Dear clerk of court,

5-27-15
RECEIVED
JUN 01 2015
SC SUPREME COURT

RE: Notice of Appeal to
2014-CP-26-01339

I'm currently in a lock-up unit with no lights or table to write on and my ability to make copies of the original conditional order which is signed by the honorable Larry B. Hyman, JR dated Dec. 17th, 2014 are slim so i'm sending the initial copy that i received. The conditional order of dismissal was clocked stamped Jan. 6th, 2015 at 1:02 PM by MRS. melanie Huggins-ward, clerk of court of Horry County.

I'm also sending the original copy of the final order of dismissal which is clocked stamped APR. 20th, 2015 at 1:49 PM.

AS for the copy of the notice of appeal and proof of service i've already sent the documents to you and you should have them by now...

I'm sending every copy of the mentioned documents that you've asked for and if leaves me empty handed as far as my file goes so if possible can i receive any or all of my materials back from you?? I'm just tring to comply with the courts so i can receive a hearing and obtain my life back honorable clerk so please if possible forward me any materials that i'm furnishing you, because due to no fault of my own i'm unable to make the appropriate copies to send you but i made it possible to do so i'm sending my copies from my case file!!! I'd like to thank you in advance for your time, patience, and assistance in this very important matter and may god bless you!!!

Sincerely,

Michael A. Dukes, #311176
ECI-223-RHU
610 Hwy 9 west
Bennettsville, SC
29512

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Michel A. Dukes, Sr., #311176, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2014-CP-26-1339 **CONDITIONAL ORDER OF DISMISSAL**

RECEIVED
JUN 01 2015
SC SUPREME COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 5, 2014. The Court finds as follows:

I. PROCEDURAL HISTORY

A. Underlying Conviction

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the November 2003 term of the Horry County Grand Jury for trafficking in crack cocaine, 10-28 Grams (2003-GS-26-3445). Paul Archer, Esquire represented Applicant. On August 8-9, 2005, Applicant proceeded to trial before the Honorable Edward B. Cottingham and a jury. The jury found Applicant guilty as indicted. Judge Cottingham sentenced Applicant as a third drug offender[1] to confinement for a period of eighteen (18) years.

Applicant filed a timely notice of appeal. Aileen P. Clare, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal with the filing of an Anders[2] brief on October 18, 2006. The South Carolina Court of Appeals dismissed Applicant's appeal on October 8, 2007. Sate v. Dukes, Op. No. 2007-

[1] Applicant has prior convictions in 1996 for possession with intent to distribute marijuana and in 2000 for possession with intent to distribute cocaine.
[2] Anders v. California, 386 U.S. 738 (1967).

UP-423 (S.C. Ct. App. filed October 8, 2007). The remittitur was returned to the circuit court on December 21, 2007.

B. First Post-Conviction Relief Action (2008-CP-26-489)

Applicant filed his first application for post-conviction relief on January 18, 2008. In his first application, Applicant alleged the following grounds for relief:

1. "Directed Verdict"
   a. "The judge should have directed a verdict due to the state not putting forth any evidence to show actual or constructive possession"
2. "Ineffective assistance of counsel"
   a. "Not doing any investigation into whether or not applicants 4th amendment was violated by the officer searching his vehicle…"
   b. "Proceeding with the picking of the jury in the absence of Applicant…"
   c. "Court lacked subject matter jurisdiction to sentence applicant as second or subsequent offender for trafficking [because] applicant has never been convicted of trafficking first."
3. "Did judge err in his ruling of Brady violation?

The Honorable Michael G. Nettles convened a hearing on the application on November 17, 2008. At the hearing, Applicant voluntarily withdrew all claims except the ineffective assistance of counsel claims. Judge Nettles denied relief by order filed December 12, 2008.

Applicant filed a timely notice of appeal. M. Celia Robinson, Esquire, of the Office of Appellate Defense perfected the appeal with the filing of a petition for writ of certiorari on December 11, 2009. The South Carolina Supreme Court denied the petition on January 7, 2011. The remittitur was returned to the circuit court on January 25, 2011. Applicant filed a subsequent notice of appeal, which the Supreme Court dismissed as successive on August 29, 2014. The remittitur was again returned to the circuit court on October 13, 2014.

C. Second Post-Conviction Relief Action (2012-CP-26-3026)

Applicant filed a second application for post-conviction relief on April 13, 2012. In the second application, Applicant alleged the following grounds for relief:

1. Fourth Amendment violations.
2. Trial judge error in selecting a jury outside Applicant's presence.
3. Ineffective assistance of counsel for allowing jury selection outside of Applicant's presence.

The Honorable Steven H. John entered a Conditional Order of Dismissal on June 13, 2012. The Honorable Thomas A. Russo convened a hearing on Applicant's response to the conditional order on August 27, 2012, in Horry County. David C. Hicks, Esquire, represented Applicant at this hearing. Judge Russo issued an order on September 11, 2013, dismissing the second application as untimely and successive.

