

RECEIVED
OCT 08 2024
S.C. SUPREME COURT

The Supreme Court of South Carolina

Kevin Smith, Petitioner,

v.

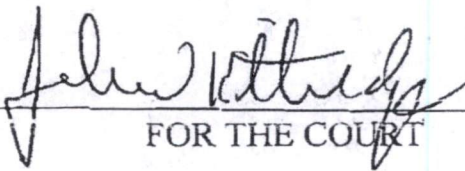
State of South Carolina, Respondent.

Appellate Case No. 2024-001289

ORDER

Because petitioner filed his explanation under Rule 243, SCACR, this matter is reinstated.

However, this Court's review of this matter shows that Petitioner failed to file a response to the underlying conditional order of dismissal. Where, as here, a PCR applicant fails to file a response to a conditional order of dismissal, this Court has held that the applicant cannot appeal. *Edith v. State*, 369 S.C. 408, 632 S.E.2d 844 (2006). Accordingly, the notice of appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.



C.J.

FOR THE COURT

Columbia, South Carolina
September 23, 2024

cc: D. Russell Barlow, II
Kevin Smith, #164920

PLEASE SEE: petitioner's Exhibit-A ATTACHED

3

Mr. KEVIN SMITH, #164920
610 Hwy # 9 West,
Bennettsville, South Carolina
#29512

SEPTEMBER 30, 2024 A.D.

RE: FILING OF AMENDED PETITION
FOR REHEARING, PURSUANT TO RULE 221
S.C.A.C.R. CASE NO. 2024-001289

TO: THE HONORABLE PATRICIA A. HOWARD, CLERK OF COURT,
THE SUPREME COURT OF SOUTH CAROLINA,
P.O. BOX #11330,
COLUMBIA, SOUTH CAROLINA, #29211;

DEAR Ms. HOWARD,

Please find enclosed an original copy of petitioner-appellants' amended
petition for rehearing, supporting memorandum & supporting documents
(exhibits); notarized certificate of proof of service, verifying service
of same upon defense counsel of record on the above date; to
include petitioner's copy for filing & return with your office.
Thank you.

I am cordially

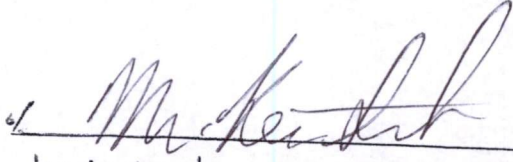


THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
 APPEAL FROM RICHLAND COUNTY
 COURT OF COMMON PLEAS
JOCALYN NEWMAN CIRCUIT COURT JUDGE
CASE NO* 2024-001289

KEVIN SMITH; 164920..... APPELLANT;
 ✓

STATE OF SOUTH CAROLINA;..... RESPONDENT;

AMENDED PETITION FOR REHEARING PURSUANT
TO RULE 22.1(A) SOUTH CAROLINA APPELLATE COURT RULES


 KEVIN SMITH #164920; APPELLANT
 - PRO-SE
 *610 HWY #9 WEST,
 BENNETTSVILLE, SOUTH CAROLINA

SEPTEMBER 30, 2024, A.D.
 DE FENSE COUNSEL OF RECORD
 D. RUSSELL BARLOW II,
 ASSISTANT ATTORNEY GENERAL,
 P.O. BOX #11549, COLUMBIA,
 SOUTH CAROLINA, #29211.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
 APPEAL FROM RICHLAND COUNTY
 COURT OF COMMON PLEAS
JOCELYN NEWMAN CIRCUIT COURT JUDGE
CASE No. #2024-001289

KEVIN SMITH #164920, Appellant,
 ✓

STATE OF SOUTH CAROLINA, Respondent,

SUPPORTING MEMORANDUM OF
APPELLANT - PETITIONER

ISSUES. PETITIONER'S RESPONSE TO THE CONDITIONAL ORDER OF DISMISSALSUPPORTING FACTS - ARGUMENT - LEGAL AUTHORITY - DOCUMENTATION

on the Date of May. 31. 2024 AD THE petitioner was SERVED with a copy of THE Conditional order of Dismissal v.IA. S.CDC official Sgt. E. McRae. to which the petitioner SERVED an original copy of his Response to THE Conditional order of Dismissal upon THE Richland County Clerk of Court Ms. JEANETTE W. McBRIDE for filing; DEFENSE COUNSEL OF RECORD, and THE Honorable Judge JOCELYN NEWMAN. v.IA. "CERTIFIED" u.s. Mail on May. 24. 2024 AD (PRIOR TO DEFENSE COUNSEL SERVICE OF THE Conditional order of Dismissal upon petitioner on MAY. 31. 2024 AD, THE petitioner was SERVED with a copy v.IA. THE Richland County Clerk of Court, to which petitioner SERVED HIS TIMELY RESPONSE PRIOR TO SERVICE OF THE Conditional order of Dismissal upon HIM v.IA. S.CDC official Sgt. McRae on May. 31. 2024 AD) SEE: THE PETITIONER'S EXHIBIT-A. ATTACHED TO THE AMENDED PETITION FOR REHEARING (NOTARIZED CERTIFICATE OF PROOF OF SERVICE; AGREEMENT TO DEBIT B.H COOPER ACCOUNT FORM, DATED MAY. 24 2024 AD, TO INCLUDE U.S. POSTAL "CERTIFIED" MAIL RECEIPTS AND PETITIONER FILED RESPONSE TO THE Conditional order of Dismissal)

on the Date of July. 26. 2024 AD THE petitioner was SERVED with another (second) copy of THE Conditional order of Dismissal (2024-cp-40-01526) v.IA S.CDC official Sgt. E McRae to which THE plaintiff submitted another original copy of petitioner's RESPONSE TO THE Conditional order of Dismissal TO THE Richland

1. THE Richland County Clerk of Court JEANETTE W. McBRIDE did not file petitioner's RESPONSE TO THE Conditional order of Dismissal until approximately two (2) months AFTER

County Clerk of Court JEANETTE W. McBRIDE for filing with HER office on July 29, 2024, AD. SEE: PETITIONERS EXHIBIT - B - ATTACHED
 (Affidavit of plaintiff KEVIN SMITH Notarized Certificate of proof of service. July 29, 2024 AD. with witness signature of S.C.D.C. official SANDRA OUTLAW-EVANS-CORR-INST. Mail Room Supervisor personnel)

IN MOSES V. STATE, 720 S.C. 500, 803 S.E.2d 710 (2021) THIS Court held; that the applicant demonstrated that the untimely filing of his application (P.C.A.) was due to circumstances beyond his control, and thus, was entitled to equitable tolling of one year limitation governing application. Citing: applicant relinquished control over application when he delivered it to prison officials' (authorities) for mailing, which was 27 days before limitations period expired. His application was notarized on same day and he admitted that the Associate Warden confirmed that application was mailed before limitations period expired.

The Court (Moses) further held, the judge should consider any reasonable verifiable evidence of the date the document was purportedly in the possession of prison authorities for purpose of mailing. In the petitioners instant case petitioner Smith timely filed his responses to the Conditional order of Dismissal. Has submitted documented evidence verifying such filings to include petitioner's filed responses with the Clerk of Court SEE: PETITIONERS EXHIBITS - A - B - ATTACHED

1 Continued over her (the clerks) receipt of the petitioners responses to the Conditional order of Dismissal via "certified" mail. SEE: PETITIONERS EXHIBIT - A - ATTACHED

Thus, THE RESPONDENTS' assertions that the petitioner failed to file his response to the conditional order of dismissal with the Richland County Clerk of Court is baseless. In South Carolina, it is well settled that statements of fact appearing only in argument of counsel will not be considered. McManus v. Bank of Greenwood, 171 S.C. 94, 171 S.E.2d 473, 475 (1933); SEE ALSO SHINN v. Kaul, 321 S.C. 94, 102, 489 S.E.2d 695, 700 (Ct App. 1993) ("A court cannot consider facts appearing only in argument of counsel."); GILMORE v. IVEY, 290 S.C. 53, 58, 348 S.E.2d 180, 184 (Ct App. 1986) ("Judge" properly disregarded counsel's statements about contents of depositions when depositions were not provided to the court.)

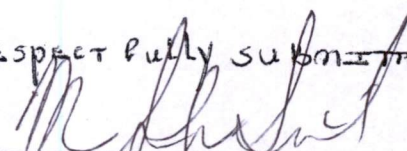
wherefore based upon sufficient facts, argument, legal authorities, supporting documentation submitted by the petitioner, the court's dismissal of the petitioner's appeal is improper, and the petitioner prays that the appeal be reinstated. Respectively

o o o

CC:

D. RUSSELL BARLOW II

SEPTEMBER 30, 2024 A.D.

Respectfully Submitted
 s/ 
 KEVIN SMITH PETITIONER
 PRO-SE

2. petitioner respectfully request the court to take judicial notice that the lower court's record are devoid of any PCR application being filed with the Richland County Clerk of Court's office on the date of March 8, 2024 A.D. by this petitioner!

