

Hello Ms. Kitchings, I got a letter of dismissal.
 But it says a remitter will be sent. **RECEIVED** MAR 19 2024 filed Mar 11, 2024.
 I have 15 days right? I need to know what I need to do? Do I need to file a motion? According to the Rule 203 (d)(1)(B)(iv) of SCACR, I didn't do something right in my explanation, I think that it was maybe not including my case law in my arguments for appeal. I have them written on a sheet of paper, but I thought it would be too much material to look through for accuracy of points for argument. I need to know if I will get a chance to correct this error, my simple mistake? Do I just file a motion or send the paper in? Will you mail a motion form to me? Do I need a lawyer? Another question? Like this argument for evidence which will determine the outcome of the decision to incarcerate or free me, I do not know of any case law matching but in my motion of discovery I give a detail description of the event in a Question and Answer interview with the Detective explaining what happened. I mention the evidence in the original recorded copy of the interview it's not a chopped or description of details like the written motion. The Detective is a witness for the government. He talks like he wants it told. I say to him he asks: where did you get the gun from I say "out of my pocket." It was in my jacket the Black Nike hooded sweatshirt which I had on. I tell him while she the victim was trying to light another item of

Clothing which was on the bed separate away from me. I drew the gun from my pocket. So how can my jacket be the piece of forensic evidence which should be tested to prove my innocence or guilt when she never attempted to burn the sweatshirt I had on, which is why I am saying my lawyer didn't object to the presentation of evidence in the plea hearing. Obviously he knows my case heard and read the interview. But I was expecting him to object. He didn't. The sweatshirt was the Burden of proof. If would have been a totally different outcome. The state has the wrong evidence that's why the forensics came back negative she the victim never tried to burn the clothes that I had on my back at the time. So do I need to file an extension or Petition for rehearing or do I get to correct my mistake so the court can proceed with the appeal. This will definitely change the outcome. What do I have to do? Again that answer is in my motion of discovery, given under signing of a Miranda contract the interview was conducted. I had asked my lawyer for video, body cam. But he said he has one. I never saw it but if the crime scene is on it it will show the item on the bed I mentioned. It was never seized. Only things the took in the search is a cell phone, a black flip LG. Please Respond I have 10 days!

Kinlaw V. Warden of Ridgeland

Involuntary Guilty Plea

A. Counsel coerced to enter a plea of guilty.

B. Counsel's inaccurate advice led to guilty plea.

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MAR 19 2021

SC Court of Appeals

Did not inform Kinlaw when plea expired. Plea
counsel's performance was deficient as it fell below an
objective standard of reasonableness when plea counsel fail
to inform Kinlaw when state plea offer would expire.
Again my counsel Daniel Macdonald who met with me on 1-5-21
said "We want to take this offer this maybe our last
chance before it expires." The offer was given to
me orally in June 2020. If I plea to DV HAN the
State would drop the remaining 3 charges and recommend
10 yrs, No cap. When I nodded "yes" said "o.k" the day
we met. I don't think he ever told them I accepted!
Nevertheless he also never said when the offer would
expire. Because then he went on to say we may not get
this same offer next time if we don't plea now. But
the expiration date made it a formal offer. The state
renege. Again Ineffective Assistance of Counsel.
Code 18-1-100 is an amendment under Appellate Rules
can I qualify for it? I hated to mail this paper with
case law because its written random as side notes not in order.

my letter of explanation though I asked to have copies made
to try and put a list in order. Amendment to perfect Appeal

18-1-100

Will this remove my dismissal or do I need forms
to fill out or motions. Again I don't have a lawyer. Do I
need to ask for more time? Essentially this is all that I want
to argue. The evidence and the Involuntary guilty plea. Plus petition
for a rehearing.

Serious injury or damage. Defense of habitation required defendant to establish that his person or property was in some danger of injury or harm.

S.C Code 16-11-450

Jordan v. State 297 S.C 52 374 S.E 2d 683 (1988) state reneges on plea agreement, the defendant is entitled to specific performance of the plea agreement and resentencing or to withdrawal of his plea agreement and a new trial.

15:13 plea bargains

State v Thrift 312 S.C 282, 295 440 S.E 2d 341 (1994) All plea agreements must be on record and must recite the scope, offenses and individuals involved in the agreement

Custodio v. State 373 S.C 4, 644 S.E 2d 36 (2007)

formal plea with explicit date

State v. Thompson, 278 S.C 1, 5, 292 S.E 2d 581 (1982)

In re M.B.H., 387 S.C 323, 326, 692 S.E 2d 541 (2010)

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SC Court of Appeals

State v. Kiser, 288 S.C 441, 443, 343 S.E 2d 292 (1986)

Stockton v. Lecke 269 S.C 459, 463, 237 S.E 2d 896 (1977)

Exclusion of Evidence Rules of Evid: Rule 103a Unfair Prejudice 403, Rule Relevant Evidence

State v. Weeks 185 S.C 277, 282, 194 S.E 12 (1932)

"1240-81, 194 S.E 12 (1937)

U.S.C.A Const. Amend. 6, 18 U.S.C.A § 1951. U.S v Merino, 109 F. Supp. 3d 368 (D. Mass. 2015)

Cole v. Sloyton (1974, WD Va) 378 F. Supp 364

U.S.C.A Const. Amend 6, In re Williams, 2014 VT 67, 101 A 3d 151 (VT, 2014)

" Thomas v. State, 365 S.W. 3d 537 (Tex. App. Beaumont 2012)

" Chapar v. State, 407 S.W. 3d 428 (Tex. App. Houston 14th dist 2013)

" P. land v. State 453 S.W 3d 473 (Tex. App. Texarkana 2014)

Duty for State to Anger the Jury

U.S.C.A Const Amend 6. Kremer v. State, 2020 ND 132, 945 N.W. 2d 279 (N.D. 2020) Latter v. Cooper

Id at 1251, Id at 1253 Rammel v. Estelle, 590 F.2d 103, 104 (CA5 1979), 1254, 1257-1258, 1256-1257 n.23, 1260-1262, 1262-63, Fayerweather v. RITCH, 195 U.S. 276, 306-307, 25 S.Ct. 58, 67-68, 49 L.Ed. 193 (1904)

United States v. Cronie, 466 U.S. 648, 104 S.Ct. 2039 80 L.Ed 2d 657 Tropnell v. United States, 725 F.2d 149 157-152 (CA2 1983)

App. B to Brief for United States in U.S v. Cronie, supra, at pp. 3a-6a; Sarno #684

Modern Status of Rules and Standards in State Courts as Adequacy of Defense Counsel's Representation of Criminal Client 2A L.R 4th 99-167, §§ 7-10 (1980)

14:11 Intent, lack of
Types of intent

State vs Jefferies 309 S.C. 141, 147, 103
S.E. 2nd 169 (Ct. App. 1991)

Purpose, knowledge, recklessness, criminal negligence.

State v American Agr. Chemical Co. 118 S.C. 333, 337, 110 S.E. 800 1922

v Thrailkill, 73 S.C. 314, 53 S.E. 482 1906

v Bryant 316 S.C. 216, 218-19, 447 S.E. 2d 852 1994

Defense of Habitation

State vs Johnson 84 S.C. 45 47 65 S.E. 1023 1909

Checker Yellow Cab Co Inc v Checker Cab and Parcel Service Inc, 287
S.C. 608, 611, 340 S.E. 2d 549 (Ct. App. 1986)

State v Adams 845 S.E. 2nd 217 (S.C. Ct. App. 2020)

State vs Bryant, 316 S.C. 216, 219, 447 S.E. 852 1994 (Transferred Intent)

Criminal law ordinarily requires that the defendant possess both a
evil meaning mind and evil doing hand before liability is imposed

State v Jefferies 316 S.C. 13 446 S.E. 2d 427

Negligence in ascertaining facts State v Rountree 80 S.C. 387 391 61
S.E. 1072 1908

State v. Cole 304 S.C. 47, 49, 403 S.E. 2d 417, 7 ALR 5th 998 1991

v New, 371 S.C. 523, 640 S.E. 2d 871 (2007)

Cherry v. Shelby Mut. Plate Glass & Cas. Co 191 S.C. 177, 4 S.E. 123 1939

State v. Houston, 29 S.C. 108 6 S.E. 943 (1888)

State v Rye 375, S.C. 119, 651 S.E. 2d 321 2007 Defense of habitation does not require
that a defendant reasonably believe that he or his property was in imminent danger of sustaining

18-1-100
Amend ment 70
601-1-81
Prosecutorial vindictiveness per feet Approp

blind plea - A plea made without concession from either the judge or prosecutor of. ^{negotiated plea}
cap plea - A plea entered upon a judge's assurance that the sentence imposed will be no greater than a certain term or specific range. With a cap plea the judge becomes involved in plea-bargain something allowed in state courts not federal. sentence cap-reference
conditional plea - a plea of guilty or no contest entered

guilty plea - an accused person formal admission in court of having committed the charged offense
a guilty plea must be made voluntarily and only after the accused has been informed of and understands his or her rights. It ordinarily has the same effect as a guilty verdict and conviction after a trial on merits
A guilty plea is usually part of a plea bargain.

negotiated plea - the plea agreed to by a criminal defendant and the prosecutor in a plea bargain.
plea-bargain - A negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty or no contest to a lesser offense or to one of multiple charges in exchange for some concession by the prosecutor usually a more lenient sentence or a dismissal of the other charges. a plea agreement; negotiated plea; sentence bargain

charge bargain - a plea bargain whereby a prosecutor agrees to drop some of the counts or reduce the charge to a less serious offense in exchange for a plea of either guilty or no contest from the defendant. An agreement made before charges were filed whereby in exchange for dismissal of higher or remaining charges

sentence bargain - an agreement between a prosecutor and a defendant whereby the defendant promises to plead guilty or no contest to the stated charge in return for a lighter sentence

fact bargain - an agreement between a prosecutor and a defendant whereby the defendant stipulates that some facts are true in exchange for the prosecutor not introducing certain other facts into evidence

detritmental reliance - reliance by one party on the acts or representations of another, causing a worsening of the first party position. Detritmental reliance may serve as a substitute for consideration and thus make a promise enforceable as a contract.

promissory estoppel - the principle that a promise made without consideration may nonetheless be enforced to prevent injustice if the promisor should have reasonably expected the promisee to rely on the promise and if the promisee did actually rely on the promise to his or her detriment. also termed equitable estoppel

representation - A presentation of fact - either by words or by conduct - made to induce someone to act, esp. to enter into a contract; esp. the manifestation to another that a fact, including a state of mind, exists & the buyer relied on the seller's representation that the roof did not leak. representation may induce a contract and affect performance; or it may induce a contract and so affect the intention of one of the parties, and the formation of the contract

Cuyler v. Sullivan, 446 U.S., at 344, 100 S.Ct., at 1716, 12d at 345-350, 100 S.Ct., at 1716-1719
United States v. Decoster, supra, at 372-373, 624 F.2d, at 209-210
" v. Ellison, 557 F.2d 128, 131 (CA7 1977)
Holloway v. Arkansas, 435 U.S. 475, 490-491, 98 S.Ct. 1173, 1181-1182, 55 L.Ed.2d 426
Decoster, 199 U.S. App. D.C. 359, 454-457, 624 F.2d 196, 291-294 (en banc) Bazelon, J
dissenting) cert. denied, 444 U.S. 944, 100 S.Ct. 302, 62 L.Ed.2d 311 (1979) Note, 93 Harv.L.Rev., at 767-770

Glasser v. United States, 315 U.S. 60, 75-76, 62 S.Ct. 457, 467-468, 96 L.Ed. 680 (1942)
United States v. Cronin, 466 U.S. at 662, n.31, 104 S.Ct. at 2046, n.31

Missouri v. Frye * Kinlaw v. Warden of Ridge land - did not inform Kinlaw when plea expired
Plea counsel's performance was deficient as it fell below an objective
standard of reasonableness when plea counsel failed to inform Kinlaw
when state plea offer would expire
71408-1409 [As a general rule, defense has the duty to communicate formal prosecution offers
to accept a plea on terms and conditions that may be favorable to accused. Any exceptions to this rule
need not be addressed here, for the offer was a formal one with a fixed expiration date.]

Hill 474 U.S., at 59, 106 S.Ct. 366 [466 U.S., at 694, 104 S.Ct. 2052]
Glover v. United States, 531 U.S. 198, 203, 121 S.Ct. 696, 148 L.Ed.2d 604 (2001)
In re Alvarez, 2 Cal. 4th 924, 938, n.7, 8 Cal. Rptr.2d 713, 830 P.2d 747, 756 n.7 (1992)

Rules of Prof. Conduct Rule 1.4
Prosecutors are entitled to substantial info about defenses the accused will assert at trial

Frye, 566 U.S. at 145, 132 S.Ct. 1399 (obviously state not held to inform offer)
He says "lapse or expires" we want to take this offer this may be our last chance [insert quotes]
or is withdrawn 3 charges dropped if plea to DV 10 yrs. Informal not on paper, orally
but he said "lapse or expires" meant it's formal that's what he made me believe he never said
the solicitor changed it or put a cap on it (10-15) open, nothing negotiated. He told my family 10, checks
did informal. Then when we were in proceedings it changed he said nothing to withdraw he said
I rejected said 10 was too much. My emails on track. Asked for other suggestions he said state said no
costed for split of 5 and 2 probation. He said they may do probation but no amount. But they never agreed to
split it but never said 10 offer was gone from table either ever during or up to guilty plea. Meaning it still there
I said if they don't take my offer it's ok I'm ready to plea. Still thinking the 10 was good. It was pleaing to 7
after the scope not a 10-15 cap. But informal deals are not to be held accountable by state. So it's a blind plea
none negotiated. with a cap. 0-10. No recommendation.

With respect to forensic evidence the ABA directs the following counsel should aggressively re-exam-
ine all of govts forensic evidence, and conduct appropriate analysis of all of the available forensic evidence
He never informed the prosecutor I accepted the offer.

Involuntary Guilty Plea A. counsel coerce to enter a plea of guilty. B. Counsel's
inaccurate advice and failure to thoroughly prepare for trial led to guilty plea. Deficient
reasonable advice
pled guilty

outrelois acquit - Double jeopardy
outrelois convict - a plea in bar that the defendant has
already been convicted of the offense [cannot be charged on fresh evidence] if convicted. cannot afterwards

Stage representation - this practice which sometimes occurs in public defenders offices has been criticized as resulting in lower quality representation. Representation of criminal defendant in only one phase of prosecution, so that in the end the defendant will have been represented by various lawyers.

fraudulent misrepresentation - a false statement that is known to be false or is made recklessly - without knowing or caring whether it is true or false - and that is intended to induce a party to detrimentally rely on it - deceit

passive misrepresentation - the act of remaining silent under circumstances that make the silence seem to support a false statement's validity. - silent misrepresentation misrepresentation by silence. the act of leading a person to believe something that isn't true without actually making any false statements.

Personal misrepresentation - A false statement made or authorized by an individual with knowledge of the falsity.

Misrepresentation of fact - A false statement about the occurrence, existence or quality of an act, circumstance, event, or thing, tangible or intangible.

Misrepresentation by silence - the act of failing to make required disclosures or corrections to previous statements when there is a duty to do so.

Estoppel is basically a tort doctrine and the rationale of the section is that justice requires the defendant to pay for the harm caused by foreseeable reliance upon the performance of his promise. The wrong is not primarily in depriving the plaintiff of the promised reward but in causing the plaintiff to change position to his detriment.

equitable estoppel - A defensive doctrine preventing

falsavert - one who has changed position by reason of falsity.

parade of horrors - A litany of detrimental or retrograde consequences that will, in view of an opponent of some proposed action, occur if the action is taken. (Slippery slope) warns

prejudice - Harboring or manifesting unreasonable preconceptions or predilection against or, less commonly, in favor of someone or something; esp. finding to be opposed to someone or something without good cause or before acquiring sufficient information or knowledge (dismissal of prejudice venire members)

confidence - A communication made in trust and not intended for public disclosure, specifically a communication protected by the attorney-client or similar privileged confidences between lawyer and client. Under ABA Code of Professional Responsibility a lawyer cannot reveal a client's confidence unless the client consents after full disclosure. DR 4-101, cf. secret

adverse inference - detrimental conclusion drawn by the fact-finder from a party's failure to produce evidence that is within the party's control. Some courts allow inference only if party's failure is attributable to bad faith - adverse presumption.

The process by which such a conclusion is reached, the process of thought by which one moves from evidence to proof.

S.C. Code § 16-11-440
" (C) Defense of Others

Blockburger is the only remaining test for determining a double-jeopardy violation, in both multiple punishment and successive prosecution cases.

"State v. Easter, 327 S.C. 121, 132, 489 S.E. 2d 617 (1997)"

"Blockburger v. U.S., 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932)"

Once a court accepts a defendant's guilty plea, jeopardy attaches.

"Reed v. Becca, 333 S.C. 676, 681, 511 S.E. 2d 396 (Ct. App. 1999)"

(State v. Baum, 355 S.C. 209, 215, 584 S.E. 2d 419 (Ct. App. 2003))

The prohibition against double jeopardy is intended to condemn the practice of the prosecution requesting a mistrial for the sole purpose of buttressing weakness in its evidence, and the strictest scrutiny is appropriate when the basis for a mistrial is the unavailability of critical prosecution evidence.

The double-jeopardy clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding.

(State v. Clifford, 355 S.C. 129, 131, 515 S.E. 2d 550 (Ct. App. 1999)) (abrogated on other grounds by "State v. Gregorie, 339 S.C. 2, 528 S.E. 2d 77 (2000) citing Burks v. U.S., 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed. 2d 1 (1978)".

A second trial is not allowed where the defendant's conviction is overturned on the ground that the evidence was insufficient to convict him. Burks v. U.S., 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed. 2d 1 (1978)

Derrick M. Miller 00384656

Kirkland Correctional Institute

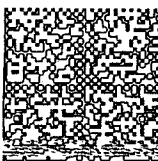
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SC Court of Appeals



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