Applicant filed a timely appeal from Judge Russo's order. On March 8, 2013, the South Carolina Supreme Court dismissed the appeal pursuant to Rule 243(c), SCACR, for failing to demonstrate an arguable basis of error. The remitter was returned to the circuit court on March 26, 2013.

D. Third Post-Conviction Relief Action (2013-CP-26-2686)

Applicant filed a third application for post-conviction relief on April 13, 2013. In this third application, Applicant alleged the following grounds for relief:

1. "Ineffective assistance of trial counsel for not requesting a suppression hearing due to an illegal arrest"
2. "Ineffective assistance of trial counsel by not protecting defendants' 4th and 14th amendment counstitutional rights under due process due to an illegal arrest"
3. "Ineffective assistance of counsel by not raising a brady violation"
4. "Lack of subject matter jurisdiction"

Applicant filed an "Amendment and Supplementation" on June 11, 2013, alleging trial counsel failed to object to evidence and statements gathered during an illegal arrest. The Honorable Benjamin H. Culbertson issued a Conditional Order of Dismissal on September 13, 2013. Applicant filed a timely response to the conditional order. Judge Culbertson issued a Final Order of Dismissal on January 7, 2014.

Applicant filed a timely notice of appeal from Judge Culbertson's order. On July 29, 2014, the South Carolina Supreme Court dismissed the appeal pursuant to Rule 243(c), SCACR, for failing to show an arguable error. The remittitur was returned to the circuit court on August 14, 2014. Applicant filed a second

notice of appeal from Judge Culbertson's order. The Supreme Court dismissed that appeal on December 10, 2014, and returned the remittitur to the circuit court on the same day.

E. State and Federal Habeas Corpus Actions

Applicant filed a federal petition for habeas corpus on February 24, 2011 (Case number 0:11-cv-00819-JFA). The United States District Court for the District of South Carolina granted summary judgment against Applicant on January 4, 2012. The District Court denied Applicant's certificate of appealability on February 7, 2012.

On March 8, 2012, Applicant filed a motion to file a subsequent federal habeas corpus action with the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit denied the motion on March 28, 2012. Nevertheless, Applicant filed a second federal habeas corpus on December 19, 2012 (Case number 0:12-3445-JFA-PJG). The District Court dismissed the action on June 4, 2013.

Applicant filed a third federal habeas on February 28, 2013 (Case number 0:13-157-JFA-PJG). This action was dismissed on June 4, 2013 as well.

Applicant filed another motion with the United States Court of Appeals for the Fourth Circuit seeking permission to file a successive habeas corpus petition on March 26, 2014. The Fourth Circuit denied this motion on April 10, 2014. In re: Michel Andre Dukes, No. 14-183 (4th Cir. Apr. 10, 2014).

On July 19, 2013, Applicant attempted to file a document titled "Writ of Habeas Corpus" with the Horry County Clerk of Court. Judge Culbertson denied permission to file the document by letter dated August 8, 2013, because Applicant failed to comply with the filing requirements of the South Carolina Rules of Civil Procedure.

II. CURRENT APPLICATION

In his current application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
    a. Failure to raise Fourth Amendment claim.
    b. Failure to object to evidence.
    c. Lack of personal jurisdiction.
2. Parole has been unlawfully revoked.
3. The State failed to disclose immunity agreement with witness.
4. The State failed to disclose a chemical analysis report.
5. The solicitor appeared as sole witness before the grand jury.
6. Violation of right to confront his accusers.
7. Malicious prosecution.
8. Sentence was illegally enhanced.
9. State failed to prove chain of custody.

On March 31, 2014, Applicant filed a document titled "Amendment and Supplementation" re-alleging a Fourth Amendment violation. On June 25, 2014, Applicant filed a second "Amendment and Supplementation" alleging the trial court lacked subject matter jurisdiction. On August 5, 2014, Applicant filed a third "Amendment and Supplementation" alleging ineffective assistance of prior collateral counsel. Respondent made a timely Return and Motion to Dismiss on or about December 12, 2014, asking this Court to dismiss the application for as successive and untimely.

Applicant has also filed the following motions in connection with his application:

1. "Motion for Default and Failure to Respond to Application Within 30 Days" filed April 29, 2014.
2. "Motion for Default" filed May 29, 2014.
3. "Petitioner's Motion for Rule 62(b) Stay of Proceedings to Enforce a Judgment" filed June 25, 2014.
4. "Amendment for Motion for Default for Failure to Respond Within 30 Days as Required by § 17-27-70(a)" filed September 4, 2014.
5. "Motion for the Appointment of Counsel" filed November 18, 2014.
6. Motion for appointment of counsel filed December 9, 2014.

Respondent incorporated its return to these motions in its return and motion to dismiss.

III. FINDINGS OF FACT AND CONCLUSION OF LAW

S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of

material fact and the moving party is entitled to judgment as a matter of law." The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law in ruling on Respondent's motion to dismiss and Applicant's other motions:

A. Respondent's Motion to Dismiss

1. Successive Application

The Court finds this application should be dismissed because it is successive to Applicant's previous applications for post-conviction relief and petitions for habeas corpus. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). S.C. Code Ann. § 17-27-90 requires that:

> 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, 450, 409 S.E.2d 392, 394 (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. 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. Id.

The Court finds Applicant failed to present any reasons why these allegations are new and distinct from the allegations contained in his numerous prior collateral attacks on his conviction. The grounds

alleged in the current application are almost identical to the grounds raised Applicant's direct appeal, his three (3) prior post-conviction relief applications, his petition for state habeas corpus, and his four (4) federal habeas corpus actions. To the extent the application includes allegations not include in those collateral attacks, the Court finds Applicant failed to demonstrate any reason why these allegations could not have been previously raised. Therefore, the Court finds summary dismissal is appropriate.

2. Failure to Timely File

The Court further finds this Application should be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-45(a) provides that:

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

This statute of limitations applies to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996).

The remittitur from Applicant's direct appeal was sent on December 21, 2007. Applicant was therefore required to file his application before December 21, 2008. This application was filed on March 5, 2014, which was well beyond the expiration of the statutory filing period. Therefore, the Court finds summary dismissal is appropriate. U.S.C.A. Const. Amend. 6; Code 1976, § 17-27-45(c) (Supp. 2001) Discovery Rule Coats v. State (S.C. 2003) 352 S.C. 500, 575 S.E.2d 557 Criminal law KEY 1586

A. Applicant's Motions

1. Motion for Deafult

The Court finds Applicant's motions for default should be denied. As a general matter, the State cannot be held in default except in rare circumstances. See Rule 55 (e), SCRCP ("No judgment by default shall be entered against the State of South Carolina or an officer or agency thereof [...] unless the claimant establishes his claim to relief by evidence satisfactory to the Court."). In the specific context of post-

conviction relief actions, compliance with the filing deadlines in Rule 12(a), SCRCP, and S.C. Code Ann. § 17-27-70(a) are not mandatory, but are left to the discretion of the court. Guinyard v. State, 260 S.C. 220, 225, 195 S.E.2d 392, 394 (1973). To be entitled to default relief, the applicant must show that he has been prejudiced by Respondent's delay in filing a return. Kneece v. State, 269 S.C. 177, 178, 236 S.E.2d 746, 747 (1977). An applicant cannot show prejudice where the application was without merit. Herring v. State, 262 S.C. 597, 598, 206 S.E.2d 885, 886 (1974).

The Court finds Applicant has not shown prejudice from Respondent's delay in filing a return. The appeal from Petitioner's prior post-conviction relief action did not conclude until the Supreme Court's issuance of a remittitur on December 10, 2014. Respondent's return is dated December 12, 2014, only two (2) days after the issuance of the remittitur. Furthermore, this date is only 282 days after the application was filed on March 5, 2014. See Guinyard, 260 S.C. at 225, 195 S.E.2d at 394 (no prejudice from 190 day delay); Herring, 262 S.C. at 598, 206 S.E.2d at 886 (no prejudice from eleven month delay).

Furthermore, as noted above, Applicant has not shown his claims are meritorious. His application merely re-alleges the same allegations raised in his numerous prior collateral attacks on his conviction. Because Applicant has had numerous prior occasions to litigate these issues, he has not demonstrated entitlement to relief in the current application. Therefore, Applicant's motions for default are hereby **DENIED**.

2. Rule 60(b) Motion

The Court finds Applicant's motion for relief from judgment should be denied. Rule 60(b)(4), SCRCP, allows the Court may to relieve a party from a final judgment where the judgment "is void." However, this provision applies only in civil cases and is not applicable to Applicant's criminal conviction. Regardless, none of Applicant's grounds for relief are valid because his conviction is not void for lack of jurisdiction. The trial court had personal jurisdiction over Applicant because he appeared to defend his case.

State v. Adams, 354 S.C. 361, 374-75, 580 S.E.2d 785, 792 (Ct. App. 2003) (citations omitted). Likewise, the trial court had subject matter jurisdiction to convict Applicant because his trafficking trial involved a criminal charge in General Sessions Court. State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) ("Circuit courts obviously have subject matter jurisdiction to try criminal matters."). Therefore, Applicant's Rule 60(b)(4), SCRCP, motion is hereby **DENIED**.

3. Motions for Appointment of Counsel

Code 1976 § 17-27-60;
Rule 71.1(d), SCRCP

The Court finds Applicant's motions for appointment of counsel should be denied at this juncture. According to the directive of the Supreme Court, the Court should not appoint counsel for successive applications unless the application raises a question of material fact. Re: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court, Order No. 2008-10-06-01 (S.C. Sup. Ct. dated Oct. 6, 2008). Because the questions raised in Applicant's application have been resolved in his direct appeal, his three prior post-conviction relief applications, his petition for state habeas corpus, and his four federal habeas corpus actions, the Court finds Applicant has not demonstrated a right to appointment of counsel at this time. Should Applicant present issues in his response to this order that warrant a hearing on his application, the Court will appoint counsel pursuant to the Supreme Court's directive. However, at this time Applicant's motions for appointment of counsel are **DENIED WITHOUT PREJUDICE.**

IV. CONCLUSION

The Court finds the record before it creates no genuine issue of material fact and Respondent is therefore entitled to judgment as a matter of law.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this order upon

him to show why this ruling should not become final. Applicant shall file any reasons he may have with the Horry County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Joshua L. Thomas, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Horry County Clerk of Court within twenty (20) days, and his failure to timely file and serve this response will result in the Court not considering any issues raised therein.

IT IS SO ORDERED THIS _________ DAY OF _______________________, 2014.

____
THE HONORABLE LARRY B. HYMAN, JR.
Chief Judge for Administrative Purposes
Fifteenth Judicial Circuit

____________________, South Carolina

1-21-15 13 59

Dear Honorable Larry B. Hyman, JR.,

RE: 2014-CP-26-1339

Conditional order of Dismissal

As of 1-21-15 i recieved a signed conditional order of dismissal from the Operations building at ECI. Due to no fault of my own the Conditional order was Served upon the Applicant late which the 20 days that applicant had to file his response to this order was taken away inwhich the applicant is asking that his response be permitted due to the mailroom holding my legal mail. I even Signed an Admission of Service on 1-21-15 to prove that i recieved the signed conditional order of dismissal dated 12-17-2014 on 1-21-15. The honorable clerk of Court clock Stamped the conditional order on 1-6-2015. The institution is to be held accountable for applicant not meeting his deadline and i'm asking the honorable courts to investigate and also allow applicants' response to the conditional order of dismissal be filed and reviewed since due to no fault of his own was denied access to his legal mail within a timely manner!!! Thanks in advance in this matter at hand because my life and the hands of Justice are at Stake!!! Also may god bless you!!!!

yours truely,

/S/ Michêl A. Dukes Sr., #311176

Michêl A. Dukes SR., #311176
ECI-F1-B-211
610 Hwy 9 west
Bennettsville, SC
29512

Date: 1-21-15

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT

Michêl A. Dukes, SR. #311176
Applicant,

vs.

State of South Carolina,
Respondent.

C/A Action No.
2014-CP-26-01339

Sufficient Explanation for Required Successive Application

RECEIVED
JUN 01 2015
SC SUPREME COURT

Sufficient Explanation for the Successive Application.

See Aice v. STATE, 409 S.E.2d 392 (S.C. 1991); in which a successive application may be permitted where the court's refusal to hear the claim or claims would constitute a "gross miscarriage of justice". At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. The applicant's sufficient reason why the new grounds for relief he asserts were not raised, or were not raised properly fall on TRIAL counsel. Applicant contends that he was convicted in state court in violation of the Sixth Amendment to the United States constitution, which vests persons charged with crimes with the right to "the assistance of counsel." U.S. Const. amend. VI. The right to "Assistance of counsel" encompasses the right to effective "Assistance of counsel," see, e.g., McMann v. Richardson, 397 U.S. 759, 771 n. 14, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970), and applies to the States as a component of the right to "due process of law" secured by the fourteenth amendment to the united States constitution, see Evitts v. Lucey, 469 U.S. 387, 394, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "CONSTITUTIONAL PRINCIPLES" See Criminal Law key 1870, which States: The right to the effective assistance of counsel at trial is a bedrock principle in our justice system. U.S.C.A. Const. Amend. 6., also see criminal law key 1710 Defense counsel tests the prosecution's case to ensure that the proceedings serve the function of adjudicating guilt or innocence, while protecting the rights of the person charged. The applicant has been denied a fair bite at the apple due to being denied effective assistance of trial counsel and denied fair process and opportunity to comply with the State's procedures and obtain an adjudication on the merits of his claim[s]. Claims of ineffective-assistance at trial often require investigative work and an understanding of trial strategy. When the issue cannot be raised on direct review, moreover, a applicant asserting an ineffective-assistance-of-trial-counsel claim in an initial-review collateral proceeding cannot rely on a court opinion or the prior work of an attorney ... Halbert, 545 U.S., at 619, 125 S.Ct. 2582

to present a claim of ineffective assistance at trial in accordance with the State's
Procedures, then a defendant likely needs an effective attorney. The defendant, unlearned
in the law, may not comply with the State's procedural rules or may misappre-
hend the substantive details of federal constitutional law. Cf., e.g., id., at
620-621, 125 S.Ct. 2582 (describing the educational background of the
Prison population). While confined to prison, the defendant is in no position
to develop the evidentiary basis for a claim of ineffective assistance,
which often turns on evidence outside the trial record. A prisoner's inab
ility to present a claim of trial error is of particular concern when the claim
is one of ineffective assistance of counsel. The right to the effective assistance
of counsel at trial is a bedrock principle in our justice system. It is deemed
as an "obvious truth" the idea that "any person haled into court, who is to
poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided
for him." Gideon v. Wainwright, 372 U.S. 335, 344, 83 S.Ct. 792, 9 L.Ed.2d 799
(1963). Indeed, the right to counsel is the foundation for our adversary system. Defense
Counsel tests the prosecution's case to ensure that the proceedings serve the function
of adjudicating guilt or innocence, while protecting the rights of the person charged.
See, e.g., Powell v. Alabama, 287 U.S. 45, 68-69, 53 S.Ct. 55, 77 L.Ed. 158
(1932) ("[The defendant] requires the guiding hand of counsel at every step in
the proceedings against him. Without it, though he be not guilty, he faces the da-
nger of conviction because he does not know how to establish his innocence"). Effe-
ctive trial counsel preserves claims to be considered on appeal, see, e.g., Fed.
Rule Crim. Proc. 52(b), and in federal habeas proceedings, Edwards v. Carpenter,
529 U.S. 446, 120 S.Ct. 1587, 146 L.Ed.2d 518 (2000). See Criminal
LAW Key 641.13(1); Right to effective assistance of counsel may be vio-
lated by even isolated error of counsel if that error is sufficient egregious
and prejudicial. U.S.C.A. Const. Amend. 6. That being stated applicant would
rely on McCleskey v. Zant, 111 S.Ct. 1454 (1991), where there was "interference by governme
officials" that makes compliance with the State's procedural rule impracticable, and or
that the factual or legal basis for a claim was not reasonably available to
counsel." In addition, constitutionally "[i]neffective assistance of counsel...
should be a sufficient explanation for a successive Application, or where some other
circumstance beyond the applicant's control occurred; see Code 1976, § 17-27-80; Rules Civ.
Proc., Rules 52(a), 59(e); U.S.C.A. Const. Amend. 6. Erroneous finding of facts, conclusion of laws and
review.

Failure to Timely File Exception

See. Discovery Rule — U.S.C.A. Const. Amend. 6; Code 1976, § 17-27-45(
Supp. 2001); Criminal law Key 1586 states that if the applicant contends that
there is evidence of material facts not previously presented and heard that
requires vacation of the conviction or sentence, the application must be filed
under this chapter within one year after the date of actual discovery of the
facts by the applicant or after the date when the facts could have been

ascertained by the exercise of reasonable diligence. Coats v. State, 575 S.E.2d 557 (S.C. 2003). Also see S.C. Ann. §17-27-45 (B) when it is a "watershed rule of criminal procedure" implicating the fundamental fairness and accuracy of the proceeding.

Applicant's Motions

1. motion for Default explanation

See 4th & 14th U.S.C.A. const. Amendments that have been violated under due process of law and equal protection of the law, and Substantive due process and Procedural due process violation aswell as 6th U.S.C.A. Const. Amendment violation under due process; Right to appointed counsel and right to effective appointed counsel. I'm being held against my will and denied equal protection of the constititution, laws, Statues, treaties of the United State and State of South Carolina constitution, laws, Statues, and treaties. See criminal law key 394.1. See. Mapp v. Ohio, 367 U.S. 643 (1961); Article I, section 10 of the South Carolina constitution; South Carolina State Statue §17-13-140.

Exclusionary rule under Wong Sun v. U.S., 371 U.S. 471 (1963), shows that there has been a conviction obtained where the constitution, laws, Statues, and treaties will not allow. Not only is the conviction void but also the indictment is void aswell. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant. Staubes v. City of Folly Beach, 331 S.C. 192, 500 S.E.2d 1[illegible] (Ct. App. 1998), cert. granted, march 3, 1999.

Rule 60(B) motion explantion

The conviction is void due to a warrant that was apparently issued upon a statement of facts not sworn to aswell as the conviction being void due to the State obtaining an indictment using the same statement of facts not sworn to which is unconstitutional. See. State v. Wimbush, 9 S.C. 309 (1878). I am being restrained by the State of South Carolina, the restraint is intentional, and the restraint is unlawful and equals a false Imprisonment. The State of South Carolina lacked probable cause to arrest, indict, or convict applicant and i'm asking that this sentence and conviction be vacated. See. Gist v. Berkeley County Sheriff's Dept., 521 S.E.2d 163 (S.C. App. 1999). Also See S.C. Code Ann. §22-5-320 & §17-23-160 in which combined effect was to deprive the court of general sessions of jurisdiction to try applicant. See. State v. Funderburk, 259 S.C. 256, 191 S.E.2d 520 (1972).

3. motion for Appointment of counsel

Because the questions raised and or not raised and have not been resolved due to the denial of effective assistance of counsel through the entire criminal proceeding including: preliminary hearing, Trial, direct Appeal, PCR, PCR Appellate review aswe[ll] The applicant is entitled to a hearing and appointment of counsel under Code 1976 § 17-27-60; Rule 71.1(d) SCRCP.

Respectfully submitted,

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Michel A. Dukes, Sr., #311176, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2014-CP-26-1339 **FINAL ORDER OF DISMISSAL**

HORRY COUNTY
2015 APR 20 PM 1:59
MELANIE HUGGINS-WARD
CLERK OF COURT

This matter comes before the Court pursuant to an Application for Post-Conviction Relief filed March 5, 2014. Respondent made a timely Return and Motion to Dismiss on or about December 12, 2014, requesting the Application be summarily dismissed as successive and untimely. Pursuant to this motion, the Court reviewed the pleadings in this matter and all of the records attached thereto. The Honorable Larry B. Hyman Jr. issued a Conditional Order of Dismissal, filed on March 10, 2014, provisionally denying and dismissing this action, while giving Applicant twenty (20) days from the date of service of said order to show why the dismissal should not become final. Attached to this final order and incorporated herein by reference is the Affidavit of Personal Service, dated January 21, 2015, of the above-mentioned conditional order on Applicant.

Applicant filed a document titled "Sufficient Explanation Required for Successive Applications" on January 26, 2015. In that response, Applicant argues his application is not successive because he was denied effective assistance of counsel, and the Court's refusal to hear his claims amounts to a "gross miscarriage of justice." He also argues the discovery of new evidence makes his application timely, but fails to describe such evidence. Applicant argues the Court erred in denying his motion for default because he is "being held against [his] will and denied equal protection[.]"

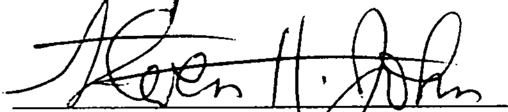
Applicant argues the trial court was without jurisdiction to convict him. Finally, Applicant argues he is entitled to counsel and a hearing to address the allegations in his application.

The Court has reviewed the original pleadings, Applicant's response to the conditional order, and all other relevant documents. The Court finds Applicant has not shown a sufficient reason why the application was not successive and untimely. The allegations raised in this application and in Applicant's response to the conditional order have already been addressed in Applicant's numerous prior collateral actions. Applicant cannot attempt to re-litigate issues that have already been addressed. Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). Accordingly, the Court finds Applicant has not demonstrated a sufficient reason why the conditional order should not become final.

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

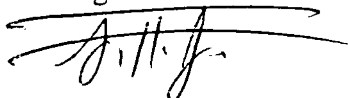
This Court notes Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this order to secure the appropriate appellate review. See Rule 203, SCACR, Rule 71.1(g), SCRCP, and Bray v. State, 366 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

IT IS SO ORDERED THIS 8th **DAY OF** April **, 2015.**



THE HONORABLE STEVEN H. JOHN
Chief Judge for Administrative Purposes
Fifteenth Judicial Circuit

Conway, South Carolina



STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS
	)	2014-CP-26-1339
MICHEL A. DUKES, SR., #311176 vs STATE OF SOUTH CAROLINA, Respondent.	)	AFFIDAVIT OF SERVICE BY MAIL

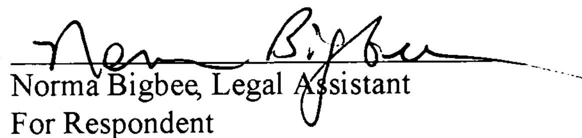
1. I am an employee of the Respondent in the above-captioned action.

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

3. I have this day served a filed copy of the Final Order of Dismissal in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Michael A. Dukes, #311176
Evans Correctional Inst.
P.O. Box 2951202
Bennettsville, SC 29512

DATED this 29th day of April, 2015.



Norma Bigbee, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Michêl A. Dukes, SR. #311176
Applicant,

VS.

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-26-1339

REQUEST FOR MOTION FOR SUMMARY JUDGMENT/DISPOSITION OF APPLICATION

Now comes the applicant before the honorable courts to show that the allegations alleged within the application are indeed genuine issues of material fact and the applicant is entitled to Judgment as a matter of law.

See. Judgment key 181(5.1) where summary judgment is not appropriate where further inquiry into the facts is desirable to clarify the application of the law. (Rules Civ. Proc., Rule 56(c). Tupper v. Dorchester county, 326 S.C. 318, 487 S.E.2d 187 (1997). when determining whether any triable issue of fact exists, the evidence and all reasonable inferences there from must be viewed in the light most favorable to the nonmoving Party. PYE V. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant. Staubes v. City of folly beach, 331 S.C 192, 500 S.E.2d 160 (Ct. App. 1998), Cert. granted, Mar. 3, 1999.

Applicant will now explain:
Issue of subject matter jurisdiction may be raised at any time. See criminal law key 105 - Carter v. State, 329 S.C. 355, 495 S.E.2d 773 (1998); State V. funderburk, 259 S.C. 256, 191 S.E.2d 520 (1972).

Probable Cause

Applicant argues that he is entitled to summary Judgment as a matter of law because a genuine issue of material fact exists as to whether there was probable cause for applicants' arrest. See statue code 1932, §§930, 952; Const. art. I, §18. See also case under §22-3-710 which follows: This statutory requirement that all proceedings before a magistrate in criminal cases shall be commenced upon the issuance of a warrant of arrest, cannot be waived. See Town of Honea path v. wright, (S.C. 1940) 194 S.C. 461, 9 S.E.2d 924; Criminal law KEY-216.

SEE also §§14-7-1510 legislative provisions concerning grand Juries where under Art. I, §11 Preliminary examination by magistrate is a issue of material fact that also exists. This rule has been applied to an act requiring magistrates to hold a preliminary investigation on the issue of a warrant charging a crime at the demand of the defendant. See State v. Brown, (S.C. 1902) 62 S.C. 374, 40 S.E. 776; Grand Jury key 26.

when faced with an irregularity in an indictment and the evidence of record is insufficient to show the action taken by the grand jury, it is proper for the appellate court to remand for an evidentiary hearing to determine whether the trial court had subject matter jurisdiction. See criminal law key-1181.5(3.1); State v. Grim, 341 S.C. 63, 533

S.E.2d 329 (2000); Anderson v. State, 338 S.C. 629, 527 S.E.2d 398 (Ct. App. 2000).

The applicant contends the court lacked subject matter Jurisdiction because prosecution was commenced without issuance of a warrant in which applicant's trial before the Horry County general sessions court and Horry county grand Jury was illegal and a nullity, upon the ground that no formal charge was preferred against applicant, and no warrant was issued setting forth the nature and grounds of the accusation preferred against him, supported by oath or affidavit. SEE U.S.C.A. Const. Amend. 4; Code 1976, § 17-13-140; State v. Mcknight, 352 S.E.2d 471 (S.C. 1987); Criminal law key 394.5(2)... State v. Covert, 382 S.C. 205, 675 S.E.2d 740; Searches and Seizures 349 key. 123.1...

On the other hand, the rights afforded by Section 17-13-140 are not dependent upon a showing of an expectation of privacy in the searched premises. The primary purpose of the statue is to insure the timely recording of the testimony upon which the Judicial officer relied in issuing the warrant. State v. Sachs, Supra. However, the primary benefit of the statute "is to the person arrested or searched." SEE 216 S.E.2d at 510. Therefore, one contesting the legality of a search or seizure because of a defect under Section 17-13-140 need only show that the State is attempting to introduce the evidence against him.

It is also applicant's contention that the warrant (H-299368) was apparently issued upon a statement of facts not sworn to and that the same statement of facts not sworn to was used to obtain an illegal indictment through the grand Jury. See State v. Wimbush, 9 S.C. 309 (1878) dealing with a warrant being issued upon a statement of facts not sworn to is unconstitutional.

Applicant points the court's attention to Gist v. Berkeley county Sheriff's department, 521 S.E.2d 163 (S.C. App. 1999); Judgment, False imprisonment....

To conclude the request for motion for summary Judgment/Disposition of application applicant also states that the defect in the authority of the court as in this case, is more fatal than the defect by reason of error on the face of the process. The court had no power or authority to issue the process without information under oath, and without that information its process was no process. Further more it is the constitutional right of a person charged with a criminal offense to be fully informed of the nature and cause of the accusation. Article I, §18 of the constitution. Relief is due not Just because of the rights of the accused are not only of interest to him, but concern the state, the statutory requirement may not be waived. §22-3-710.

SEE following enclosed relevant documents: 1) Invalid Arrest warrant-H-299368 which is without a magistrate Judge signature and violates State Statute §17-13-140; U.S.C.A. Const. Amend. 4th; S.C. Const. Article I, Section 10; S.C. Const. Article I, §18; §22-3-710... 2.) Void indictment which is a nullity and violates the same as stated for the invalid arrest warrant, and to support the above see Due Process of law under the 14th Amendment of the United States of America...

Date: 3-30-15

Respectfully Submitted,
/s/ Michael A. Dukes Jr. #311176
ECI-RHU-223
610 Hwy 9 west
Bennettsville, SC
29512

Proof of Service of a request for motion for Summary Judgment/Disposition of Application

THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

THE HONORABLE LARRY B. HYMAN, JR,
Judge for Administrative Purposes
FIFTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-26-1339

Michêl A. Dukes, SR. #311176
Applicant,

V.

The State,
Respondent.

HORRY COUNTY
2015 APR -2 PM 2:54
CLERK OF COURT

PROOF OF SERVICE

I certify that I have served the request for motion for Summary Judgment/Disposition of Application on Melanie Huggins-ward, Clerk of court of Horry County, P.O. BOX 677 Conway, SC 29528-0677, Joshua L. Thomas, Esquire, Assistant Attorney General, P.O. BOX 11549 Columbia, SC 29211, The Honorable Larry B. Hyman, Jr., Fifteenth Judicial Circuit, 1301 Second AVE., STE. 3B76 Conway, SC 29526 by depositing a copy of it in the United States Mail, Postage prepaid on:

Date: 3-30-15

Sincerely,
/S/ Michêl A. Dukes, #311176
Michêl A. Dukes, SR. #311176
ECI-RHU-223
610 Hwy 9 West
Bennettsville, SC
29512

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C/A NO.
2014-CP-26-01339

Michel A. Dukes, Sr. #311176
Applicant

VS.

STATE OF SOUTH CAROLINA,
RESPONDENT.

