

ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Newberry County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No.: 2012-212180

RONNIE ALLEN MITCHELL.....
v.
STATE OF SOUTH CAROLINA.....

APPELLANT,

Respondent.

SUPPLEMENTAL RECORD ON APPEAL

RONNIE ALLEN MITCHELL
Pro Se

Inmate No. 217691
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

APPELLANT

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

RECEIVED
DEC 19 2013
SC Court of Appeals

INDEX

ORDER OF DISMISSAL 2007-CP-36-0109	1
ADMINISTRATIVE ORDER 2011-CP-36-0176.....	13
FORM 4 2011-CP-36-0176.....	17
PETITIONER'S MOTION FOR STATE WRIT OF HABEAS CORPUS.....	18

8
ATM**FORM 4****STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY****JUDGMENT IN A CIVIL CASE****IN THE COURT OF COMMON PLEAS****CASE NO.: 2007-CP-36-109**Ronnie A. Mitchell, #217691

vs.

State of South Carolina**PLAINTIFF(S)****DEFENDANT(S)****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 _____

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

Order of Dismissal

Dated at Newberry, South Carolina, this 12th day of May, 2008.S/ J. Ernest Kinard, Jr.**CIRCUIT JUDGE**This judgment was entered on the 13th day of May, 2008, and a copy mailed first class this 16th day of May, 2008 to attorneys of record or to parties (when appearing pro se) as follows:M. Rita Metts, EsquireAshley A. McMahan, Esquire**ATTORNEY FOR THE PLAINTIFF****ATTORNEY FOR THE DEFENDANT**S/ Jackie S. Bowersbgm**CLERK OF COURT**

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

) IN THE COURT OF COMMON PLEAS
) FOR THE EIGHTH JUDICIAL CIRCUIT
) Case No.: 2007-CP-36-109

Ronnie A. Mitchell, # 217691,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

REC'D
JUL 11 10
JUL 11 10
JUL 11 10
JUL 11 10

This matter comes before the Court by way of an application for post conviction relief (PCR) filed March 21, 2007. The Respondent made its Return and Motion to Dismiss and its Motion to Restrict Future Filings on or about November 16, 2007. An evidentiary hearing into the matter was convened on April 2, 2008, at the Newberry County Courthouse. The Applicant was present at the hearing and was represented by M. Rita Metts, Esquire. Ashley A. McMahan, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

This Court had before it a copy of the application, the respondent's Return and Motion to Dismiss and Motion to Restrict Future Filings, the Appellate Court Records, the prior PCR records, the records of the Newberry County Clerk of Court and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Newberry County. The Applicant was indicted at the November 1994, term of the Newberry County Grand Jury for

First Degree Burglary and Assault with Intent to Commit First Degree Criminal Sexual Conduct (1994-GS-36-564). Raymond K. Wicker, Esquire, represented him. On February 6-7, 1995, the Applicant underwent trial by jury pursuant to which he was found guilty as charged. The Honorable E.C. Burnett, III, sentenced him to confinement for a period of life for First Degree Burglary and thirty (30) years for Assault with Intent to Commit First Degree Criminal Sexual Conduct. The Applicant did not appeal his conviction or sentence.

1996-CP-36-031

The Applicant subsequently filed an application for post-conviction relief on February 1, 1996 (1996-CP-36-031), in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel. Did not request continuance on Burglary Charge. Did not do a legal and factual investigation of charges;
2. "Improper sentence on assault with intent to commit criminal sexual conduct. The Judge still sentenced me to 30 years for C.S.C., but the jury only found me guilty to a lesser offense. In the law books assault with the intent is the same as C.S.C. 1st degree. Seems to me the judge didn't explain 1st, 2nd, or 3rd degree to the jury. Also, the Judge stated to the jury if they could not find me guilty of 1st degree he told them they could not find me guilty of 1st degree burglary my lawyer didn't say anything to the Judge about this when the verdict was read out! Why?" and
3. Without proper indictment court had no jurisdiction.

On December 19, 1996, an evidentiary hearing was held before the Honorable David H. Maring, at which the Applicant was present and was represented by Charles Johnson, Esquire. By order dated April 19, 1997, Judge Maring denied and dismissed the Applicant's application. The Applicant did not appeal the denial of his first Application for PCR.

1998-CP-36-089

Thereafter, the Applicant filed a second PCR application on March 19, 1998 (1998-CP-36-089), in which he raised the following grounds for relief:

1. Ineffective assistance of Post-Conviction Relief counsel. PCR counsel failed to file Notice of Intent to Appeal and the appeal itself; and
2. I was abandoned after denial of PCR as to where I did not know how to file an appeal to the appellate courts. I was totally abandoned by PCR counsel's negligence in perfecting the appeal.

On February 9, 1999, an evidentiary hearing was held before the Honorable Larry R. Patterson, at which the Applicant was present and was represented by Lisa G. Echols, Esquire. By order dated March 8, 1999, Judge Patterson denied and dismissed the Applicant's application. A timely notice of appeal was filed, and the Applicant submitted a petition for writ of certiorari. The South Carolina Supreme Court denied the Applicant's petition by order dated March 14, 2001. The Remittitur was sent on April 2, 2001.

2002-CP-37-0063

The Applicant filed a third PCR application on February 8, 2002 (2002-CP-37-0063), in which he raised the following allegations:

1. I was not aware of Appeal Rights;
2. Attorney did not advise me or appeal it; and
3. Court lacked subject matter jurisdiction.

The Respondent made its Return on March 25, 2003. An evidentiary hearing into the matter was convened on April 17, 2003, at the Laurens County Courthouse. The Applicant was present at the hearing and was represented by David E. Belding, Esquire. On May 12, 2003, the Honorable James W. Johnson, Jr., issued an Order of Dismissal denying and dismissing with prejudice the PCR application.

The Applicant timely served and filed a notice of appeal. Assistant Appellate Defender Robert M. Dudek represented him on certiorari in the South Carolina Supreme Court. On April 21, 2004, Mr. Dudek filed a *Johnson*¹ Petition for Writ of Certiorari on Petitioner's behalf in the South Carolina Supreme Court and moved to be relieved as counsel. The South Carolina Supreme Court denied certiorari and granted counsel's request to be relieved in an Order filed on March 3, 2005. The Remittitur was sent on March 22, 2005.

Subsequently, the Applicant filed a *pro se* Petition for Writ of Habeas Corpus in the Federal District Court for the District of South Carolina on June 3, 2005. On August 17, 2005, the Respondent filed a Motion for Summary Judgment. The Petitioner filed his Opposition to the Motion on September 9, 2005. On December 22, 2005, the Magistrate Judge issued a Report recommending that the Respondents' Motion for Summary Judgment be granted. Plaintiff filed "objections" to the Report and Recommendation on January 17, 2006. On January 26, 2006, issued an Order granting the Respondent's Motion for Summary Judgment and dismissed the petition with prejudice. On February 23, 2006, the Applicant filed a Notice of Appeal to the United States Court of Appeals for the 4th Circuit from the Order denying Plaintiff's Habeas Corpus. On June 1, 2006, the United States Court of Appeals denied and dismissed the appeal.

In his current Application (2007-CP-36-109), the Applicant alleges that he is being held in custody unlawfully for the following reasons:

¹ *Johnson v. State*, 364 S.E.2d 201 (S.C. 1988). *Johnson* sets forth the procedures for counsel to follow when filing meritless appeals in state PCR cases pursuant to *Anders v. California*, 386 U.S. 738 (1967). *Contra Pennsylvania v. Finley*, 481 U.S. 551 (1987) (prisoner, who had no equal protection or due process right to appointed counsel in post-conviction proceedings, also had no right to insist on *Anders* procedures for withdrawal of appointed counsel when collateral counsel determined direct appeal was frivolous).

1. The indictment for first-degree burglary is defective on its face.
2. Applicant argues that he has never been arrested or served properly with an arrest warrant for the offense of first-degree burglary.
3. The State issued two indictments upon the Applicant for the same offenses and improperly made an amendment to the body of the first indictment in open court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Motion to Dismiss for Statute of Limitations and Successiveness

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-80 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415

(1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. The Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, *supra*; Arnold v. State/Plath v. State, *supra*.

This Court finds, further, that this Application for Post-Conviction Relief 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, et. seq. S.C. Code Ann. §17-27-45(a) reads as follows:

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

The PCR statute of limitations applies to all applications filed after July 1, 1995. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on February 7, 1995. This Application was filed on May 21, 2007; well after the one-year statutory filing period had expired.

Motion to Restrict Future Filings

The Applicant has received his full bite at the apple. Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at

the apple;" this "bite" includes an applicant's right to appeal the denial of a post conviction relief application, and the right to assistance of counsel in that appeal. Matthews v. Evatt, 105 F.3d 907, 916 (1997), Gamble v. State, 298 S.C. 176, 379 S.E.2d 118, 119 (1989), Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999).

The Applicant has filed four (4) PCR Applications (including the current application filed on March 21, 2007) on the 1995 convictions, and he has appealed the dismissals of those Applications two (2) times. Also, the Applicant filed a Petition for Writ of Habeas Corpus. Accordingly, the Applicant has had his full bite at the apple at least two (2) times on that conviction. In fact, the Applicant has consumed the entire apple.

The United States Supreme Court has denied litigants who have filed repetitive, frivolous petitions the right to proceed *in forma pauperis*, resulting in the litigants having to pay the required filing fee with that Court. In re Whitaker, 513 U.S. 1, 115 S.Ct. 2, 130 L.Ed.2d 1 (1994); In re Anderson, 511 U.S. 364, 114 S.Ct. 1606, 128 L.Ed.2d 332 (1994); In re Demos, 500 U.S. 16, 111 S.Ct. 1569, 114 L.Ed.2d 20 (1991); In re Sindram, 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991); In re McDonald, 489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989).

In In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996), the South Carolina Supreme Court required Maxton, who had filed numerous meritless petitions with the Court, to pay a filing fee and accompany any future filings with a properly notarized affidavit by Maxton certifying that he in good faith believed that the matters he was raising were non-frivolous and proper for the Court to consider. Id. Other courts have required that the abusive litigant file an affidavit certifying that he believes the petition raises an original claim or is non-frivolous before accepting filings from the litigant. In the Matter of Verdone,

73 F.3d 669 (7th Cir.1995); Abdul-Akbar v. Watson, 901 F.2d 329 (3d Cir.1990); Green v. Warden, 699 F.2d 364 (7th Cir.), *cert. denied*, 461 U.S. 960, 103 S.Ct. 2436, 77 L.Ed.2d 1321 (1983).

The Applicant's allegations and accusations have become increasingly frivolous. The Applicant continues to waste the time and resources of the Newberry County Clerk of Court's Office, the Chief Administrative and Presiding Judges in the Eighth Circuit, the South Carolina Attorney General's Office, numerous appointed attorneys of the Newberry County Bar, Court Personnel, and the South Carolina Supreme Court.

There is a strong interest in finality of the criminal process; judicial review must stop at some juncture and finality must be realized. Aice v. State, 305 448, 409 S.E.2d 392 (1991). The Court quoted Justice Harlan when discussing the importance of finality in litigation when they stated the following:

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

second trial no more reliable as a matter of getting at the truth than the first."

Anderson v. Leeke, 271 S.C. 435, 441, 248 S.E.2d 120 (1978). For these reasons, the following restrictions will now be in place for any filing the Applicant makes in the future: Applicant must pay the filing fee generally required for filing motions and petitions with this Court; Applicant is required to provide a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous; If the Applicant submits an Application that is accompanied with a notarized affidavit, that, before filing, the Clerk's office is directed to submit the Application to the Chief Administrative Judge; The Administrative Judge will then make a finding on whether the issues raised in the Application are non-frivolous and proper for the Court to consider; If the Administrative Judge finds the Application proper, it will then be submitted to the Clerk's office for filing. No Application will be filed without a proper finding from the Chief Administrative Judge.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has failed to file his application within the time limits established in S.C. Code Ann. §17-27-45(a) and must be summarily dismissed because it is successive to his prior application for PCR pursuant to S.C. Code Ann. §17-27-90. Therefore, this Court finds that the application for post-conviction relief is summarily dismissed with prejudice for failure to file within the time mandated by statute and for being successive.

This Court further finds that due to the repetitive and frivolous nature of the Applicant's filings that it is necessary that restrictions be place for any future filings made by the Applicant.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for post conviction relief is denied and dismissed with prejudice.
2. The Applicant is remanded to the custody of the Respondent.
3. The Clerk of Court should refuse to accept further petitions from the Applicant asking the Court to entertain matters unless he pays a filing fee generally required for filing motions and petitions with this Court.
4. The Applicant should be prohibited from filing any legal actions in this Court without submitting the requisite filing fees⁶ and providing a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous.
5. Any Applications submitted with properly notarized affidavits be submitted to the Chief Administrative Judge to make a finding on whether the allegations are non-frivolous and proper for the Court before they are filed;
6. The Clerk of Courts should be instructed to return all documents that do not comply with this order, and;
7. The Applicant is directed that if he continues to file Applications containing matter that is frivolous or not proper for this Court to

⁶ S.C. Code Ann. §8-21-310(11)(a) (Supp. 2004).

consider, he may be held in contempt or sanctioned under Rule 240, SCAR; Rule 11; and anything else the court deems just and proper.

AND IT IS SO ORDERED!


J. Ernest Kinard, Jr.
Presiding Circuit Court Judge

5/12, 2008
Newberry, South Carolina.

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3600176

FILED
NEWBERRY COUNTY

Ronnie Allen #217691
Mitchell

2012 MAR 20 A 9 46

THE S. BOWERS
COURT

State Of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **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:
Administrative Order

☒ See attached order, (formal order to follow)

☐ Statement of Judgment by the Court:

This order ☒ ends ☐ does not end the case.

ORDER INFORMATION

Additional Information for the Clerk:

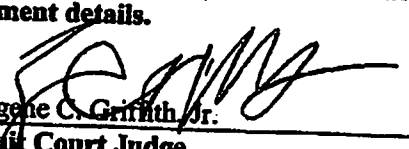
INFORMATION FOR THE PUBLIC INDEX

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

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

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

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


Eugene C. Griffith, Jr.
Circuit Court Judge

2154

Judge Code

3/30/2012

Date

For Clerk of Court Office Use Only

This judgment was entered on March 30, 2012, and a copy mailed first class or placed in the appropriate attorney's box on March 30, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Ronnie Allen #217691 Mitchell S.C.D.C. F1-A-166 386
Redemption Way McCormick, SC 29899

J Rutledge Johnson Assistant Attorney General Po Box
11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

S/ Jackie S. Bowers

Jackie S Bowers - Clerk of Court

Court Reporter

FILED
STATE OF SOUTH CAROLINA, NEWBERRY COUNTY IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY 2012 MAR 9 10 A 9 46 FOR THE EIGHTH JUDICIAL CIRCUIT

RONNIE ALLEN MITCHELL, # 217691)
vs.)
STATE OF SOUTH CAROLINA)
Respondent.)

ADMINISTRATIVE ORDER

CASE NUMBER 2011-CP-36-00176

This matter comes before this presiding judge as a petition for Writ of Habeas Corpus received by the Clerk of Court in March of 2011 along with a petition to proceed *in forma pauperis*. This court granted Mitchell a conditional authorization to proceed without costs on August 22, 2011. At that time, this judge was the Chief Judge for Administrative Purposes for the Eighth Circuit. Correspondence was sent to Mitchell requesting an affidavit of petitioner regarding his monies held in trust (Cooper Trust) by the South Carolina Department of Corrections. No response was received from Mitchell prior to the end of 2011. Thereafter, the petition to proceed without paying costs and all pleadings were transferred to the Honorable Frank Addy who is currently the Chief Judge for Administrative Purposes in the Eighth Judicial Circuit. Subsequently, Judge Addy recused himself and assigned the matter for review by Judge William Keesley who was presiding in this circuit. Judge Keesley issued an order dated March 9, 2012, which questioned whether or not the petitioner had been granted leave to proceed without paying costs for the Petition for Writ of Habeas Corpus. The issue of whether Petitioner may proceed without costs is addressed herein.

Acting in his capacity at that time as Chief Judge for Administrative Purposes, this court

JEL
SCL 1/3

allowed Mitchell to file the petition without paying costs provided he supplement the Clerk of Court's file with his "Cooper Trust" documents. No "Cooper Trust" documents nor affidavit of indigency have been received by the Clerk of Court from the petitioner in this case.

Notwithstanding the failure of the petitioner to file an appropriate affidavit, since the filing of the petition for Writ of Habeus Corpus, this Court has been apprised of a prior order of May 12, 2008 issued by the Honorable J. Ernest Kinard which restricted the petitioner in this case from filing subsequent actions in the Court of Common Pleas for Newberry County. Based upon the terms of the order of Judge Kinard, which is captioned similarly as the instant case under file number 2007-CP-36-109, the Court finds that the decision to allow this petitioner to proceed without paying costs was premature and was granted without knowledge of that order. Judge Kinard noted in his order that the Applicant (Petitioner) had filed four PCR Applications on his 1995 convictions and had appealed the dismissals of those applications twice. The Applicant also filed a Petition for Writ of Habeus Corpus prior to 2008 which was also dismissed. Based upon the specific language of Judge Kinard's order which restricts future filings, such as this petition, this Court finds that Ronnie Mitchell was improvidently granted leave to file his action without costs in this petition. This court was unaware that the applicant had previously filed numerous applications and petitions, all of which have been heard on the merits, dismissed, or denied. This court notes that Judge Kinard found that Mitchell herein had been afforded ample opportunities to seek post-conviction and/or remedial relief. Judge Kinard stated in his order that this "applicant has had his full bite of the apple at least two (2) times on that (1995) conviction. In fact, the Applicant has consumed the entire apple" in his pursuit of these types of remedies.

The court further notes that Mitchell was fully aware of Judge Kinard's order and its

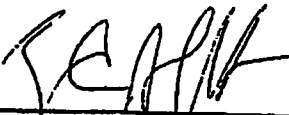
502 2/3

restrictions upon future filing like the pleadings sought to be filed herein. This Court finds that even if the petitioner had filed an appropriate affidavit of his indigency in this case, that his petition to proceed without costs for a remedial writ for relief would have been duplicative and frivolous. Accordingly, this Court directs that any and all pleadings in this action be returned to the Petitioner/Applicant and that all future pleadings be reviewed consistent with the Order of Judge Kinard.

It is therefore ordered:

1. The Petitioner's conditional authority to proceed *in forma pauperis* is rescinded.
2. That the Petitioner be provided a copy of the Order dated May 12, 2008 of the Honorable Ernest Kinard. And
3. This action be dismissed.

AND IT IS SO ORDERED.



Eugene C. Griffith, Jr.
Circuit Court Judge

March 30, 2012

Newberry, South Carolina

see 3

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2011-CP-36-00176

Ronnie Allen Mitchell vs. State

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:

Motion to proceed without costs is granted.

Dated at Newberry, South Carolina, this 29th day of March, 2011.

Court Reporter:

Eugene C. Griffith, Jr.
PRESIDING JUDGE - Eugene C. Griffith, Jr.

This judgment was entered on the 30th day of March, 2011, and a copy mailed first class this 30th day of March, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Ronnie A. Mitchell #217691 SCDC F2A-185R 386
Redemption Way McCormick, SC 29899

Harrison D. Brant, Assistant Attorney General
PO Box 11549, Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

S/ Jackie S. Bowers

Jackie S Bowers - Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERY

IN THE COURT OF COMMON
PLEAS 2011 CP-36-00176

RONNIE A. MITCHELL 217641
PETITIONER

NOTICE AND MOTION
FOR
STATE WRIT OF HABEAS CORPUS

✓
THE ATTORNEY GENERAL

THE STATE OF SOUTH CAROLINA
RESPONDENT

TO: THE ABOVE NAMED RESPONDENTS, THE STATE
ATTORNEY GENERAL OF SOUTH CAROLINA

PLEASE SEE MOTION AND ARGUMENT(S) OF MY
STATE WRIT OF HABEAS CORPUS

DATE: 7TH DAY OF FEBRUARY 2011

S/ Ronnie Allen Mitchell
PETITIONER

FILED
NEWBERY COUNTY
2011 MAR 30 A 8:46
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON
PLEAS

RONNIE A. MITCHELL #217691
PETITIONER

CASE NO. 2011-CP-36-0076

VS.
THE ATTORNEY GENERAL
THE STATE OF SOUTH CAROLINA
RESPONDENT

PETITION FOR STATE WRIT
OF HABEAS CORPUS

FILED
CLERK OF COURT
JAN 30 A 8:46
NEWBERRY COUNTY

NOW COMES THE ABOVE NAMED PETITIONER WHO
MOVES THIS HON. COURT IN THE ABOVE ENTITLED
MATTER PURSUANT TO S.C. CODE ANN 17-17-70, CONST
ART. 1 SECTION 18 ART. 5 SECTION 5 AND ANY
OTHER APPLICABLE RULES, LAWS AND OR ANY CONST.
IN THE ABOVE ENTITLED MATTER, I THEREBY
FURTHER MOVE PURSUANT TO S.C. CODE ANN
17-17-80 (SEE ATTACHED TRANSPORTATION ORDER)

PROCEDURAL HISTORY

THE APPLICANT IS PRESENTLY CONFINED IN THE
S.C. DEPARTMENT OF CORRECTIONS PURSUANT TO
ORDERS OF COMMITMENT. THE APPLICANT WAS
INDICTED IN THE NOVEMBER, 1994 TERM OF
NEWBERRY CO. COURT, BY GRAND JURY FOR FIRST
DEGREE BURGLARY AND FIRST DEGREE CRIMINAL
SEXUAL CONDUCT (1994-GS-36-564) RAYMOND K.
WICKER, ESQ. REPRESENTED APPLICANT.

ON FEBRUARY 6-7, 1995 APPLICANT UNDER WENT TRIAL BY JURY, PURSUANT TO WHICH HE WAS FOUND GUILTY AS CHARGED. THE HON. E. C. BURNETT III, SENTENCED APPLICANT TO (LIFE) FOR FIRST DEGREE BURGLARY AND THIRTY (30) YEARS FOR ASSAULT WITH INTENT TO COMMIT FIRST DEGREE CRIMINAL SEXUAL CONDUCT. APPLICANT'S ATTORNEY DID NOT APPEAL HIS CONVICTION OR SENTENCE.

1996-CP-36-031

THE APPLICANT FILED A P.C.R. ON FEBRUARY 1 1996 (1996-CP-36-031) WHICH HE ALLEGED THE FOLLOWING GROUND FOR RELIEF:

- (1) INEFFECTIVE ASSISTANCE OF COUNSEL, DID NOT REQUEST CONTINUANCE ON BURGLARY CHARGE, DID NOT DO A LEGAL AND FACTUAL INVESTIGATION OF CHARGES.
- (2) IMPROPER SENTENCE ON ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT.
- (3) WITHOUT PROPER INDICTMENT COURT HAD NO JURISDICTION.

ON DECEMBER 19, 1996 AN EVIDENTIARY HEARING WAS HELD BEFORE HON. DAVID H. MARING AT WHICH THE APPLICANT WAS PRESENT AND WAS REPRESENTED BY CHARLES JOHNSON ESQ. BY ORDER DATED APRIL 19, 1997, JUDGE MARING DENIED AND DISMISSED THE APPLICANT'S P.C.R.

Applicant's lawyer did not appeal the denial of his first P.C.R.

1998-CP-36-089

Thereafter the Applicant filed a second P.C.R. on March 19, 1998, in which he raised the following grounds for relief:

- (1) INEFFECTIVE ASSISTANCE OF P.C.R. COUNSEL
P.C.R. COUNSEL FAILED TO FILE NOTICE OF INTENT TO APPEAL AND THE APPEAL ITSELF
- (2) I WAS ABANDONED AFTER DENIAL OF P.C.R. AS TO WHERE I DID NOT KNOW HOW TO FILE AN APPEAL TO THE APPELLATE COURTS, I WAS TOTALLY ABANDONED BY P.C.R. COUNSEL'S NEGLIGENCE IN PERFECTING THE APPEAL

ON FEBRUARY 9, 1999 AN EVIDENTIARY HEARING WAS HELD BEFORE THE HON. HARRY R. PATTERSON AT WHICH THE APPLICANT WAS PRESENT AND WAS REPRESENTED BY LISA G. Echols Esq. BY ORDER DATED MARCH 8, 1999 JUDGE PATTERSON DENIED AND DISMISSED THE P.C.R. A TIMELY NOTICE OF APPEAL WAS FILED, AND APPLICANT'S COUNSEL PETITION FOR WRIT OF CERTIORARI. THE S.C. SUPREME COURT DENIED THE PETITION BY ORDER, DATED MARCH 14, 2001

2002-CP-36-0063

THE APPLICANT FILED A THIRD P.C.R. ON FEBRUARY 8, 2002, IN WHICH HE RAISED THE FOLLOWING ALLEGATIONS:

(1) WAS NOT AWARE OF APPEAL RIGHTS
(2) ATTORNEY DID NOT ADVISE ME OR APPEAL IT
(3) COURT LACKED SUBJECT MATTER JURISDICTION
AN EVIDENTIARY HEARING INTO THE MATTER
WAS CONVENED ON APRIL 17, 2003, LAURENS
CO. COURT HOUSE, THE APPLICANT WAS PRESENT AT
THE HEARING AND WAS REPRESENTED BY DAVID
E. BELDING ESQ. ON MAY 12, 2003 THE HON.
JAMES W. JOHNSON JR. ISSUED AN ORDER OF
DISMISSAL DENYING AND DISMISSING WITH
PREJUDICE.

THE APPLICANT'S ATTORNEY TIMELY SERVED AND FILED
A NOTICE OF APPEAL. ASSISTANT APPELLATE
ATTORNEY ROBERT M. DUCKER REPRESENTED (HIM)
APPLICANT ON CERTIORARI, ON APRIL 24, 2004
MR. DUCKER FILED A JOHNSON PETITION ON
PETITIONER'S BEHALF IN S.C. SUPREME COURT
AND MOVED TO BE RELIEVED AS COUNSEL. THE
S.C. SUPREME COURT DENIED CERTIORARI AND
GRANTED COUNSEL'S REQUEST TO BE RELIEVED IN
AN ORDER FILED ON MARCH 3, 2005, THE
REMITTITUR WAS SENT ON MARCH 22, 2005

SUBSEQUENTLY, THE APPLICANT FILED A PRO-SE PETITION FOR WRIT OF HABEAS CORPUS IN THE FEDERAL DISTRICT COURT, ON JUNE 3, 2005, ON AUGUST 17, 2005, THE RESPONDENT FILED A MOTION FOR SUMMARY JUDGEMENT, THE PETITIONER FILED HIS OPPOSITION TO THE MOTION ON SEPTEMBER 9, 2005, ON DECEMBER 22, 2005 THE MAGISTRATE JUDGE ISSUED A REPORT RECOMMENDING THAT THE RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT BE GRANTED.

PLAINTIFF FILED OBJECTIONS TO THE REPORT AND RECOMMENDATION ON JANUARY 17, 2006, ON JANUARY 26, 2006 ISSUED AN ORDER GRANTING THE RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT AND DISMISSED THE PETITION WITH PREJUDICE, ON FEBRUARY 23, 2006 THE APPLICANT FILED A NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE 4TH CIRCUIT FROM THE ORDER DENYING PLAINTIFFS HABEAS CORPUS ON JUNE 1, 2006 THE UNITED STATES COURT OF APPEALS DENIED AND DISMISSED THE APPEAL.

2007-CP-36-109

THE APPLICANT FILED A FOURTH PCR ON MARCH 21, 2007
THE APPLICANT ALLEGES THE FOLLOWING REASONS:

- (1) THE INDICTMENT FOR FIRST DEGREE BURGLARY IS DEFECTIVE ON ITS FACE
- (2) APPLICANT ARGUES THAT HE HAS NEVER BEEN ARRESTED FOR OR SERVED PRISON WITH AN ARREST WARRANT FOR THE OFFENSE OF BURGLARY.
- (3) THE STATE ISSUED TWO INDICTMENTS UPON THE APPLICANT FOR THE SAME OFFENSE AND IMPROPERLY MADE A AMENDMENT TO THE BODY OF THE INDICTMENT IN OPEN COURT. A EVIDENTIARY HEARING WAS HELD ON APRIL 8, 2008, THE APPLICANT WAS REPRESENTED BY RITA METTS ESQ. THE HON. JAMES KINARD JR. ISSUED AN ORDER DATED MAY 12, 2008 DISMISSING AND DENYING THE PCR.

THUS; APPLICANT HAS EXHAUSTED ALL OTHER AVAILABLE REMEDIES WHICH HAS BEEN INADEQUATE.

PENNINGTON V. STATE 441 SE 2d 315; BUTLER V. STATE 397 SE 2d 87

ARGUMENT

Applicant now brings this Petition for State Habeas Corpus under the First and Fourteenth Amendment. Applicant argues that at the start of his trial on February 6-7-1994) the Prosecutor made an Amendment to the Indictment in open court. The Applicant will show through the Indictment itself and through the trial transcripts, see: Exhibits (A) Original Indictment (B) Amended Indictment that the Prosecutor produced not a proper Indictment, but a Constructive Amendment, which violated Applicant's First and Fourteenth Amendment of the South Carolina and United States Const.

In U.S. v. Rosin 892 F.2d 649 (7th Cir 1990) the difference between a variance and a Constructive Amendment, is that a variance narrows the charges contained in the Indictment. A Constructive Amendment occurs where evidence presented at trial broadens the possible bases for a conviction from those contained in the Indictment by proving an offense not fully contained in the Indictment. See: Original Indictment and Amended Indictment Exhibit (A) - (B)

A CONSTRUCTIVE AMENDMENT OCCURS WHEN THE TRIAL COURT THROUGH ITS INSTRUCTIONS AND FACTS, IT PERMITS IN EVIDENCE, ALLOWS PROOF OF AN ESSENTIAL ELEMENT OF A CRIME ON AN ALTERNATIVE BASIS PERMITTED BY THE STATUTE, BUT CHARGED IN THE INDICTMENT. U.S. V. ARLEN 947 F.2d 139, 144 (5TH CIR 1991) QUOTING, U.S. V. SLOVACEK 867 F.2d 842, 847 (5TH CIR 1989).

SEE: TRIAL TRANSCRIPT (pg. 17-26) EXHIBITS C-L

U.S. V. MIKOLAJCZYK 137 F.3d 237, 243 (5TH CIR 1998)

THEREFORE WHEN A CONSTRUCTIVE AMENDMENT HAS OCCURED, AND ERROR HAS BEEN PROPERLY PRESERVED, WE HAVE MADE IT CLEAR THAT THE CONVICTION CANNOT STAND; THERE IS NO PREJUDICE REQUIREMENT...

IN U.S. V. DIXON 223 F.3d 636, 639-40 (5TH CIR 2001)

UNDER THIS STANDARD OF REVIEW THE COURTS MAY CORRECT FORFEITED ERRORS ONLY IF (1) THERE WAS A ERROR (2) THE ERROR WAS CLEAR OR OBVIOUS, AND (3) THE ERROR AFFECTED THE DEFENDANT'S SUBSTANTIAL RIGHTS. SEE:

U.S. V. OLANO 507 U.S. 725, 731-34 113 S. CT 1770 123 L Ed 2d 503 (1993) (QUOTING U.S. V. ATKINSON 297 U.S. 157, 160, 56 S. CT 391 80 L Ed 555 (1936))

Applicant can show, not only was he convicted under a constructive amended indictment, but that there was never a proper indictment to begin with. SEE: EXHIBIT (A) ORIGINAL INDICTMENT (which was dismissed) SEE ALSO: EXHIBIT (B) AMENDED INDICTMENT (which did not go back to the Grand Jury.

The Applicant argues that once the Solicitor made his motion to amend the original indictment. SEE: TRIAL TRANSCRIPTS EXHIBITS (C)-(D)-(E). Applicant's attorney made his objection, saying it should go back to the Grand Jury, to see what they say about the change. The Court denied the motion.

The Judge then ask the Solicitor if he plan to prepare a proper indictment deleting the statutory provisions not applicable in this case, the Solicitor said he would do that, my attorney said we would like that your Honor. The Court said; I will have that done. SEE: TRIAL TRANSCRIPT, EXHIBIT (J) pg. 24 LINE 16-22

Applicant argues that the amended indictment is not only a constructive one; but in fact it has never been presented to a Grand Jury even after the Judge informed the Solicitor to prepare a proper indictment. In fact,

THE JUDGE INFORMED MY ATTORNEY THAT HE WOULD HAVE A PROPER INDICTMENT PREPARED, APPLICANT ARGUES THAT THE ORIGINAL INDICTMENT WAS DISMISSED AND A AMENDED INDICTMENT WAS PRODUCED AT TRIAL, BUT THE COURT "NOR" THE SOLICITOR NEVER PREPARED A PROPER INDICTMENT (SEE: TRIAL TRANSCRIPT) NO WHERE IN THE TRIAL did IT STOP TO GET A PROPER INDICTMENT.

THERE IS NO DOUBT THAT THE FIFTH AMENDMENT GUARANTEES A CRIMINAL DEFENDANT THAT HE WILL ONLY BE TRIED ON THE CHARGES THAT HAVE BEEN ALLEGED IN AN INDICTMENT HANDLED DOWN BY A GRAND JURY, WHICH CANNOT BE BROADENED OR ALTERED EXCEPT BY THE GRAND JURY (QUOTING) U.S.V. CHANDLER, 858 F.2d 254, 256 (5th CIR 1988) AS THE SUPREME COURT HAS EXPLAINED TO ALLOW THE PROSECUTOR, OR THE COURT TO MAKE SUBSEQUENT GUESS AS TO WHAT WAS IN THE MINDS OF THE GRAND JURY AT THE TIME THEY RETURNED THE INDICTMENT WOULD DEPRIVE THE DEFENDANT OF A BASIC PROTECTION WHICH THE GUARANTY OF THE INTERVENTION OF A GRAND JURY WAS DESIGNED TO SECURE.

THE APPLICANT ARGUES THAT THIS IS SHOCKING
TO THE UNIVERSAL SENSE OF JUSTICE AND
EXTRAORDINARY CIRCUMSTANCES IN ITS SETTING.
SEE: GIBSON V. STATE 495 SE 2d 426 SEE ALSO:
KEELER V. MAUNEY 506 SE 2d 123 AND ALSO;
SIMPSON V. STATE 495 SE 2d 429

CONCLUSION

FOR THE FOREGOING REASONS I STRONGLY CONTEND
THAT I HAVE CLEARLY SHOWN ACTUAL PREJUDICE
RESULTING FROM CONST. VIOLATIONS CONTAINED
THEREIN WHICH ARE EXTRAORDINARY CIRCUMSTANCES
THAT HAS BEEN BEYOND MY CONTROL, AND A
FUNDAMENTAL DENIAL OF FAIRNESS THAT IS ALSO
SHOCKING TO THE UNIVERSAL SENSE OF JUSTICE, THAT
REQUIRES AN EVIDENTIARY HEARING, AND RULING
UPON THE MERITS AND ISSUES IN THIS
PROCEEDING ALONG WITH ANY OTHER RELIEF TO
WHICH I MAY BE ENTITLED TO (FROM CUSTODY)

DATE: 7 DAY OF FEBRUARY 2011

RESPECTFULLY SUBMITTED
S/ Rennie C. Mitchell
PETITIONER

DECLARATION

I RONNIE A. MITCHELL BEING duly SWORN
UPON MY OATH, DECLARE UNDER PENALTY OF
PERJURY DEPOSE AND SAY THAT I HAVE
SUBSCRIBED TO THE FOREGOING STATE WRIT
OF HABEAS CORPUS, THAT I KNOW THE
CONTENTS THEREOF ARE TRUE AND CORRECT.

SWORN TO AND SUBSCRIBED TO BEFORE ME
This 01 DAY OF Feb. 2011

G. C. Franklin

NOTARY PUBLIC

MY COMMISSION EXPIRES 12.16.2019

S/ Ronnie A. Mitchell
PETITIONER

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED MY PETITION
FOR STATE WRIT OF HABEAS CORPUS; EXHIBITS
MOTION/ORDER FOR TRANSPORTATION AND MOTION
TO PROCEED IN FORMA PAUPERIS UPON JACKIE
S. BOWERS, CLERK OF COURT NEWBERRY CO.
AT P.O. DRAWER 10 NEWBERRY S.C. 29108 BY
DEPOSITING THE ABOVE SAID, IN MCCORMICK
CORR. INST. MAIL ROOM TO BE DEPOSITED IN
THE U.S. MAIL, POSTAGE PRE-PAID ON
THIS 7TH DAY OF FEBRUARY, 2011

RECEIVED

DEC 19 2013

SC Court of Appeals

S/ Ronnie A. Mitchell
RONNIE A. MITCHELL 217691
MCCORMICK, CORR. INST.
F 2A 185
386 REDEMPTION WAY
MCCORMICK, S.C. 29899

FILED
CLERK OF COURT
MAR 30 A 8:47
CLERK S. BOWERS
MAR 30 2011