

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
ALBERT LEGARE, 191449,  
APPLICANT,  
V.  
STATE OF SOUTH CAROLINA,  
RESPONDENT.)

) IN THE SOUTH CAROLINA SUPREME COURT  
) Case No. 2015-CP-10-5656  
) MOTION OF NOTICE AND  
) MOTION FOR APPEAL

**RECEIVED**  
MAY 03 2017

S.C. SUPREME COURT

I, Albert Legare (Applicant), do hereby this motion, seek  
to appeal the "FINAL ORDER OF DISMISSAL" which was issued by  
the Honorable Deadra L. Jefferson, Chief Administrative Judge,  
dated on April 7th, 2017.

BY: Albanali Abdullah  
PRO SE  
4848 GOLDMINE HIGHWAY  
KERSHAW, SOUTH CAROLINA  
29067

CERTIFICATE OF SERVICE

I, Albert Legare (Applicant), do hereby, certify that I did  
serve the "MOTION OF NOTICE AND MOTION FOR APPEAL", on the lower  
courts, by depositing the same in the U.S. Mail, addressed as  
follows:

THE HONORABLE DEADRA L. JEFFERSON  
CHIEF ADMINISTRATIVE JUDGE, NINTH JUDICIAL CIRCUIT  
CHARLESTON COUNTY JUDICIAL CENTER  
100 BROAD ST., SUITE 336  
CHARLESTON, SOUTH CAROLINA 29401

THIS 21 DAY OF APRIL, 2017

BY: Albanali Abdullah  
PRO SE  
4848 GOLDMINE HIGHWAY  
COLUMBIA, S.C. 29067

ce  
AT  
AB

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Albert Legare , #191449 )  
aka Albarr-Ali Abdullah, )

2015-CP-10-5656

Applicant, )

v. )

State of South Carolina, )

Respondent. )

FILED  
2015 MAR 17 PM 3:32  
JULIE J. ARISTRONG  
CLERK OF COURT  
BY

**ORDER RESTRICTING FUTURE FILING**

This matter comes before this Court by way of an application for post-conviction relief filed October 20, 2015.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. He was indicted at the March 1992 term of General Sessions for the Charleston County Grand Jury for armed robbery (1992-GS-10-1412), assault and battery with intent to kill (ABWIK) (1992-GS-10-1413), and attempted armed robbery (1992-GS-10-1414). William Thrower, Esquire, represented Applicant. Applicant proceeded to trial pursuant to which a jury found him guilty as indicted. On November 11, 1992, the Honorable Jackson V. Gregory sentenced him to terms of imprisonment of twenty-five (25) years for armed robbery, twenty (20) years for ABWIK, and ten (10) years for attempted armed robbery, with all sentences to run consecutively.

Applicant filed a timely Notice of Appeal, and an appeal was perfected on his behalf. The South Carolina Supreme Court affirmed his convictions and sentences. *State v. Legare*, Op.

No. 95-MO-020 (S.C. Sup. Ct. filed January 13, 1995). The court returned the remittitur to the circuit court on January 31, 1995.

**First PCR Application: 1995-CP-10-777**

Applicant filed his first PCR application on February 27, 1995, alleging the following grounds for relief:

1. Denial of effective assistance of counsel:
  - i. Failure to investigate.
  - ii. Failure to interview witnesses.
  - iii. Erroneous advice on the current law concerning preservation of his right to appeal based on exception.
  - iv. Ineffective in his prosecution of his motion to exclude prior convictions.
  - v. Failure to object to consecutive sentencing.
2. Ineffective assistance of appellate counsel:
  - i. Court erred by denying motion to relieve appellate counsel.
3. Denial of due process of law:
  - i. Court erred by not allowing him to proceed pro se.

Respondent filed its return on April 17, 1995. An evidentiary hearing was held at the Charleston County Courthouse on April 30, 1996. Harry L. Devoe, Jr., Esquire, represented Applicant. By written Order dated May 24, 1996, the Honorable Larry R. Patterson granted the application for post-conviction relief and vacated Applicant's convictions and sentences.

Respondent appealed the grant of Applicant's PCR. The South Carolina Supreme Court reversed the order granting post-conviction relief. *Legare v. State*, 333 S.C. 275, 509 S.E.2d 472 (1998). Applicant filed a petition for rehearing on December 23, 1998. The court denied the petition and issued the remittitur on January 6, 1999.

