STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

J. Mark Hayes, II, Circuit Court Judge

PAUL LESLIE COX,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001211

SUPPLEMENTAL APPENDIX

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ATTORNEYS FOR RESPONDENT

INDEX

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT 07-CP-42-2757
Paul Leslie Cox, #75206, Applicant, v. State of South Carolina, Respondent.	ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 7, 2007. A hearing into the matter was convened on January 18, 2008 at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by William S.F. Freeman, Esquire. The Respondent was represented by S. Prentiss Counts of the South Carolina Attorney General's Office. This Court had before it the application, the respondent's return, a copy of the transcript of the proceedings against the Applicant, the records of the Spartanburg County Clerk of Court, the Applicant's prior PCR records, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the March 1987 term of the Spartanburg County Grand Jury for Kidnaping and Assault and Battery of a High and Aggravated Nature (1987-GS-42-643). He proceeded *pro se*. On April 16, 1987, the Applicant pled guilty to Kidnaping. The Assault and Battery of a High and Aggravated Nature charge was *nol prossed*. He was sentenced by The Honorable Luke N. Brown to confinement for his natural Life.

The Applicant subsequently filed an application for PCR on September 23, 1988. On May 10,

1989, the Honorable Jasper Cureton was informed that the Applicant refused to be transported. Judge Cureton issued an Order directing transport for the following day and stating that the Applicant's refusal to appear would be deemed a voluntary withdrawal. Deputy Mike McKie testified on May 11, 1989 that he had served the Applicant with the Order and that he, again, refused to be transported. Judge Cureton issued an Order dismissing the Application.

The Applicant subsequently filed a second application for PCR on December 4, 1991. Upon information and belief, this Application was denied.

The Applicant subsequently filed a third application for PCR on April 3, 1995. The Applicant was represented by Tom Dillard, Esquire. A hearing was held on September 12, 1995 where the Applicant withdrew his application. The Honorable J. Derham Cole issued an Order dismissing the Application on December 11, 1995.

The Applicant subsequently filed a fourth application for PCR on April 4, 1997. He was represented by Barbara Tiffin, Esquire. The Honorable John C. Hayes, III, denied the PCR by Order dated February 17, 1998. The Applicant filed a *pro se* 59(e) Motion which was denied by Judge Hayes by Order dated May 8, 1998. A timely notice of appeal was filed and a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The Supreme Court denied certiorari by Order dated June 24, 1999 and the remittitur was issued on July 17, 1999.

The Applicant subsequently filed his fifth application for PCR on September 8, 2000. He was represented by Baiba Bourbeau, Esquire. The Applicant wrote a letter to Bourbeau dated February 11, 2002, strongly requesting that he be allowed to withdraw his PCR without a hearing. The Honorable Gary E. Clary granted his request and dismissed the PCR by Order dated May 13, 2002.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the argument of counsel at the post-conviction relief hearing. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Statute of Limitations

This Court finds that this application for post conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, *et. seq.* S.C. Code Ann. §17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remititur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The PCR statute of limitations applies 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 April 16, 1987. This Application was filed on August 7, 2007, well after the one year statutory filing period had expired. This Court finds that the Applicant has failed to present sufficient grounds which would exempt him from the application of the statute of limitations to this action. Therefore, it is dismissed as barred by the statute of limitations.

Successive Applications

In addition, this Court finds that the current application for post conviction relief must be summarily dismissed because it is successive to the Applicant's five (5) prior applications for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

> All grounds for relief available to an application under this chapter must

> be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding 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.

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. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior applications for post conviction relief and, thus, the current application is successive and barred under S.C. Code §17-27-90. The Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post conviction relief. Therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, supra; Arnold v. State/Plath v. State, supra.

After Discovered Evidence

A defendant requesting a new trial based on after discovered evidence must show that the evidence:

> (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-612, 299 S.E.2d 854, 855 (1983).

The Court finds that the Applicant has failed to make a *prima facie* showing that his newly

discovered evidence is enough to entitle the Applicant to relief and dismisses the allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has failed to file his application within the time limits established in S.C. Code Ann. §17-27-45(a) and because it is successive. This Court finds that the Applicant failed to provide sufficient evidence of after discovered evidence. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

5

IT IS THEREFORE ORDERED:

1. This application for post conviction relief is denied and dismissed with prejudice.

2. The Applicant is remanded to the custody of the South Carolina Department of Corrections to serve the remainder of his sentence.

