Rev.Willie Johnson,#127009 E-A1-7
Kirkland Correctional Institution
4344 Broad River Road
Columbia, South Carolina 29210

The Honorable Julie J. Armstrong, Clerk
Charleston County, Clerk of Court
100 Broad Street, Suit 106
Charleston, SC 29401

RE: Willie Johnson,#127009 v. State of South Carolina
Case No.: 2017-CP-10-1194

Dear Ms.Armstrong:

Enclosed please find the original Notice of Appeals in the above-captioned case. Along, with a Proof of Service. Also, with the Notice of Appeals please forward Final Order of Dismissal, Order on Recusel and all Records bearing my name in your office to the Clerk of Court of Supreme Court. I would appreciate you stamping as "filed" and returning to me in the self-addressed stamped envelope enclosed for your convenience.

Thank you for your assistance in this matter.

Willie Johnson

Rev.Willie Johnson,#127009

cc: Rasheeda Cleveland, Asst. Attoney General

THE STATE OF SOUTH CAROLINA

IN The Supreme Court

APPEAL FROM CHARLESTON COUNTS

COURT OF COMMON PLEAS

R. MARKLEY DENNIS,JR. CIRCUIT COURT JUDGE

CASE NO.: 2017-CP-10-1194

Rev.Willie Johnson, ...Appellant

v.

State of South Carolina, ... Respondent

NOTICE OF APPEAL

Rev. Willie Johnson, #127069 Appeals the Final Order of Dismissal of the Honorable R. Markley Dennis, Jr. entry of this order on October 12,2017 Appellant received written notice of the order on November 2,2017. Appellant Appeal the Orden on Recusal, due to no notice of the Order.

November 3,2017

Rev.Willie Johnson,#127069
Kirkland Correction Institution
4344 Broad River Road
Columbia, SC 29210

OTHER COUNSEL OF RECORD:
Rasheeda Cleveland
Stafff Attorney
P.O. Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

R.MARKLEY DENNIS, JR. CIRCUIT COURT JUDGE

Case No.: 2017-CP-10-1194

Rev.Willie Johnson, ...Appellant

v.

State of South Carolina, ... Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Rasheeda Cleveland, Asst. Attorney General by depositions a copy of it in the United States Mail Postage Prepaid, on November 3,2017, P.O. Box 11549, Columbia, SC 29211.

November 3,2017

Willie Johnson

Rev.Willie Johnson, #127009
Kirkland Correctional Institution
4344 Broad River Road
Columbia, SC 29210

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AT
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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Willie Johnson, #127069, a/k/a Rev. Willie Johnson	)	Case No.: 2017-CP-10-1194
Applicant,	)	**FINAL ORDER OF DISMISSAL**
v.	)	
State of South Carolina,	)	
Respondent.	)	

FILED
2017 OCT 12 AM 10:38
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed March 8, 2016[1], and transferred to Charleston County on March 7, 2017. Respondent made its Return on or about May 15, 2017 requesting that the application be summarily dismissed as untimely, successive, barred by the doctrine of res judicata, and without merit.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted during January 1985 term of the Charleston County Grand Jury for Murder (Indictment #: 1985-GS-10-0159). Mark L. Archer, Esquire and Daniel A. Beck, Esquire represented the Applicant. Charles Molony Condon, Esquire prosecuted the case. Applicant proceeded to a jury trial before the Honorable Thomas L. Hughston, Jr., on April 17, 1985. Applicant was found guilty as indicted on April 18, 1985. Judge Hughston sentenced Applicant to incarceration for life. A timely Notice of Appeal was filed and perfected. During the pendency of his appeal, Applicant filed his first application for post-

[1] Applicant originally filed this Application in Richland County on March 8, 2016. Thereafter, by written order filed February 9, 2017, the Honorable DeAndrea G. Benjamin ordered venue transferred to Charleston County pursuant to S.C. Code § 17-27-40. (2016-CP-40-1510). The Application was filed in Charleston County on March 7, 2017.

