

RECEIVED

Exceptions tolling statute of limitations in the interest of fairness and fundamental issues relaxing the bar to present claims unknowingly waived that outweigh Court's interests in supreme courts

Petitioner Respectfully requests and Prays for the Honorable Supreme Court of South Carolina to make an exception in my case due to the many Due Process violations and procedural irregularities that have occurred, the fraudulent misrepresentations that the State still wants to benefit from by the fact of concealing the fact that my residence in 1994 case during the arrest was and still is in Darlington County, not Florence County and that the State is merely relying on a postal-services only address to claim jurisdiction by omitting the fact that the true location is in fact Darlington, S.C. That on October 7th 1994 Officer Phill Hanna did cross County line, came to my house without a warrant, came in uninvited, arrested me, searched and did seize id. during illegal search and arrest, and a check-book in which he also seized and then did contact Darlington County about said check-book alleging that it came from 325, R. Bar M. Ranch Rd, Darlington, S.C. a residence directly beside my Landlord and my house that he had to pass in his entrance to our locations, and also had to pass on the way back out of this road, that ends in Darlington County, where our residence was and still is located. That he also made fraudulent misrepresentations to a magistrate constituting a fraud upon the court in want of jurisdiction to cover up his official misconduct of not contacting Darlington County officials before entering into County to conduct this illegal arrest, search & seizure, to then fabricate evidence and illegally detain me for a month before an arraignment & bond hearing violating 48-hour rule for a probable cause determination for a week and a delay in arraignment for a month. All issues that counsel preserve these fourth amendment violations and a false imprisonment claim due to counsel's incompetence I was denied effective counsel and Due Process... a complete violation of my fundamental rights.

#2 Exhibit-A "Explanation"
2021-CP-21-1712

exceptions relaxing bar on limitations

Webb v. State 314 SE2d, 839 (1984) Trial Court's grant of PCR relief was proper under McDuffie v. State, and also see Case v. State 289 SE2d, 413 (1982) Basically I have been denied counsel actively and constructively and all counsel have been ineffective in representations. Requesting remand to appoint counsel in order to prevent having to file successive PCR application in the interest of fairness and review of violations of fundamental rights...

Fraud misrepresentation or deception as estopping reliance on statute of limitations 43 ALR3d, 420 (1972). Where legal proceedings restrain one party from exercising a legal remedy, running of limitations is post-poned or suspended during such restraint. City of Hutchinson v. Hutchinson 141 P. 589 (1914). Jaune v. Kane 124 SE 247 (1924). One falsely represented thus misleading plaintiff cannot setup limitations. Casey v. Louisiana 121 S Ct, 104 (2000). For an affiant to make an intentional material misrepresentation on a warrant to a magistrate constitutes fraud upon the court. Beard v. State 88 NE2d, 769 (1949) a guilty plea not entered freely and voluntarily and understandingly is "fraud upon the court" as well as the accused. A guilty plea is a contract, any contract tainted with fraud is void. Godly v. U.S. 5 F3d, 1473 (1993).

State v. Milne 355 N. super 355 (2002) citing, State v. Martin 677 A2d, 1106 (1996). When meritorious issues are also presented, our interest in affording defendants an access to both state and federal PCR and habeas corpus review outweighs our interest in finality. ... See also, Precioso 609 A2d, 1290 (1992). We are not so convinced of our infallibility, or so jealous of our sovereignty, as to deem review an undesirable intrusion on our adjudications. Simply put, considerations of finality and procedural enforcement count for little when a defendant's life or liberty is in the balance, ...

violating my Fourth Amendment and Sixth Amendment Rights both being fundamental rights deprived my Due Process... an exception to procedural bars on post-conviction. Rowland v. State 42 So3d, 503 (2010), citing Brooks v. State 46 So2d 94 (1950), also Kelly v. State 306 So3d, 776 (2020). We recognize that certain fundamental rights - including extraordinary circumstances, as a right to effective counsel are exempted from procedural bar.

#3 Exhibit-A "Explanation"

#2021-CF-21-1712

standing, adverse effects, collateral consequences and legal cognizable interest at stake remaining live from the actual injury for a favorable judicial decision in the vacatur of this conviction stopping prejudice...

I am still suffering persistent lingering effects that flow directly from this invalid prior-conviction. To allow this conviction to stand would result in continued legal consequences and prejudice that are traceable to my current conviction suffering anew from prior counsel ineffectiveness that deter parole, work-credits, work-release and the stigma of having it on my record that was used in my 1st-Degree Burglary and after having prior convictions... I have a legal cognizable interest at stake that remains live from the actual injury throughout the litigation. To show that counsel in 1995-GS-21-110 case was ineffective and that this unlawfully obtained conviction in violation of my Fourth, Fifth, Sixth and Fourteenth U.S. Constitutional Rights and my S.C. Constitutional rights is invalid to support enhancement on my current conviction & sentence. Also to show that Counsel in my 2019-GS-21-1520 & 1523 case is also ineffective in failure to investigate this prior convictions as an aggravating factor and evidence to support Burglary First Degree charge. Prior conviction tainted with ineffective assistance of counsel shall not be used for enhancement of subsequent offense. Prior convictions in violation of Fourth Amendment should not be used to support enhancement. I also have a stake in stopping its normal function in order to prevent the use of for purpose of enhancement should I be faced with a trial in the future and to prevent use for any impeachment purposes. Also to regain my work-credits, to shorten the length of incarceration. To regain work-release eligibility to rehabilitate and save money so when I finish sentence, I can leave prison in a peaceable manner. To also have my current conviction vacated from a violent offense to shorten the length of any supervision or parole and to stop its prejudice to my current custody level that remains medium that could be changed to minimum in order to gain all above privileges.

exceptions relaxing bar on limitations

Gary v. State 557 SE2d 662 (2001), Rule 71.1(d), Under this rule I was appointed Counsel Steven Fowler to represent me who is also representing me on 2019-CP-21-2808 case which relates back to this case for Burglary First Degree and having two or more prior convictions. Counsel shall be given a reasonable time to confer with client which he fails to do by ignoring my phone calls and not letting me know the status of my cases. Counsel shall insure that all available grounds for relief are included in the application and shall amend if necessary, yet has failed to do so denying my statutory right to the effective counsel under Rule 71.1(d), and 17-27-90...

Thus, prejudicing this case 2021-CP-21-1712 and my 2019-CP-21-2808 case making the whole process completely unreliable. He is being ineffective by failing to show prior Counsel Steven Fowler was also ineffective and that Counsel Lawson is also ineffective in case 2019-CP-21-2808. Prejudicing both case by not performing his essential duties after he was appointed to represent me on both cases. He also failed to utilize discovery methods under S.C. Rules of Civil Procedure to obtain a copy of the involuntary confession issue raised in 2019-CP-21-2808 case that Counsel Lawson committed perjury on the witness stand about at recent hearing. All he had to do was get a copy to bring to court but failed to, thus, it allowed her to get on the stand and lie about it by saying she seen James Allen III read me my rights in interrogation which was a complete lie. Thus he also made that whole process completely unreliable...

In the interest of fairness petitioner... Hutchinson respectfully request this Honorable Court to Remand his case back to PCR Court, to also appoint me new counsel to represent me on this case as I am raising issues of material fact regarding the one year statute of limitations and by also alleging in my PCR-application that I am still suffering prejudice and persistent lingering effects. See McDuffie v. State 277 SE2d 593 (1981) which is supported by Jackson v. State 489 SE2d 915 (1997) that acts as an exception to the time bar as well... Leamon v. State 611 SE2d 494 (2005) Doesn't overrule them...

#5 Exhibit-A "Explanation"
2021-CP-21-1712

exceptions in the interest of fairness
tolling statute of limitations relaxing time-bar

Violation of my Fourth Amendment fundamental Rights, Ineffective assistance of counsel violating Due Process also serving as a jurisdiction defect and Fraud upon the Court making actions of the court void and also subject to a collateral attack. That from its inception has worked to my disadvantage and that I have a substantial stake in the outcome to invalidate this complained of conviction by also showing counsel lawson in 2019-CP-21-2808 case is also ineffective for failure to investigate this prior conviction to have it set aside to help me also nullify my designation as a career offender, also by the fact that my Post-conviction counsel Steven Fowler was appointed to me on this case 2021-CP-21-1712 in June of 2022. I have sent him a brief and issues to be raised and have contacted his answering service secretaries to leave him messages to contact me concerning issues to be raised. He also represents me on the 2019-CP-21-2808 case and on October 18th 2022 at that hearing he did speak to my mother as a witness that we did live in Darlington County in 1995 case and that she was also summoned to serve jury duty in Darlington County while we lived there also. I have girlfriends attest that even though these locations have a Florence County postal addresses that they pay their land taxes in Darlington County. During that PCR-hearing I was told that I could only raise certain issues and we would raise these issues when we come to the hearing on the 2021-CP-21-1712 case, yet, since Counsel was appointed in June 2022 and I spoke with him on phone at Turbeville Corr. Inst on issues and asked him if he was related to the trial counsel who also has the name of Steve Fowler if he was related or was there any conflict of interest. He said no he was not related, but has failed to do any of his essential duties by amending my PCR-application and conferring with me, he has instead been ineffective in violation of my 5th Statutory right to counsel failing to preserve my claims and making the whole process completely unreliable...

#6 Exhibit-A "Explanation"
2021-CP-21-1712

Exceptions relaxing bar on limitations continued...
Layered ineffective Counsel

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Structural Errors

It is necessary that a postconviction petitioner have the ability to amend his per application in order to properly plead and attempt to prove layered claims of ineffective counsel where dismissal of the petition is imminent on grounds that such claims were not adequately pled. Carson v. Penn., 128 Sct. 344 (2007), Com. v. Perez 799 A2d 846 (2002). Right to counsel on indigent petitioners' first post-conviction is not limited to a mere naming of an attorney. To have any meaning, rule also requires counsel to provide meaningful process, even on an untimely petition to at least investigate if whether it fits to one of exceptions to timeliness. Com. v. Bradley 261 A3d 381 (2021). Not only does PCR-petitioner have a right to counsel, but he is also entitled to effective counsel. Matter of Fowler 197 Wash. 2d 46 (2021).

Extraordinary circumstances justifying equitable tolling to statutory time limit include but are not limited to bad faith, deception, or false assurances as in some cases a petitioner's own counsel, Wilkinson v. State 307 So3d 1231 (2020). Defendant raised sufficient questions of fact as to whether defense counsel's failure to file a motion to suppress was deficient performance as would constitute an exception to time bar for hearing. Bowers v. McFadden 153 F. supp. 3d 875 (2015 D3.C.). PCR counsel is preventing my underlying claims of ineffective counsel that have merit from being addressed prejudicing case to caused default... See Martinez v. Ryan 132 Sct. 1309 (2012) and, U.S. v. Cronin 104 Sct. 2039 (1984). cited in Williams v. State 918 NW2d 501 (2014). PCR counsel has created a structural error. Courts have found structural error where counsel allowed claimant's PCR application to be dismissed see Hadz 804 NW2d 253 also Roe v. Flores-Ortega 120 Sct. 1029 (2000). Such a conclusion make sense as "no presumption of reliability can be accorded to judicial proceedings that never took place. citing Doakery v. State 881 NW2d 469 (2016),

#7 Exhibit-A "Explanation"

2021-CP-21-1712

Webb v. State 314 S.E.2d 839 (1984)

McDuffie v. State 279 S.E.2d 595 (1981)

Case v. State 289 S.E.2d 413 (1982)

Fraud, misrepresentation or deception as estopping a reliance on statute of limitations 43 ALR 3d 429 (1972).

City of Hutchinson v. Hutchinson 141 P. 589 (1914).

