FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2020CP0600116

Sammie Lee Gerrick		South Carolina State of	
PLAINTIFF(S)		**DEFENDANT(S)**	

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: ______

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: ______

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED FOR RECORD
2022 DEC 13 PM 4:52
RHONDA D. MCELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: ______

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/ Courtney Clyburn Pope	2767	12/13/2022
Circuit Court Judge	Judge Code	Date

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JAN 17 2023
SC SUPREME COURT

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

For Clerk of Court Office Use Only

This judgment was entered on **December 13, 2022**, and a copy mailed first class or placed in the appropriate attorney's box on **December 14, 2022**, to attorneys of record or to parties (when appearing pro se) as follows:

E. Charles Grose Jr. 305 Main Street Greenwood, SC 29646

Megan Harrigan Jameson PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Ami M. Still

Court Reporter

Ami M Still - Clerk of Common Pleas

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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JAN 17 2023
SC SUPREME COURT

STATE OF SOUTH CAROLINA COUNTY OF BARNWELL	)	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
Sammie Lee Gerrick, SCDC #165940, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2020-CP-06-00116 **CONDITIONAL ORDER OF DISMISSAL AND DENIAL OF MOTION FOR DISCOVERY IN SUCCESSIVE PCR ACTION**

FILED FOR RECORD
2022 DEC 13 PM 4:53
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

This matter is before this Court based on a successive application for post-conviction relief filed on March 13, 2020, by Applicant Sammie Lee Gerrick with the assistance of retained counsel E. Charles Grose, Jr.. In response, Respondent the State of South Carolina made its return to the application and moved to summarily dismiss the action as procedurally barred as successive, untimely, and for failing to make a *prima facie* showing of newly discovered evidence pursuant to the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 et seq. (2014). After a review of the record and pleadings, this Court agrees this application should be summarily dismissed as untimely and successive and provisionally dismisses the action based on the following:

PROCEDURAL HISTORY

Records before this Court establish that Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment by the Barnwell County Clerk of Court. He is serving a life sentence without the possibility of parole.

During its November 2013 term, the Barnwell County Grand Jury indicted Applicant for the murder of Tyrone Donaldson (2013-GS-06-00465). Applicant was represented by Daniel W. Williams, Esquire. The case was prosecuted by the South Carolina Attorney General's Office.

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Prior to trial, there was discussion as to whether Byron Felder, a pre-trial detainee at the Barnwell County Detention Center overheard Dustin Williamson, another pre-trial detainee at the Barnwell County Detention Center, admit to the killing of the victim, Tyrone Donaldson. In response, Honorable Doyet A. Early, III, circuit court judge, appointed counsel to represent Felder on November 14, 2013.

On the same date, Judge Early also appointed counsel for Williamson for the express purpose of representing Williamson into the on-going South Carolina Law Enforcement Department (SLED) investigation "into whether or not Williamson had any culpability in the murder in this case of Tyrone Donaldson." Appointed counsel for Williamson immediately filed a motion to quash his subpoena and/or a motion for a protective order based on concerned of his mental health in response to a subpoena that was issued for Williamson commanding his appearance at Applicant's trial.

The State, represented Assistant Deputy Attorney General S. Creighton Waters and Assistant Attorney General Jason Anders of the South Carolina Attorney General's Office called Applicant's case to trial on November 18, 2013, before Judge Early in Barnwell County. At trial, Williamson was called as a witness by Applicant, and, upon taking the witness stand, immediately invoked the right against self-incrimination and did not testify. See Trial Tr. 635. Thereafter, SLED Agent Shaun Harley re-took the witness stand in-camera and outside the presence of the jury, and proffered testimony regarding the Williamson letter, which was found in Applicant's cell by Applicant. (Trial Tr. p. 637-645). The letter was then introduced as a Court's Exhibit. (Trial Tr. p. 637, Court's Ex. No. 5. As a result of this letter, SLED conducted an investigation into Williamson's purported involvement in the murder, which included multiple interviews with Williamson. Judge Early ruled the letter was inadmissible after arguments from both parties. (Trial

Tr. 662). The next morning, the State withdrew its objection to the letter's admissibility and indicated its desire to present evidence regarding Williamson's statements to law enforcement that he had been "played" and was not, indeed, guilty of the murder. After argument from the parties, Applicant withdrew his request to admit the letter.

At the conclusion of a four-day trial, the jury convicted Applicant of murder. On November 21, 2013, Judge Early sentenced Applicant to life imprisonment without the possibility of parole.

The next day, November 22, 2014, the court received another letter, purportedly from Williamson, stating that Applicant was innocent and implicating himself in the murder. SLED then conducted yet another investigation into Williamson's purported involvement, including subsequent interviews with Williamson and other inmates housed at the Barnwell County Detention Center with Applicant and Williamson. The investigation revealed that Applicant asked Williamson to "take" his murder charge and if he did so, Applicant would help Williamson secure an insanity plea for his pending charges, all of which was documented in letters. (See Order Denying Motion for New Trial).

On November 27, 2013, Applicant, through counsel, filed a motion for a new trial on the following grounds:

> 1) The Trial Court improperly admitted a note which was part of the "witch doctor root". The note and root found in the defendant's truck was not written by him but was portrayed and construed as a confession even though the wording of the note did not confess to the crime of murder. Therefore, the note was not relevant. Further any probative value was substantially outweighed by the unfair prejudicial effect of introducing the note and root.
>
> 2) During trial. Defendant agreed to the introduction of a video tape of an interview with defendant conducted by a polygraph examiner so long as the polygraph machine was not shown to the jury. During presentation of the video, the machine was inadvertently shown by the prosecution publishing evidence to the jury that the defendant was given a polygraph; thereby, depriving defendant of a fair trial.

> 3) The Trial Court should not have admitted the August 17, 2011 interview of defendant since defendant requested to speak with his attorney contemporaneously with being read his *Miranda* Rights, but was not provided the opportunity to speak with his attorney.
>
> 4) All evidence in the trial was circumstantial and taken together did not prove beyond a reasonable doubt defendant committed the crime of murder to the exclusion of any other reasonable hypothesis.

<u>See</u> Motion for New Trial.

Thereafter, on December 2, 2013, Applicant, through trial counsel, filed an amended motion for a new trial, adding the additional ground:

> 5) Before trial, Dustin Williamson, who is incarcerated at the Barnwell County Detention Center on charges of Murder and Attempted Murder, wrote a note which was found in Defendant's cell claiming responsibility for killing Tyrone Donaldson. The note did not give details as to how the murder was committed. At trial and outside the presence of the jury, Dustin Williamson invoked his right to self-incrimination and became an unavailable witness. Defendant made the strategic decision not to introduce the note because of the circumstances in which it was found, the lack of detail, and the evidence introduced by the State. After trial, Dustin Williamson indicated he wanted to testify. Defendant does not know what he would say nor if he had anymore detail to offer other than what was previously in the note. Defendant is informed that law enforcement has interviewed Dustin Williamson and if any evidence is favorable to the defendant, a new trial should be granted.

