

MR. KEVIN SMITH #164920,

P. C. I. - S. M. I. - D - 2 - #4,

#430 OAK LAWN ROAD,

PELZER, SOUTH CAROLINA,

#29669,

OCTOBER 27TH 2016,

RE: SMITH V. STATE CASE NO 2016-002066 - 2014-CP-40-03787

SUBJECT: SERVICE OF PETITION FOR REHEARING OF APPEAL FOR
WRIT OF CERTIORARI TO REVIEW POST CONVICTION ACTION
PURSUANT TO RULE 221 (a) S.C.A.C.R.

DEAR CLERK OF COURT,

PLEASE FIND ENCLOSED 1 ORIGINAL COPIES AND 6 COPIES
OF THE PETITION FOR REHEARING AND SUPPORTING MEMORANDUMS
AND EXHIBITS, TO INCLUDE NOTARIZED CERTIFICATE OF
PROOF OF SERVICE VERIFYING SERVICE OF SAME UPON
THE RESPONDENT ON THE ABOVE DATE.

PLEASE FILE AND RETURN COPY TO APPELLANT.

THANK YOU.

I AM CORDIALLY

Signed
Mr. Smith

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM RICHLAND COUNTY
DEANDREA G. BENJAMIN, CIRCUIT COURT JUDGE
APPELLATE CASE NO. 2016-002066
LOWER COURT CASE NO. 2014-CP-40-03787

KEVIN SMITH #164920, ... APPELLANT,
VS.

STATE OF SOUTH CAROLINA, ... RESPONDENT.

APPELLANT KEVIN SMITH PETITION FOR REHEARING OF APPEAL
FOR WRIT OF CERTIORARI TO REVIEW POST-CONVICTION
ACTION PURSUANT TO RULE 221(c) S.C.A.C.R.

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S.C. SUPREME COURT

KEVIN SMITH #164920,

P.C.I.-S.M.U.II-D-2-#4,

#430 OAKLAWN ROAD

PELZER, SOUTH CAROLINA,

#29669,

APPELLANT - PRO-SE

JESSICA E. KIMARD ESQ.

P.O. BOX #11549

COLUMBIA, SOUTH CAROLINA,

#29211

ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM RICHLAND COUNTY
DEANDREA G. BENJAMIN, CIRCUIT COURT JUDGE
APPELLATE CASE NO. 2016-004066
LOWER COURT CASE NO. 2014-CP-40-03787

KEVIN SMITH #164920;, Appellant,

v.s.

STATE OF SOUTH CAROLINA, ..., Respondent,

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING OF
APPEAL FOR WRIT OF CERTIORARI TO REVIEW POST CONV.
- ICTION ACTION PURSUANT TO RULE 221(a) S.C.A.C.R.

I. IN ITS FINAL ORDER OF DISMISSAL, THE LOWER COURT DETERMINED THAT THE APPLICANT (KEVIN SMITH) FAILED TO SUFFICIENTLY CHALLENGE THE LEGALITY AND SUFFICIENCY OF THE HORRY COUNTY GRAND JURY PROCESS; AND THAT APPLICANT HAS FAILED TO PROVIDE ANY EVIDENCE THAT THE GRAND JURY DID NOT CONVENE IN APRIL 2009 AS INDICATED ON HIS TRUE-BILLED INDICTMENT; AND THAT BECAUSE APPLICANT HAS FAILED TO STATE WITH ANY SPECIFICITY THE EVIDENCE SUPPORTING HIS CLAIM, THE COURT SUMMARILY DISMISSED THE ALLEGATION WITH PREJUDICE SEE: FINAL ORDER OF DISMISSAL AT PAGE 4; HOWEVER, AS RECORD EVIDENCE WILL SHOW, APPLICANT (KEVIN SMITH) NEVER ALLEGED NOR CLAIMED ANY LEGALITY OR SUFFICIENCY OF THE HORRY COUNTY GRAND JURY PROCESS; FURTHER THE APPLICANT / APPELLANT

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(KEVIN SMITH) WAS NEVER INDICTED IN APRIL 2000 BY A Horry County GRAND JURY; NOR IS SUCH INDICATED ON HIS TRUE-BILLED INDICTMENT SEE EXHIBIT-C ATTACHED. THE APPLICANT SUFFICIENTLY CHALLENGED THE LEGALITY AND SUFFICIENCY OF THE RICHLAND COUNTY GRAND JURY PROCESS. SEE MEMO AT IX (INVALID PROCEEDINGS AND VOID INDICTMENT). FURTHER, THE APPLICANT HAS SUCCESSFULLY PROVIDED RECORD-DOCUMENTED EVIDENCE THAT THE RICHLAND COUNTY GRAND JURY DID NOT CONVENE ON JUNE 14, 1995, AS INDICATED ON HIS TRUE-BILLED INDICTMENT SEE EXHIBIT-D-C ATTACHED. (GRAND JURY ORDER, RICHLAND COUNTY COURT OF GENERAL SESSION 1995 TERM) (INDICTMENT NO. 95-45-40-3704-3705-3706-3708-4282)

SOUTH CAROLINA CODE ANNOTATED § 17-27-80, REQUIRE THE PCR COURT TO MAKE SPECIFIC FINDINGS OF FACT; AND STATE EXPRESSLY ITS CONCLUSIONS OF LAW RELATING TO EACH ISSUE PRESENTED. IN APPLICANT (KEVIN SMITH) CASE THE PCR (LOWER) COURT ~~DID NOT~~ MAKE REQUIRED FINDINGS OF FACTS ON APPLICANT'S ALLEGATIONS OF LEGALITY AND SUFFICIENCY OF THE RICHLAND COUNTY GRAND JURY PROCESS (INVALID PROCEEDINGS AND VOID INDICTMENT) SEE: EXPLANATION MEMO AT IV, BUT INSTEAD ADDRESSES NON-EXISTING ALLEGATIONS OF THE Horry County GRAND JURY PROCESS AND A NON-EXISTING APRIL 2000 TRUE-BILLED INDICTMENT OF APPLICANT; THUS, VIOLATING STATUTE § 17-27-80; AND PRECLUDING APPELLATE REVIEW. IN MC CRAIG V. STATE, 403 S.E.2d 191 (SC 1991) THIS COURT HELD THAT REMAND WAS REQUIRED BECAUSE POST-CONVICTION COURT DID NOT MAKE REQUIRED FINDINGS OF FACTS ON SPECIFIC ALLEGATIONS RAISED; VIOLATING STATUTE AND PRECLUDING APPELLATE REVIEW. THUS, THE DETERMINATION OF THE LOWER COURT DENYING THE APPLICATION FOR POST CONVICTION RELIEF AND DISMISSAL WITH PREJUDICE WAS IMPROPER.

III. PRESIDING JUDGE OVER SUBSEQUENT PCR PROCEEDINGS

ON SEPTEMBER 20, 2002, APPLICANT FILED HIS FIRST APPLICATION FOR POST CONVICTION RELIEF (2001-CP-40-3759) AN EVIDENTIARY HEARING WAS CONVENED ON DECEMBER 13, 2003, AT THE RICHLAND COUNTY COURT HOUSE BEFORE PRESIDING PCR JUDGE ALISON RENEE LEE. BY ORDER DATED JUNE 18, 2004, JUDGE LEE, DENIED AND DISMISSED THE APPLICATION WITH PREJUDICE. SEE: CASE NO. 2001-CP-40-3759. IN THE CURRENT CASE THE COURT ISSUED A CONDITIONAL ORDER OF DISMISSAL SIGNED AUGUST 27, 2015, BY ALISON RENEE LEE CHIEF ADMINISTRATIVE JUDGE FIFTH JUDICIAL CIRCUIT, AND FILED AUGUST 31, 2015. SEE: CASE NO. 2014-CP-40-03787 CONDITIONAL ORDER OF DISMISSAL AT PAGE 7 ATTACHED; WHEREBY PREJUDICING THE APPLICANTS CASE AND THE COURTS RULING (FINAL ORDER OF DISMISSAL) ON THIS MATTER AS THE PRESIDING JUDGE. IN FLOYD V. STATE, 400 S.E.2D 145 (SC 2001) THE SUPREME COURT HELD:

"THAT JUDGE WHO PRESIDED AT PETITIONER'S TRIAL
MAY NOT PRESIDE OVER SUBSEQUENT POST CONVICTION
PROCEEDING.

VACATED AND REMANDED.

THUS, JUDGE ALISON RENEE LEE RECUSAL OF HERSELF FROM APPLICANT'S (KEVIN SMITH) CURRENT PCR PROCEEDING WAS WARRANTED AND THE LOWER COURT'S DISMISSAL OF THE APPLICATION FOR POST CONVICTION RELIEF FOR THE REASON SET FORTH IN THE COURT'S CONDITIONAL ORDER OF DISMISSAL SIGNED BY JUDGE ALISON RENEE LEE WAS IMPROPER.

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III. FINDINGS OF FACTS - LEGAL ARGUMENT - CASE LAW

DEFAULT.

A. THE APPLICANT IS ENTITLED TO AN ORDER OF DEFAULT JUDGMENT AGAINST RESPONDENT FOR THE REQUESTED RELIEF IN HIS POST CONVICTION RELIEF APPLICATION. S.C.R. CIV. PRO. 12(A) STATES IN PERTINENT PARTS:

THAT THE STATE OF SOUTH CAROLINA SHALL ANSWER OR OTHERWISE RESPOND TO AN APPLICATION FOR POST CONVICTION RELIEF WITHIN 60 DAYS AFTER SERVICE OF THE APPLICATION IF IT ARISES OUT OF A GUILTY PLEA AND 90 DAYS IF IT ARISES OUT OF A TRIAL.

APPLICANT FILED HIS APPLICATION FOR POST CONVICTION RELIEF IN THIS CASE ON JUNE 10, 2014, IN THE RICHLAND CO. COURT OF COMMON PLEAS VIA MS. JENNETTE W. MCBRIDE (CLERK OF COURT). ATTACHED TO THE PCR APPLICATION WAS APPLICANTS SUMMONS INFORMING RESPONDENT OF ITS NINETY (90) DAY REQUIREMENT TO RESPOND TO THE PCR APPLICATION AND TO FILE THEIR ANSWER (RESPONSE) WITH THE RICHLAND CO. CLERK OF COURT PER S.C.R. CIV. PRO. 12(A). FAILURE TO ANSWER WITHIN THE PRESCRIBED TIME WOULD RENDER A JUDGMENT BY DEFAULT AGAINST RESPONDENT FOR THE RELIEF IN THE POST CONVICTION RELIEF APPLICATION. SEE EXHIBIT A ATTACHED.

SERVICE OF THE SUMMONS BRINGS CIVIL DEFENDANT WITHIN COURTS JURISDICTION AND GIVES THE COURT THE POWER TO RENDER PERSONAL JUDGMENT AGAINST PERSON SERVED. LOUVER V. MORGAN, 321 S.C. 465-481 S.E.2d 535 (S.C. App. 1997)

RESPONDENT DID NOT SERVE AN ANSWER TO APPLICANT'S p.c.r. APPLICATION AND SUMMONS; NOR DID RESPONDENT FILE AN ANSWER WITH THE CLERK OF COURT (RICHLAND CO.) AS REQUIRED BY S.C.R. CIV. PRO. 11 (C) ¹ THUS RESPONDENT ARE IN DEFAULT; AND APPLICANT IS THEREFORE ENTITLED TO THE RELIEF IN THE p.c.r. APPLICATION.

RULE #55 (a) ENTRY (S.C.R. CIV. PRO.) WHEN A PARTY AGAINST WHOM A JUDGMENT FOR AFFIRMATIVE RELIEF IS SOUGHT HAS FAILED TO PLEAD OR OTHERWISE DEFEND AS PROVIDED BY THESE RULES AND THAT FACT IS MADE TO APPEAR BY AFFIDAVIT OR OTHERWISE; THE CLERK SHALL ENTER HIS DEFAULT UPON THE CALENDAR (FILEBOOK) SEE: APPLICANT'S NOTICE OF MOTION - MOTION FOR DEFAULT JUDGMENT - SUPP.

- RTING MEMORANDUM AND AFFIDAVIT OF DEFAULT FILED WITH THE RICHLAND CO. COURT OF COMMON PLEAS ON OCTOBER 28 - 2014 ATTACHED AS EXHIBIT-B²

ENTRY OF DEFAULT IS A MINISTERIAL ACT WHICH A CLERK IS REQUIRED TO PERFORM ONCE DEFAULT IS MADE TO APPEAR BY THE AFFIDAVIT OF THE MOVING PARTY. STARK THUSS CO. INC. V. SUPERIOR CONST CORP. 360 S.C. 503; 509; 602 S.E.2d 99 (S.C. App. 2004); THYNES V. LLOYD, 394 S.C. 152-153-54, 363 S.E.2d 122; 123 (Ct. App. 1987) (HOLDING THAT: WHETHER DEFAULT

1. APPLICANT WAS CONVICTED AT TRIAL AND SENTENCED JUNE 7-1996, THUS; RESPONDENT WAS REQUIRED TO SERVE ITS ANSWER AND TO FILE ITS ANSWER TO THE SUMMONS AND POST CONVICTION RELIEF APPLICATION AFTER 90 DAYS OF SERVICE UPON RESPONDENT WITH THE CLERK OF COURT - S.C.R. CIV. PRO. 12 (a)

2. APPLICANT ALSO HAS A SECOND NOTICE OF MOTION - MOTION FOR ORDER FOR DEFAULT JUDGMENT AGAINST RESPONDENT PENDING IN THIS COURT - CASE FILED ON AUGUST 5-2015.

