Date: 11-10-15

Daniel E. Shearouse
To: South Carolina Supreme Courts
Post Office Box 11330
Columbia, south Carolina 29211

RECEIVED
NOV 19 2015
S.C. SUPREME COURT

From: John P. Causar #316748
Lee C.I. F-1 A #1116
990 Wisacky Hwy
Bishopville, S.C. 29010

Dear clerks office of SC Supreme Court:

This is an response towards your notification I recieved today 11-10-15, I have enclosed the states Conditional order of Dismissal, also my response towards that order Titled Post conviction Relief Motion, also the states Final order of Dismissal, that the said Judge Daniel D. Hall signed off on. I filed an motion of Recusal do to the fact of Conflict of interest on Judge Daniel D. Hall and his dealings as prosecutor over my case at bar. In return the Judge R. Keith Kelly signed the Final Order of Dismissal on 8-28-15. So now I filed my Notice of Appeal with the proper courts. I would be highly Thankful if you could be so helpful and file my Notice of Appeal, also send me a Copy of all filings. You have a bless day and Holidays,

Sincerly,

John P. Cou[illegible]

STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
John P Cousar III, #316748, Applicant, v. State of South Carolina, Respondent.	2014-CP-46-3485 **CONDITIONAL ORDER OF DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief filed October 21, 2014. The Respondent made its return and motion to dismiss on December 30, 2014.

Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the March 2006, term of the York County Grand Jury for Armed Robbery (2006GS-46-081 0), Assault and Battery of a High and Aggravated Nature (2006-GS-46-0811), Possession of a Weapon During the Commission of Violent Crime (2006-GS-46-0813), and Criminal Conspiracy (2006-GS-46-0814). Leah B. Moody, Esquire, represented the Applicant. On July 27, 2006, Applicant pled guilty as indicted. The Honorable John C. Hayes, III, concurrently sentenced him to twenty-five (25) years for Armed Robbery, ten (10) years for Assault and Battery of a High and Aggravated Nature, five (5) years for Possession of a Weapon During the Commission of Violent Crime, and five (5) years for Criminal Conspiracy.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. A brief was filed on the Applicant's behalf pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Cousar, Op. No. 2008-UP-420 (S.C. Ct. App. filed July 15, 2008). The Remittitur was sent on August 7, 2008.

2008-CP-46-4271

The Applicant filed his first application for post-conviction relief on October 29, 2008. The Applicant raised the following issues in his first application:

1. Ineffective assistance of counsel: and
2. Involuntary Guilty Plea.

An evidentiary hearing was convened on August 4, 2009. The Applicant was presented and represented by Matthew R. Niemiec, Esquire. The Honorable Lee S. Alford, denied and dismissed the Applicant's application with prejudice by Order dated October 28, 2009.

A timely Notice of Appeal was filed and an appeal was perfected. The South Carolina Supreme Court denied the Applicant's petition by Order dated February 7, 2008. The Remittitur was issued on February 26, 2008.

In his current Application, the Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "The Applicant was denied his sixth and fourteenth amendment right to effective assistance of appellate counsel, where the post-conviction counsel failed to amend the applicant's pro-se post-conviction relief application to include all grounds in the present application."
    a. "I would aver that the applicant plea of guilty was not freely, knowingly, voluntarily, and intelligently made, thus violating the Applicant's rights under the S.C. Const. Art. I § 3 and under the 14th Amendment to the United States Constitution."
    b. "I would aver that the Circuit Court of York County Lacked Subject Matter Jurisdiction on the charges of Armed Robbery, Assault and Battery of a High and Aggravated Nature, Possession of a Weapon during the Commission of a Violent

Crime, Criminal Conspiracy, thus violating the Applicant's rights under the S.C. Const. Art. I § 3 and under the 14th Amendment to the United States Constitution."

c. "I would aver that the Circuit Court of York County lacked Competent Jurisdiction to entertain the applicant's case and sentence him, thus violating the Applicant's rights under the S.C. Const. Art. I § 3 and under the 14th Amendment to the United States Constitution."
d. "I would aver that the Circuit Court of York County lacked original jurisdiction to entertain the Applicant's case and sentence him, thus violating the Applicant's rights under the S.C. Const. Art. I § 3 and under the 14th Amendment to the United States Constitution."
e. "I would aver that the applicant received ineffective assistance of trial counsel, this violating the Applicant's rights under the S.C. Const. Art. I § 3 and under the 14th Amendment to the United States Constitution."
f. "I would aver that the applicant received ineffective assistance of Appellate court counsel, violating the Applicant's rights under the S.C. Const. Art. I § 3 and under the 14th Amendment to the United States Constitution."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

> All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding 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 were or could have been raised in the 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).

This Court additionally finds that this Application for Post-Conviction Relief should be summarily dismissed for failure 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 judgement 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). The Applicant was convicted of the offense(s) he challenges in this Application on July 27, 2006. The Remittitur after the Applicant's unsuccessful appeal was issued on August 7, 2008. Therefore, the Applicant was required to file his application by August 8, 2009. This Application was filed on October 21, 2014, which was well after the statutory filing period had expired.

This Court summarily dismisses the current Application because the circuit court had jurisdiction to decide the Applicant's case. In his Application, the Applicant has claimed subject matter jurisdiction violations.

