

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

JUDGM. IN A CIVIL CASE

CASE NUMBER: 2012CP4007884

Raqib Abdul Al Amin

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Of. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court.

**ORDER INFORMATION**

This order  ends  does not end the case.  
Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: \_\_\_\_\_

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 11 March 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Raqib Abdul #264465 Al Amin

Robert Daniel Comey

Raqib Abdul #264465 Al Amin

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court

*Jeanette W. McBride*

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 )  
 Raqib Abdul Al-Amin, #264465, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTH JUDICIAL CIRCUIT

2012-CP-40-07884

CONDITIONAL ORDER

JEANNETTE W. McBRIDE  
 2013 MAR 11 AM 10:35  
 RICHLAND COUNTY  
 FILED

This matter comes before this Court by way of an application for post-conviction relief filed November 28, 2012.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the December 1997 term of the Richland Grand Jury for Murder (1997-GS-40-25414). He was represented by attorney Douglas Strickler, Esquire, on the charge(s). On February 15, 2000, Applicant proceeded to jury trial before The Honorable James C. Williams, Jr. On February 18, 2000, Applicant was convicted of the charge as indicted and sentenced to life imprisonment without the possibility of parole.

A Notice of Appeal was filed and an appeal was perfected on Applicant's behalf. The remittitur was issued on March 26, 2004, following the unsuccessful appeal.

Applicant thereafter filed an application for PCR on November 30, 2004 (2004-CP-40-05551). He was represented by Charlie J. Johnson, Jr., Esquire, on the action. An evidentiary hearing into the matter was convened June 6, 2007, before the Honorable J. Michelle Childs at the Richland County Courthouse. Applicant was present at the hearing and testified. By order



filed November 20, 2007, Judge Childs denied and dismissed the action with prejudice. A notice of appeal was filed and a Petition for Writ of Certiorari submitted on Applicant's behalf for appellate review of the denial. By order issued February 11, 2010, the South Carolina Supreme Court denied the petition. Applicant subsequent motion for rehearing was denied as well, and the remittitur was issued thereafter on April 23, 2010.

Applicant next filed a Petition for Writ of Habeas Corpus in the United States Federal District Court for the district of South Carolina on August 12, 2010 (Docket No. 0:10-20230CMC-P). After receiving the federal magistrate's June 12, 2011, report and recommendation, the petition was dismissed by the federal court on August 5, 2011. The matter was appealed thereafter to both the United States Court of Appeals for the Fourth Judicial Circuit (Case No. 11-7084) and the United States Supreme Court (Case No. 11-9012), where both appeals were denied/dismissed. The final order denying Applicant's Petition for Writ of Certiorari was issued by the United States Supreme Court on April 16, 2012.

Applicant filed a second application for post-conviction relief on June 7, 2011 (2011-CP-40-03663). The state made a Return and Motion to Dismiss on September 27, 2011, requesting the matter be summarily dismissed as untimely filed and impermissibly successive in nature. On May 11, 2012, the Honorable James R. Barber, III, issued a Conditional Order provisionally dismissing the action while allowing Applicant thirty (30) days in which to submit his objections to summary dismissal. After receiving numerous *pro se* responses and objections from Applicant, Judge Barber issued a Final Order summarily dismissing the action **with** prejudice on November 8, 2012. No appeal was filed following that dismissal.

In making its decision, the Court had before it the available records of the Richland County Clerk of Court regarding the subject convictions, and/or Applicant's records from the

South Carolina Department of Corrections, the Applicant's application, and the *Respondent's Return and Motion to Dismiss*.

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

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) South Carolina Code of Law § 17-27-45 (B)(c), pursuant
  - (b) to State v. Broadnax, --- S.F.2d --- 2013 WL 88346
  - (c) \_\_\_\_\_
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) A conviction for robbery... beyond the basic crime itself, is
  - (b) not probative of truthfulness. It was error for the Court of Appeals
  - (c) to undertake the Rule 609(b) balancing test itself, see  
next page.

At the time of the Applicant's trial, no rule of law existed in South Carolina which held that armed robbery is a crime of dishonesty. See Broadnax, supra, "armed robbery is not considered a crime of dishonesty under 609(a)(2)." Therefore, the Applicant could not have possibly anticipated that such a maneuver by the state would be attempted. Since his only defense at trial was a defense of denial, his credibility was central to his defense.

(c). Trial counsel may generously be characterized as ineffective. He not only failed the STRICKLAND test, 466 U.S. 668, 104 S.Ct 2052 (1984), his performance was so dismal from start to finish that deficiency and prejudice must be presumed pre se under CRONIC, 466 U.S. 2039 (1984). (Even if prejudice is not presumed, there would have been different if his trial outcome of the plaintiff's trial would have been different if his trial counsel's performance had not been fatally deficient).

As part of an encyclopedic of errors and omissions, trial counsel failed to:

(1) Conduct any meaningful pretrial investigation;

(2) Present an Alibi defense for the plaintiff, as part of a valid trial strategy;

(3) Object to "flight" theory of the State;

(4) Call Darryl Cunningham, a key defense witness, when he had an opportunity to do so (before the defense rested)(even the Court hinted to counsel that he should do so). See Tr. 651 @ 11-12.

