

IN THE SUPREME COURT OF SOUTH CAROLINA

CHEROKEE CO. COMMON PLEAS

OIS-CP-11-0151

JUDGE Derham CO. **RECEIVED**

MAR 04 2015

ROBERT HOLLAND KOON

S.C. SUPREME COURT

- VS -

STATE

NOTICE INTENT TO APPEAL

The PETITIONER would hereby NOTICE  
HIS INTENT TO APPEAL the ATTACHED ORDER  
AND HAS REQUESTED ROBERT DUDER (ESQ)  
to FILE HIS NOTICE OF APPEAL AND Rule  
243 PETITION

SO MOVES

Robert Holland Koon

2/26/15

PROOF OF SERVICE

o A TRUE COPY WAS MAILED TO  
DONALD JOHN ZELENYKA PO BOX 11549 COLUMBIA SC  
29211 THIS 26 DAY FEB 2015 BY US MAIL

Under oath



RECEIVED

MAR 3 1950

U.S. DEPARTMENT OF JUSTICE

(2)

015CP-110151

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-11-0000

Robert Holland KOON,

The STATE of South Carolina

Petitioner

Respondent

Submitted by: Court

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 Magistrate is directed to supplement the record on appeal.

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:

This matter came before the Court on Petitioner's request for leave to file a successive application seeking post-conviction relief relating to a conviction and sentence on indictment 98-GS-11-650. Petitioner has previously filed four applications seeking post-conviction relief from this conviction and sentence. Three were the subject of evidentiary hearings, rulings made, and relief denied after exhaustion of appellate review. The fourth was found to be procedurally barred and the petitioner made subject to a Maxton order. The petitioner is subject to a Maxton order prohibiting the filing of any petition unless accompanied by (1) the appropriate filing fee and (2) his affidavit certifying that the petition is made in good faith and the issues raised are not frivolous. The petitioner has mailed to the clerk for filing documents entitled (1) "Pro Se PCR, with notarized affidavit", (2) "Maxton Affidavit of Good Faith", (3) "Request For A Hearing Upon Motion to Appoint Counsel", (4) "Motion to Recuse J. Mark Hayes II, Judge", and (5) "Brief In Support of Post-Conviction Relief". Included with the documents is a check on the account of Harry Lovelace in the amount of \$25.00.

In the present application the petitioner makes conclusory allegations that the judge and jurors in his trial engaged in misconduct for their failure to disclose and/or concealment of masonic membership and, as to some, affiliation in the same masonic lodge as others. From his brief it is apparent that the petitioner believed at the time of his trial that some of the witnesses were masons and suspected a masonic connection between them and some number of jurors. Petitioner has failed to make a *prima facie* showing of reliability or credibility of this information by affidavit of a person other than himself or otherwise and has further failed to make a *prima facie* showing that the discovery of such information could not have been ascertained by the exercise of due diligence within one year of

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CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2015 FEB 6 PM 3  
BRANDY W. MCBEE

the filing of the final decision upon the appeal when a *writ of certiorari* was denied by the Supreme Court on April 5, 2001.

This Court therefore finds that the petitioner has failed to make a *prima facie* showing that; his request for leave to file a fifth application for post-conviction relief has merit and therefore not frivolous; his application is timely and within the statute of limitations and therefore has merit and not frivolous; and he has further failed to comply with the Maxton order by failing to submit the required filing fees with his documents.

Petitioner's **request** for leave to file a fifth successive application for post-conviction relief is therefore **denied**.

**ORDER INFORMATION**

This order  ends  does not end the case.

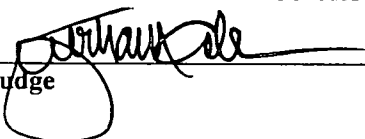
Additional Information for the Clerk :

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.		

FILED IN OFFICE OF  
 CLERK OF COURT  
 JUDICIAL BRANCH  
 YORK COUNTY, S.C.  
 FEB 6 PM 3:45  
 BRANDY W. MCBEE

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.**

J. Derham Cole  
Circuit Court Judge



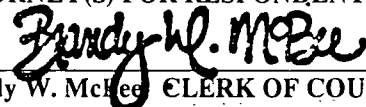
2053  
Judge Code

02/05/15  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the <sup>6<sup>th</sup></sup> day February, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this <sup>6<sup>th</sup></sup> day of Feb, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Robert Holland Koon, SCDC# 00227826  
 Lieber Correctional Institution  
 Post Office Box 205  
 Ridgeville, South Carolina 29475  
**PETITIONER appearing pro se**

Suzanne H. White  
 Office of the Attorney General  
 Post Office Box 11549  
 Columbia, South Carolina 29211  
**ATTORNEY(S) FOR RESPONDENT**  
  
 Brandy W. McBee CLERK OF COURT

**JUSTICE KITTREDGE:** Petitioner John Curtis McCoy appeals the summary dismissal of his second post-conviction relief (PCR) application, which alleged recently discovered juror misconduct, on the grounds it was successive, untimely, and failed to prove a newly discovered evidence claim. We reverse and remand this matter for an evidentiary hearing. Further, for the benefit of the bench and the bar, we clarify the proper legal standard for claims involving juror misconduct.

## I.

Petitioner was indicted for first-degree burglary and assault and battery with intent to kill. Petitioner's case was called to trial on June 14, 2005. During *voir dire*, at defense counsel's request, the trial judge asked the potential jurors if they were related by blood or marriage to any person employed in the Seventh Circuit Solicitor's office. Seven potential jurors responded affirmatively; however, Juror 84, who ultimately served on the final jury panel, did not respond or disclose that her cousin was married to the Seventh Circuit Solicitor. The defense exercised only four of its ten peremptory strikes during the jury selection process. At the conclusion of his trial, Petitioner was convicted of both offenses.

Following the dismissal of his direct appeal and first PCR application, Petitioner reviewed a fellow inmate's case in November 2009 and discovered the inmate's trial took place the day after Petitioner's. The inmate's trial was before a different trial judge but in the same courthouse. During *voir dire* for the inmate's trial, Juror 84—the same juror who served on the final panel in Petitioner's trial—advised the court that her cousin was married to the Seventh Circuit Solicitor.

A few days after making this discovery, Petitioner filed his second PCR application, arguing he was denied his Sixth Amendment right to a trial by an impartial and objective jury. In support of his claim, Petitioner submitted an excerpt of the *voir dire* transcript wherein Juror 84 revealed her relationship to the Solicitor and a copy of defense counsel's requested *voir dire* from his own trial, which included the specific question to which Juror 84 failed to respond. Petitioner argued that Juror 84's concealment deprived him of information material to his intelligent use of peremptory challenges, which, in turn, deprived him of his constitutional right to trial by an impartial jury. Petitioner averred that, if he had been aware of the juror's relationship to the Solicitor at trial, his use of peremptory challenges would have been different. Petitioner further argued he could not have previously raised this issue because the juror's concealment of her relationship to

the Solicitor, in and of itself, rendered the information unavailable to him until four years after trial when he discovered the information in a fellow inmate's case file. As noted, this occurred after both his direct appeal and first PCR application were dismissed. Petitioner further contended his claim fell within the "discovery rule" exception to the one-year limitation period and was therefore timely.

