

April 18, 2014

The Honorable Daniel E. Shearouse  
Clark of Court Supreme Court  
P.O. Box 11330  
Columbia, S.C. 29211

**RECEIVED**

APR 28 2014

S.C. SUPREME COURT

RE: Jammin Mazzyck  
Case NO: 2014-000731  
Lower Case NO: 2012-CP-38-00250

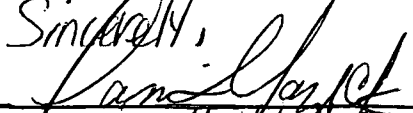
Dear Mr. Shearouse:

Enclosed please find for filing the original Motion to Remand To Address All Issues For Appellate Review and original Pro-se Petition for Writ of Certiorari and Appendix in the above case.

Would you please serve the Respondent in this matter a copy of each petition because according to SCDC's Policy, I am prevented from making legal copies of hand written materials. Therefore, I am not able to serve the Respondent. Also, please send me a "stamp clock" copy for my personal file.

With kindest regards, I remain

Sincerely,

  
Jammin Mazzyck # 238056  
Cleber Corr. Inst. EA/2  
P.O. Box 205  
Ridgelyville, SC 29472

**RECEIVED**

APR 28 2014

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Certiorari to Orangeburg County  
Edgar Dickerson, Presiding First Judicial Circuit

Appellate Case No: 2014-000731  
Case No.: 2012-CP-38-0250

State of South Carolina . . . . . Respondent

Vs.

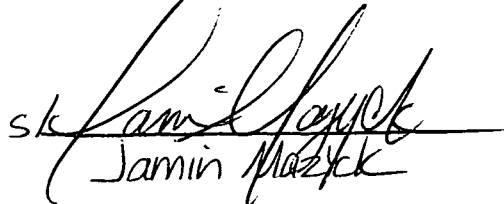
Jamin Mazzyk, #238056 . . . . . Appellant

PRO - SE

PETITION FOR WRIT OF CERTIORARI

Jamin Mazzyk, # 238056  
Lieber Corr. Inst.  
P.O. Box 205  
136 Wilborn Ave.  
Ridgeway, SC 29472

PRO SE PETITIONER

sk   
Jamin Mazzyk

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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg County  
Edgar Dickerson, Presiding Judge

Appellate Case No: 2014-000731

Case No.: 2012-CP-38-0250

State of South Carolina . . . . . Respondent

v.

Jamin Mazek, #238056 . . . . . Appellant

Motion To Remand To Address All Issues For Appellate Review

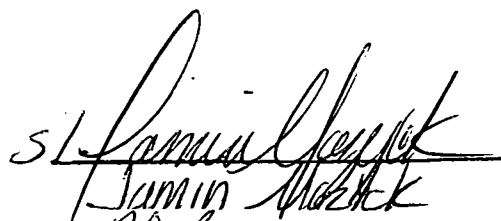
This matter comes before the Court pursuant to Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992). Appellant contends that the PCR Judge Edgar Dickerson failed to address the merits of the issues raised and presented by appellant. This will deprive appellant and the appellate court from making a proper and full review or ruling on all the issues raised. A ~~new~~ hearing is required to secure the rulings which should have been made initially.

Appellant asserts that his PCR counsel was ineffective for failing to preserve and ensure that all his issues was properly ruled and raised that's set forth in his PCR application. Additionally, he contends that he was denied his constitutional right to have all his issues raised and ruled. Petitioner's application for PCR and evidence presented within his application; Judge Edgar Dickerson order dismissing does not address ~~the~~

all the issues. Appellant avers it necessary to vacate Judge Edgar Dickerson order and remand this matter to the circuit court to hold a hearing. Additionally, Appellant appointed counsel should have ensured that all appellant issues were ruled and presented. There have been conflicting of interest in regard to having his counsel safeguard all his constitutional rights regarding his PCR application issues. Even after Judge Edgar Dickerson order of dismissal counsel has an obligation to review the order and file a Rule 59(c), SCRPC, motion to alter if the order fails to set forth the findings and the reasons for these findings as required by § 17-27-80 and Rule 52(a) SCRPC.

Counsel inability to set forth any arguable basis for Judge Edgar Dickerson determination clearly confirms her abandonment in failing to present, preserve and safeguard all appellant issues for Judge Edgar Dickerson can make a determination especially when being in possession of all appellant pro-se motions and issues (A/R 8-9) which permits the higher courts from properly ruling. Counsel abandonment has subjected appellant to deprivation of utilizing and presenting all his issues within his PCR application and motions. Appellant seeks that all his issues be properly presented, preserved and the one raised be properly ruled which requires the vacating of Judge Edgar Dickerson order.

Date: 4-18-14

  
51 Jamir Mack  
P.O. Box 205  
Lidgerville, SC 29472

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

CERTIFICATE OF SERVICE

I, Jamin Mazzyck, do hereby swear under the penalty of Perjury that I have mailed the original copy of the enclosed Pro-se Motion To Remand To Address All Issues For Appellate Review to the clerk of Court for the South Carolina Court of Appeals.

I further state that a copy of the aforesaid will also be mailed to the South Carolina Attorney General's Office due that Jamin Mazzyck is prevented from making legal copies of hand written materials by S.C.D.C. Policy.

This was done by way of the U.S. mail here at Lieber Correctional Institution in Ridgerville, SC, 29472.

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2014.

\_\_\_\_\_  
NOTARY OF PUBLIC  
COMMISSION EXPIRES: \_\_\_\_\_

Respectfully submitted,  
s/ Jamin Mazzyck  
Jamin Mazzyck

ISSUE PRESENTED

Did the PCR court erred in dismissing Petitioner's application for PCR without a hearing?

## STATEMENT

Appellant Jamin Mazzyk was indicted at the March 2004 term of the Orangeburg County Grand Jury for Burglary 1<sup>st</sup> Degree (2004-GS-38-0345); Murder (2004-GS-38-0346); and Assault and Battery with intent to kill (2004-GS-38-0347). He was represented by Carl B. Grant, Esquire. On May 26, 2005, appellant pled guilty to Burglary 1<sup>st</sup>, Voluntary Manslaughter, and Assault and Battery with intent to kill. The Honorable James C. Williams Jr. sentenced appellant to confinement for a period of twenty-five years to be served concurrently (APP. 57-65).

On February 22, 2012, Appellant filed his second PCR application (APP. 1-10) and on March 29, 2012 his Memorandum of Law in Support of his PCR application (APP. 19-25). On September 13, 2012 the state filed its Return and Motion to dismiss as successive to appellant's previous application and filed beyond the statute of limitations (APP. 26-32). On October 3, 2012 the state filed a Conditional Order of dismissal (APP. 33-38). On November 15, 2012 Appellant filed a Pro-se Memorandum of Law in opposition to Respondent's Order of Dismissal (APP. 39-43). On December 19, 2012 Appellant's counsel finally responded to the State's Return Motion to Dismiss and the Conditional Order of Dismissal while failing to preserve and ensure that all issues were ruled and raised to overcome the state's dismissal. On May 22, 2013, Appellant requested counsel to file a Motion to Amend his response to Respondent's Return and Motion to Dismiss which was in counsel's possession but counsel failed to properly file and preserve appellant's issues (APP. 44-47). On December 27, 2013, Honorable Edgar Dickerson issued his order of Dismissal without determining all issues raised (APP. 51-54). On March 31, 2014 upon appellant receiving written notice of entry of dismissal and counsel served a Notice of Appeal. On April 15, 2014 appellant received a Revised Letter of notification of 20 days of any arguable issues and this Petition follows (APP. 55-56).

# ARGUMENT

Did The PCR Court Erred in Dismissing Petitioner's Application for PCR Without a Hearing.

In McLoY v. State, 401 S.C. 363, 737 S.E.2d 623 (2013), this court held:

"when considering the state's motion for summary dismissal, where no evidentiary hearing has been held, the PCR Judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant. Learnon v. State, 363 S.C. 432, 434, 611 S.E.2d 494 (2005) (Citing S.C. Code Ann. § 17-27-80), where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing. Delaney v. State, 269 S.C. 555, 556, 238 S.E.2d 679 (1977)."

In this Present case, the respondent motioned the PCR court for summary dismissal of Petitioner's PCR application for failing to file within the one (1) year statute of limitations, successive to the previous application for post-conviction relief, failure to comply with the filing procedures of the uniform post conviction relief application and act S.C. Code Ann. § 17-27-10 to 160 S.C. Code Ann. § 17-22-45(A) and the Petitioner bears the burden of showing that the allegations could not have been raised previously. Petitioner has failed to present any reason why he could not have raised the current allegations in his previous post-conviction relief application. That Petitioner has not shown that the alleged evidence meets the "new evidence" offered by the Petitioner is not "material to the issue of guilt or innocence," and probably would not "change the result if a new trial was had."

Petitioner contends his second PCR application should not have been summarily dismissed because genuine issues of material fact exist as to whether Petitioner's claim is successive or barred by the statute of limitations. Petitioner further contends his claims fall within the "discovery rule" exception to the one-year limitation period and was therefore timely. Also a "PCR application ordinarily must be filed within one year after a conviction or, if a direct appeal is taken, one year after the remittitur is sent to the trial court. S.C. Code Ann.

§ 17-27-45(A)(2003). However, section 17-27-45(c) provides that if a PCR applicant discovers "material facts not previously presented and heard that require vacation of [his] conviction or sentence," he may file a PCR application "within one year after the date of actual discovery ... or after the date when the facts could have been ascertained by the exercise of reasonable diligence."

Petitioner newly discovered evidence regarding his issues #1, #2, #4, #6 and #7 is pursuant to S.C. Code Ann. § 17-27-45(c) which shows Petitioner meets this criteria. Petitioner contends the PCR Judge misconstrued section 17-27-45(A) in finding that he was required to file his claim within one year after his trial, rather than one year after the remittitur was sent from his direct appeal... Further, the PCR Judge apparently overlooked the discovery rule in section 17-27-45(c).

Petitioner argues he did not discover that there was approximately five (5) or more witnesses who have first hand knowledge of the events leading up to the death of Mr. Huggins. Petitioner filed his PCR application immediately upon learning of the "newly discovered evidence" and ineffective assistance claim. He was completely unaware at the time when he plead guilty that there were several witnesses with personal knowledge relative to the killing of the deceased. That these witnesses personal accounts of the facts corroborates his account of the facts and substantiates his self-defense defense, impact his innocence, mitigates his punishment and his criminal liability. These witnesses spoke with my trial counsel about what they knew and trial counsel Grant

did not inform Petitioner that there were ~~many~~ witnesses willing to verify his version of the facts.

The identity and availability of these witnesses who have genuine and material facts of Petitioner case, did not come to light until after his plea and PCR Proceeding had reached completion. This information was suppressed by trial Counsel Grant and the state solicitors, the investigating law enforcement and other state officials unlawfully. Had Petitioner been aware by trial counsel Grant of these witnesses and their material testimony, Petitioner would have refused to plea and would have adamantly proceeded to trial. This evidence of genuine material facts have not been previously presented and heard by the Court, had such evidence been presented and heard, it would have required, vacation of Petitioner conviction and sentence in the interest of Justice. (see APP-12-18 Affidavits). The failure of the presentation of this evidence at Petitioner prior PCR cannot be attributed to Petitioner, but it attributed to the state, the investigating law enforcement, trial Counsel Grant and other state officials illegal suppression of these witnesses identity and substance of these witnesses personal knowledge. Accordingly, the newly discovered evidence offering by Petitioner is material to the accused's guilt or innocence. see, e.g. State v. South, 310 S.C. 504, 507, 427 S.E.2d 666, 668 (1993); Cobbs v. State 515 SE2d 567; Jelly v. State, 511 SE2d 689 and McClay v. State 401 S.C. 363, 737 SE2d. Petitioner submits that the new evidence issue #1, #2, #4, #6, and #7 (APP-8-9) would change the result of his case because he would not have plead guilty and would have continue to assert the defense of self-defense. Because Petitioner's claims that he is entitled to the benefit of the discovery rule is not conclusively refuted by the record and the PCR Judge erred by summary dismissing his claim. Petitioner asks this Court to reverse and remand this matter for a hearing.

Petitioner avers he has demonstrated sufficient reason why his claim was not included in his first PCR application in that the newly discovered evidence regarding issues #1, #2, #4, #6, and #7 (APP-8,9)

until after his first PCR application was dismissed. However, the state contends the newly discovered evidence regarding issues #1, #2, #4, #6 and #7 could have been discovered earlier through the exercise of due diligence and, therefore, petitioner has failed to state a "sufficient reason." Petitioner contends PCR Judge erred based on this being a factual dispute and a hearing is necessary to resolve this critical issue.

Petitioner further contends even if his PCR claims may ultimately prove to be untimely, successive, or perhaps unsuccessful on the merit it does not negate that the PCR Judge erred in granting the state's motion for summary dismissal because genuine issues of material fact exist as to whether petitioner claim is successive or untimely. See Leamon, 363 S.C. 434, 611 SE2d at 495 (citing S.C. Code Ann § 17-27-10 (b)-(c) (noting summary dismissal of a PCR application without a hearing is appropriate only when it is apparent on the face of the application that (1) there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief).

Furthermore, petitioner has raised the involuntariness of the plea and the ineffective assistance of counsel from the beginning, but these issues has not been fully presented, heard and determined. The present PCR application that petitioner has filed is not "successive" under section 17-27-90 and the respective case laws developed regarding "successive" PCR's. There are genuine issue of material facts existing and petitioner instituted this subsequent PCR application in order to get his "one complete bite at the apple" to a full review and full adjudication on the merits of his original June 28, 2007 PCR application, of which he is fundamentally entitled to under South Carolina Statutory law, the Due Process Clause of U.S. Constitution and the Uniform Post-Conviction Procedure Clause of South Carolina.

Petitioner is not seeking more than he is entitled to have as a right. Petitioner had clearly alleged facts that would have established an exception to both statute of limitation and the prohibition against successive PCR application and Petitioner facts were not conclusively refuted by the record before the PCR court and several Question of facts was raised which could only been resolved by an evidentiary hearing. Petitioner simply seeks to fully and fairly and adequately present his meritorious constitutional claims to the South Carolina State Courts and have the S.C. state courts adequately hear, determine and adjudicate the merits of the original PCR application in the case 06-CP-38-459 unhampered and unthwarted by the unconstitutional collusion and illegal suppression of material evidence by the state officials.

Petitioner filed his original PCR application and had an evidentiary hearing on this original application in the case: 06-CP-38-459 on June 28, 2007. At Petitioner's original June 28, 2007 PCR evidentiary hearing in the case 06-CP-38-459 the Attorney General Office colluded with Trial Counsel Grant, the state solicitor's office, the investigating law enforcement agencies, the state record custodians and other state officials to deliberately deceive the PCR Court Judge Diane Goodstein and Petitioner by the presentation of known false evidence at the June 28, 2007 PCR evidentiary hearing to mislead the PCR Judge Diane Goodstein and Petitioner to believe the non existence of evidence which is material to the petitioner entitlement to relief on his PCR issues, and material to mitigate Petitioner's criminal liability and material to mitigate Petitioner's punishment, see Giglio v. United States, 405 U.S. 150 and Brady v. Maryland, 373 U.S. 83, 87.

The S.C. Attorney General office violated the petitioner's statutory rights and Due Process Rights under the U.S. Constitution by deliberate deception by the presentation of known false evidence and false testimony. For example,

regarding to issue #3, (APP 8) the Attorney General called Trial Counsel Carl Grant to the witness stand at the original PCR evidentiary hearing on June 28, 2007 and had him testify under oath falsely that no weapon was recovered from the decedent Terrell Huggins:

Trial Counsel Grant: How could I not have concern over a man who shot somebody and killed an unarmed man and then shot an unarmed lady.

PCR attorney Shadd: Was he really unarmed? Isn't it true that there was a weapon found on Mr. Huggins?

Trial Counsel Grant: There was no evidence of any weapon present that we discovered. (See PCR transcript APP 25 Line 18-24)

Also, the following testimony was given by Petitioner at the original PCR evidentiary hearing on June 28, 2007:

PCR attorney Shadd: what did the state interfere on that Mr. Grant didn't address?

Petitioner's Maztek: By not fully disclosing my trial counsel or not Rule 5 Brady material that it could have gave him.

PCR attorney Shadd: For example, is it the same stuff you're talking about, the autopsy and medical records.

Petitioner Maztek: Yes (see PCR transcript APP 24 Line 8-14)

These are two examples of where the Attorney General allowed false testimony to be sworn in front of them by trial Counsel Grant at Petitioner's original June 28, 2007 PCR evidentiary hearing, and saw the effect of this false testimony in misleading and deceiving the PCR Judge Goodstein and Petitioner's, but the Attorney General stood silent and allowed this deception to permeate Petitioner's original PCR application and denied Petitioner's of his "full bite" at the apple. A Plea based on misleading, inaccurate and incomplete information is not knowing, intelligent, and voluntary made.

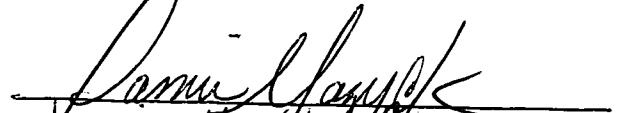
Petitioner's did raise issues #3, #5 and #7 (APP 8,9) in his original PCR application in the case 06-CP-38-459, but the Respondent unconstitutionally obstructed and illegally manipulated the proceedings denying Petitioner's one complete bite at the apple, therefore Petitioner is not procedurally barred to bring these same issues before the South Carolina State Court in a subsequent PCR application. The statute S.C. Code Ann. § 17-27-90 does not bar this subsequent PCR applications. Petitioner is bringing this Present PCR application to challenge the PCR Procedure in his original PCR evidentiary hearing in the case 06-CP-38-459 on June 28, 2007. Based on this factual dispute, a hearing was necessary to resolve this critical issue. see *State v. Odom*. also see *Paston v State*, 528 SE2d 422 and *Carter v. State*, 362 SE2d 20, *Washington v. State* 478 SE2d 833 and *Williams v. State*, 583 SE2d 52 and *McCoy v. State*, 401 S.C. 363, 737 SE2d 623.

Petitioner argues his second PCR application should not have been summarily dismissed because genuine issue of material fact exist as to whether his application is successive or barred by the statute of limitation and successiveness and asks this Court to reverse and remand this matter for a hearing. At the same time, the law provides that each Petitioner shall have the right to at least one complete opportunity to be fully heard.

CONCLUSION

Based on the above, certiorari should be granted and the order of the PCR court reversed and the case remand.

Respectfully submitted,

  
Jamin Mazurek, Pro-Se  
Lieber Cert. Inst  
P.O. Box 205  
Ridgeville, SC 29472

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Certiorari to Orangeburg County  
Edgar Dickerson, Presiding First Judicial Circuit

Appellate Case No: 2014-000731  
Case No: 2012-CP-38-0250

Jamin Mazzyk,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

Jamin Mazzyk # 238056  
Lieber Carr. Inst.  
Post Office Box 205  
Ridgerville, SC 29472

PRO SE PETITIONER

ALAN Wilson  
Attorney General  
John W. McIntosh  
Chief Deputy Attorney General  
Sally W. Elliott  
Senior Assistant Deputy Attorney  
General  
Meghan Harrihan  
Assistant Attorney General  
Office of The Attorney General  
Rombert C. Dennis Bldg.  
P.O. Box 11549  
Columbia, SC 29211



(c) 5/26/05

6. Check whether a finding of guilty was made:

(a) after a plea of guilty X

(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?  
NO

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

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

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) Counsel did not "consult" with me about the appeal

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

- (a) New Trial based on after-discovered evidence used based on ~~credit violation~~
- (b) See PCR attachment
- (c) See PCR attachment

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

- (a) See PCR attachment
- (b) See PCR attachment
- (c) See PCR attachment

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~~ Yes
- (d) any other petitions, motions or applications in this or any other Court? NO

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. PCR
  - ii. Writ of Certiorari
  - iii. Writ of habeas
  - iv. Writ of Certiorari
- (b) the name and location of the Court in which each was filed:
  - i. County of Orangeburg, St. George, SC
  - ii. Appellate Defense office, Columbia, SC
  - iii. U.S. District Court, District of SC
  - iv. Supreme Court of U.S., Washington, DC
- (c) the disposition thereof:
  - i. Denied
  - ii. Denied
  - iii. Denied

iv. Denial

(d) the date of each such disposition:

- i. September 7, 2007
- ii. November 4, 2009
- iii. November 10, 2010
- iv. October 31, 2011

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) After discovered evidence Pursuant to § 17-27-45(c)
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. Carl B. Grant P.O. Box 1203 Orangeburg, SC 29116
  - ii. James Strudd III, P.O. Box 969, Columbia, SC 29202
  - iii. LaNelle Cantel Durant, PO Box 11589, Columbia, SC 29211-1589
- (b) the proceedings at which each such attorney represented you:
  - i. ~~PO~~ Plea and sentencing
  - ii. \_\_\_\_\_ Post-Conviction Relief (PCR)
  - iii. \_\_\_\_\_ Appellate Defender

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

I want this convictions and sentences vacated

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

NO

(App 6)

STATE OF SOUTH CAROLINA )  
County of )

VERIFICATION

I, \_\_\_\_\_, 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.

Jamie Mazzick

SWORN to and subscribed before me this 21st  
day of February, 2012.  
Susan H. Frye (L.S.)  
Notary Public

My Commission Expires  
March 3, 2018

My Commission Expires: \_\_\_\_\_

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, \_\_\_\_\_, 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.

*Jamie Mazzyk*  
Applicant

SWORN or affirmed to and subscribed before me this  
21<sup>st</sup> day of February, 2012.

*Susan H. Frye*  
Notary Public

My Commission Expires: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Issue 1.

Applicant was denied the right to effective assistance of trial counsel under the U.S. Constitution and S.C. Constitution when trial counsel affirmatively misadvised Applicant that there were no witnesses to substantiate Applicant's versions of prior difficulties with the deceased Terrell Huggins that would have mitigated Applicant's punishment or alleviated his criminal liability in Terrell Huggins' death. This renders Applicant's guilty plea involuntary, unknowing and unintelligent.

Issue 2.

Applicant suffered ineffectiveness of counsel in violation of the U.S. Constitution and S.C. Constitution when trial counsel failed to investigate and interview any witnesses who have genuine material facts that impact Applicant's innocence, genuine material facts that mitigate Applicant's punishment, and genuine material facts that mitigate Applicant's criminal liability in this case where such witnesses were readily available and identifiable to trial counsel. This renders Applicant's guilty plea involuntary, unknowing and unintelligent.

Issue 3.

Applicant suffered ineffective assistance of counsel in violations of the U.S. Constitution and S.C. Constitution due to trial counsel lack of investigation trial counsel affirmatively misadvised Applicant that the deceased did not have a weapon at all, when in fact a knife weapon was retrieved from the body of the deceased Terrell Huggins. This evidence is genuine material evidence that mitigates Applicant's criminal liability and punishment and establishes his self-defense claims. This rendered Applicant guilty plea involuntary, unintelligent and unknowing.

Issue 4.

Applicant suffered due process violations of the U.S. Constitution and S.C. Constitution when the state solicitor, the investigating law enforcement agencies, and other state officials unlawfully suppressed and withheld evidence of the knife weapon being recovered from the deceased Terrell Huggins' body. This evidence is genuine material evidence that mitigates Applicant's criminal liability and punishment and establishes self-defense claims. These due process violations renders Applicant's plea involuntary, unintelligent, and unknowing.

Issue 5.

Applicant suffered ineffective assistance of counsel in violation of the U.S. Constitution and S.C. Constitution when trial counsel failed to investigate and review the toxicology and autopsy report of deceased Terrell Huggins and failed to discover the mitigating evidence of high levels of drug hallucinogens in Terrell Huggins' system at the time of his death. This evidence is genuine material evidence in mitigation of Applicant's criminal liability and punishment.

Issue 6.

Applicant suffered due process violations of the U.S. Constitution and S.C. Constitution when the state solicitor, the investigating law enforcement agencies, and other state officials unlawfully suppressed and withheld evidence of the toxicology and autopsy reports of the deceased Terrell Huggins that reveals high levels of drug hallucinogens in his system at the time of his death. This evidence is genuine material evidence in mitigation of Applicant's criminal liability and punishment. These due process violations renders Applicant's plea involuntary, unintelligent, and unknowing.

Issue 7.

Applicant's suffered due Process violations of the U.S. Constitution and S.C. Constitution when the state Solicitor, the investigating law enforcement agencies and other state officials unlawfully suppressed and withheld crucial material evidence from Applicant's discovery, thus thwarting Applicant's ability to full and fair and adequately present his constitutional claims on his Prior Post Conviction Relief hearing, his Prior Direct Appeal, his Prior Writ of Certiorari his Prior Federal Habeas Corpus filing and each and every Prior filing intermediate to these proceedings. These due Process violations are such that it is firm grounds, and good cause shown for Applicant to overcome and and all statute of limitations, waiver defenses, procedural defaults doctrines and exhaustion requirements in state court and in federal court.

Date: 2-21-12

Respectfully submitted  
Jamir Mazzyck  
JAMIR MAZZYCK

Applicant Preserves the right to amend his Pleadings if he deems it necessary in the future.

sworn and subscribes before me this  
20th day of February 2012.  
Susan A. Frye  
Notary Public My Commission Expires  
My Commission Expires: March 5, 2013

11/20/12 sent to my Gen. S.2.

(App 10)

Affidavit of Jamin Maztek CIA No. 2012-CP-38-250

I, Jamin Maztek being sworn and attest, and deposes to all the following:

That there exist evidence of genuine material facts, not previously presented and heard, and I could not have raised this claim in my previous PCR application and for hearing because I did not know of the claims until February 29, 2012. Therefore, I immediately filed my subsequent PCR application pursuant to § 17-27-45(c) which allows for post-conviction relief where there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence and that I filed under this chapter within the one year after the date of actual discovery of the facts and/or after the date when the facts could have been ascertained by the exercise of reasonable diligence and did not have to be filed within one year after conviction.

I, filed my PCR application immediately upon learning of the "newly discovered evidence" and ineffective assistance claim. I was completely unaware at the time when I plead guilty that there were several witnesses who had first hand knowledge of the events leading up to the lawful killing of the deceased. That these witnesses' personal accounts of the facts corroborate my account of the facts and substantiates my claim of self-defense, impact my innocence, mitigates my punishment and my criminal liability. These witnesses spoke with my trial counsel about what they knew and trial counsel Grant refused to interview these witnesses or investigate their account of the facts, and counsel Grant did not inform me that there were many witnesses willing to verify my version of the facts.

The identity and availability of these witnesses who have genuine and material facts of my case, did not come to light until after my plea and PCR proceeding had reached completion. This information was suppressed by trial counsel Grant and the state solicitors, the investigating law enforcement and other state officials unlawfully. Had I been made aware of these witnesses and their material testimony, I would have refused to plea and would have adamantly proceed to trial. This evidence of genuine material facts have not been previously presented and heard by the court, had such evidence been presented and heard, it would have required vacation of my conviction and sentence in the interest of justice. (see attachment of Affidavits). The failure of the presentation of this evidence at my prior PCR cannot be attributed to me, but it attributed to the state, the investigating law enforcement, trial counsel Grant and other state officials illegal suppression of the witnesses identity and substance of the witnesses knowledge.

Inasmuch as they clearly established that I was denied the right to effective assistance of counsel, guaranteed by the 6th and 14th Amendment and the corresponding provisions of the S.C. Constitution and constitute a deprivation of my constitutional rights which renders my plea involuntary, unknowing and unintelligent. Also, it violates my due process constitutional rights which renders my plea involuntary, unknowing and unintelligent.

(App. 11)

Accordingly, this matter must be scheduled for an evidentiary hearing because I meet all criteria and on my merits of my enumerated issues within my Memorandum of Law In Support of my PCR subsequent Application.

*[Signature]*  
s/ *[Signature]*  
Dannin [unclear] #238056

SWORN and Subscribe before me  
this 9<sup>th</sup> day of Nov 2012.

Rudieca Bumpant  
Notary Public

my commission expires: ~~Nov~~ May 26, 2020

cc: Winnia B. Clark

I, Danyel Smith, do hereby being duly sworn attests and deposes to the following:

I have worked in education as a middle school teacher for eight years going on nine. At my current school I am the Department Chairperson and have held this position going on four years now. I have coached three different sports at my school (Softball, Girls Basketball, & Boys Soccer) during the course of each 4 yrs. I am involved in several mentoring programs designed to guide and mold our young men into responsible prospering adults. I have earned my Bachelor's Degree as well as my Massage Therapy Certification over the years.

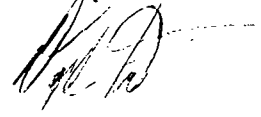
While attending South Carolina State University Jamin and I connected on many different levels one in particular is that we were both out-of-state students. I personally witnessed many lead up events instigated by Terrell Huggins that built a crescendo of tension, fear, restlessness, and frustration among myself and others. Some I remember vividly others vaguely in this affidavit I will recall such events that I recollect vividly.


On January 8, 2004, Jamin Mazyck and I were attending a social club in Orangeburg, S.C. when Terrell Huggins accompanied by two other males approached Jamin in an aggressive combative manner. While cursing and verbally threatening Jamin's life. Terrell Huggins then physically assaulted Jamin. Jamin and I immediately exited the club we got in my vehicle and sped away as quickly as possible to secure our safety. As I drove away we were followed by two speeding cars. After a few lights I was able to identify the occupants in the vehicle as Terrell Huggins and the two other men who were involved assaulting Jamin in the social club. Terrell Huggins and the two other men fired multiple gun shots into my vehicle attempting to take the life of myself and Jamin. I entered the Wal-Mart parking lot to turn around while Jamin called 911 alerting the dispatch. The police apprehended one of the vehicles while the other vehicle with Terrell Huggins got away that night. This incident occurred twelve days before Terrell Huggins death.

After that incident I can recall seeing Jamin wearing a bulletproof vest. Jamin expressed to me that he feared Terrell Huggins would see his plan realized to him and he did not want to die. I empathized fully Jamin's fears and concerns

because I felt the same way and was unsure if I was now a target after my car being riddled with bullets. I attended several of Jamin's court proceedings after his arrest. I tried twice at the very least to speak with Jamin's attorney Carl Grant about my willingness to testify for the defense regarding this incident specifically and about Terrell Huggins threats and actions to take Jamin's life. I provided the detail account of this incident of which I was an eyewitness and victim as well as Jamin Mazyck. I provided attorney Carl Grant with all my contact info at least twice. Attorney Grant never contacted me. I made my follow-up calls to Attorney Grant's office but he has not returned any of my calls.

LINH MY NGUYEN  
NOTARY PUBLIC  
PRINCE GEORGE'S COUNTY  
MARYLAND  
My Commission Expires 01-14-2015

Danyel Smith  


NOTARY:   
DATE: 02/29/2012

(App. 14)

I, Robert Greene, do hereby being duly sworn, depose and attest to the following:

My name is Robert Greene; I am a teacher in Brooklyn, NY. I am a graduate of South Carolina State University and the University of Louisville. I'm also a member of Phi Beta Sigma Inc.

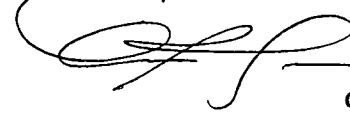
I shared a residence at Russell St. in Orangeburg S.C. in 2003 with Mr. Jamin Mazyck. I was at this residence when I personally witnessed an incident that occurred in which Terrell Huggins threatened to kill Jamin Mazyck. This incident happened on or around the month of December, 2003. Jamin and I were playing the Xbox (video game) when Jamin's phone rang. Jamin answered the phone on speaker so that he could still play the game; he had the controller in his hand. Jamin answered "Hello". Then I heard a voice say "I owe you nigga; I can take your life anytime I want" Jamin then said "who the hell is this"? Then I heard the voice say "Rell nigga, Dayna's man nigga! Next time I see you I'm going to body you nigga! Any place, any time, any where...I'm going to kill you nigga!" Jamin hung up the cell phone and was visibly shaken and afraid. The cell phone rang again, Jamin answered it on speakerphone. It was the voice that identified itself as "Rell" from the previous phone call. The voice said "You can't duck me Jamin, I got bullets with your name on them. I'm going to kill you motherfucker. I'm going to teach you that Rell is a bonafied killer you pussy motherfucker". Jamin then hung up the phone and turned it off. I was shocked and asked Jamin who is Rell? Jamin said that he's the guy Terrell, the one who is dating Dayna. It was then that I fully realized that the voice of Rell to be the voice of Terrell, a guy who I've seen and heard speak in person.

I attended a court hearing regarding Jamin's case after his arrest. It was at this hearing where I spoke to Jamin's lawyer and advised him that I was a material witness and that I have personal knowledge of Terrell Huggins's specific threats to Jamin's life which I've witnessed. I was more than willing to testify and I provided his attorney (Grant) with my contact information. However his attorney never contacted me.

2012 MAY 18 11:08 AM  
KING'S COUNTY COURT  
ORANGEBURG, SOUTH CAROLINA

*Robert Greene*

*May 18, 2012*



Linda P. James  
Notary Public State of New York  
No. 01JA4768727  
Qualified in Kings County  
Commission Expires Sept. 30, 2014

(App. 15)

I, Jovan Lamar McNair, do hereby being duly sworn, attest and depose to the following:

I began my collegiate studies at South Carolina State University in 2002, and graduated with a Bachelor's degree in Business Marketing in 2007, and a Master's in Hotel Management from Strayer University in 2013 in Charlotte, NC. I am also an active member of Phi Beta Sigma Fraternity, Inc.

When I set out my collegiate studies at South Carolina State University in 2002, I developed a friendship with Jamir Mazzyck, and personally witnessed incidents that brought fear, paranoia, and frustration in Jamir's life, specifically an incident that took place in 2004 that Darrell Smith and Jamir Mazzyck became victims of an attempted murder plot carried out by Terrell Huggins.

and his friends. Being able to personally see the bullet holes that were violently administered by Terrell Huggins and his friends into Warrick Smith's car in their attempt to kill Jamin, but also those who were close to him upon the serious danger that he was facing of losing his life by being murdered by Terrell Huggins. Not only did incident resulted in Jamin having to wear a bullet-proof vest, but also Jamin diligently following up with the Orangeburg County Sheriff Department on the incidents. Jamin emotionally displayed his concerns of being a target to be killed by Terrell Huggins and buddies. This had a serious impact on Jamin's movements and participation in school activities and public outings that he had to for a time reside at numerous college friend houses for safety instead of his own residence.

"AFFIDAVIT"

I, Barbara Minnis, residing in at 635 Central Ave, Summerville SC 29483 do hereby affirm under penalty that:

1. I am over 18 years of age and competent enough to testify of my own knowledge and the facts stated herein.
2. All the facts stated by me herein are true, correct and complete to the best of my knowledge and understandings.
3. I am witness to what *Captain Renee Williams* expressed to me on January 21st 2004 the day after the shooting occurred. During our first initial meeting, Captain Renee Williams expressed to me that he was very sorry that my son, *Jamin L. Mazyck* ended up taking matters into his own hands. He further expressed that he wished that "they" (*Police Dept*) would have apprehended the deceased, *Terrell Huggins*, first; being that *Terrell* was already under investigation, and this would have prevented *Jamin Mazyck* from going to jail. *Captain Renee Williams* further indicated that *Jamin Mazyck* came to the police department several times asking if they caught *Terrell Huggins* and later follow up with several phone calls in attempt to create a sense of urgency about this matter.
4. I personally conveyed this information to Attorney Carl Grant and attended all *Jamin Mazyck's* court proceeding and never heard Carl Grant mentioned any of this information to any of the judges presiding over *Jamin's* proceedings. I also willingly volunteered my services to testify on behalf of *Jamin's* defense; however no one reached out to me so that I could communicate the information conveyed to me by *Captain Renee Williams*.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

"2/10/2014" Barbara D. Minnis

Date

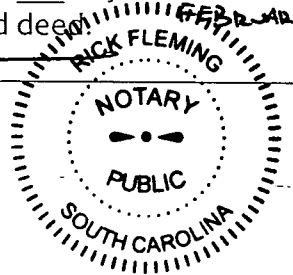
Name

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

(App. 18)

I, the undersigned Notary Public, do hereby affirm that Barbara Minnis personally appeared before me on the 10<sup>th</sup> day of ~~December 2013~~ FEBRUARY 2014, and signed the above Affidavit as his free and voluntary act and deed.

[Signature]  
Notary Public



STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

2012-CP-38-250  
(App 19)

IN THE COURT OF COMMON PLEAS

JAMIN MAZYCK, # 238056  
APPLICANT

MEMORANDUM OF LAW IN  
SUPPORT OF PCR APPLICATION

v.

STATE OF SOUTH CAROLINA

FILED FOR RECORD  
WINNIE R. CLAWSON  
CLERK OF COURT  
ORANGEBURG COUNTY  
2012 MAR 29 PM 1:44

COMES NOW the above named Applicant, Mazzyck, respectfully moving this court to grant an evidentiary hearing on this matter expeditiously based on this PCR application, this PCR "Memorandum of Law in Support of PCR Application," and all other material available to this court. In the alternative, the Applicant moves this court to convene an evidentiary hearing to, at the bare minimum, judicially determine and adjudicate whether or not the Applicant Mazzyck adequately received his statutory and constitutional "bite" at the apple in the presentation and adjudication of these issues at his original PCR evidentiary hearing before PCR Judge Diane Goodstein on June 29, 2007 in the case 06-CP-38-459. The state solicitor's office and state investigative agencies and state record custodians unconstitutionally colluded to illegally suppress material evidence and material documents in this case such that these obstructive action created procedural and constitutional errors preventing Applicant Mazzyck fair and "adequate bite" at the apple with presentation, development and adjudication on the specific issues that follow:

Issue 3: Applicant suffered ineffective assistance of counsel in violation of the U.S. Constitution and S.C. Constitution when due to trial counsel's lack of investigation trial counsel affirmatively misadvised Applicant that the deceased Terrell Huggins did not have a weapon at all, when in fact a knife weapon was documented to have been retrieved from the body of the deceased Terrell Huggins. This evidence is evidence that mitigates Applicant's criminal liability and punishment and establishes Applicant's self-defense claims. This renders Applicant guilty plea involuntary, unintelligent, and unknowing.

Issue 5: Applicant suffered ineffective assistance of counsel in violations of the U.S. Constitution and S.C. Constitution when trial counsel failed to discover and investigate and review the toxicology and autopsy report of the deceased Terrell Huggins and counsel failed to discover the mitigating evidence of high levels of drug hallucinogens consumption in deceased, Terrell Huggins system at the moment of his death. This evidence is material evidence in mitigation of Applicant's criminal liability and punishment, and establishes Applicant's self-defense claims. This renders Applicant's guilty plea involuntary, unintelligent, and unknowing.

Issue 7:

(App 20)

Applicant suffered due process violation of the U.S. Constitution and S.C. Constitution when the state solicitor's office, the investigating law enforcement agencies, the state record custodians and other state officials unconstitutionally colluded to unlawfully suppress and withhold crucial and material evidence from Applicant's discovery; thus thwarting Applicant's "bite" to fully and fairly and adequately present and develop his constitutional and statutory claims on Applicant's prior direct appeal, Applicant's prior post-conviction relief evidentiary hearing, Applicant's prior writ of certiorari, Applicant's prior § 2254 federal habeas corpus filing and each and every prior filing intermediate to this present PCR application. These due process violations by state officials are such that it is firm legal grounds for Applicant to overcome any and all statute of limitations, all waiver defenses, all procedural default doctrines and defenses, and all exhaustion requirements in South Carolina state court and in federal court. The state officials' obstructions are indistinguishable from *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio*, 92 S.Ct 763 violations.

This renders Applicant's guilty plea involuntary, unintelligent, and unknowing.

### ONE YEAR STATUTE OF LIMITATIONS - Inapplicable

With regard to issues #3, #5, #7 the Applicant is solely attacking the procedure used in his case during the June 28, 2007, PCR evidentiary hearing in the case 06-CP-38-459, this being so, the one-year statute of limitation S.C. Code Ann. § 17-27-45(A) is not applicable. In this present PCR application, Applicant claims he was denied his right to adequately raise material testimony and material evidence substantiating the merits of his PCR application at the June 28, 2007 evidentiary hearing because the state solicitor's office, the investigating law enforcement agencies, the state record custodians and other state officials unconstitutionally colluded to unlawfully suppress and withhold crucial and material evidence from Applicant's discovery thus thwarting Applicant's "bite" at the apple to fully and fairly and adequately develop and present his constitutional claims at Applicant's original June 28, 2007 PCR evidentiary hearing. See *Osborn v. State*, 523 S.E2d 753.

The essence of Applicant's present PCR application, with regard to issues #3, #5 and #7, is that he is challenging the inadequacies of his original June 28, 2007 PCR evidentiary hearing to provide him his full "bite" of the apple, that these inadequacies are directly due to unconstitutional collusion and illegal evidence suppression by the state solicitor's office, the investigating law enforcement agencies, the state record custodians and other state offices. Most importantly, because Applicant is directly attacking the original June 28, 2007 PCR's procedural and structural underpinning, and Applicant is directly attacking the denial of his full "bite" of

the apple directly cause by unconstitutional collusion and illegal evidence suppression by state officials, and Applicant is not attacking his conviction and sentence nor is he attacking under new developmental decisions of the Supreme Court, this makes the statute of limitations outlined in § 19-27-45(A) and (B) inapplicable to his current PCR application with regard to issues # 3, 5 and # 7. See Odum v. State, 523 SE2d 753

### SUCCESSIVE PCR APPLICATION - Inapplicable

The present PCR application that this Applicant has filed is not "successive" within the meaning of the Uniform Post-Conviction Procedure Act of South Carolina and the respective case laws developed regarding "successive" PCRs. Applicant Mazzyk institutes this subsequent PCR application in order to get his "one bite at the apple" to a full review and full adjudication on the merits of the original June 28, 2007 PCR application, of which he is fundamentally entitled to under South Carolina statutory law, the Due Process Clause of U.S. Constitution and the Uniform Post-Conviction Procedure Act of South Carolina.

This Applicant is not seeking more than he is entitled to have as a right. This Applicant simply seeks to fully and fairly and adequately present his meritorious constitutional claims to the South Carolina state courts and have the South Carolina state courts adequately hear, adequately determine, and adequately adjudicate the merits of the original PCR application in the case 06-CP-38-459 unhampered and unthwarted by the unconstitutional collusion and illegal suppression of material evidence by state officials.

The Applicant Mazzyk filed an original PCR application and had an evidentiary hearing on this original application in the case: 06-CP-38-459 on June 28, 2007. At the Applicant's original June 28, 2007 PCR evidentiary hearing in the case 06-CP-38-459 the Attorney General office colluded with the state solicitor's office, the investigating law enforcement agencies, the state record custodians and other state officials to deliberately deceive the PCR court Judge Diane Goodstein and Applicant Mazzyk by the presentation of known false evidence at the June 28, 2007 PCR evidentiary hearing to mislead the PCR Judge Diane Goodstein and Applicant Mazzyk to believe the non-existence of evidence which is material to the Applicant Mazzyk entitlement to relief on his PCR issues, and material to mitigate Applicant's criminal liability and material to mitigate Applicant's Punishment. See Brady v. Maryland, 373 U.S. 83, 87; also see Giglio v. United States, 405 U.S. 150.

The S.C. Attorney General Office violated the Applicant's statutory rights and Due Process rights under the U.S. Constitution by deliberate deception by the presentation of known false evidence and false testimony. For example, regarding to Issue #3, the Attorney General called Trial Counsel Carl Grant to the witness stand at the original PCR evidentiary hearing on June 28, 2007 and had him testify under oath falsely that no weapon was recovered from the decedent Terrell Huggins:

Trial Counsel Grant: How could I not have concern over a man who shot somebody and killed an unarmed man and then shot an unarmed lady.

PCR attorney Shadd: Was he really unarmed? Isn't it true that there was a weapon found on Mr. Huggins.

Trial Counsel Grant: There was no evidence of any weapon present that we discovered.  
[see 06-CP-38-459 PCR transcript Page 4 Line 18-24].

Also, the following testimony was given by this Applicant at the original PCR evidentiary hearing on June 28, 2007:

PCR attorney Shadd: what did the state interfere on that Mr. Grant didn't address?

Applicant Mazvek: By not fully disclosing my trial counsel or my Rule 5 Brady material that it could have gave him.

PCR attorney Shadd: For example, is it the same stuff you're talking about, the autopsy and medical records.

Applicant Mazvek: Yes. [see 06-CP-38-459 PCR transcript Page 117 Line 8-14].

These are two examples of where the Attorney General allowed false testimony to be sworn in front of them by trial counsel Grant at the original June 28, 2007 PCR evidentiary hearing, and saw the effect of this false testimony in misleading and deceiving the PCR Judge Goodstein and Applicant Mazvek but the Attorney General stood silent and allowed this deception to permeate the original PCR application and denied Applicant Mazvek of his "bite" at the apple.

The Applicant Mazvek did raise issues #3, #5 and #7 in his original PCR application in the case 06-CP-38-459, but the Respondent unconstitutionally obstructed and illegally manipulated the proceedings denying the Applicant's adequate "bite" at the apple, therefore Applicant is not procedurally barred to bring these same issues before the South Carolina State Court in a subsequent PCR application. The statute S.C. Code Ann. § 17-27-90 does not bar this subsequent PCR applications. The Applicant is

(App 23)  
bringing this Present PCR application to challenge the PCR Procedure in his original PCR evidentiary hearing in the case 06-CP-38-459 on June 28, 2007. See State v. Odorn, also see Roston v. State, 528 SE2d 422, and Carter v State, 362 SE2d 20, Washington v. State 478 SE2d 833, Williams v. State, 583 SE2d 52.

The Applicant is entitled to an evidentiary hearing on this Present PCR application as a matter of fact and as a matter of law and as a matter of statutory right and constitutional right.

### NEWLY DISCOVERED EVIDENCE - Applicable

With regard to the issues #1, #2, #4, #6 and #7 the Applicant is proceeding pursuant to S.C. Code Ann. § 17-27-45 (c), which allows for post-conviction relief where there is evidence of material fact 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. The Applicant has met this criteria, when the Applicant learned of the "newly discovered evidence" of issues #1, #2, #4, #6 and #7. Accordingly, this matter must be scheduled for an evidentiary hearing on the merits of Applicant's enumerated issues #1, #2, #4, #6 and #7.  
See Coats v. State, 575 SE2d 557 and Tilley v. State, 511 SE2d 689.

1 THE COURT: Wait a minute now you got to  
2 slow down a little bit.

3 THE WITNESS: Okay. Another claim that I  
4 raised deals with the fact that my trial counsel  
5 ability to exercise effective assistance of counsel  
6 was greatly affected by State interference because --  
7 BY MR. SHADD:

8 Q. What did the State interfere on that  
9 Mr. Grant didn't address?

10 A. By not fully disclosing my trial counsel or  
11 my Rule 5 Brady material that it could have gave him.

12 Q. For example, is it the same stuff you're  
13 talking about, the autopsy and medical records?

14 A. Yes.

15 Q. So we've already addressed that?

16 THE COURT: And the medical records.

17 THE WITNESS: And the medical records, yes.

18 THE COURT: Okay.

19 THE WITNESS: And also that in order for my  
20 trial counsel to be effective, he must have access to  
21 all and any evidence, information that is under the  
22 actual or constructive possession of the State. My  
23 trial counsel cannot tell me that his failure to  
24 pursue a certain line of defense was the product of a  
25 tactical or strategically sound choice or decision

EXHABIT 2

1 and him offering a self-defense defense?

2 A. Well, when you say on the same page, what  
3 do you mean by that.

4 Q. You all were in agreement that you all were  
5 planning on going to trial -- at least initially  
6 y'all were planning on going to trial based on the  
7 self-defense?

8 A. I was preparing on going to trial and  
9 representing Mr. Mazyck he decided to plead guilty.

10 Q. Isn't it true that you told Mr. Mazyck that  
11 you had no real concern regarding the murder charge  
12 or even the assault, the aggravated assault charge  
13 regarding Ms. Williams, but your issue was with the  
14 burglary charge whether he actually forced himself  
15 into it, into the apartment?

16 A. No, sir. That's absolutely not true.

17 Q. Okay.

18 A. How could I not have concern over a man who  
19 shot somebody and killed an unarmed man and then shot  
20 an unarmed lady.

21 Q. Was he really unarmed? Isn't it true that  
22 there was a weapon found on Mr. Huggins?

23 A. There was no evidence of any weapon present  
24 that we discovered.

25 Q. Okay. Isn't it true that there's case law

(App. 26)

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )  
  
Jamin Mazyck, # 238056, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

2012-CP-38-0250

**RETURN AND MOTION TO  
DISMISS**

In response to the post-conviction relief application filed February 22, 2012, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted during the March 2004 term of the Orangeburg County Grand Jury for Burglary -1<sup>st</sup> Degree (2004-GS-38-0345); Murder (2004-GS-38-0346); and Assault and Battery with Intent to Kill (2004-GS-38-0347). The Applicant was represented by Carl B. Grant, Esquire. On May 26, 2005, the Applicant pled guilty to Burglary, First Degree, Voluntary Manslaughter and Assault and Battery with Intent to Kill. The Honorable James C. Williams, Jr. sentenced the Applicant to confinement for a period of twenty-five years for Burglary – 1<sup>st</sup> Degree, twenty-five years for Voluntary Manslaughter, and twenty years for Assault and Battery with Intent to Kill, with the sentences to be served concurrently. The Applicant did not appeal his convictions or sentences.

The Applicant subsequently filed an application for post-conviction relief on April 19, 2006 (C.A. No. 2006-CP-38-459). The Applicant raised the following issues in his first application:

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.
3. Lack of subject matter jurisdiction.
4. Failure to file a direct appeal.

The State made its Return on or about February 16, 2007. An amended application was submitted on or about July 28, 2007 alleging ineffective assistance of counsel during pretrial and the plea colloquy. An evidentiary hearing was convened on June 28, 2007, before the Honorable Diane S. Goodstein. Applicant was present and represented by James Shadd, III, Esquire. Judge Goodstein denied the application by written order dated September 7, 2007 and filed September 12, 2007. A timely Notice of Appeal was filed. By Order dated October 7, 2009, the South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari. The remittitur was sent on November 4, 2009.

## II.

In his current application for post conviction relief, submitted alongside a memorandum of law in support of his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "New trial based on after-discovered evidence."
2. "Applicant was denied the right to effective assistance of trial counsel under the U.S. Constitution and S.C. Constitution when trial counsel affirmatively misadvised Applicant that there were no witnesses to substantiate Applicant's versions of prior difficulties with the deceased Terrell Higgins that would have mitigated Applicant's punishment or alleviated his criminal liability in Terrell Higgins death. This renders Applicant's guilty plea involuntary, unknowing and unintelligent."
3. "Applicant suffered ineffectiveness of counsel in violation of the U.S. Constitution and S.C. Constitution when trial counsel failed to investigate and interview any witnesses who have genuine material facts that impact applicant's innocence, genuine material facts that mitigates applicant's punishment, and genuine material facts that mitigates applicant's criminal liability in this case where such witnesses were readily available and identifiable to trial counsel"
4. "Applicant suffered ineffective assistance of counsel in violations of the U.S. Constitution and S.C. Constitution due to trial counsel lack of

- investigation trial counsel affirmatively misadvise applicant that the deceased did not have a weapon at all, when in fact a knife weapon was retrieved from the body of the deceased Terrell Higgins.”
5. “Applicant suffered due process violations of the U.S. Constitution and S.C. Constitution when the state solicitor, the investigating law enforcement agencies, and other state officials unlawfully suppressed and withheld evidence of the knife weapon being recovered from the deceased Terrell Higgins.”
  6. “Applicant suffered ineffective assistance of counsel in violation of the U.S. Constitution and S.C. Constitution when trial counsel failed to investigate and review the toxicology and autopsy report of the deceased Terrell Higgins and failed to discover the mitigating evidence of high levels of drug hallucinogens in Terrell Higgins system at the time of his death.”
  7. “Applicant suffered due process violations of the U.S. Constitution and S.C. Constitution when the state solicitor, the investigating law enforcement agencies, and other state officials unlawfully suppressed and withheld evidence of the toxicology and autopsy reports of the deceased Terrell Higgins that reveals high levels of drug hallucinogens in his system at the time of his death.”
  8. “Applicant suffered due process violations of the U.S. Constitution and S.C. Constitution when the state solicitor, the investigating law enforcement agencies, and other state officials unlawfully suppressed and withheld evidence crucial material evidence from Applicant’s discovery, thus thwarting applicant ability to fully and fairly and adequately present his constitutional claims on his prior Post-Conviction Relief hearing, his prior Direct appeal, his prior writ of certiorari, his prior federal habeas corpus filing and each and every prior filing intermediate to these proceedings.”

For the purpose of this Return, the Respondent incorporates the Orangeburg County Clerk of Court records, the South Carolina Department of Corrections’ records, and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction

relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) 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 the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to 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." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-

Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a)  
reads as follows:

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

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on May 26, 2005. This Application was filed on February 6, 2012, almost six (6) after the statutory filing period had expired.

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

V.

The Applicant's claim is an allegation that newly discovered or after discovered evidence exists. The Applicant waived his right to a jury trial. If the Court determines that the Applicant knowingly and voluntarily pled guilty, the plea waives any non-jurisdictional defects and

defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975).

Furthermore, this contention is vague and general in its terms. There are no specific allegations of the nature of the evidence. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. Most importantly, the "new evidence" offered by the Applicant is not "material to the issue of guilt or innocence," and probably would not "change the result if a new trial was had." Hayden, Id. The Court should summarily dismiss this allegation.

VI.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

[Signatures on next page.]

(App. 32)

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY ELLIOTT  
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN  
Assistant Attorney General

By: Megan E. Harrigan  
Attorneys for the Respondents

Post Office Box 11549  
Columbia, South Carolina 29211

September 13, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	2012-CP-38-0250
Jamin Mazyck, # 238056,	)	
	)	
Applicant,	)	
	)	
v.	)	<b>CONDITIONAL ORDER OF DISMISSAL</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

---

This matter comes before this Court by way of an application for post-conviction relief filed February 22, 2012. In its return, the Respondent requested the application be summarily dismissed.

**PROCEDURAL HISTORY**

Before this Court are the records of the Orangeburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections and records from Applicant's previous application for post-conviction relief. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. The Applicant was indicted at the March 2004 term of the Orangeburg County Grand Jury for Burglary - 1<sup>st</sup> Degree (2004-GS-38-0345); Murder (2004-GS-38-0346); and Assault and Battery with Intent to Kill (2004-GS-38-0347). The Applicant was represented by Carl B. Grant, Esquire. On May 26, 2005, the Applicant pled guilty to Burglary, First Degree, Voluntary Manslaughter and Assault and Battery with Intent to Kill. The Honorable James C. Williams, Jr. sentenced the Applicant to confinement for a period of twenty-five years for Burglary – 1<sup>st</sup> Degree, twenty-five years for Voluntary Manslaughter and twenty years for Assault and Battery with Intent to Kill, with the sentences to be served concurrently. The Applicant did not

appeal his convictions or sentences.

The Applicant subsequently filed an application for post-conviction relief on April 19, 2006 (C.A. No. 2006-CP-38-459). The Applicant raised the following issues in his first application:

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.
3. Lack of subject matter jurisdiction.
4. Failure to file a direct appeal.

The State made its Return on or about February 16, 2007. An amended application was submitted on or about July 28, 2007 alleging ineffective assistance of counsel during pretrial and the plea colloquy. An evidentiary hearing was convened on June 28, 2007, before the Honorable Diane S. Goodstein. Applicant was present and represented by James Shadd, III, Esquire. Judge Goodstein denied the application by written order dated September 7, 2007 and filed September 12, 2007. A timely Notice of Appeal was filed. By Order dated October 7, 2009, the South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari. The remittitur was sent on November 4, 2009.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "New trial based on after-discovered evidence."
2. "Applicant was denied the right to effective assistance of trial counsel under the U.S. Constitution and S.C. Constitution when trial counsel affirmatively misadvised Applicant that there were no witnesses to substantiate Applicant's versions of prior difficulties with the deceased Terrell Higgins that would have mitigated Applicant's punishment or alleviated his criminal liability in Terrell Higgins death. This renders Applicant's guilty plea involuntary, unknowing and unintelligent."
3. "Applicant suffered ineffectiveness of counsel in violation of the U.S. Constitution and S.C. Constitution when trial counsel failed to investigate and interview any witnesses who have genuine material facts that impact applicant's innocence, genuine material facts that mitigates applicant's punishment, and genuine material facts that mitigates applicant's criminal

liability in this case where such witnesses were readily available and identifiable to trial counsel”

4. “Applicant suffered ineffective assistance of counsel in violations of the U.S. Constitution and S.C. Constitution due to trial counsel lack of investigation trial counsel affirmatively misadvise applicant that the deceased did not have a weapon at all, when in fact a knife weapon was retrieved from the body of the deceased Terrell Higgins.”
5. “Applicant suffered due process violations of the U.S. Constitution and S.C. Constitution when the state solicitor, the investigating law enforcement agencies, and other state officials unlawfully suppressed and withheld evidence of the knife weapon being recovered from the deceased Terrell Higgins.”
6. “Applicant suffered ineffective assistance of counsel in violation of the U.S. Constitution and S.C. Constitution when trial counsel failed to investigate and review the toxicology and autopsy report of the deceased Terrell Higgins and failed to discover the mitigating evidence of high levels of drug hallucinogens in Terrell Higgins system at the time of his death.”
7. “Applicant suffered due process violations of the U.S. Constitution and S.C. Constitution when the state solicitor, the investigating law enforcement agencies, and other state officials unlawfully suppressed and withheld evidence of the toxicology and autopsy reports of the deceased Terrell Higgins that reveals high levels of drug hallucinogens in his system at the time of his death.”
8. “Applicant suffered due process violations of the U.S. Constitution and S.C. Constitution when the state solicitor, the investigating law enforcement agencies, and other state officials unlawfully suppressed and withheld evidence crucial material evidence from Applicant’s discovery, thus thwarting applicant ability to fully and fairly and adequately present his constitutional claims on his prior Post-Conviction Relief hearing, his prior Direct appeal, his prior writ of certiorari, his prior federal habeas corpus filing and each and every prior filing intermediate to these proceedings.”

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court finds that the Applicant’s allegations are without merit. The Applicant’s claim is an allegation that newly discovered or after discovered evidence exists. This allegation is not cognizable in the Applicant’s post-conviction relief action. The Applicant waived his right to a jury trial. If the Court determines that the Applicant knowingly and voluntarily pled guilty, the plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the

evidence. See Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975).

Furthermore, this contention is vague and general in its terms. There are no specific allegations of the nature of the evidence. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and
- (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. Most importantly, the "new evidence" offered by the Applicant is not "material to the issue of guilt or innocence," and probably would not "change the result if a new trial was had."

Hayden, Id. Accordingly, the Application is denied and dismissed.

This Court finds that the current application for post-conviction relief must also be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann.

§17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous

application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish 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. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice, 305 S.C. 448, 409 S.E.2d 392; Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834.

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

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

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on May 26, 2005. This Application was filed on February 22, 2012, which was almost six (6) after the statutory filing period had expired.

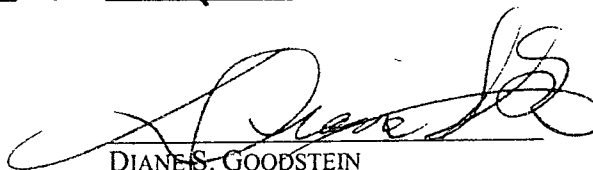
A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (1985) authorizes the Court to "grant a motion by

either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The 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. The Applicant shall file any reasons he may have, factual or legal, with the Orangeburg County Clerk of Court and shall serve opposing counsel at the following address:

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

AND IT IS SO ORDERED this 24<sup>th</sup> day of September, 2012.



DIANE S. GOODSTEIN  
Chief Judge for Administrative Purposes  
First Judicial Circuit

Summerville, South Carolina.

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURGA

(App. 39)  
IN THE COURT OF COMMON PLEAS  
CIA NO: 2012-CP-38-250

JAMIN MAZYCK, # 238056  
Applicant,

Memorandum of Law In  
Opposition to Respondent Order  
of Dismissal.

v.

STATE OF SOUTH CAROLINA

Applicant, Jamin Mazyck, hereby submits this Memorandum of Law In Opposition to Respondent Order of Dismissal and would show the Court:

Applicant must be scheduled for an evidentiary hearing on this matter expeditiously based on his PCR application, his PCR "Memorandum of Law in Support of PCR," and all other material available to this honorable court. In the alternative, the Applicant moves this court to convene an evidentiary hearing to at the bare minimum, judicially determine and adjudicate whether or not the Applicant Mazyck adequately received his statutory and constitutional "bite" at the apple in the presentation and adjudication of these issues at his original PCR evidentiary hearing before PCR Judge Diane Goodstein on June 28, 2007 in the case 06-CP-38-459, when the state solicitor's office and state investigative agencies and state record custodians unconstitutionally colluded to illegally suppress material evidence and material documents in Applicant case such that these obstructive action created procedural and constitutional errors preventing Applicant a fair and "adequate bite" at the apple with presentation, development and adjudication on the specific issues #3, #5 and #7 within Applicant Mazyck "Memorandum of Law In Support of PCR Application and Page 2 and 3 of Respondents Return and Motion to Dismiss. Therefore, this renders Applicant's Guilty Plea involuntary, unintelligent, and unknowing and for these foregoing reason Respondent Return and Motion to Dismiss should be denied and applicant granted an evidentiary hearing in the interest of Justice.

II.

The Respondents ask this Honorable Court to summarily dismiss Applicant Application because it is successive to the previous application for post-conviction relief. (CRUD 6.3) However, the present PCR application that applicant has filed is not "successive" within the meaning of the Uniform Post-Conviction Procedure Act of South Carolina and respective case laws developed regarding "successive" PCRs. Applicant institutes this subsequent PCR application in order to get his "one bite at the apple" to a full review and full

adjudication on the merits of the original June 28, 2007 PCR application, of which he is fundamentally entitled to under South Carolina statutory law, the Due Process Clause of U.S. Constitution and the Uniform Post-Conviction Procedure Act of South Carolina.

This Applicant is not seeking more than he is entitled to have as a right. This Applicant simply seeks to fully and fairly and adequately present his meritorious constitutional claims to the South Carolina state courts and have the South Carolina state adequately hear, adequately determine, and adequately adjudicate the merits of the original PCR application in the case 06-CP-38-459 unhampered and unthwarted by the unconstitutional collusion and illegal suppression of material evidence by state officials.

Applicant filed an original PCR application and had an evidentiary hearing on his original application in the case: 06-CP-38-459 on June 28, 2007. At the applicant's original June 28, 2007 PCR evidentiary hearing in the case: 06-CP-38-459, the Attorney General office colluded with the state solicitor's office, the investigating law enforcement agencies, the state record custodians and other state officials to deliberately deceive the PCR court Judge Diane Goodstein and Applicant by the presentation of known false evidence at the June 28, 2007 PCR evidentiary hearing to mislead the PCR Judge Diane Goodstein and Applicant to believe the non-existence of evidence which is material to the applicant entitlement to relief on his PCR issues, and material to mitigate Applicant's criminal liability and material to mitigate Applicant's punishment. See Brady v. Maryland, 373 U.S. 83, 87; also See Giglio v. United States, 405 U.S. 150.

The S.C. Attorney General office violated the Applicant's statutory rights and Due Process rights under the U.S. Constitution by deliberate deception by the presentation of known false evidence and false testimony. For example, regarding to Issue #5, the Attorney General called Trial Counsel Carl Grant to the witness stand at the original PCR evidentiary hearing on June 28, 2007 and had him testify under oath falsely that no weapon was recovered from the decedent Terrell Huggins:

Trial Counsel Grant:

How could I not have concern over a man who shot somebody and killed an unarmed man and then shot an unarmed lady.

PCR attorney shadd:

was he really unarmed? Isn't it true that there was a weapon found on Mr. Huggins.

Trial Counsel Grant:

There was no evidence of any weapon present that we discovered.

[See 06-CP-38-459

PCR transcript Page 14 Line 18-24].

Also, the following testimony was given by this Applicant at the original PCR evidentiary hearing on June 28, 2007:

PCR attorney Shadd:

what did the state interfere on that Mr. Grant didn't address?

Applicant Maztek:

By not fully disclosing my trial Counsel or my Rule 5 Brady material that it could have gave him.

PCR attorney Shadd:

For example, is it the same stuff you're talking about, the autopsy and medical records.

Applicant Maztek:

Yes. [see 06-CP-38-459 PCR transcript page 17 line 9-14]

These are two example of where the Attorney General allowed false testimony to be swore in front of them by trial counsel Grant at the original June 28, 2007 PCR evidentiary hearing, and saw the effect of this false testimony in misguiding and deceiving the PCR Judge Goodstein and Applicant, but the Attorney General stood silent and allowed this deception to permeate the original PCR application and denied Applicant of his "bite" at the apple.

Applicant did raise issues #3, #5, and #7 in his original PCR application in the case 06-CP-38-459, but the Respondent unconstitutionally obstructed and illegally manipulated the proceedings denying the Applicant's adequate "bite" at the apple, therefore Applicant is not procedurally barred to bring these same issues before the South Carolina State Court in a subsequent PCR application. The statute S.C. Code Ann. § 17-27-90 does not bar this subsequent PCR applications. Applicant is bringing this present PCR application to challenge the PCR procedure in his original PCR evidentiary hearing in the case 06-CP-38-459 on June 28, 2007. See state v. Ddom, also see Poston v. State, 528 SE2d 422, and Carter v. State, 362 SE2d 20, Washington v. State, 583 SE2d 52.

The Applicant is entitled to an evidentiary hearing on this present PCR application as a matter of fact and as a matter of law and as a matter of statutory right and constitutional right.

III.

The Respondents also submits that Applicant application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 and § 17-27-4(a). Applicant will bring to this Honorable court attention regarding issues #3, #5, #7 that Applicant is solely attacking the procedure used in his case during the June 28, 2007, PCR evidentiary hearing in the case 06-CP-38-459, this being so, the one-year statute of limitation S.C. Ann § 17-27-45(A) as Respondents knows is not applicable. In this present PCR application, Applicant claims he was denied his right to adequately raise genuine material testimony and genuine material evidence substantiating the merits of his PCR application at the June 28, 2007 evidentiary hearing because the state solicitor's office, the investigating law enforcement agencies, the state record custodians and other state officials unconstitutionally colluded to unlawfully suppress and withhold crucial and

(App. 42)

genuine material evidence from Applicant's discovery thus thwarting Applicant's "bite" at the apple to fully and fairly and adequately develop and present his constitutional claims at Applicant's original June 28, 2007 PCR evidentiary hearing. See Ddom v. State, 523 SE2d 753.

The essence of Applicant's present PCR application, with regard to issues #3, #5 and #7, is that he is challenging the inadequacies of his original June 28, 2007 PCR evidentiary hearing to provide him his full "bite" of the apple, that these inadequacies are directly due to unconstitutional collusion and illegal evidence suppression by the state solicitor's office, the investigating law enforcement agencies, the state record custodians and other state officials and offices. Most importantly, because Applicant is directly attacking the original June 28, 2007 PCR's procedural and structural underpinning, and Applicant is directly attacking the denial of his full "bite" of the apple directly causing by unconstitutional collusion and illegal evidence suppression by state officials, and Applicant is not attacking his conviction and sentence nor is he attacking under new developmental decisions of the Supreme Court, this makes the statute of limitations outlined in § 17-27-45(A) and (B) inapplicable to his current PCR application with regard to issues #3, #5 and #7. See Ddom v. State, 523 SE2d 753. Therefore, Applicant requests that this Court deny Respondent's Return and Motion to Dismiss and grant Applicant to an evidentiary hearing on this present PCR application as a matter of fact and as a matter of law and as a matter of statutory right and constitutional right.

V.

Furthermore, Applicant Newly Discovered Evidence regarding issues #1, #2, #4, #6 and #7, the Applicant is proceeding pursuant to S.C. Code Ann. § 17-27-45(c), which allows for Post-Conviction Relief where there is genuine evidence of material fact 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 and did not have to be filed within one year after conviction. (See attachment of Affidavits) The Applicant has met this criteria, when Applicant learned of the "newly discovered evidence" of issues #1, #2, #4, #6 and #7 immediately filed an PCR application. Accordingly, the "new evidence" offered by Applicant is "material to the issue of guilt or innocence," and would "change the result if a new trial was had." Most importantly, this matter must be scheduled for an evidentiary hearing on the merits of Applicant's enumerated issues #1, #2, #4, #6, and #7. See Coats v. State, 575 SE2d 557 and Tilley v. State, 511 SE2d 689.

WHEREFORE, Applicant is entitled to an evidentiary hearing on this Present PCR application as a matter of fact and as a matter of law and as a matter of statutory right and constitutional right. Respondents Return and Motion Dismiss should be denied.

Respectfully submitted,  
Jamin Mazzyk  
Jamin Mazzyk

FILED FOR PROB  
CLERK OF COURT  
ORANGEBURG, SC  
NOV 15 AM 11:08

November 8, 2012

Certificate of Service  
2012-CP-38-0250

I, Jamin Mazzyk have this day served a copy of the Memorandum of Law In Opposition to Respondents Order of Dismissal in the above-captioned matter on the following Person by depositing same in the United States mail, at Lieber Correctional Institution Postage Prepaid:

- 1) Megan E. Harrigan  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211-1549

Dated this 8<sup>th</sup> day of November, 2012

Jamin Mazzyk  
JAMIN MAZZYK, Applicant

(App. 44)

To: The Honorable Winnifia B. Clark  
Clerk of Court  
Orangeburg County  
Orangeburg, SC 29116

Date May 17, 2013

Re: 2012-CP-38-250

FILED FOR RECORD  
WINNIFIA B. CLARK  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

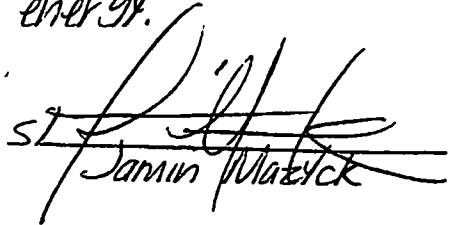
2013 MAY 22 AM 12: 21

W

Dear Ms. Clark.

Enclosed is a Motion To Amend Applicant's Response To Respondent's Return and Motion To Dismiss that needed to be filed within your office. Also can you please send me a "clocked stamp" copy for my personal file.

Thanking you in advance for your time and energy.

  
ST  
Jammin M. [unclear]

ATTEST: TRUE COPY

Winnifia B. Clark  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURGA  
Jamir Mazick, # 238056  
Applicant.

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT  
2012-CP-38-0250

v.  
State of South Carolina,  
Respondent.

MOTION TO AMEND APPLICANT'S RESPONSE  
TO RESPONDENT'S RETURN AND MOTION  
TO DISMISS

FILED FOR RECORD  
MAY 22 AM 12:22

COMES NOW, Applicant through his undersigned counsel and Amends this response in opposition to the Respondent's Return and Motion to Dismiss filed on or about September 13, 2012. Applicant respectfully moves this honorable court to grant an evidentiary hearing on this matter ~~expediently~~ based on new relevant case law, McCoy v. State 401 S.C. 363, 737 SE2d 623 @ 626-628 (2013), Applicant PCR application, "Memorandum of Law In Support of PCR Application," and all other material available to this court.

Respondent argues that Applicant's PCR should be dismissed because it is successive to the previous application for post-conviction relief. The Applicant bears the burden of showing that the allegations could not have been raised previously. Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Failure to comply with the filing procedures of the Uniform Post-conviction Procedure Act, S.C. Code Ann. § 17-27-10 to 160 S.C. Code Ann. § 17-22-45 (a). Applicant's prior PCR action was filed after the statute of limitations had expired. That Applicant has not shown that the alleged evidence meets the "new evidence" offered by the Applicant is not "material to the issue of guilt or innocence," and probably would not "change the result if a new trial was had."

Applicant argues his second PCR application should not be summarily dismissed and ask this court to grant this matter for a hearing because genuine issues of material fact exist as to whether applicant's claim is successive or barred by the statute of limitations.

ATTEST: TRUE COPY  
Wingja B. Clark  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

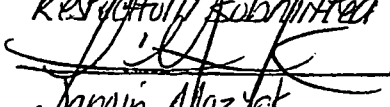
A PCR application ordinarily must be filed within one year after a conviction or, if a direct appeal is taken, one year after the resmittitur is sent to the trial court. S.C. Code Ann. § 17-27-45(A)(2003). However, section 17-27-45(C) provides that if a PCR applicant discovers "material facts not previously presented and heard that required vacation of [his] conviction or sentence," he may file a PCR application "within one year after the date of actual discovery... or after the date when the facts could have been ascertained by the exercise of reasonable diligence."

"When considering the state's motion for summary dismissal of an application for post-conviction relief, where no evidentiary hearing has been held, the judge must assume facts presented by the applicant are true and view those facts in light most favorable to applicant. Code 1976 § 17-27-80. Where post-conviction applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive applications and those facts are not conclusively refuted by the record before the trial court, a question of fact is raised which can only be resolved by a hearing.

Learmon v. State, 363 S.C. 432, 434, 611 S.E2d 494, 495 (2005) (Citing S.C. Code Ann § 17-27-80). The [PCR] court may grant this motion and schedule for an evidentiary hearing because applicant clearly meets all criteria and on applicants merits and enumerated issues within applicants PCR application, and "Memorandum of Law In Support of PCR Application," and all other material available to this court. McClay v. State, 401 S.C. 363, 737 S.E2d 623, 626-28. (2013)

For all the foregoing reasons, Applicant requests that Respondents motion for dismissal be denied and applicant be granted an evidentiary hearing on this matter expeditiously.

May 17, 2013

Respectfully submitted,  
  
Jamir Afazek  
L.C.I. / EA-3  
P.O. Box 205  
Ridgeway, SC 29472

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

Jamin Mazjek, # 238056

Applicant,

v.

State of South Carolina  
Respondent.

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

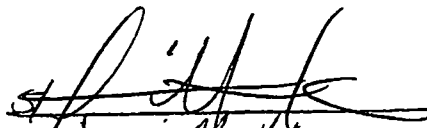
2012-CP-38-0250

CERTIFICATE OF SERVICE

FILED RECORD  
WINNIE W. AIRK  
CLERK OF COURT  
ORANGEBURG, SC  
2013 MAY 23  
AM 12: 21

This is to certify that I, Jamin Mazjek (applicant) have this day served a copy of the applicants Amended Response To Respondent's Return And Motion To Dismiss by mailing a copy in Lieber Correctional Institution mailroom. Postage Prepaid to:

Meghan E. Harrigan  
Office of Attorney General  
Columbia, SE 29211

  
Jamin Mazjek  
L.C.J. 1EA-3  
P.O. Box 205  
Ridgerville, SE 29472

May 17, 2013  
Ridgerville, SC

ATTEST: TRUE COPY

Wingie B. Clark  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ORANGEBURG )  
 )  
 Jamin Mazyck, #238056 )  
 )  
 Applicant )  
 )  
 -vs- )  
 )  
 State of South Carolina )  
 )  
 Respondent )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FIRST JUDICIAL CIRCUIT  
 2012-CP-38-0250  
 )  
**APPLICANT'S RESPONSE TO  
 RESPONDENT'S RETURN AND  
 MOTION TO DISMISS**

Comes Now, Applicant through his undersigned counsel and files this response in opposition to the Respondent's Return and Motion to Dismiss filed on or about September 13, 2012.

Applicant filed his initial Post Conviction Relief application on April 19, 2006 (C.A.2006-CP-38-459). In his initial application, Applicant alleged:

1. Ineffective assistance of Counsel.
2. Involuntary guilty plea
3. Lack of subject matter jurisdiction.
4. Failure to file a direct appeal

The State filed its Return on or about February 16, 2007. Applicant filed an amended application on or about July 28, 2007 alleging ineffective assistance of counsel. An evidential hearing was convened on June 28, 2007 before the Honorable Diane Goodstein. By order dated September 7, 2007, Judge Goodstein denied the application .

Applicant filed his current application for post conviction relief, on February 28, 2012. Applicant asserts in his current application that he is being held unlawful for the following:

1. "New trial based on after-discovered evidence."
2. "Applicant was denied the right to effective assistance of trial counsel under the U.S. Constitution and S.C. Constitution when trial counsel affirmatively misadvised Applicant that there were no witnesses to substantiate his versions of prior difficulties with the deceased Terrell Huggins that a would have mitigated Applicant's punishment or alleviated his criminal liability in Terrell Higgins death. This renders Applicant's guilty plea involuntary, unknowing and unintelligent."
3. "Applicant suffered ineffectiveness of counsel in violation of the U. S. Constitution and S.C. Constitution when trial counsel failed to investigate and interview any witnesses who have genuine material facts that impact applicant's innocence, genuine material facts that mitigates applicant's punishment, and genuine material facts that mitigates applicant's punishment, and genuine material facts that mitigates applicant's criminal liability in this case where such witnesses were readily available and identifiable to trial counsel"

S.C. Constitution due to trial counsel lack of investigation trial counsel affirmatively misadvise applicant that the deceased did not have a weapon at all, when in fact a knife weapon was retrieved from the body of the deceased , Terrell Huggins.”

5. “Applicant suffered due process violations of U.S. Constitution and S.C. Constitution when the state solicitor, the investigating law enforcement agencies, and other state officials unlawfully suppressed and withheld evidence of the knife weapon being recovered from the deceased Terrell Huggins. “
6. “Applicant suffered ineffective assistance off counsel in violation of the U.S. Constitution and S.C. Constitution when trial counsel failed to investigate and review the toxicology and autopsy report of the deceased Terrell Huggins and failed to discover the mitigating evidence of high levels of drug hallucinogens in Terrell Huggins system at the time of his death.”
7. “Applicant suffered due process violations of U.S. Constitutions and S.C. Constitution when the state solicitor, the investigating law enforcement agencies, and other state officials unlawfully suppressed and withheld evidence of the toxicology and autopsy reports of the deased Terell Huggins that reveal s high levels of drug hallucinogens in his system at the time of his death.”
8. Applicant suffered due process violations of the U.S. Constitution and S.C. Constitution when the state solicitor, the investigating enforcement agencies, and other state officials unlawfully suppressed and withheld evidence crucial material evidence from Applicant's discovery thus thraving applicant ability to fully and fairly and adequately present his constitutional claims on his prior Post Conviction Relief hearing, his prior Direct appeal, his prior writ of certiorari, his prior federal habeas corpus filing and each and every prior filing intermediate to these proceedings.”

**Successive Application and After discovered Evidence**

Pursuant to the Post Conviction Act, a successive PCR application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in a prior proceedings. The act provides an exception to allow a successive PCR application where the applicant can provide a “sufficient reason”for why the ground was not asserted or was inadequately raised in the original application. See South Carolina Code of Law, Section 17-27-90. Applicant has sufficient reason as to why he did not assert the ground of after discovered evidence and therefore his application should be allowed. Applicant did not know that the evidence existed. Applicant learned on February 29, 2012 that there were several people who had knowledge of the events leading to the killing of the deceased, Terrell Huggins. These witnesses corroborated the Applicant's defense of self defense. The availability of these witnesses did not come to Applicant's attention until after his plea on May 26, 2005, and after his first PCR hearing. Applicant contends that his attorney refused and or neglected to communicate with these witnesses. In support of Applicant's contention that these witnesses were available to testify in regard to Applicant's defense of self defense, Applicant submits the attached affidavits marked as Exhibits A-C.

Additionally the Applicant could not have raised this ground for relief because he did not know that the witnesses existed in his prior post conviction application. Applicant submits that the new evidence would probably change the result of his case because he would not have plead guilty to to the charges against him, Rather Applicant contends that he would have asserted the defense of self defense. Further the evidence was discovered since the Applicant plead guilty to the charges, and the evidence

not by the exercise of due diligence have been discovered. Finally the evidence is very material to the applicant' claim of innocence in the alternative this evidence may have lessen the sentence of Defendant.

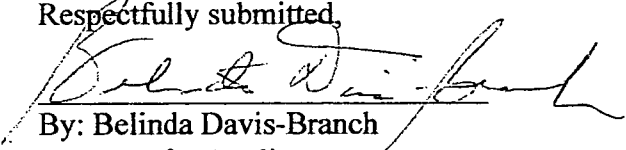
**Statute of Limitation**

South Carolina Courts have stated that if a PCR applicant has newly discovered evidence, he may benefit from a more lenient statute of limitations. Coats v. State 575 S.E. 2d 557 (S.C.2003). Applicant learned of his trial counsel's failure to contact and interview witnesses on February 29, 2012. These witnesses presented statements which corroborated Applicant's defense of self defense. The facts known by the witnesses were not previously presented and heard because Applicant learned of the witnesses and the information known to them after Applicant's first PCR hearing. Immediately after learning of trial counsel's failure to communicate with these witnesses, Applicant filed his second PCR application on February 28, 2012 . Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised... in the previous application." Alice v. State, 305 S.C. 448,409 S.E.2d 392(1991). Since Applicant did not know about the availability of the witnesses and the information known to them relative to the facts and circumstances leading up to the death of Terrell Higgins, it would have been impossible for Applicant to raise this ground in a previous application. Applicant has met his burden of showing that the allegation could not have been raised previously and the Respondent's motion for dismissal should be dismissed.

**Failure to Comply with the Filing Procedure**

Respondent argues that Applicant's PCR should be dismissed for his failure to comply with the filing procedures of the Uniform Post Conviction Act. S.C. Code Ann. Section 17-27-45(a). That section requires that an application must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur... whichever is later. Applicant submits that the statute is inapplicable because he was not aware of the witnesses statement relative to his defense of self defense.

For all of the foregoing reasons, Applicant requests that Respondent's motion for dismissal be denied.

Respectfully submitted,  
  
By: Belinda Davis-Branch  
Attorney for Applicant  
205 Elliott Street  
Orangeburg, South Carolina

December 19, 2012.

STATE OF SOUTH CAROLINA )  
 COUNTY OF ORANGEBURG )  
 )  
 Jamin Mazyck, #238056, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIRST JUDICIAL CIRCUIT

2012-CP-38-0250

FINAL ORDER OF DISMISSAL

RECEIVED FOR RECORDS  
 CLERK OF COURT  
 JUDICIAL CIRCUIT  
 ORANGEBURG COUNTY  
 SOUTH CAROLINA  
 SEP 11 9 06 AM '12

*Jm*

This matter comes before the Court pursuant to an application for post-conviction relief filed <sup>on</sup> February 22, 2012. Respondent made its Return and Motion to Dismiss on September 13, 2012, requesting that the Application be summarily dismissed, as successive to his previous application and filed beyond the statute of limitations. 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, signed September 24, 2012 and filed on October 3, 2012, provisionally denying and dismissing this action, while giving Applicant's counsel twenty days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 16, 2012, serving the aforementioned Conditional Order of Dismissal on Applicant's counsel, Belinda M. Davis-Branch, Esquire.

Through his counsel, Applicant responded to the State's Return Motion to Dismiss and this Court's Conditional Order of Dismissal in a document captioned "Applicant's Response to Respondent's Return and Motion to Dismiss," which was received by Respondent on December

19, 2012<sup>1</sup>. In this document, Applicant set forth reasons why he believed his application should not be summarily dismissed<sup>2</sup>. In this response, Applicant alleges newly discovered evidence in the form of two affidavits from possible witnesses that present evidence supporting a self-defense claim. Applicant asserts that he would not have pleaded guilty if he had been aware of these witnesses.

One of the affidavits is from Danyel Smith, who describes a close personal relationship with Applicant at the time of the incident and during his trial. Smith asserts that he was involved in an altercation between Applicant and the deceased twelve days before the incident giving rise to the subject convictions. Smith asserts that he "provided a detailed account of this incident" to Applicant's counsel before trial.

The other affidavit is from Robert Greene, who also describes a close personal relationship with Applicant and states that he "shared a residence" with Applicant during the time of the incident. Like Smith, he too asserts that he told Applicant's trial counsel that he was a material witness and had personal knowledge of threats the deceased made to Applicant.

~~\*~~ Applicant has shown no reason why this issue could not have been raised in his prior post-conviction relief applications or within the statute of limitations for filing a post-conviction relief application pursuant to S.C. Code. § 17-27-45. This Court finds that Applicant's allegations regarding the witness statements must have been presented in his initial post-

<sup>1</sup> Applicant's response to the Return Motion to Dismiss and Conditional Order of Dismissal has not been properly filed with the Orangeburg County Clerk of Court.

<sup>2</sup> Applicant also filed a *pro se* document captioned, "Memorandum of Law in Opposition to Respondent Order of Dismissal" on November 15, 2012. On May 22, 2013, Applicant filed an additional *pro se* a document captioned "Motion to Amend Applicant's Response to Respondent's Return and Motion to Dismiss." On September 6, 2013, Applicant filed a *pro se* Freedom of Information Act request. Since Applicant is represented by Counsel, this Court will not take any action on these documents. See *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989) (South Carolina does not recognize hybrid representation); see also Rule 11, SCRCP, requiring every pleading, motion, or other paper of a party represented by counsel to be signed by at least one attorney of record who is an active member of the South Carolina Bar; if a pleading, motion, or other paper is not signed, "it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant."

conviction relief application. The South Carolina Supreme Court has consistently ruled that successive post-conviction relief applications are permitted in only the rarest of procedural circumstances. Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 756 (citing See, e.g., Case v. State, 277 S.C. 474, 289 S.E.2d 413 (1982) (allowing a successive post-conviction relief application where the applicant's first post-conviction relief application was dismissed without the assistance of legal counsel or a hearing); Carter v. State, 293 S.C. 528, 362 S.E.2d 20 (1987) (permitting a successive application where the applicant did not have post-conviction relief counsel that differed from his trial counsel). The present case is not a "rare procedural circumstance," as Applicant likely was, or at the very least should have been aware of these potential witnesses in his initial post-conviction relief application or within the statute of limitations. Both of the witnesses' affidavits state they were at the courthouse for multiple stages of the trial and describe a close personal relationship with Applicant. <sup>\*</sup> Furthermore, Applicant has not shown any evidence as to why these statements could not have been found prior to his initial post-conviction relief application when the witnesses gave their information to Applicant's original attorney. Therefore, Applicant has failed to present sufficient factual or legal basis to overcome summary dismissal of this action.

refer to transcript

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, this application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203,

SCACR. The 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 27<sup>th</sup> day of Dec., 2013



EDGAR W. DICKSON  
Chief Administrative Judge  
First Judicial Circuit

Craigley, South Carolina.



BELINDA DAVIS-BRANCH  
ATTORNEY-AT-LAW

(App. 55)

205 ELLIOTT STREET

ORANGEBURG, SOUTH CAROLINA 29115

TELEPHONE 803.533.1006 | FACSIMILE 803.533.0026

April 15, 2014

Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

**REVISED LETTER**

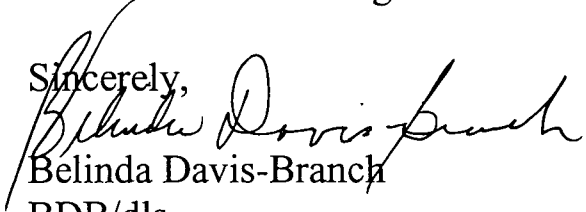
**RE: Jamin Mazyck vs. State of South Carolina Appellate  
Case No: 2014-000731, Lower Case NO: 2012-CP-38-  
00250**

Dear Mr. Shearouse:

I am in receipt of your April 10, 2014 correspondence regarding the above referenced matter. Please be advised that as an officer of the court, I am unable to set forth any arguable basis for asserting the determination by the PCR judge, that the PCR application was successive and barred by the Statue of Limitations was improper. Enclosed please find a copy of the conditional Order of Dismissal. By copy of this letter to Mr. Jamin Mazyck, Petitioner, I am advising him that he should notify the court no later than (20) days from the date of this letter, of any arguable basis he may wish to assert that the determination by the court that his PCR application was successive and barred by the limitations was improper.

With kindest regards.

Sincerely,

  
Belinda Davis-Branch

BDB/dls

Cc: Megan Harrigan, Esquire  
Jamin Mazyck



STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS

COUNTY OF ORANGEBURG )  
STATE VS. )  
JAMIN MAZYCK )  
AKA: )  
Race: B Sex: M Age: )  
DOB: 7/0/79 SS#: 263 95 8144 )  
Address: )  
City, State, Zip )  
DL#                      SID#                      )

INDICTMENT/CASE#: 2004 -GS- 38 - 347  
A/W#: H311324  
Date of Offense: 1-20-04  
S.C. Code §: 16-3-620  
CDR Code #: 0 / 0 / 1 / 4  
 CASE RESTORED  
 SENTENCE  
 PLEA  TRIAL

In disposition of the said Indictment comes now the Defendant who was  CONVICTED OF or  PLEADS  
TO: ASSAULT & BATTERY W/ INTENT TO KILL  
in violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 0 / 0 / 1 / 4  
 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:  
Therese B. Scott, III Solicitor Jamin Mazyck Defendant J.S.A. Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 20 ~~months~~ months 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           

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:           

Recipient:           

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$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
§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)	\$ 3.75
TOTAL	\$ 128.75

Appointed PD or appointed other counsel, §35.13 TP  
Requires \$500 be paid to Clerk during probation.

Marion L. Edgemond  
Clerk of Court/ Deputy Clerk  
Court Reporter: Harry Dot Walker

PRESIDING JUDGE Jamela Williams  
Judge Code: 10114  
Sentence Date: May 26, 2005

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )

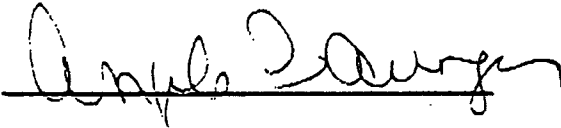
INDICTMENT  
2004GS38-0347

At a Court of General Sessions, convened on March 01, 2004 the Grand Jurors  
of Orangeburg County present upon their oath:

**ASSAULT AND BATTERY WITH INTENT TO KILL**

That Jamin Mazyck, did in Orangeburg County, on or about January 20, 2004, with  
malice aforethought did commit an assault and battery, upon the victim, Joyce Williams,  
by means of: shooting the victim with a handgun causing serious bodily injuries, with  
intent to kill the said victim. This offense being a violation of Section §16-3-620 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.

  
\_\_\_\_\_  
Angela G. Avinger SOLICITOR

(App. 59)

WITNESSES

DOCKET NO. 2004GS38-0347

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

The State of South Carolina

County of

ORANGEBURG

I hereby appear in my own proper person and plead guilty to the within indictment or to

SGT. GERALD CARTER

COURT OF GENERAL SESSIONS

March 01, 2004 TERM

Defendant

Arresting Agency:  
Orangeburg Co. Sheriff Dept.

Witness:

ARREST WARRANT NUMBER

H311324

THE STATE

C.C.C. PLS. AND G.S.

Arrested: Jan 20, 2004

vs.

ACTION OF GRAND JURY

Jamin Mazyck

MAR 04 2004

Indictment for

ASSAULT AND BATTERY WITH INTENT  
TO KILL

VERDICT

Foreperson of Grand Jury  
Date: March 4, 2004

*Davis*

SC Code: 16-3-620  
CDR Code: 0014  
Class: FLE-C(V)

82:1 Md 7-2014 40

Foreperson of Petit Jury  
Date:

(App. 60)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )  
STATE VS. )  
JAMIN MAZYCK )  
AKA: )  
Race: B Sex: M Age: )  
DOB: 7/10/79 SS#: 263-95-8144 )  
Address: )  
City, State, Zip )  
DL#                      SID#                      )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2004 -GS- 38 - 346  
AW#: H311325  
Date of Offense: 1-20-04  
S.C. Code §: 16-3-10  
CDR Code #: 0 / 1 / 1 / 1 / 6  
 CASE RESTORED  
SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS  
TO: VOLUNTARY MANSLAUGHTER  
in violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0 / 2 / 1 / 1 / 7  
 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:  
Thom S. Scott III Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 25 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 SCDPPTS \_\_\_\_\_

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: \_\_\_\_\_

Recipient: \_\_\_\_\_  
\*Fine: \_\_\_\_\_  
\$14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_  
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00  
\$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 \$ 25.00  
\$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) \$ 3.75  
TOTAL \$ 128.75

Appointed PD or appointed other counsel, §35.13 TP  
Requires \$500 be paid to Clerk during probation.  
PRESIDING JUDGE [Signature]  
Judge Code: 1 01141 1  
Sentence Date: May 29, 2005

Maxion S. Edgemore Jr  
Clerk of Court/Deputy Clerk  
Court Reporter: Harry Dot Walker

(App. 61)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )

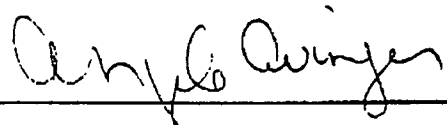
INDICTMENT  
2004GS38-0346

At a Court of General Sessions, convened on March 01, 2004 the Grand Jurors of Orangeburg County present upon their oath:

**MURDER**

That Jamin Mazyck, did in Orangeburg County, on or about January 20, 2004, with malice aforethought, kill one Terrell Huggins by shooting the victim with a handgun, and the said victim did die as a proximate result thereof. This offense being in violation of the Common Law of South Carolina, and Section 16-3-10 of the Code of Laws of South Carolina, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
\_\_\_\_\_  
Angela G. Avinger SOLICITOR

(App. 62)

WITNESSES

DOCKET NO. 2004GS38-0346

After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury.

The State of South Carolina

Defendant

County of

ORANGEBURG

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

March 01, 2004 TERM

Defendant

Arresting Agency:  
Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

H311325

Arrested: Jan 20, 2004

C.C.C. PLS. AND G.S.

THE STATE  
vs.

Witness:

ACTION OF GRAND JURY  
TRUE BILL

Jamin Mazyck

MAR 01 2004

Foreperson of Grand Jury  
Date: March 4, 2004

VERDICT

Indictment for  
MURDER

SC Code: 16-03-10  
CDR Code: 0116  
Class: FEL-EXM

82:1 HD 4-2004 HD

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ORANGEBURG )  
 STATE VS. )  
JAMIN MAZYCK )  
 AKA: )  
 Race: B Sex: M Age: )  
 DOB: 7/10/79 SS#: 263-95-8144 )  
 Address: )  
 City, State, Zip )  
 DL# SID# )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2004 -GS- 38 - 345  
 A/W#: H311343  
 Date of Offense: 1-20-04  
 S.C. Code §: 16-11-311  
 CDR Code #: 0 / 0 / 7 / 9  
 CASE RESTORED  
 SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS  
 TO: BURGLARY, 1<sup>ST</sup> DEGREE  
 in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0 / 0 / 7 / 9  
 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:  
Thom B. Scott, III Solicitor Jamin Mazyck Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 25 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 \_\_\_\_\_

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: \_\_\_\_\_

Recipient: _____	
*Fine:	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§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 \$ <u>25.00</u>
§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)	\$ <u>3.75</u>
TOTAL	\$ <u>128.75</u>

Appointed PD or appointed other counsel, §35.13 TP  
 Requires \$500 be paid to Clerk during probation.  
 PRESIDING JUDGE James L. Williams  
 Judge Code: 101141  
 Sentence Date: 5-26-05

Marion L. Edgeman  
 Clerk of Court, Deputy Clerk  
 Court Reporter: Harry Dot Walker



(App. 65)

WITNESSES

DOCKET NO. 2004GSS38-0345

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

The State of South Carolina

Defendant

County of

ORANGEBURG

I hereby appear in my own proper person and plead guilty to the within indictment or to

SGT. GERALD CARTER

COURT OF GENERAL SESSIONS

March 04, 2004 TERM

Defendant

Arresting Agency:  
Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

H311343

Arrested: Jan 21, 2003

THE STATE

VS.

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY  
TRUE BILL

Jamin Mazyck

NEAR 04 2004

Foreperson of Grand Jury  
Date: March 4, 2004

VERDICT

Indictment for  
BURGLARY - 1ST DEGREE  
(DWELLING)

SC Code: 16-11-0311

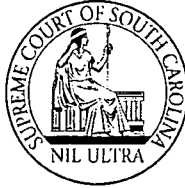
CDR Code: 0079

Class: FEL-EXM(V)

82:114 4-2004

Foreperson of Petit Jury  
Date:

(App 66)



# The Supreme Court of South Carolina

## OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola  
Disciplinary Counsel

Post Office Box 12159  
Columbia, South Carolina 29211

Tiffany N. Richardson  
Staff Attorney

Telephone: (803) 734-2038  
Facsimile: (803) 734-1964

January 23, 2014

PERSONAL AND CONFIDENTIAL

Jamin Mazyck #238056  
Lieber Correctional Institution  
Post Office Box 205  
Ridgeville, SC 29472

RE: Lawyer: Belinda Montio Davis-Branch, Esquire  
File Number: 13-DE-L-1539

Dear Mr. Mazyck:

This will acknowledge your letter received on November 5, 2013. From reading your letter, I need additional information from you. Has Mrs. Davis-Branch responded to your requests and what was that response?

Please keep in mind that the authority of this office is limited to issues of whether a lawyer has committed misconduct or is incapacitated within the guidelines set out in Rules 413, SCACR. This office does not have the authority to determine whether the outcome of a case was fair or to intervene in a legal matter.

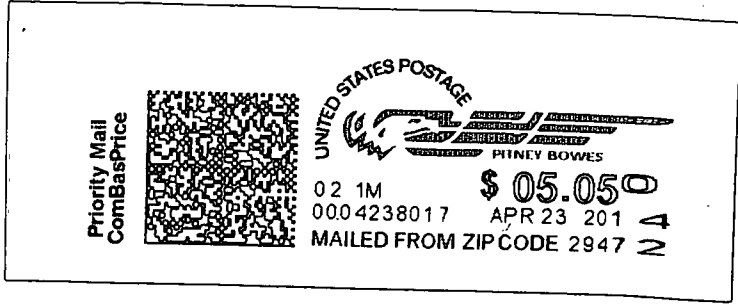
Without the requested information, we will be unable to proceed with an investigation. If we do not receive it within thirty days, we will close this matter without further notice to you. Feel free to contact me if you have any questions or concerns.

Sincerely,

*Tiffany Richardson*  
Tiffany N. Richardson

TNR/clg

Jamin Mazzyk #238056  
Lieber Corr. Inst. EA12  
P.O. Box 205  
Ridgerville, SC 29472



**RECEIVED**

APR 23 2014  
MAIL ROOM  
LIEBER C.I.

The Honorable Daniel E. Shearouse  
Clerk of Court Supreme Court  
P.O. Box 11330  
Columbia, SC 29211