

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4007435

Donald E #237941 Robinson

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 (Vol. Dismissal);  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 10 June 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Donald E #237941 Robinson

Megan E. Harrigan

Donald E #237941 Robinson

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

Donald E. Robinson, #237941,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

2013-CP-40-07435

ORDER RESTRICTING FUTURE FILINGS

RICHLAND COUNTY  
FILED  
2014 JUN 10 AM 11:31  
JEANETTE M. HERRIDGE  
C.C. & G.S.

This Order comes as a result of the State's Motion to Restrict Future Filings of the Applicant. The State argued that Applicant's filings have become repetitive and abusive filings and should be restricted in order to preserve the Court's time and resources and stop any interference with the fair administration of justice. This Court agrees.

There is a strong interest in finality of the criminal process; judicial review must stop at some juncture and finality must be realized. Aice v. State, 305 448, 409 S.E.2d 392 (1991). The Court quoted Justice Harlan when discussing the importance of finality in litigation when they stated the following:

"If law, criminal or otherwise, is worth having and enforcing, it must some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task stripping a man of his freedom and subject him to institutional restraints. But this does not mean that in doing so, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefitted by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved. A rule of law that fails to take account of these finality interests would do more than subvert the criminal process itself. It would also seriously distort the very limited resources society has allocated to the criminal process...This drain on society's resources is compounded by the fact that issuance of the habeas writ compels a State that wishes to continue enforcing its laws against the successful petitioner to relitigate facts buried in the remote past through presentation of witnesses whose memories of the relevant events often

have dimmed. This very act of trying stale facts may well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first.”

Anderson v. Leeke, 271 S.C. 435, 441, 248 S.E.2d 120 (1978).

## I. SUPPORTING FACTS

The Applicant’s extensive litigation history is necessary to understand this request for injunction:

### UNDERLYING CONVICTION

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 March 1996 term of the Richland County Grand Jury for two counts of Assault and Battery of a High and Aggravated Nature (ABHAN) (96-GS-40-1134 and - 11600), and First Degree Burglary (96-GS-40-11390). Applicant was represented on the charges by A. Randolph Hough, Esquire. Applicant proceeded to trial before the Honorable Thomas W. Cooper, Jr. on January 13-17, 1997, where he was found guilty on each charge as indicted. Judge Cooper sentenced Applicant to thirty (30) years imprisonment for Burglary and concurrent terms of ten (10) years on each count of ABHAN.

Applicant filed a timely notice of appeal on January 28, 1997. Assistant Appellate Defender Tara S. Taggart represented Applicant on his appeal. Applicant raised the following grounds for relief on his direct appeal:

1. Whether the trial judge erred in failing to sever appellant’s trial from co-defendant’s trial until after the damage was irreparable.
2. Whether the trial judge erred in denying appellant’s motion for mistrial.
3. Whether the trial judge erred in allowing appellant’s alleged oral statement into evidence in violation of Jackson v. Denno.

The State submitted a Final Brief of Respondent on February 1, 1999. The South Court of Appeals affirmed the decision of the trial court. State v. Donald Robinson, Op. No. 2000-UP-146 (S.C. Ct. App. filed Mar. 1, 2000). On June 30, 2000, Ms. Taggart filed a Petition for Writ of Certiorari, on Applicant's behalf, with the South Carolina Supreme Court. Respondent filed a Return to Petition for Writ of Certiorari on June 30, 2000. The South Carolina Supreme Court denied certiorari on October 19, 2000. The remittitur was issued on October 27, 2000..

*First PCR: 2000-CP-40-04723*

Applicant subsequently filed an application for post-conviction relief on November 9, 2000, where he alleged he was being held unlawfully for the following reasons:

1. Ineffective assistance of counsel,
2. Conspiracy, perjury, and subornation of perjury,
3. Misconduct, intentionally using false statement.

Applicant thereafter submitted an Amended Application for Post-Conviction Relief, in which he asserted the following additional grounds for relief:

1. Applicant was denied an opportunity to cross-examine the now unavailable victim's alleged statements offered as evidence by the state in violation of both, the United States and the South Carolina Constitution. The admission of hearsay evidence against a criminal defendant implicates the Sixth Amendment because the defendant is not afforded the opportunity to confront the out-of court declarant;
2. Insufficiency of evidence that the Applicant entered the victim's residence for burglary;
3. Insufficiency of evidence that the Applicant assaulted the victim;
4. Conviction upon denial of the direct verdict motion, insufficiency of the evidence.

The State filed its Return and Motion to Dismiss on August 13, 2001. Applicant was represented in this PCR action by O. Carlisle Edwards, Esquire. An evidentiary hearing was convened on May 28, 2002. The State was represented by Assistant Attorney General David A. Spencer. Applicant was present the hearing and testified on his own behalf. Also testifying was

Applicant's former trial counsel, A. Randolph Hough, Esquire and Darlene Robinson. On July 24, 2002, the Honorable Howard P. King issued an Order of Dismissal where the court found Applicant's allegations were without merit.

Applicant then filed a Motion to Alter or Amend Pursuant to Rule 59(e) SCRPC. Judge King denied this motion by order dated October 14, 2002.

Applicant appealed the decision made by the PCR court. Assistant Appellate Defender Tara S. Taggart represented Applicant in his appeal and submitted a Johnson<sup>1</sup> Petition for Writ of Certiorari and requested to be relieved as counsel on June 18, 2003. The South Carolina Court of Appeals dismissed the appeal by order dated December 4, 2003. The remittitur was issued on December 23, 2003.

*First Federal Writ of Habeas Corpus: 2001-cv-02607*

Applicant then filed a petition for writ of habeas corpus on June 15, 2001, in federal district court. On August 3, 2001, Respondent filed its return and motion for summary judgment requesting that the case be dismissed for failure to exhaust available state court remedies since Applicant's PCR case was pending at that time. The federal district court granted Respondent's motion for summary judgment and dismissed the case without prejudice by Order dated October 11, 2001.

*Second Federal Writ of Habeas Corpus: 2004-cv-00945-HMH*

Applicant then filed a second petition for writ of habeas corpus on March 30, 2004, in federal district court. Petitioner raised the following issues verbatim:

1. Denial of effective assistance of counsel at trial and on appeal.
  - a. Petitioner argues that counsel failed to develop a viable defense strategy and withheld crucial available documentations

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<sup>1</sup> Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

- evidence from the jury deliberation and from the petitioner knowledge. Also, counsel failed to raise or preserve all meritorious issues in appellate proceedings.
2. Conviction obtained by Officer Blackwell's oral statements in violation of Jackson v. Denno. Petitioner argues that he alleged oral statements by this officer were founded eleven months after the incident, and the evidence will show he committed perjury. Also, while the evidence show he knowingly and intentionall used perjured testimony, he wilfully violated the petitioner Miranda warnings.
  3. Did trial court have subject matter jurisdiction to try and sentence petitioner, where indictments not filed with the Clerk of Court.

On July 20, 2004, the Respondent filed its return and motion for summary judgment. The federal district court granted Respondent's motion for summary judgment by Order dated March 10, 2005, finding that Petitioner's claims were without merit. Applicant filed a Notice of Appeal on March 31, 2005. The Fourth Circuit Court of Appeals issued an order enforcing the judgment on October 4, 2005.

*Second PCR: 2006-CP-40-06122*

Applicant subsequently filed an application for post-conviction relief on October 17, 2006, where he alleged he was being held unlawfully for the following reasons verbatim:

1. Ineffective assistance of counsel,
  - a. Trial counsel failed to request Brady material.
2. Prosecutors violated Brady v. Maryland,
  - a. Prosecutors failed to comply with Rule 5, witnesses statements; and victim's bond hearing statements.
3. Newly discovered evidence.

Applicant then filed a document captioned "Amended Application for Post-Conviction Relief/State Habeas Corpus" dated November 30, 2006 where he reiterated the issues listed above as follows:

1. Was trial counsel Ineffective for not having the unavailable Witnesses' written statements before trial? And, was the Defendant denied the right to confront and cross-examine the victims?

2. Was trial Counsel Ineffective for failing to correct Officer Blackwell perjury testimony about two Reports required by law? And, did the false entry on the Reports by this Officer violated Defendant's due process rights to have a fair trial?
3. Was trial Counsel Ineffective for failing to protect Defendant's constitutional rights, When the Prosecution failed to give the defense copies of Victim's Bond setting statements in violation of Brady v. Maryland?

The State filed its Return and Motion to Dismiss on or about February 9, 2007, requesting that the application be summarily dismissed. A Conditional Order of Dismissal was issued by the court and filed on August 18, 2008, provisionally denying and dismissing the case, while giving Applicant twenty (20) days from the date of service of said order in which to show why the dismissal should not become final. A Final Order of Dismissal was signed by Judge Barber on October 16, 2009. The court found that the application was barred as successive and untimely filed.