Jayne v. Kane 124 S.E. 247 (1924)

Casey v. Louisiana 121 S.Ct. 104 (2000).

Beard v. State 88 Nezd. 769 (1949).

Godly v. U.S. 5 F.3d 1473 (Fed. Cir. 1993).

State v. Milne 355 N.J. Super 355 (2002).

State v. Martin 677 A.2d 1106 (1996).

State v. Precioso 609 A.2d 1280 (1982).

Rowland v. State 42 So3d 503 (2010).

Brooks v. State 46 So2d 94 (1950).

Kelly v. State 306 So3d 776 (2020).

Gary v. State 557 S.E.2d 662 (2001), Rule 71.1(d).

Jackson v. State 489 S.E.2d 915 (1997).

Leamon v. State 615 S.E.2d 494 (2005).

Carson v. Pennsylvania 128 S.Ct. 384 (2007).

Com. v. Perez 799 A.2d 848 (2002).

Com. v. Bradley 261 A.3d 381 (2021).

Matter of Fowler 197 Wash. 2d 46 (2021).

Wilkinson v. State 307 So3d 1231 (2020).

Bowers v. McFadden 153 F. Supp. 3d 875 (D.S.C. 2015).

Martinez v. Ryan 132 S.Ct. 1309 (2012).

U.S. v. Cronin 104 S.Ct. 2039 (1984).

Williams v. State 918 Nw2d 501 (2018).

Lado v. State 804 Nw2d 253 (2011).

Roe v. Flores-Ortega 120 S.Ct. 1029 (2000).

Dockery v. State 881 Nw2d 469 (2016).

Holland v. Florida 130 S.Ct. 2549 (2010). "It's like Counsel Abandoned me."

Citations for pages 1 through 6 showing standing, adverse consequences, legal standing throughout the litigation, exceptions for tolling limitations on PCR, and also PCR-Counsel ineffectiveness denying a my statutory right to effective counsel causing the whole process to be completely unreliable.

This lawyer will not answer my calls, all of them go to an answering service. Will not let me know the status of my 2019-CP-21-2808 case, and has not let me know anything on this 2021-CP-21-1712 case either.

#1 Exhibit-B "Explanation"
2021-CP-21-1712

Extraordinary Circumstances

This guilty plea is involuntary due to trial counsel's failure to inform of available defense and counsel's incompetence by acting along with Prosecution and Law Enforcement to permeate "Fraud upon the Court" that was used by deceitful contrivance that tricked me into admitting to plead guilty based upon fraud and misrepresentations from its very inception that deprived me of a fair trial worked to my disadvantage, deprived me of Due Process along with ineffective assistance of counsel making the court lack jurisdiction to enter a valid judgment & void... This conviction was obtained in violation of my United States and South Carolina Constitutions and the laws of this state and I denied my right to effective assistance of counsel thus, denying Due Process by fraud & misrepresentations...

Counsel was ineffective in failure to inform me of right to petition the court for a fair & just reason to withdraw my guilty plea that was induced by fraudulent influence and misrepresentations from the charges very inception by Officer Phill Hanna who conducted illegal arrest, search and seizure then failed to include Dartington County on my address in order to induce a magistrate to think he had probable cause to arrest outside of his County and Territorial Jurisdiction to illegally arrest, search & seize me and use illegally obtained evidence along with fraudulent misrepresentations to induce involuntary guilty plea.

Counsel was ineffective for failure to file a motion to suppress illegal arrest, search and seizure and failing to inform me that I could appeal denial of said motions. Counsel was ineffective in failure to file a motion to Quash the arrest obtained illegally outside Jurisdiction. Counsel was ineffective for failure to preserve and challenge veracity of the arrest warrant on a 4th amendment from KS v. Delaware claim prejudicing my case. Counsel was ineffective in failure to challenge and preserve issue of "fraud upon the Court" where law-enforcement permeated misrepresentations from its very inception that was also used to induce guilty plea.

Counsel was ineffective in failure to investigate, challenge or preserve 4th amendment violations that deprived me of a right to a fair trial, violated my South Carolina Indigent Defense act right and false-imprisonment claims where upon I was arrested without a warrant and my illegal detention was delayed for a month before being arraigned in magistrate court...

#2 Exhibit-B "Explanation"
2021-CP-21-1712

Affidavit of Merits

Involuntary

Fraud induced Guilty Plea by misrepresentations
delet, decay, Counsel Ineffective prevented me
from presenting defenses.

"Extraordinary"
Circumstances

Counsel was ineffective in failing to inform me that I could petition the Court to withdraw my guilty plea due to a complete misunderstanding in regards to my legal position and failed to file a motion to suppress illegally siezed evidence and file a motion to suppress the illegal, itself and that I could appeal a denial of ^{arrest} appeal in lower court. Counsel did fail to perform essential duties and did, along with the prosecution coerce me into a plea of guilt for an offense that I did not do, by trickery, fraud and "Fruit of Poisonous Tree," evidence, along with other complained of violations of my S.C. and U.S. Constitution's and the laws of this State. Due to Counsel's Incompetence in a complete failure to discover available defenses deprived me of my right to make an informed choice and the best way to make my defense to protect my liberty, thus causing me to be convicted on material misinformation and invalid premises, by an invasion of my Sixth Amendment Right to counsel I was deprived of Due Process amounting to a defect of a constitutional magnitude serving as a jurisdictional defect, making actions of the court void which are a subject to collateral attack, by inadequate assistance of counsel the Court did lack jurisdiction to enter a valid judgment. I was deprived of my due process, and without the constitutional violations no rational juror or trier of fact could have concluded guilt beyond a reasonable doubt. Circumstantial evidence does not tend to prove guilt in a burglary case, IF the evidence the state intended to use to trial in my defense and been entitled to a direct verdict of a acquittal. State v. Odoms 720 SE2d 48 (2011).

"Extraordinary Circumstances"

Counsel's failure to file motion to suppress evidence did render my guilty plea unknowing and involuntary... I was never made aware of alternative courses of action to either file motions to suppress or of the right to withdraw guilty plea induced by misrepresentations.

Counsel's incompetence caused me unknowing & involuntarily plea. Park v. Raley 1135 Ct. 517 (1992). The standard was and remains whether the plea was represented by a voluntary and an intelligent choice among alternative course of action. McCarthy v. U.S. 89 S.Ct. 1166 (1969). Ineffective assistance of counsel will excuse a waiver under post-conviction act as long as a petitioner had a constitutional right to counsel at state proceedings where counsel's ineffectiveness resulted in waiver of claims... See, Christy v. Pennsylvania 116 S.Ct. 194 (1995). If a plea is not voluntarily and knowing, plea has been obtained in violation of Due Process and is void... McCarthy, Beard v. State 88 Nezd 769 (1949). a guilty plea is to be entered freely and understanding, else it is "fraud upon the courts" citing Sanders v. State 85 Ind. 316 (1882).

The State procured by and therefore permeated guilty plea contract through fraud. Had the arrest warrant not omitted Darlington County from true address, the plea contract would never had been received... This plea contract being tainted from its inception is void, ab initio Godly v. U.S. 5 Fzd. 1473 (1993) citing... Jetsink v. U.S. 104 S.Ct. 2825 (1984). When the government knows the truth about a material fact but fails to say something it is fraud. The government as a party in an agreement has a duty to say something. It is a fraud when the government knowingly remains silent on an issue. Fraud voids contract as if it never existed. Sanders v. Smith 844 SE2d. 604 (2020) relief from judgment encompasses ones from courts which failed to provide Due Process. Ray v. Ray 647 SE2d. 237 (2007). Equitable relief is granted for extrinsic fraud because it is the fraud that prevented party from fully trying his case... Defendant may attack his guilty plea when the plea itself contains intrinsic irregularities. Schmidt v. State 909 NW2d. 776 (2018)... If a man or decide a person, he is in law guilty of fraud. Affiant who makes a material and intentional misrepresentation to a magistrate is "fraud upon the Court". Casey v. Louisiana 121 S.Ct. 104 (2000).

Taylor

"Explanation"
2021-CP-21-172

1175 Ct, 1088
(1997)

Missouri

#4 Exhibit-B "Extraordinary Circumstances"

Counsel was ineffective in failure to inform me that I could withdraw my guilty plea for a fair & just reason by the plea being coerced through fraud and misrepresentation...

Counsel's incompetence in failure to preserve my fourth amendment claims and gave erroneous advice to plead guilty and unknowingly not challenge fundamental violations...

By Law-Enforcement and the State omitting Darlington County from arrest warrant caused me to be ignorant regarding my legal position and was fundamentally unfair...

Unauthorized search without warrant and seizure of stolen property found violated my State and Federal Constitutions. Accused under a genuine misapprehension of constitutional right to exclude from evidence property illegally seized and thereby induced to plead guilty to offense is not foreclosed from subsequently withdrawing plea merely because there was no trial at which evidence was offered and it would have been futile does not constitute a waiver of rights. Richter v. Minnesota 86 Sct. 119 (1965). Without proof that I knew a violation of my fourth amendment 561 F2d. 540 (4CA 1977)... 98 Sct. 1885 (1976), on timely application the Court will vacate a guilty plea shown to have been unfairly obtained or given through ignorance 27 Harvard Law Rev. 86 (1913), Parris v. Commonwealth 52 Sct. 472 (1949). If it appears that a guilty plea was submitted in good faith under honest mistake of material fact or if such plea was induced by fraud, coercion or undue influence and otherwise would not have been made motion to withdraw plea should not be denied. The Law-Enforcement's impermissible conduct by its blatant misrepresentations did influence my decision to plead guilty and material to choice to enter plea and but for the misconduct I would not have plead guilty and went to trial. U.S. v. Fisher 711 F2d. 460 (4CA 2013). By my being misled into thinking I lived in Florence County by Government and that I would have illegally seized evidence used against me and no awareness of fourth amendment violations is what induced my plea. Counsel was ineffective and it was extraordinary circumstances in failure to inform of right to withdraw guilty plea and failure to preserve 4th amendment claims. Com. v. Strader 396 A2d. 697 (1979) Com. v. Faust 471 A2d. 1263 (1984), Com. v. Blackwell 392 A2d. 714 (1978)

The Extraordinary Circumstances of Ineffective
#5 assistance of Counsel in violation
Exhibit-B of Fundamental Rights...

Wilkerson V. State 307 So3d, 231 (2020). Under extr-ordinary circumstances ineffective assistance of counsel can constitute an exception to statutory time bar under PCR act. Defendant raised sufficient questions of fact as to whether defense counsel's failure to file a motion to suppress was deficient performance as would constitute an exception to time bar on filing PCR motion warranting a hearing...

State V. Boswell 707 SE2d, 265 (2011). Officer lacked authority to effectuate citizen's arrest... State v. Copeland 468 SE2d, 620 (1996), fruit of the 'Poisonous Tree' evidence must be excluded, Wong Sun V. U.S. 83 SCT, 407 (1963). Sikes V. State 468 SE2d, 560 (1994). Counsel was ineffective for failure to raise and to preserve Fourth Amendment claims. Horton V. California 110 SCT, 2301 (1990). Officer Phill Hanna was unlawfully located in place for plain view as he was out of his Territorial jurisdiction effectuating illegal arrest and search & seizure so he had no lawful right or access to evidence. Officer Hannah should have disclosed the truth to the magistrate judge about the locality of the arrest. The validity of the warrant must be assessed on the basis of the information that the officer disclosed, or should and had a duty to discover and disclose it to the magistrate. Instead he made the fraudulent misrepresentations in the warrant constituting the fraud from its very inception and also a claim under Franks V. Delaware 98 SCT, 2674 (1978). That counsel also failed to preserve along with the delay in arraignment on probable cause and false imprisonment claim. Kimmelson V. Morrison 106 SCT, 2574 (1946). Right to counsel is a fundamental right of a criminal defendant, hearing was required to determine whether defendant was prejudiced by counsel's failure to make timely suppression motion. People V. Spann 773 Ne2d, 59 (2002) Defense counsel's failure to present various pretrial motions did cause prejudice. Defense counsel's performance was deficient in failing to quash arrest and suppress cocaine. People V. Little 750 Ne2d, 745 (2001)...

