

SOUTH CAROLINA SUPREME COURT

William Leon Burnett # 352645,  
APPELLANT,  
~~ASSISTANT~~

v.

State of South Carolina,  
Respondent,

C. A. No: 2016-CP-42-0326

NOTICE OF APPEAL

The Appellant petitions the Supreme Court of his SUMMARY  
DISMISSAL from his Uniform Post-Conviction Relief on the  
following grounds:

- 1: The Appellant was denied his statute of limitations of twenty (20) days to submit his REPLY BRIEF from Respondent's Return;
- 2: Respondent failed to meet their statute of limitations of 60 days to transcribe and remitture of their Return from initial date of filing - October 4, 2016 which puts it at December 30, 2016;
- 3: Appellant has supporting documentation to show he was denied Rule 29(b) of the South Carolina Rules for Criminal Procedures (SCRCrimP) under after-discovered evidence;
- 4: There exist sufficient evidence that conviction under Indictment No: 2012GS42 01465 was Nolle Prosequi; and
- 5: Appellant respectfully ask Chief Justice to remand it for evidentiary hearing or hearing under South Carolina Code Ann. 17-25-326.

2017 JUN 15 AM 11  
CLERK OF COUNTY  
SPARTANBURG COUNTY

State of South Carolina  
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas  
J. Durham Cole, Sr.: Chief Administrative  
Circuit Judge

Case No: 2016-CP-48-01465

William Leon Burnett, Appellant  
V.  
State of South Carolina, Respondent

PROOF OF SERVICE

I, William Leon Burnett, certify that I have served a copy of the Notice of Appeal by mailing a copy of the same in the institution mailroom with postage prepaid, by United States Mail Service to the Respondent at the address below:

Mr. Alan McCoy Wilson  
Attorney General  
ATT: Valerie Giovanoli  
South Carolina Attorney General's Office  
1000 Assembly Street  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

CLERK OF COURT  
SPARTANBURG COUNTY  
2017 JUN 15 AM 9 14  
M. HARRIS, CL. ADMIN.

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June 9, 2017  
Fairfax, S.C.

~~William Leon Burnett~~  
William Leon Burnett, SCD# 352645  
Allendale Correctional Institution  
Barnwell A54  
1057 Revolutionary Trails  
Post Office Box 1151  
Fairfax, South Carolina 29827-7127

cc: file  
Mr. Alan Wilson  
Attorney General  
Ms. M. Hope Blackley  
7th Judicial Circuit Clerk of Court's Office

CLERK OF COURT  
SPARTANBURG COUNTY  
2017 JUN 15 AM 10 14  
K. THOMAS BLACKLEY

William Leon Burnett, GCM# 358645  
Allendale Correctional Institution  
Barnwell A54  
1057 Revolutionary Trail  
Post Office Box 1151  
Fairfax, South Carolina 29827-7127

June 9, 2017


Ms. M. Hope Blackbey  
Clerk of Court  
746 Judicial Circuit Court Clerk of Court's Office  
180 Magnolia Street  
Post Office Box 3483  
Spartanburg, South Carolina 29304-3483

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CLERK OF COURT  
SPARTANBURG COUNTY  
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M. HOPE BLACKBEY

Re: William Leon Burnett v. State of South Carolina  
C.A. No: 2016-CP-42-03626

Ms. Blackbey,  
Please take "Judicial Notice" of the NOTICE  
of APPEAL that I've filed with the Supreme Court. In complying  
with South Carolina Appellate Court Rules (SCACR) Rule 267,  
your office is being served. This document(s) is for your records.  
Please respond in kind.

Respectfully Requested  
and Submitted,

  
William Leon Burnett

William Leon Burnett, SDC# 358645  
Allendale Correctional Institution  
Barnwell A54  
1057 Revolutionary Trail  
Post Office Box 1151  
Fairfax, South Carolina 29827-7127

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Ms. M. Hope Blackley  
Clerk of Court  
7<sup>th</sup> Judicial Circuit Clerk's Office  
180 Magnolia Street  
Post Office Box 3483  
Spartanburg, South Carolina 29304-3483





degree. Also, Applicant pled guilty as indicted to unlawful neglect. The Honorable J. Mark Hayes, II, accepted Applicant's plea, and in accordance with the recommendation of the State sentenced Applicant to confinement for a period of fifteen (15) years. Applicant was to receive 295 days credit for time served. Applicant was sentenced to ten (10) years' confinement for unlawful neglect. At the time, Applicant was also on probation for financial transaction fraud (2010-GS-42-0157). Judge Hayes, found Applicant in violation of the conditions of his probation and reinstated a two (2) year sentence for the probation violation. Applicant was also required to register with the sexual offender registry and to have no contact with the victim. The sentences were to run concurrent with each other.

