

**RECEIVED**

JUL 28 2017

**S.C. SUPREME COURT**

Michael Watson, 170712  
TCI SB-270  
1578 Clarence Coker Hwy.  
Turbeville, SC 29162

July 26 2017

RE: Service of my Notice of Appeal on Respondent.

South Carolina Supreme Court  
The Honorable Daniel E. Shearouse  
Post Office Box 11330  
Columbia, SC 29211

Dear Mr. Shearouse:

Sir, I have properly and Timely Served the "Respondent" as proscribed by SCACR 203 within the timeline set by rule. However, I Thought I had served the Court with a copy but Your Office must not have received this. The Attorney General has received my Notice, which was filed timely and my Initial Brief. Enclosed please find my Notice of Appeal, Proof of Service as it relates to this PCR Appeal. I will Re-serve the Respondent with my Notice and I will forward my Initial Brief in the near future.

I was certain that i did serve the Court along with the Respondent but that corrospondence must have not arrived at your location. I want to Thank you for all your help in please returning a Clocked-In copy of my Notice of Appeal and Proof of Service. I want to thank you in advance for your help in this matter.

With Kind Regards...I Am.

Sincerely, Yours,

S/ Michael Watson

CC: A/W  
D/E/S  
File

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

JUL 28 2017

APPEAL FROM MARLBORO COUNTY

The Honorable Roger E. Henderson

**S.C. SUPREME COURT**

Case No. 2014-CP-34-195

Michael Watson..... APPELLANT,

v.

State of South Carolina,..... RESPONDENT.

NOTICE OF APPEAL

I certify that I am appealing the decision of the Honorable Roger E. Henderson (Order of Dismissal) Dated March 3 2017 and received by me on April 1 2017. Which Denied my PCR Action

S/ Michael Watson  
Michael Watson

Proof of Service

I DO certify that I have served the Respondent's Counsel of Record South Carolina Attorney General Office (Alan Wilson, Attorney General, Post Office Box 11549, Columbia, SC 29211-1549 by depositing the same in the United States Mail Postage Prepaid and addressed as mentioned herein:

S.C. Attorney General's Office  
Alan Wilson, Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549

On This 28th Day of April  
2017.

S/ Michael Watson  
Michael Watson

STATE OF SOUTH CAROLINA )  
COUNTY OF MARLBORO )

Michael Watson, )  
S.C.D.C. No. 170712, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

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

Case No. 2014-CP-34-195 )

**FINAL ORDER OF DISMISSAL**

ANITA M. WILLIAMS  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

2017 MAR 15 PM 3 51

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 21, 2014. Respondent made its return on or about September 16, 2015, requesting the application be summarily dismissed based upon Applicant's failure to timely file his PCR application and the presumption against successive PCR applications.

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 by the Honorable Roger E. Henderson on September 21, 2015 and filed September 28, 2015, provisionally denying and dismissing this action, while giving the Applicant 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 October 16, 2015, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant filed a motion to amend his PCR application on October 15, 2015 to include a claim of newly discovered evidence. Subsequently, Applicant filed a motion to dismiss the signed and filed Conditional Order of Dismissal on November 13, 2015. Thereafter, Applicant filed a motion for abeyance on November 19, 2015, in which Applicant requested a copy of the Conditional Order of Dismissal that was signed by Judge Henderson on September 20, 2015,



*Anita M. Williams*  
CLERK OF COURT  
MARLBORO COUNTY

filed with the clerk on September 28, 2015, and personally served upon the Applicant on October 16, 2015.

This Court has reviewed Applicant's motions in response to the Conditional Order of Dismissal in their 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 Applicant was convicted and sentenced on November 10, 2004. As this action was filed on July 12, 2014, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-2745(a) (Supp.2003). This is Applicant's second application for post-conviction relief.<sup>1</sup> 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 raise all issues related to his case in his first PCR application filed May 7, 2008. 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.’”).

This Court finds Applicant has failed to set forth facts sufficient to establish a claim of “newly-discovered evidence.” Pursuant to § 17-27-45(c) of the South Carolina Code of Laws, a newly-discovered evidence claim can be timely raised within one year of actual discovery or within one year after the date when, by the exercise of reasonable diligence, such evidence could have been ascertained. Furthermore, Applicant has failed to make a *prima facie* showing that he is entitled to relief based on newly-discovered evidence. Welch v. MacDougall, 246 S.C. 258,

<sup>1</sup> The Court is aware that Applicant's first PCR was timely, despite the error in the procedural history in this Court's previous Conditional Order of Dismissal. Applicant was represented by Tommy A. Thomas, Esquire. An evidentiary hearing was held in Darlington County on September 16, 2010. The application was denied and dismissed with prejudice by the Honorable Thomas A. Russo by order dated December 12, 2010. Applicant appealed the order to the Supreme Court of South Carolina by way of a Johnson Petition for Writ of Certiorari. The Petition was denied by order dated April 9, 2014. The remittitur was issued April 25, 2014.

Aida M. Williams  
CLERK OF COURT  
MARLBORO COUNTY

A CERTIFIED TRUE COPY

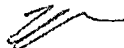
007 APR 15 PM 3 51  
AIDA M. WILLIAMS  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

FILED

143 S.E.2d 455 (1965). An applicant "requesting a new trial based on after-discovered evidence must show that the evidence: (1) is such as would likely change the result if a new trial was had; (2) has been discovered since the trial; (3) could not by the exercise of due diligence have been discovered before the trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching." Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

Applicant alleges that since the date of his first PCR, that he received documents from his PCR attorney that were not known to Applicant. The documents included an arrest warrant and indictment "placing a 9 millimeter (sic) in the hands of Tavon Littles approximately 10-12 days after a shooting incident at Tavon Littles resident (sic) where the state said a number of people were shot with a 9 millimeter (sic) pistol." Tavon Littles testified in Applicant's trial and Applicant complains that trial counsel's cross examination regarding Littles's prior gun conviction didn't specify the caliber pistol. Applicant has failed to set forth facts sufficient to satisfy these requirements. Specifically, Applicant has failed to establish why such alleged evidence could not have been discovered before the trial or during his initial PCR action. Applicant has also failed to demonstrate how this alleged newly discovered evidence is likely to result in a new trial or how it is material to the issue of Applicant's guilt. Therefore this court finds that Applicant has failed to make such a *prima facie* showing on these elements that he is entitled to relief based on the information set forth and, as such, he is not entitled to an evidentiary hearing in the matter.

This Court further finds that Applicant's claim of lack of subject matter jurisdiction is without merit. Applicant claims that the state of South Carolina did not have jurisdiction to prosecute Applicant for assault and battery with intent to kill because it was not presented to Applicant at Applicant's extradition hearing with the other charges.



*Andra M. Williams*

CLERK OF COURT  
MARLBORO COUNTY

A CERTIFIED TRUE COPY

FILED  
2017 MAR 15 5 PM 5  
MARLBORO COUNTY  
SOUTH CAROLINA

An Applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499. See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant was indicted by the Marlboro County Grand Jury for two counts of assault and battery with intent to kill and for discharging a firearm in a dwelling. The indictments allege that criminal offenses occurred in Marlboro County. Applicant was prosecuted for these charges in Marlboro County Court of General Sessions. Accordingly, the circuit court had subject matter jurisdiction. Applicant has failed to present any facts or evidence that the convictions he challenges in this application are in a class over which the circuit court does not have the authority to provide. Therefore, this allegation is dismissed with prejudice.

**IT IS THEREFORE ORDERED** that for the reasons set forth herein and in the Court's Conditional Order of Dismissal, the application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises Applicant that he must file and serve a Notice of Appeal within 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 7<sup>th</sup> day of March, 2017.

Charles J. [Signature], South Carolina.

[Signature]  
 ROGER E. HENDERSON  
 Chief Administrative Judge  
 Fourth Judicial Circuit Court

A CERTIFIED TRUE COPY

Antia M. Williams  
 CLERK OF COURT  
 MARLBORO COUNTY

FILED  
 2017 MAR 05 PM 3 51  
 ANITA M. WILLIAMS  
 CLERK OF COURT  
 MARLBORO COUNTY, S.C.

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 Sgt. Q. Murray (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 Clarendon ) AFFIDAVIT OF PERSONAL SERVICE

On this 16 day of Oct. 2015, I served the **Conditional Order of Dismissal**, on *Inmate Michael Watson, SCDC Inmate # 170712*, by delivering personally and leaving a copy of the same at **Turbeville Correctional Institution, Turbeville**. Deponent is not a party to this action.

s/ Sgt. Quera Murray  
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 16th day of Oct., 2015

Ernie White (L.S.)  
Notary Public for South Carolina

My Commission Expires: 4-27-2016

FILED  
2017 MAR 15 PM 3 51  
ANITA M. WILLIAMS  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

ADMISSION OF SERVICE

Service of a copy of the within **Conditional Order of Dismissal** is admitted at the South Carolina Department of Corrections (Turbeville Correctional Institution), Turbeville, Clarendon County, SC this 16 day of Oct., 2015.

s/ Michael K Watson  
Inmate  
SCDC Inmate #: 170712

2014-CP-34-0195

A CERTIFIED TRUE COPY

Anita M. Williams  
CLERK OF COURT  
MARLBORO COUNTY



A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders<sup>2</sup> brief. The Court of Appeals dismissed the appeal. State v. Watson, Op. No. 2007-UP-505 (S.C. Ct. App. filed October 30, 2007). The Applicant submitted a *pro se* petition for rehearing on November 15, 2007. The Court of Appeals returned the petition for rehearing without action (because it was untimely) and issued the remittitur. The Applicant filed a *pro se* petition for writ of certiorari at the South Carolina Supreme Court. The Supreme Court dismissed the petition by order dated December 19, 2007, and denied the Applicant's subsequent motion to reinstate by order dated January 23, 2008.

First PCR Application (2008-CP-13-0165)

In the Applicant's first application for PCR, filed on May 7, 2008, he raised the following grounds for relief:

1. Ineffective assistance of trial counsel
  - a. "Was without counsel in contravention of United States v. Cronin and was subsequently denied notice to a Gerstein v. Pugh hearing."
  - b. Failed to suppress physical evidence at pre-trial hearing.
  - c. Failed to investigate the crime scene.
  - d. Failed to properly object to evidence.
  - e. Failed to properly construct a defense.
  - f. Failed to impeach State witness Bobby Williams' testimony.
  - g. Failed to object to Lt. Boston's testimony.
  - h. Failed to interview witnesses provided by the Applicant.
  - i. Failed to make timely and proper objections.
  - j. Failed to object to conflicting testimony of State witnesses.
  - k. Conceded the Applicant's guilt in closing argument.
  - l. Failed to object to trial judge's charge on reasonable doubt.
  - m. Failed to object to the solicitor's summation referring to testimony of a State witness.
  - n. Failed to object to trial judge's charge on lesser-included offense of assault and battery of a high and aggravated nature.
  - o. Failed to object to improper indictment.
  - p. Failed to object to erroneous jury instructions on murder and ABWIK.

FILED  
2008 SEP 28 PM 3 16  
JULIAN E. FURDERBURK  
CLERK OF COURT  
ANDERSON COUNTY, S.C.

<sup>2</sup> Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

- q. Failed to object to the solicitor's improper use of convictions older than ten years during sentencing.
- r. Failed to move for pre-trial hearing to suppress identification evidence.
- s. Failed to object to trial judge's failure to follow concurrent sentence doctrine.

The matter was summarily dismissed by order of the Honorable J. Michael Baxley on August 4, 2009 because it was not filed within the one (1) year statutory period. This matter was not appealed.

Current Application

In his second and current application for post-conviction relief on this matter, Applicant raises the following grounds for relief (reproduced verbatim):

1. "New discovered evidence."
  - a. "Applicant did not have access to material evidence that can only be gain from NCIC Reports. This material evidence was given to applicant after applicants Trial and Post Conviction Relief Hearing."
2. "Ineffective assistance of trial counsel."
  - a. "Trial Counsel was ineffective by not investigating. This neglect to the applicants case was detrimental to the applicants innocence. Applicant was denied adequate representation that allowed the courts to find the applicant guilty. If trial attorney had presented this material evidence to the court the outcome of the would have been different."
3. "Subject Matter Jurisdiction."
  - a. The State of South Carolina did not have Jurisdiction to prosecute the applicant for crimes of Assault And Battery With Intent To Kill. The charge of Assault And Battery With Intent to Kill was not presented to applicant at applicants EXTRADITION HEARING. Therefor violating applicants Due Process Rights."

Respondent made a timely Return and Motion to Dismiss, asking this Court to dismiss the application as successive and untimely.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." See

*[Handwritten signature]*

FILED  
 2011 FEB 28 PM 3:58  
 CLERK OF COURT  
 MARLBORO COUNTY, S.C.  
 WILLIAM R. FUNDERBURK  
 CLERK OF COURT  
 MARLBORO COUNTY, S.C.

also Rule 56(c), SCRC. The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law in ruling on Respondent's motion to dismiss:

Successive Application

The allegation must be summarily dismissed because it is impermissibly successive. The Uniform Post-Conviction Procedure Act provides that:

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

S.C. Code Ann. § 17-27-90 (2003). Under this statute, successive post-conviction relief applications are forbidden unless an applicant, who bears the burden of proof, can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 398 (1991). This applicant has not explicitly stated any new grounds upon which a successive PCR action can be based. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, supra. The grounds he alleges could have been known at the time of prior application. Therefore, this application must be dismissed as impermissibly successive.

FILED  
MAY 13 2015  
CLERK OF COURT  
MARLBOROUGH COUNTY, S.C.

Failure to Timely File

Further, this application must be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-45(a) reads as follows:

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

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996).

The last order regarding Applicant's direct appeal was issued on January 23, 2008. Applicant was therefore required to file his application before January 24, 2009. This application was filed on July 21, 2014, which was well beyond the time that the statutory filing period had 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 (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, this Court finds that the application for post-conviction relief must be summarily dismissed for the reasons discussed above.

### CONCLUSION

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

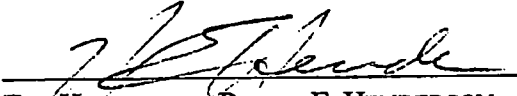
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this order upon him to show why this ruling should not become final. Applicant shall file any reasons he may have with the Marlboro County Clerk of Court (P.O. Drawer 996, Bennettsville, SC 29512-0996) and shall serve opposing counsel at the following address:

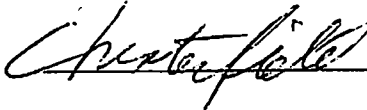
FILED  
2015 SEP 28 PM 3  
WILLIAM E. UNDERBEEK  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

Office of the Attorney General  
Attn: Jessica E. Kinard, Esquire  
Post Office Box 11549  
Columbia, South Carolina 29211

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

IT IS SO ORDERED THIS 21<sup>st</sup> DAY OF September, 2015.

  
THE HONORABLE ROGER E. HENDERSON  
Presiding Judge  
Fourth Judicial Circuit

 South Carolina

FILED  
2015 SEP 28 PM 3 16  
WILLIAM B. FENDERBURK  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA )

COUNTY OF MARLBORO )

Michael Watson, 170712 )  
 Plaintiff )

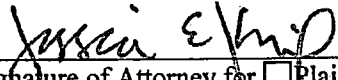

v. )

State Of South Carolina )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.  
2014-CP-34-0195

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

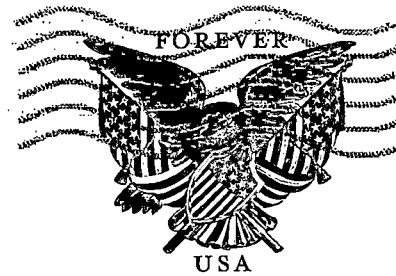
Plaintiff's Attorney: Michael Watson, 170712, Bar No. Address: Evans CI POBox 2951202 Bennettsville SC 29512 phone: fax: e-mail: other:	Defendant's Attorney: Jessica E. Kinard, Bar No. 77889 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> 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 <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	Date submitted September 16, 2015
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> 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: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	Date Filed: <b>TRUE COPY</b>  CLERK OF COURT MARLBORO COUNTY

2015 SEP 23 PM 3 16  
 FILED  
 WILLIAM B. FUNDUSBURK  
 CLERK OF COURT  
 MARLBORO COUNTY, S.C.

Michael Watson, # 170712  
TCI SB-270  
1578 Clarence Coker Hwy.  
Turbeville, SC 29162

COLUMBIA SC 290

27 JUL 2017 PM 3 L



LEGAL MAIL

South Carolina Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

**RECEIVED**

JUL 26 2017

MAILROOM  
TURBEVILLE CI

29211-133030

