

TO: S.C. Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

RECEIVED

NOV 29 2017

S.C. SUPREME COURT

FROM: ANGELO HAM #315014
MECI / F3 #118
386 Redemption Way
McCormick, S.C. 29899

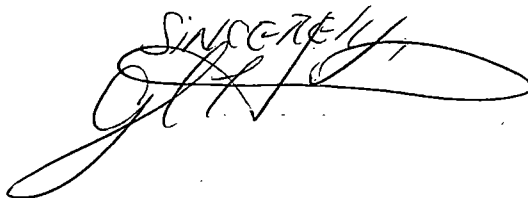
DATE: November 22, 2017

RE: ANGELO HAM V. STATE OF SOUTH CAROLINA
CA No.: 2017-002254

Dear Honorable Justices:

Enclosed please find a copy of the
Appendix in the above-cited matter
that I wish to file in this Court.

With personal kindest regards, I am

Sincerely,


RECEIVED

NOV 29 2017

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Darlington County

Roger C. Henderson, Chief Admin. Judge

CA No.: 2017-002254

Angelo Ham,

Petitioner,

VS

STATE OF SOUTH CAROLINA,

Respondent.

APPENDIX

Angelo Ham #315014

McCI/F3 #118

380 Redemption Way

McCormick, S.C. 29899

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The South Carolina Court of Appeals

Angelo Bernard Ham, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-182627

ORDER

This matter is before the Court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief.

Petitioner's counsel asserts the petition is without merit and requests permission to withdraw from further representation. Petitioner has filed a pro se petition.

After careful consideration of the entire appendix as required by *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw.

Paul G. Short, Jr. J.

W. B. W. J.

Paul C. Thomas J.

Columbia, South Carolina

1230
March 11, 2014

cc: Robert M. Pachak
Karen Christine Ratigan
Angelo Bernard Ham

COPY

FORM 5

14CP160202

STATE OF SOUTH CAROLINA

County of

DarlingtonAngelo Adam #315014

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

SCOTT B. SUGGS
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

2014 MAR 18 AM 11:32

FILED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Darlington County
Clerk of Court; 1 Public Square, RM B-4; Darlington, S.C. 29540
3. Name(s) of co-defendant(s) (if any) Anthony Robinson and Dennis Hunter
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2005-OS-10-1909 ("MURDER")
 - (b) 2005-OS-10-1970 ("MURDER")

TRUE CERTIFIED COPY.
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

- (c) 2005-GS-16-1971 ("CRIMINAL CONSPIRACY")
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 9/14/07
- (b) " "
- (c) " "
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. ~~Georgia Court of Appeals~~
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. withdrawn
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. JUNE 9, 2008
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

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SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) INEFFECTIVE ASSISTANCE OF PCR COUNSEL

(b) INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

(c) DENIED CONFRONTATION RIGHTS

(d) GUILTY PLEA NOT VALID
11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) WANTED TO RAISE PROPERLY CLAIM

(b) INEFFECTIVE DURING CRITICAL STAGE OF ADVERSARIAL PROCESS

(c) I WAS DENIED THE RIGHT TO CROSS-EXAMINE WITNESSES

(d) ALL ELEMENTS COULD NOT BE PROVED BY STATE AND I HAD A JUSTIFIED DEFENSE
12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES

(c) any petition in the United States Supreme Court for certiorari other than petitions; if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. PCR

ii. WRIT OF CERTIORARI

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. DOALINGTON COUNTY COURT OF COMMON PLEA

ii. S.C. SUPREME COURT BUT MONITORED TO COURT OF APPEALS

iii. _____

iv. _____

2011 MAR 18 AM 11:33
SCOTT B. SUGGS
CLERK OF COURT/R.D.D.
CHARLINGTON COUNTY, S.C.

FILED

(c) the disposition thereof:

- i. Dismissed with prejudice
- ii. Denied
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. December 7, 2010
- ii. March 11, 2014
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. 2008-CP-10-1000
- ii. 2011-182027
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. 11(b)
- ii. _____
- iii. _____

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

- i. The issue was not raised or argued properly
- ii. _____
- iii. _____

FILED
2014 MAR 18 AM 11:38
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
ARLINGTON COUNTY, S.D.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

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

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

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

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

(a) the name and address of each attorney who represented you:

- i. Henry M. Anderson / P.O. Box 1904 / Florence, S.C. 29503
- ii. Robert Sudek / SCCID
Robert Rochok / SCCID
- iii. Garry L. Finke / P.O. Box 137 / Florence, S.C. 29503

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

- i. Plea & sentencing
- ii. Direct Appeal
Writ of certiorari
- iii. PCR

2014 MAR 18 AM 11:33
SCOTT B. SUGGS
CLERK OF COURT/P.O.D.
DARLINGTON COUNTY, S.C.

FILED

19. State clearly the relief you seek in filing this application:

REVISION OF SENTENCE

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

NO

STATE OF SOUTH CAROLINA)

County of Darlington)

VERIFICATION

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

SWORN to and subscribed before me this 13th day of March, 2014.

Angela D. Dineen (L.S.)
Notary Public

My Commission Expires: 9/30/2023

FILED
2014 MAR 18 AM 11:33
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,

Scott B. Suggs

CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

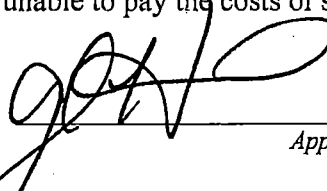
Revised 3/2003

14CP160202

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

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

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



Applicant

SWORN or affirmed to and subscribed before me this
13th day of March, 2014.

Angela V. Shirk
Notary Public

My Commission Expires: 9/30/2023

FILED
2014 MAR 18 AM 11:33
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY.

Scott B. Suggs
**CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.**

State of South Carolina

COPY

County of: Darlington

In the Court of Common Pleas
Fourth Judicial Circuit
File No.: 2014-CP-10-0202

Angelo Horn, #315014,
Applicant,

NOTICE OF DEFAULT

vs.

State of South Carolina,
Respondent.

This matter comes before this Honorable Court pursuant to Rule 55(b) of the South Carolina Rules of Civil Procedure.

On March 18, 2014, the Applicant filed his Application For Post-Conviction Relief respectfully with the Darlington County Clerk of Court.

Pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure, the State of South Carolina was suppose to serve its return within 60 days after service of the PCR application because the Applicant pled guilty. However, the State failed to do such and have, by him, went into default.

Respectfully Submitted,

[Signature] #315014

Angelo Horn #315014

L.C.I. / SIMU #02

990 Wiscally Highway

Bishopville, S.C. 29010

TRUE CERTIFIED COPY,

Scott B. Suggs

CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

2014 DEC -9 AM 11:29

FILED

State of South Carolina

COPY

County of: Darlington

In the Court of Common Pleas

Fourth Judicial Circuit

Case No.: 2014-CP-14-0202

Angelo Horn, #315011,

Applicant,

vs.

State of South Carolina,

Defendant.

CERTIFICATE OF SERVICE

I, Angelo Horn, hereby certify that an original copy of the "Notice of Default", in the above-cited matter was this day served on the Respondent by depositing a copy of the same, in the U.S. Mail, postage prepaid, to the following address:

Darlington County Clerk of Court

Attn: Mr. Scott B. Suggs, Clerk

1 Public Square, RM #B-4

P.O. Box 1177

Darlington, S.C. 29540

S.C. Office of Attorney General

P.O. Box 11549

Columbia, S.C. 29211

2014 DEC -9 AM 11:30
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

TRUE CERTIFIED COPY.

December 5, 2014, Scott B. Suggs

CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

Angelo Horn #315011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	OF THE FOURTH JUDICIAL CIRCUIT
	)	
Angelo Bernard Ham,	)	Case No.: 2014-CP-16-0202
S.C.D.C. No. 315014,	)	
Applicant,	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	
State of South Carolina,	)	
<u>Respondent.</u>	)	

The Respondent, making its Return to the application for post-conviction relief filed March 18, 2014, would respectfully show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Darlington County Clerk of Court's orders of commitment. The Darlington County Grand Jury indicted the Applicant at the October 2005 term of General Sessions for murder (2005-GS-16-1969), armed robbery (2005-GS-16-1970) and criminal conspiracy (2005GS-16-1971). Henry M. Anderson, Jr., Esquire represented the Applicant.

On April 17, 2006, the Applicant pled guilty to all three (3) charges, but was only sentenced on criminal conspiracy, due to further issues with a co-defendant on the other charges. The Honorable John M. Milling sentenced the Applicant to five (5) years imprisonment for criminal conspiracy. The Applicant did not file an appeal from the criminal conspiracy guilty plea or sentence.

On September 14, 2007, the Applicant was sentenced on the murder and armed robbery charges. Judge Milling sentenced the Applicant to concurrent terms of life imprisonment without parole for murder and twenty-five (25) years for armed robbery.

A timely Notice of Appeal was filed at the South Carolina Court of Appeals in order to challenge the convictions and sentences for the murder and armed robbery charges. The

Applicant, however, chose to withdraw his appeal. The Court of Appeals dismissed the case and issued the remittitur by order dated June 9, 2008.

II.

First PCR Application (2007-CP-16-0811)

In his first application for post-conviction relief, filed on September 11, 2007, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. Failed to ask if he wanted to file a notice of appeal
2. "Conflict of interest (honorable judge)"
3. Statements from co-defendants is [sic] void."

Respondent filed a return and partial motion to dismiss on or about November 1, 2007.

Applicant filed a motion to dismiss on or about November 12, 2007, as well as a motion for summary judgment on or about November 14, 2007, and a motion to alter or amend on April 21, 2008. On or about July 11, 2008, it an amended PCR application was filed by the Applicant. An evidentiary hearing was convened on the matter on October 15, 2008 before the Honorable Larry B. Hyman, Jr. at the Darlington County Courthouse. Applicant was represented by Charles T. Brooks, Esquire, and Respondent was represented by Karen C. Ratigan, Esquire, of the South Carolina Office of the Attorney General. At the hearing, Applicant represented that he wished to withdraw his application, and this was done with prejudice. An order to this effect was signed by Judge Hyman on November 4, 2008.

Second PCR Application (2008-CP-16-1006)

~~In his second application for post-conviction relief, filed on November 21, 2008, the~~

Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failed to object to the videotape that was allowed into evidence during the plea hearing.
2. Violations due to illegal indictments.

- a. The plea judge did not have subject matter jurisdiction of the armed robbery charge.
3. Illegal waiver from juvenile to adult.
 - a. The Family Court illegally waived jurisdiction to the Court of General Sessions.

Respondent filed a return on or about February 25, 2009. Applicant filed a motion to alter or amend on June 29, 2009, a request for production of documents on August 3, 2009, a second motion to alter or amend on July 27, 2009, and a third motion to alter or amend on February 16, 2010.. Of these motions, relief was granted via an order granting limited discovery issued October 19, 2009 by the Honorable Paul M. Burch. The Honorable Thomas A. Russo convened an evidentiary hearing into the application on September 13, 2010 at the Darlington County Courthouse. Applicant was present at the hearing and represented by Gary I. Finklea, Esquire. Judge Russo denied the application by written order filed December 10, 2010. Applicant filed a timely notice of appeal from the denial of his application, and Robert M. Pachak, Esquire, of the Office of Appellate Defense, perfected the appeal with the filing of a Johnson¹ petition for writ of certiorari. The Court of Appeals denied the petition on March 11, 2014, and returned the remittitur on March 27, 2014.

Applicant also filed a motion for relief pursuant to SCRCP 60(b)(5), which provides that the Court may relieve a party from a final judgment where the judgment “has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.” Judge Burch found Applicant’s arguments to be ineffective, particularly in that he had “not shown how the legal and factual basis of Judge Russo’s order has been reversed or

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

otherwise vacated, or that it is no longer equitable to enforce the order denying PCR. " The order was signed on May 12, 2014.

Third PCR Application (2013-CP-16-0248)

In his third application for post-conviction relief, filed March 20, 2013 by and through Elizabeth Franklin-Best, Esquire, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Applicant's sentence of life without parole, imposed for a crime he committed when he was a juvenile, violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution;
2. Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution as an excessive and cruel and unusual punishment because he was both a juvenile and a person who did not kill or intend to kill the victim;
3. Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution, because the proceedings which led to its imposition were both procedurally and substantively inadequate; and
4. Applicant was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§3 and 14 of the South Carolina Constitution because Applicant's counsel failed to develop and present mitigating evidence which would have warranted a sentence of less than life without parole.

Contemporaneously with the application, Applicant filed a motion to stay proceedings pending

the South Carolina Supreme Court's resolution of Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572, regarding the sentencing of juveniles to life without parole. Ms. Franklin-Best also filed a motion for appointment of counsel on this date. Respondent filed a return and motion to dismiss

~~on May 14, 2013, alleging that the application should be summarily dismissed due to its nature~~

as successive and filed outside of the statute of limitations. On or about May 28, 2013,

Applicant's counsel filed a document entitled "Response to AG's Return and Motion to

Dismiss," which argued that, due to the pending litigation in Aiken, holding these proceedings

in abeyance was the proper tactic; further, Applicant argued that a PCR was the proper vehicle

to raise his claim under S.C. Code Ann. §17-27-45(b), which extends the filing timeframe if relevant cases are pending before a court whose rulings are binding on South Carolina.

Respondent filed a return on or about August 16, 2013 to this response, in which it concedes that this matter should be held in abeyance until the South Carolina Supreme Court ruled on Aiken.

This matter is still pending before this Court.

III.

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

1. Ineffective assistance of PCR counsel
 - a. Failed to raise properly *[sic]* claim
2. Ineffective assistance of plea counsel
 - a. Ineffective during critical stage of adversarial process
3. Denied confrontation rights
 - a. I was denied the right to cross-examine witnesses.
4. Guilty plea not valid
 - a. All elements couldn't be proved *[sic]* by state and I had a justified defense.

For the purpose of this return, Respondent incorporates the Darlington County Clerk of Court's records regarding the subject convictions, South Carolina Department of Corrections records, Applicant's previous PCR orders, and the filings regarding this PCR. Respondent reserves the right to amend this return upon receipt of any relevant materials.

IV.

This Court should summarily dismiss Applicant's current PCR application because it is successive to his previous PCR applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) 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 prohibited unless an applicant can present a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant failed to establish any sufficient reason why he did not raise his current grounds for relief in a previous application. Respondent moves to summarily dismiss Applicant's current application because it is successive to his previous applications.

V.

Respondent submits this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. *See* S.C.

Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

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 held the one-year 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 April 17, 2006. Therefore, Applicant was required to file his PCR application on or before April 18, 2007. Applicant filed this application on March 18, 2014, nearly seven (7) years after the statutory filing period expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2003). S.C. Code Ann. Section 17-27-70(c) authorizes the circuit 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, Respondent moves to summarily dismiss this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

VI.

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

Remainder of page intentionally left blank.

VII.

WHEREFORE, Respondent moves to summarily dismiss this application because it is untimely and successive to Applicant's prior applications.

Respectfully submitted,

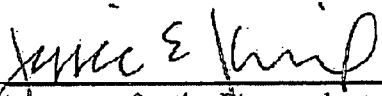
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General
S.C. Bar #77889

By:


Attorneys for the Respondent
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

Columbia, South Carolina

March 10, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)
)
)
)
ANGELO BERNARD HAM, 315014)
)
Applicant,)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

2014-CP-16-0202

AFFIDAVIT OF SERVICE BY MAIL

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

**Angelo Bernard Ham, 315014
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010**

DATED this 10th day of March, 2016.



Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

Angelo Bernard Ham,
S.C.D.C. No. 315014,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
OF THE FOURTH JUDICIAL CIRCUIT

Case No.: 2014-CP-16-0202

CONDITIONAL ORDER OF DIMISSAL

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Angelo Ham (Applicant) on March 18, 2015. The State (Respondent) made its return, requesting the application be summarily dismissed.

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Darlington County Clerk of Court's orders of commitment. The Darlington County Grand Jury indicted the Applicant at the October 2005 term of General Sessions for murder (2005-GS-16-1969), armed robbery (2005-GS-16-1970) and criminal conspiracy (2005GS-16-1971). Henry M. Anderson, Jr., Esquire represented the Applicant.

On April 17, 2006, the Applicant pled guilty to all three (3) charges, but was only sentenced on criminal conspiracy, due to further issues with a co-defendant on the other charges. The Honorable John M. Milling sentenced the Applicant to five (5) years imprisonment for criminal conspiracy. The Applicant did not file an appeal from the criminal conspiracy guilty plea or sentence.

On September 14, 2007, the Applicant was sentenced on the murder and armed robbery charges. Judge Milling sentenced the Applicant to concurrent terms of life imprisonment without parole for murder and twenty-five (25) years for armed robbery.

A timely Notice of Appeal was filed at the South Carolina Court of Appeals in order to challenge the convictions and sentences for the murder and armed robbery charges. The Applicant, however, chose to withdraw his appeal. The Court of Appeals dismissed the case and issued the remittitur by order dated June 9, 2008.

Attached herewith and incorporated herein by reference are the records of the Darlington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, the sentencing transcript, and the appellate records.

First PCR Application (2007-CP-16-0811)

In his first application for post-conviction relief, filed on September 11, 2007, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. Failed to ask if he wanted to file a notice of appeal
2. "Conflict of interest (honorable judge)"
3. Statements from co-defendants is [*sic*] void."

Respondent filed a return and partial motion to dismiss on or about November 1, 2007. Applicant filed a motion to dismiss on or about November 12, 2007, as well as a motion for summary judgment on or about November 14, 2007, and a motion to alter or amend on April 21, 2008. On or about July 11, 2008, it an amended PCR application was filed by the Applicant. An evidentiary hearing was convened on the matter on October 15, 2008 before the Honorable Larry B. Hyman, Jr. at the Darlington County Courthouse. Applicant was represented by Charles T. Brooks, Esquire, and Respondent was represented by Karen C. Ratigan, Esquire, of the South Carolina Office of the Attorney General. At the hearing, Applicant represented that he wished to withdraw his application, and this was done with prejudice. An order to this effect was signed by Judge Hyman on November 4, 2008.



Second PCR Application (2008-CP-16-1006)

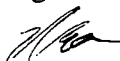
In his second application for post-conviction relief, filed on November 21, 2008, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failed to object to the videotape that was allowed into evidence during the plea hearing.
2. Violations due to illegal indictments.
 - a. The plea judge did not have subject matter jurisdiction of the armed robbery charge.
3. Illegal waiver from juvenile to adult.
 - a. The Family Court illegally waived jurisdiction to the Court of General Sessions.

Respondent filed a return on or about February 25, 2009. Applicant filed a motion to alter or amend on June 29, 2009, a request for production of documents on August 3, 2009, a second motion to alter or amend on July 27, 2009, and a third motion to alter or amend on February 16, 2010.. Of these motions, relief was granted via an order granting limited discovery issued October 19, 2009 by the Honorable Paul M. Burch. The Honorable Thomas A. Russo convened an evidentiary hearing into the application on September 13, 2010 at the Darlington County Courthouse. Applicant was present at the hearing and represented by Gary I. Finklea, Esquire. Judge Russo denied the application by written order filed December 10, 2010. Applicant filed a timely notice of appeal from the denial of his application, and Robert M. Pachak, Esquire, of the Office of Appellate Defense, perfected the appeal with the filing of a Johnson¹ petition for writ of certiorari. The Court of Appeals denied the petition on March 11, 2014, and returned the remittitur on March 27, 2014.

Applicant also filed a motion for relief pursuant to SCRCP 60(b)(5), which provides that the Court may relieve a party from a final judgment where the judgment “has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or

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



otherwise vacated, or it is no longer equitable that the judgment should have prospective application.” Judge Burch found Applicant’s arguments to be ineffective, particularly in that he had “not shown how the legal and factual basis of Judge Russo’s order has been reversed or otherwise vacated, or that it is no longer equitable to enforce the order denying PCR. “ The order was signed on May 12, 2014.

Third PCR Application (2013-CP-16-0248)

In his third application for post-conviction relief, filed March 20, 2013 by and through Elizabeth Franklin-Best, Esquire, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Applicant’s sentence of life without parole, imposed for a crime he committed when he was a juvenile, violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution;
2. Applicant’s sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution as an excessive and cruel and unusual punishment because he was both a juvenile and a person who did not kill or intend to kill the victim;
3. Applicant’s sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution, because the proceedings which led to its imposition were both procedurally and substantively inadequate; and
4. Applicant was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§3 and 14 of the South Carolina Constitution because Applicant’s counsel failed to develop and present mitigating evidence which would have warranted a sentence of less than life without parole.

Contemporaneously with the application, Applicant filed a motion to stay proceedings pending the South Carolina Supreme Court’s resolution of Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572, regarding the sentencing of juveniles to life without parole. Ms. Franklin-Best also filed a motion for appointment of counsel on this date. Respondent filed a return and motion to dismiss on May 14, 2013, alleging that the application should be summarily dismissed due to its nature as successive and filed outside of the statute of limitations. On or about May 28, 2013, Applicant’s



counsel filed a document entitled "Response to AG's Return and Motion to Dismiss," which argued that, due to the pending litigation in Aiken, holding these proceedings in abeyance was the proper tactic; further, Applicant argued that a PCR was the proper vehicle to raise his claim under S.C. Code Ann. §17-27-45(b), which extends the filing timeframe if relevant cases are pending before a court whose rulings are binding on South Carolina. Respondent filed a return on or about August 16, 2013 to this response, in which it concedes that this matter should be held in abeyance until the South Carolina Supreme Court ruled on Aiken. This matter is still pending before this Court.

II.

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

1. Ineffective assistance of PCR counsel
 - a. Failed to raise properly [*sic*] claim
2. Ineffective assistance of plea counsel
 - a. Ineffective during critical stage of adversarial process
3. Denied confrontation rights
 - a. I was denied the right to cross-examine witnesses.
4. Guilty plea not valid
 - a. All elements couldn't be proved [*sic*] by state and I had a justified defense.

Before this Court are the Darlington County Clerk of Court's records regarding the subject convictions, South Carolina Department of Corrections records, Applicant's previous PCR orders, and current PCR records.

III.

This Court finds Applicant's current PCR application must be summarily dismissed because it is successive to his previous PCR applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a



subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) 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 prohibited unless an applicant can present a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” Id. at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

This Court finds Applicant failed to establish any sufficient reason why he did not raise his current grounds for relief in a previous application. This Court must summarily dismiss Applicant’s current application because it is successive to his previous applications.

IV.



This Court finds this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. See S.C. Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

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 held the one-year 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 April 17, 2006. Therefore, Applicant was required to file his PCR application on or before April 18, 2007. Applicant filed this application on March 18, 2014, nearly seven (7) years after the statutory filing period expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2003). Section 17-27-70(c) authorizes this 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 must summarily dismiss this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

Pursuant to section 17-27-70(b) of the South Carolina Code, this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this order upon him to show why this order should not become final.

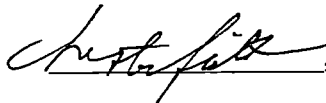


Applicant shall file any reasons he may have with the Horry County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Jessica E. Kinard, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 16TH day of March, 2016.


