

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Jessica Ann Salvini, Presiding Judge

RECEIVED

OCT 26 2026

Appellate Case No. # 2026-0011792

S.C. SUPREME COURT

Kevin Harbin,

Petitioner,

V.

State of South Carolina, and South Carolina
Department of Corrections,

Respondents.

A P P E N D I X

Other Counsel of Record:

South Carolina Attorney General
P. O. Box 11549
Columbia, SC 29211

Kevin Harbin
Petitioner, Pro Se
Kevin Harbin
Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

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Note:

No evidentiary hearing was convened in the lower court proceedings.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Kevin Harbin, #303214,

Plaintiff,

vs.

State of South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

FINAL ORDER REGARDING
MOTION TO RECONSIDER

Case No.: 2024CP2303549

FILED: 26 JUL 24 PM 4:48
COC JAY GRESHAM/GVL SC

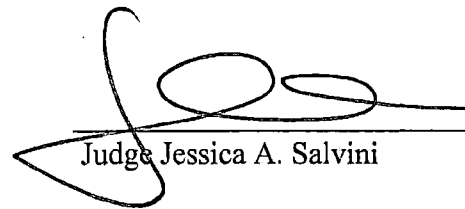
A motion to reconsider or to alter or amend has been filed with the Court on June 15, 2026. Pursuant to Rule 59(f), SCRCP, the Court, in its discretion, may decide the motion based on briefs without oral argument.

After careful consideration, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

Accordingly, the Motion for Reconsideration made pursuant to Rule 59, SCRCP,¹ is respectfully DENIED.

AND IT IS SO ORDERED.

7/24, 2026
Greenville, SC



Judge Jessica A. Salvini

¹ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT

KEVIN L. HARBIN, #303214

Applicant,

v.

STATE OF SOUTH CAROLINA,

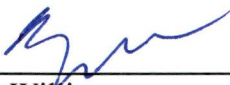
Respondent.

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that a true copy of the filed Final Order Regarding Motion to Reconsider has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

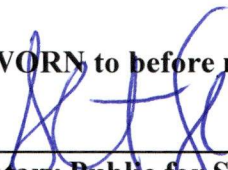
Kevin L. Harbin, #303214 (COA-0007-A)
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, SC 29827

This 27th day of July, 2026.



Z. Williams
Legal Assistant for Respondent

SWORN to before me this 27th day of July, 2026.



Notary Public for South Carolina
My Commission Expires: 3/14/2032



ALAN WILSON
ATTORNEY GENERAL

July 27, 2026

Kevin L. Harbin, #303214 (COA-0007-A)
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, SC 29827

Re: Kevin L. Harbin, #303214 v. State of South Carolina
2024-CP-23-00478

Dear Mr. Harbin,

Enclosed is a copy of the filed Final Order Regarding Motion to Reconsider for the above-captioned case signed by the Honorable Jessica A. Salvini and filed with the Greenville County Clerk of Court.

Sincerely,

Sydney N. Willingham
Assistant Attorney General

SNW/zew
Enclosure

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Kevin Harbin, #303214
Applicant,

V.

State of South Carolina and
South Carolina Department of
Corrections,
Respondents.

IN THE COURT OF COMMON PLEAS

Civ. Act. No.: 2024-CP-23-03549

NOTICE OF MOTION
AND

MOTION PURSUANT

TO
RULE 59(e)

FILED: 26JUN15AM11:18
COC JAY GREENHAM GML SC

COMES NOW, Kevin Harbin, by and through Pro Se, who hereby gives ten(10) day notice of motion to the Respondents; who submits the Motion pursuant to RULE 59(e), SCRPC, to amend, reverse or rescind, the Final Order of Dismissal, dated May 21, 2026, filed May 22, 2026, issued by the Court and Received by the Applicant on June 2, 2026.

The P.C.R. court has signed and inadequate P.C.R Order that does not comply with Section 17-27-80 and Rule 52(a), which states "The PCR court SHALL make specific findings of fact, and state expressly its conclusion of law, in relation to each issue presented." See, Reese V. State, 425 S.C. 108, 111, 820 S.E. 2d 376, 378 (2018)

The Court's Order failed to specifically address any of the issues raised by the Applicant. The South Carolina Rules of Civil Procedure apply to P.C.R. matters. Rule 71.1, SCRPC. See, Simmons V. State, 416 S.C. 584, 592, 788 S.E.2d 220, 225 (2014) (quoting Marlar V. State, 375 S.C. 467, 469, 653 S.E. 2d 266 (2007))

GROUND

1) The Applicant clearly demonstrated when a inmate alleges that the sentence itself has expired, that the duration of lawful imprisonment has ended. Such claims are cognizable under the Uniform Post-Conviction Relief Procedure Act, Section § 17-27-20(A)(5), S.C. Code Ann. SEE, ... Al-Shbazz, 338 S.C. at 368, 527 S.E. 2d at 749 (emphasis provided)
The Court has fail to or dispose of this issue.

2) Applicant is entitled to post-sentence accrual of statutory credits mandated by S.C. Codes 24-13-210(b) and 24-13-230(b), throughout the entire cumulative period of incarceration. SEE, Busby V. Moore, - S.C. -, 498 S.E. 2d 883 (1998); State V. Scott, 351 S.C. 584, - S.E. 2d (2002); Howard V. S.C.D.C., 399 S.C. 618, 733 S.E. 2d 211 (2012); Bolin V. S.C.D.C., - S.C. 781 S.E. 914, 918 (2016); Carpenter V. S.C.D.C., 848 S.E. 2d 346 (2020).
The Court has fail to mention or dispose of this issue.

3) Applicant filed a Motion To Remove The State As a Party. While the application languished in court, Five-Hundred and twenty-Six (526) days transpired as of the date motion to remove the state as a party was filed. Respondents' has not in any way, controverted, or refuted the Applicant's motion for entry of default upon the record, nor the allegations of the Affidavit, in support of that motion, and the default of the Respondents, is conclusively established.

Rule 8(d), SCRCP, Provides:

(d) Effect of Failure To Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. ..."

Respondents, thus, as a matter of law, Admit they are a defaulting party. Moreover, the Court of Appeals has held that a party in default is not entitled to participate in the litigation or raise defenses, cc Stark Truss Co., Inc V. Superior Court, Corp., 360 S.C. 503, 508, 602 S.E. 2d 99, 102 (Ct. App. 2004)
The Court has fail to mention or dispose of this issue.

4.) The Court has an affirmative duty to ensure the clerk of court's compliance with Rule 55(a), SCRCP, and the state's default entitles applicant to judgment. The Clerk of Court's duty to enter default is ministerial and non-discretionary. The applicant on October 28, 2025, file request for entry of default, and supporting Affidavit of default with the clerk of court. On December 10, 2025, applicant filed Motion To Compel Entry of Default. The State was served with the P.C.R. application on June 10, 2024, and was required to file its return with-in 90 days. Rule 12(a), SCRCP, made applicable by Rule 71.1, SCRCP. The Court, in exercise of its supervisory authority over Clerks of Court, should direct the Clerk to enter the State's default nunc pro tunc to the date the default first became available. The Court has failed to mention or dispose of this issue.

5.) The Applicant further invoked the discovery process by submitting Request For Admission, Rule 36(a), SCRCP on October 24, 2024, and the Respondents have not made any response to refute said request for admissions with-in the time limits specified by Rule 36, SCRCP. The Court has failed to mention or dispose of this issue.

6.) Applicant presented with particularity the trial court nor the sentencing sheet specifies that S.C. Code Ann. § 24-13-150(a), 85% sentences are subject to the sentence-credits mandated by S.C. Codes 24-13-210(b) and 24-13-230(b). The S.C.D.C. cannot correct and illegal sentence, only the court can modify a sentence. S.C. Code Ann. § 24-13-40 provides that "If the court fails to give credit as required by this, the court shall, upon motion of the defendant or upon its own motion, modify the sentence nunc pro tunc to correct the sentence".

The plain language of these statutes explicitly contemplate judicial correction, the sentence is clearly ambiguous and rendered illegal a judicial error. See, Tant V. S.C.D.C., 408 S.C. 334, 759, S.E. 2d 398 (2014)

The Court has failed to mention or dispose of this issue.

7) The Respondents' Waiver of all Affirmative defenses, by failure to plead them in a timely manner, the state's motions to dismiss and to restrict future filings, as well as its return, filed one(1) year and over five(5) months after the return was due, raised various defenses. However, the failure to plead any of those affirmative defenses in a timely manner constitutes a waiver of the right to assert any of them. (In Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002), the South Carolina Supreme Court squarely addressed this issue in the post-conviction relief context.) The Court has failed to mention or dispose of this issue.

8) Applicant filed a Motion To Strike Rule 12(f), S.C.R.C.P., striking the return, the motion to dismiss, and the motion to restrict future filings, submitted by the State March 10, 2026. The Court has failed to mention or dispose of this issue.

9) Applicant asserted that a Judicial Admission is one that is conclusive in the case, such formal concessions that are binding upon the party making them. Under all relevant rules, Respondents' own party admissions militate against any ruling in favor of the state and the South Carolina Department of Corrections. The Respondents' failure to make an appearance in a timely renders applicants claims uncontroverted and un-refuted. The allegations of the application and Trial brief are to be taken as true, and further conclusively established, Pursuant to Rule 8(d) S.C.R.C.P.

10) A conditional dismissal under S.C. Code Ann § 17-27-70(b), cannot be used to circumvent the default procedure. Nothing in the Uniform Post-Conviction Relief Procedure Act, S.C. Code Ann. § 17-17-10, et seq., is inconsistent with the entry of default against a non-responsive state. To the contrary, the act contemplates adversarial proceedings in which the State must file a timely return or motion to dismiss, or face the consequences of its failure to do so.

A party in default Admits the well-pleaded allegations of the complaint. Duncan v. Duncan, 93 S.C. 487, 76 S.E. 1099 (1912). The Court has failed to mention or dispose of this issue.

11.) S.C. Code Section Ann. §24-13-150(a), is an adoption of the Federal Truth In Sentencing provision of the Violent Crime Control and law enforcement Act of 1994, 42 U.S. Code, §13704(A)(2); 34 U.S. Code §12104(A)(1)(b). The unambiguous language of state and federal statutes demonstrates, the Respondents' application of Pre-calculated administrative or statutory Credits, applied to Applicant's sentence Subsequent to imposition of the actual sentence Constitutes a violation of due process, equal protection of laws, as well as ex post facto violation, under both Constitution of the United States (fourteenth Amendment) and the South Carolina Constitution of the Art. I, §3; and laws in direct conflict with federal and State law and the legislative intent of Congress and the General Assembly's enactments; and therefore, is Pre-empted, as a matter of law, by the Supremacy Clause of the United States Constitution, art. VI, Clause 2; and Section §17-27-20(A)(1), S.C. Code Ann. The Court has failed to mention or dispose of this issue.

12.) Applicant filed a Motion To Hold the P.C.R. proceeding In Abeyance pending the disposition of applicants Petition for Writ of Mandamus filed March 2, 2026, and applicant was require to file a second motion for default on April 13, 2026, pursuant to Rule 245(c), SCACP, and currently pending before the South Carolina Supreme Court, involving the issue of default on the part of the Respondents, and the clerk of courts failure to enter said default as required by Rule 55(a), SCRPC. The Court has failed to mention or dispose of this issue.

13.) The Proposed Orders, Signed before even Served upon Applicant, were not Served as required by Rule 5, SCRPC, prior to being signed by the Judge. Rule 5(a), SCRPC, mandates that "all (1.) Written Orders, ... (4) ... and other papers SHALL be Served upon each of the parties of record"

This constitutes a clear violation of due process of law, a direct violation of Rule 5(b)(3), SCRPC, and denied Applicant the fundamental right to object to the form and substance of the proposed orders.

Such ex parte submission and granting of proposed orders is improper and requires both orders be vacated and set aside. The Court has failed to mention or dispose of this issue.

14.) Applicant clearly demonstrated that P.C.R. application was filed raising claims with-in one year after the date of actual discovery of evidence of material facts not previously presented and heard that requires vacation of the sentence. S.C. Code Ann. Section § 17-27-45(c). (See, PCR Application pages) and Trial Brief statement facts). Moreover, the sentencing sheet did not include that § 24-13-150(c) is an adoption of a federal statute nor that it is subject to mandated credit statutes 24-13-210(b) and 24-13-230(b), the box for accrual of time in county is not checked.

Further, applicant had a recent communication with classification on discovered on March 13, 2026, Kiosk request reference number (26-04316470) provided?

Question: "Ms. V. Williams, what is my calculation of work credits, education credits, the total credit count?"

Response Date: March 17, 2026 Provided:

"As discussed last week, in the system your total Earned Work credits = 2727, your total Earned education credits = 1090 and your total service time = 7637."

In Carpenter v. S.C.D.C., 848 S.E. 346 (2020), Carpenter alleges S.C.D.C. misinterpreted both the law and his sentence when it concluded he is not entitled to his Earned good time and work credits of any kind. The Court concluded this allegation falls squarely under § 17-27-20(A)(5), it is also a PCR claim § 17-27-20(A)(5) ("Any person who has been convicted of, or sentenced for, a crime and who claims... [t]hat his sentence has Expired... may institute... a proceeding under [the PCR act] to secure relief.") See Also Al-Shbazz, The Court Found:

"There was an exception to this statutorily-mandated procedure when the sentencing credit issue is alleged to have caused an inmate to remain imprisoned past the Expiration of his lawful sentence, the claim is appropriately raise in a PCR application under § 17-27-20(A)(5). 338 S.C. at 368, 527 S.E.2d at 749."

The Court has not mention or dispose of this issue.

(6.)

15.) The State's Motion To Dismiss and Motion To Restrict Future Filings is procedurally defective for failing to include a Notice of Motion, pursuant to Rule 7(b)(1), SCRPC. The South Carolina Rules Annotated emphasize that a motion is not a pleading that stands alone, see Rule 7(c), SCRPC. (Abolishing demurrers and pleas, and noting that defenses are raised by motion under Rule 12, SCRPC.)

The procedural requirement of notice of motion serves fundamental due process purposes. SEE, Johnson V. Alexander, 413 S.C. 196, 202, 775 S.E. 2d 697, 700 (2015). The Court has not mentioned or disposed of this issue.

Conclusion

WHEREFORE, the Applicant respectfully requests the Court to amend the final judgment to include specific findings of fact, and state expressly its conclusions of law, relating to each issue presented, and for such other and further relief in favor of the applicant as the Court deems just and appropriate.

Date: June 3, 2026
Fairfax, South Carolina

Respectfully Submitted,
Kevin Harbin
Kevin Harbin
Applicant, Pro Se

Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, S.C. 29827

CERTIFICATE OF SERVICE

I, Kevin Harbin, the Applicant in the foregoing matter, hereby certify that I have this day served a true-copy of the following

Notice of Motion and Motion pursuant To RULE 59(e),

upon the Respondent by depositing same in the United States postal receptacle located on Allendale Yard, sufficient first-class postage affixed thereto, and addressed to:

c/o Office of the Attorney General

P.O. Box 11549

Columbia, S.C. 29211

Date: June 3, 2026
Fairfax, South Carolina

5/ Kevin Harbin
Kevin Harbin
Applicant, Pro Se

Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, S.C. 29827

FILED: 26JUN15 11:18
CLC JAY GRESHAM CIVIL SC

Kevin Harbin, #303214
 Allendale Correction Institution
 1057 Revolutionary Trail
 Fairfax, S.C. 29827

FILED: 26JUN15AM11:18
 CMC JAY GRESHAM CML SC

Jay Gresham
 Greenville Court
 Clerk of Court
 305 East North Street
 Greenville, S.C. 29601-2121

Date: June 3, 2026

Re: Kevin Harbin V. State of South Carolina and S.C.D.C.
 Civ. Act. No. # 2024-CP-23-03549

Dear Mr. Gresham:

Please find enclosed on behalf of the Applicant in the
 above styled matter, filing purposes the following:

1. Notice and Motion Pursuant to Rule 59(e);

Please file with the Court record, and please return to
 me clock-in/stamped filed.

Kindest Regards,

Kevin Harbin

Kevin Harbin

RH/

Greenville, S.C. 29601
Box 1151
S.C. 29827



9589 0710 5270 3382 3630 05

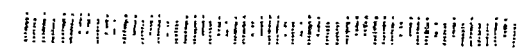


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S
CB

Jay Gresham
Greenville County Clerk of Court
365 East North Street
Greenville S.C. 29601-2121

ALBAIL



The Supreme Court of South Carolina

ORDER

Pursuant to Rule 245, SCACR, and *Key v. Currie*, 305 S.C. 115, 406 S.E.2d 356 (1991), we decline to entertain the following matters in this Court's original jurisdiction:

1. *Taurus Watts*, #324820 v. *South Carolina Department of Corrections*, Petition for Writ of Mandamus, received April 14, 2026. Appellate Case No. 2026-000905.
2. *Titus Williams* v. *Patricia A. Howard*, Clerk of South Carolina Supreme Court, Motion for Writ of Mandamus, dated September 23, 2025. Appellate Case No. 2025-002025.¹
3. *Deanna Sharp* v. *Lexington County Family Court and Orangeburg County Family Court, South Carolina Judicial Branch*, Motion to Compel Docketing and Immediate Judicial Assignment, dated April 27, 2026. Appellate Case No. 2026-001023.
4. *William Kinard A.K.A. William Smith vs Marlboro County*, Motion to Dismiss Warrants with Prejudice on Rule 3 and Rule 5 S.C.R.C.P., dated March 30, 2026; and Motion to Dismiss Warrants with Prejudice on Rule 3 South Carolina Rule Criminal Procedure on Failure to Comply with S.C.R.C.P., dated April 17, 2026. Appellate Case No. 2026-000809.
5. *Quentin J. Holt* v. *Alan Wilson*, Attorney General for the State of South Carolina, Petition for Writ of Mandamus Pursuant to Rule 65(f)(10 and Sections 14-8-280 and 14-8-290, dated February 25, 2026. Appellate Case No. 2026-000485.
6. *State of South Carolina ex rel. Kenneth Campbell Burr, Jr., Relator Executive Fiduciary and Senior Secured Creditor*, v. *Presiding Magistrate, Magistrate Court for Jasper County*, in official capacity; Magistrate Court

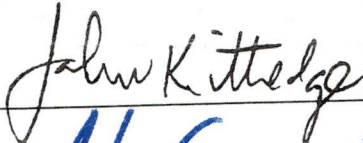
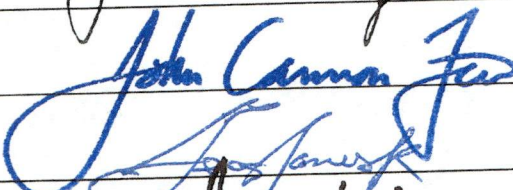
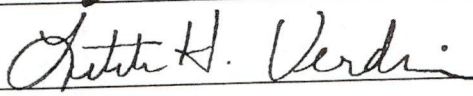
¹ Kittredge, C.J., not participating.

for Jasper County; Clerk of Court, Jasper County; L/CPL. M. Bacon, SCCJA No. 0446-5192, Jasper County Sheriff's Office; Sheriff Chris Malphrus, Jasper County Sheriff's Office; and State of South Carolina through 14th Circuit Solicitor Duffle Stone, Petition for Original Jurisdiction—Emergency Grounds, Complaint in Quo Warranto, and Petition to Proceed In Forma Pauperis, all dated April 30, 2026. Appellate Case No. 2026-001057.

7. *Kevin Stagl v. South Bay Lakes III Homeowner's Association, Inc; Laverne Wright, as Board Member for South Bay Lakes III Homeowner's Association, Inc.; Laverne Wright, Individually, James Caviness, Individually; Renee N. Elvis, in her Official Capacity as Clerk of Court for Horry County, Petition For Extraordinary Writ Of Mandamus and Extraordinary Writ of Prohibition in the Original Jurisdiction of Supreme Court of South Carolina; Motion Emergency Stay Lower Court Proceeding; Motion to Disqualify Judge David P. Caraker, Jr.; Motion for Change of Venue to a Neutral Circuit, received May 4, 2026; Motion for Leave to Supplement Petition and Petitioner's First Supplemental Petition for Extraordinary Writ of Mandamus and Extraordinary Writ of Prohibition and Extraordinary Writ of Vacatur in the Original Jurisdiction of the South Carolina Supreme Court, dated May 11, 2026; and Updated First Supplemental Petition with the same title as Item #2, dated May 11, 2026; Exhibits, received May 27, 2026; Numerous Exhibits, received May 28, 2026; Additional Exhibits, received May 29, 2026; Verified Motion to Authenticate Lower Court Case File and Public Docket, received June 9, 2026; Amended Verified Motion to Authenticate Lower Court Case File and Public Docket, dated June 10, 2026; and Additional Exhibits, received June 11, 2026. Appellate Case No. 2026-001073.*
8. *Derrick L Mundine v. Office of Disciplinary Counsel, Derrick L. Mundine Petitioner Seeking Victim Request Hearing Claim, received April 24, 2026. Appellate Case No. 2026-001017.*
9. *Kevin Harbin v. Jay Gresham, Petition for Exercise of Original Jurisdiction, dated February 20, 2026; Petition for Writ of Mandamus and Complaint, dated February 20, 2026; Notice of Motion and Emergency Motion for Protective Order, dated March 19, 2026; and Notice of Motion and Motion for Entry of Default, dated April 3, 2026. Appellate Case No. 2026-000482.*
10. *Frank Tolen v. State of South Carolina, Notice Regarding Timely Response*

to Conditional Order of Dismissal, dated March 11, 2026; and Motion to Supplement the Record, received May 13, 2026. Appellate Case No. 2026-000696.

11. *David Lynn Robbins II #306857 v. the State of South Carolina*, Extraordinary Writ of Habeas Corpus, dated April 6, 2026; Petition to Assume Original Jurisdiction, dated April 6, 2026; and Motion to Proceed Forma Pauperis, dated April 6, 2026. Appellate Case No. 2026-000898.
12. *In the Matter of Sarah Christenson*, Notice of Demand for Investigation and Correction, dated April 10, 2026. Appellate Case No. 2026-001059.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
June 12, 2026

cc: Taurus Watts
Christina Catoe Bigelow
Zachary William Jones
Titus Williams
Monier Mufid Abusoft
Angie Bryant
Deanna Sharp
The Honorable Lisa M. Comer
The Honorable Winnifa Brown-Clark
William Kinard
The Honorable Marquita McLain
Quentin Holt
D. Russell Barlow, II
Mackinnon Grace Westraad
Kenneth Campbell Burr
The Honorable Keith Horton
Jacqueline Simone Lee
Chris Malphrus
Isaac McDuffie Stone, III
Jamie William Morehead
The Honorable Renee Elvis
Joshua Hugh Umbarger
Kevin Stagle
Michael S. Harrison
Thomas William Winslow
Derrick L. Mundine
William M. Blich, Jr.
The Honorable Jay Gresham
Kevin Harbin
Frank Tolem
Donald J. Zelenka
David Robbins
W. Jeffrey Young
Sarah Christenson

Kevin Harbin #303214
Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, S.C. 29827

RECEIVED

JUN 02 2026

S.C. SUPREME COURT

Attention: Chief Justice

C/o Patricia A. Howard

Clerk

South Carolina Supreme Court

P.O. Box 11330

Columbia, S.C. 29211

Date: MAY 26, 2026

Re: To Chief Justice

Enclosures for Filing Purposes

Kevin Harbin V. Jay Gresham, Clerk of Court for

Greenville County

Case No. 2026-000482

Dear, Madame Clerk:

PLEASE find enclosed on behalf of the petitioner in the above-referenced matter the following for filing purposes:

1. Letter informing Chief Justice on extraordinary and illegal courses of action the Respondents have committed and trying to get The Honorable Jessica A. Salvini to participate in.

PLEASE forward to the Chief Justice, and file with the Court record. I respectfully request the return of a copy at your earliest convenience.

Kindest Regards

Kevin Harbin

On May 22, 2026 I receive a Final Order of Dismissal from the Attorney General Office requesting the Chief Administrative Judge Jessica A. Salvini to sign. Under the South Carolina Rules of Civil Procedure (SCRPC), which apply to Post-Conviction relief (PCR) proceedings through Rule 71.1, SCRPC, a respondent must serve an answer or other responsive pleading within ninety (90) days, as here, in the case of a jury trial. Rule 12(a), SCRPC. The State's return, filed seventeen (17) month, and more than sixteen (16) days after the deadline place the State in default. Moreover, the State has not contested, nor controverted any pleadings in the lower court, nor this Supreme Court in a timely manner pursuant to the rules of court (SCRPC). Do the rules apply to the state, and Supreme Court case ruling's, when you are a pro-se inmate litigant? Judge J. A. Salvini has already signed and issued the conditional order of dismissal based on unserved propose orders, in violation of Judicial Canon 3, (B)(7), Rule 501, SCACR, Code of Judicial Conduct, ex parte communication a Judge and a party in a pending matter. This is the reason I File a Emergency Motion For Protection March 25, 2024, who is Ms. Salvini's Superior?

Now to explain why this letter is not typed, the state has to fight "unfair". My Cousin Charele Reshad Crooks phone # 843-710-8356 is a Detective for the Oconnee County Law enforcement Center, a Pastor, and attending Clemson Univ. to acquire education needed to work for SoLoED. On May 14, 2026, some printed out info. from E-trade.com, arrived here at allendale, the recorded phone call, when I ask him to send info. and he was in the law enforcement center, the mail was never in position outside of any staff, I was summon to Lt. office, contraband miller and Capt. Horn were present and Lt. said here go your mail, then I was grabbed and inform I was in position of contraband claim the printout was lace with K-2. I'm on lock-up this is a set-up and my Cousin and I are both willing to take a lie detector test. I'm severely handicapp to produce copy's, no typewriter, been request legal supply's have not receive, Someone-gave me this envelope. my fate is the Supreme Court hands! All I can do is Pray.

That unless the Supreme Court intervenes, all lower Court actions held in abeyance pending the Ruling on pending Mandamus, the conspiracy to work a complete miscarriage of Justice will succeed. Requesting review all filings in lower Court Case No. 2024-CP-23-03549
(2024-CP-23-03549)

Kevin Harbin
Kevin Harbin

May 26, 2026

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Kevin Lamar Harbin, #303214,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) THE THIRTEENTH JUDICIAL CIRCUIT

) CASE NO. 2024-CP-23-03549

) **FINAL ORDER OF DISMISSAL**

FILED: 26MAY22PM3:22
CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

This matter comes before this Court by way of a post-conviction relief (PCR) action filed by Kevin Lamar Harbin (Applicant), on June 10, 2024. Respondent, the State of South Carolina, made its return and moved to summarily dismiss this application as untimely, barred by the statute of limitations, successive to Applicant's previous application, barred by the equitable doctrine of *laches*, for failing to make a *prima facie* showing of newly discovered evidence pursuant to S.C. Code Ann. § 17-27-20, § 17-27-45, and § 17-27-90, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014).

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed on March 10, 2026, provisionally denying and dismissing this action while giving Applicant twenty days from the date of service of said order in which to show why the Conditional Order of Dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an affidavit of service dated March 24, 2026, indicating the State served the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant has filed several responsive documents: "Notice of Motion and Motion to Strike," "Memorandum of Law," "Notice of Motion to Remove the State as a Party," "Notice of

021

Motion to Hold PCR Proceeding in Abeyance,” “Response and Objection to Conditional Order of Dismissal and Order Restricting Future Filings,” “*Amended* Memorandum of Law,” and “*Amended* Response and Objection to Conditional Order of Dismissal and Order Restricting Future Filings” on April 9, 2026. In his responses, Applicant raises no new claims and simply restates his arguments in his application, which this Court has had the opportunity to review.

This Court has reviewed its prior Conditional Order and finds Applicant has failed to show cause as to why the Order should not become final. Applicant has presented no specific factual or legal reasons on the timeliness of the issue. Applicant was sentenced on September 8, 2005, and an order dismissing Applicant’s direct appeal was issued on January 22, 2007. As such, a timely application should have been filed on or before January 22, 2008. This application was not filed until June 10, 2024, well beyond the statutory filing period. Applicant acknowledges that he filed prior PCR actions and has not provided a valid reason why the claims in this current action could not have been raised in the previous action(s). He further provides no explanation as to why no action was pursued that would require records to be preserved, as such, this action is barred by the doctrine of *laches*.

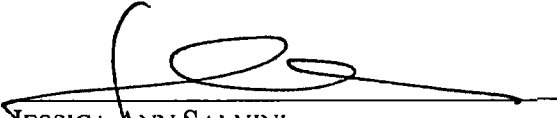
After a review of Applicant’s filing, this Court reasserts its finding in the Conditional Order of Dismissal that the current PCR application must be dismissed because it is untimely, barred by the statute of limitations, successive to Applicant’s previous PCR applications, barred by the doctrine of *res judicata*, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014). Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that 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 based on the information before this Court, and,

therefore, he is not entitled to an evidentiary hearing in this matter. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's conditional order of dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises Applicant that he must file and serve a notice of appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 21 day of May, 2026.


JESSICA ANN SALVINI
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

Copy mailed to
Attorney <u>general and Applicant</u>
on <u>5</u> / <u>22</u> / <u>2026</u>

COUNTY OF GREENVILLE

Civ. Act. No.: 2024-CP-23-03549

Kevin Harbin, #303214,
Applicant,
v.
State of South Carolina, and
South Carolina Department of
Corrections,
Respondents.

AMENDED
MEMORANDUM OF LAW
(Rule 15(a), SCRCP)

FILED: 2024 SEP 11 10 56 AM
CLERK OF COURT
COUNTY OF GREENVILLE, SC

COMES NOW, Kevin Harbin, the Applicant in the above-captioned matter, and submits the following memorandum of law, in support of his objections to the Conditional Order of Dismissal and the Order Restricting Future Filings, and in objection to the Respondent's return, motion to dismiss, and motion to restrict future filings.

The Applicant hereby incorporates by reference, the entire court record, the herewith attached Memorandum of Law, Objections To the Conditional Order of Dismissal, Order Restricting Future Filings, the motion to dismiss and motion to restrict future filings, as if re-stated verbatim herein.

Any averments, arguments, allegation, portions, or contention contained in the pleadings and motions on record, filed by the Respondent, not herein addressed or expressly admitted, qualified, or explained herein, are specifically objected to and denied.

As set forth below, the State is in default for failing to timely file a return, has waived all affirmative defenses, and has failed to comply with fundamental rules of civil procedure. Accordingly, the conditional order of dismissal, and order restricting future filing must be vacated and set aside, and the Respondent's motions to dismiss, and to restrict future filings must be denied, as a matter of law.

STATEMENT OF FACTS:

The application for post-conviction relief was filed June 10, 2024. The clerk of court properly served same on the South Carolina Attorney General the same day. The State was allotted a period of ninety (90) days in which to file a return, to plead, or otherwise defend in the matter. Ninety (90) days from the date of filing of the application elapsed on September 22, 2024.

Applicant, pursuant to Rule 55(a), SCRCP, filed Request to

Enter Default on the part of both the State of South Carolina and the South Carolina Department of Corrections, and submitted supporting Affidavit, on October 28, 2025, making the Respondent's default abundantly clear on the record. The clerk of court from the outset, refused to perform his "ministerial duty" to enter the default of the State upon the calendar (file book), despite that such duty is prescribed by law. Thereafter, Applicant filed Notice and Motion To Compel Entry of Default, on December 10, 2025, addressed to the Chief Judge For Administrative Purposes, who failed to take any action to dispose of said motion. In the face of such refusal to perform duties imposed by law, Applicant submitted to the South Carolina Supreme Court, a Petition for Writ of Mandamus, seeking to have the clerk of court compelled to perform his ministerial duty to comply with Rule 55(a), SCRCF. That petition is currently still pending before the State Supreme Court. Moreover, both Applicant's motion to enter the default of the State and his motion to compel the clerk of court to enter said default, have been ignored, and are also still pending. The State has not contested, nor controverted either of these motions.

While the application languished in court, seventeen (17) months, and sixteen (16) plus days transpired, as of the date of this pleading. That is five-hundred and twenty-six (526) days late and out of time, before the State filed its Return and motion to dismiss, and motion to restrict future filings, on March 10, 2026, apparently having become aware of the Petition for Writ of Mandamus Applicant filed in the state's high court. Neither motion filed by the State bears any Notice of Motion.

Without any proposed orders being noticed nor served upon Applicant, this court SIGNED and issued the conditional order of dismissal and order restricting future filings, granting the State's motions, based on unserved proposed orders, in violation of judicial Canon 3, (B)(7), Rule 501, SCACR, Code of Judicial Conduct., which forbids ex parte communication between a judge and a party in a pending matter.

No notice or service of the proposed orders has been made, as required by the South Carolina Rules of Civil Procedure.

ARGUMENTS

I. THE STATE IS IN DEFAULT, AND AS A PARTY IN DEFAULT , IT IS NOT ENTITLED TO PARTICIPATE IN FURTHER PROCEEDINGS OR SEEK AFFIRMATIVE RELIEF.

The State's failure to file a timely return constitutes a default. Under the South Carolina Rules of Civil Procedure (SCRCF), which apply to post-conviction relief (PCR) proceedings through Rule 71.1, SCRCF, a respondent must serve an answer or other responsive pleading within ninety (90) days, as here, in the case of a jury trial. Rule 12(a), SCRCF. The State's return, filed seventeen (17) months, and more than sixteen (16) days

after the deadline placed the State in default.

A party in default occupies a unique position in litigation. Rule 5(a), SCRCP expressly provides that "[n]o service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner as provided for serving of summons in Rule 4, SCRCP, and notice of any trial or hearing on unliquidated damages shall also be given to parties in default. See also Amendments To the South Carolina Rules of Civil Procedure (April 27, 2005)(Codifying Rule 5(a) and emphasizing that parties in default are not entitled to service of most papers).

This rule reflects the fundamental principle that a defaulting party has forfeited its right to participate in the ordinary course of litigation.

The United State Supreme Court minces no words in holding:

"The defaulting party is simply out of court and can take no farther part in the case."

Frow v. De La Vega, 82 U.S. (15 Wall.) 552, 554, 21 L.Ed. 60 (1872), 1872 WL 15275

This holding was recognized to continue in the force and effect of law, in McDaniels v. SCDC, wherein the United States District Court for the District of South Carolina, held:

"The defaulting defendant has merely lost his standing in court. He will not be entitled to service of notices in the case, nor to appear in it in any way. He can adduce no evidence, be cannot be heard at the final hearing. "

McDaniels v. SCDC, Civ. Act. No.: 1:09-1732-TLW-SVH, citing Frow v. De La Vega, supra., 2010 WL 3782134 (emphasis provided)

Our South Carolina Supreme Court has mirrored these fundamental understandings, and consistently held that a party in default may not participate in proceedings or seek affirmative relief from the court.

In Edith v. State, 369 S.C. 408, 632 S.E.2d 844 (2006), the court addressed the procedural posture of a post-conviction relief case involving a conditional order of dismissal. While the court ultimately dismissed the appeal based on the applicant's default, the court cited with approval a long line of cases establishing that defaulting parties lose their right to participate. Belue v. Belue, 276 S.C. 120, 276 S.E.2d 295 (1981)(Default judgment based on failure to appear); Duncan v. Duncan, 93 S.C. 487, 76 S.E. 1099 (1913)(Default based on failure to file a responsive pleading); Gadsen v. Home Fertilizer & Chem. Co., 89 S.C. 483, 72 S.E. 15 (1911)(same)

While Edith addressed an applicant's default, the principle applies symmetrically: a defaulting party -- whether applicant or respondent -- forfeits its right to participate and seek relief from the court.

Here, the State's motion to dismiss, and to restrict future filings, filed months after its default became effective, and without having sought or obtained leave of court to do so, are mere nullities.

As a party in default, the State has no standing to seek the

affirmative relief of dismissal. The court should disregard the State's motions and deny, set aside and vacate, the conditional order of dismissal and order restricting future filings.

II. THE STATE'S MOTION TO DISMISS AND MOTION TO RESTRICT FUTURE FILINGS IS PROCEDURALLY DEFECTIVE FOR FAILING TO INCLUDE A NOTICE OF MOTION.

A motion to dismiss and motion to restrict future filings, is a request for orders from the court and must comply with Rule 7(b)(1), SCRCP, which requires the motion to "state with particularity the grounds therefor, and shall set forth the relief or order sought." The rule further provides that "[t]he requirement of writing is fulfilled [i]f the motion is stated in a written notice of the hearing of the motion". Rule 7(b)(1), SCRCP. This language makes clear that a motion, to be properly before the court, must be accompanied by or incorporated into a notice of motion that sets a hearing date or otherwise brings the motion to the court's attention in a procedurally proper manner.

The South Carolina Rules Annotated emphasize that a motion is not a pleading that stands alone. See Rule 7(c), SCRCP (Abolishing demurrers and pleas, and noting that defenses are raised by motion under Rule 12, SCRCP.) The procedural requirement of notice of motion serves fundamental due process purposes. It ensures that the opposing party has adequate notice of the relief sought and an opportunity to be heard. See *Johnson v. Alexander*, 413 S.C. 196, 202, 775 S.E.2d 697, 700 (2015) (Parties are generally bound by their pleadings and are precluded from advancing arguments or submitting evidence contrary to those assertions.") Where, as here, a motion lacks notice of motion, it is not properly pending before the court, and any order granted, as here, on such motions is procedurally defective.

The State filed no notice of motion with these motions. As a result, there is no properly noticed motion pending before this court. The court's consideration, and granting of these motions, BEFORE THEY WERE EVEN SERVED UPON THE APPLICANT, is improper and telling.

It constitutes procedural error, requiring reversal, at a minimum. It constitutes ex parte communication, in violation of Canon 3(B)(7), Rule 501, SCACR, Code of Judicial Conduct.

III. THE PROPOSED ORDERS, SIGNED BEFORE EVEN SERVED UPON APPLICANT, WERE NOT SERVED AS REQUIRED BY RULE 5, SCRCP, PRIOR TO BEING SIGNED BY THE JUDGE.

The State admits on Page 5 of its Return, in footnote 1, that:

"A proposed order of dismissal consistent with this return and motion to dismiss is concurrently submitted for the Court's consideration."

(emphasis supplied)

Rule 5(a), SCRCP, mandates that "all (1) written

orders,...(4)... and other papers shall be served upon each of the parties of record."

The 2005 Amendments to Rule 5(a), SCRCP, made explicit that this service requirement applies to "all major documents and papers including but not limited to, pleadings and amended pleadings..."

Specifically regarding proposed orders, the South Carolina Rules of Civil Procedure provides:

"Any party providing a proposed order, proposed findings of fact or conclusions of law, or proposed judgment or other paper to the court for its consideration in any pending matter shall serve the same on all counsel of record at the same time and by the same means."

Rule 5(b), SCRCP, (emphasis supplied)

This requirement is not merely technical, it ensures that all parties have an equal opportunity to be heard before the court acts. That did not happen in the instant case.

see Rule 5, South Carolina Rules Annotated (2021 Ed.) (Service requirements ensure due process and prevent ex parte communication with the court. See also Canon 3(B)(7), Rule 501, SCACR, Code of Judicial Conduct.

The proposed orders underlying this court's granting of conditional dismissal and order restricting future filings were never served upon the Applicant before being submitted to this court who signed them BEFORE THEY WERE EVEN SERVED UPON the Applicant.

This constitutes a clear violation of due process of law, a direct violation of Rule 5(b)(3), SCRCP, and denied Applicant the fundamental right to object to the form and substance of the proposed orders. Such ex parte submission and granting of proposed orders is improper and requires both orders be vacated and set aside.

IV. THE STATE WAIVED ALL AFFIRMATIVE DEFENSES BY FAILURE TO PLEAD THEM IN A TIMELY MANNER.

The State's motions to dismiss and to restrict future filings, as well as its Return, filed a year and over five (5) months after the return was due, raised various defenses. However, the failure to plead any of those affirmative defenses in a timely manner constitutes a waiver of the right to assert any of them.

In *Whitehead v. State*, 352 S.C. 215, 574 S.E.2d 200 (2002), the South Carolina Supreme Court squarely addressed this issue in the post-conviction relief context. The State sought to raise affirmative defenses in response to an Austin claim. The court held:

"Laches is an affirmative defense that must be pleaded. Rule 8(c), SCRCP, the failure to plead an affirmative defense is deemed a waiver of the right to assert it."

Id. (Emphasis supplied)

see e.g. *Adams v. B & D, Inc.*, 297 S.C. 416, 377 S.E.2d 315

(1989)

The State, here, never raised any of the affirmative defenses it seeks now to raise in its Return and motion to dismiss.

Therefore, as a matter of law, the State has waived all rights to raise the affirmative defenses of (1) failure to state a cognizable claim, (2) statute of limitations, (3) successiveness, (4) res judicata, (5) laches, (6) no genuine issues of material fact exist, and (7) frustration of finality of convictions. Whitehead, 352 S.C. at 221, 574 S.E.2d at 202-03.

The court further explained the purpose of the pleading requirement:

"The aim of this pleading requirement is to avoid surprise defenses."

Whitehead, 352 S.C. 215, 574 S.E.2d 200 (2002) See also Earthscape Unlim., Inc. v. Ulbrich, 390 S.C. 609, 615, 703 S.E.2d 221, 224 (2010)(" a party cannot benefit from an affirmative defense that was never pleaded.")

Here, the State failed to file a timely return, nor motion to dismiss, and therefore failed to assert any defenses in a timely responsive pleading. Consequently, the State waived [ALL] defenses, including those it now attempts to raise in its untimely Return and motion to dismiss.

The State's motion to dismiss, like its Return, are nothing more than untimely assertions of **waived defenses** and should be denied, dismissed, and stricken from the record on this ground alone.

V. A CONDITIONAL ORDER OF DISMISSAL AND ORDER RESTRICTING FUTURE FILINGS IS NOT PROPER WHERE THE MOVING PARTY IS IN DEFAULT AND LACKS STANDING.

The conditional order of dismissal procedure set forth in S. C. Code Ann., § 17-27-70(b) is intended to allow a court to summarily dismiss an application when "no purpose would be served by any further proceedings." This mechanism is available when the court, reviewing "the application, the answer or motion, and the record" determines that the applicant is not entitled to relief. Edith v. State, 369 S.C. 408, 632 S.E.2d 844 (2006)(quoting § 17-27-70(b)).

Here, the court is not procedurally in a posture to make such a determination, where the defaulting Respondent, is forbidden participation in the proceedings from the point at which default became apparent or available.

Critically, the statute contemplates that the State has filed a proper "answer or motion". Where the State is in default, however, and has no properly pending motion or return before the court, the procedural foundation for a conditional order of summary dismissal is wholly absent.

A party in default is not considered a "party" entitled to invoke the court's summary dismissal mechanisms. As established in the line of cases cited in Edith, a defaulting a defaulting party forfeits its all right to participate in the litigation.

See *Belue v. Belue*, 276 S.C. 120, 276 S.E.2d 295; *Duncan v. Duncan*, 93 S.C. 427, 76 S.E. 1099; *Gadsen v. Home Fertilizer & Chem. Co.*, 29 S.C. 423, 72 S.E. 15.

The Court's conditional dismissal, predicated on a motion filed by a non-participating party in default and unsupported by a timely return or motion or proper notice, was inappropriate. Applicant is entitled to have his post-conviction relief application proceed on the merits.

VI. THE STATE'S RETURN AND MOTIONS ARE UNTIMELY, AND THE EXTREME DELAY WARRANTS DENIAL OF THE MOTIONS TO DISMISS AND TO RESTRICT FUTURE FILINGS.

The State's return was filed over seventeen (17) months and sixteen plus days late, without any motion for extension of time or any showing of excusable neglect.

This court has inherent authority to manage its docket and enforce deadlines. See Rule 12(a), SCRPC (requiring responsive pleadings to be filed within 90 days in the case of a jury trial). The State's delay is not merely procedural, it is substantive prejudice to the Applicant, whose outstanding motions have been ignored by this court and remained pending months without resolution.

In *Whitehead*, the court addressed a similar situation where the State failed to timely raise a defense. The court held the State's delay precluded it from asserting the defense. *Whitehead*, 352 S.C. at 221, 574 S.E.2d at 203.

While *Whitehead* addressed waiver of affirmative defenses, its reasoning applies with equal force to the State's dilatory conduct here:

"a party that fails to comply with procedural deadlines forfeits the right to seek relief from the court."

Allowing the state to file a dispositive motion, as here, after extreme delay lasting more than a year and five (5) months of delay -- during which time Applicant's motions remained pending -- rewards the State's dilatory conduct and prejudices Applicant's ability to obtain timely relief.

The untimely return, and each of the State's motions should be stricken and the motions denied as a direct consequence of the State's failure to comply with applicable court rules. Like everyone else, the State is not exempt from the requirement to follow the rules.

Therefore, for these reasons, the conditional order of dismissal and order restricting future filings should be vacated and set aside, and the State's motions denied, and the Applicant should be granted leave to proceed on the merits of his post-conviction relief application, including the appointment of counsel to assist him in the matter, and the court should consider and dispose of his outstanding motions for entry of default, and motion to compel said entry of default.

VII. THE COURT HAS AN AFFIRMATIVE DUTY TO ENSURE THE CLERK OF COURT'S COMPLIANCE WITH RULE 55(a), SCRPC, AND THE STATE'S DEFAULT ENTITLES APPLICANT TO JUDGMENT.

The State's default in this matter is not merely a procedural technicality; it triggers a mandatory statutory and procedural framework that entitles Applicant to judgment. Rule 55(a), SCRCP, provides:

"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, and that fact is made to appear by affidavit or otherwise, the clerk [s]hall enter his default."

This rule imposes a ministerial duty upon the clerk of court-- not a discretionary act-- once the factual predicate of default is established.

A. The Clerk of Court's Duty To Enter Default is Ministerial and Non-Discretionary

The South Carolina Supreme Court has repeatedly held that entry of default under Rule 55(a), SCRCP, is a ministerial act that the clerk must perform upon proper showing. In *Gaskins v. Firemen's Insur. Co. of Newark, New Jersey*, 206 S.C. 213, 333 S.E.2d 498 (1945), the court explained that Rule 55(a) "makes mandatory the entry of default by the clerk when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by the rules and that fact is made to appear by affidavit or otherwise."

The Applicant on October 28, 2025, filed Request for Entry of Default, and supporting Affidavit of default with the clerk of court.

The Supreme Court emphasized that the clerk has no discretion to refuse to enter a default when the facts required by the rule are shown to exist.

This principle was reaffirmed in *Stark Truss Co., Inc. v. Superior Court*, 360 S.C. 503, 602 S.E.2d 99 (2004)

the clerks duty to enter default is mandatory once the requirements of Rule 55(a) are satisfied.

Thynes v. Lloyd, 294 S.C. 152, 154, 363 S.E.2d 122, 123 (1987)

The court distinguished between the entry of default (a ministerial act performed by the clerk) and default judgment (a judicial act performed by the court), noting that the former is automatic upon proper application. Applicant has fully shouldered his burden of supplying the affidavit of default.

The South Carolina Rules Annotated, further clarify, "the entry of default under Rule 55(a), SCRCP, is a ministerial act performed by the clerk of court. It is the first step in the default process, and is distinct from the subsequent entry of default judgment.

The clerk's role is to "note on the docket the fact of the default" and this notation "establishes the defaulting party's forfeiture of the right to further participate in the litigation."

B. The Court has a Duty To Supervise The Clerk of Court and

Ensure Compliance With the Rules.

While the entry of default is a ministerial function of the clerk, the circuit court retains supervisory authority over the clerk's performance of these duties. See Canon 3(b)(c)(2), Rule 501, SCACR, Code of Judicial Conduct.

This supervisory authority includes the power to direct the clerk of court to perform a mandatory duty when the clerk fails or refuses to do so.

Where, as here, the clerk fails to enter a default as required by Rule 55(a), SCRCP, it is the judge's [d]uty to compel compliance.

Applicant filed his motion to compel such entry on December 10, 2025. This duty arises from the judge's role as the presiding officer of the court and the Constitutional obligation to ensure that judicial proceedings are conducted in accordance with the law, not contrary to the law, as demonstrated here thus far.

C. Entry of Default Under Rule 55(a), SCRCP, Is The Prerequisite To A Judgment By Default Under Rule 55(b), SCRCP.

The distinction between entry of default and default judgment is critical. Without the clerk's entry of default, the court itself lacks procedural foundation to enter judgment in favor of the non-defaulting party. Hence, the Applicant's prejudice, thus suffered and thus denied.

A party in default admits the well-pleaded allegations of the complaint. *Duncan v. Duncan*, 93 S.C. 487, 76 S.E. 1099 (1912). Moreover, the Court of Appeals has held that a party in default is not entitled to participate in the litigation or raise defenses. *Stark Truss Co., Inc. v. Superior Court, Corp.*, 360 S.C. 503, 508, 602 S.E.2d 99, 102 (Ct.App. 2004).

D. Applicant is Entitled To An Entry of Default and Therefore To An Entry of Default Judgment.

Applying the principles to the instant case, the State's failure to file a timely return or motion to dismiss constitutes a failure to "plead or otherwise defend" within the meaning of Rule 55(a), SCRCP. The State was served with the PCR application, and was required to file its return within 90 days. Rule 12(a), SCRCP, made applicable by Rule 71.1, SCRCP.

The State failed to do so, and this fact was made to appear by the Applicant's Affidavit, filed October 28, 2025, and by the court's own docket.

Because the clerk's duty to enter default under Rule 55(a) is mandatory, the clerk should have entered the State's default.

This court, in exercise of its supervisory authority over

clerks of courts, should direct the clerk to enter the State's default nunc pro tunc to the date the default first became available. See South Carolina Rules Annotated (noting a clerk's duty to enter default may be made nunc pro tunc to correct omissions)

Once default is entered, the State's right to participate in further proceedings is terminated as of that date default became available. Stark Truss Co., 360 S.C. at 508, 602 S.E.2d at 102.

The State's belated return and motions -- filed after default -- are mere nullities.

Applicant then is in a favorable position, being entitled to apply for a default judgment under Rule 55(b), SCRCP, and the court must determine whether the well-pleaded allegations of the PCR application entitle Applicant to relief, by evidence satisfactory to the court.

E. CONDITIONAL DISMISSAL AND ORDER RESTRICTING FUTURE FILINGS CANNOT SUBSTITUTE FOR PROPER DEFAULT PROCEDURES.

A conditional dismissal under S. C. Code Ann. § 17-27-70(b), cannot be used to [c]ircumvent the default procedure. Where a party is in default, the proper mechanism is entry of default and if appropriate, default judgment -- not a summary dismissal that effectively rewards the defaulting party for his procedural failures.

The post-conviction relief statute does not exempt the State from the Rules of Civil Procedure.

Rule 71.1, SCRCP, expressly incorporates the rules into PCR proceedings, "so far as they are not inconsistent with the Act". Nothing in the Uniform Post-Conviction Relief Procedure Act, S. C. Code Ann. § 17-17-10, et seq. (UPCRA), is inconsistent with the entry of default against a non-responsive State. To the contrary, the Act contemplates adversarial proceedings in which the State must file a timely return or motion to dismiss, or face the consequences of its failure to do so.

Consequently, for these reasons, Applicant respectfully requests this court:

1. Direct the clerk of court to enter the default of the State upon the calendar (file book) nunc pro tunc establishing default as of October 28, 2025; and
2. Declare the State, as a party in default, not entitled to participate in further proceedings nor to seek affirmative relief, beyond the date of October 28, 2025; and
3. Deny the State's belated motion to dismiss and to restrict future filings; as mere nullities, and
4. Permit the Applicant to proceed on the merits of his PCR application, and for entry of default judgment, under Rule 55(b), SCRCP, by presenting evidence satisfactory to the court of the well-pleaded allegations of the PCR application;; and

VIII. ISSUE PERTAINING TO SENTENCE-RELATED CREDITS DETERMINED BY STATUTORY PROVISION ARE A DIRECT CONSEQUENCE OF THE IMPOSITION OF SENTENCE AND MAY BE RAISED IN PCR

PROCEEDINGS.

The UPCRA provides a statutory basis for relief where a conviction or sentence is subject to collateral attack. S. C. Code Ann. § 17-27-20(a) states that any person who has been convicted and asserts grounds that the "sentence was imposed in violation of the Constitution or laws of this State or the United States" may institute proceedings for relief under the Act. The calculation of sentence-related credits -- specifically those referenced in statutory provisions §§ 24-13-150(A) and 24-13-210(b), -- is not a mere administrative detail for the SCDC to resolve in isolation, as the Respondent seems to argue in its untimely Return and motion to dismiss.

Rather, it is a legal component of the sentence itself. Because the sentence is the final judgment of the court, any error in its calculation, that results in an illegal sentence is cognizable under the UPCRA.

A. Sentence-Related Credits are a Direct Consequence of the Conviction.

It is well-settled in South Carolina jurisprudence that a defendant must be aware of the direct consequences of this conviction and sentence. A direct consequence is one that has a "definite, immediate, and largely automatic effect on the range of the defendant's punishment." State v. Miller, 405 S.C. 29, 744 S.E.2d 532 (2013) Statutory credits, directly affect the length of incarceration. The South Carolina Supreme Court has repeatedly emphasized that when a trial court imposes sentence, it imposes the "actual time to be served", subject to mandatory statutory credits

In State v. Sheppard, 391 S.C. 415, 706 S.E.2d 16 (Ct.App. 2011), the Court of Appeals recognized that, as alleged here, the failure to award mandatory credits renders a sentence illegal". The court held that because the statute mandates the application of credits, the sentence actually imposed is the net sentence after the application of the credits. Therefore, a trial court's failure to calculate or award this credit at the sentencing constitutes a violation of the law.

A sentence with violates a mandatory statutory provision, is illegal. It is subject to correction. An illegal sentence is a fundamental defect that can be raised in PCR proceedings. See e.g. Gantt v. State, 354 S.C. 183, 580 S.E.2d 133 (2002) (PCR is the proper forum to challenge a sentence that exceeds the maximum allowed by law.)

B. The UPCRA Provides a Remedy For Illegal Sentences.

The UPCRA was designed to provide a remedy for Constitutional and statutory violations that affect the validity of a conviction or sentence. § 17-27-20(a)(1). The State Supreme Court has consistently held that a claim that a sentence is illegal, as here, is cognizable in PCR proceedings. See Jamison

v. State, 410 S.C. 456, 765 S.E.2d 123 (2014);

The fact that the SCDC maintains the administrative records regarding time served does NOT preclude a PCR court from addressing the underlying legality of the sentence. The calculation of statutory credits is NOT a matter of administrative discretion, it is a mandatory legal computation.

When a trial court, as here, imposes sentence, but fails to apply statutory credits, the resulting sentence is illegal. Since the sentences violates the plain text of §§ 24-13-150(A), and 24-23-210(b), which mandate that the time served must be applied toward the sentence, and here was not, the sentences are illegal.

C. EXHAUSTION OF ADMINISTRATIVE REMEDIES WITHIN THE SCDC GRIEVANCE SYSTEM IS NOT REQUIRED WHEN THE ERROR IS A LEGAL ERROR IN THE SENTENCING COURT'S JUDGMENT AT SENTENCING

While the SCDC has the authority to compute credits, its authority is derivative of the Court's sentencing order (Sentencing sheet). If the sentencing order is, as here, "ambiguous", or as in this case, fails to reflect the application of these mandatory statutory provisions awarding credits to Applicant, the error originates with the sentencing court.

The SCDC cannot correct an illegal sentence, only the court can modify a sentence. § 24-13-40 provides that "If the court fails to give credit as required by this section, the Court shall, upon motion of the defendant or upon its own motion, modify the sentence nunc pro tunc to correct the sentence".

The plain language of these statutes explicitly contemplate judicial correction, not merely [a]dministrative calculation, as Respondent seems to contend.

Therefore, requiring PCR Applicants to seek relief through the SCDC's internal grievance system to remedy a judicial error, would be a patently vain and futile act.

The sentencing court and subsequently, the PCR court, are the proper forums to correct an illegal sentence that arose from the failure of the sentencing court to apply mandatory sentence-credits provided by statute.

While, Respondents cite Al-Shabazz, they conveniently omit Al-Shabazz generally channels sentence related credit claims to the Administrative Law Court, however, that holding does NOT apply here, where the error is judicial error in the original imposition of sentence rather than an administrative error in credit calculation. This court has jurisdiction under the UPCRA to correct an illegal sentence, where here, the SCDC's calculations resulted in a sentence which extends beyond the Applicant's legal max-out date. The Al-Shabazz court, very clearly enunciated that its decision does not bar PCR sentence expiration claims. Al-Shabazz, 338 S.C. 354, 527 S.E.2d 742 (2000) (Recognizing "when inmate alleges that the sentence itself has expired -- that the duration of lawful imprisonment has ended -- the claim is properly brought in PCR").

The court's resolution of the issue would not be complete without discussing and application of the important canon of statutory construction that penal statutes are to be strictly construed. The rule of lenity applies when a criminal statute or sentence is ambiguous, and requires any doubt about a statute's scope or a sentences length and duration be resolved in the defendant's favor. *State v. Miles*, 421 S.C. 154, 164, 805 S.E.2d 204, 210 (2018) citing *Berry v. State*, 381 S.C. 630, 633, 675 S.E.2d 425, 426 (2009) Here, because the trial court nor the sentencing sheet specifies that the 85 % percent sentences are subject to the sentence-credits mandated by the aforementioned two (2) statutes, the sentence is clearly ambiguous, and rendered illegal as judicial error. The SCDC has no authority to modify or correct a sentence. Thus, internal grievance procedures, are an inadequate and unavailable remedy.

