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**DEC - 4 2014**  
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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 COUNTY OF ANDERSON ) FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2011-CP-04-1329

Albert Charles Burgess, Jr., )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

FINAL ORDER

FILED - CLERK'S OFFICE  
 ANDERSON SC  
 2014 DEC - 4 P 3:19  
 COMMON PLEAS AND  
 GENERAL SESSIONS

**PROCEDURAL HISTORY**

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed April 21, 2011. The Respondent (the State) made its Return and Motion to Dismiss 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, a Conditional Order of Dismissal was issued on June 8, 2012, and filed on June 14, 2012, 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.

Applicant issued first and only substantive response in a *pro se* document captioned "Motion For Sanctions – Rule 11 – SCRCPC Response to Dismissal Order" on June 18, 2012. In summary, Applicant asserts that this Court erred in provisionally denying this PCR action because an unrelated 1998 PCR order, Clinkscales v. State, proves the search and seizure procedure utilized in his 1985 conviction for criminal sexual conduct was invalid. Instead of providing any reasoning that would exempt further litigation on an issue procedurally barred by the doctrine of *res judicata*, Applicant requests this Court sanction Respondent for asserting a

valid principle of law. Additionally, Applicant asserts his untimely Application should be exempt from the procedural bar concerning the statute of limitations because the conviction adversely resulted in a sentencing enhancement in a Federal conviction that he learned of in August of 2010.

Applicant attempted to file a premature notice of appeal from the Conditional Order in a *pro se* documents issued on August 2, 2012. Applicant also penned numerous letters concerning the administrative status of this PCR action on August 2, 2012, August 31, 2012, November 5, 2012, and December 11, 2012. He attempted to contact the Honorable J. Cordell Maddox, Jr., in a letter sent on December 20, 2012. The letter to Judge Maddox in summary reiterates the identical assertions made in his initial June 18, 2012 *pro se* response to the Conditional Order. Last, Applicant issued an inauspicious letter to Respondent's prior undersigned counsel on July 3, 2014 where he disparages Judge Maddox's then law clerk. Applicant's above mentioned *pro se* filings and correspondence have been attached and incorporated by reference in this Final Order

### CONCLUSIONS OF LAW

This Court summarily dismisses this Application where Applicant has provided this Court with no cognizable justification that would exempt this application from the procedural bars against untimely, successive, and claim preclusion at issue. Applicant's request for sanctions is wholly without merit and does not constitute a legitimate response to the Conditional Order. Therefore, it is readily denied. This Court notes that Applicant, near verbatim, has unsuccessfully and collaterally attacked his 1985 conviction based upon the validity of the search warrant in his original 1987 PCR Application, in a 2002 Petition for Habeas Corpus in Federal Court, and in a 2011 Petition to the South Carolina Supreme Court.

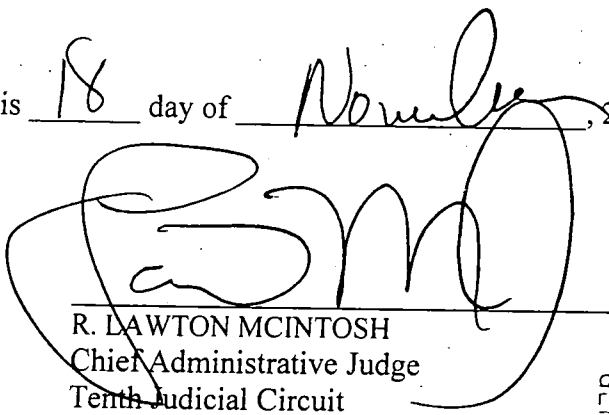


In the alternative, Applicant has failed to plead a factual cognizable allegation. Applicant solely supports the merits of this PCR action with the Clinkscales PCR Order which references a 1984 Fourth Circuit Court of Appeals Opinion that purportedly concerns a search warrant issue related to Applicant. However, Applicant challenges his 1985 guilty plea.

Last, and also alternatively, Applicant's assertion that this PCR action is exempt from the statute of limitations because Applicant's conviction was adversely used to enhance a recent Federal sentence is entirely without merit. First, this Court notes that the purported and irrelevant collateral consequence of the conviction now does negate the statute of limitations. Second, Applicant provided no cognizable justification to create an issue of fact in this case regarding the applicability of procedural bar to untimely PCR applications. See Ferguson v. State, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009).

**IT IS THEREFORE ORDERED** that, for the reasons noted here and set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 18 day of November, 2014.

  
 R. LAWTON MCINTOSH  
 Chief Administrative Judge  
 Tenth Judicial Circuit

Anderson, South Carolina.

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 COMMON PLEAS AND  
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