

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
Post Conviction Relief

William H. Seals, Jr., Circuit Court Judge

Appellate Case No.: 2016-000899

RECEIVED

DEC 28 2016

S.C. SUPREME COURT

Marcus Skeeters, #199165, ..... Petitioner,

vs.

State of South Carolina, ..... Respondent.

APPENDIX

Tommy A. Thomas  
SC Bar: 5536  
Attorney for Petitioner  
P.O. Box 88  
Irmo, SC 29063  
(803) 732-5507

Jessica Kinard, Esq.  
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Columbia, SC 29211-1549

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

MARCUS SKEETERS #199165

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

IN THE COURT OF COMMON PLEAS

00001

CIVIL ACTION COVERSHEET

2015-CP-26-3815

(Please Print)

Submitted By: Tommy A. Thomas
Address: 7588 Woodrow Street
Irmo, SC 29063

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)

- Inmate Petitions: PCR (500), Sexual Predator (510), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture (840), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Administrative Law Judge (980), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Pharmaceuticals (630), Unfair Trade Practices (640), Other (699)

Submitting Party Signature:

[Handwritten Signature]

Date: May 21, 2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF Horry )  
 )  
 MARCUS SKEETERS #199165 )  
 Full name and prison number (if any) of Applicant. )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )

IN THE COURT OF COMMON PLEAS

FILED  
 Horry County  
 2015 MAY 22 PM 4:00  
 MELANIE HUGGINS-WARD  
 CLERK OF COURT

APPLICATION FOR  
 POST-CONVICTION RELIEF

**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 Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010
2. Name and location of Court which imposed sentence Horry County Court of General Sessions, P.O. Box 677, Conway, 29528
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) 93-GS-26-1396 - Murder, Possession of Weapon, Assault with intent to Kill - 3 Counts, Assault and Battery High and Aggravated Nature
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

(a) August 12, 1993 - Life plus 71 years consecutive

(b) \_\_\_\_\_

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty x

(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. Supreme Court

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. conviction affirmed

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. April 11, 1995

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 95-MO-149

ii. \_\_\_\_\_

iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) Newly Discovered Information

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) SC Probation and Parole sent letter dated September 8, 2014 indicating that Applicant was a Subsequent Violent Offender and that he was not eligible for parole. Had he known that his sentence was life with no possibility of parole, he would have accepted the plea offer, which would have eliminated the sentence of life without parole.

(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? No

(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)? No

(d) any other petitions, motions or applications in this or any other Court? Mp

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. Application for Post-Conviction Relief

ii. Petition for Writ of Certiorari

iii. Application for a Writ of Habeas Corpus

iv. Application for Post-Conviction Relief

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

i. Horry County Court of Common Pleas, P.O. Box 677, Conway, 29528

- ii. S.C. Supreme Court, P.O. Box 11330, Columbia, SC 29211
- iii. U.S. District Court
- iv. Horry County Court of Common Pleas, P.O. Box 677, Conway, 29528

(c) the disposition thereof:

- i. Denied
- ii. Dismissed as Improvidently Granted
- iii. Dismissed without prejudice
- iv. Denied

(d) the date of each such disposition:

- i. July 24, 2000
- ii. February 10, 2003
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- 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?

no

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

(a) which grounds have been presented:

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

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

- 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:

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) your arraignment and plea?

(b) your trial, if any? X

(c) your sentencing? X

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? X

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? X

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. Orrie West, Esq., Horry County Public Defender's Office, 144 laurel St., Conway,

SC 29526

ii. M. Ann Pearce, Esq., SC Office of Appellate Defense, 1122 Lady Street, Suite

940, Columbia, SC 29201

iii. William Bruner, Esq., P.O. Box 8730, Myrtle Beach, SC 29577

iv. Joshua Snow Kendrick, 2007 Lincoln Street, Columbia, SC 29201

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

i. Trial

ii. Direct Appeal

iii. PCR

iv. PCR Appeal

v. Writ of Habeas Corpus and 2<sup>nd</sup> Post-Conviction Relief

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

New Trial

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

No

00008

STATE OF SOUTH CAROLINA )

VERIFICATION

County of Lee )

I, Marcus Skeeters #199165, 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.

Marcus Skeeters  
Marcus Skeeters

SWORN to and subscribed before me this 19  
day of May, 2015.

Debra Jones (L.S.)  
Notary Public

My Commission Expires: 11-4-2015

FILED  
Horry County  
2015 MAY 22 PM 4:00  
MELANIE HUGGINS-WARD  
CLERK OF COURT

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

I, Marcus Skeeters #199165, 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.

Marcus Skeeters  
Applicant

SWORN or affirmed to and subscribed before me this  
19 day of May, 2015.

Debra Jones  
Notary Public

My Commission Expires: 11-4-2015

FILED  
HURRY COUNTY  
2015 MAY 22 PM 4:00  
MELANIE HUGGINS, WARD  
CLERK OF COURT

ARREST WARRANT

D- 486678

STATE OF SOUTH CAROLINA

County/ Municipality of HURRY

THE STATE

against MARCUS A. SKRETER

Address:

Phone: SSN: 148

Sex: Race: Height: Weight:

DOB: Agency ORI#:

Prosecuting Agency:

Prosecuting Officers: ASSAULT AND BATTERY WITH INT. TO KILL

Offense: Offense Code:

Coda/Ordinance Sec.:

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 law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant Marcus A. Skreter on 8-3-92

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of HURRY

AFFIDAVIT

Personally appeared before me the affiant T.A. SHERMAN who being duly sworn deposes and says that defendant MARCUS A. SKRETER did within this county and state on 8/02 1992 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of ) in the following particulars:

DESCRIPTION OF OFFENSE: 16-3-620 ASSAULT AND BATTERY WITH INT. TO KILL

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

SEE ATTACHED EXHIBIT A- ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

Sworn to and subscribed before me on 8/3/92 Signature of Issuing Judge

Signature of Affiant Affiant's Address P.O. BOX 1425 NMB, SC 29582 Affiant's Telephone 272-6723

STATE OF SOUTH CAROLINA

County/ Municipality of HURRY

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 defendant MARCUS A. SKRETER

did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of 16-3-620) as set forth below:

DESCRIPTION OF OFFENSE: ASSAULT AND BATTERY WITH INT. TO KILL

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 of Issuing Judge (L.S.) Judge's Address P.O. BOX 33 N. MYRTLE BEACH, S.C. 29577-0033 Judge's Telephone 334-2611 Issuing Court: Magistrate Municipal Circuit

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

TRANSFERRED TO SOLICITOR AUG 19 1992

S E N T E N C E

STATE OF SOUTH CAROLINA  
COUNTY OF Horry

CASE NO. 93-GS-26 1396  
OF: Murder

The defendant Marcus Specter is committed to the State Department of Correction for a term of Natural Life months/years and/or pay a fine of \_\_\_\_\_ provided upon the services of \_\_\_\_\_ months/years and/or payment of \$ \_\_\_\_\_ plus pay/waive costs and assessments as applicable, \* the balance is suspended with probation for \_\_\_\_\_ months/years.

Restitution For Physical Injury \$ \_\_\_\_\_  
YES/NO Property Damage \$ \_\_\_\_\_  
to be paid \_\_\_\_\_

to Clerk of \_\_\_\_\_  
On the conditions \_\_\_\_\_

Dated 8-10, 1993

Silvey P. Floyd  
Presiding Judge

Court Reporter:  
Debra Dunn

*Costs and Assessments	
Fine	\$ _____
Court Costs	\$ _____
Assessment	\$ <u>30.00</u>
25% Assessment	\$ _____
LCF (\$50.00)	\$ _____
Chemical Assessment	\$ _____
Defendant's Fee	\$ <u>10.00</u>
3% Service Charge	\$ _____
10% Indigent Fee	\$ _____
Total	\$ _____

Brian B. Richardson  
Clerk of Court

S E N T E N C E

STATE OF SOUTH CAROLINA  
COUNTY OF Horry

CASE NO. 93-GS-26

1396

CE: ABNAN

The defendant Marius Butts is committed to the State Department of Correction for a term of Ten (10) months years and/or pay a fine of \_\_\_\_\_ provided upon the services of \_\_\_\_\_ months/years and/or payment of \$ \_\_\_\_\_ plus pay/waive costs and assessments as applicable, \* the balance is suspended with probation for \_\_\_\_\_ months/years. Consecutive to C.I, III, IV, V, VI

Restitution  
YES/NO  
to be paid \_\_\_\_\_

For Physical Injury \$ \_\_\_\_\_  
Property Damage \$ \_\_\_\_\_

to Clerk of \_\_\_\_\_  
On the conditions \_\_\_\_\_

Dated 8-10 1993

Sidney T. Flay  
Presiding Judge

Court Reporter:

Betty Ann

\*Costs and Assessments

Fine	\$	_____
Court Costs	\$	_____
Assessment	\$	<u>30.00</u>
25% Assessment	\$	_____
LCF (\$50.00)	\$	_____
Chemical Assessment	\$	_____
Defendant's Fee	\$	<u>10.00</u>
3% Service Charge	\$	_____
10% Indigent Fee	\$	_____
Total	\$	_____

Brian P. Richardson  
Clerk of Court

S E N T E N C E

STATE OF SOUTH CAROLINA  
COUNTY OF Horry

CASE NO. 93-GS-26 1396  
C.R.: Accout w/ Intent to Kill

The defendant Marcus D. Dexter is committed to the State Department of Correction for a term of Twenty (20) months (years) and/or pay a fine of \_\_\_\_\_ provided upon the services of \_\_\_\_\_ months/years and/or payment of \$ \_\_\_\_\_ plus pay/waive costs and assessments as applicable, \* the balance is suspended with probation for \_\_\_\_\_ months/years. Consecutive to GI, II, IV & VI

Restitution For Physical Injury \$ \_\_\_\_\_  
YES/NO Property Damage \$ \_\_\_\_\_  
to be paid \_\_\_\_\_

to Clerk of \_\_\_\_\_  
On the conditions \_\_\_\_\_

Dated 8-10 1993

[Signature]  
Presiding Judge

Court Reporter:  
Bettye Sum

*Costs and Assessments	
Fine	\$ _____
Court Costs	\$ _____
Assessment	\$ <u>30.00</u>
25% Assessment	\$ _____
LCF (\$50.00)	\$ _____
Chemical Assessment	\$ _____
Defendant's Fee	\$ <u>10.00</u>
3% Service Charge	\$ _____
10% Indigent Fee	\$ _____
Total	\$ _____

[Signature]  
Clerk of Court

S E N T E N C E

STATE OF SOUTH CAROLINA  
COUNTY OF Horry

CASE NO. 93-GS-26 1396  
CR: Accault w/ Intent To Kill

The defendant Darius D. Beeters is committed  
to the State Department of Correction for a term of Twenty (20) months/years  
and/or pay a fine of \_\_\_\_\_ provided upon the services of  
\_\_\_\_\_ months/years and/or payment of \$ \_\_\_\_\_ plus  
pay/waive costs and assessments as applicable, \* the balance is suspended with probation  
for \_\_\_\_\_ months/years. Consecutive to CI, II, III, IV, V, VI

Restitution For Physical Injury \$ \_\_\_\_\_  
YES/NO Property Damage \$ \_\_\_\_\_  
to be paid \_\_\_\_\_

to Clerk of \_\_\_\_\_  
On the conditions \_\_\_\_\_

Dated 8-10, 1993

Shirley T. Floyd  
Presiding Judge

Court Reporter:  
Bettye Durr

*Costs and Assessments	
Fine	\$ _____
Court Costs	\$ _____
Assessment	\$ <u>30.00</u>
25% Assessment	\$ _____
LCF (\$50.00)	\$ _____
Chemical Assessment	\$ _____
Defendant's Fee	\$ <u>10.00</u>
3% Service Charge	\$ _____
10% Indigent Fee	\$ _____
Total	\$ _____

Billy B. Richardson  
Clerk of Court

S E N T E N C E

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

CASE NO. 93-GS-26 1396  
Ch. Assault w/ Intent to Kill

The defendant Marcus Speeters is committed to the State Department of Correction for a term of Twenty (20) months years and/or pay a fine of \_\_\_\_\_ provided upon the services of \_\_\_\_\_ months/years and/or payment of \$ \_\_\_\_\_ plus pay/waive costs and assessments as applicable, \* the balance is suspended with probation for \_\_\_\_\_ months/years. Consecutive to Ch. II, III, IV, VI

Restitution For Physical Injury \$ \_\_\_\_\_  
YES/NO Property Damage \$ \_\_\_\_\_  
to be paid \_\_\_\_\_

to Clerk of \_\_\_\_\_  
On the conditions \_\_\_\_\_

Dated 8-10, 1993

[Signature]  
Presiding Judge

Court Reporter  
Bethie Burn

*Costs and Assessments	
Fine	\$ _____
Court Costs	\$ _____
Assessment	\$ <del>30.00</del>
25% Assessment	\$ _____
LCF (\$50.00)	\$ _____
Chemical Assessment	\$ _____
Defendant's Fee	\$ <del>10.00</del>
3% Service Charge	\$ _____
10% Indigent Fee	\$ _____
Total	\$ _____

Brian P. Richardson  
Clerk of Court

*Reconsidered*

S E N T E N C E

STATE OF SOUTH CAROLINA

COUNTY OF Horry

CASE NO. 93-GS-26

1396

*CH* unlawful possession of  
pistol by felon

The defendant Marcus Stubbs is committed  
to the State Department of Correction for a term of one (1) months/years  
and/or pay a fine of \_\_\_\_\_ provided upon the services of

\_\_\_\_\_ months/years and/or payment of \$ \_\_\_\_\_ plus

pay/waive costs and assessments as applicable, \* the balance is suspended with probation  
for \_\_\_\_\_ months/years. *Consecutive to CH, CH, CH, CH & CH*

Restitution

For Physical Injury \$ \_\_\_\_\_

YES/NO

Property Damage \$ \_\_\_\_\_

to be paid \_\_\_\_\_

to Clerk of \_\_\_\_\_

On the conditions \_\_\_\_\_

Dated 8-11, 1993

*Richard T. Floyd*  
Presiding Judge

Court Reporter:

*Betty Burn*

\*Costs and Assessments

Fine	\$	_____
Court Costs	\$	_____
Assessment	\$	<u>30.00</u>
25% Assessment	\$	_____
LCF (\$50.00)	\$	_____
Chemical Assessment	\$	_____
Defendant's Fee	\$	<u>10.00</u>
3% Service Charge	\$	_____
10% Indigent Fee	\$	_____
Total	\$	_____

*Billy B. Richardson*  
Clerk of Court

WITNESSES

T. Sherman/ABPD

The State of South Carolina,

County of HORRY

93-DS-26-1396

COURT OF GENERAL SESSIONS

August TERM 1993

40105

RJW

THE STATE

vs.

Marcus Skeeters B/M



UI4 D-486677 DA: 8/3/92

ARREST WARRANT NO. 321 No Warrant CAL 1934027

UI4 D-486681 DA: 8/3/92

UI4 D-486679 8/3/92

UI4 D-486680 8/3/92

UI4 D-486678 8/3/92

ACTION OF GRAND JURY

TRUE BILL

ORIGINAL

*Thie Dringler 8-5-93*  
man of Grand Jury

Indictment for

- Murder (1 Count)
- Assault and Battery With Intent to Kill (4 Counts)
- Unlawful Possession of Pistol by Felon (1 Count)

VERDICT

*Guilty trial*

RALPH J. WILSON, SOLICITOR

Foreman of Petit Jury

Date:

00017

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

INDICTMENT FOR

Murder (1 Count)

Assault and Battery With Intent  
to Kill (4 Counts)

Unlawful Possession of Pistol By  
a Felon (1 Count)

At a Court of General Sessions, convened on August 5th,  
1993, the Grand Jurors of Horry County present upon their oath:

COUNT ONE: MURDER (Section 16-3-10/16-3-20)

That Marcus Skeeters did in Horry County on or about the  
2nd day of August, 1992, knowingly, wilfully, intentionally and  
with malice aforethought kill one Amanda Shipman by means of  
shooting her with a .25 semi-automatic handgun and that the said  
Amanda Shipman did die in Horry County as a direct and proximate  
result thereof on or about the 2nd day of August, 1992.

Against the peace and dignity of the State.

And the Grand Jurors of Horry County further present:

COUNT TWO: Assault and Battery With Intent to Kill  
(Section 16-3-620)

That Marcus Skeeters did in Horry County on or about the  
2nd day of August, 1992, with malice aforethought commit an  
assault and battery upon one Robert E. Walker with intent to  
kill the said Robert E. Walker by shooting him in the forehead  
with a .25 semi-automatic handgun thereby inflicting upon the  
body of Robert E. Walker extensive and serious wounds.

Against the peace and dignity of the State.

And the Grand Jurors of Horry County further present:

COUNT THREE: Assault and Battery With Intent to Kill  
(Section 16-3-620)

That Marcus Skeeters did in Horry County on or about the  
2nd day of August, 1992, with malice aforethought commit an  
assault and battery upon one Anthony Tucker with intent to kill  
the said Anthony Tucker by shooting him in the back with a .25

semi-automatic handgun thereby inflicting upon the body of Anthony Tucker extensive and serious wounds.

Against the peace and dignity of the State.

And the Grand Jurors of Horry County further present:

COUNT FOUR: Assault and Battery With Intent to Kill  
(Section 16-3-620)

That Marcus Skeeters did in Horry County on or about the 2nd day of August, 1992, with malice aforethought commit an assault and battery upon Sylvia Legette with intent to kill the said Sylvia Legette by shooting her with a .25 semi-automatic handgun and thereby inflicting upon the body of Sylvia Legette extensive and serious wounds.

Against the peace and dignity of the State.

And the Grand Jurors of Horry County further present:

COUNT FIVE: Assault and Battery With Intent to Kill  
(Section 16-3-620)

That Marcus Skeeters did in Horry County on or about the 2nd day of August, 1992, with malice aforethought commit an assault and battery upon Kevin Lee with intent to kill the said Kevin Lee by shooting him with a .25 semi-automatic handgun and thereby inflicting upon the body of Kevin Lee extensive and serious wounds.


Against the peace and dignity of the State.

And the Grand Jurors of Horry County further present:

COUNT SIX: Unlawful Possession of Pistol by Felon  
(Section 16-23-30)

That Marcus Skeeters did in Horry County on or about the 2nd day of August, 1992, knowingly, wilfully, intentionally and unlawfully possess a .25 semi-automatic handgun after having previously been convicted of a crime of violence.

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

  
SOLICITOR

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Marcus Skeeters, #199165, )

Case No. 2015-CP-26-3815

Applicant, )

v. )

**RETURN AND  
MOTION TO DISMISS**

State of South Carolina, )

Respondent. )

In response to the application for post-conviction relief ("PCR"), filed May 22, 2015, Respondent would show this Court:

**I.**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County. In August 1993, the Applicant was indicted for murder, four (4) counts of assault and battery with intent to kill, and unlawful possession of pistol by a felon. A trial was held August 9-10, 1993, at which the Applicant was found guilty on all counts by a jury impaneled before the Honorable Sidney T. Floyd. The Applicant was represented by Orrie E. West, Esquire, Chief Public Defender. Sentencing was conducted on August 10 and 11, 1993, and Applicant was sentenced to life imprisonment for murder, ten (10) years for assault and battery of a high and aggravated nature (as a lesser included crime of the charge of assault and battery with intent to kill), twenty (20) years on each of the other three (3) counts of assault and battery with intent to kill, and one (1) year for the weapon charge, running consecutively.

A timely notice of appeal was filed on Applicant's behalf, and an appeal was perfected. Applicant was represented by M. Ann Pearce, Assistant Appellate Defender of the South

Carolina Office of Appellate Defense. The South Carolina Supreme Court affirmed Applicant's conviction on March 29, 1995. State v. Skeeters, Op. No. 95-MO-149 (S.C. filed March 29, 1995). The remittitur was returned to the circuit court on April 14, 1995.

1996-CP-26-0002

In January 1996, Applicant filed an application for post-conviction relief alleging the necessity of relief on the following grounds:

1. Applicant was denied the right to effective assistance of counsel as guaranteed by the sixth amendment due to trial counsel not properly investigating the case and not procuring witness statements;
2. Applicant was denied the right to effective assistance of counsel as guaranteed by the sixth amendment due to trial counsel depriving defendant of a fair trial;
3. Applicant was denied the right to effective assistance of counsel as guaranteed by the sixth amendment due to trial counsel's failure to object to a charge or request an additional charge at trial.

The State filed its return In November 1997. Applicant filed an amendment along with supporting documents that was transmitted to the court by William M. Bruner, Esquire shortly before the evidentiary hearing. The Honorable James E. Lockemy held an evidentiary hearing on February 24, 1998. Both Applicant and his former trial attorney testified. Judge Lockemy denied relief in a written order dated May 13, 1998. A motion to alter or amend under South Carolina Rule of Civil Procedure 59(e) was filed on July 6, 1998, and was denied.

Applicant filed a petition for a writ of certiorari, and was represented by Joseph L. Sanitz, Deputy Chief of the South Carolina Office of Appellate Defense. The Supreme Court of South Carolina granted the petition and ordered additional briefs on December 13, 2001. The Supreme Court dismissed the grant of writ of certiorari as improvidently granted on February 10, 2003. Skeeters v. State, Op. No. 03-MO-007 (S.C. filed February 10, 2003). The remittitur was returned to the circuit court on February 26, 2003.

0:04-cv-411(MJP-BM)

Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on February 10, 2004, seeking relief on the ground that "counsel was ineffective when she failed to request an instruction on transferred intent as it related to manslaughter, and failed to object to the instruction to preserve the objection for the record." It was filed against Jon Ozmint, Warden of Lee Correctional Institution, and Henry McMaster, Attorney General for the State of South Carolina. On May 5, 2004, the State filed a motion for summary judgment. On January 13, 2005, the Honorable Bristow Marchant, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment and dismiss the petition because the issue presented was procedurally defaulted. Applicant filed objections and a motion to stay proceeding or, in the alternative, dismiss the petition without prejudice by and through his attorney, Joshua Snow Kendrick, Esquire, on January 28, 2005. The State, as Respondent, filed a Return on February 7, 2005. The Honorable Matthew J. Perry issued an order on April 5, 2005 adopting the Magistrate's recommendation, granting the Respondents' motion for summary judgment, and dismissing the matter without prejudice. Respondents filed a Rule 59(e) motion to alter or amend the judgment on April 18, 2005 requesting that it show a dismissal with prejudice. An amended summary judgment order was issued on April 26, 2005, removing the word "without," and stating that "...this petition is dismissed."

2005-CP-26-2846

In June 2005, Applicant filed a second application for post-conviction relief by and through his counsel, Mr. Kendrick. He again claimed that he had not received effective assistance of counsel at trial, but argued that it should be distinguished under Aice v. State as

being a proper instance for a successive petition because it was not properly presented to the highest state court and therefore procedurally barred from review by federal courts. 305 S.C. 448 (1991). The State filed its return on December 15, 2005, and amended return and motion to dismiss on December 5, 2007.<sup>1</sup> A conditional order of dismissal was filed on December 26, 2007 after being signed by the Honorable J. Michael Baxley on December 19, 2007. Applicant refused personal service of the conditional order, but was served by mail, and did not issue any response or objection. A final order of dismissal was signed on March 5, 2008, also by Judge Baxley.

0:06-797-RBH-BM

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<sup>1</sup> It appears that both parties that action were, in the time period between December 2005 and December 2007, under the mistaken belief that the matter had been concluded.

## II.

In this third and current application for post-conviction relief, Applicant raises the following grounds for relief:

1. Newly discovered information – “SC Probation and Parole sent letter dated September 8, 2014 indicating that Applicant was a Subsequent Violent Offender and that he was not eligible for parole. Had he known that his sentence was life with no possibility of parole, he would have accepted the plea offer, which would have eliminated the sentence of life without parole.”

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the Department of Corrections, and the records of this PCR action. Respondent reserves the right to amend this return upon receipt of any relevant materials.

## III.

Respondent submits this application should be summarily dismissed for two (2) distinct failures to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. First, Respondent submits this application should be summarily dismissed because it is successive to the previous applications for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). S.C. Code Ann. § 17-27-90 requires that:

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

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to 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, 450, 409 S.E.2d 392, 394 (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. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. The applicant bears the burden of showing that the allegations could not have been raised previously. Id.

Applicant could have raised the “new” grounds for relief in his prior post-conviction relief application. Applicant was convicted of assault and battery with intent to kill in 1991, which is considered a violent offense and is reflected as such on his South Carolina Department of Corrections Records. Accordingly, Respondent moves for a summary dismissal of the Application because it is successive.

Second, 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 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.”

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996).

The remittitur was returned to the circuit court on April 14, 1995. Applicant was therefore required to file his application before April 14, 1996. This application was filed on May 22, 2015, which was well beyond the time that the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) 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 requests this Court summarily dismiss the application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

IV.

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

V.

WHEREFORE, Respondent moves to summarily dismiss the application as successive and untimely.

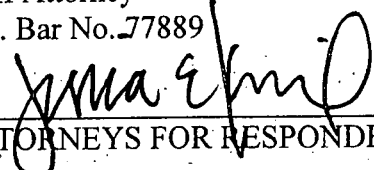
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

JESSICA E. KINARD  
Staff Attorney  
S.C. Bar No. 77889

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3737

July 22, 2015





Skeeters, Op. No. 95-MO-149 (S.C. filed March 29, 1995). The remittitur was returned to the circuit court on April 14.

**B. First Post-Conviction Relief Action (1996-Cp-26-0002)**

In January 1996, Applicant filed an application for post-conviction relief alleging the necessity of relief on the following grounds:

1. Applicant was denied the right to effective assistance of counsel as guaranteed by the sixth amendment due to trial counsel not properly investigating the case and not procuring witness statements;
2. Applicant was denied the right to effective assistance of counsel as guaranteed by the sixth amendment due to trial counsel depriving defendant of a fair trial;
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The State filed its return in November 1997. Applicant filed an amendment along with supporting documents that was transmitted to the court by William M. Bruner, Esquire shortly before the evidentiary hearing. The Honorable James E. Lockemy held an evidentiary hearing on February 24, 1998. Both Applicant and his former trial attorney testified. Judge Lockemy denied relief in a written order dated May 13, 1998. A motion to alter or amend under South Carolina Rule of Civil Procedure 59(e) was filed on July 6, 1998, and was denied.

Applicant filed a petition for a writ of certiorari, and was represented by Joseph L. Sanitz, Deputy Chief of the South Carolina Office of Appellate Defense. The Supreme Court of South Carolina granted the petition and ordered additional briefs on December 13, 2001. The Supreme Court dismissed the grant of writ of certiorari as improvidently granted on February 10, 2003. Skeeters v. State, Op. No. 03-MO-007 (S.C. filed February 10, 2003). The remittitur was returned to the circuit court on February 26, 2003.

**C. First Federal Habeas Corpus Action (0:04-cv-411(MJP-BM))**

Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on February 10, 2004, seeking relief on the ground that "counsel was ineffective when she

failed to request an instruction on transferred intent as it related to manslaughter, and filed to object to the instruction to preserve the objection for the record.” It was filed against Jon Ozmint, Warden of Lee Correctional Institution, and Henry McMaster, Attorney General for the State of South Carolina. On May 5, 2004, the State filed a motion for summary judgment. On January 13, 2005, the Honorable Bristow Marchant, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment and dismiss the petition because the issue presented was procedurally defaulted. Applicant filed objections and a motion to stay proceeding or, in the alternative, dismiss the petition without prejudice by and through his attorney, Joshua Snow Kendrick, Esquire, on January 28, 2005. The State, as Respondent, filed a Return on February 7, 2005. The Honorable Matthew J. Perry issued an order on April 5, 2005 adopting the Magistrate’s recommendation, granting the Respondents’ motion for summary judgment, and dismissing the matter without prejudice. Respondents filed a Rule 59(e) motion to alter or amend the judgment on April 18, 2005 requesting that it show a dismissal with prejudice. An amended summary judgment order was issued on April 26, 2005, removing the word “without,” and stating that “...this petition is dismissed.”

#### D. Second Post-Conviction Relief Action (2005-CP-26-2846)

In June 2005, Applicant filed a second application for post-conviction relief by and through his counsel, Mr. Kendrick. He again claimed that he had not received effective assistance of counsel at trial, but argued that it should be distinguished under Aice v. State as being a proper instance for a successive petition because it was not properly presented to the highest state court and therefore procedurally barred from review by federal courts. 305 S.C. 448 (1991). The State filed its return on December 15, 2005, and amended return and motion to dismiss on December 5, 2007.<sup>1</sup> A conditional order of dismissal was filed on December 26, 2007 after being signed by the Honorable J. Michael Baxley on December 19, 2007. Applicant refused

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<sup>1</sup> It appears that both parties that action were, in the time period between December 2005 and December 2007, under the mistaken belief that the matter had been concluded.

personal service of the conditional order, but was served by mail, and did not issue any response or objection. A final order of dismissal was signed on March 5, 2008, also by Judge Baxley.

E. Second Federal Habeas Corpus Action (0:06-797-RBH-BM)

Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on March 10, 2006, by and through his counsel, William Isaac Diggs, Esquire. It was filed against Jon Ozmint, Warden of Lee Correctional Institution, and Henry McMaster, Attorney General for the State of South Carolina. Applicant again alleged "ineffective assistance of counsel due to counsel's failure to request an additional jury instruction on the issue of transferred intent with respect to manslaughter." Respondent also filed a memorandum in support of this petition, filed on March 30, 2006. On May 8, 2006, the State filed a motion for summary judgment, accompanied by a return and memorandum of law. Applicant filed a return to this motion on May 26, 2006. On November 21, 2006, the Honorable Bristow Marchant, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment and dismiss the petition. Applicant filed objections by on December 1, 2006. The Honorable R. Bryan Harwell issued an order on January 7, 2007 adopting the Magistrate's recommendation, granting the Respondents' motion for summary judgment, and dismissing the matter with prejudice.

II. CURRENT APPLICATION

In this third and current application for post-conviction relief, Applicant raises the following grounds for relief:

- 1. Newly discovered information – "SC Probation and Parole sent letter dated September 8, 2014 indicating that Applicant was a Subsequent Violent Offender and that he was not eligible for parole. Had he known that his sentence was life with no possibility of parole, he would have accepted the plea offer, which would have eliminated the sentence of life without parole."

Respondent made a timely Return and Motion to Dismiss, asking this Court to dismiss the application as successive and untimely.

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### III. FINDINGS OF FACT AND CONCLUSION OF LAW

S.C. Code Ann. § 17-27-70(c) 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.” See also Rule 56(c), SCRPC. The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law in ruling on Respondent’s motion to dismiss:

#### Successive Application

The allegation must be summarily dismissed because it is impermissibly successive. The Uniform Post-Conviction Procedure Act provides that:

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.

S.C. Code Ann. § 17-27-90 (2003). Under this statute, successive post-conviction relief applications are forbidden unless an applicant, who bears the burden of proof, can point to 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 398 (1991). This applicant has not explicitly stated any new grounds upon which a successive PCR action can be based. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, supra. The sole ground that he alleges was or should have been known to him at the time of either of his prior applications for PCR. Therefore, this application must be dismissed as impermissibly successive.

#### Failure to Timely File

Further, this application must be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. 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 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."

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996).

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**IV. CONCLUSION**

The Court finds the record before it creates no genuine issue of material fact and Respondent is therefore entitled to judgment as a matter of law.

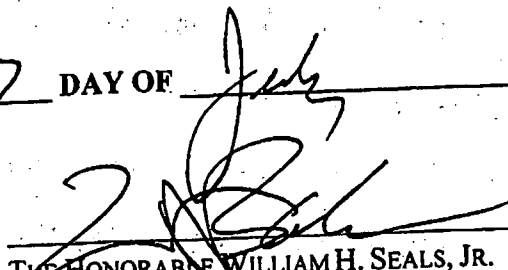
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted thirty (30) days from the date of service of this order upon him to show why this ruling should not become final. Applicant shall file any reasons he may have with the Horry County Clerk of Court (P.O. Box 677, Conway, SC 29528) and shall serve opposing counsel at the following address:

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Office of the Attorney General  
Attn: Jessica E. Kinard, Esquire  
Post Office Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Horry County Clerk of Court and opposing counsel within thirty (30) days, and his failure to timely file and serve any response will result in the Court not considering any issues raised therein.

IT IS SO ORDERED THIS 27 DAY OF July, 2015.

  
THE HONORABLE WILLIAM H. SEALS, JR.  
Chief Judge for Administrative Purposes  
Fifteenth Judicial Circuit

Mari, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

DOCKET NO.: 2015-CP-26-3815

MARCUS SKEETERS #199165, )  
Applicant, )  
v. )  
STATE OF SOUTH CAROLINA, )  
Respondent. )

RETURN TO CONDITIONAL  
ORDER OF DISMISSAL

MELANIE L. ...  
CLERK OF COURT  
2015 AUG 27 PM 1:32  
HORRY COUNTY

That the Applicant, in return to the Court's Conditional Order of Dismissal would respectfully submit the following:

A conditional Order of Dismissal was signed by the Honorable William H. Seals, Jr., on July 27, 2015. The Conditional Order of Dismissal was served on the Applicant.

PROCEDURAL HISTORY

A. Underlying Conviction

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County. In August 1993, the Applicant was indicted for murder, four (4) counts of assault and battery with intent to kill, and unlawful possession of pistol by a felon. A trial was held August 9-10, 1993, at which the Applicant was found guilty on all counts by a jury impaneled before the Honorable Sidney T. Floyd. The Applicant was represented by Orrie E. West, Esquire, Chief Public Defender. Sentencing was conducted on August 10 and 11, 1993, and Applicant was sentenced to life imprisonment for murder, ten (10) years for assault and battery of a high and aggravated nature (as a lesser included crime of the charge of assault and battery with intent to kill), twenty (20) years on each of the other

copy

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May 8, 2006, the State filed a motion for summary judgment, accompanied by a return and memorandum of law. Applicant filed a return to this motion on May 26, 2006. On November 21, 2006, the Honorable Bristow Marchant, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment and dismiss the petition. Applicant filed objections by on December 1, 2006. The Honorable R. Bryan Harwell issued an order on January 7, 2007 adopting the Magistrate's recommendation, granting the Respondents' motion for summary judgment, and dismissing the matter with prejudice.

### ARGUMENT

That as pointed out by the procedural history, the Applicant has had two Post-Conviction Relief actions as well as two Federal Habeas Corpus actions. All four of these actions were dismissed with prejudice. The last action being filed in the United State's District Court for the District of South Carolina on March 10, 2006. Despite these actions being unsuccessful, the Applicant always had the belief that he would be eligible for parole. In fact, he went up for parole in 2012. He was notified November 15, 2012 that he had been rejected for parole and that he would be notified thirty days prior to his next scheduled parole consideration date. A copy of this letter is attached as Exhibit 1. On September 8, 2014, the Applicant was notified by legal counsel for the Department of Probation, Parole and Pardon Services, that he was not eligible for parole as a result of being a subsequent violent offender. This denial was pursuant to §24-21-640 South Carolina Code of Laws, as Amended. A copy of this letter is attached as Exhibit 2.

The Court finds in its Conditional Order of Dismissal that pursuant to §17-27-90 South Carolina Code of Law, a successive Post-Conviction Relief Applications is forbidden. That successive Applications are forbidden unless the Applicant, who bears

the burden of proof, can point to a sufficient reason why new grounds for relief were not properly raised in previous applications. Aice v. State, 305 SC 448, 409 SE 2d 398 (1991).

The Court further finds and concludes that the sole grounds that the Applicant alleges should have been known to him at the time of his prior Applications for Post-Conviction. The Applicant would assert that the issue of parole eligibility was not known to him until such time as he received the notification from Probation and Parole. He was told that he would be eligible for parole and in fact possessed a parole eligibility date during his incarceration with the South Carolina Department of Corrections. He appeared before the parole board in November, 2012 and was denied parole. Pursuant to his letter regarding his parole rejection, it was indicated that he would be notified thirty (30) days prior to his next scheduled parole consideration date. The Applicant had no ability to ascertain or determine that he was not eligible for parole until such time as he received the letter from Probation and Parole, dated September 8, 2014, stating that he was a subsequent violent offender. After receipt of this letter, a timely Application for Post-Conviction Relief was filed.

The Court further finds and concludes that the Applicant's Application for Post-Conviction Relief was not timely filed quoting §17-27-45 (a) Application for relief must be filed within one year after the entry of Judgment of Conviction or within one year from the sending of the Remittitur from the Lower Court from an Appeal. The Applicant would assert that upon gaining knowledge that he was ineligible for parole from the South Carolina Department of Probation, Parole and Pardon Services on

September 8, 2014 that he timely filed a Post-Conviction Relief Action on May 22, 2015. This filing being within the one year statute of limitations.

The Court finds and concludes that the Applicant's Petition creates no genuine issue of material fact and the Respondent is therefore entitled to Judgment as a matter of law. The Applicant would assert that there is a genuine issue of material fact. The Applicant was informed at Trial that he would be eligible for parole. That this understanding was held by him through his incarceration with the Department of Corrections. That he had a parole eligibility date while waiting for parole. That he appeared before the parole board in November, 2012. That he was notified that he would be eligible for parole on a subsequent date and that he would be notified thirty (30) days prior to his next scheduled parole consideration. That is was only in September, 2014 that he was notified that he was ineligible for parole.

This notification, in essence, changed his life sentence to a pure life sentence without parole. Pursuant to this change, he has no ability to be released from the South Carolina Department of Corrections, until his death.

The Applicant is informed and believes that this is a material issue and that he is entitled to an evidentiary hearing. Had he known this information at the time of trial, he would have accepted the State's plea and he would have had a release date from the South Carolina Department of Corrections. He would not be serving a life without parole sentence.

A Defendant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence

have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. *Hayden v. State*, 278 S.C. 610, 611-12, 299 S.E. 2d 854, 855 (1983).

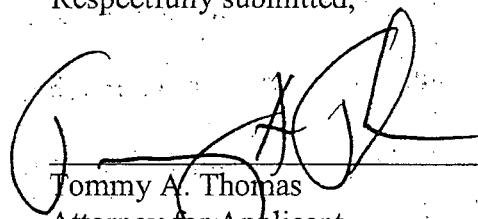
The Applicant contends that this new evidence meets the above criteria. Until he was provided the letter from Probation and Parole dated September 8, 2014, there is no way in which he could have known or been able to discover this information.

In this matter there is a genuine issue of material fact regarding the after discovered evidence and the issue of whether the Application is successive or untimely filed.

The Summary dismissal of a PCR Application is appropriate only when it is apparent on the face of the Application that there is no need for a hearing to develop any facts and the Applicant is not entitled to relief. *McCoy v. State*, 401 S.C. 363, 737 SE2d 623 (2013).

Therefore, the Applicant would respectfully request that he be allowed to proceed to an evidentiary hearing or in the alternative, that a Motion hearing be scheduled to allow testimony and argument as to why this case should not be dismissed.

Respectfully submitted,



Tommy A. Thomas  
Attorney for Applicant  
P.O. Box 88  
Irmo, SC 29063  
(803) 732-5507

August 24, 2015

State of South Carolina  
Department of Probation, Parole and Pardon Services

00043

NIKKI R. HALEY  
Governor



KELA E. THOMAS  
Director

2221 Devine Street, Suite 600  
Post Office Box 50666  
Columbia, South Carolina 29250  
Telephone: (803) 734-9220  
Fax: (803) 734-9440  
www.dppps.sc.gov

November 15, 2012

Mr. Marcus Skeeters #00199165  
Lee Correctional Institution  
990 Wisaky Hwy.  
Bishopville, SC 29010

RE: NOTICE OF REJECTION

Dear Mr. Skeeters:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense  
Indication Of Violence In This Or Previous Offense  
Use Of Deadly Weapon In This Or Previous Offense  
Prior Criminal Record Indicates Poor Community Adjustment

Sincerely,

A handwritten signature in cursive script that reads "Catherine Cooper".

Catherine Cooper  
Director of Parole Board Support

11/14/2012

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State of South Carolina  
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY  
Governor



KELA E. THOMAS  
Director

2221 DEVINE STREET, SUITE 600  
POST OFFICE BOX 50666  
COLUMBIA, SOUTH CAROLINA 29250  
Telephone: (803) 734-9207  
Facsimile: (803) 734-9324  
www.state.sc.us/ppp

September 8, 2014

Marcus Skeeters, #199165  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville, SC 29010

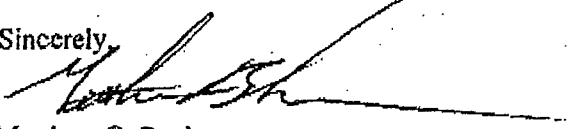
Dear Mr. Skeeters:

It is my duty to inform you that South Carolina law prohibits the Board of Probation, Parole, and Pardon Services from granting you parole on the sentence(s) identified below. Section 24-21-640 states: "[t]he board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for prior conviction, for violent crimes as defined in Section 16-1-60." Our records indicate that you have been convicted of the following violent crimes:

<u>Violent Crime</u>	<u>Indictment Number</u>	<u>Parolable</u>	<u>Sentence</u>
Murder, ABWIK	93-GS-26-1396	No	08/10/93
ABWIK	91-GS-26-1263		08/05/91

Please note that this letter is the Department's "final decision" on this matter. You have the right to appeal this final decision by seeking review by an Administrative Law Judge. Furtick v. South Carolina Department of Probation, Parole and Pardon Services, 352 S.E.2d 146 (2003). In order to file such an appeal, you must follow the instructions on the back of the enclosed "Notice of Appeal" form approved by the Administrative Law Court (ALC). You will also be required to comply with ALC Rules of Procedure for special appeals. Failure to follow the ALC instructions or Rules of Procedure will result in forfeiture of your right to challenge the Department's final decision.

Sincerely,

  
Matthew C. Buchanan  
General Counsel  
MCB:dn

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF HORRY ) FOR THE FIFTEENTH JUDICIAL CIRCUIT

DOCKET NO.: 2015-CP-26-3815


MARCUS SKEETERS #199165, )  
 )  
Applicant, )  
 )  
v. )  
 )  
STATE OF SOUTH CAROLINA, )  
 )  
Respondent. )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

HORRY COUNTY  
2015 AUG 27 PM 1:52  
MELANIE HARRIS STANARD  
CLERK OF COURT

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant hereby certify that I placed in the United States Mail, a copy of a Return to Conditional Order of Dismissal, with postage prepaid and the return address clearly shown on said envelope to Joshua L. Thomas, Esq. of the Attorney General's Office, at:

Joshua L. Thomas, Esq.  
Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211-1549



Jacquelyn E. Miller  
Secretary to Tommy A. Thomas  
Attorney for Applicant  
P.O. Box 88  
Irmo, SC 29063  
(803) 732-5507

Irmo, SC  
August 25, 2015

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15  
JK

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Marcus Skeeters, #199165,

Case No.: 2015-CP-26-3815

Applicant,

**FINAL ORDER OF DISMISSAL**

v.

State of South Carolina,

Respondent.

HORRY COUNTY  
2016 MAR 30 PM 12:43  
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed May 22, 2015. The Respondent made its return on or about July 22, 2015, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed July 27, 2015 and filed August 11, 2015, provisionally denying and dismissing this action, while giving the Applicant thirty (30) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated August 20, 2015, serving the above-mentioned Conditional Order of Dismissal on the Applicant's attorney, Tommy A. Thomas, Esquire.

In a document titled "Return to Conditional Order of Dismissal," dated August 24, 2015, Applicant, by and through his attorney, argues that the issue of being ineligible for parole was newly discovered on September 8, 2014 when the South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS) sent Applicant a letter stating that he was not eligible for parole, even though Applicant appeared before the parole board in November 2012.

COPY

Furthermore, Applicant alleges that "Applicant was informed at Trial that he would be eligible for parole" and that Applicant meets all the criteria listed in Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983) to warrant the granting of a new trial based on newly discovered evidence.

This Court has reviewed Applicant's response to the Court's Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

Applicant has failed to make a *prima facie* showing that he is entitled to relief based on newly discovered evidence. This Court concedes that it appeared that Applicant was parole eligible in November 2012 and then received a letter from SCDPPPS stating that he is ineligible for parole in September 2014, making his current application timely pursuant to S.C. Code Ann. §14-27-45(c). However, an applicant requesting a new trial based on after-discovered evidence must show that the evidence: (1) would likely change the result if a new trial was had; (2) has been discovered since the trial; (3) could not, by the exercise of reasonable diligence, have been discovered before the trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). This Court finds that Applicant cannot show that the issue of parole eligibility is material to the issue of guilt or innocence nor does this Court believe it would change the result if a new trial was had. Applicant has entirely failed to make a showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter must be summarily dismissed with prejudice.

Post-conviction relief is a proper avenue of relief only when the Applicant mounts a collateral attack challenging the validity of his conviction or sentence. Al-Shabazz v. State, 338

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S.C. 354, 527 S.E.2d 742 (2000). A credit-related claim or challenge to other conditions of confinement are administrative matters and, thus, cannot be raised in a post-conviction relief proceeding. Id. Likewise, a challenge to the conditions upon which parole eligibility is determined or decided is not cognizable in a post-conviction relief application. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000).

Here, the Applicant complains that the SCDPPPS is now denying him parole eligibility. The statutory right to sentence related credits is a protected "liberty" interest under the Fourteenth Amendment, entitling an inmate to minimal due process to ensure the state-created right was not arbitrarily abrogated. Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). However, because SCDC's disciplinary and grievance procedures are consistent with the standards delineated in Wolff v. McDonnell, supra., inmates may seek review of such claims under the Administrative Procedures Act (APA). Al-Shabazz, supra.

This Court finds that Applicant's allegation concerns matters which should first be raised through SCDC's disciplinary or the grievance procedure through the Department of Probation, Parole and Pardon Services (DPPPS). If the Applicant is dissatisfied with the decision rendered by SCDC or DPPPS, then he may seek review of the decision under the APA. Therefore, this claim is not proper for post-conviction relief and this application for post-conviction relief should be summarily denied and dismissed.


*[Remainder of page left intentionally blank]*

**IT IS THEREFORE ORDERED** that Applicant's motion for a hearing is hereby **DENIED**, and for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

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

AND IT IS SO ORDERED this 21 day of March, 2016

Mari, South Carolina

  
WILLIAM H. SEALS, JR.  
Chief Judge for Administrative Purposes  
Fifteenth Judicial Circuit

STATE OF SOUTH CAROLINA )

COUNTY OF Horry )

MARCUS SKEETERS, #199165 )

vs )

STATE OF SOUTH CAROLINA, )

Respondent. )

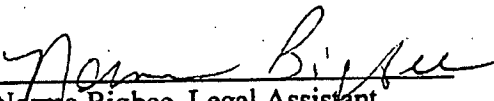
IN THE COURT OF COMMON PLEAS  
2015-CP-26-3815

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned 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 filed copy of the Final Order of Dismissal, in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Tommy A. Thomas, Esquire**  
**7588 Woodrow St.**  
**Irmo, South Carolina 29063**

DATED this 5<sup>th</sup> day of April, 2016.

  
Norma Bigbee, Legal Assistant  
For Respondent