THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 06-CP-11-223

TYREE ROBERTS, SK6012
Aka ABDIYYAH BEN ALKEBULANYAHH .... Petitioner,

v.

STATE OF SOUTH CAROLINA .... Respondent.

APPENDIX
VOLUME XI OF XI

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INDEX

INDEX i

RECORD ON APPEAL 1

APPLICATION FOR POST-CONVICTION RELIEF 4535

RETURN 4569

AMENDED APPLICATION FOR POST-CONVICTION RELIEF 4562

AMENDED RETURN 4545

POST-CONVICTION RELIEF HEARING TRANSCRIPT 4599

EXHIBITS TO POST-CONVICTION RELIEF HEARING 4921

ORDER OF DISMISSAL 5176

MOTION TO REMAND FOR ADDITIONAL POST-CONVICTION PROCEEDINGS . . . 5230

RESPONSE IN OPPOSITION TO MOTION TO REMAND FOR ADDITIONAL POST-CONVICTION PROCEEDINGS 5261

REPLY TO RESPONSE TO MOTION TO REMAND FOR ADDITIONAL POST-CONVICTION PROCEEDINGS 5282

ORDER DENYING MOTION TO REMAND FOR ADDITIONAL POST-CONVICTION PROCEEDINGS 5297

MOTION FOR RECUSAL 5299

ORDER DENYING MOTION FOR RECUSAL 5303

1 discuss cases with us, with regards to his Fourth
2 Amendment issue. Not only did he have case law, but I
3 don't know what all is reflected in the record. He had
4 the former attorney general Charles Condon subpoenaed. I
5 actually got to do that subpoena myself for
6 Mr. Alkebulanyahh.
7 And at the time the reason that's relevant and you
8 could argue logical is that the attorney general at the
9 time had come out with his statement about basically just
10 a repeat of the castle doctrine, that you have no duty to
11 retreat in your home, and if somebody came into your home
12 you had a duty to resist them with deadly force, and
13 Mr. Alkebulanyahh's position was that since that was his
14 home and the officers, in his opinion, had no right to be
15 in the room, that he could have, although he never
16 admitted that he did anything, that he or someone else
17 could have resisted them with deadly force because they
18 had no right to be in there. So he called attorney
19 general.
20 Q. Okay. So I guess he was able to discuss these
21 things logically, you just disagreed ultimately on his
22 application of them, or his interpretation?
23 A. Yes, sir. There was no question he was able to
24 bring forth legal premises that he felt supported his
25 opinion, and, frankly, it's not the first time that I

1 have disagreed on a client on what their interpretation
2 of the law is.
3 Q. And I was going to ask you, is that something that
4 is comon in your history of criminal law --
5 A. When I do criminal defense work, sir, it's not
6 uncommon for them to bring their own law to the table.
7 It's also not uncommon for them to think they're smarter
8 than I am.
9 Q. And is that what Mr. Alkebulanyahh thought?
10 A. In my opinion, yes, sir. He felt like he was more
11 capable of handing the case than I was, and he was never
12 disrespectful to me nor I to him nor would I be now. I
13 ~~was ordered by Court to represent him, and I would have~~
14 done so or tried to do so to the best of my ability, but
15 the fact of the matter is that he wanted to control the
16 case and he thought he would better at it than I would.
17 MR. WATERS: I have nothing further, Your
18 Honor. Thank you.
19 MR. WALTERS: Beg the Court's indulgence,
20 Your Honor.
21 CROSS-EXAMINATION
22 BY MR. WALTERS:
23 Q. May it please the Court, Attorney Thornton, I
24 believe Donna Schwartz-Watts was one of the experts that
25 was retained by you and Mr. Kelly to evaluate

1 Mr. Alkebulanyahh; is that correct?
2 A. Yes, sir.
3 Q. All right. And I believe in her findings -- I
4 don't know if you've seen the testimony to revive your
5 memory, and of course her testimony was that she could
6 not give an answer as to his competence, his ability to
7 represent himself; is that correct?
8 A. I believe that was her testimony, yes, sir.
9 Q. And I believe her testimony was that she met with
10 him on three different occasions; first occasion he was
11 affable, she had a conversation with him and he talked to
12 her; second occasion, there was a dispute with regards to
13 ~~the videotape; is that correct?~~
14 A. That is my recollection, yes, sir.
15 Q. And I believe on the third occasion, that's when
16 she alleges that she was threatened.
17 A. That was her testimony, yes, sir.
18 Q. All right. And, of course, under the
19 circumstances, you question his cognitive ability. Of
20 course, you're not a psychologist or psychiatrist, but
21 you question it, and you said it is an evaluation and I
22 believe Attorney Kelly also agreed with you; is that
23 right?
24 A. Yes, sir.
25 Q. All right. And I believe there was a second

1 expert that you hired and that was Dr. McKee; is that
2 correct?
3 A. I believe that is correct, yes, sir.
4 Q. And Dr. McKee, I believe, his conclusions were
5 that, number one, that there had been a PAI done,
6 personal assessment of his inventories, and of course he
7 said there was additional testing that needed to be done;
8 is that correct?
9 A. Yes, sir.
10 Q. All right. And I believe that he leaned toward
11 the fact that he wanted to have a Minnesota Mult-Phasic
12 done; is that correct?
13 A. That's correct.
14 Q. So your position of representing
15 Mr. Alkebulanyahh, and also Mr. Kelly, and the two of you
16 questioned his cognitive ability, and the two experts
17 that you hired, they can't reach any conclusions; is that
18 right?
19 A. I think that is correct, yes.
20 Q. All right. Why at that time didn't you and
21 Mr. Kelly sit down and say, Well, do we need to hire
22 someone else? What needs to be done in order to draw
23 some type of conclusion with regards to the cognitive
24 ability of Mr. Alkebulanyahh?
25 In other words, what we're doing is that you're in

1 the same position you were in before you hired the
2 experts. It's inconclusive. What discussion went on
3 between you and co-counsel with regards to
4 Mr. Alkebulanyahh and his cognitive ability, after your
5 experts have no conclusion?
6 A. The fact that, number one, Dr. Donna
7 Schwartz-Watts, if memory serves me correctly, at the end
8 of the day, because she couldn't -- because she had
9 issues that she could point out for sure between the
10 first and second interview, I believe she testified at
11 the hearing that was held, his competency hearing, that
12 he was not competent.
13 So we had an opinion from her that he was -- that
14 he was not competent. So we had her, and I considered
15 Dr. Schwartz-Watts to be one of the preeminent people.
16 She's used by defense lawyers. I've used her before, and
17 so I had an expert who was going to say, at the hearing,
18 He's not competent.
19 That was, if not corroborated by it, certainly was
20 not contradicted by the problems of our other experts, so
21 in my opinion, we didn't need another expert, because he
22 was very unlikely to cooperate with anybody else, and I
23 already had somebody I considered to be one of the
24 preeminent people who was going to say he's not
25 competent. And she told that to the judge, which is why

1 we had the hearing.

2 So as far as I was concerned, we had an expert

3 that was going to say he wasn't competent. I didn't see

4 what would be gained by having another expert, especially

5 if the state had an expert going the other way, because

6 the risk you run, if you get another expert in and that

7 expert comes in and says he is competent, you also run

8 that risk.

9 Q. So the conclusion that is reached by Donna

10 Schwartz-Watts is not counter to what your intuition or

11 gut is telling you; it sort of confirms what you're

12 saying, that he is not competent to stand trial, and

13 ~~there is a possibility that there is some error; is that~~

14 correct?

15 A. I don't think that's correct, because I don't know

16 that I felt he was not competent to stand trial. I felt

17 there was enough of an issue with things dealing with his

18 past and with his -- basically, he refused to listen to

19 me, which, again, is not all that uncommon, but in a

20 death penalty case, I was not going to leave a stone

21 unturned and neither was Mr. Kelly.

22 So I think it would be incorrect to say that I

23 thought he was not competent. I thought there was a

24 possibility he may have some issues that needed to be

25 address, so I thought with Donna Schwartz-Watts saying he

1 was not competent, he was not going to get any better
2 than that.
3 Q. And relying on the information that was obtained
4 by your expert, was there ever a discussion by you and
5 Mr. Kelly that we have to stop this man from making this
6 motion before the Court to represent himself at that time
7 because of the information that was obtained from your
8 expert and some of the information that you were drawing
9 upon in your discussions with him?
10 Was there ever a discussion between you and
11 Mr. Kelly that said, We've got to stop this man, he's
12 going to hurt himself, and going before the Court and
13 asking to represent himself would be inappropriate?
14 A. Yes. And we had a discussion with
15 Mr. Alkebulanyahh, not based on just the competency
16 issue, although that was one of them now that we had
17 Dr. Donna Schwartz-Watts, but we talked to
18 Mr. Alkebulanyahh at length about the dangers of
19 self-representation, as the judge did at the hearing, and
20 that we were looking out for him, that there was no
21 conspiracy against him, that Mr. Kelly was looking out
22 for him, and that, you know, the long and short of it was
23 he thought he could do a better job and he wanted to take
24 control of his own case.
25 Q. All right. So when he appeared before the Court

1 and said, I want to represent myself, at that time, did
2 you and Mr. Kelly come before the Court and talk about
3 the fact that we have talked about the dangers of
4 representation, but, Your Honor, we got an expert here
5 that says there may be some impairment? In other words,
6 he's saying he is not competent to stand trial. We don't
7 belief this motion should be entertained by the Court?
8 A. Well, it wasn't entertained by Court until the
9 Court made the competency determination. In fact, what
10 we did was we put up our expert. They put up their
11 expert. I actually handled that hearing, and I did the
12 cross on Dr. Frierson, their expert, and I handled the
13 ~~direct of Donna Schwartz-Watts, and the Court went into~~
14 great length in questioning Donna Schwartz-Watts in
15 addition to my questions and in addition to I believe
16 Solicitor Murdock handling the cross in that case.
17 So we did put up a expert and said if the judge is
18 not going to let us dismiss us officially until he was --
19 until the judge made the determination of whether he was
20 competent or not, so yes, sir, we put up our evidence as
21 that he wasn't competent. We put up evidence that he was
22 competent.
23 He approached the judge -- if I remember right,
24 please correct me if I'm wrong. Y'all have the
25 transcripts. I don't have them in front of me, but if I

1 remember correctly, he actually made a statement to the
2 judge at that time he believed Dr. Frierson and not
3 Dr. Schwartz-Watts, so he sided with the state's expert
4 either at the hearing or after that. Once he was found
5 competent, then the judge did the affidavit that did the
6 relief.
7 MR. WALTERS: Beg the Court's indulgence,
8 Your Honor.
9 BY MR. WALTERS:
10 Q. Attorney Thornton, in the sentencing phase you're
11 required to participate; is that correct?
12 A. Yes. If I recall correctly -- and, again, forgive
13 me. It's been five years, but I believe Mr. Kelly spoke
14 first and delivered more of a factual closing argument
15 pointing out -- I think one of the things he concentrated
16 on, if I remember correctly, was the fact Kimberly Blake
17 should have also been held responsible because of her not
18 warning the two officers before they went in the room.
19 I then got up and did a closing, and my closing
20 then centered more on the fact that you, as the jury, can
21 give mercy just to give mercy. You don't have to have a
22 reason, and I think the last thing I said was, you know,
23 All we can ask that you temper your justice with mercy.
24 Q. I want to make sure I'm clear about the role that
25 you played. We don't have hybrid representation in the

1 state of South Carolina; is that correct?
2 A. No, sir.
3 Q. All right. And you were told that you were on
4 standby; is that correct?
5 A. Yes, sir.
6 Q. All right. But then in the sentencing phase, it
7 changed into a hybrid situation because you participated?
8 A. I don't think it changed into hybrid
9 representation. What I think, in my opinion, happened
10 was Mr. Alkebulanyahh said he wasn't going to
11 participate, and Judge Pieper, if I recall, asked him,
12 Well, do you want the lawyers to present this on your
13 behalf?
14 In other words, we weren't co-counsel. He wasn't
15 going to participate anymore, so we were in essence
16 reinstated to the state for that purpose at
17 Mr. Alkebulanyahh's request.
18 Q. All right. In light of the fact that you were
19 reinstated at Mr. Alkebulanyahh's request, the
20 information that you were aware of with regards to his
21 mental status, and I believe Schwartz-Watts alluded to
22 several issues -- one he had an enlarged head, was
23 degraded as a child, he cooked animals, his mother stated
24 that there was some erratic behavior, or she used the
25 term he was off.

1 A. Yes, sir.
2 Q. In addition to that, there was also testimony with
3 regards to Schwartz-Watts with regards to this flight of
4 emotion, going from being someone that she believed had a
5 mood disorder, that possibly was bipolar, and also
6 stating that she believed he was psychotic. I believe
7 that was the information that was provided by Donna
8 Schwartz-Watts; is that correct?
9 A. That's correct.
10 Q. All right. In light of the fact that during the
11 sentencing phase you're now back in the role of serving
12 as an attorney and Mr. Alkebulanyahh has made the
13 decision, I'm out of here. I'm going to punt the ball,
14 and Judge Pieper turns around and says that you and Mr.
15 Kelly are back in the role of serving as representatives
16 for the defendant, why wasn't that information introduced
17 as mitigation?
18 A. Because we didn't get back into it.
19 Mr. Alkebulanyahh was separated from the proceedings,
20 again, but I was with him and could have -- and basically
21 was acting, for lack of a better word, as a runner on his
22 behalf up until the very end, which was the closing
23 arguments and at that time -- and you would have to look
24 at the transcript, but at that time I believe is when the
25 judge asked Mr. Alkebulanyahh, Do you wish to, you

1 know -- do you wish to do closing? Do you not want to do
2 closing? You have the right to make a final statement,
3 and at that time I think is when it was decided that
4 Mr. Kelly would do the closing, I -- in other words, we
5 didn't do the whole sentencing phase. It was only at the
6 very end when we participated, other than I assisted him
7 with physically walking out, making an objection that he
8 wanted me to make.
9 Q. So what I'm getting at, based on the transcript,
10 is that toward the end of the sentencing phase is when
11 there was this withdrawal by Mr. Alkebulanyahh; is that
12 correct?
13 A. At the very end upon -- to do closing arguments, I
14 believe, yes, but you would have to look at the
15 transcript to be sure, but I believe it was, like, right
16 before we would have done closings.
17 Q. And let go through the procedure. Prosecutor goes
18 first to present their case?
19 A. Yes, sir.
20 Q. All right. And then I believe the defense is
21 allowed to put up any mitigating circumstances?
22 A. Yes, sir.
23 Q. All right. So you were last; is that right?
24 A. Yes, sir.
25 Q. And at that time when you're last in the process,

1 of course the last thing you do is the closing statement;
2 is that right?
3 A. Yes, sir.
4 Q. All right. But before you and Mr. Kelly would go
5 into your closing statement, there was an opportunity to
6 introduce this evidence with regards to him cooking
7 animals, the large head, being off, the defining of his
8 condition by Dr. Schwartz-Watts as being bipolar, mood
9 disorder, and, of course, him being psychotic.
10 Of course, this information could have been
11 introduced to the jury, showing that he had this history
12 over a prolonged period of time all of his life.
13 A. Yes, sir, it could have been. The problem with
14 that is Mr. Alkebulanyahh did not subpoena, nor did he
15 prepare any mitigation evidence whatsoever, which is why
16 we didn't do anything on his behalf until he requested us
17 to do it, which was at the very end, during closing.
18 That literally is all we did.
19 He did no prep work on mitigation. He had no
20 witnesses subpoenaed. He had nothing organized, nothing
21 planned. He hung his whole hat on walking in the guilt
22 phase or doing -- or winning on direct appeal. He did no
23 mitigation work whatsoever once he took over, nor did he
24 have anybody subpoenaed in mitigation, nor did he call
25 anybody in mitigation.

1 Q. But my question is, is that if you're brought in
2 and he is essentially withdrawn --
3 A. I think I understand the question. The answer is
4 no, we didn't present anything, because I didn't think it
5 was appropriate because when we were told to take over,
6 it was specifically to do the closings. That's it.
7 We did -- I did not present any evidence or
8 attempt to present any evidence in mitigation because
9 there were no witnesses subpoenaed and that was, in my
10 opinion, not my job. At the time when I took over, it
11 was to do the closings. We did two closings.
12 Mr. Alkebulanyahh got to get up in front of the jury and
13 deliver his final statement, and as I recall, his final
14 statement was, after I have just talked about mercy, he
15 got up and said, I don't want mercy, I want justice, and
16 that was the end of the case.
17 Q. Mr. Thornton, you heard the pretrial testimony of
18 Dr. Schwartz-Watts at the Blair hearing; is that correct?
19 A. I have had access to it. I don't have it with me,
20 no, sir, but I have had it, yes, sir.
21 Q. Nevertheless, but with regard to this trial
22 itself, Donna Schwartz-Watts had already testified with
23 regard to his behavior?
24 A. Yes, sir, that is true.
25 Q. So you could have proffered that testimony without

1 her being subpoenaed, and the Court could have considered
2 it or it could have been put before the jury; is that
3 correct?
4 A. That is correct, sir.
5 Q. All right. But it's your testimony at that time
6 you understood your role just to be close --
7 A. Yes, sir. I was there just to be standby counsel,
8 until such time as Mr. Alkebulanyahh asked the judge for
9 us to be able to deliver the closings for him, that is
10 correct.
11 Q. Did Mr. Alkebulanyahh approach you about
12 representing him?
13 A. Yes. We talked briefly -- what he wanted me to do
14 was he wanted to be, more or less, co-counsel with me,
15 and, in fact, I think he wanted to be lead counsel, and
16 he made the same statement, although it is nice now
17 because nobody calls me the young attorney anymore,
18 unfortunately, but Mr. Alkebulanyahh said because I was a
19 younger attorney and less experienced if I could assist
20 him in trying the case.
21 Q. Essentially, what he wanted to do was he wanted to
22 remove Mr. Kelly from the case --
23 A. And take over as lead counsel and have me be
24 second chair, and I told him two problems with that --
25 well, really, one main problem. It's hybrid

1 representation and that you cannot do.
2 Q. Right. But does that seem like the actions of a
3 man that wants to represent himself?
4 A. Yes, because he wanted control of the case.
5 Q. Or did he just want to get rid of Mr. Kelly?
6 A. In my opinion, no, sir. He wanted control of the
7 case, and when I told him that couldn't be done, he
8 removed us both. If that was a man that didn't want that
9 to happen, he wouldn't have removed us both. He wanted
10 control of the case, and he thought as a younger
11 attorney, and, in his opinion, less experienced attorney,
12 that I would more do as he asked than Mr. Kelly. He and
13 ~~Mr. Kelly -- their issues broke down a lot sooner than~~
14 Mr. Alkebulanyahh and mine did.
15 Q. But there were several things going on. One, he
16 wanted you as co-counsel, and he's not aware of the fact
17 that hybrid representation is not allowed?
18 A. Correct.
19 Q. All right. And, two, he simply wanted Mr. Kelly
20 removed from the case, but, of course, he could not try
21 the case by himself, and, of course, he could not have
22 hybrid representation, and, of course, you did not meet
23 the qualifications to be lead counsel; is that right?
24 A. That's correct.
25 Q. All right. But does that seem like the actions of

1 a man that wants to go forward and represent himself?
2 A. Yes.
3 MR. WALTERS: Okay. I have no further
4 questions, Your Honor.
5 MR. WATERS: Nothing further, Your Honor.
6 THE COURT: You can step down. Thank you.
7 Anything further from the state?
8 MR. WATERS: Your Honor, there is only one
9 issue I need to bring up real quick, and because the way
10 the issues have developed in this, I would like to have
11 Dr. Frierson's reports admitted as well. He, of course,
12 testified in the Blair hearing, but Dr. Schwartz-Watts'
13 report is attached to one of the depositions, I think
14 it's only right we have Dr. Frierson's, and the only
15 reason I don't have it right now is because I tried to
16 get it from the clerk, and the evidence had been sealed.
17 THE COURT: Was it not in the trial
18 transcript?
19 MR. WATERS: It's in the trial, it's been
20 attached, but I'm only saying I don't have one for you to
21 look at right now.
22 THE COURT: I have the entire trial
23 transcript I got about a year ago, maybe.
24 MR. WATERS: His testimony is in there, but
25 his report, which is a little bit more detailed, is not

1 and that is what I would like --
2 THE COURT: When you get it, I'll be glad to
3 receive it. No objection to that, is there?
4 MR. WALTERS: No objection.
5 MR. WATERS: I guess what I would need to do
6 is send a proposed order to you allowing us to get that
7 from the clerk.
8 THE COURT: That would be fine.
9 MR. WATERS: And I tried to get one from the
10 solicitor; unfortunately, they were not able to put their
11 hands on it.
12 THE COURT: Okay.
13 MR. WATERS: With that, I believe that is the
14 state's case, Your Honor.
15 THE COURT: All right. Anything further,
16 then?
17 MR. WALTERS: No, sir, Your Honor.
18 THE COURT: All right.
19 Well, that will conclude then all the
20 testimonial portions of this hearing. We have got to
21 receive in the depositions that are being transcribed,
22 and then I will give each side -- in lieu of making
23 closing arguments today, we'll just draft proposed
24 orders, and I'll give you 60 days from the time we get
25 the transcribed depositions in.

1 Right now, I just got a calendar for the 15th
2 of December, just to have something to refresh my memory
3 on it, if when we get it in, we'll just move that back a
4 little bit, and that is a date for us if we run into any
5 kind of scheduling problems, you just let me know. We'll
6 work with you.
7 Thank you for your cooperation and I think
8 everyone did an excellent job. Thank you.
9
10 - - -
11 (Whereupon, the proceedings were concluded.)
12 - - -
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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth 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 evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the October 13-14, 2008.

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

January 23, 2009

Circuit Court Reporter

COURT OF COMMON PLEAS & GENERAL SESSIONS

EXHIBIT RECORD & RECEIPT FORM

CASE TITLE [illegible] vs. [illegible]

DOCKET # 07-CP-07-0716, 4247

Plaintiff's Exhibits

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS
1. [illegible]	1. Handwritten document
2. [illegible]	2. Handwritten document
3. [illegible]	3. Bill Statute (3) Letters & Motion
4. Newspaper Article	4. Motion to dismiss attorney
5. Newspaper Article	5.
6. [illegible] Statement	6.
7. Arrest Appeal	7.
8. Deposition of Joseph [illegible]	8.
9. Depo of Robert Dudek	9.
10. Depo of Dr. [illegible]	10. Courts
11.	11. Motions filed
12.	12. by appellant
13.	13. ~~Newspaper article~~
14.	14.
15.	15.
16. (★) Exhibit 1	16. [illegible] 10/13/08
17. returned by	17.
18. Mr. Walters	18.
19.	19.
20.	20.
21.	21.
22.	22.
23.	23.
24.	24.
25.	25.

[signature]
COURT REPORTER

10/13/08
DATE

Caroline C. [illegible]
CLERK RECEIVING EXHIBITS

PAGE ____ OF PAGE ____

IN THE UNITED NATIONS
FOR THE COMMISSION ON HUMAN RIGHTS

TO : UNITED NATIONS HEADQUARTERS
COMMISSION ON HUMAN RIGHTS
UNITED NATIONS PLAZA
NEW YORK, NY 10017

RECEIVED
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Answered ____________

ADD. : WORLD AND, UNITED STATES ORGANIZATION
AND JUDICIARIES

ATTORNEY GENERAL'S OFFICE
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ADMINISTRATIVE INSTRUCTIONS
FILE ____ OPEN ____ END
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____ ORDER: ____ TRANSCRIPT
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FROM : ABDIYYAH BEN ALKEBULANYAHH
AND FELLOW PRISONERS

ADDRESS : DEATHROW LIEBER
P.O. BOX 205
RIDGEVILLE, SOUTH CAROLINA 29472

DEFENDANT'S EXHIBIT 1 10/14/10

COME NOW, ABDIYYAH B. ALKEBULANYAHH, JOSEPH LEE ARD, CALVIN SHULER, DENISANA J. CRISP, JOSEPH GARDNER, ____, ____, ____, ____

AND DECLARE THAT WE HAVE BEEN VICTOMS (VICTIMS) AND WITNESSES TO MURDER, KIDNAPPING, ASSAULTS, PRISONERS ABUSES AND DEPRIVED OF MEDICAL AND THE JUDICIAL PROCESS CONSPIRATORIALLY UNLAWFULLY. WE DESIRE TO EXERT AND SHOW THE FOLLOWING:

1) THE PERPETRATORS ARE BUT NOT LIMITED TO:

GOVERNOR MARK SANFORD OF THE STATE-NATION SOUTH CAROLINA; DIRECTOR OF DEPARTMENT OF CORRECTION, JON OZMINT; EMPLOYEES OF THE DEPARTMENT OF CORRECTION - DEATHROW WARDEN, STAN BURTT; MCKA-THER BODISON; FRED B. THOMPSON; THIERRY NETTLES; J.C. BROWN; DEBBIE TURNER-KELLY, CHARLES WHITTEN; WILLIAM DORSAY; L. CARRINGTON; PHYSICIAN-NURSE PALMER; ERNEST WILSON; TIMOTHY CLARK; LEWISTON MILLER; PATRICIA HOVEY AND THE [illegible]

2) UPON AND AFTER ENTRY INTO PRISON FACILITY PRISONERS ARE DEPRIVE OF ALL LEGAL MATERIALS, TOTAL ACCESS TO COURT, ATTORNEYS AND FAMILY FOR WEEKS AND MONTHS (FOR EXAMPLE, PRISONER IS PLACE IN CELL WITHOUT MATTRESS, RUG, BLANK-ET, WRITTING MATERIALS, LEGAL MATERIALS AND ALL HYGIENIC ITEMS AND PRODUCTS. PRISONER IS CLAD IN EITHER A PAPER-GOWN, UNDERWEAR (BOXER) ~~AND~~ OR ONLY AND OCCASIONALLY NUDE

3) PRISONER IS FORCE TO SLEEP AND REMAIN ON THE [illegible] FLOOR IN THE COLD WITH A BRIGHT LIGHT SHINING (ON) TWENTY-FOUR HOURS A DAY WHILE BEEN VIEWED BY WOMEN GUARDS IN THIS MOST TORTURES AND HUMILIATING CONDITION

4) PRISONER ARE ATTACKED PHYSICALLY IN ASSAULTING MANNERS AND SPRAYED WITH GAS WITHOUT PRO-VOCATION; SUSTAINING PERMANENT INJURIES THAT WILL NOT/IS NOT TREATED OR DOWN-PLAYED AS INSIGNIFICANTE.

5) PRISONER IS PLACE IN HANDCUFF OR RESTRAINTS THEREAFTER, MALICIOUSLY ATTACKED OR/AND GAS

6) PRISONERS ARE BRUTALLY ASSAULTED THEN THEREAFTER [illegible] BY PRISON GUARDS:

SHAVED BALD <u>ALL</u> THE HEAD AND FACIAL HAIR (FOR EXAMPLE THE BRUTAL INCIDENTS WITNESSED BY 30 OR MORE DEATHROW INMATES THAT OCCURRED ON MAY 18, 2004 AND SEPTEMBER 26, 2004)

7) SELECTIVE PRISONERS ARE LOCKED WITHIN A TWO FEET BY TWO FEET SHOWER STALL THEREAFTER [illegible] CONTROL [illegible] MECHANISM [illegible] AND SCALDS PRISONERS, THESE INCIDENT GOES UNREPORTED AND MEDICAL [illegible] MAY BE ADMINISTERED BY OFFICERS OR PRISON GUARD. (NOTE: HOT AND COLD WATER DO FLOW OUT AND ARE [illegible] OF ONE WATER LINE. IT IS PRESUMED THAT THE SCALDING TAKE PLACE; THIS IS THE EXCUSE OF PRISONER GUARDS TO PRISONERS.)

8) THE PLACE OF MY DETENTION (HOUSING) IS A DELAPIDATED, ROACH AND VERMIN INFESTED BUILDING

9) THE STATE OF SOUTH CAROLINA HAS MURDERED AND CONTINUOUSLY CONTINUE TO KILL PRISONERS VIA NOT AFFORDING PRISONERS LEGITIMACY TO THE JUDICIAL PROCESS, FREEDOM FROM TORTURE AND ABUSE. FOR EXAMPLE WE ARE DENIED THE UNITED STATES OF AMERICA STANDING LAWS:

A. UNITED STATES CONSTITUTIONAL FIRST AMENDMENT, ACCESS TO COURT AND FREEDOM OF RELIGION

B. UNITED STATES CONSTITUTIONAL FIFTH AMENDMENT, DUE PROCESS IN CRIMINAL PROCEEDINGS AFTER [AND BEFORE] CONVICTION

C. UNITED STATES CONSTITUTIONAL EIGHTH AMENDMENT, FREEDOM FROM CRUEL AND UNUSUAL PUNISHMENT

D. UNITED STATES CONSTITUTIONAL FOURTEENTH AMENDMENT, EQUAL PROTECTION OF LAW AND DUE PROCESS

PETITIONER ACTION SEEKED :

1. THAT THIS PETITION AND COMPLAINT BE PRESENTED AND HEARD BEFORE THE UNITED NATION ORGANIZATION

2. THAT THE U.N. AND ORGANIZATIONS WHOM THIS PETITION MAY CONCERN REQUEST THE PRESIDENT OF THE UNITED STATES OF AMERICA, THE UNITED STATES SUPREME COURT JUSTICES AND THE GOVERNOR OF THE STATE-NATION SOUTH CAROLINA TO TERMINATE KILLING PRISONERS AT LEAST TILL AFTER A THOROUGH INVESTIGATION AND REPORT

3. THAT ALL THE PRISONERS AND UNDERSIGNED HEREIN AFFIXED BE BROUGHT BEFORE A COMMISSION, JUDICIARY BOARD OR LIKE TO GIVE TESTIMONY AND PRESENT EVIDENCE OR PROOF TO THE FACTS MANIFESTED HERE-IN AND ASSERTED

4. THAT ATTORNEY(S) OR LIKE BE ASSIGNED TO REPRESENT US BECAUSE WE ARE NOT ABLE TO AFFORD OR PAY THE COST THERE FOR REPRESENTATION

5. THAT UPON BEING FOUND TO BE TRUE HERE-IN THAT PERPETRATORS BE INDICTED AND CHARGED WITH VIOLATION OF THE 'CONVENTION AGAINST TORTURE' OR FEDERAL ANTI-TORTURE STATUTE, MURDER, KIDNAPPING, ASSAULT, DERELICTION OF DUTY AND ABUSE OF PRISONERS

6. THAT UNTILL AT LEAST THIS MATTER IS JUDICIALLY AND OFFICIALLY RESOLVED THAT NONE OF THE UNDERSIGNED PRISONERS BE MURDERED AS RETALIATORY MEASURE FOR COMING FORTH AND ACCUSING THE PERPETRATORS OPENLY, TRUTHFULLY

CONCLUSION:

PRISONER, ABDIYAH BEN ALKEBULANYAHH #[illegible] WAS IN HIS HOME INSIDE HIS AND HIS WIFE BED-ROOM WHEN TWO POLICEMEN ENTERED INSIDE HIS BEDROOM ILLEGALLY WITHOUT ARREST WARRANT, SEARCH WARRANT, PROBABLE CAUSE OR HIS OR HIS WIFE PERMISSION. THEREAFTER, INITIATED SHOOTING BY SHOOTING MR. ALKEBULANYAHH TWICE ATTEMPTING TO MURDER HIM. THE TWO WOULD BE MURDERERS WAS BOTH KILLED (NOT BY MR. ALKEBULANYAHH). MR. ALKE-BULANYAHH HAD NOT VIOLATED ANY LAW NOR WAS CHARGED FOR VIOLATING ANY LAW BEFORE THE TWO POLICEMEN WHO ENTER HIS BEDROOM WITH "THEIR HANDS ON THEIR GUNS".

SINCE MR. ALKEBULANYAHH IS A POLITICAL PRISONER FOR THE NATURE OF HIS OFFENSE, HE HAS BECOME HE HAS BECOME THE CENTER OF THE PRISON OFFICIALS AND GUARDS MACHINATION AND HAS SUFFERED ALL THE EXTREMITIES AND UNLAWFUL ACTS HERE-IN (SUPRA) DECLARED EXCEPT PHYSICAL DEATH.

THEREFORE, MR. ALKEBULANYAHH IS REPRESENTATIVE AND IDEAL AS PROOF AND TO PROVE ALL OF THE FACTS HERE-IN ASSERTED. THE PATTERN OF OFFICIALS UNLAWFULNESS AND INHUMANITIES.

WE BEGS AND PRAYS FOR JUSTICE AND HUMAN RIGHTS. WHATSOEVER THESE MATTERS MAY CONCERN WE DESIRE TO HEAR FROM YOU AND, ASK THAT EXPEDITIONARY MEASURES ARE ADOPTED ON ACCOUNT OF 'LIFE AND DEATH' CIRCUMSTANCES.

[WE] DO FURTHER SWEAR UNDER AND BY THE PENALTY OF PERJURY FOREGOING IS TRUE AND CORRECT.

THIS 25 DAY OF OCTOBER 2004.

RESPECTFULLY

/s/ [illegible signature]

WITNESSES AND VICTIM:

[illegible signature] ABDIYAH BEN ALKEBULANYAHH #[illegible]

(CONTINUE - WITNESSES AND VICTIMS)

Joseph Lee Ard — Joseph Lee Ard #5038
Calvin Shuler — Calvin Shuler #5069
[illegible] Craig — Deanson Craig #6004
Joseph [illegible] — Joseph Gardner #5027

CERTIFICATION

THIS IS TO CERTIFY THAT A SIX PAGE PETITION/COMPLAINT TITLE 'IN THE UNITED NATION FOR THE COMMISSION ON HUMAN RIGHTS' WAS PLACE IN A SEAL ENVELOPE AND MAIL VIA U.S. POSTAGE WITH CORRECT POSTAGE TO: UNITED NATION [illegible] HEADQUARTERS, [illegible] OF HUMAN RIGHTS, UNITED NATIONS PLAZA, NY, NY [illegible]; AMNESTY INTERNATIONAL USA, 600 PENNSYLVANIA AVE. SE, WASHINGTON, DC 20003; ACLU OF SOUTH CAROLINA, 1338 MAIN ST., STE. 800, COLUMBIA, S.C. 29201; CENTER FOR CAPITAL LITIGATION, C/O TERESA L. NORRIS, ESQ., P.O. BOX 11311, COLUMBIA, S.C. 29211; THE WHITE HOUSE, C/O THE PRESIDENT, 1600 PENNSYLVANIA AVE. N.W., WASHINGTON, D.C. 20500; GOVERNOR MARK SANFORD, 1205 PENDLETON STREET, ROOM [illegible], COLUMBIA S.C. 29201; [illegible] ATTN. GEN. BRADSE, P.O. BOX 11549, COLUMBIA, S.C. [illegible]; SUPREME COURT OF THE UNITED STATES, WASHINGTON D.C. 20543; U.S. DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION SPECIAL LITIGATION SECTION - PHB, 950 PENNSYLVANIA AVENUE N.W., WASHINGTON D.C. 20530.

THIS 25 DAY OF Oct 2004.

AND FURTHER SWEAR BY PENALTY OF PERJURY FOREGOING IS TRUE AND CORRECT.

[signature] 12/5/08

RESPECTFULLY
// [signature]
P.O. BOX [illegible] RIDGEVILLE, S.C. 29472

IN THE CHIEF OFFICES OF THE FEDERAL AND STATE GOVERNMENT IN THE UNITED STATES

ATTORNEY GENERAL'S OFFICE
RECEIVED 3-27-08
ADMINISTRATIVE INSTRUCTIONS
FILE ___ OPEN ___ END
COPIES MADE
ROUTE TO ___
ORDER ___ TRANSCRIPT
PEN RECORDS ___ CLERK RECORDS
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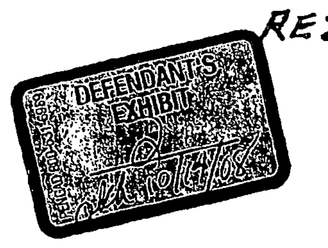
RECEIVED
MAR 27 2008
Referred to Zelenka
Answered ___

DATE: MARCH 20, 2008

TO: SOUTH CAROLINA ATTORNEY GENERAL, CHIEF, HENRY D. MCMASTER, P.O. BOX 11549, COLUMBIA, SOUTH CAROLINA 29211

FROM: ABDIYYAH BEN ALKEBU-LANYAHH, SK6012 — LIEBER DEATH ROW, P.O. BOX 205 RIDGE-VILLE, SOUTH CAROLINA, 29472



RE: DEMAND FOR EXONERATION AND RELEASE FROM FALSE IMPRISONMENT AND WRONG-FUL CONVICTION AND UN-LAWFUL DEATH SENTENCE, NOW!

DEAR MR. ATTORNEY GENERAL,

I AM PR., ABDIYYAH BEN ALKEBULAN-YAHH THE ABOVE NAMED AND BELOW SIGNED PETITIONER HEREIN. I AM DEMANDING MY RELEASE FROM FALSE IMPRISONMENT,

WRONGFUL CONVICTION AND UNLAWFUL DEATH SENTENCE INWHICH THE UNITED STATES GOVERNMENT HAS NEFARIOUSLY IMPOSED ON ME.

BECAUSE, I AM UNQUESTIONABLE INNOCENT OF THE FALSE CHARGES LEVIED UPON ME, WHICH I WAS CONVICTED OF IN THE YEAR 2003 OF OCTOBER. THEREFORE, I AM DEMANDING MY RELEASE FROM FALSE IMPRISONMENT AND WRONGFUL CONVICTION.

FOR I HAVE THE RIGHT TO DEMAND, FOR I AM RIGHT AND THE GOVERNMENT IS ABSOLUTELY WRONG, MURDEROUSLY WRONG.!

MY ARREST AND CONVICTION **WERE** BASED EXCLUSIVELY UPON THE GOVERNMENT DEPRIVING ME OF A BASIC CONSTITUTIONAL RIGHT, 'A RIGHT TO PRIVACY' TO DWELL IN THE SAFETY AND SECURITY OF MY HOME UNINTERRUPTED BY THE GOVERNMENT EXCEPT UPON ARREST WARRANT OR SEARCH WARRANT OR EXIGENT CIRCUMSTANCE OR PROBABLE CAUSE.

THE CASE BEING, TWO ROGUE SHERIFF DEPUTIES MISCREANTS UNLAWFULLY ENTERED MY RESIDENCE, THEN 'BREAKIN' MINE'S AND MY WIFE'S PRIVATE OWN BEDROOM, WITHOUT ANY WARRANT NOR ANY EVIDENCE OF A WRONGDOING, WERE OR HAD OCCURED.

THEN AFTER THE TWO MISCREANT DEPUTIES BREAKIN MINE'S AND MY WIFE'S PRIVATE BEDROOM THEY UNLAWFULLY VIOLENTLY ASSAULTED ME WITH

INTENT TO KILL ME BY SHOOTING ME TWICE AND LEAVING SEVERAL OTHER BULLETS HOLES IN THE CLOTHING I WERE WEARING.

SUBSEQUENTLY TO THAT EVENT, THE GOVERNMENT DID INFLICTED GRIEVOUS SUFFERING AND PAIN UPON MY INNOCENT WIFE AND UPON TWO OF MY INNOCENT MINOR CHILDREN, PARTICULARLY, BY ARRESTING AND TAKING THEM INTO POLICE CUSTODY UNLAWFULLY AND UNJUSTIFIABLY.

RIP RIP APART FROM EACH OTHER, MY WIFE, MY TWO MINOR CHILDREN AND MYSELF [illegible] THEN ENCAGED AND CONFINED OR IMPRISONED BY THE UNITED STATES GOVERNMENT, IN THE YEAR OF 2002 EXACTLY AS BLACK SLAVES BEFORE 1862 IN AMERICA.

WHEREAS, MINE'S, MY WIFE AND TWO OF MY LITTLE CHILDREN HUMAN AND CIVIL RIGHTS WERE STRIPPED AND REDUCED TO THE LEVEL OF THE BLACK SLAVES IN SLAVERY BEFORE THE AMERICAN CIVIL RIGHTS ACT AND BEFORE THE AMERICAN CIVIL WAR.

NOW, THE JURORS THAT WERE BIAS OR RACIST WERE COMPOSED OF: **10** CAUCASIANS, **1** BI-RACIAL WOMAN AND **1** PROUD NEGRO WHOM WERE MARRIED TO A CAUCASIAN/WHIE WOMAN.

NEVERTHELESS, THE **EXACT** FACTS AND TRUTH ARE ON THE GOVERNMENT'S COURT

RECORDS, WHICH DOES SHOW CLEARLY AND UNEQUIVOCALLY THAT THE TWO ROGUE SHERIFF DEPUTIES DID UNLAWFULLY ENTERED MY RESIDENCE, THEN UNLAWFULLY 'BREAKIN' MINE'S AND MY WIFE'S VERY OWN PRIVATE BEDROOM (THE HOME'S MASTER-BEDROOM), THEN, UNLAWFULLY ASSAULTED WITH INTENT TO KILL ME INSIDE OUR PRIVATE BEDROOM, WITHOUT ANY JUSTIFICATION OR ANY PROVOCATION.

NOW, THESE EXACT FACTS, EVIDENCE AND TESTIMONIES ARE DOCUMENTED AND RECORDED ON OR IN THE GOVERNMENT'S COURT RECORDS. AS SHOW AS FOLLOWS:

I. ON JANUARY 8, 2002 AT 4:02 P.M. A BOGUS 9-1-1 EMERGENCY CALL WAS MADE BY AN ANONYMOUS CALLER FROM A TACO BELL RESTAURANT PARKING LOT, BY ONE OF IT'S EMPLOYEE WHOM HAD JUST OFF EARLY FROM WORK.

THIS TACO BELL EMPLOYEE WERE BASICALLY A STRANGER TO ALL OF MY HOUSEHOLD MEMBERS AND, AN UNFAMILIAR FACE, AND WAS NOT A FRIEND NOR ASSOCIATE NOR ACQUAINTANCE OF MYSELF OR ANYONE THAT WERE A MEMBER OF MY HOUSEHOLD.

II. TWO ROGUE SHERIFF DEPUTIES THEREBY RESPONDED TO MY RESIDENCE, THEN ENTERED WITHOUT ANY PROBABLE CAUSE, EXIGENT NOR WARRANT;

III. THEN 'BREAKIN' AND 'INVADED' MINE'S AND MY WIFE'S PRIVATE OWN BEDROOM. THE TWO ROGUE DEPUTIES BROKE INTO MY PRIVATE BEDROOM WITH GUN IN THEIR HANDS OR DRAWN.