An Applicant may challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. *See* Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by* Gentry, *supra.* However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, *supra*, 610 S.E.2d at 499; *See also* S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). 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, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The 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. The Applicant shall file any reasons he may have with the York County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

Respectfully submitted,

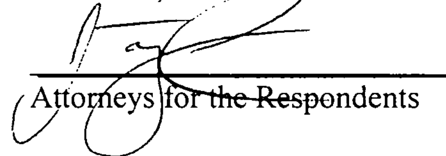
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 
Attorneys for the Respondents

Columbia, South Carolina
December 30, 2014

JANUARY 15, 2015

FROM: JOHN P. COUSAR, III #318748
P.C.I.
430 OAKLAWN Rd.
PELZER, S.C. 29669

TO: J. RUTLEDGE JOHNSON, ESQUIRE
P.O. BOX 11549
COLUMBIA, SOUTH CAROLINA 29211

RE: JOHN P. COUSAR III V. STATE OF SOUTH CAROLINA
2014-CP-46-3485

DEAR J. RUTLEDGE JOHNSON, ESQUIRE,

ENCLOSED PLEASE FIND POST CONVICTION RELIEF MOTION OF THE APPLICANT IN THE ABOVE CAPTIONED CASE, JOHN P. COUSAR III V. STATE, FOR FILING IN YOUR ATTORNEY GENERAL OFFICE. THIS IS A RESPONCE TO THE RETURN AND MOTION TO DISMISS YOU SENT TOWARDS MYSELF AND I RECIEVED ON JANUARY 5TH 2015 AND IM RESPONDING TOWARDS THE TWENTY DAYS (20) YOU GAVE ME. IM IN HOPES THIS POST CONVICTION RELIEF MOTION MEET YOUR STANDARDS AND BRINGS FORTH VERY MUCH UNDERSTANDING.

SINCERLY,

/S/ [signature]
JOHN P. COUSAR III

SWORN TO AND SUBSCRIBED BEFORE ME
THIS, 15th DAY OF January 2015,

/S/ Nancy C. Merchant
NOTARY PUBLIC

1-23-2023
MY COMMISSION EXPIRES

STATE OF SOUTH CAROLINA COUNTY OF YORK, JOHN P. COUSAR III, # 316748 APPLICANT STATE OF SOUTH CAROLINA RESPONDANT,	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT 2014-CP-46-3845 POST CONVICTION RELIEF MOTION

THE RESPONDANT MOVE TO HAVE POST CONVICTION RELIEF DISMISSED ON DECEMBER 30, 2014 IN ACTION AGAINST APPLICANT'S APPLICATION ON OCTOBER 21, 2014

PROCEEDURAL HISTORY

THE APPLICANT IS PRESENTLY CONFINED IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS PURSUANT TO ORDERS OF COMMITMENT OF THE YORK COUNTY CLERK OF COURT, APPLICANT WAS INDICTED AT THE MARCH 2006 TERM OF THE YORK COUNTY GRAND JURY FOR ARMED ROBBERY (2006GS-46-0810), ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE (2006-GS-46-0811), POSSESSION OF A WEAPON DURING THE COMMISSION OF VIOLENT CRIME (2006GS46-0813), AND CRIMINAL CONSPIRACY (2006-GS-46-0814), LEAH B. MOODY, ESQUIRE, REPRESENTED THE APPLICANT. ON JULY 27, 2006, APPLICANT PLED GUILTY AS INDICTED. THE HONORABLE JOHN C HAYES, III, CONCURRENTLY SENTENCED HIM TO TWENTY-FIVE (25) YEARS FOR ARMED ROBBERY, TEN (10) YEARS FOR ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE, FIVE (5) YEARS FOR POSSESSION OF A WEAPON DURING THE COMMISSION OF VIOLENT CRIME, AND FIVE (5) YEARS FOR CRIMINAL CONSPIRACY.

GENERAL ALLEGATION

THE APPLICANT ARGUES THAT HIS APPLICATION FOR POST-CONVICTION RELIEF FILED ON OCTOBER 21, 2014, SHOULD BE GRANTED AND ARGUES THAT ERROR OF LAW AND FACTUAL EVIDENCE WOULD SHOW AS SUCH THAT APPLICANT IS BEING CONFINED UNDER FALSE AND MISLEADING, THE RESPONDENT MOVED TO DISMISS ON DECEMBER 30, 2014 AND APPLICANT WOULD SHOW FACTUAL EVIDENCE TO BACK HIS MOTION.

ARGUEMENT OF FACTS

THAT APPLICANT IS BEING HELD IN CONFINEMENT UNLAWFULLY UNDER A CONVICTION THAT WAS OBTAINED UNDER AND THROUGH IMPROPER PROCEDURE OF LAW AND COURT RULES OF SOUTH CAROLINA, AND OF CONSTITUTIONAL RIGHTS VIOLATION ALSO THAT APPLICANT WOULD SHOW THAT BECAUSE OF INEFFECTED ASSISTANCE OF COUNSEL AT TRIAL, AND OF INEFFECTIVE ASSISTANCE OF POST CONVICTION COUNSEL, APPLICANT WAS HINDERED THE ASURRANCE OF FAIRNESS TO AN ADEQUATE OPPORTUNITY TO PRESENT HIS CLAIMS FAIRLY AND CLEARLY.