Subsequently, Applicant filed a motion to reconsider his sentence. On March 7, 2013, following a hearing on the motion, the motion to reconsider was granted. Applicant's sentence was altered to reflect that Applicant's original fifteen (15) year sentence for criminal sexual conduct, first degree and the ten (10) year sentence on child neglect were to remain, but both were suspended upon service of seven and one half (7½) years followed by five (5) years of supervised probation. Applicant did not appeal his convictions or sentences.

**2013-CP-42-2653**

Applicant filed his first post-conviction relief application on June 25, 2013. He alleged the following grounds for relief:

1. Ineffective assistance of counsel, in that;
  - a. Counsel (James Check & Richard Whelchel) only met with Applicant two times prior to guilty plea,
  - b. Counsel failed to review discovery materials with the Applicant,
  - c. Counsel failed to discuss possible defenses or challenges to Applicant's statement,
  - d. Counsel failed to present accurate and complete information during mitigation portion of sentencing,

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- e. Counsel failed to notify Applicant's family of plea or allow him time to discuss plea offer,
  - f. Counsel brought in the Assistant Solicitor to meet with Applicant the morning of the plea against Applicant's will.
2. Civil rights violation, in that;
- a. Interview with Detective Bohon was improper.

Respondent made its Return and on January 12, 2016, an evidentiary hearing into the matter was convened at the Spartanburg County Courthouse before the Honorable R. Ferrell Cothran, Jr. Applicant was present and represented by Rodney W. Richey, Esquire. Respondent was represented by Alicia A. Olive of the South Carolina Attorney General's Office. Applicant informed the Court of his desire to withdraw his application. After finding that Applicant's decision to withdraw his application was knowingly, voluntarily, and intelligently made, Judge Cothran by written order dated March 2, 2016, dismissed the application with prejudice.

#### CURRENT APPLICATION

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

1. Ineffective Assistance of Counsel in that;
  - a. Counsel failed to object to the prosecutions failure to present aggravating factors such as; the rape kit and medical examinations.
  - b. Counsel "failed to honor defendant's communication in correcting his own statements of nerve and heart problems."
  - c. Counsel failed to question potential witnesses Christie Brall.
  - d. Counsel failed to have Applicant sign his plea agreement and indictment in compliance with S.C. Code § 17-23-130.
  - e. Counsel failed to inform Applicant on the record of his constitutional right to appeal his convictions and sentences.
  - f. Applicant did not knowingly, willingly, or voluntarily waive his constitutional right to appeal his convictions and sentences.
  - g. Counsel failed to file notice of appeal.
  - h. "But for counsel's errors the outcome of the case would have been different on appeal.
  
2. After-discovered Evidence;

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- a. "The medical examinations reports were sequestered by the prosecuting attorney, Ms. Hilliary C. Welburn. Only through contact with the 7<sup>th</sup> Judicial Circuit Solicitor's Office was I able to compel the release of these documents... Finally, after ethical order of Mr. Richard H. Whelchel through Mr. Clay T. Allen did I receive them on October 1, 2015. I filed a Motion for New Trial based on Newly Discovered Evidence... Judge R. Keith Kelly denied the motion on May 13, 2016... There is substantive documentation to back it up positive."
3. State and Federal Constitutional violations.
    - a. "Waiver of Presentment of Indictment"
    - b. "Self-Incrimination" – Applicant "was refused the opportunity to put his statement in his own handwriting" and was interrogated under duress after having suffered several seizures.
    - c. "Double Jeopardy" – "General Sessions remanded the case back to family court. It was heard and ruled upon [on] May 24, 2012 before the Honorable William Wyle, Jr. with Kenneth E. Lee representing [Applicant]. The ruling was in favor of [Applicant]."
    - d. "Cruel and unusual punishment."

Before this court are the: Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's prior PCR records , and the records for this post-conviction relief action.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Statute of Limitations

The Court 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, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

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Applicant was sentenced on October 4, 2012. The sentence was altered on March 7, 2013. This application was filed on October 3, 2016, well beyond the statutory filing period expiration date.

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

#### Successive

The Court also finds that 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).

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JANET W. HENRY

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. 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 application 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.

**Newly discovered evidence**

Applicant’s assertion that he is being held in custody unlawfully as a result of “after discovered evidence”, such that he should be entitled to an evidentiary hearing, is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if “there exists evidence or 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(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C).

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In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. State v. Rice, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013) (citing Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Therefore, an applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that;

“(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. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.”

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

In support of his claim of “after” or newly discovered evidence, Applicant alleges that medical examinations reports were sequestered by prosecution and he did not receive them until October 1, 2015. Applicant has failed to allege facts sufficient to support his claim of newly discovered evidence. The medical examination records were or could have been discovered before the entry of Applicant’s plea. Respondent submits that Applicant cannot meet either of the elemental requirements of the Jamison test to show that he is entitled to a new trial based on newly discovered evidence. Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make a *prima facie* showing. Therefore, this matter shall be summarily dismissed with prejudice.

{Conclusion and signature on the following page}

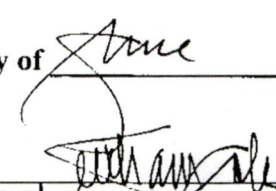
**CONCLUSION**

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 Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Valerie Giovanoli, Esquire  
Rasheeda Cleveland, Esquire  
PCR Division – 7<sup>th</sup> Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Spartanburg 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 2nd day of June, 2017.

  
J. DERHAM COLE  
Chief Administrative Judge  
Seventh Judicial Circuit

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M. HOPE BLACKLEY

\_\_\_\_\_, South Carolina

# Spartanburg County

Spartanburg County Court House  
180 Magnolia Street  
P. O. Box 3483  
Spartanburg, SC 29304-3483

Phone (864) 596-2591  
Fax (864) 596-2239



**M. Hope Blackley**  
Clerk of Court

June 2, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Wm. Leon Burnett  
Applicant # 352645

7<sup>TH</sup> JUDICIAL CIRCUIT

CASE # 2016CP42-3626

State  
vs  
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Conditional Order Dismissal  
In this action dated 6-2-2017 on 6-2-17

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

- Adrian Heese
- Alexis Oliva
- Wm. Burnett

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M. HOPE BLACKLEY

6-2-17  
(Date)

Corie Self  
(Signature)



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### William Leon Burnett #352645 VS South Carolina State Of

Case Number:	2016CP4203626	Court Agency:	Common Pleas	Filed Date:	10/04/2016
Case Type:	Common Pleas	Case Sub Type:	Post Convict Rel 500	File Type:	PCR
Status:	PCR	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			





### Case Parties

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
<input checked="" type="checkbox"/> Burnett, William Leon					Plaintiff Pro Se		10/04/2016
<input checked="" type="checkbox"/> Burnett #352645, William Leon	Allendale Ci, Jasper A223 1057 Revolutionary Trail, POB 1151 Fairfax SC 298272187				Plaintiff		06/02/2017
South Carolina State Of					Defendant		10/04/2016

### Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Burnett #352645, William Leon	Notice/Appeal	Filing		06/15/2017-11:03		
Burnett #352645, William Leon	Order/Conditional Order of Dismissal	Order		06/02/2017-13:19		
South Carolina State Of	Return and Motion to Dismiss	Filing		05/22/2017-13:02		
Burnett #352645, William Leon	Service/Affidavit Of Service by Mail	Filing		05/22/2017-13:02		
Burnett #352645, William Leon	Letter/Inmate Letter	Filing		04/28/2017-14:18		
Burnett #352645, William Leon	Letter/Inmate Letter	Filing		04/04/2017-11:15		
Burnett #352645, William Leon	Filing/Motion to Amend w/Service	Filing		03/15/2017-16:01		
Burnett #352645, William Leon	Letter/Inmate Letter/Response	Filing		01/11/2017-11:14		
Burnett #352645, William Leon	Filing/Motion for a Speedy Tiral/Response	Filing		12/05/2016-09:54		
		Filing				

<b>Burnett #352645, William Leon</b>	<b>Letter/Inmate Letter</b>			<b>12/01/2016- 15:50</b>		
<b>Burnett #352645, William Leon</b>	<b>Letter/Inmate Letter</b>	<b>Filing</b>		<b>11/09/2016- 12:07</b>		
<b>Burnett #352645, William Leon</b>	<b>Letter/Inmate Letter</b>	<b>Filing</b>		<b>10/21/2016- 11:07</b>		
<b>Burnett #352645, William Leon</b>	<b>Post Conviction Relief</b>	<b>Filing</b>		<b>10/04/2016- 09:43</b>		 

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