

State of South Carolina > In The Court of
County of Beaufort > Common Pleas

Alfonzo J. Howard # 333399
Applicant,

v.

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JUN 16 2026

SC Court of Appeals

> Fourteenth Judicial
> Circuit
> Case No. 2025-CP-07-0357
> Applicant's Response to
> Amended Conditional Order
> of Dismissal And Motion
> For Evidentiary Hearing and
> Appointment of Counsel

State of South Carolina
Respondent

Comes now the Applicant, Alfonzo J. Howard, prose, and respectfully submits this Response to the Amended Conditional order of Dismissal dated February 24, 2026. This is the fourth time Applicant has been ordered to respond to a conditional dismissal in this successive PCR proceeding. Applicant opposes dismissal in its entirety and requests that the Court not make the order final. Applicant provides specific factual and legal reasons why the application should not be dismissed addressing every finding in the order. Applicant also moves for an evidentiary hearing, appointment of counsel, and a court-ordered re-analysis of the Sexual Assault Examination kit (SAK) from the May 26, 2006 incident with the ultimate goal of a new trial or dismissal of the charges.

I.

Response To Statute of Limitations
(§ 17-27-45(A))

The court found this application barred because it was filed more than one year after the remittitur from the direct appeal (March 10, 2011). Applicant respectfully submits that the statute does not bar this application because:

(1)

Factual Reason;

The SLED Sexual Assault Examination Protocol Form dated May 26, 2006, was received anonymously by mail on February 10, 2025. Applicant had no prior knowledge of its existence or its contents (oral copulation document without any DNA analysis). Applicant filed on May 30, 2025, within four months of receipt. There is no possible way Applicant could have brought this evidence up earlier because he did not know it existed.

Legal Reason;

The one year limitation in § 17-27-45(A) is subject to equitable tolling when new evidence is discovered through no fault of the applicant. See *McCray v. State*, 408 S.C. 356, 759 S.E.2d 144 (Ct. App. 2014), *Pelzer v. State*, 662 S.E.2d 618 (S.C. Ct. App. 2008).

The anonymous mailing constitutes such an extraordinary circumstance. An evidentiary hearing is necessary to develop facts on the receipt date and Applicant's diligence.

II.

Response to Newly Discovered Evidence Claim

The court found Applicant failed to satisfy the *Hayden v. State* criteria because the SLED form is dated 2006 and contains no DNA analysis. Applicant respectfully submits:

Factual Reason;

The newly discovered evidence is the specific contents of the SLED form revealed in 2025: oral copulation documented without any DNA analysis. This was unknown to Applicant until February 10, 2025. The prosecution argued conviction was based on gloves.

not the SAK, but this is a sexual assault case with First-degree CSC conviction. The SAK form's note raises doubt about the CSC act itself.

Legal Reason;

The evidence satisfies all five Hayden criteria:

- 1) It would probably change the result if a new trial was held (re-analysis could exclude Applicant or show inconsistencies).
- 2) It has been discovered since the trial (February 2025).
- 3) It could not have been discovered before trial by due diligence (anonymous mailing)
- 4) It is material to guilt or innocence (oral copulation without DNA support goes to the heart of CSC).
- 5) It is not merely cumulative or impeaching (new factual basis for re-testing the SAK).

Applicant is requesting a court ordered re-analysis of the SAK. This meets the threshold for a hearing under *State v. Spann*, 363 S.C. 580, 611 S.E. 2d 619 (2005).

III.

Response to Successive Application Bar (§ 17-27-90)

The court found the application successive because the ineffective assistance claim could have been raised in the 2011 PCR. Applicant respectfully submits:

Factual Reason:

The current allegations are tied to the 2025 discovery of the SLED form. Applicant could not have raised this specific ground in 2011 because he did not know the form existed or what it contained (oral copulation documented, no DNA analysis). This is a new factual basis for the ineffective assistance claim.

Legal Reason:

Section 17-27-90 allows successive applications when the applicant shows a sufficient reason why the new ground was not raised earlier. The late discovery of the form via anonymous mailing in 2025 constitutes sufficient reason. See *Aice v. State*, 305 S.C. 448, 409 S.E. 2d 392 (1991); *Washington v. State*, 324 S.C. 232, 478 S.E. 2d 833 (1996). Applicant bears the burden of showing the allegations could not have been raised before, and the 2025 receipt satisfies that burden. An evidentiary hearing is necessary to establish these facts.

IV.

Response to Ineffective Assistance of Counsel

The court found applicant failed to meet the *Strickland v. Washington* standard. Applicant respectfully submits:

Factual Reason:

Trial counsel failed to request independent testing or investigate the SLED form, despite doubts about forensic evidence. The form's details (oral copulation, no DNA) could have altered the defense strategy.

Legal Reason;

Counsel's performance was deficient, and there is a reasonable probability the outcome would have differed, satisfying Strickland. The form's discovery in 2025 highlights the prejudice.

V.

Motion for Evidentiary Hearing and Appointment of Counsel

Applicant moves for an evidentiary hearing under § 17-27-80 to develop the facts, including authentication of the SLED form and testimony on counsel's performance. Applicant further requests a court-ordered re-analysis of the SAK.

Applicant has been repeatedly denied appointed counsel despite the statutory requirement under Rule 71.1(c), SCRCP, and due process. The repeated denials appear to be an attempt to run applicant in circles and force him to abandon his right for freedom. Applicant requests appointment of counsel to ensure a fair hearing on the merits. See Supreme Court administrative order on appointment of counsel October 6, 2008 and Rule 71.1(c), SCRCP (counsel required when genuine issues of facts exist).

VI.

Conclusion and Prayer for relief for the foregoing reasons, applicant respectfully requests that the court:

Withdraw the Amended Conditional order of Dismissal.
Deny the Respondents motion for Summary Dismissal.
Grant an Evidentiary hearing.
Order a re-analysis of the (SAK).

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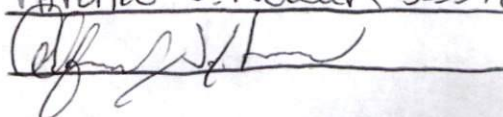
Appoint Counsel.

Grant such other relief as the court deems just and proper, including acquittal or dismissal and/or new trial.

Certificate of Service

I hereby certify that on May 5, 2026 a true and correct copy of the foregoing was served upon the Respondent via 215 mail postage addressed to:

Kulee Kanealey, Esquire
PCR Division-Ninth Circuit
Officer of the Attorney General
PO Box 11549
Columbia, South Carolina 29211

Respectfully Submitted
Alfonzo J. Howard #333309


SWORN TO AND SUBSCRIBED BEFORE ME

THIS 11 DAY OF June

20 26. Virginia Robinson

NOTARY PUBLIC
STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES April 21, 2031