

**RECEIVED**

**Aug 19 2021**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

CERTIORARI TO SPARTANBURG COUNTY  
Court Of Common Pleas

The Honorable J. Mark Hayes, II, Trial Judge  
The Honorable Michael G. Nettles, PCR Judge

---

Appellate Case No.: 2018-001188

Christopher Middleton,

Respondent.

v.

State of South Carolina,

Petitioner.

---

**MOTION TO DISMISS**

---

NOW COMES Petitioner, moving this Court to dismiss the present post-conviction relief appeal of Respondent Christopher Middleton as moot. In support of this motion, Petitioner would respectfully show this Court:

1. During its March 2015 term, the Spartanburg County Grand Jury indicted Middleton for attempted murder and possession of weapon during commission of a violent crime (2015-GS-42-1128). Middleton was represented by E. Joshua Schultz, Esquire (hereafter "Counsel"). On October 12-14, 2015, the case proceeded to trial before the Honorable J. Mark Hayes, II, and a jury. The jury found Petitioner guilty of the crimes

charged. Judge Hayes sentenced Petitioner to thirty years' imprisonment for attempted murder and five years for possession of a weapon, to be served concurrently.

2. Middleton appealed his conviction, which was perfected by Appellate Defender David Alexander, who filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Middleton's appeal. The remittitur was issued on May 5, 2017.
3. Middleton timely filed a PCR application on August 9, 2017. The State made its return on January 10, 2018. The evidentiary hearing occurred on February 22, 2018, before the Honorable Michael G. Nettles. The Court granted Middleton's request for post-conviction relief. An order granting relief was issued on June 8, 2018.
4. The State filed a notice of appeal on June 26, 2018. The petition for writ of certiorari was filed on December 7, 2018. Middleton filed his return on January 14, 2019. This case was transferred to the Court of Appeals on January 28, 2019, and certiorari was granted, by written order, on November 24, 2020.
5. Respondent passed away on April 10, 2021. (See Exhibit "A," death certificate attached). Petitioner therefore moves to dismiss the present appeal as moot. *See State v. Miller*, 409 S.C. 312, 762 S.E.2d 394 (2014).

WHEREFORE, Petitioner moves to dismiss the present appeal as moot.

Respectfully submitted,

ALAN WILSON  
Attorney General

Chelsey F. Marto  
Assistant Attorney General  
S.C. Bar # 104191

P.O. Box 11549  
Columbia, S.C. 29211  
(803) 734-3737

By:   
ATTORNEYS FOR PETITIONER

August 19, 2021

# EXHIBIT

A

Name of Decedent: **Christopher Middleton**

Autopsy Number: **FA21-232**

Preliminary Death Certificate

Date of Death: **04/10/2021**

County of Death: **Richland (SCDC)**

CAUSE OF DEATH		Approximate interval: Onset to death
32. PART I. Enter the <u>chain of events</u> -diseases, injuries, or complications-that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing etiology. DO NOT ABBREVIATE. Enter only one cause on a line. Add additional lines if necessary.		
IMMEDIATE CAUSE (FINAL) a. <u>Acute decompensated heart failure</u>	Due to (or as a consequence of):	<u>Weeks-Months</u>
b. <u>Complications of atherosclerotic cardiovascular disease</u>	Due to (or as a consequence of):	<u>Years</u>
c. _____	Due to (or as a consequence of):	_____
d. _____	Due to (or as a consequence of):	_____


PART II. Enter other <u>significant conditions contributing to death</u> but not resulting in the underlying cause given in PART I. <b>Diabetes mellitus</b>	33. WAS AN AUTOPSY PERFORMED? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	34. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

35. DID TOBACCO USE CONTRIBUTE TO DEATH? <input type="checkbox"/> Yes <input type="checkbox"/> Probably <input type="checkbox"/> No <input type="checkbox"/> Unknown	36. IF FEMALE: <input type="checkbox"/> Not pregnant within past year <input type="checkbox"/> Pregnant at time of death <input type="checkbox"/> Not pregnant, but pregnant within 42 days of death <input type="checkbox"/> Not pregnant, but pregnant 43 days to one year before death. <input type="checkbox"/> Unknown if pregnant within the past year.	37. MANNER OF DEATH <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Homicide <input type="checkbox"/> Accident <input type="checkbox"/> Pending <input type="checkbox"/> Suicide <input type="checkbox"/> Could not be determined
--	--	---

38. DATE OF INJURY (M/Day/XXXX) <b>Click or tap to enter a date.</b>	39. TIME OF INJURY (Approximate)	40. PLACE OF INJURY (e. g., Decedent's home, construction site, wooded area)	41. INJURY AT WORK? <input type="checkbox"/> Yes <input type="checkbox"/> No
---	----------------------------------	--	---

42. LOCATION OF INJURY:	State: <b>SC</b> City/Town: _____	County: _____	Zip Code: _____
	Street and Number: _____	Apartment Number: _____	

43. DESCRIBE HOW INJURY OCCURRED:	44. IF TRANSPORTATION INJURY, SPECIFY: <input type="checkbox"/> Driver/Operator <input type="checkbox"/> Passenger <input type="checkbox"/> Pedestrian <input type="checkbox"/> Other (Specify)
-----------------------------------	---

 _____ Kelly L. Rose, MD  _____ <b>April 13, 2021</b> Date	<b>Newberry Pathology Group, LLC</b> <b>Newberry, SC 29108</b>
---	---

**RECEIVED**

**Aug 19 2021**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

CERTIORARI TO SPARTANBURG COUNTY  
Court of Common Pleas  
J. Mark Hayes, II, Circuit Court Judge  
Michael G. Nettles, PCR Judge

---

Appellate Case No. 2018-001188

---

CHRISTOPHER MIDDLETON

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

---

**PROOF OF SERVICE**

---

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the **Motion to Dismiss** has been served upon opposing counsel by sending to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS):

**Joanna K. Delany, Esquire**  
**[jdelany@sccid.sc.gov](mailto:jdelany@sccid.sc.gov)**

This 19<sup>th</sup> Day of August, 2021.

s/



Chelsey F. Marto  
Assistant Attorney General  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737  
[ChelseyMarto@scag.gov](mailto:ChelseyMarto@scag.gov)



RECEIVED

Aug 19 2021

SC Court of Appeals

ALAN WILSON  
ATTORNEY GENERAL

August 19, 2021

The Honorable Jenny A. Kitchings  
Clerk of Court — SC Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

**RE: Christopher Middleton v. State of South Carolina**  
**Appellate Case No. 2018-001188**  
**Lower Court Case No. 2017-CP-42-02751**

Dear Ms. Kitchings:

Enclosed for filing are the original **Motion to Dismiss** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Chelsey F. Marto  
Assistant Attorney General  
S.C. Bar No. 104191

CFM/ec  
Enclosures

cc: Joanna K. Delany, Esquire