

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

RECEIVED

SEP - 8 2014

Appeal from Newberry County

James W. Johnson, Jr., Circuit Court Judge **S.C. Supreme Court**

---

MILO E. TUDOR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2013-001242

---

APPENDIX

---

KATHRINE H. HUDGINS  
Appellate Defender

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

J. RUTLEDGE JOHNSON  
Assistant Attorney General

P. O. Box 11549  
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROL. A  
COUNTY OF NEWBERRY

IN THE COL. OF COMMON PLEAS  
EIGHTH JUDICIAL CIRCUIT

Milo Earl Tudor, # 243378,  
Applicant,

v.

John Pate, Warden A.C.I.,  
Respondent.

Case No. 2012-CP-36-00511

WRIT OF HABEAS CORPUS

SCANNED

2012 SEP 17 P 2:04

NEWBERRY COUNTY

FILED

Now comes Milo Earl Tudor, pro-se, before this Honorable Court with a "Writ of Habeas Corpus", and prays that this Honorable Court will consider this writ on the following merits.

STANDARD OF REVIEW

Ineffective Assistance of Counsel

Petitioner has been trying to show and establish in court the ineffectiveness of trial counsel, to perfect direct appeal or advise petitioner of appeal rights, and of post-conviction relief counsel, to adequately present or argue issues.

That counsel's performance fell below an objective standard of reasonableness and to establish prejudice he must show that there is a reasonable probability that, but for counsel's unprofessional

errors, the result of the proceeding arguments would have been different. Williams V. Taylor, 120Ct.1495, 529U.S362, 146L.Ed2d389 (2000).

(1) Due Process

(2) Double Jeopardy

# 1. DUE PROCESS

Were the petitioner's constitutional right's violated, where tried without notice of charges called upon to answer?

## FACTS

(1) Sept.2,1996 arrest warrant no. F015292, offense code 16-3-620 assault & battery with intent to kill (abwik), was issued by Judge Barry S. Koon, in Newberry County, against petitioner. SEE Exhibit No. 1-arrest warrant F-015292

(2) Sept.3,1996, arrest warrant no. F-015292, offense code 16-3-620 ABWIK, was served upon the petitioner and dated/signed by lawful authority. SEE exhibit No. 1-arrest warrant F-015292

(3) October 1996, during the Grand Jury Term, of General Sessions Court, in Newberry County, a True bill indictment (no. 96-GS36-652) dated 10/26/96, was obtained by the State against petitioner, for 1 count - ABWIK, based on information from arrest warrant no. F-015292, which is noted on face of indictment, and petitioner was served notice. SEE Exhibit No. 2- indictment no. 96-GS36-652

(4) Petitioner hired Attorney, Harry DePew, of 2229 Decker blvd., suite C, Columbia, S.C. 29202, as legal representation on arrest warrant F-015292 and indictment no. 96-GS36-652, offense ABWIK. Preliminary hearing waived, bond hearing held and bond set. Trial date August 5, 1997. SEE Exhibit No. 3-letters from clerk of court/petitioner.

(5) At trial Aug. 5, 1997, the jury was empaneled and sworn, at which time the petitioner was informed that the State was calling him to answer (3) three charges in indictment no. 97-GS36-021, count 1- kidnapping, count 2- ABWIK, and count 3- Possession of a firearm or knife during the commission of a violent crime. SEE Exhibit No. 4- indictment no. 97-GS36-021

(6) Indictment No. 97-GS36-021, 3 counts, kidnapping, ABWIK, and possession, was obtained by the State against the petitioner, during the Jan. 1997, Grand Jury Term, of General Sessions Court, in Newberry County, without any arrest warrant(s) being issued by a judge and petitioner was never served with a notice of indictment no. 97-GS36-021. SEE Exhibit No. 4- indictment no. 97-GS36-021, Exhibit No. 5- Letter clerk of court.

(7) During trial, Aug. 5, 1997, Judge Johnson, denied petitioner's attorney, motion for a continuance to prepare for indictment no. 97-GS36-021, dismissal, direct verdict, etc., and trial proceeded. Petitioner was found guilty by the jury, and sentenced to confinement with the State Dept. of Corrections. SEE exhibit(s) No. 6, 7, 8- verdicts, Exhibit(s) No. 9, 10, 11- sentencing sheets.

## LAW/ANALYSIS

The State of South Carolina Constitution, Amend. 6 & 14, Art. 1, specifically mandates, "that in all criminal prosecutions, the accused shall enjoy the right... to be informed of the nature and cause of the accusations and to be confronted with the witnesses against him", STATE V. GREEN, 239SE2d485 (1977), not only are these rights guaranteed, they are applicable to State prosecution under the 14TH amendment of the United States Constitution, POINTER V. TEXAS, 380U.S400, 85S.Ct1065, 13L.Ed2d923 (1967). Moreover, these rights are personal to the accused. "It is the accused, not counsel", who must be "informed of the nature and cause of the accusations", FARRETTA V. CALIFORNIA, 422U.S806, 95S.Ct2525, 45L.Ed2d562 (1975), and in the State of South Carolina, courts follow the rule that the acts of a court of record are known by its records alone, LONG V. McMILLIAN, 226SC598, 86SE2d477 (1955).

In this case, the prosecutor 1st indicted petitioner Oct. 1996, 1 count ABWIK, for which petitioner was served with an arrest warrant, waived preliminary hearing, bond hearing held with bond set, and was notified by lawful authority. The prosecutor, from the same incident, again indicted petitioner Jan. 1997, with the same charge as the 1st indictment, plus 2 additional charges, 3 counts - kidnapping, abwik, possession, but failed to notify the petitioner of the 2nd indictment, despite having indictment in his possession for 8 months before the Aug.5, 1997 trial.

The Courts records are clear, the petitioner was not served with an arrest warrant or notice of indictment no. 97-GS36-021, on the charges for kidnapping, abwik, possession, was not arraigned on these charges for which called upon to answer, at trial Aug.5, 1997, and convicted Aug.7, 1997, nor was petitioner ever advised by any official or lawful authority of these charges against him. the only notice petitioner possibly received was Aug.5, 1997, at trial, by the trial court and through counsel, which is clearly inadequate under State and Federal Constitutional rights.

It is the petitioner's believe that the prosecutor in this case, with all his resources and power was allowed to obtain multiple indictments, from the same incident, adding more charges with the 2nd indictment, without notifying petitioner of 2nd indictment, for the sole purpose to hinder the defense and to enhance the possibility that even though innocent petitioner may be found guilty.

Therefore, the petitioner contends that his due process rights, of State and Federal Constitutions, were violated when petitioner was called upon to answer, tried, convicted, and sentenced for 2nd indictment no. 97-GS36-021, 3 counts - kidnapping, abwik, poss., and respectfully asks that this Honorable Court vacate these convictions and sentences, as it just and proper.

## 2. DOUBLE JEOPARD

Whether the nolle prosequi of 1st indictment 96-GS36-651 abwik, by the solicitor, at trial after the jury was empaneled and sworn, deprived the court from taking jurisdiction of 2nd indictment 97-GS36-021 count 2-abwik, thus rendering any subsequent proceedings void and a violation of petitioner's State and Federal Constitutional right's of double jeopardy ?

## FACTS

(1) Sept.2,1996, arrest warrant no. F-015292, offense code 16-3-620 abwik, was issued by Judge Barry S. Koon, in Newberry County, against the petitioner. Petitioner was served notice Sept.3,1996, and dated/signed by lawful auhtority. SEE Exhibit no. 1-arrest warrant no. F-015292

(2) Oct. 1996, during the Grand Jury Term, of General Sessions Court, in Newberry County, a true bill indictment 96-GS36-652 dated 10/26/96, was obtained by the State Solicitor against petitioner, for 1 count abwik, based on information from arrest warrant F-015292, which is noted on the face of the indictment, and petitioner was served notice. SEE Exhibit no. 2 indictment 96-GS36-652.

(3) Petitioner hired attorney, Harry DePew, of 2229 Decker Blvd., Suite C, Columbia, S.C. 29202, as legal representation on arrest warrant F-015292 and indictment no. 96-GS36-652 abwik. preliminary hearing waived, and bond hearing held with bond set. Trial date Aug.5,1997. SEE Exhibit No.3- letter clerk of court/petitioner.

(4) At trial Aug.5, 1997, the jury was empaneled and sworn, at which time the petitioner was informed that the State was calling him to answer 3 charges in indictment no. 97-GS36-021, count 1 - kidnapping, count 2- abwik, and count 3- possession. The State had obtained 2nd indictment no. 97-GS36-021 against the petitioner, during the Jan. 1997, Grand Jury Term, of General Sessions Court, in Newberry County, dated 1/6/97 without any arrest warrants on these charges being issued by a Judge, and petitioner was never served notice by lawful authority. SEE Exhibit No. 4- indictment 97-GS36-021.

(5) At trial Aug.5, 1997, with the jury empaneled and sworn, the prosecutor because of the confusion before the court with which indictment, 1st indictment 96-GS36-652 or 2nd indictment 97-GS36-021, the petitioner is being called upon to answer, at this time the prosecutor entered a nolle prosequi to the 1st indictment 96-GS36-652 abwik, which was later dated and signed by the solicitor, which is noted on the face of the indictment and entered into the courts records. The petitioner's attorney, Harry DePew, motion before the court for a dismissal to indictment 97-GS36-021 abwik, because with the jury empaneled and sworn the solicitor entered a nolle prosequi. Trail Judge denied motion, and trial proceeded. petitioner was found guilty by the jury, and sentenced, to indictment 97-GS36-021 abwik. SEE Exhibit NO. 2-indictment 96-GS36-652, Exhibit No.7-verdict, Exhibit no. 10- sentencing sheet.

## LAW/ANALYSIS

A nolle prosequi is an entering into the court's records of the prosecuting officer's decision that he will not proceed to prosecute a case. It has long been the law of South Carolina that the decision to nolle prosequi is a matter within the solicitor's discretion. STATE V. CHARLES, 183S.C188, 190SE466 (1937).

If "nolle prosequi" is entered prior to the jury being empaneled and sworn, there is no bar to future prosecution for the same offense. However, if "nolle prosequi" is entered after the jury is empaneled and sworn, it is equivalent to an acquittal, and the defendant cannot be again put in jeopardy for the same offense. GASKIN V. STATE, 210SE2d590 (1974). And in the State of South Carolina courts follow the rule that the acts of a court of record are known by it's records alone. LONG V. McMILLIAN, 226SC598, 86SE2d477 (1955).

In this case, the prosecutor 1st indicted petitioner Oct. 1996, indictment no. 96-GS36-652 1 count - abwik, petitioner was served with a arrest warrant, arrest warrant no. F-015292 offense - abwik, petitioner waived preliminary hearing, bond hearing held with a bond set, and notified by lawful authority.

The solicitor, from the same incident of sept. 2, 1996, again indicted the petitioner Jan. 1997, 2nd indictment no. 97-GS36-021 count 2 - abwik, plus added 2 more charges ( kidnapping and poss.), but failed to serve or notify the petitioner of 2nd indictment, despite having the 2nd indictment in his possession for over 8 months prior to the trial Aug.5, 1997, and petitioner was never served with any arrest warrant on the 2nd indictment.

The Courts records are very clear, the petitioner was served and notified he was being called to trial Aug.5,1997, to answer the charge of arrest warrant no. F-015292 and indictment no. 96-GS36-652 for the offense abwik. At trial, after the jury was empaneled and sworn, there was confusion before the court and with the petitioner, because there is 2 indictments from the same incident, 1st indictment no. 96-GS36-652 1 count -abwik and 2nd indictment no. 97-GS36-021 count 2 -abwik. At this time the prosecuting officer entered into court records a nolle prosequi to the 1st indictment no. 96-GS36-652 abwik, which is noted on the face of the indictment no. 96-GS36-652, with the date and signature of the prosecutor. Defense counsel, through motions, tried to prevent the prosecution of the 2nd indictment count 2-abwik, but was denied by the trial judge and trial proceeded. The petitioner was found guilty by the jury for the 2nd indictment no. 97-GS36-021 and sentenced.

The petitioner at this time would like to note the confusion of the trial judge, on the sentencing sheets, as to which indictment to enter as case no. 96-GS36-652 or 97-GS36-021.

It is the petitioner's believe that the prosecutor in this case, was allowed to obtain multiple indictments, from a single incident, for the same offense. Then at trail, after the jury was empaneled and sworn, pick which indictment to proceed the trial with, nolle prosequi the 1st indictment, which placed a unfair burden on defense counsel, to prepare defense, and greatly increased the prosecutor's chance of getting a conviction, where the jury found the petitioner guilty and the trial judge sentenced him.

Therefore, the petitioner contends that his State and Federal Constitutional rights were violated, when called upon to answer, tried, convicted, and sentenced, for the 2nd indictment no. 97-GS36-021 count 2 -abwik, and respectfully asks that this Honorable Court vacate this conviction and sentence, as it is just and proper.

#### CONCLUSION

The petitioner prays that after reviewing the facts, court records, and with careful consideration, this Honorable Court grant this petition for writ of habeas corpus.

Respectfully submitted,



Milo Earl Tudor

CC:

Newberry County Court  
SC Supreme Court  
SC Attorney General  
Attorney  
file

## PROOF OF SERVICE

I, hereby certify that i, Milo Earl Tudor (243378), on this \_\_\_\_ day of \_\_\_\_\_, 2012, in Fairfax, South Carolina 29827, served a copy of petitioner's writ of habeas corpus, on all parties to this matter by depositing the same in the United States Postal Service, postage prepaid, or in the mailroom dept. of the Allendale Corr. Inst. and addressed as follows, (1) Newberry County Court P.O. Drawer 10 Newberry, S.C. 29108, (2) South Carolina Supreme Court P.O. Box 11330 Columbia, S.C. 29211, (3) South Carolina Attorney General P.O. Box 11549 Columbia, S.C. 29211.

Respectfully Submitted,



Milo Earl Tudor

*Exhibits # 1-11 Included  
MEF*

Srorn and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
my commission expires

\_\_\_\_\_  
notary public

FILED  
NEWBERRY COUNTY  
2012 SEP 17 P 2 07  
JULIA S. DUNN  
CLERK

IN THE STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

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

I, Milo Earl Tudor, hereby apply for leave to proceed in this action without prepayment of fees or costs or security thereof. In support of Habeas Corpus 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 therefor.
- 3) I am an inmate with the South Carolina Dept. of Corrections - SCDC No. 243378.
- 4) My SCDC E.H. Cooper Trust funds present balance \$ 6.43.

Milo Earl Tudor 4/11/2012  
APPLICANT Milo Earl Tudor (243378)

SWORN or affirmed to and subscribed  
before me this 11 day of April, 2012.

Helen R. Freeman  
Notary public  
5/18/14  
My Commission Expires

FILED  
NEWBERRY COUNTY  
2012 SEP 17 PM 2:07  
CLERK OF COURTS  
NEWBERRY COUNTY

RECEIVED

MAR 22 2012

MAILROOM  
ACI

F3 B38

RECEIVED

MAR 15 2012

MAILROOM  
ACI

FINANCIAL CERTIFICATE  
FOR THE  
DISTRICT OF SOUTH CAROLINA

I request that an authorized officer of the institution in which I am confined, or other person designated to review financial information in relation to inmate trust funds, complete this Certificate.

Milb Earl Tindor  
INMATE NAME (PRINTED)

Milb Earl Tindor  
INMATE SIGNATURE

243378  
INMATE (PRISONER) NUMBER

Allendale Corr. Inst.  
PLACE OF CONFINEMENT

- ◆ (1) Average monthly deposits to the inmate's account.....\$ 0
- ◆ (2) Average monthly balance in the inmate's account calculated for the prior six months period.....\$ 6.43
- ◆ (3) Current Balance.....\$ 6.43
- ◆ (4) Initial Installment Payment (Take 20 percent of the greater of lines 1 or 2).....\$ 0

I hereby certify that as of this date, the above financial information is accurate for the above named inmate.

