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

Pursuant to Code Section 15-9-500, Code of Laws of South Carolina, 1976, the Director of the South Carolina Department of Corrections has designated Eartha Brooks (Server) as his duly authorized agent for the purpose of making service of the signed Conditional Order of Dismissal on the below named individual.

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

On this 12 day of December, **2013**, I served the signed **Conditional Order of Dismissal** on ***Inmate Eddie L. Hall, SCDC Inmate No. 184752*** by delivering personally and leaving a copy of the same at ***Kershaw Correctional Institution,*** Kershaw, South Carolina. Deponent is not a party to this action.

s/ Eartha Brooks

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

This 12 day of December, **2013**

Catherine A. Amaro (L.S.)

Notary Public for South Carolina

My Commission Expires: [illegible]

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, Kershaw ***Correctional Institution,*** Kershaw, Lancaster County, South Carolina, this 12 day of December, ***2013.***

s/ Eddie L. Hall

Inmate Signature
SCDC No. 184752

2013-CP-40-00895

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Eddie L. Hall, #184752, Applicant, v. State of South Carolina, Respondent.	2013-CP-40-2591 **CONDITIONAL ORDER OF DISMISSAL**

RICHLAND COUNTY FILED
2013 NOV 25 PM 12: 01
JEANETTE W. GRANGE C.P. & G.S.

This matter comes before this Court by way of a document captioned Petition for Wirt of State Habeas Corpus[1], filed April 14, 2013. In its return, Respondent requested the filing be summarily dismissed.

PROCEDURAL HISTORY

Applicant was true bill indicted at the August 1991 term of the Richland County Grand Jury for Possession with Intent to Distribute Cocaine (1991-GS-40-4018). Applicant was also true bill indicted at the December 1991 term for Distribution of Crack Cocaine (1991-GS-40-7539) and Trafficking Cocaine over 100 grams (1991-GS-40-7541). Applicant was represented by Howard Hammer, Esquire and John W. Carrigg, Jr., Esquire. Applicant proceeded to jury trial on January 27-29, 1992, at the conclusion of which, Applicant was found guilty as indicted. The Honorable L. Henry McKellar sentenced Applicant to confinement for twenty-five (25) years Trafficking Crack Cocaine over 100 grams, fifteen (15) years consecutive for Distribution of Crack Cocaine, and fifteen (15) years concurrent for Possession with Intent to Distribute Cocaine.

[1] This Court agrees with Respondent's interpretation of Applicant's filing and views the current filing as an Application for Post-Conviction Relief.

SCANNED

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Supreme Court affirmed Applicant's conviction and dismissed the appeal. State v. Hall, No. 93-MO-306 (S.C. October 12, 1993). The Remittitur was issued on November 17, 1993.

1st Federal Habeas: C.A. No. 3:93-3124-2BD

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on November 26, 1993. In his Petition, Applicant set forth the following grounds for relief:

1. Conviction was obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
2. Conviction obtained by use of evidenced obtained pursuant to unlawful arrest.
3. Denial of effective assistance of counsel.

The Report and Recommendation was issued on July 7, 1994 by United States Magistrate Judge Bristow Marchant. The Honorable C. Weston Houck denied Applicant's Petition on September 30, 1994, accepting the Report and Recommendation for summary judgment. Applicant appealed the District Court's ruling for summary judgment on October 14, 1994. The Fourth Circuit Court of Appeals dismissed Applicant's appeal on March 14, 1995. Hall v. State of South Carolina, No. 94-7220 (4th Cir. March 14, 1995). The Mandate was issued on May 10, 1995.

1st PCR: 1996-CP-40-1782

Applicant filed his first application for post-conviction relief on May 14, 1996. In his application, Applicant set forth the following grounds for relief:

1. Ineffective Assistance of Counsel.
2. Hearsay Evidence.
3. Double Jeopardy.

The State made its Return on September 17, 1996. A hearing into the matter was convened on May 19, 2000 at the Richland County Courthouse. Applicant was present and represented by

Tara Dawn Shurling. The State was represented by G. Robert DeLoach, III. By written Order dated June 20, 2000, the Honorable William P. Keesley stayed the application pending an Order from the federal court. On May 31, 2002, a hearing was convened in Richland County. Applicant was represented by H. Wesley Kirkland. In a written order dated July 1, 2002, the Honorable Howard P. King dismissed the application with prejudice.

Applicant filed a Notice of Appeal on September 5, 2002. A Johnson Petition for Writ of Certiorari was filed on Applicant's behalf on March 24, 2003. The South Carolina Supreme Court denied the Petition for Writ of Certiorari on August 20, 2003. The Remittitur was issued on September 5, 2003.

1st State Habeas: 1998-CP-40-1253

The Applicant subsequently filed a Petition for Writ of State Habeas Corpus on December 1, 1997 in Jasper County. In his Petition, Applicant set forth the following grounds for relief:

1. Violation of 5th, 6th, and 14th Amendments.
2. Subject Matter Jurisdiction.
3. Ineffective Assistance of Counsel.

Upon motion, the Petition was removed from Jasper County and transferred to Richland County. By Order dated June 5, 1998, the Honorable L. Henry McKellar denied and dismissed the Petition as improper. The Applicant filed a timely Notice of Appeal. The South Carolina Court of Appeals dismissed Applicant's appeal. Hall v. Taylor, No. 99-UP-267 (Ct. of App. April 26, 1999).

