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January 14, 2015

**RECEIVED**

JAN 20 2015

**S.C. SUPREME COURT**

The South Carolina Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

RE: Alwin Jones #260800 v. State of South Carolina  
Docket No.: 2012-CP-32-1406

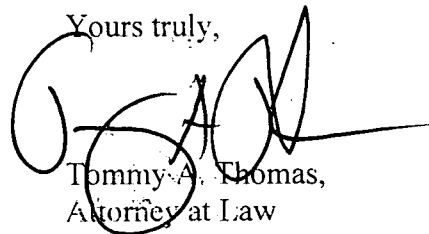
1046

Dear Sir or Madam:

Enclosed please find an Original and a copy of a Notice of Appeal, along with a Certificate of Service and attachments. Please be advised that I have been retained to represent Mr. Jones regarding this appeal. Also, please find enclosed my request for a copy of the transcript of Mr. Jones' PCR hearing.

Kindly return a clocked copy to me in the enclosed envelope. Thank you and should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,



Tommy A. Thomas,  
Attorney at Law

TAT/jem  
cc: Mary Williams, Esq.  
Alwin Jones #260800

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas  
Post-Conviction Relief

RECEIVED

JAN 20 2015

Edgar W. Dickson, Presiding Judge

S.C. Supreme Court

Case No.: 2012-CP-32-1046

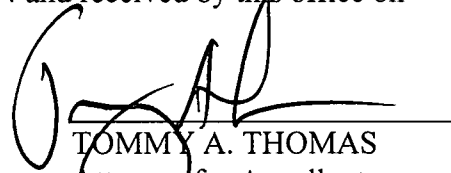
Alwin Jones #260800 .....Appellant,

vs.

State of South Carolina .....Respondent.

NOTICE OF INTENT TO APPEAL

Alwin Jones #260800 appeals the Order of Dismissal of the Honorable Edgar W. Dickson signed on July 14, 2014, filed on July 17, 2014 and received by this office on December 30, 2014.



TOMMY A. THOMAS  
Attorney for Appellant  
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Other Counsel of Record:  
Mary Williams, Esq.  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Attorney for Respondent

Irmo, South Carolina  
January 14, 2015

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas  
Post-Conviction Relief

Edgar W. Dickson, Presiding Judge

Case No.: 2012-CP-32-1046

RECEIVED

JAN 20 2015

S.C. Supreme Court

Alwin Jones #260800 .....Appellant,

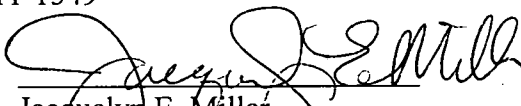
vs.

State of South Carolina .....Respondent.

CERTIFICATE OF SERVICE BY MAIL

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Attorney for the Applicant, hereby certify that I placed in the United States Mail, a copy of a the Notice of Intent to Appeal with postage prepaid, and the return address clearly shown on said envelope to Mary Williams, Esq. with the Office of the Attorney General at:

Mary Williams, Esq.  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549

  
Jacquelyn E. Miller  
Secretary to Tommy A. Thomas  
Attorney for Appellant  
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Irmo, SC 29063  
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January 14, 2015

JUL182014

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

**ORIGINAL**

**FILED** IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

Alwin Jones, #260800,  
Applicant,

2014 JUL 07 AM 11:4  
DEBRA J. CANNON  
CLERK OF COURT  
LEXINGTON, SC

2012-CP-32-3136 1046

**ORDER OF DISMISSAL**

v.

State of South Carolina,  
Respondent.

This matter comes before the Court by way of an Application for post-conviction relief filed March 6, 2012. Respondent made its Return dated June 12, 2012, requesting that the Application be summarily dismissed based on the statute of limitations, successiveness, and laches. A hearing was convened on August 16, 2013, at the Lexington County Courthouse. Applicant was present and represented by Tommy Thomas, Esquire, and Tristan Shaffer, Esquire. Following hearing, the Court requested and received memoranda from the parties. This Court has before it the records of the Lexington County Clerk of Court, the guilty plea transcript, the Applicant's records from the South Carolina Department of Corrections, and the memoranda with attachments submitted by the parties.<sup>1</sup>

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Applicant was indicted for armed robbery; criminal conspiracy; possession of a firearm or knife during commission of a violent crime; unlawful possession of a pistol by person under the age of twenty-one, burglary, second degree; burglary, first degree; and petit larceny. Cam Littlejohn, Esquire, represented Applicant. On August

<sup>1</sup> Transcripts from other proceedings were submitted by both parties, and the parties consent that these transcripts shall stand in lieu of live testimony from the witnesses in this matter.

26, 1999, Applicant pled guilty to three counts of burglary, second degree (1999-GS-32-2458; -2459; -2471) and three counts of burglary, first degree (1999-GS-32-2460; -2472; -2473) and one count of armed robbery (1999-GS-32-2654). The Honorable William P. Keesley sentenced Applicant to fifteen (15) years confinement on each count of burglary, second degree; thirty (30) years confinement on each count of burglary, first degree; and to thirty (30) years for armed robbery. The sentences were to be served concurrently. The Applicant did not appeal his sentence and conviction.

The Applicant subsequently filed an application for post-conviction relief (PCR) on December 28, 1999 (1999-CP-32-3546).<sup>2</sup> Applicant alleged he was being held unlawfully for the following reasons:

- 1 . Ineffective Assistance of Counsel.
2. "False representations, from trial or plea counsel."

An evidentiary hearing was held before the Honorable J.C. Nicholson, Jr., at which Applicant was present and was represented by Elizabeth Fullwood, Esquire. By Order dated July 31, 2001, Judge Nicholson denied and dismissed the Application. Judge Nicholson denied Applicant's motion for relief from judgment in a short order dated April 23, 2002, and filed May 21, 2002. A timely Notice of Appeal was filed on Applicant's behalf and a Johnson Petition for Writ of Certiorari was submitted by the South Carolina Office of Appellate Defense. On April 18, 2002, the South Carolina Supreme Court denied the Petition, and the Remittitur was sent on May 6, 2002.

The Applicant filed a second Application for post-conviction relief on July 25, 2002 (2002-CP-32-2531). Applicant alleged he was being held unlawfully for the following reasons:

- 1 . "Subject Matter Jurisdiction."
2. "Involuntary Guilty Plea"
3. "Ineffective Assistance of Counsel"
4. "Newly Discovered Evidence"

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<sup>2</sup> Some filings in this matter bear the case number 2000-CP-32-3546. This appears to be a scrivener's error.

5. "Brady violation"
6. "Due Process Violation"
7. Fourth, Fifth, and Sixth Amendment violations.

A hearing was held on Respondent's motion to dismiss on February 24, 2004, before the Honorable Mark H. Westbrook, at which Applicant was present and was represented by Lori Murray, Esquire. By Order dated March 14, 2004, and filed March 15, 2004, Judge Westbrook denied and dismissed the Application as successive and barred by the one-year statute of limitations. A timely Notice of Appeal was filed on Applicant's behalf and a Johnson Petition for Writ of Certiorari was submitted by the South Carolina Office of Appellate Defense. In an order dated September 7, 2005, the South Carolina Supreme Court denied the petition and granted counsel's request to withdraw. The Remittitur was sent on September 23, 2005.

Applicant filed a third Application for post-conviction relief on September 1, 2006 (2006-CP-32-3178). Applicant alleged he was being held unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
  - a. "Counsel's failure to submit evidence into courts, raise particular arguments, and to follow up on transcript."

The Honorable James W. Johnson issued a Conditional Order of Dismissal dated April 26, 2007, and filed May 3, 2007, finding the application successive and barred by the one-year statute of limitations. By Final Order of Dismissal dated June 22, 2007, and filed June 27, 2007, Judge Johnson denied and dismissed the Application. Applicant did not file a timely Notice of Appeal.

In his current application, Applicant set forth the following basis for relief:

1. Newly Discovered Evidence – Discovered on March 17, 2011, that John C. Sharpe who signed arrest warrant as issuing judge lacked the authority to do so.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

**State's Motion to Dismiss**

The State moved for summary dismissal of Applicant's claim based on the statute of limitations and successiveness. Applicant claims that he heard about the facts giving rise to his claim from another inmate but does not provide a specific date. Applicant cites a letter for Court Administration dated March 17, 2011, attached to his PCR application as the appropriate date from which to consider the one-year statute of limitations. The State maintains that the information raised in the current application has been available from the time of Applicant's arrest and therefore, with due diligence, he could have discovered this information at any time since 1998 and could have raised this claim at any time in the intervening years. The State further submits that the Applicant's claim should be barred by the doctrine of laches due to the extreme passage of time since Applicant's conviction in 1999, more than a decade before this application was filed. In response, Applicant argues that this is not the sort of claim which, even with due diligence, a defendant may normally be expected to explore and that Applicant filed his application within one year of securing information which would verify what he had heard from another inmate.

This court denies the State's motion for summary dismissal on all grounds and reaches the merits of Applicant's claim.

Merits – Ministerial Recorder

Applicant asserts that his arrest for armed robbery (one of several charges for which Applicant was arrested) was invalid based on a defective arrest warrant in that the man who signed the warrant, John Sharpe, was not properly a ministerial recorder in Cayce. Applicant adds that he was prejudiced by this because after his arrest he confessed to the robbery.

Applicant contends that the individual who signed his arrest warrant for armed robbery, John Sharpe, lacked authority to sign the warrant based on failure to comply with the South Carolina Court Administration's annual continuing education requirements. Applicant attaches excerpts from the PCR hearing of Julius Irick Gilyard v. State of South Carolina (2001-CP-32-3154) in support of his allegation.<sup>3</sup> During hearings in the Gilyard case, Sharpe testified that he was a ministerial recorder in the town of Cayce. For many purposes, ministerial recorders are afforded the same capacity as that of municipal judge. Sharpe testified that he assumed duties as a ministerial recorder in Cayce in 1977. (State's B, Tr. p. 34, lines 4-6; State's C, Tr. p. 17, lines 3-8.) He was both a ministerial recorder and also the Clerk/Treasurer for the City of Cayce during the year Applicant's warrant was issued, 1998. (State's C Tr. p. 15, lines 18-22; p. 17, lines 9-12.) Sharpe stated that during the years in question he was not aware that educational requirements existed. (State's B Tr. p. 35, lines 7-13.) Sharpe did attend seminars but was unsure of the exact dates. (State's B Tr. p. 35, line 18 – p. 36, line 3; State's C Tr. p. 18, line 19 – p. 19, line 10.) He did not report attendance at these seminars, unaware of the requirement to do so. (State's B Tr. p. 36, lines 4-8.)

During the Gilyard case, testimony was also taken from Mary Joyce Marshall, then a staff attorney with South Carolina Court Administration. Marshall reported that during 1998, ministerial recorders were required to have twelve hours of continuing education. (State's B Tr. p. 39.) Marshall

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<sup>3</sup> Per exhibit A submitted by the State in its memorandum, Gilyard's PCR application on this issue was denied. The South Carolina Supreme Court denied certiorari on April 7, 2010, and the remittitur was sent on April 23, 2010.



stated that she had been unable to find any record of Sharpe. Marshall testified that reporting would not have been required until 2000 and most recorders did not report prior to 2000. (State's B Tr. p. 40, lines 4-15.)

In 1980, the Legislature enacted S.C. Code §14-25-115, allowing a city council to appoint "one or more full-time or part-time ministerial recorders, who shall hold office at the pleasure of the counsel."<sup>4</sup> Ministerial recorders had several powers, including issuance of arrest warrants. Under §14-25-15 (1980), ministerial recorders were required to "take and subscribe the oath of office" prescribed by the South Carolina Constitution. Educational requirements were not codified until 2000 when S.C. Code §14-25-15 was amended to add sections (B) – (G) (2000 Act No. 394, §2, effective August 4, 2000) (TAB F). Until 2000, the only authority for education requirements was found in South Carolina Supreme Court Order 1994-05-03-01, dated May 3, 1994 and effective January 1, 1995 (TAB D). The order states, "[f]ailure to comply with this order shall subject the party so failing to penalties for contempt of court." No other penalty, such as vacating office or invalidation of signatures, is mentioned.

