

December 18, 2017

TO: The Honorable Clerk of  
the S.C. Supreme Court  
Post Office Box 11330  
Columbia, SC 29211

FROM: Shamar L. Macon  
Ridgeland Corr. Inst.  
Post Office Box 2039  
Ridgeland, SC 29936

**RECEIVED**

DEC 27 2017

RE: Macon V. State  
C/A 2016-CP-10-5452

**S.C. SUPREME COURT**

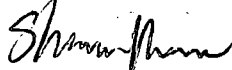
Dear Clerk,

Enclosed please find my Amended Notice of Appeal, Response to 12-14-17 Conditional Order of Dismissal, and relevant attachments for filing. You will find that this appeal has been transferred from the South Carolina Court of Appeals.

Thank you for your attention to this matter.

Best wishes,

Shamar L. Macon



**RECEIVED**

DEC 27 2017

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appellate Case No. 2017-002524

**S.C. SUPREME COURT**

Shamar L. Macon.....Appellant,

v.

The State.....Respondent.

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AMENDED NOTICE OF APPEAL

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This is an appeal from a Post Conviction Relief action in 2016-CP-10-5452. The Appellant initially appealed from the October 19, 2017 Conditional Order of Dismissal, however, the Appellant was not properly served with said order, according to Rule 4, SCRCP, at the time when the Notice of Appeal was filed with the South Carolina Court of Appeals.

Since the filing of the Notice of Appeal, the South Carolina Court of Appeals, by its December 13, 2017 Order, transferred the appeal to this Court. After said transfer, the October 19, 2017 Conditional Order of Dismissal was re-served upon the Appellant on December 14, 2017 to cure insufficient service of process.

To ensure that there is no procedural irregularity after the effecting of proper service, the Appellant has filed an additional Response to the Conditional Order of Dismissal, in replication to the original, with minor additions. A copy is herewith attached for the Court's inspection. Based upon

the foregoing, this issue may not be ripe for appeal, where this matter has not yet become final.

December 18, 2017

Ridgeland, South Carolina

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Shamar L. Macon, Appellant

Ridgeland Corr. Inst.

Post Office Box 2039

Ridgeland, SC 29936



With hindsight, the Applicant was not informed at the sentencing phase after his trial that the requirements contained in S.C. Code section 24-21-560 would be a collateral "collateral consequence" of his sentence, and unlike the plea process, the statute itself was not notice that the Community Supervision Program would be a collateral consequence of the Applicant's sentence. Being that the Applicant was facing sentencing after his trial, and not by waiver of his rights and a plea, he should have been informed on the record that the imposition of the Community Supervision Program would be a "direct consequence" of the sentence. This would have enabled the Applicant to make an objection to the construction and application of the statute to his particular sentence, and it would have preserved the issue for direct review. As a result of this shortcoming, the Applicant was denied effective representation and was prejudiced thereby in violation of his right to due process by the deprivation of notice, a meaningful opportunity to be heard, and review.

In addition to the above, and from another standpoint, the Applicant was denied due process by the Court's failure to pronounce in its sentence that the Community Supervision Program would be included as a part of the Applicant's sentence. Irregardless of the statutory mandate and its construction regarding notice, clearly established law required the Court to pronounce during sentencing that the Community Supervision Program would be a part of the Applicant's sentence, where it is a procedural requirement that a sentence must be imposed by a judge, on the record, in court. Being that the Community Supervision Program was not ordered by the Court, it is not a part of the Applicant's sentence, and such application is therefore a nullity. See Exhibits B and C. Also see Early v Murray, 451 F.3d 71 (2006).

The administrative alteration of the Applicant's sentence by adding two

(2) years Community Supervision, without notice, is in violation of his right to due process. The circuit court record reflects that the sentencing judge did not include during sentencing that the Community Supervision Program would be a part of the sentence. It is apparent from the judicial record that the inclusion of the Community Supervision Program was administrative, and that the imposition occurred after sentencing, without a judge, and without notice.

The administrative increase of the Applicant's twenty-five (25) year sentence by the imposition of two (2) additional years of Community Supervision is a violation of the Ex Post Facto Clause. The trial Court sentenced the Applicant to a term of twenty-five (25) years, and the record has no indication that the sentence would exceed that term. However, after the imposition of the sentence the SCDC, or SCDPPPS, added an additional two (2) years to the Applicant's sentence. This obviously increased the sentence and the time that was originally imposed.

Furthermore, the administrative increase of two (2) years Community Supervision by requiring the Applicant to serve an additional two (2) years after the expiration of his sentence of twenty-five (25) years is an unlawful application of statutory law and liberty constraint, and it constitutes double jeopardy. As shown by the sentencing record, there is no residual implication, such as could be inferred from a suspended sentence, where there is a greater portion included into the sentence for which the Community Supervision Program could operate as a part of the sentence. After the Applicant completes his twenty-five (25) year sentence, with credit for earned work credits (EWC) as provided by S.C. Code section 24-13-230 and SCDC policy OP-21.09, it will be the functional equivalent of day for day service of twenty-five (25) years. Therefore, the imposition of the Community Supervision Program would obviously be in excess of the original sentence that was imposed by the trial court.

Lastly, the Applicant should be afforded an opportunity to present his actual discovery claim due to the deprivation of notice and the procedural irregularities which obstructed the timely presentation of this issue. There is nothing that is contained in the PCR Act, or case law, which would prevent the Post Conviction Relief Court from hearing this equitable matter and from declaring that the imposition of the Community Supervision Program in this case would be unconstitutional and contrary to clearly established law. If this matter is not addressed at this juncture, it will create a constitutional injustice upon the completion of the Applicant's sentence. Based upon this reasoning, the Applicant requests the following:

1. The appointment of an attorney;
2. A hearing on the merits;
3. A declaratory judgment as to the imposition of the CSP in this case;
4. Equitable relief and the correction of the sentence; and
5. For such other and further relief as the Court deems just and proper.

December 18, 2017

Ridgeland, South Carolina

Respectfully submitted,



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Shamar L. Macon, Applicant

Ridgeland Corr. Inst.

Post Office Box 2039

Ridgeland, SC 29936

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**  
Post Office Box 21787 – Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated C/O A. HARRIS (*Server*) as his duly authorized agent for the purpose of making service on the below named individual.

STATE OF SOUTH CAROLINA )  
COUNTY OF JASPER )

**AFFIDAVIT OF PERSONAL SERVICE**

On this 14 day of DECEMBER, 2017, I served the Conditional Order of Dismissal on *Inmate* Macon, Shamar, *SCDC Inmate Number 238502*, by delivering personally and leaving a copy of same at Ridgeland *Correctional Institution*, RIDGELAND, SC. I am not a party to this action.

s/ A. Harris C/O  
*SCDC Server*

**SWORN TO AND SUBSCRIBED BEFORE ME**

this 14 day of December, 2017.

Deborah Ferguson  
*Notary Public for South Carolina*  
My commission expires: 10-1-25

**ACCEPTANCE OF SERVICE**

Service of a copy of the within Legal Pleadings is accepted at the South Carolina Department of Corrections (Ridgeland *Correctional Institution*), JASPER County, SC this 14 day of DECEMBER 2017.

s/ Shamar Macon 238502  
*Inmate Macon, Shamar*  
*SCDC Inmate Number 238502*

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Shamar Lee Macon, #238502,  
Applicant,

v.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

2016-CP-10-5452

**CONDITIONAL ORDER OF DISMISSAL**

BY                       
JULIE J. HINES, CLERK  
2017 OCT 25 PM 4:53  
CLERK OF COURT

This matter comes before the Court by way of the application for post-conviction relief (PCR) filed on October 13, 2016 by Shamar Lee Macon (Applicant). Respondent made its Return requesting the application be summarily dismissed.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the February 2003 term of the Charleston County Grand Jury for armed robbery (2003-GS-10-0875) and kidnapping (2003-GS-10-0876). On September 18, 2003, Applicant pled guilty before the Honorable Deadra L. Jefferson and was sentenced to confinement for period of twenty-five (25) years for each offense. Applicant was represented by Robert G. Howe, Esquire. The sentences were to run concurrently. Applicant did not appeal his plea or sentence.

