

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4007110

DUDLEY B. MACK (SCDC #366326)

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: NEWMAN, J.

Attorney for :  Plaintiff  Defendant  
or  
 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), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other Rule 41(b), SCRPC
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- 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.

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

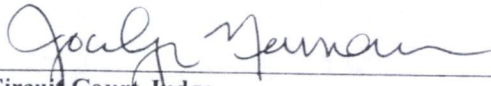
Applicant's Motion for Reconsideration (filed on 6/4/24) is DENIED.

RICHLAND COUNTY  
FILED  
2024 JUN -5 PM 4:06  
DUDLEY B. MACK

**ORDER INFORMATION**

This order  ends  does not end the case.  
Additional Information for the Clerk :

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.

  
Circuit Court Judge

2757  
Judge Code

June 5, 2024  
Date

SCDC  
JUN 17 2024  
MCI  
MAIL ROOM

**RECEIVED**  
AUG 05 2024  
S.C. SUPREME COURT



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Dudley B. Mack, #366326,  
Applicant,

v.

State of South Carolina,  
Respondent.

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

) CASE NO. 2017-CP-40-7110

) **CONDITIONAL ORDER OF DISMISSAL**

FILED  
MAY 22 11 00 AM  
JANETTE M. MOSENFELDER  
CLERK

This matter comes before this Court pursuant to Applicant Dudley B. Mack's application for post-conviction relief (PCR) commenced on November 22, 2017. Respondent, the State of South Carolina, made its Return and Motion to Dismiss on May 4, 2018. Applicant made his Return and Motion to Grant Relief on May 25, 2018. Respondent made its Amended Return and Motion to Dismiss on January 26, 2024. This Court grants Respondent's Motion to Dismiss and finds Applicant's application for post-conviction relief is untimely, barred by the statute of limitations, and fails to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014).

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court for unrelated offenses not subject to this application. On April 27, 2014, Applicant was arrested for third-degree assault (Arrest Warrant No. 2014A4010203405) stemming from an incident on September 27, 2014, in which Applicant threw a planter at D'Andre Mack (D'Andre), striking him in the right arm and then later Applicant brandished a razor and threatened D'Andre, following verbal altercations.

On September 28, 2014, Applicant appeared before Magistrate Judge M. R. Metts for a

bond hearing. Applicant's bond was granted. On October 30, 2014, Applicant proceeded to a bench trial before Magistrate Judge Josef M. Robinson. Judge Robinson found Applicant guilty and issued a sentence of credit for time served.

Applicant did not appeal his conviction or sentence.

#### ACTION BEFORE THIS COURT

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

1. "Applicant's conviction for assault and battery, 3<sup>rd</sup> S.C. Code 16-3-600(E)(1)(2)(3) was based on landlord/tenant violation S.C. Code 27-50-780(a)(b) in which violates S.C. Code 16-11-440(c) because Applicant had the right to be on the property"
2. "Applicant's conviction for assault and battery conform to the relevant statute was in violation of S.C. Code 16-11-440c in which conviction was based on applicant defending himself from being attacked at his place of residence and was not engaging in an unlawful activity"
3. "Applicant's transcript and incident report clearly shows that Applicant was trying to prevent his grandchildren from being hit by a speeding vehicle that could cause great bodily injury or death as conform to S.C Code 16-11-440c in which applicant did not make an unlawful entry nor did the tenant refuses to allow applicant to enter the residence as conform to S.C. Code 27-40-780 and there is no evidence to show that applicant violate S.C. Code 27-40-780(b)."
4. "Applicant's incident report clearly shows the factual basis provided to the judge. The applicant was at his place of residence and did not cause the altercation. The applicant was attacked and had the right to stand his ground and meet force with force and has no duty to retreat as conform in S.C. code ann. 16-11-440c"
5. "Trial judge gave applicant no warning of the dangers of self-representation"
6. "There is no evidence applicant was aware of the hazards of proceeding pro se"

On June 4, 2018, Respondent filed its Return and Motion to Dismiss asserting Applicant's action was procedurally barred by the statute of limitations.

