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MAY 11 2023

S.C. SUPREME COURT.

The State of South Carolina
In The Supreme Court



Appeal From Kershaw County
Court of Common Pleas

Chief Admin Judge, Alison Lee

Chief Admin Judge, Joeekin Newman



Case No. 2022-CP-28-413



D. Russell Barlow II

Attorney Generals etc.

Defendant,

v.

Plaintiff,

Robert Cannon # 328347



Notice of Appeal



Robert Cannon appeals the order dated
April 19th 2023 by The Honorable Judge Newman.

The Appellant received written Notice of Entry
from SCDC Mailroom April 26, 2023.

5/5/23

Robert Cannon # 328347

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Robert L. Cannon, #328347,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2022-CP-28-413

FINAL ORDER OF DISMISSAL

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S.C. SUPREME COURT

FILED FOR RECORD
2023 APR 19 AM 9:07
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter comes before this Court by way of a post-conviction relief (PCR) action commenced by Robert L. Cannon (Applicant) filed on April 27, 2022. The State made its Return and Motion to Dismiss on October 13, 2022, requesting this action be summarily dismissed because it was untimely, successive to Applicant's previous PCR applications, barred by the statute of limitations, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014).

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed November 30, 2022, and filed January 3, 2023, provisionally denying and dismissing this action while giving Applicant twenty days from the date of service of said order in which to show why the Conditional Order of Dismissal should not become final. Attached to this Final Order and incorporated herein by reference is a certificate of service dated January 19, 2023, indicating the State served the above-mentioned Conditional Order of Dismissal on Applicant at the Kershaw Correctional Institution.

Applicant submitted a "Response to Conditional Order of Dismissal (Pro Se)" filed on November 9, 2022, before the Conditional Order of Dismissal was signed or filed by Applicant.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court
Janet C. Hasty
Clerk of Court Kershaw County

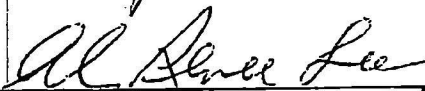
filing, he argues the same points as his initial filing, that the court lacked subject matter jurisdiction and the grand jury empanelment was not legal.

This Court reasserts its finding in the Conditional Order of Dismissal that the current PCR application must be dismissed because the circuit court had subject matter jurisdiction over Applicant's criminal matters; the application was filed after the statute of limitations had expired; and for failure to state a cognizable claim for relief. 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 showing based on the information set forth in his response, and, therefore, he is not entitled to an evidentiary hearing in this matter. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's conditional order of dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises Applicant he must file and serve a notice of appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 19th day of April, 2023.


ALISON RENEE LEE
Chief Administrative Judge
Fifth Judicial Circuit

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S.C. SUPREME COURT

Candler, South Carolina.



ALAN WILSON
ATTORNEY GENERAL

April 21, 2023

ROBERT CANNON, #328347 (PB-0035-B)
Kershaw Correctional Institution
4848 Gold Mine Hwy
Kershaw, SC 29067

Re: Robert Cannon, #328347 v. State of South Carolina
Case No: 2022-CP-28-0413

Dear Mr. Cannon:

Enclosed please find a copy of the **Final Order of Dismissal** in the above-captioned case signed by the Honorable Alison Renee Lee and filed with the Richland County Clerk of Court.

Should you need anything further, please do not hesitate to contact me.

Sincerely,

D. Russell Barlow, II
Assistant Attorney General

DRB/sce

Enclosures

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MAY 11 2023
S.C. SUPREME COURT

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

ROBERT CANNON, #328347

Applicant,

v.

STATE OF SOUTH CAROLINA

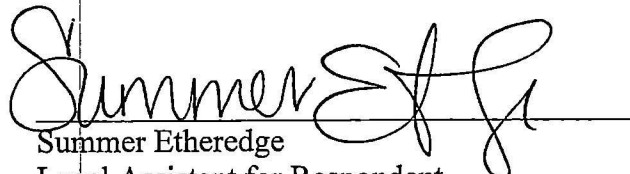
Respondent.

AFFIDAVIT OF SERVICE


The undersigned hereby certifies that a true copy of the **Final Order of Dismissal** been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

ROBERT CANNON, #328347 (PB-0035-B)
Kershaw Correctional Institution
4848 Gold Mine Hwy
Kershaw, SC 29067

This 21st day of April, 2023.


Summer Etheredge
Legal Assistant for Respondent

SWORN to before me this 21st day of April, 2023.


Notary Public for South Carolina.
My Commission Expires: 03/29/2032

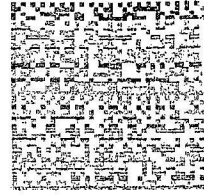


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S.C. SUPREME COURT

KERSHAW CI
MAIL ROOM

APR 24 2023

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D. Russell Barlow, II, AAG
SC Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

ROBERT CANNON, #328347 (PB-0035-B)
Kershaw Correctional Institution
4848 Gold Mine Hwy
Kershaw, SC 29067

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S.C. SUPREME COURT



[CERTIFICATE OF SERVICE]

I Mr. Robert L. Cannon, do hereby certify that on the day stated hereunder I did deposit in the Kershaw C.I. mail system and exact copy of the foregoing **RESPONSE TO FINAL ORDER OF DISMISSAL** to be deposited in the U.S. Mail system with sufficient first class postage attached and addressed as follows;

Attorney General's ofc.
D. Russell Barlow II
1000 Assembly Str
Columbia, SC 29201

4/10/23

Robert Cannon

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MAY 11 2023

S.C. SUPREME COURT

State of South Carolina)
County of Kershaw)

In The Court of Common Pleas
5th Judicial Circuit

Robert L. Cannon, #328347)
Applicant)

"vs")

Case No: 2022-CP-28-413

State Of South Carolina)
Respondent)

Response To Final Order
Order of Dismissal

Comes Now, Mr. Robert Cannon, and I would show unto this court of Common respectfully the following:

In response to the states final order of dismissal, motion received by Applicant on April 7th, 2023.

Applicant makes the following clarifications and rebuttals to show why (1) The states order of dismissal should be denied and (2) Not only should Applicant's claims be addressed, but his immediate release granted or at the ~~least~~ ^{least}, conviction reversed, remanded to the genises being that of simple arrest warrant.

(A) CLARIFICATIONS AND REBBUTALS

[1] Respondent claims Applicant submitted response before conditional order was signed and filed. However Applicant was under the understanding that he was to respond when he received the states motion dated October 14th, 022. (PLEASE SEE ATTACHED DOCUMENT. Note while state signed on Oct. 7th, ~~was~~ factor in delivery time and mail-room delay. Applicant received it a week later.)

[2] Respondent continues to try to Characterize Applicants claims ^{AS} ~~as~~ a Gentry (State "vs" Gentry) or Evans "vs" State issue. For the [f]inal time, Applicant has not argued at any point indictment issues, nor jury selection or empanelment issues.

My claims are solely about the County of Kershaw failure to abide by S.C. Law mandated by the General Assembly and hold court within the [s]pecific terms authorized to that court.

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S.C. SUPREME COURT

[3] Respondent states the court had subject matter jurisdiction (SMJ) to ~~grant~~^{Accept} Applicant's guilty plea. This can only be a lie to swey the court's as Applicant has never entered a guilty plea and went to [t]rial, as a simple search through the records would have reveled.

[4] Respondent states application was filed after the statute of limitations. ~~Applicant's~~ Applicant's asserts issues related to lack of subject matter can never be construed as successive or time barred, why not ? because the doctrine of res-judicata do not apply to the hypersensitive jurisdictional dispute BROWN "vs" State, 343 S.C. 342, 540 S.E. 2d. 846 at [No. 1] (S.C. 2001).

[5] Respondent say's application failed to state a cognizable claim of relief. However because ruling's made without subject jurisdiction are null and void, being so the need to state a claim for relief would be redundant as per my issues my conviction and even indictment's should be reversed.

Lastly, Respondent quotes Welch "vs" McDugal, and Blandshaw "vs" State, declaring Applicant failed to make a prima facie showing entitlement to relief. Let me dissect this claim. Applicant has raised his claim backing it up with not only the physical evidence of indictment's and stamps showing grand jury was held outside of terms mandated by legislative state law. applicant also provided the law itself, state and federal verifying his claims.

The U.S. Supreme Court has ruled time and time again rulings without subject matter jurisdiction is null and void. Therefore the court of Kershaw committed [f]raud on the court ^{To} return an indictment and find me guilty by failing to adhere to Constitutional and statutory law.

The fact that the state thinks it's no big deal and not a cognizable claim is troubling. To instantiate, some are trying to ignore the law itself.

In closing the state is trying to get this Honorable Court to ignore the the ^{VERY} pillars of our society, from failing to even address my claims.

To lie about serving Applicant ^{At} Lee County Correctional (I AM AT KERSHAW C.I.). To even attempting to get an outside judge to Rule on the issue (Judge Jocelyn Newman) is in charge ^{OF} the case, not the Honorable Judge Lee who I might add presided over my initial PCR. **CAN WE PLEASE CEASE THE DELAYS AND GRANT ME MY FREEDOM, JUSTICE DELAYED IS JUSTICE DENIED.**

4/10/23

Probert Cannon



ALAN WILSON
ATTORNEY GENERAL

October 7, 2022

RECEIVED
MAY 11 2023
S.C. SUPREME COURT

The Honorable Janet C. Hasty
Clerk of Court, Kershaw County
Post Office Box 1557
Camden, South Carolina 29021-8557

Re: Robert Cannon, #328347 v. State of South Carolina
Case No: 2022-CP-40-3985

Dear Ms. Hasty:

Enclosed for filing please find the original Return and Motion to Dismiss of the Respondent, with its accompanying attachments, in the above-captioned case. Please let me know if anything additional is needed at this time.

Sincerely,

D. Russell Barlow, II
Assistant Attorney General

DRB/sce
Enclosure

cc: The Honorable Jocelyn Newman, Chief Administrative Judge
Robert Cannon, #328347

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Robert Cannon, #328347,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT

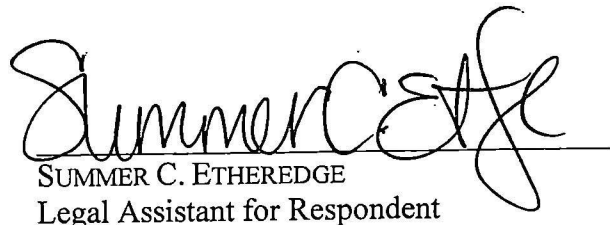
) CASE NO. 2022-CP-28-413

) **CERTIFICATE OF SERVICE BY MAIL**

1. Undersigned is an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. Undersigned has served a copy of the Return and Motion to Dismiss and Conditional Order of Dismissal in the above-captioned matter on Applicant by depositing same in the United States mail, postage prepaid:

**Kershaw Correctional Institution
Robert Cannon, #328347 (PB-0035-B)
4848 Gold Mine Hwy
Kershaw, SC 29067**

DATED this 7th day of October, 2022.


SUMMER C. ETHEREDGE
Legal Assistant for Respondent

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MAY 11 2023

S.C. SUPREME COURT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
SummerEtheredge@scag.gov

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Robert Cannon, #328347,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2022-CP-28-413

CONDITIONAL ORDER OF DISMISSAL

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MAY 11 2023

S.C. SUPREME COURT

JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

FILED FOR RECORD
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FILED FOR RECORD

The matter before the Court is an action for post-conviction relief (PCR) commenced by Applicant Robert Cannon on April 27, 2022, asserting the court lacked subject matter jurisdiction. Respondent made its Return and Motion to Dismiss on August XXC, 2022, requesting the action be summarily dismissed as untimely, successive to Applicant's previous PCR applications, barred by the statute of limitations, and for failing to comply with 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, barred by the statute of limitations, for failing to comply with the Uniform Post-Conviction Procedures Act, and provisionally dismisses the action based on the following:

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections (SCDC) pursuant to the Kershaw County Clerk of Court's orders of commitment. Applicant was indicted during the February 2007 term of the Kershaw County Grand Jury for Burglary in the First Degree (2007-GS-28-00017) and Murder (2007-GS-28-00018), stemming from the home invasion and killing of Joshua Zoch. Two co-defendants, Christopher Whitehead and Derrick McDonald were similarly indicted. Joshua Snow Kendrick, Esquire, represented Applicant.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Janet C. Hasty
Clerk of Court

P. Meadors, Assistant Solicitor Joanna A. McDuffie, and Assistant Solicitor Ronald W. Moak prosecuted the case for the Fifth Circuit Solicitor's Office.