THE STATE OF SOUTH CAROLINA
 IN THE SUPREME COURT
 APPEAL FROM RICHLAND COUNTY
 COURT OF COMMON PLEAS
 JOCELYN NEWMAN CIRCUIT COURT JUDGE
 CASE NO. #2024-001289

KEVIN SMITH #164920 Appellant,
 ✓

STATE OF SOUTH CAROLINA RESPONDENT,

NOTARIZED CERTIFICATE OF PROOF OF SERVICE

The petitioner - appellant (Kevin Smith) in the above case no, hereby certify that I served an original copy of the appellants amended petition for rehearing supporting memorandum & documents (exhibits) attached, pursuant to Rule 22.1 (a) S.C.A.C.R. upon DEFENSE COUNSEL of RECORD in the above-captioned case no #2024-001289 this 30TH DAY OF SEPTEMBER 2024, A.D. V.I.A. "CERTIFIED" U.S. MAIL

Addressed to:
 D. RUSSELL BARLOW II
 ASSISTANT ATTORNEY GENERAL
 P.O. BOX # 11549
 Columbia, SC #29211

[Signature]

SWORN AND SUBSCRIBED BEFORE THIS 30 DAY OF Sept 2024, A.D.

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA: [Signature]

MY COMMISSION EXPIRES: 2/28/34

2024-001289

881

P. 2

EXHIBIT A

2024-001259

P. 2

Mr. KEVIN SMITH #164920
610 HWY #4 WEST,
BENNETTSVILLE, S.C. #29512,

5. 24. 24. AD

The Honorable JEANETTE W. McBride
Richland County Clerk of Court
P.O. Box #2766
Columbia, S.C. #29202-#2766

RE: KEVIN SMITH vs. STATE OF SOUTH CAROLINA
CASE NO# 2024-CP-4001526

Dear Ms. McBride,

Enclosed please find enclosed the plaintiff's original response to
The Conditional order of dismissal; notice of Motion-Motion to Strike
Defendants Motion to Dismiss Affidavit of KEVIN SMITH in support of
His Motion to Strike Defendants Motion to Dismiss- notice of Motion Motion
for an order of Declaration finding the Defendants guilty of Criminal
Conspiracy, Affidavit of KEVIN SMITH in support of His Motion for an
order of Declaration finding Defendants guilty of Criminal Conspiracy,
A Affidavit of Evidence in the above-captioned case for filing with your
office. To include notarized Certificate of proof of service
& plaintiff's copies of same for filing & return

Sincerely;
Mr. Kevin Smith

Mr. KEVIN SMITH
Plaint. ff. pro-se

cc: Honorable Jocelyn Newman
Alan Wilson

enclosures

2024-002289

R3

KEVIN SMITH #164920,
PLAINTIFF - PRO SE;

5. 24. 24. AD.

THE HONORABLE JOCELYN NEWMAN,
Fifth Circuit Chief Administrative Judge - Common Pleas
P.O. Box #192.
Columbia, S.C. #29202-#192.


RE: KEVIN SMITH #164920 V. STATE OF SOUTH CAROLINA;
CASE No #2024-CP-40-01526

DEAR JUDGE NEWMAN:

Enclosed please find the plaintiff's response to the conditional order of dismissal; plaintiff's notice of motion - motion to strike defendant's motion to dismiss; affidavit of KEVIN SMITH in support of his motion to strike defendant's motion to dismiss; plaintiff's notice of motion - motion for an order of declaration finding the defendant guilty of criminal conspiracy; a affidavit of KEVIN SMITH in support of his motion for an order of declaration finding defendant's guilty of criminal conspiracy; plaintiff's affidavit of evidence in the above-captioned case to include notarized certificate of proof of service.

CC: ALAN WILSON

Enclosures

Sincerely

KEVIN SMITH
Plaintiff - pro se

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

KEVIN SMITH #164920

PLAINTIFF,

✓

STATE OF SOUTH CAROLINA,
ALAN WILSON, WARREN B. GIESE,
R. MARK LEY DENNIS JR. DEFENDANTS

IN THE COURT OF COMMON PLEAS
OF THE FIFTH JUDICIAL CIRCUIT

CASE NO# 2024-CP-1001526

PLAINTIFF KEVIN SMITH RESPONSE
TO THE CONDITIONAL ORDER OF
DISMISSAL
AND AFFIDAVIT OF KEVIN SMITH
IN CORROBORATING CASE AUTHORITIES

RICHLAND COUNTY
FILED
02/24/24
JAN 24 2024
C.P. CLERK
W. MICHAEL
RICHMOND

DISMISSAL OF THIS CASE WOULD BE A TRAVESTY OF JUSTICE - ERROR OF LAW
BASED ON THE FOLLOWING:

1

on January 30, 2024 AD. THE PLAINTIFF (KEVIN SMITH #164920) SUBMITTED HIS
NOTICE OF MOTION AND MOTION FOR A WRIT OF HABEAS CORPUS, AND A DECLARATION THAT THE
TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO CONVICT AND SENTENCE THE
PLAINTIFF BASED UPON VOID-NULL UNFILED INDICTMENTS NO'S 95-GS-40-3705, 95-GS-40-
3706, 95-GS-40-3707, 95-GS-40-3708, 95-GS-40-4202, 96-GS-40-1156, TO THE
RICHLAND COUNTY CLERK OF COURT FOR FILING [ALONG WITH CIVIL ACTION COVER SHEET
AND SUMMONS NAMING AS DEFENDANTS STATE OF SOUTH CAROLINA, ALAN WILSON, WARREN
B. GIESE; AND R. MARK LEY DENNIS JR. - AND MOTION AND AFFIDAVIT TO PROCEED IN FORMA
PAUPERIS] TO INCLUDE HIS "VERIFIED" COMPLAINT AND SUPPORTING AFFIDAVIT
WHICH WERE FILED - CLOCK-STAMPED ON MARCH 8, 2024 AD.

Page 10 of 12

1 THE PLAINTIFF (KEVIN SMITH) ALSO SUPPORTS HIS RESPONSE TO THE CONDITIONAL ORDER OF DISMISSAL
WITH PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S MOTION TO DISMISS (WITH SUPPORTING AFFIDAVIT),
PLAINTIFF'S MOTION FOR AN ORDER OF DECLARATION FINDING THE DEFENDANTS GUILTY OF CRIMINAL
CONSPIRACY (SUPPORTING AFFIDAVIT), AND PLAINTIFF'S AFFIDAVIT OF EVIDENCE IN THE
ABOVE-CAPTIONED-CASE NO# 2024-CP-1001526; ATTACHED TO THIS RESPONSE

2

on March 11, 2024, The plaintiff's Motion and Affidavit To proceed in Perma
pauperis was granted and Signed By The Honorable Judge Jocelyn Newman,
and was Filed with The Richland County Clerk of Court Clock-stamped on
March 22, 2024, to which plaintiff's Motion for a writ of Mandamus, and
Declaration, was assigned Case No. # 2024 CP-400-1526. SEE: plaintiff's
Exhibit A attached to this response

3.

AT NO TIME Did or Has The plaintiff (KEVIN SMITH) - Commenced - submitted
or Filed Any application for post conviction Relief (PCR) To The Richland
County Clerk of Court on March 8, 2024, and The Court Clerk's Records are
Devoid of such Filings. SEE: Courts Records in these proceedings

4.

Thus, The Defendants are trying to Have This Case No. # 2024 CP-400-1526
(Motion for a writ of Mandamus, and Declaration) Dismissed under False
Pretense of post-conviction Relief, and or successive applications. And The
Defendants have once again Committed fraud upon The Court By defend
ants perjured testimony. In their attempt to undermine these proceedings.
SEE plaintiff's Exhibit A, also SEE: S. Car. Code of Laws Section § 16-7-10 (a) (2)

PERJURY AND SUBORNATION of perjury:

"IT IS unlawful for a person to willfully
GIVE FALSE, misleading, or IN COMPLETE IN-
formation on a DOCUMENT, - RECORD, - REPORT or
Form Required By The laws of THIS STATE"

and an attorney has an ethical duty not to perpetrate a fraud upon The
Court By knowingly presenting perjured testimony. IN THE MATTER of goodman,

279 S.C. 294, 305 S.E.2d 578 (1983). and a Trial Judge is not Required to sit idly by and allow perjury to be committed without bringing it to the attention of proper authorities. STATE V. STANLEY; 365 S.C. 29, 615 S.E.2d 455 (2005)

5

IT appears the DEFENDANTS ARE TRYING TO DECEIVE THE COURT V.I.A. DEFENDANTS REWRORDING OF THE PLAINTIFFS Motion for a writ of Mandamus and Declarator Judgment Case No# 2024-CP-4001526, AS A post conviction Relief (P.C.R) application which This Court should find is not applicable in this case. SEE: MILLER V. STATE; 377 S.C. 98, 659 S.E.2d 492 (2008) ("The Clerk of Court should not construe a petition for a writ of **HABEAS** Corpus as a PCR application.")

Hence, the Trial Judge has a responsibility for safeguarding both the rights of the accused, and the rights of the public in the administration of justice. STATE V. STANLEY; 365 S.C. 29, 25 (2005) HE IS present in the atmosphere of the trial; and not in the administration of justice; uphold the dignity of the courts, and would be devalued in his duty if he did not take such steps as he conceives it his duty to see that justice is administered in accordance with sound principles of law. STATE V. MCKAY; 89 S.C. 234, 71 S.E. 838 (1911), STATE V. CAMPBELL 150 S.C. 449, 170 S.E. (1929)

2. Plaintiff respectfully request full prosecution of these DEFENDANTS finding the DEFENDANTS in violation of Section: 916-9-10 (a) (2) S.C. Code of Law AS A Matter of Law to include Disbarment by This Court!