WAS ACTUALLY ENTERED IS OF NO CONSEQUENCE SINCE THE ENTRY OF DEFAULT IS A PURELY MINISTERIAL ACT WHICH THE CLERK WAS REQUIRED TO PERFORM ONCE THE DEFAULT WAS MADE TO APPEAR BY THE AFFIDAVIT "OF THE MOVING PARTY.")

RESPONDENT HAS FAILED TO ACT ONCE SERVED WITH THE SUMMONS AND APPLICATION FOR POST CONVICTION RELIEF AND GAVE NO REASON FOR ITS FAILURE TO TIMELY SERVE AND FILE ANSWER WITH THE CLERK OF COURT. SEE: COURTS OWN RECORDS IN THIS CASE ALSO SEE:

STARK TRUSS CO INC. V. SUPERIOR CONST. CORP. 360 S.C. 503; 510; 602 S.E.2d 99 (S.C. App. 2004) ("FAILURE TO ACT WHEN SERVED WITH SUMMONS AND COMPLAINT; AND ATTORNEY GAVE NO REASON WHY SURETY FAILED TO TIMELY SERVE AND FILE ANSWER."); IN RE SMITH 350 S.C. 510; 515, 567 S.E. 2d 266 (S.C. 2002) ("ATTORNEY WAS NOT ENTITLED TO SET ASIDE DEFAULT AND FILE BELATED ANSWER."); DIXON V. BESSCO ENGINEERING INC. 463 S.E.2d 638 (S.C. App. 1995) ("FAILURE TO ESTABLISH SUFFICIENT CAUSE FOR RELIEF

FROM AN ENTRY OF DEFAULT JUDGMENT; AND FAILURE TO RETAIN COUNSEL UNTIL APPROXIMATELY 2 MONTHS AFTER EXTENDED DEADLINE HAD PASSED³");

PELGRIM V. MILLER 350 S.C. 637; 640; 641; 567 S.E.2d 527 (S.C. App. 2002) ("TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO SET ASIDE FOR GOOD CAUSE SHOWN ENTRY OF DEFAULT; WHERE NO EXPLANATION WAS GIVEN FOR FAILURE TO RESPOND TO COMPLAINT.") THUS, RESPONDENT

3. RESPONDENT DID NOT FILE ITS ANSWER TO THE APPLICANTS SUMMONS AND PCR APPLICATION WITH THE CLERK OF COURT UNTIL AUGUST-24-2015, APPROXIMATELY 14 MONTHS AFTER SERVICE OF THE SUMMONS AND PCR APPLICATION UPON RESPONDENT, THUS, CONCEEDING THE TRIAL COURT IMPOSED SENTENCING EXCEEDING STATUTORY MAXIMUM UNDER S.C. CODE ANN § 17-25-50 (1976), S.C.R. CIV. PROC. 56 (c)

ARE IN DEFAULT, AND APPLICANT IS THEREFORE ENTITLED TO THE REQUESTED RELIEF IN THE PCR APPLICATION.

IV. INVALID PROCEEDINGS AND VOID INDICTMENT

THE MATTER PRESENTED BELOW FOR REVIEW IS NOT A CHALLENGE TO THE COURT'S GENERAL GRANT OF AUTHORITY TO HEAR AND DETERMINE CASES. THAT AUTHORITY IS RIGHTFULLY GRANTED BY OUR CONSTITUTION: STATE V. GENTRY, 363 S.C. 93, 610 S.E.2d 494 (2005), AND WILL NOT BE AT ISSUE HERE. INSTEAD APPLICANT CONTENTS THAT THE COURT OF GENERAL SESSIONS FOR RICHLAND COUNTY FAILED TO COMPLY WITH STATUTORY LAW JURISDICTIONAL IN NATURE, SPECIFYING THE MANNER AND MEANS FOR LAWFUL RETURN OF TRUE-BILLED INDICTMENTS.

THE JURISDICTION OF A COURT OVER THE SUBJECT MATTER OF A PROCEEDING IS DETERMINED BY THE CONSTITUTION, THE LAWS OF THE STATE, AND IS FUNDAMENTAL. STATE V. HEYWARD, 564 S.E.2d 397 (S.C. APP. 2002). CITING ANDERSON V. ANDERSON, 381 S.E.2d 897, 900 (1989) (EMPHASIS ADDED) SUBJECT MATTER JURISDICTION MAY NOT BE WAIVED EVEN WITH CONSENT OF THE PARTIES, AND MAY BE RAISED AT ANY TIME. BROWN V. STATE, 540 S.E.2d 846 (2001) AND "NO INDICTMENT MAY BE TRUE-BILLED BY GRAND JURY WHEN CIRCUIT COURT LACKS JURISDICTION; SINCE GRAND JURY JURISDICTION IS COEXTENSIVE WITH CRIMINAL JURISDICTION OF THE COURT IN WHICH IT IS IMPANELLED AND FOR WHICH IT IS TO MAKE INQUIRY ... STATE V. MCLURE, 289 S.E.2d 158 (S.C. 1982), STATE V. FUNDERBUNK, 191 S.E.2d 520 (1972), STATE V. WHEELER, 193 S.E.2d 515 (1972)

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THE STATUTORY PROVISIONS AT ISSUE ARE CONTAINED IN SECTION
§ 14-9-210, AND PROVIDE IN PERTINENT PART THAT:

THE COUNTY SOLICITOR SHALL PREPARE AND THROUGH THE PRESIDING
JUDGE OF THE COURT OF GENERAL SESSIONS SUBMIT TO THE GRAND
JURY WHILE IN ATTENDANCE UPON THE COURT OF GENERAL SESSIONS,
BILLS OF INDICTMENT IN ALL CASES PENDING IN THE COUNTY COURT
IN WHICH THE PUNISHMENT MAY EXCEED A FINE OF ONE HUNDRED
DOLLARS OR IMPRISONMENT FOR THIRTY DAYS, WHEN SUCH CASES
HAVE NOT BEEN PREVIOUSLY ACTED ON BY THE GRAND JURY. THE GRAND
JURY SHALL ACT THEREON, AND SHALL REPORT ITS ACTION TO THE
PRESIDING JUDGE OF THE COURT OF GENERAL SESSIONS AND SAID
JUDGE SHALL DIRECT THE CLERK OF THE COURT OF GENERAL
SESSIONS TO REPORT THE SAME TO THE PRESIDING JUDGE OF THE
COUNTY AT ITS NEXT ENSUING TERM. . . ."

THE STATUTORY TERMS ABOVE ARE CLEAR, UNAMBIGUOUS, AND REQUIRE
THE COUNTY SOLICITOR TO PREPARE AND SUBMIT BILLS OF INDICTMENT
THROUGH THE PRESIDING JUDGE OF THE COURT OF GENERAL SESSIONS TO
GRAND JURY IMpaneled UNDER THE AUTHORITY OF THE COURT OF GENERAL
SESSIONS, NO EXCEPTIONS.

IT IS A CARDINAL RULE OF STATUTORY CONSTRUCTION THAT THE PRIMARY
PURPOSE IN INTERPRETING STATUTES IS TO ASCERTAIN THE INTENT OF THE
LEGISLATURE. HOBBS V. RAINEY, 533 S.E.2d 578; 582 (2001), STATE V. JOHNSON,
347 S.C. 67; 552 S.E.2d 339 (Ct. App. 2001); WHEN A STATUTE'S TERMS ARE CLEAR
AND UNAMBIGUOUS ON THEIR FACE, THERE IS NO ROOM FOR STATUTORY CONSTRUCTION
AND A COURT MUST APPLY THE STATUTE ACCORDING TO ITS LITERAL MEANING.
CAROLINA POWER & LIGHT CO. V. CITY OF BENNETTSVILLE, 442 S.E.2d 177; 179
(1994), AND WORDS MUST BE GIVEN THEIR PLAIN AND ORDINARY MEANING

WITHOUT RESORT TO SUBTLE OR FORCED CONSTRUCTION TO LIMIT OR
EXPAND THE STATUTES OPERATION. STATE V. OWEN 386 S.C. 334-338
S.E.2d 569 (2010). MOREOVER, PENAL STATUTES MUST BE CONSTRUED
STRICTLY AGAINST THE STATE AND IN FAVOR OF DEFENDANT. STATE
V. BLACKMAN, 403 S.E.2d 660 (S.C. 1991)

ACCORDINGLY, SECTION 8-14-9-210 REQUIRES STRICT COMPLIANCE
WITH ITS PROVISIONS; AND MANDATES THAT THE GRAND JURY MUST BE
IMpaneLED UNDER THE JURISDICTION OF THE COURT OF GENERAL
SESSIONS BEFORE LAWFUL RETURN OF A TRUE-BILLED INDICTMENT
CAN TAKE PLACE.

HOWEVER, EVIDENCE WILL ESTABLISH THAT STATE UNLAWFULLY
IMpaneLED ITS GRAND JURY OUTSIDE THE JURISDICTION OF THE COURT
OF GENERAL SESSIONS OF RICHLAND COUNTY, AND THEN WILLFULLY
PRINTED AND PUBLISHED FALSE INFORMATION (MISLEADING) IN ITS
INDICTMENT IN ORDER TO DEEP SECRET ITS VIOLATION OF STATUTORY
LAW.

"THUS A CONTROVERSY HAS COME BEFORE THE COURT
OPEN YOUR MOUTH; JUDGE RIGHTEOUSLY; AND PLEAD
THE CAUSE OF THE POOR AND NEEDY."

IN THIS CASE INDICTMENT¹ FOR ABUSE, HOSTAGE TAKING TRUE-BILL OF
INDICTMENT PRINTS THAT IT WAS RETURNED; "AT A COURT OF GENERAL
SESSIONS CONVENED ON JUNE-24-1995 THE GRAND JURORS OF RICHLAND
COUNTY PRESENT UPON THEIR OATH". THE INDICTMENT IS SIGNED BY
THE SOLICITOR WARREN B. GEISE AND GRAND JURY FOREMAN WITH TRUE BILL
STAMP; FURTHERMORE, THE TITLE PAGE OF STATES INDICTMENT PRINTS
THAT IT WAS PUBLISHED AT A COURT OF GENERAL SESSIONS FOR RICHLAND

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COUNTY TERM AS CONVENED ON JUNE-14-1995, SEE EXHIBIT C ATTACHED

HOWEVER, THE EVIDENCE PRESENTED BELOW WILL CONCLUSIVELY ESTABLISH THAT STATE (RESPONDENT) PRINTED AND PUBLISHED FALSE INFORMATION IN A-B-W-I-K-H-O-S-T-A-K-E-T-A-K-I-N-G I-N-D-I-C-T-M-E-N-T-S (NOS 75-63-40-3704 - 3705 - 3706 - 3708 - 4282)

ACCORDING TO S.C. JUDICIAL DEPARTMENT TERMS & CIRCUIT COURT CALENDAR FOR COURT OF GENERAL SESSIONS FOR RICHLAND COUNTY THERE WAS NO TERM OF COURT FOR RICHLAND COUNTY (GRAND JURY) COURT OF GENERAL SESSIONS ON JUNE-14-1995, SEE 'RICHLAND CO. GRAND JURY ORDER 1995 TERM FILED DECEMBER-6-1994 ATTACHED AS EXHIBIT D

THEREFORE, RECOGNIZING THE JURISDICTIONAL REQUIREMENTS SET FORTH IN SECTION §14-9-210, MANDATING THE ONLY PROCESS ALLOWED FOR IMPANELING A LAWFUL GRAND JURY AND AFTER CONSIDERATION OF THE FACTS AND EVIDENCE PRESENTED ABOVE IT BECOMES APPARENT THAT APPLICANT WAS INDICTED OUTSIDE THE JURISDICTION OF THE COURT OF GENERAL SESSIONS FOR RICHLAND COUNTY AND BY A MODE OF PROCEDURE THAT STATE (RESPONDENT) HAD NO LAWFUL AUTHORITY TO ADOPT.

WHEN A LEGISLATIVE ENACTMENT LIMITS THE MANNER IN WHICH SOMETHING MAY BE DONE, THE ENACTMENT ALSO EVIDENCES THE INTENT THAT IT SHALL NOT BE DONE ANOTHER WAY. THUS, SINCE THE COURT UTILIZED AN UNLAWFUL MODE OF PROCEDURE NOT ALLOWED UNDER SECTION §14-9-210, STATE LACKED THE REQUISITE JURISDICTION TO COMPLETE RETURN OF ITS TRUE-BILLED INDICTMENT.

AS ESTABLISHED ABOVE, SECTION 31-7-10 IS CLEARLY A JURISDICTIONAL STATUTE AND SETS FORTH MANDATORY PROCEDURE TO BE UTILIZED BY STATE FOR LAWFUL RETURN OF A TRUE-BILLED INDICTMENT. A SUBSTANTIAL BODY OF SOUTH CAROLINA LAW HOLDS THAT A FAILURE TO COMPLY WITH STATUTORY LAW JURISDICTIONAL IN NATURE DEPRIVES THE COURT OF SUBJECT MATTER JURISDICTION. STATE V LEE, 564 S.E.2d 372 (S.C. APP. 2002), STATE V BROWN, 570 S.E.2d 559 (CT. APP. 2002), STATE V FELDER, 437 S.E.2d 43 (S.C. 1993), STATE V. RECHBURG, 403 S.E.2d 315 (1991), STATE V LOFTEN, 375 S.E.2d 575 (S.C. 1981), GRAY V STATE, 281 S.E.2d 226 (S.C. 1981), STATE V BRUNSON, 262 S.E.2d 44 (1980), STATE V. CASTLEMAN, 64 S.E.2d 250 (1951) AND MANY MORE.

CONSEQUENTLY; AND IN KEEPING WITH THE MANDATORY PROVISIONS OF SC CODE ANN. 31-7-10, STATE HAS NO JURISDICTION TO ISSUE RETURN OF TRUE-BILLED INDICTMENT EXCEPT DURING A TIME WHEN THE COURT OF GENERAL SESSIONS IS LAWFULLY CONVENED TO OVERSEE THE GRAND JURY PROCESS. ANY ACTS OF THE COURT TAKEN OUTSIDE THOSE STATUTORY RESTRICTIONS WOULD BY NECESSITY BE NULL AND VOID. IN FACT, OUR SUPREME COURT HAS ALREADY DETERMINED THAT NO INDICTMENT MAY BE TRUE-BILLED BY A GRAND JURY WHEN THE COURT LACKS JURISDICTION. ~~THE GRAND~~ GRAND JURY MUST BE IMPANELED UNDER THE JURISDICTION OF THE COURT OF GENERAL SESSIONS BEFORE LAWFUL RETURN OF INDICTMENT CAN TAKE PLACE. SEE: STATE V. CLURE SUPRA; STATE V. FINDERBARK SUPRA. AND STATE V. WHEELER SUPRA.

THEREFORE; SINCE NO COURT OF GENERAL SESSIONS FOR RICHLAND COUNTY WAS CONVENED ON THE DATE JUNE 14-1995, INDICTMENT WAS ALLEGEDLY TRUE-BILLED; THE GRAND JURY PROCEEDINGS WOULD THEREFORE BY NECESSITY BE HELD INVALID, AND ITS ILLEGALLY ISSUED

INDICTMENT NULL AND WITHOUT BINDING LEGAL EFFECT.⁴

(CONTEMPORANEOUS OBJECTIONS)

IN GENTRY, RELYING ON SECTION 27-19-12 ("EVERY OBJECTION TO AN INDICTMENT FOR ANY DEFECT APPARENT ON THE FACE THEREFORE SHALL BE TAKEN BY DEMURRER OR ON MOTION TO QUASH SUCH INDICTMENT BEFORE THE JURY SHALL BE SWORN AND NOT AFTERWARDS."), THE SUPREME COURT HELD THAT THE SUFFICIENCY OF AN INDICTMENT MUST BE CHALLENGED BEFORE THE JURY IS SWORN.

RECOGNIZING GENTRY, OUR SUPREME COURT IN EVANS HELD THAT CHALLENGES TO THE LEGALITY AND SUFFICIENCY OF THE PROCESS OF A COUNTY GRAND JURY ALSO MUST BE MADE BEFORE THE JURY RENDERS A VERDICT IN ORDER TO PRESERVE THE ERROR FOR DIRECT APPELLATE REVIEW." SEE 54 CODE ANN. § 17-7-1110 (SUPP. 1983). "NO IRREGULARITY IN ANY WRIT OF VENUE, FASCINUS OR IN DRAWING, SUMMONING, RETURNING, OR IMPANELING OF JURORS IS SUFFICIENT TO SET ASIDE THE VERDICT, UNLESS THE PARTY MAKING THE OBJECTIONS WAS INJURED BY THE IRREGULARITY OR UNLESS THE OBJECTION IS MADE BEFORE THE RETURNING OF THE VERDICT." THE EVANS COURT OVERRULING SEVERAL CASES, FURTHER DETERMINED THAT AN INDICTMENT WHICH IS DEEMED TO BE A NULLITY BECAUSE IT WAS ISSUED BY AN ILLEGAL GRAND JURY NO LONGER IMPLICATE SUBJECT MATTER JURISDICTION.

IN THIS CASE HOWEVER, APPLICANT TAKES THE POSITION THAT A CHALLENGE TO EITHER THE ILLEGAL GRAND JURY PROCESS OR NULL INDICTMENT WOULD BE IMMATERIAL, BECAUSE NO VALID WAIVER CAN BE

4. APPLICANTS INDICTMENTS FOR A BOWTIE HOSTAGE TAKING WERE NOT FILED WITH THE CLERK OF COURT PURSUANT TO 54 CODE ANN. § 17-7-1110 (3)(C). SEE EXHIBIT C, THUS, TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO TRY AND CONVICT APPLICANT ON VIOLENT INDICTMENT. THEREFORE THIS COURT MUST FIND APPLICANTS CONVICTION ILLEGAL!

ENTERED ABSOLVING THE STATE (RESPONDENT) OF ITS UNCONSTITUTIONAL CONDUCT, AND A NULL INDICTMENT IS OF NO LEGAL EFFECT AND THEREFORE NON-BINDING UNDER LAW; APPLICANT'S NULL INDICTMENT IS BY ITS VERY NATURE INSUFFICIENT TO SUPPORT A CONVICTION OR SENTENCE, AND PROTECTS AGAINST DOUBLE JEOPARDY. IT IS AN AXIOMATIC RULE OF LAW THAT AN INDICTMENT DEEMED TO BE A NULLITY IS "SOMETHING THAT IS LEGALLY VOID" AND OF "NO LEGAL EFFECT" (CITING BLACK'S LAW DICTIONARY, 8TH ED. 1904, NULLITY AND VOID), SEE EG HARRISON V. GLENN HILL, 33 S.E.2D 421, 434 (VOID, NULL, INFECTUAL, NULLITY, HAVING NO LEGAL FORCE OR BINDING EFFECT, UNABLE IN LAW TO SUPPORT THE PURPOSE FOR WHICH IT WAS INTENDED).

AND MUST CERTAINLY; A CONVICTION AND SENTENCE BASED ON THE FACTS OF UNCONSTITUTIONAL ACTS CANNOT BE ALLOWED TO STAND UNDER ANY CIRCUMSTANCES. THE FACTS AND EVIDENCE IN THIS CASE VERY CLEARLY SHOW THAT STATE (RESPONDENT) COMMITTED UNCONSTITUTIONAL ILLEGAL CONDUCT ACTS IN ORDER TO SECURE ITS CONVICTIONS AGAINST APPLICANT. DISPERSED
C AND D

FOR THE REASONS STATED ABOVE APPLICANT ASSERTS THAT AN OBJECTION TO STATES ILLEGAL GRAND JURY AND NULL INDICTMENT WOULD BE POINTLESS. HOWEVER, FOR THE SAKE OF ARGUMENT APPLICANT WOULD SHOW THIS COURT THAT IN MURRAY V. CARRIER, 106 S.Ct. 2639; 2645 (1986). THE UNITED STATES SUPREME COURT HELD THAT THE EXISTENCE OF CAUSE FOR PROCEDURAL DEFAULT (FOR FAILURE TO COMPLY WITH A STATES CONTEMPORANEOUS-OBJECTION RULE); MUST ORIGINALLY TURN ON WHETHER THE PRISONER CAN SHOW THAT SOME OBJECTIVE FACTOR TO THE DEFENSE IMPEDED COUNSEL'S EFFORTS TO COMPLY WITH THE STATE PROCEDURAL RULE. THE COURT STATED, "WITH OUT ATTEMPTING AN EXHAUSTIVE CATALOG OF SUCH OBJECTIVE IMPEDIMENT TO COMPLIANCE WITH A PROCEDURAL RULE, WE NOTE THAT A

SHOWING THAT THE FACTUAL OR LEGAL BASIS FOR A CLAIM WAS NOT REASON-
ABLY AVAILABLE TO COUNSEL." SEED REED V. ROSS, 104 S. CT AT 2110, OR THAT
SOME INTERFERENCE BY OFFICIALS, BROWN V. ALLEN, 73 S. CT 377 411 (1953),

MADE COMPLIANCE IMPRACTICABLE, WOULD CONSTITUTE CAUSE UNDER THIS
STANDARD," II 106 OCT. AT 2645. IN THIS CASE, THE SOLICITOR WILLFULLY
PRINTED FALSE INFORMATION IN APPLICANTS STATE INDICTMENT TO KEEP
SECRET THE ILLEGAL GRAND JURY PROCESS. SEE: EXHIBITS C AND D

SURELY THOSE ACTS BY STATE CONSTITUTE AN EXTERNAL FACTOR
SUFFICIENT TO SHOW CAUSE FOR FAILURE TO MAKE TIMELY OBJECTIONS.

ADDITIONALLY, HOWEVER, EVANS, CITING STATES V. GREEN, 285 S. 2d
634 (1982), STATE V. THOMPSON, 409 S. E. 2d 410 (CT. APP 1991), HOLD THAT
THE IRREGULARITY OF GRAND JURY PROCEEDINGS IS PRESUMED, ABSENT
CLEAR EVIDENCE TO THE CONTRARY. AND THAT COUNSEL WAS THEREFORE NOT
INEFFECTIVE FOR FAILING TO REQUEST AND REVIEW THE IMPANELING DO-
-UMENTS AND SUPPORTING MATERIAL.

IN THIS CASE, IT SEEMS THAT STATE UTILIZED THAT PRESUMPTION
OF CORRECTNESS TO ASSIST IN KEEPING ITS UNCONSTITUTIONAL ACTS SECRET
AND TO MAKE EFFECTIVE AN UNLAWFUL TAKING OF APPLICANTS RIGHTS TO
MAKE CONTEMPORANEOUS OBJECTIONS. STATE USED TO ITS BENEFIT THE
FACT THAT NO ONE WOULD BE CHECKING INTO ITS GRAND JURY PROCESS.

THEREFORE, IN LIGHT OF THE UNITED STATES SUPREME COURT DECISION
IN MURRAY V. CARRIER, AND TAKING INTO CONSIDERATION STATES UNCONSTIT-
-UTIONAL ACTS, THE RESPONSIBILITY FOR APPLICANTS FAILURE TO MAKE TIMELY
OBJECTIONS TO THE ILLEGAL GRAND JURY AND NULL INDICTMENT, MUST BE
IMPUTED TO THE STATE (RESPONDENT).

THIS COURT SHOULD ALSO TAKE NOTE OF THE FACT THAT IN STATE V. ARTHUR
374 S. E. 2d 291 (1983), THE COURT HELD THAT A WAIVER OF A CONSTITUTIONAL
AND STATUTORY RIGHT REQUIRES A SHOWING ON THE RECORD THAT A DEFENDANT
MADE THE WAIVER KNOWINGLY AND INTELLIGENTLY, CITING PATTON V.

UNITED STATES SUPREME COURT 253 (1930) AS THE LANDMARK CASE. THAT SAME STANDARD SHOULD BE APPLIED HERE, BECAUSE UNDER NO CIRCUMSTANCES CAN STATE BE ALLOWED TO USE UNCONSTITUTIONAL MEANS TO EFFECT A FORFEITURE OF APPLICANTS RIGHT TO MAKE OBJECTIONS.

S.C. CODE ANN § 17-25-10 PROVIDED THAT: NO PERSON SHALL BE PUNISHED FOR AN OFFENSE UNLESS DULY AND LEGALLY CONVICTED THEREOF; IN A COURT HAVING COMPETENT JURISDICTION OF THE CAUSE AND THE PERSON."

SOUTH CAROLINA LAW HOLDS THAT WORDS OF A STATUTE MUST BE GIVEN THEIR PLAIN AND ORDINARY MEANING WITHOUT RESORT TO SUBTLE OR FORCED CONSTRUCTION. SEE: STATE V SWEAT, 334 S.C. 334, 628 S.E.2d 569 (2005); AND STATUTORY PRESCRIPTIONS COINED IN LANGUAGE SUCH AS "SHALL" AND "MUST" ARE MANDATORY IN APPLICATION AND EFFECT. SEE: BY SOUTH CAROLINA POLICE OFFICERS RET. JAMES M. CITY OF SPARTANBURG, 378 S.E. 2d 237, 241 (1990); STANLEY V SOUTH CAROLINA DEPT OF PUBLIC SAFETY, 535 S.E. 2d 657, 667 (SUPR 2000).

A PLAIN READING OF SECTION 17-25-10 REQUIRED THAT A CRIMINAL DEFENDANT CANNOT BE PUNISHED (SENTENCED) FOR AN OFFENSE UNTIL AFTER THE STATE HAS DULY AND LEGALLY CONVICTED THE INDIVIDUAL. THAT DID NOT HAPPEN IN THIS (APPLICANTS) CASE. IN THIS CASE STATE (RESPONDENT) VIOLATED NEARLY EVERY COMPONENT OF THE DUE PROCESS NOTICE REQUIREMENT THAT IS OWED TO APPLICANT.

ACCORDINGLY; AND FOR THE REASONS SHOWN ABOVE, THIS COURT SHOULD REMAND THIS CASE BACK TO THE LOWER COURT IN ORDER TO ALLOW APPLICANT TO ENTER BELATED OBJECTIONS TO STATE'S ILLEGAL GRAND JURY AND NULL INDICTMENT

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S.C. SUPREME COURT

V. INVALID CONVICTION UNDER S.C. CODE ANN § 17-25-50⁵

A COURT'S FINAL JUDGMENT IN A CRIMINAL CASE IS THE PROMULGEMENT OF THE SENTENCE WHICH INCLUDES THE ABILITY TO DESIGNATE WHETHER SENTENCES RUN CONCURRENT OR CONSECUTIVE SUBJECT TO STATUTORY RESTRICTIONS. MATTHEWS V. S.C. DEPT. OF PROB. PAROLE & PARDON SERVS 334 S.C. 451

763; 66; 683 S.E.2d 793, 799; 800 (2009)

S.C. CODE ANN § 17-25-50 PROVIDES: "IN DETERMINING THE NUMBER OF OFFENSES FOR THE PURPOSE OF IMPOSITION OF SENTENCE, THE COURT SHALL TREAT AS ONE OFFENSE ANY NUMBER OF OFFENSES WHICH HAVE BEEN COMMITTED AT TIMES SO CLOSELY CONNECTED IN POINT OF TIME THAT THEY BE CONSIDERED AS ONE OFFENSE." STATE V. BOYD 342 S.E.2d 144, 146 (S.C. APP. 1986).

STATE V. WIDBY, 545 S.E.2d 521; 522 (S.C. APP. 2001) (SECTION 17-25-50 REQUIRES THE TRIAL COURT TO COMBINE PRIOR OFFENSES ARISING OUT OF SIMULTANEOUS ACTS COMMITTED IN THE COURSE OF A SINGLE INCIDENT.")

THUS, THE TRIAL COURT DID NOT HAVE DISCRETION TO IMPOSE CONSECUTIVE SENTENCES UPON APPLICANT FOR EACH CHARGED OFFENSE BECAUSE EACH OFFENSE WAS COMMITTED IN THE COURSE OF A SINGLE INCIDENT OCCURRING ON APRIL 17, 1995 AND WAS TO BE TREATED AS ONE OFFENSE DURING SENTENCING UNDER S.C. CODE ANN § 17-25-50 (1976). SEE: STRANER V. THOMAS, 571 F.2d 1063 (4TH CIR. 1978) ("IF A STATE PRISONER'S CONVICTION FOR WHICH HE WAS CONFINED IS INVALID, HE IS ENTITLED TO BE RESENTENCED OR RELEASED.")

5. THE TRIAL COURT WAS REQUIRED TO RUN APPLICANT'S OFFENSE OF ABHIN - HOSTAGE TAKING INTO THE OFFENSE OF ABWIK (MOST SERIOUS OFFENSE) WHICH CARRIES A MAXIMUM OF TWENTY (20) YEARS, WHICH IS THE MAXIMUM SENTENCE THE TRIAL COURT HAD THE DISCRETION TO SENTENCE APPLICANT; AFTER COMPLETION OF APPLICANT'S PRIOR SENTENCE UNDER S.C. CODE ANN § 17-25-50 (1976) SEE: FOWLEY V. STATE, 289 S.E.2d 78, 64 S.E.2d 881, 883 (1951) ("A PRISONER WHILE SUFFERING THE PENALTY OF THE LAW, SHOULD ALWAYS HAVE PRESERVED TO HIM WHATEVER REMAINS OF HIS RIGHTS AND PRIVILEGES; A SENTENCE SHOULD BE SO COMPLETE AS TO NEED NO CONSTRUCTION OR A COURT TO ASCERTAIN ITS IMPORT.")

VI. NEWLY DISCOVERED EVIDENCE

S.C. CODE ANN § 17-27-45(c) READS AS FOLLOWS:

IF THE APPLICANT CONTENTS THAT THERE IS EVIDENCE OF MATERIAL FACTS NOT PREVIOUSLY PRESENTED AND HEARD THAT REQUIRES VARIATION OF THE CONVICTION OR SENTENCE, THE APPLICATION MUST BE FILED UNDER THIS CHAPTER WITHIN ONE (1) YEAR AFTER THE DATE WHEN THE FACTS COULD HAVE BEEN ASCERTAINED BY THE EXERCISE OF REASONABLE DILIGENCE.

THE APPLICANT SUBMITS EXHIBITS 6 AND 7 ATTACHED TO THIS RESPONSE TO THE ~~CONFIDENTIAL~~ ORDER OF DISMISSAL IN THIS CASE AS EVIDENCE ESTABLISHING THAT STATE UNLAWFULLY IMPARVELED ITS GRAND JURY OUTSIDE THE JURISDICTION OF THE COURT OF GENERAL SESSIONS OF RICHLAND COUNTY, AND THEN WILLFULLY PRESENTED AND PUBLISHED FALSE MISLEADING INFORMATION IN ITS INDICTMENTS IN ORDER TO KEEP SECRET ITS VIOLATION OF STATUTORY LAW.

IN RIEDER V. OZMENT, 369 SC 39, 47-48 (2006) 631 SE.2 TO THE S.C. SUPREME COURT CITED: A PROSECUTOR'S DELIBERATE DECEPTION OF A COURT AND JURY BY THE PRESENTATION OF KNOWN FALSE EVIDENCE IS INCOMPATIBLE WITH FUNDAMENTARY DEMANDS OF JUSTICE.

(CITING QUIGLEY V. U.S., 405 U.S. 150, 153, 71 S. CT 763, 32 L. ED. 2D 104 (1971))

THE FAILURE TO CORRECT FALSE EVIDENCE IS AS REPREHENSIBLE AS ITS PRESENTATION. WASHINGTON V. STATE, 324 SC 212, 178 S.E.2D 633 (1976)

THUS, STATES PRESENTMENT OF PUBLISHED FALSE MISLEADING INFORMATION IN IT TRUE BILLED INDICTMENT - UNLAWFULLY PARVELED GRAND JURY OUTSIDE THE JURISDICTION OF THE COURT OF GENERAL SESSIONS OF RICHLAND COUNTY DEPRIVED APPLICANT OF HIS RIGHT TO ENTER OBJECTIONS TO STATES ILLEGAL GRAND JURY

6. INDICTMENT NO. 75-45-40-3704-3705-3706-3703-4237

7. RICHLAND COUNTY GRAND JURY ORDER 1975 TERM

AND NULL INDICTMENT AND WOULD HAVE CLEARLY CHANGED THE OUTCOME AT TRIAL IN THAT TRIAL COURT WOULD HAVE BEEN OBLIGATED - MANDATED BY THE LAW OF THE STATE TO DISMISS ALL CHARGES (OFFENSES) AGAINST APPLICANT OF ABWICK MURDER - HOSTAGE TAKING ENTERED BASED UPON FALSE MISLEADING INFORMATION AND IT WAS NEXT TO IMPOSSIBLE FOR APPLICANT TO KNOW THAT TRIAL COURT AND COUNSEL WHO KNEW STATE'S PREPARED AND PUBLISHED INDICTMENTS (TRUE-BILLED) TO BE FALSE, FAILED TO CORRECT IT. THUS, SUCH EVIDENCE WAS NOT READILY DISCOVERABLE AT THE TIME OF TRIAL OR APPLICANT'S PREVIOUS P.C.R. ACTION. THE APPLICANT HAS THEREFORE MADE A PRIMA FACIE SHOWING THAT HE IS ENTITLED TO RELIEF. WELCH V. MACDOUGALL, 276 SC 158, 143 GE 2d 755 (1978). STRAYER V. THOM 572 F.2d 1113 (4TH CIR 1978) ("IF STATE PRESUMES CONVICTION FOR WHICH HE WAS CONFINED IS INVALID, HE IS ENTITLED TO BE RESENTENCED OR RELEASED")

THE APPLICANT DID NOT LEARN ABOUT THIS NEWLY DISCOVERED EVIDENCE UNTIL CONSULTING WITH MR. JEROME LONG IS 2096 WHO IS A CERTIFIED LAW CLERK AT THE PENNY COURT INST. ON JANUARY 13, 2017, (SEE: APPLICANT'S SWORN AFFIDAVIT IN SUPPORT OF HIS P.C.R. APPLICATION ON FILE IN THIS CASE)

APPLICANT THEN APPLIED REASONABLE DILIGENCE IN OBTAINING THE NECESSARY COURT DOCUMENTATION. (TRUE-BILLED INDICTMENTS AND RETURN - COUNTY GRAND JURY 1995 TERM CALENDAR ETC) VIA THE HONORABLE MRS. JEANETTE W. MCKENNE (CLERK OF COURT) SEE EXHIBIT E CORRESPONDENCE TO CLERK OF COURT REQUESTING WARRANTS, INDICTMENTS - COURT CALENDAR. THUS, THIS ACTION IS NOT BARRED UNDER THE DOCTRINE OF LACHES.

VIII. SUCCESSION

AS SHOWN ABOVE, APPLICANT COULD NOT HAVE KNOWN THAT TRIAL COURT AND COUNSEL KNEW STATE PRESENTED FALSE MISLEADING INFORMATION ITS TRUE-BILLED INDICTMENT TO SECURE A CONVICTION AGAINST APPLICANT; AND APPLICANT DID NOT LEARN OF

8. ON QUESTIONS OF NON-DISCLOSURE OF RELEVANT INFORMATION TO DEFENSE, EVEN IF DEFENSE COUNSEL MIGHT HAVE BEEN MORE DILIGENT, DEFENDANT SHOULD NOT SUFFER FOR MISTAKES OF HIS COUNSEL. CASTLEBERRY V. CREEP 714 F. SUPP. 945 (W.D. OKLAHOMA 1976)

THIS EXISTING EVIDENCE UNTIL CONSULTING WITH JEROME LOWN AND
CORRESPONDENCE TO AND FROM THE HONORABLE MS. JEANETTE W. MCBRIDE
SEE: EXHIBIT-E ALSO SEE TELLEY STATE 334 SC 24; 511 SE 2d 629 (SC 1977)

("FINDING INMATES FOURTH PCR APPLICATION NOT SUCCESSIVE WHERE INMATE
LEARNED OF INELIGIBILITY FOR PAROLE ON INVOLUNTARY GUILTY PLEA IN
LETTER FROM PAROLE BOARD, AND INMATE COULD NOT HAVE RAISED HIS
CLAIM IN ANY EARLIER APPLICATION BECAUSE HE WAS THEN UNAWARE
OF SUCH CLAIM.") AT 334 S.C. 28

THUS THE COURT MUST FIND APPLICANTS PCR APPLICATION IS NOT SUCCESSIVE
ENTITLING APPLICANT TO RELIEF IN THIS CASE.

CONCLUSION

TAMPERING WITH THE ADMINISTRATION OF JUSTICE IN THE MANNER UNDISPUTEDLY
SHOWN HERE INVOLVES FAR MORE THAN INJURY TO A SINGLE LITIGANT. IT IS A
WRONG AGAINST THE INSTITUTIONS ~~SET UP TO~~ ^{ESTABLISHED TO} PROTECT AND SAFEGUARD THE
PUBLIC INSTITUTION IN WHICH FRAUD CANNOT COMPLACENTLY BE TOLERATED
CONSISTENTLY WITH ^{THE} GOOD ORDER OF SOCIETY. SURELY IT CANNOT BE THAT

PRESERVATION OF THE INTEGRITY OF THE JUDICIAL PROCESS MUST ALWAYS REST
UPON THE DILIGENCE OF LITIGANTS. THE PUBLIC WELFARE DEMANDS THAT THE
AGENCIES OF PUBLIC JUSTICE BE NOT SO IMPOTENT THAT THEY MUST ALWAYS
BE MUTE AND HELPLESS VICTIMS OF DECEPTION AND FRAUD. Hazel Atlas Glass Co.
v. Hartford Empire Co. 67 S.Ct. 977, 1001 (1944)

ACCORDINGLY, FRAUD ON THE COURT IS MISCONDUCT BY AN OFFICER OF THE COURT
THAT IS DIRECTED AT THE JUDICIAL MACHINERY ITSELF, THUS, FRAUD ON THE
COURT IS VERY EVIDENT HERE.

WHEREFORE APPLICANT HAS MET HIS BURDEN OF PROOF ESTABLISHING
HIS ENTITLEMENT TO RELIEF IN HIS PCR APPLICATION BY A PREPONDERANCE
OF THE EVIDENCE... RESPECTIVELY!

OCTOBER 27TH 2016,

~~SEPTEMBER 27TH 2016~~

RESPECTFULLY SUBMITTED

MARK EVAN SMITH # 164426

#430 OAKLAND ROAD

PELZER, SOUTH CAROLINA

#29669

Exhibit A

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

KEVIN SMITH # 164920

APPLICANT,

VS.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2014 CP 403787

SUMMONS

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

TO THE RESPONDENT:

THE STATE OF SOUTH CAROLINA,

MR. ALAN WILSON, ATTORNEY GENERAL, THE STATE OF
SOUTH CAROLINA, P.O. BOX # 11599, COLUMBIA, SOUTH
CAROLINA, # 29211;

YOU ARE SUMMONED AND REQUIRED TO ANSWER THE APPLICATION FOR POST
CONVICTION RELIEF (P.C.R.) OF THE ATTACHMENT WITHIN SIXTY (60) DAYS FROM
THE DAY AFTER RECEIPT OF THIS SUMMONS. YOUR ANSWER MUST BE
RECEIVED BY THE CLERK OF THE COUNTY OF RICHLAND; MS. JEANNETTE
MCBRIDE, P.O. BOX # 2766, COLUMBIA, SOUTH CAROLINA, # 29212, AND THE
APPLICANT WHOSE ADDRESS IS MR. KEVIN SMITH, # 164920, P.O.
BOX # 19, # 430 OAKLAWN ROAD, PELZER, SOUTH CAROLINA, # 29669.

