct appeal in a Richland County murder case, and also prepared the Return to Motion for a Stay of Execution and for the Appointment of a Post-Conviction Relief Judge in the Horry County Capital matter of Louis Michael Winkler v State of South Carolina, No 10-9125 Both matters are currently pending before this Court Counsel has completed review of the 2100 pages of transcript in the matter of The State of South Carolina vs Tremaine¹ Rashon Wray and State v

Taurus Watts, co-defendant direct appeals in a Richland County murder case, both of whom are pending before the South Carolina Court of Appeals Counsel prepared and filed the Final Brief of Respondent in State vs Jonathan Millard Campbell, a direct appeal in a Greenville County murder case pending before the South Carolina Court of Appeals

Due to these and undersigned counsel's involvement in other matters pending in state and federal court, counsel was unable to timely properly prepare the return to the habeas petition in this proceeding This request is made in good faith, and not for the purposes of delay

WHEREFORE, premises considered, counsel hereby respectfully requests a twenty-one (21) day extension of time to serve and file the return in this matter

Respectfully Submitted,

ALAN WILSON
Attorney General

JOHN W McINTOSH
Chief Deputy Attorney General

DONALD J ZELENKA
Assistant Deputy Attorney General

ALPHONSO SIMON, JR
Assistant Attorney General

P O Box 11549
Columbia, South Carolina 29211
(803) 734-6305

By

ALPHONSO SIMON JR
ATTORNEYS FOR RESPONDENT

By

DONALD J ZELENKA
Assistant Deputy Attorney General

May 16 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Beaufort County,
The Honorable Carmen T. Mullen, Circuit Court Judge

ABDIYYAH BEN ALKEBULANYAHH, #6012,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

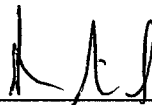
PROOF OF SERVICE

I, Alphonso Simon, Jr. do hereby certify that on this date, I served the *Petition for Extension of Time to File Return to Petition for Writ of Certiorari* in the foregoing action on counsel for the Petitioner by depositing two (2) copies of the same in the United States mail, first-class, postage prepaid, and addressed as follows

John H. Blume, Esq.
Blume, Weyble & Norris, LLC
P O Box 11744
Columbia, SC 29211

This 16th day of May, 2011

By



ALPHONSO SIMON, JR.
ATTORNEYS FOR RESPONDENT

The Supreme Court of South Carolina

Tyree Roberts, a/k/a Abdiyyah
Alkebulanyahh, Petitioner,
v
State of South Carolina, Respondent

The Honorable Carmen T. Mullen
Beaufort County
Trial Court Case No. 2007-CP-07-00715

ORDER

Respondent seeks a second extension of time to serve and file the Return to Petition for a Writ of Certiorari in the above entitled matter. The request for an extension is granted and extended until May 16, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED

JEAN H. TOAL, CHIEF JUSTICE

BY Shirley I. Sherry
Chief Deputy CLERK

Columbia, South Carolina

April 22, 2011

cc John H. Blume, III, Esquire
Chief Appellate Defender Robert M. Dudek
Assistant Attorney General Alphonso Simon, Jr



ALAN WILSON
ATTORNEY GENERAL

April 20, 2011

RECEIVED

APR 22 2011

S C SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re *Second Extension Request*
Tyree Roberts a/k/a Abdiyyah Alkebulanyahh vs. State of South Carolina
Appeal from Beaufort County

Dear Mr. Shearouse:

I hereby request an extension of twenty-six (30) days in which to file the Return to Petition for Writ of Certiorari in the above-referenced case. The Return is currently due to be served and filed today, April 20, 2011. However, because of my involvement in other matters in state and federal court, I have been unable to timely complete the Return.

Therefore, I am enclosing an original and six (6) copies of a Petition for Extension of Time to File Return to Petition for Writ of Certiorari. Opposing counsel has consented to this request and by copy of this letter I am enclosing copies of same to Mr. Blume.

Sincerely,

Alphonso Simon, Jr.
Assistant Attorney General

AS dmd
Enclosures
cc John H. Blume, Esq. (w/two (2) copies of encls.)

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Beaufort County
The Honorable Carmen T. Mullen, Circuit Court Judge

ABDIYYAH BEN ALKEBULANYAHH, #6012,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

RECEIVED
APR 22 2011
SC SUPREME COURT

**PETITION FOR EXTENSION OF TIME TO FILE
RETURN TO PETITION FOR WRIT OF CERTIORARI**

The Respondent above-named by and through the undersigned attorney would respectfully move this Court for an extension of time within which to make return or otherwise plead. The response of Respondent in the above action is due to be filed today, April 20, 2011. The undersigned attorney for the above Respondent moves that the time for return be extended by twenty-six (26) days up to and including May 16, 2011.

The undersigned attorney for the Respondent has had and is scheduled to have a number of state and federal matters to attend to in the past thirty (30) days. Specifically, counsel prepared and filed Respondent's Memorandum of Law Regarding Treatment of Mental Retardation Claims in Post-Conviction Relief Actions after Franklin v. Maynard on

April 18 2011 in Kevin Mercer, #6021 v State of South Carolina, 2009-CP-32-5465, a Lexington County capital post-conviction relief action Counsel also reviewed the Appendix and filed the Return to Petition for Writ of Habeas Corpus in Tyree Roberts, #6012 aka Abdiyyah ben Alkebulanyahh v State of South Carolina which is currently pending before the South Carolina Supreme Court Counsel also filed the State's Brief in Opposition to the Return to Petition for Writ of Certiorari in Louis Michael Winkler v State of South Carolina, No 10-9125, which is currently pending before the United States Supreme Court Counsel has reviewed the criminal trial transcripts in preparation for and attendance at three (3) depositions in Norman Starnes v State of South Carolina, 2011-CP-32-830, a capital post-conviction relief action pending in Lexington County Counsel has also reviewed the Record on Appeal in preparation and drafted the Return to Application for Post-Conviction Relief in Starnes v State which is also set to be filed this week

Counsel has also reviewed a most of the transcript in the matter of State v Tremaine Rashon Wray and State v Taurus Watts, two Richland County murder direct appeals (co-defendants in a joint trial) also pending in the South Carolina Court of Appeals Counsel prepared the Final Brief of Respondent in State vs Jonathan Millard Campbell a direct appeal in a Greenville County murder case pending before the South Carolina Court of Appeals Counsel prepared Respondent's Objections to the Report and Recommendations in the matter of James William Spoone, #309287 vs Warden, Leroy Cartledge, C/A No 9 10-2173-CMC-BM on March 28, 2011, a Reply to Response to Motion for Summary Judgment in Terry Dimingo Terry, #307935 vs Mr Leroy Cartledge, Warden of McCormick Correctional Institution, C/A No 6 10-2006-JFA-KFM on March 31, 2011, and Respondent's response in opposition to Petitioner's Request for Appointment

of Counsel in Jason Kelly, #287190 vs Leroy Cartledge, Warden, C/A No 0 10-3136-SB-PJG on April 14, 2011, all in pending federal habeas corpus actions pending in the United States District Court for the District of South Carolina

Due to these and undersigned counsel's involvement in other matters pending in state and federal court, counsel was unable to timely properly prepare the return to the habeas petition in this proceeding. This request is made in good faith, and not for the purposes of delay. I have contacted opposing counsel and he has consented to this request.

WHEREFORE, premises considered, counsel hereby respectfully requests a twenty-six (26) day extension of time to serve and file the return in this matter.

Respectfully Submitted,

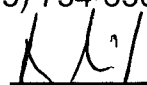
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

ALPHONSO SIMON, JR.
Assistant Attorney General

P O Box 11549
Columbia, South Carolina 29211
(803) 734-6305

By 

ATTORNEYS FOR RESPONDENT

April 20, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Beaufort County
The Honorable Carmen T. Mullen, Circuit Court Judge

ABDIYYAH BEN ALKEBULANYAHH #6012

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

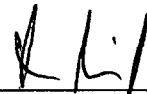
PROOF OF SERVICE

I, Alphonso Simon, Jr, do hereby certify that on this date, I served the *Petition for Extension of Time to File Return to Petition for Writ of Certiorari* in the foregoing action on counsel for the Petitioner by depositing two (2) copies of the same in the United States mail, first-class, postage prepaid, and addressed as follows

John H. Blume, Esq
Blume, Weyble & Norris, LLC
P O Box 11744
Columbia, SC 29211

This 20th day of April, 2011

By



ALPHONSO SIMON, JR

ATTORNEYS FOR RESPONDENT

The Supreme Court of South Carolina

Tyree Roberts, a/k/a Abdiyyah
Alkebulanyahh, Petitioner,

v

State of South Carolina, Respondent

The Honorable Carmen T Mullen
Beaufort County
Trial Court Case No 2007-CP-07-00715

ORDER

The request for an extension to serve and file the Return to Petition for a Writ of Certiorari is granted and extended until April 20, 2011 Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause

IT IS SO ORDERED

JEAN H TOAL, CHIEF JUSTICE

BY Brenda J. Shely
Chief Deputy CLERK

Columbia, South Carolina

March 22, 2011

cc John H Blume, III, Esquire
Assistant Attorney General Alphonso Simon, Jr



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

March 21, 2011

MAR 21 2011

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

SC Supreme Court

Re *Roberts, a/k/a Alkebulanyahh vs. State of South Carolina*

Dear Mr. Shearouse:

I hereby request an extension of thirty (30) days in which to file the Return to Petition for Writ of Certiorari in the above-referenced case. The Return is currently due to be served and filed today, March 21, 2011. However, because of my involvement in other matters in State and Federal court, I have been unable to timely complete the Return.

Therefore, I am requesting this extension within which to serve and file the Return to Petition for Writ of Certiorari. I am informing opposing counsel of my request by copy of this letter.

Sincerely,

Alphonso Simon, Jr.
Assistant Attorney General

AS dmd
cc John H. Blume Esq

BLUME WEYBLE & NORRIS, LLC

ATTORNEYS AT LAW

JOHN H. BLUME
KEIR M. WEYBLE
TERESA L. NORRIS
DAVID I. BRUCK *OF COUNSEL*

1247 SUMTER STREET, SECOND FLOOR
COLUMBIA, SOUTH CAROLINA 29201
MAILING ADDRESS
POST OFFICE BOX 11744
COLUMBIA, SC 29211
PHONE (803) 765 1044
FAX (803) 765 1143

February 17, 2011

RECEIVED

FEB 17 2011

The Honorable Daniel E. Shearouse
Clerk
South Carolina Supreme Court
P O Box 11330
Columbia, S C 29211

S C Supreme Court

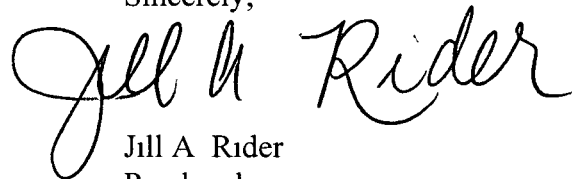
RE *Abdiyyah ben Alkebulanyahh v State of South Carolina*

Dear Mr. Shearouse:

Please find enclosed for filing, with proof of service, the original and six copies of Petitioner's Petition for Writ of Certiorari and Appendix in the above-captioned case.

Please do not hesitate to contact me if you have any questions in this matter or if I can provide you with any additional information.

Sincerely,



Jill A. Rider
Paralegal

cc Alphonso Simon, Jr

The Supreme Court of South Carolina

Tyree Roberts, a/k/a Abdiyyah
Alkebulanyahh,

Petitioner,

v

State of South Carolina,

Respondent

The Honorable Carmen T Mullen
Beaufort County
Trial Court Case No 2007-CP-07-00715

ORDER

Petitioner seeks a third extension of time to serve and file the Petition for a Writ of Certiorari and Appendix in the above entitled matter. The request for an extension is granted and extended until February 18, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances and state what actions are being taken to insure that no further extension will be required.

IT IS SO ORDERED

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

January 18, 2011

cc Chief Appellate Defender Robert M Dudek
John H Blume, III, Esquire
Assistant Attorney General Alphonso Simon, Jr

BLUME WEYBLE & NORRIS, LLC

ATTORNEYS AT LAW

JOHN H. BLUME
KEIR M. WEYBLE
TERESA L. NORRIS
DAVID I. BRUCK *OF COUNSEL*

1247 SUMTER STREET, SECOND FLOOR
COLUMBIA, SOUTH CAROLINA 29201
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POST OFFICE BOX 11744
COLUMBIA, SC 29211
PHONE (803) 765 1044
FAX (803) 765 1143

January 14, 2011

The Honorable Daniel E. Shearouse
Clerk
South Carolina Supreme Court
P O Box 11330
Columbia, S C 29211

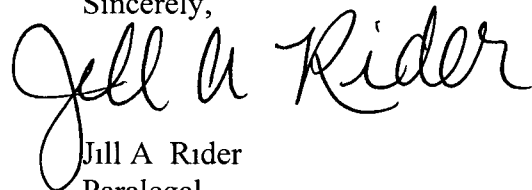
RE *Abdiyyah ben Alkebulanyahh v State of South Carolina*

Dear Mr. Shearouse

Please find enclosed for filing, with proof of service, the original and six copies of Petitioner's Third Motion for Extension of Time in the above-captioned case.

Please do not hesitate to contact me if you have any questions in this matter or if I can provide you with any additional information.

Sincerely,


Jill A. Rider
Paralegal

cc Alphonso Simon, Jr

RECEIVED

JAN 18 2011

SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T Mullen, Circuit Court Judge

Case No 06-CP-11-223

Abdiyyah ben Alkebulanyahh, #6012, *Petitioner*,

v

State of South Carolina

THIRD MOTION FOR EXTENSION OF TIME

Petitioner, through undersigned counsel, for the reasons stated below, respectfully requests that this Court grant an extension of time for 30 days to file the Petition for Writ of Certiorari and the Appendix presently currently due for filing on January 19, 2011

1 An extension is necessary because Mr Roberts' case concerns complex factual and legal issues that require thorough record review, research and analysis Furthermore, because counsel was only appointed on appeal, and was previously unfamiliar with the case, it has taken a great deal of time to review the trial transcript and other items in the record on appeal, review the transcript of the post-conviction relief hearing and otherwise "get up to speed" on the facts of the case

2 Additionally, counsel only recently obtained the exhibits from the Beaufort County

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JAN 18 2011

SC SUPREME COURT

Clerk of Court's Office Counsel is currently assembling the record for the appeal of the denial of post-conviction relief, but due to a delay in obtaining some records and documents, counsel has been unable to provide the complete record to the Office of Appellate Defense for printing

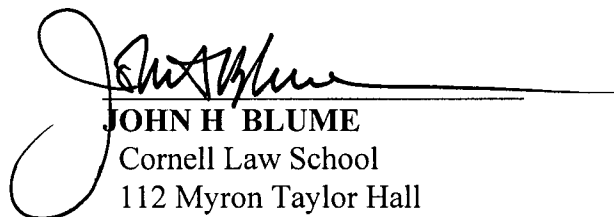
3 Furthermore, undersigned counsel is a full time Professor of Law at Cornell Law School, and this is a very busy time in the academic calender with the end of classes, preparing examinations and reviewing students papers and projects

4 Finally, counsel was recently appointed by the United States District Court for the District of South Carolina to represent James Robertson, an indigent death sentenced inmate in federal habeas corpus proceedings Counsel did not seek the appointment in that case either, but agreed to the appointment when asked to do so by the federal district court judge assigned to the case The statute of limitations expires in Mr Robertson's case in early 2011

5 Undersigned counsel has spoken with counsel for respondent, Alphonso Simon, and he has no objection to this request for an extension of time

THEREFORE, given the complexity of this case, delays in obtaining the complete record, and counsel's other professional commitments, petitioner respectfully requests that a thirty day extension of time be granted thus making the petition for writ of certiorari due on Feb 18, 2011

Respectfully submitted,


JOHN H. BLUME
Cornell Law School
112 Myron Taylor Hall
Ithaca, NY 14853
(607) 255-1030

January 14, 2011

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T Mullen, Circuit Court Judge

Case No 06-CP-11-223

Abdiyyah ben Alkebulanyahh, #6012, *Petitioner*,

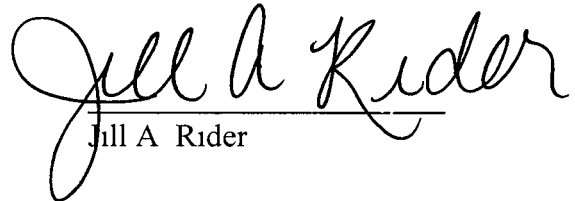
v

State of South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Applicant's Motion for Second Extension of Time was mailed today by first class United States mail, postage prepaid, this 14th day of January, 2011, upon the following

Alphonso Simon, Jr
Assistant Attorney General
P O Box 11549
Columbia, SC 29211


Jill A Rider

The Supreme Court of South Carolina

Tyree Roberts, a/k/a Abdiyyah
Alkebulanyahh,

Petitioner,

v

State of South Carolina,

Respondent

The Honorable Carmen T Mullen
Beaufort County
Trial Court Case No 2007-CP-07-00715

ORDER

Petitioner seeks a second extension of time to serve and file the Petition for a Writ of Certiorari and Appendix in the above entitled matter. The request for an extension is granted and extended until January 19, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED

JEAN H. TOAL, CHIEF JUSTICE

BY Andrea A. Shealy
CHIEF DEPUTY CLERK

Columbia, South Carolina

December 16, 2010

cc Chief Appellate Defender Robert M. Dudek
John H. Blume, III, Esquire
Assistant Attorney General Alphonso Simon, Jr

BLUME WEYBLE & NORRIS, LLC

ATTORNEYS AT LAW

JOHN H. BLUME
KEIR M. WEYBLE
TERESA L. NORRIS
DAVID I. BRUCK *OF COUNSEL*

1247 SUMTER STREET, SECOND FLOOR
COLUMBIA, SOUTH CAROLINA 29201
MAILING ADDRESS
POST OFFICE BOX 11744
COLUMBIA, SC 29211
PHONE (803) 765 1044
FAX (803) 765 1143

December 15, 2010

The Honorable Daniel E. Shearouse
Clerk
South Carolina Supreme Court
P O Box 11330
Columbia, S C 29211

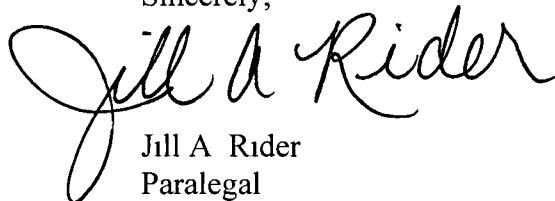
RE *Abdiyyah ben Alkebulanyahh v State of South Carolina*

Dear Mr. Shearouse

Please find enclosed for filing, with proof of service, the original and six copies of a Motion for Second Extension of Time in the above-listed case.

Please do not hesitate to contact me if you have any questions in this matter or if I can provide you with any additional information.

Sincerely,


Jill A. Rider
Paralegal

cc Alphonso Simon, Jr

RECEIVED

DEC 16 2010

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 06-CP-11-223

Abdiyyah ben Alkebulanyahh, #6012, *Petitioner*,

v

State of South Carolina

SECOND MOTION FOR EXTENSION OF TIME

Petitioner, through undersigned counsel, for the reasons stated below, respectfully requests that this Court grant an extension of time for 30 days to file the Petition for Writ of Certiorari and the Appendix presently currently due for filing on December 20, 2010.

1 An extension is necessary because Mr. Roberts' case concerns complex factual and legal issues that require thorough record review, research and analysis. Furthermore, because counsel was only appointed on appeal, and was previously unfamiliar with the case, it has taken a great deal of time to review the trial transcript and other items in the record on appeal, review the transcript of the post-conviction relief hearing and otherwise "get up to speed" on the facts of the case.

2 Additionally, counsel only recently obtained the exhibits from the Beaufort County

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DEC 16 2010
SC SUPREME COURT

Clerk of Court's Office Counsel is currently assembling the record for the appeal of the denial of post-conviction relief, but due to a delay in obtaining some records and documents, counsel has been unable to provide the complete record to the Office of Appellate Defense for printing

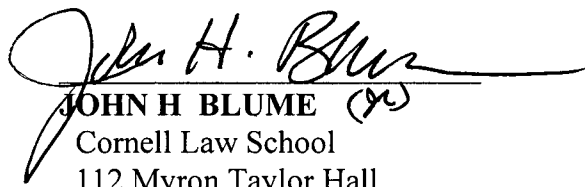
3 Furthermore, undersigned counsel is a full time Professor of Law at Cornell Law School, and this is a very busy time in the academic calender with the end of classes, preparing examinations and reviewing students papers and projects

4 Finally, counsel was recently appointed by the United States District Court for the District of South Carolina to represent James Robertson, an indigent death sentenced inmate in federal habeas corpus proceedings Counsel did not seek the appointment in that case either, but agreed to the appointment when asked to do so by the federal district court judge assigned to the case The statute of limitations expires in Mr Robertson's case in early 2011

5 Undersigned counsel has spoken with counsel for respondent, Alphonso Simon, and he has no objection to this request for an extension of time

THEREFORE, given the complexity of this case, delays in obtaining the complete record, and counsel's other professional commitments, petitioner respectfully requests that a thirty day extension of time be granted thus making the petition for writ of certiorari due on January 19, 2011

Respectfully submitted,


JOHN H. BLUME (s)
Cornell Law School
112 Myron Taylor Hall
Ithaca, NY 14853
(607) 255-1030

December 15, 2010

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T Mullen, Circuit Court Judge

Case No 06-CP-11-223

Abdiyyah ben Alkebulanyahh, #6012, *Petitioner*,

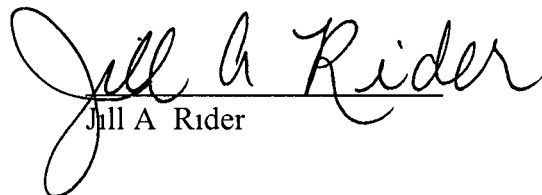
v

State of South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Applicant's Motion for Second Extension of Time was mailed today by first class United States mail, postage prepaid, this 15th day of December, 2010, upon the following

Alphonso Simon, Jr
Assistant Attorney General
P O Box 11549
Columbia, SC 29211


Jill A Rider

13

The Supreme Court of South Carolina

Tyree, Roberts, a/k/a Abdiyyah
Alkebulanyahh, Petitioner,

v

State of South Carolina, Respondent

The Honorable Carmen T Mullen
Beaufort County
Trial Court Case No 2007-CP-07-00715

ORDER

The request for an extension to serve and file the Petition for a Writ of Certiorari is granted and extended until December 20, 2010 Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause

IT IS SO ORDERED

JEAN H TOAL, CHIEF JUSTICE

BY *Lrenda I. Shealy*
CHIEF DEPUTY CLERK

Columbia, South Carolina

November 16, 2010

cc Chief Appellate Defender Robert M Dudek
John H Blume, III, Esquire
Assistant Attorney General Alphonso Simon, Jr

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NOV 16 2010

BLUME WEYBLE & NORRIS, LLC

ATTORNEYS AT LAW

JOHN H. BLUME
KEIR M. WEYBLE
TERESA L. NORRIS
DAVID I. BRUCK *OF COUNSEL*

S.C. SUPREME COURT

1247 SUMTER STREET, SECOND FLOOR

COLUMBIA, SOUTH CAROLINA 29201

MAILING ADDRESS

POST OFFICE BOX 11744

COLUMBIA, SC 29211

PHONE (803) 765 1044

FAX (803) 765 1143

November 15, 2010

The Honorable Daniel E. Shearouse
Clerk
South Carolina Supreme Court
P O Box 11330
Columbia, S C 29211

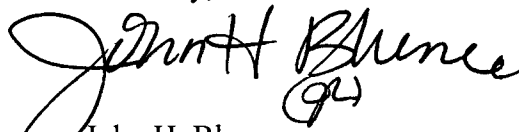
RE *Alkebulanyahh v State*

Dear Mr. Shearouse

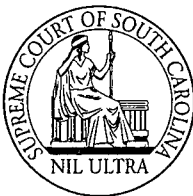
I am writing to request a thirty day extension of time in which to file the Petition for Writ of *Certiorari* in the above captioned matter. The petition is currently due on November 19, 2010. The additional time is needed to secure all of the exhibits introduced at the post-conviction relief hearing in Beaufort County.

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

Sincerely,


John H. Blume

cc Alphonso Simon, Jr
Abdiyyah Ben Alkebulanyahh



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734 1080

FAX (803) 734 1499

October 20, 2010

John H. Blume, III, Esquire
Blume Weyble & Norris, LLC
P O Box 11744
Columbia, SC 29211

Re Roberts, Tyree, a/k/a Alkebulanyahh v State

Dear Counsel

The following Order has been endorsed on your Motion to Remand for Additional Post-Conviction Proceedings in the above entitled case on appeal

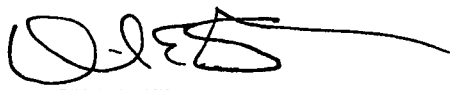
“Motion to remand for additional
post-conviction proceedings is denied

s/ Jean H. Toal C J
For the Court

October 20, 2010 ”

Please be advised the Petition for a Writ of Certiorari and Appendix should be served and filed within thirty (30) days of the date of this letter

Very truly yours,


CLERK

DES/dmh

Roberts, Tyree, a/k/a Alkebulanyahh v State
Page Two
October 20, 2010

cc Chief Appellate Defender Robert M Dudek
Assistant Attorney General Alphonso Simon, Jr

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T Mullen, Circuit Court Judge

Case No 06-CP-11-223

Abdiyyah ben Alkebulanyahh, #6012, *Petitioner*,

v

State of South Carolina

**REPLY TO RESPONSE TO MOTION TO REMAND FOR
ADDITIONAL POST-CONVICTION PROCEEDINGS**

Petitioner, through undersigned counsel, files this reply to the Response in Opposition to Motion to Remand for Additional Post-Conviction Proceedings

ARGUMENT IN REPLY

**I Petitioner's Post-Conviction Counsel Were Not Qualified
Under the Plain Language of § 17-27-160(B)**

In 1996, the South Carolina Legislature enacted S C Code Ann § 17-27-160 ("Capital Case Post-Conviction Procedures") with the intention of "opting-in" to the expedited habeas corpus

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SC SUPREME COURT

procedures for capital cases contained in Chapter 154 of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) *See Tucker v Moore*, 56 F Supp 2d 611, 613-14 (D S C 1999) (State argued that S C Code Ann § 17-27-160 was enacted to attempt to satisfy 28 U S C §§ 2261(b)-(c) of AEDPA) ¹ To qualify as an “opt-in” jurisdiction, a state is required to, *inter alia* a) establish a mechanism to provide qualified and adequately compensated counsel in post-conviction proceedings, appoint counsel pursuant to that mechanism, 28 U S C § 2261(b), and b) offer counsel to all state prisoners under capital sentence, 28 U S C § 2261(c) The statute enacted by the South Carolina General Assembly in response to this federal incentive requires the appointment of two attorneys for indigent applicants, at least one of which

[M]ust have previously represented a death-sentenced inmate in state or federal post-conviction relief proceedings or (1) must meet the minimum qualifications set forth in Section 16-3-26(B) [five years practicing law with three years in the actual trial of felony cases] and Section 16-3-26(F) [any Supreme Court promulgated guidelines for attorneys handling death penalty cases] and (2) have successfully completed, within the previous two years, not less than twelve hours of South Carolina Bar approved continuing legal education or professional training primarily involving advocacy in the field of capital appellate and/or post-conviction defense

S C Code Ann § 17-27-160(B)

It is uncontested that neither of petitioner’s post-conviction relief (PCR) attorneys had either (1) previously represented a death-sentenced inmate in state or federal post-conviction relief

¹The United States District Court in *Tucker* construed § 17-27-160(B) as requiring one of the two appointed attorneys to have either (1) previously represented a death-sentenced inmate in state or federal post-conviction relief proceedings, or, (2) met the requirements of capital trial counsel in § 16-3-26(B) and § 16-3-26(F) *and* have completed at least twelve hours of continuing legal education in *capital appellate* and/or *post-conviction* defense Report and Recommendation at 10-13, *Tucker v Moore*, 56 F Supp 2d 611 (D S C 1999) (No 0 98-681-8BD) Respondent conceded these statutory requirements and further conceded that Tucker’s PCR counsel, who were admittedly qualified under § 16-3-26(B), did not qualify for appointment as post-conviction counsel under the language of the statute at issue here *Id* Counsel in *Tucker* had the same experience as counsel appointed to represent petitioner

proceedings, or, (2) completed twelve hours of continuing legal education or professional training in capital appellate and/or post-conviction defense within two years of their appointment to represent petitioner in this case

Respondent does not attempt to offer a construction of the statute under which petitioner's PCR counsel were qualified, but instead relies entirely on an August 15, 2003 letter from the Chief Justice of the South Carolina Supreme Court to all Circuit Court Judges stating that the qualifications for capital post-conviction representation under § 17-27-160(B) are identical to those for capital trial representation under § 16-3-26(B). Response at 2. In her letter, the Chief Justice concluded that the use of "or" between "continuing legal education" and "professional training primarily involving advocacy" in § 17-27-160(B) gives courts the discretion to appoint attorneys in capital post-conviction relief proceedings that either (1) have completed any twelve hours of South Carolina Bar approved continuing legal education, *regardless of the topic*, or (2) completed twelve hours of South Carolina Bar approved professional training *specific* to advocacy in the field of capital appellate and/or post conviction defense. The Chief Justice further opined that requiring more stringent qualifications for attorneys appointed in capital post-conviction relief than for attorneys appointed in capital trial proceedings would be an absurd result that the legislature could not have intended.

Respondent's reliance on the Chief Justice's letter is misplaced for two reasons. (1) It is outside the scope of her unilateral authority as Chief Justice of this Court as conferred upon her by the State Constitution and relevant statutes, and, (2) even if it were within the Chief Justice's authority to issue this unilateral change to the rules, it violates the separation of powers doctrine by contradicting clear and unambiguous statutory language that is not so *plainly absurd* that the legislature could not have intended it.

A The South Carolina Constitution Does Not Give the Chief Justice Authority to Create Rules and Standards for the Appointment of Counsel in Capital Cases

The South Carolina Constitution creates a Supreme Court consisting of a Chief Justice and four Associate Justices S C Const art V, § 2 In addition to its original and appellate jurisdiction, the Supreme Court has the power to (1) make rules governing the administration of the courts, and, (2) subject to statutory law, make rules governing the practice and procedure in all courts S C Const art V, § 4, S C Code Ann § 14-3-640 (1976)

New rules promulgated by the Supreme Court governing the administration of state courts “become effective upon publication of such rules in the Court Register” S C Code Ann § 14-3-940(a) (1976) In contrast, new rules “governing the practice and procedure of all courts shall become effective upon publication in the Court Register and review by the General Assembly pursuant to the provisions of § 14-3-950” *Id* at (b) ²

The Constitution appoints the Chief Justice of the Supreme Court as the administrative head of the state judicial system and assigns certain limited powers to the Chief S C Const art V, § 4 As administrative head, the Chief Justice has the power to (1) appoint an administrator of the courts and such assistants as deemed necessary, and, (2) set the terms of any court and assign any judge to sit in any court within the unified judicial system *Id*

²All rules and amendments to rules governing practice and procedure in all courts of this State promulgated by the Supreme Court shall be submitted by the Supreme Court to the Judiciary Committee of each House of the General Assembly during a regular session, but not later than the first day of February during each session Such rules or amendments shall become effective ninety calendar days after submission unless disapproved by concurrent resolution of the General Assembly, with the concurrence of three-fifths of the members of each House present and voting S C Code Ann § 14-3-950 (1976)

The Chief Justice's unilateral authority to issue orders is limited to these two enumerated powers and does not extend to issuing advisory opinions, changing court administrative rules, or changing the rules governing practice and procedure. This is further supported by the language in Article V, § 4 that specifically grants the power to make rules governing the administration of all state courts and the power to make rules governing the practice and procedure in all courts to the "Supreme Court." *Id.* In order for the "Supreme Court" to make rule changes, it necessarily must conform to Article V, § 2, which requires this Court to have a three-justice quorum for the "transaction of business." Further, if the Court makes changes to the rules governing practice and procedures in state court, these changes must be submitted to the respective Judiciary Committees of General Assembly per S.C. Const. art. V, § 4A, as codified in S.C. Code Ann. § 14-3-950. None of these requirements are met by a letter sent to Circuit Court judges from the Chief Justice setting forth her interpretation of a state statute.

By concluding that § 17-27-160(B) places no additional requirements on capital post-conviction relief representation, the Chief Justice effectively created a new and different standard for the appointment of counsel in capital cases. By any definition of the term, this is either rulemaking or legislating. No single justice of this Court is empowered to unilaterally change the law through statutory interpretation, especially in an area as significant as capital representation. It necessarily follows from a plain reading of the Constitution and related statutes that the Chief Justice's letter dated August 15, 2003 was outside the scope of her authority.

B. The Change to the Appointment of Counsel Standards in Capital Post-Conviction Cases Violates the Separation of Powers

The Chief Justice's letter also violates basic separation of powers principles because it

changes the plain wording of the statute as enacted by the South Carolina Legislature. Additionally, even if the Chief Justice has unilateral authority to change the statutory rules governing capital post-conviction relief, her opinion must be rejected on well-established principles of statutory interpretation.

First, it is well established by this Court that “[a] basic presumption exists that the legislature has knowledge of previous legislation when later statutes are passed on a related subject.” *Berkebile v. Outen*, 311 S.C. 50, 534 S.E.2d 760, 762 (1993), accord *Kerr v. Richland Mem’l Hosp.*, 383 S.C. 146, 148, 678 S.E.2d 809, 811 (2009), *City of Camden v. Fairfield Elec. Coop.*, 372 S.C. 543, 548, 643 S.E.2d 687, 690 (2007), *State v. McKnight*, 352 S.C. 635, 648, 576 S.E.2d 168, 175 (2003), *Scott v. State*, 334 S.C. 248, 253, 513 S.E.2d 100, 103 (1999).

The statutory qualifications for trial attorneys appointed to defend an indigent in a death eligible case are found in S.C. Code Ann. § 16-3-26. This statute, enacted in 1977, requires that at least one of the appointed attorneys have a minimum of five years’ experience as an attorney and three years’ experience in the actual trial of felony cases. S.C. Code Ann. § 16-3-26(B)(1) (1976). The statutory qualifications for capital post-conviction relief were codified in 1996 in S.C. Code Ann. § 17-27-160, well after § 16-3-26. Additionally, § 17-27-160(B) explicitly references the minimum qualifications in § 16-3-26(B)(1), and then adds an additional requirement of continuing legal education (CLE) or professional training involving capital appellate and/or post-conviction defense. Clearly, the legislature was aware of § 16-3-26(B)(1) when it explicitly incorporated it into § 17-27-160(B), and before adding the CLE requirement. If the legislative intent in § 17-27-160(B) were simply to mirror the requirements of § 16-3-26(B)(1), it would simply have referenced that statute and said no more. The additional language after the reference to § 16-3-26(B)(1) in § 17-27-

160(B) cannot be construed as being devoid of any meaning without totally torturing basic principles of statutory construction. See e.g., *State v. Sweat*, 386 S. C. 339, 351, 688 S. E. 2d 569, 575 (2010) (“A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous”) (quoting *In re Decker*, 322 S. C. 215, 219, 471 S. E. 2d 462, 463 (1995)), *Savannah Bank and Trust Co. of Savannah v. Shuman*, 250 S. C. 344, 348, 157 S. E. 2d 864, 866-67 (1967) (Finding “[t]he construction urged by the appellant would disregard and treat as surplusage the quoted [section of the statute]. We are not at liberty to do so.”)

Second, this Court has repeatedly held that it must interpret statutory language according to its plain meaning. See e.g., *Hodges v. Rainey*, 341 S. C. 79, 85, 533 S. E. 2d 578, 581 (2000) (“Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning”) (citation omitted). The Court will only reject the plain reading of a statute “when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention.” *Kiriakides v. United Artists Commc’ns Inc.*, 312 S. C. 271, 275, 440 S. E. 2d 364, 366 (1994) (citing *Stackhouse v. Rowland*, 86 S. C. 419, 68 S. E. 561, 562 (1910)), see also *Harris v. Anderson County Sheriff’s Office*, 381 S. C. 357, 363 n. 1, 673 S. E. 2d 423, 426 n. 1 (2009) (“One rule of statutory construction allows the Court to deviate from a statute’s plain language when the result would be so patently absurd that it is clear that the Legislature could not have intended such a result.”) (citation omitted), *Hodges*, at 87, 533 S. E. 2d at 582 (2000) (“[A] court will reject the ordinary meaning of words used in a statute when, to accept the ordinary meaning, will lead to a result so plainly absurd that it can not possibly have been intended by the legislature.”) (citations omitted).

As stated in Petitioner's Motion to Remand, there are several reasons why the legislature would enact a different, and more stringent, standard for appointment of counsel in capital post-conviction cases than for appointment at the trial level. First, post-conviction litigation is an unusual combination of trial and appellate practice. Thus, persons competent to represent a death sentenced inmate at trial due to their extensive trial experience as reflected in § 16-3-26(B)(1), do not necessarily have the requisite skills to represent an individual in a capital post-conviction proceeding.³ Second, at trial, the defendant has a Sixth Amendment right to counsel, and thus a Sixth Amendment right to the effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668 (1984). If trial counsel performs incompetently and the incompetence contributes to the conviction or death verdict, the defendant has a remedy. *See e.g. Hall v. Catoe*, 601 S.E.2d 335 (S.C. 2004) (counsel found ineffective for failing to object to improper victim impact argument). However, in post-conviction proceedings, there is no currently recognized constitutional right to counsel and thus there is no clear remedy for substandard representation. *See Aice v. State*, 409 S.E.2d 392, 394 (S.C. 1991) (finding second post-conviction petition barred as successive and appearing to reject ineffective assistance of post-conviction counsel as a "sufficient reason" for failing to raise issues in the first application), *Cf. Washington v. State*, 478 S.E.2d 833, 835 (S.C. 1996) (allowing second post-conviction application to proceed due to "many procedural irregularities" in the first post-conviction proceedings). Third, the legislature enacted standards for

³See AMERICAN BAR ASSOCIATION GUIDELINES FOR THE APPOINTMENT AND PERFORMANCE OF DEFENSE COUNSEL IN CAPITAL CASES (2003) Guideline 1.1 (commentary) ("Post-conviction proceedings demand a high degree of technical proficiency, and the skills essential to effective representation differ in significant ways from those necessary to succeed at trial. For post-judgment review to succeed as a safeguard against injustice, courts must appoint appropriately trained and experienced lawyers.")

capital post-conviction counsel for a specific purpose, i.e., to meet federal “opt-in” requirements. Thus, it makes perfect sense that the statutory standards would have specific requirements requiring either prior capital post-conviction experience or capital post-conviction CLE training.⁴

It easily follows, therefore, that when drafting the procedures for indigent “capital post-conviction representation,” the legislature intended § 17-27-160(B) to require at least one of the appointed attorneys to have training that involves “advocacy in the field of capital appellate and/or post-conviction defense.” Otherwise, it is impossible to explain what purpose the second clause “involving advocacy in the field of capital appellate or post-conviction defense” would serve since the minimum standard in the first clause of *any* South Carolina Bar approved training would inevitably be met by any duly licensed attorney in South Carolina. S.C. App. Ct. R. 408 (a) (“All persons admitted to the South Carolina Bar shall be required to attend at least fourteen (14) hours of approved continuing legal education (CLE) courses each year”).⁵

The legislature was well aware of the qualifications for capital trial attorneys when it enacted the qualifications for post-conviction relief attorneys, and therefore the CLE requirement must be read as an additional qualification for capital post-conviction representation. There are also a number of plausible reasons for the legislature to have required different and more stringent qualifications for capital post-conviction relief, and in light of these reasons, the *plainly absurd*

⁴A number of other states have different requirements for capital trial and capital appellate or post-conviction counsel. *See e.g.* A.R.S. R. Crim. Pr. 16 (b) & (c) (requiring post-conviction counsel to have prior capital appellate or post-conviction experience or requiring a combination of felony trial and post-conviction experience), Oh, Sup. R. 20(A) & (B) (setting forth different criteria for appointment as lead counsel for a capital trial v. a capital direct appeal).

⁵Not to belabor the point, but such an interpretation of the statute would mean that an attorney could meet the qualifications for appointment in a capital post-conviction case, but not have sufficient CLE hours to be licensed. Obviously, the legislature can not have intended such an illogical result.

threshold is not met. Therefore, even if the Chief Justice had the unilateral authority to interpret §17-27-160(B), her interpretation must be rejected.

II Because Petitioner's Appointed PCR Counsel did not Have the Experience or Qualifications Required by §17-27-160, and Because Petitioner was Prejudiced by Their Lack of Experience, Petitioner's Case Should be Remanded to the Circuit Court for Additional Post-Conviction Proceedings

Respondent additionally maintains that the case should not be remanded to the circuit court for additional post-conviction proceedings because a) the statute does not provide a remedy for failing to appoint qualified counsel, and, b) petitioner can not demonstrate prejudice as a result of the failure to appoint counsel who satisfied the statutory criteria. Both arguments must fail.

While it is true that the statute does not specifically state what relief is available in the event a court appoints unqualified counsel, the same can be said of many (if not most) statutes. The capital trial statute does not specifically state what the remedy would be if a circuit court judge appointed trial counsel who did not meet the statutory criteria. But, if a court were to appoint counsel who did not meet those criteria and a defendant was convicted and sentenced to death, this Court would certainly reverse the conviction and sentence and remand for the appointment of qualified counsel and a new trial. *See State v. Diddlemeyer*, 371 S.E.2d 793 (S.C. 1988) (holding that “the trial court’s failure to follow the mandates of Section 16-3-26(B) denied appellant a fair trial”). There is no other appropriate remedy which would satisfy the statute’s purposes. Similarly, in petitioner’s case, there is no remedy other than remanding the case to the circuit court for additional post-conviction proceedings that will satisfy the statute’s purposes. No showing of prejudice should be required.⁶

⁶Respondent cites and attaches an order of this Court denying a petition for writ of habeas corpus in *Young v. State*. Respondent’s Exhibit B. Young sought a petition for writ of habeas corpus and alleged that he was denied due process because his post-conviction counsel did not meet

However, even if this Court were to require a showing of potential or actual prejudice, such a showing is easily made. First, as set forth in detail in the Motion to Remand, petitioner's PCR counsel a) obtained no funds for investigative and/or expert services and retained no investigators (neither fact nor social history/mitigation investigators), b) conducted no extra-record investigation to determine if there were viable claims for post-conviction relief not apparent from the trial record, and, c) failed to pursue or raise a number of claims which were apparent from the record. The PCR hearing, for the most part, consisted of counsel calling petitioner as a witness to "air his grievances" against his trial counsel. Undersigned counsel, who was appointed by this Court on appeal, does not, given the procedural posture of the case, have access to funds for investigative and expert services and thus has not (and can not reasonably be expected to have) conducted a necessary and competent post-conviction investigation.⁷ The failure to conduct any investigation or retain any experts of any

the requirements of § 17-27-160(B), and further alleged that qualified counsel would have raised two additional issues, which this Court ultimately determined to have no merit. There are a number of factors which distinguish *Young* from petitioner's case. The first distinction is the very different procedural posture of the cases. *Young* had already completed state post-conviction and federal habeas corpus proceedings (in which he was represented by different counsel) before he raised any objection to the qualifications of his original post-conviction counsel. Petitioner, on the other hand, has raised the issue of the qualifications of his PCR counsel at the earliest possible opportunity. Second, *Young* was seeking a writ of habeas corpus. Pursuant to this Court's jurisprudence, a writ of habeas corpus will only issue if there is a constitutional violation 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 87, 92 (S.C. 1990). Given that petitioner has not completed his initial post-conviction proceedings, and thus has not had a "full bite" at the post-conviction apple, he should not be required to satisfy the habeas corpus standard. However, even given the differences, it is important to note that this Court did address the merits of the issues raised by *Young* which his unqualified counsel did not present in his initial post-conviction proceedings. Appendix B at 5. Given the greater equities in petitioner's favor in his case, he is clearly entitled to a remand for additional post-conviction proceedings.

⁷At a minimum, petitioner should be afforded a) the services of a forensic psychiatrist and other mental health professionals (e.g., a neuropsychologist) to further inquire into petitioner's competency at the sentencing phase of his trial as well as his current competency, and b) the services of an investigator to interview the jurors.

kind should, in and of itself, satisfy any prejudice requirement ⁸

Second, in the Motion to Remand previously filed, petitioner set forth a number of potentially viable post-conviction issues which were not included in the amended application for post-conviction relief. In support of one of the potentially viable issues, i.e., whether petitioner became incompetent during the sentencing phase of the trial, petitioner provided a supporting affidavit from a highly qualified forensic psychiatrist. This was evidence which could have, and should have, been presented at petitioner's post-conviction relief hearing ⁹

Additionally, petitioner also noted a number of issues apparent from the record which could and should have been raised below, not only as substantive allegations for post-conviction relief but also, depending on the issue, as ineffective assistance of trial or appellate counsel. Motion to Remand at 7-11. In response to these issues, respondent makes a number of easily refutable points. First, as for petitioner's claim that he was deprived of his constitutional right to fair sentencing trial because he was shackled without any showing of necessity, respondent contends that there is no evidence the jury saw petitioner's feet shackled. Response at 6. It would be remarkable if the jurors did not see the shackles, as petitioner was placed in a glass room and there is no indication in the record any attempt was made to prevent the jurors from seeing the shackles. Furthermore, this is precisely the type of investigation which could have, and should have, been done prior to petitioner's post-conviction relief hearing. Second, in response to petitioner's claim that trial counsel was

⁸Undersigned counsel, who has represented indigent death sentenced inmates in South Carolina since 1985, is aware of no other capital post-conviction case where no funds for investigative and expert services were obtained nor any investigation conducted.

⁹Respondent points out that a claim of competence (although a different claim than the claims raised by undersigned counsel) was raised during the PCR proceedings but no evidence was presented in support of the claim. Response at 5. That, of course, only proves the point. No evidence was sought and no evidence was presented.

ineffective for failing to object to the erroneous admission of evidence and improper argument by the solicitor during the penalty phase of the trial (Motion to Remand at 9-10), respondent maintains that there was no objection to the evidence to preserve the issues for direct appeal (which is correct), but then asserts that petitioner can not “push the blame” onto standby counsel when petitioner chose to represent himself. Response at 7. This is simply wrong. The trial judge, after removing petitioner from the courtroom, specifically charged standby counsel with the responsibility of objecting to any inadmissible evidence or argument. Tr. 3541-42, 3556-57. Thus, petitioner does have a viable claim of ineffective assistance of trial counsel. Third, as for petitioner’s potentially meritorious claims of ineffective assistance of appellate counsel (Motion to Remand at 10), respondent asserts that the issues are without merit either because there was no objection or the issues were discussed in the PCR order. Response at 7. Again, that is not correct. Several of the issues, e.g., failure to terminate petitioner’s *pro se* status and the failure to conduct a competency hearing could have, and petitioner submits should have, been raised on direct appeal. As for the other issues, the PCR order did not address the merits of the issues because they were raised only as free-standing claims of error and were rejected by the lower court on procedural grounds as issues which could or should have been raised on direct appeal. PCR Order at 42, 48 & 51¹⁰. Again, the proof is in the pudding, given the procedural posture of the case, the only way to present the merits of these issues was to raise them

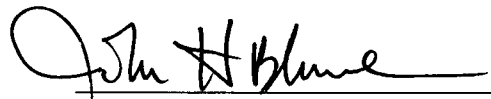
¹⁰Respondent refers a number of times to the PCR order of Judge Mullen. Response at 5,6,7. Another unique feature of this case is that the case was originally assigned to Judge Roger Young. Judge Young appointed counsel and presided over the PCR hearing. For reasons which are not stated in the order transferring the case, it was reassigned at this very late state of the proceedings to Judge Mullen on 17, 2008. It does not appear from the record that any post-hearing briefs were submitted to Judge Mullen, or that the court heard arguments before signing verbatim the state’s proposed order.

as issues of ineffective assistance of appellate counsel, which petitioner's PCR counsel failed to do ¹¹

CONCLUSION

For the reasons stated above, as well as those set forth in the Motion to Remand, petitioner's case should be remanded to the Beaufort Court of Common Pleas for additional post-conviction proceedings. Petitioner should also have counsel appointed to represent him who meet the requirements set forth in S C Code §17-27-160(B), and who are sufficiently familiar with capital post-conviction representation to provide adequate representation in a capital post-conviction case.

Respectfully submitted,


JOHN H. BLUME
Cornell Law School
112 Myron Taylor Hall
Ithaca, NY 14853
(607) 255-1030

August 9, 2010

¹¹Petitioner does not concede that the issues set forth in the Motion to Remand at 7-11 are the only potentially meritorious issues in the case. Without conducting the appropriate investigation, counsel can make no such representation.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 06-CP-11-223

Abdiyyah ben A'kebulanyahh, #6012, *Petitioner*,

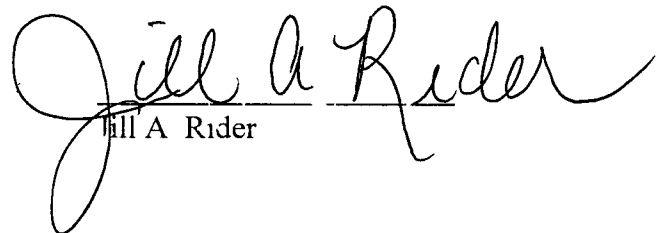
v

State of South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Applicant's Reply to Response to Motion to Remand for Additional Post-Conviction Proceedings was mailed today by first class United States mail, postage prepaid, this 9th day of August, 2010, upon the following

Alphonso Simon, Jr
Assistant Attorney General
P O Box 11549
Columbia, SC 29211


Jill A. Rider

RECEIVED

AUG - 9 2010

SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Beaufort County
The Honorable Carmen T. Mullen, Circuit Court Judge

RECEIVED

AUG - 2 2010

SC SUPREME COURT

ABDIYYAH BEN ALKEBULANYAHH, #6012,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

RESPONSE IN OPPOSITION TO
MOTION TO REMAND FOR ADDITIONAL
POST-CONVICTION RELIEF PROCEEDINGS

Respondent, above-named, hereby responds as follows to the Motion to Remand for Additional Post-Conviction Proceedings, filed by Petitioner Abdiyyah ben Alekbulanyahh. Respondent would assert the motion should be denied for the following reasons:

I. Petitioner's PCR counsel were qualified under the PCR statute, thus, there is no basis supporting a remand to allow Petitioner a second bite at the apple.

As an initial matter, Petitioner is incorrect that his PCR counsel were not qualified under the applicable statute. Petitioner asserts that under S.C. Code Ann. § 17-27-160 (2003), to be qualified in a capital PCR a lawyer either needs to have either previously represented a capital inmate in PCR, or be qualified to represent a death penalty inmate.

at trial AND also have within the preceding two years twelve hours of CLE training that primarily involves capital appeals or capital post-conviction relief

However, in her Memorandum regarding Appointment of Counsel in Capital Post-conviction Relief Matters, dated August 15th, 2003, the Chief Justice specifically rejected this interpretation, finding that it would lead to the absurd result that an attorney qualified to represent a capital inmate at trial would not be qualified to represent him in PCR. Thus, it was concluded that the “not less than twelve hours of CLE education” clause and the “or professional training primarily involving advocacy in capital appellate or PCR defense” clause of S.C. Code Ann. § 17-27-160(B) were independent means through which an otherwise death penalty-qualified attorney could qualify to represent a death row inmate in PCR. Accordingly, an otherwise death-qualified attorney’s twelve hours of CLE within the previous two years did not necessarily have to be in the field of capital appellate or PCR defense.

Here, Judge Young specifically relied on the statute and this memorandum to conclude that PCR counsel were sufficiently qualified. **{Order Appointing Counsel August 8, 2007}** Counsel Walters had been practicing for 17 years, including stints in the public defenders office and years in private practice handling felony criminal cases. He had previously represented a capital inmate at trial and was at the time of his appointment in this case representing another capital inmate in trial-level proceedings. **{Appendix A to Petitioner’s Motion pp. 6-8}** Similarly, counsel Grant had been practicing law for 22 years, including stints handling criminal law in the JAG Corps and private practice. He had tried some five capital cases, and tried his first one twelve years prior in 1995. **{Appendix**

A to Petitioner's Motion pp 8-9} Clearly these lawyers were well-versed in what it takes to try a capital case

Thus, there was no violation of the capital PCR qualification statute, and accordingly no basis for remanding this case and treating the proceedings that have taken place as a nullity. Even if it is assumed that PCR trial counsel in this case were somehow ineffective, this would not matter, as there is simply no constitutional right to counsel in post-conviction proceedings. See generally Pennsylvania v. Finley, 481 U.S. 551, 555 (1987), Coleman v. Thompson, 501 U.S. 722 (1991), Mackall v. Angelone, 131 F.3d 442 (4th Cir. 1997). Accordingly, there can be no Sixth Amendment claim of ineffective assistance of PCR counsel, and this Court is clear that alleged ineffectiveness of PCR counsel is not a basis for having a second PCR. See Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) (alleged ineffective assistance of first PCR counsel is not a sufficient reason to overcome the bar against successive applications).

In all, Petitioner's counsel were qualified under the statute, and his new counsel's complaints about PCR trial counsel are insufficient to justify a second bite at the apple.

II Even if counsel was not qualified under the statute, there is no basis for giving Petitioner a second bite at the apple

Even if somehow counsel was not qualified under the statute, and even assuming that lack of statutory qualification demanded a remedy on PCR appeal aside from the fact that there is no constitutional right of effective PCR counsel, that remedy is not a *per se* reversal. In the unpublished order issued by this Court denying the petition for habeas corpus of Kevin Dean Young, this Court pointed out that S.C. Code Ann. § 17-27-160(B) does not provide a remedy for its violation. It went on to cite cases for the proposition that

the failure to meet statutory standards for death qualification for *trial* counsel did not result in *per se* reversal but still needed to be assessed for prejudice Kevin Dean Young v. State of South Carolina, Unpub. Order (S.C. Sup. Ct. November 1, 2000) (citing Aeschliman v. State, 973 P.2d 749 (Idaho Ct. App. 1999), State v. Misch, 656 N.E.2d 381 (Ohio Ct. App. 1995), and State v. Maletta, 781 P.2d 350 (Or. Ct. App. 1989))

Thus, even assuming a remedy for a violation of the statute, Petitioner would at a minimum have to show some sort of prejudice. He cannot do so in this case. Petitioner tried to fire his PCR counsel and handle the case on his own. But regardless, he had a full and fair hearing in which PCR counsel presented evidence on his decision to represent himself and the competency determination. At this hearing Petitioner was then able to, without limit, give testimony on the issues that were important to him.

Petitioner now raises a number of issues that he asserts PCR counsel should have raised, however, none of these are a basis for relief. At this stage, Respondent does not intend to fully brief each alleged issue. Petitioner asserts his PCR counsel could have raised, since Petitioner did not brief them and to do so would require an extremely long document. Respondent submits it is sufficient to point out that the supposed issues Petitioner now raises are insufficient for relief. Thus, Petitioner has presented no evidence of prejudice from the supposed lack of qualification of PCR trial counsel.

A. Competence to stand trial

Petitioner first asserts that he was not competent to stand trial during his sentencing phase. He apparently relies on the fact that Petitioner told the judge before the jury returned its guilt phase verdict that if he was found guilty, he did not wish to remain for the sentencing phase, and would be disruptive if he had to stay. Once sentencing began, he

stood and calmly recited a religious phrase until the judge finally ordered him held in a back room where he could see and hear the proceedings. Petitioner ultimately relented and returned to the courtroom. Standby counsel and the solicitor also testified in PCR they saw no evidence of a break from reality or loss of faculties, but rather a deliberate and calm action which was the result of an intention decision that if the jury found him guilty he did not want any more part of the process. See {Order of Judge Mullen pp 14-20, 38-40}

The record in this case contains a very careful determination by the trial court of Petitioner's competence to stand trial and to represent oneself after very careful and repeated colloquies. Moreover, Judge Mullen determined that not only was it improper to go behind the trial court's ruling on PCR, but that in any event there was no evidence of incompetence from the trial or PCR record. Petitioner litigated pretrial motions and the whole guilt phase without any problems behaving inappropriately or with improper demeanor. His behavior in the sentencing phase only occurred after he calmly told the court he was going to do it and, more importantly, exactly why he was going to do it. **{Order of Judge Mullen pp 5-40}** There is no issue of competence.

B Failure to make inquiry

Petitioner contends the trial judge erred in failing to make an inquiry into is competency at the end of the sentencing phase. Not only is this an issue for direct appeal, the record is clear Petitioner was not incompetent. He made a deliberate and goal-directed decision not to participate in the sentencing phase. His behavior over the course of many pre-trial and guilt phase proceedings belies any contention he was not competent. There is no evidence of incompetence, and Judge Mullen has already found as much.

C Failure to terminate his pro se status

Again, not only is this an issue for direct appeal, the record is clear Petitioner was not incompetent. He made a calm, deliberate and goal-directed decision not to participate in the sentencing phase. Nothing about Petitioner's decision and demeanor *necessarily as a matter of law required* the judge to terminate his pro se status after he had already been granted it following a detailed procedure. Indeed, State v. Brewer, 328 S. C. 117, 492 S. E. 2d 97 (1997) and Reed v. Ozmint, 374 S. C. 19, 647 S. E. 2d 209 (2007) would counsel against terminating a competent *pro se* defendant's self-representation, and as Judge Mullen discussed in her order, nothing in Edwards requires the trial court override a competent defendant's wishes. **{Order of Judge Mullen pp 35-40}**

D Shackling

Not only is this a direct appeal issue, but there is no evidence the jury saw Petitioner's feet shackled in the back room. Regardless, there is no reversible error or prejudice under Deck v. Missouri, 544 U. S. 622, 125 S. Ct. 2007 (2005), as argued in the Final Brief of Respondent from pages 32-33. Moreover, Petitioner's own intentional behavior led to any circumstances that existed, and he cannot now use his own misbehavior as a sword.

E Admission of evidence

Petitioner makes a freestanding claim as to various evidence introduced in the sentencing phase which he asserts was inadmissible. This is clearly a freestanding claim that is only appropriate for direct appeal and not PCR. There was no objection to this evidence that would preserve it for direct appeal. Moreover, as noted in the next ground,

Petitioner cannot push the blame onto standby counsel when he chose to represent himself and he was never relieved of self-representation, even during the sentencing phase. Finally, there was no prejudice, given the horrible nature of this crime and Petitioner's long prior record and misbehavior in prison.

F Failure to object

Petitioner contends standby counsel was ineffective for failing to object to evidence in the sentencing phase. While it is true that Petitioner agreed to allow standby counsel to make any objections and handle evidence while he was in the back room, he was back there by his choice and still retained ultimate authority for his own representation. Indeed, counsel specifically noted that if they were to do anything they would still remain standby counsel, because if they were made counsel of record and were "on the hook" they would then call mitigation witnesses which Petitioner did not want. {R 3526-29} Petitioner cannot put into motion this procedure and then complain of standby counsel's performance when Petitioner still retained the ultimate authority for the representation and was pro se. He was amply warned when he chose to go pro se that he would not be able to claim ineffectiveness on himself. {R 3900-45} Finally, there was no prejudice given the horrible nature of this crime and Petitioner's long prior record and misbehavior in prison.

G Ineffective assistance of appellate counsel

Petitioner finally asserts there was ineffective assistance of appellate counsel for failure to raise many of the issues set forth above. Aside from possibly the competence issues, these are all without merit as there either was no objection, or the issues as described in Judge Mullen's Order are simply insufficient for relief.

Thus, since even with a cursory view none of these issues has any merit, Petitioner cannot show prejudice even if it is assumed that PCR trial counsel were not qualified and there is a statutory remedy for the violation

Indeed, if this Court is changing the interpretation of the qualification statute and also is at all concerned about the merits of any of these issues such that it might find prejudice, then the issues should be addressed with full briefing from both sides on the particular issue to which there is concern. All that has been done below already should not simply be thrown out based on a cursorily discussed laundry list of issues that Petitioner's current PCR counsel thinks he could have raised.

Accordingly, the motion should be denied.

Respectfully submitted,

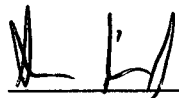
HENRY D. McMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

S. CREIGHTON WATERS
Senior Assistant Attorney General

ALPHONSO SIMON, JR.
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305
ATTORNEYS FOR RESPONDENT

BY 

ATTORNEYS FOR RESPONDENT

August 2, 2010

APPENDIX A

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Abdiyyah ben Alkebulanyahh, #6012

Applicant,

v

The State of South Carolina,

Respondent

AUG 12 PM 2 20
CLERK OF COURT
BEAUFORT SC

IN THE COURT OF COMMON PLEAS

C/A No 2007-CP-07-0715

ORDER APPOINTING COUNSEL

Applicant, Abdiyyah ben Alkebulanyahh, is a death row inmate who has filed a *pro se* post-conviction relief application. On May 4th, 2007, the South Carolina Supreme Court issued an Order in which it assigned this Court jurisdiction over the case.

Accordingly, as provided in S.C. Code Ann. § 17-27-160, this Court held a hearing to determine Applicant's desires regarding appointed counsel on June 1st, 2007, at the Orangeburg County Courthouse, and on August 8th, 2007, at the Richland County Courthouse. Applicant was present at both hearings, the State was represented at both hearings by Assistant Attorney General S. Creighton Waters.

At the June hearing, Applicant stated that he is indigent and indicated his desire to have appointed counsel. This Court finds that appointed counsel is appropriate in this case.

At the June hearing, Glenn Walters, Esquire, of Orangeburg, South Carolina, was present. At this Court's direction, attorney Walters spoke to Applicant in private during a recess in the hearing, and Applicant subsequently indicated to the Court that attorney Walters was acceptable to him. Attorney Walters was then directed to see if he



could find a second attorney for this case

At the August hearing, attorney Walters appeared along with attorney Carl B Grant, Esquire, of Orangeburg, South Carolina. Prior to the hearing, attorneys Walters and Grant spoke to Applicant in private. At the August hearing, Applicant indicated that attorneys Walters and Grant were acceptable to him as his counsel in the PCR action.

At the August hearing, both Walters and Grant stated their qualifications to the Court. Although only one lawyer needs to be statutorily qualified, this Court finds that both attorneys Walters and Grant meet the statutory qualifications, in that they each have at least five years' experience as a lawyer and three years' experience in the trial of felony cases, as well as twelve hours of CLE training within the prior two years. S.C. Code Ann. §§ 16-3-26, 17-27-160 (2003). See also Memorandum of Chief Justice Jean H. Toal Regarding Appointment of Counsel in Capital Post-conviction Cases, dated August 15th, 2003 (opining that the "not less than twelve hours of CLE education" clause and the "or professional training primarily involving advocacy in capital appellate or PCR defense" clause of S.C. Code Ann. § 17-27-160(B) were independent means through which an attorney could qualify to represent a death row inmate in PCR – thus, an attorney's twelve hours of CLE did not necessarily have to be in the field of capital appellate or PCR defense). Moreover, both attorneys have previously represented defendants in death penalty trials.

Therefore, this Court appoints Glenn Walters, Esquire, and Carl B. Grant, Esquire, as Applicant's attorneys in the capital PCR.

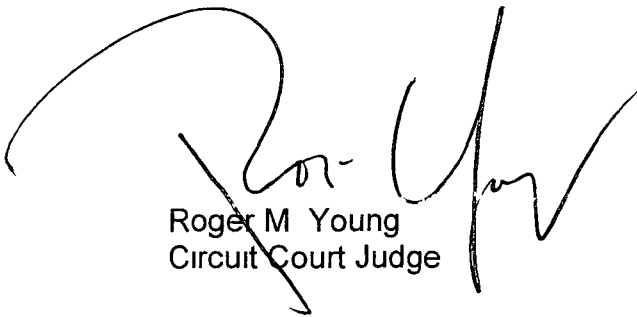
Mr. Waters of the Attorney General's Office has agreed to provide both of

A handwritten signature in black ink, appearing to be a stylized 'P' followed by a flourish.

Applicant's lawyers as well as this Court with copies of the trial transcript This Court orders that Applicant shall have until February 8th, 2008, in which to file an Amended Application The State shall then have thirty (30) days to file an Amended Return, and within thirty (30) days of that responsive filing the parties and this Court shall convene a status hearing to handle any dispositive motions or to set the case for a final evidentiary hearing on the merits, if necessary See S C Code Ann § 17-27-160(C) (2003)

Finally, the State has asserted that although funding requests for investigative, expert or other services can be made *ex parte* during a capital trial, such requests cannot be made *ex parte* in PCR proceedings See generally Thames v State, 325 S C 9, 478 S E 2d 682 (1996) While this Court declines to rule either way on the issue at this time, any party intending to approach this Court *ex parte* during the course of this litigation about funding requests for investigative, expert, or other services, shall first give notice of such intent to the opposing party as well as the Court, so that a hearing can be held before this Court with the participation of both parties as to the propriety of such an *ex parte* communication

IT IS SO ORDERED



Roger M. Young
Circuit Court Judge

Columbin, South Carolina

August 8, 2007

APPENDIX B

177

The Supreme Court of South Carolina

Kevin Dean Young, Petitioner,

v

State of South Carolina, Respondent

ORDER

In 1989, petitioner was convicted of murder and armed robbery and sentenced to death. On appeal, this Court reversed the death sentence State v Young, 305 S C 380, 409 S E 2d 352 (1991). On remand, petitioner was again sentenced to death. This Court affirmed State v Young, 319 S C 33, 459 S E 2d 84 (1995) (Young II). The United States Supreme Court denied certiorari Young v South Carolina, 516 U S 1051, 115 S Ct 718, 133 L Ed 2d 671 (1996).

Thereafter, petitioner's application for post-conviction relief (PCR) was denied. On May 15, 1998, this Court denied petitioner's petition for a writ of certiorari. The federal district court denied petitioner's

subsequent petition for a writ of habeas corpus. The Fourth Circuit Court of Appeals affirmed Young v. Catoe, 205 F.3d 750 (4th Cir. 2000). On October 2, 2000, the United States Supreme Court denied certiorari Young v. Catoe, 2000 WL 875908, No. 99-10228 (Oct. 2, 2000).

Petitioner is scheduled to be executed on November 3, 2000. He has filed a motion for a stay of execution and a petition for a writ of habeas corpus.

A writ of habeas corpus will issue only if there is a constitutional violation which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. Gibson v. State, 329 S.Ct. 37, 495 S.E.2d 426 (1998), Butler v. State, 302 S.Ct. 466, 397 S.E.2d 87, cert. denied, 498 U.S. 972, 111 S.Ct. 442, 112 L.Ed.2d 425 (1990). A request for a stay of execution pending the filing of a successive action for habeas corpus in the original jurisdiction of this Court must demonstrate that there are exceptional circumstances warranting the issuance of the stay. In re Stays of Execution in Capital Cases, 321 S.Ct. 544, 471 S.E.2d 140 (1996).

Petitioner maintains his execution should be stayed because the United States Supreme Court recently granted certiorari in Shafer v. South Carolina, 2000 WL 1057649, No. 00-5250 (Sept. 26, 2000) to review the following question:

Were petitioner's due process rights under Simmons

v. South Carolina violated by trial court's refusal to instruct sentencing jury that "under South Carolina law, [petitioner] would be ineligible for parole if the jury were to vote for a life sentence." Ramdass v. Angelone, 120 S Ct 2113, 2119, 67 CrL 394 (2000)(plurality opinion), and by South Carolina Supreme Court's holding that Simmons no longer applies to South Carolina's capital sentencing scheme?

We disagree

In Simmons v. South Carolina, 512 U S 154 114 S Ct 2187, 129 L Ed 2d 133 (1994), the United States Supreme Court held that a capital defendant is entitled to a charge on parole ineligibility when future dangerousness is argued and the defendant is not eligible for parole. In Ramdass v. Angelone, ___ U S ___, 120 S Ct 2113, 147 L Ed 2d 125 (2000), the United States Supreme Court reaffirmed its decision in Simmons, holding it applied only to instances where, as a legal matter, there is no possibility of parole if the jury decides the appropriate sentence is life in prison.

Shafer was tried under a version of S C Code Ann § 16-3-20 which became effective on January 1, 1996. State v. Shafer, 340 S C 291, 531 S E 2d 524 (2000). Under that version of the statute, a defendant can be sentenced to 1) death, 2) life without the possibility of parole, or 3) a mandatory minimum thirty year sentence. Relying on Simmons, Shafer requested the trial court instruct the jury he would be ineligible for parole. The trial judge denied the request. This Court held on appeal that since one

of the alternatives to a death sentence was not life without the possibility of parole, Simmons was inapplicable. The United States Supreme Court has now granted certiorari to review that decision.

Petitioner, on the other hand, was tried and re-sentenced at a time when S.C. Code Ann. § 16-3-20(A) stated that a person who is convicted of murder must be punished by death or life imprisonment and is not eligible for parole until the service of twenty years, provided, however, that when the State seeks the death penalty and an aggravating circumstance is specifically found beyond a reasonable doubt, and a recommendation of death is not made, the court must impose a sentence of life imprisonment without eligibility for parole until the service of thirty years. Unlike the sentencing scheme in effect at the time of Shafer's trial, the only options available at the time of petitioner's trial and re-sentencing were death or a life sentence with parole eligibility. Indeed, petitioner did not ask the trial judge to charge the jury that he would be ineligible for parole if given a life sentence, but instead requested the judge charge the jury that if sentenced to life imprisonment he would not be eligible for parole until he had served thirty years.

Accordingly, because petitioner would have been parole eligible had he been given a life sentence and because future dangerousness was not an issue in his case, see Young II at 87, the decision of the United States Supreme Court to grant certiorari in Shafer has no bearing on this case.

Petitioner maintains in his petition for a writ of habeas corpus that because the two attorneys appointed to represent him in connection with his PCR application did not meet the qualifications set forth in S C Code Ann § 17-27-160(B), he was denied his constitutional right to due process.¹ Petitioner contends it is reasonably likely that counsel experienced in capital cases would have raised the issue of racial disparity in the jury selected for petitioner's re-sentencing and the issue of a conflict of interest presented by the South Carolina Office of Appellate Defense's representation of petitioner on appeal.²

¹Section 17-27-160(B) does not provide a remedy for its violation nor has this Court ever addressed the issue. Petitioner does not argue a violation of the section constitutes prejudice per se. Instead, petitioner essentially concedes that prejudice must be proven by arguing two instances in which he feels PCR counsel were ineffective. Courts that have addressed this issue have held that failure to meet statutory standards for death qualification does not render counsel's assistance ineffective per se, but instead the effectiveness of counsel must be judged under the standard set forth in Strickland v Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). See Aeschliman v State, 973 P.2d 749 (Idaho App. 1999), State v Misch, 656 N.E.2d 381 (Ohio App. 3d 1995), State v Maletta, 781 P.2d 350 (Or. App. 1989).

²Joseph Savitz of the South Carolina Office of Appellate Defense represented petitioner on his second direct appeal. Tara Dawn Shurling, also of the Office of Appellate Defense, had represented petitioner's co-defendant on direct appeal four years earlier. Ms. Shurling had left the Office of Appellate Defense by the time petitioner's appeal was heard. Mr. Savitz was again appointed to represent petitioner in connection with his petition for a writ of certiorari filed with this Court following the denial of his PCR application.

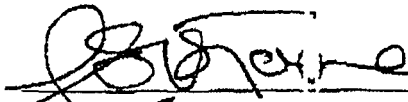
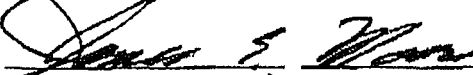
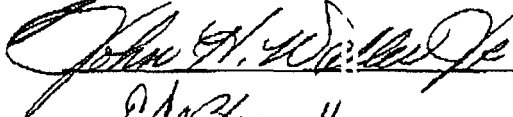
We find that because the jury venire was selected from lists of registered voters and licensed drivers, petitioner has failed to establish a systemic exclusion of blacks from the jury venire, which is required to establish a prima facie violation of the fair cross-section requirement. Duren v. Missouri, 439 U.S. 357, 99 S.Ct. 664, 58 L.Ed.2d 579 (1979), United States v. Lewis, 10 F.3d 1086 (4th Cir. 1993), United States v. Cecil, 836 F.2d 1431 (4th Cir. 1988), State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997), S.C. Code Ann. § 14-7-130 (Supp. 1999). Accordingly, petitioner was not prejudiced by the failure of appellate counsel or PCR counsel to raise this issue.

We find further that petitioner failed to show that an actual conflict of interest resulted from Mr. Savitz's representation of him after Ms. Shurling's representation of his co-defendant. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). Therefore, petitioner was not prejudiced by Mr. Savitz's representation of him or by PCR counsel's failure to raise the conflict of interest issue.

In conclusion, we find that petitioner has failed to demonstrate that there are exceptional circumstances which would warrant the issuance of a writ of habeas corpus or a stay of his execution. Accordingly, his motion for

a stay of execution and petition for a writ of habeas corpus are denied

IT IS SO ORDERED

 CJ
 J
 J
 J
 J

Columbia, South Carolina

November 1, 2000

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Beaufort County
The Honorable Carmen T Mullen, Circuit Court Judge

ABDIYYAH BEN ALKEBULANYAHH, #6012,

PETITIONER,

V

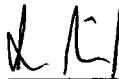
STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr , counsel for the Respondent, certify that I have served the within Response in Opposition to Motion to Remand for Additional Post-Conviction Relief Proceedings on Petitioner by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, John Blume, III, Esq , Blume, Weyble & Norris, LLC, P O Box 11744, Columbia, SC 29211

This 2nd day of August, 2010



ALPHONSO SIMON, JR

Office of Attorney General
P O Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUL 21 2010

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC SUPREME COURT

Carmen T. Mullen, Circuit Court Judge

Case No. 06-CP-11-223

Abdiyyah ben Alkebulanyahh, #6012, *Petitioner*,

v

State of South Carolina

**MOTION TO REMAND FOR
ADDITIONAL POST-CONVICTION PROCEEDINGS**

I INTRODUCTION

Petitioner, through undersigned counsel, hereby files this motion to remand the case to the circuit court for additional post-conviction proceedings. In support of the motion, petitioner apprizes this Court of the following facts and legal principles:

II PROCEDURAL HISTORY

A Pre-trial and Trial Proceedings

Petitioner was charged with two counts of murder and other offenses arising from the death of two Beaufort County Sheriff's deputies. Prior to trial, petitioner filed a motion to proceed *pro se*.

Petitioner's stated reason for wanting to dismiss his counsel was his belief that both of his court appointed attorneys, Gerald Kelly and Sean Thornton, were actively involved in a conspiracy with the prosecution to insure that he was found guilty and sentenced to death Tr 3986 ¹ Despite testimony from a respected forensic psychiatrist--Dr Donna Schwartz Watts--that petitioner suffered from bi-polar disorder with psychosis and paranoia and was not competent to stand trial, the trial judge, the Honorable Daniel Pieper, relying on the Department of Mental Health (DMH) examiner's conclusion that petitioner was competent, granted petitioner's motion to dismiss his counsel and permitted petitioner to discharge counsel and proceed *pro se* Tr 4071 ²

Petitioner's defense at the guilt-or-innocence phase of the trial was based largely on his own rambling, tangential and paranoid testimony The "gist" of the defense was that law enforcement and the solicitor's office conspired to obtain his conviction based upon false testimony and planted evidence Not surprisingly, petitioner was found guilty of the charged offenses on October 21, 2003

Prior to the commencement of the sentencing phase of his capital trial, petitioner informed the trial judge that he did not wish to participate in or attend the sentencing hearing Petitioner offered no coherent explanation for wishing to absent himself from the proceedings other than he did not think the sentencing phase would "do anything for me to no extent" and that he was not concerned with the outcome Tr 3450 Petitioner stated he did not wish to attend

¹See also Tr 3889 (Petitioner objected to counsel speaking at a pre-trial hearing saying "I am without representation They are sabotaging my case") At another pretrial hearing, petitioner stated "And this late in the stage where I have made openings to the court that the attorneys was sabotaging my case and doing things that were detriment to my defense, that they still continue on to exercise the powers attorney in filing motions and speaking with the prosecutor and speaking with this court under the impression of being in my defense when actually they are not " Tr 3910

²The trial court designated Mr Kelly and Mr Thornton "standby counsel " Tr 4071

Because I – at this – there is nothing that – it has nothing to do with me It has nothing that – you know, I’m not concerned about it I don’t care about it It has nothing to do with me It don’t – it won’t move me or shake me no matter which way it goes, one way or the other, what is said or done, so

Tr 3486

The trial judge tried to reason with petitioner to no avail Then, weighing and rejecting various options including terminating petitioner’s *pro se* status and re-appointing standby counsel to take over the penalty phase (tr 3488-3508), the judge concluded that petitioner would a) remain as his own counsel and b) remain in the courtroom for sentencing Tr 3504 The trial judge did not, however, seek or obtain any expert opinion or insight into whether petitioner was – at that point in the proceedings – competent to stand trial or to completely waive the presentation of mitigation

Petitioner informed the court that he would be disruptive if he was required to remain in the courtroom The trial judge took a “wait and see” approach When the prosecution called its first witness, petitioner stood up and, in the presence of the jury, said “Blessed be the Yahweh, El Shaddai, Jehovah, God Almighty, the God of Abraham, Issac, Ishmael, Jacob and Jesus ” Tr 3550 The trial judge briefly attempted to “plow ahead,” but petitioner repeated the above refrain when the next question was asked The trial judge removed the defendant from the courtroom, sent the jury to the jury room, and brought the defendant back into the courtroom where petitioner informed the court that he would continue to be disruptive because he “did not wish to engage in the proceedings ” Tr 3552 The court told petitioner that he had to attend the sentencing proceeding, and that if he continued to be disruptive he would put petitioner in a room in the back of the courtroom where he could see and hear the proceedings

When proceedings commenced, both petitioner and the trial judge were true to their word. When the prosecution again sought to elicit testimony from its first witness, petitioner stood up and again said “Blessed by Yahweh, El Shaddai, Jehovah, God Almighty, the God of Abraham, Issac, Ishmael, Jacob and Jesus ” Tr 3556. The trial judge ordered that petitioner be placed in the “room at the back of the courtroom that has a glass partition to allow him to hear all the proceedings and see the proceedings as he desires ” Tr 3556. The court also ordered that petitioner be shackled and said he would gag petitioner if he had another outburst. Tr 3557. Standby counsel were ordered to resume representation to a limited extent including assuming the responsibility to lodge objections to inadmissible evidence. Petitioner, however, was allowed to control the defense presentation, or non-presentation as it turned out, of evidence.

The penalty phase proceeded and no mitigating or other evidence was presented by the defense. After closing arguments, the jury sentenced petitioner to death.

B Appellate and Post-Conviction Proceedings

On direct appeal, petitioner was represented by Joseph Savitz and Robert Dudek of the Office of Appellate Defense. Petitioner moved to represent himself on direct appeal, alleging that the Warden of Leiber Correctional Institution and his appellate counsel were conspiring to deny him access to the courts. *State v Roberts*, 614 S E 2d 626, 627 (S C 2005). This Court denied the motion. *Id* at 628. Appellate counsel raised a single issue on appeal, i e , whether it was error for the trial judge to require petitioner to be present at the penalty phase of the proceedings. This Court affirmed on July 24, 2006. *State v Roberts*, 632 S E 2d 871 (S C 2007).

Petitioner filed a *pro se* application for post-conviction relief which contained a number of search and seizure and speedy trial issues. His continued belief that his arrest, trial, conviction death

sentence, continued incarceration the present conditions of his confinement were and are part of a vast and growing conspiracy is evident in the PCR application and in documents he has continued to file.³ Glenn Waters and Carl Grant were appointed by Judge Roger Young to represent petitioner in connection with his post-conviction proceedings. The transcript of the appointment hearing does not indicate that either attorney had ever been involved in a capital post-conviction case in state or federal court, or that they had attended any appropriate CLE programs as defined in S.C. Code § 17-27-160(B).⁴ They filed an amended application raising a single claim for relief. The issue asserted in the amended application was that the “trial judge failed to make the proper findings to determine if the applicant knowingly and intelligently understood the implications of proceeding *pro se*.” See Amended Application for Post-Conviction Relief (filed February 6th 2008).

The post-conviction relief hearing, conducted before Judge Young on October 13-14, 2008, consisted primarily of counsel calling petitioner to the stand to state (in detail) his grievances with trial and appellate counsel. Undersigned counsel’s review of the files provided to him by prior counsel does not reveal that petitioner’s court appointed post-conviction counsel a) conducted any independent investigation, b) secured any expert assistance, or, c) had petitioner evaluated by a psychiatrist or psychologist to determine 1) whether he was competent to proceed in post-conviction

³On April 7, 2010, this Court entered an order that clerks of court in South Carolina should no longer accept filings by petitioner unless submitted by an attorney and the filing fee was paid. The Court found the order was necessary due to the “frivolous, repetitive and abusive nature of petitioner’s filings.”

⁴A transcript of the appointment hearing is attached to this motion as Appendix A. Undersigned counsel also contacted both Mr. Walters and Mr. Grant and confirmed that they were not aware of the additional requirements for appointment of counsel in a capital post-conviction case set out in §17-27-160(B), and that they did not meet the requirements of the relevant statutory provision.

relief proceedings or 11) to do a retrospective assessment of petitioner's competency at the sentencing phase of the proceedings⁵ On September 17, 2009, Judge Carmen Mullen⁶ signed verbatim the state's order denying post-conviction relief

A timely notice of appeal was filed On January 8, 2010, this Court appointed Glenn Walters to represent petitioner on appeal from the denial of post-conviction relief, finding that the Office of Appellate Defense had a conflict of interest Mr Walters subsequently moved to be relieved alleging that petitioner made a verbal threat to harm Mr Walters and his family Petitioner also requested that this Court appoint Emily Paavola or John Blume to represent him On March 5, 2010, this Court relieved Mr Walters and appointed undersigned counsel to represent petitioner in connection with this appeal⁷

⁵As Mr Alkebulanyahh is indigent, Undersigned counsel contacted the South Carolina Office of Indigent Defense and confirmed that no funds were expended for investigative and expert services in the post-conviction proceedings Nor did Mr Walters or Mr Grant submit a voucher for attorney's fees Undersigned counsel is not aware of any other capital post-conviction case in South Carolina since § 17-27-140 was enacted where no funds were awarded or spent for investigative and expert services in a capital post-conviction proceeding

⁶As previously stated, the Honorable Roger Young appointed counsel and presided over the post-conviction relief hearing For reasons which are not clear from the record, the Office of Court Administration reassigned the case to Judge Carmen Mullen on December 17, 2008, after the PCR hearing was completed Judge Mullen signed the order denying post-conviction relief Despite the fact that Judge Mullen did not preside over the post-conviction relief hearing, the order contains a number of credibility findings Undersigned counsel is not aware of any other capital post-conviction case in this state that was reassigned to a different judge after the post-conviction relief hearing was conducted and prior to an order being filed The record also does indicate that any post-hearing briefs were filed by either side

⁷Undersigned counsel was not aware that petitioner had filed a motion requesting that new counsel be appointed or that petitioner had requested that undersigned counsel in particular be appointed Undersigned counsel had not talked to or corresponded with petitioner at any point during his direct appeal or during the post-conviction proceedings

III REASONS REMAND IS APPROPRIATE

A Potentially Meritorious Claims For Post-Conviction Relief Were Not Raised Below

As will be set forth below, there were a number of viable issues which could have – and should have – been raised as grounds for post-conviction relief. However, due to their lack of experience in death penalty litigation in general, and capital post-conviction litigation in particular, petitioner’s prior post-conviction counsel failed to identify and raise potentially meritorious post-conviction claims. While current counsel has not conducted a new post-conviction investigation, his review of the trial record has identified, *inter alia*, the following issues which were not included in the amended application for post-conviction relief:

- 1) Petitioner was not competent to stand trial during the sentencing phase of the proceedings and thus his sentence of death violates the Due Process Clause of the Fourteenth Amendment and the Eighth Amendment to the United States Constitution as well as the corresponding provisions of the South Carolina Constitution. *Dusky v. United States*, 362 U.S. 401 (1960).⁸
- 2) The trial judge failed to fulfill his obligation, required by the Due Process Clause of the Fourteenth Amendment and the corresponding provision of the South Carolina

⁸Given the current procedural posture of the case, undersigned counsel does not have access to funds for investigative and expert services. However, counsel has met with petitioner on several occasions since his appointment and has consulted with a forensic psychiatrist, Dr. Rikki Lynn Halavonich, who agreed to meet with petitioner and counsel and to review selected portions of the trial record, particularly petitioner’s trial testimony and the portions of the trial where defendant asks to not be present at sentencing and his outbursts. While Dr. Halavonich (understandably) indicated she would need to review additional material and interview petitioner and possibly other witnesses, she did inform counsel that there was a significant likelihood that petitioner’s mental state had so deteriorated by this point in the proceedings that he was no longer competent to stand trial. Questions also exist as to petitioner’s current competency to proceed. An affidavit summarizing Dr. Halavonich’s initial impressions are attached to this motion as Appendix B.

Constitution, to make an adequate inquiry into petitioner's competency to stand trial when petitioner began to act in a bizarre and irrational manner prior to and during the sentencing phase of the trial *Drope v Missouri*, 420 U S 162 (1975) (trial judge's failure to suspend the proceedings and have the defendant evaluated for competency violated due process when there was evidence suggesting the defendant's mental condition had deteriorated)

3) The trial judge deprived petitioner of a fundamentally fair sentencing hearing in violation of the Due Process Clause of the Fourteenth Amendment and the Eighth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution by failing to terminate petitioner's *pro se* status at the sentencing phase of the trial and appoint standby counsel to represent petitioner and present available mitigating evidence *See Faretta v California*, 422 U S 806 (1975) (*Pro se* status can be terminated if defendant is disruptive), *Indiana v Edwards*, 544 U S 208 (2008) (trial judge does not have to allow competent but mentally ill defendant to proceed *pro se*)

4) The trial judge violated petitioner's right to a fundamentally fair sentencing proceeding guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution by shackling petitioner in the presence of the jury during the sentencing phase of the trial *See Deck v Missouri*, 544 U S 622 (2005) (shackling the defendant in the presence of the jury deprived the defendant of a reliable determination as to whether the death penalty was the appropriate punishment)

5) Petitioner was deprived of a fair and reliable determination of whether the death penalty was the appropriate punishment, guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution, due to a) the admission of excessive and inflammatory victim impact evidence,⁹ and, b) the admission of evidence and argument regarding the conditions of confinement in general population ¹⁰See *Payne*

⁹Numerous victim impact witnesses testified extensively without objection during the penalty phase. This included the testimony of co-workers, friends, and family members. Witnesses described, among other things: a) a memorial service in a school auditorium in Ohio purportedly attended by hundreds of individuals (tr. 3698), b) the numerous police officers who attended the funeral (tr. 3705), and c) the military service of the victims (tr. 3718-3722). Additionally, the victim's family members were all asked to address the jury directly, some of the comments included:

I want to thank you guys for making the choice you made [finding the defendant guilty]. I know it was hard, and I'm proud of you. And I know A.J. [one of the victims] is very, very proud of you. You did the right thing. I just want to thank you.

Tr. 3714. The personal expression of thanks to the jurors for finding the defendant guilty was repeated by other victim impact witnesses. See e.g., Tr. 3708, 3724.

¹⁰The prosecution called James Sligh, a classifications officer for the South Carolina Department of Corrections, who described a "typical day in general population" that detailed an inmate's ability to move around the prison, participate in recreation activities, buy food items of the canteen, etc. Tr. 3636 et seq. During summation, the prosecution made the following statements:

And let's think a minute about what general population in the Department of Corrections is like, because you heard evidence about that, too. They get up in the morning, they're fed, they get recreation time.

They're contained. They have to stay inside, but they have keys to their cells. They get to visit with family 7 and 8 times a month. How much visiting with family do you think Dana Tate and Dyke Coursen are going to do?

General population. Sounds an awful lot like military school.

Tr. 3794. See *State v. Bowman*, 366 S.C. 485, 498-99, 623 S.E.2d 378, 385 (2005) ("how inmates, other than the defendant at trial, are treated in prison . . . is inappropriate evidence in the penalty phase of a capital trial"), *State v. Burkhardt*, 371 S.C. 482, 488-89, 640 S.E.2d 450, 453 (2007).

v Tennessee, 467 U S 1025 (1993) (permitting only a “brief glimpse” of the life of the victim), *Darden v Wainwright*, 477 U S 168 (1985) (recognizing that inflammatory comments at the sentencing phase can deprive the defendant of fair sentencing proceeding)

6) Petitioner was denied his right to the effective assistance of counsel at the sentencing phase of the trial guaranteed by the Sixth Amendment to the United States Constitution and the corresponding provision of the South Carolina Constitution when standby counsel, who were ordered to object to any inadmissible evidence or argument, failed to object to a) excessive and inflammatory victim impact evidence and b) improper and inflammatory closing argument *See e g Hall v Catoe*, 601 S E 2d 335 (S C 2004) (counsel found ineffective for failing to object to improper victim impact argument)

7) Petitioner was denied his right to the effective assistance of counsel on direct appeal, guaranteed by the Due Process Clause of the Fourteenth Amendment and the corresponding provision of the South Carolina Constitution, due to appellate counsel’s failure to raise, *inter alia*, the following issues on direct appeal a) the trial judge failed to conduct a competency hearing at sentencing, b) the trial judge failed to terminate petitioner’s *pro se* status and appoint standby counsel, c) the prosecution exercised its peremptory strike in a racially discriminatory manner d) the trial judge erroneously excluded evidence of third party guilt, and, e) a statement made by

(holding the prosecution’s “evidence regarding general prison conditions injected an arbitrary factor into the jury’s sentencing considerations,” and that the resulting death sentence could not be sustained under S C Code Ann § 16-3-25(C)(1) (2003))

petitioner was obtained in violation of *Miranda*¹¹ See *Southerland v State*, 524

S E 2d 833 (S C 2002) (Appellate counsel found ineffective for failing to raise meritorious issues on appeal

B Petitioner's PCR Counsel Were Not Qualified To Represent Petitioner in a Capital Post-Conviction Proceeding Pursuant to the Requirements of S C Code §17-27-160(B)

The South Carolina legislature established standards for the appointment of counsel in capital post-conviction cases. The standards are codified in S C Code §17-27-160(B) and require that at least one of the two attorneys appointed must,

(1) Have previously represented a death sentenced inmate in state or federal post-conviction relief proceedings, OR

(2) meet the minimum qualifications set forth in S C Code §16-3-26(B)¹² & (F)¹³ AND have successfully completed within the previous two years not less than twelve hours of approved CLE training “involving advocacy in the field of capital appellate and/or post-conviction defense”¹⁴

¹¹These issues were raised substantively in the petitioner's *pro se* application for post-conviction relief, i.e., petitioner alleged that his conviction should be vacated due to the state's discriminatory use of its peremptory challenges and the exclusion of third party guilt evidence. The PCR court, however, found the claims to be procedurally barred because the issues could have been but were not raised on direct appeal. Order at 42, 48, 51.

¹²Section 16-3-26(B) requires that counsel have been admitted to the bar for at least five years and have three years felony trial experience. Petitioner does not dispute that Mr. Walters and Mr. Grant had the requisite experience to meet the requirements of §16-3-26(B).

¹³Section 16-3-26(F) requires that counsel meet any other guidelines for the appointment of counsel promulgated by this Court.

¹⁴The statute provides

If the applicant is indigent and desires representation by counsel, two

Neither of petitioner's court appointed counsel satisfied the statutory requirements for appointment in a capital post-conviction case. The statutory language is clear and unambiguous. It also makes perfect sense. There are several reasons why the legislature would enact a different, and more stringent, standard for appointment of counsel in capital post-conviction cases than for appointment at the trial level. First, post-conviction litigation is an unusual combination of trial and appellate practice. Thus, persons competent to represent a death sentenced inmate at trial due to their extensive trial experience as reflected in § 16-3-26(B), do not necessarily have the requisite skills to represent an individual in a capital post-conviction proceeding. See AMERICAN BAR ASSOCIATION GUIDELINES FOR THE APPOINTMENT AND PERFORMANCE OF DEFENSE COUNSEL IN CAPITAL CASES (2003) Guideline 1.1 (commentary) ("Post-conviction proceedings demand a high degree of technical proficiency, and the skills essential to effective representation differ in significant ways from those necessary to succeed at trial. For post-judgment review to succeed as a safeguard against injustice, courts must appoint appropriately trained and experienced lawyers.") Second, at trial, the defendant has a Sixth Amendment right to counsel, and thus a Sixth Amendment right to the effective assistance of counsel. See *Strickland v. Washington*, 466 U.S. 668 (1984). Thus, if trial counsel performs incompetently and the incompetence contributes to the conviction or death verdict,

counsel shall be immediately appointed to represent the petitioner in this action. At least one of the attorneys appointed to represent the applicant must have previously represented a death sentenced inmate in state or federal post-conviction relief proceedings or (1) must meet the minimum qualifications set forth in Section 16-3-26(B) and Section 16-3-26(F) and (2) have successfully completed within the previous two years, not less than twelve hours of South Carolina Bar approved continuing legal education or professional training primarily involving advocacy in the field of capital appellate and/or post-conviction defense.

the defendant has a remedy. See e.g. *Rosemond v. Catoe*, 680 S.E. 2d 6 (S.C. 2009) (finding counsel to have rendered ineffective assistance of counsel in a capital case for several different deficiencies). However, in post-conviction proceedings, there is no currently recognized constitutional right to counsel, see e.g. *Murray v. Giarratano*, 492 U.S. 1 (1989), and thus there is no clear remedy for substandard representation. Cf. *Aice v. State*, 409 S.E. 2d 392, 394 (S.C. 1991) (finding second post-conviction petition barred as successive and appearing to reject ineffective assistance of post-conviction counsel as a “sufficient reason” for failing to raise issues in the first application), *Washington v. State*, 478 S.E. 2d 833, 835 (S.C. 1996) (allowing second post-conviction application to proceed due to “many procedural irregularities” in the first post-conviction proceedings). Therefore, because petitioner’s court appointed counsel did not meet the standards for appointment of counsel contained in S.C. Code §17-27-160(B), petitioner’s case should be remanded to the circuit court for the appointment of qualified counsel and for additional post-conviction proceedings. There is no other remedy that would not effectively render the statutory qualifications a nullity.

Furthermore, counsel’s inexperience is evident from a review of the post-conviction record. As set forth above, undersigned counsel’s review of the post-conviction file does not indicate that petitioner’s post-conviction counsel conducted any investigation or secured any assistance from investigators or expert witnesses. While counsel did file an amended application for post-conviction relief, it raised only one claim. The bulk of the post-conviction relief hearing consisted of petitioner’s testimony expressing his dissatisfaction with trial counsel. As petitioner has demonstrated, there were a number of other potentially viable claims evident from the record which could and should have been raised on petitioner’s behalf. An adequate investigation will likely

almost certainly uncover other viable claims for post-conviction relief

The American Bar Association Guidelines, referenced above, have been cited with approval by the Supreme Court of the United States on several different occasions, *see e.g. Rompilla v Beard*, 545 U S 374, (2005), *Wiggins v Smith*, 539 U S 510 (2003), as well as by this Court, *see Council v State*, 670 S E 2d 356, 363 (S C 2008), *Ard v Catoe*, 642 S E 2d 590, 597 (S C 2007), and are applicable to trial, appellate and post-conviction counsel Guidelines 10 15 1 (C) and (E), which outline the responsibilities of post-conviction counsel, explicitly state that

C Post-conviction counsel should seek to litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to high quality capital defense representation, including challenges to any overly restrictive procedural rules Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review

E Post-conviction counsel should fully discharge the ongoing obligations imposed by these Guidelines, including the obligations to

- 1 maintain close contact with the client regarding litigation developments, and
- 2 continually monitor the client's mental, physical and emotional condition for effects on the client's legal position,
- 3 keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments, and
- 4 continue an aggressive investigation of all aspects of the case¹⁵

Thus, in petitioner's case, the appointment of counsel who did not meet the criteria established by the General Assembly worked to petitioner's clear detriment, and for this additional reason, the case should be remanded to the circuit court for the appointment of qualified counsel and additional post-conviction proceedings

¹⁵The commentary to the guideline states that "collateral counsel cannot rely on the previously compiled record but must conduct a thorough independent investigation")

IV CONCLUSION

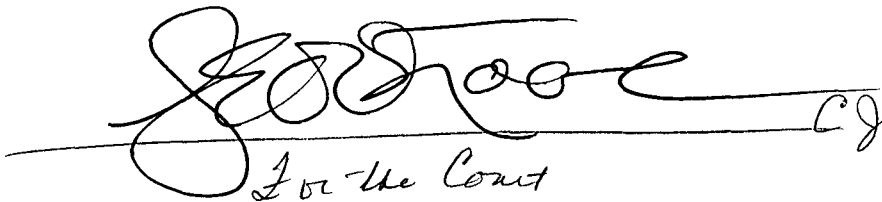
For the reasons stated above, petitioner's case should be remanded to the Beaufort Court of Common Pleas for additional post-conviction proceedings including a) the appointment of counsel who meet the requirements set forth in S C Code §17-27-160(B), b) access to funds for investigative and access services to develop and present all viable claims for post-conviction relief, and, c) a new PCR hearing

Respectfully submitted,


JOHN H. BLUME
Cornell Law School
112 Myron Taylor Hall
Ithaca, NY 14853
(607) 255-1030

July 21, 2010

*My Motion to remand for additional
Post-Conviction proceedings is denied*


For the Court

October 21, 2010

Appendix A

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A P P E A R A N C E S

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1	I N D E X			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
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4				
5	(There were no witnesses)			
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1	E X H I B I T S			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
3				
4				
5	(There were no exhibits)			
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1 (The following proceedings were held on
2 August 8, 2007)

3 **THE COURT** All right This is the State of
4 South Carolina -- it's actually Tyree Alphonso
5 Roberts also known as Abdiyyah Alkebulanyahh versus
6 State of South Carolina It's a post-conviction
7 relief matter

8 Let the record reflect Mr Alkebulanyahh is
9 present in the courtroom And I know I told you at
10 the last hearing, Mr Alkebulanyahh, I probably am
11 going to mispronounce your name, but do I have it
12 right this time?

13 **MR ALKEBULANYAHH** Yes, sir

14 **THE COURT** Okay Thank you

15 All right The last hearing we had was to
16 establish whether or not you wanted to represent
17 yourself in your post-conviction relief hearing or
18 whether or not you wished to have counsel appointed
19 And you indicated to me that you wished to have
20 counsel appointed

21 And, at that time, you had the opportunity to
22 talk to Mr Walters, who is sitting beside you,
23 Glenn Walters And I believe after discussion with
24 him, you indicated to the Court that you would be
25 glad to have him appointed to represent you

1 And I told you in a death penalty
2 post-conviction relief, you're entitled to two
3 lawyers and that Mr Walters was going to take the
4 initiative to find somebody that he had worked with
5 in the past on death penalty cases and see if that
6 person would be willing to work with you on this as
7 well and that's Mr Carl Grant, who's also present
8 and sitting with you

9 Now, I wanted to then have this hearing today
10 to again make sure that you are okay with the
11 appointment of Mr Grant as your lawyer as well
12 And then I have to conduct a hearing to make certain
13 that they are, what we call, death penalty
14 qualified There's certain minimum qualifications
15 And both of these gentlemen are well more than
16 minimally qualified to handle such a case, but we do
17 have to just kind of do this as a formality

18 And then we'll set a status conference where
19 we'll actually, we have talked about this, what we
20 will then do is set up a timeframe for when they
21 will get the transcripts and when responsive
22 pleadings will be required And then, at some point
23 in time, we will conduct a hearing

24 So you have had the opportunity to meet with
25 Mr Grant as well?

1 **MR ALKEBULANYAHH** Yes, sir, I have

2 **THE COURT** And what are your desires with
3 regards to Mr Grant representing you?

4 **MR ALKEBULANYAHH** I would like to have
5 Mr. Grant represent me along with Mr Walters, yes,
6 sir

7 **THE COURT** Very well So you would like Mr
8 Walters and Mr Grant to both be appointed as your
9 counsel in this?

10 **MR ALKEBULANYAHH** I do, sir

11 **THE COURT** All right Very well

12 Okay Mr Walters and Mr Grant -- Mr
13 Walters, give me a little bit of your background for
14 the record, please

15 **MR WALTERS** My full name is Glenn Walters
16 I'm a graduate of South Carolina State University,
17 graduated from there in 1986 I graduated from the
18 University of Virginia School of Law in 1989

19 I've been practicing law in the State of South
20 Carolina probably about 17 years I started off as
21 -- with the law firm of Johnson, Toal and Battiste
22 I later -- my law school had a loan forgiveness
23 program if I worked for indigent people, so I became
24 a public defender here in Richland County I worked
25 for the public defender's office here in Richland

1 County for a little over a year and a half

2 I left this office, I then went to Orangeburg
3 County, practiced as a public defender there for
4 probably about a year and a half I then went into
5 private practice

6 In the private practice, we continued to handle
7 extensive criminal cases, as a general practice,
8 handling criminal, bankruptcy, real estate, probate,
9 personal injury and things of that nature As far
10 as the specifics with regards to criminal
11 representation, we've represented from magistrate's
12 court to federal court, all aspects of different
13 types of cases

14 With regards to death penalty cases, Mr Grant
15 and I tried Alfred Walker, the State versus Alfred
16 Walker, and that was in Barnwell several years ago
17 And recently we were appointed as counsel to
18 represent Mr Mikal Mahdi and that case was tried in
19 Calhoun County, both death penalty cases

20 In this particular case, we'd be glad to
21 represent the defendant And as far as our criminal
22 background, it's been 17 years of extensive criminal
23 work, murder, armed robbery, death penalty, every
24 aspect of criminal law and, of course, in every
25 court in the State of South Carolina from the

1 federal courts to state courts and things of that
2 nature

3 **THE COURT** You have been death penalty
4 qualified in death penalty cases before?

5 **MR WALTERS** Yes, sir

6 **THE COURT** First chair, second chair or both?

7 **MR WALTERS** The first case, I was second
8 chair The second case, I was first chair

9 **THE COURT** That would certainly makes sense
10 All right, thank you

11 Mr Grant

12 **MR GRANT** Good morning, Your Honor

13 **THE COURT** I want you to lay a little of your
14 background on me for the record

15 **MR GRANT** Yes, sir Your Honor, my name is
16 Carl B Grant I'm also a graduate of South
17 Carolina State University, class of 1982 In 1985,
18 I graduated from the Ohio State University College
19 of Law

20 I began my practice with the U S Army JAG
21 Corps as a captain in the U S Army prosecuting
22 soldiers as a trial counsel And then as a trial
23 defense attorney, defending soldiers at U S Army
24 court-martials, all levels of court-martial from
25 murder on down, general sessions type charges

1 After leaving the JAG Corps, I joined a firm
2 here in Columbia for about two years doing primarily
3 criminal defense for the firm. And since then, I've
4 started my own practice. And my practice has
5 involved primarily criminal defense and personal
6 injury.

7 I have tried or been appointed, I should say,
8 to at least five death penalty cases in the capacity
9 of lead counsel and second chair. I tried my first
10 death penalty case in, I think, it was March of
11 1995. And I am indeed death penalty qualified.

12 I've tried cases in federal court. Every court
13 that you can possibly imagine that I could think of
14 from the Marine Corps to Fort Jackson to the Air
15 Force type courts, all court-martial levels even as
16 a civilian attorney and from death penalty cases on
17 down in the State of South Carolina from the federal
18 courts, I've tried those cases, Judge.

19 **THE COURT** Very well.

20 Well, I find that both Mr. Walters and
21 Mr. Grant are qualified to represent
22 Mr. Alkebulanyahh in this matter and will appoint
23 them as counsel for him during this post-conviction
24 relief. So, at this point then, the State will then
25 serve upon counsel a copy of the transcript and

1 provide them with a return to the application

2 What I would like to do is I will then give the
3 petitioner 180 days to review the transcripts and
4 file an amended application, if they so desire And
5 at that point, once the -- well, then the State
6 would have the right to file any responsive
7 pleadings to that We will then status the case in
8 order to set a trial date at that time

9 So let's see, this is August the 8th, so you'll
10 have until February the 8th to file an amended
11 application And after that, the State will have
12 the opportunity to file any responsive pleadings

13 So let's set this for a -- tentatively, we'll
14 set it for status some time around the first of
15 March I will have my office contact y'all in mid
16 February so that we can set up a status conference
17 then to set a trial date, see if we have any
18 dispositive motions or anything that need to be
19 heard

20 As far as any application for expenses, what I
21 would like to have the petitioner's lawyers do is
22 file any application with the court and on the
23 Attorney General's Office so if the Attorney
24 General's Office wants to file an objection, they
25 can do so

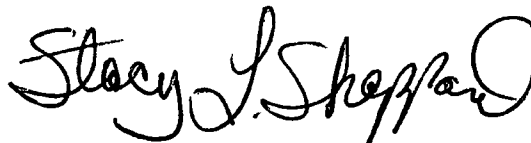
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, the undersigned, Stacy L Sheppard, Circuit Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Beaufort County, South Carolina, on the 8th of August, 2007

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

June 29, 2010

A handwritten signature in black ink, reading "Stacy L. Sheppard". The signature is written in a cursive, flowing style with a large, looped capital 'S' at the beginning.

Stacy L Sheppard, RPR
Circuit Court Reporter

Appendix B

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

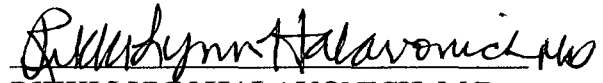
AFFIDAVIT

Dr Rikki Lynn Halavonich, who appeared personally before me, affirms and states the following

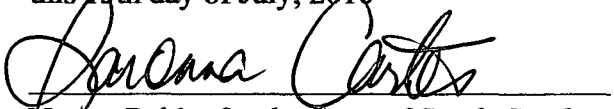
- 1 I am a physician licensed to practice medicine in the state of South Carolina. After medical school I completed a four-year residency in psychiatry and a one-year fellowship in forensic psychiatry, both at the Medical University of South Carolina (MUSC) My area of expertise is forensic psychiatry I am board certified in both general psychiatry and forensic psychiatry
- 2 After completing my forensic fellowship, I joined the faculty at MUSC as an assistant professor of psychiatry My professional responsibilities focused on training forensic fellows and psychiatry residents, as well as evaluating clients in both criminal and civil legal settings I was the Associate Fellowship Director of the forensic training program as well as the Director of the Department of Forensic Psychiatry In 2008, I transitioned from MUSC to private practice and am currently practicing in Charleston, South Carolina, at Lowcountry Forensic Psychiatry
- 3 I met with Abidiyyah ben Alkebulanyahh for 2 hours on March 31, 2010 and for 1 25 hours on May 24, 2010 I reviewed records related to Mr Alkebulanyahh's case including the following transcripts The portion of his pretrial hearing in which he made a motion to proceed pro se, his testimony during the guilt determination phase of the trial, the presentencing testimony in which he indicated his desire to not be present for the proceedings, the portion of the proceedings during sentencing in which he became unruly, and the PCR hearing I reviewed the report of Donna Schwartz-Watts, MD dated July 29, 2003 and the deposition of Dr Schwartz-Watts dated August 13, 2008 I reviewed writings of Mr Alkebulanyahh including a voluminous narrative titled "Manuscript Part One"
- 4 It is my understanding that Mr Alkebulanyahh was evaluated by multiple mental health professionals prior to his trial and subsequently found competent to stand trial, as well as competent to proceed pro se, by the Court It is further my understanding that there was agreement that, although competent to stand trial and proceed pro se, Mr Alkebulanyahh suffered from a serious mental illness
- 5 It is my professional opinion, to a reasonable degree of medical certainty, that Mr

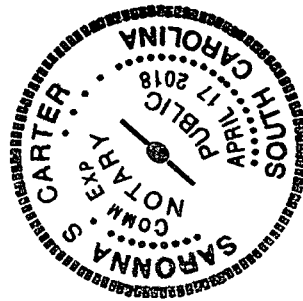
Alkebulanyahh's symptoms of mental illness worsened as his trial progressed. The transcripts indicate he became increasingly disorganized, paranoid and delusional over the course of the trial. It is further my opinion that over the course of the trial, and specifically by the time of the penalty phase, Mr. Alkebulanyahh had decompensated to the point that his ability to understand the proceedings against him and assist in his defense were significantly impaired.

FURTHER AFFIANT SAYETH NAUGHT


RIKKI LYNN HALAVONICH, M D

Sworn to and subscribed before me
this 15th day of July, 2010


Notary Public for the State of South Carolina
My commission expires April 17, 2018



THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T Mullen, Circuit Court Judge

Case No 06-CP-11-223

Abdiyyah ben Alkebulanyahh, #6012, *Petitioner*,

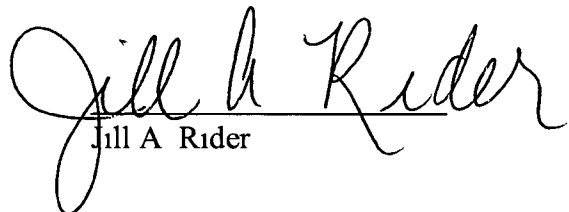
v

State of South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Applicant's Motion to Remand for Additional Post-Conviction Proceedings was mailed today by first class United States mail, postage prepaid, this 21st day of July, 2010, upon the following

S Creighton Waters
Assistant Attorney General
P O Box 11549
Columbia, SC 29211


Jill A Rider



 ORIGINAL

Division of Appellate Defense
1330 Lady Street Suite 401
Columbia South Carolina 29201 3332
Post Office Box 11589
Columbia South Carolina 29211 1589
Telephone (803) 734 1330
Facsimile (803) 734 1397

Robert M Dudek Chief Appellate Defender
Wanda H Carter Deputy Chief Appellate Defender
Joseph L Savitz III Senior Appellate Defender

September 16, 2010

RECEIVED

SEP 16 2010

SC SUPREME COURT

The Honorable Daniel E Shearouse
Clerk of Court
The South Carolina Supreme Court
P O Box 11330
Columbia, SC 29211

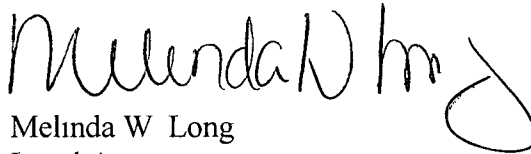
Re Abdiyyah Alkebulanyahh v The State (Capital Case)
a/k/a Tyree Roberts

Dear Mr Shearouse

This is just to inform your office that we have received the August 8, 2007 hearing on Tuesday, September 14, 2010

Please contact me if you have any questions or need any other information

Sincerely,



Melinda W Long
Legal Assistant

/mwl

cc Donald J Zelenka, Esquire

The Supreme Court of South Carolina

Tyree Roberts a/k/a_Abdıyyah
Alkebulanyahh,

Petitioner,

V

State of South Carolina,

Respondent

ORDER

Petitioner was convicted of two counts of murder and was sentenced to death. His convictions and sentence were affirmed on direct appeal. State v. Roberts, 369 S.C. 580, 632 S.E.2d 871 (2006). The case is currently before the South Carolina Supreme Court by way of a notice of appeal, filed in October 2009, from an order denying petitioner's application for post-conviction relief (PCR). Petitioner has filed a Motion to Remand for Additional Post-Conviction Proceedings, which is partially based on the assertion that the attorneys appointed to represent petitioner in his PCR action were not qualified under S.C. Code Ann. § 17-27-160(B)(2003). Consideration of that motion has been held in abeyance pending a decision

on petitioner's request that I recuse myself from participation in consideration of the motion

Petitioner's Motion for Recusal is based on a memorandum I sent to circuit court judges in August 2003, in my administrative capacity as administrative head of the unified judicial system S C Const art V, § 4 That memorandum addressed confusion that had arisen in the circuit courts regarding appointment of counsel in capital PCR cases pursuant to section 17-27-160(B)

"State supreme courts have a range of powers and responsibilities in governing the judicial branch of government and adjudicating controversies " In re Vermont Supreme Court Administrative Directive No 17, 576 A 2d 127 (Vt 1990) See S C Const art V, § 4 ("The Supreme Court shall make rules governing the administration of all the courts of the State Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts ") In addition, the Chief Justice of the South Carolina Supreme Court, like Chief Justices in other jurisdictions, is assigned both adjudicative and administrative duties S C Const art V, § 4 ("The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system He shall appoint an

administrator of the courts and such assistants as he deems necessary to aid in the administration of the courts of the State ”) See State ex rel Hash v McGraw, 376 S E 2d 634 (W Va 1988)

The South Carolina Supreme Court has never addressed whether actions taken by its Chief Justice in an administrative capacity warrant disqualification in a subsequent matter resulting from the administrative action. However, courts in other jurisdictions that have considered the issue have found “the dual responsibilities of diligent administration and impartial adjudication do not create a conflict requiring disqualification ” McGraw, supra. Cf Ky Utils Co v South East Coal Co, 836 S W 2d 407 (Ky 1992), Lorenz v N H Admin Office of Courts, 858 A 2d 546 (N H 2004), N Y State Assn of Criminal Defense Lawyers v Kaye, 95 N Y 2d 556, 744 N E 2d 123 (2000), Vermont Supreme Court Administrative Directive No 17 v Vermont Supreme Court, 576 A 2d 127 (Vt 1990). Those courts have found the situation no different from the rehearing of a case in which the judge has rendered an opinion. Id. The courts have also noted the promulgation of an administrative order or directive does not include a determination that it is valid because that would constitute an advisory opinion. Lorenz, supra, Kaye, supra, Directive No 17, supra. Instead, such a

determination must be adjudicated by way of a separate action Id Finally, the courts have recognized that in states where an appellate court has primary responsibility for administration of the judicial branch of government, including rule-making powers, the disqualification of those judges each time their administrative actions are challenged would “render the rule-making process self-defeating and nugatory ” Kaye, supra (quoting Berberian v Kane, 425 A 2d 527 (R I 1981))

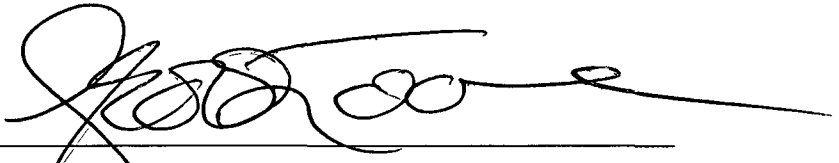
Moreover, many of these courts have also determined disqualification in such situations is not required by Canon 3(E) of the Code of Judicial Conduct Lorenz, supra, Directive No 17, supra, McGraw, supra Specifically, the courts have determined the fact that administrative action was taken by a judge does not constitute a reasonable ground for questioning the judge’s impartiality in a subsequent case challenging the action, as the administrative action does not represent a personal bias or interest nor the type of prior knowledge that would prevent the judge from acting impartially Id

Appointment of counsel is an issue that affects the operation of the judicial system and is often dealt with in an administrative capacity by me, as Chief Justice, or the Court as a whole by way of an administrative

order or even in a rule-making capacity. As noted by the Supreme Court of Appeals of West Virginia, “[o]ur court system is replete with cases and controversies that are of a hybrid nature, possessing administrative as well as judicial characteristics.” McGraw, supra. I find the fact that I have advised circuit court judges on the application of section 17-27-160(B) in my administrative capacity does not disqualify me from adjudication of petitioner’s Motion for Remand, which is based on a different interpretation of the statute. My consideration of petitioner’s Motion for Remand is no different from my consideration of petitions for rehearing filed in cases in which I have participated in a decision on the merits. Moreover, it is my opinion my issuance of the administrative memorandum does not reflect a bias or personal interest or a degree of prior knowledge that requires my disqualification pursuant to Canon 3(E) of the Code of Judicial Conduct, Rule 501, SCACR.

