

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

DEC 12 2014

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY

COURT OF COMMON PLEAS

J.C. Nicholson, Circuit Court Judge

2014-CP-10-305

Sidney Fields # 254392

Appellant.

V.

The State Of South Carolina

Respondent.

RECORD IN SUPPORT OF
PETITION FOR REHEARING

Sidney Fields # 254392

B.R.C.I. 4460 Broad River Rd.

Wateree # 177

Columbia, S.C. 29210

Karen C. Ratigan Esq.

Office Of The Attorney General

P.O. Box 11549

Columbia, S.C. 29211

(attorney for respondent)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

07-CP-10-3878

Sidney Fields, 254392,

Applicant,

v.

State of South Carolina,

Respondent.

**CONDITIONAL ORDER
OF DISMISSAL**

FILED
2008 FEB 20 PM 4:25
JULIE A. PENNINGTON
CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief filed August 31, 2007. The Respondent made its Return and Motion to Dismiss on February 7, 2008.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the August 1997 term of the Charleston County Grand Jury for murder (1997-GS-10-5026) and armed robbery (1997-GS-10-5025). D. Ashley Pennington, Esquire, represented the Applicant. On November 16, 1998, the Applicant pled guilty to murder and armed robbery. The Honorable Thomas L. Hughston, Jr. sentenced the Applicant to confinement for a period of life for murder and thirty (30) years for armed robbery. The Applicant did not appeal his conviction or sentence.

The Applicant subsequently filed an application for PCR on May 13, 1999 and an amended application on June 20, 2000, in which he alleged the following grounds for relief:

1. Ineffective assistance of counsel in that counsel:
 - a. Failed to investigate the case.

- b. Failed to get Applicant mentally evaluated.
- c. Pressured the Applicant to plead by "threatening" the Applicant with the death penalty.
- d. Did not comply with the Applicant's wishes for a jury trial.
- e. Deceived the Applicant into thinking he would be eligible for furlough.
- f. Erred in advising the Applicant that if he went to trial the jury would not be instructed on the lesser included offense of manslaughter.
- g. Misadvised the Applicant that his only two choices were the death penalty or the plea bargain.
- h. Did not make the Applicant aware that armed robbery carried a minimum sentence of ten (10) years.

2. Violation of due process and equal protection rights.

The State filed its Return on December 20, 1999. On September 13, 2000, an evidentiary hearing was held before the Honorable R. Markley Dennis, Jr., at which the Applicant was present and was represented by Jack D. Cordray, Esquire. Matthew McGuire of the South Carolina Office of the Attorney General represented the State. By Order dated September 21, 2001, Judge Dennis denied and dismissed the Applicant's application for PCR.

Eleanor Duffy Cleary of the South Carolina Office of Appellate Defense filed a timely Notice of Appeal on the Applicant's behalf and submitted a Johnson Petition for Writ of Certiorari. On October 11, 2002, the South Carolina Supreme Court denied the Petition. The Applicant then filed a Petition for Writ of Habeas Corpus in the U. S. District Court on February 2, 2003. This action was dismissed on October 14, 2003.

The Applicant subsequently filed a second PCR application on May 11, 2006, in which he alleged the following grounds for relief:



1. Ineffective assistance of counsel in that counsel introduced an inapplicable furlough statute prior to the plea.

The State filed its Return and Motion to Dismiss on June 22, 2006, 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, the Honorable Deadra L. Jefferson issued a Final Order of Dismissal dated August 23, 2006. On September 8, 2006, the Applicant filed a Rule 59(e) motion to alter or amend the Order of Dismissal. By Order dated March 20, 2007, Judge Jefferson denied the Applicant's Rule 59(e) motion. The Applicant's appeal to the Supreme Court of South Carolina was dismissed, and the Remittitur was issued on May 23, 2007.

Before this Court are the records of the Charleston County Clerk of Court regarding the subject convictions; the Applicant's records from the South Carolina Department of Corrections; the transcript of the proceedings against the Applicant; the Applicant's prior applications for PCR; the State's Return thereto; the orders denying the Applicant's prior applications for PCR; and the Supreme Court of South Carolina's Order of Dismissal.

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

1. Denied due process when PCR counsel's error denied Applicant a sufficient and preserved evidentiary record for appellate review.

This Court finds that the current application for PCR must be summarily dismissed because it is successive to the Applicant's prior applications for PCR. The Uniform Post Conviction Procedure Act (the Act) provides that:

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, knowingly, voluntarily and intelligently waived in the proceeding that resulted

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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.

S.C. Code Ann. § 17-27-90 (1985). Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

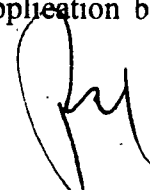
This Court finds that the Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous applications for PCR; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice, 305 S.C. 448. This Court summarily dismisses the current application for PCR as successive.

This Court also finds that the current application for PCR should be summarily dismissed for failure to comply with the filing procedures of the Act. S.C. Code Ann. § 17-27-10 to -160 (1976 & Supp. 1997). 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. 1998).

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 November 16, 1998. Therefore, he was required to file his PCR application by November 16, 1999. The



Applicant filed this application on August 31, 2007, which was almost eight 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 PCR 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, this Court summarily dismisses the Application for PCR for failure to file within the time mandated by statute.

This Court further finds that the doctrine of *res judicata* bars the Petitioner's claims. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.

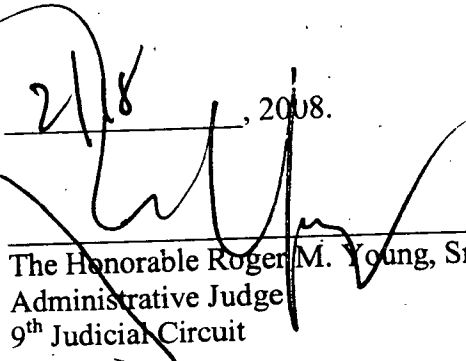
The Applicant had a full opportunity to litigate this allegation regarding ineffective assistance of counsel in the state court. The Petitioner continues to raise the same meritless claims by repeated collateral attack on his convictions. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRPC, the Court summarily dismisses these claims as barred by *res judicata*.

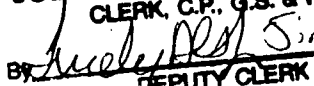
The Applicant's contention that he received ineffective assistance of PCR counsel is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990 (1987). The Sixth

Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546 (1991). Carter v. State, 149 F.3d 1167 (4th Cir. 1998); Freeman v. Condon, 2001 WL 1136007 (4th Cir. 2001). This Court summarily dismisses this allegation.

Based upon its review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent the Applicant and expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Charleston County, South Carolina.

AND IT IS SO ORDERED this 21st day of August, 2008.


The Honorable Roger M. Young, Sr.
Administrative Judge
9th Judicial Circuit

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
BY  5/10
DEPUTY CLERK

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2007-CP-10-3878

Sidney Fields,
#254392,

Applicant,

vs.

State of South Carolina,

Respondent.

**ORDER VACATING
CONDITIONAL ORDER OF
DISMISSAL**

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2008 MAR 25 AM 10:04

FILED

The Conditional Order of Dismissal filed with the Court on February 20, 2008,
hereby vacated.

AND IT IS SO ORDERED.

Roger M. Young
Presiding Judge

Date: 3/24/08
Charleston, South Carolina

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Sidney Fields

Plaintiff,

vs.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2007-CP-10-3878

**ORDER TRANSFERRING TO ROSTER
AND RELIEVING COUNSEL**

Pursuant to the Plaintiff's request in Petitioner's "Opposition" to Conditional Order of Dismissal dated March 6, 2008 (attached hereto), this matter is transferred to the civil roster as a Petition for Habeas Corpus, a Pro Se hearing will be set at the next available term, and Lisa A. Reynolds, Esquire is relieved as counsel for the Plaintiff in this matter.

THEREFORE IT IS ORDERED that this matter is transferred to the civil roster as a Petition of Habeas Corpus, a Pro Se hearing is to be set and Lisa A. Reynolds, Esq. is hereby relieved as counsel for the Plaintiff in this matter.

IT IS SO ORDERED!

Judge, Charleston County
Ninth Judicial Circuit, South Carolina

Charleston, South Carolina

June 20, 2008

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, CP & QS

By [Signature]
DEPUTY CLERK

BY _____
JULIE J. ARMSTRONG
CLERK OF COURT

2008 JUN 25 PM 3:11

FILED

STATE OF SOUTH CAROLINA
CITY OF CHARLESTON
COURT OF COMMON PLEAS
Box 1000, #254392
Plaintiff

JUDGMENT IN A CIVIL CASE

Case No.: 2007-CP-10-3878

versus State of South Carolina
Defendant

CHECK ONE:

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.

DECISION BY 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,
☐ Other:

ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by Court

This matter came before this Court seeking reconsideration of the prior order transferring to roster and leaving counsel. Upon consideration, the Motion is denied.

at Charleston, South Carolina, August 26, 2008
Date

The Honorable Roger M. Young

Judgment was entered on the _____ Day of _____, 2008, and a copy mailed first class this _____ Day _____, 2008, to attorneys of record or to parties (when appearing pro-se) as follows:

Attorney(s) for Plaintiff

Attorney(s) for Defendant(s)

CP Form 4 (Rev. 2/96)

Clerk of Court

FILED
2008 AUG 27 PM 4:30
JULIE J. ARMSTRONG
CLERK OF COURT

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By: Becky Granov
DEPUTY CLERK

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2007-CP-10-3878

Sidney Fields, #254392,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

FILED
2008 NOV 26 PM 4:41
JULIE A. HARRIS, CLERK OF COURT
BY _____

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 31, 2007. The Respondent made its Return and Motion to Dismiss on February 7, 2008, requesting that the application be summarily dismissed. An evidentiary hearing into the matter was convened on November 3, 2008 at the Berkeley County Courthouse. The Applicant was present at the hearing and represented by Elizabeth W. Ballentine, Esquire. Matthew J. Friedman of the South Carolina Attorney General's Office represented the Respondent. The Respondent moved to dismiss the matter based on successiveness and filing outside of the statute of limitations.

This Court had before it the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Order of Dismissal from Applicant's first PCR matter, the Appendix from Applicant's first PCR appeal, the Supreme Court Order denying Applicant's first PCR appeal, the Order from the District Court of South Carolina denying Applicant Federal Habeas Corpus Petition, the Final Order in Applicant's second PCR matter, the Supreme Court Order of

2008/11/26

Dismissal in Applicant's second PCR appeal, the Applicant's prior applications for PCR, and the State's Returns thereto.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the August 1997 term of the Charleston County Grand Jury for murder (1997-GS-10-5026) and armed robbery (1997-GS-10-5025). D. Ashley Pennington, Esquire, represented the Applicant. On November 16, 1998, the Applicant pled guilty to murder and armed robbery. The Honorable Thomas L. Hughston, Jr. sentenced the Applicant to confinement for a period of life for murder and thirty (30) years for armed robbery. The Applicant did not appeal his conviction or sentence.

The Applicant subsequently filed an application for PCR on May 13, 1999 and an amended application on June 20, 2000, in which he alleged the following grounds for relief:

1. Ineffective assistance of counsel in that counsel:
 - a. Failed to investigate the case.
 - b. Failed to get Applicant mentally evaluated.
 - c. Pressured the Applicant to plead by "threatening" the Applicant with the death penalty.
 - d. Did not comply with the Applicant's wishes for a jury trial.
 - e. Deceived the Applicant into thinking he would be eligible for furlough.
 - f. Erred in advising the Applicant that if he went to trial the jury would not be instructed on the lesser included offense of manslaughter.
 - g. Misadvised the Applicant that his only two choices were the death penalty or the plea bargain.

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h. Did not make the Applicant aware that armed robbery carried a minimum sentence of ten (10) years.

2. Violation of due process and equal protection rights.

The State filed its Return on December 20, 1999. On September 13, 2000, an evidentiary hearing was held before the Honorable R. Markley Dennis, Jr., at which the Applicant was present and was represented by Jack D. Cordray, Esquire. Matthew McGuire of the South Carolina Office of the Attorney General represented the State. By Order dated September 21, 2001, Judge Dennis denied and dismissed the Applicant's application for PCR.

Eleanor Duffy Cleary of the South Carolina Office of Appellate Defense filed a timely Notice of Appeal on the Applicant's behalf and submitted a Johnson Petition for Writ of Certiorari. On October 11, 2002, the South Carolina Supreme Court denied the Petition. The Applicant then filed a Petition for Writ of Habeas Corpus in the U. S. District Court on February 2, 2003. This action was dismissed on October 14, 2003.

The Applicant subsequently filed a second PCR application on May 11, 2006, in which he alleged the following grounds for relief:

1. Ineffective assistance of counsel in that counsel introduced an inapplicable furlough statute prior to the plea.

The State filed its Return and Motion to Dismiss on June 22, 2006, 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, the Honorable Deadra L. Jefferson issued a Final Order of Dismissal dated August 23, 2006. On September 8, 2006, the Applicant filed a Rule 59(e) motion to alter or amend the Order of Dismissal. By Order dated March 20, 2007, Judge Jefferson denied the Applicant's Rule 59(e) motion. The Applicant's appeal to the

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Supreme Court of South Carolina was dismissed, and the Remittitur was issued on May 23, 2007.

ALLEGATIONS

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

1. Denied due process when PCR counsel's error denied Applicant a sufficient and preserved evidentiary record for appellate review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the arguments presented at the PCR hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Successiveness

First, the State submits that the current application for PCR must be summarily dismissed because it is successive to the Applicant's prior applications for PCR. The Uniform Post Conviction Procedure Act (the Act) provides that:

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, 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.

S.C. Code Ann. § 17-27-90. Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

The State submits that the Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous applications for PCR; 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, 305 S.C. 448. The State requests that this Court summarily dismiss the current application for PCR as successive.

Statute of Limitations

Second, the State submits that the current application for PCR should be summarily dismissed for failure to comply with the filing procedures of the Act. S.C. Code Ann. § 17-27-10 to -160. 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.

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 November 16, 1998. Therefore, he was required to file a PCR application by November 16, 1999. The Applicant filed this application on August 31, 2007, nearly eight (8) years after the one-year 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) authorizes the PCR 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

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judgment as a matter of law." Therefore, the State requests that this Court summarily dismiss the Application for PCR for failure to file within the time mandated by statute.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the current application is the Applicant's third PCR application and is thus a successive application. The application was also filed outside of the statute of limitations. Therefore, the State's motion to dismiss is granted. This application must be denied and dismissed with prejudice.

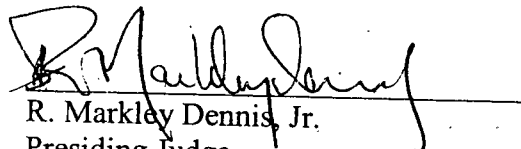
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

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IT IS THEREFORE ORDERED:

1. That the State's Motion to Dismiss be GRANTED;
2. That the application for post-conviction relief be DENIED and DISMISSED with prejudice; and
3. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 24th day of Nov, 2008.


R. Markley Dennis, Jr.
Presiding Judge
9th Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Sidney Fields #254392,

Applicant,

Versus

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS

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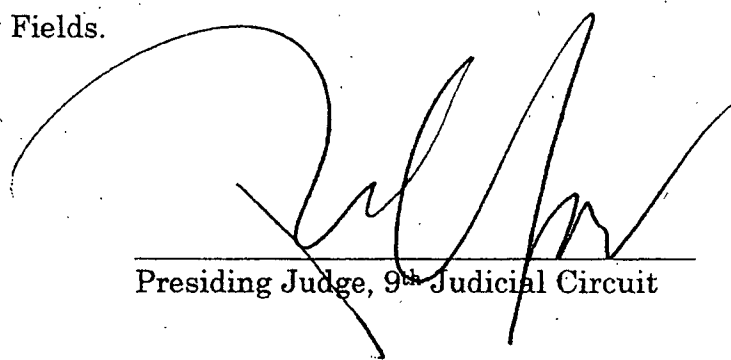
C/A No. 2007-CP-3878

ORDER

FILED
2008 DEC 12 PM 1:41
JULIE J. ARMS-IRONG
CLERK OF COURT

IT APPEARING that the Plaintiff, Sidney Fields, wishes to proceed *pro se*,
upon Motion of Elizabeth W. Ballentine, Plaintiff's counsel, it is hereby

ORDERED, ADJUDGED, AND DECREED that Elizabeth W. Ballentine is
relieved as counsel for Sidney Fields.



Presiding Judge, 9th Judicial Circuit

12/12, 2008
Charleston, South Carolina
J:\docs\624.085\ Order to be Relieved.doc

20

FORM 4
STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF CHARLESTON
THE COURT OF COMMON PLEAS

Case No.: 2007-CP-10-3878

versus

Plaintiff
Plaintiff(S)

State of South Carolina
DEFENDANT(S)

CHECK ONE:

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.

DECISION BY COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. nonsuit)
☐ Rule 43(k), SCRPC (Settled); ☐ Other -

ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

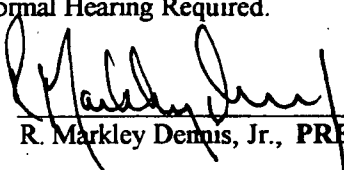
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING THE LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

ORDERED AND ADJUDGED: ☐ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

Plaintiff's Motion to Reconsider Order of Dismissal is DENIED. No Formal Hearing Required.

at Charleston, South Carolina, this 16 day of January, 2009.


R. Markley Dennis, Jr., PRESIDING JUDGE

Judgment was entered on the _____ Day of _____, 20____, and a copy mailed first class this _____ Day
_____, 20____, to attorneys of record or to parties (when appearing pro-se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

FILED
2009 JAN 21 AM 9:21
JULIE J. ARMSTRONG
CLERK OF COURT

The South Carolina Court of Appeals

Sidney Fields,

Petitioner,

v.

State of South Carolina,

Respondent.

ORDER

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 the petition is without merit and requests permission to withdraw from further representation.

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.

Thomas A. Luff J.

U. Ke J.

James E. ... J.

Columbia, South Carolina
Nov 5, 2010

FORM 4

JUDGMENT IN A CIVIL CASE

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

CASE NO. 2011- CP-10-7173

Sidney Fields
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant
	or ☐ 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: This case was filed on 10/4/2011. Service of process for the Defendant, State of South Carolina has not been perfected. This case is ordered dismissed pursuant to Rule 5(d), SCRPC. The Plaintiff shall have ten (10) days from the receipt of this Order to show cause why the case should be restored to the docket

ORDER INFORMATION

This order ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

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.

C. Nicholson JR.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-10-7173

Sidney Fields
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (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 : The Plaintiff's 59(e) motion is dismissed.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
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Circuit/Court Judge

2117

Judge Code

Date

SCRPC Form 4C (12/2011)

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF COURT

DEPUTY CLERK

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) NINTH JUDICIAL CIRCUIT
)

2014-CP-10-0305

Sidney Fields, #24592,

Plaintiff,

ORDER

vs.

The State of South Carolina,

Defendant.

FILED
2014 JUN 11 PM 2:31
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before this Court by way of a Petition for Writ of Mandamus filed by Mr. Fields and a Defendant's Motion to Dismiss by the State of South Carolina. These matters were heard by me on May 23, 2014, in the Court of Common Pleas for the Ninth Judicial Circuit in Charleston, South Carolina.

BACKGROUND

Mr. Fields has gone through a succession of actions for post judgment relief subsequent to entering pleas of guilty to murder and armed robbery on November 16, 1998. Mr. Fields was sentenced to confinement for life for the murder and for thirty (30) years for the armed robbery.