<u>See</u> Amended Motion for New Trial.

Applicant, through counsel, also filed a motion for a reconsideration of his sentence. A hearing on both motions was convened before Judge Early on December 16, 2013. Thereafter, Judge Early denied both motions by written order. In the written order, dated February 4, 2014, ***Judge Early expressly denied the claims regarding the Williamson letter, explicitly finding it was not newly discovered evidence as the letter was known to Applicant before trial and patently lacked credibility.***

Direct Appeal

Applicant appealed his conviction and sentence. Appellate Defender Lara Caudy with the South Carolina Commission on Indigent Defense-Office of Appellate Defense perfected the appeal by filing a brief raising the following issues:

1. Whether the court erred by admitting into evidence a "root" associated with witchcraft and a can of "Law Stay Away" that were seized from the center console of Appellant's truck pursuant to a search warrant because this evidence was not relevant and any probative value of this evidence was substantially outweighed by the danger of unfair prejudice to Appellant?

2. Whether the court erred by denying Appellant's motion for a mistrial after a law enforcement officer characterized the "brown piece of paper bag" that was "taped up" to form some sort of "capsule" with weeds, twigs, and a penny inside and the words "Set me Sammie Gerrick free from murder and revoked bonds" written on the outside as "witchcraft root" in front of the jury since this testimony was highly prejudicial and the court's curative instruction failed to cure the prejudice suffered by Appellant?

3. Whether the court erred by refusing to grant a mistrial after the state showed a videotape of Appellant's interview with law enforcement before his arrest with a polygraph machine clearly visible on the table since this was unduly prejudicial and denied Appellant a fair trial?

Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. *State v. Gerrick*, Op. No. 2016-UP-092 (S.C. Ct. App. filed Feb. 24, 2016). The Court of Appeals issued the Remittitur on March 25, 2016.

Initial Post-Conviction Relief Action (2016-CP-06-0111) and Subsequent Appeal

Applicant filed his *pro se* application for post-conviction relief on March 15, 2016, alleging numerous allegations of ineffective assistance of counsel, lack of subject matter jurisdiction, and trial court error. Respondent made its return on September 30, 2016, and requested an evidentiary hearing to resolve the claims as set forth in the application. On May 3, 2018, Applicant, through retained counsel E. Charles Grose, Jr., amended his application to add numerous allegations of ineffective assistance of counsel:

1. Ineffective Assistance of Counsel
   a. Not moving for Judge Early to recuse himself when the prosecution planned to present evidence that Judge Early was mentioned in a "root." Under the circumstances, Judge Early presiding over the case conveyed to the jurors the trial court's opinion about the "root" evidence and constituted a conflict of interest.
   b. Failing to investigate and present available evidence explaining the "root."
   c. Failing to object to the trial judge's opening comments and final instruction on the law, instructing the jurors to find the "true facts," including but not limited to the opening instruction, "[A]t the conclusion when you 12 acting collectively as one determine what those true facts are, then you apply those facts to the law as I give it to you and you will be in a position to render a verdict;" and the final instructions to the jurors, "It is your sole responsibility to determine what the true facts are in the case and apply those true facts to the law as I give it to you and render a verdict;" "That is your sole responsibility, your sole duty to determine what the true facts are in this case:" and "You're here to give careful consideration and deliberation of the evidence presented to you, to decide what the true facts are, and apply those facts to the law as I've given it to you."
   d. Failing to object to the trial judge excluding Mr. Gerrick from hearings to determine whether to retain or excuse juror numbers 9 and 23 in violation of Mr. Gerrick's constitutional right to be present during all critical stages of his jury trial.
   e. Failing to make an offer to stipulate to graphic photographs of the victim's body when those photographs were so prejudicial, inflammatory, and intended to arouse sympathy, passion, and prejudice in the juror's minds as to deny Mr. Gerrick due process.
   f. Failing to move to exclude the testimony of Charlene Gerrick that was obtained in violation of the spousal privilege and as a result of improper witness intimidation.
   g. Failing to object to improper victim impact evidence that was not relevant and which were intended to arouse sympathy, passion, and prejudice in the juror's minds.
   h. Failing to object to testimony that violated the confrontation clauses of the state and federal constitutions.
   i. Failing to object to impermissible character testimony that violated Rule 404, SCRE.
   j. [no allegation "j"]
   k. Failing to object to the prosecutor's statements in closing argument that were not supported by the evidence in the case and misstated testimony presented at trial when those statements amounted to a violation of due process.
   l. Failing to request the trial judge allow defense counsel an opportunity to respond to the prosecutor's statements in closing argument that were not supported by the evidence in the case and misstated testimony presented at trial when those statements amounted to a violation of due process.
   m. Failing to object to statements by the prosecutor during closing argument which were intended to arouse sympathy, passion, and prejudice in the jurors' minds

and urged the jurors to seek justice for the victim rather than to determine whether the State met its burden of proof.

n. Failing to object to inflammatory statements by the prosecutor which were intended to around sympathy, passion, and prejudice in the jurors' minds and were so defamatory to Mr. Gerrick that it denied him due process.
o. Failing to move to quash the indictment when it was discovered that one of the grand jurors that indicted Mr. Gerrick was also a witness in the case, which Denied Mr. Gerrick's right to a fair and impartial grand jury presentment.
p. Failing to investigate, develop, and present evidence that someone other than Mr. Gerrick killed the victim.
q. Failing to federalize the objections related to the three issues briefed by appellate counsel on the direct appeal.
r. The cumulative effect of trial counsel's errors requires a new trial.

An evidentiary hearing into the matter was convened on May 9, 2018, at the Aiken County Courthouse before the Honorable R. Scott Sprouse, circuit court judge. Applicant was present at the hearing and represented by counsel Grose. Applicant testified on his own behalf and presented the testimony of trial counsel and Dr. Janice Ross.

Following the hearing, both parties submitted memorandums to the court. By order filed August 3, 2018, Judge Sprouse denied Applicant's application in its entirety, finding Applicant failed to demonstrate how Counsel's performance was unreasonable under prevailing professional norms. Applicant filed a motion to reconsider, alter, or amend pursuant to Rule 59(e), SCRCP, which was denied without argument.

Applicant, though counsel Grose, then filed a timely notice of appeal from the denial of his post-conviction relief application. (Appellate Case No. 2018-001629). Applicant filed a petition for writ of certiorari asserting sixteen issues in which he asserts the post-conviction relief court erred. Respondent filed its return to the petition. The matter was transferred to the Court of Appeals pursuant to Rule 243(l), SCACR, and, thereafter, the Court of Appeals denied certiorari by order dated December 10, 2021. Applicant filed a petition for rehearing, which was summarily denied. The remittitur was returned to the circuit court on January 18, 2022.