I have no doubt that I can decide the Motion to Remand in this case in a fair and impartial manner. Indeed, such is required by my oath of

office I therefore deny petitioner's request that I recuse myself from acting on his Motion to Remand¹


CHIEF JUSTICE JEAN HOEFER TOAL

Columbia, South Carolina

August 30, 2010

cc John H. Blume, III, Esquire
Assistant Attorney General Alphonso Simon, Jr

¹ I find that where a motion is made to disqualify or recuse an individual justice of this Court, the motion is to be decided in the first instance by the challenged justice and not by other members of the Court McGraw, supra, Richard E. Flam, Judicial Disqualifications § 29.2 (2nd ed. 2007)



HENRY McMASTER
ATTORNEY GENERAL

RECEIVED

AUG 26 2010

August 26, 2010

SC SUPREME COURT

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re Abdiyyah Ben Alkebulanyahh, #6012 vs. State of South Carolina
Appeal from Beaufort County

Dear Mr. Shearouse

Please accept this letter in lieu of a formal Return to Petitioner's motion to recuse Chief Justice Toal, which the State received on August 17, 2010. While the State would of course leave the matter to the Chief Justice's discretion, the State sees no conflict here. Canon 3(E) of Rule 501 of the Rules of Judicial conduct states that '[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might be reasonably be questioned.' To follow Petitioner's logic, any Justice or appellate judge in the majority on a decision would have to recuse herself if a motion to argue against precedent had been granted as to that decision, and any Justice or appellate judge who ruled a certain way on an issue as a trial judge would have to recuse herself if that issue were under review on appeal. The Motion to Remand for Additional Post-Conviction Relief Proceedings is in no way comparable to the scenarios included in Canon 3(E) as examples of when a judge must be disqualified. Recusal is not required in this case.

Thank you for your assistance in this matter. Please let me know if you have any questions or concerns.

Sincerely,

Alphonso Simon, Jr.
Assistant Attorney General

AS/dmd

cc John Blume, III, Esq.
The Honorable Isaac McDuffie Stone, Solicitor 14th Circuit
Sandi Wofford, Victim Services

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T Mullen, Circuit Court Judge

Case No 06-CP-11-223

Abdiyyah ben Alkebulanyahh, #6012, *Petitioner*,

v

State of South Carolina

MOTION FOR RECUSAL

RECEIVED

AUG 16 2010

SC SUPREME COURT

I INTRODUCTION

Petitioner, through undersigned counsel, hereby files this motion to recuse Chief Justice Toal in the above captioned matter. In support of the motion, petitioner apprizes this Court of the following facts and legal principles:

II REASONS RECUSAL IS APPROPRIATE

Petitioner's Motion to Remand for Additional Post-Conviction Proceedings is partially predicated on the failure of his court appointed post-conviction relief attorneys to meet the statutory qualifications set forth in S.C. Code Ann. §17-27-160(B). Respondent's primary argument opposing petitioner's motion is that in an August 15, 2003 letter sent by Chief Justice Toal to All Circuit Court Judges, the Chief Justice opined that, despite the clear differences in the statutory language, the qualifications for capital post-conviction counsel in §17-27-160(B) are

identical to those for capital trial representation under § 16-3-26(B). Given respondent's reliance on the August 15, 2003 letter, the authority of the Chief Justice to issue what is in effect a rule of court as well as the correctness of the Chief Justice's interpretation of § 17-27-160(B) are issues which must be resolved by this Court in determining whether petitioner's motion to remand should be granted.

Both the South Carolina Code of Judicial Conduct, and the South Carolina Code of Laws weigh in favor of recusal. Rule 501 of the Code of Judicial Conduct, Canon 2, states that a judge "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Further, Rule 501, Canon 3(E)(1) states "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." The South Carolina Code requires a Supreme Court justice to disqualify himself or herself by reason of interest, stating "no justice shall preside in any case or at the hearing thereof in which he may be interested or in which he may have been counsel or has presided in any inferior court." S.C. Code Ann. § 14-3-50 (1976). This Court is effectively adjudicating the validity and correctness of Chief Justice's prior ruling on § 17-27-160(B).

This Court has previously recognized that "[u]nder Canon 3(E)(1)(a), a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned." *Patel v. Patel*, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004). In the matter at hand, the Chief Justice's impartiality might reasonably be questioned. Petitioner specifically asks this Court to evaluate the Chief Justice's interpretation of § 17-27-160(B) in her August 15, 2003 letter, and rule on her unilateral authority to issue changes to the rules governing the practice and procedures in South Carolina. The Chief Justice might reasonably have an interest in the Court's ruling on these issues, and therefore her impartiality might reasonably be questioned. In addition

to the code, due process affords a criminal defendant the right to have his case adjudicated before an impartial tribunal *See In re Murchison*, 349 U S 133, 136 (1955) (“A fair trial in a fair tribunal is a basic requirement of due process”)

III CONCLUSION

In the interest of justice and due process of law, petitioner submits that the Chief Justice should be recused from participating in the consideration of petitioner’s motion to remand for additional post-conviction proceedings

Respectfully submitted,



JOHN H. BLUME
Cornell Law School
112 Myron Taylor Hall
Ithaca, New York 14853
607-255-1030

August 16, 2010

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

AUG 16 2010

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC SUPREME COURT

Carmen T Mullen, Circuit Court Judge

Case No 06-CP-11-223

Abdiyyah ben Alkebulanyahh, #6012, *Petitioner*,

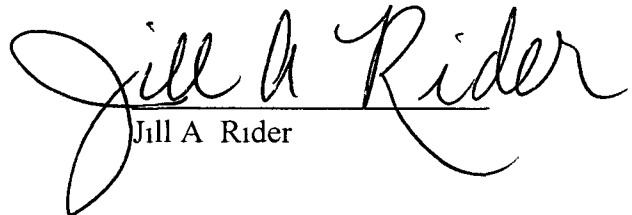
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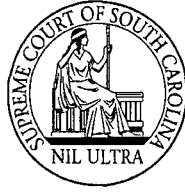
State of South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Applicant's Motion for Recusal was mailed today
by first class United States mail, postage prepaid, this 16th day of August, 2010, upon the following

Alphonso Simon, Jr
Assistant Attorney General
P O Box 11549
Columbia, SC 29211


Jill A Rider



The Supreme Court of South Carolina

JEAN HOEFER TOAL
CHIEF JUSTICE

1231 GERVAIS STREET
COLUMBIA SOUTH CAROLINA 29201
TELEPHONE (803) 734 1584
FAX (803) 734 1167

August 10, 2010

John H. Blume, Esquire
Cornell Law School
Myron Taylor Hall
Ithaca, New York 14853-4901

RE Abdiyyah ben Alkebulanyahh v State of South Carolina
Case No 2009143286

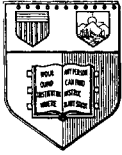
Dear Mr. Blume

I am in receipt of your letter dated August 9, 2010, concerning your request that I recuse myself in the case of Abdiyyah ben Alkebulanyahh v State of South Carolina, which is pending before this Court. In my opinion, it would be more appropriate for you to address your concerns by way of a motion for recusal. Accordingly, no action will be taken on your letter. Additionally, no action will be taken by the Court on the motion to remand, pending in the above-captioned case, until you have had sufficient time to serve and file a motion for recusal, and any such motion has been acted upon.

Sincerely,



Jean Hofer Toal



Cornell Law School

August 9, 2010

The Honorable Jean Hoefer Toal
Chief Justice, South Carolina Supreme Court
P O Box 11330
Columbia, SC 29211



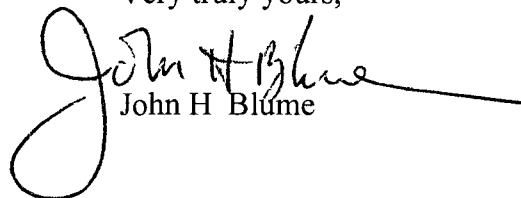
Re Abdyyah ben Alkehulanyahh v State

Dear Chief Justice Toal

On March 5, 2010, I was appointed to represent Mr Alkebulanyahh, the petitioner in the above captioned matter. On July 21, 2010, petitioner filed a Motion to Remand the Case to the Circuit Court for Additional Post-Conviction Proceedings on the basis that Petitioner's court appointed PCR counsel did not have the experience or training required by S C Code Ann 17-27-160(B). In a Response filed on August 2, 2010, counsel for the state argued that counsel were qualified based on an August 15, 2003 letter that you sent to all Circuit Judges setting forth your interpretation of the statutory provision. In a reply filed with the Court today, petitioner asserts that the Chief Justice does not have the authority under the South Carolina Constitution and the relevant statutory provisions to enter such an order/directive as it is effectively rulemaking. Petitioner further asserts that the interpretation of the statute contained in the August 15, 2003 letter violates the separation of powers doctrine and is otherwise incorrect.

Given the issues that unavoidably arise for decision due to respondent's reliance on your order and petitioner's reply, I believe that there is an adequate basis to question your impartiality under the South Carolina Code of Judicial Conduct, Canons 2 and 3(E)(1), and under S C Code § 14-3-50, and that it would create an appearance of impropriety if you were to participate in this case. If necessary, I will file a formal Motion for Recusal, but, before doing so, I wanted to inform you at the earliest opportunity of the issue raised by the pleadings relating to the lawfulness of your 2003 order so as to afford you the opportunity to take any action you feel to be appropriate.

Very truly yours,


John H. Blume

Cc Alphonso Simon, Jr



SOUTH CAROLINA COMMISSION ON INDIANT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia South Carolina 29201 3332

Post Office Box 11589
Columbia South Carolina 29211 1589
Telephone (803) 734 1343
Facsimile (803) 734 1397

Robert M Dudek Chief Appellate Defender
Wanda H Carter Deputy Chief Appellate Defender
Joseph L Savitz III Senior Appellate Defender

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AUG - 4 2010

SC SUPREME COURT

August 4, 2010

Ms Desiree Allen
S C Court Administration
1015 Sumter Street, 2nd Floor
Columbia, South Carolina 29201-3739

Dear Ms Allen

The transcript listed below was requested by this office Pursuant to Rule 207(a)(2), SCACR, the allotted time of sixty (60) days has lapsed to either receive the transcript or an extension to deliver same

Court Reporter

Ms Stacy L Sheppard

Due Date

7/5/10

Case Name

Abdiyyah Alkebulanyahh

Trial Date August 8, 2007

I would appreciate your confirming in writing as to the status of the above-referenced transcript If you should have any questions, please do not hesitate to contact me

Sincerely,

Melinda W Long
Legal Assistant

cc S C Supreme Court
Attorney General's Office



HENRY McMASTER
ATTORNEY GENERAL

RECEIVED

AUG - 2 2010

SC SUPREME COURT

August 2, 2010

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re Abdiyyah Ben Alkebulanyahh, #6012 vs. State of South Carolina
Appeal from Beaufort County

Dear Mr. Shearouse

Enclosed for filing are the original and six (6) copies of the Respondent's Response in Opposition to Motion to Remand for Additional Post-Conviction Relief Proceedings together with a Certificate of Service regarding the above-referenced matter.

Thank you for your assistance in this matter.

Sincerely

Alphonso Simon, Jr.
Assistant Attorney General

AS/dmd

Enclosures

cc John Blume, III, Esq. (w/two (2) copies of encls.)
The Honorable Isaac McDuffie Stone, Solicitor 14th Circuit (w/copies of encls.)
Sandi Wofford, Victim Services (w/copies of encls.)

BLUME WEYBLE & NORRIS, LLC

ATTORNEYS AT LAW

JOHN H. BLUME
KEIR M. WEYBLE
TERESA L. NORRIS
DAVID I. BRUCK *OF COUNSEL*

1247 SUMTER STREET, SECOND FLOOR
COLUMBIA, SOUTH CAROLINA 29201
MAILING ADDRESS
POST OFFICE BOX 11744
COLUMBIA, SC 29211
PHONE (803) 765 1044
FAX (803) 765 1143

July 21, 2010

The Honorable Daniel E. Shearouse
Clerk
South Carolina Supreme Court
P O Box 11330
Columbia, S C 29211

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JUL 21 2010

SC SUPREME COURT

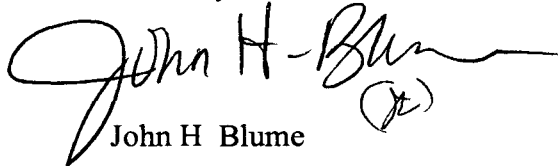
RE *Alkebulanyahh v State*

Dear Mr. Shearouse:

On Friday, July 9, 2010, our office received the August 8, 2007, transcript that we had requested in the above captioned matter. Furthermore, in reviewing the transcript of the record that was provided to me by previous counsel, it became apparent that there were numerous pages missing in several portions of that record that are relevant to the issues raised by my client or prior counsel in the lower court proceedings, and which are addressed in the order denying post-conviction relief. I contacted Bob Dudek at the Office of Appellate Defense and requested that he provide me with a complete copy of the transcript. We just received what appears to be a complete copy of the 2003, trial transcript from the Office of Appellate Defense.

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

Sincerely,


John H. Blume

cc Robert Dudek, Esq
S. Creighton Waters, Esq
Abdiyyah Ben Alkebulanyahh

Hopkins, Debbie

From Jill Rider [jill@blumelaw.com]
Sent Wednesday, July 21, 2010 8:25 AM
To Hopkins, Debbie
Cc John Blume
Subject RE: Tyree Roberts

Debbie

I have been in court in Greenville all week. I have not sent this letter because after I spoke with you I was informed that we had to obtain a copy of the ROA from Appellate Defense. The copy that his previous attorney provided us was missing numerous pages in different sections. I have just arrived back in the office and have a message from ADO that they have received the ROA from archives so I will pick it up today. I will send you a letter today indicating the above.

If you have any questions please don't hesitate to call me.

Jill

From Hopkins, Debbie [mailto:DHopkins@sccourts.org]
Sent Tuesday, July 20, 2010 9:19 AM
To Jill Rider
Subject Tyree Roberts

Good morning Jill,

I tried to call you yesterday and today and you were not available. Have you sent me the transcript letter on Roberts that we talked about last week?

Please let me know.

Thanks and have a good day.

*Debbie M. Hopkins
South Carolina Supreme Court
P. O. Box 11330
Columbia, South Carolina 29211
(803) 734-1080*

BLUME WEYBLE & NORRIS, LLC

ATTORNEYS AT LAW

JOHN H. BLUME
KEIR M. WEYBLE
TERESA L. NORRIS
DAVID I. BRUCK OF COUNSEL

1247 SUMTER STREET, SECOND FLOOR
COLUMBIA, SOUTH CAROLINA 29201
MAILING ADDRESS
POST OFFICE BOX 11744
COLUMBIA, SC 29211
PHONE (803) 765 1044
FAX (803) 765 1143

May 4, 2010

Stacy Sheppard
100 Lunsford Lane
Lexington, SC 29072

RE *Alkebulanyahh v State*

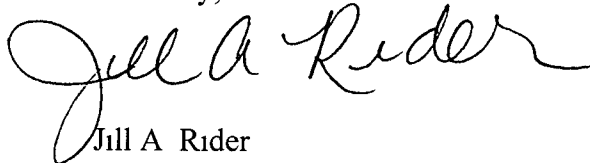
RECEIVED
MAY 05 2010
SC SUPREME COURT

Dear Ms. Sheppard

I previously requested that our office be provided with a copy of a pre-hearing transcript that took place on August 8, 2007, before the Honorable Judge Roger M. Young, Sr. in regards to the above captioned case. I have since been informed by the South Carolina Supreme Court Clerk of Court's office that the request actually has to be made through the Office of Appellate Defense. By way of this letter, I am cancelling my previous request and requesting the Office of Appellate Defense to re-request this same transcript.

I apologize for any confusion this may have caused. If you should have any questions, please do not hesitate to contact me. Thank you in advance for your assistance.

Sincerely,



Jill A. Rider
Paralegal

cc Honorable Daniel E. Shearhouse
Robert Dudek, Esq.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia South Carolina 29201 3332
Post Office Box 11589
Columbia South Carolina 29211 1589
Telephone (803) 734 1330
Facsimile (803) 734 1397

Robert M. Dudek Chief Appellate Defender
Wanda H. Carter Deputy Chief Appellate Defender
Joseph L. Savitz III Senior Appellate Defender

May 4, 2010

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MAY - 4 2010

SC SUPREME COURT

Ms. Stacy L. Sheppard
Circuit Court Reporter
100 Lunsford Lane
Lexington, SC 29072

Dear Ms. Sheppard:

Our office has been requested to perfect the appeal arising out of

Abdiyyah Alkebulanyahh v. The State

Case #

2007 CP 07 00715

County Richland

Date of Trial August 8, 2007

Presiding Judge Roger M. Young

It is my understanding that you were the court reporter at this time. In that being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

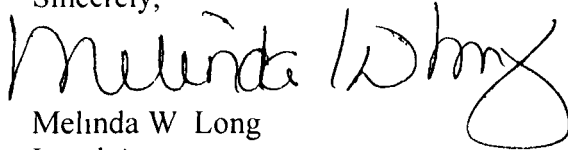
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms Stacy L Sheppard
May 4, 2010
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

I thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda W Long". The signature is fluid and cursive, with a large loop at the end of the last name.

Melinda W Long
Legal Assistant

cc S C Supreme Court
Attorney General's Office

BLUME WEYBLE & NORRIS, LLC

ATTORNEYS AT LAW

JOHN H. BLUME
KEIR M. WEYBLE
TERESA L. NORRIS
DAVID I. BRUCK *OF COUNSEL*

1247 SUMTER STREET, SECOND FLOOR
COLUMBIA, SOUTH CAROLINA 29201
MAILING ADDRESS
POST OFFICE BOX 11744
COLUMBIA, SC 29211
PHONE (803) 765 1044
FAX (803) 765 1143

April 29, 2010

Stacy Sheppard
100 Lunsford Lane
Lexington, SC 29072

RECEIVED

RE *Alkebulanyahh v State*

MAY 08 2010

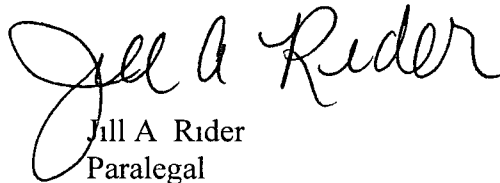
SC SUPREME COURT

Dear Ms. Sheppard

Please be advised that our office has been appointed to represent Abidiyyah Ben Alkebulanyahh (aka Tyree Roberts). I am writing to request that we be provided with a copy of a pre-hearing transcript that took place on August 8, 2007, before the Honorable Judge Roger M. Young, Sr. The case number for this case is 07-CP-07-0715.

If you should have any questions, please do not hesitate to contact me. Thank you in advance for your assistance.

Sincerely,


Jill A. Rider
Paralegal

cc Honorable Daniel E. Shearhouse

**GLENN WALTERS
ATTORNEY AT LAW, P. A.**

348 ST PAUL STREET • POST OFFICE BOX 1346 • ORANGEBURG, S C 29116
TELEPHONE (803) 531 8844 • FACSIMILE (803) 531 3628

Glenn Walters, Sr , Esquire

R Bentz Kirby, Of Counsel

April 15, 2010

Blume, Weyble & Norris, LLC
Attorneys at Law
Attn John H Blume, Esquire
1247 Sumter Street, Second Floor
Columbia, SC 29201

RECEIVED

APR 15 2010

SC SUPREME COURT

RE Alkebulanyahh v State

Dear Mr Blume

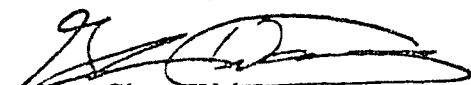
Enclosed herewith and served upon you, please find the original Post Conviction Relief Application, the Amended Post Conviction Relief Application, Order of Dismissal with Prejudice and Transcript of Record for October 13-14, 2008 hearing

We had a chambers meeting with Judge Young on July 6, 2007, a hearing for appointment of additional counsel on August 8, 2007, and telephone conferences with Judge Young on March 7, 2008, June 17, 2008 and July 16, 2008

If you need any additional information, please feel free to contact me at the office

With kind regards, I am

Sincerely,



Glenn Walters
Attorney at Law

GW gcd

cc Hon Daniel Shearhouse ✓
Robert Dudek, Esq
S Creighton Waters, Esq
Carl B Grant, Esq
Abdiyyah Ben Alkebulanyahh

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ U S Mail, ☐ emailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure

This 15th day of April, 20 10

LAW OFFICE OF GLENN WALTERS, P.A.

BY Y. C. Lewis, Paralegal

BLUME WEYBLE & NORRIS, LLC

ATTORNEYS AT LAW

JOHN H. BLUME
KEIR M. WEYBLE
TERESA L. NORRIS
DAVID I. BRUCK *OF COUNSEL*

1247 SUMTER STREET, SECOND FLOOR
COLUMBIA, SOUTH CAROLINA 29201
MAILING ADDRESS
POST OFFICE BOX 11744
COLUMBIA, SC 29211
PHONE (803) 765 1044
FAX (803) 765 1143

April 1, 2010

Glenn Walters
Attorney at Law, P A
P O Box 1346
Orangeburg, SC 29116

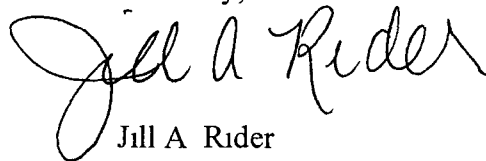
RE *Alkebulanyahh v State*

Dear Mr. Walters

On March 31, 2010, Carl Grant delivered the record on appeal to our office. Thank you for facilitating that, however, we still have not been provided with any of the post-conviction relief pleadings or the order denying post-conviction relief. We also need to request the two pre-post-conviction relief hearing transcripts that were held before Judge Young. If you could please provide us with the dates of these hearings so that we can determine who the court reporter was and make the request we would greatly appreciate it.

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

Sincerely,



Jill A. Rider
Paralegal

cc Honorable Daniel E. Shearhouse
Robert Dudek, Esq.
S. Creighton Waters, Esq.
Carl B. Grant, Esq.
Abdiyyah Ben Alkebulanyahh

RECEIVED

APR 02 2010

SC SUPREME COURT

BLUME WEYBLE & NORRIS, LLC

ATTORNEYS AT LAW

JOHN H BLUME
KEIR M WEYBLE
TERESA L NORRIS
DAVID I BRUCK *OF COUNSEL*

1247 SUMTER STREET, SECOND FLOOR
COLUMBIA SOUTH CAROLINA 29201
MAILING ADDRESS
POST OFFICE BOX 11744
COLUMBIA, SC 29211
PHONE (803) 765 1044
FAX (803) 765-1143

March 17, 2010

Glenn Walters
Attorney at Law, P A
P O Box 1346
Orangeburg, SC 29116

RE *Alkebulanyahh v State*

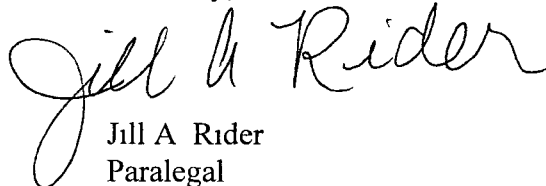
RECEIVED
MAR 18 2010
S.C. SUPREME COURT

Dear Mr Walters

Yesterday, we received the documents you provided in the above captioned matter. The order denying denying post-conviction relief was not included. Additionally, the trial transcript/record on appeal was not included. Your cover letter indicates that your co-counsel will be providing you with a copy of the most recent transcript of record on or before March 15, 2010. I am not sure if you are referring to the trial record or some other transcript. Regardless, I am writing to request that you please provide our office with the order denying post-conviction relief, as well as, the trial transcript at your earliest convenience.

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

Sincerely,


Jill A. Rider
Paralegal

cc Honorable Daniel E. Shearhouse
Robert Dudek, Esq.
S. Creighton Waters, Esq.
Carl B. Grant, Esq.
Abdiyyah Ben Alkebulanyahh

**GLENN WALTERS
ATTORNEY AT LAW, P. A.**

348 ST PAUL STREET • POST OFFICE BOX 1346 • ORANGEBURG, S C 29116
TELEPHONE (803) 531 8844 • FACSIMILE (803) 531 3628

Glenn Walters, Sr , Esquire

R Bentz Kirby, Of Counsel

March ¹⁵~~12~~, 2010

Blume, Weyble & Norris, LLC
Attn John Blume, III, Esquire
Post Office Box 11744
Columbia, SC 29211

RE Alkebulanyahh, Abdiyyah v State

Dear Counsel

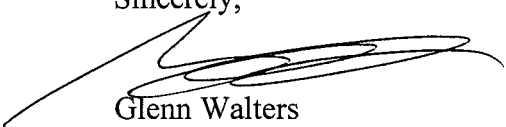
Enclosed herewith and served upon you pursuant to the Order dated March 5, 2010, with regard to the above referenced matter, please find a copy of the Transcript of Record and all supporting documents that I have in my possession

I have had an opportunity to speak with co-counsel and he will be providing my office with a copy of Volumes One (1) through Nine (9) of the most recent Transcript of Record In the event that he is unable to provide said documents to me on or before March 15, 2010, I will request a copy from the Attorney General's Office

If you have any additional questions or concerns, please feel free to contact my office

With kind regards, I am

Sincerely,


Glenn Walters
Attorney at Law

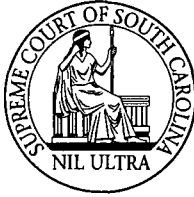
RECEIVED

MAR 1 4 2010

GW gcd

cc Daniel E Shearhouse, Clerk
Chief Appellant Defender Robert Dudek
Assistant Attorney General S Creighton Waters
Carl B Grant, Esquire
Mr Abdiyyah Ben Alkebulanyahh, SK6012

SC SUPREME COURT



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734 1080

FAX (803) 734 1499

March 15, 2010

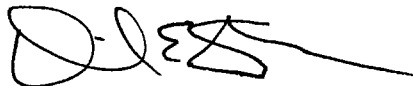
John H. Blume, III, Esquire
Blume Weyble & Norris, LLC
P O Box 11744
Columbia, SC 29211

Re Alkebulanyahh, Abdiyyah v State

Dear Mr. Blume

Enclosed is correspondence received from your client. Since you represent him in this matter, no action will be taken on this pro se filing Jones v State, 348 S C 13, 558 S E 2d 517 (2002), State v Stuckey, 333 S C 56, 508 S E 2d 564 (1998), Foster v State, 298 S C 306, 379 S E 2d 907 (1989).

Very truly yours,



CLERK

Enclosure

cc Acting Chief Appellate Defender Robert M. Dudek
Mr. Abdiyyah Ben Alkebulanyahh, SK6012
Assistant Attorney General S. Creighton Waters

IN THE STATE SUPREME COURT
OF SOUTH CAROLINA

RECEIVED

FEB 26 2010

SC SUPREME COURT

ADDIYAH BEN ALKEBULANYAH, SK6012,
APPELLANT/APPLICANT/PRO

VS.

STATE OF SOUTH CAROLINA,
RESPONDENT.

RECEIVED
FEB 25 2010

OFFICE OF
CHIEF JUSTICE

C/A NO. 2007-CP-0715

NOTIFICATION OF ISSUES/GROUNDS
INTENDED TO BE INCLUDED ON APPEAL
FROM ORDER OF DISMISSAL OF
APPLICATION FOR POST-CONVICTION
RELIEF (APCR) OR INTENDED TO BE
INCLUDED IN WRIT OF HABEAS CORPUS
FROM DENIAL OF POST-CONVICTION
RELIEF (PCR)

APPELLANT/APPLICANT IS A DEATH ROW
PRISONER HOUSED AT LIEBER CORRECTIONAL
INSTITUTION. AND NOTIFY THIS COURT THE

ISSUES THAT SHOULD BE INCLUDED IN ANY
FILED WRIT OF CERTIORARI ON HIS
BEHALF, AS ^{LISTED} ~~SHOWS~~ AS FOLLOWS:

1. FOURTH AMENDMENT ISSUE: WHEREAS,
~~THE CONSTITUTION~~ WHICH FORBIDS, IN PERTINENT
PART, POLICE OFFICERS FROM UNLAWFUL
SEARCH AND SEIZURE AND GRANTS "THE RIGHT
OF THE PEOPLE TO BE SECURE IN THEIR PERSONS,
HOUSES, PAPERS, AND EFFECTS, AGAINST UN-
REASONABLE SEARCHES AND SEIZURES, SHALL
NOT BE VIOLATED, AND NO WARRANT SHALL
ISSUE, BUT UPON PROBABLE CAUSE... DESCRIBING
THE PLACE TO BE SEARCHED, AND THE PERSONS OR
THINGS TO BE SEIZED." WHEREAS, DEPUTY
TATE AND COURSEN ENTERED MINE AND
MY WIFE'S HOME (WHICH WE RENTED)
WITHOUT EITHER OF OUR CONSENT, NOR
WITHOUT THE ^{TRUE} OWNER'S CONSENT (WHOM IS NOT
BRENDA SMITH WHOM LEGAL RESIDENT IS IN
A GOVERNMENT WELFARE FUNDED APARTMENT
IN THE ~~STATE OF~~ BRONX, NEW YORK) AT THAT
TIME, ^{ON} JANUARY 8, 2002; TATE AND COURSEN
FURTHER UNLAWFULLY INVADDED THE PRIVATE
BEDROOM OF MINE AND MY WIFE'S WITHOUT
SEARCH WARRANT NOR AN ARREST WARRANT; TATE
AND COURSEN THEREIN, ^{UNLAWFULLY} SEARCH MY PERSON AND

UNLAWFULLY SEIZED MY PERSON, AGAINST MY CONSTITUTIONAL FOURTH AMENDMENT RIGHT. THEREBY, ALSO, DEPRIVING ME OF MY UNITED STATES CONSTITUTIONAL 14TH AMENDMENT RIGHT, WHICH FORBIDS, IN PERTINENT PART, THE DEPRIVATION OF "LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS." WHEREAS, DEPUTY TATE NOR DEPUTY COURSEW DID NOT MAKE ANY EFFORT TO ATTAIN A WARRANT, BEING THERE WAS NO EXIGENT CIRCUMSTANCES FOR DEPUTY TATE AND COURSEW NOR PROBABLE CAUSE TO ENTER MY HOME, PARTICULARLY MY PRIVATE BEDROOM. MOREOVER, ^{DEPUTY} TATE AND COURSEW VIOLATED MY CONSTITUTIONAL ~~FIFTH~~ FIFTH AMENDMENT, WHICH FORBIDS, IN PERTINENT PART, THE ^{DE}PRIVATION OF "LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW", BEING I WAS SEARCHED, SEIZED THEN SHOT WITH BULLETS, AS A RESULT OF THEIR OWN ACTIONS.

2. DENIAL OF FAIR TRIAL: THE COURT VIOLATED MY CONSTITUTIONAL 6TH AMENDMENT RIGHT BY ABUSE OF DISCRETION IN MY BATSON MOTION BY EXCLUDING BLACK-AMERICAN JURORS MATTHEW YOUNG AND EDITH

DWENS, BECAUSE THE SIX AMENDMENT, WHICH GRANTS, IN PERTINENT PART, THE RIGHT ⁶⁶ IN ~~ALL~~ ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY ^{AND} PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED. " MOREOVER VIOLATING MY 5TH AMENDMENT RIGHTS TO DUE PROCESS OF LAW AND MY 14TH AMENDMENT RIGHTS TO DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAWS.

3. DENIAL OF FAIR TRIAL: THE COURT ABUSED ITS DISCRETION BY RESCINDING ON ITS PRE-TRIAL RULING IN FAVOR OF MY MOTION WHICH SUPPOSED TO HAD PREVENTED THE STATE FROM CONTINUING TO PLANT EVIDENCE, THEREBY THE RULING WAS THAT NO ~~OTHER~~ OTHER ITEMS EXCEPT THE ITEMS ALREADY LISTED ON THE RETURN SEARCH WARRANT WOULD BE ADMITTED ~~AND~~ DURING TRIAL, THE COURT ALLOWED A PLANTED BOX OF BULLETS TO BE SUBMITTED INTO EVIDENCE, THEREBY PREJUDGING MY CASE, I BELIEVE THE COURT'S ACTION VIOLATED MY CONSTITUTIONAL 5TH AMENDMENT RIGHT TO DUE PROCESS OF LAW TO A FAIR TRIAL AND VIOLATED MY CONSTITUTIONAL 14TH AMENDMENT RIGHTS TO DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAW TO A FAIR TRIAL.

(4 OF 16)

4. DENIAL OF FAIR TRIAL: WHEN THE COURT BANNED ME FROM PRESENTING ANY EVIDENCE OF A THIRD-PARTY GUILT AND THE BANNING ME FROM QUESTIONING WITNESSES DURING TRIAL AS TO A THIRD-PARTY GUILT, I BELIEVE THE COURT'S ACTION WAS A VIOLATION OF MY CONSTITUTIONAL 5TH AMENDMENT RIGHTS TO DUE PROCESS OF LAW AND, A VIOLATION OF MY 6TH AMENDMENT RIGHTS, WHICH GRANTS, IN PERTINENT PART, THE ACCUSED "TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR." ~~AND~~ MOREOVER THE VIOLATION OF MY 14TH AMENDMENT RIGHTS TO DUE PROCESS OF LAW, AND RIGHT TO A FAIR TRIAL.

5. DENIAL OF FAIR TRIAL: WHEN A FEW MONTHS BEFORE MY TRIAL BY JURY, DEPUTY TATE AND COURSEN WAS HONORED STATE-WIDE AND NATION-WIDE AS HEROES, EVEN IN A NATIONAL TELEVISED BROADCAST BY THE PRESIDENT OF THE UNITED STATES MR. GEORGE W. BUSH, HIMSELF. ~~THE~~ TATE AND COURSEN WAS HONORED FOR THEIR UNLAWFUL ASSAULT WITH INTENT TO KILL ~~ATTEMPTED MURDER~~ ME INSIDE MY PRIVATE BEDROOM AND THEIR UNLAWFUL SEARCH OF MY HOME AND PERSON AND ^{UNLAWFUL} SEIZURE OF MY PERSON. IN THIS COURSE, I BELIEVE MY CONSTITUTIONAL RIGHT TO A FAIR TRIAL WAS VIOLATED, WHICH MY 6TH AMENDMENT

RIGHTS, ~~AND~~ WHICH FORBIDS, IN PERTINENT PART,
THAT ~~THE~~ A ²² PUBLIC TRIAL, BY AN IMPARTIAL JURY
OF THE STATE... ²³ THE GOVERNMENTS OF THE STATE SOUTH CAROLINA
AND ²⁴ THE UNITED STATES HAD PREDETERMINE AND MADE
²⁵ DIRECTLY,
PUBLISHED TO ALL ITS CITIZENS THAT I WERE GUILTY
IN THE MATTER THAT DEPUTY TATE AND COURSEN WERE
MADE NATIONAL AND STATE HEROES. ~~UNWARRANTED~~, MOREOVER, I
BELIEVE, VIOLATED
~~VIOLATED~~ MY 5TH AND 14TH CONSTITUTIONAL AMENDMENT
²⁶
RIGHT IN DUE PROCESS OF LAW AND TO THE EQUAL
PROTECTION OF THE LAWS.

6. JURORS ISSUE: WHEREAS, THE VERDICT WAS
²⁷ TO FIND GUILTY BEYOND A
CONTRARY TO THE LAW, ~~ON~~ REASONABLE DOUBT. I BELIEVE
MY 5TH AND 14TH CONSTITUTIONAL AMENDMENTS WERE
VIOLATED, ~~WHEREAS~~ ²⁸ WHEN THE JURORS FOUNDED GUILTY ON A
MERE ~~SUSPICION~~ SUSPICION. WHEREAS UPON SO
VIOLATED MY RIGHT TO DUE PROCESS OF THE LAWS
AND TO THE EQUAL PROTECTION OF THE LAWS.

7. JURORS ISSUE: WHEREAS, THE VERDICT WAS
CONTRARY TO THE EVIDENCE. I BELIEVE THIS ACTION WAS
A VIOLATION OF MY 5TH AND 14TH CONSTITUTIONAL
AMENDMENTS, IN DUE PROCESS OF THE LAWS AND TO THE
EQUAL PROTECTION OF THE LAWS. WHEREAS, THE STATE
OFFERED NO EVIDENCE OF MURDER, BUT ONLY ²⁹ A SPECULATIVE
~~FOR~~ ASSUMPTION TO A ~~CRIME~~ SELF-DEFENSE OR JUSTIFIABLE
HOMICIDE AND A POSSIBLE ACCIDENTAL KILLING OF DEPUTY

COURSE BY DEPUTY TATE.

8. SPEEDY TRIAL ISSUE: I FILED SEVERAL MOTION OVER A YEAR AND A HALF (18 MONTHS) REQUESTING A SPEEDY TRIAL, BEING THAT I WERE BEING HELD IN JAIL WITHOUT BAIL. AGAINST THE STATE OF SOUTH CAROLINA STATUTES FOR SPEEDY TRIAL AND AGAINST THE CONSTITUTIONAL 6TH AMENDMENT, WHICH GRANTS, IN PERTINENT PART, THE RIGHTS "IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL". WHERE MOREOVER I BELIEVE MY CONSTITUTION 6TH AMENDMENT RIGHT TO SPEEDY TRIAL WERE VIOLATED AND, MY 5TH AMENDMENT RIGHT, TO DUE PROCESS OF LAW WERE VIOLATED AND, MY 14TH AMENDMENT RIGHT TO DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAWS.

9. MIRANDA RIGHTS ISSUE: WHERE I WAS ARRESTED AND QUESTIONED BY POLICE OFFICERS WITHOUT MIRANDA RIGHTS BEEN GIVEN. I BELIEVE THE POLICE CONDUCT WERE A VIOLATION OF MY CONSTITUTIONAL 5TH AMENDMENT RIGHT, TO DUE PROCESS OF LAW, AND A VIOLATION OF MY 14TH AMENDMENT RIGHT, TO DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAWS.

(7 OF 16)

10. INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL ISSUE: WHEREAS APPELLATE COUNSEL RAISE NO ISSUES OR GROUNDS TO CHALLENGE THE GUILT PHASE OF TRIAL, NOR EVER MET MYSELF, ~~AND~~, NOR EVER DISCUSSED WITH MYSELF ABOUT MY TRIAL ~~STRATEGY~~ STRATEGY, MY VIEWS OR MY DESIRES, BEING I REPRESENTED MYSELF, PRO SE AT TRIAL; APPELLATE COUNSEL DEPRIVE ME OF ANY FORM OF A MEANINGFUL DIRECT APPEAL. AS A MATTER OF FACT, APPELLATE COUNSEL ARBITRARILY DEPRIVED ME ^{OF} ANY RIGHTS TO APPEAL MY CONVICTION FROM TRIAL OR THE VERDICT OF GUILTY. WHEREFORE, I BELIEVE MY CONSTITUTIONAL 6TH AMENDMENT RIGHTS WERE VIOLATED, IN PERTINENT PART, "TO HAVE THE ASSISTANCE OF COUNSEL FOR DEFENSE." 1) ~~BECAUSE AND THAT~~ WHICH MEANS EFFECTIVE ASSISTANCE OF COUNSEL INSTEAD OF INEFFECTIVE COUNSEL ^{AS} IN MY CASE, WHICH AMOUNTED TO NO COUNSEL TO APPEAL AND ^{TO} CHALLENGE MY CONVICTION OR THE VERDICT OF GUILT, MOREOVER I BELIEVE MY 5TH AND 14TH CONSTITUTIONAL RIGHTS WERE VIOLATED IN AS MUCH, BY DEPRIVING ME OF DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAWS. INASMUCH, THERE WAS NO COMMUNICATION BETWEEN MYSELF AND THE ATTORNEY.

11. DENIAL OF RIGHT TO APPEAL TRIAL
CONVICTION ISSUE: WHEREAS, THE STATE
SUPREME COURT DENIED MYSELF TO APPEAL
MY CONVICTION OF GUILT FROM TRIAL
ON DIRECT APPEAL AND, FURTHER
PREVENTED MYSELF ANY MEANS TO EVEN
CHALLENGE MY CONVICTION OF GUILT ^{AT} ~~ON~~
AT DIRECT APPEAL, I BELIEVE THE COURT
THEREBY DEPRIVED ME OF A MEANINGFUL
AND FAIR TRIAL PROCESS ^{AT} ~~ON~~ UNDER THE
CONSTITUTIONAL FIFTH AMENDMENT,
WHICH FORBIDS, IN PERTINENT PART, THE
DEPRIVATION OF "OF LIFE, LIBERTY, OR
PROPERTY, WITHOUT DUE PROCESS OF LAW;" ^{ALSO,}
THE VIOLATION OF MY SIXTH AMENDMENT
RIGHT TO A FAIR TRIAL PROCESS AND "TO
HAVE THE ASSISTANCE OF COUNSEL FOR [HIS]
DEFENSE." AND A VIOLATION OF MY
FOURTEENTH AMENDMENT RIGHT, WHICH
FORBIDS, IN PERTINENT PART, THE DEPRIVATION
OF ^{BY} ANY STATE TO "MAKE OR ENFORCE ANY LAW
WHICH SHALL ABRIDGE THE PRIVILEGES OR
IMMUNITIES OF CITIZENS OF THE UNITED
STATES," NOR SHALL ANY STATE DEPRIVE ANY
PERSON OF LIFE, LIBERTY, OR PROPERTY,
WITHOUT DUE PROCESS OF LAW; NOR DENY TO

ANY PERSON WITHIN ITS JURISDICTION THE
EQUAL PROTECTION OF THE LAWS. ”

12. DIRECT VERDICT ISSUE : I BELIEVE
THAT I WAS ENTITLED TO A DIRECTED VERDICT,
WHEN THERE WAS NO EVIDENCE NOR PROOF THAT
MYSELF WAS ANYWAY RESPONSIBLE FOR THE
DEATH OF COURSEN. BEING THAT THE
EVIDENCE AT TRIAL SUBSTANTIATED THAT
TATE WERE THE CAUSATION OF COURSEN
DEATH BY SHOOTING COURSEN IN THE BACK
OF HIS HEAD, BECAUSE OF THIS, I BELIEVE MY
CONSTITUTIONAL 8TH AMENDMENT RIGHTS
WERE VIOLATED, WHICH FORBIDS, IN
PERTINENT PART, THE APPLICATION OR USE OF
“CRUEL AND UNUSUAL PUNISHMENT INFLICTED”,
BEING I WERE CONVICTED AND SENTENCE TO
DIE FOR DEPUTY ~~DEATH~~^{AT} TATE'S ACTIONS.
FURTHERMORE, BY THIS, I BELIEVE I WERE
DEPRIVED OF MY CONSTITUTIONAL 5TH AND 14TH
AMENDMENT RIGHTS TO “DUE PROCESS OF LAW”;
AND DEPRIVED OF MY CONSTITUTIONAL 6TH
AMENDMENT RIGHTS, TO A “TRIAL BY AN
IMPARTIAL JURY”; AND DEPRIVED ^{ME} OF MY
CONSTITUTIONAL 14TH AMENDMENT RIGHTS
OF “EQUAL PROTECTION OF THE LAWS.”

13. DIRECT VERDICT ISSUE: FAILURE OF THE COURT TO GRANT DIRECTED VERDICT WHEN THERE WERE NO EVIDENCE PRESENTED BY THE STATE DURING TRIAL, THAT MYSELF WAS PRESENT AT THE TIME OF TATE DEATH OR MYSELF WAS THE CAUSE OF TATE DEATH. I BELIEVE THE COURT VIOLATED MY CONSTITUTIONAL RIGHT 5TH AMENDMENT TO "DUE PROCESS OF LAW" AND MY 14TH AMENDMENT RIGHTS TO "DUE PROCESS OF LAW" ~~AND TO~~ AND TO "THE EQUAL PROTECTION OF THE ~~NATIONAL~~ LAWS."

14. DIRECT VERDICT ISSUE: FAILURE OF THE COURT TO GRANT DIRECTED VERDICT, ^{THAT} BEING THE ELEMENTS OF MURDER WERE NOT PRESENT. BECAUSE AT TRIAL ALL THE EVIDENCE PRESENTED BY THE STATE, AND PRESENTED BY THE DEFENSE DID SUBSTANTIATED THAT DEPUTY TATE DID KILL COURSEN, AND THE DEATH OF TATE WERE THE CAUSE OF SELF-DEFENSE OR THE CAUSE OF IN DEFENSE OF OTHERS. THUS, I BELIEVE MY CONSTITUTIONAL 5TH, 6TH AND 14TH AMENDMENT RIGHTS WERE VIOLATED, THAT IS, ~~AA~~ TO "DUE PROCESS OF LAW", AND TO "EQUAL

PROTECTION OF THE LAWS," AND TO A FAIR TRIAL.

15. DIRECTED VERDICT ISSUE: WHEN THE COURT FAILURE TO GRANT DIRECTED VERDICT WHEN AT TRIAL THE EVIDENCE PROVED THAT TATE AND COURSEW HAD COMMITTED TRESPASS BY BREAKING AND ENTERING MY PRIVATE BEDROOM UNLAWFULLY. I BELIEVE MY 5TH, 6TH AND 14TH CONSTITUTIONAL RIGHTS WERE VIOLATED, THAT IS, TO "DUE PROCESS OF LAW" AND TO THE "EQUAL PROTECTION OF THE LAWS" AND TO A FAIR TRIAL.

16. DIRECT VERDICT ISSUE: INSUFFICIENCY OF EVIDENCE. FAILURE OF THE COURT TO GRANT DIRECTED VERDICT, WHEN THERE WERE NO EVIDENCE PRESENTED DURING TRIAL OR AT TRIAL THAT MYSELF KILLED ANYONE ~~AND~~ OR MURDERED ANYONE. I BELIEVE MY CONSTITUTIONAL 5TH, 6TH AND 14TH AMENDMENT RIGHTS WERE VIOLATED, THAT IS, TO "DUE PROCESS OF LAW" AND TO "EQUAL PROTECTION OF THE LAWS" AND TO A FAIR TRIAL.

17. DIRECT VERDICT ISSUE: WHEN ALL FOUR OF THE STATE'S EYEWITNESSES CORROBORATIVE TESTIMONIES AND HANDWRITTEN VOLUNTARY STATEMENTS DESCRIBED AND IDENTIFIED THE CLOTHING AND FACIAL FEATURES OF A SUSPECT RUNNING WITH ~~AMERICAN~~^{AA} STATE'S MAJIN WITNESS KIMBERLY BLAKE WHILE CARRYING A GUN, AND THE SUSPECT DID NOT FIT THE IDENTIFY AND DESCRIPTIONS OF MYSELF, THUS, THE COURT SHOULD HAVE GRANTED A DIRECTED VERDICT. I BELEIVE THE COURT'S FAILURE TO DO SO, DID VIOLATED MY 5TH, 6TH AND 14TH CONSTITUTIONAL AMENDMENT RIGHT, THAT IS, TO "DUE PROLESS OF LAW" AND TO "EQUAL PROTECTION OF THE LAWS" AND TO A FAIR TRIAL.

18. THE SOUTH CAROLINA DEPARTMENT OF CORRECTION ISSUE: WHEREUPON, ~~THEY~~^{AA} ~~INTERFERED~~^{AA} OFFICIALS INTERFERRED AND BLOCKED MY ACCESS TO THE COURTS, IN ORDER FOR MYSELF TO PERFECT MY DIRECT APPEAL AND TO PUT UP A DEFENSE AGAINST THE STATE OR TO CHALLENGE MY CONVICTION.

WHEREUPON, PRISON OFFICIAL DID COMMITTED TORTURE UPON ME, UPON MY ARRIVAL AT THE PRISON. I BELIEVE THE PRISON OFFICIALS UNLAWFUL CONDUCT WERE A VIOLATION OF 1ST, 5TH, 6TH, 8TH AND 14TH CONSTITUTIONAL AMENDMENT, THAT IS, "TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES"; TO "DUE PROCESS OF LAW"; TO ¹⁴ "A FAIR TRIAL PROCESS IN THE APPEAL FROM CONVICTION"; TO BE FREE FROM "CRUEL AND UNUSUAL PUNISHMENTS INFLICTED"; AND TO DEPRIVE ME OF "THE EQUAL PROTECTION OF THE LAWS."

19. NEWLY DISCOVERED EVIDENCE ISSUE:

WHEREUPON THE PUBLIC POLICE, LAW ENFORCEMENT OR EMPLOYEES OF THE STATE COMMITTED A FALSE ARREST AND MALICIOUS PROSECUTION OF MYSELF AND, IN THEIR COURSE SUPPRESSED, FAIL TO DISCLOSE, OR FAILED TO INVESTIGATE EXCULPATORY EVIDENCE IN THE COURSE OF IDENTIFYING ~~AN~~ SUSPECT BOBBY RIGBY, SECURING A WARRANT, MAKING AN ARREST, INITIATING, INSTIGATING A CRIMINAL

PROSECUTION AGAINST RIGBY, BEING THAT
EDDIE BROWN KNEW OF AND HAD
CRITICAL INFORMATION OF RIGBY
INVOLVEMENT IN THE DEATH OF TATE.
THUS, I BELIEVE MY 5TH, 6TH AND 14TH
CONSTITUTIONAL AMENDMENT WERE
VIOLATED, THAT IS, TO ^{BE} HAVE "DUE PROCESS
OF LAW", TO HAVE A FAIR TRIAL, AND TO
HAVE "EQUAL PROTECTION OF THE LAWS."

20. RELIGIOUS ISSUE: WHEREUPON THE
COURT DENIED ME MY CONSTITUTIONAL
RIGHTS TO PRACTICE MY RELIGION IN
REFERENCE TO THE SABBATH DAY. NOT
ONLY DID THE DENIED ME TO REST OR BE
ABSENT FROM COURT ON SATURDAY, IT ALSO
DENIED ME A RIGHT TO A FAIR TRIAL
IN VIOLATION OF MY CONSTITUTIONAL
6TH AMENDMENT. IN THIS COURSE MY
1ST, 5TH, 6TH AND 14TH AMENDMENT WERE
VIOLATED.

CONCLUSION

THE ABOVE NUMBERED AND NAMED
ISSUES ARE INTENDED TO BE RAISED
ON APPEAL FROM, ^{APPLICATION} POST CONVICTION
RELIEF (PCR) OR TO BE INCLUDED
IN WRIT OF CERTIORARI FROM THE
DENIAL OF POST-CONVICTION RELIEF
(PCR).

AND I FURTHER SWEARS UNDER
AND BY THE PENALTY OF PERJURY
THAT FORGOING IS TRUE AND
CORRECT.

THIS 8TH DAY OF FEBRUARY 2010.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 8TH DAY OF February

2010

NOTARY PUBLIC
STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES 8/20/2010

RESPECTFULLY,

Abdullah B. Alkebulanyahh

ABDEYYAH B. ALKEBULANYAHH

SK6012: LIEBER DEATH ROW,

P.O. BOX 205, RIDGEEVILLE,

SOUTH CAROLINA, 29472

DATE:

NOTARY SIG:

EXP:

CERTIFICATE OF SERVICE

RECEIVED
FEB 26 2010

S.C. SUPREME COURT

RECEIVED

FEB 26 2010

OFFICE OF
CHIEF JUSTICE

I CERTIFY THAT, I SERVED A COPY
OF 'NOTIFICATION OF ISSUES/GROUNDS
INTENDED TO BE INCLUDED ON APPEAL FROM
ORDER OF DISMISSAL OF APPLICATION FOR
POST-CONVICTION RELIEF (PCR) OR INTENDED
TO BE INCLUDED IN WRIT OF CERTIORARI
FROM DENIAL OF POST-CONVICTION RELIEF', TO:

1) THE HONORABLE JEAN TOAL, JUSTICE
DIVISION, SUPREME COURT OF THE STATE OF
SOUTH CAROLINA, P.O. Box 11330, COLUMBIA, S.C.
29211; HENRY D. MCMASTER, OFFICE OF THE
ATTORNEY GENERAL, P.O. Box 11549, COLUMBIA,
S.C. 29211-1549; LARL B. GRANT, ATTORNEY,
P.O. Box 1203, DRANESBURG, S.C. 29116; GLENN
WALTERS, ATTORNEY, 348 PAUL STREET, P.O.
Box 1346, DRANESBURG, S.C. 29116.

AND FURTHER SWEARS UNDER THE PENALTY OF
PERJURY THAT FORGOING IS TRUE AND CORRECT.

THIS 8TH DAY OF FEBRUARY 2010.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 8TH DAY OF February

2010

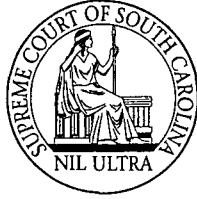
NOTARY:

NOTARY PUBLIC EX P.

STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES 8/29/2010

RESPECTFULLY,
ABDIYAH B. ALREBULANYAH,
SK 6012, LIEBER C. 20, P.O. Box 205,
RIDGEVILLE, S.C. 29472



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734 1080

FAX (803) 734 1499

March 5, 2010

Glenn Walters, Esquire
Glenn Walters & Associates, PA
P O Box 1346
Orangeburg, SC 29115-1346

Re Alkebulanyahh, Abdiyyah v State

Dear Counsel

Enclosed is the order issued in the above entitled matter

Please be advised it will be necessary for you to provide the transcript of record and any supporting documents to newly appointed counsel within ten (10) days of the date of this letter

Very truly yours,

CLERK

DES/dmh

Enclosure

cc Chief Appellate Defender Robert M. Dudek
John H. Blume, III, Esquire
Assistant Attorney General S. Creighton Waters
Mr. Abdiyyah Ben Alkebulanyahh, SK6012

The Supreme Court of South Carolina

Abdiyyah Alkebulanyahh, Petitioner,

v

State of South Carolina, Respondent

ORDER

This capital case is before the Court on a notice of appeal from an order denying petitioner's application for post-conviction relief (PCR). By order dated January 8, 2010, we appointed Glenn Walters to represent petitioner in the matter. Mr. Walters has now filed a motion to be relieved as counsel. Petitioner has filed a motion requesting the appointment of substitute counsel.

Mr. Walters states the attorney-client relationship has deteriorated following a verbal threat made by petitioner against Mr. Walters and his family, which is documented in an incident report provided by Mr. Walters. Mr. Walters has also attached a letter from petitioner demanding that Mr. Walters visit him to discuss this matter.

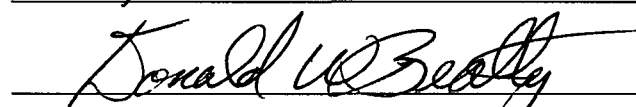
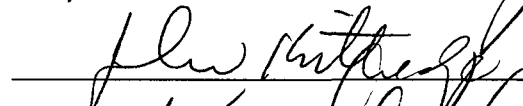
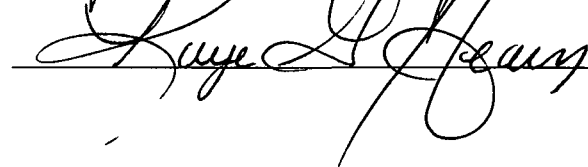
In response to Mr. Walter's motion, petitioner has filed a motion

asking the Court to appoint either Emily Paavola or John Blume to represent him in this matter

We grant both motions We hereby relieve Mr Walters as counsel and appoint John Blume to represent petitioner in this matter

IT IS SO ORDERED


C J

J

J

J

J

Columbia, South Carolina

March 5, 2010

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
CARMEN T. MULLEN, CIRCUIT COURT JUDGE

ABDIYYAH BEN ALKEBULANYAH, SK.6012,
PETITIONER/PRO SE,

RECEIVED

V.

FEB 12 2010

S.C. SUPREME COURT
THE STATE OF SOUTH CAROLINA,
RESPONDENT.

MOTION REQUESTING OF
APPOINTMENT OF COUNSEL
ATTORNEY EMILY C. PARVOLA
OR ATTORNEY JOHN BLUME

COMES NOW, PETITIONER, PRO SE, IN
THE ABOVE-STYLED MATTER, AND BEGS
AND PRAYS THIS COURT TO GRANT

(1 OF 3)

RELIEF HEREIN SOUGHT, AND WISH TO SHOWS THE COURT AS FOLLOWS:

I. THIS IS A CAPITAL CASE BEFORE THE COURT BY WAY OF A NOTICE OF APPEAL FROM AN ORDER OF THE CIRCUIT COURT JUDGE DENYING PETITIONER'S APPLICATION FOR POST CONVICTION RELIEF.

II. PETITIONER IS A PAUPER AND IS HOUSED ON DEATH ROW AT LIEBER CORRECTIONAL INSTITUTION.

III. ON FEBRUARY 10, 2010 I RECEIVED FROM COURT APPOINTED ATTORNEY GLENN WALTERS A COPY OF THE MOTION HE FILED WITH THIS COURT, THAT IS, "MOTION TO BE RELIEVED AS COUNSEL". IF SAID MOTION IS GRANTED, THEN,

IV. PETITIONER SEEKS TO HAVE SAID BELOW COUNSEL APPOINTED TO REPRESENT HIMSELF IN THIS MATTER:

1. EMILY C. PAAVOLA, ATTORNEY AT
LAW
RESOURCE AND DEFENSE CENTER
P.O. BOX 11311
COLUMBIA, SOUTH CAROLINA 29211
TELE: (803) 765-1044

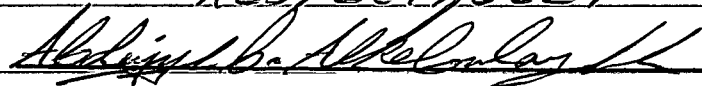
- DR -

2. JOHN BLUME, ATTORNEY AT LAW
1247 SUMTER ST., STE. 201
P.O. BOX 11744
COLUMBIA, SOUTH CAROLINA, 29211

CONCLUSION: PETITIONER BEGS
AND PRAYS FOR RELIEF HEREIN SOUGHT.
AND FURTHER SWEARS UNDER AND BY
THE PENALTY OF PERJURY THAT FORGOING
IS TRUE AND CORRECT.

THIS 10TH DAY OF FEBRUARY 2010.

RESPECTFULLY



ABDURRAHMAN B. ALKEBULANYAH,
SK6012: LEBER C. I., P.O.
BOX 205, RIDGEVILLE, SC
29472

(3 OF 3)

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT I ABDIYYAH
BEN ALKEBULANYAH, PETITIONER, HAS PLACED IN
A SEALED AND ENCLOSED ENVELOPE, WITH CORRECT
POSTAGE AFFIXED, IN THE UNITED STATES MAIL,
TO: THE SUPREME COURT OF SOUTH CAROLINA,
DANIEL SHEAROUSE, CLERK, P.O. Box 11330,
COLUMBIA, SC 29211; THE HONORABLE D.
MCMASTER, OFFICE OF THE ATTORNEY GENERAL,
P.O. Box 11549, COLUMBIA, SC 29211-1549;
EMILY C. PAAVOLA, ATTORNEY AT LAW, RESOURCE
AND DEFENSE CENTER, P.O. Box 11311, COLUMBIA,
SC 29211; JOHN BLUME, ATTORNEY AT LAW,
1247 SUMTER ST., STE. 201, P.O. Box 11744,
COLUMBIA, SC 29211 THE FOLLOWINGS:

I. MOTION REQUESTING OF APPOINTMENT
OF COUNSEL ATTORNEY EMILY C. PAAVOLA OR
ATTORNEY JOHN BLUME

II. CERTIFICATE OF SERVICE

AND FURTHER SWEARS UNDER AND BY
THE PENALTY OF PERJURY THAT FOREGOING IS
TRUE AND CORRECT,

THIS 10 DAY OF FEBRUARY 2010.

Abdiyyah B. Alkebulanyah

ABDIYYAH B. ALKEBULANYAH
SK6012; LIEBER DEATH ROW,
P.O. Box 205, RIDGEVILLE,
SC 29472

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ABDIYAH BEN ALKEBULANYAH, SK6012,
PETITIONER/PRO SE,

VS.

STATE OF SOUTH CAROLINA,
RESPONDENT.

CASE NO. 2007-LP-0715

S.C. S. CT. OPINION NO. 26185

NOTIFICATION

ATTACHED HERETO, WITHIN, IS A
LETTER DATED 'FEBRUARY 8, 2010 TO EMILY
C. PAROLA OF THE RESOURCE AND DEFENSE
CENTER-DEATH PENALTY', WHEREOF, I AM
SEEKING HELP BY EXPERIENCE DEATH
PENALTY APPEAL ATTORNEYS, BECAUSE I
BELIEVE COURT APPOINTED ATTORNEY GLENN
WALTERS (OR CARL GRANT) ARE INCOMPETENT
AND UNQUALIFIED.

I FURTHER SWEARS BY THE PENALTY OF
PERJURY THAT THE FORGOING IS TRUE AND CORRECT.

THIS 02/08/2010
RECEIVED

FEB 12 2010

S.C. SUPREME COURT

RESPECTFULLY
Abdullah B. Alkebulanyah
ABDIYAH B. ALKEBULANYAH
SK6012; LIEBER DEATH ROW,
P.O. BOX 205, RIDGEVILLE, SC
29472

DATE: FEBRUARY 8, 2010

TO: EMILY C. PARVOLA, EXEC. DIRECTOR
RESOURCE AND DEFENSE CENTER
1247 SUMTER ST., STE. 201
P.O. BOX 11744, COLO., S.C. 29211

FROM: ABDIYYAH BEN ALKEBULANYAHH
SK6012: DEATH ROW #131, LIEBER
CORR. INST., P.O. BOX 2050,
RIDGEVILLE, S.C. 29472

DEAR MS. PARVOLA,

I AM VERY CONFUSE ABOUT MY CASE
AND THE APPEAL PROCESS. THE COURT AP-
POINTED ATTORNEYS FOR MY PCR AND APPEAL,
THAT IS, CARL GRANT AND GLENN WALTERS
DO NOT HAS NO COMMUNICATION LINES WITH
ME, NOR DO EITHER RESPOND TO MY LETTERS
TO THEMSELVES. I AM QUITE SURE THE
REASON IS BECAUSE NEITHER ONE OF THEM
HAS ANY INTEREST IN MY CASE OR PLAINLY
DON'T UNDERSTAND THE DEATH PENALTY DEFENSE
PROCESS OR APPEAL PROCESS.

(1 OF 2)

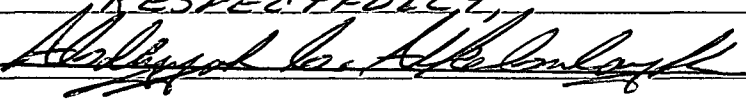
ANYWAY, I NEED YOUR HELP OR THE HELP OF
YOUR OFFICE EXPERIENCE TO NAVIGATE MYSELF
OR MY CASE IN THIS POST-CONVICTION OR
APPEAL PROCESS.

THEREFORE, I AM BEGGING YOU AND YOUR
OFFICE TO INTERVENE AND REPRESENT ME AS
MY ATTORNEY(S), BE IT BY COURT APPOINTMENT
OR PRO BONO.

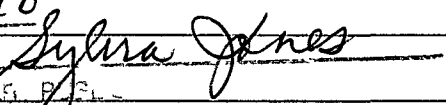
YOUR HELP WOULD BE GREATLY APPRECIATED
IN THIS MATTER.

AND I FURTHER SWEARS UNDER AND BY THE
PENALTY OF PERJURY THAT THE FORGOING IS
TRUE AND CORRECT.

THIS 9TH DAY OF FEBRUARY 2010.

RESPECTFULLY,


ABDURRAH B. ALKEBULANYAHH
3K60128 LIEBER DEATH ROW,
P.O. BOX 205, RIDGEVILLE,
S.C. 29472

SUBSCRIBED BEFORE ME
THIS 9th DAY OF February
2010

NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 1/24/2018

(1 OF 2)

RECEIVED

FEB 18 2010

CERTIFICATE OF SERVICE

SC SUPREME COURT

THIS IS TO CERTIFY THAT ON THE 9TH DAY OF
FEBRUARY 2010, I SERVED A COPY OF A
LETTER DATED ²FEBRUARY 8, 2010 TO EMILY C.
PARVOLA OF THE RESOURCE AND DEFENSE CENTER-
DEATH PENALTY ³ UPON THE PARTIES AT THE AD-
DRESSES BELOW BY DEPOSITING IT IN THE UNITED
STATES MAIL, WITH THE PROPER POSTAGE AFFIXED
THERE TO: THE SUPREME COURT OF SOUTH CAROLINA,
DANIEL E. SHEAROUSE, CLERK OF COURT, P.O. BOX
11330, COLUMBIA, S.C. 29211; GLENN WALTERS,
ATTORNEY, 348 ST. PAUL STREET, P.O. BOX 1346,
ORANGEBURG, S.C. 29116; HENRY D. MCMASTER,
OFFICE OF THE ATTORNEY GENERAL, P.O. BOX 11549,
COLUMBIA, S.C. 29211-1549; ROBERT M. DUDEK,
DIVISION OF APPELLATE DEFENSE, 1330 LADY ST.,
STE. 401, COLUMBIA, S.C. 29201-3332.

AND FURTHER SWEARS BY THE PENALTY OF
PERJURY THAT FOREGOING IS TRUE AND CORRECT.

RESPECTFULLY,
Abdullah B. Alkebulanyahh
ABDULLAH B. ALKEBULANYAHH
SK6012; LIEBER DEATH ROW,
P.O. BOX 205, RIDGEVILLE,
SC, 29472

THIS 9th DAY OF February
20 10

SUBSCRIBED BEFORE ME

NOTARY PUBLIC
STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES 2/24/2018

**GLENN WALTERS
ATTORNEY AT LAW, P. A.**

348 ST PAUL STREET • POST OFFICE BOX 1346 • ORANGEBURG, S C 29116
TELEPHONE (803) 531 8844 • FACSIMILE (803) 531 3628

Glenn Walters, Sr , Esquire

R Bentz Kirby, Of Counsel

February 8, 2010

The Supreme Court of South Carolina
Attn Daniel Shearhouse, Clerk
Post Office Box 11330
Columbia, SC 29211

RE Alkebulanyahh, Abdiyyah v State

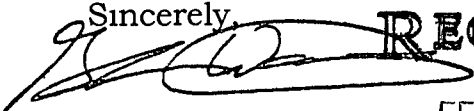
Dear Mr Shearhouse

Enclosed herewith for filing, please find the original and three (3) copies of the Motion to be Relieved as Counsel with regard to the above referenced matter

I would appreciate you filing the documents and returning the copies to me in the self addressed stamped envelope provided for your convenience

With kind regards, I am

Sincerely,



Glenn Walters
Attorney at Law

GW gcd

Enclosures as noted

cc Carl Grant, Esquire
Abdiyyah Ben Alkebulanyahh, SK6012
S Creighton Waters, Assistant Attorney General
Donald J Zelenka

RECEIVED

FEB 10 2010

S.C SUPREME COURT

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

☒ by depositing in the U S Mail a copy of same in a properly addressed envelope with adequate postage thereon

☐ by handing counsel a copy thereof

☐ by facsimile and depositing in the U S Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 8th day of February, 2010
GLENN WALTERS

By Malcolm, Paralegal

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
CARMEN T MULLEN, CIRCUIT COURT JUDGE

Abdiyyah Alkebulanyahh
a/k/a Tyree Roberts #6012,

Petitioner,

v

The State of South Carolina,

Respondent

MOTION TO BE RELIEVED AS COUNSEL

The undersigned counsel respectfully moves this Court for an Order relieving him as counsel. In support of this motion, counsel shows the Court that

This is a capital case before the Court by way of a notice of appeal from an Order of the Circuit Court Judge Denying Petitioner's Application for Post Conviction Relief

Attorney Glenn Walters was appointed to represent the Petitioner in this matter by an Order dated January 8, 2010, after the State submitted correspondence in which it took no position on the Petitioner's motion

RECEIVED

FEB 10 2010

SC SUPREME COURT

Counsel for the Petitioner is informed and believes that the attorney client relationship has deteriorated inasmuch that the Petitioner made a verbal threat to counsel and his family on or about October 8, 2008 (***see attached incident report***) prior to having his post conviction relief hearing before the Circuit Court Judge

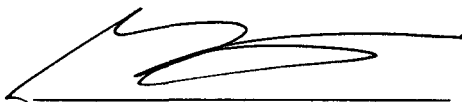
In addition, the Petitioner has indicated that if counsel did not visit within three (3) to five (5) days from the date of receipt of his correspondence dated January 11, 2010, that he would request that the Court relieve me as counsel (***see attached correspondence***)

Counsel for the Petitioner believes that it is in the best interest of both parties that he be relieved as counsel for the Petitioner and that the Court appoint counsel to represent the interest of the Petitioner in this matter on appeal, and for such other and further relief that the Court deems just and proper

WHEREFORE, Glenn Walters, Attorney for the Petitioner, prays for an Order relieving him as counsel

I SO MOVE

GLENN WALTERS, ESQ



Glenn Walters
Attorney for Plaintiff
Law Firm of Glenn Walters
Post Office Box 1346
Orangeburg, SC 29116
(803) 531-8844

Dated February 8, 2010
Orangeburg, South Carolina

AGENCY ID
SC0 380100

INCIDENT REPORT

CASE NUMBER

NCIC

18-02970

INQ ENT

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE-VICTIM
1	Harassment 753	☒ YES ☐ NO	☐ YES ☒ NO	05		☐ Individual ☐ Business ☐ Financial Inst ☐ Government ☐ Relig Orgn ☐ Soc/Public ☐ Other ☐ Unknown ☐ Police Off
2		☐ YES ☐ NO	☐ YES ☐ NO			
3		☐ YES ☐ NO	☐ YES ☐ NO			
INCIDENT LOCATION (SUBDIVISION APARTMENT AND NUMBER STREET NAME AND NUMBER)				ZIP CODE		WEAPON TYPE
398 st Paul st Orangeburg SC				29115		
INCIDENT DATE		24 HR CLOCK		TO DATE		24 HR CLOCK
10-30-08		1735		10-30-08		1735
DISPATCH DATE		DISPATCH TIME		TIME ARRIVED		DEPART TIME
10-30-08		1740		1745		1816
COMPLAINANT'S NAME (LAST FIRST MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE SEX AGE ETH DAYTIME PHONE EVENING PHONE
See - victim				#1 #2 #3	J S O U	
ADDRESS				CITY	STATE	ZIP CODE LOCATION NO
VICTIM'S NAME (LAST FIRST MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE SEX AGE ETH DAYTIME PHONE EVENING PHONE
Walters, Glenn				#1 #2 #3	O S O U	B M 45 11 531-8844
HEIGHT		WEIGHT		HAIR		EYES
5'3"		160		BLK		BRN
FACIAL HAIR SCARS TATOOS GLASSES CLOTHING PHYSICAL PECULIARITIES ETC						
ADDRESS				CITY	STATE	ZIP CODE LOCATION NO
398 st Paul st				Orangeburg	SC	29115
VISIBLE INJURY (VICT 1) ☐ YES ☒ NO ☐ EXPLAIN -						
COMPLAINT OF ANY NON VISIBLE INJURIES ☐ YES ☒ NO ☐						
VICTIM (NO 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK ☐ DRUGS ☐ YES ☒ NO ☐ UNK ☐ TYPE						
TWO MAN VEH ☐ ONE MAN VEH ☐ DETECTIVE/SPL ASMT ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ J - This Jurisdiction S - State O - Out of State U - Unknown						
SUBJECT NO 1		NAME (LAST FIRST MIDDLE)		RACE	SEX	AGE ETH DATE OF BIRTH HEIGHT WEIGHT HAIR EYES
☐ SUSPECT		Alkebulanyahh Abdiyyah Ben		B	M	45 11 5'7" 150 DLK BRN
☐ RUNAWAY		FACIAL HAIR SCARS TATOOS GLASSES CLOTHING PHYSICAL PECULIARITIES ETC				
☐ WANTED						
☐ WARRANT		ADDRESS CITY STATE ZIP CODE LOCATION NO				
☐ ARREST		Lebanon Detention Center P.O. Box 205 Ridgeville SC 29472				
☐ JAIL		SUBJECT (NO 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK ☐ ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO ☐ DATE/TIME OF OFFENSE DATE/TIME OF ARREST				
☐ SUMMONS		DRUGS ☐ YES ☒ NO ☐ UNK ☐ TYPE TOTAL # ARRESTED				
Notify of Court ☐ bond/release ☐ Court date/time						
On 10-30-08 I responded to 398 st Paul st in reference to harassment. I spoke with the clerk Mr. Bishop who stated they received a call from one of their clients from Prison. Mr. Bishop stated he identified himself as contact from Mr. Abdiyyah Ben Alkebulanyahh and told her to deliver a message to Mr. Walters would for word. He said "I will be paying him his wife and kids go to hell. The caller is also known as Tyree Alphonso Roberts a convicted Murder. Mr. Walters stated he wanted the incident on file. He is currently serving time at Lebanon Detention Center."						
Signature _____ JURISDICTION OF THEFT _____ JURISDICTION OF RECOVERY _____ LAW ENFORCEMENT AGENCY LAW ENFORCEMENT AGENCY						
TYPE (GROUP)		TOTAL VALUE				
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
SEIZED						
SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM CLOSED ☐ ARRESTED UNDER 18 ☐ EX CLEAR UNDER 18		
☒ YES ☐ NO		☒ YES ☐ NO		☐ ARRESTED 18 AND OVER ☐ EX CLEAR 18 AND OVER		
REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE NO CUSTODY						
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE
H. O. J.		10-30-08	750	Lt. Anthony Johnson		10-30-08
FOLLOW UP INVESTIGATION ☐ YES ☒ NO ☐ OFFICER						

Victim signature for notification only
Victim
Goldenrod
Jail
Pink
Officer's Copy
Yellow
Original
White

Rec'd
1/14/10

DATE: JANUARY 11, 2010

TO: GLENN WALTERS, ATT^Y. AT LAW,
348^{ST.} PAUL ST, P.O. BOX 1346, ORANGEBURG,
SC 29116

FROM: ABDIYYAH BEN ALKEBULANYAH, SK6012,
LIEBER DEATH ROW, P.O. BOX 205, RIDGEVILLE,
SC 29472

DEAR MR. WALTERS,

TODAY JANUARY 11, 2010 I RECEIVED
AN "ORDER" FROM THE STATE SUPREME COURT
APPOINTING YOURSELF TO REPRESENT ME ON
APPEAL FROM DENIAL OF PCR.

I AM ASKING YOU, THAT WITHIN
THREE TO FIVE (3-5) DAYS AFTER YOU HAVE
RECEIVE THIS BRIEF LETTER FROM MYSELF,
TO COME TO THE PRISON TO VISIT ME, TO
DISCUSS THIS MATTER. ESPECIALLY SINCE
YOUR OFFICE DOES NOT ACCEPT ANY TELEPHONE
CALLS FROM MYSELF, NOR DOES I HAVE ANY
OTHER WAYS TO CONTACT YOU.

UNLESS, I WILL BE PETITIONING THE COURT
FOR REPLACEMENT OF YOURSELF.

DR, YOU MAY ASK THE COURT TO
REPLACE YOURSELF.

ALSO, IF YOU INTEND TO HANDLE
THIS MATTER AND INTENDS TO HAVE
MR. GRANT TO ASSIST YOU, THEN BRING
MR. GRANT WITH YOU TO DISCUSS THIS
MOST URGENT MATTER WITH MYSELF.

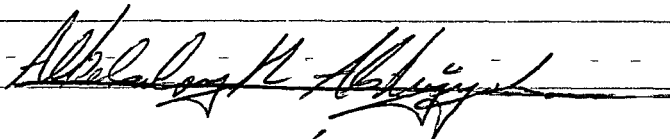
YOUR COOPERATION WOULD BE
GREATLY APPRECIATED.

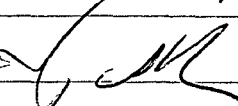
THANK YOU,

ABDULLAH B. ALKEDULANYAH
SK 6012, LIEBER C.I., P.O. BX
205, RIDGEVILLE, SC 29472

AND FURTHER SWEARS UNDER AND
BY THE PENALTY OF PERJURY THAT FOR-
GOING IS TRUE AND CORRECT.

THIS 12 DAY OF JANUARY 2010.



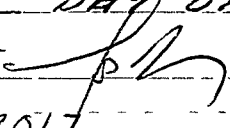
NOTARY PUBLIC. 
C.C. EXP. 27 JUNE 2017

CERTIFICATE OF SERVICE

I CERTIFY THAT ON 12 DAY OF
JANUARY 2010, I SERVED A COPY
OF 'JANUARY 11, 2010 LETTER'
ADDRESSED TO ATTORNEY GLENN WALTERS
FROM MYSELF ABDIYYAH B. ALKEBULANYAHH,
BY DEPOSITING IT IN THE UNITED
STATES MAIL, WITH THE PROPER POSTAGE
AFFIXED THERETO, TO: GLENN WALTERS,
ATTY. AT LAW, 348 ST. PAUL ST., P.O.
BOX 1346, DRANGEBURG, SC 29116;
CARL B. GRANT, ATTY. AT LAW, P.O. BOX
1203, DRANGEBURG, SC 29116.

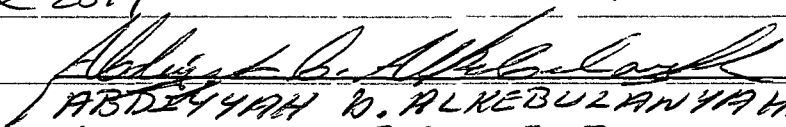
AND FURTHER SWEARS UNDER AND BY
THE PENALTY OF PERJURY THAT THE FOR-
GOING IS TRUE AND CORRECT.

THIS 12 DAY OF JANUARY 2010.

NOTARY SIE. W. 

EXP. 27 June 2017

SINCERELY,


ABDIYYAH B. ALKEBULANYAHH,
3K 6012, LIEBER C. I., P.O.
BOX 205, RIDGEVILLE, SC 29472

L.L.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
CARMEN T MULLEN, CIRCUIT COURT JUDGE

Abdiyyah Alkebulanyahh
a/k/a Tyree Roberts #6012,

Petitioner,

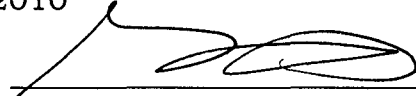
v

The State of South Carolina,

Respondent

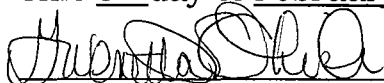
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion to be Relieved as Counsel in the above referenced case has been served upon opposing counsel, Donald J Zelenka, Esquire and Abdiyyah Alkebulanyahh, a/k/a Tyree Roberts #6012 at Lieber Correctional Institution this 8th day of February 2010


Glenn Walters, Esquire
Attorney for Petitioner
Post Office Box 1346
Orangeburg, SC 29116

SUBSCRIBED AND SWORN TO BEFORE ME

This 8th day of February 2010



Notary Public for South Carolina

My Commission Expires 03/20/2011

Debbie -

Melinda W Long

From Melinda W Long
Sent Friday, February 26, 2010 11:17 AM
To dhopkins@sccourts.org
Subject FW: Abidiyyah Ben Alkebulanyahh

From Melinda W Long
Sent Friday, February 26, 2010 11:11 AM
To Hopkins, Debbie
Subject FW: Abidiyyah Ben Alkebulanyahh

From Melinda W Long
Sent Friday, February 26, 2010 11:04 AM
To gwlaw@bellsouth.net
Cc 'Hopkins, Debbie'
Subject Abidiyyah Ben Alkebulanyahh

Mr. Walters

Attached is the October 13 – 14, 2008 hearing that we received on February 16, 2010. I am sending the original today to the South Carolina Supreme Court. You will need to set your time for 30 days from February 16, 2010, making your petition for writ of certiorari due on April 19, 2010. Please let me know if you have any questions or need any additional information.

Melinda W Long
Legal Assistant

SC Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211

803 734 1330

mflong@sccid.sc.gov

2/26/2010



SCCID

SOUTH CAROLINA COMMISSION ON INDICENT DEFENSE

Division of Appellate Defense
1330 Lady Street Suite 401
Columbia South Carolina 29201 3332
Post Office Box 11589
Columbia South Carolina 29211 1589
Telephone (803) 734 1330
Facsimile (803) 734 1397

Robert M. Dudek Chief Appellate Defender
Wanda H. Carter Deputy Chief Appellate Defender
Joseph L. Savitz III Senior Appellate Defender

RECEIPT

I, Debbie M. Hopkins, of the South Carolina Supreme Court, have received the following original trial transcript(s) in the death penalty case of Abidiyyah Ben Alkebulanyahh v The State

1 October 13 – 14, 2008 (Amanda K. Haffenden)

Date February 26, 2010

Debbie M. Hopkins
(Name)



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia South Carolina 29201 3332
Post Office Box 11589
Columbia South Carolina 29211 1589
Telephone (803) 734 1330
Facsimile (803) 734 1397

Robert M. Dudek Chief Appellate Defender
Wanda H. Carter Deputy Chief Appellate Defender
Joseph L. Savitz III Senior Appellate Defender

RECEIVED

FEB - 4 2010

February 4, 2010

SC SUPREME COURT

Ms. Amanda K. Haffenden
Circuit Court Reporter
P O Box 424
Summerville, SC 29484

Dear Ms. Haffenden,

Our office has been requested to perfect the appeal arising out of

Abdiyyah Alkebulanyahh v. The State

Case #

2007-CP-07-00715

County Beaufort

Date of Trial October 13 - 14, 2008

Presiding Judge Roger M. Young

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

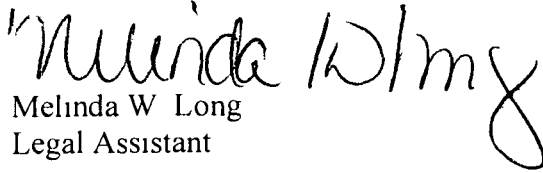
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms Amanda K Haffenden
February 4, 2010
Page Two

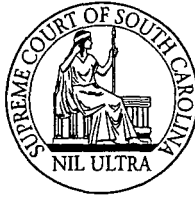
I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,


Melinda W Long
Legal Assistant

cc S C Supreme Court
Attorney General's Office



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734 1080

FAX (803) 734 1499

January 8, 2010

Acting Chief Appellate Defender Robert M. Dudek
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

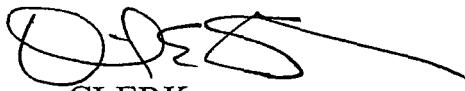
Re Alkebulanyahh, Abdiyyah v State

Dear Counsel

Enclosed is the order issued in the above entitled matter

Please be advised your office shall request the transcript(s) of record in this matter within thirty (30) days of the date of this letter

Very truly yours,



CLERK

DES/dmh

cc Carl Grant, Esquire
Glenn Walters, Esquire
Mr. Abdiyyah Ben Alkebulanyahh, SK6012
Assistant Attorney General S. Creighton Waters

The Supreme Court of South Carolina

Abdiyyah Alkebulanyahh, Petitioner,

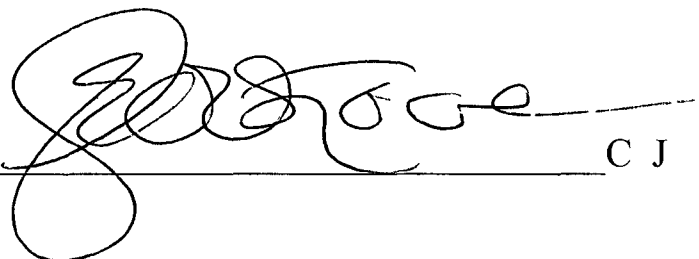
v

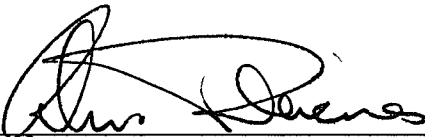
State of South Carolina, Respondent

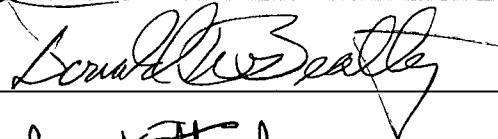
ORDER

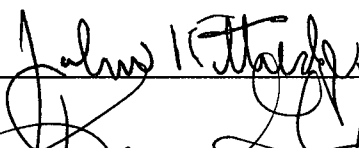
This capital case is before the Court by way of a notice of appeal from an order of the circuit court denying petitioner's application for post-conviction relief. Robert Dudek, Acting Chief Appellate Defender for the Commission on Indigent Defense, Division of Appellate Defense, has filed a motion seeking the appointment of outside counsel due to a conflict of interest. The State has submitted a letter in which it states it takes no position on the motion. The motion is granted. Glenn Walters is hereby appointed to represent petitioner in this matter. The Division of Appellate Defense shall remain associated for the limited purpose of paying for any necessary transcript(s) and providing copies of the petition, appendix and briefs.

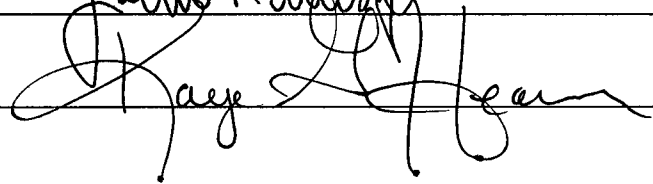
IT IS SO ORDERED


C J



J


J


J


J

Columbia, South Carolina

January 8, 2010



HENRY McMASTER
ATTORNEY GENERAL

December 14 2009

RECEIVED

DEC 14 2009

SC SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

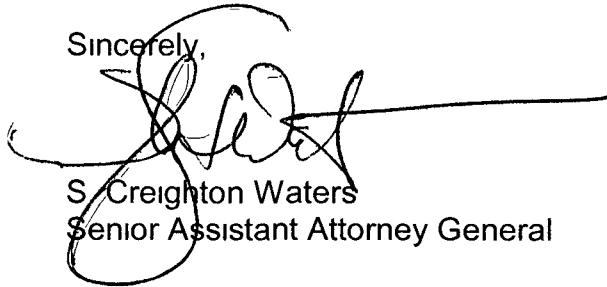
Re Abdiyyah Alkebulanyahh a/k/a Tyree Roberts v. The State

Dear Mr. Shearouse:

Respondent is in receipt of the Office of Appellate Defense's motion for appointment of outside counsel in the above-referenced case. Respondent takes no position on the motion and would of course respectfully leave the matter to the Court's discretion.

Thank you for your attention to this matter, and of course feel free to contact me with any questions or concerns.

Sincerely,



S. Creighton Waters
Senior Assistant Attorney General

SCW/epj

cc Robert M. Dudek, Esquire

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Beaufort County
Carmen T Mullen, Circuit Court Judge

ORIGINAL

RECEIVED

DEC - 2 2009

SC SUPREME COURT

ABDIYYAH ALKEBULANYAHH,
A/K/A TYREE ROBERTS

PETITIONER,

V

THE STATE,

RESPONDENT

MOTION FOR APPOINTMENT
OF OUTSIDE COUNSEL

The undersigned counsel respectfully moves this Court for an order appointing counsel outside the Appellate Division of the South Carolina Commission on Indigent Defense to represent petitioner Roberts on his appeal from the denial of post-conviction relief. In support of this motion, counsel shows the Court that

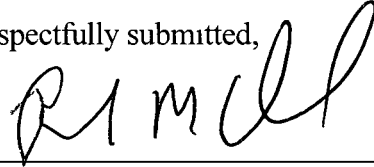
1 Petitioner Abdiyyah Alkebulanyahh, a/k/a Tyree Roberts was indicted by the Beaufort County grand jury March, 2002 on two charges of murder for the shooting death of two Beaufort County Sheriff's Deputies. The state sought the death penalty. Petitioner was convicted and sentenced to death.

2 On his mandatory appeal to this Court petitioner was represented by then Chief Appellate Defender Joseph L. Savitz, III, of this office, and then Deputy Chief Appellate Defender for Capital Appeals Robert M. Dudek. Both counsel Dudek and counsel Savitz were deposed based upon allegations of ineffective assistance of Appellate Counsel. The Honorable Edward Miller addressed the allegations of ineffective assistance of appellate counsel in his order of dismissal. Judge Miller ruled that he found “the testimony of both of Applicant’s appellate counsel was credible.” Order at 44. Judge Miller also found that while petitioner was “disappointed in the initial brief filed in his direct appeal because it did not contain any issues involving the guilt phase of the trial [that had failed] to point out any preserved, meritorious issues that he would have requested appellate counsel brief in his direct appeal.” Order at 45. In addition, Judge Miller cited the depositions of both counsel noting that petitioner representing himself at trial caused him not to “[p]roperly preserve issues for direct appeal at trial.” Order at 45. Finally, Judge Miller found that petitioner’s complaints regarding the failure to raise his “Fourth Amendment claim” was not preserved for appeal, and that appellate counsel could not be expected to raise an issue that was not preserved. Order at 46. Consequently, there is a conflict with this office representing petitioner on appeal from the denial of his post-conviction relief action.

3 In further support of this motion, petitioner would note that generally only two attorneys at this time serve as either lead counsel or sole counsel on death penalty cases for this office. They are Acting Chief Appellate Defender, Robert M. Dudek and Senior Appellate Defender, Joseph L. Savitz, III. Consequently, it would constitute a conflict of interest, or an extremely strong appearance of a conflict of interest, for undersigned counsel or another attorney from this office to now represent petitioner on appeal from the denial of PCR in this capital case.

WHEREFORE, undersigned counsel would respectfully request that the motion for outside counsel in this case be granted, and that this Court appoint outside counsel to represent petitioner on his appeal to this Court from the denial of PCR

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Acting Chief Appellate Defender

Attorney for Petitioner

December 2, 2009

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Beaufort County
Carmen T Mullen, Circuit Court Judge

ABDIYYAH ALKEBULANYAHH,
A/K/A TYREE ROBERTS

PETITIONER,

V

THE STATE,

RESPONDENT

CERTIFICATE OF SERVICE

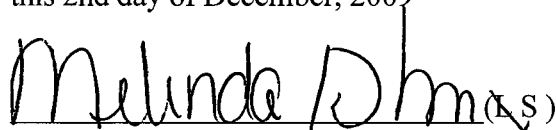
The undersigned attorney hereby certifies that a true copy of the Motion for Appointment of Outside Counsel in the above referenced case has been served upon opposing counsel, Donald J Zelenka, Esquire and Abdiyyah Alkebulanyahh, a/k/a Tyree Roberts #6012 at Lieber Correctional Institution this 2nd day of December, 2009



Robert M Dudek
Acting Chief Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 2nd day of December, 2009



Notary Public for South Carolina
My Commission Expires October 30, 2018



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street Suite 401
Columbia South Carolina 29201 3332
Post Office Box 11589
Columbia South Carolina 29211 1589
Telephone (803) 734 1330
Facsimile (803) 734 1397

Robert M Dudek Acting Chief Appellate Defender
Wanda H Carter Deputy Chief Appellate Defender
Joseph L Savitz III Senior Appellate Defender

RECEIVED

December 2, 2009

DEC - 2 2009

SC SUPREME COURT

The Honorable Daniel E Shearouse
Clerk, S C Supreme Court
PO Box 11330
Columbia, SC 29211

Re Abdiyyah Alkebulanyahh, a/k/a Tyree Roberts v The State

Dear Mr Shearouse

Enclosed are an original and six copies of the Motion for Appointment of Outside Counsel in the above-captioned case Thank you for your assistance in this matter

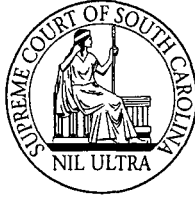
Sincerely,

Robert M Dudek
Acting Chief Appellate Defender

RMD/mwl

Enclosure

cc Donald J Zelenka, Esquire
Abdiyyah Alkebulanyahh, a/k/a Tyree Roberts



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734 1080
FAX (803) 734 1499

November 4, 2009

Carl Grant, Esquire
P O Box 1203
Orangeburg, SC 29116

Glenn Walters, Esquire
Glenn Walters & Associates, PA
P O Box 1346
Orangeburg, SC 29115-1346

Re Abdiyyah Alkebulanyahh (f/k/a Tyree A Roberts) v State, 2009-CP-07-715

Dear Counsel

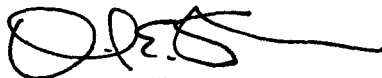
This office has received your notice of appeal in the above matter. It will be combined with the pro se notice of appeal that has been filed by your client.

I have enclosed a copy of a motion for an extension of time to file objections to the recommendations of the magistrate judge received from your client. It is unclear to me why this motion has been filed since the above action does not involve the Federal District Court but is instead a post-conviction relief case filed in the circuit court. In any event, to the extent petitioner may be seeking relief from this Court, no action will be taken on this filing since you represent him in this matter. Jones v State, 348 S C 13, 558 S E 2d 517 (2002), State v Stuckey, 333 S C 56, 508 S E 2d 564 (1998), Foster v State, 298 S C 306, 379 S E 2d 907 (1989).

Finally, enclosed is an order denying a petition for a writ of mandamus.

filed by your client As directed by the order, I have enclosed a copy of the
petition for a writ of mandamus

Very truly yours,



CLERK

Enclosures

cc Division of Appellate Defense
Mr Abdiyyah Ben Alkebulanyahh, SK6012
Assistant Attorney General S Creighton Waters

The Supreme Court of South Carolina

Abdiyyah Alkebulanyahh, Petitioner,

v

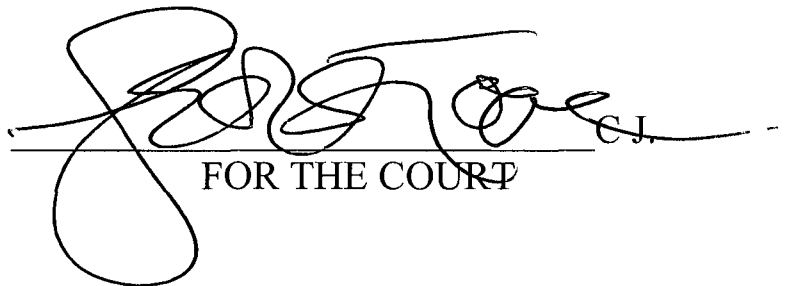
State of South Carolina, Respondent

The Honorable Carmen T Mullen
Beaufort County
Trial Court Case No 2007-CP-07-00715

ORDER

The pro se petition for writ of mandamus dated October 27, 2009, is denied. A copy of the petition for a writ of mandamus shall be provided to petitioner's counsel so that they can be aware of petitioner's desire to obtain a copy of certain documents that may be in their possession.

IT IS SO ORDERED



CJ.
FOR THE COURT

Columbia, South Carolina

November 4, 2009

cc Carl Grant, Esquire

Division of Appellate Defense

Glenn Walters, Esquire

Mr Abdiyyah Ben Alkebulanyahh, SK6012

Assistant Attorney General S Creighton Waters

CERTIFICATE OF SERVICE

RECEIVED

THIS IS TO CERTIFY THAT I, ABDIYYAH
BEN ALKEBULANYAHH, APPLICANT/PETITIONER
HAS PLACED IN THE U.S. MAIL WITH ^{SC SUPREME COURT} RECT POSTAGE AFFIXED, TO: CLERK OF COURT,
ATTN: ROBER M. YOUNG, SR., JUDGE, UNITED
STATES DISTRICT COURT, P.O. Box 835,
CHARLESTON, SOUTH CAROLINA, 29402;
CLERK OF COURT, DANIEL E. SHEARROUSE, THE
SUPREME COURT OF SOUTH CAROLINA, POST
OFFICE Box 11330, COLUMBIA, SOUTH CARO-
LINA 29211 THE FOLLOWINGS:

I. NOTICE OF MOTION AND MOTION
FOR EXTENSION OF TIME TO FILE OB-
JECTIONS TO THE MAGISTRATE'S RECOM-
MENDATIONS.

II. PETITION FOR WRIT OF MAN-
DAMUS.

III. LETTER TO GLENN WALTERS,
ATTORNEY AT LAW, P.A. (REF. NOTICE OF FI-
LINGS OF ABOVE ACTIONS AND CERTIFICATE
OF SERVICE, COPY, THERETO)

IV. CERTIFICATE OF SERVICE.

AND FURTHER SWEARS UNDER AND BY THE
PENALTY OF PERJURY THAT THE FORGOING
IS TRUE AND CORRECT.

THIS 27 DAY OF OCTOBER 2009.

RECEIVED

NOV 02 2009

SC SUPREME COURT

RESPECTFULLY,
Abdiyyah B. Alkebulanyahh
ABDIYYAH BEN ALKEBULANYAHH
SK6012, LIEBER C.I., P.O. Box
205, RIDGEVILLE, SC 29472

IN THE STATE OF SOUTH CAROLINA
FOR THE SUPREME COURT OF
SOUTH CAROLINA

RECEIVED

NOV 02 2009

ABDIYAH ben ALKEBULANYAH, SK 6012,
PETITIONER/PRO SE

SC SUPREME COURT

VS

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW, ABDIYAH ben ALKEBULANYAH,
PETITIONER, AND BEGS AND PRAYS THIS COURT FOR
THE RELIEF HEREIN SOUGHT THAT FOLLOWS AND,
WISH TO SHOW THE COURT THE FOLLOWING:

1. PETITIONER IS A DEATH ROW INMATE
CONVICTED ON TWO COUNTS OF MURDER IN BEAUFORT
COUNTY (02-65-07-0369 AND 0370),

2. PETITIONER WAS REPRESENTED ON
DIRECT APPEAL BY JOSEPH L SAVITZ III, AND
ROBERT M DUPEX, OF THE SOUTH CAROLINA APPELLATE
DEFENSE

THE SOUTH CAROLINA SUPREME COURT ISSUED AN
OPINION DATED JULY 24, 2006, AFFIRMING THE
SENTENCE. STATE V ROBERTS, 369, S.C. 580, 632 S.E. 2d 871
(2006) THE UNITED STATES SUPREME COURT DENIED THE
PETITION FOR WRIT OF CERTIORARI BY ORDER DATED
MARCH 19, 2007

III FOLLOWING A PETITION FOR A STAY OF
EXECUTION, THE SOUTH CAROLINA SUPREME COURT
ISSUED AN ORDER ON MAY 4, 2007 ASSIGNING JUDGE
ROGER YOUNG CONTINUING JURISDICTION OVER THE
MATTER. IN AUGUST OF 2007, JUDGE YOUNG SIGNED
AN ORDER APPOINTING GLENN WALTERS, ESQUIRE, AND
CARL E. GRANT, ESQUIRE, AS ATTORNEYS FOR APPLICANT
OR PETITIONER HEREIN

IV AN EVIDENTIARY HEARING IN THE CASE WAS
HELD BEFORE JUDGE YOUNG ON OCTOBER 13 AND 14, 2008
PETITIONER (APPLICANT) WAS PRESENT AND REPRESENTED
BY HIS COUNSEL, WALTERS AND GRANT, THE STATE
WAS REPRESENTED BY S CREIGHTON WALTERS AND
ALPHONSO SIMON

¶ ON OCTOBER 15, 2009 PETITIONER RECEIVED VIA U.S. MAIL FROM THE COURT OF COMMON PLEAS OF BEAUFORT COUNTY AN "ORDER OF DISMISSAL WITH PREJUDICE" - CA NO. 2007-CR-07-0715 OR DOCKET NO. 2007-DT-07-00715, ALKEBULANYAHH -VS- STATE, DATED SEPTEMBER 17, 2009 BY PRESIDING JUDGE - CARMEN T MULLEN

¶ ON DECEMBER 4, 2008, PETITIONER RECEIVED A LETTER FROM HIS COURT APPOINTED ATTORNEY GLENN WALTERS, STATING 'THIS LETTER IS IN RESPONSE TO YOUR CORRESPONDENCE DATED NOVEMBER 10, 2008, WITH REGARD TO YOUR REQUEST FOR COPIES OF THE POST CONVICTION RELIEF APPELLANT'S EXHIBIT BRIEF/EVIDENTIAL DOCUMENTARY ... I WILL FORWARD A COPY OF YOUR FILE TO YOU AS SOON AS I GET IT COPIED'

¶ AS OF TODAY'S DATE THE 27 OF OCTOBER 2009, PETITIONER HAS NOT RECEIVED.

I A COPY OF THE POST CONVICTION RELIEF APPELLANT'S EXHIBIT BRIEF/EVIDENTIAL DOCUMENTARY OR THE 'APPELLANT'S EXHIBIT NO. 1.'

2 PETITIONER HAS NOT RECEIVED ANY COPIES OF THE EXHIBITS PRESENTED DURING PCR,

3, NOR HAS PETITIONER RECEIVED ANY COPIES OF THE TRANSCRIPTS OF RECORD OF THE PCR DEPOSITION HEARINGS

~~III~~ PETITIONER BELIEVES HE IS ENTITLED TO THE AFORE SAID IN SECTION ~~III~~ HEREIN;

~~IX~~ AND FURTHER BELIEVES AFORE SAID SOUGHT IN SECTION ~~III~~ HEREIN IS VITAL TO HIS USE TO FILE OBJECTIONS TO THE MAGISTRATE'S RECOMMENDATIONS ~~IN~~ IN HIS PCR APPLICATION (OR FOR AN APPEAL ~~IF~~ REQUIRED)

~~X~~ FURTHERMORE PETITIONER BELIEVES IT IS NECESSARY THAT HIS COURT APPOINTED ATTORNEY CLAWN WALTERS SURRENDER COPIES REQUESTED HEREIN (SOUGHT IN SECTION ~~III~~) IMMEDIATELY FOR PETITIONER TO PERFECT A FILING OF OBJECTIONS TO THE MAGISTRATE'S RECOMMENDATIONS, IN A TIMELY FASHION

I SO IF PLEASE THE COURT I BEG AND PRAY
THIS COURT TO ORDER COURT APPOINTED ATTORNEY GLENN
WALTERS TO SURRENDER IMMEDIATELY TO PETITIONER
THE FOLLOWING.

- 1 COPIES OF ALL PCR EXHIBITS,
- 2 COPIES OF TRANSCRIPT OF ALL THE DEPOSITION
HEARINGS HELD FOR PCR
3. 'APPLICANT'S EXHIBIT NO. 1.

AND FURTHER SWEARS UNDER AND BY THE PENALTY OF PERJURY
THAT THE FOREGOING IS TRUE AND CORRECT

THIS 27 DAY OF OCTOBER 2009

RESPECTFULLY,



ABDIYYAH B. ALKEBULANYAHH
SK 6612
LIEBER CORR. INST.
P.O. BOX 265
RIDGEVILLE, SC. 29472

DATE: OCTOBER 27, 2009

TO: GLENN WALTERS, ESQUIRE,
348 ST. PAUL STREET, P.O. BOX 1346
DRANESBURG, S.C. 29116

FROM: ABDIYYAH BEN ALKEBULANYAH
SK6012: RA 131, LIEBER CORR. INST.,
P.O. BOX 205, RIDGEVILLE, SC 29472

RE: (PRO SE) NOTICE OF MOTION AND
MOTION FOR EXTENSION OF TIME TO FILE
OBJECTION TO THE MAGISTRATE'S RECOM-
MENDATIONS; ~~REVIEW FOR~~⁴ PETITION FOR
WRIT OF MANDAMUS

DEAR MR. WALTERS:

A COPY OF A 'CERTIFICATE OF SER-
VICE' I FILED IN THE U.S. DISTRICT
COURT AND THE SOUTH CAROLINA SUPREME
COURT IS HEREIN ATTACHED TO THIS LETTER.

I AM SEEKING FOR YOU TO SUR-
RENDER "APPLICANT'S EXHIBIT NO. 1."
FROM THE PCR HEARINGS; COPIES OF ALL
THE PCR EXHIBITS AND OF THE TRAN-
SCRIPT FROM THE DEPOSITION HEARINGS.

YOU HAVE NOT BEEN COOPERATIVE
WITH ME ^{AS} ~~DOING~~ WITH THIS MATTER. I
PRAY YOU WOULD.

WITH KIND REGARDS,

SINCERLY
Abdiyyah B. Alkebulanyah
ABDIYYAH B. ALKEBULANYAH

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

ABDYAH ben ALKEBULANYAH, # 6012,
APPLICANT/PRO SE

VS.
THE STATE OF SOUTH CAROLINA,
RESPONDENT,

RECEIVED

NOV 02 2009

SC SUPREME COURT

C/A NO 2007-CJ-07-0715

NOTICE OF MOTION AND
MOTION FOR EXTENSION OF TIME TO
FILE OBJECTIONS TO THE
MAGISTRATE'S RECOMMENDATIONS

TO THE HONORABLE ROGER YOUNG, JUDGE

COME NOW, ABDYAH ben ALKEBULANYAH, APPLICANT/PRO SE
BEFORE THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH CAROLINA, AND BEGS AND PRAYS FOR
AN EXTENSION OF TIME UNTIL NOVEMBER 16, 2009, BY WHICH
APPLICANT MAY FILE AN OBJECTION TO THE MAGISTRATE'S
RECOMMENDATION IN THE ABOVE STYLE

(1 of 5)

CASE

THE GROUNDS FOR THIS MOTION ARE AS FOLLOWS

I. THE FORM 4 JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE WAS RECEIVED FROM THE BEAUFORT COUNTY CLERK OF COURT ON OCTOBER 15, 2009 WITH REGARD TO ABOVE-STYLED CASE MATTER,

II. ON OCTOBER 26, 2009 A COPY OF THE FORM 4 JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE (AND A MASSIVE FORM COURT APPOINTED ATTORNEY GLENN WALTERS, WITH A COPY OF TRANSCRIPT OF THE PCR HEARING HELD ON OCTOBER 13-14, 2008 AND THE TRANSCRIPT OF THE TAXAL PROCEEDING HELD IN BEAUFORT COUNTY COURT THROUGH OCTOBER 6 - OCTOBER 22, 2003 NOT ANYTHING MORE OR LESS BY APPLICANT RECEIVED FROM HIS COURT APPOINTED ATTORNEY GLENN WALTERS)

III. ON DECEMBER 4, 2008, APPLICANT RECEIVED A LETTER FROM PCR COURT APPOINTED ATTORNEY GLENN WALTERS, WHICH STATES AS FOLLOWS.

(2 of 5)

" DECEMBER 4, 2008 . DEAR MR ALKEBULANMANN THIS LETTER IS IN RESPONSE TO YOUR CORRESPONDENCE DATED NOVEMBER 10, 2008 WITH REGARDS TO YOUR REQUEST FOR COPIES OF THE POST CONVICTION RELIEF APPLICANTS EXHIBIT BRIEF / EVIDENTIAL DOCUMENTARY... I WILL FORWARD A COPY OF YOUR FILE TO YOU AS SOON AS I GET IT COPIED "

AS OF TODAY OCTOBER 27, 2009 (OR THE DATE SIGNED BELOW), APPLICANT HAS NOT RECEIVED A COPY OF THE FOLLOWING

1 THE POST CONVICTION RELIEF APPELLANT'S EXHIBIT 7 BRIEF / EVIDENTIAL DOCUMENTARY PCR HEARING EXHIBIT NO. 1.

2 ANY OF THE STATE'S NOR OF THE APPLICANT'S EXHIBITS

3. NOR ANY COPIES OF ANY OF THE PCR DEPOSITION HEARINGS HELD

IV APPLICANT BELIEVES THAT ALL THE AFORE-MENTIONED IN SECTION III WOULD BE NECESSARY BEFORE A PROPER OR SIGNIFICANT RESPONSE

(3 OF 5)

COULD BE EXERCISED IN CHALLENGE OR GIVING OR FILING AN OBJECTION TO THE MAGISTRATE'S RECOMMENDATION. IN THE ABOVE-STYLED MATTER,

II FURTHERMORE, APPLICANT DOES NOT BELIEVE THAT THE PCR APPOINTED ATTORNEYS GLENN WALTERS AND CARL B. GRANT, INTENDS TO NOR HAVE FILED ANY OBJECTIONS TO THE MAGISTRATE'S RECOMMENDATION'S

III THE APPLICANT HEREIN DOES NEED ADDITIONAL TIME TO COMPLETE THE PREPARATION AND DRAFTING OF THESE OBJECTIONS TO THE MAGISTRATE'S RECOMMENDATIONS, WITHSTANDING APPLICANT PCR COURT APPOINTED ATTORNEY'S GLENN WALTERS AND CARL B. GRANT, SURRENDERING COPIES OF PCR TRANSCRIPTS OF THE DEPOSITION HEARINGS AND COPIES OF ALL THE PCR HEARING EXHIBITS,

IV IN ADDITION, BECAUSE APPLICANT INTENDS TO SEEK HELP OR ASSISTANCE FROM ATTORNEY(S) OF THE CAPITAL LITIGATION CENTER TO PERFECT THIS MATTER HEREIN DESIRED

(4 OF 5)

APPLICANT DOES BEG AND PRAY THIS COURT FOR THE
RELIEF HEREIN SOUGHT

AND FURTHER SWEARS UNDER AND BY THE PENALTY
OF PERJURY THAT THE FOREGOING IS TRUE AND
CORRECT.

THIS 20 DAY OF OCTOBER 2009

RESPECTFULLY,

Abdullah B. Abdullay K

SK 6012

LIEBER CORR. INST.

P.O. BOX 205

RIDGEVILLE, SC 29472

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

NOV - 2 1 2009

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC SUPREME COURT

Carmen T Mullen, Circuit Court Judge

Case No 2007-CP-07-00715

Abdiyyah Ben Alkebulanyahh #6012

Appellant

v

The State of South Carolina

Respondent

NOTICE OF APPEAL

Abdiyyah Ben Alkebulanyahh #6012, appeals the denial and dismissal of his Application for Post-Conviction Relief in the above case. The decision was ordered by the Honorable Carmen T Mullen on September 17, 2009 and was received by Carl B Grant, Attorney for Appellant, on October 14, 2009.



Carl B Grant
Post Office Box 1203
Orangeburg, South Carolina 29116
(803) 536-4011

Glenn Walters
Post Office Box 1091
Orangeburg, South Carolina 29116

Attorneys for Appellant

Other Counsel of Record
Samuel Creighton Waters, Assistant Attorney General
South Carolina Office of Appellate Defense

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

NOV - 2 2009

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC SUPREME COURT

Carmen T Mullen, Circuit Court Judge

Case No 2007-CP-07-00715

Abdiyyah Ben Alkebulanyahh #6012

Appellant

v

The State of South Carolina

Respondent

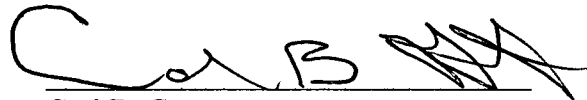
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of said Notice of Appeal in the United States Mail, postage prepaid, on November 2, 2009 addressed to the attorneys of record and the Appellant as follows

Samuel Creighton Waters
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

South Carolina Office of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

Abdiyyah Ben Alkebulanyahh #6012
Lieber Correctional Institution
Post Office box 205
Ridgeville, South Carolina 20472



Carl B Grant
Post Office Box 1203
Orangeburg, South Carolina 29116
(803) 536-4011
Attorney for Appellant

IN THE SOUTH CAROLINA SUPREME
COURT OF THE STATE OF SOUTH CAROLINA

ABDIYYAH BEN ALKEBULANYAH, SK 6012,
APPELLANT/PETITIONER

VS.

STATE OF SOUTH CAROLINA

RECEIVED

CASE NO. : 2007CP0700715

OCT 22 2009

SC SUPREME COURT

NOTICE OF APPEAL

APPELLANT/PETITIONER IS A
DEATH ROW INMATE, AND WISH TO
SHOW THE COURT THE FOLLOWINGS:

I. APPELLANT PCR APPLICAT-
ION WAS DENIED/DISMISSED ON
SEPTEMBER 17, 2009. APPELLANT WAS
NOTIFIED VIA MAIL ON OCTOBER
15, 2009. THE PRESIDING JUDGE WAS
CARMEN T. MULLEN.

II. APPELLANT WISH OR INTENDS

TO APPEAL/ OR FILE WRIT OF
HABEAS CORPUS;

III. AND BEGS AND PRAYS FOR
A STAY OF EXECUTION; AND THE
APPOINTMENT OF COUNSEL.

THIS 20 DAY OF OCTOBER 2009.

AND FURTHER SWEARS UNDER AND
BY THE PENALTY OF PERJURY THAT
THE FOREGOING IS TRUE AND
CORRECT.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 20 DAY OF OCTOBER

2009

NOTARY PUBLIC

STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES

RESPECTFULLY,

A. Alkebulanyah

ABDIYAH B. ALKEBULANYAH,

SK 6012, LIEBER DEATH ROW,

P.O. BOX 205,

5/1/2010 RIDGEVILLE, SC 29472

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ABDIYYAH BEN ALKEBULANYAH, SK6012,
PETITIONER/PROSE,
VS.

STATE OF SOUTH CAROLINA

RECEIVED

OCT 22 2009

CASE NO. 2007 CPD 700715

S.C SUPREME COURT

PETITION FOR A STAY OF EXECUTION

PETITIONER/PROSE, BEGS AND PRAYS THE
COURT TO GRANT RELIEF HEREIN SOUGHT.
HE (AND ATTORNEYS) RAISED TWELVE (12)
GROUNDS IN PCR IN WHICH PETITIONER
BELIEVES CONSTITUTIONAL MERITS DO EXIST
THAT WOULD BE HEARD ON APPEAL/WRIT OF
CERTIORARY OR HABEAS CORPUS. PCR
APPLICATION WAS DENIED/DISMISSED ON 09/17/09,
AND FURTHER SWEARS UNDER AND BY THE
PENALTY OF PERJURY FORGING IS TRUE.

THIS 20 DAY OF OCTOBER 2009.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS

20

NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION

RESPECTFULLY,

ABDIYYAH BEN ALKEBULANYAH
SK6012; LIEBER DEATH ROW, P.O.
BOX 205, RIDGEVILLE, SC 29472

5/1/2018

RECEIVED

OCT 22 2009

CERTIFICATE OF SERVICE SC SUPREME COURT

THIS IS TO CERTIFY THAT I,
ABDIYYAH BEN ALKEBULANYAH, APPELLANT
PETITIONER, HAS PLACED IN THE U.S.
MAIL, WITH PROPER POSTAGE AFFIXED
THERE TO, TO : SOUTH CAROLINA SUPREME
COURT, CLERK OF COURT (DANIEL E.
SHEAROUSE), P.O. Box 11330, COLUMBIA, SC
29211; CLERK'S OFFICE, U.S. COURT OF
APPEALS - FOR THE FOURTH CIRCUIT,
RICHMOND, VIRGINIA 23219; BLUME,
WEYBLE, AND NORRIS, LLC, ATTORNEY
AT LAW, 1247 SUMNER ST., STE. 201,
P.O. Box 11744, COLUMBIA, SC 29211
THE FOLLOWINGS:

- I. NOTICE OF APPEAL
- II. PETITION FOR A STAY OF EXECUTION
- III. CERTIFICATE OF SERVICE

AND FURTHER SWEARS UNDER AND BY THE
PENALTY OF PERJURY THAT FOREGOING IS TRUE.