On May 25, 2018, Applicant filed his "Return and Motion to Grant Relief." In this return, Applicant asserting various justifications under the guise of newly discovered evidence such as: 1. Landlord Tenant Law; 2. Protection of Persons and Property Act. Further, the Applicant asserts various caselaw to support why his application should not be summarily dismissed.

Applicant requests relief in the form of "this court finding in favor of Applicant and vacate his conviction and sentence."

Before this Court are the Eastover Magistrate Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, records from Richland County Sheriff's Department, and the current PCR application.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the pleadings, the records submitted 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, which would necessitate an evidentiary hearing. See S.C. Code Ann. § 17-27-70(b) (establishing the 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). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

#### ***SUMMARY DISMISSAL BASED ON NEWLY-DISCOVERED EVIDENCE***

Applicant's assertion of newly-discovered evidence, such that he should be entitled to PCR, is without merit. The Uniform Post-Conviction Procedure Act states that a person may institute a PCR 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 a material fact not previously presented, under the discovery rule, the PCR 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). Otherwise, a PCR must be filed within one year of sentencing or, if a direct appeal is filed, within one year of the remittitur. S.C. Code Ann. § 17-27-45(A).

In his current application, Applicant claims that he recently discovered landlord/tenant law. Specifically, he avers that the tenant did not seek injunctive relief nor was there evidence that Applicant was on the property unlawfully. Applicant further details that it was the victim in this case that came after him in a threatening manner.

Next, Applicant avers that the Protection of Persons and Property Act applied in his case. Specifically, Applicant claims that he went to the victim's house because he was protectivn his grandchildren from a speeding car in the roadway. Applicant asserts that he had a right to enter the dwelling of the victim and he had a right to defend himself from the victim. Further, Applicant asserts his "only concern was the safety of the children."

However, Applicant's assertions are refuted by the record. A party requesting a new trial based on newly-discovered evidence must show that the evidence:

1. Is such as would probably change the result if a new trial was had;
2. Has been discovered since the trial;
3. Could not by the exercise of due diligence have been discovered before the trial;
4. Is material to the issue of guilt or innocence; and,
5. Is not merely cumulative or impeaching.

Clark v. State, 315 S.C. 385, 387–88, 434 S.E.2d 266, 267 (1993); see Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (setting forth the five factors to be analyzed when considering a newly-discovered evidence claim) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979))). However, 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); see also State v. David, 14 S.C. 428, 432 (1881) ("There can be no doubt that motions of this sort should be received with the utmost caution, because, as it is said by a learned judge, there are but few cases tried in which something new may not be hunted up . . .").

During Applicant's bench trial, Applicant had the right to assert these defenses. However, the record is not available because the proceedings were not recorded. See Respondent's Exhibit #1. Additionally, the record provides the arresting officer arrived and the victim and Applicant's wife provided sworn affidavits that refute Applicant's assertions.

Applicant has failed to present any evidence to the contrary other than his blind assertions that the arrest report supports his narrative, which it does not. The "Protection of Persons and Property Act" ("the Act") provides that "[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force[.]" S.C. Code Ann. § 16-11-450. The Act further provides, in part, that:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C). "A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard[.]" *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (citing *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011)).

Where a defendant seeks treatment under § 16-11-440(c), it is not enough for a defendant to establish that he was "not engaged in an unlawful activity" and was in a "place where he has a right to be." Rather, "[c]onsistent with the Castle Doctrine and the text of the Act, *a valid case of self-defense must exist*, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity" save the duty to retreat. *Id.*, 406 S.C. at 371, 752 S.E.2d at 266 (emphasis added). Notwithstanding the Act or other provisions of law, in order to establish self-defense, the defendant must show (1) he was without fault in bringing on the difficulty; (2) he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) a reasonably prudent person of ordinary firmness and courage would have entertained the same belief; and (4) he had no other probable means of avoiding the danger. *State v. Long*, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997).

"Under the theory of defense of others, one is not guilty of taking the life of an assailant who assaults a friend, relative, or bystander if that friend, relative, or bystander would likewise have the right to take the life of the assailant in self-defense." *Douglas v. State*, 332 S.C. 67, 73, 504 S.E.2d 307, 310 (1998) (citing *State v. Long*, 325 S.C. 59, 480 S.E.2d 62 (1997)).

