STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
James Mackey, #177328, Applicant, v. State of South Carolina, Respondent.	2015-CP-10-6474 **ORDER RESTRICTING FUTURE FILINGS**

This matter comes before this Court by way of an application for post-conviction relief filed December 1, 2015.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Clerk of Court for Charleston County. The Applicant was indicted at the March 1991 term of the Charleston County Grand Jury for murder (1991-GS-10-1313). Lori Proctor, Esquire, and Sebastian Gaeta, Esquire represented the Applicant. The Applicant proceeded to trial on May 6, 1991 and was convicted of murder. On May 7, 1991, the Honorable Richard E. Fields sentenced the Applicant to confinement for life.

The Applicant timely filed Notice of Appeal, and the South Carolina Office of Appellate Defense perfected an appeal on his behalf. After the filing of briefs from both sides, the South Carolina Supreme Court affirmed the conviction and sentence. State v. Mackey, Memo. Op. No. 92-MO-250 (S.C. Sup. Ct. filed September 25, 1992). The Remittitur was issued on October 13, 1992.

First PCR Application: 1995-CP-10-0159

Thereafter, the Applicant filed an application for post-conviction relief (PCR) dated May 1, 1995, in which he made the following allegations:

1. Denial of effective assistance of counsel
2. Denial of effective assistance of appellate counsel
3. Denial of due process of law

The Respondent made its Return on June 16, 1995, requesting an evidentiary hearing be held. A hearing into the matter was convened on August 12, 1996, in the Charleston County Courthouse before the Honorable A. Victor Rawl. The Applicant was present in court and represented by David Adams, Esquire. Matthew M. McGuire, Esquire, represented the State. By Order dated October 3, 1996, Judge Rawl denied and dismissed the application. The Applicant filed a timely Notice of Appeal to the Order of Dismissal. The South Carolina Supreme Court denied certiorari by Order dated March 6, 1998. The Remittitur was issued on March 24, 1998.

Federal Habeas Corpus: 6:99-360-11AK

On August 26, 1998, the Applicant filed a Writ for Habeas Corpus. The State made its Return and Motion to Dismiss on December 16, 1999. By Order dated December 21, 1999, the Honorable A. Victor Rawl denied and dismissed the Applicant's petition.

Second PCR Application: 2001-CP-10-4691

Thereafter, the Applicant filed a second application for PCR on December 6, 2001, in which he raised the following allegations:

1. Lack of jurisdiction

2. Ineffective assistance of PCR counsel

The application was filed *pro se*. Dale T. Cobb, Jr., Esquire, was appointed to represent the Applicant on January 28, 2002. The Respondent submitted its Return and Motion to Dismiss on December 20, 2002. On March 12, 2003, the Honorable R. Markley Dennis, Jr. issued an Order granting summary judgment for the Respondent and dismissed the application for post-conviction relief.

Third PCR Application: 2007-CP-10-1676

On April 23, 2007, the Applicant filed a third PCR application. The application was later supplemented on May 25, 2007. The application raised the following allegations:

1. Ineffective appellate counsel in that counsel did not submit all issues that could have reasonably overturned his conviction
2. Ineffective trial counsel in that counsel did not object to comments by the prosecution and the judge
3. Newly discovered evidence in that Applicant has "recently received information…concerning the 'Plain Error' of Law…and violation of 'Golden Rule' by both the Solicitor and the Court"

The Respondent made its Return and Motion to Dismiss on January 31, 2008. The Honorable Roger M. Young, Sr. issued a Conditional Order dated February 2, 2008. A Final Order was issued March 25, 2008, dismissing the application.

The Applicant subsequently filed a Notice of Appeal by Order dated April 29, 2008. The South Carolina Supreme Court dismissed the appeal for the Applicant's failure to provide written

explanation as to why the lower court's determination was improper. The Remittitur was issued on May 21, 2008 by the Honorable Chief Justice Jean H. Toal.

Current PCR Application: 2015-CP-10-6474

In his *fourth* and current application for post-conviction relief, the Applicant alleges that he is being held unlawfully for the following reasons:

1. Newly Discovered Evidence
    a. Unconstitutional Statute § 1-7-330

Before this Court are the Charleston County Clerk of Court records regarding the subject convictions, South Carolina Department of Corrections records, the Applicant's previous and current PCR applications, and appellate records.

FINDINGS AND CONCLUSIONS OF LAW

This Court finds that the Applicant had a full opportunity to litigate his current allegations in prior court proceedings. The Applicant continues to raise the same meritless claims by repeated collateral attacks on his convictions. he public interest in finality of judgments requires that litigation must eventually come to an end.

Due to the repetitive and frivolous nature of Applicant's numerous applications, this Court directs the Charleston County Clerk of Court to not accept any further post-conviction relief applications from the Applicant unless he pays the normal filing fee generally required for the filing of a summons and complaint. The United States Supreme Court has denied litigants who have filed repetitive, frivolous petitions the right to proceed *in forma pauperis*, resulting in the litigants having to pay the required filing fee with that Court. In re Whitaker, 513 U.S. 1, 115 S.Ct. 2, 130 L.Ed.2d 1 (1994); In re Anderson, 511 U.S. 364, 114 S.Ct. 1606, 128 L.Ed.2d 332

(1994); In re Demos, 500 U.S. 16, 111 S.Ct. 1569, 114 L.Ed.2d 20 (1991); In re Sindram, 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991); In re McDonald, 489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989).

Additionally, this Court finds that the Applicant is required to provide a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous. In In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996), the South Carolina Supreme Court required Maxton, who had filed numerous meritless petitions with the Court, to pay a filing fee and accompany any future filings with a properly notarized affidavit by Maxton certifying that he in good faith believed that the matters he was raising were non-frivolous and proper for the Court to consider. Id. Other courts have required that the abusive litigant file an affidavit certifying that he believes the petition raises an original claim or is non-frivolous before accepting filings from the litigant. In the Matter of Verdone, 73 F.3d 669 (7th Cir.1995); Abdul-Akbar v. Watson, 901 F.2d 329 (3d Cir.1990); Green v. Warden, 699 F.2d 364 (7th Cir.), *cert. denied*, 461 U.S. 960, 103 S.Ct. 2436, 77 L.Ed.2d 1321 (1983).

This Court also finds that if the Applicant submits an application that is accompanied with a notarized affidavit, that, before filing, the Clerk's office be directed to submit the application to the Chief Administrative Judge for Common Pleas. The Administrative Judge should then make a finding on whether the issues raised in the application are non-frivolous and proper for the Court to consider. If the Administrative Judge finds the application proper, it would then be submitted to the Clerk's office for filing. No application should be filed without a proper finding from the Chief Administrative Judge.

This Court also cautions the Applicant that should he continue to file applications containing matters that are frivolous, he may be held in contempt or the Court may impose sanctions as circumstances of the case and discouragement of like conduct in the future may warrant. The Supreme Court imposed such warning on an Applicant in In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996).

There is a strong interest in finality of the criminal process; judicial review must stop at some juncture and finality must be realized. Aice v. State, 305 448, 409 S.E.2d 392 (1991). The Court quoted Justice Harlan when discussing the importance of finality in litigation when they stated the following:

> 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 a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved.
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> A rule of law that fails to take account of these finality interests would do more than subvert the criminal process itself. It would also seriously distort the very limited resources society has allocated to the criminal process. While men languish in jail, not uncommonly for over a year, awaiting a first trial on their guilt or innocence, it is not easy to justify expending substantial quantities of the time and energies of judges, prosecutors, and defense lawyers litigating the validity under present law of criminal convictions that were perfectly free from error when made final. (citation omitted) This drain on society's resources is compounded by the fact that issuance of the habeas writ compels a State that wishes to continue enforcing its laws against the successful petitioner to relitigate facts buried in the remote past through presentation of witnesses whose memories of the relevant events often have dimmed. This very act of trying stale facts may

well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first.

Anderson v. Leeke, 271 S.C. 435, 441-442, 248 S.E.2d 120, 123 (1978) citing Mackey v. United States, 401 U.S. 667, 91 S.Ct. 1160, 1179, 28 L.Ed.2d 404 (1971).

CONCLUSION

Based on all the foregoing facts, this Court finds and concludes that the Applicant has received his full bite at the apple. The Applicant's repetitive filings shall be restricted in order to preserve the Court's time and resources and stop any interference with the fair administration of justice.

IT IS THEREFORE ORDERED:

1. The Clerk of Court should refuse to accept further petitions from the Applicant asking the Court to entertain matters unless he pays a filing fee generally required for filing motions and petitions with this Court.
    a. The Applicant should be prohibited from filing any legal actions in any jurisdiction in South Carolina without submitting the requisite filing fees[1] and providing a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous.
    b. Any Applications submitted with properly notarized affidavits be submitted to the Chief Administrative Judge to make a finding on whether the allegations are non-frivolous and proper for the Court before they are filed.
    c. The Clerk of Courts should be instructed to return all documents that do not comply with this order.

[1]S.C. Code Ann. § 8-21-310(11)(a) (Supp. 2004)

AND IT IS SO ORDERED this 27th day of July, 2016.

ROGER M. YOUNG, SR.
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina