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Anderson, SC CDC, CP/66

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON)	FOR THE TENTH JUDICIAL CIRCUIT
)	
Albert Lee Evans, #260409,)	CASE NO. 2024-CP-04-02123
)	
Applicant,)	
)	
v.)	CONDITIONAL ORDER OF DISMISSAL
)	
State of South Carolina,)	
)	
Respondent.)	
)	

This matter comes before the Court by way of a post-conviction relief ("PCR") action commenced by Albert Lee Evans ("Applicant") on October 16, 2024. Respondent made its Return¹ and moved to summarily dismiss the action, asserting the application is untimely, successive, barred by the doctrine of *res judicata*, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014). After review of the record and pleadings, this Court agrees this application should be summarily dismissed and provisionally dismisses the action based on the following:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Anderson County Clerk of Court. The Anderson County

¹ Respondent's return to the application was due to be filed within sixty days of receipt. *See* Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court accepts these returns as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

Grand Jury indicted Applicant in its May 1999 term for Murder (1999-GS-04-953), First Degree Burglary (99-GS-04-952), and Possession of a Firearm during the Commission of a Violent Crime (99-GS-04-951). On August 9-11, 1999, Applicant underwent a jury trial and was found guilty as indicted. The Honorable J.C. Nicholson sentenced Applicant to confinement for life without parole for Murder, thirty (30) years for Burglary, and a five (5) year term for the weapons charge. All sentences were to run concurrently. Applicant was represented by Robert A. Gamble, Esquire. Druanne White, Esquire prosecuted the case.

Applicant timely filed a Notice of Appeal. An *Anders*² brief was submitted by Aileen P. Claire of the South Carolina Office of Appellate Defense. The South Carolina Court of Appeals dismissed the appeal by written order on January 26, 2001, after the appeal was voluntarily withdrawn by Applicant. The remittitur was issued that same day.

Initial PCR Action: 2001-CP-04-1271

Applicant subsequently filed his first application for post-conviction relief on May 11, 2001, in which he alleged the following:

1. Ineffective assistance of trial counsel
2. Judicial error- "for sentencing under a different set of indictments."

Respondent requested an evidentiary hearing through its Return on August 22, 2001. On August 30, 2005, the PCR court convened an evidentiary hearing before the Honorable Lee S. Alford. Applicant was present at the hearing and represented by David Seay, Jr., Esquire. Assistant Attorney General Sally Elliott appeared on behalf of the State. At the hearing, Applicant testified on his own behalf and presented the testimony of Alexandria Stathakis. Respondent presented testimony from Applicant's trial counsel, Robert A. Gamble, Esquire.

² *Anders v. California*, 386 U.S. 738 (1967).

By order signed November 21, 2005, and filed November 28, 2005, Judge Alford denied the application on all grounds and dismissed the action with prejudice. Applicant subsequently filed a timely motion to alter or amend pursuant to Rule 59(e), SCRCP, which Judge Alford denied on December 20, 2005. Applicant filed a timely notice of appeal. Appellate Defender Robert M. Pachak perfected Applicant's appeal by filing a *Johnson*³ petition for writ of certiorari with the South Carolina Supreme Court. On September 28, 2007, the Supreme Court issued an order denying Applicant's petition and granting appellate counsel's request to be relieved. The case was remitted back to the circuit court on October 16, 2007.

First Federal Habeas Corpus Action: 8:04-0124-GRA-BHH

On January 28, 2004, while Applicant's first PCR was pending, Applicant filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the District of South Carolina. *Evans v. Bazzle*, No. 8:04-0124-GRA-BHH. Applicant raised the following allegations in his pro se petition (verbatim):

1. Denial of my guaranteed federal constitutional rights of the First and Fourteenth Amendments to access to the state courts and due process of law; and equal protection of the laws.
 - a. I filed my PCR application in May of 2001, and the state courts are refusing to give me a hearing on my PCR application. I have written the Chief Administrative Judge of the tenth circuit and the Supreme Court of South Carolina about assisting me and they will not help me. I have no other avenue to turn to than this Honorable Court for help in asserting my federal constitutional rights having been violated and still being violated.

Respondent filed a return and motion for summary judgment on March 18, 2004, based on Applicant's failure to exhaust state remedies. The Honorable Bruce H. Hendricks, United States

³ *Johnson v State*, 294 S.C. 310, 364 S.E.2d 201 (1988) (approving of the withdrawal of counsel in meritless post-conviction appeals in accordance with the procedures outlined in *Anders v. California*, 386 U.S. 738 (1967)).

Magistrate Judge, subsequently issued a report and recommendation that Respondent be required to respond to Applicant's petition and that Respondent's motion for summary judgment be terminated as moot. On October 15, 2004, the Honorable G. Ross Anderson, Jr., issued an order rejecting the R&R, finding no "inordinate delay" because the delay was based in part on Applicant's own actions. At the time, Applicant had been appointed at least eight attorneys in his PCR, all of whom were relieved at Applicant's request. Accordingly, Judge Anderson granted Respondent's motion for summary judgment and dismissed the petition without prejudice for failure to exhaust state remedies. *Evans v. Bazzle*, No. CA 8:04-01 24-GRA (D.S.C. Oct. 15, 2004).

Applicant filed a notice of appeal. On March 30, 2005, the Fourth Circuit Court of Appeals issued an unpublished *per curiam* opinion denying Applicant's motion for a certificate of appealability and dismissing the appeal. *Evans v. Bazzle*, 124 F. App'x 207 (4th Cir. 2005). Applicant then filed a petition for rehearing and rehearing *en banc*, which was denied by order dated June 21, 2005. The mandate was issued on June 29, 2005.

Second Federal Habeas Corpus Action: 8:08-0088-GRA-BHH

On October 1, 2014, Applicant filed a second *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the District of South Carolina. *Evans v. Cartledge*, No. 8:08-0088-GRA-BHH. Applicant raised the following allegations in his *pro se* petition (verbatim):

1. "Was there any evidence to support the PCR judge's finding that the defense counsel was not ineffective in failing to request and instruction on voluntary manslaughter?"
 - a. "Jury could reasonably conclude[sic] that Petitioner committed voluntary manslaughter and based on all the evidence presented at trial Petitioner[sic] trial counsel should have requested the lesser included charge and trial judge should have charged it."
2. "Ineffective assistance of counsel"
 - a. "Petitioner stated at the hearing that an impropriety occurred respecting the selection of members of the jury and counsel was

ineffective for impaneling a juror who failed to disclose that she was an attorney. Alexandria Stathakis testified at the hearing that she served on Petitioner's jury and was an attorney at the time."

- b. "Petitioner stated at the hearing that trial counsel failed to object to the trial court abusing its discretion by allowing Solicitor Druanne White to bring pencils and pads into the courtroom, request the court to give same to the entire jury to take notes of the whole trial."
- c. "Petitioner was denied ineffective assistance of counsel when the prosecutor presented false and misleading evidence to the court during trial and was denied due process of law when counsel failed to object to this false misleading evidence."

Respondent filed a return and motion for summary judgment on May 12, 2008. The Court subsequently entered a *Roseboro*⁴ order, advising Applicant he had thirty-four days to file any material in opposition to the motion for summary judgment. Applicant filed a response on May 28, 2008. On September 22, 2008, Judge Hendricks issued a report and recommendation that Respondent's motion for summary judgment be granted and the petition be dismissed with prejudice. Applicant filed objections to the R&R on October 6, 2008. On October 29, 2008, Judge Anderson issued an order adopting and incorporating the R&R by reference; granting Respondent's motion for summary judgment; dismissing the petition with prejudice; and denying a certificate of appealability. *Evans v. Cartledge*, No. CA 8:08-0088-GRA (D.S.C. Oct. 29, 2008).

Applicant filed a notice of appeal. On June 4, 2009, the Fourth Circuit issued an unpublished per curiam opinion denying Applicant's motion for a certificate of appealability and dismissing the appeal. *Evans v. Cartledge*, 326 F. App'x 152 (4th Cir. 2009). On August 19, 2009, Applicant filed a petition for writ of certiorari in the United States Supreme Court, which the Court denied on November 9, 2009. *Evans v. Cartledge*, 558 U.S. 1014 (2009).

⁴ See *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) and *Webb v. Garrison*, No. 77-1855 (4th Cir. July 6, 1977) (requiring courts to provide explanation of dismissal/summary judgment procedures in federal habeas corpus cases).

Writ of Mandamus: 2010-CP-04-3364

On September 17, 2010, Applicant filed a "Motion for Writ of Mandamus," "Summons," and "Complaint Jury Trial Demand." In these documents, Applicant requested a "hearing on the merits of applicant's grounds of illegal search and seizure, and fundamental miscarriage of justice took place during applicant's trial." The State filed a return and motion to dismiss on February 28, 2011. On April 18, 2012, the Honorable J. Cordell Maddox, Jr., acting in his capacity as Chief Administrative Judge, issued an order denying and dismissing the action.

Applicant appealed. On February 6, 2013, the Court of Appeals dismissed the appeal for failure to serve and file the appellant's initial brief and designation of matter, as required by Rules 208 and 209 of the South Carolina Appellate Court Rules. The remitter was issued February 22, 2013.