I

TRIAL COUNSEL WAS INEFFECTIVE IN NOT BRINGING TO THE STATES ATTENTION THAT APPLICANT HAD BEEN HELD IN CUSTODY UNDER A FALSE AND FAULTY TRUE BILL INDICTMENT ON ALL SAID CHARGES LISTED AND SENTENCED UNDER THE SAME. APPLICANT WOULD SHOW UNDER "AFTER DISCOVERED EVIDENCE" AND OR "NEW EVIDENCE" THAT HE WAS INDICTED ON THE TERM OF MARCH 16TH 2006 TERM ON A GRAND JURY TRUE BILL, OF WHICH COURT CALENDER OBTAINED THROUGH DUE DILIGENCE SHOWS THERE WAS NO GENERAL SESSIONS ON THIS DATE. ALSO TRIAL ATTORNEY WAS OBLIGATED LEGALLY TO REPRESENT CLIENT, AND MOTION FOR A RULE (5) BRADY V. MARYLAND MOTION OF DISCOVERY WOULD HAVE REVEALED THIS TRUE BILL INDICTMENT VIOLATION. CALENDER OF GENERAL SESSIONS WAS REQUESTED BY APPLICANT ON MARCH 5, 2019 FROM THE S.C. COURT ADMINISTRATION, AND UPON RECEIPT OF COURT CALENDER IT WAS REVEALED THAT "NO" COURT OF GENERAL SESSIONS OR GRAND JURY IN YORK COUNTY MARCH 16, 2006. THE TERMS OF THE COURT OF GENERAL SESSIONS FOR YORK COUNTY ARE FIXED BY SC CODE ANN § 14-5 - AND "DOES NOT OFFER" PROVISIONS FOR A COURT TO BE OPEN ON MARCH 16, 2006. THIS, STATE COULD NOT LAWFULLY RETURNED ITS INDICTMENT "AT A COURT OF GENERAL SESSIONS, CONVENED ON MARCH 16, 2006" AS FALSELY ALLEGED IN STATES INDICTMENT. ALSO WE WOULD SHOW THAT THE SAME DATE ON THE TRUE BILL STAMPED, BECAUSE NO SUCH COURT IS ALLOWED TO BE OPENED.

ONE ADDITIONAL PEICE OF EVIDENCE VERY CLEARLY SETTLES THE MATTER OF STATE'S FALSE CONDITION. THE INFORMATION AND FACTS GATHERED BY EXHIBIT OF COURT CALENDER REQUESTED THROUGH THE SC COURT ADMINISTRATION THROUGH "DUE DILLIGENCE" ON MARCH 5, 2014 GIVES CLEAR FACT TO:

(A) ESTABLISHES THAT NO SPECIAL TERM OF COURT OF GENERAL SESSIONS WAS CONVENED ON MARCH 16, 2006 UNDER THE PROVISIONS OF EITHER SECTION 14-5-410, SECTION 14-5-910, OR SECTION 14-5-920.

(B) THEREFORE, RECOGNIZING THE JURISDICTION REQUIREMENTS SET FORTH IN SECTION 14-5-210, MANDATING THE ONLY PROCESS ALLOWED FOR INPANELLING A LAWFUL GRAND JURY, AND THE CONSDERATION OF THE FACTS AND EVIDENCE PRESENTED, IT BECOMES APPARENT THAT JOHN P. COUSAR III WAS INDICTED OUTSIDE JURISDICTION OF THE COURT OF GENERAL SESSIONS AND BY MODE OF PROCEDURE THAT STATE HAD NO LAWFUL AUTHORITY TO ADOPT.

AS A ESTABLISHED RULE UNDER 14-9-210 SECTION, CLEARLY A JURISDICTIONAL STATUE, AND SETS FORTH MANDATORY PROCEDURE TO BE UTILLIZED BY STATE FOR LAWFULL RETURN OF A TRUE-BILLED INDICTMENT, A SUBSTANTIAL BODY OF SOUTH CAROLINA LAW HOLDS THAT FAILURE TO COMPLY WITH

STATUTORY LAW JURISDICTION IN NATURE DEPRIVES THE COURT OF SUBJECT MATTER JURISDICTION. STATE V. LEE, 564 S.E. 2d 372 (S.C. APP 2002); STATE V. BROWN;

WHEN THE GRAND JURY RETURNS A TRUE BILL INDICTMENT IT CONFERS UPON THE TRIAL COURT SUBJECT-MATTER-JURISDICTION. WHEN THE COURT CLERK OF COURT FILES THE INDICTMENT CERTIFYING THE INDICTMENT IT CONFERED UPON THE COURTS PERSONAL-JURISDICTION. INORDER FOR THE TRIAL COURT TO PRESIDE HE MUST HAVE BOTH "SUBJECT-MATTER", AND "PERSONAL JURISDICTION" JURISDICTION DEFECT RENDERS INDICTMENT BY GRAND JURY A NULLITY. A DEFECTIVE EXERCISE OF POWER; LOLLIS VS MANNING, 242 S.C. 316, 130 S.E. 2d 847 (S.C. 1963)

APPLICANT WOULD SHOW THAT UNDER THESE FACTS THAT EVIDENCE CLEARLY REVEALS:

(A) "I WOULD AVERT THAT THE CIRCUIT COURT OF YORK COUNTY LACKED SUBJECT MATTER JURISDICTION ON THE CHARGES OF ARMED ROBBERY, ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE, POSSESSION OF A WEAPON DURING THE COMMISSION OF VIOLENT CRIME, CRIMINAL CONSPIRICY, THUS VIOLATING THE APPLICANTS RIGHTS UNDER THE S.C. CONST I §3 AND UNDER THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION,"

(B) I WOULD AVERT THAT THE CIRCUIT COURT OF YORK COUNTY LACKED COMPETENT JURISDICTION TO ENTERTAIN THE APPLICANTS CASE AND SENTENCE HIM, THUS VIOLATIONS THE APPLICANTS RIGHTS UNDER THE S.C. CONT. ART. I §3 AND UNDER THE 14TH AMENDMENT TO THE UNITED STATES CONSITUTION."

