

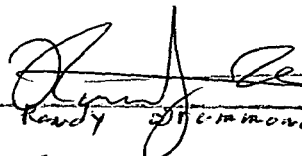
Randy Drummond
116 Elliott St
Spartanburg, SC 29308

Case No. 2013-000556

Clerk of Court
South Carolina Supreme Court

Dear Clerk of Court

Please find enclosed the following a copy of Petitioner's explanation to (S.C.A.C.R.) Rule 243(c), also a copy of Verification and Certificate of Service upon Respondents also full copies of Conditional order of dismissal, and Final order of dismissal.

s/ 
Randy Drummond

dated 29, 2013.

Home Ph (864) 573-8737

cc:

Karen G. Rutigan
A.G. office.

RECEIVED

APR 01 2013

S.C. SUPREME COURT

SOUTH CAROLINA SUPREME COURT

Randy Drummond
Petitioner

RECEIVED

Case No. 2013-00556
APR 03 2013

Vs.

S.C. SUPREME COURT

The State of South Carolina
Respondents

EXPLANATION RULE 243(c)

Petitioner states that its his Contention Greenville County general session Court on or about November 4, 2004 lack Jurisdiction under double jeopardy clause sec [SC Const., art. 1, and 12]. Also see Stevenson V. State, 335, 193 S.E. 2d 434 (1999), to accept Petitioners guilty plea nor Convict. Petitioner of Failure to stop for blue light sec. Indictment No. 2003-GS-23-9072. Whereby in support of Petitioner make the following statements.

Petitioner states that he did not, and could not raise the above and foregoing argument in his first (PCR) application sec. (PCR) 2004-CR-23-8425. base upon the following facts.

Petitioner states that he was tried, and convicted October 9, 2003 in Greenville Summary Court in his absent at Citation No. A255371. It's Petitioners Contention that said Citation is same or related charges to indictment 2003-GS-23-9072, Petitioner States that at time of said Conviction of Citation No. A255371 Petitioner was confine in Greenville County Jail on same or related charges.

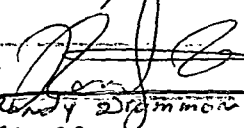
Petitioner states that he did not become aware of trial, and conviction of said Citation No. A255371 UNfile December 10, 2006. Thus Petitioner was unable to comply with SC Code Ann 17-27-10.

Petitioner states that once he became aware of citation and its conviction thereof appellate counsel Wanda H. Carter was informed of said conviction and was instructed to supplement records to add the legal argument of double jeopardy claim. Appellate counsel failed or refuse to adhere to Petitioner's instruction. Thus Petitioner sought dismissal of counsel the said request for dismissal of appellate counsel was denied by South Carolina Supreme Court see *Drummond v. State* 2007-MO-060.

Petitioner states that upon the basis of said deny Petitioner was compelled to file an assert second (PCR) application No. 2006-CP-23-2038.

WHEREFORE Petitioner state that he was impede from complying with SC Code Ann 17-27-10 and that he was denied full and fair hearing. Thus he seeks relief.

Respectfully Submitted,


s/ Wendy Drummond
pro se.

Dated March 29, 2013

IN AND FOR SOUTH CAROLINA SUPREME COURT

Randy Drummond
Petitioner,

Vs _____

Case No. 2013-000556

The State of South Carolina
Respondents,

VERIFICATION:

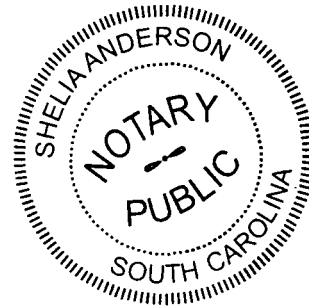
I, Randy Drummond hereby states that all foregoing documents,
and statements is true to best of my knowledge and belief.

Randy Drummond
Randy Drummond
dated 29, 2013 SCJ

dated 3/29/2013

by Shelia Anderson
Notary

exp 3-12-2014



SOUTH CAROLINA SUPREME COURT

Randy Drummond
Petitioner,

vs

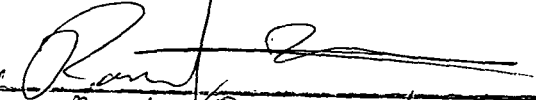
Case No. 2013-000556

The State of South Carolina
Respondents,

CERTIFICATE OF SERVICE:

I, the undersigned hereby, certify that I have on this day served the Respondents a true copy of all the attach and foregoing action via United States mail and address as follows:

Done this the 29th day of March year, 2013

S/ 
Randy Drummond,
pro se

Karen C. Ratigan
Post office Box 11549
Columbia SC 29211-1549

GREENVILLE COUNTY

Court of Common Pleas

Randy Drummond

Applicant,

Case No 2011-CP-23-8002

v.

NOTICE OF APPEAL

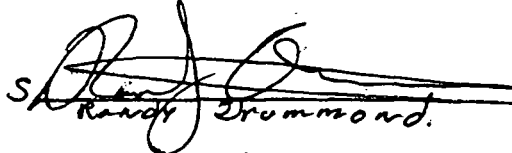
State of South Carolina

Respondent,

2012 AUG 17 AM 8:43
FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENSINGER

Comes now the Applicant in the above case who hereby give
due notice of intent to appeal pursuant to Civil Rule 203
Whereby applicant state that he intend to appeal Court order
dated 7/19/2012

Respectfully Submitted,


S. Randy Drummond.

dated 8/16/12,

A Certified Copy
Paul B. Wickensinger
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 3/27/13

GREENVILLE COUNTY

Court of Common Pleas

Randy Drummond

Case No. 2011-CP-23-8002

Applicant

v.

State of South Carolina

Respondent's

2012 AUG 17 AM 8:43
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL R. WICKENS/STAFF

CERTIFICATE OF SERVICE

I, the undersigned hereby certify that I, have on this day
Served the Respondent's a true copy of this foregoing action
of due Notice of appeal Via United States mail address as follows.
Done this the 16 day of Aug year 2012.

Karen C. Ratigan
Post office Box 11549
Columbia, SC 29211-1549

Randy Drummond
s/ Randy Drummond

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Randy Drummond,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
2011-CP-23-8002

ENTERED COMPUTER

FINAL ORDER OF DISMISSAL

FILED-CLERK OF COURT
GREENVILLE CO., S.C.
JUL 25 2012

2012 JUL 25 AM 10:28

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 1, 2011. The Respondent made its return on March 12, 2012, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

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 signed March 14, 2012 and filed March 30, 2012, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is a Certificate of Service dated April 9, 2012, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Applicant Response to Court Order" and filed April 23, 2012, the Applicant argues the plea judge "lack jurisdiction under double jeopardy clause ... to accept applicant guilty plea nor convict applicant of failure to stop for blue light." The Applicant

1

argues he was convicted in his absence of a charge of reckless driving at the time he was incarcerated on the charges at issue in his PCR application. The Applicant appears to be arguing he could not have been convicted for both failure to stop for a blue light and reckless driving for the same incident. The Applicant argues he was unable to argue newly-discovered evidence in any of his prior PCR applications because he just became aware of it on December 10, 2006.

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

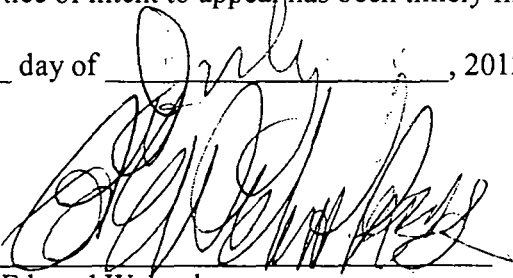
This Court notes the Applicant pled guilty and was sentenced on November 1, 2004. As this action was filed on December 1, 2011, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant's fourth application for post-conviction relief. This Court notes that successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on September 14, 2005. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) ("[A]n applicant is entitled to a full adjudication on the merits of the original petition, or 'one bite at the apple.'").

This Court finds the Applicant's allegation of newly-discovered evidence is without merit. This Court finds the Applicant's alleged evidence has failed to prove any of the five (5) required elements of newly-discovered evidence. See State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009).


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

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

AND IT IS SO ORDERED this 14 day of July, 2012.



G. Edward Welmaker
Chief Administrative Judge
Thirteenth Judicial Circuit


_____, South Carolina.

A Certified Copy
Paul B. Wiseman
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 3/27/13

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

RANDY DRUMMOND,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE


The undersigned hereby certifies that a true copy of the **Conditional Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**Randy Drummond
116 Elliott Street
Spartanburg SC 29306**

This 9th day of April, 2012.


KAREN C. RATIGAN
ATTORNEY FOR RESPONDENT

SWORN to before me this 9th day of April, 2012.


Notary Public for South Carolina.
My Commission Expires: May 11, 2014

2011-CP-23-8002

GREENVILLE COUNTY COURT OF COMMON PLEAS

Randy Drummond

2011 100 23 AM 11:42
Applicant,

Case No. 2011-CP-23-8002

FILED - CLERK OF COURT
GREENVILLE, S.C.

State of South Carolina

Respondent's,

Applicant RESPONSE TO COURT ORDER:

Applicant states that it's his contention Greenville County general session court on November 1, 2004 lack Jurisdiction under double jeopardy clause see [state v. Carter 353 S.E. 2d 875] to accept applicant guilty plea nor convict applicant of Failure to Stop for blue light see indictment no. 2003-GS-23-9072. Whereby in support of applicant assert the foregoing document mark as exhibit [A], with the following statement.

Applicant states that he could not, and did not raise the above and foregoing argument in first [PCR] application 2004-CP-23-8425 Thus base upon the following facts.

Applicant states that he tried, and convicted of Citation No. A255371 in his absent. Applicant further states at time of said conviction of Citation applicant was confined in Greenville County Jail on same or related charges see ind no. 2003-GS-23-9072.

Applicant states that he first become aware of trial, and conviction of Citation No. A255371 on or, about December 10, 2006, Thus applicant was unable to comply with SC, code ANN 17-27-90 (2003).

Applicant states once he became aware of Citation No. #255371 and its conviction thereof appellate Counsel Wanda H. Carter was inform of conviction and given instruction to supplement records to add legal argument of double jeopardy claim appeal counsel failed or refuse to adhere to applicant instruction. Thus applicant was compel to filed and assert [PCR] 2006-CP-23-2038.

Applicant assert in compliance with [State v. Mercer, 381 SC 149 S.E.2d]. Fore which states in order to granted new trial based on after-discovered evidence, he must show that evidence (1) is such that it would probably change the result if a new trial were granted.

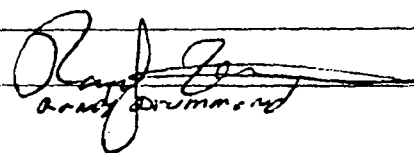
In Compliance with part (one) of State v. Mercer Applicant states, and assert the following. Attachment mark as exhibit [A] would substantiate applicant contention that State of South Carolina was without Jurisdiction to convict applicant of indictment No. 2003-GS-23-9072

In Compliance with part (Two) of State v. Mercer. Applicant states, and assert the following. Applicant assert that new discovered evidence was not known to applicant at time of trial and was discovered after trial see previously asserted affidavit of applicants.

CONCLUSION

Applicant respectfully states the he seeks a evidentiary hearing on the above, and foregoing

Date 16 April 2012


Randy Drummond

GREENVILLE COUNTY COURT OF
COMMON PLEAS

Randy Drummond

Applicant,

Case No. 2011-CP-23-8002

v.

State of South Carolina

Respondent,

VERIFICATION:

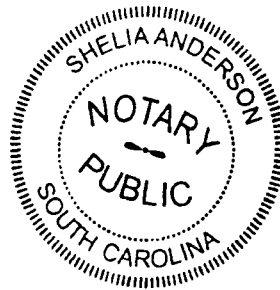
I, Randy Drummond hereby states that all foregoing documents, and statements are true to best of my knowledge and belief.

Dated 16th April 2012

Randy Drummond
Randy Drummond,
S.C.

st Shelia Anderson
Notary

exp 3-12-2014



GREENVILLE COUNTY COURT OF
COMMON PLEAS

Randy Drummond
Applicant

Case No. 2011-CP-23-8002

v.

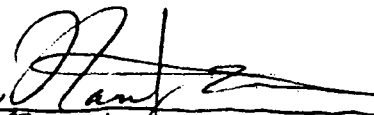
CERTIFICATE OF SERVICE:

State of South Carolina
Respondents,

The undersigned hereby certify that I have on this day
served the Respondent true copies of the foregoing action via
United States mail address as follows.

Done this the 16th day of April year 2012.

Karen C. Ratigan
Post Office Box 11549
Columbia, SC 29211-1549


Randy Drummond

STATE OF
SOUTH CAROLINA



EXHIBIT (A)

NOTICE OF WITHDRAWAL OF SUSPENSION
A SUSPENSION IMPOSED FOR THIS VIOLATION MAY BE WITHDRAWN

PAYMENT HAS BEEN MADE IN THE AMOUNT OF \$ 150.00		FOR ADMINISTRATIVE USE
COVERING THE FINE AND COST FOR THE VIOLATION DESCRIBED HEREIN.		
AUTH. SIGNATURE <i>Diane D. Cagle</i>	DATE 1-4-11	

To have this suspension withdrawn, you must take this form to the local DMV office. For mailing instructions, please see below.

#3 HOME JURISDICTION (SUSPENSION WITHDRAWAL)

DUPLICATE

CITATION NO. A255371	DATE OF VIOLATION 8/23/2003	LOCATION OF VIOLATION	SECTION VIOLATED 0657
DESCRIPTION OF VIOLATION Traffic / Reckless Driving		FINE AND COSTS \$150.00	TRIAL DATE 10/9/2003
DOCKET NO. A255371		COURT NO. 23101	

DRIVER'S LICENSE NO. 004980698	STATE SC	DATE OF BIRTH 9/17/1958	NAME OF COURT West Greenville Summary Court	
NAME LAST Drummond	FIRST Randy	MIDDLE	SEX M	MAILING ADDRESS 6247 White Horse Road
STREET ADDRESS 116 Elliott St				CITY STATE ZIP CODE Greenville SC 29611
CITY Spartanburg		STATE SC	ZIP CODE 29306	
REGIS. (TAG) NO. 329JEE	STATE SC	YEAR 2002	MAKE NISS	TELEPHONE AREA CODE (864) NUMBER 294-4810
AUTHORIZED BY Diane D. Cagle				1/4/2011

FORM DL-53 (REVISED 08/06)

TRIAL OFFICER'S INSTRUCTIONS: Upon the defendant complying with the citation, the top portion of Form DL-53 (blue & pink) copies are completed and the blue copy is forwarded to the defendant.

IMPORTANT DRIVER INSTRUCTIONS

SOUTH CAROLINA DRIVERS: DMV MUST RECEIVE THIS FORM You may take this blue form to a DMV office or mail it to the address below. If this form is not received, your driving privilege will remain suspended. If the fine is paid on or after the beginning date of the suspension, a \$100.00 reinstatement fee must be paid before the suspension is withdrawn.

MAILING INSTRUCTIONS: This form and reinstatement fee, if required, may be mailed to:
 South Carolina Department of Motor Vehicles
 Driver Records
 Post Office Box 1498
 Blythewood, South Carolina 29016-0028

OUT-OF-STATE DRIVERS: YOU must present or mail this blue copy of Form DL-53 along with any applicable reinstatement fees to the state in which you are a licensed driver. Any questions you may have concerning reinstatement fees or driver license suspension must be directed to your home state.

CERTIFIED COPY
DIANE D. CAGLE, JUDGE

West Greenville Summary Court

Judge : Diane D. Cagle
6247 White Horse Road
Greenville, SC 29611
(864) 294-4810

DUPLICATE

Received From: Drummond, Randy
116 Elliott St
Spartanburg, SC 29306

Date : 1/4/2011
RECEIPT # 368338
Clerk: ABOWMAN

Paying for: Self
Transaction Type: Final STP

Payment Type: Cash \$150.00
Total Paid \$150.00

Reference #
Comment:

<u>Case #</u>	<u>Caption</u>	<u>Previous Balance</u>	<u>Amount Paid</u>	<u>Balance Due</u>
A255371	The State of South Carolina vs. Randy Drummond	\$150.00	\$150.00	\$0.00

CERTIFIED COPY
DIANE D. CAGLE, JUDGE

Total Cases: 1 \$150.00 \$150.00 \$0.00

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Randy Drummond)

Plaintiff)

v.)

State Of South Carolina)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2011-CP-23-8002

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

FILED
CLERK OF COURT
SOUTH CAROLINA
2012 MAR 25 AM 10:28

Plaintiff's Attorney: Randy Drummond, Bar No. Address: 116 Elliott Street Spartanburg SC 29306 phone: fax: e-mail: other:	Defendant's Attorney: Karen C. Ratigan, Bar No. 68331 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: KRatigan@scag.gov other:
--	---

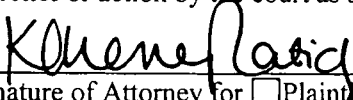
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:
 Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

Date submitted: July 17, 2012

SECTION III: Motion Fee

PAID - AMOUNT:
 EXEMPT: Rule to Show Cause in Child or Spousal Support
 (check reason) Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter:
 Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other:

JUDGE: _____
 CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: _____
 CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Randy Drummond,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
2011-CP-23-8002

CONDITIONAL ORDER OF DISMISSAL

ENTERED COMPUTER

FILED
GREENVILLE COUNTY
2011 MAR 30 PM 1:20

JW

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 1, 2011. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Greenville County Grand Jury indicted the Applicant at the December 2003 term of General Sessions for grand larceny, \$1000 or more (2003-GS-23-7486) and failure to stop for a blue light with great bodily injury (2003-GS-23-9072). E.P. "Bill" Godfrey, Esquire represented the Applicant.

On November 1, 2004, the Applicant pled guilty. The Honorable J.C. Nicholson, Jr. sentenced the Applicant to concurrent terms of eight (8) years for grand larceny and eight (8) years for failure to stop for a blue light. The Applicant did not appeal.

2004-CP-23-8425

The Applicant filed a PCR application on December 23, 2004 (2004-CP-23-8425). The Applicant raised the following issues:

[Handwritten signature]

1. Circuit court lacked subject matter jurisdiction:
 - a. Invalid indictments.
 - b. Indictment does not contain enhancement provision.
2. State violated the Applicant's Due Process rights to a fair and speedy trial.
3. Double Jeopardy.

An evidentiary hearing was convened on September 14, 2005, at the Greenville County Courthouse. Dorothy A. Manigault, Esquire represented the Applicant. The Honorable Larry R. Patterson issued an order dated December 21, 2005 in which he (1) vacated the grand larceny indictment and remanded for a new trial on that charge and (2) denied all other allegations.

Both the Applicant and the Respondent filed notices of appeal. Wanda H. Carter, Esquire of the South Carolina Office of Appellate Defense represented the Applicant on appeal. By order dated February 1, 2007, the South Carolina Supreme Court denied the Applicant's petition for writ of certiorari and granted the Respondent's petition for writ of certiorari. The Supreme Court reversed Judge Patterson's decision on October 22, 2007. Drummond v. State, Op. No. 2007-MO-060 (S.C. Sup. Ct. filed Oct. 22, 2007).

2006-CP-23-2038

The Applicant filed a PCR application on March 28, 2006 (2006-CP-23-2038). The Applicant raised the following issues:

1. Ineffective assistance of counsel.
2. Double jeopardy.

The Respondent filed a return and motion to dismiss the matter, arguing it was untimely and successive. The Honorable G. Edward Welmaker signed a conditional order of dismissal on May 9, 2006. While the Applicant filed responses to the conditional order, Judge Welmaker issued a final order of dismissal on July 3, 2006.

The Applicant filed a notice of appeal. The South Carolina Supreme Court required the

2 

Applicant – pursuant to Rule 227(c), SCACR¹ – to show an arguable reason why the denial of his application was improper. In an order of dismissal dated September 19, 2006, the Supreme Court found the Applicant failed to meet his burden in this regard.

Federal Habeas Corpus

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on October 1, 2007 (2:07-cv-03031-TLW). The Respondent submitted a motion for summary judgment on December 26, 2007. The Honorable Robert S. Carr, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated February 29, 2008. On August 18, 2008, the Honorable Terry L. Wooten, United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

The Applicant filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. In an opinion filed March 12, 2009, the Court of Appeals denied a certificate of appealability.

2009-CP-23-4755

The Applicant filed a PCR application on June 5, 2009 (2009-CP-23-4755). The Applicant raised the following issues:

1. “[T]rial counsel coerce Petitioner to pleading guilty to indictment no. 2003-GS-23-07486 Grand Larceny for term of eight (8) years.”

The Respondent filed a return and motion to dismiss the matter, arguing it was untimely and successive. The Honorable John C. Few issued a conditional order of dismissal dated September 15, 2009 and filed September 28, 2009. While the Applicant filed a response to the

¹ This rule has since been renumbered and is now Rule 243(c), SCACR.

³


conditional order, Judge Few issued a final order of dismissal dated December 31, 2009 and filed January 13, 2010. The Applicant did not appeal.

II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "The State of SC infringement of Applicant's right's to protection under due process, and double jeopardy clause."
 - a. "Applicant was tried and convicted twice in two separate court on same or related charges."
2. Ineffective assistance of counsel.
 - a. "Counsel coerce applicant to plead guilty to sentence that exceed beyond maximum penalty that's allowed by law."
3. Newly discovered evidence.

III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, *et. seq.* (2003). Specifically, South Carolina Code Ann. § 17-27-45(a) reads as follows:

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

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *See Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty to the offenses he challenges in this application on November 1, 2004. The Applicant was therefore required to file his application before November 1, 2005. This application was filed on December 1, 2011, which was more than six (6) years after the statutory



filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.”

IV.

This Court further finds the current application should also be dismissed because it is successive to the previous applications for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) 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 point to 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, 450, 409 S.E.2d 392, 394 (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. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may



not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications, the application is dismissed.

V.

This Court finds the Applicant's claim of newly- or after-discovered evidence is without merit. For an applicant to be granted a new trial based on after-discovered evidence, he must show the evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citation omitted).

This Court finds the Applicant has failed to show the alleged evidence meets any of the requirements for after-discovered evidence. Most importantly, the "new evidence" offered by the Applicant is not material to the issue of guilt or innocence, and probably would not change the result if a new trial was had. See id. This allegation is dismissed.

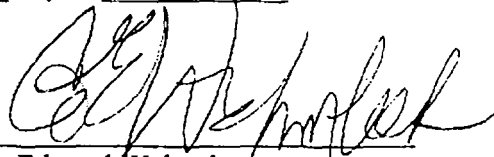
VI.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Greenville

6 

County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 14 day of March, 2012.



G. Edward Welmaker
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Randy Drummond)
 Plaintiff)

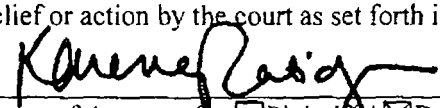
CASE NO. 2011-CP-23-8002

v.)

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

State Of South Carolina)
 Defendant.)

FILED
CLERK OF COURT
GREENVILLE, S.C.
2012 MAR 23 PM 1:21

Plaintiff's Attorney: Randy Drummond, Bar No. Address: 116 Elliott Street Spartanburg SC 29306 phone: fax: e-mail: other:	Defendant's Attorney: Karen C. Ratigan, Bar No. 68331 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: KRatigan@scag.gov other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	March 12, 2012 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Date Filed: _____	
Collected by: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Randy Drummond,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
2009-CP-23-4755

FINAL ORDER

2009 JAN 13 AM 11:28
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 5, 2009. The Respondent made its return on September 3, 2009, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

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 signed September 15, 2009 and filed September 28, 2009, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is a Certificate of Service dated October 1, 2009, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a letter dated October 21, 2009, the Applicant argues he was "over sentenced" regarding his grand larceny charge (2003-GS-23-7486).

This Court has reviewed the Applicant's response to the Respondent's motion to dismiss



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

RANDY DRUMMOND,

Applicant,

v.

STATE OF SOUTH CAROLINA,


Respondent.

CERTIFICATE OF SERVICE


The undersigned hereby certifies that a true copy of the **Conditional Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**Randy Drummond
116 Elliott Street
Spartanburg SC 29300**

This 1st day of October, 2009.


KAREN C. RATIGAN
ATTORNEY FOR RESPONDENT

SWORN to before me this 1st day of October, 2009.


Notary Public for South Carolina.
My Commission Expires: May 11, 2014

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2009CP2304755

Randy Drummond vs. South Carolina State Of

CHECK ONE:

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

IT IS ORDERED AND ADJUDGED:

See attached order;

Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter: _____

PRESIDING JUDGE -

This judgment was entered on the 13th day of Jan, 2010, and a copy mailed first class this 13th day of Jan, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Randy Drummond 116 Elliott St Spartanburg,
SC 29306

Karen Ratigan

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP-24/FORM 4

Paul B. Wickensimer Greenville County Clerk Of C
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
2004-CP-23-8425

Randy Drummond, #160950)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

ORDER
(Post Conviction Relief)

This matter is before the Court by way of an Application for Post Conviction Relief filed on December 23, 2004. Respondent made its Return on February 3, 2005, requesting summary judgment and that the allegations be dismissed.

The records before the Court indicated that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Clerk of Court for Greenville County. The Applicant was first indicted on October 21, 2003, for failure to stop for blue light, Indictment number 2003-GS-23-007485, (Sec. 56-5-750). Then subsequently, on December 16, 2003, the Applicant was indicted for grand larceny, \$1,000 or more; Indictment number 2003-GS-23-7486, and again for failure to stop for blue light, Indictment number 2003-GS-23-9072. Attorney E. P. "Bill" Godfrey represented the Applicant.

On September 14, 2005, an evidentiary hearing into the matter was convened in Greenville County before the Honorable Larry R. Patterson. The Applicant was present in Court and was represented by Dorothy A. Manigault, Esquire. The Respondent was represented by Karen C. Ratigan of the Office of the South Carolina Attorney General.

In his Application, the Applicant claims that he is being held in custody unlawfully for the following reasons:

- Ineffective assistance of Counsel;
- Due process violations by the Solicitor in obtaining multiple indictments on the same charge without dismissing the first indictments and without leave of Court; and violation of his fair and speedy trial causing loss of his key witness.

On November 1, 2004, the Applicant pled guilty on the two indictments obtained on December 16, 2003 from the Greenville County Grand Jury. The Honorable J. C. Nicholson, Jr., sentenced the Applicant to concurrent terms of eight (8) years for grand larceny and eight (8) years for failure to stop for blue light with great bodily injury. The Applicant did not appeal his convictions or sentences.

During his guilty plea on November 1, 2004, the Applicant indicated to the Judge that he was not aware that the grand larceny charge was being considered as a third property offense until informed by the Judge. (Plea transcript, page 34, line 21; page 37, lines 5 and 6.) The value of the item taken was listed in the indictment as more than one thousand. The sentencing sheet lists S. C. Code Section 16-13-0030(B)(1), however, the Applicant was sentenced under Section 16-13-0030(B)(2).

The Court finds that the record is clear and thorough as regards the Applicant's knowledge on entering the guilty plea. The trial Judge ruled that the Solicitor could properly obtain an indictment by direct presentment to the Grand Jury on the charge of failure to stop for blue light with great bodily injury, although the original warrant and the first indictment obtained was simply for failure to stop for blue light. The

JRP

Court also did not find any violation or harm to the Applicant regarding a fair and speedy trial. The issue of the loss of a key witness is not relevant since the charge where the witness may have been needed was being dismissed by the Solicitor.

Therefore, based upon a review of the pleadings and record in this matter, the Court finds:

1. That the Indictment for Grand Larceny, 2003-GS-23-07486, is improper; the sentencing sheet was improper, and the Applicant is granted the relief sought. That Indictment number 2003-GS-23-07486 for Grand Larceny is hereby vacated and the case is remanded for a new trial.

2. That the relief sought as to all other issues raised by the Applicant in his original Application, as well as in all amendments to the application, is hereby denied.

Thus, it is ordered that the sentence for Grand Larceny on Indictment Number 2003-GS-23-07486, be vacated immediately by the Clerk of Court for Greenville County, and an Order be sent to the South Carolina Department of Corrections.

IT IS SO ORDERED this 21 day of December, 2005.



Judge Larry R. Patterson
Thirteenth Judicial Circuit

Greenville, South Carolina

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD
NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY
PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Randy Drummond, Respondent

v.

State of South Carolina, Petitioner

ON WRIT OF CERTIORARI

Appeal From Greenville County
Larry R. Patterson, Circuit Court Judge

Memorandum Opinion No. 2007-MO-060
Submitted September 20, 2007 – Filed October 22, 2007

REVERSED

Attorney General Henry Dargan McMaster, Chief Deputy Attorney
General John W. McIntosh, Assistant Deputy Attorney General
Salley W. Elliott, Assistant Attorney General Karen Ratigan, all of
Columbia, for Petitioner.

valued in excess of one thousand dollars” and provides for different sentencing depending on the value of the property, as follows:

Upon conviction, the person is guilty of a felony and must be fined in the discretion of the court or imprisoned not more than:

- (1) **five years** if the value of the personalty is more than one thousand dollars but less than five thousand dollars;
- (2) **ten years** if the value of the personalty is five thousand dollars or more.

S.C. Code Ann. § 16-13-30(B) (2003) (emphasis added).

At the plea hearing, counsel informed the trial court that the grand larceny charge was for over \$5,000.00 worth of property because the television was worth \$6,000.00. The trial court stated to both respondent and his counsel that the maximum sentence was 10 years.²

As discussed above, the trial court sentenced respondent to eight years' imprisonment on the grand larceny charge. The sentencing sheet, however, listed section 16-13-30(B)(1) and also stated that respondent pled guilty to “grand larceny \$1000 or more.”

Respondent argued at the PCR hearing that he was erroneously sentenced under section 16-13-30(B)(2) because eight years was more than what he “was indicted for.” Respondent's counsel testified that the television was a plasma flat screen TV and the State was prepared to present witness testimony that its value was over \$6,000. Counsel further stated that respondent was “fully aware of the value of the TV” and they both “clearly knew that it was over 5,000.”

In the written PCR order granting respondent relief, the PCR court noted the sentencing sheet listed section 16-13-30(B)(1) but respondent was sentenced under section 16-13-30(B)(2). Consequently, the PCR court found

² In addition, it was also discussed at the plea hearing that respondent was subject to a three-strikes sentencing provision which provides for a maximum ten-year sentence. See S.C. Code § 16-1-57 (2003).

Additionally, the PCR court erred in granting relief based on the sentencing sheet. The PCR court apparently decided that because the sentencing sheet listed section 16-13-30(B)(1), but respondent was sentenced to more than five years, respondent was entitled to have the entire charge vacated. The sentencing sheet, however, "is not part of the indictment;" it simply "does not affect the nature of the offense charged." State v. Sosbee, 371 S.C. 104, 113, 637 S.E.2d 571, 575 (Ct. App. 2006). Thus, any scrivener's error on the sentencing sheet does not operate to invalidate the indictment. Id.

Accordingly, the PCR court erred, as a matter of law, by finding the indictment improper and vacating respondent's conviction. Pierce v. State, supra (when the PCR court's decision is controlled by an error of law, this Court will reverse).

REVERSED.

TOAL, C.J., MOORE, PLEICONES and BEATTY, JJ., concur.

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2011CP2308002

2012 MAR 30 PM 1:21
CLERK OF COURT
GREENVILLE CO, SC

Randy Drummond vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a),
SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other: _____

- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy:
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other: _____

- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other: _____

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

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

Dated at Greenville, South Carolina, this 30th day of March, 2012.

Court Reporter: _____

PRESIDING JUDGE - G Edward Welmaker

This judgment was entered on the 30th day of March, 2012, and a copy mailed first class this 30th day of March, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Randy Drummond 116 Elliott St Spartanburg, SC
29306

Karen Christine Ratigan Attorney Generals Office
Po Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

Randy Drummond
116 Elliott St
Spartanburg, SC 29306



Clerk of Court
South Carolina Supreme Court
1231 Genovis St
Columbia SC 29201