AND IT IS SO ORDERED this 22nd day of May, 2008.

J. Mark Hayes, II
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

FILED
CLERK OF COURT
2008 MAY 23 PM 3:32
MARC KITCHENS

A CERTIFIED COPY
CLERK OF COURT
SPARTANBURG COUNTY
BY:
DATED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	**2007-CP-42-2757**
Paul Leslie Cox, #75206,	)	
	)	
Applicant,	)	
	)	
v.	)	**APPLICANT'S MOTION TO RECONSIDER**
	)	
State of South Carolina	)	
	)	
Respondent.	)	
	)	

The applicant, Paul Leslie Cox, by and through undersigned counsel, in accordance with the applicable jurisprudence, hereby petitions the Court to reconsider, alter or amend its Order filed May 23, 2008. Counsel for the applicant received a filed and signed copy of the Order on June 18, 2008.

Undersigned counsel would refer the Court to the documents previously filed. In particular, the undersigned would especially draw the Court's attention his second memorandum in support, which was filed *after* the Court's Order of May 23, 2008--unfortunately, the undersigned was unaware the Court had issued the final order when this was filed.

The second memorandum provided as follows:

In addition to the reasons set forth in the previously filed memorandum in support, this PCR should be allowed to proceed for the following reasons, especially that a miscarriage of justice will occur if the PCR is not allowed to proceed.

IV. THE COURT SHOULD ORDER THE APPLICANT IS ELIGIBLE FOR PAROLE

As set forth in the prior memorandum, at the plea and sentencing hearing, both the Court and the Applicant believed the Applicant would be eligible for parole in 10 years. Attached as

Exhibit A is a partial copy of the Department of Corrections Offender Management System. It identifies the Applicant's sentence for "kidnapping" for "999 years."

At the time the Applicant was sentenced, S.C. Code Ann. § 24-21-610 did provide that the Applicant would be eligible for parole after 10 years[1]. However, the Applicant has been denied eligibility for parole.

This case is very similar to the facts of State v. Hazel, 271 S.E.2d 602 (S.C. 1980). In that case, the applicant was initially told by the trial court that the trial court "could" impose life

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[1] In full, Section 35 of The Omnibus Criminal Justice Improvements Act of 1986 provided as follows:

SECTION 35. Section 24-21-610 of the 1976 Code, as last amended by Act 482 of 1984, is further amended to read:

"Section 24-21-610. In all cases cognizable under this chapter the Board may, upon ten days' written notice to the solicitor and judge who participated in the trial of any prisoner, parole a prisoner convicted of a crime and imprisoned in the state penitentiary, in any jail, or upon the public works of any county who if:

(1) sentenced for not more than thirty years has served at least one-third of the term;

(2) sentenced to life imprisonment or imprisonment for any period in excess of thirty years, has served at least ten years.

If after January 1, 1984, the Board finds that the statewide case classification system provided for in Chapter 23 of this title has been implemented, that an intensive supervision program for parolees who require more than average supervision has been implemented, that a system for the periodic review of all parole cases in order to assess the adequacy of supervisory controls and of parolee participation in rehabilitative programs has been implemented, and that a system of contracted rehabilitative services for parolees is being furnished by public and private agencies, then in all cases cognizable under this chapter the Board may, upon ten days' written notice to the solicitor and judge who participated in the trial of any prisoner, to the victim or victims, if any, of the crime, and to the sheriff of the county where the prisoner resides or will reside, parole a prisoner who if sentenced for a violent crime as defined in Section 16-1-60, has served at least one-third of the term or the mandatory minimum portion of sentence, whichever is longer. For any other crime the prisoner shall have served at least one-fourth of the term of a sentence or if sentenced to life imprisonment or imprisonment for any period in excess of forty years, has served at least ten years.

The provisions of this section do not affect the parole ineligibility provisions for murder, armed robbery, and drug trafficking as set forth respectively in Section 16-3-20, Section 16-11-330, and subsection (e) of Section 44-53-370.

In computing parole eligibility, no deduction of time may be allowed in any case for good behavior, but after June 30, 1981, there must be deductions of time in all cases for earned work credits, notwithstanding the provisions of Sections 16-3-20, 16-11-330, and 24-13-230.