That a defendant was engaged in unlawful activity at the time of the incident does not in-and-of-itself defeat a claim for immunity. Rather, where a defendant was engaged in unlawful activity at the time of the incident, the trial court must consider whether the unlawful activity was the proximate cause of the incident. A person who is otherwise acting lawfully is not deprived of the right to self-defense by merely incidental illegality. *State v. Glenn*, 429 S.C. 108, 120-21, 838

S.E.2d 491, 497-98 (2019) (citing State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); State v. Goodson, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994)).

Here, the record provides Applicant did not lawfully enter the residence, and because of his entry, the incident occurred. Applicant's actions were the proximate cause of the incident, and Applicant was not acting in defense where the record provides Applicant was the aggressor.

Turning to the Clark factors, Applicant also fails the test for newly-discovered evidence because, with due diligence, Applicant could have discovered his claim before his bench trial, after his bench trial, and before the one-year statute of limitations expired. See, e.g., United States v. Connolly, 504 F.3d 206, 212 (1st Cir. 2007) ("Every element of this test . . . is essential, and a failure to establish any one element will defeat the motion.").

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing 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 a *prima facie* showing of newly-discovered evidence. Because his claims do not meet the high threshold of newly-discovered evidence, they are barred by the one-year statute of limitations set forth in S.C. Code Ann. § 17-27-45(A). Thus, Applicant is not entitled to an evidentiary hearing, and this matter shall be summarily dismissed.

#### ***Summary Dismissal Based on Statute of Limitations***

This Court finds the application shall be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.<sup>1</sup> 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

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<sup>1</sup> S.C. Code Ann. § 17-27-10 to -160.

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.

- (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 that 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 is alleging he is entitled to post-conviction relief based on various allegations that his constitutional rights were violated. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant proceeded to a

bench trial and was found guilty on October 30, 2014. Applicant did pursue a direct appeal. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before October 31, 2015. Applicant did not file this PCR application until November 22, 2017, *two years and twenty-two days* beyond the statute of limitations.

Moreover, S.C. Code Ann. 17-27-45(C) is inapplicable to Applicant's PCR application as Applicant does not present newly discovered evidence as required by the statute. McCoy v. State, 401 S.C. 363, 371, 737 S.E.2d 623, 627 (2013).

Accordingly, this Court finds the 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.

#### ***APPLICANT'S ALLEGATIONS REGARDING RIGHT TO COUNSEL***

In his PCR application, Applicant avers that he was not afforded the right to representation and was not informed of the dangers of proceeding *pro se* at his bench trial. Respondent submits that Applicant's averment is without merit and fails as a matter of law, and this Court should summarily dismiss this application.

No person may be imprisoned for an offense unless represented by counsel, absent a knowing and intelligent waiver of the right to counsel. Glaze v. State, 366 S.C. 271, 621 S.E.2d 655 (2005), citing Argersinger v. Hamlin, 407 U.S. 25 (1972). However, an accused has the constitutional right to waive counsel and to proceed *pro se* as long as the waiver is knowing, voluntary, and intelligent. Farretta v. California, 422 U.S. 806 (1975). The decision made by the accused to waive the right to counsel must be honored as long as the waiver is knowing, voluntary, and intelligent. Id.; see also State v. Brewer, 328 S.C. 117, 119, 492 S.E.2d 97, 98 (1997). The

trial judge must ensure the defendant is informed of the dangers and disadvantages of self-representation. Id.

In Scott v. Illinois, the United States Supreme Court held that "[t]he Sixth and Fourteenth Amendments require that no indigent criminal defendant be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed counsel in his defense, but do not require a state trial court to appoint counsel for a criminal defendant . . . who is charged with a statutory offense for which imprisonment upon conviction is authorized but not imposed. 440 U.S. 367, 369-374 (1979). See also Glaze supra.

Here, Applicant was arrested and charged with Assault and Battery—3<sup>rd</sup> Degree. Applicant was arraigned and released on bail the same day he was arrested. Notably, Magistrate Judge M. R. Metts informed Applicant of his right to representation before granting his bail. See Respondent's Exhibit #2 at 5(b). Applicant proceeded *pro se* in a bench trial in the Magistrate Court, and Magistrate Judge Josef M. Robinson sentenced Applicant to time served. Thus, Applicant cannot assert he was denied his right to counsel where the right was not and could not have been violated. See Glaze supra.

Accordingly, this application shall be dismissed because Applicant's allegations regarding violations of his right to counsel fail as a matter of law.

**|CONCLUSION PAGE FOLLOWS|**

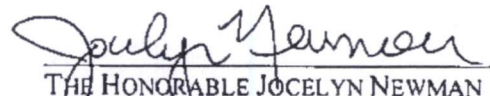
CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific factual or legal reasons 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:

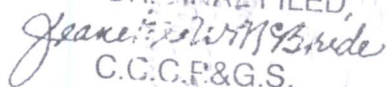
Office of the Attorney General  
Post-Conviction Relief Division – 5<sup>th</sup> Circuit  
Post Office Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Richland County Clerk of Court and opposing counsel within twenty (20) days, and this Court will not consider any issues raised in his response if not so timely filed and served

AND IT IS SO ORDERED this 20<sup>th</sup> day of May, 2024.

  
THE HONORABLE JOCELYN NEWMAN  
Chief Administrative Judge  
Fifth Judicial Circuit

Columbia, South Carolina

CERTIFIED TRUE COPY  
OF ORIGINAL FILED  
  
C.C.C.F.&G.S.  
RICHLAND COUNTY  
SOUTH CAROLINA

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Dudley B. Mack, #366326,

Applicant

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2017-CP-40-7110  
)  
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**FINAL ORDER OF DISMISSAL**

2024 JUL 19 AM 8:35  
BENNETT W. MCBRIDE  
CLERK, C.S. & F.C.  
RICHLAND COUNTY  
FILED

This matter comes before this Court by way of a post-conviction relief (PCR) action commenced by Dudley B. Mack (Applicant) on November 22, 2017. Respondent made its Return and Motion to Dismiss requesting this action be summarily dismissed because it was untimely, 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 filed May 22, 2024, provisionally denying and dismissing this action while giving Applicant's Counsel 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 an affidavit of service dated June 7, 2024, indicating the State served the above-mentioned Conditional Order of Dismissal on Applicant.

On June 4, 2024, Applicant filed his "Motion for Reconsideration for Conditional Order of Dismissal." On June 5, 2024, this Court denied Applicant's motion by Form 4 Order.

On June 10, 2024, Applicant filed his "Amend Motion for Reconsideration for Conditional Order of Dismissal."

  
Page 1 of 3

This Court has reviewed Applicant's responses to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court finds Applicant has failed in his burden to establish there is a genuine issue of material fact such that he should be granted an evidentiary hearing on his PCR application. S.C. Code Ann. § 17-27-70(c); Leamon v. State, 363 S.C. 432, 434, 61 1 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). This Court reasserts its findings in the Conditional Order of Dismissal that the current PCR application must be dismissed because it is untimely, 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).


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 application and his responses, 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.

**[SIGNATURE PAGE FOLLOWS]**

**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 18<sup>th</sup> day of July, 2024.

  
\_\_\_\_\_  
THE HONORABLE JOCBLYN NEWMAN  
Chief Administrative Judge  
Fifth Judicial Circuit

Columbia, South Carolina.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated Lt. T. Thaggard (Server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA )

COUNTY OF Richland )

**AFFIDAVIT OF PERSONAL SERVICE**

On this 7 day of June, 2024, I served the Conditional Order of Dismissal (2017-CP-40-7110), on Inmate Dudley Mack SCDC Inmate #366326 by delivering personally and leaving a copy of the same at MANNING Correctional Institution. Deponent is not a party to this action.

s/ J. Thaggard  
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 7<sup>th</sup> day of June, 2024

[Signature] (L.S.)  
Notary Public for South Carolina

My Commission Expires: 04/14/27

**ADMISSION OF SERVICE**

Service of a copy of the within Conditional Order of Dismissal (2017-CP-40-7110) is admitted at the South Carolina Department of Corrections (Manning Correctional Institution), Richland County, SC this 7 day of June, 2024.

s/ [Signature]  
Inmate  
SCDC Inmate #: 366326

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
5TH JUDICIAL CIRCUIT

Dudley B. Mack # 366326  
Applicant,

CASE NO. 2017-CP-40-710

vs.

NOTICE AND MOTION TO AMEND  
APPLICATION FOR POST-CONVICTION  
RELIEF

The state of south Carolina  
Respondent(s).

RICHLAND COUNTY  
FILED  
2024 MAR 14 PM 2:06  
SEANNETTE W. McBRIDE  
C.P., G.S., & F.C.

Now come the above named Applicant who moves this Honorable Court in the above entitled matter Per SC Code 17-27-90 and S.C.R.C.P. Rule 15(b), hereby amends his Application For Post-Conviction Relief. This amended Complaint adopts and includes all grounds in the Original Application Filed on November 22, 2017 by the Applicant.

Applicant further alleges as additional grounds regarding his claim. A violation of due Process and Equal Protection of the Constitution(s) and law(s) of the U.S. and state of South Carolina, as guaranteed by 6th and 14th amendment(s).

1) The state argument is misplaced because this invalid conviction still persist. The state used this invalid magistrate conviction to enhance sentence upon a General Sessions Case. SEE! Applicant Exhibit A, Tr. 31, at 20 and 21, and Exhibit B, Tr. 33, at 7 to 10. SEE! Jackson v. State, 331 S.C. 486 (1997),

March 12, 2024  
Dated:

Respectfully Submitted,

Dudley B. Mack

Dudley B. Mack  
502 Beckman Dr.  
Columbia, SC. 29203

cc. Honorable Jocelyn Newman  
D. Russell Barlow, II  
Asst. Atty. General

SCDC

JUN 17 2024

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STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND ) COURT OF GENERAL SESSIONS  
2013-GS-40-2025  
2018-GS-40-8386

State of South Carolina, )  
Plaintiff, )  
vs. ) TRANSCRIPT OF RECORD  
Dudley Mack, )  
Defendant. )

June 18, 2018  
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

A P P E A R A N C E S:

JEREMIAH J. SHELLBERG, II, ASSISTANT SOLICITOR  
Attorney for the Plaintiff

ROBERT W. MILLS, ESQ.  
Attorney for the Defendant

DEBORAH M. McCURDY, RPR  
Official Court Reporter

1 split sentence of probation, any kind of suspended  
2 sentence to probation. I think he is a good  
3 candidate for that. This is an unusual case. It  
4 is unusual. Mr. Mack is a very accomplished man to  
5 be standing here before you on this case, Your  
6 Honor. We would just ask for that.

7 Mr. Mack, anything you would like to say?

8 THE DEFENDANT: Your Honor, I plead with the  
9 Court to be merciful with me and allow me to go  
10 home, and I promise I won't let you down. You  
11 won't see me here no more.

12 THE COURT: Thank you.

13 MR. SHELLENBERG: Judge, briefly?

14 THE COURT: Yes, sir. And can you give me his  
15 prior record again?

16 MR. SHELLENBERG: I can. It is a 1983,  
17 assault and battery. 1995, failure to stop for  
18 blue light and criminal domestic violence. 2005,  
19 two assault with intent to kills. 2009 breaking  
20 and entering out of North Carolina. And in 2014,  
21 assault and battery third.

22 MR. MILLS: It is my understanding that the  
23 criminal domestic violence may have been dismissed.  
24 I'm not sure what the sentence on that is.

25 It is not showing on the rap sheet, Your

1 Honor.

2 THE COURT: Yes, sir?

3 MR. SHELLENBERG: Your Honor, in a 2003 plea,  
4 in addition to the probation, the Defendant  
5 received inpatient treatment, inpatient psychiatric  
6 treatment, followed by criminal domestic violence  
7 counseling. So at that time he got treatment, he  
8 got counseling, and we are back here again.

9 And the victim did go to the house because she  
10 wanted to know how somebody that she loved and she  
11 thought loved her could do such a thing, could  
12 shoot her. And we know why, because he is the  
13 victim. He is standing here today, and everything  
14 that he told you is something how somebody wronged  
15 him. He is not sorry for what he did.

