

STATE OF SOUTH CAROLINA

In The Supreme Court

-----  
APPEAL FROM CHARLESTON COUNTY

COURT OF COMMON PLEAS

R. Markley Dennis Jr., Circuit Court Judge

-----  
Case No. 2017-CP-1194  
-----

**RECEIVED**  
MAR 07 2018  
S.C. SUPREME COURT

Rev. Willie Johnson, #1270b9 ..... Petitioner

v.

State of South Carolina ..... Respondent

-----  
A P P E N D E X  
-----

Rev. Willie Johnson, #1270b9  
Kirkland Correctional Institution  
4344 Broad River Road  
Columbia, South Carolina 29210

PRO SE APPLICANT

Rasheeda Cleveland,  
Assistant Attorney General  
P.O. Box 11549  
Columbia, South Carolina 29211

(803) 73-3970

ATTORNEY FOR RESPONDENT

I N D E X

|  |    |
|--|----|
| Application for Post-Conviction Relief .....   | 1  |
| Memorandum of Law In Support of Post-Conviction Relief.  | 2  |
| Summons .....  | 3  |
| Motion for a Default Judgment .....  | 4  |
| Order To Transfer Venue .....  | 5  |
| Return and Motion to Dismiss .....   | 6  |
| Conditional Order of Dismissal .....   | 7  |
| Applicant Objection to Respondent Conditional Order of<br>Dismissal .....                                | 8  |
| Original Final Order Dismissal [unsigned] .....  | 9  |
| Cover Letter Dated July 8, 2017 .....  | 10 |
| Modify Final Order of Dismissal .....  | 11 |
| Order on Recusal .....   | 12 |
| Notice of Appeal .....   | 13 |
| Unsigned Court Order .....   | 14 |
| SCDC Request to Staff Members .....  | 15 |
| Memorandum from Dennis R. Patterson Sr., Director<br>Division of Classification and Inmate Records ..... | 16 |
| Letter to Clerk of Court .....   | 17 |
| Inmate Correspondence to form Director Williams E. Byars.  | 18 |
| Inmate Correspondence to SCDC General Counsel .....  | 19 |
| Order by Honorable Deadra L. Jefferson Dated January 9,<br>2009 .....                                    | 20 |
| Order by Deadra L. Jefferson Dated March 6, 2009 .....   | 21 |
| Letter by Legislative Service Agency, Dated February 23,<br>2015 .....                                   | 22 |
| Order by Honorable R. Markley Dennis Jr., Dated May 21,<br>2015 .....                                    | 23 |
| SCDC Policy OP-21.04 .....   | 24 |
| SCDC Policy OP-21.09 .....   | 25 |
| The Story of Rev. Willie Johnson Incarceration of Travesty<br>of Justice .....                           | 26 |
| Motion for Reconsideration to Judge Jefferson .....  | 27 |
| Charleston County, Clerk of Court .....  | 28 |
| Petition for Writ of Mandamus and Complain .....   | 29 |

01

STATE OF SOUTH CAROLINA

County of RICHLAND

2017 MAR -7 PM 2:54

In the Court of Common Pleas

2017-CP-10-1194

JEANETTE W. JACOBSON  
CLERK OF COURT

2016 MAR -8 PM 12:21  
RICHLAND COUNTY  
FILED  
JEANETTE W. JACOBSON  
CLERK OF COURT

Rev. Willie Johnson, #127069

Full name and prison number (if any) of Applicant,

vs.

Bryan Stirling, Director of

Name of Respondent.

S.C. Department of Corrections

APPLICATION FOR  
POST-CONVICTION RELIEF  
and  
Memorandum of Law in Support of PCR Application  
and Motion to Expand Record

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Allendale C.I.  
P.O. Box 1151- Fairfax, SC 29627
2. Name and location of Court which imposed sentence Confined in SCDC under a unsigned court order and illegally detained by SCDC.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - (a) 85-GS10-0159- The trial court failed to signed the Court Order to validate the conviction and sentence.
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
4. The date upon which sentence was imposed and the terms of the sentence:
  - (a) April 18, 1985
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

01

SCANNED

5. Check whether a finding of guilt was made

- (a) after a plea of guilty Yes
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere Yes

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

Yes

7. If you answered "yes" to (6), list.

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

- i. State of South Carolina Supreme Court
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. Rule 23
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(c) the date of each such result:

- i. December 8, 1996
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. Rule 23
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) N A
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) See the attach Memorandum that support the PCR Application.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) See the same attachment!
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

11. Prior to this application have you filed with respect to this conviction
- (a) any petition in a State Court under South Carolina Law? \_\_\_\_\_ **NO** \_\_\_\_\_
  - (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? \_\_\_\_\_ **NO** \_\_\_\_\_
  - (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? \_\_\_\_\_ **NO** \_\_\_\_\_
  - (d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_ **NO** \_\_\_\_\_

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
  - i. \_\_\_\_\_ **N A** \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_ **N A** \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (c) the disposition thereof:
  - i. \_\_\_\_\_ **N A** \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (d) the date of each such disposition:
  - i. \_\_\_\_\_ **N A** \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
  - i. \_\_\_\_\_ **N A** \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?  
**The Court turn a deaf ear on the unsigned court order.**

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

(a) which grounds have been presented:  
The Courts failed adjudicated the unsigned court order.

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

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

- i. N A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) The Applicant discovered in 2004 that the Court Order was not signed.
- (b) The Courts kept turning a deaf ear to the unsigned court order.
- (c) The Respondent failed to abide by their Policy on unsigned court order.

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? The Respondent refuse to obey their own rules.

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Mark L. Archer, Esq. and Daniel A. Beck, Esq.  
Charleston County Bar.
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. My Attorney represented me at trial.
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

18. State clearly the relief you seek in filing this application.

The Applicant, respectfully request to be release from SCDC Custody, and compensated for being illegally detained in SCDC on unsigned court order.

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

No

STATE OF SOUTH CAROLINA

VERIFICATION

County of RICHLAND

I, Rev. Willie Johnson, #127069, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature]

SWORN to and subscribed before me this 26th

day of February, 192016

[Signature] (L.S.)  
Notary Public

My Commission Expires: February 17, 2021

RICHLAND COUNTY  
FILED  
2016 MAR - 8 PM 2:21  
JEANNETTE W. BRIDGES  
C.C.P. & I.S.

**APPLICATION TO PROCEED WITHOUT PREPAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, Rev. Willie Johnson, #127069, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

[Signature]  
Applicant

SWORN or affirmed to and subscribed before me this

26th day of February, 192016

[Signature]  
Notary Public

My Commission Expires February 17, 2021

02

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

, IN THE COURT OF COMMON PLEAS  
, FIFTH JUDICIAL CIRCUIT

2017-CP-10-1194

2016 MAR -9 AM 11:59  
JEANETTE M. HIGBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

Willie Johnson, #127069  
Applicant,  
  
vs.  
  
Bryan Stirling, Director,  
S.C. Department of Corrections,  
Respondent.

MEMORANDUM OF LAW IN SUPPORT OF POST-CONVICTION  
RELIEF APPLICATION AND MOTION TO EXPAND RECORD

FILED  
MAR -7 PM 2:54  
CLERK OF COURT

This matter comes before the Court by way of a Post-Conviction Relief (PCR) Application filed on February 24, 2016. Respondent has jurisdiction over this subject matter, pursuant to S.C. Code Ann. § 17-2730 (a)(1), (5), (6), and 17-27-30.

PROCEDURAL HISTORY

For purpose for this PCR Application, Applicant has been illegally detained by Respondent for [31] years in the South Carolina Department of Corrections on a unsigned Court Order.

ALLEGATIONS

In this Application, Applicant argues that he is being held in Custody unlawfully for the following reasons:

GROUND A. The Applicant illegally detained in South Carolina Department of Corrections under a unsigned Court Order.

SUPPORTING FACTS: The Applicant contends that the Respondent has him held in South Carolina Department of Corrections, under a unsigned Court Order. As set fort, the trial judge failed to actually sign the Court Order to the South Carolina Department-

02

of Corrections ("SCDC"). This is a case where the Director Stirling "personally had a job to do, and he did not do it," and failure to do his job was "so likely to result in the violation of the Applications' constitutional rights" as to establish deliberate indifference on Director Stirling part. Hill v. Marshall, 962 F.2d 1209,1213-14 (6th Cir. 1972). Deliberate indifference by Respondent to Applicant constitutional rights is sufficient to establish liability under In Re Smith, 559 S.E.2d 584 (S.C.2002).

Here, Director Stirling, promulgated a Policy that set forth a procedure on entries in SCDC, pursuant to OP-21.04, "Inmate Classification Plan," Oct. 21,2013:

- ° Each inmate's commitment papers will be reviewed by the receiving person and delivered to the appropriate R&E Records person for processing. The R&E Record Staff will review the commitment papers to ensure that the inmate has a valid South Carolina sentence. Inmates who do not have valid commitment papers or a valid South Carolina sentence will not be accepted by the SCDC.

Specifically, the Respondent promulgated another Policy that set forth the Court Order [must] be signed by the trial judge, pursuant to OP-21.09, "inmate Record Plan,":

- ° 6.3.1. Review each commitment order for offense dates, sentences, signatures, indictment and warrant numbers, and any special condition indicated by the Court. In addition, a check for a previous SCDC number(s) will be complete. If a previous SCDC number(s) is identified, the old and new inmate records will be combined.

Moreover, the Respondent has no jurisdiction over the Applicant and he is being illegally detained. As a result, the Court Order, dated April 22,1985, bore only a tyewritten name of the trial judge. As the Supreme Court explained in State v. Covert, 368 S.C. 188 (App.2006), 628 S.E.2d 482; the Supreme Court specifically and unequivocally with clarity and particularity state in Davis v. Sanders, 507, 19 S.E.138 (1884). "Our Supreme Court held that the trial judge [must] signed his own Court Order. As set forth, the Respondent has failed to abide by their own Policy that set forth in SCDC Policy OP-21.04 and OP-21-09.

Furthermore, the law regarding these Courts have produced documents that were unsigned Court Order for decades. In this case the trial judge actually failed to sign the commitment order to the Department of Corrections. See In Re Smith, 559 S.E.2d 584, in this Case the Supreme Court ruled that the judge must personally sign their own Court Orders. Here, Judge Smith,.... failed to personally sign various Court Orders issued in Judge Smith's name. Judge Smith, knowingly allowed his Office personnel to sign his name to the Orders. Judge Smith, admits allowing his Office personnel to sign his name to the Orders, but asserts that he was unaware this practice was improper. Judge Smith, acknowledges that he should have been aware that this practice was contrary to the published orders, opinions, and guidelines of the South Carolina Supreme Court and South Carolina Administration, "which requires" that judges personally sign their own Court Order. As a result, Judge Smith are smiliar to the Applicant case, as it appear on the Court Order, the judge name appear ..... typewritten on the Court Order.

Specifically, the typewritten name on the Court Order is not [signature] under Rule 11, SCRCF and Fed.Rules Civ.Proc. 28 U.S.C.A., the signature constitutes a certification that a Court Order is valid.

#### B. Due Process

As a matter of law, it is well established by South Carolina Supreme Court, Ruled in Boan v. South Carolina, Supra, also see, Bradley v. State, 864 P.2d 1212 (Nev. 1993),(holding an oral pronouncement is modifiable by Judge, and the sentence is only final once signed by the judge and entered by the Clerk). Specifically, neglecting to have adequate factual basis for signed paper(s) constitutes violation of Rule 11, SCRCF. See Walker v. Walker, 834 F.Supp. 1413. Thus, a void judgment is a judgment that never really existed and is void forever. It doesn't become unvoid with the passage of time or inaction-

of the litigants. A void judgment has no power to bind or protect anyone.

Simply put, without a personal signature on these Court Orders it will merely be just a piece of paper that can not be inter-locked and or in these matters. It nullifies the subject matter judiciary action. They are distinct from one another the same way the inner-making of a unsigned Court Order is distinct from the bread of the "sandwich", but both make the man. The Criminal Court can have Subject Jurisdiction all day long, but without the judge's signature the conviction and sentence would be just like a blank piece of paper. That power is useless. Thereof does effect their ability and or power to hear the cases of this general class to which the proceedings in question belong. To determine otherwise is an error law. In comparison, you can have a "sandwich". Being a unsigned Court Order that never existed.

The legislature has made a provision in the [Uniform Commercial Code the standard for documents and Court Order to be signed.] Pursuant to S.C.Code Ann. §§ 36-3-401. Signature.

2. Sec. (1) No person is liable on an instrument unless and until he has signed it. The Chief Application of the rule has been in cases holding that a principal whose name does not appear on an instrument signed by his agent is not liable on the instrument even though the payee knew when it was issued that it was intended to be the obligation of one who did not sign.

Here the facts and evidence will establish by the [Chamber Exhibit A] will prove beyond a reasonable doubt, that the Respondent failed execute their [Ministerial Duty] as set forth in their Policy and Statutory Laws. Pursuant to S.C. Code Ann. §§ 39-330, ... Order must be signed by the Justice or Judge making it and service of a copy thereof, with an endorsement by the Attorney General, signed by him, to the effect that the person named therein is required to appear and be examined at the time and place and before the Justice, Circuit Judge...

The requirement for official signature are more rigid. 8<sup>1</sup>/<sub>2</sub> C.J.S. Signature § 9. Specifically, under 18 U.S.C.A. § 505. Seals of Court: signatures of judges or court officers. The [Chamber Exhibits A] will prove beyond a reasonable doubt there was no signature on the Court Order.

Applicant begin with the framework established by 18 U.S.C.A. § 3621:

Sec. (c) Delivery of Order of Commitment. When a prisoner, pursuant to a Court Order, is placed in the Custody of a person in charge of a penal or correctional facility a copy of the Order shall be delivered to such person as evidence of this authority to hold the prisoner, and the original Order, with the return endorsed thereon, shall be returned to Court that issued it.

Here, this issue is not a "isolated" subject matter. In the present case, the Respondent failed to abide by its own Policy, Statutory Laws, and State Constitution. As set forth, a agency must follow its regulation as well as Statutory mandates. See *Cross v. United States*, 312 F.2d 1212. There is no exception to the well established Policy and Laws hereinabove stated have led the Applicant to the conclusion that the interests of justice, in the lights of unsigned Court order. As set forth, it was [Director Stirling, primary responsibility] to bring this subject matter to the Court attention. As a result, Director Stirling, is a Officer of the Court. the Respondent did Obstruct the Due Administration of Justice, by the failure to execute his [Ministerial Duty] as set forth in his Policy. The Applicant being held in SCDC as a [Political Prisoner] under unsigned [Court Order] for thrity-one (31),.

The Applicant like to take out a page out of the sport world, just suppose a football team step out on the field without the football, they can not play the game without the football. And that is the same with a unsigned Court Order, a unsigned order is a order that never really existed and is void forever. It doesn't become unvoid with the passed of time or inaction of the litigants. A unsigned Court Order has no power to bind or protect anyone.

### C. Legal Framework

The Applicant humbly contends that he is not challenging his conviction and sentence, because the conviction and sentence was never validated. As set forth, the trial judge can orally pronounce sentence all day long, those just mere words, until the trial judge signed the [Court Order]. As prescribed by 22A C.J.S. Judicial Notice. [Seals and Signatures] Court recognize the seals and signatures of the governor, the heads of departments, and the principal officers of the State and National governments.

Judicial Notice, moreover, has been taken of a signature of a Public Official on a document which he is required to sign in his Official capacity, even without a designation of his title. Accordingly, judicial notice is taken of the signature of the President of the United States, and of the seals of notaries Public. So, also, judicial notice can be taken of whether a particular office of the state has a seal.

This Order is unsigned. For all we know, some stranger could have walked in off the street and made the Order. Clearly this anonymous Order is void. Applicant can see no way that the Respondent can construe this Order to be a signed Order, when the Order is unsigned.

In the case of *K & K Investments, Inc. v. McCoy*, S.W.2d (MO.App. E.D. 1994) (Slip Op.#64245, decided May 3,1994), The Court defined what a void judgment is as being:

<sup>c</sup> One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. One which, from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, to any degree. Judgment is a "void judgment" if Court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due-

° process . See also, *Platt v. Platt*, 815 S.W. 2d 82,83 (MO.App. 1991),(quoting from *Black's Law Dictionary* 1574 (6th Ed. 1990).

Nevertheless, the trial court failed to actually sign the Court Order to the South Carolina Department of Corrections (SCDC), as well as failed to validate the conviction and sentence. See *Bowman v. Richland Memorial Hospital*, 335 S.C. 88, 515 S.E.2d, 259, 260-61 (Ct.App.1999); clearly states that the signature must be on the document to authenticate the validity of the contents therein. A signature is used for the intention of authenticating a document(s), HCCSS 1-201(39), 3-401 (b). A signature is the act required by law of signing one's name to something in which makes the gesture legal and lawfully binding. It is the name of a person written with his or her own hand.

#### GROUND D. Jurisdiction of PCR Court

SUPPORTING FACTS: In *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000), this Court held that "aside from two non-collateral matters specifically listed in the PCR Act, PCR is a proper avenue of relief only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence as authorized by Section 17-27-20<sup>1</sup> (a)." *Id.* at 367, 527 S.E.2d at 749 (emphasis in original). One of the exceptions is when a PCR application claims that the unsigned Court Order and SCDC has him illegally detained. See S.C. Code Ann. § 17-27-20<sup>1</sup> (a) (5) (1985). In *Al-Shabazz*, we described this exception as one which authorizes a PCR action when "the applicant asserts he should not have been in SCDC under a unsigned Court Order because the Respondent has no jurisdiction over the applicant.

Thus, any kind of proceeding to cancel a void judgment is proper. And it is the duty of this Court to declare the order void as a matter of law. This Order wasn't even signed by the trial judge, nowhere on the Court Order the trial judge signature. As set forth, the Respondent has a fundamental obligation to enforce his Policy and the Laws of this State.

In the instant case, the Applicant alleges that a Post-Conviction Relief (PCR) is a proper avenue of relief when the Applicant mounts a collateral attack challenging the validity of the unsigned court order. S.C. Code Ann. § 17-27-20. (2014). This Court has "subject matter jurisdiction to hear this subject matter. Here, Director Spirling violated his own.... Policy Procedure OP-21-.04 and OP-21.09 by allowing Rev. Johnson to remain in SCDC on a unsigned Court Order. This type of PCR Application clearly is one in which Director Spirling has taken Applicant's created liberty interest by turning a deaf ear to the unsigned Court Order. He now moves, pursuant to OP-21.04 and Op-21.09, for destruction of the unsigned Court Order relating to the above-referenced unsigned Court Order. It appearing that under the provisions of S.C. Code Ann. § 17-1-40 (1976), Rev. Johnson is entitled to such relief.

The Applicant also argues, without a signature on the Court Order, it is merely an "unfinished paper." Without a signed Court Order, Rev. Johnson is still a pretrial detainee, he still award of the County. See Lee v. City of Los Angeles, 250 F.2d 665 (9th Cir. 2001); (A detainee has a right under the Due Process Clause to be free from continued detainee after it was or should have been known that the detainee was entitled to release. Here, the Respondent's Police created liberty interest as to unsigned Court Order.

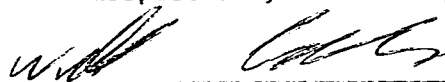
Here, the General Assembly, did not enacted a provision in the Statute that alleges a typewritten name is a "signature." The Applicant argues that a unsigned Court Order have "no probative value" seems to fly in the face of criminal Rule 32 (b)(1), which, in providing that the "Court Order shall be signed by the judge and entered by the Clerk" appears to provide that the "judgment of conviction" in a case of this kind is the one signed by the judge. That a typewritten name is not a signature pursuant to S.C. Code Ann. § 36-3-401. Signature. Under the Uniform Commercial Code, that all commercial paper and Court Order. The Respondent misrepresentation on the typewritten name on the Court Order, to be a valid Order.

## CONCLUSION

Based on the foregoing reasons and legal authorities, the Applicant respectfully requests that this matter be granted pursuant to OP-21.04 and OP-21.09 and In Re Smith, 559 S.E. 584, and release the Applicant immediately from under authority of SCDC and place in the custody of the original jurisdiction which is the County. Thus, a void unsigned Court Order is a order that never really existed and is void forever. It doesn't become unvoid with the passage of time or inaction of the litigants. A unsigned Court Order has no power to bind or protect anyone.

Thus, any kind of proceeding to cancel a void unsigned Court Order is proper. And it is the duty of this Court to declare the Order void as a matter of law. The fundamental requirement of law, the Applicant is entitled to be immediately release and compensated for the length of time the Applicant was held in SCDC illegally detained under a unsigned Court Order. And the Applicant be awarded (Compensation) for the years spent in SCDC under a unsigned Court Order.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'W. J. Carter', is written over a horizontal line.

The 26th date of February, 2016

2017-CP-10-1194

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

, IN THE COURT OF COMMON PLEAS  
, FIFTH JUDICIAL CIRCUIT  
,

*2016 CP 40815 TO*

Willie Johnson, #127069  
Applicant,  
  
vs.  
  
Bryan Stirling, Director of  
S.C. Department of Corr.  
  
Respondent.

S U M M O N S

2017 MAR -7 PM 2:54  
FILED  
2016 MAR -8 PM 12:21  
FILED

YOU ARE HEREBY SUMMONED AND REQUIRED TO ANSWER THE PCR Application herein, a copy of which is herewith served upon you, and to serve a copy of answer to this PCR Application upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive to the day of such service, and if you fail to answer the PCR Application, a judgment by an Order will be rendered against you for the Relief demanded in the PCR Application.

*Willie Johnson*

Willie Johnson, #127069  
Allendale C.T.  
P.O. Box 1151  
Fairfax, SC 29827

04

2017-CP-40-1194

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FIFTH JUDICIAL CIRCUIT  
COUNTY OF RICHLAND ) Case No.: 2016-CP-40-01510

2017 MAR -7 PM 2:54  
2016 OCT 24 PM 2:25  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

Rev. Willie Johnson, #127069 )  
 )  
Applicant, )  
 )  
 )  
 )  
vs. )  
 )  
Bryan P. Stirling, Director of )  
S.C. Department of Corrections, )  
 )  
 )  
Defendant. )

MOTION FOR A DEFAULT JUDGMENT

"EVIDENTIARY HEARING REQUESTED"

This matter comes before this Court by way of an Post-Conviction Relief Application filed February 26, 2016. The Applicant move before this Court pursuant to South Carolina Rules of Civil Procedure 55 (b)(1)(2), the Applicant this Court to enter a default judgment against the Defendant by the failure to answer the Summons. This Motion is based on the grounds that the Defendant failed to answer the pleading in the prescribed time set forth in Rule 12 (a), of the SCRPC [The Applicant humbly quotes that which is state in Section (a) When presented.]:

- ° A defendant shall serve his answer within (30) days after the serve of the Complaint upon him, unless the Court directs otherwise when service of process is made pursuant to Rule 4 (e), and provided further that the State of South Carolina shall answer or otherwise respond to an application for Post-Conviction Relief within (60) days after service of the application, if it arises out of a guilty plea, and (90) days if it arises out of a trial.

In addition to this subject matter the Defendant "Failure to Plead an Affirmative Defense waives the Defense." Under Rule 8 (c) of the SCRPC. Pursuant to Rule (b) of the SCRPC each and every allegation and material fact, therefore, Defendant have admitted all of the material facts set forth in Applicant's PCR Application.

04

The Applicant contends it is well established that the [Trial Court] failed to the Court Order. Here, Director Stirling, promulgated a Policy that a Court Order must be signed before an inmate are accepted in SCDC, pursuant to SCDC Policy OP-21.04 and OP-21-09. As a result, the Defendant has failed to abide by his own Policy. Here, the Applicant has been illegally detained in South Carolina Department of Correctios on a unsigned Court Order. Our Supreme Court held in In Re Smith, 559 S.E.2d 584 (S.C. 2002), that a trial judge [Must] signed his own Court Order. See the Memorandum of Law in Support of PCR Application and Motion to Expand Record, that support a Motion for Default Judgment.

The fact pertaining to this issue is taken sub-justice from the official record. It is beyond dispute that the Applicant file a Summons along with the Applicant PCR Application. The Defendant had thirty (30) days to answer the PCR Application in the prescribe time set forth in Summons and Rule 12 (a), of the SCRPC.

Both due process and common sense dictate that under Post-Conviction Relief Proceedings in South Carolina in section H. **Conduction Hearing. (1)**, Counsel shall be appointed for indigents. 71.1 (d), SCRPC. The Applicant was denied his Due Process, by the failure to appoint the Applicant's a Attorney to represent the Applicant in this subject matter.

**Section (2) Hearing in County in which conviction took place. § 17-27-80.**

- ° a. But, the Supreme Court has held that § 17-27-80 does not require that hearing be in county of conviction, but before a judge who has juiisdiction to pass upon matters rising within such county. Buchanan v.- State, 276 S.C. 127, 276 S.E.2d 302 (1981),.

As presented above, the Applicant should be present at hearing unless only questions of law are at issue. § 17-27-80 (Cf. 28 U.S.C. § 2243). But, states does not have the duty or authority to secure the attendance of an out of State-

inmate. Clayton v. State, 273 S.C. 655, 301 S.E.2d 133 (1983). This Court has jurisdiction over this subject matter.

The United States Constitution does not allow any state to deny a person within its jurisdiction equal protection of the law. U.S.Const. Amend. XIV, §1. The Applicant has establish an equal protection violation.

This legal framework and foundation being firmly in place, the Court is compelled to look at the facts in regard to this case sub-justice because the law arises from facts (Ex Facto Oritur Jus) The Defendant [racial prejudice and bias] has deprived the Applicant of his access to the Court. Defendant also committed a **Obstruction of Justice and Conspiracy to Commit Official Misconduct**. See Carter v. Rafferty, 781 F.2d 993.

The Applicant contend that the Defendant shall be held liable for their [Failure to Act] when they cause a Constitutional violation. Here, the Defendant "can'y just sit on their duff and not do anything" to prevent violations of rights by allowing the Applicant to remain in SCDC on a unsigned Court Order.

#### CONCLUSION

For all the reasons stated herein above, it is respectfully requested that this Honorable Court grant the Applicant's Motion For A Default Judgment. The Defendant Order to immediately release the Applicant from SCDC. The Defendant further Order to [Award the Applicant Compensatory Damages in the amount of 7.5 Million Dollard] and [Award Punitive Damages in the amount of 10 Million Dollar] for the length of time the Applicant remain in SCDC illegally detained on unsigned Court Order.

the 19th of October, 2016

Respectfully submitted,


  
Rev. Willie Johnson, 127069

2017-CP-10-1194

CERTIFICATE OF SERVICE

I, Rev. Willie Johnson, #127069, do certify that a copy of this enclosed document was mailed first class, postage prepaid, to the party named therein, on this date 19th of October, 2016 to the following address:

James Clayton Mitchell, III  
P.O. Box 11549  
Columbia, SC 29211



Rev. Willie Johnson, #127069

2017 MAR -7 PM 2:54  
BX

RICHLAND COUNTY  
FILED  
2016 OCT 24 PM 2:25  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

05

STATE OF SOUTH CAROLINA

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

COUNTY OF RICHLAND

) **2017-CP-40-1194**  
) Case No.: 2016-CP-40-01510

Willie Johnson,  
S.C.D.C. No. 127069,

Applicant,

) **82(b) ORDER TO TRANSFER VENUE**

v.

State of South Carolina,

Respondent.

FILED  
2017 MAR -7 PM 2:54  
RICHLAND COUNTY  
FILED  
2017 FEB -9 PM 12:59  
C.C.P. & C.S.

This Court finds that this application for post-conviction relief should be transferred to Charleston County. The Uniform Post-Conviction Relief Act states:

A proceeding is commenced by filing an application verified by the applicant with the clerk of court *in which the conviction took place*. [ . . . ] The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the solicitor of *the circuit in which the applicant was convicted* and a copy to the Attorney General.


S.C. Code Ann. § 17-27-40 (emphasis added). In the present case, Applicant was convicted and sentenced in Charleston County. This application for post-conviction relief was filed with the Clerk of Court in Richland County. Therefore, this application for post-conviction relief has been filed in a county that lacks jurisdiction over this matter. Buchanan v. State, 276 S.C. 127, 276 S.E.2d 302 (1981). According to Court Rule 82(b), “[w]hen an action is brought in the wrong county or in the wrong court, the court shall not dismiss the action but shall transfer it to any proper county or court which it could have been brought.”

Accordingly, Applicant’s application for post-conviction relief shall be removed from the Richland County Common Pleas Roster and transferred to the Charleston County Clerk of Court for docketing. The date this application was originally filed in Richland County shall be maintained. If Applicant has specific factual or legal reasons why this application should not be

05

transferred, he should file his response, with a copy of this Order attached, with the Charleston County Clerk of Court.

AND IT IS SO ORDERED this 07 day of feb, 2017.

  
DEANDREA G. BENJAMIN  
Chief Administrative Judge  
Fifth Judicial Circuit

Columbia, South Carolina

CERTIFIED TRUE COPY  
OF ORIGINAL FILED,  
*Jeanette Williams*  
C.C.C.P.&G.S.  
RICHLAND COUNTY  
SOUTH CAROLINA

06

|                          |   |                                     |
|--------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS        |
|                          | ) | FOR THE NINTH JUDICIAL CIRCUIT      |
| COUNTY OF CHARLESTON     | ) |                                     |
|                          | ) |                                     |
| Willie Johnson, #127069, | ) | Case No.: 2017-CP-10-1194           |
| a/k/a                    | ) |                                     |
| Rev. Willie Johnson,     | ) |                                     |
|                          | ) |                                     |
| Applicant,               | ) | <b>RETURN AND MOTION TO DISMISS</b> |
|                          | ) |                                     |
| v.                       | ) |                                     |
|                          | ) |                                     |
| State of South Carolina, | ) |                                     |
|                          | ) |                                     |
| Respondent.              | ) |                                     |

In response to the application for post-conviction relief filed in Richland County on March 8, 2016,<sup>1</sup> and transferred to Charleston County on March 7, 2017, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted during the January 1985 term of the Charleston County Grand Jury for murder (1985-GS-10-0159). Mark L. Archer, Esquire, and Daniel A. Beck, Esquire, represented Applicant. Charles Molony Condon, Esquire, prosecuted the case. Applicant proceeded to a jury trial before the Honorable Thomas L. Hughston, Jr. from April 17 to April 18, 1985, and was found guilty as indicted. Judge Hughston sentenced Applicant incarceration for life. A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. During the pendency of his appeal, Applicant filed his first application for post-conviction relief on June 28, 1985; the matter was dismissed

<sup>1</sup> Applicant originally filed this Application in Richland County on March 8, 2016. Thereafter, by written order filed February 9, 2017, the Honorable DeAndrea G. Benjamin ordered venue transferred to Charleston County pursuant to S.C. Code Ann. § 17-27-40. (2016-CP-40-1510). The Application was filed in Charleston County on March 7, 2017.

06

without prejudice by Order dated January 11, 1986.<sup>2</sup> By opinion filed December 8, 1986, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Johnson, Op. No. 86-MO-455 (S.C. Sup. Ct. Order filed Dec. 8, 1986).

**1987-CP-10-2062**

Applicant filed his first, non-premature Application for Post-Conviction Relief on April 22, 1987 (1987-CP-10-2062), alleging:

1. Ineffective assistance of counsel;
2. Excessive punishment; and
3. Insufficiency of the evidence.

Respondent made its return on June 11, 1987. An evidentiary hearing into the matter was convened on February 8, 1988, before the Honorable Wylie H. Caldwell, Jr. Applicant was present at the hearing and was represented by William Howell Morrison, Esquire. Salley W. Elliott, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Judge Caldwell denied and dismissed that application for PCR in an order dated March 9, 1988.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was filed by D. Mark Stokes, Esquire. The South Carolina Supreme Court denied certiorari by Order dated February 10, 1989.

**3:89-0722-MJP**

Applicant subsequently filed his first *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on March 30, 1989, challenging the murder conviction and sentence (C.A. No. 3:89-0722-MJP). Respondent filed its Return and Motion for Summary Judgment on May 12, 1989. The Honorable Henry M. Herlong, United States Magistrate Judge, issued on August 15, 1989, a Report and Recommendation that Respondent's motion for summary judgment be granted. The

---

<sup>2</sup> Respondent regrettably can find neither a docket number nor an order of dismissal in this premature action, but relies upon Respondent's "Return and Motion to Dismiss" dated June 11, 1987, in asserting that it took place.

Honorable Matthew J. Perry, United States District Judge, denied Applicant's Petition *with prejudice* on October 31, 1989, and accepted the Report and Recommendation for summary dismissal. Applicant thereafter appealed to the Fourth Circuit Court of Appeals, which affirmed the judgment of the District Court on April 4, 1990, but granted a certificate of probable cause to appeal and modified the judgment to reflect that the dismissal was *without prejudice*.<sup>3</sup> Johnson v. Evatt, 900 F.2d 252, 1990 WL 48932 (4th Cir. 1990).

**3:90-1308-3-MJP**

Applicant filed a second *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on June 9, 1990 (C.A. No. 90-1308-3-MJP). In his Petition, Applicant set forth the following grounds for relief:

1. The trial judge erred in instructing the jury about the punishment to be given for murder or manslaughter;
2. The trial judge erroneously instructed the jury as to the inference of malice, which shifted the burden of proof to the petitioner; and
3. The petitioner's trial attorneys provided him ineffective representation by failing to object to the above state jury instructions.

Respondent filed its Return and Motion for Summary Judgment on July 27, 1990. The Honorable Henry M. Herlong, United States Magistrate Judge, issued on March 27, 1991, a Report and Recommendation that Respondent's motion for summary judgment be granted. Applicant timely filed objections. The Honorable Matthew J. Perry, United States District Judge, denied Applicant's Petition on July 15, 1991, and accepted the Report and Recommendation for summary judgment.

Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals and was thereafter represented by appointed counsel David I. Bruck. After full briefing and oral

---

<sup>3</sup> "If a petition for habeas corpus relief contains both exhausted and non-exhausted claims, the district court must dismiss the petition without prejudice to the petitioner's refiling his petition after all of the claims have been properly exhausted. 28 U.S.C. § 2254(b) and (c); Rose v. Lundy, 455 U.S. 509 (1982)" Johnson at 1.

argument, the Court of Appeals affirmed the lower court's decision by unpublished opinion on May 26, 1993. Johnson v. Evatt, 993 F.2d 1537, 1993 WL 177800 (4th Cir. 1993). Applicant thereafter appealed to the United States Supreme Court, which denied certiorari on October 18, 1993. Johnson v. Evatt, 510 U.S. 936 (1993).

Applicant then filed third *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on December 9, 1993 (C.A. No. 0:94-310-MJP). The action was dismissed by the District Court as well as by the South Carolina Court of Appeals on June 28, 1995.

**1996-CP-10-1216**

Applicant filed a Petition for Writ of Habeas Corpus<sup>4</sup> on July 29, 1996 (1996-CP-10-1216), alleging:

1. Improper jury charge; and
2. Lack of mental evaluation.

Respondent made its return. An evidentiary hearing into the matter was convened on February 12, 1997, before the Honorable John C. Hayes, III. Applicant was present at the hearing and preceded *pro se*. Matthew M. McGuire, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Judge Hayes denied and dismissed that petition for habeas corpus in an order dated April 3, 1997, and filed May 15, 1997.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by Joseph L. Savitz, III filing a brief on May 12, 1998 pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals denied Applicant's petition by unpublished opinion. Johnson v. Moore, Op. No. 98-UP-392 (S.C. Ct. App. filed September 23, 1998).

---

<sup>4</sup> Though Applicant's filing was styled as a "Motion for Writ of Mandamus and Motion for New Trial upon After Discovered Evidence," the Court in its final order interpreted the matter as a petition for writ of habeas corpus.

Applicant timely appealed and the South Carolina Supreme Court affirmed denial of certiorari in an unpublished opinion. Johnson v. Moore, S.C. Sup. Ct. Order dated March 18, 1999.

**0:99-1070-MJP**

Applicant filed his fourth *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on April 13, 1999 (C.A. No. 0:99-1070-MJP). In his Petition, Applicant set forth the following grounds for relief:

1. The Petitioner was deprived of his due process of law by the failure of the court to order a psychiatric examination:
  - a. The state court judge erred in holding that the issue of Petitioner's competency was procedurally barred because the trial of an incompetent defendant is a due process violation that can never be waived.
2. The South Carolina Supreme Court deprived Johnson of his due process rights by allowing the Attorney General's Office to be involved with the process of the case:
3. The Anders Brief, that was filed with the Court of Appeals of South Carolina, by appellate counsel deprived the Petitioner of his due process.

Respondent filed its Return and Motion for Summary Judgment on July 8, 1999. A report and recommendation was issued on August 30, 1999, recommending that the motion for summary judgment be granted. The Honorable Matthew J. Perry, Jr., United States District Judge, denied Applicant's Petition on October 7, 1999, and accepted the Report and Recommendation for summary judgment. Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals; the Court of Appeals dismissed Applicant's appeal on December 22, 1999. Johnson v. Catoe, 202 F.3d 259, 1999 WL 1242577 (4th Cir. 1999).

**2000-CP-10-5196**

Applicant filed his third application for post-conviction relief on November 9, 2000 (2000-CP-10-5196), alleging he was denied due process through the trial court's failure to order a psychiatric examination to confirm his competence to stand trial and his mental culpability at the time of the offense. Respondent made its return and motion to dismiss on April 26, 2001.

The Honorable Daniel F. Pieper entered a Conditional Order of Dismissal on May 15, 2001, finding the application was successive. Applicant, *pro se*, timely objected on May 29, 2001.

An evidentiary hearing into the matter was convened on November 30, 2001, before the Honorable A. Victor Rawl. Applicant was present at the hearing and was represented by Stanley Feldman, Esquire. Donald J. Zelenka, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Judge Rawl denied and dismissed that application for PCR in an order dated May 20, 2002, and filed May 22, 2002.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by Aileen P. Clare, Esquire filing a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The South Carolina Supreme Court denied Applicant's petition by unpublished opinion on November 19, 2003. The Remittitur was issued on December 18, 2003.

**2004-CP-10-3752**

Applicant filed his fourth Application for Post-Conviction Relief on September 8, 2004 (2004-CP-10-3752), alleging as follows:

1. "[T]he petitioner indictment is Defective where the Circuit Court lack Subject Matter Jurisdiction to try this case." [sic]
2. "[T]he indictment failed to allege the essential Elements of murder as required by S.C. code Ann. Sec. 16-3-10 (1985)." [sic]
3. "[T]he indictment failed to allege the essential elements of murder as required by S.C. Code Ann. Section 17-19-30 (1985)." [sic]
4. Asserts the above is newly discovered evidence, citing State v. Spann, 513 S.E.2d 98 (S.C. 1999).

Respondent made its return and motion to dismiss on January 6, 2005. Applicant thereafter amended his application on July 21, 2005, through counsels Deidre Shelton McCool, Esquire, and Peter T. Phillips, Esquire, alleging the following grounds:

5. "Mr. Johnson further avers that his indictment was defective for want of the element "*with malice aforethought*" [emphasis original] under S.C. Code ann.

§ 16-3-10, and, therefore, the court did not have subject matter jurisdiction to convict or sentence him.”

6. “Mr. Johnson further avers that the trial judge failed to actually sign the commitment order to the South Carolina Department of Corrections (“SCDC”) as well as failed to reference what statute his punishment was based on, and, therefore, he was improperly sentenced and SCDC has no jurisdiction over Mr. Johnson and he is being illegally detained.”

Respondent made its supplemental return and motion to dismiss on July 25, 2004, arguing the application was untimely, successive, and without merit on the subject-matter jurisdiction allegations. An evidentiary hearing into the matter was convened on July 27, 2005, at the Charleston County Courthouse before the Honorable Judge Kenneth G. Goode. Applicant was present at the hearing and was represented by Peter T. Phillips, Esquire. Salley W. Elliott, Esquire, of the South Carolina Attorney General’s Office, represented Respondent. Judge Goode denied and dismissed that application for PCR in an order dated September 26, 2005. Applicant did not appeal.

**0:07-0604-PMD-BM**

Applicant filed his fifth *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on March 6, 2007 (C.A. No. 0:07-0604-PMD-BM). The petition was dismissed as successive by the Honorable Patrick Michael Duffy, United States District Judge, and the Court of Appeals denied the appeal on August 24, 2007.

**0:09-1782-PMD-BM**

Applicant filed his sixth *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on April 23, 2009 (C.A. No. 0:09-1782-PMD-BM). The Honorable Bristow Marchant, United States Magistrate Judge, issued the Report and Recommendation on August 30, 1999, recommending that the petition be dismissed as successive. By written order, Judge Duffy

adopted the report and recommendation of the Judge Marchant, and dismissed the petition as a successive habeas petition.

## II.

In his *fifth* and current application for post-conviction relief and the supporting memorandum, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "The Applicant illegally detained in South Carolina Department of Corrections under [an] unsigned Court order."
  - a. "Applicant has been illegally detained by Respondent for 31 years in the South Carolina Department of Corrections on an unsigned Court Order."
  - b. "The trial judge failed to actually sign the Court Order to the South Carolina Department of Corrections"
  - c. "Respondent has no jurisdiction over the Applicant and he is being illegally detained. As a result, the court order, dated April 22, 1985, bore only a typewritten name of the trial judge."
  - d. "Applicant is being held in SCDC as a Political Prisoner under unsigned Court Order for 31 [years]"
  - e. The Order holding Applicant in prison is void as a matter of law because it contains no signature of the trial judge.
2. The PCR Court has jurisdiction to grant this relief.

Attached and incorporated herein are the records of the Charleston County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the final orders from Applicant's prior post-conviction relief actions, Applicant's appellate records, and the records from this post-conviction relief action. Respondent reserves the right to amend this Return upon receipt of any relevant documents.

## III.

The application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 ("the Act"). Specifically, the Act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one

year after the entry of a judgment of offense or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted and sentenced on April 18, 1985. The South Carolina Court of Appeals affirmed his conviction and sentence on December 8, 1986. Accordingly, Applicant was required to file this Application on or before July 1, 1997. Applicant did not file this Application until March 8, 2016, which was well beyond the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, Respondent moves to dismiss this application for failure to file within the time mandated by the Act.

#### IV.

The application should be summarily dismissed because it is successive to Applicant’s previous PCR applications. 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). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the offense 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. § 17-27-70.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief. Applicant could have raised the allegations in his first application for post-conviction relief filed April 22, 1987, *and in fact did raise the allegations in his fourth application for PCR*. Accordingly, Applicant has failed to meet the burden imposed upon him, and the Court should summarily dismiss the application as successive to Applicant's previous PCR application. Therefore, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Therefore, this Application should also be summarily dismissed as barred by the doctrine of laches.

V.

This application should also be dismissed as procedurally barred by the doctrine of *res judicata*. *Res judicata* prohibits “subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.” Plum Creek Dev. Co. v. Conway, 334 S.C. 30, 512 S.E.2d 106 (1999) (citation omitted). *Res judicata* also bars any issues that were raised or *could have been raised* in the former action. Id. (citing Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm’n S.C., 294 S.C. 9, 362 S.E.2d 176 (1987)).

In this action, Applicant alleges that the orders pursuant to which he is incarcerated are void because they are not signed by a trial judge. Applicant filed his first PCR action in 1987. He appealed the denial of that application and subsequently filed multiple successive PCR and federal habeas actions. Applicant’s current allegations arise from the same conviction challenged in his prior actions. Therefore, Applicant has had a full opportunity to litigate these claims in both the state and federal courts. Applicant could have raised the instant claims in his prior proceedings. His failure to do so prevents him from raising them now. Accordingly, this Court should summarily dismiss the application as barred by *res judicata*.

VI.

Lastly, this application should be summarily dismissed because Respondent is entitled to judgment as a matter of law. Subsection 17-27-70(C) of the South Carolina Code of Laws authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Applicant alleges that he is being held in custody unlawfully because the order committing him to the Department of

Corrections is unsigned and void. Attached to this return is the indictment and verdict form bearing the handwritten signature of the foreperson finding Applicant guilty of murder and the handwritten signature of the trial judge committing Applicant to confinement for life. Therefore, it is clear based on the pleadings that there is no genuine issue of material fact and Respondent is entitled to judgment as a matter of law.

VII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained above is hereby denied.

VIII.

WHEREFORE, Respondent moves to summarily dismiss the application as untimely, successive, barred by the doctrine of *res judicata*, and without merit.

Respectfully submitted,

ALAN WILSON  
Attorney General


ROBERT BOLCHOZ  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE  
Assistant Attorney General

RASHEEDA CLEVELAND  
Staff Attorney

By:

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

May 12, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

WILLIE JOHNSON,  
S.C.D.C. No. 127069,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS


2017-CP-10-1194

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Willie Johnson, #127069  
Kirkland Correctional Institution  
4344 Broad River Rd.  
Columbia, SC 29210

DATED this 12<sup>th</sup> day of May, 2017.

  
Brianna Arnone, Legal Assistant  
For Respondent

CC  
AG  
AT

07

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

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

Willie Johnson, #127069,  
a/k/a  
Rev. Willie Johnson

) Case No.: 2017-CP-10-1194  
)  
)

Applicant,

) **CONDITIONAL ORDER OF DISMISSAL**  
)  
)

v.

State of South Carolina,

Respondent.

FILED  
2017 MAY 23 PM 4:16  
JULIE J. ANNSTRONGS  
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed in Richland County on March 8, 2016<sup>1</sup>, and transferred to Charleston County on March 7, 2017.

**PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted during the January 1985 term of the Charleston County Grand Jury for murder (1985-GS-10-0159). Mark L. Archer, Esquire, and Daniel A. Beck, Esquire, represented Applicant. Charles Molony Condon, Esquire, prosecuted the case. Applicant proceeded to a jury trial before the Honorable Thomas L. Hughston, Jr. from April 17 to April 18, 1985, and was found guilty as indicted. Judge Hughston sentenced Applicant to incarceration for life. A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. During the pendency of his appeal, Applicant filed his first application for post-conviction relief on June 28, 1985; the matter was

<sup>1</sup> Applicant originally filed this Application in Richland County on March 8, 2016. Thereafter, by written order filed February 9, 2017, the Honorable DeAndrea G. Benjamin ordered venue transferred to Charleston County pursuant to S.C. Code Ann. § 17-27-40. (2016-CP-40-1510). The Application was filed in Charleston County on March 7, 2017.

07

10/12  
2017

dismissed without prejudice by Order dated January 11, 1986.<sup>2</sup> By opinion filed December 8, 1986, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Johnson, Op. No. 86-MO-455 (S.C. Sup. Ct. Order filed Dec. 8, 1986).

**1987-CP-10-2062**

Applicant filed his first non-premature Application for Post-Conviction Relief on April 22, 1987 (1987-CP-10-2062), alleging:

1. Ineffective assistance of counsel;
2. Excessive punishment; and
3. Insufficiency of the evidence.

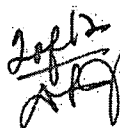
Respondent made its return on June 11, 1987. An evidentiary hearing into the matter was convened on February 8, 1988, before the Honorable Wylie H. Caldwell, Jr. Applicant was present at the hearing and was represented by William Howell Morrison, Esquire. Salley W. Elliott, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Judge Caldwell denied and dismissed that application for PCR in an order dated March 9, 1988.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was filed by D. Mark Stokes, Esquire. The South Carolina Supreme Court denied certiorari by Order dated February 10, 1989.

**3:89-0722-MJP**

Applicant subsequently filed his first *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on March 30, 1989, challenging the murder conviction and sentence (C.A. No. 3:89-0722-MJP). Respondent filed its Return and Motion for Summary Judgment on May 12, 1989. The Honorable Henry M. Herlong, United States Magistrate Judge, issued on August 15, 1989, a Report and Recommendation that Respondent's motion for summary judgment be granted. The

<sup>2</sup> Respondent regrettably can find neither a docket number nor an order of dismissal in this premature action, but relies upon Respondent's "Return and Motion to Dismiss" dated June 11, 1987 in asserting that it took place.



Honorable Matthew J. Perry, United States District Judge, denied Applicant's Petition *with prejudice* on October 31, 1989, and accepted the Report and Recommendation for summary dismissal. Applicant thereafter appealed to the Fourth Circuit Court of Appeals, which affirmed the judgment of the District Court on April 4, 1990, but granted a certificate of probable cause to appeal and modified the judgment to reflect that the dismissal was *without prejudice*.<sup>3</sup> Johnson v. Evatt, 900 F.2d 252, 1990 WL 48932 (4th Cir. 1990).

**3:90-1308-3-MJP**

Applicant filed a second *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on June 9, 1990 (C.A. No. 90-1308-3-MJP). In his Petition, Applicant set forth the following grounds for relief:

1. The trial judge erred in instructing the jury about the punishment to be given for murder or manslaughter;
2. The trial judge erroneously instructed the jury as to the inference of malice, which shifted the burden of proof to the petitioner; and
3. The petitioner's trial attorneys provided him ineffective representation by failing to object to the above state jury instructions.

Respondent filed its Return and Motion for Summary Judgment on July 27, 1990. The Honorable Henry M. Herlong, United States Magistrate Judge, issued on March 27, 1991, a Report and Recommendation that Respondent's motion for summary judgment be granted. Applicant timely filed objections. The Honorable Matthew J. Perry, United States District Judge, denied Applicant's Petition on July 15, 1991, and accepted the Report and Recommendation for summary judgment.

Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals and was thereafter represented by appointed counsel David I. Bruck. After full briefing and oral

<sup>3</sup> "If a petition for habeas corpus relief contains both exhausted and non-exhausted claims, the district court must dismiss the petition without prejudice to the petitioner's refiling his petition after all of the claims have been properly exhausted. 28 U.S.C. § 2254(b) and (c); Rose v. Lundy, 455 U.S. 509 (1982)" Johnson at 1.

30/12  
JAA

argument, the Court of Appeals affirmed the lower court's decision by unpublished opinion on May 26, 1993. Johnson v. Evatt, 993 F.2d 1537, 1993 WL 177800 (4th Cir. 1993). Applicant thereafter appealed to the United States Supreme Court, which denied certiorari on October 18, 1993. Johnson v. Evatt, 510 U.S. 936 (1993).

Applicant then filed third *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on December 9, 1993 (C.A. No. 0:94-310-MJP). The action was dismissed by the District Court as well as by the South Carolina Court of Appeals on June 28, 1995.

**1996-CP-10-1216**

Applicant filed a Petition for Writ of Habeas Corpus<sup>4</sup> on July 29, 1996 (1996-CP-10-1216), alleging:

1. Improper jury charge; and
2. Lack of mental evaluation.

Respondent made its return. An evidentiary hearing into the matter was convened on February 12, 1997 before the Honorable John C. Hayes, III. Applicant was present at the hearing and preceded *pro se* Matthew M. McGuire, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Judge Hayes denied and dismissed that petition for habeas corpus in an order dated April 3, 1997, and filed May 15, 1997.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by Joseph L. Savitz, III filing a brief on May 12, 1998 pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals denied Applicant's petition by unpublished opinion. Johnson v. Moore, Op. No. 98-UP-392 (S.C. Ct. App. filed September 23, 1998).

---

<sup>4</sup> Though Applicant's filing was styled as a "Motion for Writ of Mandamus and Motion for New Trial upon After Discovered Evidence," the Court in its final order interpreted the matter as a petition for writ of habeas corpus.

Apr 12  
JSA

Applicant timely appealed and the South Carolina Supreme Court affirmed denial of certiorari in an unpublished opinion. Johnson v. Moore, S.C. Sup. Ct. Order dated March 18, 1999.

**0:99-1070-MJP**

Applicant filed his fourth *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on April 13, 1999 (C.A. No. 0:99-1070-MJP). In his Petition, Applicant set forth the following grounds for relief:

1. The Petitioner was deprived of his due process of law by the failure of the court to order a psychiatric examination:
  - a. The state court judge erred in holding that the issue of Petitioner's competency was procedurally barred because the trial of an incompetent defendant is a due process violation that can never be waived.
2. The South Carolina Supreme Court deprived Johnson of his due process rights by allowing the Attorney General's Office to be involved with the process of the case:
3. The Anders Brief, that was filed with the Court of Appeals of South Carolina, by appellate counsel deprived the Petitioner of his due process.

Respondent filed its Return and Motion for Summary Judgment on July 8, 1999. A report and recommendation was issued on August 30, 1999, recommending that the motion for summary judgment be granted. The Honorable Matthew J. Perry, Jr., United States District Judge, denied Applicant's Petition on October 7, 1999, and accepted the Report and Recommendation for summary judgment. Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals; the Court of Appeals dismissed Applicant's appeal on December 22, 1999. Johnson v. Catoe, 202 F.3d 259, 1999 WL 1242577 (4th Cir. 1999).

**2000-CP-10-5196**

Applicant filed his third application for post-conviction relief on November 9, 2000 (2000-CP-10-5196), alleging he was denied due process through the trial court's failure to order a psychiatric examination to confirm his competence to stand trial and his mental culpability at

5/12  
SPO

the time of the offense. Respondent made its return and motion to dismiss on April 26, 2001. The Honorable Daniel F. Pieper entered a Conditional Order of Dismissal on May 15, 2001, finding the application was successive. Applicant, *pro se*, timely objected on May 29, 2001.

An evidentiary hearing into the matter was convened on November 30, 2001, before the Honorable A. Victor Rawl. Applicant was present at the hearing and was represented by Stanley Feldman, Esquire. Donald J. Zelenka, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Judge Rawl denied and dismissed that application for PCR in an order dated May 20, 2002, and filed May 22, 2002.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by Aileen P. Clare, Esquire filing a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The South Carolina Supreme Court denied Applicant's petition by unpublished opinion on November 19, 2003. The Remittitur was issued on December 18, 2003.

**2004-CP-10-3752**

Applicant filed his fourth Application for Post-Conviction Relief on September 8, 2004 (2004-CP-10-3752), alleging as follows:

1. "[T]he petitioner indictment is Defective where the Circuit Court lack Subject Matter Jurisdiction to try this case." [sic]
2. "[T]he indictment failed to allege the essential Elements of murder as required by S.C. code Ann. Sec. 16-3-10 (1985)." [sic]
3. "[T]he indictment failed to allege the essential elements of murder as required by S.C. Code Ann. Section 17-19-30 (1985)." [sic]
4. Asserts the above is newly discovered evidence, citing State v. Spann, 513 S.E.2d 98 (S.C. 1999).

Respondent made its return and motion to dismiss on January 6, 2005. Applicant thereafter amended his application on July 21, 2005, through counsels Deidre Shelton McCool, Esquire and Peter T. Phillips, Esquire, alleging the following grounds:

5. "Mr. Johnson further avers that his indictment was defective for want of the element "*with malice aforethought*" [emphasis original] under S.C. Code ann. § 16-3-10, and, therefore, the court did not have subject matter jurisdiction to convict or sentence him."
6. "Mr. Johnson further avers that the trial judge failed to actually sign the commitment order to the South Carolina Department of Corrections ("SCDC") as well as failed to reference what statute his punishment was based on, and, therefore, he was improperly sentenced and SCDC has no jurisdiction over Mr. Johnson and he is being illegally detained."

Respondent made its supplemental return and motion to dismiss on July 25, 2004, arguing the application was untimely, successive, and without merit on the subject-matter jurisdiction allegations. An evidentiary hearing into the matter was convened on July 27, 2005, at the Charleston County Courthouse before the Honorable Judge Kenneth G. Goode. Applicant was present at the hearing and was represented by Peter T. Phillips, Esquire. Salley W. Elliott, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Judge Goode denied and dismissed that application for PCR in an order dated September 26, 2005. Applicant did not appeal.

***0:07-0604-PMD-BM***

Applicant filed his fifth *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on March 6, 2007 (C.A. No. 0:07-0604-PMD-BM). The petition was dismissed as successive by the Honorable Patrick Michael Duffy, United States District Judge, and the Court of Appeals denied the appeal on August 24, 2007.

***0:09-1782-PMD-BM***

Applicant filed his sixth *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on April 23, 2009 (C.A. No. 0:09-1782-PMD-BM). The Honorable Bristow Marchant, United States Magistrate Judge, issued the Report and Recommendation on August 30, 1999, recommending that the petition be dismissed as successive. By written order Judge Duffy

adopted the report and recommendation of the Judge Marchant, and dismissed the petition as a successive habeas petition.

### CURRENT APPLICATION

In his *fifth* and current application for post-conviction relief and the supporting memorandum, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "The Applicant illegally detained in South Carolina Department of Corrections under [an] unsigned Court order."
  - a. "The trial judge failed to actually sign the court order to the South Carolina Department of Corrections ...."
  - b. "Respondent has no jurisdiction over the Applicant and he is being illegally detained. As a result, the court order, dated April 22, 1985, bore only a typewritten name of the trial judge."
2. "Jurisdiction of PCR Court."

Also, before this Court are the records of the Aiken County Clerk of Court, Applicants records from the South Carolina Department of Corrections, the final orders from Applicant's prior post-conviction relief actions, Applicant's appellate records, and the records from this post-conviction relief action.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### Statute of limitations

The application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 ("the Act"). Specifically, the Act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of offense or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

8/12  
JAF

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted and sentenced on April 18, 1985. The South Carolina Court of Appeals affirmed his conviction and sentence on December 8, 1986. Accordingly, Applicant was required to file this Application on or before July 1, 1997. Applicant did not file this Application until March 8, 2016 which was well beyond the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this application is dismissed for failure to file within the time mandated by the Act.

#### Successive

The application should be summarily dismissed because it is successive to Applicant's previous PCR applications. 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). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the offense 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

9/12  
JH

reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

S.C. Code Ann. § 17-27-70.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . . in the previous application." Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant has failed to establish any sufficient reason why could not have raised his current allegations in his previous applications for post-conviction relief. Applicant could have raised the allegations in his first application for post-conviction relief filed April 22, 1987, and he did raise the allegations in his fourth application for PCR. Therefore, the current application is successive and barred under S.C. Code Ann. § 17-27-90.

#### ***Res Judicata***

This application should also be dismissed as procedurally barred by the doctrine of res judicata. Res judicata prohibits "subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." Plum Creek Dev. Co. v. Conway, 334 S.C. 30, 512 S.E.2d 106 (1999) (citation omitted). *Res judicata* also bars any issues that were raised or *could have been raised* in the

10/12  
WPA

former action. Id. (citing Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n S.C., 294 S.C. 9, 362 S.E.2d 176 (1987)).

In this action, Applicant alleges that the orders pursuant to which he is incarcerated are void because they are not signed by a trial judge. Applicant filed his first PCR action in 1987. He appealed the denial of that application and subsequently filed multiple successive PCR and federal habeas actions. Applicant's current allegations arise from the same conviction challenged in his prior actions. Therefore, Applicant has had a full opportunity to litigate these claims in both the state and federal courts. Applicant could have raised the instant claims in his prior proceedings. His failure to do so prevents him from raising them now. Accordingly, this Court summarily dismisses the application as barred by *res judicata*.

#### **Meritless**

Lastly, this application should be dismissed on the merits. Applicant alleges that the order committing him to the department of corrections is unsigned. Attached to this return is the indictment and verdict form bearing the handwritten signature of the foreperson finding Applicant guilty of murder and of the trial judge committing Applicant to confinement for life.

{Conclusion and signature on the following page.}

11/02/12  
J. P. P.


**CONCLUSION**

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Alicia A. Olive, Esquire  
Rasheedā Cleveland, Esquire  
PCR Division – 9<sup>th</sup> Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Charleston County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 18<sup>th</sup> day of May, 2017.

  
DEADRA L. JEFFERSON  
Chief Administrative Judge  
Ninth Judicial Circuit

Christy, South Carolina

12/12  
DJG

State of South Carolina } In The Court of Common Pleas  
County of Charleston } For The Ninth Judicial Circuit  
Case no.: 2017-CP-18-1194

Rev. Willie Johnson, #127069?

Applicant,

Applicant Objection to Respondent  
Conditional Order of Dismissal

vs.

State of South Carolina,  
Respondent.

"Evidentiary Hearings Requested"

This matter comes before this court by an 82 (b) order to transfer venue filed March 7, 2017. The Respondent made a return and motion to dismiss on May 12, 2017, Applicant would show this court!

I.

The Respondent "Conditional Order of Dismissal" is made because the Respondent failed to "Answer" summons within thirty (30) days. It is beyond dispute that the Applicant file a summons, see chamber Exhibit [A]. under Rule 12 (c) of the SCRPC.

- A defendant shall serve his answer within thirty (30) days after the service of the Complaint upon him, unless the Court directs otherwise when service of process is made pursuant to Rule 4 (e), and provided further that the state of South Carolina shall answer or otherwise respond to an application for post-conviction relief within (60) days after service of the application if it arises out of guilt plea, and (90) days if it arises out of a writ.

As set forth, in Rule 8 (c), of the SCRPC, "the Respondent failure to plead an Affirmative Defense waives the Defense." Pursuant to Rule 8 (b) of the SCRPC, each and every allegation and material fact, therefore, Respondent have admitted to all of the material facts set forth in Applicant's PCR Application by failure to Answer the summons within prescribed time set forth in the summons. In appearing that under the provisions of S.C. Code Ann. § 17-1-40 (1976), Rev. Johnson is entitled to such relief.

The Respondent has filed their "Conditional Order of Dismissal Prematurely, before the Court adjudicated the "Motion for A Default Judgment. The requirement of liberal construction does not mean that the Court can ignore a clear failure in the Pleadings to allege facts which set forth a claim currently cognizable in a state Court. Also see Walker v. Department of Social Services, 905 F.2d 387 (4th Cir. 1990).

Applicant also alleged in his Application for Post-Conviction Relief that "the trial judge failed to actually sign the Court Order to the South Carolina Department of Corrections". Therefore, this issue was not adjudicated on the merits, by the Federal Courts or state Courts.

In the present case, it appears that the judge signed the face of the indictment, which is only a "notice document" and common sense dictates, if the trial judge signed the face of the indictment, the Applicant believed the trial judge would have signed the Court Order see chamber exhibit [16]. It will prove beyond a reasonable doubt that the trial judge did not sign the Court Order under Rule 11, of the SCRCP, & experienced negligence on a Court Order is not [signature], specifically, neglecting to have adequate factual basis for signed papers constitutes violation of Rule 11 of the SCRCP, see Walker v. Walker, 834 F. Supp. 1413. Thus a void judgment is a judgment that never really existed and is void with the passage of time or inaction of the litigants. A void judgment has no power to bind or protect anyone.

Thus, any kind of proceeding to cancel a void judgment is proper. And it is duty of this Court to declare the order void as a matter of law, specifically, S.C. Code Ann. § 17-27-10 to 160 does not apply to this case, because the issue in this case was not adjudicated or ruled upon.

As a matter of law, it is well established by South Carolina Supreme Court Ruled, In Re Smith, 558 S.E.2d 584, in this case the Supreme Court ruled that the Judge must personally sign their own Court orders. As a result, Judge Smith etc. Smith etc. the Applicant case.



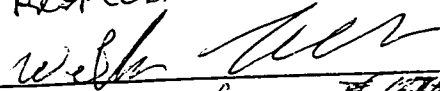
As presented above the Respondent waited 4 years before transferring the case to Charleston County. The Respondent [racial prejudice and bias] has deprived the Applicant of his access to the Court. Respondent has committed a Obstruction of Justice and conspiracy to commit official misconduct, see Safer v. Ritter, 781 F.2d 943. See Memorandum of Law in support of PCR Application and Motion to Expand Record, that support this "objection". Applicant reserves the right to make this objection upon receipt of the Applicant documents from his Institution.

### CONCLUSION

For all the reasons stated herein above, it is respectfully requested that this Honorable Court grant the Applicant's Objection to Respondent conditional order of Dismissal. As a matter of Law the Respondent conditional order of Dismissal are ~~void~~. The Applicant Requests for a "Evidentiary Hearing Requested" and seek relief in the Motion for a Default Judgment.

Met 16, 2017

Respectfully submitted,

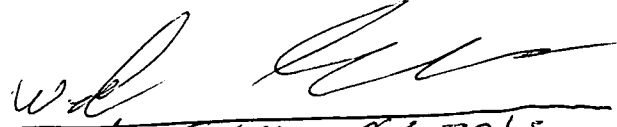


Willie Johnson, # 12769  
Kirkland Correctional Institution  
4377 Broad River Rd.  
Columbia, SC 29210

Certificate of Service

I, Rev. Willie Johnson, #127068, do certify that a copy of this enclosed Applicant's objection to Respondent's conditional order of Dismissal, along with chamber Exhibits A, B, and C was mailed first class, postage prepaid, to the party named therein on this date 16th of May, 2017 to the following address:

Office of the Attorney General  
Attn: Alicia A. Olive, Esquire  
Resheeda Cleveland, Esquire  
PCR Division - 9th Circuit  
P.O. Box 11588  
Columbia, SC 29211

  
\_\_\_\_\_  
Rev. Willie Johnson, #127068

09

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

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

Willie Johnson, #127069,  
a/k/a  
Rev. Willie Johnson

) Case No.: 2017-CP-10-1194  
)  
)

Applicant,

) **FINAL ORDER OF DISMISSAL**  
)  
)

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed March 8, 2016, and transferred to Charleston County on March 7, 2017. Respondent made its Return on or about May 12, 2017, requesting the application be summarily dismissed as untimely, successive, barred by the doctrine of res judicata, and without merit.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed May 18, 2017 and filed May 23, 2017, provisionally denying and dismissing this action, while giving Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated June 7, 2017, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant filed a document captioned "Applicant's Response to Conditional Order of Dismissal" on June 15, 2017, in which Applicant argues:

1. "The trial judge failed to actually sign the Court Order to the South Carolina Department of Corrections to [validity] the conviction and sentence."
2. "Respondent Conditional Order of Dismissal is moot because the Respondent failed to Answer Summons within thirty (30) days."

09

3. "Respondent filed their Conditional Order Dismissal prematurely, before the Court [adjudicated] the Motion for Default Judgment."
4. "Applicant argues that Respondent failure to plea an Affirmative Defense waives the defense."
5. "Respondent failed to address merits in PCR application, they ignore the probative facts in the case and Respondent change[d] the caption in the case and Applicant initially file under Rev. Willie Johnson vs. Bryan Stirling, Director of South Carolina Department of Corrections."
6. "Respondent has no jurisdiction over the Applicant being illegally detained by SCDC. As a result, the Court Order, dated April 22, 1985 bear only a typewritten name of the trial judge. It appear[s] that someone signed the trial judge name on the face of the indictment."
7. "Respondent violated the Procedural Due Process by the failure to follow the Supreme Court ruling in *In Re Smith*, 559 S.E.2d 584 (2002)."
8. "Respondent committed [an] obstruction of justice and conspiracy to commit official misconduct and perjury."

With regard to Applicant's argument that the Conditional Order of Dismissal is moot because the Respondent failed to answer within thirty (30) days, this Court finds Applicant's current action is without merit and therefore, Respondent's failure to respond within thirty (30) days was not prejudicial. See *Herring v. State*, 262 S.C. 597 (S.C. 1974).

This Court also reasserts its holding in the Conditional Order of Dismissal that Applicant's claims regarding the order of commitment being unsigned is without merit. The indictment and verdict form bears the handwritten signature of the foreperson finding Applicant guilty of murder and of the trial judge committing Applicant to confinement for life.

This Court notes the ruling in *In Re Smith* is inapplicable here. The Supreme Court in that case reprimanded a magistrate court judge for failure to personally sign orders, and knowingly allowing his personal to sign orders in his name. Applicant here has offered no evidence that would prove the trial judge failed to personally sign or allowed his personal to sign the order.

This Court also finds Applicant's allegations regarding the Respondent committing "obstruction of justice and conspiracy to commit official misconduct and perjury" and "racial prejudice and bias" are without merit.

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

**IT IS THEREFORE ORDERED** that for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby denied and dismissed with prejudice.

**AND IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
The Honorable Deadra L. Jefferson  
Administrative Judge  
Ninth Judicial Circuit

\_\_\_\_\_, South Carolina.



10

ALAN WILSON  
ATTORNEY GENERAL

July 18, 2017

The Honorable Deadra L. Jefferson  
Charleston County Judicial Center  
100 Broad St., Suite 336  
Charleston, SC 29401-2236

Re: Willie Johnson, #127069 v. State of South Carolina  
2017-CP-10-1194

Dear Judge Jefferson:

Enclosed please find the original proposed **Final of Dismissal** in the above-captioned case. If this Order meets your approval, please sign and return to me in the enclosed envelope, and I will forward to the Charleston County Clerk of Court to be filed and served.

Sincerely,

Rasheeda Cleveland  
Staff Attorney

RC/jaj  
Enclosure(s)

cc: Willie Johnson, #127069

10

KG  
AT  
33  
DL

~~11~~

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

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

Willie Johnson, #127069,  
a/k/a  
Rev. Willie Johnson

) Case No.: 2017-CP-10-1194  
)  
)

Applicant,

) **FINAL ORDER OF DISMISSAL**  
)  
)

v.

State of South Carolina,

Respondent.

FILED  
2017 OCT 12 AM 10:38  
JULIE J. ARCHER, CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed March 8, 2016<sup>1</sup>, and transferred to Charleston County on March 7, 2017. Respondent made its Return on or about May 15, 2017 requesting that the application be summarily dismissed as untimely, successive, barred by the doctrine of res judicata, and without merit.

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted during January 1985 term of the Charleston County Grand Jury for Murder (Indictment #: 1985-GS-10-0159). Mark L. Archer, Esquire and Daniel A. Beck, Esquire represented the Applicant. Charles Molony Condon, Esquire prosecuted the case. Applicant proceeded to a jury trial before the Honorable Thomas L. Hughston, Jr., on April 17, 1985. Applicant was found guilty as indicted on April 18, 1985. Judge Hughston sentenced Applicant to incarceration for life. A timely Notice of Appeal was filed and perfected. During the pendency of his appeal, Applicant filed his first application for post-

<sup>1</sup> Applicant originally filed this Application in Richland County on March 8, 2016. Thereafter, by written order filed February 9, 2017, the Honorable DeAndrea G. Benjamin ordered venue transferred to Charleston County pursuant to S.C. Code § 17-27-40. (2016-CP-40-1510). The Application was filed in Charleston County on March 7, 2017.

//

10/11

conviction relief on June 28, 1985; the matter was dismissed without prejudice by Order dated January 11, 1986.<sup>2</sup> Later that year, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence by opinion filed on December 8, 1986. State v. Johnson, Op. No. 86-MO-455 (S.C. Sup. Ct. Order filed Dec. 8, 1986). Applicant thereafter filed three successive applications for post-conviction relief in the Circuit Court of Charleston County (1987-CP-10-2062; 1996-CP-10-1216; 2004-CP-10-3752), all three of which were denied and dismissed. Applicant also filed six Petitions for Habeas Corpus in federal court between March 30, 1989 and April 23, 2009; these petitions were, too, dismissed.

## II. CURRENT APPLICATION

Applicant filed his fifth and current application for post-conviction relief on or about March 7, 2017. In this application and supporting memorandum, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "The Applicant illegally detained in the South Carolina Department of Corrections under [an] unsigned Court order."
  - a. "The trial judge failed to actually sign the court order to the South Carolina Department of Corrections . . ."
  - b. Respondent has no jurisdiction over the Applicant and he is being illegally detained. As a result, the court order, dated April 22, 1985, bore only a typewritten name of the trial judge."
2. "Jurisdiction of the PCR Court."

Respondent made its Return on or about May 15, 2017, requesting that the application be summarily dismissed as untimely, successive, barred by the doctrine of res judicata, and without merit. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records

---

<sup>2</sup> Respondent has informed the Court that it, regrettably, cannot find either a docket number or an order of dismissal in this premature action. However, the Court, in reliance upon Respondent's assertion in its June 11, 1987 "Return and Motion to Dismiss," finds that Applicant did, in fact, file an Application for Post-Conviction Relief on June 28, 1985. Applicant does not contest this portion of procedural history.

attached thereto, this Court issued a Conditional Order of Dismissal signed May 18, 2017 and filed May 23, 2017, provisionally denying and dismissing this action and giving Applicant twenty (20) days from the date of service of said Order in which to show the Court why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated June 7, 2017, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant filed a document captioned "Applicant's Response to Conditional Order of Dismissal" on June 15, 2017, in which Applicant argues:

1. "The trial judge failed to actually sign the Court Order to the South Carolina Department of Corrections to [validity] the conviction and sentence."
2. "Respondent Conditional Order of Dismissal is moot because the Respondent failed to Answer Summons within thirty (30) days."
3. "Respondent filed their Conditional Order Dismissal prematurely, before the Court [adjudicate] the Motion for Default Judgment."
4. "Applicant argues that Respondent failure to plea an Affirmative Defense waives the defense."
5. "Respondent failed to address merits in PCR application, they ignore the [Probative Facts in the case and Respondent change[d] the caption in the case and Applicant initial file under Rev. Willie Johnson v. Bryan Stirling, Director of South Carolina Department of Corrections."
6. "Respondent has no jurisdiction over the Applicant being illegally detained by SCDC. As a result, the Court Order, dated April 22, 1985 bear only a ty[p]ewritten name of the trial judge. It appear[s] that someone signed the trial judge[']s name on the face of the indictment."
7. "Respondent violated the Procedural Due Process by the failure to follow the Supreme Court ruling in In Re Smith, 559 S.E.2d 584 (2002)."
8. "Respondent committed [an] obstruction of justice and conspiracy to commit official misconduct and perjury."

Upon receipt of Applicant's Response to the Conditional Order of Dismissal, Respondent drafted a proposed Final Order of Dismissal. This Order was submitted to the Court for review and mailed to the Applicant on July 18, 2017. In response, Applicant submitted a "Memorandum in Opposition to Respondent's Final Order and Motion to Dismiss" dated July 25, 2017, and filed with the Court on August 9, 2017. Because this Court has not issued the Final Order of Dismissal, Applicant's memorandum is construed as an additional response to this Court's Conditional Order of Dismissal.

In his memorandum, Applicant reasserts his claim that he is being illegally detained by the South Carolina Department of Corrections under an unsigned Court Order. In support thereof, Applicant cites to State v. Covert, 368 S.C. 188, 628 S.E. 2d 482 (2006) (holding that a search warrant is not issued until signed by an appropriate magistrate, municipal judicial officer, or judge of a court of record); Davis v. Sanders, 40 S.C. 507, 19 S.E. 138 (1894) (holding that an arrest warrant lacking the signature of the officer who issued it constitutes an "unfinished paper"); and DuBose v. DuBose, 90 S.C. 87, 72 S.E. 645 (1911) (holding that an arrest warrant did not confer authority upon a sheriff to make an arrest because the magistrate did not sign the warrant). Applicant also cites to In Re Smith, 348 S.C. 222, 559 S.E.2d 584 (2002) to support his claim. In Smith, the South Carolina Supreme Court found that a magistrate judge violated the Code of Judicial Conduct by knowingly allowing his personnel to sign his court orders. 348 S.C. 222, 559 S.E.2d 584 (2002). Applicant also claims that "a typewritten name on a Court Order is not a signature" under South Carolina Rule of Civil Procedure 11. Applicant thereby asks this Court to "declare the Order void."

Applicant then reasserts his argument that Respondent "committed an obstruction of justice and conspiracy to commit official misconduct and perjury and racial prejudice and bias." Applicant

Page 4

alleges that Respondent did so by filing its Return to his PCR Application on May 15, 2017 in violation of South Carolina Rule of Civil Procedure 12(a), and then improperly relying upon Herring v. State, 262 S.C. 597, 206 S.E.2d 885 (1974), to excuse the delay. Appellant argues that Respondent further obstructed justice and denied him procedural due process by deliberately withholding information in the "Procedural History" Section of its Return. Specifically, Appellant alleges that Respondent failed to include in its Return that the Honorable Deadra L. Jefferson presided over Applicant's "Motion for New Trial Based on After Discovered Evidence" on January 9, 2009. According to the Applicant, "[j]udge who presided at Applicant's hearing may not preside over subsequent post-conviction proceedings..." However, Applicant does not cite to any South Carolina statutes or case law in support of this argument.<sup>3</sup>

Lastly, Applicant asks this Court to reject the proposed Order of Dismissal in order to "send a message to the Respondent [that] the Court will not turn a blind [eye] to the injustice in this State." In support of this request, Applicant cites to Cannon 2(A) and Cannon 3(B)(2) of the South Carolina Code of Judicial Conduct.

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

This Court has reviewed the Applicant's Response to the Conditional Order of Dismissal and Memorandum in Opposition to Respondent's Final Order and Motion to Dismiss in their entirety, as well as the original pleadings, and finds that the Conditional Order of Dismissal should become final for the reasons detailed below.

#### ***Statute of Limitations***

---

<sup>3</sup> Applicant's argument on this issue is addressed by separate Order of this Court dated October 5, 2017.

RNG/s

The Court holds that the instant application for post-conviction relief is hereby dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act, S.C. Code. Ann. § 17-27-10 to § 17-27-160 ("The Act"). Specifically, the Act provides:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of offense or within one year after the sending of the remitter to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code. Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1995. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted and sentenced on April 18, 1985. The South Carolina Court of Appeals affirmed his conviction and sentence on December 8, 1986. Applicant was, therefore, required to file this Application on or before July 1, 1996. However, Applicant did not file his current application for post-conviction relief until March 8, 2016 which was well beyond the statutory filing period.

A motion requesting summary judgment, like Respondent's Return, may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). Moreover, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application [for post-conviction relief] where it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Accordingly, this Court dismisses the Applicant's current application for failure to file within the time frame mandated by the Act.

*Successive*

2/10/16

This Court also finds that Applicant's current application for post-conviction relief is successive to his previous PCR applications. South Carolina 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. 614, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

Indeed, section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the offense 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. § 17-27-70.

Thus, under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 393 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . . in the previous application." Id. at 450, 409 S.E.2d at 394. That is to say, the applicant may not assert grounds for relief in a post-conviction application if he could have asserted those same allegations in a previous application. See id. The applicant bears the burden of showing that the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant here has failed to establish any sufficient reason why he could not have raised his current allegations in his previous four applications for post-conviction relief. Indeed, the Applicant could have raised his current allegations in his first, non-premature application for

post-conviction relief filed on April 22, 1987. Moreover, the Applicant did, in fact, assert the very same allegation he presently asserts in his fourth application for post-conviction relief filed on September 8, 2004 (2004-CP-10-3752). The allegation at issue being that he was illegally detained by the South Carolina Department of Correction on an unsigned order. The Court, therefore, concludes that the current application for post-conviction relief is successive and barred under S.C. Code Ann. § 17-27-90.

### ***Res Judicata***

The Court further finds that the doctrine of *res judicata* bars Applicant's claims in the current application. *Res judicata* prohibits "subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." Plum Creek Dev. Co. v. Conway, 334 S.C. 30, 512 S.E.2d 106 (1999) (citation omitted). *Res Judicata* also bars any issues that were raised or *could have been raised* in the former action. Id. (citing Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n S.C., 294 S.C. 9, 362 S.E.2d 176 (1987)).

Applicant filed his first, timely application for post-conviction relief on April 22, 1987; it was dismissed on March 9, 1988. Applicant appealed the denial of his initial PCR application and subsequently filed multiple, successive PCR and federal habeas petitions based on his April 18, 1985 conviction. His current allegations arise from the same conviction challenged in his prior actions. Moreover, the crux of Applicant's current application is that he is being detained unlawfully by the South Carolina Department of Corrections because the order committing him to the SCDC is unsigned by the presiding judge. The Applicant certainly could have raised this alleged issue as early as 1987 when he filed his first application for post-conviction relief, if, as Applicant alleges, the presiding judge did, indeed, fail to sign his sentencing order in 1985.

However, the Applicant did not raise this claim until his *fourth application for post-conviction relief* filed in September of 2004. The Court must, therefore, conclude that the Applicant has had full opportunity to raise this claim since 1987, and did, in fact, raise this claim in his fourth PCR application. Accordingly, this Court summarily dismisses the application as barred by *res judicata*.

***Meritless***

Likewise, the Court finds Applicant's current application for post-conviction relief to be without merit. The Applicant alleges that he is being held unlawfully because the Order committing him to the Department of Corrections was unsigned by the Judge who presided over his criminal trial. This claim has no basis in fact. The indictment and verdict form, attached hereto, bear the handwritten signature of the foreman of the jury finding the Applicant guilty of murder and the handwritten signature of the presiding judge, the Honorable Thomas L. Hughston, Jr. Judge Hughston's handwritten signature appears below the following statement: "The Defendant, Willie Johnson, under the jurisdiction and control of the South Carolina Corrections for a period of his life." Accordingly, the Court finds the Order committing the Applicant to the SCDC to be valid, and thereby concludes that the Applicant is lawfully detained by SCDC.

In so ruling, the Court notes that the cases cited by the Applicant are inapplicable. Indeed, State v. Covert, Davis v. Sanders, and DuBose v. DuBose are not dispositive of the issue presently before this Court because these cases discuss the requirements concerning judicial signatures *on warrant applications*. These cases do not expound on the signature requirements for sentencing orders, let alone address the type of signature that must appear on these types of orders. Likewise, the case of In Re Smith is also inapplicable. In this case, the Supreme Court of South Carolina reprimanded a magistrate judge for knowingly allowing his office personnel to sign orders in his name. In Re Smith, 348 S.C. 222, 223, 559 S.E.2d 584, 585 (2002). The Applicant here does not

argue that Judge Hughston permitted his staff to sign the order in lieu of signing it himself, nor does Applicant offer any evidence to that point. Rather, the Applicant argues that Judge Hughston failed to sign the Order altogether, which, as previously discussed, is simply not true. Finally, the Court notes that, despite Applicant's assertions to the contrary, South Carolina Rule of Civil Procedure 11(a) cannot be construed so as to forbid a member of the judiciary from utilizing an electronic or "typewritten" signature as the Applicant claims. Rather, it requires attorneys or parties to a case to sign their names to "pleadings, motions, or other papers." *See* SCRAP 11(a). Regardless, the indictment and verdict form bears the handwritten signature of the trial judge committing Applicant to confinement for life rendering this particular argument moot.

The Court also finds Applicant's argument that Respondent committed an "obstruction of justice" by failing to answer his application within thirty (30) days to be without merit. In support of his Argument, Applicant cites S.C. Code Ann. § 17-27-70(a), which provides that "the state shall respond [to an application for post-conviction relief] by answer or by motion" "within thirty days after the docketing of the application, or within any further time the court may fix." While the record indicates that the State of South Carolina did, indeed, fail to file its Return within the requisite thirty (30) day time period, the Court finds that the State's delay in filing the return was not prejudicial to the Applicant since his Application is otherwise meritless. See Herring v. State, 262 S.C. 597, 206 S.E.2d 885 (1974) (holding that the State's eleven (11) month delay in filing a return to application for post-conviction relief was not prejudicial to the applicant since the application was found to be without merit).

The Court is likewise unpersuaded to deny the Final Order of Dismissal as Applicant requests because of "injustice in [the] American [legal system.]" The Court does not find this argument by Applicant to be particularly relevant here because it focuses on recent incidents the

Applicant perceives as unjust and corrupt. Indeed, in his current application, Applicant refers to the police shootings that occurred in Ferguson, Missouri, and North Charleston, South Carolina in 2014 and 2015, respectively. While Applicant is entitled to opine that these incidents are indicative of a corrupt criminal justice system, these incidents are wholly unrelated to the Murder conviction he seeks to challenge in his current PCR application. Thus, the Court cannot and will not consider the incidents cited in ruling upon Applicant's current PCR application.

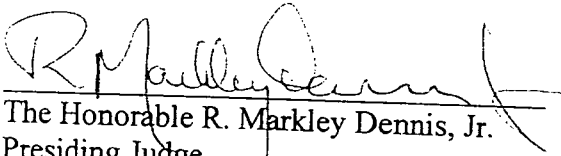
### CONCLUSION

This Court has reviewed Applicant's Response to the Conditional Order of Dismissal and Memorandum in Opposition to Respondent's Final Order and Motion to Dismiss, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

**IT IS THEREFORE ORDERED** that for the reasons set forth herein, the Application for post-conviction relief is hereby denied and dismissed with prejudice.

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

**AND IT IS SO ORDERED** this 10<sup>th</sup> day of October, 2017.

  
The Honorable R. Markley Dennis, Jr.  
Presiding Judge  
Ninth Judicial Circuit

Charleston, South Carolina.  
October 16, 2017

WJ/11

T  
9

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

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

Willie Johnson, #127069,  
a/k/a  
Rev. Willie Johnson

) Case No.: 2017-CP-10-1194  
)  
)

) Applicant,  
)  
)

**ORDER ON RECUSAL**

v.  
)  
)  
)

State of South Carolina,  
)  
)

) Respondent.  
)  
)

FILED  
2017 OCT 12 AM 10:38  
JULIE M. HUGHSTON  
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed March 8, 2016<sup>1</sup>, and transferred to Charleston County on March 7, 2017. Respondent made its Return on or about May 15, 2017 requesting that the application be summarily dismissed as untimely, successive, barred by the doctrine of res judicata, and without merit.

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted during January 1985 term of the Charleston County Grand Jury for Murder (Indictment #: 1985-GS-10-0159). Mark L. Archer, Esquire and Daniel A. Beck, Esquire represented the Applicant. Charles Molony Condon, Esquire prosecuted the case. Applicant proceeded to a jury trial before the Honorable Thomas L. Hughston, Jr., on April 17, 1985. Applicant was found guilty as indicted on April 18, 1985. Judge Hughston sentenced Applicant to incarceration for life. A timely Notice of Appeal was filed and perfected. During the pendency of his appeal, Applicant filed his first application for post-

<sup>1</sup> Applicant originally filed this Application in Richland County on March 8, 2016. Thereafter, by written order filed February 9, 2017, the Honorable DeAndrea G. Benjamin ordered venue transferred to Charleston County pursuant to S.C. Code § 17-27-40. (2016-CP-40-1510). The Application was filed in Charleston County on March 7, 2017.

1/10/19  
XG

conviction relief on June 28, 1985; the matter was dismissed without prejudice by Order dated January 11, 1986.<sup>2</sup> Later that year, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence by opinion filed on December 8, 1986. State v. Johnson, Op. No. 86-MO-455 (S.C. Sup. Ct. Order filed Dec. 8, 1986). Applicant thereafter filed three successive applications for post-conviction relief in the Circuit Court of Charleston County (1987-CP-10-2062; 1996-CP-10-1216; 2004-CP-10-3752), all three of which were denied and dismissed. Applicant also filed six Petitions for Habeas Corpus in Federal Court between March 30, 1989 and April 23, 2009; these petitions were, too, dismissed.

## II. CURRENT APPLICATION


Applicant filed his fifth and current application for post-conviction relief on or about March 7, 2017. In this application and supporting memorandum, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "The Applicant illegally detained in the South Carolina Department of Corrections under [an] unsigned Court order."
  - a. "The trial judge failed to actually sign the court order to the South Carolina Department of Corrections . . ."
  - b. Respondent has no jurisdiction over the Applicant and he is being illegally detained. As a result, the court order, dated April 22, 1985, bore only a typewritten name of the trial judge."
2. "Jurisdiction of the PCR Court."

Respondent made its Return on or about May 15, 2017, requesting that the application be summarily dismissed as untimely, successive, barred by the doctrine of res judicata, and without

---

<sup>2</sup> Respondent has informed the Court that it, regrettably, cannot find either a docket number or an order of dismissal in this premature action. However, the Court, in reliance upon Respondent's assertion in its June 11, 1987 "Return and Motion to Dismiss," finds that Applicant did, in fact, file an Application for Post-Conviction Relief on June 28, 1985. Applicant does not contest this portion of procedural history.

2 

merit. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed May 18, 2017 and filed May 23, 2017, provisionally denying and dismissing this action and giving Applicant twenty (20) days from the date of service of said Order in which to show the Court why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated June 7, 2017, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant filed a document captioned "Applicant's Response to Conditional Order of Dismissal" on June 15, 2017, in which Applicant argues:

1. "The trial judge failed to actually sign the Court Order to the South Carolina Department of Corrections to [validity] the conviction and sentence."
2. "Respondent Conditional Order of Dismissal is moot because the Respondent failed to Answer Summons within thirty (30) days."
3. "Respondent filed their Conditional Order Dismissal prematurely, before the Court [adjudicate] the Motion for Default Judgment."
4. "Applicant argues that Respondent failure to plea an Affirmative Defense waives the defense."
5. "Respondent failed to address merits in PCR application, they ignore the [Probative Facts in the case and Respondent change[d] the caption in the case and Applicant initial file under Rev. Willie Johnson v. Bryan Stirling, Director of South Carolina Department of Corrections."
6. "Respondent has no jurisdiction over the Applicant being illegally detained by SCDC. As a result, the Court Order, dated April 22, 1985 bear only a ty[p]ewritten name of the trial judge. It appear[s] that someone signed the trial judge[']s name on the face of the indictment."
7. "Respondent violated the Procedural Due Process by the failure to follow the Supreme Court ruling in In Re Smith, 559 S.E.2d 584 (2002)."
8. "Respondent committed [an] obstruction of justice and conspiracy to commit official misconduct and perjury."

3  
30/9  
[Signature]

Upon receipt of Applicant's Response to the Conditional Order of Dismissal, Respondent drafted a proposed Final Order of Dismissal. This Order was submitted to the Court for review and mailed to the Applicant on July 18, 2017. In response, Applicant submitted a "Memorandum in Opposition to Respondent's Final Order and Motion to Dismiss" dated July 25, 2017, and filed with the Court on August 9, 2017. Because this Court has not issued the Final Order of Dismissal, Applicant's memorandum is construed as an additional response to this Court's Conditional Order of Dismissal.

In his memorandum, Applicant reasserts his claim that he is being illegally detained by the South Carolina Department of Corrections under an unsigned Court Order. In support thereof, Applicant cites to State v. Covert, 368 S.C. 188, 628 S.E. 2d 482 (2006) (holding that a search warrant is not issued until signed by an appropriate magistrate, municipal judicial officer, or judge of a court of record); Davis v. Sanders, 40 S.C. 507, 19 S.E. 138 (1894) (holding that an arrest warrant lacking the signature of the officer who issued it constitutes an "unfinished paper"); and DuBose v. DuBose, 90 S.C. 87, 72 S.E. 645 (1911) (holding that an arrest warrant did not confer authority upon a sheriff to make an arrest because the magistrate did not sign the warrant). Applicant also cites to In Re Smith, 348 S.C. 222, 559 S.E.2d 584 (2002) to support his claim. In Smith, the South Carolina Supreme Court found that a magistrate judge violated the Code of Judicial Conduct by knowingly allowing his personnel to sign his court orders. 348 S.C. 222, 559 S.E.2d 584 (2002). Applicant also claims that "a typewritten name on a Court Order is not a signature" under South Carolina Rule of Civil Procedure 11. Applicant thereby asks this Court to "declare the Order void."

Applicant then reasserts his argument that Respondent "committed an obstruction of justice and conspiracy to commit official misconduct and perjury and racial prejudice and bias." Applicant

4 40/9  
2/19

alleges that Respondent did so by filing its Return to his PCR Application on May 15, 2017 in violation of South Carolina Rule of Civil Procedure 12(a), and then improperly relying upon Herring v. State, 262 S.C. 597, 206 S.E.2d 885 (1974), to excuse the delay. Appellant argues that Respondent further obstructed justice and denied him procedural due process by deliberately withholding information in the "Procedural History" Section of its Return. Specifically, Appellant alleges that Respondent failed to include in its Return that the Honorable Deadra L. Jefferson presided over Applicant's "Motion for New Trial Based on After Discovered Evidence" on January 9, 2009. According to the Applicant, "[j]udge who presided at Applicant's hearing may not preside over subsequent post-conviction proceedings..." However, Applicant does not cite to any South Carolina statutes or case law in support of this argument.

Lastly, Applicant asks this Court to reject the proposed Order of Dismissal in order to "send a message to the Respondent [that] the Court will not turn a blind [eye] to the injustice in this State." In support of this request, Applicant cites to Cannon 2(A) and Cannon 3(B)(2) of the South Carolina Code of Judicial Conduct.

***Obstruction of Justice***  
***Denial of Procedural Due Process***  
***Recusal***

The Court is unpersuaded by Applicant's claim that Respondent committed an "obstruction of justice and violation of procedural due process" by deliberately failing to disclose in the procedural history section of the Conditional Order of Dismissal that the Honorable Deadra L. Jefferson previously heard Applicant's "Motion for New Trial Based on After Discovered Evidence" on January 9, 2009, and issued an Order denying the same on February 24, 2009. Applicant asserts that Judge Jefferson is unable to hear his current PCR application because the "judge who presided at Applicant's [previous] Hearing may not preside over subsequent post-

conviction proceedings." Applicant further asserts that "[i]n the interest of justice, this Court should disqualified himself."

While it is true that "trial courts may not sit in judgment of their own rulings and proceedings," the Applicant does not currently seek relief from the February 24, 2009 Order issued by Judge Jefferson on his "Motion for New Trial." See State v. Bruce, 412 S.C. 504, 509; 772 S.E.2d 753, 756 (2015). The Applicant instead seeks post-conviction relief from his April 18, 1985 Murder conviction heard by the Honorable Thomas L. Hughston, Jr. Because the Applicant seeks post-conviction relief in a matter heard solely by Judge Hughston this Court may preside over Applicant's current PCR application. The Applicant has not raised any issues nor is he seeking any relief related to the February 24, 2009 Order issued by this Court. This Court is not in any manner reviewing its previous Order on Applicant's Motion for a New Trial. In fact, the Court has at the Applicant's request already reviewed its previous Order of February 24, 2009 upon the filing of his Motion for Reconsideration. The Court dismissed as premature the Applicant's Motion for Reconsideration on February 24, 2009, and then later denied his Motion by Order dated March 6, 2009. Applicant thereafter filed a Notice of Appeal with the Supreme Court. Applicant's appeal was dismissed as untimely by the Supreme Court on or about April 22, 2009, and a remittitur was issued on June 10, 2009.

This Court is, therefore, under no obligation to recuse itself in this matter pursuant to precedent. See Floyd v. State, 303 S.C. 298, 299, 400 S.E.2d 145, 146 (1991) (holding that the judge who presided at an applicant's guilty plea, criminal trial, or probation revocation proceeding shall, upon motion, recuse himself in all post-conviction relief hearings involving the same matter). This Court did not preside over Applicant's trial, guilty plea, or probation revocation on the underlying Murder conviction of April 18, 1985. Additionally, the State is under no obligation in

the procedural history of this PCR to disclose the name of a judge on a separate unrelated matter. Further, the Applicant was present and participated in the hearing conducted in 2009 and was well aware of the identity of the Judge hearing his Motion for a New Trial.

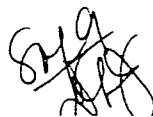
Lastly, the Court is aware of its obligations under the South Carolina Code of Judicial Conduct, specifically Canons 2(A) and 3(B)(2) referenced by the Applicant in his Memorandum in Opposition to Respondent's Final Order and Motion to Dismiss. Canon 2(A) provides that "[a] judge shall respect and comply with the law, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Similarly, Canon 3(B)(2) states that "[a] judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism." The Court has abided by these canons in rendering its Order on the Conditional Dismissal of this action. The Applicant did not raise these issues until the submission of his second supplemental response to the proposed Final Order of Dismissal. This Court has completed its judicial duties in reviewing the documents, pleadings, and case law submitted by the parties and rendering a conditional Order without prejudice or bias. The Court has acted with the utmost impartiality in considering Applicant's petition, and, therefore, declines to recuse itself on the basis of injustice to the Applicant.

The law and ethics require that a Judge recuse himself in a proceeding in which their impartiality might reasonably be questioned, including but not limited to, instances where they have a personal bias or prejudice against a party. Murphy v. Murphy, 319 S.C. 324, 331, 461 S.E. 2d 39, 42 (1995). Such bias must stem from an extrajudicial source and result in decisions based on information other than what the judge learned from their participation in the case. See State v. Jackson, 353 S.C. 625, 627, 578 S.E. 744, 745 (Ct. App. 2003). It is not enough for the party

7 7/29/09  
[Signature]

seeking disqualification to simply allege bias or prejudice. Id. The party must show some evidence of bias or prejudice. Id. The alleged Bias must be personal as distinguished from judicial. Davis v. Board of Sch. Comm'rs, 517 F.2d 1044 (5<sup>th</sup> Cir. 1975); Roper v. Dynamique Concepts, Inc., 316 S.C. 131, 447 S.E.2d 218 (Ct. App. 1994). Likewise, the bias must stem from extrajudicial sources and result in a decision on the merits based on considerations other than what the judge learned from his participation in the case. Id. A motion to recuse may not be predicated on the judge's rulings in the case before him or on rulings in a related case, nor on his demonstrated tendency to rule in a particular manner, or on a particular judicial leaning or attitude derived from his experience on the bench. United States v. Grinnell Corp., 384 U.S. 563 (1966); Berger v. United States, 255 U.S. 22, 31 (1921); Mallett v. Mallett, 323 S.C. 141, 473 S.E. 2d 804 (Ct. App. 1996).

The Applicant here has failed to show any evidence of bias or prejudice towards him in the current proceedings in issuing the Conditional Order of Dismissal, nor has he demonstrated or even indicated that the Court acted prejudicially towards him in 2009 when it heard his Motion for a New Trial. In fact, the Applicant even states that he "is not implying this Court would be bias towards him" in his Memorandum in Opposition to Respondent's Final Order and Motion to Dismiss. Moreover, the only "evidence" that the Applicant does offer in support of his argument for recusal is a statement that Judge Jefferson heard and denied his previous Motion for a New Trial. However, a judge is not required to recuse herself if no evidence of bias or prejudice is presented other than prior appearances by the party which resulted in adverse rulings by the judge. See Payne v. Holiday Towers, Inc., 283 S.C. 210, 217, 321 S.E.2d 179, 183 (Ct. App. 1984); see also State v. Cabiness, 273 S.C. 56, 254 S.E.2d 291 (1979) (defendant's three previous appearances in general sessions before the same judge not a basis for disqualification, absent other evidence of bias). The Court thus finds Applicant's claim of bias to be frivolous and without merit.



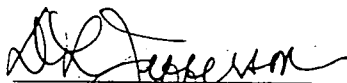
**CONCLUSION**

This Court has reviewed Applicant's Response to the Conditional Order of Dismissal and Memorandum in Opposition to Respondent's Final Order and Motion to Dismiss, in conjunction with the original pleadings, and finds his assertions lack sufficient reason and has failed to show why this Court should recuse itself from this matter.

**IT IS THEREFORE ORDERED** that for the reasons set forth herein, the Court denies any motion for Recusal. However, out of an abundance of caution the Court has referred the Final Order for Dismissal to Judge Dennis for consideration.

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

**AND IT IS SO ORDERED** this 5<sup>th</sup> day of October, 2017.



\_\_\_\_\_  
The Honorable Deadra L. Jefferson  
Chief Administrative Judge  
Ninth Judicial Circuit

Charleston, South Carolina.

THE STATE OF SOUTH CAROLINA  
IN The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
COURT OF COMMON PLEAS

R. MARKLEY DENNIS, JR. CIRCUIT COURT JUDGE

CASE NO.: 2017-CP-10-1194

FILED  
2017 NOV - 9 PM 3:44  
CLERK OF COURT

Rev. Willie Johnson, .....Appellant

v.

State of South Carolina, ..... Respondent

NOTICE OF APPEAL

Rev. Willie Johnson, #127069 Appeals the Final Order of Dismissal  
of the Honorable R. Markley Dennis, Jr. entry of this order on October 12, 2017

Appellant received written notice of the order on November 2, 2017. Appellant  
Appeal the Order on Recusal, due to no notice of the Order.

November 3, 2017

*Willie Johnson*

Rev. Willie Johnson, #127069  
Kirkland Correction Institution  
4344 Broad River Road  
Columbia, SC 29210

OTHER COUNSEL OF RECORD:  
Rasheeda Cleveland  
Staff Attorney  
P.O. Box 11549  
Columbia, SC 29211-1549

LB  
Max 99

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
REQUEST TO STAFF MEMBER

|  |        |                  |
|--|--------|------------------|
| TO: NAME:  | TITLE: | DATE:            |
| James E. Brennan Jr, Assistant Division Director |        | August 17, 2009  |
| INMATE'S NAME:                                   |        | SCDC #:          |
| Willie Johnson                                   |        | 127069           |
| INSTITUTION:                                     |        | LIVING QUARTERS: |
| Litcher Correctional Institution                 |        |                  |

I respectfully request a copy of my commitment order. I have a pending case before the courts. According to SCDC policy Op-21.09 that I may request a copy of a document if I have a pending court case, my case no. 2007-CP-40-07396. I need this legal material (ASAP)

Thank you so very much for your time and help in this most important matter.

God bless!

Willie Johnson

DISPOSITION BY STAFF MEMBER:

A copy is attached for your litigation.

2009 AUG 20 01:14:54

|          |                                      |
|----------|--------------------------------------|
| DATE:    | SIGNATURE:                           |
| 10/18/09 | James E. Brennan Jr. Asst. Div. Dir. |

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Bm/35

014

IN THE COURT OF GENERAL SESSIONS )  
OF THE STATE )  
OF SOUTH CAROLINA )

127069

INDICTMENT NO. 85-GS-10-0159

ARREST WARRANT NO. B178773

RACE: B DOB: [REDACTED]

CHARGE: MURDER

WILLIE JOHNSON COMMITTED TO JAIL 10-03-84

VERDICT: GUILTY OF MURDER

DEFENDANT

LET THE DEFENDANT, WILLIE JOHNSON BE CONFINED

UNDER THE JURISDICTION AND CONTROL OF THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD

OF ---HIS LIFE---

RECEIVED  
APR 22 1985

DATE: APRIL 18, 1985

RECEPTION CENTER  
Prison Office

s/ T. L. HUGHSTON, JR.  
PRESIDING JUDGE

ATTEST: A TRUE COPY  
HOWARD A. TAYLOR (SEAL)  
CLERK, C.P. & G.S.

BY Margaret L. [Signature]  
DEPUTY CLERK

15

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
REQUEST TO STAFF MEMBER**

|   |                                     |                              |
|---|-------------------------------------|------------------------------|
| <b>TO: NAME:</b><br>Ms. Gilmore, Record Manager | <b>TITLE:</b>                       | <b>DATE:</b><br>Dec. 6, 2004 |
| <b>INMATE'S NAME:</b> Willie Johnson            | <b>SCDC#:</b> 127069                |                              |
| <b>INSTITUTION:</b> LCI                         | <b>LIVING QUARTERS:</b> wando B-227 |                              |

I would like to apologize for not sending this form back to you before now.

I would like to know does the sentence sheet with the judge signature is the only thing give SCDC jurisdiction over a inmate once he enter SCDC? Also, if a judge signature is not on the sentence sheet does SCDC still has jurisdiction over that person.

Thank you for your assistance in this matter.

Thank you

EXHIBIT  
B

**DISPOSITION BY STAFF MEMBER:**

*The judge signature should be on the original paper work*

|                          |                                 |
|--------------------------|---------------------------------|
| <b>DATE:</b><br>12/28/04 | <b>SIGNATURE:</b><br>M. Gilmore |
|--------------------------|---------------------------------|

16

[ C ]

**Exhibit**

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
DIVISION OF CLASSIFICATION AND INMATE RECORDS**

**- M E M O R A N D U M -**

**TO:** Willie Johnson

**SCDC# :** 127069

**INSTITUTION:** Lieber Correctional Institution

**FROM:** Dennis R. Patterson Sr., Director  
Division of Classification and Inmate Records

**SUBJECT:** Response to Inmate Correspondence

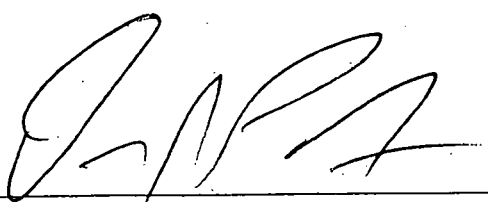
**DATE:** June 1, 2007

Your correspondence to Mr. Kenneth McKellar, dated April 29, 2007, questioning your housing assignment, has been forwarded to me for response.

Institutional wardens have the authority to relocate an inmate, or a group of inmates, within the confines of the institution assigned. If your housing assignment has been changed by the warden, I would suggest you make every effort to adjust to the move.

In reference to your commitment order not being signed by the sentencing judge, if this statement is accurate, I suggest you seek legal remedies through the court.

I hope this response addresses your concerns.

S/   
 \_\_\_\_\_  
 Dennis R. Patterson, Sr.

DRP:csk

cc: Robert Ward  
 Inmate Record  
 Institutional File  
 File

June 2, 2016

Rev. Willie Johnson, #127069  
Allendale C.I.  
P.O. Box 1151  
Fairfax, SC 29827

The Honorable Jeanette W. McBride  
Clerk of Court, Richland County  
P.O. Box 2766  
Columbia, SC 29202

RE: Rev. Willie Johnson v. Bryan Stirling, Director of SCDC  
Case No.: 2016-CP-40-01510

Dear Ms. McBride:

I trust this letter finds you doing well. I'm just writing to inquire about the status of my case [2016-CP-40-01510]. Also, I would like to know did the Judge signed the Order, that was sent to Him because the Respondent failed to answer the SUMMONS within thirty [30] days.

In addition, I would like to know did an Attorney been appointed to this case.

Thank you for your assistance in this matter.

With best personal regards,



Rev. Willie Johnson, #127069

NOTE: The Order was sent to the Honorable L. Casey Manning on May 27, 2016.

cc: Bryan Stirling, Director of SCDC

2016 CP400 1570

Letter Mailed  
6/17/16  
JP

2017-CP-10-1194

17

February 26, 2016

Rev. Willie Johnson, #127069  
Allendale C.I.  
P.O. Box 1151  
Fairfax, SC 29827

The Honorable Jeanette W. McBride  
Clerk of Court for Richland County  
P.O. Box 2766  
Columbia, South Carolina 29202

RE: Post-Coviction Relief Application

Dear Ms. McBride:

Enclosed please find the original PRC Application, along with a SUMMONS.  
Kindly file the original and stamp and return the copy to me.

By copy of this letter, I am serving Respondent Bryan Stirling, Director  
of Department of Corrections with the same.

Thank you for your attention to this matter.

With best personal regards,

  
\_\_\_\_\_  
Rev. Willie Johnson

cc: Bryan Stirling, Director of SCDC

RECEIVED

18  
DDO  
GC

APR - 2 2013

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

GENERAL COUNSEL

INMATE CORRESPONDENCE

RECEIVED

TO: Williams E. Byars, Director of SCDC  
FROM: Willie Johnson, 127069  
SUBJECT: HARDSHIP TRANSFER TO MACDOUGALL C.I.  
DATE: March 25, 2013

MAR 29 2013

DIRECTOR

I hope this correspondence finds you doing well. I'm just writing to inquire about me being denied a "Hardship Transfer" to MacDougall C.I. by Ms. Doris O. Pool, Branch Chief-Institutional Classification on March 18, 2013. Here, this Policy is very arbitrary and discriminatory because the Policy discriminate against those inmate with a life sentence. Initially, the former Director Ozmint, the one that promulgated this discriminatory Policy. As a result, there are inmate with a life sentence that house at MacDougall C.I..

Specifically, I was house at MacDougall C.I. for a (11) years and Lt. Smalls place a bogus charge against me for stealing out of the Chapel. See (attach documents of Chaplain Neal).

In addition, I was transferred from MacDougall C.I. on a Minor charge, SCDC Policy states I should not I've been transfere on a minor charge, then I was transfer to Evan Correctional Institution, then I put in for a Hardship transfer to Lieber C.I., then the caseworker lock me me in to stay at Lieber C.I., then on August 9, 2012, I was transfer to Allendale C.I., and at my annual review in January I put in for a Hardship transfer to MacDougall C.I., enclosed a letter from my wife doctor. To reiterate, inmate being charge with minor charges every day hear at Allendale C.I. and these inmates are not being transfer to a Level 3 Institution. I pose no serious security risks or threat. Here, I should not have been reassigned to an Level 3 Institution. Remember I did not request to be transfer to Allendale C.I.. This is a clear case of-

discrimination, this discriminatory practices was going on for decades in SCDC, that is why so many lawsuit is file against the Department and I do not fault you, it is those individual that work for the Department and majority of them do not have the Department best interest. Also, you may disagree with me, but the facts speak for itself.

Director Byars, I disagree with Ms. Doris P. Pool, the trial Judge failed to actually sign my commitment order to validity my conviction and sentence and SCDC has no jurisdiction over me. Since I brought this matter to the attention to former Director Ozmint, he promulgated a new Procedure and Policy on enters in SCDC on January 1, 2005 OP-21-04 Section 4.2 this new Policy is clear that if a inmate commitment order or sentence is not valid he will not be accepted by SCDC. Also, I brought this matter to your attention, let always it was pass on to someone else and person ignore it and little that person know it they committed Obstruction of Justice and Conspiracy to Commit Official Misconduct, Perjury and Kidnapping. To define kidnapping: Takeing away and holding a person illegally, usually against the person's will or by force. And you are a judge and you know a Judge suppose to signed every judgment and order that come to his Office. To reiterate, I am being illegal detained in SCDC for 28 years on unsigned commitment order. Also, I am being handle as a hostage in SCDC.

Director Byars, I have filed a Complaint for criminal charges to be brought against those individual that keep me in SCDC on unsigned Commitment order. Also, Ms. Pool has committed Obstruction of Justice and Conspiracy to Commit Official Misconduct, Perjury and Kidnapping. To put you on notice, I've a family member that work for the F.B.I.. Also, the former Director is apart of this Complaint as well and your General Counsel Chris Florian, he aware of the unsigned commitment order. Those individual action "so outrageous as to offend the sensibilities of the Department". This case is controlled by State v. Covert, 368 S.C.93, 610 S.E.2d 494 (2000), the S.C. Supreme Court held that all documents must be signed by a Judge. Enclosed you will find unsigned committed order. What Competent Authority you have that dispute that this commitment order is valid? the trial Judge pronouncement of sentence from the bench was a period of Hid Life. I don't know what the Prior Administration was thinking about when they modify the sentence on the commitment-

order. Therefore, "the Department of Corrections has no authority in the record of a clearly erroneous sentence in manner which makes the sentence conform to State Statute" and that my sentence must be Record in his combined record as specifically stated in the judgment and commitment. There is no Period of His life, in S.C. Code Ann. 16-3-20(A). I already done the time.

Thank you so very much for your time and help in this most important matter.

With best personal regards,



Rev. Willie Johnson, 127069

Note: Enclosed Documents that would give you a better insight of the subject matter

cc: U.S. Department of Justice

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE CORRESPONDENCE

19  
RECEIVED

APR - 4 2012

GENERAL COUNSEL

TO: Mr. Florian, General Counsel  
FROM: Willie Johnson, #127069  
SUBJECT: UNSIGNED COMMITMENT  
DATE: April 2, 2012

I hope this correspondence finds you doing well. I am in receipt of Maria Leggins, Institution Mailroom Coordinator dated March 20, 2012.

I'm writing to inquire about the statement you made in the Memorandum of Maria Leggins and per you:

- ° You are currently incarcerated pursuant to a valid life sentence issued by Judge Hughston on April 18, 1985. Because the order is valid, it appears you are incorrect that you were in some way affected by any change to SDC Policy, OP-21.04, Inmate Classification Plan (section 4.2). According to our records, you are properly in SDC custody pursuant to this sentencing order.

Mr. Florian, I disagree with you because the trial judge failed to actually sign the commitment order, pursuant to 18 U.S.C.A. Rule (1)(b), the judgment shall be signed by the judge and entered by the clerk.

Specifically, typewritten name on a commitment order is not "signature" under Rule 11, Fed. Rules Civ. Proc. 28 U.S.C.A.. Therefore, the signature constitutes a certification that a commitment order is valid. Here, an unsigned order of the ... void judgment and void Judge shall sign order it is clearly established in the Rules and in case law that a judge shall sign the orders of the Court. Before you is an unsigned order by the trial judge.

Mr. Florian, I would like for you to present to me the competent authority that attack commitment order is valid? I want to remind you, and Judge already already try to deface the unsigned commitment order and criminal charges is pending before this Judge for altering the Court Order. I have a family member that work for the Federal Bureau of Investigation and they have the original unsigned commitment order and other documents.

Mr. Florian, I will be bring criminal charges on those individual involve with my case. Right now, I've been kidnap in SCDC on unsigned commitment order. To define kidnapping it means: taking away and holding a person illegally, usually against the person's will or by force.

Mr. Florian, the trial judge pronouncement of sentence from the bench was a "period of His of Life" such sentencing is a "error of law" which is contrary to the very core of S.C. Code Ann. Section 16-3-20 (A) and that a Court must not creat a "sentence or punishment quite different from the one the legislature actually adopted." Here, SCDC prior Administration modify the Court Order to life in prison. SCDC Violated the State Constitution I § 8 Separation of Power. SCDC already been put on notice every day I am it will cost them \$15,000.00 dollar for each day I remain prison. SCDC General Counsel Office will be on the list of criminal charges as well because your Office suppose to uphold the Constitution.

May our glorious Lord continue to bless you, your family and your staff!

Thank you so very much for your time and help in this most important matter.

Sincerely,


  
Rev. Willie Johnson, #127069

cc: U.S. Justice Department  
Senator Ralph Anderson

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
STATE OF SOUTH CAROLINA )  
vs. )  
Willie Johnson, )  
Defendant. )

IN THE COURT OF GENERAL SESSIONS  
OF THE NINTH JUDICIAL CIRCUIT  
INDICTMENT NO.: 85-GS-10-0159

ORDER

BY   
JULIE J. ARMSTRONG  
CLERK OF COURT

2009 FEB 24 PM 1:48

FILED

Date of Hearing: January 9, 2009  
Judge: Deadra L. Jefferson  
Solicitor: Scarlett Wilson, Esq.  
Defense: Willie Johnson, *Pro Se*  
Court Reporter: Anne Meyer

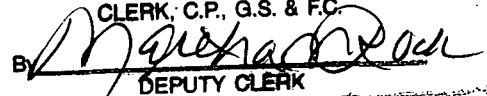
This matter comes before the Court on Defendant's Motion for New Trial Based on After Discovered Evidence, dated October 7, 2008, pursuant to Rule 29, South Carolina Rules of Criminal Procedure. Present at the hearing was Ninth Judicial Circuit Solicitor Scarlett Wilson and Defendant Willie Johnson, *Pro Se*.

**PROCEDURAL HISTORY**

A trial by jury was held on April 18, 1985, the Honorable Thomas L. Hughston presiding, at which time the Defendant Willie Johnson was found guilty of murder, pursuant to S.C. Code Ann. § 16-3-10. Accordingly, Judge Hughston sentenced the Defendant to the South Carolina Department of Corrections for a period of life. The Defendant subsequently filed an Appeal to the Supreme Court on April 25, 1985. By Order of Chief Justice Ness, dated October 16, 1985, the case was remanded to the lower court, to have been held on or before November 15, 1985, for the purpose of settling the record pursuant to Supreme Court Rule 1 § 3F. The conviction was upheld by Judge Jonathan McKnown. The Defendant filed a second Appeal to the Supreme Court. By Order of Chief Justice Ness dated January 9, 1986, the case was remanded to the



ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & F.C.

BY   
DEPUTY CLERK

lower court to have been held on or before February 10, 1986, for the purpose of settling the record pursuant to Supreme Court Rule 1 § 3F. The conviction was again upheld. Defendant filed a Motion for New Trial Based on After Discovered Evidence, dated October 7, 2008, pursuant to Rule 29, South Carolina Rules of Criminal Procedure. A hearing was held on January 9, 2009. Present at the hearing was Ninth Judicial Circuit Solicitor Scarlett Wilson and Defendant Willie Johnson, *Pro Se*.

### STANDARD OF REVIEW

“It is well settled that the grant or refusal of a new trial is within the discretion of the trial judge and will not be disturbed on appeal absent a clear abuse of discretion. However, when there is competent evidence to sustain the jury’s verdict, the judge may not substitute his judgment for that of the jury.” *State v. Prince*, 316 S.C. 57, 447 S.E.2d 177, 181 (1993).

### ANALYSIS

“A party requesting a new trial based on after-discovered evidence must show that the evidence: 1) is such as would probably change the result if a new trial was had; 2) has been discovered since the trial; 3) could not by the exercise of due diligence have been discovered before the trial; 4) is material to the issue of guilt or innocence; and 5) is not merely cumulative or impeaching.” *State v. Freeman*, 319 S.C. 110, 459 S.E.2d 867, 874-75 (Ct. App. 1995).

The Defendant raises several alleged technicalities regarding his court documents which he claims to have discovered in 2004 as the basis of his Motion for a New Trial based on after discovered evidence. Rule 29, South Carolina Criminal procedure requires “A motion for a new trial based on after-discovered evidence must be made within a reasonable period of time after the discovery of the evidence . . .” Defendant’s Motion for New Trial Based on After Discovered Evidence was dated October 7, 2008. As a preliminary matter, the Court finds that

*2009 H*  
*WJG*

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & F.C.  
*Scarlett Wilson*  
DEPUTY CLERK

the Defendant's Motion raising any issues regarding the sufficiency of his indictment are untimely and are procedurally time barred. However, the court will also dispose of the Motion on its merits or lack thereof.

First, the Defendant argues that indictment 85-GS-10-0159 is invalid on its face because he contends it cites the wrong code section. Subject matter jurisdiction and the sufficiency of the indictment are two distinct concepts. The indictment is a notice document. Any insufficiency or defect in the indictment must be challenged before the jury is sworn. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

Second, the Defendant argues that the trial judge failed to sign the sentencing sheet/commitment Order provided to SCDC after his conviction resulting in a wrongful imprisonment. The Defendant received a certified copy of the court documents which he alleges does not have the trial judge's original signature. In 1985, duplicate copies of court documents were not done in triplicate form as they are currently prepared. The Clerk of Court at that time provided a conformed copy of the document for purposes of committing a Defendant to SCDC. The sentencing document states "The Defendant Willie Johnson, be confined under the jurisdiction and control of the South Carolina Department of Corrections for a Period of his Life." The Court record clearly shows the trial judge's original signature on the original sentencing document, the Honorable Thomas L. Hughston, dated April 18, 1985.<sup>1</sup>

The arguments raised by the Defendant are mere technicalities which fail to satisfy any of the requirements needed to grant a new trial based upon after discovered evidence. The arguments are not material to the issue of guilt or innocence on the Defendant's murder charge nor would it probably change the result if a new trial were to be granted. Further, the matters raised regarding

<sup>1</sup> The original sentencing document in the indictment signed and dated by Judge Hughston committing the Defendant to SCDC for a term of life for his conviction for murder attached hereto as Exhibit A.

3 of 4  
[Handwritten signature]

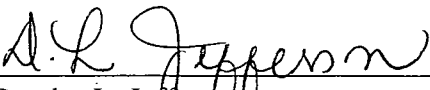
ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P. G.S. & F.C.  
BY: [Handwritten signature]  
DEPUTY CLERK

the sufficiency of the indictment could have been discovered before trial had the Defendant exercised due diligence.

**CONCLUSION**

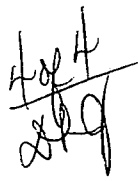
Based upon the arguments presented, the applicable statutory and case law, a thorough review of the record, and balancing the equities of the parties, the Court respectfully **DENIES** the Motion for a New Trial Based upon After Discovered Evidence.

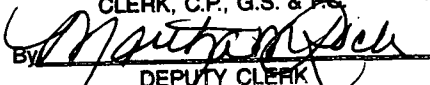
IT IS SO ORDERED!

  
\_\_\_\_\_  
Deadra L. Jefferson

Feb. 23, 2009  
Charleston, SC

**FILED**  
2009 FEB 24 PM 1:48  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_



**ATTEST: A TRUE COPY**  
**JULIE J. ARMSTRONG (SEAL)**  
CLERK, C.P., G.S. & F.S.  
  
DEPUTY CLERK

FILED

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF CHARLESTON ) OF THE NINTH JUDICIAL CIRCUIT  
2009 MAR 11 ) PM 2:18  
INDICTMENT NO.: 85-GS-10-0159

STATE OF SOUTH CAROLINA )  
JULIE J. ARMSTRONG )  
CLERK OF COURT )

vs. )  
BY \_\_\_\_\_ ) 7.0'  
)  
)  
Willie Johnson, )  
)  
Defendant. )  
\_\_\_\_\_ )

**ORDER**

Judge: Deadra L. Jefferson  
Hearing Date: January 9, 2009  
Solicitor: Scarlett Wilson, Esq.  
Defense: Willie Johnson, *Pro Se*  
Court Reporter: Anne Meyer

This matter comes before the Court on Defendant's Motion for Reconsideration, dated March 3, 2009, pursuant to Rule 59, SCRPC. The Defendant requests that this Court reconsider its Order filed February 24, 2009 denying Defendant's Motion for a New Trial based on After Discovered Evidence, dated October 7, 2008.

**PROCEDURAL HISTORY**

A trial by jury was held on April 18, 1985, the Honorable Thomas L. Hughston presiding, at which time the Defendant Willie Johnson was found guilty of murder, pursuant to S.C. Code Ann. § 16-3-10. Accordingly, Judge Hughston sentenced the Defendant to the South Carolina Department of Corrections for a period of life. The Defendant subsequently filed an Appeal to the Supreme Court on April 25, 1985. By Order of Chief Justice Ness dated October 16, 1985, the case was remanded to the lower court, to have been held on or before November 15, 1985, for the purpose of settling the record pursuant to Supreme Court Rule 1 § 3F. The conviction was upheld by Judge Jonathan McKnown. The Defendant filed a second Appeal to the Supreme

1 of 3  
[Handwritten signature]

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & F.C.  
BY [Handwritten signature]  
DEPUTY CLERK

lower court to have been held on or before February 10, 1986, for the purpose of settling the record pursuant to Supreme Court Rule 1 § 3F. The conviction was again upheld. Defendant filed a Motion for New Trial Based on After Discovered Evidence, dated October 7, 2008, pursuant to Rule 29, South Carolina Rules of Criminal Procedure. A hearing was held on January 9, 2009. Present at the hearing was Ninth Judicial Circuit Solicitor Scarlett Wilson and Defendant Willie Johnson, *Pro Se*.

### STANDARD OF REVIEW

“It is well settled that the grant or refusal of a new trial is within the discretion of the trial judge and will not be disturbed on appeal absent a clear abuse of discretion. However, when there is competent evidence to sustain the jury’s verdict, the judge may not substitute his judgment for that of the jury.” *State v. Prince*, 316 S.C. 57, 447 S.E.2d 177, 181 (1993).

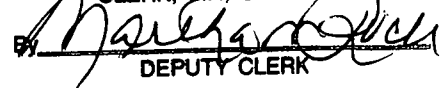
### ANALYSIS

“A party requesting a new trial based on after-discovered evidence must show that the evidence: 1) is such as would probably change the result if a new trial was had; 2) has been discovered since the trial; 3) could not by the exercise of due diligence have been discovered before the trial; 4) is material to the issue of guilt or innocence; and 5) is not merely cumulative or impeaching.” *State v. Freeman*, 319 S.C. 110, 459 S.E.2d 867, 874-75 (Ct. App. 1995).

The Defendant raises several alleged technicalities regarding his court documents which he claims to have discovered in 2004 as the basis of his Motion for a New Trial based on after discovered evidence. Rule 29, South Carolina Criminal procedure requires “A motion for a new trial based on after-discovered evidence must be made within a reasonable period of time after the discovery of the evidence . . .” Defendant’s Motion for New Trial Based on After Discovered Evidence was dated October 7, 2008. As a preliminary matter, the Court finds that



ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & F.C.

  
DEPUTY CLERK

the Defendant's Motion raising any issues regarding the sufficiency of his indictment are untimely and are procedurally time barred. However, the court will also dispose of the Motion on its merits or lack thereof.

First, the Defendant argues that indictment 85-GS-10-0159 is invalid on its face because he contends it cites the wrong code section. Subject matter jurisdiction and the sufficiency of the indictment are two distinct concepts. The indictment is a notice document. Any insufficiency or defect in the indictment must be challenged before the jury is sworn. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

Second, the Defendant argues that the trial judge failed to sign the sentencing sheet/ commitment Order provided to SCDC after his conviction resulting in a wrongful imprisonment. The Defendant received a certified copy of the court documents which he alleges does not have the trial judge's original signature. In 1985, duplicate copies of court documents were not done in triplicate form as they are currently prepared. The Clerk of Court at that time provided a conformed copy of the document for purposes of committing a Defendant to SCDC. The sentencing document states "The Defendant Willie Johnson, be confined under the jurisdiction and control of the South Carolina Department of Corrections for a Period of his Life." The Court record clearly shows the trial judge's original signature on the original sentencing document, the Honorable Thomas L. Hughston, dated April 18, 1985.<sup>1</sup>

The arguments raised by the Defendant are mere technicalities which fail to satisfy any of the requirements needed to grant a new trial based upon after discovered evidence. The arguments are not material to the issue of guilt or innocence on the Defendant's murder charge nor would it probably change the result if a new trial were to be granted. Further, the matters raised regarding

<sup>1</sup> The original sentencing document in the indictment signed and dated by Judge Hughston committing the Defendant to SCDC for a term of life for his conviction for murder attached hereto as Exhibit A.

3 of 4  
JJA

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & F.C.  
By Martham [Signature]  
DEPUTY CLERK

the sufficiency of the indictment could have been discovered before trial had the Defendant exercised due diligence.

**CONCLUSION**

Based upon the arguments presented, the applicable statutory and case law, a thorough review of the record, and balancing the equities of the parties, the Court respectfully **DENIES** the Motion for a New Trial Based upon After Discovered Evidence.

IT IS SO ORDERED!

*D.L. Jefferson*  
Deadra L. Jefferson

Feb. 23, 2009  
Charleston, SC

**FILED**  
2009 FEB 24 PM 1:48  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

*4 of 4*  
*[Signature]*

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & FC.  
BY *[Signature]*  
DEPUTY CLERK



State of South Carolina  
Legislative Services Agency



Gigi Brickle  
Director

223 Solomon Blatt Building  
1105 Pendleton Street  
Columbia, SC 29201  
(803) 212-4420

February 23, 2015

Rev. Willie Johnson, 127069 F-4-A-16  
Allendale Correctional Institution  
PO Box 1151  
Fairfax, SC 29827

Rev. Johnson:

The General Assembly has not repealed SC Const. Art. XVII §15 or SC Code of Laws §20-1-15.

Sincerely,

Legislative Services Agency

Disclaimer:

While every attempt has been made to ensure the accuracy of this public service, Legislative Services Agency (LSA) makes no warranties or representations regarding its accuracy or completeness, and each user of this product understands that LPITS disclaims any liability for any damages in connection with its use. This information is intended for personal, not commercial, uses. Official copies of documents such as bills and journals of the respective bodies of the General Assembly are available by contacting the following offices:

Clerk of the House, PO Box 11867, Columbia, SC 29211; 803-734-2010

Clerk of the Senate, PO Box 142, Columbia, SC 29202; 803-212-6200

Legislative Council of the General Assembly, PO Box 11489, Columbia, SC 29211; 803-734-2145

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Rev. Willie Johnson, #127069 )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Scarlet Wilson, Solicitor )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-2001

**ORDER REGARDING PLAINTIFF'S  
 MOTION FOR AN ORDER TO  
 PROCEED *IN FORMA PAUPERIS***

FILED  
 2015 MAY 26 PM 3:30  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

THIS MATTER CAME before the Court on the *Pro Se* Plaintiff's Motion for an Order to Proceed *In Forma Pauperis* in order to have the required filing fee waived because of indigence.

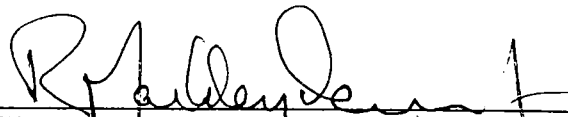
\_\_\_\_\_ The request is GRANTED. Plaintiff may proceed *in forma pauperis* without payment of \_\_\_\_\_ the filing fee and/or \_\_\_\_\_ the service cost (check one or both).

\_\_\_\_\_ The request is DENIED because the Plaintiff has not shown proof of indigence.


\_\_\_\_\_ The request is DENIED because the Plaintiff's complaint is against a political subdivision or agency of the State of South Carolina and alleges a cause of action that occurred in a county other than Berkeley County/Charleston County (circle one). The South Carolina Tort Claims Act, S.C. Code § 15-78-100(b) provides that jurisdiction is in the county in which the act or omission occurred. Therefore, the Clerk of Court is directed to return the pleadings to the Plaintiff, and the Plaintiff may re-file in the proper county.

  X   The request is DENIED because the action is frivolous on its face under S.C. Code Ann. §15-36-10.

**AND IT IS SO ORDERED.**

  
 \_\_\_\_\_  
 The Honorable R. Markley Dennis, Jr.  
 Chief Administrative Judge, Ninth Judicial Circuit

  May 21  , 2015  
 Charleston, South Carolina

ATTEST: A TRUE COPY  
 JULIE J. ARMSTRONG (SEAL)  
 CLERK, C.P., G.S. & F.C.  
  
 \_\_\_\_\_  
 DEPUTY CLERK

24

Manager/Caseworker (CPS II/CPS I in level 1A institutions). The ICC will make decisions regarding custody with the exception of placement in Protective Custody *and* Minimum Out/Minimum Restricted custody in Security Level 2 and 3 facilities. The ICC will make recommendations and State Classification will make final decisions to approve or disapprove the custody assignment in these situations. All inmates will be classified for custody and housing. The principal custody designations are: Minimum Out (MO); Minimum Restricted (MR); Minimum In (MI); Medium (ME); Maximum (MX); Security Detention (SD); Pre-Hearing Detention (PHD/ST); Pre-Hearing Detention with Protective Custody Concerns (SP); Protective Custody (PC); Disciplinary Detention (DD); *Disciplinary Yard (DY)* ; ~~Prison Rape Elimination Act-Security Detention (PREA-SD); and Prison Rape Elimination Act-Protective Concern (PREA-SP)~~. (Changes in BLUE are amended by Change 1 to OP-21.04, dated March 30, 2015.)

**2.8** Inmate custody classification is based on different factors and embodies correctional discretion. An inmate has no right to any particular custody level.

**2.9** The inmate's custody should be based on behavior and criminal history. The custody will determine the inmate's privileges and EWC/EEC level. Criminal history is considered when evaluating an inmate for MO and MR custody. (4-4296)

### **3. SECURITY AND INSTITUTION ASSIGNMENT:**

**3.1** The State Classification Committee will be the decision-making body for security level and institution assignment. The principal security level designations are: 1A, 1B, 2, and 3. (4-4296)

**3.2 USE OF AUTOMATION:** Data in the automated system is being enhanced through transfer of information from the manual record; entering additional data in areas such as medical and mental health; and auditing records to increase the accuracy of the information.

## **SECTION TWO: RECEPTION AND EVALUATION (R&E) CENTERS**

**4. INITIAL RECEPTION AND EVALUATION PROCEDURES:** All inmates who arrive at an R&E Center will immediately be processed through the following steps of receiving and evaluation (paragraphs 4.1 through 4.15). To the extent possible, the R&E process described below should take no longer than 14 days. (4-4285,4-4289)

**4.1** The R&E Records staff will be responsible for creating *both* an institutional and *a* central record for each inmate. The institutional record will accompany the inmate upon transfer from R&E and upon every institutional transfer thereafter, with the exception of inmates being transferred to regional court hubsites, medical/doctors appointments, outside (non-SCDC) hospital admissions, and overnight court transports/overnight PCR hearings.

**4.2** Each inmate's commitment papers will be reviewed by the receiving person and delivered to the appropriate R&E records person for processing. The R&E Records staff will review the commitment papers to ensure that the inmate has a valid South Carolina sentence. Inmates who do not have valid commitment papers or a valid South Carolina sentence will not be accepted by the SCDC.

**4.3** Each inmate will be searched for contraband as indicated in SCDC Policy/Procedure OP-22.19, "Searches of Inmates."

**4.4** Medical and trained security staff will conduct a medical screen to determine immediate action to be taken if inmate appears to be suicidal (i.e., referral to mental health counselor) and/or identify medical conditions that need immediate attention. Medical, mental health, and dental screening will be conducted in accordance with SCDC Policy/Procedure HS-18.13, "Health Screening and Exams."

**4.5** Inmates arriving at the R&E Center with a GBMI (Guilty But Mentally Ill) conviction will automatically be sent to Gilliam Psychiatric Hospital (males) or to Camille Graham Correctional Institution (Special Needs Facility)

**6.3.1** Review each commitment order for offense dates, sentences, signatures, indictment and warrant numbers, and any special conditions indicated by the court. In addition, a check for a previous SCDC number(s) will be completed. If a previous SCDC number(s) is identified, the old and new inmate records will be combined.

**6.3.2** Compare information on commitments with NCIC/FBI Reports. Compare information in the CRT with committing documents. If entries (i.e., indictment numbers, warrant numbers, dates of offenses, court dates, judge's name) are found to be incorrect, adjustments will be made to remedy the problem. A check for consecutive sentencing structure will be completed. (4-ACRS-6A-10, 4-4097, 4-4285)

**6.4 Priors (Any Prior Offenses or Time Served):** The Inmate Records Audit Section will:

- Check NCIC/FBI rap sheet for all commitments and convictions.
- Match all commitment orders and face sheets of prior incarceration(s).

**6.5 Previous Numbers/Names:** The Inmate Records Audit Section will:

- Check for previous numbers on the manual record.
- Check for previous numbers in the CRT.
- Check for previous numbers on the NCIC rap sheet.

**6.6 Escapes:** The Inmate Records Audit Section will:

- Check the CRT for escape data. Check for current or previous convictions for escapes on the CONVICT and PRIORS screens. Search for an automated MIN report.
- Read SIAs/MINs in inmate manual record. Read newspaper articles for references to escapes.
- Read escape/disciplinary history and/or court reports.
- Determine if escape is Class I/II, or an escape-related (other) offense.
- Enter all escape charges and/or incidents under escape history regardless of disposition, including any escape noted on the NCIC/FBI rap sheet.

**6.7 Disciplinary History:** The Inmate Records Audit Section will:

- Research violent/assaultive behavior. Verify reports from disciplinary reports, management information notes, and criminal conviction data. In the event of missing or incomplete information, contact the institution and request the necessary information. Inquire through the CRT for MIN reports.
- Confirm that all information regarding prior commitments and assaultive disciplinaries is accurate and complete.

**6.8 Open-Ended Offenses:** The Inmate Records Audit Section will:

- Check NCIC rap sheet for any arrest charges with no disposition on statutory violent offenses, **and Category 4 and 5 offenses, and** sex offenses. In addition, check all non-violent arrests within the previous year, and send a CRT message to the respective R&E Center noting all open arrests under the parameters noted above.
- Create an "open arrest notify" on the "detain" screen noting all category 4 & 5 open arrests.

**6.9 Resident Stability Code:** The Inmate Records Audit Section will:

THE STORY OF REV. WILLIE JOHNSON  
 INCARCERATION  
 OF  
 TRAVESTY OF JUSTICE

On April 1984, I came home from Summerville and saw my decease wife in bed with her ex-boyfriend in the act of Adultery. It was a very emotional moment for me, when I came in that house and saw my wife laying in bed with her ex-boyfriend and on top of that my children in the next room. She did not expect me to come home from Summerville. When I walked back out of that house I could not believe what I just witnessed, when I tried to enter back in to that house she double locked the door behind me and would not allow me back in my home. I had no place to stay that night, so I had to sleep under our front step, it was very cold that night, but I thank God for seeing me through. On many occasions my wife would asked me to hide in the closet when her family came over to our home, she did not want them to know we were back together. I went through all of these things because I loved my wife.

On several occasions, I came home and found my wife in the act of Adultery. One may ask why I stayed in this type of situation? Once again, because I loved my wife very much.

On Oct. 1, 1984 I went over to my friends apartment where my wife was staying. The reason I went by that night was to see if we could work our problems out in our marriage since I had a cab fair in that area, so when I saw that a light was on in the apartment so, I stopped to see if she was up, when I walked up to the apartment the light I saw was coming from a kitchen light. When I started to walk up the steps I heard a noise that sounded like someone moaning. I was able to see through the window to my left, because the light coming from the kitchen shined through the thin curtains at the window. While standing at the window I was able to see two bodies lying longways on a couch.. Moving in ways to me that looked very sensual. A few seconds had passed, then I saw two people shadows getting off the couch coming toward the front door. Then her lover came out first and my wife behind him they started embracing, and that's when I freaked out. And I fire one shot at her to scare my wife, and that's when her lover grabbed me, and two more shots went off, then I was knock against the wall. Beyond a reasonable doubt the first shot did not hit my wife.

I understand the hurt and pain my wife family has gone through, it is very emotional to lose someone that you love, especially a family member. God is the only one that know why this tragedy happened. The word of God tells us in (Ps. 30:5 **For His anger endureth but a moment; in His favor is life: weeping may endure for a night, but joy cometh in the morning**).

Furthermore, God teaches us about forgiveness, I thought we could work these problem out in our marriage. After all the emotional distress my wife cause me, I was willing to forgive her, because I loved her very much. I worked hard each day to provide for my family.

|                              |   |                                  |
|------------------------------|---|----------------------------------|
| State of South Carolina      | ) | In The Court of General Sessions |
| County of Charleston         | ) |                                  |
|                              | ) |                                  |
|                              | ) |                                  |
| Rev. Willie Johnson, #127069 | ) |                                  |
| Petitioner,                  | ) | Motion for Reconsideration       |
|                              | ) |                                  |
| -vs-                         | ) |                                  |
|                              | ) |                                  |
| State of South Carolina      | ) |                                  |
| Respondent.                  | ) |                                  |
|                              | ) |                                  |

**TO: *The Honorable Deadra L. Jefferson, Judge of Ninth Judicial Circuit***

This matter comes before this court by way of a Motion for After-Newly Discovered Evidence filed April 26, 2006. A hearing into the matter was convened on January 9, 2009, at the Charleston County Courthouse. The Petitioner was present at the hearing and was Pro Se. The Respondent was represented by Scarlett A. Wilson, Solicitor. This Motion was based on the grounds that the Court determined an issue of fact regarding his Commitment Order that the trial judge failed to actually sign the Commitment Order to the South Carolina Department of Corrections as well as the issue that are set forth before this Court it is based wholly upon an "error of law" and without an adequate record, and without taking the facts, in the light most favorable to the Petitioner.

The Petitioner, Rev. Willie Johnson will move before the *Honorable Deadra L. Jefferson*, for a Reconsideration of these issues; (1) the trial judge failed to signed the Commitment Order to validate the conviction and sentence and (2) the "error of law."

The grounds for this motion are as follows:

## **A. Legal Framework**

This legal framework and foundation being firmly in place, the Court is compelled to look at the facts in regards to this case sub-justice because the law arises from facts (Ex Fact Oritur Jus). As Petitioner carefully examined the commitment order, the court made a “error of law”. A good story comes to mind, and that is the story of the great Hank Aaron. Someone asked the Mr. Aaron, “How do you hit so many home runs?” Mr. Aaron’s reply was that, “I keep my eyes on the ball.” That is what the Petitioner is asking this Court to do in these proceedings, and that is to look directly at the facts surrounding this case. The Petitioner further request that this Court don’t allow the Solicitor’s misconception in her silent motion to divert your attention from what is important; it is not how the water is muddled. Here, the Petitioner has presented to the Court a prima facie case to support the material facts in this case.

Specifically, the Court of Common Pleas lacked subject jurisdiction because without a judge signature on the Commitment Order and where a void order has been entered in a criminal case; the effect is the same as if no order at all has been made, and the case necessarily remains pending before this Court; but being unsigned, and therefore such Commitment Order was void.

In the case at bar, this Court is faced with the question of the extent of a trial judge failed to signed the Commitment Order the document before this Court is a copy of the Certified Commitment Order resulting from the trial judge failure to execute this order to validate the conviction and sentence. In this context, the case is still pending before this Court.

The Court finds Ballard v. State, 207 S.E. 2d 246, to be controlling in this matter. Therefore, mere signing of written judgment does not constitute pronouncement of sentence, but judgment must be signed and filed with the Clerk of Court.

What is a sentence pronounced? Does the mere signing of the written judgment constitute the pronouncement of the sentence? *No!* There is one step further to be taken before pronouncement of the sentence is complete. That is, the judgment must be in writing, it must be signed, and it must be filed with the Clerk of Court. The parties to agreement may agree that they will not be bound until the agreement is signed.

*International Travel Arrangers v. NWA, Inc.*, 991 F. 2d 1389. Without the Commitment Order being signed by the trial judge, the conviction and sentence is not bounding upon the Petitioner.

The purpose of *Rule 32 (1) (b)*, 18 U.S.C.A., the judgment *shall* be signed by the judge and entered by the Clerk of Court. And *Rule 77 (d)*, SCRPC, the judgment *must* be signed by the judge and sent to the Clerk of Court for filing. A judgment or order is “*void on its face*” when its validity is apparent upon inspection of judgment roll. In American practice, the record is signed, filed and docketed by the Clerk. Under *Fed Rules Evid. Rule 902 (4)*, 28 U.S.C.A.; signature on a Commitment Order was to be given weight equivalent to a signature for the purpose of establishing authentication of document (901) section 114.

We would make a certain distinction between a Commitment Order and Face of the Indictment, which is only a notice document. But obviously a trial judge *must* execute the Commitment Order to validate the conviction and sentence.

Specifically, neglecting to have adequate factual basis for signed paper constitutes violation of *Rule 11*, see *Walker v. Walker*, 834 F. Supp. 1413. Further pursuant to *S.C. Code Ann. Section 17-25-10*. No person *shall* be punished until legally convicted. Without the judge’s signature on the Commitment Order, the Petitioner in not legally convicted.

## **B. Legal Framework**

The Petitioner humbly contends the trial judge did commit an “*error of law*” by sentencing Mr. Johnson to a “*period of life imprisonment*”; and this pronouncement is an “*error of law.*” There is *no statute* which prescribes a specific punishment for “*a period of life imprisonment.*” But the sentence for such offense is determined under the provisions of this section [16-3-10: *S.C. Code Ann.*], which must be construed in conjunction with the proceeding of *S.C. Code Ann. Section 16-3-20*. See *State v. Hill*, 175 S.E. 2d, 227.

32 (b), which in providing that the "judgment shall be signed by the Judge and entered by the Clerk;" appears to provide that the judgment and conviction in a case of this kind is the one signed by the Judge. This is the order that follows the defendant throughout his stay in prison and upon which authorities; parole boards and the defendant himself generally rely on. No transcript of the Judge's oral pronouncement is made to be attached to the prisoner's record; transcript of sentencing is likely to be made for an appeal, unless the sentence is drawn into issue. It is reasonable to impose a duty on the Respondent to call a problem to the court's attention; and within time limits, for the due process reason stated in Breest v. Helgemoe, 579, F2d 95, 101 (1<sup>st</sup> Cir). Commitment Order/Sentence Sheet (MITTIMUS); the Judge signed the commitment after the ruling before the court.

### COMMITMENT

English law, a precept or warrant in writing, made and issued by a court or judicial officer directing the conveyance of a person named or sufficiently described therein to a **prison** or other **legal** place of custody, and his/her detention therein for a time specified, or until the person to be detained has done a certain act specified in the warrant or order, e.g. paid a fine imposed upon him/her on conviction. **Dated Signature** and seal of a justice of the peace is mandatory. A commitment as now understood differs from "committal," which is the decision of a court to send a person to prison, and not the document containing the directions to executive and ministerial officers of the law which are consequent on the decision. An interval must necessarily elapse between the decision to commit and the making out of the order/warrant of commitment, during which interval the detention in custody of the person committed is undoubtedly legal. A commitment differs also from a warrant of arrest (mandate d'amener), in that it is not made out until after the person to be detained has actually appeared, or has been summoned, before the court which orders committal, to answer some charge. If not always, at any rate since **1679**, a warrant of commitment has been necessary to justify officers of the law in conveying a prisoner to gaol and a gaoler in receiving and detaining him/her there. It is ordinarily essential to a valid commitment that it should contain a specific statement of the particular cause of the detention order. Every person in custody is entitled, under the **Habeas Corpus Act 1679**, a copy of any warrant of commitment under which he/she is detained, and may challenge its **legality** by application for a writ of habeas corpus. So far as concerns the acts of justices and tribunals of limited jurisdiction, the stringency of rules as

to commitments is an **important aid** to the **liberty of the subject**. And in the case of persons sentenced at assizes and quarter sessions the only written authority for enforcement is a calendar of the prisoners tried, on which the sentences are entered up, **signed by the Presiding Judge**.

1. (A) what is so unfair is that for these many years Petitioner has been detained in prison. “**A Signature;**” is a writing that is placed upon an instrument (for confinement) for the purpose of giving it legal effect. The Respondent knew this fact long ago, yet they let it remain so. To have to serve a sentence that was illegally imposed upon Petitioner; that is the shocking part and that unknown to him, if Respondent chose too could make him serve the sentence as if he had just begun it. “**Misfeasor;**” is the doing of a proper act in a wrongful or injurious manner; the improper performance of an act which might have been lawfully done. Petitioner cannot in all honesty say that this negligence was done intentionally. Yet if this court does not act and take jurisdiction of this case, Petitioner may well find that Respondent may say there is **no commitment order** prior to this one that was signed “\_\_\_\_\_”. That is the start of your sentence. Petitioner without this court granting of the Writ of Habeas Corpus will again be at the judgment of Respondent, without the safeguard of the writ. Petitioner would have little or no protection against an arbitrary act that appears possible. Petitioner understands that the court does not act for the sake of opinion, but as Petitioner hopes in this case, the court action will protect the Petitioner from further unfairness i.e. “The going before a Judge and have the said Judge carry out the sentence that was pronounced so many years ago and because of negligence and the very questionable confinement that Petitioner has endured and continue to endure; the only hope for fairness is this court granting the writ.

In **Plyler v. Moore**, 129 F. 2d at 733 “It is well settled that challenges to the **facts** or length of confinement are properly considered in the context of Writ of Habeas Corpus. See **Preisen v. Rodriquez**, 411, U.S. 475, 487-88, 93 S.Ct. 1827... **Graham v. Broglin**, 922 F.2d 379, 381; “holding that claim seeking a quantum change in the level of custody, including freedom subject to the omitted reporting and financial constraints of or parole or probation are properly considered in Habeas Corpus... noting that prisoner contesting the revocation of credits, the award of which entitles the prisoner to release under similar to parole brought the action as a petition for a Writ of Habeas Corpus...” This is the only court which because of the uniqueness of the circumstances can timely protect Petitioner from further capricious action by the Respondent.

This court is empowered by the authority of the **Great Writ to Undo the Great Wrong** the unconstitutional imprisonment that is to say that without legal authority Petitioner has been subject to confinement. That in a word: **unlawful**, for the state to do as it has done, now it wants to deny to this Petitioner the legal redress that the law says he **must** have.

The Petitioner wants his day in court for the vindication of his right too. The situation is a **Brutum Fulmen**; a void judgment which is in legal affects no judgment... Any powerful and effective orders, documents, decrees or judgments that are powerless due to some imperfections causing them to be unenforceable, (because there was no attestation by the sentencing Judge to affirm as true; to sign one's name as a witness to the execution of a document).

In **Ex Parte Strom** 343, S.C. 257, 539 S.E.2d at 702 "since a court order is required to relieve an attorney of record, the trial court erred in relieving Strom pursuant to Rule 60 (A) S.C.R.C.P. Rule 60 (A) S.C.R.C.P. provides "clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversights or omissions may be corrected by the court at any time." Failure to file a motion to be relieved as counsel of record does not amount to a clerical error. A clerical error is a mistake on omission by the clerk, counsel, judge or printer – which is not the result of exercise of judicial function. **Dion v. Ravenel**, Eiserhardt Ass. 316, S.C. 226, 230, 449 S.E. 2d 251, 253... should not have been granted, Nunc Pro Tunc. Nunc Pro Tunc, is a phrase applied to acts allowed to be done after the time when they should have been done, with retroactive effect at 703, see also **Simmons v. Atlantic Coast Line R.R.** at 235 F. Supp. 325, 330 (D.S.C. 1964) "Nunc Pro Tunc, entry cannot be made to serve the office of correcting a decision or of supplying a non action on the part of the court." **Carroll v. Carroll**, 338, S.E.2d 694, 695. The error could not be corrected by Nunc Pro Tunc, order because such an order can be used only for the purpose of placing in the record evidence of judicial action that has actually been taken, not to correct an error on supply or omission of judicial action: "20 Am. Journal Courts §29 (1995) the order cannot supply the record with action that the court failed to take in."

In criminal law, execution refers to a convicted defendant serving the sentence. Execution the process of carrying into effect a courts judgment... It is the end of law. However, the act was executed, that is to say fully accomplished or performed unsigned. To sign a legal instrument such as a deed or contract so that it is legally binding and enforceable "367 So.2d 1381, 1383 the court did not execute to complete as a legal instrument to perform what is to give validity to; as by signing required.

2. (B) In the Writ of Habeas Corpus, the court has the power and opportunity to right a wrong. "Laws of the Land", phrase first used in the Magna Carta to refer to the then established law of the kingdom as distinguished from Roman or civil law. 56 Cal. 229, 238, refers today to fundamental principles of justice commensurate with due process of law i.e. "those rights that the legislature cannot abolish or significantly limit because they are so fundamental to our system of liberty and justice..."

Petitioner is not asking this as a matter of grace, but as a matter of law. It is a conclusion of fact, that Petitioner was confined **unlawfully** for the Judge never **signed** authorizing the commitment of Petitioner no matter what the sentence pronounced in open court.

In the legal system of this state and the United States Constitution, there is in a criminal context no "**confession of judgment.**" That is to say as entry of a judgment upon a written conclusion or confession... without the finality, time or expense of an ordinary legal proceeding. "105 N.W. 698, 701". Petitioner can only be placed in imprisonment by a **signed court order.**

Petitioner in light of all the relevant facts that all through the law says that he was to be put in prison, the law also first requires that certain authority do certain required things, otherwise there would be people put in any prison by any legal entity bypassing the solemnest and legal authority of the courts.

Petitioner appeals to the conscience of the court, to resolve this seemingly controversy by applying common standards of decency and fairness. For if it does not the power and force of justice of the writ will have been diminished for its very purpose is to reach **unlawful** restraint of freedom; not whether one's guilt or innocence, but was the individual's rights to due process of law protected. Petitioner will say let the record speak the truth.

This Petitioner is not looking for a culpable person to blame. It starts out as mere negligence. Yet, after these many years, it may seem to a reasonable person as gross, or even reckless, for not having timely corrected it. What has happened can only be corrected in a court of law and equity. To allow the matter to remain, if no one helps, it means that to disregard of the consequences which may ensue from the action of the sentencing court; and the indifference of the rights that have been violated. By not correcting it; it can be seen as an intentional wrongdoing. That is for this court to decide.

In the common law context, wrongful detention becomes an absolute necessity if the act was not followed in giving the person some reasonable equitable relief. Courts did?

How can this court allow what did amount to the execution allegedly (unlawfully) the Respondent to execute; to complete as a legal instrument to perform what is required to give **validity** to, as by **signing** (saying that it is the same as keeping one's signed by the court) and perhaps sealing and delivery; as to execute... 171 N.E. 2d 553, 563. For example, a contract is "executed" when all acts necessary to complete it and to give it validity as an instrument one carried out, including signing and delivery. What was done to Petitioner was the execution of an **unsigned** instrument in violation of his **due process rights**. Petitioner alleges that without the Judge's signature, the placing of him in prison was extrajudicial that is to say without the sanction of a court order.

Petitioner is not asking the court to look at this matter as a malfeasance, though it feels that way. What Petitioner seeks is a redress for the unlawful way he was placed in confinement. The law is the law for all concerned therein. None are put outside of the law. The law covers all the same. For any act or action done, no matter what the intention; if it was unlawful or illegal, the alleged victim of the acts and or actions is Petitioner's case has only remedy is to petition for the Writ of Habeas Corpus, that is to say his day in court.

The Petitioner would ask this court to consider these; Malum In Se, evil in itself; naturally evil as adjudged by the sense of a civilized community. "259 P. 893, 898 and: Malum Pro Hibitum; wrong because it is prohibited, made unlawful by statute for the welfare, but not inherently evil and not involving moral turpitude.

In **Frank v. Mangum**, 237, U.S. 331, 355 S.Ct. at 582, congress to this liberalize the common law procedure on Habeas Corpus in and/or to safeguard the liberty of all person's within the jurisdiction of the United States against infringement through any violation of the constitution or a law or treaty established there under it results that under the section cited a prisoner in custody to the final judgment of a state court of criminal may have a judicial inquiry in a jurisdiction the United States into court the very truth and substance of the cause of his detention, although it may become necessary to look behind and beyond the record of his conviction to a sufficient extent to test in state court to... judgment against him...

**Moore v. Dempsey**, 261 U.S. at 91, 43 S.Ct. at 266... there is a departure from due process of law; and that if the state supplying no corrective process, carries into execution a judgment of imprisonment based upon (a violation of due process under the fourteenth amendment)... The

state deprives the accused of his Liberty (by unlawful confinement) without due process of law...

**CASE LAW: In Re Israel Dominguez, Sr.** 14-08-00206-CV (Tex App.-Houston [14<sup>th</sup> Dist.] May 5, 2008) (Hedges) (child support contempt, commitment void, habeas corpus relief granted)

**Ex parte Amaya**, 748, S.W. 2d 224, (Tex 1988) Id at 224-25.

The trial court may cause a contemnor to be detained by the sheriff or other officer for a short and reasonable time while the judgment of contempt and the **order of commitment are being prepared for the Judge's signature**. Less than 24 hours to prepare commitment order is a short and reasonable time. In re Butler, 45 S.W. 3d 268, 271 (Tex. App.-Houston [1<sup>st</sup> Dist.] 2001, orig. proceeding). However, a two or three-day delay is not a short and reasonable time to detain a person while documents are being prepared for the **Judge's signature**. Because Hellums did not sign a written commitment order until two days after orally pronouncing relator in contempt, we hold that the March 7, 2008 contempt and commitment order is **void** and sustain relator's second issue. Accordingly, we grant relator's petition for writ of habeas corpus, order relator released from the bond set by this court on March 21, 2008, and order relator discharged from custody.

It is not a question of guilt or innocence or even that Petitioner would have been imprisoned any way. But it is about law and justice. The state just cannot lock a man up without proper authority to do, so far without that proper authority, what you have but unlawfulness! **Barden v. Lee**, 290 F.3d, 602, 615 see **Sandgathe v. Masses**, 314 F.3d 371 & **Coleman v. Dretke**, F.3 216.

Wherefore, Petitioner; \_\_\_\_\_ moves this Honorable Court to grant the following relief:

1. Accept jurisdiction over this case pursuant to 28 U.S.C. §2241 and/or 28 U.S.C. §2254.
2. Require the Respondent to answer the allegations in this petition, and
3. Hold such evidentiary hearing as this court may deem necessary or appropriate even directing the case to a lower court and appoint counsel to effect a record review;
4. Issue an Order that this court will grant a Writ of Habeas Corpus unless the Respondent holds such hearing to vindicate Petitioner's rights within a specified time, and;
5. Issue a Writ of Habeas Corpus freeing Petitioner from his constitutional confinement.

COURT OF COMMON PLEAS  
AND GENERAL SESSIONS  
100 BROAD STREET, SUITE 106  
CHARLESTON, S.C. 29401-2258  
843-958-5000 FAX 958-5020  
WWW3.CHARLESTONCOUNTY.ORG

FAMILY COURT OF THE  
NINTH JUDICIAL CIRCUIT  
100 BROAD STREET, SUITE 143  
CHARLESTON, S.C. 29401-2265  
843-958-4400 FAX 958-4434  
WWW3.CHARLESTONCOUNTY.ORG

CLERK OF COURT  
CHARLESTON COUNTY

JULIE J. ARMSTRONG  
CLERK OF COURT

12/06/2010

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

RE: JOHNSON, WILLIE

TO: JOHNSON, WILLIE

- (1) IN ORDER FOR THIS OFFICE TO PROVIDE YOU WITH THE COPIES YOU ARE REQUESTING YOU MUST 1.) PAY THE \$5.00 FEE OR 2.) PROVIDE US WITH A STATEMENT FROM THE SCDC EAST COOPER TRUST FUND WHICH SHOWS THE FINANCIAL STATUS OF YOUR ACCOUNT, IF YOUR ACCOUNT REFLECTS NO MONIES HAVE BEEN RECEIVED YOU WILL NOT BE CHARGED THE FEE.
- (2) INSUFFICIENT AMOUNT OF FILING FEE. CORRECT FEE AMOUNT:
- (3) WARRANT/INDICTMENT NUMBER IS REQUIRED IN ORDER TO FILE REQUEST.
- (4) JAIL TIME SHOULD BE REQUESTED THROUGH YOUR CASEWORKER/ATTORNEY.
- (5) YOU NEED TO CONTACT COURT REPORTER FOR YOUR TRANSCRIPT.
- (6) YOU WILL NEED TO CONTACT THE AGENCY PLACING THE DETAINER. THIS OFFICE CANNOT PLACE OR RELEASE A DETAINER.
- (7) XXXX  
MR JOHNSON: YOUR MOTION HAS BEEN FILED WITH THE CLERK'S OFFICE AND A COPY SENT TO THE SOLICITOR'S OFFICE. FIND ENCLOSED A COPY FOR YOUR RECORDS. THANK YOU.
- (8) RESEARCH COMPLETED. DOCUMENTS ENCLOSED. PLEASE FORWARD

DEPUTY CLERK

MMR

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
**Civil Action No. 2015-CP-10-2001**

Rev. Willie Johnson, #127069 )  
 )  
Petitioner, )  
 )  
 )  
vs. )  
 )  
Scarlet A. Wilson, Solicitor, )  
 )  
Respondent. )

PETITION FOR WRIT OF MANDAMUS AND COMPLAIN

**" REQUEST FOR EVIDENTARY HEARING"**

PLEASE TAKE NOTICE that the Petitioner, Rev. Willie Johnson, #127069 through its undersigned Pro Se will move before the Court of Common Pleas, at Place and Time as the Court may appoint, for a **Petition for Writ of Mandamus** pursuant to Rule 65 (f)(1), [the Motion shall be heard upon such notice as the Court may prescribe, and the Court shall proceed to hear and determine such Motion as expeditiously as the ends of Justice require.]

The Petition is based upon the ground that the Solicitor Wilson of Ninth Judicial Circuit, fails to efficient enforcement of law is a fundamental obligation of the State and the chronic backlog of criminal cases clogging up State's Court's is a fundamental impediment of justice.

On the one hand, the Petitioner has met the requirement of a Writ of Mandamus. As set forth, the requiring the performace of an act, a [Writ of Manamus] test set forth the following requirements: (1) a duty to perform the act; (2) the Ministerial nature of the act; (3) the Petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy.

On the other hand, the Respondent has a [Ministerial Duty] to act on the Petitioner [Motion] pending in the Court of General Sessions. The Petitioner has met the four prongs test that set forth in the requirement of the [Writ of Mandamus]. Here, the Respondent has a [Ministerial Duty] to set the [Motion] on the Motion Calender, pursuant to Rule 79 (e), SCRCP . [The Clerk of Court shall place on the motion calendar all pending motions and other matters requiring a summary hearing before the judge.]

Pursuant to Rule 79 (g), Failure to Comply. [Failure to comply with the requirements of this rule shall subject the party so failing to penalties as for contempt of court; which contempt shall be enforced by the court on motion of any aggrieved party or by the court on its own motion. The Respondent has failed to comply with Rule 79 (e)(g),SCRCP.

Citing State v. Gaillard, 11 S.C. 309,1879 (S.C. 1879) so it seems to me that when, in this same section that this court is invested with the Power to issue such Writ in all such cases, as it was the appropriate remedy at the time of the adoption of the Constitution of a legal right, Mandamus is the proper remedy. Here, the Respondent's deprived the Petitioner of [Procedural Due Process], due to the [Inordinate delay] for [four] years and some months. As set forth, the primary purpose of a [Writ of Mandamus] is to enforce as established right and to enforce a corresponding imperative duty created or imposed by law. Here, the Respondent, has committed Obstruction of Justice, it is an offense to do any act which prevents, obstructs, impedes, or hinders administration of justice.


As state, in State v. Cogdell, 257 S.E.2d 748, thus, misconduct in Office occurs when persons in Public Office fail to properly and faithfully discharge duty imposed by law. See also, State v. Lyles, 328 S.C. 458,492 S.E.2d 802 (S.C. App. 1997).

Simply put, this Court has subject matter jurisdiction to enforce the Respondent with a purely Ministerial Duty to conduct an Hearing on the issues set forth in the Motion for After-Newly Discovered Evidence pending before the Court of General Sessions. As set forth, in this case the trial judge failed to signed the Court Order.

#### CONCLUSION

For all the reasons stated herein above, it is respectfully requested that this Honorable Court grant the Petitioner's [Petition] to compel the Respondent to perform their [Ministerial Duty] to conduct an Hearing on the Motion for After Newly Discovered Evidence within thirty (30) days or immediately release the Petitioner on unsigned Court Order.

Respectfully submitted,

  
Rev. Willie Johnson, #127069  
Allendale C.I.  
P.O.Box 1151  
Fairfax, SC 29827

THE STATE OF SOUTH CAROLINA

In The Supreme Court

-----  
APPEAL FROM CHARLESTON COUNTY

COURT OF COMMON PLEAS

R. MARKLEY DENNIS JR., CIRCUIT COURT JUDGE

-----  
CASE NO. 2017-CP-10-1194  
-----

**RECEIVED**

MAR 07 2018

S.C. SUPREME COURT

Rev. Willie Johnson, #127069 ..... Petitioner

v.

State of South Carolina ..... Respondent

-----  
PROOF OF SERVED  
-----

I, Rev. Willie Johnson, #127069, certify that I have served APPENDIX upon Rasheeda Clevelanda, Assistant Attorney General by depositions a copy in the United States Mail Postage Prepaid, on March 2, 2018, at P.O. Box 11549, Columbia, South Carolina 29211.

March 2, 2018



Rev. Willie Johnson, #127069  
Kirkland Correctional Institution  
4344 Broad River Road  
Columbia, South Carolina 29210