On May 5, 2008, Applicant proceeded to a joint trial by jury alongside co-defendants Whitehead and McDonald before the Honorable G. Thomas Cooper, Jr. On May 13, 2008, the jury convicted Applicant as indicted for murder and burglary in the first degree.¹ Judge Cooper sentenced Applicant to thirty-five years for each offense, with the sentences to be served concurrently.

Applicant filed a notice of appeal, and an appeal was perfected on his behalf by Melissa J. Kimbrough Armstrong, Esquire. Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Robert Cannon, 2011-UP-267 (Ct. App. filed June 8, 2011). The Remittitur was returned on June 24, 2011.²

Initial PCR Action and Subsequent Appeal: 2012-CP-28-00145

Applicant subsequently filed his first application for post-conviction relief on February 9, 2012, in which he alleged the following grounds for relief:

1. Actual Innocence: "Not enough substantial evidence to convict," and
2. Ineffective Assistance of Counsel for failure to properly investigate the case.

¹ The jury similarly convicted co-defendants Whitehead and McDonald for murder and burglary in the first degree. The court sentenced Whitehead to life imprisonment and McDonald to thirty-five years imprisonment.

² Co-defendants Whitehead and McDonald also sought direct appellate review of their convictions and sentences. The South Carolina Court of Appeals affirmed both co-defendants' convictions. State v. Whitehead, Op. No. 2012-UP-536 (Ct. App. filed Sept. 12, 2012) and State v. McDonald, 400 S.C. 272, 734 S.E.2d 167 (Ct. App. 2012). Both then petitioned for certiorari to the South Carolina Supreme Court, which granted both petitions. Following full briefing and argument of each case, the Supreme Court affirmed both co-defendants' convictions and sentences, citing overwhelming evidence of guilt implicating each defendant. State v. Whitehead, Mem. Op. No. 2015-MO-033 (filed June 10, 2015) and State v. McDonald, 412 S.C. 133, 771 S.E.2d 840 (2015).

As requested relief, he sought to have his conviction and sentence vacated and remanded to the lower court for a new trial.

On March 2, 2012, the State filed a Return and Motion to Dismiss in Part.³ On March 12, 2014, Applicant, through counsel, filed an amended application alleging the following additional grounds for relief:

1. Trial counsel was ineffective for neglecting to investigate and subpoena alibi witnesses where Counsel was provided with the names and contact information for these witnesses who could have verified the Applicant's presence at a party in Columbia, at a home next door to his mother's residence from 11:00 p.m. to 12:00 a.m. These witnesses Steven Coffee, Gerod Chandler, and Orlando Givens were made known to Trial Counsel and were at the time of the Applicant's trial, available to testify for the defense.
2. Trial Counsel was ineffective for failing to introduce testimony from the Applicant's mother, Veronica Davis, whose testimony could have confirmed that the Applicant was in and out of her home in Columbia during the time period he was next door at a neighbor's party.
3. Trial Counsel was ineffective for failing to call as alibi witnesses, two neighbors of his mothers, named Shannon and Melvin, who could have confirmed his presence at a party at their home the evening of this crime in Camden, South Carolina.
4. Trial Counsel was ineffective for neglecting to call the Applicant's then girlfriend, Ember Blow, as a witness for the defense where she was made known to trial counsel as a witness who could have testified that the Applicant arrived at her home in Columbia shortly after midnight and spent the night with her home in Columbia shortly after midnight and spent the night with her.
5. Trial Counsel was ineffective for failing to call Sheila and Chad Rodden as witnesses for the defense where this couple lived very near the crime scene and they could have rebutted testimony offered by the Victim's girlfriend Melissa A. Davy concerning the circumstances under which she found the Victim's body and the timing with which she reported it to the police.

³ Respondent moved to dismiss Applicant's allegation of "actual innocence" as it is not a ground for relief under the Post-Conviction Relief Act.

6. Trial Counsel was ineffective in representing the Applicant at trial inasmuch as he failed to present two witnesses, Dixon Barker and Joe Wilson, whose testimony would have supported the Applicant's defense of third-party guilt when these witnesses were available and willing to testify to admissions made by an individual named Adrian Duran concerning his intent to harm the Victim in retaliation for his robbery by the Victim.
7. Trial Counsel erred in failing to present documentation of robbery charges against the Victim for robbing an individual named Adrian Duran where these charges, and Adrian Duran's subsequent alleged threats against the Victim, were the basis for the Applicant's plan to utilize a defense of third-party guilt.
8. Trial Counsel was ineffective in that he informed the Court at the outset of the Applicant's trial of his intent to present third party guilt as a defense and then failed to present any evidence in support of that theory at trial.
9. Trial Counsel failed to provide the Applicant reasonable professional assistance of counsel prior to and during his jury trial where Trial Counsel failed to give the State proper notice of his alibi defense, as required by Rule 5(e) SCRCrimP, despite having been advised of the Applicant's alibi when Trial Counsel was first appointed to represent the Applicant in September 2007 and thereby deprived the Applicant of the opportunity to present that defense at trial.
10. Trial Counsel was ineffective for neglecting to prepare a defense for presentation at the Applicant's trial.
11. Trial Counsel failed to provide the Applicant reasonable professional assistance of counsel where he neglected to argue that statements made by Adrian Duran to two witnesses concerning his intent to harm the Victim were admissible as admissions against penal interests pursuant to Rule 804 (b) (3), SCRE.
12. Trial Counsel failed to adequately explain the law of accomplice liability to the Applicant prior to the Applicant being required to make a decision on a plea offer from the State to plead to the lesser-included offense of voluntary manslaughter.
13. Trial Counsel was ineffective for failing to advise the Applicant concerning pleas pursuant to *North Carolina v. Alford* 400 U.S. 25 (1970), and for failing to ascertain whether the State would

have consented to the Applicant entering *Alford* pleas under the terms and conditions of the plea offer extended by the State.

