

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS)

2015 FEB 23 PM 12 59

Robert Earl Dillard, 220045

CASE NO.

Plaintiff

2013-CP-39-0128

v.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

State Of South Carolina

Defendant.

✓ E-mailed MB *✓ E-mailed*

Plaintiff's Attorney: Robert Earl Dillard, 220045, Bar No. Address: Perry CI 430 Oaklawn Road Pelzer SC 29669 phone: fax: e-mail: other:	Defendant's Attorney: Karen C. Ratigan, Sadag, Bar No. 68331 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
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MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

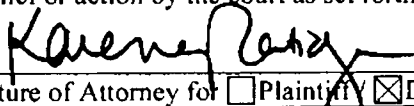
Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff Defendant

February 2, 2015
Date submitted

SECTION III: Motion Fee

PAID - AMOUNT:
 EXEMPT:

(check reason)

Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

Other: _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____

 JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed: _____

Collected by: _____

MOTION FEE COLLECTED: _____
 CONTESTED - AMOUNT DUE: _____

2015 FEB 23 PM 12 59

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)
)
Robert Earl Dillard,)
S.C.D.C. No. 220045,)
)
Petitioner,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. No. 2013-CP-39-0128

ORDER OF DISMISSAL

This matter comes before the Court by way of a document filed February 5, 2013, and captioned "Petition for Issuance of a Writ of Mandamus." Respondent filed a Return and Motion to Dismiss, requesting the matter be summarily dismissed.

I.

Petitioner is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Pickens County. Petitioner was indicted by the Pickens County Grand Jury for two counts of murder (1994-GS-39-1490, -1491). He was represented by Richard H. Warder, Esquire.

After the State called the case to trial, Petitioner was found guilty. On March 2, 1995, the Honorable Frank P. McGowan, Jr. sentenced Petitioner to two consecutive life sentences.

A notice of appeal was filed and perfected at the South Carolina Supreme Court. M. Anne Pearce, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Supreme Court affirmed Petitioner's convictions and sentences. State v. Dillard, Op. No. 97-MO-012 (S.C. Sup. Ct. filed February 11, 1997).

1997-CP-39-0820

Petitioner filed a post-conviction relief (PCR) application on October 30, 1997 (1997-CP-39-0820). Petitioner raised the following issues:

1. Ineffective assistance of trial counsel.
2. Ineffective assistance of appellate counsel.
3. Petitioner's constitutional rights were violated.

Petitioner was represented by Scott D. Robinson, Esquire. An evidentiary hearing was convened on October 5, 1998 at the Pickens County Courthouse. The Honorable Larry R. Patterson denied and dismissed the PCR application by order dated February 17, 1999. Petitioner did not file an appeal.

1999-CP-39-0406

Petitioner filed a PCR application on May 25, 1999 (1999-CP-39-0406). Petitioner raised the following issues in his PCR application:

1. Ineffective assistance of PCR counsel – counsel failed to file an appeal.

Petitioner was represented by John W. DeJong, Esquire. An evidentiary hearing was convened on August 28, 2000 at the Pickens County Courthouse. By order dated August 29, 2000, the Honorable John W. Kittredge granted Petitioner a belated appeal from the denial of his first PCR application. Upon information and belief, the subsequent Petition for Writ of Certiorari was denied by the South Carolina Supreme Court.

2002-CP-39-1217

Petitioner filed a PCR application on August 6, 2002 (2002-CP-39-1217). Petitioner raised the following issue:

1. Denial of due process of law, in violation of the Federal Constitution's Fourteenth Amendment in that the State knowingly presented false

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testimony through its key witness, James Fletcher Simpson.

Petitioner was represented by Cheree Gillespie, Esquire. An evidentiary hearing was convened on July 28, 2003 at the Pickens County Courthouse. The Honorable John C. Few denied and dismissed the PCR application by order dated August 19, 2003 and filed September 9, 2003.

Petitioner filed a notice of appeal. Wanda P. Hagler, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of a Johnson¹ petition for writ of certiorari. The South Carolina Court of Appeals denied the petition for writ of certiorari on September 27, 2006. Petitioner filed a pro se petition for writ of certiorari at the South Carolina Supreme Court, which was denied by order dated April 20, 2007.

2005-CP-39-1735

Petitioner filed a petition for writ of habeas corpus on November 28, 2005 (2005-CP-39-1735). Respondent submitted a return and motion to dismiss. The Honorable G. Edward Welmaker, acting as Chief Administrative Judge, issued a conditional order of dismissal dated March 21, 2006 and filed April 4, 2006. Petitioner did not file a response to that order. Judge Welmaker issued a final order of dismissal dated May 31, 2006 and filed June 6, 2006.

Petitioner filed a notice of appeal. The South Carolina Supreme Court dismissed the appeal by order dated July 6, 2006.