Facts Presented at Trial

Tyrone Donaldson was last seen by family and friends on July 21, 2011. At that time, Donaldson lived with his sister-in-law, Kelsea Hallingquest, who last saw him when he left their home that morning. (Tr. p. 255, ll. 8-22). John Rice, a friend of Applicant, called Donaldson sometime that morning. Rice called on Applicant's behalf to tell Donaldson that Applicant needed bail money. (Tr. p. 214, ll. 8-25). Donaldson's friend Maurice Williams also received a phone call from Applicant, again asking for bail money. (Tr. p. 179, ll. 4-9).

Williams and Donaldson met at the bank the morning of July 21, deciding they would bail Applicant out of jail for a total of $6600 in exchange for a promise by Applicant that he would pay them back on the same day. (Tr. p. 179, l. 19 – p. 181, l. 4). Williams gave Donaldson his half of the bail money then went back to work. (Tr. p. 182, l. 11 – p. 184, l. 17).

Donaldson bailed Applicant out of jail, and they called Williams to let him know. (Tr. p. 184, l. 20 – p. 185, l. 11). Applicant expressed appreciation, stating he would "bless" them. (Tr. p. 185, ll. 7-15). The bailout occurred between 11:00 AM and noon that day. (Tr. p. 215, ll. 22-25). According to county jail employees, Applicant was free of scratches or bruising upon his release, although a ceiling lightbulb did bust and fall into his cell at some point during Applicant's detention. (Tr. p. 216, l. 1 – p. 218, l. 20; p. 487, l. 3 – p. 488, l. 25).

Early that afternoon, Williams and Donaldson touched base again, and Donaldson told him he intended to drop Applicant off, go home, and then go pick Applicant back up so Applicant could reimburse the $6600 as promised. (Tr. p. 185, l. 19 – p. 186, l. 14). Between 1:00 and 2:00 PM, Donaldson did return home, picked up a shotgun, and left. (Tr. p. 256, ll. 4-25). Donaldson was also seen by Applicant's girlfriend's son dropping Applicant off at his girlfriend's home. Donaldson returned to pick Applicant up less than an hour later. (Tr. p. 230, ll. 12-24). When

Donaldson got to Applicant's location, Applicant placed two shovels from the barn behind his house into the bed of his own pickup truck, and the two men left in separate vehicles. (Tr. p. 230, l. 24 – p. 231, l. 9). Donaldson followed behind Applicant's truck. (Tr. p. 231, ll. 9-11).

Donaldson and Gerrick were next seen at 2:54 PM, which was determined from the timestamp on security camera footage at the Enterprise Bank on Main Street in Blackville. (Tr. p. 537, ll. 17-34). Security footage shows a Honda Accord following a Burgundy pickup truck out of the bank parking lot. (Tr. p. 542, l. 1 – p. 543, l. 16). At 3:15 PM at a local gas station/ Subway, Shaneka DeLoach, a relative of Donaldson's and someone who knows Applicant from the community, witnessed Applicant standing outside of Donaldson's driver's side window speaking to Donaldson and "moving his hands." (Tr. p. 234, l. 11 – p. 236, l. 17). "He could have been looking mean." (Tr. p. 236, l. 23). DeLoach, who was across the street in another parking lot, could identify Donaldson's white Honda and Applicant in a burgundy Dodge truck. (Tr. p. 236, ll. 1-7).

Sometime between 3:00 and 4:00 that same afternoon, Applicant's friend Joe Thomas saw Applicant speed past his house in a gray and burgundy truck; there was another car behind him. (Tr. p. 574, l. 4 – p. 575, l. 11). Thomas called Applicant's cell phone, and Applicant replied he was busy. (Tr. p. 574, l. 5 – p. 575, l. 18). Applicant was headed north; a rural area demarcated by Sunshine Road sits about a mile north of Thomas' house. (Tr. p. 576, ll. 4-16).

No one saw Donaldson later that evening and into the night. His girlfriend, Kim Smith, received a final text message from him around 1:30 that afternoon, but when she called his cell later that evening she received no answer. (Tr. p. 165, ll. 2-21; p. 167, l. 2 – p. 168, l. 3). Williams, who was looking to be reimbursed for his bail contribution when he finished with work for the day, could not get Donaldson to answer his phone. (Tr. p. 186, ll. 15-22). Some text messages sent to Donaldson expressing worry were not received; phone records would later show that his cell

phone was turned off or was outside of a service area for at least 72 hours. (Tr. p. 476, l. 18 – p. 478, l. 19). After a night passed without contact, Donaldson's mother contacted the police department because no one had heard from Donaldson since he was last seen with Applicant. (Tr. p. 254, ll. 17-25). Blackville Police Department Chief John Holston began a missing person's case on Donaldson the following day. (Tr. p. 265, ll. 5-13).

On the same night that no one could get in touch with Donaldson, mutual friends did see and speak with Applicant. After work, Williams, Applicant's neighbor, met Applicant outside. Applicant explained to him that he and Donaldson dug up a safe containing $90,000 to $100,000, "loaded that little Honda down with money," and Donaldson drove off with all of it. (Tr. p. 189, l. 2 – p. 190, l. 20). The next day, Williams saw Applicant again and noticed "scratch marks on his chest." (Tr. p. 200, ll. 19-25).

The next day, Williams, Hallingquest, and a third mutual friend Jamaal Berry each received a text message from an unknown phone number, 347-8647. (Tr. p. 196, ll. 9-13; Tr. p. 247, ll. 9-16). Williams' and Berry's read "help me this Tyrone am hurt Kim ex got me help please." (Tr. p. 195, ll. 4-17; Tr. p. 246, l. 18 – p. 247, l. 1). Hallingquest's text stated "help me sister-in-law Kim ex-husband got me am hurt." (Tr. p. 258, l. 10). Each recipient noticed oddities about the text message, in addition to its receipt from an unknown number. The sender incorrectly spelled "I'm" in this manner: "am." (Tr. p. 197, ll. 18-19). Additionally, Donaldson never called Hallingquest his "sister-in-law," he referred to her as either Kelsea or simply as his sister. (Tr., p. 258, ll. 11-20). Williams knew Applicant would spell "I'm" as "am" on a regular basis, and had many comparisons from past messages in his own phone. (Tr. p. 197, l. 20 – p. 198, l. 21; Tr. p. 199, ll. 17-23; Tr. p. 200, ll. 3-12). When Berry called Applicant to ask if he sent the text message, Applicant's response was along the lines of "it wasn't me, maybe this will take some heat off me."

