

LETTER TO THE S.C. SUPREME COURT  
CLERK FILING THE NOTICE OF APPEAL

S.C. Supreme Court  
Hon. Daniel Shearouse  
P.O. Box 11330  
Columbia, S.C. 29211

RECEIVED

FEB 24 2015


RE: Elson McKanic v. State of South Carolina  
C/A No. #2008-CP-44-0081; #08-44-1585

S.C. Supreme Court

Dear Hon. Shearouse:

Enclosed for filing is a Notice of Appeal in the above case. Also, enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on the Respondent's.
- (2) A copy of the Order which is to be challenged on appeal.
- (3) A copy of the 59(e) motion to be challenged on appeal.
- (4) 243(c) Explanation.

  
Elson McKanic, #182215  
Appellant

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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NOTICE OF APPEAL FROM A POST-CONVICTION  
RELIEF APPLICATION THAT WAS FILED

APPEAL FROM UNION COUNTY  
COURT OF COMMON PLEAS

JOHN C. HAYES, III, CIRCUIT JUDGE  
Case No. 2008-CP-44-0081

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FEB 24 2015

S.C. Supreme Court

Elson McKanic, #182215.....Applicant,

v.

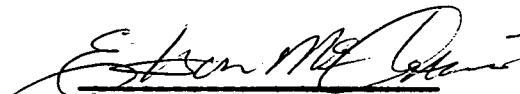
State of South Carolina,.....Respondent.

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NOTICE OF APPEAL

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Elson McKanic, #182215, Appeals his denial of Post Conviction Relief request on the above case. This appeal is taken from the two orders of Honorable John C. Hayes, III, which denied appellant. Appellant received written notice of entry of this Order on February 13, 2015.

  
Elson McKanic, #182215

Appellant

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

NOTICE OF APPEAL FROM A POST-CONVICTION  
RELIEF APPLICATION THAT WAS FILED

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FEB 24 2015

APPEAL FROM UNION COUNTY  
COURT OF COMMON PLEAS

JOHN C. HAYES, III, CIRCUIT JUDGE  
Case No. 2008-CP-44-0081

S.C. Supreme Court

Elson McKanic, #182215.....Applicant,

v.

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

PROOF OF SERVICE

I, Elson McKanic, #182215, certify that I have served a copy of the Notice of Appeal on the S.C. Supreme Court and S.C. Attorney General by depositing a copy of the same in the U.S. Mail, addressed as follows:

Hon. Daniel Shearouse  
Clerk, S.C. Supreme Court  
P.O. Box 11330  
Columbia, S.C. 29211

Alan Wilson  
Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

I, Elson McKanic, #182215, certify and verify under the penalty of perjury that the foregoing is true and correct.

  
Elson McKanic, #182215

R

FEB 19 2015

P.C.I. MAILROOM

243(c) Explanation.

MEMORANDUM OF LAW IN SUPPORT  
OF PCR APPLICATION

S.C. Code Ann. 17-27-20(a)(4)  
S.C. Code Ann. 17-27-45 C

This matter comes by way of newly/after discovered evidence which is material evidence which has never been presented before the Court and this discovered evidence is so genuine material-facts that will prove that the applicant just discovered this evidence.

Pursuant to S.C. Code of laws 17-27-20(a)(4), there exist evidence of material facts not previously presented and heard that requires vacation of conviction and sentence in the interest of justice. The applicant have filed this PCR application under this chapter within one year after date of actual discovery of the facts by the applicant and/or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

Under the facts of this case, section 17-25-45(H), clearly require that written notice must be given by the solicitor to the defendant and to the defendant's counsel.

Applicant can show by a preponderance of the evidence that the solicitor failed to comply with the requirements of 17-25-45(H). Trial counsel failed to argue the notice requirements right and appellate counsel failed to argue life without parole on appeal.

The record will demonstrate that the applicant's procedural and substantive due process rights were violated in trial and on appeal.

PCR counsel failed to amend applicant's application to include supporting grounds of Due Process which appear in the present application. Furthermore, PCR counsel failed to do so and did not raise same after being instructed to during the applicant's evidentiary hearing.

As a layman of the law, applicant did not know to present these claims in his pro se application or at the evidentiary hearing, and as a result these grounds were not heard or ruled upon even though they could have resulted in the applicant being granted resentencing or a new trial.

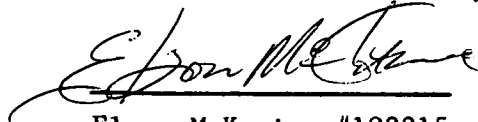
Pro Se litigants pleadings are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers, if Court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authorities, confusion of legal theories, poor syntax and sentence construction or litigant's unfamiliarity with pleading requirements.

#### In Addition To

An inmate who is trained in the law, after reading all of my legal material discovered Procedural and substantive due process violations that have not been previously presented that require vacation of my conviction and sentence.

Shortly after making this discovery, applicant now file this PCR application and pay the filing fee. This PCR application is pursuant to the "discovery rule" in accordance to S.C. Code Ann. 17-27-45(c); McCoy v. State, 737 S.E.2d 623 (S.C. 2013); See also Coates v. State, 575 S.E.2d 557 (S.C. 2003). Therefore, applicant's PCR application is timely filed and counsel should be appointed and an evidentiary hearing held. Genuine issue of material fact exist.

Applicant avers he has demonstrated sufficient reason why his claims were not included in his prior PCR application. Based upon this factual dispute, a hearing is necessary to resolve these critical issues.

  
Elson McKanic, #182215

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF UNION )  
 )  
State of South Carolina, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Elson McKanic, Jr., )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT  
CASE NO: 2008-CP-44-0081

**ORDER**

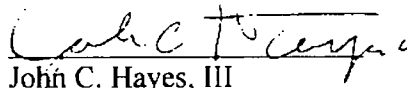
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2015 FEB 9 PM 3 32  
WILLIAM F. GAULT  
CLERK OF COURT  
UNION, SC

The undersigned issued an Order in the matter on January 5, 2015, filed January 9, 2015.

Applicant has filed a motion asking the Court to reconsider said Order.

Applicant's motion to reconsider the Court's Order of January 5, 2015 is denied.

IT IS SO ORDERED

  
John C. Hayes, III  
Presiding Judge

February 7<sup>th</sup>, 2015  
York, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF UNION )  
 )  
Elson McKanic, Jr., #182215, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2008-CP-44-0081

ORDER

FILED FOR RECORD  
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WILLIAM F. GAULT  
CLERK OF COURT  
UNION, SC

Applicant has attempted to file an Application for Post-Conviction Relief as above captioned. Refer to this Court's Order in CP No. 2008-CP-44-0081, dated November 7, 2008, for the history of Applicant's previous filings relative to his current incarceration.

Applicant has filed an affidavit in an attempt to comply with the undersigned's Order of November 7, 2008, wherein he avers he was not served with Notice pursuant to Section 17-25-45(H) prior to his 1991 conviction for Armed Robbery, Assault and Battery of a High and Aggregative Nature, and Possession of a Firearm or Knife During the Commission of a Violent Crime. However, in the Court's November 7, 2008 Order, the Court found that Applicant "at the time of his trial" knew he was looking at the possibility of life imprisonment under what he called the 'Habitual Offender law.' (November 7, 2008 Order, page 10). The Court, in said Order, also found that at the time of his trial, he "clearly understood the charges against him [and] the possible penalties he could receive were he convicted" (November 7, 2008 Order, page 12).

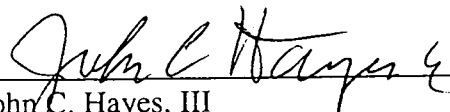
On the face of the record, without the need for additional input by the State, the Court finds Applicant's current Application is not a proper proceeding warranting filing by the Clerk of



Court and the Clerk is directed not to file Applicant's most current Application for Post-Conviction Relief, dated October 2, 2014. The Clerk is to file this Order, along with a complete copy of Applicant's attempted current filing in Case No. 2008-CP-44-0081.

Applicant's request to proceed in forma pauperis is also denied.

IT IS SO ORDERED.

  
\_\_\_\_\_  
John C. Hayes, III  
Presiding Judge #2

January 5, 2015  
York, South Carolina

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Wilson Mrs Kamin # 158215  
Perry Court, East, #4B208  
1130 Oddman Rd.  
Pelzer, S.C. 29669

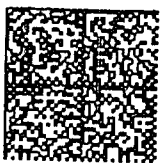
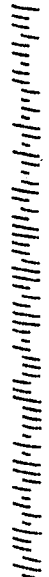
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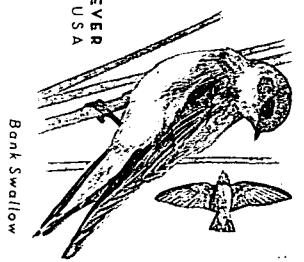
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