THE STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM DILLON COUNTY
Court of Common Pleas

Paul M. Burch Chief Administrative Judge
Fourth Judical Circuit

Case No. 2017-CP-17-0131

Artie Burns . . . . . Appellant

V.

The State . . . . . Respondent.

NOTICE OF APPEAL

Artic Burns appeals denial of Post conviction relief hearing in this case by Honorable Paul M. Burch

AUG. 19. 2017

Johnnie E. Jones
Ass. Attorney General
PO Box 11549
Columbia S.C. 29211

Artie Burns
Artic Burns #318252
Lee C.I. F4-B-1260
990 Wisacky Hwy
Bishopville, S.C. 29010

Artie Burns #318252
Lee C.I F4-B-1260
990 Wisacky Highway
Bishopville S.C 29010

COLUMBIA SC 290

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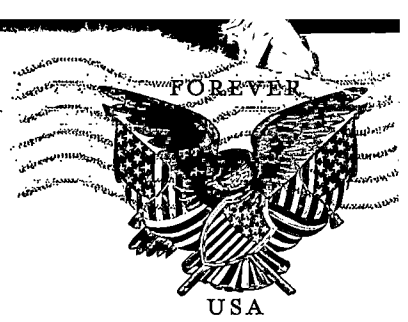

The Supreme Court of South Carolina
DANIELE. SHEAROUSE. CLERK OF COURT
Post office Box 11330
Columbia. South Carolina 29211

29211-123030

FILED
GWEN T. HYATT
2017 JUL 14 AM 10:40
CLERK OF COURT
DILLON COUNTY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON	)	
	)	
Artie Burns,	)	Case No.: 2017-CP-17-00131
S.C.D.C. No. 318252,	)	
	)	
Applicant,	)	
	)	**FINAL ORDER OF DISMISSAL**
v.	)	
	)	
State of South Carolina	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of an application for post-conviction relief filed March 17, 2017. Respondent made its return on or about May 3, 2017, requesting the application be summarily dismissed as untimely, successive, and barred by the doctrine of *res judicata*; because Applicant's subject-matter jurisdiction and indictment allegations were without merit; because Applicant's claim of actual innocence was not cognizable; and because Applicant's prayer for a belated appeal was without merit.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Honorable Roger E. Henderson issued a Conditional Order of Dismissal signed May 16, 2017 and filed May 26, 2017, 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 June 12, 2017, serving the above-mentioned Conditional Order of Dismissal on Applicant.

As Applicant received the Conditional Order of Dismissal on June 12, 2017, he had until July 3, 2017, to file a response. Applicant filed a document titled "Objection to Conditional

Order of Dismissal" on July 5, 2017. Applicant's response is late by two days—one if the Independence Day holiday is removed from measure.

This Court has reviewed Applicant's responses 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. In addition to being late, Applicant's objections in substance merely reaffirm his original allegations—that the circuit court lacked subject-matter jurisdiction to convict him. This allegation is patently without merit, as provided in the Conditional Order of Dismissal, and Applicant's insistence thereupon is based entirely on jurisprudence explicitly or implicitly overruled by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

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.**

This Court hereby advises the 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 8th day of July, 2017.

PAUL M. BURCH
Chief Administrative Judge
Fourth Judicial Circuit

, 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 _____ (*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 Lee)

AFFIDAVIT OF PERSONAL SERVICE

On this 12th day of June 2017, I served the **Conditional Order of Dismissal**, on *Inmate* **Artie Burns**, *SCDC Inmate* #318252, by delivering personally and leaving a copy of the same at **Lee** *Correctional Institution.* Deponent is not a party to this action.

s/ _____
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME
this 12 day of June, 2017

_____ (L.S.)
Notary Public for South Carolina

My Commission Expires: 3/3/2024

FILED
GWEN T. HYATT
2017 JUL 14 AM 10:40
CLERK OF COURT
DILLON COUNTY

ADMISSION OF SERVICE

Service of a copy of the within **Conditional Order of Dismissal** is admitted at the South Carolina Department of Corrections (LEE *Correctional Institution*), 990 Wisacky Highway, Bishopville, Lee County, SC this 12th day of June, 2017.

s/ _____
Inmate
SCDC *Inmate #:* 318252

2017-CP-17-0131

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON)

FILED
GWEN T. HYATT
2017 JUL 14 AM 10:40
CLERK OF COURT
DILLON COUNTY

Artie Burns, #318252)
☐ Plaintiff) CASE NO.
2017-CP-17-0131
v.) MOTION AND ORDER INFORMATION
FORM AND COVER SHEET
State Of South Carolina)
☒ Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
Artic Burns, #318252 , Bar No. Address: Lee CI 990 Wisacky Hwy Bishopville, SC 29010 phone: fax: e-mail: other:	Johnny E. James Jr., Bar No. 101260 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **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.

Johnny E. James Jr. July 6, 2017
Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT:
☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ 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, SCRCP)
☐ 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

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11-03)

ALAN WILSON
ATTORNEY GENERAL

July 12, 2017

The Honorable Gwen T. Hyatt
Clerk of Court, Dillon County
PO Box 1220
Dillon, SC 29536-1220

Re: Artie Burns, #318252 v. State of South Carolina
2017-CP-17-0131

Dear Ms. Hyatt:

Enclosed please find the original **Final Order of Dismissal** signed by the Honorable Paul M. Burch, in the above-captioned case, for filing in your office.

Pursuant to Rule 71.1(f), of the South Carolina Rules of Civil Procedure, please "provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRCP." In addition, please forward proof of service and a time stamped copy back to our office for our file.

Should you have any questions, please call me at (803) 734-3737.

Sincerely,

Johnny E. James Jr.
Assistant Attorney General

JEJ/mm

Enclosures

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON	)	
Artie Burns, S.C.D.C. No. 318252,	)	Case No.: 2017-CP-17-00131
Applicant,	)	**CONDITIONAL ORDER OF DISMISSAL**
v.	)	
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Artie Burns (Applicant) on March 17, 2017. 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 Dillon County Clerk of Court. Applicant was indicted at the May 2006 term of the Dillon County Grand Jury for trafficking cocaine, between 100 and 200 grams (2006-GS-17-00413). David Watson, Esquire, represented Applicant, and Mary Johnson-Lee and Kinard Redmond, of the Fourth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial before the Honorable John L. Breeden, Jr. and a jury. The jury found Applicant guilty as indicted on October 19, 2006. On October 20, 2006, Judge Breeden sentenced Applicant to imprisonment for a term of 25 years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Wanda H. Carter. By opinion decided June 1, 2009, the South Carolina Court of Appeals affirmed

Applicant's convictions. State v. Burns, Op. No. 2009-UP-262 (S.C. Ct. App. 2009). The Remittitur was issued on June 18, 2009.

First PCR Application: 2009-CP-17-00294

Applicant filed his first application for post-conviction relief on October 1, 2009 (2009-CP-17-00294). He alleged the following grounds for relief in his application:

1. Ineffective assistance of trial counsel:
    a. Advised client to go to trial with a 10 person jury.
    b. Failed to quash the indictment:
        i. Indictment did not contain all the elements of the crime.
        ii. The amendment of the indictment violated the Fifth and Fourteenth Amendments.
        iii. Indictment failed to provide sufficient notice of the trafficking charge.
    c. Failed to raise and preserve all meritorious issues.
    d. Failed to challenge the legitimacy of the traffic stop.
    e. Failed to object "to court's ruling that Solicitor may [ask] questions from a criminal history in front of jury that's not clients."
    f. Failed to challenge the Applicants' consent to search following an illegal traffic stop.
    g. Failed to move to suppress the evidence seized after the traffic stop.
    h. Failed to move for the judge to recuse himself.
    i. Failed to object to the use of an incident report that was not filed by the officer.
    j. Failed to investigate or call witnesses to testify.
    k. Failed to move "for dismissal on the grounds of insufficient evidence or no evidence."
    l. Failed to object to the "constructive language" in the jury instruction on trafficking.
    m. Failed to move to set aside the verdict based on the insufficiency of the evidence.
    n. Failed to move for a directed verdict on the grounds of insufficient evidence or no evidence.
    o. Failed to make any post-trial motions.
    p. Failed "to move on the pre-trial motion made before The Honorable James E. Lockemy to suppress all evidence not given to the defense ten days before trial."

q. Failed to move for a continuance "to keep trial in front of The Honorable James E. Lockemy who started the pre-trial hearing."

Respondent made its return on March 31, 2010, and an evidentiary hearing into the matter was convened on September 15, 2010, before the Honorable Thomas A. Russo. Applicant was present at the hearing and represented by Bobby G. Frederick, Esquire. Karen C. Ratigan, of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf, and J. David Watson, Esquire, also testified. By written order dated December 22, 2010, and filed December 30, 2010, Judge Russo denied and dismissed the application.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by Wanda H. Carter, Esquire, filing a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). Thereafter, the Supreme Court of South Carolina filed an order dated July 24, 2012,, transferring jurisdiction over the case to the South Carolina Court of Appeals. The South Carolina Court of Appeals denied Applicant's petition and granted counsel's request to withdraw. Burns v. State, S.C. Ct. App. filed June 4, 2013. The Remittitur was issued on June 21, 2013.

Federal Habeas Petition: 8:13-03392-BHH-JDA

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on December 2, 2013 (C.A. No. 8:13-03392-BHH-JDA). In his Petition, Applicant set forth the following grounds for relief:

1. "Petitioner was denied effective assistance of counsel at trial"
   a. "Trial Counsel was ineffective for not asking for a Directed Verdict on the Grounds of no evidence or insufficient evidence. Trial Counsel was only concern[ed] about Constructive Possession and Dominion and Control. Not at any time during the argument did Counsel nor Co-Counsel argue the fact [that] the State did not produce the evidence at trial that David Lane allege[d] he removed from Petitioner's car on February 28, 2006. David Lane's testi[fied] that the evidence the State presented at court at

trial is not the evidence he removed from Petitioner car. Trial Counsel's only argument should have been [that] the State did not produce [any] evidence of the crime of trafficking to sustain the conviction and the evidence should not have been admitted. If the Court finds that trial Counsel never properly raised and argued the issue, it should also find that such failure amounted to ineffective assistance of Counsel."

2. "Petitioner was denied effective assistance of Counsel at trial"
    a. "Trial Counsel was ineffective for advising Petitioner to go to trial with a ten (10) Person Jury. Petitioner was tried [and] convicted by a 10 member jury. Counsel should have objected and not have had Petitioner to agree with the State and the Court without a proper waiver of his rights and Counsel was ineffective for not safe guarding Petitioner's rights to a full twelve member Jury. Petitioner did not and was not allowed to seat a full twelve member Jury Panel. If the Court finds that trial Counsel erred in advising Petitioners to go to trial without a Proper waiver and against S.C.R. CrimP Rule 14, it should also find that such error amounted to ineffective assistance of Counsel and a miscarriage of Justice."
3. "Petitioner was denied effective assistance of Counsel at trial."
    a. "Trial Counsel was ineffective for not moving for trial Judge to recuse himself from Petitioner's trial. D[ur]ing the suppression hearing[,] trial Judge state[d] the following in discussing his ruling against the Police in a Previous Case. 'And I worried when I left whether or not I was going to get pulled going back to North Myrtle [B]each because I ruled against the officers in that.' The statement showed fear of the Police and there [were] uniform officers sitting in the [c]ourt room and it showed [p]rejudice that Petitioner was not going to get a fair trial. The statement was improper. If the Court finds that trial Counsel err[ed] in not moving for trial Judge [to] recuse [himself,] it should also find that such error amounted to ineffective assistance of Counsel."
4. "Trial Court lacked Subject Matter Jurisdiction."
    a. "Trial Counsel lacked subject matter Jurisdiction to convict and sentence Petitioners for trafficking without an indictment for trafficking. Petitioner was indicted for Possession with intent to distribute cocaine. The body of the indictment says the Grand Jury indicted Petitioner for Possession with intent to distribute cocaine. The Prosecutor says because of the weight alleged in the indictment it[']s trafficking. The trial Judge, because of the ruling of the pre-trial Judge[,] allowed the State to try and convict and sentence Petitioner for trafficking without an indictment for trafficking cocaine. It was Prejudice to Petitioner and was a miscarriage of Justice. It changed the nature of the crime charged and increased the penalty. It was

no longer the indictment that was passed on by the Grand Jury. If this Court finds that [the] trial Court lacked subject matter Jurisdiction to convict and sentence Petitioner, it should find Petitioner's conviction and sentence invalid."

5. "Petitioner was denied effective assistance of counsel at trial"
    a. "Trial Counsel was ineffective for not objecting to a defective chain of custody. Trial Counsel should have objected on the Grounds [that] the State did not reveal an Adequate chain of custody to satisfy the admissibility and credibility requirements. Trial Counsel objected to the evidence [itself]. Officer David Lane failed to comply with the Dept. of Public Safety directive on evidence. (1) He failed to make a chain of custody form for the evidence he said he tested d[ur]ing a field test after he altered the evidence for the field test and the State failed to produce the resu[l]ts to show probable cause and that the evidence had cocaine in it to arrest Petitioner. (2) There is no chain of custody form from the police secured repository showing when and what time he turned [in] the evidence and to who[m]. (3) The evidence was not transported to (S.L.E.D.) South Carolina Law enforcement division [within] 72 hours. (4) David Lane kept the evidence for 43 days in his personal belongings. If the Court finds that trial Counsel failed to object to the issue properly[,] it should find that such failure amounted to ineffective assistance of Counsel."
6. "Petitioner was denied effective assistance of Counsel at trial"
    a. "Trial Counsel was ineffective for fail[ure] to object to the court ruling the Solicitor can ask questions from a criminal history in front of the Jury that[']s not Petitioner[']s if Petitioner takes the stand. Trial Counsel should have objected and not agreed with the State and the Court that Petitioner could be asked questions from another person[']s criminal history and the criminal history would not be put into evidence so the Jury would not be able to see the other person[']s name on it. The report also shows that the person went to jail in Miami-[D]ade County at the time Petitioner was in jail in South Carolina showing that Petitioner is not that person. The ruling Prejudiced Petitioner and would have Prejudiced Petitioner in front of the Jury. The ruling kept Petitioner from testifying against the officer who was the sole witness. If the Court finds that trial Counsel did not properly object and was in error for agreeing with the State and the Court, it should also find that such failure amounted to ineffective assistance of Counsel."
7. "Petitioner was denied effective assistance of Counsel at trial"

a. "Trial Counsel was ineffective for fail[ing] to challenge the legitimacy of the traffic stop. Trial Counsel should have challenged the traffic stop. David Lane testified the reason he stopped Petitioner was because Petitioner "some what swerved" then he state[d] the vehicle actually enter[ed] into the other lane and then back into the outside lane. When a vehicle "some what swerved" the vehicle will never enter the other lane. Officer David Lane doesn't know what he had observed by way of his testimony shows lack of Probable Cause to stop Petitioner[']s car. Officer David Lane did not testify to any factors supporting reasonable suspicion that Petitioner[']s driving constituted threat of injury to himself or others. If the Court finds that trial Counsel should have raised the issue[, it] should also find that such failure amounted to ineffective assistance of Counsel."

8. "Prosecutorial Misconduct"
    a. "Prosecutor used false evidence [and] false criminal history to keep Petitioner from taking the stand. Prosecutor did not turn over evidence in a timely manner. Prosecutor made Improper statements he knows that are not true in front of [the] Jury. Officer David Lane testified the evidence was not the evidence he removed from Petitioner[']s car that the state presented at trial. The Prosecutor used the evidence to get a wrongful conviction and to inflame the passion of the Jury."
9. "Petitioner was denied effective Appellate Counsel"
    a. "Appellate Counsel was ineffective for not raising the chain of custody issue on direct appeal. Appellate Counsel should have raised the chain of custody because trial Counsel objected to it and there wasn't an adequate chain presented by the State."

Respondent filed its Return and Motion for Summary Judgment on March 12, 2014. The Honorable Jacquelyn D. Austin, United States Magistrate Judge, issued on December 22, 2014, a Report and Recommendation that Respondent's motion for summary judgment be granted. Burns v. Bush, 8:13-03392-BHH-JDA, 2014 WL 8272310 (D.S.C. 2014). Both parties timely objected to different portions of the Report and Recommendation. The Honorable Bruce Howe Hendricks, United States District Judge, denied Applicant's Petition on March 23, 2015, and accepted the Report and Recommendation for summary judgment. Applicant gave notice of his appeal to the U.S. Fourth Circuit Court of Appeals on April 29, 2015. The Fourth Circuit

dismissed Applicant's appeal on November 19, 2015, for want of a certificate of appealability. Burns v. Bush, 622 Fed.Appx. 265 (4th Cir. 2015). Applicant thereafter filed a Petition for Writ of Certiorari in the Supreme Court of the United States, which was denied on May 23, 2016. Burns v. Reynolds, 136 S.Ct. 2454 (2016).

II. CURRENT APPLICATION

In his second and current post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons (excerpted[1] verbatim):

1. "Subject matter Jurisdiction"
    a. "The State unlawfully impaneled its Grand Jury outside of the Jurisdiction of the Court of General Sessions and then willfully caused false and misleading information to be Printed in its indictment."
    b. Applicant "contends that the Court of General Sessions [failure] to comply with statutory law [is] jurisdictional [in] nature."
    c. "The terms of the Court of General Sessions for Dillon County are fixed by S.C. Code Ann. § 14-5-650 and which does not offer provisions for a Court to be open on May 22, 2006 as FALSELY alleged in the State['s] indictment. Also note the Grand Jury foreman signed the indictment on May 18, 2006. Four days before the alleged day of the convening of the Dillon County Grand Jury."
    d. Applicant construes the above alleged errors as intentionally created by the Solicitor, calls for him to be "punished accordingly," construes the alleged error as "fraud on the court," and calls upon the "Court to initiate an official Investigation into the herein alleged misconduct and criminal violations of law. Or in the alternative vacate the initial conviction and sentence."
    e. "Petitioner's indictment for Possession with Intent to Distribute Cocaine did not confer Jurisdiction upon the Circuit Court for the crime of trafficking cocaine."
2. "Actual [Innocence]"
    a. "State failed to show [Applicant] committed a crime"

Applicant requests relief as follows:

- "reversed and vacated"

[1] Applicant supports his allegations with a 20 page, handwritten attachment.

- "belated appeal"

Also before this Court are the Dillon County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the final orders of Applicant's previous PCR and federal habeas actions, and the records of this current PCR action.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject Matter Jurisdiction and Indictments

The Court finds that Applicant's allegation that the trial court lacked subject matter jurisdiction because his indictments were insufficient must be summarily dismissed. "[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue." State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). "An indictment is merely a notice document." State v. Baker, 390 S.C. 56, 62, 700 S.E.2d 440, 442 (Ct. App. 2010) (citing Gentry, 363 S.C. at 102-103, 610 S.E.2d at 500. Whether or not the indictment could be made more definite and certain is irrelevant. Baker, 390 S.C. at 62, 700 S.E.2d at 442. The court in Baker noted the following:

> [T]he court must look at "the indictment with a practical eye in view of all the surrounding circumstances. The sufficiency of the indictment is determined by whether: (1) the offense charged is stated with sufficient certainty and particularity to enable a court to know what judgment to pronounce, and the defendant to know what he or she is called upon to answer and whether he or she may plead an acquittal or conviction thereon, and (2) whether it apprises the defendant of the elements of the offense that are intended to be charged.

Id. (citing Gentry, 363 S.C. at 102-103, 610 S.E.2d at 500).

Moreover, "an indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." Id. at 63, 700 S.E.2d at 443 (citing State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007)); see also S.C. Code Ann. § 17-19-20. When

the indictment references the statute the elements of the charge are thereby incorporated into the indictment. See State v. Owens, 346 S.C. 637, 649, 552 S.E.2d 745, 751 (2001), overruled on other grounds by Gentry, 363 S.C. 93, 610 S.E.2d 494; see also State v. Beam, 336 S.C. 45, 50-51, 518 S.E.2d 297, 300 (Ct. App. 1999); State v. Crenshaw, 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980).

Applicant's indictment allegations are not proper for PCR. The indictments charged Applicant substantially in the language of the statute prohibiting the crime, and thus pass legal muster. Furthermore, the sufficiency of the indictment was raised to the Court and ruled upon by the Honorable James E. Lockemy before trial—the finality of the previous Court ruling should be respected. As such, the Court shall dismiss Applicant's allegation as it pertains to the indictments.

Furthermore, Applicant has presented nothing that supports his claim that the trial court lacked subject matter jurisdiction. 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, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in the 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, the Court shall dismiss Applicant's allegation as it pertains to subject-matter jurisdiction.

Actual Innocence

The Court finds that Applicant's second allegation must be dismissed as not cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. Applicant's second allegation is that he is actually innocent. Claims by an Applicant that he or she is actually innocent, is not guilty, or that the evidence against him was insufficient to prove guilt are not cognizable grounds for post-conviction relief absent a claim of ineffective assistance of counsel or newly discovered evidence. S.C. Code Ann. § 17-27-20(a)(6) ("[T]his section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction."); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (interpreting the statute as barring such claims as inappropriate for consideration under the act); Dickson v. State, 247 S.C. 153, 156, 146 S.E.2d 257, 258 (1966) ("The allegation that petitioner is not guilty does not raise a matter for consideration by habeas corpus."). Therefore, the Court shall dismiss the second allegation as not cognizable under the Uniform Post-Conviction Procedure Act.

Request for Belated Appeal

The Court finds that Applicant's prayer for a belated appeal is without merit. Applicant timely appealed his conviction to the South Carolina Court of Appeals, that appeal was perfected by counsel, and the Court ruled on the issues he raised. Furthermore, Applicant received a hearing in his first PCR action and timely appealed therefrom. Upon PCR appellate counsel's submission of a Johnson petition and Applicant's timely response, the Court carefully considered the *entire* appendix as required by law. Applicant further enjoyed to exhaustion the federal habeas corpus procedures, including an attempt to appeal to the United States Fourth Circuit

Court of Appeals and the Supreme Court of the United States. It is clear Applicant enjoyed a complete adjudication on the merits of his original application—"one full bite at the apple." Therefore, no part of Applicant's procedural history supports his prayer for a belated appeal, and the Court shall dismiss his request.

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."

Applicant was convicted on October 20, 2006, and the remittitur from his direct appeal issued on June 18, 2009. The current application was not filed until March 17, 2017—well after the one-year statutory filing period expired. Therefore, the Court shall dismiss the application as barred by the statute of limitations.

Successive

The Court finds the application must also 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 application 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, and the Court shall dismiss the application as successive to Applicant's previous PCR application.

Res Judicata

The Court finds the application is similarly barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.; see also Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant had a full opportunity to litigate all his allegations in his prior actions. Applicant's rambling allegations of deficiencies in the indictment, lack of subject-matter jurisdiction, and vindictive wrongdoing by the State were raised to and ruled upon by the Court in Applicant's previous PCR action. Burns v. State, 2009-CP-17-00294, Order filed Dec. 30, 2010, 4-6 (S.C. 4th C.P. 2010). Furthermore, as previously indicated, trial counsel challenged the sufficiency of the indictments before trial and the matter was ruled upon by Judge Lockemy. The finality of the previous Court rulings must be respected, and the Court shall dismiss the application as barred by the doctrine of *res judicata*.

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

Office of the Attorney General
Johnny E. James, Jr., Esquire
PCR Division – 4th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Dillon 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 16 day of May, 2017.

ROGER E. HENDERSON
Chief Administrative Judge
Fourth Judicial Circuit

Chesterfield, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON)

Artie Burns, #318252) CASE NO.
☐ Plaintiff) 2017-CP-17-0131

v.) MOTION AND ORDER INFORMATION
) FORM AND COVER SHEET

State Of South Carolina)
☒ Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
Artie Burns, #318252 , Bar No.	Johnny E. James Jr., Bar No. 101260
Address:	Address:
Lee CI 990 Wisacky Hwy, Bishopville, SC 29010	Post Office Box 11549 Columbia SC 29211-1549
phone: fax:	phone: (803) 734-3737 fax: (803) 734-4113
e-mail: other:	e-mail: other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **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.

Johnny E. James Jr. May 3, 2017
Signature of Attorney for ☐ Plaintiff / ☒ Defendant 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, SCRCP)
☐ 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:

FILED
GWEN T. HYATT
2017 MAY 26 AM 10:38
CLERK OF COURT
DILLON COUNTY

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

ALAN WILSON
ATTORNEY GENERAL

May 23, 2017

The Honorable Gwen T. Hyatt
Clerk of Court, Dillon County
PO Box 1220
Dillon, SC 29536-1220

Re: Artie Burns, #318252 v. State of South Carolina
2017-CP-17-0131

Dear Ms. Hyatt:

Enclosed please find the original **Conditional Order of Dismissal** signed by the Honorable Roger E. Henderson, in the above-captioned case, for filing in your office.

Pursuant to Rule 71.1(f), of the South Carolina Rules of Civil Procedure, please "provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRCP." In addition, please forward proof of service and a time stamped copy back to our office for our file.

Should you have any questions, please call me at (803) 734-7217.

Sincerely,

for Johnny E. James Jr.
Assistant Attorney General

FILED
GWEN T. HYATT
2017 MAY 26 AM 10:38
CLERK OF COURT
DILLON COUNTY

jj/mp
Enclosures