MOTION FOR SUMMARY DISPOSITION OF APPLICATION PURSUANT TO S.C. CODE ANN. §17-27-70(c)

Now comes the Applicant to show before the Honorable courts that there is a genuine issue of material fact and the applicant is Entitled to judgment as a matter of law.

The issue of Subject matter jurisdiction may be raised at any time. SEE. Criminal law KEY-105; STATE V. funderburk, 259 S.C. 256, 191 S.E.2d 520 (1972). Also SEE 1033.1 -criminal law KEY; Courts KEY-37(2); inwhich pertains to the issue of Subject matter jurisdiction being raised at any time.

In the conditional order of dismissal page 5 of 10 applicant raised or filed an "Amendment and Supplementation" alleging the trial court lacked subject matter jurisdiction on June 25, 2014.

The applicant contends that the combined effect of S.C. Code Ann. §22-5-320 (Supp. 1981); and the recently enacted Statute, S.C. Code Ann. §17-23-160 (Supp. 1981), was to deprive the Court of General Sessions of jurisdiction to try him, and where the defendant was tried and convicted upon an indictment which was a nullity, it follows that he was convicted in violation of this Section. SEE STATE V. FUNDERBURK, 259 S.C. 256, 191 S.E.2d 520 (1972). (ART. I, §11).

The issue at hand before the Honorable courts is: The effect of demand for hearing on Jurisdiction pursuant to S.C. Code Ann. §22-5-320 (Supp. 1981); and S.C. Code Ann. § 17-23-160 (Supp. 1981). The applicant would also rely on the following case aswell pursuant to §22-5-320 (effect of demand for hearing on jurisdiction) which is State v. Adcock, (S.C. 1940) 194 S.C. 234, 9 S.E.2d 730 and states: when defendant had demanded a preliminary hearing which had not been held, it was Error for the magistrate to transmit the warrants to the higher Court and, although indictments had been given out and true bills found on them, the court had no jurisdiction

until the preliminary hearing had been held. The applicant also contends that under §22-5-320 (Effect of demand for hearing on jurisdiction) State v. Funderburk, (S.C. 1972) 259 S.C. 256, 191 S.E.2d 520. Courts Key-40; which states the acts of a court in a matter over which it has no jurisdiction are void.

For the applicant ever prays for relief...

Sincerely,
Respectfully Submitted,
Michel A. Dukes Sr., #311176

Michel A. Dukes, Sr. #311176
ECI-RHU-223
610 Hwy 9 West
Bennettsville, SC
29512

4-24-15

Dear clerk of court,

RE: Michêl A. Dukes, #311176 V. State of South Carolina
2014-CP-26-1339

FILED
HORRY COUNTY
2015 APR 29 PM 1:34
MELANIE HUGGINS-WARD
CLERK OF COURT

I'd like for you to advise the courts that pursuant to ART. I, §3 titled privileges and immunities; due process; equal protection of laws it states under due process of law that a judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on. SEE Judgment key-16 Also under Constitutional law key-251.1 it states that due process is flexible and calls for such procedural protections as the particular situation demands. See Brown V. Malloy, (S.C. App. 2001) 345 S.C. 113, 546 S.E. 2d 195.

Subject matter → With the above being stated the applicant would like to point the courts in the direction to Criminal law key-1033 (1) which states that lack of jurisdiction of the cause or subject matter can be raised at any time, including for the first time on appeal to the Supreme Court. See code 1962, §43-232; const. art. I, §11; §22-5-320 (effect of demand for hearing on jurisdiction); Courts key-40; See State V. Funderburk, (S.C. 1972) 259 S.C. 256, 191 S.E. 2d 520.

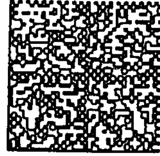
Probable Cause → Also see code 1932, §§930, 952; const. art. I §18; §22-3-710 (necessity of information and warrant); Indictment and Information key-35; criminal law key-216. See Town of Honea Path V. Wright, (S.C. 1940) 194 S.C. 461, 9 S.E. 2d 924.

I'm furnishing this information due to the fact that it seems that the courts are at a delay for what reason i dont know but i do know that i've almost been killed three times, i've lost family members, my kids have grown up, my parents are now elderly, and the biggest issue at hand is that i shouldn't even have gone through any of this!!! I just want a fair bite at the apple mrs. Ward cause i've been denied equal protection of the laws under the 14th Amendment as a United States citizen. where is the due process in that???
I'd also like to thank you once again in advance for your time, patience, and assistance in this matter and may god bless you!!!

Sincerely yours,
Michêl A. Dukes Jr.
#311176

DATE: 4-24-15

Michêl A. Dukes, Sr. #311176
ECI-RHU-223
610 Hwy 9 west
Bennettsville, SC
29512



The Supreme court of
South Carolina
The Honorable Daniel E. Shearouse,
Clerk of Court
Post office Box 11330
Columbia, South Carolina
29211

LEGAL M[illegible] ONLY

THE DEPARTMENT OF CORRECTIONS HAS NEITHER CENSORED NOR INSPECTED THIS ITEM. THEREFORE, THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY FOR ITS CONTENTS.

EVANS CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS