

# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA  
29211  
1231 GERVAIS STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1080  
FAX: (803) 734-1499  
[www.sccourts.org](http://www.sccourts.org)

May 30, 2012

The Honorable Connie Reel-Shearin  
Clerk of Court  
180 N Irby St MSC-E Rm B11  
Florence SC 29501-3456

## REMITTITUR

Re: Emmanuel McFadden v. The State  
Lower Court Case No. 2011CP2102391  
Appellate Case No. 2012-208887

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,



CLERK

Enclosure

cc: David A. Spencer, Esquire  
Mr. Emmanuel McFadden



State of South Carolina  
in the Supreme Court  

---

Appeal from County  
of  
Florence

RECEIVED

APR 08 2012

S.C. SUPREME COURT

Emmanuel Mc Fadden, #124011

----- Petitioner/Applicant

VS.  
State of South Carolina, . . . . . Respondent.

Case No # 2011-CP-21-2391

Certificate of Service By Mail.

- 1.) I, am an Employee of the applicant, 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 this Explanation of the Sufficient Facts of this Case, on the State's Respondent, in the above-captioned matter on the following person(s) by depositing in the United State Mail, Postage prepaid:

To: Julie M Thames  
Attorney General office  
P. O. Box 11549.  
Columbia, S.C.

Daniel E Shearouse  
To; Clerk of Court.  
Supreme Court of S.C.,  
P. O. Box 11330.  
Columbia, S.C. 29211

Emmanuel Mc Fadden  
Pro, Se: # 124011

SWORN to and subscribed before me this  
2nd day of Apr, 2012.  
Emilia H. [Signature] (L.S.)  
Notary Public for South Carolina

My Commission Expires: 4-27-2016

State of South Carolina  
in the Supreme Court  
Appeal from Florence

Emmanuel McFadden,  
Petitioner,  
vs,

State of South Carolina,  
Respondent,

This is the Explanation of the  
Sufficient Facts of this case.

Case No. # 2011-CP-21-2391

The Petitioner received the Order, on 3/19/2011, of the Circuit Court determined that this action is barred as being Successive and as being entirely under the statue of limitations. Rules 243(C), SCACR, requires you to provide a written explanation as to why this determination was improper. This explanation must contain sufficient facts, arguments and citation to legal authority to show that there is an arguable basis for asserting that determination by the Lower Court was improper.

### History

The application for Post Conviction Relief (P.C.R.) filed

The Petitioners argument that this action is not barred as being successive based on the Mandate set forth in *Tilley vs. State of South Carolina*.

.... on September 07, 2011, "Yes" this is applicant's... is in his fourth application to court, but the Petitioners argument, that this action is not barred as being successive based upon the Mandate set fourth in *Tilley vs. State of South Carolina*, The Petitioner submits this successive, application pursuant, to the Mandates that are set fourth in *Tilley vs. States, 511 S.E. 2nd. 188 (1999)* In which the Petitioner file under *Tilley vs. State*, who filed four P.C.R Hearing application, the state failed to address all the issues in this case, that make it mandatory for a P.C.R attorney to make sure that all available grounds are raised in the Post Conviction Proceeding, which was not done in the applicants initial P.C.R Hearing, Mandatory Special Parole. The court held that state court's failure to inform defendant about Mandatory Parole term prior to guilty Plea, and showing that defendants would not have pled guilty, had he been so advised, warrant Habeas Relief, see *Blair v. McCarthy 881 T2d 602 (9th Cir. 1985)*, also see; *United State v. Wolah, 510 T2d 164 (6th Cir. 1975)*, a defendant must be informed of the maximum possible period of incarceration and other direct consequences of a guilty plea.

Trial Counsel misrepresentation of the maximum

.... penalty on counts of indictment, which defendant pled guilty constituted Ineffective Assistance of Counsel and warranted an Evidentiary Hearing, Pitt v. United State, 763 F2d 197. (6th Cir. 1985), a Pro Se litigant cannot thereafter file any further pleadings, and any amendment to his application must be made by counsel, State v. Sanders, 237 S.E. 2d 53 (1977), Foster v. State, 379 S.E. 2d 907 (1989), thus if Post Conviction Counsel does not amend the Pro Se application, the application has no way to have all supporting grounds heard. The applicant have yet to receive a full bite of the apple of the Justice Tree, and to not have a full bite would prejudice the applicants case.

### New Discovery Evidence

In this case, the petitioner could not have been discovered before trial, because counsel failed to order a competent hearing. This material go to heart of the case, and issue of guilt or innocence, that counsels failure to seek expert testimony from a document examiner prior to trial established a lack of due diligence, thus undermining his claim that Post-trial expert assistance to the effect that the documents. State v. Allen, 279 S.E. 2d 365, 366-67 (1981). SCR Crim P. 29(B)

The applicants application was already properly amended and included within his appendix for court session. The applicants attorney did not raise the amended argument within the court session to prove the facts, the issue within the arguments was not mentioned were .... a defendant must be advised of the Constitutional Rights he or she is waiving. The applicant's sixth amendment Right to Effective Assistance of Counsel.

On and about January the plaintiff was involved in a car accident and in the accident he had a serious head trauma one or two days before this incident of this case. Once the plaintiff had entered the hospital the doctor did a number of tests. The family doctor stated that he had blood in the forehead once he took the Cat Scan of his head, all of this information was withheld from the Preliminary Hearing, because the attorney failed to do a discovery of the plaintiff's condition before going into a plea.

## Sufficient Facts

Under newly discovery of evidence we are subpoenaing the old records from the incidents of Jan. 1984; also the insurance company has records that will reflect information on this incident, all of this information is valid and shows of creditable information that this court should consider, before end of Jurisdiction of Case.

(issue) The court must concern, at a time that the Plaintiff was pleading to this charge, he was suffering trauma to the head and he was on three types of medication. His attorney failed to make the courts aware of his condition before making the plea, all of this information was withheld from the P.C.R Hearing and also the Plaintiff's cannot move forward until the court allows the Plaintiff to have a thorough investigation of the insurance company, and the hospital he also is making a Motion at this time, to subpoena this valuable information from the insurance company and the hospital in order for the Plaintiff to move forward in a Writ of Certiorari.

(Law) Defense Counsel failed to ask for Psychiatric Evaluation of Petitioner, fall before prevailing professional norms and constituted ineffective assistance. The standard of proof in this case was based on preponderance of evidence. *Bouchillen v. Collins*, 907 F 2d 589 (5th Cir. 1990)

(Law) The "End of Justice", stated two further points should

....be noted first, the foregoing enumeration is not intended to be exhaustive, the test is "The End of Justice" and it cannot be too finely particularized. Second, the burden is on the application to show that although the grounds of the new application to show.

### Newly Discovery Insanity Defense

Counsel's failure to enter the Insanity Defense after having seen letter from Psychiatric stating that defendant was manic and psychotic when he committed the crime before advising defendant to plead guilty constitutes Ineffective Assistance of Counsel, *U.S. v. Kauffman* 109 F.3d 186 (3rd Cir. 1997). Coersion, of attorney to take a plea agreement which was ambiguous, amounted to Ineffective Assistance of Counsel, *U.S. v. Borders* 992 F.2d 563 (5th Cir. 1993)

Trial Counsel's ineffectiveness constituted "cause" and court's failure along with the prosecutor's failure, to adequately inform defendant that mere presence, at the time crimes were committed did not constitute the elements of the offence, amounted to a fundament miscarriage of Justice and required Evidentiary Hearing. see, *Nevarez-Diaz v. U.S.* 870 F.2d 417 (7th Cir. 1989), under new discovery evidence of the document, Lab 1-84-029, F-84-6220-14 this report shows two (2) different guns, see Marked 84-10-1 and 84-10-2. The

