

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO YORK COUNTY
Court of Common Pleas
The Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2018-001318

JEFFREY LYNN CHRONISTER,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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SEP 21 2018

S.C. SUPREME COURT

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RESPONDENT'S STATEMENT OF THE ISSUES

Did the lower court err in denying Petitioner's motion to proceed *in forma pauperis* when Petitioner attempted to file his sixth collateral attack against his 1992 convictions?

STATEMENT OF THE CASE

Petitioner is presently in the South Carolina Department of Corrections pursuant to orders of commitment from the York County Clerk of Court. During the April 1992 term, the York County Grand Jury indicted Petitioner for murder and possession of a firearm during the commission of a violent crime (1992-GS-46-1224). Harry Dest, Esquire, and Gerald Smith, Esquire, represented Petitioner. Assistant Solicitor Larry Grant of the Sixteenth Circuit Solicitor's Office represented the State.

Applicant proceeded to a jury trial before the Honorable Don S. Rushing, circuit court judge, on September 21, 1992. The jury returned a verdict of guilty on both charges and Judge Rushing sentenced Petitioner to life in prison on the murder charge and a consecutive five years imprisonment for the weapons violation. Petitioner's post-conviction appeals are detailed as follows:

Direct Appeal

Petitioner filed a direct appeal after his conviction. In the appeal, Petitioner raised the following issues:

1. The lower court erred in overruling defense counsel's motion to suppress statements allegedly made by Appellant while in custody where the record below fails to demonstrate that Appellant was properly advised of his rights prior to the issuance of those statements.
2. The lower court erred in failing to issue a jury instruction concerning the proper standard for the use of statements attributed to Appellant.
3. The lower court erred in denying Appellant's request for a jury instruction on the lesser included offense of manslaughter where under one reasonable interpretation of the

evidence as presented at trial, the jury might logically have found Appellant not guilty of that lesser charge.

On September 1, 1994, the South Carolina Supreme Court affirmed Petitioner's convictions in a memorandum opinion. State v. Jeffrey Lynn Chronister, Memo. Op. No. 94-MO-226 (S.C.S. Ct. September 1, 1994). Remittitur was issued September 19, 1994.

First Post-Conviction Relief Application

Petitioner filed his first application for post-conviction relief (95-CP-46-1109) on August 28, 1995, alleging his confinement was unlawful because he received ineffective assistance of counsel and was denied Due Process of Law in violation of his Sixth Amendment and Fourteenth Amendment. Petitioner's specific allegations are as follows:

1. Trial counsel failed to effectively discuss the case and strategy with the client;
2. Trial counsel failed to secure a preliminary hearing for his client;
3. Trial counsel failed to subpoena and call witness on behalf of his client;
4. Trial counsel's failure to obtain an independent psychiatric exam and psychiatrist for his client amounts to ineffective assistance of counsel;
5. Trial counsel failed to request a motion of change of venue;
6. Failure to properly investigate the case.

Respondent served its Return on January 29, 1996. An amended post-conviction relief application was filed on September 16, 1996 by Petitioner alleging additional grounds as follows:

1. Ineffective assistance of counsel;
2. Applicant was denied Due Process of law in violation of the Sixth and Fourteenth Amendments.

In an attachment to the amended application, Petitioner made specific allegations, which were as follows:

1. Counsel failed to investigate Petitioner's competency;
2. Counsel failed to put up an insanity defense;
3. Counsel failed to investigate mitigating circumstances;
4. Counsel allowed a mandatory presumption of malice charge to be charged to the jury without objection;
5. Counsel failed to advise Petitioner of important laws, cases, and defenses;
6. Counsel failed to make an objection during trial;
7. Counsel failed to request a specific jury instruction;
8. Counsel failed to adequately investigate the case or call witnesses;
9. Counsel failed to raise issues on appeal concerning the mishandling of evidence by police;
10. Counsel committed procedural errors;
11. The trial court failed to hold an additional hearing on applicant's criminal responsibility and competence to stand trial.

A hearing was convened on September, 18, 1996, before the Honorable John C. Hayes, III. Petitioner was present and was the only witness. By Order dated October 21, 1996, Judge Hayes dismissed Petitioner's post-conviction relief application.

First Appeal from Denial of First Post-Conviction Relief Action

On November 11, 1996, Petitioner, through counsel, served a Notice of Appeal from the order dismissing his post-conviction relief action. On October 13, 1997, M. Anne Pearce of the

South Carolina Office of Appellate Defense, filed a Johnson¹ Petition for Writ of Certiorari that presented the following issue:

1. Whether the lower court erred in granting the State's motion for directed verdict on the ground that Petitioner had failed to carry his burden of proof?

Petitioner also filed a *pro se* document entitled "Amended Johnson Petition for Writ of Certiorari" raising the following issues:

2. Whether the lower court in granting the State's motion for directed verdict on the ground that petitioner had failed to carry his burden of proof?
3. Whether the lower court's decision to grant the State's motion for directed verdict violated the Petitioner's right to confront witnesses and of Due Process?

By Order dated May 28, 1998, the South Carolina Supreme Court granted counsel's motion to withdraw and denied the petition for certiorari. The remitter was issued on June 15, 1998.

1998 Federal Habeas Petition

On October 17, 1998, Petitioner filed a federal habeas corpus action. In the *pro se* Petition for Writ of Habeas Corpus, Petitioner alleged the following:

1. Conviction obtained in violation of Petitioner's Fifth Amendment right against compulsory self-incrimination. Petitioner was subjected to interrogation by police without being properly warned of his rights against self-incrimination.
2. Conviction was obtained in violation of Petitioner's Fifth Amendment right to have counsel present during interrogation. Petitioner twice stated that he wanted his counsel present, that he did not want to talk to police without counsel being present. Despite this request, Petitioner was subjected to the psychological ploys and interrogation tactics of Officer John Dean Shillinglaw.
3. Conviction obtained in violation of Petitioner's rights to due process of law under the Fifth and Fourteenth Amendments. The trial court erred and violated Petitioner's rights when it allowed into evidence an illegally obtained statement.
4. Conviction obtained in violation of Petitioner's Sixth Amendment right to effective assistance of counsel. Trial counsel was ineffective and prejudiced Petitioner by failing

¹ Johnson v. State, 294 S.C. 310, 364 S.E.2d 210 (1998)

to adequately investigate and present a defense based on Petitioner's sanity at the time of the crime. (Petitioner's lack of criminal responsibility.)

5. Conviction obtained in violation of Petitioner's Sixth Amendment right to the effective assistance of counsel. Trial counsel was ineffective and prejudiced Petitioner by failing to request a change of venue on the grounds of pretrial publicity where voir dire showed jury to be both knowledgeable about the case and biased against Petitioner. Petitioner could not obtain a fair trial by impartial jury in York County and counsel should have moved for a change of venue or to have the jury picked in another county.

The Federal habeas corpus petition was dismissed on January 28, 2000. Chronister v. Warden, 4:98-3371-17BF.

Second Post-Conviction Relief Action

On June 19, 2001, Petitioner filed a second post-conviction relief action (2001-CP-46-1338). Petitioner alleged the following:

1. Ineffective assistance of trial counsel.
2. Ineffective assistance of post-conviction relief counsel.
3. Conviction obtained in violation of Applicant's Fifth Amendment right against compulsory self-incrimination.
4. Conviction obtained in violation of Applicant's Fifth Amendment right to have counsel present during interrogation.
5. Conviction obtained in violation of Applicant's Fifth Amendment right of due process of law.

On January 9, 2002, Respondent made a return and motion to dismiss asking the court to summarily dismiss the application as successive and untimely in violation of S.C. Code Ann. § 17-27-90 (1985). On January 14, 2002, a conditional order of dismissal was issued by the Honorable Lee S. Alford acting in his capacity as Chief Administrative Judge for the Sixteenth Circuit. Applicant, through his counsel – David L. Little, Esquire – made a reply to the conditional order. A final order of dismissal was entered by Judge Alford on April 19, 2002.

Second Post-Conviction Relief Appeal

Petitioner filed an appeal to the denial of his second application for post-conviction relief to the South Carolina Supreme Court. On the appeal, Petitioner was represented by Daniel T. Stacey of the South Carolina Office of Appellate Defense. On November 21, 2002, counsel filed a Johnson petition for writ of certiorari, asserting, “Whether the Court erred in dismissing the instant application as successive?” Petitioner made a *pro se* response asserting the following grounds:

1. Defective indictment;
2. Ineffective assistance of trial counsel;
3. Ineffective assistance of appellate counsel;
4. Ineffective assistance of post-conviction relief hearing counsel;
5. Ineffective assistance of second post-conviction relief counsel;
6. Violations of his Fourteenth, Sixth, and Fifth Amendment rights;
7. Violations of the South Carolina Constitution.

On January 2, 2003, Petitioner made an amended *pro se* response asserting “newly discovered issues.” On February 21, 2003, the Supreme Court of South Carolina denied the petition for writ of certiorari and granted Counsel’s request to be relieved. Chronister v. State, Order (S.C.S.Ct. February 21, 2003). The remittitur was issued on March 10, 2003.

State Habeas Corpus

Petitioner subsequently filed a Petition for Writ of Habeas Corpus on September 26, 2005 (2005-CP-46-2212). Judge Hayes, acting in his capacity as Chief Administrative Judge, denied and dismissed the application by Order dated August 29, 2005.

Third Post-Conviction Relief Action

Petitioner filed his third application for post-conviction relief on February 9, 2006. In this application, Petitioner alleged:

1. Subject matter jurisdiction;
2. Violations of the United States and South Carolina Constitution;
3. Professional misconduct by defense counsel;
4. Ineffective assistance of trial counsel.

Respondent mailed a return and motion to dismiss on June 20, 2006, seeking summary judgment as Petitioner's application was successive and untimely. On July 6, 2006, Judge Alford, acting in his capacity as Chief Administrative Judge, entered a conditional order of dismissal on the basis that the application was untimely and successive. Petitioner filed a motion for relief of judgment, a motion in opposition, and a motion to appeal in the South Carolina Supreme Court. By Order dated August 9, 2006, the Supreme Court of South Carolina dismissed the appeal because a conditional order of dismissal is not an appealable order. Judge Alford entered a final order of dismissal on November 22, 2006.

Third Post-Conviction Relief Appeal

Petitioner filed a notice of appeal in the South Carolina Supreme Court. On January 22, 2007, the South Carolina Supreme Court entered an order of dismissal of the appeal concluding, "in the explanation required by Rule 227 (c), SCACR, Petitioner has failed to show that there is an arguable basis for asserting that the determination by the lower court was improper." The remittitur was issued in the matter on February 7, 2007.

Rule 29(b), SCRCrimP

On November 12, 2014, Petitioner filed a Rule 29(b), SCRCrimP, in the York County Court of General Sessions, alleging he was entitled to a new trial based on the following grounds:

1. Prosecutorial misconduct;
2. Arrest without probable cause;
3. Subject matter jurisdiction.

Judge Alford acknowledged receipt of Petitioner's motion and directed him to raise his claims by filing a post-conviction relief action. On December 11, 2014, Petitioner mailed a *pro se* notice of appeal to Judge Alford's letter. On February 13, 2015, the Clerk of Court for the Court of Appeals advised Petitioner it was in receipt of the November 21, 2014 letter from Judge Alford, which it was considering the "order on appeal." On April 5, 2017, the South Carolina Court of Appeals affirmed Judge Alford's order denying Petitioner's motion because it was untimely and a direct appeal was not the proper avenue to raise allegations for ineffective assistance of counsel. State v. Jeffrey Lynn Chronister, Op. No. 2017-UP-139 (S.C. Ct. App. filed April 5, 2017).

Fourth Post-Conviction Relief Action

Petitioner filed his sixth collateral attack on his 1992 convictions by way of a fourth post-conviction relief application on May 22, 2018, along with an application to proceed *in forma pauperis*. The Honorable Daniel D. Hall, acting in his capacity as the Chief Administrative Judge for the Sixteenth Circuit received Petitioner's application and sent Petitioner a letter denying his request to proceed without paying the filing fee stating: "This is your third PCR

Application that you have filed in this matter. The two prior applications were dismissed by the circuit courts. Your Application to Proceed Without Payment for this filing is denied.”

Petitioner appealed Judge Hall’s denial of his request to proceed *in forma pauperis*. On August 7, 2018, Petitioner filed a Petition for Writ of Certiorari.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's findings of fact and will uphold them if there is any evidence in the record to support them. Smalls, 422 S.C. at 179, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The lower court properly denied Petitioner's motion to proceed *in forma pauperis* when Petitioner attempted to file a successive collateral attack against his 1992 convictions.

Petitioner asserts Judge Hall erred in denying Petitioner's ability to proceed *in forma pauperis* when Petitioner filed his fourth post-conviction relief application. Petitioner claims his successive applications do not rise to the level of repetitive and abusive filings that should effectively discontinue Petitioner's ability to file *in forma pauperis*. Petitioner relies on the decision in Lakes v. State, 333 S.C. 382, 510 S.E.2d 228 (1998), to support his claim that Judge Hall's implicit factual finding that Petitioner's repetitive filings should not be allowed to continue *in forma pauperis*. However, Petitioner's reliance on Lakes is inappropriate because Petitioner's case can be distinguished from the holding in Lake. In Lake, unlike the case at bar, the lower court did not make a factual finding regarding Curtis Lakes' repetitive and abusive filings. Since Judge Hall, acting in his capacity as Chief Administrative Judge, made an implicit factual finding regarding Petitioner's repetitive filings, he appropriately denied Petitioner's motion to proceed *in forma pauperis* when attempting to file his fourth post-conviction relief application. This Court should deny certiorari.

Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). 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, 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 (1985).

There is a strong interest in finality of the criminal process; judicial review must stop at some juncture and finality must be realized. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991).

The South Carolina Supreme Court quoted Justice Harlan when discussing the importance of finality in litigation when they stated the following:

If law, criminal or otherwise, is worth having and enforcing, it must some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task stripping a man of his freedom and subject him to institutional restraints. But this does not mean that in doing so, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefitted by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved. A rule of law that fails to take account of these finality interests would do more than subvert the criminal process itself. It would also seriously distort the very limited resources society has allocated to the criminal process...This drain on society's resources is compounded by the fact that issuance of the habeas writ compels a State that wishes to continue enforcing its laws against the successful petitioner to relitigate facts buried in the remote past through presentation of witnesses whose memories of the relevant events often have dimmed. This very act of trying stale facts may well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first.

Anderson v. Leeke, 271 S.C. 435, 441, 248 S.E.2d 120 (1978). In the case at bar, Petitioner has filed six collateral attacks on his 1992 convictions. It is clear Petitioner has received “a

definitive answer” as to the claims he has repeatedly raised throughout his numerous filings, and to allow him to continue to litigate these claims would be to allow him to consume more than his fair share of the “limited resources... allocated to the criminal process.” Id.

Petitioner’s numerous filings have allowed Petitioner to receive more than his “full bite at the apple.” Under the Uniform Post-Conviction Relief Act, an applicant is entitled to a full adjudication on the merits of the original petition, or one bite at the apple; this “bite” includes an applicant’s right to appeal the denial of a post-conviction relief application, and the right to assistance of counsel in that appeal. Matthew v. Evatt, 105 F.3d 907, 916 (1997), Gamble v. State, 298 S.C. 176, 379 S.E.2d 118, 119 (1989), Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999).

In Williams v. State, 354 S.C. 630, 583 S.E.2d 52 (2003), John H. Williams (hereinafter Williams) was convicted of voluntary manslaughter and was sentenced to thirty years imprisonment. Id. Williams subsequently filed four post-conviction relief applications. Id. Upon receipt of the fourth post-conviction relief application, the State filed a return and motion to dismiss stating, in part, the application was successive. Id. The trial court issued a conditional order of dismissal and an order directing the Georgetown County Clerk of Court not to accept any further post-conviction relief filings from Williams unless he pays the filing fee. Id. Additionally, the Court stated any future post-conviction relief application must be accompanied by a notarized affidavit from petitioner certifying his good faith belief that the post-conviction action is “nonfrivolous and proper.” Id. Finally, the Court warned Williams that future frivolous post-conviction relief applications could lead to Williams being held in contempt or sanctioned

and sanctions could include forfeiture of all of his earned work, education, and good time credits.

Id.

The lower court's decision was later overturned because the order issued by the court stated Williams' second and third post-conviction relief applications were "summarily dismissed" as successive applications, however, Williams actually received evidentiary hearings on those applications and was granted relief on one. Id. The South Carolina Supreme Court found the trial court's conclusion that Williams' filing have been completely frivolous was incorrect. Id.

In the case at bar, Petitioner has filed six collateral attacks on his convictions. Petitioner also received a full evidentiary hearing on his initial post-conviction relief application, which was denied and dismissed by Judge John Hayes, III. Petitioner's additional filings have raised similar issues, which, unlike Williams, have led to his second and third post-conviction relief applications being summarily dismissed as successive. Judge Hall, unlike the lower court in Williams, did not put any further restrictions on Petitioner such as a requirement for a notarized affidavit or threats to hold Petitioner in contempt if he continues to file frivolous actions. Judge Hall simply found Petitioner's numerous filings to be frivolous and require the proper filing fee.

Petitioner likens his appeal to that of an indigent inmate in Lakes. In Lakes, Curtis Lakes (hereinafter Lakes) was convicted in 1989 of kidnapping, armed robbery, and assault and battery with intent to kill. After his convictions, Lakes filed a direct appeal, which resulted in his convictions and sentences being upheld by the South Carolina Supreme Court. Thereafter, Lakes filed three post-conviction relief applications, two petitions for writ of certiorari, a federal petition for writ of habeas corpus, petitions for writs of mandamus, attorney grievances, and proposed orders for release. In September 1997, Lakes filed a petition for writ of habeas corpus

in the common pleas court of Orangeburg County along with a petition to proceed *in forma pauperis*. The trial judge denied Lakes' motion to proceed *in forma pauperis* and he appealed. The South Carolina Court of Appeals reversed the trial court's decision because the trial judge failed to make a factual finding that Petitioner's filings rose to a level of repetitive and abusive filings as in Maxton² or those cases cited in Maxton.

Petitioner's case is distinguishable from Lakes because the lower court in Lakes did not provide a factual finding that Lakes' previous filings were repetitive and abusive. In the case at bar, Judge Hall made an implicit factual finding that Petitioner's excessive filings met the threshold of repetition that should bar Petitioner from being allowed to continue without paying the filing fee. Specifically, Judge Hall stated: "This is your third PCR Application that you have filed in this matter. The two prior applications were dismissed by the courts. Your Application to Proceed Without Payment for this filing is denied." Judge Hall's reference to Petitioner's numerous prior actions can only be interpreted as a finding that Petitioner's filings were repetitive and excessive.

Petitioner's convictions in 1992, Petitioner has filed a direct appeal, three post-conviction relief applications, two post-conviction relief appeals, a state habeas corpus, a federal habeas petition, and a Rule 29 (b), SCRCrimP motion. Petitioner received a full evidentiary hearing on his initial post-conviction relief application, which was denied and dismissed. At the time of Petitioner's denial to proceed *in forma pauperis*, Petitioner was filing his fourth post-conviction relief application and his sixth collateral attack.

Since being convicted in 1992, Petitioner's conviction and sentence has been reviewed on direct appeal by the South Carolina Supreme Court, which affirmed the lower court's decision.

² In re Maxton, 325 S.C. 3, 478, S.E.2d 679 (1996)

to raise the same allegations via numerous filings in state and federal court, which have all resulted in Petitioner being denied relief. Petitioner continues to burden the already tasked judicial system with his successive, frivolous claims. Petitioner has received his definitive answer to his repetitive filings and requiring him to pay the filing fee to continue to file his frivolous claims does not deny Petitioner access to the criminal justice system, but merely compels him to pay for the process he continues to abuse. As Judge Hall stated, he was aware of Petitioner's successive filings at the time he made his factual finding, and it is that history that led him to require Petitioner to pay the filing fee. Based on Petitioner's extensive history of filing frivolous claims, Judge Hall's decision to require Petitioner to pay the filing fee for his future claims was justified and proper. Therefore, this Court should deny certiorari.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied. Should this Court grant the Petition for writ of certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

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Attorney General

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By: 
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9/21, 2018

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO YORK COUNTY

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Appellate Case No. 2018-001318

JEFFREY LYNN CHRONISTER,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petition for Writ of Certiorari, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**Jeffrey L. Chronister, #189827
Kirkland Correctional Institution
Dorm: Room: Bunk: B2-0063-A
4344 Broad River Road
Columbia, SC 29210**

This 21st day of September, 2018



Jennifer Jennison
Legal Assistant

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S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

September 21, 2018

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

Re: Jeffrey L. Chronister, #189827 v. State of South Carolina
Appellate Case No. 2018-001318

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari. By copy of this letter we are serving the Applicant today.

Sincerely,

Janell H. Gregory
Assistant Attorney General
SC Bar No. 103176

JHG/jaj
Enclosures

cc: Jeffrey L. Chronister, Pro Se (2 copies)