Mr. Fields filed a document titled "Application for (State) Habeas Corpus Pursuant to S.C. Code Ann. Section 17-17-10" (the "2007 Application") on August 31, 2007. In the brief attached to the 2007 Application, Mr. Fields asserts as his argument that "Petitioner was denied Due Process when (PCR) counsel's error denied Petitioner a sufficient and preserved evidentiary record for appellate review." Judge Roger M. Young entered his order filed June 25, 2008, wherein Judge Young ordered that "this matter [the 2007 Application] is transferred to the civil

roster as a Petition for Habeas Corpus, a Pro Se hearing will be set at the next available term, and Lisa A. Reynolds, Esquire is relieved as counsel for the plaintiff in this matter."

Judge R. Markley Dennis, Jr. held an evidentiary hearing on November 3, 2008. Judge Dennis found in his Order of Dismissal filed November 26, 2008, that the 2007 Application "is the Applicant's third PCR application and is thus a successive application." Judge Dennis granted the State's motion to dismiss and found that the application must be denied and dismissed with prejudice.

LaNelle Cantey DuRant, Appellate Defender, served a Johnson Petition for Writ of Certiorari on June 24, 2009, to the South Carolina Supreme Court. The issue presented in the petition is:

Did the PCR court err in not hearing petitioner's PCR issue that he was denied due process of law when he was not able to have a fair and complete appellate review of his case because his first PCR attorney failed to file a rule 59(e) motion based on the deficiencies of the first PCR transcript.

The South Carolina Court of Appeals issued its order dated November 5, 2010, wherein it ruled that "After careful consideration of the entire record as required by Johnson v. State, 294 S.C. 310, 364 S.E. 2d 201 (1998), we deny the petition and grant counsel's request to withdraw."

CONCLUSIONS OF LAW

Mr. Fields has moved for a writ of mandamus ordering the circuit court to hold a habeas corpus hearing. The State of South Carolina opposed the motion for the writ of mandamus.

Mandamus is the highest judicial writ and is issued to compel a public official to perform a ministerial duty, not a discretionary duty, and only when there is a specific right to be enforced, a positive duty to be performed, and no other available legal remedy. Miller v. State, 377 S.C. 99, 101, 659 S.E.2d 492, 493 (2008). "A writ of mandamus is a coercive writ that orders a public official to perform a ministerial duty. Mandamus will issue only to compel a public official to

perform a mandatory legal duty. City of Rock Hill v. Thompson, 349 S.C. 197, 200, 563 S.E.2d 101, 102 (2002) (internal citations omitted). "To obtain a writ of mandamus requiring the performance of an act, the applicant must show 1) a duty of respondent to perform the act, 2) the ministerial nature of the act, 3) the applicant's specific legal right for which discharge of the duty is necessary, and 4) a lack of any other legal remedy" Holden v. Crib, 349 S.C. 132, 136, 561 S.E.2d 634, 636-7 (Ct. App. 2002), quoting Redmond v. Lexington County Sch. Dist. No. Four, 314 S.C. 431, 437, 445 S.E. 2d 441, 445 (1994).

Under the facts of this matter, Mr. Fields has no "specific legal right for which discharge of the duty [to hold a habeas proceeding in the trial court] is necessary." Mr. Fields is procedurally barred from petitioning the circuit court for a writ habeas corpus. "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 PCR application." Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998). "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." *Id.* Judge Dennis denied Mr. Field's petition. The specific issue with regard to the record was raised by Petition for *Writ of Certiorari* which was denied by the South Carolina Court of Appeals on November 5, 2010.

In his Application for Post-Conviction Relief filed May 11, 2006, Mr. Fields stated the following in Paragraph 19 that requires the applicant to state clearly their relief sought:

A [sic] EVIDENTIARY HEARING TO ADJUDICATE THE SPECIFIC FACTS THAT SUPPORTS [sic] APPLICANT'S INEFFECTIVENESS OF COUNSEL CLAIM / NOT ONLY WAS [sic] THE FACTS NOT ADJUDICATED UPON, THE FACTS WAS [sic] OMITTED FROM THE TRANSCRIPT OF RECORD.

Judge Jefferson dismissed this application on June 27, 2006, by Conditional Order of Dismissal and by Final Order dated August 23, 2006.

As an additional ground, habeas relief is not appropriate where a grant of the relief would not entitle the applicant to release from prison. "It is not necessary for the Court to decide this question as a decision in Appellant's favor would not entitle him to his release from the State Penitentiary, where he is serving a life sentence imposed upon him in 1961. The writ of habeas corpus is therefore not available to him," Bowers v. State, 241 S.C. 282, 284 127 S.E.2d 881, 882 (1962)."

Mr. Fields has raised the issue with regard to the transcript of record in previous applications for post-conviction relief, regardless of how delineated, the issue has been raised and denied by petition for writ of certiorari by the South Carolina Court of Appeals, and even if Mr. Fields were successful, he would not be released from imprisonment. For these reasons, Mr. Fields has no specific right to be enforced so a mandamus is not appropriate. Also, as set forth in Keeler, his remedy since he is procedurally barred is a petition in the original jurisdiction of the South Carolina Supreme Court.

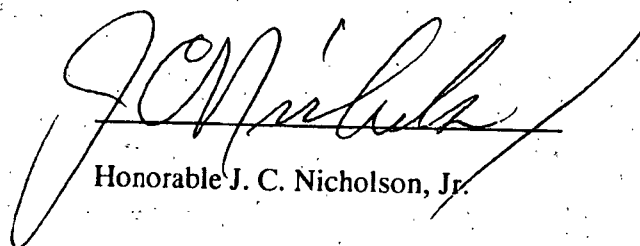
As additional grounds, Mr. Fields has failed to allege facts constituting a cause of action, the relief request is successive, and is barred by the applicable statutes of limitations.

NOW THEREFORE, it is hereby ordered that the State of South Carolina's Motion to Dismiss Mr. Field's Writ of Mandamus is granted.

AND IT IS SO ORDERED.

6/10, 2014

Charleston, South Carolina


Honorable J. C. Nicholson, Jr.

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By 
DEPUTY CLERK

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-10-0305

Sidney Fields
PLAINTIFF(S)

The State of South Carolina
DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☒ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff Sidney Fields Motion to Reconsider, filed June 24, 2014, is hereby **DENIED.**

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

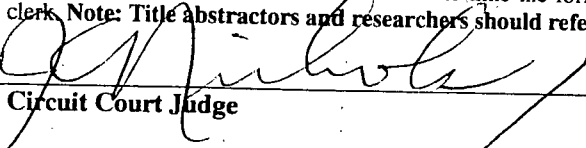
INFORMATION FOR THE JUDGMENT INDEX

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Circuit Court Judge

2117
Judge Code

9/8/14
Date

29

07-CF-10-3878

STATE OF SOUTH CAROLINA) In The Court Of Common Pleas
COUNTY OF CHARLESTON) Case #
Sidney Fields # 254392)
Petitioner.)
Vs.) Attached Brief
) In Support Of
State Of South Carolina) (State) Habeas corpus
Respondent.) Pursuant To S.C. Code Ann. §17-17-10

2007 AUG 21 11:12:50
CLERK OF COURT
JULIE A. BROWN

Petitioner above named Pursuant to S.C. Code Ann. §17-17-10 (State) Habeas Corpus, is now before this court alleging a Constitutional violation pursuant to U.S. Const. Amend. 14 (Due Process). Petitioner now hereby amend this petition and asserts the following as bases to have a hearing on this matter.

August 7, 2007

Sidney Fields

Sidney Fields # 254392
B.R.C.I. 4460 Broad River Rd.
Monticello # 210
Columbia, S.C. 29210

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STATEMENT OF QUESTION PRESENTED

WHETHER PETITIONER WAS DENIED DUE PROCESS WHEN (PCR) COUNSEL'S
ERROR DENIED PETITIONER A SUFFICIENT AND PRESERVED EVIDENTIARY
RECORD FOR APPELLATE REVIEW.

STATEMENT OF FACTS

On November 16, 1998 petitioner plead guilty and was sentenced to life imprisonment for murder and 30 years for armed robbery.

On May 13, 1999 Petitioner filed an application for Post Conviction relief (PCR) and a amendment was submitted to the application on June 20, 2000.

On September 13, 2000 an evidentiary hearing was convened before the Honorable R. Markley Dennis Jr. in the court of common pleas (Charleston, S.C.). Petitioner was represented by Jack D. Cordray and the Respondent was represented by (former) assistant attorney general Mathew Mcquire. Testimony was heard from petitioner's original trial counsel, D. Ashley Pennington and the Petitioner. Petitioner specific allegation at the (PCR) hearing was that: Prior to plea, trial counsel was ineffective for introducing an inapplicable furlough statute. This defective advice induced plea.

At the close of the hearing, the presiding judge denied the application in it's entirety and signed the order on September 21, 2001. Petitioner timely informed (PCR) counsel that the (PCR) transcript was incomplete. (PCR) counsel referred the matter to the appellate defence office through appellate defender Eleanor Duffy Cleary.

On October 11, 2002 the S.C. Supreme Court affirmed the (PCR) court's order. Appellate counsel then informed Petitioner the dismissal ended his (State) court appeals in this matter and gave Petitioner information on Federal Habeas Corpus.

On January 7, 2003 Petitioner submitted a federal petition for habeas corpus on the (ground) of ineffectiveness of trial counsel and timely pursued this appeal until April 23, 2004.

On June 24, 2004 Petitioner submitted a writ of mandamus in the court of common pleas (Charleston, S.C.), and on July 1, 2004 the mandamus was dismissed to proceed in forma pauperis.

On March 29, 2005 after appealing the forma pauperis decision, Petitioner re-submitted the mandamus with a filing fee, and it was dismissed on March 28, 2006 for failure to prosecute.

On April 4, 2006 Petitioner submitted a 59(e) motion alleging the mandamus was wrongly dismissed because transportation provisions was not made to transport Petitioner to the hearing. This was dismissed also.

On May 5, 2006 Petitioner submitted a 2nd (PCR) application alleging that he was denied effective assistance of (PCR) counsel in the 1st (PCR) action. On January 19, 2007 this matter was dismissed by the (PCR) court.

On January 31, 2007 Petitioner requested the (PCR) court to amend order to include an omitted motion. Upon the courts failure to amend, Petitioner submitted a notice of appeal to the (State) Supreme Court.

On March 6, 2007 Petitioner submitted the required explanation pursuant to rule 227(c) SCACR to show why the determination by the (PCR) court was improper.

ON March 21, 2007 the S.C. Supreme Court issued an order dismissing the explanation disallowing Petitioner to proceed with the appeal.

On March 27, 2007 Petitioner received the (PCR) court's amended order which now includes the motion that was omitted prior.

On April 3, 2007 pursuant to the amended order, Petitioner submitted a motion to re-instate the appeal. On May 23, 2007 the supreme court dismissed the motion to re-instate.

On June 28, 2007 Petitioner submitted a federal motion pursuant to §2244 to proceed on a successive Habeas Corpus petition.

On July 18, 2007 The U.S. Court Of Appeals (4th Cir) denied Petitioner's motion to proceed.

This brief in support of this (State) Habeas Corpus petition now follows :

1. ARGUMENT

PETITIONER WAS DENIED DUE PROCESS WHEN (PCR) COUNSEL'S ERROR DENIED PETITIONER A SUFFICIENT AND PRESERVED EVIDENTIARY RECORD FOR APPELLATE REVIEW.

a. Facts leading up to (PCR) counsel's error

After Petitioner pled guilty, a (PCR) action was brought by Petitioner in which Petitioner alleged through his (State) appointed (PCR) counsel that prior to plea, trial counsel was ineffective for introducing an inapplicable furlough statute S.C. Code Ann. §24-3-210 (see exhibit # 1 attached). This issue was the Focal Point of the hearing. (see (PCR) order pg 16 lines 11-13)

At the (PCR) hearing, trial counsel testified that a specific provision pursuant to S.C. Code Ann. §24-3-210 allows the director of the South Carolina Dept. Of Corrections to furlough a terminally ill inmate for an indefinite length of time, only if the victims relatives, law enforcement, and the solicitor agree. Trial counsel also testified that he advised Petitioner on this provision and that it was applicable to Petitioner's sentence situation.

Petitioner then testified that he was denied effective assistance of trial counsel because trial counsel misled him about what the furlough provision provided i.e. (72 hour passes home, work release, community based programs). Petitioner further asserted that not only was he misled, ALL furloughs (including the terminally ill furlough) are early release, community supervised programs, and such programs are prohibited to anyone sentenced to "life without parole" under S.C. Code Ann. §16-3-20.

Petitioner concluded his testimony by stating that trial counsel erroneous advice induced his plea, and had it not been for this defective advice, he would not have plead guilty. This is the "Key" facts of petitioner's claim and what Petitioner testified to at the hearing.

§16-3-20 States: For the purpose of this section, "life imprisonment" means until the death of the offender. No person sentence to life imprisonment pursuant to this section is eligible for parole, community supervision, or early release programs. (see exhibit # 2 attached)

South Carolina law on this issue states that if two statutes are in conflict, the latest statute passed should prevail so as to repeal the earlier statute to the extent of the repugnancy. Hair v. State 406 SE 2d 332 (1991) / Yanis Coastal Inc. v. Stroh Brewery Co. 368 SE 2d 64 (1998)

Therefore since Petitioner's sentencing statute S.C. Code Ann. §16-3-20 (1996 act no. 317 *1 eff may 20, 1996), was revised AFTER the latest revision of the furlough statute S.C. Code Ann. §24-3-210 (1994 act no. 477 *1 eff july 14, 1994), it is conclusively established that Petitioner's sentencing statute repeals the furlough provision, making the furlough provision an inapplicable statute.

Both statutes was marked and admitted into evidence prior to the start of the hearing (see exhibit # 3 attached). However during the hearing, the (State) and the (PCR) court misconstrued the context of Petitioner's testimony, in other words, the furlough question was addressed but not specifically to the "KEY" fact of Petitioner's claim nor to the facts of his testimony.

b. (PCR) counsel's error

When Petitioner received the **PROPOSED** order of dismissal and the (PCR) transcript (see exhibit # 4 attached), the "KEY" facts of petitioner's testimony was omitted from the transcript, thus the record is now based on the (State's) and the court's version of the facts, not on the "KEY" facts. Petitioner testified to in court. (refer back to (PCR) order pg 16 starting at line 11) to see the difference between petitioner's "KEY" facts and the court's order.

Since the burden is on Petitioner to prove his allegations, Butler v. State 334 SE 2d 813 (1985), and since only (PCR) counsel was procedurally qualified to pursue this matter Jones v. State 558 SE 2d 517 (2002), Petitioner timely informed (PCR) counsel (through several letters) that "KEY" facts was omitted from the transcript (see exhibit # 5 attached). (PCR) counsel proceeded by filing a notice to appeal the issue to the (State) Supreme Court (see exhibit # 6 attached), and then informed Petitioner that he received his letters about the Transcript, and that he referred the letters and the transcript issue to the appellate defence office to handle Petitioner's Transcript concerns (see exhibit # 7 attached)

(PCR) counsel committed **Procedural Error** by referring the transcript to the appellate level for correction, because a Petitioner has the burden of proof to convince the reviewing court that the lower court was in error, and to do this, must place in record below sufficient testimony to serve as foundation for his argument in the reviewing court above. Conran v. Joe Jenkins Realty Inc. 210 SE 2d 309 (1974)

Under State Harmless Error Analysis the court at every stage of the proceedings must disregard any error or defect in the proceeding which does not effect the substantial right of the parties. Rule 61, South Carolina Rules Of Civil Procedure. / Rule 52(a) Federal Rules Of Criminal Procedure.

In the instant case is **HARMFUL ERROR** because since (PCR) counsel's incompetence was an infringement on Petitioner's ability to perfect an appeal, this violates Petitioner's right to due process pursuant to the 14th amendment.

Because where a right of appeal is granted, an accused must be afforded due process and equal protection of the laws in it's exercise. State v. Lagerquist 176 SE 2d 141 (1970)

Furthermore **ALL** testimonial evidence that had favored Petitioner's (Prejudice Requirement) was also omitted from the transcript. Among the testimony omitted is Petitioner's testimony that before the plea, he filed a

formal complaint to the (State) Supreme Court against trial counsel for ineffectiveness because Petitioner wanted to proceed to trial (see exhibit # 8 attached). But because the record was not made sufficient, the record is now construed to make one believe that Petitioner was more than willing to accept the plea when it was first offered.

C. Due Process

The United States Supreme Court Ruled that the duty of the (State) is not to duplicate the legal arsenal that may be retained by the criminal defendant in a continuing effort to reverse his conviction, but only to assure the indigent defendant an adequate opportunity to present his claims FAIRLY in the context of the (State's) appellate process. Ross v. Moffitt 417 US at 616, 94 Sct. 2447 (1974) / Evitts v. Lucey 469 US at 402, 105 Sct. 839

Therefore petitioner in the instant challenged his plea conviction by alleging that because of trial counsel's ineffectiveness, his plea was involuntary. Hill v. Lockhart 474 US at 56, 57 106 Sct. 369, 370 (1985)

And eventhough it was the (State) who appointed (PCR) counsel to litigate Petitioner's claim, Petitioner had no Federal Constitutional right to counsel on a discretionary appeal on direct review of his plea conviction. Pennsylvania v. Finley 481 US at 555, 107 Sct. 1993 (1987), therefore Petitioner bears the risk of his attorney's error that resulted in a procedural default or error. Coleman v. Thompson 501 US at 754, 111 Sct. 2567 (1991)

But when a (State) opts to act in a field where it's actions has significant discretionary elements, it must nonetheless act in accord with the Due Process Clause. Evitts v. Lucey 469 US at 402, 105 Sct. 839 / And the constitutional mandate [guaranteeing effective assistance of counsel] is addressed to the action of the (State) in obtaining a criminal conviction through a procedure that fails to meet the standard of (Due Process Of Law). Coleman v. Thompson 501 US at 754, 111 Sct. 2567

However, defendants collaterally attacking a conviction are in a fundamentally different position than those on trial or making a first appeal as of right. Pennsylvania v. Finley 481 US 551, 559, 107 Sct. 1990, 1995 (1987). Consequently (States) need not provide the full panoply of procedural safeguards in collateral proceedings as required at trial or first appeal by right. Jackson v. Duckworth 844 F. Supp 464 [7] (1994)

But no court has, and no court could reasonably have concluded that defendants in collateral (State) court proceedings are accorded NO DUE PROCESS. Therefore if a (State) chooses to provide collateral post-conviction procedures for convicted prisoners, those procedures must at least comport with the base-line of due process, in other words, they must comport with "Fundamental Fairness". Jackson v. Duckworth 844 F. Supp 464 [8,9] / see also Finley 481 US at 556, 107 Sct. 1994

In Strickland v. Washington 466 US 668, 104 Sct. 2052, 80 L.Ed. 2d. 674 (1984), there is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case. 466 US at 689

Petitioner in the instant overcame this presumption by meeting the 1st prong of the Strickland test by showing that because of (PCR) counsel's procedural error, the evidentiary record was not made sufficient and properly preserved for appellate review. 466 US at 669. This in turn denied Petitioner his right to due process in accordance to the 14th amendment. Because Petitioner has a right to a meaningful appeal based on a COMPLETE transcript. US v. Huggins 191 F. 3rd 536 [2,3,] (1999)

And since substantial prejudice is required to establish violation of due process Felder v. Charleston County School Dist. 489 SE 2d 191 (1997), Petitioner met the 2nd prong of the Strickland test by showing that there is a reasonable probability that without counsel's error, Petitioner would have been

40

given a more favorable appellate review, in other words, the outcome of the proceedings would have been different. 446 US at 669, 104 Sct. 2055-2056

In conclusion, the effective representation by counsel guaranteed by due process of law does not mean perfection on the part of an attorney. The requirements of due process is met when counsel gives his client his complete loyalty, serves him in good faith to the best of his ability.....he is not required to be infallible, since his client is entitled to a fair trial, not a perfect one. Crosby v. State 126 SE 2d 845 [4] (1962)

However, because of (PCR) counsel's error in the instant, the "KEY" material facts of Petitioner's MAIN ISSUE was not sufficient and preserved in the record for a proper appellate review. This matter is before this court because (PCR) counsel IS a officer of this (State) and when (PCR) counsel was unable to provide competent representation to Petitioner, Petitioner was in no better position than a petitioner who had no counsel at all. Evitts v. Lucey 469 US at 387, 105 Sct. 831 (1985). Therefore this matter failed to comport with the base-line of due process i.e. "Fundamental Fairness".

Because due process encompasses all rights which are of such fundamental importance as to require compliance with due process standards of fairness and justice and includes procedural rights of citizens against government actions that threaten the denial of life, liberty, or property. Anonymous v. State Bd. Of Med. Exam'rs 473 SE 2d 870 (1998)

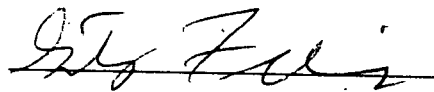
Furthermore the requirement of due process includes notice, an opportunity to be heard in a meaningful way, and judicial review. The judicial review component of due process assures a determination that the Petitioner has a factual bases. Ogburn-Mathews v. Lobolly Partners 505 SE 2d 598 (1998).

41

RELIEF SOUGHT

WHEREFORE Petitioner Sidney Fields moves this Honorable court for an evidentiary hearing on the furlough issue to establish a sufficient record for a proper appellate review, or in the alternative, to be given a hearing before the court to determine whether a hearing on the furlough issue is warranted.

Respectfully Submitted,



Sidney Fields # 254392

B.R.C.I. 4460 Broad River Rd.

Monticello # 210

Columbia, S.C. 29210

August 7, 2007

42

07-CP-10-3878

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Sidney Fields # 254392)
Petitioner.)
Vs.)
State Of South Carolina)
Respondent.)
_____)

IN The Court Of Common Pleas
Case #

2007 AUG 10 PM 12:58
CLERK OF COURT

SUMMONS

To The Above Respondents:

You are hereby summoned and required to answer the attached petition for Habeas Corpus, a copy of which is herewith served upon you and you are required to serve a copy of your return answer upon the above named Petitioner at: Broad River Correctional Inst. 4460 Broad River Rd. Columbia, S.C. 29210 within twenty (20) days after the day of service, and if you fail to answer the petition within the aforesaid time, judgment by default will be rendered against you for relief sought in the petition for Habeas Corpus.

August 7, 2007

Sidney Fields

Sidney Fields # 254392
B.R.C.I. 4460 Broad River Rd.
Monticello # 210
Columbia, S.C. 29210

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Sidney Fields, # 254392)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
2007-CP-10-3878

**MOTION TO RECONSIDER
THE ORDER TRANSFERRING TO
ROSTER AND RELIEVING COUNSEL**

The Respondent, by and through undersigned counsel, would respectfully show unto this Court:

1. The matter is before the Court by way of post-conviction relief (PCR) action filed August 31, 2007.
2. The Respondent made its Return and Motion to Dismiss on February 7, 2008.
3. The Honorable Roger M. Young, Sr. issued a Conditional Order of Dismissal on February 18, 2008, and he gave the Applicant twenty (20) days to state a sufficient reason why the order should not become final.
4. In a document captioned "Petitioner's 'OPPOSITION' to Conditional Order of Dismissal," dated March 6, 2008, Applicant argued that he is entitled to an evidentiary hearing. The Applicant asserted the following reasons why the Conditional Order of Dismissal should not become final:
 1. Current action was filed as a State Habeas Corpus action.
 2. PCR counsel failed to preserve the record for appellate review in first PCR action.
 3. Due process.

5. Based on the Applicant's response to the Conditional Order of Dismissal, Judge Young issued an Order Vacating the Conditional Order of Dismissal on March 24, 2008. Judge Young directed the Respondent to appoint counsel for the Applicant and set the Applicant's case on the next PCR docket. Lisa A. Reynolds, Esquire, was appointed to represent the Applicant on April 28, 2008. The Respondent scheduled a hearing on its Motion to Dismiss to be heard on July 21, 2008 at the Charleston County Courthouse.

6. Ms. Reynolds prepared a proposed Order Transferring to Roster and Relieving Counsel on June 16, 2008. Judge Young signed the above-mentioned Order on June 20, 2008. By letter dated June 19, 2008, the Applicant contends that counsel misconstrued one of his previous motions that indicated he wanted to proceed pro se. In the June 19 letter, Applicant asks the Court to dismiss counsel's request to be relieved. The Applicant also requested that, if the Order has already been signed, the Court vacate the Order and reappoint counsel. The Respondent requests that counsel be reappointed. Attached herewith is Applicant's letter dated June 19, 2008.

7. The Respondent also opposes transferring the case to the civil roster as a Petition for Habeas Corpus. PCR is not rendered "unavailable or inadequate" merely because the petitioner's application 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 v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Ct. App. 1998). The Uniform Post Conviction Procedure Act (the 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. "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." Id.

8. Accordingly, the Respondent requests that this Court vacate the Order Transferring to Roster and relieving Counsel, counsel be reappointed, and the matter be heard during the PCR term on July 21, 2008 on the State's Motion to Dismiss.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

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

By:


Attorneys for Respondent

July 15, 2008.

46

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Sidney Fields # 254392)
Plaintiff.)
)
Vs.)
)
State of South Carolina)
Respondent.)

)

In The Court Of Common Pleas.
9th Judicial Circuit
07-CP-10-3878

**PLAINTIFF'S MOTION
TO RECONSIDER
ORDER OF DISMISSAL**

FILED
2008 DEC 30 PM 1:51
JULIE J. ARMSTRONG
CLERK OF COURT

I

Pursuant to the Order Relieving Counsel, entered into judgment on December 12, 2008, the plaintiff above named is now before the court pro-se to move the court to reconsider it's Order Of Dismissal dated November 24, 2008 and received by plaintiff on December 22, 2008

II

PROCEDURAL HISTORY

1. On August 31, 2007 pursuant to Rule 10(a) SCRCF, the court filed plaintiff's (State) Habeas Corpus Petition S.C. Code Ann. §17-17-10 / Rule 65(f)(1) SCRCF. With a \$150.00 filing fee paid in accordance. court receipt # (CP11) 2007-010189
2. However in the respondent's Motion To Dismiss dated February 7, 2008, the respondent blatantly construed the Habeas petition as if it was a (PCR) application filed before the court, and asked the court for a summary dismissal because the alleged application was successive. Pursuant to this (mis)statement, the Honorable Roger M. Young issued a Conditional Order Of Dismissal dated February 18, 2008. The plaintiff "OPPOSED" the order dated March 6, 2008
3. On March 24, 2008 the Honorable Young Vacated his conditional order, and Lisa A. Reynolds Esq. was appointed counsel for the plaintiff

4. On June 16, 2008 Lisa Reynolds subsequently submitted a proposed order titled: Order Transferring To Roster And Relieving Counsel, in which counsel asked the court to be relieved of counsel in order for plaintiff to proceed pro-se, and to have the matter transferred to the civil roster as a petition for Habeas Corpus.

5. On June 20, 2008 an Order was entered into judgment by the Honorable Young allowing plaintiff to proceed pro-se, and to have the matter transferred to the civil roster as a petition for Habeas Corpus

6. On July 15, 2008 the respondent submitted a Motion To reconsider asking the court to reconsider it's order transferring to roster and relieving counsel. In it's motion, the respondent asked the court to: 1) reappoint counsel. 2) to again construe the matter as a (PCR) application. 3) that the Habeas petition is jurisdictionally not filed in the proper court.

7. On August 26, 2008 the Honorable Young Denied the respondent's motion to reconsider, and on September 10, 2008, Elizabeth Ballentine Esq. was appointed new counsel for plaintiff..

8. On November 3, 2008 a hearing was held on this matter. The plaintiff was represented by Ms. Ballentine. The Respondent by Matthew Friedman. The Honorable R. Markley Dennis Jr. presided

9. At the start of the hearing, the attorney for the respondent contended that the Habeas Corpus Petition is Jurisdictionally not filed in the proper court, and moved to dismiss the matter as a successive (PCR) application. Plaintiff's attorney then argued that the Habeas petition is before the court because the initial (PCR) record was never adequately raised and plaintiff's initial (PCR) counsel failed to timely object or preserve a sufficient record for review. The court informed plaintiff's counsel that the Habeas petition is not proper because it is only for immediate release from confinement, and it must be filed in the S.C. Supreme Court. (At the

respondent's behest, the court construed the Habeas petition as a successive (PCR) application, and directed the respondent to draft an order of dismissal in accordance. (exhibit 6)

10. Upon the abrupt dismissal of the hearing, the plaintiff asked to address the court, but the court refused to allow plaintiff to speak. The plaintiff then imposed his opinion upon the court by angrily informing the presiding judge that it was he who presided at the initial (PCR) hearing of September 13, 2000. And at the hearing, exhibits was marked into evidence twice but the testimony pertaining to the exhibits was omitted from the record. Therefore plaintiff pleaded before the court that because of this deprivation in the record, he was never given an adequate opportunity to prove his initial (ground) of ineffective assistance of counsel in the first (PCR) matter. The court decline to hear the matter further.

11. On November 26, 2008 based on plaintiff request, appointed counsel moved before the court to relieve herself as counsel in order for plaintiff to proceed pro-se (exhibit 7). Two hours later, the order of dismissal was entered into judgement (exhibit 8). On December 12, 2008 an order was entered into judgment granting counsel's request to be relieved, and in turn, the plaintiff is now a self represented litigant in this matter (exhibit 9).

12. On December 22, 2008 plaintiff received the order to proceed pro-se as well as the order of dismissal of the court.

Plaintiff's facts showing why the court should reconsider it's Order Of Dismissal now follows:

9 attached exhibits in chronological order, which is to be referred to extensively throughout this Motion To Reconsider.

EXHIBIT #:

- 1) Conditional Order Of Dismissal. (The Honorable Roger M. Young) dated February 18, 2008
- 2) Order Vacating Conditional Order Of Dismissal. (The Honorable Roger M. Young) dated March 24, 2008
- 3) Order Transferring To Roster And Relieving Counsel. (The Honorable Roger M. Young) dated June 20, 2008
- 4) Respondent's Motion To Reconsider Order Transferring To Roster And Relieving Counsel. (Matthew Friedman Esq.) dated July 15, 2008
- 5) Order Denying Respondent's Motion To Reconsider. (The Honorable Roger M. Young) dated August 26, 2008
- 6) Informal Order Of Dismissal of the November 3rd 2008 hearing (The Honorable R. Markley Dennis Jr.) dated November 3, 2008
- 7) Motion To Be Relieved As Counsel. (Elizabeth W. Ballentine Esq.) dated November 26, 2008
- 8) Formal Order Of Dismissal of the November 3rd 2008 hearing (The Honorable R. Markley Dennis Jr.) dated November 26, 2008
- 9) Order Granting Counsel To Be Relieved / Allowing Plaintiff To Proceed Pro-Se (The Honorable Roger M. Young) dated December 12, 2008

IV

VALIDITY OF THE ORDER OF DISMISSAL

In accordance to Rule 10(a) SCRPC, this current action is and was filed as a (State) Habeas Corpus Petition S.C. Code Ann. §17-17-10 / Rule 65(f)(1) SCRPC. With a \$150.00 filing fee paid in accordance. court receipt # (CP11) 2007-010189

However in the respondent's initial motion to dismiss, the respondent blatantly construed the Habeas petition as if it was a (PCR) application that was initially filed, and asked the court for a summary dismissal because the application is successive. Based on the respondent's (mis)statement, a conditional order was issued (**exhibit 1**), but was Vacated (**exhibit 2**), and a subsequent order issued titled: Transferring To Roster And Relieving Counsel. In which plaintiff's first counsel was relieved and the matter was transferred to the civil roster as a petition for Habeas Corpus (**exhibit 3**).

The respondent submitted a motion to reconsider, by asking the court to reconsider it's order of Transferring To Roster And Relieving Counsel. In it's motion, the respondent asked the court to: 1) reappoint counsel. 2) to again construe the Habeas petition as a (PCR) application. 3) that the Habeas petition is jurisdictionally not file in the proper court (**exhibit 4**). The court Denied the respondent's motion to reconsider (**exhibit 5**).

On November 3, 2008 a hearing was held on this matter, However not only did the respondent not honor the previous court order allowing plaintiff's Habeas Corpus hearing, the respondent rehashed at the hearing the same arguments that a previous Judge had already deemed improper for this matter (**exhibit 8 p.1 ln.7-8**) At the respondent's behest, the court deceptively construed the Habeas petition as a successive (PCR) application.

The court was further deceptive by declaring in it's Order Of Dismissal that a (PCR) application was initially filed in this matter (**exhibit 8 p.1**

ln.1), and that a hearing was held on this (PCR) application (exhibit 8 p.4 ln.3-11). There's no declaration in the court's order that a Habeas Corpus petition was filed in this matter, nor did the order declare that there ever was a Habeas Corpus petition before the court (exhibit 8).

V

(STATE) HABEAS CORPUS JURISDICTION

S.C. Supreme Court retains the ability pursuant to (State) constitution to entertain writs of Habeas Corpus in it's original jurisdiction and grant relief in those unusual instances where there has been a violation which constitutes denial of fundamental fairness shocking to universal sense of justice Simpson v. State 495 SE 2d 429 (1998).

And if theres a special ground of emergency or a good reason exist why the original jurisdiction of the supreme court should be exercised, the facts showing the reasons must be stated in the petition with supporting affidavits **Rule 229 SCACR**. However the S.C. Supreme Court will not entertain matters in it's original jurisdiction when the matter can be determined in the lower court **Rule 229 SCACR**.

Therefore plaintiff in the instant submitted the Habeas petition in the lower court, in which he asked to re-establish "KEY" testimony pertaining to marked exhibits that was omitted from the initial (PCR) record. This involves the authority and expertise of the lower court in the correction of this problem. Because testimony which serves as foundation for an argument must be place in the record of the lower court before it can be heard in the reviewing court above Conran v. Joe Jenkins Realty Inc. 210 SE 2d 309 (1974)

And just because plaintiff is challenging his plea conviction via. Habeas Corpus, does not mean he's seeking immediate release from custody. He is merely seeking the reversal of his conviction (change his plea) Baskins v.

Moore 363 F. Supp. 190 (1973)

A Habeas petition can be used to effectuate this goal. Because if the plaintiff is successful in the reversal of his conviction, have a trial, and is acquitted, then the sole purpose of the habeas petition has been accomplished (release from confinement) Baskins v. Moore 362 F. Supp. 190 (1973). Therefore Habeas Corpus relief is not limited to immediate release from custody, but also to effectuate an eventual release Preiser v. Rodriguez 411 US at 487, 93 Sct. at 1835

And since the Habeas statute gives courts the Power to fashion appropriate relief other than immediate release Pexton v. Rowe 391 US 54 88 Sct. 1549 (1968), restoration of plaintiff's "KEY" testimony into the initial (PCR) record is within the core of Habeas Corpus, because the restored testimony will procure a reversal of his conviction, then a trial, and possible acquittal (release from confinement) Preiser v. Rodriguez 411 US at 487, 93 Sct. at 1835

VI

CONCLUSION

For 8 years the plaintiff has been trying to re-establish back into his initial (PCR) record, "KEY" testimony pertaining to marked exhibits that was omitted, and only wants his day in court so that the court can determine whether this re-establishing of the record is warranted. And any accusations of successiveness is actually a true testament of plaintiff's unrelenting pursuit pertaining to this matter, which has always been pleaded in good faith with substantial justice to all parties **Rule 8(f) SCRPC**

However the court repayed plaintiff at the hearing by not honoring a prior court order allowing plaintiff a Habeas Corpus hearing (exhibit 3). The court also repayed plaintiff by not allowing plaintiff to speak at his own

hearing, but plaintiff angrily imposed his opinion upon the court by informing the court that his initial (PCR) record was never made adequate. But the court decline to hear the matter further. This shows a disregard for the procedural rights of the plaintiff, not to mention the procedural rules of the (State).

The rules states: In all actions tried upon the facts, the court shall find the facts specially and state separately it's conclusions of law thereon. And the court shall simarily set forth the findings of facts and conclusions of law which constitutes the grounds of it's actions **Rule 52(a) SCRCPP**. However the court in the instant not only failed to state the proper facts on what was before the court **Rule 12(b) SCRCPP**, the court failed to make a sufficient and consistent conclusion of law thereon.

Because the court deceptively construed the Habeas petition as a successive (PCR) application at the hearing. The court then added insult to injury by declaring in it's order of dismissal that plaintiff initially filed a (PCR) application in this matter (**exhibit 8 p.1 ln.1**), and that the (PCR) application initiated the November 3, 2008 hearing (**exhibit 8 p.4 ln.3-11**). There's no declaration in the court's order that a Habeas Corpus petition was filed in this matter, nor did the order declare that there ever was Habeas petition before the court (**exhibit 8**).

Nevertheless, the sole purpose of the court in this matter was to deceive, to (mis)represent the facts in order to form the bases for a dismissal. The court did not use it's power and authority to properly fact find, and make a sufficient conclusion of law on what was before the court **Rule 52(a) SCRCPP**, the court used it's power and authority to perpetuate a lie (**exhibit 8 p.6 ln.3-8**)

Therefore not only does the order of the Honorable R. Markley Dennis Jr. not contain the required findings of fact and conclusions of law as required by **Rule 52(a) SCRCPP**, Judge Dennis's order is a rehashed version of a prior

Conditional Order Of Dismissal that was Vacated by a previous Judge, because the Judge found that his own fact finding and conclusions of law in his conditional order was deemed improper for this matter. Therefore Judge Dennis's order of dismissal is just as improper as the order of dismissal that was Vacated (exhibit 1-2, 8).

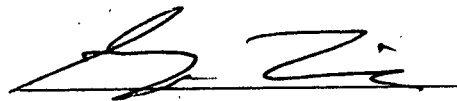
The attached exhibits clearly shows that the court used it's power and authority to deviate from the truth by purposefully defying prior orders entered into judgment (exhibit 1-5, 8) Rule 54(a) SCRCP / Rule 58(a)(2) SCRCP.

But the court's defiance is a prelude to the inevitable. The inevitable being that the omitted testimony pertaining to the marked exhibits will be amalgamated back into plaintiff's initial (PCR) record. Because the U.S. Supreme Court has explicitly declared that Fundamental Fairness entitles indigent defendants to an adequate opportunity to present their claim Fairly within the Adversary System Ake v. Oklahoma 470 US 68 at 70 (1985)

Wherefore plaintiff Sidney Fields is now again before this court through this motion to reconsider to again be allowed the opportunity in court to determined, whether the re-establishing of testimony into his initial (PCR) record is warranted. This court denied plaintiff this opportunity in court through his Habeas Corpus petition, which plaintiff has conclusively shown is just and proper before this court.

Respectfully Submitted,

December 29, 2008



Sidney Fields # 254392

B.R.C.I. 4460 Broad River Rd.

Monticello # 210

Columbia, S.C. 29210

Extra cover sheet to be filed stamped and returned in the self-addressed stamped envelope provided

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Sidney Fields (pro-se) # 254392)
Inmate Petitioner.)

Vs.)

State Of South Carolina)
Respondent.)
_____)

In The Court Of Common Pleas

Case #

14-CP-10-305

BY

2011 JAN 15 PM 3:59
JULIE J. ARMSTRONG
CLERK OF COURT

Petition For Writ

Of

Mandamus

Pursuant to S.C. Const. Article 5 Section 20 / Rule 65(f)(1) SCRCP, Petitioner above named who is an inmate in the S.C. Dept. Of Corrections, is now before this court (pro-se) by way of this petition for Writ Of Mandamus. This petition is before this court to compel the court to perform the ministerial duty of conducting a Habeas Corpus proceeding as mandated by court Order and by law. A non jury trial is demanded in this complaint.

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QUESTION PRESENTED

When the court issued the Order to transfer the pleading to the civil roster as a petition for Habeas Corpus that became the law of the case, did the court deprived petitioner of Due Process guaranteed to him by Article 1 Section 5 of the S.C. constitution and the 14th Amend of the United States Constitution, by construing and dismissing the Habeas Pleading as a successive (PCR) application when it did not have subject matter jurisdiction to do so?

Statement Of The Case

On November 16, 1998 Petitioner plead guilty, and was sentenced to Life imprisonment for Murder, and 30 years for Armed Robbery.

1st (PCR) Application

On May 13, 2000 a hearing was convened before R. Markley Dennis Jr. Petitioner testified that prior to plea, counsel advised him on an early release Statute S.C. Code Ann. §24-3-210 When in fact the provisions under this Statute was not cognizable under his sentencing Statute S.C. Code Ann. §16-3-20 This sentencing Statute prohibit any and all early release programs.

Petitioner further testified that had it not been for counsel's advice, he would not have plead guilty. Both Statutes was entered into evidence twice. Once before the hearing commenced, and a second time right before Petitioner testified. At the close of the hearing, Judge Dennis denied the application.

Upon receiving a copy of the proposed order, and a copy of the transcript of the (PCR) proceeding, Petitioner discovered that not only was the transcript not certified by a court reporter, Petitioner's specific allegation about counsel's advice being contrary to his sentencing Statute was completely omitted from Petitioner's testimony.

Petitioner informed (PCR) counsel (via) several letters that there was no testimony to substantiate the evidence presented, nor was there testimony to substantiate the main allegation of his ineffectiveness of counsel ground.

(PCR) counsel informed Petitioner that he received his letters about the transcript, and further informed Petitioner that he referred the matter to the appellate defence office to be corrected at the appellate level. *R. p. I*

Appellate Review Of 1st (PCR) Application

On October 11, 2002 the S.C. Supreme Court affirmed the 1st (PCR) denial. And eventhough Petitioner informed appellate counsel about the defective transcript on appellate review, appellate counsel informed Petitioner that he

had no more State court appeals in the matter, and made reference to Petitioner that Federal review under U.S.C. §2254 is an option. Because of appellate counsel's advice, Petitioner initiated his 1st Federal review under §2254 R. p.63

1st Petition For Mandamus In Circuit Court

After an unsuccessful Federal review, on June 24, 2004 Petitioner submitted a petition for writ of mandamus in circuit court (Charleston). But was denied to proceed in forma pauperis. On March 29, 2005 Petitioner re-submitted the mandamus with the required filing fee. On March 24, 2006 the petition was dismissed for failure to prosecute.

On April 4, 2006 Petitioner submitted a 59(e) motion alleging that the mandamus was dismissed prematurely because transportation provisions was not made to transport Petitioner to the hearing. This motion was dismissed also.

2nd (PCR) Application

On May 6, 2006 Petitioner submitted a 2nd (PCR) application pursuant to S.C. Code Ann. §17-27-90. Petitioner alleged that because of (PCR) counsel's performance, the ground in the original (PCR) was inadequately raised, thus a sufficient record for appellate review was never procured. Petitioner also argued that appellate counsel's advice in the original appellate review caused Petitioner to pursue his 1st Federal review prematurely. Thus causing Petitioner to submit the 2nd (PCR) application in a belated manner. Without a hearing, the 2nd (PCR) court concluded that Petitioner did not show a sufficient reason and dismissed the application accordingly.

Appellate Review Of The 2nd (PCR) Application

On March 21, 2007 the S.C. Supreme court denied Petitioner's explanation to proceed with an appeal. On May 23, 2007 the court denied a rehearing on the matter.

On June 28, 2007 Petitioner pursued a 2nd Federal review under U.S.C. §2244 in the U.S. Court Of Appeals (4th cir), asking the court to allow him to

proceed in the district court on a successive Federal Habeas Corpus petition. The court of appeals denied this request.

Petition For Writ Of Habeas Corpus In Circuit Court

On August 31, 2007 Petitioner submitted a petition for Habeas Corpus in circuit court (Charleston), in which he alleged that he was denied Due Process because (PCR) counsel's performance in the original (PCR) proceeding deprived him of a sufficient record for appellate review.

Petitioner also alleged that eventhough he has no constitutional right to counsel on collateral review, he has a fundamental fairness right under Due Process to a sufficient (PCR) record. And in this case, no record was ever developed to substantiate Petitioner's main allegation stemming from the original (PCR) proceeding. R. p.2-15

After a Conditional Order was issued R. p.17-23, Petitioner opposed the conditional order, in which it was Vacated R. p.24. The court subsequently issued an order transferring the pleading to the civil roster as a petition for Habeas Corpus, with a hearing ordered to be set in accordance R. p.25. The respondent submitted a motion asking the court to reconsider the Habeas order R. p.26-28. The court denied the respondent's motion R. p.29.

A Hearing was convened before Judge R. Markley Dennis Jr. However, at the hearing, the respondent construed the pleading as Petitioner's 3rd (PCR) application, and moved the court for an immediate dismissal of the application R. p.32 ln.12-15. Judge Dennis granted the respondent's motion R. p.39 ln.13-14, thus denying the application accordingly R. p.42-48.

The circuit court subsequently allowed Petitioner to proceed pro-se R. p.49. In which Petitioner submitted a pro-se motion to reconsider alleging that a succeeding Judge cannot review, reverse, or modify the holding of a preceding Judge R. p.50-58. Judge Dennis denied Petitioner's motion to reconsider R. p.59.

Appellate Review Of 3rd (PCR) Application

Upon appeal to the S.C. Supreme Court, the court granted Petitioner's explanation and allowed the appeal to proceed. On June 24, 2009 Appellate counsel submitted a "Johnson Petition" and asked to withdraw. On July 7, 2009 Petitioner submitted his pro-se response, and on November 5, 2010 the court of appeals denied Petitioner's petition for certiorari R. p.60

On January 19, 2011 Petitioner sought Federal review to the U.S. Supreme Court. On March 25, 2011 the court denied the petition for certiorari.

S.C. Supreme Court's Original Jurisdiction

On May 20, 2011 Petitioner submitted a petition for writ of Habeas Corpus to the S.C. Supreme Court. On June 22, 2011 the court denied the petition. On August 9, 2011 Petitioner submitted a petition for writ of mandamus to the S.C. Court of Appeals. On August 18, 2011 the S.C. Supreme Court which took the case denied the petition.

2nd Mandamus In Circuit Court

On October 4, 2011 Petitioner submitted his 2nd petition for Writ Of Mandamus in circuit court to compel the court to conduct a court ordered Habeas Corpus hearing as mandated by court order. On May 8, 2013 the petition was denied pursuant to Rule 5(d) SCRCF because petitioner served the respondent with the complaint and summons before it was filed with the clerk of court's office, which is a violation of Rule 5(d) SCRCF R. p. 61 On August 16, 2013 Petitioner's 59(e) motion was denied R. p.62

Predicated on the denial of the the 2nd Mandamus petition, Petitioner is now before this court with his 3rd Petition For Writ Of Mandamus to compel the circuit court to conduct a Habeas Corpus proceeding as mandated by court order.

I

ARGUMENT

When the court issued the order to transfer the pleading to the civil roster as a petition for Habeas Corpus that became the law of the case, the court deprived Petitioner of Due Process guaranteed to him by Article 1 Section 5 of the S.C. Constitution and the 14th Amend of the United States Constitution, by construing and dismissing the Habeas pleading as a successive (PCR) application when it did not have subject matter jurisdiction to do so.

1. Law Of The Case

Pursuant to S.C. Code Ann. §17-17-10 / Rule 65(f)(1) SCRCP, Petitioner submitted a petition for Habeas Corpus in circuit court R. p.2-15, with a \$150.00 filing fee R. p.16

The respondent submitted a motion to dismiss on the bases that the Habeas petition is and should be construed as a successive (PCR) application. Based upon this motion, Chief Adm. Judge Roger M. Young issued a Conditional Order Of Dismissal giving Petitioner (20) days to challenge the order or else the conditional order would become the final order of the court R. p.17-23

After Petitioner opposed the conditional order, Judge Young Vacated the conditional order R. p.24, and issued a subsequent order that transferred the pleading to the civil roster as a petition for Habeas Corpus, and ordered a hearing to be set in accordance R. p.25

The respondent submitted an untimely motion to reconsider asking Judge Young to vacate his order that transferred the pleading to the civil roster as a petition for Habeas Corpus R. p.26-28 Judge Young denied the respondent's motion R. p.29

South Carolina's Rules of Civil Procedure (SCRCP) clearly states that Judges retain jurisdiction to alter judgment on their own initiative for (10) days if motion to alter or amend is filed. However, after (10) days, that jurisdiction is lost Rule 59(e) SCRCP / Ness v. Eckered Corp 566 SE2d 193, 195 (2002)

Therefore, since the respondent submitted their motion to reconsider (15) days after the (10) day jurisdictional period had ended, Judge Young was without jurisdiction to alter or amend his own decision that transferred the pleading to the civil roster as a petition for Habeas Corpus Ness v. Eckered Corp at 195

And because Judge Young lost jurisdiction, the respondent's issues challenging the order, was never properly raised to and ruled on by Judge Young, thus the respondent's issues pertaining to Judge Young's order is not preserved for further review. This includes appellate review also Nicholson v. Nicholson 663 SE2d 74, 81-82 (2008)

Furthermore, not only did Judge Young lost jurisdiction to reverse his own decision to transfer the pleading to the civil roster as a petition for Habeas Corpus, there was no appeal from the denial of the respondent's motion to reconsider. Therefore, Judge Young's order to transfer the pleading to the civil roster as a petition for Habeas Corpus, with a hearing ordered to be set in accordance became the law of the case, being res-judicata between the parties on this matter Dinkins v. Robbins 26 SE2d 689, 690 (1943) / Miller by Miller v. Gertz 341 SE2d 620, 621 (1986)

And the law of the case doctrine clearly stipulates that once a court decides upon a rule of law, that decision should govern the same issues in subsequent stages of the same case Columbus-American Disc Group v. Atlantic Mutual Inc. 203 F3d 291, 304 (4th cir 2000) / Arizona v. California 460 U.S. at 618-19, 103 Sct at 1391 (1983)

A hearing was held on this matter before Judge R. Markley Dennis Jr. R. p.30-41 Eventhough Judge Young's previous order to conduct a Habeas Corpus proceeding became the law of the case, the respondent **RE-ARGUED** before Judge Dennis the same issues from their untimely and dismissed motion to reconsider. The respondent re-argued at the hearing that the Habeas Corpus pleading should be construed as a successive (PCR) application, and moved the court for an immediate dismissal of the pleading R. p.31 ln.11-12 / p.32 ln.12-15 / p.34 ln.21-25 / p.35 ln.1-6

Petitioner argues that the respondent's conduct at the hearing was contrary to South Carolina's Circuit Rules Of Practice, because the rules clearly states that if any application for an order be made to any Judge and such order be refused in whole or in part, no subsequent application upon the same set of facts shall be made to any other Judge, and if upon any such subsequent application any order be made, it shall be revoked **Rule 60 S.C. Circuit Court Rules Of Practice**

However, despite the respondent's deliberate contempt for established State court rules, Judge Dennis subsequently granted the respondent's motion R. p.39 ln.13-14 And in the final order of the court, Judge Dennis construed the Habeas Corpus petition as a (PCR) application, and denied the application in it's entirety R. p.42-48

But under the law of the case doctrine, the doctrine of res-judicata, and Rule 60 of the S.C. Circuit Court Rule Of Practice, Judge Dennis only had the authority to construe the pleading as a Habeas Corpus petition and proceeding. He did not have the ^{of Jurisdiction} [authority] to review, affirm, reverse nor modify what Judge Young earlier decreed under the circumstances Ex parte state 210 SE2d 600, 601 (1974)

^{But according to state law}
(In other words,) a succeeding Judge cannot recind an order made by a preceding Judge. However, where a party thinks himself aggrieved by such an order, the proper manner to procure redress is by appeal Dukes v. Dukes Inc. v. Hygrade Food Products Corp 113 SE2d 254, 256 (1960)

However, in the instant case, seeking a remedy by way of appellate review would have given the respondent no comfort, because (it is a fundamental rule of law that) the appellate court will affirm the ruling by a lower court if the offended part does not challenge that ruling. failure to challenge ruling is an abandandment of the issues and precludes consideration on appeal. The unchallenged ruling right or wrong becomes the law of the case and requires affirmance Linsay v. Linsay 491 SE2d 583, 588 (1997)

And since the respondents in the instant case failed to appealed Judge Young's denial of their motion to reconsider, Judge Young's Order right or wrong became the law of the the case Linsay at 588

2. Habeas Corpus In Circuit Court

Petitioner submitted the Habeas Corpus in circuit court because no record was ever developed to substantiate the main allegation from the original (PCR) proceeding R. p.2-15

In short, Petitioner is simply asking to reconstruct omitted testimony from the transcript of record of the original (PCR) proceeding. In other words, Petitioner wants to re-establish omitted testimony back into his original (PCR) record, because testimony which serves as foundation for an argument must be placed in the record of the circuit court before it can be heard in the reviewing court above Conran v. Joe Jenkins Realty Inc. 210 SE2d 309, 310 (1974)

However, in the process of construing the Habeas Corpus petition as a (PCR) application, Judge Dennis concluded that the circuit court can only hear (PCR) applications. Judge Dennis further concluded that petitions for Habeas Corpus is only for immediate release from confinement, and that it can only be submitted to the State's Supreme Court R. p.32 ln.23-25 / p.33 ln.1-4 Judge Dennis ultimately concluded that the circuit court lacked the jurisdiction to hear a Habeas Corpus petition R. p.39 ln.6-12

Under Federal law, it is well settled that just because a petitioner is challenging his plea conviction (via) Habeas Corpus does not mean he is seeking immediate release from custody. A petition for Habeas Corpus can also be used to seek the reversal of his conviction (Change his plea) Baskins v. Moore 362 f.Supp 187, 190 (Dist Court, S.C. 1973)

Because if a petitioner is successful in the reversal of his conviction, have a trial, and is acquitted, then the sole purpose of the Habeas Corpus has been accomplish (release from confinement) Baskins at 190

Therefore, Habeas relief is not limited to immediate release from custody, but also to effectuate an eventual release Preiser v. Rodriguez 411 U.S. 475, 487 (1973)

And since the Habeas Statute gives the courts power to fashion appropriate relief other than immediate release Paxton v. Rowe 369 U.S. 54, 66 (1966), the reconstruction of omitted testimony back into a (PCR) record is within the core of Habeas Corpus, because the re-established testimony can help procure a reversal of a conviction, then a trial, and a possible acquittal (release from confinement Preiser at 487

Under State law, the South Carolina Supreme Court has held that the lower court could treat pleadings as Habeas Corpus petitions and provide petitioners with a hearing on the merits if petitioner can show: 1). That a (PCR) is inadequate or unavailable 2). All other remedies have been exhausted 3). The issues now raised could not have been raised in their prior (PCR) application Gibson v. State 495 SE2d 426, 429 (1998)

Furthermore, Petitioner must set out a constitutional claim that meets the standard delineated in Butler v. State 397 SE2d 87 (1990) If a Habeas Corpus petitioner does not satisfy these procedural requirements, or allege sufficient facts to justify a Habeas Corpus hearing, the petition may be treated as a (PCR) application Gibson 495 SE2d 426

Petitioner argues that since a (PCR) application cannot be used to reconstruct the transcript of record of a previous (PCR) proceeding, any and all subsequent (PCR) applications used for that purpose would be deemed inadequate, thus making the (PCR) procedure unavailable to the Petitioner S.C. Code Ann. §17-27-10 to 120

And since all other remedies have been exhausted, and that the matter now raised could not have been raised in the original (PCR) application, Petitioner has met the criteria set forth in Gibson

Petitioner has also met the constitutional claim set out in Butler because under State law, the right to seek appellate review of the denial of (PCR) is expressly authorized S.C. Code Ann. §17-27-100 / Austin v. State 409 SE2d 395, 396 (1991)

And when the right to appeal is granted, an accused must be afforded Due Process and Equal Protection of the law in it's exercise State v. Lagerquist 176 SE2d 141, 143 (1970) Because Due Process guarantees an appeal that is both adequate and effective Evitts v. Lucey 469 U.S. 387, 392-94 (1985) In other words, the constitutional touchtone is that the appellate procedure must be furnished with the components necessary for a meaningful review.

Petitioner argues that by not having access to a complete record for review, he was not provided the sufficient tools necessary to gain a meaningful access to the courts Ross v. Moffitt 417 U.S. at 614-15, 94 Sct at 2446

The foregoing clearly shows that this matter cannot be treated as a (PCR) application, because not only is the facts sufficiently alleged to justify a Habeas Corpus proceeding, Judge Dennis erroneously "debunked" the Habeas Corpus petition on findings inconsistent with State and Federal law in order to justify construing the pleading as a (PCR) application.

It's important to note that at the hearing, Judge Dennis only asserted Habeas Corpus rules to justify his position. No conclusion of law was ever officially applied against the validity of Judge Young's law of the case decision, nor was there a conclusion of law made to officially dispose of Judge Young's law of the case decision.

Furthermore, Judge Dennis never applied the (4) prong analysis established by the State's Supreme court to test whether the Habeas Corpus petition should or should not be construed as a (PCR) application.

And since the record contains uncontradicted evidence that the Habeas order is the law of the case, there is no evidence to support Judge Dennis's ruling White v. State 208 SE2d 35 (1974)

Therefore, Judge Dennis erred in finding that the circuit court lacked jurisdiction over a petition for Habeas Corpus Brown v. Evatt 470 SE2d 848, 850 (1996) He also erred in finding that Habeas Corpus is inappropriate to procure the remedy Petitioner is seeking Baskins 362 F.Supp at 190 (1973)

3. Mandamus

A Writ Of Mandamus is obtained by showing: 1). A legal duty to perform act 2). The act to be performed is ministerial in nature 3). The petitioner's legal right for which discharge of duty is necessary 4). The lack of any other legal remedy Anderson v. State 527 SE2d 398, 399 (2000)

The S.C. Supreme court has recognize that a mandamus may lie to compel a Judicial officer to perform a ministerial duty State v. Barbee 313 SE2d 297, 298 (1984)

But issuance of a particular decision by a Judge is typically a matter of discretion, therefore not proper for mandamus. However, where discretion of the court can be legally exercised in only one way, a mandamus will lie to compel the court to so exercise it City Of Rock Hill v. Thompson 563 SE2d 101, 103 (2002)

Therefore, when Judge Young decreed the pleading to be transferred to the civil roster as a petition for Habeas Corpus, with a hearing to be set in accordance, the circuit court had a Legal Duty to conduct a hearing in accordance to what the order decreed because the order right or wrong became the law of the case. R. p.25

Furthermore, the court's Duty Is Ministerial In Nature because when the hearing is conducted, it is the court who must observe and weigh the testimony and evidence given before it in order to assess the parties credibility, and to issue a ruling on the relevant finding of facts and conclusion of law Rule 52(a) SCRCF

Petitioner also has A Specific Legal Right For Which Discharge Of Duty Is Necessary because by order of the court, Judge Young decreed the pleading to be transferred to the civil roster as a petition for Habeas Corpus, with a hearing ordered to be set in accordance. And when the respondent failed to appeal Judge Young's order denying their motion to reconsider, Judge Young's decision became the law of the case. Therefore, the court was bound by the law of the case doctrine to conduct a State Habeas Corpus proceeding, thus giving Petitioner the right to have a hearing in accordance Robert Harmon And Bore Inc. v. Jenkins 318 SE2d 371, 375 (1984)

And Lastly, There Is No Other Legal Remedy because only a writ of mandamus has the authority to compel the circuit court to perform this specific duty as mandated by court order.