IF YOU FAIL TO ANSWER WITHIN THE PRESCRIBED TIME A JUDGMENT
BY DEFAULT WILL BE RENDERED AGAINST YOU FOR THE RELIEF
REQUESTED IN THE POST CONVICTION RELIEF APPLICATION.

/s/ Mr. Kevin Smith
MR. KEVIN SMITH

DATE: 12014;

/s/
CLERK OF COURT

COLUMBIA, SOUTH CAROLINA,

RICHLAND COUNTY
FILED
2014 JUN 10 PM 3:22
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

County of RICHLAND

In the Court of Common Pleas

2014 P4003787

KEVEN SMITH #164920.

Full name and prison number (if any) of Applicant.

vs.

THE STATE OF SOUTH CAROLINA,

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

PURSUANT TO S.C. § 17-27-15 (C)
CODE OF LAW

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention SOUTH CAROLINA - DEPARTMENT OF CORRECTIONS
PERRY - CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence RICHLAND COUNTY COURT OF GENERAL SESSIONS #1701 MAIN ST. COLUMBIA, SOUTH CAROLINA #29281
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
3 COUNTS
(a) D8817107, D8817117, D8817127 - HOSTAGE TAKING - SC 24-13-750
(b) D881721 ABWIK - § 20-6-20 - 1 COUNT
(c) D881922 ABHAN - § 20-6-20 - 1 COUNT
D881509 ABHAN - 1 COUNT
4. The date upon which sentence was imposed and the terms of the sentence:
(a) JUNE 7 - 1996 - SENTENCING DATE
(b) HOSTAGE TAKING - 3 COUNTS 15 YEARS EACH CONSECUTIVE TO EACH OFFENSE
(c) ABWIK - 1 COUNT 20 YEARS - ABHAN - 2 COUNTS 9 YEARS EACH CONSECUTIVE TO EACH OFFENSE TOTAL 33 YEARS

2014 JUN 19 PM 3:22
JEANNETTE WOODRIDGE
C. CLERK
RICHLAND COUNTY
FILED

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) SEE: PPS 2-A THROUGH 2-E; STATEMENT OF THE CASE

(b) GROUND - SUPPORTING FACTS - PENAL STATUTES

(c) ATTACHED

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) SEE: PPS 2-A THROUGH 2-E; STATEMENT OF THE CASE

(b) GROUND - SUPPORTING FACTS

(c) PENAL STATUTES ATTACHED

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S.C. SUPREME COURT

A

STATEMENT OF THE CASE

APPLICANT WAS INDICTED AT THE JUNE 1995 TERM OF THE RICHLAND COUNTY GRAND JURY FOR 1 COUNT A.B.W.J.K.; 2 COUNTS A.B.H.V., AND 3 COUNTS HOSTAGE TAKING OFFENSES COMMITTED ON 4-17-95, AT THE BROAD RIVER CORRECTIONAL INSTITUTION IN THE COURSE OF ONE INCIDENT. ON 6-4-96 APPLICANT WAS CONVICTED OF THE CHARGED OFFENSES. ON 6-7-96, HE RECEIVED CONSECUTIVE SENTENCES FOR EACH OFFENSE FOR A TERM OF EIGHTY-THREE (83) YEARS CONFINEMENT TO THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. THE APPLICANT'S CONVICTIONS ARE INVALID UNDER SOUTH CAROLINA CODE ANNOTATED § 17-25-50 1976, THUS ENTITLING VACATION OF SENTENCE; RESENTENCING OR APPLICANT'S RELEASE BASED UPON THE FOLLOWING...

GROUND - SUPPORTING FACTS

B

A COURT'S FINAL JUDGMENT IN A CRIMINAL CASE IS THE PRO NOUNCEMENT OF THE SENTENCE WHICH INCLUDES THE ABILITY TO DESIGNATE WHETHER SENTENCES RUN CONCURRENT OR CONSECUTIVE SUBJECT TO STATUTORY RESTRICTIONS MAJOR V.

S.C. Dept of Prob. parole & pardon servs, 384 S.C. 457; 465; 66

682 S.C. 2d 795; 799; 800 (2017), RECOGNIZING THE FINDINGS
AND LOGIC EXEMPLIFIED BY THE PROVISION OF § 17-25-50
CODE OF LAWS OF SOUTH CAROLINA, (1976) PROVIDED;

"IN DETERMINING THE NUMBER OF OFFENSES FOR
THE PURPOSE OF IMPOSITION OF SENTENCE, THE
COURT SHALL TREAT AS ONE OFFENSE ANY NUM-
BER OF OFFENSES WHICH HAVE BEEN COMMITTED
AT TIMES SO CLOSELY CONNECTED IN POINT OF
TIME THAT THEY BE CONSIDERED AS ONE OFFENSE."

STATE V. BOYD, 341 S.C. 2d 144; 146 (S.C. App. 1986), STATE V. WOODY
545 S.C. 2d 521; 522 (S.C. App. 2001) ("SECTION § 17-25-50 REQUIRES
THE TRIAL COURT TO COMBINE SEVERAL OFFENSES ARISING OUT
OF SIMULTANEOUS ACTS COMMITTED IN THE COURSE OF A
SINGLE INCIDENT"), THUS, THE TRIAL COURT DID NOT HAVE
DISCRETION TO IMPOSE CONSECUTIVE SENTENCES UPON APPLICANT
FOR EACH CHARGED OFFENSE; BECAUSE EACH OFFENSE WAS
COMMITTED ~~IN~~ THE COURSE OF A SINGLE INCIDENT OCCUR-
RING ON APRIL 17, 1995, AND WAS TO BE TREATED AS ONE
CONVICTION DURING SENTENCING UNDER S.C. CODE ANN. § 17-25-50 SEE:
FENLEY V. STATE, 319 S.C. 278; 64 S.C. 2d 881; 883 (1951) ("A PRISONER WHILE

SUFFERING THE PENALTY OF THE LAW, SHOULD ALWAYS HAVE PRESERVED TO HIM WHATEVER REMAINS OF HIS RIGHTS, AND CON-
DITIOUS, A SENTENCE SHOULD BE SO COMPLETE AS TO NEED
NO CONSTRUCTION OF A COURT TO ASCERTAIN ITS IMPORT.

③

PENAL STATUTES

PENAL STATUTES ARE STRICTLY CONSTRUED AGAINST THE STATE AND IN FAVOR OF THE DEFENDANT. STATE V. COWLEY, 322 S.C. 151, 470 S.E.2d 393 (CT. APP. 1996); WILLIAMS V. STATE, 306 S.C. 89, 91, 910 S.E.2d 543, 544 (1991); A COURT'S PRIMARY PURPOSE IN CON-
-STRUING A STATUTE IS TO ASCERTAIN THE INTENT OF THE LEGISLATURE. STATE V. JOHNSON, 397 S.C. 67, 552 S.E.2d 339 (CT. APP. 2001); IF A STATUTE'S LANGUAGE IS PLAIN AND UNAMBIGUOUS, THERE IS NO NEED TO EMPLOY RULES OF STATUTORY INTER-
-PRETATION AND THE COURT HAS NO RIGHT TO LOOK FOR OR IMPOSE ANOTHER MEANING. COURTS MUST TAKE A STATUTE AS IT IS DRAFTED AND GIVE EFFECT TO THE LEGISLATIVE INTENT AS EXPRESSED IN ITS LANGUAGE. STATE V. WHITE, 525 S.E.2d 261 (CT. APP. 1999); WHEN THE TERMS OF A STATUTE ARE CLEAR, THE COURT MUST APPLY THOSE TERMS ACCORDING TO THEIR LITERAL MEANING. STATE V. JORGAN, 352 S.C. 259, 519 S.E.2d 203 (CT. APP. 2002)

THE COURT SHOULD GIVE WORDS THEIR PLAIN AND ORDINARY MEANING WITHOUT RECOURSE TO SUBTLE OR FORCED CONSTRUCTION TO LIMIT OR EXPAND THE STATUTES OPERATION. STATE V. SWEATE, 386 S.C. 334; 688 S.E.2d 569 (2010); CONSTITUTIONAL CONSTRUCTIONS OF STATUTES ARE NOT ONLY JUDICIALLY PREFERRED THEY ARE MANDATED; A POSSIBLE CONSTITUTIONAL CONSTRUCTION MUST PREVAIL OVER AN UNCONSTITUTIONAL INTERPRETATION. HENDERSON V. EVANS, 468 S. CT. 127; 132; 232 S.E.2d 331; 333; 39 (1977), IF A STATE PRISONER'S CONVICTION FOR WHICH HE WAS CONFINED IS INVALID, HE IS ENTITLED TO BE RESENTENCED OR RELEASED. STANLEY V. TROY, 571 F.2d 1263 (4TH CIR. 1978)

"THE PUNISHMENT WHICH THE WISEST CRIMINAL HAS INFLICTED UPON HIM MUST BE LEGAL, AND WHEN THIS IS NOT SO, HOW EVER UNINTENTIONAL, AN OFFENSE IS BEING COMMITTED IN THE NAME OF THE LAW AGAINST THE PERSON."

Finley v. State, 219 S.C. 276; 69, S.E. 2d 881; 883 (1951)

THUS, AS A DIRECT RESULT OF THE STATES INVALID CONVICTION OF APPLICANT, AND DEFENSE COUNSEL'S FAILURE TO OBJECT TO THIS INVALID SENTENCING; RENDERING COUNSEL INEFFECTIVE THE APPLICANT HAS SUFFERED IN CARCERATION BEYOND THE LEGAL SENTENCE (STATUTE); ILLEGAL CONFINEMENT, TRAVERSITY OF JUSTICE, OBSTRUCTION OF JUSTICE, ENTITLING APPLICANT TO VACATION OF SENTENCE; RESENTENCING OR RELEASE FROM THE S.C. DEPT. OF CORR.

SOUTH CAROLINA CODE OF LAWS STATUTE § 17-27-45 (C)

STATES IN PERTINENT PART:

" IF THE APPLICANT CONTENDS THAT THERE IS EVIDENCE OF MATERIAL FACTS NOT PREVIOUSLY PRESENTED AND HEARD THAT REQUIRES VACATION OF THE CONVICTION OR SENTENCE, THE APPLICATION MUST BE FILED UNDER THIS CHAPTER WITHIN ONE (1) YEAR AFTER THE DATE OF ACTUAL DISCOVERY OF THE FACTS BY THE APPLICANT OR AFTER THE DATE WHEN THE FACTS COULD HAVE BEEN ASCERTAINED BY THE EXERCISE OF REASONABLE DILIGENCE.

THE APPLICANT SUBMITS AN AFFIDAVIT FROM HIMSELF ATTACHED TO THE APPLICATION FOR POST CONVICTION RELIEF (P.C.R.) VERIFYING HIS DISCOVERY OF SAID EVIDENCE OF MATERIAL FACTS NOT PREVIOUSLY PRESENTED OR HEARD BY THE COURT, THUS REQUIRING VACATION OF APPLICANTS SENTENCE, RESENTENCING OR RELEASE RESPECTIVELY!

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? NA

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NA

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NA

(d) any other petitions, motions or applications in this or any other Court? NA

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

...grounds have been presented,

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. _____
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. _____
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

VACATION OF SENTENCE - RESENTENCING or
RELEASE

19. Are you now under sentence from any other court that you have not challenged?

No Your Honor!

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

KEVIN SMITH, # 164920;

APPLICANT,

VS.

THE STATE OF SOUTH CAROLINA;

RESPONDENT,

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. _____

A VERIFICATION OF APPLICANT

KEVIN SMITH IN SUPPORT

OF POST CONVICTION RELIEF

APPLICATION (P.C.R.) UNDER

S.C. CODE ANN. § 17-27-45 (C) 1976;

Come now UNDER OATH APPLICANT KEVIN SMITH STATES UNDER PENALTY OF PERJURY THE FOLLOWING:

1.

THERE IS EVIDENCE OF MATERIAL FACTS NOT PREVIOUSLY KNOWN AND HEARD THAT REQUIRES VACATION OF THE APPLICANT'S SENTENCE. SEE: APPLICANT'S (P.C.R.) pp. 2A - THROUGH 2-E

2.

THE TRIAL COURT IMPOSED SENTENCING THAT EXCEEDED MAXIMUM UNDER S.C. CODE ANN. § 17-25-50, SEE: (P.C.R.) AROUND SUPP. FACTS. THE APPLICANT BEING UNLEARNED LAYMAN IN LAW DID NOT LEARN ABOUT THIS TRIAL COURT ERROR UNTIL CONSULTING WITH MR. JEROME LONG # 152096, WHO IS A CERTIFIED LAW CLERK AT THE PERKY CORRECTIONAL INSTITUTION ON THE DATE OF JANUARY 13, 2014, WHILE DOMICILED AT THE FACILITY'S SPECIAL MANAGEMENT UNIT (SMU).

3.

THE APPLICANT WILL CONTINUE TO REMAIN INCARCERATED UNDER AN INVALID CONVICTION (SENTENCE) IF THE P.C.R. IS NOT GRANTED.

SWORN AND SUBSCRIBED BEFORE ME

THIS 20th DAY OF May 2014;NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA: Nancy C. McDanielMY COMMISSION EXPIRES: 1-23-2023

County of RICHLAND

I, MR. KEVIN SMITH #164920, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Mr. Kevin Smith

#430 oak lawn road

PELZER, SOUTH CAROLINA,

#29669, BX-#19,

SWORN to and subscribed before me this 20th

day of May, 19 2014

Nancy C. Murchad (L.S.)
Notary Public

My Commission Expires: 1-23-2023

RICHLAND COUNTY
 FILED
 2014 JUN 10 PM 3:23
 JEANNETTE W. MCBRIDE
 C.D.P. & G.S.

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, MR. KEVIN SMITH #164920, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Mr. Kevin Smith
Applicant

SWORN or affirmed to and subscribed before me this

20th day of May, 19 2014

Nancy C. Murchad
Notary Public

My Commission Expires 1-23-2023

RECEIVED

NOV 04 2016

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

KEVIN SMITH # 164920,

APPLICANT,

VS.

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2014 CP 4003787NOTARIZED CERTIFICATE OF PROOF
OF SERVICE

RICHLAND COUNTY,
FILED
2014 JUN 10 PM 3:23
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

I MR. KEVIN SMITH # 164920, HEREBY CERTIFY THAT ON 16 14,
I SERVED AN TRUE-ORIGINAL COPY OF THIS APPLICATION FOR
POST-CONVICTION RELIEF (P.C.R.) AND SUMMONS ATTACHED, UPON
COUNSEL FOR RESPONDENT (STATE OF SOUTH CAROLINA) AND REVIEWED

AS SHOWN BELOW:

MR. LAW WILSON

OFFICE OF THE ATTORNEY GENERAL, THE STATE OF SOUTH
CAROLINA; P.O. BOX # 11549; COLUMBIA, SOUTH CAROLINA;
29211,

BY DEPOSITING SUCH IN THE U.S. MAIL VIA PERAY
COMM. INST. MAIL ROOM PERSONNEL. RESPECTIVELY.

St. Mr. Keene Smith
Mr. Keene Smith
Mr. Keene Smith

SWORN AND SUBSCRIBED BEFORE ME

THIS 24th DAY OF June, 2014,Nancy C. McArthur

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA.

1-23-2023

MY COMMISSION EXPIRES

Exhibit B

STATE OF SOUTH CAROLINA
County of RICHLAND
KEVIN SMITH #164920

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondents,

IN THE COURT OF Common Pleas

Civil Action No. 2014-CP-400-3787

NOTICE OF MOTION-MOTION

FOR DEFAULT JUDGMENT

ORDER

JEANETTE W. McBRIDE
C.C.P. & C.S.

2014 OCT 28 PM 3:41

RICHLAND COUNTY
FILED

TO : RESPONDENTS (DEFENDANTS); you will please take
notice that the undersigned plaintiff, DOES BY
THE COURT OF Common Pleas Judge FOR THE STATE
SOUTH CAROLINA, RICHLAND COUNTY FOR AN ENTRY OF
DEFAULT JUDGMENT AGAINST THE DEFENDANTS AT SUCH
PLACE AND TIME, AS SET BY THE COURT OF WHICH YOU
WILL BE NOTIFIED, UNLESS, OTHERWISE SPECIFIED.

Respectfully Submitted
S. *Mr. Kevin Smith*

MR KEVIN SMITH #164920

P.O. Box #8,

#430 OAKLAND ROAD,

PULZER, SOUTH CAROLINA,

#29669,

DATE: 10-22-2014.

STATE OF SOUTH CAROLINA
County of Richland
Kevin Smith #164920

Applicant,

vs.

STATE OF SOUTH CAROLINA
Respondents

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CV-400-3787

Default Judgment Order

Supporting Memorandum

2014 OCT 28 PM 3:41
JEANETTE W. McBRIDE
C.C.F. & G.S.B.
RICHLAND COUNTY
FILED

The above applicant plaintiff is entitled to a default judgment against the respondents for relief in the post conviction relief application based upon the following:

1. On June 10, 2014, applicant (Kevin Smith) application for post conviction relief was filed in the Richland County Court of Common Pleas v. a. Ms. Jeanette McBride (Clerk of Court), attached to the post application was applicant's summons informing respondents of their duty (they) by requirement to answer the application and to file their response with the Richland County Clerk's Office on or before the date set forth.
2. On June 24th 2014, applicant served a copy of the summons and application for post conviction relief, and notarized certificate of proof of service upon Michaela Wilson, Attorney General for the State of South Carolina via certified (signature) mail via Perry, Conkerton & Associates, Inc. (Perry Personnel and Nancy McKnight - see: Exhibit A attached).

The applicant also filed a certificate of service on the respondents on June 24th 2014 and a certificate of service on the respondents on June 24th 2014.

3. more than ninety (90) days have elapsed since the service of the summons and pre application upon the respondents (State of Oklahoma) Alan Wilson, Attorney General, and no answer, notice of appearance has been served upon applicant or received by the clerk's office as required by the summons in this action.

4. Rule 55 Default (a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book)

5. The Applicant (Claimant) submits his affidavit of default attached to his notice - default motion and supporting exhibits thus establishing him to the relief in his pre application in this action. SEE EXHIBIT - B ATTACHED

6. Entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party. STARK TRUSCO INC. v. SUPERIOR CONST. CORP. 602 S.E.2d 99 (S.C. App. 2004)

7. It would be a travesty of justice if the Motion for default is not granted against respondents for the relief in this action, and the Court of Justice will object by the granting of Plaintiff's Motion. Respectfully,

Respectfully Submitted
S. Allen Reed

Attorney General

Page 3 of 3

11/21/14

11/21/14

DATE: 11/21/14

Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
KEVIN SMITH #164920,

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2014-CP-400-3787

Applicant,

NOTARIZED CERTIFICATE OF

VS

PROOF OF SERVICE

STATE OF SOUTH CAROLINA,

Respondents,

I, KEVIN SMITH #164920, HEREBY CERTIFY THAT I
SERVED AN ORIGINAL COPY OF THE NOTICE OF MOTION
FOR DEFAULT JUDGMENT ORDER UPON COUNSEL FOR THE
(STATE OF SOUTH CAROLINA) ADDRESSES AS SHOWN BELOW:

MR ALAN WILSON, ATTORNEY GENERAL, THE STATE OF SOUTH
CAROLINA, #1000 ASSEMBLY STREET, COLUMBIA, SOUTH CAROLINA
#29201

BY DEPOSITING SUCH IN THE U.S. MAIL V.I.A. PERRY
CORR. INST MAIL ROOM PERSONNEL ~~MO. WILSON~~ ^{T. CANNELL} ~~ATTORNEY~~

RESPECTIVELY!

/s/ Kevin Smith

SWORN AND SUBSCRIBED BEFORE ME

THIS 22 DAY OF October 2014.

Tamara Cunnell

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

9/25/2023

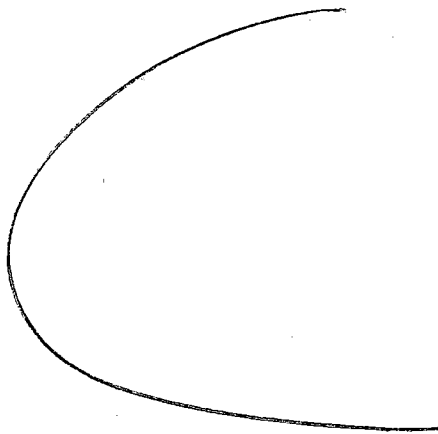
My Commission Expires

RECEIVED

NOV 04 2016

S.C. SUPREME COURT

EXHIBIT



2002-10-23-01

The Supreme Court of South Carolina

RE: Filing Indictments With the Clerk of Court

ORDER

Rule 3(c), SCRCmP, requires solicitors to file indictments with the Clerk of Court. In some counties, solicitors are retaining the original indictments which have been returned by the grand jury until the proceedings are concluded. This local practice leads to problems and confusion in some cases. Accordingly, effective the date of this order, all original indictments which have been returned by the grand jury shall immediately be filed with the Clerk of Court.

IT IS SO ORDERED

Jean Hoefer Toal
Jean Hoefer Toal, Chief Justice

Columbia, South Carolina
October 23, 2002

<http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2002.10.23.01>

Not on record w/out clerk

1st amend. due process state

2nd Field. inc. process

WITNESSES

Inv. J. Green, SCDJ

Quo. H. Rainwell

DOCKET NO. *95-GS-40-3704*

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

#42

JUNE TERM 1995

THE STATE

vs.

KEVIN SMITH

Nolle Prosequere

FILED

6/6/96

ARREST WARRANT NO. D881420

ACTION OF GRAND JURY

TRUE BILL

John Y. [unclear]
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

Indictment for Assault and
Battery With Intent To Kill
and Possession of Firearm
or Knife During
Commission of or Attempt
to Commit Violent Crime

S. C. Code Section 16-3-620 Class C-Felony

CERTIFIED TRUE COPY

OF ORIGINAL FILED

Heather W. [unclear]

C.C.C.P.&G.S.

RICHLAND COUNTY

SOUTH CAROLINA

*considered as
other charges 4/1/96*

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT FOR ASSAULT AND
BATTERY WITH INTENT TO KILL

~~THIS CASE IS BEING HANDLED BY THE
SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS~~

At a Court of General Sessions, convened on June 14, 1995
the Grand Jurors of RICHLAND County present upon their oath:

COUNT ONE — ASSAULT AND BATTERY WITH INTENT TO KILL

That KEVIN SMITH
did in Richland County on or about April 17, 1995, with
malice aforethought commit an assault and battery upon one Willie Leggins
with intent to kill the said victim

**COUNT TWO — POSSESSION OF FIREARM OR KNIFE DURING COMMISSION
OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That
did in _____ County on or about _____ possess or
visibly display a firearm or visibly display a knife during the commission or attempted commission
of a violent crime, to wit _____
in violation of Code Section 16-23-40, Code of Laws of South Carolina, (1976), as amended.

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

Kevin B. Smith
SOLICITOR

RECEIVED TO BE COPIED
FILED
Kevin B. Smith
SOLICITOR
SOUTH CAROLINA

WITNESSES

Inv. J. Green, SCD

David L. Green

DOCKET NO. 95-65-40-3706

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

#42 JUNE TERM 1995

THE STATE

ARREST WARRANT NO. DB81421

vs.
KEVIN SMITH

ACTION OF GRAND JURY

TRUE BILL

Walter H. H.
Foreman of Grand Jury

VERDICT

Guilty

Walter H. H.
Foreman of Grand Jury

Date: *June 95*

Indictment for Assault and
Battery With Intent To Kill
and Possession of Firearm
or Knife During
Commission of or Attempt
to Commit Violent Crime

S. C. Code Section 16-3-620 (Class C-Felony)
14

RECEIVED

NOV 04 2016

S.C. SUPREME COURT

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Greene
C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT FOR ASSAULT AND
BATTERY WITH INTENT TO KILL
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXX~~

At a Court of General Sessions, convened on June 14, 1995
the Grand Jurors of RICHLAND County present upon their oath:

COUNT ONE — ASSAULT AND BATTERY WITH INTENT TO KILL

That KEVIN SMITH
did in Richland County on or about April 17, 1995, with
malice aforethought commit an assault and battery upon one James Cooper
with intent to kill the said victim.

**COUNT TWO — POSSESSION OF FIREARM OR KNIFE DURING COMMISSION
OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That _____
did in _____ County on or about _____, possess or
visibly display a firearm or visibly display a knife during the commission or attempted commission
of a violent crime, to wit: _____
in violation of Code Section 16-23-400, *Code of Laws of South Carolina*, (1976), as amended.

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

Walter B. Hume
SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Heckler 2/17/95
C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES.

Inv. J. Green, SCD

Carol H. Bannell

ARREST WARRANT NO. D881411.

ACTION OF GRAND JURY

TRUE BILL

Joseph H. Smith
Foreman of Grand Jury

VERDICT

Guilty

Alison Johnson
Foreman of Petit Jury

June 96
Date

DOCKET NO. *95-GS-40-3705*

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

142 JUNE TERM 1995

THE STATE

vs.

KEVIN SMITH

Indictment for
TAKING OF HOSTAGES

S. C. Code Section 24-13-450 Felony
400

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Janette W. W. W. W.
C.C.C.P.&G.S.

RICHLAND COUNTY
SOUTH CAROLINA

442 6800 0093 1247

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT FOR
TAKING OF HOSTAGES

At a Court of General Sessions, convened on June 14, 1995
the Grand Jurors of RICHLAND County present upon their oath:

That KEVIN SMITH, an inmate of the South Carolina
Department of Corrections did in Richland County on or about the 17th day of
April, 1995, acting alone or in concert with others, by means of threats,
coercion, intimidation or physical force, take, hold, decoy or carry away any
person to wit: Mary Mathis as a hostage or for any other
reason whatsoever.