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conviction relief on June 28, 1985; the matter was dismissed without prejudice by Order dated January 11, 1986.[2] Later that year, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence by opinion filed on December 8, 1986. State v. Johnson, Op. No. 86-MO-455 (S.C. Sup. Ct. Order filed Dec. 8, 1986). Applicant thereafter filed three successive applications for post-conviction relief in the Circuit Court of Charleston County (1987-CP-10-2062; 1996-CP-10-1216; 2004-CP-10-3752), all three of which were denied and dismissed. Applicant also filed six Petitions for Habeas Corpus in federal court between March 30, 1989 and April 23, 2009; these petitions were, too, dismissed.

II. CURRENT APPLICATION

Applicant filed his fifth and current application for post-conviction relief on or about March 7, 2017. In this application and supporting memorandum, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "The Applicant illegally detained in the South Carolina Department of Corrections under [an] unsigned Court order."

    a. "The trial judge failed to actually sign the court order to the South Carolina Department of Corrections . . ."

    b. Respondent has no jurisdiction over the Applicant and he is being illegally detained. As a result, the court order, dated April 22, 1985, bore only a typewritten name of the trial judge."

2. "Jurisdiction of the PCR Court."

Respondent made its Return on or about May 15, 2017, requesting that the application be summarily dismissed as untimely, successive, barred by the doctrine of res judicata, and without merit. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records

[2] Respondent has informed the Court that it, regrettably, cannot find either a docket number or an order of dismissal in this premature action. However, the Court, in reliance upon Respondent's assertion in its June 11, 1987 "Return and Motion to Dismiss," finds that Applicant did, in fact, file an Application for Post-Conviction Relief on June 28, 1985. Applicant does not contest this portion of procedural history.

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attached thereto, this Court issued a Conditional Order of Dismissal signed May 18, 2017 and filed May 23, 2017, provisionally denying and dismissing this action and giving Applicant twenty (20) days from the date of service of said Order in which to show the Court why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated June 7, 2017, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant filed a document captioned "Applicant's Response to Conditional Order of Dismissal" on June 15, 2017, in which Applicant argues:

1. "The trial judge failed to actually sign the Court Order to the South Carolina Department of Corrections to [validity] the conviction and sentence."

2. "Respondent Conditional Order of Dismissal is moot because the Respondent failed to Answer Summons within thirty (30) days."

3. "Respondent filed their Conditional Order Dismissal prematurely, before the Court [adjudicate] the Motion for Default Judgment."

4. "Applicant argues that Respondent failure to plea an Affirmative Defense waives the defense."

5. "Respondent failed to address merits in PCR application, they ignore the [Probative Facts in the case and Respondent change[d] the caption in the case and Applicant initial file under Rev. Willie Johnson v. Bryan Stirling, Director of South Carolina Department of Corrections."

6. "Respondent has no jurisdiction over the Applicant being illegally detained by SCDC. As a result, the Court Order, dated April 22, 1985 bear only a ty[p]ewritten name of the trial judge. It appear[s] that someone signed the trial judge['s] name on the face of the indictment."

7. "Respondent violated the Procedural Due Process by the failure to follow the Supreme Court ruling in In Re Smith, 559 S.E.2d 584 (2002)."

8. "Respondent committed [an] obstruction of justice and conspiracy to commit official misconduct and perjury."

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Upon receipt of Applicant's Response to the Conditional Order of Dismissal, Respondent drafted a proposed Final Order of Dismissal. This Order was submitted to the Court for review and mailed to the Applicant on July 18, 2017. In response, Applicant submitted a "Memorandum in Opposition to Respondent's Final Order and Motion to Dismiss" dated July 25, 2017, and filed with the Court on August 9, 2017. Because this Court has not issued the Final Order of Dismissal, Applicant's memorandum is construed as an additional response to this Court's Conditional Order of Dismissal.

In his memorandum, Applicant reasserts his claim that he is being illegally detained by the South Carolina Department of Corrections under an unsigned Court Order. In support thereof, Applicant cites to State v. Covert, 368 S.C. 188, 628 S.E. 2d 482 (2006) (holding that a search warrant is not issued until signed by an appropriate magistrate, municipal judicial officer, or judge of a court of record); Davis v. Sanders, 40 S.C. 507, 19 S.E 138 (1894) (holding that an arrest warrant lacking the signature of the officer who issued it constitutes an "unfinished paper"); and DuBose v. DuBose, 90 S.C. 87, 72 S.E. 645 (1911) (holding that an arrest warrant did not confer authority upon a sheriff to make an arrest because the magistrate did not sign the warrant). Applicant also cites to In Re Smith, 348 S.C. 222, 559 S.E.2d 584 (2002) to support his claim. In Smith, the South Carolina Supreme Court found that a magistrate judge violated the Code of Judicial Conduct by knowingly allowing his personnel to sign his court orders. 348 S.C. 222, 559 S.E.2d 584 (2002). Applicant also claims that "a typewritten name on a Court Order is not a signature" under South Carolina Rule of Civil Procedure 11. Applicant thereby asks this Court to "declare the Order void."

Applicant then reasserts his argument that Respondent "committed an obstruction of justice and conspiracy to commit official misconduct and perjury and racial prejudice and bias." Applicant

Rec'd 4

alleges that Respondent did so by filing its Return to his PCR Application on May 15, 2017 in violation of South Carolina Rule of Civil Procedure 12(a), and then improperly relying upon Herring v. State, 262 S.C. 597, 206 S.E.2d 885 (1974), to excuse the delay. Appellant argues that Respondent further obstructed justice and denied him procedural due process by deliberately withholding information in the "Procedural History" Section of its Return. Specifically, Appellant alleges that Respondent failed to include in its Return that the Honorable Deadra L. Jefferson presided over Applicant's "Motion for New Trial Based on After Discovered Evidence" on January 9, 2009. According to the Applicant, "[j]udge who presided at Applicant's hearing may not preside over subsequent post-conviction proceedings..." However, Applicant does not cite to any South Carolina statutes or case law in support of this argument.[3]

Lastly, Applicant asks this Court to reject the proposed Order of Dismissal in order to "send a message to the Respondent [that] the Court will not turn a blind [eye] to the injustice in this State." In support of this request, Applicant cites to Cannon 2(A) and Cannon 3(B)(2) of the South Carolina Code of Judicial Conduct.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the Applicant's Response to the Conditional Order of Dismissal and Memorandum in Opposition to Respondent's Final Order and Motion to Dismiss in their entirety, as well as the original pleadings, and finds that the Conditional Order of Dismissal should become final for the reasons detailed below.

Statute of Limitations

[3] Applicant's argument on this issue is addressed by separate Order of this Court dated October 5, 2017.

The Court holds that the instant application for post-conviction relief is hereby dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act, S.C. Code. Ann. § 17-27-10 to § 17-27-160 ("The Act"). Specifically, the Act provides:

> 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 remitter 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, 1995. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted and sentenced on April 18, 1985. The South Carolina Court of Appeals affirmed his conviction and sentence on December 8, 1986. Applicant was, therefore, required to file this Application on or before July 1, 1996. However, Applicant did not file his current application for post-conviction relief until March 8, 2016 which was well beyond the statutory filing period.

A motion requesting summary judgment, like Respondent's Return, 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). Moreover, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application [for post-conviction relief] where 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." Accordingly, this Court dismisses the Applicant's current application for failure to file within the time frame mandated by the Act.

Successive

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This Court also finds that Applicant's current application for post-conviction relief is successive to his previous PCR applications. South Carolina 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. 614, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Indeed, section 17-27-90 of the South Carolina Code 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 offense 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.

S.C. Code Ann. § 17-27-70.