ACCORDING TO THE GOVERNMENT'S MAIN OR KEY EYEWITNESS TESTIMONY, "ALL I KNOW IS THEY (THE TWO DEPUTIES) HAD THEIR HANDS ON THEIR GUN WHEN THEY WENT IN THE ROOM (THE PRIVATE BEDROOM OF MR. AND MRS. ALKEBULANYAHH)."

IV. ONE OF THE TWO DEPUTIES UNLAWFULLY ASSAULTED WITH INTENT TO KILL ME, BY SHOOTING ME TWICE, IN HIS COURSE OF FIRING 10 (TEN) BULLET ROUNDS INSIDE MY PRIVATE BEDROOM. AND IN THE SAME COURSE HE SHOT HIS FELLOW DEPUTY IN THE BACK OF THE HEAD, **THEREBY** KILLING HIM OR CAUSING HIS DEATH.

V. THE TWO DEPUTIES THAT UNLAWFULLY ENTERED MY RESIDENCE AND UNLAWFULLY BREAKIN AND INVADED MINE'S AND MY WIFE'S PRIVATE OWN BEDROOM, THEY DID NOT HAD MINE'S NOR MY WIFE'S PERMISSION OR CONSENT TO DO SO, NEVER EVER!;

VI. THE TWO ROGUE DEPUTIES DID NOT HAD A SEARCH WARRANT NOR AN ARREST WARRANT WITH OR ON THEMSELVES, NONE!

VII. THE TWO DEPUTIES **DID NOT** HAD AN EMERGENCY NOR EXIGENT CIRCUMSTANCE; (THAT MAY HAVE JUSTIFIED THEIR UNLAWFUL SEARCH, UNLAWFUL SEIZURE OF MYSELF AND THEIR UNLAWFUL INVASION). THEY **HAD NO PROBABLE CAUSE!**

VIII. THE TWO DEPUTIES **DID NOT** HAD **ANY EVIDENCE** OF A WRONGDOING HAVING OCCURRED NOR **ANY EVIDENCE** OF A WRONGDOING HAD OCCURRED AT OR INSIDE MY RESIDENCE, PARTICULARLY INSIDE MINE'S AND MY WIFE'S PRIVATE OWN BEDROOM, **NONE!**

IX. THEREFORE, BY THE UNQUESTIONABLE AND INDISPUTABLE FACTS ABOVE ENUMERATED IT IS INDISPUTABLE THAT THE TWO MISCREANTS SHERIFF DEPUTIES WERE CONDUCTING THEMSELVES INTENTIONALLY AGAINST THE FEDERAL AND SOUTH CAROLINA STATE LAWS AND, PARTICULARLY, IN VIOLATION OF THE UNITED STATES CONSTITUTION FOURTH AMENDMENT — 'SEARCH AND SEIZURE,' WHICH STATES:

> "THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES... AGAINST UNREASONABLE SEARCHES AND SEIZURE, SHALL NOT BE VIOLATED...." U.S.C.A. FOURTH.

AND THE STATE OF SOUTH CAROLINA CONSTITUTION ARTICLE ONE, SECTION TEN, IS SIMILAR AND MORE STRINGENT THAN THE UNITED STATE CONSTITUTION FOURTH AMENDMENT. FOR SOUTH CAROLINA CONSTITUTION, STATES:

> " THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES . . . AGAINST UNREASONABLE SEARCHES AND SEIZURES AND UNREASONABLE INVASIONS OF PRIVACY SHALL NOT BE VIOLATED. . . . " SC. C. ART. ONE, SECT. TEN.

X. BOTH ROGUE DEPUTIES WERE DISCOVERED DEAD INSIDE MINE'S AND MY WIFE'S PRIVATE OWN BEDROOM BY LAW ENFORCEMENT.

XI. PRESENTLY IT HAS BEEN NEARLY SIX YEARS EXACTLY, SINCE MY FALSE ARREST AND THE GOVERNMENT'S ATTACK AND DESTRUCTION OF MY FAMILY WITHOUT LEGAL CAUSE.

YET, NO COURT OR JUDGE(S) HAS ADDRESSED THE ISSUE SET FORTH ABOVE HEREIN, NOR HAS ANSWERED OR RESPONDED TO THE ISSUE AND QUESTION PERTAINING TO IT;

XII. THE QUESTIONS IS:

1. DID THE TWO DEPUTIES HAD LEGAL OR LAWFUL AUTHORITY TO SEARCH MY RESIDENCE AND PRIVATE BEDROOM WITHOUT MINE'S NOR MY WIFE'S PERMISSION OR CONSENT?

2. DID THE TWO DEPUTIES HAD LEGAL OR LAWFUL AUTHORITY TO SEIZE ME IN MY PRIVATE BEDROOM?

3. DID THE TWO DEPUTIES HAD LEGAL OR LAWFUL AUTHORITY TO BREAKIN MY PRIVATE BEDROOM ON PRIVATE PROPERTY?

4. DID THE TWO DEPUTIES HAD LEGAL OR LAWFUL AUTHORITY TO SHOOT ME WITH THEIR GUN, INSIDE MY PRIVATE OWN BEDROOM?

XIII. THUS IF THE ANSWERS IS 'YES,' TO XII 1, 2 AND 3 OR EITHER ONE, THEN, THE UNITED STATES CONSTITUTION FOURTH AMENDMENT AND THE SOUTH CAROLINA CONSTITUTION ARTICLE ONE, SECTION TEN HAS NO MEANING, THEREFORE SHOULD BE ERADICATED OR ABOLISHED.

IF THE ANSWER IS 'NO'. PLEASE EXONERATE ME AND SET ME FREE EXPEDIENTLY. LIKE, NOW!

CERTAINLY NOT, THEY HAD NO RIGHT TO UNLAWFULLY ATTEMPT TO KILL ME.

VIX. FINALLY, I AM TIRED AND WORN FROM THESE EVIL AND NEFARIOUS JUDICIARY GAMES, THAT ARE BEING PLAYED UNJUSTLY AND UNGODLY UPON ME AND, AT THE EXPENSE AND GRIEVOUS SUFFURING OF MY LIFE, MY FAMILY, MY CHILDREN AND MY DEAR FRIENDS LIFE.

FOR I, MY WIFE AND MY CHILDREN HAS NEFARIOUSLY AND UNJUSTLY SUFFERED ENOUGH ON ACCOUNT OF MALICIOUS PROSECUTIONS, RACISM, HATRED AND PREJUDICE FROM THE UNITED STATES OF AMERICA JUDICIAL SYSTEM. ATTEMPTING TO MURDER ME UNDER THE COLOR OF LAW.

THIS SPITEFUL AND VENGEFUL INJUSTICE COMMITTED AGAINST ME BY THE UNITED STATES OF AMERICA JUDICIAL SYSTEM AND POLITICANS WITH HIDDEN HANDS: CURSE BE ALL THOSE WHOM HAS PUT THEIR HAND OR MOUTH AGAINST ME, MY WIFE AND MY CHILDREN TO INJUSTICE IN THIS MATTER. AND LIKEWISE CURSE BE THOSE WHOM SIT IDLY BY AND HAVE THE POWER TO ADMINISTER OR ADVOCATE FOR JUSTICE BUT DO NOT SO, IN THIS MATTER.

CONCLUSION: I AM DEMANDING FOR MY IMMEDIATE RELEASE AND THAT YOU USE ALL OR ANY POWER THAT YOU

POSSESS, TO LEGALLY AND RIGHTFULLY GAIN MY RELEASE FROM THIS SPITEFUL AND FALSE PROSECUTION, FALSE IM-PRISONMENT AND WRONGFUL CONVICTION.

I DO FURTHER SWEAR UNDER AND BY THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND COR-RECT.

THIS 20 DAY OF MARCH 2008.

RESPECTFULLY,

/s/ [signature]

[signature]

ABDIYYAH bEN ALKEBULANYAHH
SK6012, LIEBER DEATH ROW
P.O. BOX 205
RIDGEVILLE, SOUTH CAROLINA
29472

CC:

Sworn and Subscribe this 20th march 08
Yvette Blo[illegible]
8/20/2016

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT I ABDIYYAH bEN ALKEBULANYAHH, THE BELOW SIGNED, HAS PLACED IN A SEALED AND ENCLOSED ENVELOPE WITH CORRECT POSTAGE AFFIXED, TO: THE WHITE HOUSE, MR. PRESIDENT GEORGE W. BUSH, 1600 PENSYLVANIA AVENUE, NW, WASHINGTON, DC 20500; UNITED STATES ATTORNEY GENERAL OFFICE, CHIEF ATTORNEY GENERAL, MICHAEL MUKASEY, WASHINGTON, DC 20530; SUPREME COURT OF THE UNITED STATES, HONORABLE CHIEF JUSTICE, JOHN ROBERTS, WASHINGTON, DC 20543; OFFICE OF THE GOBERNOR, MR. MARK SANDFORD, GOVERNOR, EDGAR A. BROWN BUILDING, 1205 PENDLETON STREET, ROOM 340, COLUMBIA, SOUTH CAROLINA, 29201; SOUTH CAROLINA ATTORNEY GENERAL OFFICE, CHIEF ATTORNEY GENERAL, MR. HENRY DARGAN MCMASTER, POST OFFICE BOX 11549, COLUMBIA, SOUTH CAROLINA, 29211-1549; SOUTH CAROLINA SUPREME COURT, HONORABLE CHIEF JUSTICE JEAN TOAL, POST OFFICE BOX 11330, COLUMBIA, SOUTH CAROLINA, 29211 THE FOLLOWING DOCUMENT/PETITION/LETTER:

I. DEMAND FOR EXONERATION AND RELEASE FROM FALSE IMPRISONMENT AND WRONGFUL CONVICTION AND UNLAWFUL DEATH SENTENCE, NOW!

(CERTIFICATE OF SERVICE CONTINUE)

II. CERTIFICATE OF SERVICE.

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

THIS 20 DAY OF MARCH 2008.

RESPECTFULLY,

/S/ [signature]
[signature] *
ABDIYYAH BEN ALKEBULANYAHH
SK6012, LIEBER DEATH ROW
P.O. BOX 205
RIDGEVILLE, SOUTH CAROLINA
29472

CC:

Sworn and Subcribe this 20th March 08
Yvette B. Blow
8/20/2016

IN THE SUPREME COURT OF SOUTH CAROLINA

DATE : MARCH 26, 2005

TO : CLERK OF COURT, MR. DANIEL E. SHEAROUSE

FROM : ABDIYYAH b. ALKEBULANYAHH; SK6012
LIEBER CORRECTIONAL INSTITUTION
P.O. BOX 205, RIDGEVILLE, S.C. 29472

REF : DOCKET NO. AND ACKNOWLEDGEMENT OF RECEIPT OF MOTIONS (3-29-05)

RECEIVED
APR 0 4 2005
S.C. SUPREME COURT

DEAR MR. SHEAROUSE

UNFORTUNATE-LY, I HAVE NOT BEEN SUPPLIED A DOCKET NO. FOR MY APPEAL, IN THIS COURT. COULD YOU PLEASE FILL IN THE DOCKET NO. TO MY: 'MOTION TO FILE AN AMENDED PRO SE INITIAL BRIEF AND MOTION TO FILE AN AMENDED PRO-SE INITIAL BRIEF.'

ALSO, COULD YOU PLEASE FORWARD ME MY DOCKET NO. TO SAID CASE.

ENCLOSED IS A PRE-STAMP ENVELOPE FOR THE PURPOSE IN REFERENCE.

THANK YOU

/s/ Abdiyyah b. Alkebulanyahh

CC

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

DOCKET NO. ____________

THE STATE
RESPONDENT,
V.
ABDIYYAH BEN ALKEBULANYAHH
APPELLANT

RECEIVED
APR 2005
S.C. SUPREME COURT

CASE NO. 5-281569 AND 70

MOTION TO FILE AN AMENDED PROSE INITIAL BRIEF

COME NOW, I, APPELLANT, ABDIYYAH BEN ALKEBULANYAHH AND, BEGS AND PRAYS TO BE GRANTED AFOREMENTIONED IN THE ABOVE STYLED. AND SHOWS THIS COURT THE FOLLOWING:

1. APPELLANT INFORMED APPELLATE ATTORNEY TO FILE THESE RELEVANT ISSUES IN HIS INITIAL BRIEF. I RECEIVED A COPY OF THE INITIAL BRIEF INWHICH THE APPELLATE ATTORNEY FILED. THE RELEVANT ISSUES I REQUESTED TO BE FILE, NOT A SINGLE ONE WAS RAISED.

APPELANT MOTION PROSE FOR THIS COURT TO GRANT THIRTY (30) DAYS TO FILE, BELOW REQUESTED AMENDED INITIAL BRIEF ISSUES:

(CONTINUE)

1) JUDGE ERRED ~~BY~~ DENYING APPELLANT "MOTION FOR DISMISSAL FOR FOURTH AMENDMENT VIOLATION," ON ACCOUNT OFFICERS ENTER, SEARCH AND SEIZED APPELLANT IN HIS AND HIS WIFE OWN BEDROOM WITHOUT AUTHORIZED ~~[illegible]~~ A.A. CONSENT OR OTHER REQUIREMENTS.

2) JUDGE ERRED BY DENYING APPELLANT MOTION TO DIRECT VERDICT, FOR LACK OF EVIDENCE

3) THE JUDGE ERRED BY ALLOWING STATE TO STRIKE BLACK JUROR UPON VIOLATION TO 'BATSON'

4) THE JUDGE ERRED BY ALLOWING STATE TO INTRODUCE ADDITIONAL EVIDENCE AFTER 'RULING' TO APPELLANT MOTION, TO NOT ALLOW ADDITIONAL EVIDENCE TO BE INTRODUCE BY STATE

5) THE JUDGE ERRED BY DENYING APPELLANT REQUESTS TO CHARGE

6) THE JUDGE ERRED BY DENYING APPELLANT A TWENTY-FOUR (24) HOUR REST PERIOD TO OBSERVE APPELLANT RELIGIOUS 'SABBATH' OF CEASING FROM WORK

(CONTINUE)

7) THE JUDGE ERRED BY OVERRULING APPELLANT OBJECTION TO IMPERMISSIBLE EVIDENCE.

8) THE JUDE ERRED BY ALLOWING A "LEADING" QUESTION BY STATE, OVER APPELLANT OBJECTION THAT WAS UNFAIR AND CRITICAL TO JUSTICE AND THE DEFENSE.

THESE ISSUES WAS REQUESTED BY APPELLANT TO BE RAISED IN INTIAL BRIEF. ALL THESE ISSUES IS ABSENT FROM 'BRIEF'. AS A MATTER OF FACT! THERE IS NO ISSUES RAISED CHALLENGING TRIAL PHASE BY APPELLATE ATTORNEY.

ALSO, BE NOTIFIED OF CLEAR ERRONEOUS ASSERTED FACTS IN THE INITIAL BRIEF FILED BY APPELLANT'S ATTORNEY OF THE APPELLATE DEFENSE. SUCH:

1. IN THE STATEMENT OF FACTS PG. 4, PARG. 4. KIMBERLY DID NOT STAY WITH APPELLANT. COMPARE TRIAL TRANS. Pg. 1682, LINES 13-14, TO, HEAR. TRANS. 10-01-03, pg. 147, LINES 15 - pg. 148, LINES 4. ALSO, HEAR. TRANS. 10-01-03, pg. 129, LINE 13 - pg. 130, LINE 3; AND pg. 150, LINES 6-8.

2. IN THE STATEMENT OF FACTS pg. 4, para. 5. THERE IS NO EVIDENCE IN RECORD THAT OFFICERS HAD AUTHORIZED CONSENT TO ENTER APPELLANT BEDROOM OR LEGAL CONSENT TO ENTER APPELLANT HOME.

(CONTINUE)

3. IN THE STATE OF FACTS pg. 5, para. 3. APPELLATE ATTORNEY STATES, "APPELLANT, WHO IS MUSLIM". APPELLANT IS NOT A MUSLIM, NOR DOES ANYWHERE IN RECORD. AS A MATTER OF FACT! THE RECORD POINT DIRECTLY AT THE APPELLATE ATTORNEY AS A MALICIOUS LIAR; BY CLEARLY SPELLING OUT APPELLANT RELIGION. SEE, TRIAL TRANS. pg. 1224, LINES 2-10 ("...I'M JUST GOING TO STATE FOR THE RECORD THAT I'M HEBREW, AND MY RELIGION IS YAHWEHISM...."). ALSO, TRIAL TRANS. pg. 3818, LINES 15-18 ("YOU KNOW, HE SAID, I THINK, ON THE RECORD THAT HE PRACTICES A JEWISH FAITH, BELIEVES IN YAHWEH OR JEHOVAH, WHICH IS -- THAT'S THE OLD TESTAMENT NAME FOR GOD...").

CONCLUSION

FOR ALL THE REASONS ABOVE APPELLANT BEGS AND PRAYS THIS COURT TO ALLOW APPELLANT TO PROCEED. APPELLANT BELIEVES TO DENY THIS MOTION WOULD BE A GRAVE INJUSTICE TO APPELLANT, AS WELL AS IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS.

AND FURTHER, SWEAR UNDER AND BY THE PENALTY OF PERJURY, FORGOING IS TRUE AND CORRECT.

THIS 29 DAY OF MARCH 2005.

3/25/05
B Rashing
12/05/05

RESPECTFULLY
[signature]

ADDIYAH b. ALKEBULANYAHH #6012
(L.C.I.)
P.O. BOX 205
RIDGEVILLE, S.C. 29472

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

DOCKET NO. ______________

THE STATE
RESPONDENT,
V.
ABDIYYAH BEN ALKEBULANYAHH
APPELLANT,

CASE NO. G-281569-70

MOTION TO PRO'SE TO ADD TO INITIAL APPELLATE BRIEF

COME NOW, APPELLANT, ABDIYYAH BEN ALKEBULANYAHH, PRO'SE. AND BEGS AND PRAYS THIS COURT TO GRANT ABOVE-STYLE MOTION. AND SHOWS THIS COURT THE FOLLOWING:

1. APPELLATE APPOINTED ATTORNEY DID NOT RAISE ANY ISSUE IN INITIAL BRIEF CHALLENGING TRIAL PHASE;

2. APPELLANT REQUESTED PACIFIC ISSUES TO BE RAISED;

3. THE MOST RELEVANT ISSUE REQUESTED WAS, THAT THE ALLEGED VICTIMS BECAME SAID VICTIMS, UNFORTUNATELY, BECAUSE THEY WAS ACTING UNLAWFULLY IN VIOLATION OF APPELLANT UNITED STATE CONSTITUTION FOURTH AMENDMENT RIGHTS; BY ENTERING, SEARCHING AND SEIZING APPELLANT IN HIS AND HIS WIFE BEDROOM, WITHOUT PROBABLE CAUSE NOR AUTHORIZE CONSENT.

CONCLUSION

APPELLANT BEGS AND PRAYS FOR RELIEF SOUGHT. AND FURTHER, SWEARS UNDER AND BY PENALTY OF PERJURY FORGOING IS TRUE AND CORRECT.

THIS 29 DAY OF MARCH 2005.

RESPECTFULLY

[signature]

P.O. BOX 205 (L.C.I)
RIDGEVILLE, S.C. 29472

3/25/05
[signature]
12-05-05

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

NOTICE OF CERTIFICATION

THIS IS TO CERTIFY THAT I, ABDIYYAH BEN ALKEBULANYAH HAVE PLACED IN A SEALED AND ENCLOSED ENVELOPE AND MAILED VIA U.S. POSTAL SERVICE WITH CORRECT ADDRESS AFFIXED TO THE FOLLOWING: SOUTH CAROLINA ATTORNEY GENENERAL OFFICE, MR. DONALD J. ZELENKA, ESQ., POST OFFICE BOX 11549, COLUMBIA, S.C. 29211-1549; SOUTH CAROLINA SUPREME COURT, MR. DANIEL E. SHEARHOUSE, CLERK OF COURT, P.O. BOX 11330, COLUMBIA, S.C. 29211: A COPY OF THE FOLLOWING DOCUMENTS:

1) MOTION TO PRO'SE TO ADD TO INITIAL APPELLATE BRIEF

2) MOTION TO FILE AN AMENDED PRO'SE INITIAL BRIEF

3) NOTICE OF CERTIFICATION

AND FURTHER, SWEARS UNDER AND BY THE PENALTY OF PERJURY FORGOING IS TRUE AND CORRECT. THIS 29 DAY OF March 2005.

[signature] 12/05/05

RESPECTFULLY,

[signature]

P.O. BOX 205 (L.C.I.)
RIDGEVILLE, S.C. 29472
[ABDIYYAH B. ALKEBULANYAHH]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

07-1943

ABDIYYAH ben ALKEBULANYAHH
PETITIONER/APPLICANT

VS.

THE STATE OF SOUTH CAROLINA
RESPONDENT

ATTORNEY GENERAL'S OFFICE
RECEIVED 8-1-08
ADMINISTRATIVE INSTRUCTIONS
___FILE ___OPEN ___END
___HAVE ___COPIES MADE
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___ORDER: ___TRANSCRIPT
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___OTHER: ___

CASE NO.: 2007-CP-07-0715

MOTION TO DIMISS ATTORNEYS

COME NOW, PETITIONER ABOVE NAMED AND REQUEST THIS COURT TO DISMISS ATTORNEYS; AND SHOW AS FOLLOW:

I. THERE IS A GRAVE INDIFFENCE TO ATTORNEYS-CLIENT RELATION;

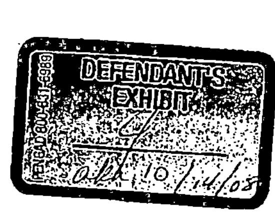
II. ATTORNEYS ARE INCOMPETENT;

III. ATTORNEYS ARE UNQUALIFIED.

AND FURTER SWEARS UNDER AND BY PENALTY OF PERJURY FORGOING IS TRUE AND CORRECT.
THIS 29 DAY OF JULY 2008.

RESPECTFULLY,

/s/ Abdiyyah ben Alkebulanyahh
ABDIYYAH ben ALKEBULANYAHH,
SK6012, LIEBER DEATH ROW, P.O. BX 205,
RIDGEVILLE, SC 29472



CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT I ABDIYYAH bEN ALKEBULANYAHH, PETITIONER HEREIN HAS MAILED BY WAY OF UNITED STATES POSTAL SERVICE TO: S. CREIGHTON WATERS, ASSISTANT ATTORNEY GENERAL, P.O. BOX 11549; U.S. DISTRICT COURT, DISTRICT OF SOUTH CAROLINA, CLERK OF COURT, 1845, ASSEMBLY STREET, COLUMBIA, S.C. 29201-2431, THE FOLLOWING:

I. MOTION TO DISMISS ATTORNEYS (GLENN WALTERS AND CARL B. GRANT)

II. CERTIFICATE OF SERVICE

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

THIS 29 DAY OF JULY 2008.

RESPECTFULLY,

s/ [signature]

ABDIYYAH BEN ALKEBULANYAHH
SK 6012, LIEBER DEATH ROW
P.O. BOX 205, RIDGEVILLE,
SOUTH CAROLINA, 29472

ABDIYYAH ben ALKEBULANYAHH
SK 6012, RA-131
LIEBER DEATH ROW
P.O. BOX 205
RIDGEVILLE, SC
29472

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UNITED STATES POSTAGE
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SOUTH CAROLINA ATTORNEY GENERAL'S
OFFICE
c/o S. CREIGHTON WATERS, ASSIST.
ATTORNEY GENERAL
P.O. BOX 11549
COLUMBIA, SOUTH CAROLINA
29211-1549

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U.S. SUPREME COURT

Ruling throws out murder conviction

Justices strike down unusual S.C. rule in case of slain York County woman

By DAVID G. SAVAGE
Los Angeles Times

WASHINGTON — With Justice Samuel A. Alito Jr. writing his first opinion, the U.S. Supreme Court on Monday overturned the murder conviction of a South Carolina man and said his lawyers had been wrongly barred from telling the jury that another man committed the crime.

"The Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense," Alito said for a unanimous court.

The decision strikes down an unusual rule in South Carolina that allowed judges to short-circuit a defendant's case before the trial.

While there are few real-life Perry Masons, defense lawyers often seek to prove their client's innocence by showing another person might be guilty of the crime.

However, South Carolina's judges said if the prosecution has strong evidence of a defendant's guilt, the defense can be barred from presenting evidence that points squarely to another suspect.

Alito said this rule "is no more logical than its converse would be" — a rule that would throw out the prosecution's evidence whenever the defendant had a strong alibi.

"By evaluating the strength of only one party's evidence, no logical conclusion can be reached regarding the strength of contrary evidence offered by the other side to rebut or cast doubt," he wrote.

The case began on New Year's Eve in 1989 when 86-year-old Mary Stewart was beaten, robbed and assaulted in her York home. She later died of her injuries. Bobby Lee Holmes had been involved in a fight earlier in the evening and fled from police.

He was arrested and charged with the woman's murder. Blood and fingerprint evidence linked Holmes to the crime.

SEE **RULING** PAGE **A3**

RULING

FROM PAGE A1

His lawyers said Holmes was innocent and pointed to witnesses who had seen another man near the woman's house on the night of the murder. Four witnesses told a preliminary hearing they had heard the man admit to the crime or say Holmes was innocent.

Nonetheless, the judge excluded this evidence from Holmes' trial because prosecutors had "strong forensic evidence" of his guilt. He was convicted and sentenced to death.

The state courts upheld the verdict and the death sentence.

Last year, Los Angeles lawyers William A. Norris, formerly a judge on the 9th U.S. Circuit Court of Appeals, and Edward Lazarus, a former Supreme Court clerk, filed an appeal in the U.S. Supreme Court on Holmes' behalf.

The justices voted to hear the case, and it was argued on Feb. 22, Alito's second day on the bench. As an appeals court judge, he had a generally conservative record on criminal cases.

Alito's ruling said judges are entitled to exclude evidence pointing to third parties if it is misleading or irrelevant. However, it is arbitrary and unconstitutional to exclude evidence that might well cast doubt on the defendant's guilt, he said.

Holmes' trial lawyer, Bill Nettles of Columbia, said Monday's ruling will have a significant impact on all types of criminal cases in the state.

"If there is evidence beyond mere speculation that someone else did it, then a jury gets to have it," he said.

Nettles, a former president of the S.C. Association of Criminal Defense Lawyers, said that since the early 1940s, S.C. courts have become more restrictive in allowing evidence of another perpetrator.

Monday's ruling will reverse that trend, he said.

Cornell Law School professor John Blume, who argued Holmes' case, said the ruling will give him a new trial. "This is a very good outcome, and hopefully it will lead to his acquittal," said Blume, also a Columbia appellate defense lawyer.

Sixteenth Circuit Solicitor Tommy Pope said Holmes isn't automatically guaranteed a new trial, based on a briefing he received from the S.C. attorney general's office.

"That is up to the S.C. Supreme Court," he said. "They could rule this is not a reversal."

But Pope, a former president of the S.C. Solicitors Association, conceded the ruling gives the defense a better chance of getting a reversal.

Staff writer Rick Brundrett contributed. Reach him at rbrundrett@thestate.com.

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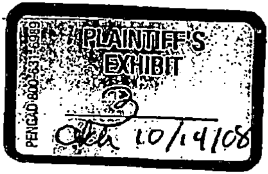
ate.com INFORMATION FOR LIFE

ROBERTS,TYREE.BGS.GUILTY BUT MENTALLY ILL.BRIEF

Sec. 17-24-20 (A) A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10 (A)*. But because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.

---

*It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong.



PER. ATTY. KELLY

Guilty but Mentally Ill

1 State v. Wilson, 413 S.E.2d 19, 306 S.C. 498 (S.C. 1992
Guilty but mentally ill may rec. death

Guilty but Mentally Ill

OOHS AND 'OZ': Beaufort Academy journeys down the yellow brick road 1C
POWER SURGE: Beaufort High softball team beats West Ashley 9-4 1B >>
WEATHER: Partly sunny and pleasant. Cloudy tonight. High: 75. Low: 49. 8B

The Beaufort Gazette

TUESDAY, March 20, 2007 | beaufortgazette.com | Established in 1897 25 cents

S. SUPREME COURT UPHOLDS DEATH SENTENCE

ben Alkebulanyahh
illed Beaufort
pl. Dyke "A.J."
5, and Lance
Lyle Tate, 44, on
12.

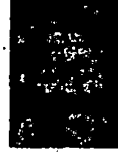
JNT
ifortgazette.com

Supreme Court upheld the death sentence of a nned down two Beaufort uties in 2002, leaving him with little recourse to appeal his execution, his defense attorney said.

Abdiyyah ben Alkebulanyahh, formerly known as Tyree Roberts, was sentenced in 2003 to die for shooting Cpl. Dyke "A.J." Coursen, 35, and Lance Cpl. Dana Lyle Tate, 44.

The officers responded to a domestic disturbance call at a mobile home Jan. 8, 2002, and were shot with an M-14 assault rifle.

The U.S. Supreme Court rejected the appeal without comment. The S.C. Supreme Court upheld the conviction in


Alkebulanyahh

July, sending the appeal to the national stage.

"I'm not surprised that we lost," said defense attorney Joseph Savitz, who heads up the S.C. Office of Appellate Defense. "He represented himself in trial, which was a mistake, and so we didn't have a whole lot to work with."

However, Savitz said he was disappointed that the U.S. Supreme Court didn't hear the case or comment because Alkebulanyahh's appeal presented a "great issue" as it was a unique situation and the court's position is "unclear."

The appeal claimed he deserved a new trial because it was unconstitutional for a judge to deny his request to skip the sentencing portion of his trial, in particular, the victims' impact statements, Savitz said. Instead, the Circuit Court judge forced Alkebulanyahh to sit in a holding cell in the back of the courtroom and was restrained on and off throughout the sentencing, which biased the jury, according to the appeal.

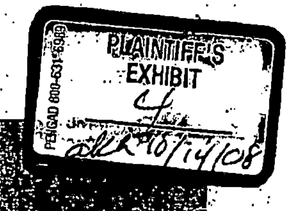
Savitz said his client was not helpful with the appeal.

"He could be the kind of guy that just says go ahead and execute me," Savitz said.

He estimated Alkebulanyahh would be executed within the next two years, though he does have a few more measures, such as post conviction relief, to pursue.

Please see SENTENCE on 5A

Dock in progress



Beaufort Memorial CEO Brown dies at 55

SENTENCE

Continued from 1A

"He's still got a couple things to do," Savitz said. "But all he's got left is to delay is execution."

D.J. Coursen, widow of one of the deputies killed, said all that matters is Alkebulanyahh is in a secure place, but she is relieved to see it is now less likely to have to endure another trial, which lasted more than two weeks in 2003.

"I just think at this point we're just going through the motions," she said. "I'm not afraid we'll have to go through it again."

However, she does plan to be there if and when her husband's killer is executed.

"I want my eyes to be the last eyes he sees because he shot my husband's eyes out," D.J. Coursen said.

Coursen

Tate

The other widow, Marie Tate, wouldn't comment Monday.

The Associated Press contributed to this report.

SCHOOL

Continued from 1A

"I was just floating other ideas because I was not thrilled by the proposed start times," Arundell said. "Because if you get research that says high school kids like starting later in the morning, moving start times up doesn't make a whole lot of sense to me."

Arundell said he received about 12 e-mails on the subject, most of which were negative, and decided to drop the plan.

"When you go to a board meeting, you don't want to propose something where you're the only one in the county who thinks it's a good idea," he said.

"I was not thrilled with the proposed start times because if you get research that says high school kids like starting later in the morning, moving start times up doesn't make a whole lot of sense to me."

Bob Arundell, school board vice chairman

BROWN

always there for you."

War protests mark anniversary of inva

Demonstrators take to the streets a second day, calling for an end to funding of operations in Iraq and the withdrawal of U.S. forces

By BRUCE SCHREINER
The Associated Press

LOUISVILLE, Ky. — Linda Englund placed flowers Monday beside a small white flag commemorating a soldier killed in Iraq, a friend of her son, who was standing beside him when he was shot in 2004.

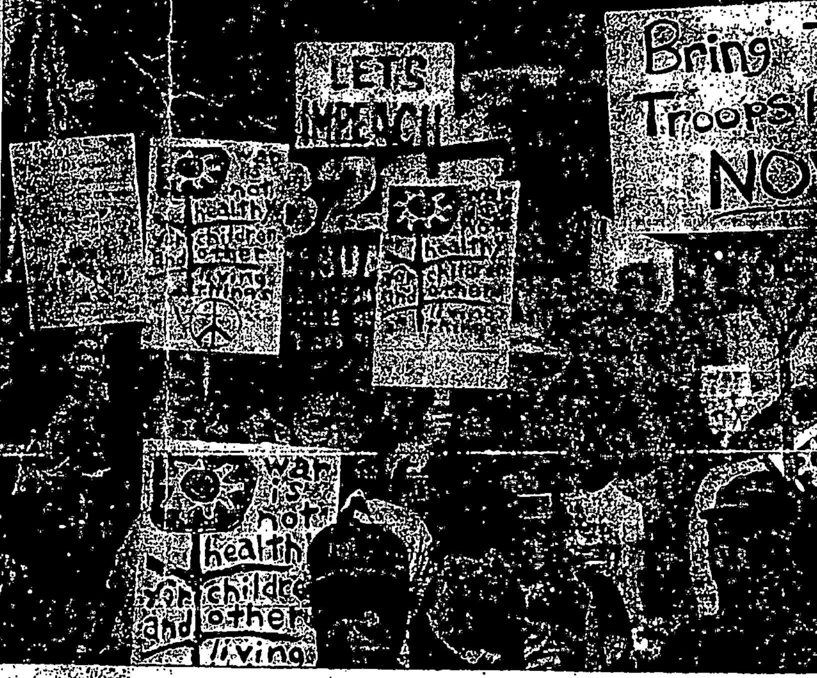
"I always feel like another foot, it would have been my son," she said.

Englund was among the volunteers who erected 4,000 flags in long rows at the city's Waterfront Park, one of numerous events around the country to mark the war's fourth anniversary.

A day after at least one demonstration turned violent, protesters peacefully remembered the military and civilian dead and ardently called for the U.S. to bring its troops home.

In televised remarks from the White House, President Bush asked for patience from a public that solidly opposes the war, saying his plan to stabilize Baghdad with more combat and support troops needs time to work.

More than 3,200 members of the U.S. military have been killed in the war. Iraqi civilian



DOUGLAS C. PIZAC | The A
Protestors hold signs during an anti-war rally Monday in Salt Lake City.

scuffles and police using pepper spray. No such trouble was reported at the much smaller demonstrations around the country Monday, although San Francisco police arrested 57 people who blocked a streetcar line in the heart of the financial district by lying in the street, draped in white sheets, to symbolize Iraq's war dead.

Also on Monday, 44 people were arrested outside the New York Stock Exchange on disor-

BUSH'S REMARKS
President Bush addresses the nation, asking for patience and assuring the American public that his troop surge needs time to work. 4A

called out the names of Iraq war casualties, both American and Iraqi.

"It's really powerful," said David Pederson, 16, of Minneapolis, who came to the exhibit with his father, Dan. "It's easy to

veteran who said the rally despite hours earlier that old mother had di

In a Salt Lake C drew hundreds, M Anderson called f Bush's impeachm son accused Bush the justification fo allowing the illeg and torture of inn citizens.

"I do not say thi

4955

OOHS AND 'OZ': Beaufort Academy journeys down the yellow brick road 1C
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The Beaufort Gazett
TUESDAY, March 20, 2007 | beaufortgazette.com | Established in 1897 25 cents

U.S. SUPREME COURT UPHOLDS DEATH SENTEN

Abdiyyah ben Alkebulanyahh shot and killed Beaufort deputies Cpl. Dyke "A.J." Coursen, 35, and Lance Cpl. Dana Lyle Tate, 44, on Jan. 8, 2002.

By LORI YOUNT
lyount@beaufortgazette.com
843-986-5531

The U.S. Supreme Court upheld on Monday the death sentence of a man who gunned down two Beaufort County deputies in 2002, leaving him with little recourse to appeal his execution, his defense attorney said.

Abdiyyah ben Alkebulanyahh, formerly known as Tyree Roberts, was sentenced in 2003 to die for shooting Cpl. Dyke "A.J." Coursen, 35, and Lance Cpl. Dana Lyle Tate, 44.

The officers responded to a domestic disturbance call at a mobile home Jan. 8, 2002, and were shot with an M-14 assault rifle.

The U.S. Supreme Court rejected the appeal without comment. The S.C. Supreme Court upheld the conviction in July, sending the appeal to the national stage.

Alkebulanyahh

"I'm not surprised that we lost," said defense attorney Joseph Savitz, who heads up the S.C. Office of Appellate Defense. "He represented himself in trial, which was a mistake, and so we didn't have a whole lot to work with."

However, Savitz said he was disappointed that the U.S. Supreme Court didn't hear the case or comment because Alkebulanyahh's appeal presented a "great issue" as it was a unique situation and the court's position is "unclear."

The appeal claimed he deserved a new trial because it was unconstitutional for a judge to deny his request to skip the sentencing portion of his trial, in particular, the victims' impact statements, Savitz said. Instead, the Circuit Court judge forced Alkebulanyahh to sit in a holding cell in the back of the courtroom and was restrained on and off throughout the sentencing, which biased the jury, acc appeal.

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Please see SENT

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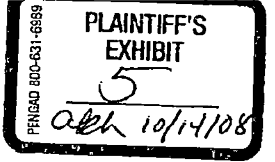
Beaufort Memori CEO Brown dies a



Agreement reached on suspect transport

By CHRIS BENDER
Gazette staff writer

Who will transport the man accused of killing two deputies to a mental competency hearing in Columbia, and when, is under tight wraps.

An agreement was reached Tuesday between the Beaufort County Sheriff's Office and Beaufort County Detention Center Director Mark Fitzgibbons over who would transport Abdiyyah ben Alkebulanyahh, formerly known as Tyree Roberts, to his psychiatric evaluation, said Circuit Court Judge Perry Buckner.

The hearing in front of Buckner was scheduled to clear up security concerns about transporting Alkebulanyahh.

Last week, Beaufort County Sheriff P.J. Tanner said he did not want his deputies involved in transporting Alkebulanyahh and sent representatives to talk to Buckner.

Chief Deputy Michael Hatfield, representing the Sheriff's Office, said the department was "satisfied with the judge's decision."

The details of when Alkebulanyahh would be taken to Columbia, however, were put under seal, Buckner said, for security reasons.

Alkebulanyahh, 40, of Burton, was charged with two counts of murder in the shooting deaths of two deputies. Lance Cpl. Dana Lyle Tate, 43, and Cpl. Dyke "A.J." Coursen, 35, died after a shooting in a Burton home Jan. 8.

Buckner said he was satisfied with the agreement and rescinded his order. Solicitor Randolph Murdaugh III said he did not have any objections.

However, when Buckner asked Alkebulanyahh's attorneys, Gerald Kelly and Sean Thornton, if they had any objections, Alkebulanyahh objected.

ALKEBULANYAHH

"I do not have lawyers. They do not represent me," Alkebulanyahh said. "They are trying to sabotage me."

Alkebulanyahh, who filed a motion to have his second set of attorneys relieved in October, asked that the judge immediately remove his attorneys from the case. Buckner tried to get an answer from the attorneys but Alkebulanyahh kept interrupting.

"I'm going to hear that motion at the appropriate time," Buckner told Alkebulanyahh. "You need to talk to your attorneys."

Alkebulanyahh continued to state that his attorneys were not representing his interests. He told Buckner he wanted to represent himself.

Buckner told Alkebulanyahh that if he did not stop interrupting the proceeding, he would be removed from the court room. Kelly and Thornton told the judge they did not object to his decision.

Murdaugh made a motion for Buckner to order the state's mental evaluation to be completed by Dec. 5.

"That doesn't mean it's going to be guaranteed," Murdaugh said. "We've been trying to do this since July."

The mental evaluation for the state has to go through the S.C. Department of Mental Health, Murdaugh said. The department has a backlog of cases.

After Alkebulanyahh undergoes the state's mental evaluation, Murdaugh said the judge probably would rule on the defendant's motion to represent himself.

Murdaugh said he doesn't know when the case will see trial.

"You're guess ... is probably better than mine," he said.

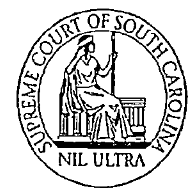
7-11-03

Eddie L. Blown
3603 Lithia Springs G.A. 30122
Concerning the Events
On 1-8-02 of my own free will,
Of Sound mind & body, I Submitt
the Following, For whatever purposes
it may Serve.

After being interviewed by the
Beaufort County Sheriff Office,
Later that evening Bobby Rigby
Continued to be nervous & Figgity
Rubbing his hands & Saying that he
was going to Jail, I tried to ignore
what he was Saying but he Continued
telling me About he was going to Jail
For Life because of those two Cops.
& I Asked him Again what are you talking
About & he repeated the Same thing
Again about the 2 cops who got Shot near
the School. I went & got him Something
to drink From the kitchen & when he

4958

Reached For it his hands smelled like parched skin, I didn't say anything to him about it but then he kept trying to hide his hands After he noticed I smelled his hands. his mother came back to the house for Bobby + when I picked up the rest of his things I found A long blade knife with a seragated back, I quickly put it back in with his things but he did not know that I saw it. I Apologized to his mother + told her Bobby could not continue being at my house because his Actions could have Jepardized everybody's safety that was at my house who lived there, + the one's who only stopped by to visit us that night.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

November 3, 2003

Mr. Tyree Alphonso Roberts
a/k/a Abdiyyah ben Alkebulanyahh
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

Re: The State v. Roberts, Tyree Alphonso

Dear Mr. Roberts:

This is in response to your pro se Notice of Appeal dated October 28, 2003 in the above entitled matter.

Please be advised that your attorney, Gerald Alan Kelly, filed a Notice of Appeal on your behalf with this Court on October 30, 2003. This appeal is proceeding in accordance with the South Carolina Appellate Court Rules, therefore no action will be taken on your pro se Notice of Appeal.

Very truly yours,

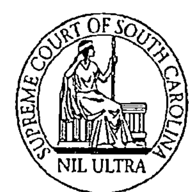
Brenda F. Shealy

DEPUTY CLERK

BFS/dmh

cc: SC Office of Appellate Defense
Gerald Alan Kelly, Esquire
Office of the Attorney General

cc: SC Office of Appellate Defense
Office of the Attorney General



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

November 20, 2003

Mr. Tyree Alphonso Roberts, #6012
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

Re: The State v. Roberts, Tyree Alphonso

Dear Mr. Roberts:

This is in response to your Motion of Use of Petitioner Legal Name concerning the above entitled case on appeal.

Because you are represented by the South Carolina Office of Appellate Defense, any document you wish to be considered by the Court must be submitted through that office. Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564(1998). Therefore, no action will be taken on your pro se motion.

