James Carl Miller #167675 SCDC,

Case No. 2012-CP-23-7604

RECEIVED
SEP 16 2013
SC OFFICE OF
APPELLATE DEFENSE

I would Like to Appeal my P.C.R. Dismissal on 8-6-2013 Sorry about the time of Appea I was Sent to Another prison Here At Lee C.I. please hear my Appeal. Case No. 2012-CP-23-7604 County of Greenville, proof of Service Attorney General Office.

James C. Miller
167675 SCDC #
9-9-2013

James Carl Miller
SCDC #167675 Ker. South 1163
Lee Correctional Inst.
990 Wisacky Hwy.
Bishopville, S.C. 29010

RECEIVED
SEP 25 2013
S.C. SUPREME COURT

RECEIVED
OCT 17 2013
S.C. Supreme Court

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE James Carl Miller, S.C.D.C. No. 167675, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS 2012-CP-23-7604 **FINAL ORDER OF DISMISSAL**

2013 AUG -7 PM 4:16
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL E. WILLEMSON

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 5, 2012. The Respondent made its return on April 30, 2013, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

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 May 7, 2013 and filed May 14, 2013, 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 June 11, 2013, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Applicant's Objection to the Respondent's Motion to Dismiss and Conditional Order of Dismissal" and filed May 21, 2013, the Applicant argues "his federal constitutional rights were violated by state appointed Post Conviction Relief ('PCR') counsel

during a critical stage of the proceedings." The Applicant argues "there was no hearing of any kind on the issue of mental competence at the time of the commission of the act." The Applicant argues trial counsel was ineffective because he conceded guilt in his closing argument. The Applicant argues the trial judge erred in instructing the jury that it could infer malice from the use of a deadly weapon.[1]

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal 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.

This Court notes the Applicant was convicted and sentenced on May 1, 1990 and the South Carolina Supreme Court affirmed his convictions and sentences on June 24, 1991. As this action was filed on December 5, 2012, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant's fourth application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on June 17, 1992. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) ("[A]n applicant is entitled to a full adjudication on the merits of the original petition, or 'one bite at the apple.'").

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

[1] The Applicant reasserted these arguments in a document captioned "Applicant's Objection to the Respondent's Return and Motion to Dismiss" and dated June 13, 2013.

prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

AND IT IS SO ORDERED this 6 day of AUG., 2013.

D. Garrison Hill
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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

TO: James Carl Miller SCDC# 167675

DATE: 9-16-13

We are in receipt of your notice of appeal. It will be necessary for you to provide this office with the following required documents within ten (10) days of the date of this notice. Failure to provide the requested documents may result in dismissal of this matter.

X proof of service showing notice of appeal was served on opposing counsel, (Attorney General's Office)

X a copy of the final order of dismissal

X a copy of the conditional order of dismissal (if one was issued)

_____ a copy of the conditional order of dismissal dated _____.

Please return this sheet with the requested documents. Thank you!

RECEIVED
SEP 25 2013
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE James C. Miller, #167675 Applicant, vs. State of South Carolina, Respondent.	)	IN THE COURT OF COMMON PLEAS C/A NO.: 2012-CP-23-07604 PROOF OF SERVICE

I, James C. Miller, certify that I have served the within Applicant's Objection to the Respondent's Motion to Dismiss and Conditional Order of Dismissal, dated May ____, 2013, on Respondent by depositing a copy of the same in the United States mail, postage prepaid. Also, a copy of same to the Attorney General's Office, addressed as follows:

Hon. D. Garrison Hill
Chief Admin. Judge
Greenville, S.C. 29601

Paul B. Wickensimer
Clerk of Court
205 E. North St., Rm 224
Greenville, S.C. 29601

Karen C. Ratigan
S.C. Attorney General
P.O. Box 11549
Columbia, S.C. 29211-1549

I, James C. Miller certify and verify under the penalty of perjury that the foregoing is true and correct.

James Miller
James C. Miller, #167675
Perry Correctional
Institution Q-2 A-11
430 Oaklawn Road
Pelzer, S.C. 29669

This 15, Day of May 2013,
in Pelzer, South Carolina.

RECEIVED
MAY 15 2013
P.C.I. MAILROOM

ALAN WILSON
ATTORNEY GENERAL

August 1, 2013

The Honorable D. Garrison Hill
Administrative Judge, 13th Judicial Circuit
305 East North Street; Suite 213
Greenville SC 29601

Re: **James G. Blakely, 255623 a/k/a Jimmy Gatewood Blakely v. State of South Carolina**
2012-CP-23-6893

Scottie Lee Butler, 349838 v. State of South Carolina
2012-CP-23-7607

Antwone Chapman v. State of South Carolina
2012-CP-23-5180

Gerrell Antonio McClintock, 293917 v. State of South Carolina
2013-CP-23-0056

James Carl Miller, 167675 v. State of South Carolina
2012-CP-23-7604

Eric Todd Burgess, 349367 v. State of South Carolina
2012-CP-39-1677

Dear Judge Hill:

Enclosed please find the proposed original **Final Order of Dismissal** in the above-captioned cases. If these Orders meet with your approval, please sign same and forward to the appropriate County Clerk of Court, to be filed and served.

Sincerely,

Karen C. Ratigan
Assistant Deputy Attorney General

KCR/jacc
Enclosure(s)

cc: James G. Blakely, 255623
Scottie Lee Butler, 349838
Antwone Chapman
Gerrell Antonio McClintock, 293917
James Carl Miller, 167675
Eric Todd Burgess, 349367

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

James Carl Miller, 167675
☐ Plaintiff

v.

State Of South Carolina
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-23-7604

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
James Carl Miller, 167675, Bar No.	Karen C. Ratigan, Bar No. 68331
Address:	Address:
Perry CI 430 Oaklawn Road Pelzer SC 29669	Post Office Box 11549 Columbia SC 29211-1549
phone: fax:	phone: (803) 734-3737 fax: (803) 734-4113
e-mail: other:	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.

Karen C. Ratigan — August 1, 2013

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — 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

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2307604

2013 AUG -7 PM 4: 16
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL WICKENSIMER

James C Miller *vs.* **South Carolina State Of**

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 7th day of August, 2013.

Court Reporter:

_____

PRESIDING JUDGE - D Garrison Hill

This judgment was entered on the 7th day of August, 2013, and a copy mailed first class this 7th day of August, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

James C Miller 167675 Perry Correctional Institution 430 Oaklawn Rd Pelzer, SC 29669

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

_____

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

James Carl Miller, 167675
☐ Plaintiff

v.

State Of South Carolina
☒ Defendant.

CASE NO.
2012-CP-23-7604

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
James Carl Miller, 167675, Bar No.	Karen C. Ratigan, Bar No. 68331
Address:	Address:
Perry CI 430 Oaklawn Road Pelzer SC 29669	Post Office Box 11549 Columbia SC 29211-1549
phone: fax:	phone: (803) 734-3737 fax: (803) 734-4113
e-mail: other:	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)**
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Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

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Karen C. Ratigan — August 1, 2013

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — Date submitted

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☐ PAID – AMOUNT:
☒ EXEMPT: (check reason)
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- ☐ 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: _____

SCCA/233 (11-03)

State of South Carolina County of GREENVILLE James C. Miller, Applicant, v. State of South Carolina, Respondent.	)	Court of Common Pleas 13th Judicial Circuit MOTION FOR POST-CONVICTION RELIEF HEARING

The applicant, James C. Miller, respectfully motion this Honorable Court for a Post-Conviction Hearing to have his timely filed claims adjudicated.

1) Applicant was convicted on May 1, 1990, in the Greenville County General Sessions Court on indictment 90-GS-23-2607.

2) Applicant is challenging a meritorious 6th amendment matter.

Wherefore, applicant request for a Post-Conviction hearing in a timely manner.

Applicant request to be present at said hearing.

I, James C. Miller, certify and verify under the penalty of perjury that the foregoing is true and correct 28 U.S.C.A. § 1746.

James C. Miller

State of South Carolina County of GREENVILLE James C. Miller, Petitioner, v. State of South Carolina, Respondent.	)	Court of Common Pleas 13th Judicial Circuit AFFIDAVIT IN SUPPORT OF APPLICANT'S MOTION FOR THE APPOINTMENT OF COUNSEL

James C. Miller, being duly sworn deposes and say:

1) I am the applicant in the above entitled case. I make this affidavit in support of my motion for appointment of counsel.

2) This is a complex case because it contains several legal claims that have merit.

3) The facts in this PCR proceeding along with the legal merit of the applicant's claims support the appointment of counsel to represent the applicant.

4) Wherefore, the applicant's motion for the appointment of counsel should be granted.

I, James C. Miller, certify and verify under the penalty of perjury that the foregoing is true and correct. 28 U.S.C.A. § 1746.

James C. Miller

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

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated Cpl J. Lee (***Server***) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT OF PERSONAL SERVICE**
COUNTY OF Greenville)

On this 11th day of June **2012**, I served the **Conditional Order of Dismissal**, on ***Inmate*** **James Carl Miller**, ***SCDC Inmate*** **#167675**, by delivering personally and leaving a copy of the same at **Perry** ***Correctional Institution***, Pelzer, SC. Deponent is not a party to this action.

s/ Cpl Jonathan Lee
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 11th day of June, **2013**

Patricia Buchanan (L.S.)
Notary Public for South Carolina

My Commission Expires: 4-26-2020

ADMISSION OF SERVICE

Service of a copy of the within **Conditional Order of Dismissal** is admitted at the South Carolina Department of Corrections (Perry ***Correctional Institution***), Pelzer, SC, Greenville County, SC this 11th day of June, ***2013.***

s/ James Miller
Inmate
SCDC *Inmate #:* 6-11-13
#167675

2012-CP-23-7604

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE James Carl Miller, S.C.D.C. No. 167675, Applicant, v. State of South Carolina, Respondent.	)))))))))))))))	IN THE COURT OF COMMON PLEAS 2012-CP-23-7604 **FINAL ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 5, 2012. The Respondent made its return on April 30, 2013, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

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 May 7, 2013 and filed May 14, 2013, 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 June 11, 2013, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

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during a critical stage of the proceedings." The Applicant argues "there was no hearing of any kind on the issue of mental competence at the time of the commission of the act." The Applicant argues trial counsel was ineffective because he conceded guilt in his closing argument. The Applicant argues the trial judge erred in instructing the jury that it could infer malice from the use of a deadly weapon.[1]

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal 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.

This Court notes the Applicant was convicted and sentenced on May 1, 1990 and the South Carolina Supreme Court affirmed his convictions and sentences on June 24, 1991. As this action was filed on December 5, 2012, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant's fourth application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on June 17, 1992. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) ("[A]n applicant is entitled to a full adjudication on the merits of the original petition, or 'one bite at the apple.'").

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

[1] The Applicant reasserted these arguments in a document captioned "Applicant's Objection to the Respondent's Return and Motion to Dismiss" and dated June 13, 2013.

prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

AND IT IS SO ORDERED this _____ day of _____, 2013.

_____
D. Garrison Hill
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.

The Supreme court of S.C.
Daniel E. Shearouse, Clerk court
Post office BOX 11330
Columbia, S.C 29211

REC
SEP
LEE CI M