#6 Exhibit-B

"Explanation"
2021-CP-21-1712

This guilty plea was unknowingly entered by mistake...

Invalid Prior Conviction still causing persistent effects gained in violation of my U.S. & S.C. Constitutional Rights... and the laws of this State that is considered void...

This guilty plea was coerced by fraud and misrepresentations.

Through an "invasion" of my Sixth Amendment Right to effective assistance of counsel I was deprived of Due Process amounting to a defect of a Constitutional magnitude serving as a jurisdictional defect. Lack of Due Process by invasion of a Constitutional Right is ground for review as an additional ground for sustaining the writ or because such a lack is a jurisdictional defect and actions of the Court Void.

The State, my Counsel and law used fraud to obtain my plea.

The Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving me of my life and liberty... The Judgement of a conviction pronounced without jurisdiction is void and one and one imprisoned thereunder may obtain relief...

That a person who happens to be a lawyer who happens to be present alongside the accused is not enough to satisfy the Sixth Amendment, because the right to counsel is the right to effective counsel and whether the violation is of Gideon v. Wainwright or Strickland v. Washington he is denied of his Constitutional Rights. Indigent accused without adequate assistance of counsel is also void. By reason of ineffective assistance of counsel, the court lack jurisdiction to enter a valid judgment... Ely v. Haugh 172 Nw2d 144 (1969). State v. Thomas 203 S2d 455 (1974). State v. Reedy 352 S2d 158 (1986)...

Lovejoy v. S Keen 75 Sct. 786 (1955), a void judgment being a nullity may be attacked at anytime and in any court upon assertion of a right claimed under such judgement... Officer Phill Hanna did on October 7th, 1994 exit Florence County and entered Darlington County without a warrant, he entered my house uninvited, illegally arrested me, illegally searched me and illegally seized evidence that was used to illegally confine me and to coerce me with the evidence that was excludable and then made fraudulent misrepresentations to a magistrate that was also used to trick me by pleading guilty by said fraud...

adverse collateral consequences can be found through recidivist statute, parole consequences and the stigma and burden of invalid prior conviction. *Tharpe v. Head* 535 F.2d 364 (2000), *Fairbanks v. State* 629 A.2d 13 (1993), *Paris v. State* 209 S.2d 493 (1974),

STRICKLAND V. WASHINGTON 104 S.C.T. 2052 (1984)

Tucker v. Peyton
357 F.2d 115
(4CA 1966)

HILL V. LOCKHART 106 S.C.T. 252 (1985) *United States v. Jackson*

U.S. V. CHRONIC 104 S.C.T. 2039 (1984) 952 F.2d 492, 494
(4CA 2020)

Counsel Lawson in my 2019-CP-21-2808 case is ineffective for not "STANDING" investigating it, nor filing direct appeal as instructed see PCR amendment. PETITIONER ALLEGING IN HIS PCR APPLICATION THAT HE IS STILL

SUFFERING PERSISTENT RESULTS FROM AN INVALID PRIOR CONVICTION EVEN THOUGH TIME HAS BEEN SERVED IS ENTITLED TO A HEARING. THE ACT CONTAINS NO IN-CUSTODY REQUIREMENT OR DEMONSTRATING OF PREJUDICE. THE CASE IS NOT CONSIDERED MOOT. 19. S.C. JURIS PRUDENCE, CONSTITUTIONAL LAW 6.1 (1994 SJPP.), *BROWN V. STATE* 814 SE2D, 146 (2018). *JACKSON V. STATE* 489 SE2D, 915 (1997), *McDUFFIE V. STATE* 277 SE2D, 595 (1981), *UNITED STATES V. SWABY* 865 F3D, 233 (44CA 2027), *UNITED STATES V. MORGAN* 74 S.C.T. 1556 (1968). THE PREPONDERANCE OF EVIDENCE STANDARD IS APPLICABLE TO COLLATERAL ATTACKS ON PRIOR CONVICTIONS BY PERSONS SEEKING PCR RELIEF, *STATE V. PAYNE* 504 SE2D, 335 (1998). THE GUILTY PLEAS WERE NOT AN INTELLIGENT CHOICE AMONG ALTERNATIVE COURSES OF ACTION, *MCCARTHY V. UNITED STATES* 895 S.C.T. 1166 (1969) AND WERE INVOLUNTARY *BOYKIN V. ALABAMA* 89 S.C.T. 1709 (1969), *PARKE V. RALEY* 113 S.C.T. 517 (1992), *BURGETT V. TEXAS* 88 S.C.T. 258 (1967). I WAS PLACED UNDER A MISAPPREHENSION OF LAW IN REGARDS TO MY LEGAL POSITION, *RICHTER V. MINNESOTA* 86 S.C.T. 119 (1965), DEFENDANT MUST BE ABLE TO PRESENT EVIDENCE SHOWING HIS ADMISSIONS WERE COERCED. *FAHY V. CONNECTICUT* 84 S.C.T. 229 (1963). COUNSEL WAS INEFFECTIVE, & PREJUDICED MY CASES. BUT FOR COUNSELS ERRONEOUS ADVICE I WOULD NOT HAVE PLED GUILTY, BUT WOULD INSISTED ON A TRIAL, AND I WAS DENIED EFFECTIVE COUNSEL AT ALL CRITICAL-STAGES OF THE PROSECUTION.

Carr v. Cox 312 F. Supp. 433 (W.D. Va. 1970) Petitioner may attack fully served sentence because recidivist sentence is founded thereon, *Jones v. Bales* 257 F. Supp. 293 (N.D.W. Va. 1966) *Spencer v. Hemma* 118 S.C.T. 978 (1998). My current no-parole eligibility is a concrete injury caused by this invalid conviction and redressable by its invalidation. This Court has presumed that wrongful convictions have continued collateral consequences, *Sibron v. New York* 88 S.C.T. 1889 (1964), *Benton v. Maryland* 89 S.C.T. 2056 (1969)

#8 Exhibit-B

"Explanation"
2021-CP-21-1712

Odeins v. State 720 SE2d 48 (2011),
 Parke v. Raley 113 Sct. 517 (1992),
 McCarthy v. U.S. 89 Sct. 1166 (1969),
 Christy v. Pennsylvania 116 Sct. 194 (1995),
 Beard v. State 84 NE2d 769 (1949),
 Sanders v. State 85 Ind. 318 (1892), Baykin v. Alabama
 89 Sct. 1709 (1969),
 Godly v. U.S. 5 F.3d 1473 (Fed. Cir. 1993),
 Jets, Inc. v. U.S. 108 Sct. 2825 (1994), Burgett v. Texas
 44 Sct. 258 (1967),
 Ray v. Ray 647 SE2d 237 (2007),
 Schmidt v. State 909 NW2d 778 (2018), Fahy v. Conn.
 84 Sct. 229 (1963),
 Casey v. Louisiana 121 Sct. 104 (2000),
 Taylor v. Missouri 117 Sct. 1088 (1997),
 Richter v. Minnesota 86 Sct. 119 (1965),
 Marzullo v. Maryland 94 Sct. 1885 (1974) 561 F2d 540 (4th 1977),
 Kercheval v. U.S. 47 Sct. 582 (1927),
 27. Harvard Law Review 86 (1913), State v. Payne
 504 SE2d 335 (1996),
 Parris v. Commonwealth 52 SE2d 472 (1949),
 U.S. v. Fisher 711 F.3d 460 (4th 2013),
 Com v. Strader 396 Azd. 697 (1974),
 Com v. Faust 471 Azd. 1263 (1984),
 Com v. Blackwell 392 Azd. 714 (1974), U.S. v. Morgan
 74 Sct. 1556 (1954),
 Taylor v. Alabama 102 Sct. 2664 (1982),
 Maryland v. Garrison 107 Sct. 1013 (1987),
 Wilkerson v. State 307 S03d 231 (2020),
 State v. Boswell 707 SE2d 265 (2011), Brown v. State
 814 SE2d 146 (2014),
 State v. Copeland 468 SE2d 620 (1996),
 Wong Sun v. U.S. 83 Sct. 407 (1963),
 Sikes v. State 468 SE2d 560 (1994),
 Horton v. California 110 Sct. 2301 (1990), U.S. v. Swaby
 865 F3d 233 (4th 2021),
 Franks v. Delaware 94 Sct. 2674 (1974),
 Kimmelson v. Morrison 106 Sct. 2574 (1986),
 People v. Spann 773 NE2d 59 (2002),
 People v. Little 750 NE2d 745 (2001), Sibron v. New York
 88 Sct. 1889 (1964),
 Ely v. Taugh 172 NW2d 144 (1969),
 State v. Thomas 203 SE2d 455 (1974),
 State v. Ruedy 352 SE2d 158 (1986), Benton v. Maryland
 89 Sct. 2056 (1969),
 Lovejoy v. Skeren 75 Sct. 786 (1955),
 Tucker v. Peuton 357 F2d 115 (4th 1966),
 United States v. Jackson 952 F3d 492 (4th 2020),
 Tharpe v. Head 533 SE2d 368 (2000), Jones v. Boles 257 F. Supp.
 Fairbanks v. State 629 Azd. 63 (1993), 293 W.D. W. Va. 1966),
 Parris v. State 208 SE2d 493 (1974),
 Carr v. Cox 312 F. Supp. 433 (W.D. Va. 1970),
 Spencer v. Kemna 118 Sct. 978 (1998).

#4 Exhibit-2

"Explanation"
2021-CP21-1712

Counsel was ineffective in failure to preserve fourth amendment violations for delay in arraignment that denied me a fair trial by failure to take before magistrate so that my right to counsel would be attached, in violation of the 5th. Defense of Indigents Act & failure to also preserve false imprisonment claim and have evidence suppressed and statement about checks that was also elicited by the use of illegally obtained evidence as a product of the illegal arrest, search and seizure by officer outside his territorial jurisdiction & no warrant.

The illegal arrest did not become legal nor did evidence between arrest and arraignment 30-days later. Counsel also failed to place the burden on the state to show existence of emergency or extraordinary circumstances. There was no intervening circumstances to dissipate the taint.

The temporary detention between arrest and trial did induce my guilty plea. See Townsend v. Burke 66 S.Ct. 1252 (1946) by the law enforcement violating my rights and breaking the laws of this state, to include S.C. 22-5-200, S.C. 22-5-110 and S.C. 23-17-90. Then delayed arraignment, and then presented fraudulent misrepresentation to magistrate.

I was denied a fair trial by the unnecessary delay, see State v. Gree 204 SE2d, 727 (1974), and the arrest was not a lawful one see... Thomas v. Colonial Stores Inc. 113 SE2d, 337 (1960). and Westbrook v. Hutchison 10 SE2d, 145 (1940). A priest v. U.S. 256 F2d, 294 (4th Cir 1954) we do not condone the use of evidence obtained in breach of law. People v. Mallory 365 NW2d, 673 (1984) suppression of evidence is required that would not have been discovered but for exploitation in delay in arraignment. Statement which the product of illegal arrest is inadmissible constitutionally. People v. Weed 442 NE2d, 227 (2005). Williams v. State 348 NE2d, 623 (1976). even if the arrest was based on probable cause and even if confession is voluntary it is subject to suppression being product of illegal detention. Com. v. Fiume 436 A2d, 1001 (1981) citing... U.S. v. Russell 93 S.Ct. 1637 (1973). The law Enforcement did violate Rule announced by Supreme Court in Riverside v. McLaughlin 111 S.Ct. 1661 (1991) 48-Hour rule for arraignment. See Gerstein v. Pugh 95 S.Ct. 854 (1975). Van Schaich v. U.S. 586 F.supp. 1023 (D.S.C. 1983). unreasonable delay constitutes false imprisonment. Mullins v. Sanders 554 SE2d, 116 (1999). Lewis v. Counts 8142d, 457 (1981). Madsen v. Hutchison 29 DP, 208 (1930). State v. Maldonado 373 P2d, 583 (1962). Relief by habeas corpus & false imprisonment action available.