(C) "I WOULD AVERT THAT THE CIRCUIT COURTS OF YORK COUNTY LACKED ORIGINAL JURISDICTION TO ENTERTAIN THE APPLICANTS CASE AND SENTENCE HIM, THUS VIOLATING THE THE APPLICANTS RIGHTS UNDER THE S.C. CONT. ART. I § 3 AND UNDER THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION."

(D) "I WOULD AVERT THAT THE APPLICANT RECIEVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, THIS VIOLATING THE APPLICANTS RIGHTS UNDER S.C. CONST. ART. I §3 AND UNDER THE 14TH AMENDMENT TO THE UNITED STATES CONSTUTION."

(E) "I WOULD AVERT THAT THE APPLICANTS PLEA OF GUILTY WAS NOT FREELY, KNOWINGLY, VOLUNTARILY AND INTELLEGENTLY MADE, THIS VIOLATING THE APPLICANTS RIGHTS UNDER THE S.C. CONT. ART I §3 AND UNDER THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION."

(F) "I WOULD AVERT THAT THE APPLICANT RECIEVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL, VIOLATING THE APPLICANT'S RIGHTS UNDER THE S.C. CONT. ART I §3 AND UNDER THE 14TH AMENDMENT TO THE UNITED STATES CONSTITION."

II

APPLICANT WOULD SHOW THAT FACTS OF LAW, AND THROUGH INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, APPELLANT COUNSEL, AND POST-CONVICTION RELIEF COUNSEL, THESE SAME ALLEGATIONS WERE PASSED THROUGH WITHOUT BEING LEGALLY AND FAIRLY SHOWN BEFORE THE COURT OF LAW. THAT APPLICANT WAS DENIED DUE PROCESS OF THE LAW AND THAT THESE ISSUES NOT RAISED ON POST-CONVICTION RELIEF THROUGH APPOINTED COUNSEL ARE NOT SUCCESSIVE AND SHOULD HAVE BEEN AMENDED AS REQUESTED BY COUNSEL AND PLACED ON RECORD.

APPLICANT WOULD SHOW ACCORDING TO RULES OF COURT THAT POST-CONVICTION RELIEF COUNSEL DID NOT RESPOND TO HIS LETTER REQUESTING OTHER ISSUES TO BE RAISED, THAT COULD AND SHOULD BE AMENDED. ALSO ACCORDING TO RULE 4/3 A 1.4 ABA COUNSEL DID NOT RESPOND TO CLIENT AND WHEN HE GOT TO COURT FOR

HEARING APPOINTED COUNSEL JOHNSON, ESQUIRE HAD BEEN CHANGED AND MATHEW R. NIEMIEC, ESQUIRE HAD BEEN REPLACED. MR. NIEMIEC DID PRESENT SOME ISSUES, BUT FAILED TO RAISE AND AMEND SERIOUS ISSUES TO BE ON RECORD, FOR MENTAL HEALTH, AND RECORDS OF TRIAL ATTORNYS ERRORS AND INEFFECTIVENESS TO PROPERLY REPRESENT CLIENT. TRIAL COUNSEL WAS INEFFECTIVE IN NOT BRINGING TO THE COURTS ATTENTION AND ON RECORD THAT CLIENT HAD BEEN ON MENTAL HEALTH FOR OVER EIGHT YEARS AND MAJOR RECORDS WERE WITH HELD. SUCH EVIDENCE WAS PREJUDICE AND VERY DAMAGING TO CLIENTS DEFENSE AND BEING A JUVENILE AT THE TIME, AND WAS RELING ON COUNSEL TO GUIDE IN RIGHT OBLIGATION LEGALLY.

(A) RECORDS SHOW THAT APPLICANT HAS "SERIOUS COPING PROBLEM" LIMITTED FRUSTRATION TOLERANCE", AND "POOR IMPULSIVE CONTROL" WAS A FOLLER AND ONLY WANTED TO FIND IN AND BE ACCEPTED.

(B) ON RECORD TRIAL ATTORNEY MS MOODY STATED SHE DID NOT WANT THE STATE TO OBTAIN THESE RECORDS AND DID NOT ALLOW VERY HELPED EVIDENCE IN APPLICANTS FAVOR ALSO SHE STATES SHE DID NOT GET MEDICAL RECORDS FOR APPLICANT AND THEN ON THE STAND FOR PCR STATED SHE HAD THEM. SHE ALSO NEVER TALKED TO THE PARENTS CONCERNING HER OWN VALUATION OF THE APPLICANT UNTIL THE 20TH OF JULY 2006 AND WENT TO TRIAL HEARING ON THE 26TH OF JULY 2006.

(C) LEAH MOODY ALLOWED A "school PSYCHOLOGIST" TO EVALUATE APPLICANT INSTEAD OF A EXPERT PSYCHOLOGIST DISCLOSING SERIOUS COPING PROBLEMS AND DID NOT DO A COMPENTCY HEARING TO SHOW APPLICANTS ISSUES THAT COULD HAVE SUPPRESSED STATEMENT AND PROVED WARN- OF WAIVER WERE NOT KNOWINGLY AND VOLUNTARILY WAIVED.

(D) "EXHIBIT E" OF MEDICAL MENTAL RECORD WERE ADMITTED TO PCR ATTORNEY AS NEW EVIDENCE BUT WAS NOT USED OR AMENDED ON RECORD OR USED A TRIAL HEARING TO SHOW TO THE COURT OF SUCH HISTORY OF HIS MENTAL HEALTH AND STEPS HIS PARENTS HAD TAKEN TO GET HIM HELP, WHICH IS A PRONG OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL AND AMENDED TO BE ON RECORD.