THE HONORABLE ROGER E. HENDERSON
Chief Judge for Administrative Purposes
Fourth Judicial Circuit

, South Carolina

Angelo Ham #315014
L.P.T. 1/F-1 #1140
990 Wilisocky Highway
Bishopville, S.C. 29010

May 16, 2016

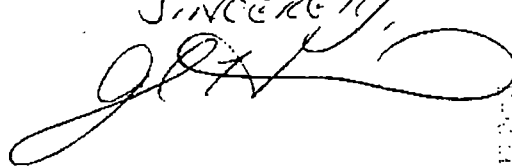
Darlington County Clerk of Court
P.O. Box 1177
Darlington, S.C. 29540

Re: Angelo Ham #315014 v. State of South Carolina
Case No.: 2014-CT-16-0200

Dear Honorable Suggs,

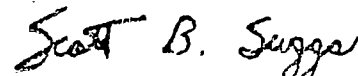
Enclosed please find "Applicant's Response
to the Conditional Order of Dismissal," in the
above-cited matter.

With personal kindest regards, I am

Sincerely,


cc: Attorney General

TRUE CERTIFIED COPY,


Scott B. Suggs

CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

2016 MAY 20 PM 12:59
DARLINGTON COUNTY, SC

State of South Carolina } IN THE COURT OF COMMON PLEAS
 County of Darlington } Fourth Judicial Circuit *2014*
 Angelo Lam, #315014, }
 Applicant, }
 vs. }
 State of South Carolina, }
 Respondent. }

%A.N.S.: 2014-CD-16-0202

Applicants Response To
 The Conditional Order
 of Dismissal

This response is in opposition to the Conditional Order of Dismissal filed in this Honorable Court on March 24, 2016 and served on the Applicant on April 20, 2016.

ISSUE 1

Applicant contends that he was denied his 6th and 14th Amendment rights to effective assistance of appellate counsel, where PCR counsel failed to amend Applicants PCR Application or Rule 59(c) motion to include all grounds and/or arguments presented in the present application.

Applicant states that S.C. Supreme Court Rules 50(5) and 71.1(c) makes it mandatory that post-conviction attorneys make *available* grounds are rejected in *1.*

TRUE CERTIFIED COPY,

CLERK OF COURT/PMC
 DARLINGTON COUNTY, SC

After filing a pro se post-conviction application and after being given court appointed counsel, a pro se litigant cannot thereafter file any further pleadings, and any amendments to his application must be made by counsel. State v. Sanders, 209 S.C. 215, 237 S.E.2d 52 (1977); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989). Thus, if the counsel does not amend the pro se application, the Applicant has no way to have all supporting grounds and/or arguments heard.

After preparing and submitting his pro se application for relief, the Applicant was appointed Cary I. Finkler to represent him in this matter. Thereafter, the Applicant wrote his attorney and verbally asked him to amend his pro se application to include the supporting grounds of ineffective assistance of plea counsel which appears in the present application. However, the counsel failed to do so and did not raise same during the Applicant's evidentiary hearing. As a result of the Applicant being a layman, he did not know how to present these claims in his pro se application or at the evidentiary hearing, and as a result these grounds were not heard or ruled upon, even though they could have resulted in the Applicant's case being reversed and remanded back to the Family Court for a proper ruling consistent with the Federal Juvenile Delinquency Act.

Since State v. Carpenter, 277 S.C. 309, 286 S.C. 20384 (1982) and State v. Kellam-Harris, 290 S.C. 281, 350 S.C. 20180 (1986) prohibits S.C. litigants from raising claims of ineffective assistance of trial counsel during their initial direct appeals, the PCR proceeding must be viewed as the first appeal as of right on that particular claim. The S.C. Supreme Court's decision in Alce v. State, 409 S.C. 20392 (1990), holding that there is no constitutional right to counsel in state PCR proceedings is based on a far-stretched reading of the Supreme Court decision in Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed. 2d 539 (1987). The decision in Finley merely held that there is no constitutional right to counsel in state court discretionary appeals after the appellate stage has been exhausted. Id., 107 S.Ct. at 1993.

Because the claim of ineffective assistance of counsel cannot be exhausted until an application for PCR is filed, South Carolina litigants clearly have a right to effective assistance of counsel in presenting their claims of ineffective assistance of trial counsel. Evitts v. Lucy, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed. 2d 821 (1985); Coleman v. Thompson, 111 S.Ct. 2546, 2568 (1991). As a result, when an applicant is not assisted by a PCR attorney in setting forth all grounds to support his claim of ineffective assistance of trial counsel in his initial application, he or she should not be barred thereafter from

submitting a second application to include additional grounds for a court's review.

In Walter v. State, 293 S.C. 528, 362 S.E.2d 20 (1987), and again in Aice, supra, the S.C. Supreme Court cited Farrar v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Land v. State, 274 S.C. 213, 262 S.E.2d 735 (1980), and the S.C. Code of Laws sections 17-27-90 for the general proposition, that successive applications are viewed with disfavor and that the applicant has the burden of showing that a new ground for relief could not have been raised in a previous application. However, Aice, supra, does not give attention to the court's decision in Case v. State, 277 S.C. 474, 284 S.E.2d 413 (1982), which held that if the applicant meets the burden, a hearing must be afforded despite the successiveness of the application. The facts in Case established that Case had no attorney in his first application, and that it was highly doubtful whether, in point of fact, that he could have raised the appropriate argument. Aice, supra; Id., 409 S.E.2d at 394.

In a situation where a PCR Applicant is not assisted by his Trial attorney is properly amending his first application to include all supporting grounds underlying a claim of ineffective assistance of Trial counsel, and does not know of such grounds, or does not know

how to raise them, and is barred from presenting those pleadings in light of State v. Sanders, supra, and Ester v. State, supra, he or she must be seen to be "without counsel" and in the same position as that of the applicant in Case v. State, supra. The Court, under such circumstances should find that the second application should be heard despite its successiveness because the first application lacked specificity, unless it can find that the Applicant intentionally waived his or her right to have the grounds stated in the subsequent application heard in the first.

If South Carolina litigants are entitled to appeal from denials of PCR under Austin v. State, 409 S.E.2d 395 (1991), if they can establish that they did not voluntarily waive their right to appeal, then they should also be allowed to file a subsequent application alleging that all grounds supporting claim of ineffective assistance of trial counsel were not presented in the first application due to ineffective assistance of PCR counsel, who in reality is not PCR counsel on such claim, but instead is an appellate attorney in the first appeal as of right on that particular claim.

According, the Applicant states that he should be allowed to file this subsequent application.

for PCR due to the fact that his first PCR counsel was ineffective.

ISSUE(S) 2, 3, and 4

Applicant contends that Issues 2, 3, and 4 are attached hereto marked as exhibit 1. See "Motion For Relief From Judgment under Rule 60(b) (5) dated December 27, 2013."

Applicant begs this Honorable Court to reflect to this exhibit because he only receives 16 sheets of paper a month and does not have any funds to pay for anymore paper. To such extent that this Honorable Court do not accept this attachment then please grant the Applicant with an extension (i.e., 30 days) so that he may get the paper so that he can write out everything and then submit the final copies.

ISSUE 5

Applicant contends that the trial court lacked subject matter jurisdiction to accept his guilty plea. Applicant further contends that he did not allege this issue in his application and the Respondent did not have

it in their response but this is an issue that cannot be waived.

As a general rule, "a defendant's knowing and intelligent guilty plea forecloses independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Tuilett v. Henderson, 711 U.S. 258, 267, 93 S.Ct. 1602, 1608, 36 L.Ed.2d 235 (1973). There are exceptions to this rule, however; a person may, despite a valid guilty plea, pursue a certain type of claim that has been variously defined as a claim that attacks "the State's power to bring any indictment at all," United States v. Brice, 484 U.S. 563, 575, 109 S.Ct. 757, 765, 102 L.Ed.2d 927 (1989), that protects a defendant's "right not to be haled into court," Blackledge v. Perry, 417 U.S. 21, 30, 94 S.Ct. 2098, 2104, 40 L.Ed.2d 628 (1974), and that, "the charge is one which the State may not constitutionally prosecute," Menna v. New York, 423 U.S. 61, 62 n.2, 90 S.Ct. 241, 242 n.2, 46 L.Ed.2d 195 (1975) (per curiam).

In South Carolina, "subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." Pierce v. State, 338 S.C. 139, 150, 520 S.E.2d 225, 227 (2000); S.C. Const. art. V § 11 ("The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such

appellate jurisdiction as provided by law.")

S.C. Code Ann. § 14-9-210 provides, in pertinent part that "the county solicitor shall prepare and, through the presiding judge of the court of general sessions, submit to the grand jury, while in attendance upon the court of general sessions, bills of indictment in all cases pending in the county court in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days, when such cases have not been previously acted on by the grand jury..."

S.C. Code Ann. § 14-5-650 provides, in pertinent part that "the courts of the fourth judicial circuit shall be held as follows:

1) Courts of General Sessions:
at Darlington for Darlington County
on the third Monday in February,
the second Monday in April, the
third Monday in June and the
third Monday in September.

2) Courts of Common Pleas:
at Darlington for Darlington County
on the second Monday in January
for two weeks, the third Monday
in March for two weeks, the fourth
Monday in April, the fourth Monday

in June, the Fourth Monday,
in October for two weeks.

The S.C. Supreme Court held that "under our judicial system, the presiding judge in the Circuit Court loses jurisdiction with the adjournment of the term." State v. Best, 257 S.C. 361, 186 S.E.2d 572 (S.C. 1972).

Applicant states that the Darlington County Grand Jury true billed his indictments for murder, armed robbery, and criminal conspiracy on October 20, 2005 and reported their finding to the presiding judge of the Court of General Sessions on October 24, 2005. (See exhibits 2, 3, and 4).

Although the Applicant does not challenge the October 24, 2005 Court of General Sessions term, the Applicant do hereby object to the October 20, 2005 term. Evidence shows that the Darlington County Court of General Sessions was not in session on October 20, 2005. (See exhibit 5).

So, therefore, how could the Darlington County Grand Jury return a true bill of indictment when in accordance to S.C. Code Ann. §14-9-210, the Court of General Sessions must be in session in order for the county solicitor to submit a bill of indictment to the grand jury so that the grand jury can act on it to find a true bill or no bill of indictment

Based upon the evidence presented by the Applicant, the trial court lacked subject matter jurisdiction to accept the Applicant's guilty plea.

CONCLUSION

Wherefore, having submitted this response, the Applicant respectfully prays that this Honorable Court DENY the Respondents request to summarily dismiss Applicants PCR Application and GRANT the Applicant an evidentiary hearing.

May 16, 2016

Respectfully Submitted,
Angelo Ham #315014
Angelo Ham #315014
L.C.I. / F.I. #1140
990 Wiscoky Highway
Bishopville, S.C. 29810

TRUE CERTIFIED COPY,

Scott B. Suggs

CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

State of South Carolina
County of: Darlington

ANGELO BERNARD HORN,
S.C.D.C. No. 315044,

Applicant,

vs.

State of South Carolina,
Respondent.

In the Court of Common Pleas
Fourth Judicial Circuit
Case No.: 2008-CP-16-1006

MOTION FOR RELIEF
FROM JUDGMENT UNDER
RULE 60(b)(5)

(Hearing Requested)

Please take notice that the Applicant files this motion based on the rulings in McQuicken v. Perkins, 133 S.Ct. 1924 (2013) as well as Martinez v. Ryan, 132 S.Ct. 1309 (2012). The Court should review the merits of this motion to determine if PCA counsels' failure to raise these issues at hearing or address in motion violates its own state rules which support Martinez ruling under state law. S.C. Code Ann. § 17-27-90 requires counsel to do so and counsels' failure to address issues constitutes as cause under state law as follows:

Question One:

Whether counsel rendered ~~TRUE~~ ^{FALSE} ~~CERTIFIED~~ ^{FALSE} COPY,
assistance of counsel during ~~stage~~ ^{stage} of adversarial process
stage of adversarial process

FILED
2013 DEC 27 AM 10:15
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

SUGGS
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

The Supreme Court recognized in both Strickland and Cronic that in certain circumstances "prejudice is presumed" because prejudice "is so likely that case-by-case inquiry... is not worth the cost." Cronic v. United States, 466 U.S. at 658, 104 S.Ct. 2039. In Cronic, the Court identified three distinct situations in which a presumption of prejudice is appropriate. First, prejudice is presumed when the defendant is completely denied counsel "at the critical stage of his trial." Cronic, 466 U.S. at 658. Second, per-se prejudice occurs if there has been a constructive denial of counsel. This happens when a lawyer "entirely fails to subject the prosecution's case to meaningful adversarial testing," thus, making "the adversarial process itself presumptively unreliable." Id. Third, the Court identified certain instances "when although counsel is available to assist the accused during a trial, the likelihood that any lawyer even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial." Id.

Although the Applicant understands that the transfer order is not immediately appealable to the Supreme Court, Applicant states that the proper order in which he was entitled to appeal this transfer order was by perfecting a notice of appeal in the circuit court. Contrary to the Respondent argument that this order is not automatically appealable to S.C. Supreme Court is conceded by Applicant. But, this is not the Applicant's argument and it is being misconstrued by Respondent. The argument is simple, that counsel should have appealed the order to the circuit court

which is who had jurisdiction over this decision. When, and only when, could it be appealed to the S.C. Supreme Court.

The 'Smiths' court also held that the justifications for allowing the immediate appeal of transfer orders remain the same regardless of whether the appeal is based on an alleged procedural or substantive deficiency. UNITED STATES V. SMITH, 851 F.2d 706, 708 (4th Cir. 1988).

The United States Supreme Court held in 'Roe' that, "In those cases where the defendant neither instructs counsel to file an appeal nor asks that an appeal not be taken, we believe the question whether counsel has performed deficiently by not filing a notice of appeal is best answered by first asking a separate, but antecedent, question: "Whether counsel in fact consulted with the defendant about an appeal." We employ the term "consult" to convey a specific meaning - advising the defendant about the advantages and disadvantages of taking an appeal, and making a reasonable effort to discover the defendant's wishes. If counsel has consulted with the defendant, the question of deficient performance is easily answered: "Counsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." If counsel has not consulted with the defendant, the court must turn ask a second, and subsidiary, question: "Whether counsel's failure to consult with the defendant itself constitutes deficient performance." That question lies at the heart of this case: Under what circumstances does counsel have an obligation to consult with the defendant about an appeal? Because the

decision to appeal rests with the defendant, we agree with Justice SOUTER that the better practice is for counsel routinely to consult with the defendant regarding the possibility of an appeal." Id. at 478-79, 120 S.Ct. at 1035

Applicant states that the plea record is clear as the plea counsel specifically stated, "... I do not remember discussing with him his right to appeal that order..." SEE App. pg. 148, lines 21-25; pg. 149, line 1. By plea counsel failing to discuss with the Applicant or filing a notice of appeal, the Applicants' plea counsel representation fell below an objective standard of reasonableness.

Applicant also states that plea counsel perfunctorily prejudiced him. After a review, had plea counsel filed a notice of appeal from the transfer order and presented all testimonies as cited above, the Circuit Court would have reversed and remanded this matter back to the Family Court so that the Applicant could receive the appropriate rehabilitative programs in the state juvenile system because, according to the state's own expert witness, "... state juvenile systems would leave the Applicant better than the adult system." SEE App. pg. 19, lines 11-24; pg. 20, lines 1-13.

The lack of appeal to the circuit court waived any chance of Applicant appealing this case to the S.C. Supreme Court. Thus, without such appeal and counsel abandoning the Applicant at critical stage of process was prejudicial to his case.

The Supreme Court directed that, prior to transfer, a hearing must be held in which certain rights are afforded

to a juvenile. IN AN APPENDIX to its opinion in 'Kent', the Supreme Court quoted, with approval, a District of Columbia policy memorandum which recited eight (8) factors to be considered by the Juvenile Court in making a transfer decision. Although the Supreme Court did not explicitly hold that these factors must be followed by lower courts, this court believes that these factors provide excellent general guidance. Putton v. Toy, 867 F.Supp. 356, 362 (D.S.C. 1994). Juvenile waiver hearings must measure up to the essentials of due process and fair treatment. Application of Bault, 387 U.S. 1, 30, 87 S.Ct. 1428, 1445, 18 L.Ed. 2d 527 (1967) (quoting from Kent v. United States, 383 U.S. 541, 560-62, 86 S.Ct. 1045, 1057, 16 L.Ed. 2d 84 (1966)).

Applicant states that a waiver hearing pursuant to 'Kent' was held on July 18, 2005. The State presented testimonies from expert witness, Dr. Joel Hepler, who is and was, at that time, the chief psychologist for the S.C. Dept. of Juvenile Justice for the Pee Dee Region, App. pg. 5, lines 14-15, and, from Investigator Colvin Jackson of the Burlington County Sheriff's Office, App. pg. 27, line 11, who was the investigator assigned to this case, App. pg. 27, lines 23-24; pg. 28, line 1.

Plea counsel was ineffective for failing to obtain the Applicants school records from the Burlington High School and for failing to interview some of the Applicants teachers and principals.

Applicants states that by failing to interview the Applicant teachers and principals at the Burlington High

school, at which, the Applicant was attending at the time he was an accomplice to the offense in 2004, plea counsel was unable to formulate any defense to strengthen the testimony of the state's expert witness and to show that the Applicant has somewhat rehabilitated himself from the rehabilitative programs. Counsel was unable to strengthen the state's expert witness testimony and refute the judge's opinion by showing that the Applicant could be rehabilitated and that the programs Applicant needs can not be obtained from sex. Similarly, there is no evidence to support the judge's decision when expert as well as evaluation show something contrary to this order.

These above facts not only made plea counsel ineffective for waiver hearing but these facts made him ineffective during waiver hearing as well because testimony would have refuted the ~~the~~ favorable Roger E. Henderson opinion as he stated, "It is the opinion of the Court that it is not likely that Defendant could be rehabilitated, in part due to prior attempts to rehabilitation by the Department of Juvenile Justice."

The 'Kent' court held, "The Juvenile Court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct. The objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment."

Applicant states that not only did the state's expert

witnesses recommend that he remain in the Family Court but the state's expert witness also stated that the Applicant could better rehabilitate himself from the DJJ programs than the SDC programs. SEE App. pg. 20-25.

Applicant states that "when counsel's constitutionally deficient performance deprives defendant of appeal that he otherwise would have taken, defendant has made out successful ineffective assistance of counsel claim entitling him to an appeal." Roe, 508 U.S. 470, 120 S.Ct. 1029 (2000).

QUESTION TWO:

Whether Applicant was denied his Sixth Amendment right under the Confrontation Clause to cross-examine?

Applicant states that his constitutional right to confrontation under Crawford v. Washington, 541 U.S. 36 (2004) were violated when the state admitted out-of-court statements into evidence at the juvenile waiver hearing and did not allow the Applicant the opportunity to cross-examine the out-of-court declarants nor a prior attempt to such.

Applicant states that the right to be present and to confront witnesses applies in juvenile court proceedings in the same manner as in criminal court proceedings.

IN THE INTEREST OF DWYANE M., 339 S.E.2d 130 (S.C. 1986)
(quoting IN RE BOUT, 387 U.S. 1, 87 S.Ct. 428, 18 L.Ed.2d 527 (1967)).

Applicant states that the State, by and through Investigator Calvin Jackson, presented testimonies from James Robinson, App. pg. 29, lines 21-24; pg. 30, lines 1-13, from Anthony Robinson, App. pg. 35, lines 8-24; pg. 36, lines 1-5, from Dennis Hunter, App. pg. 36, lines 6-24; pg. 37, lines 1-14; and, from Brian Willis Jackson, App. pg. 34, lines 18-24; pg. 35, lines 1-3.

Applicant states that the Confrontation Clause applies only to that portion of a criminal proceeding that can be classified as the trial. Ex parte v. Dugh, 420 U.S. 103, 119-20 (1975). Applicant states that the waiver hearing is considered as not only a trial but is considered as a critical stage that requires the full panoply of adversary safeguards — counsel, confrontation, cross-examination, and compulsory process. Id.

Applicant states that the Confrontation Clause is violated when the Court or State admits testimonial statements but fail to call those witnesses to be cross-examined. U.S. v. Powers, 500 F.3d 500, 506 (6th Cir. 2007). The Confrontation Clause is also violated by the admission of a co-defendant's statement during interrogation if offered to prove truth of matter asserted. U.S. v. Williams, 445 F.3d 724 (4th Cir. 2006); U.S. v. Tuyet Thi-Bach Nguyen, 565 F.3d 668, 674-75 (9th Cir. 2009). Anthony Robinson and Dennis Hunter were the

Applicants co-defendants in this matter, of which, the state used these testimonies to prove their allegation and to contradict Applicant. App. pg. 165, lines 9-19.

Applicant states that these testimonies were hearsay, of which, is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

In Crowford v. Washington, 541 U.S. at 53-54, the Supreme Court distinguished between "testimonial" and "non-testimonial" hearsay evidence. 'Crowford' held that the admission of a testimonial hearsay statement violates the Confrontation Clause unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine the declarant. Id. at 68.

Applicant states that a witness is considered "unavailable" if the government is unable, despite good faith efforts, to procure that witness attendance at trial. Ohio v. Roberts, 448 U.S. 56, 74 (1980).

Applicant states that the state did not make good-faith efforts to procure those witnesses attendance at trial because both Anthony Robinson and Dennis Hunter were incarcerated within the Dorlington County Detention Center, of which, is the Dorlington County property. Brumley v. Wingard, 269 F.3d 629, 641 (6th Cir. 2001) (good-faith effort not established because, though witness incarcerated in another state, means existed for obtaining presence at trial).

Applicant states that he neither had the prior opportunity to cross-examine the declarants.

Although the harmless error analysis is subject to violations of the Confrontation Clause, that analysis do not apply in this case because (1) the states main evidence was the confessions from Anthony Robinson and Dennis Hunter, App. pg. 105, lines 9-19; (2) the state used the testimonies of Anthony Robinson and Dennis Hunter to increase the value and/or weight against Applicant; (3) there was presence of contradiction because Applicant stated that Anthony Robinson robbed the store, App. pg. 37, lines 17-24; pg. 38, lines 1-10; and, Brian Willis Jackson stated that Anthony Robinson told him that he robbed the store, App. pg. 42, lines 1-24; pg. 43, lines 1-20; (4) counsel was only able to cross-examine the investigator, at which, wasn't very familiar with Brian Willis Jackson nor the statement that Brian Willis Jackson gave, App. pg. 42, lines 1-12; and, (5) the states strength of the overall case was weak and only consisted of statements from these witnesses.

Applicant states that having shown that this error was not harmless and that these hearsay testimonies was actually the states case, Applicants Confrontation right to cross-examine these witnesses face-to-face resulted in a violation of the Confrontation Clause. Del. v. Van Arsdall, 475 U.S. 673, 684 (1986).

QUESTION THREE:

Whether Applicants' guilty plea knowingly, intelligently, and voluntarily entered?

Applicant states that his constitutional right under Lafayette v. Cooper, 132 S.Ct. 1376 (2012); Hill v. Lockhart, 474 U.S. 52 (1985); and U.S. v. Mooney, 497 F.3d 397 (4th Cir. 2007) were violated when plea counsel advised Applicant to plead guilty instead of adequately investigating Applicants' justification and/or duress defense. SEE: State v. Crawford, 608 S.Ct. 2d 886 (2005).

Applicant states that where there has been a guilty plea, a criminal defendant may only attack the nature of the advice of counsel and the voluntariness of the plea. Once he pleaded guilty on the advice of counsel, he must demonstrate that the advice was not 'within the range of competence demanded of attorneys in criminal cases.'

Applicant states that the record clearly reflects the fact that he pleaded guilty upon the advice of counsel. SEE: App. pg. 75, lines 20-25; pg. 76, line 1. The record also reflects the fact that Applicants' plea counsel was aware of the fact that the Applicant wanted to raise the justification and/or duress defense. App. pg. 98, lines 21-25; pg. 99, lines 1-25; pg. 100, lines 1-10.

"The duty to investigate is part of a defendant's right to reasonably competent counsel. The principle is so fundamental that the failure to conduct a practical investigation may in itself amount to ineffective assistance of counsel." ELMORE v. OZMINT, 661 F.3d 783 (4th Cir. 2011).

Applicant states that plea counsel did not seek an independent investigation to uncover the facts that were hidden in Applicant's codefendant, Anthony Robinson, statement. Plea counsel was aware from three different sources of the justification or duress defense but, however, plea counsel failed to interview or obtain an investigator to interview Anthony Robinson about this situation.

Applicant contends that instead of conducting a proper investigation into the situation at hand, plea counsel stated that, "It is my understanding that the defense of you doing something because someone made you do it by force is not a defense in this case. It may a defense in other cases; however, it is not in the case of murder. You can not kill someone just because someone tells you that they are going to shoot you or kill you. That is not an acceptable defense." SEE: correspondence dated July 25, 2006.

Although Applicant understands the above-cited language and the language that is cited in SIXON v. U.S., 126 S.Ct. 2437 (2006), and in, State v. Rocheville, 425 S.E.2d 32 (S.C. 1993), Applicant clearly points out that he did not shoot anybody nor

kill anybody and that Anthony Robinson clearly confessed to being the trigger man. App. pg. 36, lines 6-11.

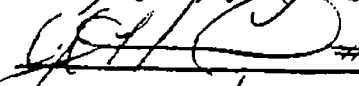
With these words in mind, it's no where possible that plea counsel could have said that, "this is not an acceptable defense." And, the defense of justification or duress could have been used by the Applicant. SEE: STATE V. NEW, 640 S.E.2d 871 (2007).

Counsel's erroneous advice to plead guilty was not within the range of competence demanded of attorneys in criminal cases. Also, looking at the facts that plea counsel failed to adequately investigate duress or justification, defense was prejudicial because defendant likely would not have pleaded guilty had he been properly advised on this issue.

CONCLUSION

Wherefore, Applicant respectfully request that this Honorable Court review the merits of this motion and these issues presented and grant a hearing to determine if the Applicant is entitled to relief from judgment.

December 19, 2013

Respectfully Submitted,
 #315014
Angelo Horn, #315014

TRUE CERTIFIED COPY. I. / SIMU # 602

Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.
Wiscoky Highway
Spartanburg, S.C. 29010

State of South Carolina

County of: Darlington

Angelo Ham, #315014,
Applicant,

vs.

State of South Carolina,
Respondent.

In the Court of Common Pleas
Fourth Judicial Circuit

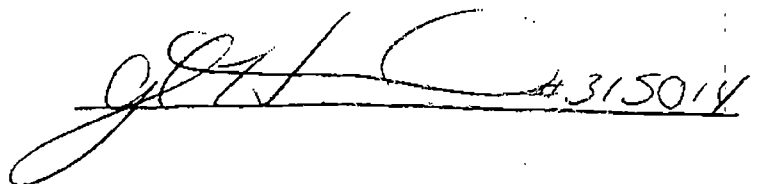
Case No.: 2014-CP-16-0202

Certificate of Service

I, Angelo Ham, hereby certify that a copy of the "Applicants Response To The Conditional Order of Dismissal", in the above-cited matter was this day served on the Respondent by depositing a copy of the same in the U.S. Mail, postage prepaid, to the following address:

S.C. Office of Attorney General
P.O. Box 11549
Columbia, S.C. 29211-1549

May 16, 2016

 #315014

TRUE CERTIFIED COPY,

Scott B. Suggs

CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

Angelo Bernard Ham, #315014,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

2014-CP-16-0202

FINAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 18, 2014. The Respondent made its return on or about March 10, 2015, requesting the application be summarily dismissed based upon expiration of the statute of limitations and the presumption against successive applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed March 16, 2016 and filed March 24, 2016, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated April 26, 2016, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant filed a document titled "Applicant's Response to the Conditional Order of Dismissal" on May 20, 2016, in which Applicant states "that he should be allowed to file this subsequent application for PCR due to the fact that his first PCR counsel was ineffective" in that he failed to amend the PCR application to include all grounds. Applicant further argues that the trial court lacked subject matter jurisdiction because the "Darlington County Court of General

Sessions was not in session” when indictments were true billed. Applicant, to address issues 2, 3 and 4 in the Conditional Order of Dismissal, attached a document titled “Motion for Relief from Judgment Under Rule 60(b)(5)” that was filed in Applicant’s second PCR cases 2008-CP-16-1006.

This Court has reviewed Applicant’s responses to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. This Court finds Applicant’s responses do not give rise to any genuine issue of material fact that would require an evidentiary hearing and therefore have failed to provide sufficient reasons why the Conditional Order of Dismissal should not become final.

This Court finds that Applicant’s claim of ineffective assistance of PCR counsel is dismissed, as it is not a cognizable claim for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). Once a PCR Applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of PCR counsel. Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). Further, Kelly v. State explicitly states, “that the holding in *Martinez*¹ is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions.” Kelly v. State, 404 S.C. 365, 365, 745 S.E.2d 377 (2013). Consequently, pursuant to Rule 12(b)(6), SCRPC, Applicant’s ~~contention that he received ineffective assistance of PCR counsel is not a cognizable claim for~~ relief, nor does it raise any genuine issue of material fact for this Court to consider in evaluating the application.

¹ Martinez v. Ryan, __ U.S. __, 132 S.Ct. 1309 (2012) (holding ineffective assistance of collateral counsel may constitute “cause” to excuse procedural default in federal habeas corpus actions under the federal “cause and prejudice” standard)

This Court finds that Applicant's allegation that the trial court lacked subject matter jurisdiction because the Grand Jury did not meet during the time his indictment was true-billed is denied. Defects in the indictment do not affect subject matter jurisdiction. However, an Applicant may challenge the subject matter jurisdiction of the trial court and such a claim may be raised at any time. Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777. The circuit court obviously has subject matter jurisdiction to try criminal matters. Therefore, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the Circuit Court had subject matter jurisdiction.

The Court submits further that a challenge to the legality and sufficiency of the process of the state grand jury does not implicate the subject matter jurisdiction of the circuit court. Evans v. State, 363 S.C. 495, 509-10, 611 S.E.2d 510, 518 (2005). Further, a defendant must challenge the legality and sufficiency of the process before the jury renders a verdict in order to preserve the issue for appellate review. Id. The regularity of grand jury proceedings is presumed absent clear evidence to the contrary. Id. at 514, 611 S.E.2d at 520.

The chief administrative judge for each circuit schedules terms of the grand jury in each county. The Applicant has failed to sufficiently challenge the legality and sufficiency of the Horry County Grand Jury process. Further, the Applicant has failed to provide any evidence that the Grand Jury did not convene in April 2000 as indicated on his true-billed indictment. Because the Applicant has failed to state with any specificity the evidence supporting his claim, this Court summarily dismisses this allegation with prejudice.

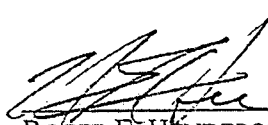
This Court submits that the doctrine of *res judicata* bars all of Applicant's claims listed in his attached "Motion for Relief from Judgment Under Rule 60(b)(5)". *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.

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

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within 30 days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 3rd day of February, 2017.

TRUE CERTIFIED COPY,


CLERK OF COURT/RMC
ROGER E. HENDERSON
Chief Administrative Judge
Fourth Judicial Circuit Court
ARLINGTON COUNTY, SC

Cheslerfield, South Carolina.

FILED
2017 FEB 15 AM 10:28
2017 FEB 15 10:28
CLERK OF COURT/RMC
ARLINGTON COUNTY, SC

State of South Carolina } In the Court of Common Pleas
County of Darlington } For the Fourth Judicial Circuit

ANGELO HARRIS, #315014, } PLA No.: 2014-CP-16-0202
Applicant, }

vs.

State of South Carolina, } APPLICANTS NOTICE
Respondent. } AND MOTION FOR
CONTINUANCE

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

PLEASE TAKE NOTICE THAT THE
Applicant hereby moves before this Court
respectfully requesting for a thirty ("30")
day extension in submitting the Applicants
Motion For Reconsideration in the above
cited matter. Applicant contends that this
Honorable Court issued its Final Order
in this case on February 3, 2017, at which,
Applicant was served with a copy of such
on March 9, 2017. Since this day, the
Applicant has been reviewing his case
files and the appropriate case law as well
as drafting the Motion For Reconsideration
to be submitted to this Court. Being that the
SCDC does not photocopy hand generating
material, Applicant is forced to hand
generate every copy which will take
longer than the ten ("10") day that's allotted

for filing such motions. Applicant further contends that by granting this motion, the Respondent will not be prejudiced as a result.

CONCLUSION

WHEREFORE, having made this motion, the Applicant hereby respectfully pray that this Honorable Court, grant this motion.

MARCH 15, 2017

Respectfully Submitted,
Angelo Ham #315014
Angelo Ham #315014
L.C.I./FS #278
990 Wiscovy Highway
Bishopville, S.C. 29010

TRUE CERTIFIED COPY,
B. Suggs
CLERK OF COURT/PMC
DARLINGTON COUNTY, S.C.

FILED
2017 MAR 20 PM 1:30
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

State of South Carolina
County of Darlington

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

ANGELO HAM, #315014,
Applicant,

Case No.: 2014-CP-16-0202

vs.

State of South Carolina,
Respondent.

CERTIFICATE OF
SERVICE

TRULY CERTIFIED COPY,
B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

I, Angelo Ham, hereby certify that a
certified copy of the "Applicant's Notice and
Motion For A Continuance", in the above
cited matter was this day served on the
Respondent by placing a copy of the same
in the U.S. Mail, postage prepaid to the
following addresses:

Darlington County Clerk of Court
P.O. Box 1177

Darlington, S.C. 29540

S.C. Attorney General

P.O. Box 11549

Columbia, S.C. 29211

FILED
2017 MAR 20 PM 1:30
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

March 15, 2017

Angelo Ham #315014

State of South Carolina
County of Darlington

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

ANGELO HAM, #315014,
Applicant,

} CA No.: 2014-CP-16-0202

vs.

State of South Carolina,
Respondent.

} APPLICANTS MOTION
FOR RECONSIDERATION
UNDER RULE 59(e),
SCRCP

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRCP, Applicant, ANGELO HAM (also referred to herein as "HAM") hereby submit this motion for reconsideration of the Court's Final Order dated February 3, 2017.

This Motion for Reconsideration is divided into several sections as set forth below. Each section provides multiple grounds for reconsideration of the Court's Order. Collectively, pursuant to these grounds for reconsideration, Applicant seeks ruling on matters that the Court did not address in its order, HAM seek the Courts reasons for deciding certain matters where no reasons are given and HAM seek for the court to reconsider its order and correct its errors based on the record and the law.

TRUE CERTIFIED COPY,

CLERK OF COURT
DARLINGTON COUNTY, SC

SC019 B.0065
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, SC

2017 APR 12 AM 11:59

FILED

ISSUE 1.

GROUND FOR RECONSIDERATION
BASED ON THE RESPONDENTS
DEFAULT AND WAIVER.

ISSUE 2.

GROUND FOR RECONSIDERATION
BASED ON INEFFECTIVE
ASSISTANCE OF PCR COUNSEL
NOT A COGNIZABLE CLAIM
FOR RELIEF.

ISSUE 3.

GROUND FOR RECONSIDERATION
BASED ON PCR COUNSEL FAILING
TO PRESERVE APPLICANTS
CLAIMS FOR REVIEW.

The Fourth Circuit has recognized three grounds for amending an earlier judgment and Federal Rule of Civil Procedure 59(e): (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Rec. Ins. Co. v. Am. Mut. Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). A Rule 59(e) motion "may not be used to relitigate old matters, or to raise ~~new~~ arguments or present evidence that could have been raised prior to the entry of judgment." Exxon Shipping Co. v. Baker, 554 U.S. 471, 486 n.5 (2008). Further, "mere disagreement [with a district court's ruling] does not support a Rule 59(e) motion." Hutchinson v. Staton, 994 F.2d 1076, 1082 (4th Cir. 1993). "In general reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." Rec. Ins. Co., 148 F.3d at 403. A motion for reconsideration "is not a license for a losing party's attorney to get a second bite at the apple." Bey v. Shapiro Brown & Alt, LLP, 997 F.Supp.2d 310, 321 (D. Md. 2014).

(citing Shields v. Shetter, 120 F.R.D. 123, 125-26 (D. Colo. 1988)).

ISSUE 1.

GROUND FOR RECONSIDERATION
BASED ON THE RESPONDENTS
DEFAULT AND WAIVER.

Applicant contends that he filed the above cited application with the Darlington County Clerk of Court on March 18, 2014. After failing to adequately to this application by way of answer, summary judgment, etc., Applicant filed a Notice and Motion for Default in the Darlington County Clerk of Court on December 9, 2014, pursuant to Rule 55(a) of the S.C. Rules of Civil Procedure.

Applicant further contends that after the Respondent still failed to respond to the Applicants Notice and Motion for Default, Applicant submitted a correspondence to the Honorable Daniel Shearouse of the S.C. Supreme Court advising him of this situation, at which time, the Honorable Shearouse

CONTACTED THIS HONORABLE COURT ADVISING THEM TO RESPOND TO THIS APPLICATION.

RESPONDENT DOES NOT DISPUTE THESE FACTS, NOR HAS ANY DEFAULT HEARING BEEN HELD TO ATTEST TO THESE FACTS OR MOTION.

BASED ON THE ABOVE-MENTIONED LEGAL ISSUES AND FACTS, APPLICANT STATES THAT NOT ONLY HAS THE RESPONDENT WAIVED THEIR ASSERTED RIGHTS TO DEFEND HIS CLAIMS BUT THE APPLICANT WOULD BE PREJUDICED AS A RESULT OF NOT HAVING HIS CLAIMS PROPERLY HEARD TO PRESERVE HIS ISSUES FOR REVIEW BY THE HIGH COURT OR ON APPEAL. SEE REGIONS BANK V. OWENS, 402 S.C. 642, 648, 741 S.E.2D 51, 54 (Ct. App. 2013)

ISSUE 2.

GROUND FOR RECONSIDERATION
BASED ON INEFFECTIVE
ASSISTANCE OF PCR COUNSEL
NOT A COGNIZABLE CLAIM FOR
RELIEF.

APPLICANT CONTENDS THAT THE RESPONDENT AND THIS HONORABLE COURT DISMISSED HIS PCR

under Pennsylvania v. Finley, 481 U.S. 551 (1987); Arce v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991); Kelly v. State, 404 S.C. 365, 365, 745 S.E.2d 377 (2013); and Rule 12(b)(6), SCRPC alleging that ineffective assistance of PCR counsel is not a cognizable claim for relief, nor does it raise any genuine issue of material fact for this Court to consider in evaluating the application.

Although this is controlling case law in this State, Applicant contends that this case is somewhat different because not only was not afforded with a proper adjudication of the merits of his case but PCR counsel failed to properly preserve his issues for review by failing to file a Rule 59(e) motion like Applicant advised him to do. The Supreme Court has well settled this issue by remanding cases to the PCR court for PCR counsel's failure to file a Rule 59(e) motion. SEE McCullough v. State, 464 S.E.2d 340, 341 (S.C. 1995)

(remanding matter to PCR court, despite the fact that no Rule 59(e) motion had been filed, and admonishing all parties to carefully prepare and review PCR orders to ensure that they specifically address

the issues raised and make conclusions of law.) The Court considered this as a "second bite of the apple" that is cited in Bay v. Shapiro Brown & Alt. LLP, 997 F.Supp.2d 310, 321 (D. Md. 2014) (citing Shields v. Shelter, 120 F.R.D. 123, 125-26 (D. Colo. 1988)).

Based on the above-cited facts, Applicant states that he is entitled to have the PCR Court to properly rule on each of his issues so that they can be properly preserve for review.

ISSUE 3.

GROUND FOR RECONSIDERATION
BASED ON PCR COUNSEL FAILING
TO PRESERVE APPLICANTS CLAIMS
FOR REVIEW.

Applicant contends that at his first PCR hearing, his PCR Counsel, Gary I. Finkler, Esq., raised seven ("7") grounds for post conviction relief. Those grounds are as follow:

1.) Trial counsel was ineffective in failing to move to withdraw his guilty plea, when defendant requested withdrawal and in writing (see Exhibit 7) and orally to counsel and then in court (transcript at p. 35+). See ROLIN v. State, 384 S.C. 409, 683 S.E.2d 471 (2009)

2.) Applicant's indictments were improper and void since they were true billed before the Grand Jury convened. The indictments were true billed October 20, 2005 but the grand jury did not convene until October 24, 2005 - Exhibit 5. See S.C. Code Ann. Section 14-7-1750 that provides in order to return a true bill of indictment the grand jury must find that probable cause existed. Also S.C. Code Ann. Section 14-7-1140 provides that any irregularity in the grand jury process must be made by a motion to quash the indictment. See EVANS v. State, 363 S.C. 495 (2005) Counsel was ineffective for failing to discuss this irregularity with the defendant and for failing to move to quash.

3.) Trial counsel was ineffective for failing to advise the defendant of the trial/sentencing judge's relationship with the victim. Though the court, made some disclosure concerning its relationship with the victim, counsel failed to follow up with any questions to the judge in this regard or discuss the matter with the applicant. Had the defendant known the trial judge and victim were from the same town, crossed paths in business, the judge had personal knowledge regarding the victim's funeral (see page 14, line 2-4.) and that he could have his plea and sentencing conducted by another judge, he would have objected to the trial judge participating. See Transcript page 8, line 21 - page 9, line 23.

4.) Trial counsel failed to object to the admission of videotape containing clips of the victim's birthday party that was allowed in to evidence during the sentencing phase. See Rule 401, see

5.) Trial counsel was ineffective for failing to object to applicant's illegal detention - see Rule 3, SCRIMP stated that once a defendant is arrested and detained, an arrest warrant shall be brought forth within 15 days - arrest warrant was not served until 10 months later.

6.) The Family Court erroneously waived jurisdiction to the Court of General Sessions (04-JU-16-233, 234 and 235) despite the findings in the pre-waiver evaluation report and testimony of Dr. Heffler. Counsel was ineffective for failing to appeal this ruling; for failing to ask Judge Henderson of any connection with the victim and further in failing to ask him to recuse; and failing to adequately present evidence regarding the defendants ability to rehabilitate and the state's failure to follow its own suggestions. See "Needs and Recommendations" of Vanessa Galvarino Hiers, MSW, LMSW dated 12-7-01 - Exhibit 11.

7.) Trial counsel was ineffective for failing to investigate the applicant's case and therefore the defendant was inadequately prepared to make a decision as to his plea or request for trial.

Applicant contends that noticing the above-cited issues that his PCR counsel raised in his PCR, Issues 2, 6, and 7 were not fully preserved for review because PCR counsel failed to properly raise them correctly.

Noticing Issue 2, PCR counsel failed to put forth evidence, i.e., Grand Jury calendar (SEE attached exhibit 1), that would have showed the Courts that the Darlington County Grand Jury did not actually convene on October 20, 2005 as stated on the indictments. Not only does the indictments show these facts but the statute clearly reflect that neither the Darlington County Court of General Sessions or Court of Common Pleas was in session on October 20, 2005. Applicant states that the S.C. Code Ann. §14-9-210 only allow the Grand Jury to

CONVENE to hear evidence to determine if the indictment should be "TRUE BILL" or "NO BILL" during the Court of General Sessions while the Court is in session. AND, the S.C. Supreme Court held in State v. Best, 257 S.C. 361, 186 S.E.2d 572 (S.C. 1972) that "the Circuit Court loses jurisdiction with the adjournment of the term." The term was not in session by statute or by Court order on October 20, 2005 which makes or mean that the Grand Jury or the Circuit Court lacked jurisdiction to "TRUE BILL" the Applicants indictments.

IN the Courts Order of Dismissal dated December 7, 2010 (See 9A No. 2008-CP-16-1006), the Circuit Court addressed this issue but, however, gave a frivolous reason for denial, at which, Applicants PCR Counsel should have filed a Rule 59(e) motion to asked the Court to correct its reasons for denial and to give the correct law. However, PCR Counsel failed to do such.

FURTHER, in the Courts Final Order dated February 3, 2007 (See 9A No. 2014-CP-16-0202), the Circuit Court stated "the Chief administrative judge for each

circuit schedules terms of the grand jury in each county. The Applicant has failed to sufficiently challenge the legality and sufficiency of the Harry County Grand Jury process. Further, the Applicant has failed to provide any evidence that the Grand Jury did not convene in April 2000 as indicated on his true-billed indictment. Because the Applicant has failed to state with any specificity the evidence supporting his claim, this Court summarily dismisses this allegation with prejudice."

However, Applicant was not indicted or charged in Harry County, his crimes was not committed in the year of 2000, and, during his first PCR, trial counsel testified to the facts that not only did he not noticed this violation but if he did, this violation would have had some different bearing on his representation for the Applicant. The Applicant not only plead guilty upon the advice of counsel but, during his ~~second~~ PCR, the Applicant's PCR counsel received his trial counsel entire file on this case but did not received copies of the Applicants indictment or arrest warrants as trial

admitted to not having those documents.

therefore, this shows that both trial counsel and PCR counsel failed to either investigate Applicants case during a critical stage and failed to properly litigate the facts of Applicants case.

Noticing Issue 6, PCR counsel failed to properly preserve Applicants claims by not only failed to contest the Circuit Court denial but also failed to raise every issue that the Applicant told him to raise. As such, PCR counsel failed to file a Rule 59(c) motion. In the order of dismissal dated December 7, 2010 (see CA No. 2008-CP-16-1006), the Circuit Court stated "This Court finds the Applicant failed to meet his burden of proving plea counsel should have appealed the family court judge's decision to transfer the case to general sessions. Such a transfer order is interlocutory and not immediately appealable. See Sanders v. State, 281 S.C. 53, 56 N.1, 314 S.E.2d 319, 321 N.1 (1984) (citing State v. Lockhart, 275 S.C. 160, 267 S.E.2d 700 (1980)). That decision, therefore, must be appealed at the conclusion

of the resulting guilty plea or trial. Plea counsel did file a notice of appeal in this case. At that point, the Applicant could have pursued the transfer issue. Instead, the Applicant chose to voluntarily withdraw his appeal."

Applicant contends that the courts in United States v. Smith, 851 F.2d 706 (4th Cir. 1988) clearly held that "the justifications for allowing the immediate appeal of transfer orders remain the same regardless of whether the appeal is based on an alleged procedural or substantive deficiency." Id. at 708; IN RE J.L.W., 136 N.C. App. 596, 599, 602, 525 S.E.2d 500, 502, 504 (2000) (transfer order is a "final order" and appealable under State v. T.D.R., 347 N.C. 489, 496, 495 S.E.2d 700, 703 (1998), but a finding of "probable cause, on the state's motion to transfer jurisdiction" is not appealable immediately); United States v. A.W.J., 804 F.2d 492, 492-93 (8th Cir. 1986) ("orders transferring juveniles for adult prosecution," although "reviewable after trial," are also immediately appealable by accused "under the collateral order exception of Cohen v. Beneficial

INDUSTRIAL LOAN CORP., 337 U.S. 541 (1949)).

Therefore, knowing that the Federal courts specifically recognize the juvenile transfer order as an order that is immediately appealable under 'Cohen', Applicant contends that his PCR counsel was ineffective for failing to file a Rule 59(e) motion to allow the Circuit Court to correct its errors as mandated by this Rule.

Noticing Issue 7, PCR counsel failed to put forth any adequate evidence showing how Applicant's plea counsel failed to investigate the case so that the Applicant could have adequately pled guilty or went to trial.

Applicant contends that he was convicted under the hands of one the hands of will theory which is actually the "felony-murder rule." Applicant did not have the intent to kill nor in possession of a deadly weapon before, during, or after the commission of the crime. However, he was convicted for murder in the first degree, Armed Robbery, and Criminal Conspiracy for the purpose of planning an Armed Robbery. The elements of Armed Robbery

is undisputedly "robbery with a deadly weapon." The elements of murder is "premeditation and/or the intent to kill." Applicant did not have either one.

Applicant does not dispute the fact that under the hands of one the hands of all that all persons participating is guilty as a principal but, however, plea counsel nor trial judge advised Applicant of the different degrees of principal nor was the Applicant aware of the fact that he could not be equal offenders with the actual perpetrator; the one who had the intent to kill or the one who did the killing.

Applicant states that some courts have ~~avoided~~ avoided the prohibitions of Mullaney v. Wilbur, 421 U.S. 684 (1975) and Sandstrom v. Montana, 442 U.S. 510 (1979) by construing the felony-murder rule as not requiring intent or notice or forethought. These courts, however, generally have failed to consider the constitutional implications of imposing several penalties for a crime without a mens rea element. The Supreme Court

recently has addressed this issue in two closely related line of cases, and these holdings indicate that imposition of severe punishments for nonregulatory crimes without a finding of culpability violates constitutional guarantees of the eighth amendment and the due process clause.

In Edmund v. Florida, 458 U.S. 782, 788-801 (1982), the Supreme Court held that the imposition of the death penalty for a nontriggerman convicted of felony-murder violates the eighth amendment prohibition of cruel and unusual punishment. Justice White, writing for the majority, stressed two factors in holding the punishment unconstitutional: the lack of a legitimate penological justification and the lack of a justifiable retribution interest.

The Court found that the death penalty would not deter "one who does not kill and has no intention or purpose that life will be taken.... If a person does not intend that

life be taken.... the possibility that the death penalty will be imposed for vicarious felony murder will not 'enter into the cold calculus that precedes the decision to act.'" Id. at 799 (quoting in part from Gregg v. Georgia, 428 U.S. 153, 186 (1976)).

Justice White proceeded to analyze the statistical data and agreed with those "competent observers who have concluded that there is no basis in experience for the notion that death so frequently occurs in the course of a felony for which killing is not an essential ingredient that the death penalty should be considered as a justifiable deterrent to the felony itself." The majority thus concluded that no legitimate deterrent effect justified imposing the death penalty for felony murder.

Justice White's second rationale was the lack of a retribution justification. He found it unconscionable to treat nontriggermen and triggermen

alike because "it is fundamental
that 'causing harm intentionally
must be punished more severely
than causing the same harm
unintentionally.' ENMUND, 458 U.S.
at 798 (quoting H. HOLT, PUNISHMENT
AND RESPONSIBILITY 182 (1968)).
Relying on noncapital cases, Justice
White asserted: "AMERICAN
criminal law has long considered
a defendant's intention - and
therefore his moral guilt - to be
critical to the degree of his criminal
culpability," MULLANEY V. WILBUR....
and the Court has found criminal
penalties to be unconstitutionally
excessive in the absence of intentional
wrongdoing." ENMUND, at 800 (quoting
MULLANEY V. WILBUR, 421 U.S. 684, 698
(1975)). The Court cited ROBINSON V.
CALIFORNIA, 370 U.S. 660, 667 (1962)
(punishing narcotics addiction
violates eighth amendment) and WEEMS
V. UNITED STATES, 217 U.S. 349, 363 (1910)
(invalidating statute making public
official's false entry in public record
a crime absent injury or intent to

injured). Justice White thus concluded that the defendant's punishment was impermissible because it was not "tailored to his personal responsibility and moral guilt." ENMUND, 458 U.S. at 801.

Applicant contends that not only was he convicted under the hands of one the hands of all theory but he was also sentenced to murder, the same statute that the actual triggerman was sentenced to. SEE S.C. Code Ann. § 16-3-10-20. Applicant states that this is a violation of the eighth amendment as well as never been brought forth to no lower court by any of his appellate or PCR counsels and therefore were not properly brought before or preserve for the record.

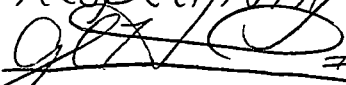
Applicant contends that he was sentenced to life without the possibility of parole and this hereby prejudiced me because the state or respondent did not sentenced me as allowed

by either the S.C. Code Ann. § 16-3-20;
§ 16-11-330(A); or the MURDER ACT of
1965. Applicant states that the
Circuit Court did not set a minimum
term but yet imposed the maximum
term possible. This is totally
against the Criminal Justice Act 2003,
later amending Section 27 in 2015.

CONCLUSION

Wherefore, having made this
motion, Applicant respectfully
request that this Honorable Court
correct its previous order and
grant the Applicant an evidentiary
hearing or a new trial based on
the aboved-cited legal authorities.

April 4, 2017

Respectfully Submitted,

#315014
Angelo Ham #315014
L.C.I. / FS #278
990 Wiscoy Hwy
Bishopville, S.C. 29010

GROUND FOR POST CONVICTION RELIEF

- ✓ 1. Trial counsel was ineffective in failing to move to withdraw his guilty plea, when Defendant requested withdrawal and in writing (see Exhibit 7) and orally to counsel and then in court (transcript at p. 35+). See Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009)
- ✓ 2. Applicant's indictments were improper and void since they were true billed before the Grand Jury convened. The indictments were true billed October 20, 2005 but the grand jury did not convene until October 24, 2005 – Exhibit 5. See S.C. Code Ann Section 14-7-1750 that provides in order to return a true bill of indictment the grand jury must find that probable cause existed. Also S.C. Code Ann Section 14-7-1140 provides that any irregularity in the grand jury process must be made by a motion to quash the indictment. See Evans v. State, 363 S.C. 495 (2005). Counsel was ineffective for failing to discuss this irregularity with the Defendant and for failing to move to quash.
- ✓ 3. Trial counsel was ineffective for failing to advise the Defendant of the trial/sentencing judge's relationship with the victim. Though the court, made some disclosure concerning its relationship with the victim, counsel failed to follow up with any questions to the judge in this regard or discuss the matter with the applicant. Had the Defendant known the trial judge and victim were from the same town, crossed paths in business, the judge had personal knowledge regarding the victims funeral (See page 14, line 2-4.) and that he could have his plea and sentencing conducted by another judge, he would have objected to the trial judge participating. See Transcript page 8, line 24 – page 9, line 23.
- ✓ 4. Trial counsel failed to object to the admission of videotape containing clips of the victim's birthday party that was allowed in to evidence during the sentencing phase. See Rule 401, SCRE
- ✓ 5. Trial counsel was ineffective for failing to object to applicant's illegal detention – See Rule 3, SCRCrimP stated that once a defendant is arrested and detained, an arrest warrant shall be brought forth within 15 days – arrest warrant was not served until 10 months later
- ✓ 6. The Family Court erroneously waived jurisdiction to the Court of General Sessions (04-JU-16-233, 234 and 235) despite the findings in the pre-waiver evaluation report and testimony of Dr. Heffler. Counsel was ineffective for failing to appeal this ruling; for failing to ask Judge Henderson of any connection with the victim and further in failing to ask him to recuse; and failing to adequately present evidence regarding the Defendants ability to rehabilitate and the State's failure to follow its own suggestions. See "Needs and Recommendations" of Vanessa Galvarino Hiers, MSW, LMSW dated 12-7-01 – Exhibit 11.
- ✓ 7. Trial counsel was ineffective for failing to investigate the applicant's case and therefore the Defendant was inadequately prepared to make a decision as to his plea or request for trial.

TRUE CERTIFIED COPY,
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

2017 APR 12 PM 12:00

FILED

WITNESSES

Jackson

DCSD

W. E. Hall

ARREST WARRANT #:

H850102

Arrested on July 20, 2005

ACTION OF GRAND JURY

True Bill

Foreman: *Sherry H. Edwards*
Grand Jury

OCT 20 2005

VERDICT

Foreman: _____
Petit Jury

Date: _____

DOCKET #: 05GS16-1969

THE STATE OF SOUTH CAROLINA

County of Darlington

COURT OF GENERAL SESSIONS

Term: October, 2005

THE STATE

vs.

Angelo Ham

I N D I C T M E N T F O R

0116

MURDER

16-3-10

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/ RMC
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)
County of Darlington)

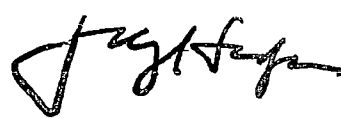
INDICTMENT #05GS16-1969

At a Court of General Sessions, convened on October 24, 2005
the Grand Jurors of Darlington County present upon their oath:

COUNT: MURDER
16-3-10

That Angelo Ham in the County of Darlington on or about September 09, 2004,
along with co-defendants, feloniously, wilfully and with malice and
aforethought, kill one Richard Griggs by means of shooting him with a .22
Caliber Pistol and that the said Richard Griggs did die in Darlington County as
a proximate result thereof.

Against the peace and dignity of the State, and contrary to the statute
in such cases made and provided.

SOLICITOR: 

WITNESSES

Jackson

DCSD



ARREST WARRANT #:

H850101

Arrested on July 20, 2005

ACTION OF GRAND JURY

True Bill

Foreman:


Grand Jury

OCT 20 2005

VERDICT

Foreman:

Petit Jury

Date:

DOCKET #: 05GS16-1970

THE STATE OF SOUTH CAROLINA

County of Darlington

COURT OF GENERAL SESSIONS

Term: October, 2005

THE STATE

vs.

Angelo Ham

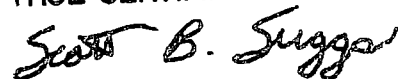
I N D I C T M E N T F O R

0139

ARMED ROBBERY

16-11-330 (A)

TRUE CERTIFIED COPY,



CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)

County of Darlington)

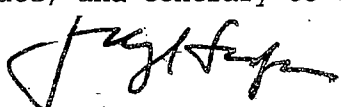
INDICTMENT #05GS16-1970

At a Court of General Sessions, convened on October 24, 2005,
the Grand Jurors of Darlington County present upon their oath:

COUNT: ARMED ROBBERY
 16-11-330 (A)

That Angelo Ham in the County of Darlington on or about September 09, 2004,
along with co-defendants, violate Section 16-11-330 of the Code of Laws of South
Carolina (1976), as amended, while armed with a deadly weapon, to wit: a .22
Caliber, did feloniously take from the person in the presence of Richard Griggs,
by means of force or intimidation goods or monies of the said Richard Griggs,
such goods or monies being describes: Cash Monies.

Against the peace and dignity of the State, and contrary to the statute
in such cases made and provided.

SOLICITOR: 

WITNESSES

Jackson

DCSD



ARREST WARRANT #:

H850100

Arrested on July 20, 2005

ACTION OF GRAND JURY

True Bill

Foreman:

Sherry H. Edwards
Grand Jury

OCT 20 2005

VERDICT

Foreman:

Petit Jury

Date:

DOCKET #: 05GS16-1971

THE STATE OF SOUTH CAROLINA

County of Darlington

COURT OF GENERAL SESSIONS

Term: October, 2005

THE STATE

vs.

Angelo Ham

I N D I C T M E N T F O R

0049

CONSPIRACY/CRIMINAL CONSPIRACY

(16-17-410)

STATE OF SOUTH CAROLINA)
) INDICTMENT #05GS16-1971
County of Darlington)

At a Court of General Sessions, convened on October 24, 2005
the Grand Jurors of Darlington County present upon their oath:

COUNT: CONSPIRACY/CRIMINAL CONSPIRACY
(16-17-410)

That Angelo Ham in the County of Darlington on or about September 09, 2004,
violate Section 16-17-410 of the Code of Laws of South Carolina (1976), as
amended, in that he did unlawfully, willfully, knowingly, wickedly and
feloniously unite, combine, conspire, confederate, agree between and among and
have tacit understanding with each other and with divers other persons whose
names are unknown to the Grand Jurors for the purpose of committing the crime of
Armed Robbery.

Against the peace and dignity of the State, and contrary to the statute
in such cases made and provided.

SOLICITOR: 

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

Terms of Circuit and Family Court October 2005

Circuit Number	10/3/2005	10/10/2005	10/17/2005	10/24/2005	10/31/2005
4	General Sessions Chesterfield Lockemy, James NO CR NEEDED 3 GORDON 4, 5, 6 NO CR NEEDED 7	Common Pleas Non-Jury/PCR Burch, Paul GORDON 10, 11, 12 NO CR NEEDED 13, 14 General Sessions Marlboro Lockemy, James HARRIS	General Sessions Dillon Lockemy, James GORDON	General Sessions Darlington Lockemy, James HARRIS	General Sessions Marlboro Cottingham, Edward MCCALL 31, 1, 2, 3 NO CR NEEDED 4 Common Pleas Darlington Lockemy, James

CERTIFIED TRUE COPY

By

South Carolina Court

State of South Carolina } IN THE COURT OF COMMON PLEAS
 County of Darlington } FOR THE FOURTH JUDICIAL CIRCUIT

Angelo Horn, #315014 } PLA No.: 2014-CP-14-0202
 Applicant }

VS. } CERTIFICATE OF
 State of South Carolina } SERVICE
 Respondent. }

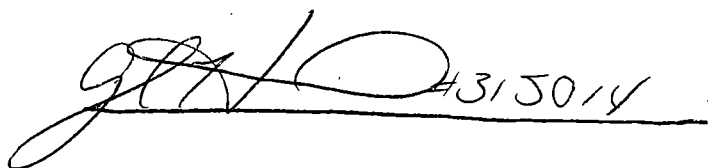
I, Angelo Horn, hereby certify that a certified copy of the "Applicant's Motion for Reconsideration Under Rule 59(e), SCRPC," was served this date upon the Respondent by depositing a copy of the same, in the U.S. Mail, prepaid, to the following address:

Darlington County Clerk
 P.O. Box 1177
 Darlington, S.C. 29540

TRUE COPY, FILED
 SCOTT B. SUGGS
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, SC

S.C. Attorney General
 P.O. Box
 Columbia, S.C. 29201

April 4, 2017

 #315014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	
Angelo Bernard Ham,	)	Case No.: 2014-CP-16-00202
S.C.D.C. No. 315014,	)	
	)	
Applicant,	)	
	)	RETURN TO APPLICANT'S MOTION
v.	)	PURSUANT TO RULE 59(e), SCRCP
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to "Applicant's Motion for Reconsideration Under Rule 59(e), SCRCP" by Angelo Bernard Ham ("Applicant") dated April 4, 2017, and filed April 12, 2017, Respondent would show this Court:

I.

This matter originally came before the Court by way of an application for post-conviction relief filed March 18, 2014. Respondent made its return on or about March 10, 2015, requesting the application be summarily dismissed as untimely and successive.

~~Pursuant to this request, and after reviewing the pleadings in this matter and all of the~~
 records attached thereto, the Court issued a Conditional Order of Dismissal signed March 16, 2016, and filed March 24, 2016, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal
 should not become final. Applicant timely responded and the Court, after considering
 Applicant's response, issued a Final Order of Dismissal signed February 3, 2017, and filed February 15, 2017, dismissing this action with prejudice. Attached to this return and

incorporated herein by reference is an Affidavit of Service dated March 9, 2017, serving the above-mentioned Final Order of Dismissal on Applicant.

II.

In his motion, Applicant asks the Court to reconsider its ruling pursuant to Rule 59(e), SCRCF. Applicant's motion for reconsideration should be denied as untimely. "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRCF. Applicant received written notice on Thursday, March 9, 2017; therefore, Applicant had until Monday, March 20, 2017, to serve a motion pursuant to Rule 59(e). Applicant's motion is dated April 4, 2017, was not received by Respondent until April 7, 2017, and was not filed until April 12, 2017—all after the Rule 59(e) deadline. Accordingly, Applicant's motion was not timely served and should be denied.

Furthermore, the Court's Final Order of Dismissal and Conditional Order of Dismissal contain the required findings of fact and conclusions of law necessary to dispense with Applicant's allegations as required by S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRCF; see also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Accordingly, the Court properly ruled on all issues before it, and Applicant's motion should be denied.

{Conclusion and signature on following page}

III.

WHEREFORE, Respondent respectfully requests the Court deny Applicant's motion for reconsideration.

Respectfully submitted,

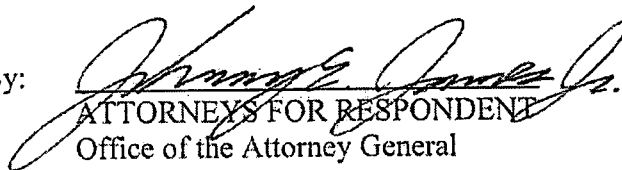
ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY E. JAMES JR.
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT

Office of the Attorney General

P.O. Box 11549

Columbia, S.C. 29211

14 Apr., 2017

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

ANGELO HAM, #315014

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

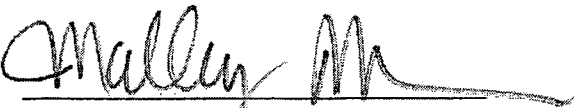
2014-CP-16-0202

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Applicant's Motion Pursuant to Rule 59(e), SCRCF** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Angelo Ham, #315014
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

DATED this 14th day of April, 2017.


Mallory Morris, Legal Assistant
For Respondent

State of South Carolina	}	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT
County of Darlington		
Angelo Ham, # 315014,	}	CA No.: 2014-CP-16-00202
Applicant,		
vs.	}	APPLICANT'S REPLY TO RESPONDENT RETURN TO APPLICANTS MOTION FOR RECONSIDERATION PURSUANT TO RULE 59(e), SCRCP
State of South Carolina,		
Respondent.		

Applicant, Angelo Ham, hereby submit this reply in response to the Respondents Return to Applicants Motion for Reconsideration Pursuant to Rule 59(e), SCRCP" filed in this Honorable Court on April 14, 2017 or some date thereafter.

Applicant states that in this motion, the Respondent alleges that "the Applicants motion for reconsideration should be denied as untimely." Applicant opposes this statement on the account that

- 1.) He was served a certified copy of the notice to "file and serve

a Notice of Appeal within 30 days of the service of this Order to secure appellate review" SEE FINAL ORDER of Dismissal dated February 3, 2017.

2.) Nothing in the Final Order of Dismissal or the Affidavit of Personal Service advised me of my statutory right to file a motion to alter or amend the judgment.

ON March 20, 2017, which is the same date that the Applicant was supposed to file his motion to alter or amend the judgment, the Applicant filed a motion for Continuance requesting for a thirty ("30") extension to file this motion. This motion for Continuance was filed in this Honorable Court on March 20, 2017.

Not hearing nothing in return from either the Respondent or Judge, I filed a motion for Reconsideration Pursuant to Rule 59(e), served on April 4, 2017 pursuant to mailing services and filed in this Honorable

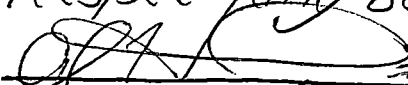
Court on April 12, 2017.

FURTHERMORE, based on the fact that the Applicant did file a motion for CONTINUANCE in this Honorable Court on March 20, 2017, i.e., the same day devolving as the motion to alter or amend judgment, the Applicants Motion for Reconsideration should not be denied and should be GRANTED to fix the errors of its Final Order of Dismissal.

CONCLUSION

Wherefore, Applicant respectfully requests this Honorable Court to GRANT Applicants Motion for Reconsideration.

April 24, 2017

Respectfully Submitted,

Angelo Horn #315014
L.C.I. / FS #278
990 Wiscoky Hwy
Bishopville, S.C. 29010

State of South Carolina

County of Darlington

Angelo Horn, #315014,

Applicant,

vs.

State of South Carolina,

Respondent.

In the Court of Common Pleas
For the Fourth Judicial Circuit

Case No.: 2014-CP-16-00202

CERTIFICATE OF
SERVICE

I, Angelo Horn, hereby declare and certify that a copy of "Applicants Reply to Respondent Return to Applicants Motion for Reconsideration Pursuant to Rule 59(e), SCRP", in the above-cited matter was this day served on the Respondent by depositing a copy of the same in the U.S. Mail, postage prepaid, to the following address:

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

April 24, 2017

 #315014

200

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	
Angelo Bernard Ham,	)	Case No.: 2014-CP-16-00202
S.C.D.C. No. 315014,	)	
	)	
Applicant,	)	
	)	ORDER GRANTING EXTENSION,
v.	)	DENYING APPLICANT'S MOTION
	)	PURSUANT TO RULE 59(e), SCRCF
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of Applicant's *pro se* documents titled "Applicant's Notice and Motion for Continuance" and "Applicant's Motion for Reconsideration Under Rule 59(e), SCRCF" by Angelo Bernard Ham ("Applicant") filed March 20, 2017, and April 12, 2017, respectively. The Respondent made its Return to Applicant's motion requesting it be dismissed.

I.

This matter originally came before the Court by way of an application for post-conviction relief filed March 18, 2014. Responded made its return on or about March 10, 2015, requesting the application be summarily dismissed as untimely and successive.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Court issued a Conditional Order of Dismissal signed March 16, 2016, and filed March 24, 2016, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. Applicant timely responded and the Court, after considering Applicant's response, issued a Final Order of Dismissal signed February 3, 2017, and filed

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 SCOTLAND COUNTY
 CLERK OF COURT
 DARLINGTON COUNTY, S.C.

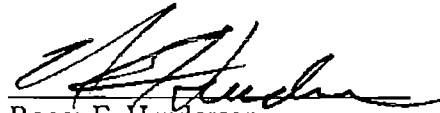
February 15, 2017, dismissing this action with prejudice. Applicant actually received the Final Order on March 9, 2017.

II.

In his motion filed March 20, 2017, Applicant timely requests an additional 30 days to file his Motion for Reconsideration. That request is granted.

The Final Order of Dismissal in this matter was signed by this Court on February 3, 2017. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's response and objections, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the original Final Order of Dismissal, which was signed and then filed February 15, 2017, shall stand as it was written.

AND IT IS SO ORDERED this 28th day of April, 2017.



Roger E. Henderson
Chief Judge for Administrative Purposes
Fourth Judicial Circuit

Charterfield, South Carolina

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CHARLESTON COUNTY, S.C.

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Darlington County

Roger C. Henderson, Chief Admin. Judge

CA No. : 2017-002251

Angelo Ham,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent,

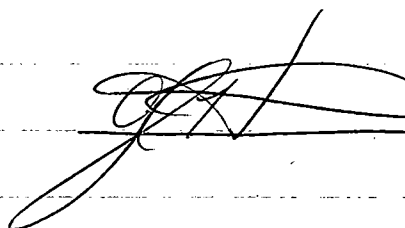
CERTIFICATE OF
SERVICE

I, Angelo Ham, hereby certify that an Original copy of the "Appendix", in the above-cited matter was this day served upon the Respondent by depositing a copy of the same in the

U.S. Mail, postage prepaid, to the
following address:

S.C. Office of the Attorney General/
P.O. Box 11549
Columbia, S.C. 29211-1549

NOVEMBER 22, 2017

 11/23/2017

Angelo Horn #315014
MCCI / FS #118

McCormick Correctional Institute
386 Redemption Way
McCormick, SC 29399

S.C. SUPREME COURT
P.O. Box 11330
Columbia, S.C. 29211

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S.C. DEPARTMENT OF CORRECTIONS

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