

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

6/19/14

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JUN 23 2014

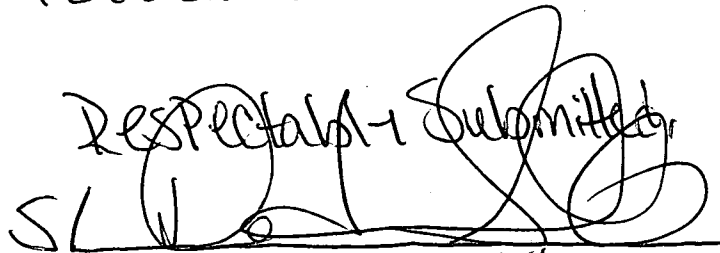
RE: Please file ^{SC. SUPREME COURT} the attached Objections
To Circuit Court Judge's Conditional
Order to Dismiss; Case no.
2013-CP-10-0719

Dear Clerk,

Blessings! Enclosed is objections

in the above caption action no. Please file it
with your office and send the original copy
back to me in the self-addressed envelope as
soon as humanly possible to be filed in the
Circuit Court sir. Enclosed is also a financial
to show that I am indigent and unable to pay
for the cost of filing. Thank you for your
professional culpability regarding this matter.
Grace, Peace, Blessings.

Respectfully Submitted,



Demetrius J. Smalls # 286806
LCI EA 37
P.O. Box 205
Ridgelyville SC 29472

State of South Carolina
County of Charleston

Demetrius J. Smalls # 2868010
Prosecution/Applicant

-- versus --

The State of South Carolina
Respondent.

In THE Court of Common Pleas
For THE Ninth Circuit

Case no. 2013-CP-10-0719

Objection To Circuit
Judge's Conditional
Order To Dismiss

To: Above-referenced Court.

You will please take notice that the Applicant
objects to the Conditional Order of Dismissal
and the Dismissal order signed by Circuit Court
Judge Stephanie McDonald on the 3rd day of June
2014. 5/14 WSCA; Art. 1 § 3 SC Const.; SC Code Ann. § 17-27-70(b) = (c)
See Leamon 363 SC at 431, 611 SE2d (2003) at 25.

The applicant objects on the basis that such
Circuit Court Judge granted the applicant (20)
twenty days from the date of service of such
order to show cause why such order should
not become final.

The applicant received such order on June 11, 2014.
and the applicant concedes that such order
is "unconstitutionally" issued to deprive the
applicant of his liberty to appeal his conviction
under indictment no. 2006-CR-10-1253-56 in
case no. 2013-CP-10-0719.

The applicant presents before the court that PCR Application for case no. 2013-CP-10-0719 was filed under the "After-discovered evidence rule" in conformity with Section 17-27-45(C) (2003), which provides that if a PCR Applicant discovers "material facts not previously ~~ascertained~~ 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."

The Court is bound by the holding in Leamon v. State, 363 SC 432, 434, 611 SE2d 494, 495 (2005), that "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, (Citing SC 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." Cf. Delaney v. State, 269 SC 555, 238 SE2d 679, 679 (1977); McCoy v. State, Appellate Case no. 2010-178927, 5:14 USA; Art. I, § 3 SC Constitution.

Here, the Applicant submits after-discovered evidence Pursuant to the rule outlined in Section 17-27-45(a) (2003), and an exception to the Statute of limitation rule. Based on the fact that the Applicant received after-discovered evidence, of there not being any active arrest warrants for the offenses of 56-1-440 1976 Code and 16-5-50 1976 Code, Driving without a license 1st and Interference with officer/Hindering officer, in Case No. 2004-010174, 5, 14 USCA, Art. 1 § 3 S.C. Constitution, SC Code Ann. § 22-3-710 1976 Code; see exhibits; 1-5

The fact that there were no arrest warrants for these offenses and the Magistrate, and Municipal Court, lacked jurisdiction of the Subject-matter to hear, and decide Case no. 2004-010174, was not discovered until December 19, 2018 through the National Crime Information Center, Criminal Justice Information Services US Dept. of Justice / FBI, through reasonable diligence.

This is sorbased on the fact that section 22-3-710 1976 code, Provides that: "All proceedings before Magistrates in Criminal Case shall be commenced on information under oath, plainly ~~and~~ and Substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue". In Case no. 2004-010174, there is no oath and information plainly and Substantially setting forth the offenses charged (56-1-440 1976 Code), and (16-5-50 1976 Code);

The Applicant Case history details and FBI records for case no. 2004-010174, reflect that the Applicant was arrested and convicted of the offenses 56-1-440 1976 Code, Driving without A license 1st, and 16-5-50 1976, Interference with

Hindering Officers, However, there is no oath and information plainly and substantially setting forth those offenses as a bail and trial proceeding was commenced, and the applicant was convicted under such offenses. With arrest warrants being charging instruments that were designed solely to place an accused on notice of the charges he or she would have to answer to, the oath and information is specifically required under Section 22-3-710 1976 Code to vest the Magistrate's Court with jurisdiction of the subject matter to commence all proceedings that come before their and other courts as well. 5/14 USCA; Art. 1 § 3 South Carolina Constitution

Being that the Court of Common Pleas is governed by the South Carolina Rules of Civil Procedure (see Rule 71.12 South Carolina Rules of Civil Procedure), the Court is bound by Rule 12(b)(3), SCRPC when such affirmative defense of the Court lacking subject matter jurisdiction has been raised. Not only is the after-discovered evidence rule an exception to the statute of limitation or the prohibition against successive PCR applications, but, the rule regarding Rule 12(b)(3), SCRPC, in conjunction with the following state cases provides that "Subject matter jurisdiction can be raised at any time on appeal, and for the first time on appeal, and may not be waived even by consent of the parties, and must be recognized *de la sponte* by the court." See Rule 12(b)(3), SCRPC; Badlaux v. Davis, 522 SE2d 835 (SC App. 1999); Rowe v. City of West Columbia, 513 SE2d 379; Wachovia Bank of South Carolina, N.A. v. Player, 512 SE2d 129; and countless other cases. 5/14 USCA; Art. 1 § 3 SC Constitution

Conclusion

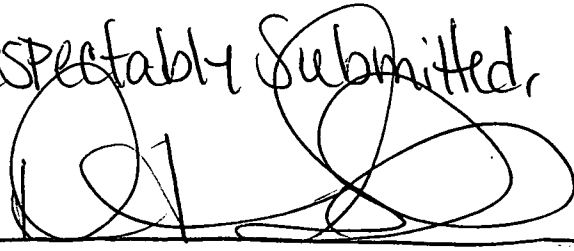
For the foregoing reasons the applicant objects to the Conditional Order to Dismiss Case no. 2013-CP-10-0719, when the Circuit Court granted the applicant (20) twenty days to show cause why such order should not become the order of the Court, and, two (2) days later the Court issued such order depriving the applicant of his liberty to exercise civil remedies to obtain a reversal of his conviction under indictment nos. 2006-CES-10-1253-5b. See exhibits 6, 7 5, 14 USCA; Art. 1, § 3 S.C. Const.

Additionally, the Court is depriving the applicant of the opportunity to respond to the States return, and refute the State's position for the record. The applicant demands for an evidentiary hearing on the facts outlined in Case no. 2013-CP-10-0719. 5, 14 USCA; Art. 1, § 3 S.C. Constitution; Rule 77d, South Carolina Rules of Civil Procedure; SC Code Ann. § 17-27-70 (B) & (C) (2003)

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

Wherefore, Applicant moves to summarily dismiss the State's contention because of the after-discovered evidence rule and Rule 12(b), SCRPC, making the lack of subject matter jurisdiction issue not applicable to or subject to the waiver rule or law under such statute and rule. SC Code Ann. 17-27-45(C) (2003); Rule 12(b), SCRPC, 5, 14 USCA; Art. 1, § 3 S.C. Constitution

Respectably Submitted,

SL 

Demetrius J. Smalls # 286806

LCE EA37

P.O. Box 205

Ridgelyville, SC 29472

RECEIVED Lieber

INMATE TRUST FUND ACCOUNT REPORT
for SOUTH CAROLINA COURT FILING FEES

APR 28 2014

MAIL ROOM
LIEBER

RECEIVED
MAY 14
MAIL ROOM
LIEBER

INSTRUCTIONS TO INMATE: Complete top portion then give to your mail room. Returned from Accounting, you must mail this form with any payment to the Court.

By signing my name below, I am asking the Financial Accounting Office of the South Carolina Department of Corrections to complete this report. In accordance with SC Code of Laws §24-27-100 and 150, I authorize payment of the full filing fee. If I have insufficient funds in my account at this time to pay the court's full filing fee, I authorize SCDC to deduct the initial and subsequent payments until payment is completed.

INMATE NAME (print): Demetrius Smalls EA 37

SCDC # 206806 INMATE SIGNATURE: [Signature]

I plan to file this action in the SC County of Charleston

The section below is for SCDC - Financial Accounting Branch's use ONLY.

- (1) Total deposits to inmate's account for preceding six months' period* \$ 0
- (2) Twenty percent (20%) of line 1 \$ 0
- (3) Account balance - current date \$ 0
- (4) PAYMENT AMOUNT **
(lesser of line 2 or line 3)
Enclosed check # _____ \$ 0

**NOTE to COURT: If payment is for partial fee, Court must notify SCDC once case is accepted and filed. Send notice with case # and balance owed to address below. SCDC will NOT process any additional payments until notification is received from Court.

South Carolina Department of Corrections
Financial Accounting - Room 234
PO Box 21787
Columbia, SC 29221-1787

* Admission date is noted here if inmate incarcerated less than six months _____

[Signature] 5/8/14
Prepared by Financial Accounting Branch - SCDC Date: _____

Demetrius J. Small
LC EA 37
P.O. Box 205
Ridgeville, SC

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MAY 20 2014
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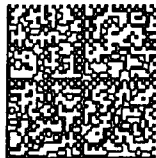
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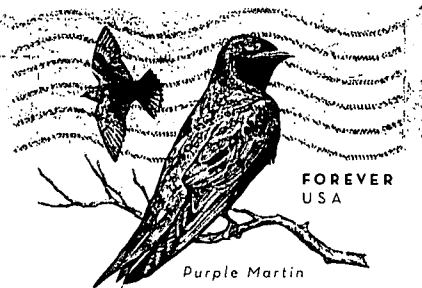
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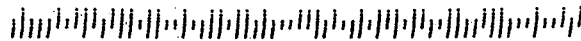
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FOREVER
USA

Purple Martin

Daniel E. Shearouse
Clerk of State Sup. Ct.
P.O. Box 11330
Columbia, SC 29211



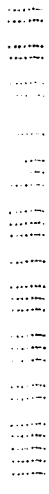
Department of Corrections
Division of Institution
Case no. 2013-CP-10-0719

THE DEPARTMENT OF CORRECTIONS HAS NOT
ENDORSED THIS ITEM. THEREFORE,
WE CANNOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

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Certified Fiber Sourcing
www.sfi-program.org



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

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