THIS INEFFECTIVENESS ALLOWED SUCH DAMAGING SUPPORT TO DEPEND APPLICANT AND ALSO ALLOWED HIM TO SIT AS A JUVENILE OVER 7 MONTHS WITH OUT MAKING MOTIONS TO HAVE HIS CASE REMANDED TO FAMILY COURT ALLOWING HIM TO TURN SEVENTEEN AND BE TRIED AS A ADULT AND NOT TRANSFERED TO JUVENILE JURISDICTION, EVEN THOUGH ON RECORD SHE CORRESPONDED WITH SOLICITOR, SHE DID NOT MOVE FORWARD TO EFFECTIVELY TRY TO GET STATEMENT SUPRESSED ALSO NOT ALLOWING PARENTS TOO SEE A VERY DAMAGING VIDEO, BUT STATED SHE COULD NOT GET IT TO COME UP AND CLEARLY THROUGH HER SCREEN, ALL OTHERS WERE CLEAR AND DID NOT SHOW THIS VIDEO TO THEM, BUT ALLOWED TO BE SHOWN ALONG WITH STATEMENT AT GUILTY PLEA HEARING. SHE KNEW THIS VIDEO WAS GOING TO BE PLAYED AND DID NOT HAVE TO WAIT UNTIL THERE WASN'T GOING TO BE A TRIAL TO SUPRESS STATEMENT.

APPLICANT WAS A MENTALLY DISTURBED JUVENILE AT THE TIME UNDER MENTAL HEALTH MEDICINE AND NARCOTICS AND WAS IN HOUSE INTERRIGATED WITHOUT GAURDIAN OR ATTORNEY PRESENT, WHICH UNDERMINED THE PROPER WAIVER OF RIGHTS. A WAIVER OF EFFECTIVE MIRANDA RIGHTS COULD NEVER BE WAIVED KNOWINGLY, AND VOLUNTARLY INTELLIGENTLY IN THAT SETTING AS A JUVENILE IN APPLICANTS CONDITION WITHOUT A UNDERSTANDING OF A SECURE STATEMENT. NO OTHER STATEMENT WAS GIVEN OR PRODUCED FROM OLDER CODEFENDANTS, AND A IN HOUSE INTERRIGATION CANNOT BE IMPROPERLY USED TO GET ANYONE TO BE COMPELLED TO BE A WITNESS AGAINST THEMSELVES, MIRANDA V. ARIZONA, 384 US 436 (1963)

IT IS CLEARLY PRESENT AS A MENTALLY DISTURBED AND INTOXICATED JUVENILE AT THE TIME OF A UNDERMING — "TO HELP US UNDERSTAND WHAT HAPPEN SON."..., — "YOU KNOW YOU ARE GOING DOWN"... - AND...., "THIS WILL HELP YOU GET LESS TIME"...., ONLY TO BE USED AGAINST YOU IN COURT IS COMPLETELY AGAINST PROPER NORMS AND SAVE GAURDS. TO HAVE MOVED FORWARD OR GET A STATEMENT UNDER THESE CONDITIONS WITHOUT PARENT OR ATTORNEY PRESENT IS IMPROPER AND HIGHLY PREJUDICE, AND TRIAL COUNSEL DID NOT TRY TO SUPRESS THIS STATEMENT, OR THE VIDEO AND POST CONVICTION CANCEL DID NOT RAISE AND PRESENT A VITAL ISSUE. FURTHERMORE, IS RULE (5) BRADY DISCOVERY HAD OF EFFECTIVELY BEEN VIEWED BY BOTH OR TRIAL ATTORNEY A FAULTY AND ILLEGAL TRUE BILL INDICTMENT WOULD HAVE BEEN SEEN RELIEVING APPLICANT OF ALL JURISDICTION MATTER AND RELIEF.

> (A) MIRANDA AT 384 US 436, 462 - THE RULE IS NOT THAT IN ORDER TO RENDER A STATEMENT ADMISSIBLE THE PROOF MUST BE ADEQUATE TO ESTABLISH THAT THE PARTICULAR COMMUNICATIONS CONTAINED IN A STATEMENT WERE VOLUNTARILY MADE — "BUT IT MUST" BE SUFFICENT TO ESTABLISH THAT MAKING OF THE STATEMENT WAS VOLUNTARY, THAT IS TO SAY, THAT FROM THE CAUSES, WHICH THE LAW TREATS AS LEGALLY SUFFICENT TO ENGER IN THE MIND OF THE ACCUSED "HOPE OR FEAR" IN RESPECT TO THE CRIME CHARGED, THE ACCUSED WAS NOT "INVOLUNTARILY IMPELLED" TO MAKE A STATEMENT, WHEN BUT "IMPROPER INFLUENCE" HE WOULD HAVE REMAINED SILENT.