2nd Federal Habeas: C.A. No. 0:00-0403-25BD

Applicant filed his second *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on January 18, 2000. In his Petition, Applicant set forth the following grounds for relief:

1. "Conviction obtained by use of coerced confession."
2. "Conviction obtained by use of evidenced gained pursuant to an unconstitutional Search and Seizure."
3. "Conviction obtained by use of evidence obtained to an unlawful arrest."
4. "Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant."

The Report and Recommendation was issued on August 11, 2000 by United States Magistrate Judge Bristow Marchant. The Honorable Terry T. Wooten denied Applicant's Petition on June 26, 2002, accepting the Report and Recommendation for summary judgment.

3rd Federal Habeas: C.A. No. 8:03-2960-25BI

Applicant subsequently filed a third *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on September 4, 2003. In his Petition, Applicant set forth the following grounds for relief:

1. Ineffective Assistance of Counsel.
2. Lack of Subject Matter Jurisdiction.

The Report and Recommendation was issued on May 20, 2004 by United States Magistrate Judge Bruce H. Hendricks. The Honorable Terry L. Wooten denied Applicant's Petition on June 21, 2004, accepting the Report and Recommendation for summary judgment. Applicant appealed the District Court's ruling for summary judgment on August 20, 2004. The Fourth Circuit Court of Appeals dismissed Applicant's appeal on December 9, 2004. Hall v. State of South Carolina, No. 04-7356 (4th Cir. December 9, 2004). The Mandate was issued on January 3, 2005.

2nd PCR: 2005-CP-40-4209

Applicant filed his second application for post-conviction relief on August 23, 2005. In his application, Applicant set forth the following grounds for relief:

1. Ineffective Assistance of Counsel.
2. Lack of Subject Matter Jurisdiction.

3. Illegal Search and Seizure.

Respondent made its Return and Motion to Dismiss on November 2, 2005. In a written order dated and filed March 6, 2006, the Honorable J. Ernest Kinard, Jr. dismissed the application with prejudice. Applicant did not appeal the Order.

2nd State Habeas: 2006-CP-40-1405

Applicant filed his second Petition for State Habeas Corpus on March 15, 2006. In his petition, Applicant set forth the following grounds for relief:

1. 4th Amendment Violation.
2. 6th Amendment Violation.
3. Invalid Arrest Warrants.

Respondent made its Return and Motion to Dismiss on October 11, 2006. In a written order dated March 26, 2007, and filed March 28, 2007, the Honorable James R. Barber, III dismissed the petition with prejudice. Applicant filed a Notice of Appeal, which was received by the Supreme Court of South Carolina on April 11, 2007. The Supreme Court dismissed Applicant's Appeal on May 14, 2007 for failure to serve counsel of respondent. The Remittitur was issued on May 30, 2007.

3rd State Habeas: 2006-CP-35-0571

Applicant subsequently filed his third Petition for State Habeas Corpus on November 22, 2006. Respondent filed a Return and Motion to Dismiss on January 19, 2007, for failure to in the original jurisdiction. In a written order dated January 20, 2007, the Honorable Paul M. Burch dismissed the petition. Applicant did not appeal the Oder.

3rd PCR: 2011-CP-40-0101

Applicant filed his third application for post-conviction relief on January 6, 2011. In his application, Applicant set forth the following grounds for relief:

1. First Amendment Violation.
2. Equal Protection Violation.
3. Due Process Violation.
4. Ineffective Assistance of Counsel.
5. Lack of Subject Matter Jurisdiction.

Respondent made its Return and Motion to Dismiss on April 7, 2011. In a written order dated June 18, 2012, and filed June 20, 2012, the Honorable James R. Barber, III dismissed the application with prejudice. Applicant filed a Notice of Appeal on July 2, 2012. The Supreme Court of South Carolina dismissed Applicant's Appeal by Order dated September 5, 2012, for failure to provide proof of service. The Remittitur was issued on September 25, 2012.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the prior post-conviction relief records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

In his current application for Post-Conviction Relief Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. First Amendment Violation.
2. Equal Protection Violation.
3. Due Process Violation.
4. Ineffective Assistance of Counsel.
5. Lack of Subject Matter Jurisdiction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current Application for post-conviction relief must be summarily dismissed because it is successive to Applicant's prior application for post-conviction relief filed on May 17, 2005. S.C. Code Ann. §17-27-90 provides that:

> All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding 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.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current Application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish a sufficient reason why he could not have raised his current allegations in his first application for post-conviction relief therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice, 305 S.C. 448, 409 S.E.2d 392 (1991).

This Court finds, further, that this Application for post-conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this Application on April 26, 1998. This Application was filed on May 21, 2013, which was well beyond the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the Application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and because it is successive.

Due to the repetitive and frivolous nature of Applicant's numerous applications, this Court directs the Richland County Clerk of Court to not 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 (1994); In re Anderson, 511 U.S. 364 (1994); In re Demos, 500 U.S. 16 (1991); In re Sindram, 498 U.S. 177

(1991); In re McDonald, 489 U.S. 180 (1989).

Additionally, this finds 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 (1983).

This Court also finds 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 for Common Pleas. The Administrative Judge should 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 should be filed without a proper finding from the Chief Administrative Judge.

This Court also cautions the Applicant that should he continue to file Applications containing matters that are frivolous, 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).

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 (20) 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, factual or legal, with the Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Megan E. Harrigan, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 21 day of November, 2013.

L. CASEY MANNING
Chief Judge for Administrative Purposes
Fifth Judicial Circuit

Columbia, South Carolina.