**2004-CP-10-3382**

On August 12, 2004, Applicant filed his first application for post-conviction relief in which he raised the following grounds for relief:

1. Lack of subject-matter jurisdiction.
2. Ineffective assistance of counsel.
3. Involuntary guilty plea.

Respondent made its Return on or about October 1, 2004. An evidentiary hearing into the matter was convened on April 31, 2006 before the Honorable William P. Keesley. Applicant was present and represented by H. Stanley Feldman, Esquire. Matthew Friedman, Esquire of the South Carolina Attorney General's Office, represented Respondent. By written order dated April 31, 2006, Judge Keesley dismissed the application with prejudice.

**2008-CP-10-4909**

Applicant then filed his second application for post-conviction relief on August 26, 2008, in which he raised the following grounds for relief:

1. Ineffective assistance of plea counsel.
2. Ineffective assistance of PCR counsel.

On June 14, 2009, Judge Jefferson dismissed the application with prejudice. Applicant appealed.

On July 21, 2009, the South Carolina Supreme Court issued the Order dismissing Applicant's appeal. The Remittitur was issued on August 11, 2009.

**2010-CP-10-4675**

Following the dismissal of Applicant's PCR appeal, he filed a third application for post-conviction relief. In his application he alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR counsel.
2. Involuntary guilty plea.

On November 3, 2010, the Honorable R. Markley Dennis Jr., dismissed the application with prejudice.

**CURRENT APPLICATION**

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

1. "Recent discovery."<sup>1</sup>
  - a. "Applicant recently discovered that the state is requiring him to serve two (2) years community supervision (CSP) under section 24-21-560 after his max out date for his active twenty-five (25) year sentence, which imposed by the Honorable Deadra L. Jefferson on September 18, 2003.
  - b. "The transcript of record of the September 18, 2003 sentencing proceeding evinces that the Applicant was not sentenced to, nor was there a conditional plea for community supervision. Therefore, it is not, nor can it be a collateral consequence of the Applicant's plea."
2. "Administrative enhancement of Court's sentence."
  - a. "The September 18, 2003 written orders of commitment do not indicate that the Applicant was sentenced to two (2) years community supervision. Therefore, the Applicant's sentence may not be increased thereafter by an administrative order."
  - b. "Applicant was not sentenced to a suspended sentence for which community supervision can be applied, where his current sentence is a straight twenty-five year cap. Considering this and earned work credit pursuant to S.C. Code § 24-13-230, once the Applicant completes his sentence it will be the entire functional equivalent of twenty-five years."
  - c. "The imposition and liberty constraint of community supervision after the Applicant's max out will obviously deny him substantive and procedural due process where his sentence would be enhanced, and it would also constitute double jeopardy in violation of both the fifth and fourteenth amendments of the United States Constitution."
  - d. "The imposition and liberty constraint of community supervision would be contrary to state and federal Supreme Court precedent, and would also be deprivation of equal protection of the law."

Also, before the Court are the records of the Charleston County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, records from Applicant's prior PCR actions, Applicant's appellate records, and the records from this PCR action.

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<sup>1</sup> Respondent interpreted this as a claim of newly-discovered evidence.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

### **Statute of Limitations**

The Court finds that this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 ("the Act"). Specifically, the Act requires as follows:

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

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

Applicant pled guilty to the offenses he now challenges on September 18, 2003. Accordingly, Applicant was required to file this Application on or before September 18, 2004. Applicant did not file this Application until October 13, 2016, which was well beyond the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). 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, 611 S.E.2d 494 (2003). In addition, S.C. Code Ann. §17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there

is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, this application is dismissed for failure to file within the time mandated by the Act.

### Successive

Similarly, this application for post-conviction relief is summarily dismissed because it is successive to the previous application for post-conviction relief and fails to state a claim upon which relief can be granted. S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, *unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.*

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991).

“All applicants are entitled to a full and fair opportunity to present claims in one PCR application.” Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). “Successive PCR applications and appeals are generally disfavored because they allow an applicant to receive more than ‘one bite at the apple’ as it were.” Id. The “burden is on the applicant to establish that any new ground raised in a subsequent application could not have been raised in a previous application.” Id.

Applicant’s current allegations could have been raised in the proceedings based on Applicant’s prior application for post-conviction relief. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and

the Court summarily dismisses the application as successive to Applicant's previous PCR application.

### Newly-Discovered Evidence

Lastly, The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material facts not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). A defendant requesting a new trial based on after-discovered evidence after a guilty plea must show:

(1) The newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the 'interest of justice' requires the applicant's guilty plea to be vacated.

Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (2014).

Here Applicant alleges that he recently discovered he is required to participate in community supervision following the completion of his sentence. Applicant's claim of alleged "newly-discovered evidence" fails to meet the burden required to be granted a new trial. While under S.C. Code § 17-27-45(c), a newly-discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence *could have been* ascertained, Applicant has failed to set forth why such alleged evidence was not readily discoverable at the time of trial. Before the Court will hold an evidentiary hearing, Applicant must make a prima facie showing that he is entitled to relief.

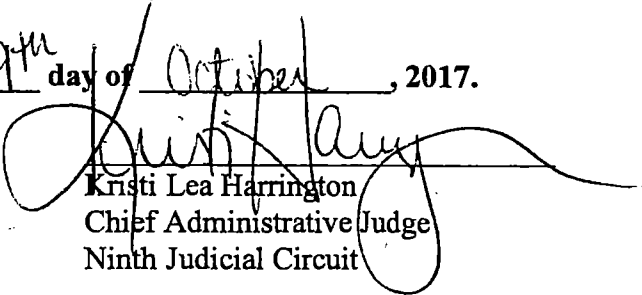
Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has entirely failed to make a showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter must be summarily dismissed with prejudice.

**CONCLUSION**

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Rasheeda Cleveland, Esquire  
PCR Division 9<sup>th</sup> Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 19<sup>th</sup> day of October, 2017.

  
Kristi Lea Harrington  
Chief Administrative Judge  
Ninth Judicial Circuit

Monck's Corner, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

Shamar L. Macon, )  
Applicant, )

VS. )

State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT  
CASE NO: 2016-CP-10-5452

AFFIDAVIT OF MAILING **RECEIVED**

DEC 27 2017

S.C. SUPREME COURT

I, Shamar L. Macon, have served the Office of the Attorney General with the Applicant's Response to the 12-14-17 Conditional Order of Dismissal and Amended Notice of Appeal by placing a copy of same in the United States Postal Mail, with proper postage, addressed to: Rasheeda Cleveland, Office of the Attorney General, Post Office Box 11549, Columbia, SC 29211.

December 18, 2017  
Ridgeland, South Carolina

Shamar L. Macon

Shamar L. Macon, Applicant  
Ridgeland Corr. Inst.  
Post Office Box 2039  
Ridgeland, SC 29936

Sworn to and subscribed before me  
this 19 day of Dec., 2017

Virginia Polinson  
Notary Public for South Carolina

My commission expires: May 26, 2021



20180707 09:54

# The South Carolina Court of Appeals

Shamar Lee Macon, #238502, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-002524

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## ORDER

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This case is transferred to the Supreme Court of South Carolina pursuant to Rule 204(a) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

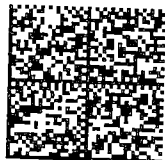
cc:  
Rasheeda Cleveland, Esquire  
The Honorable Daniel E. Shearouse

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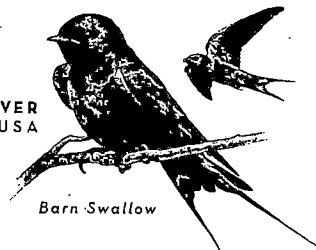
Sham & Macon 238502  
Ridgeland, CORR. Inst  
P.O. BOX 2039  
Ridgeland, S.C. 29936



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**RIDGELAND CORRECTIONAL  
INSTITUTION**

DEC 19 2017

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Christmas  
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