Thus, 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 393 (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. That is to say, the applicant may not assert grounds for relief in a post-conviction application if he could have asserted those same allegations in a previous application. See id. The applicant bears the burden of showing that the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant here has failed to establish any sufficient reason why he could not have raised his current allegations in his previous four applications for post-conviction relief. Indeed, the Applicant could have raised his current allegations in his first, non-premature application for

post-conviction relief filed on April 22, 1987. Moreover, the Applicant did, in fact, assert the very same allegation he presently asserts in his fourth application for post-conviction relief filed on September 8, 2004 (2004-CP-10-3752). The allegation at issue being that he was illegally detained by the South Carolina Department of Correction on an unsigned order. The Court, therefore, concludes that the current application for post-conviction relief is successive and barred under S.C. Code Ann. § 17-27-90.

Res Judicata

The Court further finds that the doctrine of *res judicata* bars Applicant's claims in the current application. *Res judicata* prohibits "subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." Plum Creek Dev. Co. v. Conway, 334 S.C. 30, 512 S.E.2d 106 (1999) (citation omitted). *Res Judicata* also bars any issues that were raised or *could have been raised* in the former action. Id. (citing Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n S.C., 294 S.C. 9, 362 S.E.2d 176 (1987)).

Applicant filed his first, timely application for post-conviction relief on April 22, 1987; it was dismissed on March 9, 1988. Applicant appealed the denial of his initial PCR application and subsequently filed multiple, successive PCR and federal habeas petitions based on his April 18, 1985 conviction. His current allegations arise from the same conviction challenged in his prior actions. Moreover, the crux of Applicant's current application is that he is being detained unlawfully by the South Carolina Department of Corrections because the order committing him to the SCDC is unsigned by the presiding judge. The Applicant certainly could have raised this alleged issue as early as 1987 when he filed his first application for post-conviction relief, if, as Applicant alleges, the presiding judge did, indeed, fail to sign his sentencing order in 1985.

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However, the Applicant did not raise this claim until his *fourth application for post-conviction relief* filed in September of 2004. The Court must, therefore, conclude that the Applicant has had full opportunity to raise this claim since 1987, and did, in fact, raise this claim in his fourth PCR application. Accordingly, this Court summarily dismisses the application as barred by *res judicata.*

Meritless

Likewise, the Court finds Applicant's current application for post-conviction relief to be without merit. The Applicant alleges that he is being held unlawfully because the Order committing him to the Department of Corrections was unsigned by the Judge who presided over his criminal trial. This claim has no basis in fact. The indictment and verdict form, attached hereto, bear the handwritten signature of the foreman of the jury finding the Applicant guilty of murder and the handwritten signature of the presiding judge, the Honorable Thomas L. Hughston, Jr. Judge Hughston's handwritten signature appears below the following statement: "The Defendant, Willie Johnson, under the jurisdiction and control of the South Carolina Corrections for a period of his life." Accordingly, the Court finds the Order committing the Applicant to the SCDC to be valid, and thereby concludes that the Applicant is lawfully detained by SCDC.

In so ruling, the Court notes that the cases cited by the Applicant are inapplicable. Indeed, State v. Covert, Davis v. Sanders, and DuBose v. DuBose are not dispositive of the issue presently before this Court because these cases discuss the requirements concerning judicial signatures *on warrant applications.* These cases do not expound on the signature requirements for sentencing orders, let alone address the type of signature that must appear on these types of orders. Likewise, the case of In Re Smith is also inapplicable. In this case, the Supreme Court of South Carolina reprimanded a magistrate judge for knowingly allowing his office personnel to sign orders in his name. In Re Smith, 348 S.C. 222, 223, 559 S.E.2d 584, 585 (2002). The Applicant here does not

Rnd 9

argue that Judge Hughston permitted his staff to sign the order in lieu of signing it himself, nor does Applicant offer any evidence to that point. Rather, the Applicant argues that Judge Hughston failed to sign the Order altogether, which, as previously discussed, is simply not true. Finally, the Court notes that, despite Applicant's assertions to the contrary, South Carolina Rule of Civil Procedure 11(a) cannot be construed so as to forbid a member of the judiciary from utilizing an electronic or "typewritten" signature as the Applicant claims. Rather, it requires attorneys or parties to a case to sign their names to "pleadings, motions, or other papers." *See* SCRAP 11(a). Regardless, the indictment and verdict form bears the handwritten signature of the trial judge committing Applicant to confinement for life rendering this particular argument moot.