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

William B. Giese

SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILED,

James H. W. McBride
C.C.C.P.&G.S.

RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

Inv. J. Green, SCDC

One H. Barnwell

ARREST WARRANT NO. D881412

ACTION OF GRAND JURY

TRUE BILL

John A. Smith
Foreman of Grand Jury

VERDICT

Guilty

John A. Smith
Foreman of Petit Jury

4 June 96
Date

DOCKET NO. 95-GS-40-3708

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

142 JUNE TERM 1995

THE STATE

vs.

KEVIN SMITH

Indictment for

TAKING OF HOSTAGES

S. C. Code Section 24-13-450 Felony
400

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
JUN 14 1996
BY J. W. P. & S.
C. C. AND COUNTY
RICHLAND COUNTY
SOUTH CAROLINA

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT FOR
TAKING OF HOSTAGES

At a Court of General Sessions, convened on June 14, 1995
the Grand Jurors of RICHLAND County present upon their oath:

That KEVIN SMITH, an inmate of the South Carolina
Department of Corrections did in Richland County on or about the 17th day of
April, 1995, acting alone or in concert with others, by means of threats,
coercion, intimidation or physical force, take, hold, decoy or carry away any
person to wit: Tommy Haseldon as a hostage or for any other
reason whatsoever.

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NOV 04 2016

S.C. SUPREME COURT

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

Walter B. Hester
SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Clarence W. Hester
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

EXHIBIT

D

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND)

IN RE:)

O R D E R

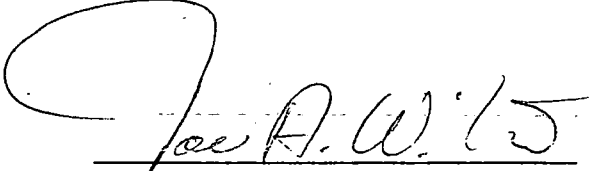
The Richland County)
Grand Jury)
)

FILED
94 DEC -6 PM 3:49
BRIAN A. SCOTT
C.C. & G.S.

IT IS ORDERED that the Richland County Grand Jury shall meet in 1995
as follows:

9:00 A.M.	Wednesday, January 18, 1995
9:00 A.M.	Wednesday, February 22, 1995
9:00 A.M.	Wednesday, March 22, 1995
9:00 A.M.	Wednesday, April 19, 1995
9:00 A.M.	Wednesday, May 10, 1995
9:00 A.M.	Wednesday, June 14, 1994

AND IT IS SO ORDERED.


PRESIDING JUDGE
FIFTH JUDICIAL CIRCUIT

Columbia, South Carolina

This 5th day of December, 1994

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND)

IN RE:)

O R D E R

The Richland County
Grand Jury)

IT IS ORDERED that the Richland County Grand Jury shall meet in 1995
as follows:

9:00 A.M.

Wednesday, July 12, 1995

9:00 A.M.

Wednesday, August 9, 1995

9:00 A.M.

Wednesday, September 13, 1995

9:00 A.M.

Wednesday, October 11, 1995

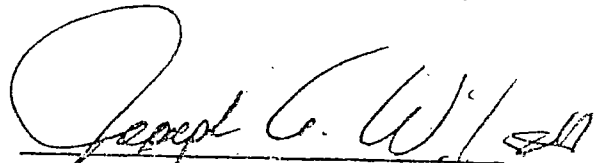
9:00 A.M.

Wednesday, November 8, 1995

9:00 A.M.

Wednesday, December 13, 1994

AND IT IS SO ORDERED.



PRESIDING JUDGE
FIFTH JUDICIAL CIRCUIT

Columbia, South Carolina

This 19th day of May, 1995

FILED
95 MAY 22 AM 7:36
BARBARA A. SCOTT
C.C.C. & G.S.

Exhibit E

MR. KEVIN SMITH #167920,
PERRY CIRCUMSTANTIAL INVESTIGATION BX-#19,
#430 OAK LAWN ROAD
PELZER, SOUTH CAROLINA, #29669

JANUARY - 12 - 2014

THE HONORABLE MS. JEANNETTE MC BRIDE

CLERK OF COURT - RICHLAND COUNTY COURTHOUSE

PO BOX # 2766

COLUMBIA, SOUTH CAROLINA, #29202

RE: SOUTH CAROLINA FREEDOM OF INFORMATION ACT REQUEST UNDER

§ 33-48 - CASE STATE V. KEVIN SMITH AND SHELDON CRAWFORD

DEAR MS. MC BRIDE:

I AM RESPECTFULLY REQUESTING A COPY OF THE FOLLOWING DOCUMENTS
UNDER THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT (C.S.A. § 33-48):

- (1) WARRANT NO. D881410 OF KEVIN SMITH
- (2) WARRANT NO. D881412 OF KEVIN SMITH
- (3) WARRANT NO. D881412 OF KEVIN SMITH
- (4) WARRANT NO. D881509 OF KEVIN SMITH
- (5) WARRANT NO. D881432 OF KEVIN SMITH
- (6) WARRANT NO. D881432 OF KEVIN SMITH
- (7) INVESTMENT OF KEVIN SMITH AND SISTER SUE

JEANNETTE MC BRIDE
C.C.P. & C.S.

2014 JAN 16 PM 4:04

RICHLAND COUNTY
FILED

JUNE-7-1996 - RICHLAND COUNTY COURT OF GENERAL SESSIONS

- (8) SOUTH CAROLINA CODE OF LAWS § 16-3-620 - § 16-3-630 AND § 24-13-750

(WHICH WERE EFFECTIVE DURING YEARS 1995-1996)

YOUR EARLIEST RESPONSE TO THIS REQUEST WILL BE GREATLY APPRECIATED.

THANK YOU IN ADVANCE FOR YOUR TIME AND CONCERN REGARDING THIS MATTER.

AN Sincerely,
KEVIN SMITH

ANNE G. KELLY
Chief Deputy Clerk of Court



TELEPHONE:
Phone: (803) 576-1950
Fax: (803) 576-1785
TDD (803) 748-4999

RICHLAND COUNTY CLERK OF COURT

Richland County Judicial Center

Clerk of Court

Criminal Records Division

1701 Main Street, Room 205

Columbia, S. C. 29201

Name: Kevin Smith

Date: 1-16-14

We have received your inquiry and respond as follows:

☐ Enclosed please find copies of the documents requested

☐ Your charge is: ☐ Pending ☐ Dismissed ☐ Bench Warranted ☐ A conviction

☐ Your request has been forwarded for handling to:

☐ Your Attorney ☐ Solicitors Office ☐ Public Defender's Office

(Please note: Any motion or other court document has been clocked prior to forwarding to the appropriate office. This office DOES NOT schedule and/or handle motions or other legal matters)

☐ Your charge(s) have been faxed to SCDC. SCDC is responsible for clearing up detainers.

☐ For matters concerning PCR's, please contact the Attorney General's office. (803-734-3737).

☐ In order to obtain a transcript, write to SC Court Administration at 1015 Sumter Street, Suite 200, Columbia, SC 29201. You need to have the case number, Judge's name, and date of trial. Any questions, call (803)734-1800.

☐ SCDC calculates credit for time served. Necessary records have been faxed to SCDC.

☐ We need more information to process your request:

☐ Case Number ☐ Charge ☐ SSN ☐ Court Location ☐ Date of Arrest

☐ There is no record of said charge.

☐ Please contact: _____

☐ Other: _____

DISCLAIMER: The role of the Clerk of Court's office is to maintain court documents. The Clerk's office provides copies of case documents (with proper identifying information) upon request, but does not provide her information regarding a case. The Clerk's office is not permitted to give legal advice and/or determine length of sentence or other case specific questions.

RECEIVED

NOV 04 2016

S.C. SUPREME COURT

Mr KEVIN SMITH #164920,
P.C.I. S.M.D. #11-C-Y #8,
#430 OAKLAWN ROAD
PELZER, SOUTH CAROLINA
#29669.

MARCH 15TH 2015

DEAR MS. MCBRIDE,

I WOULD LIKE TO RESPECTFULLY REQUEST A COPY OF THE
CIRCUIT COURT CALENDAR FOR COURT OF GENERAL SESSIONS
FOR RICHLAND COUNTY TERM JUNE 14-1995 AND MAY THROUGH
JUNE 1996 AT YOUR EARLIEST CONVENIENCE.

THANK YOU.

I AM CORDIALLY,

Kevin Smith
Mr. Kevin Smith

RICHLAND COUNTY
CLERK

2015 APR 14 PM 3:15

JEANETTE E. BOOTH
C.C.P. & S.

✓ R. KEVIN SMITH #164920.
P.C.I.: S.M.U.III - C-Y #8,
#436 OAKLAWN ROAD,
PELZER, SOUTH CAROLINA,
#29669.

✓ MARCH 29TH 2015

DEAR MS. MCBRIDE,

I WOULD LIKE TO RESPECTFULLY REQUEST THE FOLLOWING DOCUMENT:
A COPY OF THE 1995 TERM OF COURT (RICHLAND COUNTY)
AND THE DATE OF THE GRAND JURY, 1995 TERM AS WELL.

YOUR EARLIEST RESPONSE TO MY REQUEST WILL
BE GREATLY APPRECIATED

THANK YOU I AM

CORDIALLY


R. KEVIN SMITH

RICHLAND COUNTY
FILED

2015 APR 14 PM 3:15

JEANETTE W. MOORE
C.C.P. & A.S.

n/r. KEVIN SMITH #164920.

P.C. - S.M.U. II - C-Y - # 8.

#430 OAKLAWN ROAD;

PELZER, SOUTH CAROLINA;

#29669;

APRIL 9TH 2015

DEAR MS. MCBRIDE,

I WOULD LIKE TO RESPECTFULLY REQUEST
A COPY OF THE RICHLAND COUNTY 1995
CIRCUIT COURT SCHEDULE AND THE 1995
GRAND JURY DATES (TERM) AS WELL, AT YOUR

EARLIEST CONVENIENCE.

THANK YOU.

I AM CORDIALLY



RICHLAND COUNTY
CLERK OF COURT

2015 APR 14 PM 3:15

JOHN E. MCBRIDE
S.C.P. 2015.

RECEIVED

NOV 04 2016

S.C. SUPREME COURT

Mr. Kevin Smith #164920,

P.C.I. - S.M.U.II - C-Y-#8,

#430 Oaklawn Road,

Pelzer, South Carolina,

#29669,

April 21st 2015,

Dear Mr. McBride,

Thanks for sending the Grand Jury Calendar

for 1995; but I also requested the 5TH CIRCUIT
TERM COURT CALENDAR FOR 1995 as well.

Could you please send me the 5TH CIRCUIT
TERM COURT CALENDAR FOR 1995 at your

earliest convenience.

Thank you.

I am cordially

Sincerely,

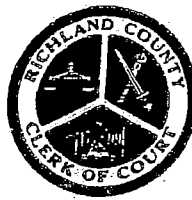
Mr. Kevin Smith

2015 APR 20 PM 4:42

JEANETTE L. GIBSON, JR.
U.S. P. 210

JEANETTE W. McBRIDE
Clerk of Court

ANNE G. KELLY
Chief Deputy Clerk of Court



MAILING ADDRESS:
POST OFFICE BOX 2766
COLUMBIA, S.C. 29202-2766

TELEPHONE:
Phone: (803) 576-1950
Fax: (803) 576-1785
TDD (803) 748-4999

RICHLAND COUNTY CLERK OF COURT

Richland County Judicial Center

Clerk of Court

Criminal Records Division

1701 Main Street, Room 205

Columbia, S. C. 29201

Name: Kevin Smith

Date: 29 April 2015

We have received your inquiry and respond as follows:

☒ Enclosed please find copies of the documents requested 5th Circuit Calendar

☐ Your charge is: ☐ Pending ☐ Dismissed ☐ Bench Warranted ☐ A conviction

☐ Your request has been forwarded for handling to:

☐ Your Attorney ☐ Solicitors Office ☐ Public Defender's Office
(Please note: Any motion or other court document has been clocked prior to forwarding to the appropriate office. This office DOES NOT schedule and/or handle motions or other legal matters)

☐ Your charge(s) have been faxed to SCDC. SCDC is responsible for clearing up detainers.

☐ For matters concerning PCR's, please contact the Attorney General's office. (803-734-3737).

☐ In order to obtain a transcript, write to SC Court Administration at 1015 Sumter Street, Suite 200, Columbia, SC 29201. You need to have the case number, Judge's name, and date of trial. Any questions, call (803)734-1800.

☐ SCDC calculates credit for time served. Necessary records have been faxed to SCDC.

☐ We need more information to process your request:

☐ Case Number ☐ Charge ☐ SSN ☐ Court Location ☐ Date of Arrest

☐ There is no record of said charge.

☐ Please contact: _____

☐ Other: _____

DISCLAIMER: The role of the Clerk of Court's office is to maintain court documents. The Clerk's office provides copies of case documents (with proper identifying information) upon request, but does not provide other information regarding a case. The Clerk's office is not permitted to give legal advice and/or determine length of sentence or other case specific questions.

The Supreme Court of South Carolina

Kevin Smith, Petitioner,

-v.-

State of South Carolina, Respondent.

Appellate Case No. 2016-002066

Lower Court Case No. 2014CP4003787

ORDER

In the explanation required by Rule 243(c) of South Carolina Appellate Court Rules (SCACR), petitioner has failed to show that there is an arguable basis for asserting that the determination by the lower court was improper. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.



C.J.

FOR THE COURT

Columbia, South Carolina

October 11, 2016

cc: Jessica Elizabeth Kinard, Esquire

Kevin Smith, 164920

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2014CP4003787

Kevin #164920 Smith

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 12 day of Sept, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Kevin #164920 Smith

Jessica Elizabeth Kinard

Kevin #164920 Smith

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. Kinard

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Kevin Smith, #T64920,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014-CP-40-03787

FINAL ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2016 SEP - 9 AM 9:18
JEANETTE W. HOSKINS
C.C.P. & G.S.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 10, 2014. Respondent made its Return and Motion to Dismiss on or about October 21, 2015, requesting that the Application be summarily dismissed based upon the expiration of the statute of limitations, the presumption against successive PCR applications, does not present a valid claim regarding newly discovered evidence, and is barred by the doctrine of laches.

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 August 27, 2015 and filed August 31, 2015, provisionally denying and dismissing this action, while giving the Applicant twenty (20) 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 September 18, 2015, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant filed a document titled "Applicants Response to Respondent Return and Motion to Dismiss and Applicants Motion for Order for Default Judgment Against Response" on September 1, 2015, in which Applicant requests denial of Respondent's Return and Motion to

Dismiss and order for default judgment against Respondent for the relief in Applicant's PCR application.

On September 18, 2015, Applicant filed a document titled "Response to Conditional Order of Dismissal," in which Applicant again requests a default judgment; claims invalid proceeding and void indictments because Grand Jury didn't meet on the date on which indictments were signed; trial court did not have discretion to impose consecutive sentences upon Application for each charge because each offense was committed in the course of a single incident; and newly discovered evidence in that the State unlawfully impaneled a Grand Jury outside the jurisdiction of the Court of General Sessions of Richland County.

Additionally, on September 29, 2015, Applicant filed a "Notice of Motion – Motion for Writ of Mandamus Pursuant to S.C.R. Civ. Pro. 65(f)," in which Applicant requests that this Court issue an order for default judgment against the Respondent.

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.

This Court notes that Applicant continued to file responses in this matter, however Applicant has failed to file these responses within the twenty (20) day response period. Therefore, this Court will not address any issues raised in the subsequent filings.

Applicant has failed to make a *prima facie* showing that he is entitled to relief based on newly discovered evidence. Applicant alleges that he is in possession of documents that show that the Grand Jury did not meet during the time in which Applicant's indictments were signed. 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).

Applicant has failed to set forth facts sufficient to establish a claim for relief pursuant to after-discovered evidence. Specifically, Applicant has failed to establish why such alleged evidence could not have been discovered before the trial. Before a Court will hold an evidentiary hearing, an applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant has failed to make such a *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, this Court finds he is not entitled to an evidentiary hearing in the matter.

Furthermore, this Court interprets Applicant's allegation that the Grand Jury did not meet during the time his indictment was true-billed as an allegation that the circuit court lacked subject matter jurisdiction due to the Grand Jury allegedly not meeting. Defects in the indictment do not affect subject matter jurisdiction. However, an Applicant may challenge the subject matter jurisdiction of the trial court and such a claim may be raised at any time. Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777. The circuit court's obviously have subject matter jurisdiction to try criminal matters. Therefore, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the Circuit Court had subject matter jurisdiction.

The Court submits further that a challenge to the legality and sufficiency of the process of the state grand jury does not implicate the subject matter jurisdiction of the circuit court. Evans v. State, 363 S.C. 495, 509-10, 611 S.E.2d 510, 518 (2005). Further, a defendant must challenge

the legality and sufficiency of the process before the jury renders a verdict in order to preserve the issue for appellate review. Id. The regularity of grand jury proceedings is presumed absent clear evidence to the contrary. Id. at 514, 611 S.E.2d at 520.

The chief administrative judge for each circuit schedules terms of the grand jury in each county. The Applicant has failed to sufficiently challenge the legality and sufficiency of the Horry County Grand Jury process. Further, the Applicant has failed to provide any evidence that the Grand Jury did not convene in April 2000 as indicated on his true-billed indictment. Because the Applicant has failed to state with any specificity the evidence supporting his claim, this Court summarily dismisses this allegation with prejudice.

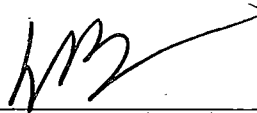
This Court also denies Applicant's motion for default. For an applicant to be granted default judgment in post-conviction relief, he must show prejudice from the State's delay in failing to timely answer his Application. See Kneece v. State, 269 S.C. 177, 236 S.E.2d 745 (1977); Herring v. State, 262 S.C. 597, 206 S.E.2d 885 (1974). To show prejudice, an Applicant must show that his application has merit. Herring, 262 S.C. at 598, 206 S.E.2d at 886. Furthermore, compliance with the statutory time limits is discretionary with the trial court. Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973). This Court finds that Applicant has failed to demonstrate the requisite prejudice or merit to his application. Therefore, the motion for default judgment is denied. Similarly, this Court finds that the issuance of this order moots all remaining other motions and petitions from Applicant upon which judgment has not yet been made. These are, accordingly, denied.

IT IS THEREFORE ORDERED that Applicant's motion for default 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 28 day of Aug, 2016.



DEANDREA G. BENJAMIN
Chief Judge for Administrative Purposes
Fifth Judicial Circuit

Columbia, South Carolina.

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

Case No.: 2014-CP-~~07-0118~~
40-3787

CONDITIONAL ORDER OF DISMISSAL

v.

Respondent.

RECEIVED
JUL 31 2015
JEANETTE M. McBRIDE
C.C.P.
on motion relief
G.S.
sting summary

Procedural History

¹ Applicant was incarcerated on other convictions not challenged in this PCR action when these charges arose from an incident at the Broad River Correctional Institution.

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~~S.C. SUPREME COURT~~

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

Kevin #164920 Smith

CASE NUMBER: 2014CP4003787

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 31 August 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Kevin #164920 Smith

James Clayton Mitchell III

Kevin #164920 Smith

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

First PCR Application (2001-CP-40-3759)

On September 10, 2001, Applicant filed his first application for post-conviction relief,² alleging he was being held unlawfully for the following reasons:

1. Trial counsel was ineffective for failing to disclose a possible conflict of interest since he was representing the South Carolina Department of Corrections in another case involving allegations of abuse by a correctional officer.
2. Trial counsel was ineffective for failing to request that a sleeping juror be individually *voir dired* to determine whether she was, in fact, sleeping during the Applicant's trial.
3. Trial counsel was ineffective for failing to request a jury charge wherein the jury would have been instructed that they could only find the Applicant guilty of the crimes that were a natural or probable consequence of the acts actually agreed on by the Applicant and his co-defendants.
4. Trial counsel was ineffective for failing to adequately explain the elements of assault and battery with intent to kill.
5. Trial counsel was ineffective for failing to object to the evidence presented at trial.
6. Trial counsel was ineffective for failing to adequately prepare for trial.
7. Trial counsel was ineffective for failing to object to a witness' testimony.
8. Trial counsel was ineffective for failing to object to the introduction of photographs depicting damage to the victim's body.
9. Trial counsel failed to object to the non-disclosure of pretrial of certain exculpatory evidence that would have been beneficial to Appellant.
10. Attorney-Client privilege violated by prison security cameras taping conversation between Applicant and attorney.

Respondent made its return on July 17, 2002. An evidentiary hearing into the matter was convened on December 3, 2003, at the Richland County Courthouse. Applicant was present and represented by Tara Dawn Shurling, Esquire. By Order dated June 18, 2004, the Alison Renee Lee, denied and dismissed the application with prejudice.

Applicant filed a timely notice of appeal to the South Carolina Supreme Court by and through Ms. Shurling on July 14, 2004. The appeal was perfected by the filing of a Johnson³ petition for writ of certiorari by Robert M. Pachak, Esquire of the South Carolina Office of Appellate Defense on November 8, 2004. The petition was denied and Mr. Pachak was relieved

² This was Applicant's first application regarding these charges. He had filed two (2) previous applications regarding his initial commitment that were merged into one (1) case. See Smith vs. State, 1995-CP-42-1221.

³ Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

by an order dated January 6, 2006, with the remittitur issued on January 24, 2006.

Current Application

In his second and current application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reason:

1. "Convictions are invalid under South Carolina Code Annotated § 17-25-50 1976, thus entitling vacation of sentence; resentencing or applicants released..."

This claim is interpreted to have elements of ineffective assistance of counsel and newly discovered evidence. Before this court are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the Department of Corrections, record from Applicant's previous PCR proceedings, and the current application. Respondent made a timely Return and Motion to Dismiss, asking this Court to dismiss the application as successive and untimely.

FINDINGS OF FACT AND CONCLUSIONS 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), SCRPC. 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

This Court finds Applicant's current application must be dismissed because it is successive to his previous applications for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). The relevant statute provides

[a]ll 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 (2014). Under this statute, successive post-conviction relief applications are forbidden unless an applicant 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 392 (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 an allegation could have been raised in a previous application, then the applicant may not raise it in successive applications. Id. Courts "will not engage in an exploration of why the grounds were not raised." Id. ("[I]t is sufficient that they could have been raised, but were not."). The applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant could have raised the ground for relief alleged in this application in his prior post-conviction relief application. Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, this Court finds summary dismissal of the application appropriate because it is successive.

Statute of Limitations

This Court further finds that this Application for post-conviction relief must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-

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Conviction Procedure Act. S.C. Code Section 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, 469 S.E.2d 606 (1996). Applicant's conviction was affirmed on September 7, 2000. He therefore had until September 8, 2001 to timely file this application. This application was filed on June 10, 2014, which was nearly thirteen (13) years after the statutory filing period had 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, 611 S.E.2d 494 (2005). In addition, Courts are authorized 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." § 17-27-70(c). Therefore, this Court finds summary dismissal of this application is appropriate for failure to file within the time mandated by the Post-Conviction Procedure Act.

Newly Discovered Evidence

This Court also finds Applicant's claim of alleged "newly-discovered evidence" is extremely vague and fails to make a *prima facie* showing that he is in actual possession of such evidence or how that evidence likely would have changed the outcome at trial. While under Section 17-27-45(c), a newly-discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence *could have been* ascertained, Applicant has failed to set forth with any specificity what the evidence is, how it would have affected the outcome if used at trial, or why such alleged

evidence was not readily discoverable at the time of trial or his previous PCR action. Before a Court will hold an evidentiary hearing, the Applicant must make a prima facie showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has entirely failed to make such a *prima facie* 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 Court finds the matter must be summarily dismissed.

Laches

In addition to the prior grounds, the Court finds this action is barred under the doctrine of laches. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. See McElrath v. State, 276 S.C. 282, 284, 277 S.E.2d 890, 891 (1981). 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." Id. (citing Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979)). Thus, the doctrine of laches bars any an action where the applicant has failed to exercise his rights for an unreasonable period. Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002) (quoting Hallums v. Hallums, 296 S.C. 195, 371 S.E. 525 (1988)); see also RWE NUKEM Corp. v. ENSR Corp., 373 S.C. 190, 199, 644 S.E.2d 730, 734-35 (2007) ("Laches connotes not only an undue lapse of time, but also negligence and opportunity to have acted sooner." (citing Chambers of South Carolina, Inc. v. County Council for Lee County, 315 S.C. 418, 434 S.E.2d 279 (1993))).

Applicant filed this current application approximately thirteen (13) years after his conviction was affirmed. The Applicant's delay has greatly prejudiced both parties' ability to

litigate this action. Records and exhibits from the trial may no longer be available. See, e.g. Rule 607(i), SCACR (court reporter only required to retain records for five years). The State should not be called upon to defend the constitutionality of convictions after such a long delay. See Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) ("Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice."). Therefore, the Court finds this action should be dismissed based on the doctrine of laches.

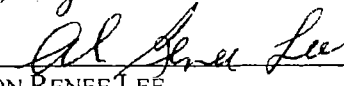
CONCLUSION

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 twenty (20) 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 Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Jessica E. Kinard, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

Applicant is cautioned that his response to this order must be actually received by the Richland County Clerk of Court and opposing counsel within twenty (20) days, and his failure to timely file and serve any response will result in the Court not considering any issues raised therein.

AND IT IS SO ORDERED this 27th day of August, 2015.


ALISON RENEE LEE
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE, CLERK OF COURT

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

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OCT 14 2016

P.C.I. MAILROOM

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NOV 04 2016

S.C. SUPREME COURT

KEVIN SMITH, [REDACTED]
PERRY CORRECTIONAL INSTITUTION
430 OAKLAWN ROAD
PELZER SC 29669

D24

Mr. KEVIN SMITH #164920,

PCI-S.M.II-D-Z #4,

#430 OAK LAWN ROAD,

PELZER, SOUTH CAROLINA,

#29669,

RECEIVED

NOV 04 2016

S.C. SUPREME COURT

RECEIVED

OCT 31 2016

PCI Mailroom

THE SUPREME COURT OF SOUTH CAROLINA

DANIEL E. SHEAROUSE, CLERK OF COURT,

P.O. Box # 11330,

COLUMBIA, SOUTH CAROLINA,

#29211,

"LEGAL MAIL ONLY"

1 OF 7 ENVELOPES