Consequently, for these reasons, this court should find that mis-calculations or the failure to apply mandatory sentence credits under South Carolina's mandatory statutory provisions, renders Applicant's sentences illegal. Such claims are clearly cognizable under the Uniform Post-Conviction Relief Procedure Act, because it involves a sentence imposed in violation of statutory law, and constitutes a **[d]irect consequence** of the conviction. The Applicant respectfully requests this court grant relief by correcting the sentences nunc pro tunc to reflect the mandatory sentencing credits due to him, or in the alternative, set the matter for an evidentiary hearing.

CONCLUSION

WHEREFORE, for the foregoing reasons and grounds, the Applicant moves that the PCR proceeding be held in abeyance pending the disposition of the Applicant's Petition for Writ of Mandamus, which bears a critical relationship to the disposition of the issue of default on the part of the State, and the clerk of court's failure to perform a ministerial duty required by law.

Further, the Applicant respectfully requests that the court:

1. Direct the clerk of court to enter the default of the State upon the calendar (file book) **nunc pro tunc** establishing default as of October 28, 2025; and
 2. Declare the State, as a party in default, is not entitled to participate in further proceedings nor to seek affirmative relief, beyond the date of October 28, 2025; and
 3. Deny the State's belated motion to dismiss and to restrict future filings; as mere nullities, and
2. Because the sentencing sheet(s) are ambiguous, they must be construed favorably to the Applicant. *Tant v. SCDC*, 408 S.C. 334, 759 S.E.2d 398 (2014)

4. Permit the Applicant to proceed on the merits of his PCR application, and for entry of default judgment, under Rule 55(b), SCRCP, by presenting evidence satisfactory to the court of the well-pleaded allegations of the PCR application; and
5. Strike the Return, the motion to dismiss, and motion to restrict future filings from the record of the proceedings.

Respectfully Submitted,

Date: March 27, 2026
Fairfax, South Carolina.

Kevin Harbin
Kevin Harbin
Applicant, Pro Se

Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

Jay Gresham
Clerk of Court
Greenville County Courthouse
305 East North St., Ste: 232
Greenville, SC 29601

Date: March 27, 2026

Re: Enclosures for Filing Purposes
Kevin Harbin v. State of South Carolina and South
Carolina Department of Corrections
Case No.: 2024-CP-23-03549

Dear Mr. Gresham,

Please find enclosed on behalf of the Applicant, the following
for filing purposes:

1. Amended Memorandum of Law; and
2. Certificate of Service; and
3. One extra-copy of all of the above which I respectfully request
be returned to me stamped-filed/clocked-in.

Please file with the court record, and I look forward to you
returning a filed copy as requested above.

Kind Regards,

Kevin Harbin

Kevin Harbin

Applicant, Pro Se

KH/

Enclosures

cc: S.C. Office of the Attorney General

FILED
CLERK OF COURT
JAY GRESHAM
SC

CERTIFICATE OF SERVICE

I, Kevin Harbin, the Applicant in the foregoing matter, hereby certify that I have this day served a true-copy of the following :

AMENDED MEMORANDUM OF LAW

upon the Respondent by depositing same in the United States postal receptacle located on Allendale yard, sufficient first-class postage affixed thereto, and addressed to:

State of South Carolina
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

Date: March 27, 2026
Fairfax, South Carolina.

s/ Kevin Harbin

Kevin Harbin
APPLICANT, Pro Se

Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

COUNTY OF GREENVILLE

Civ. Act. No.: 2024-CF-23-02549

Kevin Hardin, #308214,

Applicant,

v.

State of South Carolina, and
South Carolina Department of
Corrections,

Respondents.

NOTICE OF MOTION

AND

MOTION TO HOLD PROCEEDING

IN ABEYANCE

TO THE ABOVE-NAMED RESPONDENTS:

YOU WILL TAKE NOTICE, that within ten (10) days henceforth and exclusive of the date of service hereof upon you or as soon thereafter as may be heard, that the Applicant, will move the court for an order, holding the PCR proceedings in abeyance pending the disposition of Applicant's Petition for Writ of Mandamus, which is pending currently before the South Carolina Supreme Court, involving the issue of default on the part of the State of South Carolina, and the clerk of court's failure to enter said default as required by Rule 55(a), SCRPC.

The Applicant, hereby incorporates by reference, the entire court record, the herewith attached Memorandum of Law, Objections To the Conditional Order of Dismissal, Order Restricting Future Filings, the motion to dismiss and motion to restrict future filings, as if re-stated verbatim herein.

The grounds for this motion shall be:

STATEMENT OF FACTS:

The application for post-conviction relief was filed June 10, 2024. The clerk of court properly served same on the South Carolina Attorney General the same day. The State was allotted a period of ninety (90) days in which to file a return, to plead, or otherwise defend in the matter. Ninety (90) days from the date of filing of the application elapsed on September 22, 2024.

While the application languished in court, seventeen (17) months, and sixteen (16) plus days transpired, as of the date of this pleading. That is five-hundred and twenty-six (526) days late and out of time, before the State filed its Return and motion to dismiss, and motion to restrict future filings, on March 10, 2026.

1. The affirmative defenses attempted to be raised in the Return and motion to dismiss, by Respondents have all been waived, by failure to timely plead the defenses in a responsive pleading, answer or motion; and
2. The Respondent, as a party in default, forfeited the right to

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CLERK OF COURT
COUNTY OF GREENVILLE, SC

further participate in the proceedings, at the point in which default became available, and made to appear on the record by the Applicant's Request for Entry of Default, and supporting Affidavit, filed October 28, 2025 with the Clerk of Court. The clerk of court refused to perform the ministerial duty to enter the default of the State upon the calendar (file book), as required by law, Rule 55(a), SCRCF; and the Applicant filed before the South Carolina Supreme Court, a Petition for Writ of Mandamus to compel the performance of a ministerial duty required by law. That court has yet to resolve the matter, or issue its ruling; and

3. The motion to dismiss, is procedurally defective, and not cognizable by the court, due to failure to include Notice of Motion; as required by Rule 7(b), SCRCF; thus no such motion is pending before the court; and
4. Respondent has not in any way, controverted, or refuted the Applicant's motion for entry of default upon the record, nor the allegations of the Affidavit, in support of that motion, and the default of the Respondent, is conclusively established. Rule 8(d), SCRCF, provides:

(d) Effect of Failure To Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. ..."

(Emphasis provided)

Respondents, thus, as a matter of law, admit they are a defaulting party; and

5. As a defaulting party, the Respondent's lack standing, and therefore, may not file an out of time return, motion, nor seek affirmative relief. See *Frow v. De La Vega*, 82 U.S. (15 Wall.) 552, 554, 21 L.Ed. 60 (1872); *McDaniels v. SCDC*, Civ. Act. No.: 1:09-1732-TLW-SVH, 2010 WL 3782134; *Stark Truss Co. v. Superior Constr. Corp.*, 360 S.C. 503, 508, 602 S.E.2d 99, 102 (Ct.App. 2004) ("A party in default is not entitled to participate in the litigation.")
6. The Applicant has filed with the South Carolina Supreme Court, a Petition For Writ of Mandamus, being directly on the State's forfeiture of the right to further participate in the proceeding, and the clerk of court's failure to perform the ministerial act of entering the default of a party, as required by Rule 55(a), SCRCF, which bears a critical relationship to the eventual disposition of the instant matter; and

WHEREFORE, for the foregoing reasons and grounds, the Applicant moves that the PCR proceeding be held in abeyance pending the disposition of the Applicant's Petition for Writ of Mandamus, which bears a critical relationship to the disposition of the issue of default on the part of the State, and the clerk of court's failure to perform a ministerial duty required by law.

Respectfully Submitted,

Date: March 25, 2026.
Fairfax, South Carolina.

Kevin Harbin
Kevin Harbin
Applicant, Pro Se

Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

COUNTY OF GREENVILLE

Civ. Act. No.: 2024-CP-23-03549

Kevin Harbin, #393214,

Applicant,

v.

State of South Carolina, and
South Carolina Department of
Corrections,

Respondents.

NOTICE OF MOTION

AND

MOTION TO STRIKE

TO THE ABOVE-NAMED RESPONDENTS:

YOU WILL TAKE NOTICE, that within ten (10) days henceforth and exclusive of the date of service hereof upon you or as seen thereafter as may be heard, that the Applicant, will move the court for an order, pursuant to Rule 12(f), SCRCP, striking the Return, the motion to dismiss, and the motion to restrict future filings, submitted by Respondents on March 10, 2026.

The Applicant, hereby incorporates by reference, the entire court record, the herewith attached Memorandum of Law, Objections to the Conditional Order of Dismissal, Order Restricting Future Filings, the motion to dismiss and motion to restrict future filings, as if re-stated verbatim herein.

The grounds for this motion shall be:

STATEMENT OF FACTS:

The application for post-conviction relief was filed June 10, 2024. The clerk of court properly served same on the South Carolina Attorney General the same day. The State was allotted a period of ninety (90) days in which to file a return, to plead, or otherwise defend in the matter. Ninety (90) days from the date of filing of the application elapsed on September 22, 2024.

While the application languished in court, seventeen (17) months, and sixteen (16) plus days transpired, as of the date of this pleading. That is five-hundred and twenty-six (526) days late and out of time, before the State filed its Return and motion to dismiss, and motion to restrict future filings, on March 10, 2026.

1. The affirmative defenses attempted to be raised in the Return and motion to dismiss, by Respondents have all been waived, by failure to timely plead the defenses in a responsive pleading, answer or motion; and
2. The Respondent, as a party in default, forfeited the right to further participate in the proceedings, at the point in which default became available, and made to appear on the record by the Applicant's Request for Entry of Default, and supporting Affidavit, filed October 28, 2025 with the Clerk of Court; and

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CLERK OF COURT
COUNTY OF GREENVILLE, SC

3. The motion to dismiss, is procedurally defective, and not cognizable by the court, due to failure to include Notice of Motion; as required by Rule 7(b), SCRCF; thus no such motion is pending before the court; and
4. Respondent has not in any way, controverted, or refuted the Applicant's motion for entry of default upon the record, nor the allegations of the Affidavit, in support of that motion, and the default of the Respondent, is conclusively established. Rule 8(d), SCRCF, provides:

(d) Effect of Failure To Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading."

(Emphasis provided)

Respondents, thus, as a matter of law, admit they are a defaulting party; and

5. As a defaulting party, the Respondent's lack standing, and therefore, may not file an out of time return, motion, nor seek affirmative relief. See *Frow v. De La Vega*, 82 U.S. (15 Wall.) 552, 554, 21 L.Ed. 60 (1872); *McDaniels v. SCDC*, Civ. Act. No.: 1:09-1732-TLW-SVH, 2010 WL 3782134; *Stark Truss Co. v. Superior Constr. Corp.*, 360 S.C. 503, 506, 602 S.E.2d 99, 102 (Ct.App. 2004) ("A party in default is not entitled to participate in the litigation.")

WHEREFORE, for the foregoing reasons and grounds, the Applicant moves that the Return, the Motion To Dismiss, and the Motion To Restrict Future Filings, be stricken from the record, as constituting insufficient defenses, impertinent or immaterial matter, among other things.

Respectfully Submitted

Date: March 25, 2026.
Fairfax, South Carolina.

Kevin Harbin
Kevin Harbin
Applicant, Pro Se

Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

COUNTY OF GREENVILLE

Civ. Act. No.: 2024-GP-23-03549

Kevin Harbin, #303214,

Applicant,

v.

State of South Carolina, and
South Carolina Department of
Corrections,

Respondents.

NOTICE OF MOTION

AND

MOTION TO REMOVE THE
STATE AS A PARTY

TO THE ABOVE-NAMED RESPONDENTS:

YOU WILL TAKE NOTICE, that within ten (10) days henceforth and exclusive of the date of service hereof upon you or as soon thereafter as may be heard, that the Applicant, will move the court for an order, removing from the case, the State, as a defaulting party who has forfeited the right to further participation in the litigation.

The Applicant, hereby incorporates by reference, the entire court record, the herewith attached Memorandum of Law, Objections To the Conditional Order of Dismissal, Order Restricting Future Filings, the motion to dismiss and motion to restrict future filings, as if re-stated verbatim herein.

The grounds for this motion shall be:

STATEMENT OF FACTS:

The application for post-conviction relief was filed June 10, 2024. The clerk of court properly served same on the South Carolina Attorney General the same day. The State was allotted a period of ninety (90) days in which to file a return, to plead, or otherwise defend in the matter. Ninety (90) days from the date of filing of the application elapsed on September 22, 2024.

While the application languished in court, seventeen (17) months, and sixteen (16) plus days transpired, as of the date of this pleading. That is five-hundred and twenty-six (526) days late and out of time, before the State filed its Return and motion to dismiss, and motion to restrict future filings, on March 10, 2026.

1. The affirmative defenses attempted to be raised in the Return and motion to dismiss, by Respondents have all been waived, by failure to timely plead the defenses in a responsive pleading, answer or motion; and
2. The Respondent, as a party in default, forfeited the right to further participate in the proceedings, at the point in which default became available, and made to appear on the record by the Applicant's Request for Entry of Default, and supporting Affidavit, filed October 28, 2025 with the Clerk of Court; and

FILED: 2024-06-10 10:07
CLERK OF COURT
COUNTY OF GREENVILLE, SC

3. The motion to dismiss, is procedurally defective, and not cognizable by the court, due to failure to include Notice of Motion; as required by Rule 7(b), SCRCF; thus no such motion is pending before the court; and

4. Respondent has not in any way, controverted, or refuted the Applicant's motion for entry of default upon the record, nor the allegations of the Affidavit, in support of that motion, and the default of the Respondent, is conclusively established. Rule 8(d), SCRCF, provides:

(d) Effect of Failure To Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading."

(Emphasis provided)

Respondents, thus, as a matter of law, admit they are a defaulting party; and

5. As a defaulting party, the Respondent's lack standing, and therefore, may not file an out of time return, motion, nor seek affirmative relief. See *Frow v. De La Vega*, 82 U.S. (15 Wall.) 552, 554, 21 L.Ed. 60 (1872); *McDaniels v. SCDC*, Civ. Act. No.: 1:09-1732-TLW-SVH, 2010 WL 3782134; *Stark Truss Co. v. Superior Constr. Corp.*, 360 S.C. 503, 508, 602 S.E.2d 99, 102 (Ct.App. 2004) ("A party in default is not entitled to participate in the litigation.")

WHEREFORE, for the foregoing reasons and grounds, the Applicant moves that the State of South Carolina be removed from the case due to the fact that the State is a defaulting party, not entitled to further participation in the proceeding, as a matter of law.

Respectfully Submitted,

Date: March 25, 2026.
Fairfax, South Carolina.

Kevin Harbin
Kevin Harbin
Applicant, Pro Se

Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Civ. Act.No.: 2024-CP-23-03549

Kevin Harbin,	)	APPLICANT'S AMENDED OBJECTIONS TO CONDITIONAL
Applicant,	)	
	)	ORDER OF DISMISSAL AND ORDER RESTRICTING FUTURE
v.	)	
State of South Carolina, and	)	FILINGS AND TO MOTION TO DISMISS AND TO RESTRICT
South Carolina Department of	)	
Corrections,	)	FUTURE FILINGS WITH NOTICES OF MOTION AND MOTIONS
	)	
Respondents.	)	ATTACHED

COMES NOW, Kevin Harbin, by and through Pro Se, amending his previously submitted:

APPLICANT'S OBJECTIONS TO CONDITIONAL ORDER OF DISMISSAL AND ORDER RESTRICTING FUTURE FILINGS AND TO MOTION TO DISMISS AND TO RESTRICT FUTURE FILINGS WITH NOTICES AND MOTIONS ATTACHED

dated March 25, 2026; and
and, who submits the hereto attached Amended Memorandum of Law, and objections to the Conditional Order of Dismissal and Order Restricting Future Filings (Unconditional order), both dated March 9, 2026, filed March 10, 2026 issued by the court and received by the Applicant on March 18, 2026, as well as objections to the motion to dismiss and motion to restrict future filings submitted by the State of South Carolina, and further replying to the out-of-time (late) Return also dated March 9, 2026, filed March 10, 2026, the same day Jessica Ann Salvini, Chief Administrative Judge, signed the aforementioned orders; and Applicant hereby gives ten (10) days notice of motion(s) to the above-named Respondent, and hereby moves the Court for entry of an order:

Amendment:

The Applicant specifically amends the objections and the referenced Amended Memorandum of Law, pages 11 and 12 of the said memorandum of law, to delete certain case citations as follows:

1. State v. Miller, 405 S.C. 29, 744 S.E.2d 532 (2013)
2. State v. Sheppard, 391 S.C. 415, 706 S.E.2d 16 (Ct.App. 2011)
3. Gantt v. State, 354 S.C. 183, 580 S.E.2d 133 (2002)
4. Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (2014)

In place of the above case citations, the Applicant inserts S.C. Code Sections §§ 17-27-20(a) and 17-27-20(a)(1) and relevant portions of the Uniform Post-Conviction Relief Procedure Act (UPCRA).

- (1) Motion To Hold PCR Proceedings In Abeyance: (Motion attached hereto) holding the instant post-conviction relief proceedings in abeyance pending determination of the Applicant's Petition for Writ of Mandamus; currently pending before the South Carolina Supreme Court, a copy of which is herewith attached; and
- (2) Motion To Strike: (Motion attached hereto) holding that the State of South Carolina and the South Carolina Department of Corrections are in default, and therefore have no standing, nor right to make an appearance, file any motions or pleadings, nor to be heard in the matter due to lack of standing, and waiver of all affirmative defenses which might have been timely raised, but were not; and thus must be stricken from the record, as insufficient defenses, immaterial or impertinent matter; and
- (3) Motion To Remove The State As A Party: (Motion attached hereto) Further granting such other relief set forth and requested

FILED: 26APR14 10:19
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herein below.

The Applicant hereby incorporates by reference the entire record, the pleadings, together with the motions, and papers on file as part of the court record, as if re-stated verbatim herein.

The Application for post-conviction relief was filed June 10, 2024. The clerk of court properly served same on the Attorney General's Office that same day. The State had ninety (90) days henceforth to file an answer or Return, or to otherwise plead. Ninety (90) days from the date of filing of the application elapsed on September 22, 2024.

While the application languished in the Court, seventeen (17) months, and sixteen (16) plus days transpired as of the date of this pleading. That's five-hundred and twenty-six (526) days late before the State filed its Return and motion to dismiss, on March 10, 2026.

The Applicant's Objections and Grounds therefor shall be:

1. The motion to dismiss, and motion to restrict future filings is not ripe for disposition, nor properly before the court.

Applicant commenced the instant proceeding and nearly two (2) years has elapsed before a single judicial act occurred in relation to his post-conviction relief application, and only then to conditionally dismiss the case and restrict future filings. Despite Applicant's outstanding motions for entry of default on the record, and motion to compel the clerk of court to make such entry, the Chief Judge for Administrative Purposes has failed require the clerk of court to comply with Rule 55(a), SCRCP, and further failed to address and dispose of Applicant's motion to compel the entry of default upon the calendar (file book) filed December 10, 2025, and Applicant moved the court to proceed to evidentiary hearing and for appointment of counsel on his post-conviction relief application in a absence of a Return having been filed in the matter, and no appearance being made by the opposing parties. The disposition of these outstanding motions could have a critical and decisive effect on the disposition of the case on the merits, yet remain outstanding and unresolved by the court; and

2. The motions before the court are devoid of any Notice of Motion, and are thus not cognizable, nor properly before the court. The proposed orders have not been served prior to their having been signed by the court.

Since the service of process for the attached petition for writ of mandamus, the court and one of the opposing parties (the State), have suddenly awakened, and on March 10, 2026 filed a litany of frivolous and vexatious motions dated March 9, 2026, as well as an out of time return without

requesting judicial permission or making a motion, and filing unserved proposed orders; and

3. Despite that Applicant, filed motion for entry of default, and motion to compel entry of default, addressed to the Chief Judge for Administrative Purposes filed December 10, 2025, and the court has failed to address or dispose of those motions, which were filed months preceding the State filing its return, and other frivolous out of time motions, which are devoid of any Notice of Motion. Yet, the Chief Judge for Administrative Purposes on the same date of March 10, 2026 that said frivolous out of time motions and pleadings were filed, issued and served on Applicant an ALREADY SIGNED¹ "Conditional Order of Dismissal" and ALREADY SIGNED "Order Restricting Future Filings", without any proposed order of dismissal nor proposed order restricting future filings having been served upon Applicant, as required by Rule 5(b)(3), South Carolina Rule of Civil Procedure; violating Applicant's right to due notice and meaningful opportunity to be heard in a meaningful manner; and thus, since no service as required by this rule has occurred, Rule 6(d), SCRPC, applies, demonstrating that said return and motions simply have not been "filed", in the absence of such service, and thus these pleadings are not properly before the court, nor cognizable in any way, shape, nor form; and are, as a matter of law, mere nullities; (non-entities) and
4. That, the court ignores the fact that the State of South Carolina is a party in default, yet the court issues the Conditional Order of Dismissal, and Order Restricting Future Filings (Not a Conditional Order) which has immediate effect; in violation of Applicant's constitutional right to be heard; and
5. That, the State has in an effort to short-circuit any potential adverse ruling by the Supreme Court on the petition for writ of mandamus, has taking extraordinary and illegal courses of action, under the guise of "standing" and litigation as if the State were a legally recognized party to the instant action; thus violating core constitutional principles and effectively arranged a complete miscarriage of justice; and
6. That, unless this court intervenes, by issuing a protective order, requiring all proceedings in this matter, and its disposition, be immediately held in abeyance, pending the outcome of the instant proceedings in mandamus before the South Carolina Supreme Court, the attempted and contemplated miscarriage of justice will have succeeded; and
7. That, in light of the fact that the Respondents in the post-conviction relief proceeding, are in default and have not in anyway contested or controverted the motion for entry of default on the calendar (file book), have not made any timely appearance, nor filed a timely return, the State of South

1. This was done in an ex parte manner, forbidden under Rule 101, SCACR, Canon 3(B)(7), Code of Judicial Conduct.

Carolina is a defaulting party, and thus not a party at all in the court proceeding according to the United States Supreme Court which held:

"The defaulting party is simply out of court and can take no farther part in the case."

Frow v. De La Vega, 22 U.S. (15 Wall.) 552, 554, 21 L.Ed. 60 (1872), 1872 WL 15275

This holding was recognized to continue with the force and effect of law, in McDaniels v. SCDC, which held:

"The defaulting defendant has merely lost his standing in court. He will not be entitled to service of notices in the case, nor to appear in it in any way. He can adduce no evidence, he cannot be heard at the final hearing."

McDaniels v. SCDC, Civ. Act. No.: 1:09-1732-TLW-SVH, citing Frow v. De La Vega, supra., 2010 WL 3782134; and

The jurisprudence in South Carolina mirrors these holdings on a basic fundamental understanding of "standing".

See: Memorandum of Law, attached hereto; and

8. Thus, this court should further issue a protective order :

(a) which removes from the case the State of South Carolina, as a party thereto; and

(b) forbids the intervention of the South Carolina Department of Corrections, who similarly has not entered a timely appearance on the record; and

(c) holds that both opposing parties have waived all affirmative defenses which they now assert in the Return before the court; and

(d) and that the return and motions filed by the State of South Carolina be forthwith and immediately STRICKEN FROM THE RECORD, as they constitute under Rule 12(f), SCRCP, insufficient defenses, immaterial or impertinent matter, or redundant matter, thus, are mere nullities, ab initio (non-entities); and

(e) holds that the post-conviction relief action is NOT subject to summary dismissal; and that after disposition by the S. C. Supreme Court of the petition for writ of mandamus, South Carolina law mandates an evidentiary hearing be scheduled and convened in the post-conviction relief matter pursuant to Code Section §17-27-80, S.C. Code Ann., and Rule 55(a), SCRCP; and

9. That, there is a clear need to reject, as illegal, the State's conspiracy to work a complete miscarriage of justice, and circumvent the very purpose of the Uniform Post-Conviction Relief Act, and the South Carolina Rules of Civil Procedure, before the courts of this state. It represents a shameless lawlessness, and involves a corrupt, malignant presence in the court rooms of the State, acting under the guise of legal

standing and official prerogative; and
 10. The affirmative defenses raised by the Respondent are unavailable, and insufficient, in as much as those defenses have not been timely nor affirmatively pleaded in an timely responsive pleading.

The above objections and grounds therefor are presented in detail, in the attached motions and memorandum of law.

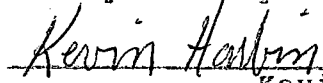
CONCLUSION

For the foregoing reasons, the Conditional Order of Dismissal, and Order Restricting Future Filings should be vacated, and the motion to dismiss, and to restrict future filings should be denied. The State should be removed as a defaulting party, and forbidden further participation in the case. The Return and motions filed by Respondent should be stricken from the record, as nullities, due to the default of the State. The proceedings should further be held in abeyance, pending disposition of the Applicant's petition for writ of mandamus pending before the South Carolina Supreme Court, on the very dispositive issue of the clerk of court's failure to perform the ministerial duty to enter the default of the State whose Return was due on September 22, 2024, but was filed recently on March 10, 2026, seventeen (17) months, and sixteen (16) plus days late as of the date of this pleading.

Therefore, sole counsel should be appointed to assist Applicant, who must present evidence satisfactory to the court, pursuant to Rule 55(b), SCRCP. The PCR application is not subject to summary dismissal, as no timely Return (answer), nor timely and properly noticed motion to dismiss are before the court. The proper mechanisms for summary dismissal under Code Section § 17-27-70(b), simply are not present in the case, therefore the court, as a matter of law, cannot substitute nor circumvent the default procedure, and effectively reward the State for its own procedural mis-steps. Like everyone else in the legal community, the State must bear the consequences of sitting on its laurels, while the clock was ticking.

April 9, 2026
 Fairfax, South Carolina

Respectfully Submitted,


 Kevin Harbin
 Applicant, Pro Se

Allendale Correction Institution
 1057 Revolutionary Trail
 Fairfax, SC 29327

CERTIFICATE OF SERVICE

I, Kevin Harbin, the Applicant in the foregoing matter, hereby certify that I have this day served a true-copy of the following :
APPLICANT'S AMENDED OBJECTIONS TO CONDITIONAL ORDER OF DISMISSAL AND ORDER RESTRICTING FUTURE FILINGS AND TO MOTION TO DISMISS AND TO RESTRICT FUTURE FILINGS WITH NOTICES OF MOTION AND MOTIONS ATTACHED upon the Respondent by depositing same in the United States postal receptacle located on Allendale yard, sufficient first-class postage affixed thereto, and addressed to:

State of South Carolina
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

Date: April 2, 2026
Fairfax, South Carolina.

sl Kevin Harbin

Kevin Harbin
APPLICANT, Pro Se

Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

Kevin Harbin, #303214
Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

Jay Gresham
Clerk of Court
Greenville County Courthouse
305 East North St.,
Greenville, SC 29601-2121

Date: April 1, 2026

Re: Enclosures for Filing Purposes
Kevin Harbin v. State of South Carolina and South Carolina
Department of Corrections
Case No.: 2024-CP-23-03549

Dear Clerk:

Please find enclosed on behalf of the Applicant in the above-referenced matter the following for filing purposes:

1. Applicant's Amended Objections To Conditional Order of Dismissal and Order Restricting Future Filings and To Motion To Dismiss and To Restrict Future Filings With Notices of Motion and Motions Attached; and
2. Certificate of Service; and
3. Extra-copy of all the above, which I respectfully request be returned to me clocked-in/stamped filed.

Please file with the court record.

Thanking You In Advance,



Kevin Harbin

Applicant, Pro Se

KH/

Enclosures

cc: S. C. Office of the Attorney General

FILED: 25 APR 10:19
JAY GRESHAM
CLERK OF COURT

Kevin Harbin, #303214
Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

053

RECEIVED

MAR 25 2026

S.C. SUPREME COURT

Attention: Chief Justice

c/o Patricia A. Howard
Clerk
South Carolina Supreme Court
P. O. Box 11330
Columbia, SC 29211

Date: March 20, 2026

Re: To Chief Justice

Enclosures for Filing Purposes

Kevin Harbin v. Jay Gresham, Clerk of Court for
Greenville County

Case No. Not Provided

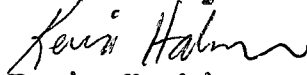
Dear Madam Clerk:

Please find enclosed for filing purposes the following on behalf
of the Petitioner in the above-referenced matter:

1. Notice of Motion and Motion for Emergency Protective
Order
2. Certificate of Service
3. Extra-copy of same , requesting it be returned to me
stamped-filed/clocked in.

Please forward to the Chief Justice, and file with the court
record. I respectfully request the enclosed extra-copy hereof be
returned at your earliest convenience,

Kindest Regards

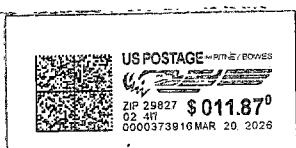

Kevin Harbin

Enclosures

cc: Jay Gresham

Office of the S. C. Attorney General

KEVIN Harbin #303214
Allendale Carr Inst
1057 Revolutionary Trail
Fairfax, S.C. 29827



RECEIVED
MAR 23 2026
S.C. SUPREME COURT

% Patricia A. Howard
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, S.C. 29211



IN THE SUPREME COURT

ORIGINAL JURISDICTION

MANDAMUS FROM GREENVILLE COUNTY

RECEIVED

MAR 28 2026

S.C. SUPREME COURT

Kevin Harbin, #303214, Petitioner,

v.

Jay Gresham, Greenville County Clerk of Court, Respondent.

NOTICE OF MOTION AND
EMERGENCY MOTION FOR PROTECTIVE ORDER

COMES NOW, Kevin Harbin, by and through Pro Se, who hereby gives ten (10) days notice of motion to the above-named Respondent, and hereby moves the Court entry of emergency protective order: (1) holding the lower court post-conviction relief proceedings in abeyance pending determination of the instant petition for writ of mandamus, and (2) holding that the State of South Carolina and the South Carolina Department of Corrections are in default, and therefore have no right to make an appearance, file any motions or pleadings, nor to be heard in the matter due to lack of standing, and waiver of all affirmative defenses which might have been timely raised, but were not. Further granting such other relief set forth and requested herein below.

The grounds for said motion shall be:

1. Petitioner commenced the instant original jurisdiction proceeding after nearly two (2) years before a single judicial act occurred in relation to his post-conviction relief application, setting forth the facts of this case and alleging the failure of the Clerk of Court for Greenville County, to make due entry of default of a party, and elucidating facts demonstrating the lower court post-conviction relief proceeding had been languishing in the Court of Common Pleas approximately two (2) years and that the Chief Judge for Administrative Purposes failed require the clerk of court to comply with Rule 55(a), SCRCP, and further failed to address

- and dispose of Petitioner's motion to compel the entry of default upon the calendar (file book) filed December 10, 2025, and Petitioner moved the court to proceed to evidentiary hearing and for appointment of counsel on his post-conviction relief application in a absence of a Return having been filed in the matter, and no appearance being made by the opposing parties. The post-conviction relief application was filed on June 10, 2024; and
2. Since the service of process for the instant petition for mandamus, the lower court and one of the opposing parties (the State), have suddenly awakened, and on March 10, 2026 filed a litany of frivolous and vexatious motions dated March 9, 2026, as well as an out of time return without requesting judicial permission or making a motion, and filing unserved proposed orders; and
 3. Despite that Petitioner, filed motion for entry of default, and motion to compel entry of default in the lower court, addressed to the Chief Judge for Administrative Purposes filed December 10, 2025, and that judge had failed to address or dispose of those motions, which were filed months preceding the State filing its return, and other frivolous out of time motions, which are devoid of any Notice of Motion. Yet, the Chief Judge for Administrative Purposes on the same date of March 9, 2026 that said frivolous out of time motions and pleadings were filed, issued and served on Petitioner an ALREADY SIGNED "Conditional Order of Dismissal" and ALREADY SIGNED "Order Restricting Future Filings", without any proposed order of dismissal nor proposed order restricting future filings having been served upon Petitioner, as required by Rule 5(b)(3), South Carolina Rule of Civil Procedure; violating Petitioner's right to due notice and meaningful opportunity to be heard in a meaningful manner; and thus, since no service as required by this rule has occurred, Rule 6(d), SCRCP, applies, demonstrating that said return and motions simply have not been "filed", in the absence of such service, and thus these pleadings are not properly before the court, nor cognizable in any way, shape, nor form; and
 4. That, obviously, the lower court has compromised any pretense of integrity, and judicial fairness; and is acting a lapdog for the State of South Carolina, who is a party in default, in issuing the Conditional Order of Dismal, and Order Restricting Future Filings (Not a Conditional Order) which has immediate effect; in violation of Petitioner's constitutional right to be heard; and
 5. That, lower court has in an effort to short-circuit any potential adverse ruling by this Supreme Court on the petition for writ of mandamus, has taking extraordinary and illegal courses of action, under the guise of judicial authority; thus violating core constitutional principles and effectively arranged a complete miscarriage of justice; and
 6. That, unless this Supreme Court intervenes, by issuing a

protective order, requiring all lower court actions, and dispositions, be immediately held in abeyance, pending the outcome of the instant proceedings in mandamus, the attempted and contemplated miscarriage of justice will have succeeded; and

7. That, in light of the fact that the Respondents in the post-conviction relief proceeding, are in default and have not in anyway contested or controverted the motion for entry of default on the calendar (file book), have not made any timely appearance, nor filed a timely return, the State of South Carolina is a defaulting party, and thus not a party at all in the lower court proceeding according to the United States Supreme Court which held:

"The defaulting party is simply out of court and can take no farther part in the case."

Frow v. De La Vega, 82 U.S. (15 Wall.) 552, 554, 21 L. Ed. 60 (1872), 1872 WL 15275

This holding was recognized to continue with the force and effect of law, in McDaniels v. SCDC, which held:

"The defaulting defendant has merely lost his standing in court. He will not be entitled to service of notices in the case, nor to appear in it in any way. He can adduce no evidence, he cannot be heard at the final hearing. "

McDaniels v. SCDC, Civ. Act. No.: 1:09-1732-TLW-SVH, citing Frow v. De La Vega, supra., 2010 WL 3782134; and

8. Thus, this Supreme Court should further issue a protective order to the lower court, requiring that court:

(a) to remove from the case the State of South Carolina, as a party thereto,

(b) and forbidding the intervention of the South Carolina Department of Corrections, who similarly has not entered a timely appearance on the record;

(c) and holding that both have waived all affirmative defenses which they now assert before the lower court;

(d) and that the return and motions filed by the State of South Carolina be forthwith and immediately STRICKEN FROM THE RECORD, as they constitute under Rule 12(f), SCRCP, insufficient defenses, immaterial or impertinent matter, or redundant matter;

(e) holding that the post-conviction relief action is NOT subject to summary dismissal; and that after disposition by this Court of the petition for writ of mandamus, South Carolina law mandates an evidentiary hearing be scheduled and convened in the post-conviction relief matter pursuant to Code Section §17-27-80, S.C. Code Ann., and Rule 55(a), SCRCP; and

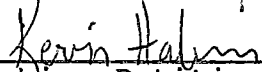
9. That, there is a lower court complicity with the State's conspiracy to work a complete miscarriage of justice, and circumvent the very purpose of the Uniform Post-Conviction Relief Act, and the South Carolina Rules of Civil Procedure, before the courts of this state. It represents a shameless

lawlessness, and involves a corrupt judicial official, acting under the guise of judicial prerogative; and

10. That, justice will be denied, as the aim of the lower court judge is to short-circuit and circumvent the obvious merit in the Petitioner's petition for issuance of writ of mandamus.
11. That should the lower court summarily dismiss the post-conviction relief application, it shall forthwith and immediately reinstate the case on the docket and proceed to full and complete evidentiary hearing on the merits of the post-conviction relief application with counsel for the Petitioner being appointed to assist him in the matter; and
12. The lower court and clerk of court shall apply and comply with the law, in accord with their Oaths of Office.

Respectfully Submitted,

March 19, 2026
Fairfax, South Carolina.


Kevin Harbin, Petitioner Pro Se

Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

CERTIFICATE OF SERVICE

I, Kevin Harbin, the Petitioner in the foregoing matter, hereby certify that I have this day served a true-copy of the following :

Notice of Motion and Motion for Emergency Protective Order

upon the Respondent by depositing same in the United States postal receptacle located on Allendale yard, sufficient first-class postage affixed thereto, and addressed to:

Jay Gresham
c/o State of South Carolina
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

Date: March 20, 2026
Fairfax, South Carolina.

s/ Kevin Harbin
Kevin Harbin
Petitioner, Pro Se

Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

RECEIVED

MAR 25 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Kevin Lamar Harbin, #303214,

Applicant,

V.

State Of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
)

) CASE NO. 2024-CP-23-03549
)

**ORDER RESTRICTING
FUTURE FILINGS**

FILED: 25MAR10M11:05
COC JAY GREENVILLE, SC

Applicant, Kevin Lamar Harbin, filed the above captioned application for post-conviction relief on June 10, 2024. Respondent made its return and moved to dismiss the application as untimely, barred by the statute of limitations, successive to Applicant's previous PCR actions, barred by the doctrine of *res judicata*, barred by the equitable doctrine of *laches*, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014). As part of its return, Respondent moved to restrict future PCR filings by Applicant. After consideration, Respondent's motion to restrict future PCR filings is granted.

PROCEDURAL HISTORY

Applicant is presently confined in the Allendale Correctional Institution pursuant to orders of commitment of the Greenville County Clerk of Court. The Applicant was indicted at the August 2004 term of the Greenville County Grand Jury for kidnapping (2004-GS-23-6122), strong arm robbery (2004-GS-23-6123), and first-degree criminal sexual conduct (CSC) (2004-GS-23-6124). He was represented by Caroline Horlbeck, Esquire.

After the State called the case to trial, the Applicant was found guilty. On September 8, 2005, the Applicant was sentenced by the Honorable Larry R. Patterson to concurrent sentences of

thirty (30) years for kidnapping, fifteen (15) years for strong arm robbery, and thirty (30) years for first-degree CSC.

DIRECT APPEAL

A notice of appeal was filed at the South Carolina Court of Appeals. Aileen P. Clare, Esquire of the South Carolina Office of Appellate Defense filed an initial brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Applicant, however, indicated he wanted to voluntarily withdraw the appeal. The Court of Appeals dismissed the appeal on January 22, 2007.

2007-CP-23-0280

The Applicant filed his *first* application for post-conviction relief on January 12, 2007 (2007-CP-23-0280). An evidentiary hearing was convened on July 10, 2007, at the Greenville County Courthouse. Rodney Richey, Esq. represented the Applicant. The Applicant raised the following issue in his PCR application:

1. Ineffective assistance of trial counsel.

The Honorable Edward W. Miller denied the application by order dated August 7, 2007. The Applicant filed a notice of appeal at the South Carolina Supreme Court. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense filed a petition for writ of certiorari. The petition was denied by the Supreme Court by order dated January 22, 2009.

FEDERAL HABEAS CORPUS ACTION: 6:09-2790-TLW-WMC

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on October 23, 2009. The Respondent submitted a motion for summary judgment on March 5, 2010. The Honorable William M. Catoe, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment on January

27, 2011. The Honorable Terry L. Wooten, United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

The Applicant filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. In an opinion filed October 4, 2011, the Court of Appeals denied a certificate of appealability and dismissed the appeal.

2009-CP-23-9578

The Applicant filed a "Petition for State Writ of Habeas Corpus" on November 13, 2009 (2009-CP-23-9578). The Respondent filed a return and motion to dismiss, arguing a petition for writ of habeas corpus must be filed in the South Carolina Supreme Court. The Honorable Edward W. Miller issued a conditional order of dismissal dated March 29, 2010 and filed April 6, 2010. Judge Miller issued a final order of dismissal filed July 1, 2010. A notice of appeal was filed at the South Carolina Court of Appeals. By order dated December 6, 2010, the Court of Appeals dismissed the appeal based on the Applicant's failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR.

2012-CP-23-1847

The Applicant filed another application for post-conviction relief on March 13, 2012, alleging he is being held in custody unlawfully for the following reasons:

1. Newly discovered evidence.
2. "Brady violation and DNA testing Act."
3. "Applicant was denied procedural due process from numerous procedural irregularities (PCR and collateral appeal)."

The State made its return on July 12, 2012, requesting the Application be summarily dismissed. On July 18, 2012, the court issued a "Conditional Order of Dismissal" and expressed its intent to summarily dismiss the matter unless Applicant advises the court with specific reasons,

factual or legal, why it should not dismiss the matter in its entirety. The Applicant was granted

twenty (20) days from the date of service of the Order to show the Court he has specific reasons supporting his allegations. Applicant filed a document titled "Applicant's Traverse and Applicant's Reasons the Conditional Order Should Not Become Final" on August 16, 2012. The Court issued its "Final Order of Dismissal" on September 26, 2012, finding that Applicant's PCR application was filed well after the statute of limitations and Applicant should have raise all cognizable claims for relief in his previous PCR application from 2007.

CURRENT PCR APPLICATION

In his *fourth* and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds (excerpt verbatim [cleaned up]):

1. Non-compliance with 42 U.S.C.A §13704(A)(2); 34 U.S.C.A §12104(A)(i)
 - a. The Violent Offender Incarceration, Truth-In-Sentencing Incentive Grant Act, Applicant's state liberty interest rights denied that derives from Federal law and S.C.D.C.'s failure to comply with statutorily mandated grant conditions of the Truth-In-Sentencing Law presents a conflict analysis. Review of agency's interpretation of its governing statutes is subject to "Chevron Deference, USA Inc. v. Natural Resources 467 U.S. 837 (1984)."
2. Incorrect administration of statutory law § 24-13-150(A)
 - a. S.C.D.C.'s misinterpretation and wrong application, on February 7, 2024, after becoming aware of provisions in law for first time, inquiry was made to classification Kiosk Reference Number 24-03395801. In their response I was informed until they are shown error, applicant's maxout date would not change. On March 18, 2024, applicant spoke with chief classification staff member in person and offered a copy of P.C.R. brief to read and she refuses and responded to my Kiosk Request #24-03441115 until I receive a legal document from the court, they will not accept a copy to review. Eighty-five percent of applicants' thirty-year (30) sentence is twenty-five years six months and should have been applied to the actual term of imprisonment imposed. Applicant calculates that June 22, 2024, will be twenty-seven years, which is more than required for sentence imposed.
3. Non-compliance with statutory law §24-13-210(A); 24-13-230(A)
 - a. System of good-time credits. S.C.D.C. Policy OP-21.11, supports claim, and the Equal Protection Rights to treat similarly situated inmates the same. Further inference is directed to S.C.D.C. Policy OP-21.07. Section 4.3: Sections 1.1, 1.2, 2.1, 2.3. "In S.C.D.C. v. Carpenter (2020), Carpenter's co-defendant Bobby Gene Horne was a no parole offender and receive his credits. In "Bolin v. S.C.D.C. (2016), 'the S.C.D.C. explains that offenders

(no parole) can be afforded community supervision, good conduct credits, work credits, education credits, without altering in eighty five percent requirement (providing for good conduct credits at the rate of three days for each month and education or work credits at the rate of six days for every month of employment for no-parole offender's subject to eight-five percent requirement."

(App. at 3 and attachments).

As requested relief, Applicant requests the court for "release from South Carolina Department of Corrections, freedom nothing else." (App. at 6).

MOTION TO RESTRICT FUTURE FILINGS

On June 10, 2024, Applicant untimely filed this successive PCR application. Respondent has filed a return and motion to dismiss. As part of its return to the current PCR application, Respondent filed a motion to restrict Applicant's future PCR filings. For the reasons set forth herein, this motion is granted.

This Court finds Applicant's repetitive and abusive filings should be restricted to preserve the Court's time and resources and stop any interference with the fair administration of justice. 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 includes the right to appeal the denial of a PCR 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).

On his underlying 2005 convictions, Applicant has now filed four State PCR applications. Applicant has had his full bite of the apple. Due to the repetitive and frivolous nature of Applicant's numerous filings, this Court directs the Greenville County Clerk of Court not to accept any further PCR applications from 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).

This Court further finds Applicant shall be required to provide a properly notarized affidavit certifying that 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 certifying that he, in good faith, believed that the matters were non-frivolous and proper for the Court to consider. Id. Other courts have likewise required abusive litigants to file affidavits certifying they believe their petitions raise an original claim or is non-frivolous before accepting filings from such litigants. 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 should Applicant submit an application accompanied with a notarized affidavit, the Clerk's office is directed to submit the application to the Chief Administrative Judge before filing the application. The Administrative Judge shall 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 shall be submitted to the Clerk's office for filing. No Application shall be filed without a proper finding from the Chief Administrative Judge.

~~Finally, this Court cautions Applicant that should he continue to file applications~~

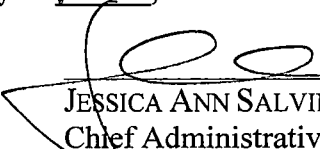
containing frivolous matters, he may be held in contempt and/or the Court may impose sanctions as circumstances of the case and discouragement of like conduct may warrant. The Supreme Court imposed such warning in Maxton, 325 S.C. at 3, 478 S.E.2d at 679.

CONCLUSION

Based on the foregoing, **IT IS THEREFORE ORDERED:**

1. The Clerk of Court of the Thirteenth Judicial Circuit shall refuse to accept further petitions from Applicant unless he pays a filing fee generally required for filing motions and petitions with this Court;¹
2. Applicant shall be prohibited from filing any legal actions in the Thirteenth Judicial Circuit without submitting the requisite filing fee and providing a properly notarized affidavit certifying that Applicant believes in good faith that the matter raised is not frivolous;
3. Any Applications submitted with properly notarized affidavits shall 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 Court of the Thirteenth Judicial Circuit shall return all documents that do not comply with this order; and
5. Applicant is directed that if he continues to file applications containing matter that is frivolous or not proper for this Court, he may be held in contempt or sanctioned under Rule 240, SCAR.

AND IT IS SO ORDERED this 9 day of May, 2026.


JESSICA ANN SALVINI
Chief Administrative Judge – Common Pleas
Thirteenth Judicial Circuit

Greenville, South Carolina

¹ Applicant shall be permitted, however, to file any response to the Conditional Order of Dismissal in the current case as set forth in that order.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Kevin Lamar Harbin, #303214,	)	CASE NO. 2024-CP-23-03549
	)	
Applicant,	)	
	)	
V.	)	CONDITIONAL ORDER OF DISMISSAL
	)	
State Of South Carolina,	)	
	)	ENTERED COMPUTER
Respondent:	)	
	)	

FILED: 28MAR10AM11:05
COC JAY GREENHAM GVL SC

Applicant, Kevin Lamar Harbin, filed the above captioned application for post-conviction relief on June 10, 2024. Respondent has moved for summary dismissal alleging the records attached to the return and motion show that the application is barred as untimely, barred by the statute of limitations, successive to Applicant's previous applications, barred by the doctrine of *res judicata*, barred by the equitable doctrine of *laches*, and § 17-27-90, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014). Respondent also moved to restrict future filings. Having reviewed the application, and the return and motion, this Court agrees and makes the following findings:

PROCEDURAL HISTORY

Applicant is presently confined in the Allendale Correctional Institution pursuant to orders of commitment of the Greenville County Clerk of Court. The Applicant was indicted at the August 2004 term of the Greenville County Grand Jury for kidnapping (2004-GS-23-6122), strong arm robbery (2004-GS-23-6123), and first-degree criminal sexual conduct (CSC) (2004-GS-23-6124). He was represented by Caroline Horlbeck, Esquire.

After the State called the case to trial, the Applicant was found guilty. On September 8, 2005, the Applicant was sentenced by the Honorable Larry R. Patterson to concurrent sentences of

thirty (30) years for kidnapping, fifteen (15) years for strong arm robbery, and thirty (30) years for first-degree CSC.

DIRECT APPEAL

A notice of appeal was filed at the South Carolina Court of Appeals. Aileen P. Clare, Esquire of the South Carolina Office of Appellate Defense filed an initial brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Applicant, however, indicated he wanted to voluntarily withdraw the appeal. The Court of Appeals dismissed the appeal on January 22, 2007.

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CURRENT PCR APPLICATION

In his *fourth* and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds (excerpt verbatim [cleaned up]):

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 - a. The Violent Offender Incarceration, Truth-In-Sentencing Incentive Grant Act, Applicant's state liberty interest rights denied that derives from Federal law and S.C.D.C.'s failure to comply with statutorily mandated grant conditions of the Truth-In-Sentencing Law presents a conflict analysis. Review of agency's interpretation of its governing statutes is subject to "Chevron Deference, USA Inc. v. Natural Resources 467 U.S. 837 (1984)."
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 - a. S.C.D.C.'s misinterpretation and wrong application, on February 7, 2024, after becoming aware of provisions in law for first time, inquiry was made to classification Kiosk Reference Number 24-03395801. In their response I was informed until they are shown error, applicant's maxout date would not change. On March 18, 2024, applicant spoke with chief classification staff member in person and offered a copy of P.C.R. brief to read and she refuses and responded to my Kiosk Request #24-03441115 until I receive a legal document from the court, they will not accept a copy to review. Eighty-five percent of applicants' thirty-year (30) sentence is twenty-five years six months and should have been applied to the actual term of imprisonment imposed. Applicant calculates that June 22, 2024, will be twenty-seven years, which is more than required for sentence imposed.
3. Non-compliance with statutory law §24-13-210(A); 24-13-230(A)
 - a. System of good-time credits. S.C.D.C. Policy OP-21.11, supports claim, and the Equal Protection Rights to treat similarly situated inmates the same. Further inference is directed to S.C.D.C. Policy OP-21.07. Section 4.3: Sections 1.1, 1.2, 2.1, 2.3. "In S.C.D.C. v. Carpenter (2020), Carpenter's co-

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(App. at 3 and attachments).

As requested relief, Applicant requests the court for “release from South Carolina Department of Corrections, freedom nothing else.” (App. at 6).

Before this court are the Greenville County Clerk of Court Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant’s records from his direct appeal, Applicant’s records from his previous post-conviction relief actions, and the current application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to S.C. Code Ann. § 17-27-70(c) and -80, this Court informs the parties of its intent to dismiss the applications as there is no genuine issue of material fact which would necessitate an evidentiary hearing. See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition is appropriate when there is no need to develop facts and the applicant is not entitled to relief). Respondent moves for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

Failure to State a Cognizable Claim

Applicants' allegations shall be summarily dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act (the Act). S.C. Code Ann. §§ 17-27-10 *et seq.* (2003). The South Carolina Supreme Court has held that "PCR is a proper avenue of relief only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence...." Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000). Claims that only affect the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are not considered collateral attacks on the conviction. Cooper v. State, 338 S.C. 202, 525 S.E.2d 886 (2000). An applicant may not seek review of a non-collateral or administrative matter through PCR. Al-Shabazz; Tutt v. State, 277 S.C. 525, 290 S.E.2d 414 (1982).

After Al-Shabazz, only two non-collateral matters are cognizable in PCR: 1) a claim that the applicant's sentence expired (Delahoussaye v. State, 369 S.C. 522, 633 S.E.2d 158 (2006)) or 2) a claim that the applicant's probation, parole or conditional release has been unlawfully revoked. Id. For credit related claims or claims concerning the conditions of confinement, the proper avenue of relief is through the Administrative Procedures Act (APA). Id., 338 S.C. at 369, 527 S.E.2d at 749-50. *Ex post facto* claims also must be brought through APA rather than PCR. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000). Therefore, the Court shall summarily dismiss these claims pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

Summary Dismissal Based on Statute of Limitations

Respondent moved this Court to summarily dismiss this application for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.¹ 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 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). 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

¹ 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 various allegations. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant was sentenced on September 8, 2005. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief one year after sentencing or one year after the sending of the remittitur to the lower court, whichever is later. Applicant did not file this PCR application until June 10, 2024—more than *fifteen years* beyond the statute of limitations.

Accordingly, this application is *untimely* pursuant to S.C. Code Ann. § 17-27-45 and shall be dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

Summary Dismissal Based on Successiveness

Respondent moved this Court to summarily dismiss the application because it is successive to Applicant's previous PCR applications. 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). Section 17-27-90 of the South Carolina Code states:

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 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.

Under this statute, successive post-conviction relief applications are forbidden 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). 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 Applicant could have raised these allegations in a previous application, then Applicant may not raise those grounds in successive applications. Id. 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).

Applicant’s current allegations regarding Plea Counsel *were or could have been* raised in the proceedings based on Applicant's prior applications for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him.

Therefore, the Application shall be summarily dismissed as successive to Applicant's previous PCR applications.

Summary Dismissal Based on the Doctrine of Res Judicata

Additionally, Respondent moved this Court to summarily dismiss this application because it 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 of 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 first and second PCR actions. 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 court's rulings should be respected, and the application shall be summarily dismissed as barred by the doctrine of *res judicata*.

Summary Dismissal Based on the Equitable Doctrine of Laches

Respondent moved this Court to summarily dismiss the application because it is barred by the equitable doctrine of *laches*. To ensure the finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). Requiring reasonable diligence “guards the state’s legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available.” Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). Where an applicant for post-conviction relief fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of *laches*, which is defined as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). “Whether a claim is barred by *laches* is to be determined in

light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches.” Id.

Applicant seeks post-conviction relief more than 15-years after his trial. Absent some explanation or justification for the delay in seeking post-conviction relief, *laches* will prevent an applicant from seeking collateral review of his conviction, significantly where the delay affects the availability of evidence to review the applicant’s claims. McElrath, 276 S.C. at 283, 277 S.E.2d at 890. Applicant has offered no legitimate justification for the delay. Because of the delay, witness memories, and physical evidence will have naturally faded and degraded. See, e.g., Bray, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge’s ruling that *laches* barred belated review of denial of PCR seven years after PCR hearing was held); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy “would undoubtedly be futile considering the passage of over ten years’ time” when the delay was caused by appellant). As a result, Applicant’s delay in bringing this action has affected the availability of evidence for this Court to review his claims. Therefore, this application shall be summarily dismissed as barred by the equitable doctrine of *laches*.

Frustration of Finality

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 PAGE TO FOLLOW]

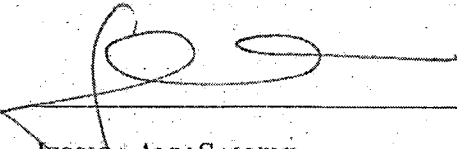
CONCLUSION

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 (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 with the Greenville County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
PCR Division – 13th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

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

AND IT IS SO ORDERED this 9 day of March, 2026.



JESSICA ANN SALVINI
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Kevin Lamar Harbin, #303214,

Applicant,

V.

State Of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT

) CASE NO. 2024-CP-23-03549

) **CONDITIONAL ORDER OF DISMISSAL**

Applicant, Kevin Lamar Harbin, filed the above captioned application for post-conviction relief on June 10, 2024. Respondent has moved for summary dismissal alleging the records attached to the return and motion show that the application is barred as untimely, barred by the statute of limitations, successive to Applicant's previous applications, barred by the doctrine of *res judicata*, barred by the equitable doctrine of *laches*, and § 17-27-90, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014). Respondent also moved to restrict future filings. Having reviewed the application, and the return and motion, this Court agrees and makes the following findings:

PROCEDURAL HISTORY

Applicant is presently confined in the Allendale Correctional Institution pursuant to orders of commitment of the Greenville County Clerk of Court. The Applicant was indicted at the August 2004 term of the Greenville County Grand Jury for kidnapping (2004-GS-23-6122), strong arm robbery (2004-GS-23-6123), and first-degree criminal sexual conduct (CSC) (2004-GS-23-6124). He was represented by Caroline Horlbeck, Esquire.

After the State called the case to trial, the Applicant was found guilty. On September 8, 2005, the Applicant was sentenced by the Honorable Larry R. Patterson to concurrent sentences of

thirty (30) years for kidnapping, fifteen (15) years for strong arm robbery, and thirty (30) years for first-degree CSC.

DIRECT APPEAL

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to S.C. Code Ann. § 17-27-70(c) and -80, this Court informs the parties of its intent to dismiss the applications as there is no genuine issue of material fact which would necessitate an evidentiary hearing. See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition is appropriate when there is no need to develop facts and the applicant is not entitled to relief). Respondent moves for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

Failure to State a Cognizable Claim

Applicants' allegations shall be summarily dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act (the Act). S.C. Code Ann. §§ 17-27-10 *et seq.* (2003). The South Carolina Supreme Court has held that "PCR is a proper avenue of relief only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence...." Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000). Claims that only affect the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are not considered collateral attacks on the conviction. Cooper v. State, 338 S.C. 202, 525 S.E.2d 886 (2000). An applicant may not seek review of a non-collateral or administrative matter through PCR. Al-Shabazz; Tutt v. State, 277 S.C. 525, 290 S.E.2d 414 (1982).