The Court also finds Applicant's argument that Respondent committed an "obstruction of justice" by failing to answer his application within thirty (30) days to be without merit. In support of his Argument, Applicant cites S.C. Code Ann. § 17-27-70(a), which provides that "the state shall respond [to an application for post-conviction relief] by answer or by motion" "within thirty days after the docketing of the application, or within any further time the court may fix." While the record indicates that the State of South Carolina did, indeed, fail to file its Return within the requisite thirty (30) day time period, the Court finds that the State's delay in filing the return was not prejudicial to the Applicant since his Application is otherwise meritless. See Herring v. State, 262 S.C. 597, 206 S.E.2d 885 (1974) (holding that the State's eleven (11) month delay in filing a return to application for post-conviction relief was not prejudicial to the applicant since the application was found to be without merit).

The Court is likewise unpersuaded to deny the Final Order of Dismissal as Applicant requests because of "injustice in [the] American [legal system.]" The Court does not find this argument by Applicant to be particularly relevant here because it focuses on recent incidents the

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Applicant perceives as unjust and corrupt. Indeed, in his current application, Applicant refers to the police shootings that occurred in Ferguson, Missouri, and North Charleston, South Carolina in 2014 and 2015, respectively. While Applicant is entitled to opine that these incidents are indicative of a corrupt criminal justice system, these incidents are wholly unrelated to the Murder conviction he seeks to challenge in his current PCR application. Thus, the Court cannot and will not consider the incidents cited in ruling upon Applicant's current PCR application.

CONCLUSION

This Court has reviewed Applicant's Response to the Conditional Order of Dismissal and Memorandum in Opposition to Respondent's Final Order and Motion to Dismiss, 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.

IT IS THEREFORE ORDERED that for the reasons set forth herein, 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 thirty (30) days of the service of this Order to secure Appellate Review. *See* SCACR 203. Applicant's attention is further directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

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

The Honorable R. Markley Dennis, Jr.
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina.
October 10, 2017

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Willie Johnson, #127069, a/k/a Rev. Willie Johnson Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2017-CP-10-1194 **ORDER ON RECUSAL**

FILED
2017 OCT 12 AM 10:38
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed March 8, 2016[1], and transferred to Charleston County on March 7, 2017. Respondent made its Return on or about May 15, 2017 requesting that the application be summarily dismissed as untimely, successive, barred by the doctrine of res judicata, and without merit.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted during January 1985 term of the Charleston County Grand Jury for Murder (Indictment #: 1985-GS-10-0159). Mark L. Archer, Esquire and Daniel A. Beck, Esquire represented the Applicant. Charles Molony Condon, Esquire prosecuted the case. Applicant proceeded to a jury trial before the Honorable Thomas L. Hughston, Jr., on April 17, 1985. Applicant was found guilty as indicted on April 18, 1985. Judge Hughston sentenced Applicant to incarceration for life. A timely Notice of Appeal was filed and perfected. During the pendency of his appeal, Applicant filed his first application for post-

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conviction relief on June 28, 1985; the matter was dismissed without prejudice by Order dated January 11, 1986.[2] Later that year, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence by opinion filed on December 8, 1986. State v. Johnson, Op. No. 86-MO-455 (S.C. Sup. Ct. Order filed Dec. 8, 1986). Applicant thereafter filed three successive applications for post-conviction relief in the Circuit Court of Charleston County (1987-CP-10-2062; 1996-CP-10-1216; 2004-CP-10-3752), all three of which were denied and dismissed. Applicant also filed six Petitions for Habeas Corpus in Federal Court between March 30, 1989 and April 23, 2009; these petitions were, too, dismissed.

II. CURRENT APPLICATION

Applicant filed his fifth and current application for post-conviction relief on or about March 7, 2017. In this application and supporting memorandum, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "The Applicant illegally detained in the South Carolina Department of Corrections under [an] unsigned Court order."

    a. "The trial judge failed to actually sign the court order to the South Carolina Department of Corrections . . ."

    b. Respondent has no jurisdiction over the Applicant and he is being illegally detained. As a result, the court order, dated April 22, 1985, bore only a typewritten name of the trial judge."

2. "Jurisdiction of the PCR Court."

Respondent made its Return on or about May 15, 2017, requesting that the application be summarily dismissed as untimely, successive, barred by the doctrine of res judicata, and without

[2] Respondent has informed the Court that it, regrettably, cannot find either a docket number or an order of dismissal in this premature action. However, the Court, in reliance upon Respondent's assertion in its June 11, 1987 "Return and Motion to Dismiss," finds that Applicant did, in fact, file an Application for Post-Conviction Relief on June 28, 1985. Applicant does not contest this portion of procedural history.

merit. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed May 18, 2017 and filed May 23, 2017, provisionally denying and dismissing this action and giving Applicant twenty (20) days from the date of service of said Order in which to show the Court why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated June 7, 2017, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant filed a document captioned "Applicant's Response to Conditional Order of Dismissal" on June 15, 2017, in which Applicant argues:

1. "The trial judge failed to actually sign the Court Order to the South Carolina Department of Corrections to [validity] the conviction and sentence."

2. "Respondent Conditional Order of Dismissal is moot because the Respondent failed to Answer Summons within thirty (30) days."

3. "Respondent filed their Conditional Order Dismissal prematurely, before the Court [adjudicate] the Motion for Default Judgment."

4. "Applicant argues that Respondent failure to plea an Affirmative Defense waives the defense."

5. "Respondent failed to address merits in PCR application, they ignore the [Probative Facts in the case and Respondent change[d] the caption in the case and Applicant initial file under Rev. Willie Johnson v. Bryan Stirling, Director of South Carolina Department of Corrections."

6. "Respondent has no jurisdiction over the Applicant being illegally detained by SCDC. As a result, the Court Order, dated April 22, 1985 bear only a ty[p]ewritten name of the trial judge. It appear[s] that someone signed the trial judge['s] name on the face of the indictment."

7. "Respondent violated the Procedural Due Process by the failure to follow the Supreme Court ruling in In Re Smith, 559 S.E.2d 584 (2002)."

8. "Respondent committed [an] obstruction of justice and conspiracy to commit official misconduct and perjury."

Upon receipt of Applicant's Response to the Conditional Order of Dismissal, Respondent drafted a proposed Final Order of Dismissal. This Order was submitted to the Court for review and mailed to the Applicant on July 18, 2017. In response, Applicant submitted a "Memorandum in Opposition to Respondent's Final Order and Motion to Dismiss" dated July 25, 2017, and filed with the Court on August 9, 2017. Because this Court has not issued the Final Order of Dismissal, Applicant's memorandum is construed as an additional response to this Court's Conditional Order of Dismissal.

In his memorandum, Applicant reasserts his claim that he is being illegally detained by the South Carolina Department of Corrections under an unsigned Court Order. In support thereof, Applicant cites to State v. Covert, 368 S.C. 188, 628 S.E. 2d 482 (2006) (holding that a search warrant is not issued until signed by an appropriate magistrate, municipal judicial officer, or judge of a court of record); Davis v. Sanders, 40 S.C. 507, 19 S.E 138 (1894) (holding that an arrest warrant lacking the signature of the officer who issued it constitutes an "unfinished paper"); and DuBose v. DuBose, 90 S.C. 87, 72 S.E. 645 (1911) (holding that an arrest warrant did not confer authority upon a sheriff to make an arrest because the magistrate did not sign the warrant). Applicant also cites to In Re Smith, 348 S.C. 222, 559 S.E.2d 584 (2002) to support his claim. In Smith, the South Carolina Supreme Court found that a magistrate judge violated the Code of Judicial Conduct by knowingly allowing his personnel to sign his court orders. 348 S.C. 222, 559 S.E.2d 584 (2002). Applicant also claims that "a typewritten name on a Court Order is not a signature" under South Carolina Rule of Civil Procedure 11. Applicant thereby asks this Court to "declare the Order void."

Applicant then reasserts his argument that Respondent "committed an obstruction of justice and conspiracy to commit official misconduct and perjury and racial prejudice and bias." Applicant

alleges that Respondent did so by filing its Return to his PCR Application on May 15, 2017 in violation of South Carolina Rule of Civil Procedure 12(a), and then improperly relying upon Herring v. State, 262 S.C. 597, 206 S.E.2d 885 (1974), to excuse the delay. Appellant argues that Respondent further obstructed justice and denied him procedural due process by deliberately withholding information in the "Procedural History" Section of its Return. Specifically, Appellant alleges that Respondent failed to include in its Return that the Honorable Deadra L. Jefferson presided over Applicant's "Motion for New Trial Based on After Discovered Evidence" on January 9, 2009. According to the Applicant, "[j]udge who presided at Applicant's hearing may not preside over subsequent post-conviction proceedings..." However, Applicant does not cite to any South Carolina statutes or case law in support of this argument.

Lastly, Applicant asks this Court to reject the proposed Order of Dismissal in order to "send a message to the Respondent [that] the Court will not turn a blind [eye] to the injustice in this State." In support of this request, Applicant cites to Cannon 2(A) and Cannon 3(B)(2) of the South Carolina Code of Judicial Conduct.

Obstruction of Justice
Denial of Procedural Due Process
Recusal

The Court is unpersuaded by Applicant's claim that Respondent committed an "obstruction of justice and violation of procedural due process" by deliberately failing to disclose in the procedural history section of the Conditional Order of Dismissal that the Honorable Deadra L. Jefferson previously heard Applicant's "Motion for New Trial Based on After Discovered Evidence" on January 9, 2009, and issued an Order denying the same on February 24, 2009. Applicant asserts that Judge Jefferson is unable to hear his current PCR application because the "judge who presided at Applicant's [previous] Hearing may not preside over subsequent post-

conviction proceedings." Applicant further asserts that "[i]n the interest of justice, this Court should disqualified himself."

While it is true that "trial courts may not sit in judgment of their own rulings and proceedings," the Applicant does not currently seek relief from the February 24, 2009 Order issued by Judge Jefferson on his "Motion for New Trial." See State v. Bruce, 412 S.C. 504, 509, 772 S.E.2d 753, 756 (2015). The Applicant instead seeks post-conviction relief from his April 18, 1985 Murder conviction heard by the Honorable Thomas L. Hughston, Jr. Because the Applicant seeks post-conviction relief in a matter heard solely by Judge Hughston this Court may preside over Applicant's current PCR application. The Applicant has not raised any issues nor is he seeking any relief related to the February 24, 2009 Order issued by this Court. This Court is not in any manner reviewing its previous Order on Applicant's Motion for a New Trial. In fact, the Court has at the Applicant's request already reviewed its previous Order of February 24, 2009 upon the filing of his Motion for Reconsideration. The Court dismissed as premature the Applicant's Motion for Reconsideration on February 24, 2009, and then later denied his Motion by Order dated March 6, 2009. Applicant thereafter filed a Notice of Appeal with the Supreme Court. Applicant's appeal was dismissed as untimely by the Supreme Court on or about April 22, 2009, and a remittitur was issued on June 10, 2009.

This Court is, therefore, under no obligation to recuse itself in this matter pursuant to precedent. See Floyd v. State, 303 S.C. 298, 299, 400 S.E.2d 145, 146 (1991) (holding that the judge who presided at an applicant's guilty plea, criminal trial, or probation revocation proceeding shall, upon motion, recuse himself in all post-conviction relief hearings involving the same matter). This Court did not preside over Applicant's trial, guilty plea, or probation revocation on the underlying Murder conviction of April 18, 1985. Additionally, the State is under no obligation in

the procedural history of this PCR to disclose the name of a judge on a separate unrelated matter. Further, the Applicant was present and participated in the hearing conducted in 2009 and was well aware of the identity of the Judge hearing his Motion for a New Trial.

Lastly, the Court is aware of its obligations under the South Carolina Code of Judicial Conduct, specifically Canons 2(A) and 3(B)(2) referenced by the Applicant in his Memorandum in Opposition to Respondent's Final Order and Motion to Dismiss. Cannon 2(A) provides that "[a] judge shall respect and comply with the law, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Similarly, Cannon 3(B)(2) states that "[a] judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism." The Court has abided by these canons in rendering its Order on the Conditional Dismissal of this action. The Applicant did not raise these issues until the submission of his second supplemental response to the proposed Final Order of Dismissal. This Court has completed its judicial duties in reviewing the documents, pleadings, and case law submitted by the parties and rendering a conditional Order without prejudice or bias. The Court has acted with the utmost impartiality in considering Applicant's petition, and, therefore, declines to recuse itself on the basis of injustice to the Applicant.

The law and ethics require that a Judge recuse himself in a proceeding in which their impartiality might reasonably be questioned, including but not limited to, instances where they have a personal bias or prejudice against a party. Murphy v. Murphy, 319 S.C. 324, 331, 461 S.E. 2d 39, 42 (1995). Such bias must stem from an extrajudicial source and result in decisions based on information other than what the judge learned from their participation in the case. See State v. Jackson, 353 S.C. 625, 627, 578 S.E. 744, 745 (Ct. App. 2003). It is not enough for the party

seeking disqualification to simply allege bias or prejudice. Id. The party must show some evidence of bias or prejudice. Id. The alleged Bias must be personal as distinguished from judicial. Davis v. Board of Sch. Comm'rs, 517 F.2d 1044 (5th Cir. 1975); Roper v. Dynamique Concepts, Inc., 316 S.C. 131, 447 S.E.2d 218 (Ct. App. 1994). Likewise, the bias must stem from extrajudicial sources and result in a decision on the merits based on considerations other than what the judge learned from his participation in the case. Id. A motion to recuse may not be predicated on the judge's rulings in the case before him or on rulings in a related case, nor on his demonstrated tendency to rule in a particular manner, or on a particular judicial leaning or attitude derived from his experience on the bench. United States v. Grinnell Corp., 384 U.S. 563 (1966); Berger v. United States, 255 U.S. 22, 31 (1921); Mallett v. Mallett, 323 S.C. 141, 473 S.E. 2d 804 (Ct. App. 1996).

The Applicant here has failed to show any evidence of bias or prejudice towards him in the current proceedings in issuing the Conditional Order of Dismissal, nor has he demonstrated or even indicated that the Court acted prejudicially towards him in 2009 when it heard his Motion for a New Trial. In fact, the Applicant even states that he "is not implying this Court would be bias towards him" in his Memorandum in Opposition to Respondent's Final Order and Motion to Dismiss. Moreover, the only "evidence" that the Applicant does offer in support of his argument for recusal is a statement that Judge Jefferson heard and denied his previous Motion for a New Trial. However, a judge is not required to recuse herself if no evidence of bias or prejudice is presented other than prior appearances by the party which resulted in adverse rulings by the judge. See Payne v. Holiday Towers, Inc., 283 S.C. 210, 217, 321 S.E.2d 179, 183 (Ct. App. 1984); see also State v. Cabiness, 273 S.C. 56, 254 S.E.2d 291 (1979) (defendant's three previous appearances in general sessions before the same judge not a basis for disqualification, absent other evidence of bias). The Court thus finds Applicant's claim of bias to be frivolous and without merit.

CONCLUSION

This Court has reviewed Applicant's Response to the Conditional Order of Dismissal and Memorandum in Opposition to Respondent's Final Order and Motion to Dismiss, in conjunction with the original pleadings, and finds his assertions lack sufficient reason and has failed to show why this Court should recuse itself from this matter.

IT IS THEREFORE ORDERED that for the reasons set forth herein, the Court denies any motion for Recusal. However, out of an abundance of caution the Court has referred the Final Order for Dismissal to Judge Dennis for consideration.

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

AND IT IS SO ORDERED this 5th day of October, 2017.

The Honorable Deadra L. Jefferson
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina.