

State of South Carolina
In the Supreme Court

Appeal from Colleton County
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge
Appellate Case: 2017-001915
Lower Court Case: 2013-CP-15-0214

Walter McQuinn 299882 ----- Prose Petitioner
v
State of South Carolina ----- Respondent

APPENDIX

Walter McQuinn 299882
Kirkland T&E/A2-58
4344 Broadriver Rd
Columbia S.C 29910

Christine A. Saville, Esquire
P.O. Box 11549
Columbia S.C 29921

INDEX

Statement of Case	1
Transcript of Guilty Plea	57
Application for Post-Conviction Relief	86
ORDER of Dismissal	93
APPLICATION for Post Conviction Relief	95
Conditional Order of Dismissal	103
Transcript of hearing in re: Objection by appl.	109
Final Order of Dismissal	154
Certi of Court Record	163
Return and Motion to Dismiss	169
Final Order of Dismissal	175

State of South Carolina
County of Colleton
Walter McQuinn & 299992
Plaintiff

Court of Common Pleas
Case No: 2013-CP-15-214

MOTION TO AMEND ①

Pursuant to Rule 15a,
South Carolina Rule Civil
Procedure

State of South Carolina

This motion is to amend the PCR application that has been filed March 19, 2013, within that application under Martinez v Ryan, S.C Code § 17-27-45(B). Martinez v Ryan does not apply in state court. see Bell v State June 20, 2013, 745 S.E2d 397.

Therefore, since the state has not filed a return to the concerns of the Arguments in that application 2013-CP-15-214. I would like to dismiss all the Arguments filed within that application, that is filed under Martinez v Ryan including Martinez v Ryan. However, I want to keep the 2013-CP-15-214 PCR application alive and amend these Arguments and exhibits as these exhibits support these arguments and the arguments filed March 17, 2014, to that application Pursuant to Rule 15a. Under Code of Laws § 17-27-45(C) (2014); 17-27-90 (2014) and Brannon v State, 548 S.E2d 866 (2001). U.S.C.A. 13th Amendment. Petition the government for redress of grievances.

2014 APR 23 AM 11:55

MARTINEZ V. C. GRANT
COLLETON COUNTY
COMMON PLEAS

Given to and subscribed before me
on the 21st day of April, 2014

S. O. M. P. O. W.

(Notary Public of South Carolina)

My Commission Expires 2/24

Applicant was incompetent and PCR Judge waived 2004-CP-15-1002 PCR application and claims from the record without a fully establish complete record with applicant under Oath to confirm the waiver was knowingly voluntarily and intelligently waived with prejudice.

Applicant contends that there is evidence of material fact The order of dismissal of PCR 2004-CP-15-1002 application and claims were not knowingly, voluntarily and intelligently waived because I was deemed incompetent by the South Carolina Department of Mental Health in a Competency to stand trial evaluation dated November 23, 2005 and March 2, 2006 and was preparing for a updated competency to stand trial evaluation Pursuant to State v Blair and S.C. Code Ann. § 44-23-410 (see, evidence entitled exhibit (1); and Exhibit (2) attached to this motion).

The PCR Judge waived the PCR application and claim from the record without conducting a evidentiary hearing in which the PCR Judge was required to carefully question me under Oath on the record about the withdrawal of the PCR application and find out whether the withdrawal was freely and voluntarily and That I knowingly and intelligently elected to have the PCR application dismissed before the PCR Judge's Order of Dismissal was signed withdrawing the PCR application and claims with

Prejudice, the PCR 2004-CP-15-1002 application and claims were waived from the record without a full establish complete record to confirm the waiver was knowingly, voluntarily, and intelligently waived with Prejudice.

I'm entitled to the Constitutional requirements in Brannon v State, 345 S.C. 437, 439, 540 S.E.2d 866, 867 (2001). Brannon held a defendant knowingly and voluntarily waiver of Statutory or Constitutional rights must be establish by a complete record, and may be accomplished by a colloquy between the Court and defendant, between the Court and defendant counsel or both. Under the PCR Rules, an applicant is entitled to a full adjudication on the merits of the original petition, "or" "one bite of the apple". Odom v State, 337 S.C. at 261, 523 S.E.2d at 735.

This reveal ample evidence of material fact ^{law} that existed at the time PCR Judge waived PCR 2004-CP-15-1002 application and claims from the record without a full record with applicant under Oath to confirm the waiver was knowingly voluntarily, and intelligently waived with prejudice. The PCR Judge Prejudice me when he signed the Order of Dismissal without conducting a evidentiary hearing to ascertain whether the withdrawal PCR application was knowingly, voluntarily, and intelligently waived with Prejudice, violating my right to due process and a fair trial.

Conclusion

(4)

Thus, applicant is entitled to a fair evidentiary hearing to present all claims raised in this application 2013-CP-15-214 as a full adjudication on the merits of his original petition, or "one bite of the apple".

Desired relief: Reverse and vacate, as an alternative, grant evidentiary hearing to submit evidence for setting a new trial.



5

ALAN WILSON
ATTORNEY GENERAL

October 23, 2014

The Honorable Patricia C. Grant
Colleton County Clerk of Court
PO Box 620
Walterboro, SC 29488

Re: Walter J. McQuine, #299882 v. State of South Carolina
2013-CP-15-0214

Dear Ms. Grant:

Enclosed please find the original Return and Motion to Dismiss of the Respondent in the above-captioned case for filing in your office.

Sincerely,

Elizabeth H. Neyle
Staff Attorney, PCR Division

EHN/arh

Enclosures

Colleton County Clerk's Records
SCDC Records
PCR Application
Prior records

cc: Walter J. McQuine

⑧

STATE OF SOUTH CAROLINA)
 COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT

Walter J. McQuine,)
 S.C.D.C. No. 299882,)

2013-CP-15-0214

Applicant,)

RETURN AND MOTION TO DISMISS

v.)

State of South Carolina,)

Respondent.)

In response to the post-conviction relief (PCR) application filed by Walter J. McQuine (Applicant) on March 19, 2013, the State (Respondent) would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. He was indicted at the August 2003 term of the Colleton County Grand Jury for murder (2003-GS-15-0491). Everett W. Bennett Jr., Esquire, represented Applicant. On February 5, 2004, Applicant pled guilty to the lesser included offense of voluntary manslaughter. The Honorable Jackson V. Gregory sentenced Applicant to twenty-five years' imprisonment. Applicant did not appeal his plea or sentence.

2004-CP-15-1002

Applicant filed his first PCR application on October 15, 2004, alleging the following grounds for relief:

9

1. Counsel for applicant was ineffective for failing to secure a competency evaluation prior to applicant entering a guilty plea.
2. The applicant's plea of guilty was not freely and voluntarily given due to a lack of competency at the time of the guilty plea.
3. After discovered evidence of lack of competency requires vacation of the conviction and sentence.

Michelle R. Suggs, Esquire, represented Applicant. Salley W. Elliott and Adrienne Turner, Esquires, represented Respondent. The Honorable Carmen T. Mullen dismissed Applicant's application with prejudice by consent order filed August 8, 2007. The order of dismissal indicates Applicant informed his counsel of his intent to withdraw his application with prejudice. Further, the order states Applicant acknowledged that he was satisfied with his counsel and was withdrawing his application freely and voluntarily. Ms. Suggs, Ms. Elliott, and Applicant also signed the consent order of dismissal.

II.

In his *second* and current PCR application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Mental evaluation.
3. Reconsideration modification of sentence.
4. The court was without subject matter/personal jurisdiction to impose sentence.

Applicant submitted a pro se document entitled "Amendment and Additional Pleading to Prior Post-Conviction Relief Application filed March 19, 2012 Pursuant to Rule 15" on April 30, 2013. He further alleges he is being held in custody unlawfully for the following reasons:

1. Counsel was ineffective of assistance by not amending indictments which were not filed with the clerk of court to Applicant's post-conviction relief application as available grounds for relief.

8

2. Applicant has been prejudiced by remaining held confined unlawfully without proper subject-matter and personal jurisdiction to the Department of Corrections for twenty-five years imprisonment.

On June 4, 2013, Applicant submitted a pro se brief in support of his application and amended application. On June 18, 2013, Applicant submitted another pro se amendment and alleged the following grounds for relief:

1. My initial review proceeding counsel Michelle Suggs was ineffective assistance in failing to amend or raise the substantial ineffective assistance trial counsel claim, that trial counsel E.W. Bennett was ineffective assistance in failing to advise applicant of minimum sentence to voluntary manslaughter is not be impose less than 2 years.

Attached herewith and incorporated herein by reference are the Colleton County Clerk of Court records regarding the subject convictions, records from the South Carolina Department of Corrections, and Applicant's previous PCR records. ★

III.

This Court should summarily dismiss the current PCR application because it is successive to Applicant's previous PCR application. 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 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

9

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). 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 Applicant 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 his current grounds for relief were not properly raised in his previous applications. Respondent moves to summarily dismiss this application because it is successive to Applicant's previous PCR application.

IV.

Respondent submits this Court should summarily dismiss this application 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.

10

The South Carolina Supreme Court held that the statute of limitations applies 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 offense he challenges in this application on February 5, 2004. Applicant did not appeal his conviction or sentence; therefore, Applicant was required to file his application on or before February 5, 2005. Applicant filed this application on March 19, 2013, **more than eight years** after the statutory filing period expired.

A motion for summary judgment is a proper mechanism to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, Section 17-27-70(c) of the South Carolina Code 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, Respondent submits this Court should summarily dismiss this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

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

(Conclusion and signatures on the following page)

5.
15

11

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive and barred by the South Carolina Uniform Post-Conviction Procedure Act.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ELIZABETH HEDGE COE NEYLE
Staff Attorney

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

By: EH Neyle
Attorneys for Respondent

October 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

WALTER J. MCQUNE, #299882

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

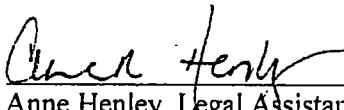
2013-CP-15-0214

AFFIDAVIT OF SERVICE BY MAIL

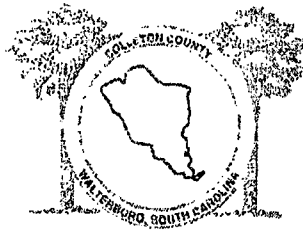
1. I am an employee of the Respondent in the abovecaptioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned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

Walter J. McQune, #299882
Evans Correctional Institution
PO Box 2951202
Bennettsville, SC 29512

DATED this 23rd day of October, 2014


 Anne Henley, Legal Assistant
 For Respondent

PATRICIA C. GRANT
CLERK OF COURT



VICKI H. SYFRETT
DEPUTY CLERK



COLLETON COUNTY

February 10, 2016

Walter McQune #299882
E.C.I. F2-B-Room 233
610 Hwy 9 West
Bennettsville, SC 29512

Dear Mr. McQune:

We have received your letter dated 1/15/16 in regards to case number 2013-CP-15-214. On 12/17/14 the State filed A Conditional Order of Dismissal. We have also filed several Motions and other documents submitted by you. Please be advised that the Clerk's office does not schedule hearings in PCR cases. All hearings are scheduled by the Attorney General's office. Please contact their office for the most current status of your case.

Sincerely,
The Common Pleas Department

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFICE OF GENERAL COUNSEL
INMATE CORRESPONDENCE**

(14)

INMATE: Walter Jermaine McQune, # 299882
INSTITUTION: Evans Correctional Institution
FROM: Office of General Counsel
SUBJECT: Paper Request to Staff Member
DATE: February 2, 2017

The Office of General Counsel is in receipt of your paper Request to Staff Member regarding service of a post-conviction relief order. Your correspondence is being rejected in accordance to SCDC Policy, GA-06.04, Request to Staff Member and returned to you for one or more of the following reasons:

- Inmates must use the correct form (Request to Staff Member SCDC 19-11) and attachments will not be accepted.
- Inmates are only allowed to submit one issue per RTSM, which must be written legibly (in the appropriate area) and must be limited to a single sheet.
- Inmates are prohibited from sending duplicate or similar RTSM to multiple staff members.
- The RTSM is intended for use by an individual inmate (An inmate may not send a RTSM form multiple inmates).
- ✓ You will have to enter your concerns through the KIOSK Automated Request to Staff System.

However, please see attached "Conditional Order of Dismissal" (in case 2013-CP-15-0214) and Affidavit of Personal Service dated March 24, 2016, which may answer your question.

2013

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

(15)

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated E. McRae (Server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF Marlboro)

AFFIDAVIT OF PERSONAL SERVICE

On this 24 day of March, 2015th, I served the Conditional Order of Dismissal, on Inmate Walter J. McQuinn, SCDC Inmate #299882, by delivering personally and leaving a copy of the same at Evans Correctional Institution. Deponent is not a party to this action.

s/ E. McRae

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 24 day of March, 2015

Sonja D. Thomas (L.S.)
Notary Public for South Carolina

Sept 22, 2019

My Commission Expires: Sonja D. Thomas

ADMISSION OF SERVICE

Service of a copy of the within Conditional Order of Dismissal is admitted at the South Carolina Department of Corrections (Evans Correctional Institution), Bennettsville, Marlboro County, SC this 24 day of March, 2015.

s/ Walter McQuinn
Inmate
SCDC Inmate #: 299882

16

0114 6995 0000 0506 2107

U.S. Postal Service	
CERTIFIED MAIL - RECEIPT	
(Domestic Mail Only. No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
Postage	\$ 2.96
Certified Fee	3.45
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.41

Sent To: HON. ATT. GEN. F. H. MAYLES Esq.
Street, Apt. No.,
or PO Box No. PO BOX 11549
City, State, ZIP+4 COLUMBIA SC 29211

Postmark Here

PS Form 3800, August 2006 See Reverse for Instructions

Walter McDurse
299882 (233)
Kerlan
OBJECTION TO Condition /
Order of Dismissal
ATT. Gen. and Clerk

17

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Inmate Services

233

AGREEMENT TO DEBIT E.H. COOPER ACCOUNT

Inmate's Name: <i>Walter McQuinn</i>	SCDC #: <i>299882</i>	Housing Unit: <i>2B233</i>	Date: <i>4-4-16</i>
---	--------------------------	-------------------------------	------------------------

GENERAL MATERIAL

** Inmate must have the funds in his/her account to pay for the materials.

To be completed by
SCDC staff:

Item	Amount
Envelope	
Pen	
Paper	
Postage	
Tape	
Box	
Electronic Repair	
Other	

Cost

Sub-Total:

LEGAL MATERIAL

** Inmate is not required to have the funds in his/her account to pay for the materials; however, his/her account must be debited for all materials s/he elects to receive.

To be completed by

Item	Amount
Envelope	
Pen	
Paper	
Postage	1 1
Other	

Cost
18
2.74
6.41

Sub-Total:

PHOTOCOPIES

** Inmate may be required to have funds in his/her account. See SCDC Procedure GA-01.03(OP), "Inmate Access to the Courts," to determine if inmate may receive copies with/without funds.

Item	Amount
Photocopies	

To be completed by
SCDC staff:

Cost
9.15

TOTAL

R. W. Watter
Inmate's Signature

Quillo
Mailroom/Canteen Signature (Request filled by)

4-4-16
Date

White - Inmate

Canary - Mailroom/Canteen Employee

SCDC Form 10-14 (November 1998)

(19)

Mr Walter McCune #299882
 Even Corr. Inst
 610 Hwy 9 West
 Bennettsville SC 29812

The Honorable, Patricia C Grant
 P.O. Box 620
 Walterboro SC 29488

RE: Walter McCune v State of South Carolina
 2013-P-15-0214; Freedom of Information Act
 (FOIA) § 30-4-10

Dear Clerk:

On April 24, 2016 I sent Objections to Conditional Order of Dismissal to be filed in your office. An objection to the State served Conditional Order of Dismissal on March 24, 2016. Under the Freedom of Information Act. What is the date, month and year you "filed" applicant's Objections? Please provide applicant a correspondence. Thank you for your assistance.

sworn to and subscribed before me

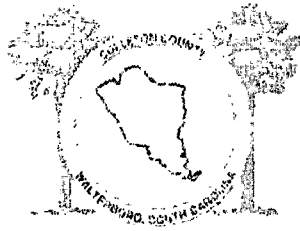
on the 11 day of October, 2016

(Notary Public of South Carolina)

Commission Expires 2/11/21

1 of 2
 (9)

PATRICIA C. GRANT
CLERK OF COURT



VICKI H. SYFRETT
DEPUTY CLERK

20

COLLETON COUNTY

October 19, 2016

Dear Mr. McQune:

In response to your letter received 10/13/16, your Objections to Conditional Order of Dismissal were filed on April 16, 2016.

Sincerely,
The Common Pleas Department



21

State of South Carolina
The Circuit Court of the Fourteenth Judicial Circuit

Perry M. Buckner
Judge

*I made the marking through the numbers
by Walter L. Buckner*

Post Office Drawer 470
101 Hampton Street
Walterboro, SC 29488-0470
Phone: (843) 549-7878
Fax: (843) 549-9876
pbucknerlc@sccourts.org

12 December, 2016

Re: December 9, 2016 Request

Dear Mr. McQuine,

I am the law clerk for Judge Perry M. Buckner, and I received a copy of your Request for a Status Conference. While your correspondence indicates that your case has been pending for over one thousand days, the Clerk's file shows that this case was dismissed in 2014 through a Conditional Order of Dismissal. That Order of Dismissal became final twenty days after it was issued, pursuant to the terms of the Order, which states, "Applicant is granted twenty days from the service of this Order upon him to show why this Order should not become final." A sufficient showing was not made for Judge Buckner to reconsider his 2014 decision in this matter.

As this case is resolved in the Circuit Court, Judge Buckner cannot schedule a status conference to address this matter.

Respectfully,

Skyler Hutto
Law Clerk to the Honorable Perry M. Buckner, III

Enclosures

L-010010

The Supreme Court of South Carolina

22

Walter J. McQune, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-000897

Lower Court Case No. 2013CP1500214

ORDER

Petitioner has filed a notice of appeal in response to a letter written by a law clerk to a circuit court judge. According to the public case index for Colleton County, a conditional order of dismissal has been filed in this case, but no final order of dismissal has been filed in this case.¹

Since no final decision or judgment has been filed in the circuit court, the notice of appeal is dismissed without prejudice to petitioner's ability to timely serve and file a notice of appeal once a final decision or judgment has been filed in this case. *Lewis v. State*, 368 S.C. 630, 630 S.E.2d 464 (2006) (by statute and rule, only a final decision or judgment is subject to review in a post-conviction relief case). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.



FOR THE COURT C.J.

Columbia, South Carolina
April 19, 2017

¹ The conditional order of dismissal was filed in December 2014. It is unclear why no further action has been taken by the circuit court in this case. This Court is confident that the circuit court will promptly proceed to take whatever action is appropriate.

cc: Ruston Wesley Neely, Esquire
Mr. Walter J. McQune, 299882
The Honorable Perry M. Buckner

73



24

ALAN WILSON
ATTORNEY GENERAL

May 8, 2017

Walter J. McQune, #299882
Goodman Correctional Institution
4556 Broad River Rd
Columbia, SC 29210

Re: Walter J. McQune v. State of South Carolina
2013-CP-15-00214

Dear Mr. McQune:

Enclosed please find a copy of the signed and filed **Final Order of Dismissal** in the above mentioned Post Conviction Relief case.

Sincerely,

Ruston W. Neely
Assistant Attorney General

RWN/bea
Enclosure(s)

EX 40107 12

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
WALTER J. MCQUNE,)
Applicant,)
v.)
STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2013-CP-15-00214

25

FINAL ORDER OF DISMISSAL

2017 APR 21 PM 3:50
JANUARY 21
COLLETON COUNTY
COMMON PLEAS

#1
PMB

This matter came before this Court by way of an application for post-conviction relief (PCR) filed by Walter J. McQuine on March 19, 2013. The State requested that the application be summarily dismissed. On December 15, 2014, this Court issued a Conditional Order of Dismissal. That Order stated that the applicant's PCR application would be dismissed because it was both successive to a previous PCR application and failed to comply with the Uniform Post-Conviction Procedure Act. The Order also stated that it would become final twenty days after service upon the Applicant unless the Applicant provided specific objections to the Order. The Applicant's next filing was made on January 30, 2015, and an Objection to Conditional Order of Dismissal was filed on April 7, 2016. Responding to letters written to the Court and the Clerk of Court, the Court's law clerk sent the Applicant a letter stating that the Conditional Order had become final when the Applicant did not provide specific objections to the Conditional Order within twenty days.

The applicant responded to the Clerk of Court with a letter stating that it was his belief that the Conditional Order of Dismissal was not an appropriate resolution to the case because of the language of *Lewis v. State*, 368 S.C. 630, 630 S.E.2d 464 (2006). This letter was filed on February 6, 2017. On April 21, 2017, the Court received a letter from the South Carolina Supreme Court requesting that the Court

26

issue a Final Order in the case. The Supreme Court's letter reiterated the language of the *Lewis* decision. This Court now issues a Final Order of Dismissal of the Applicant's PCR application.

The Court restates its original opinion from the Conditional Order of Dismissal. The PCR application is both successive and improperly filed.

The Court finds that the PCR application filed March 19, 2013 is successive to the Applicant's first PCR application from October 15, 2004. Courts disfavor successive applications and place the burden on applicants to show that and grounds for post-conviction relief could not have been raised in the original application. *See e.g., Foxworth v. State* 275 S.C. 615, 274 S.E.2d 415 (1981). Since the Applicant has not shown why the new grounds for post-conviction relief could not have been raised in the 2004 application, this 2013 application is summarily dismissed.

#2
PMB

This Court further finds that the PCR application filed March 19, 2013 failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. *See* S.C. Code §§ 17-27-10 to -160. While the Applicant's 2004 application was timely, the 2013 application is more than 8 years beyond the statutory deadline of one year after his conviction, February 5, 2005. Because of this failure to file in time, the 2013 application is summarily dismissed.

The terms of the Court's Conditional Order of Dismissal stated that the Order would become final twenty days after the defendant was served with the Order unless specific objections to the Order were filed. The Applicant's next communication to the Court declared the Applicant's intention to file a Motion for Summary Judgement. This Notice was filed on January 30, 2015. The Court does not believe that specific objections to the Conditional Order of Dismissal were made within the twenty day deadline.

27

Therefore, the Applicant's PCR application, filed March 19, 2013, is hereby dismissed with prejudice.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to be 'P. Buckner', written over a horizontal line.

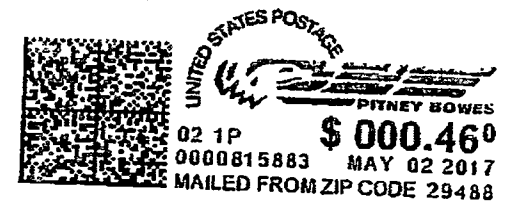
Judge Perry M. Buckner, III
Fourteenth Judicial Circuit

21 April, 2017
Walterboro, South Carolina

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

2017 MAY -2 PM 2:11

Patricia C. Grant
Clerk of Court
Colleton County
Post Office Box 620
Walterboro S.C. 29488-0026



WALTER MCQUNE 299882
E.C.I. F2-B-233
610 HWY 9 WEST
BENNETTSVILLE SC 29512

26

29

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

WALTER J. MCQUNE, #299882

Applicant,

v.

STATE OF SOUTH CAROLINA,

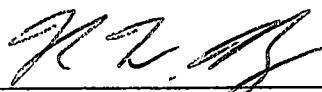
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Final Order of Dismissal (2013-CP-15-0214)** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Walter McQune, #299882
Goodman Correctional Institution
4556 Broad River Rd
Columbia, SC 29210

This 8th day of May, 2017.

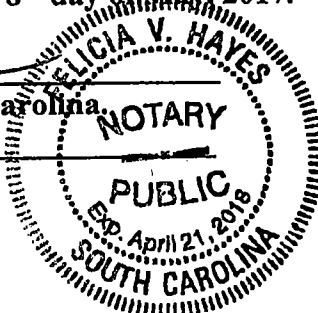


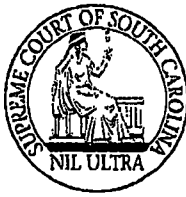
RUSTON W. NEELY
Attorney for Respondent

SWORN to before me this 8th day of May, 2017.



Notary Public for South Carolina
My Commission Expires: _____





30

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

May 08, 2017

The Honorable Patricia C. Grant
PO Box 620
Walterboro SC 29488-0028

REMITTITUR

Re: Walter McQune v. State
Lower Court Case No. 2013CP1500214
Appellate Case No. 2017-000897

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

cc:

Ruston Wesley Neely, Esquire
Walter J. McQune, 299882



31

State of South Carolina
The Circuit Court of the Fourteenth Judicial Circuit

Perry M. Buckner
Judge

Post Office Drawer 470
101 Hampton Street
Walterboro, SC 29488-0470
Phone: (843) 549-7878
Fax: (843) 549-9876
pbuckner10@scdcourts.org

26 May, 2017

Mr. McQune,

We have received your letter and Motion for Relief from Final Order of Dismissal. Judge Buckner intends to hold a hearing on this Motion. I will be contacting the Department of Corrections to arrange transport for this hearing once a date and time are established.

Please direct any correspondence in advance of this hearing to our office with a carbon copy to Ruston Neely of the Attorney General's Office as you have with your previous letters.

Thank you,

Skyler Hutto
Law Clerk to Perry Buckner

CC: Ruston Neely
Johnny James



32

State of South Carolina
The Circuit Court of the Fourteenth Judicial Circuit

Perry M. Buckner
Judge

Post Office Drawer 470
101 Hampton Street
Walterboro, SC 29488-0470
Phone: (843) 549-7878
Fax: (843) 549-9876
pbuckner@scsccourts.org

2 June, 2017

Mr. McQune,

Judge Buckner intends to hold a hearing on your Motion for Relief from Final Order of Dismissal on Wednesday, June 7, 2017 at 2pm in Hampton, SC. This letter is intended to serve as your notice of the hearing. Our office will request your transportation to and from Hampton. Please be aware that this date and time may be subject to change to a later date. If that occurs, transportation will be rearranged.

Ruston Neely from the Attorney General's office will be present at the hearing to represent the State of South Carolina.

Thank you,

A handwritten signature in black ink, appearing to read "Skyler Hutto".

Skyler Hutto

Law Clerk to Perry Buckner

CC: Ruston Neely
David Matthews – PD

33

**FOURTEENTH CIRCUIT PUBLIC DEFENDER'S OFFICE
COLLETON COUNTY DIVISION
319 North Lucas Street
WALTERBORO, SOUTH CAROLINA 29488**

(843)549-1633 (Office)
(843)549-9543 (Fax)

June 20, 2017

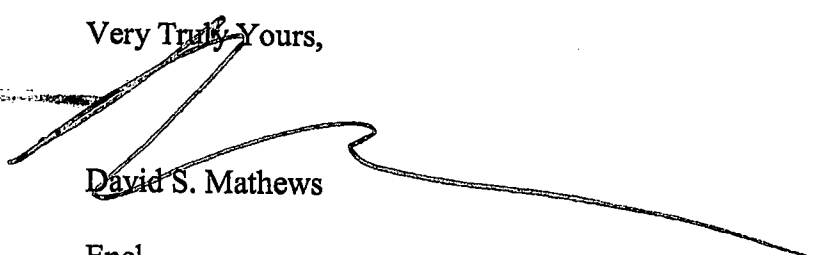
Walter McQune
Inmate #299887
G.C.I.
B5A 40B
4556 Broad River Road
Columbia, SC 29210

Re: Update

Dear Mr. McQune:

Here is a copy of an email that I sent to Assistant Attorney General Ruston Neely. I have not gotten a confirmation from Mr. Neely that this is also his understanding of where you are in the process, but it is mine. As a matter of procedure, you cannot get a hearing on your Petition for Post-Conviction Relief until the Order of Dismissal is set aside. Because you in fact DID object to the conditional order of dismissal, it is reasonable that you should be heard on your objections. If Judge Buckner agrees to set aside the Order of Dismissal, then we can talk about witnesses and things of that nature, but first the Order has to be set aside.

Very Truly Yours,



David S. Mathews

Encl.

**FOURTEENTH CIRCUIT PUBLIC DEFENDER'S OFFICE
COLLETON COUNTY DIVISION
319 North Lucas Street
WALTERBORO, SOUTH CAROLINA 29488**

34

(843)549-1633 (Office)
(843)549-9543 (Fax)

August 25, 2017

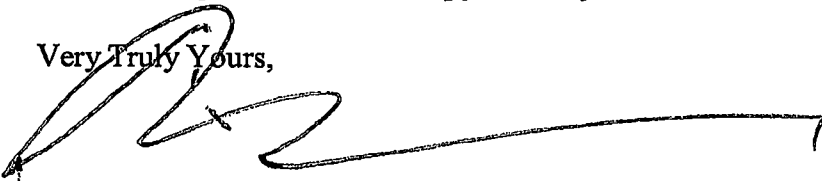
Walter McQune
Inmate #299887
G.C.I.
B5A 40B
4556 Broad River Road
Columbia, SC 29210

Re: Proposed Order

Dear Mr. McQune:

Here is a copy of a proposed order that I sent to Judge Buckner for his consideration. Obviously, if he signs this order, then you will have prevailed; however, Mr. Neely of the Attorney General's Office will also be submitting a proposed order. I will send you a copy of his order once I have received it. Whenever Judge Buckner actually signs either order, or drafts one himself to sign, I will send a copy of it to you.

Very Truly Yours,



David S. Mathews

Encl.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	CIVIL ACTION NO.:2013-CP-115-00214
WALTER J. McQUNE,	)	
	)	
Applicant,	)	
	)	
Vs.	)	ORDER GRANTING RELIEF
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondant.	)	
_____	)	

35

This matter came before this Court in a previously scheduled hearing in Colleton County on the Defendant's Petition for Post-Conviction Relief, upon consideration of the testimony of the Applicant, I grant the application.

The procedural history of this case is as follows:

During the August, 2003, term of the Colleton County Grand Jury Walter McQune was indicted for Murder in Colleton County. His trial attorney was Everett Bennett. Among the evidence collected at that time was a video-taped statement by McQune. On February 5, 2004, McQune and his attorney appeared before the Hon. Jackson V. Gregory, and McQune pled guilty to voluntary manslaughter, and was sentenced to 25 years in prison. On October 15, 2004, McQune filed a petition for a writ of habeas corpus requesting post-conviction relief, alleging, among other things, that McQune was not competent at the time of his plea, and that his counsel was aware that by McQune had attempted suicide while McQune was in jail awaiting trial, and that his trial attorney was ineffective because he did not move for a Blair hearing and

psychological evaluation to determine McQune's competency. Michelle Suggs, of the North ³⁶ Charleston bar represented McQune in the PCR matter. McQune's PCR attorney did request a psychological evaluation. A partial copy of that evaluation by Randolph Waid, PhD is included within the Court's record. Dr. Waid includes a finding that McQune was not competent at the time of that evaluation, but that there was nothing from the materials that Waid reviewed to convince him that McQune was incompetent at the time of his plea. On August 8, 2007, McQune appeared before Hon. Carmen Mullin for a hearing on McQune's PCR petition, and McQune and his attorney signed a consent order voluntarily withdrawing the PCR application.

On March 19, 2013, McQune filed a subsequent PCR application alleging, among other things, that he was not competent at the time that he waived his first PCR application, and requesting a new hearing. Ruston Nealy, from the South Carolina Attorney General's office, filed a motion to dismiss McQune's PCR petition, alleging that the action was duplicative. On December 15, 2014, Hon. Perry M. Buckner, Jr., issued a conditional order granting the A.G.'s motion to dismiss, and caused to be sent a demand that McQune provide reasons why the conditional order of dismissal ought not to be permanently granted within 20 days of the date of service of the conditional order on him. The Court did not receive a response within the time ordered, and a final order of dismissal was signed and filed on April 21, 2017. Subsequent to the entry of the final order, the court received the Defendant's response objecting to the temporary order, and requesting that his PCR petition be amended to include additional grounds for setting aside his conviction. At hearing, McQune averred, and the A.G.'s office did not contest, that

37

McQune had not be served with the temporary order of dismissal until months after the order had been issued, apparently because the order had been held at the prison where McQune was being detained, without serving McQune with that order, and that McQune, in a timely fashion after having received the order, did send his response to the Colleton County Clerk's office. David Mathews was appointed to represent McQune in PCR petition, and a hearing was commenced at the Hampton County Courthouse on June 7, 2017. That hearing was continued because McQune's counsel did not have complete discovery, and was recommenced at the Colleton County Courthouse on August 10, 2017. (August 7, 2017)

At that hearing, the Petitioner responded, and the A.G. did not deny, that McQune responded to the Conditional Dismissal with diligence in mailing his objections to the Court's Conditional Order of Dismissal, I found at hearing that it would be it would be fundamentally unfair to enter an order of Final Dismissal under the unique circumstances of this case, and I granted the Petitioner's motion to set aside the Final Order of Dismissal, and I allowed him to proceed to present his case for Post-Conviction Relief. (The Judge said and did this false record)

At hearing, I directed the Defendant to call any witnesses he may have, and he testified that, although he had, at the time of his first PCR application hearing, signed a consent order withdrawing his PCR application, and waiving his right to further application, that he had been evaluated by xxx and found not competent to stand trial. A copy of the evaluation was submitted as an exhibit. [The Defendant further testified that his Post-Conviction Relief attorney, Ms.

Suggs, had reviewed the videotapes of his confession in that case, and had informed him that the

This issue were stated in detail upon the Verbal Presented testimonial evidence in support of the amendment. And is Control by Margal v state (2017) 24. cont.

on my the PLS Judge making specific finding of fact and conclusion of Law. see (see motion)
confession may have been coerced. He further testified that his trial attorney, Everett "Eddie" (38)

Bennett, had not discussed the issue of coercion with him, and that he would not have pleaded guilty if that issue had been raised with him. No objection was made to Mr. McQune's testimony, and the attorney for the Attorney General's office did not cross-examine Mr. McQune, or call any witnesses on the State's behalf. Consequently, I find that the McQune's plea to Voluntary Manslaughter was not knowingly made, and Order that the Defendant's conviction by plea to Voluntary Manslaughter on February 5, 2004, be set aside, and the Defendant be brought before the Court during the next scheduled term of Colleton County General Sessions Court for consideration of bond and the Murder charge for which he was indicted.

AND IT IS SO ORDERED, This ____ day of August, 2017.

Hon. Perry M. Buckner, Jr.

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

WALTER J. MCQUNE,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2013-CP-15-00214

FINAL ORDER OF DISMISSAL

RECEIVED
CLERK OF COURT
SEP 11 2013
AM 9:55

39

#1
PMB
This matter came before this Court on August 8, 2017, at the Colleton County Courthouse. At the hearing Applicant was present and represented by David Mathews, Esquire. Representing the Respondent, Rustin W, Neely, Esquire, of the South Carolina Attorney General's Office. This Court had before it a copy of the records of the Colleton County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, Applicant's *pro se* filings, Applicant's mental competency evaluations, and the pleadings in this matter. This Court finds the following:

I. PROCEDURAL HISTORY

Applicant was indicted at the August 2003 term of the Colleton County Grand Jury for murder (2003-GS-15-0491). Everett W. Bennett Jr., Esquire, represented Applicant. On February 5, 2004, Applicant pleaded guilty to the lesser included offense of voluntary manslaughter. The Honorable Jackson V. Gregory sentenced Applicant to twenty-five years' imprisonment. Applicant did not appeal his plea or sentence.

Applicant filed his first PCR application on October 15, 2004, alleging the following grounds for relief:

1. Counsel for Applicant was ineffective for failing to secure a competency evaluation prior to applicant entering a guilty plea.

2. The Applicant's plea of guilty was not freely and voluntarily given due to a lack of competency at the time of the guilty plea.
3. After discovered evidence of lack of competency requires vacation of the conviction and sentence.

HO

Michelle R. Suggs, Esquire, represented Applicant. Salley W. Elliott and Adrienne Turner, Esquires, represented Respondent. The Honorable Carmen T. Mullen dismissed Applicant's application with prejudice by a consent order filed August 8, 2007. The order of dismissal indicates Applicant informed his counsel of his intent to withdraw his application with prejudice. Further, Judge Mullen's order states Applicant acknowledged he was satisfied with his counsel and was withdrawing his application freely and voluntarily. Ms. Suggs, Ms. Elliott, and Applicant also signed the consent order of dismissal.

#2
AMB
On March 19, 2013, Applicant filed his second PCR application with the Colleton County Clerk of Court alleging, among other things, that he was not competent at the time that he waived his first PCR application, and requesting a new hearing. On October 21, 2014, the State submitted its "Return and Motion to Dismiss," as well as a proposed Conditional Order of Dismissal. On December 15, 2014, this Court signed and filed a Conditional Order of Dismissal (COD) with the Colleton County Clerk of Court granting the State's motion to dismiss, and caused to be sent a demand that Applicant provide reasons why the conditional order of dismissal ought not to be permanently granted within 20 days of the date of service of the COD on him. On April 19, 2017, through an Order, the Supreme Court of South Carolina notified this Court that a Conditional Order of Dismissal had been filed in Colleton County, however, a final order of dismissal was never filed. On April 21, 2017, the Court had not received a response from Applicant within the time ordered. The Court then signed and filed a Final Order of Dismissal on April 21, 2017.

The Court later learned, after signing the Final Order of Dismissal that the COD ⁴¹was not received by the Attorney General's office until March 1, 2016, and the Applicant was not personally served the COD until March 24, 2016. On April 4, 2016, Applicant mailed objections to the COD to the Colleton County Clerk of Court, challenging this Court's assertion that Applicant did not file objections within 20 days of service.

#3
PMB
On June 2, 2017, this Court held a hearing to determine whether Applicant's opposition to his COD was timely filed and meritorious. This Court appointed David Mathews, Esquire, to represent Applicant. On June 7, 2017, By Applicant's motion, this hearing was continued. On August 8, 2017, this Court held a hearing to determine whether Applicant's objections to his COD were timely filed or meritorious. This Court took the testimony of Applicant and heard legal arguments from both parties. This Court finds Applicant has failed to show why this application should not be summarily dismissed for the following reasons:

II. DISCUSSION

A. Timeliness of Applicant's filing

The State asserted Applicant's PCR filing on April 16, 2016 was untimely per S.C. Code Ann. § 17-27-45. "It is clear under South Carolina law that mailing does not constitute filing. When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer. The mailing of petitioner's application was therefore not sufficient under § 17-27-45(A)." Gary v. State, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001) (citations omitted). However, the State did not request a dismissal based on a lack of timely filing because the State received Applicant's objections five days before the twenty day requirement. Applicant's objections to this Court's COD were mailed to the Colleton County Clerk of Court on April 4, 2016, twelve days after the COD was served on him by the State on March 24, 2016. The mailing date of April 4, 2016, is clear from the postmark on

Applicant's letter containing his objections to the COD. This Court's COD provided Applicant with twenty days to file objections in response to the COD. A letter from the Colleton County Clerk of Court to the Applicant, with a copy sent to the State, reflects Applicant's "Objections to Conditional Order of Dismissal" were filed in Colleton County on April 16, 2016. (12)

Therefore, Applicant's objections were filed twenty-three days after the COD was served on Applicant, which is three days after the twenty days allowed by this Court's COD. However, the State received Applicant's COD objections on April 8, 2016. Applicant has shown the Clerk of Court did not file his objections until twelve days after he mailed them. This Court finds Applicant exercised due diligence in filing his objections to this Court's COD. Therefore, this Court will consider those objections.

#4
PMB

B. Applicant's objections to the COD

Applicant objected to this Court's COD on the following grounds:

1. The State failed to address Applicant's argument that he was mentally incompetent under Rule 8(d), SCRCF.
2. The State failed to assert an affirmative defense in response to Applicant's prior filings.
3. Summary dismissal of his Application was inappropriate because the standard for summary dismissal assumes the facts presented by the Applicant are true.

Applicant's objections to this Court's COD failed to assert any specific factual or legal ground why his application should not be dismissed. Applicant's first PCR application already alleged he was mentally incompetent. The State is not required to assert affirmative defenses to each of Applicant's filings. The State argues Applicant's PCR application is procedurally barred by the statute of limitations and the court's prohibition against successive applications.

Applicant argues he was mentally incompetent for the withdrawal of his first PCR application, which was, therefore, improvidently dismissed. If the application was improperly dismissed then Applicant argues his current PCR is neither untimely nor successive as he has not had his 'bite at the

apple.'

43

Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple." Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). This Court shall address Applicant's argument that his first PCR was improvidently dismissed because Applicant was mentally incompetent. On March 11, 2006, Dr. Elena Nichita found Applicant was mentally incompetent due to depression, but likely to become competent in the future. These findings were made after mental competency evaluations on November 23, 2005 and March 2, 2006. In those findings, Dr. Nichita found Applicant was depressed and should be treated for depression. Dr. Nichita reported Applicant claimed he could not read or write. Dr. Nichita reported there was some evidence of malingering from Applicant's testing. Importantly, Dr. Nichita found Applicant's incompetence was remedial and he would become competent in the foreseeable future.

#5
PMB

Accordingly, PCR counsel had Applicant evaluated at a later date by Doctor L. Randolph Waid, a licensed clinical psychologist. On April 12, 2007, Dr. Waid found there was "no compelling evidence that Mr. McQuene was highly disrupted by psychiatric disturbance or lacked intellectual capacity that would have rendered him incompetent to understand the plea arrangement or proceedings." Dr. Waid's report further noted, "Walter McQuene was evaluated at Kirkland Facility of the South Carolina Department of Corrections soon after his plea on February 5, 2004. Initial evaluation conducted on 2/20/04 failed to reveal any complaint of mental health difficulties or evidence of psychiatric disturbance." Applicant withdrew his first PCR action on August 8, 2007, nearly five months after Waid's evaluation.

This Court finds the evidence shows Applicant was competent when he pleaded guilty and when he withdrew his first PCR. Accordingly, this Court finds Applicant has not proven he was not incompetent when he withdrew his first PCR allegation. Therefore, Applicant must show why his

application should not be dismissed as successive and untimely.

244

C. Successive Application

The Court finds that the PCR application filed March 19, 2013 is successive to the Applicant's first PCR application from October 15, 2004. Courts disfavor successive applications and place the burden on applicants to show that grounds for post-conviction relief could not have been raised in the original application. *See e.g., Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981). 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 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.

#6
PMB

Since the Applicant has not shown why the new grounds for post-conviction relief could not have been raised in the 2004 application, this 2013 application is summarily dismissed.

This Court has found Applicant was competent when he withdrew his first PCR application.¹ Therefore, Applicant must show why his successive application should not be dismissed. [S]uccessive 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). 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,

¹ Applicant alleges he was incompetent when he withdrew his first PCR action.

"[I]n the context of mentally incompetent PCR applicants, case law warrants a holding that, in circumstances in which an applicant demonstrates the failure to timely file for PCR was due to mental incompetency, the statute should be tolled... If the PCR court finds mental incompetence prevented his filing a PCR application, the court should determine the duration of the incompetence, and whether the application was filed within one year of Ferguson regaining competency." *Ferguson v. State*, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009). Applicant's second PCR action was filed on March 19, 2013. This was over 5 years after Applicant's first PCR action was dismissed by withdrawal on August 8, 2007.

409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then Applicant 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). 45

Applicant has failed to prove any of his allegations could not have been raised in his previous application. Applicant's alleges his PCR and plea counsel were deficient. Applicant has failed to show why his allegations against plea counsel could not have been raised in his first PCR. Applicant has also failed to show why his allegations against PCR counsel should be allowed. "[T]he contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' allowing for a successive PCR application under § 17-27-90. Robertson v. State, 418 S.C. 505, 514, 795 S.E.2d 29, 33 (2016). Therefore, this Court finds Applicant failed to establish any sufficient reason why his current grounds for relief were not properly raised in his previous applications and waived by his withdrawal.

#7
mb Accordingly, this Court summarily dismisses Applicant's application because Applicant failed to provide sufficient reason that new grounds exist or other grounds could not have been raised in his first PCR.

D. Statute of Limitations

Furthermore, this Court further finds that the PCR application filed March 19, 2013 failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. *See* S.C. Code §§ 17-27-10 to -160. The South Carolina Supreme Court held that the statute of limitations applies to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). While the Applicant's 2004 application was timely, the 2013 application is more than 8 years beyond the statutory deadline of one year after his conviction, February 5, 2005. Because of this failure to file in time, the 2013 application is summarily dismissed.

The terms of the Court's Conditional Order of Dismissal stated that the Order would become final twenty days after the defendant was served with the Order unless specific objections to the Order were filed. The Applicant's next communication to the Court declared the Applicant's intention to file a Motion for Summary Judgement. This Notice was filed on January 30, 2015. The Court does not believe that specific meritorious objections to the Conditional Order of Dismissal were made in order for this Court to grant relief. This court summarily dismisses this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act, therefore, the Applicant's PCR application, filed March 19, 2013, and is hereby dismissed with prejudice. (46)

#7
PMB
Having considered the oral arguments presented by both parties, the copy of the records of the Colleton County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, Applicant's *pro se* filings, Applicant's mental competency evaluations, and the pleadings in this matter. The Court finds that the PCR application filed March 19, 2013 is successive and has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. See S.C. Code §§ 17-27-10 to -160. The PCR application filed March 19, 2013 is successive to the Applicant's first PCR application from October 15, 2004. While Applicant's 2004 application was timely, the 2013 application is more than 8 years beyond the statutory deadline of one year after his conviction, February 5, 2005. Because of this failure to file in time, the March 19, 2013 application is summarily dismissed.

IT IS THEREFORE ORDERED, the Applicant's PCR application, filed March 19, 2013, hereby be dismissed with prejudice.

AND IT IS SO ORDERED.

[SIGNATURE ON FOLLOWING PAGE.]

47



The Honorable Perry M. Buckner, III
Presiding Judge for the Fourteenth Judicial Circuit

September 8, 2017
Walterboro, South Carolina

Order of Dismissal, a notice of appeal must be filed and served **within thirty (30) days** of the service of this Rule 59 Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed. 49

AND IT IS SO ORDERED this 19th day of September, 2017.



Perry M. Buckner
Presiding Judge
Fourteenth Judicial Circuit

Walterboro, South Carolina

The South Carolina Court of Appeals

50

Walter J. McQune, Appellant,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001915

The Honorable Perry M. Buckner, III
Colleton County
Trial Court Case No. 2013CP1500214

ORDER

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. Christine Allen, Deputy
CLERK

Columbia, South Carolina

cc:

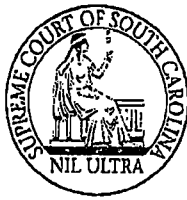
David S. Mathews, Esquire

Ruston Wesley Neely, Esquire

The Honorable Daniel E. Shearouse

FILED

Sept. 19, 2017



The Supreme Court of South Carolina (51)

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

September 21, 2017

Mr. David S. Mathews, Esquire
319 North Lucas Street
Walterboro SC 29488

Re: Walter McQune v. State
Appellate Case No. 2017-001915

Dear Counsel:

This Court has received a notice of appeal in the above post-conviction relief action. Since the order of the circuit court determined that this action is barred as being successive and/or as being untimely under the statute of limitations, Rule 243(c) of the South Carolina Appellate Court Rules requires you to provide a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. The failure to make a sufficient showing may result in the dismissal of this matter.

In the event you determine that you do not have a good faith explanation to provide pursuant to Rule 243(c), you must provide this Court with a letter stating that as an officer of the Court you are unable to set forth any arguable basis for asserting the determination by the PCR judge was improper. The letter should also advise petitioner that he has twenty (20) days from the date of the letter to file a *pro se* explanation as to why the petitioner believes that this determination by the circuit court was improper. *Dennison v. State*, 371 S.C. 221, 639 S.E.2d 35

(2006). The letter filed with this Court should include proof of service showing that a copy of the letter has been sent to the petitioner.

52

Please either provide the explanation required by Rule 243(c) or the response permitted by *Dennison* within ten (10) days of the date of this letter.

Very truly yours,

A handwritten signature in black ink, appearing to be "D. J. Neely", with a long horizontal line extending to the right.

CLERK

cc:

Ruston Wesley Neely, Esquire
Walter J. McQune, 299882

**FOURTEENTH CIRCUIT PUBLIC DEFENDER
COLLETON COUNTY OFFICE
319 NORTH LUCAS STREET
WALTERBORO, SOUTH CAROLINA 29488**

53

**(843) 549-1633 (Office)
(843) 542-9543 (Fax)**

October 2, 2017

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

Re: Walter McQune vs. State of South Carolina
Case no.: 2013-CP-15-00214

Dear Mr. Shearouse:

My rationale was that Mr. McQune was not competent at the time of his first P.C.R, as I set forth in my proposed order (copy of which I enclosed). Let me know if you need anything else.

Very Truly Yours,

A large, stylized handwritten signature in black ink, appearing to read 'David S. Mathews', written over a horizontal line.

David S. Mathews

Encl.

Cc: Walter McQune (without enclosures)
Ruston Wesley Neely, Esquire (without enclosures)

RECEIVED

OCT 16 2017

54

The Honorable Daniel Shearouse S.C. SUPREME COURT
P.O. Box 11330
Columbia 29211

Re: Walter McCarne v State of South Carolina
2013-CP-15-0214

Dear Mr. Shearouse

Enclosed for filing is a notice of appeal in the above Case. Also enclosed are the following:

(1) Proof of Service of the notice of Appeal on the Clerk of Court and Attorney General, Respondent's.

(2) A Copy of the other Pending Applicant Motion to Alter or amend of the Honorable Perry M Buckner which is to be challenged on appeal.

(3) I request to Proceed "In Forma Pauperis".

(4) This appeal is being filed with the Supreme Court because 203,506 and 243, SCACR.

10-13-17

11 U.S.C. § 1

28 U.S.C. § 1746

Sincerely

/s/ Walter McCarne

P.O. Box 304

Attentive 29810

cc: Preston Newby, Esq.
Patricia C Grant

RECEIVED

OCT 16 2017

55

S.C. SUPREME COURT

The State of South Carolina
In the Supreme Court
Appeal from Colleton County
Court of Common Pleas

Perry M. Boehman, Circuit Court Judge
2013-CP-15-02104

Walter McQuinn - - - - - Appellant

State of South Carolina - - - - - Respondent

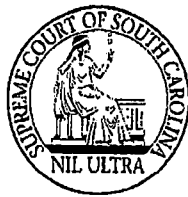
Notice of Appeal

Walter McQuinn appeals the order Denying Applicant's Motion to Alter or amend of the Honorable, Perry M. Boehman dated September 19, 2017 filed September 27, 2017. Appellant received written notice of entry of this order Denying applicant's Motion to Alter or Amend on September 29, 2017.

10-13-17
1 U.S.C.S.
28 U.S.C. § 1746

1/3/ Walter McQuinn
P.O. Box 304
Abernethy 29810

cc:



The Supreme Court of South Carolina

56

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

October 26, 2017

Mr. Walter J. McQune, 299882
P.O. Box 304
Allendale SC 29810

Re: Walter McQune v. State
Appellate Case No. 2017-001915

Dear Mr. McQune:

This responds to your recent letters.

The Division of Appellate Defense of the South Carolina Office of Indigent Defense is now representing you in this matter. Appellate Defense has ordered the transcript from the court reporter, and will serve and file a petition for a writ of certiorari and appendix once it receives the transcript from the court reporter.

If you have questions or concerns, you may contact the Appellate Defense by mail at P.O. Box 11433, Columbia, SC 29211-1433 or by phone at 803-734-1343. Please note that Appellate Defense will not assign a specific attorney to your case until the transcript is received from the court reporter.

Very truly yours,

CLERK

cc: Division of Appellate Defense
Ruston Wesley Neely, Esquire

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF COLLETON

57

THE STATE OF
SOUTH CAROLINA

-VS-

WALTER J. MCQUNE

TRANSCRIPT OF RECORD

FEBRUARY 5, 2004
HAMPTON, SOUTH CAROLINA

BEFORE:

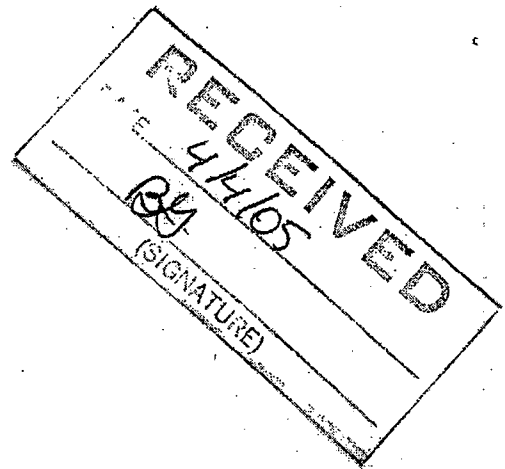
THE HONORABLE JACKSON V. GREGORY, JUDGE

APPEARANCES:

TERRY KEITH ALEXANDER, DEPUTY SOLICITOR
ATTORNEY FOR THE STATE

EVERETT W. BENNETT, JR., ESQ.
ATTORNEY FOR THE DEFENDANT

DONNA HARTLEY
CIRCUIT COURT REPORTER



INDEX

58

	PAGE
PLEA	4
SENTENCING	27
CERTIFICATE OF THE COURT REPORTER	29

EXHIBITS

NO EXHIBITS INTRODUCED

59

1 MR. ALEXANDER: PLEASE THE COURT.

2 THE COURT: SOLICITOR. (60)

3 MR. ALEXANDER: YOUR HONOR, BEFORE YOU
4 IS WALTER J. MCQUNE IN INDICTMENT O3-GS-15 DASH 0491.
5 TRUE BILL WAS RETURNED IN AUGUST OF 2003 CHARGING THE
6 DEFENDANT WITH MURDER. HE'S REPRESENTED BY E.W.
7 BENNETT.

8 THE STATE HAS THE VICTIM'S FAMILY PRESENT,
9 YOU KNOW, AND WE'RE ACCEPTING A PLEA TO VOLUNTARY
10 MANSLAUGHTER.

11 ALSO, YOUR HONOR, I'M - I WAS TOLD BY MY
12 VIC-WIT ADVOCATE THAT I NEEDED TO HAND UP - SOVA PAID
13 FOR FUNERAL EXPENSES IN THE AMOUNT OF \$4,000.00 SO I'M
14 HANDING THAT UP.

15 THERE'S BEEN NO NEGOTIATIONS, YOUR
16 HONOR.

17 THE COURT: MR. BENNETT, YOU REPRESENT
18 THE DEFENDANT WALTER J. MCQUNE?

19 MR. BENNETT: YES, SIR, I DO, YOUR HONOR.

20 THE COURT: HAVE YOU EXPLAINED TO THE
21 DEFENDANT THE CHARGE CONTAINED IN THE INDICTMENT,
22 MURDER, AND THE CHARGE HE'S PLEADING GUILTY TO,
23 VOLUNTARY MANSLAUGHTER? POSSIBLE PUNISHMENT FOR
24 VOLUNTARY MANSLAUGHTER IS UP TO THIRTY YEARS AND HIS
25 CONSTITUTIONAL RIGHTS INCLUDING HIS RIGHT TO HAVE A JURY

1 TRIAL?

2 MR. BENNETT: YES, SIR, I'VE EXPLAINED ALL
3 THAT TO HIM, YOUR HONOR. (61)

4 THE COURT: IN YOUR OPINION DOES THE
5 DEFENDANT UNDERSTAND THE CHARGE, THE PUNISHMENT AND
6 HIS RIGHTS?

7 MR. BENNETT: YES, SIR, HE DOES.

8 THE COURT: AND DOES HE INDICATE HE
9 WISHES TO PLEAD?

10 MR. BENNETT: HE INDICATED TO ME HE
11 WISHED TO PLEAD GUILTY, JUDGE.

12 THE COURT: YOU AGREE WITH HIS DECISION
13 TO PLEAD GUILTY?

14 DEFENDANT WALTER J. MCQUNE: YES, SIR.

15 MR. BENNETT: YES.

16 THE COURT: OKAY, I'LL ASK YOU QUESTIONS
17 IN JUST A MINUTE.

18 FROM YOUR – MR. BENNETT, FROM YOUR
19 INVESTIGATION OF THE FACTS AND CIRCUMSTANCES OF THIS
20 CASE DO YOU FEEL THE STATE COULD PRODUCE SUFFICIENT
21 EVIDENCE TO CONVINCE A JURY OF THE DEFENDANT'S GUILT
22 BEYOND A REASONABLE DOUBT AND IF HE WERE TO STAND
23 TRIAL A CONVICTION WOULD BE PROBABLE?

24 MR. BENNETT: YES.

25 THE COURT: HAS THE DEFENDANT BEEN

1 ORDERED TO SUBMIT TO A MENTAL EXAMINATION TO DETERMINE
2 HIS COMPETENCY TO STAND TRIAL? (62)

3 MR. BENNETT: NO, SIR. UNDER THE
4 CIRCUMSTANCES IT WASN'T NECESSARY.

5 THE COURT: OKAY.

6 AND YOU ARE WALTER J. MCQUNE?

7 DEFENDANT WALTER J. MCQUNE: YES, SIR.

8 THE COURT: MR. MCQUNE, BEFORE I CAN
9 ACCEPT YOUR PLEA OF GUILTY I NEED TO ASK YOU SOME
10 QUESTIONS TO MAKE SURE YOUR PLEA IS MADE FREELY,
11 KNOWING AND VOLUNTARY. IF YOU DON'T UNDERSTAND THE
12 QUESTIONS, LET ME KNOW AND I'LL EXPLAIN THEM TO YOU. AND
13 IF AT ANY TIME DURING MY QUESTIONING TO YOU, YOU WANT TO
14 TALK TO YOUR LAWYER PLEASE LET ME KNOW AND I'LL GIVE YOU
15 THE OPPORTUNITY TO SPEAK TO MR. BENNETT.

16 OKAY.

17 YOU'RE TWENTY YEARS OLD?

18 DEFENDANT WALTER J. MCQUNE: YES, SIR.

19 THE COURT: HOW FAR DID YOU GO IN
20 SCHOOL?

21 DEFENDANT WALTER J. MCQUNE: NINTH
22 GRADE.

23 THE COURT: WHAT KIND OF WORK DO YOU
24 DO?

25 DEFENDANT WALTER J. MCQUNE:

1 CONSTRUCTION.

2 THE COURT: HAVE YOU EVER BEEN TREATED
3 FOR ABUSE OF ALCOHOL OR DRUGS OR FOR MENTAL ILLNESS?

4 DEFENDANT WALTER J. MCQUNE: NO, SIR.

5 THE COURT: HAVE YOU TAKEN ANY
6 MEDICATION, DRUGS OR ALCOHOL IN THE LAST TWENTY-FOUR
7 HOURS?

8 DEFENDANT WALTER J. MCQUNE: NO, SIR.

9 THE COURT: ARE YOU TODAY AWARE OF ANY
10 PHYSICAL, EMOTIONAL OR NERVOUS PROBLEM THAT MIGHT
11 KEEP YOU FROM UNDERSTANDING WHAT YOU'RE DOING HERE
12 TODAY?

13 DEFENDANT WALTER J. MCQUNE: NO, SIR.

14 THE COURT: YOU'VE HEARD YOUR ATTORNEY
15 TELL ME THAT HE'S EXPLAINED TO YOU THE CHARGE AGAINST
16 YOU, THE POSSIBLE PUNISHMENT AND YOUR CONSTITUTIONAL
17 RIGHTS AND THAT YOU UNDERSTAND THESE THINGS, IS THAT
18 CORRECT?

19 DEFENDANT WALTER J. MCQUNE: YES, SIR.

20 THE COURT: YOU'RE PLEADING GUILTY TO
21 THE OFFENSE OF VOLUNTARY MANSLAUGHTER. THE STATE
22 CHARGES YOU WITH HAVING KILLED MARTY BROWN (PHON.) BY
23 STRANGLING HIM WITH YOUR HANDS AND A PHONE CORD,
24 STABBING HIM SEVERAL TIMES WITH A KNIFE ON OR ABOUT
25 AUGUST 5 OF 2002.

1 MR. ALEXANDER: IS IT AUGUST OR OCTOBER,
2 YOUR HONOR. (64)

3 MR. BENNETT: OCTOBER, JUDGE.

4 THE COURT: WHAT DID I SAY?

5 MR. ALEXANDER: AUGUST.

6 DEFENDANT WALTER J. MCQUNE: AUGUST.

7 THE COURT: OCTOBER —

8 MR. ALEXANDER: YEAH.

9 THE COURT: — 5 OF 2002.. NOW, DID YOU
10 COMMIT THIS OFFENSE?

11 DEFENDANT WALTER J. MCQUNE: YES, SIR.

12 THE COURT: WHEN YOU PLEAD GUILTY YOU
13 GIVE UP CERTAIN IMPORTANT CONSTITUTIONAL RIGHTS. FIRST,
14 YOU GIVE UP YOUR RIGHT TO REMAIN SILENT, THAT IS, YOUR
15 RIGHT AGAINST SELF-INCRIMINATION, YOUR RIGHT TO SAY
16 NOTHING AT ALL. YOU CANNOT BE COMPELLED TO TESTIFY OR
17 PROVIDE EVIDENCE AGAINST YOURSELF. DO YOU UNDERSTAND
18 THAT?

19 DEFENDANT WALTER J. MCQUNE: YES, SIR.

20 THE COURT: SECONDLY, YOU ARE GIVING UP
21 YOUR RIGHT TO HAVE A JURY TRIAL, THAT IS, YOUR RIGHT TO
22 HAVE A JURY DECIDE WHETHER OR NOT YOU'RE GUILTY BEYOND
23 A REASONABLE DOUBT. A JURY CAN BASE THEIR DECISION UPON
24 EVIDENCE WHICH THE STATE PRESENTS AND ON ANY EVIDENCE
25 YOU MIGHT WISH TO INTRODUCE. AT A TRIAL YOU ARE

1 PRESUMED TO BE INNOCENT AND THE STATE WOULD HAVE TO
2 PRODUCE EVIDENCE THAT WOULD CONVINCE ALL TWELVE
3 MEMBERS OF THE JURY THAT YOU WERE GUILTY BEYOND A
4 REASONABLE DOUBT. UNDERSTAND THAT? 65

5 DEFENDANT WALTER J. MCQUNE: YES, SIR.

6 THE COURT: THIRD, YOU'RE GIVING UP THE
7 RIGHT TO CONFRONT AND BE CONFRONTED BY THE WITNESSES
8 AGAINST YOU, THAT IS, THE RIGHT TO SEE, HEAR AND CROSS-
9 EXAMINE ANY WITNESS THAT MAY BE CALLED AGAINST YOU IN
10 THE TRIAL AND THE RIGHT TO SUBPOENA AND CALL WITNESSES
11 IN YOUR OWN BEHALF. UNDERSTAND THAT?

12 DEFENDANT WALTER J. MCQUNE: YES, SIR.

13 THE COURT: DO YOU UNDERSTAND THAT
14 SINCE YOU'RE PLEADING GUILTY YOU WILL NOT HAVE A JURY
15 TRIAL?

16 DEFENDANT WALTER J. MCQUNE: YES, SIR.

17 THE COURT: IS THAT WHAT YOU WANT?

18 DEFENDANT WALTER J. MCQUNE: YES, SIR.

19 THE COURT: UNDERSTANDING THE NATURE OF
20 THE CHARGE AGAINST YOU AND THE CHARGE YOU'RE PLEADING
21 TO, VOLUNTARY MANSLAUGHTER, AND THE CONSEQUENCE OF A
22 GUILTY PLEA, HOW DO YOU PLEAD TO THIS CHARGE?

23 DEFENDANT WALTER J. MCQUNE: GUILTY.

24 THE COURT: DO YOU UNDERSTAND THAT BY
25 PLEADING GUILTY YOU ARE ADMITTING THE TRUTH OF THE

1 CHARGES AGAINST YOU?

2 DEFENDANT WALTER J. MCQUNE: YES, SIR.

3 THE COURT: YOU MAY HAVE DEFENSES TO
4 THIS CHARGE. I DON'T KNOW WHETHER YOU DO OR NOT BUT DO
5 YOU UNDERSTAND THAT BY PLEADING GUILTY YOU'RE WAIVING
6 OR GIVING UP ANY DEFENSES TO THIS CHARGES?

7 DEFENDANT WALTER J. MCQUNE: WHAT YOU
8 MEAN? WHY YOU MEAN BY THAT?

9 THE COURT: WELL, IF - YOU MIGHT SAY THAT I
10 HAVE A DEFENSE, FOR INSTANCE, SELF-DEFENSE OR
11 SOMETHING. AND BY PLEADING GUILTY YOU'RE WAIVING OR
12 GIVING UP ANY DEFENSE TO THIS CHARGE. YOU'RE ADMITTING
13 YOU'RE GUILTY.

14 (MR. BENNETT CONFERS WITH DEFENDANT
15 WALTER J. MCQUNE OFF THE RECORD.)

16 DEFENDANT WALTER J. MCQUNE: YES, SIR.

17 THE COURT: DO YOU UNDERSTAND IT NOW?

18 DEFENDANT WALTER J. MCQUNE: YES, SIR.

19 THE COURT: OKAY.

20 AND I APPRECIATE IF YOU'VE GOT ANY
21 QUESTIONS ABOUT ANYTHING MR. BENNETT CAN EXPLAIN IT TO
22 YOU.

23 YOU MIGHT HAVE GIVEN AN INCRIMINATING
24 STATEMENT IN THIS CASE. I DON'T KNOW WHETHER YOU DID OR
25 NOT BUT IF YOU PLEAD GUILTY DO YOU UNDERSTAND THAT YOU

1 WOULD WAIVE OR GIVE UP YOUR RIGHT TO CHALLENGE (67)
2 WHETHER SUCH A STATEMENT WAS FREELY AND VOLUNTARILY
3 GIVEN IN ACCORDANCE WITH YOUR CONSTITUTIONAL RIGHTS?

4 DEFENDANT WALTER J. MCQUNE: YES, SIR.

5 THE COURT: THE SOLICITOR TELLS ME THAT
6 THE ONLY PLEA NEGOTIATIONS IN THIS CASE WAS TO REDUCE
7 THE CHARGE FROM MURDER TO VOLUNTARY MANSLAUGHTER. IS
8 THAT CORRECT?

9 DEFENDANT WALTER J. MCQUNE: YES, SIR.

10 THE COURT: AND THAT THERE IS NO PLEA
11 NEGOTIATIONS OR RECOMMENDATIONS FROM THE STATE AS TO
12 THE SENTENCE THAT I, AS A JUDGE, IMPOSE ON YOU FOR THIS.
13 IS THAT YOUR UNDERSTANDING?

14 DEFENDANT WALTER J. MCQUNE: YES, SIR.

15 THE COURT: IS THAT CORRECT, SOLICITOR?

16 MR. ALEXANDER: YES, SIR.

17 THE COURT: IS THAT CORRECT, MR. BENNETT?

18 MR. BENNETT: YES, SIR.

19 THE COURT: YOU STILL WISH TO PLEAD

20 GUILTY?

21 DEFENDANT WALTER J. MCQUNE: YES, SIR.

22 THE COURT: HAS ANYONE PROMISED YOU
23 ANYTHING OR HELD OUT ANY HOPE OF REWARD TO GET YOU TO
24 PLEAD GUILTY?

25 DEFENDANT WALTER J. MCQUNE: NO, SIR.

1 THE COURT: HAS ANYONE THREATENED YOU
2 OR USED FORCE, PRESSURE OR INTIMIDATION TO CAUSE YOU TO
3 PLEAD GUILTY? (68)

4 DEFENDANT WALTER J. MCQUNE: NO, SIR.

5 THE COURT: HAVE YOU HAD ADEQUATE TIME
6 TO MAKE UP YOUR MIND AS TO WHETHER OR NOT YOU WANT TO
7 PLEAD GUILTY?

8 DEFENDANT WALTER J. MCQUNE: YES, SIR.

9 THE COURT: ARE YOU PLEADING GUILTY OF
10 YOUR OWN FREE WILL AND ACCORD?

11 DEFENDANT WALTER J. MCQUNE: YES, SIR.

12 THE COURT: ARE YOU SATISFIED WITH THE
13 WAY IN WHICH YOUR LAWYER HAS ADVISED YOU AND
14 REPRESENTED YOU?

15 DEFENDANT WALTER J. MCQUNE: YES, SIR.

16 THE COURT: HAS YOUR LAWYER DONE
17 EVERYTHING FOR YOU THAT YOU FEEL HE COULD HAVE DONE OR
18 SHOULD HAVE DONE?

19 DEFENDANT WALTER J. MCQUNE: YES, SIR.

20 THE COURT: DO YOU HAVE ANY COMPLAINTS
21 YOU WOULD LIKE TO MAKE ABOUT YOUR LAWYER, THE
22 SOLICITOR OR ANY OF THE POLICE OFFICERS?

23 DEFENDANT WALTER J. MCQUNE: NO, SIR.

24 THE COURT: HAVE YOU UNDERSTOOD MY
25 QUESTIONS?

1 DEFENDANT WALTER J. MCQUNE: YES, SIR.

2 YES, SIR.

3 THE COURT: IS THERE ANYTHING YOU'D LIKE
4 TO ASK ME ABOUT WHAT WE'VE JUST BEEN OVER?

5 DEFENDANT WALTER J. MCQUNE: NO, SIR.

6 THE COURT: ALL RIGHT.

7 DO YOU UNDERSTAND THAT YOU HAVE A RIGHT
8 TO APPEAL THE GUILTY PLEA AND SENTENCE OF THE COURT AND
9 THAT YOU OR YOUR LAWYER MUST DO THIS WITHIN TEN DAYS?

10 DEFENDANT WALTER J. MCQUNE: APPEAL?
11 TELL ME WHAT THAT MEANS.

12 THE COURT: I'M TELLING YOU RIGHT NOW
13 THAT YOU HAVE A RIGHT TO APPEAL THE GUILTY PLEA AND
14 SENTENCE OF THE COURT. BUT IF YOU WISH TO APPEAL YOU
15 MUST FILE A NOTICE – YOU OR YOUR LAWYER MUST FILE THIS
16 NOTICE OF INTENT TO APPEAL WITHIN TEN DAYS.

17 (MR. BENNETT CONFERS WITH DEFENDANT
18 WALTER J. MCQUNE OFF THE RECORD.)

19 DEFENDANT WALTER J. MCQUNE: YES, SIR, I
20 UNDERSTAND.

21 THE COURT: OKAY.

22 MR. BENNETT, WOULD YOU EXPLAIN TO THE
23 DEFENDANT MR. MCQUNE THAT THIS IS A VIOLENT MOST
24 SERIOUS OFFENSE?

25 MR. BENNETT: YES, SIR. I DID, YOUR HONOR.

1 THE COURT: YOU'VE, YOU'VE EXPLAINED TO
2 HIM – AND THIS IS ALSO A NO PAROLE OFFENSE. HE HAS TO
3 SERVE 85 PERCENT OF ANY SENTENCE THAT IMPOSE. 90

4 MR. BENNETT: YES, SIR, I EXPLAINED HE'D
5 HAVE TO SERVE AT LEAST 85 PERCENT BEFORE HE COULD BE
6 RELEASED AND, AND HE COULD HAVE TO SERVE THE WHOLE
7 SENTENCE. IF THE – IF THE DEPARTMENT OF CORRECTIONS SO
8 DECIDED.

9 THE COURT: YOU UNDERSTAND ALL THAT, MR.
10 MCQUNE?

11 DEFENDANT WALTER J. MCQUNE: YES, SIR.

12 THE COURT: OKAY. OKAY.

13 I'LL HEAR FROM YOU NOW, SOLICITOR.

14 MR. ALEXANDER: PLEASE THE COURT, YOUR
15 HONOR.

16 AS I INDICATED AT THE BEGINNING OF THIS
17 MATTER, THE VICTIM MARTY BROWN'S MOTHER AND FATHER ARE
18 PRESENT IN THE COURTROOM ALONG WITH SOME OTHER FAMILY
19 MEMBERS SO RATHER THAN ME GOING INTO GRAPHIC DETAIL, IT I
20 COULD APPROACH I CAN GIVE THE COURT THREE PHOTOGRAPHS
21 THAT I THINK WILL HELP THE COURT UNDERSTAND THIS CASE.

22 THE COURT: OKAY.

23 YOU CAN SHOW THE DEFENDANT.

24 THESE ARE PHOTOGRAPHS OF THE BODY OF
25 MR. BROWN.

1 MR. ALEXANDER: AND, AND THE LIVING ROOM
2 AREA WHERE, WHERE – WITH HIS BODY IN IT, YOUR HONOR.

3 THE COURT: OKAY. (91)

4 MR. ALEXANDER: ALL RIGHT, SIR.

5 YOUR HONOR, YOU HEARD THE ALLEGATIONS
6 AND THE – OR READ THE ALLEGATIONS FROM THE INDICTMENT
7 AND THE ACTUAL CAUSE OF DEATH IN THIS CASE WAS MULTIPLE
8 STAB WOUNDS, ESTIMATED TO BE FIFTEEN STAB WOUNDS TO
9 THE BODY.

10 YOUR HONOR, EARLY ON OCTOBER 5 OF 2002
11 MARTY BROWN, WHO WAS TWENTY-TWO YEARS OF AGE AND
12 LIVED IN A SMALL HOUSE BEHIND HIS PARENTS HOUSE ON CARN
13 (PHON.) STREET HERE IN WALTERBORO, HIS BODY WAS
14 DISCOVERED AND, AND THEY CALLED 9-1-1. WALTERBORO
15 POLICE DEPARTMENT CAME TO THE SCENE AND SECURED THE
16 SCENE AND THE SCENE WAS PROCESSED BY SLED.

17 AND IT WAS DISCOVERED THAT SOMEONE HAD
18 GAINED ENTRY TO MARTY BROWN'S RESIDENCE THROUGH A
19 BACKDOOR. THERE WAS A WINDOW NEXT TO BACKDOOR. THE
20 SCREEN WAS OFF OF IT AND THE DOOR WAS OPEN AND
21 SOMEONE HAD GONE INSIDE AND, AND . . .

22 THE – ESPECIALLY THE LIVING ROOM AREA,
23 THIS WAS BASICALLY A – HAD A BEDROOM, A LIVING ROOM AND
24 KITCHEN AREA AND BATHROOM AND THING WAS A SMALL
25 RESIDENCE.

1 AND THE BODY WAS FOUND, AS INDICATED IN
2 THE PHOTOGRAPHS THAT I'VE HANDED UP. (92)

3 SLED PROCESSED THE SCENE. THEY SECURED
4 THE EVIDENCE AND ALL IN THIS. AND ITEMS WERE SUBMITTED
5 TO EXAMINATION AND ALL AND – BUT THEY HAD VERY LITTLE
6 FORENSIC VALUE.

7 THE – I HAVE TO TAKE MY HAT OFF TO THE
8 WALTERBORO POLICE DEPARTMENT, ESPECIALLY OFFICERS
9 CLITTS (PHON.) AND OTIS RHODES (PHON.) FOR NOT GIVING UP.
10 THEY KEPT FOLLOWING UP STREET RUMORS AND INFORMATION
11 AND ULTIMATELY THEY CAME IN CONTACT WITH WALTER J.
12 MCQUNE.

13 MR. MCQUNE BEGAN TELLING THEM THE STORY
14 OF WHAT HAD OCCURRED ON THE – ON THE NIGHT OF OCTOBER
15 5 AND – ON THE EARLY MORNING OF OCTOBER 5 AND, AND HE
16 WAS ABLE TO RELATE FACTS TO THEM THAT COULD ONLY BEEN
17 KNOWN BY A PERSON WHO HAD COMMITTED THE OFFENSE, SO.
18 SUCH AS THE TELEPHONE CORD, SUCH AS THE MONEYS THAT
19 WERE MISSING, SUCH AS HOW ENTRY WAS GAINED TO THE
20 PREMISES. HIS, HIS STATEMENT WAS SELF-CORROBORATING.

21 THE POLICE DEPARTMENT VIDEO-TAPED HIS
22 STATEMENT TO THEM. THEY AFFORDED HIM AN OPPORTUNITY
23 TO GIVE A WRITTEN STATEMENT AT WHICH POINT IN THE
24 WRITTEN STATEMENT HE STOPPED WHEN HE GOT TO THE INITIAL
25 STRANGULATION OF MARTY BROWN. AND HE WOULDN'T GO ON

1 ABOUT THE TELEPHONE CORD OR, OR ABOUT THE, THE
2 STABBING. (73)

3 ULTIMATELY HE - THEY ALLOWED HIS - I
4 BELIEVE IT WAS HIS MOTHER TO COME TO THE STATION AND,
5 AND HE WAS QUESTIONED FURTHER AND, AND AT THAT POINT HE
6 RELATED THE WHOLE STORY OF HOW HE'D GONE THERE.

7 HE KNEW MARTY. THEY HAD CONVERSATION.
8 THEY SMOKED SOME. BUT THEN WHEN HE TRIED TO TAKE
9 MARTY'S MONEY MARTY RESISTED HIM. HE INITIALLY CHOKED
10 AND HE PASSED OUT. HE WAS CHECKING FURTHER. MARTY
11 REAWOKE. THAT'S WHEN HE PUT THE TELEPHONE CORD
12 AROUND HIM AND, AND WENT ON.

13 IN LEADING UP TO ALL THIS HE ALSO RELATED
14 AN, AN EVENING OF SUBSTANCE ABUSE, BOTH ALCOHOL AND
15 DRUGS. AND THAT - AND THAT HE STUMBLED INTO THE
16 BACKYARD AREA OF THIS AND GAINED ENTRY INTO MARTY'S
17 PLACE.

18 WE HAVE NO EVIDENCE OF ANY
19 PREMEDITATION THAT HE HAD IN REGARD TO THE DEATH AND
20 THAT'S WHY I OFFERED THE VOLUNTARY MANSLAUGHTER
21 CHARGE IN THIS CASE, YOUR HONOR.

22 THE YOUNG MAN MADE A CLEAN BREAST OF
23 WHAT HE HAD DONE THAT NIGHT AND, AND, LIKE I SAID, I TWAS
24 CORROBORATED BY THE EVIDENCE THAT WAS FOUND AT THE
25 SCENE SO I, I - WE DON'T HAVE ANY DOUBT IN REGARDS TO

1 WHAT OCCURRED.

2 I'M NOT AWARE OF ANY CRIMINAL HISTORY OF
3 THE DEFENDANT, YOUR HONOR. (74)

4 AND, AGAIN, I THINK IT WAS EXCELLENT POLICE
5 WORK.

6 THE FAMILY HAS BEEN VERY COOPERATIVE
7 AND, AND I'VE ENJOYED WORKING WITH THEM, TOLD THEM I WISH
8 IT WAS UNDER DIFFERENT CIRCUMSTANCES.

9 AND AT THE APPROPRIATE TIME IF ANY FAMILY
10 MEMBER WOULD LIKE TO SPEAK I WOULD OFFER THEM THAT.
11 WOULD THAT BE NOW, YOUR HONOR, PLEASE?

12 THE COURT: WELL, FIRST, JUST ONE SECOND.
13 OKAY.

14 I FIND THAT THERE IS A SUBSTANTIAL FACTUAL
15 BASIS FOR THIS PLEA AND THAT THE DEFENDANT'S DECISION TO
16 PLEAD GUILTY IS FREELY, VOLUNTARILY, KNOWINGLY AND
17 INTELLIGENTLY MADE AND THAT THE DEFENDANT'S HAD ADVICE
18 OF COUNSEL OF AN ATTORNEY WITH WHOM THE DEFENDANT
19 SAYS HE'S SATISFIED. THE DEFENDANT'S PLEADING GUILTY IS
20 ACCEPTED.

21 MR. ALEXANDER: ALL RIGHT.

22 WOULD ANYONE LIKE TO ADDRESS THE
23 COURT?

24 THEY'RE INDICATING THEY DO NOT WISH TO,
25 YOUR HONOR, SO WE CAN PROCEED.

1 THE COURT: MR. BENNETT. (75)

2 MR. BENNETT: YOUR HONOR, I WAS, OF
3 COURSE, APPOINTED AS FIRST-TIER DEFENDER TO REPRESENT
4 MR. MCQUNE. AND I'LL HAVE TO TELL YOU, JUDGE, HE, AS MUCH
5 AS ANY CLIENT I'VE EVER HAD, HAS, HAS BEEN AS COURTESY
6 AND POLITE AND COOPERATIVE AND IS AN EASY-GOING GUY AND
7 HAS BEEN A MODEL PRISONER AND IT'S, IT'S REALLY HARD TO
8 BELIEVE, JUST FROM MY KNOWING HIM, YOU KNOW, SINCE I'VE
9 BEEN REPRESENTING HIM IT'S HARD TO BELIEVE OR IMAGINE
10 THAT HE ACTUALLY COULD'VE COMMITTED THE CRIME WHICH
11 HE'S ACCUSED OF AND WHICH HE ADMITS TO.

12 I MEAN HE FREELY - I MEAN HE CONFESSED IN
13 WRITING AND THE VIDEO STATEMENT.

14 AND, JUDGE, I JUST WANTED TO REITERATE.
15 DEPUTY SOLICITOR ALEXANDER MENTIONED IT. I DON'T THINK
16 THIS WOULD'VE EVER HAPPENED IF WALTER HAD NOT BEEN
17 SMOKING GRASS THAT DAY AND DRINKING A LOT OF ALCOHOL.
18 HE UNDERSTANDS, JUDGE, THAT'S NOT A LEGAL DEFENSE TO
19 THIS CRIME. BUT, YOU KNOW, IT IS SOMETHING THAT, YOU
20 KNOW, I'M ARGUING IN MITIGATION. IT HAD A WHOLE LOT TO DO
21 WITH IT, JUDGE.

22 HE HAS NO PRIOR CRIMINAL RECORD. HE HAS
23 NEVER BEEN ACCUSED OF EVEN COMMITTING ANY KIND OF
24 VIOLENT ACT BEFORE THIS.

25 AND HIS FAMILY MEMBERS ARE HERE, TOO,

1 YOU KNOW, TO SPEAK TO YOU ABOUT IT.

2 THIS CERTAINLY IS NOT SOMETHING THAT IS
3 TYPICAL OF THIS YOUNG MAN'S PAST BEHAVIOR AND CONDUCT. I
4 JUST WANTED TO POINT THAT OUT TO THE COURT. THIS IS
5 TOTALLY OUT OF CHARACTER, WHAT HAPPENED HERE, JUDGE.

6 AND, JUDGE, YOU KNOW, AND I'VE, I'VE SPOKEN
7 TO WALTER SEVERAL OCCASIONS. HE'S BEEN IN JAIL SINCE HIS
8 ARREST. HE WAS ARRESTED, JUDGE, ON MAY 6, 2003.

9 AND, OF COURSE, I HANDLED HIS PRELIMINARY
10 HEARING. I'VE TALKED WITH HIM, YOU KNOW, SEVERAL TIMES.

11 BUT, YOU KNOW, HE HAS TOLD ME THAT ON
12 THAT DAY THAT HE STARTED OUT THAT MORNING HANGING OUT
13 AT LINCOLN (PHON.) APARTMENTS AND HE WAS DRINKING BEER
14 AND SMOKING GRASS. AT SPRINGWOOD (PHON.) CIRCLE. AND
15 THEN HE WENT TO THE BLOCK TO SEE HIS COUSIN. AND THAT
16 THEY PLAYED BASKETBALL AT THE REC CENTER. THEN HE DRANK
17 A SIX PACK OF BEER. THEN THEY WENT OVER TO DUNK'S (PHON.)
18 OLD STORE AND HUNG OUT AND DRANK MORE BEER AND
19 SMOKED MORE, YOU KNOW, MARIJUANA, REEFER. AND, YOU
20 KNOW, THEN THEY WENT OVER TO SOMEBODY BY THE NAME OF
21 GERMAINE'S (PHON.) HOUSE BY THE STADIUM AND THEY DRANK
22 MORE AND SMOKED MORE, YOU KNOW. SO, I MEAN HE WAS
23 SMOKING GRASS AND DRINKING BEER ALL DAY.

24 AND, LIKE I SAY, JUDGE, THAT'S NOT AN
25 EXCUSE. IT'S NOT A LEGAL DEFENSE. BUT IN MITIGATION

77

1 I - WITH ALL MY HEART, I DON'T BELIEVE THIS WOULD'VE EVER
2 HAPPENED IF IT HADN'T BEEN, YOU KNOW, THE FACT THAT HE
3 WAS -- IN MY OPINION AND BASED ON WHAT HE TOLD ME, HE WAS
4 TOTALLY SPACED OUT ON DRUGS AND ALCOHOL WHEN THIS
5 HAPPENED.

6 THE OTHER THING I WANTED TO POINT OUT,
7 JUDGE, IS THAT HE HAS BEEN COOPERATIVE. WHEN HE WAS
8 ARRESTED HE MADE A VOLUNTARY STATEMENT FREELY AND
9 WILLINGLY TO THE POLICE DEPARTMENT.

10 I THINK HE GOT A LITTLE SCARED AND THEN
11 THEY BROUGHT HIS MOM DOWN AND THEN THEY DID A VIDEO-
12 TAPED CONFESSION AND HE ADMITTED, AS T.K. SAID, ALL THE
13 DETAILS OF THIS CRIME.

14 AND, OF COURSE, THERE'S NOTHING WE CAN
15 DO TO BRING MARTY BROWN, THE VICTIM, BACK. BUT MY
16 CLIENT, IF HE COULD UNDO IT, HE WOULD, JUDGE. HE, HE HAS
17 EXPRESSED DEEP REMORSE ABOUT THIS. IT BOTHERS HIM
18 EVERY NIGHT. IT'S ON HIS CONSCIENCE. AND I THINK, JUDGE,
19 THAT'S -- I THINK WHEN HE CONFESSED THIS CRIME, YOU KNOW,
20 IT WAS PARTLY DUE THAT HE IS -- I MEAN, LIKE I SAY, THIS IS
21 TOTALLY OUT OF CHARACTER. I THINK HE NEEDED TO GET IF
22 OFF HIS CHEST BECAUSE HE HAS A CONSCIENCE. AND I DON'T
23 THINK HE COULD'VE CARRIED WITH AROUND WITH HIM, JUDGE,
24 AND THAT'S WHY HE ADMITTED WHAT HE DID.

25 THE OTHER THING I WANTED TO POINT OUT,

1 JUDGE, AS T.K. ALEXANDER, THE DEPUTY SOLICITOR, TOLD YOU,
2 HE DID NOT GO THERE WITH THE INTENTION OF KILLING MARTY
3 BROWN, THE VICTIM. HE KNEW MARTY. MARTY USED TO WORK
4 AT THE ANTIQUE STORE. THEY WEREN'T CLOSE FRIENDS BUT,
5 THEY – YOU KNOW, THEY KNEW EACH OTHER. THEY WERE
6 ACQUAINTANCES. (18)

7 AND HE TOLD ME THAT HE WENT THERE TO,
8 TO, BASICALLY, JUDGE, BORROW MONEY FROM MARTY. AND IN
9 THE STATE HE WAS IN, JUDGE, I THINK HIS INTENT PROBABLY
10 WAS TO GET MONEY TO PROBABLY BUY MORE MARIJUANA,
11 LIQUOR OR BEER BECAUSE OF WHAT HE'D BEEN DOING ALL
12 DAY.

13 HE WAS NOT ARMED, JUDGE. WHEN HE – YOU
14 KNOW, WHEN HE ENTERED. THE APARTMENT. AND, AND AS
15 DEPUTY ALEXANDER EXPLAINED TO YOU AND WHAT MARTY AND
16 I – I MEAN, EXCUSE ME, WALTER AND I HAVE DISCUSSED, THAT
17 HE ASKED FOR \$35.00 AND THEY WENT IN THE ROOM WHERE
18 MARTY KEPT HIS MONEY AND THEN A SCUFFLED ENSUED. AND,
19 YOU KNOW, THEN THAT'S WHEN, YOU KNOW, HE ENDED UP
20 CHOKING THE VICTIM.

21 AND, AND WALTER TOLD ME, JUDGE,
22 BASICALLY HE FLIPPED OUT. YOU KNOW, DURING THAT
23 SCUFFLE. AND, AND THAT'S WHEN – JUDGE, THAT'S WHEN THE
24 CRIME OCCURRED, OF VOLUNTARY MANSLAUGHTER.

25 BUT, JUDGE, I WOULD ASK THAT, THAT YOU

1 CONSIDER HIS AGE. HE WAS EIGHTEEN, JUDGE, WHEN THIS
2 CRIME OCCURRED. HE'S TWENTY NOW. HE WAS NINETEEN
3 WHEN HE WAS ARRESTED. HE IS A YOUNG MAN.

4 HE HAS WORKED IN THE PAST DOING
5 CONSTRUCTION WORK. 79

6 JUDGE, HE WAS - AT THE TIME THIS CRIME
7 OCCURRED HE WAS LIVING WITH HIS PARENTS. AND THAT IS
8 MISS MARY ELLISON (PHON.) AND MR. GEORGE OWENS. AND
9 THEY LIVE RIGHT HERE IN WALTERBORO ON LEMACK (PHON.)
10 STREET. AND HE WAS LIVING THERE.

11 OF COURSE, HE WASN'T IN SCHOOL BUT HE
12 WAS, YOU KNOW, WORKING. AND, OF COURSE, HE DROPPED
13 OUT IN THE NINTH GRADE AND I'M SURE THAT DIDN'T HELP ANY
14 HERE.

15 BUT HE'S SINGLE, JUDGE. HE DOES NOT HAVE
16 ANY CHILDREN.

17 HIS PARENTS ARE HERE AND HIS UNCLE.
18 RODNEY OWENS, HIS UNCLE, HE'S VERY CLOSE TO, IS HERE,
19 JUDGE.

20 AND LIKE I SAID, I, I ALWAYS WANT TO
21 EXPLAIN TO YOU, JUDGE, HE HAS NO RECORD AND HE'S BEEN
22 VERY - I MEAN HE'S BEEN COOPERATIVE. AND HE - YOU KNOW,
23 HE WAS - ADMITTED WHAT HE DID. AND, AND HE'S, YOU KNOW,
24 OF COURSE, WANTING TO TAKE HIS PUNISHMENT.

25 BUT WE'D ASK, JUDGE, THAT YOU CONSIDER

1 ALL THESE CIRCUMSTANCES. CONSIDER, YOU KNOW, THE
2 MITIGATING CIRCUMSTANCES AND HIS AGE. AND WE'D ASK
3 THAT YOU GIVE HIM, YOU KNOW, AS, AS A LENIENT, AS
4 MERCIFUL SENTENCE, JUDGE, AS YOU FEEL IS JUSTIFIED. IN
5 THIS CASE. (30)

6 AND ALSO, JUDGE, I THINK AT THIS TIME HIS
7 PARENTS AND HIS UNCLE WOULD LIKE TO MAKE A STATEMENT
8 TO THE COURT.

9 THE COURT: GLAD TO HEAR FROM THEM.

10 IF YOU WANT TO SAY ANYTHING, SIR, PLEASE
11 COME FORWARD, STATE, STATE YOUR NAME FOR THE COURT
12 REPORTER.

13 MR. GEORGE OWENS: MY NAME IS GEORGE
14 OWENS AND I'M WALTER'S FATHER.

15 I JUST WANTED TO APOLOGIZE TO THE
16 FAMILY FOR EVERYTHING THAT HAPPENED AND WHAT NOT.

17 AND MY SON, HE'S, HE'S BEEN A GOOD BOY
18 AND EVERYTHING. AND IT WAS SHOCKING TO ME, WHAT
19 HAPPENED AND EVERYTHING AND I'M, I'M DEEPLY HURT, YOU
20 KNOW, FOR THE FAMILY, FOR HIM, FOR MYSELF AND
21 EVERYBODY.

22 AND THAT'S ABOUT ALL I CAN SAY.

23 THE COURT: THANK YOU.

24 MR. BENNETT: JUDGE, THIS IS WALTER'S
25 UNCLE RODNEY.

1 MR. RODNEY OWENS: I, I JUST WANTED TO
2 SAY THAT MY NEPHEW, HE - HE'S BEEN A GOOD PERSON. HE,
3 HE MESSED UP AND I WOULD LIKE FOR ANY AND EVERYBODY TO
4 FORGIVE HIM. (91)

5 HE STARTED GOING TO CHURCH WITH US AND
6 - ME AND MY WIFE AND MY FAMILY. AND HE TRIED TO GET
7 HISSELF STRAIGHT.

8 AND I WOULD LIKE TO SAY TO THE FAMILY, I'M
9 SORRY THAT THIS HAPPENED. IT - MAYBE IT COULD'VE BEEN
10 MY NEPHEW THAT THAT HAPPENED TO BUT PLEASE FORGIVE
11 US. PLEASE FORGIVE HIM. AND LET LORD JUST, JUST TAKE
12 IT - TAKE US ALL IN OUR LIFE AND BE . . .

13 I'M SORRY THAT THIS HAPPENED.

14 THAT'S ALL I HAVE TO SAY.

15 THANK Y'ALL.

16 MR. BENNETT: JUDGE, THIS IS MISS MARY
17 ELLISON. THIS IS THE DEFENDANT'S MOTHER.

18 MS. ELEANOR OWENS: NO, I'M ELEANOR
19 OWENS. I'M HIS STEPMOTHER.

20 MR. BENNETT: MY MISTAKE.

21 THE COURT: EXCUSE ME?

22 MR. BENNETT: ELEANOR OWENS.

23 THE COURT: MISS OWENS. GO AHEAD.

24 MR. BENNETT: STEPMOTHER.

25 MS. ELEANOR OWENS: HE LIVED WITH ME FOR

1 LIKE FOUR OR FIVE YEARS. WHEN HE WAS YOUNGER. AND I
2 NEVER THOUGHT HE WAS A PROBLEM TO SOCIETY. IT'S
3 SURPRISING TO ME THAT HE'S HERE AND I'M HERE. 92

4 NOT IN HIS DEFENSE BUT WHAT HE SAY AND
5 HIS GOOD CHARACTER AND LIKE, LIKE RODNEY SAID, I WANT TO
6 APOLOGIZE TO THE FAMILY BECAUSE I KNOW HOW IT IS TO
7 HAVE A LOVED ONE.

8 AND I WANT TO APOLOGIZE TO THE COURT.

9 THE COURT: THANK YOU, MISS OWENS.

10 MR. BENNETT: YOUR HONOR, I THINK ALSO
11 MY CLIENT - DID YOU WANT TO ...

12 I THINK MY CLIENT WOULD LIKE TO MAKE A
13 STATEMENT TO YOU.

14 THE COURT: GLAD TO HEAR FROM YOU.

15 DEFENDANT WALTER J. MCQUNE: I'D LIKE TO
16 APOLOGIZE TO THE FAMILY FOR, FOR WHAT HAPPENED. AND I
17 AIN'T - AIN'T SUPPOSED TO HAPPEN LIKE IT HAPPENED BUT IT'S
18 ON MY NERVES SOMETIMES. I APOLOGIZE FOR WHAT I DONE.

19 OKAY.

20 THE COURT: ANYTHING ELSE FROM THE
21 STATE?

22 MR. ALEXANDER: YOUR HONOR, JUST A
23 COUPLE OF OBSERVATIONS.

24 THE - MARTY WAS SPECIAL. THAT'S WHY HE
25 LIVED IN HIS PARENTS BACKYARD. HE WAD EDUCATIONALLY

1 CHALLENGED. SO THAT WAS ONE DISADVANTAGE. 83

2 ANOTHER DISADVANTAGE HE HAD IN THIS
3 SITUATION WAS THAT HE WAS SMALLER THAN MR. MCQUNE.
4 HE WAS ABOUT SIX FOOT, A HUNDRED AND THIRTY-SOMETHING
5 POUNDS. I THINK MR. MCQUNE'S A GOOD DEAL BIGGER THAN.

6 THIS HAPPENED AT 3:00 IN THE MORNING.
7 AND, AND I DO BELIEVE THAT IT'S OUT OF CHARACTER FRONT
8 THIS YOUNG MAN BUT, BY THE SAME TOKEN, BY WHAT HE DID,
9 TWENTY-YEAR-OLD LIFE IS LOST AND HE'S LOST HIS PARENTS
10 AND HIS FAMILY AND ALL.

11 I'M GLAD THE SENTENCING DECISION IS
12 YOURS AND NOT MINE, YOUR HONOR.

13 THE COURT: WELL, THIS IS CERTAINLY A
14 TOUGH SITUATION AND I, I AM IMPRESSED BY THE YOUTH AND
15 THE FACT THAT WALTER MCQUNE DIDN'T HAVE A RECORD BUT I
16 TELL YOU, I THINK THAT THIS IS A TERRIBLE, TERRIBLE CRIME
17 AND IT MANDATES A STIFF PUNISHMENT.

18 I DO BELIEVE THAT VOLUNTARY
19 MANSLAUGHTER UNDER THE CIRCUMSTANCES OF THIS CASE IS
20 PROPER, SOLICITOR. I AGREE WITH YOU ON THAT BECAUSE
21 THERE WAS NO PREMEDITATION.

22 SENTENCE OF THE COURT THAT THE
23 DEFENDANT WALTER J. MCQUNE BE COMMITTED TO THE STATE
24 DEPARTMENT OF CORRECTIONS FOR A TERM OF TWENTY-FIVE
25 YEARS.

1 AND RESTITUTION FOR MISS WILLIAMS,
2 JENIKA (PHON.) WILLIAMS OF \$4,000.00 AS ORDERED.

3 MR. ALEXANDER: THAT WOULD ACTUALLY BE
4 TO SOVA, I BELIEVE, YOUR HONOR. THAT WOULD BE
5 REIMBURSING SOVA. (84)

6 THE COURT: OH, OKAY.

7 MR. ALEXANDER: YES, SIR.

8 THE COURT: WHAT IS THAT?

9 MR. ALEXANDER: THAT'S THE GOVERNOR'S
10 OFFICE, THE VICTIMS ASSISTANCE.

11 THE COURT: S O V A?

12 MR. ALEXANDER: YES, SIR.

13 THE COURT: GOOD LUCK TO YOU.

14 YOU'LL BE IN YOUR FORTIES WHEN YOU GET
15 OUT AND, IF YOU SO CHOOSE, YOU'LL HAVE TIME TO HAVE A
16 PRODUCTIVE LIFE.

17 DEFENDANT WALTER J. MCQUNE: THANK
18 YOU.

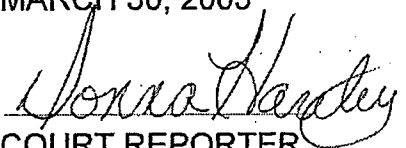
19 MR. BENNETT: THANK YOU.

20 - END OF REQUESTED TRANSCRIPT OF RECORD -
21
22
23
24
25

1 I THE UNDERSIGNED DONNA HARTLEY,
2 OFFICIAL COURT REPORTER FOR THE FOURTEENTH JUDICIAL
3 CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
4 CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
5 COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS
6 HAD AND EVIDENCE INTRODUCED IN THE TRAIL OF THE
7 CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT
8 FOR COLLETON COUNTY, SOUTH CAROLINA ON THE FIFTH DAY
9 OF FEBRUARY, 2004

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF
11 KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

12 MARCH 30, 2005

13 
14 COURT REPORTER
15
16
17
18
19
20
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)

County of Colleton)

IN THE COURT OF COMMON PLEAS

04-CP-15-1002

Walter McGune #299882)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B 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 Colleton County
General Session
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) Voluntary Manslaughter

04 OCT 15 PM 4:09

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

- (b) N/A
- (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) February 5, 2004
- (b) 25 yrs. Voluntary Manslaughter
- (c) N/A
6. Check whether a finding of guilty was made:
- (a) ☒ after a plea of guilty yes
- (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?
N/A
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) Made guilty Plea

87

- (b) N/A
(c) N/A

83

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

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

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

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

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
(d) any other petitions, motions or applications in this or any other Court? N/A

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

- (a) the specific nature thereof:
i. N/A
ii. N/A
iii. N/A
iv. N/A
(b) the name and location of the Court in which each was filed:
i. N/A
ii. N/A
iii. N/A

89

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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?

N/A

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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:

(90)

- (a) Lack of Knowledge.
(b) Counsel Did not Make Known proper Information.
(c) N/A

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

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

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

- (a) the name and address of each attorney who represented you:
i. E.W. Bennett JR., Attorney at Law.
P.O. Box 693 Walterboro, South Carolina 29488
ii. N/A
N/A
iii. N/A
N/A
(b) the proceedings at which each such attorney represented you:
i. Sentencing.
ii. N/A
iii. N/A

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

Rights to be Mentally evaluated, Reconsideration and
Modification of sentence to proceed in time
reduction.

(91)

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

N/A

N/A

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

I, _____, 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.

Walter McJannet

SWORN to and subscribed before me this 16
day of Aug, 2004.

Barbara Reichen (I.S.)
Notary Public

My Commission Expires: Oct 28, 2012

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

92

I, _____, 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.

Ms. H. M. G. G. G.
Applicant

SWORN or affirmed to and subscribed before me this

16 day of Aug, 2004.

Barbara Buckle
Notary Public

My Commission Expires: Oct 28 2018

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO: 2004-CP-15-1002

WALTER J. McQUNE #299882

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

ORDER OF DISMISSAL

07 AUG - 8 PM 3 27

PATRICIA L. GRANT
COLLETON COUNTY
COMMON PLEAS

93

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 15, 2004. The State, represented by Adrienne L. Tuner, Esq. of the South Carolina Attorney General's Office made its Return on June 8, 2005.

After careful consideration, the Applicant has informed his counsel of his intent to withdraw his Application for Post-Conviction Relief with prejudice. The Applicant has been informed by counsel that he will not be allowed to file any other Application's for Post-Conviction Relief to raise any issues that could have been raised in this Application for Post-Conviction Relief. The Applicant acknowledges that he is withdrawing his Application for Post-Conviction Relief freely and voluntarily and that he has not been threatened or promised anything to withdraw the Application for Post-Conviction Relief. The Applicant also acknowledges that he is satisfied with PCR counsel, Michelle R. Suggs, Esq.

This Court advised the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order or secure the appropriate appellate review. His

attention is also directed to South Carolina Appellate Court Rule 227 for the appropriate procedures after notice has been timely filed.

94

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 2nd day of Aug, 2007.

C. T. Munk
Presiding Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina.

I so move,

Michelle R. Suggs
Michelle R. Suggs, Esq.
Attorney for the Applicant

I consent,

Jeanette Van Ginhoven
Jeanette Van Ginhoven
Assistant Attorney General

I consent,

Walter J. McQuine
Walter J. McQuine
Applicant for Post Conviction Relief.

FORM 5

HW
14

95

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

WALTER J. McQUNE

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

13-CP-15-214

APPLICATION FOR

POST-CONVICTION RELIEF

SOUTH CAROLINA CODE OF LAW 217-27-40-50
SOUTH CAROLINA CODE OF LAW 217-27-45(B)

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 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 PERRY Correctional / 430 Oaklawn Road / Pelzer, SC 29662
2. Name and location of Court which imposed sentence Colleton County / P.O. Box 546 /
3. Name(s) of co-defendant(s) (if any) N/A General session / Hampton, SC 29924
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 03-GS-15-0491 (CRD code #0116)
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) FEBRUARY 5, 2004 (25 years Voluntary Manslaughter)
 - (b) _____

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2013 MAR 19 AM 10:01

- (96)
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty x
- (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?
N/A
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed: N/A
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed: N/A
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result: N/A
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results: N/A
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) MENTALLY INCOMPETENT to ADVISE COUNSEL
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) SOUTH CAROLINA Code of law 317-27-45(B) Pursuant
(b) to MARTINEZ vs. RYAN ... 132 S.Ct 1309, — 4.S. —
(c) SUBJECT MATTER Jurisdiction/Personal Matter Jurisdiction

11. State concisely and in the same order the facts which support each of the grounds set out in (10): (97)

(a) See attach next Page.

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
(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)? N/A
(d) any other petitions, motions or applications in this or any other Court? N/A

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. Ineffective Assistant Counsel
ii. Mental Evaluation
iii. Reconsideration Modification of Sentence
iv. _____

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

- i. Court of Common Pleas; Colleton County
ii. _____
iii. _____
iv. _____

(c) the disposition thereof: Denied with Prejudice.

i. _____

ii. _____

iii. _____

11. STATE concisely and in the same order the facts which support each of the grounds set out in (10);

(98)

iv. _____

(d) the date of each such disposition: May, 2007

(99)

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition: 2004-CP-15-1002

i. _____

ii. _____

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?

N/A

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

(a) which grounds have been presented: N/A

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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: NO

(a) _____

(b) _____

(c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? _____
- (c) your sentencing? yes
- (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? Incompetent to advise

100

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. EW Bennett SR ESQUIRE
- ii. Michelle R. Suggs, ESQUIRE
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Plea
- ii. PCR
- iii. _____

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

Reverse and vacate, as alternative grant evidentiary hearing to submit retrospective evaluation, evidence for setting new trial.

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

NA

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Colleton)

Jeanine McGowan)

101

I, *Jeanine McGowan*, 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.

Jeanine McGowan

SWORN to and subscribed before me this 29th
day of January, 2013.

Steven T. McCawley (L.S.)
Notary Public

My Commission Expires January 7 2016

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

102

I, Jeanine McEwen, 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.

Jeanine McEwen
Applicant

SWORN or affirmed to and subscribed before me this

09th day of January, 2013.

Steven T. McEntley
Notary Public

My Commission Expires: January 7 2016

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Walter J. McQune,
S.C.D.C. No. 299882,

2013-CP-15-0214

Applicant,

v.

State of South Carolina,

Respondent.

CONDITIONAL ORDER OF DISMISSAL

103
2014 DEC 17 AM 11:48
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Walter J. McQune (Applicant) on March 19, 2013. The State (Respondent) made its return, requesting the application be summarily dismissed.

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. He was indicted at the August 2003 term of the Colleton County Grand Jury for murder (2003-GS-15-0491). Everett W. Bennett Jr., Esquire, represented Applicant. On February 5, 2004, Applicant pled guilty to the lesser included offense of voluntary manslaughter. The Honorable Jackson V. Gregory sentenced Applicant to twenty-five years' imprisonment. Applicant did not appeal his plea or sentence.

2004-CP-15-1002

#1
PMB
Applicant filed his first PCR application on October 15, 2004, alleging the following grounds for relief:

1. Counsel for applicant was ineffective for failing to secure a competency evaluation prior to applicant entering a guilty plea.
2. The applicant's plea of guilty was not freely and voluntarily given due to a lack of competency at the time of the guilty plea.
3. After discovered evidence of lack of competency requires vacation of the conviction and sentence.

104

Michelle R. Suggs, Esquire, represented Applicant. Salley W. Elliott and Adrienne Turner, Esquires, represented Respondent. The Honorable Carmen T. Mullen dismissed Applicant's application with prejudice by consent order filed August 8, 2007. The order of dismissal indicates Applicant informed his counsel of his intent to withdraw his application with prejudice. Further, the order states Applicant acknowledged that he was satisfied with his counsel and was withdrawing his application freely and voluntarily. Ms. Suggs, Ms. Elliott, and Applicant also signed the consent order of dismissal.

II.

In his *second* and current PCR application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Mental evaluation.
3. Reconsideration modification of sentence.
4. The court was without subject matter/personal jurisdiction to impose sentence.

#2
PMB
Applicant submitted a pro se document entitled "Amendment and Additional Pleading to Prior Post-Conviction Relief Application filed March 19, 2012 Pursuant to Rule 15" on April 30, 2013. He further alleges he is being held in custody unlawfully for the following reasons:

1. Counsel was ineffective of assistance by not amending indictments which were not filed with the clerk of court to Applicant's post-conviction relief application as available grounds for relief.

2. Applicant has been prejudiced by remaining held confined unlawfully without proper subject-matter and personal jurisdiction to the Department of Corrections for twenty-five years imprisonment.

105

On June 4, 2013, Applicant submitted a pro se brief in support of his application and amended application. On June 18, 2013, Applicant submitted another pro se amendment and alleged the following grounds for relief:

1. My initial review proceeding counsel Michelle Suggs was ineffective assistance in failing to amend or raise the substantial ineffective assistance trial counsel claim, that trial counsel E.W. Bennett was ineffective assistance in failing to advise applicant of minimum sentence to voluntary manslaughter is not be impose less than 2 years.

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

III.

This Court finds this current application must be summarily dismissed because it is successive to Applicant's previous PCR application. 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 states:

#3
PMB

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.

106

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). 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 Applicant 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 his current grounds for relief were not properly raised in his previous applications; therefore, this Court finds this application must be summarily dismissed because it is successive to Applicant's previous PCR application.

IV.

#4
PMB
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.

107

The South Carolina Supreme Court held that the statute of limitations applies 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 offense he challenges in this application on February 5, 2004. Applicant did not appeal his conviction or sentence; therefore, Applicant was required to file his application on or before February 5, 2005. Applicant filed this application on March 19, 2013, **more than eight years** after the statutory filing period expired.

A motion for summary judgment is a proper mechanism to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, Section 17-27-70(c) of the South Carolina Code authorizes the court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court must summarily dismiss this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

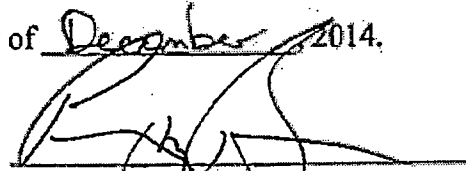
V.

#5
PMB
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 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 Colleton County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Elizabeth Hedgecoe Neyle, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

108

AND IT IS SO ORDERED this 15th day of December, 2014.



PERRY M. BUCKNER
Chief Judge for Administrative Purposes
Fourteenth Judicial Circuit

Walterboro, South Carolina

#6

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON) CASE NO.: 2013-CP-15-00214

WALTER J. MCQUNE,
APPLICANT,

v.

THE STATE,

RESPONDENT.

109
TRANSCRIPT OF RECORD

AUGUST 8, 2017

COMMENCING AT
COLLETON COUNTY COURTHOUSE
WALTERBORO, SOUTH CAROLINA
BEFORE THE HONORABLE PERRY M. BUCKNER, JUDGE.

APPEARANCES:

RUSTON NEELY, ESQUIRE
SOUTH CAROLINA ATTORNEY GENERAL'S OFFICE
1000 ASSEMBLY STREET
COLUMBIA, SOUTH CAROLINA 29201
Attorney for the State of South Carolina

MR. DAVID S. MATHEWS, ESQUIRE
FOURTEENTH CIRCUIT PUBIC DEFENDER'S OFFICE
WALTERBORO, SOUTH CAROLINA 29488
Attorney for the Applicant

Rebecca H. Hill
Official Court Reporter

110

INDEX

HEARING IN RE: OBJECTIONS BY APPLICANT

<u>WITNESS: APPLICANT, WALTER J. MCQUNE</u>	
DIRECT EXAMINATION BY MR. MATHEWS	11
EXAMINATION BY THE COURT	15
FURTHER EXAMINATION BY MR. MATHEWS	17
CERTIFICATE OF REPORTER	45

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>
ONE	COMPETENCY TO STAND TRIAL PSYCHOLOGICAL EVALUATION

1 THE COURT: I ask that counsel identify themselves and who
2 they represent; for the Applicant? 

3 MR. MATHEWS: Your Honor, I'm David Mathews. I represent
4 Mr. McQune.

5 THE COURT: Counsel for the State of South Carolina.

6 MR. NEELY: Thank you, Your Honor. My name is Ruston
7 Neely. I represent the State of South Carolina.

8 THE COURT: Thank you, Mr. Neely and Mr. Mathews. Now,
9 Becky, there is some history since you were not the court
10 reporter, nor do you have the record. I signed an Order in this
11 case, even though we started in Hampton, trying to accomodate
12 Mr. McQune. However, Mr. Mathews did not feel that he had
13 enough information on the file of Mr. McQune to move forward and
14 asked for a continuance, therefore, the hearing we started in
15 Hampton was continued at Mr. Mathews' request; is that correct,
16 Mr. Mathews?

17 MR. MATHEWS: It is, Your Honor.

18 THE COURT: Is that correct, Mr. Neely?

19 MR. NEELY: It is, Your Honor.

20 THE COURT: All right. I signed an Order in this matter
21 back on April 21st, 2017. My Order was entitled the Final Order
22 of Dismissal. In that Order, I recited the history of this
23 case. It began by way of an Application for PCR that was filed
24 by Mr. McQune back on March 19th, 2013.

25 After McQune filed his Application, the State of South

112

1 Carolina requested that the Application be summarily dismissed.
2 On December 15th, 2014, this Court issued a Conditional Order of
3 Dismissal. That Order stated that Mr. McQune's Post-Conviction
4 Relief Application should be dismissed because it was both
5 successive to a previous Post-Conviction Relief Application and
6 also failed to comply with the uniform Post-Conviction Procedure
7 Act.

8 This will be David's first PCR hearing.

9 The Order also stated that it would become final; that is
10 the December 15th, 2014, Order, would become final 20 days after
11 service upon Mr. McQune, unless Mr. McQune provided some
12 specific objections to the Order.

13 As far as the Court was aware at the time, the next filing
14 by the Applicant was January 30th, 2015. There was an objection
15 to a Conditional Order of Dismissal, but it wasn't filed until
16 April 7th, 2016. There were letters written to the Court and
17 the Clerk of Court, and my previous law clerk sent Mr. McQune a
18 letter stating that the Conditional Order of Dismissal had
19 become final when he didn't provide specific objections to the
20 Conditional Order of Dismissal within 20 days.

21 Then, Mr. McQune responded to the Clerk of Court with a
22 letter saying that it was his belief that the Conditional Order
23 of Dismissal was not an appropriate resolution to the case
24 because of the language in Lewis V. State, which is 630 S.E.2d,
25 464. It's a 2006 case.

113

1 That letter was not filed with the clerk until February
2 6th, 2017. On April 21st, 2017, I received a letter from the
3 South Carolina Supreme Court requesting, they wanted to know --
4 apparently Mr. McQuine had contacted them as to whether or not I
5 had issued a final Order in this case. The Supreme Court's
6 letter to me reiterated the language of both the Lewis decision.

7 As a result of the Supreme Court's decision, I issued my
8 Order dated April 21st, 2017, as a final Order of Dismissal of
9 the Applicant's Post-Conviction Relief Application. I restated
10 in that Order my original opinion from the Conditional Order of
11 Dismissal and that is that the PCR Application was both
12 successive and improperly filed.

13 And to be more specific, Becky, so that you catch up on the
14 history of this and this record, I found that the PCR
15 Application that was filed on March 19th, 2013, Mr. McQuine's
16 original application, was successive to his first PCR
17 Application, which he filed on October 15th, 2004.

18 Obviously, the Court disfavors successive applications and
19 places the burden on the Applicant to show that grounds for
20 post-conviction relief should not have been raised in the
21 original application, or could not have been raised. Since I
22 did not believe in my final Order that the Applicant had shown
23 why new grounds for Post-Conviction Relief could not have been
24 raised in the 2004 Application for Post-Conviction Relief, I
25 found that the 2013 Application should be summarily dismissed.

114

1 I further found in my final Order that the post-conviction
2 relief application that was filed on March 19th, 2013, failed to
3 comply with the filing procedures of the Uniform Post-Conviction
4 Relief Procedure Act.

5 The Uniform Post-Conviction Relief Procedure Act obviously
6 has a section in 17-27-10 and 160, and what I found was that
7 while Mr. McQuine's 2004 Application was a timely application for
8 Post-Conviction Relief, the 2013 application was more than 8
9 years beyond the statutory deadline, which is one year for PCR
10 after his conviction. The statutory deadline is one year after
11 the conviction, which would have been February 5th, 2005.

12 Because of the failure to file in time, I also found that
13 the 2013 application for Post-Conviction Relief is summarily
14 dismissed.

15 Now, the terms of the Court's Conditional Order of
16 Dismissal stated that my Order would become final 20 days after
17 Mr. McQuine was served with the Order unless specific objections
18 to the Order were filed. The next communication from Mr. McQuine
19 to the Court declares his intention to file a motion for summary
20 judgment. That motion was filed on January 30th, 2015. So at
21 the time I signed my final Order, which was April 21st, 2017,
22 the Court did not believe that specific objections to the
23 Conditional Order of Dismissal were made within the 20 days'
24 time deadline.

25 My law clerk tells me that Mr. McQuine was not served with

(115)

1 my Order because he has pulled out the Clerk's file the
2 affidavit of personal service showing that Mr. McQune was not
3 served with my Conditional Order of Discharge until March 24th,
4 2016, based on the process server from the South Carolina
5 Department of Corrections.

6 So there was quite a time delay between the signing of my
7 Conditional Order of Dismissal and when I learned of the fact
8 that Mr. McQune had not been served with my Order in a timely
9 fashion after it was originally issued, which led me to the
10 erroneous belief that the 20 days had run.

11 When I learned of the date that Mr. McQune was actually
12 served with the Conditional Order of Dismissal, I attempted to
13 immediately -- even though I had already signed a final Order of
14 dismissal, attempted to schedule a hearing for Mr. McQune. We
15 started that hearing, I believe, it was May, wasn't it?

16 MR. MATHEWS: June 7th, I believe.

17 THE COURT: June 7th in Hampton, at which time I appointed
18 Mr. Mathews to represent Mr. McQune and Mr. Mathews asked that
19 the matter be continued. I rescheduled the matter for today
20 because this is the first open day I've had that I have not
21 actually been in Court or already committed in Order to hear
22 this matter.

23 Have I accurately summarized the history of what brought us
24 here today insofar as the Applicant is concerned?

25 MR. MATHEWS: Your Honor, not every detail, but in terms of

1 the most significant detail that he didn't actually receive
2 notice

3 THE COURT: We've got his proof of service right here, Mr.
4 Mathews.

5 MR. MATHEWS: Yes, sir.

6 THE COURT: I've already published it for the record. I'm
7 asking you today if what I've published is accurate.

8 MR. MATHEWS: I wasn't there, so I don't know, and Mr.
9 McQune says ---

10 THE COURT: Never mind. Mr. Neely, have I accurately
11 stated the summary of the events as far as you recall?

12 MR. NEELY: Yes, sir, Your Honor

13 THE COURT: Mr. Mathews, if you will look in the clerk's
14 file, you will see the affidavit of personal service by the
15 South Carolina Department of Corrections of my Conditional Order
16 of Dismissal on Mr. McQune on March 24th, 2016. I realize you
17 weren't here before, but you certainly had the opportunity to
18 read my Order so you would know the history of this matter,
19 which I've reiterated for the record since we have a new court
20 reporter. With that, Mr. Mathews, I will be happy to hear from
21 you on behalf of Mr. McQune at this time.

22 MR. MATHEWS: Thank you, Your Honor. Your Honor, it
23 appears that Mr. McQune did everything he could to respond to
24 the Conditional Order within a timely fashion. He's not in full
25 control, obviously. He's in prison, so obviously, he's at a lot

1 of people's mercy. I think the Attorney General's Office would
2 agree that he substantially complied and that justice requires
3 that his objections be considered, and we would only ask that
4 the Court consider Mr. McQune's objections ---

5 THE COURT: Mr. Mathews, we are past that now. I'm ready
6 to hear from you on his objections. That's the purpose of us,
7 having scheduled this hearing. You have the burden of proof.
8 Move forward.

9 MR. MATHEWS: Thank you, Your Honor. Your Honor, the crux
10 of his argument is that he was not competent at the time of his
11 PCR hearing and there are findings in the record to that effect.
12 He got a Blair hearing at his first PCR and in that he was found
13 incompetent -- well, not found incompetent, but the doctor says
14 he was incompetent. And yet somehow a consent Order with his
15 signature on it was presented to give up his right to go forward
16 with a PCR application. So, he didn't get a fair bite at the
17 apple.

18 THE COURT: Are you going to call Mr. McQune as a witness?

19 MR. MATHEWS: Your Honor, like I said, I've gone back and
20 forth trying to figure out exactly where we were when this was
21 to set aside the final hearing and have the objections
22 considered or whether we were ready to go forward with an
23 evidentiary hearing. I wasn't clear exactly where we are. I
24 ~~talked some to Mr. Neely and I think he thought we were even~~
25 earlier in the process than I thought we were. So in terms of

1 calling -- if we are --

2 THE COURT: Well, it's my feeling that you just stated that
3 your client wants to reach the merits of this, Mr. Mathews. I
4 assume that you would like to call him as a witness in light of
5 the fact that you have just gone through again the litany that
6 he wasn't served until much later with my Conditional Order,
7 that his grounds for objecting is that he was not competent at
8 the time. So I'm ready to hear from you. Call your first
9 witness.

10 MR. MATHEWS: Your Honor, because I wasn't clear and I've
11 been back and forth with Mr. Neely; I've sent e-mails and stuff
12 to try and figure out where we are. I haven't subpoenaed any
13 witnesses as far as that goes.

14 I think my understanding is that Mr. McQune would like to
15 subpoena Ms. Michelle Suggs, his PCR attorney, and other folks.
16 Because I thought we were earlier in the process than we were, I
17 haven't sent out subpoenas. I don't want to be his third
18 consecutive ineffective assistance of counsel and that sort of,
19 procedurally, where I thought we were is just asking the Court
20 to reconsider this.

21 THE COURT: Obviously, there is a procedural argument, but
22 that's the State's argument. Yours is that I ought to consider
23 the objections, Mr. Mathews, because he wasn't timely served.
24 And I'm certainly willing to listen to his objections today. I
25 understand the State may take a different view than yours,

1 but that's their concern, not yours. Let me hear from you.

2 MR. MATHEWS: (To Mr. McQune) Do you want to testify?

3 MR. MCQUNE: Yes, I do.

4 MR. MATHEWS: Yes, sir, he would like to testify.

5 THE COURT: I very much want to hear it. Call your first
6 witness, Mr. Mathews.

7 MR. MATHEWS: I call Mr. McQune, Your Honor.

8 THE COURT: Swear him in for me, please.

9 (Whereupon, Mr. Walter McQune is duly sworn.)

10 THE COURT: Come on around over here in this box. Watch
11 your step. Gerald, help him with these leg chains up these
12 stairs.

13 (Mr. McQune takes the witness stand.)

14 THE COURT: I want you to begin by stating your full name
15 and spelling your last name for the court reporter.

16 Okay. My full name is Walter McQune, Walter Jermaine
17 McQune. W-A-L-T-E-R, J-E-R-M-A-I-N-E, M-C-Q-U-N-E.

18 THE COURT: Speak up so we can hear you. Your witness,
19 counsel, direct examination.

20 MR. MATHEWS: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. MATHEWS:

23 Q Mr. McQune, you pled guilty to voluntary manslaughter in
24 2003?

25 A 2004.

1 Q 2004, okay. At the time that you appeared, you talked some
2 to your attorney, Eddie Bennett? Y'all consulted a great deal,
3 right?

4 A Right.

5 Q During your pre-trial detention, did you have some
6 emotional and mental problems?

7 A Yes, sir.

8 Q Would you tell the Court about those problems?

9 A I attempted suicide in the county jail. I was administered
10 antipsychotic medication called Haldol.

11 Q Did the Haldol affect your ability to understand what was
12 going on?

13 A I can't answer that question.

14 Q You don't know whether it affected your ability to
15 understand?

16 A No, sir.

17 Q All right. Did you discuss the fact that you were on
18 medication with Mr. Bennett?

19 A No, sir. If counsel would have -- I want to say something.

20 Q Sure.

21 A May I speak directly?

22 THE COURT: You can, but I would suggest that if you are
23 going to make a statement that you talk to Mr. Mathews before
24 ~~you make a statement so you don't do anything that would affect~~
25 your case without going through your lawyer. And if he tells

1 you that he's happy with you doing it, then I'm happy to listen
2 to you. Do you understand that?

3 MR. MCQUNE: Yes, sir.

4 THE COURT: Now, you might want to wait to make that
5 statement later. Let him ask you questions and then you talk to
6 him, because you are in the middle of your testimony right now
7 and I can't stop and let you have a conference with him because
8 you are subject to cross-examination by the State's attorney; do
9 you understand that?

10 MR. MCQUNE: Yes, sir.

11 THE COURT: That does not mean I won't listen to your
12 statement; I'm more than willing to. But I want you to talk to
13 your lawyer first before you do that. Ask your question,
14 counsel.

15 Q Mr. McQune, you had attempted suicide, right? When was
16 that?

17 THE COURT: Hold on, David. Let him answer the question.

18 MR. MATHEWS: All right.

19 EXAMINATION CONTINUES

20 BY MR. MATHEWS:

21 A It was around 2000 -- I don't have the records. They are
22 all in the county jail right now. I don't have the records.

23 Q All right. The Colleton County jail?

24 A Yes.

25 Q All right. Did you discuss with Mr. Bennett your attempted

1 suicide?

2 A No, sir.

3 Q Okay. Now, this goes to the meat of this, okay? Were you
4 on Haldol at the time you made your appeal to plead guilty?

5 A No, sir.

6 Q You were not?

7 A No, sir.

8 Q Okay. Please tell the Court why you feel you did not get a
9 fair hearing on your plea.

10 A Everett Bennett, Jr., was ineffective assistance.

11 Q Why?

12 A In failing to investigate the medical records in the
13 Colleton County Clerk of Court -- excuse me, the Colleton County
14 jail to discover my mental -- I don't feel right. Because I
15 wanted to amend my application and I didn't have the right to
16 amend my application before I came into this courtroom. And I
17 don't really want to challenge this issue that he's trying to
18 make me put on the record.

19 I wanted to amend my application under Shirley v. State,
20 306, SC 241, decided in 1991, which is that my trial counsel,
21 Everett Bennett, Jr., was ineffective assistance in failing to
22 inform me that prior to the plea of guilty that the statements
23 may have been made involuntarily. And if so, would have been
24 admissible at trial, and there's a reasonable probability but
25 for counsel's inefficient performance, I would not have pled

1 guilty and would have insisted on going to trial to challenge
2 the charges grounded on the involuntary confession in violation
3 of the Sixth Amendment made applicable to the State by way of
4 the Fourteenth Amendment; due process violation. South Carolina
5 Constitution Article I, Section III, Fourteenth Amendment. I
6 didn't want to challenge this issue right here that he's trying
7 to get me to challenge on the record.

VOIR DIRE EXAMINATION BY THE COURT

8
9 THE COURT: Now, when you say "he", you're referring to Mr.
10 Mathews?

11 MR. MCQUNE: My counsel, yes.

12 THE COURT: So in other words, the issue that Mr. Mathews
13 has raised with you is not the issue that you would have
14 preferred to have put in your amended application, but there is
15 no amended application raised in that issue before the Court at
16 this time; is that right?

17 MR. MCQUNE: I wanted to amend the application.

18 THE COURT: I understand that you wanted to, but there is
19 no amended application on that ground at this time; is that
20 correct?

21 MR. MCQUNE: Yes, sir.

22 THE COURT: Okay, David, ask a question.

23 Q Please tell the Court why you did not feel that you got a
24 fair hearing at either at the PCR level, your first PCR, why
25 you did not get a fair bite at the apple the first time?

1 A The Honorable Carmen T. Mullen, she erred on August 8th,
2 2007, when she did not conduct an evidentiary hearing with me to
3 establish a complete record to ascertain whether PCR 2004-CP-15-
4 1002 was knowingly, voluntarily, and intelligently deemed with
5 prejudice.

6 THE COURT: Slow down a little bit, Mr. McQune, I'm trying
7 to follow you. Start over again as to why you felt like you
8 didn't get a fair hearing at the PCR hearing?

9 MR. MCQUNE: Because the Honorable Carmen T. Mullen erred
10 on August 8th, 2007.

11 THE COURT: You're talking about Judge Mullen?

12 MR. MCQUNE: Yes, sir.

13 THE COURT: What about Judge Mullen?

14 MR. MCQUNE: She did not conduct an evidentiary hearing to
15 ascertain whether PCR 2004-CP-15-1002 was knowingly, voluntarily
16 and intelligently waived under statutory and constitutional
17 rights with prejudice under Brannon v. State 548, S.E.2d, 866,
18 decided in 2001, in violation of Rule 71.1F, South Carolina
19 Rules of Civil Procedure.

20 MR. MATHEWS: Your Honor, if I might interject, this has
21 sort of been an ongoing problem. Mr. McQune knows a lot of ---

22 THE COURT: I'm going to give you a chance to argue at the
23 end, but right now before you start making a closing argument,
24 this is a witness on the witness stand who is subject to cross-
25 examination. So please proceed and let me hear it all and

1 then I will hear argument. (105)

2 MR. MATHEWS: I have questions about his competence now is
3 what I'm saying.

4 THE COURT: Well, Mr. Mathews, that's a whole separate
5 matter that hasn't been raised yet. Proceed.

6 EXAMINATION CONTINUES

7 BY MR. MATHEWS: 

8 Q Mr. McQune, you signed at your first PCR hearing, you were
9 represented by Michelle Suggs; is that correct?

10 A Yes, sir.

11 Q And she presented -- you signed something saying that you
12 give up your right to go forward and that you agreed to get rid
13 of that PCR Hearing; is that correct?

14 A It says that I voluntarily and knowingly waived that right.

15 Q But were you competent at the time you signed that?

16 A The South Carolina Department of Mental Health opined me to
17 be incompetent.

18 Q Okay. And that Order has been among the papers that should
19 be in the Court's file; is that correct?

20 A I have the documentation; I can present it to the Court as
21 an exhibit.

22 Q Okay.

23 MR. MATHEWS: Your Honor, if I might step away. I have a -

24 --

25 THE COURT: Certainly.

125

1 MR. MATHEWS: May I approach, Your Honor?

2 THE COURT: You may. Any objection?

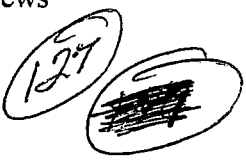
3 MR. NEELY: Not to this, Your Honor.

4 THE COURT: Let the record reflect that Mr. Mathews has
5 handed me a competency to stand trial evaluation, which has been
6 marked without objection, which has been marked as Court's
7 Exhibit Number One. It is signed by Dr. Nichita, M.D., and
8 Richard Frierson, M.D., and it refers to an exam on March 2nd,
9 2006, and the date of the evaluation is March 2nd, 2006.

10 However, there had been a prior evaluation on November
11 23rd, 2005. The final evaluation as of March 2nd, 2006, was
12 that Mr. McQuine is not currently competent to stand trial; the
13 symptoms rendering him incompetent are often remedial. It is
14 also opined that with treatment he will likely become competent
15 in the foreseeable future.

16 Therefore, it was recommended that if he is adjudicated not
17 competent, that he be court-ordered for hospitalization in the
18 forensic division of the Department of Mental Health for 60 days
19 in order to help him obtain competence. I'm assuming there was
20 a subsequent evaluation; is that correct, Mr. Mathews?

21 MR. MATHEWS: Your Honor, I have something else, but it is
22 not a complete record. This just goes to whether or not he was
23 competent at the time at his first PCR hearing. It appears that
24 he was not. There was something that was done in between, I
25 believe, by Dr. Waid.

1 THE COURT: It's in the file, Mr. Mathews. 

2 MR. MATHEWS: I'm missing a page, though, and I don't know
3 the final result of it, but it appears clearly from that, he
4 appears to have been incompetent at the time he agreed to get
5 rid of his first PCR hearing.

6 THE COURT: On both November 23rd, 2005, and March 2nd,
7 2006, he declined to read the informed consent form saying he
8 could not read. His rights were then read to him and he was
9 then able to restate them in his own words. He understood that
10 he had the right to have his attorney present. Michelle Suggs
11 was present for the initial interview.

12 Mr. McQune acknowledged to the examiner that he knew he had
13 the right to not answer any questions and that he also
14 understood the information he gave was not confidential. Dr.
15 Waid, whose report is in the file and was dated April 12th,
16 2007, gave a retrospective finding of competency in an
17 evaluation conducted dated September 29th, 2006, Dr. Waid, being
18 a licensed clinical psychologist and professor in psychiatry and
19 neurology at the Medical University of South Carolina.

20 In that evaluation, once again, Mr. McQune would not fully
21 cooperate. Dr. Waid felt there was no compelling evidence that
22 Mr. McQune was highly disruptive by any psychiatric disturbance
23 or lack of intellectual capacity that would have rendered him
24 incompetent to understand the plea arrangement or the
25 proceedings in the post-conviction relief proceedings, which is

108

1 also contained within the file. So I'm assuming that when you
2 say subsequent evaluation, you're referring to Dr. Waid's
3 report, and I don't see any pages missing from it in the Clerk's
4 file.

5 MR. MATHEWS: Your Honor, what I have and what was
6 presented to me is everything that existed at that time are
7 pages 1, 2 and 4, but I'm missing page 3.

8 THE COURT: Page 3 is missing, but we have his conclusion.

9 MR. MATHEWS: Obviously, you know, it's hard for me to
10 judge how you got to Point C if you're missing point B.

11 THE COURT: All right. Mr. Mathews, let's proceed. Any
12 other questions of this witness?

13 MR. MATHEWS: Well ---

14 THE COURT: I've looked at Court's One, without objection.

15 MR. MATHEWS: Yes, I do, Your Honor.

16 EXAMINATION CONTINUES

17 BY MR. MATHEWS:

18 Q Mr. McQune, is there anything else you would like to tell
19 the Court as to why your conviction should be overturned because
20 of ineffective assistance, counsel, or any other matters that
21 you raised on your post-conviction relief application?

22 A Honestly, Your Honor, I would like to amend my application
23 because counsel is ill prepared today.

24 THE COURT: What counsel are you referring to?

25 MR. MCQUNE: David Mathews. I wrote him and asked him to

(129) ~~129~~

1 subpoena the doctors that are on the mental health documents. I
2 asked him to talk to Waltherboro Police Department's Otis Rhodes
3 and James Clites and Michelle R. Suggs, Esquires, and Everett
4 Bennett, Jr., Esquires, so that they could be here to testify to
5 their participations as well dealing with my representation.
6 The opinions for the doctor's testimony and opinion in the
7 documentation so that evidence could be established for the
8 record. I was under the impression that this was a hearing to
9 object; to argue my objections that I filed to the Conditional
10 Order of Dismissal. ~~Exhibit~~ -

11 THE COURT: Well, you heard me express to Mr. Mathews, so
12 you know, I filed a Final Order of Dismissal in your case and
13 then I learned afterwards that you weren't served timely with
14 the Conditional Order of Dismissal. So I'm trying to cover as
15 much ground today to understand what your objections were since
16 you weren't timely served. That's why I want to hear everything
17 from you.

18 I understand that you also have a complaint against Mr.
19 Mathews, just as you have a complaint against -- who was your
20 lawyer at the time of your plea?

21 MR. MCQUNE: Michelle R. Suggs and Edward Bennett, Jr.,
22 Esquires.

23 THE COURT: I thought it was Suggs.

24 MR. MCQUNE: At the time of plea? Mr. Everett Bennett,
25 Jr., Esquires.

130

1 THE COURT: Eddie Bennett. Ms. Suggs represented you ---

2 MR. MCQUNE: --- in the PCR.

3 THE COURT: In the PCR. All right. Anything further?

4 MR. MATHEWS: Yes, sir. This is some of the difficulty I'm
5 having.

6 EXAMINATION CONTINUES

7 BY MR. MATHEWS:

8 Q Mr. McQune, please tell the Court why you feel like your
9 conviction ought to be overturned. Not what's happened today, I
10 understand that, but if you had, you know, what evidence would
11 you present? Tell the Judge exactly why your plea should be set
12 aside and you should be allowed to have a trial on the merits of
13 your first conviction of voluntary manslaughter. Please tell
14 the judge why you didn't feel like ---

15 THE COURT: Mr. Mathews, that's five questions in one.
16 Please don't confuse him. Just ask one question at a time.

17 MR. MATHEWS: I'm having a very difficult time
18 communicating with Mr. McQune, Your Honor.

19 THE COURT: The Court notes for the record that Mr. McQune
20 understands my questions and yours completely, Mr. Mathews.
21 Just state your question and not a multiple form of questions.
22 You're on direct examination.

23 MR. MATHEWS: Yes, sir, Your Honor.

24 EXAMINATION CONTINUES:

25 BY MR. MATHEWS:

1 Q Mr. McQune, why was your plea not fair? (931) ~~131~~

2 A Counsel, Everett Bennett, Jr., was ineffective assistance
3 failing to inform me prior to a plea of guilty that the
4 statement may have been made involuntarily. And if so, it would
5 be inadmissible at trial. There is a reasonable probability,
6 but for counsel's deficient performance I would not have pled
7 guilty and would have insisted on going to trial on charges of
8 involuntary confession. Under Shirley v. State 306 SC 241,
9 1991, it's a violation of the Sixth Amendment made applicable to
10 the State by way of the 14th Amendment. Due process violation,
11 14th Amendment, South Carolina Constitution, Article I, Section
12 3.

13 Q So Mr. Bennett failed to tell you that you could challenge
14 statements?

15 A He didn't inform me that the statements may have been made
16 involuntarily.

17 Q Okay. And so how did you learn that these statements had
18 been -- explain.

19 A In my first PCR application, 2004-CP-15-1002, Michelle R.
20 Suggs informed me that she viewed the videotape confession that
21 was taken at the Walterboro Police Department, and she concluded
22 that it was coerced. So I came to the conclusion from doing
23 meditations and looking at the facts at what actually occurred
24 that Otis Rhodes and James Clites conspired to implement my
25 mother into the interrogation room to compel me, or imply

132

1 improper influence, improper psychological influence, to
2 pressure me to make a statement, and that's how I came to that
3 conclusion.

4 Q All right. And this is something that Ms. Suggs discovered
5 that Mr. Bennett did not discuss with you?

6 A Something what -- I don't understand your question.

7 Q All right. The --

8 MR. MATHEWS: Your Honor, I don't know how to do this other
9 than to summarize what I understand him to have already said,
10 and I'm not trying to lead him. I'm just trying to make sure
11 that he understands the question.

12 THE COURT: There has been no objection by counsel of the
13 State to your leading questions, Mr. Mathews, at this point.

14 EXAMINATION CONTINUES

15 BY MR. MATHEWS:

16 Q In looking at the issues with Ms. Suggs, you discover that
17 your confessions may have been coerced, yes or no?

18 A Ms. Suggs told me that my confessions was coerced.

19 Q Okay. This is something that had you known at your first
20 plea, you probably would not have pled guilty; true or false?

21 A True.

22 Q Okay. Is there anything else that you would like to tell
23 the Court?

24 A No, sir.

25 THE COURT: Mr. Neely, cross-examination.

153

1 MR. NEELY: Your Honor, the State does not have any cross-
2 examination. All of the State's arguments can be made from the
3 record on a legal basis. I don't believe I have any questions
4 for Mr. McQune.

5 THE COURT: Very well. I will hear from both of you in
6 argument. Help Mr. McQune down those stairs. Now, you can go
7 talk to Mr. Mathews about anything that you want him to tell the
8 Court that you asked me about earlier, since you're not on the
9 witness stand; do you understand?

10 THE COURT: Mr. Mathews, I will give you a moment to confer
11 with your client and then I will hear from you.

12 MR. MATHEWS: Your Honor, I think Mr. McQune would like to
13 argue for himself and I would reluctantly allow him to do that
14 just because we're having a difficult time communicating.

15 THE COURT: I understand that. Mr. McQune, I'm more than
16 willing to hear from you; I told you that. I want to make sure
17 you confer with Mr. Mathews beforehand because of the rules of
18 the hearing. I'm going to hear from both sides. Mr. Mathews
19 tells me are you prepared to argue for him, Mr. Mathews, or does
20 he want you to raise matters that you feel are not proper for
21 the hearing?

22 MR. MATHEWS: Your Honor, we are fundamentally at
23 different places in this.

24 THE COURT: All right. Let me hear from you what you think
25 is fundamentally correct, Mr. Mathews, and then I'll hear from

1 him before I hear from the State.

2 MR. MATHEWS: Your Honor, in terms of initially, of course,
3 I thought we were at a different point on the hearing where we
4 were.

5 THE COURT: Mr. Mathews, I understand this is a different
6 procedure because of the fact that Mr. McQune was not timely
7 served with a Conditional Order of Dismissal, but you allege --
8 or Mr. McQune did, you took over the file, and that he wants me
9 to reach the merits of his claim and therefore, I scheduled this
10 hearing when I learned he wasn't timely served. All of which I
11 put on the record before we began.

12 MR. MATHEWS: Yes, Your Honor.

13 THE COURT: No one has to go over that because frankly
14 that's ground that has already been paved. I'm sure the State
15 objects to that, although they haven't said a word in this
16 hearing yet, because I haven't given them an opportunity to do
17 so. However, regardless of their position, I want to hear from
18 you. So let me hear from you.

19 MR. MATHEWS: Thank you, Your Honor. In terms of the
20 issues at a final PCR hearing on the matter, Mr. McQune said
21 that Mr. Bennett did not discuss with him the possibility of
22 suppressing statements of confessions that he had made in his
23 case in chief and that had he had the opportunity to do that, he
24 would have been aware that you could attack that on the basis of
25 coercion. He would not have pled guilty. That is

1 uncontradictive.

2 I would ask the Court to overturn the conviction on the
3 basis that he was not informed by Mr. Bennett that his
4 statements could be suppressed or that he could move to have
5 those statements suppressed on the basis of coercion, and I
6 would ask the Court to overturn his conviction.

7 THE COURT: All right. Now, Mr. Mathews, you are aware
8 that that is not in his Application?

9 MR. MCQUNE: That's what I was ---

10 THE COURT: Hold on a second now, Mr. McQune. That's not
11 his fault. You filed that application long before Mr. Mathews
12 was involved in this case. What you're asking to do is raise
13 the new matter that you've just argued; is that correct, Mr.
14 Mathews?

15 MR. MATHEWS: Yes, sir.

16 THE COURT: Very well. All right, now Mr. Mathews, I've
17 heard from you and Mr. McQune wants to argue. I assume you have
18 no objection, Mr. Neely?

19 MR. NEELY: As Your Honor well knows, there is no right to
20 hybrid representation. I think it's very unusual.

21 THE COURT: I can't hear you. Come on up to my microphone.
22 Say that again, now.

23 MR. NEELY: In South Carolina, there is no right to hybrid
24 representation; so the State would object. I realize this is a
25 very strange matter and a very strange set of circumstances.

136

1 THE COURT: It is strange. Mr. Mathews has pointed out
2 three times that he wasn't sure, although Mr. McQune very much
3 wants to reach the merits of this matter, which is why I wanted
4 to hear from him.

5 I understand it's different because I believe when I filed
6 my Order that he was timely served within 20 days. I found out
7 after I filed my Order that he wasn't, so I scheduled this
8 hearing. I've said that now four times in this hearing. Even
9 though you object to hybrid representation and even though there
10 is no right in South Carolina to hybrid representation, I
11 overrule your objection. I will listen to Mr. McQune. Take a
12 seat.

13 Mr. McQune, if you want to tell me something that Mr.
14 Mathews hasn't covered, now is your time. Stand up and speak
15 up.

16 MR. MCQUNE: Your Honor, I would like to move for a
17 continuance under Rule 15(a) of the South Carolina Rules of
18 Civil Procedure to amend one claim for relief under Shirley v.
19 State, 306 S.C., 241, cited in 1991. I ask for a 15-day
20 continuance so that the Attorney General can obtain the proper
21 evidence to challenge this claim.

22 THE COURT: Thank you very much, Mr. McQune. I appreciate
23 it. You want to move for a continuance so you can amend your
24 application?

25 MR. MCQUNE: Yes, sir.

137

1 THE COURT: All right. I'm ready to hear from you now, Mr.
2 Neely.

3 MR. NEELY: Thank you, Your Honor. First off, I just want
4 to point out that in Mr. McQune's objections, his initial letter
5 of Order of Dismissal, which is what this hearing is all about
6 to begin with, there is ---

7 THE COURT: Well, everybody seems to have a different idea
8 of justice in this case, Mr. Neely. Mr. Mathews is not quite
9 certain we even all discussed the merits. I understand that
10 there is quite a history here with Mr. McQune, so you tell me,
11 first of all, procedurally; do you think I ought to reach the
12 merits of this case?

13 MR. NEELY: Your Honor, I think that the objections that
14 Mr. McQune filed should be ---

15 THE COURT: Which objections are you talking about now,
16 because there have been numerous.

17 MR. NEELY: The objections that were filed -- they were
18 mailed by Mr. McQune on April ---

19 THE COURT: To the Conditional Order of Dismissal?

20 MR. NEELY: That's correct.

21 THE COURT: We have to make the record clear. You're
22 talking about the written objections that were filed with the
23 Clerk of Court to the Conditional Order of Dismissal which are
24 dated April 4th, 2016?

25 MR. NEELY: It's my understanding that the objections in

138

1 which the Order of dismissal were mailed April 4th, 2016, they
2 were received by the Attorney General's Office on April 7th,
3 2016, and they were filed by the Clerk of Court's office on
4 April 16th, 2016. There's a letter to that effect in the file
5 sent by the Clerk of Court I believe to Mr. McQuine in response
6 to his question. That would place the objections, the
7 Conditional Order of Dismissal that Mr. McQuine sent at 23 days
8 after the Conditional Order was served on Mr. McQuine, however,
9 despite what technicality that Mr. McQuine's objections were not
10 filed in the Clerk of Court until after the 20-day period, I
11 think that justice requires the State would consent to alleviate
12 that burden because he sent the objections to the Conditional
13 Order of Dismissal on April 4th. And I believe that
14 substantially complies with his response to the Conditional
15 Order of Dismissal. So I believe that this Court should
16 consider the objections, Conditional Order of Dismissal, that
17 Mr. McQuine sent in crafting its final Order of Dismissal.

18 However, I would state that there are no new grounds raised
19 in his objections to the Conditional Order of Dismissal. He
20 merely restates the same grounds he stated in his application
21 that was filed in 2013. Therefore, because there are no new
22 grounds raised and no new legal arguments raised in his
23 objections to the Conditional Order of Dismissal, I believe this
24 Court should amend its final Order of Dismissal to include Mr.
25 McQuine's response and find his response did not change the

1 Court's mind and did not find any substantive argument for the
2 Court to consider.

3 THE COURT: Let me make sure I understand that argument.
4 Number one, you argue that you don't think he timely objected to
5 the Conditional Order of Dismissal, because you say it was three
6 days beyond the twenty before it was actually completed.
7 However, because he placed it in the mail within the time, you
8 think the Court should consider it, but you think it's merely
9 successive, and regardless, if I do consider it, you don't think
10 it changes my Order. Is that a fair characterization of my
11 argument?

12 MR. NEELY: That is a fair characterization. I would make
13 one additional point. I don't believe that mailing constitutes
14 filing. However, in this case, the Clerk of Court took nine
15 days after the Attorney General's Office had received objections
16 to the Conditional Order of Dismissal ---

17 THE COURT: Well, I don't think there's any question -- you
18 know that Mr. Mathews wouldn't agree to any date when we started
19 this hearing. You agree that he wasn't served with my
20 Conditional Order of Dismissal until March the 24th, 2016.

21 MR. NEELY: That's correct, Your Honor.

22 THE COURT: So he couldn't do anything until he got it.

23 MR. NEELY: That's correct.

24 THE COURT: So the time has to start on March 24th, 2016,
25 does it not?

1 MR. NEELY: That's correct, Your Honor.

2 THE COURT: All right. Now, therefore, 20 days from March
3 24th, 2016, would include within the time of April 4th when he
4 placed it in the mail?

5 MR. NEELY: That's correct, Your Honor.

6 THE COURT: Even though it had not been filed by the Clerk
7 of Court of Colleton County at that point?

8 MR. NEELY: That's correct, Your Honor.

9 THE COURT: And so you say that even though there was more
10 time utilized in the 20 days in my conditional Order, you think
11 I should consider the objections that Mr. McQuine raised, his
12 written objections, to the Conditional Order of Dismissal. That
13 being that he was incompetent on November 23rd, 2005, and March
14 2nd, 2006, and that Judge Mullen erred on August 8th, 2007, when
15 she didn't conduct an evidentiary hearing to establish a record
16 to ascertain whether or not his PCR application was knowingly
17 and intelligently being withdrawn with prejudice. And that his
18 incompetency prevented him from timely filing and that this
19 claim could not have been raised, he says, in 2004, because it
20 was not in existence to be discovered and raised until the judge
21 signed the consent Order of dismissal without issuing the final
22 Order of judgment, all of which are set forth in his written
23 objections: do you understand that?

24 MR. NEELY: Yes, sir, Your Honor. Each one of those
25 objections was contained in his original application which had

1 the Conditional Order of Dismissal.

2 THE COURT: And you are referring to the original PCR
3 application?

4 MR. NEELY: Original date of 2013 PCR application, Your
5 Honor. No new grounds, no new objections were raised in his
6 objections to the Conditional Order of Dismissal. Therefore,
7 just as Your Honor signed the Conditional Order of Dismissal for
8 his original application, I believe a final Order of judgment
9 should be written and crafted and considered that he wrote
10 objections within the time, the 20 days that he had to object.
11 However, those objections are not substantive and do not allege
12 anything different than what's already been ruled upon in its
13 Conditional Order of Dismissal that was filed in 2014 and was
14 served on the applicant in 2016.

15 For the record, my files show that the Attorney General's
16 Office did not receive the Conditional Order of Dismissal until
17 March 1st, 2016. It was reviewed by an AAG, which is an
18 Assistant Attorney General, on March 7th, 2016, and then was
19 served on the Applicant after that. So our office did not
20 receive a copy of the filed Conditional Order of Dismissal until
21 March 2016, which is why he wasn't served until March of 2016.

22 THE COURT: From the time I signed the Conditional Order of
23 Dismissal, which was December 15th, 2014, you are telling me
24 that you didn't get it until 2016, as well as the Applicant?

25 MR. NEELY: That is what my records reflect, Your Honor.

1 And I wasn't here, and I certainly think that somebody should
2 have checked the clerk's records in that almost two year period
3 to see what was going on with that case and would have seen that
4 you filed an Order of dismissal with the clerk of court's
5 office, however, that apparently was not done until we received
6 the Order from the clerk's office in March of 2016.

7 THE COURT: Very well. Anything else?

8 MR. NEELY: On the merits, I would argue that this is a
9 successive application and the competency evaluation that
10 occurred on ---

11 THE COURT: There were actually two.

12 MR. NEELY: The March 2006 copies ---

13 THE COURT: That report refers to two different
14 evaluations, a November 2005 -- let me see it, Becky.

15 (Court reporter hands The Court Exhibit Number One.)

16 THE COURT: November 23rd, 2005, and March 2nd, 2006, but
17 the actual date of the report is March 2nd, 2006. But the dates
18 of the evaluation are two different dates. I don't think there
19 is any difference in the ultimate finding. And that's reflected
20 in Court's Exhibit Number One, which I've reviewed during this
21 hearing. Go ahead.

22 MR. NEELY: Court's Exhibit One, on the first page, we have
23 two incidences, November 23rd, 2005, and March 2nd, 2006, where
24 ~~Mr. McQuine declined to read and sign the consent form stating to~~
25 the psychologist and his attorney that he cannot read. That is

143

1 reflected again in two pages of Court Exhibit One on page number
2 three where they assign a diagnosis of a reading disorder to Mr.
3 McQune.

4 Based on Mr. McQune's numerous filings with this Court, I
5 think it's fairly obvious that he can read and write at a fairly
6 high level. He has done so on a consistent basis, and I would
7 point this Court to page number four where the psychologist
8 referred Mr. McQune to a malingering test and the psychologist
9 stated that malingering and memory deficit should be considered
10 based on the test results.

11 I think that the first test for November 2006 and March
12 2006 tests should be considered with that in mind. That the
13 malingering was something that the psychologist was concerned
14 about and when Mr. McQune said that he could not read or write
15 and we have evidence that Mr. McQune can read and write at a
16 very high level, as well as consider statutes of case law. I
17 believe that malingering makes the most sense, and again, he was
18 found competent in the September 2006 evaluation and there was
19 no Order of dismissal ---

20 THE COURT: Now, you're referring to Dr. Waid's evaluation?

21 MR. NEELY: That's correct, Your Honor. The Consent Order
22 voluntarily withdrawing willingly and knowingly Mr. McQune's
23 post-conviction relief application was not until August of 2007,
24 which is well after the September 2006 period where he was found
25 to be competent.

148

1 Therefore, I would argue that it was obvious on the face of
2 the record that Mr. McQune was competent at that point in time
3 and able to follow the direction and guidance of his PCR
4 attorney and did voluntarily and knowingly waive his right to
5 his PCR application. Successive applications are not favored,
6 as this Court has already stated. And eight years passed -- or
7 more than eight years passed from the time of Mr. McQune's
8 withdrawal of his PCR application in 2007, until his current PCR
9 application which was filed in 2013.

10 For Mr. McQune to argue that he was mentally incompetent
11 the last eight years after being found competent by a
12 psychologist in 2006 is beyond the pale and the applicant has
13 not proven that. The burden of proof is on the applicant to
14 prove the allegations in his application. He has failed to
15 prove that.

16 Therefore, the statute of limitations provided in the South
17 Carolina Code 17-27-45(a), which is the statute of limitations
18 under the PCR statute which requires that the applicant file
19 within a year of his final adjudication or the discovery of new
20 facts or evidence. That was clearly not done.

21 Therefore, I believe this Court should amend the final
22 Order of Dismissal to include a response to Mr. McQune's
23 objections to the Conditional Order of Dismissal and find that
24 ~~they are not substantive, and they have not been proven, and~~
25 this should be the final adjudication for Mr. McQune's case

145

1 based on the statute of limitations and the successive
2 application.

3 THE COURT: Thank you very much. Mr. Mathews, I will be
4 happy to hear you in reply.

5 MR. MATHEWS: Thank you, Your Honor. Your Honor, first of
6 all, Mr. McQuine says that he got his GED

7 THE COURT: No, Mr. Mathews, look up; don't look down so I
8 can hear you.

9 MR. MATHEWS: Okay. Mr. McQuine says that he got his GED on
10 February 28th, 2013, so that accounts for his ability to write
11 at a higher level.

12 THE COURT: There's no question that there is evidence in
13 the record of a learning disorder, Mr. Mathews. That doesn't
14 necessarily equate to a competency failure, but that is exactly
15 what the examiner has pointed out. If you read Court's Exhibit
16 Number One, it was a diagnosis of a reading disorder, which is a
17 learning disorder. However, I'm happy to learn that Mr. McQuine
18 got his GED. There were a lot of statements that he made about
19 the quality of education that he received as a younger person.

20 However, I want to hear you on the law, Mr. Mathews. We
21 are here because as you know I'm governed by the Post-Conviction
22 Relief Act. The State argues, number one, they are sort of
23 conceding while arguing that, number one, they think more than
24 20 days passed. Actually, so you will know, Mr. Neely, my law
25 clerk has handed me notes that he thinks it was actually filed

1 on April 7th, 2016 with the clerk.

2 The reason I wanted to hear from you this morning, Mr.
3 Mathews, is because I wanted to get to the heart of the matter.
4 Mr. McQune has been wanting a hearing and I want to give him
5 one.

6 MR. MATHEWS: Yes, sir.

7 THE COURT: The State on one hand says, "Judge, we think
8 the 20 days has run, but we concede that he mailed it within the
9 20 days and wasn't filed, which of course is required," and I
10 agree with the State. I think when he mailed it, I ought to
11 consider his objections, which are numerous if you -- I'm sure
12 you've read them in detail, Mr. Mathews, because he sets them
13 out in detail. In fact, it consumes about 30 to 40 pages in the
14 record, an estimate.

15 Now, having said that, the State then goes to say, "Judge,
16 I see that there was some time delay," which was my concern in
17 setting this hearing. I see there could be an argument made
18 that he at least mailed his objections within 20 days, but we
19 ask you still to issue a final Order. Number one, we ask you to
20 do it on successive applications. Number two, we ask you to do
21 it under the statute of limitations which is in the post-
22 conviction relief act, which is one year. Then, the State goes
23 to a third level. First, it's more than 20 days; even if it
24 isn't more than 20 days, consider them. If you do consider
25 them, it's successive. If you do consider them, it violates the

147

1 statute of limitations, but if you do reach the merits, we think
2 there is still no merit as the result of this could have been
3 raised in the earlier application. Now, I want to hear from you
4 in reply on that.

5 MR. MATHEWS: Thank you, Your Honor. Your Honor, Mr.
6 McQune did raise a lot of different points. He did it without
7 the assistance of counsel. One of the things in response to
8 that, basically, this is either just a hearing to determine if
9 there is going to be a hearing or it's a hearing. If it's a
10 hearing to determine whether there is going to be a hearing,
11 then Mr. McQune's offer to amend would still perhaps be timely
12 in which case his testimony that he was not advised about the
13 possibility of suppressing his confession would be relevant and
14 that could be fleshed out and the attorney general's office
15 could of course call Mr. Bennett to contradict it.

16 If it's a full hearing, then Mr. McQune should carry the
17 day because the Attorney General's office has acquiesced on
18 that. If it's not a full hearing, then it's simply a matter of
19 whether the Court determines that the conditional Order should
20 be made a final Order and then that all predates me.

21 I think that -- I know Mr. McQune appreciates the Court's
22 hearing and giving him the opportunity to show up and make his
23 arguments, and I appreciate that, too, Your Honor. So that's
24 where we are at on those two things; either this is a final
25 hearing on the PCR, in which case Mr. McQune's testimony is

145

1 uncontradicted and acquiesced by the attorney general's office
2 that he was not informed ---

3 THE COURT: They say it's successive, Mr. Mathews. They
4 don't acquiesce Mr. McQune's testimony; don't characterize it
5 because they didn't put up a witness that it can't be a
6 successive application, because that is exactly what they've
7 just argued to me.

8 MR. MATHEWS: Your Honor, Mr. McQune has well addressed
9 that issue by saying that he was not, at the time of his PCR
10 hearing, competent. And so he did not get -- and it would be
11 successive because he was not competent at the time that he
12 appeared in court on his PCR haring.

13 THE COURT: What about Dr. Waid's evaluation of competency
14 of Mr. McQune?

15 MR. MATHEWS: Your Honor, I was missing a page. I did not
16 present that as ---

17 THE COURT: It's in the Clerk's file, Mr. Mathews; that's
18 the reason I asked you about it.

19 MR. MATHEWS: But it's not complete and I'd ask the Court
20 not to consider it simply because page three is missing. We
21 don't know how we got to that conclusion without that page. I
22 ask the Court not to consider that.

23 THE COURT: Very well. Anything else?

24 ~~MR. MATHEWS: No, sir.~~

25 THE COURT: Mr. McQune has been raising his hand. Now, I

1 will certainly listen to him because he wanted to move to amend.
2 Talk to him and tell me if there is anything else you need to
3 tell me, because I am ready to conclude. (179)

4 MR. MATHEWS: Your Honor, Mr. McQune feels that it is very
5 important that the Court carefully consider the procedural
6 history that he has set forth in his many ---

7 THE COURT: In his objections to the Conditional Order of
8 Dismissal?

9 MR. MATHEWS: Yes, Your Honor.

10 THE COURT: I've got it in front of me. All right, listen
11 to me carefully. I'm going to give you both two weeks. I want
12 proposed Orders from you by two weeks from today. Mr. Mathews
13 thinks that I'm supposed to decide whether this is a full
14 hearing or not; I disagree. I have to decide every issue that
15 is in front of me. I'm going to tell you both right now that I
16 think Mr. McQune was entitled to a hearing today.

17 When I say a "hearing," Mr. McQune obviously wanted me to
18 reach the merits, which you disagree on how I should treat them,
19 Mr. Neely. Mr. Mathews even wants to raise matters today on
20 behalf of Mr. McQune that were not raised in the original
21 application. Therefore, Mr. McQune stands up in the middle of
22 the hearing and asks me to continue the hearing so he can amend
23 his application.

24 What is before me are Mr. McQune's objections to the
25 Conditional Order of Dismissal and I believe Mr. McQune is

150

1 entitled at the very least to a hearing today on that. Which
2 may lead to the Court addressing the merits raised in the
3 objections to the Conditional Order of Dismissal, which is why I
4 asked Mr. Mathews to present his case when we began today so
5 that I could understand completely the position of the
6 applicant.

7 This is a strange procedural history in that I believe that
8 both the Attorney General's office and Mr. McQuine had gotten my
9 Conditional Order of Dismissal, certainly in much less time than
10 what they tell me in this hearing they received it.

11 Therefore, both of you will address in your Order's Mr.
12 McQuine's objections to the Conditional Order of Dismissal. You
13 will have two weeks from today to send in the Order. You will
14 send them to me at P.O. Drawer 470, Walterboro, 29488. You will
15 copy opposing counsel on your transmittal of your proposed
16 Orders. You will include a self-addressed, stamped envelope
17 with sufficient postage affixed thereto.

18 The reason I'm doing that is because post conviction is a
19 common pleas matter, and in common pleas, Mr. McQuine, we have e-
20 filing. However, post conviction is exempt from e-filing right
21 now. Now, if you want to send me your Order by e-mail, you can
22 do so. I will then consider, along with his objections to the
23 Conditional Order of Dismissal, how I wish to rule in this
24 matter. I wanted to get some idea today of what Mr. McQuine --
25 Mr. McQuine, don't keep raising your hand. The hearing is over

1 now. That's not fair. I've given you every opportunity to tell
2 me what you wanted during this hearing. You can talk to your
3 attorney, but we are done with argument.

4 Now, I wanted to hear from Mr. McQune today because I
5 wanted to see what it is that he felt the Court should have
6 looked at in his application that was failed to be considered
7 before. He sets that out in writing in his objections to the
8 Conditional Order of Dismissal. I will expect both of you to
9 address that in your proposed Order.

10 I will look forward to receiving your Orders. If you
11 decide to e-mail me, I want you to send my law clerk a working
12 copy. His e-mail address is pbucknerlc@sccourts.org. Mine is
13 pbucknerj@sccourts.org. You will have to copy opposing counsel
14 on any transmittal to the Court either by e-mail or United
15 States Mail. Your proposed Orders need to be on my desk either
16 by United States Mail or e-mail no later than two weeks from
17 today. I have the entire clerk's file. I'm giving the court
18 reporter back the one exhibit which was made a part of the
19 record. I have a complete copy of the Clerk's file of Mr.
20 McQune's objections to my Conditional Order of Dismissal, which
21 I had reviewed prior to starting this hearing.

22 Mr. Neely, any questions by the State about the proposed
23 Order?

24 MR. NEELY: None, Your Honor.

25 THE COURT: Any questions about the proposed Order

1 procedure from counsel for the applicant?

2 MR. MATHEWS: One moment, Your Honor. (Brief pause.)

3 Nothing further, Your Honor.

4 THE COURT: All right. I'll look forward to getting your
5 proposed Orders.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

CERTIFICATE

153

I, REBECCA H. HILL, Official Court Reporter for the
Judicial Department of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate and complete
Transcript of Record of the proceedings had in the hearing of
the captioned case, in the Court of Common Pleas for Colleton
County, South Carolina, on the 8th day of August 2017.

I do further certify that I am neither of kin, counsel, nor
interest to any party hereto.

January 2, 2018

Rebecca H. Hill

Rebecca H. Hill,
Official Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

WALTER J. MCQUNE,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2013-CP-15-00214

FINAL ORDER OF DISMISSAL

RECEIVED

SEP 18 2017

SC Court of Appeals

#1
PMB
This matter came before this Court on August 8, 2017, at the Colleton County Courthouse. At the hearing Applicant was present and represented by David Mathews, Esquire. Representing the Respondent, Rustin W. Neely, Esquire, of the South Carolina Attorney General's Office. This Court had before it a copy of the records of the Colleton County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, Applicant's *pro se* filings, Applicant's mental competency evaluations, and the pleadings in this matter. This Court finds the following:

1. PROCEDURAL HISTORY

Applicant was indicted at the August 2003 term of the Colleton County Grand Jury for murder (2003-GS-15-0491). Everett W. Bennett Jr., Esquire, represented Applicant. On February 5, 2004, Applicant pleaded guilty to the lesser included offense of voluntary manslaughter. The Honorable Jackson V. Gregory sentenced Applicant to twenty-five years' imprisonment. Applicant did not appeal his plea or sentence.

Applicant filed his first PCR application on October 15, 2004, alleging the following grounds for relief:

1. Counsel for Applicant was ineffective for failing to secure a competency evaluation prior to applicant entering a guilty plea.

2. The Applicant's plea of guilty was not freely and voluntarily given due to a lack of competency at the time of the guilty plea.
3. After discovered evidence of lack of competency requires vacation of the conviction and sentence.

135

Michelle R. Suggs, Esquire, represented Applicant. Salley W. Elliott and Adrienne Turner, Esquires, represented Respondent. The Honorable Carmen T. Mullen dismissed Applicant's application with prejudice by a consent order filed August 8, 2007. The order of dismissal indicates Applicant informed his counsel of his intent to withdraw his application with prejudice. Further, Judge Mullen's order states Applicant acknowledged he was satisfied with his counsel and was withdrawing his application freely and voluntarily. Ms. Suggs, Ms. Elliott, and Applicant also signed the consent order of dismissal.

#2
AmB
On March 19, 2013, Applicant filed his second PCR application with the Colleton County Clerk of Court alleging, among other things, that he was not competent at the time that he waived his first PCR application, and requesting a new hearing. On October 21, 2014, the State submitted its "Return and Motion to Dismiss," as well as a proposed Conditional Order of Dismissal. On December 15, 2014, this Court signed and filed a Conditional Order of Dismissal (COD) with the Colleton County Clerk of Court granting the State's motion to dismiss, and caused to be sent a demand that Applicant provide reasons why the conditional order of dismissal ought not to be permanently granted within 20 days of the date of service of the COD on him. On April 19, 2017, through an Order, the Supreme Court of South Carolina notified this Court that a Conditional Order of Dismissal had been filed in Colleton County, however, a final order of dismissal was never filed. On April 21, 2017, the Court had not received a response from Applicant within the time ordered. The Court then signed and filed a Final Order of Dismissal on April 21, 2017.

The Court later learned, after signing the Final Order of Dismissal that the COD was not received by the Attorney General's office until March 1, 2016, and the Applicant was not personally served the COD until March 24, 2016. On April 4, 2016, Applicant mailed objections to the COD to the Colleton County Clerk of Court, challenging this Court's assertion that Applicant did not file objections within 20 days of service.

On June 2, 2017, this Court held a hearing to determine whether Applicant's opposition to his COD was timely filed and meritorious. This Court appointed David Mathews, Esquire, to represent Applicant. On June 7, 2017, By Applicant's motion, this hearing was continued. On August 8, 2017, this Court held a hearing to determine whether Applicant's objections to his COD were timely filed or meritorious. This Court took the testimony of Applicant and heard legal arguments from both parties. This Court finds Applicant has failed to show why this application should not be summarily dismissed for the following reasons:

II. DISCUSSION

A. Timeliness of Applicant's filing

The State asserted Applicant's PCR filing on April 16, 2016 was untimely per S.C. Code Ann. § 17-27-45. "It is clear under South Carolina law that mailing does not constitute filing. When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer. The mailing of petitioner's application was therefore not sufficient under § 17-27-45(A)." *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001) (citations omitted). However, the State did not request a dismissal based on a lack of timely filing because the State received Applicant's objections five days before the twenty day requirement. Applicant's objections to this Court's COD were mailed to the Colleton County Clerk of Court on April 4, 2016, twelve days after the COD was served on him by the State on March 24, 2016. The mailing date of April 4, 2016, is clear from the postmark on

Applicant's letter containing his objections to the COD. This Court's COD provided Applicant with twenty days to file objections in response to the COD. A letter from the Colleton County Clerk of Court to the Applicant, with a copy sent to the State, reflects Applicant's "Objections to Conditional Order of Dismissal" were filed in Colleton County on April 16, 2016. 

Therefore, Applicant's objections were filed twenty-three days after the COD was served on Applicant, which is three days after the twenty days allowed by this Court's COD. However, the State received Applicant's COD objections on April 8, 2016. Applicant has shown the Clerk of Court did not file his objections until twelve days after he mailed them. This Court finds Applicant exercised due diligence in filing his objections to this Court's COD. Therefore, this Court will consider those objections.

#4
PMB

B. Applicant's objections to the COD

Applicant objected to this Court's COD on the following grounds:

1. The State failed to address Applicant's argument that he was mentally incompetent under Rule 8(d), SCRCP.
2. The State failed to assert an affirmative defense in response to Applicant's prior filings.
3. Summary dismissal of his Application was inappropriate because the standard for summary dismissal assumes the facts presented by the Applicant are true.

Applicant's objections to this Court's COD failed to assert any specific factual or legal ground why his application should not be dismissed. Applicant's first PCR application already alleged he was mentally incompetent. The State is not required to assert affirmative defenses to each of Applicant's filings. The State argues Applicant's PCR application is procedurally barred by the statute of limitations and the court's prohibition against successive applications.

Applicant argues he was mentally incompetent for the withdrawal of his first PCR application, which was, therefore, improvidently dismissed. If the application was improperly dismissed then Applicant argues his current PCR is neither untimely nor successive as he has not had his bite at the

apple.

158

Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple." *Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). This Court shall address Applicant's argument that his first PCR was improvidently dismissed because Applicant was mentally incompetent. On March 11, 2006, Dr. Elena Nichita found Applicant was mentally incompetent due to depression, but likely to become competent in the future. These findings were made after mental competency evaluations on November 23, 2005 and March 2, 2006. In those findings, Dr. Nichita found Applicant was depressed and should be treated for depression. Dr. Nichita reported Applicant claimed he could not read or write. Dr. Nichita reported there was some evidence of malingering from Applicant's testing. Importantly, Dr. Nichita found Applicant's incompetence was remedial and he would become competent in the foreseeable future.

HS
MB
Accordingly, PCR counsel had Applicant evaluated at a later date by Doctor L. Randolph Waid, a licensed clinical psychologist. On April 12, 2007, Dr. Waid found there was "no compelling evidence that Mr. McQuine was highly disrupted by psychiatric disturbance or lacked intellectual capacity that would have rendered him incompetent to understand the plea arrangement or proceedings." Dr. Waid's report further noted, "Walter McQuine was evaluated at Kirkland Facility of the South Carolina Department of Corrections soon after his plea on February 5, 2004. Initial evaluation conducted on 2/20/04 failed to reveal any complaint of mental health difficulties or evidence of psychiatric disturbance." Applicant withdrew his first PCR action on August 8, 2007, nearly five months after Waid's evaluation.

This Court finds the evidence shows Applicant was competent when he pleaded guilty and when he withdrew his first PCR. Accordingly, this Court finds Applicant has not proven he was not incompetent when he withdrew his first PCR allegation. Therefore, Applicant must show why his

application should not be dismissed as successive and untimely.

C. Successive Application

The Court finds that the PCR application filed March 19, 2013 is successive to the Applicant's first PCR application from October 15, 2004. Courts disfavor successive applications and place the burden on applicants to show that grounds for post-conviction relief could not have been raised in the original application. See e.g., Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981). 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 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.

Since the Applicant has not shown why the new grounds for post-conviction relief could not have been raised in the 2004 application, this 2013 application is summarily dismissed.

This Court has found Applicant was competent when he withdrew his first PCR application.¹ Therefore, Applicant must show why his successive application should not be dismissed. [S]uccessive 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. Alice v. State, 305 S.C. 448, 409 S.E.2d 392 (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.

¹ Applicant alleges he was incompetent when he withdrew his first PCR action.

[I]n the context of mentally incompetent PCR applicants, case law warrants a holding that, in circumstances in which an applicant demonstrates the failure to timely file for PCR was due to mental incompetency, the statute should be tolled. If the PCR court finds mental incompetence prevented his filing a PCR application, the court should determine the duration of the incompetence, and whether the application was filed within one year of Ferguson regaining competency. Ferguson v. State, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009). Applicant's second PCR action was filed on March 19, 2013. This was over 5 years after Applicant's first PCR action was dismissed by withdrawal on August 8, 2007.

409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then Applicant 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 has failed to prove any of his allegations could not have been raised in his previous application. Applicant alleges his PCR and plea counsel were deficient. Applicant has failed to show why his allegations against plea counsel could not have been raised in his first PCR. Applicant has also failed to show why his allegations against PCR counsel should be allowed. "[T]he contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' allowing for a successive PCR application under § 17-27-90. *Robertson v. State*, 418 S.C. 505, 514, 795 S.E.2d 29, 33 (2016). Therefore, this Court finds Applicant failed to establish any sufficient reason why his current grounds for relief were not properly raised in his previous applications and waived by his withdrawal.

#?
MB Accordingly, this Court summarily dismisses Applicant's application because Applicant failed to provide sufficient reason that new grounds exist or other grounds could not have been raised in his first PCR.

D. Statute of Limitations

Furthermore, this Court further finds that the PCR application filed March 19, 2013 failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. See S.C. Code §§ 17-27-10 to -160. The South Carolina Supreme Court held that the statute of limitations applies to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). While the Applicant's 2004 application was timely, the 2013 application is more than 8 years beyond the statutory deadline of one year after his conviction, February 5, 2005. Because of this failure to file in time, the 2013 application is summarily dismissed.

The terms of the Court's Conditional Order of Dismissal stated that the Order would become final twenty days after the defendant was served with the Order unless specific objections to the Order were filed. The Applicant's next communication to the Court declared the Applicant's intention to file a Motion for Summary Judgement. This Notice was filed on January 30, 2015. The Court does not believe that specific meritorious objections to the Conditional Order of Dismissal were made in order for this Court to grant relief. This court summarily dismisses this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act, therefore, the Applicant's PCR application, filed March 19, 2013, and is hereby dismissed with prejudice.

#7
PMB
Having considered the oral arguments presented by both parties, the copy of the records of the Colleton County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, Applicant's *pro se* filings, Applicant's mental competency evaluations, and the pleadings in this matter. The Court finds that the PCR application filed March 19, 2013 is successive and has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. See S.C. Code §§ 17-27-10 to -160. The PCR application filed March 19, 2013 is successive to the Applicant's first PCR application from October 15, 2004. While Applicant's 2004 application was timely, the 2013 application is more than 8 years beyond the statutory deadline of one year after his conviction, February 5, 2005. Because of this failure to file in time, the March 19, 2013 application is summarily dismissed.

IT IS THEREFORE ORDERED, the Applicant's PCR application, filed March 19, 2013, hereby be dismissed with prejudice.

AND IT IS SO ORDERED.

[SIGNATURE ON FOLLOWING PAGE.]

September 8, 2017
Walterboro, South Carolina


The Honorable Perry M. Buckner, III
Presiding Judge for the Fourteenth Judicial Circuit



ALAN WILSON
ATTORNEY GENERAL

April 25, 2013

FILED
14
163
2013 MAY -8 PM 2:54
COLLETON COUNTY
GENERAL SESSIONS COURT

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

Re: Walter McQune, # 299882 v. State of South Carolina
2003-GS-15-491

Dear Ms. Armstrong:

Please send me true copies of all records in your office concerning the arrest, trial, sentence, and commitment (**including the face of the indictment**) of the above-named individual, tried during the Court of General Sessions for your county.

Sincerely,

Anne R. Henley, Legal Assistant for
Ashleigh R. Wilson, Assistant Attorney General

/arh

VM 0217 CLASS A Violent
16-3-50 MUST SIGN
= 30yr 164

STATE OF SOUTH CAROLINA)
COUNTY OF Colleton)
STATE VS.)
Walter J. McQuane)
AKA:)
Race: B Sex: M Age:)
DOB: 02-02-84 SS#: 248-57-6029)
Address:)
City, State, Zip)
DL# 011551945 SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 03 -GS- 15 - 0491
A/W#: G622233
Date of Offense: 10/05/02
S.C. Code §: 16-3-10
CDR Code #: 0 1 1 1 1 6
☐ CASE RESTORED
SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: VOLUNTARY MANSLAUGHTER
in violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0 1 2 1 1 7
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: W. Alexander Solicitor Walter J. McQuane Defendant E.W. Barnett Jr. Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Heard, ☐ Waived, ☒ Ordered
Total: \$ 4000 plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS
Recipient: Sora
*Fine: Genevieve Williams
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
§ 35.13 (Public Def/Prob) \$500 \$ _____
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 3.75
TOTAL \$ 128.75

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, §35.13-TP
Requires \$500 be paid to Clerk during probation.

Patricia C. Grant
Clerk of Court/Deputy Clerk
Court Reporter: Donna Hartley

PRESIDING JUDGE Jackson V. Gregory
Judge Code: 5-847
Sentence Date: 5-8-2013
CLERK OF COURT
CERTIFIED TRUE COPIES OF RECORDS
Patricia C. Grant
CLERK OF COURT, CP & GS
COLLETON COUNTY, SOUTH CAROLINA
DATE: 5-8-2013
SCCA/217 (7/2003)

Affidavit

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON
CITY OF WALTERBORO

165

Personally appeared before me, **Detective James Clites** one who, being duly sworn, deposes and says that:

Walter J. Mcqune

Address: 1024 N. Lemacks St. Walterboro, SC 29488

Race: B Sex: M Ht: 603 Wt: 150 Hr: Blk Eyes: Brn
SSN: 248-57-6029 D.O.B.: 02/02/84 DL#: 011551945 ST: SC Phone:

WJM

Defendant

did within this County and State on the **5th DAY OF October, 2002**, violate the criminal laws of the State of South Carolina in the following particulars:

**Murder
16-3-10**

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on October 5th 2002, at approximately 0300 hrs., while at 712-A Carn St. Walterboro, County of Colleton and State of South Carolina, the defendant **Walter J. Mcqune**, did commit the offense of Murder in violation of section 16-3-10 of the South Carolina Code of Laws of 1976, as amended.

In that the Defendant did enter the residence by opening a rear window, reaching through, unlocking the door to burglarize and rob the victim. The subject confronted the victim who was sleeping. The victim was told to give the suspect his money that was in the house approx. \$35 in cash. The suspect took the money. The victim attempted to flee the residence at which time the subject began a physical altercation with the victim. The suspect strangled the victim with his hands until he passed out. The victim began to regain consciousness at which time the subject pulled the phone cord from the wall and wrapped it around the victims neck strangling him then tying it several times into a large knot. The subject then retrieved a large knife from the kitchen and stabbed the victim several times in the chest, neck, stomach, back, and leg areas. The above actions resulted in the death of the victim. This was done with malice and aforethought to prevent the victim from contacting police or assistance. This information was confessed to me while being video taped and in a written statement.

The Affiant, **Detective James Clites**, is a witness to prove the same. All against the Law, Peace and Dignity of the State.

CLERK OF COURT
COLLETON COUNTY
PATRICIA C. GRANT
CLERK OF COURT, CP & GS
COLLETON COUNTY, SOUTH CAROLINA
DATE: 5-8-2013
CERTIFIED TRUE COPIES OF RECORDS

166

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Walterboro

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518

Personally appeared before me the affiant Det. James Clites
being duly sworn deposes and says that defendant Walter J. McQuire
did within this county and state on 10-5-02 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Walterboro)
in the following particulars:

DESCRIPTION OF OFFENSE: Murder
16-3-10

I further state that there is probable cause to believe that the defendant named above
the crime set forth and that probable cause is based on the following facts:

See Attached Affidavit

Sworn to and subscribed before me on 5-6-03

[Signature] (L.S.)
Signature of Issuing Judge

Signature of Affiant

Affiant's Address

Affiant's Telephone

242 Hampton Street
Walterboro, SC 29488
(843) 549-1811

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Walterboro

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 10-5-02 defendant Walter J. McQuire
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of Walterboro) as set forth below:

DESCRIPTION OF OFFENSE: Murder
16-3-10

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

[Signature] (L.S.)
Signature of Issuing Judge

Judge Code: 6581

Judge's Address

Judge's Telephone

P.O. Box 709
Walterboro, SC 29488
549-6559

Issuing Court:

☐ Magistrate

☒ Municipal

☐ Circuit

WITNESSES

Det. James Clites

Capt. Bob Carter ✓

ARREST WARRANT #:

G622233

Arrested on May 06, 2003

ACTION OF GRAND JURY

Once Bill

Foreman:

Virginia C. Cobb
Grand Jury

VERDICT

Foreman:

Petit Jury
Date: _____

DOCKET #: 03GS15-0491 *167*

THE STATE OF SOUTH CAROLINA
County of Colleton *[Signature]*

COURT OF GENERAL SESSIONS

Term: August, 2003

THE STATE

VS.

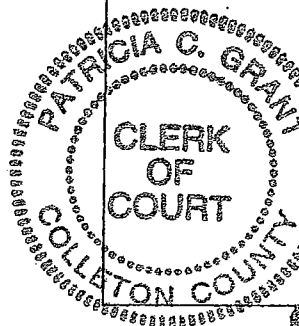
Walter J. McQune

INDICTMENT FOR

0116

MURDER

16-3-20



CERTIFIED TRUE COPIES OF RECORDS

Patricia C. Grant
CLERK OF COURT, CP & GS
COLLETON COUNTY, SOUTH CAROLINA
DATE: 5-8-2013

STATE OF SOUTH CAROLINA)
County of Colleton)

INDICTMENT #03GS15-0491

At a Court of General Sessions, convened on August 25, 2003,
the Grand Jurors of Colleton County present upon their oath:

COUNT:

MURDER
16-3-20

168

That Walter J. McQuine did in Colleton County on or about October 05, 2002,
feloniously, wilfully and with malice aforethought, kill one Marty Brown by
means of strangling him with his hands and a phone cord and stabbing him
several times throughout his body with a knife and that the said Marty Brown
did die in Colleton County as a proximate result thereof on or about the 5th
day of October, 2002.

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

SOLICITOR

W. J. McQuine



CERTIFIED TRUE COPIES OF RECORDS

Patricia C. Grant
CLERK OF COURT, CP & GS
COLLETON COUNTY, SOUTH CAROLINA
DATE: 5-8-2013

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Walter J. McQune,
S.C.D.C. No. 299882,

2013-CP-15-0214

169

Applicant,

RETURN AND MOTION TO DISMISS

v.

State of South Carolina,

Respondent.

In response to the post-conviction relief (PCR) application filed by Walter J. McQune (Applicant) on March 19, 2013, the State (Respondent) would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. He was indicted at the August 2003 term of the Colleton County Grand Jury for murder (2003-GS-15-0491). Everett W. Bennett Jr., Esquire, represented Applicant. On February 5, 2004, Applicant pled guilty to the lesser included offense of voluntary manslaughter. The Honorable Jackson V. Gregory sentenced Applicant to twenty-five years' imprisonment. Applicant did not appeal his plea or sentence.

2004-CP-15-1002

Applicant filed his first PCR application on October 15, 2004, alleging the following grounds for relief:

170

1. Counsel for applicant was ineffective for failing to secure a competency evaluation prior to applicant entering a guilty plea.
2. The applicant's plea of guilty was not freely and voluntarily given due to a lack of competency at the time of the guilty plea.
3. After discovered evidence of lack of competency requires vacation of the conviction and sentence.

Michelle R. Suggs, Esquire, represented Applicant. Salley W. Elliott and Adrienne Turner, Esquires, represented Respondent. The Honorable Carmen T. Mullen dismissed Applicant's application with prejudice by consent order filed August 8, 2007. The order of dismissal indicates Applicant informed his counsel of his intent to withdraw his application with prejudice. Further, the order states Applicant acknowledged that he was satisfied with his counsel and was withdrawing his application freely and voluntarily. Ms. Suggs, Ms. Elliott, and Applicant also signed the consent order of dismissal.

II.

In his *second* and current PCR application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Mental evaluation.
3. Reconsideration modification of sentence.
4. The court was without subject matter/personal jurisdiction to impose sentence.

Applicant submitted a pro se document entitled "Amendment and Additional Pleading to Prior Post-Conviction Relief Application filed March 19, 2012 Pursuant to Rule 15" on April 30, 2013. He further alleges he is being held in custody unlawfully for the following reasons:

- ~~1. Counsel was ineffective of assistance by not amending indictments which were not filed with the clerk of court to Applicant's post-conviction relief application as available grounds for relief.~~

2. Applicant has been prejudiced by remaining held confined unlawfully without proper subject-matter and personal jurisdiction to the Department of Corrections for twenty-five years imprisonment.

171

On June 4, 2013, Applicant submitted a pro se brief in support of his application and amended application. On June 18, 2013, Applicant submitted another pro se amendment and alleged the following grounds for relief:

1. My initial review proceeding counsel Michelle Suggs was ineffective assistance in failing to amend or raise the substantial ineffective assistance trial counsel claim, that trial counsel E.W. Bennett was ineffective assistance in failing to advise applicant of minimum sentence to voluntary manslaughter is not be impose less than 2 years.

Attached herewith and incorporated herein by reference are the Colleton County Clerk of Court records regarding the subject convictions, records from the South Carolina Department of Corrections, and Applicant's previous PCR records.

III.

This Court should summarily dismiss the current PCR application because it is successive to Applicant's previous PCR application. 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 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.

172

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). 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 Applicant 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 his current grounds for relief were not properly raised in his previous applications. Respondent moves to summarily dismiss this application because it is successive to Applicant's previous PCR application.

IV.

Respondent submits this Court should summarily dismiss this application 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.

173

The South Carolina Supreme Court held that the statute of limitations applies 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 offense he challenges in this application on February 5, 2004. Applicant did not appeal his conviction or sentence; therefore, Applicant was required to file his application on or before February 5, 2005. Applicant filed this application on March 19, 2013, **more than eight years** after the statutory filing period expired.

A motion for summary judgment is a proper mechanism to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, Section 17-27-70(c) of the South Carolina Code 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, Respondent submits this Court should summarily dismiss this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

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

(Conclusion and signatures on the following page)

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

WALTER J. MCQUNE, #299882

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-15-0214

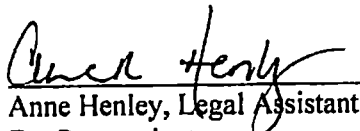
174

AFFIDAVIT OF SERVICE BY MAIL

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

**Walter J. McQune, #299882
Evans Correctional Institution
PO Box 2951202
Bennettsville, SC 29512**

DATED this 23rd day of October, 2014


Anne Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
WALTER J. MCQUNE,)
Applicant,)
v.)
STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2013-CP-15-00214

FINAL ORDER OF DISMISSAL

175
2017 APR 21 PM 3:50
COLLETON CITY
COMMON PLEAS

#1
P.B.
This matter came before this Court by way of an application for post-conviction relief (PCR) filed by Walter J. McQune on March 19, 2013. The State requested that the application be summarily dismissed. On December 15, 2014, this Court issued a Conditional Order of Dismissal. That Order stated that the applicant's PCR application would be dismissed because it was both successive to a previous PCR application and failed to comply with the Uniform Post-Conviction Procedure Act. The Order also stated that it would become final twenty days after service upon the Applicant unless the Applicant provided specific objections to the Order. The Applicant's next filing was made on January 30, 2015, and an Objection to Conditional Order of Dismissal was filed on April 7, 2016. Responding to letters written to the Court and the Clerk of Court, the Court's law clerk sent the Applicant a letter stating that the Conditional Order had become final when the Applicant did not provide specific objections to the Conditional Order within twenty days.

The applicant responded to the Clerk of Court with a letter stating that it was his belief that the Conditional Order of Dismissal was not an appropriate resolution to the case because of the language of *Lewis v. State*, 368 S.C. 630, 630 S.E.2d 464 (2006). This letter was filed on February 6, 2017. On April 21, 2017, the Court received a letter from the South Carolina Supreme Court requesting that the Court

issue a Final Order in the case. The Supreme Court's letter reiterated the language of the *Lewis* decision. This Court now issues a Final Order of Dismissal of the Applicant's PCR application.

The Court restates its original opinion from the Conditional Order of Dismissal. The PCR application is both successive and improperly filed.

176

The Court finds that the PCR application filed March 19, 2013 is successive to the Applicant's first PCR application from October 15, 2004. Courts disfavor successive applications and place the burden on applicants to show that and grounds for post-conviction relief could not have been raised in the original application. *See e.g., Foxworth v. State* 275 S.C. 615, 274 S.E.2d 415 (1981). Since the Applicant has not shown why the new grounds for post-conviction relief could not have been raised in the 2004 application, this 2013 application is summarily dismissed.

#2
PMB

This Court further finds that the PCR application filed March 19, 2013 failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. *See* S.C. Code §§ 17-27-10 to -160. While the Applicant's 2004 application was timely, the 2013 application is more than 8 years beyond the statutory deadline of one year after his conviction, February 5, 2005. Because of this failure to file in time, the 2013 application is summarily dismissed.

The terms of the Court's Conditional Order of Dismissal stated that the Order would become final twenty days after the defendant was served with the Order unless specific objections to the Order were filed. The Applicant's next communication to the Court declared the Applicant's intention to file a Motion for Summary Judgement. This Notice was filed on January 30, 2015. The Court does not believe that specific objections to the Conditional Order of Dismissal were made within the twenty day deadline.

Therefore, the Applicant's PCR application, filed March 19, 2013, is hereby dismissed with prejudice.

IT IS SO ORDERED.

177



Judge Perry M. Buckner, III
Fourteenth Judicial Circuit

21 April, 2017
Walterboro, South Carolina