After Al-Shabazz, only two non-collateral matters are cognizable in PCR: 1) a claim that the applicant's sentence expired (Delahoussaye v. State, 369 S.C. 522, 633 S.E.2d 158 (2006)) or 2) a claim that the applicant's probation, parole or conditional release has been unlawfully revoked. Id. For credit related claims or claims concerning the conditions of confinement, the proper avenue of relief is through the Administrative Procedures Act (APA). Id., 338 S.C. at 369, 527 S.E.2d at 749-50. *Ex post facto* claims also must be brought through APA rather than PCR. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000). Therefore, the Court shall summarily dismiss these claims pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

Summary Dismissal Based on Statute of Limitations

Respondent moved this Court to summarily dismiss this application for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.¹ 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 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). 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

¹ 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 various allegations. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant was sentenced on September 8, 2005. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief one year after sentencing or one year after the sending of the remittitur to the lower court, whichever is later. Applicant did not file this PCR application until June 10, 2024— more than *fifteen years* beyond the statute of limitations.

Accordingly, this application is *untimely* pursuant to S.C. Code Ann. § 17-27-45 and shall be dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

Summary Dismissal Based on Successiveness

Respondent moved this Court to summarily dismiss the application because it is successive to Applicant's previous PCR applications. 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). Section 17-27-90 of the South Carolina Code states:

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 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.

Under this statute, successive post-conviction relief applications are forbidden 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). 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 Applicant could have raised these allegations in a previous application, then Applicant may not raise those grounds in successive applications. Id. 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).

Applicant’s current allegations regarding Plea Counsel *were or could have been* raised in the proceedings based on Applicant's prior applications for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him.

Therefore, the Application shall be summarily dismissed as successive to Applicant's previous PCR applications.

Summary Dismissal Based on the Doctrine of Res Judicata

Additionally, Respondent moved this Court to summarily dismiss this application because it 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 of 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 first and second PCR actions. 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 court's rulings should be respected, and the application shall be summarily dismissed as barred by the doctrine of *res judicata*.

Summary Dismissal Based on the Equitable Doctrine of Laches

Respondent moved this Court to summarily dismiss the application because it is barred by the equitable doctrine of *laches*. To ensure the finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). Requiring reasonable diligence “guards the state’s legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available.” Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). Where an applicant for post-conviction relief fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of *laches*, which is defined as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). “Whether a claim is barred by *laches* is to be determined in

light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches.” Id.

Applicant seeks post-conviction relief more than 15-years after his trial. Absent some explanation or justification for the delay in seeking post-conviction relief, *laches* will prevent an applicant from seeking collateral review of his conviction, significantly where the delay affects the availability of evidence to review the applicant’s claims. McElrath, 276 S.C. at 283, 277 S.E.2d at 890. Applicant has offered no legitimate justification for the delay. Because of the delay, witness memories, and physical evidence will have naturally faded and degraded. See, e.g., Bray, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge’s ruling that *laches* barred belated review of denial of PCR seven years after PCR hearing was held); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy “would undoubtedly be futile considering the passage of over ten years’ time” when the delay was caused by appellant). As a result, Applicant’s delay in bringing this action has affected the availability of evidence for this Court to review his claims. Therefore, this application shall be summarily dismissed as barred by the equitable doctrine of *laches*.

Frustration of Finality

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 PAGE TO FOLLOW]

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 (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 with the Greenville County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
PCR Division – 13th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

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

AND IT IS SO ORDERED this _____ day of _____, 2026.

JESSICA ANN SALVINI
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.



ALAN WILSON
ATTORNEY GENERAL

March 9, 2026

The Honorable Jessica A. Salvini
Thirteenth Judicial Circuit Chief Administrative Judge
305 E. North Street
Greenville, SC 29601
(via e-mail only - jsalvinij@sccourts.org; jsalvinile@sccourts.org; jsalvinisc@sccourts.org)

Re: Kevin L. Harbin, #303214 v. State of South Carolina
2024-CP-23-03549

Dear Judge Salvini,

Enclosed please find the proposed Order Restricting Future Filings in the above-captioned case. If this proposed order meets your approval, please sign it, and forward it to the Greenville County Clerk of Court to be filed and served.

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

Sincerely,

Sydney N. Willingham
Assistant Attorney General

SNW/zew
Enclosure

cc: Kevin L. Harbin, #303214

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Kevin Lamar Harbin, #303214,	)	CASE NO. 2024-CP-23-03549
	)	
Applicant,	)	
	)	
V.	)	ORDER RESTRICTING
	)	FUTURE FILINGS
	)	
State Of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Applicant, Kevin Lamar Harbin, filed the above captioned application for post-conviction relief on June 10, 2024. Respondent made its return and moved to dismiss the application as untimely, barred by the statute of limitations, successive to Applicant's previous PCR actions, barred by the doctrine of *res judicata*, barred by the equitable doctrine of *laches*, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014). As part of its return, Respondent moved to restrict future PCR filings by Applicant. After consideration, Respondent's motion to restrict future PCR filings is granted.

PROCEDURAL HISTORY

Applicant is presently confined in the Allendale Correctional Institution pursuant to orders of commitment of the Greenville County Clerk of Court. The Applicant was indicted at the August 2004 term of the Greenville County Grand Jury for kidnapping (2004-GS-23-6122), strong arm robbery (2004-GS-23-6123), and first-degree criminal sexual conduct (CSC) (2004-GS-23-6124). He was represented by Caroline Horlbeck, Esquire.

After the State called the case to trial, the Applicant was found guilty. On September 8, 2005, the Applicant was sentenced by the Honorable Larry R. Patterson to concurrent sentences of

thirty (30) years for kidnapping, fifteen (15) years for strong arm robbery, and thirty (30) years for first-degree CSC.

DIRECT APPEAL

A notice of appeal was filed at the South Carolina Court of Appeals. Aileen P. Clare, Esquire of the South Carolina Office of Appellate Defense filed an initial brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Applicant, however, indicated he wanted to voluntarily withdraw the appeal. The Court of Appeals dismissed the appeal on January 22, 2007.

2007-CP-23-0280

The Applicant filed his *first* application for post-conviction relief on January 12, 2007 (2007-CP-23-0280). An evidentiary hearing was convened on July 10, 2007, at the Greenville County Courthouse. Rodney Richey, Esq. represented the Applicant. The Applicant raised the following issue in his PCR application:

1. Ineffective assistance of trial counsel.

The Honorable Edward W. Miller denied the application by order dated August 7, 2007. The Applicant filed a notice of appeal at the South Carolina Supreme Court. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense filed a petition for writ of certiorari. The petition was denied by the Supreme Court by order dated January 22, 2009.

FEDERAL HABEAS CORPUS ACTION: 6:09-2790-TLW-WMC

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on October 23, 2009. The Respondent submitted a motion for summary judgment on March 5, 2010. The Honorable William M. Catoe, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment on January

27, 2011. The Honorable Terry L. Wooten, United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

The Applicant filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. In an opinion filed October 4, 2011, the Court of Appeals denied a certificate of appealability and dismissed the appeal.

2009-CP-23-9578

The Applicant filed a “Petition for State Writ of Habeas Corpus” on November 13, 2009 (2009-CP-23-9578). The Respondent filed a return and motion to dismiss, arguing a petition for writ of habeas corpus must be filed in the South Carolina Supreme Court. The Honorable Edward W. Miller issued a conditional order of dismissal dated March 29, 2010 and filed April 6, 2010. Judge Miller issued a final order of dismissal filed July 1, 2010. A notice of appeal was filed at the South Carolina Court of Appeals. By order dated December 6, 2010, the Court of Appeals dismissed the appeal based on the Applicant’s failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR.

2012-CP-23-1847

The Applicant filed another application for post-conviction relief on March 13, 2012, alleging he is being held in custody unlawfully for the following reasons:

1. Newly discovered evidence.
2. “Brady violation and DNA testing Act.”
3. “Applicant was denied procedural due process from numerous procedural irregularities (PCR and collateral appeal.)”

The State made its return on July 12, 2012, requesting the Application be summarily dismissed. On July 18, 2012, the court issued a “Conditional Order of Dismissal” and expressed its intent to summarily dismiss the matter unless Applicant advises the court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant was granted

twenty (20) days from the date of service of the Order to show the Court he has specific reasons supporting his allegations. Applicant filed a document titled “Applicant’s Traverse and Applicant’s Reasons the Conditional Order Should Not Become Final” on August 16, 2012. The Court issued its “Final Order of Dismissal” on September 26, 2012, finding that Applicant’s PCR application was filed well after the statute of limitations and Applicant should have raise all cognizable claims for relief in his previous PCR application from 2007.

CURRENT PCR APPLICATION

In his *fourth* and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds (excerpt verbatim [cleaned up]):

1. Non-compliance with 42 U.S.C.A §13704(A)(2); 34 U.S.C.A §12104(A)(i)
 - a. The Violent Offender Incarceration, Truth-In-Sentencing Incentive Grant Act, Applicant’s state liberty interest rights denied that derives from Federal law and S.C.D.C.’s failure to comply with statutorily mandated grant conditions of the Truth-In-Sentencing Law presents a conflict analysis. Review of agency’s interpretation of its governing statutes is subject to “Chevron Deference, USA Inc. v. Natural Resources 467 U.S. 837 (1984).”
2. Incorrect administration of statutory law § 24-13-150(A)
 - a. S.C.D.C.’s misinterpretation and wrong application, on February 7, 2024, after becoming aware of provisions in law for first time, inquiry was made to classification Kiosk Reference Number 24-03395801. In their response I was informed until they are shown error, applicant’s maxout date would not change. On March 18, 2024, applicant spoke with chief classification staff member in person and offered a copy of P.C.R. brief to read and she refuses and responded to my Kiosk Request #24-03441115 until I receive a legal document from the court, they will not accept a copy to review. Eighty-five percent of applicants’ thirty-year (30) sentence is twenty-five years six months and should have been applied to the actual term of imprisonment imposed. Applicant calculates that June 22, 2024, will be twenty-seven years, which is more than required for sentence imposed.
3. Non-compliance with statutory law §24-13-210(A); 24-13-230(A)
 - a. System of good-time credits. S.C.D.C. Policy OP-21.11, supports claim, and the Equal Protection Rights to treat similarly situated inmates the same. Further inference is directed to S.C.D.C. Policy OP-21.07. Section 4.3: Sections 1.1, 1.2, 2.1, 2.3. “In S.C.D.C. v. Carpenter (2020), Carpenter’s co-defendant Bobby Gene Horne was a no parole offender and receive his credits. In “Bolin v. S.C.D.C. (2016), ‘the S.C.D.C. explains that offenders

(no parole) can be afforded community supervision, good conduct credits, work credits, education credits, without altering in eighty five percent requirement (providing for good conduct credits at the rate of three days for each month and education or work credits at the rate of six days for every month of employment for no-parole offender's subject to eight-five percent requirement."

(App. at 3 and attachments).

As requested relief, Applicant requests the court for "release from South Carolina Department of Corrections, freedom nothing else." (App. at 6).

MOTION TO RESTRICT FUTURE FILINGS

On June 10, 2024, Applicant untimely filed this successive PCR application. Respondent has filed a return and motion to dismiss. As part of its return to the current PCR application, Respondent filed a motion to restrict Applicant's future PCR filings. For the reasons set forth herein, this motion is granted.

This Court finds Applicant's repetitive and abusive filings should be restricted to preserve the Court's time and resources and stop any interference with the fair administration of justice. 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 includes the right to appeal the denial of a PCR 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).

On his underlying 2005 convictions, Applicant has now filed four State PCR applications. Applicant has had his full bite of the apple. Due to the repetitive and frivolous nature of Applicant's numerous filings, this Court directs the Greenville County Clerk of Court not to accept any further PCR applications from 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).

This Court further finds Applicant shall be required to provide a properly notarized affidavit certifying that 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 certifying that he, in good faith, believed that the matters were non-frivolous and proper for the Court to consider. Id. Other courts have likewise required abusive litigants to file affidavits certifying they believe their petitions raise an original claim or is non-frivolous before accepting filings from such litigants. 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 should Applicant submit an application accompanied with a notarized affidavit, the Clerk's office is directed to submit the application to the Chief Administrative Judge before filing the application. The Administrative Judge shall 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 shall be submitted to the Clerk's office for filing. No Application shall be filed without a proper finding from the Chief Administrative Judge.

Finally, this Court cautions Applicant that should he continue to file applications

containing frivolous matters, he may be held in contempt and/or the Court may impose sanctions as circumstances of the case and discouragement of like conduct may warrant. The Supreme Court imposed such warning in Maxton, 325 S.C. at 3, 478 S.E.2d at 679.

CONCLUSION

Based on the foregoing, **IT IS THEREFORE ORDERED:**

1. The Clerk of Court of the Thirteenth Judicial Circuit shall refuse to accept further petitions from Applicant unless he pays a filing fee generally required for filing motions and petitions with this Court;¹
2. Applicant shall be prohibited from filing any legal actions in the Thirteenth Judicial Circuit without submitting the requisite filing fee and providing a properly notarized affidavit certifying that Applicant believes in good faith that the matter raised is not frivolous;
3. Any Applications submitted with properly notarized affidavits shall 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 Court of the Thirteenth Judicial Circuit shall return all documents that do not comply with this order; and
5. Applicant is directed that if he continues to file applications containing matter that is frivolous or not proper for this Court, he may be held in contempt or sanctioned under Rule 240, SCAR.

AND IT IS SO ORDERED this ___ day of _____, 2026.

JESSICA ANN SALVINI
Chief Administrative Judge – Common Pleas
Thirteenth Judicial Circuit

_____, South Carolina

¹ Applicant shall be permitted, however, to file any response to the Conditional Order of Dismissal in the current case as set forth in that order.



ALAN WILSON
ATTORNEY GENERAL

March 9, 2026

The Honorable Jay Gresham
Greenville County Clerk of Court
305 E North Street
Greenville, SC 29601-2121

Re: Kevin L. Harbin, #303214 v. State of South Carolina
2024-CP-23-03549

Dear Mr. Gresham,

Enclosed please find the original Return and Motion to Dismiss of the Respondent, with its accompanying attachments, in the above-captioned case, for filing in your office. Please forward proof of service and a time stamped copy of the Return and Motion to Dismiss back to our office for our file using the following e-mail address: Thirteenthcircuitpcr@scag.gov.

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

Sincerely,

Sydney N. Willingham
Assistant Attorney General

SNW/zew
Enclosure

cc: The Honorable Jessica A. Salvini (*via e-mail only*)
Kevin L. Harbin, #303214

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

KEVIN L. HARBIN, #303214

Applicant,

v.

STATE OF SOUTH CAROLINA

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRTEENTH JUDICIAL
) CIRCUIT

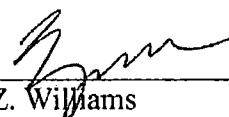
) 2024-CP-23-03549

) **CERTIFICATE OF SERVICE BY MAIL**

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Kevin L. Harbin, #303214 (HAA-0004-A)
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, SC 29827

DATED this 9th day of March, 2026



Z. Williams
Legal Assistant for Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Kevin Lamar Harbin, #303214,	)	CASE NO. 2024-CP-23-03549
	)	
Applicant,	)	
	)	RETURN, MOTION TO DISMISS,
V.	)	AND MOTION TO RESTRICT
	)	FUTURE FILINGS
State Of South Carolina,	)	
	)	
Respondent.	)	

Applicant, Kevin Lamar Harbin, filed the above captioned application for post-conviction relief on June 10, 2024. Respondent makes the following return and motion to dismiss, and motion to restrict future filings. In support of its position, Respondent would respectfully show the Court:

PROCEDURAL HISTORY

Applicant is presently confined in the Allendale Correctional Institution pursuant to orders of commitment of the Greenville County Clerk of Court. The Applicant was indicted at the August 2004 term of the Greenville County Grand Jury for kidnapping (2004-GS-23-6122), strong arm robbery (2004-GS-23-6123), and first-degree criminal sexual conduct (CSC) (2004-GS-23-6124). He was represented by Caroline Horlbeck, Esquire.

After the State called the case to trial, the Applicant was found guilty. On September 8, 2005, the Applicant was sentenced by the Honorable Larry R. Patterson to concurrent sentences of thirty (30) years for kidnapping, fifteen (15) years for strong arm robbery, and thirty (30) years for first-degree CSC.

DIRECT APPEAL

A notice of appeal was filed at the South Carolina Court of Appeals. Aileen P. Clare, Esquire of the South Carolina Office of Appellate Defense filed an initial brief pursuant to Anders

v. California, 386 U.S. 738 (1967). The Applicant, however, indicated he wanted to voluntarily withdraw the appeal. The Court of Appeals dismissed the appeal on January 22, 2007.

2007-CP-23-0280

The Applicant filed his *first* application for post-conviction relief on January 12, 2007 (2007-CP-23-0280). An evidentiary hearing was convened on July 10, 2007, at the Greenville County Courthouse. Rodney Richey, Esq. represented the Applicant. The Applicant raised the following issue in his PCR application:

1. Ineffective assistance of trial counsel.

The Honorable Edward W. Miller denied the application by order dated August 7, 2007. The Applicant filed a notice of appeal at the South Carolina Supreme Court. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense filed a petition for writ of certiorari. The petition was denied by the Supreme Court by order dated January 22, 2009.

FEDERAL HABEAS CORPUS ACTION: 6:09-2790-TLW-WMC

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on October 23, 2009. The Respondent submitted a motion for summary judgment on March 5, 2010. The Honorable William M. Catoe, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment on January 27, 2011. The Honorable Terry L. Wooten, United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

The Applicant filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. In an opinion filed October 4, 2011, the Court of Appeals denied a certificate of appealability and dismissed the appeal.

2009-CP-23-9578

The Applicant filed a "Petition for State Writ of Habeas Corpus" on November 13, 2009 (2009-CP-23-9578). The Respondent filed a return and motion to dismiss, arguing a petition for writ of habeas corpus must be filed in the South Carolina Supreme Court. The Honorable Edward W. Miller issued a conditional order of dismissal dated March 29, 2010 and filed April 6, 2010. Judge Miller issued a final order of dismissal filed July 1, 2010. A notice of appeal was filed at the South Carolina Court of Appeals. By order dated December 6, 2010, the Court of Appeals dismissed the appeal based on the Applicant's failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR.

2012-CP-23-1847

The Applicant filed another application for post-conviction relief on March 13, 2012, alleging he is being held in custody unlawfully for the following reasons:

1. Newly discovered evidence.
2. "Brady violation and DNA testing Act."
3. "Applicant was denied procedural due process from numerous procedural irregularities (PCR and colletal appeal.)"

The State made its return on July 12, 2012, requesting the Application be summarily dismissed. On July 18, 2012, the court issued a "Conditional Order of Dismissal" and expressed its intent to summarily dismiss the matter unless Applicant advises the court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant was granted twenty (20) days from the date of service of the Order to show the Court he has specific reasons supporting his allegations. Applicant filed a document titled "Applicant's Traverse and Applicant's Reasons the Conditional Order Should Not Become Final" on August 16, 2012. The Court issued its "Final Order of Dismissal" on September 26, 2012, finding that Applicant's PCR application

was filed well after the statute of limitations and Applicant should have raise all cognizable claims for relief in his previous PCR application from 2007.

CURRENT PCR APPLICATION

In his *fourth* and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds (excerpt verbatim [cleaned up]):

1. Non-compliance with 42 U.S.C.A §13704(A)(2); 34 U.S.C.A §12104(A)(i)
 - a. The Violent Offender Incarceration, Truth-In-Sentencing Incentive Grant Act, Applicant's state liberty interest rights denied that derives from Federal law and S.C.D.C.'s failure to comply with statutorily mandated grant conditions of the Truth-In-Sentencing Law presents a conflict analysis. Review of agency's interpretation of its governing statutes is subject to "Chevron Deference, USA Inc. v. Natural Resources 467 U.S. 837 (1984)."
2. Incorrect administration of statutory law § 24-13-150(A)
 - a. S.C.D.C.'s misinterpretation and wrong application, on February 7, 2024, after becoming aware of provisions in law for first time, inquiry was made to classification Kiosk Reference Number 24-03395801. In their response I was informed until they are shown error, applicant's maxout date would not change. On March 18, 2024, applicant spoke with chief classification staff member in person and offered a copy of P.C.R. brief to read and she refuses and responded to my Kiosk Request #24-03441115 until I receive a legal document from the court, they will not accept a copy to review. Eighty-five percent of applicants' thirty-year (30) sentence is twenty-five years six months and should have been applied to the actual term of imprisonment imposed. Applicant calculates that June 22, 2024, will be twenty-seven years, which is more than required for sentence imposed.
3. Non-compliance with statutory law §24-13-210(A); 24-13-230(A)
 - a. System of good-time credits. S.C.D.C. Policy OP-21.11, supports claim, and the Equal Protection Rights to treat similarly situated inmates the same. Further inference is directed to S.C.D.C. Policy OP-21.07. Section 4.3: Sections 1.1, 1.2, 2.1, 2.3. "In S.C.D.C. v. Carpenter (2020), Carpenter's co-defendant Bobby Gene Horne was a no parole offender and receive his credits. In "Bolin v. S.C.D.C. (2016), 'the S.C.D.C. explains that offenders (no parole) can be afforded community supervision, good conduct credits, work credits, education credits, without altering in eighty five percent requirement (providing for good conduct credits at the rate of three days for each month and education or work credits at the rate of six days for every month of employment for no-parole offender's subject to eight-five percent requirement."

(App. at 3 and attachments).

As requested relief, Applicant requests the court for “release from South Carolina Department of Corrections, freedom nothing else.” (App. at 6).

Attached to this Return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's records from his direct appeal, Applicant's records from his previous post-conviction relief actions, and the current application.

The State reserves the right to amend this return upon receipt of any additional relevant materials.

MOTION TO DISMISS

Respondent moves for summary dismissal pursuant to Section 17-27-70(b) of the South Carolina Code because there are no genuine issues of material fact to necessitate a hearing. Because there are no questions of law or fact to necessitate a hearing, Respondent requests this Court issue a Conditional Order of Dismissal indicating the Court's intent to dismiss the application and its reasons for doing so.¹ See S.C. Code Ann. § 17-27-70(b) (establishing procedures for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief). The State further avers that because there are no questions of law or fact to necessitate a hearing, counsel does not need to be appointed for Applicant. See Re: Appointment of Counsel in Post-Conviction Relief Cases before the Circuit Court, S.C. Sup. Ct. Order filed October 6, 2008 (“If the Attorney General asserts that the [PCR]

¹ A proposed conditional order of dismissal consistent with this return and motion to dismiss is concurrently submitted for the Court's consideration.

application is barred as being successive or being untimely, under the statute of limitations, counsel will not be appointed except upon written order of the Chief Judge for the Administrative Purposes for the Court of Common Pleas in the circuit.”); Rule 71.1(d), SCRCP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). Respondent moves for summary dismissal for the following reasons:

Failure to State a Cognizable Claim

Applicant raises allegations that challenge the calculation of his sentence and credit for time served in his current post-conviction relief application. Applicant’s allegations shall be summarily dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act (the Act). S.C. Code Ann. §§ 17-27-10 *et seq.* (2003). The South Carolina Supreme Court has held that “PCR is a proper avenue of relief only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence....” Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000). Claims that only affect the duration of the sentence or quality of the inmate’s confinement do not affect the validity of the conviction or sentence and therefore are not considered collateral attacks on the conviction. Cooper v. State, 338 S.C. 202, 525 S.E.2d 886 (2000). An applicant may not seek review of a non-collateral or administrative matter through PCR. Al-Shabazz; Tutt v. State, 277 S.C. 525, 290 S.E.2d 414 (1982).

After Al-Shabazz, only two non-collateral matters are cognizable in PCR: 1) a claim that the applicant’s sentence expired (Delahoussaye v. State, 369 S.C. 522, 633 S.E.2d 158 (2006)) or 2) a claim that the applicant’s probation, parole or conditional release has been unlawfully revoked. Id. For credit related claims or claims concerning the conditions of confinement, the proper avenue of relief is through the Administrative Procedures Act (APA). Id., 338 S.C. at 369, 527 S.E.2d at 749-50. *Ex post facto* claims also must be brought through APA rather than PCR. Jernigan v. State,

340 S.C. 256, 531 S.E.2d 507 (2000). Therefore, the Court shall summarily dismiss these claims pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

Statute of Limitations

This action should be summarily dismissed for failure to comply with the statute of limitations. “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....” S.C. Code Ann. § 17-27-45(A). The statute of limitations applies 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 statute of limitations. McDonnell v. Consol. Sch. Dist. of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). The circuit court may “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.” § 17-27-70(c).

Applicant’s current PCR application was filed after the expiration of the statutory filing period. Applicant was sentenced on September 8, 2005, and the direct appeal was dismissed on January 22, 2007. This application thus had to be filed by January 22, 2008. This application was filed on June 10, 2024—more than *fifteen years* after the requisite filing period expired. Therefore, Respondent moves to dismiss this application for failure to file within the time mandated by the Act.

Successiveness

The Application should be summarily dismissed because it is successive to Applicant's previous PCR actions. 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). Section 17-27-90 of the South Carolina Code states:

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 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.

Under this statute, successive post-conviction relief applications are forbidden 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). 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 Applicant could have raised these allegations in a previous application, then Applicant may not raise those grounds in successive applications. Id. 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).

Applicant's current allegations *were or could have been* raised in the proceedings based on Applicant's prior application(s) for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application(s) for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him.

Therefore, the Application should be summarily dismissed as successive to Applicant's previous PCR applications.

Summary Dismissal Based on the Doctrine of Res Judicata

Additionally, 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 of 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 of his allegations in his *first* PCR action. The prior PCR Court issued final judgments on the merits of the same or similar issues Applicant raises in the successive actions. The finality of the previous court's rulings should be respected, and the application should be summarily dismissed as barred by the doctrine of *res judicata*.

Summary Dismissal Based on the Equitable Doctrine of Laches

Respondent reasserts and submits the application should also be dismissed as barred by the equitable doctrine of *laches*. To ensure the finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). Requiring reasonable diligence "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). Where an applicant for post-conviction relief fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of laches, which is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Bray

v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). “Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute *laches*.” Id.

Applicant seeks post-conviction relief more than 15-years after his trial. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an applicant from seeking collateral review of his conviction, significantly where the delay affects the availability of evidence to review the applicant’s claims. McElrath, 276 S.C. at 283, 277 S.E.2d at 890. Applicant has offered no legitimate justification for the delay. Because of the delay, witness memories, and physical evidence will have naturally faded and degraded. See e.g., Bray, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge’s ruling that laches barred belated review of denial of PCR seven years after PCR hearing was held); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy “would undoubtedly be futile considering the passage of over ten years’ time” when the delay was caused by appellant). As a result, Applicant’s delay in bringing this action has affected the availability of evidence for this Court to review his claims. Therefore, this application should be summarily dismissed as barred by the equitable doctrine of *laches*.

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).

"[T]he 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 Schneekloth 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 judgments 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 successive and time-barred application is contrary to the recognized need

for finality of litigation. Therefore, Applicant's claims should be dismissed.

ALL OTHER CLAIMS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

MOTION TO RESTRICT FUTURE FILINGS

Applicant's repetitive and abusive filings should be restricted to preserve the Court's time and resources and stop any interference with the fair administration of justice. 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 includes the right to appeal the denial of a PCR 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).

On his underlying 2005 convictions, Applicant has now filed four State PCR applications. Applicant has had his full bite of the apple. Due to the repetitive and frivolous nature of Applicant's filings, Respondent requests the Court to direct the Greenville County Clerk of Court not to accept any further PCR applications from 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).

Respondent further requests Applicant be required to provide a properly notarized affidavit certifying that 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 certifying that he, in good faith, believed that the matters were non-frivolous and proper for the Court to consider. Id. Other courts have likewise required abusive litigants to file affidavits certifying they believe their petitions raise an original claim or are non-frivolous before accepting filings from such litigants. 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).

Respondent also requests that should Applicant submit an application accompanied with a notarized affidavit, the Clerk's office be directed to submit the application to the Chief Administrative Judge before filing the application. Respondent requests the Administrative Judge 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.

Finally, Respondent requests Applicant be warned that should he continue to file Applications containing frivolous matters, he may be held in contempt and/or the Court may impose sanctions as circumstances of the case and discouragement of like conduct may warrant. The Supreme Court imposed such warnings in Maxton, 325 S.C. at 3, 478 S.E.2d at 679.

Based on the foregoing, Respondent request the Court issue an order finding:

1. The Clerk of Court of the Thirteenth Judicial Circuit should refuse to accept further petitions from Applicant unless he pays a filing fee generally required for filing motions and petitions with this Court;
2. Applicant should be prohibited from filing any legal actions in the Thirteenth Judicial Circuit without submitting the requisite filing fee

and providing a properly notarized affidavit certifying that Applicant believes in good faith that the matter raised is not frivolous;

3. Any Applications submitted with properly notarized affidavits should 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 Court of the Thirteenth Judicial Circuit should return all documents that do not comply with this order; and
5. Applicant should be directed that if he continues to file Applications containing matter that is frivolous or not proper for this Court, he may be held in contempt or sanctioned under Rule 240, SCAR.

[CONCLUSION AND SIGNATURE PAGE FOLLOWS]

CONCLUSION

WHEREFORE, the State moves to summarily dismiss the application because it is untimely, barred by the statute of limitations, successive to Applicant's previous PCR actions, barred by the doctrine of *res judicata*, barred by the equitable doctrine of *laches*, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014).

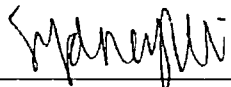
Respectfully submitted,

ALAN WILSON
Attorney General

DON ZELENKA
Deputy Attorney General

D. RUSS BARLOW, II
Senior Assistant Deputy Attorney General

SYDNEY N. WILLINGHAM
Assistant Attorney General
SC Bar No: 106466

By: 
SYDNEY N. WILLINGHAM

Office of the Attorney General
Post Office Box 11549
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Telephone: (803) 734-4437

March 9, 2026
Columbia, South Carolina

ATTORNEYS FOR RESPONDENT

Kevin Harbin, # 303214
Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

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Patricia A. Howard
Clerk of Court
South Carolina Supreme Court
P. O. Box 11330
Columbia, SC 29211

RECEIVED

MAR 02 2026

S.C. SUPREME COURT

Date: February 23, 2026

Re: Enclosures for Filing Purposes

**Kevin Harbin v. Jay Gresham, Clerk of Court for
Greenville County, South Carolina.**

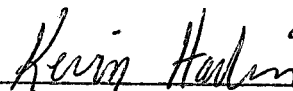
Dear Madame Clerk:

Please find enclosed on behalf of the Petitioner the following for filing purposes:

1. Filing Fee Check Receipt enclosed; and
2. Petition for Exercise of Original Jurisdiction; and
3. Summons; and
4. Complaint; and
5. Petition for Writ of Mandamus; and
6. Affidavit; and
7. Proof of Service;

Please file with the record, and I respectfully request be returned to me a clocked-in/stamped filed copy of each of the foregoing, as extra-copy of each is enclosed.

Kindest Regards,



**Kevin Harbin
Petitioner, Pro Se**

KH/

Enclosures

cc: file

**South Carolina Attorney General's Office
Jay Gresham, Clerk of Court Greenville, SC**

Kevin Harbin #303214
Allendale Corr. Inst.
1057 Revolutionary Trail
Fairfax, S.C. 29827

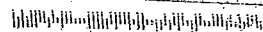


1/c Ms. Patricia A. Howard
Clerk of Court
South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

RECEIVED

MAR 02 2026

S.C. SUPREME COURT



STATE OF SOUTH CAROLINA
IN THE ORIGINAL JURISDICTION
IN THE SUPREME COURT
Mandamus From Greenville County

123

RECEIVED

MAR 02 2026

S.C. SUPREME COURT

Kevin Harbin, Petitioner,

v.

Jay Gresham, Respondent.

PETITION FOR EXERCISE OF ORIGINAL JURISDICTION

Jurisdiction:

The South Carolina Supreme Court may issue writs of mandamus, Rule 245, SCACR, and art. V, § 20, South Carolina Constitution. Additionally, this Court has jurisdiction of the parties, of the subject-matter, and over all things pertaining hereto, Rule 245, SCACR. The Chief Justice of the Supreme Court is the administrative head of the Unified Judicial System of the State of South Carolina. art. V, § 4, South Carolina Constitution and Code Section, § 14-1-90, S. C. Code, Ann. (1976)

"He may examine the administrative methods, systems and dockets of the courts and their employees, examine the dockets ... and require the courts and their employees to furnish him information as may be appropriate to assist in the administration of the courts."

Id. (Emphasis supplied)

Furthermore, this Court should exercise its original jurisdiction, as there exists good and sufficient cause therefor, and other good reasons, as shall be made to appear from the herein Complaint, and Affidavit in support hereof.

Petitioner Prays

Date: February 20, 2024
Fairfax, South Carolina.

Kevin Harbin
Kevin Harbin
Petitioner, Pro Se

Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

STATE OF SOUTH CAROLINA
IN THE ORIGINAL JURISDICTION

IN THE SUPREME COURT
Mandamus From Greenville County

124

RECEIVED

MAR 02 2026

S.C. SUPREME COURT

Kevin Harbin, Petitioner,

v.

Jay Gresham, Respondent.

S U M M O N S

TO THE ABOVE-NAMED RESPONDENT:

You are hereby given NOTICE, that an action has been commenced against you, and that you have twenty (20) days, henceforth and exclusive of the date of service upon you, in which to file an answer, return, to make an appearance or otherwise defend in the matter. If you do not respond, the Petitioner will move the Court for the relief demanded in the hereto attached Petition for Writ of Mandamus and Complaint.

Date: February 20, 2026
Fairfax, South Carolina.

Kevin Harbin
Kevin Harbin

Petitioner, Pro Se

STATE OF SOUTH CAROLINA
IN THE ORIGINAL JURISDICTION
IN THE SUPREME COURT
Mandamus From Greenville County

125

RECEIVED

MAR 02 2026

S.C. SUPREME COURT

Kevin Harbin, Petitioner,

v.

Jay Gresham, Respondent.

PETITION FOR WRIT OF MANDAMUS
AND COMPLAINT

Jurisdiction:

The South Carolina Supreme Court may issue writs of mandamus, Rule 245, SCACR, and art. V, § 20, South Carolina Constitution. Additionally, this Court has jurisdiction of the parties, of the subject-matter, and over all things pertaining hereto, Rule 245, SCACR. The Chief Justice of the Supreme Court is the administrative head of the Unified Judicial System of the State of South Carolina. art. V, § 4, South Carolina Constitution and Code Section, § 14-1-90, S. C. Code, Ann. (1976)

"He may examine the administrative methods, systems and dockets of the courts and their employees, examine the dockets ... and require the courts and their employees to furnish him information as may be appropriate to assist in the administration of the courts."

Id. (Emphasis supplied)

Furthermore, this Court should exercise its original jurisdiction, as there exists good and sufficient cause therefor, and other good reasons, as shall be made to appear from the herein Complaint, and Affidavit in support hereof.

Parties:

1. Kevin Harbin, the "Petitioner", is a ward of the State of South Carolina, currently in the custody of the South Carolina Department of Corrections; and is domiciled in the State of South Carolina and
2. Jay Gresham, the "Respondent", is the duly elected or appointed Clerk of Court for the County of Greenville, South Carolina; and is domiciled in the State of South Carolina;

who, at all times relevant hereto, the Respondent did violate his oath of office, to well and truly discharge all of the duties and responsibilities prescribed by law, or that may be incident to his office; and

C O M P L A I N T :

Kevin Harbin, the Petitioner hererin, hereby petitions this Court to exercise its original jurisdiction and to issue the "Great Writ" of Mandamus, and further complains of the Respondent as follows:

3. The Petitioner, filed an application for post-conviction relief on June 10, 2024 in Court of Common Pleas for Greenville County, South Carolina. The case was assigned Case No.: 2024-CP-23-03549; and
4. Thereafter, the Clerk of Court for Greenville County, served upon the South Carolina Attorney General a copy of the application for post-conviction relief. Pursuant to Rule 4, South Carolina Rules of Civil Procedure, SCRCP the Attorney General is the proper agent for service of process upon the State and any of its agencies; and
5. That, Rule 12, SCRCP provides the State and the South Carolina Department of Corrections an allotted a period of sixty (60) days or ninety (90) days in the case of a jury trial, in which to respond or otherwise respond to an application for post-conviction relief and the both the State of South Carolina and the Department of Corrections have failed to file a responsive pleading or otherwise respond to the allegations contained in the application for post-conviction relief up to and including the present date; and
6. Accordingly, on October 28, 2025, Petitioner filed with the Clerk of Court, a Request For Entry of Default, properly supported with an attached Affidavit of default, pursuant to Rule 55(a), SCRCP; conclusively demonstrating that each of the Respondents did timely fail to plead or otherwise appear or defend in the matter; and
7. That, the Clerk of Court for the Greenville County Court of Common Pleas, did fail to make due entry of the default of the Respondents' default upon the calendar (file book), despite the positive mandate contained in the language of Rule 55(a), SCRCP; and
8. That, at all times relevent hereto, Jay Gresham, the Clerk of Court for Greenville County, South Carolina did neglect, refuse, or otherwise fail to perform a 'ministerial duty' prescribed by law; and
9. That, at all times relevant hereto, the Petitioner did have a specific legal right to the performance of the ministerial duty in question; and
10. That, on December 10, 2025, the Petitioner did file in the lower court in the first instance, a Motion To Compel Entry of Default and To Convene Evidentiary Hearing directed to the "Chief Judge For Administrative Purposes" seeking relief in the form of an order directing the Clerk of Court, Jay

- Gresham, to perform his explicitly mandatory duty to enter the default of the Respondents in the matter upon the calendar (file book), as mandated by the plain and ordinary language of Rule 55(a), SCRCP; and to date that motion has been ignored by the lower court, and the lower court has abdicated its duty to promptly dispose of motions and related matters pending on its dockets; therefore, this matter cannot be heard in the lower court in the first instance, without material prejudice to the Petitioner; and
11. That, at all times relevant hereto, the Petitioner has no other adequate remedy at law, because the lower court has failed to adequately supervise or manage subordinate officers of the court, namely the Clerk of Court, and failed to require the performance of ministerial duties imposed or otherwise prescribed by law; and
 12. That, the application for post-conviction relief, has been pending in the lower court from June 10, 2024 until the present date, without a single affirmative act on the part of the Clerk of Court toward performance the ministerial duty in question; and no judicial action in the matter whatsoever; thus, the instant matter cannot be heard in the lower court without material prejudice to the Petitioner, as the facts demonstrate an active and real denial of effective, meaningful and adequate access to the courts within the meaning of *Elrod v. Burns*, 427 U.S. 347, 374 96 S.Ct. 2673, 2690 (1976) (Loss of First Amendment rights for even minimal periods of time, unquestionably constitutes irreparable injury); and
 13. That, on February 3, 2026, nearly two (2) years after the application for post-conviction relief was filed and the matter commenced, and without any responsive pleading or answer being filed by the State of South Carolina, nor the Department of Corrections, the Petitioner in writing contacted the Clerk of Court in question, seeking information pertaining to the terms of court related to post-conviction relief proceedings held since the filing of his application. The Clerk of Court refused to respond thereto; and instead merely mailed a copy of Petitioner's correspondence to the Attorney General's office, despite a ministerial duty to respond to inquiries from parties in a pending action; and
 14. That due to the foregoing facts and circumstances, the public interest is involved, and other good reasons exist why the original jurisdiction of the the South Carolina Supreme Court should be exercised and for mandamus to issue in the instant matter; and is further demonstrated by the hereto attached Complaint, and Affidavit in support hereof; pursuant to Rule 245, South Carolina Rules of Appellate Court Procedure; and
 15. At all times relevant hereto, the Respondent did violate his oath of office, to well and truly discharge all of the duties and responsibilities prescribed by law, or that may be incident to his office; Code Sections §§ 14-17-220, 14-17-510 S. C. Code Ann.; and

16. At all times relevant hereto, Respondent had a duty to perform the act of entering the default of a party upon the calendar (file book), as provided by Rule 55(a), South Carolina Rules of Civil Procedure; and
17. At all times relevant hereto, the act of entering the default of a party in accordance with Rule 55(a), SCRCF, was "ministerial in nature"; and
18. At all times relevant hereto, Petitioner had a specific legal right to the discharge of the duty of the Clerk of Court, to enter the default of the State of South Carolina and the South Carolina Department of Corrections upon the calendar (file book); as demonstrated and shown by the pleadings in the post-conviction relief proceedings, including but not limited to the Request For Entry of Default filed October 28, 2025, with the attached Affidavit of default and other documents on file; and
19. At all times relevant hereto, the Petitioner attempted to avail himself of remedies, by filing a Motion To Compel Entry of Default and To Convene Evidentiary Hearing, filed December 10, 2025 and submitted to the Chief Judge for Administrative Purposes; and no action was taken by the lower court judge to dispose of the motion, and thus, no action was taken to supervise subordinate court officers as required by law; and that remedy is evidenced to be a vain and futile act, and thus unavailable; and
20. At all times relevant hereto, the Petitioner lacks any other legal remedy at law; and
21. At all times relevant hereto, the Petitioner has already suffered irreparable harm or injury, as denial of access to the courts and the right to be heard on motions and to the performance of ministerial duties, constitute irreparable harm or injury, including but not limited to disparate treatment, denial of the opportunity to be heard and deprivation of a legal gain due to default of the opposing parties in the post-conviction relief proceeding; and
22. At all times relevant hereto, the Respondent, did willfully neglect to perform a duty imposed by law; and
23. The public policy of the State of South Carolina, is that a clerk of court may not refuse to perform a "ministerial act", imposed by positive mandate of law. See Barnes v. State, 433 S.C. 399, 559 S.E.2d 260 (2021), Miller v. State, 377 S.C. 99, 102, 659 S.E.2d 492, 493 (2008); 6 S. C. Jur. Clerks of Court, § 12;

WHEREFORE, having presented the foregoing matters, the Petitioner prays this Court exercise its original jurisdiction in this matter, for good and sufficient cause shown and other good reasons going to the addressing disparate treatment and unequal access to the courts and the law in this State's courts, and denial of due process of law and the equal protection thereof. The Court is requested to mandamus the Respondent, to perform his "ministerial duty" and to perform the "ministerial act" of making entry of default of the State of South Carolina and of the

1. Re Commission on Equal Access To Justice Commission, 417 S.C. 118 (Chief Justice, August 10, 2016)

Department of Corrections upon the calendar (file book), as provided by Rule 55(a), South Carolina Rules of Civil Procedure.

Petitioner Prays

Date: February 20, 2024
Fairfax, South Carolina.

Kevin Harbin
Kevin Harbin
Petitioner, Pro Se

Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

STATE OF SOUTH CAROLINA
IN THE ORIGINAL JURISDICTION

IN THE SUPREME COURT
Mandamus From Greenville County

130
RECEIVED

MAR 02 2026

S.C. SUPREME COURT

Kevin Harbin, Petitioner,

v.

Jay Gresham, Respondent.

A F F I D A V I T

BEING FIRST DUTY SWORN. Kevin Harbin, hereby states and deposes the following:

1. That I filed an application for post-conviction relief on June 10, 2024 in Court of Common Pleas for Greenville County, South Carolina. The case was assigned Case No.: 2024-CP-23-03549; and
2. Thereafter, the Clerk of Court for Greenville County, served upon the South Carolina Attorney General a copy of the application for post-conviction relief. Pursuant to Rule 4, South Carolina Rules of Civil Procedure, SCRCP the Attorney General is the proper agent for service of process upon the State and any of its agencies; and
3. That, Rule 12, SCRCP provides the State and the South Carolina Department of Corrections an allotted a period of sixty (60) days or ninety (90) days in the case of a jury trial, in which to respond or otherwise respond to an application for post-conviction relief and the both the State of South Carolina and the Department of Corrections have failed to file a responsive pleading or otherwise respond to the allegations contained in the application for post-conviction relief up to and including the present date; and
4. On October 28, 2025, I filed with the Clerk of Court, a Request For Entry of Default, properly supported with an attached Affidavit of default, pursuant to Rule 55(a), SCRCP; conclusively demonstrating that each of the Respondents did timely fail to plead or otherwise appear or defend in the

- matter; and
5. That, the Clerk of Court for the Greenville County Court of Common Pleas, did fail to make due entry of the default of the Respondents' default upon the calendar (file book), despite the positive mandate contained in the language of Rule 55(a), SCRCP; and
 6. That, at all times relevant hereto, Jay Gresham, the Clerk of Court for Greenville County, South Carolina did neglect, refuse, or otherwise fail to perform a 'ministerial duty' prescribed by law; and
 7. That, at all times relevant hereto, I did have a specific legal right to the performance of the ministerial duty in question; and
 8. That, on December 10, 2025, I did file in the lower court in the first instance, a Motion To Compel Entry of Default and To Convene Evidentiary Hearing directed to the "Chief Judge For Administrative Purposes" seeking relief in the form of an order directing the Clerk of Court, Jay Gresham, to perform his explicitly mandatory duty to enter the default of the Respondents in the matter upon the calendar (file book), as mandated by the plain and ordinary language of Rule 55 (a), SCRCP; and to date that motion has been ignored by the lower court, and the lower court has abdicated its duty to promptly dispose of motions and related matters pending on its dockets; therefore, this matter cannot be heard in the lower court in the first instance, without material prejudice to me; and
 9. That, at all times relevant hereto, I have no other adequate remedy at law, because the lower court has failed to adequately supervise or manage its subordinate officers of the court, namely the Clerk of Court, and failed to require the performance of ministerial duties imposed or otherwise prescribed by law; and
 10. That, the application for post-conviction relief, has been pending in the lower court from June 10, 2024 until the present date, without a single affirmative act on the part of the Clerk of Court toward the performance of the ministerial duty in question; and no judicial action in the matter whatsoever; thus, the instant matter cannot be heard in the lower court without material prejudice to me, as the facts demonstrate an active and real denial of effective, meaningful and adequate access to the courts within the meaning of *Elrod v. Burns*, 427 U.S. 347, 374 96 S.Ct. 2673, 2690 (1976) (Loss of First Amendment rights for even minimal periods of time, unquestionably constitutes irreparable injury); and
 11. That, on February 3, 2026, nearly two (2) years after the application for post-conviction relief was filed and the matter commenced, and without any responsive pleading or answer being filed by the State of South Carolina, nor the Department of Corrections, I did in writing contact the Clerk of Court in question, seeking information pertaining to the terms of court related to post-conviction relief proceedings

held since the filing of his application. The Clerk of Court refused to respond thereto; and instead merely mailed a copy of my correspondence to the Attorney General's office, despite a ministerial duty to respond to inquiries from parties in a pending action; and

12. That due to the foregoing facts and circumstances, the public interest is involved, and other good reasons exist why the original jurisdiction of [] the South Carolina Supreme Court should be exercised and for mandamus to issue in the instant matter; and is further demonstrated by the hereto attached Complaint, and Affidavit in support hereof; pursuant to Rule 245, South Carolina Rules of Appellate Court Procedure; and
13. At all times relevant hereto, the Respondent did violate his oath of office, to well and truly discharge all of the duties and responsibilities prescribed by law, or that may be incident to his office; Code Sections §§ 14-17-220, 14-17-510 S. C. Code Ann.; and
14. At all times relevant hereto, Respondent had a duty to perform the act of entering the default of a party upon the calendar (file book), as provided by Rule 55(a), South Carolina Rules of Civil Procedure; and
15. At all times relevant hereto, the act of entering the default of a party in accordance with Rule 55(a), SCRCP, was "ministerial in nature"; and
16. At all times relevant hereto, I had a specific legal right to the discharge of the duty of the Clerk of Court, to enter the default of the State of South Carolina and the South Carolina Department of Corrections upon the calendar (file book); as demonstrated and shown by the pleadings in the post-conviction relief proceedings, including but not limited to the Request For Entry of Default filed October 28, 2025, with the attached Affidavit of default and other documents on file; and
17. At all times relevant hereto, I attempted to avail himself of remedies, by filing a Motion To Compel Entry of Default and To Convene Evidentiary Hearing, filed December 10, 2025 and submitted to the Chief Judge for Administrative Purposes; and no action was taken by the lower court judge to dispose of the motion, and thus, no action was taken to supervise subordinate court officers as required by law; and that remedy is evidenced to be a vain and futile act, and thus unavailable; and
18. At all times relevant hereto, I therefore lack any other legal remedy at law; and
19. At all times relevant hereto, I have already suffered irreparable harm or injury, as denial of access to the courts and the right to be heard on motions and to the performance of ministerial duties, constitute irreparable harm or injury, including but not limited to disparate treatment, denial of the opportunity to be heard and deprivation of a legal gain due to default of the opposing parties in the post-conviction relief proceeding; and
20. At all times relevant hereto, the Respondent, did willfully

- neglect to perform a duty imposed by law; and
21. The public policy of the State of South Carolina, is that a clerk of court may not refuse to perform a "ministerial act", imposed by positive mandate of law. See *Barnes v. State*, 433 S.C. 399, 859 S.E.2d 260 (2021) , *Miller v. State*, 377 S.C. 99, 102, 659 S.E.2d 492, 493 (2008); 6 S. C. Jur. Clerks of Court, § 12;

Date: February 20, 2026.
Fairfax, South Carolina.

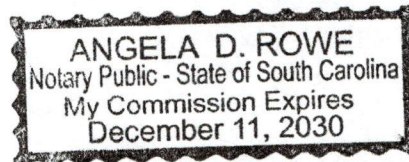
Furthermore Affiant Sayeth Not.

Kevin Harbin
Kevin Harbin
AFFIANT

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 20TH
DAY OF February, 2026

Angela D. Rowe
Notary Public for South Carolina

My Commission Expires: December 11, 2030.



MAR 02 2026

PROOF OF SERVICE

I, **Kevin Harbin**, the Petitioner in the foregoing **S.C. SUPREME COURT** hereby certify that I have this day served a true-copy of the following :

1. Petition for Exercise of Original Jurisdiction; and
2. Petition for Writ of Mandamus; and
3. Summons; and
4. Complaint; and
5. Affidavit;

upon the Respondent by depositing same in the United States postal receptacle located on Allendale yard, sufficient first-class postage affixed thereto, and addressed to:

State of South Carolina
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

Jay Gresham
Clerk of Court Greenville County
305 East North Street
Greenville, SC 29601-2121

Date: February 20, 2024
Fairfax, South Carolina.

Kevin Harbin
Kevin Harbin
Petitioner, Pro Se

Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

Kevin Harbin, # 303214 / F3A004
Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

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Jay Gresham
Greenville County
Clerk of Court
305 East North Street
Greenville, SC 29601-2121

Date: December 29, 2024

Re: Kevin Harbin v. State of South Carolina and SCDC
Civ. Act. No.# 2024-CP-23-03549

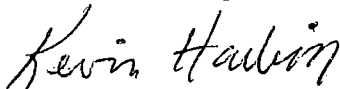
Dear Mr. Gresham:

Please find enclosed on behalf of the Applicant in the above-styled matter, for filing purposes the following:

1. Motion To Compel Entry of Default and To Convene Evidentiary Hearing; and

Please file with the court record, and I respectfully request the enclosed extra-copy hereof, be returned to me **clocked-in/stamped** filed.

Kindest Regards,



Kevin Harbin

KH/

cc: File

Kevin Harbin,)
Applicant)
v.)
State of South Carolina and,)
South Carolina Department)
of Corrections,)
Respondents.)

MOTION TO COMPEL
ENTRY OF DEFAULT
AND
TO CONVENE EVIDENTIARY HEARING

FILED: 25DEC10AM10:18
CIC/M/GRSH/ML/SC

To Chief Judge For Administrative Purposes:

COMES NOW, the Applicant, Kevin Harbin, by and through Pro Se, will move, and hereby moves for an order compelling the Clerk of Court for Greenville County, South Carolina to perform the ministerial duty to make entry of default, pursuant to Rule 55(a), South Carolina Rules of Civil Procedure (SCRCP), and for an order scheduling this matter for evidentiary hearing.

The grounds for this motion shall be:

1. On or about the date of October 28, 2025, the Applicant filed with the Clerk of Court for Common Pleas, a Request For Entry of Default, along with supporting Affidavit; requesting pursuant to Rule 55(a), SCRCP, that the Clerk of Court make entry of default against the Respondents, for failure to file and serve a timely responsive pleading, and to otherwise make an appearance or otherwise defend in the action; and
2. That despite the explicitly mandatory language of Rule 55(a), SCRCP, the Clerk of Court has failed to make entry of default as required by this rule of civil procedure; and thus the Clerk of Court has failed to discharge his ministerial duty and responsibility to perform all of the duties and responsibilities of his office required by law and the rules of court; Code Section § 14-17-220, S. C. Code Ann., which provides in pertinent part the following:

"[E]very clerk ,... He shall discharge all of the duties required by law or the rules of court or that may be incident to the office."

(Emphasis supplied).

Rule 55(a), SCRCP, provides in pertinent part, that:

"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend ... and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book)."

(emphasis provided).

In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Supreme Court applies the same rules of construction used to interpret statutes. S. C. Human Affairs Comm'n v. Chen, 430 S.C. 509, 519, 577, 846 S.E.2d 861, 866 (2020); Farnsworth v. Davis Hearing and Air Conditioning, Inc., 367 S.C. 634, 638, 627 S.E.2d 724, 726 (2006)

Thus, as used in Rule 55(a), SCRCP, "Under the rules of statutory interpretation, the use of word such as "shall" or "must" indicate the legislature's intent to enact a "mandatory requirement." Collins v. Doe, 352 S.C. 462, 574 S.E.2d 739 (2002); In re Matthews, 345 S.C. 638, 550 S.E.2d 311 (2001) Thus, the clerk of court has a ministerial duty to perform this act; and no authority or discretion to refuse to perform this duty imposed by positive mandate of law; and

4. That, the Clerk of Court is subject to judicial control by court orders and rules; and this control may be exercised by the inherent power of the court, 6 S.C. Jur. Clerks of Court § 12. Moreover, although the Applicant does not impute any particular judge, Applicant references this power of a judge pursuant to Canon 3, Rule 501, South Carolina Appellate Court Rules, which states:

(b)(5) A judge shall perform judicial duties without

bias or prejudice. A judge shall not ... by words or conduct manifest bias or prejudice..., and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(emphasis provided); and

5. That, even though the Respondents are in default, South Carolina law provides in the Uniform Post-Conviction Relief Act, that:

"The application shall be heard in and before any judge of a court of competent jurisdiction....; All rules and statutes applicable to civil proceedings are available to the parties."

Code Section § 17-27-80, S. C. Code Ann.

6. Because, Rule 55, SCRCP, provides that default judgment against a state agency or officer is not proper, however, the rule provides that the movant for default must still bear the burden of proof by a preponderance of the evidence; and for this reason, an evidentiary hearing must be scheduled and convened, as contemplated by law; and in fact is mandatory under Code Section, §17-27-80, supra.; and
7. That, as a constitutional officer, the clerk of court is a ministerial officer, and officer of the court. Moreover, "the clerk shall make a full, fair, and correct entry and record of the proceedings and other matters pertaining to his office in the various books required to be kept.." Code Section § 14-17-510, S.C. Code Ann.. Further, Rule 55, SCRCP, makes abundantly clear, that upon the request of a party and upon affidavit, the clerk of court shall enter the default of the defaulting party upon the "calendar (file book)". See Rule 55(a), SCRCP. Under South Carolina law, this calendar is required to be kept. Code Section, § 14-17-540(b)(5); and

Wherefore, as is abundantly made clear, the Clerk of Court

has no authority to refuse to perform a ministerial act or function required by law. This Court have supervisory and administrative authority and control over its own staff, court officials and the clerk of court. Applicant has a statutory right to an evidentiary hearing on his application for post-conviction relief, as further supported by the provisions of Rule 55, SCRCP, even in the default context. Therefore, Applicant moves for an order compelling the clerk of court to perform the ministerial act of making entry of default upon the calendar (file book) against the Respondents; and for an order scheduling and convening an evidentiary hearing in the matter.

Date: December 2, 2025
Fairfax, South Carolina.

Respectfully Submitted,

Kevin Harbin

Kevin Harbin

Applicant, Pro Se

Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

Kevin Harbin, # 303214
Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

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FILED: 26 FEB 2024 4:42
COC JAY GRESHAM CIVL SC

Jay Gresham
Greenville County
Clerk of Court
305 East North Street
Greenville, SC
29601-2121

Date: January 20, 2024

Re: Request PCR Court Terms Information
Kevin Harbin v. State of South Carolina and South
Carolina Department of Corrections
Case No.: 2024-CP-23-03549

Dear Mr. Gresham:

On June 24, 2024, I filed an application for post-conviction relief. I am requesting the following information regarding terms of court for post-conviction relief proceedings:

The start date and end date for each post-conviction relief term of court (Common Pleas) held since June 24, 2024 to the present date.

Thanking you in advance,

Kevin Harbin
Applicant

KH/ *Kevin Harbin*
Enclosures
cc: File

Copy mailed to
Attorney <u>General</u>
on <u>2 / 3 / 2026</u>

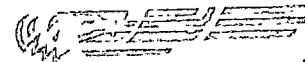
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win Harbin, #303214
endale Corr. Inst
57 Revolutionary Trail
urfax, S.C. 29827



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Mr. JAY Gresham

Clerk OF Court

Greenville County

305 East North Street

Greenville, S.C. 29601

RECEIVED

JAN 28 2026

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
)

IN THE COURT OF COMMON PLEAS

Civ. Act.No.: 2024-CP-23-03549

Kevin Harbin,)
Applicant,)
)
v.)
)

State of South Carolina and)
South Carolina Department)
of Corrections,)
Respondents.)
_____)

POST-CONVICTION RELIEF
TRIAL BRIEF

POST-CONVICTION RELIEF TRIAL BRIEF
ON BEHALF OF THE APPLICANT

Kevin Harbin
Applicant, Pro Se

Kevin Harbin
Allendale Correction Institution
1057 Revolutionary Trail

Fairfax, South Carolina 29827

Date: October 21, 2025

25 OCT 28 AM 9:56
JAY GRESHAM COC GVL SC

TABLE OF AUTHORITIES

U.S. Constitution

Due Process Clause
Equal Protection of Laws Clause
Ex Post Facto Clause
Supremacy Clause

South Carolina Constitution

Due Process Clause
Equal Protection of Laws Clause
Ex Post Facto Clause

U. S. Code Annotated

34 U.S.C. § 12104(A)(i)(B)
42 U.S.C § 13704(A)(2)

S. C. Code of Laws, Annotated (1976)

§ 17-27-20(A)(4)
§ 17-27-20(A)(5)
§ 17-27-45(c)
§ 24-13-210
§ 24-13-230
§ 24-13-260

South Carolina Court Rules

Rule 8(d), South Carolina Rules of Civil Procedure
Rule 36, South Carolina Rules of Civil Procedure
Rule 201, South Carolina Rules of Evidence

Cases

Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000)
Arnold v. Huntington Ingalls, Inc., 2024 WL 4274710 (4th Cir.)

Blue Ribbon Taxi, 380 S.C. at 607, 670 S.E.2d 677
Bolin v. SCDC, 781 S.E.2d 914, 918 (2016)
Brunig v. S.C. Dept. of Health & Envir. Ctrl., 418 S.C. 537, 545, 795 S.E.2d 290 (Ct.App. 2016)
Busby v. Moore, 498 S.E.2d 883 (S.C. 1998)
Burke v. Republic Parking Sys.Inc., 421 S.C. 553, 560-61, 808 S.E.2d 626, 629 (Ct.App. 2017)

Carpenter v. SCDC, 848 S.E.2d 346 (2020)
City of Charleston S.C. v. A Fisherman's Best Friend, Inc., 310 F.3d 155 (4th Cir. 2002)

Ex Parte DeBordien Colony Community Ass'n, Inc., 442 S.C.

285, 298 S.E.2d 179 (Ct.App.2024)

Fulk v. U.S., 875 F.Supp.2d 535 (4th Cir. 2010)

Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 (1992)

Howard v. SCDC, 399 S.C. 618, 733 S.E.2d 211 (2012)

Howlett v. Rose, 496 U.S. 356, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990)

Hubbard v. Beverly, ___ S.C. ___, 15 S.E.2d 740, 741 (1941)

Jones v. Key, 2007 WL 4292416 (D.S.C. 2007)

Lucas v. Burnley, 879 F.2d 240, 1242 (4th Cir. 1989)

Malik v. Ward, 2010 WL 936777 (D.S.C. 2010)

Malone v. White Motor Corp., 435 U.S. 497, 504, 98 S.Ct. 1185, 55 L.Ed.2d 443 (1978)

Minter v. Wells Fargo Bank,N.A., 762 F.3d 339, 347 (4th Cir.2014)

Marbury v. Madisen, 1 Cranch 137, 177, 5 U.S. 1372 (1803)

Parker v. Parker, 313 S.C. 482, 488, 443 S.E.2d 388, 391 (1994)

Pell v. Procunier, 417 U.S. 817, 822, 94 S.Ct. 2800, 41 L.Ed.2d 495 (1974)

S.C. Pub. Serv. Auth. v. Ocean Forest, Inc., 275 S.C. 552, 554, 273 S.E.2d 773, 774 (1981)

Smith v. Groose, 205 F.3d 1045, 1052 (8th Cir. 2000)

Smith v. U.S., 143 S.Ct. 1594, 1601 (2023)

Spartanburg Dep't Soc. Serv. v. Padgett, 296 S.C. 79, 370 S.E.2d 872 (1988)(Per Curiam)

Strickland v. Richland Co. Legis. Deleg., 892 S.E.2d 288 (2023)

Sweet v. SCDC, 529 F.2d 854 (4th Cir. 1975)

Suggs v. M&T Bank, 230 F.Supp.3d 458 (E.D. Va. 2017)

State v. Scott, 351 S.C. 584 (2002)

State v. DeAngelis, 183 S.E.2d 906 (1971)

State v. Elwell, 743 S.E.2d 802 (2013)

State v. Fowler, 322 S.C. 157, 470 S.E.2d 393 (Ct.App. 1996)

State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002)

Tant v. SCDC, 759 S.E.2d 398 (2014)

Rushing v. McKinney, 370 S.C. 280, 633 S.E.2d 917 (Ct.App. 2006)

Turner v. Safely, 482 U.S. 78, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987)

Wilkerson v. Austin, 545 U.S. 209, 94 S.Ct. 2963, 41 L.Ed.2d (2005)

Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974)

Yawn v. Eagleton, 2009 WL 5697879

U.S. v. Dickerson, 15 Pet. 141, 40 U.S. 689 (1841)

STATEMENT OF THE CASE

This matter is pending before the Court of Common Pleas, by way of Application for Post-Conviction Relief, challenging conditions of confinement, and/or the legality of Applicant's sentence as interpreted by the South Carolina Department of Corrections (SCDC).

In August of the year 2004, Applicant was indicted by a Greenville County Grand Jury, for the offenses of strong armed robbery, kidnapping, and criminal sexual conduct in the first degree. After rejecting a plea offer for a term of incarceration of fifteen (15) years, the Applicant on September 6, 2005 proceeded to trial by jury. The Applicant was found guilty, and the trial judge imposed a sentence of thirty (30) years imprisonment, concurrently.

During the month of February 2024, as a result of the communication with SCDC classification officials via kiosk message system, Applicant learned from classification department officials within the South Carolina Department of Corrections, that the SCDC had interpreted a certain portion of his sentence to require that he be incarcerated for at least eighty-five (85) percent, pursuant to statutory provision, which states in pertinent part the following:

"The 85 % percentage MUST be calculated WITHOUT the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed."

Section § 24-13-150(A), S.C. Code Ann.

Applicant also informed the classification department in reference to statutory provisions Sections §§ 24-13-210 and 24-13-230, and the fact that the SCDC is not in compliance with the General Assembly's intent and public policy, which in the plain language of the relevant statutory provisions provides:

"A no parole offense is entitled to a deduction computed at the rate of three (3) days for each month served for good behavior.

... A no parole offense is entitled to a reduction from the term of his sentence of six (6) days for EVERY MONTH he is employed or enrolled for productive duty assignment or participation in academics."

Applicant thereafter filed a timely application for post-conviction relief on June 3, 2024, and subsequently filed an Amended Application pursuant to Rule 15, SCRPC, on September 30, 2024.

The Applicant further invoked the discovery process by submitting Request for Admission, pursuant to Rule 36(A), SCRPC on October 24, 2024.

STATEMENT OF THE ISSUES

I. Applicant asserts that the State of South Carolina and the South Carolina Department of Corrections has violated Applicant's protected liberty interests and rights under the Fourteenth Amendment's due process of law and equal protection clauses of the United States Constitution and its counterpart art. I, § 3 in the South Carolina Constitution. Moreover, the South Carolina Department of Corrections erred in misinterpreting code Section § 24-13-150(A), the 85 % percent statute which is an adoption of the federal "Truth In Sentencing Provisions" of the "Violent Crime Control and Law Enforcement Act of 1994."

42 U.S. Code, § 13704(A)(2); 34 U.S. Code § 12104(A)(i)(B)

Applicant further contends the miscalculation of his sentence max-out date, now has the Applicant being unlawfully held in custody beyond his lawful release date or expiration date of his sentence pursuant to code Sections §§ 17-27-20(A)(4), 17-27-20(A)(5), 17-27-45(C) and Carpenter v. S.C.D.C., ___ S.C. ___, 848 S.E.2d 346 (2020)

II. Applicant asserts that the State of South Carolina and the South Carolina Department of Corrections is in violation of constitutional and statutory provisions S.C. Code Ann. sections §§ 24-13-210 and 24-13-20, and is not in compliance with the General Assembly's purpose and policy expressed or implied in the statutes, and the legislative intent thereof.

STATEMENT OF THE FACTS

During the month of February 7, 2024, as a result of communication via kiosk message system reference no. # 24-03395801, Applicant informed classification department officials within the South Carolina Department of Corrections, that the SCDC had erroneously interpreted a certain portion of his sentence to require that he be incarcerated for at least ~~eighty~~ eighty-five (85) percent, pursuant to statutory provisions sections §§ 24-13-150(A) and 24-13-100, and inquiry was also made regarding code sections §§ 24-13-210 and 24-13-230. In response thereto, the SCDC informed the Applicant that unless he could demonstrate error, that his max-out date would not change.

STANDARD OF REVIEW

Under the prior United States Supreme Court's decision, *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), for decades courts have sometimes been required to "defer to 'permissible' agency interpretations of the statutes those agencies administer -- even when a reviewing court reads the statute differently."

However, in a later decision, *Loper Bright Enter. v. Raimondo*, 603 U.S. ___, 144 S.Ct. 2244, the Supreme Court overruled the Chevron decision. Id. at 22.

The court made clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority." Id. The exercise of such independent judgement, the court explained is rooted in the solemn duty imposed on courts under the Constitution to "say what the law is." Id. at 9, citing *U.S. v. Dickson*, 40 U.S. 141 (1841); *Marbury v. Madison*, 5 U.S. 137 (1803) see also Id. (The framers envisioned that the final interpretation of the laws would be the proper and peculiar province of the courts.) quoting "The Federalist", No.78, at 525 (J.Cook, ed.1961, A. Hamilton)

The exercise of independent judicial judgement to decide legal questions, the court observed, is also embodied in the Administrative Procedures Act (APA), which directs that [t]o the extent necessary to a decision and when presented, a reviewing court shall decide all relevant questions of law, interpret the constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action."

Loper v. Bright, 2024 WL 3208360, at 12, ___ U.S. ___, 144 S.Ct. 2244 (interpreting 5 U.S.C. §706)

Likewise, under the Administrative Procedures Act, a reviewing court is required to "hold unlawful and set aside agency action, findings, and conclusions found to be ... not in accordance with law." Id. quoting :706(2)(A)

The APA thus codifies for agency cases the unremarkable, yet elemental proposition reflected by judicial practice dating back

to the Marbury decision: that courts decide legal questions by applying their own judgement. Id.

The Loper decision further recognized that a statute may authorize an agency to exercise a degree of discretion, and some statutes expressly delegate to an agency the authority to give meaning to a particular statutory term. Id. at 13. The court went on to instruct that, when a statute delegates discretionary authority to an agency, the role of the reviewing court is always to independently interpret the statute and to effectuate the will of the legislative body subject to constitutional limits. Id. at 14. Courts fulfill that role by recognizing constitutional delegations fixing the boundaries of the delegated authority, and ensuring the agency has engaged in "reasoned decision-making" within those boundaries. Id. By doing so, a court upholds the traditional concept of the judicial function.

ARGUMENT AND ANALYSIS

Prison inmates do not shed all fundamental protections of the Constitution at the prison gates. *Turner v. Safely*, 482 U.S. 78, 95, 107 S.Ct. 2254, 2265, 96 L.Ed.2d 64 (1987). Rather, inmates "retain those constitutional rights that are not inconsistent with their status as prisoners or with the legitimate penological objectives of the corrections system." *Pell v. Procunier*, 417 U.S. 817, 822, 94 S.Ct. 2800, 2804, 41 L.Ed.2d 495 (1974). A regulation that impinges on inmate's constitutional rights is therefore valid only if it is reasonably related to legitimate penological interests. *Turner*, 482 U.S. at 89, 107 S.Ct. at 2261.

Rights of prisoners to due process, to equal protection and against cruel and unusual punishment are binding on the states. Courts can and should intervene when any due process, equal protection or Right Amendment rights are violated. This is true whether the prisoner is in segregated confinement or in the general population. *Sweet v. South Carolina Department of Corrections*, 529 F.2d 854, 859 (4th Cir.1975).

Applicant directs this court's attention to the standard that "in cases where plaintiff appears pro se, courts do not expect the pro se plaintiff to frame legal issues with clarity and precision expected of lawyers." *Suggs v. M & T Bank*, 230 F.Supp.3d 458, 461 (E.D. Va.2017). In such cases, courts are required to construe the operative complaint liberally. *Id.* See *Arnold v. Huntington Ingalls Inc.*, 2024 WL 4274710 (4th Cir. 2024)

- 1) Applicant asserts that this court should examine and correct the constitutional and statutory violations at issue.

Applicant further moves for an order directing the Respondents to correct his sentence so that it is commensurate with the clearly established law.

Applicant has been prejudiced by the erroneous interpretation of the relevant statutory provisions, such that Applicant's max-out date as currently interpreted by the South Carolina Department of Corrections constitutes an illegal sentence which is in contravention of the law, including but not limited to constitutional provisions. Thus, this claim before the court squares with the post-conviction relief statutes, Sections §§ 17-27-20(A)(4), 17-27-20(A)(5) and 17-27-45(C), as well as the holding of *Carpenter v. S.C.D.C.*, ___ S.C. ___, 348 S.E.2d 346 (2020) see *Tant v. S.C.D.C.*, ___ S.C. ___, 759 S.E.2d 398, 401 (2014) (There can be no doubt that the length of an inmate's incarceration implicates a constitutional liberty interest.)

Under South Carolina law, there is an affirmative duty and statutory mandate that is unambiguous as a legislative directive, which provides in pertinent part the following:

An inmate convicted of a no parole offense and sentenced to the custody of the SCDC is not eligible for early release, discharge, or community supervision until the inmate has served at least eighty-five percent of the actual term calculated WITHOUT the application of earned work credits, education credits, or good conduct credits, and is to be applied to the

actual term of imprisonment imposed, not including any portion of the sentence which has been suspended."

Section § 24-13-150(A), S.C. Code Ann.

In determining the legislative intent, the prevailing rule of statutory construction is that the use of words such as "shall" or "must" indicates that the legislative intent is to enact a mandatory provision of law. Strickland v. Richland County Legis. Delegation, ___ S.C. ___, 892 S.E.2d 288, 290 (2023).

This statutory provision is clear and unambiguous in that it mandates that when an inmate is sentenced, the 85 % percent calculation of the incarceration period becomes automatically calculated to and immediately applied to the sentence when the inmate is sentenced by the presiding judge. This is without any further application of earned work credits, education or good conduct credits the prisoner has not earned. See Busby v. Moore, ___ S.C. ___, 498 S.E.2d 883 (1998); which held:

"The language of the statute shows the legislature did not intend for prisoners to get credit for good behavior at the outset of their sentences. The legislature's use of the past tense shows an intent to reward inmates only after they exhibit good behavior."

Thus, the Applicant contends the SCDC erred in its interpretation of code Section § 24-13-150(A) and Applicant's max-out date, where it calculated 85 % percent of Applicant's sentence with 'pre-calculated credits' the Applicant had not yet earned, such that 15% percent from 100 % percent of Applicant's sentence results in Applicant's sentence is 85 % percent.

Penal statutes are to be strictly construed against the State. State v. Elwell, ___ S.C. ___, 743 S.E.2d 802, 806 (2013). Moreover, any ambiguity or doubt relative to sentencing must be resolved in favor of the accused. State v. DeAngelis, ___ S.C. ___, 183 S.E.2d 906, 909 (1971).

The clear and unambiguous mandatory plain language of South Carolina law, is that:

"This percentage MUST be calculated WITHOUT the

application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed..."

Thus, the well-settled law immediately calculates an inmate's sentence to become 85 % percent automatically when sentence is imposed. The work, education or good conduct credits are "Earned Extra Time Served Days" applied to put an inmate closer to completing the 85 % percent of the sentence actually imposed by the trial court.

The SCDC regulation and administrative interpretation of Applicant's sentence clearly impinges upon Applicant's constitutional and statutory rights, and further does not reasonably relate to nor promote any legitimate penological interests.

This court must give effect to the intent of the legislature, and may take judicial notice of matters of public record. Rule 201, SCRE; Malik v. Ward, 2010 WL 936777 (D.S.C. 2010)(Judicial notice of SCDC policies and procedures); Jones v. Key, 2007 WL 4292416 (D.S.C. 2007)(same)

South Carolina statutory provision provides that:

"An officer having charge of an inmate who refuses to allow a deduction in time of serving sentence is guilty of a misdemeanor and upon conviction MUST be imprisoned for not less than thirty (30) days or pay a fine not less than one hundred dollars."

Section 24-13-260, S.C. Code Ann.

The attachment of criminal liability to violation of these constitutional and statutory mandates call for strict scrutiny analysis.

Remedies for constitutional violations should be tailored to the injury suffered and should not unnecessarily infringe on competing interests. Smith v. United States, 143 S.Ct. 1594, 1601 (2023)

- 2) The SCDC has no independent authority to interpret Applicant's sentence. The court should take judicial notice of Rule 201, SCRE; Malik v. Ward, 2010 WL 936777 (D.S.C. 2010)(Judicial

notice of SCDC policies and procedures); Jones v. Key, 2007 WL 4292416 (D.S.C. 2007)(same); Tant v. SCDC, 759 S.E.2d 398, 402 (2014) which held:

"That absent ambiguity in the sentencing sheet, SCDC is confined to the face of that order for its interpretation of an inmate's sentence. SCDC is allowed to assume a sentencing sheet, signed by the judge and attorney without objection, is a memorialization of the judge's intent no less than what was pronounced from the bench."

Id. at 403.

Furthermore, the Department is generally confined to the face of the sentencing sheets in determining the length of a sentence, but may refer to the sentencing transcript if there is an ambiguity in the sentencing sheet. The court should find that Applicant's sentence sheets are unambiguous.

The United States Supreme Court made clear that courts must exercise independent judgement in deciding whether an agency has acted within its statutory authority. Loper Enters. v. Rainmondo, 603 U.S.____, 144 S.Ct. (2024), 2024 WL 3208360, at 6 (June 28, 2024)

3) A fair reading of the statutes, and when construing its purpose, the court's duty is to determine and effectuate the legislative intent. Section § 24-13-150(A) mirrors the federal law, codified as the "Truth In Sentencing" provision adopted from the "Federal Violent Crime Control and Law Enforcement Act of 1994."

42 U.S. Code, § 13704(A)(2), which provides:

"If a state receives funding then fails to actually implement a qualifying Truth-In-Sentencing law within three (3) years of submitting its initial application, 'OJP' treats this event as a failure to substantially comply with statutorily mandated grant conditions and as a violation of the terms of the grant agreement."

Further, 34 U.S. Code, § sec. 12104(A)(i) requires:

Persons convicted of a part(1) violent crime to serve not less than eighty-five (85) percent of the sentence imposed (Without counting time not actually served, such as a administrative or statutory incentives for good behavior.)

B. Such state has Truth-In-Sentencing laws that have been enacted, but not yet implemented, that require such state, not later than three (3) years after such state submits an application to the Attorney General, to provide that persons convicted of a part(1) violent crime serve not less than eighty-five (85) percent of the sentence imposed (Without counting time not actually served, such as a administrative or statutory incentives for good behavior.)

This statute is unambiguous and mandates that when an inmate is sentenced, the statutory language and terms automatically take effect and are applied to the sentence as pronounced during the sentencing proceeding, and at no other time, including later earned administrative or statutory incentives such as credits for good behavior, employment or earned-work credits. *Howlett v. Rose*, 496 U.S. 356, 110 S.Ct. 2430, 110 L.ED.2d 332 (1990)

In Howlett, the court held:

"Federal law is enforceable in state courts ... because the Constitution and laws passed pursuant to it are as much laws passed by the state legislature. The Supremacy Clause makes those laws the supreme law of the land, and charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure."

Here, the SCDC erred in its interpretation of both federal and state law, including 34 U.S. Code, sec. § 12104(A)(i), and state law § 24-13-150(A), and Applicant's sentence max-out date as calculated 85% percent with pre-calculated statutory credits, as

here, violates these well-settled legislative enactments, as well as the Constitutions of the United States, and of South Carolina.

Thus, the Department of Corrections's interpretation of Applicant's sentence, is pre-empted by federal law, inasmuch, as the state law pertaining to this issue is an adoption of its federal origin, as stated above.

The ultimate touchstone of a pre-emption analysis is the intent of Congress. *City of Charleston, S.C. v. A Fisherman's Best Friend, Inc.*, 310 F.3d 155 (4th Cir. 2002) ; *Malone v. White Motor Corp.*, 1435 U.S. 497, 504, 98 S.Ct. 1185, 55 L.Ed.2d 443 (1978)

One of the most familiar recitals is that federal and state law conflict when the state law stands as an obstacle to the accomplishment of the full purpose and objectives of federal law. *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248, 104 S.Ct. 615, 78 L.Ed.2d 443 (1984)

Here, the SCDC's failure to apply the correct interpretation to the mandatory provisions of law, and the purpose and policy of the legislative bodies in this matter, means that Respondents have received federal funding and failed to actually implement a qualifying Truth-In-Sentencing law. This is a clear attempt to evade, and circumvent the legal force and effect of those laws, where Congress in express terms has declared its intent to calculate an inmate's sentence to 85% percent automatically at the point sentence is imposed, and not later upon application of administrative or statutory incentives.

The administration of state law is pre-empted by the Supremacy Clause, where as here, the interpretations and applications performed by Respondents actually conflicts with federal law. Applicant points to the dual protections against arbitrariness and compact-breaking under Section 42 U.S. Code, § 13704(A)(2) to comply with statutorily mandated grant conditions. These consequences disadvantage the Applicant by illegally

lengthening his sentence, outside of a judicial proceeding, and without the concurrence of the sentencing judge, and more importantly, without the consent of the South Carolina General Assembly, nor Congressional approval.

The SCDC has voluntarily acted with willful breach of its affirmative statutory duty, in blatant disregard of clearly established federal and state law. This implicates Applicant's Constitutional right to due process, and infringes his liberty interest. see *Tant v. SCDC*, supra.

A willful act is one done voluntarily and intentionally with the specific intent to fail to do something the law requires to be done. *Id.* quoting *Spartanburg City Department of Soc. Serv. v. Padgett*, 296 S.C. 79, 82-83, 370 S.E.2d 872, 874 (1988)(Per Curiam)

The record before this court discloses that the Applicant submitted Requests for Admission to the Respondents, on or about October 24, 2024; and that the Respondents have failed to respond to said request for admissions within the time limits specified by Rule 36, SCRCP. Thus, the matters set forth in those discovery requests for admission, Request No.1 and Request No.3, are deemed to be conclusively established. (emphasis supplied)

Moreover, as the Respondents have failed to file a timely responsive pleading after service of the application for post-conviction relief, the allegations of the application are to be taken as true, and further conclusively established, pursuant to Rule 8(d), SCRCP.

4) The Respondents' own party admissions militate against any ruling in favor of the State and the South Carolina Department of Corrections.

A court abuses its discretion where it fails to consider all the factors necessary to a particular decision.

Ex parte DeBordien Colony Commun. Ass'n, Inc. v. Republic Parking Sys., Inc., 421 S.C. 553, 560-61, 808 S.E.2d 626, 629 (Ct.App.

2017)

The core of the SCDC's decision is based upon a procedure which is in direct conflict with federal and state law, specifically under the Due Process Clauses of the United States Constitution and its counterpart under the state Constitution.

A due process violation occurs when there is inconsistency in the core theory feeding the Agency decision-making. *Fulk v. U.S.*, 875 F.Supp.2d 535 (4th Cir.2010)

Under all relevant rules, the party admissions attributable to Respondents should fairly well resolve this case in favor of the Applicant. *Lucas v. Burnley*, 879 F.2d 240, 1242 (4th Cir. 1989); *Minter v. Wells Fargo Bank, N.A.*, 762 F.3d 339, 347 (4th Cir. 2014) In as much as the Respondents have failed to timely respond or object to Applicant's request for admissions, and the fact that Respondents have wholly failed to file a responsive pleading in the entire matter, constitutes default. The Respondents' failure to make an appearance renders Applicant's claims uncontroverted and un-refuted. A judicial admission is one that is conclusive in the case, such as formal concessions that are binding upon the party making them. *Minter v. Wells Fargo Bank, N.A.*, 762 F.3d 339, 347 (4th Cir. 2014)

5) Applicant is entitled to post-sentence accrual of administrative and/or statutory credits.

The Constitutional imperative established by the General Assembly is distinctly drawn in the law of this state.

Section § 24-13-210 S.C. Code, Ann. provides:

"A) An inmate convicted on an offense against this state, except a no parole offense as defined in Section 24-13-100 ... is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of twenty days for each month served.

B) An inmate convicted of a no parole offense against

this state is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of three days for each month served."

(emphasis provided)

Additionally, South Carolina Code, Section : 24-13-230, provides for productive duty assignment or participation, technical, or vocational training program credits:

"The Director of the Department of Corrections may allow an inmate sentenced to the custody of the department serving a sentence for a no parole offense ... a reduction from the term of his sentence of six days for every month he is employed or enrolled ... A maximum annual credit for both work credit and education credit is to seventy-two days."

Moreover, it has been recognized in South Carolina, that:

"That credits for good behavior are available throughout the entire cumulative period of incarceration."

Busby v. Moore, ___ S.C. ___, 498 S.E.2d 883 (1993) And further, such credits accrue to both no-parole and parole eligible offenders:

"Contrary to Scott's argument, § 24-13-210 does not apply only to offenders who had at a minimum served eighty-five percent of their sentences. Instead, the section applies to any no parole offender who statutorily maxes out his sentence with the benefit of good conduct credits."

State v. Scott, 351 S.C. 584, ___ S.E.2d ___ (2002); See also Rolin v. SCDC, ___ S.C. ___, 781 S.E.2d 914, 918 (2016)(same)

The former Chief Justice Jean Toal, writing for the court held:

"Clearly an inmate does not acquire an interest in sentence related credits until he or she earns them. As noted in Sections § 24-13-210 and 24-13-230, these

credits are 'NOT AUTOMATICALLY' given to an inmate. Instead, an award of good-time credits at the end of 'each month' is contingent upon an inmate faithfully observing all disciplinary rules during that month. Howard v. SCDC, 399 S.C. 618, 733 S.E.2d 211 (2012)

The United States Supreme Court recently re-affirmed the holding of Wolff v. McDonnell, that:

"There is a liberty interest in avoiding withdrawal of state-created system of good-time credits."

Wilkerson v. Austin, 545 U.S. 209, 221, 125 S.Ct. 1384, 162 L.Ed.2d 174 (2005) citing Wolff at 556-558, 94 S.Ct. 2963, 41 L.Ed.2d at 951-52.

Thus, under this state-created system of good conduct credits and work credits, the court should find that these statutory provisions create a legitimate and reasonable expectation of said credits. By contrast, after enacting these provisions, the General Assembly clearly treated these two statutory provisions as 'specifically distinct'.

For example, the legislature 'specifically' limited the amount of credits a no parole offender could receive each month, while in comparison to credits non-violent parole offenders are permitted to receive each month. The distinction is more than semantic, but is based on the principle that the constitution protects individuals from intentional state action that interferes with liberty interests, whether under a due process, ex post facto clause, or equal protection of laws analysis, from arbitrary governmental encroachments.

The Al-Shabazz court found there was an expectation to this statutorily mandated procedure, that, when sentence credit claims involve an allegation that cause an inmate's sentence to be lengthened beyond that expiration of his lawful sentence, the claim is appropriately raised in a post-conviction relief proceeding under Section § 17-27-20(A)(5), S.C. Code Ann. See Al-Shabazz, 338 S.C. at 368, 527 S.E.2d at 749 (emphasis provided)

The SCDC's encroachments as set forth herein, unlawfully and

unconstitutionally impinge upon Applicant's liberty interests.

Accordingly, and in support hereof, the Applicant has attached as demonstrative evidence, a Time and Credits Chart to aid the court in its analysis of the issues.

CONCLUSION

WHEREFORE, having set forth the preceding matters, under the uncontroverted and un-refuted facts, this Court should render a decision making the following findings of fact and conclusions of law, and requiring correction of Applicant's sentence, ruling that:

1. The interpretation and application of pre-calculated administrative or statutory credits, applied to Applicant's sentence subsequent to imposition of the actual sentence constitutes a violation of due process, equal protection of laws, as well as an ex post facto violation, under both the Constitution of the United States and of the State of South Carolina; and
2. The interpretation and application of pre-calculated administrative or statutory credits, applied to Applicant's sentence subsequent to imposition of the actual sentence constitutes a violation of due process, equal protection of laws, as well as an ex post facto violation, under both the Constitution of the United States and of the State of South Carolina; and further have the operative effect of unlawfully lengthening the sentence actually imposed by the sentencing court; and
3. The interpretation and application of pre-calculated administrative or statutory credits, applied to Applicant's sentence subsequent to imposition of the actual sentence constitutes a violation of due process, equal protection of laws, as well as an ex post facto violation, under both the Constitution of the United States and of the State of South Carolina; and laws in direct conflict with federal and state

law and the legislative intent of Congress and the General Assembly's enactments; and therefore, is pre-empted, as a matter of law, by the Supremacy Clause of the United States Constitution, art. VI., clause 2; and

4. That due to Respondents' failure to enter an appearance, and to otherwise file a responsive pleading in the matter, and the complete failure to respond to or object to Applicant's requests for admissions, renders the Respondents wholly in default, and the facts set forth in the application for post-conviction relief and the requests for admission are, as a matter of law, deemed admitted, and conclusively established; entitling Applicant to entry of default judgement. Finally, under these circumstances and facts, the Applicant has more than satisfied his burden of proof far and beyond a mere preponderance of the evidence, within the meaning of the applicable standard of proof in civil matters; and
5. That the post-conviction relief application is neither untimely, nor successive, and that the Respondents have wholly waived all affirmative defenses, including the privilege to make a recommendation regarding the appointment of counsel; and thus, because genuine issues of material fact exist, counsel for Applicant should be appointed, and an evidentiary hearing convened to resolve these material issues of fact, which include but are not limited to the following:
 - (a) whether the SCDC employed and applied an erroneous interpretation of federal and/or state law; and
 - (b) whether the SCDC illegally and improperly applied Pre-Calculated administrative or statutory credits posterior to actual imposition of sentence by the trial court, which had the effect of actually lengthening the incarceration period, beyond the lawful expiration date of Applicant's sentence; and
 - (c) whether the erroneous interpretation of law and application of said pre-calculated credits was objectively unreasonable and/or involved promotion of any legitimate penological interest; and

(d) whether SCDC properly weighed competing interests involved in the matter.

Date: October 26, 2025

Fairfax, South Carolina.

Respectfully Submitted,

Kevin Marbin

Kevin Marbin

Applicant, Pro Se

Allendale Correction Institution

1057 Revolutionary Trail

Fairfax, SC 29827

TIME AND CREDITS CHART

Good-Behavior, § 24-13-210(B) = 3 days per month/36 days per year

Work and Education, § 24-13-230(B) = 6 days per month/72 days per year

Total Credits = 9 Days per month = 108 days per year

CALCULATION EXAMPLE FOR TEN YEARS:**Physical**

<u>Time Served</u>	<u>Credits</u>	<u>Total Time Serv</u>
1 year	108 days	1 year, 108 da
2 years	216 days	1 year, 216 da
3 years	324 days	2 years, 324 da
4 years	1 year, 67 days	5 years, 67 da
5 years	1 year, 175 days	6 years, 175 day
6 years	1 year, 283 days	7 years, 283 da
7 years	2 years, 26 days	9 years, 26 da
8 years	2 yeas, 134 days	10 years, 134 da
9 years	2 years, 242 days	11 years, 242 day
10 years	2 years, 350 days	12 years, 350 da

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE

Kevin Harbin #303214
Petitioner,

2024-CP-23-03549

Vs.

STATE OF SOUTH CAROLINA/
South Carolina Department of
Correction.
Respondent.

SUPPLEMENTAL AMENDED
APPLICATION FOR
POST CONVICTION RELIEF

"RULE 15"
S.C.R.C.P.

24 OCT 29 PM 3:30
Brice Garrett/CDC 611.30

DUE to clerical error, the Post-Conviction Relief Application filed by petitioner is hereby Supplementally Amended as follows to correct the prior ground in the original application for post-conviction relief:

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

(A) The South Carolina Department of Correction's (S.C.D.C.) violated Petitioner's United States Constitutional Amendment 14 due process (liberty interest) rights, U.S. Const. Amend. 14 equal protection of the laws rights, South Carolina Constitutional 1, 3 due process (liberty interest) rights, and S.C. Const. 1, 3 equal protection of the laws rights when S.C.D.C. erred in misinterpreting the "24-13-150 (A) Early release, discharge, and community supervision..." 35% statute, which is an unambiguous, affirmative and construction statute, that is a statutory adoption from the "Truth In Sentencing" provisions of the "Violent Crime Control and Law Enforcement Act of 1994".

This prejudiced Petitioner because S.C.D.C. misinterpretation of the statute and S.C.D.C. miscalculation of Petitioner's sentence max out date, both now have petitioner being held unlawfully in S.C.D.C. custody past the expiration of his sentence. Petitioner raises this issue pursuant to statutes 1-27-20(A)(4), 17-27-20(A)(5), 17-27-45(c), and CARPENTER V. S.C.D.C., 348 S.E. 2d 346 (2020).

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

165

(A.) STATUTE 24-13-150(A) is a affirmative and construction statute that is an unambiguous legislative directive that states an inmate convicted of a no parole offense and sentence to the custody of S.C.D.C. is not eligible for early release, discharge, or community supervision until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed. This Percentage (MUST) be calculated (Without) the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended.

This statute is unambiguous and mandates that when a inmate is sentenced, the 85% calculation of their time of imprisonment in S.C.D.C. becomes automatically calculated to and immediately applied to their sentence when inmate's are sentenced at the sentencing hearing, without the application of earned, work, education, or good conduct credits they have not earned Pursuant to BUSBY V. Moore, 498 S.E. 2d 883 (S.C. 1998)

S.C.D.C. erred in its interpretation of statute 24-13-150(A) and Petitioner's sentence maxout date, when it calculated 85% of Petitioner's sentence with precalculated credits. Petitioner didn't earn to take 15% from 100% of Petitioner's sentence, to make Petitioner's sentence 85%. The mandatory

The mandatory language of the statute which states, "This percentage (MUST) be calculated (Without) the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended."; Immediately calculates an inmate's sentence to become 85% automatically at sentencing when the sentence is imposed. The Work, education, and Good Conduct credits are earned extra time served days applied to put an inmate closer to completing the 85% of their sentence that was imposed at sentencing.

(2.)

As such, Petitioner has already completed his 85% sentence with the earned credits he received through out his years of incarceration, which helped him to complete his 85% sentence early. THUS, Petitioner is being held unlawfully in custody.

Petitioner continues to respectfully reserve the right to amend application for further issues.

THIS 30th day of September 2024

Kevin Harbin #303214
Allendale Co. I. F-3/Rm. 4
1057 Revolutionary Trail
Fairfax, S.C. 29827

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

Kevin Harbin #303214
Petitioner,

2024-CP-23-03549

Vs.

STATE OF SOUTH CAROLINA/
South Carolina Department of
Correction
Respondent.

CERTIFICATE OF SERVICE

24 OCT 29 PM 3:30
Brice Garrett C00601 SC

I, Kevin Harbin, do hereby certify that on this date, I served the "Supplemental Amended Application for Post Conviction Relief" and "Certificate of service" in the foregoing action on the Clerk of Court, Attorney General Office Respondent, by depositing one copy of the same in the United States mail, first class postage prepaid, and address as follows:

Greenville County Court House
Greenville County Clerk of Court
% Brice Garrett, clerk of Court
305 East North Street
Greenville, S.C. 29601

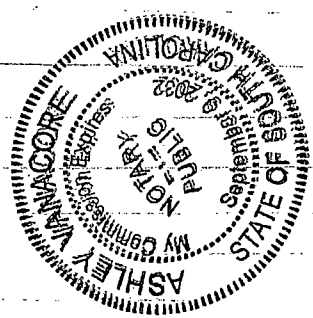
Attorney General Office
% Alan Wilson
Post Office Box 11549
Columbia, S.C. 29211

SWORN or AFFIRMED To
and Subscribed before me this
30th day of Sept, 2024

Opheya Candace
Notary Public

my Commission Expires: 9/9/32

s/ Kevin Harbin
Kevin Harbin #303214
Allendale CI/F-3/A/ Rm. 4
1052 Revolutionary Trail
Fairfax, S.C. 29827



(4)

Dear Clerk,

October 24, 2024

RE: Case No: 2024-CP-23-03549

Please Return additional copy with a Court stamp copy of
"Request For Admission RULE 36(A)".

Also on September 30, 2024 I Filed a "Supplemental Amended
Application For Post Conviction Relief" pursuant to RULE 15 S.C.R.C.P.
I have not receive a Court stamp copy. Please return all together.

Copy of Amended P.C.R. IS
Enclose Also filed on September 30, 2024

Thanks,

Kevin Harbin

A "Notice" To Amend Also
Was with Amended P.C.R.

Kevin Harbin #303214
Petitioner,

Vs.

STATE OF SOUTH CAROLINA/
South Carolina Department
OF Correction.

2024-CP-23-03549

"FIRST"
"REQUEST FOR ADMISSIONS"

RULE 36(A)
S.C.R.C.P.

2024 OCT 19 PM 3:30
SC JUDICIAL BRANCH

The petitioner Kevin Harbin, STATE OF SOUTH CAROLINA/Respondent, pursuant to Rule 36 of the South Carolina Civil Procedure, hereby serves upon you its first set of requests for admission. You are instructed to serve on the undersigned Party of record within thirty (30) days from service of these requests your answers and/or objections to these requests for admission. Pursuant to Rule 26 of the South Carolina Rules of Civil Procedure, you are further instructed to supplement your responses up to and through the trial of this matter.

Request For Admission

1) Request for Respondent's to agree, concede, and admit that the 24-13-150(A) Early release, discharge, and community supervision 85% statutory law, is a affirmative and construction statute, that is a "Truth In Sentencing" provision adopted from the "Violent Crime Control and Law Enforcement Act of 1994" (Section 42 U.S.C.A. § 13704(A)(2) and 34 U.S.C.A. § section 12104) and this statute is a United State Constitutional Amendment. 14 due process liberty interest right and South Carolina Constitutional 1, 3 state created due process liberty interest right. SEE. Tant V. S.C. Dept. of Correction, 759 S.E.2d 398, 401 (2014). (There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest.)

2) Request for Respondent's to agree, concede, and admit that, The South Carolina Department of Corrections interpretation and administration of Statute 24-13-150(A) is as consistent with the ruling in the case of ~~Yawn~~ Yawn, Petitioner V. Willie Eggleton, Warden, Respondent, Analysis Section, 2009 WL 5697879.

3.) Request for Respondent to agree, concede and admit that the ruling in Busby v. Moore, 330 S.C. 201(1998) which states "...The language of the statute shows the legislature did not intend for prisoner's to get credit for good behavior at the outset of their sentences. The legislature's use of the past tense shows an intent to reward inmate's only after they exhibit good behavior. A prisoner may benefit from this section if he or she 'has faithfully observed all the rules' and has not been subjected to punishment for misbehavior." BUSBY v. MOORE, Supra.

4.) Request for Respondent's to agree, concede and to admit to the ruling in STATE v. DANTE Ricardo Scott, 351 S.C. 584, (2002) which states "...Contrary to Scott's argument, § 24-13-210 does not apply 'only to offenders who had at a minimum served eighty-five percent of their sentences.' Instead, the section applies to any 'no parole' offender who statutorily maxes out his sentence with the benefit of good conduct credits." ...

5.) Request for Respondent to agree, concede and to admit to the ruling in Busby v. Moore, 330 S.C. 201(1998) which states "...That credits for good behavior are available throughout the entire cumulative period of incarceration," Busby v. Moore, Supra.

6.) Request for Respondent to agree, concede and to admit, that the South Carolina Department of Correction in Bolin v. S.C.D.C., 781 S.E. 2d 914, 918 (2016), cites the following provisions: S.C. Code Ann § 24-13-210(B) (Supp. 2015) providing for good conduct credits at the rate of three days for each month served for 'no-parole' offenders' subject to the eighty-five percent requirement; S.C. Code Ann § 24-13-236(B) (Supp. 2015) providing for work or education credits at the rate of six days for every month of employment or enrollment for 'no-parole' offenders);

This 24th day of October 2024

s/ Kevin Harbin
Kevin Harbin # 303214
Allendale Co. F-3/Rm. 4
1057 Revolutionary Trail
Fairfax, S.C. 29827

(2.1)

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE

Kevin Harbin #303214
Petitioner,

2024-CP-23-03549

CERTIFICATE OF SERVICE

VS.

STATE OF SOUTH CAROLINA
South Carolina Department of
Correction
Respondent.

24 OCT 29 PM 8:30
Brice Garrett DCC BUL SC

I, Kevin Harbin, do hereby certify that on this date, I served the "First Request For Admissions Rule 36(A) S.C.R.C.P." and "Certificate of Service" in the foregoing action on the Clerk of Court, Attorney General Office and General Counsel S.C.D.C., by depositing one copy of the same in the United States mail, first class postage prepaid, and address as follows:

Greenville County Courthouse
c/o Brice Garrett, CLERK of COURT
305 East North Street
Greenville, S.C. 29601

Attorney General Office
Post Office Box 11549
Columbia, S.C. 29211

South Carolina Dept. of Correction
c/o General Counsel
P.O. Box 21787
Columbia S.C.

SWORN or AFFIRMED TO
and Subscribed before me this

24TH day of October, 2024

Angela D. Rowe

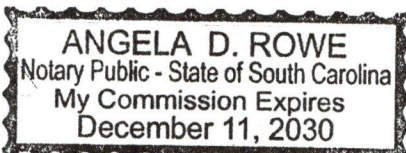
Notary Public

my Commission Expires December 11, 2030.

/s/ Kevin Harbin

KEVIN HARBIN #303214
Allendale CT/F-3/A/Rm. 4

1057 Revolutionary Trail
Fairfax, S.C. 29827



(3.1)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
)

IN THE COURT OF COMMON PLEAS

Civ. Act.No.: 2024-CP-23-03549

Kevin Harbin,)
Applicant,)
)
v.)
)
State of South Carolina and)
South Carolina Department)
of Corrections,)
Respondents.)
)

REQUEST FOR ENTRY
OF DEFAULT

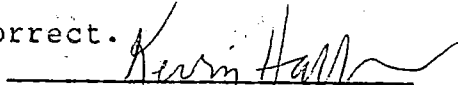
25 OCT 28 AM 9:55
JAY GRESHAM CJC GVL SC

A F F I D A V I T

To the Clerk of Court:

Comes Now, the Applicant in the above-styled matter, by and through pro se, and hereby requests the Clerk of Court to make entry of default on the record as against the Respondents in the instant action, pursuant to Rule 55(a), South Carolina Rules of Civil Procedure. The grounds shall include the following:

1. That, on 24 June 2024, the Applicant filed with this Court, Application for Post-Conviction Relief. The Clerk of Court for Greenville County did subsequently deliver and serve the same upon the South Carolina Attorney General. Pursuant to Rule 4, SCRCP, the Attorney General is the proper agent for service upon the State and any of its agencies; and
2. That more than ninety (90) days has elapsed since the date of service upon the Respondents; and
3. That, despite having been properly served with a true copy of the application for post-conviction relief, the Respondents have each failed to plead or otherwise defend as provided by the South Carolina Rules of Civil Procedure, and that this is made to appear as the fact of the matter, as provided by Rule 55(a), SCRCP, which states that:
"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend ... and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book)."
4. That, the above is true, accurate, and correct.


Kevin Harbin

Sworn To and Subscribed
Before Me This 21st
Day of October, 2025.
Angela D. Rowe
Notary Public for South Carolina
My Commission Expires:
December 11, 2030

ANGELA D. ROWE
Notary Public - State of South Carolina
My Commission Expires
December 11, 2030

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)
) Civ. Act.No.: 2024-CP-23-03549

Kevin Harbin,
Applicant,

v.

MOTION FOR APPOINTMENT
OF COUNSEL

State of South Carolina and
South Carolina Department
of Corrections,
Respondents.

Comes Now,, Kevin Harbin, the Applicant in the above-captioned matter, by and through Pro se, who hereby moves for the appointment of counsel to represent him in this post-conviction relief matter. The grounds for this motion shall be:

1. That the Attorney General has waived the privilege to make a recommendation regarding the appointment of counsel to represent the Applicant in the instant matter, by failing to affirmatively plead the same in a responsive pleading; and
2. That, the Attorney General, has failed to answer or otherwise enter and appearance or defend in the case, despite having been served a true-copy of the application for post-conviction relief, by the Clerk of Court for Greenville Count, South Carolina; and the Respondents are in default; and
3. That, the application for post-conviction relief is neither untimely, nor successive and; the claims raised therein are uncontroverted and un-refuted; and thus are deemed conclusively established as a matter of law; and
4. That because the Respondents have failed to enter an appearance, Rule 55, SCRCP, still requires the Applicant to present the case and satisfy the burden of proof by a preponderance of the evidence; and there are material issues of fact which exist in the matter; and
5. That the following material issues of fact exist in the case, and therefore counsel should be appointed, and an evidentiary hearing should be convened, as contemplated by these rules:
 - (a) Whether the SCDC erroneously applied to Applicant's sentence Pre-Calculated administrative or statutory credits; which illegally lengthened his sentence beyond his lawful expiration date, and
 - (b) Whether the erroneous interpretation of federal and

25 OCT 28 AM 9:56
JAY GRESHAM CDC CIVL SC

state law by the SCDC was objectively reasonable and/or involved promotion of any legitimate penological interest; and

(c) Whether the SCDC properly weighed competing interests involved in the matter.

Date: October 21, 2025
Fairfax, South Carolina.

Respectfully Submitted

Kevin Harbin

Kevin Harbin
Applicant, Pro Se
Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

Kevin Harbin, # 303214
Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

Jay Gresham
Greenville County
Clerk of Court
305 East North Street
Greenville, SC
29601-2121

Date: October 21, 2025

25 OCT 28 AM 9:55
JAY GRESHAM CDC CIVIL SC

Re: Enclosures for Filing Purposes
Kevin Harbin v. State of South Carolina and SCDC
Civ. Act. No.: 2024-CP-23-03549

Dear Mr. Gresham:

Please find enclosed for filing purposes the following, on behalf of the Applicant, Kevin Harbin, in the above-styled matter:

1. To Clerk of Court: Request for Entry of Default and Affidavit; and
2. Motion for Appointment of Counsel; and
3. Post-Conviction Relief Trial Brief On Behalf of the Applicant, with attached "Time and Credits Chart".

Please file with the record, and I respectfully request be returned to me a clocked-in/stamped file copy of each of the foregoing, as extra-copies of each is enclosed.

Kindest Regards

Kevin Harbin

Kevin Harbin
Applicant

KH/

Enclosures

cc: file

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)Kevin Harbin #303214)

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

v.)

State of South Carolina /)

South Carolina
Department of
Correction)

IN THE COURT OF COMMON PLEAS

2024-CP-23- 03549

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 Allendale Correction Institution; S.C.
Department of Corrections
2. Name and location of Court which imposed sentence Greenville County
General Sessions Court
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2004-GS-23-006124; Criminal Sexual Conduct First degree
 - (b) 2004-GS-23-006123; Strong Arm Robbery

- (c) 2004-GS-23-006122 Kidnapping
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) September 8th 2005
- (b) 30 years Concurrent
- (c) Eighty-five percent sentences 85%
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?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeal Direct Appeal
- ii. Post Conviction Relief (P.C.R.): S.C. Supreme Court petition for Writ of certiorari; Federal Habeas Corpus
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Court of Appeals dismissed the appeal on 1/22/2007; Judge Miller denied relief dismiss P.C.R.; S.C. Supreme Court denied petition;
- ii. Federal Habeas Corpus was denied on 1/27/2011
- iii. _____
- (c) the date of each such result:
- i. Jan. 22nd 2007; August 7th 2007; January 22nd 2009;
- ii. January 27, 2011;
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- 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: Additional Page, Continue Answer's
 (a) Non-compliance with 42 U.S.C.A. § 13704(A)(2); 34 U.S.C.A. § 12104(A)(1)...
 (b) Incorrect administration of Statutory LAW § 24-13-150(A)
 (c) Non-compliance with statutory LAW § 24-13-210(A); 24-13-230(A)
11. State concisely and in the same order the facts which support each of the grounds set out in (10): Additional Page, Continue Answer's
 (a) The Violent Offender Incarceration, Truth-in-Sentencing Incentive Grant Act,
 (b) SoC.D.C. is in violation of constitutional and statutory provisions,
 (c) Applicant has Liberty interest in avoiding withdrawal of state-created
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? _____
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. Application For Forensic DNA Testing: September 23, 2014
 ii. County of Greenville IN THE Court of General
 iii. Sessions, P.C.R
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. County of Greenville IN THE Court of General
 ii. Sessions
 iii. Federal Court's for Habeas Greenville County
 iv. _____

11.) State concisely and in the same order the facts which support each of the grounds set out in (10): "Continuation from Page 3"

A.) Applicant's state liberty interest right's denied that derive's from Federal Law and So.C.D.Co.'s failure to comply with statutorily mandated grant conditions of the Truth-in-Sentencing Law present's a conflict analysis. Review of Agency's interpretation of it's governing statute §24-13-150(A) is subject to "CHEVRON DEFERENCE, USA INC. V. Natural Resources's 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)".

B.) So.C.D.Co.'s misinterpretation and wrong application, On February 7th 2024, after becoming aware of provision's in law for first time, inquiry was made to Classification Kiosk Reference Number 24-03395801. In there response I was inform until they are shown the error, applicant's maxout date would not change. On March 18th, 2024, applicant spoke with chief Classification Staff member in person and offered a copy of P.C.R. brief to read and she refuses and responded to my Kiosk Request # 24-03441115 until I receive a legal document from the court they will ^{not} accept copy to review. Eighty-five percent of applicant's thirty year (30) setence is twenty-five year's six month's and should have been applied to the actual term of imprisonment imposed. Applicant calculate's that June 22, 2024, will be twenty-seven 27 year's, which is more than require for sentence imposed.

C.) System of good-time credit's. So.C.D.Co. Policy OP-21011, supports claim, and the Equal Protection Right's to treat similarly situated inmates the same. Further inference is directed to So.C.D.Co. Policy OP-21007. Section 403: Section's 101, 102, 201, 203. "IN So.C.D.Co. V. Carpenter, (2020) Carpenter's co-defendant Bobby Gene Horne was A No Parole offender and receive his credit's. IN "Bolin V. So.C.D.Co., (2016)" The So.C.D.Co. explains that offenders (No Parole) can be afforded community supervision, good conduct credit's, work credits, education credit's, without altering an eighty-five percent requirement (providing for good conduct credit's at the rate of three (3) days for each month and education or work credit's at the rate of six (6) days for every month of employment for No-Parole offender's subject to eighty-five percent requirements."

(c) the disposition thereof:

i. Denied by Written Order

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. March 25, 2021

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

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?

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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: Did not know that 35% was a statutory law
- (a) 24-13-150A that derive from the Truth-in-Sentencing LAW.
- (b) Did not know that there was a statutory law for Good Conduct or
- (c) Work and Education credits, 24-13-210(A), 24-13-230(A), until February 2024.
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (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?
Yes
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. Caroline Horlbeck
- ii. Rodney W. Richey
- iii. Kathrine H. Hudgins
Susanna Ross
- (b) the proceedings at which each such attorney represented you:
- i. Trial and Sentencing
- ii. Post Conviction Relief
- iii. Application For Forensic DNA Testing

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

Release from South Carolina Department of
Corrections, Freedom nothing else!

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

No

STATE OF SOUTH CAROLINA)

County of Greenville)

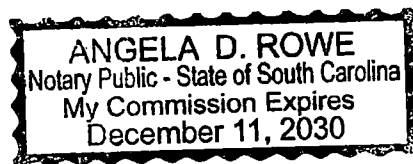
VERIFICATION

I, Kevin Harbin, 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.

Kevin Harbin

SWORN to and subscribed before me this 3rd
 day of June, 2024.

Angela Rowe (L.S.)
 Notary Public



My Commission Expires: December 11, 2030.

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

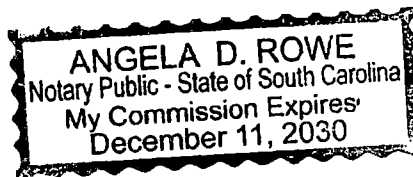
I, Kevin Harbin, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Kevin Harbin
Applicant

SWORN or affirmed to and subscribed before me this
3rd day of June, 2024.

Angela Rowe
Notary Public



My Commission Expires: December 11, 2030.



Office of the Clerk of Court

Greenville, South Carolina

Brice Garrett
Clerk of Court

24 JUN 10 AM 10:40
Brice Garrett COC GUL SC

Circuit Court Division
Greenville County Courthouse
305 East North Street
Greenville, South Carolina 29601
(864) 467-8551 FAX (864) 467-8540

JUNE 10, 2024

KEVIN HARBIN 303214
ALLENDAL CORRECTIONAL INSTITUTE
P O BOX 1151
FAIRFAX SC 29827

KEVIN HARBIN

ENCLOSED YOU WILL FIND A COPY OF YOUR POST CONVICTION RELIEF APPLICATION.
YOUR CIVIL CASE NUMBER IS **2024CP2303549**.

A COPY OF YOUR PCR HAS BEEN FORWARDED TO THE ATTORNEY GENERAL'S OFFICE.

ONCE IT IS DETERMINED THAT A HEARING SHALL BE SCHEDULED, THE PROCESS
FOR ATTORNEY ASSIGNMENT WILL BEGIN. THIS MAY TAKE SEVERAL MONTHS.

WE ONLY FILE THE PCR APPLICATIONS. WE DO NOT SET COURT DATES NOR ARE WE
ABLE TO ANSWER QUESTIONS CONCERNING YOUR CASE.

THANK YOU.
CLERK'S OFFICE

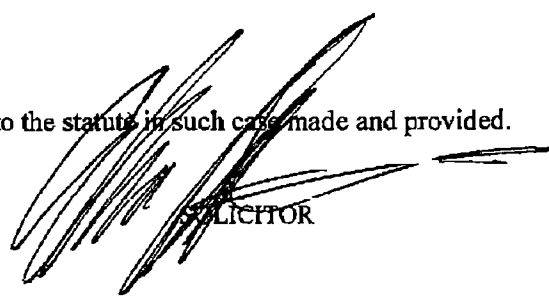
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT FIRST DEGREE

At a Court of General Sessions, convened on August 23, 2005 the Grand Jurors of Greenville County present upon their oath:

That KEVIN LAMAR HARBIN did in Greenville County, on or about the 12th day of May, 2004, engage in sexual battery, with Megan E. George, and used aggravated force to accomplish this sexual battery and/or the victim submitted to sexual battery committed by KEVIN LAMAR HARBIN, under circumstances where the victim is also victim of forcible confinement, and/or kidnapping, and/or robbery. This is in violation of South Carolina Code of Laws Section 16-3-652 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

344
STATE OF SOUTH CAROLINA
COUNTY OF Greenville
STATE VS.
Kevin Harbin

AKA:
Race: B Sex: M Age: 31
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED] STREET
WESTMINSTER, SC 29693
DL#: 999999999 SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:
2004GS2306122
A/W#: 1340767
Date of Offense: 05-12-2004
S.C. Code § : 16-03-0910
CDR Code #: 0095

☐ CASE RESTORED
SENTENCE
☐ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: Kidnapping / Kidnapping

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor: Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv Surcharge) \$100 \$ 100
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 35.13 (Public Def/Prob) \$500 \$
§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25
§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$

TOTAL \$

Paul B. Wicker
Clerk of Court/ Deputy Clerk

Court Reporter: Sprague

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

L.H. Pelt
2004-09-08
September 8, 2005

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Kevin Harbin

AKA:

Race: B Sex: M Age: 31

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] STREET
WESTMINSTER, SC 29693

DL#: 999999999 SID#:

IN THE COURT OF GENERAL SESSIONS 345

INDICTMENT/CASE#:

2004GS2306123

A/W#: 1340766

Date of Offense: 05-12-2004

S.C. Code § : 16-11-0325

CDR Code #: 0137

☐ CASE RESTORED
SENTENCE

☐ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
TO: Robbery / Common law robbery, strong arm

in violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPS

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

Recipient:

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv Surcharge \$100 \$ 150

§ 14-1-211(A)(2) (DUI Surcharge \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Paul B. Wick
Clerk of Court/ Deputy Clerk

PRESIDING JUDGE

Judge Code: 101515

Sentence Date: September 8, 2005

Court Reporter: Spang

346
STATE OF SOUTH CAROLINACOUNTY OF Greenville
STATE VS.
Kevin Harbin

AKA:

Race: B Sex: M Age: 31

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] STREET
WESTMINSTER, SC 29693

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2004GS2306124

A/W#: I340768

Date of Offense: 05-12-2004

S.C. Code § : 16-03-0652

CDR Code #: 0160

☐ CASE RESTORED
SENTENCE☐ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: Sex / Criminal sexual conduct - First degree

in violation of § 16-03-0652

of the S.C. Code of Laws, bearing CDR Code # 0160

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv Surcharge \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Paul B. Wick
Clerk of Court/ Deputy ClerkCourt Reporter: Page

PTUP

days/hours Public Service Employment

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Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE L. R. PittJudge Code: 21 0 315Sentence Date: September 8, 2005

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