THIS 20 DAY OF OCTOBER 2009.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 20 DAY OF October

20 09

NOTARY PUBLIC
STATE OF SOUTH CAROLINA

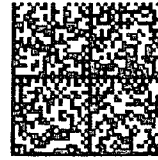
MY COMMISSION EXPIRES 5/12/18

RESPECTFULLY,

A. Abdoulaye
ABDIYYAH BEN ALKEBULANYAH,
SK 6012; LIEBER DEATH ROW, P.O.
BOX 205, RIDGEVILLE, SC 29472

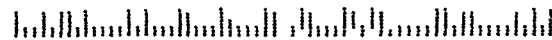
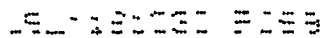
ABDIYYAH BEN ALKEBULANYAH
SK 60123 RA-131
LIEBER C.I.
P.O. BOX 205
RIDGEVILLE, SC
29472

FIRST CLASS



UNITED STATES POSTAGE **LEGAL**
MAIL
PITNEY BOWES
02 1M \$ 00 44⁰
0004238017 OCT 21 2009
MAILED FROM ZIP CODE 29472

SOUTH CAROLINA SUPREME COURT
CLERK OF COURT, DANIEL E. SHEAROUSE
P.O. BOX 11330,
COLUMBIA, SOUTH CAROLINA
29211



FORM 4

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF BEAUFORT

CASE NO 2007CP0700715

IN THE COURT OF COMMON PLEAS

Abdiyyah Ben Alkebulanyahh vs State Of South Carolina

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 Nonsuit) ☐ Rule 43(k) SCRPC (Settled) ☒ Other **PCR Application Denied/Dismissed**
- ☐ **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	☐ Remeanded	☐ 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 of Dismissal W/Prejudice

Dated at Beaufort, South Carolina, this 17th day of September, 2009

Court Reporter

s/ C T Mullen

PRESIDING JUDGE Carmen T Mullen

This judgment was entered on the 17th day of September 2009 and a copy mailed first class this 12th day of October 2009 to attorneys of record or to parties (when appearing pro se) as follows

Abdiyyah Ben Alkebulanyahh LCI Po Box 205
 Ridgeville SC 29472
Glenn Walters Attorney at Law PO Box 1091
 Orangeburg, SC 29115
Carl B Grant Attorney at Law PO Box 1202
 Orangeburg SC 29116

Samuel Creighton Waters SC Attorney
 General Office PO Box 11549 Columbia SC
 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

ADMINISTRATIVE INSTRUCTIONS

SCRPC APP 24/FORM 4

CPFORM4M

RECEIVED 10/16/09
 _____ FILE _____ OPEN _____ END
 _____ HAVE _____ COPIES MADE
 _____ POINT TO _____
 _____ ORDER _____ TRANS PT
 _____ OPEN RECORDS _____ CLERK RECORDS
 _____ OTHER _____

Jerrri Ann Roseneau - Clerk of Court

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

Abdiyyah ben Alkebulanyahh, #6012)

C/A No 2007-CP-07-0715

Applicant,)

v)

ORDER OF DISMISSAL WITH PREJUDICE

The State of South Carolina,)

Respondent)

2009 SEP 17 PM 2:11
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, SC

This matter is before me on the application for post-conviction relief (PCR) filed by Abdiyyah ben Alkebulanyahh¹ ("Applicant") and dated March 12, 2007, and the Amended APCR filed by Applicant through his appointed counsel dated February 7, 2008. For the following reasons, I deny and dismiss the application with prejudice.

I

Procedural History

In March of 2002, the Beaufort County Grand Jury indicted Applicant on two charges of murder for the shooting deaths of two Beaufort County Sheriff's Deputies (02-GS-07-0369 & 0370) {R 4534-35}. The State gave notice of intent to seek the death penalty and served its notice of evidence in aggravation.

Applicant represented himself at his jury trial, but Attorneys Gerald Kelly and Sean Thornton remained throughout the trial to assist. *Voir dire* in the case began on October 6, 2003 before Judge Daniel F. Pieper. Trial began on October 10, 2003 {R 1316}. On

¹ Mr. Alkebulanyahh was formerly known as Tyree A. Roberts but has since legally changed his name.

October 21, 2003, Applicant's jury convicted him of both charges **{R 3472-73}**

The sentencing phase of his trial began on October 22, 2003 Judge Pieper submitted the following aggravating factors to the jury

(1) The murder of a federal, state, or local law enforcement officer, peace officer or former peace officer, corrections employee or former corrections employee or fireman or former fireman during or because of the performance of his official duties

(2) Two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct

{R 3847, 4529} The following mitigating factors were submitted to the jury

Whether the existence of any non-statutory mitigating circumstance was supported by the evidence

{R 3851, R 4529}

On October 22 2003 Applicant's jury found the existence of the aggravating factors and recommended a sentence of death on the murder counts That same day, Judge Pieper sentenced Applicant to death **{R 3861-68, 3873, 4533}**

A timely Notice of Appeal was filed with the South Carolina Supreme Court Applicant was represented on direct appeal by Joseph L Savitz, III, and Robert M Dudek, of the South Carolina Office of Appellate Defense, after the South Carolina Supreme Court denied Applicant's motion to proceed on direct appeal *pro se* State v Roberts, 364 S C 583, 614 S E 2d 626 (2005) On March 7 2006 Applicant submitted a Final Brief of Appellant to the South Carolina Supreme Court, in which he raised the following issue

The judge erred by refusing to allow appellant to waive his right to be present at the sentencing phase instead confining him to a holding cell attached to the Courtroom in which he was visible to the jury particularly since appellant's absence during sentencing was his *pro se* trial strategy and the State advanced no countervailing reason for requiring him to be present

The State, represented by Assistant Attorney General S Creighton Waters, filed a Final Brief of Respondent on February 17, 2006. Oral argument was held before the South Carolina Supreme Court on May 24, 2006. The South Carolina Supreme Court issued an opinion dated July 24, 2006, affirming the sentence State v Roberts, 369 S C 580, 632 S E 2d 871 (2006).

Following a Petition for Stay of Execution by Applicant and a Return by the State, the South Carolina Supreme Court issued an Order dated September 7, 2006, which stayed the execution so that Applicant could file a Petition for Writ of Certiorari with the United States Supreme Court. Applicant filed his Petition dated November 9, 2006, in which he raised the following issue:

May a capital defendant waive his right to be present at the sentencing phase of his trial, where his absence during sentencing is the product of his trial strategy and the prosecution advances no countervailing reasons for requiring him to be present?

The State, through Assistant Attorney General S Creighton Waters, filed a Return to the Petition for Writ of Certiorari dated February 5, 2007. The United States Supreme Court denied the Petition for Writ of Certiorari by Order dated March 19, 2007.

Applicant filed a *pro se* Application for Post-Conviction Relief dated March 12, 2007.

Following a Petition for a Stay of Execution, the South Carolina Supreme Court issued an Order on May 4, 2007, assigning Judge Roger Young continuing jurisdiction over the matter. In August of 2007, Judge Young signed an Order appointing Glenn Walters Esquire, and Carl Grant, Esquire, as attorneys for Applicant, and giving them until February 8, 2008, to file an Amended Application. The State filed an initial Return Motion to

Dismiss and/or Motion for Summary Judgment on October 15, 2007. Applicant followed with his Amended Application on February 7, 2008, to which the State responded with an Amended Return on March 21, 2008.

An evidentiary hearing in the case was held before Judge Young on October 13 and 14, 2008. Applicant was present and represented by his counsel Walters and Grant. The State was represented by S. Creighton Waters and Alphonso Simon. Applicant called himself to testify, the State called Sean Thornton, Esquire. Further, the parties agreed to submit into evidence the depositions of Chief Appellate Defender Joseph Savitz, III, Deputy Appellate Defender Robert M. Dudek, Dr. Donna Schwartz-Watts, Gerald Kelly, Esquire, Sean Thornton, Esquire, and Solicitor I. McDuffie Stone, III.

Subsequently, the South Carolina Supreme Court, by Order dated December 17, 2008, reassigned continuing jurisdiction of this case to me for review of the evidence and a determination on the merits.

I have reviewed the testimony and the record and rule as follows:

II

Brief Statement of Facts

Applicant was convicted and sentenced to death for murdering two police officers who responded to a domestic call at his home. Applicant testified that two others were in the room when the shooting happened, and that he did not shoot anyone. He did not present a case in mitigation.

III

Grounds for Relief

This Court has had the opportunity to review the record in its entirety, including the testimony and arguments presented at the PCR hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-160(D).

None of Applicant's grounds for relief are sufficient for relief. A PCR Applicant has the burden of proving his claims for relief by a preponderance of the evidence. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992).

A. Ground One

In his amended application for relief, Applicant first contends the trial court failed to make the proper inquiry and failed to ensure that Applicant knowingly, intelligently, and competently waived his right to counsel.

1. Events at trial

At a pre-trial hearing before Judge Perry M. Buckner on November 12, 2002, Applicant stated to the judge that he filed a motion to dismiss his attorneys as he felt they were sabotaging his case. The Solicitor requested that the competency evaluation be done by a certain date and when Counsel Thornton indicated he had no objection - Applicant stated he did object to it. **{R 3888-91}**

At a pre-trial hearing before Judge Pieper on July 23, 2003, there was an extensive colloquy on Applicant's motion to represent himself. Applicant noted he had finished high school and had taken some college coursework and had also self-educated himself on the criminal justice system by studying the Constitution, PCR materials, trial proceedings, and

statutes. He pointed out he had done PCR work for other inmates and filed numerous motions in his own case. He stated he thought his lawyers were incompetent and lazy, and complained about them withdrawing his speedy trial motions. Applicant also complained that his lawyers hired an expert to make him look like he had a mental problem when the State expert found him competent – and he thought the State expert was far more professional and qualified. Applicant noted his lawyers had given him a document on the dangers of self-representation, and the appointed defense lawyers agreed that if Applicant was found to be competent he could, in fact, represent himself. The trial court discussed the fact that by waiving counsel Applicant was waiving it for the entire case, and he might find himself shocked and dazed when faced with proceeding with the penalty phase if the jury returned a guilty verdict. The Court also warned Applicant that his failure to properly raise issues at trial would preclude them on appeal and he would be unable to raise inadequate representation as grounds for Post Conviction Relief. Despite this, Applicant continued to indicate his desire to represent himself, and the Court specifically noted Applicant was very coherent. After Applicant reiterated his free, knowing, and intelligent decision, the Court indicated its intent to allow Applicant to proceed *pro se* pending a Blair hearing. {R 3900-3945}

As the hearing progressed and various housekeeping and logistical matters were discussed, Applicant listed for the Court a relatively long list of people he wished to subpoena, including law enforcement personnel, DSS employees, and other witnesses. {R 3951-55} The Court accepted as a Court's Exhibit the document setting forth the dangers of *pro se* representation that counsel Kelly had given to Applicant. {R 3955-56}

The Court inquired again if Applicant understood everything that transpired, and after Applicant indicated he did, the Court gave him an additional week to think over *pro se* representation. The Court also noted that if the case was to go forward as soon as possible, such as Applicant desired, Applicant would need to be prepared for the hearing the following week to argue any motions he may have. {R 3955-58} Before the hearing concluded, Applicant and Judge Pieper discussed some expert witnesses he wished to pursue, including Applicant's very cogent explanation to Judge Pieper why he wished to have a psychological expert on false statement testify at trial in the face of the Judge's questioning on why cross-examination would not be sufficient. {R 3958-64}

A Blair hearing took place on August 1, 2003. Defense-retained psychiatrist Dr. Donna Schwartz-Watts felt that Applicant was not competent to represent himself based on her assessment of his paranoia, psychosis, and the reasoning he provided on why he wished to defend himself. Specifically, Dr. Schwartz-Watts stated that at their third interview Applicant was psychotic and not in touch with reality and he had since refused to see her. She felt Applicant did not have the capacity to assist his attorneys because he thought they were conspiring with the Solicitor. She also felt he did not have the capacity to look at different decisions about how to defend himself because he refused to consider any kind of mental health mitigation. She admitted, though, that she could not give an opinion as to his competency at that moment since he had refused to see her again. {R 3971-90}

On cross-examination by the Applicant, personally, Dr. Schwartz-Watts agreed that while he initially consented to having the interviews taped, he forgot it was recording, and

was very angry that Dr Schwartz-Watts might disclose the tape to other people {R 3991-95}

On cross-examination by the Solicitor and questioning by Judge Pieper, Dr Schwartz-Watts stated Applicant's intelligence was sufficient, but she was concerned – not with the decisions he makes but with the reasoning behind them – given that he thought he could do better than his attorneys, and his belief that his attorneys were Masons who were conspiring with the Solicitor to deny him a fair trial based on his religious beliefs. She also thought his mental illness precluded him from considering issues in mitigation. However, she stated she thought some of Applicant's decisions about experts were "brilliant." Further, she stated to the judge that if Applicant decided to accept the opinion of another expert who thought he was competent that could be considered a rational decision, unless he was only doing so because of his illness. Ultimately, she stated Applicant had some "good" and "strong" ideas about how to defend his case but she questioned the reasoning with which he arrived at those ideas. Dr Schwartz-Watts stated it would not be unusual for him to be mistrusting since he was accused of killing two police officers, but she felt he "crossed the line" with his belief that his attorneys were part of a conspiracy {R 3997-10}

The defense psychologist, Dr Jeffrey R McKee, stated Applicant refused to see him and he had elevated scores on a portion of a psychological test which indicated defensiveness and underreporting of symptoms. On cross-examination by Applicant, he agreed Applicant had average intelligence, no neuropsychological deficits, and no indications of malingering {R 4011-21}

The Court's psychiatrist and psychologist both found Applicant competent to stand

trial and criminally responsible. The psychiatrist, Dr. Richard Frierson, diagnosed Applicant as having a personality disorder with narcissistic and anti-social traits – but noted that was not a major mental illness. He stated he would expect Applicant to have elevated scores on the Personal Assessment Inventory Test (“PAI”) because Applicant tries to present himself in best light. {R 4022-26}

On cross-examination, Dr. Frierson testified he scheduled another meeting with Applicant after viewing Dr. Schwartz-Watts’ videotape of the interview. He discussed in detail these issues with Applicant and concluded Applicant’s thoughts about the Masons and the Court system were not delusional but an ideology shared by a number of people. Dr. Frierson found information on the Internet about books written on the Masons, and Applicant agreed he had read some of those books. Since Applicant’s beliefs were similar to what other people believe about these organizations, Dr. Frierson found it to be a cultural belief that may be false – rather than a delusion that was caused by mental illness. While Dr. Frierson certainly agreed Applicant displayed narcissism and might overestimate his abilities, he saw no evidence Applicant ever had a major depressive or manic episode. {R 4026-33}

The Court’s psychologist, Dr. Jeffrey E. Musick, examined Applicant four times and also agreed he was competent to stand trial. He noted Applicant did show elevated scores on the positive impression management scale of the PAI test – meaning Applicant was unwilling to disclose minor shortcomings to which others might admit. However, since Applicant was presenting himself in the best light, Dr. Musick found the unwillingness was not surprising. {R 4036-40}

On cross-examination by Thornton, Dr Musick agreed that where there are scores on the positive impression management scale similar to Applicant's score, the PAI manual cautions that the other scores might underestimate any psychopathology Dr Musick noted he compensated for any discrepancy by spending a lot of time in the interviews addressing any symptoms Applicant might have Similar to Dr Frierson, Dr Musick also did not think Applicant's belief about the Masons was a delusion but rather, believed it was a cultural or subcultural belief, partly because Applicant agreed he did not know if what he had read about Masons was true and partly because there was information on the Internet and in books reflecting similar views {R 4040-48}

On cross-examination by Applicant, Dr Musick stated that none of Applicant's tests indicated he was mentally retarded Dr Musick agreed that while Applicant did have some suspiciousness and distrustfulness, that did not necessarily make one abnormal, and noted Applicant was well aware of his rights Dr Musick also agreed with Applicant's questioning that simply because one tried to portray himself in a positive light or did not admit to minor annoyances did not necessarily mean he was hiding larger issues, and agreed that one would not be delusional if he believed in the existence of the Ku Klux Klan Free Masonry or enemies {R 4049-52}

The Court found, based on the Court Examiner's testimony as well as its own observations and interaction with Applicant, Applicant was competent, stating

THE COURT I have watched the defendant in court, I gave the defendant the opportunity to ask questions in these proceedings for the very purpose of evaluating the defendant's demeanor his behavior whether the defendant is rational, whether he has an appreciation of these proceedings The defendant asked some questions when he was addressing the witnesses the questions were pertinent I think the defendant listened to the testimony

he referenced some of that testimony in his questions and there is evidence in the record from the psychiatric testimony that the defendant is competent to so proceed and the Court upon review of all of these – with the entire record finds that defendant does have such a rational understanding of these proceedings and does have the ability to present his defense that I find that he is competent to proceed

{R 4054-55}

The Court then held another colloquy with Applicant on his desire to represent himself, and engaged in a detailed and lengthy discussion with Applicant on the responsibilities, dangers, and issues with *pro se* representation particularly in a capital case. Indeed, the judge even advised Applicant not to represent himself, and told him he would be overwhelmed by the prospect of a sentencing phase if he were convicted. Applicant held firm to his desire to represent himself. **{R 4055-61}**

The discussion then moved to standby counsel. Applicant noted he had requested different counsel, but he understood that trial was approaching and he wanted a speedy trial so he stated he would accept Kelly and Thornton as standby counsel rather than no counsel at all. The judge pointed out that there was no obligation to appoint standby counsel, and that even if standby counsel were appointed there would be no hybrid representation. Applicant specifically stated he did not expect his standby attorneys to be able to assist in presentation, and the judge agreed to allow Kelly and Thornton to remain in that capacity. After one final colloquy on Applicant's decision to represent himself, Judge Pieper accepted Applicant's request, finding it to be a free, voluntary, and intelligent decision. Again, the judge noted that in reviewing Applicant's motions and discussing the case with Applicant, the judge believed Applicant "does seem to have the ability to proceed and handle his defense in this case." Appointed counsel Kelly and Thornton were ordered

to remain as standby counsel to assist Applicant with advice and logistical support {R 4061-73}

For the remainder of that pre-trial proceeding, Applicant was able to make and logically discuss a number of motions. While at least some of them might not have been made by a formally trained lawyer, none of them were rambling or nonsensical but rather, they were at least somewhat appropriately related to a valid principle of law. These motions included a motion for bond, withdrawal of motion to change venue, motion to dismiss indictments for use of Applicant's former name, motion to dismiss indictments based on 4th Amendment issue, motion for a speedy trial, motion for release from segregation, motion to dismiss based on a conspiracy between judge, prosecutor and detention officials, motion to dismiss because arrest warrant is false based on error in one of the deputy's names, motion for *voir dire*, motion to sequester jurors, motion to dismiss based on false testimony allegedly being presented to the Grand Jury, motion to dismiss because of the failure to include aggravating circumstances in the indictment, motion based on the lack of representation of minorities on the grand jury, motion to preclude the State from using any information gleaned during the competency evaluation, a motion to allow his investigators to examine the evidence, and a motion for a room wherein the defense team could meet during the trial. {R 4074-4220} In *ex parte* proceedings Applicant then cogently discussed his requests for experts, including a false memory expert, a forensic evidence expert, a jury selection expert, and a firearms expert. Some of these requests were granted. {R 4222-4255} An additional pre-trial hearing was held on October 1, 2003, at which Applicant raised a number of other appropriate motions, as well

as conducted an evidentiary hearing on his Fourth Amendment claims {R 4259-4451}
Applicant handled motions to quash in opposition to his subpoenas as well as *voir dire* issues at the pretrial hearing on October 3, 2003 {R 4455-4523}

When trial commenced on October 6, 2003, Applicant successfully conducted extensive capital *voir dire* without any significant incident, asking a number of questions that were probative of the jurors as to race, involvement with law enforcement, and the death penalty. He engaged in jury selection, made a motion for a Batson hearing, and discussed parameters of the opening statement with Judge Pieper {R 54-1364}

Applicant then gave a long opening statement – and while it was not perhaps as focused as other experienced lawyers' arguments might be, it was pertinent, logical, and relevant to the issues in the case. Applicant argued the prosecution's opening statement was not the truth, that some of the witnesses were going to be lying, that some witnesses would be intimidated by officers, that Kimberly Blake kept changing her story, that he was shot and fled but was not the shooter of the officers, that the officers were not following the law and proper procedure when they searched the house, that the jury should not overlook lies, discrepancies, and inconsistencies in making its decision, that the case was not about race because injustice could happen to any citizen, and that he was being falsely characterized as some sort of "radical guy, some Jamaica guy, or some poor black, racist-type, militant type of guy." Applicant concluded by appropriately thanking the jury, and reminding them of their promise to be impartial and give him a fair trial {R 1385-1414}.
By no means would I characterize Applicant's argument as the irrelevant ramblings of an incompetent. Further, his argument to the jury might be the best indication of Applicant's

competence because it is a long unprompted exposition coming straight from Applicant himself

Without now recounting from this large transcript every witness and every time Applicant did something “right,” or even clever, Applicant also engaged in lengthy arguments and examinations of witnesses in an emotionally charged case. A reading of the guilt phase shows that while Applicant may have occasionally had trouble with Rules of Evidence and Rules of Civil Procedure, he had no trouble whatsoever during the guilt phase in maintaining proper demeanor in the Courtroom and displaying proper respect for the Court, opposing counsel, and the witnesses. Indeed, Applicant repeatedly expressed his appreciation and respect to the trial court throughout the entirety of the guilt phase process. See, e.g. {R 1914, 1976-79, 1991, 3456}. Thus, this is not a situation where a defendant requested to represent himself and misbehaved the whole time or repeatedly showed an inability to follow basic courtroom decorum.

As shown by the record, the only serious issue developed after closing arguments were completed in the guilt phase while the jury was still in the deliberation. The Court noted that while it had honored Applicant’s desire to represent himself, and even appointed stand-by counsel to help Applicant, Applicant apparently said he did not intend to participate in sentencing and did not even intend to appear in the courtroom. Applicant stated that he did not intend to present anything in mitigation. The Court highlighted the importance of a case in mitigation, but Applicant remained firm, stating that it would make no difference for him. {R 3448-3450}.

Applicant stated he wanted to continue to represent himself, but that he would not

be attending the sentencing. When the judge said that he would need to be present, Applicant replied he “wouldn’t be able to sit there and attend that proceeding,” and then proclaimed he “waive[d] all the rights to any objections to anything in the event that I’m found guilty.” The judge engaged in another colloquy on Applicant’s right to give a statement to the jury, but Applicant was adamant he did not want to present any case in mitigation. **{R 3450-54}**

The judge then held a meeting with just the defendant and his stand-by attorneys. Applicant stated that he did not want to participate in sentencing because

[I]t wouldn’t have no bearing on me, because if I’m in prison for life that’s death to me. I can never accept that. You know, I don’t find [a life sentence] as a easy or something positive or good in my situation. Death would be more preferable than life until I die in - - in prison.

{R 3455-56}

Applicant went on to say he did not want to be sentenced to death but that life in prison was a form of death itself. Applicant also told the Court he did not want counsel appointed for sentencing and stated that it was a decision he had thought long and hard about. **{R 3454-58}**

After the meeting, the Court found Applicant’s decision to be voluntarily and knowingly made with regard to his sentencing phase rights but said Applicant was going to remain present during the sentencing phase. In response, Applicant said he would probably be “unruly” and would have to be restrained if he were forced to attend. The Court stated that Applicant was not going to be unruly and that he would be restrained if need be, and lamented that Applicant had not caused any other problems up to that point. The Court admonished, “You asked to represent yourself and you ll need to follow that

through ” **{R 3460-63}**

Applicant continued to make guilt phase motions and otherwise represent himself even after a verdict the next morning, but he, again reaffirmed his intention not to offer anything in sentencing **{R 3463-82}** As the parties discussed logistics, Applicant again stated that he had no intention of sitting in the Courtroom listening to the case, and while he would not be violent, he would be unruly The Court responded that it had honored Applicant's request to represent himself, and that a capital case required the defendant's presence during the sentencing phase **{R 3482-83}**

Applicant reaffirmed his waiver of his sentencing phase rights even reciting them himself – but warned that he would make a statement whenever he wanted to if he was in the presence of the jury According to Applicant he did not care for the jury to know anything about him because he had already presented everything he wanted to present in the guilt phase Applicant declined the Court's suggestion that he sit in the back room where he could observe the proceedings **{R 3484-88}**

As the conversation continued, Applicant said that from the beginning he had instructed his stand-by attorneys and investigators that there would be no mitigation witnesses called The Court decided to break for lunch but warned Applicant that his presence may be required and the Court would deal with any misconduct **{R 3490-92}**

Before the break, Applicant's standby attorneys conferred with him and reported their conversations with the Judge According to them Applicant (1) did not want to be supplanted as attorney of record, (2) did not want to put up evidence but did not care if standby counsel objected to or examined witnesses during the state's case, and (3) did not

want to be present, but felt it was going to be up to the judge whether to put him in the back room. They then discussed the possibility of standby counsel representing Applicant in a limited capacity during the sentencing phase. The Court reviewed some cases and standby counsel proposed that, consistent with Applicant's wishes, counsel be limited in action to three things: to make objections, to give argument, and to stipulate. Applicant expressly refused to comment. **{R 3494-3505}**

After lunch, the Court again took up the issue, phrasing it as an attempt to balance Applicant's right to represent himself with his right not to present evidence or testify. Applicant again said he would be a disruption if forced to remain. **{R 3512-14}**

When the Court asked Applicant how he planned on being disruptive, Applicant said just verbally [but] not any profanity or anything like that, or disrespectful. Applicant said he did not want to see any of the witnesses, and again stated that he wanted to "waive any defense in reference to that proceeding," and wanted to "waive my right to not even be there." He stated he was "respectfully" ready to accept the jury's sentence when the time came. **{R 3516-18}** Applicant had no problem with standby counsel handling the witnesses and the objections, and he freely and voluntarily waived his right to be present. **{R 3518-20}**

The Court then discussed with the lawyers whether they had to wait for Applicant to be disruptive to exclude him. Standby counsel asserted that Applicant could waive his right to be present. **{R 3521-23}** The Court stated that was the question at issue but pointed out that Rule 16 of the South Carolina Rules of Criminal Procedure seemed to require a capital defendant's presence. **{R 3523-30}**

Ultimately, the judge concluded that Rule 16 required Applicant to be present. The Court offered to allow Applicant's father to sit at counsel table with Applicant, but Applicant declined. The Court then directed that the trial proceed, and stated it would continue to honor Applicant's desire to represent himself. {R 3532-36}

The next morning, after a detailed colloquy, Applicant again stated he still wanted to continue to represent himself, but he agreed that standby counsel could make objections and give a closing statement. {R 3538-42}

After an opening charge by the judge, the State began its sentencing phase case. As soon as the Solicitor asked his first question, Applicant stood up and recited, "Blessed be Yahweh, el Shaddai, Jehovah, God Almighty, the God of Abraham, Isaac, Ishmael, Jacob, and Jesus." The Court asked Applicant to take a seat, which he did, and the Solicitor tried to ask the question again. Applicant stood up a second time and recited the same religious phrase. At this point the Court ordered the jury to step out. {R 3548-51, 3553}

Applicant told the judge that he intended to continue to interrupt the proceedings. The Court noted that he had already warned Applicant about misbehavior, but was going to warn him one last time and that if he continued to misbehave, he would be removed from the Courtroom and placed in the back room. {R 3551-53} When the jury returned, the Court immediately gave a curative instruction. {R 3555}

Again, when the Solicitor started questioning, Applicant stood up and recited the same religious phrase. The Court ordered the jury out of the Courtroom, and put on the record that since Applicant repeatedly refused to behave, he would be put in the back room where there was a glass partition allowing him to see the proceedings and hear the

testimony. The Court noted that Applicant had authorized his counsel to make objections and give a closing statement. Applicant requested that the sound be turned off in the back room, but the judge said he could not do that – Applicant could cover his ears if he wanted. Again, Applicant asked to be “exempted from” or to “waive” the proceeding, but the Court denied his request, stating the rules required his presence. **{R 3555-60}** When the jury returned, the trial court gave another curative instruction. **{R 3566-67}** The sentencing phase then began.

After a couple of witnesses testified, the lunch recess was taken. The judge offered to let Applicant sit back at the counsel table, but Applicant told the Court he would rather remain in the back. Applicant said he could hear everything, and he would raise his hand if he could not. **{R 3596-97}**

After a number of further witnesses, the Court again invited Applicant to return to counsel table. Applicant again declined, saying he was “fine” in the back, that he could hear and see everything, and that he did not mind standby counsel operating on his behalf in a limited fashion. **{R 3681}** Witnesses continued for the rest of the day.

The next morning, the trial court asked Applicant if he would make outbursts if placed in court, and Applicant said he would. Applicant said he preferred to stay in the back room, and again said that he had no problem with standby counsel representing him in the limited fashion consistent with his desire not to present a case in mitigation. **{R 3738-40}**

Finally, at the close of the state’s case, the Court gave Applicant one last chance to present a case in mitigation, testify or give a closing statement. Applicant declined to present a case or testify, but agreed his counsel could argue in closing. **{R 3760-63}**

Upon inquiry, Applicant again stated he would not return to the front of the Courtroom without making outbursts {R 3765}

During the state's closing argument, Applicant apparently decided to participate again by twice making objections through his counsel. Despite these actions, Applicant still declined to return to counsel table, stating that he preferred to remain in the back {R 3789-90, 3795-97}. Applicant ultimately decided to return to the Courtroom – where he gave a fairly lengthy closing statement to the jury in which he personally apologized to the victim's families. Like his other arguments, the closing argument Applicant gave was logical, appropriate and relevant to the issues. After finishing his argument, Applicant returned to counsel table for the rest of the case {R 3829-40}. Applicant remained calm and coherent after the sentencing phase verdict, renewing his motions, apologizing to the family, and thanking the trial judge {R 3871-73}.

2 Direct appeal

Applicant also showed no difficulty in expressing himself to the Courts in the direct appeal proceedings. Unsatisfied with the efforts made by his appellate defender, Applicant filed a *pro se* "Motion to file an Amended *Pro se* Initial Brief" received by the South Carolina Supreme Court on April 5, 2005, in which he set forth eight issues he wanted to raise on appeal. Like his trial performance, all of the issues listed were at least somewhat appropriately raised issues on direct appeal, including claims of error as to the Batson motion, denial of the directed verdict motion, and introduction of inadmissible evidence. Applicant also filed a Motion to Proceed *Pro se* on Direct Appeal in All Matters ' dated

April 25, 2005.² The South Carolina Supreme Court denied Applicant's motion to represent himself on appeal by Order dated June 3, 2005. State v. Alkebulanyahh, 364 S.C. 583, 614 S.E.2d 626 (2005).

3 The inquiry at trial as to the waiver of counsel was sufficient and provides no basis for relief

Applicant next attacks the sufficiency of the Court's inquiry into his desire to represent himself as well as the Court's determination that Applicant's decision to waive counsel was knowingly and intelligently made. Freestanding claims as to waiver have been addressed in both direct appeal and PCR contexts. In the capital case of State v. Reed, 332 S.C. 35, 503 S.E.2d 747 (1998), the Court on direct appeal found the judge did not err in accepting waiver of the right to counsel where the trial court informed the defendant of the dangers over several hearings, but the defendant held firm. In an earlier case, the South Carolina Supreme Court, on direct appeal, remanded the case back to the trial court for a determination of whether the waiver of counsel was intelligently made. The case of State v. Dixon noted that the issue "could have been, and perhaps more properly should have been raised by way of post conviction relief," but decided to order a remand. See State v. Dixon, 269 S.C. 107, 236 S.E.2d 419 (1977).³

² These documents were also entered into evidence at the PCR hearing as Defendant's Exhibits 3 and 4.

³ Other cases have addressed waiver of counsel by conduct on direct appeal in situations where the defendant was tried *in absentia*. In State v. Fahey, 374 S.C. 92, 646 S.E.2d 445 (Ct. App. 2007), the Court on direct appeal rejected a defendant's claim that he was denied the right to counsel, finding the intelligent and experienced defendant had waived it by conduct, including his refusal to cooperate with his attorney, his filing of *pro se* motions and his dilatory tactics. See also State v. Pride, 372 S.C. 443, 641 S.E.2d 921 (2007) (defendant waived counsel by conduct where he failed to cooperate with public defender).

Consistent with Dixon, the issue has also been addressed in the PCR context, in cases where the record from trial was insufficient to show the proper inquiry had been made, or that the defendant had been appropriately advised of the dangers of self-representation. Thus, the PCR court (or the South Carolina Supreme Court on PCR appeal) had to look to the defendant's background and the PCR testimony to determine whether the defendant was adequately warned and advised from some other source. See, e.g. Watts v. State, 347 S.C. 399, 556 S.E.2d 368 (2001) (plea judge made no effort to advise defendant of dangers of *pro se* representation, and nothing in record or background showed that defendant was advised by some other source), Prince v. State, 301 S.C. 422, 392 S.E.2d 462 (1990) (PCR case finding record did not demonstrate defendant was made sufficiently aware of the dangers of *pro se* representation), Wroten v. State, 301 S.C. 293, 391 S.E.2d 575 (1990) (PCR case finding insufficient inquiry at trial and nothing in the PCR testimony or about defendant's background that would lead to conclusion that he was apprised of his rights by some other source), Bridwell v. State, 306 S.C. 518, 413 S.E.2d 30 (1992) (record shows trial judge gave defendant no warning of dangers of self-representation and there is no other evidence in the record showing the defendant was aware of the dangers some other way).

Thus, for PCR, I must look at two issues – first, the sufficiency of the record at trial, and second, any new evidence presented at PCR but not at trial that might have an effect

told public defender a private attorney would represent him and failed to appear for trial). However, in recent months the *South Carolina Supreme Court* issued an opinion in which it noted that the Farretta requirements were inapplicable in a situation in which the defendant failed to appear for trial despite adequate notice. State v. Roberson, --- S.E.2d ----, 2009 WL 982249 (2009).

on whether Applicant made a knowing and voluntary waiver. As set out below, I find the inquiry conducted at trial by Judge Pieper was more than sufficient, and this case is more akin to the Court's determination in Reed.

As documented in detail before, Judge Pieper engaged in repeated and extensive inquiries on the issue of *pro se* representation with Applicant. At the first hearing in which this issue was discussed in detail on July 25, 2003, Applicant noted his background, which included some college as well as a self-education process over the years about the criminal justice system. Additionally, Applicant had been provided a detailed packet by counsel containing information on the dangers of self-representation, and he admitted he had reviewed it.⁴ The judge warned Applicant of the "major consequences" of his decision. {R 3900} explained to him the advantages a lawyer could provide with regard to procedural and substantive matters, pointed out the benefit of having a more objective viewpoint from the lawyer, recited the old adage that "a person who represents himself has a fool for a lawyer," and cautioned Applicant that he would have to abide by court procedures and handle every aspect of the case without help from the judge. {R 3905-10} As previously stated, the judge also explained to Applicant that he may be shocked and dazed by a guilty verdict but regardless, he would have to continue on with sentencing and further, pointed out that Applicant would not have anyone to blame in PCR for his own decisions if they were erroneous. {R 3934-40} Applicant affirmed his desire to proceed despite the advice from the judge and the advice contained in the packet of information he was provided. {R 3945}

⁴ It was marked and introduced at that hearing as Court's 1 and is part of the record before this Court. {R 3955-56}

At the August 1, 2003 hearing, after the Blair hearing was concluded and the judge found Applicant competent, Applicant continued with his desire to represent himself, despite yet another lengthy discussion from the trial court in which the judge noted *pro se* representation was disfavored, and reiterated that Applicant might find himself overwhelmed, that he would not have the access to individuals a lawyer might, and reminded Applicant he would have to address a capital sentencing phase as well as the initial trial in the event he was found guilty {R 4055-61} Applicant then participated in a discussion of the limited role of standby counsel, demonstrating his understanding of the task of acting as his own lawyer {R 4061-69} Finally the judge gave Applicant one more chance to decide not to proceed *pro se* before finding that Applicant was freely and intelligently giving up his right to counsel and he did so with an understanding of the judicial system and the task he was facing {R 4071-73}

Having reviewed the record that Judge Pieper developed in this case, it is apparent that Applicant was more than adequately advised of the dangers of self-representation Judge Pieper found that Mr Alkebulanyahh s waiver was knowing and voluntary, the inquiry Judge Pieper conducted was sufficient under the law, and Judge Pieper came to that conclusion after extensive colloquies with and observations of Applicant It is also a well-known principle that the transcript of the plea proceeding is generally conclusive of any claims of misconceptions see Rayford v State, 314 S C 46 443 S E 2d 805 (1994) (record of plea proceeding, including applicant s answers to the trial judge's questions, clearly establishes that applicant could not have had misconceptions regarding sentencing)

4 Nothing presented at PCR calls into question the

validity of the waiver at trial

The only way Applicant could succeed on grounds that the waiver was invalid is if there was something new presented that would call into question the record from the trial. However, after a review of the testimony at trial and PCR hearing, this Court finds no such evidence.

In a PCR action, if the record fails to demonstrate the petitioner made an informed choice to proceed *pro se* with “eyes open” then, the petitioner did not make a knowing and voluntary waiver of counsel, and the case should be remanded for a new trial. See Watts v. State, 347 S.C. 399, 556 S.E.2d 368 (2001). As noted by the South Carolina Supreme Court in Sims v. State, 313 S.C. 420, 438 S.E.2d 253 (1993), “[t]here is a difference in the standards between competency and a knowing and intelligent waiver.” Id. (discussing Godinez v. Moran, 509 U.S. 389 (1993)). Godinez explained the distinction as follows:

The focus of a competency inquiry is the defendant's mental capacity, the question is whether he has the ability to understand the proceedings. The purpose of the “knowing and voluntary” inquiry, by contrast, is to determine whether the defendant actually does understand the significance and consequences of a particular decision and whether the decision is uncoerced.

509 U.S. at 401 n.12 (citations omitted)

It is also important to remember that determining whether a decision is “knowing” or “intelligent” does not mean the Court is to decide whether a decision is a good one. See State v. Brewer, 328 S.C. 117, 492 S.E.2d 97 (1997) (waiver of counsel “can be made intelligently, with an understanding of the consequences, without the decision itself being a wise one”).

