

**Court of Appeals  
Supreme Court of South Carolina**

John Dykeman, Appellant

v.

State of South Carolina, Respondent

**Court of Common Pleas  
Fourteenth Judicial Circuit**

No. 2020-CP-07-00741

**NOTICE OF APPEAL**

**RECEIVED**

DEC 02 2020

S.C. SUPREME COURT

29 November 2020

John Dykeman SCDC#245443 appeals the final order of dismissal from the Honorable D.L. Jefferson, dated 10 November 2020. Appellant received written notice of entry of this final order of dismissal on 20 November 2020.

Respectfully yours,

*John Dykeman*  
30 Nov 2020

John Dykeman, SCDC#245443  
PCI, Q1A-217  
430 Oaklawn Road  
Pelzer, SC 29669

1492

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF Beaufort )  
 )  
John Dykeman, #245443 )  
 )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s) 19 APR 11 5:00 PM '20 -CP-07-741

vs.

State of South Carolina )  
 )  
Defendant(s) )

(Please Print)  
Submitted By: John Dykeman, #245443  
Address: Perry Corr. Inst. Q-2B 213  
430 Oaklawn Rd.  
Peizer, S.C. 29669

SC Bar #: \_\_\_\_\_  
Telephone #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Other: \_\_\_\_\_  
E-mail: \_\_\_\_\_

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

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- |  |  |  |   |
|--|--|--|---|
| <p><b>Contracts</b></p> <input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> Employment (120)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Other (199) | <p><b>Torts - Professional Malpractice</b></p> <input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br>Previous Notice of Intent Case #<br><u>20 -CP-</u><br><input type="checkbox"/> Notice/ File Med Mal (230)<br><input type="checkbox"/> Other (299)  | <p><b>Torts - Personal Injury</b></p> <input type="checkbox"/> Assault/Stander/Label (300)<br><input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Other (399)  | <p><b>Real Property</b></p> <input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499)   |
| <p><b>Inmate Petitions</b></p> <input checked="" type="checkbox"/> PCR (500)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599)  | <p><b>Administrative Law/Relief</b></p> <input type="checkbox"/> Reinstate Drv. License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture-Petition (840)<br><input type="checkbox"/> Forfeiture-Consent Order (850)<br><input type="checkbox"/> Other (899) | <p><b>Judgments/Settlements</b></p> <input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript of Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)<br><input type="checkbox"/> Confession of Judgment (770)<br><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)<br><input type="checkbox"/> Other (799) | <p><b>Appeals</b></p> <input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Public Service Commission (990)<br><input type="checkbox"/> Employment Security Commission (991)<br><input type="checkbox"/> Other (999) |
| <p><b>Special/Complex /Other</b></p> <input type="checkbox"/> Environmental (600)<br><input type="checkbox"/> Automobile Arb (610)<br><input type="checkbox"/> Medical (620)<br><input type="checkbox"/> Other (699)<br><input type="checkbox"/> Sexual Predator (510)                                     |  | <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Foreign Subpoenas (650)<br><input type="checkbox"/> Motion to Quash Subpoena in Out-of-County Action (660)<br><input type="checkbox"/> Other (999)   |   |

Submitting Party Signature: John Dykeman

Date: 3-16-20

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

County of Beaufort )

John Dykeman, #245443 )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

APPLICATION FOR  
POST-CONVICTION RELIEF

2021 MAR 19 PM 11:50  
CLERK OF COURT  
SOUTH CAROLINA

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 Perry Corr. Inst. 430 Oaklawn Rd.  
Pelzer, S.C. 29669
2. Name and location of Court which imposed sentence Beaufort Co. General  
Sessions Court P.O. Drawer 1128 Beaufort, S.C. 29901
3. Name(s) of co-defendant(s) (if any) Samantha Morgan-major
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2004-GS-07-835 Murder

2004-GS-07-834 Kidnapping

(c) 2004-GS-07-836 Armed Robbery

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

(a) April 18 Life

(b) April 18 30yrs Concurrent

(c) April 18 30yrs Concurrent

6. Check whether a finding of guilty was made:

(a) after a plea of guilty \_\_\_\_\_

(b) after a plea of not guilty X

(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. S.C. Court of Appeals

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. Affirmed

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. October 12, 2010

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. Rule 220(b)(1), SCACR, Rule 215, SCACR

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) N/A

(b) N/A  
(c) N/A

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

(a) See Attached  
(b) See Attached  
(c) See Attached

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

(a) See Attached  
(b) See Attached  
(c) See Attached

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? \_\_\_\_\_

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. 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

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?

N/A

N/A

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

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

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? Yes

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. Joseph L. Savtiz, III P.O. Box 11589 Columbia, S.C.  
29211 Appellate Defense
  - ii. Gene G. Hood P.O. Box 525 Beaufort, S.C. 29901  
Trial Counsel
  - iii. Samuel L. Kirkland P.O. Drawer 7049, HHI S.C. 29928  
PCR Counsel
- (b) the proceedings at which each such attorney represented you:
  - i. Direct Appeal, Joseph L. Savtiz, III
  - ii. Arraignment, Trial, Sentencing Gene G. Hood
  - iii. PCR Hearing Samuel L. Kirkland

19. State clearly the relief you seek in filing this application:  
TO HAVE SENTENCE VACATED

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: Beaufort

VERIFICATION

I, John Dykeman, 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.

John Dykeman

SWORN to and subscribed before me this 16th day of March 2020.

Tamara Crowell (L.S.)  
Notary Public

My Commission Expires: \_\_\_\_\_  
My Commission Expires  
September 25, 2023

RECEIVED

MAR 16 2020

P.G.I. MAILROOM

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

I, JOHN DYKEMAN 245443, 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.

John Dykeman  
Applicant

SWORN or affirmed to and subscribed before me this  
16 day of March, 2020.

Tamara Conwell  
Notary Public

My Commission Expires: September 22, 2021

RECEIVED

MAR 16 2020

P.C.I. MAILROOM

10(A) Ineffective assistance of counsel for failure to investigate.

(B) Newly Discovered Evidence

(C) Fraud Upon the Court, Rule 60(B)(3)

11(A)(1) Failure of counsel and the Court to investigate the laws of South Carolina as to whether they were "Affixed" with the impression of the Great Seal of South Carolina. Section 16-1-60 of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read:

S.C. Const. Art. III, Section 18

§ 18. Formalities of Act.

No Bill or Joint Resolutions have the force of law until it shall have been read (3) Times and on (3) Several Days in each house has had the (Great Seal) of the State Affixed to it, and has been signed by the President of the Senate, and the Speaker of the House of Representatives: provided that either branch of the General Assembly may provide by rule for a first and third reading of any Bill or Joint Resolution by it's title only.

The "Great Seal" of the State (Must) be attached to an act before it can become effective. 1974-75.

Op. Attyy. Gen. 4013, pg. 85

**"Newly Discovered Evidence"  
and "Fraud Upon the Court"**

The Applicant asserts upon belief and facts that on or around November 2017 the State Newspaper reported the Great Seal of the State missing from certain laws here in South Carolina.

Furthermore, the Applicant has researched this Newly Discovered Evidence with the S.C. Department of Archives and History, with a Mr. Steven Tuttle confirming the Great Seal of South Carolina is not affixed to the 1993 Act. No. 184. See Exhibit 1

Also the Applicant will submit a letter from a Mr. Stephen Draffin addressed to Mr. Spencer Hewitt, that states the Original 1995 Act. No. 7, has been lost and only a Duplicate copy resides at the S.C. Department of Archives and History. See Exhibit 2

Due to the facts of evidence the Applicant moves this Court to allow this Post Conviction Relief application to proceed. Further the Applicant asserts that this matter is a Due Process Violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution and the S.C. Constitution Article III, Section 18.

EXHIBIT 1



SOUTH CAROLINA DEPARTMENT OF  
ARCHIVES • HISTORY

3 March 2020

Mr. John Dykeman #245443  
Perry Correctional Institution Q-2B 216  
430 Oaklawn Road  
Pelzer, SC 29669

Dear Mr. Dykeman:

I checked the following act that you requested but could not locate a visible impression of the Great Seal: 1993 Act No. 184.

Sincerely,

A handwritten signature in black ink that reads "Steven D. Tuttle". The signature is written in a cursive style with a large, prominent "S" and "T".

Steven D. Tuttle  
Deputy Director  
Archives & Records Management

# South Carolina Legislative Council

DAVID H. WILKINS, CHAIRMAN  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

GLENN F. MCCONNELL  
CHAIRMAN, SENATE JUDICIARY COMMITTEE  
THE SENATE

JAMES H. HARRISON  
CHAIRMAN, HOUSE JUDICIARY COMMITTEE  
THE HOUSE OF REPRESENTATIVES

ROBERT L. PEELER  
PRESIDENT OF THE SENATE

JIM MILES  
SECRETARY OF STATE



Exhibit 2

STATE HOUSE, FIRST FLOOR  
AND  
DENNIS BUILDING, SUITE 434  
1000 ASSEMBLY STREET  
P.O. BOX 11489, COLUMBIA, S.C. 29211-1489  
TELEPHONE: (803) 734-2145  
FAX: (803) 734-2425

STEPHEN T. DRAFFIN  
CODE COMMISSIONER AND DIRECTOR

October 21, 2002

Mr. Spencer Hewitt  
Secretary of State's Office  
Edgar Brown Building  
Columbia, South Carolina 29211

Dear Spencer:

You asked us recently to help locate the original of H.4323 of 1994 (Ratification Number 585 of 1994 and Act Number 7 of 1995) which became law on January 12, 1995, without the signature of the Governor. As we indicated in our telephone conversation, the Governor's office sends acts directly to the Secretary of State's office without transmitting them back through any office of the General Assembly. It is our best guess if you have no record of it that the original was lost during the changeover from the Campbell administration to the Beasley administration in January 1995, especially since the Governor didn't sign it. We asked Steve Tuttle at Archives to go through the boxed materials of these administrations, and he indicated that after doing so the original of this act could not be found. We did not check with Governor Hodges' office but it may be worth trying to follow up there although this would be a long shot.

In order that you can have a record of this act in the Secretary of State's office, we have prepared a duplicate from the computer files maintained by Legislative Printing. This is the same procedure we follow from time to time when bills are misplaced while under the consideration of the General Assembly. This should provide you with a sufficient record of what was ratified by the General Assembly and what became law without the signature of the Governor. If we can be of further help, please let us know.

Very truly yours,

A handwritten signature in black ink, appearing to be "SK" followed by a long horizontal line.

Stephen T. Draffin

STD/gjk  
Enc.

M. HOPE BLACKLEY

MISSISSIPPI COUNTY

MISSISSIPPI COUNTY

Exhibit 3

Section 16-1-57. A person convicted of an offense for which the term of imprisonment is contingent upon the value of the property involved must, with certain exceptions, be punished as prescribed for a Class 2 felony.

**Violent crimes defined**

SECTION 3. Section 16-1-60 of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read:

"Section 16-1-60. For purposes of definition under South Carolina law a violent crime includes the offenses of murder (Section 16-3-10); criminal sexual conduct in the first and second degree (Sections 16-3-652 and 16-3-653); criminal sexual conduct with minors, first and second degree (Section 16-3-655); assault with intent to commit criminal sexual conduct, first and second degree (Section 16-3-656); assault and battery with intent to kill (Section 16-3-660); kidnapping (Section 16-3-910); voluntary manslaughter (Section 16-3-30); armed robbery (Section 16-11-330); drug trafficking as defined in Sections 44-53-370(A) and 44-53-375(C); arson in the first degree (Section 16-11-140(A)); burglary in the first degree (Section 16-11-311); and burglary in the second degree (Section 16-11-312(B)), engaging a child for a sexual performance (Section 16-3-810); accessory before the fact to commit any of the above offenses (Section 16-1-40); and attempt to commit any of the above offenses (Section 16-1-80). Only those offenses specifically enumerated in this section are considered violent offenses."

**Mandatory minimum terms**

SECTION 4. Section 16-11-330 of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read:

Section 16-11-330. (A) A person convicted for the crime of robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon must be imprisoned for a mandatory minimum term of not less than ten years nor more than thirty years, no part of which may be suspended or probation granted. A person convicted under the provisions of this subsection is not eligible for parole until he has served at least seven years of his sentence.

(B) A person under the age of twenty-one sentenced under the provisions of Chapter 49 of Title 24 (Youthful Offenders Act) convicted of armed robbery shall receive and serve a minimum sentence of at least three years, no part of which may be suspended. The person is not eligible for parole or probation until he has served a three-year minimum sentence.

(C) A person between the ages of twenty-one and twenty-five, who is convicted of armed robbery, may not be sentenced under the provisions of Chapter 49 of Title 24 (Youthful Offenders Act).

M. HOPE BLACKLEY

2018 NOV -5 PM 11:58

CLERK OF COURT

ED

John Dykeman 245443  
ERRY, CORR. INST. Q-2-B 213  
30 OAKLAWN RD  
LZEE, SC 29669.

2020 MAR 19 AM 11:50

JERI ANN ROSENBAU  
CLERK OF COURT  
JEANFORT, S.C.

MARCH 16, 2020

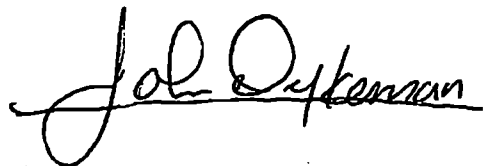
Jeri Ann ROSENBAU  
CLERK OF COURT.  
PO DRAWER 1128  
JEANFORT, SC 29901

Re: Clock Dated and stamped COPIES OF THE FOLLOWING DOCUMENTS

Ms. ROSENBAU,

PLEASE BE ADVISED THAT I AM REQUESTING TO HAVE CLOCK  
DATED AND STAMPED COPIES OF THE DOCUMENTS BEING FILED AT  
THIS TIME. AS ALWAYS THANKS FOR YOUR TIME AND ASSISTANCE  
IN ADVANCE.

Respectfully Submitted,



John Dykeman

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS )  
IN THE FOURTEENTH JUDICIAL CIRCUIT )

John Dykeman, #245443, )  
Applicant, )

Case No.: 2020-CP-07-00741 )

v. )

**CONDITIONAL ORDER OF DISMISSAL** )

State of South Carolina, )  
Respondent. )

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Applicant John Dykeman on March 19, 2020. Respondent made its return, requesting the application be summarily dismissed.

#### I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. In May 2004, the Beaufort County Grand Jury indicted Applicant for murder (2004-GS-07-0835), kidnapping (2004-GS-07-0834), and armed robbery (2004-GS-07-0836). Circuit Public Defender Gene Hood represented Applicant. Solicitor I. McDuffie Stone and Assistant Solicitors Sean Thornton, and Angela Tanner of the Fourteenth Judicial Circuit prosecuted the case. On February 22, 2007, Applicant proceeded to trial before the Honorable John M. Milling, circuit court judge. The jury found Applicant guilty as indicted. On April 18, 2007, Judge Milling sentenced Applicant to life imprisonment for murder and concurrent terms of thirty years each for armed robbery and kidnapping.

Applicant filed a timely notice of appeal. Appellate Defender Joseph Savitz, III, Esquire, of the Commission on Indigent Defense—Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on October 12, 2010. State v. Dykeman, Op. No. 2010-UP-436 (S.C. Ct. App. filed October 12, 2012). The remittitur was

issued on October 28, 2010.

**First PCR Application: 2010-CP-07-5697**

Applicant subsequently filed an application for PCR on November 18, 2010, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
  - a. Failed to object to the court charging the jury with hand of one hand of all where defendant was indicted as a principal only and the charge of hand of one hand of all was insufficient, vague, misleading, and confusing.
  - b. Conceded defendant's guilt during trial.
2. Ineffective Assistance of Appellate Counsel
  - a. Failed to brief defense motion for a directed verdict.
  - b. Failed to brief defense motion as to the exclusion of evidence in respect to videotape clip of Brett Kinney.
  - c. Failed to brief defense motion to strike specific portions of State's witness Brandy Ross and/or denying defense motion for a mistrial pertaining to this witness testimony.
3. Trial judge committed reversible error by instructing the jury that Applicant would obtain a procedural advantage – “the final argument” – if he “offered no testimony whatsoever and does not appear and take the stand,” as this procedural matter is irrelevant to the jury's determination of guilt or innocence and this instruction undermines the utility of having the final argument.

Respondent filed its return on March 17, 2011. An evidentiary hearing into the matter was convened on September 4, 2012, at the Beaufort County Courthouse before the Honorable Perry M. Buckner, III. Applicant was present at the hearing and was represented by Samuel Kirkland, Esquire. Assistant Attorney General Ashleigh Wilson of the South Carolina Attorney General's Office represented Respondent. On October 1, 2012, Judge Buckner issued the order of dismissal denying Applicant's application for post-conviction relief.

Applicant filed a timely notice of appeal of his denial of his application for post-conviction relief. He was represented by Appellate Defender Robert Pachak of the South Carolina Commission on Indigent—Office of Appellate Defense. A Johnson<sup>1</sup> petition was filed on behalf of Applicant on March 25, 2013. Applicant submitted a *pro se* petition for writ of

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<sup>1</sup> *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

certiorari on May 13, 2013. The South Carolina Supreme Court denied Applicant's petition of writ of certiorari by order dated July 11, 2013. The Remittitur was issued on July 31, 2013.

**Second PCR Application: 2013-CP-07-02285**

Applicant filed his second PCR application on September 5, 2013, in which he alleged the following grounds for relief:

1. Ineffective assistance of PCR counsel.
  - a. "PCR counsel advised Applicant to drop allegations on trial counsel."

Respondent made its return and motion to dismiss on September 25, 2014. On October 3, 2014, the Honorable R. Markley Dennis, Jr., issued a conditional order of dismissal provisionally denying and dismissing the application. Applicant failed to make a response. On May 13, 2015, the Honorable Carmen T. Mullen issued a final order of dismissal denying and dismissing the application with prejudice.

**Federal Habeas Petition: 8:13-2933-MGL-JDA**

Applicant subsequently filed a petition to the United States District Court seeking federal habeas relief under 28 U.S.C. § 2254. Applicant raised the following issues:

1. Ineffective assistance of appellate counsel;
  - a. Appellate counsel knowingly raised a [sic] unpreserved issues for appellate review where there were in fact meritorious issues which clearly had precedence; by appellate counsel's actions Applicant was denied due process

On March 24, 2014, Respondent made its return and memorandum of law in support of its motion for summary judgment. The Honorable Jacquelyn D. Austin, United States Magistrate Judge, issued a report and recommendation on January 5, 2015, recommending that Respondent's motion for summary judgment be granted and the petition be summarily dismissed without an evidentiary hearing. Applicant made several objections to the report and recommendation, which were filed on February 18, 2015. On March 5, 2015, the Honorable

Mary G. Lewis, United States District Judge, issued an order adopting the report and recommendation, overruling Applicant's objections, granting Respondent's motion for summary judgment, and denying a certificate of appealability.

Applicant filed a notice of appeal on April 8, 2015. The United States Court of Appeals for the Fourth Circuit dismissed the appeal in an unpublished opinion on March 2, 2016.

#### **Third PCR Application: 2015-CP-07-01565**

Applicant filed his third PCR application on June 19, 2015, in which he alleged the following grounds for relief:

1. Juror misconduct;
  - a. Jurors intentionally concealed the fact that they were related to one another by marriage and were listed as living at the same residence on the jury roll call roster.
2. Violation of 6<sup>th</sup> and 14<sup>th</sup> Amendments U.S. Constitution

Respondent made its return and motion to dismiss on August 18, 2015. On September 8, 2015, the Honorable Carmen T. Mullen, issued a conditional order of dismissal provisionally denying and dismissing the application. On September 16, 2015, Applicant made his response to the conditional order of dismissal. On April 11, 2016, Judge Mullen issued a final order denying and dismissing the application with prejudice.

#### **Fourth PCR Application: 2018-CP-07-2083**

Applicant filed his fourth PCR application on October 22, 2018, in which he alleged the following grounds for relief:

1. Lack of subject matter jurisdiction
2. Insufficiency of indictment
  - a. "The trial court lacked subject matter jurisdiction to hear the case on indictment no: 2004-GS-07-835 for murder, does not have any specified State, that where the death of the deceased had been alleged. However, the place of death of deceased is not alleged in the body of the indictment."
  - b. "There are two Beauforts in the continental United States, and the indictment fails to specify the location of the State."

On January 22, 2020, Applicant withdrew this PCR action.

## II. CURRENT APPLICATION

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

1. Ineffective Assistance of Counsel
  - a. Failure to investigate
2. Newly discovered evidence
  - a. "...Great Seal of South Carolina is not affixed to the 1993 Act. No. 184."
3. "Fraud upon the court, Rule 60(B)(3)."

Before this Court are the records of the Beaufort County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, Applicant's prior PCR records, the current application, and Respondent's return and motion to dismiss.

## III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to S.C. Code Ann. §§ 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application based upon the following findings:

### Statute of Limitations

This Court finds this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. 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 that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant was found guilty of murder, kidnapping, and armed robbery on April 18, 2007. Remittitur from the direct appeal was issued on October 28, 2010. This application was filed on March 19, 2020, well beyond the statutory filing period. Therefore, this Court finds the application shall be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

#### **Successiveness**

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

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the 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 could have been raised in the proceedings based on Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations regarding the Great Seal issue in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and this Court finds the application shall be summarily dismissed as successive to Applicant's previous PCR application.

#### **Newly Discovered Evidence – Great Seal Issue**

Applicant's assertion he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to vacation of his sentences and be released, is without merit. The Uniform Post-Conviction Relief Act states a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code

Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C).

A defendant requesting a new trial based on after-discovered evidence *following a trial* must show that the evidence:

(1) is such as would probably change the result if a new trial was held; (2) has been discovered since the trial; (3) could not, by the exercise of due diligence, have been discovered before the trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983); Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). Applicant gives no

Applicant alleges there is no visible impression of the Great Seal on the following Acts of which he was convicted: 1993 Act No. 184. In support of this allegation, Applicant cites Article III, Section 18 of the South Carolina Constitution, "No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, has had the Great Seal of the State affixed to it. . . ."

The South Carolina Supreme Court has held absolute literal compliance is not essential to valid legislation, but substantial compliance is sufficient. Smith v. Jennings, 67 S.C. 324, 45 S.E. 821, 824 (1903). Furthermore, under the enrolled bill rule, an act is deemed to be properly passed when it has been ratified by the presiding officers of the General Assembly, approved by the Governor, and enrolled in the Office of Secretary of State. Medical Soc. of South Carolina v. Medical Univ. of South Carolina, 334 S.C. 270, 278, 513 S.E.2d 352, 356 (1999); Beaufort County v. Jasper County, 220 S.C. 469, 487, 68 S.E.2d 421, 430 (1951); State v. Town Council

of Chester 39 S.C. 307, 17 S.E. 752, 755 (1893) (“when the bill . . . is deposited in the department of state, according to law, its authentication as a bill that has passed congress is complete and unimpeachable).

Other jurisdictions have upheld acts challenged as invalid because there was not strict compliance with a constitutional provision. See Taylor v. Wilson, 22 N.W. 119 (Neb. 1885) (citing Cottrell v. State, 1 N.W. 1008 (Neb. 1879)) (finding an act was not unconstitutional when the president of the senate did not sign it as required by the state’s constitution); Commr’s of Leavenworth Co. v. Higginbotham, 17 Kan. 62 (Kan. 1876) (“[T]he mere failure of the president of the senate to do his duty cannot have the effect to invalidate the law.”).

Additionally, the South Carolina Supreme Court has upheld the appointment of an officer whose commission lacked the Great Seal as required by law. State v. Toomer, 7 Rich. 216, 229, 41 S.C.L. 216, 229 (1854). The Court explained if the State excused the delinquency of the officer and cured the defects, then the title has related back to the time of the election. Id. Moreover, section 2-7-45 of the South Carolina 1976 Code states:

The Code of Laws of South Carolina, 1976, which contains the permanent laws of general application through the 1975 session of the General Assembly and which was presented to the members of the General Assembly during the 1977 session is hereby adopted as the Code of Laws of South Carolina, 1976, and is declared to be the only general statutory law of the State as of January 1, 1976.

The South Carolina Supreme Court has held codification of an act will cure a constitutional defect, and is part of the general statutory law of the State. South Carolina Tax Comm’n v. York Elec. Co-op., Inc., 275 S.C. 326, 333, 270 S.E.2d 626, 629-30 (1980). The Act Applicant currently challenges had substantial compliance with the requirements and were codified into the 1976 Code. Therefore, these laws are enforceable, and Applicant’s allegation lacks merit.

Furthermore, Applicant's discovery of the missing Great Seals under Article III, Section 18 does not constitute newly discovered evidence. This evidence was discoverable prior to the trial, if due diligence was exercised. Furthermore, the lack of a Great Seal of South Carolina affixed to the 1993 Act No. 184 is not material to Applicant's guilt or innocence.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing 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 a showing he is entitled to relief based on the information set forth above and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter must be summarily dismissed with prejudice.

#### IV. CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty 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 Beaufort County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
PCR Division -14<sup>th</sup> Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Beaufort County Clerk of Court and opposing counsel within twenty 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 \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
DEADRA L. JEFFERSON  
Chief Administrative Judge  
Fourteenth Judicial Circuit

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

RECEIVED

SEP 10 2020

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

John Dykeman, #245443,  
Applicant.

v.

State of South Carolina,  
Respondent.

P.C.I. MAIL ROOM

IN THE COURT OF COMMON PLEAS  
IN THE FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-07-00741

Applicants Response to  
Conditional Order of  
Dismissal

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Applicant John Dykeman on March 19, 2020. Respondent made its return, requesting the application be summarily dismissed.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections. In May 2004, the Beaufort County Grand Jury indicted Applicant for murder (2004-GS-07-0835), kidnapping (2004-GS-07-0834), and armed robbery (2004-GS-07-0836). Circuit Public Defender Gene Hood represented Applicant. Solicitor I. McDuffie Stone and Assistant Solicitors Sean Thornton, and Angela Tanner of the Fourteenth Judicial Circuit prosecuted the case. On February 22, 2007, Applicant proceeded to trial before the Honorable John M. Milling, circuit court judge. The jury found Applicant guilty as indicted. On April 18, 2007, Judge Milling sentenced Applicant to life imprisonment for murder and concurrent terms of thirty years each for armed robbery and kidnapping.

Applicant filed a timely notice of appeal. Appellate Defender Joseph Savitz, III, Esquire, of the Commission on Indigent Defense—Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on October 12, 2010. State v. Dykeman, Op. No. 2010-UP-436 (S.C. Ct. App. filed October 12, 2012). The remittitur was

issued on October 28, 2010.

**First PCR Application: 2010-CP-07-5697**

Applicant subsequently filed an application for PCR on November 18, 2010, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
  - a. Failed to object to the court charging the jury with hand of one hand of all where defendant was indicted as a principal only and the charge of hand of one hand of all was insufficient, vague, misleading, and confusing.
  - b. Conceded defendant's guilt during trial.
2. Ineffective Assistance of Appellate Counsel
  - a. Failed to brief defense motion for a directed verdict.
  - b. Failed to brief defense motion as to the exclusion of evidence in respect to videotape clip of Brett Kinney.
  - c. Failed to brief defense motion to strike specific portions of State's witness Brandy Ross and/or denying defense motion for a mistrial pertaining to this witness testimony.
3. Trial judge committed reversible error by instructing the jury that Applicant would obtain a procedural advantage – "the final argument" – if he "offered no testimony whatsoever and does not appear and take the stand," as this procedural matter is irrelevant to the jury's determination of guilt or innocence and this instruction undermines the utility of having the final argument.

Respondent filed its return on March 17, 2011. An evidentiary hearing into the matter was convened on September 4, 2012, at the Beaufort County Courthouse before the Honorable Perry M. Buckner, III. Applicant was present at the hearing and was represented by Samuel Kirkland, Esquire. Assistant Attorney General Ashleigh Wilson of the South Carolina Attorney General's Office represented Respondent. On October 1, 2012, Judge Buckner issued the order of dismissal denying Applicant's application for post-conviction relief.

Applicant filed a timely notice of appeal of his denial of his application for post-conviction relief. He was represented by Appellate Defender Robert Pachak of the South Carolina Commission on Indigent—Office of Appellate Defense. A Johnson<sup>1</sup> petition was filed on behalf of Applicant on March 25, 2013. Applicant submitted a *pro se* petition for writ of

<sup>1</sup> *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

certiorari on May 13, 2013. The South Carolina Supreme Court denied Applicant's petition of writ of certiorari by order dated July 11, 2013. The Remittitur was issued on July 31, 2013.

**Second PCR Application: 2013-CP-07-02285**

Applicant filed his second PCR application on September 5, 2013, in which he alleged the following grounds for relief:

1. Ineffective assistance of PCR counsel.
  - a. "PCR counsel advised Applicant to drop allegations on trial counsel."

Respondent made its return and motion to dismiss on September 25, 2014. On October 3, 2014, the Honorable R. Markley Dennis, Jr., issued a conditional order of dismissal provisionally denying and dismissing the application. Applicant failed to make a response. On May 13, 2015, the Honorable Carmen T. Mullen issued a final order of dismissal denying and dismissing the application with prejudice.

**Federal Habeas Petition: 8:13-2933-MGL-JDA**

Applicant subsequently filed a petition to the United States District Court seeking federal habeas relief under 28 U.S.C. § 2254. Applicant raised the following issues:

1. Ineffective assistance of appellate counsel;
  - a. Appellate counsel knowingly raised a [sic] unpreserved issues for appellate review where there were in fact meritorious issues which clearly had precedence; by appellate counsel's actions Applicant was denied due process

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On March 24, 2014, Respondent made its return and memorandum of law in support of its motion for summary judgment. The Honorable Jacquelyn D. Austin, United States Magistrate Judge, issued a report and recommendation on January 5, 2015, recommending that Respondent's motion for summary judgment be granted and the petition be summarily dismissed without an evidentiary hearing. Applicant made several objections to the report and recommendation, which were filed on February 18, 2015. On March 5, 2015, the Honorable

Mary G. Lewis, United States District Judge, issued an order adopting the report and recommendation, overruling Applicant's objections, granting Respondent's motion for summary judgment, and denying a certificate of appealability.

Applicant filed a notice of appeal on April 8, 2015. The United States Court of Appeals for the Fourth Circuit dismissed the appeal in an unpublished opinion on March 2, 2016.

### **Third PCR Application: 2015-CP-07-01565**

Applicant filed his third PCR application on June 19, 2015, in which he alleged the following grounds for relief:

1. Juror misconduct;
  - a. Jurors intentionally concealed the fact that they were related to one another by marriage and were listed as living at the same residence on the jury roll call roster.
2. Violation of 6<sup>th</sup> and 14<sup>th</sup> Amendments U.S. Constitution

Respondent made its return and motion to dismiss on August 18, 2015. On September 8, 2015, the Honorable Carmen T. Mullen, issued a conditional order of dismissal provisionally denying and dismissing the application. On September 16, 2015, Applicant made his response to the conditional order of dismissal. On April 11, 2016, Judge Mullen issued a final order denying and dismissing the application with prejudice.

### **Fourth PCR Application: 2018-CP-07-2083**

Applicant filed his fourth PCR application on October 22, 2018, in which he alleged the following grounds for relief:

1. Lack of subject matter jurisdiction
2. Insufficiency of indictment
  - a. "The trial court lacked subject matter jurisdiction to hear the case on indictment no: 2004-GS-07-835 for murder, does not have any specified State, that where the death of the deceased had been alleged. However, the place of death of deceased is not alleged in the body of the indictment."
  - b. "There are two Beauforts in the continental United States, and the indictment fails to specify the location of the State."

On January 22, 2020, Applicant withdrew this PCR action.

## II. CURRENT APPLICATION

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

1. Ineffective Assistance of Counsel
  - a. Failure to investigate
2. Newly discovered evidence
  - a. "...Great Seal of South Carolina is not affixed to the 1993 Act. No. 184."
3. "Fraud upon the court, Rule 60(B)(3)."

Before this Court are the records of the Beaufort County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, Applicant's prior PCR records, the current application, and Respondent's return and motion to dismiss.

## III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to S.C. Code Ann. §§ 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application based upon the following findings:

### Statute of Limitations

This Court finds this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. 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 that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

Applicant was found guilty of murder, kidnapping, and armed robbery on April 18, 2007. Remittitur from the direct appeal was issued on October 28, 2010. This application was filed on March 19, 2020, well beyond the statutory filing period. Therefore, this Court finds the application shall be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

#### **Successiveness**

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

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the 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 could have been raised in the proceedings based on Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations regarding the Great Seal issue in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and this Court finds the application shall be summarily dismissed as successive to Applicant's previous PCR application.

#### **Newly Discovered Evidence – Great Seal Issue**

Applicant's assertion he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to vacation of his sentences and be released, is without merit. The Uniform Post-Conviction Relief Act states a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code

Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C).

A defendant requesting a new trial based on after-discovered evidence *following a trial* must show that the evidence:

(1) is such as would probably change the result if a new trial was held; (2) has been discovered since the trial; (3) could not, by the exercise of due diligence, have been discovered before the trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983); Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). Applicant gives no

Applicant alleges there is no visible impression of the Great Seal on the following Acts of which he was convicted: 1993 Act No. 184. In support of this allegation, Applicant cites Article III, Section 18 of the South Carolina Constitution, "No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, has had the Great Seal of the State affixed to it. . . ."

The South Carolina Supreme Court has held absolute literal compliance is not essential to valid legislation, but substantial compliance is sufficient. Smith v. Jennings, 67 S.C. 324, 45 S.E. 821, 824 (1903). Furthermore, under the enrolled bill rule, an act is deemed to be properly passed when it has been ratified by the presiding officers of the General Assembly, approved by the Governor, and enrolled in the Office of Secretary of State. Medical Soc. of South Carolina v. Medical Univ. of South Carolina, 334 S.C. 270, 278, 513 S.E.2d 352, 356 (1999); Beaufort County v. Jasper County, 220 S.C. 469, 487, 68 S.E.2d 421, 430 (1951); State v. Town Council

of Chester 39 S.C. 307, 17 S.E. 752, 755 (1893) ("when the bill . . . is deposited in the department of state, according to law, its authentication as a bill that has passed congress is complete and unimpeachable).

Other jurisdictions have upheld acts challenged as invalid because there was not strict compliance with a constitutional provision. See Taylor v. Wilson, 22 N.W. 119 (Neb. 1885) (citing Cottrell v. State, 1 N.W. 1008 (Neb. 1879)) (finding an act was not unconstitutional when the president of the senate did not sign it as required by the state's constitution); Commr's of Leavenworth Co. v. Higginbotham, 17 Kan. 62 (Kan. 1876) ("[T]he mere failure of the president of the senate to do his duty cannot have the effect to invalidate the law.>").

Additionally, the South Carolina Supreme Court has upheld the appointment of an officer whose commission lacked the Great Seal as required by law. State v. Toomer, 7 Rich. 216, 229, 41 S.C.L. 216, 229 (1854). The Court explained if the State excused the delinquency of the officer and cured the defects, then the title has related back to the time of the election. Id. Moreover, section 2-7-45 of the South Carolina 1976 Code states:

The Code of Laws of South Carolina, 1976, which contains the permanent laws of general application through the 1975 session of the General Assembly and which was presented to the members of the General Assembly during the 1977 session is hereby adopted as the Code of Laws of South Carolina, 1976, and is declared to be the only general statutory law of the State as of January 1, 1976.

The South Carolina Supreme Court has held codification of an act will cure a constitutional defect, and is part of the general statutory law of the State. South Carolina Tax Comm'n v. York Elec. Co-op., Inc., 275 S.C. 326, 333, 270 S.E.2d 626, 629-30 (1980). The Act Applicant currently challenges had substantial compliance with the requirements and were codified into the 1976 Code. Therefore, these laws are enforceable, and Applicant's allegation lacks merit.

Furthermore, Applicant's discovery of the missing Great Seals under Article III, Section 18 does not constitute newly discovered evidence. This evidence was discoverable prior to the trial, if due diligence was exercised. Furthermore, the lack of a Great Seal of South Carolina affixed to the 1993 Act No. 184 is not material to Applicant's guilt or innocence.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing 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 a showing he is entitled to relief based on the information set forth above and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter must be summarily dismissed with prejudice.

#### IV. CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty 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 Beaufort County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
PCR Division -14<sup>th</sup> Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

Pursuant to Rule 201 of SCRE, Judicial Notice of Adjudicative Facts.

The Applicant respectfully requests that this Court take Judicial Notice of Adjudicative Facts. Applicant hereby objects to the Respondent's claim that it does not matter if The 1993 Act No. 184 Does Not have the Great Seal affixed to it. Applicant further contends that it is clear that the Respondents either overlooked or ignored the fact that the 1993 Act No. 184 was not signed by the Governor, therefore one cannot say with certainty that the Governor actually approved of the 1993 Act No. 184.

The Respondent's claim that the 1993 Act No. 184 had substantial compliance with the requirements and were codified into the 1976 Code. The Respondent failed to provide proof that the "Act" met all the requirements. The "Act" was not signed nor had the Great Seal affixed to it, therefore it lacked (2) two of the requirements to make it valid.

Based on Adjudicative Facts the Applicant can show based on transcribed records that he suffers from drug addiction to Cocaine, Amphetamine and Cannabis, See Volume One of Appellate Case No 2012-213569 page 5. This information comes by way of a Blair Hearing conducted by Dr. Melikian from South Carolina Department of Mental Health retired.

Due to Applicant's diminished capacity from many years of drug addiction along with the fact he is a layman when it comes to presenting and arguing law, It is apparent that Applicant failed to properly argue and present in his first PCR Application Ineffective Assistance of Appellate Counsel which in turn denied him an actual "first bite of the Apple" and in so doing denied him Due Process under the Law. According to Thrift v. State 302 S.C. 535, 539, 397 S.E.d 2d 523 (1990), Appellate Counsel is not required to raise every non-frivolous issue. In Applicant's case Appellate Counsel knowingly raised an issue that was not preserved for review by the Appellate Court

Which again denied Applicant effective assistance of Counsel,  
Fritts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985),  
Based on adjudicative facts appellate counsel's performance was  
deficient and Applicant was prejudiced by the deficiency Thrift, Id  
at 537. This should satisfy the requirements of S.C. Code of Law  
§ 17-27-90 where my claims were inadequately raised.

At this time Applicant wishes to submit a request to this honorable  
Court to ask for an extension of time that he might more fully  
brief his response to this conditional order of Dismissal Due to  
the COVID-19 crisis and Applicant's limited access to the institutional  
Law library.

John Dykeman 215443

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2020CP0700741**

John Dykeman		South Carolina State Of	
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<b>PLAINTIFF(S)</b>	<b>DEFENDANT(S)</b>
<b>Submitted by:</b>	<b>Attorney for:</b> <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Other: **FINAL ORDER OF DISMISSAL**
- Rule 43(k), SCRPC (Settled);
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other:

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

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:  
**ORDER INFORMATION**

**This order**  ends  does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

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

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

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

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

**Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

S/ D. L. Jefferson	2128	11/10/2020
<b>Circuit Court Judge</b>	<b>Judge Code</b>	<b>Date</b>

**For Clerk of Court Office Use Only**

This judgment was entered on **November 16, 2020**, and a copy mailed first class or placed in the appropriate attorney's box on **November 17, 2020**, to attorneys of record or to parties (when appearing pro se) as follows:

**John Dykeman Perry Correctional Insitution Q 2B 217 430**  
Oaklawn Rd Pelzer, SC 29669

**Sara Elyssa Gunton PO Box 11549 Columbia, SC 29211**

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

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**ATTORNEY(S) FOR THE DEFENDANT(S)**

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MK

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**Court Reporter**

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**Jerri Ann Roseneau - Clerk of Court**

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.**

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
IN THE FOURTEENTH JUDICIAL CIRCUIT

John Dykeman, #245443, 2020 NOV 16 PM 4:26 )

Case No.: 2020-CP-07-00741

Applicant, JERRALYN ROSENEAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT )

v. )

**FINAL ORDER OF DISMISSAL**

State of South Carolina, )  
Respondent. )

This matter comes before the Court by way of an application for post-conviction relief filed by Applicant John Dykeman on March 19, 2020, asserting he was entitled to relief based on ineffective assistance of counsel for failing to investigate his case and newly discovered evidence in the form of irregularities of the acts and statutes under which he was indicted and convicted. Respondent made its return, requesting the application be summarily dismissed pursuant to S.C. Code Ann. § 17-27-70.

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. In provisionally dismissing this application, which is Applicant's *fifth* application for post-conviction relief, this Court found the action should be dismissed as filed beyond the statute of limitations as set forth in Section 17-27-45, as successive to his four prior actions as set forth in Section 17-27-90, and for failing make a prima facie showing of newly discovered evidence. This conditional order of dismissal was signed August 18, 2020, and filed August 24, 2020, provisionally denying and dismissing this action, while giving the Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final.

10/3  
*[Signature]*  
Page 1 of 3

Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated September 10, 2020, serving the above-mentioned Conditional Order of Dismissal on Applicant.

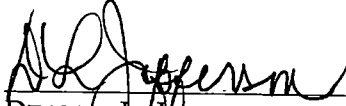
Applicant responded to the motion to dismiss and Conditional Order of Dismissal in a document filed September 28, 2020. In this document, Applicant first asserts 1993 Act No. 184 does not have the Great Seal affixed to it and is not signed by the Governor, which he asserts thereby renders the act, and ultimately his indictments and convictions invalid. However, Applicant failed to establish why he could not have discovered this information previously. Next, Applicant asserts long term drug abuse rendered him incompetent and prevented him from timely raising claims of ineffective assistance of counsel. In support of this claim, Applicant cites to the appendix from the appeal of his initial post-conviction relief action in 2012. He further asserts that this incompetency based on drug use prevented him from timely raising claims against appellate counsel in his initial post-conviction relief proceeding. However, he fails to state why he could not have raised these claims in any of his intervening PCR actions (his second, third, or fourth actions) or explain why this claim is different from the claims of ineffective assistance of appellate counsel that were already raised and adjudicated in his initial PCR action.

After a thorough review of the record and Applicant's response to the Conditional Order of Dismissal, this Court finds Applicant has still failed to establish any evidence or facts entitling him to an evidentiary hearing. Accordingly, pursuant to S.C. Code Ann. § 17-27-70, this Court finds this action must be summarily dismissed.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, this application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

AND IT IS SO ORDERED this 10<sup>th</sup> day of Nov., 2020.

Chat, South Carolina.

  
DEADRA L. JEFFERSON  
Chief Administrative Judge for Common Pleas  
Fourteenth Judicial Circuit

3013  
ARF