CPW94 K007 GL

ARREST WARRANT

E-239411

E239411

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
FLORENCE

THE STATE

against

JAMES EDGAR HUTCHINSON

RT. 1, BOX 143A

Address:

FLORENCE, SC

Phone:

SSN:

Race:

Height:

Weight:

Date:

DL#:

DOB:

1971

Agency ORI#:

Prosecuting Agency:

Prosecuting Officer:

Offense: BURGLARY - 2ND & G.L. (NON-VIOLENT)

Offense Code:

Code/Ordinance Sec.

16-11-312

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

(LS.)

RETURN

A copy of this arrest warrant was delivered to defendant James Hutchinson on 11-21-94

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of
FLORENCE

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 28, 1980
SCA 518

Personally appeared before me the affiant PHILLIP HANNA who being duly sworn deposes and says that defendant JAMES EDGAR HUTCHINSON did within this county and state on 7/21/94 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of) in the following particulars:

DESCRIPTION OF OFFENSE: 16-11-312

BURGLARY - 2ND & G.L. (NON-VIOLENT)

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:

On 7-21-94, THE DEFENDANT, JAMES HUTCHINSON, DID BREAK AND ENTER THE RESIDENCE OF CRAIG TYLER. ONCE INSIDE THE DEFENDANT DID TAKE AND CARRY AWAY A FISHER HIRE STEREO, A BOOK OF CHECKS BELONGING TO THE VICTIM AND THE VICTIM'S DRIVERS LICENSE. REASON TO BELIEVE THE SAME: WHEN THE DEFENDANT WAS ARRESTED FOR FORGERY, CONCERNING THE ABOVE REFERENCED BOOK OF CHECKS, HE HAD IN HIS POSSESSION THE DRIVERS LICENSE OF THE VICTIM.

Sworn to and subscribed before me on 10/14/94

Signature of Affiant

Affiant's Address 6719 FRIENDFIELD RD.

EFFINGHAM, SC 29541

Affiant's Telephone 0006652121

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
FLORENCE

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 defendant JAMES EDGAR HUTCHINSON did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of) as set forth below

DESCRIPTION OF OFFENSE: 16-11-312

BURGLARY - 2ND & G.L. (NON-VIOLENT)

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 its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge

(LS.)

Judge Code: 636

Judge's Address 345 S. RIM MONAIRE BLVD.

LAKE CITY, S.C.

Judge's Telephone 8033945443

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

where I went to court concerning forgery charges without my right to counsel.

Parol Evidence "Explanation" 2021-CP-7-11P2 to show delay in arraignment and fraud.

#2 Exhibit

Warrant not served for 30 days after illegal arrest and delay in arraignment

FILED
NOV 17 3 41 PM '94
BERNICE B. PAPER
CCCP COUNTY, S.C.
FLORENCE

Burglary 2nd 16-11-312(a)

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

95-GS-21-110

THE DEFENDANT James E. Hutchinson IS COMMITTED TO THE
STATE DEPARTMENT OF CORRECTIONS/COUNTY FOR A TERM OF Six (6)

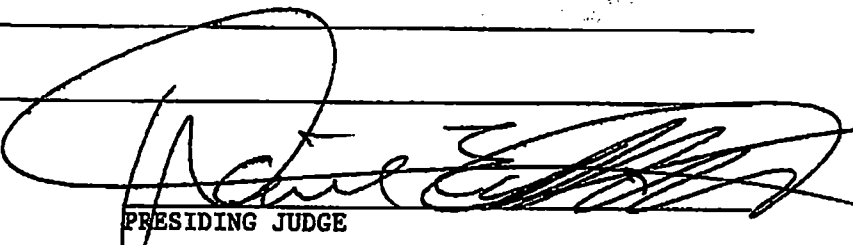
~~DAYS/MONTHS/YEARS AND/OR PAY A FINE OF \$ _____, PROVIDED UPON THE
SERVICE OF _____ DAYS/MONTHS/YEARS AND/OR THE PAYMENT OF A
FINE OF \$ _____, PLUS PAY/WAIVE ASSESSMENTS AS APPLICABLE*, THE
BALANCE IS SUSPENDED WITH PROBATION FOR _____ YEARS/MONTHS.~~

RESTITUTION - YES/NO

FOR PROPERTY DAMAGE	\$ _____	FOR PHYSICAL INJURY	\$ _____
3%	\$ _____	3%	\$ _____

TO BE PAID AT THE RATE OF \$ _____ PER MONTH BEGINNING _____,
TO THE FLORENCE COUNTY CLERK OF COURT FOR _____
_____. **

OTHER CONDITIONS:

DATE March 22, 1995 
PRESIDING JUDGE

*ASSESSMENT \$ _____ (62% of fine added back)
3% \$ _____
TOTAL \$ _____

CERTIFIED COPY REC'D
Date 3-23-95
F.C.S.O. [Signature]

Bernice B. Parker
FLORENCE COUNTY CLERK OF COURT

** Pay to Victim's Compensation Fund if subrogated.

#3 Exhibit-C "Explanation"
2021-CP-21-1712

Counsel Ineffectiveness in failure
to preserve 4th Amendment claims of
Delay in arraignment, probable cause
determination and False Imprisonment

Townsend v. Burke 66 Sct. 1252 (1948),
State v. Gue 204 SE2d 727 (1974),
Westbrook v. Hutchison 10 SE2d 145 (1940),
Armstrong v. U.S. 256 F2d 294 (4CA 1958),
People v. Mallory 365 NW2d 673 (1984),
People v. Weed 842 NE2d 227 (2005),
Williams v. State 348 NE2d 623 (1976),
Com. v. Fiume 436 A2d 1001 (1981),
U.S. v. Russell 93 Sct. 1637 (1973),
Riverside v. McLaughlin 111 Sct. 1661 (1991),
Gerstein v. Pugh 95 Sct. 854 (1975),
Van Schaick v. U.S. 546 F. Supp. 1023 (D.S.C. 1983),
Mullins v. Sanders 54 SE2d 116 (1949),
Lewis v. Counts 81 A2d 857 (1981),
Madsen v. Hutchison 290 P. 208 (1930),
State v. Maldonado 373 P2d 543 (1962),
S.C. Code ann. 22-5-200,
S.C. Code ann. 22-5-110,
S.C. Code ann. 23-17-90,

Ward v. State of Texas 62 Sct. 1139 (1942)
Exhibit-D Franks v. Delaware 96 Sct. 2674 (1978)

State v. Dudley 604 SE2d 623 (2005)
State v. Boswell 707 SE2d 265 (2011),
Casey v. Louisiana 121 Sct. 104 (2000),
Owens v. Russell 726 NW2d 610 (2007),
State v. Payne 504 SE2d 335 (1994),
Godly v. U.S. 5F3d 1473 (Fed. Cir. 1993),
State v. Alexander 814 SE2d 455 (2014),

The State's misinterpretation of my
Territorial Jurisdiction claims.

They are founded on Officer Phill Hanna who
executed an illegal arrest, search & seizure
outside his Territorial Jurisdiction then
presumed fraud upon the Court by putting the
misrepresentations on arrest warrant to
fool mag'strate to think I lived in Florence County,

Rebuttal To State's Erroneous Brief

If you read the entire PCR-application it will show that nowhere in it, did I assert that the Court lacked jurisdiction to accept my guilty plea. The State's misinterpreting my Territorial Jurisdiction Claims, This reference came out of the (2011) State v. Boswell citing State v. Dudley (2005) that says although that Territorial Jurisdiction is not a component of subject matter jurisdiction it is a fundamental issue that may be addressed at any time. This case is about an officer outside his Jurisdiction and the fooling of a magistrate Judge to unknowingly extend his jurisdiction to think that the arrest was proper, which is why in my response to the conditional order of dismissal I quoted Counsel was ineffective for failure to not challenge the veracity of the arrest warrant, the arrest where Officer committed Darlington County. That amounts to "fraud upon the Court" avoid instrument. Now the State wants to keep reasserting erroneous misrepresentations to cover up old misrepresentations. Through ineffective assistance of counsel, the court did lack jurisdiction to enter a valid judgment. The warrants issued by Florence County magistrate do represent fraud that was also used to trick me into an unintelligent & unknowingly guilty plea by said fraudulent misrepresentations. An affiant who does make misrepresentations to a magistrate judge on a warrant is "fraud upon the Court" Casey v. Louis 1215 Ct. 104 (2000). A claim of ineffective assistance of counsel is a mixed question of law and fact. In criminal cases, a violation of defendant's constitutional rights constitutes a jurisdictional error subject to review. Owens v. Russell 726 Nw2d 610 (2007), attacking prior convictions is a collateral attack. See State v. Payne 504 SE2d 335 (1998). This case was induced by extrinsic fraud and intrinsic fraud. Schmidt v. State 909 Nw2d 778. Defendant may attack his plea when the plea itself contains intrinsic irregularities. for a summary disposition to be proper in post-conviction proceedings the State must be able to prevail as if it were filing a summary disposition judgment motion in a civil proceeding and the moving party bears the burden of proving no material facts exist. Fraud in a contract voids the contract as if it never existed... Godly v. U.S., 5 F3d 1473 (Fed. Cir. 1993)

#2 Exhibit-D 2021 CP-21-1712

"Explanation"

The state in misinterpreting this issue and presenting a frivolous

STRICKLAND V. WASHINGTON 104 SCT.2052 (1984) argument

Officer did HILL V. LOCKHART 106 SCT.252 (1985) instead magistrate
to extend his U.S. V. CHRONIC 104 SCT.2039 (1984) Jurisdiction

Officer Phil Hanna executed an illegal arrest, search & seize
outside "TERRITORIAL JURISDICTION" then frauded the court

1995-GS-21-110

Incompetent

Invalid "Extraordinary Circumstances" Ineffective Counsel
Guilty Plea

ALTHOUGH TERRITORIAL JURISDICTION IS NOT A COMPONENT OF

SUBJECT MATTER JURISDICTION, IT IS A FUNDAMENTAL ISSUE THAT MAY

BE RAISED BY A PARTY OR A COURT AT ANYTIME. STATE V. DUDLEY 614

SE2D. 623 (2005), OFFICER WAS WITHOUT AUTHORITY TO EFFECTUATE A

CITIZEN'S ARREST OUTSIDE OF HIS TERRITORIAL JURISDICTION AND THE

"FRUITS OF THE POISONOUS TREE" EVIDENCE OBTAINED THAT WAS USED

TO INDUCE INVOLUNTARY STATEMENT TO HOLD ME IN DETENTION ALSO

INDUCING MY INVOLUNTARY GUILTY PLEA WAS INADMISSABLE UNDER THE

"EXCLUSIONARY-RULE". STATE V. BOSWELL 707 SE2D.265 (2011). STATE

V. ALEXANDER 818 SE2D.455 (2018). COUNSEL WAS INEFFECTIVE FOR

FAILURE TO FILE MOTION TO SUPPRESS EVIDENCE AND PRESERVE FOURTH

AMENDMENT CLAIMS, THAT INDUCED MY UNINTELLIGENT PLEA, SIKES V.