14. Trial Counsel was ineffective for neglecting to seek a mistrial when the jury announced it was deadlocked and advised the Court that further deliberations were not likely result in a unanimous verdict.
15. Trial Counsel was ineffective for failing to make a motion for a severance where the Applicant's trial with co-defendant McDonald deprived him of the opportunity to cross-examine McDonald concerning his statements to law enforcement.
16. Trial Counsel was ineffective for failing to move to sever the Applicant's trial from his co-defendants where their joint trial deprived the Applicant of the opportunity to present testimony from Whitehead which would have verified that the Applicant left the Sonic with a friend; not one of his co-defendants.
17. Trial Counsel was ineffective for failing to object to the use of polygraph evidence relating to any of the three defendants on trial in the *Jackson v. Denno* hearing held in this case where polygraph evidence is inadmissible in South Carolina and its consideration by the Court in deciding the admissibility of the statements attributed to the Applicant improperly bolstered the credibility of the State's witness by improperly attacking the Applicant's credibility.
18. Trial Counsel failed to provide the Applicant reasonable professional assistance of Counsel when he informed the jury of a list of evidence they would hear during the Applicant's trial and then failed to introduce any of the evidence he promised the jury they would hear, thus setting the Applicant up for the jury to draw negative inferences from this omission and from his election not to present a defense in general.
19. Trial Counsel failed to raise adequate arguments for the suppression of the co-defendant statement of McDonald where despite redaction, the statement of McDonald could easily be interpreted as implicating the Applicant, where McDonald was not available for cross-examination, and where the statement implicated the Applicant and Whitehead by confirming the State's theory that two others, in addition to McDonald, were responsible for this crime.

20. Trial Counsel failed to provide the Applicant reasonable professional assistance of counsel in that he neglected to preserve the Applicant's objection to gruesome crime scene photographs and inflammatory photographs of the Victim's body where any arguable probative value of this evidence was outweighed by the tendency of this evidence to prejudice the Applicant's ability to receive a fair trial by inflaming the jury by appealing to their passions and where other trial testimony established any facts arguably demonstrated by the photographs in question.
21. Trial Counsel was ineffective for requesting, as an alternative to the suppression of the testimony of Lt. Crawford, a recess to permit him the opportunity to consult with a polygraph expert prior to Lt. Crawford's testimony where evidence relevant to the testing was not timely produced during the discovery process.
22. Trial Counsel was ineffective for neglecting to request a continuance based upon the State's failure to produce evidence relevant to the Applicant's polygraph examination where Counsel discovered the State had this evidence in dispute during the pretrial motions hearing.
23. Trial Counsel erred in failing to pursue a Rule to Show Cause when the State failed to respond to his subpoena for the raw data and test strips from the multiple polygraphs administered in this case.

On March 17, 2014, an evidentiary hearing was held before the Honorable Alison Renee Lee. Applicant was present and represented by Tara D. Shurling, Esquire. Assistant Attorney General Megan E. Harrigan represented Respondent. On September 14, 2015, Judge Lee issued an Order of Dismissal denying Applicant's PCR application and requested relief.

A timely Notice of Appeal was filed on the Applicant's behalf on October 13, 2015. Applicant's PCR appeal was perfected by Susan B. Hackett of the South Carolina Office of Appellate Defense. On February 14, 2018, the South Carolina Court of Appeals denied Applicant's petition for writ of certiorari. The Remittitur was returned on March 2, 2018.

Federal Habeas Corpus Action: 8:18-cv-00975-DCC-JDA

On April 17, 2018, Applicant filed a *pro se* Petition for Writ of Habeas Corpus pursuant to

28 U.S.C. § 2254 in the Federal District Court of South Carolina. On May 2, 2018, Applicant filed a document asking the court for guidance on how to amend his application. On May 16, 2018, Respondent filed a Response to Petitioner's Motion to Amend. On May 28, 2019, Applicant filed an amendment to his application. On August 1, 2018, Respondent filed a Motion for Summary Judgment and a Return and Memorandum in Support of Summary Judgment. On August 2, 2018, the court issued a Roseboro Order on Applicant. On August 16, 2018, Applicant filed a Motion to Stay Petition. On August 27, 2018, Applicant filed a Motion Asking Judge Austin to "Toll the Time" or Dismiss Without Prejudice. On September 21, 2018, Respondent filed its Response to Petitioner's Motion to Stay and Motion to Toll the Time or Dismiss the Case Without Prejudice. On October 15, 2018, the court issued an Order giving Applicant till November 1, 2018, to respond to the Motion for Summary Judgment.

On November 16, 2018, United States Magistrate Jacquelyn D. Austin issued a Report and Recommendation. On December 13, 2018, the Honorable Donald C. Coggins, Jr., issued an order adopting the Magistrate Judge's R&R as the Order of the Court, dismissing Applicant's §2254 petition without prejudice pursuant to Rule 41(b), F.R.C.P.

CURRENT ACTION BEFORE THIS COURT

In Applicant's *second* and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:⁴

"10-A: The Kershaw County Court of General Sessions lacked subject matter jurisdiction to entertain and adjudicate applicants criminal case, thus violating his rights under the S.C. Constitution Article I §3, and under the 14th Amendment to the U.S. Constitution."

"11-A-1: THE KERSHAW COUNTY COURT OF GENERAL SESSIONS LACKED SUBJECT MATTER JURISDICTION TO ENTERTAIN AND ADJUDICATE APPLICANTS CRIMINAL

⁴ The allegations are taken verbatim from Applicant's "Memorandum To Support PCR Application" that was attached to his application for post-conviction relief.

CASE, BECAUSE THE GRAND JURY OF KERSHAW COUNTY TRUE BILLED APPLICANTS INDICTMENTS OUTSIDE OF ITS JURISDICTIONAL LIMITS AS COMMANDED BY THE STATE LEGISLATURE."

"Point 1: THE GRAND JURY CAN ONLY CONVENE WHEN THE COURT OF GENERAL SESSIONS IS IN SESSION"

"Point 2: SUBJECT MATTER JURISDICTION JURISPRUDENCE."

"Point 2: THE DICTION OF THE S.C. CODE ANN. § 14-5-670(1) IS CLEAR AND UNAMBIGUOUS."

"Point 3: THE S.C. CODE ANN. § 14-9-210 REINFORCES THE S.C. CODE ANN. § 14-5-670(1)."

"Point 4: APPLICANTS INDICTMENTS ARE NULL, VOID, AND WITHOUT LEGAL EFFECT AS A FACT OF STATUTORY LAW"

"Point 5: AN INDICTMENT FROM THE GRAND JURY MUST BE REAL"

"Point 5: APPLICANTS INDICTMENTS FAIL ON THEIR FACIAL VALIDITY FOR VIOLATIONS OF STATE AND FEDERAL LAW"

"Point 6: FRAUD HAS BEEN COMMITTED ON THE COURT"

"11-A-2: THE KERSHAW COUNTY COURT OF GENERAL SESSIONS LACKED SUBJECT MATTER JURISDICTION TO ENTERTAIN AND ADJUDICATE APPLICANTS CRIMINAL TRIAL HELD ON MAY 13TH 2007."

Applicant seeks relief in the form of his sentence being vacated and he being released from custody.

In response, Respondent made its return to the action and moved to dismiss the application as untimely, successive, barred by the statute of limitations, and for failure to comply with the Post-Conviction Relief Act.

Attached to Respondent's return and before this Court are the Kershaw County Clerk of Court records regarding the subject's convictions and sentences; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcripts; records from Applicant's federal habeas actions; records of Applicant's previous PCR action and subsequent appeal; and the records of the current PCR action.


SUMMARY OF EVIDENCE ADDUCED AT TRIAL

On Tuesday, December 12, 2006, the Victim, Joshua Zoch, was brutally murdered in his home. At approximately 11:30 p.m., neighbor Cosmo [Baccamo] testified that he was outside with his son's dog and heard "a lot of knocking noise, loud, like somebody kicking something or slamming doors" and, "about ten minutes later," he heard "excited" and loud male voices, a door slam, a car, with a loud muffler, take off. (R. p. 525, line 25 - p. 527, line 15).

Earlier, at approximately 10:00 p.m. that evening, Allen Brown, a manager at a local Sonic, recognized Applicant, along with Derrick McDonald and Christopher Whitehead. All of them had worked at some point for him in the restaurant. Applicant was wearing a ski mask and was told to take it off. Brown instructed Applicant to leave, which he did. (R. p. 511, line 2 - p. 512, line 14). Christopher Rust, also an employee at Sonic, confirmed that Applicant was wearing the ski mask and testified that all three left at the same time. (R. p. 549, lines 11 - 22). Rust recalled that Christopher Whitehead drove a car with "noticeable" muffler noise. (R. p. 559, line 20 - p. 560, line 5).

Zachary Waltemath, who was also an employee at Sonic, testified that at approximately 7:00 or 8:00 that same night, Christopher Whitehead called him and asked him to call the Victim "and see what he's doing because he wanted to go over there and fight him or something." (R. p. 573, line 17 - p. 574, line 3). Waltemath declined. Whitehead called back shortly after and asked if Waltemath had tried to call him, and he responded he had not, and Whitehead indicated he wanted Waltemath to call him. (R. p. 574, lines 4-11). The next day, Wednesday, December 13, 2006, Whitehead came to work at Sonic with a scratch under one eye, a noticeable limp, and complaining his ankle hurt. (R. p. 631, line 19 - p. 633, line 23; p. 666, lines 16-24).

Victim's longtime live-in girlfriend, Melissa Davy, was absent from the home at the time



of the burglary and murder; the two had a disagreement over Victim's drug use. Victim had used crack cocaine and marijuana and had drugs in the home. (R. p. 781, line 16 - p. 784, line 12). Victim hosted a party at their home on Friday, December 8, 2006, that lasted into the early morning hours of Saturday, December 9, 2006. At approximately 2:00 a.m. that Saturday, Davy left with friends Zachary Waltermath and his sister Molly after a fight about Victim's drug use and his request that they leave the house. (R. p. 751, line 13 - p. 753, line 17; p. 783, line 23 - p. 784, line 3). Davy would later spend time with the Victim on Monday, December 12, 2006. (R. p. 755, line 1 - p. 756, line 19). She last spoke to him when he called her at approximately 6:00 that night. (R. p. 757, lines 14-19). The next day, Tuesday, December 13, 2006, at approximately 5:30 p.m., Davy went back to the Victim's home with Zach and Molly after completing her work shift at Sonic. The lights were off, and Victim's car was backed into the garage, which was unusual for the Victim and alerted Davy that things were not right. She called Victim's grandmother, Helen Zoch, who had purchased the home for Victim to rent, (R. p. 1459, lines 14-24), and stayed on the phone with the grandmother as she entered the home. She saw Victim's lifeless body and called 911. (R. p. 760, line 9 - p. 763, line 23).

Helen Zoch testified that she had spent time with Victim the day before and hoped to help him with his drug problem. She also testified that she had called at 7:30 a.m. that morning but had not gotten an answer. At approximately 2:00 p.m., she went by the home and noticed the Victim's car was backed in the garage, which was unusual, but she did not try to enter the home. (R. p. 1460, line 6 - p. 1462, line 24; p. 1466, line 11 - p. 1468, line 11). She knew her grandson was working with the police, making drug buys for them. (R. p. 1472, lines 9-24); (See also R. p. 807, lines 19-25).

Investigating officers found the home a "complete mess" with the Victim's body in the

middle of it all. (R. p. 880, lines 13-17). The back door had been kicked in. (R. p. 863, lines 13-25). The investigation began to focus on Whitehead, McDonald, and Applicant. Whitehead informed the investigating officers he "didn't know a damned thing about" Victim's murder. (R. p. 905, line 18 - p. 906, line 5). Both McDonald and Applicant similarly denied any direct knowledge or involvement in their initial statements to the police. (R. p. 909, lines 21-25; p. 920, lines 14-25).

