

January 2, 2019

Hon Paul M. Burch Chief Administrative Judge  
Fourth J. D. Clerk Of Court, Marlboro County  
P. O. Drawer 996, Bennettsville, SC 29512

Johnny E. James Jr.  
SC Attorney General Office  
P. O. Box 11549  
Columbia, SC 29211-1549

**RECEIVED**  
FEB 05 2019  
S.C. SUPREME COURT

Leroy Staton:

Staton V. State  
2018-CP-34-0113

This is notice of appeal, your decision on my writ of habeas corpus petition. That was filed with the Clerk Of Court Marlboro County on 12-18-2017.

cc.

Clerk's Office  
(843) 479-5613  
1-800-603-7179

Fax  
(843) 479-5640

Family Court  
(843) 479-5613  
1-800-603-7179

## Anita M. "Joy" Williams

Clerk of Court, Marlboro County  
Courthouse Square, 105 Main Street  
P.O. Drawer 996  
Bennettsville, S.C. 29512

November 2, 2018

Mr. Staton,

We have received your request and have filed it. The Attorney General's office handles these cases so you would need to contact them to see when you will come to court.

Thanks,

Marlboro Clerk of Court

What you mean about not less instructed by a Court of competent jurisdiction. The Clerk of Marlboro County, say Attorney General Office handle this case. That need contact, for any information about case.



Leroy Staton # 241382  
F-2-B-Part-2226  
990 Wisacky Hwy  
Bishopville, SC 29010

COLUMBIA SC 290  
06 JAN 2019 PM 4 1/4



Barn Swallow


Jonny E. James Jr.  
SC Attorney General Office  
P. O. Box 11549  
Columbia, SC 29211-1549



MENT OF CORRECTIONS HAS NOT CENSORED  
THEREFORE, THE DEPARTMENT DOES NOT  
RESPONSIBILITY FOR ITS WRITTEN CONTENTS  
LEE CORRECTIONAL INSTITUTE  
SC DEPARTMENT OF CORRECTIONS

RE  
JAN 03 2016  
LEE CORRECTIONAL INSTITUTE  
MAIL ROOM



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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE FOURTH JUDICIAL CIRCUIT  
 COUNTY OF MARLBORO )

Leroy Staton, ) Case No.: 2018-CP-34-00113  
 S.C.D.C. No. 241382, )

Petitioner, )

**ORDER OF DISMISSAL**

v. )

State of South Carolina, )

Respondent. )

This matter comes before the Court by way of a petition for writ of habeas corpus filed by Leroy Staton (Petitioner) on December 18, 2017, and received by Respondent May 29, 2018. Respondent made its Return, requesting the application be summarily dismissed.

**I. PROCEDURAL HISTORY**

Petitioner is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. Petitioner was indicted at the December 1996 term of the Marlboro County Grand Jury for kidnapping, murder, criminal sexual conduct in the first degree, and criminal conspiracy (1996-GS-34-00982, Cts. I-IV). Milton M. Moore, Jr., Esq., represented Petitioner, and Ralph J. Wilson, Sr., of the Fifteenth Circuit Solicitor's Office,<sup>1</sup> prosecuted the case. Petitioner proceeded to trial before the Honorable Edward B. Cottingham and a jury. The jury found Petitioner guilty as indicted on March 18, 1997. Judge Cottingham sentenced Petitioner to imprisonment for concurrent terms of life for murder, 5 years for conspiracy, and a consecutive term of 30 years for the CSC. Petitioner was not sentenced for the kidnapping pursuant to S.C. Code Ann. § 16-3-910.

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<sup>1</sup> Wilson, Solicitor for the Fifteenth Circuit at the time of trial, was appointed to try the case by then-Attorney General Charlie Condon.

*PMB*

Petitioner filed a timely notice of appeal and a direct appeal was perfected by Joseph Savitz, III, Esq., who raised the following issues:

1. The judge erred by refusing to direct a verdict acquitting appellant of kidnapping, criminal sexual conduct and murder.
2. The judge erred by refusing to sever appellant's trial from his codefendants'.

The parties proceeded to oral arguments on September 5, 2001. Attorney Savitz represented Petitioner and S. Creighton Waters, Esq., of the South Carolina Attorney General's Office, represented the State. By opinion decided November 8, 2001, the South Carolina Court of Appeals affirmed Petitioner's convictions by unpublished opinion. State v. Staton, Op. No. 2001-UP-478 (S.C. Ct. App. filed Nov. 8, 2001). Petitioner thereafter filed a *pro se* petition for writ of certiorari in the Supreme Court of South Carolina on dated February 4, 2002. Respondent filed its return on April 2, 2002. The Supreme Court denied the petition by letter order dated November 21, 2002. The Remittitur was issued on November 25, 2002.

**First Federal Habeas Petition: 2:01-2487-23AJ**

Petitioner subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on June 11, 2001 (C.A. No. 2:01-2487-23AJ). In his Petition, Petitioner set forth the following grounds for relief:

1. The Petitioner is actually innocent but is being denied a fair direct appeal of his innocence due to Excessive and Unjustified delay by the South Carolina Court of Appeals.
2. The trial court lacked subject matter jurisdiction to try and convict Petitioner for the charges for which he was sentenced. The petitioner was arrested without probable Cause or Warrants and detained for four (4) months on the charges

Respondent filed its Return and Motion for Summary Judgment on July 12, 2001. The Petitioner's direct appeal was still pending before the South Carolina Court of Appeals. The Honorable Robert S. Carr, United States Magistrate Judge, issued on August 24, 2001, a Report

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CHARLES COUNTY, S.C.

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and Recommendation that Respondent's motion for summary judgment be granted. The Honorable Patrick Michael Duffy, United States District Judge, denied Petitioner's Petition on March 25, 2002, and accepted the Report and Recommendation for summary judgment.

**First PCR Application: 2003-CP-34-00392**

Petitioner filed his first application for post-conviction relief on November 19, 2003, thereafter amended July 3, 2006 (2003-CP-34-00392). He alleged the following grounds for relief in his application, as amended:

1. Ineffective assistance of trial counsel, in that:
  - a. Counsel failed to argue existence of co-defendant's confession to the jury;
  - b. Counsel failed to object to "golden rule" argument made by the State in closing argument; and
  - c. Counsel failed to object to the State's implication in closing argument that the Applicant was guilty because the State's witnesses were guilty.

Respondent made its return on October 5, 2004, thereafter amended on April 25, 2005, and an evidentiary hearing into the matter was convened on July 12, 2006, before the Honorable Paul M. Burch. Petitioner was present at the hearing and represented by W. Keith Powell, Esq. Karen C. Ratigan, Esq., of the South Carolina Attorney General's Office, represented Respondent. Petitioner testified on his own behalf, and Milton M. Moore, Jr., Esq., also testified. By written order dated July 28, 2006, Judge Burch denied and dismissed the application.

Petitioner filed a timely notice of appeal and a petition for writ of certiorari was filed by Eleanor Duffy Cleary, Esq. on Petitioner's behalf, who raised the following issue(s):

Whether trial counsel was ineffective for failing to object to the solicitor's improper "Golden Rule" closing argument, which asked jurors to put themselves in the victim's place, and there is a reasonable probability that counsel's deficiency affected the outcome of petitioner's trial?

Respondent filed its Return on December 11, 2007. On May 8, 2008, the Supreme Court of South Carolina granted the petition and directed further briefing. Staton v. State, S.C. Sup. Ct.

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MARLBOROUGH COUNTY, S.C.

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filed May 8, 2008. After briefing, the Supreme Court dismissed certiorari as improvidently granted. Staton v. State, Op. No. 2009-MO-014 (S.C. Sup. Ct. filed Mar. 23, 2009). The Remittitur was issued on April 8, 2009.

### First State Habeas Petition

Petitioner filed his first petition for habeas corpus in the original jurisdiction of the Supreme Court of South Carolina on March 22, 2010. In his Petition, Petitioner set forth the following grounds for relief:

1. "Did the State have probable cause to arrest the Petitioner in this case, did the State have probable cause to try the Petitioner in this case, can the State prove beyond a reasonable doubt that Police tried to obtain a legal arrest warrant?"
2. "Was Danny Davis's testimony true, was his testimony inadmissible hearsay, did the State coerce him into testifying to keep from getting a long prison term, did he know anything about this case, did the State elicit false testimony in violation of the Fifth, Sixth, and Fourteenth Amendments?"
3. "Was Jeffrey Graham coerced and intimidated into making a statement, was this inadmissible hearsay, was anything that Graham testified to true?"
4. "Can the state prove beyond a reasonable doubt that the victim had been raped, was this used as prejudicial evidence to help obtain a conviction, did the lack of DNA evidence prove that she was not raped, did this make DNA a real issue?"
5. "Was the Sheriff's testimony inadmissible hearsay, were the notes written by the Sheriff, can he testify to someone else's notes, did the state hide anything by not producing these notes, was this a Brady violation, was this a confrontation issue?"
6. "Did the Prosecutor destroy the character and honor of the Petitioner and infect this whole trial with prejudice and bias against the Petitioner by accusing him of being a Devil, a Sinner, and or just Mean, the Prosecutor accused the Petitioner of being all of these because he was a faithful at going to church, was this a due process violation?"
7. "Did the Prosecutor vouch for the states witnesses in violation of the due process violating the Fifth, Sixth and Fourteenth Amendments?"
8. "Did the Prosecutor's closing argument inflame the jury's passion, did he say this to obtain a conviction in violation of due process?"
9. "Did the court have subject matter jurisdiction, was the indictment rubber stamped, was this a violation of due process?"

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CLERK OF COURT  
MARLBOROUGH COUNTY, S.C.

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10. "Was Bobby Ranson's testimony true, was it believable, was he compelled by the Prosecutor threatening him with the death penalty, was the death penalty shocking to the universal conscience since Bobby is paralyzed from the neck down?"
11. "When did the "pig party" actually happen, did the state use leading questions to convince the jury into believing that the party happened in November, was this variance of indictment since the party actually happened in September?"
12. "No one actually saw the victim being murdered, raped, and or kidnapped, the arresting officers, Knight and Jacobs wrote all of the statements that the co-defendants testified to, they should have been called to testify, they are the main accusers in this case?"
13. "Did the Prosecutor use more perjury by Gracie and Robert Graham, did the Prosecution made him a deal to give this testimony, was it inadmissible hearsay, was this unconstitutional presumptions, did the police tell the Grahams the dates?"
14. "Did the State violate due Process by not having a public trial, so the judge and prosecutor could abuse judicial power?"
15. "Pearson confessed to Officer Jerry Starnes on December 1<sup>st</sup>, 1994, Starnes also accused the Petitioner of these crimes, he was not called to testify, was this a Brady violation and a confrontation issue, and prosecutor misconduct for not calling Starnes?"
16. "Ringo Pearson confessed to this crime on December 1<sup>st</sup>, 1994, why were the police intimidating people into making statements, was this a cover-up, did this confession under mines the states whole theory of the case and prove beyond a reasonable doubt that Petitioner was innocent, was this a due process violation?"
17. "Did the Prosecutor violate due process by leading the South Carolina Supreme Court into believing that an arrest warrant had bene issue by using the wrong documents in Petitioner's transcripts?"
18. "Did Officer Starnes set the petitioner up for these charges to cover-up that fact that he is molesting young children?"
19. "Did the Prosecutor elicit false testimony from the witnesses, by citing the date of the kidnapping, was this a violation of due process by leading the witnesses?"
20. "Has the state tried to cover-up anything in this case, is this a Brady violation?"
21. "Was this whole case a Brutton violation, did the state use Ringo Pearson confession to help convict any and all co-defendants, is this a severance issue and a Brady violation?"
22. "Did the Prosecutor violate due process by using Jerry Ward's testimony, was perjury and was it also inadmissible hearsay?"
23. "Did the local prosecutor have a conflict of interest because of Pearson confession, was a special prosecutor brought in from Horry County to violate due process?"

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CLERK OF COURTS  
HARRIS COUNTY TEXAS

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By order issued April 21, 2010, the Supreme Court of South Carolina denied the petition, finding Petitioner failed to show "there has been a violation which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice." Staton v. State, S.C. Sup. Ct. Order filed April 21, 2010 (quoting Butler v. State, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990)).

**Second Federal Habeas Petition: 8:11-745-TMC-JDA**

Petitioner subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on March 24, 2011 (C.A. No. 8:11-745-TMC-JDA). In his Petition, Petitioner set forth the following grounds for relief:

1. "The State has covered up evidence of my actual innocence, Ringo Pearson's confession, that he alone kidnapped and murdered Patterson."
2. "The police arrested me without an arrest warrant, they had plenty of time to obtain an arrest warrant, but had no probable cause."
3. "Has the State tried to cover up anything in this case, was this structural error in a trial?"
4. "Did the prosecutor elicit false testimony from Danny Davis, did he know anything about this case, was he coerced into testifying?"
5. "Was Jeffrey Graham coerced and intimidated into making a statement, was this inadmissible hearsay, was anything that Graham testified to true?"
6. "Can the State prove beyond a reasonable doubt that the victim had been raped, was this used as prejudicial evidence to help obtain a conviction, did the lack of DNA evidence prove that she was not raped, did this make DNA a real issue?"
7. "Was the Sheriff's testimony inadmissible hearsay, were the notes written by the Sheriff, can he testify to someone else's notes, did the state hide anything by not producing these notes, was this a Brady violation, was this a confrontation issue?"
8. "Did the Prosecutor destroy the character and honor of the Petitioner and in fact the entire trial with bias and prejudice against the Petitioner by accusing him of being a devil, a sinner, or just mean, the prosecutor accused the Petitioner of being all these because he was faithful at going to church, was this a due process violation?"
9. "Did the prosecutor vouch for the State's witnesses in violation of due process, violating my Fifth, Sixth, and the Fourteenth Amendments?"
10. "Did the prosecutor's closing argument inflame the jury's passion, did he say this to obtain a conviction in violation of due process?"
11. "Did the Court have subject matter jurisdiction, was the indictment rubber stamped, was this a violation of due process?"

AMITA M. WILLIAMS  
CLERK OF COURT  
MARLBOROUGH COUNTY, S.C.

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12. "Was Bobby Ranson's testimony true, was it believable, was he coerced by the Prosecutor threatening him with the death penalty, was the death penalty shocking to the universal conscience since Bobby was paralyzed from the neck down?"
13. "When did the "pig party" really happen? Did the State use leading questions to convinced the jury into believing that the pig party happened in November, was this a variance of indictment since the pig party happened in September?"
14. "No one actually saw the victim being murdered, raped, and or kidnapped, the arresting officers, Knight and Jacobs, wrote all of the statements that the co-defendants testified to, they should have been called to testify, they are the main accusers in this case."
15. "Did the Prosecutor use perjury by Gracie and Robert Graham, did the Prosecutor make a deal to give this testimony, was it inadmissible hearsay, was this an unconstitutional presumption, did the police tell the Grahams the dates?"
16. "Did the state violate due process by not having a public trial, so the judge and prosecutor could abuse judicial power?"
17. "Ringo Pearson confessed to Officer Jerry Starnes on December 1, 1994, Starnes also accused the Petitioner of these crimes, Starnes was not called to testify, this was a violation of due process, a confrontation issue, and prosecutor misconduct for not calling Starnes to testify."
18. "Did the Prosecutor violate due process by leading the South Carolina Supreme Court into believing that an arrest warrant had been issued by using the wrong indictment in Petitioner's transcripts?"
19. "Did Officer Starnes set the Petitioner up to these charges to cover-up the fact that he was molesting young children?"
20. "Did the Prosecutor elicit false testimony from the witnesses by citing the date of the kidnapping, was this a violation of due process by leading the witness?"
21. "Was this whole case a due process violation, did the state use Ringo Pearson's confession to help convict any and all co-defendants, is this a severance issue and a discovery issue violation?"
22. "Did the prosecutor violate due process by using Jerry Ward's testimony, was it perjury and was it also inadmissible hearsay?"
23. "Did the local prosecutor have a conflict of interest because of Pearson's confession, was a special prosecutor brought in from Horry County to violate due process?"
24. "Did the South Carolina Supreme Court dismissed my State Habeas Corpus in an unconstitutional manner?"

Respondent filed its Return and Motion for Summary Judgment on June 3, 2011. The Honorable Jacquelyn D. Austin, United States Magistrate Judge, issued on November 18, 2011 Report

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 HARRISBORO COUNTY, S.C.

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and Recommendation that Respondent's motion for summary judgment be granted. The Honorable Timothy M. Cain, United States District Judge, denied Petitioner's Petition on January 6, 2012, and accepted the Report and Recommendation for summary judgment. Staton v. Warden Kershaw Corr. Inst., 8:11-745-TMC-JDA, 2012 WL 33214 (D.S.C. 2012). Petitioner gave notice of his appeal to the Fourth Circuit Court of Appeals, which dismissed Petitioner's appeal on June 6, 2012, for want of a certificate of appealability. Staton v. Warden Kershaw Corr. Inst., 474 Fed.Appx. 129 (4th Cir. 2012). Petitioner thereafter petitioned for a writ of certiorari in the Supreme Court of the United States, which denied the petition on November 5, 2012. Staton v. Reynolds, 568 U.S. 1002 (2012). The Supreme Court denied Petitioner's request for rehearing on January 7, 2013. Staton v. Reynolds, 568 U.S. 1118 (2013).

## II. CURRENT APPLICATION

In his petition for writ of habeas corpus, Petitioner alleges he is being held unlawfully for the following reasons:

1. Actual innocence, in that:
  - a. "THERE WAS NO RAPE"
  - b. See lines 1-10 of the Petition, the quoted portion at line 6.
2. "The State's witnesses were not competent to testify," in that:
  - a. Co-defendant Danny "Davis testified that he suffered brain damage from a traumatic head injury . . . . His alcohol use caused him to forget events and confuse things."
  - b. See lines 11-12 of the Petition
3. Ineffective assistance of trial, appellate, and PCR counsels, in that:
  - a. "Counsel at all levels failed to notice or litigate the impossibility of the sexual assault charge and the extensive implications instead litigating frivolous issues."
  - b. See line 13 of the Petition.

Before this Court are the Marlboro County Clerk of Court records regarding the subject convictions, Petitioner's records from the South Carolina Department of Corrections, the

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MARLBORO COUNTY, S.C.

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opinions of the Court from each of Petitioner's prior appeals, the final order of Petitioner's previous PCR and habeas actions, and the records of this current habeas petition.

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

Petitioner has filed a petition for writ of habeas corpus in the Court of Common Pleas. However, the Court finds a state habeas petition raising matters which could have been raised in an application for post-conviction relief may only be filed in the original jurisdiction of the South Carolina Supreme Court. See Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1988). A habeas corpus petition must support the requested relief. Gibson v. State, 329 S.C. 37, 40, 495 S.E.2d 426, 427 (1998); Hunter v. State, 316 S.C. 105, 107 n.1, 447 S.E.2d 203, 204 n.1 (1994). Although the allegations in the petition are to be treated as true, Petitioner must make out a *prima facie* case showing he is entitled to relief and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Gibson, 316 S.C. at 40, 495 S.E.2d at 427-28.

To warrant a hearing, the petition must include the two allegations described below. First, the petition must allege the Petitioner has exhausted all available post-conviction relief remedies. Gibson, 316 S.C. at 42, 495 S.E.2d at 428; Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994); Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). Exhaustion includes filing an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review. Gibson, 316 S.C. at 42, 495 S.E.2d at 428. Second, the petition must allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate. Id. PCR is not rendered "unavailable or inadequate" merely because the petition might be dismissed as successive or untimely.

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In fact, any matter that is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts of this State. Simpson, 329 S.C. at 46, 495 S.E.2d at 431 (citing Gibson). The Uniform Post Conviction Procedure Act is broadly inclusive and will rarely be inadequate or unavailable to test the legality of detention. Gibson, 316 S.C. at 41, 495 S.E.2d at 428. A petitioner may even allege constitutional violations in PCR proceedings, unless the issue could have been raised by direct appeal. Id.

Petitioner could have raised his present allegations in a prior PCR application. As such, the state habeas petition can only be filed in the original jurisdiction of the South Carolina Supreme Court.<sup>2</sup> Accordingly, the Court shall summarily dismiss the petition for writ of habeas corpus.

*[Conclusion and signature on following page]*

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MARLBORO COUNTY, S.C.

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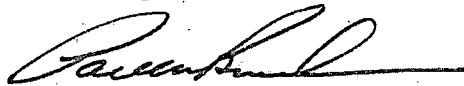
<sup>2</sup> Any further applications under the Uniform Post-Conviction Procedure Act would be barred as untimely and successive.

IV. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Petitioner has not established any constitutional violations or deprivations that could not be heard in an application for post-conviction relief. Therefore, this petition for writ of habeas corpus must be denied and dismissed.

This Court notifies the Petitioner that he must file and serve a notice of appeal within thirty (30) days from the receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

AND IT IS SO ORDERED this 27<sup>th</sup> day of August, 2018.



PAUL M. BURCH  
Chief Administrative Judge  
Fourth Judicial Circuit

Chesterfield, South Carolina

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CLERK OF COURT  
MARLBORO COUNTY, S.C.  
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STATE OF SOUTH CAROLINA )

COUNTY OF MARLBORO )

Leroy Staton, #241382 )

Plaintiff )

v. )

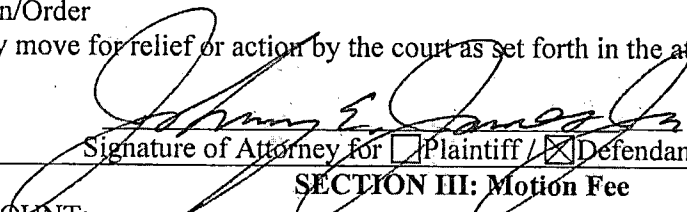
State Of South Carolina )

Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.  
2018-CP-34-0113

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney: Leroy Staton, #241382, Bar No. Address: Lee CI 990 Wisacky Hwy Bishopville, SC 29010 phone: fax: e-mail: other:	Defendant's Attorney: Johnny E. James Jr, Bar No. 101260 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	August 23, 2018 Date submitted
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRC <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE _____ CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	Date Filed: _____

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 MARLBORO COUNTY, S.C.

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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF MARLBORO ) FOR THE FOURTH JUDICIAL CIRCUIT  
) )  
Leroy Staton, ) Case No.: 2018-CP-34-00113  
S.C.D.C. No. 241382, ) )  
) )  
Applicant, ) )  
) ) **MOTION TO STRIKE**  
v. ) )  
) )  
State of South Carolina, ) )  
) )  
Respondent. ) )  
\_\_\_\_\_ ) )

In response to the “Answer and Objections to Proposed Order with Counter Motion by Petitioner” filed with respect to Leroy Staton (Applicant) on September 7, 2018, Respondent would show this Court:

**I.**

Applicant’s filing is one in a recent string of filings which appear to be submitted on behalf of incarcerated persons by an individual by the name of Mark Marvin, of Walden, New York. The Supreme Court of South Carolina indicates there is no person by the name of “Mark Marvin” admitted to practice law in the State of South Carolina. (Attachment 1 - Letter from S.C. Sup. Ct. dated October 24, 2018). The New York State Office of Court Administration, Attorney Registration indicates no licensed attorney there named “Mark Marvin.” (Attachment 2 – E-mail exchange with NYS – OCA dated October 24, 2018). A search of New York caselaw appears to indicate Marvin is unlikely to be licensed as an attorney in any jurisdiction, due to a conviction for the possession of bombs and bomb-making equipment, as well as other legal difficulties of concerning character. See People v. Marvin, 666 N.Y.S.2d 510 (N.Y. App. Div.

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CLERK OF COURT  
MARLBORO COUNTY, S.C.

1997); Orange County Dept. of Social Services v. Marvin, 910 N.Y.S.2d 365 (2010) (unpaid child support); Zieran v. Marvin, 770 N.Y.S.2d 408 (N.Y. App. Div. 2003) (restraining order).

A search of caselaw nationwide indicates Marvin's activity is not geographically restricted. See, e.g. Commonwealth v. Gessner, 2016 WL 4710209 (Pa. Super. Ct. 2016). A cursory search of recent news reports affirms Marvin is not a lawyer, and indicates a trend of frivolous filings in other states. See Ed Palattella, Court petition seeks Diehl-Armstrong's remains, The Erie Times-News, May 1, 2018, <http://www.goerie.com/news/20170822/court-petition-seeks-diehl-armstrongs-remains>. (Attachment 3 – Erie Times-News Article).

Marvin has not entered any notice of appearance on behalf of Applicant. The petition lacks any indicia of Applicant's consent to this filing, such as a signature. "Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose address and telephone number shall be stated." Rule 11(a), SCRPC. "A party who is not represented by an attorney shall sign his pleading, motion or other paper and state his address." Id. "If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." Id.

Because Applicant is not represented by an attorney, and because the petition lacks Applicant's signature, Respondent moves the filing of September 7, 2018, be stricken and the matter dismissed pursuant to Rule 11(a), SCRPC, and Rule 12(f), SCRPC.

## II.

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

ANITA M. WILLIAMS  
CLERK OF COURT  
MARLBOROUGH COUNTY, S.C.

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III.

WHEREFORE, Respondent moves to strike the filing by Mark Marvin of September 7, 2018.

Respectfully submitted,

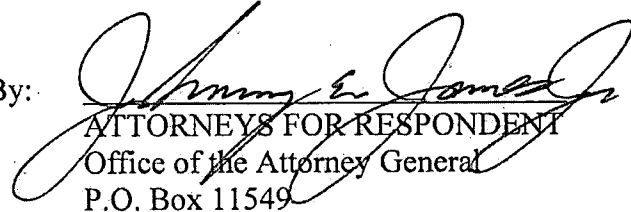
ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.  
Assistant Attorney General

By:



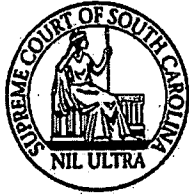
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

*25 Oct.*, 2018

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MARLBORO COUNTY, S.C.

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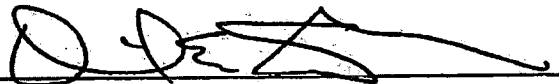
# The Supreme Court of South Carolina

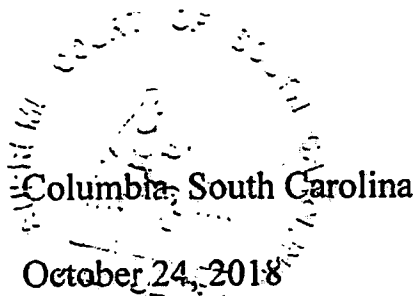
DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211  
TELEPHONE: (803) 734-1080  
FAX: (803) 734-1499

I, Daniel E. Shearouse, Clerk of the Supreme Court of South Carolina, hereby certify that a diligent search of the records of this Court fails to reveal that any person by the name of Mark Marvin is admitted to practice law in the State of South Carolina.

  
Clerk

  
Columbia, South Carolina  
October 24, 2018

ANITA M. WILLIAMS  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

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**Mallory Morris**

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**From:** ATTYREG <attyreg@nycourts.gov>  
**Sent:** Wednesday, October 24, 2018 2:04 PM  
**To:** Johnny James  
**Cc:** Fourthcircuitpcr  
**Subject:** RE: Mark Marvin of Walden, NY

Hello,

A review of our files indicates no record of an individual listed as admitted as an attorney to the New York bar since 1920 with the name of "MARK MARVIN".

Please be advised that attorneys listed in our database are listed by the name that corresponds to their name in the Appellate Division Admissions roll. There are attorneys who may currently use a name that differs from the name under which they were admitted. If you need additional information, or written confirmation that an individual is not admitted as an attorney to the New York bar, please contact the NYS Office of Court Administration at:

NYS - OCA  
Attorney registration Unit  
25 Beaver Street  
Room 840  
New York, NY 10004

We always advise that you contact the Attorney General's office if someone that is not licensed is claiming to be an attorney. They can be reached at 1-800-771-7755.

Regards,  
NYS Attorney Registration  
25 Beaver St, Rm: 840  
New York, NY 10004  
(212) 428-2800

**From:** Johnny James <JJJames@scag.gov>  
**Sent:** Wednesday, October 24, 2018 10:41 AM  
**To:** ATTYREG <attyreg@nycourts.gov>

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Cc: Fourthcircuitpcr <Fourthcircuitpcr@scag.gov>

Subject: Re: Mark Marvin of Walden, NY

To Whom it May Concern,

This office is in receipt of numerous recent habeas/post-conviction relief filings by the below individual who, upon cursory investigation, appears to not be a licensed attorney in either South Carolina or New York, his State of residence:

Mark Marvin  
135 Mills Road  
Walden, N.Y. 12586

I must respectfully request confirmation as to this individuals attorney status/non-status. If you are immediately aware of any other orders or injunctions against this individual relating to the unlicensed practice of law, please let me know.

Respectfully,

Johnny Ellis James Jr.  
Assistant Attorney General  
Post-Conviction Relief, 4<sup>th</sup> & 15<sup>th</sup> Judicial Circuits  
Office of the Attorney General  
State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
803.734.3737

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## Court petition seeks Diehl-Armstrong's remains

By Ed Palattella

Posted May 1, 2018 at 12:01 AM

Confirmation also requested in death of Erie killer, convicted in pizza bomber case.

Marjorie Diehl-Armstrong's appeals are continuing from the grave.

The main defendant in the pizza bomber case died in federal prison in Texas on April 4. But a dispute over her remains is generating activity in her case in U.S. District Court in Erie, where she was convicted in 2010 and sentenced to life plus 30 years in 2011.

A southern New York man who contends he was Diehl-Armstrong's common-law husband has petitioned a federal judge to order the U.S. Bureau of Prisons to confirm that Diehl-Armstrong died and to release her remains to him.

The petitioner, Mark Marvin, of Walden, New York, also wants the judge to "abate" the charges against Diehl-Armstrong, which Marvin said would declare her innocent after her death. Diehl-Armstrong, 68, lost all her appeals when she was alive.

Marvin's requests, included in a petition docketed on Thursday, are unusual, just as the pizza bomber case was unusual.

"I am just pursuing her interests," Marvin, 68, said in an interview. "She insisted she is not guilty."

Marvin is not a lawyer. He said he met Diehl-Armstrong when he was corresponding with her fellow inmates and helping them with legal work while Diehl-Armstrong was at the State Correctional Institution at Muncy, Williamsport, Pennsylvania. He said he and Diehl-Armstrong became friends, and he filed legal paperwork for her.

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Perhaps Marvin's most unorthodox claim in the new filing is that he "cannot confirm that his wife is dead," according to his petition.

Marvin acknowledged that the Erie Times-News in April received official confirmation of Diehl-Armstrong's death. The confirmations came from spokeswomen with the U.S. Attorney's Office for the Western District of Pennsylvania and the Federal Medical Center Carswell in Fort Worth, Texas, where Diehl-Armstrong was last incarcerated.

Marvin said he still has questions. He said the Bureau of Prisons has refused to cooperate with him, despite his claim that he and Diehl-Armstrong were married.

"I do go through the process of the Elvis thing," Marvin said, referring to rumors that Elvis Presley is still alive. "It is a natural grieving thing — denial.

"It is certainly reasonable to believe she died," Marvin said. "But I don't have any confirmation of that."

He said he has no idea where Diehl-Armstrong is buried. Marvin wrote in the petition that he fears authorities "may have dumped his wife's remains in an unmarked grave in a landfill."

Diehl-Armstrong's final resting place remains a mystery. The Bureau of Prisons declined upon her death to provide information about her remains to the Erie Times-News, which then filed a request for details under the Freedom of Information Act. The request is pending.

Diehl-Armstrong is believed to have died of cancer, though the FOIA request also seeks the official cause of death. Marvin in his petition wrote that she died while in hospice care.

A spokeswoman for the Federal Medical Center Carswell did not immediately respond to a request for comment on Marvin's petition. The government will get a chance to respond in filings before U.S. District Judge David S. Cooney, who is assigned the case.

Marvin wrote that he wants to inter Diehl-Armstrong's remains at a Quaker cemetery he said he administers in a town near Walden, which is southwest of

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▷ Poughkeepsie. A burial there would add another twist to the pizza bomber case.

Quaker institutions generally hold pacifist positions. Diehl-Armstrong's life was filled with violence.

In the pizza bomber case, she was convicted of conspiring in the plot that ended with the death of pizza deliveryman Brian Wells, killed when a bomb locked to his neck exploded after he robbed a bank in Summit Township in 2003.

Diehl-Armstrong, who suffered from bipolar disorder, pleaded guilty but mentally ill to fatally shooting her boyfriend, James Roden, in 2003. And she argued self-defense and was acquitted in the fatal shooting of her boyfriend, Robert Thomas, in 1984.

"A coldly calculated criminal recidivist and serial killer" is how a federal magistrate judge once described Diehl-Armstrong.

Marvin has a different view.

"I miss her very much," he said of Diehl-Armstrong, whom he said he met in person in prison. "Just our relationship. She was just really easy to talk to. She appreciated me. We had a really good partnership."

*Ed Palattella can be reached at 870-1813 or by email. Follow him on Twitter at [twitter.com/ETNpalattella](https://twitter.com/ETNpalattella).*

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