STATE 448 SE2D, 560 (1994). WARD V. STATE OF TEXAS 62 SCT.1139

(1942), TOWNSEND V. BURKE 68 SCT, 1252 (1948), TAYLOR V. ALABAMA

102 SCT.2664 (1982), GANS V. WARDEN OF MD. PENN. 196 A2D, 632

(1964), WALKER V. PEPPERSACK 316 F2D, 119 (4CA 1963), RICHTER V.

MINNESOTA 86 SCT.119 (1965). HARING V. PROSISE 103 SCT. 2368

(1983). Counsel's incompetence prejudiced my

case by failing to discover 4th Amendment

violations then failed to file a motion to suppress

evidence, nor did counsel inform me of the filing

said pre-trial motions and that I had a right

to appeal denial of a motion to suppress evidence

that was suppressible, illegally obtained and

the only piece of evidence linked to petitioner

was an "extraordinary circumstance" by my

counsel's failure to perform essential duties to

have the arrest itself suppress and fruits

thereof, And by counsel's failure to challenge the

veracity of arrest warrant containing intrinsic

and extrinsic fraud violating 4th Amendment

Counsel failed to preserve from his V. Delaware claim,
my guilty plea is involuntary. I was deceived by fraud,
upon the court to plead guilty of crime I did not commit...

#3 Exhibit-D "Explanation"

2021-CP-21-1712

That Prior convictions tainted with ineffective shall not be used as a Foundation of Recidivist Statute.

The Court did lack Jurisdiction to enter a valid Judgement rendering actions of the court void.

By The State's Invited Error

Petitioner presents Rebuttal to State's Erroneous argument.

first, law enforcement did not find the victims check-book during illegal arrest, search & seizure. He found an id. card. The check book he found came from a co-defendant Jimmy Turner, which belonged to a Mrs. Virginia Warren 325 R. Bar M. Ranch Rd. Florence S.C. in Darlington County, see warrants from Darlington that were dismissed. Which is the same location on the arrest warrant from my 1999-GS-21-927 case that Florence County also used the mailing purposes only address of Rt. 8, box 140 Florence S.C. and omitted Darlington County from it then also to fool a magistrate judge in want of probable cause and jurisdiction causing that judge to be induced to issue a warrant outside his territorial jurisdiction. Officer Phill Hanna seizure outside his territorial jurisdiction of the Florence County into Darlington County and then he did make fraudulent misrepresentations on the warrant causing the magistrate judge to believe my residence was in Florence County by omitting Darlington County from the warrant. Just because he put Florence County on the warrant does not mean it is true. It was a deceitful trick and he should have informed the magistrate of this when he realized he had to contact Darlington County concerning the book of checks he found from Virginia Warren's residence that he had to pass to get to my house and landlords house located directly beside Both plots of land in Darlington County also, and then he also had to pass coming back out of road after illegally arresting me where I was also confined illegally without served a warrant for a month on 11-7-1994 of a warrant from 11-14-1994, and a delay in arraignment for a month until 11-7-1994, that was a delay in arraignment violating 48-hour rule and also False imprisonment also violating my fourth amendment, and my right to Indigent Defense act of S.C.

STATE OF SOUTH CAROLINA

County of Florence

IN THE COURT OF COMMON PLEAS

Full name and prison number (if any) of Applicant: James Edgar Hutchinson #2540083
FLORENCE COUNTY, S.C.CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEFBONIS FOLIOS OHARA
CCL & GS
FLORENCE COUNTY, SC

2021 AUG -5 PM 2:11

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution
FLA-1125 990, W. Sack Highway, Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Florence County, S.C.
12th Judicial Circuit, 180 N. Ivey St. Florence, S.C. 29501
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: See SC Code 4-3-260 Florence County Boundaries
(a) 1995-65-21-110 conviction invalid
(b) and still causing prejudice and persistent lingering effects in violation of my SC, U.S. Constitutional rights and the laws of this state
McDuffie v. State 274 S.E.2d 595
Richter v. Minnesota 86 S.Ct. 119 (1965), (1994)

5. (c) Territorial Jurisdiction is also a fundamental issue
and may be raised anytime,
 The date upon which sentence was imposed and the terms of the sentence:
- (a) March 22nd 1995
- (b) Six (6) - years Right before my plea was
- (c) The first time I even met counsel.
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓ unintelligently
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no, counsel failed to raise issue or preserve
8. If you answered "yes" to (7), list: for appeal on any issue, because
he did not conduct independent investigation,
- (a) the name of each Court to which you appealed:
- i. no
- ii. no
- iii. no
- (b) the result in each such Court to which you appealed:
- i. no
- ii. no
- iii. no
- (c) the date of each such result:
- i. no
- ii. no
- iii. no
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. no
- ii. no
- iii. no
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Due to counsel's deficient performance &
failure to investigate the arrest, I
- (b) was under a misapprehension regarding
my legal position in this case or that
I had a meritorious 4th Amendment
claim and a Territorial Jurisdiction claim.

Resulting in an involuntary, unintelligent plea
(c) ~~and waiving unknowingly a valid defense,~~

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Conviction and Plea invalid by

- (a) Counsel's deficient performance in
(b) in failing to investigate illegal arrest, search &
(c) seizure by Deputy outside his Territorial Jurisdiction

11. State concisely and in the same order the facts which support each of the grounds set out in (10): Officer was outside his Territorial

- (a) Jurisdiction, was unauthorized to make
an illegal arrest, search & seizure.
(b) for Misdemeanor Forgery. The T.D. and any
(c) statements were "Fruit of the Poisonous Tree,"
Counsel ineffective by failing to file a motion to

12. Prior to this application have you filed with respect to this conviction: suppress

- (a) any petition in a State Court under South Carolina Law? no Evidence,
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
(d) any other petitions, motions or applications in this or any other Court? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
i. no
ii. no
iii. no
iv. no
(b) the name and location of the Court in which each was filed:
i. no
ii. no
iii. no
iv. no

(c) the disposition thereof:

i. no

ii. no

iii. no

iv. no

(d) the date of each such disposition:

i. no

ii. no

iii. no

iv. no

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. no

ii. no

iii. no

iv. no

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. no

ii. no

iii. no

(b) the proceedings in which each ground was raised:

i. no

ii. no

iii. no

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented: Counsel's failure to investigate illegal arrest, search & seizure, accepting the state's version of facts prejudiced my case by telling me the evidence and statements would be used against me, and my illegal detention placed me in a position where I felt I had no choice but to plead guilty by a misapprehension of law
17. Were you represented by an attorney at any time during the course of: my case,

- (a) your arraignment and plea? ✓ Counsel had filed a motion to suppress the id. & any other evidence would have been excluded. (statements & no other independent evidence,
- (b) your trial, if any? no other independent evidence,
- (c) your sentencing? no other independent evidence,
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Counsel failed to preserve 4th Amendment claim or file a notice of appeal,
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? (no) Counsel failed to file a motion to suppress evidence and did not inform me I could appeal a denial to a motion to suppress, illegally obtained evidence.

18. If you answered "yes" to one or more parts of (17), list: illegally obtained evidence.
- (a) the name and address of each attorney who represented you:
- i. (Fowler) met him for the first time on the day I entered plea, no discussion of defenses, Florence County Public Defenders Office,
- ii. 140 N. Irby St. Florence, S.C. 29501
- iii. Prejudiced my case by not allowing court to exercise its discretion on motion to suppress illegally obtained evidence,
- (b) the proceedings at which each such attorney represented you: 5th, Florence County 12th Circuit.
- i. Guilty Plea involuntarily, due to the fact the Law Enforcement, Counsel and the Prosecution all led me to believe I lived in Florence County, so I never knew I had any valid defense or Territorial Jurisdiction issues in Case No. 1995-GS-21-110 obtained unconstitutionally and still causing prejudice and persistent lingering effects. Due to ineffective assistance of Counsel.
- ii. My address of Rt. 4, box 143 Bar Ranch Rd, Is really 344. Bar Ranch Rd. Darlington, S.C.

19. State clearly the relief you seek in filing this application: Beto v. Stacks 409 F2d 313
Vacate conviction, invalidate for (1969),
enhancement purposes, Conviction obtained in
violation of Gideon v. Wainwright or Strickland v. Washington still
violates Due Process, U.S. v. Custis, 114 S.Ct. 1732 (1994)
20. Are you now under sentence from any other court that you have not challenged?

I'm under sentence on burglary 1st degree
by the use of invalid prior convictions to
enhance sentence, Sikes v. State 445 SE2d 560 (1994),
S.C. Code 4-3-260, a straight air-line from
Muse's Bridge running to Back Swamp crosses
Bar Ranch Rd. at 302, Bar Ranch Rd
State v. Boswell 707 SE2d 265 (2011),

STATE OF SOUTH CAROLINA

County of Florence

VERIFICATION

I, James Edgar Hutchinson, being duly sworn
upon my oath, depose and say that I have subscribed to the foregoing application; that I know the
contents thereof; that it includes every ground known to me for vacating, setting aside or
correcting the conviction and sentence attacked in this application; and that the matters and
allegations therein set forth are true.

James Edgar Hutchinson

SWORN to and subscribed before me this 28
day of July, 2021.

Debra Eastridge (L.S.)
Notary Public

My Commission Expires: 3/3/2026

2021 AUG - 5 PM 2:11
FILED
DORIS FOLIOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Clerk of Court C.P. & G.S.
FLORENCE COUNTY, S.C.
Paula O'Hara

Revised 3/2003

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, James Edgar Hutchinson, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give
security thereof.

James Edgar Hutchinson
Applicant

SWORN or affirmed to and subscribed before me this

28 day of July, 2021.

Debra Estrada
Notary Public

My Commission Expires: 3/3/2024

2021 AUG -5 PM 2:11
BONIS FOLIOS O'HARA
CCCP & GS
FLORIDA COUNTY, SC

FILED

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORIDA COUNTY, S.C.
Debra Estrada

Exhibit-A

SOUTH CAROLINA RULES OF EVIDENCE
JUDICIAL NOTICE RULE 201. RULE 902 SELF-AUTHENTICATED EVIDENCE
"AFFIDAVIT OF MERITS"

INVALID PRIOR CONVICTION THAT WAS UNLAWFULLY GAINED BY INEFFECTIVE ASSISTANCE OF COUNSEL, INVOLUNTARY, UNINTELLIGENT, AND INVALID GUILTY PLEA, IN VIOLATION THE LAWS AND STATUTES THIS STATE, THUS DENYING ME DUE PROCESS PROTECTED BY THE CONSTITUTION OF SOUTH CAROLINA AND THE UNITED STATES IN THE OF CASE NO. 1995 -GS-21- 110 THAT IS STILL CAUSING PREJUDICE AND PRESISTENT LINGERING EFFECTS AFFECTING MY SUBSTANTIAL RIGHTS.

Mrs. Doris Poulas Ohara "Clerk of Court" Florence
Judicial Center 141 N. Trby St. Suite-1100
Florence S.C. 29501

S.C. RULES OF CIVIL PROCEDURE RULE 77, COURTS AND CLERKS (a) COURTS ALWAYS OPEN.
COURTS OF THIS STATE SHALL BE DEEMED ALWAYS OPEN FOR PURPOSE OF FILLING AND PLEADING

This invalid prior conviction was obtained in violation of my Constitutional Rights protected by S.C. Constitution Article I. Sections 3, 10, 12, and 14, and the U.S. Constitution's 4th, 5th, 6th and 14th Amendments, along with violation of the laws of this state.

- 1.) Officer was outside his "Territorial Jurisdiction" and did not have authority to effectuate a legal arrest,
- 2.) Illegal arrest, search & seizure
- 3.) Guilty Plea was involuntary due to a misapprehension of law, and petitioner did not knowingly waive his meritorious 4th Amendment claims,
- 4.) Counsel was ineffective in failing to preserve 4th amendment claims for appeal.
- 5.) Territorial Jurisdiction is a fundamental issue can raise anytime.

STATE V. PAYNE 504 SE2D (1988). THE STATE ASSUMES THAT A PRIOR CONVICTION LEGAL AS WELL AS A LAICAL PRESUMPTION THAT IT WAS JUST, STATE V. MCABEE 67 SE2D, 417 (1951). EVERY ACT OF A COURT IS PRESUMED RIGHTLY DONE 'TILL THE CONTRARY APPEARS, VORHEES V. JACKSON 35 U.S., (10 PET.) 499 (1836). THE STATE RELIES ON THE PRESUMPTION OF REGULARITY ATTACHING TO FINAL JUDGMENTS. THIS DOES NOT MEAN THAT THE PRESUMPTION OF REGULARITY MAY NEVER BE SUSPENDED. PARK V. RALEY 118 S. CT. 517 (1992). THE PRESUMPTION MAY BE SUSPENDED IF THE UNAVAILABILITY OF EVIDENCE TO SUPPORT THE DEFENDENTS ATTACK OF PRIOR CONVICTIONS IS DUE TO GOVERNMENT MISCONDUCT, BY DENYING ACCESS TO DISCOVERY AND DOCUMENTARY EVIDENCE PURSUANT TO THE RULES OF "CIVIL PROCEDURE"

RESPECTFULLY SUBMITTED ON THIS 31st DAY OF July 2021 James Edgar Hutchinson
JAMES EDGAR HUTCHINSON #258003 LEE, C.I. F6A-1125 990 WISACKY HWY. BISHOPVILLE, S.C. 29010

Please file the attached affidavits as part of the record in case no. 1995 GS-21-110
A through I

Exhibit-D

"AFFIDAVIT OF MERITS"

INVALID PRIOR CONVICTION THAT WAS UNLAWFULLY GAINED BY INEFFECTIVE ASSISTANCE OF COUNSEL, INVOLUNTARY, UNINTELLIGENT, AND INVALID GUILTY PLEA, IN VIOLATION THE LAWS AND STATUTES THIS STATE, THUS, DENYING ME DUE PROCESS PROTECTED BY THE CONSTITUTION OF SOUTH CAROLINA AND THE UNITED STATES IN THE OF CASE NO. 1995-GS-21-110, THAT IS STILL CAUSING PREJUDICE AND PERSISTENT LINGERING EFFECTS AFFECTING MY SUBSTANTIAL RIGHTS...
STATE OF SOUTH CAROLINA
AFFIDAVIT OF MERITS

IN THE COURT OF COMMON PLEAS

V.

COUNTY OF FLORENCE SOUTH CAROLINA

JAMES EDGAR HUTCHINSON

CASE NO.2019-CP-21-2808

ATTACK ON THE INVALIDITY OF CONVICTION CASE NO. 1995-GS-21-110, THAT WAS UNCONSTITUTIONALLY GAINED IN VIOLATION OF MY SUBSTANTIAL DUE PROCESS RIGHTS AND USED FOR ENHANCEMENT PURPOSES. I AM BEING PREJUDICED AND STILL SUFFERING PERSISTENT LINGERING EFFECTS FROM THIS CONVICTION CASE MENTIONED IN MY AMENDED POST-CONVICTION APPLICATION. COUNSEL WAS INEFFECTIVE, DEFICIENT PERFORMANCE, UNREASONABLE TRIAL STRATEGY, ERRONEOUS ADVICE, UNKNOWINGLY, UNINTELLIGENT, INVOLUNTARY, AND INVALID GUILTY PLEA, DUE PROCESS DENIED, AND IS OTHERWISE INVALID FOR ENHANCEMENT PURPOSES DUE TO FOLLOWING REASONS LISTED BELOW REGARDING THIS SAID INVALID CONVICTION THAT IS CAUSING PREJUDICE. BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, I WOULD HAVE INSISTED ON GOING TO TRIAL...

This conviction was unlawfully & unconstitutionally obtained in violation of my S.C. Constitution, U.S. Constitution rights, and the laws of this state.

Did not knowingly waive 4th amendment violations, because counsel never made me aware that I had a meritable issue, and counsel prejudice my case by not filing a motion to suppress evidence and a statement that was the results of an unlawful arrest, and an illegal search & seizure, resulting in the court not being allowed to exercise discretion or the issues being preserved for appeal. Officer was outside his Territorial Jurisdiction. Although Territorial Jurisdiction is not related to subject matter jurisdiction, it is a fundamental issue that may be raised anytime. Guilty plea was involuntary under a misapprehension of law & counsel ineffective assistance.

RESPECTFULLY SUBMITTED ON THIS 31st DAY OF July 2021
JAMES EDGAR HUTCHINSON #258003 LEE, C.I. F6A-1125 990 WISACKY HWY. BISHOPVILLE, S.C. 29018

Exhibit - C

PROOF OF SERVICE

31st July 2021
DATE

Florence Judicial
PLACE Center

Doris Poulas Ohara "Clerk of Court Suite-1100
SERVED 141. N. Irby St. Florence, S.C. 29501

SERVED ON (PRINT NAME)

MANNER OF SERVICE

James Edgar Hutchinson #258003

U.S. Postal,

SERVED BY (PRINT NAME)

TITLE Petitioner

hee, Corr. Inst. F6-A-1125 990, Wisacky Hwy. Bishopville,
S.C.
29010

DECLARATION OF SERVER

I CERTIFY THAT THE FOLLOWING INFORMATION CONTAINED IN THE
PROOF OF SERVICE IS TRUE AND CORRECT.

EXECUTED ON

31st

July 2021

SIGNATURE OF SERVER

hee, Corr. Inst. F-6-A-1125

ADDRESS OF SERVER

990, Wisacky Hwy.
Bishopville S.C. 29010

SCCA 253 (102011)

Exhibit-D "JUDICIAL NOTICE"

"REQUEST FOR DISCOVERY OF DOCUMENTARY-EVIDENCE"

STATE OF SOUTH CAROLINA
V.

COURT OF COMMON PLEAS COUNTY OF FLORENCE
CASE NO. 2019-CP-21-2808

JAMES EDGAR HUTCHINSON

INVALID PRIOR CONVICTION STILL CAUSING PREJUDICE
CASE NO. 1995-GS-21-110

TO: Florence County Sheriff
T. Joye at the Florence
County Sheriff's Department
6719 Friend Field Rd., Effingham, SC 29541

FROM: JAMES EDGAR HUTCHINSON #258003
LEE, C.I. F-6-A-1125
990. WISACKY HWY.
BISHOPVILLE, S.C. 29010

RE: PURSUANT TO S.C. CODE OF REGULATIONS: 12-502.10-CASE FILES (A). DESCRIPTION: COMPILATION OF RELEVANT DATA NECESSARY FOR THE CREATION OF A CASE AGAINST A DEFENDANT(S) ON A PARTICULAR CRIME, INFORMATION INCLUDES DETAILED INVESTIGATIVE DATA ON THE OFFENSE AND THE DEFENDANT(S) COMPILED ON SEVERAL STANDARD FORMS SUCH AS INCIDENT-REPORT AND BOOKING-REPORT. (B). RETENTION: 30-YEARS, THEN DESTROY.

S.C. CODE 8-15-50. PUBLIC EMPLOYEE TAKING STATEMENT IN INVESTIGATION TO PROVIDE COPY TO PERSON MAKING STATEMENT.

S.C. CODE 19-1-80. CONDITIONS ON EXAMINATION OF WITNESS IN CRIMINAL PROCEEDING CONCERNING WRITTEN STATEMENT MADE TO PUBLIC EMPLOYEE.

S.C. CODE 19-1-90. ADMISSIBILITY IN CRIMINAL PROCEEDING OF WRITTEN STATEMENT MADE TO PUBLIC EMPLOYEE.

S.C. RULES OF EVIDENCE RULE 613. (A), (B). PRIOR STATEMENTS OF WITNESSES.

S.C. RULES OF EVIDENCE RULE 801. (C). "HEARSAY" A STATEMENT, OTHER THAN ONE MADE BY THE DECLARANT WHILE TESTIFYING AT HEARING OFFERED TO PROVE THE TRUTH OF MATTER ASSERTED.

PURSUANT TO THE S.C. RULES OF CIVIL PROCEDURE S.C.R.C.P. RULE 26., AND S.C.R.C.P. RULE 34.

REQUEST FOR DOCUMENTARY-EVIDENCE OF PRIOR CONVICTION PRIOR RELATED TO POST-CONVICTION IN CASE NO. 2019-CP-21-2808, ON THE INVALID CONVICTION CASE NO. 2018-GS-21-1520 AND CASE NO. 2018-GS-21-1523, THAT WAS SUPPORTED BY THE BELOW COMPLAINED OF INVALID PRIOR CONVICTION UNCONSTITUTIONALLY OBTAINED IN VIOLATION OF MY RIGHTS PROTECTED BY THE LAWS OF THIS STATE, THE S.C. AND U.S. CONSTITUTIONAL AMENDMENTS, FOR ENHANCEMENT PURPOSES, IMPEACHMENT PURPOSES, S.C.R.E. RULE 404(E). CHARACTER EVIDENCE PURPOSES. STILL CAUSING PREJUDICE, AND PERSISTENT LINGERING EFFECTS, DETERRING PAROLE, WORK-RELEASE, CUSTODY-LEVEL, EDUCATION PROGRAMS IN S.C.D.C., AND GOVERNMENT ASSISTANCE DURING LIBERTY, ETC... THIS CASE EVIDENCE NO LONGER NEEDED PURSUANT TO CRIMINAL PROCEDURE FOR GENERAL SESSIONS. IT IS NEEDED FOR POST-CONVICTION PURPOSES UNDER SOUTH CAROLINA RULES OF CIVIL PROCEDURE AS DISCOVERY AND DOCUMENTARY-EVIDENCE IN CURRENT CASES LITIGATION.

WILL YOU PLEASE SEND ME A COPY OF THE CASE FILES ON THE CASES AND WARRANTS LISTED BELOW?

REQUESTING Copy of Mutual Aid Agreement Pursuant to Title-23

S.C. Code ann. 23-20-40. All evidence and statements
embodied in a case file pursuant to S.C. Code of regulations
12-502.10 and S.C.R.E. 613(A)(B) taken by investigator Phillip Hanna on

THANK YOU VERY MUCH... THIS EVIDENCE IS NEEDED FOR POST-CONVICTION PREPARATION FOR TRIAL. 10-7-1994
CC:1 OF 7: JUDGE, ATTORNEY GENERAL, FAIR PRIVILEGE REPORT, DEPT. OF JUSTICE, NEWS/MEDIA, ETC.

RESPECTFULLY SUBMITTED ON THIS 31 DAY OF July 2021 James S. Hutch

Exhibit **E**

"JUDICIAL NOTICE"

"REQUEST FOR DISCOVERY AND PRODUCTION OF DOCUMENTS"

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE COURT OF COMMON PLEAS

CASE NO. 2019-CP-21-2808

V.

INVALID PLEA, CONVICTION, AND SENTENCE

CASE NO. 2018-GS-21-1520 & CASE NO. 2018-GS-21-1523

ENHANCED BY INVALID PRIOR CONVICTIONS

STILL CAUSING PREJUDICE AND LINGERING EFFECTS

JAMES EDGAR HUTCHINSON

CASES NO. 1989-GS-21-927, 1994-GS-21-110, 2002-GS-21-1670

TO: Florence County Sheriff "T.J. Joye" at the (6719)

6719, Florence County Sheriff's Department
Friendfield Rd. Effingham S.C. 29541

and Major Mike Nunn, for this is now a civil matter,
PURSUANT TO S.C. RULES OF CIVIL PROCEDURE: S.C.R.E. RULE 26. & S.C.R.E. RULE 34. APPLICANT FOR POST-CONVICTION IS REQUESTING PRODUCTION OF DOCUMENTS NEEDED AS EVIDENCE IN LITIGATION.

