

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

—————  
Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge  
—————

RECEIVED

JUL 30 2018

S.C. SUPREME COURT

CURTIS D. RICHARDSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000816  
—————

APPENDIX  
—————

ROBERT M. PACHAK  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

JOHNNY ELLIS JAMES, JR.  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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FORM 5

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF )  
*CURTIS RICHARDSON #28507-171* )  
Full name and prison number (if any) of Applicant. )

IN THE COURT OF COMMON PLEAS

1600005589

v. )

APPLICATION FOR

State of South Carolina )  
 )

POST-CONVICTION RELIEF

CLERK OF COURT  
16 AUG 26 AM 8:59  
HOBBS COUNTY

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention *FEDERAL CORR INST 11, P.O. BOX 1500, BUTNER NC 27509*
2. Name and location of Court which imposed sentence *HOBBS COUNTY GENERAL SESSIONS 1301 AND AVE CONWAY, SC 29526*
3. Name(s) of co-defendant(s) (if any) *NONE*
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) *POSSESSION OF FIREARM*
  - (b) *POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE*
  - (c) *\_\_\_\_\_*
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) *SEPTEMBER 2011 - 3 YEARS*
  - (b) *SEPTEMBER 2011 - 5 YEARS*

- (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty
  - (b) after a plea of not guilty
  - (c) after a plea of nolo contendere \_\_\_\_\_
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO

- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. N/A
    - ii. N/A
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. N/A
    - ii. N/A
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. N/A
    - ii. N/A
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. N/A
    - ii. N/A
    - iii. \_\_\_\_\_

- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) UNCOUNSELED AND NOT ADVISED OF RIGHT TO APPEAL
  - (b) UNCOUNSELED AND NOT ADVISED OF RIGHT TO APPEAL
  - (c) NEWLY DISCOVERED AND ACTUAL INNOCENCE

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: THESE CHARGES WERE USED BY FEDERAL COURT TO ENHANCE MY SENTENCE. THESE CHARGES WERE UNCOUNSEL AND PLEA WAS ACCEPTED BY GENERAL SESSIONS IN VIOLATION OF FEDERAL RULE AND STATE RULES OF CRIMINAL PROCEDURE 11 AND BOYKIN V ALABAMA

- (a) A HEARING ON THESE CHARGES WILL PROMPT MY RELEASE
- (b) A HEARING ON THESE CHARGES WILL PROMPT MY RELEASE
- (c) THESE 2 CONVICTIONS OBTAINED IN VIOLATION OF FED RULE CRIMINAL PROCEDURE 11 AND BOYKIN V. ALABAMA

11. State concisely and in the same order the facts which support each of the grounds set out in (10): THESE 2 CONVICTIONS OBTAINED IN VIOLATION OF RULE 11 FED RULES OF CRIMINAL PROCEDURE AND BOYKIN V. ALABAMA AND THEREFORE

- (a) COLLATERAL CONSEQUENCES VIA USE OF THESE INVALID CONVICTIONS UNDER FEDERAL GUIDELINES WILL TERMINATE SENTENCE
- (b) COLLATERAL CONSEQUENCES VIA USE OF THESE INVALID CONVICTIONS WILL TERMINATE MY CURRENT FEDERAL SENTENCE VIA A HEARING
- (c) COLLATERAL CONSEQUENCES VIA USE OF THESE INVALID CONVICTIONS WILL TERMINATE MY CURRENT FEDERAL SENTENCE VIA A HEARING

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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.
  - ii.
  - iii.
  - iv.
- N/A

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

- i.
  - ii.
  - iii.
  - iv.
- N/A

(c) the disposition thereof:

- i.
  - ii.
  - iii.
- N/A

iv. \_\_\_\_\_  
(d) the date of each such disposition:

i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
iv. \_\_\_\_\_

N/A

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

i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
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/D

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

(a) which grounds have been presented:

i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

N/A

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

i. \_\_\_\_\_  
ii. \_\_\_\_\_  
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:

(a) EVIDENCE DISCOVERED IN AUGUST OF 2016  
(b) AFTER BEING ABLE TO USE THE LAW LIBRARY  
(c) COMPUTER WEST-LAW DECISION OF CITATION OF U.S. SUPREME COURT IN MOLINA-MARTINEZ V U.S.

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

136 SCT 1338 DECIDED APRIL 20, 2016  
(ALSO SEE FED RULE CIV PROC 4 RULE 11' RULE 52 (b) AND BOYKIN V ALABAMA

- (a) your arraignment and plea? NO
- (b) your trial, if any? NO
- (c) your sentencing? NO
- (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? NO

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.
  - ii.
  - iii.
- N/A

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

- i.
  - ii.
  - iii.
- N/A

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

SENTENCES VACATED

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

NO

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.

16 5589

*[Signature]*

SWORN to and subscribed before me this 22<sup>ND</sup> day of AUGUST, 2016.

*[Signature]* (L.S.)  
Notary Public  
My Commission Expires: 3/28/21

JESSICA L GLANCY  
NOTARY PUBLIC, NORTH CAROLINA  
WAKE COUNTY  
MY COMMISSION EXPIRES  
3/28/21

HORRY COUNTY  
2016 AUG 26 AM 8:59  
MELANIE HUGHES-WARD  
CLERK OF COURT

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

16 5389

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.

Curtis Reckman  
Applicant

SWORN or affirmed to and subscribed before me this  
22<sup>nd</sup> day of August, 2016

Jessica L. Glancy  
Notary Public

My Commission Expires: 3/28/21

JESSICA L GLANCY  
NOTARY PUBLIC, NORTH CAROLINA  
WAKE COUNTY  
MY COMMISSION EXPIRES  
3/28/21

HORRY COUNTY  
2016 AUG 26 AM 8:59  
MELANIE JUDSONS-WARD  
CLERK OF COURT

HONORABLE CLERK;

WOULD YOU PLEASE FORWARD TO ME  
A FILED COPY OF THIS APPLICATION  
FOR POST-CONVICTION RELIEF FOR  
MY RECORDS ASAP

THANK YOU,

HORRY COUNTY  
2018 AUG 26 AM 10:54  
MELANIE JOHNSON-WARR  
CLERK OF COURT

**CLERK OF COURT**



**MELANIE HUGGINS-WARD**  
CLERK OF COURT  
1301 2<sup>ND</sup> AVENUE  
CONWAY, SC 29526  
(843) 915-5080 • Fax: (843) 915-6081

FILED  
HORRY COUNTY  
2016 SEP 12 PM 3:11  
CLERK OF COURT

SEPTEMBER 13, 2016

CURTIS RICHARDSON # 28507-171  
FCI BUTNER MEDIUM II  
FEDERAL CORRECTIONAL INSTITUTION  
P.O. BOX 1500  
BUTNER, NC 27509

RE: POST-CONVICTION RELIEF  
CIVIL ACTION #2016-CP-26-05589

DEAR MR. RICHARDSON,

THE POST-CONVICTION RELIEF APPLICATION HAS BEEN FILED AND ASSIGNED THE ABOVE CIVIL ACTION NUMBER FOR THE DOCKET. YOUR COPY IS ENCLOSED WITH THE ABOVE INFORMATION SHOWN. COPIES HAVE BEEN FORWARDED TO THE OFFICE OF THE ATTORNEY GENERAL. THAT OFFICE WILL BE PROCESSING YOUR CASE FOR COURT PROCEEDINGS.

SINCERELY,

*Melanie Huggins-Ward*

MELANIE HUGGINS-WARD  
CLERK OF COURT

MHW/fhn  
ENCLOSURES

**CLERK OF COURT****MELANIE HUGGINS-WARD**

CLERK OF COURT  
1301 2<sup>ND</sup> AVENUE  
CONWAY, SC 29526  
(843) 915-5080 • Fax: (843) 915-6081

FILED  
HORRY COUNTY  
2016 SEP 12 PM 3:11  
MELANIE HUGGINS-WARD  
CLERK OF COURT

SEPTEMBER 13, 2016

ATTORNEY CAITLIN B. HASTINGS  
OFFICE OF ATTORNEY GENERAL  
POST OFFICE BOX 11549  
COLUMBIA, SOUTH CAROLINA 29211

RE: CURTIS RICHARDSON # 28507-171  
CASE #: 2016-CP-26-05589

PLEASE BE ADVISED THAT THE ABOVE REFERENCED INDIVIDUAL HAS  
MADE APPLICATION FOR POST-CONVICTION RELIEF IN OUR COUNTY.

ENCLOSED YOU WILL FIND A COPY OF THE POST-CONVICTION RELIEF  
APPLICATION, ALONG WITH TRUE COPIES OF THE WARRANT, VERDICT  
FORM (IF TRIAL BY JURY), SENTENCE SHEET, AND THE INDICTMENT  
ON THE ABOVE REFERENCED INDIVIDUAL.

IF WE MAY BE OF FURTHER ASSISTANCE, PLEASE ADVISE.

SINCERELY,

*Melanie Huggins-Ward*

MELANIE HUGGINS-WARD  
CLERK OF COURT

MHW/fhn  
ENCLOSURES

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY ) IN THE COURT OF COMMON PLEAS  
CURTIS RICHARDSON 28507-171 ) APPLICATION FOR  
VS ) POST-CONVICTION RELIEF  
STATE OF SOUTH CAROLINA )  
2016-CP-26-05589

---

SUPPLEMENTAL AMENDMENT IN SUPPORT

COMES NOW, THE APPLICANT, AND SAME MOVES THIS COURT TO AMEND HIS APPLICATION TO RAISE THE FOLLOWING GROUNDS BASED ON NEWLY DISCOVERED EVIDENCE AS FOLLOWS.

ISSUE ONE:

THE POSSESSION OF MARIJUANA WAS AN INVALID CONVICTION AS THE ALLEGED AMOUNT OF MARIJUANA FOR THIS OFFENSE IS ONLY 4.5 GRAMS WHICH IS A MISDEMEANOR UNDER STATE LAW (SEE 44-53-370 ATTACHED)

ISSUE TWO

THE PROBATION VIOLATION FOR THE OFFENSE OF BURGLARY SECOND DEGREE WAS INVALID AS THE VIOLATION WAS ACQUIRED WITHOUT COUNSEL REPRESENTATION IN VIOLATION OF MORRISSEY VS BREWER AND IN VIOLATION OF GAGNON VS SCARPELLI.

(SEE ATTACHED EXHIBIT B FOR CASE NUMBER)

ARREST WARRANT  
J-324850

STATE OF SOUTH CAROLINA  
 County/  Municipality of  
Horry

THE STATE  
against

Curtis Dale Richardson  
Address: RAILROAD AVE  
LORIS, SC 99999

Phone: SSN:  
Sex: M Race: B Height: 6 1 Weight: 170  
OL State: SC OL #:

Agency ORI #: SCSHP0000  
Prosecuting Agency: Horry County Highway Patrol  
Prosecuting Officer: Gregory R Mccrackin - 8161  
Offense: Drugs / Manuf., poss. of other sub. in Sch. I,II,III  
or Marijuana, w.i.t.d. - 1st offense

Offense Code: 0186  
Code/Ordinance Sec: 44-53-0370(b)(2)

This warrant is CERTIFIED FOR SERVICE in the  
 County/  Municipality of  
The accused  
is to be arrested and brought before me to be  
dealt with according to the law.

(L.S.)  
Signature of Judge  
Date:

RETURN  
A copy of this arrest warrant was delivered to  
defendant on  
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:  
General Sessions  
PO Box 677  
1301 2nd Avenue  
Conway, SC 29528

ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
Horry )  
AFFIDAVIT

Personally appeared before me the affiant Gregory R Mccrackin  
being duly sworn deposes and says that defendant Curtis Dale Richardson  
did within this county and state on or about 01/23/2010

State of South Carolina (or ordinance of  County/  Municipality of Horry  
in the following particulars:  
DESCRIPTION OF OFFENSE Drugs / Manuf., poss. of other sub. in Sch. I,II,III or Marijuana, w.i.

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

That on January 23, 2010 in the city/county of Horry, one Curtis Dale Richardson did aid, abet, &  
distribute, dispense, deliver, purchase and or possess 4.5 grams of Marijuana, with the intent to n  
deliver, or purchase Marijuana, a controlled substance or a controlled substance analogue classifi  
is a narcotic drug or lysergic acid diethylamide (LSD) or in Schedule II which is a narcotic drug.

Signature of Affiant  
STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
Horry )  
Affiant's Address 4195 Hwy 701 North  
Conway, SC 29526  
Affiant's Telephone

ARREST WARRANT  
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF  
it appearing from the above affidavit that there are reasons

on or about 1/23/2010 defendant Curtis Dale Richardson  
did violate the criminal laws of the State of South Carolina (or ordinance of  
 County/  Municipality of Horry ) as set

DESCRIPTION OF OFFENSE: Drugs / Manuf., poss. of other sub. in Sch. I,II,III or Marijuana, w.i.  
Having found probable cause and the above affiant having sworn before me, you are empowered and directed to r  
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the de  
soon thereafter as is practicable  
Sworn to and subscribed before me

on 01/24/2010 )  
Signature of Issuing Judge (L.S.) )  
Christopher John Arakas )  
Judge's Address J. Ruben Long Detention  
Conway, SC 29526-1071 )  
Judge's Telephone (843)365-9222 )  
Issuing Court:  Magistrate

ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL

(4) possession of more than: ten grains of cocaine, one hundred milligrams of alpha- or beta-eucaine, four grains of opium, four grains of morphine, two grains of heroin, one hundred milligrams of isonipecaine, twenty-eight grams or one ounce of marijuana, ten grams of hashish, fifty micrograms of lysergic acid diethylamide (LSD) or its compounds, fifteen tablets, capsules, dosage units, or the equivalent quantity of 3, 4-methylenedioxyamphetamine (MDMA), or twenty milliliters or milligrams of gamma hydroxybutyric acid or a controlled substance analogue of gamma hydroxybutyric acid, is prima facie guilty of violation of subsection (a) of this section. A person who violates this subsection with respect to twenty-eight grams or one ounce or less of marijuana or ten grams or less of hashish is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days or fined not less than one hundred dollars nor more than two hundred dollars. Conditional discharge may be granted in accordance with the provisions of Section ~~14-53-450~~ upon approval by the circuit solicitor to the magistrate or municipal judge. As a part of a sentence, a magistrate or municipal judge may require attendance at an approved drug abuse program. Persons charged with the offense of possession of marijuana or hashish under this item may be permitted to enter the pretrial intervention program under the provisions of Sections ~~17-22-10~~ through ~~17-22-160~~. For a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not less than two hundred dollars nor more than one thousand dollars, or both.

When a person is charged under this subsection for possession of controlled substances, bail shall not exceed the amount of the fine and the assessment provided pursuant to Section 14-1-206, 14-1-207, or 14-1-208, whichever is applicable. A person charged under this item for a first offense for possession of controlled substances may forfeit bail by nonappearance. Upon forfeiture in general sessions court, the fine portion of the bail must be distributed as provided in Section 14-1-205. The assessment portion of the bail must be distributed as provided in Section 14-1-206, 14-1-207, or 14-1-208, whichever is applicable.

(e) Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of:

(1) ten pounds or more of marijuana is guilty of a felony which is known as "trafficking in marijuana" and, upon conviction, must be punished as follows if the quantity involved is:

(a) ten pounds or more, but less than one hundred pounds:

1. for a first offense, a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars;
2. for a second offense, a term of imprisonment of not less than five years nor more than twenty years, no part of which may be suspended nor probation granted, and a fine of fifteen thousand dollars;
3. for a third or subsequent offense, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(b) one hundred pounds or more, but less than two thousand pounds, or one hundred to one thousand marijuana plants regardless of weight, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(c) two thousand pounds or more, but less than ten thousand pounds, or more than one thousand marijuana plants, but less than ten thousand marijuana plants regardless of weight, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(d) ten thousand pounds or more, or ten thousand marijuana plants, or more than ten thousand marijuana plants regardless of weight, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

(2) ten grams or more of cocaine or any mixtures containing cocaine, as provided in Section 44-53-210(b)(4), is guilty of a felony which is known as "trafficking in cocaine" and, upon conviction, must be punished as follows if the quantity involved is:

(a) ten grams or more, but less than twenty-eight grams:

1. for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;
2. for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;
3. for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(b) twenty-eight grams or more, but less than one hundred grams:

14

DOCKET NO. 00-GS-26-145

THE STATE OF SOUTH CAROLINA

CERTIFIED COPY

COUNTY OF HORRY

2015 MAY -5 AM 11:01

56274 GHD

COURT OF GENERAL SESSIONS

*Melaine H. ...*

CLERK OF COURT FEBRUARY TERM 2000

HORRY COUNTY

THE STATE

vs.

CURTIS DALE RICHARDSON B/M

(B)

MARKET STREET

LORIS SOUTH CAROLINA 29569

DOB: 54

SSN: \_\_\_\_\_

JURY

4 2000

y

ATTY: THOMAS FLOYD

INDICTMENT FOR:

BURGLARY SECOND DEGREE

ORIGINAL

Date:

J. GREGORY HEMBREE, SOLICITOR

5/25/00

*Or motion of a atty  
20m 7:00, and a finding  
of Manifest Necessity -  
Trial ordered -*

*Rodney A. Pappas  
Presiding Judge 15th Circuit*

PROOF OF SERVICE

---

THIS IS CERTIFICATION THAT I SERVED A COPY OF SUPPLEMENTAL AMEND-  
MENT TO APPLICATION FOR POST-CONVICTION RELIEF ON THE FOLLOWING  
PARTIES BY PLACING A COPY OF SAME IN THE U.S. MAIL POSTAGE PRE-  
PAID ADDRESSED AS FOLLOWS.

ATTORNEY CATLIN B. HASTINGS  
OFFICE OF ATTORNEY GENERAL  
P O BOX 11549  
COLUMBIA, SC  
29211.

  
S  
CURTIS RICHARDSON

JANUARY 26, 2017

*Williams*, 474 U.S. 327, 328-36 (1986). Plaintiff's claims relating to loss of personal property are cognizable under the South Carolina Tort Claims Act (S.C. Code Ann. § 15-78-10 through § 15-78-220). The Fourth Circuit has found that state courts and the process are a constitutionally adequate means to bring property claims. *Mora v. City of Gaithersburg*, 519 F.3d 216, 231 (4th Cir. 2008).<sup>3</sup> Accordingly, this Court agrees that Plaintiff has not stated a valid claim pursuant to § 1983 against these Defendants, and these claims should be dismissed.

#### VI. Claims Against Defendant D.S. Wilkes

Finally, the Magistrate Judge recommends service of process issue as to Defendant D.S. Wilkes because Plaintiff provided sufficient factual allegations to withstand summary dismissal. [ECF #26, p. 10]. Within his Complaint, Plaintiff alleges that while in custody he suffered from dental pain, as well as back, head and neck pains. He alleges that he notified prison officials that he had severe tooth pain and requested a tooth removal, and further, that the medical staff determined he needed immediate dental treatment. [ECF #1, p. 9]. He alleges that despite the medical staff reporting these findings to Defendant D.S. Wilkes, he took no action for nearly two months. [ECF #1, p. 10]. Plaintiff alleges that when he was finally seen by a doctor, the doctor informed him that due to the delay, the condition of his tooth declined in that a hole had grown larger in size, subsequently increasing the cost of treatment. [ECF #1, p. 10]. Plaintiff alleges that because the federal government would not pay for the cost of this treatment, he had to undergo a tooth extraction. [ECF #1, p. 10]. He further alleges that Defendant D.S. Wilkes has refused to provide needed treatment for his back, head, and neck pains, nor will Defendant D.S. Wilkes issue any pain medications to Plaintiff for these pains. [ECF #1, p. 10]. Finally, Plaintiff

---

<sup>3</sup> S.C. Code Ann. § 15-78-70 provides that the South Carolina Tort Claims Act is the exclusive remedy for any tort committed by an employee of a governmental entity. Irrespective of the fact that Plaintiff sued these two officers personally, Plaintiff still has an adequate remedy in state court to bring his alleged loss of personal property claim.

HARDSON 28507-171

Number:

ational Institution 2

509

RALEIGH NC 275  
Research Triangle Region  
31 JAN 2017 PM 5 L

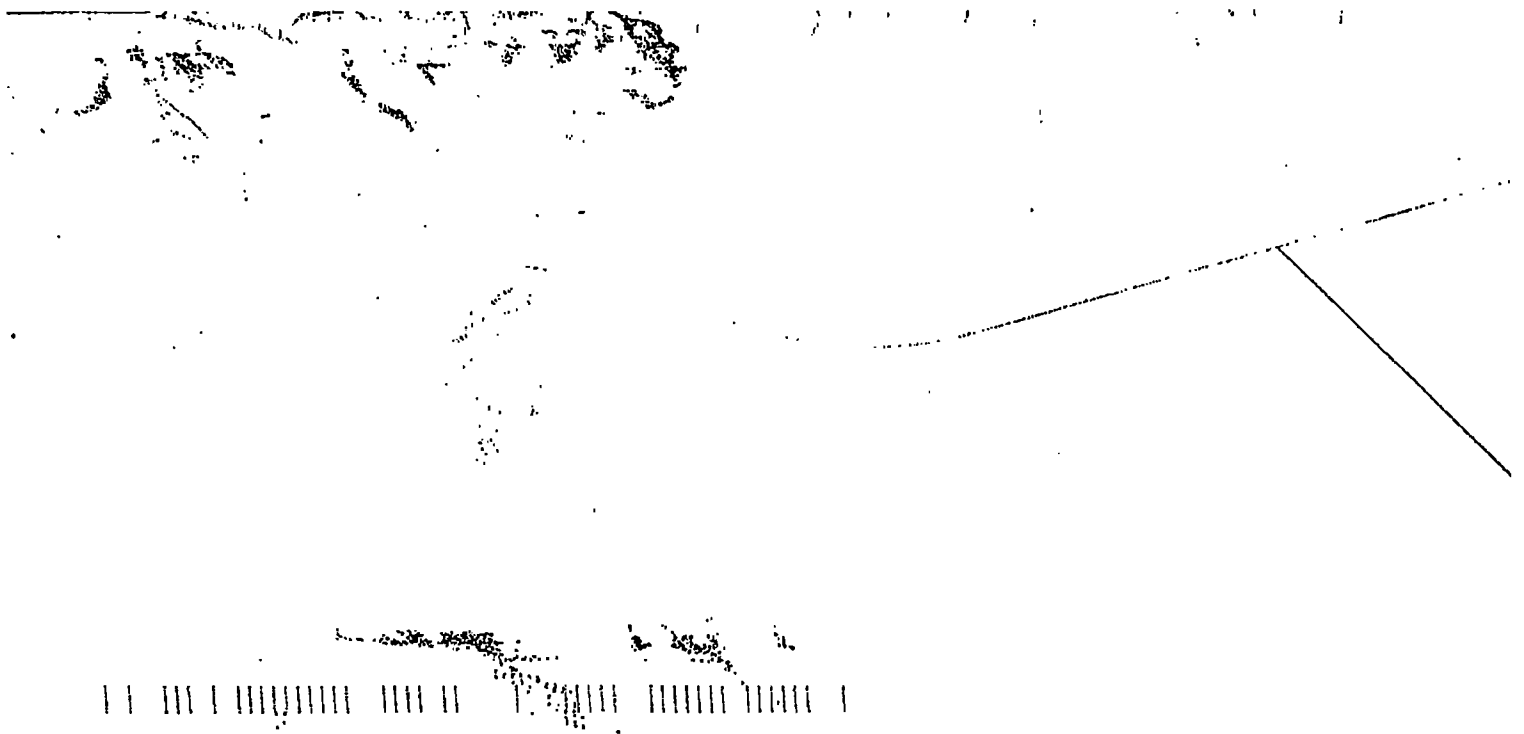


↔28507-171↔

Attorney Caitlin B Hastings  
PO BOX 11549  
Columbia, SC 29211  
United States

29211-11549





# The Supreme Court of South Carolina

Curtis D. Richardson, Petitioner,

v.

Heath Stewart, Esquire and Horizon Addiction  
Treatment Unit, Respondents.

---

## ORDER

---

Petitioner has filed a motion for leave to proceed in forma pauperis in this action. The motion is denied. Ex parte Martin, 321 S.C. 533, 471 S.E.2d 134 (1995).

We also take this opportunity to address the repetitive, frivolous and abusive nature of petitioner's filings in the courts of this state. With the exception of a period of time from July 27, 2006, until September 13, 2007, petitioner has been incarcerated in the South Carolina Department of Corrections (SCDC) since January 31, 2000. During his time of incarceration, petitioner has filed approximately twenty-two actions in the United States District Court for the District of South Carolina, twenty-two actions in the South Carolina Court of Common Pleas, and eleven actions in the Administrative Law Court (ALC).<sup>1</sup> Petitioner has represented himself in the majority of those actions.

Petitioner has proceeded in forma pauperis in federal court pursuant to the Prison Litigation Reform Act (PLRA) and in state court pursuant to Rule 3(b), SCRCP. However, by order dated December 14, 2006, the federal court prohibited petitioner from filing any further actions pursuant to the PLRA without prepayment of the filing fee. Since that time, petitioner has filed approximately seventeen pro se actions in the court of common pleas in Richland, Horry and Georgetown Counties.

A majority of the matters set forth above are of a repetitive and frivolous nature and, as evidenced by the sheer number of matters referenced, have resulted in a waste of judicial time and resources and have interfered with the fair administration of justice. Accordingly, in order to curb petitioner's abusive filings, we hereby order the Clerks of Court in this state, including clerks of the circuit courts, the appellate courts, and the Administrative Law Court, not to accept any documents from petitioner for filing that require a filing fee unless accompanied by the filing fee and a properly notarized affidavit from petitioner stating that he in good faith believes the document submitted for filing is nonfrivolous and proper for the court to consider. See In re Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996). This order shall not apply to matters in which petitioner has already been granted leave to proceed in forma pauperis. Finally, any attempt by petitioner to file documents in any of the courts of this state in violation of this order may result in him being held in contempt of this Court.

IT IS SO ORDERED.

s/Jean H. Toal \_\_\_\_\_ C.J.

s/Donald W. Beatty \_\_\_\_\_ J.

s/John W. Kittredge \_\_\_\_\_ J.

s/Kaye G. Hearn \_\_\_\_\_ J.

Columbia, South Carolina  
January 8, 2010

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1 In addition, since 2001, petitioner has filed six pro se petitions in this Court that were disposed of pursuant to Key v. Currie, 305 S.C. 115, 406 S.E.2d 356 (1991). In 2002, petitioner filed a pro se “Johnson Petition for a Writ of Certiorari” in this Court following the issuance of an opinion by the Court of Appeals affirming petitioner’s convictions and sentences. The petition was dismissed because it was not served on counsel for the State and because no petition for rehearing was filed in the Court of Appeals. In 2004, counsel for petitioner filed a petition for a writ of certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), following the denial of petitioner’s application for post-conviction relief (PCR). Petitioner filed a lengthy, and frivolous, pro se response. In March 2009, petitioner filed a pro se notice of appeal from an order of the circuit court denying his PCR application as successive and untimely. The notice of appeal was dismissed based on petitioner’s failure to provide a sufficient explanation pursuant to Rule 243(c), SCACR. In May 2009, petitioner filed a pro se notice of appeal from an order of the Court of Appeals dismissing his appeal in Curtis Richardson v. SCDC; however, the matter was dismissed without prejudice to petitioner’s right to seek review if a petition for rehearing or reinstatement was acted upon by the Court of Appeals.

Since 2000, two direct appeals have been filed by counsel on petitioner’s behalf in the Court of Appeals. In both cases, counsel filed a brief pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), and the appeals were dismissed. In 2007, petitioner filed a pro se notice of appeal, which was dismissed by the Court of Appeals due to petitioner’s failure to timely serve the notice on opposing counsel. Petitioner has filed four pro se notices of appeal in the Court of Appeals in actions against SCDC. Two of the appeals were from orders of the circuit court in one action and the remaining appeals were from orders of the ALC in separate actions. The first appeal was dismissed at petitioner’s request based on the fact that he had a Rule 59(e), SCRPC, motion pending in the circuit court. In the second appeal from the circuit court, petitioner was allowed to proceed in forma pauperis. However, on May 5, 2009, the Court of Appeals dismissed the appeal based on petitioner’s failure to order the transcript. The remittitur was sent to the lower court on May 21, 2009. Petitioner attempted to file a petition for rehearing and/or reinstatement after the remittitur was sent, but the Court of Appeals refused to act on the petition because it was untimely. Petitioner filed a petition for a writ of certiorari in this Court which, as noted above, was dismissed without prejudice to his right to seek review if the Court of Appeals acted on a petition for rehearing or reinstatement in the matter. In August 2008, petitioner filed a pro se notice of appeal from an order of the circuit court denying his petition for a writ of habeas corpus. The Court of Appeals dismissed the notice of appeal based on petitioner’s failure to provide a sufficient explanation pursuant to Rule 203(d)(1)(B)(vi), SCACR. In the third action against SCDC, the Court of Appeals allowed petitioner to proceed in forma pauperis. However, on September 23, 2009, the court granted SCDC’s motion to dismiss. Petitioner’s petition for reinstatement was denied on December 8, 2009. In July 2009, petitioner filed a pro se notice of appeal in the Court of Appeals from an order of the circuit court in Curtis Richardson v. Scott Joye. Petitioner’s request to proceed in forma pauperis was denied. Thereafter, the notice of appeal was dismissed based on petitioner’s failure to pay the filing fee. Petitioner’s petition for reinstatement was denied. In August 2009, petitioner filed a notice of appeal from an order of the circuit court in Curtis Richardson v. Heath Stewart. Petitioner’s request to proceed in forma pauperis was denied and the notice of appeal was eventually dismissed due to petitioner’s failure to pay the filing fee, and a request for reinstatement was denied. Petitioner is seeking to proceed in forma pauperis in filing a petition for a writ of certiorari in this Court from the decision of the Court of Appeals. Petitioner currently has an appeal pending before the Court of Appeals from an

proceed in forma pauperis in that matter. He also has an appeal pending in the Court of Appeals from an order of the circuit court in Curtis Richardson v. James Galmore. The Court of Appeals 21 denied petitioner's request to proceed in forma pauperis by order dated December 30, 2009. Finally, in petitioner's fourth appeal involving SCDC, which remains pending before the Court of Appeals, his request to proceed in forma pauperis was denied on November 24, 2009.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Curtis D. Richardson,	)	Case No.: 2016-CP-26-05589
F.B.O.P. No. 28507-171,	)	
	)	
Applicant,	)	
	)	<b>ORDER OF DISMISSAL PURSUANT TO</b>
v.	)	<b>RESTRICTIVE FILING ORDER</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Horry County  
 2016 APR -9 PM 1:16  
 CLERK OF COURT  
 Horry County, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed by Curtis D. Richardson (Applicant) on August 26, 2016. Respondent requests the application be dismissed pursuant to a restrictive filing order issued by the Supreme Court of South Carolina on January 8, 2010.

I.

Applicant is confined in the Federal Bureau of Prisons. Applicant was indicted at the September 2011 term of the Horry County Grand Jury for possession of marijuana with intent to distribute, 2<sup>nd</sup> offense (2010-GS-26-02856), and unlawful possession of a pistol (2011-GS-26-03427). Brana J. Williams, Esq. represented Applicant, and Heather Smith von Hermann, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On September 16, 2011, Applicant pled guilty to the lesser-included offense of PWID marijuana, 1<sup>st</sup> offense, and as indicted for the pistol. The Honorable Benjamin H. Culbertson sentenced Applicant to imprisonment for concurrent terms of five years for the PWID and three years for the pistol. Applicant filed a timely notice of appeal, but subsequently indicated his desire to withdraw the appeal. By Order filed July 24, 2012, the South Carolina Court of Appeals dismissed Applicant's appeal.

Applicant filed his first application for post-conviction relief on April 24, 2012 (2012-CP-26-03250). He alleged the following grounds for relief in his application:

1. "Illegal Sentence and actual innocence"
2. "Ineffective Assistance of Counsel"
3. "Court lacked jurisdiction to accept plea."
4. "Court lacked jurisdiction to impose sentence of five years for this offense."
5. "the prosecutor knowingly and deliberately mislead the court and supplied false information to the court causing the court to impose illegal without jurisdictional authority, current conviction and sentence"
6. "Counsel erroneously coerced guilty plea by relaying false information to client."
7. "I was denied my witness testimony"

Respondent made its return on June 14, 2012, and an evidentiary hearing into the matter was convened on April 23, 2012, before the Honorable Larry B. Hyman, Sr.. Applicant was present at the hearing and represented by Daniel A. Sclwa, II, Esq. Tyson Andrew Johnson, Sr., of the South Carolina Attorney General's Office, represented Respondent. Applicant informed the court he wished to withdraw his application for relief. By written order dated May 5, 2013, and filed May 9, 2013, Judge Hyman denied and dismissed the application.

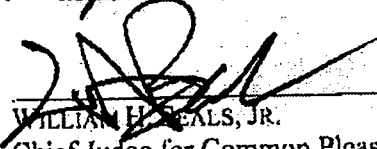
Applicant filed a timely notice of appeal, but was subsequently dismissed by Order of the Supreme Court of South Carolina filed May 30, 2013, pursuant to Rush v. State, 368 S.C. 144, 628 S.E.2d 42 (2006) (Rule that a party cannot appeal an order issued with its consent is extended to post-conviction relief). The Remittitur was issued on June 18, 2013.


## II.

By Order dated January 8, 2010, the Supreme Court of South Carolina, addressing "the repetitive, frivolous and abusive nature of [Applicant's] filings in the courts of this state[,]" ordered that no clerk of court in this state accept any documents from Applicant unless accompanied by the filing fee and a properly notarized affidavit of good faith by Applicant.

The application for relief before the Court is not accompanied by the required filing fee, but rather requests leave to proceed *in forma pauperis*. Furthermore, the allegations raised would otherwise be procedurally barred and are facially without merit. In light of the Order of January 8, 2010, and Applicant's prior application as set forth in the summary<sup>1</sup> procedural history above, Applicant's request to proceed *in forma pauperis* is denied, and the application for post-conviction relief is **DISMISSED**.

AND IT IS SO ORDERED this 4 day of April, 2018.

  
WILLIAM H. SEALS, JR.  
Chief Judge for Common Pleas  
Fifteenth Judicial Circuit

  
\_\_\_\_\_, South Carolina

<sup>1</sup> A complete recitation of Applicant's *profligate* filings is not necessary to the disposition of this matter. Rather, the Court notes the prior application to confirm that Applicant was not unduly denied his "one bite at the apple" by a restrictive filing order that pre-dates the conviction at issue. See Mangal v. State, 421 S.C. 85, 99, 805 S.E.2d 568, 575-76 (2017) (encouraging flexibility within the rules to ensure all applicants receive a full and fair opportunity to present claims in one PCR application).

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS )

COUNTY OF Horry )

Curtis D. Richardson, F.B.O.P. #28507-171 )

CASE NO.  
2016-CP-26-5589 )

Plaintiff )

v. )

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET )

State Of South Carolina )

Defendant. )

Plaintiff's Attorney: Curtis D. Richardson, Bar No. Address: FCI Butler Med. II, PO Box 1500 Butler, NC 27509 phone:            fax: e-mail:           other:	Defendant's Attorney: Johnny E. James Jr, Bar No. 101260 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: jjames@scag.gov other:
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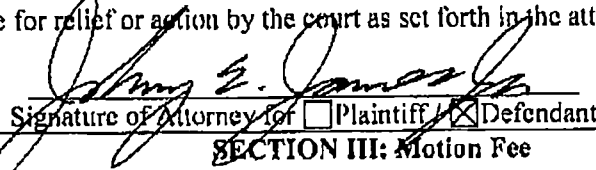
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: \_\_\_\_\_  
 Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached  
 Form Motion/Order  
 I hereby move for relief or action by the court as set forth in the attached proposed order.

  
 Signature of Attorney for  Plaintiff /  Defendant

March 29, 2018  
 Date submitted

**SECTION III: Motion Fee**

PAID - AMOUNT: \_\_\_\_\_  
 EXEMPT:  Rule to Show Cause in Child or Spousal Support  
 (check reason)  Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRPC)  
 Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions  
 Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_

JUDGE \_\_\_\_\_

CODE: \_\_\_\_\_ Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_

Date Filed: \_\_\_\_\_

MOTION FEE COLLECTED: \_\_\_\_\_



ALAN WILSON  
ATTORNEY GENERAL

April 6, 2018

The Honorable Renee N. Elvis  
Clerk of Court, Horry County  
Post Office Box 677  
Conway, SC 29528-0677

2018 APR -9 PM 1:14  
CLERK OF COURT  
HORRY COUNTY, SC

Re: Curtis D. Richardson v. State of South Carolina  
2016-CP-26-5589

Dear Ms. Elvis:

Enclosed please find the original **Order of Dismissal Pursuant to Restrictive Filing Order** signed by the Honorable William H. Seals, Jr., in the above-captioned case, for filing in your office.

Pursuant to Rule 71.1(f), of the South Carolina Rules of Civil Procedure, please "provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRPC."

In addition, please forward proof of service and a time stamped copy back to our office for our file.

If you have any questions, please do not hesitate to call me at (803) 734-3737.

Sincerely,

Johnny Ellis James Jr.  
Assistant Attorney General

JHJ/mm

Enclosure