Wherefore Based upon Evidence and Cas Law submitted by
The plaintiff, The Conditional order of The Court should not
BeCoale final, and This Case should Be allowed To proceed To
Trial for The Requested Relief In The Motion for a writ of
Mandamus and Declaratory Judgment Case no: 2024cp-1001526³
Respectively...

RESPECTFULLY SUBMITTED
s/ Kevin Smith
KEVIN SMITH #164920
610 HWY #9 WEST
BENNETTSVILLE, S.C #29512

5.24.24AD

I SWEAR UNDER PENALTY OF PERJURY THAT EACH STATEMENT IN
THIS RESPONSE TO THE CONDITIONAL ORDER OF DISMISSAL, AND EACH
EXHIBIT ATTACHED IS TRUE-ACCURAT-CORRECT-GENUINE AND AUTHENTIC!

SWORN AND SUBSCRIBED BEFORE ME THIS 24 DAY OF May 2024AD

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA Sandra Deller
MY COMMISSION EXPIRES: 2/28/34

³ BECAUSE OF DEFENDANT'S DECEIT - fraud upon THE COURT [ATTEMPT TO CONSTRUe plaintiff's
Motion for a writ of Mandamus and Declaratory Judgment as a PCR application], A condit-
-ional order of Dismissal and Response from the plaintiff should not HAVE BEEN NECESSARY.

2024-05-28

P. 8

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

KEVIN SMITH, #164920

PLAINTIFF;

vs.

STATE OF SOUTH CAROLINA;
ALAN WILSON; - WARREN B GIESE
R. MARKLEY DENNIS JR;
DEFENDANT'S;

IN THE COURT OF COMMON PLEAS
OF THE EIGHTH JUDICIAL CIRCUIT

CASE NO. # 2024-CP-40-01526

NOTARIZED CERTIFICATE OF
PROOF OF SERVICE

I KEVIN SMITH #164920 (PLAINTIFF IN THE ABOVE-CAPTIONED CASE) HEREBY
CERTIFY THAT I SERVED UPON DEFENSE COUNSEL, THE PLAINTIFFS RESPONSE
TO THE CONDITIONAL ORDER OF DISMISSAL, PLAINTIFFS NOTICE OF MOTION-MOTION
TO STRIKE DEFENDANT'S MOTION TO DISMISS; AFFIDAVIT OF KEVIN SMITH IN
SUPPORT OF HIS MOTION TO STRIKE DEFENDANT'S MOTION TO DISMISS; PLAINTIFFS
NOTICE OF MOTION-MOTION FOR AN ORDER OF DECLARATION FINDING THE DEFENDANT
GUILTY OF CRIMINAL CONSPIRACY; AFFIDAVIT OF KEVIN SMITH IN SUPPORT OF HIS
MOTION FOR AN ORDER OF DECLARATION FINDING DEFENDANT GUILTY OF CRIMINAL
CONSPIRACY; PLAINTIFFS AFFIDAVIT OF EVIDENCE IN THE ABOVE-CAPTIONED
CASE, ON THIS 24TH DAY OF MAY, 2024 AD, V.I.A. "CERTIFIED MAIL

ADDRESSED TO:

OFFICE OF ATTORNEY GENERAL
P.C.R. DIVISION - 5TH CIRCUIT
P.O. BOX # 11549
COLUMBIA, S.C. # 29211

24 MAY 2024
[Signature]

CC:
JUDGE CELYN NEWMAN

SWORN AND SUBSCRIBED BEFORE ME
ON THIS 24 DAY OF MAY 2024 AD
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

[Signature]

20240528

2024-002209

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Inmate Services

AGREEMENT TO DEBIT E.H. COOPER ACCOUNT

Inmate's Name: <u>MR. KEVIN SMITH</u>	SCDC #: <u>#164920</u>	Housing Unit: <u>F-3B-138</u>	Date: <u>5.24.24</u>
------------------------------------------	---------------------------	----------------------------------	-------------------------

GENERAL MATERIAL

** Inmate must have the funds in his/her account to pay for the materials.

To be completed by
SCDC staff: 660

2024-001289

P. 10

CASE No 1

2024-cp900-1526

2222 6405 0000 0890 8102

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Adult Signature Restricted Delivery \$ _____

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City, State, ZIP+4® Columbia SC 29211

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

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City, State, ZIP+4® Columbia SC 29202

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage \$ 9.50

Total Postage and Fees \$ 13.90

Sent To Jocelyn Newman

Street and Apt. No. or PO Box No. POB 192, 5th Circuit Ct July

City, State, ZIP+4® Columbia SC 29202

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Postmark Here
JUN 03 2024
BENNETTSVILLE, S.C. 29512

2024-001289

P. 12

Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
KEVIN SMITH #164920.

PLAINTIFF;

vs.

STATE OF SOUTH CAROLINA;
ALAN WILSON; WARREN B. GIESE;
R. MARKLEY DENNIS JR.

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
OF THE FIFTH JUDICIAL CIRCUIT

CASE NO. #2024-CP-400-1526

AFFIDAVIT OF PLAINTIFF
KEVIN SMITH & NOTARIZE
CERTIFICATE OF PROOF OF
SERVICE

I KEVIN SMITH (PLAINTIFF) ¹ STATE UNDER OATH: THAT ON THE DATE
OF JULY 26, 2024, I WAS SERVED A COPY OF THE Conditional order of
DISMISSAL (2024-CP-40-1526). By Sgt. ENIC RAY. SEE EXHIBIT A.
ATTACHED (AFFIDAVIT OF PERSONAL SERVICE)

That I am submitting another original copy of plaintiff (KEVIN SMITH)
RESPONSE TO THE Conditional order of Dismissal (#2024-CP-400-1526)
TO THE Richland County Clerk of Court (JEANETTE W. MCBRIDE) FOR FILING
WITH HER OFFICE ON THIS 29TH DAY OF JULY, 2024, V.I.A. "CERTIFIED MAIL"
ADDRESSED TO: JEANETTE W. MCBRIDE, Richland County Clerk of Court,
P.O. BOX #2766 - COLA; S.C. #29202-#2766.

[Signature]
PLAINTIFF
[Signature]
WITNESS SIGNATURE

I SWORN & SUBSCRIBED BEFORE ME THIS
29 DAY OF JULY 2024 A.D.

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA [Signature]

MY COMMISSION EXPIRES: 2/28/34

2024-001289

881

P. 14

EXHIBIT A

Mr. KEVIN SMITH #164929

610 Hwy #9 West,

Bennettsville, South Carolina.

29512

SEPTEMBER 23, 2024 A.D.

RE: FILING of PETITION FOR REHEARING

PURSUANT TO RULE 221, S.C.A.C.R.(a)

CASE NO. # 2024-001289

TO: HONORABLE PATRICIA HOWARD, CLERK OF COURT,
THE SUPREME COURT OF SOUTH CAROLINA,

P.O. Box # 11330;

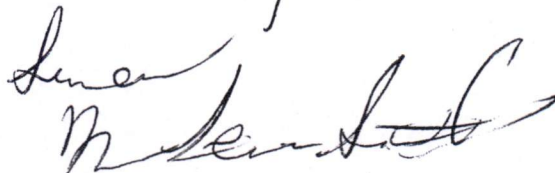
Columbia, South Carolina, S.C. # 29211.

Dear Ms. Howard,

Please find enclosed an original copy of petitioner-appellant's petition for rehearing; supporting memorandum & supporting documents, NOTARIZED CERTIFICATE OF PROOF OF SERVICE; verifying service of same upon defense counsel of record on the above date; to include petitioner's copy for filing & return with your office.

Thank you!

I AM Cordially



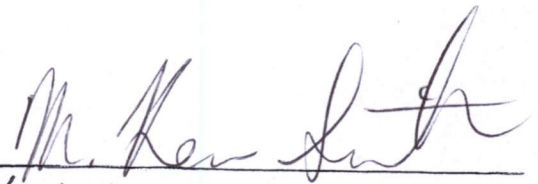
THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
JOCelyn NEWMAN CIRCUIT COURT JUDGE
CASE NO # 2024-001289

KEVIN SMITH #164920, APPELLANT;

✓

STATE OF SOUTH CAROLINA, RESPONDENT;

PETITION FOR REHEARING PURSUANT TO
RULE 22.1 (a) SOUTH CAROLINA APPELLATE COURT RULES

✓ 
KEVIN SMITH #164920, APPELLANT
PRO-SE;
#610 HWY #9 WEST,
DENNETTSVILLE, SOUTH CAROLINA
#29512;

SEPTEMBER 23, 2024 A.D.,

DEFENSE COUNSEL OF RECORD:
D. RUSSELL BARLOW II
ASSISTANT ATTORNEY GENERAL;
P.O. BOX #11549 - COLUMBIA,
SOUTH CAROLINA, #29221.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
JOCELYN NEWMAN CIRCUIT COURT JUDGE
CASE NO. #2024-001289

KEVIN SMITH #164920, Appellant.

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STATE OF SOUTH CAROLINA RESPONDENT,

SUPPORTING MEMORANDUM OF APPELLANT

PETITIONER

ISSUE 1 THE COURT OVERLOOKED A KEY FACTOR. THAT DISMISSAL OF THIS CASE PURSUANT TO THE POST-CONVICTION PROCEDURES ACT, AS BARRED AS BEING SUCCESSIVE, AND/OR UNTIMELY BY THE LOWER COURT IS IMPROPER.

