

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Marlboro County
Court of Common Pleas
The Honorable Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2015 – 000460
Lower Court Case No. 2013-CP-34-0089

RECEIVED
JAN 13 2017
S.C. SUPREME COURT

ALFONSO STATON, #241380,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

SUPPLEMENTAL APPENDIX

TRISTAN SHAFFER
225 Columbia Avenue
Chapin, SC 29036

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHANNA C. VALENZUELA
Assistant Attorney General
SC Bar #79834

Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

96-984

OFONZO STATON
LECI/SN/#241380
990 WISACKY HWY.
BISHOPVILLE, SC 29010

APRIL 28, 2009

HON: WILLIAM B. FUNDERBURK
CLERK OF COURT, MARL. CO.
PO DRAWER 996
BENNETTSVILLE, SC 29512

RE: OFONZO STATON vs. STATE, et. al., 2009, see ENCLOSED MATTERS.

DEAR MR. FUNDERBURK,
PLEASE FIND ENCLOSED FOR YOUR FILING MY MOTION AND THE CERTIFICATE OF SERVICES FOR THE PROOF OF SERVING THE RESPONDENT OF THIS URGENT AND RESPECTFUL MATTERS, I ALSO ENCLOSED ATTACHED TO MY PLEADING FILED A COPY OF THE DOCUMENTS THAT YOU HAVE IN YOUR FILES AS THEM BEING THE ORIGINALS TO ALL EVIDENCE MATTERS.

THANKING YOU IN THE ADVANCE FOR YOUR ATTENTION GIVEN TO THIS CRUX MATTERS AND I LOOK FORWARD IN HEARING FROM YOU IN THIS VERY NEAR FUTURE.

NOTE: PLEASE RETURN A CLOCK FILED COPY TO ME IF THERE IS NOT ANY RESTRICTIONS APPLICABLE TO MY MATTERS FILED TO THIS RESPECTFUL COURT.

AGAIN THANK SO VERY MUCH YOUR HONOR.

APRIL 28, 2009

RESPECTFULLY SUBMITTED,

ENCLOSURES:

Sl. Ofonzo A. Staton

OS/cm

OFONZO STATON
990 WISACKY HWY.
BISHOPVILLE, SC 29010
pro se PETITIONER

cc: HON FUNDERBRK
HON P.M. BURCH
HON SOLIC.
SCCA OFFICE

FILED
2009 APR 6 PM 3 09
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

OFONZO STATON
LECI/SN/241380
990 WISACKY HWY
BISHOPVILL, SC 29010

APRIL 28, 2009

4TH JUD. CIR. SOLIC.
PO BOX 1175
BENNETTSTVILLE, SC 29512

FILED
2009 MAY 6 PM 3 1
WILLIAM B. FUNDENBERG
CLERK OF COURT
MARLBORO COUNTY, S.C.

RE: SEE STATE V. STATON, 1996 to be INCORP. TO 2009 mfntboade, et

DEAR MR. *Rogers*

PLEASE FIND ENCLOSED THE FILED MOTION TO THIS 4th JUDICIAL COURT CIRCUIT FOR THE PROMPT AND ENTITLED ADJUDICATION TO IT AS ENTITLED.

ALSO SEE ALL DOCUMENTS FILED ACCORDINGLY AND APPROPRIATELY TO THE PROCEDURAL AND DUE PROCESS, IT IS ALSO SHOWN THAT THIS MATTERS TO THE RESPECTFUL COURT DOES COMPEL YOU TO PROCURE THE RESPECTFUL RECORDS FROM THE CUSTODIAL RECORDS KEEPER OF THIS PARTICULAR MATTERS, AND IT IS FURTHERED UPON YOU TO SEE THAT THE SC RULE 5, SCRSCRIM.P AND THE RULE 26, SCRCP, IS IN THE FULL EFFECTS DUE TO IT IS MY ENTITLEMENT TO ALL DOCUMENTS FILED TO THIS CASE MATTERS AND IT IS MY SOLE RIGHTS TO EXERCISE MY RIGHTS RATHER THEY ARE THE SILENCED ARE EXPRESSED BY AND THROUGH THE RESPECTFUL RECORDS OF THIS COURT AND YOUR OFFICE AS WELL. IT IS MY CONTENTIONS AS WELL THAT THIS OFFICE IS TO CORRESPOND WITH ME IN REGARDS TO MY MOTION AND NOT NO OTHER UNTIL THE COURT HAS FOUND FOR IT TO DONE IN OTHER FORMATS, THIS RIGHT ENFORCED IS BASED UPON THE PRIOR MATTERS ADJUDICATED BEFORE THE COURT IN REGARDS TO §17-27-10 thru 160, et. al., AND HAVING THIS ISSUE EXPLICITLY STATED TO THE COURT IT IS ADVISED THAT THIS COURT DO NOT CAUSE ANY FURTHER CONFLICT TO THE COURT TO RENDER THE ENDS OF JUSTICE TO THIS CASE MATTERS BEFORE.

PLEASE PROVIDE TO A COPY OF THIS MATTERS FILED TO YOUR OFFICE RECORDS OF THIS CASE MATTERS AS SOON AS PRACTICAL, I DO THANK YOU IN THE ADVANCE FOR YOUR TIME GIVEN TO MY MOTION.

IF YOU HAVE ANY QUESTIONS PLEASE DO NOT HESITATE TO CONTACT ME AT THE ADDRESS ABOVE AND BELOW STATED AND I WILL REPLY ASAP.

APRIL 28, 2009

ENCLOSURES:

OS/om

RESPECTFULLY,

S/ Ofonzo A. Staton
2

cc: HON SOLICITOR

OFONZO STATON
LECI/SN/#241380
990 WISACKY HWY.
BISHOPVILLE, SC 29010

APRIL 28, 2009

HON: PAUL M. BURCH
SEAT #1 CIRCUIT JUDGE
FOURTH JUDICIAL CIR.
PO BOX 276
PAGELAND, SC 29728

RE: STATE V. STATON, INCORP. TO ENCLOSED PLEADINGS FILED FOR NEW TRIAL MOTION.

DEAR JUDGE BURCH,

PLEASE FIND ENCLOSED MY MOTION FILED IN THE CLERK'S OFFICE OF MARLBORO COUNTY FOR A NEW TRIAL BASED UPON AFTER TRIAL DISCOVERED EVIDENCE, AND AS YOU WILL FIND ENCLOSED INCLUNED THE CERTIFICATES OF SERVICE TO THE SOLICITOR AND AS APPLICABLE TO ENSURE THAT THE SOLICITOR'S OFFICE HAS BEEN SERVED WITH THE SAME FOR THE ENSURING AS WELL TO RECEIVE ANSWERS.

JUDGE BURCH AS YOU DO KNOW THE HONORABLE CHIEF JUSTICE TOAL HAS STATED IN THE CLARIFICATION OF THE RULES APPLICABLE TO FILING MOTIONS AS POST-TRIAL OF THIS CASE IT IS REQUIRED TO FILE COPY TO THE CHIEF ADMINISTRATIVE JUDGE OF THE CIRCUIT AS WELL TO THE CLERK SO THAT YOU AS THE CHIEF WILL BE MADE AWARE OF THE PLEADINGS SO THAT THEY WILL BE ADJUDIATED UPON AS PROMPTLY AS DEEM TO YOU ASSIGNMENTS.

THANKING YOU IN THE ADVANCE AND I RESPECTFULLY APPRECIATE YOUR ATTENTION GIVEN TO MY MATTERS IN THE ADANCE.

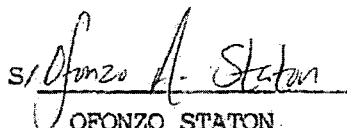
APRIL 28, 2009

RESPECTFULLY SUBMITTED,

ENCLOSURES:

OS/cm

cc: HON P.M. BURCH
HON SOLICT.
HON CLERK
SCCA
FILES/OS


OFONZO STATON
990 WISACKY HWY.
BISHOPVILLE, SC 29010
pro se PETITIONER

FILED
2009 APR 6 PM 3 10
WILLIAM B. FUNDENBERG
CLERK OF COURT
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF MARLBORO) FOURTH JUDICIAL CIRCUIT
) CASE NO. 1996-GS-34-0984
OPONZO STATON, #241380,)
PETITIONER,)
))
V.)
) >>> MOTION FOR NEW TRIAL BASE UPON AFTER
STATE OF SOUTH CAROLINA,) TRIAL DISCOVERY, et. al.,
RESPONDENT.) RULE 29(b), SCRCrim.P.
_____)

COMENOW THE ABOVE NAMED PETITIONER BEFORE THIS HONORABLE COURT BY WAY OF A MOTION FOR A NEW TRIAL BASED UPON DISCOVERY EVIDENCE IN THE ABOVE CAPTION CASE PRIOR HEARD IN THE MARLBORO CO. GEN. SESSIONS COURT.

PROCEDURAL HISTORY

PETITIONER OPONZO STATON, #241380, WAS INDICTED BY THE MARLBORO COUNTY GRAND JURY AT THE DECEMBER 1996 TERM OF GENERAL SESSIONS COURT FOR KIDNAPPING(1996-GS-34-0984, MURDER(0984), CSD(0984, AND CRIM. CONSPIR.(0984) @ 4 COUNTS(CHARGES), PETITIONER WAS BY WAY OF A TRIAL BY A JURY AND FOUND GUILTY FOR KIDNAP., MURDER, AND CRIM. CONSPIRACY ON MARCH 18, 1997, AND SENTENCED BY JUDGE E.B. COTTINGHAM, THE PETITIONER WAS REPRESENTED BY THE ESQUIRE WILLIAM B. ROGERS, Jr., ESQ., AND THE STATE WAS REPRESENTED BY THE (FOURTH JUD. CIR.) SOLICITOR OFFICE, etc., PETITIONER APPEALED HIS CONVICTIONS TO THE COURT OF APPEALS, SEE STATE V. STATON, OP. NO. 2001-UP-478(S.C. Ct. App. filed Nov. 8, 2001), WHEREAS THE CT. APP. AFFIRMED PETITIONER'S CONVICTIONS, THE PETITIONER FILED A POST CONVICTION RELIEF APPLICATION ON JULY 7, 2003(SEE 2003-CP-34-0244), THE PETITIONER'S PCR EVIDENTIARY HEARING WAS HELD BY THE DARLINGTON COUNTY COURT ON JANUARY 11, 2005, PETITIONER WAS REPRESENTED BY THE PCR COUNSEL CANDICE A. LIVELY, ESQ., AND THE STATE WAS REPRESENTED BY THE OAG KAREN C.

FILED
2008 MAY 6 PM 3:00
WILLIAM B. FUNDENBERG
CLERK OF COURT
MARLBORO COUNTY, SC

RATIGAN, ESQ., ASST. ATTY. GENERAL, THIS HEARING WAS HELD IN THE PRESIDING OF JUDGE MILLING, THE PETITIONER WAS DENIED RELIEF BY THE ORDER OF DISMISSAL ISSUED BY JUDGE MILLING ON SEPTEMBER 16, 2005, THE PETITIONER FILED AN APPEAL BY THE RULE 227, SCACR, WRIT OF CERTIORARI TO THE SC SUPREME COURT, THAT OF WHICH WAS PERFECTED BY APPELLATE DEFENSE WANDA H. CARTER, ESQ., THE SUPREME COURT DISMISSED THE APPEAL BY WAY OF AFFIRMING THE PCR JUDGE ORDER OF DENYING RELIEF TO THE PETITIONER PCR CASE MATTER, SEE AFONSO STATON V. STATE, (2003-CP-34-0244), THEREFORE, THE PETITIONER HAVE COMMENCED THE RESPECTFUL MOTION FOR A NEW TRIAL BASE UPON THE AFTER TRIAL DISCOVERED EVIDENCE IN PETITIONER'S CASE MATTERS: THERETO HAVING THE FOLLOWING FACTS PRESENTED IN PETITION:

INTRODUCTION OF AFFIDAVIT FOR PETITIONER'S MOTION

PETITIONER O. STATON, RESPECTFULLY MOVES IN THIS MOTION BY THE PROBATIVE VALUED DOCUMENTS PROVIDED TO HIM FROM THE INITIAL APPOINTED TRIAL COUNSEL WILLIAM B. ROGERS, Jr., ESQ., AND THE DEFENDANT WHO CONFESSED TO THE CRIMES. INITIALLY HAVING THIS MATTERS DISCERNED DURING TRIAL AS IS DISCLOSED CITED IN THE TRIAL RECORDS, AS THE PETITIONER EXCLUSIVELY MAKES THIS MATTERS KNOWN TO THE RESPECTFUL COURT HE EXPLICITLY STATES CLEARLY THAT THE DOCUMENTS ARE SELF EXPLANATORY AND THE STANDARDS FOR THEM TO BE REVIEWED BY ARE ABSOLUTELY AND CLEAR TO DONE BY THE SC RULES OF EVIDENCE AND IS NOT UPON NO DISCRETION OF THE RESPONDING RESPONDENT DUE TO THE FACTS THAT PETITIONER'S CASE MATTERS ARE FROM A TRIAL BY A JURY AND IT IS IN THE ACCORDINGS OF APPLICABLE LAWS THAT THE JURY IS THE FACT FINDERS AND AS IT WAS IN ORIGINAL TRIAL THE JURY HAD THE FACTS FINDING PROCESS EXERCISED AND THEREFORE THIS MATTER IS NOT A DECLINED ONE TO BE SHORT OF THE FACTS FINDING PROCESS ACTIVATED UPON IT, THE EVIDENCE AND THE DOCUMENTS DESCRIBING THE THAT THERE WAS POTENTIAL VIOLATIONS OF THE PETITIONER'S DUE PROCESS RIGHTS THAT LEAD TO THE UNFORESEEN EXISTED ISSUES IN THE REGARDS TO A CONFLICT OF INTEREST, SEE THE APPOINTED COUNSEL WAS ONE OF THE SOLICITOR'S OFFICE(JAY HODGE, FORMER SOLICITOR), WILLIAM B. ROGERS,Jr.,esq., WHOM WAS AN

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WILLIAM B. FURNESS
CLERK OF COURT
MARLBOROUGH COURT

EMPLOYEE OF THE SOLICITOR'S OFFICE AND UNDER THE DISCERNED MATTERS BEFORE THIS HONORABLE COURT ARE EXPLICITLY THE ONE THAT A CONFLICT OF INTEREST EXISTED BEFORE THE COURT AND THE DOCUMENTS SUBMITTED TO IT UNDER THE TITLES OF EXHIBITS NO. 1, SEE AS ATTACHED, THE PETITIONER ALSO MAKES A PRIMA FACIE SHOWING THROUGH THE DOCUMENTS AS EXHIBITS PROFFERED TO THIS COURT THE THEY ARE FAVORABLE EVIDENCE TO THE PETITIONER AND THAT THE PETITIONER TAKES HIS STANCES AND MAKE CONTENTIONS THAT THE FACTS THAT THE DOCUMENTS WAS NOT AVAILABLE TO HIM BY THE DUE DILIGENCE EXERCISED AND IF THE CONFLICT OF INTEREST DOCUMENTS AND THE DEFENDANT'S CONFESSIONS STATEMENTS WERE AVAILABLE HE WOULD HAVE A DIFFERENT OUTCOME TO HIS TRIAL AND AS HAVING THESE DOCUMENTS THAT BEHOLDS THE FAVORABLE EVIDENCE, IT IS THE POSITION OF THE PETITIONER THAT IT IS A FACT THAT THE CURRENT OUTCOME OF THE PETITIONER'S JURY TRIAL IS NOT RELIABLE AND IT IS CONCLUDED THAT ALL ELEMENTS OF THE EVIDENCE SUBMITTED TO THIS COURT IS A BARING ON THE FACTS OF THE CASE MATTERS AND IT DOES DIRECTLY EXONERATES THE PETITIONER FROM THE CONVICTIONS POINT BLANK.

RE: BY FACTS THE PETITIONER HAD HIS MATTERS DISCERNED AT TRIAL
 SEE: TRIAL BY JURY AND DISCOVERY PROCESS EXERCISED BY TRIAL
 COUNSEL, MADE BY: STATE GIVING DISCLOSURES TO DEFENDANT AND THE
 ORIGINAL TRIAL RECORDS GIVES CONFIRMATION TO ALL FACTS AS THE
 ORIGINAL RECORDS OF THE HONORABLE CLERK OF COURT WILL GIVE
 CONFIRMATION, THEREFORE, MAKING IT CONCLUSIVELY SHOWN THAT THE
 PETITIONER'S MATTERS ARE IN THE ACCOUNTABLE CLAIMS THAT QUALIFIES
 AS ONE THAT ARE TO BE REVIEWED ACCORDINGLY DESCRIBED TO BE FROM
 THE STANCES TO HAVE ALL LAWS STATUTES APPLICABLE TO HIS CASE
 MATTERS IN THE BEHALF OF THE PETITIONER AS IT IS PRESENTED BY PRO
 SE STATUS, THE PETITIONER FURTHER SHOWS THAT HE DID SUBMIT THE
 RECORDS FOR AUTHENTICATION AND COMPLIED TO THE RULES OF EVIDENCE
 SO THAT THE DOCUMENTS WOULD BE ACCEPTABLE THROUGH ITS PROBATIVE
 PROCESSES, SEE ATTACHED: EXHIBITS
 NO. 1 thru 4 . THE PETITIONER
 TAKES THE STANCES AS HE MOVE IN THIS COURT BY AND THROUGH WELL
 SETTLED LAWS GIVING THE CLEAR AND DESCRIBED ELEMENTS THAT
 WARRANTS FOR THIS MOTION, WITH THE USAGES OF PRESENTED AFTER
 TRIAL DISCOVERED EVIDENCE BY IT FACTUAL SHOWING, WILL CHANGE THE

FILED
 WILLIAM B. FUNDEN
 CLERK OF SUPERIOR COURT
 MARLBOROUGH COUNTY, N.H.
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RESULTS OF A NEW TRIAL. THE PETITIONER TAKES THE STANCE, HAD THE STATEMENTS OF THE NAMED DEFENDANT CONFESSIONS BEEN PROCURED BY THE TRIAL COUNSEL OF THE CONFESSING DEFENDANT AND THE MATTERS WITH THE PETITIONER'S TRIAL COUNSEL WOULD HAVE BEEN ADJUDICATED UPON BY THE TRIAL JUDGE THE FACT FINDER WOULD NOT HAVE FOUND HIM GUILTY OF CHARGES AGAINST HIM, THE PETITIONER SHOWS SEVERAL DEPRIVATIONS OF HIS DUE PROCESS AND EQUAL PROTECTION "ALL OF WHICH BY THE UNITED STATES AND SOUTH CAROLINA CONSTITUTIONS GUARANTEES, SEE AT EVANS V. GUNTER, 294 SC 525, 529, 366 SE2d 44, 46 (Ct. App. 1988): IT IS ESSENTIAL TO THE CONSIDERATION OF A MOTION FOR A NEW TRIAL BASED UPON AFTER DISCOVERED EVIDENCE THAT SUCH A MOTION SHALL BE SUPPORTED BY AN AFFIDAVIT SUBMITTED BY THE PETITIONER/ACCUSED; HIMSELF UNLESS A VALID AND SUFFICIENT REASON FOR OMISSION TO FILE SUCH AN AFFIDAVIT IS SHOWN. THE AFFIDAVIT OF THE PETITIONER /ACCUSED MUST SHOW HE DID NOT KNOW SUCH EVIDENCE EXISTED AT THE TIME OF HIS TRIAL, AND HE USED DUE DILIGENCE TO DISCERN SUCH EVIDENCE OR HE COULD NOT HAVE DISCOVERED IT BY THE EXERCISE OF DUE DILIGENCE; PETITIONER TAKES POSITIONS BY THE HOLDINGS IN CASES: SEE STATE V. DEANGELIS, 256 SC 364, 182 SE2d 501, 502, holding; PETITIONER BRINGS FOURTH THE CONTENTIONS OF THE TIMELESS PROCEDURES IN THIS MATTER OF HIS MOTION FOR A NEW TRIAL BASED UPON AFTER DISCOVERY EVIDENCE. THE TIMELESS FACTORS ARE: PER SC CODE §17-23-110; SEE STATE V. WILLIAMS, 108 SC 95, 93 SE2d 1006 (1917), see at SAM V. HOVER, 33 SC 401, 128 SE2d 417 (1960); CATOE V. STATE, 241 SC 351, 128 SE2d 417 (1960); FILED FOR WILLIAM B. FURD TARRANT CLERK OF SUPERIOR COURT HARLEBORO COUNTY, MASS. 2009 JUN 6 AM 3 10

TIMELESS RE: IT IS FACTUAL INTERPRETATION THAT THIS MOTION FOR A NEW TRIAL BASED UPON AFTER DISCOVERY EVIDENCE DOES NOT HAVE A TIME LIMIT TO WHEN THE MOTION BE MADE, AND ACCORDINGLY TO THE APPLICABLE RULES OF THE SC RULES OF CRIMINAL PROCEDURES. IT PROVIDES THAT A MOTION FOR A NEW TRIAL BASED UPON AFTER DISCOVERY EVIDENCE MUST BE MADE WITHIN A REASONABLE PERIOD OF TIME AFTER THE DISCOVERY OF EVIDENCE IS MADE. THERE IS NO TIME LIMITATION WITHIN WHICH A MOTION FOR A NEW TRIAL BASED UPON AFTER DISCOVERY EVIDENCE MUST BE MADE. WHEREAS THE PETITIONER IS WELL WITHIN THE REASONABLE TIME PERIOD IN MOVING IN THIS COURT BY HIS MOTION FOR

A NEW TRIAL BASED UPON AFTER DISCOVERY EVIDENCE.

AFFIDAVIT BY PETITIONER

PETITIONER MAKES RESPECTFUL MOTION TO THIS COURT WITH A REASONABLE AND FACTUAL CAUSE PROVIDED THROUGH DISCOVERED EVIDENCE. PETITIONER'S POSITION IS PURSUANT TO HIS US AND SC CONSTITUTIONAL RIGHTS TO DUE PROCESS, THAT HE IS ENTITLED TO A FAIR TRIAL. THE PETITIONER WILL SHOW THIS COURT FACTS AS HE SUBMIT THIS MOTION FOR A NEW TRIAL. FIRST, THE PETITIONER WILL SHOW TH TCOURT THAT JOHNNY "RINGO" PEARSON CONFESSED HIS GUILT WHILE PROFESSING THE PETITIONER'S INNOCENCE THROUGH A TAPED, SIGNED AND NOTARIZED AFFIDAVIT, WHICH WAS GIVEN TO PETITIONER FROM THE DECLARANT. IF SUCH EVIDENCE WAS PRESENTED AT PETITIONER'S TRIAL, THE TRIER OF THE FACTS COULD NOT HAVE RENDERED A VERDICT OF GUILTY, BECAUSE OF THE DECLARANT'S CONFESSION OF GUILT. THIS SUBMITTED NOTARIZED AFFIDAVIT WAS DISCOVERED IN THE POST-TRIAL ERROR, AND IN NO WAY COULD HAVE BEEN UTILIZED AS TRIAL, OR AT OTHER POST-TRIAL HEARINGS, BUT IF IT WERE MADE AVAILABLE, THE OUTCOME OF PETITIONER'S TRIAL WOULD HAVE BEEN DIFFERENT, FURTHERMORE THE PETITIONER WILL SHOW THAT HE FORWARDED THE DOCUMENTS TO THE MARLBORO COUNTY CLERK OF COURT FOR THE AUTHENTICATION SO THAT IT COMPLIES WITH THE SC RULES OF EVIDENCE., SECONDLY, THE PETITIONER WILL SHOW THIS COURT THAT HIS TRIAL COUNSEL WILLIAM B. ROGERS, JR. WAS AN ACTIVE EMPLOYEE FOR THE FOURTH JUDICIAL CIRCUIT AS AN ASSISTANCE SOLICITOR DURING THE TIME OF HIS REPRESENTATION, THEREFORE CREATING A CONFLICT OF INTEREST. A CONFLICT OF INTEREST OCCURS WHEN A DEFENSE ATTORNEY PLACES HIMSELF IN A SITUATION INHERENTLY CONDUCIVE TO DIVIDED LOYALTIES, IF A DEFENSE ATTORNEY OWES DUTIES TO A PARTY WHOSE INTEREST ARE ADVERSE TO THOSE OF THE DEFENDANT, THEN AS ACTUAL CONFLICT EXIST. IN THE ABOVE CASE MATTER, THERE WAS AN ACTUAL

2009 MAR 30
 WILLIAM B. ROGERS, JR.
 CLERK OF COURT
 MARLBORO COUNTY, VA

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 6:39 AM

CONFLICT OF INTEREST, BECAUSE COUNSEL ROGERS BEING A SOLICITOR, BUT ACTING AS A DEFENSE ATTORNEY, DIVIDED HIS LOYALTIES, AND HE SHOULD HAVE BEEN RELIEVED AS REQUESTED. THE SIXTH AMENDMENT REQUIRES THAT A DEFENDANT MAY NOT BE REPRESENTED BY COUNSEL WHO MIGHT BE TEMPTED TO DAMPEN THE ARDOR OF HIS DEFENSE IN ORDER TO PLACATE THE OPPOSITE PARTY. TO ESTABLISH A VIOLATION OF THE SIXTH AMENDMENT (INEFFECTIVE ASSISTANCE OF COUNSEL OF RECORD) DUE TO A CONFLICT OF INTEREST ARISING FROM MULTIPLE REPRESENTATION, A DEFENDANT WHO DID NOT OBJECT AT TRIAL MUST SHOW AN ACTUAL CONFLICT OF INTEREST ADVERSELY AFFECTED HIS ATTORNEY'S PERFORMANCE. THERE WAS NO WAY THE PETITIONER COULD HAVE OBJECTED TO THIS ISSUE AT TRIAL, NOR COULD HE LITIGATED ON IT IN ANY POST-TRIAL HEARING(PCR), BECAUSE HE HAD NO KNOWLEDGE OF THIS CONFLICT OF INTEREST ISSUE UNTIL RECENTLY, WHICH WAS THROUGH MEMORANDUMS AND LETTER PROVIDED TO HIM FROM MR. ROGERS HIMSELF. A DEFENDANT NEED NOT TO DEMONSTRATE PREJUDICE IF THERE IS AN ACTUAL CONFLICT OF INTEREST, THE LETTER PROVIDED TO PETITIONER CONFIRMED THE MEMORANDUM, BUT IT ALSO CONFIRMED THAT THE PETITIONER DIDN'T HAVE THIS INFORMATION BEFORE FILING ANY POST-TRIAL MOTIONS, SO HE COULD HAVE SOUGHT RELIEF OF THE MATTER PERTAINING TO THIS ISSUE.

CONCLUSION

PETITIONER STATON, RESPECTFULLY DEMANDS FOR A NEW TRIAL BASED UPON AFTER DISCOVERY EVIDENCE MOTION SUBMITTED TO THIS COURT, IT IS THEREFORE PRAYED THAT THIS COURT SEE AS SUBMITTED THAT THE PETITIONER MAKES A PRIMA FACIE SHOWING TO THE COURT TO GRANT THE MOTION AS REQUIRED AND WARRANTED TO DO SO IN THIS PARTICULAR MATTER HAVING THAT THE TRIAL IS THE ONLY WAY TO RESOLVE SUCH MATTERS BEFORE THIS HONORABLE COURT, THEREFORE IT IS HEREBY REQUESTED BY THE PETITIONER PRO SE, ON THIS 28th DAY OF APRIL 2009.

RESPECTFULLY SUBMITTED,

S. Janzo A. Staton

FILED
 APR 6 PM 3:10
 WILLIAM B. FUND
 CLERK OF COURT
 MARLBORO COUNTY, MASS.

Mr. Ofonzo A Staton

OFONZO STATON

990 WISACKY HWY.

BISHOPVILLE, SC 29010

pro se PETITIONER

SWORN AND SUBSCRIBED BEFOREME

ON THIS *21* DAY OF APRIL 2009

Cynthia J. Miller
notary public

MY COMMISSION EXPIRES: *October 31, 2015*

FILED

2009 MAY 6 PM 3 10

WILLIAM B. FURDERBORK
CLERK OF COURT
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY MARLBORO) FORTH JUD. CIR.

OFONZO STATON, 241380) CASE NO.:1996-GS-34-0984
PETITIONER,)

v.)>>>>PROOF OF SERVICE

STATE OF S.C.,)
RESPONDENT.)

RECEIVED

DATE

I, OFONZO STATON, CERTIFY THAT I SERVED THE RESPONDENT(4th JUDICIAL CIRCUIT SOLICITOR'S OFFICE AT THE ADDRESS: SOLICITOR'S OFFICE, PO BOX 1175, BENNETTSVILLE, SC 29512 , WITH A COPY OF MOTION FOR A NEW TRIAL BASED UPON AFTER TRIAL DISCOVERED EVIDENCE, THROUGH THE UNITED STATES MAIL, IN A POSTAGE PREPAID ENVELOPE, AND PERSONALLY DELIVERED TO THE POSTAL DIRECTORS MS. WHITNEY AND SIMON FOR ALL VERIFICATIONS AND ALL WAS DONE ON THIS 20th DAY OF APRIL 2009.

APRIL 20, 2009

S/ James A Staton
OFONZO STATON
990 WISACKY HWY.
BISHOPVILLE, SC 29010

FILED
2009 APR 20 6 PM 3 10
WILLIAM E. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

MEMORANDUM

TO: FILE
FR: WILL *WBR*
RE: ALPHONSO STATON
DA: JANUARY 30, 1997

ON JANUARY 17, 1997, JUDGE SMOAK ADVISED THE DEPUTY SOLICITOR GEORGE GREGORY THAT HE WOULD NOT ALLOW ANY OF THE SPECIAL PROSECUTORS/ASSISTANT SOLICITORS TO PROSECUTE IN ONE COUNTY AND DEFEND CRIMINAL CLIENTS IN ANOTHER COUNTY WITHIN THE FOURTH JUDICIAL CIRCUIT. IT WAS MY UNDERSTANDING THAT I WOULD BE UNABLE TO REPRESENT ANY CRIMINAL CLIENTS IN THE FOURTH JUDICIAL CIRCUIT (EITHER IN GENERAL SESSIONS COURT OR MAGISTRATES COURT OR MUNICIPAL COURT).

I PRESENTED SEVERAL MOTIONS TO BE RELIEVED AS COUNSEL TO JUDGE BROGDON IN DARLINGTON COUNTY ON JANUARY 20, 1997. JUDGE BROGDON ADVISED ME THAT I NEEDED TO APPEAR BEFORE JUDGE SMOAK TO RESOLVE THIS MATTER SINCE HE HAD ALREADY ADDRESSED THE ISSUE. THROUGH JAY HODGE, SOLICITOR, I WAS INFORMED THAT JUDGE SMOAK WANTED ME TO INFORM ALL OF MY CRIMINAL CLIENTS THAT I WOULD BE UNABLE TO REPRESENT THEM BECAUSE OF A CONFLICT OF INTEREST. I THEN NOTIFIED MY CLIENTS OF THIS DECISION.

ON JANUARY 28, 1997, AFTER NOTIFYING ALL OF MY CLIENTS, I APPEARED BEFORE JUDGE SMOAK IN DILLON COUNTY AND HE RELIEVED ME AS COUNSEL ON ALL OF MY CRIMINAL CASES. HE SIGNED AN ORDER ON JANUARY 29, 1997 RELIEVING ME AS COUNSEL ON ALL CRIMINAL CASES (SEE ATTACHED ORDER). I THEN ADVISED THE CLERK OF COURT'S OFFICE SO OTHER ATTORNEYS COULD BE APPOINTED TO REPRESENT THE CLIENTS I WAS RELIEVED FROM REPRESENTING. I WAS INSTRUCTED BY THE STAFF OF THE CLERK OF COURT IN MARLBORO TO LET JUDGE COTTINGHAM KNOW THAT I WAS RELIEVED AS COUNSEL FOR ALPHONSO STATON SINCE JUDGE COTTINGHAM HAD JURISDICTION OVER THIS CASE AND THE TRIAL WAS SCHEDULED FOR MARCH 3, 1997. I ADVISED LINDA MCCALL (JUDGE COTTINGHAM'S EXECUTIVE SECRETARY) AND SHE INFORMED JUDGE COTTINGHAM. JUDGE COTTINGHAM DISCUSSED THIS MATTER WITH JUDGE SMOAK.

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MAY 6 PM 3 10
B. FUNDERBURK
CLERK OF COURT
DARLINGTON COUNTY, S.C.

Exhibit # 1

ON THURSDAY, JANUARY 30, 1997, LINDA MCCALL CONTACTED ME BY PHONE AND ADVISED ME THAT JUDGE SMOAK AND JUDGE COTTINGHAM DECIDED THAT THERE WAS NO CONFLICT OF INTEREST IN THE ALPHONSO STATON CASE BECAUSE SOLICITOR RALPH WILSON FROM THE FIFTEENTH JUDICIAL CIRCUIT WAS PROSECUTING THE CASE. OUT OF AN ABUNDANCE OF CAUTION, I ONCE AGAIN APPEARED BEFORE JUDGE SMOAK (CHIEF ADMINISTRATIVE JUDGE FOR THE FOURTH JUDICIAL CIRCUIT) IN DILLON AND HE ADVISED ME THAT HE WAS NOT RELIEVING ME AS COUNSEL FOR ALPHONSO STATON BECAUSE THERE WAS NO CONFLICT OF INTEREST IN THIS CASE BECAUSE I WAS WORKING FOR THE FOURTH CIRCUIT SOLICITOR AND THE CASE WAS BEING PROSECUTED BY THE FIFTEENTH CIRCUIT SOLICITOR. THE ORIGINAL ORDER WAS AMENDED TO CONFORM TO JUDGE SMOAKS RULING.

MY MAJOR CONCERNS WITH REPRESENTING ALPHONSO STATON ARE AS FOLLOWS:

1. GREG OHANESIAN WAS RELIEVED FROM REPRESENTING A DEFENDANT IN THIS SAME CASE BECAUSE OF A CONFLICT OF INTEREST. SINCE I AM IN A SIMILAR SITUATION AS MR. OHANESIAN, EVEN IF THERE IS NOT A CONFLICT OF INTEREST, IT WOULD BE IMPROPER FOR ME TO CONTINUE REPRESENTING ALPHONSO STATON BECAUSE IT WOULD APPEAR IMPROPER AND PROVIDE MY CLIENT WITH GROUNDS FOR A POST CONVICTION RELIEF MOTION IF HE IS FOUND GUILTY.
2. IT IS MY UNDERSTANDING THAT REPRESENTATIVE DOUG JENNINGS WAS REPRIMANDED WHEN HE WAS AN ASSISTANT SOLICITOR FOR REPRESENTING A CRIMINAL IN ANOTHER CIRCUIT.

FILED
2009 MAY 6 PM 3 10
WILLIAM B. FINDERBUNK
CLERK OF COURT
MARLBORO COUNTY, S.C.

Exhibit #

ROGERS & MUNNERLYN, P.A.
ATTORNEYS AT LAW

Post Office Box 1175
207 West Main Street
Bennettsville, South Carolina 29512

William B. Rogers, Jr.
Elizabeth R. Munnerlyn

Phone: (843) 479-9577
Fax: (843) 479-0685

November 14, 2007

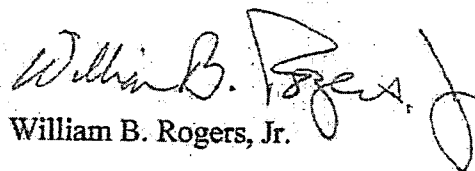
Ofonzo Staton #241380
L.C.I. Che. 5th 2213
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your letter dated 10/29/07

Dear Ofonzo:

Although I did not review your file before responding to your letter, I do recall the motion I filed. After I was appointed to represent you, I began working for the Fourth Circuit Solicitor's Office as an assistant solicitor. I filed the motion to make the court aware I was actually working as a prosecutor at the same time I was representing you. Greg Ohanesian, Esquire, was removed as attorney for one of your co-defendants because he was working for the Solicitor's Office. Since he was removed, I felt I needed to inform the Court that I was in a similar situation. However, Judge Cottingham did not agree and denied the motion. The memorandum you ask about was my way of documenting your file to reflect what occurred.

Yours truly,


William B. Rogers, Jr.

WBR.JR/wbr

Enclosure

Exhibit #2

FILED
2009 MAY 6 PM 3
WILLIAM B. FUNDEN
CLERK OF COURT
MARLBORO COUNTY

ROGERS & MUNNERLYN, P.A.
ATTORNEYS AT LAW

Post Office Box 1175
207 West Main Street
Bennettsville, South Carolina 29512

William B. Rogers, Jr.
Elizabeth R. Munnerlyn

Phone: (843) 479-9577
Fax: (843) 479-0685

November 11, 2008

Ofonzo Staton #241380
L.C.I. Che. 5th 2213
990 Wisacky Hwy.
Bishopville, SC 29010

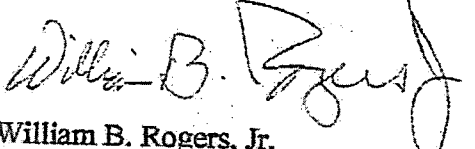
Re: Your letter dated 10/21/08

Dear Ofonzo:

Although I do not recall the exact date I began my employment with the Fourth Circuit Solicitor's office, it could not have been until Jay Hodge was sworn in as Solicitor. Jay would have been sworn in the first Wednesday after the second Tuesday in January. It would have probably been around January 15, 1997.

I did not review the record of your trial before I responded, however, it is my recollection that all motions were renewed during trial per Judge Cottingham. I cannot answer why you did not have the memo before you filed your PCR. The memorandum you refer to was not submitted to the Court. It was a memorandum to the file so I could remember what occurred.

Yours truly,


William B. Rogers, Jr.

