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May 18, 2016

The South Carolina Supreme Court  
Daniel E. Shearouse, Clerk of Court  
P.O. Box 11330  
Columbia, SC 29211

RECEIVED

MAY 23 2016

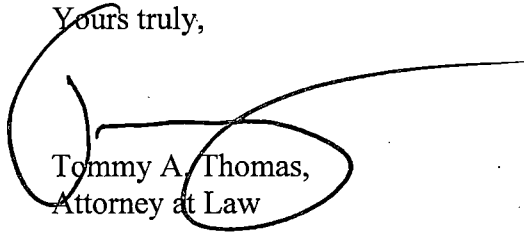
S.C. SUPREME COURT

RE: Marcus Skeeters #199165 v. State  
Docket No.: 2016-000899

Dear Sir or Madam:

Enclosed please find for filing, an Explanation pursuant to Rule 243 (c) in the above referenced case. I also wanted to bring it to the Court's attention, that it appears that pursuant to the Lower Court's Order that Mr. Skeeters' must first file a grievance action regarding his ineligibility for parole and that this action may potentially have to proceed through the Administrative Law Court. The purpose of this appeal is to preserve any right Mr. Skeeters would have to appeal the Court's decision after grievance process or Administrative Courts determination. While I have enclosed the Explanation pursuant to Rule 243, I would respectfully request that this Appeal be held in abeyance until such time as the directions of the Lower Court are complied with.

Yours truly,

  
Tommy A. Thomas,  
Attorney at Law

TAT/jem  
cc: Jessica E. Kinard, Esq.  
Marcus Skeeters #199165  
*Appellate Defense*

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
Post Conviction Relief

William H. Seals, Jr., Circuit Court Judge

**RECEIVED**

MAY 23 2016

**S.C. SUPREME COURT**

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Appellate Case No.: 2016-000899

Marcus Skeeters, #199165, ..... Appellant,

vs.

State of South Carolina, ..... Respondent.

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EXPLANATION PURSUANT TO RULE 243 (c)

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That in explanation pursuant to Rule 243 (c), the Appellant would respectfully submit the following:

The Lower Court should not have summarily dismiss the Appellant's Post-Conviction Relief Case as being successive to the previous application(s) for Post-Conviction Relief. Although successive applications for Post-Conviction Relief are disfavored, Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980), the exception for successive applications under S.C. Code § 17-27-90 states that any "new ground" for relief are forbidden unless the Appellant states a "sufficient reason" why new grounds for relief were not raised or were not properly raised in the previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Appellant contends

the new ground(s) for relief in the Post-Conviction Relief Application are legitimate claims in a successive application under S.C. Code § 17-27-90 because (1) it is "So novel that it's legal basis was not reasonably available to counsel", or Appellant, at the time of the earlier proceedings, and (2) constitute "Newly Discovered Evidence". Reed v. Ross, 104 S.Ct. 2901 (1984).

## PROCEDURAL HISTORY

### A. Underlying Conviction

The Appellant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County. In August 1993, the Appellant was indicted for murder, four (4) counts of assault and battery with intent to kill, and unlawful possession of pistol by a felon. A trial was held August 9-10, 1993, at which the Appellant was found guilty on all counts by a jury impaneled before the Honorable Sidney T. Floyd. The Appellant was represented by Orrie E. West, Esquire, Chief Public Defender. Sentencing was conducted on August 10 and 11, 1993, and Appellant was sentenced to life imprisonment for murder, ten (10) years for assault and battery of a high and aggravated nature (as a lesser included crime of the charge of assault and battery with intent to kill), twenty (20) years on each of the other three (3) counts of assault and battery with intent to kill, and one (1) year for the weapon charge, running consecutively.

A timely notice of appeal was filed on Appellant's behalf, and an appeal was perfected. Appellant was represented by M. Ann Pearce, Assistant Appellate Defender of the South Carolina Office of Appellate Defense. The South Carolina Supreme Court affirmed Appellant's conviction on March 29, 1995. State v. Skeeters, Op. No. 95-MO- 149 (S.C. filed March 29, 1995). The remittitur was returned to the circuit court on April 14.

B. First Post-Conviction Relief Action (1996-CP-26-0002)

In January 1996, Appellant filed an application for post-conviction relief alleging the necessity of relief on the following grounds:

1. Appellant was denied the right to effective assistance of counsel as guaranteed by the sixth amendment due to trial counsel not properly investigating the case and not procuring witness statements;
2. Appellant was denied the right to effective assistance of counsel as guaranteed by the sixth amendment due to trial counsel depriving defendant of a fair trial;
3. Appellant was denied the right to effective assistance of counsel as guaranteed by the sixth amendment due to trial counsel's failure to object to a charge or request an additional charge at trial.

The State filed its return in November 1997. Appellant filed an amendment along with supporting documents that was transmitted to the court by William M. Bruner, Esquire shortly before the evidentiary hearing. The Honorable James E. Lockemy held an evidentiary hearing on February 24, 1998. Both Appellant and his former trial attorney testified. Judge Lockemy denied relief in a written order dated May 13, 1998. A motion to alter or amend under South Carolina Rule of Civil Procedure 59(e) was filed on July 6, 1998, and was denied.

Appellant filed a petition for a writ of certiorari, and was represented by Joseph L. Sanitz, Deputy Chief of the South Carolina Office of Appellate Defense. The Supreme Court of South Carolina granted the petition and ordered additional briefs on December 13, 2001. The Supreme Court dismissed the grant of writ of certiorari as improvidently granted on February 10, 2003. Skeeters v. State, Op. No. 03-MO-007 (S.C. filed February 10, 2003). The remittitur was returned to the circuit court on February 26, 2003.

C. First Federal Habeas Corpus Action (0:04-cv-411(MJP-BM))

Appellant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on February 10, 2004, seeking relief on the ground that "counsel was ineffective when she failed to request an instruction on transferred intent as it related to manslaughter, and failed to object to the instruction to preserve the objection for the record." It was filed against Jon Ozmint, Warden of Lee Correctional Institution, and Henry McMaster, Attorney General for the State of South Carolina. On May 5, 2004, the State filed a motion for summary judgment. On January 13, 2005, the Honorable Bristow Marchant, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment and dismiss the petition because the issue presented was procedurally defaulted. Appellant filed objections and a motion to stay proceeding or, in the alternative, dismiss the petition without prejudice by and through his attorney, Joshua Snow Kendrick, Esquire, on January 28, 2005. The State, as Respondent, filed a Return on February 7, 2005. The Honorable Matthew J. Perry issued an order on April 5, 2005 adopting the Magistrate's recommendation, granting the Respondents' motion for summary judgment, and dismissing the matter without prejudice. Respondents filed a Rule 59(e) motion to alter or amend the judgment on April 18, 2005 requesting that it show a dismissal with prejudice. An amended summary judgment order was issued on April 26, 2005, removing the word "without," and stating that".. .this petition is dismissed."

D. Second Post-Conviction Relief Action (2005-CP-26-2846)

In June 2005, Appellant filed a second application for post-conviction relief by and through his counsel, Mr. Kendrick. He again claimed that he had not received effective assistance of counsel at trial, but argued that it should be distinguished under Aice v. State as being a proper instance for a successive petition because it was not properly presented to the highest state court and therefore procedurally barred from review by federal courts. 305 S.C.

448 (1991). The State filed its return on December 15, 2005, and amended return and motion to dismiss on December 5, 2007. A conditional order of dismissal was filed on December 26, 2007 after being signed by the Honorable J. Michael Baxley on December 19, 2007. Appellant refused personal service of the conditional order, but was served by mail, and did not issue any response or objection. A final order of dismissal was signed on March 5, 2008, also by Judge Baxley.

E. Second Federal Habeas Corpus Action (0:06-797-RBH-BM)

Appellant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on March 10, 2006, by and through his counsel, William Isaac Diggs, Esquire. It was filed against Jon Ozmint, Warden of Lee Correctional Institution, and Henry McMaster, Attorney General for the State of South Carolina. Appellant again alleged "ineffective assistance of counsel due to counsel's failure to request an additional jury instruction on the issue of transferred intent with respect to manslaughter." Respondent also filed a memorandum in support of this petition, filed on March 30, 2006. On May 8, 2006, the State filed a motion for summary judgment, accompanied by a return and memorandum of law. Appellant filed a return to this motion on May 26, 2006. On November 21, 2006, the Honorable Bristow Marchant, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment and dismiss the petition. Appellant filed objections by on December 1, 2006. The Honorable R. Bryan Harwell issued an order on January 7, 2007 adopting the Magistrate's recommendation, granting the Respondents' motion for summary judgment, and dismissing the matter with prejudice.

## ARGUMENT

That as pointed out by the procedural history, the Appellant has had two Post-Conviction Relief actions as well as two Federal Habeas Corpus actions. All four of these actions were dismissed with prejudice. The last action being filed in the United State's District Court for the District of South Carolina on March 10, 2006. Despite these actions being unsuccessful, the Appellant always had the belief that he would be eligible for parole. In fact, he went up for parole in 2012. He was notified November 15, 2012 that he had been rejected for parole and that he would be notified thirty days prior to his next scheduled parole consideration date. A copy of this letter is attached as Exhibit 1. On September 8, 2014, the Appellant was notified by legal counsel for the Department of Probation, Parole and Pardon Services, that he was not eligible for parole as a result of being a subsequent violent offender. This denial was pursuant to §24-21-640 South Carolina Code of Laws, as Amended. A copy of this letter is attached as Exhibit 2.

The Court found in its Order of Dismissal that pursuant to §17-27-90 South Carolina Code of Law, a successive Post-Conviction Relief Applications is forbidden. That successive Applications are forbidden unless the Appellant, who bears the burden of proof, can point to a sufficient reason why new grounds for relief were not properly raised in previous applications. Aice v. State, 305 SC 448, 409 SE 2d 398 (1991).

The Court further found and concluded that the sole grounds that the Appellant alleges should have been known to him at the time of his prior Applications for Post-Conviction. The Appellant would assert that the issue of parole eligibility was not known to him until such time as he received the notification from Probation and Parole. He was told that he would be eligible for parole and in fact possessed a parole eligibility date

during his incarceration with the South Carolina Department of Corrections. He appeared before the parole board in November, 2012 and was denied parole. Pursuant to his letter regarding his parole rejection, it was indicated that he would be notified thirty (30) days prior to his next scheduled parole consideration date. The Appellant had no ability to ascertain or determine that he was not eligible for parole until such time as he received the letter from Probation and Parole, dated September 8, 2014, stating that he was a subsequent violent offender. After receipt of this letter, a timely Application for Post-Conviction Relief was filed.

The Court further found and concluded that the Appellant's Application for Post-Conviction Relief was not timely filed quoting §17-27-45 (a) Application for relief must be filed within one year after the entry of Judgment of Conviction or within one year from the sending of the Remittitur from the Lower Court from an Appeal. The Appellant would assert that upon gaining knowledge that he was ineligible for parole from the South Carolina Department of Probation, Parole and Pardon Services on September 8, 2014 that he timely filed a Post-Conviction Relief Action on May 22, 2015. This filing being within the one year statute of limitations.

The Court found and concluded that the Appellant's Petition creates no genuine issue of material fact and the Respondent is therefore entitled to Judgment as a matter of law. The Appellant would assert that there is a genuine issue of material fact. The Appellant was informed at Trial that he would be eligible for parole. That this understanding was held by him through his incarceration with the Department of Corrections. That he had a parole eligibility date while waiting for parole. That he appeared before the parole board in November, 2012. That he was notified that he would

be eligible for parole on a subsequent date and that he would be notified thirty (30) days prior to his next scheduled parole consideration. That is was only in September, 2014 that he was notified that he was ineligible for parole.

This notification, in essence, changed his life sentence to a pure life sentence without parole. Pursuant to this change, he has no ability to be released from the South Carolina Department of Corrections, until his death.

The Appellant is informed and believes that this is a material issue and that he is entitled to an evidentiary hearing. Had he known this information at the time of trial, he would have accepted the State's plea and he would have had a release date from the South Carolina Department of Corrections. He would not be serving a life without parole sentence.

A Defendant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. *Hayden v. State*, 278 S.C. 610, 611-12, 299 S.E. 2d 854, 855 (1983).

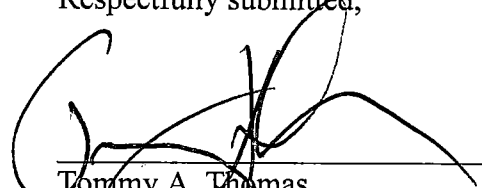
The Appellant contends that this new evidence meets the above criteria. Until he was provided the letter from Probation and Parole dated September 8, 2014, there is no way in which he could have known or been able to discover this information.

In this matter there is a genuine issue of material fact regarding the after discovered evidence and the issue of whether the Application is successive or untimely filed.

The Summary dismissal of a PCR Application is appropriate only when it is apparent on the face of the Application that there is no need for a hearing to develop any facts and the Appellant is not entitled to relief. McCoy v. State, 401 S.C. 363, 737 SE2d 623 (2013).

Therefore, the Appellant would respectfully request that he be allowed to proceed with this appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tommy A. Thomas', is written over a horizontal line. The signature is stylized and somewhat cursive.

Tommy A. Thomas  
Attorney for Appellant  
P.O. Box 88  
Irmo, SC 29063  
(803) 732-5507

May 18, 2016

State of South Carolina  
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY  
Governor



KELA E. THOMAS  
Director

2221 Devine Street, Suite 600  
Post Office Box 50666  
Columbia, South Carolina 29250  
Telephone: (803) 734-9220  
Fax: (803) 734-9440  
www.dppps.sc.gov

November 15, 2012

Mr. Marcus Skeeters #00199165  
Lee Correctional Institution  
990 Wisaky Hwy.  
Bishopville, SC 29010

RE: NOTICE OF REJECTION

Dear Mr. Skeeters:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense  
Indication Of Violence In This Or Previous Offense  
Use Of Deadly Weapon In This Or Previous Offense  
Prior Criminal Record Indicates Poor Community Adjustment

Sincerely,

A handwritten signature in cursive script that reads "Catherine Cooper".

Catherine Cooper  
Director of Parole Board Support

11/14/2012

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM Horry COUNTY  
Court of Common Pleas  
Post Conviction Relief

William H. Seals, Jr., Circuit Court Judge

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Docket No.: 2015-CP-26-3815

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Marcus Skeeters, #199165, ..... Appellant,

vs.

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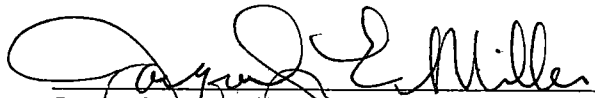
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CERTIFICATE OF SERVICE

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I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant,  
hereby certify that I placed in the United States Mail, a copy of an Explanation Pursuant to Rule  
243 (c), with postage prepaid and the return address clearly shown on said envelope to:

Office of the Attorney General  
Attention: Jessica Kinard, Esq.  
P.O. Box 11549  
Columbia, SC 29211-1549



Jacquelyn E. Miller, Secretary  
Tommy A. Thomas, Attorney for Appellant  
P.O. Box 88  
Irmo, SC 29063  
(803) 732-5507

Irmo, South Carolina  
May 18, 2016