III

RESPONDANT ARGUES THAT THE CURRENT APPLICATION FOR POST CONVICTION RELIEF MUST BE SUMMARILY DISMISSED BECAUSE IT IS SUCCESSIVE TO APPLICANTS PRIOR APPLICATION FOR POST CONVICTION RELIEF. S.C. CODE ANN § 17-27-90 STATES:

> ALL GROUNDS FOR RELIEF AVAILABLE TO AN APPLICATION UNDER THIS CHAPTER MUST BE RAISED IN HIS ORIGINAL, SUPPLEMENTAL OR AMENDED APPLICATION. ANY GROUND FINALLY ADJUDACATED OR NOT RAISED, KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY WAIVED IN THE PROCEEDING THAT RESULTED IN THE CONVICTION OR SENTENCE OR IN ANY OTHER PROCEEDING APPLICANT HAS TAKEN TO SECURE RELIEF, MAY NOT BE THE BASIS FOR A SUBSEQUENT APPLICANT APPLICATION, UNLESS THE COURT FINDS A GROUND FOR RELIEF ASSERTED WHICH FOR "SUFFICENT REASON" WAS NOT ASSERTED OR WAS INADEQUATELY RAISED IN THE ORIGINAL, SUPPLEMENTAL OR AMENDED APPLICATION.

ARGUMENT OF FACTS AND CONCLUSION OF LAW (III)

RESPONDENT WOULD STATE SUCCESSIVE APPLICATIONS ARE DISFAVORED AND THE BURDEN IS ON APPLICANT TO ESTABLISH THAT ANY NEW GROUND RAISED IN A SUBSEQUENT APPLICATIONS COULD NOT HAVE BEEN RAISED BY HIM IN A PREVIOUS APPLICATION.

APPLICANT WOULD SHOW THAT HIS APPLICATION IS NOT SUCCESSIVE AND HAD TO DEPEND ON APPOINTED COUNSEL FOR POST CONVICTION RELIEF TO FILE AND SECURE A APPLICATION IN HIS BEHALF FOR RELIEF. THAT APPLICATE RESPONDED BY LETTER TO APPOINTED COUNSEL JOHNSON, ESQ. WITHOUT RESPONSE TO NEEDING ISSUES RAISED FOR HEARING. UNDER THE GUIDELINES OF ATTORNEY CLIENT CORRESPONDENCE RULE 4/3A 1.4 ABA I NEVER GOT RESPONSE AND HAVE EVIDENCE OF SUCH CORRESPONDENCE AND WHEN APPLICANT GOT TO SUCH HEARING, MR. MATTHEW R. NIEMIEC HAD BEEN APPOINTED AND DID NOT ADEQUATELY RAISE AND PRESERVE ISSUE OF TRIAL HEARING NOR ADEQUATELY AGRUE THOSE PRESENTED. THE APPLICANT THROUGH DUE DILLIGENCE PURSUED LEGAL ASSISTANCE TO HIM WITH HIS MUCH LIMITED ABILITY TO UNDERSTAND, SEARCH, AND PRESENT "AFTER DISCOVERED EVIDENCE" SINCE CONVICTION AND POST CONVICTION RELIEF HEARING.

THAT APPLICANT HAS SHOWN NEW GROUND COULD NOT HAVE BEEN RAISED AT PREVIOUS APPLICATION BECAUSE "AFTER DISCOVERED EVIDENCE" WAS DISCOVERED THROUGH FALSE TRUE BILL INDICTMENT, AND COURT CALENDAR OF MARCH 16, 2006 VALIDATES NO SUCH GENERAL SESSIONS ON THE CALENDAR DATE, AND SCHEDULED HEARING OF YORK COUNTY FROM ADMINISTRATIVE COURT OF SOUTH CAROLINA SETS FORTH ALL GENERAL SESSION FOR ALL COUNTIES AND CIRCUITS. AND — WHATEVER THROGH "AFTER DISCOVER EVIDENCE" OR "NEW DISCOVERED EVIDENCE" THESE FACTS PUSH PAST SUCCESSIVE APPLICATION AND MEETS NEW GROUND FOR EVIDENTUARY HEARING. THESE NEW GROUNDS AND "AFTER DISCOVERED EVIDENCE" ALLEGATIONS AND "FACTS" ONLY STRENGTHENS AND SUPPORTS THAT APPLICANT COULD ONLY DEPEND ON THE EFFECTIVENESS AND LEGAL REPRESENTATION, AND THAT NEW GROUND OR GUIDELINES OF SUCCESSIVE APPLICATIONS MEETS THE BURDEN ON <u>LAND V. STATE</u> 274 S.C. 243, 262 S.E. 2d 735 (1980). APPLICANT HAS MOVED PAST — "SUFFICIENT REASON" WHY NEW GROUNDS FOR RELIEF WERE NOT RAISED OR NOT PROPERLY RAISED IN PREVIOUS APPLICATIONS.

APPLICANT HAS MEET THE GROUNDS OF RESPONDENTS ARGUEMENT OF: — ANY NEW GROUND RAISED IN A SUBSEQUENT APPLICATION IS LIMITED TO THOSE GROUNDS THAT "COULD NOT HAVE BEEN RAISED . . . IN THE PREVIOUS APPLICATION": <u>AICE V. STATE</u>, 305 S.C. 448, 409 S.E. 2d 392 (1991) THESE ALLEGATIONS PREVIOUSLY STATED COULD NOT HAVE BEEN RAISED CONCERNING TRUE BILL INDICTMENT BECAUSE NO SUCH COUNSEL THUS FAR HAS DISCOVERED OR CHALLENGED THE FALSE TRUE BILL OR BROUGT TO THE ATTENTION OF THE COURT. THESE ALLEGATIONS BECAUSE ALL GRAND JURY INDICTMENTS WERE STAMPED SIGNED ON A SCHEDULED CALENDAR DATE OF NO SUCH AND COULDN'T BE RAISED. IT WAS ONLY THROUGH DUE DILLIGENCE THAT THESE BECAME "AFTER DISCOVERED EVIDENCE" OR "NEW DISCOVERED EVIDENCE" AND HAVE MET THE BURDEN OF PROOF OF <u>LAND V. STATE</u>, 274 S.C. 243, 262 S.E. 2d 735 (1980).

