

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM FLORENCE COUNTY

Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Docket No. 2020-CP-21-1467

**RECEIVED**

**Aug 23 2021**

**S.C. SUPREME COURT**

Johnell Richardson, SCDC # 355032,

Petitioner,

v.

The State of South Carolina,

Respondent,

Affidavit of Written Explanation Pursuant

to South Carolina Appellate Court Rule 203 (d)(B)(iv)

Personally appeared before me, Attorney Philip B Atkinson, who being duly sworn, deposes and states as follows:

- 1) I was appointed to represent Johnell Richardson by Order of Circuit Court Judge Michael G. Nettles dated January 22, 2021 (an Amended Order with corrected addresses substituting me for Attorney Michael C Abbott).
- 2) I graduated from the University of South Carolina School of Law in 1999 and I am admitted to the South Carolina Bar.
- 3) I am a member of the Florence and Marion County bar associations.
- 4) My practice primarily involves litigation and family disputes and nearly 80% of my current caseload involves matters in the Family Court. I'm also a certified mediator, serve as a guardian *ad litem*, and perform contract services for the guardian *ad litem* program in Dillon, South Carolina as well as serving as a private guardian myself.

*PA*

- 5) During that time that I've been practicing law, I have practiced primarily in the state courts. My primary practice concentrates on matters in the Family Court for the State of South Carolina and, from time to time, on any cases where the clerk selects me as counsel for indigent clients.
- 6) The purpose of the appointment above was to serve as Mr. Richardson's counsel regarding his filing for habeas corpus relief.
- 7) My client filed his petition himself prior to the appointment of his first attorney, Mr. Abbott, and already had one hearing continued before I was even appointed as his successor counsel as listed above.
- 8) By June 9, 2021 the office of the Attorney General had finally been properly served with the pleadings initially (and errantly) filed by the client due to my efforts which prompted their Return and Motion to Dismiss the Petition for Writ of Habeas Corpus along with a proposed Order to the Judge for gaining such relief.
- 9) By June 22, 2021 I began corresponding with the judge and opposing counsel asking for oral arguments in the above-referenced case to indicate what reason, if any, my client could show that the relief requested therein was not a subsequent post-conviction relief action and why those materials could not have been presented under a previous application the client filed on April 10, 2014.
- 10) The judge in this matter did not respond to my request for a hearing or oral arguments and granted the respondent's order dismissing the petition for writ of habeas corpus. Initially, there were some scrivener errors the State made. A corrected copy was sent to the judge before the matter was finalized. The final copy of the Order Dismissing the Petition for Writ of Habeas Corpus was served upon me via mail on August 16, 2021.
- 11) Out of an abundance of caution, knowing from previous conversations with my client that he would intend to appeal any such dismissal, I undertook this filing of a Notice of Intent to Appeal and signed the actual document August 20, 2021.
- 12) Out of an abundance of caution, I also filed a motion to proceed without cost in accordance to Ex Parte Cauthen, 354 S.E. 2d 381, 291 S.C. 465 (1987) completing that on August 23, 2021.
- 13) There was no transcript from any proceedings to be ordered from the court to be provided to the appeals court.
- 14) It is conceded that the petitioner did file a previous post-conviction relief action in 2014 which was dismissed (wherein he alleged ineffective assistance of counsel for failing to

present mitigation evidence and/or adequately preparing). His current claims under the South Carolina Constitution Article 3 Section 18 are asserted by him as newly discovered evidence wherein he only received proof (See attached Exhibit A) from the State Archives after March 18<sup>th</sup> 2019 that the law he was convicted under had been searched for and was not found in the archives nor could the archivist prove that any such law was affixed with the great seal of the state of South Carolina as Petitioner argues is mandatory under the state constitution. He would allege that no resolution or act of the state legislature would have "the force of law" unless it bears the great seal of the state and is accurately recorded in the archives as the true law of the State of South Carolina.

- 15) In an effort to verify the 2019 statement he provided to me, I asked the archivist to provide a sworn affidavit as well. (See attached Exhibit B) The court has not had the opportunity to consider that document as would have been done through a hearing or oral arguments upon the matter.
- 16) Further, the court has denied this relief *with prejudice* wherein the State, in its own Return conceded that Habeas petitions must be filed in the original jurisdiction of the South Carolina Supreme Court (especially where the legitimacy of a state statute is challenged). The State requested the action be summarily dismissed because the lower court lacked any jurisdiction to rule on the issue. The Order should at least be without the added burden of the dismissal *with prejudice* therefore tying the hands of the Supreme Court in its original jurisdiction to ever hear the matter.
- 17) In the alternative, after reviewing the court file, I am submitting this affidavit in accordance with further tenets of Cauthen, believing that there are no other meritorious issues to brief. I have been in contact with the office of Appellate Defense prior to signing the Notice of Intent to Appeal and will copy them on all transmissions. I am asking that I be relieved as counsel in this matter. If the court sees fit to hear the petitioner upon evidence that is either newly discovered or should have been originally brought in the jurisdiction of the Supreme Court itself, I would ask that he be appointed appellate counsel.

Further affiant sayeth not.

August 23rd, 2021



SWORN TO and subscribed before me

This 23<sup>rd</sup> day of August, 2021.

Notary Public for S.C.

My Commission expires: 10/8/29



Philip B. Atkinson (SC Bar No.: 16686)

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Kolby Atkinson Notary Public, State of South Carolina My Commission Expires October 8th, 2029
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# EXHIBIT A

Exhibit 1



18 March 2019

Mr. Johnell Richardson 355032  
McCormick Correctional Institution F3/B/244  
386 Redemption Way  
McCormick, SC 29899

Dear Mr. Richardson:

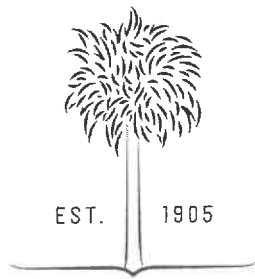
I checked the following act that you requested but could not locate a visible impression of the Great Seal: 1993 Act No. 184.

Sincerely,

A handwritten signature in black ink, reading "Steven D. Tuttle". The signature is written in a cursive style with a large, sweeping initial "S".

Steven D. Tuttle  
Deputy Director  
Archives & Records Management

# EXHIBIT B



SOUTH CAROLINA DEPARTMENT OF  
**ARCHIVES & HISTORY**

15 April 2021

Affidavit of Steven D. Tuttle, Deputy Director for Archives and Records Management, South Carolina Department of Archives and History, 8301 Parklane Road, Columbia, South Carolina 29223.

On 18 March 2019, our agency received a letter from Mr. Johnell Richardson #355032, McCormick Correctional Institution F3/B/244, 386 Redemption Way, McCormick, South Carolina 29899. In this letter, Mr. Richardson asked if 1993 Act No. 184 had been affixed with the Great Seal.

I located the original copy of this act in our security vaults and found that it has 198 pages. I checked each of these pages but could not see an impression of the Great Seal. On 18 March 2019, I wrote Mr. Richardson a letter stating "I checked the following act that you requested but could not locate a visible impression of the Great Seal: 1993 Act No. 184."

Checking original acts for an impression of the Great Seal is a regular duty performed by our staff as we have received and answered more than 400 requests to do so since November 2017.

Signature: *Steven D. Tuttle*

State of South Carolina

County of Richland

Acknowledged before me on this date: *04-15-2021*

Notary Name: *Brenda C. House*

My Commission Expires: *01-31-2024*

Notary Signature: *Brenda C. House*