

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
	)	Case # 2014-CP-44-0078
Robert Dale Smart, pro se	)	
	)	
Applicant,	)	
v.	)	NOTICE OF INTENT TO APPEAL
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

The Applicant would like to take leave and move this court to be allowed to file this NOTICE OF INTENT TO APPEAL. The Applicant received the Final Order of Dismissal on January 10<sup>th</sup>, 2015 from the Clerk of Court, who filed the order on January 8<sup>th</sup>, 2015. The Applicant would like to file because his constitutional rights, state and federal, have violated.

Respectfully submitted,

*Robert D. Smart*

Robert Dale Smart, pro se

January 13<sup>th</sup>, 2015

**RECEIVED**

JAN 16 2015

**S.C. SUPREME COURT**

FILED FOR RECORD  
 2015 JAN 13 AM 10:54  
 WILLIAM F. GAULT  
 CLERK OF COURT  
 UNION, SC

STATE OF SOUTH CAROLINA

)

IN THE COURT OF COMMON PLEAS

COUNTY OF UNION

)

SIXTEENTH JUDICIAL CIRCUIT

Applicant,

)

Robert Dale Smart, pro se,

)

Case # 2014-CP-44-0078

)

v.

)

NOTICE OF INTENT TO APPEAL

STATE OF SOUTH CAROLINA,

)

Respondent.

)

CERTIFICATE OF SERVICE

I, Robert Dale Smart, certify that on this 13<sup>th</sup> day of January, 2015 served a copy of the NOTICE OF INTENT TO APPEAL on the Respondent by placing a copy in the U.S. Mail postage prepaid and addressed as follows;

Office of the Attorney General

State of South Carolina

PO Box 11549

Columbia, S.C. 29211-1549

January 13<sup>th</sup>, 2015

si Robert D. Smart

Robert Dale Smart, Pro se

FILED FOR RECORD  
2015 JAN 13 AM 10:55  
WILLIAM F. GAULT  
CLERK OF COURT  
UNION, SC

From,

January 13, 2015

Robert Dale Smart

110 Oakridge Drive

Cowpens, S.C. 29330

Re; Smart v. State of South Carolina

Case # 2014-CP-44-0078

To the Clerk of the Supreme Court of South Carolina,

I am filing a NOTICE OF INTENT TO APPEAL in the above named case. Could you please keep me informed of when to file my initial pleadings.

Respectfully submitted,

*Robert D. Smart*  
s/ Robert D. Smart

**RECEIVED**

JAN 16 2015

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA )  
COUNTY OF UNION )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Robert Dale Smart, *pro se*, )  
Applicant, )

2014-CP-44-0078

JUDGEMENT ROLL NO. 2014CP4400078

v. )

FINAL ORDER OF DISMISSAL

State of South Carolina, )  
Respondent. )

WILLIAM F. GAULT  
CLERK OF COURT  
UNION, SC

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This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed February 21, 2014. The Respondent (the State) made its Return and Motion to Dismiss on August 27, 2014, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated September 4, 2014, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. The Applicant replied timely to the Conditional Order of Dismissal on October 7, 2014 after receiving a copy of the Conditional Order of Dismissal on October 2, 2014.

In a document titled "Motion of Objection to Conditional Order of Dismissal," the Applicant argues the State has never proven jurisdiction in his case and requests this Court to "pin-point" where in the transcript the State proves jurisdiction. Applicant also argues the trial testimony proves he never molested the victim and that he took a lie-detector test which confirms his innocence.

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JAN - 8 2015

W. F. Gault  
CLERK OF COURT

SCANNED

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This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court finds that the current application for post-conviction relief must be summarily dismissed because the doctrine of *res judicata* bars the Applicant'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 raised these exact issues in his 2008 PCR Federal Habeas Corpus actions. See "Report and Recommendation of Magistrate Judge" C/A No. 8:08-3918-GRA-BHH. 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*. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

Additionally, this Court finds Applicant has failed to show why he could not have raised these issues within the statute of limitations as set forth by S.C. Code Ann. § 17-27-45(a). S.C. Code Ann. §17-27-45(a) reads as follows:

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

The South Carolina Supreme Court has held that the statute of limitations shall apply to all

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applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on January 17, 2001. The Remittitur after the Applicant's unsuccessful appeal was issued on January 7, 2003. Therefore, the Applicant was required to file his application by January 8, 2004. This Application was filed on February 21, 2014, which was well after the statutory filing period had expired.

Further, this Court finds Applicants current application is successive to his 2003 PCR case and 2008 Federal Habeas Corpus case. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State,

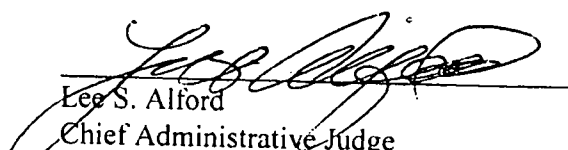
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274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

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

This Court hereby notifies the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 5<sup>th</sup> day of December, 2014.

  
Lee S. Alford  
Chief Administrative Judge  
Sixteenth Judicial Circuit

, South Carolina.

JUDGEMENT SIGNED AND  
ENTERED UP 12-5-14

  
CLERK OF COURT

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**JUDGMENT ROLL NO. 2014CP4400078**  
**FORM 4**

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2014CP4400078

FILED FOR RECORD  
 2015 JAN 8 PM 3 34  
 WILLIAM F. ST  
 CLERK OF COURT  
 UNION, SC

Robert Smart

South Carolina State of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- 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:

See attached Final Order of Dismissal  
**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

**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)

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/Lee S. Alford  
Circuit Court Judge

2113  
Judge Code

12/05/2014  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 8th day of January, 2015, and a copy mailed first class or placed in the appropriate attorney's box on the 8th day of January, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Robert D. Smart  
110 Oakridge Drive  
Cowpens, SC 29330

James Rutledge Johnson PO Box 11549 Columbia, SC  
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*William F. Gault / JGW*

Court Reporter

William F. Gault - Clerk of Court

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

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

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STATE OF SOUTH CAROLINA )  
COUNTY OF UNION )

IN THE COURT OF COMMON PLEAS )  
SIXTEENTH JUDICIAL CIRCUIT )

Robert Dale Smart, *pro se*, )

2014-CP-44-0078 )

Applicant, )

v. )

CONDITIONAL ORDER OF DISMISSAL )

State of South Carolina, )

Respondent. )

WILLIAM F. GAULT  
CLERK OF COURT  
UNION, SC

2014 OCT 2 AM 11 54

FILED FOR RECORD

This matter comes before this Court by way of an application for post-conviction relief filed

February 21, 2014. The Respondent made its Return and Motion to Dismiss on

August 27, 2014.

### PROCEDURAL HISTORY

Applicant was indicted by the Union County Grand Jury during the November 9, 2000 term of the Union County Court of General Sessions for one count of Criminal Sexual Conduct with a Minor, First Degree (1998-GS-44-296). Applicant was represented by John B. White, Jr., Esquire, and J. Mark Hayes, II, Esquire, both of Spartanburg, SC. The State was represented by Bradford W. Cranshaw, Esquire, and Howard L. Steinberg, Esquire, both Assistant Attorney Generals for the State of South Carolina. On January 16-17, 2001, Applicant was tried by jury and convicted of Criminal Sexual Conduct with a Minor, First Degree. The Honorable Howard P. King, Circuit Court Judge, sentenced Applicant to fifteen years confinement.

Counsel for Applicant timely filed a Notice of Appeal on January 26, 2001. On appeal, Applicant was represented by Tara Shurling, Esquire. The appeal was perfected with the filing of

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OCT 2 2014  
W. F. Gault  
CLERK OF COURT

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Final Brief of Appellant. In an unpublished opinion filed on December 16, 2002, the South Carolina Court of Appeals affirmed Applicant's conviction. State v. Smart, 2002-UP-781 (filed December 16, 2002). The Remittitur was issued on January 7, 2003.

**2003-CP-44-0073**

The Applicant filed his first application for post-conviction relief on March 3, 2003. Specifically, Applicant alleged trial counsel was constitutionally ineffective and unduly prejudiced Applicant denying him a fair trial through counsel's failure: to object to and move for a mistrial based on the identification testimony of the witness Sharon Wright, who was qualified as an expert in the field of child sexual abuse treatment and psychotherapy; to object to the assistant attorney general's improper comments on Applicant's silence and failure to present a defense; and to subpoena and call witnesses who would have provided Applicant with an alibi defense.

Respondent filed its Return on April 23, 2004. An evidentiary hearing was convened on October 11, 2005. The Applicant was represented by Frank Epps, Esquire. The Honorable John C. Hayes, III, denied and dismissed the Applicant's application with prejudice by Order dated March 27, 2006.

Counsel for Applicant timely filed a Notice of Appeal to the PCR Court's Order on April 21, 2006. On appeal, Applicant was represented by Wanda H. Carter, Esquire, Deputy Chief Attorney of the South Carolina Commission on Indigent Defense Division of Appellate Defense. By letter filed December 7, 2006, Applicant moved to relieve counsel and file his appeal pro se. In a South Carolina Supreme Court letter Order dated January 18, 2007, Applicant's motion to relieve counsel was denied. Applicant's appeal was subsequently perfected with the filing of a Petition for Writ of

Certiorari on February 20, 2007. Respondent filed its Return on March 26, 2007. In a letter Order dated February 7, 2008, the South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari. The Remittitur was sent on February 26, 2008.

**C/A No. 8:08-3918-GRA-BHH**

Applicant filed a Petition for Writ of Habeas Corpus in the Federal District Court for the District of South Carolina on December 1, 2008. Respondent filed its Return and Motion for Summary Judgment on April 10, 2009. On October 21, 2009, the Honorable Bruce H. Hendricks issued a Report and Recommendation, recommending the State's Motion for Summary Judgment be granted. On December 9, 2009, the Honorable G. Ross Anderson, Jr. adopted the Report and Recommendation and dismissed Applicant's Federal Habeas Corpus petition with prejudice.

**C/A No. 2:13-3621-GRA-BHH**

Applicant filed a second Petition for Writ of Habeas Corpus in the Federal District Court for the District of South Carolina on November 24, 2013, alleging the exact same reasons as he is seeking PCR in this application. On June 2, 2014, the Honorable Bruce H. Hendricks issued a Report and Recommendation, recommending the petition be summarily dismissed. On July 9, 2014, the Honorable G. Ross Anderson, Jr. adopted the Report and Recommendation and dismissed Applicant's Federal Habeas Corpus petition with prejudice.

In his current Application filed on February 21, 2014, the Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Motion for the State to Prove Jurisdiction"

"The Petitioner in the above named case would like to take leave and move this court to be allowed to file this Motion to Prove Jurisdiction in the above named case and or for this application to be

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ruled upon WITHIN THIRTY DAYS due to the Petitioner was stalked and nearly murdered by the Tezner family. The Supreme Court of S.C. referred the case back to General Sessions Court. 1) The Petitioner is in fear for his life due Petitioner saw one of the Tezner in the road in front of his residence. 2) That in Union County in August or September of 2013 a skinhead murdered a sex offender and his wife, the guy had a list of other sex offender. 3) The Petitioner's sister-in-law, Dovie Smart, is in fear for life due to these charges because Petitioner is on house arrest and has nowhere else to live, Brady Smart has stage four cancer if he dies Petitioner will have nowhere to live.”

On May 1, 2014, Applicant filed a “Motion to Compel the State to Prove Jurisdiction,” alleging that nowhere in Judge King’s sentencing order is there anything concerning Applicant being placed on community supervision and that he is being forced to wear an ankle monitor.

On July 29, Applicant filed a “Motion for Default Judgment” alleging that the State has never “come forward to prove beyond a reasonable doubt that the child was molested during the incident period or had jurisdiction in this case.”

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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 to -160 . S.C. Code Ann. §17-27-45(a) reads as follows:

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

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on January 17, 2001. The Remittitur after the Applicant’s unsuccessful appeal was issued on January 7, 2003. Therefore,

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the Applicant was required to file his application by January 8, 2004. This Application was filed on February 21, 2014, which was well 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) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

This Court also finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court further finds this Application is barred by the doctrine of *res judicata*. *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.

Applicant had a full opportunity to litigate all allegations in his 2003 PCR application and his 2008 and 2013 Federal Habeas Corpus actions. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, this Court summarily dismisses these claims as barred by *res judicata*.

This Court further summarily dismisses Applicant "Motion for Default Judgment." This Court finds Applicant has failed to prove that he was prejudiced by the State alleged delay as he has had a prior opportunity to raise these allegations in his previous actions.

Therefore, this Court finds that the application for post-conviction relief is summarily

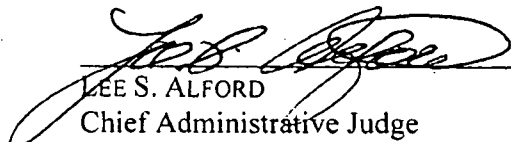
dismissed for failure to file within the time mandated by statute, for being successive and for being barred by the doctrine of *res judicata*.


### CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Union County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: J. Rutledge Johnson, Esquire  
P.O. Box 11549  
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 4<sup>th</sup> day of September 2014.

  
LEE S. ALFORD  
Chief Administrative Judge  
Sixteenth Judicial Circuit

 \_\_\_\_\_, South Carolina

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RB

Robert Spart  
10 Oakridge Drive  
Copers, S.C. 29330

REGISTERED MAIL



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