(Tr. p. 248, l. 22 – p. 249, l. 14). When Applicant provided law enforcement with a handwritten statement, he spelled "I'm" as "am."[1] (Tr. p. 318, ll. 2-9). The texts came from a trac phone. (Tr. p. 611, ll. 3-18). Applicant later asked others if they had heard from Donaldson, or what they might have heard about Donaldson's disappearance. (Tr. p. 194, ll. 3-15; Tr. p. 565, l. 18 – p. 566, l. 25).

Also occurring one day after the disappearance, Lana Joyner, a friend of Donaldson and Hallingquest, took a detour home from work, spotted Donaldson's white Honda parked at the China Express in Orangeburg, and called Hallingquest to tell her. (Tr. p. 498, l. 23 – p. 500, l. 10). Applicant's wife Charlene testified at trial as to how the Honda appeared at the Orangeburg China Express. Between nine and ten on the night Donaldson went missing, Applicant asked Charlene to drive him to retrieve a white Honda Civic "off a paved road, back up in the woods," and Charlene obliged. (Tr. p. 303, l. 10 – p. 304, l. 24). Applicant had the key to the Honda Civic and drove it over to Orangeburg, parking it at the China Express. (Tr. p. 305, l. 8 – p. 306, l. 25). Charlene followed behind and then drove Applicant home. (Tr. p. 307, ll. 4-21). According to Charlene, they arrived home late that night, and recalled that Applicant did not stay with her for long. (Tr. p. 308, l. 23 – p. 309, l. 4). Gerrick was seen back at his girlfriend's house later that night by her son. (Tr. p. 231, ll. 12-13). He said Applicant was sitting outside on the steps between ten and midnight and "looked like he was facing – like he had a lot on his mind." (Tr. p. 231, ll. 14-24; Tr. p. 233, ll. 1-3).

Several days later on August 3, Charlene took law enforcement to the place in the woods where Applicant recovered Donaldson's car. (Tr. p. 310, ll. 2-9). The spot was located off of Sunshine Road, where there is another "little dirt road called One Way." (Tr. p. 327, ll. 8-16). They

[1] Evidence at trial established that Applicant utilized other phonetic spellings, such as spelling "right" r-a-t ("rat") and using "no" where "know" was the appropriate form in context. (Tr. p. 318, line 10 – Tr. p. 319, line 11).

made a left onto One Way, driving past where "there's an open field. And then it goes into a heavy wooded area." (Tr. p. 327, ll. 14-19). Based upon this information, law enforcement assembled a search in that area beginning August 4. (Tr. p. 328, ll. 3-10). One officer eventually came across a disturbance underfoot, "and when he poked his [search] stick into the ground . . . an odor came up." (Tr. p. 329, ll. 7-13). SLED was contacted and a crime scene technician later recovered the body of a black male later identified by a right forearm tattoo as Tyrone Donaldson. (Tr. p. 329, l. 23 – p. 331, l. 25; Tr. p. 443, ll. 12-20).

Upon recovery, Donaldson's body "was face down and the knees were bent as if put into the ground on the stomach with the legs bent up." (Tr. p. 415, ll. 15-17). Donaldson had been buried in a two-foot grave. (Tr. p. 417, ll. 1-4). Also apparent were bindings which had once bound Donaldson's knees and ankles; "his arms were underneath his chest." (Tr. p. 415, ll. 14-22). "There was a piece of root that actually went through his arms. And it was connected on both ends so his arm had gone through and around the root." (Tr. p. 416, ll. 2-5). SLED agents also found burned charcoal in the soil, a fired shotgun shell, an unfired shotgun shell, a logging chain, a cigar butt, gloves, and "a white appliance top that looked like it had burned charcoal around in it." (Tr. p. 416, ll. 9-10; Tr. p. 420, l. 25 – p. 421, l. 8).

At the gravesite, investigators found green netting, which they initially believed to be trash. (Tr. p. 411, ll. 15-18). Investigators also collected green netting and fishing lures at Applicant's Blackville residence, "similar to what [they] had seen at the body." (Tr. p. 427, ll. 16-20; Tr. p. 429, l. 25 – p. 430, l. 2). Trial testimony from Applicant's girlfriend's son showed that green netting was also present approximately a year prior to Donaldson's disappearance as part of some sod laid at Applicant's girlfriend's home. (Tr. p. 231, l. 25 – p. 232, l. 10).

Forensic Pathologist Dr. Janice Ross conducted an autopsy on Donaldson's body the day after its discovery. (Tr. p. 438, ll. 6-25). The body, "very much covered with dirt," had decomposed in a moderate-to-severe, or "fairly advanced" fashion due to it being buried for ten to twelve days in July. (Tr. p. 439, ll. 5-21). Dr. Ross discovered neither fractures nor bullets, and could not clearly identify any bruising or other soft-tissue injury due to the extent of the body's decomposition. (Tr. p. 440, ll. 2-20). Ross found no visible particles of dirt in the throat or nostrils. (Tr. p. 451, ll. 13-17). In addition to the ligatures or bindings, Dr. Ross did identify "some defects in the back of the left forearm. They were splits in the skin consistent with a laceration." (Tr. p. 441, ll. 1-7). Dr. Ross identified these forearm lacerations as defensive wounds, such as the scratches that may be obtained by shielding oneself from harm with his or her arms. (Tr. p. 447, l. 22 – p. 448, l. 22). In conclusion, Dr. Ross determined based upon "[t]he fact that he was buried underneath dirt, and without evidence of shooting or fractured skill, for instance from a beating, it is most likely that there was some kind of asphyxiation," strangulation, and a homicide. (Tr. p. 445, ll. 1-11). Such a homicide, given the circumstances and burial scenario, could result "either from being strangled with some sort of soft item" or "result from somebody being incapacitated and then buried." (Tr. p. 445, ll. 9-18).

On August 5, law enforcement executed search warrants for Applicant's Dodge pickup truck as well as for places he was known to reside. (Tr. p. 332, ll. 10-14; p. 343, l. 23 – p. 344, l. 1). Applicant was in custody at that time. (Tr. p. 392, l. 19 – p. 393, l. 5). Law enforcement found in the center console of Gerrick's truck a "brown package, like a brown piece of paper bag . . . . It was just taped up. Once you open it, it had some dust, weed, twigs, and a penny in it." (Tr. p. 344, ll. 2-10). It was taped up like a capsule. (Tr. p. 344, ll. 18-20). Law enforcement opened the capsule to find the handwritten words:

Set me Sammie Gerrick free from murder and revoke bond.

Jack Early set me free now.

Jack Early set me free now.

Jack Early set me free now.

Sammie Gerrick, Sr.

Sammie Gerrick, Sr.

Sammie Gerrick, Sr.

So shall it be.

So shall it be.

So shall it be.

Amen.

Amen.

Amen.

(Tr. p. 346, ll. 4-18).

