

Sep 09 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

2024 MAY 31

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

Randevious H. Sims, #364413,)
Applicant,)

FAIRFIELD COUNTY)
CLERK OF COURT)
JUDY H. SIMS)

CASE NO. 2023-CP-20-331)

v.)

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter is before the Court based on a successive application for post-conviction relief (PCR) filed by Randevious H. Sims (Applicant) on October 18, 2023. In response, Respondent made its return¹ and moved to summarily dismiss the action as procedurally barred as untimely, barred by the statute of limitations, successive to Applicant's previous application, barred by the doctrine of *res judicata*, for failing to make a *prima facie* showing of newly discovered evidence pursuant to S.C. Code Ann. § 17-27-20, § 17-27-45, and § 17-27-90, 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 and provisionally dismisses the action based on the following:

¹ Respondent's return to the application was due to be filed within sixty days of receipt. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court accepts this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

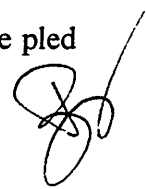
PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Fairfield County Clerk of Court. During the October 2011 term, the Fairfield County Grand Jury indicted Applicant for one count of Murder (2011-GS-20-409), one count of Attempted Armed Robbery (2011-GS-20-411), and one count of Burglary—1st Degree (2011-GS-20-412). Applicant was subsequently indicted in Newberry County² at the January 2015 term for one count of Armed Robbery (2015-GS-36-0026), and one count of Unlawful Carrying of Weapons (2015-GS-36-0029). Applicant was also indicted during the May 2015 term for Possession of Contraband (2015-GS-36-0187). Tyree D. Lee, Jr., Esquire represented Applicant.

On June 15, 2015, Applicant pled to the lesser included charge of Voluntary Manslaughter and pled as indicted to all other charges. The Honorable Diane Goodstein sentenced Applicant to incarceration for concurrent terms of thirty (30) years for Voluntary Manslaughter, fifteen (15) years for Attempted Armed Robbery, thirty (30) years for Burglary—1st Degree, fifteen (15) years for Armed Robbery, one (1) year for Unlawful carrying of Weapons, and one (1) year for Possession of Contraband. The sentences are set to run concurrently.

Applicant filed a timely Notice of Appeal. On March 23, 2016, the South Carolina Court of Appeals dismissed Applicant's appeal for failing to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was returned to the lower court on April 20, 2016.

² Applicant waived his right to have his Newberry charges heard in Newberry County; he pled guilty to each of these charges in Fairfield County.



FIRST PCR ACTION AND APPEAL: 2016-CP-20-250

On June 12, 2016, Applicant *timely* filed his first application for PCR in which he alleged the following:

1. "Trial Judge abuse of discetion (sic) with the sentence of an excessive amount of time."
 - a. "sentence to 30 years for involuntary manslaughter."
2. "insufficient evidence"
 - a. "No valuable implicating defendent (sic) of the elements of the charge ."
3. "convicted unlawfully and unconstitutional"
 - a. "coerced to make an involuntary plea"
4. "Never a waiver from family court."
 - a. "was 16 years old but was sentence at the age of 19."

An evidentiary hearing convened on January 22, 2019, at the Lancaster County Courthouse before the Honorable Paul M. Burch. Applicant was present and represented by Nathan J. Sheldon, Esquire. Assistant Attorney General Samuel L. Key represented the State. Applicant testified on his own behalf at the hearing. Charles Verner, Esquire, and Tyree D. Lee, Esquire, also testified at the hearing. At the PCR hearing, Applicant, through PCR counsel, amended his allegations as follows:

1. Ineffective assistance of counsel for:
 - a. Failing to explain how pleading guilty to the Newberry County charges would impact the Fairfield County charges; and
 - b. Failing to explain the potential pitfalls of pleading guilty to Applicant.

On June 18, 2019, Judge Burch issued the Order of Dismissal dismissing Applicant's PCR application with prejudice.

Applicant filed a timely Notice of Appeal. Appellate Defender Susan B. Hackett perfected Applicant's appeal by filing a Johnson³ petition on February 10, 2020. On February 24, 2021, the

³ Johnson v. State, 294 S.C. 310, 364 SE.2d 201 (1988).



South Carolina Court of Appeals denied the petition. The Remittitur was returned to the lower court on March 17, 2021.

CURRENT APPLICATION

On October 19, 2023, Applicant *untimely* filed his second application for PCR in which he alleges the following:

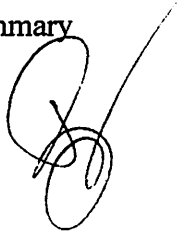
1. Ineffective Counsel
2. Brady Violation
3. Prosecutorial Misconduct
4. § 17-27-45(C) – Evidence of Material Fact Not Previously Presented

Applicant seeks relief in the form of "sentence reduction."

Attached to this Return and Motion to Dismiss are the Richland County Clerk of Court records regarding the subject's convictions; Applicant's records from SCDC; records from Applicant's direct appeal, records from Applicant's first PCR action and appeal, and the records of the current PCR action.

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 which would necessitate an evidentiary hearing. See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing). Respondent moved for summary



dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

SUMMARY DISMISSAL BASED ON NEWLY DISCOVERED EVIDENCE

Respondent moved this Court to summarily dismiss the application because Applicant's assertion that he is being held in custody unlawfully due to 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 discovered on March 7, 2023, that counsel did not file a Rule 5, SCRCrimP, for his discovery. However, Applicant's contention that counsel did not have his discovery is wholly refuted by the guilty plea and first PCR action records. 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 . . .").

At Applicant's guilty plea hearing, the following colloquy occurred between Applicant and the court:

THE COURT: Very well. Has Mr. Lee -- I don't know that he gave you copies of what's called the discovery, do you know what I mean when I talk about discovery?

APPLICANT: Yes, ma'am.

THE COURT: The evidence that the State has available to present at trial?

APPLICANT: Yes, ma'am.

THE COURT: Has he been over that with you?

APPLICANT: Yes, ma'am.

THE COURT: And I don't know that you have copies of it, but you know if you want to have copies of it he will give you copies of that, you know that, right?

APPLICANT: Yes, ma'am.

THE COURT: Now, has Mr. Lee investigated your case?

APPLICANT: Yes, ma'am.

THE COURT: All right. And I don't know that you asked him to talk to any particular folks but if you did, did he?

APPLICANT: Yes, ma'am.

THE COURT: Okay. And has he investigated your case you believe adequately?

APPLICANT: Yes, ma'am.

THE COURT: And appropriately?

APPLICANT: Yes, ma'am.

THE COURT: Has Mr. Lee done all those things in his representation of you that you believe he should have done or could have done to properly represent you?

APPLICANT: Yes, ma'am.

THE COURT: Has he done anything in his representation of you that you think he should not have done?

APPLICANT: No, ma'am.

(Plea Tr. pp. 44-45).

Additionally, Applicant testified at his first PCR evidentiary hearing that counsel shared all the discovery with him and reviewed it with him. (App. p. 95).

Even if Applicant's allegation was true, Applicant has failed to present the evidence that had counsel filed a Rule 5, SCRCrimP, motion then he would have specific evidence that was favorable to Applicant, that it was in the possession of or known to the prosecution, that it was suppressed by the prosecution, and it was material to his guilt or punishment. See Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). In the context of a guilty plea, a Brady⁴ violation is material "when there is a reasonable probability that, but for the government's failure to disclose Brady evidence, the defendant would have refused to plead guilty and gone to trial." Gibson, 334 S.C. at 525, 514 S.E.2d at 325. Here, Applicant has produced a letter from one of the two counties he pled guilty to charges in, and that letter just indicates that counsel did not file a Rule 5, SCRCrimP, motion. Thus, Applicant has not satisfied the requirements laid out in Gibson.

Turning to the Clark factors, Applicant also fails this test because, with due diligence, Applicant could have discovered his claim before his guilty plea, after his guilty plea, and before his first PCR action. 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*

⁴ Brady v. Maryland, 373 U.S. 83 (1963).



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).

This Court finds Applicant is not entitled to an evidentiary hearing, and this matter shall be summarily dismissed

SUMMARY DISMISSAL BASED ON STATUTE OF LIMITATIONS

Respondent moved to summarily dismiss this application for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.⁵ 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.
- (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.

⁵ S.C. Code Ann. § 17-27-10 to -160.



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 allegations that his plea counsel was ineffective and his constitutional rights were violated. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant pleaded guilty and was sentenced on June 15, 2015. Applicant did pursue a direct appeal. The Remittitur was returned to the lower court on April 20, 2016. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before April 21, 2017. Applicant did not file this PCR application until October 18, 2023, *six years, five months, and twenty-seven days* 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.

SUMMARY DISMISSAL BASED ON SUCCESSIVENESS

Respondent moved to summarily dismiss this application because it is successive to Applicant's previous *two* PCR applications. 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 raised earlier 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). Section 17-27-90 of the South Carolina Code states:

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 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.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). 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 Applicant could have raised these allegations in a previous application, then Applicant may not raise those grounds in successive applications. Id. 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).

Applicant's current allegations, other than newly discovered evidence, *were or could have been* raised in the proceedings based on Applicant's prior applications for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him.

Accordingly, this Court finds this application is successive and procedurally barred pursuant to S.C. Code Ann. § 17-27-90 and shall be dismissed.



SUMMARY DISMISSAL BASED ON MOTION FOR DECLARATORY JUDGMENT

Respondent moved to summarily dismiss this application because a motion for declaratory judgment does not apply in Applicant's case. This Court agrees.

Because the PCR Act explicitly applies to constitutional challenges to convictions and sentences, relief in the form of a declaratory judgment is not available. See S.C. Code Ann. § 17-27-20 (A)(1), (B); Singleton v. State, 313 S.C. 75, 85–86, 437 S.E.2d 53, 59 (1993) (discussing § 17-27-20(B) and the appropriate relief in PCR cases); Gilstrap v. State, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (stating that even under the assumption that all the allegations were true, the relief to be granted on PCR is remand for a new trial); Smith v. State, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) ("We now clarify the proper remedy is a new trial."). The PCR Act has taken the place of all other remedies formerly available for challenging the validity of a conviction or sentence, including actions for declaratory judgment. S.C. Code Ann. §17-27- 20(B). Recently, in Carpenter v. S.C. Dep't of Corr., the Court of Appeals rejected Carpenter's attempt to circumvent post-conviction procedures by raising claims that "fit squarely into a category available for redress under the PCR Act" in the form of a petition for habeas corpus or a declaratory judgment action. 431 S.C. 512, 521, 848 S.E.2d 346, 350 (Ct. App. 2020); see also Williams v. Ozmint, 380 S.C. 473, 671 S.E.2d 600 (2008) (stating that PCR is intended to address constitutional violations related to the criminal conviction (citing S.C. Code Ann. § 17-27-20(A) (2007))).

Applicant has had an opportunity to raise his allegations in previous collateral actions. Accordingly, the motion for declaratory judgment shall be summarily dismissed pursuant to Rule 12(b)(6), SCRCPP, because it fails to state facts sufficient to constitute a cause of action or to support the requested relief.

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FRUSTRATION OF FINALITY OF CONVICTIONS

As a final matter, both the United States Supreme Court and the South Carolina Supreme Court have emphasized the necessity for 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.

[CONCLUSION PAGE FOLLOWS]

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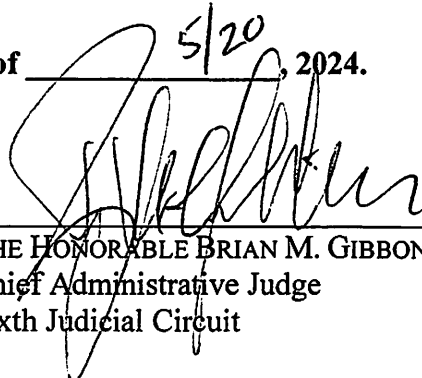
CONCLUSION

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


Office of the Attorney General
PCR Division – 6th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Fairfield 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 _____ day of _____, 2024.



THE HONORABLE BRIAN M. GIBBONS
Chief Administrative Judge
Sixth Judicial Circuit

, South Carolina

Post Office Drawer 299
Winnsboro, South Carolina 29180



Clerk of Court (803) 712-6526
Fax (803) 712-1506
Family Court (803) 712-6528
Fax (803) 712-1478

CLERK OF COURT FAIRFIELD COUNTY
JUDY M BONDS

Tammy Durham
Deputy Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF FAIRFIELD

6th JUDICIAL CIRCUIT

Randevious H Sims #364413

Case: 2023-CP-20-331

Applicant

Vs

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Respondent

PROOF OF MAILING

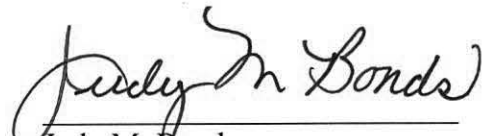
I certify that, on this date, I mailed a copy of the **Conditional Order of Dismissal**

In this action, dated May 20, 2024 on May 31, 2024.

By mail to him/her, at his/her last known address, by depositing it in the US Mail, in an envelope
With sufficient postage affixed, addressed as follows:

Randevious H. Sims #364413
E.C.I.
610 Hwy #9 West
Bennettsville, SC 29512

Date: May 31, 2024



Judy M. Bonds
Fairfield County Clerk of Court