Applicant filed a notice of appeal. Applicant filed a *pro se* Petition for Writ of Certiorari with the South Carolina Supreme Court. The Supreme Court dismissed Applicant's appeal by order dated April 16, 2010, finding there was no arguable basis for asserting that the determination by the lower court was improper. Applicant then filed a Petition for Rehearing with the Supreme Court on April 27, 2010 which was denied. The remittitur was issued on May 14, 2010.

***Third PCR: 2012-CP-40-02064***

Applicant subsequently filed a third application for post-conviction relief on March 16, 2012, where he alleged he was being held unlawfully for the following reasons verbatim:

1. The Applicant Donald E. Robinson in this present application did not have the services of competent legal counsel during the course of the PCR case No. 2000-CP-40-4628.

2. As a result of the fact that the Applicant did not have the services of competent legal counsel during the course of PCR case No. 2000-CP-40-4628. The Applicant was unlawfully denied and deprived of right to due process during the PCR process.
3. As a result of the fact that the Applicant did not have the services of competent legal counsel during the court of PCR case No. 2000-CP-40-4628. The Applicant was unlawfully denied and deprived of the right to the equal protection of the law during the PCR process.
4. As a result of the fact that the Applicant did not have the services of competent legal counsel during the course of PCR case No. 2000-CP-40-4628. The Applicant was unlawfully denied and deprived of the right to have meaningful access to the court during the PCR process.
5. As a result of the fact that the Applicant did not have the services of competent legal counsel during the course of PCR case No. 2000-CP-40-4628. The Applicant was unlawfully denied and deprived of the kind of post-conviction relief process that he was legally and procedurally entitled to under South Carolina law.
6. As a result the Applicant was unlawfully denied and deprived of post-conviction relief process that he is still legally and procedurally entitled to until this date under South Carolina law. § 17-27-90.

Applicant set forth sixty (60) pages of *pro se* allegations as to why he is currently being held in custody unlawfully. Respondent filed its Return and Motion to Dismiss on March 21, 2012, requesting the application be summarily dismissed as untimely filed and as successive in nature. Judge Barber issued a Conditional Order of Dismissal on March 28, 2012, which gave Applicant twenty (20) days to respond. After reviewing Applicant's responses in their entirety in conjunction with the record and pleadings in the matter, the Judge Barber signed a Final Order of Dismissal on July 13, 2012.

***Fourth PCR: 2013-CP-40-07435***

The Applicant has most recently filed his fourth post-conviction relief application on December 10, 2013, which is pending before this Court. The Applicant raised the following issues:

1. The Applicant was denied and deprived of the services of competent legal counsel during PCR. He failed to amend the Applicant PCR Application as and is required by South Carolina law.
2. The Applicant was denied and deprived of Constitutional rights, when investigator Smith lied to the Magistrate Judge, that the Defendant unlawfully entered the victims house for Burglary First Degree. S.C. Code sec, 16-11-311.
3. The Applicant was denied and deprived of constitutional rights, when solicitor Warren B. Giese lied to the Grand Jury, that the Defendant willfully and unlawfully entered the victims house for Burglary First degree. S.C. Code sec, 16-11-311.
4. The Applicant was denied and deprived of constitutional rights when charged with Burglary first degree, when he never willfully and unlawfully entered the victims house. And when Solicitor Giese deliberately lied to the Grand Jury to get the indictment, that which deprived the trial court of subject matter jurisdiction in this case.

## II. FINDING OF FACT AND CONCLUSIONS OF LAW

The Applicant's repetitive and abusive filings must be restricted in order to preserve the Court's time and resources and stop any interference with the fair administration of justice.

The Applicant has received his full bite at the apple. Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple;" this "bite" includes an applicant's right to appeal the denial of a post-conviction relief application, and the right to assistance of counsel in that appeal. Matthews v. Evatt, 105 F.3d 907, 916 (1997), Gamble v. State, 298 S.C. 176, 379 S.E.2d 118, 119 (1989), Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999).

Applicant has filed four (4) PCR applications and two (2) federal writs of habeas corpus on his Armed Robbery, First Degree Burglary, and Kidnapping convictions, and he has appealed the dismissals of each. Applicant has filed his most recent PCR application on December 10, 2013, alleging very similar allegations that have continually been raised and dismissed.

## REMEDY

### a. *Filing Fee*

Due to the repetitive and frivolous nature of Applicant's numerous applications, the Court directs the Richland County Clerk of Court not to accept any further PCR applications from the Applicant unless he pays the normal filing fee generally required for the filing of a summons and complaint. The United States Supreme Court has denied litigants who have filed repetitive, frivolous petitions the right to proceed *in forma pauperis*, resulting in the litigants having to pay the required filing fee with that Court. In re Whitaker, 513 U.S. 1, 115 S.Ct. 2, 130 L.Ed.2d 1 (1994); In re Anderson, 511 U.S. 364, 114 S.Ct. 1606, 128 L.Ed.2d 332 (1994); In re Demos, 500 U.S. 16, 111 S.Ct. 1569, 114 L.Ed.2d 20 (1991); In re Sindram, 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991); In re McDonald, 489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989).

This Court also requires the Applicant to pay the normal civil filing fee for any subsequent motions filed in the case. This includes a filing fee for letters which include arguments for the Court to consider. Documents submitted to the Clerk's Office which are not accompanied by the proper filing fee will be returned to the Applicant.

### b. *Notarized Affidavit*

This Court requires the Applicant to provide a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous in any further PCR applications. In In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996), the South Carolina Supreme Court required Maxton, who had filed numerous meritless petitions with the Court, to pay a filing fee and accompany any future filings with a properly notarized affidavit by Maxton certifying that he in good faith believed that the matters he was raising were non-frivolous and

proper for the Court to consider. *Id.* Other courts have required that the abusive litigant file an affidavit certifying that he believes the petition raises an original claim or is non-frivolous before accepting filings from the litigant. In the Matter of Verdone, 73 F.3d 669 (7th Cir.1995); Abdul-Akbar v. Watson, 901 F.2d 329 (3d Cir.1990); Green v. Warden, 699 F.2d 364 (7th Cir.), *cert. denied*, 461 U.S. 960, 103 S.Ct. 2436, 77 L.Ed.2d 1321 (1983).

Once the Applicant submits an Application that is accompanied by the required filing fee and a notarized affidavit, this Court directs the Clerk's office to submit the Application to the Chief Administrative Judge before filing. The Administrative Judge will then make a finding on whether the issues raised in the Application are non-frivolous and proper for the Court to consider. If the Administrative Judge finds the Application proper, it will then be submitted to the Clerk's office for filing. No Application would be filed without a proper finding from the Chief Administrative Judge.

*c. Procedure*

Once the Applicant submits an application that is accompanied by the required filing fee and notarized affidavit, this Court directs the Clerk's office to submit the application to the Chief Administrative Judge before filing. The Administrative Judge will then make a finding on whether the issues raised in the application are non-frivolous and proper for the Court to consider. If the Administrative Judge finds the application proper, it will then be submitted to the Clerk's office for filing. No application would be filed without a proper finding from the Chief Administrative Judge. The Applicant must provide, with his application, an explanation as to why it is not barred as successive or being untimely under the statute of limitations. This explanations must contain sufficient facts, arguments and citations to legal authority to show that there is an arguable allegation that is not barred as successive or untimely, and is not based on

mere speculation or unfounded accusations. If the Applicant fails to make a sufficient showing, the application will be summarily dismissed by written order of the Chief Administrative Judge.

No response is required from the State unless the Chief Administrative Judge makes a finding that the Applicant made a sufficient showing. The State will then treat the application as is customary with all PCR applications. The State does not waive the right to raise defenses of untimeliness and successive at a future hearing.

This Court also warns the Applicant that the PCR court has the authority to issue Rule 11 sanctions against a post-conviction applicant pursuant to the South Carolina Rules of Civil Procedure. Rule 11 provides: "The signature of an attorney or party [on a pleading, motion, or other paper] constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is a good ground to support it; and that it is not interposed for delay. If a pleading, motion or other paper is signed in violation of this Rule, the court . . . may impose upon the person who signed it, a represented party, or both, an appropriate sanction." Hiott v. State, 375 S.C. 354, 652 S.E.2d 436 (S.C. App. 2008).

#### IV. CONCLUSION

The Applicant's allegations and accusations have become increasingly frivolous and meritless. The Applicant continues to waste the time and resources of the Richland County Clerk of Court's Office, the Chief Administrative and Presiding Judges in the Fifth Circuit, the South Carolina Attorney General's Office, numerous appointed attorneys of Richland County and surrounding Bars, Court Personnel, and the South Carolina Supreme Court.

#### IT IS THEREFORE ORDERED:

For these reasons, this Court orders the following:

1. The Clerk of Court should refuse to accept further petitions from the

