

Antonio Gordon, #259798
Kershaw C.I. Pelmatto B #35
4848 Goldmine Hwy
Kershaw, SC 29067
March 16th, 2016

RECEIVED

MAR 18 2016

RE: Antonio Gordon v. State
Appellate Case No. 2015-001014
Lower Court Case No: 2000-CP-46-1414

S.C. SUPREME COURT

Dear Clerk:

Please find enclosed a Petition for Rehearing, And a Motion To Remand To PCR Court Pursuant To Garner v. State, I am filing in this Court's Jurisdiction. The Opposing Counsel has been served with the same.

Respectfully Submitted

Antonio Gordon

State of South Carolina
In The Supreme Court

RECEIVED

Appeal from York County
Court of Common Pleas
John C. Hayes, III, Presiding Judge

MAR 18 2016

S.C. SUPREME COURT

Appellate Case No: 2015-001014
Lower Court Case No: 2000-CP-46-1414

Antonio Gordon,

Petitioner,

v.

State of South Carolina,

Respondent.

Petition For Rehearing Pursuant To Rule 221^(A),
SCACR

The Petitioner hereby Petition this Court for a Rehearing Pursuant to Rule 221^(A), SCACR. This Court denied his Petition for writ of certiorari and Motion To Supplement On March 7, 2016 based on a vote of the Court, and recieved by Petitioner on March 10, 2016. Petitioner asserts this Court should either ^{order} briefing and or remand to the PCR Court because this Court has overlooked the following and or was not made aware of the following:

"Before this Court issued its Ruling in the instant case the Petitioner filed a Motion dated March 3, 2016, to remand to the PCR Court Pursuant to Hendricks v. State, 692 S.E.2d 892, 893 (2010), to seek a odum v. State, 523 S.E.2d 753 (1999) review because of procedural irregularities that occurred in his initial review collateral proceeding, Antonio Gordon v. State, Case No: 2000-CP-46-1414. See Attachment (A) (Motion to Remand to PCR Court Pursuant to Hendricks)". Petitioner asserts Jurisdiction still lies in this Court to adjudicate the said above Motion because he properly filed his motion before this Court issued its order when he delivered it to the "Prison mailroom". Citing Houston v. Lack, 487 U.S. 266, 101 L. Ed2d 245, 108 S.Ct 2379 (1988) (Prisoner's pro se motion for Judgment N. O. v. was deemed filed on date motion was placed in Prison's "legal mailbox", as opposed to date of its receipt by Court clerk). Petitioner submit as evidence to support his claim Attachment (b) (South Carolina Department of Corrections, Agreement to Debit E. H. Cooper Account, signed by Mailroom Personnel March 4, 2016, three days before the order was

issued in the Instant Case). Therefore, this motion is properly before the Court and should be adjudicated on the merits Pursuant to Wise v. South Carolina Dept of Correction, 642 S.E. 2d 551 (2007); Martin v. Paradise Cove, Inc, 559 S.E. 2d 348 (2001).

However, Petitioner in his Rule 60(b), SCBCP motion at Appendix Page 570 - 572 provided the Court with a sufficient reason ~~that~~ under Section 17-27-90 that his subject matter Jurisdictional Claims at Appendix Pages 409 and 420-426 was inadequately raised by PCR Counsel which deprived him of his "one full fair bite at the apple" Pursuant to Odom v. State, 523 S.E. 2d 753 (1999). However, in Odom this Court held the statute of limitation does not apply to "Belated Appeals". Id Petitioner incorporates the argument in his Motion to Remand to PCR Court Pursuant to Hendricks v. State, supra, dated March 31, 2016 and ask the Court to take Judicial Notice of said motion.

Petitioner's Rule 60(b), motion is inconsistent with the Post-Conviction Act, specifically Section 17-27-45 (A), where this Court held the statute of limitation does not apply to "Belated Appeals" in Odom v. State, supra, and the lower Court find Petitioner did not file his motion within a reasonable time. Secondly, his motion was inconsistent with Section 17-27-90 which entitles a PCR applicant a second PCR if he shows the claims was "inadequately" raised in the initial PCR. Rice v. State, 409 S.E. 2d 392 (1992). This Court has held where the General Assembly has provided a specific procedure to follow when a Defendant petition for a post-conviction, S.C. Code Ann § 17-27-20 - 120. A Rule of Civil Procedure may not limit the provision of a statute. Hendricks v. State, supra. Therefore, this Court should remand to the PCR Court Pursuant to Hendricks, supra.