Federal Habeas Corpus

Petitioner filed a petition for writ of habeas corpus in the United States District Court for

¹ Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

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the District of South Carolina (8:07-1533-JFA-BHH). Respondent submitted a motion for summary judgment on November 26, 2007. The Honorable Bruce H. Hendricks, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated June 2, 2008. On September 2, 2008, the Honorable Joseph F. Anderson, Jr., United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

Petitioner filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. In an opinion filed February 25, 2009, the Court of Appeals denied a certificate of appealability and dismissed the appeal. Though Petitioner filed a petition for writ of certiorari at the United States Supreme Court, that petition was denied on October 18, 2010.

Federal Habeas Corpus

On May 25, 2011, Petitioner filed a motion – under 28 U.S.C. § 2244 – for an order authorizing the United States District Court of South Carolina to consider a successive habeas corpus application under 28 U.S.C. §§ 2254 or 2255. By order filed June 27, 2011, the United States Court of Appeals for the Fourth Circuit denied the motion.

2011-CP-39-1892

Petitioner filed a PCR application on December 22, 2011 (2011-CP-39-1892). Petitioner raised the following issues:

1. “The Applicant suffered a gross miscarriage of justice when he was convicted upon a standard of guilt below that required by 14th Amend.”
2. “After-discovered evidence of knowing use of perjured testimony by the State.”
3. “The court lacked jurisdiction (power) to try and convict Petitioner.”

Respondent submitted a return and motion to dismiss. The Honorable G. Edward

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Welmaker, acting as Chief Administrative Judge, issued a conditional order of dismissal dated July 19, 2012 and filed July 20, 2012. Petitioner filed a response to that order; however, Judge Welmaker issued a final order of dismissal dated and filed September 26, 2012.

Petitioner filed a notice of appeal. The South Carolina Supreme Court required Petitioner – pursuant to Rule 243(c), SCACR – to show an arguable reason why the denial of his application was improper. In an order of dismissal dated November 5, 2012, the Supreme Court found Petitioner failed to meet his burden in this regard.

II.

In the “Petition for Issuance of a Writ of Mandamus,” Petitioner argues: (1) he “was denied the right to a fair trial by the State’s knowing use of perjured testimony to convict him,” (2) “[t]he trial court lacked subject-matter jurisdiction to convict and sentence” him, and (3) he “suffered a miscarriage of justice when he was convicted upon a standard of guilt below that required by the Fourteenth Amendment Due Process clause.”²

Petitioner requests “the Honorable Court should grant relief to correct [his] unjust convictions.”

III.

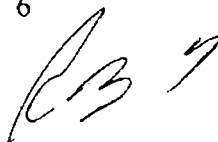
Upon review of the documents filed and the argument from the parties in this matter, this Court finds the “Petition for Issuance of a Writ of Mandamus” must be denied because Petitioner failed to name a responsible party with the power and authority to “grant relief to correct [his] unjust convictions.”

² This Court notes Petitioner has raised these issues in prior PCR applications.

IV.

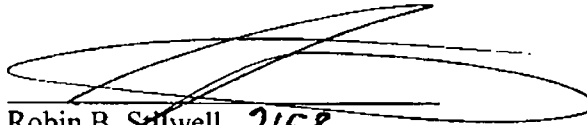
This Court further finds the “Petition for Issuance of a Writ of Mandamus” must be denied because Petitioner failed to state a cause of action against the Office of the Attorney General. “The primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law.” Porter v. Jedziniak, 334 S.C. 16, 18, 512 S.E.2d 497, 497 (1999). A petitioner seeking a writ of mandamus to require the performance of an act “must show (1) a duty of respondent to perform the act, (2) the ministerial nature of the act, (3) the petitioner’s specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy.” Id. at 18, 512 S.E.2d at 498; see also Sanford v. South Carolina Ethics Comm’n, 385 S.C. 483, 685 S.E.2d 600 (2009). “A ministerial act or duty is one which a person performs because of a legal mandate which is defined with such precision as to leave nothing to the exercise of discretion.” Edwards v. State, 383 S.C. 82, 96, 678 S.E.2d 412, 419 (2009).

This Court finds the act demanded in this case is not ministerial, the Office of the Attorney General has no duty to perform the act demanded, and Petitioner has no specific legal right to “relief to correct [his] unjust convictions.” This Court also finds Petitioner has another adequate remedy (such as a PCR application or a petition for writ of habeas corpus in the original jurisdiction of the South Carolina Supreme Court). This Court concludes the matter must be dismissed.



IT IS THEREFORE ORDERED that the "Petition for Issuance of a Writ of Mandamus" must be denied and dismissed with prejudice.

AND IT IS SO ORDERED this 13 day of FEB, 2015.



Robin B. Stillwell *2158*
Chief Administrative Judge
Thirteenth Judicial Circuit

Cherokee South Carolina.

2015 FEB 23 PM 1 01
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA