

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

MAY 03 2013

APPEAL FROM FAIRFIELD COUNTY S.C. SUPREME COURT
D. GARRISON HILL, CIRCUIT COURT JUDGE
CASE No. 2012-213133

Sherman Boyd

PETITIONER

vs.

SOUTH CAROLINA

RESPONDENT

PRO SE JOHNSON PETITION FOR WRIT HABEAS CORPUS

Sherman Boyd 252465
KCI BII-47
4344 Broad River Rd.
Columbia S.C.

29210

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ISSUE PRESENTED

I. Whether Plea Counsel had a Conflict of Interest in that he had previously Prosecuted the Petitioner on a Drug Charge in 2005, in front of the Honorable Brooks Goldsmith. Then in 2010 Counsel of Record represented the Defendant on a Drug Charge in front of the same Judge, the Honorable Brooks Goldsmith.

II. Ineffective Assistance of Counsel due to the fact that Counsel did not assist the Defendant during his Plea Bargain Process with competent advice. With the end result the Plea was rejected. And the Defendant was given an excessive sentence.

ARGUMENT

I
The Defendant was Appointed Counsel on April 4, 2011. On that very same day Counsel was given a Plea offer to the Defendant case. Which he states that he had no knowledge of. In the fact that the Defendant case was called to trial nine days after arrest. Counsel states he had little to no knowledge of the Defendant case. And he states he could not assist the Defendant with his Plea process. The Plea was rejected on April 4, 2011 the Prosecution moved to give the Defendant an excessive sentence due to the fact of ineffective assistance. Counsel states he could not render effective assistance until he knows what the video shows.

II
Conflict of Interest occurred when the Defendant previous Prosecutor now Counsel of Record represented the Defendant in front of the same Judge that he had previously prosecuted the Defendant in front of. The Honorable Brooks Goldsmith See Sentencing sheet JUDGE CODE 139

Argument I

INEFFECTIVE ASSISTANCE OF COUNSEL

When The Defendant QUOTE STRICKLAND, THE Defendant would like to show that THERE WAS A REASONABLE PROBABILITY THAT BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS THE RESULT OF THE PLEA PROCEEDING WOULD HAVE BEEN DIFFERENT WITH COMPETENT ADVICE

Read Page 58 Line 5-8

Counsel states "I BELIEVE MR. BOYD WAS ONE OF THOSE I LIKE EVERY C.I. BUT DIFFICULT FOR ME TO GIVE YOU AN EDUCATED ANALYSIS OF YOUR CASE UNTIL I KNOW WHAT THE VIDEO SHOWS"

Rp. 58 Line 11-17

Counsel states "I'M CERTAINLY NOT GOING TO ASK YOU TO PLEA TO SOMETHING THAT CARRIES AS MUCH TIME THAT MR. BOYD IS LOOKING AT. SO I KNEW WHEN WE HAD THAT FIRST CONVERSATION (ON APRIL 4, 2011) AT THAT ROLL CALL I DIDN'T HAVE THAT INFORMATION HIS CASE CLEARLY WAS MOVING QUICKLY, QUICKER THAN I WOULD HAVE LIKED IT QUITE FRANKLY.

Read Page 58 Line 17-25

Counsel told the Defendant that his Case was one that he knew that Narcotics officers were Interested in Pursuing when Defendant came to Court in April. I Cant Say That I had Seen the VIDEO that Day when we had that Roll call, but I DID convey to him that the solicitor had Put it on the Trial list. I Think it was a Second Appearance which is very fast but within the scheduling order " when a lawyer advises his client to Plea Bargain to offense which attorney has not Investigated there is no Presumption that Counsel has Exercised Reasonable Professional Conduct U.S.C.A. Const (6)

Rp 59 Line 1-3

Counsel states " That he Conveyed to Mr. Boyd what he knew the offer to be, the knowledge he had about the Case and likely told the Defendant that he haven't Seen the VIDEO yet

Remand was Required to Determine whether Defendant was Prejudiced by Counsel failure to Investigate Crime to which, upon Counsel's Advice Petitioner Pled Guilty.

Woodard v. Collins 898 F.2d 1027-1029 (5th Cir 1990)

The District Court held that Failure to Investigate Constituted Constructive Denial of Counsel. Counsel Omissions Constituted Ineffective Assistance of Counsel and the Case was Remanded so that the Court below may Make Findings of Facts as to whether Defendant was Prejudiced Thereby.

As a Threshold Issue, we must Determine whether the Failure of an Attorney to Investigate the Court in a multi-Count Indictment to which the Defendant pleads Guilty Constitutes Bad Lawyering or No Lawyering

In Both Cases the Accused is Denied his Sixth Amendment Right to Effective Assistance of Counsel because there is a Serious Doubt as to the Reliability of the Conviction. See *Strickland vs. Washington*.

At the time of the Defendant Plea Process Counsel was not able to assist the Defendant, During one of the Critical Phases of the Proceeding To note the Prevalance of the Plea Bargaining is, in order that these Benefits can be Realized however, Criminal Defendants Require effective Assistance During Plea Negotiations Any thing less...

Might Deny a Defendant effective Representation by Counsel at the only stage when legal aid and Advice would help him. *Massiah vs. State*

The Defendant states.... That he did not receive competent advice, or effective assistance of counsel during his plea negotiations phase. Counsel stated that he had little to no knowledge of the defendant case while the plea was being offered on that day due to counsel's deficient performance and lack of educated analysis, the defendant was not rendered effective assistance of counsel. On the advice of counsel the plea offer was rejected due to the lack of knowledge counsel had about the case.

The United States District Court for the Eastern District of Michigan, Denise Page Hood J. 2009 WL 817712, conditionally granted the petition requiring the state to offer the plea deal that the defendant would have taken but for his attorney's ineffective assistance. During plea negotiations defendants are entitled to effective assistance of competent counsel.

The Defendant would like for the Court to look at in context. The Strickland Prejudice Test requires a Defendant to show a reasonable possibility that the outcome of the plea process would have been different with competent advice. Here the Defendant seeks relief from Counsel's failure to meet a valid legal standard, which caused Defendant to lose benefits he would have received but for Counsel's ineffective assistance.

MISSOURI V. FRYE

To show prejudice where a plea offer has lapsed or been rejected because of Counsel's deficient performance, Defendants must demonstrate a reasonable probability both that they would have accepted the more favorable plea offer had they been afforded effective assistance of Counsel and that the plea would have been entered without the prosecution's canceling it or the trial court's refusing to accept it. Defendant argues that with effective assistance he would have accepted an earlier plea offer as opposed to entering an open plea.

The Reality is that Plea Bargains has become so central to the administration of the Criminal Justice System that Defense Counsel have Responsibilities in the Plea Bargain Process. Responsibilities that must be met to Render the Adequate Assistance of Counsel that the Sixth Amendment Requires in the Criminal Process at all Critical Stages

The Question was asked of Counsel Pg 57 Line 21 Do You Recall meeting with the Defendant and Talking with him About an Initial Plea offer?

(A) Counsel states "I Recall seeing him at a Roll Call of Course, these are... were a little Informal in Fairfeld, when you come to your First Roll Call we Dont have a lot of Information in this Case, the solicitor likely have some type of Plea offer but we Dont know a Heck of a lot About it. We talk About whether you should do that at First Appearance or Second Appearance. I Believe Mr. Boyd was one of those like Every C I Guy was, Difficult for me to give you an Educated Analysis of your Case until I know what the Video Shows.

We are one of those Jurisdictions in Fairfeld that the Jury has Got to See hand to hand.