On the other side there was a selection resembling Psalm 130:

> Out of the depths[sic], have I cried unto thee, O Lord. Lord hear my viouce[sic]: ut[sic] think ears, be attentive to the voice of my supplications, if that Lord shouldest mark iniquities O Lord, who shall stand? But there is forgiveness with thee that there inaqest[sic] be feared. I wait for the Lord, my soul doth wait, and in his word do I hope my soul waiteth for the Lord more than they that watch for the morning I saw, more than they that watch for the morning. Let Israel hope in the Lord. For with the Lord there is mercy. And with him is plenteous[sic] redemptions. And he shall redeem Israel from all his inguities[sic].

(Tr. p. 347, ll. 7-15).

Also found in the center console was a small canister labeled "Law Stay Away." (Tr. p. 425, l. 16 – p. 426, l. 13).

Law enforcement did not process Applicant's vehicle for prints because it had been washed and because Donaldson and Applicant "had knowledge of each other" such that law enforcement characterized it "not a big deal" if Donaldson's fingerprints were found in Applicant's vehicle. (Tr. p. 427, ll. 2-12). But Lieutenant Schultz with the Orangeburg Department of Public Safety recovered five of Applicant's fingerprints from the front right passenger door of Donaldson's white Honda Civic. (Tr. p. 525, ll. 1-10; Tr. p. 532, ll. 1-8). Further DNA testing inside the Honda Civic showed no contributions from either Applicant or Charlene Gerrick. (Tr. p. 507, l. 17 – p. 510, l. 3).

Over the course of the investigation into Donaldson's disappearance, Applicant made a series of voluntary statements to law enforcement. They were introduced in segments at trial. (Court's Exhibit 2). He made his first statement on July 22, the day after commencement of the missing person's investigation. (Tr. p. 266, l. 16). Blackville Police Chief John Holston first spoke with Applicant because Donaldson was last seen in his company. (Tr. p. 266, ll. 18-21). Applicant told Chief Holston that Donaldson bailed him out of jail on July 21, they went to Enterprise Bank together sometime afterwards so that Applicant could cash a check, and then they went to the BP station in Blackville. Applicant said they remained at the BP and Junior Food Mart convenience store for a while talking and were not together any time thereafter. (Tr. p. 266, l. 25 – p. 267, l. 9).

After law enforcement got the tip about Donaldson's Honda Civic from the China Express in Orangeburg, Chief Holston again spoke with Applicant. (Tr. p. 267, ll. 10-20). Chief Holston wanted to know whether Applicant knew about Donaldson's ATM card. (Tr. p. 268, ll. 1-2). Chief Holston included SLED Lieutenant Shaun Harley in this second interview, which began late into the night on July 22 and bled into early the next morning. (Tr. p. 314, ll. 13-24). Applicant went

into the details of his initial arrest,[2] his attempts to contact Donaldson for bail money, and Donaldson ultimately bailing him out. (Tr. p. 269, l. 1 – p. 270, l. 20). Applicant's statement included more minutia about his July 21 contact with Donaldson: Donaldson drove him home from jail, Applicant went inside and cleaned up, then Donaldson and Applicant went to Enterprise Bank so Applicant could cash a check for $104, then Applicant "went to JRs Mart driving [his] 1998 Dodge pickup to put $30 worth of gas in [his] truck while Tyrone was still driving the white Honda Civic." (Tr. p. 270, l. 21 – p. 271 l. 6). Applicant referenced his use of Donaldson's ATM card. (Tr. p. 271, ll. 22-24). Then, according to Applicant, each told the other they were going home. (Tr. p. 271, ll. 7-9). During this interview, Chief Holston "did notice that there w[ere] some scratches across . . . Applicant's arms and across his chest." (Tr. p. 272, ll. 13-15). Holston photographed the marks. (Tr. p. 273, ll. 2-13).

Applicant gave a third statement to Lieutenant Harley at the Barnwell County Sheriff's Office during an interview with Harley and SLED agent John Burnett. (Tr. p. 320, l. 3 – p. 321, l. 18). In this statement, Applicant went into details on how he got in touch with Williams about needing bail money, and then went on to explain how he and Donaldson jointly received $18,000 from a backhoe. Applicant did not want to tell Williams about that money because "he didn't think that [he] need to bring that up." (Tr. p. 322, p. 14 – p. 323, l. 3). Applicant expounded upon financial calculations he made with Donaldson regarding repayment for bail and admits in that statement: "So I received the [ATM] card from there and went to the bank." (Tr. p. 323, ll. 4-16; Court's Exhibit 2). Applicant stated he was given Donaldson's ATM card because they shared joint ownership of the backhoe funds. (Tr. p. 323, l. 20 – p. 324, l. 23).

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[2] The chain of events arose from Applicant's Bamberg County incarceration following a wholly separate child support issue. Once Applicant received that sentence, he attempted to escape the courthouse and was apprehended in the Piggly Wiggly parking lot. (Tr. p. 269, ll. 1-11).

On July 25, SLED agent John Burnett interviewed Applicant again. (Tr. p. 394, ll. 19-23). Applicant stated he had the economic means to get out of jail but was not allowed to make the requisite calls to arrange his bond, and eventually the bail arrangement with Donaldson worked out ten days after Applicant's initial incarceration. (Tr. p. 400, l. 20 – p. 401, l. 1). Applicant said he had tardy bills totaling somewhere between $1500 and $1800, that he fronted Donaldson some money at an earlier time, and he had no reason for meeting Donaldson post-bailout at Enterprise Bank. (Tr. p. 401, l. 2 – p. 402, l. 9; Tr. p. 403, ll. 10-17). Agent Burnett also noticed scratches "visible to the eye" on Applicant's arms and chest "consistent with having been exposed to the outdoors." (Tr. p. 402, ll. 10-17).

Also, one week after Donaldson's disappearance, Applicant called Chief Holston's cell phone. (Tr. p. 274, ll. 8-12). When Holston picked up the phone, Gerrick said "Tyrone's not dead. . . . Black's got Tyrone and they want $25,000 in cash for him . . . ." (Tr. p. 274, ll. 13-19). Applicant requested "backup" to get Donaldson back, explained that Donaldson must be "over around Springfield" where "Black was from." (Tr. p. 274, ll. 20-23). Chief Holston told Applicant that if he could send him more information and proof of life, they would "go from there." (Tr. p. 275, ll. 1-7). Applicant sent no additional information. (Tr. p. 279, ll. 12-18).

After law enforcement recovered Donaldson's body, they had Applicant transported from the Charleston County Detention Center[3] to Barnwell County for a fifth interview. (Tr. p. 333, ll. 1-21). Applicant started providing answers to information presented to him by law enforcement at this time. Applicant said he went to the BP station to visit with Donaldson, then visited his father's house in Bamberg County, and then walked from there to his wife's house. (Tr. p. 350, ll. 16-24).

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[3] Applicant's Charleston County incarceration stemmed from a bond violation. (Tr. p. 351, ll. 11-14).

This time, Applicant for the first time said that he went to Orangeburg, but did not mention the Honda Civic. (Tr. p. 350, l. 25 – p. 351, l. 3). Applicant was arrested for Donaldson's murder. (Tr. p. 358, ll. 21-25).

A few hours after arrest, Applicant requested to speak with law enforcement again. (Tr. p. 359, ll. 8-18). Applicant imparted upon the officers that he wanted to tell the whole story truthfully, opening with "I'm going to put it all out there." (Tr. p. 361, l. 24 – p. 362, l. 3). Applicant then told the events in a different light, stating that he and Donaldson planned a drug transaction while riding back from jail. Donaldson was supposed to purchase a kilo of cocaine from Andrew Hightower, O'Shane Dixon and "Big Joe." (Tr. p. 362, ll. 4-12). Applicant previously mentioned a Big Joe to Lieutenant Harley, (p. 358, ll. 5-11), but Big Joe was identified slightly differently this time. (Tr. p. 362, l. 21 – p. 363, l. 3; Tr. p. 600, ll. 14-21). All Applicant knew about Big Joe was that he was from Georgia and drove a Denali. (Tr. p. 362, l. 13 – p. 363, l. 3). Applicant talked about a drug deal set to occur after he and Donaldson departed from the BP and Junior Food Mart, wherein Donaldson was supposed to give Applicant some of the proceeds, even though Applicant owed Donaldson $3300 in bail money. (Tr. p. 363, ll. 7-23). Andre Hightower then instructed Applicant to move Donaldson's car in exchange for $400, and Applicant admitted to driving the Honda to Orangeburg. (Tr. p. 364, l. 2 – p. 368, l. 24).

During the same interview, Applicant first maintained that he never traveled to the "wooded areas on that one-way dirt road where the car was located and the body was discovered." But Applicant changed his story after Lieutenant Harley told him homeowners on the road saw his truck. (Tr. p. 369, l. 14 – p. 371, l. 8). In a follow-up August 18 interview with SLED agent Jeff Croft, Applicant "began to explain how his truck could have possibly been found or seen in the area." (Tr. p. 599, ll. 9-21). Now placing himself at the crime scene, Applicant declared that the

drug deal involving a kilo of cocaine became fumbled and Applicant looked on while Big Joe, Andre Hightower and O'Shane Dixon began to beat Donaldson. (Tr. p. 599, l. 22 – p. 601, l. 24). The weapon was a pipe or a gun. (Tr. p. 604, ll. 10-13).

On yet another occasion in October 2011, Applicant sent a letter to SLED requesting a further interview during which "he stated that he had somebody that could vouch for his innocence." (Tr. p. 372, l. 5 – p. 373, l. 25). Another inmate at Lieber, Early Glover, wrote a statement on Applicant's behalf because Applicant told him he "was in a bind." (Tr. p. 374, ll. 3-12; Tr. p. 583, ll. 1-25). Applicant promised Glover he would pay him $1000 to copy a statement Applicant scripted and passed through the jail cells, and Applicant practiced writing the statement to Applicant's satisfaction, signing Glover's name at the bottom. (Tr. p. 584, l. 3 – p. 587, l. 5). The statement dealt with Donaldson, who "was supposed to be the main man," meeting two other men in the woods, when an argument ensued involving Applicant, and whereupon Applicant was told to stay in the car. (Tr. p. 587, ll. 6-24). "None of it never[sic] happened" in reality. (Tr. p. 588, l. 1).

Upon further investigation, zero evidence corroborated other individuals in Donaldson's disappearance. (Tr. p. 376, l. 2 – p. 377, l. 2). Donaldson had no community reputation for or connection with drugs. (Tr. p. 376, ll. 11-22). In regards to the drug deal narrative, Andre Hightower testified at trial that he hardly knew Applicant and had never heard about a Big Joe. (Tr. p. 558, l. 12 – p. 559, l. 16). He also did not know O'Shane Dixon. (Tr. p. 561, l. 25 – p. 562, l. 1). Hightower was in Greenville with his girlfriend and her son on July 21. (Tr. p. 558, l. 21 – p. 559, l. 9), and he stayed in Greenville for about two days. (Tr. p. 563, ll. 2-9). O'Shane Dixon, fishing buddies with Applicant, also testified. (Tr. p. 564, ll. 13-21). Dixon was at home watching his children all day on July 21, heard about Donaldson's disappearance that evening, and began

receiving phone calls from Applicant that night onward asking about what Dixon may have heard about it. (Tr. p. 565, l. 18 – p. 566, l. 25). Applicant also called off their fishing trip on July 22 without reason. (Tr. p. 567, ll. 1-21).

Also, just as Applicant and Donaldson went to the Enterprise Bank ATM on the day of Donaldson's disappearance, Applicant returned to that same ATM alone at 8:00 that same night in his burgundy Dodge Ram and used Donaldson's ATM card. (Tr. p. 545, l. 6 – p. 546, l. 25). p. 555, ll. 15 – 20). Donaldson's card was also used on July 22 at 7:50 PM at Bamberg Auto Parts, at 8:00 PM at the Palm Pantry in Bamberg, twice more at the in-store ATM at the Palm Pantry, and that morning at the Bank and Trust on North Main Street in Bamberg. (Tr. p. 552, l. 1 – p. 554, l. 23). Donaldson's same account was used to pay bills for SCANA Energy around midnight on July 22. (Tr. p. 555, ll. 2-14).

Finally, cell phone records evidence that Donaldson's cell phone permanently left the grid at the same time as Applicant's, but Donaldson's phone never regained service. (Tr. p. 461, l. 4 – p. 470; Tr. p. 476, l. 18 – p. 478, l. 19; Tr. p. 705, l. 24 – p. 706, l. 9). The last four phone calls the Donaldson made were to Applicant. (Tr. p. 469, l. 15 – p. 470, l. 1; Tr. p. 612, l. 24 - p. 614, l. 21; Tr. p. 705, ll. 3-11). After that last phone call, made from the Blackville area, Applicant's phone escaped from the phone grid for two hours. (Tr. p. 461, l. 4 – p. 470; Tr. p. 705, ll. 12-25). Other records show that the mysterious "help me am hurt" text messages derived from a trac phone pinging from the same location as Applicant's phone at the time the texts were sent. (Tr. p. 611, ll. 3-18; Tr. p. 719, l. 13 – p. 720, l. 11).

Based on the following evidence adduced at trial, the jury convicted Applicant.

