

THE STATE OF SOUTH CAROLINA
SOUTH CAROLINA SUPREME COURT

CIA %

Terrell McCoy, 256070

Petitioner

(HABEAS CORPUS) FOR BAIL
SCACR RULE 243(K)

v.

Charles (Tony) Burton

Warden
Respondent

This Habeas Corpus is not to challenge any Constitutional violation claims pending in SC COURT OF APPEALS. This Petition is for the purposes stated below.

Pursuant to SCACR RULE 243(K), the petitioner hereby moves this court with a motion to grant bail pending appellate review. Pursuant to SCACR rule 243(K) an appellate may be granted bail, however, the authority to grant bail will be exercised with caution and only in exceptional cases. In deciding whether to exercise the discretionary authority to admit applicant to bail the following factors will be considered:

(1) the probability the applicant will prevail on appellate review and the nature of the relief he or she will receive; the seriousness of the criminal offense committed; the danger the applicant may impose on the community if he or she is released; the likelihood the applicant may flee if released; and the character and circumstances of the applicant.

Petitioner, Writ of Certiorari was granted, the PCL judge order was vacated and re-manded back to PCR for the judge to make specific finding of facts and conclusions of law. PCL Judge issue a second order denying PCR relief. Petitioner through counsel filed a timely SCACR Rule 59(c) motion, which was denied. Petitioner, through counsel filed a timely notice of appeal in this court on 7/19/19. Terrell McCoy v. State of South Carolina Appellate Case number 2019-001193.

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GAL MAIL
MAIL ROOM

Petitioner move with motion pursuant to SCACR RULE 240 & 243 (K) requesting to grant Petitioner bail. The language in SCACR 243 (K) describe Post Conviction Relief applicant may be admitted to bail upon notice of appeal by either party. Supreme Court may also grant bail under provision of SC Const. Article 5 Section 4 (now Article 5, Section 5) and since the legislature may not remove powers granted to the Court by the Constitution, the Supreme Court may in its discretion grant bail where the sentence exceeds Ten years notwithstanding the provision of this section. State v. Whitener (S.C. 244, 815 E.2d 784) SEE SC code 18-1-80 2012) 2 Art. V, § 4 Provides that "The supreme court shall have power to issue writs ... of habeas Corpus ..."

Memorandum of law to support Petitioner motion (please see Petitioner's Writ of Certiorari, Reply brief & State Response in court records.) Pending in SC Court of Appeals appellate case number 2019-001193)

The facts that Petitioner's arrest warrant was sworn and subscribe by a magistrate judge on March 25, 2006. There is no evidence, the state can produce to show there was any probable cause to arrest Petitioner for Murder on March 25, 2006. According to the record on Appeal, State witness Cerenda Williams gave a written statement on March 25, 2006, describing someone arguing in her back yard, then heard a loud boom, at her front door, and then gunshots. When she approach the victim, she touch him, ran to the front door, and saw someone running down the street with a hoodley on his head. Time of Incident. 5:30 a.m through 6:00 a.m (see Record on Appeal, Appendix V page. 829-830) (Exhibit 1 - Arrest Warrant)

~~Based off~~ this later that evening, Cerenda Williams contacted police again, and stated she wasn't completely honest, and that the person she saw running down the street was her boyfriend Brother Skeeze. There was still no probable cause to obtain a warrant for Petitioner arrest for murder.

The facts that PCL court violated Petitioner's Constitutional rights to call favorable witness (Chorelle Proctor) during evidentiary hearing is a clear violation of the PCR Uniform Act 17-27-20. And v. Cator 372 S.C. 318, 331, 642 S.E.2d 590 (2007). In this case, during

during a evidentiary hearing, Petitioner was denied his constitutional right to call Horelle Proctor as witness to prove his burden of proof that counsel gave Petitioner erroneous advice to waive his Sixth amendment right to counsel and proceed without counsel during trial. During Summary Judgment hearing held on September 9, 2015 Judge Larry Hyman ruled that Petitioner could not argue ineffective assistance of counsel claims despite the fact Petitioner's PCR application alleges he was given erroneous advice to waive his Sixth amendment right. (See Record on Appeal Appendix page 896 through page 913.)

Next, Petitioner argue during his PCR hearing that Appellate Counsel Robert Duder was ineffective for failing to raise his preserve Appellate issues during appeal. Petitioner Prove his burden of proof, that Appellate Counsel will not raise substantial issues during appeal. Appellate counsel did not refute the facts that he did not raise any Brady Violation claims during appeal. He testified, he was not aware of any Brady Violation claims in Petitioner Case. (Record on Appeal Appendix page 920 through 1004.)

During Petitioner's trial, Petitioner argued that the state did not disclose exculpatory evidence upon specific request. Brady v. Maryland, 373 U.S. 83 S.Ct. 1194, 10 L.Ed 13d (1963)

Petitioner also filed a motion to Compel evidence, which was held during his trial. Appellate Counsel failed to raise the trial judge abused his discretion by excluding 911 dispatcher's report which was preserved for Appellate review. During Petitioner's trial, a hearing was held outside the presence of the jury where parties stipulated on the admission of relevant evidence. (Record on Appeal Appendix IV page 639 through 644.)

The state objected and the trial judge sustained the objection preserving the issue for Appellate review. The evidence was not hearsay, and was relevant evidence pursuant to SCRE Rule 402 & 803(3) South Carolina. Stak v. Alexander, 303 S.C. 377, 401 S.E. 2d 146 (1991) (relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice); In this case, the evidence was a dispatcher report which gave description of what the 911 caller perceive during a startling event. A proffer was made during the hearing on the relevancy of the evidence. (Record on Appeal Appendix IV page 641 line 16-19, 643 Line 6-17.)

During, the hearing, state argued they did not know who made the

Call, and the Caller was not Present to testify.

The reason the Caller wasn't present is because, the police department destroyed the 911 tape. Specific request for the evidence was made pursuant to SCRCrP, Rule 5 & 6 & Brady. (See Record on Appeal Appendix V page 1066 - Also page 859), During the hearing Petitioner's standby Counsel Lovelle Proctor, explained to the Court that she had made specific request for the 911 tape before its destruction. Also state informed petitioner his subpoena for Jenie Fowler did not process.

The state also state Solicitor testified that 911 tape did not exist, nor did their office look for it. (See Record on Appeal Appendix IV page 639 through 640).

Petitioner after discovered, a 911 tape did exist, and that during his trial it was only one dispatcher at North Charleston Police Department name Jenie Fowler, this prevented Petitioner due process right to a fair trial guaranteed by fourteenth Amendment of the United States Constitution. (See Record on Appeal Appendix pages 855 - 858)

During PCR, Petitioner argued that it existed material facts not previously presented and heard that requires vacation of the conviction or sentence in the interest of justice pursuant to SC Code 17-21-20(4) During the evidentiary hearing PCR Counsel admitted the dispatcher report into the record for Appellate review. (Record on Appeal Appendix V page 970 Line 14 through 16)

Appellate counsel also failed to raise issues concerning unduly suggestive identification of Petitioner, where State witness was shown a mugshot of Petitioner, and gave multiple statement to police, in which two statements one stated she did not identified Petitioner committing a crime but alleged saw him running down the street. The trial judge did not held a full Neil V. Biggers hearing, see State v. Liverman, The state did not call the law enforcement officer, to explain why it was necessary to show the witness a mugshot of Petitioner with the words Charleston County Sheriff office.

During the hearing, Cerenda Snowden admitted to lying to police on multiple occasions. (Record on Appeal, Appendix V page 99 line 2-4)

A full Neil V. Biggers hearing was required to determine the accuracy of the witness identification. On March 25, 2006, the witness prior description was at 5:30 a.m. through 6:00 a.m., she identified someone running down the street. 24 hours later police showed Cerenda Snowden a one photo mugshot of Petitioner after obtaining a warrant for his arrest. (See Record on Appeal Appendix V page 103 line 1-15 and page 106 line 11-16)

The state did not cross examine any law enforcement officers concerning the showing of a one photo mugshot of App Petitioner. This tainted the identification, Petitioner's due process guaranteed by the Fourteenth Amendment was violated. See Neil V. Biggers.

This court overruled McLeod v. State, 260 S.C. 445, 196 S.E.2d 645 (1973), stating that a full Neil v. Biggers hearing is required regardless of witness previous knowledge of Petitioner.

During PCR, Appellate Counsel testified he did not recall an identification issue in Petitioner's trial.

State also failed to preserve DNA evidence which could have exonerated Appellate. The evidence was exculpatory. This violated Petitioner's due process, pursuant to Arizona v. Youngblood 488 U.S. 51, 57 S.Ct. 333 L.Ed.2d 281 (1988)

As stated above, this petition is only for (Bond) PCR Appeal Bond, pursuant SCAR 243(K). There is probability Petitioner will win on Appeal. The Respondent can not present evidence which shows Petitioner is being held lawfully.

Petitioner was employed from 1996 through 2006 with multiple jobs in South Carolina. Petitioner was also an inspiring music artist. Petitioner does not ~~any~~ have any conviction besides the conviction he now appeals. While incarcerated Petitioner has earned his work Keys, and Safety Certificate. Petitioner had earned his GED before his Unlawful arrest.

If bail is granted, Petitioner has a job, and family members that will assist him in the community. Petitioner request that bail is granted upon the facts that he is being held wrongfully in violation of the constitution in this state and United States, and for Covid pandemic reasons and concerns.

Petitioner presented alibi defense. This Court issued a GSV order on February 1, 2019. The PCR Judge issued the same order and Petitioner filed a timely SCAR Rule 59 (c) motion. The order is pending on appeal. Petitioner has a guaranteed due process right to appeal his conviction. He was appointed Appellate Counsel to represent him on Appeal, and Appellate Counsel was ineffective for ~~failing~~ ~~preser~~ ~~ve~~ failing to raise Petitioner's preserve Appellate issues. There is evidence in the Record of Appeal, which shows Petitioner would have prevail on Appeal. Petitioner request Motion For Bail is granted pursuant to SCAR RULE 243(K)

September 7, 2021

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Amell McCoy
MCI F3 145
386 Redemption Way
McCormick SC 29899

STATEMENT OF CASES

Brady v. Maryland, 373 U.S. 83 S.Ct. 1194 (1963)

Arizona v. Young Blood, 488 U.S. 51 S.Ct. 333 L.Ed. 2d 281 (1988)

McLeod v. State, 260 S.C. 445, 196 S.E. 2d 645 (1973)

Neil v. Biggers,

Ard v. Catoe, 372 S.C. 318, 331 642 S.E. 2d 590 (2007)

State v. Alexander, 303 S.C. 377, 401 S.E. 2d 146 (1991)

State v. Whitener S.C. 244, 81 S.E. 2d 787

RULES OF COURT

SCAER RULE 243(R)

Code of Laws

PCR Uniform Act 17-27-20

SC Constitution 5 section 4; 2 Article V. § 4

Habeas Corpus For Bond

HABEAS CORPUS FOR BAIL

Evidence

RECORD ON Appeal (Appendix) SC Appellate Case No. 2019-001193

Exhibit 1 (ARREST WARRANT)

Terrell McCormick 256070
MCI F3 Y45
386 Redemption Way
McClormick SC 29899

RECEIVED
SEP 09 2021

THE HONORABLE DANIEL E SHEAR
Clerk of COURT
Supreme Court of South Carol
P. O. BOX 11330
Columbia SC 29211

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SEP 14 2021
S.C. SUPREME COURT

ARREST WARRANT

F- 969254

STATE OF SOUTH CAROLINA

County: Municipality of Charleston

THE STATE against

Terrell Lynwood McCoy

SSN

Height: 511 Weight: 165

DOB

Agency ORI #: 0100800

City: North Charleston

Officer: Sgt. T. Meckard

Charge: Murder

Offense Code:

Sec. 16-3-10

CERTIFIED FOR SERVICE in the

Municipality of

The accused

presented and brought before me to be binding to law

Signature of Judge

RETURN

Arrest warrant was delivered to

TERRELL MCCOY

3/27/06

Signature of Constable/Law Enforcement Officer

DELIVERED TO:

STATE OF SOUTH CAROLINA

County: Municipality of Charleston

AFFIDAVIT

EXHIBIT

10

Personally appeared before me the affiant Sgt. Thomas Meckard being duly sworn deposes and says that defendant Terrell Lynwood McCoy did within this county and state on March 25, 2006 violate the criminal laws of the State of South Carolina (or ordinance of County: Municipality of Charleston) in the following particulars:

DESCRIPTION OF OFFENSE: Murder 16-3-10

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT
Entered NCIC WIS0236110 3/26/06 opr 901

Sworn to and subscribed before me on 25 March 2006

Signature of Issuing Judge (L.S.)

Signature of Affiant

4900 Lacross Rd

North Charleston SC 29405

Affiant's Telephone 843-740-2864

STATE OF SOUTH CAROLINA

County: Municipality of Charleston

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on March 25, 2006 defendant Terrell Lynwood McCoy did violate the criminal laws of the State of South Carolina (or ordinance of

County: Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Murder 16-3-10

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)

Judge Code: 3904

Judge's Address: 3870 Leeds Ave

N. CHAR SC

Judge's Telephone: 745-2380

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ATTACHED TRUE COPY
JULIE J. ARMSTRONG (SEAL)

The State of South Carolina C/A N/A

Terrell McCoy

Petitioner

v.

Charles (Tony) Burton

Warden

Respondent

Petition (Habeas Corpus) for Bail

This Habeas Corpus is not to challenge any constitutional violation claims pending in SC Court of Appeals this petition is for the purposes stated below :

Pursuant to SCACR rule 243 (k) the Petitioner hereby moves this court with a motion to grant bail pending appellate review. Pursuant to SCACR rule 243 (k) an appellate may be granted bail ; however the authority to grant bail will be exercised with caution and only in exceptional cases. In deciding whether to exercise the discretionary authority to admit applicant to bail the following factors will be considered : (1) the probability the applicant will prevail on appellate review and the nature of the relief he or she will receive ; the seriousness of the criminal offense committed ; the danger the applicant may impose on the community if he or she is released; the likelihood the applicant may flee if released; and the character and circumstances of the applicant.

Petitioner , Writ of Certiorari was granted , the PCR judge order was vacated and remanded back to the PCR for the judge to make specific finding of facts and conclusions of laws. PCR judge issued a order denying PCR relief. Petitioner through counsel filed a timely SCRPC rule 59 (E) motion , which was denied. Petitioner, through counsel filed a timely notice of appeal in this court on 7/19/19. Terrell McCoy v. State of South Carolina Appellate case number 2019-001193

Petitioner move with a motion pursuant to SCACR 240 & 243 (k) with a motion for PCR appeal bond. The language in SCACR 243 (k) describe Post Conviction Relief applicant may be admitted to bail upon notice of appeal by either party. Supreme Court may also grant bail under provision of SC Const, Art 5 section 4 (now Art 5, section 5) and since the legislature may not remove powers granted to the court by the Constitution, the Supreme Court may in its discretion grant bail where the sentence exceeds ten years notwithstanding the provision of this section . State v. Whitener (S.C. 244 , 81 S.E.2d 784. See SC code 18-1-80 (2012) 2 Art. V, § 4 provides that "The supreme court shall have power to issue writs

• . . of habeas corpus.

Memorandum of law to support Petitioner motion (please attach Petitioner original petition filed in SC Supreme Court) the court should have a copy.

The facts that Petitioner arrest warrant was sworn and subscribe by a magistrate judge on March 25 ,2006. There was no probable cause to issue a arrest warrant on the date. According to SCRcrimp Rule 5

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SC Court of Appeals

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S.C. SUPREME COURT

, police did not obtain a written statement from a witness identifying a shooter until March 26, 2006. On March 25, 2006. A witness described someone running down the street that look like someone name Sleezie Boy. The time of statement was approx. Between 5:00 am -5:40 a.m. Police had no probable cause to obtain a arrest warrant for murder for Petitioner on March 25, 2006. (Arrest warrant was mailed to this court and attach to petition as Exhibit 1) (See Appendix page 829-830)

The fact that PCR court violated Petitioner's constitutional right to call favorable witness (Lorelle Proctor) during evidentiary hearing is a clear violation of the PCR Uniform Act 17-27-20. *Ard v. Catoe* 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). In this case, during a evidentiary hearing, Petitioner was denied his constitutional right to call Lorelle Proctor as witness to prove his burden of proof that counsel gave Petitioner erroneous advice to waive his sixth amendment right to counsel and proceed without counsel during trial. During a summary judgment hearing held on September 2015, Judge Hyman ruled that Petitioner could not argue ineffective assistance of counsel claims despite the fact Petitioner's PCR application alleges he was given erroneous advice to waive his sixth amendment right. (See Writ of Certiorari & Appendix page 810, 896-916)Petitioner appeal the judges order. The claim is pending on appeal.

Next, Petitioner argue during his PCR hearing that Appellate counsel Robert Dudek was ineffective for failing to raise his preserve Appellate issues during appeal. Petitioner prove his burden of proof during PCR hearing, that Appellate counsel did not raise substantial issues during appeal. Appellate counsel does not refute the facts that he did not raise any Brady violation claims during appeal because he wasn't aware of a Brady violation in Petitioner case. The failure to disclose evidence upon specific request is a due process violation under Fourteenth amendment of the United States Constitution. During Petitioner's trial, Petitioner argued that the State did not disclose a 911 tape to his defense attorney at the time the specific request for evidence was made (see Appendix page 641 through 642).The evidence was exculpatory and could have exonerated the Petitioner. Petitioner was prejudice by the failure to disclose evidence pursuant to SCRcrimp rule 5&6.*Brady v. Maryland* 386 U.S (1963) Petitioner was arrested on March 27 2006. Counsel filed a Brady motion on March 30, 2006 and serve upon the solicitor office on April 10, 2006.(See Appendix page 1066)

Appellate counsel failed to raise the trial judge abused his discretion by excluding the 911 dispatcher's report. This issue was preserved for Appellate review. During Petitioner's trial a hearing was held outside the presence of the jury where parties stipulated on the admission of the evidence. (Appendix pages 639-646) The State objected and the judge sustained the objection preserving the issue for Appellate review. The evidence was not hearsay, and was relevant evidence pursuant to SCRE rule 402 & 803 (3) *South Carolina. State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991) (relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice); In this case, the evidence was a dispatcher report which gave description of what the 911 caller perceive during a startling event. A proffer was made during the hearing on the relevancy of the evidence. (See Appendix page 643) During trial the state argued a 911 tape did not exist and the judge based his ruling on the state misinformation. (See Appendix page 641 line 20-25; 642 line 1-11; 643 line 23 -25).

Petitioner after discovered a 911 tape did exist in his case. (See Appendix page 855-858) PCR counsel argued during PCR that it existed material facts not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice pursuant to SC code 17-27-20 (4) During the evidentiary hearing PCR counsel admitted the dispatcher report into the record for Appellate review. (See Appendix page 970 line 8-16) During Petitioner trial , trial judge ruled that 911 tape did not exist. (See Appendix 643 line 25 thru 644 line 1)

