

David E. Dixon
#217520 MLT 1030
Broad River Comm East
Broad River Road
Columbia, SC 29219

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S.C. SUPREME COURT

Mr. David E. Shearouse
Clerk of Court
S.C. Supreme Court

Dear Mr. Shearouse;

I want to file a writ of Habeas
in the S.C. Supreme Court.
Is there any forms that I need and or
any information that you may provide me
with. This is in reference to the denial
of my P.C.A.

Thank you for any information
that you may provide to me and or any
forms.

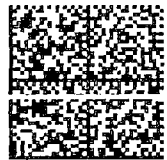
Sincerely,
David E. Dixon

DAVID R. NIXON

* 217520 MHT 1030

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Broad River Rd
Columbia, S.C. 29210

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The Supreme Court of South Carolina
Mr. Daniel E. Shearouse
Clerk of Court
P.O. Box 11330
Columbia SC 29211

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

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

David E. Dixon, #217520,)

Case No. 2015-CP-26-6513)

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 September 2, 2015, amended on October 1, 2015, and supplemented by letter dated December 3, 2015 (collectively "the application"). The Court finds as follows:

I. PROCEDURAL HISTORY

A. Underlying Conviction

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted by the Horry County Grand Jury on September 8, 1994 for the following:

1. 1994-GS26-1381 – seven (7) counts
 - I. Accessory before the fact to Burglary 1st
 - II. Accessory after the fact to Burglary 1st
 - III. Accessory before the fact to Kidnapping
 - IV. Accessory after the fact to Kidnapping
 - V. Accessory before the fact to Armed Robbery
 - VI. Accessory after the fact to Armed Robbery
 - VII. Criminal Conspiracy
2. 1994-GS26-1383 – seven (7) counts
 - I. Accessory before the fact to Burglary 1st
 - II. Accessory after the fact to Burglary 1st
 - III. Accessory before the fact to Kidnapping
 - IV. Accessory after the fact to Kidnapping

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HORRY COUNTY, SC

- V. Accessory before the fact to Armed Robbery
 - VI. Accessory after the fact to Armed Robbery
 - VII. Criminal Conspiracy
3. 1994-GS26-1393 – three (3) counts
- I. Accessory before the fact to Armed Robbery
 - II. Accessory after the fact to Armed Robbery
 - III. Criminal Conspiracy

David H. Breen, Esq. represented Applicant on all of the above charges.

Applicant proceeded to a jury trial before the Honorable M. Duane Shuler from January 16 to January 19, 1996. Upon close of the State's case-in-chief, Judge Shuler granted Applicant's motion for a directed verdict as to Count III on 1994-GS26-1381 and to Counts III and V on 1994-GS26-1383. The jury thereafter returned a verdict of guilty on all remaining counts. Judge Shuler sentenced Applicant as follows:

- 1. 1994-GS26-1381 – seven (7) counts
 - I. Thirty (30) years
 - II. Ten (10) years
 - III. *Directed Verdict for Applicant*
 - IV. Ten (10) years
 - V. Twenty-five (25) years
 - VI. Ten (10) years
 - VII. Five (5) years
- 2. 1994-GS26-1383 – seven (7) counts
 - I. Thirty (30) years
 - II. Ten (10) years
 - III. *Directed Verdict for Applicant*
 - IV. Ten (10) years
 - V. *Directed Verdict for Applicant*
 - VI. Ten (10) years
 - VII. Five (5) years
- 3. 1994-GS26-1393 – three (3) counts
 - I. Twenty-five (25) years
 - II. Ten (10) years
 - III. Five (5) years

Applicant filed a timely notice of appeal and a direct appeal was perfected by Wanda H. Haile filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed Applicant's convictions by unpublished opinion. State v. Dixon, Op. No. 97-UP-483 (S.C. Ct. App. filed September 23, 1997).

The Remittitur was returned to the circuit court on October 9, 1997, but thereafter recalled to consider Applicant's *pro se* motion for rehearing. See State v. Dixon, S.C. Sup. Ct. Order dated December 18, 1997. The Court of Appeals denied said motion by order dated February 19, 1998. Applicant timely filed *pro se* a petition for writ of certiorari, which was denied by the South Carolina Supreme Court on April 12, 1999. State v. Dixon, S.C. Sup. Ct. Order dated April 12, 1999. The Remittitur was returned to the circuit court on May 11, 1999.

B. Prior post-conviction relief applications

1996-CP-26-3508

Applicant filed his first application for Post-Conviction Relief from the above convictions on November 26, 1996. Applicant alleged the following grounds for relief:

1. Ineffective assistance of counsel.
2. After-discovered evidence.

Respondent made its return on March 24, 1997. Because of his pending appeal, Applicant's PCR case was continued for over three years. On November 7, 2000, an evidentiary hearing was held before the Honorable Sidney T. Floyd, at which Applicant was present and represented by Barbara Pratt, Esquire. Respondent was represented by Patricia D. Breen of the South Carolina Office of the Attorney General. By order dated December 19, 2000, Judge Floyd denied and dismissed Applicant's application for PCR.

Applicant filed a timely notice of appeal to the Supreme Court of South Carolina. Aileen P. Clare, Esquire, Assistant Appellate Defender perfected the appeal by way of a Johnson¹ Petition for Writ of Certiorari. By order dated April 18, 2002 and signed by The Honorable Chief Justice Jean H. Toal, the petition was denied. The remittitur was issued May 30, 2002.

2000-CP-26-2123

Applicant subsequently filed his second application for PCR on May 8, 2000 (2000-CP-26-2123). Respondent made its Return and Motion to Dismiss on May 17, 2002, arguing the application was not timely filed. The Court denied that motion and Respondent submitted an Amended Return and Motion to Dismiss on July 9, 2002, arguing the application was successive. The Court denied that motion as well and an evidentiary hearing into the matter was convened on September 15, 2003 before the Honorable Steven H. John. Applicant was present at the hearing and was represented by Barbara W. Pratt, Esq. Bryan Dukes, of the South Carolina Attorney General's Office, represented Respondent. Judge John denied and dismissed the application for PCR in an order dated December 15, 2003.

Applicant filed a timely notice of appeal from 2000-CP-26-2123 and a petition for writ of certiorari was filed by Eleanor Duffy Cleary, of the South Carolina Office of Appellate Defense, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The Supreme Court of South Carolina denied Applicant's petition and granted counsel's request to withdraw by order dated December 14, 2005. The Remittitur was returned on December 30, 2005. On January 6, 2006, Applicant filed a *pro se* petition for rehearing, which was denied by the Clerk as untimely by letter dated January 6, 2006, and upon further demand by Applicant, by order dated February 7, 2006.

¹ Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

Applicant was released on parole effective August 17, 2006. On February 13, 2015, a warrant was issued for Applicant's arrest for failing to refrain from possessing firearms or other dangerous weapons pursuant to condition #4 of his release, as well as for failing to follow the advice and instructions of his agent pursuant to condition #10 of his release. On April 22, 2015, the South Carolina Board of Probation, Parole, and Pardon Services ordered Applicant's parole revoked for violations of conditions #4 and #10 of his August 2006 release. Order was signed by Parole Board chairpersons, Karen A. Walto, Henry S. Eldridge, and Marvin Stevenson.

C. Current post-conviction relief application

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

1. "Illegal Sentence and Conviction"
 - a. "SCDC classification at the time [of conviction] was FIFTY ONE (51) PERCENT."
2. "Illegal Search Warrant, Defective w/ False Information for Affidavit"
 - a. "... DAVID MARK DIXON, gave perjury and false information, which lead to the search warrant and search of applicant's residence."
3. "Illegal Parole Violation"
 - a. "The [A]pplicant's search warrant was and still today is illegal, invalid and voided due to the perjury and false information inside the body of affidavit. The applicant 'WAS NOT' found in actual or constructive possession of any weapons."
4. "Wrongful Conviction"
 - a. "The information provided to the parole agent and magistrate was false. Applicant was never in actual or constructive possession of any weapons."
5. "SCDC Classification of Sentence is Wrong"
 - a. "The applicant will show by preponderance of evidence how the SCDC classification sentence is wrong and incorrect and how he has done all he could to try and have them to correct it. The applicants sentences are NON-VIOLENT from the day of sentencing and he was 51 PERCENT, not 85 PERCENT."

(Formatting excluded). Applicant offers no facts in his application to support any of the above allegations in his original application. Applicant then requests relief as follows:

- “Vacate sentence and conviction and Release.”

Applicant expands upon each of the above allegations through a four-page amendment (excluding attachments) filed October 1, 2015; Respondent’s best determination of the heart of the amendment’s treatment of each allegation is provided above. Applicant then further advances a sixth ground as follows:

6. “At common law, an accessory “COULD NOT” be convicted unless his principal had been convicted, and thus, an accessory could “ONLY” be tried either together with principal or after the conviction of the principal[. . .].

Parolee DAVID DIXON ‘COULD NOT’ or should not have been convicted, because his codefendants CLIFFORD CORNS, DAVID BOLTON and TONY MARTIN, the principals, had not been convicted. They weren’t tried together, nor was DIXON convicted after his codefendants. He also “DID NOT” nor did they plead to the original charges. He/they pleaded out to lesser included offenses.”

Applicant cites to State v. Massey, 267 S.C. 432, 229 S.E.2d 332 (1976) and State v. Hess, 288 N.W. 275, 276-277 (Wis. 1939)².

1. A letter from Applicant, dated December 3, 2015, addressed to the Director of the South Carolina Department of Corrections, and copied to both the Governor of South Carolina and Respondent, restates the first and fifth contentions. Applicant’s letter argues that upon revocation of his parole, S.C.D.C. erroneously reclassified four of his “accessory before the fact” convictions from non-violent to violent.

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

²Hess is favorably quoted by the Supreme Court in Massey.

/BKK

III. FINDINGS OF FACT AND CONCLUSION 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 also Rule 56(c), SCRPC. 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:

A. Successive Application

The Court finds this application should be dismissed because it is successive to Applicant’s previous collateral actions. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). S.C. Code Ann. § 17-27-90 requires 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.

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 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 that “could not have been raised . . . in the previous application.” Id. 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.

Applicant could have raised the grounds pertaining to his underlying conviction for relief in his prior post-conviction relief applications. In fact, the exact same allegations were raised in his past applications. Applicant has failed to present any reasons why he should be allowed to proceed with a successive application on these grounds. The grounds put forth by Applicant with regard to his parole revocation, while not successive, fail to state a claim, as discussed infra. Therefore, the Court finds summary dismissal is appropriate.

B. Failure to Timely File

The Court further finds this application should be dismissed based on Applicant's failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-45(a) provides that:

"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."

This statute of limitations applies to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996).

The Court of Appeals issued the remittitur in Applicant's direct appeal on May 11, 1999. Applicant was therefore required to file his application before May 12, 2000. This application was filed on September 2, 2015, well beyond the expiration of the statutory filing period. While Applicant's claims deriving from his parole revocation are timely, they fail to state a cognizable claim, as discussed infra. Therefore, the Court finds summary dismissal is appropriate.

C. Failure to State a Claim

The application should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other write, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

Applicant's allegations do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are considered non-collateral attacks on the conviction. Cooper v. State, 338 S.C. 202, 525 S.E.2d 886 (2000). As stated in Cooper, by challenging the duration of the sentence, the Applicant is in fact trying to enforce the sentence and this therefore not making a collateral attack on the conviction. Furthermore, "an ex post facto claim is considered a non-collateral matter" and must

be brought through the Administrative Procedures Act. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000).

In allegations one and five of the application, Applicant alleges an ex-post facto, non-collateral issue: that his term of incarceration is being calculated under new law rather than the law in effect at the time of his sentencing. Applicant offers no attack upon the conviction itself, but instead seeks its enforcement. In allegations two, three, and four of the application, Applicant alleges that the arrest warrant was based on false information and that he [Applicant] was never actually in possession of any weapons. These allegations also fail to state a cognizable claim for post-conviction relief. Post-conviction relief is a proper avenue of relief only when the Applicant mounts a collateral attack challenging the validity of his conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The only exceptions are claims that an applicant's sentence has expired and claims that an applicant's probation, parole, or conditional release have been unlawfully revoked. Id. at 368, 527 S.E.2d 742.

In Duckson v. State, 355 S.C. 596, 599, 586 S.E.2d 576, the Supreme Court of South Carolina held an unlawful revocation of parole was a valid ground for post-conviction relief. However, the Court found that Duckson failed to make a cognizable claim for PCR because he did not allege that his Due Process rights were violated, where he was represented by counsel at his parole revocation hearing. The present case is analogous to Duckson. Applicant alleges only that the search warrant was based on false information and that he never actually had possession of the many weapons which were recovered in the search. Applicant has not alleged that his Due Process rights were violated or that he received ineffective assistance of counsel at the parole revocation hearing, and therefore has not raised a claim under the exceptions enumerated in Al-

Shabazz. His claims that the search warrant was invalid and that he never possessed any weapons are not cognizable claims for PCR.

Moreover, the allegations relevant to Applicant's parole revocation would be direct appeal issues procedurally barred by statute if they arose in the context of a trial. S.C. Code Ann. § 17-27-20(b) (2003). A parole revocation hearing is an administrative rather than a criminal proceeding. Duckson, 355 S.C. at 598, 586 S.E.2d at 578. Moreover, appeal from a parole revocation is expressly prohibited by legislation. S.C. Code Ann. § 24-21-680. This Court finds that it would be an unreasonable interpretation of the legislature's intent in prohibiting review of a parole revocation by allowing a substitution for review through post-conviction relief. Furthermore, to allow Applicant to raise issues in post-conviction relief which could not have been raised if the same issues arose from the original trial proceeding would make little sense. Post-conviction relief claims arising from trials and guilty pleas are limited in number and scope. Allowing a claim not permitted in a typical post-conviction relief application following a trial or a guilty plea would essentially expand one's post-conviction relief rights as a parolee, where those same rights do not exist for non-parolees. For these reasons, these allegations are summarily dismissed.

Applicant's sixth allegation, raised in Applicant's amendment of October 1, 2015, is a purely legal argument that does not allege any of the grounds cognizable under the Post-Conviction Procedures Act. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal.

Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief.

Notwithstanding the fact that Applicant's sixth allegation is a direct appeal issue, the legal argument advanced is without merit. The court in Massey offers a conclusion in plain contravention of Applicant's argument, as the Court clearly affirms that under South Carolina state law, the conviction or acquittal of a principal has no bearing upon the conviction or acquittal of an accessory. See State v. Massey, 267 S.C. 432, 229 S.E.2d 332 (1976). It is adequate protection for defendants that "the jury in the trial of the accessory must find as a fact that the principal did actually commit the crime involved[.]" Id. at 446, 229 S.E.2d at 339.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court dismisses Applicant's first, fifth, and sixth allegations for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

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IV. CONCLUSION

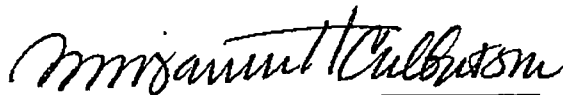
The Court finds the record before it creates no genuine issue of material fact and Respondent is therefore entitled to judgment as a matter of law.

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 Horry County Clerk of Court (PO Box 677, Conway, SC 29528) and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Valerie Garcia Giovanoli
Post Office Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Horry 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 19 DAY OF May, 2017.



THE HONORABLE BENJAMIN H. CULBERTSON
Chief Administrative Judge
Fifteenth Judicial Circuit

Georgetown, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FOR THE FIFTEENTH JUDICIAL CIRCUIT

David E. Dixon,) Case No.: 2015-CP-26-06513
S.C.D.C. No. 217520,)

Applicant,)

v.)

State of South Carolina)

Respondent.)

FINAL ORDER OF DISMISSAL

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KENESE H. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

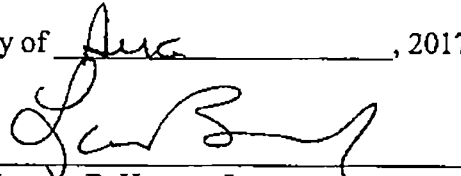
This matter comes before the Court by way of an application for post-conviction relief filed September 2, 2015, amended on October 1, 2015, and supplemented by letter dated December 3, 2015. Respondent made its return on or about April 14, 2017, requesting the application be summarily dismissed as untimely and successive (in part) and for failing to state a claim cognizable under the Uniform Post-Conviction Procedure Act.

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 May 19, 2017, and filed May 25, 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 Certificate of Service dated July 31, 2017, serving the above-mentioned Conditional Order of Dismissal on Applicant's counsel.

Applicant has failed to respond to either Respondent's motion to dismiss or this Court's Conditional Order of Dismissal. Therefore, this Court finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

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.**

AND IT IS SO ORDERED this 30 day of June, 2017.



LARRY B. HYMAN JR.
Chief Judge for Common Pleas
Fifteenth Judicial Circuit

CONWAY, South Carolina.

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

DAVID E. DIXON, #217520,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

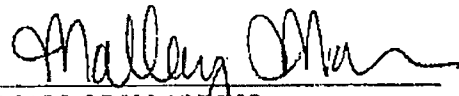
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CLERK OF COURT
HORRY COUNTY, SC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Conditional Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:


Daniel Selwa, II, Esquire
516 29th Avenue North
Myrtle Beach, SC 29577

This 31st day of July, 2017.



MALLORY MORRIS
LEGAL ASSISTANT FOR RESPONDENT

SWORN to before me this 31st day of July, 2017.


Notary Public for South Carolina.
My Commission Expires: 5/14/2024

2015-CP-26-6513



ALAN WILSON
ATTORNEY GENERAL

September 14, 2017

The Honorable Renee N. Elvis
Clerk of Court, Horry County
Post Office Box 677
Conway, SC 29528-0677

Re: David E. Dixon, #217520 v. State of South Carolina
2015-CP-26-6513

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RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

Dear Ms. Elvis:

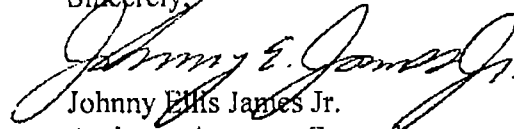
Enclosed please find the original **Final Order of Dismissal** signed by the Honorable Larry B. Hyman, Jr., in the above-captioned case, for filing in your office.

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), SCRPC."

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 Ellis James Jr.
Assistant Attorney General

JEJ/mm

Enclosure