However, Applicant gave a detailed confession to officers (redacted for presentation at trial to avoid Bruton⁵ issues), including not only the gruesome facts of the vicious beating - - such as the attack on the Victim while he slept, dragging him off his couch, using the Victim's bat, which he kept in the house for protection, on the Victim's head - - but also that the Victim was selected because he was thought to be a "snitch" and for his drugs. Applicant's details included that one person took the frozen chicken from the kitchen and placed it on the Victim's head wounds in an attempt to stop the bleeding, that someone hit the Victim with a glass object and the fact that the three used purple latex gloves during the attack and wore ski masks. (R. p. 936, line 25 - p. 940, line 15). Applicant later supplemented his statement voluntarily with a list of items he recalled taking from the home, including DVDs, a DVD player, presents, hair clippers, and phones. (R. p. 1210, line 16 - p. 1211, line 17).

McDonald would also confess to the crime, also in detail, including that the three went to the local Wal-Mart and bought a ski mask and a box of purple gloves; that one called "Zach" to see if someone was home; all three kicked in a sturdy back door; one person "picked up a glass bowl with flower petals in it, picked it up over his head and hit Josh in the head with it while Josh

⁵ Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620 (1968). See also State v. Holder, 382 S.C. 278, 283, 676 S.E.2d 690, 693 (2009).

was asleep on the couch"; another person dragged Victim off the couch; that he repeatedly hit Victim with his fists then hit him in the back of the head using the Victim's bat; they were searching for drugs and money; and another kicked and stomped the Victim, and, eventually, pulled a Christmas tree over on him. He claimed someone else left the house with "plastic bags of stuff" and gave him some "DVDs and stuff." (R. p. 961, line 15 - p. 963, line 21).

Whitehead, though he did not give a confession to officers, was twice overheard by another inmate at the detention center bragging about the killing, identifying the home where the murder occurred, and calling the Victim's name. (R. p. 1409, lines 12-20; p. 1414, line 10 - p. 1415, line 7). A detention center officer confirmed that the former inmate who testified was in the cell next to Whitehead when the initial conversation was overheard. (R. p. 1445, lines 15-20).

Forensic pathologist Joel Sexton, M.D., testified that at the autopsy, he identified "at least six" and possibly eight "injuries or blows were inflicted to the head that were each capable of causing death," with wounds inflicted on the top and back of the head and behind the left ear, along with abrasions and cuts to the face, injuries on legs, abrasions on knees and the abdomen. (R. p. 1279, line 15 - p. 1284, line 8; p. 1286, line 19 - p. 1287, line 16; p. 1288, line 21 - p. 1293, line 4). From the wounds and autopsy and from looking at scene photos, the pathologist was able to opine that two blows were inflicted on the couch, but that the Victim either came off, or was pulled off, the sofa and was hit on the floor with a "cylindrical and linear" object such as the bat (State's 99); and that he was hit on the head with a glass potpourri bowl, remnants of same still being on the couch. (R. p. 1311, line 17 - p. 1313, line 14). He also confirmed that testing showed a prior use of cocaine and marijuana. (R. p. 1315, lines 11-17).

Investigators obtained a copy of a receipt from the local Wal-Mart confirming a purchase of a ski mask and purple gloves on December 12, 2006, at 10:43. (R. p. 1246, line 7 - p. 1249,

line 5). Ms. Davy testified that Victim's grandparents had provided a bat to keep in their residence for protection. (R. p. 778, line 4 - p. 779, line 12). Ms. Zoch testified that she had recently replaced the home's back door with another sturdier one prior to the burglary and murder. (R. p. 1470, line 17 - p. 1471, line 6). Photos from the scene also confirmed the use of the latex gloves, the bat, the placement of the frozen chicken near Victim's head, and the overturned Christmas tree. (R. p. 899, line 3 - p. 901, line 2; p. 1294, line 1-7). In sum, the physical evidence supported the detailed confessions of both Applicant and McDonald.

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 §§ 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 that 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:

Subject Matter Jurisdiction

As an initial matter, this Court finds Applicant's allegations regarding jurisdiction are without merit. "Circuit courts obviously have subject matter jurisdiction to try criminal matters." State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). Further, a circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently

states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment." State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)).

In this case, despite Applicant's allegations against the indictments, the record reflects the Kershaw County Grand Jury validly indicted Applicant. These indictments contain all the necessary elements of the offenses, and further cites the applicable statute. Further, "[a]n indictment is merely a notice document." State v. Baker, 390 S.C. 56, 62, 700 S.E.2d 440, 442 (Ct. App. 2010) (citing State v. Gentry, 363 S.C. 93, 102-103, 610 S.E.2d 494, 500 (2005)). A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims: See, e.g., Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Here, Applicant cannot show any irregularity because the indictments in question are sufficient on their face.

Moreover, "an indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." Id. at 63, 700 S.E.2d at 443 (citing State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007).) Significantly, an objection must be made before the jury is sworn in to challenge the sufficiency of an indictment. S.C. Code Ann. §17-19-90 (2003).

Accordingly, this Court finds Applicant's allegations regarding jurisdiction shall be dismissed pursuant to Rule 12(b)(6), SCRPC.

Summary Dismissal Based on Successiveness

Respondent moved to summarily dismiss Applicant's application because it is successive to the previous application for post-conviction relief. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application

could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Importantly, S.C. Code Ann. § 17-27-90 provides:

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.

Pursuant to S.C. Code Ann. § 17-27-90, successive PCR actions are barred 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). In Aice, the South Carolina Supreme Court held that PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." Id. at 452, 409 S.E.2d at 395 (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The Court also noted, "[f]inality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice." Id. at 451, 409 S.E.2d at 394.

Expressly, any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Notably, the Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Here, this Court finds Applicant's current allegations *were or could have been* raised in

Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. This Court notes that while Applicant is correct, that subject matter jurisdiction claims can be raised at any time, he still has the burden of establishing why he could not have raised this claim in his initial post-conviction relief action. See Graham v. State, 378 S.C. 1, 3, 661 S.E.2d 337, 338 (2008) ("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.' A successive PCR application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in prior proceedings. In order to be entitled to a successive PCR application, the applicant must establish that the grounds raised in the subsequent application could not have been raised in the previous application."). This Court finds Applicant cannot show that these claims could not have been raised in his initial application, as his claims were known prior to his trial and easily could have and should have been raised in his initial post-conviction relief action.

Accordingly, Applicant has failed to meet the burden imposed upon him, and this Court shall summarily dismiss the application as successive to Applicant's previous PCR application.

Summary Dismissal Based on Statute of Limitations

Respondent also moved for summary dismissal for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.⁶ Specifically, the Act requires as follows:

- (A). An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the Remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

⁶ S.C. Code Ann. § 17-27-10 to -160.

- (B). When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
- (C). If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter 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.

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, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of the statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, S.C. Code Ann. § 17-27-70(c) authorizes the 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 alleges he is entitled to post-conviction relief based on allegations of subject matter jurisdiction. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant was found guilty on May 13, 2008. Applicant pursued a direct appeal, and his convictions and sentences were affirmed on June 8,

2011. The Remittitur was returned on June 24, 2011. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before June 24, 2012. Applicant did not file this PCR application until April 27, 2022, nearly *ten years* beyond the statute of limitations.

Accordingly, this Court finds this application is *untimely* pursuant to S.C. Code Ann. § 17-27-45 and shall be dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

Frustration of Finality of Convictions

As a final matter, the United States Supreme Court and the South Carolina Supreme Court have emphasized the necessity of finality of litigation in criminal cases. The Court in Aice explained that:

Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. . . . [Here], Aice seeks to have more than one procedural "bite" at the apple. Aice has filed an original PCR application, and has been allowed to seek review of the ruling against him. We refuse to grant his request for a second chance, and again we do so in order to effectuate the purposes of the Act and rules.

305 S.C. at 451–52, 409 S.E.2d at 394–95 (citations omitted).

The United States Supreme Court has explained that "the principle of finality . . . is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." Teague v. Lane, 489 U.S. 288, 309 (1989). "Relitigation of a conviction is a rear-view mirror, while a respect for finality encourages those in custody to contemplate the future prospect of 'becoming a constructive citizen.'" United States v. Fugit, 703

F.3d 248, 252 (4th Cir. 2012) (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 262 (1973) (Powell, J., concurring)). In his concurring and dissenting opinion in Mackey v. United States, Justice Harlan wrote:

Finality in the criminal law is an end which must always be kept in plain view. . . . At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing that a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation.

401 U.S. 667, 691 (1971) (Harlan, J., concurring in part and dissenting in part). Seven years after Mackey, the South Carolina Supreme Court quoted Justice Harlan's opinion with approval in Anderson v. Leeke, 271 S.C. 435, 441-42, 248 S.E.2d 120, 123 (1978). Applicant's attempt to relitigate his convictions and sentences through this successive and time-barred application is contrary to the recognized need for finality of litigation.

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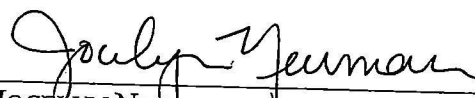
CONCLUSION

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 Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
PCR Division – D. Russell Barlow, II
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this Order must be actually received by Richland the Kershaw 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 30th day of November, 2022.


JOCELYN NEWMAN
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

RECEIVED

MAY 11 2023

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Robert Cannon, #328347,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT

) CASE NO. 2022-CP-28-413

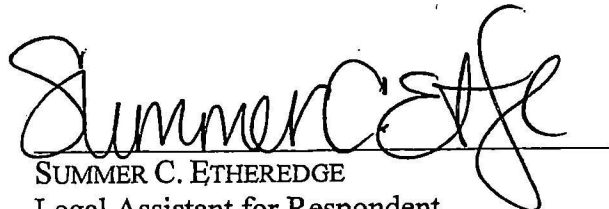
) **CERTIFICATE OF SERVICE BY MAIL**

1. Undersigned is an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. Undersigned has served a copy of the Return and Motion to Dismiss and Conditional Order of Dismissal in the above-captioned matter on Applicant by depositing same in the United States mail, postage prepaid:

**Kershaw Correctional Institution
Robert Cannon, #328347 (PB-0035-B)
4848 Gold Mine Hwy
Kershaw, SC 29067**

DATED this 7th day of October, 2022.

RECEIVED
MAY 11 2023
S.C. SUPREME COURT


SUMMER C. ETHEREDGE
Legal Assistant for Respondent

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
SummerEtheredge@scag.gov



ALAN WILSON
ATTORNEY GENERAL

October 7, 2022

The Honorable Janet C. Hasty
Clerk of Court, Kershaw County
Post Office Box 1557
Camden, South Carolina 29021-8557

Re: Robert Cannon, #328347 v. State of South Carolina
Case No: 2022-CP-40-3985

Dear Ms. Hasty:

Enclosed for filing please find the original Return and Motion to Dismiss of the Respondent, with its accompanying attachments, in the above-captioned case. Please let me know if anything additional is needed at this time.

Sincerely,

D. Russell Barlow, II
Assistant Attorney General

DRB/sce
Enclosure

cc: ~~The Honorable Jocelyn Newman, Chief Administrative Judge~~
Robert Cannon, #328347

RECEIVED
MAY 11 2023
S.C. SUPREME COURT

1 STATE OF SOUTH CAROLINA
2 COUNTY OF KERSHAW

3 Robert Cannon, #328347,
4 Applicant,

5 v.

6 State of South Carolina,
7 Respondent.

) IN THE COURT OF COMMON PLEAS
)
) CASE NO. 2022-CP-28-413
)
)
) Response To Conditional
) Order of Dismissal
) (Pro Se)

RECEIVED

MAY 11 2023

8
9 In response to the states return and motion for dismissal which
10 was filed on October 7th, 2022 and received on October 12, 2022.
11 Applicant makes the following to show why order to dismiss
12 should not be granted and applications claims should be
13 addressed by this court.