WBRJR/

Exhibit #3

FILED
2008 NOV 6 PM 10
WILLIAM B. FURDELL, JR.
CLERK OF COURT
MARLBORO COUNTY

STATE OF SOUTH CAROLINA
County of Marlboro

Ofonzo A. Staton #241380

Applicant

vs.

State of South Carolina

Respondent

Case No. 96-GS-34-984

AFFIDAVIT

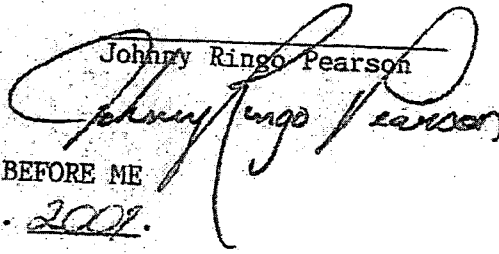
I, Johnny Ringo Pearson, in support of this motion, will give a statement of facts truthfully under the penalty of perjury.

FILED
2009 MAY 6 PM 3 10
WILLIAM J. FUNDENBUNK
CLERK OF COURT
MARLBORO COUNTY, S.C.

STATEMENT

The above defendant Ofonzo Staton, is innocent on all charges he is being confined for. I, Johnny Ringo Pearson, confessed to the crimes and I acted alone in doing so. I have admitted to doing wrong and those that have been punished for my actions shouldn't be held accountable for something he didn't do. So with my open confession Ofonzo Staton should not be incarcerated for a crime he knew nothing about.

Johnny Ringo Pearson



FILED
2009 MAR 26 PM 1 30
WILLIAM J. FUNDENBUNK
CLERK OF COURT
MARLBORO COUNTY, S.C.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 2 DAY OF Nov. YR. 2009.

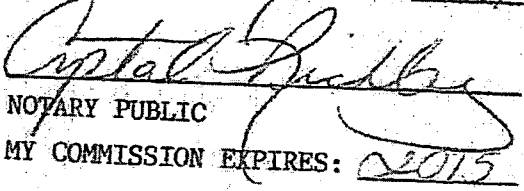

NOTARY PUBLIC
MY COMMISSION EXPIRES: 2015

Exhibit #4

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

In The Court of General Sessions
Fourth Judicial Circuit

Ofonzo Staton)
Applicant.)

1996-GS-34-0984

v.)

Motion to Alter or Amend Judgment
Pursuant to South Carolina Civil
Procedure Rule 59(e)

State of South Carolina)
Respondent.)

2012 JAN 26 PM 3:15
WILLIAM B. FUNBERG, JR.
CLERK OF COURTS
MARLBORO COUNTY, S.C.

FILED

On January 4, 2012 applicant was served with a copy of the "Denying applicant's motion for a new trial", in which Applicant filed pro se through the Courts of General Session for the Fourth Judicial Circuit. The order was signed by the Honorable Howard P. King on October 19, 2011. Applicant was served by an Institutional Officer at Lee Correctional on January 4, 2012. See: Exhibit #1. Also see: Houston v. Lack, 487 U.S. 266, 270-76 (1988). Applicant now moves to Alter or Amend the Honorable King judgment pursuant to SCRCP Rule 59(e).

In applicants 59(e) motion, applicant will like to present to this court attention that:

- (1.) The court failed to address an incorporate applicants pro-se rule 29(b) motion, and
- (2.) The court failed to apply the correct govern law to applicant's conflict of interest claim.

As the record will reflect, applicant filed a pro se motion pursuant to the SCRcrimp Rule 29(b) on April 28, 2009, which was dated, clock stamped and filed with the Marlboro County Clerk of Court on May 6, 2009 at 3:10 p.m. See: Exhibit #2. Applicant was eventually appointed counsel of Ms. Emily Crayton of the Fourth Circuit Public Defender Office. A hearing was conducted on October 6, 2011 at the Marlboro County Courthouse with the Honorable Howard P. King presiding, while Attorney Will Groves appeared for the applicant.

(1)

Attorney Crayton filed an amended 29(b) motion to applicant's pro se motion, only raising one issue. "a conflict of interest", which was heard and denied. Applicant position is that the court failed to incorporate the initial filing of applicant's pro se 29(b) motion. Applicant also points out that his strongest issue, whis the Actual Innocence claim was drafted by applicant in which Attorney Crayton never added into her amended motion of applicant's original 29(b) motion.

Applicant can only suggest to this court that for counsel failures to add the actual innocence claim to her amended 29(b) motion was, based on the fact that applicant's actual innocence claim was already well drafted in applicant's original pro se 29(b) motion, that was drafted by Applicant Staton. However, based on Attorney Crayton to not include apolicant's actual innocence claim in her amended 29(b) motion, the trial judge should have not been mislead or ignore that the actual innocence claim have not been presented properly when its filed in the original motion. See: Exhibit #2. Therefore, applicant ask this court to grant applicants 59(e) motion so that applicant's actual innocence claim can be preserve for a higher review.

Secondly. applicant argues that Judge King failed to apply the correct govern law in denving applicant's conflict of interest claim. Judge King denied the motion because he stated that, "the evidence presented was not considered after-discovered because it was in existence prior to trial". Applicant argues, indeed it was in existence; however. applicant was ignorance to it's existence which will make it a discovered evidence. Pursuant to State v. Hallcomb, 195 S.E. 2d 200, a similar motion was filed and denied because evidence was not in existence.

(2)

2012 JUN 26 PM 3 15
FILED
WILLIAM B. FINDERBURN
CLERK OF COURT
MARLBORO COUNTY, S.C.

at the time of the initial trial. Therefore, was not properly considered after-discovered evidence, but after created evidence. See: State v. DeAngelis. 182 S.E.2d 732. DeAngelis did not file his own affidavit setting forth such evidence, showing that he did not know of the existence of such evidence at the time of trial, resulted in a denial of the motion. However, in applicant's case, applicant filed his affidavit, along with documentations showing dilligence. which set him aside from Hallcomb and DeAngelis, which make his evidence after discovered. Credibility of after-discovered states that the court and it's judgment will not be disturbed except for error of law or abuse of discretion. In this case. it clearly shows that Judge King denied applicant's motion based on an error of law, because he fail to apply the correct governed law to applicant's claim.

CONCLUSION

For all the reason's applicant has stated in this motion, Applicant hope and prays this court will alter or amend judgment pursuant to South Carolina Civil Procedure Rule 59(e).

s/ Genzo A. Staton

Sworn to And Subscribed Before Me
This 20 Day of Jan 2012
Debra Jones

Notary Public For South Carolina
My Commission Expires On: 11-4-2015

Cc: The Honorable Howard P. King
The Honorable William Funderburk

FILED
2012 JAN 26 PM 3 15
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

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

Alfonso Staton, #241380,)

C.A. No. 2013-CP-34-00089)

Applicant,)

**CONDITIONAL ORDER)
OF DISMISSAL)**

v.)

State of South Carolina,)

Respondent.)
_____)

This matter comes before the court by way of an Application for Post-Conviction Relief filed April 26, 2013. The Court finds as follows:

I. PROCEEDURAL HISTORY

gub
Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of the Marlboro County Clerk of Court. The Marlboro County Grand Jury indicted the Applicant for kidnapping (1996-GS-34-0979, count 1), murder (1996-GS-34-0979, count 2), first-degree criminal sexual conduct (1996-GS-34-0979, count 3), and criminal conspiracy (1996-GS-34-0979, count 4). He was represented by William B. Rogers, Jr., Esquire.


After the State called the case to trial – the Applicant was tried jointly with five (5) co-defendants – the Applicant was found guilty of kidnapping, murder, and criminal conspiracy. On March 18, 1997, the Applicant was sentenced by the Honorable Edward B. Cottingham to life imprisonment for murder and a concurrent five (5) year sentence for criminal conspiracy.¹

¹ Applicant was not sentenced on the kidnapping conviction provision pursuant to S.C. Code Ann. § 16-3-910.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court affirmed the Applicant's convictions and sentences. State v. Staton, Op. No. 2001-UP-478 (S.C. Ct. App. filed Nov. 8, 2001). The South Carolina Supreme Court denied the Applicant's subsequent petition for writ of certiorari on November 21, 2002.

Applicant filed his first post-conviction relief action on June 10, 2003. In his first PCR application, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to object to indictment.
 - b. Failed to object to improper evidence.
 - c. Failed to subpoena alibi witnesses.
2. Subject matter jurisdiction.
3. Prosecutorial misconduct.

 The State made its return on November 3, 2003. The Applicant filed an amendment to his PCR application on August 26, 2004 in which he expanded upon his argument that a defective indictment deprived the trial court of subject matter jurisdiction. The Honorable John H. Milling convened an evidentiary hearing on the application on January 11, 2005, at the Darlington County Courthouse. Applicant was present and represented by counsel. After the hearing, Judge Milling denied all of Applicant's claims in an order dated September 16, 2005.

Applicant filed a notice of appeal of the denial of his PCR. Wanda H. Carter, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal with the filing of a petition for writ of certiorari on June 18, 2007. The South Carolina Supreme Court granted certiorari on

May 8, 2008. On February 23, 2009, the Supreme Court dismissed the writ as improvidently granted. The remittitur was returned to the circuit court on March 11, 2009.

II. CURRENT APPLICATION

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

1. "Ineffective assistance of 29(b) counsel"
 - a. "Mr. Grove the 29(b) counsel did not properly research of brief my issues. He did not notify me immediately when 29(b) motion was denied, and he did not file an appeal of the dismissing of 29(b)."

Applicant seeks relief in the form of a "[n]ew trial and belated appeal of 29(b)[.]" Respondent made a Return and Motion to Dismiss the Application on May 20, 2013. Respondent asked this Court to dismiss the application as successive, untimely, and failing to state a cognizable claim.

III. FINDINGS OF FACT AND CONCLUSION OF LAW

JS
3
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." 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:

A. Failure to State a Claim

The Court finds that this application should be dismissed for failure to state a cognizable claim under the Post-Conviction Procedure Act. An applicant may commence a post-conviction relief action based on the following grounds:

- “(1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- (2) That the court was without jurisdiction to impose sentence;
- (3) That the sentence exceeds the maximum authorized by law;
- (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- (5) That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
- (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....”

S.C. Code Ann. § 17-27-20(a). Applicant’s allegations center on the performance of his appointed counsel at his Rule 29(b), SCRCrimP, motion for a new trial based on after discovered evidence. The Sixth Amendment only guarantees effective assistance of counsel at critical stages of a prosecution. State v. Clinkscales, 318 S.C. 513, 515, 458 S.E.2d 548, 549 (1995). However, a post-trial motion is not a critical stage of criminal proceedings. Id. Because the Constitution does not guarantee Applicant effective assistance of counsel for his Rule 29(b) hearing, he has not demonstrated “[t]hat the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State[.]” S.C. Code Ann. § 17-27-20(a)(1). Therefore, the Court finds that summary dismissal is appropriate.

B. Failure to Timely File

The Court further finds that this application should be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-45(a) provides that:


“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.”

This statute of limitations applies to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted of the offenses he challenges in this application on March 18, 1997. Applicant was therefore required to file his application before March 18, 1998. This application was filed on April 26, 2013, which was well beyond expiration of the statutory filing period.

It further appears from the records that Applicant’s Rule 29(b) motion was ruled on in October 2011.² Assuming Applicant had a viable PCR claim, he would have been required to file this application in October of 2012. This application was filed in April, 2013, more than five months later. Therefore, the Court finds that summary dismissal is appropriate.

C. Successive Application

The Court finds that this application should be dismissed because it is successive to Applicant’s previous applications for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). S.C. Code Ann. § 17-27-90 requires that:

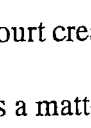
All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

² Applicant’s SCDC records indicate he was transported to Marlboro County for a court appearance on October 6, 2011. In Question 13 of his application, Applicant lists the date of the denial of his Rule 29(b) motion as October 19, 2011

Under this statute, successive post-conviction relief applications are forbidden unless 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, 450, 409 S.E.2d 392, 394 (1991). Any new grounds raised in a subsequent application are limited to those that "could not have been raised . . . in the previous application." Id. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. Id. Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

Applicant has failed to present any reasons why the current allegations could not have been alleged in his previous application. Therefore, the Court finds that summary dismissal is appropriate.

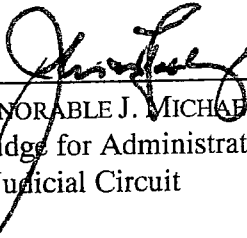
IV. CONCLUSION

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

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted 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 Marlboro County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Joshua L. Thomas, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

IT IS SO ORDERED.



THE HONORABLE J. MICHAEL BAXLEY
Chief Judge for Administrative Purposes
Fourth Judicial Circuit

10/11, 2013
Hartsville, South Carolina