Notwithstanding the provisions of this section, the Board may parole any prisoner not sooner than one year prior to the prescribed date of parole eligibility when, based on medical information furnished to it, the Board determines that the physical condition of the prisoner concerned is so serious that he would not be reasonably expected to live for more than one year. Notwithstanding any other provision of this section or of law, no prisoner who has served a total of ten consecutive years or more in prison may be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist."

imprisonment. However, at the time the crime carried a mandatory sentence of "life imprisonment" (the same as in the instant case). Based on this error of understanding, the Court reversed the plea, holding:

> It is elementary that in order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of his plea. Upon the facts in this case, appellant's plea was not knowing because it was entered without an understanding of the mandatory punishment for the offense to which she was pleading. It was thus a plea entered in ignorance of its direct consequences, and was therefore invalid.

Hazel at 603 (citations and footnote omitted).

In the present case, neither the Applicant nor the Court foresaw that the kidnapping charge would morph into a sentence of life without the possibility of parole.[2] In fact, the Court stated the Applicant would be eligible in ten years:

> The Court: You won't come up for parole until twenty years. Do you know that?
> Defendant Cox: Yes, sir, I understand that.
> The Court: Mr. Sanders back here says it's ten years.
> Mr. Sanders: Ten years on kidnapping.
> Defendant Cox: It's ten years on kidnapping.
> The Court: Kidnapping, come up for parole on ten years of kidnapping.

transcript, page 11, lines 18-25.

Since the plea was not "knowing" and the Applicant should be entitled to the possibility of parole; or a plea hearing; or a new sentencing.

Given the likelihood of success on the merits; and the manifest injustice that would result from a denial, the Court should permit a hearing on the merits of this argument to proceed.

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[2] This matter is subject to the Court's review under S.C. Code Ann. § 17-27-20(a)(5) which provides a PCR court may review the following:

> (a) Any person who has been convicted of, or sentenced for, a crime and who claims:
> ***
> (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint...

And see Delahoussaye v. State 633 S.E.2d 158 (S.C. 2006).

V. NOT ALLOWING A PAROLE HEARING IS AN EX POST FACTO VIOLATION

At the time of the offense, the Applicant, after an initial denial, was entitled to a review of his parole every two years.[3] As noted in Exhibit A, the Applicant has been denied the ability to seek parole.

In Jernigan v. State, 531 S.E.2d 507 (S.C. 2000), the Court was confronted with an applicant whose right to a parole hearing was reduced from every year to every two years. The Court ruled this loss of annual parole was an enhancement of a penalty. The Court went on the rule that the reduction of the parole hearing constituted an ex post facto violation.

In the present case[4], the Applicant has been denied the opportunity for parole. Given the Court's decision in Jernigan, there is a good chance of success on the merits and therefore this matter should be allowed to proceed to a full hearing.

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[3] In full, Section 33 (defining kidnapping as a "violent crime") and Section 31 (regarding parole for violent crimes) of The Omnibus Criminal Justice Improvements Act of 1986 (which were in effect at the time of the kidnapping) provided as follows:

> Order authorizing parole
>
> SECTION 31. Section 24-21-645 of the 1976 Code, added by Act 100 of 1981, is amended to read:
>
> "Section 24-21-645. The Board may issue an order authorizing the parole which must be signed either by a majority of its members or by all three members meeting as a parole panel on the case, ninety days prior to the effective date of the parole; provided that at least two-thirds of the members of the Board must authorize and sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60. A provisional parole order shall include the terms and conditions, if any, to be met by the prisoner during the provisional period and terms and conditions, if any, to be met upon parole. Upon satisfactory completion of the provisional period, the Executive Director or one lawfully acting for him, shall issue an order, which, if accepted by the prisoner, shall provide for his release from custody.
>
> Provided, that upon a negative determination of parole, prisoners in confinement for a violent crime as defined in Section 16-1-60 must have their cases reviewed every two years for the purpose of a determination of parole."
>
> Definition of violent crime
>
> SECTION 33. The 1976 Code is amended by adding:
>
> "Section 16-1-60. For purposes of definition under South Carolina law a violent crime includes the offenses of murder, criminal sexual conduct in the first and second degree, assault and battery with intent to kill, kidnapping, voluntary manslaughter, armed robbery, drug trafficking as defined in Section 44-53-370(e), arson in the first degree, burglary in the first degree, and burglary in the second degree under Section 16-11-312(B)."