14 (A) Subject Matter Jurisdiction

15 As an initial matter, Respondent's rebuttals utilizing
16 STATE V GENTRY (363 S.C. 93, 101, 610 S.E.2d 494, 499). Are
17 inapplicable to applicants claim which is sui generis. My claim
18 pertaining to subject matter jurisdiction reflects entirely on
19 the grand jury itself. "The grand jury serves a dual function of
20 determining if there is a probable cause to believe a crime has
21 been committed and of protecting citizens against unfounded
22 criminal prosecutions." (U.S V Sells Engineering group Inc 463
23 U.S 418 (1983). Further, how that grand jury broke the law by
24 convening outside the term of court mandated by the general
25 assembly. (S.C code of laws 14-5-670).

26 Respondent's argument is focused on an issue that I
27 CLEARLY did not raise. While I did submit my Indictments as
28 evidence attached that was only to be used as evidence to show
the date of the hearing. As respondent has stated "the
Indictments are sufficient on their face." Which is an admission
that the grand jury did in fact meet on February 7th, 2007.
Which is by LAW 'outside of the term mandated by the general
assembly which gives the court authority on specific days.
"Provided, each county shall be entitled to four weeks of court
each year and such terms therefor shall be provided for by the
General Assembly." (S.C constitution Art 4. Sect 4.) The general
assembly decides when a court is in term. The term of a court is
the LEGALLY prescribed period for which it may be in session.
That is a fact.

1 Despite respondents attempt to assert otherwise. Nothing
2 that's been mentioned by respondent has anything to do with my
3 claim of subject matter jurisdiction. If the grand jury had no
4 authority given to them by the general assembly to convene on
5 February 7th, 2007. Then any ruling made, or documents signed on
6 February 7th, 2007 would be ILLEGAL. And since all parties
7 involved in said unlawful hearing knows the law and their
8 obligations since they swore an oath to uphold them. They
9 committed this SHAM LEGAL PROCESS knowingly with aforethought.
10 This fictitious document was then perpetuated as true billed to
11 bring me to trial. Which by definition of law is fraud on the
12 court. In fact, respondent failed to even address my issue of
13 lack subject matter jurisdiction which should be viewed as them
14 defaulting in this issue.

15 (B) Response to dismissal on successiveness, statute of
16 limitations, and frustration of finality of convictions

17 (1) Respondent argues my claims should be dismissed
18 because it's successive.

19 Courts have shown that prisoners can file successive
20 applications in situations where a gross miscarriage of justice
21 took place. Where legal unique facts require review in the
22 interest of justice. I would argue that of the very limited
23 instances of cases which should be viewed under the scope of
24 "gross miscarriage of justice" lack of subject matter
25 jurisdiction should definitely be categorized as one being that
26 due process is one of the very pillars of the constitution
27 United States & S.C. "Lack of subject matter jurisdiction can be
28 raised at any time since acts of a court with respect to a
matter of which it has no jurisdiction is void." (Hoover V
Hoover 271 S.C. 177, 246 S.E.2d 179 (1978). "Void judgments are
defined as those from courts that lacked personal or subject
matter jurisdiction or failed to provide due process.
(Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC,
815 S.E.2d 780 (2018).

(2) Finally, in regard to statute of limitations and
finality of convictions.

Simply put applicant was not aware of the issue until
August of last year. Therefore, it couldn't have been raised. As
proof attached are documents showing that applicant reached out
to the Kershaw county clerk of court as soon as he became aware
of the issue multiple times. Where he was rebuffed and

1 eventually told that any information regarding his grand jury
2 was only available to him if he had a pending case. After
3 further educating myself on the matter I filed a 2nd PCR and
4 immediately requested the grand jury information again. Where I
5 was given my indictments, sentencing sheets, and told that's was
6 all the information available to her on my grand jury. Knowing
7 that newly discovered evidence applies for 1 year after becoming
8 aware of the information I did everything I could to respect the
9 courts time and mandates.

10 Anticipating ignorantia juris non excusat. That principal
11 is enforced on those who have committed a crime and try to use
12 ignorance to subvert punishment. That is not the case here. I
13 was a sophomore dropout. I have been incarcerated since I was
14 17. Everything I have learned pertaining to law has been hard
15 fought and self-taught. I am not attempting to crowd the court
16 with repetitive and frivolous arguments. I am only trying to
17 seek the justice and fairness that was promised to me as a
18 citizen by our forefathers.

19 From egregious violations of due process, fraud on the
20 court (WHICH HAS NO STATUE OF LIMITATIONS I might add), and lack
21 of subject matter jurisdiction. I know that the courts don't
22 pick and choose when to follow law. However, that was not the
23 case on Feb 7th, 2007. Someone got the grand jury to break the
24 law and hold a unsanctioned hearing resulting in a breakdown of
25 due process. The court doesn't guarantee a perfect outcome, but
26 it does guarantee a fair one. And can anything legally be fair
27 if the due process mandated by legislature was not followed in
28 the pursuit of justice? IF the courts had followed the letter of
the law, I would not be here today asking for it to be
rectified. This domino effect prevented the legal machinery from
performing as anticipated. If my due process wasn't violated
from its very Genesis, I wouldn't be raising these issues.

"Petitioner was not procedurally barred from receiving new
trial, even though post-conviction relief application may have
been successive, given many procedural irregularities that
occurred during course of Petitioners judicial process that
deprived him of due process." Washington V State 342 S.C. 232,
478 S.E.2d 833 (1996). There's much more than the grand jury
issue that was a procedural irregularity in my case. When you
factor in Law enforcements failure to follow statues (8-15-50),
trial courts failure to follow (19-1-80, 19-1-90), and the fact
that my trial was also held outside of court term mandated by
legislature. This was a cumulative effect of blatant disregard
for the judicial process. I beg the courts leave to recognize my
case as being sui generis and accept my application and allow my
claims to be heard.

Sincerely,

Robert Cannon

Robert Cannon 1/13/23

Signature and Date

RECEIVED
MAY 11 2023
S.C. SUPREME COURT