Antonio Gordon, 259798
ECI SMU A 232
610 Hwy 9 West
Bennettsville, SC 29512

CR

Dear Clerk:

Please find enclosed A Belated Notice of Appeal I am filing with the court with an explanation. I am also filing A motion requesting permission to file A post-conviction Relief Application in the Lower courts with attach documents. These are my original could your office please send me a stamped true copy back. Thanks very much.

Antonio Gordon

~~9-26-2013~~
10-4-2013

RECEIVED
OCT 07 2013
S.C. SUPREME COURT

c

State of South Carolina
In The Supreme Court

Appeal from York County
Court of Common Please
Post-Conviction Relief

Case No.: 03-3308
2000-CP-46-1414

Antonio Gordon.................................Petitioner

Vs.

State of South Carolina.................................Respondent

Belated Notice of Appeals

Antonio Gordon, appeals the order denying his motion for Rule 59(e) SCR. Civ Proc, filed on August 25, 2006, and recieved by Petitioner's Counsel, Tara D. Shurling, esq., on August 26, 2006, issued by the Honorable J. Ernest Kinard Presiding Judge.

Antonio Gordon

Antonio Gordon, 259798
ECI Smu A 232
610 Hwy 9 West
Bennettsville, SC 29512

This 4th day of ~~September~~ October, 2013

other Counsel of Record:
Salley Elliot Attorney General

RECEIVED
OCT 07 2013
S.C. SUPREME COURT

c

State of South Carolina
In The Supreme Court

Appeal from York County
Court of Common Pleas
J. Ernest Kinard, Presiding Judge

Antonio Gordon, ... Petitioner

V.S.

State of South Carolina . . . . Respondent

Certificate of Service

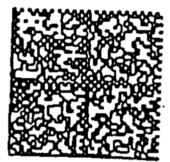
The Petitioner hereby certifies that one copy of Petitioner's Belated Notice of Appeal ~~[illegible]~~ have been served on Salley W. Elliot, Attorney General, at P.O. Box 11549, Columbia, SC 29211, this 4th day of ~~September~~ October, 2013.

Antonio Gordon
Antonio Gordon

Sworn to before me this 4th day of September, 2013
[signature]
Notary
Feb. 9th 2020
EXP

RECEIVED
OCT 07 2013
S.C. SUPREME COURT

Antonio Gordon 259788
ECI smy A 232
610 Hwy 9 West
Bennettsville, SC 29512



The supreme Court of S.C.
Daniel E. Shearouse, Clerk of Court
Post office Box 11330
Columbia, SC 29211

LEGAL MAIL USE ONLY

THE DEPARTMENT OF CORRECTION HAS NEITHER CENSORED NOR INSPECTED THIS ITEM. THEREFORE THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY FOR ITS CONTENTS.
EVANS CORRECTIONAL INSTITUTION
S. C. DEPARTMENT OF CORRECTIONS

State of South Carolina
In The Supreme Court

Appeal from York County
Court of Common Pleas
J. Ernest Kinard, Prisding Judge

Case No. 03-3308-2000-CP-46-1414

Antonio Gordon — Petitioner

VS.

State of South Carolina — Respondent

Explanation Pursuant to Rule 243, SCACR

Pursuant to Rule 243, SCACR, the Petitioner, Provides the following explanation to show that he was denied the Right to Appellate review.

Procedural History

The Petitioner filed his first PCR on June 19, 2000, Antonio Gordon V. State, (2000-CP-46-1414). The Respondent made it return on May 4, 2001. An Evidentiary hearing into the matter was held on July 29, 2003. The application was denied and dismissed by Honorable J. Ernest Kinard order dated August 19, 2003, "without" all allegations being addressed in the Order of dismissal. The Petitioner was represented by Tara D. Shurlingesa. Petitioner asserts that the following allegations was not addressed in the order of dismissal:

(A).... Involuntarily Guilty Plea, APP. P 408

(B)..... Lack of subject matter Jurisdiction [Pertaining to Petitioner being tried as an adult] APP. P 409

(C).... Allegations one through five on the motion to Amend [Pertaining to Petitioner being tried as an adult] APP. P 414

(D)..... Counsel should have further asserted the inherent conflict in trying Petitioner as an adult between section 20-7-6605 and other Children Code Provision 20-7-7605 APP. P 445-446

(E).... Defense Counsel failed to challenge Petitioner's statements on the Ground that there was no Probable Cause for his arrest and that his statements were the fruit of the Poisonous tree with regard to the illegal arrest. APP. P 456

State of South Carolina
In the Supreme Court

Antonio Gordon, Petitioner

VS.

State of South Carolina Respondent.

motion
Requesting Permission to file A belated PCR under Austine V. State, 409 S.E.2d 395 (1991).

~~Procedural History~~

Petitioner hereby file this motion requesting Permission to file a belated PCR Application under Austine V. State, 409 S.E.2d 395 (1991). Petitioner assert that extraordinary circustances exist and thus the denial to file a belated PCR will result in a miscarriage of Justice.

Procedural History

The Petitioner filed his first PCR on June 19, 2000, Antonio Gordon V. State, (2000-CP-46-1414). The Respondent made it return on May 4, 2001, and an evidentiary hearing into the matter was convened at the Richland County Courthouse in Richland County on July 24, 2003. The application was denied and dismissed by Honorable J. Ernest Kinard Order dated August 19, 2003, without all allegations being addressed in the order of dismissal. Petitioner was represented by Tara D. Shurling, esq. Petitioner assert that the following allegations was not addressed in the order of dismissal:

(A) Involuntarily Guilty Plea, APP. P 408

(B) Lack of Subject matter Jurisdiction (Pertaining to being tried as an adult) APP. P 409 in conjunction with Motion to Amend: APP. P 414

(C) Counsel should have asserted the inherent conflict in trying Petitioner as an adult between Section 20-7-6605 and other children code Provision. ~~AP~~ 20-7-7605. APP. P 445-446.

(D) Defense Counsel failed to challenge Petitioner's statements on the Ground that there was no Probable Cause for Petitioner arrest and that his statements were the fruit of the Poisonous tree with regard to the illegal arrest. APP. P. 456

On November 25, 2003, PCR Counsel filed a Rule 59(e) SCR.Civ. Proc motion in the Lower Court. Honorable J. Ernest Kinard denied and dismiss the Rule 59(e) motion [Case No. 03-3308] on "August 25, 2006". However, also on November 25, 2003, PCR Counsel filed a Notice of Appeal in this Court. This Court denied and dismissed the Notice of Appeal on "August 2, 2005", a Year before PCR Court denied and dismissed the Rule 59(e) SCR.Civ.Proc motion.

On January 1, 2009, Petitioner filed Antonio Gordon V. State, (2008-CP-46-4951). The Respondent filed a motion to Restrict future filings. See order attached. However, this Order address Petitioner's Rule 59(e) motion Case No. 03-3308 that was filed on November 25, 2003. PCR Counsel Tricia Blanchette brought to the Court Attention that a Rule 59(e) motion was filed that the Rule 59(e) motion did not include several issues. PCR Court found the 59(e) motion did not have relevancey to the PCR that was filed.

Reasons for Granting Permission to file PCR under Austine V. State, 409 S.E.2d 395 (1991)

Petitioner assert that this Court lacked Jurisdiction to entertain the Notice of Appeal in Antonio Gordon V. State, (2000-CP-46-1414), because the filing of the Rule 59(e) SCR.Civ. Proc motion "stayed the time for filing the Notice of Appeal under Rule 59(f) SCR.Civ. Proc and Rule 203 (A)(B)(1), SCACR. Therefore, the Judgment issued by this Court is void. The definition of void under voidness provision of relief from Judgment rule encompasses Judgment from Courts which failed to provide proper due process, or Judgments from Courts which lack Subject Matter Jurisdiction or Personal Jurisdiction, citing Linda McCompany Inc V. Shore, (S.C. App 2007) 653 S.E.2d 279, Gainy V. Gainy, (S.C. 2009) 675 S.E.2d 792, Stearns Bank Nat Ass'n V. Gleenwood Falls, (S.C. 2007) 644 S.E.2d 793, Kulko V. Superior Court, 436 U.S. 84 (1978). Therefore, Petitioner asserts that because the Rule 59(e) motion was pending before the lower Court, this Court was without Jurisdiction and this create an extraordinary circumstance that warrant remanding for a Austine V. State, 409 S.E.2d 395 (1991), review

The Petitioner asserts that in letter addressed to him from PCR Counsel August 31, 2006, indicating she will file a Notice of Appeal but failed to do so. The denial of the Rule 59(e) motion was never appealed. Petitioner asserts that he is entitled to an Austine Review because the Supreme Court Lack Jurisdiction in Antonio Gordon V. State, (1414). Petitioner contends that because this Court lacked Jurisdiction to entertain the Notice of Appeal, he never had an appeal that amounted to due process of Law because all claims was not considered. Petitioner asserts had the Rule 59(e) SCR.Civ.Proc motion been considered on Appeal, this Court would have remanded back to the PCR Court to make findings of fact under § 17-27-80. See Pruitt V. State, 423 S.E.2d 127 (1992), McCray V. State, 408 S.E.2d 241 (1991). Therefore, due to the Rule 59(e) Pending in the lower court when the Notice of Appeal was filed, Petitioner have been denied the right to Appeal because PCR Counsel failed to file an Appeal from the Rule 59(e) motion Case No. 03-3308. This create an extraordinary circumstance that warrant remanding for a Austine review.

Petitioner assert that the PCR Court failed to make findings of fact on every allegation presented to the PCR Court. Allegations "[A through D]" See Page One of Request for Permission to file belated Post-Conviction, was not addressed in the Order of dismissal and the PCR Court held in the Rule 59(e) Order that all claims presented was ruled on, but was not. § 17-27-80

Petitioner assert that the PCR Court Order of dismissal dated August 19, 2003, and the Rule 59(e) SCR. Civ. Proc Order dated August 25, 2006, Judgment's are Void under Rule 60(b)(4) and § 17-27-80. FN[1] Therefore, Petitioner have been denied his "one bite at the apple" on PCR and "Appeal". Gamble V. State, 379 S.E.2d 118 (1989), Odom V. State, 523 S.E.2d 753 (1999), Pruitt V. State, 423 S.E.2d 127 (1992), McCray V. State, 408 S.E.2d 241 (1991). Austine V. State.

Petitioner recently file a motion in the Court of Appeals requesting leave to file a Rule 60(b)(4) and was denied. Petitioner assert that, Rule 60(b)(4) can be filed after one year of Judgment entered. Petitioner Assert that both Judgment's are void in his PCR(1414), because all Allegations was not Ruled on. § 17-27-80. Gainy V. Gainy, Supra, Stearns Bank Nat Ass'n V. Gleenwood Falls, 644 S.E.2d 793 (2007). Therefore, this create an extraordinary circumstance that warrant Petitioner filing a belated Post-Conviction Relief Application under Rule 60(b)(4) SCR.Civ. motion. ~~See Attachment(s)~~.

Petitioner respectfully ask this Court that if it allow Petitioner to file the enclose PCR Application, that petitioner be allowed to Proceed without Payment due to his indigency status. Due to the Extraordinary Circumstances ~~because~~ Petitioner have been denied the Right to appeal and respectfully asking permission to file a belated Appeal under Austine V. State, or Rule 60(b)(4). Finally Petitioner should be allowed to file his subject matter Jurisdiction claim because subject matter Jurisdiction can be raised at anytime. Browning V. State, 465 S.E.2d 358 (1995).

Antonio Gordon

FN[1] In Antonio Gordon V. ~~State~~ Leroy Cartledge, Warden, C/A No. 2:10-2578-MBS-RSC, Respondent acknowledge in their Return and memorandum of Law in support of motion for Summary Judgment, that Petitioner raised certain issues in Antonio Gordon V. State, 1414 was not addressed in the order of dismissal. Even the motion to Restrict furture filing Page 5 acknowledges the order did not make findings of fact on every allegations Presented to the PCR Court. See Attachment motion to restrict future filing ~~on~~ Page 5 and order of dismissal.

FORM 5

STATE OF SOUTH CAROLINA

County of York

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

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 Evans Correctional Institution

2. Name and location of Court which imposed sentence York County Moss Justice Center

3. Name(s) of co-defendant(s) (if any) Monta Gordon, Terrence McCreary, Gary Moffat

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

   (a) 98-GS-46-2847; 2849; 2850; 2851

   (b)

(c) __________

5. The date upon which sentence was imposed and the terms of the sentence:

   (a) July 19, 1999 40 years

   (b) __________

   (c) __________

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?

   see attachment

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

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

   i.
   ii. SEE ATTACHMENT
   iii.

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

   i.
   ii. SEE ATTachment
   iii.

   (c) the date of each such result:

   i. __________
   ii. __________
   iii. __________

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

   i.
   ii. SEE ATTACHMENT
   iii.

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

   (a) __________

   (b) __________

(c) ____________________

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

(a) SEE ATTACHMENT SEE Attachent

(b) SEE ATTACHMENT See Attachment

(c) ____________________

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

(a) [illegible]

(b) SEE Attachment

(c) [illegible]

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

(a) any petition in a State Court under South Carolina Law? Yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(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.

ii. SEE Attachment

iii.

iv.

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

i.

ii. SEE Attachment

iii.

iv.

(c) the disposition thereof:

i.

ii.

iii. SEE Attachment

iv.

(d) the date of each such disposition:

i.

ii.

iii. SEE Attachment

iv.

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

i.

ii.

iii. SEE Attachment

iv.

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?

SEE Attachment

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

(a) which grounds have been presented:

i.

ii. SEE Attachment

iii.

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

i.

ii. SEE Attachment

iii.

Revised 3/2003

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) ______

(b) SEE Attachment

(c) ______

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? ______

(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?

See Attachment

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. ______

ii. SEE Attachment

iii. ______

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

i. ______

ii. SEE Attachment

iii. ______

Revised 3/2003

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

Evidentiary hearing

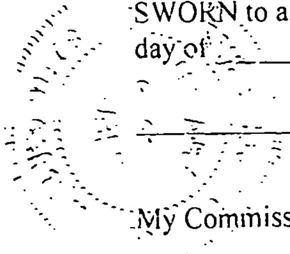
20. Are you now under sentence from any other court that you have not challenged?

NO NO

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of YORK)

I, Antonio Gordon #259798, 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.

Antonio Gordon



SWORN to and subscribed before me this 22nd day of August, 2013.

(L.S.)
Notary Public

My Commission Expires: Feb. 9th, 2020

Revised 3/2003

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

(A) Involuntarily Guilty Plea

(B) Lack of Subject matter Jurisdiction

(C) Counsel should have asserted the inherent conflict in trying Applicant as an adult between Section 20-7-6605(1) and 20-7-7605(1)(6)(10), 20-7-400(A)(3)

(D) Defense counsel failed to challenge Applicant statements on the ground that there was no Probable cause for Applicant's arrest and that Applicant statements were the fruit of the Poisonous tree with regard to the illegal arrest

(E) Austine v. State, 409 S.E.2d 395

(F) Rule 60(b)(4) Judgment Void

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

(A)... The Judge did not affirmatively ask Applicant for an admission of guilt.

(b)... General sessions was without Jurisdiction to accept Applicant's Guilty Plea because he was under the Exclusive Original Jurisdiction of Family Court because Section 20-7-6605(1) is unconstitutional.

(c)... Counsel had a constitutional duty under the 6th Amendment to assert Applicant's statutory rights.

(D)... Counsel challenged the illegal arrest but failed to challenge Applicant statements statements as the fruit of the Poisonous tree in regards with the illegal arrest, and failed to conduct relevant research.

(E)... PCR Counsel failed to file a Notice of Appeal from the denial of Rule 59(e) SCR, Civ, Proc motion, and the Supreme court Lacked Jurisdiction to entertain the Notice of Appeal in Antonio Gordon v. State, 2000-CP-46-1414, therefore, its Judgment cannot be upheld.

(F)... PCR Court orders failed to make findings of fact under § 17-27-80.

STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
Antonio Gordon, 259798, Applicant, v. State of South Carolina, Respondent.	**2008-CP-46-4951** MOTION TO RESTRICT FUTURE FILINGS

Attachment

The Applicant's repetitive and abusive filings should be restricted in order to preserve the Court's time and resources and stop any interference with the fair administration of justice.

The Applicant has received his full bite at the apple. Under the PCR rules, an Applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple." This "bite at the apple" includes an Applicant's right to appeal the denial of a post-conviction relief application, and the right to assistance of counsel in that appeal. Matthews v. Evatt, 105 F.3d 907, 916 (1997), Gamble v. State, 298 S.C. 176, 379 S.E.2d 118, 119 (1989), Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999).

The Applicant has filed three (3) PCR Applications on the 1999 convictions, a motion for reconsideration from the dismissal of the first PCR application, an appeal from the dismissal of his first PCR (2001-CP-46-1866), a Federal Petition for Writ of Habeas Corpus which was subsequently denied, a rule 60(b) motion to reconsider and clarify, and a State Petition for Writ of Habeas Corpus which was also

subsequently denied. A new Application was filed on January 9, 2009 and amended on May 19, 2009. He is also now requesting $5,000 from Indigent Defense for an investigator to investigate several allegations that have already been raised and dismissed. The Applicant has had his full bite at the apple at least three (3) times on the 1999 convictions, and has appealed the dismissal of his allegations or reasserted his allegations after each dismissal through a PCR appeal, or Federal or State Petition for Writ of Habeas Corpus, including several amendments to those filings. The Applicant continues to raise the same frivolous and repetitive allegations. The Applicant's filings clearly rise to the level of repetitive and abusive filings, and he must be restricted from future filings.

I. REQUESTED REMEDY

Due to the repetitive and frivolous nature of Applicant's numerous applications, the State would request the Court to direct the York County Clerk of Court not to accept any further PCR applications from the Applicant unless he pays the normal filing fee generally required for the filing of a summons and complaint. The United States Supreme Court has denied litigants who have filed repetitive, frivolous petitions the right to proceed *in forma pauperis*, resulting in the litigants having to pay the required filing fee with that Court. In re Whitaker, 513 U.S. 1, 115 S.Ct. 2, 130 L.Ed.2d 1 (1994); In re Anderson, 511 U.S. 364, 114 S.Ct. 1606, 128 L.Ed.2d 332 (1994); In re Demos, 500 U.S. 16, 111 S.Ct. 1569, 114 L.Ed.2d 20 (1991); In re Sindram, 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991); In re McDonald, 489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989).

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

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

The State also requests that the Applicant be warned that should he continue to file Applications containing matters that are frivolous, that he may be held in

contempt or for the Court to impose sanctions as circumstances of the case and discouragement of like conduct in the future may warrant. The Supreme Court imposed such warning on an Applicant in In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996).

II. SUPPORTING FACTS

The Applicant's extensive litigation history is necessary to understand this request for injunction:

Underlying Convictions

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the October 1998 term of the York County Grand Jury for Murder (98-GS-46-2847), three counts of Possession of a Firearm During the Commission of a Violent Crime (98-GS-46-2847-A)(98-GS-46-2849-A)(98-GS-46-2850-A), two counts of Attempted Armed Robbery (98-GS-46-2849)(98-GS-46-2850), Criminal Conspiracy (98-GS-46-2851), and Possession of a Pistol by a Person Under Twenty-One (98-GS-46-2852). Daniel D'Agostino, Esquire, represented the Applicant. On July 16, 1999, the Applicant pled guilty as indicted. On July 19, 1999, the Honorable John C. Hayes III sentenced Applicant to confinement for thirty (30) years for Murder; ten (10) years for Attempted Armed Robbery, which was consecutive to the 98-GS-46-4827 charge, but concurrent with present sentence being served; five (5) years concurrent for Possession of a Firearm During the Commission of a Violent Crime; five (5) years concurrent for Criminal Conspiracy; and five (5) years concurrent for Possession of a Pistol by a

Person Under Twenty-One.

The Petitioner filed a timely notice of appeal and an Anders brief was submitted on his behalf pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the Defendant's appeal. State v. Gordon, 2000-UP-747 (S.C. Ct. App. filed December 6, 2000). The Remittitur was sent on January 9, 2001.

PCR APPLICATIONS AND OTHER FILINGS

A. Gordon v. State (2000-CP-46-1414)

Filed: 6/19/2001
Conviction: 1999
Allegations: Ineffective assistance of counsel, subject matter jurisdiction (failure to have waiver hearing to transfer him from Family Court to General Sessions because he was sixteen (16) years old when arrested, and failure to challenge the indictments), involuntary guilty plea (incompetence and limited comprehension because of low IQ), trial court error in failing to grant the severance motion, failing to adequately pursue the Applicant's incompetence to stand trial, failing to make a double jeopardy argument, failing to advise the Applicant that pleading guilty meant he waived his right to appeal the admissibility of his statements on direct appeal, and failing to advise the Applicant he would be subject to community supervision.
Hearing: 7/29/03
Judge: J. Ernest Kinard, denied 8/19/03
Ruling: Denied by Order dated 11/27/87
Counsel: Tara Shurling
Appeal: Johnson brief, cert. Denied. 8/9/05

B. Gordon v. State (2004-CP-46-1700)

Filed: 7/6/04
Conviction: 1999
Allegations: Violation of due process and equal protection, lack of

	subject matter jurisdiction (failure to have waiver hearing in Family Court, failure to challenge the indictments), failure to request a competency hearing to stand trial,
Hearing:	12/6/04
Judge:	Thomas W. Cooper, Jr.
Ruling:	Denied by Order dated 5/20/05
Counsel:	Pro Se.
Appeal:	None.

C. **Federal Petition for Writ of Habeas Corpus** (2:05-3327-MBS-R)

Filed this habeas in 2006 Not 2009, and before I received the 59(e) in the mail. A.G.

Filed:	1/3/09
Conviction:	1999
Allegations:	Objection to Report and Recommendation of Magistrate Judge, ineffective assistance of counsel for failure to advise murder was non-parole offense, failure of PCR counsel to file a 59(e) motion, failure to raise double jeopardy issue, failure to advise him he was waiving his right to appeal admissibility of statements, 4th amendment violation because he was interrogated as a juvenile without counsel or parent present, failure of counsel to challenge the admissibility of his statement that resulted from the invalid interrogation, due process because competency evaluation was conducted by an unlicensed psychologist, trial court erred in denying severance motion, involuntary guilty plea
Hearing:	10/15/90
Judge:	Margaret B. Seymour
Ruling:	Dismissed without prejudice to permit Petitioner to exhaust all State remedies, dated 2/16/07
Counsel:	Pro Se
Appeal:	None

D. **Gordon v. State** (2006-CP-46-0010)
(State Petition for Writ of Habeas Petition)

Never raised newly discovered evidenced in this habeas

Filed:	1/3/06, Motion to amend 1/23/07
Conviction:	1999
Allegations:	Newly discovered evidence, ineffective assistance of counsel, prosecutorial misconduct, Brady violations, involuntary guilty plea, personal jurisdiction
Hearing:	1/23/07

Judge:	John C. Hayes, III
Ruling:	Dismissed with Prejudice dated 4/30/07
Counsel:	Charles B. Burnette, III
Appeal:	None.

E. Rule 60(b) Motion

Filed:	8/7/07
Conviction:	1999
Allegations: M	Motion to reconsider; seeking amendment and clarification; conflict with Judge Hayes.
Judge:	Roger L. Couch
Ruling on Motion:	Granted; clarified and amended order that Petitioner is without prejudice to bring a Habeas Corpus Petition in the original jurisdiction of the South Carolina Supreme Court.
Ruling on State Habeas:	An evidentiary hearing was held before Judge Couch. He dismissed the State Habeas Corpus without prejudice on January 31, 2008.

F. Gordon v. State (2008-CP-46-4951)

Filed:	1/9/09 and amended 5/19/09
Conviction:	1999
Allegations:	Ineffective assistance of counsel, personal jurisdiction (failure to have waiver hearing to transfer him from Family Court to General Sessions because he was sixteen (16) years old when arrested), involuntary guilty plea, Brady violations, 4th amendment/involuntary statement, Defense counsel failed to challenge applicant's statement's on the ground that there was no probable cause for the arrest and that applicant statement's was the fruit of the poisonous tree with regard to the illegal arrest, prosecutorial misconduct, counsel failed to conduct a pretrial investigation, counsel failed to interview key witnesses, failing to advise the Applicant that pleading guilty meant he waived his right to appeal the admissibility of his statements on direct appeal, and failing to advise the Applicant that murder was a non-parole offense
Hearing:	12/1/09
Judge:	Lee S. Alford

Counsel:	Tricia Blanchette
Other:	Current PCR Application includes a "Motion for Funds for an Investigator" and a "Motion for Funding of Expert"

IV. CONCLUSION

The Applicant's allegations and accusations have become increasingly frivolous and ridiculous. His only success has been to have his Rule 60(b) motion granted to allow him to file a Petition for Habeas Corpus in the original jurisdiction of the South Carolina Supreme Court. Each case is accompanied with numerous requests to amend and other frivolous motions, and often requires a change of venue for the evidentiary hearings. The Applicant continues to waste the time and resources of the York County Clerk of Court's Office, the Chief Administrative and Presiding Judges in the Sixteenth Circuit, the South Carolina Attorney General's Office, numerous appointed attorneys of the York County Bars, Court Personnel, and the South Carolina Supreme Court.

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

> All law, criminal or otherwise, is worth having and enforcing, it must some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task stripping a man of his freedom and subject him to institutional restraints. But this does not mean that in doing so, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing a man shall tentatively go to jail today, but

> tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved. A rule of law that fails to take account of these finality interests would do more than subvert the criminal process itself. It would also seriously distort the very limited resources society has allocated to the criminal process...This drain on society's resources is compounded by the fact that issuance of the habeas writ compels a State that wishes to continue enforcing its laws against the successful petitioner to relitigate facts buried in the remote past through presentation of witnesses whose memories of the relevant events often have dimmed. This very act of trying stale facts may well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first.

Anderson v. Leeke, 271 S.C. 435, 441, 248 S.E.2d 120 (1978).

V. PRAYER FOR RELIEF

For these reasons, The State requests the Court to find the following:

1. The Clerk of Court should refuse to accept further petitions from the Applicant asking the Court to entertain matters unless he pays a filing fee generally required for filing motions and petitions with this Court.

2. The Applicant should be prohibited from filing any legal actions in any jurisdiction in South Carolina without submitting the requisite filing fees[1] and providing a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous.

3. Any Applications submitted with properly notarized affidavits be submitted to the Chief Administrative Judge to make a finding on whether the allegations are non-frivolous and proper for the Court before they are filed;

4. The Clerk of Courts should be instructed to return all documents that do not comply with this order, and;

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

5. The Applicant be directed that if he continues to file Applications containing matter that is frivolous or not proper for this Court to consider, he may be sanctioned under Rule 269, SCAR.

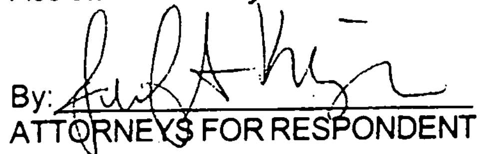
Respectfully submitted,

HENRY D. MCMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney Genera

JENNIFER A. KINZELER
Assistant Attorney General



By: ____________________
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

November 18, 2009.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	2000-CP-46-1414
Antonio Gordon, #259798,	)	
Applicant,	)	
v.	)	ORDER OF DISMISSAL
State of South Carolina,	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 15, 2000. The Respondent made its Return on May 2, 2001. An evidentiary hearing into the matter was convened on July 29, 2003, at the Richland County Courthouse. The parties agreed to change venue from York County to Richland County pursuant to the Consent Order Changing Venue signed by the Honorable John C. Hayes, III. Due to conflicts with the judges in the Sixteenth Circuit, this case was transferred to the Fifth Circuit in order to conduct the PCR hearing in a more timely manner. IN ADDITION A SPECIAL ORDER WAS EXECUTED GRANTING THE UNDERSIGNED The Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. The Respondent was represented by Jeanette Van Ginhoven of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Testifying on behalf of the State was Daniel D'Agostino, Esquire. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the York County Clerk of Court and the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of

commitment. On October 15, 1998, the York County Grand Jury indicted the Applicant for murder, three counts of possession of a firearm during the commission of a violent crime, two counts of attempted armed robbery, possession of a firearm by a person under twenty-one, and criminal conspiracy.

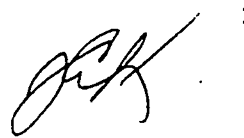
On July 16, 1999, the Applicant pled guilty as charged. On July 19, 1999, the Honorable John C. Hayes, III, sentenced the Applicant to thirty years imprisonment for murder, five years for each count of possession of a weapon during the commission of a violent crime, ten years for each count of attempted armed robbery, five years for criminal conspiracy, and five years for possession of a weapon by a person under twenty-one years of age. Daniel D'Agostino, Esquire, represented the Applicant.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals was dismissed. State v. Antonio Gordon and Monta Gordon Op. No. 2000-UP-747 (S.C. Ct. App. filed December 6, 2000).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that



"counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

INEFFECTIVE ASSISTANCE OF COUNSEL

The Applicant claims guilty plea counsel was ineffective for failing to prepare his case for trial by (1) failing to challenge the indictments for lack of subject matter jurisdiction because the indictments were not filed with the Clerk of Court within ninety (90) days after his arrest; (2) failing to challenge the murder indictment for lack of subject matter jurisdiction because the indictment did not contain the requisite elements in the body of the indictment; (3) failing to challenge the attempted armed robbery indictments for lack of subject matter jurisdiction because the indictment did not contain the requisite elements in the body of the indictments; (4) failing to challenge the indictments since an agent of the state was the only witness before the grand jury; (5) failing to make a concerted effort to get the Solicitor to remand the case to the Family Court; (6) failing to adequately pursue the Applicant's competency to stand trial; (7) failing to make a double jeopardy argument since the Applicant was charged with attempted armed robbery and possession of a weapon during the commission of a violent crime; (8) failing to advise the Applicant that if he pled guilty he would waive his right to challenge the admissibility of his statements on direct appeal; and

(9) failing to advise the Applicant he would be subject to community supervision.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

1. Failure to Challenge Subject Matter Jurisdiction Because Indictment Not Filed withe Clerk of Court Within Ninety Days

The Applicant claims guilty plea counsel was ineffective for failing to challenge subject matter jurisdiction because the Applicant's indictments were not filed with the York Clerk of Court within ninety (90) days after his arrest. This allegation does not warrant relief. Each indictment was marked "True Bill" and signed by foreman of the grand jury. The failure to obtain an indictment within ninety days of arrest does not render it void for lack of jurisdiction. State v. Culbreath, 282 S.C. 38, 316 S.E.2d 681 (1984). This Court finds guilty plea counsel was not ineffective and that the Applicant has failed to show he was prejudiced by guilty plea counsel's performance. This Court further finds that the lower court had the subject matter jurisdiction to accept the Applicant's guilty pleas since the ninety day rule does not render an indictment void for lack of jurisdiction.

2. Failure to Challenge Subject Matter Jurisdiction Because the Murder Indictment Did Not Contain the Requisite Elements

The Applicant claims guilty plea counsel was ineffective for failing to challenge the murder indictment because the indictment failed to allege that the Applicant "willfully" and "feloniously" committed the crime. However, in Joseph v. State, the South Carolina Supreme Court held that a murder indictment was sufficient to confer subject matter jurisdiction on the court that accepted the defendant's guilty plea, even though the indictment omitted the words "willfully" and "feloniously," as the term "feloniously" was encompassed in "murder" and the term "willfully" was encompassed in "malice." 351 S.C. 551, 571 S.E.2d 280 (2002).

The Applicant's murder indictment read as follows:

> That Antonio Gordon did in York County on or about July 23, 1998, with *malice aforethought, kill* one Eric Peter Krenn by means of shooting him with a firearm and said victim died as a result thereof, all in violation of Section 16-3-10, South Carolina Code of Laws (1976, as amended).

Although the Applicant's murder indictment did not state the words "willfully" or "feloniously", these words were encompassed by the words "kill" and "malice". Therefore, this Court finds guilty plea counsel was not ineffective for failing to challenge the murder indictment and that the Applicant was not prejudiced by guilty plea counsel's performance. This Court further finds that the lower court had subject matter jurisdiction to accept the Applicant's guilty plea to murder

3. Failure to Challenge Subject Matter Jurisdiction Because the Attempted Armed Robbery Indictments Did Not Contain the Requisite Elements

The Applicant claims guilty plea counsel was ineffective for failing to challenge the attempted armed robbery indictments because the indictments failed to allege the element of asportation.

The Applicant's indictments for attempted armed robbery read as follows:

> That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to *feloniously take from the person or presence* of Eric Krenn, by means of force or intimidation good or monies of said Eric Krenn to wit: one 1985 BMW belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

In Locke v. State, 341 S.C. 54, 533 S.E.2d 324 (2000), the South Carolina Supreme Court held that the indictment language "taking of good and/or monies from the person or presence of" alleged the substance of asportation, one of the elements of common-law robbery and that this was sufficient because asportation merely meant the taking of an object with felonious intent. Therefore, this Court finds guilty plea counsel was not ineffective for failing to challenge the attempted armed robbery indictments and that the Applicant has failed to show he was prejudiced by guilty plea counsel's performance. This Court further finds that the lower court had subject matter jurisdiction to accept the Applicant's guilty pleas to attempted armed robbery.

4. Failure to Challenge Subject Matter Jurisdiction Because Only an Agent of the State Was a Witness Before the Grand Jury

The Applicant claims guilty plea counsel was ineffective for failing to challenge the indictments since an agent of the State was the only witness before the grand jury. The Applicant cites the case of State v. Anderson, 312 S.C. 185, 439 S.E.2d 835 (1993), to support this proposition.

In State v. Anderson, the South Carolina Supreme Court held that prosecutors cannot appear as a sole witness before the grand jury. In the Applicant's case, the witness before the grand jury was Officer Herring from the Rock Hill Police Department, not a prosecutor.

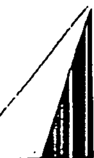
Further, the circuit court does not have subject matter jurisdiction to hear a guilty plea unless: (1) there has been an indictment which sufficiently states the offense; (2) there has been a waiver of

indictment; or (3) the charge is a lesser included offense of the crime charged in the indictment. Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777 (1998). South Carolina law provides an indictment is sufficient if it "charges the crime substantially in the language ... of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." S.C. Code Ann. §§ 17-19-20 (1985). "The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet." Browning v. State, 320 S.C. 366, 368, 465 S.E.2d 358, 359 (1995). South Carolina courts have held that the sufficiency of an indictment "must be viewed with a practical eye; all the surrounding circumstances must be weighed before an accurate determination of whether a defendant was or was not prejudiced can be reached." State v. Adams, 277 S.C. 115, 125, 283 S.E.2d 582, 588 (1981), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

The indictments in this case were marked "True Bill" and signed by the grand jury foreman. The witness before the grand jury was a police officer and not a prosecutor. The elements of the crimes were sufficiently alleged in the indictments. Therefore, this Court finds that guilty plea counsel was not ineffective for failing to challenge the Applicant's indictments and that the Applicant has failed to carry his burden in this action by failing to show prejudice from guilty plea counsel's performance. This Court further finds that the lower court had subject matter jurisdiction to accept the Applicant's guilty pleas.

5. Failure to Make Concerted Effort to Get the Solicitor's Office to Remand Case to Family Court

The Applicant claims guilty plea counsel was ineffective for failing to make a concerted effort to get the Solicitor's office to remand the case to Family Court. The Applicant claims guilty



plea counsel never discussed the differences between Family Court and General Sessions Court.

Pursuant to S.C. Code Ann. §20-7-6605, a "person sixteen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the *discretion of the solicitor*." The Applicant was sixteen years old when he committed the crime for which he was indicted and the crimes committed were Class A, B, C or D felonies. Therefore, the General Sessions Court had jurisdiction. The decision to remand the case to Family Court was within the Solicitor's discretion.

Guilty plea counsel testified that he was appointed to the case after the Applicant was indicted. He testified that he researched the fact that the Applicant was a child at the time of the commission of the crimes. Guilty plea counsel further testified that he brought this issue to the Solicitor's attention but that the Solicitor's office gave intimations that they wanted tot seek the death penalty in this case and that they would not remand this case to the Family Court. Further, the Applicant did not provide testimony from the Solicitor's office stating that they would have used their discretion and remanded the case to the Family Court.

Therefore, this Court finds that guilty plea counsel was not ineffective. This Court further finds that the Applicant has not shown that he was prejudiced by guilty plea counsel's performance.

6. <u>Failing to Pursue Applicant's Competency to Stand Trial</u>

The Applicant claims guilty plea counsel was ineffective for failing to pursue the Applicant's competency to stand trial. The Applicant claims that if this avenue had been explored, he would have had a defense to the charges.

Guilty plea counsel testified that he was concerned with the Applicant's mental state. The

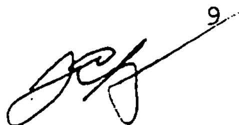
State provided the testimony of Dr. Leslie Sandler. Dr. Sandler was qualified as an expert in forensic psychology, clinical psychology and substance abuse. (T. p. 9). Dr. Sandler testified that the Applicant was not mentally retarded. (T. p. 118). The trial court found the Applicant competent to stand trial. (T. p. 147).

Guilty plea counsel also hired a psychologist, Dr. Jonathan Venn. Dr. Venn was qualified as an expert in forensic and clinical psychology. (T. p. 108). Dr. Venn testified during the hearing concerning the admissibility of the Applicant's statements given to law enforcement. However, Dr. Venn was not able to come to an opinion concerning mental retardation. (T .p. 113).

A criminal defendant is competent to enter his guilty plea if "the accused [has] sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and [has] a rational as well as a factual understanding of the proceeding against him." Jeter v. State, 308 S.C. 230, 417 S.E.2d 594, 596 (1992). An Applicant challenging his competency to plead must prove this allegation by a preponderance of the evidence. Id.

An Applicant claiming that trial counsel was ineffective in failing to pursue this defense "must produce some evidence of insanity or showing that with the exercise of due diligence, an insanity defense could have been developed." Jeter v. State, 308 S.C. 230, 233-34, 417 S.E.2d 594 (1992). The Applicant must show that he was "unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong."

The Applicant presented no testimony or evidence regarding the elements of the defense. The Applicant was also examined by two experts, one hired by the State and one by the defense, who either came to the conclusion the Applicant was not mentally retarded or could not reach an opinion. Therefore, this Court finds that guilty plea counsel was not ineffective. This Court further finds that the Applicant has not carried his burden in this action by showing he was prejudiced by



guilty plea counsel's performance.

7. Failure to Make Double Jeopardy Claim

The Applicant claims guilty plea counsel was ineffective for failing to make a double jeopardy claim since he was charged with attempted armed robbery and possession of a weapon during the commission of a violent crime.

In State v. Bolden, 303 S.C. 41, 398 S.E. 2d 494 (1990), the South Carolina Supreme Court held that punishment for both armed robbery and possession of a weapon during a violent crime does not violate double jeopardy. The Supreme Court held that the legislature clearly intended to provide additional punishment for possession of a weapon during the commission of a violent crime. Id.

Therefore, this Court finds guilty plea counsel was not ineffective for failing to make a double jeopardy challenge. This Court further finds that the Applicant has failed to show he was prejudiced by guilty plea counsel's performance.

8. Failure to Advise Applicant Appellate Rights are Waived Upon Entry of Guilty Plea

The Applicant claims guilty plea counsel was ineffective for failing to advise him that if he pled guilty, he would waive his right to appeal the admissibility of his statements to law enforcement officers. The Applicant testified that he would have continued to trial if he knew pleading guilty would waive his right to attack his pre-trial issues.

However, guilty plea counsel testified he advised the Applicant of his appellate rights and that if he pled guilty he could not appeal issues raised prior to the plea. The trial judge also informed the Applicant of his appellate rights during his guilty plea. (T. p. 205). The Applicant subsequently filed an appeal that was later dismissed. Antonio Gordon and Monta Gordon v. State of South Carolina, 2000-UP-747, filed December 6, 2000.

This Court finds the testimony of guilty plea counsel to be more credible than that of the Applicant. This Court finds that guilty plea counsel was not ineffective and that the Applicant has failed to carry his burden in this action by showing he was prejudiced by guilty plea counsel's performance.

9. <u>Failure to Advise of Community Supervision</u>

The Applicant claims guilty plea counsel was ineffective for failing to advise the Applicant he would be subject to community supervision by the South Carolina Department of Corrections. Guilty plea counsel testified that he did not advise the Applicant concerning community supervision.

However, community supervision is a collateral consequence of a guilty plea. As such, guilty plea counsel was not ineffective for failing to advise the Applicant of community supervision. *See* <u>Smith v. State</u>, 329 S.C. 280, 494 S.E.2d 626 (1997), (counsel is not ineffective for failing to advise a defendant regarding parole eligibility because it is a collateral consequence of sentencing.) Therefore, this Court finds guilty plea counsel was not ineffective and that the Applicant has failed to show he was prejudiced by guilty plea counsel's performance.

As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30)

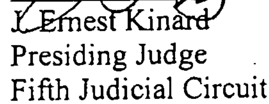
days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 18 day of AUG, 2003.



J. Ernest Kinard
Presiding Judge
Fifth Judicial Circuit

Camden, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
Sixteenth Judicial Circuit
2000-CP-46-1414

Antonio Gordon,)
)
Applicant,)
)
vs) AFFIDAVIT OF SERVICE BY MAIL
)
State of South Carolina,)
)
Respondent.)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Personally appeared before me, Jeanette VanGinhoven, who being first duly sworn, states:

1. That I am an employee of the Office of the Attorney General.

2. That regular communication by mail exists throughout the State of South Carolina, and that this is a proper circumstance of service by mail.

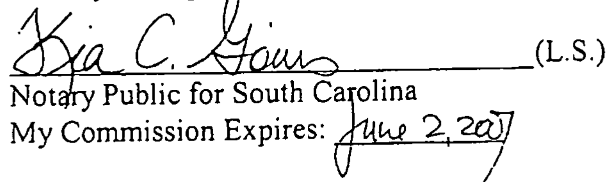
3. That I have this day served a copy of the Order in the above-captioned matter on the following persons by depositing same in the United States mail, postage prepaid:

Tara D. Shurling, Esquire
3614 Landmark Drive, Suite D
Columbia, South Carolina 29204

DATED this 19th day of August, 2003.

JEANETTE VANGINHOVEN

SWORN to before me this
19th day of August, 2003.



(L.S.)
Notary Public for South Carolina
My Commission Expires: June 2, 2007

FILED-RECEIVED
2003 NOV 25 PM 2:12
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

Antonio Gordon 259798
F1-A-193
Route 2, Box 100
McCormick, South Carolina 29899

Dear clerk:

I am respectfully writing to your office because I am in need of some help.

Clerk could you please forward the enclosed motion for Rehearing, and or for Reconsideration of facts to the Honorable Kinard.

Furthermore, could you please return me a clock stampe copy of the motion, along with both letters. I thank you in advance for your time.

Sincerely
/s/ Antonio Gordon

CERTIFIED TRUE COPY
2013 NOV -8 AM 9:45
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

FILED-RECEIVED

2003 NOV 25 PM 2:12

DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

Dear Ms. Shurling:

I respectfully request you to file a Motion for Rehearing and/or Motion for Reconsideration of Facts, with the PCR Court. As you recall, I presented you with an argument that I drafted concerning my mental retardation.

I am enclosing a copy of the Psychological Examination Reports that show my IQ was below that of a competent defendant. I am also enclosing a proposed motion that I would like you to file on my behalf. I am only sending you this motion because I realize you represent many clients and are therefore very busy. If you deem it necessary, and you have the time to spare, please feel free to add anything that it is lacking.

I thank you for your time.

Sincerely,

cc: Judge Kinard

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	2000-CP-46-1414
ANTONIO GORDON,#259798,	)	MOTION FOR REHEARING AND/OR
Applicant,	)	
v.	)	MOTION FOR RECONSIDERATION OF FACTS
	)	
STATE OF SOUTH CAROLINA	)	
Respondent.	)	

FILED-RECEIVED 2003 NOV 25 PM 2:12 DAVID HAMILTON C.C.C.P. & G.S. YORK COUNTY, SC

JURISDICTION

Comes now the Applicant, by way of his undersigned attorney, or in the alternative, in propria persona, and moves this Honorable Court to grant this Motion for Rehearing and/or Motion for Reconsideration of Facts, pursuant to the procedures provided by the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §§17-27-10 to -120(1985), and the South Carolina Rules of Civil Procedure.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 15, 2000. The Respondent made its Return on May 2, 2001. An evidentiary hearing into the matter was convened on July 29, 2003, at the Richland County Courthouse. The parties agreed to change venue from York County to Richland County pursuant to the Consent Order Changing Venue signed by the Honorable John C. Hayes, III. Due to conflicts with the judges in the Sixteenth Circuit, this case was transferred to the Fifth Circuit in order to conduct the PCR hearing in a more timely manner. A special order was executed granting the undersigned jurisdiction. The Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. The Respondent was represented by Jeanette Van Ginhoven of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Testifying on behalf of the State was Daniel D'Agostino, Esquire. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the York County Clerk of Court and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is currently confined in the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. On October 15, 1998, the York County Grand Jury indicted the Applicant for murder, three counts of possession of a firearm during the commission of a violent crime, two counts of attempted armed robbery, possession of a firearm by a person under twenty-one, and criminal conspiracy.

On July 16, 1999, the Applicant pled guilty as charged. On July 19, 1999, the Honorable John C. Hayes, III, sentenced the Applicant to thirty years imprisonment for murder, five years for each count of possession of a weapon during the commission of violent crime, ten years for each count of attempted armed robbery, five years for criminal conspiracy, and five years for possession of a weapon by a person under twenty-one years of age. Daniel D'Agostino, Esquire, represented the Applicant.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected, which the South Carolina Court of Appeals dismissed. State v. Antonio Gordon and Monta Gordon Op. No. 2000-UP-747 (S.C. Ct. App. filed December 6, 2000).

Applicant's PCR application was dismissed by this Court and the Order of Dismissal signed August 18, 2003 by the Honorable J. Ernest Kinard, Presiding Judge, Fifth Judicial Circuit.

ARGUMENT

The Applicant would bring to this Court's attention the fact that, at the hearing, his attorney, Ms. Tara Dawn Shurling, did not raise all of the issues that were addressed in his PCR application, and that he wrote her extensively about. "After a post-conviction relief order is filed, counsel has an obligation to review the order and file a motion to alter or amend judgement if the order fails to set forth the required findings and reasons for those findings." Code 1976 §17-27-80; Rules of Civ. Proc.; Rules 52(a),(59)(e); U.S.C.A. Const. Amend. 6.

The Court took the opportunity in <u>Pruitt v. State</u>, 423 SE2d 127 (1992), to espress its concern with the increasing number of orders in PCR proceedings that fail to address the merits of the issues raised by the applicant. Not only does this deprive the parties of rulings on the issues raised, but it makes review by the appellate court more difficult and ultimately increases the work load of all involved where, as in this case, a new hearing is required to secure the rulings which should have been made initially. Counsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order, and the PCR judge should carefully review the order prior to signing it. Even after an order is filed, counsel has an obligation to review the order and file a Rule 59(e), SCRCP, motion to alter or amend, if the order fails to set forth the findings and the reasons for those findings as required by §17-27-80 and Rule (52)(a),SCRCP.

Although counsel did vaguely mention the Applicant's mental status, she failed to argue in detail the issues surrounding the Applicant's mental retardation. Furthermore, Ms. Shurling did not submit into evidence the numerous Psychological Evaluation Reports that were available to trial counsel before and during trial. (See Enclosed Reports). Said reports were written by State employees and reflect that the Applicant had an IQ of 68, which

is mild retardation.

Mental retardation is a condition in which people have substantial limitations in their intellectual abilities. As a result of their intellectual limits, people with retardation experience difficulties in daily activities such as learning, working, and caring for themselves. They also have difficulty with such social skills as understanding other people's behavior or communicating thoughts and feelings. The Stanford-Binnet Intelligence Scale, Fourth Edition, places my test score results in the range of mentally retarded. It also points out, along with several other leading authorites, that the IQ of most persons does not change much from year to year. But scores of some individuals can vary from one test to another.

Applicant further argues that the PCR evidentiary hearing outcome would have probably been different if counsel would have raised and argued these issues fully.

CONCLUSION

Wherefore, the Applicant prays this Honorable Court will grant the above motion.

S/ [signature]

Sworn to and Subscribed
before me this 18 day of November 03
Notary: [signature]
Exp: Oct-15, 2013

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK)
) Case Number: 2000-CP-46-1414
ANTONIO GORDON, #259798)
) **ORDER**
Applicant,)
)
v.)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)

FILED-RECEIVED
2003 DEC 15 PM 4:33
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

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NOV 13 2013
S.C. SUPREME COURT

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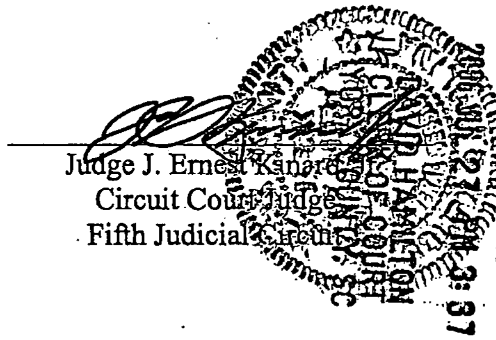
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

This matter came before the Court on the Applicants Motion for Rehearing and/or Motion for Reconsideration of Facts relating to a Post-Conviction Relief ("PCR") hearing on July 29, 2003. This Court dismissed the Applicants PCR application and an Order of Dismissal was signed on August 18, 2003. After careful consideration of the Applicants memorandum, the Motion for Rehearing and/or Motion for Reconsideration of Facts is denied as all issues that were brought before this Court in the PCR application were considered and ruled upon in the initial dismissal. A party may not raise additional issues after the original PCR hearing and seek a rehearing based upon those new issues.

IT IS SO ORDERED

December 9, 2003



Judge J. Ernest Kinard, Jr.
Circuit Court Judge
Fifth Judicial Circuit

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STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

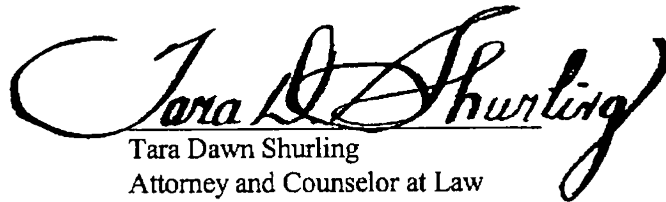
IN THE SUPREME COURT

ANTONIO GORDON, 259798,)
)
Applicant,)
v.)
)
)
THE STATE,)
Respondent.)
)

NOTICE OF APPEAL

00-CP-46-1414

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned counsel, giving notice of his intent to appeal the Order of Dismissal denying his Post-Conviction Relief dated August 18, 2003, issued by the Honorable J. Ernest Kinard, presiding judge. The Order of Dismissal was filed with the York County Clerk of Court on August 20, 2003, and received by Counsel for the Applicant on November 20, 2003.



Tara Dawn Shurling
Attorney and Counselor at Law

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Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 25th day of November, 2003.