In the absence of other guidance requiring continuing education for the post of ministerial recorder, the only remedy for non-compliance with training at the time of Applicant's arrest warrant was civil contempt of court. While in 2000 the amendments to S.C. Code §14-25-15(D) and (E) allowed for the office of a magistrate to be declared vacant upon notice of failure to comply or April 30, 2002, whichever came first, no such directive existed in 1998 when Applicant's arrest warrant was issued. The State maintains that §14-25-15(D)(2000) set out requirements for each magistrate and municipal judge to pass an examination and does not address continuing education requirements. Nonetheless, even applying the section and assuming that Sharpe never took an appropriate

<sup>4</sup> Prior to 1980, when Sharpe was initially appointed, the office of ministerial recorder was covered by S.C. Code §§14-25-310 and – 320 (1976). These sections similarly permitted a city council to establish the office of ministerial recorder.



examination, Sharpe remained a ministerial recorder until April 30, 2002. Therefore, even in the light most favorable to Applicant, Sharpe properly signed his arrest warrant on September 1, 1998. Because in the light most favorable to Applicant no violation has been established in this regard Applicant's claim fails.

Merits – Evidence Custodian

Applicant asks this court to accept a portion of a transcript from another case taken in 1996 in which a police officer testifies that he turned money over to Sharpe as evidence that Sharpe was acting as an evidence custodian for the police department at the time of Applicant's warrant, 1998. In the 1996 transcript, the law enforcement officer states that Sharpe is the City Treasurer; in Sharpe's position as Treasurer/Clerk, the officer takes money to Sharpe that is collected from search warrants. After taking money to the Treasurer, the officer did not know what happened to the money. Applicant somehow interprets this administrative function, assuming such was the case at the time of Applicant's arrest, as equivalent of being in the employ of law enforcement as an evidence custodian, and implies that Sharpe could somehow lose neutrality by handling evidence submitted by a law enforcement officer. However, as City Treasurer/Clerk, Sharpe is removed from the prosecutor and police, not under their employ or influence. Additionally, the facts as set forth in the warrant affidavit, including the victim's identification of Applicant from a lineup, surely support the issuance of the warrant based on probable cause and not on any improper basis. There is no evidence that Sharpe handled any money associated with Applicant's case. For all these reasons, Applicant's claim that his arrest warrant was invalid on this basis likewise fails.

Prejudice

Even if Applicant's claims above succeeded, this Court finds no evidence of prejudice. As prejudice, Applicant states that he would not have confessed to armed robbery had he known the arrest

warrant was defective. Applicant offers mere speculation that he could have secured a more favorable plea offer regarding his remaining charges (including multiple counts of burglary – 1<sup>st</sup> degree and burglary – 2<sup>nd</sup> degree and a series of charges dismissed pursuant to the plea dating back to 1997, including breaking and entering of an auto, unlawful carrying of a pistol, seven petit larcenies, two forgeries, armed robbery, burglary, and numerous other offenses) had he not been arrested for armed robbery. However, an indictment could have been sought even without an arrest warrant. Thompson v. State, 251 S.C. 593, 164 S.E.2d 760 (1968). Moreover, Applicant was arrested pursuant to several warrants associated with the same armed robbery which were issued on September 1, 1998: conspiracy to commit armed robbery (F-655787), possession of a firearm by a person under the age of 21 (F-655786), and possession of a firearm during commission of a violent crime (F-655786). Applicant alleges no defects in these additional warrants or any question as to the validity of his arrest. For all these reasons, in the light most favorable to Applicant, Applicant's claim that he was somehow prejudiced by the invalid warrant fails.

#### Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

#### **CONCLUSION**

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also

directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 14<sup>th</sup> day of July, 2014.

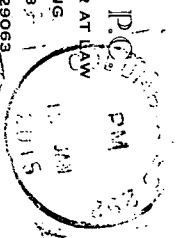


EDGAR W. DICKSON  
Presiding Judge  
Eleventh Judicial Circuit

Orangeburg, South Carolina.



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