Petitioner asserts the lower Court abused his discretion and committed error of law because he did not have the authority to issue an order in the Instant Case because he signed an order changing venue in the instant case. See Appendix Page 568 alleging he was a Judicial Conflict which is law of the case. Under law of the case doctrine, "finding made at one point during litigation become law of the case for subsequent stages of that same litigation. U.S. v. Gama-Bastidas, 222 F.3d 779 (2000); North Mississippi Communications v. Jones, 951 F.2d 652, 656 (5th Cir), cert. denied - U.S. - 113 S.Ct 184 (1992) (Under law of the case doctrine, we follow the prior decisions in a case as the law of the case), therefore, Judge Hayes order finding he was a conflict in Antonio Gordon v. State, Case No: 2000-CR-46-1414, remain law of the case, id and the lower Court order is controlled by error of law under Floyd v. State, 400 S.E. 2d 145 (1991).

In the Instant case Petitioner asserted that PCR counsel recharacterized his subject matter Jurisdictional claims and the PCR court Ruled on them under the sixth Amendment analysis. ~~See Motion to Supplement Page 9 Footnote 4.~~ See Motion to Supplement Page 9 Footnote 4. The PCR court deem the Jurisdictional claims waived. No court has ever Ruled on the claim despite Subject matter Jurisdiction cannot be waived even by consent of the parties and should be taken notice of by the court. Anderson v. Anderson, 382 S.E.2d 897, 900 (1989). This court Did Not take Notice of the subject matter Jurisdictional claims. See Motion to Supplement Pages 4-14. But see Brown v. State, 540 S.E.2d 846 (2001) (where this court took notice of a subject matter Jurisdictional claim on a writ of certiorari.

For all of the above mention Reasons Petitioner ask this court to grant ~~his~~ his Petition for Rehearing, and to adjudicate his motion filed on March 9, 2016

This 16th day of March, 2016

Antonio Gordon

Antonio Gordon, #259798
Kershaw C. I. RHU 69
4848 Goldmine Hwy
Kershaw SC 29067

FN1 In order To get relief from Judgment, a separate action "cannot" be sustain; ~~and remedy~~ Remedy, if any, being by motion in the original case. Baker v. Brewer, 123 S.E. 771 (1924)

State of South Carolina
In THE Supreme Court

RECEIVED

MAR 18 2016

Appeal from York County
Court of Common Pleas
John C. Hayes III, Presiding Judge

S.C. SUPREME COURT

Appellate Case No: 2015-001014
Lower court Case No: 2000-CP-46-1414

Antonio Gordon,

Petitioner,

v.

State of South Carolina,

Respondent.

Certificate of service

I, hereby certify I did serve Petitioner's petition for Rehearing on:

Attorney General Office
Justin James Hunter, Esquire
P.O. Box 11549
Columbia, SC 29211

by depositing a copy in the mail with sufficient funds on this 16th day of March, 2016.

Antonio Gordon

Antonio Gordon, # 259798
Kershaw C. I. RH4 69
4848 Goldmine Hwy
Kershaw, SC 29067

Attachment (A)

March 3, 2016

RECEIVED

MAR 09 2016

S.C. SUPREME COURT

RE: Gordon v. State,
Appellate case NO: 2015-001014

Dear Clerk:

Please find enclosed a motion to remand to
Post-conviction Court Pursuant to Hendricks v. State,
692 S.E.2d 892, 893 (2010). The opposing Counsel has
been served with a copy. Could you please stamp
file and send me a copy back.

Respectfully Submitted

Antonio Gordon

State of South Carolina
In The Supreme Court

Attachment (A)

Appeal from York County
Court of Common Pleas
John C. Hayes, III, Presiding Judge

Appellate Case No: 2015-001014
Lower Court Case No: 2000-CP-46-1414

Antonio Gordon,

Petitioner,

v.

State of South Carolina,

Respondent.

Motion To Remand To Post-Conviction
Court Pursuant To Hendricks v. State,
692 S.E.2d 892, 893 (2010) To Seek a
Adom v. State, 523 S.E.2d 753 (1999)
Review because of Procedural irregularities
that occurred in initial PCR that deprived
him of due process

The Petitioner filed a Rule 60 (b)(5) SCRPC motion dated April 13, 2015, filed April 27, 2015, asserting the Judgment in Antonio Gordon v. State, Case No: 2000-CP-46-1414, should be reopened because Post-Conviction (PCR) Court appointed Counsel, Tara D. Shurling, esq "committed constructive fraud upon him and the Court when she in the record informed the PCR Court Petitioner asked her to present a subject matter jurisdiction claim, namely, General Sessions lacked jurisdiction to accept his guilty plea where Family Court had not relinquished it jurisdiction, Counsel further informed the PCR Court that Petitioner asked her to present ~~the~~ a subject matter jurisdiction claim in his amendment to the application that raised a Constitutional challenge to S.C. Code Ann § 20-7-6605 (1) (SUPP. 1998) Title Define "EcJhild" Statutory." See Appendix Pages 570-571 with Appendix Pages 409 and Pages 420-426 However, instead of PCR Counsel presenting the claims Petitioner asked her to present she waived the claims without his consent, recharacterized them ~~as~~ and inadequately raised

them as "[I]neffective assistance of counsel"; namely, "Plea Counsel failed to make a concerted effort to convince the solicitors office as an advocate to remand his case to family court under Section 20-7-6605 (D), supra". See Appendix Page 500 claim five Jurisdiction claim addressed under sixth Amendment analysis in PCR order date August 13, 2003, filed August 20, 2003, therein "depriving Petitioner of his statutory right to present all his claims in one PCR / one full bite at the apple" Pursuant to Odom v. State, 523 S.E.2d 753 (S.C. 1999). See Appendix Pages 570-576. The Honorable John C. Hayes, III, dismissed the Petition based upon he failed to file his Rule 60 (b) motion "within a reasonable time" Pursuant to Rule 60 (b). See Appendix Page 540

Before this court is Petitioner's Explanation Pursuant to Rule 243 (c) / Petition for writ of certiorari. On Page 3 of his brief "Statement of the Grounds" Petitioner asked the following question:

whether the Lower Court erred when it found Petitioner did not file his motion within a reasonable time under rule 60 (b) when he asserted a Odom v. State, supra review?

Argument

This Court has held where the General Assembly has provided a specific procedure to follow when a Defendant Petition for Post-Conviction. S.C. Code Ann § 17-27-20 -120. A Rule of Civil Procedure may not limit the provision of a statute. Hendricks v. State, supra. This Court in Odom v. State, supra held that the statute of limitation does not apply to "belated Appeals" and Pursuant to section 17-27-90 the General Assembly has placed in law that:

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 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.

Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Pice v. State, 305 S.C. 448, 404 S.E.2d 392 (1991); Arnold v. State / Plath v. State, 420 S.E.2d 834 (1992). ~~The Honorable Court find~~

Rule 60 (b) "Reasonable Time" standard is inconsistent with this Court ruling in odom v. state, supra and inconsistent with Section 17-27-90 that a subsequent Post-conviction could be granted if the Court find a sufficient reason why the ground was not raised in the original application or that the ground was "inadequately raised in the original, supplemental or amended application." Aice v. state, supra. In Petitioner's Rule 60 (b) motion he presented to the lower court a claim that his PCR Counsel "inadequately" raised the subject matter jurisdictional claims in his original, supplemental and amended application, therefore the General Assembly has provided a specific procedure to be followed in PCR cases and that method is inconsistent with the more General Procedure of SCRCP, the statutory procedures must be followed, this Court should remand to the PCR Court for an evidentiary hearings. Hendricks, supra.

odom v. state, Review

Petitioner avers he is entitled to a odom v. state, supra, review because procedural irregularities that occurred in his initial Post-conviction deprived him of Due Process and "one procedural right to a full bite at the apple". In the instant case Petitioner attached to his original PCR application a subject matter jurisdiction claim, namely "General Sessions was without jurisdiction to accept his guilty plea where Family Court had not relinquished it's jurisdiction". See Appendix Page 409. Petitioner amended his application to assert a second subject matter jurisdiction claim, namely, because "Section 20-7-605 (1), supra, was unconstitutional General Sessions was without jurisdiction to accept his guilty plea". See Appendix Page 420 - 426. However, PCR Counsel Tara D. Shurtinsweg in the middle of the record informed the PCR Court that Petitioner asked her to present his subject matter jurisdiction claims but instead "recharacterized them and "inadequately" raised them as "ineffective assistance of counsel" claim under the Sixth Amendment." See Appendix Pages 444 line 15-24 and Pages 445 line 23 through Page 446 line 1.

Because PCR Counsel recharacterized Petitioner's jurisdictional claims and then "inadequately" raised them as ineffective assistance of counsel constituted a "waiver" of the claims which deprived him of his procedural right to "one full bite at the apple" Pursuant to odom v. state, and provide a sufficient reason under section 17-27-90 that entitle Petitioner to a subsequent

Post-conviction where he have shown his subject matter Jurisdiction claims was "inadequately raised in the original, supplemental and amended" application. Alice v. State, supra.

Furthermore, Petitioner contends that he's entitled to a "Belated Appeal" Pursuant to Odom v. State, supra, because the ~~lower~~ PCR Court too failed to make specific, finding and fact~~s~~ conclusion of Law on his subject matter Jurisdiction claims under section 17-27-80 because PCR Counsel could not legally or constitutionally "waived" his Subject matter Jurisdiction claims where this Court has held Jurisdiction of a Court over the subject matter of a proceeding is fundamental. Anderson v. Anderson, 294 S.C. 110, 115; 382 S.E.2d 897, 900 (1989). "Lack of subject matter Jurisdiction may not be waived, even by consent of the Parties, and should be taken notice of by the Court". Id It is well-settled that issues related to subject matter Jurisdiction may be raised at any time. Carter v. State, 495 S.E.2d 773 (1998); State v. Funderburk, 191 S.E.2d 520 (1972). Thus in the instant case the PCR Court considered Petitioner's subject matter Jurisdiction claims "waived" when PCR Counsel recharacterized them and then "inadequately raised" them as ineffective assistance of counsel claim and did not take notice of the subject matter Jurisdiction claims which is a direct violation of Anderson v. Anderson, supra, Carter v. State, supra, therefore, under Section 17-27-90 Petitioner's Subject matter Jurisdiction claims could not ~~be~~ constitutionally be waived, ~~as a result of the PCR Court's decision to recharacterize them as ineffective assistance of counsel claims and did not take notice of the subject matter Jurisdiction claims which is a direct violation of Anderson v. Anderson, supra, Carter v. State, supra, therefore, under Section 17-27-90 Petitioner's Subject matter Jurisdiction claims could not be constitutionally be waived,~~ ~~as a result of the PCR Court's decision to recharacterize them as ineffective assistance of counsel claims and did not take notice of the subject matter Jurisdiction claims which is a direct violation of Anderson v. Anderson, supra, Carter v. State, supra, therefore, under Section 17-27-90 Petitioner's Subject matter Jurisdiction claims could not be constitutionally be waived,~~ this Court has held subject matter Jurisdiction should be taken notice of by the Court, Anderson v. Anderson, supra. Therefore, a remand to the PCR Court is warranted Pursuant to Washington v. State, 478 S.E.2d 833 (1996) (Given many Procedural irregularities that occurred during the course of Petitioner's Judicial Process deprived him Due Process); Odom v. State, supra. See FN 1

Time Bar / Successive Application / Procedural Bars

Petitioner asserts a remand to the PCR Court will not result in a time barred application because this court has held in Odom v. State, supra the statute of limitation

FN 1 Petitioner ask this Court take Judicial notice of his subject matter Jurisdiction claims attached to ~~in~~ his motion to supplement Explanation / Petition for writ of certiorari and the merits of them therein mention, Dated January 13, 2016, Pages 4-14.

does not apply to "Belated Appeals". Id.

~~Further~~ Petitioner asserts a remand to the PCR Court would not result in a ~~second~~ successive application pursuant to Section 17-27-90 - Alice v. State, supra, because he is not mounting a collateral attack on his conviction or sentence under Section 17-27-20 (A) (i) - (6). This court in William v. State, 662 S.E.2d 615 (2008) held "PCR relief is a proper avenue of relief" [Only] when the applicant mount a collateral attack challenging validity of his conviction or sentence; The only exceptions are claims, specifically listed in PCR Act, that an Applicant's sentence has expired, or that an Applicant's Probation, Parole, or Conditional release has been unlawfully revoked. Code 1976 § 17-27-20 (A) - Al-Shabazz v. State, 529 S.E.2d 742, 749 (2000) (emphasis in original)

Matter of fact this court's reasoning in Odom v. State, supra of not applying the statute of limitations under the PCR Act is because he was not mounting a collateral attack on his conviction or sentence. See Odom v. State, 523 S.E.2d at 754, 755 (1999). Petitioner asserts this very same reason apply when a PCR Applicant file a subsequent application seeking a "Belated Appeal" and have had one PCR challenging his conviction and sentence but in his subsequent application he challenges the "Procedures instituted in his initial application" here Petitioner's Application would not be successive and to ~~be~~ expand 17-27-90 to "Belated Appeals" mounting a collateral attack on his conviction and sentence will be a direct violation of Epstein v. Coastal Timber Co., 711 S.E.2d 912, 917 (2011) (words ~~off~~ in a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or "expand the statute operation"), therefore, because Petitioner is not mounting a collateral attack on his conviction or sentence a remand would not result in a successive application under Section 17-27-90, For the herein stated reasons Petitioner's case is inopposit than Alice v. State, 409 S.E.2d 392 (1991) (Finding application successive), ~~because the conditions of his case should be considered to the lower court as a Belated Appeal Pursuant to Odom v. State, supra, which was held to be a Belated Appeal, where he was deprived Judicial and appellate relief on his claims.~~

It is a manifest injustice where the PCR Court failed to take notice of Petitioner's subject matter jurisdictional claims that was attached to his "original, supplemental and amended" Application that could not have been waived even by consent of the Parties as a matter of Law. Anderson v. Anderson, supra. This manifest error resulted in a substantial error and also amounts to a manifest constitutional error and the cumulative errors of PCR Court failing to take notice of the subject matter jurisdictional claims and PCR Counsel recharacterizing and then inadequately raising the subject matter jurisdiction claims resulted in a miscarriage of Justice because in the case sub judice when the Police made the warrantless arrest and took Petitioner into custody "Family Court acquired first jurisdiction over the subject matter and the Petitioner's Person Pursuant to S.C. Code Ann § 20-7-205 (A) (Supp. 1998) Title "Taken into custody". See Friz And because Proceedings under S.C. Code Ann § 20-7-400 (A) (3) (Supp. 1993) Title "Exclusive original Jurisdiction of Family Court" was not instituted, General Sessions Court was without subject matter and Personal Jurisdiction to accept Petitioner's Guilty Plea. See State v. England, 245 S.E.2d 603 (S.C. 1978) (Defendant was a person under Family Court exclusive original Jurisdiction and since Jurisdiction had not been relinquished by Family Court, defendant should have been ~~deat~~ dealt with under the children code); State v. Maxfield, 241 Kan 555, 561, 738 P.2d 861 (1987) (Thus, we think it is abundantly clear that the Kansas Juvenile Code (and now the Kansas Juvenile offenders Code) established an exclusive procedure for those subject to its provisions. . . . To obtain such Jurisdiction the Proceedings had to be instituted under the provisions of the Kansas Juvenile Code. Failure of the State to proceed in accordance with the Code deprived the Court of Jurisdiction to accept Appellant's plea.). Therefore, Petitioner's Guilty Plea Judgment entered July 19, 1999, is null, void ab initio. State v. England, supra; State v. Maxfield, supra and Petitioner was entitled to his speedier and immediate release at his 2003 PCR hearing ~~as a matter of law~~ because he was twenty-one years of age and Family Court Exclusive original Jurisdiction had terminated over him Pursuant to S.C. Code Ann § 20-7-1810 (B) (Supp. 1998) Title "Commitment" Sanders v. State, 281 S.C. 53, 314 S.E.2d 319 (1984) (The maximum sentence a Juvenile can receive in Family Court is an indetermined period of confinement not to extend past the Juvenile's twenty first birthday); In Interest of Keith Lamont G, 405 S.E.2d 404 (1991) (Same) In the Matter of Westbrook, 297 S.C. 410, 288 S.E.2d 395 (1982) (Same).

Friz Pursuant to S.C. Code Ann § 20-7-2605 (a) (Supp. 1998) Title Define "child" Statutory the Court means the "Family Court."

However, the PCR Court in it's order at appendix PAGE 500 claim five (5) found under a sixth Amendment analysis because Petitioner was sixteen years of age and "Charged with" a Class A, B, C, or D Felony as defined in section 16-1-20 or a felony which provide for a maximum term of imprisonment of fifteen years or more "General Sessions had Jurisdiction". The decisions to remand the case To Family Court was within the discretion of the solicitor. See FN 3 Thus, the ineffective assistance of Counsel claim at ~~extra~~ Appendix Page 500 Claim five (5) ("The Applicant Claims Guilty Plea Counsel was ineffective for failing to make a concerted effort to get the solicitor's office to remand the case to family court), is directly contrary to the subject matter Jurisdictional Claims at appendix Pages 409 and 420-426 that the PCR Court failed to take notice of and PCR Counsel recharacterized and then inadequately raised as the above sixth amendment claim. This resulted in a Mis carriage of Justice, denial of fundamental fairness.

Furthermore, because the PCR Court in Antonio Gordon v. State, Case No: 2008-CP-46-4951 issued an order restricting Petitioner from filing any future Post-conviction relief applications Pursuant to In re Theron Maxton, 478 S.E.2d 679 (1996). Petitioner assents this order should not create a Procedural bar that would prevent a remand to the Lower PCR Court because otherwise would constitute a extraordinary circumstance that would prevent the PCR Court from taking notice of his subject matter Jurisdictional Claims and Odum v. State, supra, review. It is also contended by Petitioner that his case is inopposit than Maxton. In the Present case, Petitioner with the I.Q. of 68 and reading level at a third grade level filed his initial (PCR) with the help of Jail house lawyers and attached to his original, Supplemental and amended Application the subject matter Jurisdiction claims and asked his PCR Court appointed counsel to present his claims but she "recharacterized and inadequately raised" his claims and the PCR Court too failed to take notice of the subject matter Jurisdictional Claims. Petitioner was unaware PCR Counsel had "recharacterized and inadequately raised his claims". See Appendix Page 455 line 5 through Page 456 line 2. It was testimony during the PCR hearing and Petitioner's Pretrial Proceedings of his limited IQ of 68 and deficits, see Appendix Page 475 line 18-20 (Guilty Plea Counsel testimony) - with (Doctor Jonathan Venn) testimony that Petitioner's I.Q 68, reading level at 3rd Grade Percentage and he's very suggestible. See Appendix Page 304 line 4 through Page 305 line 22.

FN 3 Petitioner ask the court to take judicial notice that he was not "Charged with" any criminal offense when he was "taken into custody" July 23, 1998. See Appendix Pages 274 line 16 through Page 275 line 15 Plus Pages 283 line 13 through page 284 line 11 (John Thickens Testimony) - with Appendix Page 44 line 16 through Page 45 line 23 (Charles Cabin Testimony) and it wasn't until after Petitioner was in custody approx 6 to 8 hours that he was charged with a crime. See Appendix Pages 342 line 14 through Page 343 line 4. By then Family Court Jurisdiction attached and could not be ousted. Buller v. White, 95 S.E.2d 496 (1956)

After being brought to Petitioner's attention when he received the PCR order he was then informed by a Jailhouse lawyer that the Subject matter Jurisdictional Claims was not addressed in the order of dismissal and he prepared a Rule 59(c), SCRCP motion. See Appendix Page 571. See FN 4 However, the Petitioner then filed a second (PCR) and attached the Subject matter Jurisdictional Claims. Antonio Gordon v. State, Case No: 2004-CP-46-1700. The PCR Court found the Application time barred and successive under the Post-Conviction relief Act. The Petitioner next filed a Statutory State Habeas ~~Corpus~~ Corpus in the lower Court. Antonio Gordon v. State, Case No: 2006-CP-46-0010. In the Petition the Petitioner asserted he was entitled to his release because "General Sessions was without Jurisdiction to accept his guilty plea because Family Court had not relinquished its Jurisdiction to General Sessions." The Clerk of Court filed the Petition as a Post-Conviction relief Application. The Court found that Petitioner could have raised his claims in his first PCR and to "a large extent did in a order dated April 30, 2007, filed June 1, 2007". See FN 5