[Signature]  
Authorized Officer's Signature

3/20/12  
Date

J. Smith for Actg.  
Authorized Officer's Name and Title

SCDC-FINANCIAL ACCT'G  
2012 MAR 19 AM 11:31

## ARREST WARRANT

F 015292 Cash Bond

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of  
NEWBERRY COUNTY

## THE STATE

against

TUDOR, MILO E.

Address:

Name:

Race: ☐ Height: ☐ Weight: ☐SSN: ☐

DL #:

DOB: ☐ Agency ORI #: SC03600000

Prosecuting Agency: NEWBERRY CO. SHERIFF

Prosecuting Officer: ANY LAWFUL OFFICER

Offense: MISC. CRIM. MAXIMUM 185-201-1

Offense Code: 947M

Code/Ordinance Sec. 16-3-620

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

 The accused  
is to be arrested and brought before me to be  
dealt with according to law.

Signature of Judge

(L.S.)

## RETURN

 A copy of this arrest warrant was delivered to  
defendant TUDOR, MILO E.

on 05-23-96

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

NEWBERRY COUNTY SHERIFF'S OFFICE

CENTRAL COURT

3239 LOUIS RICH RD

NEWBERRY, SC 29108

EXHIBIT # 1

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of  
NEWBERRY COUNTY

Personally appeared before me the affiant

being duly sworn deposes and says that defendant

did within this county and state on 05/22/96

 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of ☐ who  
in the following particulars: violate the criminal laws of the

DESCRIPTION OF OFFENSE:

MISC. CRIM. MAXIMUM

16-3-620

 I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:

 ON 5-2-96 AT APPROXIMATELY 19:42 HOURS THE DEFENDANT, MILO E. TUDOR DID  
COMMIT THE OFFENSE OF ASSAULT & BATTERY WITH THE INTENT TO KILL IN THAT HE  
CUT THE VICTIM ON BOTH FOREARMS AND BEHIND LEFT EAR. DEFENDANT ALSO TRIED  
TO CHOKER THE VICTIM, YVONNE TUDOR. TO WIT: VICTIM WAS HOSPITALIZED RECEIVING  
2000 STITCHES FROM CUTS. THIS INCIDENT OCCURRED ON BRANCH ROAD IN NEWBERRY  
COUNTY, S.C.

Sworn to and subscribed before me

on ☐ (L.S.)

Signature of Issuing Judge

Signature of Affiant

3239 LOUIS RICH DRIVE

NEWBERRY, SC 29108

Affiant's Telephone 803 321-2144

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of  
NEWBERRY

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe the  
defendant TUDOR, MILO E.

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of ☐ as set forth below:

DESCRIPTION OF OFFENSE:

MISC. CRIM. MAXIMUM

16-3-620

 Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before  
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the  
defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address

(L.S.)

Signature of Issuing Judge

Judge Code: 432

SHIRLEY S. ROON

Judge's Telephone

803 321-2144

Issuing Court:

☒ Magistrate

☐ Circuit

ORIGINAL

FILED  
CLERK OF COURT

WITNESSES 17 P 200

S. K. Scott  
Todd Johnson  
Yvonne Tudor V

The State of South Carolina

County of NEWBERRY

COURT OF GENERAL SESSIONS

OCTOBER Term, 1996

96GS36-652

THE STATE  
vs.

MILQ-EARL TUDOR

*Noted 10/28/96*  
*W. J. Johnson*  
*Dep. Solicitor*  
*8/7/97*

Indictment for Assault and  
Battery With Intent to Kill

VERDICT

Foreman

TRUE BILL

*Charles H. DeLoach*  
Foreman of Grand Jury  
10-28-96

F-015292

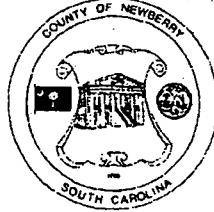
*ChRB*

EXHIBIT #2

THE DEFENDANT, IN MY OWN PROPER  
PERSON, COME TO THE BAR OF THIS COURT, WAIVE GRAND JURY ACTION, AND FREELY AND  
VOLUNTARILY PLEAD \_\_\_\_\_ GUILTY TO THE CHARGE(S) OF: \_\_\_\_\_  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 19 \_\_\_\_\_  
ATTEST: \_\_\_\_\_  
DEFENDANT'S SIGNATURE \_\_\_\_\_  
CLERK OF COURT, NEWBERRY, S. C. \_\_\_\_\_  
*Noted 10/28/96*  
*W. J. Johnson*  
*Dep. Solicitor*  
*8/7/97*

DEFENDANT WAS CONVICTED OF  
THE SAME AS

Office of Clerk of Court  
**County of Newberry**



**Jackie S. Bowers**  
 Clerk of Court

Newberry, S.C. 29108

P.O. Drawer 10  
 (803) 321-2110  
 Fax: (803) 321-2111

March 30, 2012

Mr. Milo Earl Tudor, #243378  
 Allendale C.I. F33-38  
 PO Box 1151  
 Fairfax, SC 29827

Re: 1997GS36-021

Dear Mr. Tudor:

I am writing in response to your letters received by this office on March 22, 2012 and March 29, 2012. I am enclosing copies of your Sentencing Sheets and Indictment. The Attorney of record reflected in the case was Harry Clayton DePew. I am also sending you a copy of Warrant F015292. The information you are requesting should be on these documents.

If you have any questions, please let us know.

Sincerely,

*Beverly J. Brehmer*  
 Beverly J. Brehmer  
 Accounting Clerk

Enclosures  
 BJB/

FILED  
 NEWBERRY COUNTY  
 2012 SEP 17 P 2:06  
 CLERK OF COURTS

EXHIBIT #3  
 1072

Harry C. DePew  
 Attorney at Law  
 2229 Decker Blvd., Suite C  
 Columbia, S.C. 29206

Re: Milo Earl Tudor  
 Warrant # FO15292 ABWIK  
 Indictment # 16-6536-652 ABWIK  
 June 14, 1997

FILED  
 NEWBERRY COUNTY  
 2017 SEP 17 P 2:06  
 CLERK OF COURT

Dear Mr. DePew,

I am writing to ask about my criminal case. Have you received discovery from the State?, Will you have a medical expert examine me?, Have you consulted with the solicitor concerning the plea offer of 10 years?, and if I take the plea offer, when will I go to Court?. I have been in the County Jail since Feb. 17, and have heard nothing from you or the Court. Please write me as soon as possible and let me know what going on with my case.

Sincerely,  
 Milo Earl Tudor 6/14/97  
 Milo Earl Tudor C-Pod  
 Newberry County Detention Center  
 3239 Louis Rich Drive  
 Newberry, South Carolina 29108

EXHIBIT # 3  
 80924

214911-140  
(803) 256-4580

Revised 6-10-62

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY  
NEWBERRY COUNTY

WITNESSES

S. K. Scott  
Todd Johnson  
Yvonne Tudor

COURT OF GENERAL SESSIONS 7 P 2 06

JANUARY TERM, 19 97 S. BOWERS  
CLERK OF COURT

97GS36-21

THE STATE

VS

MILO EARL TUDOR

CLERK OF COURT  
JANUARY TERM, 19 97 S. BOWERS  
CLERK OF COURT

BW 1-8-97

INDICTMENT FOR

- (1) KIDNAPPING
- (2) ASSAULT AND BATTERY WITH INTENT TO KILL
- (3) VIOLATION SECTION 16-23-490

VERDICT

Foreman

Solicitor

Foreman of Grand Jury

CLERK OF COURT

THE DEFENDANT, IN MY OWN PROPER PERSON, COME TO THE BAR OF THIS COURT, WAIVE GRAND JURY ACTION AND FREELY AND VOLUNTARILY PLEAD GUILTY TO THE CHARGE(S) OF:

THIS DAY OF A.D. 19

ATTEST:

CLERK OF COURT, NEWBERRY, S. C.

DEFENDANT'S SIGNATURE

## INDICTMENT FOR:

**The State of South Carolina**County of Newberry

- (1) KIDNAPPING  
 (2) ASSAULT AND BATTERY WITH INTENT  
 TO KILL  
 (3) VIOLATION SECTION 16-23-490

At a Court of General Sessions, convened on the 6th day of January,  
 19 97, the Grand Jurors of Newberry County present upon their oath:

## COUNT ONE

(1) That MILO EARL TUDOR

did in the county and state aforesaid, on or about the 2nd day of September,  
 19 96, wilfully and unlawfully with criminal intent, seize, confine,  
 inveigle, decoy, kidnap, abduct or carry away Yvonne Tudor without  
 authority of law

FILED  
 NEWBERRY COUNTY  
 17 SEP 17 P 2:06  
 CLERK OF COURT

## COUNT TWO

(2) That MILO EARL TUDOR

did in the county and state aforesaid, on or about the 2nd day of September,  
 19 96, in and upon one Yvonne Tudor feloniously, wilfully and of his  
 malice aforethought, did make an assault with certain deadly weapons,  
 to wit: a knife and/or a razor blade, a rope and his hands and/or fists,  
 and him the said MILO EARL TUDOR with the said knife and/or razor blade,  
 rope and hands and/or fists did stick, cut, stab, choke, hit, beat and

EXHIBIT #4  
 2002

FILED  
HARTLEY COUNTY  
2012 SEP 17 P 2:06

100

Jackie S. Bowers  
Clerk of Court  
P.O. Drawer 10, 1226 College St.  
Newberry, SC 29108

RECEIVED

SEP 29 2010  
11 ROOM  
ACI

White Earl Tudor # 243378  
F 5A - 212 Allendale Corv. Inst.  
PO Box 1151  
Fairfax SC 29827

100



20

2010CP26-154

Memorandum

## CLERK OF COURT'S OFFICE, NEWBERRY COUNTY

Jackie S. Bowers, Clerk of Court

Post Office Drawer 10

Newberry, S.C.

TO: MILO EARL TUDOR

DATE: SEPTEMBER 27, 2010

FROM: BETH P. FOLK  
DEPUTY CLERK OF COURT

AS I WROTE TO YOU ON JULY 15, 2010 WHEN YOU REQUESTED COPIES OF THE WARRANTS ON CASE NO 97GS36-21, THIS INDICTMENT WAS DONE ON INFORMATION. THEREFORE THERE ARE NO WARRANTS. (SEE ATTACHED) ALSO I RECEIVED YOUR LETTER REQUESTING COPIES OF DOCUMENTS IN INDICTMENT NUMBER 96GS36-652. I HAVE ATTACHED COPIES OF THE WARRANT AND INDICTMENT. AS FOR ANY OTHER DOCUMENTS CONCERNING THIS CASE YOU WILL NEED TO CONTACT THE ARRESTING AGENCY OR YOUR ATTORNEY.

FILED  
NEWBERRY COUNTY  
2011 SEP 17 P 2 06  
CLERK OF COURT

EXHIBIT # 5  
2012

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF NEWBERRY )

IN THE COURT OF GENERAL SESSIONS  
 EIGHTH JUDICIAL CIRCUIT

THE STATE, )  
 )  
 vs. )  
 )  
 MILO EARL TUDOR, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

**VERDICT**

INDICTMENT NO.: 97-GS-36-21

I. NOT GUILTY

\_\_\_\_\_  
 FOREPERSON

II. GUILTY OF KIDNAPPING

*Dell Williams*  
 \_\_\_\_\_  
 FOREPERSON

FILED  
 NEWBERRY COUNTY  
 2017 SEP 17 P 2:06  
 CLERK OF COURT

DATE 8/17/97

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE,  
 PLEASE NOTIFY THE BAILIFF.

EXHIBIT 6

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF NEWBERRY )

IN THE COURT OF GENERAL SESSIONS  
 EIGHTH JUDICIAL CIRCUIT

THE STATE, )  
 )  
 vs. )  
 )  
 MILO EARL TUDOR, )  
 )  
 DEFENDANT. )

**VERDICT**

INDICTMENT NO.: 97-GS-36-21

I. NOT GUILTY

\_\_\_\_\_  
 FOREPERSON

II. GUILTY OF ASSAULT AND BATTERY WITH INTENT TO KILL

*Jeff. D. Dunning*  
 \_\_\_\_\_  
 FOREPERSON

III. GUILTY OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

\_\_\_\_\_  
 FOREPERSON

DATE 7/19/97

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE,  
 PLEASE NOTIFY THE BAILIFF.

EXHIBIT #7

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF NEWBERRY )

IN THE COURT OF GENERAL SESSIONS  
 EIGHTH JUDICIAL CIRCUIT

THE STATE, )  
 )  
 vs. )  
 )  
 MILO EARL TUDOR, )  
 )  
 DEFENDANT. )

**VERDICT**

INDICTMENT NO.: 97-GS-36-21

I. NOT GUILTY

\_\_\_\_\_  
 FOREPERSON

II. GUILTY OF POSSESSION OF A KNIFE DURING THE  
 COMMISSION OF A VIOLENT CRIME

*[Signature]*  
 \_\_\_\_\_  
 FOREPERSON

FILED  
 NEWBERRY COUNTY  
 2012 SEP 17 P 2 06  
 CLERK S. HARRIS  
 1000 COURT

DATE 8/17/07

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE,  
 PLEASE NOTIFY THE BAILIFF.

EXHIBIT #8

## S E N T E N C E

STATE OF SOUTH CAROLINA

Newberry COUNTY

Case #

97

-21

-GS-

PLED CONVICTED:KIDNAPPING

The defendant MIL E. TUDOR is committed to the  
 State Department of Corrections for a term of 30 ~~months~~ years  
 and/or pay a fine of \$ \_\_\_\_\_; provided upon the service of  
15 ~~months~~ years and/or payment of \$ \_\_\_\_\_; plus pay/waive costs  
 and assessments as applicable the balance suspended with probation for  
5 ~~months~~ years.

Restitution

For physical injury \$ \_\_\_\_\_

Yes/No

Property damage \$ \_\_\_\_\_

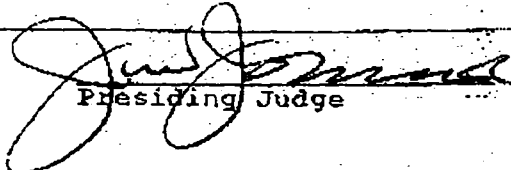
to be paid \_\_\_\_\_

to clerk for \_\_\_\_\_

other conditions:

① No contact, direct or indirect, with  
victim. ② Consecutive

Date:

August 7, 1997
  
 Presiding Judge

## Costs and Assessments:

B.A. Test \$ \_\_\_\_\_  
 Non-waivable \$ \_\_\_\_\_  
 Not waived \$ \_\_\_\_\_  
 Total \$ \_\_\_\_\_

Deputy/Clerk of Court

EXHIBIT 9

STATE OF SOUTH CAROLINA

Newberry COUNTY

Case #

97  
GS-36-21PLED CONVICTED:ASSAULT AND BATTERY  
WITH INTENT TO KILL

The defendant MIL E. TUDOR is committed to the  
 State Department of Corrections for a term of 20 months years  
 and/or pay a fine of \$ \_\_\_\_\_; provided upon the service of  
 \_\_\_\_\_ months/years and/or payment of \$ \_\_\_\_\_; plus pay/waive costs  
 and assessments as applicable the balance suspended with probation for  
 \_\_\_\_\_ months/years.

