

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

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PO Box 88  
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(803) 732-6542

April 28, 2016

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

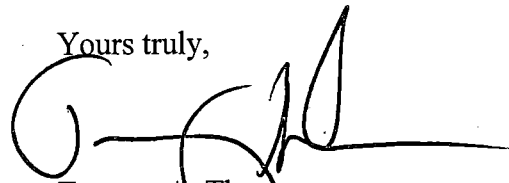
RE: Marcus Skeeters #199165 v. State.  
Docket No.: 2015-CP-26-3815

Dear Sir or Madam:

Enclosed please find for filing, an original and a copy of a Notice of Appeal and Certificate of Service regarding the above matter.

Kindly return a clocked copy to me in the enclosed envelope. Thank you for your assistance in this matter.

Yours truly,



Tommy A. Thomas,  
Attorney at Law

TAT/jem  
cc: Jessica Kinard, Esq.  
Marcus Skeeters #199165

**RECEIVED**

MAY 02 2016

S.C. SUPREME COURT

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.

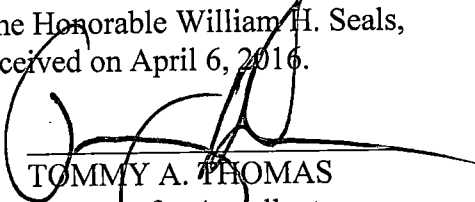
State of South Carolina, .....Respondent.

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NOTICE OF APPEAL

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Marcus Skeeters, #199165 appeals the Order of the Honorable William H. Seals, Jr. dated March 21, 2016, filed on March 30, 2016, and received on April 6, 2016.

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

Other Counsel of Record:

Jessica Kinard, Esq.  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Attorney for Respondent

Irmo, South Carolina  
April 24, 2016

**RECEIVED**  
MAY 02 2016  
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
Post Conviction Relief

William H. Seals, Jr., Circuit Court Judge

Docket No.: 2015-CP-26-3815

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

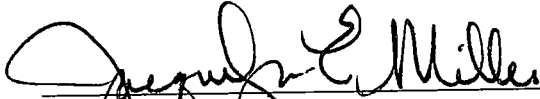
vs.

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

CERTIFICATE OF SERVICE

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 a Notice of Appeal, 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  
April 28, 2016

**RECEIVED**  
MAY 02 2016  
S.C. SUPREME COURT

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JK

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

Marcus Skeeters, #199165,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-26-3815

FINAL ORDER OF DISMISSAL

**RECEIVED**  
MAY 02 2016  
S.C. SUPREME COURT  
Horry County  
2016 MAR 31 12:13  
FILED

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed May 22, 2015. The Respondent made its return on or about July 22, 2015, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed July 27, 2015 and filed August 11, 2015, provisionally denying and dismissing this action, while giving the Applicant thirty (30) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated August 20, 2015, serving the above-mentioned Conditional Order of Dismissal on the Applicant's attorney, Tommy A. Thomas, Esquire.

In a document titled "Return to Conditional Order of Dismissal," dated August 24, 2015, Applicant, by and through his attorney, argues that the issue of being ineligible for parole was newly discovered on September 8, 2014 when the South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS) sent Applicant a letter stating that he was not eligible for parole, even though Applicant appeared before the parole board in November 2012.

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Furthermore, Applicant alleges that "Applicant was informed at Trial that he would be eligible for parole" and that Applicant meets all the criteria listed in Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983) to warrant the granting of a new trial based on newly discovered evidence.

This Court has reviewed Applicant's response to the Court's Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

Applicant has failed to make a *prima facie* showing that he is entitled to relief based on newly discovered evidence. This Court concedes that it appeared that Applicant was parole eligible in November 2012 and then received a letter from SCDPPPS stating that he is ineligible for parole in September 2014, making his current application timely pursuant to S.C. Code Ann. §14-27-45(c). However, an applicant requesting a new trial based on after-discovered evidence must show that the evidence: (1) would likely change the result if a new trial was had; (2) has been discovered since the trial; (3) could not, by the exercise of reasonable 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). This Court finds that Applicant cannot show that the issue of parole eligibility is material to the issue of guilt or innocence nor does this Court believe it would change the result if a new trial was had. Applicant has entirely failed to make a showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter must be summarily dismissed with prejudice.

Post-conviction relief is a proper avenue of relief only when the Applicant mounts a collateral attack challenging the validity of his conviction or sentence. Al-Shabazz v. State, 338

S.C. 354, 527 S.E.2d 742 (2000). A credit-related claim or challenge to other conditions of confinement are administrative matters and, thus, cannot be raised in a post-conviction relief proceeding. Id. Likewise, a challenge to the conditions upon which parole eligibility is determined or decided is not cognizable in a post-conviction relief application. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000).

Here, the Applicant complains that the SCDPPPS is now denying him parole eligibility. The statutory right to sentence related credits is a protected "liberty" interest under the Fourteenth Amendment, entitling an inmate to minimal due process to ensure the state-created right was not arbitrarily abrogated. Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). However, because SCDC's disciplinary and grievance procedures are consistent with the standards delineated in Wolff v. McDonnell, supra., inmates may seek review of such claims under the Administrative Procedures Act (APA). Al-Shabazz, supra.

This Court finds that Applicant's allegation concerns matters which should first be raised through SCDC's disciplinary or the grievance procedure through the Department of Probation, Parole and Pardon Services (DPPPS). If the Applicant is dissatisfied with the decision rendered by SCDC or DPPPS, then he may seek review of the decision under the APA. Therefore, this claim is not proper for post-conviction relief and this application for post-conviction relief should be summarily denied and dismissed.


*[Remainder of page left intentionally blank]*

IT IS THEREFORE ORDERED that Applicant's motion for a hearing is hereby DENIED, and for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby DENIED AND DISMISSED WITH PREJUDICE.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 21 day of March, 2016

Mani, South Carolina

  
WILLIAM H. SEALS, JR.  
Chief Judge for Administrative Purposes  
Fifteenth Judicial Circuit

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS )  
FOR THE FIFTEENTH JUDICIAL CIRCUIT )

Marcus Skeeters, #199165, )

Case No. 2015-CP-26-3815 )

Applicant, )

**CONDITIONAL ORDER )  
OF DISMISSAL )**

v. )

State of South Carolina, )

Respondent. )

HORRY COUNTY  
2015 AUG 11 PM 12:53  
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 22, 2015. The Court finds as follows:

**I. PROCEDURAL HISTORY**

**A. Underlying Conviction**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County. In August 1993, the Applicant 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 Applicant was found guilty on all counts by a jury impaneled before the Honorable Sidney T. Floyd. The Applicant was represented by Orrie E. West, Esquire, Chief Public Defender. Sentencing was conducted on August 10 and 11, 1993, and Applicant 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 Applicant's behalf, and an appeal was perfected. Applicant was represented by M. Ann Pearce, Assistant Appellate Defender of the South Carolina Office of Appellate Defense. The South Carolina Supreme Court affirmed Applicant's conviction on March 29, 1995. State v.

**copy**

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, Applicant filed an application for post-conviction relief alleging the necessity of relief on the following grounds:

1. Applicant 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. Applicant 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. Applicant 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. Applicant 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 Applicant 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.

Applicant 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))**

Applicant 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 filed 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. Applicant 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, Applicant 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.<sup>1</sup> A conditional order of dismissal was filed on December 26, 2007 after being signed by the Honorable J. Michael Baxley on December 19, 2007. Applicant refused

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<sup>1</sup> It appears that both parties that action were, in the time period between December 2005 and December 2007, under the mistaken belief that the matter had been concluded.

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)**

Applicant 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. Applicant 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. Applicant 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. Applicant 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.

**II. CURRENT APPLICATION**

In this third and current application for post-conviction relief, Applicant raises the following grounds for relief:

1. Newly discovered information – "SC Probation and Parole sent letter dated September 8, 2014 indicating that Applicant was a Subsequent Violent Offender and that he was not eligible for parole. Had he known that his sentence was life with no possibility of parole, he would have accepted the plea offer, which would have eliminated the sentence of life without parole."

Respondent made a timely Return and Motion to Dismiss, asking this Court to dismiss the application as successive and untimely.

### III. FINDINGS OF FACT AND CONCLUSION OF LAW

S.C. Code Ann. § 17-27-70(c) 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.” See also Rule 56(c), SCRCP. The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law in ruling on Respondent’s motion to dismiss:

#### Successive Application

The allegation must be summarily dismissed because it is impermissibly successive. The Uniform Post-Conviction Procedure Act provides that:

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.

S.C. Code Ann. § 17-27-90 (2003). Under this statute, successive post-conviction relief applications are forbidden unless an applicant, who bears the burden of proof, can point to 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, 409 S.E.2d 398 (1991). This applicant has not explicitly stated any new grounds upon which a successive PCR action can be based. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, supra. The sole ground that he alleges was or should have been known to him at the time of either of his prior applications for PCR. Therefore, this application must be dismissed as impermissibly successive.

#### Failure to Timely File

Further, this application must be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. 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 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 has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996).

The remittitur was returned to the circuit court on April 14, 1995. Applicant was therefore required to file his application before April 14, 1996. This application was filed on May 22, 2015, which was well beyond the time that the statutory filing period had expired.

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) 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 must be summarily dismissed for the reasons discussed above.

#### **IV. CONCLUSION**

The Court finds the record before it creates no genuine issue of material fact and Respondent is therefore entitled to judgment as a matter of law.

Pursuant to S.C. Code Ann. § 17-27-70(b), the 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 thirty (30) days from the date of service of this order upon him to show why this ruling should not become final. Applicant shall file any reasons he may have with the Horry County Clerk of Court (P.O. Box 677, Conway, SC 29528) and shall serve opposing counsel at the following address:



STATE OF SOUTH CAROLINA )  
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COUNTY OF HORRY )  
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MARCUS SKEETERS, #199165 )  
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vs )  
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STATE OF SOUTH CAROLINA, )  
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Respondent. )  
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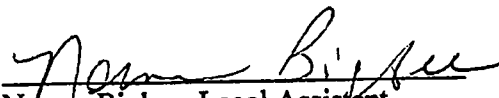
IN THE COURT OF COMMON PLEAS  
2015-CP-26-3815

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a filed copy of the Final Order of Dismissal, in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Tommy A. Thomas, Esquire**  
**7588 Woodrow St.**  
**Irmo, South Carolina 29063**

DATED this 5<sup>th</sup> day of April, 2016.

  
Norma Bigbee, Legal Assistant  
For Respondent