GROUND(S). SUPPORTING FACTS - ARGUMENT - LEGAL AUTHORITY

In a post conviction proceeding, the focus usually is upon alleged errors made by trial or plea counsel, the applicant attempts to show that his or her attorney erred in a manner that a reasonably proficient attorney would not and that error prejudiced his case. OUTTON V. STATE, 361 S.C. 644 S.E.2d d 779 (S.C. 2004) which is not the case here.

AT NO TIME DID THE APPELLANT COMMENCE, SUBMITTED OR FILE ANY APPLICATION FOR POST-CONVICTION RELIEF (P.C.R.) TO THE RICHLAND COUNTY CLERK OF COURT ON MARCH 8, 2024. AS ASSERTED BY THE RESPONDENT, AND THE LOWER COURTS RECORDS ARE DEVOID OF SUCH FILINGS. AND THE STATE (RESPONDENT) NEVER PRESENTED ANY ACTUAL EVIDENCE SUPPORTING ITS ASSERTION/ALLEGATIONS IN SOUTH CAROLINA IT IS WELL SETTLED "THAT STATEMENTS OF FACT APPEARING ONLY IN ARGUMENT OF COUNSEL WILL NOT BE CONSIDERED." MCANUS V. BANK OF GREENWOOD, 171 S.C. 84, 171 S.E. 493, 495 (1933); SEE ALSO SHINN V. KRAUL, 311 S.C. 99, 102, 487 S.E.2d 695, 700 (CT. APP. 1993) ("A COURT CANNOT CONSIDER FACTS APPEARING ONLY IN ARGUMENT OF COUNSEL."),

GILMORE v. JCY, 290 S.C. 53, 58, 348 S.E.2d 180, 184 (Ct. App. 1986)
 ("Judge 'properly disregard' Counsel's statements about contents of depositions when depositions were not provided to the court.")¹

On January 20, 2024, AD, the appellant submitted his notice of motion and motion for a writ of mandamus and a declaration that the trial court lacked subject matter jurisdiction to convict and sentence the plaintiff (appellant) based upon states void-null-unfiled indictments, to the Richland County Clerk of Court for filing (common pleas) accompanied with civil action cover sheet; summons; verified complaint and supporting affidavits, which were filed-clock-stamped on March 8, 2024, AD and assigned CASE NO. 2024-CP-400-1526
SEE: plaintiff / appellants Exhibit A attached to Affidavit of Evidence

Thus, the Richland County Clerk of Court erroneously construed the appellants motion for a writ of mandamus and declaratory judgment as a p.c.m. application, which this court (appellate) overlooked is not applicable law. SEE: MILLER v. STATE, 377 S.C. 99, 659 S.E.2d 492 (2008) (South Carolina Supreme Court noting, "The clerk of court should not construe a petition for a writ of habeas corpus as a p.c.m. application.")
 And the lower court erroneously overlooked this key factor/error of law as well. SEE: appellants explanation Brief App 1-3

¹ Since the respondents (state) strongly assents/states that the appellant filed a p.c.m. application in these proceedings, the court should issue an order allowing the respondents to produce said document, allegedly filed on March 8, 2024, AD with the Richland County Clerk's office respectively.

ISSUE 2. THE COURT OVERLOOKED A KEY FACTOR OF SOUTH CAROLINA LAW, THAT THE APPELLANTS CASE IS NOT BARRED BY THE EQUITABLE DOCTRINE OF LACHES - OR STATUTE OF LIMITATIONS

GROUNDS - SUPPORTING FACTS - ARGUMENT - LEGAL AUTHORITY

THE COURT OVERLOOKED A KEY FACTOR OF LAW IN APPELLANTS CASE, BECAUSE APPELLANT CHALLENGES THE RESPONDENTS VIOLATIONS OF STATUTORY LAW IN STATES CRIMINAL DUE PROCESS PROCEDURES SECTIONS § 14-9-210 ~~§ 26-9-10(a)(2)~~ § 25-10 (AND NUMEROUS OTHER CODE VIOLATIONS); SUMMARY DISMISSAL OF THIS CASE

BY LACHES IS NON-APPLICABLE. SEE: SLAN V. DEPT. OF TRANSPORTATION, 365 S.C. 299 (2005) ("Laches did not prevent Supreme Court from reviewing ISSUE of whether D.O.T. violated STATUTORY BIDDING REQUIREMENTS").
SEE: APPELLANTS EXPLANATION BRIEF pp 8.