4. Jurisdiction

It is well settled that issues related to subjectmatter jurisdiction may be raised at any time Brown v. State 540 SE2d 846, 848-49 (2001) Therefore, Petitioner's failure to raise this issue prior to his petition for mandamus does not preclude the court's consideration of it Anderson v. State 527 SE2d 398, 399 (2000)

Furthermore, appellate court's must on it's own motion raise the issue of subject matter jurisdiction to ensure an orderly administration of justice Ness v. Eckered Corp 566 SE2d 193, 195 (2002), especially since orders determining questions of subject matter jurisdiction are immediately appealible Carter v. Florentine Corp Inc. 423 SE2d 112, 112-13 (1992)

Even the lack of subject matter jurisdiction may not be waved even by consent of the parties Brown at 848 And the actions of a court with respect to a matter to which it has no jurisdiction are void Brown at 848

In the instant case, since the respondent's motion to reconsider was submitted untimely, coupled with the fact that there was no appeal from the denial of their motion, Judge Young's decision became the law of the case Dinkins 26 SE2d at 690 / Miller by Miller 341 SE2d at 621 Therefore, Judge Dennis not only lacked the jurisdiction to entertained the respondent's motion at the hearing, he also lacked the jurisdiction to construe and dismiss the pleading as a (PCR) application.

Jurisdiction was further lost because the fact finding and conclusion of law Judge Dennis used as the bases for denying the (PCR) application had already been included in a earlier pleading. This earlier pleading was the Conditional Order Of Dismissal R. p.17-23, which was Vacated by Judge Young R. p.24

It is clear that Judge Young had the authority to construe the Habeas petition as a (PCR) application, and that his vacating of the conditional order of dismissal, and the denial of the respondent's motion to reconsider encompasses his refusal to construe the pleading as a (PCR) application Dinkins v. Robbins 26 SE2d 689, 690 (1943)

And since Judge Young's decision embraced all matters that could have been properly raised, coupled with the fact that the respondent never immediately appealed Judge Young's denial of their motion to reconsider, Judge Young's decision became the law of the case, thus making petitioner's Habeas pleading not cognizable under the (PCR) Act S.C. Code Ann. §17-27-10 to 120 / Cooper v. State 525 SE2d 886, 888 (2000)

5. Due Process

Due Process demands that when a remedy is granted by the State, it's operation must conform to the Due Process requirement of the 14th Amendment Evitts v. Lucey 469 U.S. 387, 400-01 (1985) / Easter v. Endell 37 F.3d 1343, 1345 (9th cir 1994)

In other words, Due Process assures that when a State provides an avenue or means to vindicate a constitutional right, the State must assure the indigent defendant an adequate opportunity to present his claim fairly within the context of the State's appellate process Ross v. Moffitt 417 U.S. 600, 616, 94 Sct at 2247

* And the requirement of procedural Due Process apply when there's a deprivation of an interest encompassed by the 14th amendment of "Liberty" and "Property" Board Of Regents Of State Colleges v. Roth 408 U.S. 564, 569, 92 Sct at 2705 (1972)

To find a liberty interest, courts require a showing of 1). A substantive predicate for the official decision 2). Employ a mandatory language governing the outcome Kentucky Dept. Of Correction v. Thompson 490 U.S. 454, 462-63 (1994) If either of these elements is missing, the court will not find a liberty interest Id at 463-65

* And since it's well settled that an order of the court can create a liberty interest Walters v. Grossheim 990 F.2d 381, 384 (8th cir 1993), Judge Young's order to conduct a State Habeas Corpus proceeding in the instant gave Petitioner the liberty interest to vindicate his constitutional rights by means of the State's appellate process Id at 384 In short, since Judge Young's Order became the law of the case, Petitioner's liberty interest was clearly established. And whether or not the respondent was in agreement with the Order does not diminish Petitioner's liberty interest or make his liberty interest less clear Sloan v. Herman 983 F. 2d 107, 110 (8th cir 1993)

Furthermore, once it was ordered that a State Habeas Corpus proceeding be conducted, coupled with the fact that the order became the law of the case, the State of South Carolina was bound by law to meet the Due Process Clause requirements in executing the remedy it had created. Because once a remedy, post conviction, or otherwise is granted by the State, the Federal constitution requires that it be reasonably accessible to those affected

Easter v. Endell 37 F.3d at 1347

Federal law clearly dictates that a State may not act arbitrarily and capriciously to deprive it's citizens of a liberty interest Richarson v. McFadden 540 F.3d 744, 750 (4th cir 1976) Because the Due Process clause is especially designed to protect individuals against such arbitrary actions Wolf v. McDonnell 418 U.S. 539, 558 (1972)

However, when the court in the instant case dismissed the pleading as a successive (PCR) application, despite the fact that Judge Young's decision was the law of the case, the court deprived Petitioner of his "liberty" to vindicate this matter through the State's appellate process (via) Habeas Corpus. (In other words, since the court had no authority to dismiss the pleading as a successive (PCR) under the circumstances, the court deprived Petitioner of his liberty without Due Process of law Walters v. Grossheim at 384

Therefore when the court

This violation, and the others afore mentioned in this brief, clearly constitutes a denial of fundamental fairness shocking to the universal sense of justice Butler v. State 397 SE2d 87 (1990)

Petitioner further asserts that even though there was a law of the case decision in place to conduct a Habeas Corpus proceeding, Petitioner was still *Plaintiff was unfairly* forced to challenge at the hearing the opposing party's contention that his pleading was a successive (PCR) application. When in fact Petitioner's pleading was already adjudicated by the court as a Habeas Corpus petition

II

CONCLUSION

Petitioner is simply seeking to enforce the Habeas Corpus proceeding previously granted to him by court Order and by law. Petitioner asserts that even though Judge Young's Habeas Order is not actually Habeas relief in and of itself, nevertheless the Order granting the Habeas hearing is the avenue needed through which Petitioner is to gain Habeas relief. In other words, to deny Petitioner access to this court Ordered Habeas proceeding that became the law of the case, is just as egregious as denying Petitioner the actual relief itself.

And because this law of the case decision granted Petitioner a Habeas Corpus proceeding, this decision puts this matter well within Habeas corpus jurisprudence, and well within the jurisdiction of the circuit court to act on it. Brown v. Evatt 470 SE2d 848, 850 (1996).

Wherefore, Petitioner Sidney Fields now pray that this Honorable court review the constitutional issue now before it to compel the court to conduct the court Ordered Habeas Corpus proceeding.

Respectfully Submitted,

November 27, 2013

Sidney Fields

Sidney Fields (pro-se) # 254392

B.R.C.I. 4460 Broad River Rd.

Wateree # 177

Columbia, S.C. 29210

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

Case No. 2014-CP-10-00305

Sidney Fields, #254392,

Plaintiff,

vs.

The State of South Carolina,

Defendant.

**DEFENDANT'S
MOTION TO DISMISS**

TO: SIDNEY FIELDS, PLAINTIFF *PRO SE*

PLEASE TAKE NOTICE THAT the Defendant, by and through the undersigned counsel, will move before this Honorable Court within ten (10) days hereof (or at such time and place as the Court determines) for an Order Dismissing Plaintiff's Petition for Writ of Mandamus as barred by the doctrines of *res judicata* and law of the case, and for failure to state facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

Background and Procedural History

Mr. Fields is a prisoner in the custody of the South Carolina Department of Corrections. Upon information and belief, on November 16, 1998, he pleaded guilty to murder (1997-GS-10-5026), and armed robbery (1997-GS-10-5025), and was sentenced to confinement for life for murder, and for thirty (30) years for armed robbery (Plaintiff's Record in Support of Petition for Writ of Mandamus, p. 6). Mr. Fields did not appeal his conviction or sentence, but filed an application for Post-Conviction Relief on

or about May 13, 1999, which was dismissed by order dated September 21, 2001. Mr. Fields appealed the dismissal, which was also denied. Mr. Fields filed a second application for Post-Conviction Relief on or about May 11, 2006, which was denied by order dated June 22, 2006 (Plaintiff's Record, pp. 6-7).

On August 31, 2007, Mr. Fields filed a petition for writ of habeas corpus pursuant to Section 17-17-10 of the South Carolina Code of Laws (2007-CP-10-3878). A Conditional Order of Dismissal was filed on February 20, 2008, and subsequently vacated by Order filed March 25, 2008 (Plaintiff's Record pp. 18-24). Pursuant to Mr. Fields' objections to the Conditional Order of Dismissal, the case was transferred to the civil roster as a Petition for Habeas Corpus and Mr. Fields' counsel was relieved by Order filed June 25, 2008. (Plaintiff's Record p. 25). Defendant's Motion to Dismiss was heard on November 3, 2008, at which Mr. Fields was present and represented by counsel. After hearing arguments by both parties, the Court found that the action was a successive PCR, and that habeas corpus did not apply (Transcript at Plaintiff's Record pp. 30-41). The Court issued an Order filed November 26, 2008, dismissing the petition as a successive and untimely application for Post-Conviction Relief (Plaintiff's Record pp. 42-48). Mr. Fields filed a Motion for Reconsideration, which was denied by Order filed January 1, 2009 (Plaintiff's Record pp. 50-58, p. 59). The Court of Appeals denied Mr. Field's Petition for Writ of Certiorari pursuant to *Johnson v. State*, 294 S.C. 310, 364 E.2d 201 (1988), by Order dated November 5, 2010 (Plaintiff's Record p. 60).

In this action, Mr. Fields alleges that the Court improperly interpreted his August 1, 2007, petition for Writ of Habeas Corpus as a successive PCR, and seeks a writ of mandamus to "compel the Court to conduct the court Ordered Habeas Corpus

proceeding" (Petition for Writ of Mandamus p. 9). Defendant respectfully submits that the action is barred by the doctrines of *res judicata* and law of the case, and fails to state facts sufficient to constitute a cause of action, and accordingly, must be dismissed.

STANDARD OF REVIEW

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Rule 12(b)(6) SCRCP; *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct.App.2007); *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). Dismissal of a Petition pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure is appropriate where, as here, the allegations set forth on the face of the Petition and inferences reasonably deducible therefrom, even when viewed in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, fail to state any valid claim for relief. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

ARGUMENT

1. *Res Judicata* Law of the Case

This action is barred by the doctrine of *res judicata*, which bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of *res judicata*, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the

former suit." *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011), quoting *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 34, 512 S.E.2d 109(1999). The elements of *res judicata* are: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Judy v. Judy*, 393 S.C. 160, 167, 712 S.E.2d 408, 412 (2011), citing *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 419 S.E.2d 217 (1992). "[F]or purposes of *res judicata*, 'cause of action' is not the form of action in which a claim is asserted but, rather the 'cause for action, meaning the underlying facts combined with the law giving the party a right to a remedy of one form or another based thereon.'" *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 36, 512 S.E.2d 110 (1999) (quoting 50 C.J.S. Judgment § 749 (1997)).

Plaintiff argued, unsuccessfully, at the hearing on the State's Motion to dismiss the 2007 case (2007-CP-10-3878), that it was not a successive PCR, but a petition for habeas corpus. The court correctly rejected that argument. It is well established that any matter that is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), "must be raised in PCR application, and may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts." *Al-Shabazz v. State*, 338 S.C. 354, 365, 527 S.E.2d 742, 748 (2000); *Simpson v. State*, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). The Uniform Post Conviction Procedure Act is "broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention." *State v. Gibson*, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998). A petitioner may even allege constitutional violations in PCR proceedings, unless the issue could have been raised by the petitioner on direct appeal. *Id.*

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 v. Mauney*, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998). "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." *Id.*

The Court found that the claims made in the Petition for Writ of Habeas Corpus could have been raised in a post-conviction relief application, and accordingly, could not be raised in a Petition of Habeas Corpus in the Circuit Courts of South Carolina. As the Court of Appeals denied Plaintiff's petition for writ of certiorari of the PCR "[a]fter careful consideration of the entire record as required by *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988)," the Order of Dismissal finding that the action was a successive PCR is the law of the case. "Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). These same parties have previously litigated this very issue, and it has been finally adjudicated. Accordingly, this action is barred by the doctrines of *res judicata* and law of the case.

2. Failure to State Facts Sufficient to Constitute a Cause of Action

The Petition fails to state facts sufficient to constitute a cause of action for mandamus, or any other cause of action, requiring dismissal pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

Mandamus is the highest judicial writ and is issued to compel a public official to perform a ministerial duty, not a discretionary duty, and only when there is a specific right to be enforced, a positive duty to be performed, and no other available legal remedy. *Miller v. State*, 377 S.C. 99, 101, 659 S.E.2d 492, 493 (2008) "A writ of mandamus is a coercive writ that orders a public official to perform a ministerial duty. Mandamus will issue only to compel a public official to perform a mandatory legal duty. *City of Rock Hill v. Thompson*, 349 S.C. 197, 200, 563 S.E.2d 101, 102 (2002) (internal citations omitted). Plaintiff failed to name as a defendant any public official. Moreover, Plaintiff's Petition fails to set forth facts that show he is entitled to mandamus. "The primary purpose of a writ of mandamus is to enforce an established right and a corresponding imperative duty created or imposed by law. When the legal right is doubtful, or the performance of duty rests in discretion, or when there is another adequate remedy, a writ of mandamus cannot rightfully be issued." *City of Rock Hill v. Thompson*, 349 S.C. 197, 200, 563 S.E.2d 101, 102 (2002). (internal citations omitted). "To obtain a writ of mandamus requiring the performance of an act, the applicant must show 1) a duty of respondent to perform the act, 2) the ministerial nature of the act, 3) the applicant's specific legal right for which discharge of the duty is necessary, and 4) a lack of any other legal remedy." *Holden v. Cribb*, 349 S.C. 132, 136, 561 S.E.2d 634, 636-37 (Ct. App. 2002), quoting *Redmond v. Lexington County Sch. Dist. No. Four*, 314 S.C. 431, 437, 445 S.E.2d 441, 445 (1994).

Plaintiff's Petition fails to state facts that if proven, would entitle him to the relief sought. Not only did Plaintiff fail to name any public official as a defendant in this action, there is no legal duty on the part of the Clerk of Court, or any other official, to provide

the relief requested. He has had an opportunity to present his case; and simply because the issues were not resolved to his satisfaction, there exists no duty for which Mandamus applies. Accordingly, the Petition for Writ of Mandamus should be denied and summarily dismissed because it fails to support the requested relief.

Conclusion

Therefore, based upon the foregoing, the statutory and common laws of the State of South Carolina, any subsequent memoranda that may be filed in connection with this action, and any arguments that may be presented at a hearing on this matter; The State of South Carolina hereby requests that this action be dismissed.

Respectfully Submitted,

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Attorney General

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FEBRUARY 15, 2014

ATTORNEYS FOR THE STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	In the Court Of Common Pleas
COUNTY OF CHARLESTON	)	9th Judicial Circuit
Sidney Fields (pro-se) # 254392	)	Case # 2014-CP-10-305
Plaintiff.	)	
	)	
Vs.	)	
	)	
State Of South Carolina	)	Plaintiff's Response To
Defendant.	)	Defendant's
	)	Motion To Dismiss
	)	

FILED
2014 MAR -6 PM 3:29
JULIE M. ANGLING
CLERK OF COURT

INTRODUCTION

On January 15, 2014 the above named plaintiff submitted a petition for writ of mandamus to compel the court to conduct a habeas corpus proceeding as mandated by court Order that became the law of the case. The defendant filed a motion to dismiss which was received by plaintiff on February 28, 2014

Plaintiff is now before this court to respond to the defendant's motion to dismiss, in which the defendant is basing their defence on the fact that this matter is barred by the doctrine of res-judicata. The defendant is also basing their defence on Rule 12(b)(6) SCRPC (failure to state facts to constitute a cause of action).

This response will clearly show that the defendant deliberately mischaracterized and misrepresented the facts of plaintiff's pleading. However, despite the defendant's position, the plaintiff does state sufficient facts in this response to constitute a cause of action, and that issuing an Order of dismissal would be inappropriate in this case.

This motion will be referring extensively to the mandamus petition and the record in support of the petition. Therefore when the letter "M" appears with a number, it is referring to the mandamus petition. When the letter "R" appears with a number, it is referring to the record in support of the petition.

RES-JUDICATA

The defendant submits that the action is barred by the doctrine of res-judicata. The defendant is applying this doctrine to the Order of Judge R. Markley Dennis, in which Judge Dennis construed plaintiff's habeas corpus petition as a successive (PCR) application. R. p.42-48

However, plaintiff argues that when the defendant initially submitted it's return and motion to dismiss the plaintiff's August 31, 2007 habeas corpus action, the defendant based it's motion on the fact that the petition should be construed as a successive (PCR) application and barred by the statute of limitations and res-judicata. The Honorable Judge Roger M. Young issued a conditional Order of dismissal based on the defendant's return. R. p.17-23 After plaintiff opposed the conditional order, Judge Young vacated his conditional order R. p.24, and subsequently issued an order that transferred the pleading to the civil roster as a petition for habeas corpus and ordered a hearing to be set in accordance. R. p.25

However, 15 days after the 10 day jurisdictional period had ended to file motion to reconsider, the defendant filed a belated motion to reconsider asking Judge Young to vacate his habeas order alleging that the habeas corpus petition should be construed as a successive (PCR) application and barred by statute of limitation and re-judicata. R. p.26-28 Judge Young denied the defendant's motion. R. p.29

And since the defendant failed to appeal Judge Young's denial of their motion to reconsider, Judge Young's order to transfer the pleading to the civil roster as a petition for habeas corpus became the law of the case, being res-judicata between the parties in this matter. Dinkins v. Robbins 26 SE2d 9, 690 (1943) / Miller by Miller v. Gertz 341 SE2d 620, 621 (1986)

And the law of the case doctrine clearly stipulates that once a court decides upon a rule of law, that decision should govern the same issues in subsequent stages of the same case. Columbus-American Disc Group v. Atlantic Mutual Inc. 203 F3d 291, 304 (4th cir 2000) / Arizona v. California 460 US at 618-19, 103 Sct 1391 (1983)

A hearing was held before the Honorable R. Markley Dennis R. p.30-41 In which the defendant argued before the court for a 3rd time that the habeas petition should be construed as a successful (PCR) application and should be barred by the statute of limitation and res-judicata. The defendant moved the court for a dismissal of the pleading. R. p.31 ln.11-12 / p.32 ln.12-15 / p.34 ln.21-25 / p.35 ln.1-6

Plaintiff argues that the defendant's conduct at the hearing was contrary to rule 60 of S.C. Circuit Court Rules Of Practice, because the rule clearly states that if any application for an order be made to any Judge, and such an application is refused in whole or in part, no subsequent application upon the same set of facts shall be made to any other Judge. and if upon any such application any order be made, it shall be revoked. Rule 60 S.C. Circuit Court Rules Of Practice

And eventhough the defendant violated rule 60, Judge Dennis subsequently granted the defendant's motion. R. p.39 ln.13-14 And in the final order of the court, Judge Dennis construed plaintiff's habeas petition as a successive (PCR) application and denied the application in it's entirety. R. p.42-48

But according to state law, a succeeding Judge cannot resend an order made by a preceding Judge. However, where a party thinks himself aggrieved by such an order, the proper manner to procure redress is by appeal. Dukes v. Dukes Inc. v. Hygrade Food Products Corp 113 SE2d 254, 256 (1960)

However in the instant case, seeking appellate review would have given the defendant no comfort, because the appellate court will affirm the ruling by a lower court if the offended party does not challenge that ruling. Failure to challenge ruling is an abandonment of the issues and precludes consideration on appeal. The unchallenged ruling right or wrong becomes the law of the case and requires affirmance. Lindsay v. Lindsay 491 SE2d 583, 588 (1997)

And since the defendant in the instant case failed to appeal Judge Young's denial of their motion to reconsider, Judge Young's order right or wrong became the law of the case. Lindsay at 588

Therefore, under the law of the case doctrine, the doctrine of res-judicata, and Rule 60 of the S.C. Circuit Rules Of Practice, Judge Dennis only had the authority to construe the pleading as a habeas corpus petition and proceeding. He did not have the authority to review, affirm, reverse nor modify what Judge Young earlier decreed under the circumstances. Ex parte state 210 SE2d 600, 601 (1974)

And since the defendant's motion to reconsider was submitted untimely, coupled with the fact that there was no appeal from the denial of their motion, Judge Dennis lacked the jurisdiction to entertain the defendant's motion at the hearing based on the same set of facts that was denied by Judge Young earlier. He also lacked the jurisdiction to construe and dismiss the pleading as a (PCR) application.

Therefore, since Judge Dennis lacked the jurisdiction to issue an order construing plaintiff's habeas corpus petition as a successive (PCR) application, the doctrine of res-judicata cannot be applied to Judge Dennis's order. And if res-judicata can't be applied to Judge Dennis's order, then the defendant's res-judicata position pertaining to Judge Dennis's order has no merit. R. p.42-48

FAILURE TO STATE FACTS THAT WOULD ENTITLE PLAINTIFF TO RELIEF SOUGHT

In the defendant's second and final contention, the defendant states that plaintiff mandamus petition fails to state facts that would entitle him to the relief sought, and that plaintiff failed to name any public official as a defendant.

The S.C. Supreme Court has recognize that a mandamus may lie to compel a judicial officer to perform a ministerial duty. State v. Barbee 313 SE2d 297, 298 (1984)

But issuance of a particular decision by a Judge is typically a matter of discretion, therefore not proper for mandamus. However, where discretion of the court can be legally exercised in one way, a mandamus will lie to compel the court to so exercise it. City Of Rock Hill v. Thompson 563 SE2d 101, 103 (2002)

Therefore, when Judge Young decreed the pleading to be transferred to the civil roster as a petition for habeas corpus, with a hearing to be set in accordance, the circuit court had A Legal Duty to conduct a hearing in accordance to what the order decreed because the order right or wrong became the law of the case. R. p.25

Furthermore, the court's Duty Is Ministerial In Nature because when the hearing is conducted, it is the court who must observe and weigh the testimony and evidence given before it in order to assess the parties credibility, and issue a ruling on the relevant findings of fact and conclusions of law. Rule 52(a) SCRPC

Plaintiff also has A Specific Legal Right For Which Discharge Of Duty Is Necessary because by order of the court, Judge Young decreed the pleading to be transferred to the civil roster as a petition for habeas corpus, with a hearing ordered to be set in accordance. And when the defendant failed to appeal Judge Young's order denying their motion to reconsider, Judge Young's decision became the law of the case. Therefore the court was bound by the law

of the case doctrine to conduct a state habeas corpus proceeding, thus giving plaintiff the right to have a hearing in accordance. Robert Harmon And Bore Inc. v. Jenkins 318 SE2d 371, 375 (1984)

There Is No Other Legal Remedy because only a writ of mandamus has the authority to compel the circuit court to perform this specific duty as mandated by court order. M. p.17-18

Therefore since plaintiff has satisfied the 4 prongs that entitle him to mandamus relief, lets now take a closer examination of the habeas order in question. R. p.25

This order does not call for it to be enforced only by Judge Dennis himself, nor by any specific judicial officer. It must be enforced by the court system itself. Judges are judicial officers (public officials) within the court system. Plaintiff has to litigate through the court system to gain access to these judicial officers (public officials) for the enforcement of his habeas order.

Normally the court is asked to compel a public official outside of the court system to perform a ministerial duty. But in the instant case, the public official to perform the ministerial duty is within the court system itself. They are called Circuit Judges (judicial officer); who are several in number, who each possess the same amount of power and authority as the other, who must perform the ministerial duties required by the court system. Therefore, on it's face, the habeas order is a legal judicial instrument created by the court, to be enforced by the court. And the court is under the jurisdiction of the State. And plaintiff is a ward of the State.

Therefore the defendant's contention's that plaintiff failed to state the facts that would entitle him to relief, and that plaintiff failed to name any public official as a defendant also has no merit.

DUE PROCESS

To add insult to injury, not only did the defendant violated Rule 60 of the S.C. circuit court rules of practice by moving the court for a dismissal based on the same facts that was denied by a previous Judge, the defendant gave no notice that they would do so. M. p.21-22

Due process clearly stipulates that without due notice and an opportunity to be heard, a court has no jurisdiction to adjudicate such personal rights. Due process further demands notice to be calculated under all circumstances to apprise interested parties of the pendency of the action, and afford them an opportunity to present their objections. Murdock v. murdock 526 SE2d 241, 248 (1999)

In the instant case, plaintiff came to the hearing to litigate the matter as a habeas corpus pleading and proceeding. However, since plaintiff was never given proper notice that the court was going to re-address the legitimacy of the pleading, plaintiff was forced to unduely challenge at the hearing the defendant's contention that the pleading was a successive (PCR) application. This is clearly a violation of due process, which states that a litigant be placed on notice of the issues the court is to consider. Murdock at 248

This due process inquiry does not end here. Due process applies when there's a deprivation of an interest encompassed by the 14th Amen of "Liberty" and "Property". Board Of Regents Of State Colleges v. Roth 408 U.S. 564, at 569 (1972)

And since it's well settled that an order of the court can create a liberty interest Walters v. Grossheim 990 F.2d 381, 384 (8th cir 1993), Judge Young's order to conduct a State habeas corpus proceeding in the instant gave plaintiff the liberty interest to vindicate his constitutional rights by means

of the State appellate process. Id at 348 In short, since Judge Young's order became the law of the case, plaintiff's liberty interest was clearly established. And whether or not the defendant's was in agreement with the order does not diminish plaintiff's liberty interest, or make his liberty interest less clear. Sloan v. Herman 983 F.2d 107, 110 (8th cir 1993)

In conclusion, plaintiff is simply seeking to enforce the habeas corpus proceeding previously granted to him by the court and by law. and since Plaintiff has shown in his response that the defendant's motion to dismiss is not supported by the evidence, plaintiff now ask the court to deny the defendant's motion to dismiss that's now before the court.

Wherefore, plaintiff again pray that this honorable court review the constitutional issue now before it to compel the court to conduct the court ordered habeas corpus proceeding.

Respectfully Submitted,

Date March 4, 2014

Sidney Fields

Sidney Fields (pro-se) # 254392

B.R.C.H. 4460 Broad-River Rd.

Wateree # 177

Columbia, S.C. 29210

STATE OF SOUTH CAROLINA	)	In The Court Of Common Pleas
COUNTY OF CHARLESTON	)	9th Judicial Circuit
Sidney Fields (pro-se) # 254392	)	Case # 2014-CP-10-305
Plaintiff:	)	
	)	
Vs.	)	
	)	Plaintiff's Motion
State Of South Carolina	)	To Reconsider
Defendant.	)	
_____	)	

2014 JUN 24 PM 1:24
CLERK OF COURT

I

Plaintiff above named is now before this court to have the court reconsider it's Order dismissing plaintiff's writ of mandamus.

II

PROCEDURAL HISTORY

On August 31, 2007, plaintiff submitted a petition for Habeas Corpus in circuit court (Charleston), in which he alleged a violation of due process because no record was ever developed to substantiate the evidence presented, nor the main allegation of his ineffectiveness of counsel ground in the original (PCR) proceeding.

The Hon. Roger M. Young subsequently issued an Order transferring the pleading to the civil roster as a petition for Habeas Corpus and Ordered a hearing to be set in accordance. The defendant submitted a motion to reconsider asking Judge Young to vacate his Order and return the pleading to the (PCR) docket in order to move the court for a (PCR) dismissal. Judge Young denied the defendant's motion and no appeal was taken.

A hearing was held before the Hon. R. Markley Dennis. Judge Dennis conducted the proceeding under the (PCR) docket and accepted the defendant's motion to dismiss the pleading as a successive (PCR) application.

By court Order, plaintiff was allowed to proceed pro-se. Plaintiff filed a pro-se motion to reconsider in which Judge Dennis denied. After unsuccessful appeals, on January 14, 2014 plaintiff filed a writ of mandamus alleging that in accordance to the law of the case doctrine, the court had a ministerial duty to conduct a Habeas Corpus proceeding as mandated by Judge Young. Also that Rule 60 of the circuit rules of practice invalidated Judge Dennis's Order.

After the defendant filed their motion to dismiss, in which plaintiff responded to, on May 23, 2014 a hearing was held before the Hon. J.C. Nicholson. At the hearing, Judge Nicholson acknowledged the fact that the defendant failed to appeal Judge Young's Habeas Order, thus the Order became the law of the case. But concluded at the hearing, that the only relief under the Habeas statute is immediate release which is not appropriate relief for plaintiff. Judge Nicholson denied the mandamus at the hearing.

Plaintiff's motion to reconsider now follows:

ARGUMENT

When the court issued the Order to transfer the pleading to the civil roster as a petition for Habeas Corpus that became the law of the case, the court deprived plaintiff of Due Process guaranteed to him by Art 1 §5 of the S.C. Const. and the 14th Amend of the United States Const, by construing and dismissing the Habeas pleading as a successive (PCR) application when it did not have subject matter jurisdiction to do so. / see Mandamus p.5

III

ARGUMENT

LAW OF THE CASE / RULE 60 CIRCUIT RULES OF PRACTICE

When Judge Young issued the Order transferring the pleading to the civil roster as a petition for Habeas Corpus, with a hearing to be set in accordance R. p.25, the defendant filed a motion to reconsider asking Judge Young to vacate his Order and return the pleading to the (PCR) docket in order to move the court for a (PCR) dismissal R. p.26-28

Judge Young denied the defendant's motion R. p.29 and no appeal was taken. At the hearing before Judge Dennis, Judge Dennis conducted the proceeding under the (PCR) docket and the defendant moved the court for a (PCR) dismissal. Judge Dennis granted the defendant's motion and dismissed the Habeas pleading as a successive (PCR) application R. p.42-48

Since the defendant failed to appeal Judge Young's denial of their motion to reconsider, Judge Young's Order right or wrong became the law of the case Lindsay v. Lindsay 491 SE2d 583,588 (1997) / see Mandamus p.10-13

And when the defendant moved the court for a (PCR) dismissal with Judge Dennis granting their motion, this violated Rule 60 of S.C. circuit rules of practice which states: If any application for an Order is made to any Judge, and such an application is refused in whole or in part, no subsequent application upon the same set of facts shall be made to any other Judge. And if upon any such application any Order be made, it shall be revoked Rule 60 S.C. Circuit Court Rules Of Practice // see Mandamus p.12

The court's jurisdiction was further lost because the defendant gave no notice of their motion before the hearing. Due process says no notice no jurisdiction. No jurisdiction no Order Murdock v. Murdock 526 SE2d 241, 248 (1999) / see Mandamus p.22

This clearly shows the validity of Judge Young's Order and the invalidity of Judge Dennis's Order. Therefore Judge Nicholson's Order on this issue is not supported by the evidence White v. State 208 SE2d 35, 38-39 (1974)

ELEMENTS TO ESTABLISH MANDAMUS

When Judge Young issued the Order transferring the pleading to the civil roster as a petition for Habeas Corpus that became the law of the case, the court had a legal Duty to conduct a Habeas proceeding in accordance to the Order whether the Habeas Order was right or wrong Lindsay at 588

The court's duty is Ministerial In Nature because Rule 52(a) SCRPC states that it is the court who must fact find and state it's conclusion of law by weighing testimony and evidence given before it and make a ruling thereon Rule 52(a) SCRPC

Plaintiff had A Specific Legal Right For Which Discharge Of Duty Is Necessary because the court was bound by the law of the case doctrine to conduct a Habeas Corpus proceeding, thus giving plaintiff the right to have a hearing in accordance Robert Harmon And Bore Inc. v. Jenkins 318 SE2d 371,375 (1984) Under due process, once the Habeas Order became the law of the case, plaintiff was given a "Liberty Interest" in the proceedings Walters v. Grossheim 990 F.2d 381,384 (8th cir 1993) / see Mandamus p.20-21

There Is No Other Legal Remedy because only a writ of mandamus can compel the court to conduct a Habeas Corpus proceeding in accordance with the law of the case doctrine. And only a writ of mandamus can overturn or revolk Judge Dennis's Order in accordance to Rule 60 S.C. circuit court rules of practice.

Furthermore, Statute law §15-35-180 states that a judgment requiring a person or public official to perform an act must by law obey it and there obedience thereto enforced. Failure to do so can be punished by the courts for contempt S.C. Code Ann. §15-35-180 / see Mandamus p.17-18

97

This statute waves the State's sovereign immunity and gives plaintiff the consent to force the State to make good on an Order it's own court created. This is why the State is the defendant in this mandamus pleading.

RULING OUTSIDE OF COMPLAINT

It is well settled that a decision on a motion to dismiss for failure to state claim must be based solely upon allegations set forth on the face of the complaint Barns v. Gardner 493 SE2d 356,359 (1997)

The complaint in the instant is before the court by way of writ of mandamus, in which plaintiff argued to involk the mandamus to enforce a law of the case Order that decreed that a Habeas Corpus proceeding be conducted.

Plaintiff argues that Judge Nicholson went outside the face of the complaint by making a fact finding and conclusion of law that the plaintiff could not receive relief in a Habeas Corpus proceeding. Citing Bowers v. State 127 SE2d 881,882 (1962) / see Order p.4

The primary purpose of a writ of mandamus is to force an established right and a corresponding imperative duty created or imposed by law City of Rock Hill v. Thompson 563 SE2d 101,102 (2002)

This matter is before the court to enforce a court Order that decreed a Habeas Corpus proceeding be conducted, not for the court to exercise it's discretion to decide whether plaintiff could receive Habeas relief. Not only did Judge Nicholson conclusion in his Order went outside the nature and purpose of plaintiff's mandamus pleading, this issue in Judge Nicholson's Order was not averred by the defendant in their motion to dismiss.

Furthermore, this Habeas issue has already been pleaded before Judge Young by the defendant in their motion to reconsider the Habeas Order R. p.26-28. Judge Young denied the defendant's motion to reconsider R. p.29

HABEAS CORPUS RELIEF IN CIRCUIT COURT

Judge Nicholson stated in his Order that Habeas relief is not appropriate being that grant of relief would not entitle plaintiff to be released from prison. Therefore, Habeas Corpus is not available to him. see Order p.4

In Slack v. State 429 SE2d 801 (1993), Slack argued before the S.C. Supreme court that the circuit court erred in failing to issue a writ of Habeas Corpus, in which he alleged that trial court lacked subject matter jurisdiction to accept his guilty plea of grand larceny. The supreme court agreed and reverse the circuit court's decision and vacated Slack's plea and sentence.

In Grant v. Macdougall 137 SE2d 270 (1964), a Habeas Corpus proceeding was conducted in circuit court. The court concluded that since Grant pleaded guilty without the benefit of counsel, he was entitled to have his sentence vacated, but was not entitled to immediate release from confinement. Grant appealed the circuit court's decision alleging that he was entitled to immediate release, not the vacating of sentence. The supreme court affirmed the circuit court's decision.

In Pitt v. Macdougall 138 SE2d 840 (1964), Pitt alleged in a Habeas Corpus proceeding in circuit court that at the time of his trial, the circuit court did not appoint counsel to represent him and that he did not wave any right to counsel. Thus said, his sentence and conviction should be set aside. The circuit court denied the petition. Pitt appealed and the supreme court reversed and remanded for a new trial.

In Blandshaw v. State 152 SE2d 349 (1967), Blandshaw alleged several issues in a Habeas Corpus proceeding in circuit court. The court concluded that each of the issues is meritless. The court further concluded that even if the allegations were true, petitioner would not be entitled to immediate

release, but would be entitled to a setting aside of his conviction and sentence and remanded to general sessions for further proceedings.

In Baskins v. Moore 362 F.Supp 181,190-91 (D.S.C. 1973), the Federal district court has ruled that just because a petitioner is challenging his plea conviction (via) Habeas Corpus does not mean he is seeking immediate release from custody. A petition for Habeas Corpus can also be used to seek the reversal of his conviction (change his plea.)

Because if a petitioner is successful in the reversal of his conviction, have a trial, and is acquitted, then the sole purpose of the Habeas Corpus has been accomplished (release from confinement) Baskins at 190-91

Therefore, Habeas relief is not limited to immediate release from custody, but also to effectuate an eventual release Preiser v. Rodriguez 411 U.S. 475,487 (1973)

And since the Habeas Statute gives the courts power to fashion appropriate relief other than immediate release Paxton v. Rowe 369 U.S. 54,66 (1966), the reconstruction of plaintiff's Original (PCR) record is within the core of Habeas Corpus, because the re-established testimony can help procure a reversal of a conviction, then a trial, and a possible acquittal (release from confinement) Preiser at 487.

These being examples showing that a petition for writ of Habeas Corpus can be pleaded in circuit court to gain relief other than immediate release from prison. Therefore, Judge Nicholson's conclusion on this issue is not factual and is not supported by the evidence nor by the law White v. State 208 SE2d 35,38-39 (1974) / see Mandamus p.14-17

ORDER CONTAINS FACTS MISLEADING / NOT SUPPORTED BY THE EVIDENCE

Judge Nicholson's Order failed to mention that the defendant filed a motion to reconsider asking Judge Young to vacate his Habeas Order and return the pleading to the (PCR) docket in order to move the court for a (PCR) dismissal' R. p.26-28

Judge Nicholson's Order failed to mention that after Judge Young denied the defendant's motion to reconsider R. p.29, no appeal was taken by the defendant. Thus said, Judge Young's Habeas Order right or wrong became the law of the case.

Judge Nicholson's Order failed to mention that the defendant not only violated the law of the case doctrine, the defendant violated Rule 60 of the S.C. circuit court rules of practice by moving the court before Judge Dennis for a (PCR) dismissal. The law of the case doctrine and Rule 60 made Judge Dennis's Order invalid R. p.42-48

Judge Nicholson's Order failed to mention that after the hearing before Judge Dennis, the court Ordered plaintiff to proceed pro-se R. p.49 The Order also failed to mention that plaintiff filed a pro-se motion to reconsider with supporting evidence showing that Judge Dennis's Order was invalid R. p.50-58

Judge Nicholson's failed to mention that on appeal from Judge Dennis's Order, appellate counsel included plaintiff's pro-se motion to reconsider Judge Dennis's Order in the appendix, but excluded the supporting evidence that the motion to reconsider was based on (i.e.) 1). Judge Young's Habeas Order 2.) Defendant's motion to reconsider the Habeas Order 3). Judge Young's denial of Defendant's motion to reconsider.

To add insult to injury, appellate counsel also excluded from the appendix the court's Order allowing plaintiff to proceed pro-se. By excluding this Order, plaintiff's motion to reconsider Judge Dennis's Order was Hybrid before the appellate court. Thus said, plaintiff's allegation of the validity of Judge Young's Habeas Order, and the invalidity of Judge Dennis's Order was not preserved for appellate review Foster v. State 379 SE2d at 907 (1989)

In all total, appellate counsel deliberately excluded from the appendix and the appeal (3) State court Judgments and the defendant's motion to reconsider the Habeas Order. This is a clear violation of appellate court Rule 243, which states that the appendix shall contain the entire record of the lower court **Rule 243(f)(1) SCACR**

At the mandamus hearing, Judge Nicholson refuse to hear the egregious errors committed on appeal that facilitated the denial of certiorari. ^{trans p.} But was quick to point out in his Order that appellate counsel properly submitted a Johnson petition to the S.C. Supreme Court, and that the S.C. Court Of Appeals properly denied plaintiff's petition for certiorari R. p.60 / Order p.3-4

Also at the hearing, Judge Nicholson confirmed on record that plaintiff filed a response to the defendant's motion to dismiss, but made no mention of plaintiff's response in his Order **Order p.1**

Finally, Judge Nicholson's Order alluded to the fact that the Order is based on the granting of the defendant's motion to dismiss **Order p.4** However, the Order is inundated with fact finding issues that was never averred by the defendant in their motion to dismiss.

The foregoing clearly shows that the underlying facts in Judge Nicholson's Order is not only misleading, it is not supported by the evidence nor by law White v. State 208 SE2d 35,38-39 (1974) Judge Nicholson used his Order to masquerade the procedural and statutory violations committed against plaintiff that occurred on every level of the Judicial spectrum.

CONCLUSION

This matter stems from the fact that no record was ever developed to substantiate the evidence presented nor plaintiff's main allegation of his ineffectiveness of counsel ground in his original (PCR) proceeding 14 years ago.

From the original (PCR) proceeding to the present, plaintiff has constantly encountered numerous procedural errors committed against him in an effort to thwart relief. Plaintiff further asserts that if the circuit court has no regard for it's own court Order that became the law of the case, how much less would the court regard plaintiff's constitutional, procedural and Statutory rights. This is a testament of the procedural errors committed toward plaintiff in this 14 year period.

Plaintiff is simply seeking by way of mandamus to enforce a Habeas Corpus proceeding previously granted to him by the circuit court and by law. Plaintiff asserts that even though Judge Young's Habeas Order is not actually Habeas relief in and of itself, nevertheless they are interchangeable because you need to conduct a Habeas proceeding to gain Habeas relief. And to gain Habeas relief you need to conduct a Habeas proceeding.

And because plaintiff was granted a Habeas Corpus proceeding through a court Order that became the law of the case, this Habeas Order puts this matter well within the State's Habeas Corpus Statute and Jurisprudence S.C. Code Ann. §17-17-10 Therefore, to repeatedly deny plaintiff a Habeas proceeding that was granted to him by court Order is just as egregious as repeatedly denying plaintiff the actual court Ordered Habeas relief.

Therefore, it is safe to say that if a lower court denies a prisoner a court Ordered Habeas proceeding or a court Ordered Habeas relief, this gives the appellate courts Jurisdiction to Order an absolute / immediate release from prison Gibson v. State 495 SE2d 426 (1998)

Plaintiff finally asserts that he has already given the circuit court an opportunity by way of a 2nd (PCR) and (2) subsequent opportunities to enforce it's own Habeas Order.

Lastly, to emphasize the power and validity of an Order that becomes the law of the case, a Federal district Judge vacated his own Order after it became the law of the case. And when the plaintiff appealed the Judge's decision to vacate, the U.S. Court Of Appeals (4th cir) on it's own motion involked "The All Writs Act" U.S.C. §1651 (Mandamus) compelling the district court to reinstate the vacated Order. Three J. Farms Inc. v. Alton Box Board Co. 609 F.2d 112 (4th cir 1979)

Wherefore, plaintiff Sidney Fields now pray that this Honorable court reconsider it's Order denying his writ of mandamus and to review the constitutional issue before it to compel the circuit court to conduct the court Ordered Habeas Corpus proceeding. The circuit court is now put on notice that upon the denial of this motion to reconsider, plaintiff will seek immediate release from confinement in the appellate court or seek an alternative relief the appellate court deems appropriate.

Respectfully Submitted,

Date June 23, 2014

Sidney Fields

Sidney Fields (pro-se) # 254392

B.R.C.I. 4460 Broad River Rd.

Wateree # 177

Columbia, S.C. 29210

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY CHARLESTON	)	COURT OF COMMON PLEAS
	)	
Sidney Fields,	)	
	)	
Applicant,	)	
	)	
vs.	)	Case No. 07-CP-10-3878
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned case was held on November 3, 2008, before The Honorable R. Markley Dennis, Jr. in Courtroom B of the Berkeley County courthouse, 300 California Avenue, Moncks Corner, South Carolina; attended, by counsel, as follows:

APPEARANCES:

Elizabeth Wells Ballentine, Esq.
 HOOD LAW FIRM
 P O Box 1508
 Charleston, South Carolina 29401
 Appearing for Applicant

Matthew J. Friedman, Assistant Attorney General
 OFFICE OF THE ATTORNEY GENERAL
 P O Box 11549
 Columbia, South Carolina 29211-1549
 Appearing for State of South Carolina

ALSO PRESENT:

Sidney Fields, Applicant

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 901
 Johns Island, South Carolina 29457
dGarrison@sccourts.org

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Case No. 07-CP-10-3878
Hearing of November 3, 2008
Before The Honorable R. Markley Dennis, Jr.

1 THE COURT: Good morning, Mr. Fields.

2 You are Sidney Fields?

3 APPLICANT: Yes, sir.

4 THE COURT: Good morning, sir.

5 APPLICANT: How you doing, Your
6 Honor?

7 THE COURT: I am fine. Thank you,
8 sir. You are here today and I'm sure that you
9 have talked with your lawyer -- was this -- is
10 this a trial?

11 MR. FRIEDMAN: It's the State's
12 Motion to Dismiss, Your Honor.

13 THE COURT: '98 is the date of
14 sentence?

15 MR. FRIEDMAN: Yes, sir.

16 THE COURT: Okay, all right, I'll be
17 happy to hear from you.

18 MR. FRIEDMAN: Thank you, Your
19 Honor. Your Honor, Mr. Fields was originally
20 indicted for murder and armed robbery.

21 On November 16th, 1998, he pled Guilty
22 as indicted. He was sentenced to confinement
23 for life for murder and thirty years for armed
24 robbery.

25 THE COURT: Correct.

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1 MR. FRIEDMAN: He filed his first
2 PCR application on May 13th, 1999. There was an
3 evidentiary hearing held on September 13th, 2000.
4 His application was subsequently denied and
5 dismissed by Order dated September 21st, 2001.
6 He appealed that and his petition was denied.

7 THE COURT: Okay.

8 MR. FRIEDMAN: His second PCR
9 application was filed on May 11th, 2006. Judge
10 Jefferson issued a final Order dated June 22nd,
11 2006.

12 His third and current application was
13 filed August 31st, 2007, and the State now moves
14 to dismiss based on successiveness and filing
15 outside the statute of limitations.

16 THE COURT: Okay. Be happy to hear
17 from you.

18 MS. BALLENTINE: Your Honor, we --
19 first of all, Mr. Fields has brought this
20 application under 17-17-10 of the South Carolina
21 Code, *habeas corpus*, not under the uniform post-
22 conviction relief.

23 THE COURT: That's not appropriate in
24 this court, I don't think. Because a *habeas*
25 *corpus*, I don't think -- we can only hear PCR's.

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1 I think the *habeas corpus*, as I understand it,
2 means immediate relief, means immediate release;
3 as I understand that, and I think that has to go
4 before the Supreme Court.

5 But, you know, I think this is -- I'll
6 be happy to hear from the State in response to
7 that position. I understand your position but I
8 think -- (pause). We can go forward. He
9 believes it to be a *habeas corpus* but it's filed
10 under the premise of a PCR?

11 MS. BALLENTINE: Yes, sir.

12 THE COURT: Thank you.

13 MS. BALLENTINE: If I may just set
14 forth our ---

15 THE COURT: Certainly, absolutely and
16 please, please forgive me for interrupting you.

17 MS. BALLENTINE: Oh, no, that's okay.
18 In the initial PCR hearing, Mr. Fields was
19 represented by Mr. Jack Cordray. Following the
20 Hearing there was an Order of Dismissal. The
21 transcript was mailed to Mr. Fields. Mr. Fields
22 notified Mr. Cordray of what he thought to be
23 deficiencies in the transcript, as well as the
24 Order. Mr. Cordray did not file a 59(e) Motion
25 and, pursuant to this, it is Mr. Fields'

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1 position that he has not been allowed a
2 sufficient appeal; that this is therefore not
3 successive and he is requesting a Hearing ---

4 THE COURT: For the appeal?

5 MS. BALLENTINE: --- to preserve it
6 for an appeal. Yes, sir.

7 THE COURT: Let me make sure that I
8 understand something, too. Mr. Cordray was the
9 second application or the first application?

10 MS. BALLENTINE: He represented Mr.
11 Fields at the initial PCR Hearing. Yes, sir.

12 THE COURT: I thought he said that
13 there was an appeal from that?

14 MS. BALLENTINE: It was appealed but
15 he did not file a Rule 59(e) Motion following
16 the issuance of the Order and the objecting to
17 the transcript when Mr. Fields informed him that
18 he believed that there were deficiencies.

19 THE COURT: I see. Okay. All right.
20 Okay. Response?

21 MR. FRIEDMAN: Yes, Your Honor. We
22 were construing it as a PCR application when we
23 moved to dismiss it on successiveness and under
24 the statute of limitations. But also I agree
25 with Your Honor that if it is a State habeas,

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1 that it can only be filed and there is no
2 jurisdiction for the Supreme court, so we move
3 to dismiss it.

4 THE COURT: To dismiss it, either
5 way?

6 MR. FRIEDMAN: Right.

7 THE COURT: Okay. Anything else?

8 MS. BALLENTINE: No, sir, Your Honor.

9 THE COURT: Thank you. Mr. Fields,
10 I ---

11 APPLICANT: Can I speak, Your Honor?

12 THE COURT: No, sir. Well, -- what
13 is it that you want to say, sir?

14 APPLICANT: Well, initially I filed
15 an ineffective assistance of counsel after the
16 2000 PCR Hearing.

17 THE COURT: Yes, sir.

18 APPLICANT: The actual question that
19 I brought before the court was contrary to
20 statute of law. Counsel's ineffective
21 assistance of counsel was that his advice was
22 contrary to the statute of law.

23 THE COURT: Okay.

24 APPLICANT: Now, when I had got the
25 Order of Dismissal and the PCR transcript, the

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1 Order of Dismissal was not in compliance with
2 what I argued in court. And when I had the PCR
3 Hearing, everything that I said in particular in
4 dealing with the statute of law was omitted from
5 the transcript. Now, to avoid that, before the
6 Hearing started -- now, let me speak. Excuse my
7 nervousness. Before the Hearing started, before
8 you entered the courtroom, because you presided
9 over the 2000 PCR Hearing, before you entered
10 the courtroom the State, we had the State submit
11 into evidence three exhibits: one from the
12 Solicitor's office, one statute 16-3-20 and one
13 statute, 24-3-210. My primary argument with the
14 State was to argue that counsel's advise was
15 contrary to statute of law.

16 Now, before the court entered, started
17 the Hearing, counsel said that his advice to me
18 was applicable when he said that the Department
19 of Corrections had further information that
20 could apply to my case. Then I stood up and
21 said, 'well, the statute that I entered into
22 evidence'; and then secondly -- let me add this
23 in, secondly you entered it into evidence a
24 second time, to make sure that's what we were
25 going to argue.

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1 So we have two -- two instances where
2 three exhibits were entered into evidence; one
3 by the State before the Hearing started, one by
4 me before I took the stand, and one by you.

5 Then I took the stand and said that
6 counsel further information was contrary to
7 statue of law because I was sentenced under
8 sixteen-three-twenty. Sixteen-three-twenty
9 states, (reading) "Life imprisonment means
10 until the death of the offender." And,
11 (reading): "No person sentenced to life
12 imprisonment pursuant to this section can be
13 eligible for parole, community supervision, or
14 any early release program."

15 Counsel admitted on the stand that he
16 gave me an early release program. That's what I
17 argued. Now, when I argued the State tried to
18 construe to the fact that it was my word against
19 counselor's word. That is not what I was
20 arguing. My word is that the question before
21 the court was to argue that was contrary to
22 statute law. Period. That's all that I wanted
23 the court to address, but they was addressing
24 whether counsel was right or wrong in his
25 advice, but his advice was ---

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1 THE COURT: Mr. Fields, in all due
2 respect, sir, the issue before me today --
3 you're arguing the merits and that's not here.
4 We are not at that Hearing yet.

5 APPLICANT: Yeah, but see that's the
6 -- I know ---

7 THE COURT: Yeah, but nothing. The
8 issue before me today is whether you have a
9 Hearing so that we can hear that.

10 APPLICANT: Exactly.

11 THE COURT: All right. Well, that's
12 the ----

13 APPLICANT: But that's what I am
14 saying, that I understand the ---

15 THE COURT: Mr. Fields, you don't
16 understand. If you say yeah, that you do, then
17 you don't understand because what you're saying
18 has no relevance to the issue that I have. The
19 issue that I have today has nothing to do with
20 the merits. The issue today is whether or not
21 this is successive, meaning multiple, appeals or
22 multiple PCR's, or a violation of the statute.
23 Those are the two issues. That's all that I am
24 hearing today.

25 APPLICANT: That's set forth ---

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1 THE COURT: And if I say no, that
2 it's not, then you will have your day to put all
3 that on the record.

4 APPLICANT: Exactly, sir, but all I
5 want ---

6 THE COURT: Mr. Fields, thank you,
7 sir. We don't need to hear it twice is all that
8 I am saying to you. That will be for another
9 day if you are successful, but you're not going
10 to be because it's successive, it violates the
11 statute and *habeas corpus* does not apply in this
12 situation.

13 Prepare the Order, please, the Motion
14 is denied -- the Motion is granted.

15 MR. FRIEDMAN: Yes, sir.

16 APPLICANT: Can I say just one thing,
17 sir?

18 THE COURT: Sure.

19 APPLICANT: Okay. Can I just say one
20 more thing, one more last thing?

21 THE COURT: Sure.

22 APPLICANT: Okay. Now, I gave the
23 State the opportunity to rule under ---

24 THE COURT: Thank you, sir. That's
25 not germane. Have a good day. Mr. Friedman,

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1 please prepare the Order.

2 MR. FRIEDMAN: Yes, sir.

3 (HEARING CONCLUDED)

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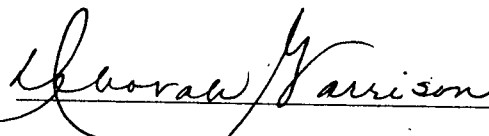
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CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9TH Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the Hearing
held before The Honorable R. Markley Dennis,
Jr., on November 3, 2008;

I do further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

November 23, 2008

1 STATE OF SOUTH CAROLINA)
 2) Court of Common Pleas
 2 COUNTY OF CHARLESTON) Case No. 2014-CP-10-305
 3)
 3 SIDNEY FIELDS,)
 4)
 4 Plaintiff,)
 5)
 5 vs.) Transcript of Record
 6)
 6 STATE OF SOUTH CAROLINA,)
 7)
 7 Defendant.)
 8) DATE: May 23, 2014
 9)

10 B E F O R E:

11 The Honorable J.C. Nicholson
 12

13 A P P E A R A N C E:

14 SIDNEY FIELDS, Pro Se
 15 Plaintiff

16 T. PARKIN HUNTER, Office of the Attorney General
 17 For the Defendant

18 Karen V. Andersen, RMR, CRR
 19 Circuit Court Reporter
 20
 21
 22
 23
 24
 25

1 THE COURT: Sidney Fields vs. South Carolina State.

2 Mr. Fields, where are you incarcerated? Where are
3 you in jail?

4 MR. FIELDS: Broad River.

5 THE COURT: Broad River? How long have you been in
6 Broad River?

7 MR. FIELDS: 16 years.

8 THE COURT: 15?

9 MR. FIELDS: 16.

10 THE COURT: How long are you going to be there?

11 MR. FIELDS: I hope to get released.

12 THE COURT: When are you up for parole?

13 MR. FIELDS: I got a natural life sentence.

14 THE COURT: You got a what?

15 MR. FIELDS: A natural life sentence.

16 THE COURT: Oh, you got a life sentence? You are
17 going to be there for awhile.

18 MR. FIELDS: Yes, sir. Hopefully not.

19 THE COURT: So you didn't get a life sentence under
20 the old system where you could make parole, huh?

21 MR. FIELDS: Oh, no, new system.

22 THE COURT: New system where life means life?

23 MR. FIELDS: Yes.

24 THE COURT: What are you in for?

25 MR. FIELDS: Murder and armed robbery.

1 THE COURT: Murder and armed robbery? Okay. What
2 have you filed?

3 MR. FIELDS: I filed a petition of mandamus.

4 THE COURT: To do what?

5 MR. FIELDS: Sir?

6 THE COURT: To do what?

7 MR. FIELDS: To enforce a state code judgment that
8 was not adhered to or not enforced.

9 THE COURT: In relation to your sentence, or what
10 was it?

11 MR. FIELDS: This was during a collateral
12 proceeding where --

13 THE COURT: PCR?

14 MR. FIELDS: No, sir. It was a state habeas
15 corpus. And Judge Young had issued an order transferring it
16 to the civil roster and the petition of habeas corpus. But
17 when I got to the hearing, Judge Dennis construed it as a
18 PCR. But Judge Young had already ruled it for the PCR
19 docket. The State filed a motion for reconsideration asking
20 Judge Young to remove -- to place it back --

21 THE COURT: Judge Young said what now?

22 MR. FIELDS: Judge Young said -- he had moved my
23 habeas corpus proceedings, he had placed it on the habeas
24 corpus docket. And when I got to the hearing, they
25 construed it as a PCR. The State filed a motion for

1 reconsideration, asked Judge Young to vacate his habeas
2 orders, and asked Judge Young to replace it back to the PCR
3 docket so they could file a motion to dismiss. But when we
4 got to the court, the State filed a Rule 60 and tried to
5 construe it before Judge Dennis as a PCR. And Judge Dennis
6 granted the order in violation of Rule 60, which he
7 shouldn't have done. And that's why I'm here, to enforce
8 the state -- it is, per se, actually about enforcing of
9 administrative ruling --

10 THE COURT: Defendant filed a motion to dismiss.
11 Are you familiar with it?

12 MR. FIELDS: Yes, sir.

13 THE COURT: You filed a response; is that correct?

14 MR. FIELDS: Yes, sir

15 THE COURT: All right. I'm going to listen to the
16 defendant's motion to dismiss, and I will listen to you.
17 Okay?

18 MR. FIELDS: Yes, sir.

19 THE COURT: Thank you. Have you a seat. Glad to
20 hear you.

21 MR. HUNTER: May it please the Court. I'm Parkin
22 Hunter from the South Carolina Attorney General's Office.
23 And Judge Young did issue an order transferring what
24 Mr. Fields had captioned as a habeas corpus petition to the
25 jury roster. Judge Dennis heard it. He treated it as a

1 successive PCR, which amounted to the fourth successive PCR
2 -- well, third. It was his fourth PCR. Judge Dennis --

3 THE COURT: Wait. Judge Young, as administrative
4 judge, put it on the jury roster for a jury trial for habeas
5 corpus?

6 MR. HUNTER: For habeas corpus, yes, sir.

7 THE COURT: And Judge Dennis took it off; or what
8 happened?

9 MR. HUNTER: No. It came up on Judge Dennis's
10 roster. He read it. He ruled on it. He treated it as
11 another PCR. And he said in his record -- it's not in his
12 order, but he said it was not properly a habeas petition
13 because it couldn't have been raised on PCR and previously
14 raised on PCR, and so it was not proper under the habeas
15 laws. And he dismissed it as a successive PCR.

16 THE COURT: Okay. And what are you here for today?

17 MR. HUNTER: Well, I'm here to oppose his request
18 for a mandamus, that it be -- that you or somebody, I'm not
19 sure who you would order, to hear it as a habeas corpus
20 petition. And this is something that is -- the underlying
21 facts are subject to PCR. They've been raised on PCR. So
22 there's no grounds to hear it as a habeas petition. I think
23 his only habeas remedy is petition for original jurisdiction
24 to the Supreme Court.

25 And another reason that it was not proper as a

1 habeas petition is he would not get out of jail --

2 THE COURT: Well, I mean, Judge Dennis ruled on it.

3 So that was appealed?

4 MR. HUNTER: Yeah. He did a Johnson --

5 THE COURT: Did Mr. Fields appeal that?

6 MR. HUNTER: Yes, sir. Well, they did a writ of
7 certiorari, raised the exact same issue. And the Supreme
8 Court denied it.

9 THE COURT: So the issue of the habeas corpus,
10 whether it's a PCR or habeas corpus, all the Supreme Court
11 did was deny it?

12 MR. HUNTER: Well, what he did in his certiorari
13 petition -- this has to do with whether the record was
14 proper. And the issue that he stated in his certiorari
15 petition was, did the PCR court err in not hearing
16 petitioner's PCR issue, that he was denied due process of
17 law when he was not able to have a fair, complete appellate
18 review of his case because his PCR attorney failed to file a
19 59E motion based on the deficiencies of the first PCR
20 transcript.

21 THE COURT: That was his third PCR?

22 MR. FIELDS: No.

23 THE COURT: How many PCRs did you file, Mr. Fields?

24 MR. FIELDS: Only two PCRs. The third one --
25 second or third one was the habeas corpus. I only filed

1 two.

2 THE COURT: But the judge converted from habeas, to
3 a PCR. That was -- assuming he was right, that would be
4 your third PCR?

5 MR. FIELDS: That would be my third. Judge Dennis
6 ordered --

7 THE COURT: What's your basis of habeas corpus to
8 begin with?

9 MR. FIELDS: Well, because --

10 THE COURT: Stand up. You know better. You've
11 been in court enough.

12 MR. FIELDS: Yes, sir. The basis of the habeas,
13 because the record coming out of the PCR court never was
14 reconstructed because testimony based on the evidence I
15 presented at that PCR hearing was omitted from my
16 transcript. The lawyer, my PCR lawyer, concurred with that.
17 And what he did was, he sent the matter to the appellate
18 court for them to correct. Appellate court saying that
19 that's not their problem, you should have had that done in
20 the lower court. It was a back-and-forth thing between my
21 PCR lawyer and the appellate lawyer.

22 THE COURT: You are talking about on the appeal?
23 Do you cite the PCR?

24 MR. FIELDS: Yeah, I'm trying to get the record
25 reconstructed from the original process. When I came out of

1 the PCR hearing, I did not have a complete record because
2 evidence -- because testimony was omitted. As a matter of
3 fact, I have a transcript whereas Ms. Suzette Wise, it
4 wasn't -- the transcript wasn't even signed. So nobody ever
5 rectified the record for me to verify the evidence,
6 everything I'm saying. Because I'm saying that my trial
7 counsel -- where I pled guilty, my trial counsel's advice
8 was contrary to statute law. So all the evidence to show
9 that counsel was ineffective, that was omitted from the
10 record.

11 So my PCR counsel -- after the argument, I said,
12 all of this is missing from the PCR record. So he said, I'm
13 going to refer everything to the appellate defense, let them
14 deal with it. They said that is not our problem, it should
15 have preserved in lower court. So I'm back and forth; and
16 I'm stuck --

17 (Whereupon, a cell phone goes off loudly in the
18 courtroom.)

19 MR. FIELDS: -- under due process, because due
20 process we have a right to appeal; then you are subject to
21 the --

22 THE COURT: I can't listen to that phone and you.

23 (Speaking to person with the cell phone.) Take the
24 phone and get out of here.

25 MR. FIELDS: You have a right to appeal, then you

1 have to be provided with the tools necessary for a
2 meaningful review. But I didn't have a meaningful review
3 because my record wasn't there. That was the whole point.

4 THE COURT: Well, were you ever granted the process
5 to get the transcript?

6 MR. FIELDS: No. They ordered the second
7 transcript, but the second transcript was worse than the
8 first. Because I had the evidence entered before the
9 hearing started. So the second transcript don't even have
10 the evidence being entered properly in the second
11 transcript.

12 THE COURT: What are you asking for the writ --
13 what are you asking for under the writ of mandamus?

14 MR. FIELDS: The writ of mandamus is because when
15 Judge Young had granted the motion, I mean, the order
16 transferring the pleading to the civil roster at the
17 original habeas corpus, the State filed a motion for
18 reconsideration, asked Judge Young to vacate his order, to
19 replace it back to the PCR docket. So it had been replaced
20 back to the PCR, then it was removed. So they asked him to
21 remove the -- put it back to the PCR docket so they can file
22 a motion to dismiss. Now, they failed to repeal it.

23 They had a chance to appeal it, but they didn't
24 appeal it. So now it becomes the law in the case. Supreme
25 Court sets up a hearing. First thing Judge Dennis says off

1 the bat, saying, I'm doing PCR. I'm getting irate in court.
2 It was a heated exchange between me and him, because I know
3 what he was doing. I said, I have an order. He didn't want
4 to hear it. He said, I'm doing PCR. So now the State moves
5 for a dismissal.

6 THE COURT: Do you think you are entitled to a jury
7 trial on habeas corpus?

8 MR. FIELDS: On the habeas corpus, because --

9 THE COURT: Do you think you are entitled to jury
10 trial on habeas?

11 MR. FIELDS: Yes, sir. Because, first of all, I
12 never did get a record. Because, basically, with the record
13 being incomplete, I basically never did have a PCR, because
14 the evidence was omitted.

15 THE COURT: Let me ask you this, Mr. Jenkins (sic).

16 MR. FIELDS: Mr. Fields.

17 THE COURT: Assuming you are right and you didn't
18 get the record, so the proper record on the PCR wasn't
19 available for appeal, habeas is argued before the Court and,
20 for some reason, it's being held illegally, so what does
21 that have to do with the system holding you illegally
22 because you didn't have the transcript on your second PCR?

23 MR. FIELDS: No, it was on the first.

24 THE COURT: You already had one first. Now we are
25 talking about the second one.

1 MR. FIELDS: The second one, they construed the
2 second one -- because they misconstrued the second one. So
3 when they misconstrued the evidence -- because this time
4 they are trying to say -- when I went on my second PCR, they
5 are trying to say because I filed ineffective assistance of
6 PCR counsel. I did not file ineffective assistance of PCR
7 counsel on the second PCR. It was due process. But by
8 using counsel's actions as an underlying factor, they tried
9 to construe it as I could presume I didn't have no right to
10 declare a PCR, but I did not say PCR.

11 THE COURT: Why was your second PCR dismissed?

12 MR. FIELDS: Because they are saying that I
13 didn't -- fact insufficient or --

14 THE COURT: You didn't raise them on the first one?

15 MR. FIELDS: No, no, no, no. It wasn't that.
16 Didn't have anything to do with the first one, because the
17 first one, all I had to do to reconstruct the record on the
18 first one -- that's all I wanted to do, because I'm not
19 bringing up something that I should have done in the first
20 one. The only thing I wanted to do is reconstruct the
21 record that was omitted, deliberately omitted from the
22 transcript, on the first transcript.

23 THE COURT: On the first transcript?

24 MR. FIELDS: On the first transcript. And they
25 misconstrued the facts to make out like I don't have --

1 THE COURT: What was the ruling on the second PCR?

2 MR. FIELDS: Just I didn't show sufficient reason.

3 That's basically -- that was Judge Deidre Jefferson and --

4 THE COURT: Let me ask you this. What do you think
5 was missing on the transcript? This was a guilty plea,
6 right?

7 MR. FIELDS: Exactly, because --

8 THE COURT: And you pled guilty?

9 MR. FIELDS: Exactly.

10 THE COURT: You pled guilty to what, murder?

11 MR. FIELDS: Murder and armed robbery, yes, sir.

12 THE COURT: Armed robbery?

13 MR. FIELDS: Yes, sir.

14 THE COURT: Got life on the murder?

15 MR. FIELDS: Yes.

16 THE COURT: What did you get on the burglary?

17 MR. FIELDS: 30 years concurrent.

18 THE COURT: Concurrent 30 years? All right. So

19 what was missing in that transcript you think would have

20 helped you on an appeal from the guilty plea?

21 MR. FIELDS: Oh, well, counsel gave me advice that

22 was contrary to statute law. I'm sentenced under 16-320,

23 which states --

24 THE COURT: Well, the advice of counsel wouldn't

25 have necessarily been on the transcript.

1 MR. FIELDS: No.

2 THE COURT: Tell me what was missing on that
3 transcript that would have helped your appeal.

4 MR. FIELDS: Because the advice that counsel gave
5 me, I said that his advice was contrary to the statute law.
6 And now the law that I placed -- the testimony based on the
7 evidence that --

8 THE COURT: What was contrary to the lawyer's
9 advice?

10 MR. FIELDS: Because he gave me early release
11 statute. He gave me that when I was sentenced to life
12 imprisonment, that I would have an early release program
13 while serving in Department of Corrections, which the
14 statute law says I can't because I have to die in prison.
15 He gave me --

16 THE COURT: Was all that on the record? Normally,
17 on guilty pleas, Mr. Jenkins (sic), that doesn't go on the
18 record.

19 MR. FIELDS: Mr. Fields, Your Honor.

20 THE COURT: That was a conversation between you and
21 your lawyer.

22 MR. FIELDS: Exactly. So that was the purpose of
23 us going to the PCR hearing --

24 THE COURT: Mr. Fields, I'm sorry. Excuse me.

25 MR. FIELDS: So that was --

1 THE COURT: Excuse me for calling you Jenkins.

2 MR. FIELDS: That was the whole purpose in going to
3 the PCR hearing, to establish the fact that he was
4 ineffective for giving me wrong advice, because I pled
5 involuntarily thinking that -- because at first --

6 THE COURT: You alleged ineffective assistance of
7 counsel.

8 MR. FIELDS: Exactly.

9 THE COURT: But my question is, whether the
10 transcript was void or not void, that information was given
11 to you outside the transcript by your attorney.

12 MR. FIELDS: No, no. Yes, outside the transcript.
13 But, see, all of that was in the PCR record when we were
14 arguing in the courtroom, because counsel said he gave me
15 advice. I said advice was ineffective because he told me
16 that when -- because I didn't want to plead guilty.

17 THE COURT: Did the attorney admit on the record
18 that he gave you that advice?

19 MR. FIELDS: He had all that established, that he
20 gave me this advice and this and that. Then I got on the
21 stand and said --

22 THE COURT: The attorney admitted under oath that
23 he gave you that advice and it was error?

24 MR. FIELDS: Exactly, exactly. No, he didn't say
25 it was an error. He just said this is advice that I believe

1 was correct. When I got on the stand behind him, I said
2 it's not correct because it's contrary to statute law. And
3 the statute law says that I will die, that I can't qualify
4 for any type of early release statute. He's saying I can.

5 So Markley Dennis says, because he was the actual
6 judge at the time of the original proceedings, he said that
7 counsel gave correct advice and it's a credibility issue.
8 I'm not saying it was a credibility issue. I'm saying that
9 his advice is contrary to statute law. The statute law is
10 saying one thing. Counsel is saying it's another. Statute
11 law is saying he's wrong. I didn't say that counsel was
12 wrong. Statute law says that he's wrong.

13 But when I got to the hearing, when I got to the
14 Supreme Court, they took everything I said about the statute
15 law compared to counsel out of the record.

16 THE COURT: All right. Okay. I understand. Now
17 you are asking me to grant you a writ to do what
18 specifically now?

19 MR. FIELDS: Now, when I had filed the habeas
20 corpus petition to rectify the fact that to get the
21 record -- because I didn't get a fair proceedings at the
22 PCR --

23 THE COURT: This is 15 years ago.

24 MR. HUNTER: I know that.

25 THE COURT: The record, that's long gone.

1 MR. FIELDS: I know that, sir. That's why I'm
2 trying to get back before --

3 THE COURT: There's no way we could reconstruct
4 that record.

5 MR. FIELDS: Exactly. See, now when I -- I'm
6 giving you an example. When I went through this situation
7 in the present with the habeas corpus with Judge Young, and
8 the State filed a motion of reconsideration, then they
9 failed to appeal it. Now it takes me into the courtroom and
10 file a motion, knowing good and well that they would deny
11 the motion when Judge Young denied the motion for
12 reconsideration. That's a clear violation of Rule 60. And
13 this is what I've been going through for 15 years; 15 years
14 I was going through. They violated Rule 60. What's the
15 point in going to law school? As a matter of fact, Rule 60
16 clearly states --

17 THE COURT: Look on the bright side, gave you
18 something to do.

19 MR. FIELDS: But Rule 60 clearly states when an
20 application is made to any judge -- right? -- application is
21 made to any judge, and application is refused in whole or in
22 part, no subsequent application shall be made to any other
23 judge on the same set of facts. But, yet, that's what the
24 State done. The State knew that they were denied their
25 motion for separation. They asked Judge Young to turn it

1 back to the PCR, PCR docket. But when Judge Young told them
2 no and denied them, they took it right in front of him,
3 another judge, in plain daylight and say, Your Honor, we are
4 going to move for a PCR, knowing that they asked this before
5 from another judge. And Judge Dennis knew what was going
6 on. He knew there was another order pending. That's all
7 pending. You can't treat a state court order like it's a
8 piece of wet toilet paper, throw it in the trash can like
9 it's nothing because you don't agree with it.

10 This is what I've been going through for 15 years.
11 Nobody wants to listen. He violated -- you say you public
12 official of the court, then you violate your own rules.
13 Because we have an order, it doesn't make no difference, still
14 no equitable solution because you can't just submit an
15 order. They had a chance to appeal it, but they didn't.
16 They did not appeal it.

17 THE COURT: Taking all of that into consideration,
18 I still don't know why you would --

19 MR. FIELDS: So now I'm -- now we all the way back
20 to Judge Young's order, regardless. Rather I get the habeas
21 corpus paper on file, motion to dismiss habeas corpus or we
22 still back to the habeas corpus level with Judge Young.

23 THE COURT: I understand. That's what I just said.
24 Everything I've heard you say, I'm still not sure that
25 entitles you to a habeas.

1 MR. FIELDS: Exactly. So now --

2 THE COURT: You just want the opportunity to try?

3 MR. FIELDS: Well, yeah, exactly. Because now
4 from -- just like I said, the egregious violation that I
5 just mentioned before the Court, I was going through --

6 THE COURT: I hate to cut you off. I understand
7 where you are coming from. Okay? And I appreciate your
8 argument very much. If you will have a seat, I will listen
9 to the attorney now. Okay? I will give you a few minutes
10 to respond, so listen to what he has to say. Okay?

11 MR. HUNTER: Thank you. May I approach?

12 THE COURT: Yes, sir.

13 MR. HUNTER: This is Judge Young's order
14 transferring him to the roster. And it was heard by Judge
15 Dennis. Now, this is not in Judge Dennis's order, but the
16 transcript of the hearing before Judge Dennis, Judge Dennis
17 said, with regard to this: That's not appropriate of this
18 court, I don't think, because a habeas corpus -- I don't
19 think. We can only hear PCRs. I think the habeas corpus,
20 as I understand it, means immediate relief, means immediate
21 release, as I understand that. And I think that has to be
22 --

23 THE COURT: I agree with that. Okay? But my
24 question to you is real simple. If Judge Young transferred
25 it to the civil jury roster on a petition of habeas corpus,

1 number one, I'm not sure he's entitled to a jury trial,
2 because habeas corpus, you come before the Court, you are
3 entitled to immediate release to be turned loose. But
4 that's neither here nor there.

5 My only concern I have is this. We've got an order
6 from Judge Young saying it's habeas corpus, putting him on a
7 jury trial. That wasn't appealed, apparently. That's the
8 order in the case. Another circuit court judge doesn't have
9 the authority to countermand that order. Court of Appeals
10 do, and it wasn't appealed. That's the only concern I have.

11 Now, I don't know what to do about it at this point
12 in time. Okay? And, quite frankly, I don't think he has a
13 habeas corpus, period. But that's neither here nor there.
14 He's still entitled to be treated properly under the system.

15 MR. HUNTER: Right. I would agree he's entitled to
16 be treated properly under the system. It showed up on Judge
17 Dennis's roster as the presiding judge to hear the matter,
18 and he heard it.

19 THE COURT: Did he appeal that?

20 MR. FIELDS: I --

21 THE COURT: Court of Appeals denied your appeal?

22 MR. HUNTER: If you want to hear the story --

23 THE COURT: I don't want to hear a story. Did you
24 appeal it? Did the Court of Appeals deny your appeal?

25 MR. FIELDS: Yes, sir.

1 THE COURT: Okay. Thank you very much. What do
2 you want to tell me?

3 MR. HUNTER: I was just going to say what I said
4 before, in his -- I'm sorry -- in his cert petition, he
5 raised the deficiencies of the PCR transcript in his cert'
6 petition, and the Court denied.

7 THE COURT: In which petition?

8 MR. HUNTER: His cert' petition.

9 THE COURT: Cert' from the Court of Appeals,
10 Supreme Court?

11 MR. HUNTER: This is Johnson petition for writ of
12 certiorari he filed.

13 THE COURT: All right. Mr. Fields, anything you
14 want to say very briefly? You have 30 seconds. Stand up
15 and I will hear you.

16 MR. FIELDS: Okay. So, well, when I filed my
17 action filed -- that's another story. The appellate process
18 was 10 times more egregious than what they did at the lower
19 court. So I know you don't have time to hear that, because
20 that's why --

21 THE COURT: I'm not going into that. Okay? That's
22 they're problem, not mine.

23 MR. FIELDS: Exactly. So that's the whole purpose,
24 because the habeas corpus must be treated as a PCR
25 application if I can show that the PCR is inadequate or

1 unavailable, that I could not have raised the issue in the
2 previous PCR or that I had exhausted all other remedies. So
3 I felt that I was qualified because I didn't never have a
4 record. And I did due diligence. I tried, you know, but
5 I'm going through these procedural errors with public
6 officers to thwart my effort to get the record.

7 THE COURT: Thank you very much, Mr. Fields. I
8 appreciate. Your motion for writ of mandamus hearing is
9 denied.

10 Will you type me up a proposed order please, sir?
11 Thank you very much.

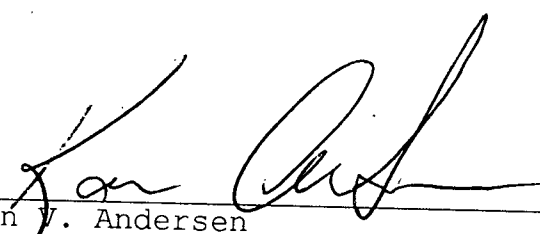
12 (Proceedings are concluded.)
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 25th day of September, 2014, at Charleston,
Charleston County, South Carolina.



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

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October 18, 2001

Sidney Fields #254392
BRCI 4460 Broad River Road
Monticello #144
Columbia, SC 29210

**Re: Sidney Fields, 254392 -vs- State
99-CP-10-1788**

Dear Sidney,

I have the letters about the transcript and I have sent copies of the letters on to appellate defense. They are handling all aspects of your case. I am sending your letter of October 17, 2001 to them along with a copy of this letter. I believe that they should advise you on your concerns regarding the transcript record.

With kindest personal regards,

Yours truly,


Jack D. Cordray

JDC, rhs