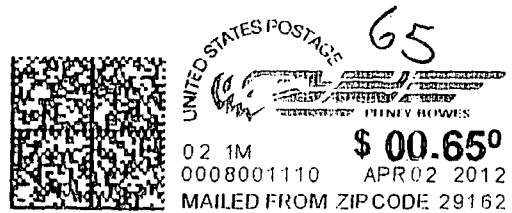
.... Plaintiff raised a procedural and a substantive claim of incompetency at the time to take a Plea of Guilty and argues that the state trial court violated his Procedural Due Process Right under Pate v. Robinson, 383 U.S. 375 86 S.Ct 836, 15 L.Ed 2d 815 (1996). The U.S.C.A fourth tenth amendment. Presenting to Due Process "Clause" prohibits the state from trying and consisting mentally, incompetent defendants. see, Jame v. Singletary, cite as 957 F.2d 1562 (11th Cir. 1992). See, Hayden v. State 299 S.E. 2d 854 (1983) State v. Edens, 250 S.E. 2d at 118; See also, State v. Pierce, 263 S.C. 23, 207 S.E. 2d 414. (1999). State v. South, 427 S.E. 2d at 668, See also, State v. Cashey, 273 S.C. 325, 256 S.E. 2d. 737 (1979)

## Conclusion

In, the conclusion of the Explanation of the Sufficient and facts of this case, should be granted, on a number of issue, and the substance of the claims brought to the courts attention, The Petitioner also maintained that the evidence was relevant to his guilty or innocense because he did not: receive competent hearing and counsel failure to inform the Petitioner before entering guilty plea, that sentence might be under the Sentencing Guideline constitute Ineffective Assistance, "The End of Justice" require Federal Court to entertain successive petition only where the Petitioner makes a colateral showing of factual innocence. The Petitione for a Writ of Cetirorari should be granted.

Respectfully Submitted,

Emmanuel McFadden #124011  
Turbeville C.I. TAWCA B-154  
P.O. Box 252  
Turbeville, S.C. 29162



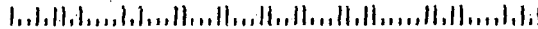
**RECEIVED**

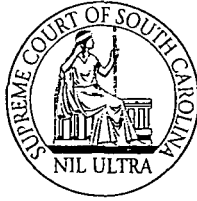
APR 02 2012

MAILROOM  
TURBEVILLE CI

Clerk of Court  
Supreme Court of S.C.  
P.O. Box 11330  
Columbia, S.C. 29211

29211133030





# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 7, 2012

Emmanuel McFadden #124011  
Turbeville Correctional Inst.  
P.O. Box 252  
Turbeville, SC 29162

Re: McFadden, Emmanuel v. The State

Dear Mr. McFadden:

This Office has received a notice of appeal in the above post-conviction relief action. Since the order of the circuit court determined that this action is barred as being successive and as being untimely under the statute of limitations, Rule 243(c), SCACR, requires you to provide a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. The failure to make a sufficient showing may result in the dismissal of this matter.

I ask that you provide the explanation required by Rule 243(c) within twenty (20) days of the date of this letter.

Very truly yours,

CLERK

DES/jj

cc: Assistant Attorney General David Spencer

RECEIVED

FEB 28 2012

S.C. SUPREME COURT

IN THE COURT OF COMMON PLEAS

State of South Carolina )  
County of FLORENCE )

APPLICANT, )

Vs. )

STATE OF SOUTH CAROLINA )  
RESPONDENT )

CASE # 2011-CP-21-239

NOTICE OF APPEAL  
WRIT OF CERTIORARI

Under: Rule 203 SCACR.

) Rule 243, SCRAP.

The Applicant is file a notice of appeal base on the rule 203 and 243 of the court. and the service and filing defined by rule 262 time for service. The notice of appeal shall be file with the clerk of the lower court and with clerk of the Supreme Court, this fee is not required for criminal appeals or appeals by the State of South Carolina or its departments or agencies. and under Rule 243, Notice of appeal and Ordering Transcript, and shall obtain from the court reporter a transcript of the proceeding in the lower court.

DATED THIS 23<sup>rd</sup> DAY OF February, 2012.

RESPECTFULLY SUBMITTED,  
Emmanuel A. Walker

SWORN to and subscribed before me this  
23<sup>rd</sup> day of February, 2012.  
Calvin Stokes (L.S.)  
Notary Public for South Carolina

My Commission Expires: 4-27-2016

RECEIVED

FEB 28 2012

STATE OF SOUTH CAROLINA.  
COUNTY OF FLORENCE.

S.C. SUPREME COURT

) IN THE COURT OF COMMON PLEAS.

)  
)  
) Applicant,  
)  
) vs,)  
)

Case;# 2011-CP-21-239

)  
) STATE OF SOUTH CAROLINA.  
)  
) Respondent.  
)  
)

AFFDAVIT OF SERVICE BY MAIL.

(1) I am an inmate at Turbersville Correctional Inst.

(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 Notice of Appeals in the above-captioned matter on the following person(s) by depositing same in the United State mail postage prepaid.

To, Attorney General Office.  
Post Office Box 11549  
Columbia S.C. 29211.

Clerk of Court.  
Att; Connie R Sheorin.  
180 N. Irby st MSC-Room  
B-11 Florence S.C. 29501.

Clerk of Court Office.  
Supreme Court, Bldg, Suit 305.  
Columbia S.C. 29201.

Dated this 23rd day of feb, 2012.

Respectfully Submitted.

*Garman W. McFadden*

SWORN to and subscribed before me this  
23rd day of February, 2012.  
Paul J. [Signature] (L.S.)  
Notary Public for South Carolina

My Commission Expires: 4-27-2016

State of South Carolina )  
County of FLORENCE )

IN THE COURT OF COMMON PLEAS

APPLICANT, )

CASE # 2011-CP-21-239

Vs. )

NOTICE OF APPEAL  
WRIT OF CERTIORARI

STATE OF SOUTH CAROLINA )  
RESPONDENT )

Under: Rule 203 SCACR.  
Rule 243, SCRAP.

The Applicant is file a notice of appeal base on the rule 203 and 243 of the court. and the service and filing defined by rule 262 time for service. The notice of appeal shall be file with the clerk of the lower court and with clerk of the Supreme Court, this fee is not required for criminal appeals or appeals by the State of South Carolina or its departments or agencies. and under Rule 243, Notice of appeal and Ordering Transcript, and shall obtain from the court reporter a transcript of the proceeding in the lower court.

DATED THIS 23<sup>rd</sup> DAY OF February, 2012.

RESPECTFULLY SUBMITTED,  
Emmanuel N. Williams

SWORN to and subscribed before me this  
23<sup>rd</sup> day of February, 2012.  
Carlye Stalder (L.S.)  
Notary Public for South Carolina

My Commission Expires: 4-27-2016

STATE OF SOUTH CAROLINA.

COUNTY OF FLORENCE.

) IN THE COURT OF COMMON PLEAS.

)

Applicant,

)

Case;# 2011-CP-21-239

vs,

)

))

STATE OF SOUTH CAROLINA.

)

AFFDAVIT OF SERVICE BY MAIL.

Respondent.

)

)

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To, Attorney General Office.

Post Office Box 11549

Columbia S.C. 29211.

Clerk of Court.

Att; Connie R Shearin.

180 N. Irby st MSC-Room

B-11 Florence S.C. 29501.

Clerk of Court Office.

Supreme Court, Bldg, Suit 305.

Columbia S.C. 29201.

Dated this 23rd day of feb, 2012.

Respectfully Submitted.

*Emmanuel McFadden*

SWORN to and subscribed before me this

23rd day of February, 2012.

*Emily Shady* (L.S.)

Notary Public for South Carolina

My Commission Expires: 4-27-2016

RECEIVED

FORM 4

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

FILED

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2011CP2102391  
S.C. SUPREME COURT

Emmanuel Mcfadden

2011 DEC 30 AM 11:54

State

CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

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.
- 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:

\_\_\_\_\_  
\_\_\_\_\_

TRUE COPY  
COURT OF COMMON PLEAS  
FLORENCE COUNTY, S.C.