(A) ESTABLISHES THAT NO SPECIAL TERM OF COURT OF GENERAL SESSIONS WAS CONVENED ON MARCH 16, 2006 UNDER THE PROVISIONS OF EITHER SECTION 14-5-410, SECTION 14-5-919, OR SECTION 14-5-920

IV

RESPONDENT SUBMITTED THAT APPLICANTS APPLICATION FOR POST CONVICTION RELIEF SHOULD BE SUMMARILY DISMISSED FOR FAILURE TO COMPLY WITH THE FILING PROCEDURES OF THE UNIFORM POST CONVICTION ACT S.C. CODE ANN § 17-27-1070-160. S.C. CODE ANN § — 17-27-45 (A), AND STATES AS FOLLOWS:

> - AN APPLICATION FOR RELIEF FILED PURSUANT TO THIS CHAPTER MUST BE FILED WITHIN ONE YEAR AFTER THE ENTRY OF A JUDGEMENT OF CONVICTION OR WITHIN ONE YEAR AFTER SENDING OF THE REMITTITUR TO THE LOWER COURT FROM AN APPEAL OR THE FILING OF THE FINAL DECISION UPON AN APPEAL, WHICHEVER IS LATER.

APPLICANT AGREES THAT ON AUGUST 4, 2009 A EVIDENTIARY HEARING WAS HELD AND WAS REPRESENTED BY MATTHEW R. NIEMIEC ESQUIRE (2008-CP-4271): APPLICANT RAISED THE FOLLOWING ISSUES IN HIS FIRST APPLICATION:

(1) INEFFECTIVE ASSISTANCE OF COUNSEL

(2) INVOLUNTARY GUILTY PLEA

THE HONORABLE LEE S. ALFORD, DENIED AND DISMISSED THE APPLICANT'S APPLICATION WITH PREJUDICE BY ORDER ON OCTOBER 28, 2009.

A TIMELY NOTICE OF APPEAL WAS FILED AN APPEAL WAS PERFECTED, THE SOUTH CAROLINA SUPREME COURT DENIED THE APPLICANTS PETITION BY ORDER DATED FEBRUARY 7, 2008.

APPLICANT WOULD SHOW THAT IN ACCORDANCE TO "THE DISCOVERY RULE" S.C. CODE ANN § 17-27-45 (C) (2003) HE HAS ONE YEAR STATUE FROM THE TIME THE "NEW DISCOVERED EVIDENCE" IS FOUND, THE ACTUAL DATE OF THE "FACTUAL FIND." <u>COATS V. STATE</u>, 575 S.E. 2d 557 (S.C. 2003):

RESPONDENT WOULD ASSERT IN <u>McDOWELL V. CONSOLIDATED SCHOOL DISTRICT OF AIKEN</u>, 315 S.C. 487, 445 S.E. 2d 638 (1994) THAT A SUMMARY DISMISSAL SHOULD BE GRANTED FOR THE FORGOING REASON OF STATUE OF LIMITATIONS VIOLATION.

THE APPLICANT WOULD SHOW ACCORDING TO THE POST CONVICTION ACT, S.C. CODE ANN. § 17-27-1070-160. S.C. CODE ANN. § 17-27-45 (A) TO "THE DISCOVERY RULE" THAT THE DATE OF "FACTUAL FIND" OF "NEW DISCOVERED EVIDENCE" OR "AFTER DISCOVERED EVIDENCE" ESTABLISHES THE ACTUAL DATE FOR THE ONE YEAR FILING STATUE. APPLICANT ON AUGUST 11, 2014 THROUGH "REASONABLE OR DUE DILIGENCE" REQUESTED AFTER RESEARCH FROM LEGAL ASSISTANCE, COURT CALENDAR OF MARCH 16, 2006 FROM ADMINISTRATIVE COURT OF SOUTH CAROLINA THIS TERM OF GENERAL SESSIONS FOR YORK COUNTY. ON THE DATE OF AUGUST 27, 2014 APPLICANT RECEIVED LETTER AND SCHEDULE OF DATES FOR THE MARCH 13,

2006 GENERAL SESSIONS CALENDAR FOR YORK COUNTY, AND NO SUCH GENERAL SESSIONS OR GRAND JURY WAS HELD FOR THE WEEK OF MARCH 13, 2006.

THEREFORE, IN ACCORDANCE WITH POST CONVICTION ACT. S.C. CODE ANN. § 17-27-10 TO -160. S.C. CODE ANN. § 17-27-45(A), APPLICANT HAS MET THE STATUE OF LIMITATIONS OF FILING WITHIN ONE YEAR TO "THE DISCOVERY RULE" OF "NEW DISCOVERED EVIDENCE", OR "AFTER DISCOVERED EVIDENCE." APPLICANT FILE NEW POST-CONVICTION APPLICATION ON OCTOBER 2014. APPLICANT WOULD SHOW AS FOLLOWS:

> (C) IF APPLICANT CONTENDS THAT THERE IS EVIDENCE OF MATERIAL FACTS NOT PREVIOUSLY PRESENTED AND HEARD THAT REQUIRES VACATION OF CONVICTION OR SENTENCE, THE APPLICATION MUST BE FILED UNDER THIS CHAPTER WITHIN ONE YEAR THE "ACTUAL DISCOVERY OF FACTS" BY THE APPLICANT OR AFTER THE DATE WHEN FACTS COULD HAVE BEEN ASCERTAINED BY THE EXERCISE OF "REASONABLE DILIGENCE."