16 And, Your Honor, I think he needs prison time  
17 in this case. He didn't apologize to the victim.

18 MR. MILLS: Yes, I think he does apologize.  
19 He is sorry this happened.

20 THE DEFENDANT: Because I have lost -- I have  
21 lost three brothers of my own, so I know how she  
22 must feel.

23 THE COURT: All right. On  
24 Indictment 2013-GS-40-2025, on attempted murder,  
25 sir, you will be sentenced to the State Department

1 of Corrections for 17 years.

2 On Indictment 2018-GS-40-8386, sir, you will  
3 be sentenced to the State Department of Corrections  
4 for five years.

5 All sentences will run concurrent. You will  
6 be given credit for 1,258 days of service.

7 If this was the first time and he didn't have  
8 all those assaults on his record and other violent  
9 crimes on his record, I may have considered  
10 something less, but there is obviously an issue  
11 with him and relationships and guns. And I'm sure  
12 he had the same conversation with the judge the  
13 last time back in 2004, he wouldn't be back here  
14 again, and that he needed treatment. He got the  
15 treatment and still didn't -- we are still back  
16 here.

17 So that will be the sentence of the Court. He  
18 will be given credit for the time that he has  
19 served.

20 Thank you.

21 MR. SHELLENBERG: Thank you, Your Honor.

22 (WHEREUPON, the hearing adjourned at  
23 4:11 p.m.)

24

25

(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

1  
2  
3  
4 STATE OF SOUTH CAROLINA        )  
5 COUNTY OF RICHLAND            )

6  
7  
8        I, Deborah M. McCurdy, Official Court Reporter for  
9 the Fifth Judicial Circuit of the State of South  
10 Carolina, do hereby certify that the foregoing is a  
11 true, accurate and complete Transcript of Record of the  
12 proceedings had and evidence introduced in the trial of  
13 the captioned case, relative to appeal, in the Court of  
14 General Sessions for Richland County, South Carolina, on  
15 the 18th day of June, 2018.

16        I do further certify that I am neither of kin,  
17 counsel nor interest to any party hereto.

18  
19                                    MARCH 22, 2021  
20                                    June 20, 2019

21                                    *s/Deborah M. McCurdy, RPR*

22 \_\_\_\_\_  
23 Deborah M. McCurdy, RPR  
24 Fifth Circuit Court Reporter  
25

Exhibit 3

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE 5TH JUDICIAL CIRCUIT

Dudley B. Mack # 366326  
Applicant,

CASE NO. 2017-CP-40-7110

v.

Motion For Reconsideration  
For Conditional Order of  
Dismissal.

The State of South Carolina  
Respondent.

RICHLAND COUNTY  
FILED  
2024 JUN -4 AM 9:27  
JEANETTE W. MARRIOTT  
C.C.P., G.S. & J.C.

Now Come The above named Applicant Respondent Fully. Moves  
This Honorable Court in the above entitled matter For a  
reconsideration of an Conditional Order of dismissal Filed on  
May 22, 2024 and received by Manning's Correctional Inst May 28,  
2024. This order was signed by The Honorable Jocelyn Newman  
on May 20, 2024.

This matter comes before this Honorable Court For a reconsideration  
based on these Facts and laws). The Applicant Filed an application For  
Post-Conviction relief (PCR) on November 22, 2017. Respondent, the State,  
made its Return and Motion to Dismiss on May 4, 2018. Applicant made  
his Return and Motion to Grant Relief on May 25, 2018. Respondent  
made its Amended Return and Motion to Dismiss on January 26, 2024.  
The Court grant Respondent's motion Without making a ruling on the  
Amended application Filed on March 14, 2024. Pursuant to S.C. Code  
41-35-640 (A) in Part. An initial determination may For good cause be  
reconsidered. In the applicant's Notice and motion to Amend  
Application For Post Conviction relief, the Applicant contends that  
this invalid magistrate conviction is still Persist due to state used  
to enhance sentence. see: McDuffie v. State, 276 S.C. 229 (1981).  
The applicant never had an evidentiary hearing.

