

Petition for a Writ of Certiorari

In Post-Conviction Relief Actions

In The State of South Carolina

In The Supreme Court

Appeal From Chesterfield County

Court of Common Pleas

Paul M. Brock Circuit Court Judge

Case No. 2012-cp-13-0577

Michael T. Perry 281249 , Petitioner

V.

State of South Carolina , Respondent.

Petition for a Writ of Certiorari

Other Counsel of Record:

Tyson Andrew Johnson, Sr.

Assistant Attorney General

P.O. Office Box 11549

Columbia, S.C. 29211

Attorney for Respondents.

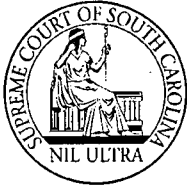
Michael Perry 281249

McCl

SMU Cell 76

386 Redemption Way

McCormick, S.C. 29899



South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201

February 16, 2012

Michael Perry #281249
McCormick Correctional Institution
SMU Cell 36
386 Redemption Way
McCormick SC 29899

Dear Mr. Perry:

Your inquiry has been received by this office and has been forwarded to this section for response.

Unfortunately, Court Administration cannot assist you with your request because this office does not maintain or have ready access to the records you have requested.

Should you desire additional assistance, please do not hesitate to contact this office.

Sincerely,
Court Services Section

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Statement of the Case

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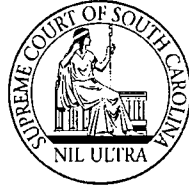
Argument

1. Counsel was ineffective for failing to object and withdraw guilty plea once prosecution breached the 10 to 20 plea agreement p. 11

2. Counsel was ineffective for failing to object, withdraw and enforce the original 10 to 20 plea agreement p. 11

3. Counsel was ineffective for playing the adverse role of the prosecution by making biased and prejudiced remarks about the case and the defendant also thus causing and showing a conflict of interest in representation p. 11

4. Counsel was ineffective for failing to file a motion for reconsideration of sentence once seeing that defendant never received the promised mitigation by her, the prosecution, and the sentencing



South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201

March 8, 2012

Michael Perry #281249
McCormick Correctional Institution
SMU Cell 36
386 Redemption Way
McCormick SC 29899

Dear Mr. Perry:

Your inquiry has been received by this office and has been forwarded to this section for response.

Unfortunately, Court Administration cannot assist you with your request because this office does not maintain or have ready access to the records you have requested.

Should you desire additional assistance, please do not hesitate to contact this office.

Sincerely,
Court Services Section

Judge before and after being
sentenced

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5. The Prosecution displayed Prosecutorial
Misconduct by breaching the 0 to 20 plea by
changing that plea to 10 to 20 plea. After I signed
the 0 to 20 plea plus I later verbally replied
upon it.

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6. The Prosecution displayed Prosecutorial Misconduct
by breaching the 10 to 20 plea by recommending
to the Judge the maximum prison sentence
of 20 years

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7. Counsel was ineffective for failing to obey
Judge Tilley's instructions and order to PR Bond
me out. I hadn't went to trial or took a
plea by April 1, 2007. I pled guilty on April 4,
2007. That April 1, 2007 date was exceeded and
I should have been PR Bonded out. . . .

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Note to 2007 Amendments

Rule 60 is amended to provide that statements of fact set forth in the briefs are binding upon the proponent of the statement.

61. **Record on Appeal.** The record on appeal shall consist of the transcript of the proceedings before the agency, if any, and the record of the contested case as described by Rule 58.
62. **Dismissal of Appeal; Sanctions.** Upon motion of any party, or on its own motion, an Administrative Law Judge may dismiss an appeal for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided by this section (V), or for the failure to provide a factual basis for each expressly and specifically asserted constitutional violation as prescribed by Rule 59(B). Notwithstanding the time frames established herein, the Administrative Law Judge has the discretion to determine that a document is timely filed upon a finding that the party who filed the document made a good faith effort to file the document within the applicable time limits. If the presiding judge determines that the appeal is frivolous or taken solely for purposes of delay, the judge may impose such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.

Note to 2007 Amendments

Rule 62 is amended to add the last sentence, which allows an administrative law judge to impose appropriate sanctions for inmate appeals which are frivolous or taken solely for the purpose of delay. This amendment is based upon the provisions of Rule 72, which applies to all contested cases and appeals, other than inmate appeals, heard by the Administrative Law Court.

63. **Motions.** Any motions filed shall be in written form and shall state the grounds for relief and the relief sought. Any response to the motion must be filed within ten (10) days after receipt of the motion, unless the time is extended or shortened by the Administrative Law Judge. The filing of a motion does not toll any time limits imposed by these Rules.
64. **Oral Argument.** In the discretion of the Administrative Law Judge, oral argument may not be required. Oral argument will ordinarily not be ordered by the Administrative Law Judge unless the proceeding involves a novel issue or a question of exceptional importance. If so ordered, at least twenty (20) days notice of oral argument shall be provided. The oral argument shall follow the procedure in Rule 218, SCACR.
65. **Opinion.** The Administrative Law Judge shall render a decision in a written order which shall be served on all parties and filed with the clerk of the Court. The Administrative Law Judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record and need not address a point which is manifestly without merit. The decision of the Administrative Law Judge is a final decision and motions for reconsideration will not be considered. Judicial review of any decision of the Court shall be as provided in S.C. Code Ann. § 1-23-610 (1976) (as amended).

Note to 2007 Amendments

Rule 65 is amended to incorporate the portion of Rule 220, SCACR, which allows the judge to affirm upon any ground appearing in the Record and to decline to address points which are without merit.

66. **Appeal of Final Order.** The appellant shall file a copy of the notice of appeal from the decision of the Administrative Law Judge with the clerk of the Court.

Note to 2007 Amendments

Rule 66 is amended to delete the provisions relating to the transmission of the record to the appellate court. Pursuant to Act 387 of 2006, the South Carolina Appellate Court Rules now govern the procedure for appealing a final order of an administrative law judge; accordingly, the deleted provisions are no longer necessary. The title of the rule is also amended to more accurately reflect the content of the amended rule.

8. The Circuit Court erred in dismissing
Appellant's First PCR because prison officials
were at fault causing appellant to miss the
1 year statutory limitations deadline. And because
according to *Houston v. Lack*, 108 S.Ct. 2379 (1989) my first
PCR application is considered filed at the moment of
delivery or delivering the application to the prison
officials to forward to the court

... p. 13

9. The Circuit Court erred in dismissing my second
PCR Application because after receiving for the first
time in January of 2012 a copy of the 0-620 plea
agreement that I had signed
that was never before presented in my earlier
discovery & filed. To file my second PCR under
§ 17-27-115 (a)(1)(A). This newly discovered
evidence established ineffective assistance of
counsel, involuntary, unknowing, unintelligent
and illegal concepts.

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Memorandum

To: APPELLANT
From: Clerk's Office, Administrative Law Court
Re: Filing Fee

The number of administrative appeals an inmate may file in a calendar year before they are required to file a filing fee has been changed pursuant to Proviso 55.3 of the FY 07-08 Appropriations Act. The Proviso reads in part:

"No filing fee shall be required in administrative appeals by inmates from final decisions of the Department of Corrections or the Department of Probation, Pardon and Parole. **However, if an inmate files three administrative appeals during a calendar year, then each subsequent filing during that year must be accompanied by a twenty-five dollar filing fee.**" (Emphasis added)

The Proviso became effective July 1, 2007. However, the Administrative Law Court will not implement the Proviso until January 1, 2008. After that time, the ALC will return any fourth and subsequent filing by an individual that is not accompanied by the \$25 filing fee.

PLEASE NOTE: THERE ARE NO PROVISIONS MADE IN THE PROVISO FOR INDIGENT INMATES OR IN FORMA PAUPERIS PETITIONS.

10. Counsel was ineffective for failing to know
the correct Sentencing Guidelines during
plea bargaining and plea negotiations ... p.15

11. The Prosecution displayed Prosecutorial Misconduct
for failing to know of the Correct Sentencing
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negotiations ... p.15

12. The Court, the Prosecution, and Counsel was
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advise defendant that a mandatory term of (CSP)
Community Supervision was required after
serving his prison sentence ... p.15

13. The Sentencing Judge was impartial
for making groundless inferences in
imposing sentence ... p.16

**IMPORTANT INFORMATION . . . PLEASE READ CAREFULLY
WARNING TO PRO SE PARTY OR NONPARTY FILERS**

All Documents That You File with the Court Will Be Available to the Public on the Internet Through Pacer (Public Access to Court Electronic Records) and the Court's Electronic Case Filing System. **CERTAIN *PERSONAL IDENTIFYING INFORMATION* SHOULD NOT BE INCLUDED IN OR SHOULD BE REMOVED FROM ALL DOCUMENTS BEFORE YOU SUBMIT THE DOCUMENTS TO THE COURT FOR FILING.**

Rule 5.2 of the Federal Rules of Civil Procedure provides for privacy protection of electronic or paper filings made with the court. Rule 5.2 applies to **ALL** documents submitted for filing, including pleadings, exhibits to pleadings, discovery responses, and any other document submitted by any party or nonparty for filing. Unless otherwise ordered by the court, a party or nonparty filer should not put certain types of an individual's personal identifying information in documents submitted for filing to any United States District Court. If it is necessary to file a document that already contains personal identifying information, the personal identifying information should be "**blacked out**" or **redacted** prior to submitting the document to the Clerk of Court for filing. A person filing any document containing their own personal identifying information **waives** the protection of Rule 5.2(a) by filing the information without redaction and not under seal.

1. Personal information protected by Rule 5.2(a):

(a) Social Security and Taxpayer identification numbers. If an individual's social security number or a taxpayer identification number must be included in a document, the filer may include only the last four digits of that number.

(b) Names of Minor Children. If the involvement of a minor child must be mentioned, the filer may include only the initials of that child.

(c) Dates of Birth. If an individual's date of birth must be included in a document, the filer may include only the year of birth.

(d) Financial Account Numbers. If financial account numbers are relevant, the filer may include only the last four digits of these numbers.

2. Protection of other sensitive personal information – such as driver's license numbers and alien registration numbers – may be sought under Rule 5.2(d)(Filings Made Under Seal) and (e) (Protective Orders).

Questions Presented

1. Was ~~Prosecutor's~~ Public Defender ineffective in failing to object, withdraw, and enforce the original 10 to 20 plea agreement?

2. Was Counsel ineffective for failing to object and withdraw guilty plea once prosecution breached the 10 to 20 plea agreement?

3. Was Counsel ineffective for playing the adverse role to the prosecution by making biased and prejudiced ~~statements~~ ^{statements} about the case and defendant?

4. Was Counsel ineffective for ~~not~~ failing to file a Motion for Recommendation of Sentence once seeing that defendant never renewed the promised negotiation by her, the prosecution, and the sentencing Judge before and after being sentenced?

pending cases you have filed with this Court. Your failure to do so will not be excused by the Court.

IT IS SO ORDERED.

March 28, 2013
Florence, South Carolina

s/Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

Plaintiff's attention is directed to the important warning on the next page.

6. Was the Prosecution Misconduct by
breaching the 10 to 20 plea by recommending
to the Judge the Maximum prison
sentence of 25 years?

7. Was counsel ineffective for failing to obey
the Judge's instructions and order to P.R. Bond
the defendant ask to 3 months went to trial
or took a plea by April 1, 2007?

8. Did the Circuit Court err in dismissing
the defendant's first P.R. application?

9. Did the Circuit Court err in dismissing
Defendant's second P.R. Application?

10. Was counsel ineffective for failing to
know of the correct Sentencing Guidelines
during plea bargaining and plea negotiations?

252 (4th Cir. 2010) (“We hold that 28 U.S.C. § 1915(b)(2) caps the amount of funds that may be withdrawn from an inmate's trust account at a maximum of twenty percent *regardless of the number of cases or appeals the inmate has filed.*”) (emphasis in original).

Plaintiff's Motion for Leave to Proceed *in forma pauperis* (ECF No. 2) is **granted**.

TO THE CLERK OF COURT:

This case is subject to summary dismissal based on an initial screening conducted pursuant to 28 U.S.C. § 1915 and/or 28 U.S.C. § 1915A. Therefore, the Clerk of Court shall **not** issue the summonses or forward this matter to the United States Marshal for service of process at this time.

The Clerk of Court shall not enter any change of address submitted by Plaintiff which directs that mail be sent to a person other than Plaintiff unless that person is an attorney admitted to practice before this Court who has entered a formal appearance.

TO PLAINTIFF:

Plaintiff must place the civil action number (C/A No.) listed above on any document provided to the Court provided in connection with this case. **Any future filings by Plaintiff in this case must be sent to the Clerk's Office in Florence (Post Office Box 2317, Florence, South Carolina 29503).** All documents requiring Plaintiff's signature shall be signed with Plaintiff's full legal name written in Plaintiff's own handwriting. *Pro se* litigants, such as Plaintiff, shall *not* use the “s/typed name” format used in the Electronic Case Filing System. In all future filings with this Court, Plaintiff is directed to use letter-sized (8½ inches by 11 inches) paper only, to write or type text on one side of a sheet of paper only and not to write or type on both sides of any sheet of paper. Plaintiff is further instructed not to write to the edge of the paper, but to maintain one-inch margins on the top, bottom, and sides of each paper submitted.

Plaintiff is a *pro se* litigant. Plaintiff's attention is directed to the following important notice:

You are ordered to always keep the Clerk of Court advised **in writing** **(Post Office Box 2317, Florence, South Carolina 29503)** if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this Order, you fail to meet a deadline set by this Court, **your case may be dismissed for violating this Order.** Therefore, if you have a change of address before this case is ended, you must comply with this Order by immediately advising the Clerk of Court in writing of such change of address and providing the Court with the docket numbers of all

11. Was the Prosecution Misconduct in
failing to know of the correct sentencing
guidelines during plea bargaining and plea negotiations?²
12. Was the Court, the Prosecution and Counsel
in error and ineffective for failing to advise
defendant that a mandatory term of community
supervision was required after serving prison sentence?²
-

13. Was the Sentencing Judge impartial
for making ~~any~~ groundless inferences in
imposing sentence?²

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Michael Tyrone Perry, # 281249,

Plaintiff,

vs.

Sgt. Jimmy Williams;
Cpl. Young;
McCormick Correctional Institution,

Defendants.

) C/A No. 4:13-475-RMG-TER

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ORDER

This is a civil action filed by a state prisoner. Therefore, in the event that a limitations issue arises, Plaintiff shall have the benefit of the holding in *Houston v. Lack*, 487 U.S. 266, 276 (1988) (prisoner's pleading was filed at the moment of delivery to prison authorities for forwarding to District Court). Under Local Civil Rule 73.02(B)(2) DSC, pretrial proceedings in this action have been referred to the undersigned United States Magistrate Judge.

PAYMENT OF THE FILING FEE:

By filing this case, Plaintiff has incurred a debt to the United States of America in the amount of three hundred fifty dollars (\$350). See 28 U.S.C. § 1914. This debt is not dischargeable in the event that Plaintiff seeks relief under the bankruptcy provisions of the United States Code. See 11 U.S.C. § 523(a)(17). The Prison Litigation Reform Act (PLRA) of 1996 permits a prisoner to file a civil action without prepayment of fees or security, but requires the prisoner "to pay the full amount of the filing fee" as funds are available. See 28 U.S.C. § 1915(a), (b).