**First Federal Habeas Corpus Petition: 2:99-0289-24AJ**

On February 10, 1999, Applicant filed a petition for a writ of habeas corpus in the United States District Court for the District of South Carolina. On November 17, 1999, Respondent



filed a motion for summary judgment. United States Magistrate Judge Robert S. Carr issued a Report and Recommendation on May 30, 2000, recommending that Respondent's motion for summary judgment be granted and Applicant's habeas corpus relief be denied. On August 23, 2000, the Honorable Margaret B. Seymour, United States District Judge, granted Respondent's motion for summary judgment and dismissed the petition with prejudice. Applicant appealed to the United States Court of Appeals for the Fourth Circuit, which denied the certificate of appealability and dismissed the appeal by Order filed April 24, 2001. *Legare v. Rushton*, No. 00-7431 (4<sup>th</sup> Cir. April 24, 2001).

**Second PCR Application: 2001-CP-10-3435**

Applicant filed his second application on September 6, 2001, and alleged the following grounds for relief:

1. The Charleston County Courthouse lacked subject matter jurisdiction.
  - i. The indictments were deficient because they failed to allege the time and place of the crime and were not filed.
  - ii. Miranda rights were not provided.

Respondent filed its return and motion to dismiss on November 15, 2001. An evidentiary hearing was held at the Charleston County Courthouse on June 6, 2002. William B. Jung, Esquire, represented Applicant. By written Order dated July 3, 2002, the Honorable R. Markley Dennis, Jr. denied and dismissed the application with prejudice.

**Third PCR Application: 2002-CP-10-2854**

Applicant filed his third application on July 3, 2002, and alleged the following grounds for relief:

1. Violation of S.C. Code § 17-27-80 in that the prior PCR order failed to make findings of fact and conclusions of law.

2. The Charleston County Courthouse lacked subject-matter jurisdiction because of double jeopardy, Rule 3 of the South Carolina Criminal Procedure was violated, and Miranda rights were not provided.

Respondent filed its return and motion to dismiss on November 6, 2002. An evidentiary hearing was held at the Charleston County Courthouse on March 13, 2003. Renee Newman, Esquire, represented Applicant. Applicant freely, voluntarily, and intelligently withdrew his application at the hearing. By Order filed March 13, 2003, the Honorable R. Markley Dennis, Jr. denied and dismissed the application with prejudice.

**Fourth PCR Application: 2005-CP-10-0645**

Applicant filed his fourth application on February 16, 2005, and alleged the following grounds for relief:

1. Lack of subject matter jurisdiction.
2. Lack of subject matter jurisdiction in the Court of Appeals.

Respondent filed its return and motion to dismiss on November 7, 2005. A motions hearing was held at the Charleston County Courthouse on January 18, 2006. By written Order dated March 3, 2006, the Honorable Daniel F. Pieper denied and dismissed the application with prejudice.

Applicant subsequently filed a Rule 59(e) motion and asserted the circuit court did not address his pro se document entitled "Amendment and Supplementation to Applicant's PCR Application." Judge Pieper stayed his original order and allowed the parties an opportunity to address Applicant's amendments. After review of the amendments, Judge Pieper found the amendments had no effect on his original order dismissing the successive application, and issued an Order dated October 25, 2007, lifting the stay of the court's original Order and denying relief.

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Applicant then filed a notice of appeal. The South Carolina Supreme Court dismissed Applicant's appeal by Order dated December 27, 2007 for failure to provide proof of service pursuant to Rule 221(b). The remittitur was issued on January 15, 2008.

**Second Federal Habeas Corpus Petition**

On April 30, 2008, Applicant filed a motion under 28 U.S.C. § 2244, for an order authorizing the district court to consider a second or successive application for relief under 28 U.S.C. §§ 2254 or 2255. The United States Court of Appeals for the Fourth Circuit dismissed Applicant's motion by Order filed May 28, 2008. *In re: Albert Legare*, No. 08-163 (4<sup>th</sup> Cir. May 28, 2008).

**State Habeas Corpus Petition: 2013-CP-10-0425**

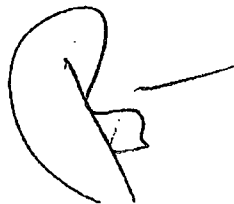
Applicant filed a state petition for a writ of habeas corpus on February 6, 2013, and alleged the following grounds for relief:

1. Writ of certiorari granted to State in 1997 PCR appeal based on the application of ex post facto violations and new rules of law.
2. Conviction obtained in violation of ex post law.
3. Conviction obtained by use of poisonous tree doctrine.
4. Conviction obtained by the use of inadmissible witness testimony from Walker.
5. Conviction obtained in violation of Rule of Evidence 609.
6. Certiorari and appeal of grant of PCR untimely.
7. Conviction obtained when the court lacked subject matter jurisdiction.
8. Continued incarceration after grant of PCR.

The Honorable Roger M. Young Sr. denied and dismissed the petition with prejudice in a written Order dated June 14, 2013.

**Fifth PCR Application: 2013-CP-10-4715**

Applicant subsequently filed his *fifth* PCR application on August 12, 2013, and alleged

A handwritten signature or set of initials, possibly 'R', written in black ink. The signature is stylized and appears to be a large letter 'R' with a horizontal line extending from the top right.

he is being held in custody unlawfully for the following reasons:

1. Writ of certiorari granted to State in 1997 PCR appeal based on the application of ex post facto violations and new rules of law.
2. Conviction obtained in violation of ex post law.
3. Conviction obtained by use of poisonous tree doctrine.
4. Conviction obtained by the use of inadmissible witness testimony from Walker.
5. Conviction obtained in violation of Rule of Evidence 609.
6. Certiorari and appeal of grant of PCR untimely.
7. Conviction obtained when the court lacked subject matter jurisdiction.
8. Continued incarceration after grant of PCR.

The Honorable R. Markley Dennis, Jr. issued a Conditional Order of Dismissal dated November 17, 2014. Following Applicant's response to the Conditional Order, Judge Dennis denied and dismissed the petition with prejudice in a Final Order of Dismissal dated May 22, 2015.

Applicant subsequently filed a Writ of Mandamus on May 18, 2015, which was later dismissed by an Order dated June 3, 2015 from the South Carolina Supreme Court pursuant to *Key v. Currie*, 305 S.C. 115, 406 S.E.2d 356 (1991).

**Current PCR Application: 2015-CP-10-5656**

In his *sixth* and current PCR application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of PCR Counsel
  - a. "Failure to protect my rights to appeal my original PCR Application in violation of S.C. Code Ann. § 17-27-100"

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court finds that Applicant had a full opportunity to litigate his current allegations in prior court proceedings. The Applicant continues to raise the same meritless claims by repeated



collateral attacks on his convictions. The public interest in finality of judgments requires that litigation must eventually come to an end.

Due to the repetitive and frivolous nature of Applicant's numerous applications, this Court directs the Charleston County Clerk of Court to not accept any further post-conviction relief applications from the Applicant unless he pays the normal filing fee generally required for the filing of a summons and complaint. The United States Supreme Court has denied litigants who have filed repetitive, frivolous petitions the right to proceed *in forma pauperis*, resulting in the litigants having to pay the required filing fee with that Court. In re Whitaker, 513 U.S. 1, 115 S.Ct. 2, 130 L.Ed.2d 1 (1994); In re Anderson, 511 U.S. 364, 114 S.Ct. 1606, 128 L.Ed.2d 332 (1994); In re Demos, 500 U.S. 16, 111 S.Ct. 1569, 114 L.Ed.2d 20 (1991); In re Sindram, 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991); In re McDonald, 489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989).

Additionally, this Court finds that the Applicant is required to provide a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous. In In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996), the South Carolina Supreme Court required Maxton, who had filed numerous meritless petitions with the Court, to pay a filing fee and accompany any future filings with a properly notarized affidavit by Maxton certifying that he in good faith believed that the matters he was raising were non-frivolous and proper for the Court to consider. Id. Other courts have required that the abusive litigant file an affidavit certifying that he believes the petition raises an original claim or is non-frivolous before accepting filings from the litigant. In the Matter of Verdone, 73 F.3d 669 (7th Cir.1995); Abdul-Akbar v. Watson, 901 F.2d 329 (3d Cir.1990); Green v. Warden, 699 F.2d 364 (7th Cir.),

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*cert. denied*, 461 U.S. 960, 103 S.Ct. 2436, 77 L.Ed.2d 1321 (1983).

This Court also finds that if the Applicant submits an application that is accompanied with a notarized affidavit, that, before filing, the Clerk's office be directed to submit the application to the Chief Administrative Judge for Common Pleas. The Chief Administrative Judge should then make a finding on whether the issues raised in the application are non-frivolous and proper for the Court to consider. If the Administrative Judge finds the application proper, it would then be submitted to the Clerk's office for filing. No application should be filed without a proper finding from the Chief Administrative Judge.

This Court also cautions the Applicant that should he continue to file applications containing matters that are frivolous, he may be held in contempt or the Court may impose sanctions as circumstances of the case and discouragement of like conduct in the future may warrant. The Supreme Court imposed such warning on an Applicant in In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996).

There is a strong interest in finality of the criminal process; judicial review must stop at some juncture and finality must be realized. Aice v. State, 305 448, 409 S.E.2d 392 (1991). The Court quoted Justice Harlan when discussing the importance of finality in litigation when they stated the following:

Finality in the criminal law is an end which must always be kept in plain view. . . . At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing a man shall tentatively go to jail



today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved.

A rule of law that fails to take account of these finality interests would do more than subvert the criminal process itself. It would also seriously distort the very limited resources society has allocated to the criminal process. While men languish in jail, not uncommonly for over a year, awaiting a first trial on their guilt or innocence, it is not easy to justify expending substantial quantities of the time and energies of judges, prosecutors, and defense lawyers litigating the validity under present law of criminal convictions that were perfectly free from error when made final. (citation omitted) This drain on society's resources is compounded by the fact that issuance of the habeas writ compels a State that wishes to continue enforcing its laws against the successful petitioner to relitigate facts buried in the remote past through presentation of witnesses whose memories of the relevant events often have dimmed. This very act of trying stale facts may well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first.

Anderson v. Leeke, 271 S.C. 435, 441-442, 248 S.E.2d 120, 123 (1978) citing Mackey v. United States, 401 U.S. 667, 91 S.Ct. 1160, 1179, 28 L.Ed.2d 404 (1971).

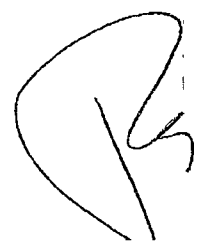
#### CONCLUSION

Based on all the foregoing facts, this Court finds and concludes that the Applicant has received his full bite at the apple. The Applicant's repetitive filings shall be restricted in order to preserve the Court's time and resources and stop any interference with the fair administration of justice.

#### IT IS THEREFORE ORDERED:

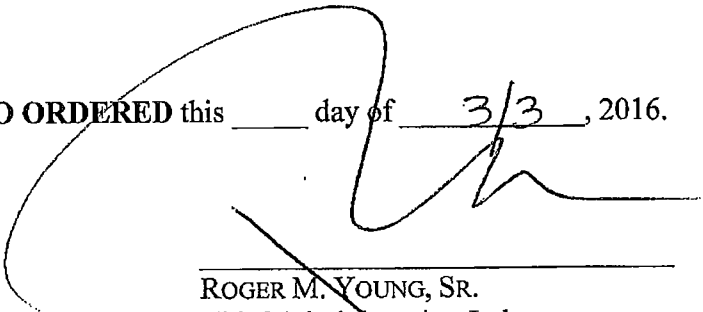
1. The Clerk of Court should refuse to accept further petitions from the Applicant asking the Court to entertain matters unless he pays a filing fee generally required for filing motions and petitions with this Court.
  - a. The Applicant should be prohibited from filing any legal actions in any jurisdiction in South Carolina without submitting the requisite filing fees<sup>1</sup> and providing a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous.

<sup>1</sup> S.C. Code Ann. § 8-21-310(11)(a) (Supp. 2004)



- b. Any Applications submitted with properly notarized affidavits be submitted to the Chief Administrative Judge to make a finding on whether the allegations are non-frivolous and proper for the Court before they are filed.
- c. The Clerk of Courts should be instructed to return all documents that do not comply with this order.

AND IT IS SO ORDERED this \_\_\_\_\_ day of 3/3, 2016.



\_\_\_\_\_  
ROGER M. YOUNG, SR.  
Chief Administrative Judge  
Ninth Judicial Circuit

*Charleston*, South Carolina.

LE  
AT  
AG

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Albert Legare, #191449 )  
aka Albarr-Ali Abdullah, )

2015-CP-10-5656

Applicant, )

v. )

State of South Carolina, )

Respondent. )

**CONDITIONAL ORDER OF DISMISSAL**

**FILED**  
2016 MAR 17 PM 3:32  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

This matter comes before this Court by way of an application for post-conviction relief (PCR) application filed by Albert Legare (Applicant) on October 20, 2015. The State (Respondent) made its return, requesting the application be summarily dismissed for failure to file within the applicable statute of limitations and for being successive to Applicant's prior applications for post-conviction relief. This Order follows.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. He was indicted at the March 1992 term of General Sessions for the Charleston County Grand Jury for armed robbery (1992-GS-10-1412), assault and battery with intent to kill (ABWIK) (1992-GS-10-1413), and attempted armed robbery (1992-GS-10-1414). William Thrower, Esquire, represented Applicant. Applicant proceeded to trial pursuant to which a jury found him guilty as indicted. On November 11, 1992, the Honorable Jackson V. Gregory sentenced him to terms of imprisonment of twenty-five (25) years for armed robbery, twenty (20) years for ABWIK, and

ten (10) years for attempted armed robbery, with all sentences to run consecutively.

Applicant filed a timely Notice of Appeal, and an appeal was perfected on his behalf. The South Carolina Supreme Court affirmed his convictions and sentences. *State v. Legare*, Op. No. 95-MO-020 (S.C. Sup. Ct. filed January 13, 1995). The court returned the remittitur to the circuit court on January 31, 1995.

**First PCR Application: 1995-CP-10-0777**

Applicant filed his first PCR application on February 27, 1995, alleging the following grounds for relief:

1. Denial of effective assistance of counsel:
  - i. Failure to investigate.
  - ii. Failure to interview witnesses.
  - iii. Erroneous advice on the current law concerning preservation of his right to appeal based on exception.
  - iv. Ineffective in his prosecution of his motion to exclude prior convictions.
  - v. Failure to object to consecutive sentencing.
2. Ineffective assistance of appellate counsel:
  - i. Court erred by denying motion to relieve appellate counsel.
3. Denial of due process of law:
  - i. Court erred by not allowing him to proceed pro se.

Respondent filed its return on April 17, 1995. An evidentiary hearing was held at the Charleston County Courthouse on April 30, 1996. Harry L. Devoe, Jr., Esquire, represented Applicant. By written Order dated May 24, 1996, the Honorable Larry R. Patterson granted the application for post-conviction relief and vacated Applicant's convictions and sentences.

Respondent appealed the grant of Applicant's PCR. The South Carolina Supreme Court reversed the order granting post-conviction relief. *Legare v. State*, 333 S.C. 275, 509 S.E.2d 472 (1998). Applicant filed a petition for rehearing on December 23, 1998. The court denied the petition and issued the remittitur on January 6, 1999.



**First Federal Habeas Corpus Petition: 2:99-0289-24AJ**

On February 10, 1999, Applicant filed a petition for a writ of habeas corpus in the United States District Court for the District of South Carolina. On November 17, 1999, Respondent filed a motion for summary judgment. United States Magistrate Judge Robert S. Carr issued a Report and Recommendation on May 30, 2000, recommending that Respondent's motion for summary judgment be granted and Applicant's habeas corpus relief be denied. On August 23, 2000, the Honorable Margaret B. Seymour, United States District Judge, granted Respondent's motion for summary judgment and dismissed the petition with prejudice. Applicant appealed to the United States Court of Appeals for the Fourth Circuit, which denied the certificate of appealability and dismissed the appeal by Order filed April 24, 2001. *Legare v. Rushton*, No. 00-7431 (4<sup>th</sup> Cir. April 24, 2001).

**Second PCR Application: 2001-CP-10-3435**

Applicant filed his second application on September 6, 2001, and alleged the following grounds for relief:

1. The Charleston County Courthouse lacked subject matter jurisdiction.
  - i. The indictments were deficient because they failed to allege the time and place of the crime and were not filed.
  - ii. Miranda rights were not provided.

Respondent filed its return and motion to dismiss on November 15, 2001. An evidentiary hearing was held at the Charleston County Courthouse on June 6, 2002. William B. Jung, Esquire, represented Applicant. By written Order dated July 3, 2002, the Honorable R. Markley Dennis, Jr. denied and dismissed the application with prejudice.

**Third PCR Application: 2002-CP-10-2854**

Applicant filed his third application on July 3, 2002, and alleged the following grounds



for relief:

1. Violation of S.C. Code § 17-27-80 in that the prior PCR order failed to make findings of fact and conclusions of law.
2. The Charleston County Courthouse lacked subject-matter jurisdiction because of double jeopardy, Rule 3 of the South Carolina Criminal Procedure was violated, and Miranda rights were not provided.

Respondent filed its return and motion to dismiss on November 6, 2002. An evidentiary hearing was held at the Charleston County Courthouse on March 13, 2003. Renee Newman, Esquire, represented Applicant. Applicant freely, voluntarily, and intelligently withdrew his application at the hearing. By Order filed March 13, 2003, the Honorable R. Markley Dennis, Jr. denied and dismissed the application with prejudice.

**Fourth PCR Application: 2005-CP-10-0645**

Applicant filed his fourth application on February 16, 2005, and alleged the following grounds for relief:

1. Lack of subject matter jurisdiction.
2. Lack of subject matter jurisdiction in the Court of Appeals.

Respondent filed its return and motion to dismiss on November 7, 2005. A motions hearing was held at the Charleston County Courthouse on January 18, 2006. By written Order dated March 3, 2006, the Honorable Daniel F. Pieper denied and dismissed the application with prejudice.

Applicant subsequently filed a Rule 59(e) motion and asserted the circuit court did not address his pro se document entitled "Amendment and Supplementation to Applicant's PCR Application." Judge Pieper stayed his original order and allowed the parties an opportunity to address Applicant's amendments. After review of the amendments, Judge Pieper found the amendments had no effect on his original order dismissing the successive application, and issued



an Order dated October 25, 2007, lifting the stay of the court's original Order and denying relief.

Applicant then filed a notice of appeal. The South Carolina Supreme Court dismissed Applicant's appeal by Order dated December 27, 2007 for failure to provide proof of service pursuant to Rule 221(b). The remittitur was issued on January 15, 2008.

**Second Federal Habeas Corpus Petition**

On April 30, 2008, Applicant filed a motion under 28 U.S.C. § 2244, for an order authorizing the district court to consider a second or successive application for relief under 28 U.S.C. §§ 2254 or 2255. The United States Court of Appeals for the Fourth Circuit dismissed Applicant's motion by Order filed May 28, 2008. *In re: Albert Legare*, No. 08-163 (4<sup>th</sup> Cir. May 28, 2008).

**State Habeas Corpus Petition: 2013-CP-10-0425**

Applicant filed a state petition for a writ of habeas corpus on February 6, 2013, and alleged the following grounds for relief:

1. Writ of certiorari granted to State in 1997 PCR appeal based on the application of ex post facto violations and new rules of law.
2. Conviction obtained in violation of ex post law.
3. Conviction obtained by use of poisonous tree doctrine.
4. Conviction obtained by the use of inadmissible witness testimony from Walker.
5. Conviction obtained in violation of Rule of Evidence 609.
6. Certiorari and appeal of grant of PCR untimely.
7. Conviction obtained when the court lacked subject matter jurisdiction.
8. Continued incarceration after grant of PCR.

The Honorable Roger M. Young Sr. denied and dismissed the petition with prejudice in a written Order dated June 14, 2013.

**Fifth PCR Application: 2013-CP-10-4715**

Applicant filed his fifth PCR application on August 12, 2013, and alleged he is being



held in custody unlawfully for the following reasons:

1. Writ of certiorari granted to State in 1997 PCR appeal based on the application of ex post facto violations and new rules of law.
2. Conviction obtained in violation of ex post law.
3. Conviction obtained by use of poisonous tree doctrine.
4. Conviction obtained by the use of inadmissible witness testimony from Walker.
5. Conviction obtained in violation of Rule of Evidence 609.
6. Certiorari and appeal of grant of PCR untimely.
7. Conviction obtained when the court lacked subject matter jurisdiction.
8. Continued incarceration after grant of PCR.

The Honorable R. Markley Dennis, Jr. issued a Conditional Order of Dismissal dated November 17, 2014. Following Applicant's response to the Conditional Order, Judge Dennis denied and dismissed the petition with prejudice in a Final Order of Dismissal dated May 22, 2015.

Applicant subsequently filed a Writ of Mandamus on May 18 2015, which was later dismissed by an Order dated June 3, 2015 from the South Carolina Supreme Court pursuant to *Key v. Currie*, 305 S.C. 115, 406 S.E.2d 356 (1991).<sup>1</sup>

**Current PCR Application: 2015-CP-10-5656**

In his *sixth* and current PCR application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of PCR Counsel
  - a. "Failure to protect my rights to appeal my original PCR Application in violation of S.C. Code Ann. § 17-27-100"

Before this Court are the Charleston County Clerk of Court records regarding the subject convictions, the Applicant's application, and Applicant's previous PCR and appellate records by reference.

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<sup>1</sup> Applicant filed a second petition for writ of mandamus on October 19, 2015. By Order dated November 19, 2015, the South Carolina Supreme Court dismissed the petition again pursuant to *Key v. Currie*, 305 S.C. 115, 406 S.E.2d 356 (1991). Applicant's petition for rehearing was denied on December 29, 2015.

## FINDINGS AND CONCLUSIONS OF LAW

### Successiveness

This Court finds the current PCR application must be summarily dismissed because it is successive to Applicant's five previous PCR applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) states:

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.

Under this statute, successive post-conviction relief applications are prohibited unless an applicant can indicate 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 Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. *Id.* The contention that prior PCR counsel was ineffective is not *per se* a "sufficient reason allowing for a successive PCR application under § 17-27-90." *Id.* at 451, 409 S.E.2d at 394. Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

This Court finds that the current allegation merely alleges a "reason" for reexamining claims already fully adjudicated in the Applicant's prior PCR proceedings. See Aice at 451, 409 S.E.2d at 394. This Court finds that this is not a "sufficient reason" pursuant to Aice to allow a successive PCR application under § 17-27-90. Id. Therefore, the current application is denied because it is successive to Applicant's numerous prior applications for post-conviction relief.

#### Statute of Limitations

This Court finds this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. See S.C. Code Ann. §§ 17-27-10 to -160 (2014). South Carolina 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 held this one-year 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 was convicted of the offenses challenged in his application on November 11, 1992. The court issued the remittitur from Applicant's appeal on January 31, 1995. Therefore, Applicant was required to file his PCR application on or before July 1, 1996.<sup>2</sup> Applicant filed this application on October 20, 2015, **more than nineteen years** after the statutory filing period expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638

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<sup>2</sup> Section 17-27-45(A) of the South Carolina Code was enacted on July 1, 1995. *Peloquin* held "all those convicted prior to the effective date of the statute should be allowed one year after its effective date to file an application." *Peloquin*, 321 S.C. at 470, 469 S.E.2d at 606. Therefore, *Peloquin* required Applicant to file his PCR application by July 1, 1996.

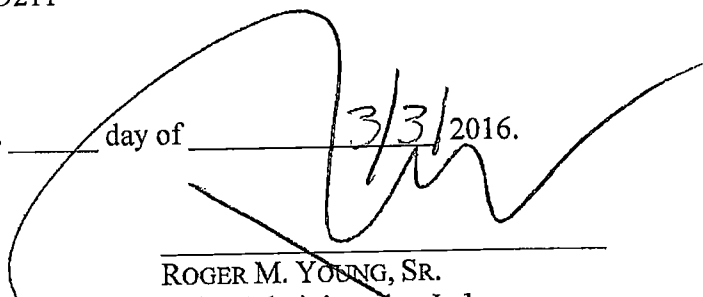
(1994). In addition, South Carolina Code Section 17-27-70(c) (2014) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings...that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." This Court finds it must summarily dismiss this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

**CONCLUSION**

Pursuant to Section 17-27-70(b) of the South Carolina Code, this 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 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 Charleston County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
J. Rutledge Johnson, Esquire  
PCR Division  
P.O. Box 11549  
Columbia, SC 29211

AND IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_ 3/3/2016.

  
\_\_\_\_\_  
ROGER M. YOUNG, SR.  
Chief Administrative Judge  
Ninth Judicial Circuit

Charleston, South Carolina

SC  
AG  
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SOL

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
Albert Legare, #191449, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2015-CP-10-5656

FINAL ORDER OF DISMISSAL

FILED  
2017 APR 12 PM 12:50  
JULIA S. SMITH, CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 20, 2015. The Respondent made its return on March 2, 2016, requesting the application be summarily dismissed as successive and based upon the expiration of the statute of limitations.

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<sup>1</sup> signed March 3, 2016, and filed March 17, 2016, 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 March 30, 2016, serving the above mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Reply in Opposition to Return and Motion to Dismiss" and dated March 8, 2016, Applicant reasserts the allegations set forth in his PCR application and contends he was denied the right to appeal his original PCR application. He argues this Court

<sup>1</sup> The Court also issued an Order Restricting Future Filings on March 17, 2016.


"should schedule an evidentiary hearing in the interest of justice to prevent a miscarriage of justice."

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

This Court notes the Applicant was convicted and sentenced on November 11, 1992, and the South Carolina Supreme Court affirmed his convictions and sentences on January 13, 1995. This action was filed on October 20, 2015. Therefore, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-2745(a). This is the Applicant's *sixth* application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first, second, and third PCR applications on April 30, 1996, June 6, 2002, and March 13, 2003, respectively. See Odom v. State, 337 S.C. 256, 261 523 S.E.2d 753, 755 (1999). ("[A]n Applicant is entitled to a full adjudication on the merits of the original petition, or 'one bite at the apple.'").

**IT IS THEREFORE ORDERED** that, 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.

AND IT IS SO ORDERED this 7<sup>th</sup> day of April, 2017.

  
\_\_\_\_\_  
THE HONORABLE DEADRA L. JEFFERSON  
Chief Administrative Judge,  
Ninth Judicial Circuit

has., South Carolina.



SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated T. Jones (Server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA )  
COUNTY OF LANCASTER

AFFIDAVIT OF PERSONAL SERVICE

On this 30<sup>th</sup> day of March 2016, I served the Order Restricting Future Filings, on Inmate Albert Legare aka Ali-Albarr Abdullah, SCDC Inmate #191449, by delivering personally and leaving a copy of the same at Kershaw Correctional Institution. Deponent is not a party to this action.

s/ T. Jones  
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 30 day of March, 2016

Charles R. Lust (L.S.)  
Notary Public for South Carolina

My Commission Expires: January 27, 2025

ADMISSION OF SERVICE

Service of a copy of the within Order Restricting Future Filings is admitted at the South Carolina Department of Corrections Kershaw Correctional Institution), Kershaw County, SC this 30<sup>th</sup> day of March, 2016.

s/ Albert A. Abdullah  
Inmate  
SCDC Inmate #: 3-30-16



ALAN WILSON  
ATTORNEY GENERAL

April 5, 2017

The Honorable Deadra L. Jefferson  
Chief Administrative Judge, Ninth Judicial Circuit  
Charleston County Judicial Center  
100 Broad St., Suite 336  
Charleston, SC 29401-2236

RE: Albert Legare, #191449 v. State of South Carolina  
2015-CP-10-5656

Dear Judge Jefferson:

Enclosed please find a proposed **Final Order of Dismissal** on the above case. If this order meets with your approval, please sign it and return to me in the self address envelope provided. I will file with the clerk.

Sincerely,

Alicia A. Olive  
Assistant Attorney General

AAO:bea  
Enclosure

cc: Albert Legare, #191449

Albert Legare  
KC 2-OB-57  
4648 Goldmine Hwy  
Kershaw, S.C. 29067

COMPLETE DEBIT FORM AND  
RETURN TO MAILROOM

The South Carolina Supreme Court  
Clerk / Daniel Shearouse  
P.O. Box 11330  
Columbia, S.C. 29211

Abdullah 191449  
**LEGAL**

RECEIVED



APR 24 2017

Kerr  
MAIL ROOM

THE DEPARTMENT OF CORRECTIONS AND REFORMATORY SERVICES  
CENSORED AND SEIZED THIS MAIL FOR MORE  
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY  
FOR IT'S CONTENTS.  
KERR  
KERR COUNTY CORRECTIONAL INSTITUTION  
KERR COUNTY DEPARTMENT OF CORRECTIONS

Albarr Ali Abdullah #191449

AKA,  
Albert Legare

Kershaw Corr. Inst. Oak, B. 57

4848 Goldmine Highway

Kershaw, S.C. 29067

The South Carolina Supreme Court  
Clerk / Daniel Shearouse  
P.O. Box, 11330  
Columbia, S.C. 29211

Abdullah 191449  
**LEGAL**