Here, a review of the record from trial and the PCR proceeding confirms that

Applicant's waiver of counsel was knowing and voluntary. As set forth above, the colloquies by Judge Pieper were extensive and sufficient as to the waiver. Thus, Applicant must overcome the solemn admissions and statements he made on the issue during trial proceedings. See, e.g., Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity," and "representations of the defendant at [plea] hearing[s] constitute a formidable barrier in any subsequent collateral proceedings"), Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (transcript of guilty plea hearing will be considered to determine whether any alleged erroneous information from counsel was cured by information the trial judge conveyed at plea proceeding and applicant indicated to the judge that he understood the possible sentences and the terms of the plea agreement), Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (record of plea proceeding, including applicant's answers to the trial judge's questions clearly establishes that applicant could not have had misconceptions regarding sentencing).

a Waiver of counsel was knowing and intelligent

Here, the PCR record confirms that the waiver of counsel was knowing and intelligent. As previously stated, Applicant has a high school education and has taken some college course work. Applicant has had fairly extensive prior experience with the criminal justice system as a result of his prior convictions and incarcerations, and stated he studied criminal law during his previous stays in prison – even claimed to have done PCR work for other inmates. He described these efforts at the PCR hearing, and stated that he had the assistance in prison of older inmates who were mentoring younger inmates as to the law. {R 3900-05, PCR Tr 182-99}. The competency evaluation found Applicant was

of average intelligence with no neuropsychological deficits {R 4019, 4049}, which was reflected in the manner in which Applicant conducted the trial and discussed legal issues with Judge Pieper

Further a review of Applicant's various *pro se* motions submitted into evidence at the PCR hearing – as Applicant's 1, Applicant's 7, and Respondent's 1 through 4 – shows that Applicant could discuss legal issues and express his positions in writing in a fairly accurate manner, even if those positions were not necessarily the precise positions a trained lawyer would take Applicant was able to file the original PCR application, which raised a number of constitutional issues At the hearing, Applicant had a stack of documents relating to this case which he had organized and from which he was able to access information and documents during his testimony {PCR Tr 187-89} At the PCR hearing, Applicant admitted his understanding of the limited role of standby counsel and the prohibition against hybrid counsel once someone proceeds *pro se* and acknowledged his understanding that issues that could have been raised on direct appeal cannot be raised in PCR – both of which confirm his knowledge of the task he faced {PCR Tr 67-69, 209-11, 240-41} Accordingly there is nothing about Applicant's background or intelligence that would preclude him from understanding Judge Pieper's repeated colloquies on the nature of the right to counsel and the significance of waiving that right and proceeding *pro se*

Further, Counsel Thornton testified at his deposition that he and Applicant disagreed on the interpretation of the law and the validity or strategic viability of Applicant's legal defenses Counsel stated ultimately Applicant just decided to present the case he wanted to present and noted that he, too discussed the dangers of *pro se* representation with

Applicant {Thornton Dep 11-12, 28-29, 35-36}

Thornton echoed these sentiments as to his discussions with Appellant on legal issues at the PCR hearing, and stated that while he did not often agree with Applicant's interpretation of the law the discussions were logical and he saw no loss of contact with reality or lack of understanding {PCR Tr 288-290, 294-96, 300, 302-04} Counsel pointed out that he and Kelly sat down and talked with Applicant about the dangers of self-representation, but Applicant believed he could handle the case better than either of his appointed counsel {PCR Tr 309}

Counsel Kelly testified similarly in his deposition, stating both attorneys discussed with Applicant the dangers of self-representation but Appellant had made up his mind to represent himself Kelly also stated that while he might have disagreed with Applicant's interpretation of the law Applicant was competent and able to represent himself {Kelly Dep Pp 8-9, 11-12}

This Court finds the testimony of trial counsel credible Particularly in the context of the extensive record developed at trial, any suggestion from Applicant that he did not know what he was facing when he decided to represent himself is not credible Nothing presented at PCR would conflict with or call into question the decision made at trial that Applicant's waiver of his right to counsel was knowing

b The waiver of counsel was voluntary

Most of Applicant's complaints at PCR were aimed at a claim his waiver was not voluntary However, again, Applicant has a difficult burden to overcome his statements in the trial record, and there is nothing in the PCR record which would cause this Court to discount Applicant's repeated statements to Judge Pieper that his decision was voluntary

and without coercion {R 3907-08, 4061, 4069-70}

At the PCR hearing Applicant testified he dismissed his counsel in desperation, because he felt railroaded through the system. He dismissed his first set of appointed attorneys because of affiliations with law enforcement. After Kelly and Thornton were appointed, he did not trust Kelly because Kelly allegedly told him "if this was 25 years ago you would not make it in a courtroom." Applicant complained that he was insulted because Kelly told the mental health examiners to go easy on Applicant because he was 'retarded,' and Applicant disagreed with Kelly's statement that insanity was the only possible defense. Applicant told his counsel there was nothing wrong with him and felt betrayed by them for having him evaluated by Dr. Schwartz-Watts {PCR Tr 22-27, 38-49}

Applicant claimed he felt it was not really his decision to represent himself and he wanted a third set of attorneys. He admitted he knew he could not pick his attorneys based on race but he was hoping for an African-American one. He claimed he thought members of such organizations as the Klan, the Masons, and the Shriners would conspire to prevent him from getting a fair trial {PCR Tr 31-36}

Applicant testified he ultimately felt he needed to represent himself after some members of his family were accosted by a protester on the way to the Courthouse and after Kelly told him his argument that the officers violated the law in entering the house was not a good one. Applicant also saw on television the officers being inducted into the national memorial before he was tried, which he thought was improper since they had acted unlawfully in entering his house. He felt hopeless and compelled then to represent himself – although he said he would not have minded had the Court appointed new counsel a third time {PCR Tr 55-60}

Applicant also complained that he felt he had to represent himself because his attorneys had done no investigation as to his claims about the unlawful activities of the slain officers. He thought they should have conducted depositions or taken statements from witnesses while memories were still fresh. He felt his attorneys had presumed him guilty and would not present any defense other than insanity, and this “terrified” him. {PCR Tr 61-67}

As his testimony progressed, Applicant claimed the Court’s evaluator, Dr. Richard L. Frierson, told him if he did not cooperate he would be forcibly medicated, and this also ‘terrified’ him. He claimed he then tried to act as bright and intelligent as he could to avoid this. {PCR Tr 77-79}

This Court finds Applicant’s testimony not credible and rejects any contention that the careful, on-the-record waiver conducted by Judge Pieper at trial was anything but voluntarily made. A number of factors support this conclusion.

First, trial counsel refuted any of Applicant’s claims about the inadequacy of the course of the representation chosen by counsel or any allegations of racism or biased representation. Counsel agreed that Applicant was very concerned about racism and counsel assured him they were going to do everything they could to protect his rights. Thornton told Applicant he did not care what color he was, and pointed out to Applicant that he was in private practice with an African-American attorney. Thornton denied he or Kelly ever threatened or intimidated Applicant, and denied that he or Kelly ever told the mental health examiners Applicant was retarded or to go easy on him during the mental examination because he “wasn’t all there.” {PCR Tr 283-85}

Thornton also refuted a claim that he did no investigation, stating that he had a

couple of bankers' boxes of information, and that they hired two investigators in the course of their representation. Counsel never refused to show any discovery to Applicant. {PCR Tr 285-88} Thornton did agree that he told Applicant he did not think Applicant's Fourth Amendment defense would be a viable defense before the jury, and stated the attorneys discussed with Applicant the idea that mental health issues could be used to get a deal or a verdict for life in prison instead of death. However, Applicant was insistent that he wanted no part of mitigation or any mental health defense and was insistent that his Fourth Amendment defense would exonerate him. Thornton felt the attorneys' disagreement that a Fourth Amendment defense would be successful was the "straw that broke the camel's back" – and after that, Applicant wanted to handle the case himself. {PCR Tr 288-91, 296-97, 299}

As to the evaluation, Counsel stated they explained to Applicant they felt they needed to have a defense evaluator examine him since the Court was having one done and also felt they needed to have a Blair hearing despite Applicant's misgivings since there were conflicting reports. Counsel believed there needed to be at least some judicial determination of the issue. {PCR Tr 296-97, 299-300}

Ultimately, counsel stated Applicant continued to believe in his Fourth Amendment defense, and was able to discuss it logically with counsel, but counsel simply did not agree with his conclusions. Counsel noted Applicant was not the first client he had who thought he knew more than the lawyer, and believed that Applicant wanted to represent himself because Applicant thought he could do a better job than his attorneys. {PCR Tr 300-04} Thornton testified similarly in his deposition as to Applicant's desire to present the case the way he wanted to present it. {Thornton dep 11-13, 28-32}

Kelly felt that Applicant was competent to represent himself, and felt Applicant presented the case as he wanted despite Kelly's disagreement with Applicant's views on the law **{Kelly Dep 8-12}**

This Court finds counsel's testimony credible and finds it refutes much of Applicant's claims as to the course of events leading up to self-representation

Second much of Applicant's testimony on the issue is simply not credible in and of itself For example, while Applicant claimed he thought Kelly had deceived him because defense expert Dr Schwartz-Watts had been associated with the State in the past and claimed that Dr Frierson had terrified him by the suggestion of forced medication Applicant knew Dr Frierson worked for the State but told Judge Pieper at the trial that he thought Frierson was far more "unbiased" and professional" than the defense experts **{Tr 2943, PCR Tr 219-23}** While Applicant complained at PCR his lawyers were not communicating with him and denied he ever refused to see them his lawyers told Judge Pieper he was refusing to see them or cooperate with them which Counsel Thornton testified to at PCR, as well **{Tr 3912, PCR Tr 260, 268-69, 297}** More importantly, Applicant was examined at PCR on the fact that he did not mention many of his complaints at PCR including his distrust of Counsel Kelly based on the alleged comments made to Applicant – such as the comment that 25 years ago Applicant would not have made it into court and that he was "retarded" – to Judge Pieper as bases for his motion to represent himself **{Tr 3908-09, PCR Tr 260-65}** Applicant *did* tell Judge Pieper he wanted to represent himself because he thought the attorneys were lazy and incompetent and he could do 'a much, much better job than they would be able to" **{Tr 3909}** This is nearly identical to the complaint he made against both his appellate attorneys and his PCR

attorneys in his attempts to get them relieved {PCR Tr 265-73, Defendant's 3 & 4} Applicant has attempted to fire his appellate attorneys and his PCR attorneys for similar reasons, which arguably refutes any contention that he was forced against his will to fire his trial attorneys

This Court finds and believes that Applicant's decision to represent himself was voluntary and driven by his desire to present the case exactly the way he wanted, as well as Applicant's belief that he knew better than his attorneys. As Applicant told Judge Pieper, he was trying for a year to proceed *pro se* before he was finally allowed to do so – this was hardly a decision made at the last minute or with insufficient time for reflection {PCR Tr 4062-63}. There is, of course, no question that Appellant had some issues with Kelly and to a lesser extent Thornton. But this Court finds that there is nothing counsel did that was improper or would have caused a coercive environment such that Appellant's decision to represent himself would not be voluntary. Indeed, none of Applicant's complaints would even create a coercive environment such as would vitiate the decision he made on the record. The fact that counsel gave Applicant their best professional opinion – that his Fourth Amendment defense would not work – and the fact that counsel suggested a mental health defense or focus on mitigation, does not amount to coercion but good, honest and principled representation. See, e.g. United States v Lagrone 727 F.2d 1037 (11th Cir. 1984) (when a defendant pleads guilty relying on his counsel's best professional judgment, he cannot later argue that the plea was due to coercion by counsel).

Accordingly, this Court finds Applicant's decision to represent himself was knowing and intelligent, and nothing credible in the trial or PCR record disputes this.

5 There is no basis for relief as to competence to represent himself, even following *Indiana v Edwards*

The final issue this Court must address in this regard is the Applicant's contention as to his competence to stand trial and represent himself. This Court again finds nothing which calls Judge Pieper's decision at trial into question.

[T]he Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment." Faretta v. California, 422 U.S. 806, 807 (1975). However, due to our system's respect for the individual, a person may waive the right to counsel as long as the waiver is knowing, voluntary, and intelligent. *Id.* at 835; State v. Fuller, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999). Faretta allows a defendant to waive his right to counsel if the following conditions are satisfied: (1) the accused is advised of his right to counsel, and (2) he is adequately warned of the dangers of self-representation. Prince v. State, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990). In a PCR action, if the record fails to demonstrate the petitioner made an informed choice to proceed *pro se* with "eyes open," then the petitioner did not make a knowing and voluntary waiver of counsel, and the case should be remanded for a new trial. See Watts v. State, 347 S.C. 399, 556 S.E.2d 368 (2001).

Prior to the United States Supreme Court's decision in Indiana v. Edwards, 128 S.Ct. 2379 (2008), it was clear that a defendant found competent to stand trial had an absolute right to waive counsel. Our South Carolina Supreme Court has noted that there is no difference between the level of competence required to stand trial and the level required to waive the right to counsel, as long as the waiver is knowing and voluntary. Sims v.

State, 313 S C 420, 438 S E 2d 253 (1993) (discussing and quoting Godinez v Moran, 509 U S 389 (1993)) And, in State v Brewer, 328 S C 117, 492 S E 2d 97 (1997), the South Carolina Supreme Court reversed the decision of the trial judge to prevent a capital defendant from proceeding *pro se* In that case, the judge believed the defendant understood the dangers of self-representation but “for whatever reason failed to accept it ” The Court noted that “a determination by the trial judge that the accused lacks the expertise or technical legal knowledge to proceed *pro se* does not justify a denial ” Thus, the Court concluded that the trial judge violated the defendant’s Sixth Amendment right to proceed *pro se*

Brewer, Sims, and Godinez were all in existence at the time of Applicant’s trial and direct appeal However, just this past year, the United States Supreme Court issued Edwards which called into question the efficacy of the single competency standard and the absolute nature of the right of a competent defendant to represent himself In Edwards, an initially incompetent defendant was given mental health treatment and ultimately found competent to stand trial He wanted to represent himself but the trial court denied the request The judge there found that while the defendant was competent and could cooperate with his attorney his delusional disorder and schizophrenia precluded him from staying focused enough to represent himself However, the Indiana appellate courts reversed the decision, noting that they were bound by Godinez’s single competency standard, and Faretta’s statement that a state may not constitutionally hail a person into its criminal courts and there force a lawyer upon him, even when he insists that he wants to conduct his own defense ” Edwards v State, 854 N E 2d 42, 46 (Ind Ct App 2006) (quoting Faretta, 422 U S at 807) See *also* Edwards, 128 S Ct at 2382-83

The United States Supreme Court reversed the Indiana appellate court and upheld the trial court's ruling that the defendant was competent to stand trial but not competent to represent himself. Formulating the question before it as whether there was a "mental-illness-related limitation on the scope of the self representation right," the Court began by noting that the competence standard itself refers to the ability to consult with a lawyer and also that Faretta did not deal with the issue of the relationship between mental competency and self-representation because the defendant there had no such issues. The Court rationalized away Godinez's expression of a single competency standard by stating

Godinez involved a State that sought to permit a gray area defendant to represent himself. Godinez's constitutional holding is that a State may do so. But that holding simply does not tell a State whether it may deny a gray area defendant the right to represent himself - the matter at issue here.

Edwards, 128 S Ct at 2383-85

The Court concluded that while the " 'dignity' and 'autonomy' of [an] individual underlie self-representation" - there may be times where a defendant meets the competency standard for going to trial but lacks the ability to "carry out the basic tasks needed to present his own defense," and noted that allowing for self-representation in such situations would do nothing for the dignity of the individual, may compromise the defendant's right to a fair trial, and would call the integrity of the system into question. "Insofar as a defendant's lack of capacity threatens an improper conviction or sentence [which] undercuts the most basic of the Constitution's criminal law objectives, providing a fair trial." Thus, Edwards held

We consequently conclude that the Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. That is to say, the Constitution permits States

to insist upon representation by counsel for those competent enough to stand trial under Dusky but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves

128 S Ct at 2385-88

Therefore this Court interprets Edwards as only *allowing* a State to force representation on a 'grey area' defendant incapable of conducting trial proceedings – not as requiring the State to do so. And, of course, Edwards was not issued until after this trial and Brewer's admonition as to the absolute nature of the right to represent oneself was the law the trial court was bound to follow. However, even if Edwards was applicable to these proceedings, even though it was decided after this trial it would provide no basis for relief for Applicant.

Due process prohibits the conviction of a person who is mentally incompetent. Jeter v. State, 308 S C 230, 417 S E 2d 594 (1992). The test for competency to stand trial or continue trial is whether the defendant has the sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as a factual, understanding of the proceedings against him. State v. Kelly, 331 S C 132, 502 S E 2d 99 (1998). The defendant bears the burden of proving his incompetence by a preponderance of the evidence. McLaughlin v. State, 352 S C 476, 481, 575 S E 2d 841, 843 (2003).

First, any challenge to competence to stand trial is procedurally barred in PCR. No additional expert evidence of incompetency other than that presented at trial was given to this Court. No new mental health expert testified, nor did Applicant ever allege in his testimony that he did not understand the proceedings or have the ability (as opposed to the

desire) to consult with his counsel. A freestanding claim of competency can be a direct appeal issue. See State v. Weik, 356 S.C. 76, 587 S.E.2d 683 (2003); Sims v. State, 313 S.C. 420, 438 S.E.2d 253 (1993). And, issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993). Additionally, “a defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of effective assistance of counsel.” Faretta, 422 U.S. at 834, fn. 46.

Here the issue was fully litigated at trial, and the filing of a PCR is not an opportunity for this Court to relitigate and review *de novo* Judge Pieper’s decision to find Applicant competent after an extensive Blair hearing at trial. Indeed, a trial court in deciding Blair issues can believe one expert over another, and also can rely on its own observations of the defendant. State v. Weik, 356 S.C. 76, 587 S.E.2d 683 (2002).

Typically, in PCR the Court is reviewing new evidence of incompetence, and the PCR judge has the duty to weigh the credibility of the doctors who have testified as to the defendant’s competency to stand trial. See *e.g.* Hall v. Catoe, 360 S.C. 353, 601 S.E.2d 335 (2004). The South Carolina Supreme Court has upheld courts which determined competency where there was conflicting evidence, Hall, *supra*, and Weik, *supra*, and additionally, has reversed a PCR court that granted relief on incompetence where “(1) counsel testified at the PCR hearing that he had no trouble communicating with the defendant, (2) the trial transcript showed that the defendant clearly understood the questions asked and responded in an appropriate manner, and (3) a forensic psychiatrist evaluated the defendant prior to trial and found the defendant’s medical conditions did not

affect his mental state " Hall *supra*, (discussing McLaughlin v State, 352 S C 476, 575 S E 2d 841 (2003))

Here, the testimony surrounding the issue has been extensively set forth in subsection (1), *supra*. The expert testimony was more than sufficient to support a finding of competence, but on top of that, Judge Pieper had discussions with and observations of Applicant which this Court agrees confirm his competence to stand trial. Additionally Applicant showed he was competent to represent himself. As detailed before, while he may not have raised issues or interpreted the law in the manner a lawyer might (such as the Fourth Amendment defense), he was reasonably well-argued with his claims, and was able to examine witnesses, logically discuss issues with the Court, make arguments, and assert legal claims throughout the trial. He had studied the law in prison and at the PCR hearing was able to convey and articulate his claims from a large stack of documents and a huge record. **{PCR Tr 184-93}** Further, he was able to file motions and reassert his claims on appeal and PCR. **{PCR App 193-200}** He was able to give logical explanations for his trial decisions, such as his desire for the memory expert, and his cross-examination of Blake on her treatment by police and her issues with DSS. **{PCR Tr 200-06}** He discussed very cogently why he withdrew his motion to change venue, which was based on the fact that he ultimately decided he had a better chance with the community he knew. **{PCR Tr 230-33}** Counsel indicated they thought Applicant was competent and they had no problem communicating with him. Their discussions were logical, despite disagreements on the law. **{PCR Tr 292, 299-300, 302-04, Kelly Dep 8, 11-12, Thornton Dep 31, 34}**

The only issue that arose after Judge Pieper's Blair determination that requires further discussion is Applicant's outburst at the beginning of the sentencing phase. However, as described, this was an intentional decision, not an example of mental illness or psychosis. Applicant told the judge beforehand he was going to disrupt the proceedings and why. Counsel and the Solicitor all stated that Applicant did not suddenly go psychotic or lose touch with reality but merely stood up and calmly recited a religious phrase {PCR Tr 295-96, Kelly Dep 8, 11-12, Thornton Dep 24-25, Stone Dep }. This Court finds Applicant's action was a peaceful yet certainly disruptive protest against the judge's decision to require him to remain for sentencing rather than any evidence of mental illness, psychosis, or incompetence to either stand trial or represent himself at trial.

Therefore, this Court finds no credible evidence that Applicant was incompetent to either stand trial or to represent himself *pro se* under an Edwards analysis, and therefore, the issue is denied.

B Ground Two Directed Verdict Issue

Applicant has alleged that he was entitled to a directed verdict for several reasons. First, he alleges there was insufficient evidence to support his conviction for the murder of Deputy Coursen because the evidence at trial indicated that a bullet from Deputy Tate's gun hit Deputy Coursen in the back of the head {PCR Tr 85}. Second, he alleges he was entitled to a directed verdict because the identification testimony and evidence were insufficient to support the charges {PCR Tr 110}. Third, Applicant asserts there was generally insufficient evidence to support his convictions {PCR Tr 145}.

These directed verdict claims should be dismissed. These directed verdict claims are not viable claims for relief in PCR and should be dismissed as a matter of law. As

freestanding claims, they are not proper for PCR Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel) See also S.C. Code Ann. § 17-27-20(b) (Rev. 2003) (PCR is not a substitute for remedies available at trial or on direct review) Indeed, the PCR statute specifically precludes “collateral attack on the ground that the evidence was insufficient to support a conviction.” S.C. Code Ann. § 17-27-20(a)(6) (Rev. 2008)

C. Ground Three: Batson issues

Applicant raised two claims regarding jurors at the evidentiary hearing. First, he asserted that an African-American male juror, Matthew Young, was improperly dismissed during jury selection because the State claimed the juror knew a defense witness. {PCR Tr. 87-88, 128-35} The witness the juror knew was actually one of the State’s potential witnesses. {PCR Tr. 87-88, 128-35} Second, Applicant asserted that the State failed to provide an adequate reason for its strike of an African-American female juror, Edith Owens. {PCR Tr. 128-35} Applicant asserted the trial court was wrong in finding that Owens and a white female juror were similarly situated for the purposes of deciding whether the State’s explanation for the use of its strike was pretextual. {PCR Tr. 128-35} At trial, Applicant raised these same claims in his Batson motion after the jury was selected. {R. 1339-49}

These Batson claims should be dismissed. Batson claims are not viable claims for relief in PCR and should be dismissed as a matter of law. As freestanding claims, they are not proper for PCR. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application).

absent a claim of ineffective assistance of counsel) See also S C Code Ann § 17-27-20(b) (Rev 2003) (PCR is not a substitute for remedies available at trial or on direct review)

D Ground Four Ineffective assistance of Appellate Counsel

Applicant asserted that his appellate counsel were ineffective in their representation. Specifically, Applicant alleged that appellate counsel did not communicate with him regarding his direct appeal. At the evidentiary hearing, Applicant testified that he only recalled hearing from appellate counsel once, four months after his death sentence {PCR Tr 88}. He recalled asking Robert Dudek if he would assist him in requesting a mattress and some clothes {PCR Tr 88-89}. At the time, Applicant claims he was being held in a cell in a paper gown, and he was forced to sleep on the concrete floors because there was no mattress {PCR Tr 89-90}. According to Applicant, Dudek informed him that he would look into those concerns, but Applicant never heard from him again until after the South Carolina Supreme Court decided his direct appeal {PCR Tr 90}. Applicant further complained that appellate counsel never visited him, never submitted a form for him to contact them and he never had the opportunity to contact them {PCR Tr 90}. Applicant also noted that he was not pleased with the brief submitted on direct appeal because it did not include any issues from the guilt phase of the trial {PCR Tr 95}.

Both of Applicant's appellate counsel were deposed in this case. Robert Dudek, the Deputy Chief Attorney for Capital Appeals, testified that he has handled approximately twenty-five death penalty cases on appeal {Depo Dudek 7}. He noted that he did not meet with Applicant in person, but he recalled speaking with him on the telephone.

approximately three or four times {Depo Dudek 8-9} Only one issue was raised on appeal, which was whether Applicant should have been allowed to excuse himself from the sentencing phase of the trial {Depo Dudek 10} Dudek also testified that the fact that Applicant represented himself made it difficult to find preserved issues for the direct appeal {Depo Dudek 16} Dudek did not recall any appealable issue other than the one that was raised in the brief {Depo Dudek 17}

At his deposition Joseph Savitz testified that he did not recall meeting with Applicant in person {Depo Savitz 8} However he did believe that he had spoken with Applicant on the phone and that Applicant had written him {Depo Savitz 8} Savitz recalled that he had assigned the brief to himself and Dudek because they had the most experience handling capital cases {Depo Savitz 10} He remembered there were two other cases he had handled where the defendant acted *pro se* at trial {Depo Savitz 10} Savitz noted that Applicant waived a lot of issues by representing himself {Depo Savitz 14} He did not recall seeing any preserved issues in the transcript {Depo Savitz 14} but thought the issue they raised in the direct appeal was a good issue {Depo Savitz 14} Overall, Savitz did not believe that Applicant represented himself effectively at trial {Depo Savitz 19}

A defendant is constitutionally entitled to the effective assistance of appellate counsel Evitts v Lucey, 469 U S 387 (1985) A PCR applicant has the burden of proving appellate counsel's performance was deficient Anderson v State 354 S C 431 581 S E 2d 834 (2003) Appellate counsel is not required to raise every non-frivolous issue that is presented by the record, Tisdale v State, 357 S C 474 594 S E 2d 166 (2004), as

"[t]here can hardly be any question about the importance of having the appellate advocate examine the record with a view to selecting the most promising issues for review " Jones v Barnes, 463 U S 745, 752 (1983) Rather, appellate counsel has a professional duty to choose among potential issues according to their merit Id

To obtain relief a PCR applicant must show that appellate counsel's performance was (1) deficient, and (2) prejudice from the appellate counsel's deficiency Southerland v State, 337 S C 610, 615-16, 524 S E 2d 833 836 (1999) In other words, the applicant is required to demonstrate "that his counsel was objectively unreasonable in failing" to identify and argue present significant and obvious issues on appeal and "a reasonable probability that, but for his counsel's unreasonable failure he would have prevailed on his appeal " Smith v Robbins 528 U S 259, 285 (2000) (citation omitted) Although recognizing that "[n]otwithstanding Barnes, it is still possible to bring a Strickland claim based on counsel's failure to raise a particular claim" on direct appeal, the Supreme Court has recently reiterated that "it [will be] difficult to demonstrate that counsel was incompetent " Robbins, 528 U S at 288 Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome " Id (quoting Gray v Greer, 800 F 2d 644, 646 (7th Cir 1986) See *also* Bell v Jarvis, 236 F 3d 149, 164 (4th Cir 2000) (en banc)

This Court finds that the testimony of both of Applicant's appellate counsel was credible Furthermore, this Court finds the testimony of Applicant in regards to these claims was not credible Applicant's claim that appellate counsel was ineffective in not contacting SCDC about obtaining a mattress for Applicant s cell and clothing for Applicant is dismissed In this claim Applicant has failed to assert a deficiency in counsel s

performance that has resulted in Applicant's unlawful confinement. Furthermore, Applicant has failed to show that he was prejudiced by appellate counsel's inaction in regards to his request for a mattress and clothing. Clearly, he cannot show that the physical conditions of his confinement had any effect on the merits of his appeal. Since Applicant has failed to establish that appellate counsel was either deficient in their performance or that he was prejudiced in his appeal as a result, this claim of ineffective assistance of appellate counsel must be dismissed. Southerland, *supra*

Similarly, Applicant's claim that appellate counsel failed to communicate with him regarding his direct appeal is dismissed because it lacks merit. On this matter, this Court finds the testimony of appellate counsel credible. While appellate counsel did not meet with Applicant in person, both Savitz and Dudek testified that they spoke with Applicant several times during the pendency of his direct appeal. **{Dudek Depo 8-9, Savitz Depo 8}** This Court finds there was sufficient communication between appellate counsel and Applicant. This Court also finds that Applicant has failed to establish that appellate counsel were deficient in communicating with him. Applicant has also failed to establish that he was prejudiced by any lack of communication between appellate counsel and him. At the evidentiary hearing, Applicant testified that he was disappointed in the initial brief filed in his direct appeal because it did not contain any issues involving the guilt phase of the trial. **{PCR Tr 95}** However, he has failed to point out any preserved, meritorious issues that he would have requested appellate counsel brief in his direct appeal. As pointed out by both appellate counsel, it was extremely difficult to find preserved meritorious issues in the guilt phase of trial because Applicant represented himself, and he did not properly preserve issues for direct appeal at trial. **{Dudek Depo 16, Savitz Depo 14}** As a result, this

Court finds that appellate counsel was not ineffective in its communication with Applicant. See Southerland, supra. Therefore, this claim is dismissed.

Third, Applicant has failed to establish that appellate counsel was ineffective for not challenging the guilt phase of the trial. In support of this argument, it appears that Applicant is asserting there were preserved, meritorious challenges that could be made on what he calls his Fourth Amendment claim. Specifically, Applicant asserts that neither he nor his wife gave consent for the two deputies to search his bedroom. {PCR Tr 99} Appellate counsel need not raise matters not preserved for appellate review. Tisdale, 357 S C at 476, 594 S E 2d at 167. Applicant has failed to establish that he would have prevailed on appeal had these claims been raised. Thus, Applicant has failed to establish that appellate counsel was ineffective in their representation of Applicant. This claim is dismissed.

E Ground Five Fourth Amendment claims

At the evidentiary hearing, Applicant raised what he asserted were Fourth Amendment claims. Applicant asserted that the two deputies violated his Fourth Amendment rights by entering his private bedroom without consent. He asserted they had no warrant, no probable cause, and no exigent circumstance for their entry. {PCR Tr 99} He claimed that Brenda Smith did not have the authority to grant consent to a search of the house and specifically Applicant's bedroom. {PCR Tr 99-100} He further argued there was no evidence at trial that indicated the officers had a right to enter his home. {PCR Tr 100} According to Applicant, since the officers did not have authority to enter the bedroom, he was entitled to shoot them because he was acting in self-defense. {PCR Tr

101} In support of this argument, Applicant asserted that Kimberly Blake testified at a pretrial hearing she did not recall hearing the officers ask Ms Smith for consent to search the trailer {PCR Tr 117} Applicant also claimed there was no evidence that the officers asked Blake any questions before entering the bedroom {PCR Tr 118-19} In support of his firing shots at the officers, Applicant cited to State v Hewitt 31 S E 2d 257 and State v Davis, 51 S E 2d 86 {PCR Tr 119-20} Applicant also asserted that Ms Smith, as the landlord, did not have authority to consent to a search of the trailer under State v Lawton and U S v Whitfield, 939 F 2d 1071 {PCR Tr 120-21} Second Applicant raised a Fourth Amendment claim on the assertion that he was unlawfully arrested after the search {PCR Tr 164-65} This claim is based upon his belief that he, or someone acting in his defense lawfully shot the two deputies after they allegedly unlawfully entered his bedroom {PCR Tr 165}

All of Applicant s Fourth Amendment claims are denied At the close of Applicant s case at trial the trial court denied his motion to dismiss based on his claim that his Fourth Amendment rights were violated by the deceased deputies These claims are not viable claims for relief in PCR and should be dismissed as a matter of law As freestanding claims they are not proper for PCR Drayton v Evatt, 312 S C 4, 430 S E 2d 517 (1993)

F Ground Six Speedy Trial claims

Applicant initially raised claims that he was denied a speedy trial Those claims were withdrawn by Applicant at the end of his direct testimony at the evidentiary hearing {PCR Tr 180} Since Applicant has withdrawn these claims this Court dismisses them

accordingly

G Ground Seven Third-party Guilt Evidence

At the evidentiary hearing Applicant asserted that the trial court unlawfully restricted him from presenting evidence that he believed indicated a third-party was guilty of the murders. Specifically, Applicant wanted to present evidence that Bobby Rigby was the shooter. In support of his argument, Applicant claimed that Rigby was apprehended minutes after the shooting, he fit the description of someone seen at the scene trying to jump on the back of a pickup truck, and he was the only one who was not subjected to testing for gunshot residue and forensic evidence {PCR Tr 137-38}. Applicant alleged that the trial court prevented him from presenting evidence that Rigby had confessed to others that he was involved in the shooting, that Rigby was at the shooting, and that Rigby saw what happened that day {PCR Tr 138}. Applicant also asserted that his constitutional rights were violated as a result of the trial court's ruling that he could not ask law enforcement officials questions pertaining to third-party guilt {PCR Tr 139-42}.

These claims are not viable claims for relief in PCR and should be dismissed as a matter of law. As freestanding claims, they are not proper for PCR. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993).

H Ground Eight Newly discovered evidence

At the evidentiary hearing, Applicant asserted that he had newly discovered evidence that incriminated Bobby Rigby of the murders {PCR Tr 152-54}. Specifically, Applicant claimed that while he was on death row, he obtained a handwritten statement from someone whom he believed to be Eddie Brown {PCR Tr 154}. He could not positively identify Brown as the writer of the statement and the statement was not signed or

notarized {PCR Tr 152-54} According to Applicant, Brown and Rigby were roommates when this crime occurred {PCR Tr 153} Before trial, Applicant claims Brown gave him a handwritten statement which implicated Rigby as the shooter {PCR Tr 152} Applicant asserted that he believed this second, unsigned statement was also from Brown because the handwriting was similar {PCR Tr 152}

Applicant has failed to show that he was entitled to a new trial because of newly discovered evidence This issue is dismissed as a matter of law The standard for addressing motions for a new trial due to after-discovered evidence is as follows

Applicant must show that the after-discovered evidence (1) is such that it would probably change the result if a new trial were granted, (2) has been discovered since the trial, (3) could not have been discovered prior to trial in the exercise of due diligence (4) is material and (5) is not merely cumulative or impeaching

Johnson v. Catoe 345 S.C. 389, 548 S.E.2d 587 (2001)

First Applicant has not properly presented any alleged newly discovered evidence There was some discussion at the evidentiary hearing concerning a note that he discussed during his testimony However, this note was neither marked nor introduced as an exhibit at the hearing {See PCR Tr 155} Thus, there was no new evidence presented at trial to support this claim Second, even if the document Applicant alleges was newly discovered was properly tendered to the Court Applicant's testimony about the document clearly indicates it was inadmissible hearsay and it was not properly authenticated As already noted Applicant asserted the document was from Brown and that it was a statement that implicated Rigby as a possible suspect, but the statement was not notarized or signed Third, Applicant has failed to establish that this document warrants a new trial The presentation of this note would probably not result in Applicant's acquittal if a new trial were

granted. At best, this note was inadmissible hearsay, and based on Applicant's description of its contents, it was also inadmissible as improper evidence of third-party guilt because it does not present any information that was inconsistent with Applicant's guilt in the murders. Based on Applicant's testimony, it appears that the document only recounts the same information provided to Applicant in a document he received from Brown before trial.

Furthermore, it appears that the note was not material to Applicant's defense. The note did not indicate that Brown witnessed the shooting, or that he had any firsthand knowledge of anyone's involvement in the shooting. Based on Applicant's testimony at the evidentiary hearing, the note was cumulative to one that he received from Brown before his trial. Applicant testified that he had received a note with similar handwriting from one of Rigby's roommates, Eddie Brown. He indicated that Brown may have implicated Rigby as having some involvement in the shooting. A review of the record clearly indicates that Applicant was aware of Brown's allegations before trial. At the July 25, 2003 pre-trial hearing, Applicant informed the trial court that he wanted to subpoena Eddie Brown for trial. **{R 3954}** Considering Applicant's testimony that he received the first note before his trial, Applicant was on notice of the allegations made by Brown. Clearly, this new document was cumulative to what Applicant knew before his trial commenced. Overall, Applicant has failed to present any newly discovered evidence. To the extent that he attempted to offer such evidence at the evidentiary hearing, this Court finds that he has failed to establish that he is entitled to a new trial based upon that evidence. The evidence would not have led to a different result at trial, it was not material evidence. The alleged evidence was also cumulative to information available to Applicant before trial. As a result, this claim is dismissed.

I Ground Nine *Miranda* Violation

At the evidentiary hearing Applicant alleged that the police violated his Miranda rights. Specifically, he asserted that the police extracted a statement regarding the location of the murder weapon from him by putting a gun in his face and questioning him without reading him his Miranda rights {PCR Tr 155-57}. He further alleged that he raised this claim at trial in his motion to suppress the introduction of the SKS assault rifle at trial {PCR Tr 156-57}.

This Court finds this claim should be dismissed. This Miranda claim is not a viable claim for relief in PCR and should be dismissed as a matter of law. As a freestanding claim, it is not proper for PCR. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517.

J Ground Ten South Carolina Department of Corrections has interfered with Applicant's Access to the Courts

Applicant has alleged that the South Carolina Department of Corrections ("SCDC") has interfered with his right to access to the Courts. Specifically, Applicant alleges that SCDC has deprived him of his legal materials, forced him to sleep on concrete with no mattress, refused to mail documents on his behalf, and continually interfered with his ability to proceed *pro se* in his direct appeal {PCR Tr 169-175}. This claim is dismissed. It is not a viable claim for relief in PCR under the Uniform Post-Conviction Procedure Act, as codified in S.C. Code Ann. § 17-27-10 et seq.

Any person who has been convicted of or sentenced for, a crime and who claims

(1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State,

- (2) That the Court was without jurisdiction to impose sentence,
- (3) That the sentence exceeds the maximum authorized by law,
- (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice,
- (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint, or
- (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ motion, petition, proceeding or remedy

S C Code Ann § 17-27-20(a) (2008)

Applicant's complaints about SCDC do not fall within any of these bases for relief. Therefore, it is dismissed as a matter of law. Furthermore, to the extent that Applicant has asserted that SCDC's actions interfered with his fundamental right to act *pro se* in his direct appeal, Applicant's claim lacks merit. In addressing Applicant's request to proceed *pro se* on direct appeal, the South Carolina Supreme Court held that Applicant did not have either a federal or a state constitutional right to proceed *pro se* on direct appeal. State v. Roberts, 364 S C 583 588-589, 614 S E 2d 626, 629 (2005). Using its discretion, the Supreme Court declined to grant Applicant permission to proceed *pro se*. Thus, Applicant's claim that his fundamental right to proceed *pro se* on direct appeal was interfered with has no legal basis. This claim is dismissed.

K Ground Eleven Denial of Eighth Amendment, Fourteenth Amendment, and First Amendment rights when trial court did not allow him to exercise his religion during the course of the trial

Applicant asserted the trial court denied his First Amendment right to exercise his religion by holding Applicant's trial on Saturdays during the course of the proceedings.

{PCR Tr 178} Applicant noted that Saturday is the Holy Sabbath. He asserted that had he been allowed to practice his religion, he would have been more effective in preparing his defense because he would have been spiritually whole and more accountable mentally in the Courtroom. {PCR Tr 178} This claim is dismissed as a matter of law. It is not a viable claim for relief in PCR under the Uniform Post-Conviction Procedure Act as codified in S.C. Code Ann. § 17-27-10 et seq. *supra*. Reiterating the statutory language as previously stated, this claim does not fall within the parameters of the Uniform Post-Conviction Relief statute. As a result, Applicant's claim is denied and dismissed.

L. Ground Twelve: Box of bullets were inadmissible

Applicant appears to state that the trial court improperly allowed certain evidence to be introduced at trial. Specifically, he contends that a box of bullets that was not listed on the return to the search warrant was improperly admitted into evidence. {PCR Tr 108} This evidentiary claim is dismissed. Admissibility of evidence claims are not viable claims for relief in PCR and should be dismissed as a matter of law. As freestanding claims, they are not proper for PCR. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993).

IV

CONCLUSION

For the foregoing reasons, Applicant's Application for Post Conviction Relief is denied and dismissed with prejudice.

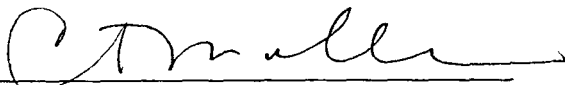
Applicant is hereby advised that if he wishes to appeal this Order, a notice of intent to appeal must be filed within thirty (30) days of the receipt of this Order. Applicant's

attention is also directed to Rules 203, 206 and 227 of the South Carolina Appellate Court Rules for appropriate procedures to follow after notice of intent to appeal has been timely filed

Therefore, it is ORDERED that

- 1 The application for post-conviction is denied and dismissed with prejudice
- 2 Applicant is remanded to the custody of the State of South Carolina

This 17th day of September 2009


Carmen T. Mullen
Circuit Court Judge

Beaufort, South Carolina