

The State of South Carolina  
In the Supreme Court

Appeal from Richland County Court  
of Common Pleas.

DeAndea Benjamin, Circuit Court Judge

Case No: 2016-CP-40-00847

Timothy E Green #324607

Appellant,

v

State of South Carolina

Respondents,

Petitioner's Pro Se Brief

Timothy E Green, petitioner  
S.C.D.C No 324607  
Lee CI F4B 1263  
990 Wisacky Hwy  
Bishopville S.C 29010.

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S.C. SUPREME COURT

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2. Counsel's numerous deficiencies and inadequate defense violated petitioners constitution to a fair trial.

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## Tables of Authorities.

SC. Code Ann § 17-27-45(c).

John McCoy v South Carolina 401 S.C. 363 (2013) 737 S.E.2d 623.

Clark v State, 315 S.C. 385, 434 S.E.2d 266 (1993)

Hayden v State, 278 S.C 610, 299 S.E.2d 854 (1983)

People v Knight, 405 Ill 9pp 3d 461 937 N.E 2d 789 (3rd Dist 2010)

State v Pickens, 346 N.C 628 (1997).

18 U.S. Code § 3501

## Statement of case

Petitioner filed his first application for Post-Conviction Relief on March 29, 2009 (2009-CP-40-02144), alleging ten grounds of ineffective assistance of counsel and one ground of trial error. Respondant made its return on April 29, 2009. An evidentiary hearing into the matter was convened on November 16, 2011 before Honorable L. Casey Manning. Judge Manning denied and dismissed application for P.C.R. in an order date January 20, 2012.

Petitioner filed a timely notice of appeal and a petition for writ of Certiorari was perfected by Dayne C. Phillips filing a brief pursuant to Johnson v State, 294 S.C 310, 364 S.E.2d 201 (1988). The South Carolina Supreme Court denied petitioner

Petitioner subsequently filed a pro se petition for Habeas Corpus under 28 U.S.C § 2254 on June 16, 2014 (C.A. No 2:14-2405-MGL-22D). Respondant filed its Return and Motion for Summary Judgment on October 2, 2014. The Honorable Wallace W. Dixon, United States Magistrate Judge, issued on November 21, 2014 a Report and Recommendation that Respondant's motion for summary judgment be granted. Petitioner filed objections to the R&R on December 5, 2014. The Judge Mary G. Lewis, U.S. District Judge, denied petitioner on December 9, 2014 and accepted the R&R for summary judgment. Petitioner gave notice of his appeal to the Fourth Circuit Court of appeals on Dec 22, 2014. The Fourth Circuit Court of Appeals dismissed petitioner appeal May 6, 2015. Petitioner therefore filed a petition for writ of Certiorari in the U.S. Supreme Court, which was denied by Order dated January 11, 2016

I. The Post-Conviction Relief Court erred in ordering an order of dismissal for misinterpreting S.C. Code Ann. § 17-27-45 statute of limitations

The South Carolina Supreme Court has held that, Section 17-27-45(c) provides that if a PCR Applicant discovered "material facts not previously presented and heard that require vacation of [his] conviction or sentence" he may file a PCR application "within one year after the date of actual discovery. McCoy v South Carolina (citing Clark v State, 315 S.C. 385, 434 S.E. 2d 266 (1993))

On Sept 1, 2015 petitioner received in the mail Co-defendant P.C.R transcript According to S.C. Code Ann § 17-27-45(c) petitioner filed a Second P.C.R for "Newly Discovered Evidence" solely because co-defendant confess that he was the one responsible for killing the victim leaving petitioner not guilty for murder. Secondly Co-defendant was willing to testify at petitioner trial putting petitioner innocent of murder.

To obtain a new trial based on after discovered evidence, the party must show that the evidence; (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issues of guilt or innocence; and (5) is not merely cumulative or impeaching. Clark v State.

Petitioner has met these prongs simply because of co-defendant due diligence to ease the guilty burden of the petitioner. Hayden v State, 278 S.C. 610, 299 S.E. 2d 854 (1983) People v Knight, 405 Ill. app. 3d 461, 937 N.E. 2d 789 (3rd Dist 2010)

II. Counsel's numerous deficiencies and inadequate defense violated petitioners constitution to a fair trial.

18 U.S. Code § 3501 Admissibility of confessions (e) hereof, shall be admissible in evidence if it is voluntarily given. On April 7, 2007 a voluntary statement was given by co-defendant stating that he was willing to take a sworn confession in court. According to *State v Pickens*, states that "when a witness invokes the Fifth Amendment privilege, the trial court is to determine whether the question is such that it may reasonably be inferred that the answer may be self-incriminating." Counsel failing to interview in advance important witness prior to, failing to have an organized plan of defense, and failing to present an adequate defense resulted in counsel advising petitioner to plea. Prejudice was reviewed de novo because the state court did not rule on this issue *Avery v. Preslesnik*, 548 F.3d 434 (6th Cir. 2008)

Counsel's calculus misapprehended potential of co-defendant prejudice petitioner under the Sixth Amend U.S. Constitution. On January 15, 2010 co-defendant testified at his PCR hearing that petitioner was not guilty for murder. Also when questioned by the state was he willing to testify at petitioners trial co-defendant said yes see exhibit A. Because of 18 U.S. Code § 3501 (e) petitioner filed a second PCR on Newly Discovered Evidence solemnly because the outcome of trial would have been different. under S.C code ann § 17-27-45(c) Statute of limitations

Conclusion

The Petitioner request that the Post-Conviction Relief Court decision be reversed in its entirety and that the Petitioner be remanded for a hearing. For S.C Code ann § 17-27-45(e) grants Petitioner to file and application for Post-Conviction Relief.

Timothy Green

Timothy E. Green #324607

Pro Se Petitioner

Lee CI F4B 1263

990 Wisacky Hwy

Bishopville. S.C 29010.

1 trial, it was to try and say he wasn't that involved  
2 and that you were the one who killed him?

3 A Yes.

4 Q Nothing further. Thank you.

5 THE COURT: Anything in redirect, Mr.  
6 Thompson?

7 MR. THOMPSON: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. THOMPSON:

10 Q Were you afraid that -- when you filed  
11 your motion to suppress and you included your co-  
12 defendant's statement in that, were you afraid that  
13 they were going to try you together and use his  
14 statement against you?

15 A Yes.

16 Q And at any point in time did you have any  
17 indication or did you know that Mr. Green, if you  
18 had gone to trial, was going to testify against you?

19 A No.

20 Q But all of that didn't really matter after  
21 your attorney came and told you that you had no  
22 chance at trial, you'd get life, is that right?

23 A Yes. If I possibly lose, I could possibly  
24 get life, yes.

25 MR. THOMPSON: I have no further

1 just testify against you?

2 A In a way. And really, I really couldn't  
3 say, because I had talked to him a couple of times  
4 in the County Jail, and he was saying this. He was  
5 saying that he wasn't, and then, you know -- so I  
6 really couldn't say for sure.

7 Q And on the flip side --

8 A Yes.

9 Q -- were you prepared to testify against  
10 him?

11 A No, I wasn't prepared to testify against  
12 him, but I was prepared to say that he didn't have  
13 anything involved in the -- I didn't have anything -  
14 - I was prepared to say that he --

15 COURT REPORTER: Could you back up?

16 THE COURT: Don't talk so close to the  
17 microphone.

18 MR. HARRIS: Oh, okay.

19 THE COURT: It makes it pop. It's okay.

20 A I was prepared to say that he didn't have  
21 too much involvement really as far as killing the  
22 man, killing Mr. Bush, that he was just there to  
23 help me carry whatever I was taking from the store.

24 Q So if you -- I want to make sure I hear  
25 that right. If you were to testify at Mr. Green's

The defendant: Curtis M Harris Jr. (#91961)

2nd.

To whom this is concerning:

Date: 4/10/07

This is a statement pertaining Case # on Behalf of Codefendant:  
Timothy E. Green (#91962).

I the defendant: Curtis M Harris Jr. am writing this statement on Behalf of Codefendant. I am writing this to indicate on 7-7-05 in Hopkins Area of Bluff Road of Victims Store W. Bush. [REDACTED] in the Homicide/Armed Robbery that I Curtis Harris am Responsible for the Homicide of Victim with objects in his store which was cause of Death. I am stating that I am the one who took part in the Incident which I did by myself only to make Codefendant carry Guns which was also taken from Area. And I am also stating that Codefendant Timothy Green Never once touch Victim whatsoever either. I Also made him come with me I threatened him if he didn't come. I Curtis M Harris Jr. am willing to take a sworn confession in Court also when time. NO one is making me do this, this is a doing on my own will I am also stating that I the defendant also gave codefendant money that I Also took from the Scene out of the Cash Register of Victims Store Also.

Defendant Signatures: Curtis M Harris Jr. 04-10-07

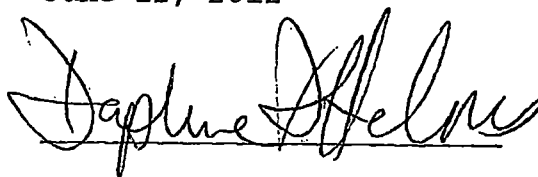
Notarizers Signature: [Signature] 04-10-07

Witnesses Signatures: Dennis Hib 4/10/07

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 18th of November, 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 12, 2012

A handwritten signature in cursive script, reading "Daphne D. Helms", written over a horizontal line.

Daphne D. Helms, court reporter

The State of South Carolina  
In the Supreme Court.

Appeal From Richland County  
Court of Common Pleas.

DeAndea Benjamin, Circuit Court Judge

Case No.: 2016-CP-40-00847

Timothy Earl Green, #324607

Appellant.

v

State of South Carolina,

Respondents.

---

Proof of Service

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I, Timothy E. Green, do hereby certify that I have served the petitioner's pro se Brief on Jessica E. Kinard by depositing a copy of it in the United States Mail, postage pre paid, on April 27, 2017, address to his Attorney of Record, Assistant Attorney General, P.O. Box 11549, Columbia SC 29222

Timothy Green  
Timothy E Green  
Lee CI  
990 Wisacky Hwy  
Bishopville SC 29010

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SC Court of Appeals

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Timothy Earl Green, #324607,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2016-CP-40-00847

**FINAL ORDER OF DISMISSAL**

RICHLAND COUNTY  
FILED  
2017 APR 21 AM 11:23  
JEANETTE G. GIBSON  
C.C.P.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed February 9, 2016. Respondent made its Return on or about September 6, 2016, requesting that the Application be summarily dismissed based upon the expiration of the statute of limitations, and the presumption against successive PCR application.

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 September 14, 2016 and filed September 20, 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 November 29, 2016, serving the aforementioned Conditional Order of Dismissal on the Applicant.

Applicant filed a document titled "Response to Respondent's Return and Motion to Dismiss," on September 27, 2016, in which Applicant argues ineffective assistance of PCR counsel.

This Court has reviewed all pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. This Court will not

consider any issues raised in Applicant's response that was filed on January 25, 2017 as Applicant was cautioned in the Conditional Order that such responses must be *received* by the Richland County Clerk of Court within the 20 (twenty) day response period. Applicant still fails to present any reason that this application should be reviewed despite its being filed after the expiration of the statute of limitations.

This Court finds that Applicant's claim of ineffective assistance of PCR counsel is dismissed, as it is not a cognizable claim for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). Once a PCR Applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of PCR counsel. Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). Further, Kelly v. State explicitly states, "that the holding in *Martinez*<sup>1</sup> is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions." Kelly v. State, 404 S.C. 365, 365, 745 S.E.2d 377 (2013). Consequently, pursuant to Rule 12(b)(6), SCRPC, Applicant's contention that he received ineffective assistance of PCR counsel is not a cognizable claim for relief, nor does it raise any genuine issue of material fact for this Court to consider in evaluating the application.

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<sup>1</sup> Martinez v. Ryan, 566 U.S. 1, 132 S.Ct. 1309 (2012) (holding ineffective assistance of collateral counsel may constitute "cause" to excuse procedural default in federal habeas corpus actions under the federal "cause and prejudice" standard)

**IT IS THEREFORE ORDERED** that, for the reasons set forth in the Court's Conditional Order of Dismissal, the application for PCR is hereby denied and dismissed with prejudice.

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

AND IT IS SO ORDERED this 21 day of April, 2017.



---

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

Columbia, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2016CP4000847**

**Timothy Earl #324607 Green**

**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 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 24<sup>th</sup> day of April, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Timothy Earl #324607 Green

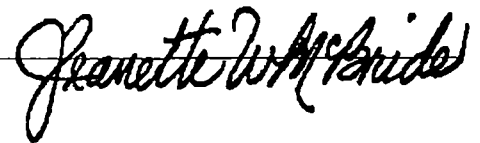
Jessica Elizabeth Kinard

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court



STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF RICHLAND ) FIFTH JUDICIAL CIRCUIT  
) 2016-CP-40-00849  
Timothy Earl Green, ) **847**  
S.C.D.C. No. 324607 )  
) **CONDITIONAL ORDER OF DISMISSAL**  
v. )  
) State of South Carolina )  
) Defendant. )

2016 SEP 20 PM 3:56  
JEANETTE V. HARRIS  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

This matter comes before the court by way of an application for post-conviction relief filed by Timothy Earl Green (Applicant) on February 9, 2016 (“the Application”). Respondent made its Return, requesting the Application be summarily dismissed.

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. On July 11, 2005, the Richland County Sheriff’s Department sought and obtained arrest warrants against Applicant for the crimes of Murder (I-972984) and Armed Robbery (I972985). Applicant was thereafter indicted by the Richland County Grand Jury during the August 2005 term for the same (2005-GS-40-06547, -06546). Carolyn Gripp, Esquire represented Applicant on the charges. On October 17, 2007, after a jury was selected, Applicant entered a plea of guilty to the crimes as indicted. The Honorable G. Thomas Cooper sentenced Applicant to concurrent terms of thirty (30) years and ten (10) years incarceration.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Wanda H. Carter, Esquire filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant thereafter indicated to the South Carolina Court of Appeals his desire to withdraw his appeal.

The South Carolina Court of Appeals thereafter dismissed the appeal and remitted the matter on January 13, 2009.

**2009-CP40-02144**

Applicant filed his first Application for Post-Conviction Relief on March 29, 2009 (2009-CP-40-02144), alleging ten grounds of ineffective assistance of counsel and one ground of trial court error. Respondent made its return on April 29, 2009. An evidentiary hearing into the matter was convened on November 16, 2011 before the Honorable L. Casey Manning. Applicant was present at the hearing and was represented by Tristan M. Schafer. At the hearing, Applicant amended his application and proceeded on a single ground alleging ineffective assistance of counsel. Brian Petrano, of the South Carolina Attorney General's Office, represented Respondent. Judge Manning denied and dismissed that application for PCR in an order dated January 20, 2012.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by Dayne C. Phillips filing a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The South Carolina Supreme Court denied Applicant's petition by unpublished opinion on March 11, 2014. The Remittitur issued on March 27, 2014.

**2:14-2405-MGL-WWD**

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on June 16, 2014 (C.A. No. 2:14-2405-MGL-22D). In his Petition, Applicant set forth six grounds for relief, including four allegations of ineffective assistance of trial counsel, one allegation of ineffective assistance of P.C.R. counsel, and one allegation of trial court error. Respondent filed its Return and Motion for Summary Judgment on October 2, 2014. The Honorable Wallace W. Dixon, United States Magistrate Judge, issued on November 21, 2014 a

Report and Recommendation that Respondent's motion for summary judgment be granted. Applicant filed objections to the R&R on December 5, 2014. The Honorable Mary G. Lewis, United States District Judge, denied Applicant's Petition on December 9, 2014 and accepted the Report and Recommendation for summary judgment. Green v. Bush, 2:14-2405-MGL-WWD, 2014 WL 6983352 (D.S.C. December 9, 2014). Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals on December 22, 2014. The Fourth Circuit Court of Appeals dismissed Applicant's appeal on May 6, 2015. Green v. Bush, 601 Fed.Appx. 235 (4th Cir. 2015). The mandate issued July 29, 2015. Applicant thereafter filed a Petition for Writ of Certiorari in the United States Supreme Court, which was denied by Order dated January 11, 2016. Green v. Bush, 136 S.Ct. 833 (2016).

## II. CURRENT APPLICATION

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

1. "Newly Discovered Evidence. Applicant co-defendant sent on the day of Sept 1, 2015 his P.C.R. transcript. Which shows that counsel was ineffective under Rule 407 Rule of Professional Conduct."
  - a. "On Sept 1 2015 Applicant received in the mail co-defendants P.C.R. transcript. In his P.C.R. co-defendant Mr. Harris was questioned by the State Attorney Mr. Patrano. Mr. Patrano ask Mr. Harris were he prepared to testify against the applicate, but was prepared to say that he Mr. Harris was responsible for killing the victim. and that the applicate was not responsible for the murder which he was charge."

Applicant requests relief as follows:

- "Conviction vacated and overturned remanded for charges to be dismissed"

Respondent incorporates the Richland County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the final order of Applicant's previous PCR and federal habeas corpus actions, and the records of this current PCR action.

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

#### *After-Discovered Evidence*

The Court finds the Application must be summarily dismissed because Applicant's assertion that he is entitled to a new trial based upon after-discovered evidence is without merit. The Uniform Post-Conviction Procedure Act permits an applicant to bring action where "there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice[.]" S.C. Code ann. § 17-27-20(4). A defendant requesting a new trial based on after-discovered evidence after a guilty plea must show:

- (1) The newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and
- (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the 'interest of justice' requires the applicant's guilty plea to be vacated.

Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (2014). Evidence is "[s]omething (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact; anything presented to the senses and offered to prove the existence or nonexistence of a fact[.]" Evidence, Black's Law Dictionary (10th ed. 2014).

The likelihood that a co-defendant would or would not testify against Applicant at trial is not evidence and is ascertainable before a proceeding given the exercise of reasonable diligence. "A defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action." Jamison at 471, 765 S.E.2d at 130 (quoting Brady v. United States, 397 U.S. 742, 757 (1970)). Therefore, Applicant has not shown that the alleged "evidence" meets any of the requirements for after-discovered evidence. Therefore, the Application shall be summarily dismissed.

### *Statute of Limitations*

The Court also finds the Application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires 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 on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a).

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). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

The Applicant was convicted on October 17, 2007 and the remittitur from direct appeals issued on January 13, 2009. The current application was not filed until February 9, 2016 – well after the one-year statutory filing period expired. Therefore, the Application shall be summarily dismissed as barred by the statute of limitations.

### *Successive*

Further, the Court finds the Application must be summarily dismissed because it is successive to Applicant’s previous PCR application. 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 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 forbidden 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 the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. 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).

Applicant’s current allegations were or could have been raised in the proceedings based on Applicant’s prior applications for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him.

Thus, the Court shall summarily dismiss the Application as successive to Applicant’s previous PCR application.

**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  
Johnny E. James, Jr., Esquire  
Post-Conviction Relief 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 that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 14 day of Sept, 2016.



DEANDREA G. BENJAMIN  
Chief Administrative Judge  
Richland Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
TIMOTHY EARL GREEN, #324607, )  
 Plaintiff, )  
 vs. )  
 )  
STATE OF SOUTH CAROLINA )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FIFTH JUDICIAL CIRCUIT

CASE NO: 2016-CP-40-0847

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

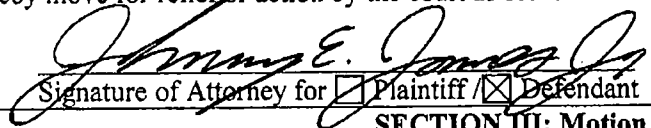
RICHLAND COUNTY  
 FILED  
 2016 SEP 20 PM 3:50  
 JEANETTE C. PROSSER  
 C. C. P. & S.S.

Plaintiff's Attorney:  
 Timothy Earl Green, #324607 (Pro Se)  
 Address: Lee Correctional Institution  
 990 Wisacky Highway  
 Bishopville, SC 29010  
 Phone: \_\_\_\_\_ Fax \_\_\_\_\_  
 E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

Defendant's Attorney:  
 Johnny E. James, Jr., Bar No. 101260  
 Address: PO Box 11549  
 Columbia, SC 29211  
 Phone: 803.734.3737 Fax 803.734.4113  
 E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**  
 Nature of Motion: \_\_\_\_\_  
 Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**  
 Written motion attached  
 Form Motion/Order  
 I hereby move for relief or action by the court as set forth in the attached proposed order.  
  
 Signature of Attorney for  Plaintiff /  Defendant  
 September 6, 2016  
 Date submitted

**SECTION III: Motion Fee**  
 PAID - AMOUNT: \$ \_\_\_\_\_  
 EXEMPT: (check reason)  
 Rule to Show Cause in Child or Spousal Support  
 Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRPC)  
 Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions  
 Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

**JUDGE'S SECTION**  
 Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_  
 Date: \_\_\_\_\_

**CLERK'S VERIFICATION**  
 Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4000847

Timothy Earl #324607 Green

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. 9 Consult);  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 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 22 day of Sept, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Timothy Earl #324607 Green

James Clayton Mitchell III

Timothy Earl #324607 Green

ATTORNEY(S) FOR THE PLAINTIFF(S)

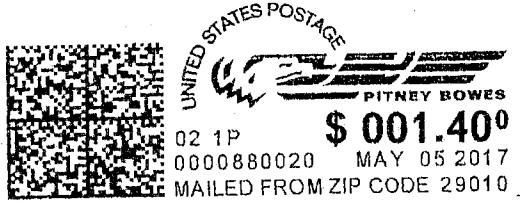
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court

*Jeanette W. McBride*

07



Supreme Court of S.C  
P.O. Box 11330  
Columbia SC 29211

Legal