Second Post-Conviction Relief Action and Subsequent Appeal: 2013-CP-04-2470

On November 13, 2013, Applicant filed a second PCR action, alleging he was being held in custody unlawfully based on the following:

1. Ineffective assistance of appellate counsel
2. Prosecutorial misconduct
3. Due process violation
4. Newly-discovered evidence

Respondent made its return on April 28, 2015, requesting the application be summarily dismissed as untimely and successive. Pursuant to this request, Judge Maddox, again acting in his capacity as Chief Administrative Judge, issued a conditional order of dismissal on May 6, 2015, provisionally denying and dismissing the application while giving Applicant twenty days to show why the dismissal should not become final. Applicant filed a response on May 7, 2015. Judge Maddox subsequently issued a final order of dismissal on September 9, 2015, denying and dismissing the application with prejudice. Applicant did not appeal.

First State Habeas Corpus Action: 2020-000373

On March 2, 2020, Applicant filed a petition for a writ of habeas corpus in our Supreme Court's original jurisdiction. By order dated July 8, 2020, the Supreme Court denied Applicant's petition.

Third PCR Application: 2021-CP-04-1650

On August 23, 2021, Applicant filed his third application for post-conviction relief. Applicant alleged he was being held unlawfully based on the following:

1. Ineffective assistance of appellate counsel
2. Prosecutorial misconduct
3. Due process violation
4. Newly-discovered evidence

Respondent made its Return on November 22, 2021, requesting the application be summarily dismissed as untimely, successive, and barred by the doctrines of *res judicata* and *laches*. Pursuant to this request, Judge Maddox, again acting in his capacity as Chief Administrative Judge, issued a conditional order of dismissal signed November 22, 2021, and filed November 23, 2021, provisionally denying and dismissing the application while giving Applicant twenty days to show why the dismissal should not become final. On March 9, 2022, Assistant Attorney General Lillian L. Meadows received a response from Applicant dated March 8, 2022. The response was also clock-stamped by the Anderson County Clerk of Court March 9, 2022. Judge Maddox subsequently issued a final order of dismissal on June 28, 2022, denying and dismissing the application with prejudice.

Second State Habeas Corpus Action: 2022-001348

On September 23, 2022, Applicant filed a writ of habeas corpus in our Supreme Court's original jurisdiction. By order dated March 26, 2024, the Supreme Court denied Applicant's petition.

CURRENT APPLICATION

On October 16, 2024, Applicant filed this PCR application alleging he is being held in custody unlawfully on the following grounds:

1. Ineffective assistance of counsel
2. Ineffective PCR Counsel
3. Ineffective Counsel after original PCR
4. Misdemeanor prior conviction statutes are from Florida.
 - a. The conviction the Anderson County used for enhancement from Orange County Florida is illegal and void, that charge was dismissed.
5. Unconstitutional sentence/conviction.
6. Life without parole notice is invalid and void.
7. Petitioner never pled guilty to manslaughter.

Applicant requests relief in the form of the vacation of his sentence. Before this Court are the Anderson County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; the records from Applicant's prior PCR and habeas corpus actions, and the records of the current PCR action.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Summary dismissal without a hearing is appropriate only if (1) it is apparent on the face of the application that there is no need for a hearing to develop facts, and (2) the applicant is not entitled to post-conviction relief. § 17-27-70(c). When considering Respondent's motion for summary dismissal, the Court must assume the facts presented in the application are true and view those facts in the light most favorable to the Applicant. *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005). This Court finds there are no genuine issues of material fact and Applicant is not entitled to post-conviction relief. Therefore, summary dismissal is appropriate.

Summary Dismissal Based on Statute of Limitations

Respondent moved to summarily dismiss this application for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.⁵ Specifically, the Act requires as follows:

- (A). 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.
- (B). When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
- (C). If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45.

The South Carolina Supreme Court has held 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). A motion for summary judgment may properly be used to raise the defense of the statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638

⁵ S.C. Code Ann. § 17-27-10 to -160.

(1994). Additionally, S.C. Code Ann. § 17-27-70(c) 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."

In the present case, Applicant is alleging he is entitled to post-conviction relief based on multiple allegations. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant was convicted and sentenced on August 11, 1999. Applicant appealed his conviction for which the Remittitur was returned on January 26, 2001. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before January 27, 2002. Applicant did not file this PCR application until October 16, 2024.

Accordingly, this Court finds the application is *untimely* pursuant to S.C. Code Ann. § 17-27-45 and shall be summarily dismissed as barred by the statute of limitations.