Plaintiff has submitted an Application to Proceed Without Prepayment of Fees and Affidavit (Form AO 240) and a Financial Certificate, which are being construed as a Motion for Leave to Proceed *in forma pauperis*. See 28 U.S.C. § 1915(a)(1), (2). A review of the Motion reveals that Plaintiff does not have the funds to pay the first installment of the filing fee. Therefore, the amount due from Plaintiff is currently three hundred fifty dollars (\$350). **The agency having custody of Plaintiff shall collect payments from Plaintiff's prisoner trust account in accordance with 28 U.S.C. § 1915(b)(1) and (2), until the full filing fee is paid.** See *Torres v. O'Quinn*, 612 F.3d 237,

Statement of the Case

On April 4, 2005, the Petitioner was convicted of First Degree Criminal Sexual Conduct with a minor and sentenced to a cap of Twenty years. On direct appeal, his Counsel stated that she found no reversible issues so Petitioner canceled his appeal, State v. Perry 2006 - ~~00~~ 45 - 13 - 00442.

Petitioner's PCR application was then lost by prison officials on 8/1/08 before I could file it. This caused Petitioner to miss the 1 year statutory deadline of 9/6/08. The application was later found and returned to petitioner who observed that he had failed to get one page of his PCR notarized so he sent it to the prison attorney and got it notarized and then I forwarded my PCR to the Court in December of 2008. Petitioner's PCR was dismissed as procedurally barred for missing the 1 year deadline. In my application petitioner was alleging Ineffective Assistance of Counsel for failing to object, withdraw and enforce

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

CHANGE OF ADDRESS (PRO SE)

No. 13-6402, Michael Perry v. SCDC
4:12-cv-01205-RMG

If your address changes, it is your obligation to notify the clerk. If your address changes and you do not notify the clerk, we will not be responsible for your failure to receive documents from the court.

THE CLERK IS HEREBY NOTIFIED THAT MY ADDRESS SHOULD BE
CHANGED TO:

Name:
Street/P. O. Box:
City/State/ZIP:
Telephone Number:
Prison (if applicable):
Prisoner's Reg. No. (if applicable):
Release Date (if applicable):
Effective Date for Change of Address:
Signature:

the 0 to 20 plea agreement, for failing to
object, and ~~with~~ ⁱⁿ plea once prosecution
breached the 0 to 20 plea agreement and the
10 to 20 plea agreement, for playing the adverse
role of the prosecution, for failing to PR Band
defendants out for failing to know the
correct sentencing Guidelines during plea
bargaining and plea negotiations, for failing
to file a Motion for reconsideration of
Sentence, Prosecutorial Misconduct for
breaching the 0 to 20 (and 10 to 20) plea
agreements, for failing to know the
correct sentencing Guidelines during plea
bargaining and plea negotiations, for failing
to be sentenced before a Impartial Judge
Imprudent, Unknowingly, Unintelligent
guilty plea, Illegal Sentence, Harshness and
of Course, see app. ~~Attachments~~ p. 1 through 8.
After receiving Newly Discovered Evidence in
~~the~~ ^{the} ~~case~~ ^{case} of January of 2012 which was

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
OFFICE OF THE CLERK**

1100 East Main Street, Suite 501
Richmond, Virginia 23219-3517
www.ca4.uscourts.gov

Patricia S. Connor
Clerk

Telephone
804-916-2700

March 15, 2013

**MOTION TO DISMISS
PURSUANT TO FRAP 42(b)**

No. 13-6402, Michael Perry v. SCDC
4:12-cv-01205-RMG

Appellant moves to voluntarily dismiss this proceeding pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure.

Appellant understands that this proceeding will be dismissed and cannot be reinstated at a later date.

Signature _____

Date _____

CERTIFICATE OF SERVICE

I certify that on I served a copy of this motion on all parties, addressed as shown [list parties' names and the addresses at which they were served below]:

Signature _____

a copy of the 9 to 20 plea bargain sentencing sheet that I signed. This was never presented earlier in my Discovery. I filed a Second PCR Application only this time, instead of only putting my arguments in my PCR Attachments as I did in my First PCR. I put the arguments in my Second PCR (Application) so the arguments and issues were the same. That PCR was dismissed as procedurally barred and as Successive. I filed Objections but the dismissal became final on March 20, 2013. I was served on April 9, 2013. The Petitioner was not served with a Notice of Appeal. Petitioner now seek a writ of Certiorari to review the denials. I could not appeal my First PCR denial because when I learned that I could appeal the time frame to ~~an~~ appeal had already elapsed.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DIRECTIONS FOR INFORMAL BRIEF

1. Preparation of Brief. The Court will consider this case according to the written issues, facts, and arguments presented in the Informal Briefs. Space is provided to present up to four issues. Additional issues may be presented by attaching additional sheets. The Court will not consider issues that are not specifically raised in the Informal Briefs. Informal Briefs must be legible and concise, and any attached pages must be sequentially numbered. Informal Briefs may be filed on the form provided or in memorandum or formal briefing format.

2. Copies required.

* File the original of the Informal Brief with the Court. If you would like a file stamped copy returned, send an extra copy and a self addressed stamped envelope. The Court's address is:

Clerk

U.S. Court of Appeals, Fourth Circuit

1100 East Main Street, Suite 501

Richmond, VA 23219

* Send one copy of the Informal Brief to each of the parties in the case.

3. Certificate of Service Required. You must certify that you sent each of the other parties or attorneys complete copies of all documents you send the Court. Service on a party represented by counsel shall be made on counsel. Be certain that your certificate shows the complete name and address of each party or attorney to whom copies were sent and the date of mailing.

4. Signature Required. You must sign your Informal Brief and all Certificates of Service. If the Informal Opening Brief is not signed, the case will be subject to dismissal under this Court's Local Rule 45.

Argument.

1. Counsel was ineffective in failing to object with any and enter the original 10 to 20 plea agreement. see *Thompson v. State*, 15-cv-2000-340 s.c. 112,531 S.E.2d 294.
2. Counsel was ineffective for failing to object and withdraw guilty plea once prosecution breached the 10 to 20 plea agreement. See *Thompson v. State*, 15-cv-2000-340 s.c. 112,531 S.E.2d 294; *Baker v. Barbo*, 197 F.3d 149, 154 (3rd Cir. 1999).
3. Counsel was ineffective for playing the adverse role of the prosecution by making biased and prejudicial remarks and statements about the case and defendants thus causing a conflict of interest in representation and ineffective representation. see *Richman v. Bell*, 131 F.3d 1150 (6th Cir. 1997) stating courts have reviewed the equivalent of what Livingston did in this case to be more than no representation at all. see *McMann, v.*

proceeding without full prepayment, the appellant must pay the full filing fee to the Court of Appeals within 15 days of the date of this notice or the Court of Appeals will initiate the process set forth in Local Rule 45 to dismiss this case for failure to prosecute.

If the appellant does not wish to proceed with this case, a motion to dismiss pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure may be filed on the form provided for that purpose. If the case is dismissed prior to consent to collection of fees, no fees will be charged against the appellant's account. After consent has been given for collection of fees from the appellant's trust account, however, that consent may not be withdrawn or full payment of the fee avoided. A dismissal under Rule 42(b) is not a dismissal of the case as frivolous or malicious and does not count as one of the three such dismissals allowed under the Prison Litigation Reform Act.

Richard H. Sewell, Deputy Clerk
804-916-2702

Richardson 397 U.S. 759, 771 n.14, 90 S.Ct. 1441,
1449 n.14, 25 L.Ed.2d 763 (1970) stating would be
devoid of meaning were counsel like Livingston deemed
effective.

4. Counsel was ineffective for failing to file
a Motion for Recross, variation of Sentence
once seeing that defendant never received the
promised mitigation by her, the prosecution and
trial sentencing judge before and after being
sentenced. See U.S. v. Rongjeng, 998 F.2d 504
(4th Cir. 1993) stating plea bargains rest on
contract principles and each party should receive
benefits of the bargain. It never received
any benefits from the plea bargain or the promised mitigation.

5. The Prosecution displayed Prosecutorial
Misconduct by breaching the 0 to 20 plea
bargain by changing that plea to 10 to 20
plea bargain after I signed the 0 to 20 plea
agreement and detrimentally relied on it. See
Correia v. United States, 479 F.2d 944
(1973); Reed v. Becka, 511 S.E.2d 396 (S.C. App 1998).

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
OFFICE OF THE CLERK**

1100 East Main Street, Suite 501
Richmond, Virginia 23219-3517
www.ca4.uscourts.gov

Patricia S. Connor
Clerk

Telephone
804-916-2700

March 15, 2013

**PRISONER LITIGATION REFORM ACT
NOTICE FOR APPEALS**

No. 13-6402, Michael Perry v. SCDC
4:12-cv-01205-RMG

**\$455 FEE DUE TO DISTRICT COURT OR PLRA APPLICATION &
CONSENT TO COLLECTION OF FEES DUE TO COURT OF APPEALS:
04/01/2013**

The Prison Litigation Reform Act, 28 U.S.C. § 1915(b), requires that a prisoner pay the full filing fee to the Clerk of the District Court. If the appellant is financially unable to pay the fee, the appellant may apply to pay the fee in installments from the appellant's prison trust account by filing the enclosed forms with the Court of Appeals:

- 1. PLRA Application**
- 2. Consent to Collection of Fees from Trust Account**
- 3. Prisoner Trust Account Statement for preceding 6 months**

The appellant must either pay the fee or file a PLRA Application and Consent to Collection form with the Court of Appeals within 15 days of the date of this notice or the court will initiate the process set forth in Local Rule 45 to dismiss this case for failure to prosecute.

The Prison Litigation Reform Act also provides that if a prisoner has previously filed, while incarcerated, three or more civil actions or appeals which were dismissed by a federal court as frivolous, malicious, or for failure to state a claim, the prisoner must prepay the filing fee in full unless the prisoner is under imminent danger of serious physical injury. If this provision bars the appellant from

6. The Prosecutorial Misconduct by breaching the 10 to 20 plea bargain by recommending to the Judge the maximum prison sentence of 20 years. see *Correale v. United States*, 479 F.2d 944 (1973); *Reed v. Beekun*, 511 S.E.2d 396 (S.C.App. 1999).

7. Counsel was ineffective for failing to obey Judge Wiley's instructions and order to PR Bond me out so I had time to work or back a plea bargain by April 2, 2007. That date was exceeded.

8. The Circuit Court erred in dismissing my habeas corpus application because it is prison officials who are at fault for causing detainees to miss the one year statutory limitations and because according to *Horton v. Lack*, 108 S.Ct. 2379 (1989) my first PCR application is considered filed at the moment of delivery or delivering to prison officials to forward to the Court. See *Arce v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991).

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

CHANGE OF ADDRESS (PRO SE)

No. 13-6402, Michael Perry v. SCDC
4:12-cv-01205-RMG

If your address changes, it is your obligation to notify the clerk. If your address changes and you do not notify the clerk, we will not be responsible for your failure to receive documents from the court.

THE CLERK IS HEREBY NOTIFIED THAT MY ADDRESS SHOULD BE
CHANGED TO:

Name:
Street/P. O. Box:
City/State/ZIP:
Telephone Number:
Prison (if applicable):
Prisoner's Reg. No. (if applicable):
Release Date (if applicable):
Effective Date for Change of Address:
Signature:

9. The Grand Jury erred in discussing petitioner's second PC application after petitioner had filed to enter a guilty plea and discovered evidence that was not previously presented which was the basis for a plea bargaining sentencing which I had stated that was never presented in my earlier discovery. The 0 to 20 plea bargaining sentencing which showed and established prosecutorial misconduct in failure to assist of counsel in voluntary guilty plea, unknowingly, and allegedly entered guilty plea and that the current sentence that I am imposing is illegal, and that the 0 to 20 original plea was breached by the prosecution and because I never had an evidentiary hearing and my one bite of the apple. See *State v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991); *Tilley v. State* (S.C. 1999) 334 24, 511 S.E.2d 689.

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

1100 East Main Street, Suite 501
Richmond, Virginia 23219-3517

www.ca4.uscourts.gov

March 15, 2013

PRISONER TRUST ACCOUNT STATEMENT

No. 13-6402, Michael Perry v. SCDC

4:12-cv-01205-RMG

TO: Trust Officer

FROM: Clerk, U.S. Court of Appeals for the Fourth Circuit

RE: _____ **(Prisoner Name/Reg.No.)**

Under the Prison Litigation Reform Act, a prisoner appealing a civil judgment must obtain from the trust officer of each institution in which the prisoner was confined during the preceding six months a certified copy of the prisoner's trust account statement for the six months prior to filing of the appeal. Please complete this form, attach the supporting ledger sheets, and return these documents to the prisoner for mailing to the Court of Appeals within 7 days.

Date of Filing Notice of Appeal in Court of Appeals	
Balance at Time of Filing Notice of Appeal	
Average Monthly Deposits during 6 months prior to Filing Notice of Appeal	
Average Monthly Balance during 6 months prior to Filing Notice of Appeal	

I certify that the above information accurately states the deposits and balances in applicant's trust account for the period shown and that the attached ledger sheets are true copies of account records maintained in the ordinary course of business.

Signature _____ Date _____

Print Name & Title: _____

10. Counsel was ineffective for failing to know the correct Sentencing Guidelines during plea bargaining and plea negotiations which resulted in an additional 10 years being added to petitioner's sentence which is unconstitutional. see *Baker v. Barbo*, 177 F.3d 149, 154 (3rd Cir. 1999).

11. The Prosecution Displayed Prosecutorial Misconduct by failing to know the correct Sentencing Guidelines during plea bargaining and plea negotiations which resulted in a breach of the 0 to 20 plea agreement and added an additional 10 years to petitioner's sentence which is unconstitutional. see *Correale v. United States*, 479 F.2d 944 (1973).

12. The Court, the Prosecution, and Counsel were in error and ineffective for failing to advise defendant that a mandatory term of (CSP) community Supervision Program was required after serving his prison sentence when the term of (CSP) if repeatedly revoked could require the petitioner to return to prison repeatedly thereafter doubling

South Carolina Department of Corrections
Request to Staff Member

LEGAL MAIL

To: ~~Col. Morton~~ Law Library From: ~~John~~	Date: ~~4/2/13~~ 4/2/13
Request Name: Michael Perry	S.C.D.C. # 281249
Requester: M.C.	#76 Law Director - S.C. Coll.

~~_____~~
~~_____~~
~~_____~~

I need 50 F. supp 12d 544. ✓

I need 204 F. 3d. ✓

I need South Carolina Appellate Court
Rules Book. ✓

Approved By Staff Member:

[Signature]

Filled
4/10/10

Date: _____ S.C.D.C. Form 19-14 (Rev. Feb 2001)	Signature: _____
--	------------------

The 20 year sentence and maximum 30 years stipulated by the Judge, see U.S. v. Thorne, 153 F.3d 130, 133 (4th Cir. 1998); U.S. v. Syal, 963 F.2d 900, 905-07 (6th Cir. 1992).

13. The Sentencing Judge was unimpaired for making groundless inferences in imposing sentence. see U.S. v. Boss - Isaza, 887 F.2d 1349, 9th Cir. 1998).

Conclusion.

I want my extraordinary hearing or I want my promised mitigation fulfilled and my sentence and conviction vacated and remanded with relief or sentence. Had it not been for counsel, prosecution, and the courts deficient performance and errors I would not have pled guilty and insisted on going to trial.

