

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Honorable R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2016-001721

RECEIVED

SEP 08 2017

S.C. SUPREME COURT

Stanley L. Butler, Petitioner,

v.

State of South Carolina, Respondent.

SUPPLEMENTAL APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender
S.C. Bar # 2391

S.C. Commission on Indigent Defense
Post Office Box 11589
Columbia SC 29211
(803) 734-1343

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General
S.C. Bar # 101813

Post Office Box 11549
Columbia SC 29211
(803) 734-3737

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
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ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA

County of Greenville

Stanley Lewis Butler #233704
Full name and prison number (if any) of Applicant.

vs.

State
Name of Respondent.

In the Court of Common Pleas

98-CP-23 2305

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
FLEETCHER, C. MARY, JR.

JUN 26 9 59 AM '98

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention McCormick Correctional Institution. South Carolina
Department of Corrections
2. Name and location of Court which imposed sentence Greenville S.C. General Session:
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Arm Robbery - 96-3381, Kidnapping 96-3380, kidnapping 96-3382, Kidnapping
 - (b) 96-3383, Kidnapping 96-3384, Possession of a fire arm during the commission
 - (c) of a violent crime 96-3386
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 7/23/96 - 30 years, 20 years consecutive, 20 years concurrent,
 - (b) 20 years concurrent, 20 years concurrent, 5 years concurrent
 - (c) _____

5. Check whether a finding of guilt was made
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty yes _____
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. Court of Appeals _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Turned down my direct appeal _____
 - ii. Court of Appeals _____
 - iii. _____
 - (c) the date of each such result:
 - i. December 10, 1997 _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. 97 - UP - 640 _____
 - ii. _____
 - iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel _____
 - (b) failure to present an alibi defense _____
 - (c) My lawyer did not prepare for trial. He only spent about 1 hour with me before a two-day trial _____
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) lack of preparation _____
 - (b) my mother, Sharon Todd, and my wife would have testified that I was not _____
 - ~~(c)~~ present at the scene of the crime. _____

- 11. Prior to this application have you filed with respect to this conviction
 - (a) any petition in a State Court under South Carolina Law? Direct Appeal
 - (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
 - (d) any other petitions, motions or applications in this or any other Court?

- 12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:
 - (a) the specific nature thereof:
 - i. Direct Appeal
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. General Sessions, Greenville County
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. Turned down Direct Appeal
 - ii. _____
 - iii. _____
 - iv. _____
 - (d) the date of each such disposition:
 - i. December 10, 1997
 - ii. _____
 - iii. _____
 - iv. _____
 - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. Opinion No. 97 - UP - 640
 - ii. _____
 - iii. _____
 - iv. _____

- 13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

- (a) the name and address of each attorney who represented you
 - i. My trial lawyers name is John Rollins Jr.
and sentencing
 - ii. Robert M. Dudek was my Appellate Defender
1122 Lady Street, Suite 940 Columbia, S.C. 29201
 - iii. 3243

(b) the proceedings at which each such attorney represented you:

- i. John Rollins Jr. - Trial and Sentencing
- ii. Robert M. Dudek - Direct Appeal
- iii. _____

18. State clearly the relief you seek in filing this application.

Sentence Over Turn

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

VERIFICATION

County of Greenville

I, Stanley Lewis Butler, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Stanley Lewis Butler

SWORN to and subscribed before me this 22nd

day of June, 19 98.

[Signature] (L.S.)
Notary Public

My Commission Expires: 11-21-2005

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
FLETCHER & MANN, JR.

JUN 26 9 59 AM '98

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Applicant

SWORN or affirmed to and subscribed before me this

_____ day of _____, 19 _____

Notary Public

My Commission Expires _____

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE)
) 98-CP-23-2305
 Stanley Lewis Butler, 233704)
)
 Applicant,)
)
 vs.) RETURN
)
 State of South Carolina,)
)
 Respondent.)
 _____)

The Respondent, making its Return to the Application for Post-Conviction Relief dated June 22, 1998, would respectfully show this Court:

I.

The Applicant is presently confined in the McCormick Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the May 1996 term of the Court of General Sessions for Greenville County for four (4) counts of kidnapping (96-GS-23-3380, 3382, 3383, 3384), armed robbery (96-GS-23-3381), and possession of firearm or knife during commission of or attempt to commit violent crime (96-GS-23-3386). He was represented by John Rollins, Jr., Esq. A jury trial was held on July 22, 1996, at the conclusion of which, the Applicant was found

guilty of the charges. He was sentenced by the Honorable C. Victor Pyle to confinement for a period of fifty (50) years.

The Applicant filed a timely notice of intent to appeal; and an appeal was perfected by the South Carolina Office of Appellate Defense. Following the submittal of briefs from both sides, the South Carolina Supreme Court affirmed the conviction and sentence. State v. Stanley Butler, Op. No. 97-UP-640, (filed December 10, 1997).

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the transcript of the jury trial.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Failure to present an alibi defense.
3. My lawyer did not prepare for trial. He only spent about 1 hour with me before a two-day trial.

III.

The Respondent interprets the Applicant's allegations as claims that he was denied effective assistance of trial counsel. The Respondent submits that the extensive trial record speaks for itself as to the competency of counsel. The Respondent contends that the attorney for the Applicant was diligent in his representation of the Applicant, performed well within the range of competence demanded of attorneys in criminal matters and performed within the wide range of reasonable professional assistance. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977); Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985); Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

In Strickland v. Washington, supra, the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. 104 S.Ct. at 2064. The Respondent submits that counsel's performance was not defi-

cient nor was the Applicant prejudiced in any way by such performance.

Nevertheless, the allegation of ineffective assistance of counsel probably raises questions of fact which cannot be conclusively refuted by the record presently before this Court. Therefore, the Respondent requests that an evidentiary hearing be held in order to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent therefore requests that this Court convene an evidentiary hearing to be held solely on the issue of whether the Applicant received effective assistance of trial counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to § 17-27-20, S.C. Code Ann., (1976) on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing.

Each and every allegation contained within the Application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.


Respectfully submitted,

CHARLES MOLONY CONDON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

TERESA A. KNOX
Assistant Deputy Attorney General

BARBARA HEAPE TIFFIN
Senior Assistant Attorney General

BY: 
(ATTORNEYS FOR RESPONDENT)
Office of the Attorney General
620 N. Main St., Suite 201
Greenville, SC 29601
(864) 241-1168

March 9, 1999.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

)
) IN THE COURT OF COMMON PLEAS

98-CP-23-2305

Stanley L. Butler, 233704,

Applicant,

v.

State of South Carolina,

Respondent.

)
)
) ORDER OF DISMISSAL
)
)
)
)
)
)

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 22, 1998. An evidentiary hearing into the matter was convened on April 12, 2000 at the Greenville County Courthouse. The Applicant was present at the hearing and was represented by William G. Yarborough, Esquire. The Respondent was represented by Kevin Tierney of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Testifying on behalf of the State was John Rollins, Jr., Esquire. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Greenville County Clerk of Court and the Applicant's records from the South Carolina Department of Corrections.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing and to closely pass upon their credibility and has weighed their

H. J. [Signature]

testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

A. Allegations of Ineffective Assistance of Counsel.

The Applicant alleges that he received ineffective assistance of counsel prior to and during his guilty plea and that Counsel's ineffectiveness rendered his plea involuntary. This Court finds these allegations to be without merit.

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Applicant alleges that his trial counsel rendered ineffective assistance in several areas. They are each addressed separately below. None of the allegations require this Court to grant post-conviction relief.

1. Failure to call alibi witnesses. The Applicant testified that he had an alibi defense, and that he wanted witnesses to be called to verify this alibi. Trial counsel testified that he spoke with his client before trial and that his client had not informed him of any potential alibi witnesses. The Applicant's wife (Shawna Butler) and mother (Pauline Butler) testified to alibi defense.

This Court has heard the testimony and weighed the testimony of the witnesses. This Court finds that the Applicant did not inform his attorney of his desire to have any alibi witnesses subpoenaed. This Court finds that trial counsel's testimony is more credible than that of the Applicant and his witnesses. This Court notes that both the Applicant's witnesses were present at his trial and did not inform Mr. Rollins of their desire to testify. Further, this Court recognizes that a Defendant has a Constitutional right not to testify. However, the Applicant asserts that he had an alibi at his PCR hearing. This Court cannot consider his testimony to that effect since he waived his right to testify at trial.

2. Counsel failed to meet with his client. This claim is denied. This Court accepts trial counsel's testimony that he met and was prepared for trial. Further, the Applicant has failed to show this Court examples of how counsel was unprepared.

3. Counsel failed to retain an expert witness to refute the State's fingerprint expert. Initially, this Court finds that Counsel is not required to retain an expert witness to refute the State's witness. The

A3 [Signature]

refutation can occur through cross-examination. Further, the Applicant has the burden of proof in this matter and has failed to subpoena an expert witness on fingerprints. Therefore, this claim is denied. Further, Counsel has articulated legitimate reasons for not calling an expert witness. His trial strategy will not be grounds for a finding of ineffectiveness.

Waived Allegations.

As to any remaining grounds raised in his application, this Court finds that he failed to raise it/them at the hearing and has, thereby, waived it/them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address this/these issue(s) at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, this/these allegation(s) is denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been

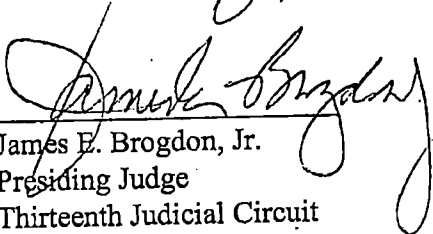
H. J. [Signature]

timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 16 day of July, 2001.


 James E. Brogdon, Jr.
 Presiding Judge
 Thirteenth Judicial Circuit

Mason, South Carolina.

#5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Stanley L. Butler, #233704)
)
 Applicant,)
)
 vs)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 98-CP-23-2305

AFFIDAVIT OF SERVICE BY MAIL

PERSONALLY APPEARED before me SANDY L. BROWN, who being first duly sworn, states:

1. That I am an employee of the Respondent in the above-captioned action.
2. That regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. That I have this day served a copy of the Order of Dismissal in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

The Honorable Paul Wickensimer
 Greenville County Clerk of Court
 305 East North Street
 Greenville, SC 29601

Honorable Robert M. Ariail
 Solicitor Thirteenth Judicial Circuit
 Courthouse Annex Suite 113
 Greenville, SC 29601

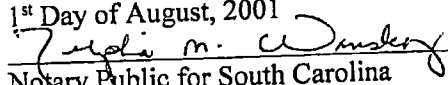
Jerry Merriam, Esquire
 (Service for W. G. Yarborough)
 P. O. Box 10828
 Greenville, SC 29603

Victim Services
 SC Office of the Attorney General
 100 Assembly Street
 Columbia, SC 29201

Richard P. Stroker, Esquire
 Office of General Counsel SCDC
 P. O. Box 21787
 Columbia, SC 29211

DATED this 1st Day of August, 2001


 Sandy L. Brown, Legal Assistant

SWORN TO before me this
 1st Day of August, 2001
 (L.S.)
 Notary Public for South Carolina
 My Commission Expires: 12/22/04

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	2012-CP-23-4208
COUNTY OF GREENVILLE)	
)	
Stanley Lewis Butler,)	
S.C.D.C. No. 233704,)	
)	
Applicant,)	
)	AMENDED RETURN AND MOTION TO DISMISS
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

In response to the post-conviction relief (PCR) application filed June 29, 2012,¹ the Respondent would show this Court:

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the May 1996 term of the Greenville County Grand Jury for four counts of kidnapping (1996-GS-23-3380, -3382, -3383, -3384), armed robbery (1996-GS-23-3381), and possession of a weapon during commission of a violent crime (1996-GS-23-3386). He was represented by John Rollins, Jr., Esquire.

After the State brought the case to trial, the Applicant was found guilty. On July 23, 1996, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of 20 years

¹ Respondent originally filed a motion to dismiss on September 11, 2012. A final order of dismissal in this case was filed on January 3, 2013 and Applicant appealed. In an order filed September 1, 2015, the South Carolina Court of Appeals remanded the matter back to circuit court for a hearing “on the allegations contained in Butler’s PCR application and motion to amend.”

for three counts of kidnapping, 30 years for armed robbery, and 5 years for possession of a weapon during commission of a violent crime. Judge Pyle levied a consecutive sentence of 20 years for one count of kidnapping (1996-GS-23-3380).

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Butler, Op. No. 97-UP-640 (S.C. Ct. App. filed Dec. 10, 1997).

The Applicant filed a PCR application on June 26, 1998 (1998-CP-23-2305). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. Failed to prepare for trial.
 - b. Failed to present alibi witnesses.

An evidentiary hearing was held on April 12, 2000 at the Greenville County Courthouse. In addition to the above issues, the Applicant alleged trial counsel was ineffective in failing to obtain an independent fingerprint expert. William G. Yarborough, Esquire represented the Applicant. The Honorable James E. Brogdon, Jr. denied and dismissed the PCR application by order dated July 16, 2001. The Applicant did not appeal.

II.

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

1. Ineffective assistance of counsel:
 - a. Failure to investigate.
 - b. Conflict of interest.

In the Applicant's "Motion to Amend" filed on September 25, 2012, the Applicant raised

the following allegation:

1. Ineffective assistance of PCR counsel:
 - a. Failed to file an appeal from denial of first PCR application.

For the purpose of this Return, the Respondent incorporates the Greenville County Clerk of Court records, the South Carolina Department of Corrections' records, and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent submits that this Application for Post-Conviction Relief should 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 upon an appeal, whichever is later.

The Applicant was convicted of the offenses he challenges in this application on July 23, 1996 and the South Carolina Court of Appeals affirmed on December 10, 1997. This application was filed on June 29, 2012, which was several years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) 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, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

IV.

The Court should also summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) 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 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, 450, 409 S.E.2d 392, 394 (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. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the Respondent moves for a

summary dismissal of the application because it is successive.

V.

The Respondent submits this PCR application must be dismissed because it violates the doctrine of laches. While the Applicant argues he is raising an Austin issue, Respondent submits this does not prevent the dismissal of his case.

The Applicant filed this PCR application 14 years after his direct appeal and almost 11 years after the denial of his first PCR application. The Respondent submits the doctrine of laches bars the Applicant from raising his allegations in a PCR application. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981). To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id. at 283, 277 S.E.2d at 890-91 (citation omitted).

The Applicant's delay has greatly prejudiced the Respondent. A transcript of the Applicant's first PCR hearing is now unavailable. In addition, it is doubtful that Applicant's counsel on his first PCR case has any memory of his representation of the Applicant. If the Applicant had sought post-conviction relief within a reasonable time, neither of these problems would exist. Therefore, the Court should summarily dismiss the Application based on the Applicant's lack of diligence in processing his claim for relief. See Whitehead v. State, 352 S.C.

215, 220, 574 S.E.2d 200, 202 (2002) (finding the doctrine of laches may be raised as a defense to an Austin claim).

VI.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VII.

WHEREFORE, the Respondent moves to summarily dismiss the application because it: (1) is successive to the Applicant's prior PCR action, (2) was filed after the statute of limitations had expired, and (3) violates the doctrine of laches. Pursuant to the order of the Court of Appeals, Respondent requests a hearing and for counsel to be appointed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

December 4, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
)
 STANLEY LEWIS BUTLER, 233704)
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 Applicant,)
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 vs)
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)
 STATE OF SOUTH CAROLINA,)
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 Respondent.)
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IN THE COURT OF COMMON PLEAS

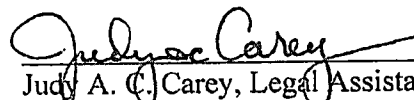
2012-CP-23-4208

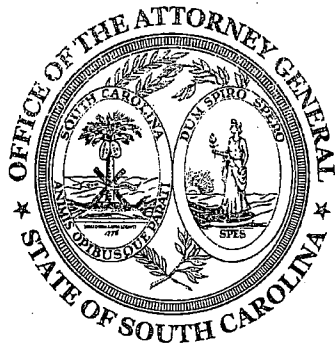
AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Stanley Lewis Butler, 233704
 Kershaw Correctional Institution
 4848 Goldmine Highway
 Kershaw SC 29067**

DATED this 4th day of December, 2015.


 Judy A. C. Carey, Legal Assistant
 For Respondent



RECEIVED

SEP 08 2017

S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

September 8, 2017

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

Re: Stanley L. Butler v. State of South Carolina
Appellate Case No. 2016-001721
Lower Court Case No. 2012-CP-23-4208

Dear Mr. Shearouse:

Attached is the original and one copy of the **Supplemental Appendix** in the above referenced case for filing in your office.

Sincerely,

DeShawn H. Mitchell
Assistant Attorney General
SC Bar #101813

DHM/jacc
Enclosures

cc: Wanda H. Carter, Esquire
Trisha Allen, Director - Victim Advocacy Division (without enclosure)