The Petitioner filed his third PCR and ~~again~~ attached the Subject matter Jurisdictional Claims again. Antonio Gordon v. State, Case No: 2008-CP-46-4951. Retained counsel refused to present the Subject matter Jurisdictional Claims informing Gordon they should have been raised in his initial application and proceeded with a newly-discovered Evidence claim. The state argued the evidence was not new and requested a order Pursuant to Maxton. The PCR Court issued the Order Pursuant to Maxton and found Petitioner's application time barred and successive Pursuant to the Post-Conviction Act.

Petitioner contends he simply tried to correct the errors the system made during his initial PCR Collateral Proceedings and was not filing Petitions attempting to abuse the system. Unlike Maxton he continued to file over 30 Petitions that had no merits within a short time period which amounted to abusive filings. Here, Petitioner attempted to receive his "one full fair bite at the apple" by having his

FN 4 Even though the PCR Court found in its order that all claims had been ruled upon that was brought before the Court in the PCR Application, Petitioner filed a "Belated Appeal" from the order dated December 9, 2005. Petitioner also filed a motion requesting permission to file a Belated PCR under Austin v. State, 409 S.E. 2d 395 (1991). This Court vacated the order denying the Pro Se motion for reconsideration, as the motion was improper since at the time it was filed, Petitioner was represented by Counsel. Miller v. State, 699 S.E. 2d 527 (2010). See Appendix Page 578

FN 5 Petitioner currently have an appeal Pending in the Court of Appeals concerning that PCR. Antonio Gordon v. State, Appellate Case No: 2015-001004.

Subject matter jurisdictional claims considered on the merits that PCR Counsel "recharacterized and then inadequately raised" and where the PCR Court failed to take notice of his jurisdictional claims as a matter of law." Petitioner avers because of the PCR Court error and PCR Counsel errors he was deprived fundamental fairness and the opportunity to be heard at a meaningful time and in a meaningful manner in violation of his fundamental constitutional right to Due Process of Law under the 14th Amendment to the United States Constitution and Art I, § 3 of South Carolina Constitution. South Carolina Dep't of Social Ser v. Beeks, 325 S.C. 243, 481 S.E.2d 703 (1997) (Due Process requires fundamental fairness and the opportunity to be heard at a meaningful time and in a meaningful manner).

Finally, failure to hold an evidentiary hearing on Petitioner's Odom v. State, supra, review and subject matter jurisdictional claims where the PCR Court failed to take notice of and PCR Counsel recharacterized and then inadequately raised in the initial PCR collateral proceedings will result in a constitutional violation of Petitioner's fundamental constitutional right to Equal Protection of the Laws under the 14th Amendment to the United States Constitution and South Carolina Constitution Art I, § 3. See Arnold v. Association of Citadel Men, 523 S.E.2d 757 (1999) (The Equal Protection Clause provides: "No state shall... deny to any person within its jurisdiction the Equal Protection of the Laws". U.S. Const. Amend. XIV, § 1).

In the instant case Petitioner attached properly his subject matter jurisdictional claims to his original, supplemental and amended application ~~on subject matter jurisdictional claims~~ and even though PCR Counsel "recharacterized and then inadequately raised the claims" as a matter of Law, the subject matter jurisdictional claims could not be waived and the PCR Court should have took notice of them pursuant to Anderson v. Anderson, supra, which a ruling in Petitioner's favor would have entitled him to his "speedier and immediate release". This Court in Rice v. State, 404 S.E.2d at 394 (1991) held, "where the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice that a successive PCR can be obtain". Petitioner's case fit within this narrow exception. Washington v. State, supra. Therefore, any procedural bars should be excused even the Maxton Order. See FN 6

FN 6 Petitioner contends he is a defendant with a limited IQ of 68 and he should not be held accountable for the errors the system has made from the time of taken into custody and during his first PCR hearing. Petitioner has been deprived judicial and appellate review on his jurisdictional claims.

Conclusion

It is respectfully asked that this matter be remanded to the PCR Court for an ~~even~~ evidentiary hearing on his Odom v. State review and his subject matter Jurisdictional claims that was properly before the Court in Petitioner's initial PCR Collateral Proceedings that the PCR Court failed to take notice of and PCR Counsel recharacterized and than inadequately raised. It is also asked that this Court allow Petitioner by Pass the Maxton order in the lower court where the system has failed Petitioner. It is also asked that this Court grant relief as it deem fit to Prevent a miscarriage of Justice. Failure to remand will result in a miscarriage of Justice.

Respectfully Submitted

Antonio Gordon

Antonio Gordon # 259998
Kershaw C.I. CYP 77-A
4848 Goldmine Hwy
Kershaw, SC 29067

Dated this 3rd day of March 2016.

State of South Carolina
In The Supreme Court

APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS

John C. Hayes, III, Presiding Judge

APPELLATE CASE NO: 2015-001014

LOWER COURT CASE NO: 2000-EP-46-1414

Antonio Gordon,

Petitioner,

vs.

State of South Carolina,

Respondent.

Affidavit of Antonio Gordon

I, Antonio Gordon, hereby depose of and declare that:

- (1) That I in good faith certify that the matter raised is not frivolous;
- (2) That I asked PCR Counsel to present the subject matter jurisdictional claims at Appendix Page 404 and 420-426;
- (3) That I was deprived judicial and appellate review on the claims;
- (4) That I did not file the many petitions I did to abuse the system but to try and have my jurisdictional claims heard.

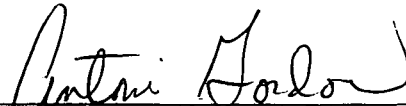
I, hereby certify that the above is true and correct under the penalty of perjury:

Sworn to and subscribed before me

this 3rd day of March 2016

Notary: Catherine A. Amara

Exp: December 23 2018



Antonio Gordon, #259798

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS
JOHN C. HAYES, III, PRESIDING JUDGE

APPELLATE CASE NO: 2015-001014

Antonio Gordon,

Petitioner,

v.

State of South Carolina

Respondent.

Certificate of Service

I, Antonio Gordon, hereby certify I did serve Petitioner's motion to remand to Post-conviction court and affidavit on:

Attorney General office
Justin James Hunter, esq
P.O. Box 11549
Columbia, SC 29211

by depositing a copy in the mail with sufficient funds this 3rd of march,
2016

Antonio Gordon

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Inmate Services

Attachment (b)

AGREEMENT TO DEBIT E.H. COOPER ACCOUNT

Inmate's Name: <i>Antonio Gordon</i>	SCDC #: <i>259798</i>	Housing Unit: <i>RHU 69</i>	Date: <i>3-3-16</i>
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GENERAL MATERIAL

** Inmate must have the funds in his/her account to pay for the materials.

To be completed by
SCDC staff:

Item	Amount	Cost
Envelope		
Pen		
Paper		
Postage		
Tape		
Box		
Electronic Repair		
Other		
Sub-Total:		

*S. C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211
Motion Requesting copy of Appendix*

LEGAL MATERIAL

** Inmate is not required to have the funds in his/her account to pay for the materials; however, his/her account must be debited for all materials s/he elects to receive.

To be completed by
SCDC staff:

Item	Amount	Cost
Envelope		
Pen		
Paper		
Postage		
Other		
Sub-Total:		

*S. C. Supreme Court
P.O. Box 11330
Columbia, S.C. 29211
Attorney General office
P.O. Box 11549
Columbia, SC 29211*

Motion to Remand to Post Conviction Court

PHOTOCOPIES

** Inmate may be required to have funds in his/her account. See SCDC Procedure GA-01.03(OP), "Inmate Access to the Courts," to determine if inmate may receive copies with/without funds.

To be completed by
SCDC staff:

Item	Amount	Cost
Photocopies		
Sub-Total:		

TOTAL

Antonio Gordon
Inmate's Signature

C. Amose
Mailroom/Canteen Signature (Request filled by)

3-4-16
Date

White - Inmate
Canary - Mailroom/Canteen Employee