

# AXELROD & ASSOCIATES, P.A.

Attorneys and Counselors at Law

*"Success is all that matters"*

Stuart Mark Axelrod†  
W. Christopher Castro\*  
Tristan M. Shaffer  
Caitlin M. Epley

4701 Oleander Drive  
Myrtle Beach, SC 29577  
Phone: (843) 916-9300  
Fax: (843) 916-9311

†Certified Family Court Mediator  
\*Currently on Active Military Leave  
‡Certified Guardian Ad Litem

September 21, 2015

Janet Johnson  
Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, SC 29211

**RECEIVED**

SEP 23 2015

**RE: Demetrius Jones v. State 2013-CP-33-0082**

**S.C. SUPREME COURT**

Dear Janet Johnson:

Please find the enclosed Order of Dismissal, Notice of Appeal, and Dennison letter in the above referenced case.

Sincerely



Tristan M. Shaffer

cc: Croom Hunter  
Demetrious Jones  
Marion County Clerk of Court

SUPREME COURT OF SOUTH CAROLINA

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APPEAL FROM MARRION COUNTY  
In The Court of Common Pleas

Honorable William Seals,  
Common Pleas Judge of the Twelfth Judicial Circuit

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Case No.: 2013-CP-33-0082

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Demetrius Jones #322016,

Petitioner,

v.

State of South Carolina,

Respondent.


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NOTICE OF APPEAL

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Petitioner appeals the Order of Dismissal of the Honorable William Seals dated July 8, 2015, filed July 25, 2015 and received by Petitioner on August 21, 2015.

September 21, 2015



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Tristan M. Shaffer, Esq.  
AXELROD & ASSOCIATES P.A.  
4701 Oleander Drive  
Myrtle Beach, SC 29577  
(843) 848-6708 Phone  
(843) 848-6709 Fax  
Tristan@Gotaxelrod.com  
*Attorney for Petitioner*

Respondent's Attorney:  
Croom Hunter, Esquire  
S.C. Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211

**RECEIVED**

SEP 23 2015

**S.C. SUPREME COURT**

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM MARRION COUNTY  
In The Court of Common Pleas

Honorable William Seals,  
Common Pleas Judge of the Twelfth Judicial Circuit

Case No.: 2013-CP-33-0082

**RECEIVED**

SEP 23 2015

Demetrius Jones #322016, Petitioner,

v.

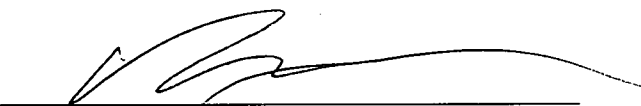
**S.C. SUPREME COURT**

State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I, Tristan Shaffer, I have this date served the Petitioner's Notice of Appeal upon the following, by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

Croom Hunter, Esquire S.C. Office of the Attorney General Post Office Box 11549 Columbia, SC 29211	Demetrius Jones #322016 Kirkland Reception and Evaluation Center 4344 Broad River Road Columbia SC 29210
Marion County Clerk of Court PO Box 295 Marion, SC 29571-0295	Appellate Defense 1330 Lady Street Columbia, SC 29201

  
Tristan Shaffer

September 21, 2015

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF MARION )  
 )  
DEMETRIUS JONES, #322016 )  
 )  
vs )  
 )  
STATE OF SOUTH CAROLINA, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
2015-CP-33-0082

AFFIDAVIT OF SERVICE BY MAIL

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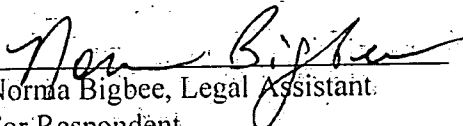
SEP 23 2015

**S.C. SUPREME COURT**

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 that this 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:

Tristan Michael Shaffer, Esquire  
4701 Oleander Drive  
Myrtle Beach, SC 29577

DATED this 19<sup>th</sup> day of August, 2015.

  
Norma Bigbee, Legal Assistant  
For Respondent

STATE OF SOUTH CAROLINA )  
COUNTY OF MARION )  
Demetrius Jones, SCDC No. 322016, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT

Case No. 2013-GP-33-0082

**FINAL ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 1, 2013. The Respondent made its return on April 1, 2015, requesting the application be summarily dismissed based upon the failure to seek a remedy available in post-conviction relief.

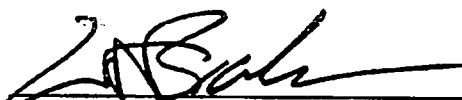
Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed April 30, 2015, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated May 27, 2015, serving the above mentioned Conditional Order of Dismissal on the Applicant.

The Applicant has failed to respond to either the Respondent's motion to Dismiss or this Court's Conditional Order of Dismissal. Therefore, this Court finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

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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.

AND IT IS SO ORDERED this 8 day of July, 2015.