The State filed a motion to dismiss Petitioner's PCR application, arguing it was successive and barred by the statute of limitations. Regarding successiveness, the State claimed Petitioner failed to present sufficient reason why he could not have raised the current allegations in his previous PCR application. Further, the State contended the application was untimely because it was not filed within the one-year limitation period applicable to PCR actions. The State also contended Petitioner's claim "that he has discovered evidence that he was not tried by a fair and impartial jury lack[ed] merit" because Petitioner failed to provide any corroborating information or demonstrate how his allegations satisfied the five-pronged test for newly discovered evidence.<sup>1</sup>

The PCR judge granted the State's motion for summary dismissal, finding Petitioner's claim was untimely because it was not filed within one year of trial. The PCR judge also found Petitioner's claim was successive because it could have been raised in his first PCR application and failed to prove a claim based on newly discovered evidence. Specifically, the PCR judge found that, because Petitioner failed to "offer any detail as to how this information would have affected his trial had it been known at that time, or how and when it was discovered," Petitioner

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<sup>1</sup> See, e.g., *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993). *Clark* provides:

To obtain a new trial based on after discovered evidence, the party must show that the evidence:

- (1) would probably change the result if a new trial is had;
- (2) has been discovered since trial;
- (3) could not have been discovered before trial;
- (4) is material to the issue of guilt or innocence; and
- (5) is not merely cumulative or impeaching.

*Id.* at 387-88, 434 S.E.2d at 267 (citing *Hayden v. State*, 278 S.C. 610, 299 S.E.2d 854 (1983)).

failed to establish "sufficient reason" why the current allegations could not have been raised in his previous PCR application. We granted certiorari to review the PCR judge's summary dismissal of Petitioner's claim.

## II.

### A.

Petitioner argues his second PCR application should not have been summarily dismissed and asks this Court to reverse and remand this matter for a hearing. We find summary dismissal was error because genuine issues of material fact exist as to whether Petitioner's claim is successive or barred by the statute of limitations.

A PCR application ordinarily must be filed within one year after a conviction or, if a direct appeal is taken, one year after the remittitur is sent to the trial court. S.C. Code Ann. § 17-27-45(A) (2003). However, section 17-27-45(C) provides that if a PCR applicant discovers "material facts not previously presented and heard that require[] vacation of [his] conviction or sentence," he may file a PCR application "within one year after the date of actual discovery . . . or after the date when the facts could have been ascertained by the exercise of reasonable diligence."

A PCR applicant must allege all available grounds for relief in his original application; any ground not raised in the original application may not be the basis for subsequent applications unless the court finds a ground for relief asserted which, for sufficient reason, was not raised in the original application. S.C. Code Ann. § 17-27-90.

"The [PCR] court may grant a motion by either party for summary disposition of the [PCR] application when . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." S.C. Code Ann. § 17-27-70(c). When considering the State's motion for summary dismissal, where no evidentiary hearing has been held, the PCR judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant. *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (citing S.C. Code Ann. § 17-27-80). Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive

PCR applications and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing. *Cf. Delaney v. State*, 269 S.C. 555, 556, 238 S.E.2d 679, 679 (1977).

As to the timeliness issue, we conclude the PCR judge misconstrued section 17-27-45(A) in finding Petitioner was required to file his claim within one year after his trial, rather than one year after the remittitur was sent from his direct appeal. The time limitation in § 17-27-45(A) provides that, where a defendant appeals his conviction (as Petitioner did), the one-year period begins the date the remittitur is sent by the appellate court—not the date of conviction. Further, the PCR judge apparently overlooked the discovery rule in section 17-27-45(C), which allows one year after the discovery of "material facts not previously presented and heard that require[] vacation of the conviction or sentence" to file a PCR application. Petitioner argued he did not discover the juror's misconduct until November 2009, and he promptly filed his second PCR application after making that discovery. Because Petitioner's claim that he is entitled to the benefit of the discovery rule is not conclusively refuted by the record, the PCR judge erred by summarily dismissing Petitioner's claim.

We also find a genuine issue of fact exists as to whether Petitioner's claim is successive under section 17-27-90, which permits an applicant to file a subsequent PCR application only if the applicant demonstrates a sufficient reason why the claims asserted therein were not asserted previously. Petitioner avers he has demonstrated sufficient reason why his claim was not included in his first PCR application in that the juror's misconduct was not discovered until after his first PCR application was dismissed. However, the State contends the juror's misconduct could have been discovered earlier through the exercise of due diligence and, therefore, Petitioner has failed to state a "sufficient reason." Based on this factual dispute, a hearing is necessary to resolve this critical issue.

Although Petitioner's PCR claim may ultimately prove to be untimely, successive, or perhaps unsuccessful on the merits, the PCR judge erred in granting the State's motion for summary dismissal because genuine issues of material fact exist as to whether Petitioner's PCR claim is successive or untimely. *See Leamon*, 363 S.C. at 434, 611 S.E.2d at 495 (citing S.C. Code Ann. § 17-27-70(b)-(c)) (noting summary dismissal of a PCR application without a hearing is appropriate only when it is apparent on the face of the application that (1) there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief).

## B.

For the benefit of the bench and bar, we address the frequent but erroneous application of the standard newly discovered evidence framework in summarily dismissing PCR claims involving juror misconduct. Where a PCR applicant alleges juror misconduct, we reject application of the *Clark* five-pronged newly discovered evidence standard, as it does not lend itself to properly evaluating a claim of juror misconduct. In addition, the *Clark* framework is not conducive for determining whether a PCR applicant is entitled to a hearing where intentional juror concealment is alleged.

The standard test governing newly discovered evidence is properly applied when relief is sought based on evidence discovered post-trial that is material to the accused's guilt or innocence. *See, e.g., State v. South*, 310 S.C. 504, 507, 427 S.E.2d 666, 668 (1993) (noting that to obtain a new trial based on newly discovered evidence, the evidence must be material to the issue of guilt or innocence). However, juror misconduct discovered post-trial is not properly considered "newly discovered evidence"; rather, it is a separate basis for a new trial. *See, e.g., State v. Sheppard*, 582 A.2d 116, 118 (Vt. 1990) (noting evidence of juror misconduct is not properly considered newly discovered evidence because it has no bearing on the issue of innocence or guilt and does not concern the substance of the State's case or an accused's defense).

Because juror misconduct is a separate basis for a new trial, it is governed by a separate standard. Provided a claim is timely raised, a new trial is warranted on the basis of juror misconduct if it is shown that (1) the juror intentionally concealed information; and (2) the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. *See State v. Woods*, 345 S.C. 583, 587-89, 550 S.E.2d 282, 284 (2001) (finding that a juror's intentional failure to disclose a relationship gives rise to an inference of bias and rejecting the State's argument that a new trial should be warranted only where an individual shows he was prejudiced by the juror's failure to disclose information); *State v. Kelly*, 331 S.C. 132, 145-46, 502 S.E.2d 99, 106-07 (1998) (recognizing that trial judges and attorneys cannot fulfill their duty to screen out biased jurors without accurate information and finding that the first inquiry in the juror disqualification analysis is whether the juror intentionally concealed information during *voir dire*). Further, evaluating the merits of a juror

misconduct claim is a fact-intensive inquiry, which is most appropriately conducted after a hearing. *See State v. Sparkman*, 358 S.C. 491, 496, 596 S.E.2d 375, 377 (2004) ("Whether a juror's failure to respond [during *voir dire*] is intentional is a fact intensive determination that must be made on a case-by-case basis.").

Therefore, in the context of PCR allegations involving juror misconduct, the standard five-pronged newly discovered evidence test, as set forth in *Clark*, has no application and should not be used as the basis for summary dismissal. Rather, juror concealment claims are governed by the analysis set forth in *Woods*, and such case-by-case determinations are most appropriately made after a hearing, which allows the factual circumstances to be more fully developed.

### III.

For the reasons stated above, we find the PCR judge erred in summarily dismissing Petitioner's application because genuine issues of material fact exist as to whether his claim is successive or time-barred. Thus, we reverse the dismissal of Petitioner's second PCR application and remand the matter for a hearing. If, upon remand, the court determines Petitioner's claim is not untimely or successive, the court shall consider the merits of the second PCR application.

**REVERSED AND REMANDED.**

**TOAL, C.J., PLEICONES, BEATTY and HEARN, JJ., concur.**

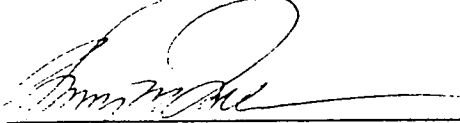
AFFIDAVIT

I, Harry M. Lovelace, hereby give the following statement freely and voluntarily that is true and correct, under oath:

On the afternoon of May 12, 2014, I went to the Cherokee County Clerk of Court's office and attempted to submit a PCR filing on behalf of Robert H. Koon and pay the filing fee. I was advised by one of the office staff that I could not file the petition as Mr. Koon had been "banned" from filing any documents directly with the Clerk of Court's office; that any filings from Mr. Koon must be submitted directly to Judge J. Mark Hayes. The PCR filing in question made allegations of judicial improprieties from Judge Hayes, so I felt a conflict of interest may result. Nevertheless, I then mailed the documents to Judge Hayes and later received a letter from him dated May 22, 2014 in which he stated that he had forwarded the information to the Chief Administrative Judge for the Common Pleas Court (attached).

I request to be provided with a copy of the court ruling that prohibits Mr. Koon from filing any legal documents directly through the Cherokee County Clerk of Courts office.

Further AFFIDAVIT sayeth not

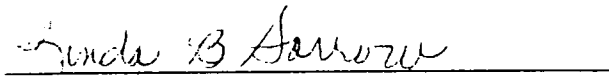


Harry M. Lovelace

Daytime Phone: 864-838-1381

Sworn and Subscribed to me on this 9th day of June, 2014.

My Commission expires:



Notary Public

11-28-2017



State of South Carolina  
Circuit Court Judge, At-Large, Seat 5

J. MARK HAYES, II  
JUDGE

180 MAGNOLIA STREET, 2ND FLOOR  
SPARTANBURG, SOUTH CAROLINA 29308  
TELEPHONE: (864) 562-4144  
FAX: (864) 562-4142  
E-MAIL: [mhayesj@sccourts.org](mailto:mhayesj@sccourts.org)

May 22, 2014

Harry Lovelace  
Post Office Box 71  
Gaffney, South Carolina 29342

Re: Robert Holland Koon

Dear Mr. Lovelace:

Please be advised that your May 20, 2014 letter to me and the attachments thereto have been forwarded onto the Chief Administrative Judge for the Common Pleas Court.

Respectfully,



J. Mark Hayes, II

JMHII/smw

CC: Honorable Derham Cole w/enclosures

includes an applicant's right to appeal the denial of a post-conviction relief application, and the right to assistance of counsel in that appeal. Matthews v. Evatt, 105 F.3d 907, 916 (1997), Gamble v. State, 298 S.C. 176, 379 S.E.2d 118, 119 (1989), Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999).

The Applicant has filed six (6) PCR Applications on his 1998 convictions. Of the three (3) final Orders of Dismissal, the Applicant has appealed one (1) of them.<sup>6</sup> A new application was filed on January 3, 2008. The Applicant has had his full bite on that conviction. The Applicant has also filed seven (7) PCR Applications on the 1986 conviction alone and he has appealed the dismissals of those Applications five (5) times. One is currently pending in the lower court.

## REMEDY

### *a. Filing Fee*

Due to the repetitive and frivolous nature of Applicant's numerous applications, the Court directs the Cherokee County Clerk of Court not to accept any further PCR applications from the Applicant unless he pays the normal filing fee generally required for the filing of a summons and complaint. The United States Supreme Court has denied litigants who have filed repetitive, frivolous petitions the right to proceed *in forma pauperis*, resulting in the litigants having to pay the required filing fee with that Court. In re Whitaker, 513 U.S. 1, 115 S.Ct. 2, 130 L.Ed.2d 1 (1994); In re Anderson, 511 U.S. 364, 114 S.Ct. 1606, 128 L.Ed.2d 332 (1994); In re Demos, 500 U.S. 16, 111 S.Ct. 1569, 114 L.Ed.2d 20 (1991); In re Sindram, 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991); In re McDonald, 489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989).

This Court also requires the Applicant to pay the normal civil filing fee for any subsequent motions filed in the case. This includes a filing fee for letters which include arguments for the Court

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<sup>6</sup> The State appealed the Court's finding in State v. Koon, (04-CP-11-214). See entry "L" below.

to consider.

Documents submitted to the Clerk's Office which are not accompanied by the proper filing fee will be returned to the Applicant.

*b. Notarized Affidavit*

This Court requires the Applicant to provide a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous in any further PCR applications. In In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996), the South Carolina Supreme Court required Maxton, who had filed numerous meritless petitions with the Court, to pay a filing fee and accompany any future filings with a properly notarized affidavit by Maxton certifying that he in good faith believed that the matters he was raising were non-frivolous and proper for the Court to consider. Id. Other courts have required that the abusive litigant file an affidavit certifying that he believes the petition raises an original claim or is non-frivolous before accepting filings from the litigant. In the Matter of Verdone, 73 F.3d 669 (7th Cir.1995); Abdul-Akbar v. Watson, 901 F.2d 329 (3d Cir.1990); Green v. Warden, 699 F.2d 364 (7th Cir.), *cert. denied*, 461 U.S. 960, 103 S.Ct. 2436, 77 L.Ed.2d 1321 (1983).

Once the Applicant submits an Application that is accompanied by the required filing fee and a notarized affidavit, this Court directs the Clerk's office to submit the Application to the Chief Administrative Judge before filing. The Administrative Judge will then make a finding on whether the issues raised in the Application are non-frivolous and proper for the Court to consider. If the Administrative Judge finds the Application proper, it will then be submitted to the Clerk's office for filing. No Application would be filed without a proper finding from the Chief Administrative Judge.

*c. Practice*

Each application will be assigned its own civil action number. When the Clerk's office receives an application, it will be filed as customary PCR filing procedure. The Clerk's office will then forward

it to the Chief Administrative Judge for the Seventh Judicial Circuit. The Chief Administrative Judge will make a ruling on whether the issues raised in the Application are non-frivolous, are not untimely or barred as successive, and proper for the Court to consider.

The Applicant must provide with his Application an explanation as to why it is not barred as successive or being untimely under the statute of limitations. This explanation must contain sufficient facts, arguments and citation to legal authority to show that there is an arguable allegation that is not barred as successive or untimely, and is not based on mere speculation or unfounded accusations. If the Applicant fails to make a sufficient showing, the Application will be summarily dismissed by written order of the Chief Administrative Judge.