The Applicant request a evidentiary hearing.

May 30, 2024  
Date:

cc. The Honorable Jocelyn Newman  
Asst. Atty. General  
D. Russell Barlow, II

SCDC

JUN 17 2024

MCI  
MAIL ROOM

Respectfully Submitted.

Dudley B. Mack  
502 Beckman dr.  
Columbia, SC 29203

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Dudley B. Mack # 366326  
Applicant,

v.

The State of South Carolina  
Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE 5TH JUDICIAL CIRCUIT

CASE NO: 2017-CP-40-7110

Amend Motion For Reconsideration  
For Conditional Order of Dismissal

RICHLAND COUNTY  
FILED  
2024 JUN 10 AM 9:11  
JEANETTE W. MERRID  
C.C.P., G.S., & C.F.R.

NOW Comes The above named Applicant, Respectfully, moves This Honorable Court in the above entitled matter with an Amendment motion for reconsideration for conditional order of dismissal. This amend-Complaint adopts and includes all grounds in the original motion for reconsideration for conditional order of dismissal.

The applicant further alleges as additional grounds regarding his motion for reconsideration, the statutory requirement was not complied with in retaining testimony in the trial, S.C. Code 18-3-40, S.E. Code 22-3-790. Pursuant to S.C. Code of Laws 22-3-790,

In the trial of any case before a Magistrate the testimony of all witnesses must be taken down in writing and signed by the witnesses.

SEE! Conditional Order of Dismissal, Page 5, Line 10. It states: the record is not available because the proceedings were not recorded. SEE! State v. Johnson, 396 S.C. 182 (2011).

The applicant request a evidentiary hearing.

Date: June 3, 2024

Respectfully submitted:  
Dudley B. Mack  
Manning Ct W147  
502 Beckman Dr.  
Columbia SC 29203

SCDC  
JUN 17 2024  
MCI  
MAIL ROOM

The Hon. Jeanette W. McBride  
Clerk of Court, Richland Co.  
P.O. Box 2766  
Columbia, SC 29202

RE: Case no. 2017-CP-40-7110

Dear Ms. McBride:

Please find enclosed for filing a notice of  
appeal for the above case.

Please send me a filed copy.

Thanking you in advance.

Cc.

D: Russell Barlow, II

Date: 7-31 2024

Sincerely,  
Dudley B. Mack

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Dudley B. Mack  
Applicant,

v.

The State  
Respondent(s).

IN THE COURT OF COMMON PLEAS  
5TH JUDICIAL CIRCUIT

Case no. 2017-CP-40-7110

NOTICE OF APPEAL

I Dudley B. Mack hereby appeal the court decision and order(s) of dismissal, final order, conditional order, reconsideration order.

Cc.  
D. Russell Barlow, II  
Asst. Atty. General  
P.O. Box 11549  
Columbia, S.C. 29211

Date: 7-31, 2024

Respectfully Submitted,  
Dudley B. Mack  
Manning, C.I. 41-47  
502 Beckman Dr.  
Columbia, SC 29203

## PROOF OF SERVICE BY MAIL

I Dudley B. Mack, hereby certify that I have served notice of appeal on the person below by placing it in Manning's C.I. mailroom to be placed in U.S. Mail on 7-31, 2024, Postage Paid.

Cc. The Hon. Jeanette W. McBride  
Clerk of Court, Richland County  
P.O. Box 2766, Columbia, S.C. 29202

D. Russell Barlow, II  
Asst. Atty General  
P.O. Box 11549  
Columbia, S.C. 29211

Date: 7-31, 2024

Sincerely,

Dudley B. Mack  
502 Beckman Dr.  
Columbia, SC 29203

Jeanette W. McBride  
CLERK OF COURT  
RICHLAND COUNTY  
P.O. Box 2766  
Columbia, SC 29202-2766

WI-47B

Dudley Mack #366326  
Manning C I  
502 Beckman Road  
Columbia, SC 29203

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ZIP 29204 \$ 000.62<sup>2</sup>  
02 4W  
0000390929 JUL 23 2024

Final order came this  
day

SCDC

JUL 30 2024

MCI  
MAIL ROOM