RE: REQUEST FOR PRODUCTION OF DOCUMENTS AND RECORDS PERTAINING TO THE S.C. CODE OF LAWS LISTED BELOW IN CASE NO. 1995-GS-21-110. THAT IS INVALID AND STILL CAUSING PREJUDICE.

CODE OF LAWS OF SOUTH CAROLINA 1976 ANNOTATED. TITLE 23. LAW-ENFORCEMENT AND PUBLIC SAFETY. CHAPTER 20. LAW ENFORCEMENT ASSISTANCE AND SUPPORT ACT. S.C. CODE ANN. 23-20-40 REQUIRED MUTUAL AID AGREEMENT PROVISIONS. (A), ALL MUTUAL AID AGREEMENTS FOR LAW ENFORCEMENT SERVICES MUST BE IN WRITING.

CODE OF LAWS OF SOUTH CAROLINA 1976 ANNOTATED. TITLE 17. CRIMINAL PROCEDURES. CHAPTER 13. ARREST, PROCESS, SEARCH AND SEIZURES. S.C. CODE ANN. 17-13-40. LAW ENFORCEMENT OFFICER JURISDICTION WHEN IN PURSUIT OF OFFENDER; AUTHORITY, RIGHTS, PRIVILEGES, AND IMMUNITIES EXTENDED. S.C. CODE ANN. 17-13-45. RESPONSE TO DISTRESS CALLS OR REQUEST FOR ASSISTANCE IN ADJACENT JURISDICTION; EXTENSION OF RIGHTS, PRIVILEGES AND IMMUNITIES.

1). REQUEST FOR RECORDS AND DOCUMENTARY EVIDENCE PERTAINING TO LAWS NOTED ABOVE FOR ARREST ON 10-7-1994 CASE NO.00043611-001 WARRANT NO. E239411, INDICTMENT NO. 1995-GS-21-110 BY FLORENCE COUNTY SHERIFF DEPUTY ON ALLEGED FORGERY CHARGES NOT COMMITTED IN HIS VIEW IN ORDER TO EFFECTUATE AN ILLEGAL ARREST, SEARCH & SEIZURE BY VIOLATING LAWS OF THIS STATE, HUTCHINSON'S RIGHTS PROTECTED BY THE S.C. CONSTITUTIONS ARTICLE 1, SECTION 3.,10., AND 14. AND THE U.S. CONSTITUTIONS FOURTH, FIFTH, SIXTH & FOURTEENTH AMENDMENT RIGHTS...

STATE V. PAYNE 504SE2D.335(1998), THE STATE RELIES ON THE PRESUMPTION OF REGULARITY ATTACHING TO FINAL JUDGMENTS. THIS DOES NOT MEAN THAT THE PRESUMPTION OF REGULARITY COULD NEVER BE SUSPENDED. AS NOTED IN PARKE V. RALEY 113SCT.517(1992), THE PRESUMPTION OF REGULARITY MAY BE SUSPENDED IF THE AVAILABILITY OF EVIDENCE TO SUPPORT THE DEFENDANT'S ATTACK OF PRIOR CONVICTION IS DUE TO GOVERNMENT MISCONDUCT. SEE RULE 71.1(E), S.C.R.C.P.

CC: 1 OF 7 . ATTORNEY GENERAL, FAIR PRIVILEGE REPORT, DEPARTMENT OF JUSTICE, MEDIA, ETC...

RESPECTFULLY SUBMITTED ON THIS 31st DAY OF July, 2021, James E. Hutchinson
JAMES EDGAR HUTCHINSON #258003 F-6-A-1125 990. WISACKY HWY. BISHOPVILLE, S.C. 29010

Exhibit-F

PROOF OF SERVICE

31st July, 2021
DATE

Sheriff Department
Florence County
PLACE

SERVED T.J. Jare 6719 Friend Field Rd. Effingham, S.C.
Florence County "Sheriff" 29541

SERVED ON (PRINT NAME) #259003 MANNER OF SERVICE

James Edgar Hutchinson U.S. Postal

SERVED BY (PRINT NAME)

TITLE Petitioner

here, Corr. Inst. F-6 A-1125 990. Wisacky, Hwy. Bishopville, S.C.
29010

DECLARATION OF SERVER

I CERTIFY THAT THE FOLLOWING INFORMATION CONTAINED IN THE
PROOF OF SERVICE IS TRUE AND CORRECT.

EXECUTED ON

31st July, 2021

SIGNATURE OF SERVER

here, Corr. Inst. F-6 A-1125

ADDRESS OF SERVER

990. Wisacky Hwy. Bishopville
S.C.

SCCA 253 (102011)

29010

Exhibit-G

"JUDICIAL NOTICE"

"REQUEST FOR DISCOVERY OF DOCUMENTARY-EVIDENCE"

STATE OF SOUTH CAROLINA
V.

COURT OF COMMON PLEAS COUNTY OF FLORENCE
CASE NO. 2019-CP-21-2808

JAMES EDGAR HUTCHINSON

INVALID PRIOR CONVICTION STILL CAUSING PREJUDICE
CASE NO. 1995-GS-21-110

TO: Florence County Solicitor's office
Florence Judicial Center Suite-1108
191 N. Tryon St.
Florence, S.C. 29501

FROM: JAMES EDGAR HUTCHINSON #258003
LEE, C.I. F-6-A-1125
990. WISACKY HWY.
BISHOPVILLE, S.C. 29010

RE: PURSUANT TO S.C. CODE OF REGULATIONS: 12-502.10-CASE FILES (A). DESCRIPTION: COMPILATION OF RELEVANT DATA NECESSARY FOR THE CREATION OF A CASE AGAINST A DEFENDANT(S) ON A PARTICULAR CRIME, INFORMATION INCLUDES DETAILED INVESTIGATIVE DATA ON THE OFFENSE AND THE DEFENDANT(S) COMPILED ON SEVERAL STANDARD FORMS SUCH AS INCIDENT-REPORT AND BOOKING-REPORT. (B). RETENTION: 30-YEARS, THEN DESTROY.

S.C. CODE 8-15-50. PUBLIC EMPLOYEE TAKING STATEMENT IN INVESTIGATION TO PROVIDE COPY TO PERSON MAKING STATEMENT.

S.C. CODE 19-1-80. CONDITIONS ON EXAMINATION OF WITNESS IN CRIMINAL PROCEEDING CONCERNING WRITTEN STATEMENT MADE TO PUBLIC EMPLOYEE.

S.C. CODE 19-1-90. ADMISSIBILITY IN CRIMINAL PROCEEDING OF WRITTEN STATEMENT MADE TO PUBLIC EMPLOYEE.

S.C. RULES OF EVIDENCE RULE 613. (A), (B). PRIOR STATEMENTS OF WITNESSES.

S.C. RULES OF EVIDENCE RULE 801. (C). "HEARSAY" A STATEMENT, OTHER THAN ONE MADE BY THE DECLARANT WHILE TESTIFYING AT HEARING OFFERED TO PROVE THE TRUTH OF MATTER ASSERTED.

PURSUANT TO THE S.C. RULES OF CIVIL PROCEDURE S.C.R.C.P. RULE 26., AND S.C.R.C.P. RULE 34.

REQUEST FOR DOCUMENTARY-EVIDENCE OF PRIOR CONVICTION PRIOR RELATED TO POST-CONVICTION IN CASE NO. 2019-CP-21-2808, ON THE INVALID CONVICTION CASE NO. 2018-GS-21-1520 AND CASE NO. 2018-GS-21-1523, THAT WAS SUPPORTED BY THE BELOW COMPLAINED OF INVALID PRIOR CONVICTION UNCONSTITUTIONALLY OBTAINED IN VIOLATION OF MY RIGHTS PROTECTED BY THE LAWS OF THIS STATE, THE S.C. AND U.S. CONSTITUTIONAL AMENDMENTS, FOR ENHANCEMENT PURPOSES, IMPEACHMENT PURPOSES, S.C.R.E. RULE 404(E). CHARACTER EVIDENCE PURPOSES. STILL CAUSING PREJUDICE, AND PERSISTENT LINGERING EFFECTS, DETERRING PAROLE, WORK-RELEASE, CUSTODY-LEVEL, EDUCATION PROGRAMS IN S.C.D.C., AND GOVERNMENT ASSISTANCE DURING LIBERTY, ETC... THIS CASE EVIDENCE NO LONGER NEEDED PURSUANT TO CRIMINAL PROCEDURE FOR GENERAL SESSIONS. IT IS NEEDED FOR POST-CONVICTION PURPOSES UNDER SOUTH CAROLINA RULES OF CIVIL PROCEDURE AS DISCOVERY AND DOCUMENTARY-EVIDENCE IN CURRENT CASES LITIGATION.

WILL YOU PLEASE SEND ME A COPY OF THE CASE FILES ON THE CASES AND WARRANTS LISTED BELOW?

REQUESTING: The above Evidence of any and all statements related to this case by myself where I never implicated myself and only pleaded guilty by a misapprehension of law, ineffective counsel, involuntary plea and office outside his jurisdiction
THANK YOU VERY MUCH... THIS EVIDENCE IS NEEDED FOR POST-CONVICTION PREPARATION FOR TRIAL.
CC: 1 OF 7: JUDGE, ATTORNEY GENERAL, FAIR PRIVILEGE REPORT, DEPT. OF JUSTICE, NEWS MEDIA, ETC.

RESPECTFULLY SUBMITTED ON THIS 31st DAY OF July 2021 James E. Hutchinson

Exhibit-H

"JUDICIAL NOTICE"

"REQUEST FOR DISCOVERY AND PRODUCTION OF DOCUMENTS"

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE COURT OF COMMON PLEAS

CASE NO. 2019-CP-21-2808

V.

INVALID PLEA, CONVICTION, AND SENTENCE

CASE NO. 2018-GS-21-1520 & CASE NO. 2018-GS-21-1523

ENHANCED BY INVALID PRIOR CONVICTIONS

STILL CAUSING PREJUDICE AND LINGERING EFFECTS

JAMES EDGAR HUTCHINSON

CASES NO. 1989-GS-21-927, 1994-GS-21-110, 2002-GS-21-1670

TO: Florence County Solicitor's Office, Florence Judicial
Center Suite 1100 181 North Tryon St,
Florence, SC, 29501

PURSUANT TO S.C. RULES OF CIVIL PROCEDURE: S.C.R.E. RULE 26. & S.C.R.E. RULE 34. APPLICANT FOR POST-CONVICTION IS REQUESTING PRODUCTION OF DOCUMENTS NEEDED AS EVIDENCE IN LITIGATION.

RE: REQUEST FOR PRODUCTION OF DOCUMENTS AND RECORDS PERTAINING TO THE S.C. CODE OF LAWS LISTED BELOW IN CASE NO. 1995-GS-21-110. THAT IS INVALID AND STILL CAUSING PREJUDICE.

CODE OF LAWS OF SOUTH CAROLINA 1976 ANNOTATED. TITLE 23. LAW-ENFORCEMENT AND PUBLIC SAFETY. CHAPTER 20. LAW ENFORCEMENT ASSISTANCE AND SUPPORT ACT. S.C. CODE ANN. 23-20-40 REQUIRED MUTUAL AID AGREEMENT PROVISIONS. (A), ALL MUTUAL AID AGREEMENTS FOR LAW ENFORCEMENT SERVICES MUST BE IN WRITING.

CODE OF LAWS OF SOUTH CAROLINA 1976 ANNOTATED. TITLE 17. CRIMINAL PROCEDURES. CHAPTER 13. ARREST, PROCESS, SEARCH AND SEIZURES. S.C. CODE ANN. 17-13-40. LAW ENFORCEMENT OFFICER JURISDICTION WHEN IN PURSUIT OF OFFENDER; AUTHORITY, RIGHTS, PRIVILEGES, AND IMMUNITIES EXTENDED. S.C. CODE ANN. 17-13-45. RESPONSE TO DISTRESS CALLS OR REQUEST FOR ASSISTANCE IN ADJACENT JURISDICTION; EXTENSION OF RIGHTS, PRIVILEGES AND IMMUNITIES.

1). REQUEST FOR RECORDS AND DOCUMENTARY EVIDENCE PERTAINING TO LAWS NOTED ABOVE FOR ARREST ON 10-7-1994 CASE NO.00043611-001 WARRANT NO. E239411, INDICTMENT NO. 1995-GS-21-110 BY FLORENCE COUNTY SHERIFF DEPUTY ON ALLEGED FORGERY CHARGES NOT COMMITTED IN HIS VIEW IN ORDER TO EFFECTUATE AN ILLEGAL ARREST, SEARCH & SEIZURE BY VIOLATING LAWS OF THIS STATE, HUTCHINSON'S RIGHTS PROTECTED BY THE S.C. CONSTITUTIONS ARTICLE 1, SECTION 3, 10., AND 14. AND THE U.S. CONSTITUTIONS FOURTH, FIFTH, SIXTH & FOURTEENTH AMENDMENT RIGHTS...

STATE V. PAYNE 504SE2D.335(1998), THE STATE RELIES ON THE PRESUMPTION OF REGULARITY ATTACHING TO FINAL JUDGMENTS. THIS DOES NOT MEAN THAT THE PRESUMPTION OF REGULARITY COULD NEVER BE SUSPENDED. AS NOTED IN PARKE V. RALEY 113SCT.517(1992), THE PRESUMPTION OF REGULARITY MAY BE SUSPENDED IF THE AVAILABILITY OF EVIDENCE TO SUPPORT THE DEFENDANT'S ATTACK OF PRIOR CONVICTION IS DUE TO GOVERNMENT MISCONDUCT. SEE RULE 71.1(E), S.C.R.C.P.

CC: 1 OF 2 . ATTORNEY GENERAL, FAIR PRIVILEGE REPORT, DEPARTMENT OF JUSTICE, MEDA ETC.
RESPECTFULLY SUBMITTED ON THIS 3rd DAY OF July 2021 BY James Edgar Hutchinson
JAMES EDGAR HUTCHINSON #258003 F-6-A-1125 990. WISACKY HWY. BISHOPVILLE, S.C. 29010

Exhibit - I

PROOF OF SERVICE

30th July 2021
DATE

Florence Judicial
PLACE

SERVED Florence County Solicitor's Office Suite 1100
131 N. Tryon St. Florence, S.C. 29501

SERVED ON (PRINT NAME)

#254023

MANNER OF SERVICE

James Edgar Hutchinson

U.S. Postal

SERVED BY (PRINT NAME)

TITLE Petitioner

Lee Corr. Inst, F-6A-1125990, Wisacky Hwy,
Bishopville, S.C.

DECLARATION OF SERVER

2900 I certify that the following information contained in the Proof of Service is true and correct.

Executed on 31st July 2021

James E. Hutchinson

SIGNATURE OF SERVER

Lee Corr. Inst, F6A-1125

ADDRESS OF SERVER

990. Wisacky Hwy,
Bishopville, S.C. 29010

The State Asst. Attorney General's
have misinterpreted this Territorial
Just selection issue, It is totally different from the

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS 2021-CP-21
FOR THE TWELFTH JUDICIAL CIRCUIT

James Edgar Hutchinson, #258003,)

Case No.: 2021-CP-21-1712

Applicant)

v.)

RETURN & MOTION TO DISMISS

State of South Carolina,)

Respondent.)

In response to an application for post-conviction relief (PCR) filed by James Edgar Hutchinson (Applicant) on August 5, 2021, the State makes this return and motion to dismiss.

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court.¹ Applicant was indicted at the January 1995 term of the Florence County Grand Jury for second degree burglary and grand larceny (1995-GS-21-0110). The charges stem from Applicant's arrest for forgery, where law enforcement found the burglary victim's book of checks, which Applicant had been using fraudulently, and the burglary victim's identification card. Represented by Steven Fowler, Esquire, Applicant appeared for a plea on March 22, 1995. Applicant pleaded guilty to second degree burglary. The State dropped the remaining charges. Applicant was sentenced him to six years' imprisonment. Applicant did not appeal.

¹ Applicant is currently incarcerated due to a third and separate burglary offense (2018-GS-21-1520; -1523). Applicant filed this application because the underlying conviction to this matter was legally used to enhance his current sentence pursuant to 16-11-311(2) of the South Carolina Code. ("the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both[.]")

II. Current Application

Applicant *untimely* commenced this PCR action on August 5, 2021. In his application, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Ineffective assistance of counsel
 - a. Counsels failure to investigate Illegal arrest, search and seizure, accepting the states version of facts prejudiced my case by telling me the evidence and statements would be used against me and my illegal detention placed me in a position where I felt I had no choice but to plead guilty by a misapprehension of law in my case.
 - b. If counsel had filed a motion to suppress the ID and any other evidence would have been excluded (statements), no other independent evidence
 - c. Counsel failed to preserve a 4th Amendment claim for a notice of appeal.
2. Involuntary Guilty Plea and Lack of Jurisdiction
 - a. Guilty plea involuntarily, due to the fact the law enforcement, counsel, and the prosecution all led me to believe I lived in Florence County, so I never knew I had any valid defense or territorial jurisdiction issues . . . obtained unconstitutionally and still causing prejudice and persistent lingering effects due to ineffective assistance of counsel.
 - b. My address of Rt. 8-box-143 Bar Ranch Rd. is really 344 Bar Ranch Rd. Darlington, SC.

As relief, Applicant requests his sentence be vacated and invalidate for support enhancement purposes to stop its prejudice in Applicant's current incarceration for his third burglary conviction (2018-GS-21-1520; -1523).² Attached to this return and incorporated herein are the Florence County Clerk of Court records, Applicant's SCDC records, and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant material.

² The State notes this is not a cognizable claim for relief under the Uniform Post-Conviction Procedure Act. This is discussed in the "Failure to State a Claim" subsection below.

III. Motion to Dismiss

The State moves for summary dismissal pursuant to section 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing. Because there is no question of law or fact to necessitate a hearing, the State requests the Court issue a conditional order of dismissal indicating the Court's intent to dismiss the application and its reasons for so doing.³ See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); Re: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court, S.C. Sup. Ct. Order filed October 6, 2008; Rule 71.1(d), SCRPC (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). The State moves for summary dismissal for the following reasons:

i. Allegation of Lack of Jurisdiction

Applicant alleges the trial court did not have jurisdiction to accept his guilty plea because Rt. 8-box 143 Bar Ranch Rd. is now referred to as 325 Bar Ranch Rd., which Applicant claims is in Darlington County.⁴ However, this allegation is without merit and should be summarily dismissed.

In South Carolina, jurisdiction, the basic authority of a court to hear and exercise judgment over a criminal matter, is based upon two considerations; territorial jurisdiction, and subject matter

³ A proposed Conditional Order of Dismissal consistent with this return and motion to dismiss is concurrently submitted for the Court's consideration.

⁴ This was where Applicant was arrested for forgery and where law enforcement found the book of checks and the victim's identification card, which was the evidence used to bring the charges of the underlying conviction.

jurisdiction. The territorial jurisdiction of a municipal court is limited to the boundaries of the municipality. Under section 22-3-710, "All proceedings before magistrates in criminal cases shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon, and only which, shall a warrant of arrest issue." Under section 14-25-45, "Each municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which established. The court shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates. . . ." *Town of Honea Path v. Wright*, 194 S.C. 461, 9 S.E.2d 924 (1940); *State v. Fennel*, 263 S.C. 216, 209 S.E.2d 433 (1974).

In the present case, the indictments clearly cite that the offenses occurred within Florence County. Additionally, the arrest warrants were issued by a Florence County judge. Therefore, the trial court judge clearly had jurisdiction. Applicant has provided no proof except his own assertion that the address is in Darlington County. Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter should be summarily dismissed with prejudice.

ii. Statute of Limitations

Applicant's allegations should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act⁵ (the Act). Specifically, the Act requires:

⁵ S.C. Code Ann. § 17-27-10 to -160.

An application for relief filed pursuant to this chapter *must* be filed within *one year after the entry of a judgment . . . or within one year after the sending of the remittitur*

S.C. Code Ann. § 17-27-45(A) (emphasis added).

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). Further, section 17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

In the present case, Applicant pleaded guilty on March 22, 1995, and he did not pursue a direct appeal. The application was, therefore, due on or before August 8, 1990. This application was filed on August 5, 2021, *well after* the requisite filing period expired. Accordingly, Applicant’s allegations should be summarily dismissed because the action is untimely.

iii. Failure to State a Claim

Applicant’s action should be summarily dismissed for failure to state a cognizable claim for relief. See Rule 12(b)(6), SCRCPP (stating a defending party may move for summary judgement based on the plaintiff’s failure to “state facts sufficient to constitute a cause of action”). The application should be dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A). However, because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the *overwhelming* majority of cognizable claims fall under the broad umbrella of “ineffective assistance of counsel,” a contention under the Sixth Amendment to the Constitution of the United States. *See Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (“Allegations of trial court error are not cognizable on PCR.”); *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494 499 (2005) (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”).

Applicant’s allegations do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). “The imposition of a sentence may have a number of collateral consequences, however, and a plea of guilty is *not* rendered involuntary in a constitutional sense if the defendant is not informed of the collateral consequences.” *Brown v. State*, 306 S.C. 381, 382-83, 412 S.E.2d

399, 400 (1991) (emphasis in original). Thus, a defendant need not be advised of all collateral consequences of his or her plea in order for the plea to withstand constitutional scrutiny. *Id.*; see also *Cuthrell v. Dir., Patuxent Inst.*, 475 F.2d 1364, 1365-66 (4th Cir. 1973) (“[B]efore pleading, the defendant need not be advised of all collateral consequences of his plea . . .”). “[A]side from two non-collateral matters specifically listed in the PCR Act, PCR is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence . . .*” *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (emphasis in original).

A consequence that the defendant must be informed of is one which impacts the sentence imposed on the defendant, and as such, is a direct consequence. See *State v. Armstrong*, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975) (stating the defendant must be apprised of the direct consequences, which are the direct and immediate results, of his guilty plea). “The distinction between ‘direct’ and ‘collateral’ consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate, and largely automatic effect on the range of the defendant’s punishment.” *Cuthrell v. Dir., Patuxent Inst.*, 475 F.2d 1364, 1365-66 (4th Cir. 1973).

The fact that a conviction for a violent offense may be used to enhance a subsequent conviction is a collateral consequence of a guilty plea. *Smith v. State*, 329 S.C. 280, 494 S.E.2d 626 (1997). Applicant’s allegation is only that his prior burglary, the conviction he is challenging in this application, was used to enhance the sentence arising out of his subsequent burglary conviction pursuant to section 16-11-311(2) of the South Carolina Code is a non-collateral attack on his conviction. As such, this allegation and every part of the application based thereupon should be dismissed pursuant to Rule 12(b)(6), SCRPC.

IV. Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

V. Conclusion

WHEREFORE, the State moves to summarily dismiss the application because the circuit court had jurisdiction to accept Applicant's guilty plea, the application was filed after the statute of limitations had expired, and for failure to state a cognizable claim for relief.

Respectfully submitted,

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