CURRENT ACTION BEFORE THE COURT

In his successive application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

> "10(a) Mr. Gerrick was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution."
>
> > "11(a) Trial counsel's performance was both unreasonable and prejudicial, *see Strickland v. Washington*, 466 U.S. 668 (1984), for failing to investigate and discover that Dustin Williamson is the person who actually committed the murder for which Mr. Gerrick is convicted. An opinion from the Fourth Circuit Court of Appeals states:
> >
> > > On November 22, 2013, Williamson gave Barwell County correctional officers a letter addressed to Sheriff Carroll. Carroll was then out of town, but asked Chief Deputy David Deering to open the letter. Williamson's letter ranted against several individuals, confessed to murder, and proclaimed the innocence of another man.
> >
> > *Williamson v. Stirling*, 912 F.3d 154, 160 (4th Cir. 2018). Mr. Gerrick is informed and believes that this confession pertains to the murder of the decedent in his case. During Mr. Gerrick's PCR evidentiary hearing, trial counsel testified:
> >
> > > About three weeks, roughly, before trial, a note - or a letter was found in Sammie's cell. It was supposed to be from a fella named "Dustin Williamson." Dustin, in the letter, admits to having killed Tyrone Donaldson. All right. He says that he did it in Santee, okay, which is 60 miles from Barwell, and then they came back sometime later and buried the body where - where it was found.
> > >
> > > Dustin was also in trial - on trial for murder. The question is: Is he gonna be a witness in this case, and is there any way I can corroborate what's in that note, that this actually happened somewhere else?
> >
> > PCR Tr. 67, lines 7-17. Although trial counsel was aware that Mr. Williamson was a suspect in this murder, trial counsel failed to investigate and discover Mr. Williamson is the person who actually committed the murder for which Mr. Gerrick is convicted.
>
> "10(b) Mr. Gerrick is actually innocent."
>
> > "11(b) Dustin Williamson's confession establishes Mr. Gerrick's actual innocence."

"10(c) The prosecution withheld evidence, in violation of the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, relevant to guilt-innocnence, that was exculpatory or otherwise necessary for preparing a defense[] in the guilty-innocence phase. *Kyles v. Whitley*, 514 U.S. 419, (1995); *Brady v. Maryland*, 373 U.S. 83, (1963); *Roviaro v. U.S.*, 353 U.S. 53 (1957); *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006); Rule 5, SCRCrimP.

> "11(c) The prosecution has an obligation to disclose Dustin Williams's confession to law enforcement, even though it occurred after Mr. Gerrick's trial, but did not do so."

(APCR p. 2-3). Applicant further states his application is premised on newly discovered evidence, which he asserts he discovered in December 2019. (APCR p. 4)

On February 3, 2021, Applicant, through Counsel Grose, served a Motion for Discovery, seeking

> 1. All information in the possession of or known to the State of South Carolina regarding Dustin Williamson's confession to the murder for which Mr. Gerrick was convicted of committing. *Kyles v. Whitley*, 514 U.S. 419, (1995); *Brady v. Maryland*, 373 U.S. 83, (1963); *Roviaro v. U.S.*, 353 U.S. 53 (1957); *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006).
>
> 2. All information in the possession of or known to the State of South Carolina regarding the prosecutions of Dustin Williamson for murder, ten counts of attempted murder, and possession of a weapon during the commission of a violent crime pending in Aiken County, Case No. 2020-A02-102-02216 - 02227. Exhibit A.
>
> 3. All information in the possession of or known to the State of South Carolina regarding the prosecutions of Dustin Williamson for murder and possession of a weapon during the commission of a violent crime pending in Barwell County, Case No. 2020-A06-101-00060, 00027, 00028. Exhibit B.

Applicant states, "Obtaining these materials are essential for counsel to provide effective representation, factually develop all PCR claims, and amend the PCR application."

In response, Respondent served its return and motion to summarily dismiss the successive application as procedurally barred as successive, untimely, and for failing to make a *prima facie* showing of newly discovered evidence pursuant to the Uniform Post-Conviction Procedures Act,

S.C. Code Ann. § 17-27-10 et seq. (2014), on January 12, 2022. Attached to this return are the records of the Barnwell County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the records from Applicant's direct appeal, prior post-conviction relief action, and the appeal of that action.

In the more than six months since this return and motion to dismiss has been served, Applicant has not responded to the motion or otherwise amended his application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application as there is no genuine issue of material fact which would necessitate an evidentiary hearing. 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); Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

Although Applicant frames his grounds for post-conviction relief as separate claims of actual innocence, ineffective assistance of counsel, and prosecutorial misconduct, all center around a claim of newly discovered evidence—the purported confession of Dustin Williamson, a pre-trial detainee waiting the resolution of numerous charges pending in Aiken and Barnwell Counties. Applicant acknowledges the claims are based on newly or after discovered evidence in his application. Specifically, Applicant cites to the November 22, 2013, letter purportedly written by

Williamson, which was provided to the trial court, Applicant, and the State, and which was the basis for one of the grounds in his Amended Motion for a New Trial. However, because this letter was known to Applicant (as well as the State and the trial court) immediately following his trial, was a basis for a new trial motion, and was expressly rejected by the trial court, Respondent asserts these claims must fail as a matter of law because they do not constitute newly discovered evidence and are barred by the doctrine of *res judicata*. After a thorough review of the record, this Court agrees.

The Uniform Post-Conviction Relief Act states a person may institute a post-conviction relief action if "there exists evidence or material facts, ***not previously presented and heard***, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application ***must be filed within one year after the date of actual discovery*** of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C).

"Traditionally, in South Carolina, to obtain a new trial based on after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 128 (2014) (internal citations and quotations omitted); see also Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979) (setting forth the five factors to be analyzed when considering a newly discovered evidence claim). The granting of a new trial based on after-discovered evidence is disfavored. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011).

Based on the standard set forth above, Applicant cannot establish he is entitled to post-conviction relief based on the purported confession of Dustin Williamson in a November 22, 2013, letter because this claim is untimely and has already been litigated in his post-trial motions. As extensively documented in the general sessions record, which is attached to Respondent's return and motion to dismiss, Applicant was well aware of the November 22, 2013, letter from Williamson immediately after it was written. It was the subject of his amended motion for a new trial, was the basis of a SLED investigation to which Applicant and his counsel were privy and was litigated before the trial court in his post-trial motion. To now argue this letter is "newly discovered" is directly contrary to the record and fails as a matter of law and fact. Accordingly, Applicant's claims are patently untimely. See Jamison, 410 S.C. at 466, 765 S.E.2d 127–28 ("The South Carolina Uniform Post–Conviction Procedure Act (PCR Act) allows an applicant to file an application for relief '[i]f the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence.' S.C. Code Ann. § 17–27–45(C) (2014) (allowing applications to be filed within one year of the date of actual discovery of the facts or from the date when the facts "could have been ascertained by the exercise of reasonable diligence"). This Court finds these claims must fail as a matter of law.