Restitution

For physical injury \$ \_\_\_\_\_

Yes/No

Property damage \$ \_\_\_\_\_

to be paid \_\_\_\_\_

to, clerk for \_\_\_\_\_

other conditions: Credit for time served since Feb. 16, 1997

Date:

August 7, 1997.[Signature]  
Presiding Judge

Costs and Assessments:

B.A. Test \$ \_\_\_\_\_

Non-waivable \$ \_\_\_\_\_

Not waived \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

Deputy/Clerk of Court

2010CPK-154

EXHIBIT # 10

STATE OF SOUTH CAROLINA

Newberry COUNTY

Case # 97 -GS-36-21

PLED/CONVICTED: USE OF KNIFE  
IN COMM. OF A VIOLENT CRIME

The defendant M. LO E. TUDOR is committed to the  
State Department of Corrections for a term of 5 ~~months~~ years  
and/or pay a fine of \$ \_\_\_\_\_; provided upon the service of  
\_\_\_\_\_ months/years and/or payment of \$ \_\_\_\_\_; plus pay/waive costs  
and assessments as applicable the balance suspended with probation for  
\_\_\_\_\_ months/years.

Restitution For physical injury \$ \_\_\_\_\_  
Yes/No Property damage \$ \_\_\_\_\_  
to be paid \_\_\_\_\_

to clerk for \_\_\_\_\_  
other conditions: Concave

Date: August 7, 1997

[Signature]  
Presiding Judge

Costs and Assessments:

B.A. Test \$ \_\_\_\_\_  
Non-waivable \$ \_\_\_\_\_  
Not waived \$ \_\_\_\_\_  
Total \$ \_\_\_\_\_

\_\_\_\_\_  
Deputy/Clerk of Court

EXHIBIT #11

## PROOF OF SERVICE

I, hereby certify that i, Milo Earl Tudor (243378), on this 16  
 day of April, 2012, in Fairfax, South Carolina 29827, served a  
 copy of petitioner's writ of habeas corpus, on all parties to this  
 matter by depositing the same in the United States Postal Service,  
 postage prepaid, or in the mailroom dept. of the Allendale Corr.  
 Inst. and addressed as follows, (1) Newberry County Court P.O.  
 Drawer 10 Newberry, S.C. 29108, (2) South Carolina Supreme Court  
 P.O. Box 11330 Columbia, S.C. 29211, (3) South Carolina Attorney  
 General P.O. Box 11549 Columbia, S.C. 29211.

Respectfully Submitted,

 4/24/2012  
 Milo Earl Tudor

Srorn and subscribed before me  
 this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
 my commission expires

\_\_\_\_\_  
 notary public

FILED  
 NEWBERRY COUNTY  
 2012 SEP 17 P 201

IN THE STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

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

I, Milo Earl Tudor, hereby apply for leave to proceed in this action without prepayment of fees or costs or security thereof. In support of Habeas Corpus 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 therefor.
- 3) I am an inmate with the South Carolina Dept. of Corrections - SCDC No. 243378.
- 4) My SCDC E.H. Cooper Trust funds present balance \$ 6.43.

Milo Earl Tudor 4/11/2012  
APPLICANT Milo Earl Tudor (243378)

SWORN or affirmed to and subscribed  
before me this 11 day of April, 2012.

John R. Freeman  
Notary public

5/18/14  
My Commission Expires

FILED  
NEWBERRY COUNTY  
2012 SEP 17 P 2:04  
CLERK OF COURT

F3 B38

RECEIVED

MAR 22 2012

MAILROOM  
ACI

FINANCIAL CERTIFICATE  
FOR THE  
DISTRICT OF SOUTH CAROLINA

RECEIVED

MAR 15 2012

MAILROOM  
ACI

I request that an authorized officer of the institution in which I am confined, or other person designated to review financial information in relation to inmate trust funds, complete this Certificate.

Milb Earl Tudor  
INMATE NAME (PRINTED)

243378  
INMATE (PRISONER) NUMBER

Milb Earl Tudor  
INMATE SIGNATURE

Alledale Corr. Inst.  
PLACE OF CONFINEMENT

- ◆ (1) Average monthly deposits to the inmate's account.....\$ 0
- ◆ (2) Average monthly balance in the inmate's account calculated for the prior six months period. ....\$ 6.43
- ◆ (3) Current Balance .....\$ 6.43
- ◆ (4) Initial Installment Payment (Take 20 percent of the greater of lines 1 or 2).....\$ 0

I hereby certify that as of this date, the above financial information is accurate for the above named inmate.

[Signature]  
Authorized Officer's Signature

3/20/12  
Date

J. Smith for Actg.  
Authorized Officer's Name and Title

SCDC-FINANCIAL ACCTG.  
2012 MAR 19 AM 11:31

RECEIVED  
 4/27/2012  
 CLERK OF COURT  
 NEWBERRY, SC

Dear Clerk of Court

I have enclosed a copy of a Writ of Habeas Corpus, please clock stamp and file one into the Courts records and the other copy please return it to me, in self-addressed envelope with postage prepaid.

Your time and cooperation in this matter would be greatly appreciated.

Respectfully



4/26/2012

FILED  
 NEWBERRY COUNTY  
 2012 SEP 17 P 2 04  
 CLERK OF COURT

COPY mailed to Mr. Judo 9/17/12



2012-CP-36-00511

**State of South Carolina**  
**The Circuit Court of the Eleventh Judicial Circuit**

**William P. Keesley**  
 Judge

Post Office Box 10  
 127 Courthouse Square  
 Edgefield, SC 29824-0010  
 Phone: (803) 637-4095  
 Fax: (803) 637-2035  
 wkeesleyj@sccourts.org

August 17, 2012

SCANNED

Mr. Milo Earl Tudor, 243378  
 F3B-38 ACI  
 P.O. Box 1151  
 Fairfax, SC 29827

Re: Petition  
 2012-CP-36-00372

Dear Mr. Tudor:

In response to your letter of August 14, 2012, I received the order from the Chief Justice assigning me to serve as the Chief Judge for Administrative Purposes for this matter and another matter in the 8<sup>th</sup> Circuit. I requested and received copies of the documents that you filed. I plan to be in touch with you and the opposing attorney soon. In looking on the Newberry County website, there is an indication that Tommy A. Thomas, Esquire, is your attorney. I am sending a copy of this to him. There is no indication of an attorney for the State, yet; so, I am sending a copy of this letter to the Attorney General's office and to the 8<sup>th</sup> Circuit Solicitor's office.

Thank you.

Sincerely,

COPY

William P. Keesley

JACKIE S. BOWERS  
CLERK OF COURT

2012 AUG 22 A 9:48

FILED  
NEWBERRY COUNTY

cc: Tommy A. Thomas, Esq., P.O. Box 88, Irmo, SC 29063  
 Attorney General (PCR for 8<sup>th</sup> Circuit) P.O. Box 11549, Columbia, SC 29211  
 Office of the Solicitor, 8<sup>th</sup> Judicial Circuit, PO Box 516, Greenwood, SC 29648  
 ✓ Newberry County Clerk of Court's file

STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS

Case Number: 2012-CP-36-00511

MILO EARL TUDOR, 243378,  
Petitioner,

vs.

STATE OF SOUTH CAROLINA,  
Respondent.

ORDER REGARDING FILING

FILED  
NEWBERRY COUNTY  
JANIE S. HARRIS  
CLERK OF COURT

2012 SEP 18 A 10:18

*WPH #1*

Milo Earl Tudor, who is an inmate of the South Carolina Department of Corrections (SCDC), submitted a petition for a writ of habeas corpus to the Newberry County Clerk of Court, along with a request that he be allowed to proceed without payment of the filing fee and costs. He also included a report concerning his Cooper Trust Fund account. The Clerk is directed to file the habeas corpus petition, without payment of the filing fee at this stage. A determination will be made at a later stage after the court is able to conduct further research as to whether the inmate may be required to use his Cooper Trust Fund. However, nothing contained herein constitutes a ruling on the merits of the petition or prohibits the summary dismissal of the petition, if that is deemed appropriate. Further, nothing contained herein should be construed as a determination that the petitioner cannot sanctioned under the statutory procedure contained in the Code.

Upon receipt of the packet, the Clerk forwarded the request to the Chief Judge for Administrative Purposes for the Eighth Judicial Circuit. He has a conflict, as does the other resident judge of the Eighth Circuit. That situation required that the Chief Justice of the Supreme Court of South Carolina be notified, and she issued an order on June 25,

2012, designating the undersigned judge to handle the administrative aspects of this matter.

In *Ex Parte: Martin v. State*, 321 S.C. 533, 471 S.E.2d 134 (1995), the Supreme Court of South Carolina addressed when an inmate may proceed *in forma pauperis*. It contains the following language:

Because of the increasing number of persons seeking to proceed in forma pauperis, we take this opportunity to give guidance as to when it is appropriate to waive filing fees. In the absence of a statutory provision allowing the general waiver of filing fees, we conclude motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions. See *Tahtinen v. Superior Court, Pinal County*, 130 Ariz. 513, 637 P.2d 723 (1981); *Steinkamp v. Jacque*, 36 Conn.Sup. 37, 410 A.2d 489 (1979); 1986 Op.S.C.Att'y Gen. No. 86-44 at 131.

WAC #2  
Among the statutory provisions allowing or requiring waiver of filing fees are S.C.Code Ann. §§ 8-21-310(11) (Supp.1994) (no fee must be paid to appeal from a conviction in magistrate's or municipal court); 17-27-60 (1985) (no fee required of indigent filing a post-conviction relief action); 20-4-40(e) (1985) (clerks of court must assist persons seeking an order of protection from domestic abuse by giving them forms to proceed in forma pauperis); 20-7-1440 (Supp.1994) (no court fee may be charged in delinquency and neglect actions); 41-39-30 (1986) (fee waived in a proceeding involving a claim for benefits from the Employment Security Commission); and, 44-41-34(B) (Supp.1994) (a minor may file an action seeking consent for an abortion without paying any filing fee). Further, where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts. Compare *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971) (an indigent must be given access to courts in divorce action) and *Smith v. Bennett*, 365 U.S. 708, 81 S.Ct. 895, 6 L.Ed.2d 39 (1961) (an indigent prisoner may not be required to pay a filing fee for petitioning for a writ of habeas corpus) with *Ortwein v. Schwab*, 410 U.S. 656, 93 S.Ct. 1172, 35 L.Ed.2d 572 (1973) (no [321 S.C. 536] constitutional violation in requiring payment of appellate filing fee by indigents seeking review of an adverse welfare decision) and *United States v. Kras*, 409 U.S. 434, 93 S.Ct. 631, 34 L.Ed.2d 626 (1973) (no constitutional violation in requiring payment of filing fee by indigent in bankruptcy action). (FN1)

In the future, when an indigent litigant files a motion to proceed in forma pauperis pursuant to Rule 3(c), and the complaint does not appear to

fit within one of the statutory or constitutional exceptions to the requirement of a filing fee, the clerk of court must submit the motion to a judge for a ruling as to whether the complaint does fit within one of the statutory exceptions or whether the cause of action concerns a fundamental right that requires waiver of the filing fee.

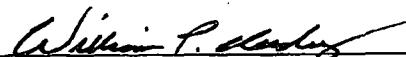
Clearly, an inmate must be given access to the courts and the "great writ" of habeas corpus ~~services~~ <sup>inmate</sup> must be preserved. The establishment of the Uniform Post Conviction Relief Act created a vehicle that allows access to the courts for almost all claims that traditionally would have been subject to a habeas corpus petition. After reviewing the files at the Newberry County Clerk of Court's office, it appears that this petitioner has filed several post-conviction petitions, as well as filing more than one federal habeas corpus action. It seems that the claims raised in this petition may be nothing more than duplicitous assertions of issues already raised and ruled upon.

#3 If this is a repetitive filing, it seems, at a minimum, that the inmate could be required to pay toward the filing fee. He should be given the right to file at this stage, however.

THEREFORE, IT IS ORDERED that the Clerk of Court is to file the petition for writ of habeas corpus, with the court reserving the decision on whether payment of a filing would be required and paid as being allowed under the statutory scheme of S.C. Code Sections 24-27-100, et. seq. The Clerk of Court has no responsibility for serving the petition upon any party that requires service of process, though the Clerk is to forward a copy of this order to the petitioner.

AND IT IS SO ORDERED.

September 14, 2012

  
William P. Keesley  
(Acting) Chief Judge for Admin. Purposes

STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS  
EIGHTH JUDICIAL CIRCUIT

Milo Earl Tudor, #243378,

2012-CP-36-0511

Petitioner,

v.

**RETURN AND MOTION TO DISMISS**

State of South Carolina,

Respondent.

FILED  
NEWBERRY COUNTY  
2012 OCT 31 AM 10:26  
JAMES S. DOWERS  
CLERK OF COURT

In response to the Petition for Writ of Habeas Corpus filed September 17, 2012, the Respondent would show this Court:

I.

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of Newberry County Clerk of Court. The Petitioner was indicted at the January 1997 term of the Newberry County Grand Jury Kidnapping, Assault and Battery with Intent to Kill (ABWIK), and Possession of a Weapon during the Commission of a Violent Crime (1997-GS-36-21). The Petitioner was represented by Harry DePew, Esquire. On August 7, 1997, the Petitioner proceeded to trial at which he was found guilty of kidnapping, ABWIK, and use of a knife in commission of a violent crime. The Honorable Judge James W. Johnson, Jr. sentenced the Petitioner to confinement for a period of twenty (20) years for ABWIK, thirty (30) years, consecutive, suspended upon the service of fifteen (15) years and five (5) years probation for Kidnapping, and five (years), concurrent for Use of a Knife during the Commission of a Violent Crime.

SCANNED

A timely Notice of Appeal was filed on Petitioner's behalf. The South Carolina Court of Appeals issued an Order of Dismissal on May 5, 1998 and a Remittitur on May 21, 1998.

**2.00-1358-12AJ**

The Petitioner then filed a Federal Habeas Corpus in the Federal District Court for the District of South Carolina. The Magistrate issued a Report and Recommendation on June 21, 2000, recommending that the action be dismissed without prejudice for failure to exhaust all state remedies. On August 1, 2002, the Honorable C. Weston Houck adopted the Report and Recommendation and dismissed Petitioner's Federal Habeas Corpus claim without prejudice.

**2002-CP-36-357**

The Petitioner subsequently filed an application for post-conviction relief (PCR) on August 21, 2002. The Applicant raised the following issues in his first PCR:

1. Ineffective assistance of counsel;
2. Denial of right to direct appeal.

The Honorable James E. Lockemy denied and dismissed the application with prejudice by written Order filed June 28, 2004. Robert M. Pachak, Esquire, filed a Petition for a Writ of Certiorari on the Petitioner's behalf pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2s 201 (1988). The South Carolina Supreme Court denied the Petitioner's Petition. The Remittitur was sent on September 14, 2005.

**2:06-0342-RBH**

The Petitioner then filed a Federal Habeas Corpus in the Federal District Court for the District of South Carolina. The Magistrate issued a Report and Recommendation on September 15, 2006, recommending that the action be dismissed. The Petitioner responded to the Report and Recommendation on October 12, 2006. On January 30, 2007, the Honorable R. Bryan

Harwell adopted the Report and Recommendation and granted the State's Motion for Summary Judgment, denying the Petitioner's Habeas Corpus claim.

**2010-CP-36-0154**

The Petitioner subsequently filed an application for post-conviction relief (PCR) on April 5, 2010 and amended May 7, 2010. The Petitioner raised the following issues in his second PCR:

1. Ineffective Assistance of Counsel
  - a. "Trial Counsel failed to perfect direct appeal, file brief, or advise of appeal rights"
2. Denial of Direct Appeal
  - a. "Applicant did not knowingly and intelligently waive direct appeal."
3. PCR Judge erred by summarily dismissing application
  - a. "Denial of fair proceeding where grounds for relief were not asserted and inadequately raised by counsel's ineffective assistance."

The Honorable Eugene C. Griffith, Jr. denied and dismissed the application with prejudice by written Order filed December 11, 2009 as successive to his 2002 PCR action. Thereafter, the Petitioner filed a PCR appeal. The South Carolina Court of Appeals denied Petitioner's appeal. The Remittitur was filed on February 24, 2012.

**II.**

In his Petition for Writ of Habeas Corpus, Petitioner alleges the following grounds for relief:

1. "Ineffective Assistance of Counsel"
2. "Due Process"
3. "Double Jeopardy"

**III.**

The Petitioner has filed a "State Writ of Habeas Corpus" in the Court of Common Pleas. The Respondent submits that a state habeas petition must be filed in the original jurisdiction of

the South Carolina Supreme Court. See Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Ct. App. 1998).

A habeas corpus petition must support the requested relief. Gibson v. State, 329 S.C. 37, 495 S.E.2d 426 (1998); Hunter v. State, 316 S.C. 104, 447 S.E.2d 203 (1994). Although the allegations in the petition are to be treated as true, the Petitioner must make out a prima facie case showing he is entitled to relief and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Gibson, 495 S.E.2d 426. To warrant a hearing, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available post-conviction relief (PCR) remedies. Gibson, 495 S.E.2d 426; Hunter, 447 S.E.2d 203; Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994). Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review. Gibson, 495 S.E.2d 426. Second, the petition must allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate. Gibson, 495 S.E.2d 426. PCR is not rendered "unavailable or inadequate" merely because the petition might be dismissed as successive. In fact, any matter that is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts of this State. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998); Gibson, 495 S.E.2d 426; Keeler, 330 S.C. 568, 500 S.E.2d 123. The Uniform Post Conviction Procedure Act is broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention. Gibson, 495 S.E.2d 426. A petitioner may even allege constitutional violations in PCR proceedings, unless the issue could have been raised by direct appeal. Id.; Keeler, 500 S.E.2d 123. Thus, "[a] person is procedurally barred from petitioning the circuit court for a writ of

habeas corpus where the matter alleged is one which could have been raised in a PCR application." Keeler, 500 S.E.2d 123.

In the case at bar, the Respondent submits that Petitioner could have raised these allegations in his prior PCR application. In fact, the Petitioner raised the issues of ineffective assistance of counsel in his prior PCR application. The Respondent submits that the Petitioner is filing a state habeas petition to circumvent the bars of successiveness and statute of limitations that he would face with a PCR application. A state habeas petition must be filed in the original jurisdiction of the South Carolina Supreme Court. Accordingly, the petition should be summarily dismissed.

IV.

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

V.

WHEREFORE, the Respondent moves to summarily dismiss the Petition for Writ of Habeas Corpus because state habeas petitions must be filed in the original jurisdiction of the Supreme Court of South Carolina.

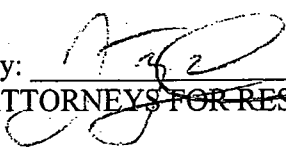
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

October 30, 2012.

STATE OF SOUTH CAROLINA )

COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS )

2012-CP-36-0511 )

MILO E. TUDOR, 243378, )

Applicant, )

vs )

AFFIDAVIT OF SERVICE BY MAIL )

STATE OF SOUTH CAROLINA, )

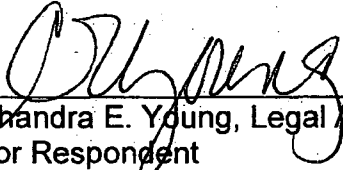
Respondent. )

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Milo Tudor, 243378  
 Allendale Correctional Institution  
 P.O. Box 1151  
 Fairfax, SC 29827

FILED  
 NEWBERRY COUNTY  
 2012 OCT 31 A 10:29  
 JONIE S. POWERS  
 CLERK OF COURT

DATED this 30<sup>th</sup> day of October, 2012.

  
 Chandra E. Young, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS

Case Number: 2012-CP-36-00511

MILO EARL TUDOR, 243378, )  
 )  
 Petitioner, )

vs. )

STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )

ORDER FOR HEARING  
 ON STATE'S MOTION  
 DISMISS & TO APPOINT  
 COUNSEL

JACKIE S. POWERS  
 CLERK OF COURT

2012 NOV 26 A 9:55

FILED  
 NEWBERRY COUNTY

*WPL #1*

The State has filed a motion for summary dismissal of the petition for a writ of *habeas corpus*, without a hearing. Because of the protracted nature of this matter and the multiple filings, the court feels that a hearing on this motion is preferable so that a procedural mechanism will be in place to avoid overlooking any constitutional or jurisdictional issue. It is not possible for the court to summarily review files in different courts (state and federal), and the court believes that the parties should have the opportunity to provide submissions from all the previous filings. The court directs the Attorney General's office to arrange for a hearing on the State's motion to dismiss at the first reasonable opportunity. It must be brought before a judge who is not a resident judge of the Eighth Judicial Circuit, since both of those judges are recused. If the matter can be arranged for the term of court being held next week (the week of November 26, 2012), it shall be done. If that does not provide sufficient time, it shall be scheduled during the next scheduled term beginning March 11, 2013, or such sooner time as the parties agree upon.

Because of the fact that the petitioner is an inmate and has been allowed to file without payment of a filing fee, the court has considered whether counsel should be appointed. Assistance of counsel is deemed necessary, not only for the petitioner, but also for the court to make sure that any paperwork from other files can be submitted for review. The court appoints Tommy A. Thomas, Esquire as attorney for the petitioner on the *habeas corpus* petition.<sup>1</sup>

Milo Earl Tudor, who is an inmate of the South Carolina Department of Corrections (SCDC), submitted a petition for a writ of *habeas corpus* to the Newberry County Clerk of Court, along with a request that he be allowed to proceed without payment of the filing fee and costs. Because of conflicts held by the resident judges of the Eighth Judicial Circuit, the Chief Justice of the Supreme Court of South Carolina issued an order on June 25, 2012, designating the undersigned judge to act as Chief Judge for Administrative Purposes related to this matter.

Mr. Tudor is being held for convictions under Indictment Number 1997-GS-36-00021. The charges are kidnaping, assault and battery with intent to kill (ABWIK), and possession of a knife during the commission of a violent crime. He had a jury trial and was sentenced by The Honorable James W. Johnson, Jr. as follows: 30 years, suspended

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<sup>1</sup> The court expresses no opinion as the validity of this petition. It is also aware of the Order of Chief Justice Toal dated October 6, 2008, dealing with appointment of counsel in PCR applications where there is an issue of the case being dismissed as successive or beyond the statute of limitations. Since the court has ordered a hearing, it has decided to appoint the attorney who is also representing Mr. Tudor in a pending PCR case. The court believes that this serves the interests of judicial economy in many ways, including that Mr. Thomas may be able to advise the petitioner whether this case should be dismissed prior to the hearing and/or resubmitted in the original jurisdiction of the Supreme Court of South Carolina.

on the service of 15 years, with probation of 5 years on the kidnaping charge; 20 years on the ABWIK charge; and, 5 years on the weapon charge. The sentences run concurrently.

In *Gibson v. State*, 329 S.C. 37, 495 S.E.2d 426 (1998), the Supreme Court of South Carolina discussed the interaction between a petition for writ of *habeas corpus* and an application for post-conviction relief (PCR). The court reversed the decision of the circuit judge who had summarily dismissed Gibson's case, without a hearing. The Supreme Court held that Gibson's *habeas corpus* petition did not constitute a valid *habeas corpus* petition, but should instead be treated as a PCR application. Since the petition appeared to attempt to raise an issue that had not been raised in Gibson's prior PCR cases, the Supreme Court remanded the case to the circuit court for a hearing to determine whether the application should be dismissed as successive.

*W/Rel #3*  
In *Keeler v. Mauney*, 330 S.C. 568, 500 S.E.2d 123 (Ct.App.1998), the South Carolina Court of Appeals discussed Gibson and *Simpson v. State*, 329 S.C. 43, 495 S.E.2d 429 (1998). The court in *Keeler* stated:

In *Simpson*, the circuit court dismissed the appellant's *habeas corpus* petition on the ground that a petition for a writ of *habeas corpus* cannot be used as a substitute for an action under the Uniform Post-Conviction Procedure Act (the Act), S.C.Code Ann. §§ 17-27-10 to 160 (1985 & Supp.1997). The Supreme Court agreed, holding "that a matter which is cognizable under the Act may not be raised by a petition for a writ of *habeas corpus* before the circuit or other lower courts." *Simpson*, 329 S.C. at 46, 495 S.E.2d at 431. However, the Supreme Court expressly reserved the "ability to entertain writs of *habeas corpus* in [its] original jurisdiction [under article V, section 5 of the South Carolina Constitution] and [330 S.C. 571] grant relief in those unusual instances where 'there has been a violation which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice.'" *Id.* at 46 n. 4, 495 S.E.2d at 431 n. 4.

The import of the holdings in *Gibson* and *Simpson* is clear. A person is procedurally barred from petitioning the circuit court for a writ of *habeas corpus* where the matter alleged is one which could have been

raised in a PCR application. Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court. S.C. Const. Art. V, § 5.

In the document which Mr. Tudor has captioned as a petition for Writ of *Habeas Corpus*, he begins by stating, "Petitioner has been trying to show and establish in court the ineffectiveness of trial counsel, to perfect direct appeal or advise petitioner of appeal rights, and of post-conviction counsel, to adequately present or argue issues." [punctuation in original] He asserts due process violations and double jeopardy.

W/Pol #4  
Mr. Tudor has repeatedly raised issues concerning the prosecution of his case and his appeal. He has asserted that he could not be prosecuted on the indictment mentioned above because of what he perceives to be problems with the issuance of two indictments and asserts jurisdictional issues related to the timing of the dismissal of one indictment. The arrest warrant (F-015292) was issued for the ABWIK charge that occurred on September 2, 1996. He was arrested on September 3, 1996.

An indictment bearing the number 1996-GS-36-00652 was prepared and submitted to the Grand Jury. A true-billed indictment was issued on October 28, 1996, for ABWIK. In 1997, an indictment was prepared and submitted to the Grand Jury on three counts, and it was true billed on January 6, 1997.

The trial began on August 7, 1997. In the portions of the trial transcript that the court has been able to review, there is a discussion of which indictment is being pursued. The trial judge went forward with the trial. An appeal was filed, and the South Carolina Court of Appeals issued an Order of Dismissal on May 5, 1998. The Remittitur was issued on May 21, 1998. The dismissal was based on the failure to pursue the appeal.

Mr. Tudor then filed a federal petition for *habeas corpus*. The United States Magistrate recommended dismissal without prejudice for failure to exhaust all state remedies, and the United States District Judge adopted that report on August 1, 2002.

A PCR action was filed in state court on August 21, 2002 (Case Number 2002-CP-36-00357). It alleged ineffective assistance of counsel and denial of Mr. Tudor's right to a direct appeal. That action was dismissed by The Honorable James E. Lockemy on June 28, 2004. Counsel for Mr. Tudor filed a petition for certiorari, which was denied by the South Carolina Supreme Court. The Remittitur was issued on September 14, 2005.

Another federal action followed. Mr. Tudor filed for *habeas corpus* in federal court. The United States District Judge dismissed the petition by summary judgment on January 30, 2007.

CWPK  
#5  
A PCR action was filed in state court (Case Number 2010-CP-36-00154) on April 5, 2010, and amended on May 7, 2010. In that PCR application, Mr. Tudor raised ineffective assistance of counsel. He alleged that trial counsel failed to perfect his direct appeal, file a brief, or advise him of his appellate rights. Mr. Tudor also alleged denial of his right to direct appeal. He asserted that he did not knowingly and intelligently waive his right to appeal. He also alleged that the PCR judge (Judge Lockemy) erred in summarily dismissing his application, maintaining that his counsel did not properly raise his grounds for PCR and denied him a fair hearing. This second PCR claim was dismissed by The Honorable Eugene C. Griffith, Jr. in 2011 for being successive. Mr. Tudor sought to appeal. The case was dismissed and the Remittitur was filed February 24, 2012.

The current petition for Writ of *Habeas Corpus* is dated April 26, 2012.

However, because of the recusals mentioned previously in this order and the fact that the petitioner requested to proceed without payment of a filing fee, the case was not filed until September 17, 2012.

In the interim, the same attorney who represented Mr. Tudor in his 2010 PCR case (Mr. Thomas) filed another PCR action. Case Number 2012-CP-36-00372 was filed on July 23, 2012, and it is pending.

On October 31, 2012, the State moved to dismiss this action. Part of the assertion is that the requested relief is procedurally barred in the circuit court under the *Keeler* case. If the relief sought could have been raised under the Uniform Post Conviction Relief Act, the means of obtaining state *habeas corpus* relief is to petition the Supreme Court of South Carolina in its original jurisdiction.

WPA  
#6

Under *Gibson v. State*, 329 S.C. 37, 495 S.E.2d 426 (1998), a petition for *habeas corpus* must support the requested relief. The allegations are to be treated as true, but they must make a prima facie showing of entitlement to *habeas corpus* relief, with sufficient factual allegations to support that request. The petition must allege that the petitioner has exhausted all available PCR remedies. It must also allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate. A PCR application is not deemed to be unavailable or inadequate merely because it might be dismissed as successive.

If a matter is cognizable under the Uniform Post Conviction Relief Act (S.C. Code Ann. §17-27-10, et seq.), it cannot be raised through a petition for Writ of *Habeas Corpus* before a state circuit court. The Act is broadly inclusive and will rarely be

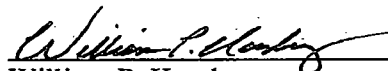
deemed inadequate or unavailable to challenge the legality of detention. Constitutional issues may be raised through PCR, unless they were issues that could have been raised on direct appeal. Because there are so many files in different courts, the administrative decision of this court is to schedule a hearing on the State's motion.

Mr. Tudor's petition asserts ineffective assistance of counsel, which is the standard PCR allegation. He also argues due process and double jeopardy issues, and appears to raise jurisdiction. As stated in the initial paragraph, the court feels that the multiple filings and protracted nature of these claims are of such a degree that a hearing on the State's motion to dismiss is a more reasonable procedure and preferable to summarily dismissing the case.

THEREFORE, IT IS ORDERED that a hearing be scheduled on the State's motion to dismiss, and that Tommy A. Thomas, Esquire, is appointed as attorney for the petitioner in this matter.

IT IS SO ORDERED.

Date: November 21, 2012

  
\_\_\_\_\_  
William P. Keesley  
Acting Chief Judge for  
Administrative Purposes

State of South Carolina )  
 )  
County of Newberry )

In the Court of Common Pleas  
Eighth Judicial Circuit  
2012-CP-36-0511

Milo E. Tudor,  
Applicant,  
vs.  
State of South Carolina,  
Respondent,

Transcript of Record

March 12, 2013  
Greenwood, South Carolina

B E F O R E:

The Honorable Clifton B. Newman, Judge

A P P E A R A N C E S:

Tommy Thomas, Esquire  
Attorney for Applicant

J. Rutledge Johnson, Esquire  
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM  
Circuit Court Reporter

I N D E X

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EXHIBITS

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No Exhibits Introduced.

## TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 5:22 p.m.)

May it please the Court, Your Honor: This is the case of *Milo Tudor v. State of South Carolina*, Case No. 2012-CP-36-0511. Mr. Tudor has filed a petition for writ of habeas corpus in the County of Newberry, September 17th, 2012. We filed our return October 30th, 2012.

And if I may give Your Honor a brief procedural history: He was indicted at the January 1997 term of the Newberry County Grand Jury for kidnapping, assault and battery with intent to kill, and possession of a weapon. He proceeded to trial on August 7th, 1997; was found guilty of kidnapping, ABWIK, and possession. The Honorable James W. Johnson sentenced -- sentenced him to confinement for a period of 20 years for the ABWIK; 30 consecutive, suspended upon 15 years and 5 years' probation, for kidnapping; and 5 years concurrent for the use of the knife during the commission of a crime.

There was a notice of appeal filed on his behalf. The South Carolina Court of Appeals issued an order of dismissal, and remittitur was thereafter issued on May 21st, 1998.

He thereafter filed a petition for federal habeas corpus in the federal district court, District of South Carolina. His case was dismissed without prejudice for

1 failure to exhaust all state remedies on August 1st, 2002.

2 He thereafter filed a PCR application on August the  
3 22nd, 2002. That was dismissed. It was an appeal filed  
4 pursuant to *Johnson v. State*. And the South Carolina  
5 Supreme Court denied his petition.

6 He filed a second federal habeas corpus, and that was  
7 also denied. He then filed a second PCR case in 2010, and  
8 that was also denied. He filed another appeal to that,  
9 which was also denied. And now he is filing a petition for  
10 writ of habeas -- state habeas corpus in Newberry County.

11 And if I may turn this over to Mr. Tommy Thomas?

12 THE COURT: All right. Give me one moment to catch up

13 ---

14 MR. JOHNSON: Yes, sir.

15 THE COURT: --- with what was said.

16 All right, Mr. Thomas.

17 MR. THOMAS: Your Honor, if it please the Court, I  
18 might take the easiest thing first. I was actually  
19 retained to do a petition for a declaratory judgment on the  
20 kidnapping. There was no sexual connotation to it. This  
21 was an altercation, actually, between he and his wife.

22 And based upon the statute, if there is no finding  
23 that it's not sexually oriented -- oriented, then SCDC  
24 immediately classifies them as a sex offender or a sexual  
25 nature, Your Honor. And we have filed a petition for a

1 declaratory judgment, asking the Court to say that there  
2 was no sex crime involved in this case and that he would  
3 not be required to register as a sex offender.

4 I think -- attorney general's office has contacted the  
5 solicitor's office in regards to this. And I believe  
6 there's no objection.

7 MR. JOHNSON: Yes, sir, Your Honor. He is correct. I  
8 spoke with Solicitor David Stumbo on Friday. And I also  
9 spoke with my immediate supervisor, Karen Ratigan, about  
10 this. And they both agree that I have the authority to say  
11 yes; that he is to be taken off the sex-offender registry,  
12 if Your Honor orders. But yes.

13 THE COURT: All right.

14 MR. JOHNSON: We consent to having ---

15 MR. THOMAS: And -- and ---

16 MR. JOHNSON: --- that.

17 MR. THOMAS: --- there's no allegations, Your Honor,  
18 in the -- in the warrant or the indictment or any of the  
19 Court documents in regards to any type of ---

20 THE COURT: All right.

21 MR. THOMAS: --- sexual offense.

22 THE COURT: So ordered.

23 MR. THOMAS: Thank you, Your Honor.

24 Your Honor, if it please the Court: I was actually  
25 appointed to this part of the case in -- by Judge Keesley.

1 And Judge Keesley ordered -- his order actually sets out, I  
2 think, the -- the issue that's before the Court pretty well  
3 and also the factual history.

4 This is not a case of he's had multiple bites at the  
5 apple and he just keeps filing stuff and keeps coming back  
6 to the Court. In a nutshell, what happened is that he  
7 filed -- he went to trial; was convicted. His attorney  
8 filed a notice of intent to appeal.

9 And then, nothing was ever done from that stage  
10 forward. He was under the assumption that it was being, I  
11 guess, prosecuted, for lack of a better term. It was not;  
12 it got dismissed.

13 He went and had other counsel. Other counsel then  
14 filed a federal habeas, which was not the proper thing to  
15 do. When the federal habeas was filed, it was dismissed  
16 because he had not exhausted his state remedies.

17 When he comes back before us now, he's three years  
18 later and he's time-barred from really bringing the direct  
19 appeal. And all these other actions have just come after  
20 that, Your Honor, seeking the same thing.

21 What he's asking for, really, is a belated appeal  
22 based upon an issue of double jeopardy, which I think is  
23 really interesting. I looked at this case. And I looked  
24 at the -- at Judge Keesley's order very closely.

25 There's evidently a partial transcript. I do not have

1 a copy of the transcript from the trial. And I don't know  
2 if it exists. But Judge Keesley, in his order, makes  
3 reference to some partial part of the transcript, where he  
4 says that: The Court has been able to review -- in  
5 portions of the trial script that the -- transcript that  
6 the Court has been able to review, there is a discussion of  
7 which indictment is being pursued. And that's ---

8 THE COURT: All right.

9 MR. THOMAS: --- the issue ---

10 THE COURT: Say that again, please.

11 MR. THOMAS: All right. Your Honor, it says in page 3

12 ---

13 MR. JOHNSON: Is that the order?

14 MR. THOMAS: --- of his order, he says -- I'm sorry,  
15 Your Honor. I thought that was part of the file.

16 (Whereupon, the Court conferred with Mr. Johnson.)

17 MR. THOMAS: Actually, it's page 4.

18 THE COURT: Page ---

19 MR. THOMAS: --- 4, Your Honor.

20 THE COURT: All right.

21 MR. THOMAS: And it -- really, what he's doing,  
22 beginning about halfway down the page, it starts giving a  
23 -- a history of -- of Mr. Tudor's case and filings. The  
24 last paragraph he says: The trial began on August 7th,  
25 1997.

1 THE COURT: Yes, sir.

2 MR. THOMAS: All right. And -- and I guess maybe to  
3 bring the horse back in front of the cart, what Mr. Tudor  
4 is saying is that he was indicted for ABWIK; and just prior  
5 to trial another, basically, direct indictment was  
6 obtained, charging him with ABWIK -- same facts, same crime  
7 ---

8 (Whereupon, Mr. Thomas conferred with the applicant.)

9 MR. THOMAS: --- kidnapping, possession of a weapon  
10 during the commission of a crime. Now, at the trial, the  
11 judge -- according to my client, the judge asked the  
12 solicitor: Which one of these indictments do you intend to  
13 go forward on? Because there are two indictments for the  
14 exact same crime.

15 Well, the solicitor nolle-presses the first  
16 indictment, which was the original indictment, charging him  
17 with the ABWIK. He says that counsel then objected to --  
18 once he did that, then we had a double-jeopardy situation,  
19 because he had basically -- had concluded the case. And  
20 there is some case law in which says that ---

21 THE COURT: And what stage was it, after the jury was  
22 selected or ---

23 MR. THOMAS: After the jury was selected, Your Honor,  
24 and prior to -- I think, right at the end of the case and  
25 prior to it going to the jury.

10

1 THE APPLICANT: The jury was selected on August 5th.  
2 And that was -- he entered that -- the jury was selected  
3 August 5th. And the trial started. He entered it in the  
4 record on August 7th, after he had put it before the judge.  
5 And he signed the indictment and dated it and everything.

6 MR. THOMAS: And my client does attach to the --  
7 attached to his petition for writ is a copy of the original  
8 indictment. And also, the written portion of it says it's  
9 been nolle-prossed.

10 And then, there is also a copy of the indictment in  
11 which the three crimes, Count 1, Count 2, and Count 3 are  
12 listed. So at that point, Your Honor ---

13 THE COURT: So your argument, if there are duplicate  
14 indictments and the solicitor nolle-prosses one after the  
15 jury is sworn, it's double jeopardy as to the other?

16 MR. THOMAS: Jeopardy attaches. Yes, sir. And now,  
17 in looking at the case law ---

18 THE COURT: Well ---

19 MR. THOMAS: --- I did find -- there are two cases  
20 that I'm -- that I'm looking at: *State v. Gaskins*; and  
21 then, there's also another one in which -- *Sellers v. the*  
22 *Sheriff of Orangeburg County*. These are -- let's see.

23 Your Honor, in -- in *Gaskins* the Court says: If a --  
24 if a nolle-prosse is entered after the jury is empaneled and  
25 sworn, it is equivalent to an acquittal and the defendant

1 cannot again be put in jeopardy for the same offense.

2 Now, in *Sellers* there is argument -- because the Court  
3 said that you can have two indictments, and you can dismiss  
4 an indictment and go further on -- on the other indictment.  
5 The problem in *Sellers*, though, is that this gentleman was  
6 charged with riot. And evidently, he was charged with  
7 conspiracy to commit the crime of riot; and then, another  
8 charge of -- of attempting to induce a riot and riot  
9 itself.

10 And the Court in that case said: Well, they could  
11 dismiss the other two charges of riot and proceed on  
12 another charge, on another indictment. But actually, in --  
13 in -- in -- in that situation, the facts of the crime are  
14 different.

15 So I believe that he could potentially be correct in  
16 that if that indictment was nolle-prossed after the jury  
17 was empaneled, that it could be double jeopardy. Now, why  
18 ---

19 THE COURT: And therefore, what?

20 MR. THOMAS: Sir?

21 THE COURT: And therefore, what?

22 MR. THOMAS: Therefore, he couldn't have been found  
23 guilty of the second indictment because they were ---

24 THE COURT: All right. And ---

25 MR. THOMAS: --- putting in ---

1 THE COURT: --- therefore, he should have a belated  
2 appeal on the issue?

3 MR. THOMAS: Well ---

4 THE COURT: Or -- or you want me to agree with you and  
5 say ---

6 MR. THOMAS: No, sir. No, sir. We'd like ---

7 THE COURT: --- and tell ---

8 MR. THOMAS: --- to have -- what we'd like to have is  
9 a belated-appeal issue.

10 THE COURT: Pardon me?

11 MR. THOMAS: We'd like to have a belated appeal.

12 Because I think that the issue is a -- I think it's a  
13 genuine issue. And I think it should've gone up on appeal  
14 and it should be decided by the -- the Supreme Court, Your  
15 Honor.

16 THE COURT: All right. What's the state's position  
17 about this belated appeal?

18 MR. JOHNSON: The state's position here, Your Honor,  
19 is that this is actually not the proper venue. According  
20 to -- and it's in my return -- *Keeler v. Mauney*, the South  
21 Carolina Supreme Court has original jurisdiction and that  
22 must be filed with the Supreme Court.

23 THE COURT: For habeas corpus?

24 MR. JOHNSON: Yes, sir.

25 THE COURT: How about for double jeopardy?

1 MR. JOHNSON: If he is entitled a belated direct  
2 appeal, I think that's for the Supreme Court. If it's  
3 double jeopardy, I'll have to research that more fully,  
4 Your Honor.

5 MR. THOMAS: I think it's interesting, Your Honor,  
6 because I think he actually meets the criteria for both. I  
7 think he could proceed as a postconviction relief because  
8 it's not a written, bright-line test that -- or rule that  
9 you can't have a successive postconviction relief. You can  
10 have a successive postconviction relief under certain  
11 circumstances.

12 THE COURT: Such as what, in relation to this matter?

13 MR. THOMAS: Your Honor, let me find that case right  
14 fast.

15 THE COURT: I thought you had it on the tip of your  
16 tongue.

17 MR. THOMAS: I did ---

18 THE COURT: But ---

19 MR. THOMAS: --- Your Honor.

20 THE COURT: --- since you're --

21 MR. THOMAS: And it just ---

22 THE COURT: --- arguing it ---

23 MR. THOMAS: And -- and it just went straight out.

24 THE COURT: Oh, okay.

25 MR. THOMAS: Let's see, Your Honor.

1 MR. JOHNSON: Your Honor, belated direct appeal is one  
2 of the accepted two successives. However, the state's  
3 position also is that he is procedurally barred: (a) by  
4 the statute of limitations; but also, he has raised direct  
5 -- belated direct appeal in his prior PCR claims. I'm not  
6 sure if he's ever had an evidentiary hearing, which may be  
7 a speed bump and maybe he's entitled to that on -- on the  
8 belated-direct-appeal issue only, however Your Honor sees  
9 fit.

10 MR. THOMAS: Wrong section, Your Honor. I found it.

11 The Court said, in *Williams v. Ozmint* that: "Although  
12 successive PCR applications are disfavored, they are not  
13 prohibited (allowing successive PCR application where the  
14 defendant was denied due process due to numerous procedural  
15 irregularities)."

16 I think that -- that, in essence, what he's claiming  
17 that he -- he never was allowed to have a direct appeal due  
18 to the problems that were encountered in regards to  
19 thinking that his attorney had -- well, he did file the  
20 appeal, but never did complete it, taking the advice of  
21 counsel and proceeding forward and going into federal  
22 habeas when that was probably ---

23 THE COURT: Well, based on everything I -- I've heard,  
24 it sounds like he's entitled to a belated appeal to have  
25 this issue addressed by the Courts.

1 MR. THOMAS: I -- I think so, Your Honor.

2 THE COURT: I don't think the Courts would ever agree  
3 with the -- that this is a double jeopardy. But that  
4 wouldn't be for me to decide.

5 MR. THOMAS: And -- and -- and I think it's not for me  
6 to decide either, Your Honor. And I don't really know the  
7 answer to that. I just know that I did find case law that  
8 said that if it is -- if it's caused ---

9 THE COURT: Well, they would ---

10 MR. THOMAS: --- and if it's ---

11 THE COURT: --- conclude that it's double jeopardy as  
12 to one that was nolle-prossed but not as the one each was  
13 tried on.

14 MR. THOMAS: Yes, sir. And -- and it's -- and it's  
15 significant, though, because he has consecutive sentences.  
16 So if, for some reason, it is double jeopardy for his  
17 conviction of the ABWIK, then it reduces his sentence. So  
18 it is prejudicial.

19 THE COURT: Yeah. And then, you have other the issues  
20 as to how many instances of assaults there may have been.  
21 And you have a lot of -- a lot of things that might sound  
22 one way on just purely discussing law but may -- you know,  
23 the facts may ---

24 MR. THOMAS: And -- and that's ---

25 THE COURT: --- distinguish ---

1 MR. THOMAS: --- fair ---

2 THE COURT: --- significantly.

3 MR. THOMAS: And -- and that's possible, Your Honor.

4 And I think that, in all candor, in looking at the case and  
5 looking at the facts and things that I've seen, I really do  
6 think that he hasn't had a bite at the apple. I think he  
7 does have an issue that -- that -- that could be decided by  
8 the Supreme Court. It is prejudicial as it is. And I  
9 think, in all fundamental fairness, that the best thing  
10 would be ---

11 THE COURT: Well, it ---

12 MR. THOMAS: --- to send it up for a direct appeal.

13 THE COURT: Well, if it -- all right. Well, Mr.  
14 Johnson?

15 MR. JOHNSON: We'd just reiterate that this is not the  
16 proper venue; filing in the original jurisdiction of the  
17 Supreme Court would be the proper place to file the writ of  
18 habeas corpus.

19 THE COURT: And I agree with you on the habeas corpus  
20 thing. But I'm -- the issue of belated appeal, if he  
21 hasn't ---

22 MR. JOHNSON: It'd be ---

23 THE COURT: --- ever had one perfected ---

24 MR. JOHNSON: Then, that would be in Your Honor's  
25 discretion.

1 THE COURT: Yeah. Right. And that's where my  
2 discretion says he should have belated appeal and it -- but  
3 he should not have habeas corpus, because that it is -- I'm  
4 agreeing with you on habeas corpus and agreeing with you on  
5 belated appeal.

6 MR. THOMAS: Yes, sir. And -- and that's what we're  
7 asking for today, Your Honor, is just the chance to ---

8 THE COURT: All right.

9 MR. THOMAS: --- have a belated appeal.

10 THE COURT: Well, that would be my order.

11 MR. THOMAS: All right. Thank you, Your Honor.

12 THE COURT: All right.

13 MR. JOHNSON: And Mr. Thomas draw that order?

14 THE COURT: Mr. -- yeah. Mr. Thomas is going to work  
15 on that one. He ---

16 MR. THOMAS: Yes, sir.

17 THE COURT: --- he -- he likes to work on those types.

18 MR. THOMAS: Thank you, Your Honor.

19 THE COURT: All right.

20 (Whereupon, the proceeding was concluded at 5:40 p.m.)

21 --- END OF TRANSCRIPT OF RECORD ---  
22  
23  
24  
25

**CERTIFICATE**

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED  
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,  
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL  
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY  
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND  
COMPLETE EXCERPT OF TRANSCRIPT OF RECORD IN THE  
HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN  
THE CIRCUIT COURT FOR NEWBERRY COUNTY, SOUTH CAROLINA,  
ON THE 12TH DAY OF MARCH, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,  
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



---

MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 4, 2013

STATE OF SOUTH CAROLINA )

COUNTY OF NEWBERRY )

) IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2012-CP-36-511

MILO EARL TUDOR, )

Petitioner, )

v. )

State of South Carolina, )

Respondent. )

ORDER GRANTING BELATED  
DIRECT APPEAL PURSUANT TO  
WHITE V. STATEFILED  
NEWBERRY COUNTY  
2013 MAY 24 AM 10 00  
JACKIE S. BOWERS  
CLERK OF COURTPROCEDURAL HISTORY

This matter comes before the Court by way of an Order for Hearing dated November 21, 2012 and a Petition for Writ of *habeas corpus*. Milo Earl Tudor, who is an inmate of the South Carolina Department of Corrections (SCDC), submitted a Petition for a Writ of *habeas corpus* to the Newberry County Clerk of Court. Because of conflicts held by the resident judges of the Eighth Judicial Circuit, the Chief Justice of the Supreme Court of South Carolina issued an order on June 25, 2012, designating the Honorable William P. Keesley to act as Chief Judge for Administrative Purposes related to this matter.

Mr. Tudor is being held for convictions under a three count Indictment, Number 1997-GS-36-00021. The charges are kidnapping, assault and battery with intent to kill (ABWIK), and possession of a knife during the commission of a violent crime. He had a jury trial and was sentenced by The Honorable James W Johnson, Jr. as follows: 30 years, suspended on the service of 15 years, with probation for 5 years on the kidnapping charge; 20 years on the ABWIK charge; and, 5 years on the weapon charge. The sentences run concurrently.

In *Gibson v. State*, 329 S.C. 37, 495 S.E.2d 426 (1998), the Supreme Court of South Carolina discussed the interaction between a Petition for Writ of *habeas corpus* and an application for post-conviction relief (PCR). The Supreme Court held that Gibson's *habeas corpus* petition did not constitute a valid *habeas corpus* petition, but should instead be treated as a PCR Application.

In the document which Mr. Tudor has captioned as a Petition for Writ of *Habeas Corpus*, he begins by stating, "Petitioner has been trying to show and establish in court the ineffectiveness of trial counsel, to perfect direct appeal or advise petitioner of appeal rights, and of post-conviction counsel, to adequately present or argue issues." He asserts due process violation and double jeopardy.

Mr. Tudor has repeatedly raised issues concerning the prosecution of his case and his appeal. He has asserted that he could not be prosecuted on the indictment mentioned above because of what he perceives to be problems with the issuance of two indictments and asserts jurisdictional issues related to the timing of the dismissal of one indictment. The arrest warrant (F-015292) was issued for the ABWIK charge that occurred on September 2, 1996.

An indictment bearing the number 1996-GS-36-00652 (F-015292) was prepared and submitted to the Grand Jury. A true-billed indictment was issued on October 28, 1996 for ABWIK. In 1997, a second indictment was prepared and submitted to the Grand Jury on multiple (three) counts, and it was true billed on January 6, 1997. This indictment included the charge originally set forth in 96-GS-36-00652.

The trial began on August 1997. It appears at trial there was a discussion by the Court of which indictment were being pursued. The State elected to proceed on indictment 97-GS-36-021 containing the multiple counts. The State decided to *nolle pross* the indictment 96-GS-36-

652 after the empanelling of the Jury and before a verdict was rendered. An appeal was filed, and the South Carolina Court of Appeals issued an Order of Dismissal on May 5, 1998. The Remittitur was issued on May 21, 1998. The dismissal was based on the failure to pursue the appeal. The issue presented before this Court was never reviewed by the Supreme Court.

Mr. Tudor then filed a federal petition for *habeas corpus*. The United States Magistrate recommended dismissal without prejudice for failure to exhaust all state remedies, and the United States District Judge adopted that report on August 1, 2002.

A PCR action was filed in State Court on August 21, 2002 (Case Number 2002-CP-36-00357). It alleged ineffective assistance of counsel and denial of Mr. Tudor's right to a direct appeal. That action was dismissed by The Honorable James E. Lockemy on June 28, 2004. Counsel for Mr. Tudor filed a petition for certiorari, which was denied by the South Carolina Supreme Court. The Remittitur was issued on September 14, 2005.

Another federal action followed. Mr. Tudor filed for *habeas corpus* in federal Court. The United States District Judge dismissed the Petition by Summary Judgment on January 30, 2007.

A PCR action was filed in State Court (Case Number 2010-CP-36-00154) on April 5, 2010, and amended on May 7, 2010. In that PCR application, Mr. Tudor raised ineffective assistance of counsel. He alleged that trial counsel failed to perfect his direct appeal, file a brief, or advise him of his appellate rights. Mr. Tudor also alleged denial of his right to direct appeal. He asserted that he did not knowingly and intelligently waive his right to appeal. He also alleged that the PCR judge (Judge Lockemy) erred in summarily dismissing his application, maintaining that his counsel did not properly raise his grounds for PCR and denied him a fair hearing. This second PCR claim was dismissed by The Honorable Eugene C. Griffith, Jr. in

2011 for being successive. Mr. Tudor sought to appeal. The case was dismissed and the Remittitur was filed February 24, 2012.

The current Petition for Writ of *Habeas Corpus* is dated April 26, 2012.

On October 31, 2012, the State moved to dismiss this action. Part of the assertion is that the requested relief is procedurally barred.

Mr. Tudor's Petition asserts ineffective assistance of counsel, which is the standard PCR allegation. He also argues due process and double jeopardy issues, and appears to raise jurisdiction.

An evidentiary hearing into the matter was held on March 12, 2013 at the Greenwood County Courthouse before me. The Petitioner was present at the hearing and was represented by Tommy A. Thomas, Esq. The Respondent was represented by J. Rutledge Johnson, Assistant Attorney General.

#### **SUMMARY OF ARGUMENT AND EVIDENCE PRESENTED**

Counsel for the Applicant argued that due to numerous errs that Mr. Tudor had been denied his right to Direct Appeal. That he was entitled to his one bite at the apple.

Counsel's argument in part is that the State's decision to *nolle pross* indictment 96-GS-36-652, after the jury was empanelled is equivalent to an acquittal. The State would then be barred from proceeding on indictment 97-GS-36-21, which alleged the exact same crime as Indictment 652. Mr. Tudor asserts that objection was made to the State's action by way of Motion, preserving this issue for Appeal.

The State made argument that Mr. Tudor was procedurally barred from bringing up this issue at this late date. That his application was successive and barred.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court finds that the Petitioner is entitled to a review of his direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). It appears to the Court that this issue was preserved by trial counsel and that Mr. Tudor is entitled to present this issue on appeal. Due to procedural issues, he has not been afforded his one bite at the apple on this matter. There also appears to be evidence that the direct appeal was dismissed for failure to pursue. There is no evidence presented that Mr. Tudor agreed to a dismissal of this appeal.

This Court advises that in order to secure belated review, the Applicant's counsel must file and serve a Notice of Appeal **within thirty (30) days** of the date of service of this Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

**AND, IT IS SO ORDERED** this 24<sup>th</sup> day of May, 2013

  
 Clayton Newman  
 Presiding Judge  
 Eighth Judicial Circuit

Clayton, South Carolina

WITNESSES

S. K. Scott

S. Todd Johnson

Yvonne Tudor

1

Offense occurs: 2005, 2014  
405349

PC# 9-2-96  
VERDICT

Foreman

(805) 256-4082

Re-indict by 90-652  
THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

JANUARY TERM, 19 97

97GS36, 21

THE STATE

VS

MILIO EARL TUDOR

Conviction 8/14/97

Bul 1-8-97

INDICTMENT FOR

- (1) KIDNAPPING
- (2) ASSAULT AND BATTERY WITH INTENT TO KILL
- (3) VIOLATION SECTION 16-23-490

Solicitor

Don Locky

Foreman of Grand Jury

ca ing. TRUE BILL

11.6-

I, \_\_\_\_\_, THE DEFENDANT, IN MY OWN PERSON  
PERSON, COME TO THE BAR OF THIS COURT, WAIVE GRAND JURY ACTION AND FREELY AND  
VOLUNTARILY PLEAD \_\_\_\_\_ GUILTY TO THE CHARGE(S) OF:

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 19 \_\_\_\_\_

ATTEST:

DEFENDANT'S SIGNATURE

CLERK OF COURT, NEWBERRY, S. C.

## INDICTMENT FOR:

**The State of South Carolina**County of Newberry

- (1) KIDNAPPING  
 (2) ASSAULT AND BATTERY WITH INTENT  
 TO KILL  
 (3) VIOLATION SECTION 16-23-490

At a Court of General Sessions, convened on the 6th day of January,  
 19 97, the Grand Jurors of Newberry County present upon their oath:

## COUNT ONE

(1) That MILO EARL TUDOR

did in the county and state aforesaid, on or about the 2nd day of September,  
 19 96, wilfully and unlawfully with criminal intent, seize, confine,  
 inveigle, decoy, kidnap, abduct or carry away Yvonne Tudor without  
 authority of law

## COUNT TWO

(2) That MILO EARL TUDOR

did in the county and state aforesaid, on or about the 2nd day of September,  
 19 96, in and upon one Yvonne Tudor feloniously, wilfully and of his  
 malice aforethought, did make an assault with certain deadly weapons,  
 to wit: a knife and/or a razor blade, a rope and his hands and/or fists,  
 and him the said MILO EARL TUDOR with the said knife and/or razor blade,  
 rope and hands and/or fists did stick, cut, stab, choke, hit, beat and  
 knock and wound with intent the said Yvonne Tudor then and there feloniously  
 wilfully and of malice aforethought, to kill and murder

## COUNT THREE

(3) That MILO EARL TUDOR

did in Newberry <sup>state aforesaid</sup> County, on or about the 2nd day of September 1996, possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of violent offenses, to wit: Kidnapping and Assault and Battery With Intent to Kill, said offenses being defined as violent offenses in Section 16-1-60 of the 1976 Code of Laws of South Carolina, as amended, and the said MILO EARL TUDOR was convicted of committing or attempting to commit the said violent crimes, Kidnapping and Assault and Battery With Intent to Kill

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

W. Townes Jones  
Solicitor

STATE OF SOUTH CAROLINA  
County of Newberry

In the Court of Common Pleas

Milo Earl Tudor, 243378  
Full name and prison number (if any) of Applicant,

2002 CP 36-357

Vs.

State of South Carolina  
Name of Respondent,

APPLICATION FOR  
POST-CONVICTION RELIEF

2002 AUG 21 A 11:15

FILED  
NEWBERRY COUNTY

2010CP36-154

### INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention:

McCormick Correctional Institution

2. Name and location of Court which imposed sentence:

Court of General Sessions for the Eighth Judicial Circuit.  
Newberry, SC

(7) Pages

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) ABWIK  
 (b) Kidnapping  
 (c) Poss. of Knife during Violent Crime

4. The date upon which sentence was imposed and the terms of the sentence:

(a) August 4, 1997 - ABWIK: 20yrs; Kidnapping - 30yrs.  
 (b) - Poss. Knife - 5yrs.  
 (c) \_\_\_\_\_

5. Check whether a finding of guilty was made:

(a) after a plea of guilty ☒

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

6. Did you appeal from the judgement of conviction or the imposition of sentence?

yes

7. If you answered "yes" to (6), list

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

i. SC Court of Appeals

ii. United States District Court Writ of Habeas Corpus

iii. \_\_\_\_\_

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

i. Dismissed

ii. Dismissed

iii. \_\_\_\_\_

(c) the date of each such result:

i. May 5, 1998 - dismissed

ii. August 1, 2002

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) \_\_\_\_\_

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

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

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

(a) Ineffective Assistance of Counsel

(b) Denial of Direct Appeal

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

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Applicant's Attorney allowed his appeal to be

(b) dismissed.

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

11. Prior to this application have you filed with respect to this conviction:

(a) any petition in the State Court under South Carolina Law? \_\_\_\_\_

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? \_\_\_\_\_

yes, federal Habeas

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? \_\_\_\_\_

(d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Habeas Petition - Denial of Right to Appeal

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

i. US District Court, Columbia, SC

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. dismissed

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. 8/1/02

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

- i. Written Order entered 8/1/02
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion, or application which you have filed?

yes

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. Denial of Appeal
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. Federal Habeas
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

15. If any ground set forth in (9) 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) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

16. 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 judgement of conviction or the imposition of sentence? \_\_\_\_\_

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

17. If you answered "yes" to one or more parts of (16), list

(a) the name and address of each attorney who represented you:

i. Harry DePew - plea + sentencing - unknown

ii. Wesley Locklair, Federal Habeas - 3575 Hwy 17 B.W.S.  
Murrells Inlet, SC 29576

iii. \_\_\_\_\_

(b) the proceedings at which each such attorney represented you:

i. Plea + sentencing

ii. Federal Habeas

iii. \_\_\_\_\_

18. State clearly the relief you seek in filing this application.

Direct Appeal

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

No

STATE OF SOUTH CAROLINA

## VERIFICATION

County of Newberry

I, Milo Earl Tudor, 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.

Milo Earl Tudor8/13/2002SWORN to and subscribed before me this 13<sup>th</sup>Day of August, 19 2002

Janella Davis (L.S.)  
Notary Public

My Commission Expires: 3-30-2009

APPLICATION TO PROCEED WITHOUT PREPAYMENT  
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 therefor.

\_\_\_\_\_  
Applicant

SWORN or affirmed to and subscribed before me this

\_\_\_\_\_, Day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

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

STATE OF SOUTH CAROLINA )

COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS

2002-CP-36-357

Milo Earl Tudor, 243378, )

Applicant, )

v. )

RETURN

State of South Carolina, )

Respondent. )

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 21, 2002, would respectfully show this Court:

## I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. The Applicant was indicted at the January 1997 term of the Newberry County Grand Jury for kidnapping, assault and battery with intent to kill, and possession of a firearm or knife during the commission of a violent offense (97-GS-36-21). He was represented by Harry DePew, Esquire. On August 7, 1997, the Applicant proceeded to trial after which he was found guilty of kidnapping, assault and battery with intent to kill, and use of a knife in commission of a violent crime. He was sentenced by the Honorable Judge James W. Johnson, Jr. to confinement for a period of thirty (30) years suspended to fifteen (15) years and five (5) years probation.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence.

Attached herewith and incorporated herein by reference are the records of the Newberry County Clerk of Court regarding the subject conviction(s) and the Applicant's records from the South Carolina Department of Corrections. Also incorporated herein by reference are the Applicant's appellate record. It will be forwarded upon receipt.

## II.

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

1. Ineffective assistance of counsel.
2. Denial of direct appeal.

## III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler, Id. Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that a hearing be held.

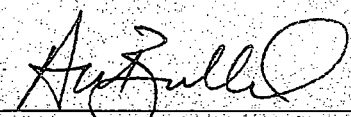
Respectfully submitted,

HENRY D. McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Chief, Capital and Collateral Litigation

ALLEN BULLARD  
Assistant Deputy Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

Aug 20, 2003.

STATE OF SOUTH CAROLINA  
IN THE CIRCUIT COURT

Case No. 2002-CP-36-0357

MILO EARL TUDOR,

Applicant,

v.

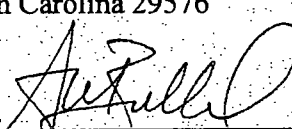
STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Return of the Respondent been served upon opposing counsel, Wesley Locklair, by mailing one (1) copy in an envelope properly addressed with postage prepaid this 20th day of August, 2003, to the below address:

J. Wesley Locklair, III, Esquire  
JOYE & LOCKLAIR, P. A.  
Attorneys at Law  
3575 Highway 17 Business  
Murrells Inlet, South Carolina 29576

  
B. ALLEN BULLARD, JR.  
ATTORNEY FOR RESPONDENT

13

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS  
2002-CP-36-357

COUNTY OF NEWBERRY

MILO EARL TUDOR,

Plaintiff,  
-vs-STATE OF SOUTH CAROLINA,  
Defendant.

May 14, 2004

B E F O R E:

HONORABLE JAMES E. LOCKEMY

A P P E A R A N C E S:

DOANLD B. HOCKER, Esquire  
Attorney for the PlaintiffJULIE M. THAMES, Esquire  
SALLEY WOODS ELLIOTT  
Attorney for the DefendantHenry P. Young  
Court Reporter

2010CP26-154

EXHIBIT #8

(1) Pages

## P-R-O-C-E-E-D-I-N-G-S

MS. THAMES: Your Honor, the State calls Milo Tudor versus the State.

THE COURT: All right, we're in the matter of my Milo Tudor. Background, Miss Thames?

MS. THAMES: Yes, sir. Mr. Tudor was tried on August 7th, 1997, for kidnapping, assault and battery with intent to kill, possession of a firearm during commission of a violent offense. He was found guilty of the charges and sentenced by Judge Johnson to thirty years, suspended to fifteen years and five years probation. Notice of appeal was filed and was dismissed on May 5th, 1998, and this is here on the State's motion to dismiss.

THE COURT: All right, what is the basis of your motion?

MS. THAMES: Yes, sir. The State argues that the application should be dismissed for failure to comply with the provisions of the Post Conviction Relief Act, which requires applications to be filed within one year of conviction. Mr. Tudor was sentenced on August 7th, 1997, he filed his application on June 21st, 2002, well past the filing period.

He is alleging that his attorney allowed his

Wrong  
Sentence

State of  
Illinois

Harry DeLoe  
did not file a re-instate  
Petition  
Was not owed money  
this is not true.

1 appeal to be dismissed. His appeal, the notice of  
2 intent to appeal was filed and was dismissed, his  
3 attorney filed a motion to re-open that file and it  
4 was again dismissed. He was retained and the  
5 family did not pay him any money, they kept  
6 promising him money and did not pay him, so the  
7 appeal was never perfected.

8 The State would argue that even if the  
9 attorney is at fault, the application should still  
10 be dismissed for Statute of Limitations. The State  
11 also argues that the application is barred by the  
12 Doctrine of Laches. He has neglected to file for  
13 an unreasonable and unexplained amount of time.  
14 The state is prejudiced because due to the length  
15 of time, it appears that there is no transcript  
16 available since it was a 1997 case, and we  
17 respectfully request the application be dismissed.

18 THE COURT: Okay. Mr. Hocker?

19 MR. HOCKER: If it please the Court, Your  
20 Honor, we don't really have anything to add as far  
21 as the Statute of Limitations is concerned. The  
22 only thing we would add as far as Laches, that he  
23 did go through, attempt federal habeas way before  
24 now, attempt a federal habeas which was dismissed  
25 on the Magistrate Court's recommendation.

1           So he has taken action since that time.  
2   Obviously we have some factual issues as far as the  
3   appeal is concerned but that is something we  
4   wouldn't raise until you ruled on the motion to  
5   dismiss.

6           THE COURT: Let me ask this. Is he alleging  
7   ineffective assistance of counsel at trial?

8           MR. HOCKER: At the trial and for the appeal.

9           THE COURT: But the State is under a  
10   difficult burden here without the transcript.

11          MR. HOCKER: Yes, sir, we understand that.

12          THE COURT: When did he file this?

13          MS. THAMES: He filed the application, Your  
14   Honor, June 21st, 2002.

15          THE COURT: What's the statutory time they  
16   have to keep the transcript, I thought it was six  
17   years?

18          MS. ELLIOTT: May I, Your Honor?

19          THE COURT: Yes.

20          MS. ELLIOTT: It is my understanding for a  
21   period of time the Court reporters were told they  
22   only needed to retain the transcript and the  
23   records for three years and a lot of records have  
24   been destroyed, so I think now they are required to  
25   keep them a little bit longer, for five years, but

1 this may have been the case that it was, the  
2 transcript was destroyed.

3 THE COURT: Even at five years, it may have  
4 been destroyed.

5 MS. ELLIOTT: Certainly whenever that ruling  
6 or advisory was issued by Court Administration, I  
7 would imagine most transcripts that were being held  
8 were then destroyed, that were older than three  
9 years.

10 THE COURT: Tell me again your argument  
11 against their motion on the Statute of Limitations.

12 MR. HOCKER: We didn't have anything to add  
13 on the Statute of Limitations issue. I was saying  
14 on the Laches issue there wasn't an unreasonable  
15 delay because he filed a federal habeas. By the  
16 time he found out his appeal had been dismissed he  
17 was outside the statute to file a PCR. He had gone  
18 through a federal habeas, he had to come back  
19 because he had not exhausted his statutory remedy,  
20 the federal court wouldn't hear it, but we don't  
21 have anything to add additionally on the statute  
22 argument.

23 THE COURT: In looking at this, I try to be  
24 as fair as I can, regardless, but the law  
25 prohibits, whether one wants to or not, making

201000236-154

1 discretionary rulings, when in fact you have no  
2 basis to do anything but follow the law, and the  
3 law says you have one year to file a PCR  
4 application. Here, if I were to somehow not follow  
5 the law and permitted you to go foreward I would be  
6 putting the State under a tremendous burden, by not  
7 having the transcript on the trial situation. For  
8 that reason, the law provides that it's got to be  
9 filed in one year. It was filed here five years  
10 later, almost five years later.

11 I will grant the motion for dismissal based  
12 on the Statute of Limitations. Thank you.

13 MR. HOCKER: Thank you, Your Honor.

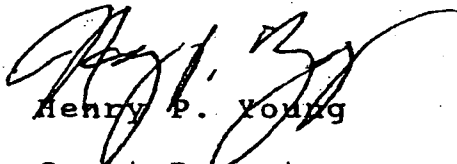
14 MS. THAMES: Thank you, Your Honor.

15 (Hearing Concluded).  
16  
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1  
2  
3  
4 I, the undersigned Henry P. Young, Official  
5 Court Reporter for the Eighth Judicial Circuit of  
6 the State of South Carolina, do hereby certify that  
7 the foregoing is a true, accurate, and complete  
8 transcript of record of all the proceedings had and  
9 evidence introduced in the trial of the captioned  
10 case in the Circuit Court for Newberry County,  
11 South Carolina, on the 14th day of May, 2004.

12 I do further certify that I am neither of kin,  
13 counsel, nor interest to any party hereto.

14 August 19, 2004

15  
16  
17  
18   
19 Henry P. Young  
20 Court Reporter  
21  
22  
23  
24  
25

STATE OF SOUTH CAROLINA )

COUNTY OF NEWBERRY )

Milo Earl Tudor,  
S.C.D.C. No. 243378, )

Applicant, )

vs. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS  
IN THE EIGHTH JUDICIAL CIRCUIT

C.A. No. 2002-CP-36-357

**ORDER OF DISMISSAL  
WITH PREJUDICE***Wesley Locklair, Esq. for the Applicant**Julie M. Thames, Assistant Attorney General, for Respondent*

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed August 21, 2002. An evidentiary hearing was convened at the Laurens County Courthouse on May 14, 2004. At the hearing, Respondent made a Motion to Dismiss asserting that the Applicant failed to file within the statute of limitations and that the Application was barred by the doctrine of laches.

**I. PROCEDURAL BACKGROUND**

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Newberry County Clerk of Court's orders of commitment. The Newberry County Grand Jury indicted the Applicant at the January, 1997, term of General Sessions for kidnaping, assault and battery with intent to kill (ABWIK), and possession of a firearm or knife during the commission of a violent offense. (970GS-36-21). Harry DePew, Esq. represented the Applicant.

On August 7, 1997, the Applicant proceeded to trial, after which he was found guilty of the indicted charges. The Honorable James W. Johnson, Jr., sentenced the Applicant to confinement for thirty (30) years suspended to fifteen (15) years and five (5) years probation on the kidnaping charge, to twenty (20) years on the ABWIK charge, and to five (5) years on the firearm charge, all sentences to run concurrently. A timely Notice of Appeal was filed on the Applicant's behalf. The appeal was dismissed on May 5, 1998, and the remittitur was filed on May 21, 1998.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the records of the County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the pleadings and makes the following findings of fact and conclusions of law:

This Court finds that the current application for PCR should be dismissed for failure to comply with the filing procedures of the Post Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 ( Supp. 1999). The Act 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.

S.C. Code Ann. § 17-27-45(a) (Supp. 1999).

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 offenses he challenges in this Application on August 7, 1997. The remittitur from the dismissal of his direct appeal was filed on May 21, 1998. The

Applicant filed this Application on June 21, 2002, more than three years after the one year statutory filing period had expired.

This Court finds this Application is also barred by the doctrine of laches. Laches is (1) neglect for an unreasonable and unexplained length of time under circumstances affording opportunity for diligence to do what in law should have been done; (2) resulting prejudice to the opposing party. Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute laches. Ex parte Stokes, 256 S.C. 260, 182 S.E.2d 306 (1971). The Applicant did not offer any explanation as to why he did not pursue this relief earlier. In addition, the Respondent is prejudiced due to the fact that a transcript of the Applicant's trial is no longer available.

### III. CONCLUSION

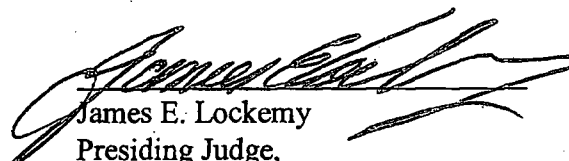
Based on the records, pleadings, the arguments of counsel, and evidence presented this Court finds that the Applicant failed to file his application for post conviction relief within the time mandated by the Post Conviction Procedure Act.

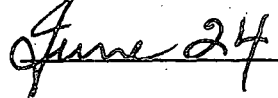
IT IS THEREFORE ORDERED THAT:

1. The Respondent's Motion To Dismiss is hereby **GRANTED** and the post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**.

2. The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.

3. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

  
James E. Lockemy  
Presiding Judge,  
Eighth Judicial Circuit

, South Carolina  
, 2004

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

## JUDGEMENT IN A CIVIL CASE

CASE NO. *2002-CP-36 357*

PLANTIFF(S)

*Milo Earl  
Indor*

DEFENDANT(S)

*State of S.C.*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

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgement by the Court:

Dated at *Wesley*, South Carolina, this *24* day of *June*, 2004.

*S/James E. Lockney*  
PRESIDING JUDGE

This judgement was entered on the *28* day of *June*, 2004, and a copy mailed first class this *29* day of *June*, 2004 to attorneys of record or to parties (when appearing pro se) as follows:

*Wesley Lockley, Esq.*

ATTORNEY(S) FOR THE PLAINTIFF(S)

*Bryan W. Dukes*

ATTORNEY(S) FOR THE DEFENDANT(S)

*Spencer S. Bowers (K)*  
CLERK OF COURT

# The Supreme Court of South Carolina

Milo Earl Tudor,

Petitioner,

v.

State of South Carolina,

Respondent.

---

## ORDER

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JACKIE S. BOWERS  
CLERK OF COURT

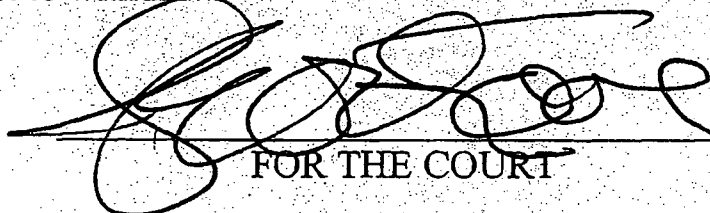
2005 SEP 14 A 10:47

FILED  
NEWBERRY COUNTY

This matter is before the Court on a petition for a writ of certiorari following the denial of petitioner's application for post-conviction relief.

Petitioner's counsel asserts that the petition is without merit and requests permission to withdraw from further representation. Petitioner has filed a *pro se* petition.

After careful consideration of the entire record as required by *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw.

  
C. J.  
FOR THE COURT

Columbia, South Carolina

August 26, 2005

Dear Clerk of Court, JACKIE BOWERS.

RE: MARCH 25, 2010  
PCR Application

2010CP36 - 154

I have enclosed a application for post-conviction relief,  
please file with a date stamp, and forward me a copy after  
filed with date stamp.

Your assistance is greatly appreciated in this matter. Thank  
you.

Respectfully

*Milo Earl Tudor*

MILO EARL TUDOR  
243378, F6A-212  
Allendale Corr. Inst.  
P.O. Box 1151  
Fairfax, S.C. 29827

FILED  
MAR 25 2010  
CLERK OF COURT  
JACKIE BOWERS

STATE OF SOUTH CAROLINA

County of NEWBERRY

In the Court of Common Pleas

MILO EARL TUDOR # 243378

Full name and prison number (if any) of Applicant,

vs.

STATE OF SOUTH CAROLINA

Name of Respondent.

APPLICATION FOR

POST-CONVICTION RELIEF

2010CP36 -154

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention ALLENDALE CORR. INST. P.O. BOX 1151 FAIRFAX, S.C. 29827
2. Name and location of Court which imposed sentence NEWBERRY COUNTY COURT  
P.O. BOX 278 / P.O. BOX DRAWER 10 NEWBERRY, S.C. 29108
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - (a) INDICTMENT # 97653621 - ASSAULT & BATTERY WITH INTENT TO KILL
  - (b) INDICTMENT # 97653621 - KIDNAPPING
  - (c) INDICTMENT # 97653621 - POSSESSION OF KNIFE IN COMMISSION OF VIOLENT CRIME
4. The date upon which sentence was imposed and the terms of the sentence:
  - (a) AUGUST 7, 1997 - 20 YEARS
  - (b) AUGUST 7, 1997 - 30 YEARS SUSPENDED TO 15 YEARS & 5 YEARS PROBATION - CONSECUTIVE
  - (c) AUGUST 7, 1997 - 5 YEARS (CONCURRENT)

5. Check whether a finding of guilty was made
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty ✓ MET
- (c) after a plea of nolo contendere \_\_\_\_\_
6. Did you appeal from the judgment of conviction or the imposition of sentence?  
YES- TRIAL COUNSEL FILED A TIMELY NOTICE OF APPEAL
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. UNITED STATES DISTRICT COURT
- iii. NEWBERRY COURT OF COMMON PLEAS
- (b) the result in each such Court to which you appealed:
- i. DISMISSED
- ii. DISMISSED
- iii. DISMISSED
- (c) the date of each such result:
- i. MAY 5, 1998
- ii. AUGUST 1, 2002
- iii. JUNE 24, 2004
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. COUNSEL FAILED TO FILE BRIEF OF ISSUES
- ii. WITHOUT PREJUDICE - FAILED TO EXHAUST STATE REMEDIES
- iii. TIME BARRED
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) DENIAL OF DIRECT APPEAL
- (c) PCR JUDGE ERRED BY SUMMARILY DISMISSING APPLICATION
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) TRIAL COUNSEL FAILED TO PERFECT DIRECT APPEAL, FILE BRIEF, OR ADVISE OF APPEAL RIGHTS
- (b) APPLICANT DID NOT KNOWINGLY AND INTELLIGENTLY WAIVE DIRECT APPEAL
- (c) DENIAL OF FAIR PROCEEDING WHERE GROUNDS FOR RELIEF WERE NOT ASSERTED AND INADEQUATELY RAISED BY COUNSEL'S INEFFECTIVE ASSISTANCE

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court?  
YES

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. NOTICE OF APPEAL
- ii. HABEAS CORPUS
- iii. POST-CONVICTION RELIEF APPLICATION
- iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