[4] This matter is subject to the Court's review under S.C. Code Ann. § 17-27-20(a)(5) which provides a PCR court may review the following:

Given the likelihood of success on the merits; and the manifest injustice that would result from a denial, the Court should permit a hearing on the merits of this argument to proceed.

VI. THE COURT SHOULD ORDER THE APPLICANT'S OTHER ACTIONS DO NOT PRECLUDE THE POSSIBILITY OF PAROLE[5]

To the extent the State raises the subsequent convictions of the Applicant as a bar to parole, that argument should be denied. The "three strikes" law in effect in 1987 (the year in which the Applicant received all of his convictions), found at S.C. Code Ann. §17-25-45 provided that life without the possibility of parole would only occur where the solicitor, in his discretion, invoked the clause.[6] The State has not presented evidence of such invocation; in fact,

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(a) Any person who has been convicted of, or sentenced for, a crime and who claims:

***

(5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint...

And see Delahoussave v. State 633 S.E.2d 158 (S.C. 2006) (interpreting Al-Shabazz v. State, 527 S.E.2d 742 (S.C. 2000)). Delahoussave is especially applicable since the instant case involves mandatory conditions, rather than discretionary conditions.

[5] As above, this matter is subject to the Court's review under S.C. Code Ann. § 17-27-20(a)(5) which provides a PCR court may review the following:

(a) Any person who has been convicted of, or sentenced for, a crime and who claims:

***

(5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint...

And see Delahoussave v. State 633 S.E.2d 158 (S.C. 2006).

[6] Section 37 of The Omnibus Criminal Justice Improvements Act of 1986 provided in full as follows:

Life imprisonment without parole

SECTION 37. Section 17-25-45 of the 1976 Code is amended to read:

"Section 17-25-45. (1) A. Notwithstanding any other provision of law, any person who has three convictions under the laws of this State, any other state, or the United States, for a violent crime as defined in Section 16-1-60 except a crime for which a sentence of death has been imposed shall, upon the third conviction in this State for such crime, be sentenced to life imprisonment without parole.

B. For the purpose of this section only, a conviction is considered a second conviction only if the date of the commission of the second crime occurred subsequent to the imposition of the sentence for the first offense. A conviction is considered a third conviction only if the date of the commission of the third crime occurred subsequent to the imposition of the sentence for the second offense. Convictions totaling more than three must be determined in a like manner.

(2) The decision to invoke sentencing under subsection (1) shall be in the discretion of the solicitor."

the two subsequent convictions do not reference one way or the other that the solicitor was invoking the life imprisonment without parole statute.

To the extent the State will argue parole is barred by successive criminal guilty pleas, the State should have the burden of presenting such evidence (and the invocation of the statute in existence at the time of the pleas). Accordingly, on the record before the Court, the Applicant has raised substantial issues that he should be entitled to the possibility of parole; or a plea hearing; or a new sentencing.

Given the likelihood of success on the merits; and the manifest injustice that would result from a denial, the Court should permit a hearing on the merits of this argument to proceed.

VII. THE KIDNAPPING CHARGE SHOULD BE BACKDATED TO JUNE 16, 1983

In the original transcript where the Applicant plead guilty to kidnapping, the following colloquy occurred:

> The Court: How much more time -- how long have you been in jail now on that first sentence?
> Defendant Cox: Since June the 16, '83.
> Solicitor Bowden: Your Honor, the State would recommend that this sentence be back dated to that date.

transcript, page 3, lines 5-9.

The internal documents from the Department of Corrections indicate the "start" of the sentence for kidnapping as "04/16/1987" (see Exhibit A). This was the date of the plea, though, and as set forth above the Court should backdate the start of this sentence to June 16, 1983.

This matter is subject to the Court's review under S.C. Code Ann. § 17-27-20(a)(5) which provides a PCR court may review the following:

> (a) Any person who has been convicted of, or sentenced for, a crime and who claims:
> ***
> (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint...

And see Delahoussave v. State 633 S.E.2d 158 (S.C. 2006) (interpreting Al-Shabazz v. State, 527 S.E.2d 742 (S.C. 2000)). Delahoussave is especially applicable since the instant case involves mandatory conditions, rather than discretionary conditions.

Given the likelihood of success on the merits; and the manifest injustice that would result from a denial, the Court should permit a hearing on the merits of this argument to proceed.

Respectfully submitted,

Greenville, South Carolina

June 18, 2008

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Post Office Box 383
Greenville, South Carolina 29602
telephone: (864) 271-3838
fax: (864) 271-2828

COUNSEL FOR APPLICANT

Exhibit A

```
;HTI330D                SCDC OFFENDER MANAGEMENT SYSTEM                  09/05/07
)MCOMITA                      RELEASE DATE SCREEN                        C041957
;CDC# ) ?75206                                              LOC: LIEBER
:OX, LESLIE -                                  SCDC CLASSIFICATION..: VIOLENT
)FFENDER TYPE...: ADULT-STRAIGHT SENTENCE  SEXUAL REGISTRY..: Y
                                           SEXUAL PREDATOR..: NOT APP
                                           DNA STATUS.......: COMPLETED
                                           GPS REQUIREMENT..: N
:URRENT SENTENCE:                    CONSECUTIVE SENTENCE ..:
              LIFE                   CURRENT SENT START DATE: 04/16/1987
'ROJECTED COMPLETION DATES
 MAXOUT DATE .....: 99/99/9999       CURRENT EWC .:
 YOA SIX YEAR DATE:                  CURRENT EEC .:
:NITIAL PAROLE DATE: 00/00/0000      NEXT PAROLE HEARING DATE: 00/00/0000
    INELIG FOR PAROLE-MULT VIOL OFFENSES.

'OTAL GT DAYS EARNED .......: 000000     LABOR CREW/WORK PROG DATE: 99/99/9999
'OTAL EARNED WORK CREDITS ..: 000000     LABOR CREW DISQ REASON:
'OTAL EDUCATION CREDITS ....: 000000      CURRENT OR PRIOR SEX CONDUCT CONVICT
'OTAL EXTRA EARNED CREDITS .: 000
'OTAL SERVICE TIME EARNED ..: 000000


'FKEYS:      5:HISTORY OF DATE CHANGES
```

CLASSIFICATION SUMMARY REPORT DATED 09/05/07 C041957

:DC# 00075206 COX,LESLIE - FBI# 542013P11
'FENDER TYPE.: ADULT-STRAIGHT SENTENCE
ISTITUTION ..: LIEBER CORRECTIONAL INST. DORM.....: MB0127A
:CURITY/CUST.: 3 CODE NOT IN TABLE TOBACCO USER....: N
IRR INCARC SENT...:999 YRS 0 MOS 0 DYS PROJ MAXOUT DATE: 99/99/9999
:NTRAL MONITORING.: YES SEPREQ PROJ PAROLE DATE: 00/00/0000
:D CLASS: 3 MED PROB/WORK RESTRICT EWC JOB..: NO CURRENT JOB
:NTAL CLASS: MI-3 (OUTPATIENT MENTAL H EDUC PGM.: NO CURR EDUC PROGRAM
IRRENT PROGRAM..: NO CURRENT PROGRAM EWC LEVEL: 0 EEC LEVEL:
:E...: 51 ASSIGNMENT..: LOCKED - UP

'EVIOUS NUMBERS:
NO PREVIOUS NUMBERS **

	SENTENCE				SENTENCE			
RRENT OFFENSES	YRS	MOS	DYS	COUNTY	START	V/NV	CAT	INDICT
SLT & BATT W/INTNT KILL	20	0	0	GREENVILLE	08/04/1987	V	4	87GS2303859
UG/POSS CONTRABAND PRI	10	0	0	GREENVILLE	08/04/1987	N	3	87GS2303860
DNAPPING	999	99	999	SPARTANBUR	04/16/1987	V	5	87GS42643
HICLE THEFT	10	0	0	LAURENS	03/02/1987	N	2	87GS30146
EACH OF TRUST/FRAUD IN	3	0	0	SPARTANBUR	08/28/1983	U	2	82GS422292
RGERY	7	0	0	SPARTANBUR	08/28/1983	U	2	83GS422290
RGERY	7	0	0	SPARTANBUR	08/28/1983	U	2	83GS422289
TAIN GOODS FALSE PRETEN	0	0	300	PICKENS	08/28/1983	U	1	00008
RGERY	7	0	0	SPARTANBUR	08/28/1983	U	2	83GS422288
RGERY	1	0	0	SPARTANBUR	08/12/1982	U	2	82GS421704-
RGRY/CNTRFTNG-NEC	4	0	0	SPARTANBUR	02/14/1975	U	2	00016
NTEMPT OF COURT	1	0	0	SPARTANBUR	02/14/1975	U	1	00015
RCENY-NEC	9	0	0	SPARTANBUR	02/14/1975	U	2	00014
NTEMPT OF COURT	1	0	0	SPARTANBUR	02/14/1975	U	1	00013