ISSUE 3. THE COURT OVERLOOKED A KEY FACTOR OF SOUTH CAROLINA LAW IN THE APPELLANTS CASE, THAT SUBJECT MATTER JURISDICTION IS NOT BARRED BY STATUTE OF LIMITATIONS

GROUNDS - SUPPORTING FACTS - ARGUMENT - LEGAL AUTHORITY

THE JURISDICTION OF A COURT OVER THE SUBJECT MATTER OF A PROCEEDING IS DETERMINED BY THE CONSTITUTION, THE LAWS OF THE STATE, AND IS FUNDAMENTAL. STATE V. HEYWARD, 564 S.E.2d 397 (S.C. App 2002) (CITING ANDERSON V. ANDERSON, 362 S.E.2d 977 (S.C. 1994) (EMPHASIS ADDED))

AND SUBJECT MATTER JURISDICTION MAY NOT BE WAIVED EVEN WITH CONSENT OF THE PARTIES; AND MAY BE RAISED AT ANY TIME. BROWN V. STATE, 540 S.E.2d 846 (2002). SEE: APPELLANTS EXPLANATION

Brief e pp 5 - 8.

ISSUE 4. THE ORDER OF THE COURT DISMISSING PETITIONER'S CASE FOR FAILURE TO PROVIDE AN EXPLANATION, AS REQUIRED BY RULE 243(C) SOUTH CAROLINA APPELLATE COURT RULES IS IN ERROR

Grounds - Supporting Facts - Argument - Legal Authority
When an Appellate Court chooses to find facts in accordance with its own view of the evidence, the court must state distinctly its findings of fact and the reason for its decision.

CARPENTER V. BURK, 381 S.C. 444, 673 S.E.2d 818 (S.C. App. 2009) JEE:

ALSO: DEARY BURY V. DEARY BURY, 351 S.C. 278, 569 S.E.2d 367 (S.C. 2002)

(SAMB) The September 13, 2024, order of the court does not state distinctly any (its) findings of fact and the court's reason for its decision, but merely states "petitioner has failed to provide an explanation, as required by Rule 243(c) of S.C.A.C.A., and the court does not address any of the appellants

issues 1 through 11 in appellants explanation brief to include supporting documents submitted by appellant as evidence/exhibits in support of the explanation brief.

SEE (appellants August 27, 2024 AD written explanations pursuant to Rule 243(c), and appellants Affidavit of Evidence with supporting exhibits) attached as exhibit-B. pp 1 through 90

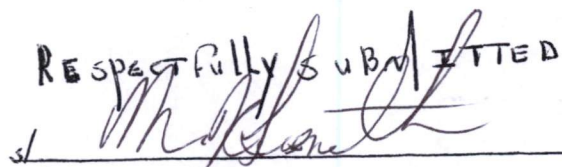
2024-001489

wherefore. The petitioner respectfully pray that
the petition for a hearing be granted by the
Court respectively. . .

SEPTEMBER 23, 2024 A.P.

CC.

D. RUSSELL BARLOW II

RESPECTFULLY SUBMITTED


KEVIN SMITH #164920

PETITIONER - PRO-SE

610 HWY #4 WEST

BENNETTSVILLE S.C.

#29512

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From RICHLAND COUNTY

COURT OF COMMON PLEAS

JOCelyn NEWMAN CIRCUIT COURT JUDGE

CASE NO # 2024-001289

KEVIN SMITH #164920, APPELLANT;

v.

STATE OF SOUTH CAROLINA, RESPONDENT;

NOTARIZED CERTIFICATE OF PROOF OF SERVICE

THE APPELLANT (KEVIN SMITH) IN THE ABOVE CASE NO., HEREBY CERTIFY THAT I HAVE SERVED AN ORIGINAL COPY OF THE APPELLANTS petition for a REHEARING, Supporting Memorandum & exhibits attached, pursuant to RULE 221 (a) upon DEFENSE COUNSEL OF RECORD IN THE ABOVE CAPTIONED CASE NO # 2024 001289. This 23 DAY OF SEPTEMBER, 2024 AD V.I.A U.S. "CERTIFIED MAIL ADDRESSED TO:

D. RUSSELL BARLOW II
ASSISTANT ATTORNEY GENERAL
P.O. BOX #11549,
COLUMBIA, S.C. #29221

SWORN & SUBSCRIBED BEFORE ME THIS 23 DAY OF September, 2024 AD

2024 AD NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA Scott

MY COMMISSION EXPIRES 2/28/34

MR. KEVIN MITCHELL #164920,
EVANS-CORRECTIONAL INSTITUTION, F-3B-138

#610 Hwy #9 West,
BENNETTSVILLE S.C.
#29512



RECEIVED

OCT 08 2024

S.C. SUPREME COURT

HONORABLE JOHN KITTRIDGE,
THE SUPREME COURT OF SOUTH CAROLINA,
P.O. BOX #11330,
COLUMBIA, SOUTH CAROLINA,
#29211.

