

RE: 2013-CP-16-1003

RECEIVED

NOV 13 2015

DEAR CLERK:

S.C. SUPREME COURT

PLEASE FILE FOR FILING WITH IN
YOUR OFFICE.

(1) NOTICE OF APPEAL
ATTACHED ORDER (2) CERTIFICATE OF SERVICE
AND BY THIS LETTER, THE APPLICANT GIVES
NOTICE THAT HE HAS CAUSED THE SAME TO BE
SERVED UPON THE RESPONDENT,

RESPECTFULLY, RUSSELL DAWSON
RUSSELL DAWSON #
LIEBER CORR, EAST, EA-05
POST OFFICE BOX 205
RIDGEVILLE, S.C. 29472

THE SUPREME COURT OF SOUTH CAROLINA
CLERK OF COURT
POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON,) FOURTH JUDICIAL CIRCUIT
RUSSELL DAWSON #) NO. 2013-CR-12-1003
#161707)
VS. APPLICANT,) NOTICE OF APPEAL
STATE OF SOUTH CAROLINA)
RESPONDENT?)

RECEIVED

NOV 13 2015

S.C. SUPREME COURT

NOW HERE COMES THE PRO-SE APPLICANT WHO HERE
BY APPEALS THE FINAL ORDER OF THE CHIEF JUDGE
FOR ADMINISTRATIVE PURPOSE DISMISSING HIS POST
CONVICTION RELIEF DATED SEPTEMBER 29, 2015

S/- Russell Dawson #
Lieber Cott, INST, EA 05
POST OFFICE BOX 205
RIDGEVILLE, S.C. 29472

[Handwritten signature]

STATE OF SOUTH CAROLINA)
 COUNTY OF DARLINGTON)
)
)
)
 Russell Dawson.)
 S.C.D.C. No. 161707,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT

2013-CP-16-1003

CONDITIONAL ORDER OF
 DISMISSAL

2015 MAY -7 PM 1:30
 SCOTT G. SUGGS
 CLERK OF COURT/R.D.D.
 DARLINGTON COUNTY, S.C.

FILED

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Russell Dawson (Applicant) on May 28, 2013. The State (Respondent) made its return, requesting the application be summarily dismissed.

I.

Applicant was indicted during the July 1989 term of the Darlington County Grand Jury for criminal sexual conduct in the first degree, two counts of kidnapping, and two counts of armed robbery. Applicant proceeded to trial, and Marshall Rogol, Esquire, represented him. The Honorable C. Anthony Harris directed verdicts of acquittal on the kidnapping charges. Judge Harris directed a mistrial on the criminal sexual conduct charge after the jury could not reach a verdict. The jury found Applicant guilty as indicted on the armed robbery charges. On February 7, 1990, Judge Harris sentenced him to consecutive terms of imprisonment of twenty-five years on both charges.

Applicant appealed, and the South Carolina Supreme Court affirmed his convictions and sentences. *State v. Dawson*, Op. No. 1991-MO-0198 (S.C. Sup. Ct. filed July 15, 1991).

First PCR Application: 1994-CP-16-0093

Applicant filed his first PCR application on January 18, 1994, alleging the following grounds for relief:

1. "I was falsely accused for crimes I did not commit."
2. "Inefficient counsel."

An evidentiary hearing was held on August 17, 1994, at the Darlington County Courthouse. Hugh Cannon, Esquire, represented Applicant. By order dated October 31, 2014, the Honorable James E. Lockemy denied and dismissed the application. Applicant appealed, and the South Carolina Supreme Court denied his petition for a writ of certiorari on October 5, 1995.

Second PCR Application: 1996-CP-16-0153

Applicant filed his second PCR application on March 19, 1996, alleging the following grounds for relief:

1. Ineffective assistance of counsel.
2. Denial of full and fair post-conviction relief proceeding.

The Honorable Edward B. Cottingham issued a conditional order of dismissal on October 28, 1996. The Honorable Gerald Smoak issued a final order of dismissal on January 21, 1997.

First Federal Habeas Corpus: 2:00-900-17AJ

Upon information and belief, Applicant filed a pro se federal petition for a writ of habeas corpus on March 28, 2000. Respondent made its return on May 9, 2000. Upon information and belief, a magistrate judge issued a report and recommendations on August 22, 2000, and the United States District Court of South Carolina dismissed Applicant's petition on October 2, 2000.

Third PCR Application: 2001-CP-16-0058

Applicant filed his third PCR application on February 7, 2001, alleging the following grounds for relief:

1. Ineffective assistance of counsel.
2. Illegal sentence and conviction.
3. Violation of constitutional rights.

An evidentiary hearing was held on September 9, 2002, at the Darlington County Courthouse. Eugene Warr, Esquire, represented Applicant. By order dated November 12, 2002, the Honorable John M. Milling denied and dismissed the application. Applicant appealed, and the South Carolina Supreme Court denied his petition for a writ of certiorari on August 4, 2004.

Fourth PCR Application: 2004-CP-16-0781

Applicant filed his fourth PCR application on September 14, 2004, alleging the following grounds for relief:

1. Subject matter jurisdiction.
2. Ineffective assistance of counsel.
 - i. Trial attorney failed to object to defective indictments that did not have the time, place, and element of the charges of armed robbery.
 - ii. Trial attorney failed to object to defective indictment that did not have the element of the charge of criminal sexual conduct.

The circuit court issued a conditional order of dismissal on February 23, 2005. On May 26, 2005, the Honorable J. Michael Baxley issued a final order of dismissal.

Fifth PCR Application: 2004-CP-16-1034

Applicant filed his fifth PCR application on December 14, 2004, alleging the following grounds for relief:

1. "The Court lacks subject matter jurisdiction."
2. "The Solicitor tried the Applicant without an arrest warrant or an indictment on the charge of criminal sexual conduct."
3. Violation of "Fifth Amendment Right to indictment by grand jury."

The circuit court issued a conditional order of dismissal on February 23, 2005. On May 26, 2005, the Honorable J. Michael Baxley issued a final order of dismissal.

Sixth PCR Application: 2007-CP-16-1000

Applicant filed his sixth PCR application on November 7, 2007, alleging the following grounds for relief:

1. Ineffective assistance of trial counsel.
2. Prosecutorial misconduct.
3. Denial of due process.
4. Newly discovered evidence:
 - i. The CSC charge "was never considered by a sitting grand jury."
 - ii. Was denied a preliminary hearing.

Respondent made its return on February 15, 2008. The circuit court issued a conditional order of dismissal on February 19, 2008. The Honorable James E. Lockemy issued a final order of dismissal on April 28, 2008.

II.

Applicant filed his *seventh* and current application on May 28, 2013, and amended application on November 6, 2014, alleging the following grounds for relief:

1. "Direct appeal counsel was ineffective when he failed to conduct a reasonable investigation of facts and circumstances surrounding the case. With it direct appeal counsel would have done the investigation turnout could have been different."
2. "Plus denied due process of law violated."
3. "Counsel was ineffective by going on with direct appeal when he failed to conduct a reasonable investigation of the facts and circumstances surrounding the case which prejudiced the Applicant and denied him due process of law."
4. "Significant and obvious issues with the charging indictment."

Before this Court are the Darlington County Clerk of Court's records regarding the subject convictions, South Carolina Department of Corrections records, and Applicant's previous and current PCR records.

III.

This Court must summarily dismiss Applicant's current PCR application because it is successive to his previous PCR applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) 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.

Under this statute, successive post-conviction relief applications are prohibited unless an applicant can present 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.* at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

This Court finds Applicant failed to establish any sufficient reason why he did not raise his current grounds for relief in a previous application. This Court must summarily dismiss Applicant's current application because it is successive to his previous applications.

IV.

This Court finds this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. *See* S.C. Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

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 held the one-year 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 was convicted of the offenses he challenges on February 7, 1990. Therefore, Applicant was required to file his PCR application on or before July 1, 1996.¹ Applicant filed this application on May 28, 2013, **more than sixteen years** after the statutory filing period 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, 434, 611 S.E.2d 494, 495 (2003). Section 17-27-70(c) authorizes this 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."

¹ Section 17-27-45(A) of the South Carolina Code was enacted on July 1, 1995. *Peloquin* held "all those convicted prior to the effective date of the statute should be allowed one year after its effective date to file an application." *Peloquin*, 321 S.C. at 470, 469 S.E.2d at 606. Therefore, under *Peloquin*, Applicant was required to file his PCR application by July 1, 1996.

Therefore, this Court must summarily dismiss this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

This Court finds any claims regarding Applicant's convictions must be summarily dismissed based on the doctrine of laches. Absent some explanation or justification for the delay in seeking post-conviction relief, laches prohibits an applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. *McElrath v. State*, 276 S.C. 282, 277 S.E.2d 890 (1981); *Whitehead v. State*, 352 S.C. 215, 574 S.E.2d 200 (2002).

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." *McElrath*, 276 S.C. at 283. South Carolina law also imposes a one-year statute of limitations. *See* S.C. Code Ann. § 17-27-45(a) (2014).

Without offering any justification or explanation for his delay, Applicant filed this application **more than sixteen years** after the statutory filing period expired. Applicant's failure to seek post-conviction relief within a reasonable time after his conviction has unduly prejudiced Respondent. The memories of any necessary witnesses, including Applicant's trial counsel, are also no longer fresh. Therefore, this Court must summarily dismiss this application based on Applicant's failure to diligently pursue his claim for relief.

VI.

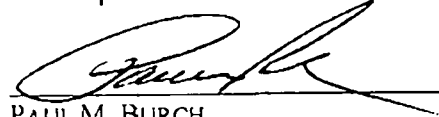
Pursuant to section 17-27-70(b) of the South Carolina Code, this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this order upon him to show why this order should not become final. Applicant shall file any reasons he may have with the Darlington County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Elizabeth H. Neyle, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

2015 MAY -7 PM 3:31
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

AND IT IS SO ORDERED this 24th day of April, 2015.



PAUL M. BURCH
Chief Judge for Administrative Purposes
Fourth Judicial Circuit

Chesterfield, South Carolina

Russell Dawson # 1617877
prose plaintiff,
VS.
State, Darlington County
et.al. Defendant,

The Supreme Court
of South Carolina
YANO: 2013-CP-16
1003 P.M Burch
Files Intent To
Appeal and For Appointed
Council Too.