**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)

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.**

	12/30/2011	
Circuit Court Judge	Judge Code	Date

**For Clerk of Court Office Use Only**

This judgment was entered on **December 29, 2011**, and a copy mailed first class or placed in the appropriate attorney's box on **December 30, 2011**, to attorneys of record or to parties (when appearing pro se) as follows:

**Emmanuel Mcfadden** P.O. Box 252 Turbeville, SC 29162

---

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**David A. Spencer** S.C. Attorney General's Ofc. P.O. Box  
11549 Columbia, SC 29211

---

**ATTORNEY(S) FOR THE DEFENDANT(S)**

*Connie Reel-Shearin*

---

**Connie Reel-Shearin - Clerk of Court**

**Court Reporter**

FILED

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

) IN THE COURT OF COMMON PLEAS  
) TWELFTH JUDICIAL CIRCUIT  
2011 DEC 29 PM 12:58  
2011-CP-21-2391

Emmanuel McFadden, SCDC No. 124011

CONNIE DEEL-SHEARIN  
COP & GS  
FLORENCE COUNTY, SC

2011-CP-21-2391

FINAL ORDER

Applicant,  
v.  
State of South Carolina,  
Respondent.

DEEMED A TRUE COPY  
Clerk of Court  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

This matter is before this Court by way of an application for post conviction relief (PCR) filed September 7, 2011. This is Applicant's fourth PCR application challenging his 1984 murder, armed robbery, and criminal conspiracy convictions. He is alleging ineffective assistance of counsel. The State made its return and motion to dismiss on October 12, 2011, moving to dismiss this application on grounds of being successive and filed beyond the statute of limitations. After careful review of the pleadings from both parties, this Court issued a Conditional Order of Dismissal dated October 28, 2011. The Conditional Order was mailed directly to Applicant on November 3, 2011 and served personally on Applicant by SCDC on November 16, 2011 (see attached Affidavit of Service). Applicant made his response to the Conditional Order on November 29, 2011 in the appropriately entitled document: "Objection to Conditional Order of Dismissal".

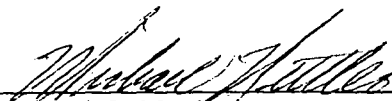
Applicant admits "Yes, this is Applicant's fourth P.C.R. application." Applicant argues that his claims of ineffective assistance of counsel are "newly discovered". Primarily, his claims allege defects in the plea proceedings. Certainly, these claims were discoverable in prior PCR applications. Applicant also alleges counsel was ineffective for failing to utilize a SLED ballistics report. Applicant has failed to indicated why this


alleged report could not have been discovered with due diligence in a time frame of less than twenty-seven years since the convictions and could not have raised the issue in one of his first three applications, the third being filed as recently as 2006. This Court finds Applicant has not provided sufficient reason why the Conditional Order should not become final and therefore dismisses this application with prejudice.

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

This Court hereby advises 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 29 day of Dec, 2011.

  
\_\_\_\_\_  
Michael G. Nettles  
Administrative Judge  
Twelfth Judicial Circuit

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

**FILED**  
2011 DEC 29 PM 12:38  
CONNIE REEL-SHEARN  
CCCP & GS  
FLORENCE COUNTY, SC

TRUE COPY  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

FORM 4

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2011CP2102391

FILED

CERTIFIED: A TRUE COPY  
C. Maria Kelly  
CLERK OF COURT  
FLORENCE COUNTY, S.C.

Emmanuel Mcfadden  
2011 NOV -3 PM 12:51  
COMM. DEEL...  
SCCP...  
FLORENCE...

State

PLAINTIFF(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.
- 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:

RECEIVED  
FEB 28 2012  
S.C. SUPREME COURT  
RECEIVED  
FEB 28 2012  
S.C. SUPREME COURT

**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)

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.**

11/3/2011

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )  
 )  
 Emmanuel McFadden, SCDC No. 124011, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 TWELFTH JUDICIAL CIRCUIT  
 2011-CP-21-239  
 2011-CP-21-2397  
**CONDITIONAL ORDER  
 OF DISMISSAL**