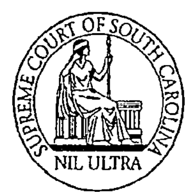
You may contact the Office of Appellate Defense at 1205 Pendleton Street, Suite 306, Columbia, South Carolina, 29201. The telephone number for that office is 803-734-1330.

Very truly yours,

Daniel E. Shearouse
BS

CLERK

DES/dmh



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

August 20, 2004

REGULAR AND CERTIFIED MAIL

Mr. Tyree Roberts,
a/k/a Abdiyyah Ben Alkebulanyahh
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

Re: State v. Roberts, aka Alkebulanyahh

Dear Mr. Alkebulanyahh:

Enclosed is the order issued in the above entitled matter.

By copy of this letter, we are advising counsel of record that the appellant's initial brief and designation of matter should be served and filed within thirty (30) days of the date of this letter.

Very truly yours,

CLERK

DES/dmh

Enclosure

cc: Acting Chief Attorney Joseph L. Savitz, III
Assistant Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Donald J. Zelenka

The Supreme Court of South Carolina

The State, Respondent,

v.

Tyree Alphonso Roberts, a/k/a
Abdiyyah Ben Alkebulanyahh, Appellant.

ORDER

Appellant has filed two motions in which he asks that Robert Dudek, of the South Carolina Office of Appellate Defense (OAD), be relieved as his counsel. Appellant bases his motion on allegations that Mr. Dudek will not pursue appellant's complaints about mistreatment on death row and that Mr. Dudek stated he did not need appellant's assistance with preparation of the appeal. Appellant also raises allegations of a conspiracy.

By way of return, Joseph L. Savitz, III, acting Chief Attorney of OAD, states he is representing appellant along with Mr. Dudek. He states that he is without information regarding any connections between the OAD and a prison guard, as alleged by appellant, and asserts neither he nor Mr. Dudek, nor anyone else at OAD, is engaged in a conspiracy against appellant.

We deny the motions to relieve Mr. Dudek as counsel. See State v. Marshall, 273 S.C. 552, 257 S.E.2d 740 (1979)(an indigent must generally show satisfactory cause to dismiss appointed counsel and have other counsel appointed); State v. Boykin, 324 S.C. 552, 478 S.E.2d 689 (Ct. App. 1996)(the right of an accused to effective assistance of counsel does not extend to the appointment of counsel of choice, or to special rapport or even a meaningful relationship with appointed counsel). There is no indication that Mr. Dudek is not fulfilling his duties to appellant in this criminal appeal.[1] While Mr. Dudek does have a duty to communicate with appellant regarding the appeal, he has no duty to raise every non-frivolous issue, and must be allowed to exercise his reasonable professional judgment. Tucker v. Catoe, 346 S.C. 483, 552 S.E.2d 712 (2001).

IT IS SO ORDERED.

______________________ C. J.

______________________ J.

______________________ J.

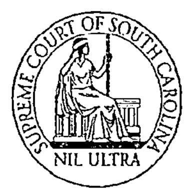
______________________ J.

[1] Appellant's allegations regarding prison conditions are not related to this appeal but must instead be raised through the Department of Corrections' inmate grievance process, which appellant states he is pursuing. See Al-Shabazz v. State, 338 S.E. 354, 527 S.E.2d 742 (2000).

_______________________________ J.

Columbia, South Carolina

August 20, 2004



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

April 21, 2005

Mr. Tyree Roberts, a/k/a Abdiyyah Ben Alkebulanyahh
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

Re: State v. Roberts, aka Alkebulanyahh

Dear Mr. Roberts:

Enclosed is the order issued in the above entitled matter.

By copy of this letter, we are advising opposing counsel that the Respondent's Initial Brief and Designation of Matter should be served and filed within thirty (30) days of the date of this letter.

Very truly yours,

Daniel E. Shearouse SS

CLERK

DES/dmh

Enclosure

cc: Acting Chief Attorney Joseph L. Savitz, III
Assistant Appellate Defender Robert M. Dudek
Assistant Attorney General S. Creighton Waters

The Supreme Court of South Carolina

The State,	Respondent,
v.	
Tyree Alphonso Roberts, a/k/a Abdiyyah Ben Alkebulanyahh,	Appellant.

ORDER

Robert Dudek and Joseph Savitz, counsel for appellant, have filed the initial brief of appellant in this death penalty case. Petitioner has now submitted two *pro se* motions asking the Court to allow him to file an amended *pro se* initial brief or to "add to" the initial brief filed by counsel. Petitioner states he asked counsel to raise eight issues which are not raised in the initial brief. Petitioner also alleges there are inaccuracies in the statement of facts.

There is no constitutional right to hybrid representation either at trial or on appeal. *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989). Since there is no right to hybrid representation, substantive documents filed *pro se* by a person represented by counsel are not accepted unless submitted

by counsel. *Id.* Because petitioner is represented by counsel in this matter, we deny his motion to file an amended *pro se* initial brief and his motion to add to the initial brief filed by counsel.

IT IS SO ORDERED.

C. J.

J.

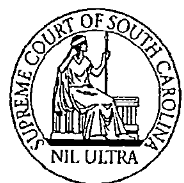
J.

J.

J.

Columbia, South Carolina

April 21, 2005



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

April 27, 2005

Mr. Tyree Roberts, a/k/a Abdiyyah Ben Alkebulanyahh
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

Re: State v. Roberts, aka Alkebulanyahh

Dear Mr. Roberts:

This will acknowledge receipt of your Motion to Proceed Pro Se on Direct Appeal in All Matters in the above entitled matter.

By copy of this letter, your attorney and opposing counsel are requested to file an original and six (6) copies of a return to this motion no later than May 9, 2005. Upon receipt of the returns, this matter will be taken under consideration and you will be notified as soon as action has been taken.

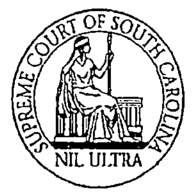
The time limits for perfecting the appeal will be held in abeyance pending the Court's decision.

Very truly yours,

CLERK

DES/dmh

cc: Acting Chief Attorney Joseph L. Savitz, III
Assistant Appellate Defender Robert M. Dudek
Assistant Attorney General S. Creighton Waters



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 3, 2005

REGULAR AND CERTIFIED MAIL
Mr. Tyree Roberts, a/k/a Abdiyyah Ben Alkebulanyahh
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

Re: State v. Roberts, aka Alkebulanyahh

Dear Mr. Roberts:

Enclosed is the order issued in the above entitled matter.

By copy of this letter, we are advising counsel for the State that the Respondent's Initial Brief and Designation of Matter should be served and filed within thirty (30) days of the date of this letter.

Very truly yours,

CLERK

DES/dmh

Enclosure

cc: Acting Chief Attorney Joseph L. Savitz, III
Assistant Appellate Defender Robert M. Dudek
Assistant Attorney General S. Creighton Waters

The Supreme Court of South Carolina

The State, Respondent,

v.

Tyree Alphonso Roberts, a/k/a
Abdiyyah Ben Alkebulanyahh, Appellant.

ORDER

Appellant was sentenced to death on October 22, 2003. The case is now before this Court on direct appeal. Joseph Savitz and Robert M. Dudek, of the Office of Appellate Defense, serve as counsel for appellant. They served and filed the initial brief on February 22, 2005.

Appellant now moves to proceed pro se, arguing the warden and appellate counsel are acting to deny him access to the courts. He maintains he does not want the assistance of attorneys from the Office of Appellate Defense and that he "rejected" them prior to their filing the initial brief and continues to reject them and any action they take on appellant's behalf. In support of his request to proceed pro se, appellant contends S.C. Code Ann. § 16-3-25(D) states that, "Both the defendant and the State shall have the right to submit briefs within the time provided by the court and to present oral

arguments to the court."

By way of return, appellate counsel take the position that the Court should not allow self-representation on direct appeal. They assert that while a pro se defendant who mishandles a trial harms only himself, a pro se defendant who mishandles a direct appeal damages the criminal justice system as a whole. Finally, appellate counsel argue that even if the Court allows self-representation on appeal from a criminal conviction, it should require the appellant to exercise that option before appellate counsel files the initial brief and designation of matter.

The State has filed a return in which it argues there is no federal constitutional right to self-representation on direct appeal and this State has not recognized such a right under its own constitution, see Martinez v. Court of Appeal of California, 528 U.S. 152, 120 S.Ct. 684, 145 L.Ed.2d 597 (2000), although it acknowledges that the Court has noted it is questionable whether Art. I, § 14 of the South Carolina Constitution applies to appellate matters.[1] Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989). The State

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[1] "The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both."

argues that constitutional provision applies only to trials and not appellate proceedings.

The State argues further that appellant has the assistance of two very experienced capital appeals litigators and they have already filed a brief in this matter. The State contends it is simply too late to stop the process, go back to the beginning and allow submission of new substantive arguments simply because appellant is not satisfied with the issues raised by appellate counsel. The State maintains appellate counsel are entitled to make a reasonable choice not to raise every non-frivolous issue requested by appellant, see Jones v. Barnes, 436 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983), and any mistake they make in determining viable issues for briefing can be resolved on post-conviction relief instead of by way of a pro se brief on direct appeal.

By way of reply, appellant maintains Mr. Savitz is incompetent and ineffective. He points to Mr. Savitz's failure to raise any guilt phase errors or constitutional errors in the initial brief. Appellant contends the record clearly reflects that during the pre-trial and guilt phase, appellant sought "instant relief or release" based on Fourth Amendment violations and a lack of evidence. He claims these two issues are the most significant and

meritorious and should have been raised in the initial brief. Appellant maintains he cannot raise the insufficiency of the evidence on post-conviction relief.

This Court has repeatedly held, pursuant to Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), that a criminal defendant may waive the right to counsel and proceed pro se at trial. State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); State v. Reed, 332 S.C. 35, 503 S.E.2d 747 (1998); State v. Brewer, 328 S.C. 117, 492 S.E.2d 97 (1997); State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991); State v. Dixon, 269 S.C. 107, 236 S.E.2d 419 (1977). However, we have never addressed whether a criminal defendant has the same right on appeal.

In Martinez, supra, the United States Supreme Court held that the rationale underlying the Faretta decision, including reliance on the Sixth Amendment, did not apply to appellate proceedings. The Court also found no right of self-representation under the Due Process Clause. Accordingly, a right of self-representation on appeal must be grounded in the state constitution, if at all. The majority of the states that have addressed this issue following Martinez have found there is no state constitutional right to self-

representation on appeal.

Article I, § 16 of the Florida Constitution states the following:

> In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed.

The Florida Supreme Court found, despite this language, which is very similar to Art. I, § 14 of the South Carolina Constitution, that in Florida there is no state constitutional right to proceed pro se on direct appeal, although the appellate court may, in its discretion, allow an appellant to proceed pro se. Davis v. State, 789 So.2d 978 (Fla. 2001). The New Hampshire Supreme Court has also determined its state constitution provides no due process right to a defendant to proceed pro se on appeal.[2] State v. Thomas, 840 A.2d 803

[2] Part 1, § 15 of the New Hampshire Constitution states:

> No subject shall be held to answer for any crime, or offense, until the same is fully and plainly, substantially and formally described to him; or be compelled to accuse or furnish evidence against himself. Every subject shall have a right to produce all proofs that may be favorable to himself; to meet the witnesses against him face to face, and to be fully heard in his defense, by himself, and by counsel. No subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land;

(N.H. 2003). Appellate courts in Arkansas, Texas and Washington have also held, in reliance upon Martinez, that an appellant in a criminal case does not have the right to proceed pro se on direct appeal in those states. Fudge v. State, 19 S.W.3d 22 (Ark. 2000); Cormier v. State, 85 S.W.3d 496 (Tex. App. 2002); State v. Watson, 2000 WL 339179 (Wash. App. 2000).

The Alabama Supreme Court held that while the Alabama Constitution does not provide any basis for recognizing a right to self-representation on appeal,[3] certain statutes, when read together, give an

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> provided that, in any proceeding to commit a person acquitted of a criminal charge by reason of insanity, due process shall require that clear and convincing evidence that the person suffers from a mental disorder must be established. Every person held to answer in any crime or offense punishable by deprivation of liberty shall have the right to counsel at the expense of the state if need is shown; this right he is at liberty to waive, but only after the matter has been fully explained to the court.

[3] Article I, § 6 of the Alabama Constitution states:

> [I]n all criminal prosecutions, the accused has a right to be heard by himself and counsel, or either; to demand the nature and cause of the accusation; and to have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to testify in all cases, in his own behalf, if he elects so to do; and, in all prosecutions by indictment, a speedy, public trial, by an impartial jury of the county or district in which the offense was committed; and he shall not be compelled to give evidence against himself, nor be deprived of life, liberty, or property, except by due process of law . . . .

appellant in a criminal case a statutory right to do so.[4] Ex parte Scudder, 789 So.2d 837 (Ala. 2001).

Other states had determined prior to the decision in Martinez that there is no constitutional right to self-representation on appeal from a criminal conviction. In Blandino v. State, 914 P.2d 624 (Nev. 1996), the Supreme Court of Nevada held that the Sixth Amendment only applies to trials and does not support the existence of a right to self-representation on appeal. The same has been held in Tennessee. State v. Gillespie, 898 S.W.2d 738 (Tenn. Crim. App. 1994).

However, there have been two states, Georgia and Michigan, who have determined that an appellant may proceed pro se in an appeal from a criminal conviction based on a state constitutional provision that contains language nearly identical to that found in S.C. Code Ann. § 40-5-80 (Supp. 2004). Costello v. State, 522 S.E.2d 572 (Ga. 1999); People v. Stephens, 246

[4] The statutes relied upon by the Alabama Supreme Court are the statute which provides for the right to appeal and the statute which states that an indigent appellant is entitled to the assistance of counsel. The former states, "A person convicted of a criminal offense in the circuit court or other court from which an appeal lies directly to the Supreme Court or Court of Criminal Appeals may appeal from the judgment of conviction to the appropriate appellate court." Ala. Code § 12-22-130 (1975). The latter states, "If it appears that the defendant desires to appeal and is unable financially or otherwise to obtain the assistance of counsel on appeal and the defendant expresses the desire for assistance of counsel, the trial court shall appoint counsel to represent and assist the defendant on appeal." Ala. Code § 15-12-22(b) (1975). The Alabama Supreme Court found that these sections do not require that an appellant in a criminal case proceed with his appeal through counsel, but instead confer upon a defendant in a criminal case the right to represent himself on appeal if he so desires.

N.W.2d 429 (Mich. App. 1976). That statute states nothing in Chapter 5 of Title 40, regulating the practice of law in South Carolina, may be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires.[5] We note that New Hampshire, which has a statute containing nearly identical language, has held, in State v. Thomas, supra, that a criminal defendant does not have a right to proceed pro se on appeal, relying on the fact that its state constitution does not provide such a right. The New Hampshire Supreme Court did not mention N.H. Rev. Stat. § 311:1, which states that "[a] party in any cause or proceeding may appear, plead, prosecute or defend in his or her proper person, that is, pro se, or may be represented by any citizen of good character."

Appellant clearly does not have a federal constitutional right to proceed pro se in this appeal from his criminal conviction. We also find there is no state constitutional provision which confers such a right. We agree with the Florida, New Hampshire and Alabama Supreme Courts that language such as that contained in Art. I, § 14 of the South Carolina Constitution does

[5] Article I, Section I, Paragraph XII of the Georgia Constitution states: "No person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person's own cause in any of the courts of this state." Article I, Section 13 of the Michigan Constitution states: "A suitor in any court of this state has the right to prosecute or defend his suit, either in his own person or by an attorney."

not apply to appeals. However, the Court may, in its discretion, allow an appellant to proceed pro se in an appeal from a criminal conviction.

We decline to do so in this case. Initially, we note that appellant's request to proceed pro se was not made in a timely fashion. Moreover, appellate counsel has no duty to raise every non-frivolous issue presented by the record and must be allowed to exercise reasonable professional judgment. See Jones v. Barnes, supra. This is a death penalty appeal and, as the State points out, appellant is represented by two very experienced capital appeals litigators. Finally, the State is also correct that any mistake appellate counsel make in determining viable issues for briefing can be resolved on post-conviction relief. We therefore deny appellant's motion to proceed pro se.

IT IS SO ORDERED.

_________________________ C. J.

_________________________ J.

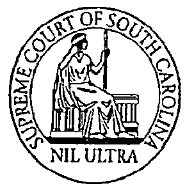
_________________________ J.

_________________________ J.

_________________________ J.

Columbia, South Carolina

June 3, 2005



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

July 8, 2005

Mr. Tyree Roberts,
a/k/a Abdiyyah Ben Alkebulanyahh, #6012
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

Re: State v. Roberts, aka Alkebulanyahh

Dear Mr. Roberts:

The following Order has been endorsed on your Motion for Reconsideration to Motion to Proceed Pro Se on Direct Appeal in the above entitled case on appeal.

> "Motion for reconsideration
> is denied.
>
> s/ Jean H. Toal C.J.
> For the Court
>
> July 8, 2005."

By copy of this letter we are advising opposing counsel that the Respondent's Initial Brief and Designation of Matter should be served and filed within thirty (30) days of the date of this letter.

Very truly yours,

CLERK

DES/dmh

cc: Acting Chief Attorney Joseph L. Savitz, III
Assistant Appellate Defender Robert M. Dudek
Assistant Attorney General S. Creighton Waters
The Honorable Randolph Murdaugh, III, Esquire

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

April 8, 2005

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

Re: *State of South Carolina v. Abdiyyah Ben Alkebulanyahh*
Appeal from Beaufort County

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the **Respondent's Return to the Motion to File an Amended Pro Se Initial Brief** dated April 8, 2005, together with a certificate of service, in the above-referenced case.

Sincerely,

S. Creighton Waters
Assistant Attorney General

SCW/lb

Enclosures

cc: Robert M. Dudek, Esquire
Joseph L. Savitz, III, Esquire
Abdiyyah Ben Alkebylanyaah, #6012
Sandi Wofford, Victims' Services

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Beaufort County
Honorable Daniel F. Pieper, Circuit Court Judge

THE STATE,

Respondent,

v.

ABDIYYAH BEN ALKEBULANYAHH,

Appellant.

RETURN TO MOTION TO FILE
AN AMENDED PRO SE INITIAL BRIEF

Respondent, above-named, hereby respond to the *pro se* "Motion to file an Amended Pro se Initial Brief", received from Appellant personally on April 5th, 2005. In the motion, Appellant claims he requested that his appointed appellate defender, Joseph Savitz, file eight (8) separate issues in the initial brief of appellant, but Savitz did not brief any of them in the initial brief of appellant submitted on February 22nd, 2005. Thus, Appellant requests *only* that he be allowed to file an *pro se* amended initial brief of appellant discussing these issues.

The motion should be denied and any *pro se* documents should not be considered. This Court has repeatedly stated that there is no right to hybrid representation in South Carolina. See, e.g. 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); State v. Sanders, 269 S.C. 215, 237 S.E.2d 53 (1977). Further, this Court has specifically held in the appellate context that it would not consider *pro se* documents filed by an inmate who was represented by counsel. See Koon v. Clare, 338 S.C. 423, 527 S.E.2d 327 (2000) (Supreme Court would not consider *pro se* petition filed with it from inmate represented by Appellate Defense in direct appeal pending before the Court of Appeals); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998) (Supreme Court would not consider *pro se* initial brief and designation of matter filed by inmate represented by the Office of Appellate Defense).

Pursuant to the above-cited precedent, Appellant's *pro se* motion should not be considered, as he is represented by Acting Chief Attorney Joseph L. Savitz of the South Carolina Office of Appellate Defense. Moreover, since an initial brief has already been filed with this Court on behalf of Appellant, it would be procedurally improper to allow further submissions of substantive issues for appeal. See generally Rule 208, SCACR. Finally, Appellant's concern that his counsel did file his requested issues is insufficient for his requested relief, as appellate counsel may make reasonable strategic choices not to appeal every non-frivolous argument requested by the defendant. See Jones v. Barnes, 463 U.S. 745, 751 (1983). Any mistake that appellate counsel may make in determining viable issues for briefing is appropriately resolved in post-conviction relief, not by way of *pro se* motion during direct appeal.

Appellant's motion should be dismissed.

CONCLUSION

Respondent respectfully submits that for the above-expressed reasons the Motion to File an Amended Pro Se Initial Brief should be dismissed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

S. CREIGHTON WATERS
Assistant Attorney General

ATTORNEYS FOR RESPONDENT

By: ______________________

Columbia, South Carolina

April 8, 2005

CERTIFICATE OF SERVICE

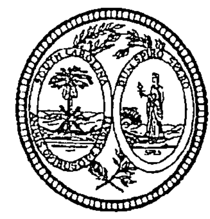
I, S. Creighton Waters, hereby certify that I have served the ***Return to Motion to File an Amended Pro Se Initial Brief*** in the foregoing matter by depositing copies in the United States mail, postage prepaid, to the following:

Robert M. Dudek, Esquire
Joseph L. Savitz, III, Esquire
South Carolina Office of Appellate Defense
1205 Lady Street, Room 306
Columbia, South Carolina 29201

Tyree Roberts, a/k/a
Abdiyyah Ben Alkebulanyahh, #6012
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina 29472

This 8th day of April, 2005.

S. CREIGHTON WATERS



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

May 9, 2005

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

Re: *State of South Carolina v. Abdiyyah Ben Alkebulanyahh*
Appeal from Beaufort County

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the **Respondent's Return to Motion to Proceed Pro Se on Direct Appeal** dated May 9, 2005, together with a certificate of service, in the above-referenced case.

Sincerely,

S. Creighton Waters
Assistant Attorney General

SCW/lb

Enclosures

cc: Robert M. Dudek, Esquire
Joseph L. Savitz, III, Esquire
~~Abdiyyah Ben Alkebulanyaah, #6012~~
Sandi Wofford, Victims' Services

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, S.C. 29211-1549 • TELEPHONE: 803-734-3970 • FACSIMILE: 803-253-6283

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Beaufort County
Honorable Daniel F. Pieper, Circuit Court Judge

THE STATE,

Respondent,

v.

ABDIYYAH BEN ALKEBULANYAHH,

Appellant.

RETURN TO MOTION TO PROCEED PRO SE ON DIRECT APPEAL

As requested by this Court in an Order dated April 21st, 2005, Respondent hereby responds to the *pro se* "Motion to Proceed Pro Se on Direct Appeal in All Matters", dated April 25th, 2005. In the motion, Appellant states he does not want the assistance of his appellate defender, and claims that the warden and his appellate defender are acting together to deny him access to the courts.

Respondent respectfully submits that this Court should deny the motion to proceed *pro se* during the direct appeal. There is no federal constitutional right to *pro se* representation during a direct appeal – though the States are free to recognize their own right. See Martinez v. Court of Appeal, 528 U.S. 152 (2000).

However, this Court has not recognized an absolute right for inmates to appear

before this Court *pro se*. Instead, this Court has noted that it is "questionable" whether section 14 of Article I of the South Carolina Constitution applies to appellate matters, even though the section provides that a defendant has a right to be "fully heard in his defense by himself or by his counsel or by both". See Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989). That passage exists only in the context of a provision discussing rights applicable to *trials* and not appellate proceedings, such as the right to a jury, to a speedy disposition, to notice of the charges, to confrontation of witnesses, and to compel witnesses.

Along these lines, this Court has repeatedly stated that there is no right to hybrid representation in South Carolina, and further has specifically held that it would not consider *pro se* documents filed by an inmate who was represented by counsel. See Koon v. Clare, 338 S.C. 423, 527 S.E.2d 327 (2000) (Supreme Court would not consider *pro se* petition filed with it from inmate represented by Appellate Defense in direct appeal pending before the Court of Appeals); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998) (Supreme Court would not consider *pro se* initial brief and designation of matter filed by inmate represented by the Office of Appellate Defense). See also Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989); State v. Sanders, 269 S.C. 215, 237 S.E.2d 53 (1977). In doing so, this Court has reasoned:

> At the appellate stage, particularly, succinct, relevant legal arguments are most likely to be persuasive. Counsel is best able to use professional judgment to determine which arguments are relevant and should be presented for appellate review. While counsel may choose to submit arguments urged by his client, counsel has an obligation to review those arguments for possible relevance and merit before submitting them. In other words, counsel cannot serve as a mere conduit for pro se documents in an effort to avoid the prohibition against hybrid representation and the

displeasure of his client. As stated by the Supreme Court of Pennsylvania, when faced with a situation similar to this one,

> [t]ails should not wag dogs. Merely because an appellant believes that the irrelevant is relevant is no reason to turn the system on its head and solemnly contemplate the wisdom of a person who does not have the sense to be guided by experts in an area where he himself possesses no expertise.

Commonwealth v. Ellis, 534 Pa. 176, 626 A.2d 1137, 1140 (1993).

Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002).

Finally, Appellant is incorrect that his claim to self-representation is required by a provision in the death penalty statutes, which, in discussing this Court's appellate review of a death sentence, states:

> Both the defendant and the State shall have the right to submit briefs within the time provided by the court and to present oral arguments to the court.

S.C. Code Ann. § 16-3-25(D) (Rev. 2003). However, this provision simply means that each *side* gets an equal chance to argue the issues to the Court – it does not expressly or implicitly somehow create a new statutory right to appellate self-representation in capital cases only.

Thus, it is apparent there is no absolute state-created right to proceed *pro se* during direct appeal. Since Appellant does not have an absolute right to proceed *pro se*, Respondents would respectfully submit that this Court should deny the request in this case. At present, Appellant already has the assistance of Acting Chief Attorney Joseph L. Savitz and Assistant Appellate Defender Robert Dudek of the South Carolina Office of Appellate Defense – two very experienced capital appeals litigators.

More important is simply a question of timing. Appellant's attorneys have already filed with this Court a brief on his behalf in this matter – as a procedural matter it is simply

too late to stop the process, go back to the beginning, and allow submission of new substantive arguments simply because Appellant personally has some issues with what was raised by the appellate defenders. See generally Rule 208, SCACR (setting forth time limits for briefing, and noting that no point will be considered that is not in the statement of issues on appeal). Indeed, appellate counsel is entitled to make a reasonable choice not to appeal every non-frivolous argument requested by the defendant, see Jones v. Barnes, 463 U.S. 745, 751 (1983), and any mistake that appellate counsel may have made in determining viable issues for briefing is appropriately resolved in post-conviction relief, not by way of *pro se* motion during direct appeal.

Appellant's motion should be denied.

CONCLUSION

Respondent respectfully submits that for the above-expressed reasons the "Motion to Proceed Pro Se on Direct Appeal in All Matters" should be denied.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

S. CREIGHTON WATERS
Assistant Attorney General

ATTORNEYS FOR RESPONDENT

By:____________________

Columbia, South Carolina

May 9, 2005

CERTIFICATE OF SERVICE

I, S. Creighton Waters, hereby certify that I have served the ***Return to Motion to Proceed Pro Se on Direct Appeal*** in the foregoing matter by depositing copies in the United States mail, postage prepaid, to the following:

Robert M. Dudek, Esquire
Joseph L. Savitz, III, Esquire
South Carolina Office of Appellate Defense
1205 Lady Street, Room 306
Columbia, South Carolina 29201

Tyree Roberts, a/k/a
Abdiyyah Ben Alkebulanyahh, #6012
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina 29472

This 9th day of May, 2005.

S. CREIGHTON WATERS

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Beaufort County

Honorable Daniel F. Pieper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TYREE ALPHONSO ROBERTS
A/K/A ABDIYYAH BEN ALKEBULANYAHH,

APPELLANT.

RETURN TO APPELLANT'S MOTION TO PROCEED PRO SE

Counsel opposes the motion to proceed *pro se* on direct appeal for the following reasons:

1. Based on past experience, as a general rule this Office takes the position that the Court should not allow self-representation on direct appeal. Although the matter is certainly one within the Court's discretion, there exists no right to proceed *pro se* on appeal.

2. A *pro se* defendant who mishandles a trial harms only himself. A *pro se* defendant who mishandles a direct appeal, on the other hand, damages the criminal justice system as a whole.

3. In any case, the Court should require a defendant to exercise the option (assuming the Court, in its discretion, provides the option) of self-representation before appellate counsel files

the initial brief and designation of matter. The motion to proceed *pro se* in this case was not filed until after counsel had already completed that step in the appellate process.

Accordingly, counsel opposes the motion to proceed *pro se* on direct appeal.

Respectfully submitted,

Joseph L. Savitz, III
Acting Chief Attorney

Robert M. Dudek
Assistant Appellate Defender

Attorneys for Appellant

May 4, 2005

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Beaufort County
Honorable Daniel F. Pieper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TYREE ALPHONSO ROBERTS,
A/K/A ABDIYYAH BEN ALKEBULANYAHH,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the return to appellant's motion to proceed *pro se* in the above referenced case has been served upon opposing counsel, Donald J. Zelenka, this 4th day of May, 2005. A copy has also been served on Tyree Alphonso Roberts, this 3rd day of May, 2005.

Joseph L. Savitz, III
Acting Chief Attorney

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 4th day of May, 2005.

(L.S.)
Notary Public for South Carolina
My Commission Expires: March 13, 2007.

IN THE SUPREME COURT OF THE STATE SOUTH CAROLINA

NOTICE OF CERTIFICATION

THIS IS TO CERTIFY THAT I HAVE PLACE IN A SEALED AND ENCLOSED ENVELOPE AND MAILED VIA UNITED STATES POSTAL SERVICE WITH CORRECT AFFIXED POSTAGE TO: SOUTH CAROLINA OFFICE OF APPELLATE DEFENSE, ATTORNEY, JOSEPH L. SAVITZ, III, 1205 PENDLETON STREET, ROOM 306, COLUMBIA, S.C. 29201; SOUTH CAROLINA SUPREME COURT, CLERK OF COURT, COLUMBIA, SOUTH CAROLINA; UNITED STATES ATTORNEY OFFICE 'CIVIL RIGHTS DIVISION' 1845 ASSEMBLY STREET, COLUMBIA, S.C. 29202; UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON THE JUDICIARY, WASHINGTON, D.C. 20515-6215; NATIONAL PRISON PROJECT OF THE AMERICAN CIVIL LIBERTY UNION 1875 CONNETICUT AVENUE N.W. WASHINGTON, D.C. 20009; THE FOLLOWING DOCUMENTS:

I. LETTER TO SOUTH CAROLINA OFFICE OF APPELLATE DEFENSE, JOSEPH L. SAVITZ, III, ACTING CHEIF ATTORNEY

II. MOTION FOR DISMISSAL AND TO BLOCK ALL ACTION OF 'APPELLATE' APPOINTED COUNSEL, BOB DUDEK

III. NOTICE OF CERTIFICATION

AND FURTHER, DO SWEAR UNDER AND BY THE PENALTY OF PERJURY THAT FORGOING IS TRUE AND CORRECT.

THIS 26 DAY OF ________ 2004.

Sworn to me this 26 July 04

[signature]

8/20/06

RESPECTFULLY

/S/ [signature]

ABDIYYAH B. ALKEBULANYAHH, PRO SE

#6012 LIEBER DEATHROW

P.O. BOX 205

RIDGEVILLE, S.C. 29472

1117. 6.

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

ABDIYYAH bEN ALKEBULANYAHH
DEFENDANT/PRO SE
VS.
STATE OF SOUTH CAROLINA

CASE NO:
02-GS-07-0370
02-GS-07-0369

MOTION FOR DISMISSAL AND TO BLOCK ALL ACTION OF 'APPELLATE DEFENSE' APPOINTED COUNSEL, BOB DUDEK, ATTORNEY

COMES' NOW, ABDIYYAH bEN ALKEBULANYAHH, PRO SE, AND SHOWS THIS COURT THE FOLLOWING:

I. SINCE OCTOBER 22, 2003 (AFTER SENTENCING) I HAVE BEEN FORCE TO SLEEP IN AN TOTAL EMPTY CELL ON CONCRETE AND STEEL, WITHOUT MATTRESS OR BLANKET OR SHEETS, UNDER FREEZING COLD TEMPERATURE. I ONLY HAVE HAD RELIEF FROM THIS CONDITION FOR FOR 30-45 DAYS IN THE PAST 9 MONTHS OR THE DATE SIGNED BELOW

II. I AM DENIED ACCESS TO ALL MY PERSONAL LEGAL MATERIAL, HOLY BIBLE AND ADEQUATE WRITTING MATERIAL AND COURTS

III. THERE IS A GUARD (PRISON) HERE BY THE NAME OF CAPTAIN NETTLES, WHO BOAST THAT HIS FAMILY MEMBERS AND FRIENDS IS CONNECTED AND EMPLOYED WITH THE 'SOUTH CAROLINA OF APPELLATE DEFENSE'
I HAVE BEEN BRUTALLY ASSAULTED BY THIS PRISON GUARD AND A CAPTAIN DOBSON ALSO THEY SPAYED INTO MY EYES AND MOUTH A CHEMICAL AGENT WHICH CAUSE ME TO PASS OUT AND MY EYES FOREVER BURNS

IV. I BEGAN WORKING ON SOME TRANSCRIPTS I RECEIVED TWO WEEKS AGO FROM 'SOUTH CAROLINA APPELLATE DEFENSE OFFICE'; PRISON GUARD CAPTAIN DOBSON CAME INTO THE CELL WITH FORCE, THREW A PORTRAIT (PICTURE) OF MY DAUGHTER AND THE ABUNDANCE OF LEGAL WORK I HAD DONE INTO THE TRASH CAN, INCLUDING A TRANSCRIPT THEN STATED I "DIDN'T NEED IT (LEGAL WORK) THAT'S WHY THEY APPOINT YALL LAWYERS FOR..."

T.Y.L.

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

[CONTINUE]

V. I SPOKE WITH ATTORNEY, BOB DUDEK OF THE 'SOUTH CAROLINA APPELLATE DEFENSE', FOR THE VERY FIRST TIME, ON JULY 20, 2004.
HE TOLD ME THAT I DON'T NEED TO ASSIST HIM WITH MY APPEAL AND THAT A PRISONER DON'T REALLY HAVE RIGHTS TO HIS LEGAL MATERIAL AND HE COULDN'T HELP ME ATTAIN MY PERSONAL LEGAL MATERIAL, NOR A MATTRESS OR A BLANKET

VI. MY INTELLIGENCE HAS BEEN INSULTED. IT'S CRIMINAL THE WAY I AM BEING TREATED

VII. I ~~REPRESTED~~ REPRESENTED MYSELF IN AN ENTIRE TRIAL PROCEEDING, AS PRO SE DEFENDANT. IT'S ON THE RECORD THAT MY INTELLIGENCE IS MUCH HIGHER THAN THE AVERAGE AMERICAN YET, I AM BEING TREATED LESS THAN HUMAN AND DEPRIVE OF BASIC RIGHTS INWHICH THE PRESIDENT OF IRAQ AND OSAMA BIN LADEN WOULD GRANT TO A HUMAN BEING; AT THE LEAST ~~THEY WOULD~~ GIVE A MAN A RUG TO SLEEP ON AND CLOTHING. I BEEN NAKED AND AT SOME POINT AFTER MONTHS OF HUMILIATION GIVEN A BOXER UNDER-WEAR

VIII. I KNOW IN FACT THE GOVENOR IS AWARE OF MY CONDITION AND TREATMENT. IT IS MY BELIEF THAT THE OFFICIALS OF THE SOUTH CAROLINA DEPARTMENT OF CORRECTION, THE COURTS AND GOVENOR ARE IN FACT IN CONSPIRACY TO DEPRIVE MEN OF AN FAIR APPELLATE PROCESS, AND IS INVOLVED WITH MURDERS AND LAWLESSNESS; FOR I AM A EYE WITNESS

IX. THERE IS A BLATANT CONSPIRACY THAT IS/HAS PREVENT ME FROM FILING ANY CIVIL ACTIONS. THEY HAVE A POLICY THAT NO INMATE IS TO BE ALLOW ACCESS TO MAKE COPIES OF ANY DOCUMENT OR SUCH, INMATE MUST HAND WRITE ALL AND EVERY TYPE OF COPY (WITHOUT CARBON PAPER)

X. I AM INNOCENT. I AM 100% SURE I WILL BE EXONERATED BY ANY PRUDENT ~~[illegible]~~ JUST JUDGE AND IF MY DIRECT APPEAL IS FOUL-UP OR PRO LONGED I WILL SEEK MY CASE TO THEREAFTER BE PRESENTED TO THE UNITED STATES SUPREM COURT, WHERE I CAN HAVE SWIFT JUSTICE AGAINST OR FOR ME. I WILL NOT BEAR LIVING LIKE THIS

I BEG THIS COURT TO ACCEPT THIS MOTION & PLEA AND FURTHER SWEAR UNDER AND BY THE PENALTY OF PERJURY FORGOING IS TRUE AND CORRECT.
THIS 26 DAY OF JULY 2004.

RESPECTFULLY
/s/ Abdiyyah b. Alkebulanyahh
ABDIYYAH b. ALKEBULAYAHH
#6012 / LIEBER DEATHROW, SC

Sworn to me this 26 July 04
Annette R. Blum [illegible]
8/20/04

5001

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

ABDIYYAH ben ALKEBULANYAHH PRO SE'/DEFENDANT PETITIONER VS. STATE OF SOUTH CAROLINA	CASE NO: 02-GS-07-0370 02-GS-07-0369

A MOTION, REQUEST, PLEA AND BEGGING TO BE ALLOWED TO EXCERCISE THE UNITED STATES CONSTITUTIONAL RIGHT, AMENDMENT ONE (I.)

COME'S NOW, ABDIYYAH ben ALKEBULANYAHH, PRO SE', PETETIONER, AND SHOW THIS COURT THE FOLLOWING:

I. I WAS CONVICTED AND BROUGHT TO LIEBER DEATHROW, SOUTH CAROLINA ON OCTOBER 22, 2003

II. SINCE THE DATE SIGNED BELOW, I HAVE BEEN DENIED ACCESS TO ALL MY LEGAL MATERIALS AND BOOKS FOR OVER SEVEN (7) MONTHS

III. AT TRIAL I WAS MY OWN ATTORNEY (PRO SE'). I INTEND TO ASSIST OR FILE MY OWN BRIEF AND ARGUMENT ON 'DIRECT APPEAL'

IV. I HAVE BEGGED, ASKED, REQUEST IN WRITTING AND FILED INMATE GRIEVANCES TO HAVE ACCESS TO MY LEGAL MATERIALS, AND TO HAVE. PRISON OFFICIALS CEASE TAKING MY NOTES, DOCUMENTATIONS OF INCIDENTS AND CIVIL ACTION WORK, AS WELL AS TO STOP PHYSICALLY ASSAULTING ME

V. ANY TIME I MAKE AN ATTEMPT TO PETITION THE COURT, PRISON GUARDS TAKE BY FORCE ALL LEGAL ORIENTED DOCUMENTS AND MATERIALS

VI. THE SOUTH CAROLINA OF APPELLATE DEFENSE OFFICE HAS BEEN NOTIFIED OF THESE PRISON OFFICIALS LAWLESSNESS AND THE BRUTAL INHUMANE TREATMENT INFLICTED UPON ME

NOTICE OF CERTIFICATION

I DO CERTIFY THAT I HAVE SERVED THIS MOTION OR PETITION VIA UNITED STATES MAIL TO: SOUTH CAROLINA OFFICE OF APPELLATE DEFENSE, JOSEPH L. SAVITZ, ATTORNEY, 1205 PENDLETON ST., RM. 306, COLUMBIA, SC 29201; SOUTH CAROLINA SUPREME COURT, COLUMBIA, S.C.; UNITED STATES SUPREME COURT, WASHINGTON, D.C.; AMERICAN CIVIL LIBERTY UNION, 1875 CONNETICUT AVE. N.W., WASHINGTON, D.C.; AND LIEBER DEATHROW WARDEN, STAN BURTT (OR MR. BODISON) OF SOUTH CAROLINA.

AND FURTHER DO SWEAR UNDER AND BY THE PENALTY OF PERJURY FORGOING IS TRUE AND CORRECT.

THIS 26 DAY OF JULY 2004.

Sworn to me this 26 July 04
Yvette R. Blue
8/2/04

RESPECTFULLY
/S/ Abdiyyah b. Alkebulanyahh
ABDIYYAH b. ALKEBULANYAHH
#6012, LIEBER DEATHROW
P.O. BOX 205
RIDGEVILLE, S.C. 29472

jn4 c.

TO : SOUTH CAROLINA OFFICE OF APPELLATE DEFENSE
C/O JOSEPH L. SAVITZ III, ACTING CHIEF ATTORNEY

FROM: ABDIYYAH bEN ALKEBULANYAHH #6012, LIEBER DEATHROW, S.C.

DEAR MR. SAVITZ

PLEASE BE ADVISED TO APPOINT ANOTHER ATTORNEY FOR MY DIRECT APPEAL OTHER THAN BOB DUDEK, ATTORNEY.

I AM ASKING YOU AS I ASKED ATTY. BOB DUDEK, PLEASE FILE A 'WRIT OF MANDAMUS' OR 'MOTION TO COMPEL' IN MY BEHALF TO HAVE ALL MY LEGAL MATERIALS, DOCUMENTS AND BOOKS RELEASE TO ME WHICH HAS BEEN TAKEN FROM ME BY PRISON OFFICIALS FOR OVER EIGHT (8) MONTHS, AGAINST MY UNITED STATES FIRST AMEND. CONST. RIGHTS AND PRISONER RIGHTS.

WHICH THIS ISSUE WILL BE MY FIRST ENUMERATED ISSUE ON DIRECT APPEAL, AS WELL AS, AN ISSUE WHY THE DEATH PENALTY SHOULD BE ABOLISH. FOR I AM EYE WITNESS TO MURDERS OF MEN BY THE JUDICIAL UNCONSTITITION PROCESS.

IF I DON'T HAVE ALL MY MOST IMPORTANT, LEGAL MATERIAL AND A MATTRESS TO SLEEP ON BY JULY 30, 2004 OR A WRIT IS FILED IMMEDIATEDLY IN COURT TO CORRECT THIS LAWLESSNESS AND INJUSTICE, I WILL ON THAT DAY NOTIFY THE SUPREME COURT; I WILL PROCEED PRO SE' ON DIRECT APPEAL. FOR BETTER OR WORSE.

YET, FORTUNATELY FOR ME I WILL BE TOTALLY EXONERATED AT DIRECT APPEAL, IF NOT I DESIRE NO MORE STATE APPEALS PROCESS, I INTEND TO LET THE UNITED STATES SUPREME COURT TO HEAR MY CASE.

WHEN ONE IS TRULY INNOCENT AND THE FACTS ARE IN THE RECORD TO SHOW IT. I'VE SUFFER ENOUGH FROM INJUSTICE. LET THE LAWLESSNESS CEASE BY OFFICIALS.

I DO SWEAR UNDER AND BY THE PENALTY OF PERJURY THAT FORGOING IS TRUE AND CORRECT.
THIS ___ DAY OF __________ 2004.

Sworn to me the 26th July

[illegible signature]
8/20/06

RESPECTFULLY
/S/ [signature]
ABDIYYAH B. ALKEBULANYAHH

CHALLENGE TO STATE'S BRIEF

(PG. 1)

DATE NOVEMBER 23, 2005

TO SOUTH CAROLINA OFFICE OF APPELLATE DE-FENSE, ATTORNEY, JOSEPH L. SAVITZ, III 1205 PENDLETON STREET, ROOM 306, COLUM-BIA, S.C. 29201.

FROM ABIJYAH BEN ALKEBULANYAHH, SK6013 LIEBER DEATHROW, P.O. BOX 205, RIDGE-VILLE, S.C. 29472

REF O.A.D. INCOMPETENCY AND INEFFECTIVE ASSISTANCE

DEAR MR. SAVITZ:

UNFORTUNATELY THE O.A.D. WANT ALLOW ME TO HAVE ACCESS TO CALL THE O.A.D. BY TELEPHONE AS O.A.D. HAS GRANTED OTHERS ON DEATHROW, WHOM O.A.D. REPRESENTS. I WOULD HAVE LIKE TO HAD BEEN ABLE TO MAKE IMMEDIATE-LY CONTACT ON IMPORTANT ISSUES OR MATTERS PERTAINING TO MY CASE. I WAS CALL TO A SPECIAL PRISON-GUARDS PHONE ONCE, WHERE O.A.D. TOLD ME THEY ARE FILING MY APPEAL. I HAVE NEVER EVER SEEN ANYONE FROM O.A.D., NOR HAVE I SPOKE TO ANYONE SINCE THAT AFOREMENTION CALL.

II. I RECEIVED THE "STATE'S INITIAL BRIEF" WHICH YOU SENT ME ON NOVEMBER 11, 2005, I BELIEVE. NOW, PLEASE ALLOW ME TO POINT OUT WHY D.R.D. IS INCOMPETENT AND INEFFECTIVE.

III. FIRST, MY LEGAL NAME IS AEDIYYAH BEN ALKEBULANYAHH. MY NAME, IS NOT AN ALIAS! THE STATE AND LAW ENFORCEMENT KNEW EXACTLY MY LEGAL NAME AND WHO I AM, BY HAVING IN THEIR POSSESSION "RELEVANT COURT RECORDS" FROM THE "BEAUFORT CO. COUNTY COURTHOUSE", TWO DAYS AFTER MY ARREST ON JANUARY 8TH, 2002. THE STATE AND LAW ENFORCEMENT OBTAINED THE INDISPUTABLE FACT OF MY "LEGAL NAME" ON "JANUARY THE 10TH," 2002. SEE PRELIMINARY HEARING TRANSCRIPT 3-18-02, PG. 10, LINES 11-15. DESPITE KNOWING AND USING MY LEGAL NAME,

IV. THE STATE DREW UP AN INDICTMENT, THEN INDICTED ME UNDER AN ALIAS NAME, UNLAWFULLY AN AGAINST MY CONSTITUTIONS RIGHTS. SEE, TRIAL TR. PG. 1361, LINES 7 - PG. 1362, LINES 17.

V. EVEN AGAINST THE COURT ASKING AND DIRECTING AN "ORDER" TO CHANGE ALL DOCUMENTS AND USE MY LEGAL NAME UPON. SEE, HEAR. TRANS. 10-8-02, PG. 4, LINES 21 - PG. 6, LINE 13.

VI. NOW, I STILL HAS TO ENDURE THE UNLAWFUL INSULT FROM O.A.D. AND THE STATE IN REGARDS TO FILING MY CASE OR APPEAL "IN THE STATE OF SOUTH CAROLINA IN THE SUPREME COURT," UNDER AND IN A ALIAS OR ILLEGAL OR 'UNLAWFUL' NAME. IT IS APPARENT THEIR IS NO RESPECT FOR LAW, OR, O.A.D. DON'T KNOW MY LEGAL NAME, NOR CARE.

VII. YOU ASK ME TO CONTACT YOU IN THE MATTER CONCERNING THE "STATE'S INITIAL BRIEF OF RESPONDENT" IN MY CASE. WELL, LET ME BRING TO YOUR ATTENTION A FEW LIES AND UNSUBSTANTIATED FACTS, IN THE "STATEMENT OF FACTS" OF THE STATE'S INITIAL BRIEF OF RESPONDENT.

VIII. IN SECTION 'A' PAGE 4. THE STATE STATED, "IN JANUARY 2002, APPELLANT WAS LIVING WITH HIS WIFE NZURI AT THE HOME OF BRENDA SMITH AND HER HUSBAND ISAAC RILEY...." THIS IS A ABSOLUTE LIE! FOR BRENDA SMITH NOR ISAAC RILEY OWNED, RENTED OR LEASED A HOME IN BEAUFORT COUNTY. AND NO WHERE IN THE RECORD IS THERE ANY EVIDENCE TO SUPPORT THAT CLAIMED BY THE STATE. I AND MY WIFE NZURI OCCUPIED THE SPACIOUS MASTER-BEDROOM! WHILE MS. SMITH AND ISAAC OCCUPIED THE SMALLER AND CRAMP GUEST-BEDROOM.

SEE, STATES EXH. NO. 24 (DIAGRAM) AND EXHIBIT NO. 25 (MODEL).

IX. THE STATED FURTHER ON PG. 4, PAR. 3, THAT, "APPELLANT PICKED UP KIMBERLY BLAKE AND THEIR BABY AND TOOK THEM TO THE RILEY HOUSE..." THAT'S A LIE! STATE'S WITNESS KIMBERLY BLAKE TESTIFIED THAT A GUY NAME DEVON IVY BROUGHT HER TO MY HOUSE IN A BLACK TRUCK. SEE, HEAR. TRANS. 10-01-03, PG. 147, LINES 15-25.

X. ON PAGE 4, THE STATE STATED, "APPELLANT ALSO HAD THREATENED TO BEAT KIMBERLY UP. KIMBERLY ASKED STRAWBERRY TO CALL THE POLICE BECAUSE SHE WAS SCARED TO LEAVE THE RESIDENCE." KIMBERLY TESTIFIED THAT I HAD "THREATEN TO TAKE [THE] HOME". TRIAL TRANS. PG. 1716, LINES 14-16. SHE FURTHER TESTIFIED TO, THAT SHE COULD HAVE LEFT MY HOME ANY TIME SHE WANTED TO, AND, NO ONE COULD HAVE STOP OR PREVENTED HER FROM WALKING AWAY FROM THE RESIDENCE, EVEN 50 YARDS AWAY TO HER COUSIN'S HOME. SEE, TRIAL TRANS. PG. 1717, LINES 24 - PG. 1718, LINE 3; PG. 1718, LINES 14-16; PG. 1718, LINES 4-7; PG. 1718, LINES 8-13.

XI. ON PAGE 5, IN PAR. 2, THE STATED STATED, "BRENDA SMITH ANSWERED THE DOOR AND INVITED THE OFFICER INSIDE." THIS IS A LIE!

MS. SMITH CAME OUTSIDE RESIDENCE AND WAS STANDING ON THE PORCH. SEE TRIAL TRANS. PG. 1665, LINES 18-19. MS. SMITH TOLD THE POLICE-MEN "THAT NO ONE WAS BEING HELD HOSTAGE OR KIDNAPPED AT THEIR HOME". TR. TRANS. PG. 1665, LINES 23-25. MS. SMITH CONFRONTED STRAWBERRY WHO WAS SITTING IN HER CAR, THEN REMOVED HER AND THE [illegible]. SEE TR. TRANS. PG. 1651, LINES 11-12; PG. 1665 LINES 22 - PG. 1666, LINE 12.

KIMBERLY WAS INSIDE THE HOUSE IN THE BED-ROOM AND SHE TESTIFIED SHE HEARD MS. SMITH OUTSIDE THE RESIDENCE FROM WHAT SHE WAS ABLE TO "HEAR AND SEE", MS. SMITH WAS "ADAMANT OF PUTTING UP A LOT OF RESISTANCE ... TO PREVENT THE TWO OFFICERS FROM COM-ING INTO HER HOUSE... SHE DID STATE OR TRY TO PREVENT THEM FROM ENTERING THE RESIDENCE ..." SEE, HEAR. TRANS 10-01-03 PG. 166, LINES 4 - PG. 167, LINE 4.

MS. SMITH TESTIFIED TO THAT, SHE "REPEATED-LY AND CONSISTENTLY TELL THE OFFICER THAT THERE WAS NO HOSTAGE OR ANYONE BEING HELD AGAINST THEIR WILL," AND THAT SHE SPEND [illegible] TIME TRYING TO CONVINCE THE OFFICERS OUT-SIDE THE RESIDENCE THAT, "WHEN THE OFFICER WAS -- WAS PERSISTENT -- WAS TRYING TO GET [HER]

TO SAY THAT SOMEONE WAS BEING HELD HOSTAGE OR BEING KIDNAPPED AGAINST THEIR WILL AT THE HOME, AT A GIVEN TIME [SHE] TELL THE OFFICER THAT [SHE] WOULD GO INSIDE AND GET [illegible] [I.E. KIMBERLY] TO STRAIGHTEN THAT ALL OUT". SEE TRIAL TRANS. PG. 1814, LINES 8 - PG. 1815, LINE 1; ALSO, DEFENSE EXHIBIT NO. 9.

CONTRARY TO THE STATE'S ASSERTION ON PAGE NO. 5, PAR. 2, IN STATE'S BRIEF, THAT MS. SMITH ANSWERED THE DOOR AND "INVITED" THE OFFICERS INSIDE. THE INDISPUTABLE TRUTH THAT THAT A LIE, IS IN MS. SMITH TESTIMONY. SEE, TRIAL TRANS. PG. 1812, LINES 3 - 9.

VII. PAGE NO. 5, PAR. 3. THE STATE ASSERTED IN THEIR BRIEF, "[illegible] SAID HE WAS NOT GOING BACK TO JAIL..." WHEREAS, IT WAS KIMBERLY WHO TESTIFIED THAT SHE DID NOT WANT TO ENCOUNTER THE OFFICERS AND THAT SHE DIDN'T BECAUSE SHE WAS AFRAID SHE WOULD GO TO JAIL. SEE, HEAR. TRANS. 10-01-03, PG. 157, LINES 9-17.

VIII. PAGE NO. 5, PAR. 4, IN STATE'S BRIEF, THE STATE STATED, "KIMBERLY CAME OUTSIDE OF THE BEDROOM AND TALKED WITH THE OFFICERS." THIS STATEMENT IS A OUTRIGHT BLATANT LIE!!! MS. SMITH TESTIFIED THAT THE OFFICERS NEVER ASK KIMBERLY "ANYTHING ONCE THEY ENCOUNTERED

(P.G. 7)

HER". SEE, TRIAL TRANS. PG. 1828, LINES 10 - PG. 1829, LINE 1.

KIMBERLY INITIALLY CLAIMED THE OFFICERS ASKED HER ONE QUESTION (HER NAME). THEN TWENTY-TWO (22) MONTHS LATER, CLAIMED IT WAS TWO QUESTIONS (IF THEY [illegible] THE ROOM [illegible]). THEN THEY "WALKED PASS HER FAST". SEE, DEFENSE EXH. NO. 35 AT PG. 12, LINES 3-5, EMPHASIS; DEFENSE EXHIBIT NO. 6, PG. 2, LINES 14-17; DEFENSE EXH. NO. 7, PG. 2, LINES 16-19; DEFENSE EXH. NO. 5, PG. 2, LINES 16-20 LAST PARAGRAPH. KIMBERLY FURTHER TESTIFIED THAT THE OFFICERS "WALKED PASS HER FAST" AND "THEY HAD THEIR HANDS ON THEIR GUN WHEN THEY WENT INTO THE ROOM," HEAR. TRANS. 10-01-03 PG. 159, LINES 3-5.

III. PAGE 5, PAR. 4, IN THE STATE'S BRIEF, THE STATE ASSERTS, "THE OFFICERS ASKED HER NAME, AND THEN ASKED TO SEARCH THE BEDROOM BECAUSE BRENDA HAD APPARENTLY SAID ONLY THE BABY WAS IN THERE." MS. BRENDA CAME BACK INSIDE THE RESIDENCE TO GET AND BRING KIMBERLY OUTSIDE THE RESIDENCE TO TALK TO THE OFFICERS, "NOT A BABY". SEE, DEFENSE EXHIBIT NO. 4, LINES 1-10 (VOLUNTARY STATEMENT, MS. SMITH)," TRIAL TRANS. PG. 1814, LINES 20 - PG. 1815, LINE 1; PG. 1815, LINE 18-20.

KIMBERLY TESTIFIED AND GAVE EVIDENCE

OVERWHELMINGLY, THAT MS. SMITH KNOCKED ON MY BEDROOM DOOR, THEN TOLD HER SHE NEED TO COME OUT THE BEDROOM AND "GO OUTSIDE" AND TALK TO THE POLICE. SEE, HER TRAN. [illegible] 03, PG. 159, LINES [illegible]; AND, TRIAL TRANS. PG. 285, LINES 3-6; DEFENSE EX. NO. 5, PG. 2, LINE 9 (VOLUNTARY STATEMENT, MS. [illegible]) ("SO, GO OUTSIDE AND TALK TO THEM"),

XV. AT SECTION 'C' ON PAGE 6, PAR. 1, IN STATE'S BRIEF, THE STATE'S ASSERTS THAT "DEPUTY STEFFMAIER ARRIVED FIRST TO FIND [illegible], ISAAC, AND THE BABY;" THE STATE FAILED TO MENTION THE "JUVENILE" (BOBBY RIGBY), SEE DEFENSE EXH. NO. 29, AT [illegible]426, TRIAL TRAN. PG. 1416, LINES 14-16.

THE "JUVENILE" TOLD OFFICER STEFFMAIER "THE SHOT CAME FROM THE BACK YARD", SEE, DEFENSE EXH. NO. [illegible], PG. 1, PAR. 4. MS. SMITH AND MR. RILEY KNEW THE SHOTS CAME FROM WITHIN THE RESIDENCE, THEY WERE INSIDE WHEN THE SHOTS STARTED! THE "JUVENILE", BOBBY RIGBY NEED TIME TO BUY HIS ESCAPE, SO HE SENT THE OFFICER TO THE "BACK YARD".

THE EVIDENCE OF RIGBY PRESENT AND ESCAPE IS: SEE, TRIAL TRANS. PG. 3176, LINES 5-PG. 3177, LINE 2; PG. 2984, LINES 7-11; PG. 2963, LINE 13-19; PG. 3156, LINES 21-25 (CE, DEFENSE EX. NO. 42 ID);

PG. 3116, LINES 18 - PG. 3117, LINE 19; PG. 3139, LINES 8-25; PG. 3118, LINE 11-14.

XVI. SECTION "I", ON PAGE 6, STATE'S BRIEF, TITLE, "KIMBERLY AND APPELLANT RUN AWAY."

ALL THE STATE'S WITNESSES GAVE A DETAILED DESCRIPTION OF THE CLOTHES AND FACE APPEARANCE OF SOMEONE OTHER THAN ME WHOM WAS LATTER [illegible] LY [illegible] (HER COUSIN MICHAEL CLARK).

STATE'S WITNESSES: JACKELLE [illegible], TRL. TR. 18[illegible]; [illegible] FRANKLIN, PG. 18[illegible]; [illegible] HOLLOWAY, PG. 18[illegible]; BRYAN [illegible], PG. 1879, AND [illegible], PG. 18[illegible].

SUSPECT WITH KIMBERLY

1. WEARING BROWN OR TAN OR [illegible] JACKET. SEE, TRL. TR. PG. 1843, LINES [illegible]-22 AND 18[illegible], LINES [illegible]-17 AND PG. 1877, LINES 5-8; ALSO DEFENSE EXH. NO. 10; TRIAL TR. PG. 1874, LINES 7-11; ALSO DEFENSE EXH. NO. 12; TRIAL TR. PG. 18[illegible], LINES 13-17 AND PG. 1888, LINE 2-7; DEFENSE EXH. NO. [illegible], AT 1[illegible]

2. WORE A ROUGH BEARD AND [illegible]. SEE TRL. TR. PG. 18[illegible], LINE 7-11; PG. 18[illegible], LINES 2-6; PG. 1826, LINES 19-2[illegible]

3. HAD A [illegible] ON HIS [illegible] LEFT HAND. SEE, TRL. TR. PG. 1840, LINES [illegible].

4. DRAGGED HIS LEFT LEG WHICH HAD BLOOD ON IT. SEE, TRL. TR. PG. 1858, LINES 19 - PG. 1859 LINE 15; ALSO, DEFENSE EXH. NO. 11.

APPELLANT DESCRIPTION

1. WERE WEARING BLACK COAT WITH BULLET HOLES [illegible]. SEE, DEFENSE EXH. NO. 24, AT ITEM NO. 14, 14.1 AND 14.2; DEFENSE EXH. NO. 16, AT ITEM 14, 14.1 AND 14.2; DEFENSE EXH. NO. 26, AT 17.1.1; DEFENSE EXH. NO. 19, AT 1725.26 - [illegible]; TRIAL TR. PG. 2473, LINES [illegible] AND PG. 2480, LINES [illegible]. SEE, COURT'S EXH. NO. 2 AND 4.
2. WERE A CLEAN SHAVEN FACE WITH NO BEARD OR GOATEE. SEE, DEFENSE EXH. NO. 22 (PHOTO); TRIAL TR. PG. 2700, LINES [illegible] [illegible]; TRIAL TR. PG. 2173, LINES 16-25 AND PG. 2173, LINES [illegible] AND PG. [illegible], LINE [illegible]; AND DEFENSE EXH. NO. 19 AT PG. 3, PAGE NO. 10 AND 11.
3. HAD NO LEFT LEG INJURY NOR BLOOD ON LEG (PANTS). SEE, TRIAL TR. PG. 2470, LINES 9-15 AND PG. 2483, LINES [illegible] AND PG. 2482, LINES [illegible]; ALSO DEFENSE EXH. NO. 26 AT [illegible] AND [illegible].
4. NONE OF APPELLANT'S FINGERPRINTS WERE FOUND ON ANY GUN, NOR GUN POWDER RESIDUE ON MY HANDS. SEE, DEFENSE EXH. NO. [illegible] ([illegible] WITH [illegible]); ALSO DEFENSE EXH. NO. 24, AT ITEM NO. [illegible].

XVII. OFFICER TATE SHOT OFFICER COURSEN IN THE BACK OF HIS HEAD AND BULLET FRAGMENTS FROM TATE'S GUN WAS FOUND ON, UNDER AND AROUND COURSEN'S HEAD. SEE, TRIAL TR. PG. 2256, LINES 16-17

AND PG. 2?45, LINES 2-13 AND PG. 2347, LINE 4 AND PG. 2366, LINES 17-33 AND PG. 2367 LINES 14-18 AND 2368, LINES 2-7; ALSO, STATE'S EXH. NO. 25 ([illegible]); TR. TR. PG. 3193, LINES 25 - PG. 3194, LINE 2 - PG. 3195, LINE 17, AND PG. 2412, LINE 14-17 AND 2419, LINES 9-20 AND PG. 2420, LINE 5 - PG. 2421, LINE 4; ALSO, DEFENSE EXH. NO. 23, AT ITEM NUMBER 1?; ALSO, TRI. TR. PG. 1513, LINES 20-21 (STATE'S EXH. NO. 7 (FRAGMENTS)); TRI. TR. PG. 2403, LINES 4-12, (STATE CONCEDES). TRI. TR. 2790, LINES 15-20.

XVIII. ON PAGE 3, PARA. 1, IN THE STATE'S BRIEF, THE STATE SAYS "DEPUTY TATE WAS FACE DOWN NEAR THE ADJOINING BATHROOM..." THIS WAS FOUND IN THE "MASTER-BEDROOM BATHROOM" AND "NOT ADJOIN-ING." SEE, STATE'S EXH. NO. 34 AND NO. 35.

XIX. ON PAGE 4, PARA. 1, THE STATE CLAIMED, "APPELLANT'S FINGERPRINTS WERE FOUND ON THE MAGAZINE RECOVERED FROM THE WEAPON." A PARTIAL FINGERPRINT, OF 7 POINTS, WAS SAID TO HAVE BEEN FOUND ON THE EDGE OF A MAGAZINE, SEE, TRI. TR. PG. 2521, LINES 4. IF THIS WAS TRUE, THERE IS AN EXPLANATION. WHEREAS, WHEN [illegible] AND KIMBERLY BLAKE WERE ASSISTING ME, MY FINGER OR "THUMB," TRI. TR. 2522, LINE 17-20. BRUSH THE "EDGE" OF MAGAZINE. TRI. TR. PG. 3197, LINES 15-19.

XX. ON PAGE 9, PARA. 1, IN THE STATE'S BRIEF, THE STATE STATED, "HIS DNA WAS MATCHED TO BLOOD SAMPLES TAKEN FROM THE BEDROOM, KIMBERLY'S BRA, A STICK FOUND NEAR WHERE THE RIFLE WAS HIDDEN, AND THE RIFLE ITSELF."

1. THIS DNA BLOOD SAMPLE (NOT SAMPLES) WAS SAID TO BEEN FOUND ON THE "OUTSIDE" OF THE BEDROOM DOOR." SEE, TRL. TR. PG. 2331, LINE 4-21. THE POLICE PLANTED MY BLOOD THERE WHEN THEY TOOK MY BLOODY CLOTHES OFF ME AT THE HOSPITAL, THEN CARRY THE BLOODY CLOTHES BACK TO THE ALLEGED CRIME SCENE. SEE, DEFENSE EXH. NO. 15, AT PAGE 2, PARA. 5 AND PG. 3, PARA. 1; DEFENSE EXH. NO. 17, PG. 2, PARA. 2 AND AT PAGE 3-4; ALSO, TRL. TR. PG. 2238, LINES 15 - PG. 2239, LINE 14, AND, PG. 2235, LINES 18 - PG. 2236, LINE 6, AND, AT PG. 2116, LINES 2-16.

2. KIMBERLY HAD ENORMOUS AMOUNT OF BLOOD COVER OVER HERSELF, NOT JUST A "BRA" AS THE STATE'S BRIEF HAVE POINT OUT. KIMBERLY HAD BLOOD ON HER "SHIRT (BLUE), BEIGE GIRDLE, BEIGE BRA, LONG SLEEVE BLUE SHIRT AND BLUE JEANS," AND, ALL OVER HER HANDS. SEE, DEFENSE EXH. NO. 25, AT ITEM 22 - 22.4; D. EXH. NO. 26 AT PG. 2, ITEM NO. 22, 2.1, 22.3.1, 22.3.2, 22.3.3 AND 22.4.1.

3. KIMBERLY WAS IN THE WOODS WITH A SUSPECT

WHO HAD A GUN, WORE A BROWN JACKET AND, A ROUGH BEARD AND GOATEE WHOM ALSO HAD BLOOD ON HIS LEFT LEG. AS I AFOREMENTIONED, WHEN THE LAW ENFORCEMENT DISCOVERED KIMBERLY WITH BLOOD ALL OVER HER, THEY THEN IMMEDIATELY HAD HER TO RETRACE HER FOOTSTEPS INTO THE WOODS WHILE SHE WAS ALL BLOODY FOR THEM. SEE, TRIAL TR. PG. 2641, LINES 1-25; PG. 2850, LINES 4-15; PG. 2611, LINES 14-25; PG. 2923, LINES 4-18 AND PG. 2923, LINES 19-25 2924, LINE 16.

4. THERE IS NO EVIDENCE PRESENTED BY THE STATE, THAT THE RIFLE ACTUALLY HAD BLOOD ON IT, NOR MY FINGERPRINTS, "INDISPUTABLE!" THE RIFLE 'STRAP' HAD BLOOD ON IT WHICH KIMBERLY OR MICHAEL BLAKE POUND HAD TRANSFERRED THE BLOOD ONTO THE STRAP.

5. THIS DNA MATCHED TO THE ACTUAL BLOOD SAMPLE OF MY WIFE N-E-J-R-I B-A-T-H E-L-KE-B-U-L-A-N-Y-A-H-H. I THOUGHT I WAS "THREE ROBERTS A.K.A. ABDIYYAH BEN ALKEBULANYAHH." THIS BLOOD SAMPLE OR VIAL IS DEFACTO MY WIFE'S, NEJRI. SEE STATE'S EXHIBIT NO. 22 (VIAL OF BLOOD).

CONCLUSION

So, MR. SAVITZ, WHEN YOU GET THE CHANCE

PLEASE DO WHAT IS NECESSARY TO LET THE COURT KNOW THAT THE [illegible] BRIEF IS SATURATED WITH [illegible] TRUTH OF [illegible] FAMILY [illegible] ALREADY.

[illegible]

1. [illegible] ?

2. [illegible] ?

[illegible]

[illegible]

CC: S.C. SUPREME CT.
[illegible]

[illegible]

CERTIFICATE OF [illegible]

[illegible]

[illegible]

[illegible]

This 29 day of Nov [illegible]

[illegible]

[illegible signature]

8/20/06

[illegible signature]

[illegible]
[illegible] - L.C.I., P.O. Box
[illegible], Ridgeville, [illegible]

ORIGINAL

1 STATE OF SOUTH CAROLINA)
: IN THE COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT) Case No. 07-CP-07-0715

3 Abidiyyahben Alkebulanyahh,)
\# 6012)
4 Plaintiff,)
) DEPOSITION OF:
5 -vs-) JOSEPH SAVITZ
)
6 The State of South Carolina,)
)
7 Defendant.)

8 Given before KATHLEEN M. HALL, Court Reporter and
Notary Public, at the Offices of The Attorney General,
9 1000 Assembly Street, Columbia, South Carolina, on
Wednesday, August 13, 2008, commencing at 10:15 a.m.
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INDEX TO EXAMINATIONS:

DIRECT EXAMINATION BY MR. GRANT 4
CROSS EXAMINATION BY MR. WATERS 24

INDEX TO EXHIBITS:

NO EXHIBITS

1 It was stipulated by and between
2 counsel for the parties that this
3 deposition is taken pursuant to notice and
4 that all questions as to notice are
5 waived; that all objections, save as to
6 the form of the question, are reserved
7 until the time of trial; that the
8 deposition is taken pursuant to the South
9 Carolina Rules of Civil Procedure, for the
10 purposes allowed therein; and that the
11 deponent was explained his right to read
12 and sign the deposition and WAIVED that
13 right.
14 (JOSEPH SAVITZ, being duly sworn,
15 testified as follows:)
16 DIRECT EXAMINATION BY MR. GRANT:
17 Q. State your full name for the record sir?
18 A. Okay my name is Joseph L. Savitz, III.
19 Q. Do you need me to close the door. But there are
20 other people coming in sitting down. They might
21 want to hear. Probably. All right Mr. Savitz my
22 name is Carl B. Grant. I am one of the court
23 appointed attorneys along with Mr. Glen Walters
24 to the PCR of this capital case. I am still
25 having problems announcing my client's own name

1 but it is Abdiyyah ben well let us just put it
2 this way. I will spell it. A-B-D-I-Y-Y-A-H b-
3 e-n- A-L-K-E-B-U-L-A-N-Y-A-H-H formerly known as
4 Tyree Roberts the applicant we will refer to him
5 in this case?
6 A. Okay that will be fine.
7 Q. And I will again along with Mr. Glen Walters we
8 have been appointed to represent him in his
9 death penalty PCR. And you have been your role
10 in this case is you were one of his appellate
11 defense attorneys, is that correct sir?
12 A. That is correct.
13 Q. All right?
14 MR. WATERS: I am sorry to interrupt
15 you. We want to ask whether he wants to
16 read and sign or waive that.
17 MR. GRANT: Okay, sure.
18 Q. You have the right to read your deposition and
19 sign it before it is finally presented if you
20 want to do that?
21 A. No, I will be glad to waive the right.
22 Q. And by the way this is not going to take that
23 long today, okay?
24 A. Even better.
25 Q. All right. Mr. Savitz let us talk a little bit

1 about you for a second, sir?
2 A. Okay.
3 Q. Your educational background, where did you go to
4 college?
5 A. I went to college I actually went to three
6 colleges went to Carolina, Erskine, Clemson
7 graduated from there and came back to law school
8 at USC here.
9 Q. And what year did you finish law school?
10 A. In 1982.
11 Q. Okay. All right. And let us talk about your
12 professional are you admitted to the South
13 Carolina Bar?
14 A. Yes, I am.
15 Q. Any other bars other than the South Carolina
16 Bar?
17 A. Um I am in the U.S. Supreme Court and you know
18 things like that I mean everything I have to be
19 admitted to for federal courts and stuff.
20 Q. Any other state bars other than South Carolina?
21 A. No.
22 Q. And since you graduated from law school and got
23 admitted to practice law in South Carolina what
24 tell me about your professional work experience?
25 A. Okay I um I was in private practice from 1982

1 until I went to work at appellate defense in
2 1985 on January the 2nd of 1985 and I have been
3 with appellate defense since then.
4 Q. So approximately twenty-three years now?
5 A. Yeah almost going on almost twenty-four yeah.
6 Q. And what position do you hold at appellate
7 defense now?
8 A. I am the chief attorney at appellate defense.
9 Q. What are your daily responsibilities as the
10 chief attorney in appellate defense?
11 A. As the chief attorney I have a the
12 administrative responsibilities for the
13 division. We have seven other lawyers in
14 addition to me right now. I mean and support
15 staff. I am in charge of administering them and
16 just the day to day functioning of the office.
17 As an attorney I handle half of the capital
18 death penalty appeals with Robert Dudek who is
19 the other attorney on this case. And I do have
20 the non-capital murders and then just the
21 regular caseload of non-homicidal cases.
22 Q. When did you first become involved with the
23 appeal of this case?
24 A. I do not remember the exact time. The way, the
25 way we get these is, is right after the trial is

1 completed and the death sentence is announced
2 they file the notice of intent to appeal. We
3 take the case over at the point we order the
4 transcript of the trial and the pre-trial
5 hearings. And once it comes in we read the
6 transcript and we need to research the issues
7 that we want to raise, write the brief and when
8 all that occurred as far as the time frame I am
9 not really sure. I remember the dates of this
10 case but that would have been the sequence.
11 Q. Have you had an opportunity to meet the
12 applicant in this case?
13 A. I do not know if I ever met with him in person.
14 As a matter of fact I probably did not. And I
15 do not know if Mr. Dudek did. I believe that we
16 talked on the telephone. I think that he may
17 have written me. I have not reviewed anything
18 so to prepare for this testimony. I did not get
19 the file back from archives. I do not even know
20 if it is there.
21 Q. So that was?
22 A. Whatever, whatever is in the file whatever it
23 says is accurate.
24 Q. And that was going to be my question is whether
25 or not you remember ever talk to him even on the

1 phone?
2 A. I know I do not.
3 Q. Uh-huh?
4 A. But I mean but that is not not just in his case
5 but in I mean I talked to people. I have got
6 2000 clients at any one time so I may have. I
7 may not have.
8 Q. And obviously you assigned yourself since you
9 are the chief?
10 A. I just we actually I we just do them it is we
11 are in rotation. I get whatever is up unless it
12 is Abbeville for example the Bixby case. I do
13 not take any capital cases out of Abbeville.
14 Q. And once you get the transcript what is the next
15 step from here?
16 A. We read the transcript. In this case Bob and I
17 both would have read the transcript and made
18 notes about important points during the trial
19 noted issues that we considered to be viable for
20 appeal. Then we sit down and decide would have
21 decided you know what issues we thought should
22 have been raised and then just written the brief
23 and gone and argued the case. And in this case
24 it was fairly easy.
25 Q. Now you indicated that you and Mr. Dudek were

1 assigned or you are assigned it too is that
2 because you are the most experienced out of the
3 other seven other lawyers?
4 A. Yeah Bob and I are the most experienced in
5 capital cases. We we do all of them and then we
6 have been doing them. I have been doing capital
7 cases since 1985. And Bob has been doing them
8 since probably 1990 or so.
9 Q. Approximately how many capital cases would you
10 say you have handled on appeal, just a rough
11 estimate?
12 A. I have no idea.
13 Q. How many do you think you have handled on appeal
14 where the defendant acted pro se at trial?
15 A. Two.
16 Q. Two?
17 A. Yeah.
18 Q. What was the other case?
19 A. James Earl Reed and there may have been others.
20 Those are just James was unfortunately executed
21 recently so he stands out in my mind.
22 Q. Were there any issues raised if you could
23 remember in the James Earl Reed case?
24 A. Yeah.
25 Q. As to whether or not Mr. Reed should have been

1 allowed to represent himself?
2 A. Yes. As a matter of fact that that was probably
3 our biggest issue. Mr. Reed decided he was
4 convicted and once he was convicted as you know
5 the capital trial is two parts. Before the
6 sentencing phase he decided that he wanted
7 representation and the Judge would not allow him
8 the lawyer he had a lawyer a public defender the
9 Judge would not allow the public defender to
10 represent him.
11 Q. At the second stage?
12 A. At the second sentencing stage and that was our
13 biggest issue in the case.
14 Q. How did the Supreme Court rule on the case?
15 A. They ruled against us on it.
16 Q. Was there any issue in that case in the Reed
17 case as to whether or not Mr. Reed was actually
18 competent to represent himself?
19 A. Actually yeah interestingly enough there was his
20 execution was delayed and I mean it is kind of
21 late in the game but the night of his execution
22 a few weeks ago the day before the Supreme Court
23 had come out with a case the U.S. Supreme Court
24 had come out with the case. And this is kind of
25 a digression from this but it is interesting.

1 The Supreme Court had come out with a case
2 saying that you can be competent to waive your
3 right to your or competent to stand trial but
4 not competent to actually represent yourself and
5 and to me James Reed is the is the would be the
6 person that that case would be written for.
7 Q. And you are talking about Indiana v. Edwards
8 case, is that right?
9 A. This is one yeah is this the one that came out
10 just like.
11 Q. Yes, sir?
12 A. Within the past month or so.
13 Q. Yeah?
14 A. That is exactly who I am talking about.
15 Q. Okay?
16 A. And anyways some, some attorneys read this case
17 and I did not even know of this case but some
18 attorneys local attorneys read this case and
19 filed a last minute stay of execution on Mr.
20 Reed's behalf and actually managed to delay the
21 execution I do not know five hours or so. They
22 got a stay in federal court which was overturned
23 by the Fourth Circuit and the Supreme Court
24 upheld that. And based on this case but that is
25 that is my Reed is my only experience with that.

1 Q. And the Reed case occurred before this case of
2 this applicant?
3 A. Uh-huh.
4 Q. How long do you estimate it took you to review
5 the transcript of trial in this case?
6 A. I have no I mean it is however long it is. I
7 mean what I usually do is I take the transcript
8 and just I I take it home and basically lock
9 myself in and read it and I usually read it
10 twice. The second time is obviously goes a lot
11 quicker.
12 Q. Based on my review of the record it appeared you
13 were your appeal your brief I should say it
14 appears that the only issue that you all filed
15 for appeal was the issue of whether or not the
16 applicant should have been allowed, should have
17 been allowed to not be part of the sentencing
18 proceeding?
19 A. Yes.
20 Q. And he desired?
21 A. Yes.
22 Q. Excuse me. You did not come across any other
23 issues in the case that you thought were worthy
24 of appealing?
25 A. No. The problem was he had waived his right of

1 counsel and was representing himself. And when
2 you do that you abandon a lot of issues. And a
3 lot of issues that may have been preserved if he
4 had had an attorney you know were preserved. I
5 do not even remember seeing any unpreserved
6 issues to be honest with you. The issue that we
7 raised or not to suggest we just found something
8 and then we had to go with something. I thought
9 the issue when we raised was outstanding and I
10 am still I do not believe that we were going to
11 win the case. And I think we even appealed it
12 to the U.S. Supreme Court. And to me it is a
13 perfectly legitimate strategic move is to leave
14 the courtroom during the sentencing phase while
15 the State is presenting their evidence and
16 aggravation and I do not know why more
17 defendants do not do not want to try to do that
18 at the sentencing phase. I still think it is a
19 good issue.
20 Q. How do you think that benefitted the defendant?
21 A. If if we had won on that issue, he would have
22 gotten a new sentence which would have been a
23 benefit to him. How it benefits the defendant
24 just strategically speaking generally is that
25 the the sentencing phase is at least the first

1 part of it has become like a memorial service
2 for the victim in South Carolina. I mean
3 regardless of how you feel about that that is
4 really what it is. And for the defendant to
5 actually have to sit there while they are
6 presenting.
7 Q. Any evidence and aggravation?
8 A. This evidence about how great the victim was and
9 then have the jury actually have him there
10 watching that. And they usually say in the
11 close -- there is the Solicitor usually I mean
12 what are you going what is the defendant going
13 to do burst into tears, remain silent and the
14 Solicitor always gets up there and you know you
15 cannot comment on remorse or anything like that.
16 But if you read the papers the papers always
17 report that he sat there with no expression on
18 his face sat there solemnly so it I mean it does
19 not help you know and there is no way it could
20 help so yeah I think it is a good strategy.
21 Q. Have you had an opportunity and you may or may
22 not remember giving you the opportunity to
23 review the testimony of Doctor Donna Schwartz-
24 Watts at the pre-trial motion as to whether or
25 not the applicant was competent to stand trial

1 and whether or not she thought he was competent
2 to represent himself. Let me give you this to
3 review that?
4 A. Okay.
5 Q. That is the one there?
6 A. It starts right here at the top.
7 Q. Yeah?
8 A. At 3986.
9 Q. I believe it does yes?
10 MR. WATERS: Do you want this to stay in
11 the chair these are a little spread out.
12 MR. GRANT: I am sorry. I can do that.
13 A. Okay. I guess I do you want me to read all the
14 way through.
15 Q. Well just wanted you to be familiar with her
16 testimony?
17 A. Ask me or just going to I see where she is
18 going. I can read it.
19 Q. Now that you have had a chance to refresh your
20 memory about her testimony and the pre-trial
21 motion on competency and whether he should be
22 allowed to represent himself. First of all, do
23 you know who Dr. Donna Schwartz-Watts is?
24 A. Oh, yes I do.
25 Q. She is a forensic psychiatrist, is that right?

1 A. That is correct.
2 Q. And does she often testify and provide a
3 professional services in these types of cases in
4 South Carolina?
5 A. Yes, she does.
6 Q. And is she well known and well respected amongst
7 Bench and Bar?
8 A. Yes, she is.
9 Q. Now having read that has it refreshed your
10 memory that it was her opinion that the
11 applicant in this case she thought was not
12 competent actually to represent himself. And
13 she made that recommendation to the Court?
14 A. Yeah.
15 Q. Naturally the Court disagreed?
16 A. Right.
17 Q. And we will rule in that he cannot represent
18 himself?
19 A. Right.
20 Q. Is there any reason why the Office of Appellate
21 Defense did not take that issue up with the
22 Supreme Court?
23 A. Well I mean obviously the issue the reason we
24 would not have taken that up is I I do not
25 remember that is the only testimony. There is

1 other testimony that he was competent. We, I
2 mean you know competency is a we see competency
3 occasionally raised. I assume that there was a
4 that they were having a hearing on the issue of
5 his competence at this point I do not remember
6 what happened at it. I mean I see what she
7 testified. If the reason we would not have
8 raised it and I do not remember why specifically
9 we did not raise it in this case would have been
10 that when you are talking about issues like
11 competence where there is conflicting testimony
12 we usually do not raise issues of competence
13 unless it is fairly clear that there are you
14 know fairly profound issues of competence. And
15 then it has to come from the record. Of course
16 you know the competence is one of those things
17 that really cannot be waived. I mean it is a
18 you know he has to have been competent at the
19 time of trial. And if he was not competent it
20 does not really matter whether or not we raised
21 the issue or not. I mean you cannot that is not
22 something I can just sit here and say well we
23 decided to waive his lack of competence as a
24 strategic issue. But having said that I just
25 obviously we did not see that as an issue.

1 Q. In reading the transcript do you remember what
2 impressions you had as to whether or not the
3 applicant represented himself effectively?
4 A. I do not no I, I think that I think that he
5 meant I am always a I do not think the
6 defendants ought to have a right. I know the
7 U.S. Supreme Court says Ferreta you have got a
8 right to represent yourself. And I am mostly, I
9 am usually for constitutional rights but the
10 right to represent yourself in a capital case
11 while you have that right never really seen it
12 done effectively before except in one case and
13 that was Johnny Brewer over in Lexington and
14 that was for entirely different reasons then
15 Brewer's competence as an attorney. It had to
16 do more with the personalities involved in the
17 case. And but I have never seen James Reed
18 would be alive today had he not represented
19 himself and we may not have a death sentence in
20 this case with Mr. Roberts the applicant not
21 representing himself. So I mean I do not
22 believe he did that good a job. I mean it could
23 not have turned out any worse I will put it that
24 way.
25 Q. If you would have appealed the Court's decisions

1 allowing him to represent himself?
2 A. Uh-huh.
3 Q. What would be the argument if a Judge abuses
4 discretion or what would be the argument on
5 appeal?
6 A. Yeah I mean it would have to be because I mean
7 the Judge held the hearing. You know held a
8 hearing on it. And heard why he wanted to
9 represent himself and you do not really have to
10 give that great a reason I mean if you acted
11 like I say you have a right to do to represent
12 yourself as long as the Judge informs you that
13 it is not that maybe not the best idea in the
14 world to represent yourself and it kind of gives
15 you an idea of the the dangers of doing that
16 then it pretty much is in his discretion. I
17 mean he does not have a whole lot of discretion
18 once he does that is my understanding unless
19 there is the unless there are reasons for delay
20 or you know whatever was there a countervail and
21 reasons the defendant is using it to delay the
22 proceedings or something like that I do not
23 think there is any suggestion of that here. I
24 myself like I say am against the idea of
25 individuals representing themselves in at the

1 capital trials. I think there are policy
2 reasons involved that are should weigh against
3 the defendant being able to represent himself in
4 a capital trial but I can also see not forcing
5 him you do not want to force a lawyer on
6 somebody that does not want one.
7 Q. Did you ever talk to Donna excuse me Doctor
8 Watts, Schwartz-Watts about her opinion in this
9 case?
10 A. Um I have talked with her many times. I
11 probably have talked with her about her opinion
12 in this case. Did I talk to her during the
13 pendency of this appeal. No.
14 Q. Now you have had a chance to read Ferreta or
15 discuss it with your colleagues?
16 A. Yes. Oh yeah.
17 Q. Not Ferreta I did not mean Ferreta is old law?
18 A. Read it just the other day.
19 Q. I am talking about Indiana v. Edwards?
20 A. Yes, I have.
21 Q. Do you think that opinion in your professional
22 opinion?
23 A. Well I mean that seems to be what Doctor
24 Schwartz-Watts is saying. I mean I am not a I
25 mean I am not a you know that is kind of a you

1 know combination legal psychological question
2 but what she seems to be saying there is that
3 that he is you know may not be particularly
4 competent that what he thinks is the reason that
5 is is competent to represent himself. That
6 seems to be what she is saying yeah. I mean I
7 can see how the opinion might apply.
8 Q. On second on hindsight of course is always
9 twenty twenty as the saying goes?
10 A. Right.
11 Q. Do you think that you probably should have
12 raised that issue on appeal now?
13 A. If I had this case the newer case in my hand
14 yes. But the way I was back then not I mean I
15 never thought they would come out and say there
16 were two different standards. One that you were
17 competent to stand trial but not competent to
18 represent yourself. I never in a million years
19 thought they would come out with an opinion that
20 said that. I do not think anybody did. If the
21 opinion come out two weeks earlier James Reed
22 would still be alive today.
23 Q. Seven two opinion taking that ruler?
24 A. Yeah. So if I had the same issue if it appeared
25 in front of me today with that opinion in hand

1 would I raise it yes.
2 Q. I am just about finished. I may have a couple
3 more questions for you. I want to turn your
4 attention to what appears to be page 19 of the
5 pretrial motion testimony of August 1, 2003
6 which is bates stamped 3987 of Doctor Schwartz-
7 Watts. I will show this to you Creighton?
8 MR. WATERS: Just give me one second. I
9 will get my copy.
10 MR. GRANT: Okay.
11 MR. WATERS: Is it 3987?
12 MR. GRANT: Uh-huh.
13 MR. WATERS: All right.
14 Q. If you look at lines 18, 18 through 25. Would
15 you please read that, those lines into the
16 record for me. That is the testimony of Doctor
17 Donna Schwartz-Watts?
18 A. Okay. This is her answer. He does not have the
19 capacity to look at different decisions at
20 different pleas, different options available to
21 him so that he can make a reasonable so that he
22 can make reasonable decisions in defending
23 himself.
24 Q. Now again if you have had the benefit of the
25 Evans case today well back then as you now have

1 today?
2 A. Yeah.
3 Q. You probably definitely would have appealed that
4 issue, is that right?
5 A. If yeah I mean. Obviously, obviously so. It is
6 I mean it is the kind of issue that I certainly
7 did not anticipate back then but if I had the
8 opinion now and like I say I mean if he is you
9 know whether I would have done it then or now or
10 whatever if he if he was not competent then that
11 is something that cannot wait. And you know we
12 are still whether I raised it or not it is still
13 an issue in the case if he was not competent to
14 represent himself at trial although competent to
15 stand trial then it seems to me like that that
16 is the competency is an issue that I understand
17 cannot be waived.
18 Q. Right. Thank you Mr. Savitz. That is all the
19 questions I have?
20 A. Thank you.
21 CROSS EXAMINATION BY MR. WATERS:
22 Q. Joe, I have just a few. I think you said and I
23 think you would probably agree and correct me if
24 I am wrong that having Mr. Alkebulanyahh
25 represent himself certainly made it difficult

1 for you to have other good preserved issues such
2 as evidentiary issues and other sorts of things
3 that you usually have?
4 A. That is right. You, it is a bad move to
5 represent yourself I think.
6 Q. And that was the case in this particular?
7 A. That was only the case in this case.
8 Q. And let me quickly show you well let me ask you
9 have you heard of Doctor Richard Frierson?
10 A. Uh-huh.
11 Q. Before?
12 A. I mean yes, yes I have.
13 Q. And he is one of the people at DMA who is often
14 a court's examiner of competency in these cases.
15 He often testifies in these cases as well. And
16 how about Doctor Jeffrey Musick a psychologist
17 do you recall him?
18 A. I, the name is familiar. I do not I mean I am
19 not as familiar with him.
20 Q. And I just want you to skim very briefly it is
21 pages 402 and the Record on Appeal to about 452
22 with Mr. Frierson or excuse me Doctor Frierson
23 and Doctor Musick testified?
24 A. Okay.
25 Q. For the Defendant I am sorry was I supposed to.

1 I just wanted you to quickly refresh your memory
2 as to as to what those two individuals testified
3 and they both pretty much supported his
4 competency to stand?
5 A. Yeah.
6 Q. To represent himself and to stand trial correct?
7 A. Yeah they they said I mean usually that is I
8 mean the testimony appears to be the kind of
9 dividing line that is most of these testimonies
10 and the defense way of evidence and the
11 defendants in comp and the State will have
12 evidence and no he is like anti-social or
13 narcissistic which I think was the diagnosis
14 here. And that he is in fact competent. And
15 that appears to be there appears to be a
16 disagreement among the experts.
17 Q. And those were in fact court's experts though
18 they are employed by the State but they are the
19 court's experts in that case, correct?
20 A. I suppose.
21 Q. So what typically if you have a situation where
22 you have conflicting expert testimony on the
23 issue of competence and the trial judge
24 ultimately makes the call one way or the other
25 what is your likelihood of success in trying to

1 appeal that determination?
2 A. The likelihood of the I mean that is why it is
3 kind of a you know the Judge gets to view the
4 witnesses and see them and see their demeanor
5 and assess all that which is something that goes
6 into credibility and so you know the Judge has a
7 lot of discretion. This is one of those areas
8 where the Judge I mean if the guy is incompetent
9 he does not have any discretion but if the
10 evidence is conflicting he has a lot of leeway
11 in how he can decide the issue and that is and
12 when there is competent evidence on both sides
13 and the Judge decides against you you rule.
14 That is a factual determination he gets to make
15 and you really cannot appeal. I mean you can
16 appeal if he is just wrong and the guy is a
17 wacko but you know that but if there is just a
18 you know a legitimate disagreement among experts
19 and you know the Judge has got to decide
20 something. If he decides the guy is competent
21 it is difficult to appeal that if it is
22 supported by the evidence.
23 Q. Okay and putting Edwards aside which of course
24 as we know?
25 A. Yeah.

1 Q. Did not come out of that time would that be the
2 reason why you might not have seen that as a
3 viable appellate issue?
4 A. Yeah.
5 Q. At the time you were writing this brief?
6 A. That is right. That is correct. There is just
7 no point in arguing you know an evidentiary
8 dispute that is supported or that results in a
9 decision that is supported by the evidence.
10 Q. Okay. That is all I have. Thank you.
11 MR. GRANT: Let me see that Court of
12 Appeals a minute?
13 MR. WATERS: Do you want me to call Bob
14 and tell him to come on in?
15 MR. GRANT: Please.
16 MR. WATERS: Okay. While you are
17 looking at that go off the record.
18 (DEPOSITION RECESSED AT 10:43 a.m.)
19 (DEPOSITION RECONVENED AT 10:44 a.m.)
20 Q. I have no further questions.
21 A. All right well thank you.
22
23
24
25 (Deposition CONCLUDED at 10:44 A.M.)

1 STATE OF SOUTH CAROLINA)
2 : C-E-R-T-I-F-I-C-A-T-E
3 COUNTY OF RICHLAND)
4 I, KATHLEEN M. HALL, Court Reporter and Notary Public,
5 certify that I did have JOSEPH SAVITZ to appear before me
6 at 10:15 a.m. on WEDNESDAY, AUGUST 13, 2008, at the
7 Offices of The Attorney General, 1000 Assembly Street,
8 Columbia, South Carolina; that the witness was sworn and
9 cautioned to tell the truth, the pages constitute a true
10 and accurate transcript of the testimony given at that
11 time and place.
12 I further certify that I am not of counsel or kin to
13 any of the parties to this cause of action, nor am I
14 interested in any manner in its outcome.
15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal this the 25TH day of August, 2008.
17
18
19 Kathleen M. Hall
20 Notary Public for South Carolina
21 My Commission Expires: 09/25/17
22
23
24
25

ORIGINAL

1 STATE OF SOUTH CAROLINA)
: IN THE COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT) Case No. 07-CP-07-0715

3 Abidiyyah ben Alkebulanyahh,)
\# 6012)
4 Plaintiff,)
) DEPOSITION OF:
5 -vs-) ROBERT M. DUDEK
)
6 The State of South Carolina,)
)
7 Defendant.)

8 Given before KATHLEEN M. HALL, Court Reporter and Notary Public, at the Offices of The Attorney General,
9 1000 Assembly Street, Columbia, South Carolina, on Wednesday, August 13, 2008, commencing at 11:03 a.m.
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25 Spartanburg, Summerville, Sumter, West Columbia

1 A P P E A R A N C E S

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INDEX TO EXAMINATIONS:

DIRECT EXAMINATION BY MR. GRANT 4
CROSS EXAMINATION BY MR. WATERS 16
REDIRECT EXAMINATION BY MR. GRANT 23

INDEX TO EXHIBITS:

NO EXHIBITS

1 It was stipulated by and between
2 counsel for the parties that this
3 deposition is taken pursuant to notice and
4 that all questions as to notice are
5 waived; that all objections, save as to
6 the form of the question, are reserved
7 until the time of trial; that the
8 deposition is taken pursuant to the South
9 Carolina Rules of Civil Procedure, for the
10 purposes allowed therein; and that the
11 deponent was explained his right to read
12 and sign the deposition and WAIVED that
13 right.
14 (ROBERT DUDEK, being duly sworn,
15 testified as follows:)
16 DIRECT EXAMINATION BY MR. GRANT:
17 Q. Good morning, Sir. And please state your name
18 for the record?
19 A. Robert M. Dudek.
20 Q. Mr. Dudek, my name is Carl B. Grant. I am a
21 lawyer practicing in Orangeburg and Columbia,
22 South Carolina. I have been appointed to this
23 case for purposes of PCR along with Attorney
24 Glen Walters. And we are here today to take
25 your deposition?

1 A. Okay.
2 Q. All right, Mr. Dudek. Where are you employed,
3 sir?
4 A. Now it is the Office of Indigent Defense, the
5 Appellate Division formerly Office of Appellate
6 Defense.
7 Q. And let us go over a little bit of your
8 background. Where did you go to college?
9 A. Went to the University of South Carolina College
10 of Journalism.
11 Q. And what year did you graduate from there?
12 A. In 1979.
13 Q. And what about law school?
14 A. Here.
15 Q. Carolina also?
16 A. That is correct.
17 Q. What year did you finish law school?
18 A. 1980, 1984.
19 Q. And what year were you admitted to the Bar?
20 A. In January 1995.
21 Q. And what professional employment as a lawyer
22 have you had since being admitted to the Bar?
23 A. Since being admitted to the Bar I began doing
24 civil legal services 1995 to 1990.
25 Q. 1995 to?

1 A. February 17, 1990.
2 Q. I am confused?
3 A. Okay.
4 Q. From 1995 that is where you started?
5 A. Yes. To 1985 I am sorry.
6 Q. Oh I am sorry 1985.
7 A. Okay 1995. I am sorry to interrupt.
8 Q. Yeah 1985 to February 17, 1990?
9 A. I started in appellate defense February 17,
10 1990.
11 Q. Since you have been with the appellate defense
12 primarily what have been your responsibilities?
13 A. Well that that is kind of evolved. In 1990 the
14 first first chief attorney I worked for was
15 David Bruck. David is the one who hired me and
16 when you first start out you pretty much do all
17 all types of cases. Everything that comes in
18 the door. It is just general caseload including
19 like all sorts of crimes. I am going to guess
20 at these years now because I do not remember
21 exactly okay but um somewhere along about 1994
22 1993 when Dan Stacey who succeeded David Bruck
23 was Chief Attorney I took over general
24 responsibility for death penalty cases which
25 namely is um trying to ensure that all

1 transcripts are ordered that cases are assigned
2 so that attorneys doing capital cases do not
3 have too many at one time try to stagger them
4 out that sort of thing. My present title now is
5 Deputy Chief Attorney for Capital Appeals and
6 essentially now Joe Savitz who you just had here
7 who is the Chief Attorney and I do the death
8 penalties along with some of the younger
9 attorneys having second serving as second
10 counsel with the hopes that someday we will have
11 more than two attorneys being the primary
12 attorney for capital cases. I hope that answers
13 the question.
14 Q. It does. How many capital appeals can you
15 estimate that you have handled roughly?
16 A. Now I am guessing.
17 Q. Yes, sir?
18 A. I want to tell you that. I do not I do not
19 know. I would again a guess would be about 25.
20 Q. Twenty-five. And have you ever handled one
21 before this case where with the issue involving
22 the Defendant acting pro se?
23 A. In a capital case.
24 Q. Yes, sir in a capital case?
25 A. No. I can never remember the only ones I am

1 remembering are Johnny Brewer and Joey Savitz
2 handled that one. And James Reid. Joey and Dan
3 Stacy did that one. But no personally me for
4 our office I cannot ever recall representing a
5 defendant in a death penalty case who
6 represented himself.
7 Q. Do you know when you first became involved with
8 the appeal for Mr. Abidiyyah ben Alkebulanyahh
9 also known as Tyree Roberts whom we will refer
10 to in this deposition as the PCR applicant?
11 A. Can you ask that again, I am sorry.
12 Q. Yes, sir. Do you know when you first became
13 involved with handling his appeal to the Supreme
14 Court?
15 A. No. 1, I do not. As far as the as I sit up
16 here I am seeing the date on the opinion was
17 argued May 24, 2006. So you know just guessing
18 I am sometime in 2005 when exactly I do not, I
19 do not recall.
20 Q. Have you ever met the applicant in this case?
21 A. No I have talked to him on the telephone. I
22 never met him in person that I recall. I think
23 I would recall so the answer would be no.
24 Q. Do you know approximately how many times you
25 spoke to him on the phone?

1 A. Just a rough estimate. Yeah I I would say it it
2 was not that many it is like three or three or
3 four times and if I am remembering also there
4 must probably some correspondence back and forth
5 but again I do not remember exactly off the top
6 of my head.
7 Q. What are the initial steps you take Mr. Dudek
8 after being assigned appellate counsel in a
9 capital or death penalty case?
10 A. Well the general practice is Joey and I do not
11 do many together. When I first started doing
12 capital cases that was practice so this one is a
13 little different. What I do when a case comes
14 in is I first thing I usually do is order the
15 exhibits. In other words just go through the
16 exhibit page order all paper exhibits and get
17 those in, obviously read the transcript,
18 research identify issues and then actually write
19 the brief itself.
20 Q. It is my understanding that there are seven
21 lawyers who work in your office, is that
22 correct?
23 A. Give me a second. I think it is actually eight.
24 Q. And you were assigned to this case because of
25 your experience in capital cases?

1 A. Pretty much Joe Joey Savitz or I for a good
2 while have done the death penalty cases for our
3 office. I am thinking actually that one in
4 exception. Evelyn Cleary at times on at least
5 one or well actually Ellen Cleary did Sigmon on
6 her own outside of that off the top of my head I
7 am not thinking of anybody for the last ten
8 years or more who has been a the first chair on
9 one of them if it was not Joe or myself.
10 Q. Do you remember or can you estimate how long it
11 would have taken you to review the transcript in
12 this case?
13 A. I really cannot. I do not know how to answer
14 that.
15 Q. The based upon my review of the, the brief and
16 of course the record the only issue that you and
17 Mr. Savitz identified for appeal was the issue
18 of whether or not the applicant should have been
19 allowed to excuse himself from the punishment
20 stage of the procedures?
21 A. Right.
22 Q. As he desired to do. Is that your recollection
23 as well as to the on the issue that you all?
24 A. That is it was the sole issue raised on appeal.
25 Q. Well let us let me turn your attention now then

1 to the issue of his competency to stand trial
2 and also his competency to represent himself.
3 Apparently at a pre-trial motions hearing Doctor
4 Donna Schwartz-Watts testified that she did not
5 think he was competent to stand trial and she
6 certainly did not think he was competent to
7 represent himself in that crusade. Do you have
8 any recollection of the reading of that
9 testimony or coming across that testimony in the
10 transcript?
11 A. Off the top of my head I really do not remember
12 a whole lot on Mr. Roberts' competence and I
13 definitely do not recall off the top of my head
14 Doctor Schwartz-Watts' testimony.
15 Q. Let me refresh your memory by turning your
16 attention to Page 18 of your transcript dated
17 August 1, 2003. It looks like it is Bates
18 stamped pages 3986 through 3988?
19 A. Uh.
20 Q. But particularly I want you to take a look if
21 you will at page 3987 lines 18 through 25 of
22 Doctor Schwartz' testimony?
23 A. 18 to 25 right.
24 Q. Yes, sir. Would you publish that for the
25 record?

1 A. Sure.
2 Q. He does not have the capacity to look at
3 different decisions at different pleas different
4 options available to him so that he can make
5 reasonable decisions in defending himself. Do
6 you want me to continue?
7 MR. WATERS: No, sir.
8 MR. GRANT: Okay.
9 MR. WATERS: Okay.
10 Q. Do you know who Doctor Donna Schwartz-Watts is?
11 A. Yes, I used her as an expert in several death
12 penalty remands on volunteers who were
13 volunteering to be executed.
14 Q. She is a forensic psychiatrist, is that right?
15 A. That is correct.
16 Q. Well respected by the bench and Bar of South
17 Carolina?
18 A. In my humble opinion yes, sir.
19 Q. Right. Is there any reason why the Appellate
20 Defense team that is of course yourself and Mr.
21 Savitz decided not to address that issue on
22 appeal considering the testimony of Doctor
23 Schwartz-Watts. That is the issue whether or
24 not Mister, whether or not the applicant should
25 have been allowed to represent himself?

1 A. I frankly do not have any recollection I mean I
2 talking that over with Joe off the top of my
3 head I frank answer.
4 Q. Are you aware of the new Supreme Court case
5 Indiana v. Edwards here a Supreme Court case?
6 A. Yes, I am. Now it you know I remember or I
7 would think at the time Creighton you can
8 correct me if I am wrong I think Johnny Brewer
9 had not out been out long for long in which my
10 recollection is the Court actually reversed
11 because the trial judge would not allow the
12 Defendant to represent himself. But I am
13 generally aware of Indiana v. Edwards.
14 Q. Now that case that I have a copy of it is a long
15 opinion but you can review some of that well you
16 can view it all if you want to but the pertinent
17 parts of it. Essentially what the Court held
18 was that a person could indeed be found to be
19 competent to stand trial yet if there is
20 evidence of some type of mental disease or
21 defect the Court can rule that yet a trial court
22 could rule the person to indeed to have counsel
23 appointed to represent them because they just
24 may not be competent to act pro se?
25 A. Uh-huh.

1 Q. And this of course is a relatively new case with
2 the U.S. Supreme Court. Based upon this ruling
3 do you think that this new case in the Supreme
4 Court sheds a different light from your
5 perspective as an appellate defense attorney on
6 the case of this applicant?
7 A. Well it is definitely from my memory I mean it
8 is you know I am looking at it here as is a big
9 decision I guess it was seven to I mean it is
10 looking at the heading here they have states to
11 insist upon representation by counsel for those
12 who are competent enough to stand trial but who
13 still suffer from severe mental illness to the
14 point where they are not competent to conduct
15 trial proceedings by themselves. Now how in
16 retrospect if this opinion had been out at the
17 time it it you know might have effected me or
18 Joe or both of us would you know just just be
19 speculation. I do not, I do not know like I say
20 in answer to your earlier question that it seems
21 to me Johnny Brewer had not been out very long
22 in my recollection as our Court had said that
23 Mr. Brewer could represent himself. Now I can
24 it would have to be in the record but I did find
25 just from my several telephone conversations

1 with Mr. Roberts I you know his behavior manners
2 were kind of erratic so you know I do not I just
3 do not remember I just do not remember kicking
4 this around at the time that this is an issue.
5 Q. I think Doctor Schwartz-Watts' testimony
6 indicated that the applicant was born to a
7 mother of only fourteen years old and that he
8 had had a history of weird behavior ever since
9 childhood in fact she considered him to be quote
10 off o-f-f ever since he was a kid. Considering
11 the totality of that record that is through her
12 testimony?
13 A. Uh-huh.
14 Q. And let us now let us talk about that testimony.
15 In light of Indiana v. Edwards once again do you
16 think from your professional opinion that the
17 Edwards case puts a different light now on the
18 Tyrie Roberts case?
19 A. Mr. Grant in all in all candor I really do not
20 recall the testimony clearly regarding um what
21 all was said about Mr. Roberts competency so I
22 mean it really would be impossible for me to
23 answer that.
24 Q. Right?
25 A. Question.

1 Q. I have no further questions of this witness.
2 CROSS EXAMINATION BY MR. WATERS:
3 Q. Bob, I have got just a couple. The first one
4 though is is kind of a procedural one. You have
5 the right to read this deposition before you
6 sign it or you can waive that right. I just
7 need to get your answer as to which one you want
8 to do?
9 A. I will waive it.
10 Q. All right. Now you you were asked about Mr.
11 Alkebulanyahh having a represented himself at
12 trial and is it fair to say that that
13 complicated this case in finding good preserve
14 issues that you could raise on direct appeal as
15 opposed to other cases where you might have
16 evidentiary issues or other legal issues?
17 A. Well yeah I mean obviously I mean you know no
18 but well I mean I understand under Feretti you
19 have the right under certain circumstances to
20 represent yourself but you know but to state the
21 obvious is a very stupid thing to do because if
22 you are not a lawyer I mean you know we have
23 experienced lawyers in capital cases and you and
24 your colleagues will tear them apart
25 procedurally so you can imagine what somebody

1 representing himselves that they are really not
2 going to have much of a chance. So yeah the
3 answer is yes obviously.
4 Q. And that made it difficult to try to identify
5 other issues to?
6 A. Right. And clearly you know the only the issue
7 that we settled on you know as I recall was this
8 one where there was enough of a record of his
9 complaining about being stuck in this back room
10 where, which which which I thought was a good
11 issue. Joe thought it was a good issue and I do
12 remember us discussing that but I do not
13 remember anything else really jumping out at us
14 or me more clearly um cannot speak for Joe but
15 um to raise as an issue.
16 Q. And we have talked a little bit about Indiana v.
17 Edwards and that came out in June of this year,
18 2008, correct?
19 A. Looks like it. June 19, 2008.
20 Q. Okay. You were asked about Donna Schwartz-
21 Watts' testimony and let me ask you are you
22 familiar with Doctor Richard Frierson?
23 A. Yes. I am very familiar with Doctor Frierson.
24 Q. And Doctor Frierson is who?
25 A. Doctor Richard Frierson is a he teaches at the

1 Medical School here and he also does evaluations
2 for the Department of Mental Health what else he
3 does, I am not, I am not familiar with but
4 anyways he is a forensic psychiatrist teaches at
5 the Medical University and does evaluations for
6 the Department of Mental Health.
7 Q. So he frequently testifies on competency and
8 criminal responsibility issues in these types of
9 cases, correct?
10 A. He, he does. Yes, sir.
11 Q. How about Doctor Jeffrey Musick a psychologist,
12 are you familiar with him?
13 A. Yeah Doctor Musick had in at least one case
14 right he is a as I recall forensic psychologist
15 does testing and in other matters for the
16 forensic psychiatrist view it be it you know I
17 guess Doctor Frierson say Pam Doctor Pam
18 Crawford Doctor Wallister whoever.
19 Q. So and you had mentioned that you have had
20 Doctor Schwartz-Watts hired her and in cases
21 where we have had remands to consider and
22 capital inmates desire to waive any further
23 appeal, is that correct?
24 A. That is correct.
25 Q. I think you and I did one Hastings wise where I

1 had Doctor Frierson and you had Doctor Schwartz-
2 Watts. Do you recall that?
3 A. That that is correct. I guess more technically
4 I guess Doctor Frierson would have been a court
5 witness rather than your witness.
6 Q. Right, right. I just mean that he was he found
7 him to be competent and Doctor Schwartz-Watts
8 had some issues. I think she found him to be
9 competent but had some issues and wanted to
10 delay it is that your recollection?
11 A. My clear recollection is I want to be sure I am
12 not mixing Hastings up with Junior Downs but my
13 yeah I am. Yeah, anyway we had a Doctor
14 Frierson and Doctor Schwartz-Watts were the
15 psychiatrists and I am Creighton I am just
16 remembering if Jeffrey Musick was involved.
17 Q. It is not that important. Let me ask do you
18 recall what Doctor Frierson and Doctor Musick
19 testified to in this particular case in Mr.
20 Alkebulanyahh's case?
21 A. Not, not off the top of my head I really do not.
22 Q. Okay well let me just show you starting on page
23 4022 of the record and go into about 4052 and I
24 just you know skim it but?
25 A. 423.

1 Q. Yeah?
2 A. Okay.
3 Q. To 4052 and just scan that I will need to I am
4 not going to quiz you on specifics. They are
5 general in them?
6 (DEPOSITION RECESSED AT 11:37 A.M.)
7 (DEPOSITION RECONVENED AT 11: A.M.)
8 A. Okay. Okay I skimmed it Creighton.
9 Q. Okay and is it fair to say that Bob, Doctor
10 Frierson and Doctor Musick testified on the
11 manner supportive of a determination that Mr.
12 Alkebulanyahh was competent to stand trial, am I
13 correct?
14 A. That is correct. I mean they they apparently
15 you know Doctor Frierson is not they are I guess
16 saying his beliefs about the Masons and other
17 things were odd but not saying he is not
18 competent.
19 Q. And so just as in your experiences in appellate
20 advocate what is the likelihood of success on
21 appeal and challenging a decision where you have
22 conflicting testimony from people like Doctor
23 Frierson, Doctor Musick on one side and Doctor
24 Schwartz-Watts on the other and the trial judge
25 ultimately makes the call?

1 A. Well as as you know anytime you have a
2 discretionary call and conflicting evidence one
3 expert going one way one expert going another
4 way for lack of a better way of putting it tie
5 kind of goes to the trial judge. Now you know
6 certainly representing yourself is a not your
7 run of the mill every day discretionary decision
8 but you know they can say there was where are
9 you going with your question I guess is the that
10 there was any evidence to support the trial
11 judge's decision.
12 Q. And there was in fact some evidence in that in
13 that case?
14 A. Well Doctor Frierson is saying that he
15 understands as I as I take it he understands
16 what he is doing and he is and he is competent
17 and yeah, so I mean Doctor Musick seems to be
18 you know although he is bringing Masons thing up
19 is saying he is narcissistic or over how do I
20 articulate it would be I guess that he he has a
21 overblown sense of I guess of his own abilities
22 and you know I mean I think kind of common sense
23 would dictate that if you want to represent
24 yourself during a death penalty trial you you
25 definitely have some strange beliefs whether

1 they are a result of mental illness or not I, I
2 am on what you are going to be able to do.
3 Q. Right. But from your perspective as an
4 appellate advocate with the Johnny Brewer
5 opinion existing and just having it come out and
6 Edwards and of the Edwards not yet on the radar
7 is it fair to say that you did not see much on
8 the, on the as far as the direct appeal issue
9 with regard to the competency decision?
10 A. Well the only way I can the only way I can
11 answer that is we did not raise it. And you
12 know but we thought it was a winning issue or I
13 thought it was or Joe was. Joey was the lead
14 counsel. But we would have raised it. I mean
15 you cannot you know for some things are a
16 winning issue you cannot as an appellate
17 advocate you know make some kind of knowing
18 waiver of not raising the issue so obviously did
19 not think it would win or would have been
20 raised.
21 Q. Okay. I do not have anything further. Thanks,
22 Bob.
23 (OFF THE RECORD)
24 (ON THE RECORD)
25 REDIRECT EXAMINATION BY MR. GRANT:

1 Q. Let us go off the record for a second. No, not
2 yet. Mr. Dudek, take another look if you will at
3 the testimony of Doctor Frierson. I have had a
4 chance now to look at it a little closer. On
5 the issue of competency to stand trial. The
6 pages that you asked to review I think pages 422
7 to 452 I really think his testimony stops a
8 little short of the 452 but do you see anything
9 in there where Doctor Frierson addresses the
10 issue of whether or not he is competent to
11 represent himself. I saw something in there
12 where he talks about he is competent to stand
13 trial but I did not see an opinion given by
14 Doctor Frierson as to whether or not he is
15 competent to act pro se which is a different
16 question?
17 A. Yeah. Let me leaf back through. Now I guess we
18 are kind of going full circle the part I guess
19 you had me refer to earlier when he is just
20 saying I am on page 420, 4-0-2-4 I guess lines
21 10 to 14 it is my opinion on all of the
22 interviews with him his factual understanding of
23 the legal system a rational core understanding
24 of the core process and the capacity to assist
25 an attorney in preparation of a defense if he

1 chooses to do so. Now you are correct the
2 ability to to assist an attorney is different
3 from representing yourself.
4 Q. You do not see anything in his testimony where
5 he specifically says he thinks he is competent
6 to stand trial from your second review of this,
7 of the record, is that right?
8 A. No, unless either one of you can flip me to a
9 specific site no I did not see anything.
10 Q. All right. Now I am going to turn you back to
11 the testimony of Doctor Donna Schwartz-Watts.
12 Okay?
13 A. All righty.
14 Q. And I have in my hand and Creighton for your
15 sake this is again page 18 of the August 1, 2003
16 transcript bates stamped 3986. I would like for
17 you to put into the records line read into the
18 records lines 9 through 11 of Doctor Donna
19 Schwartz-Watts' testimony on that page?
20 A. Okay. Uh lines 9 through 11. I got you. I
21 just do not want to butcher his name. Mr. Alkea
22 let me just say Roberts is that all right.
23 Q. That is fine?
24 A. Mr. Roberts is the first defendant that has ever
25 wanted to represent himself in terms of a death

1 penalty case.

2 Q. All right. Thank you. Now the other portions I

3 am going to want you to publish as well um and

4 actually just publish into the record lines 12

5 through 25 as well on that same page?

6 A. Okay now I certainly had experience dealing with

7 defendants before that want to represent

8 themselves but usually the reason is things like

9 their lawyers have not met with them their

10 lawyers are incompetent they do not they do not

11 like the qualifications of their attorneys.

12 Q. I am sorry. I want you to continue get down to

13 the bottom of the page?

14 A. Okay sorry. Mr. Alkebulanyahh's comments have

15 been that he is paranoid of them. He does not

16 trust their affiliations. He considers them to

17 be friends of Randy Murdaugh and thinks that Mr.

18 Murdaugh and Mr. Kelly collude together and in

19 my opinion he is paranoid to the point that he

20 is believes there is a conspiracy to prevent him

21 from representing himselves. It is not the

22 actions that he takes but it is his and that is

23 the end of the page.

24 Q. All right and turning over to the next page a

25 few more lines that I want you to continue with

1 and that would be lines 5 through 18, actually 5
2 through 17 you read earlier lines 18 to 25 on
3 this page and again that is lines 5 through 17.
4 Five through 17?
5 A. You want me to read that in the record.
6 Q. Yes, sir?
7 A. Okay. Again it just shows that it is not
8 necessarily the behaviors he has but it is the
9 capacity that he has to make decisions. He does
10 not even consider in terms of trying to approach
11 this gentleman in terms of mitigation what kind
12 of factors would be helpful for his case he
13 would not even consider in any way, shape or
14 form any forms of mitigation that have to do
15 with possible mental illness. His mentality at
16 the time of the crime whether he had sufficient
17 capacity or if his capacity to conform his
18 conduct was severely impaired. He will not even
19 consider those kinds of issues and to me that is
20 what renders him unable to assist himself.
21 Q. To assist himself?
22 A. Right.
23 Q. Okay all right so Doctor Schwartz-Watts'
24 professional opinion dealt specifically with his
25 ability to act pro se, is that correct?

1 A. That is correct. And what you had me just
2 reading I, I assume what she is saying is that
3 he is not able to represent himself because I
4 guess she is saying there would be quote,
5 issues, un quote in this case involving his
6 mental capacity or bringing up matters in
7 mitigation that may deal with mental health
8 mental health matters and those type things and
9 I assume what she is saying is if you are going
10 to take those off the table in a death penalty
11 case you are not able to assist yourself.
12 Q. And Doctor Frierson's testimony essentially
13 deals with the issue whether or not he is
14 competent to stand trial that is understand the
15 proceedings that assist his counsel, is that
16 correct?
17 A. On the parts that you and Mr. Waters had me
18 review skim more accurately that seems to be
19 where Doctor Frierson was going so the answer to
20 your question would be yes.
21 Q. And is it fair to say that none of Doctor
22 Frierson's testimony that you read or skimmed
23 contradicts the testimony of Doctor Donna
24 Schwarz-Watts on the issue of whether or not he
25 is competent to stand trial?

1 A. Nothing that I scanned or recall seems to
2 contradict Doctor Watts' testimony.
3 Q. Okay and now in light of the U.S. Supreme Court
4 case recent U.S. Supreme Court case Indiana v.
5 Edwards we are now taught if you will?
6 A. Right.
7 Q. That a person can be competent to stand trial
8 and yet not competent to act pro se in a capital
9 case, is that fair to say?
10 A. Apparently as I my understanding of the of the
11 Indiana v. Edwards and correct me if I am wrong
12 as they say nothing prevents a state from doing
13 what you are saying.
14 Q. Okay. Thank you Mr. Dudek. I have no further
15 excuse me. You are Mr. Dudek yes. I have no
16 further questions of you sir.
17 A. Okay. Thank you.
18 MR. WATERS: I do not have anything.
19
20
21
22
23 (Deposition CONCLUDED at 11:47 A.M.)
24
25

1 STATE OF SOUTH CAROLINA)
2 : C-E-R-T-I-F-I-C-A-T-E
3 COUNTY OF RICHLAND)
4 I, KATHLEEN M. HALL, Court Reporter and Notary Public,
5 certify that I did have ROBERT DUDEK to appear before me
6 at 11:03 a.m. on WEDNESDAY, AUGUST 13, 2008, at the
7 Offices of The Attorney General, 1000 Assembly Street,
8 Columbia, South Carolina; that the witness was sworn and
9 cautioned to tell the truth, the pages constitute a true
10 and accurate transcript of the testimony given at that
11 time and place.
12 I further certify that I am not of counsel or kin to
13 any of the parties to this cause of action, nor am I
14 interested in any manner in its outcome.
15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal this the 21ST day of August, 2008.
17
18
19 Kathleen M. Hall
20 Notary Public for South Carolina
21 My Commission Expires: 09/25/17
22
23
24
25

ORIGINAL

1 STATE OF SOUTH CAROLINA)
: IN THE COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT) Case No. 07-CP-07-0715

3 Abidiyyah ben Alkebulanyahh,)
6012)
4 Plaintiff,)
) DEPOSITION OF:
5 -vs-) DONNA SCHWARTZ-WATTS,
) M.D.
6)
The State of South Carolina,)
7)
Defendant.)
8
Given before KATHLEEN M. HALL, Court Reporter and
9 Notary Public, at the Offices of The Attorney General,
1000 Assembly Street, Columbia, South Carolina, on
10 Wednesday, August 13, 2008, commencing at 2:08 p.m.

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By: S. Creighton Waters, Esquire
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7 Also Present: Dr. Watson

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INDEX TO EXAMINATIONS:

DIRECT EXAMINATION BY MR. GRANT 4

CROSS EXAMINATION BY MR. WATERS 20

REDIRECT EXAMINATION BY MR. GRANT 44

RECROSS EXAMINATION BY MR. WATERS 46

INDEX TO EXHIBITS:

PSYCHIATRIC EVALUATION REPORT FOR ABIDIYYAH BEN ALKEBULANYAHH PREPARED BY DR. DONNA SCHWARTZ-WATTS MARKED APPLICANT/PLAINTIFF'S EXHIBIT NO. 1 16

VIDEOTAPE INTERVIEW OF ABIDIYYAH BEN ALKEBULANYAHH BY DOCTOR DONNA SCHWARTZ-WATTS MARKED APPLICANT/PLAINTIFF'S EXHIBIT NO. 2 18
(Retained by Dr. Schwartz-Watts)

1 It was stipulated by and between
2 counsel for the parties that this
3 deposition is taken pursuant to notice and
4 that all questions as to notice are
5 waived; that all objections, save as to
6 the form of the question, are reserved
7 until the time of trial; that the
8 deposition is taken pursuant to the South
9 Carolina Rules of Civil Procedure, for the
10 purposes allowed therein; and that the
11 deponent was explained her right to read
12 and sign the deposition and WAIVED that
13 right.
14 (DR. DONNA SCHWARTZ-WATTS, being duly
15 sworn, testified as follows:)
16 DIRECT EXAMINATION BY MR. GRANT:
17 Q. Please state your name for the record?
18 A. Sure. Donna Marie Schwartz-Watts. S-C-H-W-A-R-
19 T-Z hyphen W-A-T-T-S.
20 Q. And what is your professional title?
21 A. I am Director of Forensic Services and Professor
22 of Clinical Psychiatry at the University of
23 South Carolina School of Medicine.
24 Q. And when did you graduate from medical school?
25 A. 1989.

1 Q. And what medical school did you graduate from?
2 A. University of South Carolina.
3 Q. Okay and when did you start practicing in the
4 field of psychiatry?
5 A. 1993. I finished my residency in general
6 psychiatry in 1993 and then did a year of
7 forensic fellowship in 1994 but began some
8 psychiatric in 1993.
9 Q. And tell me about your professional experiences
10 as far as employment since 1993 to the present
11 date?
12 A. Sure. I upon finishing the residency program in
13 forensic psychiatry in 1994 at the William S.
14 Hall Institute I worked at the William S. Hall
15 Institute Department in Mental Health from 1994
16 and then part time until 1997. And then in 1997
17 I went full time to the University of South
18 Carolina. The Department of Mental Health and
19 USC at the time it was not uncommon for
20 employees to have positions in both institutions
21 since they were affiliated and so there were a
22 few years there where I worked in the insanity
23 unit but was also working for USC but went full
24 time to USC in 1997.
25 Q. Are you a member of any type of professional

1 organizations or associations?
2 A. Yes.
3 Q. What are they?
4 A. I am still involved with the American Board of
5 Psychiatry and Neurology. And that is our board
6 certification and what I do there is I serve as
7 an examiner. I used to be on a team to do it
8 routinely but now I just serve as a substitute
9 examiner who will go over all over the country
10 and the young psychiatrists that are attempting
11 to get their board certification I will serve as
12 an examiner. I was also on the forensic
13 recertification committee and actually took part
14 in helping write the questions for our forensic
15 recertification boards. That is an organization
16 I have maintained contact with and then the
17 other is the American Academy of Psychiatry and
18 the Law and that is the national organization
19 for forensic psychiatrists. I have served in a
20 number of roles here. I have been a counselor,
21 chairs of committees but this at this point I am
22 just a member and just participating by
23 presenting research and that sort of thing.
24 Q. Do you have experience in serving as an expert
25 on the issue of psychiatric and psychological

1 problems in death penalty murder cases, is that
2 correct?
3 A. Yes.
4 Q. Would you well tell me give me an estimate as to
5 how many death penalty cases you have been
6 called upon to serve as an expert, just a rough
7 estimate?
8 A. Between seventy and a hundred. I think it is
9 probably around eighty at this point.
10 Q. Are you still being called upon for those
11 services across South Carolina?
12 A. Yes and actually I have got five cases in
13 Arizona, two in Oklahoma, five in North Carolina
14 so also now going to other states.
15 Q. Have you ever been offered as an expert in the
16 field of psychiatry in any death penalty case
17 and not accepted by the Court?
18 A. No.
19 Q. And let me turn your attention now then and you
20 are indeed board certified?
21 A. Yes. And I have added qualifications in
22 forensic psychiatry and I am actually the first
23 year of psychiatry that we had to get re-boarded
24 so every fifteen years I was in the unfortunate
25 class that we have to get recertified so I have

1 actually now been recertified in both areas as
2 well.
3 Q. Let me turn your attention now to a case of
4 State v. Mr. Alkebulanyahh also known at Tyree
5 Roberts who is the applicant in this post-
6 conviction relief matter. And by the way,
7 Doctor, I did not tell you this up-front. I am
8 his appointed counsel, one of his appointed
9 counsel appointed by the Court for purposes of
10 representing him in this post-conviction relief
11 hearing. Do you remember this particular case?
12 A. Yes, I do very well.
13 Q. I notice you are saying that with emphasis.
14 What is it about this case that makes you I
15 remember it so well?
16 A. Well out of the eighty plus it is one of the
17 more complicated cases so I certainly remember
18 the complicated things.
19 Q. What made this particular case complicated for
20 you professionally?
21 A. Well Mr. Alkebulanyahh had issues with his
22 attorneys from the beginning from the first time
23 I saw him there were, there was already some
24 conflict and it I also call it complicated
25 because it was my opinion he was mentally ill

1 and it was the Doctor Frierson's opinion that he
2 was acutely mentally ill so there was a
3 contested competency hearing. He wanted to
4 represent himself pro se which I did not feel he
5 was competent to do.
6 Q. And that is the reason why you are here for this
7 deposition. Do you have your report with you by
8 the way?
9 A. Yes, I do.
10 Q. Take a look at your report for me and tell us
11 just to refresh your memory if you need to what
12 were your findings with regards to whether or
13 not Number 1 he was competent to stand trial?
14 A. It was my opinion he was not competent to stand
15 trial and I testified to that.
16 Q. And what led you to that conclusion, Doctor.
17 What is the basis for that opinion?
18 A. Many things. It was meetings with Mr.
19 Alkebulanyahh and then reviewing some of his
20 prior records, speaking with his mother and then
21 also working with his counsel and it was very
22 clear that he always had issues with his counsel
23 issues of trust but in my opinion as I gathered
24 more information about him and interviewed him
25 he got to the point where he clearly was

1 psychotic. He believed that the Court system
2 was made of Masons and that he decided that he
3 was on trial because the police officers he
4 killed may have been involved with the Masons.
5 It was his opinion that the police officers
6 broke into his house to steal some religious
7 type of work that was held in a Torah that his
8 great grandfather got from Africa and he talked
9 about Governor Oglethorpe in Georgia and that
10 his grandfather was a high priest and that these
11 people had come to steal his official paperwork.
12 He no longer trusted his attorneys. He had
13 difficulty with the, I remember there was I
14 think Judge Buckner was the first judge assigned
15 and he had issues with Judge Buckner being
16 appointed that he also felt that he perhaps he
17 could be a Mason so in my opinion he as the
18 struck -- the trial came he would be
19 compensated. He got quite sick and got to the
20 point where he had no working relationship with
21 his attorney and was very paranoid and did not
22 understand the court roles.
23 Q. What were your clinical diagnoses?
24 A. I diagnosed him with bipolar disorder. Most
25 recent episode manic with psychotic features

1 reason being he had never had that diagnosis
2 before but it in looking at his records and
3 obtaining his history it is clear that he had
4 periods of mood instability and that with those
5 periods of mood instability he would become
6 psychotic. He did not have periods of psychosis
7 when he was when his mood was stable. And so to
8 me diagnostically that met the criteria for
9 bipolar disorder.
10 Q. I think you also testified that he was paranoid?
11 A. Very paranoid.
12 Q. What impact did his paranoia have upon his
13 competency?
14 A. In my opinion it made it where he was not able
15 to assist in his defense which is one of reasons
16 why he wanted to proceed pro se because he could
17 not trust to work with his attorneys.
18 Q. No Doctor I also noticed through your testimony
19 at the pre-trial motion on the issue of
20 competency your testimony not only addressed
21 whether he was confident to stand trial but
22 unlike Doctor Frierson your testimony addressed
23 whether you thought he was competent to actually
24 represent himself and act pro se. Do you
25 remember that?

1 A. Yes.
2 Q. And what was your opinion on that?
3 A. That he was not competent to do that.
4 Q. And again what is the basis for your what was
5 the basis for your opinion then as to why he was
6 not competent to represent himself?
7 A. I have not reviewed my testimony but my
8 recollection he was so grandiose. He believed
9 that the he said the earth would shake if he
10 were found guilty. That he had armies and
11 legions of followers and that he could not be
12 found guilty and I think he was very unrealistic
13 about what his charges were in looking at the
14 evidence and representing himself. And he, he
15 was not able to look at all the options about
16 what defenses were available to him why he would
17 have needed an attorney so I did not feel like
18 it was a knowing and intelligent waiver. In my
19 opinion it was based on his grandiosity and his
20 mental illness and his refusal to work with his
21 attorneys. It is one thing to say I am not
22 going to work with my attorneys because I am
23 smarter and I know better but it is another
24 thing to not work with your attorneys because
25 you believe that they are a part of a big scheme

1 plotting to have you found guilty.
2 Q. He literally said the earth would shake?
3 A. In the he, if I remember correctly the earth
4 would shake meaning not concretely but that
5 there would be uprising civilly all over the
6 country that that he had many friends. He
7 talked about that he had friends in the United
8 Nations that were keeping up with his case and
9 that it would be a worldwide resonance if he
10 were to be found guilty of this.
11 Q. Were these elements things that you are
12 revealing now was that brought to the Court's
13 attention as we are here?
14 A. I am sure it would have been.
15 Q. Did you, did you find him to be narcissistic?
16 A. Yes. Yes. I totally agree with Doctor
17 Frierson. There is no question that he is
18 someone that has a very high opinion of himself
19 even when he is not psychotic. And he is very
20 entitled. But I, I agree with that assessment.
21 I think he finds himself even if he were not
22 under the influence of a mood disorder I think
23 he thinks he is very unique and very special and
24 he has a very inflated self esteem and a very,
25 very good opinion of himself.

1 Q. Since you testified at the pre-trial motion
2 hearing on these issues has your opinion in any
3 way changed about Mr. Roberts, Tyree Roberts?
4 A. Not at all. I have not seen him or heard from
5 him. I do not really know exactly everything
6 that happened in the court case. I remember I
7 was in San Antonio. I believe his trial was in
8 the month of October and I think during the week
9 someone called me to say that things were not
10 going well in court. I cannot really re -- you
11 know I remember hearing that information somehow
12 but I had no no further contact with him or
13 anybody involved in the case you know what was
14 going on.
15 Q. How many times do you think you have met with
16 the applicant in this case?
17 A. I saw him December 2nd of 2002, February 5, 2003,
18 April the 10th 2003 and then on the date of his
19 court hearing I attempted to both before I gave
20 testimony in his competency hearing I attempted
21 to talk with him and he turned his back to me
22 from his cell and refused to speak. He did
23 cross examine me. I guess it was my cross
24 examination while I was on the stand.
25 Q. Do you feel you had an adequate opportunity to

1 talk with him and come to these conclusions that
2 you are testifying about now?
3 A. Yes.
4 Q. And do you feel that these opinions and
5 conclusions that you rendered then and that you
6 are now sticking by now are indeed based in
7 sound psychiatric principles?
8 A. Absolutely.
9 Q. Okay. Doctor, you have your report, is that
10 right?
11 A. Yes.
12 Q. And may I see the report please?
13 A. Sure.
14 Q. And is this a copy or this is the original
15 report?
16 A. This is the original.
17 Q. And a copy of this original report was submitted
18 to the Court?
19 A. I believe. I do not have a recollection but I
20 would certainly not dispute that.
21 Q. Okay. What we are going to do, in fact let us
22 go off the record for a second?
23 (DEPOSITION RECESSED AT 2:20 P.M.)
24 (DEPOSITION RECONVENED AT 2:24 P.M.)
25 Q. Doctor, once again I am showing you now what has

1 been made a copy of your, the psychiatric
2 evaluation of Mr. Abidiyyah ben Alkebulanyahh
3 also known as Tyree Roberts dated September or
4 sorry his date of birth date of report July 29,
5 2003. Is that your report?
6 A. Yes, it is a copy.
7 Q. A copy of it. And is that your signature on the
8 back page?
9 A. Yes, that is a copy of my chicken scratch
10 signature.
11 Q. All righty. This has already been marked and we
12 will offer this as Plaintiff's well actually
13 this is Plaintiff's one but really this is
14 Applicant One, same thing for purposes of this
15 deposition.
16 (PSYCHIATRIC EVALUATION REPORT FOR
17 ABDIYAH BEN ALKEBULANYAHH PREPARED BY
18 DOCTOR DONNA SCHWARTZ-WATTS MARKED
19 PLAINTIFF'S EXHIBIT NO. 1 FOR
20 IDENTIFICATION.)
21 Q. Now Doctor, you also indicated that you had a
22 VHS. It is hard to see these any more these days
23 the VHS tape it is almost like the eight-track
24 tape you know that you brought with you. Would
25 you tell us for the record what this tape is?

1 A. Yes. After my initial meeting with Mr.
2 Alkebulanyahh he was the first time I met he was
3 at Just Care. He was there I do not know if he
4 was getting a psychiatric evaluation or for what
5 reason. I cannot recall but my first meeting
6 with him he was actually in Columbia at the Just
7 Care facility. And I noted upon our initial
8 interview he had some paranoia so it was my idea
9 to videotape. Whenever I suspect someone may be
10 psychotic I am now one of the routine practices
11 I try to do is videotape them so that way if the
12 issue comes up there is proof. If anybody wants
13 to challenge my methodology in interviewing
14 someone the other board experts will have access
15 to that and so when we will normally routinely
16 use that now when I suspect someone is psychotic
17 and I suspect that it will be litigated so I had
18 gone in. I met with his attorneys his attorneys
19 were wonderful in terms of access, preparing and
20 we had met and I discussed my wanting to do that
21 and they made arrangements for me and I went to
22 the Beaufort County Detention Center and we
23 videotaped that evaluation there.
24 Q. And this tape is the original tape?
25 A. Yes.

1 Q. What we are going to do is mark it as an
2 exhibit. Counsel and I have Mr. Waters have
3 talked about this. We will mark this as an
4 exhibit but we will ask that you keep this tape
5 in your possession which we will duplicate for
6 our use later on. Is that agreeable, counsel?
7 MR. WATERS: That is correct.
8 Q. Okay. Mark this please as Applicant/Plaintiff's
9 2 and Donna will keep that in her possession?
10 (VIDEOTAPE OF INTERVIEW OF ABIDIYYAH
11 BEN ALKEBULANYAHH TAKEN BY DOCTOR DONNA
12 SCHWARTZ-WATTS MARKED APPLICANT/PLAINTIFF'S
13 EXHIBIT NO. 2 FOR IDENTIFICATION.)
14 Q. Now Doctor, once again based on everything that
15 you saw during your services in this case as the
16 forensic psychiatrist and based upon your
17 understanding of everything that occurred and
18 your observations of Mr. Tyree Roberts, the
19 applicant in this case is it still your opinion
20 to a reasonable degree of psychiatric certainty
21 that this man should not have been allowed to
22 represent himself in this death penalty case?
23 A. That, that is my opinion at the time now keeping
24 in mind I do not if I have no new information so
25 based on all the information I have at this

1 point I have not changed my mind. That would
2 still had been my opinion.
3 Q. And is it also still your opinion that he was
4 not competent even to stand trial?
5 A. That was my opinion.
6 Q. If he was not competent to stand trial then what
7 would you have recommended as a course of
8 treatment to get him to competency?
9 A. We tried a number of things. Early on I had
10 seen this coming. I saw this train wreck so to
11 speak coming. What I was trying to do early on
12 was get an African-American counsel member. Mr.
13 Alkebulanyahh very clearly had cultural issues
14 and that was one of the ways to work with him.
15 If you can get Mr. Alkebulanyahh if you can meet
16 him halfway that is just some of his narcissism
17 if you can work with him he is a lot more
18 agreeable and, and more likely and he functions
19 better. He is under less stress. So early on
20 what we have tried to do was try to get co-
21 counsel appointed for him someone that he felt
22 he could relate to culturally but then as time
23 progressed he got very psychotic and I feel at
24 that point no counsel probably would have been
25 able to work with him so he would have required

1 medication.
2 Q. Did Mr. Alkebulanyahh ever indicate he wanted an
3 African-American attorney representing him?
4 A. Absolutely.
5 Q. And you certainly understand you he does not
6 have that absolute right to choose who his
7 attorney is but he did express that interest?
8 A. Oh always. Yes and we had even discussed. We
9 had one of the things we had done. We talked
10 about I think Doctor Gainey I cannot remember he
11 was one of the law professors that there were a
12 number that he were interested in. And I
13 actually had talked to the team. I thought that
14 that if that was at all possible that would have
15 been a something they could have done earlier on
16 to continue his cooperation as he began to be
17 compensated.
18 Q. I am just about finished here Doctor with my
19 examination. Thank you. No further questions.
20 CROSS EXAMINATION BY MR. WATERS:
21 Q. Hey, Doctor Schwartz-Watts. How are you doing?
22 A. Great.
23 Q. Real quick as you know you have the right to
24 either read this deposition before signing it or
25 you can waive that right. You just need to make

1 a choice?
2 A. I would like to read it but waive signing.
3 Q. Okay. So, you want a copy of it then is what
4 you are saying?
5 A. Yes. Yes.
6 Q. But she can go ahead and submit the official
7 version prior to your seeing it?
8 A. Absolutely.
9 Q. Okay. All right, fair enough?
10 A. I waive signature because if I missed something
11 I do not want to say that I agreed with it so I
12 read it to make sure that I am familiar with the
13 contents just for and the purposes that is how I
14 was trained and that I how I trained my forensic
15 doctors.
16 Q. Fair enough. I think you diagnosed Mr.
17 Alkebulanyahh bipolar with paranoid traits are
18 we agreed that he had paranoid traits, is that
19 correct?
20 A. I think I said yes the actual terminology is
21 with psychosis but that is correct psychosis was
22 his paranoia.
23 Q. Was paranoia?
24 A. Paranoia and some of his beliefs that the police
25 were coming to rob his grandfather's paperwork.

1 Q. Okay, all right?
2 A. Because he was not able I asked him he was not
3 able. I asked him he was not able to produce
4 that paperwork. I am not even sure if it
5 existed.
6 Q. Now the first interview you had with him was
7 basically okay as I recall correct?
8 A. That is correct. He was somewhat reluctant he
9 did not want to interview with me but the
10 corrections officers at Just Care knew me.
11 Q. Right?
12 A. And they calmed him down immediately. When I
13 met him he was actually in one of their
14 isolation cells. He was in a big room by
15 himself and I do not know why he was in that
16 situation. I do not recall why he was even at
17 Just Care but the officer said no talk to her,
18 you can trust her and so it was kind of with the
19 coaching of the officers that he I, I do not
20 think he would have talked to me as much as he
21 did had it not been for some of the officers
22 there but correct. I did not. I had some
23 suspicions. He seemed a little odd in thinking
24 but he was not overly psychotic.
25 Q. And then the second interview was pretty much

1 okay as well he just did he express some
2 thoughts or beliefs that you found problematic
3 is that correct?
4 A. No, the second interview would have been the
5 taped interview. And there is when I believed
6 he was psychotic. I am near the end of this
7 interview. What happened is the tape ended.
8 And near the end of the after the tape ended.
9 And he had totally forgotten. I had gotten an
10 informed consent from him at the beginning to
11 inter -- to tape his he forgot that the tape was
12 running and so I think what happened is as he
13 got very relaxed and started discussing things
14 that he thought maybe it might make him look
15 psychotic. He got very upset and so when the
16 tape ran out he was like oh we were being taped.
17 And I said of course I told you we were being
18 taped. But at the end of the tape he talked
19 about how he he had predicted 9/11 and that he
20 had written newspaper articles and that he had
21 powers and so he got quite grandiose at the end
22 so at that point I had enough information to
23 deem him psychotic.
24 Q. And then the third interview was the real bad
25 one, correct?

1 A. Yes. That is the in the sense that he was very
2 angry with me. What happened was when he.
3 Q. He thought that you had essentially betrayed him
4 by delivering that that tape to Doctor Frierson
5 and the defense team, correct?
6 A. That is correct. What happened was once he once
7 in the second interview when he realized that he
8 probably had said some things that would make
9 him look psychotic which is not uncommon with
10 psychotic people. They do not like to think
11 they are sick. If you ask him today there is
12 nothing wrong with him. He would never admit
13 that he has a mental illness. He asked me to
14 hold the tape and I told him I would. You know
15 I did not know ethically what I would do about
16 that. Did he have the power to take his consent
17 back and so I was not sure what to do so I told
18 him I would try to find out what I was to do
19 ethically. I called Howard Sennana who is the
20 medical director for the American Academy of
21 Psychiatry and the Law because I would not turn
22 his the videotape over to his attorney Mr. Kelly
23 wanted it and I told him he had to wait.
24 Q. Right?
25 A. And I had to find out you know ethically what I

1 was supposed to do. I consulted Howard Sennana
2 and Howard said it was a medical record just
3 like any other notes and that it was the
4 attorneys and if they asked for it it had to it
5 was I had to give it to them. What I had done
6 in the interim I was going to make an
7 appointment with Mr. Alkebulanyahh to explain to
8 him what happened but Doctor Frierson saw him
9 before I could get to him so.
10 Q. And asked him about the tape?
11 A. Yes and so had reviewed the tape and so when I
12 saw Mr. Alkebulanyahh the following week he was
13 incredibly he was enraged. He was he frightened
14 me. He was so he was so angry.
15 Q. But that anger at least it had a rational basis
16 as far as that went. It might have been
17 inappropriately expressed but it had a rational
18 basis, correct?
19 A. Absolutely. Absolutely.
20 Q. I think that one of the things that you found
21 was significant in your opinion was the fact
22 that he refused to consider the possibility of
23 mental health mitigation and refused to consider
24 the possibility I guess of a family type
25 mitigation social history mitigation and that

1 sort of thing is that correct?
2 A. That is correct.
3 Q. And so you you opine then that because he would
4 he did not want to consider these you know
5 fairly typical avenues of defense or or
6 sentencing phase defense that he thereby could
7 not consider all the available options and that
8 was an impediment to his competency to stand
9 trial, is that correct?
10 A. Yes and no.
11 Q. Okay?
12 A. Where the impediment was is that he would not
13 consider that. It, it is not I felt like he was
14 not weighing all of his options. He was saying
15 there is nothing wrong with me. I am not going
16 to be found guilty. I do not need medication.
17 And I am not participating so it was more it had
18 a psychotic flair to it in that he was so sure
19 he was going to be found not guilty. And he
20 would not consider anything else.
21 Q. Right?
22 A. And so for me it was more that he would not even
23 consider those options and he was not being
24 realistic about the possible outcome of his
25 guilt phase proceedings.

1 Q. This, it has happened before though with inmates
2 with attorneys that they have directed their
3 attorney I do not want you digging around in my
4 family. I do not want you presenting any
5 experts about my mental health. And then it is
6 so that sort of thing is happening with the
7 attorneys before has it not?
8 A. Absolutely. And I am going to be touched by
9 next week in a very similar case and that person
10 is totally competent. Most of the times the
11 people are it is actually a rational decision.
12 Q. Correct?
13 A. And it is for for rational reasons. I do not
14 want to put my family through this. T want to
15 die. I feel bad about what I did but his were I
16 am not guilty. I did not do this. I am going
17 to be found not guilty. You are not going to
18 upset my family and bother them on this esoteric
19 kind of mission when it is not even going to
20 happen.
21 Q. So his defense to you essentially was self
22 defense. These officers were on a raid mission
23 and I defended my home and my property is that
24 correct?
25 A. That is correct. They were coming in to steal

1 his religious documents.
2 Q. Right?
3 A. And that they meant him harm and that he killed
4 them.
5 Q. All right. Did you had you reviewed any of the
6 evidence surrounding this case or the witness
7 statements or anything like that in the prior
8 year?
9 A. Yes.
10 Q. Do you recall any information that the girl who
11 ran away with him he made statements to the
12 effect I will not use his exact language but I
13 killed those two devils and I am going to claim
14 it was self defense?
15 A. Absolutely.
16 Q. Would that not indicate the construction of a
17 lie a defense that if in fact that is not true
18 that that was could be a very rational response
19 to somebody being in obvious trouble?
20 A. Sure.
21 Q. Would that not be supportive of that?
22 A. Sure. It could be it could be and at some level
23 he would for me I am kind of mixed on that
24 because it could be. And it most likely is.
25 But also keep in mind that this man really did

1 view them as invading his home and so he
2 claiming self defense I do not think was more
3 like an alibi to say that is why I killed him it
4 is a rational thing but it is he also killed
5 them because self defense could have meant that
6 he felt like they were coming to harm him, steal
7 from him he he again he did not the first
8 interview he did not say that. He did not
9 discuss those things. It was in the second
10 interview when he told me that he felt that they
11 were coming in and they were part of the Masonic
12 scheme and that they wanted to seize religious
13 paperwork so it could have been that him setting
14 up a defense but it also could have represented
15 some of his beliefs.
16 Q. Let us talk about the Masons a little bit. Did
17 he I do not recall if this is what he told you
18 or Doctor Frierson but did he not relate that he
19 had downloaded things off the Internet or read
20 books about the Masons some of which are out
21 there about the conspiracy of the Masons that is
22 what, it may be something that we do not
23 necessarily accept commonly except that is not a
24 viewpoint that is totally unknown in our society
25 is that correct?

1 A. That is right. And that is not being psychotic.
2 It is a cultural belief.
3 Q. Right?
4 A. There is many people that hold those beliefs.
5 That belief in itself is not psychotic at all.
6 Q. And that is of course the difference between a
7 false belief that we are assuming that we are
8 all correct and that is false. And a delusion
9 correct or explain the difference between the
10 two?
11 A. That is correct. The delusion is a fixed false
12 belief. But there is many people that a fixed
13 false belief that even when you provide them
14 proof they will not they continue to believe
15 everything despite any evidence to the contrary
16 but a culturally accepted syndrome for example
17 you hear about roots in South Carolina. A lot
18 of people may not believe their roots but there
19 is enough people that believe in it that it is
20 not an idiosyncratic unique belief that is based
21 in mental illness.
22 Q. Right?
23 A. So this so the belief that the Masons were
24 organized and that they do harm to people that
25 is a commonly held belief in this area.

1 Q. Correct. So that can be kind of a razor sharp
2 line between the false belief and the delusion
3 that is just because someone has a belief that
4 the vast majority of citizens would find
5 eccentric or odd or even crazy does not
6 necessarily mean it is crazy in delusion form,
7 is that correct?
8 A. That is exactly true.
9 Q. Okay and you you were of the opinion that his
10 statements and beliefs about the Masons fell
11 into the delusional category and Doctor Frierson
12 was of the belief that it fell under the false
13 belief cultural type category correct?
14 A. Yes but for very very specific reasons. For
15 example when Judge Buckner was the court when he
16 was the judge originally retained on the case I
17 remember this discussion with Mr. Alkebulanyahh
18 very clearly. He did not have an opinion about
19 the judge. He based his Masonic belief on your
20 age and how you held yourself. So he loved this
21 he was very concerned that people be age less
22 than fifty. I cannot remember the cutoff but he
23 thought that if you were like a post-Martin
24 Luther King judicial official attorney, doctor,
25 like he liked me at first that that we were much

1 more liberal than say compared to his parents or
2 you know people that were older. So he did not
3 have the delusions that specifically encompass
4 the judges. In fact when Judge Peeper was
5 appointed to the case he was very pleased about
6 that. He liked Judge Peeper's demeanor. He was
7 very happy about that.
8 Q. Because he was younger or?
9 A. Whatever his criteria is yes it matched that he
10 he was not as paranoid about that. But where I
11 thought it came into play was two areas. Number
12 1 his refusal to work with Gerald Kelly because
13 he felt like Gerald Kelly was older school. He
14 was convinced that you know that that would
15 prevent them from working together and then to
16 the point where he presented that this was a
17 Masonic plot by the officers to come into that
18 house and steal the paperwork that Governor
19 Oglethorpe had from his priestess great
20 grandfather or grandfather so to me that is the
21 only two areas where it crossed the line. I was
22 I thought that I agreed that the Masonic police
23 were culturally held but in his case I think you
24 uniquely put a twist on them that the other
25 people in that culture would not agree.

1 Q. Right?
2 A. I think many people will say okay Masons you
3 cannot trust them. They are going to come into
4 your home but I do not think you are going to
5 find it is a cultural belief that they simply
6 saunters into your home to kill you so they can
7 steal religious paperwork. So some, some of the
8 idiosyncratic thinking that he added to that
9 cultural belief that made me think it was
10 delusional.
11 Q. Did you read any of these Mason these documents
12 against the Masons or any of the, things that he
13 had read?
14 A. I think I did. I cannot remember. I think
15 Doctor Frierson provided me. I was familiar with
16 them. Because I actually was not really in
17 disagreement with the, the general testimony of
18 Doctor Frierson. It was just more the specific
19 beliefs he tied to them. But I do remember
20 reviewing them.
21 Q. But it is possible that those documents he could
22 have constructed his criteria from things that
23 he had read in those documents?
24 A. Sure.
25 Q. Which would not be unreasonable?

1 A. Sure and actually his reasoning was not bad.
2 You know if it is somebody post-Civil Rights
3 they are more likely to be liberal so that was
4 rational for me. That part it was, it was just
5 his own unique criteria as far as I knew.
6 Q. If someone whose competent and may have some of
7 these cultural beliefs that are outside of the
8 mainstream and they are in trouble and they are
9 looking to construct a way to get out of
10 trouble, would it not be unusual for them to com
11 -- essentially combine those two things the
12 cultural belief which dovetails nicely here with
13 this idea that he was a victim here and not the
14 aggressor?
15 A. Sure. Sure. But the difference is they would
16 welcome it and you need to get to the defense or
17 they will welcome the designation of mental
18 illness and this guy would not do that. Correct
19 and we see that sometimes sometimes it is not
20 only developed sometimes it is just the product
21 of the mental illness. You will take beliefs
22 that you commonly held and then you put your own
23 spin on it. So all of those scenarios are
24 possible but normally with somebody suing that
25 they would welcome that defense. He would want

1 that kind of information and here he forewent
2 his legal counsel because they were at odds and,
3 and did not I am sure if I was not at his trial
4 but I am going to presume he did not present any
5 kind of mental illness defense for himself.
6 Q. Right. Is is possible that somebody could
7 rationally decide that given the nature of the
8 evidence in this case and what they are facing
9 that they wanted to represent themself because
10 this was essentially the last thing they can
11 control in their lives?
12 A. Absolutely. And that is perfectly consistent
13 with his personality structure. He thought he
14 could do a better job.
15 Q. Right?
16 A. And that, that is perfectly consistent with his
17 personality.
18 Q. But that is not necessarily indicative of
19 psychosis or anything like that?
20 A. Not on that end but the fact that he refused to
21 work with these guys especially Mr. Kelly. He
22 was not. I, I do not recall him being at odds
23 with Mr. Thornton as much but the fact that he
24 would not rely upon legal counsel to even help
25 him because he was paranoid about them. But no

1 certainly he went with his narcissism to be in
2 charge of his own trial.
3 Q. And that was part of it that he thought that he
4 could do a better job than his attorneys,
5 correct?
6 A. I think at some level that is absolutely
7 correct.
8 Q. And he thought that attorneys are lazy
9 incompetent and they were not going to do a job,
10 do a good job?
11 A. Yes but more importantly he thought these
12 attorneys were part of a scheme in plotting
13 against him and working against him not only
14 incompetent but against him.
15 Q. But we have also discussed that that can be part
16 of a cultural belief. It is not a delusion,
17 correct?
18 A. Sure.
19 Q. And it is not uncommon for many inmates. You
20 see it all the time in PCR. You think that
21 their attorneys are lazy and incompetent and
22 they could have done a better job, correct?
23 A. Absolutely. Absolutely. See it all the time.
24 Q. All right. Now your report I believe was
25 submitted into evidence at the hearing. Do you

1 recall?
2 A. I do not.
3 Q. This would be the report if it was submitted.
4 This would be the one, correct?
5 A. Yes that is the only report that existed that I
6 know of.
7 Q. So any any details that you might not have
8 specifically mentioned to the Judge during the
9 course of your testimony he would have had a
10 copy of this this right here?
11 A. Correct.
12 Q. This has been marked which I believe Plaintiff's
13 1 is that correct. Okay. All right. Now you
14 were asked about about whether or not you were
15 sticking by your opinion as to his competency to
16 stand trial and correct me if I am wrong but
17 competency is a fluid thing, correct?
18 A. Correct. And that is why it can only go back to
19 my testimony then. I have not seen him I do not
20 even know how he is or what is going on with
21 him, correct.
22 Q. You do not know if he is worse, better the same?
23 A. That is correct. So I could not give any
24 opinion presently about his state but my
25 understanding of that question was any, had I

1 gained any knowledge over the years that would
2 have said oh you are wrong or you made a mistake
3 and I am just not aware of any and my opinion
4 would still be the same now. I would be glad to
5 look at any new information but as far as the
6 knowledge I have now I am still sticking to my
7 guns and I would hold to that opinion.
8 Q. Okay and in fact you even said at the hearing
9 that because he would not speak with you on the
10 day of the hearing you really could not even
11 talk about right then. You could only talk
12 about that third interview where you made your
13 final diagnosis which of course as we discussed
14 was the worst one?
15 A. That is correct.
16 Q. That was sort of poisoned by the whole videotape
17 issue as well?
18 A. Correct.
19 Q. Just one second. Did you talk with Doctor
20 Frierson about this case. Did you all have
21 discussions about it?
22 A. Yes. We did. It may have been after I cannot
23 remember when.
24 Q. Do you all usually debate these things or are
25 you just kind of talk about sharing information

1 and that sort of thing?
2 A. No, after we usually debate them. Doctor
3 Frierson is incredibly ethical and I respect him
4 so much so normally we a lot of times both work
5 for USC now.
6 Q. Right?
7 A. And we worked together in training the fellows
8 but a lot of times we are on opposite sides of
9 the testimony.
10 Q. Right?
11 A. For example yesterday we were both court-
12 appointed by the Court but we both had to render
13 an opinion so it is not uncommon for us. But
14 normally later we will talk about it. But I do
15 not I cannot I do not. I think Doctor Frierson
16 and I he may have talked with me about the tape.
17 I know we had to have had some discussion during
18 the evaluation because he knew about the tape
19 and got with me and asked me you know when I was
20 told to hand over the tape to him but normally
21 we will save that for later.
22 Q. It is not inappropriate for you all to discuss
23 it. I mean that is?
24 A. No.
25 Q. That is how diagnoses are made all the time.

1 People call their colleagues and that sort of
2 thing. And even though you all both may be
3 testifying it is not inappropriate for you to
4 share information and maybe discuss your
5 opinions or is it?
6 A. It depends and certainly I can tell you Mr.
7 Kelly was very old school. And you you know he
8 does not if he is retained you do not talk to
9 anyone unless he tells you to.
10 Q. Right?
11 A. And he in fact was very upset with me early on
12 in the case because I got a consultation for
13 myself and I had to provide him documentation
14 for more ethics but we are allowed I am allowed
15 to obtain the consultants to help me do my
16 evaluation.
17 Q. What was that?
18 A. I had contacted David Bruck to ask because I saw
19 in my opinion this was quote like a Frendak
20 case. Early on when I saw Mr. Alke --
21 Q. Like a what case, I am sorry?
22 A. A Frendak. F-R-E-N-D-A-K.
23 Q. I do not know what that means. Do you know
24 what?
25 A. Yes it is a case we studied that you worry that

1 someone might be insane and that they are not
2 going to you would have to impose an insanity
3 defense upon them and they would not welcome
4 that.
5 Q. Okay?
6 A. So very early on I was very concerned that this
7 was going to be a case where the Defendant was
8 not going to work with his attorneys so I I
9 cannot I called Mr. Bruck to ask him what is the
10 procedure for an attorney and Mr. Kelly was very
11 upset about that. And I explained to him that I
12 had to have that knowledge to be able to proceed
13 when I saw Mr. Alkebulanyahh again because I did
14 not know how I was going to deal with that
15 issue.
16 Q. What did the the procedure what procedure did
17 you ask Mr. Bruck for?
18 A. I, I cannot recall. It was something. It was I
19 think it was to get an African American
20 appointed. I was asking. And I think I just
21 posed a hypothetical. I did not give David any
22 details. I said David I am doing a case right
23 now. I have got a client that is not going to
24 work with his attorney. He may be psychotic but
25 there may be some cultural issues. If he gets

1 to the point where he cannot work with his
2 attorneys what do I do as an expert because I do
3 consider him he is to me an ethics advisors in
4 the law and I foresaw a case where the lawyers
5 were going to get removed and I did not know if
6 I would be retained in that case or what my role
7 was going to be so I was trying to seek
8 consultation for me to understand what the legal
9 process is going to be in anticipation that I
10 knew very early on this case was going to be
11 difficult.
12 Q. So it was about the issue about getting an
13 African American attorney appointed or was the
14 issue about potentially having or essentially
15 impose an insanity defense on the or does it
16 depends on what?
17 A. I am just asking what legally how does that
18 process work. What would happen and just making
19 sure that I understood the legal processes as I
20 did my evaluation so I would not. We should not
21 we do not have to know the law but we should be
22 aware of the parameters especially if those
23 issues came up because I did not know what my
24 role would be. Sometimes we have a role when we
25 do a case we have to impart that information to

1 the attorney. He cannot work with you that sort
2 of thing so I was trying to anticipate those
3 things ahead of time. But the answer to your
4 question Mr. Kelly was very old school and I, I
5 appreciated that. He and I had a very good
6 working relationship but he follows the rules.
7 Q. Right?
8 A. So normally you would not talk but and also the
9 State when you are working for the Department of
10 Mental Health it is fine if you have a release
11 with those doctors to talk with you. So some
12 lawyers are saying please talk with the
13 Department of Mental Health physicians and then
14 other lawyers will say I do not want you to talk
15 to anybody. So I remember Mr. Kelly gave me
16 permission. I think to give the tape to Rick.
17 Q. So some lawyers want you to essentially abdicate
18 that your opinion with the, the examiner,
19 correct?
20 A. Correct.
21 Q. Now you talked when you told Mr. Kelly though
22 about talking with Mr. Bruck and he said well I
23 do not want you to do that. That is essentially
24 is what happened, is that right?
25 A. Well he was fine with it. No, it had already

1 and he had he had written me an email and said
2 you know I did not authorize you to do that.
3 Would you please explain to me why you did that
4 so I sent him some chapters and showed him that
5 it was certainly within my guidelines to get a
6 consultation ethically for me to make sure that
7 I understood and he was fine with that. I am
8 not sure. He just did not know why I did that.
9 It is probably not common for his experts to do.
10 Q. I think that is it. Thank you Doctor Schwartz-
11 Watts.
12 REDIRECT EXAMINATION BY MR. GRANT:
13 Q. Doctor, I have a few additional questions. You
14 indicated you had not had an opportunity to
15 review your testimony in the pre-trial motion?
16 A. Correct.
17 Q. I think it is only fair for the purposes of the
18 deposition to at least give you that opportunity
19 in case certain aspects of your testimony here
20 needs to be refreshed. I have in my hand a copy
21 of that testimony pages 6 typewritten pages 6
22 through typewritten pages 32 bates stamped 397
23 to actually that is 37 and it looks like 3794 to
24 bates stamp I think that is right. Excuse me
25 3974. It is bates stamped 4000. We are going

1 to go off the record for a second and give you
2 an opportunity to review it?
3 A. Thank you.
4 (DEPOSITION RECESSED AT 2:51 p.m.)
5 (DEPOSITION RECONVENED AT 2:58 p.m.)
6 Q. Doctor, you have now had an opportunity to
7 review your testimony at the pre-trial motion on
8 the issue of competency to stand trial. How
9 does that assist you in any way with your
10 testimony here today?
11 A. In two ways first of all Mr. Waters asked me the
12 question. It is obvious from reading it that
13 Doctor Frierson had conducted the first
14 interview of Mr. Alkebulanyahh and then had
15 contacted me and stated that he most likely
16 would not speak with me. So indeed I obviously
17 had a conversation with Doctor Frierson before I
18 ever saw Mr. Alkebulanyahh and then secondly it
19 just reaffirmed basically the other things I
20 have told you have been consistent with my
21 testimony.
22 Q. And now that you have reviewed it your pre-trial
23 motion testimony is there any need to expound
24 upon or explain anything you said earlier here
25 today?

1 A. Yes. Just to add one of the details I had
2 forgotten. One of the other things he told me
3 about his case I forgot that Mr. Murdaugh was
4 also allegedly one of the Masons and that his
5 specific ideas is that Mr. Kelly and Mr.
6 Murdaugh were working together to conspire
7 against him to have him feeling guilty. And then
8 secondly I had not recalled but I do absolutely
9 remember him telling me that witnesses in his
10 case were turning up dead. And he feared that
11 there was some conspiracy to make sure that he
12 could not win his case by murdering his
13 witnesses.
14 Q. Thank you, Doctor. That is all I have.
15 RECROSS EXAMINATION BY MR. WATERS:
16 Q. I just got a couple more. To take the risk of
17 defending someone are both Mr. Kelly and Mr.
18 Murdaugh are older gentlemen?
19 A. That is correct.
20 Q. Would not both of them have white hair?
21 A. Yes.
22 Q. Okay?
23 A. They were significantly older than the Judge
24 certainly shown forward in the examiners yes and
25 they would have met his criteria for being

1 mistrustworthy just by virtue of their age.
2 Q. Okay and Mr. Alkebulanyahh fancied himself a a
3 minister, did he not?
4 A. Yes.
5 Q. And so it is not uncommon for religious people
6 and ministers to speak of range or visions or
7 beliefs that they believe were divinely
8 inspired, is that correct?
9 A. Not at all. Well his was a little bit unique.
10 What bothered me about because he told me about
11 the vision and I was not bothered by the fact
12 that he had a vision but then he said he cried
13 every day for two weeks afterwards which let me
14 think it was in the midst of a mood disorder
15 that he was so upset. He states that he cried
16 every day for two weeks. So it was more his
17 response to the hallucination or the vision
18 which, whichever you would choose to call it
19 that made me deem it a little it made me deem it
20 abnormal.
21 Q. But it is not is it not true that many biblical
22 stories and I am trying to think of one but I
23 cannot think of one right now results in people
24 getting visions and resulting to extreme action
25 extreme emotional despair or joy whatever the

1 case may be?

2 A. Sure.

3 Q. Or even self abuse or whatever the case may be?

4 A. Sure. Absolutely.

5 Q. I believe that is all I got. Thank you very

6 much.

7 MR. GRANT: Nothing further.

8

9 (Deposition CONCLUDED at 3:00 P.M.)

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1 STATE OF SOUTH CAROLINA)
2 : C-E-R-T-I-F-I-C-A-T-E
3 COUNTY OF RICHLAND)
4 I, KATHLEEN M. HALL, Court Reporter and Notary Public,
5 certify that I did have DR. DONNA SCHWARTZ-WATTS to
6 appear before me at 2:08 p.m. on WEDNESDAY, AUGUST 13,
7 2008, at the Offices of The Attorney General, 1000
8 Assembly Street, Columbia, South Carolina; that the
9 witness was sworn and cautioned to tell the truth, the
10 pages constitute a true and accurate transcript of the
11 testimony given at that time and place.
12 I further certify that I am not of counsel or kin to
13 any of the parties to this cause of action, nor am I
14 interested in any manner in its outcome.
15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal this the 21st day of August, 2008.
17
18
19 ____
20 Notary Public for South Carolina
21 My Commission Expires: 09/25/17
22
23
24
25

Psychiatric Evaluation

Name: Abdiyyah ben Alkebulanyahh (aka) Tyree Roberts
DOB: 7/24/62
Dates of Evaluation: 12//02, 2/5/03, 4/10/03
Date of Report: July 29, 2003

Identifying Information: Mr. Addiyyah ben Alkebulanyahh aka Tyree Roberts is a forty-one-year old African American male evaluated at the request of his attorney Gerald Kelly. Mr. Alkebulanyahh has been charged with Two Counts of Murder, which will be tried as Capital Offenses.

Reason for Referral: Mr. Alkebulanyahh's attorney Gerald Kelly requested this evaluation to determine if his client was competent to stand trial, criminally responsible and had any pertinent mitigation for his capital charges.

Statement of Nonconfidentiality: Mr. Alkebulanyahh was strongly opposed to any communication between this evaluator and his attorney. This evaluator contacted the Medical Director of the American Academy of Psychiatry and Law who informed her that she is an agent of his attorney and must provide Mr. Kelly with any information obtained during these evaluations.

Sources of Information:
DOJ Records, Georgia 8/7/87
NCIC Records
Post Sentencing Evaluation 8/24/87 by Marlene D. Graham
Georgia DOC Disciplinary records 1988-1993
Case Management Analysis form 7/10/90, 1/10/92, 7/13/95,
Sentence 5/21/87
Transfer Recommendation 2/29/88
Transfer Recommendation 8/29/89, 8/31/89
Transfer Recommendation 3/22/90
Transfer Recommendation 7/2/90
Parole Review Summary 11/9/93
Letter to Mr. Roberts 3/30/94 from Parole Hearing
Security Reclassification form 3/23/89
Inmate Security Adjustment 7/27/90
Disciplinary Report 4/5/88, 6/15/88, 6/22/88, 7/14/88, 7/19/88, 7/20/88, 7/25/88, *7/27/88, *7/29/88, 8/11/88, *1/27/89, 6/16/89, 10/31/89, *12/28/89
Georgia State DOC Medical Records 8/11/87 – 7/24/96 *8/1/88, *4/2/91
Georgia State DOC Psychometric Report 9/15/87 Critical Analysis Questionnaire Part II

Florida DOC Disciplinary Reports *1/11/82, 6/25/82, 9/2/82, *6/30/83, 8/17/83,
Florida DOC records 7/30/81
Florida DOC Discipline Reports 11/1/81 – 4/11/84
SCDOC Medical Records 1997-1998
10/9/98, 1022/98
SCDOC Disciplinary Reports 4/5/98, 9/1/9810/7/98
SCDC Record Summary Report 10/3/02
Incident Report by Sgt. Stettmier 1/12/02
Supplemental Incident Report Stettmier 1/8/01
Supplementary Report Stettmier 1/8/02
Supplemental Incident Report Sgt Zanelotti 1/22/02
Supplemental Incident Report K. Cotner 1/10/02
Supplemental Incident Report C Sankowski 1/12/02
Supplemental Incident Report KM Gregg 1/17/02
Affidavit Jermel James
Paper entitled Halleluyah by Abdiyah ben Alkebulanyahh
7 page letter to President from Priest, Abdiyah ben Alkebulanyahh 8/23/02
Handwritten Motion of Dismissal of Attorney Gerald Kelly 10/14/02
Handwritten Notice of Certification 8/23/02
Audiotaped speech 6/02
M.L. King Jr. School Records Grades 1- 6
Phoebe Putney Memorial Hospital Records of Betty Daniel 7/24/62
Report of Dr. Frierson 3/12/03
Social History by Carols Torres LMSW 12/4/02
Notes of Interview with Clifford Ponder 11/7/02, 11/11/02
Gazette article: Suspects Shared Ministry" 1/14/02
Numerous Internet Articles on Freemasonry
2.5 hr clinical forensic interview 12/6/02 Just Care
2.25 hr clinical forensic interview 2/5/03 Beaufort County Detention Center
2.5 hr clinical forensic interview 4/10/03 Beaufort County Detention Center
Telephone Interview Betty Roberts 4/9/03
3.0 hour consultation with Geoffrey McKee, Ph.D. July 27,2003
Telephone Consultation with Robert Deysach, PhD July 28,2003
Telephone Interview of Kimberly Blake July 29, 2003

Pertinent Statements:

Developmental History: Medical records and interview of Mrs. Betty Roberts indicate she was fourteen years of age when she became pregnant with Tyree Roberts. She had no prenatal care. She reports she hid her pregnancy from her mother by wearing a girdle. She was admitted to Phoebe Putnay Hospital on 7/24/62 when she was 36 weeks pregnant. Her membranes were ruptured, and she delivered Tyree Roberts soon after. Records indicate she became eclamptic and had a 3-5 minute seizure shortly after his birth. She had extremely high blood pressures during her delivery as well. She was placed on Phenobarbital and released seven days later. Mrs. Roberts reports she was in a

coma for one month after her son's birth. This examiner is unsure whether the seven day period recorded in the hospital records is the same period of time Mrs. Roberts refers to when she stated she was in a coma for a month. She reports that her son had a very large head for his age and was always teased by family members and peers because of head size. She states that by the time her son went to school, the family stated "he finally grew into his head." Mrs. Roberts reports she always believed her son "was off." She states his siblings avoided him because he was different. She states that she took him to doctors to get help but was told: "You're a child with a child." She states she became extremely worried when he began cooking and eating animals as a young boy. There are no reports that he tortured animals. Mrs. Roberts did report this behavior occurred around the ages of six and seven, which are also consistent with the time period her described being sexually molested. Mrs. Roberts states her son did not tell her bout this until he was nine and the man had left the neighborhood. When confronted by his apparent denial to Dr. Frierson she replied: "I know he told the truth. I was molested as a child too and you just know these things when you are told about them and see them." She states that she believes her son is denying this in order to appear well. Review of Mr. Roberts' elementary school records indicate he was an average student in grades one through three. The only observed comment written by a teacher states: 'Tyree has a pleasing and likable personality. He also is quite capable in his work; however, he does not often work up to his ability. He is easily distracted and very forgetful. These comments were recorded by his sixth grade teacher. The only unsatisfactory reports he ever earned in school citizenship were for dependability, obedience and use of time in the fifth and sixth grades. He consistently scored satisfactorily in cooperativeness, courtesy, initiative, being orderly and working carefully. There were no records of any fights or suspensions during this time. His citizenship marks did appear to decrease between fourth and fifth grade which may have been consistent with the periods of his alleged molestation. Mrs. Roberts also reports that Tyree spent a lot of time with his grandmother "who was off." Mrs. Roberts believed she had dementia. Mr. Alkebulanyahh did receive his GED in 1981 while incarcerated in Georgia. Records indicate Mr. Alkebulanyahh had experience with hanging dry wall. He also reported that he was a minister and can interpret Hebrew.

Legal History: Mr. Roberts was arrested at age 18 for Armed Robbery and Kidnapping. He plead guilty to Armed Robbery on July 21, 1981. He was committed to Florida Department of Corrections and paroled in May 1984. He was incarcerated again in Georgia from 1987 until 1996 for an Armed Robbery conviction. He was sentenced to 20 years suspended to 10 yrs with 10 yrs probation. He was convicted of Distribution of Marijuana and sentenced to 5 yrs suspended to 24 mos and 2 yrs probation in South Carolina in 1997.

Psychiatric History: Mr. Alkelbulanyahh denies any prior history of inpatient or outpatient psychiatric treatment. He adamantly denies he suffers from any form of mental illness. While incarcerated in Georgia, he did have a psychological test in 1987 which indicated he had disordered thought processes. Sometime later when he was evaluated, the examiner did not find the results consistent with the interview and did not diagnose him as mentally ill.

Present Social History: Mr. Alkebulanyahh reports he is married to Nzuri Alkebulanyahh (aka Monica DeJesus). He states they have a child. Mr. Alkebulanyahh also has two children from Kimberly Blake. Ms. Blake states that she had Mr. Alkebulanyahh separated when she was eight months pregnant and that she did not hear from him again until her daughter was five months old. At that time, she states his attitude had changed. She denied that he had any sleep disturbance when they were together before her daughter was born. There are reports that Mr. Alkebulanyahh may have fathered as many as twenty children; he did not answer directly how many more children he had, but states that he accepted responsibility for the children of these women. Mr. Alkebulanyahh reports that prior to this offense, Ms. Blake maintained a relationship with him and Nzuri. He states there was a period of time where he and Nzuri had separated and that Ms. Blake became pregnant. He reports that the women had a friendship. His wife, Nzuri was pregnant at the time of his arrest. After his arrest, Mr. Alkebulanyahh reported that he discovered Kimberly Blake was pregnant again as well. Mr. Alkebulanyahh and his wife were residing in the home of friends, Isaac and Brenda Riley when he was arrested. Mr. Alkebulanyahh described himself as a minister of The Church of the People of God at the time of the offense. He states that he would go around to other areas and preach about his vision. He states audiotapes of his sermons exist.

Substance Abuse History: Mr. Alkebulanyahh does not meet the criteria for any substance abuse disorder although he has reported using marijuana on occasion in the past. He was incarcerated in South Carolina for associated drug charges.

Mental Status Examination:
Interview 1 (12/6/02): Mr. Alkebulanyahh was initially reticent to see this examiner. However, when the officers in his room assured him they knew this examiner, he began to cooperate. His appearance was neat. He apologized for not having showered, which was due to his custody status and not enough staff being available for him to shower the night before. He wore dreadlocks. He maintained good eye contact throughout the interview. He would often widen his gaze during periods of the interview for emphasis on certain statements. His speech was normal in rate and tone, however he spoke voluminously. His thinking was goal directed but circumstantial. He did not demonstrate thought processes seen in psychotic individuals. The content of his thought was significant for preoccupation with his legal situation. He expressed a dislike and mistrust of his defense team. He discussed the merits of his case and the need for an African American team. Although his thinking had paranoid themes, there was not enough evidence to support a psychotic thought process. His judgment was impaired due to his beliefs about his defense team. He was no longer meeting with them and wanted to represent himself. He stated the constitutional issues involved in his case would free him or there would be outbreaks in the streets. He was clearly grandiose and had heightened self esteem and importance.

Interview 2 (2/5/03): Mr. Alkebulanyahh was examined in the detention center. He entered the room and was immediately notified that this evaluation would be videotaped. He consented. His appearance was similar to the previous exam. His manner of speech

was similar as well. As the interview progressed, he became more animated and comfortable. His speech remained circumstantial and voluminous. The rate of his speech nor the tone had changed. The thought content of this evaluation was different from the first. He was hyperreligious, grandiose and paranoid when discussing the Masons. He had eccentric ideas he presented about how he judged whether he could trust others or not. He used age and post Martin Luther King exposure as some criteria. He described a hallucinatory religious experience which was consistent with mental illness. He described a vision which was followed by two weeks of crying daily. He reports he has preached about this vision to others. He states following this vision he ruminated about the well being of the world and felt compelled to share this vision to help others. He discussed grandiose and paranoid themes including that his perceived home invasion was an assassination attempt by the Masons in order to gather important documents which he had in his possession. He expressed a belief these items were removed from the residence and are not on the evidence sheet. His judgment remained impaired as he continued to refuse to work with his defense team. He did admit to having special powers such as the ability to predict 9/11. He stated (after the tape ended) that he had written a local newspaper to predict a major disaster. At the end of the interview when this examiner went to remove the tape, Mr. Alkebulanyahh asked that the tape not be shared with anyone. He asked to review this tape and to have it sent to third party to be reviewed. This examiner told him she was unsure about the ethics of the situation and would consult the medical director of the American Academy of Psychiatry and the Law. After the medical director of AAPL informed this examiner this was part of her medical record and that she was an agent of the defense team and that she must share it, this examiner notified Mr. Kelly of its existence.

Interview 3 (4/10/03): Mr. Alkebulanyahh was interviewed in the detention center. He was very angry with this examiner for having shared the videotape with the defense team who instructed her to share it with Dr. Frierson. He looked gaunt and tired. When this examiner questioned him about the amount of sleep he was getting, he replied he didn't need "any damn sleep." He had a noticeable twitch in his left maxilla. His speech was loud in tone and marked by profanity. He was also hypersexual. He remained grandiose and theatrical at times. He made statements such as: If you want to do something for me, give me pussy. If you can't do that, tell the judge to 'suck my dick.'" He also described Caucasians and European Americans (this is in reference to this examiner) as "despicable creatures." He made recurrent statements stating he was "a champion, the winner, and the king." He made numerous gestures and remarks about having sexual relations with this examiner. He became agitated when discussing the delay of his trial. He did calm down after thirty minutes of the interview but remained hypersexual and grandiose. He states no matter what the outcome of the trial, he was at peace. He made numerous religious references that the outcome no longer mattered. He reported he had to be made to suffer to help people understand his message. He continued to express paranoid thought content. He reported that the officers in the detention center wanted to kill him but no longer bothered him because they knew how connected he was and that he would bring worldwide attention to his treatment and dilemma. His judgment remained impaired as evidenced by his profanity, inappropriate sexual behavior, demeaning remarks to legal officials and his continuing refusal to work with his team in

order to prepare a defense. His thought processes were loose at times, and circumstantial at others. Mr. Alkebulanyahh does not believe he is mentally ill and therefore has no insight into his grandiosity or disordered thought processes.

Results of Testing: Psychological testing was performed when Mr. Alkebulanyahh was evaluated at the William S. Hall Psychiatric Institute. Consultation with Dr. Geoff McKee reveals that Mr. Alkebulanyahh was extremely defensive and paranoid according to his interpretation of the testing performed at the Hall Institute. These results are consistent with his presentations to this examiner on multiple occasions.
Dr. McKee reported that Mr. Alkebulanyahh refused to see him. Results of neuropsychological testing do not reveal any localized deficits. Dr. Deysach did remark Mr. Alkebulanyahh has difficulty with problem solving which worsens when he is unstructured.

Diagnoses:
Axis I) Bipolar Disorder, Most Recent Episode Manic with Psychotic Features
Axis II) Narcissistic Personality Traits
Axis III) s/p gunshot wounds to hip and shoulder
Axis IV) Problems related to interaction with legal system, problems with primary support group, problems related to social environment, economic problems
Axis V) 35

Discussion of Diagnosis:
During the final interview of Mr. Alkebulanyahh, he met the criteria for a manic episode. He has an abnormal and expansive mood which for a week's duration which was confirmed by talking with detention center officers who monitor him daily. During this period, he has demonstrated: inflated self-esteem and grandiosity, decreased need for sleep, pressure to keep talking, and increased goal-directed activity (sexual) and psychomotor agitation. He did not meet the criteria for a Mixed Episode. He had marked impairment in his relationships with others and in social situations. His symptoms are not due to a medical condition or substances. It is this examiner's opinion that he was hypomanic during a previous interview. During that period, he possessed the inflated self-esteem, pressure to keep talking, and increased goal-directed activity. This presentation was different from the initial observation although some symptoms were present at that time as well. It is clear from interviewing his mother that he has had similar episodes in the past. His mother discussed times were he would have pressured speech accompanied by irrelevant ideas, grandiosity and a noticeable change of functioning. Mr. Alkebulanyahh did describe an episode months prior to his charges where he cried daily and ruminated for the well being of the world. He described a hallucinatory experience which can be a complication of a mood disorder. He has a family history of mental illness. Associated features of such an illness (p. 359 DSM-TR) include an inability to recognize they are ill, hostility and threatening behaviors to others, and poor judgment. In addition to these prominent mood symptoms, Mr. Alkebulanyahh has psychotic thought processes. During unstructured interviews, he associates ideas in a manner that make him difficult to understand. He demonstrates paranoid thinking which has caused him severe difficulty in working with his defense team and adjusting to his

detention. He has expressed paranoid ideation to the point where he has stated he has switched where he sits at the last minute to avoid being poisoned by the detention center staff. He has stated to this examiner that his team wants him to be "crazy" so that he cannot defend himself. He reports this is part of a conspiracy in which many officials are involved. He has written letters indicating the same. Mr. Alkebulanyahh's personality style accounts for some of the discrepancies in his mental status. Due to his narcissism, his grandiosity is heightened in the presence of females. However, his disorder of thought processes is a manifestation of his mental illness, not his personality traits.

Opinion Regarding Competency to Stand Trial:
It is this examiner's opinion with a reasonable degree of medical certainty that Mr. Alkebulanyahh does not have present sufficient capacity to assist his attorney in his defense due to his mental illness. Due to his paranoia, he expresses ideas that his lead defense attorney is an agent of the Masons. While he does not express whether this particular relationship is directly harmful to him, he has expressed beliefs that the Masons in Beaufort are persecuting him because of his religious ideation which he publicizes. He refuses to meet with experts retained by his team and has threatened a harassment suit should his attorneys continue to "harass him." Mr. Alkebulanyahh has very fixed ideas about how his case should be presented. Although alone this does not reflect a lack of competence, his inability to examine other potential defenses demonstrates his lack of capacity to work with his attorneys. Defendants need not always agree with their attorneys, but they need a capacity to weigh various pleas and defenses available to them. Mr. Alkebulanyahh refuses to have any defense about mental illness because he does not believe he is mentally ill. He has refused to pursue any form of psychiatric mitigation for a potential sentencing phase. He has refused to develop any strategy for a sentencing trial. This again reflects upon his inability to consider options which is necessary for competence. His idiosyncratic ideas about the court system do not necessarily render him unable to assist in his defense. He has expressed beliefs that the former judge on this case was corrupt due to associations with law enforcement personnel in Beaufort. Mr. Alkebulanyahh is not able to appreciate potential outcomes of his trial. Although he recognizes he can receive the death penalty, he states there will be a revolution and bloodshed on the streets if he is convicted. He states he has written the United Nations and has other friends across the nation who will assist him in this outcome. Whenever Mr. Alkebulanyahh is presented with any discussions concerning mental illness, he becomes enraged and states these discussions are another attempt to persecute him and to deny him justice. Mr. Alkelbulanyahh has been involved with the judicial system before, and there is no record that he expressed these beliefs then. It is this examiner's opinion that these beliefs represent major mental illness which has a fluctuating course. It is this examiner's opinion that his mental state will continue to deteriorate during a trial during periods where his belief system is confronted. If he is found competent to stand trial, it is recommended that he be evaluated intermittently to monitor his mental status. It is necessary for this examiner to see him again due to the fluctuating nature of his mental status.

Conclusion Regarding Criminal Responsibility: Although Mr. Alkebulanyahh has a major mental illness, there is no evidence that his illness prevented him from knowing

the difference between legal and moral right from wrong. It is this examiner's opinion that he could appreciate the difference at the time of the offense. His beliefs regarding the Masons and an assassination attempt arose after his charges. Ms. Blake did report that he discussed the Masons before with her, but she reports he only mentioned his dislike for them.

Mitigating Factors: It is this examiner's opinion that Mr. Alkebulanyahh has a number of mitigating factors. His mentality at the time of the offense is significant. His capacity to conform his conduct at the time of the offense was seriously impaired due to his mental illness. His mental state at the time of the offense is very significant. Mr. Alkebulanyahh has consistently maintained that the police invaded his home without probable cause and then shot him. He consistently maintains that his home was a place of safety.

Donna Schwartz-Watts, M.D.
Consulting Forensic Psychiatrist

STATE OF SOUTH CAROLINA IN THE SUPREME COURT

CERTIFICATE OF SERVICE

I, APPELLANT, ABDIYYAH BEN ALKEBULANYAHH, PRO SE, HEREBY CERTIFY THAT I HAVE SERVED BY DEPOSITING IN A SEALED ENVELOPE; IN THE UNITED STATES MAIL, POSTAGE PREPAID, TO THE FOLLOWING: CLERK, DANIEL E. SHEAROUS, SOUTH CAROLINA SUPREME COURT, P.O. BOX 11330, COLUMBIA, S.C.-29211; HENRY McMASTER, ATTORNEY GENERAL, STATE OF SOUTH CAROLINA, POST OFFICE BOX 11549, COLUMBIA, S.C.-29211; THE FOLLOWING:

I. MOTION FOR RECONSIDERATION TO MOTION TO PROCEED PRO SE ON DIRECT APPEAL

II. CERTIFICATE OF SERVICE

AND FURTHER SWEAR UNDER AND BY PENALTY OF PERJURY FORGOING IS TRUE AND CORRECT.

THIS 14 DAY OF June 2005.

[signature]

ABDIYYAH B. ALKEBULANYAHH
SK6012
DEATHROW S.C.

COURT'S EXHIBIT NO. 1
IDENTIFICATION/EVIDENCE
DKT.# [illegible]
DATE: 10/13/08

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

THE STATE, RESPONDENT

V.

ABDIYYAH BEN ALKEBULANYAHH, APPELLANT/PRO SE

MOTION FOR RECONSIDERATION TO MOTION TO PROCEED PRO SE ON DIRECT APPEAL

APPELLANT, ABDIYYAH BEN ALKEBULANYAHH, PRO SE, RECEIVED PERSONALLY VIA CERTIFIED MAIL ON JUNE 7, 2005, AN "ORDER" WORDING THE DENIAL OF APPELLANT'S 'MOTION TO PROCEED PRO SE' ON DIRECT APPEAL.

BASED ON THE ADVERSE RULING AND WORDING IN THE 'ORDER' AFOREMENTIONED, APPELLANT BELIVES THIS COURT FAILED TO PERCEIVE THE ARGUMENTS AND FACTS PRESENTED BY APPELLANT THAT WOULD HAVE WARRANT A FAVORABLE DECISION IN APPELLANT BEHALF. THEREFORE, APPELLANT WOULD LIKE TO SHOW THIS COURT THE FOLLOWING IN SUPPORT OF THIS MOTION:

I. THE "ORDER" STATED, "APPELLANT NOW MOVES TO PROCEED PRO SE, ARGUING THE WARDEN AND APPELLATE COUNSEL ARE ACTING TO DENY HIM ACCESS TO THE COURTS". APPELLANT ARGUED AND SUBMITTED EVIDENCE THAT SHOWED THE WARDEN AND APPELLATE COUNSEL DID ACT AND DID DENY APPELLANT ACCESS TO THE COURT, AGAINST APPELLANT FIRST, FIFTH, EIGHTH AND FOURTEENTH CONSTITUTIONAL RIGHTS. FOR THE WORDING, "... ARE ACTING...." IS NOT FITTING, TO THE MATERIAL PROOF APPELLANT PRESENTED IN THIS COURT. (SEE, ATTACHMENT NO. ONE, TO THIS MOTION, AND, REFER TO ATTACHMENT NO. ONE, IN APPELLANT'S MOTION "RESPONSE TO RETURN TO MOTION TO FILE AN AMENDED PRO SE INITIAL BRIEF", FILED ON APRIL 15, 2005.) THE ATTACHMENTS ARE THE SAME, ONE BEING ORIGINAL COPY, THE SECOND IN THIS MOTION BEING A COPY. THIS PROOF CLEARLY SHOW THAT APPELLANT WERE BEING DENIED ACCESS TO THE COURT BY PRISON OFFICIALS UNLAWFUL ACTION. WHEREAS, APPELLANT WERE FORCE IN A PRISON CELL AND ALL HIS LEGAL MATERIAL WAS SEIZED INDEFINITELY BY PRISON OFFICIALS,

AND, APPELLANT WAS LEFT IN A PRISON CELL WITH ONLY HIS BOXER UNDERWEAR FOR MONTHS, LITTERALLY, WITHOUT ANY ITEMS, EXCEPT, A NAKED IRON CAST BUNK, TOILET AND SINK.

II. THE "ORDER" FURTHER STATED, "HE [APPELLANT] MAINTAINS HE DOES NOT WANT THE ASSISTANCE OF ATTORNEYS FROM THE OFFICE OF APPELLATE DEFENSE AND THAT HE 'REJECTED' THEM PRIOR TO THEIR FILING THE INTIAL BRIEF AND CONTINUES TO REJECT THEM AND ANY ACTION THEY TAKE ON APPELLANT'S BEHALF".

THE APPELLANT DID USE THE WORD "REJECTED" IN HIS "MOTION TO PROCEED PRO SE ON DIRECT APPEAL IN ALL MATTERS". BECAUSE, THE WORD "REJECTED" WAS USE ON ACCOUNT THIS COURT DID AND CONTINUE TO IMPOSE THE APPELLATE DEFENDERS UPON APPELLANT AGAINST APPELLANT'S "MOTION FOR DISMISSAL AND TO BLOCK ALL ACTION OF APPELLATE APPOINTED COUNSEL, BOB DUDEK", FILED/DATED JULY 26, 2004, WHICH, THIS MOTION WAS FILED SEVEN (7) MONTHS BEFORE "JOSEPH SAVITZ AND ROBERT M. DUDEK, OF THE OFFICE OF APPELLATE DEFENSE... SERVED AND FILED INITIAL BRIEF ON FEBRUARY 22, 2005". TO SUPPORT THIS FACT,

THIS COURT HAD AN "ORDER" DELIVERED TO APPELLANT, THAT IS DATED AUGUST 20, 2004, DENYING APPELLANT MOTION FOR DISMISSAL OF ATTORNEY OF APPELLATE DEFENSE. THIS "ORDER" STATES',

"APPELLANT HAS FILED TWO MOTIONS IN WHICH HE ASKS THAT ROBERT DUDEK, OF THE SOUTH CAROLINA OFFICE OF APPELLATE DEFENSE (OAD), BE RELIEVED AS HIS COUNSEL... BY WAY OF RETURN, JOSEPH L. SAVITZ, III.... OF OAD, STATES HE IS REPRESENTING APPELLANT ALONG WITH MR. DUDEK... WE DENY THE MOTIONS TO RELIEVE MR. DUDEK AS COUNSEL." DATED, AUGUST 20, 2004.

FURTHERMORE, APPELLANT WERE PRO SE DURING TRIAL; WERE SENTENCE TO DEATH ON OCTOBER 22, 2003; APPELLANT FILED A "PRO SE NOTICE OF APPEAL DATED OCTOBER 28, 2003," IN WHICH, THIS COURT OFFICE, ON RETURN, RESPONDED ON "NOVEMBER 3, 2003... THIS APPEAL IS PROCEEDING IN ACCORDANCE WITH THE SOUTH CAROLINA APPELLATE COURT RULES,

THEREFORE NO ACTION WILL BE TAKEN ON YOUR PRO SE NOTICE OF APPEAL." SIGNED BY BRENDA T. SHEALY, DEPUTY CLERK OF THE SUPREME COURT OF SOUTH CAROLINA. DE FACTO, APPELLANT ACTION, PRO SE ACTION AND ENDEAVOUR PRECEDE ANY FILING BY THE OFFICE OF APPELLATE DEFENSE.

III. NOW, THE SEQUENCE OF APPELLANT ACTIONS AND THE COURT'S REJECTION OR DENIAL OF APPELLANT, TO DISMISS OR 'REJECT' COUNSEL OF APPELLATE DEFENSE, AND, APPELLANTS' STRUGGLE TO PROCEED PRO SE ON DIRECT APPEAL, AS FOLLOW:

1. OCTOBER 22, 2003, APPELLANT, PRO SE DEFENDANT WAS SENTENCED TO DEATH;

2. OCTOBER 30, 2003, APPELLANT, PRO SE DEFENDANT FILED A 'PRO SE NOTICE OF APPEAL'. (NOTICE OF APPEAL WERE REJECTED);

3. JULY 26, 2004, APPELLANT FILED A "MOTION FOR DISMISSAL AND TO BLOCK ALL ACTION OF APPELLATE APPOINTED COUNSEL, BOB DUDEK", AND, DID INFORMED THE COURT THAT PRISON

OFFICIALS WERE DENYING APPELLANT ACCESS TO COURTS, AND, "IN FACT IN CONSPIRACY TO DEPRIVE MEN [ME] OF AN FAIR APPELLATE PROCESS".

4. JULY 26, 2004, APPELLANT FILED A "MOTION REQUEST, PLE AND BEGGING TO BE ALLOWED TO EXERCISE THE UNITED STATES CONSTITUTIONAL RIGHT, AMENDMENT ONE", AND, SHOWED THE COURT APPELLANT "HAVE BEEN DENIED ACCESS TO" THE COURT, "TO ALL LEGAL MATERIALS AND BOOKS FOR OVER SEVEN (7) MONTHS... [APPELLANT] INTEND TO ... FILE MY OWN BRIEF AND ARGUMENT ON DIRECT APPEAL ...."

5. AUGUST 20, 2004, THIS COURT RESPONDED TO APPELLANT'S MOTION TO DISMISS APPELLATE DEFENDER, FILED JULY 26, 2004, "WE DENY THE MOTION TO RELIEVE MR. DUDEK AS COUNSEL." THIS RESPONSE FROM THIS COURT WERE BEFORE THE INITIAL BRIEF AND ARGUMENT WERE FILED BY THE OFFICE OF APPELLATE DEFENSE COUNSELS.

6. FEBRUARY 22, 2005, JOSEPH SAVITZ AND ROBERT DUDEK, OF THE OFFICE OF APPELLATE DEFENSE, "THEY SERVED AND FILED THE INITIAL BRIEF ON FEBRUARY 22, 2005";

7. MARCH 29, 2005, APPELLANT GAIN ACCESS TO A PEN AND PAPER, IMMEDIATELY, FILED A "MOTION TO PRO'SE TO ADD TO INITIAL APPELLATE BRIEF". REASONS:

I. APPELLANT ENDEAVOUR TO PROCEED PRO SE AND DISMISS APPELLATE ATTORNEY HAD BEEN REJECTED OR DENIED

II. AGAINST APPELLANT REQUEST FOR SPECIFIC GROUNDS TO BE RAISE (STEM FROM PRO SE DEFENDANT TRIAL STRATEGY), APPELLATE COUNSEL DID NOT RAISE ANY GROUNDS IN INITIAL BRIEF CHALLENGING GUILT PHASE. WHEREAS, APPELLANT IS ABSOLUTELY INNOCENT AND BEING ILLEGALLY DETAINED!

8. MARCH 29, 2005, APPELLANT FILED A "MOTION TO FILE AN AMENDED PRO SE INITIAL BRIEF". REASONS:

I. IN THE APPELLATE DEFENSE COUNSEL INITIAL BRIEF THERE BE "CLEAR ERRONEOUS

ASSERTED FACTS IN THE INTIAL BRIEF FILED... IN THE STATEMENT OF FACTS".

II. THE APPELLATE DEFENSE COUNSEL INTIAL BRIEF CONTAINED IN THE STATEMENT OF FACTS BLATANT LIES AGAINST APPELLANT WHICH THE RECORD DO NOT SUPPORT, AND, FALSE INFORMATION, AND, HALF-TRUTHS. THE APPELLATE DEFENSE COUNSEL STATED IN THE STATEMENT OF FACTS, "APPELLANT, WHO IS MUSLIM", WHEREAS, THERE IS NO EVIDENCE IN THE RECORD THAT SUPPORT THAT LIE. YET, THE RECORD REFLECT CLEARLY AND INDISPUTABLE THE CONTRARY.

9. APRIL 15, 2005, APPELLANT FILED A "RESPONSE TO RETURN TO MOTION TO FILE AN AMENDED PRO SE INITIAL BRIEF", IN THIS MOTION APPELLANT SUBMITTED TO THE COURT, EVIDENCE TO SUPPORT THAT THERE WERE A CONSPIRACY AGAINST APPELLANT TO DENY HIM 'ACCESS TO COURT', ACCESS TO WRITTING MATERIAL OR SUPPLIES, ADEQUATE ACCESS TO LAW LIBRARY AND APPELLANT'S LEGAL MATERIAL (REFERENCE, SUPRA, MOTION FILED IN APRIL 15, 2005, REFER TO ATTACHMENT TO MOTION, ATTACHMENT NO. 1, 2, 3, 4 AND 5);

10. APRIL 21, 2005, THIS COURT RESPONED TO APPELLANT TWO (2) MOTION, SUPRA AL [illegible] (7 AND 8), "... WE DENY [APPELLANT] MOTION TO FILE AN AMENDED PRO SE INITIAL BRIEF AND HIS MOTION TO ADD TO THE INITIAL BRIEF FILED BY COUNSEL."

11. APRIL 25, 2005, APPELLANT FILED A "MOTION TO PROCEED PRO SE ON DIRECT APPEAL IN ALL MATTERS". APPELLANT AGAIN IN THIS MOTION INFORMED THE COURT THAT THE DEPARTMENT OF CORRECTION WARDEN, STAN BURTT WERE (BE/IS) DENYING APPELLANT "ACCESS TO THE COURT AND EQUAL PROTECTION OF THE LAW", THEREBY, INTERFERING AND PREVENTING APPELLANT FROM FILING TIMELY MOTIONS, IN A TIMELY FASHION; (REFER TO INFO, SUPRA (9));

12. MAY 9, 2005, APPELLANT FILED A "RESPONSE TO RETURN TO APPELLANT'S MOTION TO PROCEED PRO SE" IN RESPONSE TO APPELLATE COUNSEL MOTION.

13. MAY 17, 2005, APPELLANT FILED A "RESPONSE TO MOTION TO PROCEED PRO SE ON DIRECT APPEAL", IN RESPONSE TO THE STATE'S MOTION. THE

APELLANT ARGUED THAT THIS COURT ALLOWED IN, THE STATE OF SOUTH CAROLINA V. NORMAN STARNES, AND, STATE OF SOUTH CAROLINA V. JAMES ROBERTSON TO PROCEED PRO SE ON DIRECT APPEAL. BOTH ARE WERE DEATHROW INMATES;

14. MAY 17, 2005, APPELLANT FILED ANOTHER, "MOTION TO DISMISS APPELLATE DEFENDER".

15. JUNE 3, 2005, THIS COURT IN IT'S "ORDER," RESPONDED TO APPELLANT'S "MOTION TO PROCEED PRO SE", "WE THEREFORE DENY APPELLANT'S MOTION TO PROCEED PRO SE."

CONCLUSION

THIS COURT ALLOWED THREE (3) CAUCASIAN DEATHROW INMATES TO PROCEED PRO SE ON DIRECT APPEAL. ONE, NORMAN STARNES; TWO, JAMES ROBERTSON; AND, THREE, CRISP J. DENISOMA.

APPELLANT BEING'S AFRICAN-HEBREW AMERICAN, OF THE BLACK RACE IS DENIED TO PROCEED PRO-SE. APPELLANT BELIEVES ON ACCOUNT OF RACIAL PREJUDICE, POLITICAL UNDERTONES,

INDIFFERENCE TO EQUALITY AND TRUE JUSTICE FOR/TOWARDS BLACK (SKIN) PEOPLE IN THIS COURT. THIS COURT QUOTED OR REFERRED TO CASES IN THEIR "ORDER" DATED JUNE 3, 2005, CASES FROM CALIFORNIA TO FLORIDA TO NEW HAMPSHIRE, TO MAKE REASONINGS FOR THEIR ACTION, AGAINST APPELLANT. YET, TURN A BLIND EYE TO THEIR OWN RULING, IN THE DEATHROW CASES OF NORMAN STARNES, JAMES ROBERTSON AND CRISP J. DENISONA, WHOM WERE GRANTED LEAVE TO PROCEED PRO SE ON DIRECT APPEAL, AS APPELLANT SEEK.

CONCLUSION:

APPELLANT BELIEVES AN ADVERSE RULING WOULD PROVE DISASTROUS TO APPELLANTS CONSTITUTIONAL RIGHTS. AND PRAYS THIS COURT TO GRANT THIS MOTION.

AND FURTHER SWEARS UNDER AND BY PENALTY OF PERJURY FORGOING IS TRUE AND CORRECT. THIS 14 DAY OF JUNE 2005.

6-14-05

RESPECTFULLY
[signature] PROSE
DEATHROW, S.C.
P.O. BOX 205
RIDGEVILLE, S.C.
29742

IN THE SUPREME COURT OF THE STATE SOUTH CAROLINA

NOTICE OF CERTIFICATION

THIS IS TO CERTIFY THAT I, ABDIYYAH BEN ALKEBULANYAHH HAVE PLACED IN A SEALED AND ENCLOSED ENVELOPE AND MAILED VIA U.S. MAIL WITH CORRECT POSTAGE AFFIXED, TO THE FOLLOWING: SOUTH CAROLINA ATTORNEY GENERAL OFFICE, MR. DONALD J. ZELENKA, ESQ., POST OFFICE BOX 11549, COLUMBIA, S.C. 29211-1549; SOUTH CAROLINA SUPREME COURT, MR. DANIEL E. SHEAROUSE, CLERK OF COURT, P.O. BOX 11330, COLUMBIA, S.C. 29211; A COPY OF THE FOLLOWING:

I. RESPONDS TO MOTION TO PROCEED PRO SE ON DIRECT APPEAL

II. MOTION TO DISMISS APPELLATE DEFENDER

III. NOTICE OF CERTIFICATION

AND FURTHER, SWEARS UNDER PENALTY OF PERJURY FOREGOING IS TRUE AND CORRECT.

THIS ____ DAY OF ____________ 2005.

RESPECTFULLY

[signature]

P.O. BOX 265, RIDGEVILLE, S.C. 29472

SWORN TO AND SUBSCRIBED BEFORE ME THIS 27 DAY OF May 2005

[signature]

NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 8/20/06

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

THE STATE, RESPONDENT

V.

ADDIYYAH BEN ALKEBULANYAHH, APPELLANT/PRO SE

MOTION TO DISMISS APPELLATE DEFENDER

COME NOW, IN THE ABOVE-STYLED CASE AND SHOWS THE COURT THE FOLLOWING:

I. APPELLATE DEFENDER(S) ARE INCOMPETENT;

II. APPELLANT INTENDS TO PROCEED PRO SE;

III. APPELLANT HAD INFORMED THIS COURT OF HIS INTENTION, BEFORE APPELLATE DEFENDER FILED ANY BRIEF IN HIS BEHALF

IV. UNDER S.C. CODE ANN. SECT. 16-3-25(D) (REV. 2003) APPELLANT BELIEVES HE IS AFFORDED THE RIGHT TO PROCEED PRO SE AND DISMISS ATTORNEY.

CONCLUSION:

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

SWORN TO AND SUBSCRIBED BEFORE ME THIS 17 DAY OF May 2006

[signature]

NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 9/30/06

RESPECTFULLY

[signature] PRO SE

P.O. BOX 205, RIDGEVILLE, S.C. 29472

STATE OF SOUTH CAROLINA IN THE SUPREME COURT

THE STATE,
RESPONDENT
V.

ABDIYYAH BEN ALKEBULANYAHH, APPELLANT/PRO SE

RESPONDS TO RETURN TO MOTION TO PROCEED PRO SE ON DIRECT APPEAL

COME NOW, ABDIYYAH BEN ALKEBULANYAHH, APPELLANT/PRO SE AND RESPONDS TO THE STATE'S 'RETURN TO MOTION TO PROCEED PRO SE ON DIRECT APPEAL', DATED MAY 9TH, 2005, RECEIVED BY APPELLANT MAY 11, 2005. AND SHOWS THIS COURT THE FOLLOWINGS:

I. ON JULY 26TH, 2004 APPELLANT FILE A "MOTION FOR DISMISSAL, AND TO BLOCK ALL ACTION OF APPELLATE DEFENSE APPOINTED COUNSEL, BOB DUDEK."

II. ON JULY 26TH, 2004 APPELLANT FILED "A MOTION... TO BE ALLOWED TO EXCERCISE THE UNITED STATES CONSTITUTIONAL RIGHT, AMENDMENT ONE (I.)".

III. APPELLANT FILED AFOREMENTION MOTIONS BEFORE APPELLATE DEFENDER INITIATED A BRIEF ON APPELLANT BEHALF.

IV. APPELLANT DID NOTIFY THIS COURT THAT THE APPELLATE DEFENDER, THE OFFICIALS OF THE SOUTH CAROLINA DEPARTMENT OF CORRECTION AND OTHERS "ARE IN FACT IN CONSPIRACY TO DEPRIVE MEN AND (MYSELF) OF AN FAIR APPELLATE PROCESS ... (AND) THERE IS A BLATANT CONSPIRACY THAT IS/HAS PREVENT ME FROM ANY CIVIL ACTIONS" AND ACCESS TO COURT.
SEE, MOTION REFERRED TO IN ABOVE SECTION ONE, AT SECTION VIII AND IX.

V. SUBSEQUENT, APPELLANT MOTION TO DISMISS APPELLATE COUNSEL (SUPRA SECTION I.) IN THIS COURT, AND APPELLANT INTENTION TO FILE HIS INITIAL BRIEF; THIS COURT UPON APPELLANT INITIATING, ADVISE APPELLATE "COUNSEL OF RECORD THAT THE APPELLANT'S INITIAL BRIEF AND DESIGNATION OF MATTER SHOULD BE SERVED AND FILED WITHIN THIRTY (30) DAYS OF THE DATE OF THIS LETTER," ON AUGUST 20TH, 2004.

VI. BEFORE, DURING AND AFTER, SUPRA, THE SOUTH CAROLINA DEPARTMENT OF CORRECTION OFFICIALS AND WARDEN, STAN BURTT, ORDERED HIS STAFF TO CONFISCATE ALL APPELLANT'S LEGAL AND WRITTING MATERIALS, INDEFINITE! THEREBY, DENYING APPELLANT ALL HIS PRISONER'S RIGHT AND CONSTITUTIONAL RIGHTS, THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH, AND FIRST;

VII. AS A RESULT OF AFOREMENTIONED UNLAWFUL ACT, APPELLANT'S ONLY MEANS OF CHALLENGING THE STATE AND THE FRIEND OF THE COURT, APPELLATE COUNSEL, WERE BY FELLOW PRISONERS OPPORTUNITY TO SMUGGLE A SHEET OF PAPER AND PEN TO APPELLANT TO ADRESS THE COURTS. USUALLY, WHILE APPELLANT IS IN THE ACT OR PROCESS OF WRITTING A MOTION OR PETITIONING TO COURT, PRISON OFFICIALS ENTER THE CELL WHICH IS ASSIGNED TO APPELLANT, THEN SEIZE ANY AND ALL, PEN, PAPER AND LEGAL MATERIAL. REFER TO EVIDENCE SUBMITTED WITH APPELLANT'S "RESPONSE TO RETURN TO MOTION TO FILED AN AMENDED PRO SE INTIAL BRIEF", 'ATTACHMENT NO. ONE (1) AND NO. FIVE (5)' MOTION DATED APRIL 15, 2005 (INDISPUTABLE EVIDENCE!).
THUS, VIOLATING APPELLANT'S FIRST, FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENT

VIII. On March 24th, 2005, Appellant filed a "Motion to Raise to Add to Initial Appellate Brief". For the fact, "Appellant appointed attorney did not raise any issue in initial brief challenging the trial phase", against Appellant's request.

IX. Also, on March 24th, 2005 Appellant filed a "Motion to File an Amended Pro Se Initial Brief". For the fact, these particular issues was not raise in brief, by Appellate Defender, as requested by Appellant, as follows: "1) Judge erred by denying Appellant 'Motion for Dismissal for Fourth Amendment Violation', on account officers enter, search and seized Appellant in his and his wife own bedroom without authorized consent or other requirements. 2) Jude erred by denying Appellant Motion to Direct Verdict, for lack of evidence. 3) The Judge erred by allowing State to strike black juror upon violation to 'Batson'. 4) The Judge erred by allowing State to introduce additional evidence after 'ruling' to Appellant motion, to not allow additional evidence to be introduce by state. 5) The Judge erred by denying Appellant

REQUESTS TO CHARGE. 6) THE JUDGE ERRED BY DENYING APPELLANT A TWENTY--FOUR (24) HOUR REST PERIOD TO OBSERVE APPELLANT RELIGIOUS 'SABBATH' OF CEASING FROM WORK. 7) THE JUDGE ERRED BY OVERRULING APPELLANT OBJECTION TO IMPERMISSIBLE EVIDENCE. 8) THE JUDGE ERRED BY ALLOWING A 'LEADING' QUESTION BY STATE, OVER APPELLANT OBJECTION THAT WAS UNFAIR AND CRITICAL TO JUSTICE AND THE DEFENSE."

ALSO, BROUGHT TO THE COURT, THIS COURT ATTENTION THAT APPELLATE DEFENDER LIED IN INITIAL BRIEF AGAINST APPELLANT. AND FURTHER, INSERTED IN INITIAL BRIEF PREJUDICIAL MATTERS THAT THE RECORD DOES NOT REFLECT, AGAINST APPELLANT. EVENMORE, INCLUDED MISFEASANCES BY APPELLATE COUNSEL INTO APPELLANT'S INITIAL BRIEF, THAT WOULD PREJUDICE APPELLANT NOW, AND POSSIBLE POST CONVICTION REMEDY PROCESS AND PROCEDURES IF NECESSARY. AS INDICATED TO THIS COURT, AS FOLLOWS: "1. IN THE STATEMENT OF FACTS PG. 4, PARA. 4. KIMBERLY DID NOT STAY WITH APPELLANT. COMPARE, TRIAL TRANS. PG. 1682, LINES 13-14, TO, HEAR. TRANS. 10-01-03, PG. 147, LINES 15 - PG. 148, LINES 4. ALSO, HEAR. TRANS. 10-01-03, PG. 129, LINE 13 - PG. 130, LINE 3; AND PG. 150, LINES 6-9.

2. IN THE STATEMENT OF FACTS PG. 4, PARA.

5. THERE IS NO EVIDENCE IN RECORD THAT OFFICERS HAD AUTHORIZED CONSENT TO ENTER APPELLANT BEDROOM OR LEGAL CONSENT TO ENTER APPELLANT HOME.

3. IN THE STATEMENT OF FACTS PG. 5, PARA. 3. APPELLATE ATTORNEY STATES, "APPELANT, WHO IS MUSLIM". APPELLANT IS NOT A MUSLIM, NOR DOES ANYWHERE IN RECORD, AS A MATTER OF FACT! THE RECORD POINT DIRECTLY AT THE APPELLATE ATTORNEY AS A MALICIOUS LIAR; BY CLEARLY SPELLING OUT APPELLANT RELIGION. SEE, TRIAL TRANS. PG. 1224, LINES 2-10 ("... I'M JUST GOING TO STATE FOR THE RECORD THAT I'M HEBREW, AND MY RELIGION IS YAHWEHISM....."). ALSO, TRIAL TRANS. PG. 3816, LINES 15-18 ("YOU KNOW, HE SAID, I THINK, ON THE RECORD THAT HE PRACTICES A JEWISH FAITH, BELIEVES IN YAHWEH OR JEHOVAH, WHICH IS -- THAT'S THE OLD TESTAMENT NAME FOR GOD...")."

X. APPELLATE DEFENDER, FURTHER, DISTORTED THE FACTS, DEVIATED FROM THE TRUTH AND SUPPRESSED THE ~~EXA~~ AS EXACT FACTS AND EVIDENCE OF THE EVENTS WHICH STARTED AND LED TO APPELLANT ILLEGAL DETAINMENT, ARREST AND CONVICTION.

THE EVIDENCE AS FOLLOWS:

1. APPELLATE DEFENDER STATED IN THE STATEMENT OF FACTS IN INITIAL BRIEF THAT, "AT TRIAL, THE STATE PRESENTED EVIDENCE THAT BEAUFORT COUNTY DEPUTIES DUKE COURSEN AND DANA TATE WERE DISPATCHED TO 21 RILEY ROAD ON JANUARY 8, 2002, AS THE RESULT OF AN ANONYMOUS DOMESTIC ABUSE CALL". SEE, STATEMENT OF FACTS, INITIAL BRIEF, PG. 4, PARA. 3. THAT ASSERTION IS HALF-TRUTH! THE INDISPUTABLE VERBATIM EVIDENCE IS AS FOLLOWS:

"10-16, 10-31, AT 21 RILEY RD. 10-17 IS KIMBERLY BLAKE, HAVING A PROBLEM WITH HER BOY FRIEND, REFUSING TO LET THE 10-17 AND HER BABY LEAVE THE RESIDENCE. SHE HAS SOME FRIENDS WAITIN' OUTSIDE, TO PICK HER UP... REPEAT THE CALL FROM KIMBERLY BLAKE... 10-4 SIR, THE ONLY INFORMATION THAT WE HAVE, THE 10-17 WAS KIMBERLY BLA..., BLAKE, ADVISED THAT HER BOYFRIEND WAS REFUSING TO LEAVE HER ALONE. HE WAS STILL AT THE RESIDENCE". SEE, DEFENSE EXHIBIT NO. 29 (9-1-1 TRANSCRIPT), AT 160922, AT 162113 AND 164907. DE FACTO, THE DEPUTIES, TATE AND COURSEN WERE ~~[illegible]~~ DISPATCHED AS THE

RESULT OF A 9-1-1 EMERGENCY PHONE "CALL FROM KIMBERLY BLAKE". DE FACTO, UNDISPUTABLE, THE 9-1-1 DISPATCHER GAVE A FALSE REPORT. THE INDISPUTABLE EVIDENCE AS FOLLOWS:

"Q. MS. BLATE (PHONETIC) ON JANUARY 8, 2002 DID YOU CALL 9-1-1 DISPATCHER?

A. NO.

Q. DID YOU CALL THE BEAUFORT COUNTY SHERIFF'S DEPARTMENT?

A. NO.

Q. DID YOU MAKE ANY CALLS TO EITHER ONE OF THEM AT ANY TIME ON JANUARY 8, 2002?

A. NO.

TRIAL TRANS. PAGE 1708, LINES 16-24.

2. APPELLATE DEFENDER ASSERTED, "THE SHERIFF'S DEPARTMENT LAST CONTACT WITH THE TWO DEPUTIES AFTER THEY WERE DISPATCHED". STATEMENT OF FACTS, PG. 4, PARA. 3. THAT IS NOT TRUE. THE VERBATIM EVIDENCE AS FOLLOWS:

"(A45) '10-4, WHAT WAS THAT LAST NAME HERE?' (DISP) 'REPEAT THE CALL FROM KIMBERLY BLAKE...' (A35) '10-6! DISPATCH, WE'RE TRYING

TO GET TO THE BOTTOM OF THIS.'" SEE, DEFENSE EXHIBIT NO. 29, AT 162110 - 162113 AND 162759.

3. APPELLANT DEFENDER ASSERTED FALSELY, THAT "CONSEQUENTLY, DEPUTY MICHAEL STETTMIER WAS SENT TO THE MOBLE HOME TO CHECK ON LAURSEN AND TATE," AS A RESULT OF "THE SHERIFF'S DEPARTMENT LOST CONTACT WITH THE TWO DEPUTIES AFTER THEY WERE DISPATCHED". STATEMENT OF FACTS, PG. 4, PARA. 3. THE TRUTH WERE, DEPUTY MICHAL STETTMIER AL, ALONG WITH OTHERS WERE SENT TO THE MOBILE HOME AS A RESULT OF A PERSON AND MS. STRAWBERRY WASHINGTON REPORTING TO 9-1-1 THAT DEPUTIES ENTER APPELLANT'S RESIDENCE AND MS. WASHINGTON HEARD GUNSHOTS AND SAW KIMBERLY BLAKE RUN OUT THE HOUSE. THE VERBATIM EVIDENCE AS FOLLOWS:

"DISP: 911, WHERE IS YOUR EMERGENCY?

CALLER: UM, YES MA'AM, THERE'S, UM, GUNSHOTS ON RILEY RD. AT 21 RILEY RD.

DISP: 21 RILEY RD.

CALLER: YES...

CALLER: THERE'S A GIRL, UH, HERE AT MY DOOR,

WHO CAME TO MY DOOR FOR HELP,...

DISP: UH, HUH...

CALLER: YEAH, THE GIRL IS STILL HERE, YOU WANT TO TALK TO HER?

DISP: YEAH, LET ME TALK TO HER... YOU SAID THERE'S SHOTS FIRED AT YOUR ADDRESS AT 21 RILEY RD?

2ND CALLER: THAT'S NOT MY ADDRESS, BUT I CALL EARLIER, I CALL THE POLICE EARLIER... AND THE POLICE WENT UP TO THE HOUSE AND, UH, TALKED TO THE PEOPLE, AND THEY HAD NO IDEA SHE WAS EVEN IN THE HOUSE OR WHATEVER, BUT, UM, ALL I HEARD, I SAW MY FRIEND RUN OUTSIDE OR WHATEVER, AND I HEARD GUNSHOTS, AND THAT'S WHEN I CRANKED UP MY CAR AND I LEFT. AND I DON'T WHAT'S GOING ON RIGHT NOW... THE OFFICERS, THERE'S 2 OFFICERS, UM, THEY WENT INSIDE THE HOUSE, AND I HEARD GUNSHOT GUNSHOTS, AND I DIDN'T SEE THEM COME OUT...

DISP: OK, WHAT'S THE NUMBER TO THAT RESIDENCE ON RILEY RD.?

2ND CALLER: THE NUMBER'S 525-0640...

DISP: WHAT'S YOUR NAME?

2ND CALLER: STRAWBERRY WASHINGTON...

(DISP) ...! FHA 35, DISPATCH

(DISP) A 45, DISPATCH

(DISP) A 45, DISPATCH

(A12/ZANELOTTI) DISPATCH, IS HE STILL OUT ON RILEY RD?

(DISP) AFFIRMATIVE SIR. NOW WE'RE GETTING REPORTS OF SIGNAL 1 IN THE AREA OF 21 RILEY RD., AND I CAN'T REACH EITHER ONE OF THEM ON THE AIR.

(ZANELOTTI) I'M 76, 10-39

(DISP) 10-4 912

(KUHN) DISPATCH, A60 COPIES, I'LL BE 76 AS WELL....

SEE, DEFENSE EXHIBIT NO. 29, AT 163952-164059. THIS EVIDENCE CONTRADICT APPELLATE DEFENDER FALSE ASSERTION, ENTIRELY. APPELLATE DEFENDER IS BEYOND INCOMPETENT AND INEFFECTIVE. APPELLATE DEFENDER INITIAL BRIEF IS ABSURD AND A MOCKERY OF PROFESSIONALISM, THE WORD EXPERT AND APPELLATE DEFENDER. THE APPELLATE DEFENDER IN QUESTION, IS IN FACT, A PROFESSIONAL/EXPERT APPELLATE PRETENDER! SINCE, I'LL NEVER MET HIM OR THEM FACE TO FACE OR IN PERSON, BY HIS STUNT TO BE CALLED A LAWYER AND THE JUDGEMENT OF HIS WORKS, AT AN EDUCATED GUESS --- HE MUST BE A CAUCASIAN DRUNK!

OR A QUASI NIGGER. NEVERTHELESS, THE COUNSEL(S) MAY BE, HIRED TO BE INCOMPETENT AND INEFFECTIVE OR EMPLOYED TO BE, WHICHEVER, HE IS OR THEY ARE! I REBUKE THEM OR HIM!!

XI. FINALLY, THE STATE ARGUED IN THEIR 'RETURN TO MOTION TO PROCEED PRO SE ON DIRECT APPEAL' THAT, "APPELLANT IS INCORRECT THAT HIS CLAIM TO SELF-REPRESENTATION IS REQUIRED BY A PROVISION IN THE DEATH PENALTY STATUTES, WHICH, IN DISCUSSING THIS COURT'S APPELLATE REVIEW OF A DEATH SENTENCES, STATES:

> 'BOTH THE DEFENDANT AND THE STATE SHALL HAVE THE RIGHT TO SUBMIT BRIEFS WITHIN THE TIME PROVIDED BY THE COURT AND TO PRESENT ORAL ARGUMENTS TO THE COURT.' S.C. CODE ANN. (SECT.) 16-3-25(D)(REV. 2003)."

DE FACTO! DE FACTO! SUPRA PROVISION STATES, "THE DEFENDANT", NOT APPELLATE DEFENDER. THE DEFENDANT ... SHALL HAVE THE RIGHT TO SUBMIT BRIEF.

CONCLUSION

APPELLANT, WHOM WAS DEFENDANT AND PRO SE AT TRIAL, IN ABOVE-STYLED CASE. DO POINTS OUT ONCE AGAIN THAT APPELLANT/DEFENDANT HAS IN OTHER CASES BEEN ALLOWED TO PROCEED PRO SE ON DIRECT APPEAL, BY THIS COURT. SEE, THE STATE OF SOUTH CAROLINA V. JAMES ROBERTSON; ALSO, THE STATE OF SOUTH CAROLINA V. NORMAN STARNES. BUT WERE DEATHROW INMATES.

THEREFORE, FOR ALL THE REASONS ABOVE, APPELLANT SHOULD BE GRANTED HIS MOTION TO PROCEED PRO SE, ON DIRECT APPEAL.

AND FURTHER, MOTION TO DISMISS ATTORNEY FORMALLY.

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

THIS ____ DAY OF ________ 2005.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS ____ DAY OF ____________
20 ____

____
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES ________

RESPECTFULLY

BY [signature], PRO SE
ABDIYYAH BEN ALKEBULANYAHH, PRO SE
P.O. BOX 205, RIDGEVILLE, S.C. 29472

(13 OF 13)

STATE OF SOUTH CAROLINA IN THE SUPREME COURT

CERTIFICATE OF SERVICE

I, APPELLANT, ABDIYYAH ben ALKEBULANYAHH, PRO SE, HEREBY CERTIFY THAT I HAVE SERVED BY DEPOSITING IN A SEALED AND ENCLOSED ENVELOPE, VIA UNITED STATES MAIL, POSTAGE PREPAID, TO THE FOLLOWING: CLERK, DANIEL E. SHEAROUS, SOUTH CAROLINA SUPREME COURT, P.O. BOX 11330, COLUMBIA, S.C. 29211; SOUTH CAROLINA OFFICE OF APPELLATE DEFENSE, JOSEPH SAVITZ, 1205 PENDLETON ST. ROOM 306, COLUMBIA, S.C. 29201; THE FOLLOWING DOCUMENTS:

I. RESPONSE TO RETURN TO APPELLANT'S MOTION TO PROCEED PRO SE

II. CERTIFICATE OF SERVICE

AND FURTHER, SWEARS UNDER AND BY THE PENALTY OF PERJURY FORGOING IS TRUE AND CORRECT.
THIS 9 DAY OF May 2005.

RESPECTFULLY

/s/ [signature]

ABDIYYAH b. ALKEBULANYAHH, PROSE
SK, 6012, L.E.I.
P.O. BOX 205
RIDGEVILLE, S.C. 29472

STATE OF SOUTH CAROLINA IN THE SUPREME COURT

THE STATE,
RESPONDENT

V.

ABDIYYAH BEN ALKEBULANYAHH, APPELLANT, PRO SE

RESPONSE TO RETURN TO APPELLANT'S MOTION TO PROCEED PRO SE

COMES NOW, APPELLANT, ABDIYYAH BEN ALKEBULANYAHH, PRO SE AND OPPOSE MOTION OF APPELLANT DEFENDER ATTORNEY EXPERT WITNESS, JOSEPH L. SAVITZ, AND SHOWS THE COURT THE FOLLOWING:

I. APPELLANT DEFENDER J. L. SAVITZ IS INCOMPETENT AND INEFFECTIVE.

II. PROOF HAS BEEN REVEALED AND INDICATED IN APPELLANT'S MOTION FILED ON MARCH 29TH, 2005; AND IN HIS ACTION IN MATTERS OF APPELLANT'S.

III. APPELLANT IS ENTITLED TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL ON FIRST APPEAL FROM CONVICTION. EVITT V. LUCEY, 469 U.S. 387 (1985);

IV. APPELLANT DEFENDER RAISED NO TRIAL PHASE ERRORS NOR CONSTITUTIONAL ERRORS FOR INSTANT RELIEF;

V. WHEREAS, FOR EXAMPLE, THE RECORD CLEARLY REFLECT DURING PRE-TRIAL AND TRIAL PHASE, APPELLANT SOUGHT INSTANT RELIEF OR RELEASE BASED ON THE GROUND OF "4TH AND 14TH CONSTITUTIONAL VIOLATION" AND "LACK OF EVIDENCE". SEE, PRE-TRIAL HEARING 10-01-03, PG. 75, LINES 19 - PG. 76, LINE 10 AND; TRIAL TRANSCRIPT P.G. 2596, LINES 23 - PG. 2603, LINE 10 AND PG. 3236, LINES 12 - PG. 3238, LINE 9.

VI. SINCE THESE TWO AFOREMENTIONED CLAIMS WERE THE MOST SIGNIFICANT AND ARE THE MOST MERITORIOUS TO APPELLANT, THESE TWO AT LEAST SHOULD HAD BEEN RAISED ON DIRECT APPEAL BY [illegible] APPELLATE DEFENDER.

VII. FOR APPELLANT CLAIMED AND IS ABSOLUTELY INNOCENT, AND SEEKED INSTANT RELIEF FROM BEING HELD UNLAWFULLY IN CUSTODY.

VIII. APPELLANT IS BEING UNLAWFULLY IN PRISON AND SENTENCE TO DIE, AS A RESULT OF AN UNCIVILIZED RETARDED FORM OF JUSTICE FROM TRIAL PHASE.

IX. APPELLATE DEFENDER ACTION IN DIRECT APPEAL IS PREJUDICIAL AND WILL IN FACT CAUSE PREJUDICE IN THE INVENT TO PROCEDURE OF A POST CONVICTION REMEDY, IF SOUGHT BY APPELLANT;

X. FOR EXAMPLE, THE CLAIMS OF LACK OF EVIDENCE OR INSUFFICIENCY OF EVIDENCE TO SUPPORT A CONVICTION, ARE NOT COGNIZABLE HEARD ON PCR. SEE, S.C. STATUE 17-27-20 (A)(6), ALSO,

XI. THAT ERRORS THAT CAN BE REVIEWED ON DIRECT APPEAL MAY NOT BE ASSERTED FOR THE FIRST TIME OR REASSERTED, IN POST-CONVICTION PROCEDING. SIMMONS V. STATE, 264 S.C. 417, 215 S.E. 2D 883 (1975).

XII. THEREBY, THE ~~EXAMPLE~~ EXAMPLES, APPELLATE DEFENDER HAS SEEDED PREJUDICE, UNFAIRNESS AND ATTEMPT TO HENDER APPELLANT FROM THE 5TH, 6TH, 8TH AND 14TH CONSTITUTION AMENDMENTS, APPELLATE DEFENDER, I BELIEVE, IS A 'FRIEND OF THE COURT'.

XIII. APPELLANT ASSERTED HIS RIGHT INITIALLY TO PRO SE ON DIRECT APPEAL, ON JULY 26, 2004. AS SHOWN:

"COME NOW, ABDIYIAH BEN ALKEBULANYAHH, PRO SE... I INTEND TO... FILE MY OWN BRIEF AND ARGUMENT ON 'DIRECT APPEAL'".

REFER TO, 'A MOTION, REQUEST, PLEA AND BEGGING TO BE ALLOWED TO EXERCISE THE UNITED STATES CONSTITUTIONAL RIGHT, AMENDMENT ONE (I.)'. FILED JULY 26, 2004 IN S.C. SUPREME COURT.

—CONCLUSION—

APPELLANT DEMANDS HIS RIGHT TO PROCEED PRO SE AND FILE HIS OWN 'BRIEF'. AND FURTHER SWEARS FOREGOING IS TRUE AND CORRECT, THIS 9 DAY OF MAY 2005.

RESPECTFULLY,

[signature]

[illegible]
RIDGEVILLE, S.C. 29472

STATE OF SOUTH CAROLINA IN THE SUPREME COURT

CERTIFICATE OF SERVICE

I, APPELLANT, ABDIYYAH BEN ALKEBULAYAHH, PRO SE, HEREBY CERTIFY THAT I HAVE SERVED BY DEPOSITING IN A SEALED ENVELOPE, IN THE UNITED STATES MAIL, POSTAGE PREPAID, TO THE FOLLOWING: CLERK, DANIEL E. SHEAROUS, SOUTH CAROLINA SUPREME COURT, P.O. BOX 11330, COLUMBIA, SOUTH CAROLINA -29211; HENRY MCMASTER, ATTORNEY GENERAL, STATE OF SOUTH CAROLINA, POST OFFICE BOX 11549, COLUMBIA, S.C. - 29211-1549; THE FOLLOWING DOCUMENTS:

I. MOTION TO PROCEED PRO SE ON DIRECT APPEAL IN ALL MATTERS

II. CERTIFICATE OF SERVICE

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

THIS 25 OF April 2005.

[signature]
12/05/05

RESPECTFULLY,
/s/ [signature]
ABDIYYAH BEN ALKEBULAYAHH
PRO SE

L.C.I., P.O. BOX 205
RIDGEVILLE, S.C. 29472

STATE OF SOUTH CAROLINA IN THE SUPREME COURT

THE STATE,
V. RESPONDENT

ABDIYYAH BEN ALKEBULANYAHH, APPELLANT

MOTION TO PROCEED PRO SE ON DIRECT APPEAL IN ALL MATTERS

COME NOW, APPELLANT, ABDIYYAH BEN ALKEBULANYAHH, PRO SE IN THE ABOVE-STYLED MATTER, AND SHOWS THIS COURT THE FOLLOWING:

I. APPELLANT DO NOT WANT THE ASSISTANCE OF APPELLATE DEFENSE ATTORNEYS;

II. APPELLANT HAS OFFICIALLY REJECTED APPELLATE ATTORNEY PRIOR TO ANY 'INITIAL BREIF' AND CONTINUE TO REJECT THEM AND ANY ACTION THEY HAVE HAD AND DO IN APPELLANT BEHALF;

III. THE APPELLANT HAD AND HAS BEEN UNLAWFULLY DENIED ACCESS TO THE COURTS AND EQUAL PROTECTION OF THE LAW' BY STATE OR GOVERNMENT EMPLOYEES IMMEDIATE RING LEADERS WARDEN, STAN BURTT AND ATTORNEY, JOSEPH SAVITZ;

IV. APPELLANT BELIEVES, THE ~~SOUTH~~ SOUTH CAROLINA SUPREME COURT AUTOMATICALLY REVIEWS CASE IN WHICH A SENTENCE OF DEATH IS IMPOSED. SOUTH CAROLINA CODE 16-3-25; 18-9-20. NEITHER SECTION REFERS TO THE REPRESENTATION OF THE DEFENDANT, BUT 16-3-25(D) MAKE CLEAR THAT "THE DEFENDANT... SHALL HAVE THE RIGHT TO SUBMIT BRIEFS WITHIN THE TIME PROVIDED BY THE COURT AND TO PRESENT ORAL ARGUMENTS TO THE COURT."

V. APPELLANT IS CLEARLY BEING DETAINED UNLAWFULLY AND HIS DETENTION IS ILLEGAL. HAD NOT IN FACT THE ALLEGED VICTIMS VIOLATED APPELLANT FOURTH AMENDMENT RIGHT THEY WOULD NOT BE CLAIMED VICTIMS AND APPELLANT WOULD NOT HAVE BEEN BROUGHT BEFORE THE ~~[illegible]~~ JUSTICE SYSTEM;

CONCLUSION

APPELLANT PRAYS FOR REDRESS SOUGHT. AND FURTHER SWEAR UNDER AND BY PENALTY OF PERJURY FORGOING IS TRUE AND CORRECT.

THIS 25 DAY April 2005.

[signature] 3/05/06

RESPECTFULLY,
/s/ Abdiyyah ben Alkebulanyahh, PRO SE
SK 6012; A-33
L.C.C., P.O. BOX 205
RIDGEVILLE, S.C. 29472

STATE OF SOUTH CAROLINA IN THE SUPREME COURT

CERTIFICATE OF SERVICE

I, APPELLANT, ABDIYYAH BEN ALKEBULANYAHH, PRO SE, HEREBY CERTIFY THAT I HAVE SERVED THE RESPONSE TO RETURN TO MOTION TO FILE AN AMENDED PRO SE INITIAL BRIEF IN THE FORGOING MATTER BY DEPOSITING COPIES IN A SEALED ENVELOPE IN THE UNITED STATES MAIL, POSTAGE PREPAID, TO THE FOLLOWING: HONORABLE, DANIEL E. SHEAROUSE, CLERK, SOUTH CAROLINA SUPREME COURT, POST OFFICE BOX 11330, COLUMBIA, SOUTH CAROLINA 29211; HENRY MCMASTER, ATTORNEY GENERAL, STATE OF SOUTH CAROLINA, POST OFFICE BOX 11549, COLUMBIA, SOUTH CAROLINA-29211-1549.

AND FURTHER SUBMITTED FIVE ATTACHMENTS TO THE STATE OF SOUTH CAROLINA SUPREME COURT OF THE FOLLOWING:

1) NO. 1: INMATE PROPERTY INVENTORY FORM

2) NO. 2: REQUEST TO STAFF MEMBER; ALSO A, INMATE CANTEEN RECEIPT (TICKET)

3) NO. 3: DISPOSITION OF INMATE REQUEST

4) NO. 4: (A NOTE FROM LAW LIBRARY)

5) NO. 5: GRIEVANCE NO. 0133-04; NO. 0511-04; NO. 0530-04; NO. 0804-04 AND 0411-04

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

THIS 15 DAY OF April 2005.

[signature] 12/05/06

RESPECTFULLY

[signature]

ABDIYYAH BEN ALKEBULANYAHH, PRO SE
SK-2012: L.E.I., P.O. BX. 205
RIDGEVILLE, SC 29472

STATE OF SOUTH CAROLINA IN THE SUPREME COURT

THE STATE,

RESPONDENT

V.

ABDIYYAH BEN ALKEBULANYAHH,

APPELLANT

RESPONSE TO RETURN TO MOTION TO FILE AN AMENDED PRO SE INITIAL BRIEF

COMES NOW, APPELLANT, ABDIYYAH BEN ALKEBULANYAHH, PRO SE.

HEREBY RESPOND TO THE STATE'S, "RETURN TO MOTION TO FILE AN AMENDED PRO SE INITIAL BRIEF", RECEIVED FROM RESPONDENT PERSONALLY ON APRIL 11TH, 2005.

THE RESPONDENT ASSERTED THAT, "APPELLANT REQUESTED ONLY THAT HE BE ALLOWED TO FILE AN PRO SE AMENDED INITIAL BRIEF OF APPELLANT DISCUSSING THESE ISSUES." PG. 1, PARA. 1. RESPONDENT ASSERTION IS NOT CORRECT. APPELLANT REQUESTED, 'THAT HE BE ALLOW TO FILE AN ~~AIA~~ AMENDED PRO SE INITIAL BRIEF TO RAISE THESE ISSUES', ALSO, APPELLANT DESIRE TO RECTIFY MALFEASANCE, OF THE APPELLATE COUNSEL IN APPELLANT'S BRIEF, EVENMORE, SET FORTH TRIAL PHASE ISSUES, SINCE, APPELLATE DEFENDER DID NOT RAISE ANY OF HIS REQUESTED ISSUES NOR RAISE ANY TRIAL PHASE ISSUES.

APPELLATE DEFENDER SET FORTH INTO THE STATEMENT OF FACTS OF THE BRIEF, LIES AND MISREPRESENTATION OF FACTS, WHICH THE RECORD DOES NOT REFLECT NOR GIVE VALIDITY TO NOR THE EVIDENCE IN RECORD SUBSTANTIATE.

FOR THESE REASONS APPELLANT MOTION SHOULD BE GRANTED.

EVENMORE, THE APPELLATE DEFENDER BRIEF IS A COUNTER-BLAST TO APPELLANT AND APPELLANT TRIAL STRATEGY.

RESPONDENT CITED CASES, IN WHICH APPELLANT BELIEVES, NONE OF THE CASES REFLECT THE CIRCUMSTANCES WHICH APPELLANT IS FACE WITH OR UP AGAINST, NOR CASES HAVE SIMILAR CIR-

CUMSTANCES. WHEREAS, APPELLANT HAS POINTED OUT A GRAVE INDIFFERENCE OF APPELLATE DEFENDER TO APPELLATE AND HIS INNOCENCE, BY THE FACTS SET FORTH IN COUNSEL BRIEF. SUCH AN INDIFFERENCE CAN BE FATALLY DETRIMENTAL AND DANGEROUSLY IRREPARABLE. CONSIDERING, APPELLANT WERE SENTENCE TO DIE BY EXECUTION AND, IS UNDER THE SOUTH CAROLINA EFFECTIVE DEATH PENALTY ACT OF 1996, S.C. ACTS NO. 448. FOR IT IS THE INNOCENT APPELLANT THAT IS SUBJECTED TO LOSE HIS LIFE, NOT THE APPELLATE COUNSEL, WHO HAS REVEALED A TOTAL INDIFFERENCE TO APPELLANT AND HIS LIBERTY.

THEREFORE, APPELLANT MOTION SHOULD BE GRANTED.

THE RESPONDENT ASSERTED, "APPELLANT'S CONCERN THAT HIS COUNSEL 'DID' FILE HIS REQUESTED ISSUES IS INSUFFICIENT FOR HIS REQUESTED RELIEF...." PG. 2, PARA. 2. THIS IS NOT IN FACT APPELLANT'S CONCERN." FOR APPELLATE COUNSEL DID NOT FILE APPELLANT REQUESTED ISSUES 'NOR ANY ISSUE' CHALLENGING THE TRIAL PHASE OR PRE-TRIAL PHASE.

THEREFORE, APPELLATE COUNSEL STRATEGIC CHOICE NOT TO RAISE ANY ISSUES AGAINST THE TRIAL PHASE, AMOUNT TO A TREACHEROUS ACT AND TREASONOUS STRATEGY, WHICH APPELLANT DEEMS A MALEVOLENT UNREASONABLE CHOICE, BY SO-CALLED APPELLATE DEFENDER.

THEREFORE, APPELLANT MOTION SHOULD BE GRANTED.

RESPONDENT STATED, "ANY MISTAKE THAT APPELLATE COUNSEL MAY MAKE IN DETERMINING VIABLE ISSUES FOR BRIEFING IS APPROPRIATELY RESOLVED IN POST-CONVICTION RELIEF, NOT BY WAY OF A PRO SE MOTION DURING DIRECT APPEAL."

APPELLANT BELIEVE, APPELLATE COUNSEL MISFEASANCE, IS NOT A "MISTAKE". APPELLANT BELIEVES THAT THE "STATEMENT OF FACTS" IN BRIEF SHOULD BE TRUE AND SUBSTANTIATED BY THE EVIDENCE IN RECORD.

AS FOR RESOLVING THIS MATTER-AT-HAND, APPELLANT BELIEVES THIS COURT CAN AND HAS BEFORE RESOLVED SIMILAR MATTER, BY PERMITTING PRO SE INITIAL BRIEF BY DEATHROW INMATES. FOR EXAMPLE, I BELIEVE, IN THE CASES OF, STATE V. JAMES ROBERTSON, AND

STATE V. NORMAN STARNES.

[NOTE: APPELLANT DID MOVE TO PROCEED PRO SE IN REFERENCE TO MOTIONS FILED ON 7-26-04, "MOTION FOR DISMISSAL AND TO BLOCK ALL ACTION OF APPELLATE DEFENSE APPOINTED COUNSEL, BOB DUDEK, ATTORNEY" AND A "MOTION, REQUEST, PLEA AND BEGGING TO BE ALLOWED TO EXERCISE THE UNITED STATES CONSTITUTIONAL RIGHT, AMENDMENT ONE (I.)". THE COURT WAS WARN OF A "CONSPIRACY" AGAINST APPELLANT, AND THAT APPELLANT WAS BEING PREVENTED AND DENIED ACCESS TO THE COURTS.]

APPELLANT DO HERE-IN SUBMIT ATTACHED TO THIS ADDRESS, TO THE COURT, RECEIPTS AND DOCUMENTS OF EVIDENCE OF THE DEPARTMENT OF CORRECTION OFFICIALS DIRECT INVOLVEMENT IN PREVENTING, INTERFERRING AND DENYING APPELLANT ACCESS TO THE COURT, TO RESPOND TO COURT AND STATE MOTIONS OR, ADDRESSED, TO FILE TIMELY MOTIONS AND PLEADINGS AND, TO SUBMIT STRATEGIC MOTIONS IN THE COURTS.

-CONCLUSION-

APPELLANT HAS NO OTHER AVENUE TO CHALLENGE HIS CONVICTION ON DIRECT APPEAL, AND RAISE MATTERS WHICH ARE RELEVANT TO THIS APPEAL, NOR SUBMIT RELEVANT MERITS AND ISSUES TO RENDER LIBERTY, EXCEPT BY THIS COURT GRANTING APPELLANT 'MOTION TO FILE AN AMENDED PRO SE INITIAL BRIEF', WHICH COULD RECTIFY THE LIES AND MISREPRESENTATION OF FACTS, IN THE STATEMENT OF FACTS IN APPELLATE COUNSEL BRIEF.

APPELLANT BELIEVES IF HIS MOTION IS NOT GRANTED, THAT IT WOULD BE A GRAVE MISCARRIAGE OF JUSTICE.

THEREFORE APPELLANT SHOULD BE GRANTED.

AND FURTHER SWEAR BY THE PENALTY OF PERJURY FOREGOING IS TRUE AND CORRECT:

THIS 15 DAY OF April 2005.

[signature]

[signature]
12/05/05

SKCDIR: P.O. BOX 205
RIDGEVILLE, S.C. 29472

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

NOTICE OF CERTIFICATION

THIS IS TO CERTIFY THAT I, ABDIYYAH BEN ALKEBULANYAH HAVE PLACED IN A SEALED AND ENCLOSED ENVELOPE AND MAILED VIA U.S. POSTAL SERVICE WITH CORRECT ADDRESS AFFIXED TO THE FOLLOWING: SOUTH CAROLINA ATTORNEY GENENERAL OFFICE, MR. DONALD J. ZELENKA, ESQ., POST OFFICE BOX 11549, COLUMBIA, S.C. 29211-1549; SOUTH CAROLINA SUPREME COURT, MR. DANIEL E. SHEAROUSE, CLERK OF COURT, P.O. BOX 11330, COLUMBIA, S.C. 29211: A COPY OF THE FOLLOWING DOCUMENTS:

1) MOTION TO PRO'SE TO ADD TO INITIAL APPELLATE BRIEF

2) MOTION TO FILE AN AMENDED PRO'SE INITIAL BRIEF

3) NOTICE OF CERTIFICATION

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

THIS 29 DAY OF MARCH 2005.

3/25/05
[signature]
12/05/05

RESPECTFULLY,
[signature]
P.O. BOX 205 (L.C.I)
RIDGEVILLE, S.C. 29472
[ABDIYYAH B. ALKEBULANYAHH]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

THE STATE
RESPONDENT,

V.

ABDIYYAH BEN ALKEBULANYAHH
APPELLANT.

MOTION TO PRO'SE TO ADD TO INITIAL APPELLATE BRIEF

COME NOW, APPELLANT, ABDIYYAH BEN ALKEBULANYAHH, PRO'SE. AND BEGS AND PRAYS THIS COURT TO GRANT ABOVE-STYLE MOTION. AND SHOWS THIS COURT THE FOLLOWING:

1. APPELLATE APPOINTED ATTORNEY DID NOT RAISE ANY ISSUE IN INITIAL BRIEF CHALLENGING TRIAL PHASE;

2. APPELLANT REQUESTED PACIFIC ISSUES TO BE RAISED;

3. THE MOST RELEVANT ISSUE REQUESTED WAS, THAT THE ALLEGED VICTIMS BECAME SAID VICTIMS, UNFORTUNATELY, BECAUSE THEY WAS ACTING UNLAWFULLY IN VIOLATION OF APPELLANT UNITED STATE CONSTITUTION FOURTH AMENDMENT RIGHTS, BY ENTERING, SEARCHING AND SEIZ-ING APPELLANT IN HIS AND HIS WIFE BEDROOM, WITH-OUT PROBABLE CAUSE NOR AUTHORIZE CONSENT.

CONCLUSION

APPELLANT BEGS AND PRAYS FOR RELIEF SOUGHT. AND FURTHER, SWEARS UNDER AND BY PENALTY OF PERJURY FOR-GOING IS TRUE AND CORRECT.

THIS 29 DAY OF March 2005.

[signature] 12/05/05

RESPECTFULLY

[signature]

P.O. BOX 205 (L.C.I.)
RIDGEVILLE, S.C. 29472

IN THE SUPREME COURT OF THE
STATE OF SOUTH CAROLINA

DOCKET NO. ____________

THE STATE
RESPONDENT,
V.
ABDIYYAH bEN ALKEBULANYAHH
APPELLANT

CASE NO. 5-281569 AND 70

MOTION TO FILE AN AMENDED PROSE
INITIAL BRIEF

COME NOW, I, APPELLANT, ABDIYYAH bEN ALKEBULANYAHH AND, BEGS AND PRAYS TO BE GRANTED AFOREMENTIONED IN THE ABOVE STYLED. AND SHOWS THIS COURT THE FOLLOWING:

1. APPELLANT INFORMED APPELLATE ATTORNEY TO FILE THESE RELEVANT ISSUES IN HIS INITIAL BRIEF. I RECEIVED A COPY OF THE INITIAL BRIEF INWHICH THE APPELLATE ATTORNEY FILED. THE RELEVANT ISSUES I REQUESTED TO BE FILE, NOT A SINGLE ONE WAS RAISED.

APPELANT MOTION PROSE FOR THIS COURT TO GRANT THIRTY (30) DAYS TO FILE, BELOW REQUESTED AMENDED INITIAL BRIEF ISSUES:

(CONTINUE)

1) JUDGE ERRED BY DENYING APPELLANT "MOTION FOR DISMISSAL FOR FOURTH AMENDMENT VIOLATION," ON ACCOUNT OFFICERS ENTER, SEARCH AND SEIZED APPELLANT IN HIS AND HIS WIFE OWN BEDROOM WITHOUT AUTHORIZED CONSENT OR OTHER REQUIREMENTS.

2) JUDGE ERRED BY DENYING APPELLANT MOTION TO DIRECT VERDICT, FOR LACK OF EVIDENCE

3) THE JUDGE ERRED BY ALLOWING STATE TO STRIKE BLACK JUROR UPON VIOLATION TO 'BATSON'

4) THE JUDGE ERRED BY ALLOWING STATE TO INTRODUCE ADDITIONAL EVIDENCE AFTER 'RULING' TO APPELLANT MOTION, TO NOT ALLOW ADDITIONAL EVIDENCE TO BE INTRODUCE BY STATE

5) THE JUDGE ERRED BY DENYING APPELLANT REQUESTS TO CHARGE

6) THE JUDGE ERRED BY DENYING APPELLANT A TWENTY-FOUR (24) HOUR REST PERIOD TO OBSERVE APPELLANT RELIGIOUS 'SABBATH' OF CEASING FROM WORK

(CONTINUE)

7) THE JUDGE ERRED BY OVERRULING APPELLANT OBJECTION TO IMPERMISSIBLE EVIDENCE.

8) THE JUDE ERRED BY ALLOWING A "LEADING" QUESTION BY STATE, OVER APPELLANT OBJECTION THAT WAS UNFAIR AND CRITICAL TO JUSTICE AND THE DEFENSE.

THESE ISSUES WAS REQUESTED BY APPELLANT TO BE RAISED IN INTIAL BRIEF. ALL THESE ISSUES IS ABSENT FROM 'BRIEF'. AS A MATTER OF FACT! THERE IS NO ISSUES RAISED CHALLENGING TRIAL PHASE BY APPELLATE ATTORNEY.

ALSO, BE NOTIFIED OF CLEAR ERRONEOUS ASSERTED FACTS IN THE INITIAL BRIEF FILED BY APPELLANT'S ATTORNEY OF THE APPELLATE DEFENSE, SUCH:

1. IN THE STATEMENT OF FACTS PG. 4, ~~LINE~~ 4t, PARA. 4. KIMBERLY DID NOT STAY WITH APPELLANT. COMPARE TRIAL TRANS. Pg. 1682, LINES 13-14, TO, 4t. HEAR. TRANS. 10-01-03, pg. 147, LINES 15 - pg. 148, LINES 4. ALSO, HEAR. TRANS. 10-01-03. pg. 129, LINE 13 - pg. 130, LINE 3; AND pg. 150, LINES 6-8.

2. IN THE STATEMENT OF FACTS pg. 4, para. 5. THERE IS NO EVIDENCE IN RECORD THAT OFFICERS HAD AUTHORIZED CONSENT TO ENTER APPELLANT BEDROOM OR LEGAL CONSENT TO ENTER APPELLANT HOME.

(CONTINUE)

3. IN THE STATE OF FACTS pg. 5, para. 3. APPELLATE ATTORNEY STATES, "APPELLANT, WHO IS MUSLIM". APPELLANT IS NOT A MUSLIM, NOR DOES ANYWHERE IN RECORD. AS A MATTER OF FACT! THE RECORD POINT DIRECTLY AT THE APPELLATE ATTORNEY AS A MALICIOUS LIAR; BY CLEARLY SPELLING OUT APPELLANT RELIGION. SEE, TRIAL TRANS. pg. 1224, LINES 2-10 ("...I'M JUST GOING TO STATE FOR THE RECORD THAT I'M HEBREW, AND MY RELIGION IS YAHWEHISM...."). ALSO, TRIAL TRANS. pg. 3818, LINES 15-18 ("YOU KNOW, HE SAID, I THINK, ON THE RECORD THAT HE PRACTICES A JEWISH FAITH, BELIEVES IN YAHWEH OR JEHOVAH, WHICH IS -- THAT'S THE OLD TESTAMENT NAME FOR GOD...").

CONCLUSION

FOR ALL THE REASONS ABOVE APPELLANT BEGS AND PRAYS THIS COURT TO ALLOW APPELLANT TO PROCEED. APPELLANT BELIEVES TO DENY THIS MOTION WOULD BE A GRAVE INJUSTICE TO APPELLANT, AS WELL AS IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS.

AND FURTHER, SWEAR UNDER AND BY THE PENALTY OF PERJURY, FORGOING IS TRUE AND CORRECT.

THIS 29 DAY OF March 2005.

RESPECTFULLY

[signature]

12/05/05

ABDIYAH b. ALKEBULANYAHH #6012
P.O. BOX 205 (L.C.I)
RIDGEVILLE, SC. 29472

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, S.C.

This matter is before me on the application for post-conviction relief ("APCR") filed by Abdiyyah ben Alkebulanyahh[1] ("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. Fairey, 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

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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 1and 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

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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.

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:

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[1] *See 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.

[2] The 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 i) whether he was competent to proceed in post-conviction

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[3]On 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."

[4]A 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 ii) to do a retrospective assessment of petitioner's competency at the sentencing phase of the proceedings.[5] On September 17, 2009, Judge Carmen Mullen[6] 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 appeal.[7]

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[5]As 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.

[6]As 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.

[7]Undersigned 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

[8]Given 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 defendants'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) (shacking 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. [10] *See Payne*

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[9]Numerous 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. 3718022). 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.

[10]The 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. Burkhart*, 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]

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[11]These 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

[12]Section 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).

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

[14]The 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 is 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,

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> 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 deficiences). 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 case.[15]

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.

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[15]The 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

Appendix A

1 STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT
3
4
5 ABDIYYAH ALKEBULANYAHH)
A/K/A TYREE ROBERTS)
)
6 APPLICANT,) TRANSCRIPT OF RECORD
v.) 07-CP-07-715
7)
STATE)
8)
)
9
10
11 AUGUST 8, 2007
COLUMBIA, SOUTH CAROLINA
12
13 B E F O R E:
14 THE HONORABLE ROGER M. YOUNG, JUDGE.
15
16 A P P E A R A N C E S:
17 GLENN WALTERS, ESQUIRE
CARL B. GRANT, ESQUIRE
18 ATTORNEYS FOR THE APPLICANT
19
SAMUEL CREIGHTON WATERS, ASSIST. ATTORNEY GENERAL
20 ATTORNEY FOR THE STATE
21
22
23
24
STACY L. SHEPPARD, RPR
25 CIRCUIT COURT REPORTER

1 I N D E X

2 WITNESSES DIRECT CROSS REDIRECT RECROSS

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5 (There were no witnesses.)

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1 EXHIBITS

2 NO.	DESCRIPTION	ID.	EVD.

3
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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.

1 C E R T I F I C A T E

2

3 STATE OF SOUTH CAROLINA

4 COUNTY OF BEAUFORT

5

6 I, the undersigned, Stacy L. Sheppard, Circuit

7 Court Reporter for the Fifth Judicial Circuit of the

8 State of South Carolina, do hereby certify that the

9 foregoing is a true, accurate and complete

10 transcript of record of all the proceedings had and

11 the evidence introduced in the hearing of the

12 captioned cause, relative to appeal in the Circuit

13 Court for Beaufort County, South Carolina, on the

14 8th of August, 2007.

15 I do further certify that I am neither of kin,

16 counsel, nor interest to any party hereto.

17

18 June 29, 2010

19

20

21

22 Stacy L. Sheppard, RPR
Circuit Court Reporter

23

24

25

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 form 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

SARONNA S. CARTER NOTARY PUBLIC SOUTH CAROLINA COMM. EXP. 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

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.

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 Abidiyyah 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 their 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,

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Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

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ATTORNEYS FOR RESPONDENT.

BY: ______________________
ATTORNEYS FOR RESPONDENT

August 2, 2010.

APPENDIX A

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 APPOINTING COUNSEL
	)	
The State of South Carolina,	)	
	)	
Respondent.	)	

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BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

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 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

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

Columbia, South Carolina

August 8, 2007.

APPENDIX B

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.C. 37, 495 S.E.2d 426 (1998); Butler v. State, 302 S.C. 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.C. 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]

---

[1]Section 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).

[2]Joseph 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.

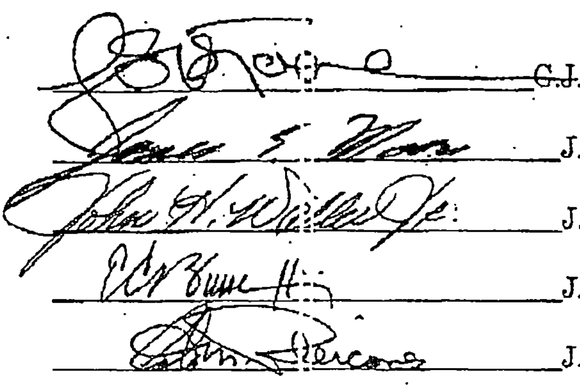
We find that because the jury venire was selected from lists of registered voters and licensed drivers, petitioner has failed to establish a systemic exclusion of blacks from the jury venire, which is required to establish a prima facie violation of the fair cross-section requirement. Duren v. Missouri, 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.



C.J.

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

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S.C. 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

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

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[1]The 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.*

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[2]All 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, 53 426 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

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[3]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.").

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*

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[4]A 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).

[5]Not 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]

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[6]Respondent 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

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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.

[7]At 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

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[8]Undersigned 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.

[9]Respondent 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 & 51[10]. 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

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[10]Respondent 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

[11]Petitioner 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 Alkebulanyahh, #6012, *Petitioner*,

v.

State of South Carolina.

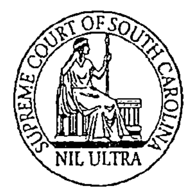
RECEIVED
AUG - 9 2010
S.C. SUPREME COURT

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



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

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

RECEIVED
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S.C. SUPREME COURT

Case No. 06-CP-11-223

Abdiyyah ben Alkebulanyahh, #6012, *Petitioner*,

v.

State of South Carolina.

MOTION FOR RECUSAL

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, Cannon 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, Cannon 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 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

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

RECEIVED
AUG 1 6 2010
S.C. SUPREME COURT

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 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

Tyree Roberts a/k/a_Abdiyyah 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 Remand.[1]

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).