South Carolina Dept of Corrections Request to Staff Member

^{Law Library} ~~Det. Sgt. Morton~~	~~Date 4/19/13~~
~~Truist Harris Michael~~	~~SCDC # 281249~~
~~Truist Harris Michael~~	~~L.P. # 76~~

I need the Black Law Dictionary. ✓

I need 260 F.3d ✓

I need 53 F.3d ✓

Inspection By Staff Member:

Filed
4-23-13

Date

SCDC Form 12-11/Rev. Feb 2001

Signature:

For the reasons stated, petitioner asks this
court to grant the petition for a writ of
Certiorari.

Respectfully Submitted,

Michael Perry 281249

McCT

April 30 2013

SNV Cell 76

386 Redemption Way

McCormick, S.C 29899

JAM JREJ

South Carolina Dept. of Corrections
 Request for Staff Member

To: Cpl. Norton Telle. Law Library	Date: 12/3/12
inmate Name: Michael Perry	DOC: 231249
Institution: MCH	Living Quarters: SMU # 76
I need 108 s.c. 2379 ✓ I need Black Law Dictionary ✓	
Filled 12/4 LEGAL MAIL	
Approved by Staff Member:	
Signature:	Signature:

Appendix on Post Conviction Relief Action

The State of South Carolina

In The Supreme Court

Michael Perry

#281249

McCormick Correctional Institution

386 Redemption Way

McCormick, SC 29899

Appeal From Chesterfield County

Court of Common Pleas

Paul M. Brock Circuit Court Judge

Case No. 2012-cv-13-0577

Michael T. Perry 281249

Appellant

State of South Carolina

Respondents

Appendix

Michael Perry 281249

McCI

SMU cell 76

386 Redemption Way

McCormick, S.C. 29899

Tyson Andrew Johnson, Sr.

Assistant Attorney General

Post office Box 11549

Columbia, S.C. 29211

Attorney For Respondents.

Index

<u>Transcript of Trial (Guilty Plea)</u>	<u>p. 1</u>
<u>Application for Post Conviction Relief</u>	<u>p. 15; p. 48</u>
<u>Response to the Application</u>	<u>p. 26; p. 91</u>
<u>Transcript of the Post Conviction Relief</u>	
<u>Hearing</u>	<u>N/A</u>
<u>Order of Dismissal</u>	<u>p. 15; p. 91</u>
<u>Clerk of Court Records</u>	<u>p. 1 - 93.</u>
<u>South Carolina Department of Corrections</u>	
<u>Records</u>	<u>p. 1 - 93.</u>

The remaining portion of the Appendix is
composed of a copy of the documents listed
in the Index.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME: <i>Cpl. Norton</i>	TITLE: <i>Law Library</i>	DATE: <i>7/27/12</i>
INMATE'S NAME: <i>Michael Perry</i>		SCDC #: <i>281249</i>
INSTITUTION: <i>MCB</i>		LIVING QUARTERS: <i>Small Cell 76</i>
<i>I need 988 F.2d.</i> <i>I need,</i> <i>Cooper v. United States 594 F.2d 12 (1979)</i> <i>2 Cal. 4th 924, 938, n.7, 1830 P.2d 747, 756 n.7 (1992).</i> <i>I need 887 F.2d.</i> <i>X Don't have</i> <i>Filled</i> <i>8/7</i>		
DISPOSITION BY STAFF MEMBER:		
DATE:	SIGNATURE:	

Proof of Service of A Notice of Appeal.

In The State of South Carolina

In The Supreme Court

Appeal From Chesterfield County

Court of Common Pleas

Paul M. Broch Circuit Court Judge

Case No. 2012-cp-13-0577

Tyson Andrew Johnson, Sr Assistant

Attorney General

Respondents

V.

Michael T. Perry

Appellants

Proof of Service.

I certify that I have served the Petition for Writ
of Certiorari on Tyson Andrew Johnson, Sr by depositing
a copy of it in the United States Mail, postage
prepaid, on 4/30/13, addressed to Tyson Andrew Johnson,
Sr, Post Office Box 11549, ~~PO~~ Columbia S.C 29211 by
delivering a copy to his address at his office

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

on 4/30/13.

April 30 2013.

Michael Perry 281249

McCI

SMU cell 76

386 Redemption Way

McCormick, S.C. 29899

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

ORIGINAL

-VS-)

~~2007-04-04-0000~~

MICHAEL TYRONE PERRY,)

DEFENDANT.)

THE FOLLWOING PROCEEDINGS WERE HELD BEFORE THE HONORABLE

PAUL M. BURCH

IN THE CIRCUIT COURT OF CHESTERFIELD COUNTY (4TH JUDICIAL
DISTRICT) BEGINNING ON 2:58 PM ON THE 4TH DAY OF APRIL,
2007, IN THE CHESTERFIELD COUNTY COURTHOUSE,
CHESTERFIELD, SOUTH CAROLINA.

REPORTED BY: H. EUGENE BUCKNER, CVR

H. EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
7TH JUDICIAL DISTRICT
PO BOX 280, DRAYTON, SC 29333

APPEARANCES:

L. SUZANNE MAYES, ESQUIRE
S.C. COMMISSION ON PROSECUTION COORDINATION
1003 GERVAIS STREET
COLUMBIA, S.C. 29201
TEL: 803-343-0765

.... ON BEHALF OF THE STATE

PATRICIA RIVERS, ESQUIRE
105 AGERTON ST
CHERAW, SC 29520
TEL: 843-537-2479

.... ON BEHALF OF THE DEFENDANT

NO EXHIBITS WERE MARKED AND NO WITNESSES TESTIFIED DURING
THESE PROCEEDINGS.

1 MS. MAYES:

2 Michael Perry.

3 Your Honor, before you is Michael
4 Perry.

5 This is the case of State versus
6 Michael Perry. The indictment is number ~~99-09-09-001~~.
7 The indictment is ~~the indictment is~~
8 ~~the indictment is~~

9 Mr. Perry tenders a plea of guilty
10 at this time -- uh -- to that particular charge in the
11 indictment.

12 Uh -- However Your Honor -- uh --
13 there have been plea negotiations in this case wherein
14 the State is recommending a cap or maximum exposure of 20
15 years.

16 Uh -- There is also by statute a
17 minimum 10 year -- uh -- requirement pursuant to the
18 charge.

19 THE COURT:

20 Any questions about that Ms.
21 Rivers before we go any further?

22 MS. RIVERS:

23 No, Your Honor; none.

24 THE COURT:

25 Mr. Perry, I need your age.

1 DEFENDANT PERRY:

2 24 sir.

3 THE COURT:

4 Where are you from?

5 DEFENDANT PERRY:

6 Pageland.

7 THE COURT:

8 And what is your education?

9 DEFENDANT PERRY:

10 8th grade.

11 THE COURT:

12 And your occupation?

13 DEFENDANT PERRY:

14 Restaurant work sir.

15 THE COURT:

16 The indictment ~~allegedly~~ is

17 ~~[REDACTED]~~

18 ~~[REDACTED]~~

19 ~~[REDACTED]~~

20 ~~[REDACTED]~~

21 ~~[REDACTED]~~

22 ~~[REDACTED]~~

23 ~~[REDACTED]~~

24 ~~[REDACTED]~~

25 ~~[REDACTED]~~

1 DEFENDANT PERRY:

2 Yes sir.

3 THE COURT:

4 Everybody's in agreement on that.

5 And you heard the recommendations or negotiations that
6 were put forth by the State; I ask you, then:

7 How do you plead to that offense;
8 guilty or not guilty?

9 DEFENDANT PERRY:

10 Guilty.

11 THE COURT:

12 You know by entering a plea of
13 guilty that you waive the constitution right to a jury
14 trial.

15 DEFENDANT PERRY:

16 Yes sir.

17 THE COURT:

18 You fully understand that if you
19 had a trial, the State of South Carolina would have to
20 prove your guilt beyond a reasonable doubt and convince
21 12 jurors unanimously of your guilt?

22 DEFENDANT PERRY:

23 Yes sir.

24 THE COURT:

25 You would have a right through

1 your attorney to cross-examine the state's witnesses and
2 put up your own defense witnesses.

3 DEFENDANT PERRY:

4 Yes sir.

5 THE COURT:

6 You'd have a right to testify in
7 your own defense; but you'd also have a constitutional
8 right not to testify. And if you didn't, it couldn't be
9 used against you; and I'd tell the jury that.

10 DEFENDANT PERRY:

11 Yes sir.

12 THE COURT:

13 You need to understand that you
14 are presumed innocent and that presumption remains and
15 stays with you throughout your trial; and it would only
16 end if the jury convicted you?

17 DEFENDANT PERRY:

18 Yes sir.

19 THE COURT:

20 If a jury did convict you, you'd
21 have a right to appeal just as you can appeal a guilty as
22 long as you file notice of appeal within 10 days of the
23 sentence.

24 DEFENDANT PERRY:

25 Yes sir.

1 THE COURT:

2 Any questions about this jury

3 trial?

4 DEFENDANT PERRY:

5 No sir.

6 THE COURT:

7 You understand it?

8 DEFENDANT PERRY:

9 Yes sir.

10 THE COURT:

11 You do not want a jury trial?

12 DEFENDANT PERRY:

13 No sir.

14 THE COURT:

15 You satisfied with Ms. Rivers'

16 advice?

17 DEFENDANT PERRY:

18 Yes sir.

19 THE COURT:

20 She's answered all your questions?

21 DEFENDANT PERRY:

22 Yes sir.

23 THE COURT:

24 She's contacted anybody you asked

25 her to contact?

1 DEFENDANT PERRY:

2 Yes sir.

3 THE COURT:

4 Uh -- Are you under the influence
5 of any drugs, alcohol, or medication?

6 DEFENDANT PERRY:

7 No sir.

8 THE COURT:

9 Has anybody promised you anything
10 or held out any hope for reward or -- uh -- threatened
11 you in any way in order to get you to plead?

12

13 DEFENDANT PERRY:

14 No sir.

15 THE COURT:

16 I think I asked you -- You not on
17 any type medication, drugs, or alcohol?

18 DEFENDANT PERRY:

19 No sir; I'm not.

20 THE COURT:

21 Any mental or physical problem
22 that can be affecting your understanding?

23 DEFENDANT PERRY:

24 No sir.

25 THE COURT:

1 have been prevented.

2 The whole community needs to
3 understand that this thing is not acceptable and cannot
4 be done.

5 And Your Honor, we worked out that
6 sentence again because -- uh -- he -- he gave his
7 statement and he provided all the information necessary
8 for law-enforcement.

9 I don't think they had to do any
10 investigation. He gave -- He gave them everything, from
11 the very get-go.

12 THE COURT:

13 All right. Anything you want to
14 say?

15 DEFENDANT PERRY:

16

17

18

19 MS. RIVERS:

20

21

22

23

24

25 DEFENDANT PERRY:

1 client; but I am disappointed [REDACTED]

2 [REDACTED]

3 Uh -- My client has no -- uh -- no

W 4 defenses. It's uncalled for. And I think at this time

5 he understands that; but like I said at first, he just --

6 uh -- he -- he explained everything he did.

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 He could have lied; but he didn't.

11 And the -- the problem I had with him was just in

12 explaining to him that -- you know -- you can't do this.

13 [REDACTED]

X 14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 I just don't understand.

18 But -- uh -- the -- one thing I

19 can say about him: He has no prior record; never been in

20 any other kind of trouble; [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 I begged The Court to order that

24 while he has been -- uh -- combined.

25 Uh -- And again, this event could

1 uh -- quilt before 12 jurors; so I'm going to go along
2 with what y'all worked out.

3 I'm going to give him credit,
4 though, for his 438 days.

5 Sentenced to 20 years; credit for
6 438 days; and recommend a placement for mental health
7 counseling.

8 Thank you very much.

9 DEFENDANT PERRY:

10 Thank you, Your Honor.

11 MS. MAYES:

12 Thank Your Honor.

13 MS. RIVERS:

14 Thank you, Your Honor.

15 (WHEREUPON: THERE BEING NOTHING
16 FURTHER, THE FOREGOING PROCEEDINGS WERE CONCLUDED AT 3:10
17 PM, APRIL 4TH, 2007.)

18

19

20

21

22

23

24

25

1 Yes.

2 MS. RIVERS:

3 -- have to deal with.

4 I think now he's at the point
5 where he understands what he's done; but it appears that
6 at the time he didn't.

7 THE COURT:

8 What date were you put in jail?

9 DEFENDANT PERRY:

10 January 2001st -- January the 21st
11 of 2006.

12 MS. RIVERS:

13 He's been in jail 400 days, it
14 looks like -- 438 days.

15 THE COURT:

16 All right.

17 I appreciate you all sitting down
18 to get this negotiation before The Court.

19 Well, he does deserve some
*20 ^{lessen} mitigation in his favor because he did cooperate, and he
21 seems to be sincere before The Court in the -- in his
22 remorse.

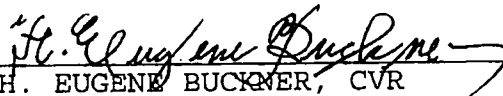
23 And he could have carried this
24 thing to trial; ~~_____~~
25 ~~_____~~ -- with the court system and asked to prove his --

CERTIFICATE

I, THE UNDERSIGNED, H. EUGENE BUCKNER, CVR, OFFICIAL COURT REPORTER IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS WERE RECORDED ON THE 4TH DAY OF APRIL, 2007; AND THAT THE FOREGOING IS TO THE BEST OF MY ABILITY AN ACCURATE TRANSCRIPTION OF SAID PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL NOR SOLICITOR TO ANY OF THE PARTIES IN THE FOREGOING PROCEEDINGS, NOR INTERESTED IN THE EVENT OF THE CAUSE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL
THIS 15TH DAY OF JUNE, 2007.


H. EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
15TH JUDICIAL DISTRICT, CONWAY, S.C.



Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

July 3, 2007

Mr. Michael Tyrone Perry, #281249
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your case

Dear Mr. Perry:

I am the lawyer who will be handling your case in the appellate court. I will be reviewing the record of the proceedings at the trial court to see what legal errors to present to the court on your behalf. I will submit these arguments in the form of a written "brief."

With this letter, I am sending you copies of all hearing transcripts relevant to your case. I will send you copies of the brief when I filed it with the appellate court. Please be patient while the court considers your case. This process is very slow, but there is nothing I can do to speed up the process. It will probably be at least six months before I submit a brief to the appellate court and at least a year after that before the court decides your case. **Some cases take even longer.** You will be notified when the court makes a decision and letters asking the status of your case do not speed up the process.

Please keep these points in mind. In a direct appeal, the appellate court can only consider the information that was in front of the trial court. Any new information cannot be brought to their attention at this point. The appellate court does not decide guilt or innocence. In general, it only looks to see if the trial judge made errors of law. A reversible error only occurs when your lawyer makes an objection or motion and the judge rules against you when legally he should not have. In addition, usually the error must not have been harmless. That is, the error must be something that could have changed the result of the trial.

Mr. Michael Tyrone Perry, #281249

Page 2

July 3, 2007

In addition, the court decides the case based on the written briefs submitted by the attorney general's office and me. It occasionally sets oral arguments, which are an opportunity for me to focus its attention on the information in the information in the brief. If you are in prison, you cannot attend.

I receive a tremendous amount of mail and I may not be able to respond to all letters. However, you are free to telephone me, and to telephone me collect. This is the preferred method of us communicating. Regardless, rest assured if you write me a letter about your case, I will read it and carefully consider it as I decide which issue or issues to submit to the appellate court. Please note that the decision about which issues to submit is mine. Only if I submit a "no merits" or Anders brief, stating I could not find any good issues, will the court let you submit your own legal arguments to the court.

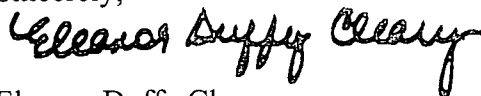
In addition, we are not able to visit our clients personally but feel free to call collect.

Be assured that I will try my best to find reversible error. I will submit the best brief I possibly can to the appellate court.

Finally, if you are transferred to another facility or released, you must write and let me know where you are. The Department of Corrections will not notify us of your new address.

I hope this letter answers some of the questions you may have at this time. Again, please do not hesitate to contact me by letter if you have any questions or I may be of further assistance.

Sincerely,

A handwritten signature in black ink that reads "Eleanor Duffy Cleary". The signature is written in a cursive, flowing style.

Eleanor Duffy Cleary
Appellate Defender

EDC/fkb

Enclosure



Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

August 16, 2007

Mr. Michael Tyrone Perry, #281249
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your case

Dear Mr. Perry:

When you plead guilty in South Carolina, with limited exceptions, no direct appeal issues are available. I have reviewed your case and there are no meritorious direct appeal issues. Following a guilty plea, you must prove you were ineffectively represented, or that your plea was not intelligently and voluntarily entered. You must do so in an action for **post-conviction relief**. This assumes you still want your guilty plea vacated, and want to start over with no guarantees as to the result. You could, and probably would, get a harsher sentence if you were convicted after a trial.

You have a right to appeal, and if you want to continue with your appeal, I will honor your wishes and will represent you in your appeal to the best of my ability. The decision of whether to continue with the direct appeal is yours alone to make.

If you intend to seek post-conviction relief, you must know that you cannot have a post-conviction relief hearing while your direct appeal is still pending before the South Carolina Supreme Court. Therefore, if you plan on filing for post-conviction relief, it would definitely be in your best interest to drop your appeal now. Please understand that a decision to drop your direct appeal is **final**, you **cannot** start the direct appeal process over if you fail to prove your case in post-conviction.

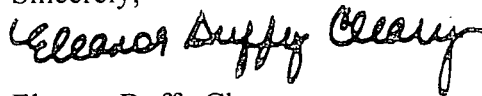
If you agree that it is in your best interest to drop your direct appeal, please sign the enclosed affidavit to drop your appeal in the presence of a notary and return it to me in the enclosed envelope as soon as possible.

Mr. Michael Tyrone Perry, #281249
August 16, 2007
Page 2

If you would like to discuss this with me further after you have had a chance to review the documents, please feel free to write me.

Please give this matter your best consideration. I look forward to receiving your response as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "Eleanor Duffy Cleary". The signature is written in dark ink and is positioned above the printed name.

Eleanor Duffy Cleary
Appellate Defender

EDC/fkb

Enclosure



CHESTERFIELD COUNTY CLERK OF COURT

200 West Main Street • P. O. Box 529
Chesterfield, South Carolina 29709
Telephone (843) 623-2574

Court of General Sessions
Court of Common Pleas
Register of Deeds

____ PLEASE FIND THE REQUESTED DOCUMENTS ENCLOSED, THERE WILL BE A 25 CENT FEE FOR EACH DOCUMENT THE NEXT TIME THESE DOCUMENTS ARE REQUESTED.

____ OUR OFFICE DOES NOT HANDLE DETAINERS, YOU WILL HAVE TO CONTACT THE ARRESTING AGENCY THAT PLACED THE DETAINER ON YOU.

____ I HAVE PLACED YOUR LETTER/MOTION REGARDING A SPEEDY TRIAL IN YOUR FILE AND I HAVE MADE A COPY AND FORWARDED TO THE SOLICITORS OFFICE.

____ I HAVE PLACED YOUR LETTER REGARDING YOUR CHARGES TO BE DISMISSED OF IN YOUR FILE AND I HAVE ALSO FORWARD A COPY TO THE SOLICITORS OFFICE.

____ OUR OFFICE DOES NOT HANDLE JAIL TIME YOU WILL NEED TO CONTACT YOUR CASE WORKER TO FIND OUT THAT INFORMATION.

XXXXX OTHER: IM SORRY BUT WE DO NOT HAVE A RECORD OF THIS P C R RECORDED.

SINCERELY,
COURT SERVICES SECTION

A True Copy, Attest

Laye S. Salter

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

2008 CP 13- 499

STATE OF SOUTH CAROLINA)

County of Chesterfield)

IN THE COURT OF COMMON PLEAS

Michael Perry # 291249)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
CLERK OF COURT
08 DE 19 P 12:05.9
CHESTERFIELD COUNTY, SC
BOOK PAGEINSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SCA True Copy, Attest
Jaime D. Sellers

- Place of detention Lee Correctional Institution (SMU Cell # 17)
990 Wisacky Hwy, Bishopville S.C. 29010-1775
- Name and location of Court which imposed sentence Chesterfield, S.C. 29709
Chesterfield County Court of General Sessions 200 N. Main St
- Name(s) of co-defendant(s) (if any) N/A
- The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) [REDACTED] - 2006G31300442

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SCJaime D. Sellers
COPY ATTACHED

- (b) N/A
- (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 4, 2007
- (b) Credit for 438 days jail time mandatory minimum 10-20 year cap
- (c) Recommend a placement for proper mental health counseling - sentence 20 yr. cap.
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- Yes
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. Canceled Appeal
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. August 16, 2007
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Attachment page 1
- ii. N/A
- iii. N/A
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

A True Copy, Attest
Jorge J. Salas
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

A True Copy, Attest
Jorge J. Salas
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

- (b) N/A
(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Constitutional Violation of Applicant's Fifth and Sixth Amendments.
(b) Ineffective Assistance of Counsel
(c) Horrific Abuse

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Attachment page 1
(b) N/A
(c) N/A

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
(c) any petition in the United States Supreme Court for certiorari other than petition if any, already specified in (8)? N/A
(d) any other petitions, motions or applications in this or any other Court? yes

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
i. Attachment page 5
ii. Attachment page 5
iii. N/A
iv. N/A
(b) the name and location of the Court in which each was filed:
i. Attachment page 5
ii. N/A
iii. N/A

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

A True Copy, Attest
Jaye S. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

A True Copy, Attest
Jaye S. Sellers

- iv. N/A
- (c) the disposition thereof:
- i. Attachment page 5
- ii. N/A
- iii. N/A
- iv. N/A
- (d) the date of each such disposition:
- i. November 30, 2006
- ii. March 2, 2007
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. Attachment page 2
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Ineffective Assistance of Counsel
- ii. Harmless Advice
- iii. Constitutional Violation of Applicant's Fifth and Sixth Amendments

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

A True Copy, Attest
Jaime D. Sellers

A True Copy, Attest
Jaime D. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) N/A
- (b) N/A
- (c) N/A

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Attachment page 6
N/A
- ii. N/A
N/A
- iii. N/A
N/A

(b) the proceedings at which each such attorney represented you:

- i. Patricia Cribb Rivers - sentencing
N/A
- ii. Eleanor Duffy Cleary - Direct Appeal
N/A
- iii. N/A
N/A

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

A True Copy, Attest
Jaime S. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC
A True Copy, Attest
Jaime S. Sellers

19. State clearly the relief you seek in filing this application:

Reverse and Remand of sentence
Specific performance of the original plea agreement and resentencing
Guilty Plea Vacated

20. Are you now under sentence from any other court that you have not challenged?

Attachment page 6

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Chesterfield)

VERIFICATION

I, Michael Perry, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Michael Perry

SWORN to and subscribed before me this 26
day of Nov., 2008.
S. Bracey Simon (L.S.)
Notary Public

My Commission Expires: 5/16/12

A True Copy, Attest
Joey J. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

FILED
CLERK OF COURT
2008 DEC 17 AM 9 21
BOOK _____ PAGE _____

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Michael Perry
I, M.P., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- M.P. (1) I am the applicant in this action and I believe I am entitled to redress.
- M.P. (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Michael Perry
Applicant

SWORN or affirmed to and subscribed before me this
13th day of June, 2008

Cyrtel Dickie
Notary Public

My Commission Expires: 10-31-2015

A True Copy, Attest
Jorge S. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

FILED
CLERK OF COURT
JUN 17 AM 9 21
BOOK _____ PAGE _____

RECEIVED
MAR 16 2009

BS

LEED CLASSIFICATION

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFICE OF GENERAL COUNSEL
MEMORANDUM

TO: WARDEN'S OFFICE
Lee Correctional Institution

FROM: Tina Kellett
Office of General Counsel

RE: REQUEST FOR SERVICE OF LEGAL PLEADINGS
Inmate Michael Perry SCDC Inmate # 281249

DATE: 3-16, 2009

Pursuant to the above referenced subject, please follow the below procedures for *Service of Legal Pleadings* on Inmate.

1. Serve Papers (*Pleadings/Summons/Complaint etc.*) on Inmate.
2. Complete the **AFFIDAVIT OF SERVICE** (sign/date/notarize) acknowledging that the Legal Pleading(s) were served on the Inmate.
3. Please note that **if** the Inmate chooses 'not' to physically accept the Legal documents from you (Server), the Inmate is considered '**Served**' once he/she has been properly identified.
Therefore, please proceed with service process by placing the Legal document(s) under the Inmate's cell door.
5. Please indicate on the ORIGINAL AFFIDAVIT OF SERVICE the following:
'Inmate refused to accept service'.
6. Make a **COPY** of the **AFFIDAVIT OF SERVICE** for the Inmate for his/her record.
7. Return the completed **'ORIGINAL' AFFIDAVIT OF SERVICE ONLY** back to the Office of General Counsel (H.Q.)

If you have any questions, please call me at 896-8508.

/tk:
Attachment(s)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Code Section 15-9-500, Code of Laws of South Carolina, 1976, the Director of the South Carolina Department of Corrections has designated Rosa M. Hilton (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 Lee)

AFFIDAVIT OF PERSONAL SERVICE

On this 30th day of March 2009, I served the Conditional Order of Dismissal, on Inmate Michael Tyrone Perry, SCDC Inmate # 281249, by delivering personally and leaving a copy of the same at Lee Correctional Institution, _____ . Deponent is not a party to this action.

s/ Rosa M. Hilton
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 30 day of Mar., 2009

Debra Lynn Simon (L.S.)

Notary Public for South Carolina

My Commission Expires: 5/16/11

ADMISSION OF SERVICE

Service of a copy of the within Conditional Order of Dismissal is admitted at the S. C. Department of Corrections (Lee Correctional Institution), 990 Wiscacky Hwy, Bishopville S.C. - Lee County, SC this 30th day of March, 2009.

s/ Michael Perry
Inmate
SCDC Inmate #: 281249



RECEIVED

MAR 13 2009

GENERAL COUNSEL

ef

HENRY McMASTER
ATTORNEY GENERAL

March 11, 2009

David M. Tatarsky, General Counsel
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221-1787

Re: Michael Tyrone Perry v. State of South Carolina
2008-CP-13-0499

Dear Mr. Tatarsky:

Enclosed please find the **Conditional Order** dismissing the above-captioned inmate's post-conviction relief application. Please serve the inmate, **Michael Tyrone Perry, 281249**, with the order and provide me with an affidavit of service (enclosed).

If you have any questions, please feel free to call: (803) 734-4042.

Sincerely,

Karen C. Ratigan
Assistant Attorney General

KCR/jacc
Enclosures

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
C.A. No. 2008-CP-13-0499

COUNTY OF CHESTERFIELD)

Michael Tyrone Perry,
S.C.D.C. No. 281249,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 19, 2008. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Chesterfield County Clerk of Court's orders of commitment. The Chesterfield County Grand Jury indicted the Applicant at the April 2006 term of General Sessions ~~_____~~ ~~_____~~ (2006-GS-13-0442). Patricia C. Rivers, Esquire represented the Applicant.

On April 4, 2007, the Applicant pled guilty as indicted. The Honorable Paul M. Burch sentenced the Applicant to twenty (20) years imprisonment.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. The Applicant, however, chose to voluntarily withdraw the appeal. The Court of Appeals dismissed the case and issued the remittitur by order dated September 6, 2007.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.

III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina Code Ann. § 17-27-45(a) reads as follows:

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.

JLB
2
The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty the offenses he challenges in this Application on April 4, 2007 and the South Carolina Court of Appeals issued the remittitur in this case (after the Applicant chose to withdraw his appeal) on September 6, 2007. The Applicant was therefore required to file his application before September 6, 2008. This Application was filed on December 19, 2008, which was more than three (3) months after the statutory filing period had expired.

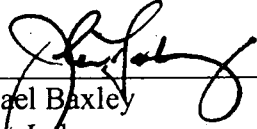
A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from

the pleadings . . . that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law."

IV.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Chesterfield County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 5TH day of MARCH, 2009.



J. Michael Baxley
Resident Judge
Fourth Judicial Circuit

HARTSVILLE, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2008-CP-13-0499
COUNTY OF CHESTERFIELD	)	
	)	
Michael Tyrone Perry,	)	
S.C.D.C. No. 281249,	)	
	)	
Applicant,	)	
	)	RETURN AND MOTION TO DISMISS
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed December 19, 2008, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Chesterfield County Clerk of Court's orders of commitment. The Chesterfield County Grand Jury indicted the Applicant at the April 2006 term of General Sessions ~~_____~~ ~~_____~~ (2006-GS-13-0442). Patricia C. Rivers, Esquire represented the Applicant.

On April 4, 2007, the Applicant pled guilty as indicted. The Honorable Paul M. Burch sentenced the Applicant to twenty (20) years imprisonment.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. The Applicant, however, chose to voluntarily withdraw the appeal. The Court of Appeals dismissed the case and issued the remittitur by order dated September 6, 2007.

Attached herewith and incorporated herein by reference are the records of the Chesterfield County Clerk of Court regarding the subject conviction, the Applicant's records

from the South Carolina Department of Corrections, the guilty plea transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

- I. Ineffective assistance of counsel.

III.

The Respondent submits this Application for post-conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act: S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

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.

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty the offenses he challenges in this Application on April 4, 2007 and the South Carolina Court of Appeals issued the remittitur in this case (after the Applicant chose to withdraw his appeal) on September 6, 2007. The Applicant was therefore required to file his application before September 6, 2008. This Application was filed on December 19, 2008, which was over three (3) months after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d

638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) 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." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests the matter be summarily dismissed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

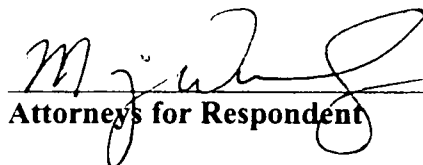
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:

 FOR Karen Ratigan
Attorneys for Respondent

February 27, 2009

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

MICHAEL TYRONE PERRY, 281249

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

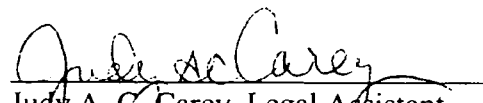
2008-CP-13-0499

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Michael Tyrone Perry, 281249
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010**

DATED this 27th day of February, 2009.


Judy A. C. Carey, Legal Assistant
For Respondent

COUNTY OF CHESTERFIELD

☐ Plaintiff γ

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2008-CP-13-0499

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

SCCA/233 (11-03)

)

)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Code Section 15-9-500, Code of Laws of South Carolina, 1976, the Director of the South Carolina Department of Corrections has designated Rosa M. Hilton (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 Lee)

AFFIDAVIT OF PERSONAL SERVICE

On this 30th day of March, 2009, I served the Conditional Order of Dismissal, on Inmate Michael Tyrone Perry, SCDC Inmate # 281249, by delivering personally and leaving a copy of the same at Lee Correctional Institution, Bishopville SC 29008. Deponent is not a party to this action.

Rosa M. Hilton
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 30th day of March, 2009
Notary Public for South Carolina (L.S.)

My Commission Expires: 2/16/11

ADMISSION OF SERVICE

Service of a copy of the within Conditional Order of Dismissal is admitted at the S. C. Department of Corrections (Lee Correctional Institution), 990 Wiscoky Hwy, Bishopville S.C. - Lee County, SC this 30th day of March, 2009.

s/ Michael Perry
Inmate
SCDC Inmate #: 281249

prejudice.

AND IT IS SO ORDERED this _____ day of _____, 2009.

J. Michael Baxley
Resident Judge
Fourth Judicial Circuit

_____, South Carolina.



HENRY McMASTER
ATTORNEY GENERAL

February 27, 2009

RECEIVED

OCT 05 2009

S.C. SUPREME COURT

The Honorable Faye Sellers
Clerk of Court, Chesterfield County
Post Office Box 529
Chesterfield SC 29709

**Re: Michael Tyrone Perry, 281249 v. State of South Carolina
2008-CP-13-0499**

**Derrick L. Thomas, 259051 v. State of South Carolina
2008-CP-13-0484**

Dear Ms. Sellers:

Enclosed please find the original Return and Motion to Dismiss of the Respondent, in the above-captioned cases, for filing in your office.

Sincerely,

Karen C. Ratigan
Assistant Attorney General

KCR/jacc
Enclosures

cc: Michael Tyrone Perry, 281249
Derrick L. Thomas, 259051

HENRY McMASTER
ATTORNEY GENERAL



February 27, 2009

RECEIVED

OCT 05 2009

S.C. SUPREME COURT

The Honorable Faye Sellers
Clerk of Court, Chesterfield County
Post Office Box 529
Chesterfield SC 29709

**Re: Michael Tyrone Perry, 281249 v. State of South Carolina
2008-CP-13-0499**

**Derrick L. Thomas, 259051 v. State of South Carolina
2008-CP-13-0484**

Dear Ms. Sellers:

Enclosed please find the original Return and Motion to Dismiss of the Respondent, in the above-captioned cases, for filing in your office.

Sincerely,

Karen C. Ratigan
Assistant Attorney General

KCR/jacc
Enclosures

cc: Michael Tyrone Perry, 281249
Derrick L. Thomas, 259051

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

Michael Tyrone Perry, 281249

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2008-CP-13-0499

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Michael Tyrone Perry, 281249, Bar No.

Address:

Lee Ct 990 Wisacky Hwy Bishopville SC 29010

phone: fax:

e-mail: other:

Defendant's Attorney:

Karen C. Ratigan, Bar No.

Address:

Post Office Box 11549 Columbia SC 29211-1549

phone: (803) 734-3737 fax: (803) 734-4113

e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff ☒ Defendant

July 14, 2009

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☒ EXEMPT:

(check reason) ☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed:

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

Michael Tyrone Perry, 281249

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2008-CP-13-0499

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Michael Tyrone Perry, 281249, Bar No.

Address:

Lee CI 990 Wisacky Hwy Bishopville SC 29010

phone: fax:

e-mail: other:

Defendant's Attorney:

Karen C. Ratigan, Bar No.

Address:

Post Office Box 11549 Columbia SC 29211-1549

phone: (803) 734-3737 fax: (803) 734-4113

e-mail: other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff ☒ Defendant

July 14, 2009

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

Michael Tyrone Perry,
S.C.D.C. No. 281249,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
C.A. No. 2008-CP-13-0499

FINAL ORDER

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 19, 2008. The Respondent made its return on February 27, 2009, requesting the application be summarily dismissed based upon the expiration of the statute of limitations.

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 signed March 5, 2009 and filed March 13, 2009, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated March 30, 2009, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Motion Objecting to Respondents Summary Judgment" and filed March 23, 2009, the Applicant argues events beyond his control impeded his ability to file his PCR application within one year after his appeal was dismissed. The Applicant argues that

prison officials delayed sending his legal mail. The Applicant argues he is entitled to a hearing on the issues in his PCR application.

In a document captioned "Motion Objecting to Respondents Summary Judgment" and filed April 7, 2009, the Applicant makes the same arguments as in the March 23rd filing.

This Court has reviewed the Applicant's responses to the Respondent's motion to dismiss 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.

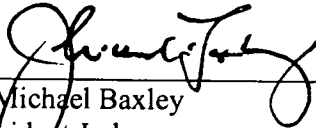
Feb 2
The Uniform Post-Conviction Procedure Act specifically states the statute of limitations for the filing of a PCR application is "one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later." S.C. Code § 17-27-45(a) (Supp. 2003) (emphasis added). The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty on April 4, 2007 and the South Carolina Court of Appeals dismissed his appeal – at his request – on September 6, 2007. The one-year time limit, therefore, expired on September 6, 2008. As this application was not filed until December 19, 2008, it is clearly untimely.¹ See id.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with

¹ This Court notes that, while the Applicant argues prison officials were not timely delivering or sending his mail, this PCR application was witnessed by a notary on November 26, 2008 – well after the September 6, 2008 filing deadline.

prejudice.

AND IT IS SO ORDERED this 4th day of August, 2009.



J. Michael Baxley
Resident Judge
Fourth Judicial Circuit

Cherokee, South Carolina.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Code Section 15-9-500, Code of Laws of South Carolina, 1976, the Director of the South Carolina Department of Corrections has designated Rosa M. Hilton (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 Lee)

AFFIDAVIT OF PERSONAL SERVICE

On this 30th day of March, 2009, I served the Conditional Order of Dismissal, on Inmate Michael Tyrone Perry, SCDC Inmate # 281249, by delivering personally and leaving a copy of the same at Lee Correctional Institution, Bishopville, SC 29010. Deponent is not a party to this action.

Rosa M. Hilton
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 30 day of March, 2009
Notary Public for South Carolina (L.S.)

My Commission Expires: 5/16/11

ADMISSION OF SERVICE

Service of a copy of the within Conditional Order of Dismissal is admitted at the S. C. Department of Corrections (Lee Correctional Institution), 990 Wiscacky Hwy, Bishopville S.C. - Lee County, SC this 30th day of March, 2009.

s/ Michael Perry
Inmate
SCDC Inmate #: 281249

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

MICHAEL TYRONE PERRY, 281249

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

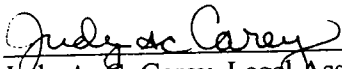
2008-CP-13-0499

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Final Order** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Michael Tyrone Perry, 281249
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010**

DATED this 6th day of August, 2009.


Judy A. C. Carey, Legal Assistant
For Respondent



HENRY McMASTER
ATTORNEY GENERAL

August 6, 2009

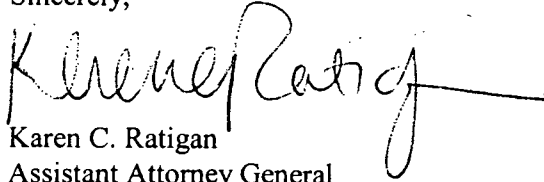
The Honorable Faye Sellers
Clerk of Court, Chesterfield County
Post Office Box 529
Chesterfield SC 29709

Re: Michael Tyrone Perry, 281249 v. State of South Carolina
2008-CP-13-0499

Dear Ms. Sellers:

Enclosed please find the original **Final Order**, signed by The Honorable J. Michael Baxley, in the above-captioned case, for filing in your office. Please return a "**clocked copy**" to me for our files.

Sincerely,


Karen C. Ratigan
Assistant Attorney General

KCR/jacc
Enclosure(s)

cc: Michael Tyrone Perry, 281249



HENRY MCMASTER
ATTORNEY GENERAL

July 14, 2009

The Honorable J. Michael Baxley
Judge, Fourth Judicial Circuit
531 East Carolina Avenue
Hartsville SC 29550-4311

Re: Michael Tyrone Perry, 281249 v. State of South Carolina
[REDACTED]

Dear Judge Baxley:

Enclosed please find the proposed original Final Order in the above-captioned case. If this Order meets with your approval, please sign same and return to me in the enclosed envelope and I will forward to the Chesterfield County Clerk of Court to be filed and served.

Sincerely,

Karen C. Ratigan
Assistant Attorney General

KCR/jacc
Enclosure

cc: [Michael Tyrone Perry, 281249]

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD
STATE VS.

Michael Perry

AKA:
Race: B Sex: M Age: 24

DOB: 11/11/81 SS#: ██████-██-████

Address: _____

City, State, Zip _____

DL# _____ SID# _____

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: ██████████

in violation of § 16-3-655(1)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. mandatory minimum 0 - 20 yr. cap

ATTEST:

L. Mayes SCCPC, for
Solicitor

Michael Perry
Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus
costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South
Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. since 1/21/06 - (438 days)

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §26-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ Plus 20% fee: \$ _____

Payment Terms: _____
☐ set by SCDPPPS

Recipient: _____
*Fine:
\$14-1-206 (Assessments 107.5%) \$
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$
\$56-5-2995 (DUI Assessment) \$12 \$
\$35-13 (Public Def/Prob) \$500 \$
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$
\$50-21-114(BUI Breath Test Fee) \$50 \$
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ 3.75
TOTAL \$ 128.75

PTUP

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: Appropriate mental health
Counseling
☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: _____

Sentence Date: _____

0101418

4-4-07

Court Reporter: _____

L. J. Sellers
Clerk of Court/ Deputy Clerk

H. Eugene Buetner

SCCA/217 (9/2006)

COUNTY OF CHESTERFIELD
STATE VS.

Michael Perry

AKA:
Race: B Sex: m Age: 24DOB: 7/12/82 SS#:

Address:

City, State, Zip

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO:

in violation of § 16-3-655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

SENTENCE SHEET

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury: _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

mandatory minimum 10 -
20 yr. cap18 May 06 SCCPC, for
SolicitorMichael Perry
Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. since 1/21/06 - (438 days)☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ Plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§35.13 (Public Def/Prob) \$500 \$ _____

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§50-21-114(BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: Appropriate mental healthCounseling

☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 0101418Sentence Date: 4-4-07

Clerk of Court/ Deputy Clerk

Court Reporter: H. Eugene Buetner

SCCA/217 (9/2006)

A True Copy, Attest

Layne L. SellersCLERK OF COURT C.P. & Q.S.
CHESTERFIELD COUNTY, SC

FORM 5

STATE OF SOUTH CAROLINA)

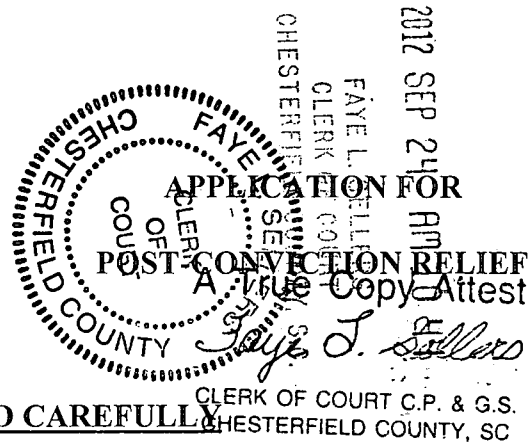
COUNTY OF CHESTERFIELD)

Michael Tyrone Perry #281249
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

2012-13-511
IN THE COURT OF COMMON PLEAS



INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized); and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention *McLennan Correctional Institution*
2. Name and location of Court which imposed sentence *General Sessions, Chesterfield, SC*
3. Name(s) of co-defendant(s) (if any) *N/A*
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) *6550*
 - (b) *2006 GS 1300442*
 - (c) *—*
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) *April 4, 2007*
 - (b) *Sent to for 438 days jail time, mandatory 10-20 years cap.*

(c) Recommendation placement for mental health counseling; 20 year cap.

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty ✓
(b) after a plea of not guilty _____
(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Cancelled Appeal

ii. _____

iii. _____

(c) the date of each such result:

i. August 16, 2007

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Attached page 2

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

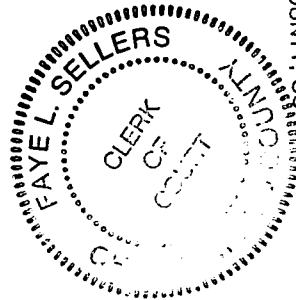
(b) N/A

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

2012 SEP 24 AM 10 44
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

A True Copy Attest
Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC



- (a) Ineffective Assistance of Counsel, Unknowingly and
 (b) Prosecutorial Misconduct, etc.,
 (c) See Attachment page 1 for more!

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See Attachment page 2 through
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court? Yes

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Ineffective Assistance of Counsel.
 ii. Motion for new Counsel.
 iii. N/A
 iv. N/A

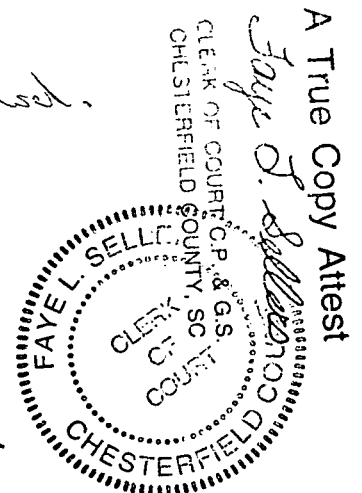
(b) the name and location of the Court in which each was filed:

- i. General Sessions Court.
 ii. Chesterfield, S.C. 29709.
 iii. N/A
 iv. N/A

(c) the disposition thereof:

- i. Counsel had to PR and defendant out of Jail on 4/11/09
 ii. _____
 iii. _____

SEP 24 AM 10:44
 FAYE L. SELLERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.



iv. N/A

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. see Attachment page 2.

ii. _____

iii. _____

iv. _____

2012 SEP 24 AM 10 44
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

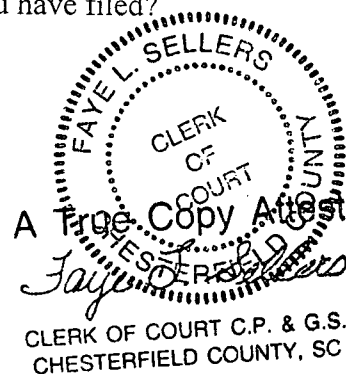
iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____



16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented: See Attachment page 1.

(a) RC denied without evidentiary hearing.

(b) government interference caused Applicant to exceed 1 year limitation.

(c) circumstance beyond the Applicant's control occurred.

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? No
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Patricia C. Rivers P.O. Box 1000 Cheraw, S.C. 29520
- ii. Eleanor Betty Cleary P.O. Box 11589 ~~Cheraw~~ Columbia, S.C. 29211-1589.
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Sentencing.
- ii. Appeal.
- iii. _____

19. State clearly the relief you seek in filing this application: Reverse and Remand of Sentence, Specific performance of original plea agreement, a Reduction in sentence to 10 years, this was informal promised.

20. Are you now under sentence from any other court that you have not challenged?

No.



2012 SEP 24 AM 10 44
 FAYE L. SELLERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.

A True Copy Attest
Faye L. Sellers
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA)

County of Chesterfield)

VERIFICATION

I, MP, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Michael Perry

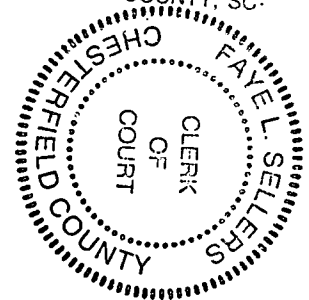
SWORN to and subscribed before me this 17th
day of September, 2012.

Perry G. Martin (L.S.)
Notary Public

My Commission Expires: Feb 28, 2018

2012 SEP 24 AM 10 44
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

A True Copy Attest
Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC



**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, MP, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Michael Perry
Applicant

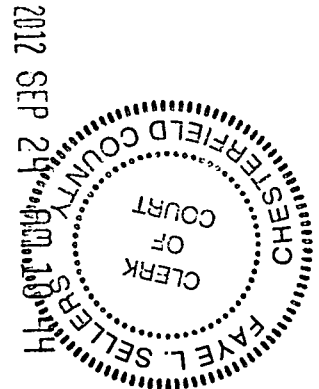
SWORN or affirmed to and subscribed before me this

17th day of September, 2012.

Penny G. Minton
Notary Public

My Commission Expires: Feb 28, 2018

FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.



A True Copy Attest

Faye L. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Answer:

1. PCA denied without a evidentiary hearing.
2. Government interference caused applicant to miss the 1 year statutory period.
3. Circumstances beyond the applicant's control occurred.

2012 SEP 24 AM 10
FAYE J. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SC

See: Charleston Law Review 2010 Author J. True Copy Attest

Faye J. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

C. Successive Applications. The court has allowed a successive PCA application where the applicant's first PCA was

denied without a evidentiary hearing and without a hearing. Finally

a successive application may be permitted where the applicant's first PCA was

to hear the claim would constitute a "gross miscarriage of justice."

where government interference, or where some other circumstances

beyond the applicant's control occurred. In *State v. State*, the

court explained that every PCA applicant is entitled to a full

adjudication on the merits of the PCA application - or "one bite

at the apple". The applicant Michael Perry has never had his one

bite at the apple. See: Key 305(2) Access to Courts hearing

and determination W.C. App. 2003. - Webb's W.C. G.S.A.

cont. App. 3 19 - Hammond v. University of North Carolina 376

S.E.2d 124.

The next pages are evidence and affidavits from witnesses

who testify that due to government interference, circumstances

beyond applicant's control he missed the 1 year statutory limitations to file

LEGAL MAIL

that he did not receive notice that
we could appeal PCL until after 30 day notice of appeal time
had elapsed.

SEP 24 AM 10 4H
DAVE J. SELLERS
CLERK OF COURT
ENFIELD COUNTY, N.H.

The Dept. call on 8/1/08 gave per man St. and Sgt. T.
W. Means my P.C. Application and P.C. Amendment to take,
and I have been asked to be noted and it had to do so because

The Plaintiff was off in the Court was in was a True Copy At
 I would not leave the Court. I am Willam
 Faye J. Sell
 CLERK OF COURT C.P. &

and amendments to make it "attached" to the
 then of the station. I did not receive my legal
 until October 22, 2008. Since my "September 6, 2008"
 my PCR had expired. It was not until your check

A circular ink stamp from Chesterfield County, Virginia. The outer ring contains the text "CHESTERFIELD COUNTY, VIRGINIA". The inner circle contains the text "CLERK OF COURT" and "FAYE L. SELLERS".

and since it was old Gray was found in his office he is a witness
and a good one. The date that due to government interference

as ~~applied~~ applicant was unable to file his POA within the
your statutory limitation period. This applicant with Chief of

It can be noted on September 29, 2009, regarding assistance in getting the
me. I can re-File. On October 5, 2009, applicant received a letter.

For the Supreme Court sitting in the fall, a writ will be filed to appeal
the ruling. When, apparently, secured, before with notice the 30 day time

int had already expired and when the State dismissed, apparently I can't

South Carolina Department of Corrections

Request To Staff Member

McCORMICK LIBRARY

Warden Bell

Michael Perry # 281249

~~Ches North - 1142~~ SMV 17

SEP 15 2008

9/12/08

I have written the Business Office on 9/8/08 and Mr. Simon responded and said they do not have copy of the forms. I was requesting that the clerk then records to see if they have a "10-14" SDC form from the last August 1, 2008 to August 15, 2008. I was in a large Brown crop folder and a stamp and sent out to the Clerk of Court. Chesterfield County my deadline for my SDC application was September 6, 2008. So I thought to know if my application is ok. I don't know if the Court have received it. But no one seems to know anything. Saying to help me. Request to see to help.

A True Copy Attest

Faye L. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2012 SEP 24 AM 10 44

Your concern has been forwarded to Mr. Matison.

10/30/08 Au Buller Simon, File

J. J. J. J.

South Carolina Department of Correction
Request To Staff Member

Date: 9/27/08

SCDC# 281249

To: Captain Thomas

Inmate's name: Michael Perry

Institution: Lee C.I.

Living Quarters: Ches 11

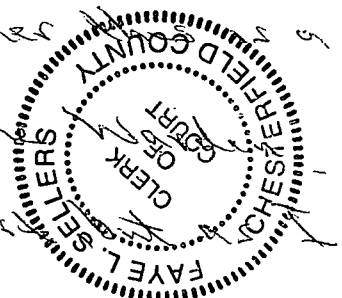
I need to place a legal call. I am on phone restriction and the mailroom says I have to have proof of pending case with the court to write them so not only can't I call them but I can't correspond either. This is an important case it's about my PER. The warden wrote me and told me to write the court. The warden stated I can't correspond through mail. My Doctor Lt. said he would see me everyday for 3 weeks now. I haven't accomplished nothing. I have no documents as to what I've stated.

Disposition By Staff Member.

A True Copy Attest

Faye L. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC



2012 SEP 24 PM 1:00
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SC

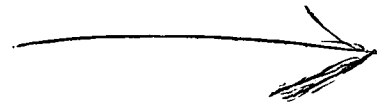
South Carolina Department of Corrections
Request To Staff Member

To Name: Williams	Chesterfield Title: Sgt.	Date: ~~10/14/08~~ 10/14/08
Donor's Name: Michael Perry	SCDC # 221249	Living Quarters: SMU Cell # 17
Institution: Lee C.I.		

Do you remember when I gave you my PCR Application to take to the mailroom so it could have been sent out? Well the clerk of court responded by mail and said they don't have my PCR on record it never made it to the Clerk of Court. My name is Perry I was in Chesterfield North Room 1142. Where is my PCR it was given to you by me in a Large Brown Clasp Envelope I have someone who witnessed this. Check your office for this legal material and send it to me. If you can't find it that is a Federal offense. Please respond

Very Urgent

Disposition By Staff Member



Look on Back!

Date:

Signature:

I South Carolina Department of Corrections official
read this request and witnessed Inmate Perry place it in
the mailbox.

Inmate signature: Michael Perry #221249

Staff Signature: AL Samuels

South Carolina Department of Corrections Request To Staff Member

Lt. To: June	Title: <u>Chesterfield Lt</u>	Date: <u>10/21/08</u>
Inmate: <u>Marci Michael Perry</u>		SCDC # <u>281249</u>
Institution: <u>Lee C-1</u>		Living Quarters: <u>SM cell 19</u>

On 8/11/08 I gave Sgt. Williams legal mail my PCR Application to be placed in the mailbox due to the door being placed on lock down. The courts responded and said they have no record of my PCR Application. That document has been found and returned to me on 10/22/08, my deadline was 9/10/08, it was not my fault it was sent out before my deadline. I was told these documents were lost or misplaced in your office. In order to file my PCR with the courts I need you to read and sign this Request stating the above is true. Please sign copy also! Thank you!

A True Copy Attest
Jaye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Staff Signature: [Signature]

Date: 11-6-08
NOV 06 2008

Inmate's Signature: [Signature] # 281249

Disposition By Staff Member

A True Copy Attest
Jaye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

FILED
CLERK OF COURT
NOV 17 11 09 21

Date:

Signature:

Dear Mr. Padula,

CORNIC LIBRARY

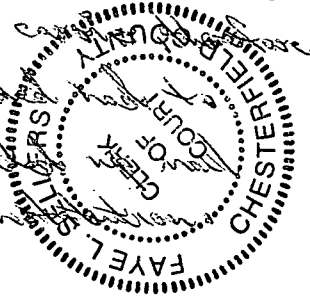
5/27/11

I wrote you on 5/11/11 requesting information that would help and assist me in refiling my PCR application. I was able to see Courtland [unclear] a [unclear] lost my PCR application before I was able to file it with the court, and because I was I missed my 1 year statutory limitations to file this application with the court. And now in order for me to file or refile my PCR application I must prove that the Chesterfield North unit was locked down and because of this lockdown inmates in that unit were not able to leave the dorm and go to the mail room or place mail in the mail corner, so therefore inmates had to give officers, or Sgt's, or [unclear] their mail to be placed in the mail or taken to the mail room at [unclear].

WARDEN

MAY 20 2011

I am requesting that you check and review your [unclear] log-book and report to this Request stating that from March — 2008 p. until August — 2008 that the Chesterfield North unit was on lock down requiring the Red Team to serve meals, showers, etc. By this locking inmates on the North wing were not allowed to leave the unit to go to the mail room or place mail in the mail corner. These inmates, above inmate Michael Perry # 233449 included [unclear] gave their mail to the officers, or Sgt's, or [unclear] who placed it to be placed in the mail or taken to mail room at [unclear].



May 21 - July 16, 2008
 July 26 - August 4, 2008

Respectfully, Warden 5/27/11

(Warden to Mr. Padula)

Please Sign Above

Michael Perry
 McCormick CD

Small Cell 36
 386 Redemptive Way
 McCormick, S.C. 29869

A True Copy Attest
 Faye L. Sellers
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, S.C.

2012 SEP 24 AM 10 45

cc

The Supreme Court of South Carolina

District of South Carolina

RECEIVED

OCT 05 2009

S.C. SUPREME COURT

Michael Tyrone Perry # 281249

Applicant Pro Se

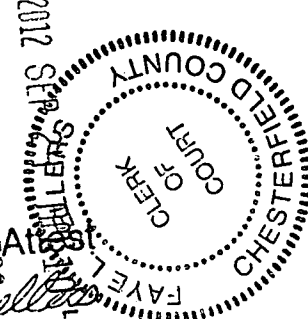
Case 2008-CP-13-0499

Vs.

State of South Carolina

PCR Application

2012 SEP 29 11:55
FAYEL L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SC



A True Copy Attest
Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

In response to the post-conviction relief application filed September 29, 2008

The Applicant would respond and show the court:



Mr. Jean H. Tool

RECORDED

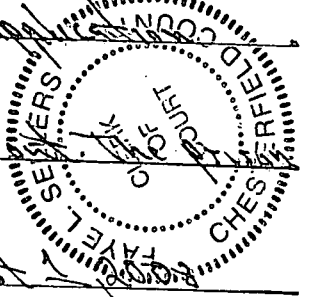
September 29, 2009

My name is Michael Tyrone Perry I am currently housed at Lee
Correctional Institution and I was informed you can assist me with
this matter. I filed a notice of Appeal on April 4, 2007 but withdrew my Appeal
dismissed order dated September 6, 2007. So I have it September 11, 2008
file a PCR while incarcerated here at Lee C.I. a serious incident happened
which caused the dorm I was housed in to be placed on total lock-down
and I or any other inmate was not allowed to go to the Mail Room, Library or Kitchen. So I had to give my PCR
to the prison officials to take to the Mail Room to be sent
official Sgt. Williams lost and or misplaced my PCR on August 1, 2008
I then was placed in the Administrative Segregation Unit at Lee C.I. and on
October 22, 2008 after my deadline the prison officials doing mail gave
me my PCR. I checked my documents and noticed that Amendments that
I had drawn up one needed to be noticed that was done November 26,
2008 I sent all documents out November 27, 2008 but my Amendments

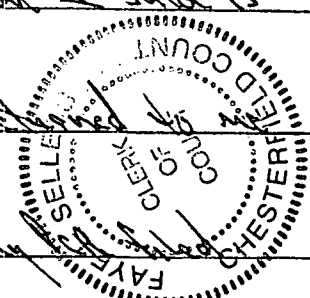
2012 SEP 24 PM 10 45
FEL SEERS
CLERK OF COURT
CHESTERFIELD COUNTY

A True Copy Attest

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC



came back. The PRA was sent and filed December 17, 2008 I had sent it
 out a month before my deadline but the prison officials lost or misplaced it
 and what enclosed are all documents and the clerk has a copy of the debt
 form that the Institution uses when sending mail out if you are indigent.
 I am request your help that my PRA gets Refiled. I also wrote the
 prison officials who lost my mail he never responded so I wrote his
 superior and explained the situation and he states all that I said is
 true because the PRA was found in his office then returned to me
 on 9/29/09. Again please assist me I really would like my PRA

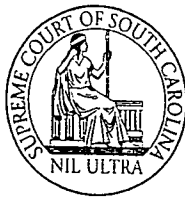


Michael Perry #281249

Signed This 29 Day of September 2009.

Lee Correctional Institution
 SMU Cell 17
 990 Wisacky Hwy
 Bishopville, S.C. 29010-1775

FAYE L. SELLERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, SC
 2009 SEP 24 AM 10:12
 A True Copy Attest
 Faye L. Sellers
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

October 5, 2009

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

Mr. Michael Tyrone Perry, #281249
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010-1775

RE: Perry v. State, 2008-CP-13-0499

Dear Mr. Perry:

This responds to your recent correspondence to Chief Justice Toal. Please be advised that the Chief Justice cannot assist you with this matter.

If you were aggrieved by the final order in this matter, your remedy was to timely serve and file a notice of appeal as provided by Rule 243 (formerly Rule 227) and Rule 203, SCACR. Please note that the time to serve the notice of appeal on opposing counsel is relatively short and this period cannot be extended. Rule 263 (formerly Rule 234), SCACR.

Sincerely,

Daniel E. Shearouse

cc: Office of the Attorney General

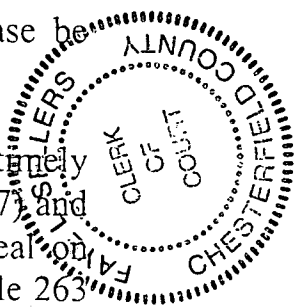
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

SEP 24 AM 10 45

A True Copy Attest

Faye L. Sellers

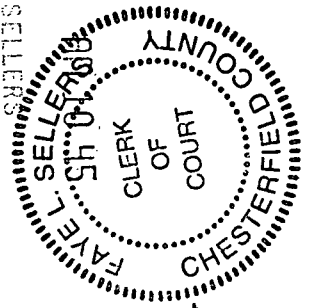
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC



Michael Perry #281249

McCormick C.F.

2012 SEP 24
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.



A True Copy Attest
Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Faye L. Sellers

Clerk of Court

Chesterfield County

P.O. Box 529

Chesterfield, S.C. 29709

RE: Filing of PCR Application.

Enclosed, please, find Applicant's PCR Application
completely filled out for your filing. Your quickest attention
on this matter is appreciated. Also include is "Applicant's PCR Brief".

Respectfully submitted,

Michael Perry

Michael Perry #281249

McCormick C.F.

State of South Carolina
County of Chesterfield

For The Court of Common Pleas
Fourth Judicial Circuit

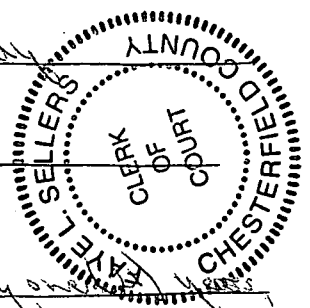
Michael T. Perry
Applicant

C/A: 06 G.S. - 13 - 0442

State of South Carolina
Recorded

Applicant

Personally appeared before me Michael Perry, who duly
affirmed, and states as follows:



My name is Michael Perry. I am over the age of twenty-one
years, and I am the applicant in the above captioned matter. I am presently incarcerated in
the South Carolina Department of Corrections at the McCormick
Correctional Institution, 386 Redemption Way, McCormick, S.C.
29899, and a citizen of this state.

A True Copy Attest

Faye L. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

I am the applicant who makes the above and make this affidavit
in support of my application for (P.C.) relief.

2012 SEP 24 AM 10 45
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

That I pled guilty in fear of receiving the thirty (30) year maximum sentence.

That I pled guilty based on counsel's advice and counsel's and prosecutors promise of a 10 year sentence.

That I would not have pled guilty had I known counsel was not effective for failing to object when prosecutors withdrew the original plea.

That I would not have pled guilty had I known the prosecution would ~~range~~ range on the 10 to 20 plea a promise of a 10 year sentence.

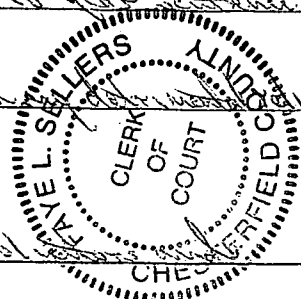
That I could have entered that promise and plea based on the fact that I would not have pled guilty had I known the prosecution would range on the 10 to 20 plea and offer a 10 to 20 plea which requires by law after breaching 9 to 20 plea they should have recommended sentence within 1 month and if the Sentencing Guidelines which was the 10 year sentence.

That I would not have pled guilty had I known the Prosecution would breach the 10 to 20 plea by recommending the maximum 20 year sentence when I had believed the terms of that plea agreement was that no specific sentence recommendation would be made by the state.

That I would not have pled guilty had I known counsel would not have been a lawyer called in to assist by once ~~and~~ refusing to P.R. Bond.

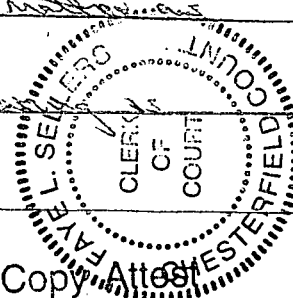
Scrubbed and turned by ~~an~~ abandoned and acting as the advocate during sentencing.

2012 SEP 24 AM 10 46
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SC
A True Copy Attest
Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC



That I would not have pled guilty had I known a mandatory term
of Community Supervision Program was required after service of sentence.
in any potential revocation proceedings I would be required to
forfeit my Constitutional Rights to counsel, trial by jury and indictment by grand jury.
That I faced a potential doubling of my sentence through the possibility
of imposition of successive one year revocations prison terms.

That I am competent to testify to the facts in this matter as
stated in this affidavit and application when P.C. hearing
held.



A True Copy Attest
Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

September 2012

Michael Perry

Michael Perry #2812449

FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2012 SEP 24 AM 10 46

I

Pg. 1 of 3

Unknowing and Involuntary Plea

The due process clause of the United States Constitution requires that a guilty plea must be entered voluntarily and knowingly.

Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In order for a defendant to knowingly and voluntarily pled guilty, he must have full understanding of the consequences of his plea.

State v. Hazel, 275 S.C. 392, 271 SE 602 (1980);

Dover v. State, 304 S.C. 433, 405 SE 2d 391 (1991).

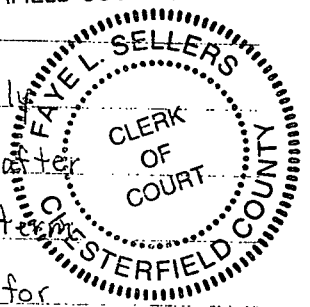
A True Copy Attest

Jaye J. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

In this case, Applicant contends that his guilty plea was involuntarily and unknowingly entered, because counsel failed to advise him that after completion of sentence he was also required to serve a mandatory term of Community Supervision and that in all revocation proceedings for Community Supervision violation offenses, applicant would not be afforded the right to trial by jury, appointment of counsel, or indictment, even though he faced a potential violation sentence of up to one year.

Additionally, that repeat Community Supervision violations could result in successive one year violation sentences being imposed and which could actually double the sentence originally imposed.



FILED
CLERK OF COURT
2009 JAN 19 AM 10:04

A True Copy Attest

Jaye J. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Under the provisions of S.C. Code Ann. § 24-21-560 (D) (Supp 2003), States Community Supervision Program (CSP). Participation is a mandatory condition of release after completion of sentence. Section 24-21-560 further provides in pertinent part:

(C). If the department determines that a prisoner has violated a term of the community supervision program and the community supervision should be revoked, a probation agent must initiate a proceeding in General Session Court.

If the Court determines that a prisoner has willfully violated a term or condition of the Community Supervision program, the court may impose any other terms or conditions considered appropriate and may continue the prisoner on community supervision, or the court may revoke the prisoner's community supervision and impose a sentence of up to one year for violation of the community supervision program...

(D). If prisoner's community supervision is revoked by the court and the court imposes a period of incarceration for revocation, the prisoner must also complete a community supervision program of up to two years as determined by the department pursuant to subsection (B) when he is released from incarceration.

Accordingly, a prisoner who is sentenced to successive revocations of community supervision program may be required to serve terms of incarceration for successive revocations as provided in sections 24-21-560 (c) and may be required to serve additional periods of community supervision for successive revocations, as provided in section 24-21-560 (D).

The maximum aggregate amount of time the prisoner may be required to serve when sentenced for successive revocations may not exceed an amount of time equal to the length of incarceration imposed for the original "No parole offense." See e.g. State v. Mills, 360 S.C. 621, 602 S.E.2d 750 (S.C. 2004). ("The court determined that CSP violations could result in successive ~~and~~ violation sentences which could operate to double the original sentence imposed for convictions.")

Furthermore, the determination of whether to impose a CSP violation sentence of up to one year would be made by the court through revocation proceedings during which the defendant would not be afforded an indictment, trial by jury, or counsel. See Section 24-21-560, and Mills at 752. (Pleicones J. dissenting.)

In this case, Applicant contends that his guilty plea was entered into involuntarily and unknowingly because he was not advised that his sentence would include a mandatory term of CSP which in operation acted to automatically Forfeit his Constitutional and statutory rights in all future revocation proceedings.

FILED
CLERK OF COURT
2009 MAR 19 AM 10 05

Pg. 1 of 2

State of South Carolina
County of Chesterfield

In The Court of Common Pleas
Fourth Judicial Circuit

Michael Tyrone Perry,
Applicant,

- VS -

The State of South Carolina,
Respondent.

Notice of Motion and Motion
To Argue Against Precedent

Case No. 06GS-13-0442

To: The Court and Respondent

A True Copy Attest
John J. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

You will Please Take Notice, that applicant Michael
Tyrone Perry, Pro Se, will so move before this court for
an order to permit argument contrary to the holding in
Jackson v. State, 349 S.C. 62, 562 SE 2d 475 (2002).

This motion is based on good cause as shown below and
will be heard at a date and time specified by the court.
Applicant, Michael Tyrone Perry, Pro Se, hereby submits
that on Post Conviction Relief (hereinafter "PCR") his
application presents legal questions of law concerning
State's Community Supervision Program, (hereinafter "CSP"),
neither argued nor explicitly discussed in the Jackson holding.

Specifically, applicant's "PCR" application argues that counsel was ineffective for failing to advise, prior to guilty plea, that any sentence imposed by the court must include a mandatory term of Community Supervision Program, (hereinafter "CSP"), which contained statutory provisions whereby a new and additional one year prison sentence would be imposed by the court without applicant having the benefit of a notice, indictment, appointment of counsel, or trial by Jury. That successive prison sentence could be imposed for successive violation offenses, which could act to double the sentence originally imposed and beyond the maximum advised by the plea court.

Conclusion

This motion is supported with the attached PCR applications, Exhibits and memorandum in support. Therefore, Applicant Michael Tyrone Perry, for good cause shown, hereby moves this court to schedule an evidentiary hearing at the soonest available date, for taking of additional evidence and testimony in support of the claims herein alleged.

Dated: 6/4/08

I so Move,
/By/ Michael Perry

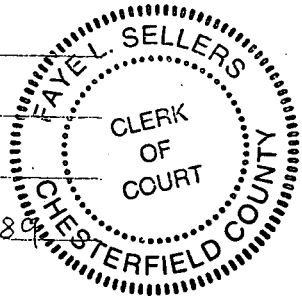
Michael Tyrone Perry #281249
Pro Se Applicant

FILED Trial by Jury

CLERK OF COURT

pg. 1 of 2

Under the Sixth Amendment, criminal defendants have a right to trial by impartial jury in state criminal prosecutions. Duncan v. La, 391 U.S. 145, 149 (1968). The right to trial by jury exists only in prosecutions for serious crimes. Blanton v. N. Las Vegas, 489 U.S. 538, 542 (1989). See also Duncan 391 U.S. 159-61. In whether a crime is "serious" for Sixth Amendment purposes the court will look at the severity of the maximum authorized penalty see Lewis v. U.S., 518 U.S. 322, 325-26 (1996). U.S. v. Linney, 134 F 3d 274, 280 (4th Cir 1998).



The United States Supreme Court has held that any crime punishable by a prison sentence greater than six months triggers the right to trial by jury regardless of the sentence ultimately imposed. See Blanton, 489 U.S. 536, also see Frank v. U.S., 395 U.S. 147, 149-50 (1969); Baldwin v. New York, 399 U.S. 66, 69 (1970). ("No offense can be deemed 'Petty' for purposes of the right to trial by jury where imprisonment of more than six months is authorized.") Duncan 391 U.S. 161-62 (right to trial by jury where defendant sentenced to 60 days in Jail). Clearly, U.S. Constitutional law provides that any time a defendant is exposed to the possibility of a prison sentence in excess of six months the right to trial by jury attaches.

A True Copy Attest
Jaye J. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

South Carolina, cannot lawfully circumvent applicant's Sixth Amendment right to jury trial by process of labeling a CSP term of incarceration a violation offense. The fact is that any CSP violation sentence would be in addition to and outside the original sentence imposed for guilty plea. A CSP violation term of incarceration is still a prison sentence, no matter what its called.

A True Copy Attest
Jaye J. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Therefore, either the court or defense counsel was required to advise applicant before entry of guilty plea, that any sentence imposed for convictions would include a mandatory term of CSP which included provisions forfeiting his right to jury trial in all potential revocations proceedings where he faced the possibility of being sentenced to a new one year term of incarceration.

The waiver of a constitutional or statutory right [Jury Trial], cannot be implied or forced, and requires a showing on the record that a defendant made a knowing and intelligent waiver. See *State v. Luther*, 269 S.C. 495, 374 SE 2d 291 (1988). (Citing *Patton v. U.S.*, 281 U.S. 276, 50 S.Ct. 253, 74 L. Ed. 854 (1930), as the landmark case).

Here the record is devoid of any advise counsel or the court offered to applicant concerning state's "CSP" or its mandatory provisions which in operation would act to deprive him of the right to trial by jury in any and all potential revocation proceedings.

Court's failure to inform defendant of additional supervised release term was reversible error because defendant faced total penalty in excess of advised maximum penalty. See, *U.S. v. Thorne*, 153 F.3d 130, 133/4th cir. 1998; See *U.S. v. Sygal*, 963 F.2d 900, 905-07 (6th cir. 1992); *U.S. v. Saenz*, 969 F.2d 294 (7th cir. 1992); *United States v. Bonds*, 943 F.2d 541, 545 (5th cir. 1991); *United States v. Garcia - Garcia*, 939 F.2d 230, 233 (5th cir. 1991).

FILED
CLERK OF COURT

2009-MAR 19

AM 10:05

Right To Counsel)

pg. 1 of 2

The Sixth Amendment provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense. U.S. Const. Amend. VI. In Gideon v. Wainwright, 372 U.S. 335, 342 (1963) the court recognized the "Sixth Amendment's guarantee of counsel." As "Fundamental and essential to a fair trial." Id. at 342, 83 S. Ct. at 796. The United States system of justice suggest that any amount of actual jail time or prison time has Sixth Amendment significance. See e.g. Argersinger v. Hamlin, 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed 2d 530 (1972) (holding that assistance of counsel must be provided when a defendant is tried for a crime that results in a sentence of imprisonment). Both the plain wording of the amendment and the reading of Gideon would support the guarantee of counsel in "All" criminal prosecutions, petty or serious, whatever their consequences. See Scott v. Illinois, 440 U.S. at 376, 379, 99 S. Ct. at 1163 (Brennan J. dissenting) Although the court has never read the guarantee of counsel that broadly, one principle has been clear No imprisonment may be imposed on the basis for an uncounseled conviction. Thus in Argersinger the court rejected a formalistic distinction between petty and non-petty offenses and applied Gideon to "Any criminal trial, where an accused is deprived of his liberty." Id. at 32, 92 S. Ct. at 2010; Id. at 41, 42, 92 S. Ct. at 2014, 2015 (Burger C.J. concurring in result) (because "Any deprivation of liberty is a serious matter," no individual "Can be imprisoned unless he is represented by counsel.")

A True Copy Attest

Joyce J. Sullivan

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

In this case, State's CSP statute contains provisions that operate to deprive Applicant of both his right to trial by jury and the accompanying right to appointment of counsel. Specifically, CSP provides that the court may impose a new sentence of up to one year for violation offenses without Applicant being provided with trial by jury or counsel. The loss of the right to counsel in proceeding where the court may impose a new one year violation sentence is a serious matter, involving the loss of Constitutional Rights and which must be explained to applicant before entry of guilty plea.

The loss or waiver of the Constitutional right to counsel must be entered into knowingly and intelligently, See e.g. U.S. v. Singleton, 107 F.3d 1091, 1095 (4th Cir. 1997). (Citing Brady v. United States, 397 U.S. 742, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970); and Johnson v. Zerbst, 304 U.S. 458, 58 S. Ct. 1019 1024-25, 82 L. Ed. 1461 (1938). The waiver cannot be implied because representation by counsel is indispensable to fair administration of criminal Justice. See Brewer v. Williams, 430 U.S. 387, 404 (1977). (Powell J. concurring) (expressing disapproval of implied waiver of a Constitutional Right).

Therefore, either the plea court or defense counsel was required to advise applicant before entry of his guilty plea, that state's CSP required a mandatory waiver of his constitutional right to counsel in all future revocation proceedings. That did not happen in this case.

FILED (Right To Indictment)

CLERK OF COURT 363 S.C. 93, 610 SE 2d 494 (2005), our Supreme Court held that an indictment is a "Notice document" required by State

Constitution and Statutes. See S.C. Const. Art. I § 11 and Art. V. § 22 [Footnote omitted]. S.C. Code § 17-19-10 (2003) ("No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by grand jury..." (except in specified exceptions, not applicable here)).

Futhermore, a criminal defendant has the right to make contemporaneous objection to a defective indictment. See S.C. Code Ann § 17-19-90.

As shown above, States CSP operates to deprive applicant of his right to an indictment, See Mills on any potential violation offense which a sentence of up to one year may be imposed. Applicant's right to indictment protected by both the S.C. Constitution and U.S. Constitution, See Gentry. Thus, either the court or defense attorney was required to advise applicant that his guilty plea would operate as a waiver of his right to indictment. Again, the waiver of a Constitutional or statutory right must be entered into knowingly and intelligently See State v. Auther and cannot be implied by a silent record.

Therefore, based on the fact that neither the trial court or counsel advised applicant that his guilty plea would result in a loss of the right to indictment, this court should find the plea unknowing and involuntary See e.g. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969).

A True Copy Attest

Jaye J. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

(Maximum Sentence)

pg. Lot 4

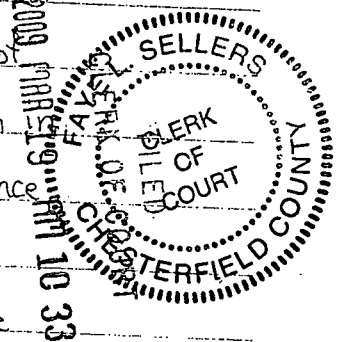
Constitutional due process requires that before accepting a guilty plea the court must determine defendant understands the statutory-defined maximum penalty which may be imposed for conviction of the crime[s] charged. See State v. Hazel, 275 S.C. 392, 271 SE 2d 602 (1980); U.S. v. Goins, 51 F.3d 400, 403-05 (4th Cir. 1995).

In this case, the court advised the applicant that he was charged with a violation of section 16-3-655(A)(1), Criminal Sexual Conduct w/ minor 1st degree and that the maximum penalty which could be imposed for conviction was a (30) thirty year sentence without the possibility for parole. However, neither the court or defense counsel advised applicant that a mandatory term of community supervision was required to be served after completion of sentence, and that state's CSP contained mandatory provisions which operation could result in a doubling of the original conviction sentence see section 24-21-560 and Mills.

Although not absolutely inevitable, Applicant is still exposed to the possibility that his sentence could be doubled through imposition of successive one year violation sentence up to the length of the original 20-year term.

At sentencing the plea court imposed a (20) twenty year term of incarceration for conviction of Criminal Sexual Conduct 1st degree.

Therefore, in this case applicant's actual sentence exposure with state's mandatory "CSP" incorporated into the term is (40) Forty years and well in excess of the maximum of 30-years advised by the plea court.



A True Copy Attest
Jaye D. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

A True Copy Attest
Jaye D. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

A court's failure to inform a criminal defendant that his sentence would include a term of supervised release and its failure to inform a criminal defendant that his sentence would include a term of supervised release and its failure to further explain the significance of supervised release has been found to be in error.

See U.S. v. Thorne, 153 F.3d 130, 133 (4th Cir. 1998) (Court's failure to inform defendant of additional supervised release term was reversible error

because defendant faced total penalty in excess of advised maximum penalty;

U.S. v. Syal, 963 F.2d 900, 905-07 (6th Cir. 1992) (Court's failure to notify defendant of supervised release term constituted reversible error

because defendant faced possible restraint on liberty in excess of

advised maximum penalty.) U.S. v. Osment, 13 F.3d 1240, 1243 (8th Cir. 1994)

(Same) U.S. v. Gigot, 147 F.3d 1193 (10th Cir. 1998) (Same).

According and before accepting applicant's guilty plea either the court or defense counsel was required to advise that "C.S.P" contained provisions which could operate to double any sentence imposed by the court. Moreover, and in this case the 20-year sentence originally imposed ^{with} the ~~20~~ ^{additional} 20-years of possible restraint on liberty is well in excess of the 30-years advised by the plea court. Constitutional due process requires applicant to be advised of the maximum penalty which may be imposed for conviction of the crime[s] charged see State v. Hazel and U.S. v. Goins. That did not happen in this case and the applicant stands sentenced to possible restraint on liberty well in excess of the statutory-defined maximum penalty and what was advised by the trial court and defense counsel.

In establishing the first part of the Strickland and Hill test, for determining claims of ineffective assistance of counsel, applicant has shown that Patricia C. Rivers, was deficient in failing to advise him of state's mandatory "CSP," and its required forfeiture at revocation proceedings of the right to jury trial, the right to appointment of counsel, and the right to indictment. Thus, the first part of the Strickland and Hill test has been met.

In support of Strickland and Hill prejudice requirement, applicant submits affidavit (Exhibit 1 Affidavit) and will offer testimony at (PCR) hearing establishing that ^{had} Patricia C. Rivers, advised him of state's mandatory "CSP" and its required forfeiture of Constitutional and statutory rights he would not have pled guilty. Thus the second part of the Strickland and Hill test has been met.

See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L. Ed. 2d 674 (1984); Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L. Ed. 2d 203 (1985); Wolf v. State, 326 S.C. 158, 485 SE 2d 367 (1997); Rosco v. State, 345 S.C. 16, 546 SE 2d 417 (2001).

Futhermore, the U.S. Supreme Court has held in Tollett v. Henderson, 416 U.S. 258, 267, 93 S. Ct. 1602, 366 L Ed 2d 235 (1973). Defense Counsel who is unprepared to try a case is also inadequately prepared to advise his client intelligently to plead guilty, therefore it can't hold up as being intelligently or voluntarily made.

A defendant who pleads guilty on the advise of counsel may collaterally attack the plea only by showing that counsel's performance was deficient and that, but for counsel's errors there was a resonable probability a guilty plea would not have been entered. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L Ed 2d 674 (1985); Wolf v. State, 326 S.C. 158, 485 SE 2d 367 (1997); Satterwhite v. State, 325 S.C. 254, 481 SE 2d 709 (1997).

State of South Carolina
County of Chesterfield

Michael Perry
Applicant

State of South Carolina
Respondent

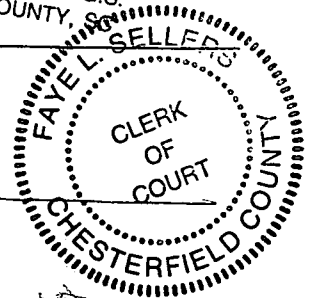
In The Court of Common Pleas
County of Chesterfield

2012 SEP 24 AM 10 46
FAYEL L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

Case No. 06-GS-13-0442

A True Copy Attest
Faye L. Sellers

Applicant's Attorney
Brief



Statement of the Case.

Applicant was arrested on January 20, 2006 for CSC 1st degree.
On April 3, 2006 the Grand Jury convened and indicted him.
Applicant was appointed Patricia C. Rivers of Charari to represent him.
The State was represented by JR Janner, Rob McKenzie and
Suzanne Mayes. On January 4, 2007 a hearing was held for the
first time applicant was alleging Patricia Rivers to be ineffective
before the Honorable Judge John M. Mullings in Chesterfield General
Sessions Courtroom. Judge Mullings stated on record that because
applicant had been in the detention center for 438 days that if nothing
was done about his case or if he had not been tried by "April 1, 2007"
his counsel Patricia Rivers had to PR bond applicant out on bond. That

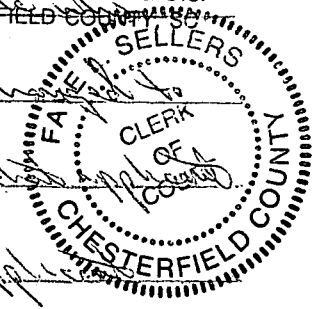
to be held date was set for the month of April by the Solicitor General.
On April 14, 2007 applicant was brought to the Grand Sessions Court
believing he would be PR bonded only to their understanding it was
applicant's plea hearing date of sentencing hearing. Applicant ple
gives counsel advice and promise that if he accepted
the offer he would only receive a 10 year sentence and that
was in agreement with the offer but at the last minute def
reused the offer that was set and defendant would probably get
the maximum 30 year sentence if found guilty by the jury. Applicant
signed that at 20 plea with a promise of a 10 year sentence
left the conference room and returned with his father and
was the prosecutor, and they both stated the plea had been changed
to a 20 year cap instead of a 10 year cap but still promised that
would only receive a 10 year sentence if he accepted the offer. Appl
on the advice of counsel and promise from both counsel and
prosecution was advised into signing that 10 to 20 plea also. Both
counsel's left off and again returned a few minutes later and told
applicant the plea had now changed to a 15th sentence that there
had been a mistake in the plea process, applicant refused to sign that
plea offer of a 15th sentence. Applicant was then brought before
the Honorable Judge Paul M. Murch for sentencing. At sentencing
the prosecution breached the plea agreement three times during

2012 SEP 24 AM 10 47
PAGEL L. ALLEN
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

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CHESTERFIELD COUNTY, S.C.



sentencing and counsel did not object once it was made
plea. The prosecution recommended, the maximum
20 year sentence when under the terms ~~of the~~
plea agreement was that no specific sentence recommendation
would be recommended, and (b) the prosecution stated that there
was a 10 year ~~minimum~~ requirement by statute
to go to ~~the~~ or when the judge due to incorrectly
the sentencing guidelines and breaking the 10 to 20 plea agreement
changing plea to 10 to 20 years that ~~the~~
prosecution recommended the lowest of the sentencing guidelines
which ~~is~~ the 10 year minimum sentence, and (c) by again ~~the~~
~~recommending~~ the 20 year maximum with a cap. Counsel
abandoned the defendant attacking him being the advocate
the role of the prosecution showing hostility toward defendant
abandonment of the duty of loyalty as a court in Kentucky. The
sentencing judge stated on record that the defendant deserved some
mitigation in his favor but that promise was not fulfilled
because the judge intended apply that to the maximum plea of
of 20 year sentence with a cap. The defendant never received the
benefit of the plea bargain nor the promise of mitigation (Veiny).
Counsel never filed a Motion For Reconsideration of Sentence
as the defendant never received those benefits and promises.

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Jaye L. Sellers
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CHESTERFIELD COUNTY, MO



2012 SEP 24 / 11:10 AM
JAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, MO

Therefore, applicant represented by counsel did not enter
his guilty plea freely and voluntarily and has shown that his
plea cannot constitute errors amounting to deficient performance
and causing prejudice to applicant in the context of the plea
process and sentencing. See: Scott v. State, 334 S.C. 248, 513

S.E.2d 601 (1999). See: U.S. v. Carr, 80 F.3d 413/10th Cir. 1996. See: U.S.
v. Sanders 80 F.3d 1145/7th Cir. 1996. * U.S. v. Punch 709 F.2d 888/8th Cir. 1983.

Prosecutorial misconduct is basic for reversing conviction only
if, in context of entire trial and in light of any evidence
submitted, misconduct may have prejudiced substantial rights

of accused. U.S. v. Reed, 887 F.2d 1398/11th Cir. 1999. at 1398. True Copy Attest
J. T. Sellers

U.S. v. Odom, 858 F.2d 664/11th Cir. 1988. United States v. Collins, 719 F.2d 1001/11th
Cir. 1986. See: Corrales v. United States, 479 F.2d 844/11th Cir. 1973.

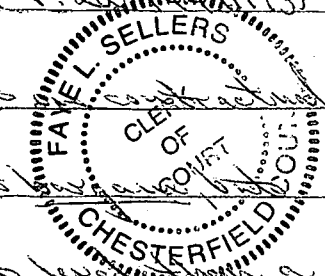
Criminal law keys (1), (2), (3), (4), (5), (6). Plea bargains rest
principles and each party should receive benefits of the
plea agreement must be analyzed at more stringent level than a

commercial contract since rights involved are generally fundamental
and constitutionally based. U.S. v. Ringling, 988 F.2d 504/11th Cir. 1993.

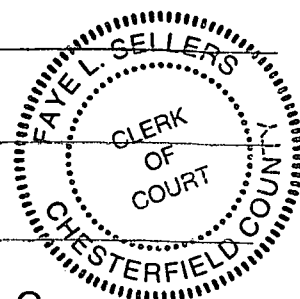
Cooper v. United States, 594 F.2d 121/11th Cir. 1979. Reed v. Becka, 511 S.E.2d
396/S.C. App. 1999. U.S. v. Savage, 978 F.2d 1136/9th Cir. 1992. Applicant

has a due process right to be sentenced on the basis of accurate

2012 SEP 24 PM 10 47
KYLE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SC



v. Coonce, 961 F.2d 1268, 1275 (7th Cir. 1992); U.S. v. Siegel, 102 F.3d
477 (11th Cir. 1996); U.S. v. Stephenson, 887 F.2d 57 (5th Cir. 1989)
Ignorance, incomprehension, coercion, threats, inducements,
~~subtle or blatant~~ threats might be a perfect cover-up of
unconstitutionality. Boykin v. Alabama, 89 S.Ct. 1709 (1969); Key
273 (1962) - Bordentricher v. Hayes, 98 S.Ct. 663, 434 U.S. 357, 54
L.Ed.2d 604, rehearing denied 98 S.Ct. 1477, 435 U.S. 918, 55 L.Ed.2d 511.



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Faye L. Sellers

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CHESTERFIELD COUNTY, SC

2012 SEP 24 AM 10 47
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

Michael Perry, 281249

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-13-0577

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Michael Perry, 281249, Bar No.

Address:

MCI 386 Redemption Way McCormick SC 29899

phone: fax:

e-mail: other:

Defendant's Attorney:

Tyson Andrew Johnson, Sr., Bar No. 16230

Address:

Post Office Box 11549 Columbia SC 29211-1549

phone: (803) 734-3737 fax: (803) 734-4113

e-mail: other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

November 21, 2012

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed:

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

1. "Ineffective Assistance of Counsel"
2. "Involuntary Guilty Plea, Prosecutorial Misconduct, Etc."

DISCUSSION

This Court finds that the Application should be dismissed with prejudice as it was filed beyond the statute of limitations, is successive, and is barred by laches.

Statute of Limitations

Applicant has failed to comply with the filing procedures of the Act. S.C. Code Ann § 17-27-10 to -160 (1976 & Supp. 1997). The Act reads as follows:

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.

S.C. Code Ann. § 17-27-45(a) (Supp. 1998).

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). Applicant's conviction was April 4, 2007. This Application was filed September 24, 2012, which was well beyond the time the statutory filing period expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the PCR 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." Therefore, the Court finds that it should summarily dismiss the

Application for PCR for failure to file within the time mandated by statute.

Successive

This Court finds the Application must be summarily dismissed because it is successive to the Applicant's prior PCR Applications. The Uniform Post Conviction Procedure Act (the Act) provides that:

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 the 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.

S.C. code Ann. § 17-27-90 (1985). Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised in the previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991).

The current allegations were or could have been raised in the proceedings based on Applicant's prior applications for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. The Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; accordingly, this Court finds the Application should be summarily dismissed as successive.

CONCLUSION

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons,

factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court, and serving such reasons with the SC Office of the Attorney General: Attn. Assistant Attorney General Tyson A. Johnson, Sr., Post Office Box 11549, Columbia, SC 29211.

AND IT IS SO ORDERED this

_____ day of _____, 2012.

Honorable Paul M. Burch
Chief Administrative Judge
4th Circuit

_____, South Carolina.

Michael Perry #281249

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Clerk of Court

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Columbia, S.C. 29211

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