

Mr. Gabriel Randolph # 248729
Perry CI-SMU-Bx2
430. Oaklawn, Rd
Pelzer, SC. 29669

January 14, 2013

The South Carolina Court Of Appeal
Ms. Jenny A. Kitching; Clerk
P.O. Box 11629
Columbia, SC. 29211

RE; Petition For Writ Of Certiorari = Appellate Case 2012-211862

Dear, Ms. Kitching, Clerk

Enclose, Petition For Writ Of Certiorari of original and a copy.
Please clocked-file date and send me copy back to me. If there any
situation of you doing this please don't hesitate to write above address.

Sincerely,

Mr. Gabriel Randolph

RECEIVED

JAN 29 2013

S.C. Supreme Court

RECEIVED

JAN 17 2013

SC Court of Appeals

The State Of South Carolina In The Court Of Appeal.

CERTIORARI To Greenville County

G. Edward Welmaker; Chief Administrative Judge of 13th Circuit Court Judge
Gabriel Randolph # 248729 Petitioner,

vs.

The State Of South Carolina Respondent,

PETITION FOR WRIT OF CERTIORARI

Appellate Case No# 2012-211862

Submitted By Pro'Se; Mr Gabriel Randolph #248729
Perry Correction Institution
430, Oaklawn Rd
Pelzer, SC. 29669

Pro Se Petitioner

Karen Patigan.
Assistance Attorney General

South Carolina Attorney General Office
P.O. Box 11549
Columbia, SC. 29211

Attorney For Respondent

Date, January 14, 2013

RECEIVED

JAN 17 2013

SC Court of Appeals

RECEIVED

JAN 23 2013

S.C. Supreme Court

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Table Of Authorities

Cases;

Celotex Corp. vs Catrett 477 US 317 (1986)5

Statutes;

Other Authority;

South Carolina Rule Of Civil Procedure, Rule 565

ISSUE PRESENTED

1) Did the judge err in not let petitioner respond to Order of Dismissal.

STATEMENT

Petitioner is confined in the South Carolina Department of Correction pursuant to orders of commitment of the Clerk Of Court for Colleton County.

On March 26, 1998, Petitioner pled guilty to distribution of crack cocaine (1997-GS-15-0805) and distribution of crack cocaine within proximity of a school (1997-GS-15-0817). The Honorable Rodney A. Peoples levied consecutive sentence of twenty-two (22) years for distribution of crack cocaine and fifteen (15) years suspended on service of five (5) years and five (5) years probation for distribution of crack cocaine within proximity of a school. Petitioner filed three (3) unsuccessful post-conviction relief application in Colleton County Court and a unsuccessful petition for writ of habeas corpus in the United State District Court for South Carolina. Petitioner file a Petition For Writ Of Mandamus and now. Petitioner appeal to this court.

ARGUMENT

Did the judge err in not let petitioner respond to Order Of Dismissal.

On March 9, 2012 Respondent file a Return And Motion To Dismiss Petition For Writ Of Mandamus and ORDER OF DISMISSAL. Judge Welmaker sign the Order Of Dismissal on March 14, 2012. not given the petitioner a opportunity to challenge or dispute the Order Of Dismissal.

The petitioner must have opportunity to challenge or dispute the respondent Order Of Dismissal. By the South Carolina Rule Of Civil Procedure (Rule 56). Summary Judgment. is when both parties have to dispute the fact of the case. Only the respondent file their motion. which either parties can show genuine issue. Judge Welmaker did not give petitioner opportunity to make a reply motion to the respondent Order Of Dismissal.

Under Rule 56 of the South Carolina Rule of Civil Procedure, a moving party may file a motion for summary judgment when there are two conditions present to justify the judgment; (1) that there is no genuine issue or dispute regarding the material, or important fact of the case and (2) when the law is applied to these facts, the moving party is entitled to summary judgment. also to rule 56 of the South Carolina Rule of Civil Procedure, if petitioner dispute the facts presented by the moving party, you must set forth in a sworn statement specific facts showing that there is a genuine issue or important fact which is in dispute. This means petitioner must relate what important facts the moving party left out or what facts the moving party stated that you contest. Petitioner must additionally explain how you know that this information is correct, how you came by that knowledge, and if petitioner possess any documents that support petitioner allegation. Celotex Corp. v Catrett. 477 U.S 317 (1986)

Petition have a right to respond to Order Of Dismissal.

CONCLUSION

Based on the foregoing argument, petitioner's writ of certiorari should be granted and petitioner need opportunity to respond to the Order Of Dismissal.

Respectfully Submitted Mr. Gabriel Randolph
Mr. Gabriel Randolph # 248729
Perry CI - Smu - BX2
430. Oaklawn Rd
Pelzer, SC. 29669

Date January 14, 2013

SWORN OR AFFIRMED TO AND SUBSCRIBED
BEFORE ME THIS 4th DAY OF January 2013
Henry T. Milabaly
Notary Public South Carolina

My Commission Expires January 7, 2016

The State Of South Carolina In The Court Of Appeal

CERTIORARI To Greenville County

G. Edward Welmaker; Chief Administrative Judge Of 13th Circuit Court Judge.

Gabriel Randolph #248729 Petitioner

VS

The State Of South Carolina Respondent

Appellate Case # 2012-211862

PROOF OF SERVICE

I, Gabriel Randolph hereby certify that I served the within, Petition For Writ Of Certiorari on Respondent by depositing copy of the same in the United States mail, postage and prepaid address to his attorney;

South Carolina Attorney General Office
Karen Ratigan; Assistance Attorney General
P.O. Box 11549
Columbia, SC. 29211.

I, Gabriel Randolph certify that all parties required by Rule to be served have been served

This 14 day of January 2013

Submitted By Mr. Gabriel Randolph
MR GABRIEL RANDOLPH # 248729
Perry Ct - SMU - BX2
430. Oaklawn Rd
Pelzer. SC. 29669

Sworn or affirmed to and subscribed
before me this 4th day of January 2013
Steve T. Mulvaney
Notary Public Of South Carolina

My Commission Expires January 7, 2016

The State Of South Carolina In The Court Of Appeal

CERTIORARI To Greenville County

G. Edward Welmaker ; Chief Administrative Judge of 13th Circuit Court Judge

Gabriel Randolph # 248729 Petitioner,

vs

The State Of South Carolina Respondent

Appellate Case no # 2012 - 211862

APPENDIX

Submitted By Pro'Se Mr. Gabriel Randolph #248729
Perry CI- 5mu- Bx2
430. Oaklawn. Rd
Pelzer, SC. 29669

Pro'Se Petitioner

Date, January 14, 2013

Karen Ratigan
Assistance Attorney General
South Carolina Attorney General Office
P.O. Box 11549
Columbia, SC. 29211.

Attorney For Respondent

Sworn or affirmed to and subscribed
before me this 14th day of January 2013
Steven T. Melander
Notary Public Of South Carolina

My Commission Expires January 7 2016

Appendix

- 1) Return And Motion To Dismiss Petition
For Writ Of Mandamus; Letter. 1
- 2) Return And Motion To Dismiss Petition
For Writ Of Mandamus. 2
- 3) Order Of Dismissal; Letter 6
- 4) Judgement In A Civil Case 7



ALAN WILSON
ATTORNEY GENERAL

March 9, 2012

The Honorable Paul B. Wickensimer
Clerk of Court, Greenville County
305 East North Street; Room 224
Greenville SC 29601-2121

**Re: Gabriel Randolph, 248729 v. State of South Carolina
2011-CP-23-4873**

Dear Mr. Wickensimer:

Enclosed please find the original **Return and Motion to Dismiss Petition for Writ of Mandamus** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Karen C. Ratigan
Assistant Deputy Attorney General

KCR/jacc
Enclosures

cc: Gabriel Randolph, 248729

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Gabriel Randolph,)
 S.C.D.C. No. 248729,)
)
 Petitioner,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2011-CP-23-4873

**RETURN AND MOTION TO DISMISS
 PETITION FOR WRIT OF MANDAMUS**

This matter comes before the Court by way of a document filed July 21, 2011, and captioned "Petition for a Writ of Mandamus." Respondent submits the matter should be summarily dismissed.

I.

Petitioner is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Colleton County.¹ On March 26, 1998, Petitioner pled guilty to distribution of crack cocaine (1997-GS-15-0805) and distribution of crack cocaine within proximity of a school (1997-GS-15-0817). The Honorable Rodney A. Peeples levied consecutive sentences of twenty-two (22) years for distribution of crack cocaine and fifteen (15) years suspended on service of five (5) years and five (5) years probation for distribution of crack cocaine within proximity of a school. Petitioner did not appeal. Upon information and belief, Petitioner has filed three (3) unsuccessful post-conviction relief applications in Colleton County and an unsuccessful petition for writ of habeas corpus in the United States District Court for the

¹ Petitioner does not explain why he filed this action in Greenville County when he is incarcerated on Colleton County charges.

*

District of South Carolina.

II.

Petitioner submitted a Petition which he captions "Petition for a Writ of Mandamus." In the Petition, Petitioner states he is serving an illegal sentence and is requesting "a resentencing by the SC Code Law 17-25-50."

III.

Petitioner served the Office of the Attorney General with the Petition for a Writ of Mandamus by sending the documents through certified mail.

IV.

The undersigned moves this Court to deny and dismiss the Petition for a Writ of Mandamus. Petitioner is improperly requesting that his sentences be vacated and the charges remanded for resentencing. Petitioner must name a responsible party with authority to perform the task requested. Merely naming "The State" is not sufficient. The Office of the Attorney General does not accept service of these documents for any agency, individual, entity, or official.

V.

Alternatively, and as to the merits, the Petition for a Writ of Mandamus must be denied because mandamus is not appropriate. To secure a writ of mandamus requiring the performance of an act, Petitioner must show a duty of the respondent to act, the ministerial nature of the act, the specific right for which discharge of the duty is necessary, and lack of another adequate remedy. Porter v. Jedziniak, 334 S.C. 16, 18, 512 S.E.2d 497, 498 (1999). The act demanded in this case is not ministerial, the Office of the Attorney General has no duty to perform the act demanded, Petitioner has no specific legal right to secure the items in the manner demanded, and Petitioner has another adequate remedy.

VI.

Specifically, the undersigned submits the Petition for a Writ of Mandamus should be denied because the Office of the Attorney General has no duty to compel any State or County agency or official to comply with Petitioner's request to vacate his sentences and remand for resentencing.

VII.

WHEREFORE, having made its Return and Motion to Dismiss, Respondent requests the matter be summarily dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

March 9, 2012
~~February~~

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
)
)
GABRIEL RANDOLPH, 248729)
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Applicant,)
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vs)
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STATE OF SOUTH CAROLINA,)
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)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

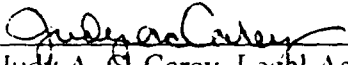
2011-CP-23-4873

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 Petition for Writ of Mandamus** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Gabriel Randolph, 248729
Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669**

DATED this 9th day of March, 2012.



Judy A. C. Carey, Legal Assistant
For Respondent

④

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x



ALAN WILSON
ATTORNEY GENERAL

March 9, 2012

The Honorable G. Edward Welmaker
Chief Administrative Judge, 13th Judicial Circuit
Post Office Box 899
Pickens SC 29671

**Re: Gabriel Randolph, 248729 v. State of South Carolina
2011-CP-23-4873**

Dear Judge Welmaker:

Enclosed please find the proposed original **Order of Dismissal** in the above case. If this order meets with your approval, please sign and forward to the Greenville Clerk of Court to be filed and served.

Sincerely,

Karen C. Ratigan
Assistant Deputy Attorney General

KCR/jacc
Enclosure(s)

cc: Gabriel Randolph, 248729

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2011CP2304873

FILED IN COURT OF COMMON PLEAS
GREENVILLE COUNTY, S.C.
2012 MAR 29 AM 8:32

Gabriel Randolph vs. South Carolina State Of

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 29th day of March, 2012.

Court Reporter:

PRESIDING JUDGE - G Edward Welmaker

This judgment was entered on the 29th day of March, 2012, and a copy mailed first class this 29th day of March, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Gabriel Randolph P C I/Smu B45 430 Oaklawn Rd
Pelzer, SC 29669

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan Attorney Generals Office
Po Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Gabriel Randolph,)
S.C.D.C. No. 248729,)
)
Petitioner,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. No. 2011-CP-23-4873

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
2011 JUL 29 AM 8:32

ORDER OF DISMISSAL

This matter comes before the Court by way of a document filed July 21, 2011, and captioned "Petition for a Writ of Mandamus." Respondent filed a Return and Motion to Dismiss, requesting the matter be summarily dismissed.

I.

Petitioner is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Colleton County.¹ On March 26, 1998, Petitioner pled guilty to distribution of crack cocaine (1997-GS-15-0805) and distribution of crack cocaine within proximity of a school (1997-GS-15-0817). The Honorable Rodney A. Peebles levied consecutive sentences of twenty-two (22) years for distribution of crack cocaine and fifteen (15) years suspended on service of five (5) years and five (5) years probation for distribution of crack cocaine within proximity of a school. Petitioner did not appeal.

Upon information and belief, Petitioner has filed three (3) unsuccessful post-conviction relief applications in Colleton County and an unsuccessful petition for writ of habeas corpus in

¹ This Court notes Petitioner does not explain why he filed this action in Greenville County when he is incarcerated on Colleton County charges.

1
[Signature]
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the United States District Court for the District of South Carolina.

II.

In the “Petition for a Writ of Mandamus,” Petitioner states he is serving an illegal sentence and is requesting “a resentencing by the SC Code Law 17-25-50.”

III.

This Court finds the Petition for a Writ of Mandamus must be denied because Petitioner failed to name a responsible party with authority to produce the items requested. Merely naming Respondent or “The State” is not sufficient. This Court finds the Office of the Attorney General did not accept service of these documents for any other agency, individual, entity, or official.

IV.

This Court further finds the Petition for a Writ of Mandamus must be denied because Petitioner failed to state a cause of action against the Office of the Attorney General. “The primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law.” Porter v. Jedziniak, 334 S.C. 16, 18, 512 S.E.2d 497, 497 (1999). A petitioner seeking a writ of mandamus to require the performance of an act “must show (1) a duty of respondent 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.” Id. at 18, 512 S.E.2d at 498; see also Sanford v. South Carolina Ethics Comm’n, 385 S.C. 483, 685 S.E.2d 600 (2009). “A ministerial act or duty is one which a person performs because of a legal mandate which is defined with such precision as to leave nothing to the exercise of discretion.” Edwards v. State, 383 S.C. 82, 96, 678 S.E.2d 412, 419 (2009). This Court finds the act demanded in this case is not ministerial, the Office of the Attorney General has no duty to perform the act demanded,

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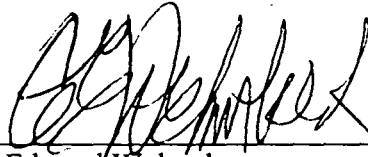
Petitioner has no specific legal right to secure the items in the manner demanded, and Petitioner has another adequate remedy

V.

Based on the foregoing, this Court finds Petitioner failed to make the requisite showing to enable this Court to issue a writ of mandamus.

IT IS THEREFORE ORDERED that the Petition for a Writ of Mandamus must be denied and dismissed with prejudice.

AND IT IS SO ORDERED this 14 day of March, 2012.



G. Edward Welmaker
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

Mr. Gabriel Randolph # 248729
Perry CI-SMU-BX2
430. Oaklawn, Rd
Pelzer, SC. 29669

January 14, 2013

The South Carolina Court Of Appeal
Ms. Jenny A. Kitching; Clerk
P.O. Box 11629
Columbia, SC. 29211

RE; Petition For Writ Of Certiorari = Appellate Case 2012-211862

Dear, Ms. Kitching, Clerk

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vs.

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Perry Correction Institution
430, Oaklawn Rd
Pelzer, SC. 29669

Pro Se Petitioner

Karen Ratigan.
Assistance Attorney General

South Carolina Attorney General Office
P.O. Box 11549
Columbia, SC. 29211

Attorney For Respondent

Date, January 14, 2013

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Other Authority;

South Carolina Rule Of Civil Procedure, Rule 565

ISSUE PRESENTED

1) Did the judge err in not let petitioner respond to Order of Dismissal.

STATEMENT

Petitioner is confined in the South Carolina Department Of Correction pursuant to orders of commitment of the Clerk Of Court for Colleton County.

On March 26, 1998, Petitioner pled guilty to distribution of crack cocaine (1997-GS-15-0805) and distribution of crack cocaine within proximity of a school (1997-GS-15-0817). The Honorable Rodney A. Peebles levied consecutive sentence of twenty-two (22) years for distribution of crack cocaine and fifteen (15) years suspended on service of five (5) years and five (5) years probation for distribution of crack cocaine within proximity of a school. Petitioner filed three (3) unsuccessful post-conviction relief application in Colleton County Court and a unsuccessful petition for writ of habeas corpus in the United State District Court for South Carolina. Petitioner file a Petition For Writ Of Mandamus and now Petitioner appeal to this court.

ARGUMENT

Did the judge err in not let petitioner respond to Order Of Dismissal.

On March 9, 2012 Respondent file a Return And Motion To Dismiss Petition For Writ Of Mandamus and ORDER OF DISMISSAL. Judge Welmaker sign the Order Of Dismissal on March 14, 2012. not given the petitioner a opportunity to challenge or dispute the Order Of Dismissal.

The petitioner must have opportunity to challenge or dispute the respondent Order Of Dismissal. By the South Carolina Rule Of Civil Procedure (Rule 56). Summary Judgment. is when both parties have to dispute the fact of the case. Only the respondent file their motion. Which either parties can show genuine issue. Judge Welmaker did not give petitioner opportunity to make a reply motion to the respondent Order Of Dismissal.

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Petition have a right to respond to Order Of Dismissal.

CONCLUSION

Based on the foregoing argument, petitioner's writ of certiorari should be granted and petitioner need opportunity to respond to the Order Of Dismissal.

Respectfully Submitted Mr. Gabriel Randolph

Mr. Gabriel Randolph # 248729
Perry CI-SMU-BX2
430. Oaklawn Rd
Pelzer, SC. 29669

Date January 14, 2012

SWORN OR AFFIRMED TO AND SUBSCRIBED
BEFORE ME THIS 4th DAY OF January 2013

Stenn T. Melabey

Notary Public South Carolina

My Commission Expires January 7, 2016

The State Of South Carolina In The Court Of Appeal

CERTIORARI To Greenville County

G. Edward Welmaker; Chief Administrative Judge Of 13th Circuit Court Judge.

Gabriel Randolph #248729 Petitioner

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The State Of South Carolina Respondent

Appellate Case # 2012-211862

PROOF OF SERVICE

I, Gabriel Randolph hereby certify that I served the within, Petition For Writ Of Certiorari on Respondent by depositing copy of the same in the United States mail, postage and prepaid address to his attorney;

South Carolina Attorney General Office
Karen Rutigan; Assistance Attorney General
P.O. Box 11549
Columbia, SC. 29211.

I, Gabriel Randolph certify that all parties required by Rule to be served have been served

This 14 day of January 2013

Submitted By Mr. Gabriel Randolph
MR GABRIEL RANDOLPH # 248729
Perry CI-SMU- BX2
43D. Oaklawn. Rd
Pelzer. SC. 29669

Sworn or affirmed to and subscribed
before me this 4th day of January 2013
Steve T. Welmaker
Notary Public Of South Carolina

My Commission Expires January 7, 2016

The State Of South Carolina In The Court Of Appeal

CERTIORARI To Greenville County

G. Edward Welmaker; Chief Administrative Judge of 13th Circuit Court Judge

Gabriel Randolph # 248729 Petitioner,

vs

The State Of South Carolina Respondent

Appellate Case NO# 2012-211862

APPENDIX

Submitted By Pro'Se Mr. Gabriel Randolph #248729
Perry, CI-5mu-BX2
430. Oaklawn. Rd
Pelzer, SC. 29669

Pro'Se Petitioner

Date, January 14, 2013

Karen Ratigan
Assistance Attorney General
South Carolina Attorney General Office
P.O. Box 11549
Columbia, SC. 29211.

Attorney For Respondent

Sworn or affirmed to and subscribed
before me this 7th day of January 2013
Stuart T. Melander
Notary Public Of South Carolina

My Commission Expires January 7 2016

Appendix

- 1) Return And Motion To Dismiss Petition
For Writ Of Mandamus; Letter 1
- 2) Return And Motion To Dismiss Petition
For Writ Of Mandamus 2
- 3) Order Of Dismissal; Letter, 6
- 4) Judgement In A Civil Case 7



ALAN WILSON
ATTORNEY GENERAL

March 9, 2012

The Honorable Paul B. Wickensimer
Clerk of Court, Greenville County
305 East North Street; Room 224
Greenville SC 29601-2121

**Re: Gabriel Randolph, 248729 v. State of South Carolina
2011-CP-23-4873**

Dear Mr. Wickensimer:

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Sincerely,

Karen C. Ratigan
Assistant Deputy Attorney General

KCR/jacc
Enclosures

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¹ Petitioner does not explain why he filed this action in Greenville County when he is incarcerated on Colleton County charges.

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District of South Carolina.

II.

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III.

Petitioner served the Office of the Attorney General with the Petition for a Writ of Mandamus by sending the documents through certified mail.

IV.

The undersigned moves this Court to deny and dismiss the Petition for a Writ of Mandamus. Petitioner is improperly requesting that his sentences be vacated and the charges remanded for resentencing. Petitioner must name a responsible party with authority to perform the task requested. Merely naming "The State" is not sufficient. The Office of the Attorney General does not accept service of these documents for any agency, individual, entity, or official.

V.

Alternatively, and as to the merits, the Petition for a Writ of Mandamus must be denied because mandamus is not appropriate. To secure a writ of mandamus requiring the performance of an act, Petitioner must show a duty of the respondent to act, the ministerial nature of the act, the specific right for which discharge of the duty is necessary, and lack of another adequate remedy. Porter v. Jedziniak, 334 S.C. 16, 18, 512 S.E.2d 497, 498 (1999). The act demanded in this case is not ministerial, the Office of the Attorney General has no duty to perform the act demanded, Petitioner has no specific legal right to secure the items in the manner demanded, and Petitioner has another adequate remedy.

VI.

Specifically, the undersigned submits the Petition for a Writ of Mandamus should be denied because the Office of the Attorney General has no duty to compel any State or County agency or official to comply with Petitioner's request to vacate his sentences and remand for resentencing.

VII.

WHEREFORE, having made its Return and Motion to Dismiss, Respondent requests the matter be summarily dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

March 9
February 9, 2012

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
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GABRIEL RANDOLPH, 248729)
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Applicant,)
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vs)
)
STATE OF SOUTH CAROLINA,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

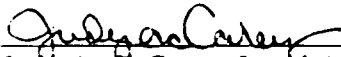
2011-CP-23-4873

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 Petition for Writ of Mandamus** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Gabriel Randolph, 248729
Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669**

DATED this 9th day of March, 2012.



Judy A. C. Carey, Legal Assistant
For Respondent

④



ALAN WILSON
ATTORNEY GENERAL

March 9, 2012

The Honorable G. Edward Welmaker
Chief Administrative Judge, 13th Judicial Circuit
Post Office Box 899
Pickens SC 29671

Re: Gabriel Randolph, 248729 v. State of South Carolina
2011-CP-23-4873

Dear Judge Welmaker:

Enclosed please find the proposed original **Order of Dismissal** in the above case. If this order meets with your approval, please sign and forward to the Greenville Clerk of Court to be filed and served.

Sincerely,

Karen C. Ratigan
Assistant Deputy Attorney General

KCR/jacc
Enclosure(s)

cc: Gabriel Randolph, 248729

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2011CP2304873

FILED IN COURT OF COMMON PLEAS
GREENVILLE COUNTY, S.C.
MAY 29 2012
AM 8:32

Gabriel Randolph vs. South Carolina State Of

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 29th day of March, 2012.

Court Reporter:

PRESIDING JUDGE - G Edward Welmaker

This judgment was entered on the 29th day of March, 2012, and a copy mailed first class this 29th day of March, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Gabriel Randolph P C I/Smu B45 430 Oaklawn Rd
Pelzer, SC 29669

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan Attorney Generals Office
Po Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Gabriel Randolph,)
S.C.D.C. No. 248729,)
)
Petitioner,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. No. 2011-CP-23-4873

FILED - CLERK OF COURT
GREENVILLE CO., S.C.
2011 MAR 29 AM 8:32

ORDER OF DISMISSAL

This matter comes before the Court by way of a document filed July 21, 2011, and captioned "Petition for a Writ of Mandamus." Respondent filed a Return and Motion to Dismiss, requesting the matter be summarily dismissed.

I.

Petitioner is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Colleton County.¹ On March 26, 1998, Petitioner pled guilty to distribution of crack cocaine (1997-GS-15-0805) and distribution of crack cocaine within proximity of a school (1997-GS-15-0817). The Honorable Rodney A. Peebles levied consecutive sentences of twenty-two (22) years for distribution of crack cocaine and fifteen (15) years suspended on service of five (5) years and five (5) years probation for distribution of crack cocaine within proximity of a school. Petitioner did not appeal.

Upon information and belief, Petitioner has filed three (3) unsuccessful post-conviction relief applications in Colleton County and an unsuccessful petition for writ of habeas corpus in

¹ This Court notes Petitioner does not explain why he filed this action in Greenville County when he is incarcerated on Colleton County charges.

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[Handwritten signature]
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the United States District Court for the District of South Carolina.

II.

In the "Petition for a Writ of Mandamus," Petitioner states he is serving an illegal sentence and is requesting "a resentencing by the SC Code Law 17-25-50."

III.

This Court finds the Petition for a Writ of Mandamus must be denied because Petitioner failed to name a responsible party with authority to produce the items requested. Merely naming Respondent or "The State" is not sufficient. This Court finds the Office of the Attorney General did not accept service of these documents for any other agency, individual, entity, or official.

IV.

This Court further finds the Petition for a Writ of Mandamus must be denied because Petitioner failed to state a cause of action against the Office of the Attorney General. "The primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law." Porter v. Jedziniak, 334 S.C. 16, 18, 512 S.E.2d 497, 497 (1999). A petitioner seeking a writ of mandamus to require the performance of an act "must show (1) a duty of respondent 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." Id. at 18, 512 S.E.2d at 498; see also Sanford v. South Carolina Ethics Comm'n, 385 S.C. 483, 685 S.E.2d 600 (2009). "A ministerial act or duty is one which a person performs because of a legal mandate which is defined with such precision as to leave nothing to the exercise of discretion." Edwards v. State, 383 S.C. 82, 96, 678 S.E.2d 412, 419 (2009). This Court finds the act demanded in this case is not ministerial, the Office of the Attorney General has no duty to perform the act demanded,

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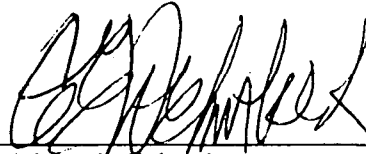
Petitioner has no specific legal right to secure the items in the manner demanded, and Petitioner has another adequate remedy

V.

Based on the foregoing, this Court finds Petitioner failed to make the requisite showing to enable this Court to issue a writ of mandamus.

IT IS THEREFORE ORDERED that the Petition for a Writ of Mandamus must be denied and dismissed with prejudice.

AND IT IS SO ORDERED this 14 day of March, 2012.



G. Edward Weimaker
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.