Or You're Probably not going to get Connected and if You're not going to get Connected. I'm Certainly not going to ask You to Plead to Something that Causes as much time that Mr. Boyd is looking at. So I know when we had that First Conversation at Roll Call I Didn't have that Information, His Case clearly was moving Quickly, Quicker than I would like it Quite Frankly" Your Honor we would just Respectfully ask that You Consider Granting Mr. Boyd Relief Based on the Fact of Ineffective Assistance of Counsel. This is a Case in which the attorney has actually stated that the Prosecution Fast Tracked this Case. The Defendant was Arrested on Dec 21 2010 and on April 4 2011 which was Ninety Days later, The Defendant was up for Trial. In fact Counsel only had two opportunities to actually meet with the Defendant. And one of those opportunities was During his Plea Bargain Process which Counsel of Record states he was not able to offer an Educated Analysis or Effective assistance to the Defendant which effected his Plea Process. As a Result of those actions and Inactions that the Defendant was actually Prejudiced and in Essence he Received an Excessive sentence. For the lack of knowledge Counsel had of the Defendant Case. The Plea offer was Rejected.

There was a Reasonable Probability that but for Counsel Unprofessional Errors. The Result of the Proceeding would have been Different with Competent Advice

Hill vs. Lockhart

When a Criminal Defendant Rejects a Plea Bargain we will Examine Separately whether Trial Counsel was ineffective with respect to both the Defendant's Rejection of the offer and his ultimate Decision to Plead Guilty. The Defendant is alleging that his Guilty Plea was Induced by Ineffective Assistance of Counsel and that Counsel Advice was not within Competence Demanded of Attorney's in Criminal Cases

Competence Rule 1.1

A Lawyer shall Provide Competent Representation Requires the legal Knowledge Skill, Thoroughness and Preparation Reasonably Necessary for the Representation

Argument II Conflict of Interest

In May of 2006 the Defendant Current Counsel was his solicitor on a Prison Day charge in which he Prosecuted the Defendant on in front of Judge Brooks Goldsmith (Judge code 139) Now on the Defendant Current Conviction for a Day charge, the Defendant Prison solicitor is Counsel of Record in which he Represented the Defendant in front of the same Judge Brooks Goldsmith (code 139) See Sentencing sheet for May 2006 also May 2011.

Rp 10 line 22-24

Counsel states " I chose Mr. Boyd Case because I was hoping I could help him out. I was hoping I could get him more than what were talking about today.

Zuck v. State

States that an Actual Conflict of Interest occurs: when a Defense attorney places himself in a situation inherently conducive to Divided loyalties. The Court has set forth a Test to Determine when an actual Conflict of Interest occurs.

Cyler v. Sullum

Defense Counsel has an Ethical obligation to avoid conflicting representation AND to advise the Court promptly when a conflict of interest arises, During the course of Trial "ABA" Code of Professional Responsibility Representation of a Criminal function is to assist the Defendant, and hence Counsel owes the client a Duty of Loyalty. A Duty to avoid Conflicts of Interest.

Holloway v. Aek

Courts failed to inquire into Conflict of Interest after Defense Counsel's Pretrial warnings of Conflict violated Right to Effective assistance of Counsel, Because Court has the Duty to avoid Potential Conflict.

Rules of Professional Conduct 3.7

Recognizes that a Balancing is Required between the Interest of the Client and those of Tribunal and the opposing Party. Whether the Tribunal is likely to be misled or the opposing Party is to suffer prejudice Depends on the Nature of the Case

General Principles

A Conflict of Interest may exist before Representation is undertaken. In which event the Representation must be Declined, unless the Lawyer obtains the Informed Consent of Each Client under the Conditions Ignorance caused by a failure to Institute Such Procedures will not Excuse a Lawyer's violation of This Rule

Rule of Professional Conduct 1.12

Like Former Judges, Lawyers who have served as a Arbitrators, Mediators or other Third-Party Neutrals may be asked to Represent a Client in a matter in which the lawyer Participated Personally and Substantially.

This Rule Forbids Such Representation unless all of the Parties to the Proceedings give their Informed Consent, Confirmed in Writings

In Order to Establish a violation of the Sixth Amendment Right to Counsel Based on Conflict of Interest, A Defendant who Raised No objection at Trial must Demonstrate that an Actual Conflict of Interest adversely affected his lawyers Performance. A Defendant who shows that a Conflict of Interest Actually Affected the Adequacy of his Representation need not Demonstrate Prejudice in order to obtain Retef. Amend (6)

The Sixth Amendment Guarantees Defendants Effective albeit Not Perfect, Representation by Counsel, which Guarantee Includes Representation that is Free of any Actual Conflicts of Interest with Counsel
Lumax v. State

For a Claim of Ineffective Assistance of Counsel based on an attorney's alleged Conflict of Interest a Defendant need not Demonstrate Prejudice if there is an Actual Conflict.
Const. Sixth Amendment

The Defendant also Testified at the Evidentiary hearing that the Public Defender who was Appointed to Represent him on his Current Drug Charge, had actually Prosecuted him on Drug Charges back in 2006 P. 36 line 3-8. That should be sufficient to show Conflict of Interest. *State v. Childers*

During the Defendants Post Conviction Relief Hearing Judge D. Garrison Hill made a statement and a Question to the Court See Pg 69 Line 19 on to Pg 70 line 1-2. " I Recall Reading Sometime ago, is there any Authority on a former solicitor representing Defendant and whether that does become an issue. Ms White for the state answers that Mr. Frank says that there is Your Honor, This is one of the First Case I have had so I Don't have one in mind at this Point.... This is not something that's very common Counsel did not tell the Defendant about the Enhancement statutes or nothing at that time. If Counsel would have said the Enhancement statute, The Defendant would have said that Counsel Prosecuted the charge that was used to Enhance the Defendant Current Sentence.

UNITED STATES V. ZIEGENHAGEN

Defendant was convicted in the United States District Court for the Western District of Wisconsin Barbara B. Crabb of unlawful possession of a firearm. And his sentence was enhanced as result of previous convictions and he appealed. The Court of Appeals Flaum Circuit Judge, held that Defense Counsel's previous appearance against defendant at state sentencing hearing 20 years earlier. Represented actual conflict of interest

Attorney and Client

Government Employment in Prosecutorial Role against defendant and subsequent representation of the same defendant in defense capacity is not proper. In this case the prosecutorial role that the defendant counsel took in the Carter convictions was substantial enough to represent an actual conflict of interest. Counsel of record was the prosecuting attorney of record. He appeared at the defendant's 2006 drug conviction for PWID crack cocaine that conviction is used to enhance the defendant present sentence. This former representation amounted to an actual conflict of interest.

Pg 60 line 5

Counsel of Record states that he thinks at the time of this Occurrence the Defendant charge fell under the old statute where his Previous charge of Possession would Count against him.

Unfortunately I think if Mr. Boyd were Prosecuted today the Result could be Different. The Defendant Argument is that his old charges of Possession should not have Counted towards his Current Conviction. Defendant Previous Charge was Aug 1998 over the Ten Year statute that is Spike of In Code 1976 § 44-53-470 Second or Subsequent offense "Defined"

Code 1976 § 44-53-470

Code of Laws of South Carolina 1976 annotated
For an offense Involving a Controlled substance other than Marijuana Pursuant to This Article the offender has been Convicted within the Previous Ten Years of a First violation of a Controlled substance offense Provision of This Article or of another state or Federal statute Relating to Narcotic Drugs, Depressants, Stimulants or Hallucinogenic Drugs

(B)

It a Person is Sentenced to Confinement as the Result of a Conviction Pursuant to This Article the Time Period Specified in This Section Begins on the Date of the Conviction or on the Date of the Person is Released from Confinement Imposed for the Conviction whichever is later.

15 yr
no prob, susp. sent

STATE OF SOUTH CAROLINA)
)
COUNTY OF Fairfield)
STATE VS.)
Sherman Durand Boyd)
AKA: _____)
Race: B Sex: M Age: _____)
DOB: 7/9/72 SS#: _____)
Address: _____)
City, State, Zip _____)
DL# _____ SID# _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: _____
05 -GS- 20 - 420
AW#: H840152
Date of Offense: 8/4/05
S.C. Code §: 44-53-275
CDR Code #: 0 1 1 1 1 1 2
 CASE RESTORED
 SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: PWIA Crack
in violation of § 44-53-275 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 1 2
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State 2-10-yr
ATTEST: Win Zin [Signature] [Signature]
Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 7 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on: Federal Sentence
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS _____

PTUP _____
days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: ATU

Recipient: _____
*Fine: \$ _____
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
§ 35.13 (Public Def/Prob) \$500 \$ _____
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 6.75
TOTAL \$ 231.75

Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Betty G. Beckham
Clerk of Court/ Deputy Clerk
Court Reporter: Nancy Monteith

PRESIDING JUDGE [Signature]
Judge Code: _____
Sentence Date: May 17, 2006

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Fairfield
STATE VS. SHERMAN BOYD
AKA:
Race: B Sex: M Age: 38
DOB: 07-19-1972 SS#:
Address: SUPERFAN ROAD
City, State, Zip: WINNSBORO, SC 29180
DL#: SID#:

INDICTMENT/CASE#: 2011-GS-20-72
A/W#: M400913
Date of Offense: 12/10/2010
S.C. Code § : 44-53-0375(B)(3)
CDR Code #: 3039

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Drugs / manufacture, distribution, etc. of cocaine base, 2nd

in violation of § 44-53-0375(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3039 3DIS
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST Maxwell, Riley J SC Bar# 74878 Defendant Attorney for Defendant SC Bar# 69735

WHEREFORE, the Defendant is committed to State Department of Corrections, County Detention Center,
for a determinate term of 12 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.
CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:
*Fine:
§ 14-1-206 (Assessments 107.5%) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 8.40
TOTAL \$ 288.40

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other: A.T.U.

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Betty J. Beckman
Court Reporter: Hilda Gerber
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 139
Sentence Date: May 9, 2011

STATE OF SOUTH CAROLINA
IN THE STATE SUPREME COURT

CERTIORARI TO FAIRFIELD COUNTY
D. GARRISON HELL, CIRCUIT COURT JUDGE

SHERMAN BOYD

PETITIONER

v

STATE OF SOUTH CAROLINA

RESPONDENT

APPELLATE CASE NO. 2012-213133

CERTIFICATE OF SERVICE

I CERTIFY THAT A TRUE COPY OF THE PRO SE JOHNSON
PETITION FOR WRIT OF CERTIORARI IN THIS HAVE BEEN
SERVED ON ROBERT M. PACHAK AT SOUTH CAROLINA COMMISSION
ON INDIGENT DEFENSE DIVISION OF APPELLATE DEFENSE P.O. Box
11589 Columbia S.C. 29211-1589

Sworn To Before Me This
28 Day of April, 2013

W. J. Wesley

Notary Public For South Carolina

My Commission Expires October 8, 2014

Sherman Boyd

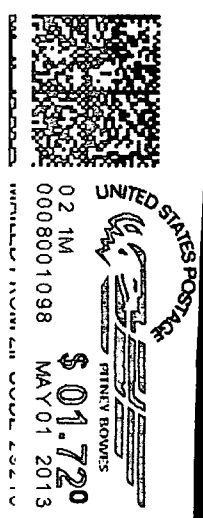
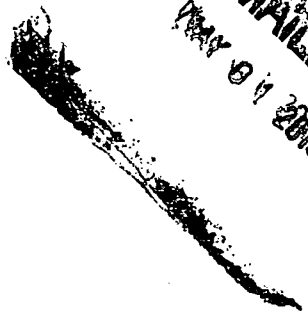
SHERMAN BOYD

PRO SE JOHNSON PETITIONER



Sherman Boyd 258465
KCI BII-47
4344 Broad River Rd
Columbia S.C. 29210

KCI MAILROOM
MAY 01 2013



DANIEL E. SHERROUSE, Clerk of Court
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina
29211