

Jose Alberto Maldonado, # 312648
Kershaw Corr. Inst. MB/Room, # 63

4848 Goldmine Highway
Kershaw, South Carolina 29067

November 14th, 2017

RECEIVED

NOV 17 2017

In The Supreme Court
Honorable Daniel E. Shearouse
Clerk of Court

Post Office Box 11330
Columbia, South Carolina 29211

S.C. SUPREME COURT

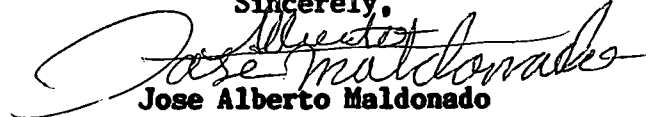
Re; Jose Alberto Maldonado, # 312648 v. The State of South Carolina.
Appellate Case No. 2017-002092

Dear Clerk of Court:

The Petitioner, file enclosed an Original copies; PETITION FOR WRIT OF CERTIORARI IN POST-CONVICTION RELIEF ACTION, and DESIGNATION OF MATTER TO BE INCLUDED IN IN THE RECORD ON APPEAL, within the letter from Oct. 6 - 12, 2017, the ORDER from September 1, 2017, the Return and Motion To Dismiss, and that Conditiona Order of Dismissal, from March 8 - 13, 2017. Included's Certificate of Service, attached below this Petition. To prove this Honorable Court's Jurisdiction on the above reference case.

In the reference to the above-captioned a civil case. In this Honorable Court. Please if this files meets your approval to you. File the Original in and return a clock-stamped to me, in the enclosed self-address envelope.

Sincerely,



Jose Alberto Maldonado
Petitioner Pro - Se

Files:(2)

Appendix:(3)(Part of ROA)(C, E, H, & I)

cc: Megan Harrigan Jameson, AG's Office Assistant.

IN THE STATE OF SOUTH CAROLINA.

In The Supreme Court

APPEAL FROM THE GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Judge

RECEIVED

NOV 17 2017

Appellate Case No. 2017-002092
Lower Court Case No. 2015-CP-23-04747 S.C. SUPREME COURT

Jose Alberto Maldonado, # 312648, Petitioner,

v.

The State of South Carolina, Respondent.

PETITION FOR WRIT OF CERTIORARI
IN POST-CONVICTION RELIEF ACTION

South Carolina
Department of Corrections

Jose Alberto Maldonado, # 312648.
Petitioner Pro - Se

Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina 29067

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STATEMENTS OF ISSUES ON APPEAL

I.

Petitioner Jose Alberto Maldonado Respectfully Petition this Honorable Court for a Writ of Certiorari to review the (4th) Post - Conviction Relief Action, Application. In A Civil Case No. 2015-CP-23-04747. "ALTERNATIVE PETITION FOR STATE HABEAS CORPUS." Pursuant, to S.C. Code Ann. §§ 17-27-10/20 and 17-27-45(A)(B), (C) and also the South Carolina Article I, § 18. The (PCR. Act.) application entered in the Greenville County Court of Common Pleas July 31, 2015.

II.

Thus, the Explanation Required within the Petitioner's Petition to a full review the (unsigned judgments) from Honorable Perry H. Gravely, judge. In the Greenville County Court of Common Pleas for the Thirteenth Judicial Circuit, upon its "wrong judgments In A Civil Case No. 2015-CP-23-04757," in Order for this Honorable Supreme Court to Reconsider and abolish its judgment when it's null and void, upon the Petitioner's ("PCR. Action Application"). When the Petitioner sentence should be vacate, and for that the presided judge failed below to returned the Petitioner immediately before the issuing of the October 12, 2017, Applicant's Amendment of Rule 59(f), SCRCP. See, Appendix.:(E)(R. Pp. 40-43. ROA).

III.

Therefore, Honorable Perry H. Gravely did an error, to not review the Petitioner's (4th) Post-Conviction Relief Action Application, and for that him fall below's jurisprudence in this Case?

ARGUMENTS

1. This Court Should Reconsider And Abolish The Lower Court Its Qualifications. And This Explanation Required Jurisprudenced.
2. THAT OBJECTION TO THE STATE GRAND JURY MAY BE TAKE AT ANY TIME

ORDERS AND OPINION BELOW

That, the Order of the South Carolina Court of Appeals for the State, is reported at Appellate Case No. 2017-002092, were the Court of Appeals sent the ORDER to Appeal the Trial Court Case No. 2008-CP-23-02140? And transferred to the Supreme Court of South Carolina pursuant to Rule 204(a), SCACR.

On October 23, 2017, the Court of South Carolina Notified the Petitioner, and indicated that the lower court case number is "2015CP2304757." And advised that all filings must comply with the requirement of Rule 243(c), & 267, (SCACR).

On October 17, 2017 Petitioner filed the Petitioner's Time for Appeal, and also Petitioned to this Court the release all full information, above the case No. 2015-CP-23-04757, See Appendix.: (A)(3) (R. 1-of-8)(R. Pp. 1 - 3. ROA); included the above case 2008-CP-23-02140. See, Appendix.: (C)(2-of-10)(R. p. 14. ROA).

Furthermore, this Court answer on October 31, 2017, in respond to the "Petitioner's captioned of Time For Appeal, in the letter dated October 17, 2017, but this Court awared that Appellate Case involves Petitioner Notice of Appeal in 2015CP2304747. See Appendix.: (A)(1)(2-of-3)(R. p.ii-iii. ROA).

Thus, the Petitioner informed to the Court on October 25, 2017, with a letter above his wrong case this Court (citing). And asked to granted ten (10) more days in his deadline by the Petitioner received the full information in his right Case. See Appx.: (A)(3)(R. 1-of-8)(R. Pp. 1 - 8. ROA).

Finally this Court filed an "ORDER" ON November 2, 2017, that the Petitioner shall file the explanation required by Rule 243(c) SCACR, within fifteen (15) days of the dated of this Order, Nov. 2nd, 2017. See Appendix.: (A)(1)(Report p. 1). And also this Court notified me that Court of Appeals appears to have errenously listed the lowe court case number as 2008CP2302140 in the ORDER received from the Court of Appeals transferreing the Notice of Appeal had been enter with this Court October 11, 2017. See Appendix.: (C)(R. 6-of-10)(R. p. 18. ROA).

That, the Opinion from the South Carolina in the Court of Appeals Jose Alberto Maldonado, #312648 v. South Carolina Dep't of Corrections, Appellate Case No. 2016-001274, Appeal from the Administrative Law Court, S. Phillip Lenski, Administrative Law judge. Unpublished Opinion No. 2017-UP-209 Submitted March 1, 2017- Filed May 17, 2017. had been present in this action, and now this Opinion is subject to this Honorable Supreme Court at, Jose Alberto Maldonado v. SCDC (2) Appellate Case No. 2017-001525. See the Opinion at the Appendix.: (F)(37-38)(R. Pp. 128-129. ROA).

JURISDICTION

The South Carolina Court of Appeals filed its decision ORDER on October 11, 2017, Thereafter, on October 4, 2017 the Petitioner filed a timely Notice of Appeal. The Court of Appeals Further entered an ORDER, and putting out's jurisdiction to review that unsigned judgments from the lower court on October 11, 2017, transferred this case to this Court under Rule 204(a), SCACR.

Thereafter, on October 23, 2017, the Supreme Court's Clerk did and since the Order, under Rule 243(c), SCACR, require that Petitioner provide a Written explanation as to why this circuit court, or the Respondent's determination was improper. The Petitioner enter the (ROA) against the judgments, ORDER of the circuit court, between the Respondent AG's Office determination under this action is not barred, or is being successive and/or as being untimely under the statute of limitation. Rule 243(C) of the South Carolina Appellate Court Rules. And S.C. Code Ann. § 17-27-45(C).

This Honorable Clerk of Court Respectfully asked the Petitioner to provide the "Explanation Require by Rule 243(c), SCACR, within twenty (20) days of the date in which the Petitioner received the Clerk of Court correspondence. (On October 24, 2017). See Appendix:(A)(3)(B)(R.Pp. 1 - 12. RO).

This Court has jurisdiction under S.C. Code 1976, §§ 14-8-250, 18-9-280; and the Appellate Court Rule 220(b)(1, 2). and also 28 U.S.C.§ 1254(1)(2) to review the circuit court's decision on a Writ of Certiorari. See e.g., In re MEMORANDUM DECISIONS BY COURT OF APPEALS, 322 S.C. 53, 471 S.E.2d 450 (S.C. 1993).

CONSTITUTIONAL PROVISION INVOLVED

The first Amendment provides as follows: "Congress shall make no law respecting an establishment to obtain meaningful access to courts is a fundamental right within protection of First Amendment, and broad rules framed to procted public and to preserve respect for administration of justice must not work a significant imparment of the value of the people peaceably to assemble, and to petition the Government for a redress of the complains within his due process against disciplinary action of prosecutorial misconduct. U.S.C.A. Const Amends. 1. And 14.

STATUTORY PROVISION INVOLVED

In the present case, petitioner concern is not with sufficiency of a "particular indictment," but with the "legality and sufficiency of the process of the "Statewide Grand Jury" which issued the indictment." Focus on the "indictment as a notice document instead of a document which confers subject matter jurisdiction on the court."

As a Petitioner in his Explanation Require by this Petition:

[W]hen that indictment is presented, that accusation made, that pleading filed, the accusation, the manner in which it has been presented have these matters promptly and properly determined; or waiving them, he may put in issue the truth of the accusation, and demand the judgment of his peers on the merits of the charge.

The South Carolina Constitution Article I, § 11, provides, in pertinent part:

No person may be held to answer for any crime the jurisdiction over which is not of the County where the crime has been committed. The General Assembly may provided for the (waiver) of an (indictment) by the accused. Nothin contained in this Constitution is deemed to limit or prohibit the establishment by the General assembly of a state grand jury with the authority to return indictments irrespective of the County where the crime has been committed and that other authority, including procedure, as the General Assembly may provide.

Article V, § 22. Provides, in Pertinent part:

The grand jury of each County, and the state grand jury, as the General Assembly may establish by general law, shall consist of "eighteen members, twelve of who must agree in a matter before it can be submitted to the Court. That truth bill indictment. U.S.C.A. Const. Amend. 5.

That, the DESIGNATION OF THE MATTER TO BE INCLUDED IN THE RECORD ON APPEAL, The Petitioner submit in his Petition with this Honorable Court, within the (Record on Appeal). Pursuant to the Rules, Rule 243(d), and 267(d), (SCACR).

STATEMENT OF THE CASE

On July 31, 2015 the Petitioner Jose Alberto Maldonado ("Petitioner") filed in the Greenville County Court of Common Pleas his (4th) Post - Conviction Relief Action, application. This clerk of court returned the ("PCR. Act. Application with its ORIGINAL Docket Number 2015-CP-23-04747"), against the South Carolina attorney general's office. This office assigned a Mr. James Clayton Michell III. Esquire ("Respondent").

The Petitioner's Original (4th) Post-Conviction Relief Act. Application alleged in this State of South Carolina, pursuant to "Newly Discovered Evidence" information that "State Grand Jury released on April 17, 2015," and pendant claims arising under the General Sessions Court Term in the Greenville County, within the Rule 60(b), SCACR. Against the Respondent pursuant to fraudulent sworn amended such indictments to orders of commitment of the Clerk of Court for the State Grand Jury. And prosecuted with those indictments, and said the Petitioner was indicted by the state grand jury in December 13, 2005 for trafficking in crack cocaine conspiracy, more than "400-grams (2005-GS-47-0026, Count-2)," and the second indicted by the state grand Jury in February 22, 2006 for trafficking in methamphetamines, more than 400-grams (indictment 2005-GS-47-0026, Count-3), Petitioner was represented on the charges by James H. Price, Esquire. Petitioner pleaded guilty on, November 29, 2005 for trafficking in cocaine not more than 28-100 grams, (indictments, 2003-GS-23-04547, and 2003-GS-23-04545), before the Honorable Edward W. Miller, and he received at

the time "seven (7) years", than Petitioner made his consecutive plead of guilty on August 22, 2006, before the Honorable Alexander Macaulay to the lesser included charges of conspiracy to trafficking in more than 28 grams but less than 100-grams of methamphetamine ("2nd offence"), For trafficking in Methamphetamine. Sentencing was deferred until April 10, 2007, Where Petitioner was sentenced to "concurrent terms of twenty (20) years" imprisonment with the (indictments 2005-GS-47-0026, Count 2, and Count 3"). and did not for the ("Count IV."). Pursuant to S.C. Code (1976) § 44-53-375(C)(5) under both indictments. Petitioner did not appeal his pleas or sentences for ineffective assistance of his defense counsel.

On March 7, 2017, the Respondent filed a Return and Motion To Dismiss, the Greenville County's clerk of court clock-stamped March 8, 2017, and also Respondent filed the Conditional Order of Dismissal, entered with the clerk of court from Greenville County March 8, 2017, and also Respondent filed the Conditional Order of Dismissal, entered with the clerk of court from Greenville County on March 13, 2017, by using the wrong Civil Case No. 2015-CP-23-04757, this Case now against the Respondent for default judgment.

Pursuant to S.C. Code Ann. § 17-27-70(b), the lower court intends to dismiss this Case 2015-CP-23-04747, with the Conditional Order citing the wrong Case 2015-CP-23-4757, with "prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The

Respondent is granted twenty (20) days from the date of service of this Order upon Petitioner to show why this Order should not be come final.

That Petitioner filed an "OBJECTION TO MOTIONS OF RETURN AND RESPONSE TO MOTION OF DISMISSAL/AN A CONDITIONAL ORDER OF DISMISSAL, And also, the Petitioner REQUEST FOR DEFAULT JUDGMENT/AND A ORDER TO STRIKE THE <CASE NO. 2015-CP-23-047(57)>, PURSUANT TO RULES 12(a)(b), and (f), AND RULE 55(a)(b)(c), (SCRCP): When as Law Sanction."

Thereafter, the Conditional Order of Dismissal in the lower court of Greenville County went forward, and on July 18, 2017, Honorable Perry H. Gravely Presiding judge signed the Final Order of Dismissal and failed to signed the judgment in his wrong Civil Case Number. The clerk of court clock-stamped on July 21, 2017.

Further the Petitioner filed the Motion of Rule 59(e), SCRCP, before the limitation of ten (10) days had been expired. On August 1, 2017, the honorable Perry H. Gravely judge, filed an ORDER to denied Petitioner's filed Motion of Rule 59(e), SCRCP. Entered in the lower court August 12, 2017, the lower court did not review the Motion of Rule 59(e)'s (Attachment) including that argument and failed to signed the judgment upon the "ORDER" In a Civil Case on August 24, 2017; entered with the clerk on September 1, 2017.

Thereafter, the Petitioner filed an Order Granting Applicant's Rule 59(e), SCRCP, in support of Rules 59(b), & 60(b), (SCRCP), filed on September 13th, 2017, and also therein is the Motion of

Petitioner's Amendment of Rule 59(f), SCRCPP, Motion And Post-Conviction Relief Action, that Honorable Perry H. Gravely Presiding judge pronounce in his ORDER on August 24, 2017, the Applicant had failed to filed and amendment, to support the Rule 59(e), SCRCPP, and said: There does not appear to be any additional evidence to support the "Order" previously filed in this matter? The Petitioner first filed his Rule 59(e), and then retroactive the Order' of Rule 59(f), SCRCPP, and latter filed the Amendment no longer that ten (10) days has expired on September 15, 2017, against the ORDER for a new trial. Therein is two;(2), or three (3) separately filed motions: (1) is the Rule 59(e); and (2) the Rule 59(f), (SCRCPP) which is the "Order" by this Court signed. See Appendix.:(E)(8-of-54)(R. Pp. 46 - 92. ROA), See the (attachment's Order).

And the third (3) is the Motion against the unsigned judgment, with the Applicant's Amendment of Rule 59(f), SCRCPP, Motion And PCR. Action. See, Appendix.:(E)(2-of-6)(R. Pp. 39 - 44. ROA). Filed on September 15, 2017, and the Order of Rule 59(f), SCRCPP, September 13, 2017. See Rule 52(b), SCRCPP, does of ("Amendment").

Therefore, the lower court denied the Petitioner's Motions to Alter/Amendment Judgment, under the Civil Case No. 2015-CP-23-04747. The rule does provides impertinent part: Rule 52(b), SCRCPP.

The Honorable Perry H. Gravely presiding judge issued the Applicant's Amendment of Rule 59(f), SCRCPP, and (PCR. Action), application, and returned back on October 6, 2017, was failed to clock-stamped, by the clerk of court, after this Court requested, and providing it an Applicant's clock-stamped October 12th, 2017. This Petition, within the Explanation Required as Follows:

REASON IN THE EXPLANATION REQUIREMENT
FOR GRANTING THE PETITION

ARGUMENT

1. This Court Should Reconsider And Abolish The Lower Court Its Qualifications. And This Explanation Required Jurisprudenced.

In 1993 This Honorable Supreme Court Proudly Declared That:

Thus, The South Carolina Supreme Court have to ruling, and issue a Order to remand this Case to the lower court. "This, Order is intended to clarify the authority to the "Court of Appeals" entered with this Court. Pursuant to "Rule 204(a), SCACR." Against the Opinion below this Argument. See, In Re MEMORANDUM DESICIONS BY COURT OF APPEALS, 322 S.C. 53, 471 S.E.2d 450 (S.C. 1993). Rule 220(b)(1), SCACR.

See, Appendix.:(C)(R. p. 18. ROA). And also the Court of Appeals Opinion under Jose Alberto Maldonado v. South Carolina Dep't of Corrections, Appellate Case No. 2016-001274. Unpublished Opinion No. 2017-UP-209 - Submitted March 1, 2017 - Filed May 17, 2017. Affirmed that Petitioner sentence within the S.C. Code Ann. § 44-53-375(C) (2)(b)(Supp. 2016)(providing a person who is guilty of traffick- ing in methamphetamine or cocaine based between twenty-eight and nitety-nine grams should be sentenced to "a term of imprisonment of not less than seven years nor more than thirty years" for their ("second offense"). See Appendix.:(C)(37)(R. Pp. 128 - 129. ROA).

How the lower court has determined that, the (4th) Post- Conviction Relief, application, and argues that; is "barred as successive or being untimely under the statute of limitation." When the Petitioner did not have any records from the "State Grand Jury of indicted the Petitioner, there is not record against him for a second offense charges? See the Opinion by the court of Appeals. Appellate Case No.2016-001274. At Appx.:(C)(37)(R. Pp. 128-129.AOA). See id., 52, 471 S.E.2d 456 (S.C. 1993);

See, e.g., Evans v. State, 363 S.C. 495, at 501-52, 611 S.E.2d 510, 513 (2005)

Hereby this Honorable Supreme Court, Decided the George Allen Evens's case April 4, 2005. Justice BURNETT. Granted Evans (Petitioner's) petition for a Writ of Certiorari to decide whether a criminal defendant has the right to obtain documents pertaining to the impanelment of the "State Grand Jury which indicted him" this Court concluded a defendant has a right to obtain such documents. Justice BURNETT. Affirm in part and reversed in part. Evans filed a "post - conviction relief (PCR) action" and "sought the 'files of the state grand jury'" including, but not limited to, the "State's petition and the court "ORDER" impaneling the State Grand Jury which indicted him for trafficking in cocaine."

The clerk of state grand jury refused to release the documents pursuant of S.C. Code Ann. § 14-7-1770 (Supp. 2003).

Thereupon, it is the Petitioner's explanation to this Court as to why this (4th) (PCR. Act.), application's determination by the Honorable Perry H. Gravely presided judge was improper.

ARGUMENT

2. THAT OBJECTION TO THE STATE GRAND JURY MAY BE TAKE AT ANY TIME.

Lack of Subject Matter Jurisdiction Pursuant of Newly Discovered Evidence, provides, in pertinent part:

Thus, the Petitioner, filed a Motion of Rule 60(b), SCRPC, see Appendix.:(P)(1)(R. Pp. 387 - 436. ROP); Appendix.:(Q)(1)(R. Pp. 437 - 470. ROA); And Appendix.:(R)(1)(R. Pp. 471-495. ROA). With the General Sessions Court Term, in the Greenville County's clerk of court, for ("second time") and in his last filing, Petitioner was served one

copy to the "Motion of Rule 60(b)(5), SCRCP, within the State Grand Jury's office, and another copy to "Richland County's clerk of court fifth judicial circuit," because, in this clerk of court the Petitioner has information of records, or evidence, to show his incarceration under this Case No. 2005-GS-23-0026, datined in that County Jail on June 27, 2005, throughout of August 2005. Therefore, the files had been presented by the ("SLED")'s office too. See, Appx.:(S)(R. Pp. 495-496. ROA). This evidence have been raised in the (PCR. Act.), application's (arguments) by the "MOTION OF RULE 59(e), SCRCP," See Appendix.:(F)(28)(R. p. 120. ROA); and also at the: "Order Granting Applicant's Rule 59(e) In Support of Rule, 59(b), & (60)(b) SCRCP." See, this filed under the:"Newly Discovery Evidence" is ("ARGUMENS). Subject to Appendix.:(E)(22-26) (R. Pp. 60 - 64. ROA)(citing, McCoy v. State, at, 370, 737 S.E.2d at, 627 (S.C. 2013); Coats v. State, at, 500, 575 S.E.2d at, 558.

However, on April 17, 2015 the "state grand jury office" released the 'Newly Discovered Evidence' without the S.C. Code of laws § 14-7-1770, stated as, in Evans. This Clerk considered to release the newly discovered evidence' and as a rule, by (PCR. Act. Application), under the S.C. Code Ann. § 17-27-45(C), See id., at Coats v. State, 352, S.C. 500, 504, 575 S.E.2d 557, 559. (quoting, Al-Shabazz, supra, this Honorable Court held that, except for two non-collateral matters specifically listed in the "POST-CONVICTION RELIEF ACTION," See at Coats (Fn.1), "PCR" is "a proper avenue of relief only when the applicant mounts a colateral attack challenging the validity of his conviction or sentence." This Court

stated a Claim regarding sentence-related, credits or other condiction of imprisonment does not fall into this category. Al-Shabazz, 338 S.C. at 367-368, 527 S.E.2d at 747. The avenue of relief for these latter claims is the "Department of Corrections" internal "griavance system." See the Petitioner, griavance filed's Petition, for "Writ of Certiorari, Jose Alberto Maldonado v. (SCDC)(2), Petitioner (Petition), submitted on July 11, 2017, as stated in the Respondent's Return to Petitioner for Writ of Certiorari filed August 10, 2017, see That Petitioner's Reply Motion For Return To Petition For Writ of Certiorari, at (R. Pp. 3, 5, & 8-9). Pursuant, Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) see S.C. Code of Laws Section 17-27-20(a)(5)(R. Pp. 8-9), the Petitioner's Reply Motion had been submitted on July 11, 2017. This Court have to see that, and ruling both Petitions.

(PCR is a proper avenue of relief when Applicant mounts collateral attack challenging validity of his conviction or sentence). Enter this Civil Action Case Number 2015-CP-23-04747, against the (AG's OFFICE", and the "SCDC"), at "Cristina Catoe Bigelow," (Respondent)'s "Return to Petition for Writ of Certiorari, (R. p. 4)(Argued under Jernigan v. State, 340 S.C. 256, 259, 260, 531 S.E.2d 507, 508-509 (2000), That (SCDC)(2) the Respondent finding the "Petitioner's eligible for Post-Conviction Relief is proper avenue of relief when the Petitioner wishes to attack the validity of his underlying conviction or sentence") From the Greenville County's Court, This court have to ruling that. and allow the (4th) POST-CONVICTION RELIEF ACTION against her finding, and inflict this

question to this Court under, Petitioner's (R. p. 3. ROA). Appellate Case No. 2016-001274, ALC Case No. 15-ALJ-04-056-AP/The ORDER From S. Phillip Lenski, judge, See Appendix.:(G)(71-76)(R. Pp. 291 - 296. ROA), Petitioner raised this argument with the lower court in Greenville County.

See "Coats, at 504-05, 575 S.E.2d 558-59, pursuant of S.C. Code Ann.§ 17-27-45(C)(Supp. 2001)" Coats, Petitioner was allegedly informed by his counsel and was informed by the "Department of Corrections" that he was eligible for parole. "The Department even conducted a parole hearing for Petitioner in 1999. A few months later, the department informed him he was not parole eligible." "When he finally received the correct information"? Hereby the S. C. Department of Corrections, the (Respondent)'s "Return, to Petition for Writ of certiorari, Jose Alberto Maldonado (SCDC) (2), Appellate Case No-2017-001525's (R. p. 4), of such Return, Respondent said that Petitioner is eligible for (PCR. Act.), application, too.

Hereinafter, the "State Grand Jury informed the Petitioner on April 17, 2015." See Appendix.:(G)(39)(R. P. 259. ROA), and Appendix.:(E)(26)(R. P. 64 ROA)(citing, McCoy v. State, 401 S.C. 363, at 370, 737 S.E.2d 623, at 627 (S.C. 2013) pursuant to Section 17-27-45(C), therein is the "Explanation requirement of Petitioner argued and present to this Court by granting this Petition for Writ of Certiorari. See Appendix.:(E)(23-26)(R. Pp. 61 - 64. ROA).

("[T]herefore, Petitioner contends that there is evidence of material facts not previously presented and heard that, and for that 'Require Vacating the Petitioner Conviction or Sentence,'").

That records (ROA) should that previously presented in this

matter. When the application, was filed under this chapter within one year, after the date of actual discovery of the facts by the application Case No. 2015-CP-23.04747 or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. § 17-27-45(C). et seq. That (4th) Post-Conviction Relief Action presided judge failed in signed the "ORDER" by released the unsigned judgment from September 1, 2017, See, Appendix.:(D)(12)(R. Pp. 34-35. ROA); Bowan, at, 92, 515 S.E.2d 261 (Ct. App. 1999). See the Appendix.:(E)(53-54)(R. Pp. 91-92. ROA).

When the Petitioner had been showing and demonstrating the requisite no prejudice or merit to his application, and "as no patently successive" and filed well-beyond the prescribed statute of limitation, under § 17-27-45(C). See(Coats v. State, 352 S.C. 500, at, 504, 575 S.E.2d 558, 559 (S.C. 2003)(Coats Petitioner), filed his PCR application raising that claim within one year after the date of actual discovery of the fact he was parole ineligible). Justice, TOAL, C.J., WALLER, BURNETT and PLAICONES, JJ., concur reversed and remanded. See, id., Supra, "McCoy v. State, 401 S.C. 363, at, 370, 737 S.E.2d 623, at, 627 (S.C. 2013). and Coats v. State, at, 504-05, 575 S.E.2d 558-09 (S.C. 2003)." (This Court find's genuine issue of "existance" as to whether applicant's "claim is not successive under S.C. Code Ann. § 17-27-90"): Which permits the Petitioner to file a (4th) Post-Conviction Relief Act. Application. See the Motion, (Order Granting Applicant's Rule 59 (e), In Support of rule 59(b), & 60(b), (SCRCP), at Appendix.(E)(23) (R. p. 61. ROA), pursuant to Rule 29(b), SCRCrimP. "Explanation that:For ("New Trial based on After - Discovered Evidence must be made within [a] reasonable period of tme after discovered of evidence;(citing, Calderon v. Thompson, 523 U.S. 538, at, 557, 118 S.Ct. 1489, at, 1502 (1998); see also State v. Campbell, 376 S.C. 212, at (Fn.1) 216, 656 S.E.2d 371, at, 373 (2008).") That, Coats,

(petitioner)'s Court, "remanded his claims." Hereby, Petitioner informed it to the lower court, by an Objection to the "Return and Motion to Dismiss," and "Conditional Order of Dismissal." Written filed signed "March 29, 2017, entered with the clerk April 13, 2017," Petitioner filed a response against the "conditional order of dismissal," including evidence to support the (4th PCR. Act.), application. See the Appendix.:(G)(39-40)(R. Pp. 259-260. ROA). with an ("AFFIDAVIT OF TRUTH") see the Appendix.:(G)(37-38)(R. Pp. 257-258. ROA)." ("[W]en the State Grand Jury of South Carolina Office to the Clerk of Court, releasd the "Evidence", information subject with ("[Two], (2) marks (X)") and affirmed as follows:

This Clerk of Court (saying), that Clerk have received the Petitioner inquiry:

This inquiry's the filed Motion of Rule 60(b)(5), SCRPC, See the Appendix.:(P)(1-of-51)(R. Pp. 387 - 439. ROA); there's the "State Grand Jury clock-stamped from March 9, 2015." To support the ("Three (3) issues of Newly Discovered Evidence"). That have to support the (4th PCR. Act.), application, from July 31, 2015. Which provide to this Petition, and granting as follows:

- 1). [X] There is no record of said charged;
- 2). [x] Please speak with your attorney regarding your request;
- 3). Other: This Office has no record of State Grand Jury case regarding this matter.

Here, (instead, the case 2005-GS-47-0026, upon the indictments, and the arguments have been presented of S.C. Code Ann. § 44-53-375(C)(5)) which this "section failed" to Petitioner's "second offense" sentence § 44-53-375(C)(2)(b) to "a state gran jury jurisdiction." When had/or have been argued in the lower court. See Appx.:(E)(13)(R. p. 51. ROA).

See, the Objection To Motion of Return and Response to Motion of Dismissal. Appendix.:(G)(16-17)(R. Pp. 236-237. ROA). "Ca-

ptioned--SUSSESSIVENESS AND STATUTE OF LIMITATION DOES NOT AFFECT PCR ACTIONS." This EXPLANATION REQUIREMENT is Clear in this Court. ("Supporting Records").

This Court further finds that this Application for Post-Conviction Relief should be granting for relief have been sought with the filing procedure of Uniform Post Conviction Procedure Act. S.C. Code § 17-27-20(a, 2),(4) & (6). See Appendix:(G)(7-8)(R. Pp. 227-228. ROA), it is the ("MOTION of OBJECTION"), by Respondnt's Conditional Order of Dismissal. Overview of "Statutory Enumarate Grounds in this matter, (emphasis added). 11 U.S.L.A Post - Conviction Act § 489; and South Carolina Code Ann. § 17-27-45(C), read as follows:

Under the PCR Action, an applicant must initiate a PCR proceeding within one year after one of (1, 2), (4), and (6) Petitioner against the enumerating in this action, events him may benefit from a more lenient statute of limitation.

...

That Petitioner filed a Motion to the Clerk of Court, Pursuant of Rule 60(b), SCRPC, addressed ("four (4) copies")(one-1) to the State Grand Jury in Columbia, and the Original to the General Sessions Court in Greenville County, the "state grand jury office review Petitioner's Motion of Rule 60(b), within that the (Attachments)'s argument was the "indictments information." of this matter, and then later returned the information of Newly Discovered Evidence. See Appx.:(P)(51)(R. Pp. 387 - 436 ROA).

Therein, the evidence's the "State Grand Jury, Coverage Sheet" in return my Motion of Rule 60(b), SCRPC,' this information agains the Respondent by Petitioner's (4th PCR. Act.), with

the lower court of Common Pleas in this action by the Respondent and the evidence from April 17, 2015. Petitioner, further filed his next "Motion to Supplement the Pleading," and a "Motion to Reopen Judgment with Memorandum of Law, subject to Rule 15(b), and 60(b)(4), (SCRCP). Issue dated May 26, 2015. See Appendix.:(Q)(Report Page 1 through 34)(R. Pp. 437 - 470. ROA), and then later Petitioner filed a ("NOTICE OF SUMMONS AND COMPLAINT") entered with the lower court's clerk "July 31, 2015" had been amended the complaint the Motion of Rule 60(b)(4,& 5) (SCRCP). See Appendix.:(R)(Report pages 1 through 24)(R. Pp. 471 - 494. ROA).

Hereby, Petitioner after he not heard any ruling in such Motion of rule 60(b), SCRCP, the Petitioner decide to filed his ("4th") Post Conviction Relief Action, application Civil Case No. 2015-CP-23-04747, The clerk of Court docket number on "July 31, 2015", and with this Civil Action Petitioner against the "AG's Office" when the time run started from this "Newly Discovered Evidence, was from [April 17, 2015]", through, the (PCR. Act. Application's), docket number enter on July 31, 2015, is total of ("three months within 'fourteenth (14) days'"). Petitioner demand this time limitation period, under the "S.C. Code Ann. § 17-27-45(A, & C). Against the evidentiary hearing with this Court, between the Respondent wrong case 2015-CP-23-04757. Coats v. State, 352 S.C. 500, at 504, 575 S.E.2d 557 (S.C. 2003).

Because, this ORDER, and unsigned judgment in a civil action's case number is null and void after this Honorable Supreme Court finding the Petitioner's "ORIGINAL" Case No.: 2015-CP-23-04747 on October 31, 2017, Petitioner received on Nov. 1, 2017,

and this honorable Court would be granting this Petition by filed MEMORANDUM OPINION Under that Rule 220(b)(1), stated in the cause and fairly arising upon the "DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL" of the case shall be considered and decided and reason thereof shall be concisely and briefly stated in writing and preserved in the record of the cause, except the Court file MEMORANDUM Opinion in unanimous decision when the Court determines that a full written Opinion would have no precedential value and any one or more of the "following circumstances exists" and is dispositive of a matter submitte to the Court for decision:

- (1) that a judgment of the trial court is based on findings of fact which are not clearly erroneous;
- (2) that the evidence of the trial judge is not insufficient;
- (3) That the order of an administrative agency in supported by such quantum of evidence as prescribed by "statatute or law" under which judicial review is permitted; and
- (4) that no error of law appear?

This, statute, S.C. Code Ann. § 44-53-375(C)(2)(b), has been interpreted by the Court of Appeals, under the Appellate Case No. 2016-001274; Unpublished Opinion No. 2017-UP-209 Submitted March 1, 2017-Filed May 17, 2017 (i.e., Aff'd Decision by the Court of Appeals. Pursuant to Rule 268(d)(2), (SCACR)). In re MEMORANDUM DECISIONS BY COURT OF APPEAL, 322 S.C. 53, 471 S.E. 459 (1993).

The Court of Appeals need not address a point of S.C. Code Ann. § 44-53-375(C)(2)(b). Rule 220(b)(2), SCRCP, and Section 17-27-45(C). which is manifestly without merit.

CONCLUSION

For the above reasons, a Writ of Certiorari should be issued to review the ORDER, within the (unsigned) judgment in the lower court of Greenville County, filed on September 1, 2017. and that, Jose Alberto Maldonado v. SCDC (2), Appellate Case No. 2017-001525, there about is pending with this Honorable Court for its ruling. In order to reverse and remanded the Case in the Greenville County's General Sessions Court, upon the Petitioner Civil Case No. 2015-CP-23-04747, Post-Conviction Relief Action, application, presented in this Petition for Writ of Certiorari.

Done this 14th day of November, 2017.

Respectfully, Submitted


Jose Alberto Maldonado, # 312648
The Petitioner Pro - se

Kershaw, Correction Institution
Magnolia B/Room, # 64
4848 Goldmine Highway
Kershaw, South Carolina 29067

IN THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM THE GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Judge

Appellate Case No. 2017-002092
Lower Court Case No. 2015-CP-23-04747

Jose Alberto Maldonad, # 312648, Petitioner,

v.

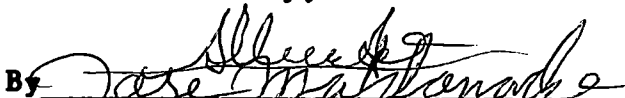
The State of South Carolina,

Repondent.

PETITIONER'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORDS ON APPEAL

Subscribed, this 14th day of November, 2017.

Sincerely, Submitted

By 

Jose Alberto Maldonado, # 312648
Kershaw Correctional Institution
Magnolia, B/Room, # 63

4848 Goldmine Highway
Kershaw, South Carolina 29067

I N D E X

**DESIGNATION OF THE MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

APPENDIX, RECORD ON APPEAL:

I). Appendix.:(A)(1)(Report Pages i-of-iii):

The Supreme Court's November 02, 2017 ORDER, towards the October 17 - 25, motion of Petitioner has filed asking of this Court to direct the lower court's clerk to release the full filings above of Respondent's case No. 2015-CP-23-04757. "When the Petitioner has issued the filed (PCR. Act.), application form," by the "lower court's docket such number," after this Honorable Clerk of Court' said that Petitioner's the actual case number[?] From Cotober 20—23, 2017, with two (2), letters. Then the "Petitioner filed immediately the motion to grant Petitioner an extencion until ten (10) days after the receipt of these filings, and letter filed an explanation captioned-above his right "Case Number," and the full explanation within of (PCR. Act.), application, requir- emant of Rule 243(c), SCACR, with the "time of limitation of fifteen (15) days of date of this ORDER; stated on November 02, 2017. "

That, this Court must correct the issue - and discover the Corr- ect Case Number. See Appendix.:(A)(1)(R. i-of-iii. ROA);

II). Appendix.:(A)(2)(Report Pages ii):

The Supreme Court's letter from October 31, 2017, respond to Petitioner his letter from dated October 17, 2017. "That the Appellate Case Involves Petitioner 'Notice of Appeal in 2015-CP-23-04747.'" See Appendix.:(A)(2)(R. Pp.ii-of-iii ROA);

III). Appendix.:(A)(3)(Report Pages 1-of-8):

The Petitioner's filed informatio to this Court from Oct. 25, 2017, "above-captione his ORIGINAL CASE NUMBER 2015-CP-23-04747, that him would be citing in his cover sheet in his PETITION FOR WRIT OF CE- RTIORARI TO REVIEW AN ALTERNATIVE PETITION FOR STATE HABEAS CORPUS IN POST-CONVICTION RELIEF ACTION", within the (attachments: "E-I - through- E-IV"). See Appendix.:(A)(3)(R. Pp. 1-of-8. ROA);

IV). Appendix.:(B)(Report Pages 1 through 4):

The October 20 - 23, 2017 Supreme Court's information ORDER to Petitioner had to filed an "Axplanation Requirement" under the Rules, Rule 243(c), and 267, (SCACR), with the Perry H. Gravely judge's October 12, 2017 ("letter"), against the Petitioner's Amendment of Rule 59(f), SCRCF. This Court had been ("attached") within the Oct. 20 - 23, 2017 files. See the Appendix.:(B)(R. Pp. 9 - 12. ROA);

V). Appendix.:(C)(Report Pages 1 through 10):

The Petitioner's Timely for Appeal, within the (attachments: A through C), that (attached: "A")'s the S.C. Court of Appeals ORDER, by transferred this Case to this Court. From October 11, 2017. See the Appendix.:(C)(R. Pp. 9 - 12. ROA);

VI). Appendix.:(D)(Report Pages 1 through 16):

The Petitioner's cover sheet to his Notice of Appeal, within the Petitioner's Petition for Abeyance. See Appendix.:(D)(R. Pp. 23 - 38. ROA);

VII). Appendix.:(E)(Report Pages 1 through 55):

The Petitioner's Amendment of Rule 59(f), SCRCF, Motion of (PCR. Act.), application, included the Order Granting Applicant's Rule 59(e) In Support of Rules, Rule 59(b), & 60(b), (SCRCF); within an (attachments: A through F)(Attached: "A" it's the January 24, 2006 information that Petitioner's ("sealed indictment")"; attached: "B" Petitioner repoded to the lower court's clerk, to another case, No. 2013-CP-23-0432, the lower court released the information that petitioner it's no a party in such case, and he reply in the same matter; see (attachments: C, & D), it is the records of same matter by the lower court's clerk, again used such wrong case number against the Petitioner with such wrong case, (the attached "E-IV") providing there is newly discovered evidence, against the lower court, with the Repondent upon is the case No. 2015-CP-23-04757. See the Amendment To (PCR. Act.), application's Certificate of Service, therein, is the ORIGINAL CASE NUMBER? And (Attachments: F-1, and F-2)'s the ORDER, with the unsign judgment from September 1, 2017. that Hon: Perr H. Gravely. denied the Rule 59(e). See Appendix.:(E)(R. Pp. 40 - 92. ROA);

VIII). Appendix.:(F)(Report Pages 1 through 128):

The Motion of Rule 59(e) within the (attachments: A, through Q), the (attachments: A, & B, was is the former PCR Cases's evidence); (Attachments: C-1, & C-2, the Appellate Case No. 2016-001274, Opinion No 2017-UP-209); (Attached C-1 through 10) it's the Respondent of (SCDC)'s Final Brief; (attached: D-1 through 5, there is the Petitioner "unsigned Plea Agreement"); (Attached E-1 through E-6), there is the cover sheet from the Motion of OBJECTION/AN A CONDITIONAL ORDER OF DISMISSAL, and DEFAULT JUDGMENT, to STRIKE the Case No. 2015-CP-23-04747's clock-stamped was from April 13, 2017; the, (Attached: "E" therein's the first evidence that Petitioner discovered, from the Respondent's wrong case number); (attachments: F-1 and F-2 the PCR. Action's number Applicant was introduce in evidence); That, (Attachments: G-1, through G-3, the "Final Order of Dismissal," from May 14, 2014); (attachment: H-1 through H-10, the alteration of Petitioner's 3rd PCR. Action's "Transcript of Record

at the hearing, from October 25, 2013); (attachments: I-1 through I-3, the unsigned judgment Order Denying Motion for Default, filed from November 8, 2013); (Attachments: I-1 & I-2, the ORDER DENYING MOTION TO ALTER OR AMENDED issue on April 9, 2014); (attachments: J-1 & J-2, the Affidavit of Truth, issue on April 17, 2014); (attachments: K-1 through K-4, the Return to motion To Alter or Amend the Order Denying the Motion for Default. Issued on January 15, 2014); (attachments: L-1 and L-2, the Affidavit of: Affiant, issued on November 21, 2013).

Hereby, the (Attachments: M-1 through M-21, that, the "Trasncript of Record, in the General Sessions Court's case 2005 - GS-47-26, the Petitioner's Guilty Plea Hearing from August 22, 2006"); (Attachments: N-1 through N-12, the "Transcript of Records of that General Sessions Court Case 2005-GS-47-26's sentencing hearing on: April 10, 2007"); (attachments: O-1 through O-4, the correct information to a ('secon offense'), under § 44-53-375(C)(2)(b)); (attachments: P-1 through P-4, the wrong information against Petitioner's 'guilty plead, between his counsel, and the AG's office); and ("Attached: Q") unsigned, "judgment") (See ROA. R. p. 217) (See also, Attachments: "Q-1 through Q-3," the "Final Order of Dismissal," entered with the lower court's clerk on July 21, 2017) ... See that, Appendix.:(F)(R. Pp. 93 - 220. ROA);

XV). Appendix.:(G)(Report Pages 1 through 78):

The OBJECTION To Motion of Return and Response to Motion of Dismissal/An A Conditional Order of Dismissal, and the Request for Default Judgment/An A Order to Strike <2015-CP-23-04757>, pursuant to the Rules, Rule 12(a)(b), & (f), 55(a)(c)(b), (SCRCP), as law sansion; the "AFFIDAVIT OF TRUTH, against the wrong case's number , with the (Attachments: "E", "E-I, through E-III", included the, ("Attached: A-I"), there is the ("Newly Discovered Evidence, had been released the State Grand Jury, from Columbia, S.C., to Petitioner, issue dated on April 17, 2015"); ("Attached: A-II", therein is the ("fraudulent MEMORANDUM record report"), from Susan Porter , former prosecutor, at Case No. 2005-GS-47-0026, Issue dated on: April 13, 2007)(including, attachments: A-1 through 1-11, all report of fraudulent records of sentencing sheets, warrants, and the "indictment's records)(See, attached: A-6, the Return and Memorandum in Support of Motion for Summary Judgment's information when the "State Grand Jury indicted the Petitioner at the December 13, 2005, C/A No. 8:11-1372-TLW-JDA); (See also the Attachments: "B-I & B-II", the REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE, AT THE February 22, 2006 indicted the State Grand Jury, didn't match from Dec. 13, 2005, see the Case No. 8:11-1372-TLW-JDA)("see: the indictments in this matter at (attachments: B-1 through B-4), and (Attachments: "C-I, & C-II", the sentencing sheets C/A#:2003-GS-23-4547, Warrant C/A#: G-803304; (attachments: C-1 through C-6 , the records of first sentencing, indictments, warrants)); see: (Attached: "D-I" the "Summons"); (attachments: "E-I through E-III , of the Original Case 2015-CP-23-04747, included the (attached: "E"). See (attachments E-1 through E-5 the (ALJ's Order from May 2016) See Appendix.:(G)(R. Pp. 221 - 296. ROA);

X). Appendix.:(H)(Report Pages 1 through 10):

The "RETURN AND MOTION TO DISMISS." From March 8, 2017.
See (R. Pp. 297 - 306. ROA);

XI). Appendix.:(I)(Report Pages 1 through 11);

The Unsigned JUDGMENT, AND CONDITIONA ORDER OF DISMISSAL.
From March 13, 2017. See (R. Pp. 307 - 317. ROA);

XII). Appendix.:(J)(Report Pages 1 through 11):

The "Cover Sheet of July 31, 2015 PCR. Action's Case No. 2015-CP-23-04747." With the "Original Form of Petitioner his (4th) (PCR. Action), application had been docket on: July 31, 2015's Number." Within the (attachments: Post - Conviction Relief Action, application "INDEX". See, (R. Pp. 318 - 328. ROA);

XIII). Appendix.:(K)(Report Pages 1 through 4):

The Motion to Address All Issues. See (R. Pp. 329 - 332. ROA);

XIV). Appendix.:(L)(Report Pages 1 through 28).

The "NITIAL BRIEF IN SUPPORT OF THE APPLICATION FOR POST CONVICTION RELIEF, ALTERNATIVE PETITION FOR STATE HABEAS CORPUS," File dated of December 22, 2016. See, (R. Pp. 333-359. ROA);

XV). Appendix.:(M)(Report Page 1 through 21):

The "Amendment To Post Conviction Relief Application, 4th Post-Conviction Relief Action, application," pursuant of RULE 15(a) (b), SCRCP. Issue dated on January 25, 2017. See:(R. Pp. 360 - 380. ROA);

XVI). Appendix.:(N)(Report Page 1):

The "SUMMONS" against the Respondent in Default Judgment within 20 days to answer the (4th) (PCR. Act.), applica-tion, issue dated on January 25, 2017. See, (R. P. 381. ROA);

XVII). Appendix.:(O)(Report Pages 1 through 5):

The "Case No. 2015-CP-23-04747's Motion To Allow Transf-er and Consolidate Case Pursuant To Rule 42(a), SCRCP, Between Rule 60(b), SCRCP. In The Pending Files of Mo-

tions." Issue dated on January 25, 2017. See (R. Pp. 382-386. ROA);

XVIII). Appendix.:(P)(Report Pages 1 through 51):

The Greenville County General Sessions, clock-stamped of Jose Alberto Maldonado, Defendant's filing. "Cover Sheet from March 23, 2015," below the "Motion for Counsel and Interpreter", "Post - Conviction Motion Pursuant the True Bill", "Notice and Motion To Set Aside or Vacate Judgment Pursuant To Rule 60(b)(5)", "Memorandum of Law In Support of Motion To Set Aside of Vacate Judgment", "Affidavit" and (Attachments: "A through D"). See:(R. Pp. 387 - 436. ROA);

XIX). Appendix.:(Q)(Report Pages 1 through 34):

The Greenville County General Session, clock-stamped, of Jose Alberto Maldonado, Defendant's filing. Cover Sheet From May 26, 2015, below the "Notice of Motions", Motion To Supplement the Pleading", "Motion To Reopen Judgment with Memorandum of Law", And (Attachments: "A-I", there is the first evidence that Defendant present with the lower court, for 'Newly Discovered Evidence' it is the April 17, 2015 facts to the State Grand Jury); see (attachments: "B through D", the full information of discovery in this matter to the attached: "A-I"). See: (R. Pp. 437 - 470. ROA);

XX). Appendix.:(R)(Report Pages 1 through 24):

The Greenville County General Sessions, clock-stamped of Jose Alberto Maldonado, Defendant's filing, Cover Sheet from "July 31, 2015", below, the "Notice of Summons and Complain", and "Amending Complaint", See at (Attachments: (A), is the state grand Jury Evidence, from April 17, 2015, the (attached: (B), it is the D. Garrison Hill's letter from ("May 28, 2015"), him has filed to "Ms. Karen Ratigan," by her review and take whatever action she deem appropriate. See (R. Pp. 471 - 494. ROA); and

XXI). Appendix.:(S)(Report Pages 1 & 2):

The Jose Alberto Maldonado's Cover Sheet letter of Motion he issue and filed to ("SLED")'s office on July 27, 2015, of "Notice of Motions and Complaint," and Amending Complaint. But the (SLED), return my Motion August 10, 2015, and said that, the office does not ("approve, sign") "forward to the General Sessions Court Term." ... Enter on Record this letter, to (SLED)'s office. See: (R. Pp. 495 - 496. ROA).

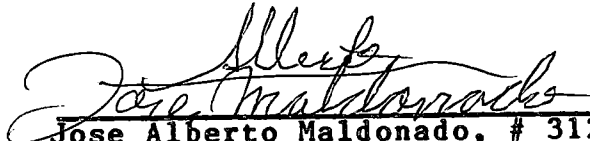
The undersigned hereby certifies this Designation contains no matter that is irrelevant to this appeal, or Petition For Writ of Certiorari, In Post-Conviction Relief Action.

PETITIONER OBJECTS TO ANY AND ALL DOCUMENTS RESPONDENT PROPOSED TO INCLUDE INTO THE RECORD ON APPEAL WHICH WERE DUPLICATES OF THE SUBMITTED RECORDS THE PETITIONER FILED WITHIN THE LOWER COURT.

THEREBY, THE RESPONDENT REFILED IN RETURN, YET DID NOT HAVE JURISDICTION TO THE GENERAL SESSIONS COURT TERM.

Respectfully, Submitted

November 14th, 2017


Jose Alberto Maldonado, # 312648
The Petitioner, pro - se.

Kershaw Correctional Institution
Magnolia, B/Room, # 63
4848 Goldmine Highway
Kershaw, South Carolina 29067

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE GREENVILLE COUNTY
PERRY H. GRAVELY, CIRCUIT JUDGE

APPELLATE CASE No. 2017-002092
LOWER COURT CASE No. 2015-CP-23-04747

JOSE ALBERTO MALDONADO, # 312648, PETITIONER,

v.

THE STATE OF SOUTH CAROLINA, RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned Jose Alberto Maldonado, Pro - Se, hereby certify that on today's date he mailed a copy of the Petition For Writ Of Certiorari In Post-Conviction Relief Action, file under the Rule 243(c) SCACR; and Designation of Matter to be Included in the Record on Appeal to Respondent, addressed as follows: Megan H. Jameson, AG's Office, 1000 Assembly Street, P. O. Box 11459 Columbia, South Carolina, 29211, And the file Original Copy addressed to:

In the Supreme Court
Honorable Daniel E. Shearouse
Clerk of Court
Post Office Box 11330
Columbia, South Carolina 29211

Respectfully, Submitted

By, Jose Maldonado
Jose Alberto Maldonado, # 312648
The Petitioner, Pro - Se,

Kershaw, Corr. Inst. MB/Room, # 63
4848 Goldmine Highway
Kershaw, South Carolina 29067

SWORN to and SUBSCRIBED Before Me

This 14 day of November, 2017

Cheryl R. Frost
NOTARY Public For SOUTH CAROLINA

My Commission Expires: Jan 27, 2025

Further, The Petitioner said and

Certifies: November 14, 2017.

DELIVERED NOV 14 2017



APPX. (C)(7-0F10) State of South Carolina
The Circuit Court of the Thirteenth Judicial Circuit

Perry H. Gravely
Judge

Post Office Box 219
Pickens, SC 29671

October 6, 2017

Via U.S. Mail

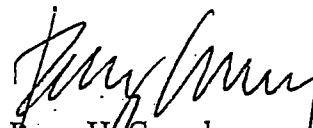
Mr. Jose Alberto Maldonado, #312648
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067

Re: Applicant's Amendment of Rule 59(f), SCRPC and Post-Conviction Relief Action

Dear Mr. Maldonado:

The Court has received your September 15, 2017, Motion to Alter or Amend this Court's September 1, 2017, Order denying your previous Motion to Alter or Amend Judgment dismissing your Post-Conviction Relief claim, filed August 14, 2017. Court Rules do not allow a party to file a Rule 59 Motion for an Order denying a previous Rule 59 Order. Therefore, the Court cannot accept nor consider your repeat filing at this time, and your Motion with all attachments are being returned at this time.

Sincerely,


Perry H. Gravely
Judge

Enclosure: As stated

cc: Greenville County Clerk of Court

(R.P. 19-0F-298, ROA)

(Attachment: B)

File: OCT 17 2017

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO: 2015CP2304757

IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE, SC

2017 SEP - 1 PM 12: 42

Jose Alberto Maldonado vs. South Carolina State Of

APPX. (E) (page 54)

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

NOTICE

This is a notice to you that an attached Order in this case has been filed in the Clerk of Court's Office.

Dated at Greenville, South Carolina, this .

(Attachment: F-2)
File on 9-13-2017.
(4th PCR Act Dec. 7)

Court Reporter:

PRESIDING JUDGE - Perry H. Gravely

Jose Alberto Maldonado Kershaw Correctional
Institute 4848 Goldmine Hwy Kershaw, SC 29067

James Clayton Mitchell III PO Box 11549
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

(R. p. 92 of - ROA)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
)
Jose Alberto Maldonado, #312648)
)
Applicant,)
APPX. (E) (53-OF 54))
vs.)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
Case No. 2015-CP-23-04757

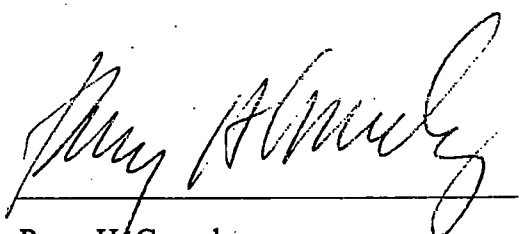
FILED-CLERK OF COURT
PAUL B. WICKENS/SMITH
GREENVILLE, SC 29601
2017 SEP - 1 PM 12: 42

ORDER

This matter comes before the Court upon the Applicant's Motion to Alter/Amend
Judgement of the Order dismissing this Post-Conviction Relief claim, filed on August 14, 2017.
After fully considering said Motion, this Court finds that oral argument is not needed for a final
determination of this Motion. The Court has reviewed the file and there does not appear to be
any additional evidence to support an amendment to the Order previously filed in this matter.
Therefore, the Applicant's Motion to Alter/Amendment Judgment is DENIED.

IT IS SO ORDERED!

(Attachments: F-1)
File on: 9-13-2017
(4th PCR Act. Doc. 7)


Perry H. Gravely
Presiding Judge

Greenville, South Carolina

August 24, 2017

(R.p. 91 of ROA)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Jose Alberto Maldonado, #312648,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2015-CP-23-04757

RETURN AND MOTION TO DISMISS

FILED-CLERK OF COURT
PAUL B. WICKENS
GREENVILLE CO. S.C.
2017 MAR -8 AM 11:21

Respondents respectfully move this Court, pursuant to 12(b), SCRPC for judgment on the pleadings. In response to the post-conviction relief (PCR) application filed July 31, 2015, the

Respondent would show this Court:

Appendix: (H) (Report of Page (1) through (10))
I.

Underlying Charges and Trial

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for the State Grand Jury. Applicant was indicted by the State Grand Jury in December 2005 for trafficking in crack cocaine conspiracy, more than 400 grams (2005-GS-47-0026, Count 1) and trafficking in methamphetamines, more than 400 grams (2005-GS-47-.0026, Count 4). Applicant was represented on the charges by James H. Price, Esquire. Applicant pleaded guilty on August 22, 2006, before the Honorable Alexander Macaulay to the lesser included charges of conspiracy to traffick in more than 28 grams but less than 100 grams of methamphetamine (2nd offense) and trafficking in methamphetamine, more than 28 grams but less than 100 grams (2nd offense). Sentencing was deferred until April 10, 2007, where Applicant was sentenced to concurrent terms of twenty (20) years' imprisonment.

Applicant did not appeal his pleas or sentences.

(R. P. 297 OF - , ROA)

APPX. (H) (2-0F-10)

2008-CP-23-2140

Applicant subsequently filed an application for post-conviction relief on March 18, 2008. Respondent filed its return on or about September 30, 2008. An evidentiary hearing was convened on December 8, 2008, at the Greenville County Courthouse before the Honorable Edward W. Miller. Applicant was present and represented by Rodney W. Richey, Esquire. At the hearing, Applicant chose to voluntarily withdraw his PCR application. After questioning Applicant about his decision, Judge Miller dismissed the matter with prejudice by Order filed on December 29, 2008.

2010-CP-23-3391

On April 28, 2010, Applicant filed his 2nd application. The State made its Return and Motion to Dismiss on or about August 20, 2010, requesting that the application be summarily dismissed. By Conditional Order of Dismissal filed on September 9, 2010, the Honorable Robin B. Stillwell dismissed the 2nd application finding it was time barred by the statute of limitations and successive to Applicant's first application. Applicant filed a Motion for Immediate Release from the Conditional Order of Dismissal on or about September 30, 2010. On December 14, 2010, Judge Stillwell dismissed the application finding the reasons stated in Applicant's responses to the Conditional Order had not shown sufficient reason why the order should not become final. Judge Stillwell found the application clearly successive and filed outside the statute of limitations.

Applicant appealed the denial of the second application to the South Carolina Supreme Court. Applicant submitted a lengthy document as his Rule 243(c) explanation. However, by Order dated April 20, 2011, the court determined Applicant failed to show there was an arguable basis for asserting that the PCR court's determination was improper. The court dismissed

(R. P. 298-0F- , ROA)

Applicant's appeal. Applicant then filed a request to reconsider its denial of Applicant's petition, but the court declined to take action because Applicant failed to submit a certificate of service upon opposing counsel. The remittitur was issued on June 3, 2011.

Appx. (H)(3-0F-10)

2011-cv-01372

Applicant then filed a *pro se* petition for writ of habeas corpus on June 2, 2011, in federal district court. Applicant raised the following issues verbatim:

1. The Clerk of Court of Supreme Court of South Carolina failed and refused to raise other my Grounds again. (Under PCR Act).
2. Professional conduct for court interpreters. As officer of the court, interpreter help assume that such person may enjoy equal access to justice and that court proceeding.
3. The H abes Corpu* Remedies will reverse or Order, for Relief, under invalid indictments. Lack of Jurisdiction. Over:
4. The plea form currently used in any court provide notice of possible immigration consequences. Court and Counsel Adverse in issues of:

On August 22, 2011, Respondent filed a return and motion for summary judgment. The district court granted the State's Motion for Summary Judgment on December 5, 2011, and dismissed the petition. Applicant then filed a notice of appeal on December 14, 2011. The United States Fourth Circuit Court of Appeals issued an opinion dismissing the appeal on March 20, 2012.

II.

Finally, in his *third* and current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons verbatim:

1. Because, the Respondent have Fraudulent Indictments, and had been misrepresent the State of South Carolina, by use ("two Counties") and lack jurisdiction, upon the State Grand Jury, in Columbia;
2. Violated Code of Laws its "Statutes", when at the time that: fall inside the State Constitutional/United States its Constitution;
3. That trial judge(s) with "Bias", against the Rule 501 canon 3(A)(B)(5), (C)(1), and canon 5(D), SCACR, (Ex Parte Communication. See also Rule 502 cite Rule 11, & 12(c), RJD Ex-Parte Contacts; In re Woodham, 386 S.C. 495, n.1, 499, 689 S.E.2d 605, 607, (2010); See at (per se rule); see id., State v. Cheatham, 349 S.C. 101, 109, 112; 561 S.E.2d 618; 624-627 (2002); citing Rule 104, & 404(b);

APPX. (H) (4-OF-10)

4. Because therein is a CONFLICT OF INTEREST between the prosecutor with held to the STATE GRAND JURY from Columbia, was this County, allow them, by let used a "FRAUDULENT SWORN AMENDED SUCH INDICTMENTS ..." with the same series of (Numbers); and
5. Which Applicant had been prosecuted in the GENERAL SESSIONS court term/indicted with CONSECUTIVELY OFFENSES, MULTIPLE GRAND JURY DATES, and Counts: That, the "State Grand Jury from (SC) Columbia deprive a Court in the Greenville County is jurisdiction," before the Applicant agree inside of both INDICTMENTS/where not had or, have being present, upon the State Grand Jury, and which choice not being indict relative of any exsistanced, (i.e.). But who later sued for malicious prosecution;
6. The Susana O. Porter, solicitor, "MANDATORY" has to AMEND the "TRUE BILL INDICTMENT" to: A second Offenses; (28 -unless- 100) grams; and "quashed" the (Inf. Indictmens for 7-years sentences) included the (Inf., from Dec. 13, 2005 indictment's (Count Two)), with the unknow names; and pursued with a single name. As an Applicant upon the SUPERSEDING INDICTMENT, because the (100 -grams, more than - >400 grams: Therefore, this PROVISION, had been EXCHANGED its NATURE of LANGUAGE at the STATUTE; SC. Code of Laws Ann. § 44-53-375(C)(2)(b); and quashed the LENGUAGE of: § 44-53-375(C)(5) at front as the Applicant's Greenville County. In his "PRIOR BREACH IS NEGOTIATION of GUILTY PLEAD," see the "PLEAD AGREEMENT: Was therein, is no been signed" and that against Mr. Maldonado is relief. Because Applicant didn't signed the Waiver, was that barred by res judicata to been prosecute Applicant with those papers.
7. Counsel was ineffective for not attempting to get all the drug charges ran together pursuant to South Carolina Ann., § 17-25-50; see e.g., Brayan v. State, 384 S.C. 525, 530, 683 S.E.2d 280, at 283 (S.C. 2009)(quoting State v. Gordon, 356 S.C. 143, 150, at 153, 188 S.E.2d 105, (111) (S.C. 2003) ("[C]ounsel was ineffective for not challenging the invalid "Indictment(s)" before Applicant plead guilty"? Hereby, (Mr. Maldonado), had been filed ("Tw PCR. Act.), but the State denied such applications, for a successive petitions, was against the (1-year of limitations Act.). But now, I am ("a motions"). In the "General Sessions Court Term." Holdings, the Ground for Relief as follows:
8. The null and void indictments" makes the "conviction(s) and sentences constitutionally" (invalid)? Because, during the prosecution, the "State is failure to collateraly review a "physically presented [Applicant] at the imposition of sentences" such (Inf., Indictments)" See Jimenez v. Quarterman, 555 U.S. 120, N.4, 121, 129 S.Ct. 681, at 686 (2009) ("[t]he statute thus carries out "AEDPA's goal" of promoting 'comity, finality, and federalism' by givin state courts 'the first opportunity to review (the) claim,' and to 'correct' any constitutional violation in the first instance." (Quoting, Carrey v. Safford, 536 U.S. 214, 220 (2002). The statute requires a federal court, presented with an individual (is) first "Petition for habeas corpus" relief? Sending, those facts at (C/A#:8:11-cv-01372-TWL DAtE Filed 9/27/11 (Entry-Number 24 at Page 2/between the State's Summary Judgment, (Doc.

APPX. (H)(5-af-10)

- 15) when the Jacquelyn D. Austin Denied the § 2254 Petition and grant (“Doc. 15”)? Was this motion showing the judgments is recommendation is “Null and Void”. Against the relief. Because the “dates didn’t match (Eah one?)”; see the (“Inf., Sworn to the State Grand Jury inside the filed Motions/Doc. 15 from the State and Doc.24 from “Jacquelyn D. Austin” Indictments” and
9. Was the plea constitutionally invalid due to the court failure to comply with the mandate of Rule 11, FRCrimP; see Boykin v. Alabama? ...Did prosecutorial misconduct make this plea invalid ...; U.S. v. Lawrence, 248 F. 3d 300, 305 (4th Cir. 2001)(recentencing vacated and Remended, because defendant must be “physically present at imposition of sentenced”); see, id., Keeney v. Tamayo Reyes, 504 U.S. 1, 11-12 (1962)). To obtain hearing, Petitioner mus show cause for his failure to develop the facts in “State Court” proceedings and actual prejudice resulting from that failure: unless failure to hold evidentiary hearing would result in “fundamental miscarry of justice”) Barr v. City of Columbia, at 149, 84 S.Ct. at 1736 (1964)(“(S)tate, requirements which are not strictly deprive ‘Applicant’ of the right to review his claim).
10. Applicant, showdown to this C ourt, why this case be heard and Rule? Upon, Accordingly, Williams v. State, 354 S.C. 360 n.1, 632, 583 S.E.2d 52 54 (2003)(before the issue summon and complaint) See, also Garner v. State, 371 S.C. 1; 2, n.1, 3; 636 S.E.2d *60 (2006)(holding, the State filed a “void” motions; (1) to alter or amend the Order; and (2) the preside (3rd PCR Act.) judge granted, as Applicant is Rule 59(e), SCRCP, and a mislead is “Motions; Order from November 8, 2013/April 3, 2014”. Preside judge Edward W. Miller.

Applicant then filed a document captioned “Motion to Address All Issues,” on December 22, 2016. Attached was a document captioned “Initial Brief in Support of the Application for Post Conviction Relief,” where Applicant sets forth four (4) issues:

1. Counsel was ineffective for not attempting to have all drug charges consolidated pursuant to S.C. Code Ann. § 17-25-50.
2. Counsel was ineffective for not challenging the invalid indictments before advising Applicant to plead guilty.
3. Did the invalid indictments make the convictions and sentences constitutionally invalid.
4. Was the plea constitutionally invalid to the court’s failure to comply with the mandates of Rule 11, FRCrimP. And Boykin v. Alabama, (1963)?

On January 25, 2017, Applicant filed a documents captioned “Motion to Allow Transfer and Consolidate Cases Pursuant to Rule 42(a); SCRCP, Between Rule 60(b); SCRCP Pending

(R. p. 301 -of- , RON)

APPX. (4)(G-OF-10)

File Motion." In the motion Applicant asks the court to transfer the general sessions cases into this common plea case number. Also on January 25, 2017, Applicant filed a document captioned "Amendment to Post Conviction Relief Application 4th PCR. Action (Rule 15(a)(b), SCRCF)".

In this document, Applicant presents the following issues:

1. The indictment C/A#: 2005-GS-47-0026, upon which the offense for which sentences was imposed, therein's in violation of 5th, 6th and 14th Amendments to the United States Constitution, and the S.C. Article I, §§ 11, 14; art. V, § 22. That grounds to Applicant's allegations are being held in custody unlawful. Setting this claims an evidentiary hearing. Under Arnold v. State, 309 S.C. 157, 160, 420 S.E.2d 834, 842 (1992);
2. [Grounds 4(a)]. The indictment numbers upon which the sentences were imposed violated the S.C. And U.S. Constitution;
3. [Ground 5(a)]. The date upon which sentences was wrong had been imposed and the term of the sentence;
4. [Ground 6(a)]. Check, the Applicant whether a finding of guilty was made;
5. [Ground 7] Applicant did not appeal from the judgment of conviction for the imposition of his sentence(s)?
6. [Ground 8] The Applicant, answered to (ground 7) to no had "any appeal" in his due process to the S.C. Court of Appeals.
7. [Ground 9(a)]. Applicant's answer "no" to grounds (7), and (8) why Applicant did not so appealing;
8. The Applicant hereby this amends answers to (number 10 through 11) in his Application for Post-Conviction Relief to stat the following:
9. Enter [Ground 12(a)] Prior to this Application have beenfile with respect to this conviction, against Applicant's relief, included Petitioner first, second and "third, had been argued at his petition with The SC State Courts; (b)(c), see:
10. [Ground 13 through 18] hat Applicant constitutionally answered to all parts of his Application, and part of (12), list with respect to each petition, motion or application:
11. [Ground 19]. The Applicant, addressing all's grounds for the relief have been sought to file his "Post-Conviction Relief (4th PCR.Act) Application, after his Initial Brief had, been filed with this Court:

For the purpose of this Return, Respondent incorporates the Clerk of Court records, Applicant's prior PCR records, and the South Carolina Department of Corrections' records. The

Respondent reserves the right to amend this Return upon receipt of any relevant materials.

(R. P. 302-OF- , ROA)

III.

APPX. (H) (7-8F-10)

This 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. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) 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, 305 S.C. 448, 409 S.E.2d 392. Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If 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 that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant could have raised the new grounds for relief in his prior post-conviction relief applications. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

(R. p. 303 -8F-) ROA)

APPX.(H)(8-0F-10)

IV.

Respondent also submits this Application for Post-Conviction Relief should also be dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003). S.C. Code Ann. §17-27-45(a) reads as follows:

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

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pled guilty to the offenses he challenges on August 22, 2006, so he was therefore required to file his application on or before August 23, 2007. This Application was filed on July 31, 2015, which was over five (5) 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. 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) (1985) 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 dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

V.

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

R. P. 304-0F- , ROA)

APPX. (H) (9-OF-10)

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to Applicant's previous PCR applications and was filed after the statute of limitations had expired.

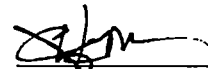
Respectfully submitted,

ALAN M. WILSON
Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

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

By:


Attorneys for the Respondents

3/6, 2017

(R. P. 305 - OF - , RGA)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

APPX.(H) (Report Page (10)))

2015-CP-23-4757

JOSE ALBERTO MALDONADO, #312648,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

FILED-CLERK OF COURT
PAUL B. WICKERSHAW
GREENVILLE, SC
2017 MAR -8 AM 11:21

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 **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Jose Alberto Maldonado, #312648
 Kershaw Correctional Institution
 4848 Goldmine Hwy
 Kershaw, SC 29067**

DATED this 7th day of March, 2017.

(R. P. 306 - of - , ROA)

Ashley Hawthorn
 Ashley Hawthorn, Paralegal
 For Respondent



ALAN WILSON
ATTORNEY GENERAL

Appendix: (I) (Report page 1 through 11)

March 7, 2017

The Honorable Perry H. Gravely
Presiding Judge – 13th Judicial Circuit
Post Office Box 219
Pickens SC 29671

Re: Jose Alberto Maldonado v. State of South Carolina
2015-CP-23-4757

Dear Judge Gravely:

Enclosed please find the proposed original **Conditional Order of Dismissal** in the above-captioned cases. If these orders meet with your approval, please sign and forward to the Greenville Clerk of Court to be filed and served.

Sincerely,

J. Clayton Mitchell
Assistant Attorney General

JCM/ah
Enclosure(s)

cc: Jose Alberto Maldonado, #312648

(R. p. 307 - of - , ROA)

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2015CP230475

FILED-CLERK OF COURT
PAUL B. WICKENS
GREENVILLE, SC
2017 MAR 13 PM 4:32

Jose Alberto Maldonado vs. South Carolina State

APPX.(I)(2-OF-11)

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
SCRC (Vol. Nonsuit); Rule 12(b), SCRC; Rule 41(a),
 Rule 43(k), SCRC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRC; Bankruptcy:
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court;

Dated at Greenville, South Carolina, this .

Court Reporter:

(R. P. 308-0F- , ROA)

PRESIDING JUDGE - Perry H Gravely

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Jose Alberto Maldonado Kershaw Correctional
Institute 4848 Goldmine Hwy Kershaw, SC 29067

James Clayton Mitchell III PO Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Jose Alberto Maldonado, #312648,

Appx. (I) (3 - of - 11) Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2015-CP-23-04757

CONDITIONAL ORDER OF DISMISSAL

FILED - CLERK OF COURT
PAUL B. NICKENSBERGER
GREENVILLE CO. SC
2017 MAR 13 PM 4:32

This matter comes before this Court by way of an application for post-conviction relief filed July 31, 2015.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for the State Grand Jury. Applicant was indicted by the State Grand Jury in December 2005 for trafficking in crack cocaine conspiracy, more than 400 grams (2005-GS-47-0026, Count 1) and trafficking in methamphetamines, more than 400 grams (2005-GS-47-.0026, Count 4). Applicant was represented on the charges by James H. Price, Esquire. Applicant pleaded guilty on August 22, 2006, before the Honorable Alexander Macaulay to the lesser included charges of conspiracy to traffick in more than 28 grams but less than 100 grams of methamphetamine (2nd offense) and trafficking in methamphetamine, more than 28 grams but less than 100 grams (2nd offense). Sentencing was deferred until April 10, 2007, where Applicant was sentenced to concurrent terms of twenty (20) years' imprisonment. Applicant did not appeal his pleas or sentences.

2008-CP-23-2140

(R. P. 309 - of - , ROA) Page 1 of 9

plp

Applicant subsequently filed an application for post-conviction relief on March 18, 2008. Respondent filed its return on or about September 30, 2008. An evidentiary hearing was convened on December 8, 2008, at the Greenville County Courthouse before the Honorable Edward W. Miller. Applicant was present and represented by Rodney W. Richey, Esquire. At the hearing, Applicant chose to voluntarily withdraw his PCR application. After questioning Applicant about his decision, Judge Miller dismissed the matter with prejudice by Order filed on December 29, 2008. APPX. (I)(4-of-11)

2010-CP-23-3391

On April 28, 2010, Applicant filed his 2nd application. The State made its Return and Motion to Dismiss on or about August 20, 2010, requesting that the application be summarily dismissed. By Conditional Order of Dismissal filed on September 9, 2010, the Honorable Robin B. Stillwell dismissed the 2nd application finding it was time barred by the statute of limitations and successive to Applicant's first application. Applicant filed a Motion for Immediate Release from the Conditional Order of Dismissal on or about September 30, 2010. On December 14, 2010, Judge Stillwell dismissed the application finding the reasons stated in Applicant's responses to the Conditional Order had not shown sufficient reason why the order should not become final. Judge Stillwell found the application clearly successive and filed outside the statute of limitations.

Applicant appealed the denial of the second application to the South Carolina Supreme Court. Applicant submitted a lengthy document as his Rule 243(c) explanation. However, by Order dated April 20, 2011, the court determined Applicant failed to show there was an arguable basis for asserting that the PCR court's determination was improper. The court dismissed

[Handwritten signature]

Applicant's appeal. Applicant then filed a request to reconsider its denial of Applicant's petition, but the court declined to take action because Applicant failed to submit a certificate of service upon opposing counsel. The remittitur was issued on June 3, 2011.