Summary Dismissal Based on Successiveness

Respondent also moved to summarily dismiss Applicant's claims because it is successive to the previous applications for post-conviction relief. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Importantly, S.C. Code Ann. § 17-27-90 provides:

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.

Pursuant to S.C. Code Ann. § 17-27-90, successive PCR actions are barred unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). In *Aice*, the South Carolina Supreme Court held that PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." *Id.* at 452, 409 S.E.2d at 395 (citing *Gamble v. State*, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The Court also noted, "[f]inality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice." *Id.* at 451, 409 S.E.2d at 394.

Expressly, any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." *Id.* at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. *Id.* Notably, the Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

Here, Applicant has failed to show that a successive application is appropriate or why he could not have raised these claims in his prior post-conviction relief actions. Accordingly, this Court finds Applicant has failed to meet the burden imposed upon him, and the Court shall summarily dismiss the application as successive to Applicant's previous PCR application(s).

Summary Dismissal Based on Res Judicata

Additionally, this Court finds this application is barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars

subsequent consideration of those issues in a new action. *Foran v. USAA Casualty Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.*; see also *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant had a full opportunity to litigate any and all his allegations in his *two* prior PCR actions and failed to do so. The prior PCR Courts issued final judgments on the merits of the same or similar issues Applicant raises in this successive action. The finality of the previous Courts' rulings should be respected, and the application should be summarily dismissed as barred by the doctrine of *res judicata*.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a showing he is entitled to relief based on the information set forth above; therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, the Court find this matter shall be summarily dismissed with prejudice.

Frustration of Finality of Convictions

As a final matter, both the United States Supreme Court and the South Carolina Supreme Court have emphasized the necessity for finality of litigation in criminal cases. The Court in *Aice* explained that:

Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. . . . [Here], Aice seeks to have more than one procedural "bite" at the apple. Aice has filed an original PCR application, and has been allowed to seek review of the ruling against him. We refuse to grant his request for a second

chance, and again we do so in order to effectuate the purposes of the Act and rules.

305 S.C. at 451–52, 409 S.E.2d at 394–95 (citations omitted).

The United States Supreme Court has explained that "the principle of finality . . . is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." *Teague v. Lane*, 489 U.S. 288, 309 (1989). "Relitigation of a conviction is a rear-view mirror, while a respect for finality encourages those in custody to contemplate the future prospect of 'becoming a constructive citizen.'" *United States v. Fugit*, 703 F.3d 248, 252 (4th Cir. 2012) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 262 (1973) (Powell, J., concurring)). In his concurring and dissenting opinion in *Mackey v. United States*, Justice Harlan wrote:

Finality in the criminal law is an end which must always be kept in plain view. . . . At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing that a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation.

401 U.S. 667, 691 (1971) (Harlan, J., concurring in part and dissenting in part). Seven years after *Mackey*, the South Carolina Supreme Court quoted Justice Harlan's opinion with approval in *Anderson v. Leeke*, 271 S.C. 435, 441–42, 248 S.E.2d 120, 123 (1978). Applicant's attempt to relitigate his convictions and sentences through this successive and time-barred application is contrary to the recognized need for finality of litigation.

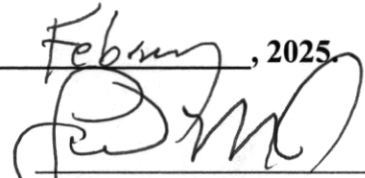
CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Anderson County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Ryan T. Kowalski
Post-Conviction Relief Division
Post Office Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Anderson County Clerk of Court and opposing counsel within twenty (20) days, and this Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 7 day of February, 2025.



R. LAWTON MCINTOSH
Chief Administrative Judge
Tenth Judicial Circuit

Anderson, South Carolina



25 FEB 7 PM 4:26:36
Anderson, SC COC, CP/66

ALAN WILSON
ATTORNEY GENERAL

January 28, 2025

The Honorable R. Lawton McIntosh
Tenth Judicial Circuit Chief Administrative Judge
Post Office Box 8002
Anderson, SC 29622

Re: Albert L. Evans, #260409 v. State of South Carolina
2024-CP-04-02123

Dear Judge McIntosh,

Enclosed please find the proposed Conditional Order of Dismissal in the above-captioned case. Respondent's Return and Motion to Dismiss has also been sent to your chambers for your consideration. If this proposed order meets your approval, please sign it, and forward it to the Anderson County Clerk of Court for filing with the enclosed stamped envelope.

If you have any questions regarding this matter, please let me know.

Sincerely,

Ryan T. Kowalski
Assistant Attorney General

RTK/zew
Enclosure

cc: Albert L. Evans, #260409