No response is required from the State unless the Chief Administrative Judge makes a finding that the Applicant made a sufficient showing. The State will then treat the Application as is customary with all PCR applications. The State does not waive the right to raise defenses of untimeliness and successive at a future hearing.

*d. Procedural History Outline*

When forwarding the Application to the Chief Administrative Judge, the Clerk's Office should include a document explaining the procedural history of the Applicant. This document is to be maintained by the State. After the Chief Administrative Judge makes a finding by written order, the Clerk's office will forward this Order to the State. The State will then update the procedural history document and forward it back to the Clerk's Office.

This Court also warns the Applicant that the PCR court has the authority to issue Rule 11 sanctions against a post-conviction applicant pursuant to the South Carolina Rules of Civil Procedure. Rule 11 provides: "The signature of an attorney or party [on a pleading, motion, or other paper] constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of

his knowledge, information and belief there is a good ground to support it; and that it is not interposed for delay. If a pleading, motion or other paper is signed in violation of this Rule, the court...may impose upon the person who signed it, a represented party, or both, an appropriate sanction.” Hiott v. State, 375 S.C. 354, 652 S.E.2d 436 (S.C. App. 2008)

#### IV. CONCLUSION

The Applicant’s allegations and accusations have become increasingly frivolous and meritless. His only successes have been to vacate one of his four burglary, second-degree charges,<sup>7</sup> and a re-sentencing which was later overturned by the Supreme Court.<sup>8</sup> Each case is accompanied with constant letters from the Applicant, many times when he is represented by counsel, to the Judges, the Clerk’s Office, and the State. There are continued requests to be heard out of turn, to recuse Judges, to recuse Assistant Attorney Generals, and general accusations of bias and conspiracy. The Applicant continues to waste the time and resources of the Cherokee County Clerk of Court’s Office, the Chief Administrative and Presiding Judges in the Seventh Circuit, the South Carolina Attorney General’s Office, numerous appointed attorneys of the Cherokee and Spartanburg County and surrounding Bars, Court Personnel, and the South Carolina Supreme Court.

#### IT IS THEREFORE ORDERED:

For these reasons, this Court orders the following:

1. The Clerk of Court is directed to refuse to accept further petitions and applications from the Applicant asking the Court to entertain matters unless he pays a filing fee generally required for filing motions and petitions with this Court.
2. The Applicant is prohibited from filing any legal actions in any

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<sup>7</sup> Koon v. State, 00-CP-11-623. This vacated sentence is now inconsistent with the Court’s new ruling in Gentry 363 S.C. 93, 610 S.E.2d 494 (2005). See entry “L” above.

<sup>8</sup> Koon v. State, (04-CP-11-214). See entry “N” above.

jurisdiction in South Carolina without submitting the requisite filing fees' and providing a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous. The requisite filing fee must also be submitted with any subsequent filings.

3. Any Applications submitted with properly notarized affidavits be submitted to the Chief Administrative Judge with the procedural history document to make a finding on whether the allegations are non-frivolous and proper for the Court before they are filed; and
4. The Clerk of Courts should be instructed to return all documents that do not comply with this order.

AND IT IS SO ORDERED this 5 day of August, 2009.

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J. MARK HAYES, II  
Presiding Judge  
Seventh Judicial Circuit

Gaffney, South Carolina.

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<sup>9</sup> S.C. Code Ann. §8-21-310(11)(a) (Supp. 2004)

# EXHIBIT B

EXHIBIT B

McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013): Standard for New Trial Motion based on Juror Concealment.

When a PCR applicant alleges juror misconduct (by concealment), the five-pronged newly discovered evidence standard from Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993), is not the standard to be used. Instead, as set forth in State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001), the analysis to be used in determining whether a new trial should be granted because of juror concealment of information is whether (1) the juror intentionally concealed information; and (2) the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. The Court noted that "evaluating the merits of a juror misconduct claim is a fact-intensive inquiry, which is most appropriately conducted after a hearing." McCoy, 401 S.C. at 371, 737 S.E.2d at 628.



STATE OF SOUTH CAROLINA

County of ANDERSON Cherokee

In the Court of Common Pleas

ROBERT KOON

Full name and prison number (if any) of Applicant,

vs.

STATE

Name of Respondent.

**APPLICATION FOR  
POST-CONVICTION RELIEF**

BRIEF EXPLANATION & GOOD  
FAITH AFFIDAVIT IS ATTACHED

**INSTRUCTIONS — READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention L.C.I. PO BOX 205 Ridgeville SC 29472

2. Name and location of Court which imposed sentence GENERAL SESSIONS

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 2ND DEGREE BURGLARY - (ILLEGAL) CONCEAL

(b) \_\_\_\_\_

(c) \_\_\_\_\_

4. The date upon which sentence was imposed and the terms of the sentence:

(a) MAY 29, 1993 LUCIF + 5 yrs.

(b) \_\_\_\_\_

(c) \_\_\_\_\_

5. Check whether a finding of guilty was made

(a) after a plea of guilty \_\_\_\_\_

(b) after a plea of not guilty  \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. COURT OF APPEALS

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. AFFIRMED

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. APRIL 2000

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. STATE V. KOON

ii. \_\_\_\_\_

iii. \_\_\_\_\_

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) NLR

(b) \_\_\_\_\_

(c) \_\_\_\_\_

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) SEE ATTACHED

(b) \_\_\_\_\_

(c) \_\_\_\_\_

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) SEE ATTACHED

(b) \_\_\_\_\_

(c) \_\_\_\_\_

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? NOT Relevant
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? ''
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? ''
- (d) any other petitions, motions or applications in this or any other Court? ''

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. NOT Relevant
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

- i. NOT Relevant
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. NOT Relevant
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. NOT Relevant
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NOT Relevant
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

(a) which grounds have been presented:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) NEWLY DISCOVERED EVIDENCE 17-27-45(C) MSCOY V.
- (b) STATE 737 SEED 623 SC (2013) OF JUNON MISCONDUCT
- (c) \_\_\_\_\_

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea?
- (b) your trial, if any?
- (c) your sentencing?
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. MITCH STADE (ESQ)
- ii. ALTON CLARE (ESQ)
- iii. \_\_\_\_\_

(b) the proceedings at which each such attorney represented you:

- i. TRIAL
- ii. APPEAL
- iii. \_\_\_\_\_

18. State clearly the relief you seek in filing this application.

NEW TRIAL

19. Are you now under sentence from any other court that you have not challenged?

D

County of Ridgville

I, Robert Koon, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Paul Koon

SWORN to and subscribed before me this 20<sup>th</sup>

day of May, 2014

Luduan Bryant (L.S.)  
Notary Public

My Commission Expires: May 26, 2020

**APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF**

I, Robert Koon, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Robert Koon  
Applicant



**NOTARIZED AFFIDAVIT OF GOOD FAITH**

SWORN or affirmed to and subscribed before me this

20<sup>th</sup> day of May, 2014

Luduan Bryant  
Notary Public

My Commission Expires: May 26, 2020

I, Robert Koon do hereby CERTIFY THIS PCL IS MADE IN GOOD FAITH AND IS NOT FRIVOLOUS BUT IS OF SUBSTANTIAL MERIT BASED UPON AFTER DISCOVERED EVIDENCE (I) UNDER PCL WITH I AFFIRMED

# LAW IN SUPPORT

The Sixth Amendment of the United States Constitution guarantees a criminal defendant the right to trial by an impartial jury. The right to a trial by an impartial jury lies at the very heart of due process. Irvin v. Dowd, 366 U.S. 717, 721-722, 81 S.Ct. 1639, 1641-1642, 6 L.Ed.2d 751 (1961). "[our common-law heritage, our Constitution, and our experience in applying that Constitution have committed us irrevocably to the position that the criminal trial has one well-defined purpose--to provide a fair and reliable determination of guilt." Estes v. Texas, 381 U.S. 532, 565, 85 S.Ct. 1628, 1644, 14 L.Ed.2d 543 (1965) (Warren, C.J., with whom Douglas and Goldberg, JJ., joined, concurring). That purpose simply cannot be achieved if the jury's deliberations are tainted by bias and prejudice. // Therefore, a defendant is entitled to a jury that will decide the charge according to the evidence presented in court and a jury that is free of outside influences. // State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998).

