

Exhibit (A)

STATE OF SOUTH CAROLINA

County of Anderson

In the Court of Common Pleas

Darnell Hudson #227328

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

vs.

State of South Carolina

Name of Respondent.

2003-CF-04-3394

APPLICATION FOR
POST-CONVICTION RELIEF

A TRUE COPY
28 2003

Caryn M. Phillips
CLERK OF COURT

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention Evans Corr Inst F5-B185

610 Hwy 9 West, Bennettsville SC 29512

2. Name and location of Court which imposed sentence Anderson County Court of General Sessions, 100 South Main Street, Anderson, SC 29624

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

- (a) 01-GS-04-1621(Armed Robbery); 01-GS-04-367(Kidnapping); 01-GS-04-
(b) 365(Kidnapping); 01-GS-04-368(Kidnapping); 01-GS-04-366(Kidnapping);
(c) 01-GS-04-369(Kidnapping); 01-GS-04-370(Kidnapping); 01-GS-04-371

4. The date upon which sentence was imposed and the terms of the sentence:

(a) Applicant sentenced to life imprisonment on 8/9/01 for each offense

(b) _____

(c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty Yes

(c) after a plea of nolo contendere _____

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

Yes

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

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

i. The South Carolina Court of Appeals

ii. _____

iii. _____

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

i. Conviction AFFIRMED

ii. _____

iii. _____

(c) the date of each such result:

i. Filed March 17, 2003

ii. _____

iii. _____

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

i. Opinion No. 3615

ii. _____

iii. _____

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

(a) N/A

(b) _____

(c) _____

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

(a) Ineffective assistance of counsel at trial and sentencing

(b) Ineffective assistance of appellate counsel

(c) _____

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

(a) See Strickland v Washington, 466 US 668, 104 S Ct 2052 (1984)

(b) See Evitts v Lucey, 469 US 387, 105 S Ct 830 (1985)

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? No

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No

(d) any other petitions, motions or applications in this or any other Court?
No

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

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) PCR is proper avenue for presenting these claims

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

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

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

i. Dorothy Manigault

P.O. Box 3921 Greenville, SC 29602

ii. Wanda H. Haile

1122 Lady Street, Suite 940 Columbia, SC 29201-3243

iii. _____

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

i. Trial and sentencing

ii. Direct Appeal

iii. _____

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

Reverse conviction and remand for trial and sentencing that

comports with the Constitution and laws of this State and the US

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

No

STATE OF SOUTH CAROLINA

County of Anderson

VERIFICATION

I, Darnell Hudson #227328, 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.

Darnell Hudson 227328

SWORN to and subscribed before me this 24th

day of Oct

10/2003

[Signature] (L.S.)
Notary Public

My Commission Expires: 08-06-2009

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

I, Darnell Hudson #227328, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Darnell Hudson 227328
Applicant

SWORN or affirmed to and subscribed before me this

24th day of Oct 2003

[Signature]
Notary Public

My Commission Expires 08-06-2009

2003 OCT 28 P 12:27

October 22, 2003

Clerk of Court, Anderson County
The Honorable Linda J. Deshields
100 South Main Street
Anderson, South Carolina 29624

RE: Application for PCR

Dear Clerk of the Court,

Enclosed please find my Application for PCR for filing by your office.

Upon your filing of this application, would you please be so kind as to return a "clock - stamped" copy to me and also forward a copy of the same to all parties necessary.

I extend my full gratitude in advance for your time and assistance, as I eagerly await your reply.

Yours Very Truly,

Darnell Hudson #227328

Darnell Hudson #227328
Evans Corr Inst F5-B185
610 Hwy 9 West
Bennettsville, SC 29512

Sworn to and subscribed before me

this 2nd day of Oct 2003

[Signature]
(Notary Public of South Carolina)

My Commission Expires 08-06-2009

2003 OCT 28 P 12:27

STATE OF SOUTH CAROLINA)

County of ANDERSON)

IN THE COURT OF COMMON PLEAS

AMENDED APPLICATION FOR RELIEF
CLERK OF COURTDARNELL HUDSON, #227328
Full name and prison number (if any) of Applicant)

NUMBER: 2003-CP-04-3394:

FILED ON: OCT. 29th, 2003:

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B 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 EVANS CORRECTIONAL INSTITUTION
610 HWY. 9 WEST; BENNETTSVILLE, SOUTH CAROLINA 29512
2. Name and location of Court which imposed sentence ANDERSON COUNTY COURT OF
GENERAL SESSIONS; 100 SOUTH MAIN STREET; ANDERSON, S.C. 29624
3. Name(s) of co-defendant(s) (if any) RODERICK SLOAN
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2001-GS-04-365; 366; 367; 368; 369; 370, and 371 (KIDNAPPING)

(b) and 2001-GS-04-1621 (ARMED ROBBERY)

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) AUGUST 9th, 2001 (LIFE SENTENCE) imposed on each offense

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty 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 Ayes@ to (7), list:

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

i. THE SOUTH CAROLINA COURT OF APPEALS

ii. _____

iii. _____

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

i. CONVICTION AFFIRMED

ii. _____

iii. _____

(c) the date of each such result:

i. FILED; MARCH 17th, 2003

ii. _____

iii. _____

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

i. OPINION NUMBER 3615

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (b) SUBJECT MATTER JURISDICTION VIOLATION
- (c) SECTION 17-25-50 VIOLATION-& PROSECUTORIAL MISCONDUCT
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) (SEE) INITIAL BRIEF OF APPLICANT; for all (GROUNDS)
- (b) (SEE) INITIAL BRIEF
- (c) (SEE) INITIAL BRIEF
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____

- iv. _____
- (c) the disposition thereof:
- i. N/A _____
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. N/A _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A _____
- ii. _____
- iii. _____
- iv. _____

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?
 (NO) FIRST CHALLENGE (PCR PROPER AVENUE) for presentation _____

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:

- i. N/A _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A _____
- ii. _____
- iii. _____

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) (ALL GROUNDS) (FIRST-TIME CHALLENGE)
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
- (b) your trial, if any? (YES)
- (c) your sentencing? (YES)
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? (YES)
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? (NO)
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. DOROTHY MANIGAULT
P.O. BOX 3921 GREENVILLE, SOUTH CAROLINA 29602
- ii. WANDA H. HAILE
1122 LADY STREET, SUITE 940, COLUMBIA, S.C. 29201-3243
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL and SENTENCING
- ii. DIRECT APPEAL
- iii. _____

19. State clearly the relief you seek in filing this application:
CONVICTION and SENTENCES VACATED; or NEW TRIAL GRANTED
SENTENCING TO COMPORT with the U.S. CONSTITUTION
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 ANDERSON) VERIFICATION

I, DARNELL HUDSON, # 227328, 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.

SWORN to and subscribed before me this _____ day of _____, 2004.

Notary Public (L.S.)

My Commission Expires: _____

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

I, DARNELL HUDSON, #227328, 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.

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, 2004.

Notary Public

My Commission Expires: _____

RECEIVED MAY 11 P. 2:59

337
STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
CASE NO'S. 2001-GS-04-365;366;
367;368;369;370;371;and 1621:

DARNELL HUDSON, #227328;

APPLICANT;

VS.

STATE OF SOUTH CAROLINA;

RESPONDENTS.

C/A NO: 2003-CP-04-3394; AMENDED:

INITIAL BRIEF OF APPLICANT:

SUBMITTED, THIS _____ DAY OF _____, 2004.

2004 MAY 11 P 2:59

RESPECTFULLY SUBMITTED BY;

DARNELL HUDSON, #227328:

E.C.I. F2-B-214

610 HWY. 9 WEST

BENNETTSVILLE, SOUTH CAROLINA 29512

	<u>PAGES:</u>
TABLE OF CONTENTS:	2
TABLE OF AUTHORITIES;	3A-3D
ISSUES PRESENTED:	4
STATEMENT OF THE CASE:	5
ARGUMENT:ISSUE A:	6-9
ISSUE B:	10
ISSUE C:	11
ISSUE D:	12-15
ISSUE E:	16-19
ISSUE F:	20-23
ISSUE G:	24-25
ISSUE H:	26-27
ISSUE I:	28
CONCLUSION:	29
MOTION TO ADDRESS ALL ISSUES:	30
CERTIFICATE OF SERVICE:	31

JUN 11 P 2:59

TABLE OF AUTHORITIES: (

<u>CASES:</u>	<u>PAGES:</u>
Adams V. U.S.; 63 S. Ct. at 236	19
Bearden V. S.C.; 443 F. 2d 1090 (4th Cir. 1971)	18
Brown V. State; 540 S.E. 2d 846 (2001)	6
Butler V. State; 334 S.E. 2d 813 (1985)	19
Cruz V. U.S.; 247 F. Supp. 835 (D SC 1965)	18
Dusky V. U.S.; 362 U.S. 402 (1960)	18
Engle V. Issac; 102 S.Ct. at 1558	19
Evitts V. Lucey; 469 U.S. 387 (1985)	19
Faretta V. California; 95 S. Ct. at 2531	19
Fay V. Noia; 372 U.S. at 391	19
Fewell V. State; 225 S.E. 2d 853 (1976)	7
Gallman V. State; 414 S.E. 2d 780 (1992)	25
Granger V. State; 507 S.E. 2d 322 (1998)	11
Hooks V. State; 577 S.E. 2d 211 (2003)	6
Jackson V. State; 495 S.E. 2d 768 (1998)	25
Jackson V. Virginia; 443 U.S. 307 (1979)	10 215
Minnesota V. Olson; 110 S.Ct. at 168 (1990)	25
Mooney V. Holohan; 555 S.Ct. 340 (1935)	7
Oregon V. Kennedy; 102 S.Ct. 2083 (1982)	11
Ray V. State; 498 S.E. 2d 640 (1998)	14
Rogers V. State; 199 S.E. 2d 761 (1973)	18
Sanders V. S.C.; 296 F. Supp. (D SC 1969)	18
Sandstrom V. Montana; 442 U.S. 513 (1979)	26
Sikes V. State; 448 S.E. 2d 560 (1994)	18
Simmons V. State; 503 S.E. 2d 166-67 (1998)	26
Slack V. State; 429 S.E. 2d 801 (1993)	11
State V. Anthony; 817 SW 2d 299, 305 (Tenn. 1991)	10
State V. Austin; 409 S.E. 2d 84 (S.Ct.App. 1991)	25

MAY 11 P 2:59

(P.3A)

<u>CASES:</u>	<u>PAGES:</u>
State V. Beachum;342 S.E. 2d 597 (1986)	6
State V. Bennitt;182 S.E. 2d 8 (1976)	25
State V. Berntsen;367 S.E. 2d 152,153 n.1 (1988)	8
State V. Benjamin;579 S.E. 2d 289 (2003)	28
State V. Brisbon;447 S.E. 2d 443 (1996)	26
State V. Broome;232 S.E. 2d 324 (1977)	22
State V. Brown;88 S.E. 21 (1916)	15
State V. Brown;227 S.E. 2d 674,677 (1976)	15
State V. Chandler;226 S.E. 2d 553 (1976)	25
State V. Copeland,spura.	22
State V. Cowart;162 S.E. 2d 535 (1968)	18
State V. Davis;422 S.E. 2d 133 (1992)	14
State V. Dildine;410 S.E. 2d 597 (S.C.App. 1991)	14
State V. Edwards;379 S.E. 2d 888 (1989)	15
State V. Fulcher;243 S.E. 2d 338 (1978)	8
State V. Funderburk;191 S.E. 2d 520 (1972)	6
State V. Gamble;272 S.E. 2d 796 (1980)	11
State V. Goolsby;268 S.E. 2d 31 (1980)	22
State V. Gordon;No. 25737(S.C.Sup.Ct.filed Oct. 20,2003)	28
State V. Hall;310 S.E. 2d 429 (1983)	15
State V. Jefferies;446 S.E. 2d 427 (1994)	14
State V. Lynch;545 S.E. 2d 511 (2001)	6
State V. Johnson;552 S.E. 2d at 339	7
State V. Jones;259 S.E. 2d 120 (2001)	23
State V. Kornahrens;350 S.E. 2d 180 (1986)	14
State V. McHoney;544 S.E. 2d 30 (2001)	10
State V. Motes,spura.	22
State V. Mouzon;485 S.E. 2d 918 (1997)	15
State V. Owens;352 S.E. 2d 474 (1987)	8

TABLE OF AUTHORITIES: CONTINUE

CASES:PAGES:

State V. Peake;362 S.E. 2d 396 (1989)	22
State V. Posey;238 S.E. 2d 176-77 (1977)	26
State V. Pressley;147 S.E. 2d 33 (1966)	22
State V. Quattlebaum;527 S.E. 2d 105 (2000)	26
State V. Rabon;272 S.E. 2d 634 (1980)	22
State V. Smalls'519 S.E. 2d 793 (1999)	6
State V. Stewart;272 S.E. 2d 628 (1980)	28
State V. Tucker;512 S.E. 2d 99 (1999)	15
U.S. V. Fisher;477 F. 2d 300 (4th Cir. 1973)	18
U.S. V. Gordon;61 F. 3d 263,267 (4th Cir. 1995)	26
U.S. V. Hill;310 F. 2d 601 (1962)	18
State V. Varner;423 S.E. 2d 133 (1992)	14
State V. Williams;331 S.E. 2d at 354	25
State V. Williams;485 S.E. 2d 92 (1997)	25
State V. Wood;545 S.E. 2d 521 (S.C.App. 2001)	28
Strickland V. Washington;466 U.S. 668 (1984)	PASSIU
Wong Sun V. U.S.;371 U.S. 471 (1963)	25

RULES AND STATUTES:

Crim.Law,Keys 105;641.12(1);700(1)
S.C.Code Ann.,Sects. 17-19-10;17-19-100
S.C.Code Ann.,Sects. 16-3-910;16-3-20
S.C.Code Ann.,Sects. 19-1-80;19-1-85;19-1-90
S.C.Code Ann.,Sects. 17-25-45;17-25-50
Crim.Law,Sect. 825
App.Ct. Rule 407
Sup.Ct. Rule 23
R.Prof. Conduct 3.8
S.C.R.Crim.Pro.,Rules 5(e)(1);5(f)

████████████████████

(7.30)

101 MAY 11 P 2 59

OTHER AUTHORITIES: CONTINUED:

Const. Law, Key 254(2.3)

Model Penal Code, Sect. 212.1(2001)

CONSTITUTIONAL ISSUES:

S.C. Const. Art. 1, Sects. 3 & 14

S.C. Const. Art. 1, Sect. 11

S.C. Const. Art. 9

U.S. Const. Amends. 4-5-6-& 14

MAY 11 P 2:59

(R3D)

ISSUES PRESENTED:

- ISSUE A: Did the trial Court lack subject matter jurisdiction to enter conviction and impose sentences upon indictments 2001-GS-04-365 through 371 for kidnapping?
- ISSUE B: Did the trial Court have subject matter jurisdiction on the indictment for Richard Ausburn for kidnapping?
- ISSUE C: Did the State's Amendment to the indictment divest the Court of subject matter jurisdiction?
- ISSUE D: Did the trial Court interfere with counsel's ability to represent her client by denying her Motion for Directed Verdict?
- ISSUE E: Was defense counsel ineffective in failing to prepare for the trial?
- ISSUE F: Did the trial Court error in not excluding the Applicant's alleged statement from the trial of this case?
- ISSUE G: Was the evidence entered into the trial obtained in violation of the 4th Amendment?
- ISSUE H: Was defense counsel ineffective in failing to object to the prosecutor's pitting of witnesses and vouching for State's witnesses in his closing to the jury?
- ISSUE I: Was S.C. Code Ann., Section 17-25-50 violated in the sentencing phase of the trial?

12/11/11 11:25

Applicant Darnell Hudson was convicted of armed robbery and seven counts of kidnapping during the August, 2001 term of the Anderson County General Sessions Court before the Honorable John W. Kittredge, Judge, and a jury. He was represented by Ms. Dorothy Manigault, Esq. The jury found Applicant guilty as charged. Judge Kittredge sentenced applicant to life without parole pursuant to S.C. Code, Section 17-25-45.

A timely Notice Of Appeal was filed, and the Appeal was then prefected by Ms. Wanda H. Haile of the Columbia Appellate Defense Office. The South Carolina Court of Appeals Affirmed the conviction on March 17th, 2003. (Op. No. 3615).

Applicant filed an Application for Post-Conviction Relief on October 24th, 2003; which was stamp filed by the Clerk of Court for Anderson County on October 29th, 2003. (Number: 2003-CP-04-3394).

This Amended Application, with an Initial Brief of Applicant, and Certificate of Service now follows.

11 P. 3:00

ISSUE A: ARGUMENT:

ISSUE A: Did the trial Court lack subject matter jurisdiction to enter conviction and impose sentences upon indictments 2001-GS-04-365 through 371 for kidnapping?

Lack of subject matter jurisdiction may be raised at any time. Brown V. State; 343 S.C. 342, 540 S.E. 2d 846 (2001); Crim. Law, Key 105; State V. Funderburk; 259 S.C. 256, 191 S.E. 2d 520 (1972).

The appropriate analysis for determining whether an indictment deprives the trial Court of subject matter jurisdiction is whether the nature of the offense charged was changed by a defective indictment, not whether it surprised or prejudiced the defendant. The material change modifies what the defendant is called upon to answer. State V. Lynch; 344 S.C. 635, 545 S.E. 2d 511 (2001). Moreover, lack of subject matter jurisdiction cannot be waived, even by the consent of the parties. Hooks V. State; 353 S.C. 48, 577 S.E. 2d 211 (2003). Without a proper indictment, the circuit court lacks jurisdiction to enter a conviction or impose a sentence for a crime. S.C. Code Ann., Section 17-19-10, S.C. Const. Art. 1, Sect. 11). An indictment is proper only if it is sufficient in charging the elements of the offense, is returned true-billed by the grand jury, or presentment is waived. State V. Beachum; 288 S.C. 325, 342 S.E. 2d 597 (1986). An indictment is sufficient in the charge; only if it contains all of the necessary elements of the offense, and gives notice of what a defendant must be prepared to meet. State V. Smalls; 336 S.C. 301, 519 S.E. 2d 793 (1999). Hence, if the indictment fails to allege the necessary elements of the offense charged, the indictment is not sufficient, or if the proof at trial is in fatal variance with the elements alleged in the indictment's body, then it fails to be

sufficient and the court lacks authority to enter a conviction or impose sentence. Beachum, supra.

Now, let us review the factual basis presented by the State at trial in this case.

The testimonies of the victim's clearly show the Applicant was not guilty of kidnapping or initiating it. Testimonies as follows. (Arron Richard Mathis); Tr. p. 129, line 23-p. 134, line 1; p. 137, lines 9-24); (Tony Ann Pilgrim); Tr. p. 145, lines 16-23); (Kenny Lee Cannon); Tr. p. 148, line 14-p. 149, line 1; p. 152, lines 20-25); (Richard Keith Williamson); Tr. p. 154, line 25-p. 155, line 3; p. 156, lines 13-21; p. 157, lines 12-21); (Vickie Susan McMahan); Tr. p. 161, line 22-162, line 1); (Leslie Theresa Banda); Tr. p. 166, lines 3-6). "All" the victims testified to one major factor at trial. *(The co-defendant with the knife; (Roderick D. Sloan), ordered them to lay down on the floor until they were gone, and that he was the person who escorted Mathis to Cannon's Office, and then brought the two men back and ordered them to lay on the floor with the other victims.)* The Applicant (Hudson) was certainly not guilty of kidnapping by the State's own proof at trial. Thus, there is a fatal variance between the proof at trial and the elements alleged in the indictment's body and face. State V. Johnson; 347 S.C. 67, 552 S.E. 2d 339); Fewell V. State; 267 S.C. 17, 225 S.E. 2d 853 (1976).

This was a deliberate deception of the jury by the prosecution as to the evidence actually presented by the State. Mooney V. Holohan; 555 S. Ct. 340 (1935).

Now, let us review the elements alleged in the indictments for kidnapping. (Article 9); and S.C. Code Ann., Sect. 16-3-910 (Kidnapping), Provides; **

Whoever shall unlawfully seize,confine,inveigle,kidnap,adduct,or carry away any other person by any means whatsoever without authority of law is guilty of a felony,and upon conviction may be sentenced not to exceed thirty(30)years unless sentenced for murder as provided in Section 16-3-20).**

The word,*Kidnap* means,"to remove or steal a person against his will by unlawful force.

The word,*Abduction* means,"to carry off surreptitiously or by force for an illegal purpose. The victim's own testimonies at trial clearly show that neither occurred in this case.

The victims remained in their work environment and were never removed from their work surroundings. They were not ask or taken outside or to a different location. Thus,the incident a K.F.C. was part of the crime of armed robbery,and was not separate and distinct offenses,but one single transaction occurring during the same point and time,as one action. Intent to commit another crime after the first crime is committed must be shown as a separate and completely independent act apart from the first crime. *Any restrain or limited movement of the victims is only incidental to the crime of armed robbery itself.* Otherwise,any armed robbery as well as many other crimes would also constitute kidnapping,as the victim's freedom of movement is momentarily suspended in time. State V. Fulcher;294 N.C. 503,243 S.E. 2d 338 (1978).

SEE:Tr. p. 22,line 23-p. 23,line 23). South Carolina's kidnapping Statute requires proof of an unlaw act taking one of several alternative forms,including seizure,confinement,inveiglement, decoy,kidnapping,abduction,or carrying away. None of these were proved at trial of this case by the State. State V. Owens;291 S.C. 116,352 S.E. 2d 474 (1987);State V. Berntsen;295 S.C. 52,54

n. 1,367 S.E. 2d 152,153 n. 1 (1988)(Common Law). Citing;State V. Anthony;817 S.W. 2d 299,305 (Tenn. 1991),(citing to at least fifteen State's Appellate Court decisions on this issue and statingthat *(by)* an overwhelming margin,the majority view in other jurisdictions is that kidnapping Statutes do not apply to unlawful confinements or movements incidental to the commission of other crimes.)** SEE: Model Penal Code,Sect. 212.1(2001); (requiring movement over a substantial distance or confinement for a susstantial period of time). It is clear,that these finding and decisions should apply in the Applicant's case as binding precedents of law and the U.S. Constitution.

For these legal principles and case facts the Applicant's convictions and sentences for kidnapping should be vacated,or at the least,reversed and remanded for a New Trial.

ARGUMENT: ENDED:

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ISSUE B: ARGUMENT:

ISSUE B: Did the trial Court have subject matter jurisdiction on the indictment for Richard Ausburn for kidnapping?

At the close of the State's case, the defense moved for a directed verdict on the State's indictment alleging that the Applicant kidnapped (victim) Richard Ausburn because Ausburn did not appear to testify at trial. Tr.p. 229, line 23-p. 230, line 3;p. 279, line 9-p. 280, line 2). After the verdict was reached, defense moved to set aside all verdicts and move for a new trial, particularly the verdict on the kidnappings. Tr. p. 324, lines 9-24). The Court denied both Motions and this was error, especially as to the indictment of Richard Ausburn. It was a violation of the due process clause of the 14th Amend. U.S.C.A. Const.; S.C. Const. Art. 1, Sect. 3).

As a rule, a defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State V. McHoney; 344 S.C. 85, 544 S.E. 2d 30 (2001).

First, we must note that the victim was not present at trial, which violated the Fair-Cross Section as counsel could not cross-examine the witness as to his alleged kidnapping. It does also violate the Applicant's rights to the Confrontation, as to the right to face one's accusers, as well as his right to an adversarial testing of the State's case against him. U.S.C.A. Const. Amend. 6. The Court erred in not granting counsel's motion for a directed verdict on the indictment set forth for the victim Richard Ausburn. Jackson V. Virginia; 443 U.S. 307 (1979). Thus, the Court did not have subject matter jurisdiction to enter a conviction or impose a sentence upon this indictment. State V. McHoney; 344 S.C. 85, 544 S.E. 2d 30 (2001).

ARGUMENT: ENDED:

(P. 10)

ISSUE C: Did the State's Amendment to the indictment divest the
Court of subject matter jurisdiction?

The prosecutor moved to Amend the indictments Caption to read Darnell East Hudson from Darnell East.

The Court stated, "All right. The Amendment for the "Caption" of the indictment, not the substance of the indictment, will be Amended to reflect this additional name. Tr.p. 20, lines 8-19); the Court on lines 17-19).

This Amendment was upon indictment number 2001-GS-04-1621 for armed robbery. The indictment is defective upon its face, because the indictment alleged in the section "ACTION OF GRAND JURY" and "COURT OF GENERAL SESSIONS", its dated June 12, 2001, thus, in Volume 1 Tr. p. 7, the date August 7th, 2001 appears to be the date upon which the Honorable Judge Kittredge allowed the Solicitor (David Wagner) the right to Amend the indictment's ^{new} Caption, not its substance. A review of the indictment clearly shows that the substance was also Amended against the Judge's ruling. This Amendment broadened the indictment's basis by the STATE GRAND JURY, causing a construction Amendment of the indictment. Oregon V. Kennedy; 102 S.Ct. 2083 (1982); Slack V. State; 429 S.E. 2d 801 (1993); State V. Gamble; 272 S.E. 2d 796 (1980). Thus, the trial Court lacked subject matter jurisdiction to enter a conviction or to impose a sentence upon indictment (1621). An indictment may be Amended at trial only if the Amendment does not change the nature of the offense charged. Granger V. State; 333 S.C. 2, 507 S.E. 2d 322 (1998); S.C. Code Ann., Sect. 17-19-100).

The conviction and sentenced upon (1621) should be vacated.

ARGUMENT: ENDED:

ISSUE D: ARGUMENT:ISSUE D: Did the trial Court interfere with counsel's ability to represent her client by denying her Motion for Directed Verdict?

We must review the actual facts in regards to this Issue at hand.

First, all the victim's testified that the co-defendant; the taller black man with the knife (Roderick D. Sloan), was the person who took an employee to (Cannon's Office), then brought them back, and ordered everybody to lay upon the floor until they were gone. SEE: Tr. p. 129, line 23-p. 134, line 1; p. 137, lines 9-24; p. 145, lines 16-23; p. 148, line 14-p. 149, line 1; p. 152, lines 20-25; p. 154, line 25-p. 155, line 3; p. 156, lines 13-21; p. 157, lines 12-21; p. 161, line 22-p. 162, line 1; p. 166, lines 3-6).

Second; the victim's descriptions of the Applicant (Hudson) were very different. SEE: Tr. p. 137, lines 9-12; p. 143, line 10-p. 144, line 25; p. 149, line 22-p. 150, line 2; p. 155, lines 6-19; p. 157, lines 8-11; p. 160, lines 8-14; p. 161, lines 11-18; p. 165, lines 10-19; p. 166, lines 7-21; p. 166, line 24-p. 167, line 1).

Third, none of the victim's were ever shown a line-up of the Applicant. SEE: Tr. p. 138, lines 21-24; p. 143, lines 7-9 & 22-25; p. 144, lines 22-25; p. 157, lines 1-7; p. 161, lines 19-21).

Fourth; one victim testified that the Applicant had a tattoo on the back of his neck and a teardrop below the eye. (The two main questions of concern here, are: #1, Which eye was the teardrop supposed to be under, and #2, Why did none of the other victim's notice these very distinguishing body marks?)

Fifth; Officer Reeves admitted that he did not do a lineup in this case, and that Officer Coyle did the composite in the case. SEE: Tr. p. 213, lines 10-21). Officer Coyle testified that he did (P. 12)

do composite descriptions of the suspects in this case, but he was not sure that it was ever used in the investigation. SEE: Tr. p. 225, lines 9-22).

Sixth; Officer Coyle testified that no fingerprints were taken and that he did not dust for any prints. He further testified that there was no video tape of the incident; as the store cameras were not operational when the incident occurred. SEE: Tr. p. 221, lines 2-21.)

Seventh; Officer Steven J. Reeves failed to testify or report that he had been given a description of the crime vehicle as a four-door Bronze or Cooper colored vehicle, possibly a Bonneville by, and that the Chevy Lumina had black letters across the truck of the vehicle. (Two completely different descriptions given to him by the victims). SEE: Tr. p. 208, line 18-p. 209, line 2). He also failed to testify or mentioned that nothing in his crime report stated anything about a red stocking cap, but a grayish snow cap described by one of the victims). (Again; two completely different descriptions by the victims; one in the report, and one at the trial of this case.) SEE: Tr. p. 210, line 2-p. 211, line 12.)

Eighth; and most vital is the fact; that the Applicant's cousin (Nicole Hudson); his grandmother (Sharon Yvette Gilbert), and Ms. Margaret Dora Fairfax testified to an (Alibi defense) stating that the Applicant was at home with them and could not have committed the offense charged against him. SEE: Tr. p. 257, line 6-p. 258, line 15; p. 258, line 22-p. 259, line 2; p. 260, lines 7-10; p. 261, lines 3-5; p. 261, line 19-p. 262, line 2; p. 263, line 3-p. 264, line 4; p. 265, lines 7-25; p. 266, line 9-p. 267, line 24; p. 268, lines 11-16; p. 269, line 13-p. 270, line 7; p. 271, line 3-p. 272, line 16; p. 273, lines 1-18; p. 274, lines 8-24, and p. 275, line 22-p. 276, line 2.)

At the close of the case, the defense moved for directed verdicts on the kidnapping charges on the ground that applicant and company did not confine or detain the employees. Defense counsel reasoned that in the instant case there was not two distinct offenses or actions; rather, the armed robbery was the only offense committed sans any other separate and distinct offenses, i.e. the kidnappings in question. The State prosecutor even admitted the alleged offenses occurred at the same point and time. SEE: Tr.p. 22, line 23-p. 23, line 23). The Court denied the motions on the ground that the perpetrators ordered the employees to move into specific areas during the robbery and that kidnapping is a continuing offense. The defense argued that the employees were at their work environment where they were supposed to be and were not detained or confined. Tr.p. 229, line 23-p. 231, line 9; p. 238, lines 1-7; p. 240, line 17-p. 241, line 20; p. 247, line 22-p. 253, line 3). The Court denied the motions at the close of the testimony in the case. Tr.p. 243, lines 2-4; p. 279, line 9-p. 280, line 2.) Counsel was right in her assumption and the Court erred in its ruling on the motions.

The testimony of the employees as it relates to the kidnapping charges established that applicant and company did not confine them.

Mens rea required for the crime of kidnapping is "knowledge" that the crime is to be committed, which is not present in this instant case. State v. Kornahrens; 290 S.C. 281, 350 S.E. 2d 180 (1986); State v. Varner; 310 S.C. 264, 423 S.E. 2d 133 (1992); State v. Dildine; 306 S.C. 198, 410 S.E. 2d 597 (S.C. App. 1991); State v. Davis; 309 S.C. 326, 422 S.E. 2d 133 (1992); State v. Jefferies; 316 S.C. 13, 446 S.E. 2d 427 (1994); Ray v. State; 330 S.C. 184, 498

S.E. 2d 640 (1998). As a rule, even though kidnapping is a continuing offense; nonetheless, two or more criminal offenses arising out of a single act must be distinct offenses, which is not the case here. State V. Hall; 280 S.C. 74, 310 S.E. 2d 429 (1983); State V. Tucker; 334 S.C. 1, 512 S.E. 2d 99 (1999). A person is entitled to a directed verdict when the State fails to provide sufficient evidence of the offense charged. State V. Brown; 103 S.C. 437, 88 S.E. 2d 21 (1916); State V. Brown; 267 S.C. 311, 316, 227 S.E. 2d 674, 677 (1976); State V. Edwards; 298 S.C. 272, 379 S.E. 2d 888 (1989), 493 U.S. at 895; State V. Mouzon; 326 S.C. 199, 485 S.E. 2d 918 (1997); Jackson V. Virginia; 443 U.S. 307, 316, 99 S. Ct. 2781, 2787 (1979); U.S. Const. Amend. 14, & S.C. Const. Art. 1, Sects. 3 & 14).

The trial Court erred in denying defense counsel's motion for directed verdict on the kidnapping offenses. In doing so, the Court violated the applicant's rights to effective assistance of counsel when it interfered in this certain way with the ability of counsel to make and pursue independent decisions about how to conduct defense. U.S. Const. Amend. 6; Crim. Law, Key 641-12(1)

ARGUMENT: ENDED:

1 P 3:00

ISSUE E: ARGUMENT:ISSUE E: Was defense counsel ineffective in failing to prepare for the trial?

On August 7th, 2001 of the Pre-Trial Motions in this case the defense counsel moved for a Continuance based upon not being prepared to go to trial, and not being retained for the trial of this case. Tr.p. 7, line 11-p. 8, line 1). Counsel stated that she had received a list of witnesses on July 30th, 2001 from the Applicant's family. She further stated, that she had not went to interview these witnesses prior to trial, and that she was scheduled to represent a murder case in Greenville General Sessions on the August 13th, 2001; clearly showing that counsel's train of thoughts were upon the murder case, not the Applicant's case which was going to trial before the murder case. The Applicant's case had been on the docket for trial for several terms of Court, and counsel had not even attempted to prepare for a trial. Tr.p. 8, line 2-p. 9, line 6). Counsel had received all the discovery material from the State long before the trial of this case, and although, the case had been on the docket over and over, counsel by her own omission had done absolutely nothing to prepare for a trial, other than to review the material provided her by the State. Counsel had done no pre-trial investigation, and had not interviewed the witnesses necessary for the Alibi defense at trial. Tr.p. 9, line 7-p. 10, line 1; p. 16, lines 1-15; p. 17, lines 1-19). Counsel stated that she had only been retained for a probation violation of a Y.O.A. parole in December 2000, and for that case only. Counsel had known of the State's intent to seek life without parole since May 3rd, 2001, and still had not prepared for trial or advised Applicant to retain different counsel or court appointed counsel; which is clearly ~~fact~~ ^{FACT} of counsel in

this case, not the applicant. Counsel could have made a motion to remove herself as counsel in this case prior to trial, but instead ask that the Court allow her to apply for indigent funds after trial of the case. The case records do not indicate whether or not the Court allowed her to do so. Tr.p. 10, line 2-p. 13, line 17.) The Court denied the motion for Continuance stating; "I further note that the inability or unavailability of these witnesses is solely the result of defendant and his lack of effort to prepare the case." Tr.p. 17, line 20-p. 18, line 22; and p.p. 17, line 24-p. 18, line 1.) The Court further stated, "There is a complete absence of any diligence on the part of the defendant in this case." Tr.p. 18, lines 4-5.) This ruling is most certainly in error. It is the duty of counsel to interview and obtain the witnesses for a defense at trial, and it was solely counsel's lack of effort to prepare the case, and counsel's like of diligence in this case; as clearly shown by the case records. Counsel did not even try to subpoena (Mr. Gilbert) an Alibi witness who lived in North Carolina even tho the Court offered to assist in issuing subpoenas. Tr.p. 17, lines 20-23; p. 19, lines 10-14.) Counsel stated, "I don't even have a jury list, Your Honor." Tr.p. 19, lines 4-16).

The applicant stated; that he was not prepared for trial as he had not had time to even talk to his attorney in person and since counsel had not been retained to represent him at trial. Tr. p. 13, line 18; p. 17, line 19.) The purpose for counsel is to protect an accused from conviction resulting from his/her own ignorance of his legal and constitutional rights, which is the necessary requisite of due process of law, as well as equal protection of law. U.S. Const. Amends. 5 and 14, Const. Law, Key 254(2.3); U.S.

(B/7)

Const. Amend. 6). A defendant is entitled to effective assistance of counsel at any crucial and critical stages of the proceedings against him, and what could be more crucial and critical than the trial itself. Therefore, an abridgement of the 6th Amendment occurred, as well as a substantial prejudice to the cause of the accused in this case and he is entitled to Relief therefrom. Cruz V. U.S.; 247 F. Supp. 835 (D SC 1965); U.S. V. Hill; 310 F. 2d 601 (1962); State V. Cowart; 251 S.C. 360, 162 S.E. 2d 535 (1968); Rogers V. State; 261 S.C. 288, 199 S.E. 2d 761 (1973); Bearden V. S.C.; 443 F. 2d 1090 (4th Cir. 1971); Sanders V. S.C.; 296 F. Supp. (D SC 1969). Applicant's counsel failed to file Request For Alibi Defense pursuant to S.C.R.Crim.Pro.Rule 5(e)(1), and 5(f). Counsel failed to prepare for trial, failed to conduct an adequate and appropriate legal and factual investigation, failed to communicate with her client, failed to bring forth a meaningful adversarial challenge to the State's case, and failed to file a Motion To Quash defective indictments. Sikes V. State; 448 S.E. 2d 560 (1994). Counsel failed to request a competency hearing, which is undisputably ineffective assistance. Dusky V. U.S.; 362 U.S. 402 (1960); U.S. V. Fisher; 477 F. 2d 300 (4th Cir. 1973). Counsel failed to object to prejudicial comments by prosecutor in his closing argument to the jury, and failed to object or to suppress evidence allowed into trial in violation of the 4th Amendment, or to suppress the statement allowed into evidence, and these last three(3) factors will be shown in further Argument of the Constitutional Issues involved in this case, and cited in this Initial Brief thereof.

The trial Court erred in failing to grant counsel's Motion for Continuance, as the 6th Amendment clearly provides; "that counsel cannot be forced upon a defendant.

Faretta V. California;95 S.Ct. at 2531;Adams V. U.S.;63 S. Ct. at 236;Engle V. Issac;102 S. Ct. at 1558;Fay V. Noia;372 U.S. at 391;Evitts V. Lucey;469 U.S. 387 (1985).

Defense counsel by her own omission was ineffective. Butler V. State;334 S.E. 2d 813 (1985);Strickland V. Washington;466 U.S. 668,688,104 S. Ct. 2052,2064 (1984).

ARGUMENT: ENDED:

EXHIBIT 11 P 3:00

ISSUE F: ARGUMENT:

ISSUE F: Did the trial Court error in not excluding the Applicant's alleged statement from the trial of this case?

Officer Brian Edward Gibson of Pickens County made the traffic stop in this case. Tr.p. 169, lines 11-16.) The Applicant was not Mirandized at that time, but he was detained; handcuffed and placed in a Pickens County Patrol car. Tr.p. 171, lines 1-17.) Officer Jody Cartee of Pickens County advised Applicant of his Miranda rights. Tr.p. 172, line 23-p. 173, line 11) According to the Pickens County Officer (Gibson) the Applicant was the passenger of the vehicle stopped. The driver (Sloan; co-defendant) was placed under arrest by Pickens County Officers on traffic violations, but the Applicant was not placed under arrest, even though he was detained and handcuffed and placed in a Patrol car at the traffic stop. (The fact that Applicant was detained, handcuffed, and placed in a Pickens Patrol car constituted an arrest, as under the totality of circumstances, he was not free to leave, and believed he was under arrest.) (Officer Gibson stated that Applicant was not handcuffed when he was accompanied back to Anderson County by Officers Reeves. SEE: Tr.p. 63, line 18-p. 65, line 13; p. 97, line 14-p. 98, line 25; p. 99, line 1-p. 100, line 6-p. 101, line 18-p. 102, line 22-p. 109, lines 1-18.) However; SEE: Tr.p. 174, line 25-p. 175, line 14); where the Officer stated he did not know of the handcuffs being removed before Officer Reeves escorted the Applicant back to Anderson County. Officer Reeves testified at trial that the handcuffs were removed from the Applicant before he escorted him back to Anderson County. But, he did not know who the handcuffs belong to or who they were given back to. (This is highly unusual since he was supposed to be there when they were removed.) Tr.p.

189, line 8-p. 192, line 16.)

Officer Reeves testified both at the Pre-Trial Motion Hearing and at trial as follows. I Mirandized the applicant before the statement was given by him. "I wrote down exactly what he told me in the vehicle in my writing from my memory. No one was present ~~wh~~when he took the statement, and the applicant was not placed under arrest til they arrived at the Sheriffs Office in Anderson. Tr.p. 70, line 19-p. 71, line 1-p. 72, lines 9-17-p. 72, line 18-p. 73, line 5-p. 73, line 17-p. 74, line 2-p. 100, line 11-p. 101, line 17, p. 102, line 23-p. 103, line 14)(PRE-TRIAL); where the applicant testified that he did not make or sign any statement)." The applicant also testified that he did not admit to Officer Brothers that he sign any statement. Tr.p. 103, line 15-p. 106, line 1-p. 110, line 19-p. 112, line 14). SEE: Tr.p. 195, line 22-p. 202, line 16, p. 205, lines 7-p. 208, line 17, p. 211, line 13-p. 214, line 22; (Officer Reeves at trial.). There is no written evidence to the contrary in regards to applicant's testimony upon the statement. Tr.p. 112, line 23-p. 114, line 18). Officers Reeves did not have him to initial or sign anything to show that any statement was voluntarily given or that he understood what was taking place. Tr.p. 87, lines 11-15, p. 88, line 15-p. 89, line 1, p. 102, line 23).

Officer Jami E. Brothers who signed as a witness in regard to the alleged statement testified at trial; "That she signed her name saying that she vouched for what they told me (Reeves and applicant), but was not present when the statement was made or taken." She testified that, "applicant attested to his signature at the bottom of the statement by nodding his head. Tr.p. 215, line 15-p. 217, line 6, p. 217, line 9-p. 218, line 5). However, ~~she~~ ^(continued) at the Pre-Trial Hearing that the Applicant did not

(P.21)

ISSUE F: CONTINUED:

say anything at all to her, and she did not testify then that he nodded his his head. But, she did testify that Officer Reeves was the one who verified that the applicant signed the alleged statement. Tr.p. 79, lines 5-19, p. 85, line 10-p. 86, line 19, p. 90, line 5-p. 91, line 23.)

The Court ruled that the statement was admissible into evidence at trial. Tr.p. 114, line 19-p. 116, line 15.) This ruling was error. (First, Officer Reeves like most of us was not born with a photostatic memory, so as to remember everything alleged said by the applicant in transit). (Second, Officers such as Brothers, humans, and can make mistakes or lie also.) (Third, under the totality of the circumstances there is high question of whether or not the applicant made or signed the alleged statement and it should have been excluded from trial.) But, it was entered at trial. Tr.p. 202, line 25-p. 203, line 12.) That was error. State V. Rabon; 275 S.C. 459, 272 S.E. 2d 634 (1980); State V. Broome; 268 S.C. 99, 232 S.E. 2d 324 (1977); State V. Goolsby; 268 S.E. 2d 31 (1980); State V. Peake; 362 S.E. 2d 396 (1989); State V. Pressley; 266 N.C. 663, 147 S.E. 2d 33 (1966); Crim. Law, Sect. 825; Sup. Ct., Rule 23).

The case records also show that the applicant was not given a copy of the alleged statement. Tr.p. 103, lines 3-5). S.C. Statute 19-1-80. A defendant cannot be examined or cross-examined on written statements made to public officials until he's given an exact copy of it prior to and allowed reasonable time to read it. State V. Copeland, supra. State V. Motes, supra. "provides where a written statement was taken by an officer and a copy was not given to the defendant prior to his testimony, the statement would not be ^(ALLOWED) into evidence or permitted in cross-examin-

(7.22)

ation, due to code Section 19-1-90). "And a written statement taken from a defendant by a person employed by the State cannot be used, unless an exact copy of the statement is given to the defendant and a signed receipt taken therefore." S.C. Code, Sects. 19-1-85, & 19-1-90). State V. Jones; 259 S.E. 2d 120 (2001).

Counsel was ineffective in failing to argue at trial for the suppression of the alleged statement. Strickland V. Washington; 466 U.S. 668 (1984).

ARGUMENT: ENDED:

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(23)
(P. 27)

ISSUE G: ARGUMENT:

ISSUE G: Was the evidence entered into the trial obtained in violation of the 4th Amendment?

A clear reading of the case records will show that Pickens County Officer Brain Gibson made the traffic stop in this case, and that the Pickens County Officer alleged he did not place the applicant under arrest. However, the applicant was detained, handcuffed, and placed in a Pickens County Patrol car. Officer Reeves of Anderson County alleged that he placed the applicant under arrest at the Sheriff's Office in Anderson County, and then later obtained search warrants for the crime vehicle which had been toed into Pickens County. However, a search of the vehicle had been conduct by Pickens Officers at the traffic stop without a legal search warrant. SEE: (Pre-Trial Motions transcript of August 7th, 2001).

The case records clearly show, that the BB pistol along with the other items were found under the passenger seat of the said crime vehicle stopped. The records show that the police officer removed these items from under the passenger seat, placed them on top of the seat, and then took pictures of the items. (These items were certainly not in plain view.*) Tr.p. 177, lines 7-18.)

Defense counsel objected based on the placement and arrangement of the items found. The Court overruled the objection. Tr.p. 177, line 22-p. 178, line 24.)

The pictures of these items were allowed into evidence at trial. Tr.p. 181, lines 7-14). The items found were entered into evidence at trial, as State's Exhibits #1 and #2. Tr.p. 228, lines 3-5.) The picture of the items was State's Exhibit #17.) It is crystal clear that the picture of the items and the items found

were obtained and used at trial against the applicant in a direct violation of the 4th Amendment.

Clearly, the applicant's protection of privacy was violated. State V. Chandler; 267 S.C. 138, 226 S.E. 2d 553 (1976); Minnesota V. Olson; 110 S.Ct. at 168 (1990). The United States Supreme Court has recognized that the privacy interests in an automobile are constitutionally protected. It has also in a long line of cases recognized that evidence obtained in violation of the 4th Amendment by police officers, cannot be used in trial against the accused. State V. Austin; 409 S.E. 2d 84 (S.Ct.App. 1991); State V. Bennitt; 182 S.E. 2d 8 (1976); Wong Sun V. U.S.; 371 U.S. 471 (1963) State V. Williams; 331 S.E. 2d at 354).

Had defense counsel adequately prepared for trial she would have discovered this legal concept and principle as a defense at trial. Jackson V. State; 495 S.E. 2d 768 (1998); Gallman V. State, 414 S.E. 2d 780 (1992); State V. Williams; 485 S.E. 2d 92 (1997).

Counsel was ineffective. Strickland V. Washington; 466 U.S. 668 (1984).

ARGUMENT: ENDED:

ISSUE H: ARGUMENT:

ISSUE H: Was defense counsel ineffective in failing to object to the prosecutor's pitting of witnesses and vouching for State's witnesses in his closing to the jury?

The prosecutor relied upon the alleged statement heavily in his closing argument to the jury. Defense counsel did object to two comments by the prosecutor. (Mr. Wagner) The Court overruled one and sustained the other objection by counsel. Tr.p. 296, line 5-p. 298, line 1, p. 299, line 24-p. 300, line 17, p. 301, line 25-p. 302, line 8).

However, the prosecutor vouched for the truth of the State's witnesses (both victims and officers), and indicated to the jury that the defense witnesses were liars. He pitted their testimonies against each other, and in doing so, he became a witness himself. Tr.p. 303, lines 1-6.) This was highly improper and unethical procedure, which was prejudicial to the applicant during trial, and which counsel did fail to object to this procedure by the prosecutor. Sandstrom V. Montana; 442 U.S. 513 (1979); UCS. V. Gordon; 61 F. 3d 263, 267 (4th Cir. 1995); State V. Brisbon; 323 S.C. -447 S.E. 2d 443 (1996). This adverse inference indulged against the applicant, because of its exercise denied the presumption of innocence and shifted the burden of proof from the State upon the applicant; which so infected the trial with unfairness as to make the conviction a denial of due process. State V. Posey; 269 S.C. 500, 503, 238 S.E. 2d 176-77 (1977); Simmons V. State; 331 S.C. 338, 503 S.E. 2d 166-67 (1998). A prosecutor has special responsibilities to do justice and is held to the highest standard of professional ethics. In this his case, the prosecutor violated both those standards and ethics. State V. Quattlebaum; 527 S. E. 2d (1999); App. Ct. Rule 407; Rules of Prof. Conduct, Rule

Fail

3.8;Crim.Law,Key 700(1).

Counsel was ineffective in failing to object to this improper procedure by the prosecutor. Strickland V. Washington;466 U.S. 668 (1984).

ARGUMENT: ENDED:

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ISSUE 1: ARGUMENT:ISSUE 1: Was S.C. Code Ann., Section 17-25-50 violating in the sentencing phase of the trial?

The prosecutor(David Wagner)sought a life sentence under S.C. Code Ann.,Sect. 17-25-45,and the trial Judge imposed the sentences,of life on all eight charges. Tr.p. 327,line 21-p. 328, line 16.)

The offenses occurred at the same location,same date,and at the same point and time. Tr.p. 22,line 23-p. 23,line 23.)

The Applicant argues that the sentencing by the Judge violated S.C. Code Ann.,Sect. 17-25-50;as it is provided for the purpose of prior convictions being considered together under this Section for sentencing purposes under Section 17-25-45).** State V. Benjamin;353 S.C. 441,579 S.E. 2d 289 (2003);State V. Gordon;No. 25737 (S.C.Sup.Ct.filed Oct. 20,2003);State V. Stewart;275 S.C. 447,272 S.E. 2d 628 (1980);State V. Wood;345 S.C. 34,545 S.E. 2d 521 (S.C.App. 2001).

The convictions and sentences should be reversed and remanded for a New Trial or Re-Sentencing.

ARGUMENT: ENDED:

For the legal principles cited in the Initial Brief, the conviction and sentences should be vacated, or reversed and remanded for a New trial and sentencing that comports with the U.S. Constitution and it's provisions.

For the cited Relief, the Applicant does forever pray.

RESPECTFULLY SUBMITTED BY;



DARNELL HUDSON, #227328:

E.C.I. F2-B-214

610 HWY. 9 WEST

BENNETTSVILLE, SOUTH CAROLINA

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MAY 11 1968

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
CASE NO'S. 2001-GS-04-365;366;
367;368;369;370;371;and 1621:

DARNELL HUDSON, #227328;

APPLICANT;

VS.

STATE OF SOUTH CAROLINA;

RESPONDENTS.

C/A NO: 2003-CP-04-3394; AMENDED:

MOTION TO ADDRESS ALL ISSUES:

Now comes the Applicant, Darnell Hudson, #227328; by and through whoever is appointed as his court appointed attorney, who ask this Honorable Court to require the attorneys involved in this Post-Conviction Relief Action to be meticulous in the preparation of any "Order" prepared in this case.

Specifically, the Applicant ask that each and every issue raised in the Post-Conviction Relief Application, the Initial Brief thereof, and any Amendment thereof; at the hearing, to be addressed in the "Order" of the Court to be issued at the conclusion of the Evidentiary Hearing in this matter.

The reason for the Motion is that in Pruitt V. State; 423 S.E. 2d 127 (1992); the Court held that this is a legal requirement under the Laws of South Carolina; pursuant to Statute, Section 17-27-80. Citing; Bryon V. State; 493 S.E. 2d 500 (1997).

Therefore, the Applicant requests this Honorable Court rule upon, and grant the Motion for the above stated reasons.

SWORN TO BEFORE ME THIS 7th DAY OF May, 2004.

NOTARY PUBLIC FOR SOUTH CAROLINA: [Signature]

MY COMMISSION EXPIRES: 06-06-2009

RESPECTFULLY SUBMITTED BY;

[Signature]

DARNELL HUDSON, #227328:

E.C.I. F2-B-214 -610 HWY. 9 WEST
BENNETTSVILLE, SOUTH CAROLINA 29512

(7.30)

Exhibit (B)

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

TRUE COPY

SEP 12 2007

IN THE COURT OF COMMON PLEAS

Cathy M. Phillips
(Clerk of Court)

2003-CP-04-3394

Darnell Hudson, # 227328,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

CCJMO FILES AND
GENERAL SESSIONS

2007 SEP 12 P 3:40

FILED-CLERK'S OFFICE
ANDERSON SC

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 28, 2003. Respondent made its Return on September 17, 2004. An evidentiary hearing into the matter was convened on August 14, 2007, at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Scott Robinson, Esquire. Respondent was represented by Daniel E. Grigg of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Margaret Fairfax, Applicant's grandmother (Ms. Fairfax), and Dorothy Manigault, Esquire (Ms. Manigault), testified at the hearing as well. This Court also had before it the records of the Anderson County Clerk of Court, the transcript of the proceedings against Applicant, Applicant's records from the South Carolina Department of Corrections and the order of the South Carolina Court of Appeals confirming Applicant's conviction and sentence.

The records before this Court indicate that Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Anderson County Clerk of Court's orders of commitment. The Anderson County Grand Jury indicted Applicant for seven counts of Kidnapping (2001-GS-04-

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0365, -0366, -0367, -0368, -0369, -0370, -0371) and one count of Armed Robbery (2001-GS-04-1621). Applicant was represented on the charges by Ms. Manigault. On August 9, 2001, Applicant went to trial by jury and was found guilty as indicted. The Honorable John W. Kittredge sentenced Applicant to confinement for eight concurrent terms of life imprisonment.

A timely Notice of Appeal was filed on Applicant's behalf and Wanda H. Haile, Esquire, perfected an appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Hudson, Op. No. 3615 (S.C. Ct. App. filed March 17, 2003).

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

1. Ineffective assistance of trial counsel;
2. Ineffective assistance of appellate counsel;
3. Lack of subject matter jurisdiction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant testified that Ms. Manigault was never retained to represent him on these charges. He testified that she was retained to assist him on a probation violation in Greenville County. Applicant stated that his grandmother contacted Ms. Manigault about representing him on these charges but she never paid Ms. Manigault. Applicant testified that he and counsel met only once or twice. He stated that they spoke on the day of the probation violation hearing and then again on the

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day before his trial on the above charges. He testified that Ms. Manigault never visited him at Turbeville Correctional Facility, which is where he was housed prior to and during his trial.

Applicant testified that he was transported to the local jail in Anderson County approximately four or five days before his trial. He stated that Ms. Manigault never came to visit him during that time. Applicant stated that counsel visited him finally on August 6, 2001, the day before trial, and informed him she was not prepared and she was going to request a continuance. He testified that they never discussed his case. He stated that there was no correspondence between he and counsel. Applicant stated that he did not know anything about his case other than he was facing a life sentence on serious charges.

Applicant testified that counsel failed to investigate his case and prepare for trial. He testified that he gave Ms. Manigault a list of potential alibi witnesses and she never bothered to contact them. He stated that the list included Ms. Fairfax, his cousin and his girlfriend. Applicant stated that he informed Ms. Manigault on more than one occasion that he needed these alibi witnesses. Applicant testified that counsel never spoke with any of the alibi witnesses he provided. Applicant subsequently testified that counsel did call several witnesses to testify on his behalf at trial, including Ms. Fairfax, and that she did put up a defense. However, Applicant stated that counsel was not prepared to question these witnesses because she had not previously spoken with them.

Applicant testified that counsel wrote a letter to him stating that she was considering requesting that she be relieved as counsel. He testified that she never made a motion to be relieved, but that she should have because she wasn't his attorney on these charges, and because she was not prepared to represent him. In addition to the letter regarding counsel's contemplation as to whether

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or not she would make a motion to be relieved, Applicant testified that he received four or five other letters from her.

Applicant testified that he did not commit these offenses. He testified that he never gave a statement to the police. Applicant stated that he did not give the statement the police said he gave. Applicant further stated that the statement was not properly executed because there was no witness.

Applicant testified that Ms. Manigault did not properly investigate his case. He stated that counsel received discovery but never reviewed it with him. Applicant testified that counsel did not investigate the victims' statements. He further testified that she never investigated the identification issues. Applicant stated that the identification testimony of the state's witnesses changed from the time they gave statements to the time they testified. He stated that Ms. Manigault should have addressed this because it would show that the victims were biased and that he was not the perpetrator. Applicant testified that counsel should have made a motion to exclude this identification evidence. Additionally, he stated that counsel failed to object to the statements once made. Applicant testified that there was never a photo lineup taken in his case. Applicant testified that Ms. Manigault should have made a motion to sequester the witnesses and that he was prejudiced because she failed to do so.

Applicant testified that the 911 audiotape and the "Be On Look Out" bulletin were not part of the discovery. He stated that neither he nor counsel were able to review this evidence. Applicant testified that this information could have been beneficial to him and he was prejudiced by not having it. Applicant further stated that it was possible that he did not receive this evidence because it never existed.

Applicant further testified that he wanted to testify on his own behalf and counsel would not let him. He testified that the trial judge went over his right to testify and he told counsel that he

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wanted to. He testified that he passed Ms. Manigault a note telling her he wanted to testify. Applicant stated that if he had been allowed to testify he could have made the jury understand that he was at home at the time these crimes occurred. Applicant stated that he was prejudiced by not testifying because the result of his trial could have been different.

Applicant testified that he was prejudiced because he was not present at the pre-trial hearing. He testified that counsel appeared on his behalf but he was not taken to the courthouse. Applicant stated that he had a right to be there and that he could have informed the court of all the things wrong with his case.

Applicant testified that he was denied his right to confront the victims. He stated that one of the victims was never subpoenaed and, therefore, was never in court. Applicant testified that this prejudiced him. Applicant stated that counsel should have at least made an attempt to depose the victims.

Applicant further testified that his arrest was unlawful. He testified that counsel was ineffective because she should have challenged his unlawful detention. In addition, he stated that counsel should have made a motion to suppress the evidence obtained as a result of his unlawful arrest. Applicant also testified that he should not have had to register as a sex offender.

Ms. Fairfax testified that she was Applicant's grandmother. She testified that she met with Ms. Manigault to discuss Applicant's case. Ms. Fairfax stated that they discussed Ms. Manigault's representation of Applicant regarding the probation violation and these pending charges. She testified, however, that she never retained Ms. Manigault. Ms. Fairfax stated that she never paid counsel to represent Applicant.

Ms. Fairfax testified that Applicant and his girlfriend were at her house the Sunday morning of the incident. She testified that she left for church approximately fifteen minutes before ten. She

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[Handwritten signature]

testified that Applicant and his girlfriend were planning on leaving her house about noon to go to Charlotte, North Carolina. Ms. Fairfax testified that she was not with Applicant and, therefore, could not testify as to his whereabouts at the time this incident occurred.

Ms. Fairfax testified that she did not remember providing a written list of witnesses to Ms. Manigault. She stated that she told counsel of the potential witnesses over the phone. Ms. Fairfax testified that she gave not only the names but also the phone numbers of the witnesses. She testified that Ms. Manigault already had her phone number from previous conversations. Ms. Fairfax stated that she did not speak to counsel again until just prior to trial. Ms. Fairfax testified that she was in the courtroom during the trial.

Ms. Manigault testified that she was retained to represent Applicant on both the probation violation and these charges. She testified that Ms. Fairfax came to her office in January 2001 to retain her to represent Applicant at the probation violation hearing. She stated that, at that time, they discussed these charges and she agreed to represent Applicant on all the charges. Ms. Manigault testified that Ms. Fairfax signed a retainer agreement. Ms. Manigault testified that she never received any money for her representation.

Ms. Manigault testified that Applicant had other pending charges that were ultimately dismissed by the solicitor after the conclusion of this trial. Ms. Manigault stated that she did investigate the case against her client. She testified that she requested discovery and received it from the solicitor's office on April 4, 2001. Ms. Manigault testified that the solicitor filed a notice of intent to seek life without parole (LWOP) and served her and Applicant with a copy of that letter. Ms. Manigault testified that she provided a copy of the LWOP letter to Applicant and to Applicant's family.

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Ms. Manigault stated that she wrote several letters to Applicant while he was incarcerated at Turbeville. She stated that, among other things, she asked him to provide a list of potential witnesses with their phone numbers. Ms. Manigault testified that a written list of potential witnesses was placed on her office door the week before trial. She testified that she did not remember having a phone conversation in which Ms. Fairfax provided the witness information. Ms. Manigault testified that she tried to contact Ms. Fairfax and the witnesses to come to her office to discuss their testimony. Ms. Manigault testified that she sent subpoenas to all of the witness on the list. According to Ms. Manigault, one of the witnesses did not want to participate in the trial. Additionally, she testified that the family members could not testify as to Applicant's whereabouts at the time these crimes occurred.

Ms. Manigault testified that she met with client on several occasions, including a couple of times at the Anderson County detention facility. She testified that her theory at trial was that Applicant did not commit these crimes. Ms. Manigault testified that she was prepared to go to trial and that she asked for a continuance and stated that she was not prepared to go forward as an attempt to carry out her client's wishes. Ms. Manigault stated that she fully cross-examined the state's witnesses and she put up several witnesses on Applicant's behalf. She testified that Applicant made it clear to her that he did not want to testify. She testified that he never passed a note to her during the trial stating he wanted to testify. Ms. Manigault testified that she did not make a motion to be relieved because she was prepared to go to trial and because Applicant's family had assured her that he wanted her to represent him and that she would be paid.

Ms. Manigault testified that there was no fingerprint evidence that connected Applicant to the crime. She stated that there was forensic evidence presented by the State, but that she was not surprised that there was no such evidence. Ms. Manigault stated that there were photo line-ups

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performed in regard to the other cases against Applicant, but not in the present case. She testified that Applicant's co-defendant never testified against him. She testified that she did not make a motion to sequester the witnesses. Ms. Manigault testified that she could see how in some situations it would be important to try to exclude the in court identification testimony. She further stated that she did not feel that was important in this case. Ms. Manigault testified that she was most concerned with the statement Applicant gave the police in which he confessed to the crimes. She testified that Applicant never denied giving the statement to the police. She testified that it was highly unlikely that the court was going to exclude his statement. Ms. Manigault stated that she did examine the arresting police officer on cross about Applicant's statement. She stated that there was a Jackson v. Denno hearing at the outset of his trial. Ms. Manigault testified that Applicant was the only person seated next to her at the defendant's table.

Ms. Manigault testified that Applicant told her he was detained unlawfully. She testified that the court determined that he was not unlawfully detained. Ms. Manigault testified that the police found many items related to the crimes in Applicant's car.

In a post-conviction relief action, Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.

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Butler, Id. Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. As discussed above, Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

This Court finds that Applicant's testimony is not credible. Applicant on more than one occasion contradicted his own testimony. For example, on one occasion Applicant testified that he never received correspondence from counsel. Yet, on another occasion, he testified that he received four or five letters from her, including a letter in which he claims she stated that she was considering making a motion to be relieved. Additionally, this Court finds that Applicant made a statement to the police and signed that statement. Two people witnessed his signature. Yet, he has told this Court that he never made a statement to the police. This Court finds it difficult to find any credibility in Applicant's testimony.

This Court does find Ms. Manigault's testimony to be credible. It is clear that she investigated Applicant's case, she requested and received discovery, and reviewed that discovery with her client. She made several attempts to get a list of witnesses from Applicant and did not receive that list until the week before trial. Despite the short notice, Ms. Manigault used every

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resource available to contact the potential witnesses and speak with them. As she stated in her testimony, she left messages with each of them and with Applicant's family in an attempt to set up meetings with them. Ms. Manigault then sent subpoenas to each of the witnesses. This Court also notes that the transcript reflects that several witnesses testified on Applicant's behalf. It is clear that Ms. Manigault prepared a defense, developed a trial strategy and used several witnesses whom she thought would be beneficial to her client's case.

This Court finds that Ms. Manigault was prepared for trial even though she made a motion for a continuance. Ms. Manigault had her client's best interest in mind when she made that motion and diligently argued for more time on his behalf. However, it is evident from the transcript and the testimony at the PCR hearing that she was prepared to defend Applicant.

This Court finds that Ms. Manigault was in no way ineffective for not making a motion to be relieved. She had been retained on this case and was assured she would be paid. This Court notes for the record, however, that she was never paid and Applicant received very thorough, competent and free representation.

This Court finds that Applicant was fully informed of his right to testify and chose not to. Ms. Manigault did nothing to prevent him from testifying. This Court further finds that Applicant was found guilty of kidnapping among other things. The laws of this state require that, when a victim of kidnapping is under the age of seventeen, the convicted person must register as a sex offender. This Court finds that Applicant was properly required to register as a sex offender.

This Court finds that Ms. Manigault properly requested a Jackson v. Denno hearing to address the statement Applicant gave the police, and the trial judge ruled against her. Additionally, this Court finds that the arrest was lawful and the subsequent search and seizure of evidence was

legitimate.

Applicant gave the police a statement essentially confession to the crimes. This Court finds it was reasonable of Ms. Manigault to have focused on the statement as the greatest hurdle to overcome. Additionally, this Court finds no fault on her part for not having the identification evidence suppressed and for not having the state's witnesses sequestered. Furthermore, this Court finds that Applicant has not shown that any of this would have made a difference in his case. He has simply shown no prejudice.

This Court finds that Applicant has chosen to waive his allegation regarding subject matter jurisdiction. He produced no evidence and informed this Court that he did not wish to pursue that claim. Likewise, Applicant has failed to show that appellate counsel was ineffective. This Court has reviewed the appellate records before it and it appears that appellate counsel presented a reasonable issue to the Court of Appeals.

This Court finds that Applicant was able to present a defense and, in fact, did so. He put up witnesses, presented evidence, and cross-examined state witnesses; including the police officers and the victims. This Court finds that Applicant was not prejudiced simply because one of the witnesses did not appear in court. Likewise, this Court finds no prejudice in the fact that Applicant may not have been prejudiced at his pretrial hearing.

This Court further finds that Applicant was not prejudiced because he was not able to review the 911 audiotape and the BOLO that was issued. Applicant has completely failed to show that trial counsel or appellate counsel was deficient. Furthermore, he has failed to show that he was prejudiced by their representation.

CONCLUSION

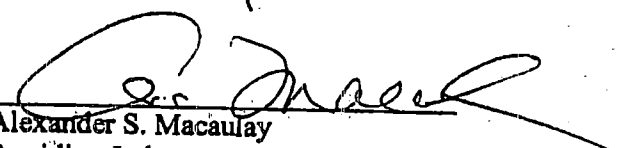
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

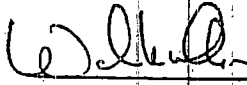
This Court advises Applicant that he must file and serve a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. His attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent.

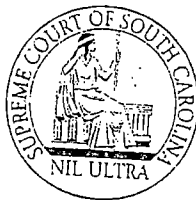
AND IT IS SO ORDERED this 24 day of September, 2007.


Alexander S. Macaulay
Presiding Judge
Tenth Judicial Circuit

, South Carolina.

FILED-CLERK'S OFFICE
ANDERSON SC
2007 SEP 12 P 3:41
COMMON PLEAS AND
GENERAL SESSIONS

EXHIBIT (c)



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 8, 2008

Scott David Robinson, Esquire
Law Office of Scott D. Robinson
209 E. Main St.
Pickens, SC 29671

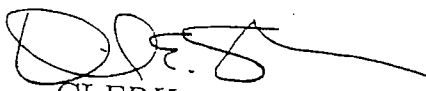
Re: Hudson, Darnell v. The State

Dear Mr. Robinson:

We are in receipt of your Notice of Appeal in the above entitled matter.

In order to determine the timeliness of this appeal, please be advised that it will be necessary for you to provide the Court with the date on which you first received written notice of entry of the order pursuant to Rule 203(d)(1)(B) of the South Carolina Appellate Court Rules. If we do not receive the requested information within ten (10) days of the date of this letter, this matter may be dismissed.

Very truly yours,


CLERK

DES/jj

cc: Appellate Defense
Darnell Hudson #227328
Assistant Attorney General Daniel E. Grigg



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11336
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 29, 2008

Scott David Robinson, Esquire
Law Office of Scott D. Robinson
209 E. Main St.
Pickens, SC 29671

Re: Hudson, Darnell v. The State

Dear Mr. Robinson:

Enclosed is a copy of my January 8, 2008 letter to you in which I requested that you provide this Court with information relevant to the above captioned matter. To date, we have not received this information.

I would again ask that you provide this Court with the date on which you first received written notification of entry of the order pursuant to Rule 203(d)(1)(B), SCACR. If this information is not received within ten (10) days, this matter will be dismissed.

Very truly yours,

Daniel E. Shearouse
ES

CLERK

DES/jj

cc: Appellate Defense
Darnell Hudson #227328
Assistant Attorney General Daniel E. Grigg

The Supreme Court of South Carolina

Darnell Hudson,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Alexander S. Macaulay
Anderson County
Trial Court Case No. 2003-CP-04-03394

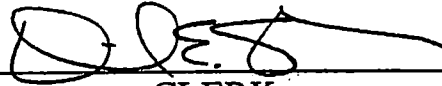
ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of petitioner to provide the date on which he first received written notice of entry of the order as requested by this Court on January 8, 2008 and again on January 29, 2008 in the above matter, as provided for in Rule 203(d)(1)(B) of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in the case will be sent to the Clerk of Court for Anderson County after fifteen (15) days, exclusive of the date of filing this Order.

JEAN H. TOAL, CHIEF JUSTICE

BY

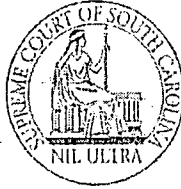


CLERK

Columbia, South Carolina

February 12, 2008

cc: Appellate Defense
Darnell Hudson #227328
Scott David Robinson, Esquire
Assistant Attorney General Daniel E. Grigg



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 29, 2008

REMITTITUR

The Honorable Cathy M. Phillips
100 S Main
PO Box 8002
Anderson, SC 29622-8002

Re: Hudson, Darnell v. The State -- 2003-CP-04-03394

Dear Ms. Phillips:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,

Daniel E. Shearouse
CLERK

DES/jj

cc: Appellate Defense
Darnell Hudson #227328
Scott David Robinson, Esquire
Assistant Attorney General Daniel E. Grigg

EXHIBIT (D)

RECEIVED

SEP 26 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)

County of Anderson)

IN THE COURT OF COMMON PLEAS

A TRUE COPY

Darnell E. Hudson #227528)

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

MAY 19 2008

v.)

Cathy M. Phillips)

APPLICATION FOR CLERK OF COURT

State of South Carolina)

POST-CONVICTION RELIEF

2008-CP-04-01567

INSTRUCTIONS B 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 Lee Correctional Inst. 990 WISACKY Hwy
BISHOPVILLE, SC. 29010...
2. Name and location of Court which imposed sentence General Sessions
Anderson County, 100 SOUTH MAIN ST. ANDERSON SC. 29624
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) N/A - KIDNAPPINGS - / ARM ROBBERY

closed PCR file #2004168-44
closed PCR Appeal file #20076752; 46C
no previous ~~200~~ SVP file
closed CA file #20013075 (Darnell East); 40F; 59612

ATTORNEY GENERAL'S OFFICE

RECEIVED 05/22/2008

ADMINISTRATIVE INSTRUCTIONS

☒ FILE ☐ OPEN ☐ END

☐ HAVE ☐ COPIES MADE

☐ ROUTE TO

☐ ORDER: ☐ TRANSMIT

☐ PEN RECORDS ☐ CLERK RECORDS

☒ OTHER: *Calendar Review*

Do not amend

Spokes

- (b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) 8/9/01 Life Sentence
(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 Ayes@ to (7), list:
(a) the name of each Court to which you appealed:
i. Court of Appeals
ii. _____
iii. _____
(b) the result in each such Court to which you appealed:
i. Denied / Conviction Affirmed
ii. _____
iii. _____
(c) the date of each such result:
i. Filed March 17, 2003
ii. _____
iii. _____
(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. Opinion # 3615
ii. _____
iii. _____
9. If you answered No@ to (7), state your reasons for not so appealing:
(a) N/A

- (b) _____
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of "PCR" Counsel
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) 1) PCR Counsel Failed to File (FR.E) after order denying Relief Failed
 (b) to address all claims raised at PCR hearing.
 (c) 2) PCR Counsel Failed to File a timely notice of Intent to Appeal.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes - POST-CONVICTION-RELIEF.
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. An Application for postconviction Relief.
 ii. _____
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Court of Common Pleas / Anderson County
 ii. _____
 iii. _____

iv. _____

(c) the disposition thereof:

i. Denied / Conviction Affirmed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. September 7, 2004

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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?

no

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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) Could not be Raised

(b) _____

(c) _____

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? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

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

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

i. Dorothy A. Manigault "GREENVILLE" COUNTY

P.O. BOX 3921 GREENVILLE, SC. 29602

ii. Wanda Haile "COLUMBIA" COUNTY ?

1122 LADY ST, SUITE 940 COLUMBIA, SC. 29201-3243

iii. Scott Robinson "PICKENS" COUNTY

P.O. BOX 10042 GREENVILLE, SC. 29603

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

i. TRIAL

ii. Direct Appeal

iii. Total PCR

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

A new PC2 hearing, allowing amendments (4, or) 3 related
appeals.

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 Lee)

VERIFICATION

I, Darnell East Hudson, 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.

Darnell Hudson

SWORN to and subscribed before me this 6
day of May, 2008.

George J. Jume (L.S.)
Notary Public

My Commission Expires: 12-30-2017

A TRUE COPY

MAY 19 2008

Cathy M. Phillips
CLERK OF COURT

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

I, Darnell East Hudson, 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.

Darnell Hudson

Applicant

SWORN or affirmed to and subscribed before me this
10 day of May, 2008.

George Linn

Notary Public

My Commission Expires: 12-20-2017

Ineffective Assistance of "PCR" Counsel.

Ineffective assistance of "PCR" Counsel [is] A Cognizable Claim For a Second, or Successive Application For postconviction Relief [only] when PCR Counsel's actions or Inactions [precludes] an Applicant's Rights to Appellant Review. See Austin..., where Petitioner's original Application For "PCR" was denied After A hearing, And petitioner's Counsel Failed to File A timely notice of Intent to appeal. On Austin's Subsequent Application petitioner's Sole Claim was Ineffective assistance of "PCR" Counsel For Failing to Seek Appellate Review of the Denial of his PCR. Austin vs. State 409 S.E. 2d 395

Furthermore, the State Supreme Court has held that; Remand was Required on appeal From denial of postconviction Relief where PCR Court dismissed movant's ineffective assistance of Counsel Claims without making Findings of Fact on Specific Allegations Raised, violating Statute, and [precluding] Appellate Review. McCray vs. State 408 S.E. 2d 241 (1991) Title 17-27-80

Then in An Attempt to Correct the Continual violations of Statute that took place in McCray the State Supreme Court made another Ruling Stating; After A PCR order is Filed, Counsel has An [obligation] to Review the order and file a motion to alter or amend Judgment if the order fails to set forth the Required Findings and Reasons For those Findings. Title 17-27-80, Rules of Civil Pro. 52(A) 59(E) Pruitt vs. State 423 S.E. 2d 127 (SC 1992)

Thus, by way of rulings made by the State Supreme Court; 1) The Failure of the PCR Court to address all Claims Raised by the applicant, [precludes] Applicant's Rights to Appellate Review; 2) The Failure of PCR Counsel to File A motion to alter or Amend Judgment when PCR Court Fails to address all Claims Raised [precludes] Applicant's Rights to Appellate Review; + 3) The Failure of PCR Counsel to File A timely notice of Intent to appeal [precludes] Applicants Rights to Appellate Review; And For each violation the State Supreme Court has given ways to Remedy each violation, by way of Rulings; in 1) McCray v. State, where the Court Failed to address all Claims, the PCR order denying Relief WAS vacated and the Appellant WAS Remanded to the Court of Common Pleas For A New + Full [(Allowing Amendments) PCR hearing; 2) In Pruitt v. State, where the State Supreme Court [obligated] PCR Counsel to Renew the order to ensure it addresses all Claims Raised and if it doesn't to File A S.E. motion, + when this was not done the Courts Remedy WAS to vacate the denial And Remand For A [New + Full] (Allowing Amendments) PCR hearing; 3) And Finally in Austin v. State, where PCR Counsel Failed to File A timely notice of Intent to appeal, the Court's Remedy WAS to grant a belated appeal.

Conclusion

Now in the present case, where all three violations have taken place and the Applicant, whom is similarly situated to McCray, Pruitt, and Austin, due to his rights to Appellant Review being precluded due to PCR Counsel Inaction, the applicant respectfully moves upon this honorable Court to hand down judgment, or Remedy that is also similar, that being to vacate the denial of his initial PCR + to Remand for a "new + Full" PCR hearing.

WON & Scribed me the
date of 6 May 2008
George J. J. Notary
12-20-2017 EXPIRES

/ Daniel Jackson

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) 10TH JUDICIAL CIRCUIT

DARNELL HUDSON,)
APPLICANT,) TRANSCRIPT OF RECORD
V.) 08-CP-04-1567
STATE OF SOUTH CAROLINA,)
RESPONDENT.)

OCTOBER 7, 2009

ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. CORDELL MADDOX, JR., JUDGE

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

DAVID BROUSSEAU, ESQUIRE
ATTORNEY FOR THE APPLICANT

A. WEST LEE, ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE STATE

SHARON L. VIZER-HANKS
CIRCUIT COURT REPORTER

I N D E X

	PAGE
POST-CONVICTION RELIEF MOTION FOR BELATED APPEAL :	---3
<u>SCOTT ROBINSON:</u>	
DIRECT EXAMINATION BY MR. BROUSSEAU	---8
CERTIFICATE OF REPORTER	--11

NO EXHIBITS WERE INTRODUCED

1 Wednesday, October 7, 2009

2 THE COURT: We're on the record with Darnell Hudson.

3 I had a hearing in this case at some point. When did I hear
4 it, back in June?

5 MR. BROUSSEAU: Back in June, Your Honor.

6 THE COURT: And there was a question about whether
7 or not he was entitled to a belated appeal, right?

8 MR. BROUSSEAU: What it was, Your Honor, we had
9 basically a conditional order. Mr. Robinson was unavailable
10 that day based upon priority in another court, but at that
11 time we were informed and believed that Mr. Robinson would be
12 filing an affidavit essentially testifying to the fact that he
13 did not perfect Mr. Hudson's appellate rights in his first PCR
14 case. Mr. Robinson was PCR counsel for Mr. Hudson.

15 At that time, the Court basically granted a
16 conditional order saying that once we received the affidavit
17 from Mr. Robinson that the belated appeal would be granted, as
18 well as there was also, I think two issues that my client
19 brought up in regards to the failure of filing a rule 59(e)
20 motion to alter or amend in regards to an issue about a Brady
21 violation on receiving victim statements, as well as his
22 criminal trial counsel's continuance request because she had
23 informed the Court that she was not prepared.

24 I think the Court at that time reviewed the order of
25 dismissal, and essentially what we had stated was that he was

1 entitled to a belated appeal as well as preserving any issues
2 that have been raised at the hearing for appellate review at
3 this time upon us receiving that affidavit. We did not
4 receive the affidavit so this hearing was then reset so that
5 Mr. Robinson could be here to testify.

6 THE COURT: Yeah. I mean, once you appeal those
7 issues, Brady issues and all of that will be addressed on the
8 appeal.

9 MR. BROUSSEAU: I agree but my client feels
10 differently, I guess.

11 THE COURT: Mr. Hudson, you feel differently than
12 that?

13 THE APPLICANT: Yes, sir.

14 THE COURT: Why?

15 THE APPLICANT: Because under rule 17-27-80 it says
16 under Pruitt, it create all these other cases. It says under
17 rule 17 --

18 THE COURT: Hold on. You got to slow down. She's
19 taking everything down.

20 THE APPLICANT: I'm sorry. Under rule 17-27-80 it
21 say the Court shall make a specific finding of fact and state
22 expressly its conclusion of law relating to every issue
23 presented.

24 In this order of dismissal the Court never made no
25 finding or fact, no conclusion of law to that issue. Now,

1 being that --

2 THE COURT: To what issue? To what issue?

3 THE APPLICANT: The victim's statements and the
4 Brady violation.

5 THE COURT: I didn't have to get to that point. I
6 don't have to get to that. Here's the deal. Was this a
7 conviction or a guilty plea?

8 THE APPLICANT: Conviction.

9 THE COURT: All right. You got convicted. There
10 was no appeal. That was the reason that we had the hearing in
11 June, right?

12 THE APPLICANT: It was appealed. I went through a
13 direct appeal then I came to PCR. I retained Mr. Robinson to
14 represent me on PCR.

15 MR. BROUSSEAU: This is an Austin vs. State.

16 THE APPLICANT: Yes, sir.

17 THE COURT: Okay. All right. So what we did in
18 June is we provided that Mr. Robinson says that he failed to
19 file the appeal then you will appeal the PCR, whatever the
20 order of the PCR was, right?

21 MR. BROUSSEAU: That's correct, Judge.

22 THE APPLICANT: It's the electric slide I'm talking
23 about. Once we get here with this right here, Your Honor, I'm
24 telling you what the Supreme Court going to do. Even if you
25 say okay, this was what's going on, because you got the

1 authority to do that, once we get to the Supreme Court they
2 are going to review the transcript of record, the PCR and they
3 going to go through this right here.

4 They are going to say oh, this issue was not
5 entertained. It's not preserved under McCray, under Pruitt,
6 under 17-27-80, and under a case I got right here that say it
7 must be preserved in the order, which you know how old this
8 order is, Your Honor. He had 10 days to file it. He didn't
9 file that. He didn't file it. I've requested that. I got a
10 letter right here that he -- I know he received.

11 I wrote him a letter saying Mr. Robinson can you
12 please file a rule 52(a) and a rule 59(e) to preserve and
13 alter and amend my order to preserve my issues and also the
14 part of record I wish to appeal. He did not file no rule
15 59(e), just like he didn't file my PCR on time. Once I get
16 here they are going to see that, then I'm coming right back to
17 see you again.

18 THE COURT: The problem is that if he didn't file a
19 rule 59 -- you are alleging that he was --

20 THE APPLICANT: Ineffective.

21 THE COURT: -- ineffective. That would be one of
22 the reasons on appeal that they would determine, he was
23 ineffective, but I can't now let you file a rule 59 motion to
24 an order that was way back when.

25 THE APPLICANT: You can't.

1 THE COURT: That's right.

2 THE APPLICANT: That's what it say. That's why I
3 was trying --

4 THE COURT: So what I did was I think the order --
5 doesn't the order provide that -- read me the part. I don't
6 have that order here. That's the problem.

7 MR. BROUSSEAU: I don't know if -- what I've got is
8 my order notes from there, Judge, and it was to the extent
9 that issues were raised and ruled on in the order of dismissal
10 from the original PCR, those issues would be preserved in
11 regards to the notice of appeal.

12 THE COURT: That's what the order is going to say,
13 and you probably need to reference rule 59 and say that I'm
14 assuming that a proper rule 59 motion would have been filed,
15 it was not, and those matters are preserved.

16 THE APPLICANT: All right.

17 THE COURT: There you go. Bam.

18 THE APPLICANT: That's all I'm asking for.

19 THE COURT: But I need some testimony that -- okay.
20 You want to call Mr. Robinson?

21 MR. BROUSSEAU: I can. I'll call Mr. Scott
22 Robinson.

23 THE CLERK: Come around and be sworn, please.

24 SCOTT ROBINSON, after having been duly sworn,
25 testified as follows:

SCOTT ROBINSON - DIRECT EXAMINATION BY MR. BROUSSEAU

1 THE COURT: Yes, sir.

2 MR. BROUSSEAU: Thank you, Judge.

3 DIRECT EXAMINATION

4 BY MR. BROUSSEAU:

5 Q. Mr. Robinson, you represented Darnell Hudson on his
6 PCR case; is that correct?

7 A. I did so.

8 Q. And I don't know if you have it. I'll hand you just
9 a copy of what I have here, his order of dismissal.

10 A. Okay.

11 Q. And the filing date on that is September, I believe
12 12th of 2007; is that correct?

13 A. It looks like it was filed September 12, and it was
14 actually signed by Judge Macaulay on September 7th.

15 Q. Okay. And following that -- you received this order
16 shortly after it was filed, correct?

17 A. I would have, correct.

18 Q. Yes. And following that did Mr. Hudson, do you
19 recall him requesting that you file both a rule 59(e) motion
20 as well as a notice of appeal --

21 A. Uh-huh.

22 Q. -- on this case?

23 A. I don't know -- yes. I don't know when I received
24 it though. I can't tell you the date that I received it but I
25 know I got something from him to that effect.

SCOTT ROBINSON - DIRECT EXAMINATION BY MR. BROUSSEAU

1 Q. Okay. And you admit that you did not file a
2 rule 59(e) motion on any of the issues raised in the order of
3 dismissal?

4 A. If he had -- I don't know when I received this
5 notice but I did not file those, correct.

6 Q. And you also admit this is dated September 12th of
7 2007. You also admit that you did not timely perfect his
8 appellate rights on this case; is that correct?

9 A. I did not, and it would be 30 days not 10 days.

10 Q. And that's what I meant. Thirty days after this --

11 A. Correct.

12 Q. -- order you did not file notice of appeal; is that
13 correct?

14 A. Correct. That's correct.

15 Q. And, in fact, you also got some letters from the
16 Supreme Court after you had filed asking for proof of when the
17 transcript was received and stuff like that?

18 A. Correct. The reason I think that this all happened,
19 we didn't know when we got it. That was one of the issues
20 that we had. We couldn't tell them when we received it and
21 take the date from 30 days. That's the biggest issue I had in
22 the case because we didn't know exactly when we received it.
23 After that we have a policy in the office of stamping
24 everything, you know, so we know exactly when we receive
25 things and so forth. So that was our -- my mistake.

1 MR. BROUSSEAU: Nothing further, Judge.

2 THE COURT: Any questions?

3 MR. LEE: No questions from the State, Your Honor.

4 THE COURT: All right. Okay. Thank you. You can
5 step down.

6 I'm going to grant the belated appeal, and I
7 understand your problem regarding rule 59. It's an
8 interesting legal problem because rule 59 is never discussed
9 in the appellate rules, I don't think, but to the extent I can
10 in an order I'll protect you. And if you have to come back up
11 here we'll do it again. Good luck to you.

12 (WHEREUPON, the hearing was concluded.)

13

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EXHIBIT

J

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2008CP0401567

Darnell E Hudson vs. South Carolina State Of

CHECK ONE:

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

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☐ Statement of Judgment by the Court:

PCR DENIED; HOWEVER, APPLICANT IS GRANTED RIGHT TO FILE A BELATED APPEAL.

Dated at Anderson, South Carolina, this 7th Day of October, 2009..

Court Reporter: **Sharon Vizer-Hanks**

J. CordeLL Maddox, Jr.

PRESIDING JUDGE - J. CORDELL MADDOX, JR.

This judgment was entered on the 7th Day of October, 2009., and a copy mailed first class this 8th Day of October, 2009., to attorneys of record or to parties (when appearing pro se) as follows:

Darnell E Hudson,
David James Brousseau McIntosh Sherard &
Sullivan P.O. Box 197 Anderson, SC 29622

West Lee Assistant Attorney General Po Box
11549 Columbia, SC 292111549

ATTORNEY(S) FOR THE PLAINTIFF(S)

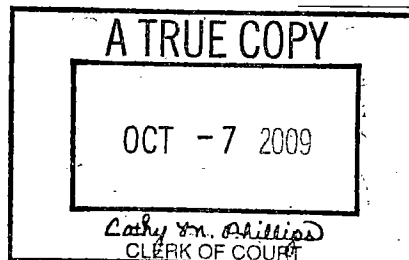
ATTORNEY(S) FOR THE DEFENDANT(S)

SCRCP APP-24/FORM 4

Cathy M. Phillips

Cathy M. Phillips - Clerk of Court

CPFORM4M



THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

Case No. 2003-CP-04-3394

Darnell E. Hudson, #227328 Appellant

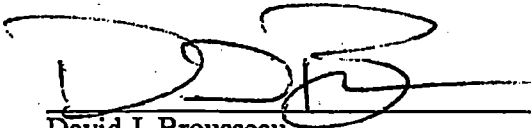
v.

State of South Carolina Respondent

NOTICE OF APPEAL

Pursuant to Rules 227, 203 and 206, SCACR, DARNELL E. HUDSON, #227328 appeals the Order of Dismissal of the Honorable Alexander S. Macaulay, Circuit Court Judge filed on September 12, 2007. Appellant was granted belated appeal rights pursuant to an Order of the Honorable J. Cordell Maddox, Jr., filed on November 17, 2009, in Case No: 2008-CP-04-1567. (Applicable Orders attached hereto). Appellant received a copy of the most recent Order granting belated appeal rights on November 18, 2009.

December 8, 2009


David J. Brousseau
MCINTOSH, SHERARD, SULLIVAN & BROUSSEAU
Post Office Box 197
Anderson, SC 29622
(864) 225-0001 | FAX (864) 225-0004
Attorneys for Appellant

Other Counsel of Record:

West Lee, Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3970 FAX (803) 253-6283
Attorneys for Respondent

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

Case No. 2003-CP-04-3394

Darnell E. Hudson, #227328..... Appellant

v.

State of South Carolina Respondent

PROOF OF SERVICE

I certify that I have served Notice of Appeal on Honorable Cathy Phillips, Clerk of Court for Anderson County, South Carolina and on West Lee, Esq., Assistant Attorney General for the State of South Carolina by depositing copies of same in the United States Mail, postage prepaid, on December 8, 2009, addressed as follows:

Honorable Cathy Phillips
Clerk of Court for Anderson County, SC
Post Office Box 8002
Anderson, South Carolina 29622-8002

West Lee, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549



David J. Brousseau
McIntosh, Sherard, Sullivan & Brousseau
Post Office Box 197
Anderson, South Carolina 29622-0197
(864) 225-0001 | 225-0004 (fax)
ATTORNEYS FOR APPELLANT

EXHIBIT (E)

The South Carolina Court of Appeals

Darnell East Hudson, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2009-147666

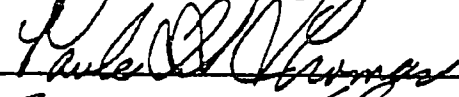
ORDER

Petitioner's application for post-conviction relief was denied by Judge Alexander S. Macaulay. No timely notice of appeal was filed. Petitioner now seeks a writ of certiorari from an order issued by Judge Cordell Maddox, Jr. granting petitioner a belated review of Judge Macaulay's order pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

We grant the petition for a writ of certiorari from Judge Maddox's order, dispense with further briefing, and proceed with an *Austin* review of Judge Macaulay's order.

The petition for a writ of certiorari from Judge Macaulay's order is denied.



J.


J.


J.

Columbia, South Carolina

EXHIBIT (F)

FILED CLERK OF COURT
ANDERSON SC

2018CP0401305

STATE OF SOUTH CAROLINA

2018 JUL -3 PM 12:28

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

DARNEIL E. HUDSON

COMMON PLEAS AND
CRIMINAL COURT

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

v.

State of South Carolina, RESPONDENT

APPLICATION FOR

POST-CONVICTION RELIEF

A TRUE COPY

JUL - 3 2018

Anderson X. Kiley
ANDERSON CLERK OF COURT

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 KERSHAW CORR INST, 4843 FRIEDMANE RD. KERSHAW S.C. 29069
2. Name and location of Court which imposed sentence ANDERSON COUNTY COURT OF GENERAL SESSIONS, 100 SOUTH MAIN ST. ANDERSON S.C. 29624
3. Name(s) of co-defendant(s) (if any) RODERICK SLOAN
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2001-GS-24-365, 366, 367, 368, 369, 370 AND 371 (KIDNAPPING)
 - (b) 2001-GS-04-1021 (ARMED ROBBERY)
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) AUGUST 9TH, 2001 (LIFE SENTENCE) ON EACH OFFENSE
 - (b) _____

Revised 3/2003

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
(b) after a plea of not guilty 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. THE SOUTH CAROLINA COURT OF APPEALS

ii. _____

iii. _____

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

i. CONVICTION AFFIRMED

ii. _____

iii. _____

(c) the date of each such result:

i. FILED MARCH 17TH, 2007

ii. _____

iii. _____

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

i. _____

OPINION NUMBER 3415

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) N/A
(b) _____
(c) _____

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

- (a) TRIAL COURT SUBJECT-MATTER JURISDICTION VIOLATIONS
- (b) VIOLATIONS OF S.C. CODE ANNS 17-25-45(H) & 16-3-910
- (c) VIOLATIONS OF DUE PROCESS AND EQUAL PROTECTION RIGHTS

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

- (a) PROSECUTOR AND COURT CONSTRUCTED AMENDED APPLICANT'S INDICTMENTS
- (b) TRIAL COURT IMPOSED AN EXCESSIVE SENTENCE ON KIDNAPPING INDICTMENT
- (c) TRIAL COURT VIOLATED APPLICANT'S CONST RIGHTS WHEN IMPOSED SENTENCES

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? (YES)
- (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 (6)? (NO)
- (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. AN APPLICATION FOR POST-CONVICTION RELIEF
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. COURT OF COMMON PLEAS / ANDERSON COUNTY
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. "DO NOT MARK IT TRUE TIME"
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition: _____
- i. _____
- ii. _____
- 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?

(NO)

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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) P.C.R. COURT DEPRIVED APPLICANT OF RIGHT TO RAISE CLAIMS AT P.C.R.
- (b) JUDICIAL MISCONDUCT - VIOLATIONS OF S.C.A.C.R. RULE "502.18" S.C.R.P.C. RULE 84
- (c) (d) SUCH VIOLATIONS DEPRIVED APPLICANT OF DUE PROCESS RIGHTS IN P.C.R.

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

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

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. DOROTHY MANIGAN 111 P.O. BOX 3921 GREENVILLE S.C. 29602

ii. WANDA HAILE 1122 LADY ST, SUITE 940 COLUMBIA SC. 29201

iii. SCOTT O. ROBINSON 209 E MAIN ST. PICKENS S.C. 29671

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

i. TRIAL AND SENTENCING

ii. DIRECT APPEAL

iii. POST-CONVICTION RELIEF

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

CONVICTIONS AND SENTENCES VACATED

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

(NO)

2018CP0401305

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

DARRELL HUDSON)

I, ↑, 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.

Darrell Hudson

SWORN to and subscribed before me this 13th
day of May, 2018.

Claude Jordan ELLIOTT II (L.S.)
Notary Public

My Commission Expires June 23rd 2021

FILED-CLERKS OFFICE
ANDERSON SC
2018 JUL -3 PM 12:28
COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY

JUL -3 2018

Richard M. Hines
ANDERSON CLERK OF COURT

2018CP0401305

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

I, DARNEIL HUDSON, 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.

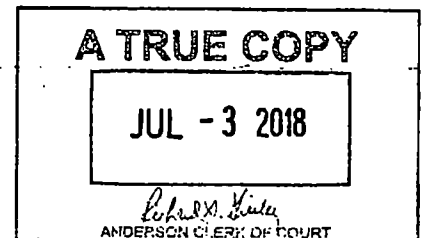
Darnell Hudson
Applicant

SWORN or affirmed to and subscribed before me this
13th day of MAY, 2018.

Charles S. Ellis II
Notary Public

My Commission Expires: JUNE 23rd 2021

FILED-CLERK'S OFFICE
ANDERSON SC
2018 JUL -3 PM 12:28
COMMON PLEAS AND
GENERAL SESSIONS



STATE OF SOUTH CAROLINA
THE COUNTY OF ANDERSON

DARNEIL E. HUDSON *227328
APPLICANT,

V.

IN THE COURT OF COMMON
PLEAS

C/A NO: 2018-CP-04-01305

MOTION FOR LEAVE TO AMEND

STATE OF SOUTH CAROLINA
RESPONDENT.

NOW COMES APPLICANT, DARNEIL E. HUDSON *227328, HEREBY MOVES BEFORE THIS HONORABLE COURT OF COMMON PLEAS FOR THE TENTH (10TH) JUDICIAL CIRCUIT FOR ANDERSON COUNTY, BY MOTION PURSUANT TO S.C.R.C.P. RULE 15(A) REQUESTING FOR LEAVE TO AMEND P.C.R. APPLICATION FILED UPON THIS COURT ON THE DAY OF JULY 3RD 2018 IN C/A NO: 2018-CP-04-01305 HUDSON V. STATE. THE HEREBY AMENDED P.C.R. APPLICATION ATTACHED TO THIS MOTION FOR LEAVE TO AMEND IS TO GIVE NOTICE TO THE RESPONDENT OF THE ASSERTED GROUNDS THAT IS HEREBY NOW RAISED BY APPLICANT AND THE RELIEF DEMANDED.

THIS MOTION FILED UPON THIS COURT DO NOT CREATE NO DELAY OR PREJUDICE TO THE RESPONDENT IN THIS MATTER. APPLICANT REQUEST MOTION TO AMEND BE GRANTED PURSUANT TO S.C.R.C.P. RULE 15(A) PARKER V. SPARTANBURG SANITARY SEWER DIST. (S.C. APP 2005) 362 S.C. 276, 607 S.E.2d 711.

SEPTEMBER 6TH, 2018
DATE



SIGNATURE OF APPLICANT

FILED-CLERKS OFFICE
ANDERSON SC
2018 SEP 12 PM 2:18
COMMON PLEAS AND
GENERAL SESSIONS

LEGAL

HUDSON-227328

STATE OF SOUTH CAROLINA

County of ANDERSON

DARNEILLE HUDSON #227328

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

vs.

STATE OF SOUTH CAROLINA

Name of Respondent.

In the Court of Common Pleas
CIA No: 2018-CP-04-01305

AMENDED

**APPLICATION FOR
POST-CONVICTION RELIEF**

PURSUANT TO S.C.R.C.P. RULE 15(A)
APPLICANT'S MOTION TO AMEND
INCORPORATED TO ATTACHED MOTION
FILED

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention KERSHAW CORR INST, 4848 GOLDMINE HWY KERSHAW
S.C. 29067
2. Name and location of Court which imposed sentence ANDERSON COUNTY COURT OF GENERAL
SESSIONS, 100 SOUTH MAIN ST. ANDERSON S.C. 29624
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2001-GS-04-365, 366, 367, 368, 369, 370 & 371 (KIDNAPPINGS)
 - (b) 2001-GS-04-1621 (ARMED ROBBERY)
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) AUGUST 9TH, 2001 (LIFE SENTENCE) ON EACH OFFENSE
 - (b) _____
 - (c) _____

COMMON PLEAS AND
GENERAL SESSIONS

2018 SEP 2 PM 2:18

FILED-CLERK'S OFFICE
ANDERSON SC

5. 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 _____

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

YES

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

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

i. THE SOUTH CAROLINA COURT OF APPEALS

ii. _____

iii. _____

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

i. CONVICTION AFFIRMED

ii. _____

iii. _____

(c) the date of each such result:

i. FILED MARCH 17TH, 2003

ii. _____

iii. _____

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

i. _____

OPINION NO: 3615

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

(a) TRIAL COURT LACKED SUBJECT MATTER JURISDICTION

(b) _____

(c) _____

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

(a) SEE ATTACHED MOTION TO AMEND INCORPORATED TO APPLICATION

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? YES

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? YES

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO

(d) any other petitions, motions or applications in this or any other Court? YES

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

(a) the specific nature thereof:

i. AN APPLICATION FOR POST-CONVICTION RELIEF

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. COURT OF COMMON PLEAS / ANDERSON COUNTY

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. DO NOT HAVE AVAILABLE AT THIS TIME

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) LACK OF SUBJECT MATTER JURISDICTION CAN BE RAISED AT ANY TIME

(b) _____

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

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

i. DOROTHY MANIGAUIT

P.O. BOX 3921 GREENVILLE S.C. 29602

ii. WANDA HAILE

1122 LADY ST, SUITE 940 COLUMBIA, SC 29201

iii. SCOTT D. ROBINSON

209 E. MAIN ST, PICKENS S.C. 29671

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

i. TRIAL AND SENTENCING

ii. DIRECT APPEAL

iii. POST-CONVICTION RELIEF

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

CONVICTIONS AND SENTENCES VACATED

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

NO

STATE OF SOUTH CAROLINA

County of ANDERSON

VERIFICATION

I, DARNEIL E. HUDSON

, 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.

Darnell E. Hudson

SWORN to and subscribed before me this 6th

day of September, 16 2018

Catherine A. Amos

Notary Public

(L.S.)

My Commission Expires: December 22, 2018

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

I, DARNEIL E. HUDSON

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

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

Darnell E. Hudson

Applicant

SWORN or affirmed to and subscribed before me this

6th day of September, 16 2018

Catherine A. Amos

Notary Public

My Commission Expires December 22, 2018

FILED-CLERKS OFFICE
ANDERSON SC
2018 SEP 12 PM 2:18
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
APPLICANT

V.

STATE OF SOUTH CAROLINA
RESPONDENT.

IN THE COURT OF COMMON PLEAS

C/A NO: 2018-CP-04-01305

ATTACHMENT INCORPORATED TO
AMENDED P.C.R. APPLICATION

NOW COMES APPLICANT, DARNEIL E. HUDSON #227328, ACTING PRO SE, HEREBY FILE AMENDED ISSUE TO P.C.R. Application NO: 2018-CP-04-01305 IN HUDSON V. STATE PURSUANT TO S.C.R.C.P. RULE 15 (A). THE APPLICANT AMENDED P.C.R. APPLICATION NOW FOLLOWS:

ISSUE(A) AMENDED

THE TRIAL COURT OF ANDERSON COUNTY GENERAL SESSIONS LACKED SUBJECT MATTER JURISDICTION OVER APPLICANT'S CRIMINAL CHARGES FOR THE OFFENSE(S) OF ARMED ROBBERY AND KIDNAPPING PURSUANT TO THE FEDERAL HATE CRIME ACT, 18 U.S.C.A. § 245 (b)(1)(2) & (F).....

STATEMENT OF FACTS

1. APPLICANT ASSERTS THAT HIS CONVICTION(S) AND SENTENCE(S) ARE VOID DUE TO THE ANDERSON COUNTY COURT OF GENERAL SESSIONS LACKED SUBJECT MATTER JURISDICTION OVER HIS CRIMINAL CHARGES FOR THE OFFENSE(S) OF ARMED ROBBERY AND KIDNAPPING DUE TO APPLICANT'S CRIMINAL CASE BEING CLASSIFIED UNDER THE FEDERAL HATE CRIME ACT PURSUANT TO 18 U.S.C.A. § 245 (b)(1)(2) & (F) WHICH HAVE VIOLATED APPLICANT'S STATE AND FEDERAL CONSTITUTIONAL AMENDMENT RIGHTS UNDER THE DUE PROCESS AND EQUAL PROTECTION CLAUSE. APPLICANT ASSERTS THAT DUE TO THE STATE COURT VIOLATION HE IS HELD ILLEGALLY, UNLAWFULLY AND UNCONSTITUTIONALLY DUE TO VOIDNESS OF THE COURT.
2. APPLICANT ASSERTS THAT THE TRIAL COURT DID NOT HAVE SUBJECT MATTER JURISDICTION TO HEAR APPLICANT'S CRIMINAL CASE AND IMPOSE THE CONVICTION(S) AND SENTENCE(S) UPON HIM DUE TO THE STATE OF SOUTH CAROLINA NOT HAVING A HATE CRIME LAW OR CRIMINAL STATUTE.
3. ON THE DAY OF NOVEMBER 26TH 2000 AT APPROX 9:30 - 10:00 A.M. TWO BLACK MEN ENTERED THE K.F.C. RESTAURANT HERE IN ANDERSON COUNTY LOCATED AT 3100 EARLE E. MORRIS JR. HWY IN POWDERSVILLE S.C. WITH DEADLY WEAPONS DESCRIBED AS [KNIFE AND PISTAL] AND PROCEEDED TO ARM ROB THE K.F.C. OF ITS MONEY.
4. DURING THE COMMISSION OF THE ARMED ROBBERY SEVEN (7) OF THE K.F.C. WORKERS [ALL CAUCASIAN] [WHITE PEOPLE] [1. KENNY CANNON, 2. ARRON MATHIS, 3. TONI PILGRIM, 4. RICHARD AUSBURN, 5. RICHARD WILLIAMSON, 6. VICKIE MCMAHAN AND 7. LESLEY BANDA] WAS FORCED BY THE ARMED ROBBERS AROUND THE PUBLIC RESTAURANT BY THREATS OF CAUSING PHYSICAL HARM UPON THEM IF THEY DID NOT COOPERATE WITH THE ARMED ROBBERS DEMANDS. THE ARMED ROBBERS POINTED THEIR WEAPONS AT THE SEVEN EMPLOYEES AND INTIMIDATED THEM BY SUCH THREATS OF CAUSING BODY INJURY OR HARM TO THEM WITH THE USE OF THEIR WEAPONS. ALL SEVEN OF THE EMPLOYEES WAS FORCED AGAINST THEIR WILL TO LAY DOWN ON THE FLOOR BY ONE OF THE ARMED ROBBERS AFTER THEY HAD ROBBED THE ESTABLISHMENT OF ITS MONEY.

5. APPROX 15 MINUTES AFTER THE ARMED ROBBERY AND KIDNAPPINGS HAD OCCURRED, THE ANDERSON COUNTY SHERIFF'S OFFICE WAS NOTIFIED BY ONE OF THE K. F. C. EMPLOYEES OF THE INCIDENT, THE POLICE THEN ARRIVED AT THE INCIDENT LOCATION AND QUESTIONED THE SEVEN (7) VICTIMS OF THE KIDNAPPING AND ARMED ROBBERY. THE SEVEN (7) VICTIMS GAVE THE POLICE THE DESCRIPTIONS OF THE ARMED ROBBERS/ KIDNAPPERS AND THE KIND OF VEHICLE THE SUSPECTS ALLEGESLY WAS DRIVING.

6. ON THE DAY OF DECEMBER 4TH, 2000 APPROX EIGHT (8) DAYS AFTER THE ARMED ROBBERY AND KIDNAPPING INCIDENT APPLICANT WAS ARRESTED BY THE ANDERSON COUNTY SHERIFF'S DEPT AND WAS CRIMINALLY CHARGED WITH SEVEN (7) KIDNAPPING(S) AND THREE (3) ARMED ROBBERIES CHARGES WHICH OCCURRED AROUND THE POWERSVILLE AREA OF THE COUNTY.

7. EACH OF THE ARREST WARRANT(S) WAS ALL COMMITTED AGAINST ALL WHITE PEOPLE THAT EITHER OWNED THEIR OWN PUBLIC ESTABLISHMENT OR WORKED FOR A COMMERCIAL PUBLIC RESTAURANT BUSINESS RANED BY AN CAUCASIAN WHITE PEOPLE.

8. INVESTIGATOR REEVES FOR THE ANDERSON COUNTY SHERIFF'S DEPT WAS OVER THE CASE AND THROUGH HIS INVESTIGATION HE DISCOVERED FROM OTHER SURROUNDING COUNTIES [GREENVILLE AND PICKENS] THAT APPLICANT WAS A SUSPECT INVOLVED IN SEVERAL ARMED ROBBERIES IN THEIR COUNTY WHICH WAS ALSO COMMITTED AGAINST [ALL CAUCASIAN WHITE PEOPLE] THAT EITHER OWNED THEIR OWN BUSINESS ESTABLISHMENT THAT WAS A PUBLIC PLACE OF BUSINESS RANED BY ALL CAUCASIAN WHITE PEOPLE. AFTER MR. REEVES LEARNED OF THE ARMED ROBBERIES FROM THE OTHER COUNTIES HE CAME TO THE ANDERSON COUNTY DETENTION CENTER AND HAD APPLICANT PULLED FROM HIS JAIL CELL AND TOOK SEVERAL PHOTO'S OF APPLICANT'S BODY FOR TATTOO'S WHICH HE DISCOVERED SEVERAL OF APPLICANT'S TATTOOS TO BE SIGNS, SYMBOLS AND PICTURES OF BLACK AFRICAN ART. INVESTIGATOR REEVES THEN TURNED OVER THE PHOTO'S TO THE ANDERSON COUNTY PROSECUTOR'S OFFICE.

9. IN THE SEVERAL PHOTO'S TAKEN BY INVESTIGATOR REEVES THAT WAS TURNED OVER TO THE PROSECUTOR'S OFFICE WAS PHOTO'S OF TATTOO'S LISTED UNDER THE FEDERAL ANTI DEFAMATION LEAD FOR SYMBOLS OF HATE CRIME ORGANIZATIONS.

10. THE ANDERSON COUNTY PROSECUTOR'S OFFICE FAILED TO TURN OVER TO THE FEDERAL AUTHORITIES APPLICANT'S CASE TO BE INVESTIGATED UNDER THE FEDERAL HATE CRIME ACT PURSUANT TO 18 U.S.C.A. § 245 (b) (1) (2) (F) WHICH PERMITS FEDERAL PROSECUTIONS OF ANYONE WHO WILLINGLY INJURES, INTIMIDATES OR INTERFERES WITH ANOTHER PERSON, OR ATTEMPTS TO DO SO BY FORCE BECAUSE OF THE OTHER PERSON'S RACE, COLOR, RELIGION OR NATIONAL ORIGIN OR BECAUSE THE VICTIMS ATTEMPTED TO ENGAGE IN ONE OF THE TYPES OF FEDERAL PROTECTED ACTIVITIES SUCH AS ATTENDING SCHOOL, PATRONIZING A PUBLIC PLACE, FACILITY, APPLYING FOR EMPLOYMENT, ACTING AS A JUROR IN A STATE COURT OR VOTING. THE LAW PROVIDES THAT ANY PERSON THAT VIOLATES SUCH LAW BE PUNISHED UPON CONVICTION EITHER BY FINE, LIFE OR DEATH.

11. IN THIS CRIMINAL MATTER, THE ANDERSON COUNTY PROSECUTION FAILED TO TURN OVER APPLICANT'S CASE TO THE SOUTH CAROLINA ATTORNEY GENERAL'S OFFICE FOR CERTIFICATION REQUIREMENT PURSUANT TO 18 U.S.C.A. § 249 (b)(1)(A) BECAUSE THIS STATE OF SOUTH CAROLINA [STATE COURTS] DO NOT HAVE JURISDICTION OVER ANY CRIMINAL OFFENSES INVOLVING HATE CRIME ACTS PURSUANT TO 18 U.S.C.A. § 245 (b)(1)(2) (F).

12. PURSUANT TO 18 U.S.C.A. § 245 (b)(1)(2)(F) APPLICANT'S ARMED ROBBERY AND KIDNAPPING CHARGES MUST BE CLASSIFIED UNDER THE HATE CRIME ACT BECAUSE (1) APPLICANT IS A BLACK MAN, (2) THAT WAS SUSPECTED A PART OF A ORGANIZATION THAT HATE CAUCASIAN WHITE PEOPLE (3). HE WILLINGLY FORCED AND INTIMIDATE (7) PEOPLE BECAUSE OF THEIR RACE AND COLOR, WITH MOTIVE AND CRIMINAL INTENT TO ARM ROB THEM AND KIDNAP THEM (4). WITH DEADLY WEAPONS (5). BECAUSE THEY ENGAGED IN PATRONIZING A PUBLIC PLACE. THE ARMED ROBBERY AND KIDNAPPINGS MUST ALSO BE CONSIDERED AS VIOLENT UNDER THE STATUTE.

13. APPLICANT ASSERTS THAT THE ANDERSON COUNTY PROSECUTION PROCEEDED WITH THE CRIMINAL MATTER AGAINST THE LAWS OF THIS STATE WHICH DO NOT HAVE A HATE CRIME LAW OR CRIMINAL STATUTE AND INTENTIONALLY INDICTED APPLICANT FOR (7) KIDNAPPING AND (1) ARMED ROBBERY CHARGE. SEE EXHIBIT (A) INCORPORATED TO MOTION.

14. ON THE DAY OF 8-7-2001 APPLICANT PROCEEDED TO TRIAL BY JURY AND WAS FOUND GUILTY ON 8-9-2001 AS CHARGED. THE TRIAL COURT THEN SENTENCED APPLICANT TO LIFE ON EACH CHARGE WHICH WAS PREJUDICE.

15. APPLICANT ASSERTS THAT THE CONVICTION(S) AND SENTENCE(S) IN THIS MATTER IS VOID BECAUSE THE COURT HAD NO JURISDICTION TO ACT UPON THE CRIMINAL FEDERAL OFFENSE(S). APPLICANT IS THE ONLY PERSON CONVICTED IN STATE COURT UNDER A HATE CRIME ACT WHICH IS NOT LEGAL OR LAWFUL. CLEARLY APPLICANT'S DUE PROCESS AND EQUAL PROTECTION RIGHTS WERE VIOLATED.

16. APPLICANT ASSERTS THAT DUE TO THE STATE COURT ERROR HIS CONVICTION(S) AND SENTENCE(S) MUST BE VACATED.

LAW

17. APPLICANT ASSERTS THAT SUBJECT MATTER JURISDICTION CAN BE RAISED AT ANY TIME. BROWN V. STATE 343 S.C. 342, 540 S.E.2d 846 (2001) FURTHERMORE, LACK OF SUBJECT MATTER JURISDICTION CAN NOT BE WAIVED, NOT EVEN BY CONSENT OF EITHER PARTY. ANDERSON V. ANDERSON, 382 S.E.2d 897 (1989).

IN THIS PRESENT ISSUE APPLICANT ASSERTS LACK OF JURISDICTION OF THE STATE COURT OF GENERAL SESSIONS NOT HAVING THE POWER TO ACT UPON THE CRIMINAL OFFENSE(S) BECAUSE OF 18 U.S.C.A. § 245 (b)(1)(2)(F) NOT WHETHER THE CRIMINAL INDICTMENTS WAS DEFECTED PURSUANT TO STATE V. GENTRY 610 S.E. 2d 494 (2005) SEE UNITED STATES V. DYLAN ROBBE 2:15-472-RMG, UNITED STATES V. CHASE MCCLARY D.O.J. 12-778 (D.O.J.) 2012 WL 2340616.

APPLICANT'S ISSUE IS HEREBY AMENDED TO P.C.R. APPLICATION.

DATE: SEPT 6TH 2018

Darrell E. Hudson
DARRELL E. HUDSON

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 6TH DAY OF Sept 2018

Catherine A. Amara

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES December 27 2018

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

DARNEIL E. HUDSON #227328
APPLICANT,

v.

STATE OF SOUTH CAROLINA
RESPONDENT.

IN THE COURT OF COMMON PLEAS

C/A NO: 2018-CP-04-01305

PROOF OF SERVICE

I, DARNEIL E. HUDSON #227328, APPLICANT CERTIFY THAT I HAVE THIS DAY OF SEPTEMBER 6TH 2018 HAVE SERVED APPLICANT'S MOTION TO AMEND UPON THE CLERK OF COURT OF ANDERSON COUNTY AND THE S.C. ATTORNEY GENERAL'S OFFICE BY DEPOSITING ONE ORIGINAL AND ONE COPY OF THE SAME IN THE U.S. POSTAL MAILBOX (BY AND THROUGH THE KERSHAW CORR INST LEGAL MAIL SYSTEM). THE NOTARIZED SIGNATURE SEEN BELOW INDICATES THAT THE ABOVE PARTIES IS NOW IN THE POSSESSION OF SAID INSTITUTION LEGAL MAIL. HOUSTON V. LACK 487 U.S. 266 (1988).

THE FOLLOWING PARTIES HAVE BEEN SERVED AT THE BELOW ASSERTED ADDRESSES.

1. RICHARD A. SHIRLEY
CLERK OF COURT
P.O. BOX 8002
ANDERSON S.C. 29622

2. S.C. ATTORNEY GENERAL'S
OFFICE
P.O. BOX 11549
COLUMBIA, S.C. 29202

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 6TH DAY OF September
2018.

NOTARY: Catharine A. Amos

EXP: December 22 2018

s/ Darrell Hudson

DARNEIL E. HUDSON #227328
K.C.I. / R.H.U. Cell #83
4848 GOLDMINE HWY
KERSHAW S.C. 29067

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ANDERSON SC
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COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY

SEP 12 2018

LEGAL

Richard Shirley
CLERK C HUDSON-227328

EXHIBIT (G)

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Darnell E. Hudson, #227328,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-04-01305

CONDITIONAL ORDER OF DISMISSAL

A TRUE COPY

MAR 14 2019

CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief filed by Darnell E. Hudson, a.k.a Darnell Hudson East, (Applicant) on July 3, 2018, and an amendment thereto filed September 12, 2018. Respondent made its return and motion to dismiss on or about March 5, 2019, requesting the application be summarily dismissed.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. During its February 2001 term, the Anderson County Grand Jury indicted Applicant for seven counts of kidnapping (2001-GS-04-365; -366; -367; -368; -369; -370; -371). Thereafter, during its June 2001 term, the Anderson County Grand Jury indicted Applicant for one count of armed robbery (2001-GS-04-1621). Dorothy Manigault, Esquire, represented Applicant on these charges. On August 7-9, 2001, Applicant proceeded to a jury trial before the Honorable John W. Kittredge. Following deliberations, the jury convicted Applicant as indicted for all charges. Judge Kittredge sentenced Applicant to eight concurrent terms of life imprisonment for each charge.

Applicant filed a timely notice of appeal, and Wanda H. Haile, Esquire, perfected an appeal on Applicant's behalf. On appeal, Applicant raised the following issues:

1. The lower court erred in denying [Applicant's] directed

2. verdict motions on the kidnapping charges; [and]
The lower court erred in denying [Applicant's] motion for a directed verdict on the indictment alleging that [Applicant] kidnapped one Richard Ausburn when said victim was not present at trial to testify to this effect.

Following briefing, the South Carolina Court of Appeals affirmed Petitioner's convictions and sentences in a published opinion on March 17, 2003. *State v. Darnell Hudson East*, 353 S.C. 634, 578 S.E.2d 748 (Ct. App. 2003). The remittitur was issued on April 2, 2003.

2003-CP-04-03394

Applicant subsequently filed an application for post-conviction relief on October 29, 2003, alleging he was being held unlawfully for the following reasons:

1. Ineffective assistance of counsel at trial and sentencing; [and]
 - a. See *Strickland v Washington*, 466 US 668, 104 S Ct 2052 (1984).
2. Ineffective assistance of appellate counsel.
 - a. See *Evitts v Lucey*, 469 US 387, 105 S Ct 830 (1985).

On May 11, 2004, Petitioner submitted an amended application in which he asserted the following additional allegations:

1. Ineffective Assistance of Trial Counsel;
 - a. Was defense counsel ineffective in failing to prepare for the trial; [and]
 - b. Was defense counsel ineffective in failing to object to the prosecutor's pitting of witnesses and vouching for State's witnesses in his closing to the jury?
2. Subject Matter Jurisdiction;
 - a. Did the trial court lack subject matter jurisdiction to enter conviction and impose sentences upon indictments 2001-GS-04-365 through 371 for kidnapping;
 - b. Did the trial court have subject matter jurisdiction on the indictment for Richard Ausburn for kidnapping; [and]
 - c. Did the State's Amendment to the indictment divest the court of subject matter jurisdiction?
3. Section 17-25-50 Violation;

4. Prosecutorial Misconduct;
 - a. Was S.C. Code Ann., Section 17-25-50 violated in the sentencing phase of the trial?
5. Did the trial court interfere [sic] with counsel's ability to represent her client by denying her Motion for Directed Verdict;
6. Did the trial Court error [sic] in not excluding the Applicant's alleged statement from the trial of this case; [and]
7. Was evidence entered into the trial obtained in violation of the 4th Amendment?

Respondent made its return on September 17, 2004, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was subsequently convened on August 14, 2007, at the Anderson County Courthouse before the Honorable Alexander S. Macaulay. Applicant was present at the hearing and represented by Scott Robinson, Esquire. Thereafter, on September 7, 2007, Judge Macaulay issued an order denying and dismissing the application with prejudice. Said order was filed September 12, 2007.

Applicant filed a notice of appeal November 21, 2007. On February 12, 2008, the South Carolina Supreme Court dismissed the appeal for Applicant's failure to provide the Court with the date on which he first received notice of entry of the order as requested. The remittitur was issued on February 29, 2008.

2008-CP-04-01567

Applicant filed his second application for post-conviction relief on May 19, 2008, alleging he was being held unlawfully for the following reasons:

1. Ineffective assistance of "PCR" counsel.
 - a. PCR Counsel failed to file (59E) after order denying relief failed to address all claims raised at PCR hearing; [and]
 - b. PCR Counsel failed to file a timely notice of intent to appeal.

Respondent filed its return and motion to dismiss on September 2, 2008, requesting the application be summarily dismissed as untimely and because Applicant received appellate review of the denial of his first post-conviction relief application. On September 5, 2008, Judge Macaulay issued a conditional order of dismissal provisionally denying and dismissing the application while giving Applicant twenty days to show why the conditional order should not become final. Thereafter, Applicant was granted an evidentiary hearing, and a hearing was held on October 7, 2009, at the Anderson County Courthouse before the Honorable J. Cordell Maddox, Jr. Applicant was present at the hearing and represented by David Brousseau, Esquire. On November 13, 2009, Judge Maddox issued an order granting Applicant a belated appeal from the denial of his first post-conviction relief application. Said order was filed on November 17, 2009.

Applicant filed a timely notice of appeal, and Elizabeth Franklin-Best, Esquire, perfected an appeal on Applicant's behalf. On appeal, Applicant raised the following issues:

1. Did counsel render ineffective assistance of counsel by denying her client's right to be present at a pre-trial hearing when she made a motion for a continuance, at the start of trial? [and]
2. Did counsel render ineffective assistance of counsel by failing to inform the trial court judge that she was only recently retained on his case, and had not meaningfully discussed the case with him prior to trial?

The South Carolina Court of Appeals subsequently denied Applicant's petition for a writ of certiorari by written order on July 11, 2012. The remittitur was issued on July 30, 2012.

2012-CP-04-02734

Applicant filed his third application for post-conviction relief on August 14, 2012. In that application, Applicant alleged he was being held in custody unlawfully based on:

1. Ineffective Assistance of P.C.R. Counsel (see attach [sic] statement of facts and legal argument; Exhibits #a)
 - a. Martinez v. Ryan; 566 U.S. ____ (2012) Opinion of

- b. the Supreme Court of the United States.
At the P.C.R. evidentiary hearing P.C.R. Counsel precluded [Applicant] to raise [sic] a [sic] issue of ineffective assistance of appellate counsel.

Thereafter, on February 25, 2013, Applicant amended his application to include the following additional grounds:

1. The State prosecution violated Applicant's rights by the Fourteenth Amendment of the United States Constitution and by the South Carolina Constitutional Law under the Due Process Clause when it failed to disclose in its Rule (5) Brady disclosure that one of the State's witnesses had a prior conviction which was favorable evidence to the defense.

Applicant filed another amended application on April 4, 2013, raising the same issue in his first amended application for post-conviction relief. On January 27, 2014, Respondent made its return and motion to dismiss, requesting the application be summarily dismissed as untimely and as successive. On September 2, 2014, Petitioner filed a petition for writ of mandamus to the South Carolina Supreme Court. Thereafter, the Court informed Petitioner it would take no action on the writ.

Subsequently, on April 27, 2015, Respondent filed an amended return and motion to dismiss, again requesting the application be summarily dismissed as untimely and as successive. Judge Maddox subsequently issued a conditional order of dismissal on May 1, 2015, and filed May 4, 2015, provisionally denying and dismissing the application with prejudice while giving Applicant twenty days to show why the order should not become final. Applicant failed to respond to the conditional order within the allotted time. Thereafter, Judge Maddox issued a final order of dismiss, denying and dismissing the application with prejudice. Applicant did not appeal Judge Maddox's final order.

Applicant subsequently filed a petition for writ of habeas corpus in the Anderson County Court of Common Pleas. In this petition, Applicant alleged the following grounds for relief:

1. Trial counsel render [sic] ineffective assistance of counsel by failing to call [Applicant] to the stand to testify when [Applicant] never knowingly, voluntarily, or intelligently waived his 5th Amend. Of the U.S. Const Amendment right to testify, denying [Applicant] the right to testify;
2. Trial counsel render [sic] ineffective assistance of counsel by failing to request to the trial court to question [Applicant] on the record whether or not [Applicant] was going to testify or waive his 5th Amendment right not to testify;
3. [Applicant] never knowingly, voluntarily, or intelligently waived his 5th Amendment right to testify;
4. The trial court erred in failing to question [Applicant] on the record of his decision to testify or not testify.
5. [Applicant] was denied the guaranteed right to confrontation and cross examination of one of the State's victims in this case (Richard Ausburn);
6. Trial counsel render [sic] ineffective assistance of counsel by failing to object to the State failing to enter any "sworn testimony" or subpoena to establish the unavailability of an alleged victim (Richard Ausburn) who was not in court to testify that they got kidnapped;
7. Trial counsel render [sic] ineffective assistance of counsel by failing to motion [sic] to depose (videotape or get a statement) of a allege [sic] victim that the State failed to produce at trial for the [Applicant] to confront and cross examine under oath that he was kidnapped by [Applicant];
8. Trial counsel render [sic] ineffective assistance of counsel by failing to motion [sic] to suppress identification testimony of the victims;
9. Trial counsel render [sic] ineffective assistance of counsel by failing to object to in-court identification of [Applicant];
10. [Applicant] was denied his 6th and 14th Amends. Rights of the U.S. Const. Amendments by being denied to confrontation and cross examination of a State witness (Detective Judy Cartee) which the State filed to produce at trial so [Applicant] could confront and cross examine under oath;
11. Trial counsel was ineffective in failing to object to the Prosecutor pitting of defense witness and vouching to the State witnesses in his closing to the jury;

12. The P.C.R. court violated the South Carolina Post-Conviction Relief Procedures Act, Code Ann § 17-27-80 by failing to make a specific finding of fact and state expressly its conclusion of law relating to each issue presented;
13. P.C.R. counsel render [sic] ineffective assistance of counsel by failing to file a Rule 59(e) motion to alter or amend the judgment of the P.C.R. court's Order of Dismissal; [and]
14. P.C.R. counsel render [sic] ineffective assistance of counsel by denying [Applicant] to his right to raise claim of ineffective assistance of appellate counsel at Petitioner's P.C.R. hearing.

Respondent made its return and motion to dismiss the petition for writ of habeas corpus on June 4, 2015, requesting the application be summarily dismissed because the allegations could have been raised in prior application for post-conviction relief and because State petitions for writ of habeas corpus must be filed in the original jurisdiction of the Supreme Court of South Carolina. The Honorable R. Lawton McIntosh issued an order dismissing the petition for writ of habeas corpus on June 9, 2015, and filed on June 10, 2015. Applicant did not appeal.

4:15-690-JMC-TER

Applicant subsequently filed a petition for writ of habeas corpus in the United States District Court, District of South Carolina on February 18, 2015. In the petition, Applicant raised the following grounds for relief:

1. [Applicant's] Due Process and Equal Protection Clause of the 5th and 14th Amendments of the U.S. Const is [sic] being violated;
2. [Applicant] was denied effective assistance of trial counsel which violated his 6th and 14th Amendments of the U.S. Const;
3. P.C.R. Counsel rendered ineffective assistance of counsel in [Applicant's] initial review collateral [sic] proceeding; [and]
4. [Applicant's] Due Process rights pursuant to the 5th and 14th Amendments of the U.S. Const was [sic] violated which prejudiced him.

Respondent made its return and motion for summary judgment on June 10, 2015, requesting the action be summarily dismissed as the record conclusively showed Applicant was not entitled to any relief. Thereafter, the Honorable Thomas E. Rogers, III, United States Magistrate Judge, issued a report and recommendation on September 9, 2015, recommending Respondent's motion for summary of judgment be granted in its entirety and the petition dismissed without an evidentiary hearing. The Honorable J. Michelle Childs, United States District Judge, subsequently issued an order, adopting Judge Rogers's report and recommendation, ordering Respondent's motion for summary judgment be granted in its entirety, and dismissing the petition without an evidentiary hearing.

CURRENT APPLICATION

In his *fourth* and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Trial court subject-matter jurisdiction violations;
 - a. Prosecutor and court constructed amended Applicant's indictments.
2. Violations of S.C. Code Ann § 17-25-45(H) & 16-3-910; [and]
 - a. Trial court imposed an excessive sentence on kidnapping indictment;
3. Violations of Due Process and Equal Protection rights.
 - a. Trial court violated Applicant's Const rights when imposed sentences.

In his amendment to the application for post-conviction relief, Applicant raises the following additional grounds for relief:

1. The trial court of Anderson County General Sessions lacked subject matter jurisdiction over Applicant's criminal charges for the offense(s) of armed robbery and kidnapping pursuant to the Federal Hate Crime Act, 18 U.S.C.A. § 245(b)(1)(2) & (F)

Also before this Court are the Anderson County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the records from Applicant's prior post-conviction

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relief actions and the appeals therefrom, the records from Applicant's federal habeas corpus action, the records from Applicant's state habeas corpus action, and the records for this current post-conviction relief action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), this Court makes the following findings of fact and conclusions of law:

Statute of Limitations

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

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of 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 on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held 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). 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, section 17-27-70(c) of the South Carolina Code 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."

Applicant was convicted as indicted on August 9, 2001, and the remittitur from his direct appeal was issued on April 2, 2003. The application was, therefore, due on or before April 3, 2004. This application was not filed until July 3, 2018, *more than fourteen years after* the statutory filing period had expired. Therefore, this Court shall summarily dismiss the application as barred by the statute of limitations.

Successive

This Court further finds the application shall be summarily dismissed because it is successive to Applicant's previous post-conviction relief applications. Courts disfavor successive applications and place the burden on applicants to establish any new ground raised in a subsequent application could not have been raised in an earlier application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

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

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

applications. *Id.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations of ineffective assistance of counsel, prosecutorial misconduct, and lack of subject matter jurisdiction could have been, or were in fact, raised in Applicant's prior applications for post-conviction relief. Indeed, Applicant's current application is practically identical to his prior applications. Applicant has wholly failed to establish any sufficient reason why he could not have raised these current allegations in one of his numerous previous applications for post-conviction relief. Therefore, Applicant has failed to meet the burden imposed upon him, and the application is summarily dismissed as successive to Applicant's prior post-conviction relief action.

Res Judicata

This Court similarly finds the application is similarly barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. *Foran v. USAA Casualty Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.*; see also *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant had a full opportunity to litigate all of his allegations in his prior actions. Specifically, Applicant raised the same allegations in this application which were not only raised in his original application for post-conviction relief but also raised at the evidentiary hearing. Indeed, Applicant voluntarily chose to waive his allegations of subject-matter jurisdiction at the evidentiary hearing for his first post-conviction relief application. Accordingly, these issues were

fully litigated and were ruled upon by the post-conviction relief court. The finality of the previous court rulings should be respected, and this Court finds the application shall be summarily dismissed as barred by the doctrine of *res judicata*.

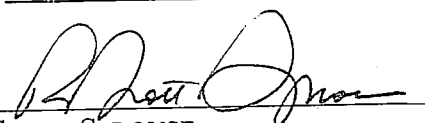
CONCLUSION

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

Office of the Attorney General
Attn: Kelly Oppenheimer, Esquire
PCR Division – 10th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

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

AND IT IS SO ORDERED this 8 day of March, 2019.


R. SCOTT SPROUSE
Chief Administrative Judge
Tenth Judicial Circuit

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Anderson, SC DEC: CP/BS

Walthalla, South Carolina

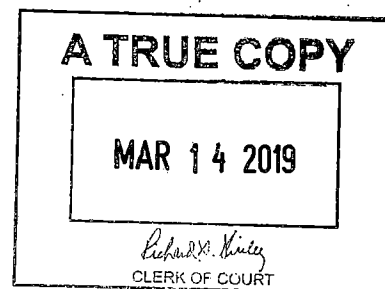


EXHIBIT (H)

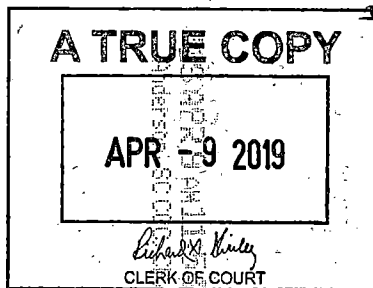
STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

DARNEIL HUDSON #227328

APPLICANT,

V.

STATE OF SOUTH CAROLINA
Respondent.



IN THE COURT OF COMMON PLEAS

C/A NO: 2018-CP-04-01305

OPPOSITION TO COURT
CONDITIONAL ORDER
OF DISMISSAL

THIS MATTER CAME BEFORE THE COURT BY WAY OF AN APPLICATION FOR POST CONVICTION RELIEF FILED BY APPLICANT DARNEIL HUDSON #227328 ON JULY 3 2018 AND A FILED AMENDMENT THERETO ON SEPTEMBER 12, 2018. THE RESPONDENT MADE ITS RETURN AND MOTION TO DISMISS ON OR ABOUT MARCH 5, 2019 REQUESTING THAT APPLICANT P.C.R. APPLICATION BE SUMMARILY DISMISSED. PURSUANT TO S.C. CODE ANN § 17-27-70 (b) THIS COURT INTENDS TO DISMISS APPLICANT'S P.C.R. APPLICATION WITH PREJUDICE UNLESS APPLICANT PROVIDE SPECIFIC REASONS EITHER LEGAL OR FACTUAL WHY HIS P.C.R. APPLICATION SHOULD NOT BE DISMISSED IN ITS ENTIRETY. APPLICANT WAS GRANTED TWENTY (20) DAYS FROM THE DATE OF SERVICE OF THE COURT ORDER TO SHOW WHY THE ORDER SHOULD NOT BECOME FINAL. APPLICANT ASSERTS THAT HE RECEIVED THE COURT'S ORDER ON THE DATE OF MARCH 18, 2019 BY THE PRISON MAILROOM SYSTEM. THIS RESPONSE TO SUCH ORDER NOW TIMELY FOLLOWS:

PROCEDURAL HISTORY

APPLICANT ADOPTS PROCEDURAL HISTORY FROM THE COURT CONDITIONAL ORDER OF DISMISSAL. PAGE 1 THROUGH 8 INCORPORATED HEREIN AS IF FULLY REWRITTEN.

STATEMENT OF FACTS

1. APPLICANT ASSERTS THAT THE RESPONDENT, STATE OF SOUTH CAROLINA HAS PUNISHED HIM FOR CRIMINAL OFFENSE(S) WHICH HE WASN'T LEGALLY CONVICTED FOR IN THE COURT OF ANDERSON COUNTY GENERAL SESSIONS THAT LACKED COMPETENT JURISDICTION OVER THE CRIMINAL CHARGES AND OVER APPLICANT, IN VIOLATION OF CRIMINAL STATUTES, BOTH STATE AND FEDERAL, AND PURSUANT TO HIS 5TH AND 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION, ART 1 § 3, 11 OF THE SOUTH CAROLINA CONSTITUTION.
2. APPLICANT ASSERTS THAT THE ANDERSON COUNTY COURT OF GENERAL SESSIONS LACKED SUBJECT MATTER JURISDICTION OVER HIS CRIMINAL CHARGE(S) FOR ARMED ROBBERY AND KIDNAPPING PURSUANT TO THE FEDERAL STATUTE OF 18 U.S.C.A. § 245 HATE CRIME ACT.
3. APPLICANT ASSERTS THAT ON THE DAY OF NOVEMBER 26, 2000 SEVEN [7] CAUCAISAN WHITE PEOPLE, KENNY CANNON, ARRON MATHIS, TONI PILGRIM, RICHARD AUSBURN, RICHARD WILLIAMSON, VICKIE MCMAHAN AND LESLEY BRANDA WAS KIDNAPPED DURING THE COMMISSION OF AN ARMED ROBBERY THAT OCCURRED AT THE

LOCATION OF 3100 EARLE E. MORRIS JR. HWY IN POWDERSVILLE SOUTH CAROLINA
By APPLICANT AND A CO DEFENDER.

4. EACH EMPLOYEE WAS EMPLOYED FOR K.F.C. WHICH IS A PUBLIC PLACE OF BUSINESS THAT ACCOMMODATED PEOPLE THROUGH THE SERVICE OF THE RESTAURANT WHICH ENGAGED IN SELLING FOOD.
5. EACH EMPLOYEE WAS WILLFULLY FORCED, INTIMIDATED, AND THREATEN BY APPLICANT WHILE HE WAS ARMED WITH A WEAPON COMMITTING THE VIOLENT CRIME OF KIDNAPPING AND ARMED ROBBERY AGAINST THEM BECAUSE THEY WERE ALL CAUCASIAN WHITE PEOPLE THAT WORKED FOR A PUBLIC PLACE OF BUSINESS OUT OF HATE AND RACIAL MOTIVE.
6. PRIOR TO THE ARMED ROBBERY AND KIDNAPPING INCIDENT APPLICANT WAS A SUSPECT OF SEVERAL ARMED ROBBERIES AROUND THE AREA OF POWDERSVILLE AND OTHER SURROUNDING COUNTIES [PICKEN'S AND GREENVILLE] WHICH WAS ALSO COMMITTED AGAINST ALL CAUCASIAN WHITE PEOPLE.
7. PRIOR TO NOVEMBER 26, 2000 THE ANDERSON COUNTY SHERIFF'S DEPT KNEW OF THE OTHER CRIMES BEING COMMITTED AGAINST ONLY CAUCASIAN WHITE PEOPLE BY A BLACK MALE SUSPECT FITTING APPLICANT'S DESCRIPTION AND FAILED TO TURN OVER TO THE ATTORNEY GENERAL'S OFFICE ITS INVESTIGATION OF THE CRIMES FOR THE FEDERAL AUTHORITIES TO INVESTIGATE THE POSSIBLE CRIMES OF HATE OR RACIAL MOTIVE DUE TO ALL THE CRIMES BEING COMMITTED ONLY AGAINST CAUCASIAN WHITE PEOPLE.
8. ON DECEMBER 4, 2000 APPLICANT WAS ARRESTED BY THE ANDERSON COUNTY SHERIFF'S DEPT AND WAS CHARGED FOR ALL THE MULTIPLE CHARGES OF KIDNAPPING AND ARMED ROBBERY WHICH WAS COMMITTED AGAINST ALL CAUCASIAN WHITE PEOPLE.
9. THE ANDERSON COUNTY SHERIFF'S DEPT HAD SUSPECTED APPLICANT TO BE A PART OF AN ORGANIZATION AND CAME TO THE ANDERSON COUNTY DETENTION CENTER AND HAD APPLICANT TOOKEN FROM HIS JAIL CELL AND TOOK SEVERAL PHOTOGRAPHS OF APPLICANT TATTOO'S WHICH THEY DISCOVERED THAT SOME OF APPLICANT'S TATTOO'S WERE LISTED UNDER THE FEDERAL ANTI DEFAMATION LEADS FOR TATTOO'S OF HATE CRIME ORGANIZATION.
10. AFTER LEARNING ABOUT THE TATTOO'S OF APPLICANT THE ANDERSON COUNTY SHERIFF'S DEPT FAILED TO CONTACT THE ATTORNEY GENERAL'S OFFICE ABOUT THE CRIMES THAT WAS COMMITTED AGAINST ALL CAUCASIAN WHITE PEOPLE FOR THEIR INVESTIGATION OF POSSIBLE HATE CRIME ACTS OR RACIAL MOTIVE.

11. THE SHERIFF'S DEPT DISREGARDED TURNING OVER ITS CASES TO THE FEDERAL AUTHORITIES OR ATTORNEY GENERAL OFFICE FOR ITS CERTIFICATION SEEKING FEDERAL INVESTIGATION OF POSSIBLE HATE CRIME ACT AND OR PROSECUTION AGAINST APPLICANT BECAUSE (1). APPLICANT IS A BLACK MAN (2). WILLFULLY USED FORCE, THREATS AND INTIMIDATION (3), WITH A WEAPON (4), TO KIDNAPP AND ARM ROB (5) ALL CAUCASIAN WHITE PEOPLE THAT (6). WAS EMPLOYEE'S FOR A PUBLIC PLACE OF BUSINESS THAT ENGAGED IN SELLING FOOD TO THE PUBLIC WHICH (7). HAD A FEDERAL PROTECTED RIGHT TO DO SO.
12. THE SHERIFF'S DEPT INSTEAD TURNED THE CASE OVER TO THE ANDERSON COUNTY PROSECUTOR'S OFFICE WHICH FAILED TO CONTACT THE ATTORNEY GENERAL'S OFFICE FOR ITS CERTIFICATION REQUIREMENT FOR THE FEDERAL AUTHORITIES TO HOLD AN INVESTIGATION FOR POSSIBLE CRIMES OF HATE OR RACIAL MOTIVE WHICH WAS COMMITTED BY APPLICANT, DUE TO THE ACTIONS OF THE PROSECUTION, IT VIOLATED THE FEDERAL STATUTE OF 18 U.S.C. A. § 245.
13. THE PROSECUTOR'S OFFICE FOR ANDERSON COUNTY KNEW THAT APPLICANT WAS SUBJECTED TO FEDERAL PROSECUTION DUE TO THE CRIMES COMMITTED AND ALSO KNEW THAT SOUTH CAROLINA DID NOT HAVE A HATE CRIME ACT OR CRIMINAL LAW OR STATUTE AND INSTEAD INDICTED APPLICANT ON THE MULTIPLE CHARGES ARISING OUT OF HATE OR RACIAL MOTIVE.
14. APPLICANT PROCEEDED TO TRIAL BY JURY ON THE DATE OF AUGUST 7, 2001 ON EACH INDICTMENT FILED AGAINST HIM BY THE STATE. APPLICANT WAS REPRESENTED BY MS. DOROTHY MANIGUAT ESQ. AND THE STATE WAS REPRESENTED BY MR. DAVID WAGNER FOR THE ANDERSON COUNTY SOLICITOR'S OFFICE, WHICH WENT BEFORE THE HONORABLE JOHN W. KITTREDGE WHICH SENTENCED APPLICANT TO CONFINEMENT FOR EIGHT CONCURRENT TERMS OF LIFE AFTER A JURY RETURNED WITH A FINDING OF GUILT ON ALL CHARGES
15. THE TRIAL COURT ERRED BY SENTENCING APPLICANT TO A LIFE SENTENCE ON A KIDNAPPING INDICTMENT (2001-GS-04-365) IN VIOLATION OF S.C. CODE ANN § 16-3-910 AND S.C. CODE ANN § 17-25-45(H) DUE TO APPLICANT AND HIS TRIAL COUNSEL FAILURE TO BE NOTIFIED BY THE STATE THAT IT SEEKED A LIFE SENTENCE UPON SUCH CHARGE.
16. FURTHERMORE, THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION OVER APPLICANT'S CRIMINAL CHARGES DUE TO THE FEDERAL STATUTE OF

18 U.S.C.A. § 245. SOUTH CAROLINA DOES NOT HAVE A HATE CRIME ACT OR LAW THEREFORE THE COURT ACTED UPON A MATTER WHICH IT HAD NO RIGHT TO DO SO. THE CONVICTIONS AND SENTENCES IMPOSED UPON APPLICANT IS VOID DUE TO THE COURT LACK OF SUBJECT MATTER JURISDICTION.

CAUSE OF ACTION

17. IN THIS MATTER APPLICANT RAISED UPON THIS COURT LACK OF SUBJECT MATTER JURISDICTION VIOLATIONS, IN PARTICULAR, APPLICANT ASSERTED WITHIN HIS P.C.R. APPLICATION THAT HE IS BEING HELD UNLAWFULLY IN CUSTODY DUE TO:
1. THE TRIAL COURT OF ANDERSON COUNTY LACKED SUBJECT MATTER JURISDICTION OVER HIS CRIMINAL CHARGES DUE TO THE VIOLATION OF THE FEDERAL LAW OF 18 U.S.C.A. § 245 HATE CRIME ACT.
 2. HE WAS SENTENCED TO LIFE IMPRISONMENT UPON AN INDICTMENT FOR KIDNAPPING IN VIOLATION OF S.C. CODE ANN § 16-3-910 AND S.C. CODE ANN § 17-25-45 (H).
- APPLICANT ASSERTED THAT DUE TO SUCH VIOLATIONS, HIS DUE PROCESS AND EQUAL PROTECTION RIGHTS BEEN VIOLATED WHICH VOIDED HIS CONVICTIONS AND SENTENCES WHICH MUST BE VACATED.

18. APPLICANT RE-ASSERTS HIS CAUSE OF ACTION WHICH HE PRESENTED TO THIS COURT IN HIS ACTIVE P.C.R. ACTION AND STATEMENT OF FACTS IN SUPPORT OF HIS ENTITLEMENT TO POST-CONVICTION RELIEF. INCORPORATED HEREIN IS PARAGRAPH 1 THROUGH IT AS COMPLETELY REWRITTEN.

STANDARD OF REVIEW

19. IT IS WELL SETTLED THAT ISSUES RELATED TO SUBJECT MATTER OF A COURT JURISDICTION MAY BE RAISED AT ANY TIME. BROWN V. STATE 343 S.C. 342, 540 S.E. 2d 846, STATE V. FUNDERBURK 529 S.C. 256, 191 S.E. 2d 520. THIS RIGHT IS FUNDAMENTAL AND IS PROTECTED BY THE CONSTITUTION AND THE LAWS OF THIS STATE. THE APPROPRIATE ANALYSIS FOR DETERMINING WHETHER THE TRIAL COURT LACK SUBJECT MATTER JURISDICTION OVER A CAUSE OF ACTION IS WHETHER
1. THE COURT ACTED UPON A MATTER WHICH IT HAD NO VENUE OVER THE CAUSE OF ACTION OR PARTIES INVOLVED.

FURTHERMORE, LACK OF SUBJECT MATTER JURISDICTION ISSUES CAN NOT BE WAIVED, NOT EVEN BY CONSENT OF THE PARTIES. BROWN V. STATE, SUPRA

FIRST CLAIM FOR RELIEF

20. APPLICANT ASSERTS THAT THE COURT OF ANDERSON COUNTY GENERAL SESSIONS LACKED SUBJECT MATTER JURISDICTION OVER APPLICANT'S CRIMINAL CHARGES FOR KIDNAPPING AND ARMED ROBBERY DUE TO THE FEDERAL STATUTE OF 18 U.S.C.A. § 245 ETC, SEQ. HATE CRIME ACT. THE TRIAL COURT VIOLATED THE STATUTE AND IMPOSED CONVICTIONS AND SENTENCES UPON APPLICANT WHICH MUST BE VACATED DUE TO THE COURT ACTING UPON A FEDERAL MATTER WHICH IT HAD NO JURISDICTION TO DO SO, THUS VIOLATING APPLICANT'S 5TH AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION, ART 1 § 3 OF S.C. CONSTITUTION RENDERING APPLICANT'S CONVICTION(S) AND SENTENCE(S) VOID.
- PARAGRAPH 1 THROUGH 19 ARE INCORPORATED HEREIN AS IF FULLY REWRITTEN.
21. PURSUANT TO THE FEDERAL STATUTE OF 18 U.S.C.A. § 245 (b) PERMITS FEDERAL PROSECUTION OF ANY ONE, WHETHER OR NOT ACTING UNDER THE COLOR OF LAW WHO WILLFULLY BY FORCE OR THREAT OF FORCE, INJURES, INTIMIDATES OR INTERFERES WITH OR ATTEMPTS TO INJURE, INTIMIDATE OR INTERFERES WITH (1) ANY PERSON OR PERSONS BECAUSE OF THAT PERSON OR PERSONS (2) RACE, COLOR, RELIGION, NATIONAL ORIGIN OR GENDA BECAUSE THAT PERSON OR PERSONS (F) ENGAGED OR ATTEMPTED TO ENGAGE IN ONE OF THE TYPES OF FEDERAL PROTECTED ACTIVITIES SUCH AS PATRONIZING A PUBLIC PLACE OF BUSINESS WHICH ACCOMMODATES AND SERVES THE PUBLIC BY ENGAGING IN SELLING FOOD FROM A RESTAURANT, MUST BE PUNISHED BY FINE OR IMPRISONMENT UP TO 1 YEAR OR BOTH. IF BODILY INJURY RESULTS OR IF SUCH ACTS OF INTIMIDATION INVOLVES A WEAPON, INDIVIDUALS CAN RECEIVE PRISON TERMS UP TO 10 YEARS WHILE VIOLENT CRIMES CAN CARRY UP TO LIFE OR DEATH IF DEATH RESULTS.
22. IN THIS ACTION, APPLICANT ASSERTS THAT THE FEDERAL COURTS ARE GUARDIANS OF PEOPLE FEDERAL RIGHTS. MITCHUM V. FOSTER 407 U.S. 255 AND THAT APPLICANT COMMITTED MULTIPLE CRIMES OF KIDNAPPING AND ARMED ROBBERY AGAINST ALL CAUCASIAN WHITE PEOPLE WHICH SUCH ACTS FELL WITHIN THE FEDERAL STATUTE OF 18 U.S.C.A § 245 (b) (1) (2) (F) (ii) BECAUSE APPLICANT WILLFULLY

VIOLATED MULTIPLE VICTIMS FEDERAL RIGHTS DUE TO HATE OR RACIAL MOTIVE TOWARDS THEM. PARAGRAPH 1 THROUGH 13 ARE HEREIN INCORPORATED AS IF FULLY REWRITTEN. FEDERAL PROTECTED RIGHTS OF THE PEOPLE WITHIN THE U.S. TERRITORY IS THE RIGHT TO BE FREE TO PARTICIPATE IN OR ENJOY ANY BENEFIT, SERVICE, PRIVILEGE OR ECONOMICAL ACTIVITY WITHOUT DISCRIMINATION ON THE ACCOUNT OF THEIR RACE, COLOR, RELIGION, NATIONAL ORIGIN OR GENDA. U.S. PIMENTAL 979 F.2d 282 U.S. V. ROOF D.S.C. 2016, 255 F SUPP 3RD 438.

23. IN THIS MATTER THE ANDERSON COUNTY SHERIFF'S DEPT AND SOLICITOR'S OFFICE THROUGH THEIR INVESTIGATION OF THE CRIMES COMMITTED KNEW THAT APPLICANT WAS SUBJECTED TO FEDERAL INVESTIGATION FOR POSSIBLE HATE CRIME ACT OR RACIAL MOTIVE AND INTENTIONALLY FAILED TO TURN OVER TO THE ATTORNEY GENERAL'S OFFICE APPLICANT'S CASE FOR A WRITTEN CERTIFICATION FOR THE FEDERAL AUTHORITIES TO INVESTIGATE OR PROSECUTE APPLICANT WHICH WAS REQUIRED IN THIS CASE BECAUSE THE CRIMES COMMITTED INVOLVED THE FEDERAL AUTHORITY TO GET INVOLVED BECAUSE (1) THE STATUTE OF 18 U.S.C.A § 245 GIVES FEDERAL JURISDICTION ONLY TO THOSE CASES WHICH ARISE UNDER FEDERAL LAW WHICH THE HATE CRIME ACT OR MULTIPLE CHARGES ARISING OUT OF RACIAL MOTIVE IS FEDERAL LAW (2) THIS STATE OF SOUTH CAROLINA DOES NOT HAVE JURISDICTION OVER HATE CRIME ACTS OR MULTIPLE CHARGES ARISING OUT OF RACIAL MOTIVE AND (3) UNDER THE 13TH AMENOMENT OF THE U.S. CONSTITUTION PROSECUTION IMPLICATE A SUBSTANTIAL FEDERAL INTEREST. U.S. V. CHASE MCCLARY D.O.J. 12-778 (D.O.J. 2012-WI 2340616). A SUBSTANTIAL FEDERAL INTEREST IS ONE THAT GIVES CONCERN AND CURIOUSITY ABOUT SOMETHING THEY HAD (CAUSE) TO BECOME CONCERNED OR INVOLVED WITH. U.S. V. BRONK 604 F. SUPP 743, U.S. V. CARVIN 555 F. 2d 1303. DUE TO SUCH ACTS COMMITTED BY THE PROSECUTION VIOLATED SECTION A (2) OF THE FEDERAL STATUTE OF 18 U.S.C.A, § 245, WHICH PROVIDED THAT NOTHING IN THE SECTION SHALL BE CONSTRUED TO LIMIT THE FEDERAL AUTHORITY OF FEDERAL OFFICERS OR A FEDERAL GRAND JURY TO INVESTIGATE POSSIBLE VIOLATIONS OF THE FEDERAL STATUTE.

24. PURSUANT TO THE FEDERAL STATUTE IT PROVIDED THE WORD SHALL WHICH INDICATED A MANDATORY INTENT PROVIDED BY THE LEGISLATURE THAT NOTHING CAN LIMIT THE AUTHORITY OF FEDERAL OFFICERS OR A FEDERAL GRAND JURY OF THE RIGHT TO INVESTIGATE POSSIBLE VIOLATIONS OF 18 U.S.C.A. § 245 U.S. V. MYERS 106 F.3d 936 (10 CIR 1997) WILLIAMS V. STATE 410 SE2d 563, HELD, PENAL LAWS ARE TO BE CONSTRUED STRICTLY, IS PERHAPS NOT MUCH LESS OLD THEN CONSTRUCTION ITSELF. IT IS FOUNDED ON THE TENDERNESS OF THE LAW FOR THE RIGHTS OF INDIVIDUALS, AND ON THE PLAIN PRINCIPLE THAT THE POWER OF PUNISHMENT IS VESTED IN THE LEGISLATIVE, NOT IN THE JUDICIAL DEPARTMENT. IT IS THE LEGISLATURE, NOT THE COURT WHICH IS TO DEFINE A CRIME AND ORDAIN ITS PUNISHMENT. PURSUANT TO THE STATUTE OF A (ii) OF 18 U.S.C.A. § 245 THIS COURT MUST ATTEMPT TO ASCERTAIN AND EFFECTUATE THE INTENT OF THE LEGISLATURE WHICH IS CONSTRUED STRICTLY AGAINST THE STATE AND IN FAVOR OF A DEFENDANT. STATE V. CARTER 379 SE2d 905, STATE V. CUTLER 264 SE2d 376.

IN THIS MATTER THE ANDERSON COUNTY SHERIFF'S DEPT AND THE ANDERSON COUNTY SOLICITOR'S OFFICE VIOLATED SECTION (ii) OF A, 18 U.S.C.A. § 245 BY LIMITING THE AUTHORITY OF THE FEDERAL OFFICERS OR FEDERAL GRAND JURY TO INVESTIGATE POSSIBLE VIOLATIONS OF SECTION b(1)(2)(F)(ii) AGAINST APPLICANT AND INSTEADEO INDICTED AND PROSECUTED APPLICANT, THEREFORE APPLICANT'S CONVICTIONS AND SENTENCES ARE VOID DUE TO THE TRIAL COURT LACK OF SUBJECT MATTER JURISDICTION. CAMPBELL V. STATE 535 S.E.2d 928 (2000) STATE V. JOHNSON 510 S.E.2d 423

SECOND CLAIM FOR RELIEF

25. APPLICANT ASSERTS THAT ON THE DAY OF AUGUST 9, 2001 CIRCUIT COURT JUDGE MR. KITTREDGE SENTENCED APPLICANT TO LIFE WITHOUT PAROLE UPON INDICTMENT NUMBER 2001-GS-04-365 FOR THE CRIMINAL OFFENSE OF KIDNAPPING.

26. THE PROSECUTOR IN THAT MATTER FAILED TO SEEK LIFE UPON APPLICANT AND HIS TRIAL COUNSEL PURSUANT TO S.C. CODE ANN § 17-25-45 (H) WHICH PROVIDED THAT A WRITTEN NOTICE MUST BE SERVED UPON A DEFENDANT AND HIS COUNSEL WITHIN 10 DAYS PRIOR TO THE DEFENDANT TRIAL.
27. THE SUPREME COURT HAS ESTABLISHED IN STATE V. JOHNSON 347 S.C. 67, 552 S.E.2d 339 (CT. APP 2001) THAT A WRITTEN NOTICE IS MANDATORY. THE COURT HELD THAT IT IS CLEAR AND UNAMBIGUOUS IN ITS REQUIREMENT THAT BOTH A DEFENDANT AND HIS COUNSEL MUST BE SERVED WITH WRITTEN NOTICE OF THE STATE INTENTION TO SEEK A LIFE SENTENCE TEN (10) DAYS PRIOR TO TRIAL. JAMES V. STATE 368 S.C. 323, 325, 628 SE2d 892, 893 (CT. APP 2006) HOLDING: TRIAL COUNSEL REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS GIVEN, HIS FAILURE TO OBJECT TO THE STATE'S CLEAR NON-COMPLIANCE WITH THE STATUTE OF S.C. CODE ANN § 17-25-45 (H) WAS DEFICIENT AND APPELLANT WAS PREJUDICED BECAUSE HE WAS SENTENCED TO LWOP IN VIOLATION OF THE STATUTE.
28. APPLICANT ASSERTS THAT HIS TRIAL COUNSEL DID LIKEWISE AND THE COURT EXCEEDED THE SENTENCING STATUTE OF S.C. CODE ANN § 16-3-910 WHICH APPLICANT FACED NO MORE THEN THIRTY (30) YEARS STATE V. VARNER 310 S.C. 264, 423 S.E.2d 133 (1992) HELD, THAT NO ONE CAN BE SENTENCED TO LIFE UPON A KIDNAPPING CONVICTION AFTER THE LEGISLATURE AMENDED S.C. CODE ANN § 16-3-910 REDUCING THE MAXIMUM PENALTY FOR KIDNAPPING FROM LIFE TO THIRTY YEARS IMPRISONMENT.
29. DUE TO THE COURT'S ERROR APPLICANT'S SENTENCE UPON SUCH INDICTMENT MUST BE VACATED BECAUSE ITS VOID DUE TO THE COURT EXCESSIVE SENTENCING WHICH IT LACKED SUBJECT MATTER JURISDICTION TO DO SO.
30. THIS COURT ALLEGES IN ITS CONDITIONAL ORDER OF DISMISSAL THAT APPLICANT'S CURRENT P.C.R. APPLICATION SHOULD BE DISMISSED AS PROCEDURAL BARRED DUE TO UNTIMELY SUCCESSIVE AND REJUDICATA.
31. WHEN CONSIDERING THE COURT'S MOTION FOR SUMMARY DISMISSAL OF AN APPLICATION FOR POST-CONVICTION RELIEF THE COURT MUST ASSUME FACTS PRESENTED BY AN APPLICANT ARE TRUE AND VIEW THOSE FACTS IN THE LIGHT MOST FAVORABLE TO THE APPLICANT. AL-SHABAZZ

V. STATE 338 S.C. 354, 527 S.E.2d 742, WILSON V. STATE 348 S.C. 215, 559 S.E.2d 581

32. OPPOSITION TO THE COURT'S CONDITIONAL ORDER OF DISMISSAL ALLEGING THAT APPLICANT'S POST-CONVICTION RELIEF ACTION SHOULD BE DISMISSED BECAUSE IT'S PROCEDURAL BARRED DUE TO UNTIMELY, SUCCESSIVE AND UNDER RES JUDICATA.
33. APPLICANT ASSERTS THAT EVERYTHING STATED IN HIS STATEMENT OF FACTS ARE TRUE AND CORRECT. PARAGRAPH 1 THROUGH 16 AS COMPLETELY REWRITTEN.
34. APPLICANT ASSERTS THAT PURSUANT TO THE PARAMETERS OUTLINED IN BROWN V. STATE 343 S.C. 342, 540 S.E.2d 846 IS APPLICABLE AND RELATE TO APPLICANT'S CURRENT P.C.R. APPLICATION WHICH THIS COURT MUST ACKNOWLEDGE AND ACCEPT PURSUANT TO THE LAWS OF THIS STATE. IN APPLICANT'S P.C.R. ACTION HE RAISED THE CLAIMS OF SUBJECT MATTER JURISDICTION VIOLATIONS. HE ASSERTS THAT HIS CONVICTIONS AND SENTENCES ARE VOID AND MUST BE VACATED.
35. FIRST AND FOREMOST, LACK OF SUBJECT MATTER JURISDICTION MAY BE RAISED AT ANY TIME. BROWN V. STATE SUPRA. STATE V. FUNDERBURK 529 S.C. 526, 191 S.E.2d 520 (1972). THE JURISDICTION OF A COURT OVER THE SUBJECT MATTER OF A PROCEEDING IS DETERMINED BY THE CONSTITUTION OF THE UNITED STATES, AND THE CONSTITUTIONAL LAWS OF THIS STATE WHICH IS FUNDAMENTAL. ANDERSON V. ANDERSON, 299 S.C. 110, 382 S.E.2d 897 (1989) ADDITIONALLY, LACK OF SUBJECT MATTER JURISDICTION CANNOT BE WAIVED, NOT EVEN BY CONSENT OF THE PARTIES. HUNTER V. BOYD 203 S.C. 518, 28 S.E.2d 412, 416 (1943) FIELDEN V. FIELDEN 274 S.C. 219, 262 SE2d 43. IN THIS MATTER OF LAW HAS BEEN ESTABLISHED IN UNITED STATES V. COTTON 535 U.S. 625 (4TH CIR 2002) WHICH HELD THAT SUCH CLAIM OF SUBJECT MATTER JURISDICTION VIOLATIONS CAN NEVER BE FORFEITED OR WAIVED.

36. IN BROWN V. STATE SUPRA, BROWN FILED A SECOND P.C.R. APPLICATION ALLEGING THAT THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO IMPOSE A CONVICTION AND SENTENCE UPON HIM DUE TO AN INVALID CODE SECTION WITHIN HIS INDICTMENT. THE COURT SUMMARY DISMISSED HIS SECOND P.C.R. APPLICATION AS SUCCESSIVE, UNTIMELY AND PROCEDURALLY BARRED UNDER RES JUDICATA. BROWN APPEALED AND UPON APPEAL HE RAISED A NEW CHALLENGE TO THE INSUFFICIENT INDICTMENT, ALLEGING THE CODE SECTION WITHIN HIS INDICTMENT WAS INVALID AND THE COURT OF GENERAL SESSIONS LACKED SUBJECT MATTER JURISDICTION TO IMPOSE SUCH CONVICTION AND SENTENCE UPON HIM. THE RESPONDENT ON APPEAL ARGUED THAT BROWN WAS PROCEDURALLY BARRED FROM RAISING THE NEW CLAIM BECAUSE BROWN P.C.R. ACTION WAS UNTIMELY, SUCCESSIVE AND BARRED UNDER RES JUDICATA. THE SUPREME COURT ADDRESSED BROWN'S NEW CHALLENGE TO THE INVALID INDICTMENT AND DENIED THE STATE'S ARGUMENTS. THE COURT IN THAT MATTER STATED THAT THEY WAS NOT PERSUADED BY THE STATE'S ARGUMENT AND DECLINED TO FIND THAT BROWN'S SECOND P.C.R. APPLICATION WAS PRECLUDED FROM REVIEW DUE TO PROCEDURAL GROUNDS. IN PARTICULAR, TO UNTIMELY, SUCCESSIVE AND UNDER RES JUDICATA. THE COURT HELD THAT SUBJECT MATTER JURISDICTION CAN BE RAISED AT ANY TIME, SUCH RIGHT IS FUNDAMENTAL AND PROTECTED BY THE CONSTITUTION AND THE LAWS OF THIS STATE. STATE V. FUNDERBURK SUPRA. THE COURT FURTHER FOUND THAT SUBJECT MATTER JURISDICTION CAN NOT BE WAIVED, NOT EVEN BY CONSENT OF THE PARTIES INVOLVED. HUNTER V. BOYD SUPRA. AND GRANTED BROWN RELIEF.

UNTIMELY

37. THIS COURT ALLEGES THAT APPLICANT'S P.C.R. APPLICATION SHOULD BE SUMMARY DISMISSED FOR APPLICANT'S FAILURE TO COMPLY WITH THE FILING PROCEDURE OF THE UNIFORM POST-CONVICTION PROCEDURE ACT, S.C. CODE ANN § 17-27-10, SPECIFICALLY UNDER § 17-27-45(A) WHICH PROVIDED THAT AN APPLICATION FOR RELIEF MUST BE FILED WITHIN ONE YEAR AFTER THE ENTRY OF A JUDGMENT OF A CONVICTION OR WITHIN ONE YEAR AFTER THE SENDING OF THE REMITTITUR TO THE LOWER COURT FROM AN APPEAL OR FILING OF THE FINAL DECISION ON APPEAL WHICHEVER IS LATER. CITING RELOQUIN V. STATE 321 S.C. 468, 469 S.E.2d 606 (1996).

THE COURT ALLEGED THAT APPLICANT WAS CONVICTED AS INDICTED ON AUGUST 9, 2001, AND THE REMITTITUR FROM HIS DIRECT APPEAL WAS ISSUED ON APRIL 2, 2003. THE COURT STATED THAT THIS CURRENT P.C.R. APPLICATION WAS THEREFORE DUE ~~ON~~ OR BEFORE APRIL 3, 2004. THE COURT ALLEGED THAT APPLICANT'S ACTIVE P.C.R. APPLICATION WAS NOT FILED UNTIL JULY 3, 2018, MORE THAN FOURTEEN YEARS AFTER THE STATUTORY FILING PERIOD HAD EXPIRED. THE COURT MOVES TO SUMMARILY DISMISS THE CURRENT P.C.R. APPLICATION AS BARRED BY THE STATUTE OF LIMITATIONS.

38. APPLICANT ASSERTS THAT THE COURT IGNORES THE LAWFUL AND CONSTITUTIONAL RIGHT THAT LACK OF SUBJECT MATTER JURISDICTION CAN BE RAISED AT ANY TIME. BROWN V. STATE SUPRA. APPLICANT FILED THE CURRENT P.C.R. APPLICATION ON JULY 3, 2018 AND AMENDED THE P.C.R. ACTION THEREAFTER. APPLICANT RAISED THE CLAIMS OF LACK OF SUBJECT MATTER JURISDICTION VIOLATIONS THEREFORE APPLICANT ASSERTS THAT THE PROCEDURAL BAR OF UNTIMELY MUST BE RIGHTFULLY AND RESPECTFULLY DENIED.

SUCCESSIVE

39. NEXT THIS COURT ALLEGES THAT APPLICANT'S P.C.R. APPLICATION SHOULD BE DISMISSED AS SUCCESSIVE PURSUANT TO S.C. CODE ANNS 17-27-90 OF THE POST CONVICTION PROCEDURE ACT, WHICH PROVIDES: ALL GROUNDS FOR RELIEF AVAILABLE TO AN APPLICANT UNDER THIS CHAPTER MUST BE RAISED IN HIS ORIGINAL, SUPPLEMENTAL OR AMENDED APPLICATION. ANY GROUND FINALLY ADJUDICATED OR NOT SO RAISED OR KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY WAIVED IN THE PROCEEDING THAT RESULTED IN THE CONVICTION OR SENTENCE OR IN ANY OTHER PROCEEDING THE APPLICANT HAS TAKEN TO SECURE RELIEF, MAY NOT BE THE BASIS FOR A SUBSEQUENT APPLICATION, UNLESS THE COURT FIND A GROUND FOR RELIEF ASSERTED WHICH FOR SUFFICIENT REASON WAS NOT ~~GRANTED FOR RELIEF~~ ASSERTED OR WAS INADEQUATELY RAISED IN THE ORIGINAL, SUPPLEMENTAL OR AMENDED APPLICATION.

40. THE COURT ALLEGED THAT APPLICANT BEARS THE BURDEN OF SHOWING THAT THE ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL, PROSECUTORIAL MISCONDUCT AND LACK OF SUBJECT MATTER JURISDICTION COULD NOT BEEN RAISED PREVIOUSLY CITING LAND V. STATE 262 S.E.2d 735 (1980) THE COURT STATED THAT THE CURRENT ALLEGATION COULD HAVE BEEN, OR

WERE IN FACT, RAISED IN APPLICANT'S PRIOR APPLICATION FOR POST CONVICTION RELIEF. THE COURT STATED INDEED, APPLICANT'S CURRENT P.C.R. APPLICATION IS PRACTICALLY IDENTICAL TO HIS PRIOR APPLICATIONS. THE COURT FURTHER STATE APPLICANT HAS WHOLLY FAILED TO ESTABLISH ANY SUFFICIENT REASON WHY HE COULD NOT HAVE RAISED THESE CURRENT ALLEGATIONS IN ONE OF HIS NUMEROUS APPLICATIONS FOR POST CONVICTION RELIEF. THE COURT ALLEGES THAT APPLICANT HAS FAILED TO MEET THE BURDEN IMPOSED UPON HIM AND THEREFORE HIS P.C.R. APPLICATION SHOULD BE SUMMARILY DISMISSED AS SUCCESSIVE TO HIS PRIOR P.C.R. ACTIONS.

41. APPLICANT ASSERTS THAT THE COURT FINDING AND CONCLUSION OF LAW RELATED TO SUCCESSIVENESS UNDER S.C. CODE ANN § 17-27-90 MUST BE DENIED. FIRST AND FOREMOST, LACK OF SUBJECT MATTER JURISDICTION SUPERCEDES THE STATUTE OF § 17-27-90. BROWN V. STATE SUPRA. FURTHERMORE IN THIS ACTION THE APPLICANT DID NOT RAISE THE CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL NOR PROSECUTORIAL MISCONDUCT. APPLICANT'S SOLE ISSUE BROUGHT BEFORE THIS COURT WAS PARTICULARLY TO THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION VIOLATIONS. IT IS A FACT THAT THE ISSUES RAISED IN THIS CURRENT ACTION FOR POST-CONVICTION RELIEF HAS NEVER ONCE BEEN RAISED IN ANY OF HIS PRIOR P.C.R. APPLICATIONS. APPLICANT ASSERTS THAT IN HIS P.C.R. APPLICATION HE RAISED LACK OF SUBJECT MATTER JURISDICTION OF THE TRIAL COURT AND ATTACHED TO HIS AMENDED P.C.R. APPLICATION HIS REASON FOR POST CONVICTION RELIEF, WHICH BY LAWS OF THE CONSTITUTION AND OF THIS STATE CAN BE RAISED AT ANY TIME. STATE V. FUNDERBURK SUPRA. APPLICANT HEREBY ASSERTS HIS FUNDAMENTAL RIGHT TO BE HEARD ON THIS ISSUE RAISED WHICH IS PROTECTED BY THE CONSTITUTION AND THE LAWS OF THIS STATE. ANDERSON V. ANDERSON SUPRA. APPLICANT ASSERTS THE CHALLENGE HAS BEEN RAISED UPON THIS COURT WHICH THE RESPONDENT NOR APPLICANT CAN WAIVE, THEREFORE THE COURT FINDING OF SUCCESSIVENESS MUST BE DENIED AND GRANTED AN EVIDENTIARY HEARING WHICH IS REQUIRED IN THIS MATTER BECAUSE APPLICANT PRESENTS FACTS THAT THE COURT LACKED SUBJECT MATTER JURISDICTION IN THIS MATTER WHICH HAVE ESTABLISHED AN EXCEPTION TO STATUTE OF LIMITATION AND SUCCESSIVE APPLICATION AND THESE FACTS ASSERTED BY APPLICANT IS NOT AND CAN NOT CONCLUSIVELY BE REFUTED BY A RECORD BEFORE THE COURT, THEREFORE, A HEARING CAN ONLY RESOLVE THIS MATTER. DELANEY V. STATE 238 S.E.2d 679, MCCOY V. STATE 737 S.E.2d 623, ROBERTSON V. STATE 795 S.E.2d 29,

RES JUDICATA

42. THIS COURT ALLEGES THAT APPLICANT IS BARRED FROM POST-CONVICTION RELIEF DUE TO RES JUDICATA. THE COURT ALLEGES THAT APPLICANT HAD A FULL OPPORTUNITY TO LITIGATE ALL OF HIS ALLEGATIONS IN HIS PRIOR ACTIONS, SPECIFICALLY, THE COURT STATES APPLICANT RAISED THE SAME ALLEGATIONS IN THIS CURRENT P.C.R. APPLICATION WHICH WAS RAISED IN HIS ORIGINAL APPLICATION FOR POST-CONVICTION RELIEF AT THE EVIDENTIARY HEARING WHICH THE P.C.R. COURT IN THAT MATTER RULED UPON. THE COURT ALLEGES THAT THE FINALITY OF THE PREVIOUS COURT RULINGS SHOULD BE RESPECTED BECAUSE ITS BARRED BY THE DOCTRINE OF RES JUDICATA.

43. APPLICANT ASSERTS THAT THE COURT ARGUMENT OF RES JUDICATA MUST BE RIGHTFULLY AND RESPECTFULLY DENIED. APPLICANT ASSERTS THAT THIS COURT NOR ANY OTHER COURT HAS NOT HEARD, ADDRESSED OR RULED UPON THE PRECISE CHALLENGE NOW AT ISSUE. IN THIS ACTION APPLICANT ASSERTED THAT THE COURT OF GENERAL SESSIONS FOR THIS COUNTY OF ANDERSON LACKED SUBJECT MATTER JURISDICTION OVER HIS CRIMINAL CASE DUE TO (1) 18 USCA § 245 HATE CRIME ACT AND (2) EXCESSIVE SENTENCE IN VIOLATION OF S.C. CODE ANN § 16-3-910 AND § 17-25-45 (H) OF S.C. CODE OF LAWS. THESE ISSUES ARE NOT THE SAME ISSUES THAT THE COURT ALLEGES WAS RAISED TO AND RULED UPON.

IN BROWN V. STATE SUPRA. THE STATE ARGUED THAT BROWN HAD RAISED A SUBJECT MATTER JURISDICTION ARGUMENT WHICH WAS LITIGATED ONCE BEFORE AND RULED UPON BY THE P.C.R. COURT. THE COURT STATED, WE ARE UNPERSUADED BY THE STATE'S PROCEDURAL ARGUMENT AND ADDRESSED THAT IN A P.C.R. ACTION THE DOCTRINE OF RES JUDICATA DOES NOT APPLY TO ISSUES OF SUBJECT MATTER JURISDICTION, QUOTING STATE V. PARHAM 2000 WL 1176529 * 2 (OHIO CT. APP AUGUST 17, 2000) IN STATE V. PARHAM THAT COURT HELD, A PETITIONER'S APPLICATION FOR P.C.R. IS NOT PRECLUDED BY RES JUDICATA WHERE THE CLAIM IS THAT THE CONVICTION IS VOID FOR LACK OF SUBJECT MATTER JURISDICTION. CITING (STATE V. WILSON 73 OHIO ST. 3d 40, 652 N.E. 2d 196, 2000 N. L. 1995)

44. IN THIS MATTER, BROWN V. STATE SUPRA IS APPLICABLE TO APPLICANT THEREFORE THE COURT FINDING AND CONCLUSION OF LAW CONCERNING RES JUDICATA MUST BE DENIED.

CONCLUSION

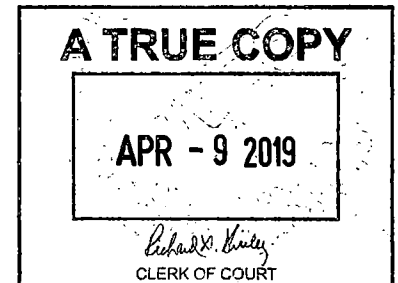
BASED ON ALL THE FOREGOING REASONS, THIS COURT MUST HOLD AN EVIDENTIARY HEARING ON THE ISSUES RAISED IN APPLICANT'S P.C.R. APPLICATION ON THE LACK OF SUBJECT MATTER JURISDICTION CLAIMS.

DATE: 4-3-2019

RESPECTFULLY SUBMITTED.

Darnell Hudson

APPLICANT



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

C/A No: 2018-CP-04-01305

DARNELL HUDSON #227328
APPLICANT,

PROOF OF SERVICE

v.

STATE OF SOUTH CAROLINA
RESPONDENT.

I, THE APPLICANT IN THE ABOVE REFERENCE MATTER, HAVE SERVED COPIES OF RESPONSE TO THE COURT'S CONDITIONAL ORDER OF DISMISSAL UPON THE BELOW LISTED PARTIES UPON THIS DAY OF 4-3-2019 BY PLACING SAID RESPONSE IN THE U.S. POSTAL MAIL BOX

(1) TAYLOR Z. SMITH

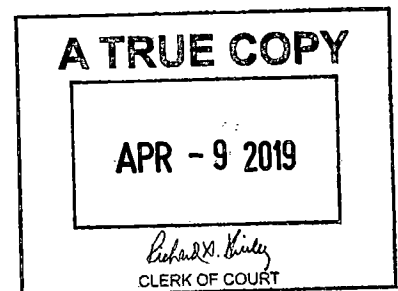
ATTORNEY GENERAL
P.O. BOX 11549
COLUMBIA, S.C. 29211

S/ Darnell Hudson
APPLICANT

DATE: 4-3-2019

(2) RICHARD A. SHIRLEY

ANDERSON COUNTY
CLERK
P.O. BOX 8002
ANDERSON, S.C. 29622



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Anderson, SC COC, CP/GS

Exhibit (I)

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Darnell E. Hudson, #227328,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-04-01305

FINAL ORDER OF DISMISSAL

A TRUE COPY

AUG - 8 2019

[Signature]
CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief filed by Darnell E. Hudson, a.k.a Darnell Hudson East (Applicant) on July 3, 2018, and an amendment thereto filed September 12, 2018. The State made its return and motion to dismiss on or about March 5, 2019, requesting the application be summarily dismissed based upon filing after the statute of limitations had expired, the successiveness of the application, and it being barred by the principles of *res judicata*.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal on March 8, 2019, and filed March 14, 2019, provisionally denying and dismissing this action, while giving Applicant twenty 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 April 5, 2019, serving the above-mentioned Conditional Order of Dismissal on Applicant.

On April 3, 2019, Applicant filed a document entitled "Opposition to Court Conditional Order of Dismissal." In this response, he argued that his PCR application was not successive because "the court ignores the lawful and constitutional right that lack of subject matter can be raised at any time." Applicant further argues that "because [he] presents facts that the court lacked

of subject matter jurisdiction in this matter which have established an exception to statute of limitation and successive application." On June 30, 2019, Applicant filed a document entitled "Motion for an Evidentiary Hearing and Appointment of Counsel." In this motion, he similarly argued he is entitled to an evidentiary hearing and appointment of counsel because the trial court lacked subject matter jurisdiction.

This Court has reviewed Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. This Court reasserts its finding in the Conditional Order of Dismissal that the current PCR application must be dismissed as untimely filed, successive to his previous filings, barred under *res judicata*; and because his subject matter jurisdiction claim is without merit.

I. ISSUES RAISED IN CURRENT ACTION

In his *fourth* and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Trial court subject-matter jurisdiction violations;
 - a. Prosecutor and court constructed amended Applicant's indictments.
2. Violations of S.C. Code Ann § 17-25-45(H) & 16-3-910; [and]
 - a. Trial court imposed an excessive sentence on kidnapping indictment;
3. Violations of Due Process and Equal Protection rights.
 - a. Trial court violated Applicant's Const rights when imposed sentences.

In his amendment to the application for post-conviction relief, Applicant raises the following additional grounds for relief:

1. The trial court of Anderson County General Sessions lacked subject matter jurisdiction over Applicant's criminal charges for

the offense(s) of armed robbery and kidnapping pursuant to the Federal Hate Crime Act, 18 U.S.C.A. § 245(b)(1)(2) & (F)

In his response to the Conditional Order of Dismissal, Applicant asserts the Order should not become final, alleging:

1. The trial court did not have subject matter jurisdiction over the charges Applicant was convicted of because the case should have been turned over to the federal authorities for investigation and prosecution under the Hate Crimes Act, 18 U.S.C. § 249 (2009).
 - a. Specifically, Applicant claims his case required federal investigation and prosecution because (1) the statute of 18 U.S.C.A. § 245 gives federal jurisdiction only to those cases which arise under federal law which the Hate Crime Act or multiple charges arising out of racial motive is federal law (2) the state of South Carolina does not have jurisdiction over Hate Crime Acts or multiple charges arising out of racial motive and (3) under the 13th Amendment of the U.S. Constitution prosecution implicate a substantial federal interest.”
2. The trial court did not have subject matter jurisdiction to sentence Applicant to life without parole on an indictment for kidnapping because the solicitor failed to file and serve notice of the State’s intent to seek life without parole in violation of S.C. Code Ann. § 17-25-45(H).¹

II. DISCUSSION

The Court finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final on Applicant’s allegations that the trial court lacked subject matter jurisdiction (1) pursuant to the Hate Crimes Act; and (2) to the State’s non-compliance with S.C. Code Ann. § 17-25-45(H).

¹ In Applicant’s first PCR action, his trial attorney testified at the evidentiary hearing that the State’s notice of intent to seek life without parole was timely served on her and Applicant.

1. Statute of Limitations

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

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of 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 on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held 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). 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, section 17-27-70(c) of the South Carolina Code 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.”

Applicant was convicted as indicted on August 9, 2001, and the remittitur from his direct appeal was issued on April 2, 2003. The application was, therefore, due on or before April 3, 2004. This application was not filed until July 3, 2018—**more than fourteen** years—after expiration of the statutory filing period. Accordingly, this application is summarily dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

2. Successive

This Court further finds the application shall be summarily dismissed because it is successive to Applicant’s previous post-conviction relief applications. Courts disfavor successive

applications and place the burden on applicants to establish any new ground raised in a subsequent application could not have been raised in an earlier application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

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

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. *See Aice v. State*, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991 (“[Applicant] has filed an original PCR application, and has been allowed to seek review of the ruling against him. We refuse to grant his request for a second chance, and again we do so in order to effectuate the purposes of the Act and rules.”)). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” *Id.* at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

In this case, Applicant filed a timely notice of appeal, and the South Carolina Court of Appeals affirmed Petitioner’s convictions and sentences in a published opinion on March 17, 2003. *State v. Darnell Hudson East*, 353 S.C. 634, 578 S.E.2d 748 (Ct. App. 2003). The remittitur was

issued on April 2, 2003. Applicant filed his first application for post-conviction relief on October 29, 2003, which was denied on September 7, 2007. Applicant appealed the denial of his first application and on February 12, 2008, the South Carolina Supreme Court dismissed the appeal for Applicant's failure to provide the Court with the date on which he first received notice of entry of the order as requested. Applicant filed his second application for post-conviction relief on May 19, 2008, and the Court issued an order granting Applicant a belated appeal from the denial of his first post-conviction relief application on November 3, 2009. Applicant filed a timely notice of appeal, and the South Carolina Court of Appeals subsequently denied Applicant's petition for a writ of certiorari by written order on July 11, 2012. Applicant filed his third application for post-conviction relief on August 14, 2012. On September 2, 2014, Petitioner filed a petition for writ of mandamus to the South Carolina Supreme Court. Thereafter, the Court informed Petitioner it would take no action on the writ. Subsequently, on April 27, 2015, Respondent filed an amended return and motion to dismiss, again requesting the application be summarily dismissed as untimely and as successive. The Court issued a conditional order of dismissal on May 1, 2015, of which Applicant failed to respond within the allotted time. Applicant did not appeal the final order. Applicant subsequently filed a petition for writ of habeas corpus in the Anderson County Court of Common Pleas, which was denied on June 9, 2015. Finally, Applicant filed a petition for writ of habeas corpus in the United States District Court, District of South Carolina on February 18, 2015. The Court granted the State's motion for summary judgment, and dismissed the petition without an evidentiary hearing.

Applicant's current allegations of ineffective assistance of counsel, prosecutorial misconduct, and lack of subject matter jurisdiction could have been, or were in fact, raised in Applicant's direct appeal, prior applications, or petition for writ of habeas corpus. Applicant has

wholly failed to establish any sufficient reason why he could not have raised these current allegations in one of his numerous previous applications for post-conviction relief. Therefore, Applicant has failed to meet the burden imposed upon him, and the application is summarily dismissed as successive to Applicant's prior post-conviction relief action.

3. *Res Judicata*

This Court similarly finds the application is similarly barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. *Foran v. USAA Casualty Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.*; see also *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant had a full opportunity to litigate all of his allegations in his prior actions. Applicant's current claims allege and arise from the same convictions as his previous PCR applications. Moreover, Applicant's present allegations as to subject matter jurisdiction are virtually indistinguishable from those set forth in his previous applications

Specifically, Applicant raised the same allegations in this application which were not only raised in his original application for post-conviction relief but also raised at the evidentiary hearing. Indeed, Applicant voluntarily chose to waive his allegations of subject-matter jurisdiction at the evidentiary hearing for his first post-conviction relief application. Accordingly, these issues were fully litigated and were ruled upon by the post-conviction relief court. The finality of the previous court rulings should be respected, and this Court finds the application shall be summarily dismissed as barred by the doctrine of *res judicata*.

4. Subject Matter Jurisdiction

Furthermore, an applicant's contention of lack of subject matter jurisdiction is without merit. An applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. *See Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." *Gentry*, 363 S.C. at 101, 610 S.E.2d at 499. *See also* S.C. Const. Art. V, § 7. The regularity of proceedings in a court of general jurisdiction "will be assumed" absent evidence to the contrary. *Pringle v. State*, 287 S.C. 409, 410-411, 339 S.E.2d 127, 128 (1986). Thus, Applicant must present evidence his case is of some class over which the circuit court does not have the authority to preside.

The Anderson County Grand Jury indicted Applicant for seven counts of kidnapping and one count of armed robbery, which allege the criminal offenses occurred in Anderson County. Moreover, Applicant was tried and sentenced in the Anderson County Court of General Sessions. Therefore, Applicant's allegations regarding jurisdiction are baseless and offer him no relief from the grounds for dismissal set forth in the Conditional Order.

III. CONCLUSION

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a showing based on the information set forth in his response, and, therefore, he is not entitled to an evidentiary hearing in this matter. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

As a final matter, this Court notes both the United States Supreme Court and the South Carolina Supreme Court have emphasized the necessity for finality of litigation in criminal cases.

The Court in *Aice* explained that:

Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. *See Butler v. State*, 397 S.E.2d 87 (S.C.1990). **We can envision successive PCR applications filed for the purpose of delaying a just execution in a capital case, as well as other abuses of the reviewing system Aice urges that we establish.** For these reasons, we hold the contention that prior PCR counsel was ineffective is not per se a "sufficient reason" allowing for a successive PCR application under § 17-27-90. This Court has implied such a holding in the past. *See Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980) (applicant pointed to his attorney's "inadequate" performance; held not a "sufficient reason" warranting a successive application).

Aice, 305 S.C. at 451, 409 S.E.2d at 394. (emphasis added).

The United States Supreme Court has explained that "the principle of finality ... is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." *Teague v. Lane*, 489 U.S. 288, 309 (1989). This Court finds that Applicant's attempt to litigate his successive and time-barred applications is contrary to the recognized need for finality of litigation.

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

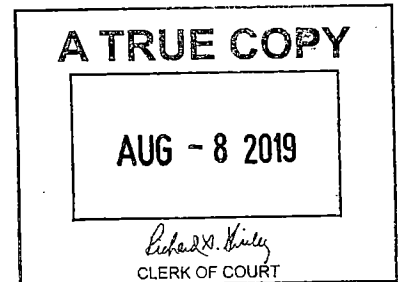
This Court hereby advises the Applicant he must file and serve a Notice of Appeal within thirty days of the service of this Order to secure appellate review. *See* Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice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

AND IT IS SO ORDERED this 5 day of August, 2019.


R. SCOTT SPROUSE
Chief Administrative Judge
Tenth Judicial Circuit

Waltham, South Carolina

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