NOV - 3 PM 12:06  
 FILED

This matter is before this Court by way of an application for post conviction relief (PCR) filed September 7, 2011. This is Applicant's fourth PCR application. He is alleging ineffective assistance of counsel. The State made its return and motion to dismiss on October 12, 2011, moving to dismiss this application on grounds of being successive and filed beyond the statute of limitations.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 1984 term of the Grand Jury for Florence County for conspiracy to commit armed robbery and/or murder, attempted armed robbery, and murder (1984-GS-21-525). Applicant was represented by B. Hicks Harwell, Esquire and Allen Lewis, Esquire. On June 20, 1984, Applicant pled guilty as charged. The Honorable John H. Waller sentenced Applicant to consecutive sentences of life imprisonment for murder; twenty years imprisonment for attempted armed robbery; and five years imprisonment for conspiracy. Applicant did not appeal his convictions or sentences.

**CERTIFIED: A TRUE COPY**  
*Connie Red Spearin*  
 CLERK OF COURT C.P & G.S  
 FLORENCE COUNTY, S.C.

**1992-CP-21-1391**

Applicant subsequently filed his first PCR application on September 17, 1992 (1992-CP-21-1391). The Respondent filed its Return on November 17, 1992. Applicant raised allegations of ineffective assistance of counsel and involuntary plea. On October 20, 1993, an evidentiary hearing was held before the Honorable James E. Lockemy, at which the Applicant was present and was represented by Jerry Angelo, Esquire. By Order dated December 30, 1993, Judge Lockemy denied and dismissed the application with prejudice.

A timely Notice of Appeal was filed on the Applicant's behalf and a Petition for Writ of Certiorari was submitted by the South Carolina Office of Appellate Defense. On April 11, 1995, the South Carolina Supreme Court denied the Petition.

**3:95-1993-18BC**

On July 3, 1995, Applicant filed his first Petition in for Writ of Habeas Corpus in the United States District Court for the District of South Carolina (3:95-1993-18BC). In the petition, Applicant raised allegations of involuntary guilty plea, ineffective assistance of counsel, and a due process violation based on the length of his sentence. On August 6, 1995, Respondent made a Return and Motion for Summary Judgment. On February 29, 1996, a Report and Recommendation by the Honorable Joseph R. McCrorey, United States Magistrate Judge, was entered. In the Report, he recommended that summary judgment for the Respondent be granted. On March 11, 1996, Applicant made objections to the Report. On March 29, 1996, the Honorable David C. Norton, United States District Judge entered his Order granting summary judgment for Respondent.

Applicant appealed to the United States Court of Appeals for the Fourth Circuit. On August 6, 1996, the Court dismissed the appeal by unpublished opinion. Emmanuel McFadden v. Michael Moore, et. al, No. 96-6642 (4<sup>th</sup> Cir. August 6, 1996)(Unpublished).

**1996-CP-21-1143**

Applicant filed his second PCR application on September 9, 1996 (1996-CP-21-1143) raising allegations of involuntary guilty plea and after discovered evidence.<sup>1</sup> Respondent made its Return and Motion to Dismiss on December 18, 1996. A Conditional Order of Dismissal was entered by the Honorable J. Ernest Kinard on December 30, 1996, conditionally dismissing the application as successive. A Final Order denying and dismissing the second PCR application with prejudice was signed by Judge Kinard and filed on March 12, 1997.

A timely Notice of Appeal was filed on the Applicant's behalf and a Petition for Writ of Certiorari<sup>2</sup> was submitted by the South Carolina Office of Appellate Defense. By Order dated November 7, 1997, the South Carolina Supreme Court denied the Petition. The Remittitur was issued on November 25, 1997.

**3:98-2540-18BC**

Applicant filed a second Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina on August 7, 1998 (3:98-2540-18BC). On November 16, 1998, Respondent made a Return and Motion for Summary Judgment. On February 9, 1999, a Report and Recommendation by the Honorable Joseph R. McCrorey, United States Magistrate Judge, was entered. In the Report, he recommended

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<sup>1</sup> The after-discovered evidence allegation concerned the conditions of his confinement.