IOR COMMITMENTS OVER 90 DAYS:

08/17/83	*BREACH OF TRUST/FRAUD INT	3	YRS	0 MOS	0 DYS
08/13/82	*FORGERY	1	YRS	0 MOS	0 DYS
02/25/75	*FORGERY	9	YRS	0 MOS	0 DYS

TAINERS (HOLD,WANTED,NOTIFY):
NO DETAINERS

:APES:
01/13/87 OTHER ESCAPE RELATED CODE NOT IN TABLE

[MINAL CHARGES:
NO CRIMINAL CHARGES HISTORY

;AULTIVE DISCIPLINARIES:

)3/21/04	STRIKING AN INMATE WITH/	CONVICTED	MAJOR	INMATE
)1/02/04	STRIKING AN EMPLOYEE WIT	CONVICTED	MAJOR	STAFF
.1/06/99	POSSESSION OF A WEAPON	CONVICTED	MAJOR	
)5/21/97	POSSESSION OF A WEAPON	CONVICTED	MAJOR	
1/10/88	STRIKING AN EMPLOYEE WIT	CONVICTED	MAJOR	STAFF WEAPON
1/10/88	RIOT	CONVICTED	MAJOR	
1/10/88	STRIKING AN EMPLOYEE WIT	CONVICTED	MAJOR	STAFF WEAPON
0/25/88	POSSESSION OF A WEAPON	CONVICTED	MAJOR	
2/09/88	POSSESSION OF A WEAPON	CONVICTED	MAJOR	
6/20/87	STRIKING AN EMPLOYEE WIT	CONVICTED	MAJOR	STAFF
6/17/87	STRIKING AN EMPLOYEE WIT	CONVICTED	MAJOR	STAFF
5/27/87	STRIKING AN EMPLOYEE WIT	CONVICTED	MAJOR	STAFF
1/26/87	STRIKING AN EMPLOYEE WIT	CONVICTED	MAJOR	STAFF
0/06/75	POSSESSION OF A WEAPON	CONVICTED	MAJOR	

-ASSAULTIVE DISCIPLINARIES:

1/07/06	THREATENING TO INFLICT H	CONVICTED	MAJOR	
9/06/06	THREATENING TO INFLICT H	CONVICTED	MAJOR	
8/21/06	THREATENING TO INFLICT H	CONVICTED	MAJOR	
7/27/06	THREATENING TO INFLICT H	CONVICTED	MAJOR	

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2007-CP-42-2757
Paul Leslie Cox, #75206,	)	
	)	
Applicant,	)	
	)	
v.	)	**RULE 59(e), SCRCP, MOTION TO ALTER OR AMEND**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Now comes the Respondent, respectfully asking the Court to alter or amend its Order, filed August 22, 2008, granting reconsideration to the Applicant's application, which had previously been dismissed. The Respondent did not receive a copy of the signed order until October 10, 2008. The Respondent asks the Court to reconsider its decision, pursuant Rule 59(e), SCRCP, where the order grants the Applicant discovery despite the Applicant's failure to show grounds for discovery.

I.

The Uniform Post-Conviction Procedure Act comprehends and takes the place of the statutory writ of habeas corpus found in S.C. Code Ann. §§ 17-17-10 (1985), *et seq.*, under which this action has been filed. *See* S.C. Code Ann. § 17-27-20(b) (2003). The Uniform Post-Conviction Procedure Act does not allow for discovery in a non-capital post-conviction relief case without good cause. S.C. Code Ann. § 17-27-150(A) states:

> A party in a noncapital post-conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for the effective utilization of discovery procedures, counsel may be appointed by

the judge for an applicant who qualifies for appointment pursuant to Section 17-27-60 or similar applicable provisions of law.

First, the Applicant can subpoena a copy of his criminal trial attorney's file without invoking the discovery process. Second, the Applicant has failed to specify any basis for his discovery motion. South Carolina case law requires the Applicant to set forth specific grounds for discovery, prohibiting even the speculation of what discovery may reveal. In this case, the Applicant hasn't set forth any grounds for discovery whatsoever. *See, e.g.*, Strickler v. Greene, 527 U.S. 263, 286, 119 S.Ct. 1936, 1950-1951 (1999) ("Mere speculation that some exculpatory material may have been withheld is unlikely to establish good cause for a discovery request on collateral review."); U.S. v. Williams, 544 F.2d 1215, 1217 (4th Cir. 1976) (noting that a conclusory argument does not demonstrate "good cause").

The Applicant has failed to show good cause to support discovery. Under the Uniform Post-Conviction Procedure Act, discovery cannot be granted in PCR without the showing of good cause.

Even if the Applicant had shown good cause, the Applicant's discovery requests are unreasonable. The Attorney General's Office does not have any authority over the majority of items requested. The Attorney General's Office only has custody, possession, and control over PCR files or files in cases that our office prosecuted. As our office did not prosecute this case, we only have custody or control over the PCR file. Files held by other State agencies are not within our custody, possession, or control. Consequently, the Attorney General's Office has no jurisdiction or authority to obtain these files.

The Applicant's attorney has equal access to files within the control of other State agencies. As Applicant's counsel, Mr. Freeman should have no difficulty in working with these

agencies to get these files. The Applicant has failed to demonstrate good cause for shifting the discovery burden to the Attorney General's office for these third party files.

For the above reasons, the Respondent asks the Court to amend its order granting discovery pursuant Rule 59(e), SCRCP.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MICHELLE J. PARSONS
Assistant Attorney General

BY: Michelle J. Parsons
ATTORNEYS FOR RESPONDENT

P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

October 14, 2008

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS IN THE SEVENTH JUDICIAL CIRCUIT
Paul Leslie Cox, Applicant, vs. State of South Carolina, Respondent.	2007-CP-42-2757 **AFFIDAVIT OF SERVICE BY MAIL**

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the State's Rule 59(e), SCRP, Motion to Alter or Amend in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

William S. F. Freeman, Esquire
P.O. Box 383
Greenville, South Carolina 29602

Anne A. Mueller
Legal Assistant for the Respondent

DATED this 14th day of October, 2008.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)

Paul Leslie Cox
☐ Plaintiff

v.

State of South Carolina
☒ Defendant.

CASE NO.
2007-CP-42-2757

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
William S.F. Freeman, Bar No.	Michelle J. Parsons Bar No.
Address:	Address:
P.O. Box 383	P.O. Box 11549
Greenville, South Carolina 29602	Columbia, SC 29211-11549
phone: fax:	phone: (803) 734-3737 fax: (803) 734-4113
e-mail: other:	e-mail: other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached motion.

Michelle J. Parsons — October 14, 2008
Signature of Attorney for ☐ Plaintiff / ☒ Defendant — Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT:
☒ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT
	2007-CP-42-2757
Paul Leslie Cox, #75206, Applicant, v. State of South Carolina, Respondent.	**ORDER GRANTING RULE 59(e) MOTION**

This matter comes before the Court by way of Respondent's Motion to Alter or Amend the Order granting Applicant's Motion to Reconsider and allowing discovery. The Order granting Applicant's motion in this matter was entered on August 22, 2008.

Based upon careful reconsideration of the pleadings, the Applicant's Motion to Reconsider, the Order granting applicant's Motion to Reconsider, and the Respondent's Rule 59(e), Motion to Alter or Amend, the Court is persuaded to grant the Respondent's Motion to Alter or Amend. Therefore, the order granting discovery dated August 22, 2008 is revoked.

This Court finds that it is necessary to hold an evidentiary hearing to fully consider the Applicant's allegations and the Respondent's motion to dismiss.

AND IT IS SO ORDERED this 20th day of February, 2014.

J. Mark Hayes, II
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

23PC

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	7TH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	
Paul Leslie Cox, #75206)	CA: 2007 -CP-42- 2757
Applicant)	
)	
Vs)	CERTIFICATE OF SERVICE
)	
State of South Carolina)	
Respondent)	
)	

I certify that, on this date, I served a copy of the Order of dismissal

in this action dated 5-22, 2008 on May 23, 2008

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in and envelope with sufficient postage affixed, addressed as follows:

S. Prentiss Counts, Esq.
William S.F. Keenan, Esq.
Paul Leslie Cox, #75206

May 23rd, 2008 — (DATE)

Sharon Winstead — (SIGNATURE)