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THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY  
COURT OF COMMON PLEAS

Hon. Jocelyn Newman, Circuit Court Judge

Case no. 2024-001263

Dudley B. Mack

Appellant,

v.

State of South Carolina.

Respondent.

BRIEF OF APPELLANT

August 14, 2024  
Date:

PRO SE: Dudley B. Mack  
Manning C.I. WI-47  
502 Beckman Dr.  
Columbia, SC. 29203

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DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL

1. Conditional Order of dismissal, Form 4 order, Final Order,
2. Appellant's Notice and motion to Amend application, and transcript of record from Proceedings June 18, 2018, Front Page, and 31 to 34.
3. Appellant's Motion For reconsideration, and Amend Motion For reconsideration.

I certify that this designation contains no matter which is irrelevant to this appeal.

August 14, 2024,  
Date:

Dudley B. Mack  
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Manning #1 W1-47  
502 Beckman Dr.  
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## STATEMENT OF ISSUES ON APPEAL

1. Whether the lower court erred in not allowing appellant to amend application for post-conviction relief that would show that this invalid prior magistrate conviction still persists,
2. Whether the lower court erred in not allowing appellant to amend application for post-conviction relief to show evidence presented by the respondent in conditional order of dismissal was not comply with the relevant statute, which violates appellant due process rights.

## STATE OF THE CASE

The Appellant was arrested and charged with assault 3rd, S.C. Code Ann. 16-3-600(E), (1). The arrest was based on landlord/tenant violation S.C. Code Ann. 27-50-780(b). The state alleged that Appellant made an unlawful entry into the home. On September 28, 2014, Appellant was released on P.R. bond.

On October 30, 2014, Appellant went before The Honorable Donald J. Simons, Magistrate Judge by way of a bench trial, and was found guilty and sentence to time served, and court fees.

Appellant did not appeal his conviction or sentence.

The Appellant was not represented by an attorney during the trial nor did the trial Judge advise the Appellant of his right to counsel, nor is Appellant represented during the P.C.R. Proceedings nor this appeal.

On November 22, 2017, a Application for Post Conviction relief was filed, and on July 18, 2024 The Honorable Jocelyn Newman signed an order summarily dismissing application based on statute of limitation and filed in clerk's office on July 19, 2024.

Appellant is presently being held pursuant to an Order of the Richland County Clerk's Office for unrelated offense(s) not subject to this application.

## STATEMENT OF THE FACTS

The Appellant was arrested and charged with Assault 3rd, S.C. Code Ann. 16-3-600(E)(1), (Warrant no. 2014A4010203905). The Appellant was said to allegedly throw a Planter at D'Andre Mack, striking him in the right arm, and then later alleged brandished a razor and threatened Mack, following verbal altercation.

The arrest was based on Landlord/Tenant Violation S.C. Code Ann. 27-50-780(b). The state alleged that Appellant made a unlawful entry into the home. On September 28, 2014, Appellant was released on a P.R. bond.

On October 30, 2014, Appellant went before The Hon. Donald J. Simons, Magistrate Judge by way of a bench trial, and was found guilty and was sentenced to time served and Court Fee's.

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# ARGUMENT

1. The lower court erred in summarily dismissing Appellant's Application For Post-Conviction relief without allowing Appellant to amend Application as Provided in S.C. Code Ann. 17-27-90, SEE: Love v. State, 428 S.C. 231 (2019); and to determine whether or not Appellant has or is Prejudiced by the Persisted of a invalid Prior Magistrate conviction. SEE: McDuffie v. State, 276 S.C. 229 (1981), Jackson v. State, 331 S.C. 486 (1997), S.C. Code Ann. 17-27-20 (9)

The state is using the statute of limitation to circumvent the Persisted of this invalid Prior Magistrate conviction that was used to enhance sentence upon a General Sessions case. SEE: State v. Henderson, 347 S.C. 455 (2017), SEE: Black's Law Dictionary (12th ed. 2024) circumvent means: To avoid by changing route, To gain advantage over or get the better of by craft, deceit, or fraud.

2. The lower court erred in summarily dismissing Appellant's Application For Post-Conviction relief without allowing Appellant to amend Application as Provided in Rule 15(b) to show that the statutory requirement was not complied with in retaining testimony in a trial before magistrate as provided in S.C. Code Ann. 22-3-790.

In Conditional Order of dismissal on Page 5, Line #10, the Respondent states, the record is not available because the Proceedings were not recorded. This violates Appellant's due Process right. 6th and 14th amend. And violates S.C. Code Ann. 22-3-790. SEE: State v. Johnson, 396 S.C. 182 (2011), State v. Taylor, 436 S.C. 28 870 S.E.2d. 168 (2022).

The statute requires as Provided in sc Code Ann. 22-3-790. In the trial of any case before magistrate the testimony of all witnesses must be taken down in writing and signed by witnesses.

### CONCLUSION

Wherefore, and for the foregoing reasons, the Appellant, Respectfully, request that this honorable court reverse and remand for evidentiary hearing and any other relief this court deems just and proper.