ALSO APPLICANT WOULD SHOW THROUGH MENTAL HEALTH RECORDS THAT WERE NEVER OBTAINED THROUGH TRIAL ATTORNEY FROM APPLICANTS MENTAL HEALTH DOCTOR, THAT HE HAS LIMITED AND FRUSTRATED EFFORTS TO SUCCESSFULLY ASSIST IN HIS RELIEF. AS A MATTER OF FIRST IMPRESSION THAT APPLICANT HAS BEEN UNABLE TO MET OBLIGATIONS THROUGH MENTAL INCOMPETENCE AND HAS SUFFERED ENDLESS INMATE PROBLEMS COPING WITH ISSUE. ALTHOUGH APPLICATE IS NEITHER MENTALLY RETARDED OR ESTREMELY MENTALLY INCOMPETANT, THERE ARE SERIOUS ISSUES HE HAS HAD AS A MENTAL HEALTH PATIENT COPING WITH ADULT POPULATION IN THE DEPARTMENT OF CORRECTION.

APPLICANT MOVES THROUGH SUCH EVIDENCE FOR NEW HEARING BASED ON THE FACTS SET FORTH IN THE MOTION OF "THE DISCOVERY RULE" OF "AFTER DISCOVERED EVIDENCE" AND IS AS FOLLOWS:

> A MOTION FOR A NEW TRIAL BASED ON AFTER DISCOVERED EVIDENCE ENCOMPASSES CLAIMS PREDICATED ON THE PRESENTATION OF EVIDENCE THAT EXISTED AT THE TIME OF TRIAL BUT OF WHICH THE DEFENDANT WAS "EXCUSABLY IGNORANT." THE AFTER DISCOVERED EVIDENCE MUST REFLECT UPON THE DEFENDANTS INNOCENCE OR THE DEFENDANTS MORAL CULPABILITY IN CAPTIAL CASES. GENERALLY, A MOTION FOR NEW TRIAL SHOULD BE CONSIDERED WHEN NEW EVIDENCE IS DISCOVERED SHORTLY AFTER THE TRIAL HAS CONCLUDED OF WHEN NEW EVIDENCE IS DISCOVERED AFTER THE COMPLETION OF STATE POST CONVICTION RELIEF.

APPLICANT WOULD ASSERT THAT EVEN THOUGH THIS IS NOT A CAPITAL CASE IT STILL FALLS UNDER SUCH NEW EVIDENCE AND IS SHOCKING TO THE FAIRNESS AND STATUES AND GUIDELINES SET FORTH BY THE SUPREME COURT OF SOUTH CAROLINA AND THE RIGHTS OF THE UNITED STATES CONSTITUTION.

THE APPLICANT THEREFORE MOVES IN ACCORDANCE WITH THE SOUTH CAROLINA RULES OF COURT AND PROCEDURE IN THIS MATTER AND HAS ARGUED THE FACTS AND PRESENTED EVIDENCE TO SUPPORT THE FOREGOING CLAIMS AND ALLEGATIONS.

VII

WHEREFORE, APPLICANT REQUEST THAT EVIDENTUARY HEARING BE GRANTED IN THIS MATTER AND IMMEDIATE RELIEF GIVEN IN ACCORDANCE TO VIOLATION OF THE GOVERNING RULES AND STATUES SET FORTH BY THE SOUTH CAROLINA RULES OF COURT AND THE CONSTITUTIONAL RIGHTS OF THE UNITED STATES. THAT ACCORDING TO THE FOREGOING ACTIONS STATED THAT A NEW POST CONVICTION RELIEF EVIDENTUARY HEARING BE SET FORTH AND GRANTED, FOR AS FOLLOWS:

> A SUCCESSIVE APPLICATION MAY BE PERMITTED WHERE THE COURTS REFUSAL TO HEAR THE CLAIM WOULD CONSTITUTION A "GROSS MISCARRIAGE OF JUSTICE," WHERE GOVERNMENT INTERFERENCE OR THE REASONABLE UNAVAILABILITY OF FACTUAL BASIS OF CLAIM IMPEDED COUNSEL'S ABILITY TO RAISE THE CLAIM, OR WHERE SOME OTHER CIRCUMSTANCE BEYOND THE APPLICANT'S CONTROL OCCURRED.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS, 15th DAY OF January 2015,

/S/ Mary C Murchant

NOTARY PUBLIC

1-23-2023

MY COMMISSION EXPIRES

SINCERELY,

[signature]

JOHN P. CAUSAR III

ALAN WILSON
ATTORNEY GENERAL

December 30, 2014

The Honorable David Hamilton
Clerk of Court, York County
Post Office Box 649
York SC 29745

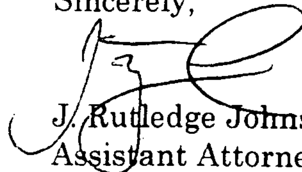
Re: John P. Cousar, III v. State of South Carolina
2014-CP-46-3485

Dear Mr. Hamilton:

Enclosed please find the original Return and Motion to Dismiss of the Respondent, in the above-captioned case, John P. Cousar, III v. State, for filing in your office. We are also sending you copies of the following documents to accompany our Return:

1) PCR application
2) Clerk Records-York

Sincerely,



J. Rutledge Johnson
Assistant Attorney General

JRJ:cey
Enclosures

cc: John P. Cousar, #316748

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