- i. SOUTH CAROLINA COURT OF APPEALS P.O. BOX 11629 COLUMBIA, S.C. 29211
- ii. U.S. DISTRICT COURT 1845 ASSEMBLY STREET COLUMBIA, S.C. 29201
- iii. NEWBERRY COUNTY COURT P.O. DRAWER 10 NEWBERRY, S.C. 29108
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. DISMISSED
- ii. DISMISSED
- iii. DISMISSED
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. MAY 5, 1998
- ii. AUGUST 1, 2002
- iii. JUNE 24, 2004
- iv. \_\_\_\_\_

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

- i. ORDER OF DISMISSAL - FAILURE TO FILE BRIEF
- ii. WRITTEN ORDER OF DISMISSAL WITHOUT PREJUDICE - FAILED TO EXHAUST STATE REMEDIES
- iii. ORDER OF DISMISSAL - TIME BARRED
- iv. \_\_\_\_\_

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES

14. If you answered "yes" to (13), identify:
- which grounds have been presented:
    - INEFFECTIVE ASSISTANCE OF COUNSEL
    - DENIAL OF DIRECT APPEAL
    -
  - the proceedings in which each ground was raised:
    - HABEAS CORPUS
    - POST-CONVICTION RELIEF
    -
15. If any ground set forth in (9) 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:
- PER JUDGE ERRED BY SUMMARILY DISMISSING APPLICATION; DENIAL OF FAIR PROCEEDING WHERE GROUNDS FOR RELIEF WERE NOT ASSERTED AND ADEQUATELY RAISED BY COUNSEL'S
  - INEFFECTIVE ASSISTANCE
  -
16. Were you represented by an attorney at any time during the course of:
- your arraignment and plea? \_\_\_\_\_
  - your trial, if any? YES
  - your sentencing? YES
  - your appeal, if any, from the judgment of conviction or the imposition of sentence? No
  - preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES
17. If you answered "yes" to one or more parts of (16), list:
- the name and address of each attorney who represented you
    - HARRY DEPEN 2016 LINCOLN STREET COLUMBIA, S.C 29201
    - WEXLEY LOCKMAN 2007 LINCOLN STREET COLUMBIA, S.C 29201
    - DENNIS BOLT P.O. BOX 137 COLUMBIA, S.C 29202
  - the proceedings at which each such attorney represented you:
    - TRIAL & SENTENCING, FILED TIMELY NOTICE OF APPEAL
    - POST-CONVICTION APPLICATION
    - HABEAS CORPUS
18. State clearly the relief you seek in filing this application.  
A HEARING TO PROPERLY ASSERT AND ADEQUATELY RAISE ISSUES OF APPLICATION FOR PER DIRECT APPEAL
19. Are you now under sentence from any other court that you have not challenged?  
No

STATE OF SOUTH CAROLINA

County of ALLENDALE

## VERIFICATION

I, MIL0 EARL TODOR #243378, FSA-212 A.C.I, P.O. BOX 1151, FAIRFAX, SC, 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.

Milo Earl Todor

SWORN to and subscribed before me this 31  
day of March, 2010

Helen P. Freeman (L.S.)  
Notary Public

My Commission Expires: 5/18/14

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

I, MIL0 EARL TODOR #243378, FSA-212 A.C.I, P.O. BOX 1151, FAIRFAX, S.C. 29827, 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 therefor.

Milo Earl Todor  
Applicant

SWORN or affirmed to and subscribed before me this

31 day of March, 2010  
Helen P. Freeman  
Notary Public

My Commission Expires 5/18/14

FILED  
2010 APR -5 A 11:45  
CLERK OF COURT  
FAIRFAX COUNTY

STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS  
EIGHTH JUDICIAL CIRCUIT

Milo Earl Tudor, 243378,

2010-CP-36-0154

Applicant,

v.

State of South Carolina,

Respondent.

SCANNED

RETURN AND MOTION TO DISMISS

The Respondent, making its Return to the application for post conviction relief (PCR) filed April 5, 2010, and amended May 7, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of Newberry County Clerk of Court. The Applicant was indicted at the January 1997 term of the Newberry County Grand Jury Kidnapping, Assault and Battery with Intent to Kill (ABWIK), and Possession of a Weapon during the Commission of a Violent Crime (1997-GS-36-21). The Applicant was represented by Harry DePew, Esquire. On August 7, 1997, the Applicant proceeded to trial at which he was found guilty of kidnapping, ABWIK, and use of a knife in commission of a violent crime. The Honorable Judge James W. Johnson, Jr. sentenced the Applicant to confinement for a period of twenty (20) years for ABWIK, thirty (30) years, consecutive, suspended upon the service of fifteen (15) years and five (5) years probation for Kidnapping, and five (years), concurrent for Use of a Knife during the Commission of a Violent Crime.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals issued an Order of Dismissal on May 5, 1998 and a Remittitur on May 21, 1998.

**2.00-1358-12AJ**

The Applicant then filed a Federal Habeas Corpus in the Federal District Court for the District of South Carolina. The Magistrate issued a Report and Recommendation on June 21, 2000, recommending that the action be dismissed without prejudice for failure to exhaust all state remedies. On August 1, 2002, the Honorable C. Weston Houck adopted the Report and Recommendation and dismissed Applicant's Federal Habeas Corpus claim without prejudice.

**2002-CP-36-357**

The Applicant subsequently filed an application for post-conviction relief (PCR) on August 21, 2002. The Applicant raised the following issues in his first PCR:

1. Ineffective assistance of counsel;
2. Denial of right to direct appeal.

The Honorable James E. Lockemy denied and dismissed the application with prejudice by written Order filed June 28, 2004. Robert M. Pachak, Esquire, filed a Petition for a Writ of Certiorari on the Applicant's behalf pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2s 201 (1988). The South Carolina Supreme Court denied the Applicant's Petition. The Remittitur was sent on September 14, 2005.

**2:06-0342-RBH**

The Applicant then filed a Federal Habeas Corpus in the Federal District Court for the District of South Carolina. The Magistrate issued a Report and Recommendation on September 15, 2006, recommending that the action be dismissed. The Applicant responded to the Report and Recommendation on October 12, 2006. On January 30, 2007, the Honorable R. Bryan

and Recommendation on October 12, 2006. On January 30, 2007, the Honorable R. Bryan Harwell adopted the Report and Recommendation and granted the State's Motion for Summary Judgment, denying the Applicant's Habeas Corpus claim.

## II.

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

1. Ineffective Assistance of Counsel
  - a. "Trial Counsel failed to perfect direct appeal, file brief, or advise of appeal rights"
2. Denial of Direct Appeal
  - a. "Applicant did not knowingly and intelligently waive direct appeal."
3. PCR Judge erred by summarily dismissing application
  - a. "Denial of fair proceeding where grounds for relief were not asserted and inadequately raised by counsel's ineffective assistance"

For the purpose of this Return, the Respondent incorporates the Newberry County Clerk of Court records, the South Carolina Department of Corrections' records and the prior PCR and Appellate 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. "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 prior proceedings." Graham v. State, 378 S.C. 1, 3, 661 S.E.2d 337, 338 (2008) (quoting Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999)). The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

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, et. seq.

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 August 7, 1997. The Remittitur from the South Carolina Court of Appeals was sent on May 21, 1998. The Applicant was therefore required to file his application before May 22, 1999. This Application was filed on April 5, 2010, which was almost eleven (11) years 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, 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 Respondent denies each allegation that is not expressly admitted, qualified or explained.

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.

Respectfully submitted,

ALAN WILSON  
Attorney General

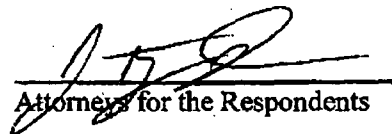
JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY ELLIOTT  
Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON  
Staff Attorney

P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for the Respondents

Columbia, South Carolina  
Oct 17, 2011.

STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

2010-CP-36-0154

MILO EARL TUDOR,

Applicant,

vs

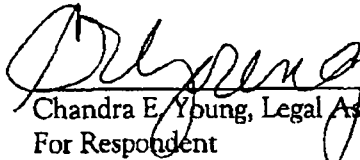
AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,  
Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Tommy A. Thomas, Esquire  
Post Office Box 88  
Irmo, SC 29063

DATED this 21<sup>st</sup> day of October, 2011.

  
Chandra E. Young, Legal Assistant  
For Respondent

2011 OCT 24 AM 10:04

|                          |   |                                       |
|--------------------------|---|---------------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS          |
|                          | ) | EIGHTH JUDICIAL CIRCUIT               |
| COUNTY OF NEWBERRY       | ) |                                       |
|                          | ) |                                       |
| Milo Earl Tudor, 243378, | ) | 2010-CP-36-0154                       |
|                          | ) |                                       |
| 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 April 5, 2010, and amended May 7, 2010.

#### PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of Newberry County Clerk of Court. The Applicant was indicted at the January 1997 term of the Newberry County Grand Jury Kidnapping, Assault and Battery with Intent to Kill (ABWIK), and Possession of a Weapon during the Commission of a Violent Crime (1997-GS-36-21). The Applicant was represented by Harry DePew, Esquire. On August 7, 1997, the Applicant proceeded to trial at which he was found guilty of kidnapping, ABWIK, and use of a knife in commission of a violent crime. The Honorable Judge James W. Johnson, Jr. sentenced the Applicant to confinement for a period of twenty (20) years for ABWIK, thirty (30) years, consecutive, suspended upon the service of fifteen (15) years and five (5) years probation for Kidnapping, and five (years), concurrent for Use of a Knife during the Commission of a Violent Crime.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals issued an Order of Dismissal on May 5, 1998 and a Remittitur on May 21, 1998.

**2:00-1358-12AJ**

The Applicant then filed a Federal Habeas Corpus in the Federal District Court for the District of South Carolina. The Magistrate issued a Report and Recommendation on June 21, 2000, recommending that the action be dismissed without prejudice for failure to exhaust all state remedies. On August 1, 2002, the Honorable C. Weston Houck adopted the Report and Recommendation and dismissed Applicant's Federal Habeas Corpus claim without prejudice.

**2002-CP-36-357**

The Applicant subsequently filed an application for post-conviction relief (PCR) on August 21, 2002. The Applicant raised the following issues in his first PCR:

1. Ineffective assistance of counsel;
2. Denial of right to direct appeal.

The Honorable James E. Lockemy denied and dismissed the application with prejudice by written Order filed June 28, 2004. Robert M. Pachak, Esquire, filed a Petition for a Writ of Certiorari on the Applicant's behalf pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2s 201 (1988). The South Carolina Supreme Court denied the Applicant's Petition. The Remittitur was sent on September 14, 2005.

**2:06-0342-RBH**

The Applicant then filed a Federal Habeas Corpus in the Federal District Court for the District of South Carolina. The Magistrate issued a Report and Recommendation on September 15, 2006, recommending that the action be dismissed. The Applicant responded to the Report and

2006, recommending that the action be dismissed. The Applicant responded to the Report and Recommendation on October 12, 2006. On January 30, 2007, the Honorable R. Bryan Harwell adopted the Report and Recommendation and granted the State's Motion for Summary Judgment, denying the Applicant's Habeas Corpus claim.

## II.

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

1. Ineffective Assistance of Counsel
  - a. "Trial Counsel failed to perfect direct appeal, file brief, or advise of appeal rights"
2. Denial of Direct Appeal
  - a. "Applicant did not knowingly and intelligently waive direct appeal."
3. PCR Judge erred by summarily dismissing application
  - a. "Denial of fair proceeding where grounds for relief were not asserted and inadequately raised by counsel's ineffective assistance"

Incorporated herein are the Clerk of Court records, the South Carolina Department of Corrections' records and the prior appeal and PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must 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 v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

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 judgement 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 August 7, 1997. The Remittitur from the South Carolina Court of Appeals was sent on May 21, 1998. The Applicant was therefore required to file his application before May 22, 1999. This Application was filed on April 5, 2010, which was almost eleven (11) years after the statutory filing period had expired.

A motion for summary judgement 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) (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 the moving party is entitled to judgement 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.

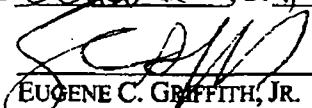
#### CONCLUSION

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 with the Sumter County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: J. Rutledge Johnson, Esquire  
P.O. Box 11549

Columbia, South Carolina 29211

AND IT IS SO ORDERED this 25<sup>th</sup> day of October, 2011.

  
EUGENE C. GRIFFITH, JR.  
Chief Administrative Judge  
Eighth Judicial Circuit

Newberry, South Carolina

STATE OF SOUTH CAROLINA )  
 COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS  
 EIGHTH JUDICIAL CIRCUIT

Milo Earl Tudor, #243378,

2011-CP-36-1675

Applicant,

v.

**FINAL ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

JACKIE S. BOWERS  
 CLERK OF COURT

2011 DEC 16 A 11:58

FILED  
 NEWBERRY COUNTY

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed April 5, 2010 and amended May 7, 2010. The Respondent (the State) made its Return and Motion to Dismiss on October 17, 2011, requesting that the Application be summarily dismissed. 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 dated October 25, 2011, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final.

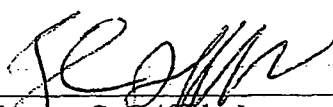
In a document titled "Return To Conditional Order of Dismissal," dated November 10, 2011, the Applicant, through Tommy A. Thomas, Esquire, argues the Applicant was informed by trial counsel that a direct appeal was filed on his behalf. The Applicant also alleges that he was told the next step would be filing an Initial Brief, but was advised on a later date that the direct appeal was dismissed. In essence, the Applicant alleges a denial of a meaningful direct appeal under White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. The Applicant has shown no reason why these issues were not litigated in his first PCR application. Further, S.C. Code § 17-27-90 states "[a]ll 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." Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR 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 9<sup>th</sup> day of December, 2011.

  
 Eugene C. Griffith, Jr.  
 Chief Administrative Judge



Eighth Judicial Circuit

Namory, South Carolina.

FORM 4

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2010CP3600154

Milo Earl Tudor

South Carolina State Of

SCANNED

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant  
☐ Self-Represented Litigant

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);  
☐ 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; (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<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |

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.**

S/Eugene C. Griffith, Jr.  
Circuit Court Judge

2154  
Judge Code

12/09/2011  
Date

### For Clerk of Court Office Use Only

This judgment was entered on **December 16, 2011**, and a copy mailed first class or placed in the appropriate attorney's box on **December 19, 2011**, to attorneys of record or to parties (when appearing pro se) as follows:

Milo Earl Tudor  
Tommy Arthur Thomas Attorney at Law P.O. Box 88 Irmo,  
SC 29063

J Rutledge Johnson Assistant Attorney General Po Box  
11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

S/Jackie S. Bowers(BJB)

Jackie S Bowers - Clerk of Court

Court Reporter

# The Supreme Court of South Carolina

Milo Earl Tudor,

Petitioner,

RECEIVED

v.

State of South Carolina,

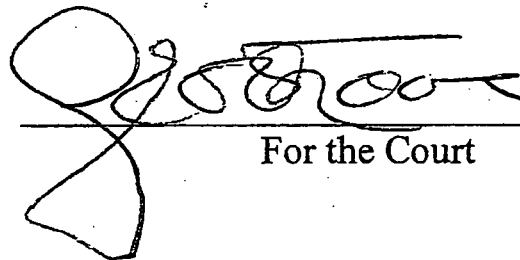
Respondent.

The Honorable Eugene C. Griffith, Jr.  
Newberry County  
Trial Court Case No. 2010-CP-36-00154

## ORDER of DISMISSAL

In the explanation required by Rule 243(c), SCACR, petitioner has failed to show that there is an arguable basis for asserting that the determination by the lower court was improper. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

IT IS SO ORDERED.

  
\_\_\_\_\_  
For the Court C.J.

Columbia, South Carolina

February 3, 2012

cc: Appellate Defense  
Tommy Arthur Thomas, Esquire  
Staff Attorney J. Rutledge Johnson

FILED  
NEWBERRY COUNTY  
2012 FEB 24 A 11:06  
JACKIE S. BOWERS  
CLERK OF COURT