Appellate counsel also failed to raise issues concerning unduly suggestive identification of Petitioner , where State witness was shown a mug shot of Petitioner, and gave multiple statement to police , in which two statements she stated she did not identified Petitioner committing a crime but allege saw him running down the street. Although she testified she knew Petitioner from her boyfriend Travis Johnson . The trial judge did not held a full Neil. V. Biggers hearing. See State v. Liverman. The State did not call the law enforcement officer , to explain why it was necessary to show the witness a mug shot of Petitioner with the words Charleston County Sheriff Office. During the hearing , the witness Cerenda Snowden testified she lied to police on multiple occasions. (See Appendix page 98 line 21-25 ; page 99 line 1-2) Therefore a full Neil v. Biggers hearing was required to determine the accuracy of the witness identification. Her identification of Petitioner is she knew him from being her boyfriend , Travis brother.

On March 25 2006 , the witness prior description was at 5:00 am. She describe someone running down the street that look like her boyfriend brother. (See Appendix page 828-830)

Later that evening Ms. Snowden contact police and say that the person she saw running look like Sleezie , she could not tell because he had a hoodey on his head. Police obtained an array warrant for murder from the magistrate judge based off that information. On March 26 , 2006 , 24 hours later Cerenda Snowden contact police again and then gives another statement but inconsistent from the first & second. She was then shown a one photo mugshot of Petitioner. (Appendix page 108 line 13-15) By this time an arrest warrant for murder was filed in violation of the fourth amendment .

Petitioner introduce two alibi witness. Travis Holcombe and Tonia Theus. Travis testified he did not have a girlfriend name Cerenda Snowden or was present at the time the victim was killed.

This court overrule McLeod v. State 260 S.C. 445, 196 S.E.2d 645 (1973), stating that a full Neil v. Biggers hearing is required regardless if witness previous knowledge of Petitioner. During PCR , Appellate counsel testified he did not recall an identification issue in Petitioner trial. See Appendix

Appellate counsel failure to raise issues concerning the State failure to preserve DNA evidence , and bad faith. See Petitioner Writ of Certiorari & Appendix. There is probability Petitioner will prevail on appeal.

Petitioner was employed from 1996 through 2006 with multiple jobs in South Carolina. Petitioner was also an inspiring music artist. Petitioner does not have any convictions besides the conviction he now appeals.

While incarcerated Petitioner has earned his Work keys , and safety certificate. There are no other programs available for inmates in SCDC.

If bail is granted , Petitioner has a job , and family members that will assist him in the community. Petitioner request that bail is granted upon the facts that he is being held wrongfully in violation of the Constitution in this state and United States. And for Covid pandemic reasons.

Petitioner presented alibi witness who testified that he nor Petitioner had an altercation that caused the death of the victim. See Appendix Travis Holcombe testimony. Also Tonia Theus testimony. Petitioner believe he will win on appeal due to above constitutional violation claims stated above. This court issued a GSV order on February 1 , 2019. The PCR judge issued the same order & Petitioner filed a timely SCACR rule 59 E motion. The order is pending on appeal.

Terrell McCoy 256070

MCI F3 145

186 Redemption Way

McCormick SC 29899

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SEP 15 2021

S.C. SUPREME COURT

Terrell McCoy #256070
MCI #3145
386 Redemption Way
McCormick SC 29899

Return
A Copy

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SEP 16 2021

September 7, 2021 SC Court of Appeals

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

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SEP 14 2021

S.C. SUPREME COURT

Dear Clerk of Court, please find enclosed the above Petitioner's Motion for Bond (Habeas Corpus) pursuant to SCACR Rule 243(K) to be filed in this court, Jurisdiction is proper pursuant to our South Carolina Constitution article V section 4. Can you assign a case number and return a copy. I have also enclosed proof of service as evidence of service upon you. I recently sent documents dated August 17, 2021, so I resend them.

Thank you

Terrell McCoy

9-7-2021

Proof of Service

I, Terrell McCoy hereby declare that on August 17, 2021, I placed petition (Habeas Corpus for Bail) inside a prepaid stamp envelope to be mailed to the following:

The Honorable Alan Wilson
P.O. Box 11549
Columbia SC 29211

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