The United States Supreme Court requires that a jury's verdict be based on evidence received in open court, not from outside sources. Sheppard v. Maxwell, 384 U.S. 333, 351, 86 S.Ct. 1507, 1516, 16 L.Ed.2d 600, 613 (1966). Trial courts have been required to protect jurors and their deliberations from outside influences that threaten to taint the verdict. State v. Salters, 273 S.C. 501, 257 S.E.2d 502 (1979).

WORLD: MCCOY V. STATE 737 S.E.2d 623 (2013)  
STATE V. KELLY 331 S.C. 132, 502 S.E.2d 99 (1998)

LAW

FILE

## JUROR MISCONDUCT

I. IT HAS BEEN DISCOVERED IN THE PAST YEAR  
PUR. TO 17-27-45(C) THAT SEVERAL JURORS CONCEALED  
THE FACT THAT THEY WERE MEMBERS OF SAME MASONIC LODGE #136  
AS THE STATE KEY WITNESS DETECTIVE J. HENSON, AND THIS  
WAS RELEVANT/MATERIAL TO A STRIKE FOR CAUSE OR PEREMPTORY  
CHALLENGE - PUR. TO MCCOY V. STATE, 737 S.E.2d. 623 (SC2013)  
THIS ESTABLISHES "JUROR MISCONDUCT"

## II. JUDICIAL MISCONDUCT, BIAS OF TRIAL JUDGE

TRIAL JUDGE JOHN C. HAYES III CONCEALED THE FACT  
AS IT WAS DISCOVERED WITHIN LAST YEAR PUR. TO 17-27-45(C)  
THAT HE WAS A MEMBER OF GRAND LODGE OF MASONIC  
ORDER SMITH V. SMITH, 3 DES. 557, 1813 WL 373  
(SC APP EQ 1813) WHEN IT WAS KNOWN TO HIM SEVERAL  
PROSECUTION WITNESSES WERE MASONS, IN FACT, TRIAL  
COUNSEL ACCUSED CAPT. PHILLIP MEDLEY (WHO, LIKE HENSON,  
SPORTED GOLD MASONIC RING) ON "SIGNING AND GESTURING"  
TO JUROR MEMBERS - YET WHEN TRIAL COUNSEL ASKED  
JUDGE TO VOIL PIRE JURORS JUDGE HAYES REFUSED TO  
DO SO. IN RE: WILDER, 516 S.E.2d 927 SC (1999)  
HELD "FAILURE OF JUDGE TO DISCLOSE ON THE RECORD  
THAT MCFADDEN WAS A FELLOW MASONIC MEMBER WARRANT  
JUDICIAL REPRIMAND" IS.

THIS JUDICIAL MISCONDUCT MANIFESTED IN BIAS  
AND PARTIALITY EXHIBITED TOWARDS MEDLEY IN  
RELATION TO ALLEGATIONS OF JURY TAMPERING - THIS WAS  
ESPECIALLY PREJUDICIAL AS THERE WERE SEVERAL MASONS  
ON THE JURY AND COUNSEL'S MOTION TO VOIL PIRE  
WAS DENIED BY MASONS, BUT DENIED BY MASONS  
TOWARDS THE JURY

SUMMARY

THIS NEWLY DISCOVERED EVIDENCE PUR 17-27-45(C) OF MASONIC TIES BETWEEN TRIAL JUDGE, STATE WITNESSES, ALLEGED JURY TAMPERERS (MERLEY) AND THAT JUROR MEMBERS WERE ALSO MASONS SHOWS DEFENDANT DENIED A IMPARTIAL JUDGE AND JURY PUR 6th AMENDMENT - IRVIN V. DOWD, 366 US 717, 721 (1961) (SEE PG 3)

~~CONCLUSION~~

CONCLUSION PUR. TO MCOOT V. STATE, SUPRA, APPLICANT HAS SET FORTH ALLEGATIONS, THAT IF PROVEN, WOULD WARRANT RELIEF, AND THESE FACTS WERE DISCOVERED WITHIN PAST YEAR PUR 17-27-45(C) AND THUS HE IS ENTITLED TO APPOINTMENT OF COUNSEL PUR 71.1(D) SCRPC AND A EVIDENTIARY HEARING PUR. TO LEAMONT V. STATE 611 S.E.2D. (2005)

I verify under oath.

Relief

NEW TRIAL

(3)

~~St Robert Hollow (Kool)~~

EXPLANATION AS TO TIME BAR - SUCCESSIVENESS

THIS IS TO BE CONSTRUED AS A EXPLANATION OF FACTS AND LAW AS TO WHY THIS PER IS NOT ETHICALLY SUCCESSIVE OR TIME BARRED BUT IS PROPER PUR NEWLY DISCOVERED EVIDENCE 17-27-45(C) AND

FOR THE COURT

Robert HOLLAND KOON  
LEE PRISON, S.K.  
1204 E Church St.  
Bishopville, SC 29010

HONORABLE JOHN C. HAYES  
Chief Admnl. Judge  
P.O. BOX 1744  
SPARTA, SC 29304

Apr 3, 1998

Sir,

IN JAN. 1996 I WAS SENTENCED TO 10 YRS. Sus. to 2 YRS w/  
3 YRS PROBATION FOR INDICTMENTS 96-GS-11, 31, 32, 33, 34, 132  
THIS SENTENCE VIOLATED THE PLEA-BARGAIN ACCEPTED BY THE COURT,  
THAT A FIVE YEAR CAP WAS THE MOST I COULD BE SENTENCED TO.  
W/ ALL SENTENCES TO RUN CONCURRENT.

IN JAN 1997 I FILED A P.C.R. 97-CP-11-20, ALLEGING THE  
THE COURT VIOLATED PLEA AGREEMENT & PLEA WAS INDUCED BY FALSE  
PROMISES (etc)

FOR 14 MONTHS THE ATTORNEY GENERAL HAS REFUSED TO FILE  
A RETURN TO THE P.C.R., OR ANSWER MOTIONS FOR SUMM. JUDGMENT  
OR FILE ANY RESPONSIVE PLEADINGS.

IN MARCH 1998 HONORABLE VICTOR PYLES APPOINTED B. ALLEN BULLARD  
TO REPRESENT ME ON THIS P.C.R.

SIR, A MOTION FOR SUMM. JUDGMENT, WRIT OF HABEAS CORPUS &  
MOTION FOR DEFAULT JUDGMENT ARE CURRENTLY PENDING JUDICIAL ACTION,  
IT IS CLEAR BEYOND ANY DOUBT FROM THE TRIAL TRANSCRIPTS THAT  
THIS SENTENCE IS ILLEGAL & UNCONSTITUTIONAL.

AS YOU KNOW I AM AWAITING TRIAL IN JUNE 1998 ON  
FELONY CHARGES, THIS ILLEGAL CONVICTION IS A MATTER THAT NEEDS  
TO BE ADDRESSED PRIOR TO MY TRIAL DATE.

THEREFORE, I AM ASKING YOU TO REVIEW THE PENDING MOTIONS,  
TRANSCRIPTS & FILE OF 97-CP-11-20 AND MAKE A RULING ON  
THE PLEADINGS UNDER RULE 12(b)6 AS NO MATERIAL ISSUE EXISTS  
TO WARRANT A EVIDENTIARY HEARING.

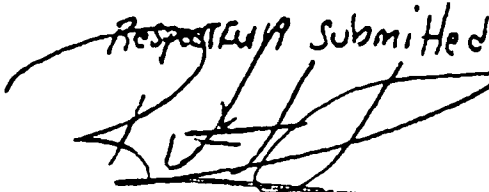
THIS ILLEGAL CONVICTION IS GOING TO BE A MAJOR ISSUE AT MY TRIAL, AS WELL AS THE CIRCUMVENTION OF THE S.C. RULES OF CIVIL PRO. BY THE PROSECUTOR: ATTY. GEN.

THE MATTER SET FORTH IN THIS LETTER NEEDS TO BE ADDRESSED PRIOR TO MY TRIAL; PLEASE IF NECESSARY, CONTACT MY ATTORNEY B. ALLEN BULLARD OF COLUMBIA SC (803)-738-8622 AND THE ATTORNEY GENERAL'S OFFICE.

FURTHER, IN THE MATTER OF MY TRIAL UNDER 97-GS-11-267, 268 I AM BY COPY OF THIS LETTER INFORMING THE COURT I AM ASSERTING MY RIGHTS UNDER FARETTA V. CALIFORNIA TO REPRESENT MY-SELF, TO INSURE THAT MATTERS RAISED IN THIS LETTER AND OTHER MATTERS ARE RAISED AT MY TRIAL.

AND AS MY COUNSEL I AM ASKING TO BE APPOINTED THE PRIVATE INVESTIGATOR / PRIVATE PSYCHIATRIST THAT I HAVE REQUESTED FOR THE PAST 6 MONTHS.

AND THAT YOU ORDER LEE PRISON OFFICIALS TO PROVIDE ME W/ PHYSICAL ACCESS TO THE LAW LIBRARY.

Respectfully Submitted  


MS. KATIE BAINGS,  
CLERK OF COURT,  
Cherokee CO. Courthouse  
GAFFNEY, S.C. 29340

MAY 1, 1998

RE: 97 GS-11-267  
WITNESSES FOR TRIAL

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
MAY 7 11 38 AM '98  
VOL. 1 PAGE 1  
KATIE W. BAINGS  
CLERK OF COURT

MS. BAINGS,

PLEASE FIND ENCLOSED A FORMAL REQUEST THAT YOU ISSUE  
Subpoenas FOR the following persons AND EVIDENCE AT MY  
TRIAL, to Appear by the "Compulsory Appearance"  
CLAUSE OF the 6th AMEND.

I MAY REPRESENT MYSELF AND I NEED EACH ONE OF  
THESE WITNESSES AND EVIDENCE to be AT MY TRIAL TO PRESENT  
MY DEFENSE.

PLEASE SEND me A COPY OF the Subpoenas upon Service  
ON the WITNESSES.

I AM Requesting Service 10 DAYS prior to trial AND  
ASKING for JUDICIAL ASSISTANCE IS SECURING the PRESENCE  
OF MY WITNESSES, 6th AMEND. U.S.C.A.

MAY 1, 1998

Richard Holloway Koon (Pro SE)  
LEE PRISON  
1204 E. Church St.  
Bishopville, SC 29010

PLEASE SEND ME AND MY ATTORNEY  
A CLOCKED IN COPY OF this request.

You need to make this request  
to your attorney - J.A. 70

RHK

Copy to:  
Solicitor  
The Hon. Koon  
CL

STATE OF SOUTH CAROLINA )  
COUNTY OF CHEKOREE )

97-ES-11-267, 268

STATE OF SOUTH CAROLINA )

v  
Robert Koon,

) DEFENDANTS DEMAND FOR JUDICIAL ASSISTANCE  
) IN THE ISSUANCE OF SUPRENA'S FOR  
) DEFENSE WITNESSES, AND CITING 6th AMEND  
) COMPLUSORY ATTENDANCE FOR ALL WITNESSES.

DEFENDANT

\* NOTICE OF POSSIBLE (PRO SE) REPRESENTATION.

TO CLERK OF COURT,  
PRESIDING JUDGE,

THE DEFENDANT IS SEEKING THE COURT TO ISSUE SUPRENA'S  
AND TO COMPEL THE ATTENDANCE OF THOSE WITNESSES AT THE TRIAL  
OF THE DEFENDANT. AND MAY PROCEED (PRO SE) AT TRIAL.

AND TO COMPEL THE RELINQUISHMENT OF CRUCIAL DOCUMENTS  
BY SUPRENA RELEVANT TO DEFENSE OF THESE CHARGES:

PRETRIAL WITNESSES:

1) DR. A. DeL RIO, S.C. STATE HOSPITAL, Bull ST. Columbia, SC

<PLEASE BRING> ALL MEDICAL/MENTAL RECORDS OF DEFENDANTS SINCE  
JULY 1979 TO DATE, <TO INCLUDE 12-20-82 RECORDS>

2) W. GASTON FAIREY, (ESQ), 1704 MAIN ST. Columbia, SC

CASE FILE OF Robert K. v. Robert Bell (etal)

3) BEN APLIN, P.O. Box 11549 Columbia, SC, (SC ATTORNEY GEN. OFFICE)

4) TERESA N. CUSBY, P.O. Box 11549 Columbia, SC (SC ATT. GEN OFFICE)

<PLEASE BRING> 97-CP-11-539, 97-CP-11-20 Files.

5) Michael W. Moore, S.C.D.C., All S.C.D.C. MENTAL HEALTH RECORDS  
4144 BROAD RU. RD. Columbia, SC (OR S DESIGNEE, RECORDS...)

6) BARBARA BROWN, C.C. DETENTION CENTER 315 E. FREDRICK ST. GAFNE  
All JAIL MEDICAL RECORDS OF DEFENDANT,

- 7) CHIEF JOHN O'DONALD, GAFFNEY CITY Police, 315 E. FREDERICK ST GAFFNEY  
BRING Arrest photo of 1-14-97
- 8) COL'S EDWARDS, Probation Dept. 315 E. FREDERICK ST. GAFFNEY, SC.  
OFFICE Policy ON STORAGE OF WEAPONS, REGISTRATION OF 357 MAG BBD-340  
File OF DEFENDANT, FIELD NOTES (etc).
- 9) JIMMY HEINSON, Cherokee MASONIC Lodge, FLOYD BAKER BLVD. GAFFNEY, SC.  
BRING membership LIST OF MASONS IN Cherokee. ~~XY~~
- 10) ANDREW JOHNSTON, P.O. Box 3252 SPARTANBURG, SC  
BRING DEFENDANT File
- 11) LINDA TSCHOPATT, PO Box 3252 Spartanburg, SC
- 12) ELIZABETH GRIFFIN, Cherokee CO. Public DEFENDERS OFFICE,  
BRING DEFENDANT File, OFFICE Policy ON Guidelines AS to when to  
INTERVIEW Indigent PRISONERS FOR COUNSEL.
- 13) B. ALLAN DILLARD 3614 LANDMARK DR. Columbia, SC  
BRING DEFENDANTS File
- 14) JACK ALLISON, Magistrate, 315 E. FREDERICK ST. GAFFNEY SC
- 15) BARBARA SPENCER, Sec. 315 E. FREDERICK ST. GAFFNEY SC  
→ BRING 1-14-97 AND 2-11-97 Documents FOR ARRANGMENT / PICA
- 16) DAVID RECTOR Probation OFFICE, 315 E. FREDERICK ST. GAFFNEY SC
- 17) Cherokee CO. JURY COMMISSIONERS; Cherokee CO. COURTHOUSE  
\* BRING 3-3-97 GRAND JURY Documents,
- 18) USHA BRIDGES, W. MONTGOMERY ST. GAFFNEY, SC
- 19) ROGER OSMENT, CC SHERIFF DEPT.
- 20) S. P. MANNING CC SHERIFF DEPT.
- 21) FRANKIE MOORE, LOT 136 RUPPER TRAILER PARK, GAFFNEY, SC
- 22) JOSEPH MATHIS 210 B. LIMESTONE ST. GAFFNEY, SC
- 23) DAVID DALBY, CC SHERIFF DEPT.
- 24) MARK RAMSEY, Sec LT. LYNN RAMSEY, CC SHERIFF DEPT

EXHIBIT C



State of South Carolina  
Circuit Court Judge, At-Large, Seat 5

J. MARK HAYES, II  
JUDGE

180 MAGNOLIA STREET, 2ND FLOOR  
SPARTANBURG, SOUTH CAROLINA 29306  
TELEPHONE: (864) 562-4144  
FAX: (864) 562-4142  
E-MAIL: mhayesj@scccourts.org

April 30, 2014

Robert Koon, #00227826  
Lieber Correctional Institution  
Post Office Box 205  
Ridgeville, SC 29475

Dear Mr. Koon:

I have reviewed six (6) recent mailings received in my office which were made by you. According to the documents or the envelopes, they are dated April 7, 2014, April 11, 2014, two of them dated April 14, 2014, April 15, 2014, and April 17, 2014.

★ In general, all of these documents relate your desire to collaterally challenge your prior conviction due to jury misconduct. My belief continues to be that all of these documents are subject to the prior order restricting the filing of documents you can make with the Cherokee County Clerk of Court. According to the Order, your filing is restricted based on a finding that your prior filings had become repetitive and abusive to the fair administration of justice.

2(b) Even though I am no longer the Administrative Judge, my desire is to make you aware of my position since you continue to direct correspondence to me about your desire to once again collaterally challenge your prior conviction. I also write this letter to you because at least one of your letters was directed to Judge Couch, who is the Administrative Judge for the General Sessions docket and who has recused himself from your cases, and because Judge Couch has asked me to handle your cases for him.

From the various documents you have sent to me, I also note that you have written to Judge Cole on these matters since he, as I told you previously, now serves as the Administrative Judge for the Common Pleas docket. This letter is not meant to affect any decision that will be made by Judge Cole or has been made by him concerning your request to file for another collateral review of your conviction.

I also note from your papers that you request that I recuse myself from your case. You characterize a prior decision I made as acting in complicity with a solicitor and a prior lawyer appointed to represent you as hiding the whereabouts of a detective. You also claim that I and the clerk of court are acting together in a form of retaliation against you:

Robert Koon, #00227826  
April 30, 2014  
Page Two of Two

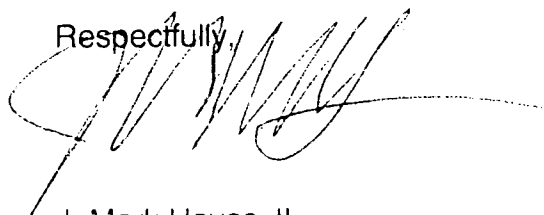
5:05-2523  
333  
Rule 60 (B)6

that I do not have the authority to instruct the clerk of court to not accept your documents for filing; that I violate my oath because I am so biased and poisoned against you; you challenge the relationship I have with the clerk of court as unprofessional; and assert, among other things, that Cherokee County is run by Masons and the K.K.K. Based on these and the other assertions listed in recusal request, I cannot grant your request. My belief is that a judge should only recuse himself when he has gained knowledge of facts outside of his official role as a judge. I am not aware that Cherokee County is run by the Masons or the K.K.K. and all other assertions against me, even if characterizations are true, all arose from my official acts as a judge. Moreover, presently there is no case assigned to me that involves you. In the event a case is subsequently assigned to me that does involve you, I will be glad to entertain a renewal of your recusal request if you desire, at that time, to present it to me.

A suggestion I have for you is to stop writing to me or Judge Couch about your desire to have a collateral review of your criminal conviction. Additionally, if you disagree with a decision I have made, you may also consider having a higher court review any such decision for error on my part.

Since I am of the belief you have sent a request to Judge Cole in his capacity as the Administrative Judge for the Common Pleas docket to grant your request to file additional documents with the clerk's office, this correspondence to you will not be shared with him.

In advance thank you for your cooperation and attention.

Respectfully,  
  
J. Mark Hayes, II

CC: Judge Roger Couch

JMHII/smw

Robert Holland Koon

LIEBER CT

PO Box 205 RIDGEVILLE SC 29972

BRANDY MCBEE

TO: CLERK OF COURT

AND JUDGE MARK HAYES II

RE: MAXTON ORDER COMPLIANCE

AFFIDAVIT AND FILING FEE

RE: ROBERT HOLLAND KOON

PLEASE FIND ENCLOSED A NOTARIZED AFFIDAVIT OF GOOD FAITH AND INC # 25<sup>00</sup> ~~00~~ Filing Fee THAT HAS BEEN LEVIED AGAINST THE APPLICANT - CONTRARY TO LAKES V. STATE, 333 SC 282 (SC 1998) (WHICH HELD THERE IS NO FILING FEE FOR PCR IN SC)

THIS FILING FEE AND NOTARIZED AFFIDAVIT SHOULD

ALLOW ~~FOR~~ PCR ~~AND~~ ~~APPEAL~~ ~~SESSIONS~~ ~~AND~~ ~~PROCEEDINGS~~

(WHICH REQUIRE NO FEE UNDER # 98-ES-11-650

PREEXISTING SENTENCING ORDER / INDICTMENT)

TO PROCEED ON ISSUES OF JUROR MISCONDUCT

AND JUDICIAL MISCONDUCT), PUR TO MAXTON ORDER.

THE FILING FEE IS BEING PAID BY HARRY M. LOVELACE

AS THE DEFENDANT IS INDIGENT AND CANNOT PAY THE

FUNDS REQUIRED BY UNDUPLY BURDENSOME MAXTON ORDER

THAT SEEKS TO DENY DEFENDANT ACCESS TO THE COURTS

ON JUROR / JUDICIAL MISCONDUCT IN VOLUNTARY MASONIC

TIES OF JUDGE, JURORS AND WITNESSES IN HIS 1998

TRIAL STATE V. KOON 98-ES-11-650. USCA 6th.

sf Robert Holland Koon

LIEBER CT

PO BOX

RIDGEVILLE SC 29972

CC: Resmaa Alley

4/4/14

Hon. J. MARK HAYES II  
Circuit Court Judge

Robert Koon 227826  
CCI  
PO Box 205  
Ridgelyville SC 29472

ON APRIL 1, 2014 I SENT A AMENDED PCR.  
NOTARIZED AFFIDAVIT OF GOOD FAITH AND Attempted  
to ASCERTAIN the AMOUNT OF this so-called  
FILING FEE - PLEASE CITE ME the "COST" to  
FILE this PCR (which is NOT CONTAINED in  
the Rules of COURT OR STATE STATUTE, so I  
Guess the COURT is MAKING UP A Amount to be PAID  
SPECIFICALLY BY ME ALONE?)

Whatever the COST IS PLEASE LET ME KNOW  
AND I will TRY my best to PAY it OR HAVE  
my VICTIM MAKE COUPAGE by it.

I Remind you this MSCOT v. STATE 737 S2d 623 (2013) ISSUE  
WAS DISCOVERED WITHIN the LAST YEAR (AS WAS MSCOT) AND  
WARRANTS APPOINTMENT OF COUNSEL

I WOULD ALSO ASK you RECESS YOURSELF FROM

Ruling on Ant further ISSUED AS CLEARLY YOU ARE  
BIASED AND POISONED AGAINST MY CASE, EVEN  
IN THE FACE OF A EASILY PROVAABLE JUNIOR MISCONDUCT  
ISSUE, AND I ~~AM~~ ASK FOR ASSIGN ANT OTHER  
ORDER TO JUDGE Keith Kelly

PLEASE REVIEW THE NOTARIZED AFFIDAVIT  
OF GOOD FAITH AND ALLOW ME TO PROCEED  
PENDING RECEIPT OF THE \$        <sup>00</sup> (?) FILING FEE  
IS IS IT 25<sup>00</sup>? FILING FEE FOR MOTIONS?  
LET ME KNOW AND I WILL PAY IT!

---

Butt K

cc: Desiree Allen

I NOTE YOU DID NOT RETURN  
THE 2/28/14 LETTER OR BRIEF

---

OTHER THAN NOTARIZED AFFIDAVIT AND X \$ AMOUNT  
OF FILING FEE HOW ELSE DOES MY FILING NO COMPART  
YOUR 200? ORDER? MR. LOVELACE HAS STATED HE WILL  
PAY FILING FEE!

HON. BRANDI MCBEE  
CLERK OF COURT

ROBERT KOOK  
227826 Lichen Ct  
Ridgewood SC 29472

STATUS OF PCR, FILING FEE FOR PCR  
AMENDED PCR

4-1-14

MRS. MCBEE,

SEVERAL WEEKS AGO I MAILED TO YOUR OFFICE A  
PCR APPLICATION ON JUROR MISCONDUCT ISSUE  
FOR MCCOY v. STATE (2012) I ALSO SEND A BRIEF  
IN SUPPORT OF THAT PCR AND AFFIDAVIT OF GOOD FAITH  
to WHICH JUDGE DID YOU SEND THIS too? JUDGE HATES  
ON JUDGE KEITH KELLEY? AND WHAT WAS THE DATE  
IT WAS FORWARDED TO HIM? PLEASE FORWARD ENCLOSED  
AMENDMENT TO THAT PCR TO THE CHIEF ADMIN JUDGE.

ALSO JUDGE HATES CONTINUOUSLY REFERS TO A FILING  
FEE FOR THE PCR - HOW MUCH IS THIS SO  
CALLED FILING FEE FOR MY PCR?

RULE OF COURT PROVIDE NO FEE FOR PCR ON  
GENERAL SESSIONS MOTIONS. I NEED TO KNOW HOW  
MUCH THIS SO CALLED FILING FEE IS. SO PLEASE  
LET ME KNOW THE AMOUNT I MUST PAY PER TO MAYOR  
ORDER.  
THANK YOU

HOW MUCH  
IS FILING FEE?

IN FORMA PAUPERIS AFFIDAVIT 4-3-14  
OF ROBERT HOLLAND KOON

TO: Chief Adminl Judge  
COMMON PLEAS (CHEVANCE CO.)

I WAS ADVISED BY CLERK OF COURT ON 4-22-14  
TO FILE THIS PCN DIRECTLY TO YOUR OFFICE  
PUR TO MAXTON ORDER THAT PURPORTS TO RESTRICT

FUTURE FILING OF PCN ISSUED OF AUGUST 2, 2009  
THE APPLICANT HAS SUBMITTED A (A) NOTARIZED AFFIDAVIT

OF GOOD FAITH RELATIVE TO THE JUROR AND  
JUDICIAL MISCONDUCT ISSUES IN HIS 1998 TRIAL

THAT ARE FILED WITH THE CLERK OF COURT

(B) EXPLANATION WHY PCN IS NOT TIME BARRED/SUCCESSIVE  
(C) HOWEVER, APPLICANT DOES NOT HAVE ANY MEANS

TO PAY A PURPORTED FILING FEE TO FILE PCN  
AND NOTHING IN 17-27-10 PCN STATUTES REQUIRE

A FILING FEE! AND THE CLERK OF COURT HAS  
CONSISTENTLY REFUSED TO EVEN TELL ME WHAT AMOUNT  
THIS SO CALLED "SPECIAL FEE/TAX" IS!

I ASK IF PCN BE PROCESSED WITHOUT THE FEE  
BUT IF A FEE IS MANDATED TREAT THE AMOUNT OF  
THAT FEE BE STATED TO ME AND THAT I BE GIVEN

(D) LAKES V. STATE 333 SC 252 (SC 1998) HELD PCN  
DO NOT REQUIRE FILING FEE!

30 DAYS TO ATTEMPT TO HAVE A 3RD PARTY  
PAY THIS PURPORTED FEE THAT IS NOT REQUIRED  
BY STATUTE.

(IE) IS THE FEE A 25<sup>00</sup> MOTION FEE OR  
A 300<sup>00</sup> FEE FOR SUMMONS AND COMPLAINT

C CLEARLY A PCA IS NOT A SUMMONS/ COMPLAINT

\* DECLARATION OF INDIGENCY \*

I STATE UNDER OATH I AM INDIGENT AND  
OWE SCDC IN EXCESS OF \$7,000<sup>00</sup> AND  
I HAVE NO FUNDS TO PAY A FILING FEE

UNDER OATH

SWORN AND SUBSCRIBED  
BEFORE ME THIS 3<sup>rd</sup> DAY OF

Rev. L. K. [Signature]

April 2014

Diana Sines

NOTARY PUBLIC

11-4-2015

MY COMM. EXPIRES

IT IS SUBMITTED A CIRCUIT COURT JUDGE CANNOT  
CREATE A FILING FEE WHEN NO EXISTS IN  
STATUTE THUS NO FILING FEE SHOULD BE REQUIRED

LAKER v. ST. 333 SC 382 (SC 1998)

ROBERT KOON  
227826 LCI  
PO BOX 205  
RIPPEVILLE SC 29472

**RECEIVED**  
FEB 27 2015  
MAIL ROOM  
LIEBERGL

S.C. SUPREME COURT  
PO BOX 11330  
COLUMBIA SC 29201

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