(5) Object to the Court's jury instruction which stated that malice could be inferred from the use of a deadly weapon, disregarding the principle established in ARNOLD v. EVATT, 113 F.3d 1352, 1356 (4th Cir. 1997), thus shifting the burden of proof from the State to the plaintiff;

(6) Demand from the State and the trial Court the precise justification for the admission of the plaintiff's prior conviction for armed robbery (the State, on Appeal, for the first time, stated that its justification was that armed robbery is a crime of dishonesty, although that standard had not been established at the time of the plaintiff's trial). See <sup>STATE V. COLP</sup> <sup>37</sup> 337 S.C. 525 S.E.2d 246 (S.C. 2000).

In sum, the alleged <sup>after</sup> newly-discovered evidence does meet the last requirement of Needs as Daniel brown's statement that he "saw [applicant] at CJ Mart...at the telephone booth" on the day of the murder is not cumulative to the testimony provided by applicant at trial. The applicant denied his presence. Applicant stated that he had been with the victim earlier in the day, had left (corroborated by Cunningham) and upon his returning to his apartment, found her body. Applicant credibility was attacked on cross-examination. "When a witness' testimony is disputed or his credibility called into question, other testimony is ~~disputed or his credibility called into question, other testimony~~ verifying the facts or opinions giving by the witness is not merely cumulative. STATE v. DOCTOR, 306 sc 527, 413 S.B.2d 36 (S.C. 1992).

Applicant can present a genuine material evidence of affidavits by witness(es) based on <sup>after</sup> newly discovered evidence of his actual innocent of murder, which the defendant was seen by several witness(es), and the applicant is actual innocent of crime of murder which the applicant's was found guilty by a jury in January 15-18, 2000. See exhibits support his defense and innocent.

First exhibits affidavit by Daniel Brown a.k.a. Danny Brown dated May 15, 2011.

Second exhibits affidavit of letter from Audrey E. Al-Amin about the discovery: dated May 16, 2011:

Third exhibits affidavit by Audrey & Jodeesha Al-Amin dated June 19, 2012:

## Findings of Fact and Conclusions of Law

### Timeliness – S.C. Code §17-27-45(a)

This Court agrees with Respondent 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). For the purposes of this Return, Applicant's conviction/sentence was finalized on the date of his conviction or the date of the Remittitur from any direct appeal, whichever was later, i.e. March 26, 2004. Adding one (1) year per S.C. Code § 17-27-45(a) and one (1) day per Rule 6(a), SCRPC means that this PCR application had to be filed by March 27, 2005. **This Application was filed on, November 28, 2012, which was beyond the statutory time period for filing.**  
**Error! Reference source not found.**

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 shall summarily dismiss the application for post-conviction

relief for failure to file within the time mandated by the Post-Conviction Procedure Act.**SUCCESSIVE**

The application should be summarily dismissed 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.

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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).

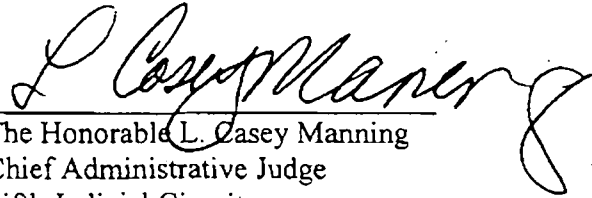
Applicant could have raised the new grounds for relief in his prior post-conviction relief application. Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Further, the precise allegation of newly-discovered evidence set forth in the current action was previously raised and ruled upon in Applicant's prior PCR action. Therefore, the current application is successive and the claim of newly-discovered evidence has previously rejected by this Court. Accordingly, the current application for PCR is impermissibly successive in nature and must be summarily dismissed. ~~Error! Reference source not found.~~ 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 the reasons explained above.

Based upon its review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent the Applicant and expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted thirty (30) 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 with the Richland County Clerk of Court and shall serve opposing counsel at the following address:

Assistant Attorney General  
Robert D. Corney

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

AND IT IS SO ORDERED this 7 day of March, 2013.

  
The Honorable L. Casey Manning  
Chief Administrative Judge  
Fifth Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Raquib A. Al-Amin )

Plaintiff )

v. )

State Of South Carolina )

Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.  
2012-CP-400-7884

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

FILED  
MAR 11 AM 10:35  
RICHLAND COUNTY  
JENNIFER W. McBRIDE  
C.C.R. & G.S.

Plaintiff's Attorney: Raquib A. Al-Amin, Bar No. Address: PERRY CORRECTIONAL INSTITUTION 430 Oaklawn Road Pelzer, SC 29669 phone: fax: e-mail: other:	Defendant's Attorney: Robert D. Corney, Bar No. Address: Post Office Box 11549 Columbia, South Carolina 29211 phone: 803-734-5178 fax: 803-734-4113 e-mail: rcorney@scag.gov other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	
Date submitted: <u>March 4, 2013</u>	
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	_____ JUDGE CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Date Filed: _____ Collected by: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____	

Re 5

Robert Daniel Corney  
PO Box 11549  
Columbia, SC 292111549