Additionally, to the extent Applicant raises this claim as ineffective assistance of counsel for failing to discover and investigate Williamson's statement, this Court also finds this claim must be dismissed on procedural bars because all claims of ineffective assistance of counsel must have been raised in Applicant's initial post-conviction relief action. See S.C. Code Ann. § 17-27-90 (1985) ("All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction

or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, *unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.*"). Successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). "All applicants are entitled to a full and fair opportunity to present claims in one PCR application." Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). "Successive PCR applications and appeals are generally disfavored because they allow an applicant to receive more than 'one bite at the apple' as it were." Id. The "burden is on the applicant to establish that any new ground raised in a subsequent application could not have been raised in a previous application." Id.

As discussed above, Applicant was well aware of Williamson's November 22, 2013, letter immediately after it was written—it was the basis of his amended motion for a new trial, filed by trial counsel. Applicant cannot now claim in a successively, untimely application that trial counsel did not do a sufficient investigation into this letter for which he has been on notice since 2013.

Respondent asserts, and this Court agrees, that Applicant cannot proceed forward on claims of ineffective assistance of counsel based on a successive application based in information that he knew about not only during his post-trial motions but that he also could have pursued during the pendency of his initial post-conviction relief action.

Moreover, the trial court already expressly rejected this claim, finding that Williamson's letter and repeated attempt to intertwine himself in Applicant case lacked credibility following an extensive SLED investigation both before and after Applicant's trial. The trial court was in the best position to rule on such claims, and it rightfully rejected these claims. See State v. Harris, 391

S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) ("This issue [of newly discovered evidence] comes down to a matter of the credibility of the witnesses, which we leave to the trial court's discretion.").

Moreover, as this claim has already been litigated by the same parties, it is now barred under the principles of *res judicata*. See Carpenter v. S.C. Dep't of Corr., 431 S.C. 512, 525–26, 848 S.E.2d 346, 353 (Ct. App. 2020) (quoting Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) ("To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.")). Because Applicant previously raised these specific claims regarding Williamson's November 22, 2013, letter, and Judge Early expressly rejected the claims, this application based on the same issue is barred by *res judicata*.

Accordingly, this Court finds that this application should be summarily dismissed pursuant to Section 17-27-70. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final.

Applicant has also requested to invoke the discovery process, and more specifically, has requested the Court issue an order allowing him to obtain the following:

> 1. All information in the possession of or known to the State of South Carolina regarding Dustin Williamson's confession to the murder for which Mr. Gerrick was convicted of committing. *Kyles v. Whitley*, 514 U.S. 419, (1995); *Brady v. Maryland*, 373 U.S. 83, (1963); *Roviaro v. U.S.*, 353 U.S. 53 (1957); *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006).
>
> 2. All information in the possession of or known to the State of South Carolina regarding the prosecutions of Dustin Williamson for murder, ten counts of attempted murder, and possession of a weapon during the commission of a violent

crime pending in Aiken County, Case No. 2020-A02-102-02216 - 02227. Exhibit A.

3. All information in the possession of or known to the State of South Carolina regarding the prosecutions of Dustin Williamson for murder and possession of a weapon during the commission of a violent crime pending in Barwell County, Case No. 2020-A06-101-00060, 00027, 00028. Exhibit B.

Motion for Discovery.

The Uniform Post-Conviction Procedure Act allows for discovery in a non-capital PCR case with good cause and order of the circuit court permitting discovery requests. S.C. Code Ann. § 17-27-150(A) states:

> A party in a non-capital post-conviction relief proceeding shall be entitled to invoke the process of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for the effective utilization of discovery procedures, counsel may be appointed by the judge for an applicant who qualifies for appointment pursuant to Section 17-27-60 or similar applicable provisions of law.

Applicant asserts he has established good cause because "[o]btaining these materials are essential for counsel to provide effective representation, factually develop all PCR claims, and amend the PCR application."

Respondent opposed this motion, noting that the underlying successive application is procedurally barred on numerous grounds and the very letter that is subject to all claims was in the possession of Applicant and his counsel immediately following his trial. Respondent asserts this issue has been extensively litigated and Applicant has not shown good cause to invoke the discovery process on this meritless claim.

This Court agrees that Applicant has failed to show good cause. As discussed above, these claims patently lack merit as a matter of law and fact, and therefore, Applicant cannot establish good cause to obtain discovery in an action that is procedurally barred and should be summarily

dismissed. Accordingly, this Court denies his motion to conduct discovery.

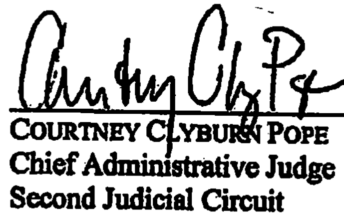
CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Barnwell County Clerk of Court and shall serve opposing counsel at the following address:

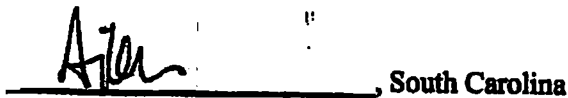
Office of the Attorney General
PCR Division – Megan Harrigan Jameson
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Barnwell County Clerk of Court and opposing counsel within twenty days, and the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 13 day of December, 2022.



COURTNEY CLYBURN POPE
Chief Administrative Judge
Second Judicial Circuit



Aiken, South Carolina

RECEIVED
JAN 17 2023
SC SUPREME COURT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 – Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated T. DEBOW *(Server)* as his duly authorized agent for the purpose of making service on the below named individual.

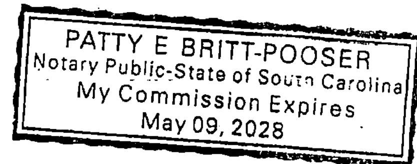
STATE OF SOUTH CAROLINA)
) **AFFIDAVIT OF PERSONAL SERVICE**
COUNTY OF Dorchester)

On this 3 day of January, ~~2022,~~ 2023 I served the **Conditional Order of Dismissal-Case No.: 2020-CP-06-00116** on *Inmate* **Sammie Lee Gerrick** ***SCDC Inmate Number*** **165940** by delivering personally and leaving a copy of same at **Lieber** ***Correctional Institution***, Ridgeville, SC. I am not a party to this action.

s/ T. DEBOW
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME
this 3 day of January 2023 ~~2022.~~

Notary Public for South Carolina
My commission expires: 5/9/2028.


PATTY E BRITT-POOSER
Notary Public-State of South Carolina
My Commission Expires
May 09, 2028

ACCEPTANCE OF SERVICE

Service of a copy of the within Legal Pleadings is accepted at the South Carolina Department of Corrections (**Lieber** ***Correctional Institution***), Dorchester County, SC this 3 day of January ~~2022.~~ 2023

s/ Sammie Gerrick
Inmate **Sammie Lee Gerrick**
SCDC Inmate Number 165940

SCDC 9-12 (Rev. 5-2010)

RECEIVED

JAN 17 2023

SC SUPREME COURT