

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals  
[In The Supreme Court]

---

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge  
Edward W. Miller, Circuit Court Judge

---

Case No. 2013-CP-23-01440

---

State of South Carolina, and Edward W. Miller presided Judge, ...  
.....Respondent(s),

v.

Jose Alberto maldonado, .....Appellant.

---

NOTICE OF APPEAL

---

Jose Alberto Maldonado appeals the order [judgments] of the Honorable Letitia H. Verdin, and Hon: Edward W. Miller dates Nov. 8, 2013, April 3, 2014; and Appellant received written notice of entry of this and that, order [judgment] on May 1, 2014. And The, Appellant Received on May 6, 2014.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge  
Edward W. Miller, Circuit Court Judge

Case No. 2013-CP-23-01440

State of South Carolina, and Edward W. Miller presided Judge, ...  
.....Respondent(s),

v.

Jose Alberto Maldonado, .....Appellant.

PROOF OF SERVICE

I certify that I have serve the Notice of Appeal In The Supreme Court's Clerk of Court. By depositing a copy of it in the United States Mail, postage, on This 28 day of May, 2014. And a copy of it have being served to the Greenville County's Clerk of Court, to paul B. Wickensimer, 305 E. North Street Greenville, S. C. 29601, by personally delivering a copy of it to the Attorney General is Office of records. mr. Alan Wilson P.O. Box 11549 Columbia, SC.29211. Appellant personally forward in Notice of Appeal.  
To:

The Supreme Court of South Carolina  
DANIEL E. SHEAROUSE, CLERK OF COURT  
POST OFFICE BOX 11330  
Columbia, South Carolina 29211

ATTORNEY GENERAL'S OFFICE,  
Alan Wilson Atty. General  
POST OFFICE BOX 11549  
Columbia, S.C. 29211

FURTHER THE APPELLANT SAID AND NOT:

DAVID TATARSKY/CRISTINA KELLET  
SCDC GENERAL COUNSEL  
POST OFFICE BOX 21787  
4444 BROAD RIVER ROAD  
COLUMBIA, SC. 29210

THIS 28 DAY OF May, 2014.

SWORN TO And SUBSCRIBED Before me

Respectfully Submitted

THIS 28 DAY OF May, 2014

Catherine A. Chivers  
NOTARY PUBLIC FOR SOUTH CAROLINA

SI Jose A. Maldonado  
Jose A. Maldonado, # 312648  
Kershaw Corr. Inst. MB/Rm., 59  
4848 Goldmine Highway  
Kershaw, South Carolina 29067

MY COMMISSION EXPIRES: \_\_\_\_\_

My Commission Expires December 22, 2018

PCR(?)

JOSE A. MALDONADO, # 312648  
KERSHAW CORR. INST. MB/Rm., 59  
4848 GOLDMINE HIGHWAY  
KERSHAW, S.C. 29067

RECEIVED

May 28, 2014

MAY 30 2014

S.C. SUPREME COURT

The Supreme Court of South Carolina  
DANIEL E. SHEAROUSE, CLERK OF COURT  
POST OFFICE BOX 11330  
Columbia, South Carolina 29211

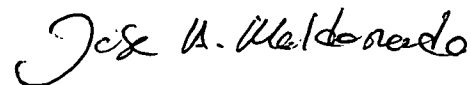
Re: Jose Alberto Maldonado, C/A#.: 2013-CP-23-01440 v. The State of South Carolina, and The Respondent(s).

Dear Clerk of Court,

Enclosed please find the proposed original **Notice of Appeal**. And I hope this Enclosure Notice of Appeal find you in greading healt, in the above-captioned case. If this **Notice of Appela** meets with your "Approval," please be so kind to **clock - stamped**, and forward to the Court of Appeals, to review the (2) separated order [judgments]. And also at the same time that you please return the **clock - stamped copy** of the Appellant's confinement address. For, have being file in served in "Your Clerk of Court."

Thank You, For Your Valuable Time of This Matter.  
With Kind Was Requireds!!!

Sincerely,



Jose A. Maldonado  
The, Appellant

I Look Forward To Hearing From Your Office Soon Concerning The Content of This Notice of Appeal.

Thank You In Avance!

Enclosure:(1)

Cc: File

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Jose Alberto Maldonado, )  
S.C.D.C. No. 312648, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
2013-CP-23-1440

**FINAL ORDER OF DISMISSAL**

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMMER  
2014 MAY 1 AM 9 41

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 12, 2013. The Respondent made its return on August 5, 2013, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Honorable D. Garrison Hill – acting in his capacity as Chief Administrative Judge – issued a Conditional Order of Dismissal filed August 22, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final.

The Applicant filed a motion for default on September 16, 2013. A hearing on this motion was held on October 25, 2013. The Applicant proceeded pro se. The Honorable Edward W. Miller filed an order on November 8, 2013 in which he denied the motion for default.

On December 16, 2013, the Applicant filed a “Supporting Motion to Alter or Amend Judgment Rule 59(e), 55(c) (SCRCP): And (SCACR), 501 Code of Jud. Conduct Canon 3,



Subds. (C)(1); and (E)(1)(a)(b); (i)(ii)(iii)(iv).” A hearing was held on April 1, 2014. The Applicant proceeded pro se. Judge Miller filed an order on April 9, 2014 in which he denied the Applicant’s motion and noted: (1) that “Applicant’s filing actions in this case were abusive” and (2) that the Applicant “voluntarily and contemptuously vacated the courtroom and refused to participate in his motion hearing.”

In addition to the above-referenced motions, the Applicant has filed several other lengthy documents: (1) “Return and Response to Motion to Dismiss/and Conditional Order of Dismissal” filed September 6, 2013, (2) “(Supplemental) Amendment of Complaint P.C.R. Act Application Motion” filed September 16, 2013, (3) “Reply Motion to Lack Merit or is Untimely S.C. Clerk of Court Manual § 6.24.: & Rule 12(a), (b)(5)” filed January 17, 2014, and (4) “Motion for New Pre-Trial Calendar Hearing” filed March 6, 2014. In these documents, the Applicant argues ineffective assistance of plea counsel, lack of subject matter jurisdiction, and an illegal indictment. The Applicant also argues he is entitled to a new evidentiary hearing and the quick resolution of his case.

This Court has reviewed the Applicant’s numerous responses to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant pled guilty on August 22, 2006 and was sentenced on April 10, 2007. As this action was filed on March 12, 2013, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant’s third application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980).



This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on December 8, 2008 and instead chose to voluntarily withdraw his application. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“[A]n applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

This Court finds the Applicant’s claim that the plea court lacked subject matter jurisdiction is without merit. Indictments are not jurisdictional in nature, they are merely notice documents. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). This Court finds the indictments in this case were true-billed and clearly adequate to provide notice of the charges the Applicant was facing.

**IT IS THEREFORE ORDERED** that, for the reasons set forth in the Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**AND IT IS SO ORDERED** this 29 day of April, 2014.



\_\_\_\_\_  
Letitia H. Verdin  
Chief Administrative Judge  
Thirteenth Judicial Circuit

\_\_\_\_\_, South Carolina.



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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2013CP2301440

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2014 MAY 1 AM 9 45

Jose Alberto Maldonado vs. South Carolina State Of

**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 (Vol. 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;  Statement of Judgment by the Court:  
Dated at Greenville, South Carolina, this .

Court Reporter:

\_\_\_\_\_  
PRESIDING JUDGE - Letitia H Verdin

This judgment was entered on the . and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
Jose Alberto Maldonado 312648 Kershaw Corr  
Instit 4848 Goldmine Hwy Kershaw, SC 29067

\_\_\_\_\_  
Karen Christine Ratigan PO Box 11549 Columbia,  
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Jose Alberto Maldonado, )  
S.C.D.C. No. 312648, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
2013-CP-23-1440

CONDITIONAL ORDER OF DISMISSAL

ENTERED COMPUTER

FILED - CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENS  
2013 AUG 22 AM 11:54

*JN*

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 12, 2013. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is presently confined in the South Carolina Department of Corrections. The Applicant was indicted at the December 2005 term of the State Grand Jury for conspiracy to traffick methamphetamines more than 400 grams (2005-GS-47-0026, count 1) and trafficking methamphetamines more than 400 grams (2005-GS-47-0026, count 4). James H. Price, III, Esquire represented the Applicant.

On August 22, 2006, the Applicant pled guilty before the Honorable Alexander S. Macaulay to lesser-included charges but sentencing was deferred. On April 10, 2007, Judge Macaulay levied concurrent sentences of twenty (20) years for conspiracy to traffick methamphetamines (28-100 grams), second offense and twenty (20) years for trafficking methamphetamines (28-100 grams), second offense. The Applicant did not appeal his

convictions or sentences.

**2008-CP-23-2140**

The Applicant filed a PCR application on March 18, 2008 (2008-CP-23-2140). The Applicant raised the following issues:

1. Ineffective assistance of counsel.
2. Lack of jurisdiction by trial court to accept the plea.

An evidentiary hearing was convened on December 8, 2008 at the Greenville County Courthouse. Rodney W. Richey, Esquire represented the Applicant. At the hearing, the Applicant chose to voluntarily withdraw his PCR application. After questioning the Applicant about this decision, the Honorable Edward W. Miller dismissed the matter with prejudice by order filed December 29, 2008.

**2010-CP-23-3391**

The Applicant filed a PCR application on April 28, 2010 (2010-CP-23-3391). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
  - a. Failed to request a charge of simple possession.
2. Involuntary guilty plea based on erroneous advice of counsel.
3. "The judge has discretion and is not bound to accept the recommendations of either party."
4. Subject matter jurisdiction.

The Honorable Robin B. Stilwell issued a conditional order of dismissal dated August 27, 2010 and filed September 9, 2010. Though the Applicant filed a response to the conditional order, Judge Stilwell issued a final order of dismissal dated December 8, 2010 and filed December 14, 2010.

The Applicant filed a notice of appeal. The South Carolina Supreme Court required the

Applicant – pursuant to Rule 243(c), SCACR – to show an arguable reason why the denial of his application was improper. In an order of dismissal dated April 20, 2011, the Supreme Court found the Applicant failed to meet his burden in this regard.

### **Federal Habeas Corpus**

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (8:11-cv-1372-TLW-JDA). The Respondent submitted a motion for summary judgment on August 22, 2011. The Honorable Jacquelyn D. Austin, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated September 27, 2011. On December 2, 2011, the Honorable Terry L. Wooten, United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

The Applicant filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. In an opinion filed March 20, 2012, the Court of Appeals denied a certificate of appealability and dismissed the appeal. In an order dated April 23, 2012, the Court of Appeals denied the subsequent petitions for rehearing and rehearing en banc.

The United States Supreme Court denied the subsequent petition for writ of certiorari on October 1, 2012.

## II.

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

1. “Flawed indictments.”
2. “Multiple grand jury dates, or indicted.”
3. “State Grand jury of South Carolina Indicted the Applicant, on Dec. 13, 2005, Supersending indictment convened in S.C. Columbia, On Feb. 22,

- 2006.”
4. “Spending nearly more than the ‘13 months.’ The Applicant seek[ing] of the (Amendment, process by the indictment9s) after had been amended. S.C. Code Ann. Section 17-19-100. et seq.; Const. Art. 1 § 11; U.S.C.A. Const. Amend 5th.; §§ 14-7-1750, 14-7-1650 Indictment be ‘Certified.”
    - a. “Amendment, in the indictment provided a defendant with sufficient notice. §§ 44-53-375(C)(2)(b), 17-19-100. et seq.”
    - b. “Error in administration of evidence of prior bad act to show motive or intent and common scheme or plan was not harmless.”
    - c. “Failure to object to reasonable doubt charge.”

### III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina 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 Applicant was sentenced on the offenses he challenges in this application on April 10, 2007. The Applicant was therefore required to file his application before April 10, 2008. This application was filed on March 12, 2013, which was over four years beyond the time the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) 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 that the moving party is

entitled to judgment as a matter of law.”

IV.

This Court further finds the current application should also be dismissed because it is successive to the previous applications for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) 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, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” Id. (emphasis in original). 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. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications, the application is dismissed.

V.

Based upon its review of the pleadings in this matter, this Court 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 twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 8 day of AUG., 2013.



\_\_\_\_\_  
D. Garrison Hill  
Chief Administrative Judge  
Thirteenth Judicial Circuit

\_\_\_\_\_, South Carolina.

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2013CP235

FILED - CLERK OF COURT  
GREENVILLE, S.C.  
AUG 22 AM 11:54  
PAUL B. WICKENSIMER

Jose Alberto Maldonado vs. South Carolina State

**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):**  
SCRCP (Vol. Nonsuit);  Rule 12(b), SCRCP;  Rule 41(a),  
 Rule 43(k), SCRCP (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRCP;  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;  Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 21st day of August, 2013.

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

**PRESIDING JUDGE - D Garrison Hill**

This judgment was entered on the 21st day of August, 2013, and a copy mailed first class this 21st day of August, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Jose Alberto Maldonado 312648 Kershaw Corr  
Instit 4848 Goldmine Hwy Kershaw, SC 29067

Karen Ratigan Attorney General Office

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

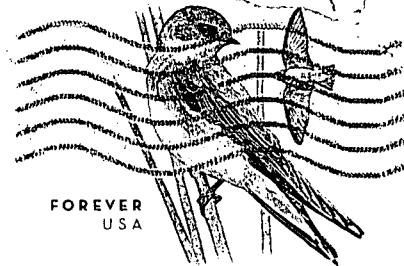
\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

JOSE A. MALDONADO, #312648  
KERSHA CORR. INST. MB/Rm., 59  
4848 GOLDMINE HIGHWAY  
KERSHAW, S.C. 29067

COLUMBIA SC 292

29 MAY 2014 PM 4 L

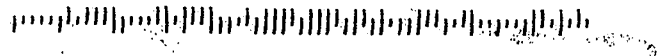


Bank Swallow

LEGAL - MAIL

The Supreme Court of South Carolina  
DANIEL E. SHEAROUSE, CLERK OF COURT  
POST OFFICE BOX 11330  
Columbia, South Carolina 29211

2921131330





Certified Fiber Sourcing  
www.sfi-program.org

THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT

© USPS 2012

**RECEIVED**

MAY 28 2014

MAILROOM (SOUTH)

THE DEPARTMENT OF CORRECTIONS HAS NOT  
CONSIDERED THE RIGHTS OF PERSONS WITH DISABILITIES  
DOES NOT ASSUME LIABILITY FOR ITS  
CONTENTS

NY NY