APPELLATE CASE NO:
2020-001092

CERTIFICATE OF SERVICE BY MAIL

I George L. Douglas #24956, Do By Swear That I'm The Petitioner In This Case. I Am Sending One(1) Copy By U.S. Mail To The Below Name Individuals.

Respectfully Submitted,
George L. Douglas #24956

DANIEL SHEAR HOUSE
CLERK OF CT
S.C. Supreme Court
P.O. Box 11330
Columbia, SC
29201

DATE: MARCH 13th, 2021

LILLIAN L. MEADOWS ESQUIRE
ATTORNEY GENERALS OFFICE
P.O. Box 11549 1000 ASSEMBLY ST.
Columbia, S.C. 29211

APPENDIX

Fully Prior Served Sentences

McDuffie v St, 276 S.C. 229, 277 SE2d 595 (4/22/81)

Maleng v Cook, 490 US 488, 109 S.Ct. 1923 (6/2/88)

Daniels v US, 532 US 374, 121 S.Ct. 1578

Garlotte v Fordice, 515 U.S. 39, 115 S.Ct. 1948
5/30/95

Lomand v OK, 512 U.S. 1, 114 S.Ct. 2004 (6/13/94)

Ring v Ariz, 536 US, 584, 122 S.Ct. 2428 (6/24/02)

Setser v US, 566 U.S. 231, 132 S.Ct. 1463 (3/24/12)

Ewing v Cal, 538 US 11, 123 S.Ct. 1179 (3/5/03)

Packingham v N.C., 137 S.Ct. 1730 (6/19/17)

Carafas v LaVallee, 391 US 234, 88 S.Ct. 1556, 1566, (5/20/68)

Gideon v Wainwright, 372 US 335, 83 S.Ct. 792

Townsend v Burke, 334 US 736, 68 S.Ct. 1252

THE SUPREME COURT OF S.C.

STATE OF SC)
COUNTY OF LEXINGTON) APPELLATE CASE NO. 2020-001092

GEORGE L. DOUGLAS #24956)
PETITIONER)

V) DATE: 3/13/21

STATE OF S.C.)
RESPONDENT)

THIS MATTER IS BEING BROUGHT BY PETITIONER GEORGE L. DOUGLAS #24956 STATING THAT ON 3/12/20 THE PETITIONER did MAIL THE ASST ATTY GEN. LILLIAN LOCH MEADOWS, ESQUIRE AND THE HONORABLE WALTON J. McLEOD IV, CHIEF ADMIN. JUDGE, 11th JUDICIAL CIRCUIT AND THE HONORABLE JEANETTE McBRIDE, CLERK OF LEXINGTON COUNTY. THIS WAS THROUGH THE LIEBER CORR. INST. MAIL ROOM AND I HAVE A COPY OF THE E. H. COOPER DOBIE FORM OF WHO I SENT THESE DOCUMENTS TOO

THE THREE (3) INDIVIDUALS. THE ASST. ATTY. GEN., STATED ON RECORD THAT SHE DID NOT RECEIVE THE MOTION FOR SUBJECT MATTER JURISDICTION AND A AFFIDAVIT OF GEORGE DOUGLAS, SHE STATES NONE OF THE RESPONSES WAS SERVED ON HER, BUT I MAILED THEM OUT ON 3/12/20. ALSO THE STATE USED A FULLY PRIOR SERVED SENTENCE AGAINST ME TO ENHANCE MY SENTENCE, UNDER Cook V MACENG, 847 F.2d 616, 617 (9th CIR), CERT GRANTED, 109 S.CT. (1988) U.S. V TUCKER, 404 U.S. 443, 448 (1972) U.S. V MORGAN, 346 U.S. 502, 512-513, 74 S.CT. 247, 253, 98 L.Ed 248 (1954) U.S. V GERNIE, 228 F.Supp, 329, 332 (D.C.S.D.N.Y. 1964)

THE COURT QUOTING FROM MORGAN, Supra, Held;

"(T)HE CASE IS NOT CONSIDERED MOOT MERELY BECAUSE SENTENCE HAS BEEN Completed, AND THE COURT HAS POWER TO VACATE AND

SET ASIDE AN ILLEGAL CONVICTION AND SENTENCE IF THE PROCEEDINGS ARE WELL GROUNDED". THE PETITIONER IS PRAYING TO THE COURTS FOR RELIEF FOR A VACATED SENTENCE FOR ENHANCEMENT.