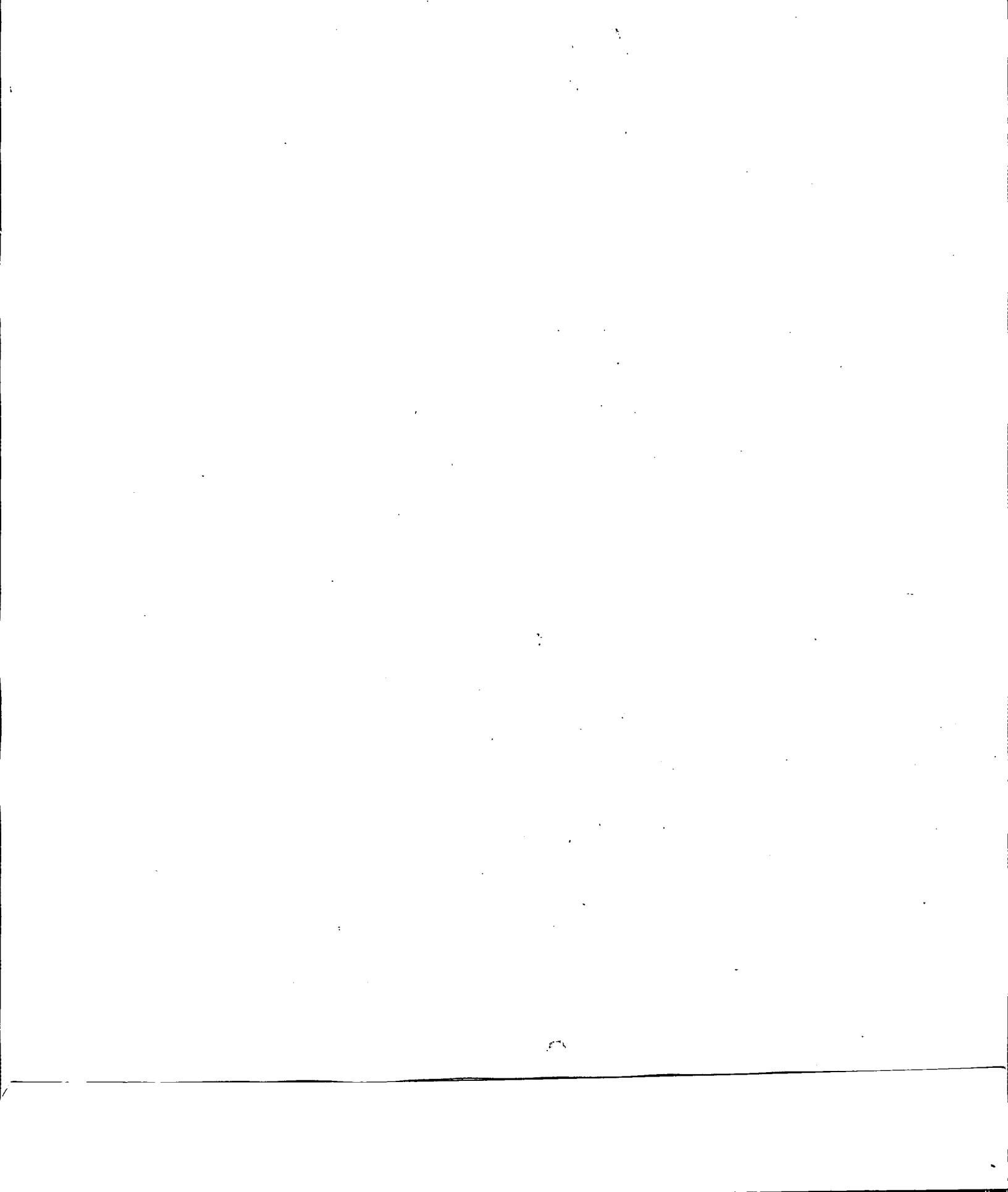
I. I prose Russell Dawson, seeks To Appeal Judge Paul. M. Burch second order september 29, 2015 got 10-16-2015 I sign for it by prose had a double Jeopardy violation and Judges Errors, Court Reporter left out parts of Trial Arguments Indictments were defective! Blair mental Testing violation, Prior Records Brought out but proved Jeopardy. Already Tried, And Victim had to be Blanked out. Judges Error on charges To Jury on hand of one hand of All, There was no other Hand There, on finding prose guilty on the Alibi Charge, And allowing Jury To hearing Sex Charge when they had no Evidence and Told Before Trial, on Batson violation and Indictments are Forged, Trial Counsel m.v. Royal wasnt Allowed To Questions Jury? Admndmat

Trial Counsel fail To have prose EXPERT To do Testing under Blair I wasnt Allowed To get up witness ms. TERESA To prove Innocent: no Blair nor preliminary Hearing Allowed And many more Constitutional Rights violated.

6] And PCR Judge Burch Fail To Appoint (Gal) For Prose To
Reise The Constitutional Jeopardy ; other violations, See pgs 10-12
where I served Above on Time once I Found Some one who
Knows All Law, And Wrong To Prose.

7] Prose Seeks by motion - mandamus for honored Judge To
Appoint him a (Gal) Lawyer To help get his Arguments Before
The Court. By Prose has mental problems ; is Housed in A mentally
Ill AOS Unit AS Court Knows prose has Been in mental Inst.
Since he was 6 years old; is Indigent Too, See Thomson 88 S.C.
2^d 354 (S.C. 1955) Judge Clerk Has To Appoint (Gal)
For mental in competence (A)(b)(c) ; imprisoned prose mandatory)
See code 15-3- 320, 360, 370 mandatory 55.2 S.C. code That
(Gal) ~~BE~~ given person listed mentally Ill or In competent To
Appear on There Behalf ; if Justice, is ordered without one its
void And can Be Re-opened ; vacated, see: Soming 427 S.E. 2nd
646 (S.C. App 1992) (Gal) is a ma of The Court To protect
Incompetent. I see Dixon) 47 F Sarp 798 (S.C. 1901) duties
of (Gal) To protect] See: Beddie
- U.S. 371 (1972) mandatory state Give indigent counsel
; cant deny them Access To There Courts.]

8] Prose. States There proof of his mental Status is per
01-CP 26 0058 In Trans. 20 Lines 7-22 Prose cant Read
Nor write ; does not Know The Laws, ; has A Low IQ
In Trans. ~~page~~ 23 fed 6-6 1998 Before Judge Ca Harris
; In ; out of mental hospitals.



And mental control drugs used up prose All his LIFE!! The Test used By Psy- DR Montgomery- m. Nighten ARE NO Longer used. See TR, Trans PS, 11- Lines 7-9, Because it doesnt work.

And prose P.C.R fails under Title Y Salpa, (we holds sup. Ct.) Prose p.c.r. is Not successfull And may Be heard.) And NO Time Baton can Apply To prose By his mental Low IQ Unde Tected in Law. Status (s) S.C. Code 15-3-40 (3) ~~450~~ And 60-(1962). (10-204) Ericks ISE 884 (SL 1887) Statute Of Limitations is Told When There's disability of 2 or more, mental Ill ? imprisoned untill The Lease TO Exist.

And The Jeopardy Violation cannot Be Swept Aside Fained ? proven in prose Reply Pages 1-6 of 12 Pages. Not The Defective Indictment, cant be waived Aside Either PTimas 564 S.E. 2^{CD} 103 (S.C. 2002) Court has No Jurisdiction To convict De fendant unless There is PROPER indictment By a Grand Jury See Brown U.S. ROE 274. F 3D Table Tolling Applies). Also Laws 351F. 3RD 919 (9th circ 2003) Prose mental incompetent or placed in Admin Sec. Justifies E.O.W. Table Tolling Applies) Also Laws, Are Look OF access To Adequate Legal Advise And materials And see: Pages 1-12 Argument Belany,

prose Prays Judge will human his status ? Grant Relief.

Respectfully submitted,
Prose. Russel Dawson
Russel Dawson 262707
Lieber Curt Inst
P.O. Box 205
Ridgeville SC 29472

Certificate of Service

This is to certify that I Russell Dawson
the Applicant has caused a notice of appeal to
be filed in the herein mentioned action and have
served the respondent by placing same in the
United States mail here at Leiber Correctional
Institution this 1 Day of November 2015,

Please file and acknowledge and send me
a file copy.

Thank you so much,

Respectfully,

Russell Dawson, # 161707
The Supreme Court of South Carolina
Clerk of Court
Post Office Box 21330
Columbia, South Carolina 29211

S. Russell Dawson

Leiber Corr Inst, EADS
P.O. Box. 205
Ridgville, SC, 29472

SUMMATION OF FACTS IN EVIDENCE

1. IT IS THE JOB AND DUTY OF THE SOLICITOR'S OFFICE TO INCLUDE THE SOUTH CAROLINA STATUTE IN THE BODY OF AN INDICTMENT, WHICH PUT FORTH THE STATUTE THAT PROSE VIOLATED.
2. THE FACTS THAT NO INDICTMENT FOR ARMED ROBBERY AGAINST ME CONTAINS A SOUTH CAROLINA CODE OF LAW STATUTE, MEANS THAT DARLINGTON COUNTY GENERAL SESSIONS COURT DID NOT HAVE "SUBJECT MATTER JURISDICTION", TO TRY PROSE IN THERE COURT.
3. THE ABOVE IS CLEARLY AN ABUSE OF POWER BY THE SOLICITOR'S OFFICE AS WELL AS OF THE GRAND JURY FOR TRUE BILLING AN INDICTMENT WITH NO SOUTH CAROLINA CODE OF LAW STATUTE, THIS ABOVE MAKE PROSE CONVICTION ILLEGAL AND UNCONSTITUTIONAL AND AGAINST THE LAW.
4. THE INDICTMENTS FOR ARMED ROBBERY AGAINST ME SHOULD BE THROWN OUT OF THIS APPEAL COURT. THE STATE CLEARLY ~~DEED~~ DENIED "PROSE DUE PROCESS".
5. BASED ON EVERY THING AS STATED ABOVE, PROSE SHOULD BE RELEASED IMMEDIATELY. PROSE HAVE CERTIFIED COPIES OF HIS INDICTMENTS TO PROVE ABOVE STATED FACTS, TO VERIFY MY SERIOUS CLAIM, WHICH PROSE IS ENCLOSING WITH THIS LEGAL APPEAL DOCUMENT.
6. PROSE PRAYS APPEAL JUDGE WILL ADMIT HIS STATUS AND GRANT RELIEF.

The State of South Carolina

INDICTMENT FOR ARMED ROBBERY,
ROBBERY AND GRAND LARCENY

County of DARLINGTON

At a Court of General Sessions, convened on the 17TH day of JULY
19 89, the Grand Jurors of DARLINGTON County present upon their oath:

COUNT ONE—ARMED ROBBERY

That RUSSELL DAWSON
did in DARLINGTON County on or about the 15TH day of MAY
19 89, while armed with a deadly weapon, to wit: A PISTOL
feloniously take from the person in the presence of: HELEN JORDAN
by means of force or intimidation goods or monies of the said MAJIK MARKET
such goods or monies being described: U. S. MONIES AND PERSONAL BELONGINGS

COUNT TWO—ROBBERY

That _____
did in _____ County, on or about the _____ day of _____
19 _____, feloniously take from the person or presence of _____
by means of force or intimidation goods or monies of the said _____
such goods or monies being described: _____

COUNT THREE—LARCENY

That _____
did in _____ County on or about the _____ day of _____
19 _____, feloniously take and carry away the goods and monies of _____
of a value of _____
described: _____

with intent to deprive the owner permanently of such goods and monies
Against the peace and dignity of the State, and contrary to the Statute in such case made and
provided.

Clinton McBride

Solicitor

TRUE CERTIFIED COPY,
Sgt. B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

WARRANT # : C389R11
DOA : 05/17/89

Witnesses

BOBBY H. JAMES / DGSD

B. H. James

197

Verdict

Foreman

89-GS-16 697

The State of South Carolina

County of DARLINGTON

COURT OF GENERAL SESSIONS

JULY

Term, 19 89

P.D. THE STATE

VS.

RUSSELL DAWSON

Russell Dawson

INDICTMENT FOR

Armed Robbery.

[Redacted]
[Redacted]
[Redacted]
7-17-89

[Redacted]

Foreman of Grand Jury

LEGAL PRINTERS

OXFORD & C. SMITH

DAY V
BACK

The State of South Carolina

INDICTMENT FOR ARMED ROBBERY,
ROBBERY AND GRAND LARCENY

County of DARLINGTON

At a Court of General Sessions, convened on the 17TH day of JULY
1989, the Grand Jurors of DARLINGTON County present upon their oath:

COUNT ONE—ARMED ROBBERY

That RUSSELL DAWSON
did in DARLINGTON County on or about the 15TH day of MAY
1989, while armed with a deadly weapon, to wit: A PISTOL
feloniously take from the person in the presence of SAMMIE NUTTER

by means of force or intimidation goods or monies of the said FAST FARE CONVENIENCE STORE
such goods or monies being described: U. S. MONIES AND PERSONAL BELONGINGS.

COUNT TWO—ROBBERY

That _____
did in _____ County, on or about the _____ day of _____
19____, feloniously take from the person or presence of _____
by means of force or intimidation goods or monies of the said _____
such goods or monies being described: _____

COUNT THREE—LARCENY

That _____
did in _____ County on or about the _____ day of _____
19____, feloniously take and carry away the goods and monies of _____
of a value of _____
described: _____
with intent to deprive the owner permanently of such goods and monies.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Clendon McBride
Solicitor

TRUE CERTIFIED COPY.
J. B. S. S. S.
CLERK OF COURTS/RMC
DARLINGTON COUNTY, S.C.

WARRANT #: C389810
DOA: 05/17/89

Witnesses

BOBBY H. JAMES/DCCSD

[Handwritten signature]

204

Verdict

Foreman

89-GS-16 696

The State of South Carolina

County of DARLINGTON

COURT OF GENERAL SESSIONS

JULY Term, 1989

P.D.
THE STATE

vs.

RUSSELL DAWSON

INDICTMENT FOR

Armed Robbery.

[Redacted]
[Handwritten signature] 7-17-89

[Handwritten signature]

Foreman of Grand Jury
COLUMBIA, S. C. 29208
McGAW PRINTERS