<sup>2</sup> The Petition for Writ of Certiorari was submitted pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

that summary judgment for the Respondent be granted. On February 26, 1999, Applicant made objections to the Report. On March 3, 1999, the Honorable David C. Norton, United States District Judge entered his Order granting summary judgment for the Respondent.

**Petition for Writ of Habeas Corpus - Florence County**

On November 7, 2000, Applicant filed a document captioned "Petition for Writ of Habeas Corpus" in the Florence County Clerk of Court's Office. Respondent filed a Return and Motion to Dismiss on May 4, 2001. On October 7, 2003, a hearing was convened on the Motion to Dismiss. The Honorable John M. Milling found that because a state habeas corpus petition must be filed in the original jurisdiction of the South Carolina Supreme Court, the petition had to be treated as a PCR action. Judge Milling specifically found the trial court had subject matter jurisdiction to accept Applicant's plea and denied and dismissed the Petition with prejudice by Order dated November 25, 2003.

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. By Order dated April 20, 2005, the South Carolina Supreme Court denied the Petition. The Remittitur was issued on May 6, 2005.

**2006-CP-21-1309**

Applicant filed his third PCR application on August 2, 2006. The State made its return and motion to dismiss on May 15, 2007. The Honorable Thomas A. Russo issued a Conditional Order of Dismissal on May 23, 2007. Applicant objected in writing with a pleading dated May 29, 2007. Judge Russo dismissed the action with prejudice on June 22, 2007.

## DISCUSSION

This Court finds that this Application should be summarily dismissed because it is both untimely filed and successive.

### Statute of Limitations

This Court finds the statute of limitations applicable to post-conviction relief actions bars the entire application. Under S.C. Code Ann. § 17-27-45 (Supp. 2000), an inmate is required to file a post-conviction relief application “within one year after the entry of a judgment of conviction . . . .” For convictions prior to the July 1, 1995 effective date of the statute, the applicant was allowed one year after the statute's effective date to file an application. See Peloquin v. State, 321 S.C. 468, 470 S.E.2d 606, 607 (1996). For such a conviction the application must have been filed prior to July 1, 1996.

As shown above, the Applicant's conviction and sentence occurred in 1984. The Applicant should have filed this application on or before July 1, 1996. As shown above, the Applicant filed this post-conviction relief application on September 7, 2011, exceeding the applicable statute of limitations by fifteen years. Accordingly, since Applicant did not present these allegations in a timely manner, this application should be summarily dismissed with prejudice as barred by the statute of limitations.

### Successive Application

This Court finds that the application should also be summarily dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

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, or 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.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, supra.

Applicant could have raised the issue of ineffective assistance of counsel for failure to file an appeal in his prior applications. Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, the Application should be dismissed as successive.

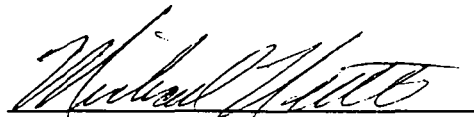
### CONCLUSION

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

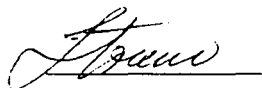
this Order should not become final. The Applicant shall file any reasons he may have with the Florence County Clerk of Court and shall serve opposing counsel at the following address:

David Spencer, Esquire  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

**AND IT IS SO ORDERED!**



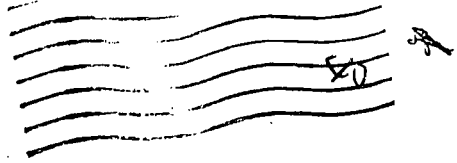
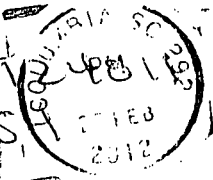
Michael G. Nettles  
Chief Administrative Judge  
12<sup>th</sup> Judicial Circuit

, South Carolina :

Oct 28, 2011

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CLERK OF COURT  
FLORENCE COUNTY

Emmanuel McFadden  
TCS Law-Care-B.  
P.O. Box 252  
Turbeville, SC 29162



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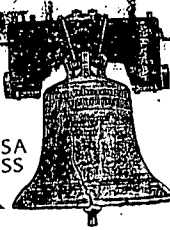
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