Respectfully Submitted,
George L. Douglas #249816
George L. Douglas #249816
Ridgeland Corr. Inst
SAVANNAH B-12
P.O. Box 2039
Ridgeland, S.C.
29936-2039

CC: FILE
CC: Lillian L. Meadows
Esquire
Asst. Atty Gen

(3)

ATTORNEY GENERALS OPINIONS

THE STATUTORY PROVISIONS WITH RESPECT TO THE SENTENCING OF YOUTHFUL OFFENDERS ARE OBLIGATORY UPON SENTENCING COURTS, AN INDIVIDUAL SENTENCED PURSUANT TO THE PROVISION [1962 CODE §55-395(c) [1976 CODE §24-1950] SETTING UP AN INDETERMINATE SENTENCING PROCEDURE CANNOT RECEIVE A SENTENCE FOR A DEFINITE TERM. 1975-76 OF ATTORNEY GENERAL NO: 4285 P.97

SECTION §24-19-50(c) REQUIRES CIRCUIT COURT TO SENTENCE YOA'S TO INDEFINITE TERM NOT TO EXCEED 6YRS OR MAXIMUM TERM PRESCRIBED IF SENTENCE AS ADULT WHICHEVER IS LESS; CIRCUIT COURTS DIRECTION THAT YOA'S SERVE "INDETERMINATE TERM NOT TO EXCEED 2YRS IS THEREFORE MERELY RECOMMENDATION TO YOA DIVISION THAT DEFENDANT NOT BE HELD BEYOND 2YRS

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
George L. Douglas, SCDC #249516, Applicant, v. State of South Carolina, Respondent.	Case Nos.: 2018-CP-32-02660 2019-CP-32-01592 **FINAL ORDER OF DISMISSAL**

This matter comes before the Court by way of post-conviction relief (PCR) applications filed by George L. Douglas (Applicant) on August 1, 2018, and April 23, 2019. The State made its return to the 2018 action on March 15, 2019, requesting the application be summarily dismissed. On March 19, 2019, just four days later, Applicant filed an amended application. On April 23, 2019, approximately a month after Applicant filed said amended application, Applicant filed another PCR action. The State made its amended return and motion for merger on February 5, 2020, requesting the actions be merged and summarily dismissed because both the 2018 and 2019 applications were filed after the statute of limitations had expired; they are successive to Applicant's prior PCR actions; they are barred by the doctrines of *res judicata* and *laches*; and because continued litigation by Applicant frustrates the need for finality of litigation.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued an Order of Merger and Conditional Order of Dismissal signed February 7, 2020, and filed February 19, 2020, 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. This Court ordered the two PCR actions to be merged,

with the application filed August 1, 2018 (2018-CP-32-02660) be the surviving case, and the application filed April 23, 2019 (2019-CP-42-04261) be considered an amendment to the 2018 application and be closed by the Lexington County Clerk of Court. Attached to this Final Order of Dismissal is an Affidavit of Service dated March 4, 2020, serving the above-mentioned Conditional Order of Dismissal on Applicant.

On February 11, 2020, after this Court's Conditional Order was signed but before it was filed, Applicant filed a motion to amend his PCR application.[1] Thereafter, on March 18, 2020, Applicant filed a document entitled "Motion for Subject Matter Jurisdiction and a second document entitled "Affidavit of George Douglas."[2] None of these responses were served on the Attorney General's Office as instructed in this Court's Conditional Order. Nevertheless, this Court has reviewed all three documents in their 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.

In his responses, Applicant contends the trial court was without jurisdiction to sentence him to life without the possibility of parole (LWOP) based on his prior conviction for second-degree criminal sexual conduct from 1980.[3] Specifically, Applicant claims he pleaded guilty to a lesser-included, nonviolent offense in 1980 because "there is no other way he could have received a lawful sentence under the Youthful Offender Act." Applicant does not specify the lesser-included

[1] Pages 2–8 of this document contains a motion for a new trial based on after-discovered evidence pursuant to Rule 29(b), SCRCrimP, in Applicant's underlying General Sessions cases. As the undersigned is the Chief Administrative Judge for Administrative Purposes for Common Pleas and not General Sessions, this Order will address PCR matters only.

[2] This Court issued an Order Restricting Future Filings in the circuit court in conjunction with the Conditional Order. This Court notes that its Order Restricting Future Filings in circuit court does not prevent Applicant from responding in this action, only future actions. Applicant is therefore not required to submit an affidavit or otherwise comply with the Order Restricting Future Filings for purposes of this action.

[3] This Court notes that issues related to Applicant's sentence have been raised *at least* once in his numerous prior actions in state and federal courts.

offense to which he allegedly pleaded guilty, however, Applicant's sentencing sheet from the 1980 Richland County conviction and his records from the South Carolina Department of Corrections indicate he served a sentence for second-degree criminal sexual conduct starting June 9, 1980. The sentencing sheet further indicates he was sentenced pursuant to the Youthful Offender Act.

Applicant relies on the **current** version of the statute, which prohibits the imposition of a YOA sentence for conviction classified as a violent crime, including second-degree criminal sexual conduct. *See* S.C. Code Ann. § 24-19-10(d)(ii) ("'Youthful offender" means an offender who is . . . seventeen but less than twenty-five years of age at the time of conviction for an offense that is not a violent crime, as defined in Section 16-1-60 . . .") At the time of Applicant's 1980 conviction, however, that provision of the statute did not exist. *See* S.C. Code Ann. § 24-19-10(d) (amended 1996) ("Youthful offender" means all male and female offenders who are seventeen but less than twenty-five years of age at the time of conviction.") Therefore, Applicant's prior conviction was a proper predicate offense used for enhancement purposes under section 17-25-45. *cf. United States v. Wilks*, 464 F.3d 1240, 1243 (11th Cir. 2006) ("It is one thing to prohibit capital punishment for those under the age of eighteen, but an entirely different thing to prohibit consideration of prior youthful offenses when sentencing criminals who continue their illegal activity into adulthood.").

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, the Court finds no reason why the Conditional Order of Dismissal should not become final. The Court reasserts its finding in the Conditional

Order of Dismissal that the current PCR action must be dismissed based upon filing after the statute of limitation had expired; successiveness of the applications; being barred by the doctrines of *res judicata* and laches; failing to state a cognizable claim; and because the pursuit of this current application frustrates the need for finality of litigation.

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

This Court hereby advises 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 227, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 12 day of May, 2020.

WALTON J. McLEOD, IV
Chief Administrative Judge
Eleventh Judicial Circuit

Lexington, South Carolina

In support of Applicant's jurisdictional argument, the Applicant would show the following:

The trial Court was without jurisdiction to sentence the Applicant to life without the possibility of parole pursuant to the criteria set forth in S.C. Code Ann. §17-25-45. After a careful review of the Applicant's criminal record of **arrest** and **convictions**, the Court will discover that Applicant's present conviction for Criminal Sexual Conduct first degree is his **first** and only conviction of a "**serious**" or "**most serious**" nature. Therefore, because the Applicant's past criminal record of convictions does not meet the statutory criteria necessary to be sentenced pursuant to §17-25-45, the trial court was without jurisdiction to impose a sentence of life.

In reviewing the Applicant's arrest record, it reveals that there was an arrest in 1980 for Criminal Sexual Conduct second degree, which is a crime that meets the criteria necessary for sentencing under §17-25-45. However, that arrest did not result in a **conviction which fit within the criteria of §17-25-45.** This 1980 arrest resulted in a conviction by way of a **negotiated plea agreement.** The Applicant's violent offense was reduced to a lesser included offense and he was sentenced under the terms of the Youthful Offender Act of South Carolina. Because the Youthful Offender statute does not permit the sentencing of individuals **for violent offenses** as defined under South Carolina Code Ann. §16-1-60.

South Carolina Supreme Court Justice Samual McGowan states the following: "The law cast its protection over all persons alike. Hence therefore, before any person can be made to suffer for a crime, he must be caught and held in the exact meshes for which the law has provided; or in other words, he must be proceeded against **step by step according to the rules which the law has ordained.** It is to no avail to proceed against him according to other or better rules. **The laws rules must be pursued,** or the laws penalty cannot be imposed upon him for his crime." State v. Briggs, 27 S.C. 85, 2 S.E. 856.(emphasis added).

I have here for the Court's review copies of S.C. Code Ann. §24-19-5, which is entitled "Judge William R. Byars Youthful Offender Act" and if the Court would please look at Section §24-19-10(d)(ii) "Definitions", which reads as follows:

> "Youthful Offender" means and offender who is "seventeen but less than twenty-five years of age at the time of conviction for an **offense that is not a violent crime**, as defined in Section §16-1-60, and that is a misdemeanor, a Class D, Class E, or Class F felony, or a felony which provides for a **maximum** term of imprisonment of **fifteen years or less.**" (emphasis added through out).

As this Honorable Court can see, the language used in the statute is plain and ordinary, conveying a clear meaning. Based on this plain and ordinary language, **the expressed intent of the legislature** here is that any crime defined as violent pursuant to **"Section §16-1-60"** is not eligible for sentencing under the **"Youthful Offender Act"** and therefore, The Applicant's 1980 conviction and sentence under the provisions of the Youthful Offender Act, was a conviction and sentence of a lesser offense than that for which he was originally arrested.

In other words, the Applicant was indeed arrested and charged in 1980 with a crime that could be used to enhance under §17-25-45. However, because he entered into a negotiated plea agreement with the prosecution to reduce the charge and allow him to receive a Youthful Offender sentence. **There is no other way he could have received a lawful sentence under the Youthful Offender Act.** It's safe to assume that the 1980 charge of CSC was reduced, thereby allowing the Applicant to enter a **Valid plea** and receive a Youthful Offender sentence.

With that being the case, the Applicant's 1980 Youthful Offender sentence **does not fit the criteria** necessary **by law** to be sentenced pursuant to §17-25-45 because no Youthful Offender conviction can be a conviction of a violent crime pursuant to the language of the statute.

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. State v. Alexander, 424 S.C. 270 (2018); see also State v. Elwell, 403 S.C. 606,612 743 S.E.2d 802,806 (2013). "All rules of statutory construction are subservient to the Maxim that legislative intent must prevail if it can be reasonably discovered in the language used." State v. Pittman, 373 S.C. 527,561 647 S.E.2d 144,161 (2007). "However, penal statutes will be strictly construed against the state." ~~Elwell~~ ELWELL, 403 S.C. at 612, 743 S.E.2d at 806.

A statute must be taken as found, giving effect to the legislative intent as expressed in its language. State v. White, 338 S.C. 56, 525 S.E.2d 261 (1999). If the terms of a statute are clear, the court must apply those terms according to their literal meaning. City of Columbia v. Am. Civil Liberties Union of S.C. Inc., 323 S.C. 384, 475 S.E.2d 747 (1996).

In the instant case the Applicant, (George Douglas) has suffered a miscarriage of justice in that he was sentenced to an unlawful term of life imprisonment without the possibility of parole, and has suffered the anxiety, frustration and emotional trauma of that burden for the past twenty-three (23) years.

Because the legislature has specifically excluded Y.O.A. sentencing for certain offenses, therefore, anyone who receives a Youthful Offender sentence, can only be convicted of an offense that fits within the scope of the statute's language. The Youthful Offender Act specifically states that an offense **cannot** be classified as a **violent offense** pursuant to S.C. Code §16-1-60 making all conviction under the Act neither "serious" nor "most serious" offenses.

Penal statutes are construed strictly against the State and in favor of the defendant. State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 (1980).

THE STATE OF SOUTH CAROLINA
RICHLAND COUNTY
Fifth Circuit

Oct 6, term, 1980

The State of South Carolina

vs

George L Mangum

Sex M Race W DOB 1/10/58

Soc.Sec.No. 250-25-5576

IN THE COURT OF GENERAL SESSIONS

INDICTMENT NO. 80-GS-40-2608

COPY OF SENTENCE (COMMITMENT)

INDICTMENT FOR

Criminal Sexual Conduct - 2nd degree

The prisoner, George L Mangum

( ) having entered a guilty plea

( ) having been found guilty by jury trial

it is the

SENTENCE

The Sentence of the Court is that the prisoner _____, shall be confined in the custody of the Board of Corrections of the State of South Carolina for a period of _____ and the Board of Corrections shall designate a place of confinement where this sentence shall be served The sentence of the Court is that the prisoner George L. Mangum be sentenced pursuant to Section 5(c) of the Youthful Offender Act, the Defendant is committed to the Custody of ~~the Department of Corrections Youthful~~ Offender Division for an indeterminate period of time not to exceed ~~four (4) years.~~

Walter P. Cooper III
Presiding Judge /s/

Presiding Judge

10-9-80

The State of South Carolina
County of Richland

I, John R. T. Major, Clerk of the Court of General Sessions for Richland County, State aforesaid, do hereby certify that the foregoing is a true copy of the sentence pronounced by the Court in the case above entitled.

GIVEN under my HAND and the Seal of the said Court at Columbia,
this 9 of Oct 1980

John R T Major
C.C.G.S.R.C.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Inmate Services

AGREEMENT TO DEBIT E.H. COOPER ACCOUNT

Inmate's Name:	SCDC #:	Housing Unit:	Date:
George L. Douglas	249516	RB-225	3/11/20

GENERAL MATERIAL

** Inmate must have the funds in his/her account to pay for the materials.

Item	Amount	To be completed by SCDC staff: Cost
Envelope		
Pen		
Paper		
Postage		
Tape		
Box		
Electronic Repair		
Other		
	Sub-Total:	

LEGAL MATERIAL

** Inmate is not required to have the funds in his/her account to pay for the materials; however, his/her account must be debited for all materials s/he elects to receive.

Item	Amount	To be completed by SCDC staff: Cost
Envelope		
Pen		
Paper		
Postage	3	10.92
Other		
	Sub-Total:	10.92

Judge McLeod IV
Clerk of Ct. Lee Cty
Atty Generals Office

PHOTOCOPIES

** Inmate may be required to have funds in his/her account. See SCDC Procedure GA-01.03(OP), "Inmate Access to the Courts," to determine if inmate may receive copies with/without funds.

Item	Amount	To be completed by SCDC staff: Cost
Photocopies		
		10.92
		TOTAL

RECEIVED
MAR 12 2020
ROOM
LEBER C

George L. Douglas #249516
Inmate's Signature

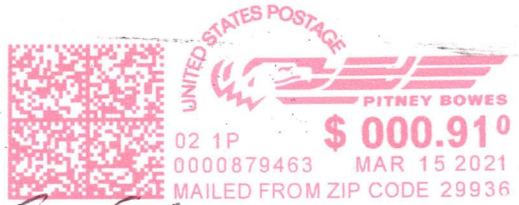
Mailroom/Canteen Signature (Request filled by)

3/12/20
Date

White - Inmate
Canary - Mailroom/Canteen Employee

SCDC Form 10-14 (November 1998)

Gary L. Douglas #249516
S.C.E. SB-12
P.O. Box 2039
Ridgeland, S.C.
29936-2039



RIDGELAND CORRECTIONAL INSTITUTION
MAR 15 2021
Mailroom

THE Supreme CT. OF S.C.
ATTN: DANIEL SHEARHOUSE
CLERK OF COURT
P.O. Box 11330
Columbia, S.C.
29211

#249516
LEGAL MAIL

APPELLATE CASE NO: 2020-001092