THE HONORABLE MICHAEL G. NETTLES  
Chief Administrative Judge  
Twelfth Judicial Circuit

*Wlt. Seals*

Pal Chambers, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	2013-CP-33-082
	)	
Demetrius Jones,	)	
S.C.D.C. No. 322016,	)	
	)	
Applicant,	)	<b>CONDITIONAL ORDER OF DISMISSAL</b>
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Demetrius Jones (Applicant) on February 1, 2013. Respondent made its Return, requesting the application be summarily dismissed.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County Clerk of Court. Applicant was indicted at the February 2005 term of the Marion County Grand Jury for murder, armed robbery, and assault and battery of a high and aggravated nature (ABHAN). (2005-GS-33-11). He was represented by Henry M. Anderson, Jr., Esquire. On May 21, 2007, Applicant pled guilty to ABHAN, voluntary manslaughter, and armed robbery. The Honorable Michael G. Nettles sentenced him to ten (10) years imprisonment for the ABHAN charge. Sentencing on the manslaughter and armed robbery charges was deferred as Applicant was expected to testify against a co-defendant. However, the co-defendant elected to enter a plea and on May 23, 2008, Applicant appeared before the Honorable Howard P. King for sentencing. It appears that Judge King was not provided with documentation showing that Applicant had entered guilty pleas to voluntary manslaughter and

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armed robbery in front of Judge Nettles. Judge King then went through the entire process and Applicant again pled guilty to the two charges. Judge King sentenced him to twenty-five (25) years imprisonment on each charge, to run concurrently with the ten (10) years sentence for ABHAN.

Applicant did not appeal his convictions or sentences.

#### **2008-CP-33-351**

On August 22, 2008, Applicant filed an application for post-conviction relief, alleging he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Conflict of Interest

The State filed a return and requested an evidentiary hearing. On December 18, 2008, a hearing was conducted before the Honorable Benjamin H. Culbertson in Florence County. Applicant was present and represented by Johnny Gardner, Esquire. At the conclusion of the hearing, the PCR Court denied relief and on February 6, 2009, Judge Culbertson entered an order of dismissal.

Applicant filed a timely notice of appeal, while represented by Appellate Defender M. Celia Robinson. Applicant filed a petition for writ of certiorari to the South Carolina Supreme Court arguing the following:

Did the PCR judge err in denying relief despite the fact that evidence established an actual conflict of interest in the representation provided to petitioner so that his guilty plea was entered in violation of the State and Federal constitutional guarantees of effective, independent, counsel and due process of law."

The State filed its return on February 10, 2010. Certiorari was granted on April 7, 2011. After certiorari was granted, Applicant, through his counsel Lanelle Cantey Durant, Esquire, filed a brief on May 5, 2011. On November 28, 2011, the South Carolina Supreme Court issued an order dismissed certiorari as being improvidently granted. The Remittitur was issued December 15, 2011.

**2010-CP-33-980 and 2010-CP-33-988**

Applicant filed an application for post-conviction relief on October 28, 2010, (2010-CP-33-980). He subsequently filed an application on December 6, 2010, (2010-CP-33-988) that may have been intended as an amendment to the application filed on October 28, 2010. The State filed motions to dismiss on both applications because Applicant's appeal from his first PCR application was still pending and its jurisdiction was in the South Carolina Supreme Court. On March 15, 2011, the Honorable Michael G. Nettles signed an Order of Dismissal for each application, dismissing the applications as the first PCR was still pending on appeal.

**1:12-115-RBH-SVH**

On December 29, 2011, Applicant filed a petition for writ of habeas corpus with the United States District Court pursuant to 28 U.S.C. § 2254. He asserted the following grounds for relief:

Ground One: Actual conflict of interest in representation rendered his guilty plea in violation of state and federal Constitutional guarantees and due process.

Respondent filed a Motion for Summary Judgment on June 8, 2012. On November 21, 2011, the court issued an order pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir.1975). On June 26, 2012, Applicant filed a Motion for Summary Judgment and Response in Opposition. On August 23, 2012, United States Magistrate Judge Shiva V. Hodges issued a Report and Recommendation, recommending that the court should grant Respondent's Motion for Summary Judgment, deny Applicant's Motion for Summary Judgment, and dismiss Applicant's petition. Petitioner filed timely objections to the Report on September 6, 2012. On November 15, 2012, United States District Court Judge R. Bryan Harwell issued an Order overruling all of Applicant's Objections, adopting the Report and Recommendation, granting Respondent's

Motion for Summary Judgment, denying Applicant's Motion for Summary Judgment, and dismissing Applicant's Petition.

### **Current Application**

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

1. "Subject matter jurisdiction Indictment is a nullity legal grand jury never existed."
  - a. "Indictment is a nullity never been presented to a legal grand jury."
2. Newly Discovered Evidence
  - a. "Solicitor lie to judge saying that my paper work was misplace which caused me to take another plea, later the paper work was in my appendix that Solicitor said was misplaced. If it wasn't for the sham the Solicitor pulled the out come of my P.C.R. would have been different because my first plea I never waived my conflict on record, but in the second one I did."

Before this Court are the records of the Marion County Clerk of Court regarding Applicant's convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's prior PCR records, Applicant's current PCR Application and Respondent's Return and Motion to Dismiss.

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

### **Statute of Limitations**

The Court finds that this Application for post-conviction relief must also be summarily dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

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

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pled guilty to the offenses he challenges in this Application on May 23, 2008. This Application was filed on February 1, 2013, which was over three years after the statutory filing period had expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005). In addition, S.C. Code Ann. § 17-27-70(c) (1985) 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." Therefore, Applicant failed to file within the time mandated by the Post-Conviction Procedure Act and Applicant's post-conviction relief application must be summarily dismissed.

#### **Successiveness**

The Court finds that the current Application for post-conviction relief must be summarily dismissed because it is successive to the previous application for post-conviction relief. S.C. Code Ann. § 17-27-90 (1985) states:

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

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a

previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

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

#### **Subject Matter Jurisdiction**

For the following reasons, this Court finds that Applicant's allegation that the circuit court lacked subject matter jurisdiction because the indictment was not presented to a grand jury is without merit.

First, South Carolina law allows a grand jury may meet at any time ordered by a circuit judge. See S.C. Code Ann. §§ 14-5-910 to -940 (allowing for terms of court not provided for by law). Accordingly, a grand jury is not unlawfully impaneled simply because it does not meet during a term of court as provided for in sections 14-5-620 to -820. See State v. Jeffcoat, 26 S.C. 114, 1 S.E. 440, 441 (1887) (“[M]erely changing the time for holding the court did not make the grand jury illegal.”). Furthermore, a presumption of regularity attaches to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986) (citing State v. Britt, 235 S.C. 395, 111 S.E.2d 669 (1959); State v. Jones, 211 S.C. 319, 45 S.E.2d 29 (1947); State v. Waring, 109 S.C. 52, 95 S.E. 143 (1918)). Absent evidence to the

contrary, the court must presume that a properly returned indictment is valid. State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996) (citing Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995); State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (Ct. App. 1991)). In examining Applicant's indictment, this Court finds it to be valid on its face because it states all the necessary elements of the crime, the date of the offense, and the name of the accused. Id. at 75, 472 S.E.2d at 40. Likewise, the indictment is stamped "True Bill" and signed by the grand jury foreman. See Pringle, 287 S.C. at 410, 339 S.E.2d at 128. Thus, Applicant's indictment appears to have been lawfully obtained.

Additionally, this Court finds that Applicant's allegation regarding subject matter jurisdiction in general is without merit. Subject matter jurisdiction is the power of a court to hear a particular class of cases. State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005). An applicant may challenge the subject matter jurisdiction of the trial court at any time. Id. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Id. at 101, 610 S.E.2d at 499. Thus, an applicant challenging subject matter jurisdiction must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's pleas involved criminal charges in General Sessions Court. Thus, the circuit court had subject matter jurisdiction and this Court finds that the allegation must be dismissed pursuant to Rule 12(b)(6), SCRPC.

#### **Newly Discovered Evidence**

This Court finds that Applicant's claim of alleged "newly-discovered evidence" is vague and fails to make a prima facie showing that he is in actual possession of such evidence or how that evidence likely would have changed the outcome at trial. While under S.C. Code § 17-27-45(c), a newly-discovered evidence claim can be timely raised within one year of actual


discovery or within one year of when, by the exercise of due diligence, such evidence *could have been* ascertained, Applicant has failed to set forth with any specificity what exactly the evidence is, how it would have affected the outcome if used at trial, or why such alleged evidence was not readily discoverable at the time of trial or his previous PCR action. Before the Court will hold an evidentiary hearing, Applicant must make a prima facie showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has entirely failed to make such a prima facie showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter should be summarily dismissed with prejudice.

**CONCLUSION**

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

Office of the Attorney General  
Justin J. Hunter, Esquire  
PCR Division – 12th Circuit  
P.O. Box 11549  
Columbia, SC 29211

AND IT IS SO ORDERED this 11 day of April, 2015.

  
WILLIAM H. SEALS, JR.  
Circuit Court Judge  
Twelfth Judicial Circuit

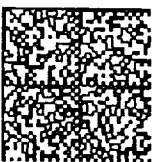
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Mini, South Carolina

# AXELROD

& ASSOCIATES  
ATTORNEYS AT LAW

4701 Oleander Drive ♦ Myrtle Beach, SC 29577



UNITED  
PITNEY BOWES  
\$ 000.705  
02 1P SEP 21 2015  
0001950239  
MAILED FROM ZIP CODE 29577

Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, SC 29211

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