

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

NOV 24 2015

S.C. Supreme Court

DION O. TAYLOR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001397

APPENDIX

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR PETITIONER

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
1009-GS-10-31

[illegible]

B E F O R E:

The Honorable Roger M. Young, Sr., Judge

A P P E A R A N C E S:

Cody Groeber, Assistant Solicitor
Attorney for the State

Trip Riesen, Esquire
Attorney for the Defendant

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1	E X H I B I T S			
2	NO.	DESCRIPTION	ID.	EV.
3	Court's 1	Evaluations of Defendant	19	--
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1 THE COURT: Well, what did you decide?

2 MR. GROEBER: He is going to formally reject
3 the offer on the record, Your Honor.

4 THE COURT: All right. You're Mr. Dion
5 Taylor?

6 MR. GROEBER: I'm sorry.

7 THE DEFENDANT: I want to go forward.

8 MR. GROEBER: I misunderstood what he said.

9 THE COURT: All right. You're Dion Orlando
10 Taylor?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Mr. Taylor, let me go
13 over this with you, because there is some questions that
14 I want to make sure you understand and I understand where
15 you're at so we don't have any misunderstanding down the
16 road.

17 Now, you're here today because you got
18 indicted by the grand jury of Charleston County for two
19 things: Indictment 2009-GS-10-031 charges you with
20 criminal domestic violence, second or subsequent offense.
21 That can carry a minimum of one year up to five years.
22 All right, Charleston County grand jury, and that first
23 indictment was arising out of an incident where you are
24 alleged to have caused physical harm to Shavon Denmark on
25 or about June 2nd, 2008. The second indictment is

1 2009-GS-10-030. In that indictment the Charleston County
2 grand jury charged you with armed robbery, saying that on
3 or about September 24, 2008, you robbed Enoma Rollerson
4 while armed with a deadly weapon at [REDACTED] Rivers Avenue.

5 Now, talking to your lawyer earlier, he told
6 me that you want to plead guilty but mentally ill, but
7 the problem that you have is that you had an evaluation
8 done by the doctors at MUSC, and they did not believe,
9 based on their evaluation of you, that you fit the
10 criteria for guilty but mentally ill, because
11 essentially, under the statute, you have -- you had the
12 capacity to distinguish right from wrong, but the
13 critical part on the guilty but mentally ill part of the
14 statute says that because of a mental disease or defect
15 you lack capacity to conform your conduct to the
16 requirements of the law.

17 They said, well, they don't feel like you
18 meet that second criteria, that while you do, perhaps,
19 have some aspects of mental illness, you did have the
20 capacity to conduct or conform your conduct to the
21 requirements of the law. So you don't fit under a guilty
22 but mentally ill. At the lunch break, I took the
23 evaluation that your lawyer provided with me, I read it,
24 and I said look, I don't have any basis for disagreeing
25 with these psychiatrists. All right? They evaluated

1 you. They're professionals in that.

2 I said, you got something like another
3 psychiatrist or some other testimony other than what is
4 on the basis that they put in their report, I don't have
5 any way of saying that you meet that statute. So I can't
6 accept a plea of guilty but mentally ill.

7 However, your lawyer tells me that you have a
8 deal on the table here, that the state is willing to
9 enter a negotiated plea, and if you plead guilty, and I
10 accept the plea, that your sentence would be ten years on
11 armed robbery and you would also get a three-year
12 sentence to run concurrent with criminal domestic
13 violence. You have a minimum of ten years on armed
14 robbery. It's up to 30 years at the minimum, but the
15 minimum is ten.

16 It's a strike offense, and there is no
17 parole, so you have to do at least eight and a half years
18 on that ten-year sentence. There is no parole
19 eligibility on armed robbery, so you got to do at least
20 85 percent of that, and, presumably, if you did
21 everything that you're supposed to do while you're there,
22 you'll get out in eight and a half years.

23 But that is the deal that being offered to
24 you today if you plead guilty. It actually sounds to me
25 like the same deal they would probably give to you if I

1 agree that -- if I agreed to accept your plea of guilty
2 but mentally ill, but I'm not willing to accept your plea
3 of guilty but mentally ill because based on what your
4 lawyer's provided to me and talked with me about it, I
5 don't believe that your conduct and your mental state at
6 that time conform to the statute, so I told him I was not
7 willing to accept a plea of guilty but mentally ill.

8 If you wish, you can still plead guilty
9 today, guilty, to these charges. You'll get the exact
10 same sentence. The only difference, really, that I
11 understand it would be is if you got guilty but mentally
12 ill, instead of going straight to general population with
13 SCDC, you go and have an evaluation done, and within 30
14 days you would be in general population. That's really
15 the only substantive difference.

16 So that is where we're at. The state is
17 willing to go along with this plea today, but if you did
18 not accept the plea today, we'll set your trial. There
19 is no deal on. If you got convicted, the judge would be
20 able to sentence you anywhere from 10 to 30 years, and
21 it's totally up to the trial judge as to what your
22 sentence would be.

23 Do you understand what I just explained to
24 you?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you have any questions about
2 what I just explained to you?

3 THE DEFENDANT: No.

4 THE COURT: Now, based on what I just
5 explained to you, do you want to plead guilty or not
6 guilty to the indictment for armed robbery?

7 THE DEFENDANT: Guilty.

8 THE COURT: All right. Based on what I just
9 explained to you, do you want to plead guilty or not
10 guilty to the charge of criminal domestic violence?

11 THE DEFENDANT: Guilty.

12 THE COURT: All right. Now, I want you to
13 understand that I'm going to tell you what some rights
14 are that you waive. I told you about this being a no
15 parole offense. I'm also telling you that this is a
16 strike offense.

17 We have classifications of crimes in this
18 state that carry the consequence of if you get enough of
19 them, you go to jail for the rest of your life without
20 the possibility of parole. We have two strike offenses
21 and three strike offenses. Two strike offenses are known
22 as most serious offenses. If you get two of those, you
23 go to jail for the rest of your life. There is no
24 possibility that you ever get out on parole.

25 Three strike offenses are known as serious

1 offenses, and if you get three of those, you go to jail
2 for the rest of your life without the possibility of
3 parole. Armed robbery is a two strike offense, or most
4 serious offense. If you get three or two of those, it's
5 life without parole. You, after today, will have one.
6 Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: So if you ever get another strike
9 conviction the rest of your life, you'll go to jail,
10 you'll never get out. Do you understand that?

11 Now, I also want you to understand that you
12 have the right to a jury trial. If you want a jury
13 trial, you stop me at any time in this process. We will
14 arrange that for you. The state then has to present
15 enough evidence to convince 12 jurors that you are guilty
16 beyond a reasonable doubt. All 12 jurors would have to
17 agree that you are guilty in order to convict you, and if
18 convicted, you have the right to appeal.

19 You have the right to challenge the
20 admissibility of the state's evidence. You could put up
21 evidence of your own, testify if you want, tell the jury
22 your side of the story, and if you don't want to, the
23 judge will tell the jury they're not to hold that against
24 you while they're deliberating. Do you understand those
25 rights?

1 THE DEFENDANT: Yes.

2 THE COURT: And do you still wish to plead
3 guilty to these charges today?

4 THE DEFENDANT: Yes.

5 THE COURT: And are you pleading guilty to
6 these charges because you're guilty of these charges?

7 THE DEFENDANT: Yes.

8 THE COURT: Are you under the influence of
9 any alcohol today?

10 THE DEFENDANT: No.

11 THE COURT: Are you taking any prescription
12 medication today?

13 THE DEFENDANT: Yes.

14 THE COURT: What are you taking?

15 THE DEFENDANT: Tegretol and Prozac.

16 THE COURT: All right. Now, these are
17 prescribed to you?

18 THE DEFENDANT: Yes.

19 THE COURT: And you are taking the prescribed
20 amounts?

21 THE DEFENDANT: Yes.

22 THE COURT: And they're being dispensed to
23 you at the jail?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. When is the last time

1 you took some?

2 THE DEFENDANT: This morning.

3 THE COURT: Do they affect your ability to
4 help you understand what you're doing?

5 THE DEFENDANT: No.

6 THE COURT: Do they help you understand what
7 you're doing maybe better?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. Tell me why you're
10 here today.

11 THE DEFENDANT: Because I'm guilty.

12 THE COURT: And you're in a court proceeding
13 to do what?

14 THE DEFENDANT: To plead guilty.

15 THE COURT: All right. Is there anyone that
16 has promised you anything or threatened you to get you to
17 plead guilty, other than this negotiated plea sentence
18 that you have worked out with the state?

19 THE DEFENDANT: Besides the fact that it will
20 be off the table if I don't accept it and go to trial and
21 lose.

22 THE COURT: But there is nobody out there
23 that is saying you got to plead guilty or anything?

24 THE DEFENDANT: No, no.

25 THE COURT: You understand you can take the

1 deal today or you can go to trial. Totally up to you.

2 THE DEFENDANT: Right.

3 THE COURT: You just talked with your lawyer
4 about these charges?

5 THE DEFENDANT: Yes.

6 THE COURT: All right. Now, he's talked with
7 you about the evidence the state has?

8 THE DEFENDANT: Yes.

9 THE COURT: He's told you what the law is on
10 criminal domestic violence and on armed robbery?

11 THE DEFENDANT: Yes.

12 THE COURT: And based on those discussions,
13 you decided you wanted to not call any witnesses or put
14 up any defenses, you would rather plead?

15 THE DEFENDANT: Yes.

16 THE COURT: All right. This is your decision
17 and your decision alone?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. Are you satisfied
20 with his representation?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you need to spend any more
23 time with him?

24 THE DEFENDANT: No.

25 THE COURT: All right. How old are you?

1 THE DEFENDANT: Thirty-five.

2 THE COURT: How far did you get in school?

3 THE DEFENDANT: Went to junior college.

4 THE COURT: All right. How long have you
5 been in jail on these charges?

6 THE DEFENDANT: About eight and a half
7 months.

8 THE COURT: Prior to that, did you have a
9 job?

10 THE DEFENDANT: Yes.

11 THE COURT: What did you do?

12 THE DEFENDANT: I was a supervisor for a
13 hardware flooring company.

14 THE COURT: Mr. Groeber, does this gentleman
15 understand what he's doing when he waives his right to a
16 jury trial?

17 MR. GROEBER: Yes, Your Honor.

18 THE COURT: In your opinion, does he
19 understand what he's doing when he enters this plea of
20 guilty?

21 MR. GROEBER: Yes, sir.

22 THE COURT: Now, you provided me earlier with
23 a report which, I would like to get made part of the
24 court record. Basically, you had him evaluated, and the
25 psychiatrist at MUSC believed that he was competent at

1 the time he committed the offense and competent to stand
2 trial?

3 MR. GROEBER: Yes, Your Honor.

4 THE COURT: Have you had any problems getting
5 him to cooperate with you insofar as mental health is
6 concerned?

7 MR. GROEBER: No, sir, definitely articulate.

8 THE COURT: And you believe he is competent
9 today?

10 MR. GROEBER: Yes, Your Honor.

11 THE COURT: And he is able to assist you?

12 MR. GROEBER: Absolutely.

13 THE COURT: I find his plea is freely,
14 voluntarily, and intelligently made. What would the
15 state like to tell me about the case?

16 MR. RIESEN: Thank you, Your Honor. As to
17 the first charge on CDV, on June 24 of '08 while at 44
18 Rivers Avenue, North Charleston, the defendant assaulted
19 the victim, Ms. Denmark, by striking her in the face with
20 his fist. The defendant was angry because she thought
21 she had been cheating on him.

22 The defendant and the victim had a
23 relationship. They had cohabitated together, and at the
24 time the victim was pregnant with the defendant's child.
25 The defendant has a previous conviction of CDV in '98,

1 '99, and '01.

2 As to the armed robbery, on September 24th of
3 2008, this took place at the Maxway on Rivers Avenue, and
4 the victim was a Ms. Enoma Rollerson who was a manager
5 there. She was working the cash register. The defendant
6 came up from behind her and demanded that she open the
7 register while holding a utility knife.

8 The defendant then pushed the victim toward
9 the register and stated, quote, Open the register. I
10 don't want to kill you. The defendant reached into the
11 register and took approximately \$444 in cash, fled the
12 store on foot.

13 He was apprehended a short distance away with
14 the money from the robbery as well as the utility knife
15 in his right pocket. He was later positively identified
16 by the victim, and he subsequently gave a signed, written
17 confession, admitting to the armed robbery.

18 As to his prior convictions, he has a '94
19 trespassing; '95 filing false police reports, and
20 malicious injury to personal property, threats and
21 intimidation, simple assault, trespassing; in '98, public
22 disorderly conduct and CDV; '99, simple assault and CDV;
23 2001, disorderly conduct, giving false information, and a
24 CDV third, and an '04 failure to stop for a blue light,
25 and he may be on probation for that violation.

1 THE COURT: All right. Were you on probation
2 at the time you committed these offenses? You got two
3 years. That will obviously be revoked today as well. Do
4 you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: All right. Mr. Groeber, what
7 would you like to tell me?

8 MR. GROEBER: Thank you, Your Honor, first
9 I'll provide you with those reports that you looked at
10 earlier.

11 THE COURT: Okay.

12 MR. GROEBER: Thank you.

13 THE COURT: Thank you.

14 MR. GROEBER: Since the Court has reviewed
15 those, I think you saw the different mental health
16 diagnoses. At different times he's been diagnosed with
17 bipolar, as having major depressive disorder,
18 intermittent explosive disorder. I think that the
19 explosive disorder explains a lot of what I'll
20 characterize as the petty violent crimes in his past. He
21 didn't really -- you know, he had a few CDVs and simple
22 assaults, and I think that that diagnosis explains some
23 of that behavior.

24 In this case, in the case of the armed
25 robbery, Mr. Taylor -- and I know you've read this in the

1 report, but he was very depressed at the time. He had
2 lost his job three weeks before. His girlfriend, who is
3 the victim in the CDV, he felt had been pulling him
4 along. He was evicted the day before, and I think that
5 this put him into this kind of major depressive state
6 that lead to the terrible robbery, and he'll tell you, he
7 is absolutely sorry for what happened, and he does want
8 to take responsibility for it, and that, I think, is why
9 he's pleading guilty today.

10 He also at the time was not taking his
11 medicine, which he needs to do, and I'm glad and I think
12 he understands that when he is -- when he does serve this
13 time, he will be getting the treatment that he needs, at
14 least the meds that he needs, while he's incarcerated at
15 SCDC.

16 Judge, he is an intelligent, articulate man,
17 and this armed robbery was the fruit of absolute
18 desperation. And I don't think that he's the kind of
19 person who would just, you know, kind of go do this just
20 to get money or anything like that. I do believe that
21 his mental illness contributed to this terrible action
22 that he's here taking responsibility for.

23 He has been in for 252 days on this charge.
24 He was in 146 days on the probation violation, on the
25 charge with probation violation. He was served with that

1 warrant in October, so in addition to those 146 days,
2 he's got 225 days towards probation violation as well. I
3 just bring that so you have that for your attention, and
4 we would ask that you would accept the plea, the
5 negotiated plea, and, again, thank you for reviewing.

6 THE COURT: So he's getting credit for 252
7 days?

8 MR. GROEBER: Yes, Your Honor.

9 THE COURT: All right. Mr. Taylor, would you
10 like to say anything?

11 THE DEFENDANT: Thank you. Yes. Okay.

12 THE COURT: Okay. Go ahead.

13 THE DEFENDANT: I would like to impress upon
14 the Court that I am hopeful, responsibility, guilty and
15 ashamed for my actions. I don't like to make excuses.
16 There were mitigating factors, as my public defender
17 alluded to, as far as the things that I was going through
18 through.

19 No excuse, being because I wasn't taking my
20 medications which was irresponsible. I have victimized
21 innocent people, including my children, that will now be
22 left alone without a father. I wish there was some kind
23 of leniency that the Court could afford me, but I
24 understand that because of the sentencing guidelines that
25 there isn't.

1 So I accept responsibility for my actions.

2 Thank you.

3 THE COURT: All right. Well, I'm going to
4 obviously just revoke your probation in full. I'm going
5 to charge you, or give you three years on the criminal
6 domestic silence. I'm going to give you ten years on the
7 armed robbery. You'll get credit for 252 days. They'll
8 run concurrent for the probation violation and each
9 other.

10 I'm going to put on here SC DC is to continue
11 your medications for mental health problems. I really
12 don't know if that will do anything, other than drive
13 them crazy, but we'll put it on there and maybe that will
14 bring that to their attention that maybe you need to have
15 medication while you're on there. I'm going to have the
16 court reporter mark these two evaluations and make it a
17 part of the record.

18 (Evaluations marked for identification as
19 Court's Exhibit No. 2.)

20 - - -

21 (Whereupon, the proceedings were concluded.)

22 - - -

23

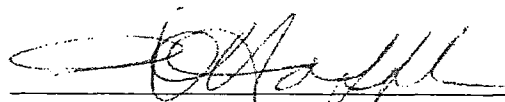
24

25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 3rd of June 2009.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 7, 2009

A handwritten signature in dark ink, appearing to read 'A. Haffenden', is written over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CharlestonDion O. Taylor

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP-10-8090

(Please Print)

Submitted By: Dion O. TaylorAddress: #335 089 - 5mU #115-A
All male Correctional Institution
P.O. Box 1151, FAY, SC 29527

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|--|
| ☐ Contracts | ☐ Torts - Professional Malpractice | ☐ Torts - Personal Injury | ☐ Real Property |
| ☐ Construction (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20 <u>-CP-</u> | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| ☒ Inmate Petitions | ☐ Judgments/Settlements | ☐ Administrative Law/Relief | ☐ Appeals |
| ☐ PCR (300) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Other (899) | ☐ Worker's Comp (960) |
| | ☐ Other (799) | | ☐ Zoning Board (970) |
| ☐ Special/Complex /Other | | | ☐ Administrative Law Judge (980) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | | ☐ Public Service Commission (990) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | ☐ Other (999) |
| ☐ Other (699) | ☐ Sexual Predator (510) | | |

Submitting Party Signature:

Dion O. TaylorDate: 11-28-12

FORM 5

STATE OF SOUTH CAROLINA

County of CharlestonDion Orlando Taylor #335089
Full name and prison number (if any) of Applicant

v.

State of South Carolina

2012-CP-10-8090
IN THE COURT OF COMMON PLEASJULIE CLERK OF COURT
2012 DEC 11 PM 4:54

APPLICATION FOR

POST-CONVICTION RELIEF

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 clear to which question any such continued answer refers.

Since every application must be sworn 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 the applicant was convicted.

1. Place of detention Allendale Correctional Institution, P.O. Box 1151, Fairfax, SC 29827
2. Name and location of Court which imposed sentence Court of General Sessions, Chas. County Court of Common Pleas, Chas. SC
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Armed Robbery

- (b) Q8V3rd
- (c) probation violation
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 6/3/09 - 10 yrs all charges run concurrent
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. ~~SC~~ SC Court of Appeals
- ii. S.C. Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. dismissed because issues not preserved under state law for review
- ii. failure to provide PCL application
- iii. _____
- (c) the date of each such result:
- i. NA
- ii. -
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) BRADY v. MARYLAND, 373 U.S. 83 (1963) violation (prosecution)
- (b) Ineffective assistance of counsel (not purchasing signed written statement)
- (c) Ineffective assistance of counsel (evidence from crime, victim T.S. had money)
(Affirmative defense of not guilty)
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) In plea hearing transcript, solicitor can be found stating
- (b) In letter dated 11-18-08, Applicant's attorney - Creeber
- (c) Counsel was ineffective, because the dollar amount that was
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? yes
- (d) any other petitions, motions or applications in this or any other Court? yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Habeas corpus petition
- ii. Post conviction
- iii. writ of certiorari - As of date - not docketed
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. U.S. District Court Columbia SC
- ii. Court of Common Pleas, CHAS. SC
- iii. U.S. Supreme Court, Washington DC

PCE Application

I.

Continued

10. (c). Ineffective for not informing of an affirmative defense
 (e). Ineffective for not questioning medical doctor's findings about effects of not being on prescribed meds & on being misdiagnosed & taking wrong meds
 (f) 8th (28th) Amendment violation. S.C. min 10yr on armed robbery not on case by case basis, circumstances of applicant's case (ie no gun, ect) 10yr min excessive in comparison w/ other sentences in other jurisdictions
 (g). not informed by counsel ex. cont of right to appeal by right

11 (a). That defendant gave a signed written confession to the crime. Even though this is accurate, it was done while defendant was not local & he never had an opportunity to compare his written version to the typed version of detective. The only confession produced & in evidence was/is a typed version by the detective having many discrepancies. Voluntariness of the confession would have been challenged by defendant at or before a trial that he desired, likelihood of success can be premised upon said discrepancies & counsel's admission that his client desired trial & that his client ~~was~~ was not interested at time of the crime, & confession (ie same day) There would be no need to tell or give detective a statement as the typed version states, when there was/is a written one.

(b) states he received Rule 5 Discovery requests. Counsel should have been aware of the signed written confession. At plea hearing, solicitor states applicant gave a signed, written confession, not the typed version of the Rule 5. Considering the knowledge counsel had he should have conferred w/ his client about the confession & the nature of it & requested this & or produced signed written confession for examination.

(c). Recovered from robbery does not match the dollar amount the business was deprived of & there is a substantial difference in the two, & this is shown on several official documents. Victim of crime identified applicant as her assailant, but in her statement her back was to the door & it stated assailant came from behind & pushed her, no weapon mentioned in her written statement this differs from the affidavit stating assailant had a weapon. N. Chas. Police Dept states they someone fitting description from the crime, yet several items used for identifying the assailant were not & adorning the applicant at time of apprehension. Counsel had knowledge of his client falling through a building at evaluation it was noted that there was no injury, counsel notes state injury was sustained fall was from 12 to 15 ft building on the ~~ground~~ but his head, but counsel didn't take his client over brain scan to see if there was an opportunity to present favorable evidence of brain defect along w/ the established mental illnesses of his client, to a potential jury. ~~the~~ defense of not guilty should have been presented as an option due to these various discrepancies, & there would have been reasonable doubt due to the evidence of lack thereof.

II. Continued

These issues could have been presented to his client, as stated potentially a jury, opposing what evaluators had found. In addition counsel had his client's MISC. "ICB" Summary Discharge showing how his client needed medications & he had knowledge & admitted his client's conditions worsened upon his release from mental hospital.

(D). Counsel was ineffective for not informing of affirmative defenses of either not guilty or insanity defense. At applicant's plea hearing counsel is found producing numerous contradictory contents which would have established an affirmative defense, moreover PCR judge found that counsel's testimony was credible.

(E). Counsel was ineffective for not questioning the eval findings, when the reports are absent of any reference to his client not being medicated & how this could have affected his mental state. Failed to interview other doctors who diagnosed applicant to oppose or inc. responsibility & capacity to condemn a finding.

(F) S. C. min 10 yr min for armed robbery w/out gun (when defendant was charged for armed robbery for first time, its relative to strong armed robbery which is a non-violent sentence i.e. victim injuries, & it's min fails to judge on case by case basis.

(G). Rules of C.A. & state judge must advise of appellate rights even after a guilty plea, this was not done. Plea hearing record ~~was~~ shows plea was made under some duress, counsel never informed of right to appeal, counsel notes how he had never been to prison so he wouldn't have known about this procedure. S.C. Appellate procedure invalid for it does afford appellant counsel acting reasonably for his case, state lost appellant w/out counsel on appeal, as a result direct appeal filed & grossly & dismissed due to issues not being able to be reviewed under state law.

(H). Evidence will show Applicant was not on his psychiatric meds before & at PCR hearing, evidence will also show Applicant was affected & severely & not able to present issues adequately.

iv. _____

(c) the disposition thereof:

i. dismissed

ii. dismissed

iii. _____

iv. _____

(d) the date of each such disposition:

i. 11-14-11

ii. 3-11-11

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

yes

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

(a) which grounds have been presented:

i. Ineffective assistance of counsel ^{not informing of an affirmative defense}

ii. Failure to inform of right to counsel appeal

iii. [REDACTED]

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

i. PCR court petition

ii. habeas petition

iii. [REDACTED]

16. If any ground set forth in (10) 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) Brady violation - did not have attorney client file, was segregated from back
 (b) Counsel not properly signed @ confession - same reason as letter (a) ab
 (c) Ineffective assistance of counsel (victim T.S. heard dying evidence → back
 (2) & (4) on back

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

- (a) your arraignment and plea? yes
 (b) your trial, if any? _____
 (c) your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

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

i.

Cody J. Groves, North Creek Public Defender,
Berkley, Chas County, O.T. Wallace County Office Bldg 101 Meeting St, 5th floor
 Back

ii.

iii.

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

i.

Plea hearing

ii.

iii.

(a) From legal property from County transfer to prison, never recovered. still haven't seen on the statement, (i.e. written) for comparison to typed detective records

(c) SAME REASONS AS (a) & (b) & didn't receive another Rule 5 or the Attorney of that file until 9-17-12 to identify issues & evidence

(e) Did not have an opportunity to address appropriately at initial PCR hearing, & subsequent appeals dismissed at S.C. Court of Appeals & Fed. Court level for procedural reasons
SAME REASONS AS (a) thru (c)

(f) Constitutional implications not known at time of filing PCR initially

* For all above Applicant never knew of right to direct appeal was neither informed by counsel or court at that right

(H) Attempted to access writ of certiorari? Denied access to courts by prison ever heard represented, as of date of this app. U.S. Supreme Court has not accepted writ of certiorari

18. (i) Charleston, SC 29401-2214

19. State clearly the relief you seek in filing this application:

vacating or setting aside of conviction

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, Dion O. Taylor, 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.

Dion O. Taylor

SWORN to and subscribed before me this 27 day of Nov., 2012

Cynthia G. Sanders (L.S.)
Notary Public

My Commission Expires: 3/9/21

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

I, Dion O Taylor, 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 thereof.

Dion O Taylor
Applicant

SWORN or affirmed to and subscribed before me this
27 day of Nov., 2012

Cynthia S. Sanders
Notary Public

My Commission Expires: 3/9/21

General Sessions

CASE HISTORY FOR CASE K351324

The State of South Carolina VS Dion Orlando Taylor

FILED DATE: 9/29/2008

CASE TYPE: GS

STATUS: Disposed

JUDGE: Clerk Of Court C P, G S, And Family Court

ARRESTING AGENCY: North Charleston Police Department

CASE PARTIES:

Defendant Taylor, Dion Orlando

[REDACTED], North Charleston, SC 294180000

Officer Jeffeaux, Joe

Court Reporter Haffenden, Amanda K.

Post Office Box 424, Summerville, SC 29484

Victim Rollerson, Inoma

[REDACTED], Charleston, SC 294070000

Defendant Attorney Groeber, Cody J.

Charleston Cty Public Defender's Office, Ot Wallace Office Bldg. 101 Meeting St., Charleston, S

CASE HISTORY FOR CASE K351324

Taylor, Dion Orlando

Age: 38

DOB: [REDACTED] 1974

DL#: [REDACTED]

SSN: [REDACTED]

North Charleston, SC 294180000

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0139 ARMED ROBBERY	9/24/2008	Pled Guilty	6/3/2009

SENTENCING

10Y10Y

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: ARMED ROBBERY				
Collection Fee for Converted Cases	\$3.90	\$3.90	\$0.00	999
SC Criminal Justice Academy Training	5.00	5.00	0.00	999
Law Enforcement Funding Surcharge \$	25.00	25.00	0.00	999
Victim Conviction Surcharge \$100 / \$2	100.00	100.00	0.00	999
Total:	\$133.90	\$133.90	\$0.00	

DATE	TIME	EVENT DESCRIPTION
9/25/2008	10:00 AM	Court event: Bond Hearing
10/30/2008	3:00 PM	Court event: Preliminary Hearing Scheduled w/ Notices

Print Date: 12/11/2012

Print Time: 4:52:04PM

Requested By: COCBLC

CaseHistory.rpt

Page 1 of 2

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

Dion O. Taylor,
 S.C.D.C. No. 335089,

2012-CP-10-8090

Applicant,

v.

RETURN AND MOTION TO DISMISS

State of South Carolina,

Respondent.

The Respondent, making its Return to the Application for post-conviction relief filed December 11, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the January 2009 term of the Charleston County Grand Jury for criminal domestic violence (CDV) – 2nd or subsequent offense (2009-GS-10-0031) and armed robbery (2009-GS-10-0030). He was represented by Cody Groeber, Esquire.

On June 3, 2009, the Applicant pled guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable Roger M. Young, Sr. sentenced the Applicant to imprisonment for ten (10) years on the armed robbery and three (3) years imprisonment for CDV. The sentences were to run concurrently with each other and concurrently with a probation revocation. The Applicant did not appeal.

2009-CP-10-6320

The Applicant filed an application for post-conviction relief (PCR) on October 6, 2009 (2009-CP-10-6320). In that application, the Applicant raised the following grounds for relief:

1. Ineffective assistance of counsel.
 - a. Gave erroneous evidence.
 - b. Failed to investigate.
 - c. Failed to get another mental evaluation for Applicant.
 - d. Failed to inform plea judge that Applicant was not on medication at time of the offense.

The Respondent made its Return on February 1, 2010. The court initially appointed John T. Chakaris, Esquire to represent the Applicant. On June 21, 2011, through counsel John T. Chakaris, Applicant made a request to amend the petition. In the proposed amendments, counsel attached a *pro se* pleading of the Applicant's in which Applicant alleged:

- I. Pleas counsel deprived mentally ill defendant his Sixth and Fourteenth Amendment rights when ineffective counsel:
 - A. Counsel was ineffective when counsel provided me erroneous, inaccurate and untrue to get me to plead guilty.
 - B. Counsel withheld evaluation reports that was considered prior to 9/24/08 from myself, from judge show transcript.
 - C. Provided state evaluation report to the judge while Applicant was medicated for mental illness.
 - D. Failed to withdraw applicant's guilty plea.
 - E. Failed to request a Blair hearing to decide whether mentally ill Applicant was competent during the time at criminal act when I was not medicated.
 - F. Failure to investigate and contact witnesses and discover exculpatory evidence and get witnesses who would testify and to present evidence showing applicant mental state, just months before crime.
 - G. Failure to consult with Defendant (i.e. direct appeal, about state eval, etc.).
 - H. Failure to advise defendant about a potentially affirmative defense to charged crime.
 - I. State evaluation discrepancies, issues, prove incompetence, prejudicial by never being.
2. Rule 11 (B).
3. Judge Abused his discretion.

4. Transcript discrepancies.
5. State return - no direct appeal , no statement of confession.

On November 18, 2010, Mr. Chakaris was relieved as counsel by Judge Kristi Harrington. On December 7, Florence Scarborough, Esquire, was appointed by the Clerk's office. An evidentiary hearing into the matter was convened on March 1, 2011 at the Charleston County Courthouse before the Honorable R. Markley Dennis, Presiding Judge. At the outset, counsel was relieved and the Applicant chose to appear *pro se* at the hearing and represented himself *pro se*. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent. Judge Dennis entered a written order of Dismissal dated April 5, 2011 and filed April 13, 2011.

The Premature March 2011 Notice of Appeal

After the hearing, Respondent submitted a proposed order to Judge Dennis. On March 14, 2011, the Applicant made a notice of appeal. On April 12, 2011, the South Carolina Supreme Court entered an Order of Dismissal of the appeal because a final order of dismissal was not provided to the Supreme Court. Applicant then filed a "Motion to Alter and/or Amend Judgment" in which he asserted that he provided the court with an unsigned and undated copy of the order of dismissal, which the Supreme Court construed as a motion to reinstate the appeal. In an Order dated April 21, 2011, the Supreme Court of South Carolina stated that it had reviewed the records of the Charleston County Clerk of Court's website which indicated that the Order of Dismissal was signed April 5, 2011 and entered in the Clerk's Office on April 13, 2011. The Supreme Court then concluded the filed notice of appeal was premature because it was filed prior to the entry of the final order in the case, citing SCACR Rule 243 (b), Rule 203(B)(1). The Court denied the request to reinstate the appeal .

However, the Supreme Court concluded:

Since this order serves as written notice that the order of dismissal has been entered by the Charleston County Clerk of Court, petitioner shall have thirty days from the date he receives this order to serve and file another notice of appeal, which must include proof of service on the Attorney General's Office and a copy of the signed and dated order of dismissal. Rule 243(b) and 203(b)(1).

Dion Orlando Taylor v. State, Order (S.Ct. S.C. April 21, 2011).

The Proceedings after the May 13, 2011 Notice of Appeal and Dismissal.

The Applicant, *pro se*, filed a Notice of Appeal based upon the Supreme Court order on May 13, 2011. On May 16, 2011, the Clerk of Court of the Supreme Court requested a copy of the final order of dismissal because none was provided with the motion. On August 3, 2011, the Supreme Court of South Carolina entered an "Order of Dismissal." Dion Taylor v. State, Order (S.C.S.Ct. August 3, 2011)(dismissing for failure to order transcript of hearing). The order stayed dismissal until after 15 days. On August 22, 2011, the South Carolina Supreme Court issued its remittitur in the action.

Federal Habeas Corpus

The Applicant subsequently filed a *pro se* Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina (0:11-CV-01456-CMC-PJG). The Respondent made its Return and Memorandum of Law in support of Motion for Summary Judgment on August 22, 2011. On November 14, 2011, the Honorable Paige J. Gossett, United States Magistrate Judge, entered the Report and Recommendation that the petition be dismissed, and the motion for summary judgment be granted. In the Opinion and Order filed December 19, 2011, the Honorable Cameron McGowan Currie, United States District Judge, denied the petition.

The Applicant subsequently appealed to the United States Court of Appeals for the Fourth Circuit. In an unpublished per curiam opinion, decided April 3, 2012, the Court dismissed the appeal. The Mandate was issued on July 5, 2012.

II.

In his current application for post-conviction relief, the Applicant alleges that he is being held unlawfully for the following reasons:

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

- (a) BRADLEY v. MARYLAND, 373 US 83 (1963) violation (prosecution)
- (b) Ineffective assistance of counsel (not having signed a statement)
- (c) Ineffective assistance of counsel (evidence from crime, within T 8, habeas corpus, affirmative defense of not guilty)

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

- (a) In plea hearing transcript, solicitor can be heard stating
- (b) In letter dated 11-18-08, Applicant's attorney, Crocker
- (c) Counsel was ineffective because the dollar amount that was

[Continued on following page]

P.C.E. Application

Continued

10. (c). Ineffective for not informing of an affirmative defense
 (e). Ineffective for not questioning medical doctor findings about effects of not being on prescribed meds & on being misdiagnosed & taking wrong meds
 (f) 8th (2nd) Amendment violation. S.C. min 10 yrs on armed robbery not on case by case basis, circumstances of applicant's case (ie no gun, 10 yrs min excessive in comparison w/ other sentences in other jurisdictions)
 (g). not informed by counsel of exact right to appeal by right
11. (a). That defendant gave a signed written confession to the crime. Even though this is accurate, it was done while defendant was not locked & he never had an opportunity to compare his written version to the typed version of detective. The only confession produced & on evidence was a typed version by the detective having many discrepancies. Voluntariness of the confession would have been challenged by defendant at a hearing & trial that he desired. Likelihood of success can be premised upon said discrepancies & counsel admitted that his client desired trial & that his client ~~was~~ was in the state of mind at time of the crime, & confession (ie same day). There would be no need to tell or give detective a statement as the typed version states what there was/is a written one.
- (b) states he received Rule 5 & discovery requests. Counsel should have been aware of the signed written confession. If plea hearing, solicitor states applicant gave a signed written confession, not the typed version of the Rule 5. Considering the knowledge counsel had he should have conferred w/ his client about the confession & the nature of it & requested this & or produced signed written confession for examination.
- (c). Recovered from robbery does not match the dollar amount the business was deprived of & there is a substantial difference in the two, & this is shown on several official documents. Victim of crime identified applicant as her assailant, but in her statement her back was to the door & it stated assailant came from behind & pushed her, no weapons mentioned in her written statement & is different from the affidavit stating assailant had a weapon. N. Chas. Police Dept states they someone fitting description from the crime, yet several items used to identify the assailant were not a during the apprehension time at apprehension. Counsel had knowledge of his client falling through a building at apprehension. It was noted that there was no injury, counsel notes state injury was sustained fall was from 12 to 15 ft building on the ground & his neck, but counsel did not take his client for a brain scan to see if there was an opportunity to present forensic evidence of brain defect along w/ the established mental illnesses of his client, to a potential jury. ~~the~~ defense of not guilty should have been presented as an option due to these various discrepancies, & there would have been reasonable doubt due to the evidence of lack thereof.

II. Continued

These issues could have been presented to his client's attorney potentially a jury, appearing what evaluators had found. In addition, counsel had his client's MUSE "ICP" Summary Discharge showing how his client needed medications & he had knowledge & admitted his client's conditions worsened upon his release from mental hospital.

- (D). Counsel was ineffective for not informing of Affirmative defense(s) of either not guilty or insanity defense. At applicant's plea hearing, counsel is found producing numerous orienting points which would have established an Affirmative defense, however, PCL judge ruled that counsel's testimony was credible.
- (E). Counsel was ineffective for not questioning the evaluations when the reports stated of any reference to his client not being medicated & how this could have affected his mental state. Failed to interview other doctors who diagnosed applicant to oppose or in. responsibility & capacity to condemn Affirmation.
- (F). S. C. Min. Bureau to Anne Deberry (outgoing when defendant was charged) information came for first time, its relation to state mental health which is a non-violent sentence (i.e. victim injuries, etc.) it must fail to judge on case by case basis.
- (G). Rules of Appellate state judge must advise of appellate rights even after a guilty plea. This was not done. Plea hearing occurred ~~in~~ ⁱⁿ ~~the~~ ^{the} ~~plea~~ ^{plea} ~~was~~ ^{was} ~~made~~ ^{made} under some duress, counsel never informed of right to appeal. Counsel knows how he had never been to prison so he would not have known about the procedure. S. C. Appellate procedure invalid for it classifies an appellant counsel not negotiating for his client, state lost appellant w/out counsel on appeal, as a result direct appeal filed & dismissed due to issues not being able to be reviewed under state law.
- (H). Evidence will show applicant was not on his psychiatric meds before & at PCL hearing, evidence will also show applicant was not treated adequately & not able to present issues adequately.

For the purposes of this Return, the Respondent incorporates herein and by reference the records of the Charleston County Clerk of Court, the prior PCR records, the Applicant's records from the Department of Corrections, and the appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent submits 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 to -160. 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 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). The Applicant was convicted of the offenses he challenges in this Application on June 3, 2009. This Application was filed on December 11, 2012, which was well after the statutory filing period had expired.

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) (1985) 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, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

IV.

Respondent submits that the current application for post-conviction relief must be summarily dismissed because it is successive to Applicant's prior application for post-conviction relief. S.C. Code Ann. §17-27-90 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 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 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).

Respondent submits 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. 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, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

V.

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

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired, and it is successive to the Applicant's prior application for post-conviction relief..

Respectfully submitted,

ALAN WILSON
Attorney General

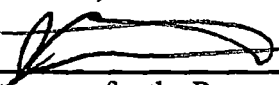
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. CROOM HUNTER
Staff Attorney

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

By:


Attorneys for the Respondents

Columbia, South Carolina

March 31, 2014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2012-CP-10-8090

DION O. TAYLOR, #335089

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

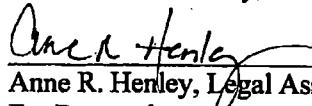
STATE OF SOUTH CAROLINA,

Respondent.

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

Dion O. Taylor, #335089
Allendale Correctional Institution
PO Box 1151
Fairfax, SC 29827

DATED this 31st day of March, 2014


Anne R. Henley, Legal Assistant
For Respondent

AWG

CC
AG
AT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
)
Dion O. Taylor,)
S.C.D.C. No. 335089,)
Applicant,)
)
v.)
)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-10-8090

2014 JUL 21 AM 9:18
JUL 21 2014
BY _____
CLERK OF COURT

CONDITIONAL ORDER OF DISMISSAL

In response to the post-conviction relief application filed December 11, 2012, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the January 2009 term of the Charleston County Grand Jury for criminal domestic violence (CDV) - 2nd or subsequent offense (2009-GS-10-0031) and armed robbery (2009-GS-10-0030). He was represented by Cody Groeber, Esquire.

On June 3, 2009, the Applicant pled guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable Roger M. Young, Sr. sentenced the Applicant to imprisonment for ten (10) years on the armed robbery and three (3) years imprisonment for CDV, to run concurrently with each other and concurrently with a probation revocation. The Applicant did not appeal.

2009-CP-10-6320

The Applicant filed an application for post-conviction relief (PCR) on October 6, 2009 (2009-CP-10-6320). In that application, the Applicant raised the following grounds for relief:

AWG

1. Ineffective assistance of counsel.
 - a. Gave erroneous evidence.
 - b. Failed to investigate.
 - c. Failed to get another mental evaluation for Applicant.
 - d. Failed to inform plea judge that Applicant was not on medication at time of the offense.

The Respondent made its Return on February 1, 2010. The court initially appointed John T. Chakaris, Esquire to represent the Applicant. On June 21, 2011, through counsel John T. Chakaris, Applicant made a request to amend the petition. In the proposed amendments, counsel attached a *pro se* pleading of the Applicant's in which Applicant alleged:

1. Pleas counsel deprived mentally ill defendant his Sixth and Fourteenth Amendment rights when ineffective counsel:
 - a. Counsel was ineffective when counsel provided me erroneous, inaccurate and untrue to get me to plead guilty.
 - b. Counsel withheld evaluation reports that was considered prior to 9/24/08 from myself, from judge show transcript.
 - c. Provided state evaluation report to the judge while Applicant was medicated for mental illness.
 - d. Failed to withdraw applicant's guilty plea.
 - e. Failed to request a Blair hearing to decide whether mentally ill Applicant was competent during the time at criminal act when I was not medicated.
 - f. Failure to investigate and contact witnesses and discover exculpatory evidence and get witnesses who would testify and to present evidence showing applicant mental state, just months before crime.
 - g. Failure to consult with Defendant (i.e. direct appeal, about state eval, etc.).
 - h. Failure to advise defendant about a potentially affirmative defense to charged crime.
 - i. State evaluation discrepancies, issues, prove incompetence, prejudicial by never being.
2. Rule 11 (B).
3. Judge Abused his discretion.
4. Transcript discrepancies.
5. State return - no direct appeal, no statement of confession.

am
2

On November 18, 2010, the Honorable Kristi Harrington relieved Mr. Chakaris as counsel. The Clerk of Court appointed Florence Scarborough, Esquire, on December 7, 2010. An evidentiary hearing into the matter was convened on March 1, 2011, at the Charleston County Courthouse before the Honorable R. Markley Dennis. At the outset, counsel was relieved and the Applicant chose to appear *pro se*. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent. Judge Dennis entered a written order of Dismissal dated April 5, 2011, and filed April 13, 2011.

The Premature March 2011 Notice of Appeal

After the hearing, Respondent submitted a proposed order to Judge Dennis. On March 14, 2011, the Applicant made a notice of appeal. On April 12, 2011, the South Carolina Supreme Court entered an Order of Dismissal as to the appeal because a final order of dismissal was not provided to the Supreme Court. Applicant then filed a "Motion to Alter and/or Amend Judgment" in which he asserted that he provided the court with an unsigned and undated copy of the order of dismissal. The Supreme Court construed this filing as a motion to reinstate the appeal. In an Order dated April 21, 2011, the Supreme Court of South Carolina stated that it had reviewed the records of the Charleston County Clerk of Court's website which indicated that the Order of Dismissal was signed April 5, 2011, and entered in the Clerk's Office on April 13, 2011. The Supreme Court then concluded that the filed notice of appeal was premature because it was filed prior to the entry of the final order in the case, citing SCACR Rule 243 (b), and Rule 203(B)(1). The Court denied the request to reinstate the appeal; however, it concluded that:

Since this order serves as written notice that the order of dismissal has been entered by the Charleston County Clerk of Court, petitioner shall have thirty days from the date he receives this order to serve and file another notice of appeal, which must include proof of service on the Attorney General's Office and a copy of the signed and dated order of dismissal. Rule 243(b) and 203(b)(1).

APM
3

Dion Orlando Taylor v. State, Order (S.Ct. S.C. April 21, 2011).

The Proceedings after the May 13, 2011 Notice of Appeal and Dismissal.

Proceeding *pro se*, on May 13, 2011, the Applicant filed a Notice of Appeal based upon the Supreme Court's order. On May 16, 2011, the Clerk of Court of the Supreme Court requested a copy of the final order of dismissal because none was provided with the motion. On August 3, 2011, the Supreme Court of South Carolina entered an "Order of Dismissal." Dion Taylor v. State, Order (S.C.S.Ct. August 3, 2011)(dismissing for failure to order transcript of hearing). The order stayed the dismissal for 15 days. On August 22, 2011, the South Carolina Supreme Court issued its remittitur in the action.

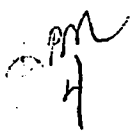
Federal Habeas Corpus

The Applicant subsequently filed a *pro se* Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina (0:11-CV-01456-CMC-PJG). The Respondent served its Return and Memorandum of Law in support of Motion for Summary Judgment on August 22, 2011. On November 14, 2011, the Honorable Paige J. Gossett, United States Magistrate Judge, entered the Report and Recommendation, recommending that the petition be dismissed and the motion for summary judgment be granted. In the Opinion and Order filed December 19, 2011, the Honorable Cameron McGowan Currie, United States District Judge, denied the petition.

The Applicant subsequently appealed to the United States Court of Appeals for the Fourth Circuit. In an April 3, 2012 unpublished per curiam opinion, the Court dismissed the appeal. The Mandate was issued on July 5, 2012.

II.

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In his current application for post-conviction relief, the Applicant alleges that he is being held unlawfully for the following reasons:

1. Brady violation.
2. Ineffective assistance of counsel.
 - a. "Not producing signed written statement."
 - b. Did not inform of affirmative defense.
 - c. Did not thoroughly question doctor.
3. Excessive sentence.
4. Not informed of right to appeal.

III.

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. §17-27-90 provides that:

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, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding 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. Applicant has failed to establish any 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, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

IV.

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 to -160. 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 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). The Applicant was convicted of the offenses he challenges in this Application on June 3, 2009. This Application was filed on December 11, 2012, well after the statutory filing period had expired.

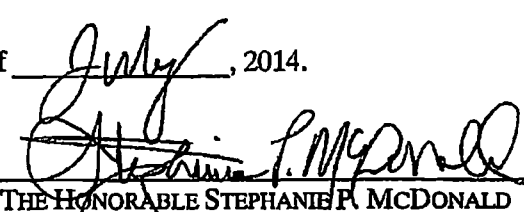
A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary 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 Court finds that the application for post-conviction relief should be summarily dismissed for failure to file within the time mandated by statute and for being successive.

V.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The 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. The 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: J. Croom Hunter, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 17th day of July, 2014.


THE HONORABLE STEPHANIE P. McDONALD
Chief Administrative Judge
Ninth Judicial Circuit Court

Charleston, South Carolina

LEGAL MAIL

Att. Gen. Copy

Aug

Response to Conditional Order...

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Response Brief pgs 1 thru 15-Front & Back

Exhibit A... 2pg grievance ACI-0209-11 (see Warden's Decision as well)
Exhibit B... SC Dept of Corrections - Sick call - 3/14/11

Dated: 4-22-13

s/Dion O. Taylor

State of South Carolina

County of Charleston

Dion O. Taylor #335089

Appellant.

v.

State of South Carolina Respondent

In The Court of Common

Pleas/Ninth Judicial Court

2012-CP-8090

Response to Conditional

Order of Dismissal

Applicant, forthwith, will show this Court why he should be granted evidentiary hearing, regarding a successive PCIC Application.

Applicants reasons are cogent & fit w/in the parameters of S.C. state law, statutes, relevant & applicable case law & other pertinent evidence will be a fore-mentioned hearing is sought & necessary.

I. S.C. Code Ann. §17-27-90 & S.C. Code Ann §17-27-45(a)
(re Reasons)

The successive nature of the Applicants Application should be deemed inapplicable in this instance, due to sufficient ~~reasons~~ ^{reasons} for grounds not being raised & or inadequately raised as delineated in the above S.C. statutes. Applicant was not in lucid state when he refused to go forth w/ counsel, & nor when he subsequently represented himself present at initial hearing. It can be shown throughout the record, that the Applicant suffers from multiple mental health illnesses in which he is prescribed different psychotropics promoting lucidity & competence. Due to malfeasance & or negligence the Applicant wasn't medicated by health care persons at Institution he was & is housed at (re Allendale Correctional Institution). Record shows initial evidentiary hearing was on 3-11/11. Applicant submitted grievance (Ex. A) concerning him not receiving medications since 2-23-11. Exhibit A shows Warden of Institution (ACT)

Regarding to grievance; in essence he states medical circuit knew where I was being housed since 2-23-11, his response to said grievance was 3-7-11, proving Applicant was medicated at hearing. To prove the necessity & importance of Applicant being on medication, Applicant wants to Plea hearing from this collateral ^{not} which

Attack on conviction derives. Trans. Pgs 9-10 reveal the Courts extensive inquiry into the applicants medication consumption. Pgs 9 Lines 4 thru 25. Court: Are you taking any prescription meds today? Defendant (Applicant): Yes. Court: Are you taking the prescribed amounts? Defendant: Yes. Court: Are they're being dispensed to you at the jail? " : Yes. Court: "... When is the last time you took some. Pgs 10; Defendant: This morning. Court: Do they help you understand what you're doing... better? Defendant: Yes. For the Court to accept the defendants plea as voluntary & intelligently made, the applicants medication intake was paramount in that decision to accept, & of a surety if the applicant wasn't medicated, properly or at all, the plea itself would be in serious question as to the voluntary nature of it. Further evidence (Ex. B) shows just how not taking his medications can effect the Applicant adversely. W/out being able to rationalize, think logically, organize, & articulate adequately, he could not effectively & w/ specificity set forth claims of ineffective assistance of counsel & other meritorious claims. The Applicant could not be reasonably expected to prepare for a hearing under such duress in addition. His state should be construed as one of incompetence, & the courts have ruled on this issue accordingly. Council v. Carter, 359 S.C. 120, 597 S.E. 2d 782 (S.C. 2004): "Post conviction petitioner cannot delay his collateral review... due to his competency, however if at a future date the petitioner regains his competency & discovers that at his original PCR hearing, his incompetency prevented his ability to assist counsel on a... claim of ineffective assistance of counsel, he may raise that claim in a subsequent proceeding." U.S.C.A. Const. Amend 6. S.C. Code of Laws Ann. 17-27-45(A) in pertinent parts: "An application for relief filed pursuant to this Chap. must be filed w/in a 1 yr... or the filing of the final decision whichever is later." An Axiom of preclusion shows the statutory filing period could not have tolled due to the petitioners

Appeal not being of finality adjudicated upon until Jan. 7, 2013 by the Supreme Ct. of the United States. Moreover, due diligence can be shown to have been exercised in obtaining the attorney-client file to support his claims of ineffective asst. of counsel, w/ certain documents. On July, 2012 & Aug. 19, 2012, he had correspondence w/ Public Defenders Office & on Sept. 17th 2012 he received a fore-stated file, which encompasses far more than Rule 5, but intimate issues detailed by the attorney, including a copy to sever att-client relationship, notes, ect, none of which was available to the applicant at the time of the evidentiary hearing. Respondents motion for summary dismissal should fail due to the applicants hopefully explicit in nature arguments. In the following paragraphs, applicant will prove why his successive application should be entertained due to the specific ineffective assistance of counsel & other grounds.

II Direct Appeal - Ineffective Assistance of Counsel

Respondent incorrectly avers that applicant did file an appeal from guilty plea. The Order of dismissal (from applicants first app. (i.e. hearing) 2009-CR-10-6320, shows an order dismissing the direct appeal introduced into evidence. The attorney-client file produced notes wherein attorney acknowledges his client had never been to prison. (i.e. had never had a serious charge of the nature of armed robbery). This is a key element in the applicants argument that he was never advised of a direct appeal. A PCR proceeding of 3-1-11, public defender avers that his client never asked him about a direct appeal, this goes directly to counsels ineffectiveness in not advising. ~~he~~ he in essence acknowledges he wouldn't or couldn't have known of out his advisement. Pg 10 of plea hearing trans. goes further to prove that counsel should have at least discussed direct appeal w/ his client. In part ~~the~~ dialogue: Court: "Is there anyone that has promised you anything out mentioned you to plead guilty...?" Defendant: "Besides the fact that it will be off the table if I don't accept it & go to trial & lose." This is not a minuscule statement

(54)

by the applicant, & viewed in conjunction w/ counsel's knowledge (he testified to not ~~knowing~~ ^{hearing}) that his client desired wanted a trial, it speaks volumes as to applicant's indecision & mess, it should have been enough for attorney to at least confer or let his client know this option was available. He did not, & the Court did not conclusively rule on this issue of specificity, it only ruled based upon the statement of counsel that applicant did not ask him to file direct appeal. There is a stark differentiation between the latter & a ruling being based upon his ineffectiveness in not advising. Applicable case law states in: Roe v. Flores-Ortega, 120 S. Ct 1029 (2000); "The complete denial of counsel during a critical stage... mandates a presumption of prejudice because the 'adversary process itself' has been rendered unreliable." In this instance, due to counsel not informing applicant of this right, option, he [applicant], filed a pro se direct appeal, dismissed due to, by state law, none of the issues could be ruled upon (Sec PCR evidentiary hearing evidence on record). Ortega cont: [Respondent] appeared... w/ public defender... pleaded guilty... "After pronouncing sentence... judge informed... you may file an appeal..." Plea trans. will show there was no such directive from Court. Ortega: At conclusion... judge found: "It is clear... [Ortega] had little or no understanding of what the process was or what the appeal process was or what appeal meant at that stage." Counsel's actions, in view of the totality of circumstances were not reasonable nor strategic. This amounts to deprivation & is below the requirement that the 6th & 14th Amendment will tolerate, as the first appeal of right in procedure or otherwise was not adequate or effective. Applicant would not have likely pursued fed. habeas relief or would have had more compelling arguments, ones of necessity, the appellate process as a whole was compromised. Furthermore the Court in applicant's instance did not advise of appellate right or process & the negotiated plea didn't waive appeal (direct). Cherry v. State, 386 S.E. 2d 624 (S.C. 1999): "Indigent defendant has right to be informed of appeal & manner & method of taking appeal." Defendant did not knowingly & intelligently waive right to direct appeal where there was no evidence suggesting that trial counsel informed defendant as to manner & method for taking appeal nor any evidence... Counsel attempted to ascertain whether defendant wanted to appeal his conviction so that counsel

could file notice of appeal." Furthermore, Graham v. State, 378 S.C. 1, 661 S.E.2d 337 (S.C. 2008): Holdings: (1) One year statute of lim. does not apply to allegation that he was denied effective assistance of counsel."

~~Delaney v. State~~ Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (S.C. 1977): "In this case we find appellants allegation that he was denied effective assistance of counsel because he was unaware of his right to appeal could not have been conclusively refuted on the record before lower court." At the evidentiary hearing of 3/1/11, public defender admits client (applicant) wanted to go to trial. The only finding by lower court on that issue specifically is that counsel didn't ask him to file ^{notice} appeal.

That finding should not suffice in the courts determination of ineffective Asst. of counsel in this instance. Fisher v. Holland, 342 S.E.2d 215 (W. Va. 1986): "...the State is constitutionally obliged to appoint effective counsel to assist an indigent criminal defendant in his appeal..." The const. right to appeal cannot be destroyed by counsels inaction, by criminal defendant delay in bringing... to attention of court... "Applicant intends forthwith to show other instances of ineffectiveness supporting the need for counsels assistance on appeal, due to the likelihood of success."

III. Grounds For Relief

(A) Brady violation (Prosecutorial) Plea hearings trans. show prosecutor stating that defendant (applicant) gave a signed, written, confession to the crime of Armed robbery. The signed, written confession was never produced by prosecution w/ R/S discovery, only the detective's typed version. Applicants contention was there is/was a significant variance between the written & typed versions. It can be proven that defendant had never been to prison. This is one key factor is considering voluntary nature of confession. It can also be proven that when in custody of instant instead, he refused to speak. Invoked 5th amendment right, then ~~there~~ there is a dispute about if the applicant initiated the intent to speak w/ detective, or if Officer violated applicants rights (ie mental coercion), contact w/ applicant after invoking of rights) (90 days in mental hospital) w/ the passage of time, the applicants memory has eroded somewhat, but he remembered in retrospect, in his written statement, detailing how he wasn't on his prescribed psychotropics for considerable time prior to this incident. Instead, the typed version states 'I am currently on two meds at this time...'

It omits the mention of recent hospital visit due to suicidal attempt & the length of time he was in taking meds. This is key, for at that time, the applicant could have viewed the written confession versus what was typed he could have very possibly remembered what he wrote & could have been a key factor in challenging the voluntariness & intelligent nature of the oral confession. The applicant did sign the typed version, but viewed in totality (regarding, suicidal thoughts, released from hospital, initially wanted attorney this all happened on same day, 40 days prior, deterioration of mental state, stress, etc) there was still a preponderance of evidence (the standard for voluntariness) in favor of applicant. The detective even said my skin looked white & "was I okay?" Not until much later did this come to the applicant's remembrance, if the written version turns out to be as described, then not producing a written statement w/ Rule 5 shall be construed as Brady violation, & prejudice being exempted/exemplified by above-mentioned issues, & that the likelihood applicant would have demanded a trial more vehemently. This written version of the confession has still not surfaced. Gibson v. State, 514 S.E.2d 320 (S.C. 1999): "When a defendant lacks knowledge of material evidence in the prosecutions possession, the waiver of rights cannot be deemed knowing & voluntary."

const.

When the applicant signed the typed version he didn't examine the written against it for comparison, it was already out of his presence, & detective was dictating while I spoke, she supposedly just typed my written statement over, hence the signing w/out question of scrutiny. Again w/ the totality of the circumstances, the requisite factors to challenge the voluntariness abound.

"A Brady claim is complete if the accused can demonstrate (1) The evidence was favorable to the accused (2) it was in the possession of a known to prosecution

(3) It was suppressed by the prosecution, it was material to guilt or punishment." (Kyles v. Whitley, 514 U.S. 419, 432-42 115 S.Ct. 1555, 1565-69 (1995).

Request for Disclosure was filed by attorney Gibson further states: "... Gibson would have known about ... inconsistent statements." When the mental state

of a defendant is at issue, even though seemingly minute, the omission of sentences or a sentence changes the scope of the entire confession, especially w/ clearing w/ involuntary mental hospital commitment, suicide attempts, length of time on meds, the ramifications are copious. Stater v. Knighton, 512 S.E.2d 117 (S.C. 1999): Rule 5 of S.C.R. Crim. P. provides in pertinent part:

④ disclosure of evd. by the Prosecution 1) Info Subject to Disclosure
 ④ Statements of defendant: "upon request by... defendant... the prosecution shall permit the defendant to inspect, copy... any relevant written... statements made by the defendant... in the possession... or control of the prosecution intends to offer into evidence... made by the defendant whether before or after arrest in response to interrogation..." N.C. has. Police Dep't Advice of Const. rights waiver document in part states: "I wish to waive these rights & answer questions concerning the charge of Armed Robbery, no threats Force or promises of any kind have been made... to cause me to waive these rights & or answer questions. This explicitly shows the statements were borne from interrogation & by S.C. law should have been produced & were not. Moreover, a confession that is incompatible gives credence to a defendant's assertion that his own alleged confession was non-existent or false. The statement can be admitted if differences are trivial & insignificant. ~~See~~ (Lee v. Illinois 476 U.S. 530, 540, 106 S.Ct 2056, 2062, 90 L.Ed2d 514 (1986)). As Aforesaid explained the differences in the written & typed version of confession of Applicant are neither trivial or insignificant, & at a decisive trial this would be a point of contention, yet another way how Applicant was prejudiced by Brady violation by Prosecution. To further support the Applicant's prejudice the States appointed psychiatrist even though unfavorable, diagnosed Applicant w/ personality disorder. Jones v. Comm., 506 S.E. 2d 27 (Va. App 1998)"... [Jones] suffers from... depression... & a personality disorder which renders her mentally incompetent in times of extreme stress." Another point of contention of what very likely was going on w/ the applicant at the time of signing of waiver, giving confession, ect. Based on the Arguments provided, Applicant seeks an evidentiary hearing to further prove his position, & said evd. necessitates it, as this among others, would have been argued on a counsel-assisted direct appeal.

(b) Ineffective Asst. of Counsel (not producing written statement, or advice of counsel pleading, failure to identify violation of clients 5th amendment rights (ie knowledge of facts))

The confession & waiver of rights cannot be separated from each other, & counsel had cognizance of violation of his ~~clients~~ ^{clients' rights} & failed to advise of & advise that evidence could be suppressed due to these issues of const. impinging. If counsel's claim is that he didn't know of written statement, he knew of the typed version, & he should have intervened at that point, because a written version of statement was not w/ Rule 5 discovery. But the waiver document was, wherein it shows his client was interrogated & thus, if his written ~~document~~ document should have been produced. This was still a proceeding & he was still representing his client a client whom he admitted wanted a trial. There was however evidence in the typed version of confession that his ~~clients~~ ^{clients'} rights were violated. It stated as follows: "When we [Applicant speaking] got to the jail

& were inside the other cop [identified as Cpl. Zimmer] approached me
 & said he heard I started talking to the other cop & asked if I was
 going through plot... & asked if I wanted to talk to a detective. I told
 him yes. By his client saying he started talking to another cop doesn't
 mean he intimidated, it only means that now he was communicating, as he was
 before. His client had invoked his right to remain silent & at least one of
 blatantly violated that right. This is the knowledge the applicant, according
 to in his application in his explanation: (b) "considering the knowledge
 counsel had he should have conferred w/ his client about the confession
 & nature of..." It cannot be considered strategic for counsel not to
 do so, w/ little or no investigation these issues were apparent & he failed to
 act in a reasonable manner. Moreover, counsel was aware of ~~the~~ his client's
 hospitalization just 90 days prior, & his deteriorated mental health.
 The statement/confession by applicant was damaging, as the State psychiatrist
 (allotted by State) used police reports & excerpts from a confession
 to support in the affirmative that applicant was criminally responsible
 & had capacity to conform, they even opine that the applicant made
 a voluntary statement & waived rights. State v. Dohy, 258 S.E. 2d 816:
 "The signing of a waiver form alone is not conclusive; the state still
 has the burden of showing the waiver was voluntary." (State v. Penland,
 270 S.E. 1, 239 S.E. 2d 750 (1977)) This requires an examination of the
 totality of the circumstances surrounding the waiver, including the background
 exp., & conduct of the accused. We have consistently held that a mental
 deficiency alone is not sufficient to render a confession involuntary but it is a
 factor to be considered w/ other facts & circumstances in determining the
 voluntariness of the confession. We believe the same principle applies where the
 issue is the voluntariness of a defendant's waiver of const. rights.
 Circumtously & directly, counsel's failure to act when knowledge of an
 confession existed, to confer about the issue of voluntariness of confession, & the
 ways it could be attacked, amounts to ineffectiveness when the totality of the
 circumstances are weighed. As found by the lower ct., the only thing counsel
 told his client about the confession was he could only challenge it at trial.
 w/ all that presented itself to him, it was ineffective for him not to explain
 how these issues could be challenged, his client could not make an informed
 decision, rendering the results unreliable. A bit of the breadth of knowledge
 counsel had is shown in plea court trans. pg. 16: "He [Applicant] was excited
 the day before &... this put him into this kind of major depressive state

Pg 9

that led to ... robbery. He also at the time was not taking his meals which he needs to do. This armed robbery was the fruit of absolute desperation... I don't think that he's the kind of person who would just... do this to get money or anything... I do believe that his mental illness contributed to this terrible act. Applicant's first real time to study his eval results were before PCR hearing, he requested another eval. when counsel told him the eval was unfavorable. S.C. Code Ann §44-23-410(c): "If the person or the person's counsel requests the court may authorize the person to be examined additionally by a duly noted examiner, and the court may prescribe the time & conditions..." These are specific claims of ineffective asst of counsel, w/out these ineffective acts, applicant would have insisted upon going to trial. Counsel's advice & conduct were unreasonable due to these reports described. All in lacking to conform to the 6th Amendment.

(c) Ineffective asst. of counsel - not guilty verdict from crime victim I.D. dollar amount, heard injury, ect.

Due to counsel's ineffectiveness in regards to the plausible way to challenge the confession/statement by his client, this translated into another form of ineffective asst. of counsel. The dollar amount the business was cleared of what was ~~found on~~ ^{found on} applicant, allegedly just minutes after ~~the~~ ^{crime} committed crime, differed by \$200⁰⁰. 2 witnesses who saw the applicant never stated they saw him hiding anywhere, one witness saw the applicant in close proximity to the business. Police reports say the applicant matched the description of the assailant. The strong inference is that the perpetrator ~~was~~ adorned a baseball hat, sunglasses, doc-rags. When approached by police the applicant was not wearing any of these items, the two witnesses don't state they saw him wearing these items. There was nothing in Rules discovery about what the victim said about what the robber was wearing, so there is only the inferences from the police reports. The applicant had a jacket that was misidentified in color. The police report said applicant had on work pants: A utility knife was purportedly used in robbery, & one was found on applicant. In the victim statement she mentions nothing about a utility knife or any other weapon being used allegedly by applicant. ~~Moreover~~ ^{Moreover}, public defender knew if it can be shown by applicant's work history, he worked construction in which this kind of tool is readily used. Victim statement states: "On 9-24-08 at 12:50 pm, I was working

the register, with my back to the door. A B/m came up from behind me stating open the register." The police brought the victim to where the applicant was arrested & said she positively ID Applicant as her attacker or one who robbed her. This is an impossibility according to the victim's statement & circumstances surrounding. To wit: Applicant was not wearing hat, clothing, baseball cap or shades (sunglasses) when victim ID Applicant. According to the S. Ct (i.e. Neil v. Biggers, 409 U.S. 188, 196, 93 S.Ct 375, 380 34 L.Ed.2d 401, 1972), & state case law, this case shows there was a substantial likelihood of misidentification that misidentification was reasonable.

State v. Moore, 513 S.E.2d 646 (S.C. App. 1999): "Single person show-ups are disfavored because they are suggestive in nature. In determining reliability of an I.D., following factors are considered: (1) opportunity of witness to view the criminal at scene (Applicant has already shown this to be in his favor, w/ a hat on, she could not know if he had hair or not, sunglasses conceal eyes, part of face, she had back to door, ect), (2) The witness degree of attention (Again her back was to door, she knew he was black, impossible for of any certitude to say applicant was perpetrator) (3) The accuracy of the witness prior description (Rule 5 shows no real description by victim, only police report references to the items, articles of clothing color of jacket misidentified black ~~the~~ the jacket blue, ambiguous) (4) level of certainty of witness (certainty of ID must be called into serious question due to prior-described throughout) (5) Amount of time between crime & confrontation (due to other factors being adverse to a positive ID, should be given substantial weight). Applicants Const. rights were violated by this suggestive single person ID, & counsel failed to discuss these issues so he could (applicant) make an informed decision, he (counsel) apparently solely relied upon a confession that very well was one of an involuntary nature. These issues presented a reasonable doubt, & the applicant if these issues were discussed w/ him at all, would have demanded a trial. w/out the confession there are too many discrepancies to w/ any confidence of certitude, say the applicant is guilty. Counsel never discussed suppressing the confession. Cobb v. State, 408 S.E.2d 223 (S.C. 1991): Evidence in post-conviction proceeding... sufficient to establish that defendant convicted... was denied effective Asst. of counsel due to counsel's failure to investigate..." The enumeration of these errors by counsel clearly show that it changed the outcome of proceeding, these were not strategic errors, rather a case of ineptitude & or lack of experience, which cannot be an excuse for an ineffective performance by counsel.

Counsel was aware that his client had fallen through a building, 12 to 15 ft in height, & landed on his head. He did not investigate this issue at all, when he knew his client sustained an injury, that went untreated. w/ his clients already existent mental health issues, for him not to have his client checked for any trauma associated w/ all that may have exacerbated issues of mental defect & effected reasons, is also ineffective. Again all this being prejudicial to his client because an evaluation was conducted w/out a thorough investigation of issues, & he led his client to believe he couldnt ask the court for a subsequent eval. & all the facts were not presented to psychiatrist. Not to mention, that he failed to discuss w/ the evidentiary issues he failed to discuss w/ his client, he failed in his duty to fully inform his client of all options available. These are specific instances of ineffectiveness, & by state law, a PCR hearing is needed to resolve.

(D) Ineffective asst. of counsel - Insanity Defense

S.C. Dept of mental health from all documents relevant, apparently outsource services for a ~~psy~~ psychiatrist to eval defendants in matters of mental health or eval. The Applicant had one of these said evals. Counsel had access to a pre-incarceration summary for his client from the IOP (ie MUSC). He would have had to been aware of the differences of opinions of the doctors insofar as the diagnoses for his client. It would not be hard to imagine that a psychiatrists opinion would differ from another, yet he refused to request another eval from the Court once the Applicant asked him for, because he desired to go to trial. The eval. states in part: Disclosure of Confidentiality: "He [Applicant] was advised that the eval was not for medical purposes" Crim. Responsibility: "Yes. It is our opinion to a reasonable degree of medical certainty...". It cont. along the same vein when capacity to conform is decided. Blacks Law Dictionary describes 'Insanity' as being a legal not med. standard. It is important that Applicant show what a contradiction is presented by the eval itself, & for him to describe certain elements of his diagnoses, what effort he's say according to these issues & what case law asserts concerning. An additional psychiatrist would have materially aided in the preparation & presentation of an insanity defense for a few reasons as to how, lets look to Applicants pre-incarceration hospitalization (involuntary) discharge summary.

The evaluation ordered by the state was for several hrs. the afore-referenced to hospital stay was for several days, & issues of similitude presented themselves in regards to applicants mental state he attempted suicide 90 days before crime. At Admission, doctors stated insight & judgement were both poor. Applicant was prescribed Prozac for a major depressive disorder & Tegretol to target impulsivity, these same meds. he was not taking taking at relevant times before crime change dw that at time of univ. & confession, the same can be found to be germane. (Doctors at TOP (MUSC) opined that disorder 'Cyclothymia' should remain on the differential at this time to be further assessed by out patient physician, never saw outside doctor). The drug 'Prozac' is known to have adverse effects (side) & the like. Applicant, asked about the TOP doctor testifying, counsel said it couldnt be done, this directly led to indecision, after he was ready & wanted to go to trial. These doctors could have testified about how not taking these meds could have affected his client & not being diagnosed accurately, which is a common occurrence. In R. Hayes, 564 S.E. 2d 305 (N.C. App. 2002): "At the time of the killings & ... assaults... the respondent suffered from acute psychotic episode which lasted 3 to 4 months in duration from the week before the killings..." In applicants case he was suffering from extreme mental health issues, as shown by involuntary commitment to hospital for suicide attempt 90 days before crime. The following case law will show how they are applicable to the applicants situation & if thorough research was done by counsel it would have been clear to him that he should & could request another eval. Because an insanity defense was a plausible one. State v. Gittman, 420 S.E. 2d 437 (N.C. 1992) (State v. Ross, 297 N.C. 137, 254 S.E. 2d 10 (1979) (had been involuntarily committed to psychiatric hospital... prior to... crime & the defendants confession, he had been to mental health clinic. "Court Ross: Therapist... testified that his mood & affect were inappropriate. he had poor judgement..." Id at 141, 142, 254 S.E. 2d at 13). Counsel, in this instance of applicants concedes the deterioration of his clients mental health & circumstances since his discharge from psychiatric hospital, up until charged crime. (Court Ross: "Other evidence tended to show that the defendant had been unable to work, incapable of caring for himself & exhibiting bizarre behavior." Id at 142, 254 S.E. 2d at 13). SCutt em pg 7 thru 8 of 10 pgs. Defendant acct. of alleged offense [armed robbery]: Mr. Taylor [Applicant] stated: "... I was laid off for 3 weeks & received evetron notice... I wasn't taking a shower... I was not eating... I wanted to overdose on the Tegretol (psychotropics)... day before (charged crime):

"I was on the sofa & barely able to get up to use the bathroom..." These instances, w/ case law, present a premise for a request for a subsequent eval & even if not, S.C. statute states the doctors couldn't testify on the issue of insanity (i.e. S.C. Code Ann §44-23-420), w/ another doctors testimony to refute findings of eval. & the evidence, insanity defense could still be pursued. Counsel claims it was solely his clients choice to plead guilty, but he contradicts this statement by saying he didn't have a insanity defense. He obviously conveyed these thoughts to his client, but w/ what the applicant has set forth, this belies his assertion. Evaluation says applicant wasn't acting in a bizarre fashion; they base that on a view not considering the months prior in which the defendants deterioration began.

In a Public Defender document - memo to my public defender Cecily Creeber - State v. Dion Taylor: TO Cecily: From E. Lim Jr Defense Investigator: (June 25th 2008) (approx 2 months before charged crime robbery) Just received a call... Dion [Applicant] over the last sev. hrs. has been calling & threatening (voice mails & calling over 25 times & hanging up. Sounds like Dion is off his meds again). In Rule 5.3 discovery typed version of confession, Applicant to charged crime was apologizing to victim while robbing her (store). On the same day of charged crime, Applicant invoked 5th amendment rights, then signed waiver. Pittman states "...the inescapable conclusion is that the confession most probably was not the product of any meaningful volition" (quoting Blackburn v. Alabama, 361 U.S. 199, 211, 4 L. Ed. 2d 242, 250, 1960). The evaluation states that applicant wasn't acting in a bizarre way w/out considering totality of circumstances. Public defender was understandably not doctors but it was counsels inaction, lack of preparation, i.e. that ~~he~~ ^{he} ~~the~~ ^{the} adversarial process they are in. Even if counsel was to claim strategy, it is not strategic for him not to inform himself & his client, which explicitly is what he did. A reasonable thorough investigation would have produced reasonable logical decision of action to take, it is not unreasonable to believe the applicant would have been successful at trial w/ insanity defense.

Hill v. Lockhart, 106 S. Ct 366 (1985) = "...to satisfy prejudice... must show there was a reasonable probability that but for counsels errors he would not have pled guilty & would have insisted on going to trial." U.S. Ct. Const. Amend 6. Ad nauseum, it has been discussed how the Applicant wanted to go to trial, & hearing ~~(from)~~ ^(from) counsel admits as much. He asked about a sub. eval, the eval was instigated, possible psychiatrist witnesses, special emphasis was put on psychiatry issues, as this is another ex. of specific ineffective assist. of counsel.

Pg (14)

More evidence in the form of case law exists going to the seriousness of applicant's mental illness he's been diagnosed with. (i.e. Personality Disorder).

U.S. v. Murdoch, F.3d (9th Cir. 1996) - U.S. 117 S.Ct. 258, 138 L.E. 2d 22 (1997): (not guilty by reason of insanity - suffered from Personality Disorder)

Even evtl. doctors diagnosed applicant with this disorder & counsel was aware, there should have been independent study of this mental health issues on his own to prepare for a sub evtl. request. U.S. v. Henley 8 F. Supp. 2d 503 (E.8. N.C. 1998): "According to the Diagnostic & Statistical Manual of the American

Psychiatric Ass., a personality disorder is an enduring pattern of inner experience & behavior that deviates markedly from the expectations of the indiv. culture which is pervasive & inflexible... & leads to distress & impairment." Id. (quoting the American Psychiatric Ass. Diagnostic Manual 629 (4th Ed. 1994))

Judge... noted... A personality disorder is a systematic, impairing psychiatric abnormality that can dominate the persons mental state to the point where they experience significant functional impairment or subjective distress." Id. at 479-80 pg. 507. Extensive discussion was necessary to elucidate severity of applicant's mental health issues & what plagues him in all his functioning only exacerbated by stressors. The S.Ct. of the U.S. has found that an inadequate investigation by counsel prejudiced petitioner, & if not for counsel's errors the result would have been different.

Case in particular dealt w/ investigation of m/h issues. (Wiggins v. Smith, U.S. 510, 123 S.Ct. 2527, U.S. 2003). Voluminous accts. have been proffered to support applicant's position, of ineffective asst. of counsel w/ specificity, & applicant in accordance w/ state law & statutes should be afforded a hearing on these issues.

Lastly applicant deserves before the South Carolina process for adherence to const. right of an indigent defendant to be examined by a private psychiatrist is adequate. (i.e. Ake v. Oklahoma, U.S. 105 S.Ct. 1087, 84 L.E. 2d 53 (1985)). The State claims that the 'SC DMH' is an independent entity, but this is not analogous to their functioning & functions in which they are bound by state law to carry out. Pg 2 of 8 of General Sessions Elderster eval: "Because the Dept of Mental Health has a statutory responsibility for custody & control of indiv. determined not guilty by reason of insanity, defendant shall be examined & observed by an appropriate facility of the Dept of Mental Health by one or more examiners..."

Pg 15

The most common definition of statutory is enacted by a statute. For expanding, we must define statute which most commonly defined is: A law passed by the legislature of a state, an enactment, a fundamental or permanent rule of law. It is incontrovertible that the States interest intermingle w/ the S.C. Dept of Mental Health & doesn't satisfy Ake, even if the SCDMHC outsources to a private psychiatrist.

IV. Conclusion.

Applicant seeks hearing on the matters set forth on these matters, or other relief Court may deem appropriate according to S.C. law; law of the land, applicable statutes & case law. And the Applicant does so respectfully submit.

s/ Dion O. Payne
#335089-JMD #15-A
Allendale Correctional Institution
P.O. Box 151
Fairfax, SC 29827

Certificate of Service

The undersigned certifies he was served w/ Conditional Order of Dismissal in which he was served on 4-3-14 & is mailing to the Att. General's office on date of 4-28-14, by depositing a copy of it in the U.S. Mail, & placing in the exclusive care of the U.S. Postal Service & mailing to: Office of the Attorney General, Attn: J. Cason Hunter, Esquire, P.O. Box 11549, Columbia SC 29211

s/ Dion O. Payne

LEGAL MAIL

U.S. 66 of 2005 Emergency Grievance - Inmate Copy

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: Dion O. Taylor
SCDC NUMBER: 335089
INSTITUTION: ACI
HOUSING UNIT: SMU 031-B
WORK ASSIGNMENT: WARDEN'S OFFICE

Office Use Only
Grievance No. ACT-1109-11
Code: General
Policy
Disc. Hear.
Class
Date Received 2/28/11
IGC Initials ps

4/9/11

STATE GRIEVANCE (Include documentation, and date of incident; if SCDC Policy, indicate which policy)

SCDC policy when an inmate's physical, mental safety is at risk it is an emergency. On 2-23-11 I was placed in SMU custody. On that morning I received no meds. I have not received my medications since on SMU. His appointment needs have been cancelled, it has been done so maliciously and intentionally. Prior to 2-23-11 I met w/ mental health counselor & he explained I needed to take my morning dosage, even though I had missed my afternoon meds. The morning dosage I forgot which triggers 1 of my mental illnesses, & the afternoon meds are designed to attack & eliminate the depressive aspect of my mental illness. Then he threatened to file a grievance w/ me if I did not take my morning dosage. I took the morning dosage, my depressive medication was included. The claim by all conflict individuals will be that I have been non-compliant w/ my morning meds. I will contact & contact

ACTION REQUESTED: That all conflict prison officials, medical staff be investigated & held to be accountable to investigative branch in Columbia to get the response on subsequent legal action to be levied against the medical staff at S.C.D.C. & all its subparts.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

On or about the week of 2-23-11 spoke w/ mental health counselor about these issues, took morning dosage days after meeting w/ counselor, wrote request to medical about my medication once in SMU on 2-24-11

Dion Taylor 2-28-11
Grievant Signature Date

ACTION TAKEN BY IGC:

According to the Inmate Grievance Branch, your complaint is not deemed an emergency because it does not affect your health or safety. Your grievance will be processed through normal institutional grievance procedures.

Due to nature of complaint, documentation and grievance forwarded to Warden for response.

- ☒ I accept the action taken by the IGC and consider the matter closed.
☒ I do not accept the action taken and wish to appeal.

Pam Smith 3-1-11
IGC Signature Date
7/14
Grievant Signature Date

WARDEN'S DECISION AND REASON:

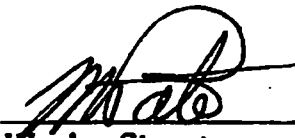
GRIEVANCE # ACI-0209-11

Inmate Taylor:

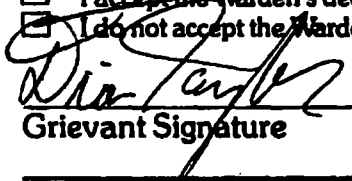
Nurse Derrick, Health Care Authority for Allendale, was contacted and stated that Medical was not aware that you had been placed in Special Management Unit (SMU) for disciplinary reasons. Your bed assignment has been updated and your name has been placed on the pill issuance list for SMU.

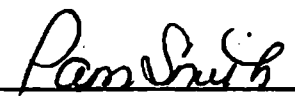
I consider this issue resolved.

If you wish to appeal my response, refer to instructions #5 listed below.

 3/7/11
Warden Signature Date

- ☐ I accept the Warden's decision and consider the matter closed.
☒ I do not accept the Warden's decision and wish to appeal.

 3/9/11
Grievant Signature Date

 3-9-11
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

pg 2 of 2 pgs
68

Institutional copy

State grievance... cont.

This holds truth; sadistic intention to cause my (person's) emotional distress, anguish, & more. Even though it is a fact, the manner of change at my meds, I've been inconsistent in taking, since my incarceration at RCI, my meds have not been given to me on a consistent basis while I was on SMO by medical staff. I've wrote several grievances about issues w/ mental health staff at RCI. I've had problems w/ Dr. Ford & asked that someone else handle my mental health issues other than him because he has displayed apathy & incompetence when it comes to my mental health needs. SCDC has supported these malpractices & other means of illicit activity & am definitely complicit in the wrongdoing & this will be proven even if by way of the U.S. Supreme Court. Nevertheless, mental health Counselor at ACT discusses my not taking morning meds at RCI, & explains I need to do so. I agree & state that they be in fact true but I have multiple mental health issues & my morning dosage doesn't cover to tolerate point of no return. I've never been diagnosed by SCDC, evaluated by SCDC, I've told Dr. Ford my multiple mental health issues, have records of such, & have records of a Court Order to continue my psychiatric care by SCDC & that I've never been written up for non-compliance. These are blatant & cogent evidences of misconduct by this institution & others; SCDC ~~holistically~~ holistically.

I haven't missed 3 pill lines, or 3 days of medications because my afternoon needs ~~has~~ been taken & this is denying me medical care because my depressive meds are dispensed only at afternoon pill lines minus the laughable attempt to cover-up & deceive by dispensing my depressive meds the only time I've ever received them in many, & the Dr's order should prove as such, & if not it has been altered & will further prove two departments egregious activities - my mental health has been compromised once again by SCDC & this is another proof of profound obduracy.

* Note: I have the copy of the Dr's order w/ the dispensing regimen, from Columbia, you all are in a lot of trouble. Cover that up!

Maybe you should finish the job of attempting to kill me as you've done before, you all are ruined, & eventually state prison will no longer have any state employees, if it cost me my life, or all of my life, God willing!

Dion Taylor - 2-28-11

ACT 0209-11

2-28-11

Institutional copy:

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Division of Medical and Health Services

69

SICK CALL and DENTAL REQUEST

This form is to be used for:

- **SICK CALL-SEGREGATED and CLOSE CUSTODY populations.**
- **DENTAL-at facilities where approved by dentist.**

Inmate Name: Dion O. Taylor SCDC # 335089 Date 3/4/11
Institution: ACT Dorm & Room/Cell SMU-231B

(Check only one) ☒ **SICK CALL REQUEST** ☐ **DENTAL REQUEST**

DISPOSITION: SHADED AREA FOR MEDICAL ONLY

☐ You have a sick call/doctor/dental appointment on: _____ at: _____

☐ Nursing/dental instructions/response to inmate: _____

Returned to inmate-SIGNATURE: _____ DATE: _____

INMATE NAME: Dion O. Taylor SCDC # 335089

WHY DO YOU WISH TO BE SEEN ON MEDICAL SICK CALL OR IN THE DENTAL CLINIC?

Since 2-23-11 after morning meals, my medications were discontinued
by Allendale Medical Staff, Dr. Fend, Medical Administration at
SCDC, Headquarters (Columbia SC) & I've suffered extreme withdrawal
& issues because of this malicious & sinister act by prison officials
Request to be seen by outside mental health expert

You do not have the funds for outside medical care this will kill
Received by Medical Staff - SIGNATURE: Dr. [Signature] DATE: _____

(NOTE: This form should be used for SMU, MSU, Death Row, Safekeeper, and Close Custody inmates only)

70
C
501
AG
65
Bull

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Dion O. Taylor, #335089,

2012-CP-10-8090

Applicant,

v.

FINAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED
JUL 15 2014
CLERK OF COURT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed December 11, 2012. The Respondent (the State) made its Return and Motion to Dismiss on March 31, 2014, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Honorable Stephanie P. McDonald issued a Conditional Order of Dismissal dated July 17, 2014, provisionally denying and dismissing this action, while giving the 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 August 15, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In the document titled "Response to the Conditional Order of Dismissal", the Applicant argues that he was not in a lucid state of mind when he chose to represent himself at his first PCR evidentiary hearing, that plea counsel should have filed a direct appeal on his behalf, that the State committed a Brady violation and that plea counsel was ineffective. This Court has reviewed the

END 8/1

Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

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. §17-27-90 provides that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended Application. (emphases added). 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 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 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). Applicant could have alleged these allegations in his 2010 PCR action. He simply failed to do so.

The Applicant has also presented no legitimate reasons why these issues were not raised within the statute of limitations for filing a PCR application pursuant to S.C. Code. § 17-27-45(a). S.C. Code Ann. §17-27-45(a) reads as follows:

RMG 8/2

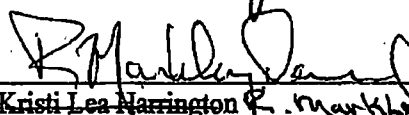
An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The 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). The Applicant was convicted of the offenses he challenges in this Application on June 3, 2009. Therefore, Applicant was required to file his application before June 4, 2010. This Application was filed on December 11, 2012, which was well past the expiration of the statutory filing period.

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

This Court hereby notifies 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 Rule 203, SCACR. The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 15th day of May, 2015.


 Kristi Lea Harrington
 Presiding Judge¹
 Ninth Judicial Circuit

Moncks Corner South Carolina.

1 The Honorable R. Markley Dennis, Jr. presided over Applicant's first PCR evidentiary hearing.

rm08/3

FWR20080905813

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008024862

ARREST WARRANT NUMBER

1102589

DATE OF ARREST

September 25, 2008

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date: JAN 07 2009

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS1000031

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

January Term 2009

THE STATE

vs.

DION ORLANDO TAYLOR

DOB: [REDACTED]

B/M

08 5987 (01)

Indictment for

Criminal Domestic Violence, 2nd or
Subsequent Offense2009 JAN -9 PM 2:44
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

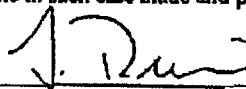
INDICTMENT

At a Court of General Sessions, convened on January 5, 2009 the Grand Jurors of Charleston County present upon their oath:

Criminal Domestic Violence, 2nd or Subsequent Offense

That in Charleston County, South Carolina, on or about June 2, 2008, the Defendant, DION ORLANDO TAYLOR, did cause physical harm or offer or attempt to cause physical harm to Zevon Denmark, a family or household member, with apparent present ability under circumstances reasonably creating fear of imminent peril; said Defendant having being convicted of Criminal Domestic Violence on at least 2 prior occasions. This is in violation of Section Code 16-25-20 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



TRIP RIESEN
ASSISTANT SOLICITOR

FWR20080905824

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008042931

ARREST WARRANT NUMBER

K351324

DATE OF ARREST

September 24, 2008

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date:

JAN 07 2009

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS1000030

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

January Term 2009

THE STATE

vs.

DION ORLANDO TAYLOR

DOB: [REDACTED]
B/M

08 5975 (01)

Indictment for
Armed Robbery

FILED

2009 JAN -9 PM 2:44

JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

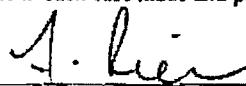
INDICTMENT

At a Court of General Sessions, convened on January 5, 2009 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about September 24, 2008, in Charleston County, South Carolina, the Defendant, DION ORLANDO TAYLOR, while at [REDACTED] Rivers Avenue, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Inoma Rollerson with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



TRIP RIESEN
ASSISTANT SOLICITOR