

Thomas J. Torrence  
#094651  
Perry Corr. Inst. 3B102  
430 Oaklawn Road  
Pelzer, South Carolina 29669

December 11, 2017

**RECEIVED**

DEC 14 2017

The Honorable Daniel E. Shearouse  
Clerk of Court  
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**S.C. SUPREME COURT**

Re: Thomas John Torrence v. State of South Carolina  
C/A No. 2005-CP-32-00833  
Appellate Case No. 2017-001782

Dear Mr. Shearouse:

Pursuant to your October 24, 2017 correspondence, please find enclosed for filing the original Rule 243(c) Explanation required by Court Rules i the above-referenced appeal. Also enclosed is proof of service on counsel for Respondent.

Your assistance is sincerely appreciated.

With kindest regards, I remain,

Sincerely,



Thomas J. Torrence  
APPELLANT, pro se

Cc: The Honorable Lisa M. Comer  
Melody J. Brown, Esq.

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Honorable William P. Keesley, Chief Administrative Judge

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Appellate Case No. 2017-001782  
Lower Court Case No. 2005CP3200833

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Thomas John Torrence, #094651 . . . . . Appellant

v.

State of South Carolina . . . . . Respondent

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**RULE 243(c) EXPLANATION**

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Thomas J. Torrence  
#094651  
Perry Corr. Inst. 3B102  
430 Oaklawn Road  
Pelzer, SC 29669

APPELLANT pro se

This matter is before this Honorable Court by way of the October 24, 2017 instruction of this Court concerning the July 1, 2008 order of denial of an application for post-conviction relief by the Honorable William P. Keesley, from Lexington County (attached). As the order of denial was a summary dismissal based on the statute of limitations and as a successive application, and pursuant to the October 24, 2017 instruction of this Court, this Explanation is filed under Rule 243(c), SCACR.

#### PROCEDURAL HISTORY

The pro se Appellant, Thomas J. Torrence, was indicted at the July 1987 and April 1988 terms of the Lexington County Grand Jury for two counts of murder, two counts of armed robbery, first degree burglary, kidnapping, and criminal conspiracy. Appellant was served a Notice of Intent to Seek the Death Penalty. Appellant proceeded to a bifurcated trial before the Honorable Ralph K. Anderson, Jr. and a jury on May 18 - 26, 1992. Following verdicts of guilty, Appellant proceeded to the sentencing phase where the jury returned a recommendation of life. Judge Anderson sentenced Appellant respectively to thirty (30) year life sentences for the murders, a twenty (20) year life sentence for burglary 1st degree, twenty-five (25) years on each armed robbery and five (5) years for criminal conspiracy. Based on the law regarding the murder sentence, Appellant was not sentenced on the kidnapping. This Court affirmed Appellant's convictions and sentences, State v. Thomas

J. Torrence, 95-MO-117 (S.C. Sup. Ct., filed March 23, 1995).

On December 1, 1995, the Appellant filed an application for post-conviction relief (1995-CP-32-2656). An evidentiary hearing was convened on November 6, 2000. The PCR Court, the Honorable Rodney Peeples, issued an Order of Dismissal on December 31, 2001. A Rule 59(e) Motion was timely filed and subsequently denied by written Order Dated June 12, 2002. A petition for writ of certiorari was perfected. On April 8, 2004, this Court denied the petition by written order. The remittitur issued on April 26, 2004.

On June 4, 2004, Appellant was notified by the South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS) that he was no longer eligible for parole, in contravention of the trial court's May 25, 1992 written and oral pronouncement of sentences.

On March 14, 2005, Appellant filed post-conviction application 2005-CP-32-0833 regarding his sentence(s) and the June 4, 2004 DPPPS notification. John D. Elliott, Esquire was retained to represent Appellant on a writ of federal habeas corpus and the state post-conviction relief application, but later assumed pro bono representation. An evidentiary hearing was held before the Honorable William P. Keesley on October 10, 2007. The matter was reconvened on November 10, 2007.

On June 24, 2008, Appellant filed a pro se motion to substitute counsel. On July 1, 2008, Judge Keesley issued

an Order in regards to Appellant's pro se motion to substitute counsel, instructing counsel "to ascertain [Appellant's] wishes to substitute counsel, pursue other issues, or pursue an appeal." On July 1, 2008, Judge Keesley simultaneously issued a summary dismissal of the application based on a successive petition and the statute of limitations.

This Rule 243(c), SCACR, "Explanation" follows:

### EXPLANATION

Appellant submits that PCR 2005-CP-32-0833 addressed the question of whether Appellant's rights under the Eighth and Fourteenth Amendments of the United States Constitution were violated by the DPPPS. DPPPS deemed Appellant ineligible for parole on his sentence structure where the trial court specifically sentenced Appellant to life sentences with parole eligibility following the bifurcated jury's recommendation of "life." Appellant had an expectation in the finality of those sentences. The state waived appealing those sentences at direct review and actually conceded the 30 year parole eligibility at the initial collateral proceedings. Ultimately, Appellant challenged a violation of the sentences pronounced as the law of the case.

Appellant filed PCR 2005-CP-32-0833 on March 14, 2005 within one year of being notified (discovery) by the DPPPS on June 4, 2004 that he was no longer eligible for parole, although Appellant had been deemed and classified eligible for parole throughout service of his sentences based on the court's sentences; and was placed in a less restrictive custody level based upon that parole eligibility.

Appellant suggests that the decision by the lower court concerning the classification of 2005-CP-32-0833 as "successive" and "time barred" is incorrect and failed to make a finding on the merits. These factors and the

corresponding chronology should be weighed to determine the timeliness and excuse successiveness to provide Appellant a hearing, a factual determination and order on the merits to which he was entitled from the timely PCR.

**PCR 1995-CP-32-2656**

Appellant filed PCR 1995-CP-32-2656, his initial PCR, on December 1, 1995. The application and Rule 59(e) Motion were denied by written orders on December 31, 2001 and June 12, 2002, respectively. This Court denied certiorari on April 8, 2004 and the remittitur issued on April 26, 2004.

**The SCDPPPS Notice**

On June 4, 2004 Appellant received notice from the DPPPS that he was no longer eligible for parole despite the trial court's identical oral and written pronouncement of sentences.

**PCR 2005-CP-32-0833**

On March 14, 2005, within one (1) year of the June 4, 2004 DPPPS Notice regarding parole eligibility, Appellant filed PCR 2005-CP-32-0833 regarding the DPPPS notification disturbing his trial court sentences as the law of the case.

Simply, the ground did not exist until DPPPS issued the June 4, 2004 parole ineligibility notice, almost two (2) years to the day after the last lower court order in the initial 1995 PCR (June 12, 2002). Thus, these issues could not have been raised in 1995-CP-32-2656.

Judge Keesley's July 1, 2008 Order of Dismissal, in the "Findings of Fact and Conclusion of Law," Order pp. 5-7,

summarily dismissed 2005-CP-32-0833 based upon failure to file within the statute of limitations of S.C. Code Ann. §17-27-45(a), Order, pp. 5 and 7, and as being successive under S.C. Code Ann. §17-27-90, Order, pp. 5-7.

The facts here demonstrate an application of S.C. Code Ann. §17-27-45(c) in that there is less than one (1) year between the June 4, 2004 Notice and March 14, 2005 filing of 2005-CP-32-0833, thus conforming to the one (1) year statute of limitations. The facts also demonstrate that under S.C. Code Ann. §17-27-90 there exists sufficient reason that the ground(s) for relief could not be asserted in PCR 1995-CP-32-2656.

The facts as marshalled thus demonstrate the July 1, 2008 Order was in error:

(1) Appellant's initial PCR (1995-CP-32-2656) was dismissed by the lower court by order dated June 12, 2002.

(2) The DPPPS Notice was dated June 4, 2004.

(3) This matter could not have been addressed in PCR 1995-CP-32-2656 where the final order was dated June 12, 2002, two (2) years before the DPPPS Notice.

(4) PCR 2005-CP-32-0833 was filed March 14, 2005, within one (1) year of the DPPPS Notice.

S.C. Code Ann. §17-27-20(a) allows a timely PCR to enter a challenge where a sentence is subject to collateral attack upon any ground of alleged error. Appellant submits the alteration of a sentence considered the law of the case is a matter of constitutional dimension.

Summary dismissal by the July 1, 2008 Order was an error. Summary dismissal "on the pleadings and record is not proper if there exists a material issue of fact," S.C. Code Ann. §17-27-70(b). This Court applied this statute wherein "[s]ummary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief," Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005).

The Discovery Rule, S.C. Code Ann. §17-27-45(c) reads as follows:

"If the applicant contends that there is evidence of material facts not previously presented and heard that require vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

In McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013), this Court held that "[w]here an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR Court, a question of fact is raised which can only be resolved by a hearing," Id at 369, 737 S.E.2d at 626.

The matter of the statute of limitations and successive PCR applications following a DPPPS Notice was addressed by this Court in Tilley v. State, 334 S.C. 24, 511 S.E.2d 689 (1999). Tilley's application following a parole

ineligibility notice from DPPPS was his fourth PCR, filed within one (1) year of the DPPPS notice. This Court found Tilley's application timely with sufficient reason why it could not have been raised previously.

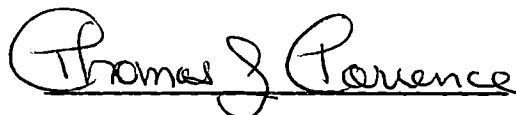
Successive applications are generally disfavored and the burden is on the applicant to establish any new ground raised in a subsequent application could not have been raised by him in a previous application, Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981). Appellant submits he has made a sufficient showing of that rule here.

The July 1, 2008 PCR Order of Dismissal was in error where the facts here demonstrate the PCR was timely filed under S.C. Code Ann. §17-27-45(c) and provides a sufficient reason as to why the ground was not asserted in his initial PCR, under S.C. Code §17-27-90.

**CONCLUSION**

For the foregoing reasons the Appellant is entitled to a writ of certiorari for the July 1, 2008 Order of Dismissal to be reversed and remanded to the lower court to conduct an evidentiary hearing on the merits.

Respectfully submitted,

A handwritten signature in cursive script that reads "Thomas J. Torrence". The signature is written in black ink and is positioned above the typed name.

Thomas J. Torrence  
#094651  
Perry Corr. Inst.  
430 Oaklawn Road  
Pelzer, SC 29669

APPELLANT, pro se

December 11, 2017  
at Pelzer, SC

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS

2005-CP-32-0833

Thomas John Torrence, # 094651, )  
 )  
Applicant, )

ORDER OF DISMISSAL

v. )

State of South Carolina, )  
 )  
Respondent. )

**PROCEDURAL HISTORY**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 14, 2005. An evidentiary hearing into the matter was initially convened on October 10, 2007, at the Lexington County Courthouse. Applicant was present at the hearing and was represented by Jay Elliott, Esquire. Respondent was represented by Daniel F. Grigg of the South Carolina Attorney General's Office. Ultimately, the matter was reconvened on November 10, 2007, at the Newberry County Courthouse before the Honorable William P. Keesley.

*WPK*  
*#1*

This Court had before it the application Respondent's return, a copy of the transcript of the proceedings against Applicant, the records of the Lexington County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, Applicant's direct appeal records. Applicants prior applications for post-conviction relief and the appeal records regarding Applicant's prior applications.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. In his Application, Applicant alleges in 1979 he pled guilty to one count of armed robbery (1979-GS-12-179) in Chester County and was sentenced to 21 years imprisonment. Applicant was later indicted at the July 1987 term of the Lexington County Grand Jury for two counts of murder (1987-GS-32-1418 and 1987-GS-32-1427), two counts of armed robbery (1987-GS-32-1422 and 1987-GS-32-1432), first-degree burglary (1987-GS-32-1433), and kidnapping (1987-GS-32-1425). Applicant was indicted at the May 1988 term of the Lexington County Grand Jury for criminal conspiracy (1987-GS-32-666). On May 18-25, 1992, Applicant underwent trial by jury and was found guilty as charged. At his 1992 trial, Applicant was represented by William T. Rast, Jr. Esquire and Robert T. Williams, Esquire. On May 25, 1992, he was sentenced by the Honorable Ralph King Anderson, Jr., as follows:

*W. Rast  
#2*

Murder (1987-GS-32-1418) parole for 30 years	Life without the eligibility of
Murder (1987-GS-32-1427) parole for 30 years	Life without the eligibility of
Burglary, first (1987-GS-32-1433)	Life, consecutive
Armed robbery (1987-GS-32-1422) consecutive	25 years imprisonment,
Armed robbery (1987-GS-32-1432) consecutive	25 years imprisonment,
Kidnapping (1987-GS-32-1425)	N/A
Criminal conspiracy (1988-GS-32-666) consecutive	5 years imprisonment,

Direct Appeal

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Supreme Court affirmed Applicant's conviction and sentence. State v. Torrence, Op.

No. 95-MO-117 (S.C. Sup.Ct. filed March 23, 1995). The court remitted the case to the trial court on April 10, 1995.

1995 Post-Conviction Relief Action

Applicant subsequently filed an application for PCR from his Lexington County convictions on December 1, 1995 (1995-CP-32-2656). In that action, Applicant asserted he was being held unlawfully on numerous grounds including ineffective assistance of trial counsel, ineffective assistance of appellate counsel, trial court error, and prosecutorial misconduct, all of which appear unrelated to Applicant's current allegations.

The State filed its Return dated March 14, 1996. On November 16, 2000, an evidentiary hearing was held before the Honorable Rodney A. Peeples, at which Applicant was present and was represented by Lisa McPherson. By Order dated December 21, 2001, Judge Peeples denied and dismissed Applicant's application. By Order dated June 12, 2002, Judge Peeples, on Motion to Alter or Amend, dismissed allegations not addressed in the court's original order and otherwise denied the motion.

*WPA  
#3*

A timely Notice of Appeal was filed on Applicant's behalf and a Petition for Writ of Certiorari was submitted by the South Carolina Office of Appellate Defense. On April 8, 2004, the South Carolina Supreme Court denied the Petition. The court remitted the case to the trial court on April 26, 2004.

Al-Shabazz Action

Applicant is currently appealing an administrative decision of the South Carolina Department of Probation, Parole, and Pardon dated June 4, 2004 concerning his parole ineligibility. Applicant submitted a brief to the Administrative Law Judges Division on September 7, 2004. The Department

filed its brief dated September 27, 2004, and Applicant filed a "Reply Brief and Traverse" dated October 4, 2004.

### Federal Habeas Corpus Petition

On March 23, 2005, Applicant filed a petition for a writ of habeas corpus in the United States District Court for the District of South Carolina (C/A No. 0893-SB-JRM). The case is styled as Thomas J. Torrence v. Jonathan Ozmint, et. al. In his petition, Applicant alleges he is being held unlawfully because of several errors by the trial court in his criminal trial as well as several erroneous rulings by the trial court in his PCR hearing concerning his ineffective assistance of counsel claims. Finally, Applicant asserts an issue related to his current PCR Application, i.e., that the South Carolina Department of Probation, Parole and Pardon violated his constitutional rights by deeming him ineligible for parole. The State's time to respond to Applicant's petition has not yet expired. Applicant has filed a motion to hold the petition in abeyance pending the outcome of his current state actions concerning the question of his parole eligibility. Applicant has also filed an objection to the magistrate's preliminary order denying his motion.

In his current Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. The SC Department of Probation, Parole and Pardon violated his constitutional rights by deeming him ineligible for parole in contravention of Judge Anderson's sentencing orders;
2. The Chester County trial court lacked subject matter jurisdiction to sentence him for armed robbery because his indictment did not allege a violent offense as an element of the crime;
3. Unknowing and involuntary guilty plea (1979 armed robbery conviction, Chester County); and
4. Ineffective assistance of 1979 (Chester guilty plea) and 1992 (Lexington trial) counsel in failing to ensure the 1979 indictment was sufficient.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record. This Court further requested that both parties submit memoranda in support of their respective positions. Both parties submitted memoranda in a timely manner and this Court has reviewed the arguments as set forth by both parties. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

This Court finds that this application for post conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, *et. seq.* S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement 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.

*WPK*  
*#2*

The PCR 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 was convicted of the offenses he challenges in this application on 1979 and 1992. Applicant's direct appeal issues were denied by the South Carolina Supreme Court on March 23, 1995. This application was filed on March 14, 2005, well after the one-year statutory filing period had expired. This Court finds that Applicant has failed to present sufficient grounds which would exempt him from the application of the statute of limitations to this action. Therefore, it is dismissed as barred by the statute of limitations.

In addition, this Court finds that the current application for post conviction relief must be summarily dismissed because it is successive to Applicant's prior application for post-conviction

relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, 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.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application, could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

*W.P.*  
*H.6*  
This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior applications for post conviction relief and, thus, the current application is successive and barred under S.C. Code §17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post conviction relief. Therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, *supra*; Arnold v. State/Plath v. State, *supra*.

Finally, this Court finds that Applicant's allegation involving the Department of Probation, Parole and Pardon is not cognizable under the PCR Act and should be summarily dismissed. Aside from two matters specifically mentioned in the statute, PCR is a proper avenue of relief only when Applicant mounts a collateral attack challenging the validity of his conviction or sentence. Al-Shubazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000). A credit-related claim or challenge to other conditions of confinement does not fall into that category. Id. Furthermore, a

challenge to the conditions upon which parole eligibility is determined or decided is not cognizable in a PCR application. Jernigan v. State, 340 S.Ct. 256, 259, 531 S.F.2d 507, 508 (2000).

**CONCLUSION**

Based on all the foregoing, this Court finds and concludes that Applicant has failed to file his application within the time limits established in S.C. Code Ann. §17-27-45(a) and because it is successive. Additionally, much of what Applicant asserts should be raised in Administrative Law Courts and is not cognizable in PCR. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of intent to appeal within thirty (30) days from the receipt of this order to secure the appropriate appellate review. See Rule 203, SCACR. His attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.

#7

**IT IS THEREFORE ORDERED:**

1. This application for post conviction relief is denied and dismissed with prejudice.
2. Applicant is remanded to the custody of the South Carolina Department of Corrections to serve the remainder of his sentence.

AND IT IS SO ORDERED this 15<sup>th</sup> day of July, 2008.

William P. Keesley  
William P. Keesley  
Presiding Judge  
Eleventh Judicial Circuit

Edgfield, South Carolina.

**EXHIBIT**

**B**

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Honorable William P. Keesley, Chief Administrative Judge

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Appellate Case No. 2017-001782  
Lower Court Case No. 2005CP3200833

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Thomas John Torrence, #094651 . . . . . Appellant

v.

State of South Carolina . . . . . Respondent

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PROOF OF SERVICE

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The undersigned hereby certifies that he has served a true and correct copy of the Rule 243(c) Explanation, pursuant to the October 24, 2017 correspondence of this Court on all parties required by Court Rules by placing a copy in the U.S. Mail, first-class postage affixed thereto, this 11th day of December, 2017, addressed as follows:

Melody J. Brown, Esq.  
Office of Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549

Honorable Lisa M. Comer  
Clerk of Court  
205 E. Main St., Ste. 146  
Lexington, SC 29072-3557

  
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APPELLANT pro se