

LAW OFFICE OF

# Kristy Grafton Goldberg, LLC

ATTORNEY AT LAW

---

November 2, 2018

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

**RECEIVED**

NOV 05 2018

RE: Jeffrey D. Cromer, SCDC # 197498, vs. State of South Carolina  
Appeal of Case No. 2012-CP-32-2197

SOUTH CAROLINA  
SUPREME COURT

Dear Mr. Shearouse,

Enclosed for filing is a Notice of Appeal in the above referenced case. Also enclosed are a certificate of service and a copy of the original court orders to be challenged on appeal. I would appreciate it if you could file the Notice of Appeal and mail a date-stamped copy back to me in the enclosed pre-stamped envelope.

By copy of this letter I am informing the Office of Appellate Defense of this Appeal. I was **appointed** to represent Mr. Cromer on his PCR.

Please let me know if you have any questions or concerns regarding this matter.

Respectfully,



Kristy Goldberg

CC: Kelly Oppenheimer  
Assistant Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

Jeffrey Cromer, SCDC # 197498  
Turbeville Correctional Institution  
P. O. Box 252  
Turbeville, SC 29162

The Honorable Lisa Comer  
Clerk of Court  
205 East Main Street  
Lexington, South Carolina 29072

Office of Appellate Defense  
Chief Appellate Defender – Robert Dudek  
PO Box 11433  
Columbia, SC 29211-1433

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

**NOV 05 2018**

**S.C. SUPREME COURT**

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2012-CP-32-2197

Jeffrey D. Cromer, # 197498, ..... Appellant

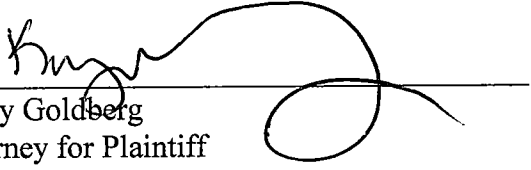
v.

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

NOTICE OF APPEAL

Applicant Jeffrey D. Cromer hereby appeals from the Order of the Perry H. Gravely, presiding Judge for the 11<sup>th</sup> Judicial Circuit, filed September 13, 2018 and Order Denying Applicant's Motion to Alter/Amend Judgment, filed October 29, 2018 received by counsel for the Applicant on October 31, 2018 in the matter of Jeffrey D. Cromer v. State of South Carolina, Case No. 2012-CP-32-2197.

November 2, 2018

  
\_\_\_\_\_  
Kristy Goldberg  
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.  
1720 Main Street, Suite 303  
Columbia, SC 29201  
Phone (803) 667-6633  
kristy@kristygoldberglaw.com

Other Counsel of Record:  
Assistant Attorney General, Kelly Oppenheimer  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

NOV 05 2018

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Perry H. Gravely, Circuit Court Judge

Case No. 2012-CP-32-2197

Jeffrey D. Cromer, # 197498, ..... Appellant

v.


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

PROOF OF SERVICE

Personally appeared before me, Kristy Goldberg, Esquire, who being duly sworn, deposes  
and states:

She is the counsel of record for Applicant;  
Service by mail is proper in this instance; and  
She has served the NOTICE OF APPEAL on the following party on November 2, 2018 by  
depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Kelly Oppenheimer  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

  
\_\_\_\_\_  
Kristy Goldberg  
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.

1720 Main Street, Suite 303  
Columbia, SC 29201  
Phone (803) 667-6633  
[kristy@kristygoldberglaw.com](mailto:kristy@kristygoldberglaw.com)

Other Counsel of Record:  
Assistant Attorney General, Kelly Oppenheimer  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

ORIGINAL

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS )  
FOR THE ELEVENTH JUDICIAL CIRCUIT )

Jeffrey D. Cromer, #197498, )  
Applicant, )

Case No. 2012-CP-32-2197 )

ORDER DENYING APPLICANT'S )  
"MOTION TO ALTER/AMEND )  
JUDGMENT" )

v. )

State of South Carolina, )  
Respondent. )

2018 OCT 29 AM 8:45  
USA M. COVER  
DENIED

This matter comes before this Court by way of Applicant's "Motion To Alter/Amend Judgment," asking this Court to alter or amend its Order of Dismissal denying Applicant's application for post-conviction relief.

I.

Jeffrey D. Cromer (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its January 2001 term, the Lexington County Grand Jury indicted Applicant for first-degree burglary (2001-GS-32-217). Michael W. Chesser, Esquire represented Applicant on this charge. On March 6, 8, 12-13, and 19-21, 2001, Applicant proceeded to a jury trial before the Honorable J.C. Nicholson, Jr. The jury convicted Applicant as indicted, and Judge Nicholson sentenced Applicant to a term of imprisonment of twenty-five years.

Applicant filed a timely notice of appeal, and Appellate Defender Robert M. Pachak, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, perfected an appeal on Applicant's behalf. On appeal, Applicant raised the following issue: "Whether the trial court erred in overruling defense counsel's objection to the solicitor's closing argument where he urged the jury not to

*PHC*

victimize the victim again?" Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence by unpublished opinion on August 26, 2002. *State v. Cromer*, Op. No. 2002-UP-518 (S.C. Ct. App. filed August 26, 2002). The Remittitur was issued on September 11, 2002.

**2002-CP-32-3895**

Applicant filed his first application for post-conviction relief November 6, 2002, alleging:

1. Ineffective Assistance of Trial Counsel;
  - a. Trial attorney failed to fully investigate case; did not pursue defense required by 6<sup>th</sup> Amendment, USCA; was not fully prepared to go to trial; did not raise issues during suppression.
2. Ineffective Assistance of Appellant Counsel; [and]
  - a. Appellant Counsel did not present meritorious issues to appeals court after being ask [sic] to.
3. Violation of Due Process.
  - a. Do [sic] to the aforementioned [sic] of ineffective assistance of counsel, Applicant was denied a fair trial and proper readdress [sic] to court.

Respondent made its Return on February 7, 2003, requesting an evidentiary hearing be held. Thereafter, through his counsel, Applicant filed an amended application for post-conviction relief on October 13, 2004. In this amended application, Applicant raised the following additional ground:

1. That the Applicant is informed and believes that after discovered evidence has been obtained that indicates there is a witness who was unknown and/or had information unknown at the time of trial.

An evidentiary hearing into the matter was convened on February 10, 2005, at the Lexington County Courthouse before the Honorable William P. Keesley. Applicant was present at the hearing and was represented by Tommy A. Thomas, Esquire. By Order dated September 21, 2007, Judge Keesley denied and dismissed Applicant's application for post-conviction relief with prejudice.

Applicant filed a timely notice of appeal, and an appeal was perfected on his behalf by Tricia A. Blanchette, Esquire. On appeal, Applicant raised the following issues:

1. Whether appellate counsel rendered ineffective assistance of counsel when he failed to address the introduction of [Applicant's] three prior convictions to establish burglary in the first degree?
2. Whether appellate counsel rendered ineffective assistance of counsel when the appellate brief failed to address prejudicial comments made by the Solicitor and defense counsel's motion for a mistrial? [and]
3. Whether appellate counsel rendered ineffective assistance of counsel when he failed to address the introduction of the redacted portions of [Applicant's] statement during cross-examination of [Applicant]?

By written Order dated January 8, 2009, the Supreme Court of South Carolina denied the Petition for Writ of Certiorari. Thereafter, on January 16, 2009, Applicant filed a Motion for Reconsideration, requesting the Court to reconsider its denial of the Petition and requesting Counsel be allowed to further brief the issues. The Supreme Court denied Applicant's motion on February 4, 2009, while simultaneously issuing the Remittitur.

**0:09-2235-MBS-PJG**

Applicant then filed a Petition for a Writ of Habeas Corpus on August 24, 2009. In this Petition, Applicant raised the following grounds:

1. [Applicant] argues the trial court's decision to allow evidence of 3 prior burglary convictions and 1 felony in Florida (Burglary was in err [sic];
2. Voluntariness of statement—use of statement was in err [sic];
3. Solicitor's misconduct throughout the trial—Solicitor's closing; [and]
4. Ineffective Assistance of Trial Counsel—Mistrial not successful.

Respondent made its "Return and Memorandum of Law in Support of Motion for Summary Judgment" on December 2, 2009, requesting the Petition be dismissed. Thereafter, on July 2, 2010, United States Magistrate Judge Paige J. Gossett issued a report and recommendation, recommending Respondent's motion for summary judgment be granted. On October 26, 2010, United States District Judge Richard

Mark Gergel issued an order granting Respondent's motion for summary judgment and denying the certificate of appealability. Judge Gergel reissued the same order on November 4, 2010.

II.

On May 29, 2012, Applicant filed his second and current application for post-conviction relief. In this application, Applicant alleges he is being held unlawfully for the following reasons:

1. Newly, important, helpful evidence;
  - a. Alibi witness has come forward.
2. Trial judge erred and abused his discretion;
  - a. He stated and agreed [Applicant] was deprived a fair trial and [Applicant's] Due Process rights violated.
3. PCR judge abused his discretion;
  - a. Ruled investigation by non-license [sic] investigator is adequate for criminal trial.
4. Case lacked proper investigation; [and]
  - a. Civilian who imposed [sic] as an investigator scammed the defense.
5. Prosecution used strikes because of jurors['] race deprived [Applicant] fair trial.
  - a. Black jurors struck because of where they worked and where they lived.

Respondent made its Return and Motion to Dismiss on July 9, 2014, requesting the applicant be summarily dismissed as successive and as untimely. Applicant then filed numerous *pro se* responses, requesting an evidentiary hearing on this application. Thereafter, on August 19, 2014, the Honorable William P. Keesley, in his capacity as Chief Administrative Judge for the Eleventh Judicial Circuit for Common Pleas, issued an "Order Regarding Motion for Conditional Order of Discharge." In said Order, Judge Keesley denied Respondent's motion for a conditional order of discharge and required Applicant to amend his application to "provide more specifics as to the claim of after-discovered evidence and when this information was obtained." Applicant filed his amendment to the application on September 16, 2014, alleging the purported alibi witness, Yolanda E. Watlington, was not contacted by trial counsel or

Applicant's investigator at the time of trial, nor was Ms. Watlington in contact with Applicant at the time.

The application also included a handwritten letter from Ms. Watlington. Respondent made its "Amended Return and Motion to Dismiss" on September 30, 2015, requesting the application be summarily dismissed as successive, as untimely, as barred by the doctrine of *res judicata*, and for failing to set forth a *prima facie* showing of newly discovered evidence. Thereafter, the Honorable R. Knox McMahon in his capacity as Chief Administrative Judge for the Eleventh Circuit for Common Pleas appointed Applicant counsel and ordered an evidentiary hearing be held on this application, solely as to the issue of whether the application should be summarily denied and dismissed. Subsequently, through his counsel, Applicant filed a "Response to the State's Motion to Dismiss" on July 25, 2018. In this response Applicant narrowed his grounds for relief to the following<sup>1</sup>:

1. After discovered evidence of an alibi witness; and
2. Subject matter jurisdiction.

A hearing into the matter was convened at the Lexington County Courthouse on July 30, 2018, before the Honorable Perry H. Gravely. Applicant was present at the hearing and represented by Kristy G. Goldberg, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office represented Respondent. After hearing arguments from both parties, this Court issued an order of dismissal on September 6, 2018, denying and dismissing the application with prejudice.

Subsequently, on September 19, 2018, Applicant, through his counsel, submitted a "Motion To Alter/Amend Judgment." Respondent submitted its return to Applicant's motion on or about October 16, 2018.

### III.

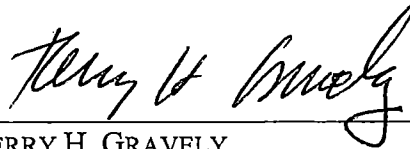
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<sup>1</sup> At the hearing, Applicant proceeded forward on the grounds raised in his July 25, 2018, filing.

This Court finds its Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCF. *See also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this Court finds there is no basis for altering or amending its prior ruling.<sup>2</sup> Therefore, this Court hereby denies Applicant's motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes if Applicant desires to secure appellate review of this Order and the Order of Dismissal, a Notice of Appeal must be filed and served within thirty days of the service of this Order. Applicant is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 22nd day of Oct, 2018.



PERRY H. GRAVELY  
Presiding Judge  
Eleventh Judicial Circuit

Dixie, South Carolina

<sup>2</sup> The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. *See* Rule 59(f), SCRCF.



Kristy Grafton Goldberg  
1720 Main Street, Suite 303 Columbia, SC 29201

Kelly Oppenheimer  
Rembert C. Dennis Building  
PO Box 11549 Columbia, SC 29211

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ATTORNEY(S) FOR THE PLAINTIFF(S)

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ATTORNEY(S) FOR THE DEFENDANT(S)

*Lisa M Comer* /mh

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Court Reporter

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Lisa M. Comer - Clerk of Court

Court Reporter:

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.**

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

FILED  
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IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

Jeffrey D. Cromer, #197498,

LISA M. CROMER  
CLERK OF COURT  
LEXINGTON, SC

2012-CP-32-2197

Applicant,

v.

**ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

This matter comes before this Court by way of an application for post-conviction relief filed May 29, 2012.

**PROCEDURAL HISTORY**

Jeffrey D. Cromer (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its January 2001 term, the Lexington County Grand Jury indicted Applicant for first-degree burglary (2001-GS-32-217). Michael W. Chesser, Esquire represented Applicant on this charge. On March 6, 8, 12-13, and 19-21, 2001, Applicant proceeded to a jury trial before the Honorable J.C. Nicholson, Jr. The jury convicted Applicant as indicted, and Judge Nicholson sentenced Applicant to a term of imprisonment of twenty-five years.

Applicant filed a timely notice of appeal, and Appellate Defender Robert M. Pachak, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, perfected an appeal on Applicant's behalf. On appeal, Applicant raised the following issue: "Whether the trial court erred in overruling defense counsel's objection to the solicitor's closing argument where he urged the jury not to victimize the victim again?" Following briefing, the South



Carolina Court of Appeals affirmed Applicant's conviction and sentence by unpublished opinion on August 26, 2002. *State v. Cromer*, Op. No. 2002-UP-518 (S.C. Ct. App. filed August 26, 2002). The Remittitur was issued on September 11, 2002.

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Applicant filed his first application for post-conviction relief November 6, 2002, alleging:

1. Ineffective Assistance of Trial Counsel;
  - a. Trial attorney failed to fully investigate case; did not pursue defense required by 6<sup>th</sup> Amendment, USCA; was not fully prepared to go to trial; did not raise issues during suppression.
2. Ineffective Assistance of Appellant Counsel; [and]
  - a. Appellant Counsel did not present meritorious issues to appeals court after being ask [sic] to.
3. Violation of Due Process.
  - a. Do [sic] to the aforementioned [sic] of ineffective assistance of counsel, Applicant was denied a fair trial and proper readdress [sic] to court.

Respondent made its Return on February 7, 2003, requesting an evidentiary hearing be held. Thereafter, through his counsel, Applicant filed an amended application for post-conviction relief on October 13, 2004. In this amended application, Applicant raised the following additional ground:

1. That the Applicant is informed and believes that after discovered evidence has been obtained that indicates there is a witness who was unknown and/or had information unknown at the time of trial.

An evidentiary hearing into the matter was convened on February 10, 2005, at the Lexington County Courthouse before the Honorable William P. Keesley. Applicant was present at the hearing and was represented by Tommy A. Thomas, Esquire. By Order dated September 21, 2007, Judge Keesley denied and dismissed Applicant's application for post-conviction relief with prejudice.

Applicant filed a timely notice of appeal, and an appeal was perfected on his behalf by Tricia A. Blanchette, Esquire. On appeal, Applicant raised the following issues:

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for summary judgment and denying the certificate of appealability. Judge Gergel reissued the same order on November 4, 2010.

### CURRENT APPLICATION

In his second and current application for post-conviction relief Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Newly, important, helpful evidence;
  - a. Alibi witness has come forward.
2. Trial judge erred and abused his discretion;
  - a. He stated and agreed [Applicant] was deprived a fair trial and [Applicant's] Due Process rights violated.
3. PCR judge abused his discretion;
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4. Case lacked proper investigation; [and]
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5. Prosecution used strikes because of jurors['] race deprived [Applicant] fair trial.
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Respondent made its Return and Motion to Dismiss on July 9, 2014, requesting the applicant be summarily dismissed as successive and as untimely. Applicant then filed numerous *pro se* responses, requesting an evidentiary hearing on this application. Thereafter, on August 19, 2014, the Honorable William P. Keesley, in his capacity as Chief Administrative Judge for the Eleventh Judicial Circuit for Common Pleas, issued an "Order Regarding Motion for Conditional Order of Discharge." In said Order, Judge Keesley denied Respondent's motion for a conditional order of discharge and required Applicant to amend his application to "provide more specifics as to the claim of after-discovered evidence and when this information was obtained." Applicant filed his amendment to the application on September 16, 2014, alleging the purported alibi witness, Yolanda E. Wattlington, was not contacted by trial counsel or Applicant's investigator at the time of trial, nor was Ms. Wattlington in contact with Applicant at



the time. The application also included a handwritten letter from Ms. Wattlington. Respondent made its “Amended Return and Motion to Dismiss” on September 30, 2015, requesting the application be summarily dismissed as successive, as untimely, as barred by the doctrine of *res judicata*, and for failing to set forth a *prima facie* showing of newly discovered evidence. Thereafter, the Honorable R. Knox McMahon in his capacity as Chief Administrative Judge for the Eleventh Circuit for Common Pleas appointed Applicant counsel and ordered an evidentiary hearing be held on this application, solely as to the issue of whether the application should be summarily denied and dismissed. Subsequently, through his counsel, Applicant filed a “Response to the State’s Motion to Dismiss” on July 25, 2018. In this response Applicant narrowed his grounds for relief to the following<sup>1</sup>:

1. After discovered evidence of an alibi witness; and
2. Subject matter jurisdiction.

A hearing into the matter was convened at the Lexington County Courthouse on July 30, 2018, before the Honorable Perry H. Gravely. Applicant was present at the hearing and represented by Kristy G. Goldberg, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General’s Office represented Respondent.

This Court also had before it the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, Applicant’s prior post-conviction relief records and the appeal therefrom, Applicant’s appellate records, the records from Applicant’s federal habeas proceeding, and the records from this current application.

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<sup>1</sup> At the hearing, Applicant proceeded forward on the grounds raised in his July 25, 2018, filing.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings and all relevant supporting documents and further listened to the arguments presented by counsels at the hearing. This Court makes the following findings of fact and conclusions of law:

### *Newly Discovered Evidence*

This Court finds Applicant has wholly failed to set forth a *prima facie* case, which would permit this application based on newly discovered evidence. The Uniform Post-Conviction Relief Act states a person may institute a post-conviction relief action if “there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.” S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction 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, 299 S.E.2d 854, 855 (1983) (citing *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979)).

Applicant contends his alleged alibi witness, Yolanda E. Wattlington, came forward in November of 2011; and, therefore, he filed this current application within the requisite one year filing period. In support of this allegation, Applicant includes a handwritten note from Ms.

Wattlington.

As an initial matter, this Court notes the letter with which Applicant has provided this Court is neither dated nor a sworn statement. Given the absence of a date on this letter, it is impossible for this Court to determine whether or not Applicant did, in fact, learn of this alibi witness after trial. Furthermore, because of this deficiency, it is impossible to ascertain if Applicant did, in fact, file this current application within one year of discovering this alleged newly discovered evidence.

Furthermore, this Court notes it is simply inconceivable Applicant discovered Ms. Wattlington post-trial. Ms. Wattlington provided a statement to law enforcement on April 22, 2000, in which she indicated stolen items were brought into her home. Moreover, Ms. Wattlington was subpoenaed to appear at trial on March 6, 2001, and she failed to do so. Due to her failure to appear, a bench warrant was issued, and Ms. Wattlington was subsequently brought into court to address the trial court. *See* Trial Tr. 96. In addition, at the time of these crimes, Ms. Wattlington and Applicant were dating and living together. Accordingly, this Court finds Applicant was aware of Ms. Wattlington's presence at the time of trial, and he has not since discovered her alleged alibi testimony after trial. This Court further finds any allegation by Applicant Ms. Wattlington was unavailable at the time or unaware of the circumstances surrounding Applicant's trial are conclusively refuted by the record. Accordingly, this Court finds Applicant could have discovered Ms. Wattlington and her alleged alibi testimony with due diligence prior to trial.

Even if Applicant's allegation Ms. Wattlington did not come forward until 2011 were plausible, this Court finds the information provided in her letter does not establish an alibi. Through an alibi, an accused attempts "to show that because he was not at the scene of the

crime at the time of its commission, having been at another place at the time, he could not have committed the crime.” *State v. Robbins*, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am. Jur. 2d Criminal Law s 136)). To do so, the accused must show “he was at a place so distant that his participation in the crime was impossible.” *Id.* Furthermore, the alibi must account for the entire time during which these crimes were committed. *Id.* In her letter, Ms. Wattlington indicates three men arrived at her home on the night of the commission of this burglary, and Applicant left with them. She further indicates she was unaware where Applicant and these men went, but she “guessed” Applicant went to the liquor store. Ms. Wattlington cannot account for Applicant’s whereabouts during this time. Accordingly, this Court finds the information provided does not establish an alibi for Applicant, as Ms. Wattlington cannot account for his whereabouts during the time in which these crimes were committed. Therefore, this Court finds the testimony of Ms. Wattlington would not change the result if a new trial were had.

This Court finds Applicant has failed to make a *prima facie* showing he is entitled to relief based on the information set forth above. Specifically, this Court finds Applicant has wholly failed to establish the information provided by Ms. Wattlington would: (1) change the result if a new trial were had; (2) has been discovered since Applicant’s trial; and (3) could not by the exercise of due diligence be discovered prior to trial. Accordingly, this application must be denied and dismissed with prejudice.

#### ***Subject Matter Jurisdiction***

Applicant alleges the trial court lacked subject matter jurisdiction. An applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. *See Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part*

by *Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” *Gentry*, 363 S.C. at 101, 610 S.E.2d at 499. *See also* S.C. Const. Art. V, § 7. Thus, an applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant was indicted by the Lexington County Grand Jury for first-degree burglary, and the indictment alleges the criminal offenses occurred in Lexington County. Moreover, Applicant was prosecuted for these charges in the Lexington County Court of General Sessions. Accordingly, this Court finds Applicant has failed to present any facts or evidence which would establish the convictions he challenges in this application are of a class over which the circuit court does not have the authority to preside. This allegation must be denied and dismissed with prejudice.

## CONCLUSION

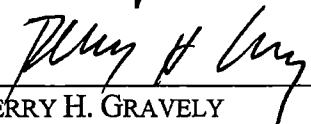
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

### IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 6<sup>th</sup> day of Sept, 2018.

  
\_\_\_\_\_  
PERRY H. GRAVELY  
Presiding Judge  
Eleventh Judicial Circuit

Greenville, South Carolina

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP3202197**

Jeffrey Cromer #197498		State of South Carolina	
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<b>PLAINTIFF(S)</b>	<b>DEFENDANT(S)</b>
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**       Rule 12(b), SCRPC;                       Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);                       Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**       Rule 40(j) SCRPC;       Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;       Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;       Reversed;       Remanded;       Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.  
**Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

	9/17/2018	Date
Circuit Court Judge	Judge Code	

**For Clerk of Court Office Use Only**

This judgment was entered on **September 13th 2018**, and a copy mailed first class or placed in the appropriate attorney's box on **September 17th 2018**, to attorneys of record or to parties (when appearing pro se) as follows:

Kristy Grafton Goldberg 1720 Main Street, Suite 303  
Columbia, SC 29201

Kelly Oppenheimer Rembert C. Dennis Building PO Box  
11549 Columbia, SC 29211

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

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**ATTORNEY(S) FOR THE DEFENDANT(S)**

LISA COMER/jp

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**Court Reporter**

**Lisa M. Comer - Clerk of Court**

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**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.**

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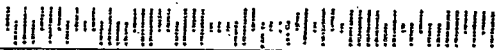
**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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LAW OFFICE OF  
**Kristy Grafton Goldberg, LLC**  
ATTORNEY AT LAW  
1720 MAIN STREET, SUITE 303  
COLUMBIA, SOUTH CAROLINA 29201

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