APPX. (I) (5-df-11) 2011-cv-01372

Applicant then filed a *pro se* petition for writ of habeas corpus on June 2, 2011, in federal district court. Applicant raised the following issues verbatim:

1. The Clerk of Court of Supreme Court of South Carolina failed and refused to raise other my Grounds again. (Under PCR Act).
2. Professional conduct for court interpreters. As officer of the court, interpreter help assume that such person may enjoy equal access to justice and that court proceeding.
3. The H abes Corpu* Remedies will reverse or Order, for Relief, under invalid indictments. Lack of Jurisdiction. Over:
4. The plea form currently used in any court provide notice of possible immigration consequences. Court and Counsel Adverse in issues of:

On August 22, 2011, Respondent filed a return and motion for summary judgment. The district court granted the State's Motion for Summary Judgment on December 5, 2011, and dismissed the petition. Applicant then filed a notice of appeal on December 14, 2011. The United States Fourth Circuit Court of Appeals issued an opinion dismissing the appeal on March 20, 2012.

CURRENT APPLICATION

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

1. Because, the Respondent have Fraudulent Indictments, and had been misrepresent the State of South Carolina, by use ("two Counties") and lack jurisdiction, upon the State Grand Jury, in Columbia;
2. Violated Code of Laws its "Statutes", when at the time that: fall inside the State Constitutional/United States its Constitution;
3. That trial judge(s) with "Bias", against the Rule 501 canon 3(A)(B)(5), (C)(1), and canon 5(D), SCACR, (Ex Parte Communication. See also Rule 502 cite Rule 11, & 12(c), RJD Ex-Parte Contacts; In re Woodham, 386 S.C. 495, n.1, 499, 689 S.E.2d 605, 607, (2010); See at (per se rule); see id., State v.

(R-P.311 -df-) ROA)

[Handwritten signature]

Cheatham, 349 S.C. 101, 109, 112, 561 S.E.2d 618, 624 - 627 (2002), citing Rule 104, & 404(b);

4. Because therein is a CONFLICT OF INTEREST between the prosecutor with held to the STATE GRAND JURY from Columbia, was this County, allow them, by let used a "FRAUDULENT SWORN AMENDED SUCH INDICTMENTS ..." with the same series of (Numbers); and
5. Which Applicant had been prosecuted in the GENERAL SESSIONS court term/indicted with CONSECUTIVELY OFFENSES, MULTIPLE GRAND JURY DATES, and Counts: That, the "State Grand Jury from (SC) Columbia deprive a Court in the Greenville County is jurisdiction," before the Applicant agree inside of both INDICTMENTS/where not had or, have being present, upon the State Grand Jury, and which choice not being indict relative of any exsistanced, (i.e.). But who later sued for malicious prosecution;
6. The Susana O. Porter, solicitor, "MANDATORY" has to AMEND the "TRUE BILL INDICTMENT" to: A second Offenses; (28 -unless- 100) grams; and "quashed" the (Inf., Indictmens for 7-years sentences) included the (Inf., from Dec. 13, 2005 indictment's (Count Two)), with the unknow names; and pursued with a single name. As an Applicant upon the SUPERSEDING INDICTMENT, because the (100 -grams, more than - >400 grams: Therefore, this PROVISION, had been EXCHANGED its NATURE of LANGUAGE at the STATUTE; SC. Code of Laws Ann. § 44-53-375(C)(2)(b); and quashed the LENGUAGE of: § 44-53-375(C)(5) at front as the Applicant's Greenville County. In his "PRIOR BREACH IS NEGOTIATION of GUILTY PLEAD," see the "PLEAD AGREEMENT: Was therein, is no been signed" and that against Mr. Maldonado is relief. Because Applicant didn't signed the Waiver; was that barred by res judicata to been prosecute Applicant with those papers.
7. Counsel was ineffective for not attempting to get all the drug charges ran together pursuant to South Carolina Ann., § 17-25-50; see e.g., Brayan v. State, 384 S.C. 525, 530, 683 S.E.2d 280, at 283 (S.C. 2009)(quoting State v. Gordon, 356 S.C. 143, 150, at 153, 188 S.E.2d 105, (111) (S.C. 2003) ("[C]ounsel was ineffective for not challenging the invalid "Indictment(s)" before Applicant plead guilty"? Hereby, (Mr. Maldonado), had been filed ("Tw PCR. Act.), but the State denied such applications, for a successive petitions, was against the (1-year of limitations Act.). But now, I am ("a motions"). In the "General Sessions Court Term." Holdings, the Ground for Relief as follows:
8. The null and void indictments" makes the "conviction(s) and sentences constitutionally" (invalid)? Because, during the prosecution, the "State is failure to collateraly review a "physically presented [Applicant] at the imposition of sentences" such (Inf., Indictments)" See Jimenez v. Quarterman, 555 U.S. 120, N.4, 121, 129 S.Ct. 681, at 686 (2009) ("[t]he statute thus carries out "AEDPA's goal" of promoting 'comity, finality, and federalism' by givin state courts 'the first opportunity to review (the) claim,' and to 'correct' any constitutional violation in the first instance." (Quoting,

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Carrey v. Safford, 536 U.S. 214, 220 (2002). The statute requires a federal court, presented with an individual (is) first "Petition for habeas corpus" relief? Sending, those facts at (C/A#:8:11-cv-01372-TWL DATE Filed 9/27/11 (Entry-Number 24 at Page 2/between the State's Summary Judgment, (Doc. 15) when the Jacquelyn D. Austin Denied the § 2254 Petition and grant ("Doc. 15")? Was this motion showing the judgments is recommendation is "Null and Void". Against the relief. Because the "dates didn't match (Eah one?"); see the ("Inf. Sworn to the State Grand Jury inside the filed Motions/Doc. 15 from the State and Doc.24 from "Jacquelyn D. Austin" Indictments" and

9. Was the plea constitutionally invalid due to the court failure to comply with the mandate of Rule 11, FRCrimP; see Boykin v. Alabama? ...Did prosecutorial misconduct make this plea invalid ...; U.S. v. Lawrence, 248 F. 3d 300, 305 (4th Cir. 2001)(recentencing vacated and Remended, because defendant must be "physically present at imposition of sentenced"); see, id., Keeney v. Tamayo Reyes, 504 U.S. 1, 11-12 (1962)). To obtain hearing, Petitioner mus show cause for his failure to develop the facts in "State Court" proceedings and actual prejudice resulting from that failure: unless failure to hold evidentiary hearing would result in "fundamental miscarry of justice" Barr v. City of Colum,bia, at 149, 84 S.Ct. at 1736 (1964)("([S]tate, requirements which are not strictly deprive 'Applicant' of the right to review his claim).
10. Applicant, showdown to this C ourt, why this case be heard and Rule? Upon, Accordingly, Williams v. State, 354 S.C. 360 n.1, 632, 583 S.E.2d 52 54 (2003)(before the issue summon and complaint) See, also Garner v. State, 371 S.C. 1; 2, n.1, 3; 636 S.E.2d *60 __ (2006)(holding, the State filed a "void" motions; (1) to alter or amend the Order; and (2) the preside (3rd PCR Act.) judge granted, as Applicant is Rule 59(e), SCRCPP, and a mislead is "Motions; Order from November 8, 2013/April 3, 2014". Preside judge Edward W. Miller.

Applicant then filed a document captioned "Motion to Address All Issues," on December 22, 2016. Attached was a document captioned "Initial Brief in Support of the Application for Post Conviction Relief," where Applicant sets forth four (4) issues:

1. Counsel was ineffective for not attempting to have all drug charges consolidated pursuant to S.C. Code Ann. § 17-25-50.
2. Counsel was ineffective for not challenging the invalid indictments before advising Applicant to plead guilty.
3. Did the invalid indictments make the convictions and sentences constitutionally invalid.

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4. Was the plea constitutionally invalid to the court's failure to comply with the mandates of Rule 11, FRCrimP. And Boykin v. Alabama, (1963)?

On January 25, 2017, Applicant filed a documents captioned "Motion to Allow Transfer and Consolidate Cases Pursuant to Rule 42(a), SCRPC, Between Rule 60(b), SCRPC Pending File Motion." In the motion Applicant asks the court to transfer the general sessions cases into this common plea case number. Also on January 25, 2017, Applicant filed a document captioned "Amendment to Post Conviction Relief Application 4th PCR. Action (Rule 15(a)(b), SCRPC)".

In this document, Applicant presents the following issues:

1. The indictment C/A#: 2005-GS-47-0026, upon which the offense for which sentences was imposed, therein's in violation of 5th, 6th and 14th Amendments to the United States Constitution, and the S.C. Article I, §§ 11, 14; art. V, § 22. That grounds to Applicant's allegations are being held in custody unlawful. Setting this claims an evidentiary hearing. Under Arnold v. State, 309 S.C. 157, 160, 420 S.E.2d 834, 842 (1992);
2. [Grounds 4(a)]. The indictment numbers upon which the sentences were imposed violated the S.C. And U.S. Constitution;
3. [Ground 5(a)]. The date upon which sentences was wrong had been imposed and the term of the sentence;
4. [Ground 6(a)]. Check, the Applicant whether a finding of guilty was made;
5. [Ground 7] Applicant did not appeal from the judgment of conviction for the imposition of his sentence(s)?
6. [Ground 8] The Applicant, answered to (ground 7) to no had "any appeal" in his due process to the S.C. Court of Appeals.
7. [Ground 9(a)]. Applicant's answer "no" to grounds (7), and (8) why Applicant did not so appealing;
8. The Applicant hereby this amends answers to (number 10 through 11) in his Application for Post-Conviction Relief to stat the following:
9. Enter [Ground 12(a)] Prior to this Application have beenfile with respect to this conviction, against Applicant's relief, included Petitioner first, second and "third, had been argued at his petition with The SC State Courts; (b)(c), see:
10. [Ground 13 through 18] hat Applicant constitutionally answered to all parts of his Application, and part of (12), list with respect to each petition, motion or application:
11. [Ground 19]. The Applicant, addressing all's grounds for the relief have been sought to file his "Post-Conviction Relief (4th PCR.Act) Application, after his Initial Brief had, been filed with this Court:

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, ROA)

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Before this Court are the records of the State Grand Jury Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Applicant's previous PCR records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding 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.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-

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conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

Statute of Limitations

This Court further finds 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 to -160 (2003). S.C. Code Ann. §17-27-45(a) reads as follows:

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

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pled guilty to the offenses he challenges on August 22, 2006, so he was therefore required to file his application on or before August 23, 2007. This Application was filed on July 31, 2015, which was over five (5) 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. 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) (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, this Court summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.



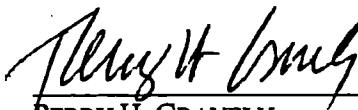
III. CONCLUSION

Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The 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. The Applicant shall file any reasons he may have with the Greenville County Clerk of Court and shall serve opposing counsel at the following address:

Appendix: (I)(Report Page (11))

Office of the Attorney General
J. Clayton Mitchell, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 10th day of March, 2017.



PERRY H. GRAVELY
Chief Judge for Administrative Purposes
Thirteenth Judicial Circuit

Greenville

, South Carolina