

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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MAR 29 2021

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Appeal from Spartanburg County S.C. SUPREME COURT  
Court of Common Pleas, R. Keith Kelly, Presiding  
[C/A No.2019-CP-42-01727]

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Lonnie Geter, #288401, -- APPELLANT,

-vs-

State of South Carolina -- RESPONDENT,

APPELLATE CASE NO. 2021-000235

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APPENDICIES

- (A). May 14, 2019 PCR application and Memorandum in support.
- (B). August 20, 2019 Conditional Order.
- (C). September 5, 2019, Rule 59(e) motion
- (D). February 15, 2021 Court's Final Order.

Exhibit  
(A)

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg

Lonnie Geter #288401

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2019 -CP- 42 01727

Submitted By: Lonnie Geter #288401  
Address: Perry Corr. Inst.  
430 Oaklawn Rd  
Pelzer, 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> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Fraud/Bad Faith (150)</li> <li><input type="checkbox"/> Failure to Deliver/Warranty (160)</li> <li><input type="checkbox"/> Employment Discrim (170)</li> <li><input type="checkbox"/> Employment (180)</li> <li><input type="checkbox"/> Other (199)</li> </ul> <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599)</li> </ul> | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li>Previous Notice of Intent Case #<br/>20 <u>-NI-</u></li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299)</li> </ul> <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Drv. License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture—Consent Order (850)</li> <li><input type="checkbox"/> Other (899)</li> </ul> | <p><b>Torts – Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Assault/Battery (370)</li> <li><input type="checkbox"/> Slander/Libel (380)</li> <li><input type="checkbox"/> Other (399)</li> </ul> <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate’s Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)</li> <li><input type="checkbox"/> Confession of Judgment (770)</li> <li><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)</li> <li><input type="checkbox"/> Other (799)</li> </ul> | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic’s Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499)</li> </ul> <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOT (950)</li> <li><input type="checkbox"/> Worker’s Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Public Service Comm. (990)</li> <li><input type="checkbox"/> Employment Security Comm (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
| <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699)</li> <li><input type="checkbox"/> Sexual Predator (510)</li> <li><input type="checkbox"/> Permanent Restraining Order (680)</li> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> <li><input type="checkbox"/> Out-of State Depositions (650)</li> <li><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)</li> <li><input type="checkbox"/> Pre-Suit Discovery (670)</li> </ul>  |   |   |  |

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Submitting Party Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, 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 )  
 )  
County of Spartanburg )  
 )  
Lonnie Ceter #288401 )  
Full name and prison number (if any) of Applicant )  
 )  
v. )  
 )  
State of South Carolina )  
 )  
 )  
 )  
 )  
 )

IN THE COURT OF COMMON PLEAS

2019 CP 42 01727

APPLICATION FOR  
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk 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 Spartanburg Co.  
General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 02-GS-42-4633 Robbery
  - (b) 02-GS-42-4634 Burg. 1st  
02-GS-42-4635 ABHAN

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SPARTANBURG COUNTY

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 12-06-2002, 15yrs concurrent
  - (b) 12-06-2002 Life concurrent
  - (c) 12-06-2002, 10yrs concurrent

- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty N/A
  - (b) after a plea of not guilty Yes
  - (c) after a plea of nolo contendere N/A

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. Denied
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_

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 CLERK OF COURT  
 SPARTANBURG COUNTY  
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- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) N/A
  - (b) \_\_\_\_\_

- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See attached pages
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached pages
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

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

N/A

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

- (a) which grounds have been presented:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings in which each ground was raised:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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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) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? No
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
No

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

- (a) the name and address of each attorney who represented you:
  - i. Jennifer Johnson, Esq
  - Danial T. Stacy
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Jury Trial
  - ii. Direct Appeal
  - iii. \_\_\_\_\_

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19. State clearly the relief you seek in filing this application:  
~~Vacate Conviction and sentence~~, Remand For Resentencing

20. Are you now under sentence from any other court that you have not challenged?  
No

STATE OF SOUTH CAROLINA )  
County of Spartanburg ) VERIFICATION

I, Lonnie Geter #288401, 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.

Lonnie Geter

SWORN to and subscribed before me this 2nd day of May, 2019.  
Tamara Conwell (L.S.)  
Notary Public

My Commission Expires: September 25, 2023

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SPARTANBURG COUNTY  
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MAY 02 2019  
P.C.I. MAILROOM

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

I, Lonnie Geter #288401, 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.

Lonnie Geter  
Applicant

SWORN or affirmed to and subscribed before me this

2nd day of May, 2019.

Lamara Conwell  
Notary Public

My Commission Expires: September 25, 2023

**RECEIVED**

MAY 02 2019

P.C.I. MAILROOM

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SPARTANBURG COUNTY

# Memorandum of Law In Support of PCR Application

S.C. Code Ann. 17-27-20(a)(4)

S.C. Code Ann 17-27-45(c)

This matter comes by way of newly and after discovered evidence which is material evidence which has never been presented to this Court. This evidence is a genuine issue of material fact that will prove the applicant just recently discovered this evidence. See letter dated August 1, 2018

Pursuant to S.C. Code of laws § 17-27-20 (a)(4) there exist evidence of material fact not previously presented and heard that require vacation of applicant's conviction and sentence in the interest of justice. The applicant have filed this PCR application within one year after date of actual discovery of facts by the applicant or after the date when the facts could have been ascertained by reasonable diligence

Trial counsel was ineffective for failure to convey/communicate to applicant the precise terms of a plea/offer before going to trial

As a general rule, defense counsel has a duty to convey/communicate formal prosecution offers to accept a plea on terms and conditions that may be favorable to the accused. Trial counsel failed to convey/communicate a 20 year plea offer before trial.

Here in this case, the applicant found out that the solicitor had e-mail my attorney about a favorable plea offer, but the terms and conditions were not convey to the applicant. Applicant had talked to his attorney after a 20 year plea was extended to him. The attorney stated that she would email the solicitor back about a 20 year plea offer. For some unknown reason, negotiation somehow broke down thereby forcing the applicant to a jury trial.

Applicant would have accepted the plea offer had he been afforded effective assistance of counsel. The applicant can demonstrate that a reasonable probability the plea would have been entered without the prosecution canceling it. There is a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time. *Blower v. United States*, 531 U.S. 198, 203, 121 S.Ct. 696. Any amount of [additional] jail time has Sixth Amendment significance.

A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668, 685-86, 104 S.Ct. 2052. Our Supreme Court has also held "a defendant has the right to effective assistance of counsel during the plea bargaining process".

Davie, 381 S.C. at 607, 675 S.F. 2d at 419.

As a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused. Fry, 132 S.Ct. at 1408; see also Davie, 381 S.C. at 609, 675 S.F. 2d at 420 (2009) adopting "rule that counsel's failure to convey a plea offer constitutes deficient performance".

First, plea negotiations had begun between the solicitor and trial counsel. The final outcome of the negotiations were never conveyed and communicated to the applicant. Second, applicant would have accepted the plea offer had he known about it. Third, the difference between the sentence applicant received, life, and the plea offer, 20 years is proof of prejudice. There is a reasonable

probability that, but for this error of counsel, the result to the applicant would have been different. A reasonable probability sufficient to undermine confidence in the outcome.

Applicant can prove that trial counsel's failure to communicate after plea negotiations the final plea offer, constituted deficient performance, and applicant was prejudiced by this deficient performance. There is a reasonable probability that but for counsel's deficient performance, he would have accepted the plea offer, whatever the terms was inherently prejudicial because the deficient conduct prevented the applicant from making an informed decision. *Bell v. State*, 765 S.E. 2d 4; *Davis*, 675 S.E. 2d 416

The applicant would show this Honorable court that the applicant just recently came upon this information

on August 6, 2018, letter dated August 1, 2018, that have apparently been withheld from the applicant for no reason explained. The applicant would also show this Court that § 17-27-45(c) govern this successive PCR application.

Applicant states that he learned of the existence of this claim on the above date August 6, 2018 from a response to a letter sent to Clay Allen, Public Defender, inquiring about any, and all plea offers extend to applicant. See copy of E-mail. Therefore the applicant is not procedurally barred from raising the present claim.

Shortly after making this discovery, applicant now file this second PCR application pursuant to the "Discovery Rule" in accordance to S.C. Code Ann. § 17-27-45(c) *McCoy v. State*, 401 S.C. 363, 737 S.E. 2d 623

See *Coates v. State*, 575 S.E.2d 557 (S.C. 2003). Therefore, the issue raised herein is timely filed and an evidentiary hearing should be held with the appointment of counsel to assist the applicant in the above matter because genuine issues of material facts exist to warrant a PCR hearing.

Applicant avers that he has demonstrated sufficient reason why his claim was not included in his first PCR application and not discovered earlier.

Allegations in applicant's PCR application contained in verified application for PCR are controverted by the state, they are deemed to be true for purpose of determining whether an evidentiary hearing should be held.

The fundamental defects alleged in this PCR action are standards that require establishment of a complete miscarriage of justice inconsistent with the demands of a fair procedure. It would be a denial of Due Process to not give the applicant a PCR hearing on the following claim.

CLERK OF COURT  
SPARTANBURG COUNTY  
2019 MAY 14 AM 8:43

SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER  
CLAY T. ALLEN  
CIRCUIT PUBLIC DEFENDER

366 NORTH CHURCH STREET  
SUITE 3000  
SPARTANBURG SC 29303



TELEPHONE (864) 596-2561

FAX (864) 596-2284

August 1, 2018

Mr. Lonnie Geter  
SCDC # 288401  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, South Carolina 29669

Re: Indictment Numbers 02-GS-42-4633, 02-GS-42-4634, 02-GS-42-4635

Dear Mr. Geter:

In response to your letter to me of July 25, 2018, enclosed are the emails concerning the plea negotiations in your case and my letter to you of July 11, 2017, showing that I have provided these documents to you. Again, I am reminding you of my policy of not providing duplicate copies of documents that have been previously provided to the client. You need to keep these documents in a safe place because I will not provide these same documents to you again.

Sincerely,

A handwritten signature in black ink, appearing to read "Clay T. Allen".

Clay T. Allen  
Circuit Public Defender

CTA:

Enclosures.

2019 MAY 14 AM 8:43  
SOUTH CAROLINA COUNTY

**Johnson, Jennifer**

---

**From:** Coler, Bob  
**Sent:** Tuesday, November 26, 2002 5:08 PM  
**To:** Johnson, Jennifer  
**Subject:** RE: Lonnie Geter

jennifer,

yes, that seems like a good idea. I will recommend his sentence on the burg 1, abhan, and c/l robbery run concurrently with his probation violation of 8 years. of course, as I note from your email you are aware that the sentence on the burg 1, abhan, and c/l robbery is in no way is capped or limited by his 8 year parole violation. thanks for the offer, perhaps this will be enough incentive for him to plea. let me know after you talk to him. I will bring him up on the jail-chain if needed.

bob.

-----Original Message-----

**From:** Johnson, Jennifer  
**Sent:** Monday, November 25, 2002 5:00 PM  
**To:** Coler, Bob  
**Subject:** Lonnie Geter

Bob - I met with Geter today. He apparently got 8 years on a VOP. I am not sure whether he'd be interested in a plea, but thought I would propose the following: a recommendation of concurrent charges, concurrent with the VOP. I am well-aware that he will get more time and that this wouldn't be much of a recommendation as a practical matter, but it may give him some sort of incentive which he otherwise does not have.

Let me know.

Thanks.  
Jennifer

**Jennifer L. Johnson**  
Staff Attorney  
Spartanburg County Public Defender's Office  
864-596-2581 Office  
864-596-2284 Fax  
864-596-3097 Direct  
[jjohnson@spartanburgcounty.org](mailto:jjohnson@spartanburgcounty.org)

2002 MAY 14 AM 8:41  
 SPARTANBURG COUNTY  
 COURT

**Johnson, Jennifer**

---

**From:** Coler, Bob  
**Sent:** Monday, December 02, 2002 5:12 PM  
**To:** Johnson, Jennifer  
**Subject:** RE: Geter

yes. I thought about it, and although I appreciate the offer, I am not able to make that offer.

-----Original Message-----

**From:** Johnson, Jennifer  
**Sent:** Monday, December 02, 2002 4:52 PM  
**To:** Coler, Bob  
**Subject:** Geter

Any thoughts on my plea "offer" from this afternoon? Geter didn't seem very interested in the original offer...

**Jennifer L. Johnson**  
Staff Attorney  
Spartanburg County Public Defender's Office  
864-596-2561 Office  
864-596-2284 Fax  
864-596-3097 Direct  
[jjohnson@spartanburgcounty.org](mailto:jjohnson@spartanburgcounty.org)

CLERK OF COURT  
SPARTANBURG COUNTY  
2019 MAY 14 AM 8:41

COURT  
SPARTANBURG COUNTY

2019 MAY 14 AM 8:41

Seventh Judicial Circuit Public Defender  
366 N Church Street, Suite 3000  
Spartanburg, South Carolina 29303

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First Class Mail  
Commerce Price



U.S. POSTAGE METNEY BOWEN

ZIP 29301 \$ 000.45<sup>8</sup>  
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AUG 06 2018

P.C.I. MAILROOM

Mr. Lonnie Geter  
SCDC # 288401  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, South Carolina 29669

4B116

13 FRDUMPF 29669



Lonnie Geter #288401  
Perry Correctional INST.  
Q-4 B-116  
430 Oaklawn Road  
Pelzer, S.C. 29669

MAY 2, 2019

Spartanburg Co.  
Clerk of Court  
P.O. Box 3483  
Spartanburg, S.C. 29304

Dear Clerk:

Could you please send <sup>this</sup> clock stamp copy  
back in this self stamp envelope

Thanks

Lonnie Geter

CLERK OF COURT  
SPARTANBURG COUNTY  
2019 MAY 14 AM 8:43

Exhibit

(B)

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS  
FOR THE SEVENTH JUDICIAL CIRCUIT

Lonnie Geter,  
S.C.D.C. No. 288401,

Case No.: 2019-CP-42-01727

Applicant,

CONDITIONAL ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed by Lonnie Geter (Applicant) on May 14, 2019. Respondent made its Return, requesting the application be summarily dismissed.

#### I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the October 2002 term of the Spartanburg County Grand Jury for common law robbery (2002-GS-42-04633), burglary, first degree (2002-GS-42-04634), and assault and battery of a high and aggravated nature (2002-GS-42-04635). Jennifer L. Johnson, Esq. represented Applicant, and Robert Coler, Esq., of the Seventh Circuit Solicitor's Office, prosecuted the case. On December 4, 2002, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. The jury found Applicant guilty as indicted on December 6, 2002. Judge Cole sentenced Applicant to imprisonment for concurrent terms of fifteen years for the robbery, life for the burglary, and ten years for ABHAN.

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2019 JUN 28 AM 8:44

Applicant filed a timely notice of appeal and a direct appeal was perfected by Daniel T. Stacey, Esq., filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967), which raised the following issue:

"Whether the court erred when it refused appellant's request to submit the lesser included offense of second degree burglary to the jury?"

The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Geter, Op. No. 2004-UP-413 (S.C. Ct. App. filed June 24, 2004). The Remittitur was issued on July 28, 2004.

**First PCR Application: 2004-CP-42-02852**

Applicant filed his first application for post-conviction relief on August 29, 2004 (CP-42-02852). He alleged the following grounds for relief in his application:

1. "Ineffective Assistance of Counsel"
  - a. "[. . .] when my trial counsel failed to object to the arraignment and charging of Burglary 1<sup>st</sup> Degree, when the elements did not meet the crime originally charged."
  - b. "[. . .] when my trial counsel failed to make an oral objection to proceed to trial, when my due process rights had been violated by not allowing my constitutional right of a Preliminary Hearing."
  - c. "[. . .] when trial counsel failed to object to trial benches unconstitutional, burden shifting jury charge instructions concerning the definition of Burglary 1<sup>st</sup> Degree."
  - d. "[. . .] when my trial counsel failed to call witnesses that would provide a better defense nor did trial counsel allow sufficient time to prepare a competitive defense on my behalf."
2. "Subject Matter of Jurisdiction"
  - a. "That on October 21, 2002, the Applicant completed and filed with the Magistrate Court sufficient Notice of Right to Preliminary Hearing, form 512 of the SCCA. This notice was disregarded, although a hearing date and time had been set and Applicant was transferred from the County Jail to the Magistrate Court only to be turned back around by the Trial Solicitor, stating to Applicant, "That there is no need." This violation of due process denied Trial Court jurisdiction and was a complete disregard for the Constitution."
3. "Due Process Violation"

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Respondent made its return on February 1, 2005, and an evidentiary hearing into the matter was initiated on March 24, 2006, and completed on May 21, 2007, before the Honorable J. Mark Hayes. Applicant was present at the hearings and represented by David L. Walsh, Esq. Colleen E. Dixon, Esq., of the South Carolina Attorney General's Office, represented Respondent at the first hearing, and S. Prentiss Counts, Esq., of the same, represented Respondent at the second hearing. Applicant testified on his own behalf, and Jennifer L. Johnson, Esq., also testified. By written order dated September 7, 2007, and filed September 11, 2007, Judge Hayes denied and dismissed the application.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was filed by Elizabeth A. Franklin, Esq., on Applicant's behalf, who raised the following issue:

Did the PCR judge err when he held that trial counsel was not ineffective, when trial counsel's "strategy" was not a legally cognizable strategy at all?

Respondent filed its Return on June 6, 2008. On November 19, 2008, the Supreme Court of South Carolina denied the petition by letter order. The Remittitur was issued on December 5, 2008.

**Federal Habeas Petition: 8:09-1589-PMD-BHH**

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on June 9, 2009 (C.A. No. 8:09-1589-PMD-BHH). In his Petition, Applicant set forth the following grounds for relief:

1. "Petitioner was denied due process of law at trial when the Court refused to submit the lesser included offense of 2<sup>nd</sup> degree burglary because of prior burglary convictions."
2. "The Court of General Sessions lacked subject-matter jurisdiction to try Petitioner on the Amended burglary-first degree indictment &/or his defense counsel was ineffective for failing to object to the amended burglary-first degree indictment and for failing to inform him that the indictment had been amended to materially change the aggravating circumstances."

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3. "Petitioner was denied effective assistance of Counsel. Counsel admitted Petitioner's guilty in her closing argument, counsel failed to subject the state's case to a meaningful adversarial testing."

Respondent filed its Return and Motion for Summary Judgment on October 16, 2009. The Honorable Bruce Howe Hendricks, United States Magistrate Judge, issued on February 9, 2010, a Report and Recommendation that Respondent's motion for summary judgment be granted. Geter v. McCall, 8:09-1589-PMD-BHH, 2010 WL 2640216 (D.S.C. 2010). The Honorable Patrick Michael Duffy, United States District Judge, denied Applicant's Petition on June 29, 2010, and accepted the Report and Recommendation for summary judgment. Geter v. McCall, 8:09-1589-PMD-BHH, 2010 WL 2640221 (D.S.C. 2010). Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals, which dismissed Applicant's appeal on February 15, 2011. Geter v. McCall, 412 Fed.Appx. 564 (4th Cir. 2011). Applicant filed a petition for writ of certiorari in the Supreme Court of the United States, which was denied on October 3, 2011. Geter v. McCall, 565 U.S. 840 (2011).

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**Second PCR Application: 2015-CP-42-03424**

Applicant filed his second application for post-conviction relief on August 10, 2015 (2015-CP-42-03424). He alleged the following grounds for relief in his application:

1. Ineffective assistance of counsel, in that:
  - a. "Failure of trial counsel to request competency hearing to determine Applicant[s] fitness to stand trial-constituted ineffective assistance by failing to preserve the issues for direct review;"
2. "Brady Violation;"
3. "Sham Process"
  - a. "two (2) documents or any document claiming authority over an individual that does not [truly] exist or is just for show makes a sentence void. See S.C. Code Ann. 16-17-735"
4. "After Discovered Evidence"
5. Ineffective assistance of PCR counsel, in that:
  - a. "Counsel failed to investigate, develop, and present all available, relevant, admissible, and mitigating evidence. [See letter] dated September 11, 2007. Counsel admitted that he failed to object on all possible grounds to inflammatory and irrelevant evidence."

Respondent made its return and motion to dismiss on October 25, 2016, arguing the application raised claims not cognizable in a PCR action, failed to make a *prima facie* case of newly-discovered evidence, and was untimely and successive. On October 31, 2016, the Honorable J. Mark Hayes, II issued a Conditional Order of Dismissal. On May 19, 2017, the Honorable J. Derham Cole issued a Final Order dismissing the matter with prejudice. Applicant did not appeal the order dismissing his application

## II. CURRENT APPLICATION

In his third and current post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons (as summarized by the State):

1. Newly discovered evidence, in the form of:
  - a. E-mails between original defense counsel Jennifer L. Johnson, Esq. and Assistant Solicitor Robert Coler regarding a "plea offer" which were never conveyed to applicant.
2. Ineffective assistance of counsel, in that:
  - a. Counsel Johnson failed to convey a "plea offer" to Applicant.

Applicant requests relief as follows:

- "Vacate Conviction and sentence, Remand for Resentencing"

Before this Court are the Spartanburg County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the opinions of the Court from each of Applicant's prior appeals, the final orders of Applicant's previous PCR actions, and the records of this current PCR action.

## 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:

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### Newly-Discovered Evidence

The Court finds that Applicant's assertion that he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to vacation of his sentence and immunity, is without merit. The Uniform Post-Conviction Procedure Act states that 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 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).

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Applicant has failed to allege facts sufficient to support his claim. Applicant alleges that a plea offer was made by the solicitor and not conveyed to him by his trial counsel. However, review of the e-mails filed by Applicant alongside his application refute the claim, and it appears Applicant misunderstands them. The November 25, 2002, e-mail from Counsel to the State reflects that *Counsel* initiated negotiations by proposing a potential deal. The November 26, 2002, response from the State is initially favorable. However, the December 2, 2002, e-mail indicates Applicant "didn't seem very interested in the original offer" and implies a new proposal was provided to the State, which the State rejected. Taken together, the e-mails (1) do not reflect any firm plea offer from the State and (2) that Applicant was appraised of Counsel's negotiation efforts and was disinterested. Furthermore, the August 1, 2018, letter by which the e-mails were provided to Applicant reflect that copies were provided to him at least as early as July 11, 2017, nearly two years before the Application was filed, and that the e-mails provided with the August

1, 2018, were duplicates. Accordingly, Applicant has both failed to provide any reason why these allegations could not by the exercise of due diligence have been discovered before the filing of his previous PCR applications, and failed to show that he filed the application within one year of "discovering" the e-mails.

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 a showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, the Court shall summarily dismiss the application.

#### Statute of Limitations

The Court finds the application must 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).

Applicant was convicted on December 6, 2002, and the remittitur from his direct appeal issued on July 28, 2004. The most generous conceivable date upon which Applicant could prevail is July 11, 2017. The current application was not filed until May 14, 2019—well after

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the one-year statutory filing period expired under any subsection of the statute. Therefore, the Court shall dismiss the application as barred by the statute of limitations.

#### Successive

The Court finds the application must be summarily dismissed because it is successive to Applicant's previous PCR application. 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, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

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Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior applications 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 in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and the Court shall dismiss the application as successive to Applicant's previous PCR application.

#### Laches

The Court finds the application must also be dismissed as barred by the equitable doctrine of laches. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). Requiring reasonable diligence "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id. (quoting Honeycutt v. Ward, 612 F.2d 38, 44 (2nd Cir. 1979)). Where an applicant for post-conviction relief fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of laches, which is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). "Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches." Id.

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Applicant seeks post-conviction relief more than 16 years after his conviction. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review the applicant's claims. McElrath, 276 S.C. at 283, 277 S.E.2d at 890. Applicant has offered no justification for the delay. Because of the delay, witness memories and physical evidence will have naturally faded and degraded. See, e.g., Bray, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge's ruling that laches barred belated review of denial of PCR seven years after PCR hearing was held); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy "would undoubtedly be futile considering the passage of over ten years' time" the delay was caused by appellant). As a result, Applicant's delay in bringing this action has affected the availability of evidence for this Court to review his claims. Therefore, the Court shall summarily dismiss the application as barred by the equitable doctrine of laches.

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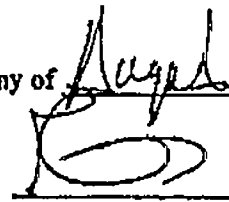
#### IV. CONCLUSION

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 (20) 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 Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Johnny E. James, Jr., Esquire  
PCR Division - 7<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 Spartanburg County Clerk of Court and opposing counsel within twenty (20) days from the date of the service of this Order, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 19 day of August, 2019.



GRACE G. KNIE  
Chief Judge for Common Pleas  
Seventh Judicial Circuit

Spartanburg, South Carolina

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Exhibit

(C)

STATE OF CAROLINA  
COUNTY OF SPARTANBURG

COURT OF COMMON PLEAS  
2019-CP-42-01727

LONNIE GETER#288401  
APPLICANT.

MOTION TO ALTER OR  
AMEND JUDGEMENT  
PURSUANT TO59 (E)

V.

STATE OF SOUTH CAROLINA  
RESPONDENT.

PURSUANT TO RULE 59(E), SCRC, LONNIE GETER#288401 MOVES THIS COURT FOR AN ORDER ALTERING AND OR AMENDING THE CONDITIONAL ORDER OF DISMISSAL DATED AUGUST 26, 2019. this motion is based on the following facts.

THERE EXIST EVIDENCE OF GENUINE ISSUE OF MATERIAL FACTS NOT PREVIOUSLY PRESENTED AND HEARD THAT REQUIRE VACATION OF A PAST CONVICTION AND SENTENCE. THIS MATTER COME BY WAY OF NEWLY AN AMENDMENT AFTER DISCOVERED EVIDENCE WHICH WAS DISCOVERED AUGUST#1, 2018 see ATTACHED LETTER. THE APPLICANT HAVE FILED THIS PCR APPLICATION WITHIN ONE YEAR AFTER DATE OF ACTUAL DISCOVERY OF FACT ON MAY14, 2019, SEE ATTACHED E-MAIL, AND AFTER THE DATE WHEN THE FACTS COULD HAVE BEEN ASCERTAINED BY REASONABLE DILIGENCE S.C. CODE ANN 17-27-20 (A) (4) AND S.C. CODE ANN, 17-27-45 (C).

THE APPLICANT RECEIVED ONE SET OF E-MAILS PROVIDED TO HIM BY THE SPARTANBURG COUNTY PUBLIC DEFENDERS OFFICE ON AUGUST 1, 2018.

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AMY ST. COX

APPLICANT REQUEST THAT THIS HONORABLE COURT APPOINT COUNSEL PURSUANT TO RULE 71.1(D) WHICH PROVIDES IF AFTER THE STATE HAS FILED ITS RETURN, THE APPLICATION PRESENTS QUESTION OF LAW AND FACTS AS IN THE CASE AT BAR, THE COURT SHALL PROMPTLY APPOINT COUNSEL TO ASSIST THE APPLICANT IF HE IS INDIGENT. COUNSELS SHALL BE GIVEN A REASONABLE TIME TO CONFER WITH THE APPLICATION COUNSEL SHALL INSURE THAT ALL AVAILABLE GROUNDS FOR RELIEF ARE INCLUDED IN THE APPLICATION AND SHALL AMEND THE APPLICATION IF NECESSARY APPLICANT HAVE NOT BEEN AFFORDED COUNSEL TO ASSIST IN HIS CASE.

APPLICANT GETER CONTEND THA RULE 71.1 (D) SCRPC REQUIRE THE JUDGE TO APPOINT COUNSEL FOR HIM OR OBTAIN HIS INTELLIGENT AND KNOWING WAIVER OF THE RIGHT TO COUNSEL WHITEHEAD V. STATE, 310 S.C. 532, 426 S.E. 2D.315.

THRESHOLD MATTER

AS A THRESHOLD MATTER, THE PROCEDURE FOLLOWED BY THIS COURT DENIED LONNIE GETER, AN OPPORTUNITY TO HAVE HIS POST CONVICTION RELIEF CLAIMS ADJUDICATED BY A JUDICIAL OFFICER, S.C. 17-27-80(1976), REQUIRE THE PCR COURT TO MAKE SPECIFIC FINDING OF FACT, AND STATE EXPRESSLY ITS CONCLUSION OF LAW, RELATING TO EACH ISSUE PRESENTED. MC CRAY V. STATE, 305 S.C. 329, 408 S.E.2D 241(1991). SEE ALSO PRUITT V. STATE, 310 S.C.254, 423 S.E.2d 127(1992).

THIS COURT DID NOT DO THAT, BUT RATHER DELEGATED THAT RESPONSIBILITY TO THE ATTORNEY GENERALS OFFICE, JOHNNY E. JAMES, JR. SEE

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AMY W. COOPER

ATTACHED LETTER. THIS . HONORABLE COURT SIGNED OFF ON THE PROPOSED  
CONDITIONAL ORDER OF DISMISSAL THREE(3) DAYS AFTER IT WAS SUBMITT-  
ED TO HER BY JAMES JR.

THE REASONING IN THE ORDER IS ENTIRELT THAT OF AN ADVOCATE AND  
NOT AN INDEPENDANT JUDICIAL OFFICER, WHICH VIOLATES THE SEPARATION  
OF POWERS S.C. CONST.ART.I 8. APPLICANT WAS NOT GIVEN THE  
OPPORTUNITY TO SUBMIT A PROPOSED CONDITIONAL ORDER OF DISMISSAL.

OUR SUPREME COURT STRONGLY ENCAURAGED PCR JUDGES TO DRAFT THEIR  
OWN FINDINGS OF FACT AND CONCLUSIONS OF LAW, HALL V. CATCO, 3  
S.C. 353,365,601 S.E.2D335,341(2004) AS A RESULT OF THE ORDER OF DISMISSAL READS LIKE AN ADVOCATE TRYING TO  
THE ORDER OF DISMISSAL READS LIKE AN ADVOCATE TRYING TO  
THE CONVICTION THAT A JUDICIAL OFFICER SAFEGUARDING THE  
OF LITIGANTS. STATE V. LONGFORD, 400 S.C.421,429,735 S.E.  
(2012).

THE CONDITIONAL ORDER OF DISMISSAL IS A VERBATIM COPY OF THE  
ATTORNEY GENERAL PROPOSED CONDITIONAL ORDER OF DISMISSAL. THE  
WHOLESALE ADOPTION OF THE STATES ADVOCACY POSITION UNDERSCORES  
THE LACK OF JUDICIAL INDENDANCE IN THIS PROCESS .THE NEED TO  
GRANT A PCR HEARING WITH THE APPOINTMENT OF COUNSEL IS APPOINT.

THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE  
CONSTITUTION OF THE UNITED STATES PROTECTS CITIZERS AGAINST  
STATE ACTION. WHEN THE UNITED STATES SUPREME COURT ENUNCIATES  
A RULE BASED UPON THE FOURTEENTH AMENDMENT, THAT RULE IS BINDING  
UPON STATE COURTS THROUGH THE SUPRMACY CLAUSE HENRY V. CITY OF  
ROCK HILL, 376 U.S.776,845, CT, 1042(1954)

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PER CURROM SEE ALSO KEELER V. MAUNEY, 500 S.E.2D223 (S.C.APP1998)

OUR SUPREME COURT HAS MADE IT ABUNDANTLY CLEAR THAT PCR IS STILL A CONSTITUTIONALLY PROTECTED AND STATUTORILY PROVIDED NECHANISM TO ADDRESS A DENIAL OF FUNDAMENTAL FAIRNESS SHOCKING TO THE UNIVERSAL SENSE OF JUSTICE SEE PENNINGTON V. STATE, 441 S.E. 2D315 QUOTING STATE V. TORRENCE, 406 S.E. 2D315 (1991). (TOAL, A.J. CONCURRING)

HEREIN THIS CASE APPLICANT FOUND OUT THAT THE SOLICITOR HAD E-MAILED MY ATTORNEY ABOUT A PLEA TO THE PENDING CHARGES BUT THE TERMS AND CONDITIONS WERE NEVER CONVEYED TO THE APPLICANT. MY ATTORNEY STATED THAT SHE WOULD E-MAIL THE SOLICITOR BACK ABOUT A 20 YEAR NEGOTIATIONS PLEA OFFER AND SENTENCE, FOR SOME UNKNOWN REASON NEGOTIATIONS BROKE DOWN THEREBY FORCING THE APPLICANT TO TRIAL.

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AMY W. COX

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APPLICANT WOULD HAVE ACCEPTED THE PLEA OFFER HAD HE BEEN AFFORDED EFFECTIVE ASSISTANCE OF COUNSEL. THE APPLICANT CAN DEMONSTRATE THAT A REASONABLE PROBABILITY THE PLEA WOULD HAVE BEEN ENTERED WITHOUT THE PROSECUTION CANCELING IT THERE IS A REASONABLE PROBABILITY THAT THE END RESULT OF THE CRIMINAL PROCESS WOULD HAVE BEEN MORE FAVORABLE BY REASON OF A PLEA TO A LESSER CHARGE OR A SENTENCE OF 20 YEARS WHICH IS LESS PRISON TIME. GLOVER V. UNITED STATES 531 U.S. 198, 203, 121 S. CT. 696, any amount of addition JAIL TIME HAS SIXTH AMENDMENT SIGNIFICANCE. STRICKLAND V. WASHINGTON, 466 U.S. 668, QUOTING DAVIE V. STATE, 381 S.C. AT 607, 675 S.E. 2D AT 419.

THE APPLICANT WOULD SHOW THIS HONORABLE COURT THAT HE RECENTLY COME UPON THIS INFORMATION ON AUGUST 6,2018.WHICH WAS APPARENTLY WITHHELD FORM THE APPLICANT FOR NO REASON EXPLAINED BY THE ATTORNEY.

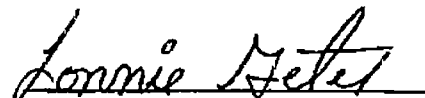
SHORTLY AFTER MAKING THIS DISCOVERY APPLICANT NOT FILE THIS PCR APPLICATION PURSUANT TO THE DISCOVERY RULE IN ACCORDANCE TO S.C. CODE ANN.17-27-45(C) SEE MC COY V. STATE,401S.C.363 737S.E.2D623, ALSO COATES V. STATE 575S.E.2D557(S.C.2003) THEREFORE THE ISSUES RAISED HEREIN ARE TIMELY FILE AND A EVIDENTIORY HEARING SHOULD BE HELD WITH THE APPOINTMENT OF COUNSEL TO ASSIST THE APPLICANT GENUINE ISSUES OF MATERIAL FACTS EXIST TO WARRANT A PCR HEARING.

APPLICANT AVERS THAT HE HAS DEMONSTRATED SUFFICIENT REASONS WHY HIS CLAIM WAS NOT INCLUDED IN HIS PRIOR PCR APPLICATION NOT DISCOVERED EARLIER.

STATE OF LIMITATION ,SUCCESSIVE AND LACHES DOES NOT APPLY TO THIS CASE.IT WOULD BE A DENIAL OF DUE PROCESS TO NOT APPOINT COUNSEL AND HAVE A PCR HEARING .  
SEE ATTACHED MOTIONS.

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LONNIE GETER#288401

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

2019-CP-42-01727

LONNIE GETER#288401,

MOTION FOR A POST

PETITIONER,

CONVICTION RELIEF HEARING

V.

STATE OF SOUTH CAROLINA,  
RESPONDENT,

THE APPLICANT, LONNIE GETER #288401 RESPECTFULLY MOTION THIS  
HONORABLE COURT FOR A POST CONVICTION HEARING TO HAVE HIS  
TIMELY FILED CLAIMS ADJUDICATED.

1) APPLICANT WAS CONVICTED ON DEC 6, 2002, IN THE SPARTANBURG COUNTY  
GENERAL SESSIONS COURT ON INDICTMENTS 2002 -GS-42-0433 AND 2004-463

2) APPLICANT IS CHALLENGING A MERITORIOUS 6 AMENDMENT MATTER.

WHEREFORE, APPLICANT REQUEST FOR A POST CONVICTION HEARING  
IN A TIMELY MANNER.

THE APPLICANT REQUEST TO BE PRESENT AT SAID HEARING.

I, LONNIE GETER#288401, CERTIFY AND VERIFY UNDER THE PENALTY OF  
PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. 28 U.S.C.A. 1746.

*Lonnie Geter*  
\_\_\_\_\_  
LONNIE GETER#288401

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SPARTANBURG COUNTY  
AMY W. COOPER

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG  
LONNIE GETER#288401  
petitioner,

COURT OF COMMON PLEAS  
2019-CP-42-01727  
MOTION FOR APPOINTMENT  
OF COUNSEL

v.

STATE OF SOUTH CAROLINA,  
RESPONDENT,

LONNIE GETER #288401, HEREBY RESPECTFULLY REQUEST THIS  
HONORABLE COURT TO APPOINT COUNSEL TO REPRESENT HIM IN THIS  
POST CONVICTION RELIEF HEARING FOR THE FOLLOWING REASONS.

- 1) THE APPLICANT IS UNABLE TO AFFORD COUNSEL.
- 2) THE ISSUES IN THIS CASE ARE COMPLEX.
- 3) THE APPLICANT DOES NOT HAVE AN ATTORNEY OF RECORD IN  
COURT OF COMMON PLEAS.
- 4) THE APPLICANT HAS A LIMITED KNOWLEDGE OF THE LAW.  
RELIEF REQUEST FOR APPOINTMENT OF COUNSEL.

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SPARTANBURG COUNTY  
AMY W. OSX

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I, ~~LONNIE GETER #288401~~, certify and verify unthe penalty of  
perjury that the foregoing is true and correct. 28 U.S.C.A.  
1746.

*-Lonnie Geter*  
LONNIE GETER#288401

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG-  
LONNIE GETER #288401  
PETITIONER,

COURT OF COMMON PLEAS  
2019-CP\_42-01727  
affIDAVIT IN SUPPORT  
OF APPLICANTS NOTION  
FOR THE APPOINTMENT  
OF COUNSEL

V.

STATE OF SOUTH CAROLINA,  
RESPONDENT,

I, LONNIE GETER #288401, BEING DULY SWORN DEPOSER AND SAY.

- 1) I AS THE APPLICANT IN THE ABOVE ENTITLED CASE. I MAKE THIS AFFIDAVIT IN SUPPORT OF MY MOTION FOR APPOINTMENT OF COUNSEL
- 2) THIS IS A COMPLEX CASE BECAUSE IT CONTAINS SEVERAL CLAIMS THAT HAVE MERIT.
- 3) THE FACTS IN THIS PCR, PROCEEDING ALONG WITH THE LEGAL CLAIMS OF THE APPLICANTS CLAIMS SUPPORT THE APPOINTMENT OF COUNSEL TO REPRESENT THE APPLICANT.
- 4) WHEREFORE ,THE APPLICANTS MOTION FOR THE APPOINTMENT OF COUNSEL SHOULD BE GRANTED.

I, LONNIE GETER #288401, CERTIFY AND VERIFY UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. 28 U.S.C.A. 1746

*Lonnie Geter*

LONNIE GETER#288401.

2019 SEP -5 AM 11:03  
CLERK OF COURT  
SPARTANBURG COUNTY  
SOUTH CAROLINA  
LAWEN.COM

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

LONNIE GETER#288401  
APPLICANT.

COURT OF COMMON PLEAS

2019-CP-42-01727

CERTIFICATE OF SERVICE

v.

STATE OF SOUTH CAROLINA  
RESPONDENT.

I, LONNIE GETER#288401 certify that i have served the responden  
with a copy of my objection to motion to dismiss and conditional  
order of dismissal by placing a copy in the perry mailroom and  
for mailing addressed as follows.

2019 SEP -5 AM 11:03  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

FILED

HONORABLE GRACE G. KNIE  
CHIEF ADMINISTRATIVE JUDGE  
180 MAGNOLIA STREET  
SPARTANBURG, S.C. 29306

JOHNNY E. JAMES JR.  
ASST. ATT. GENERAL  
P.O. BOX 11549  
columbia, S.C. 29211-

Exhibit  
D

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS  
) FOR THE SEVENTH JUDICIAL CIRCUIT  
)  
)  
)

Lonnie Geter, #288401

) Case No.: 2019-CP-42-01727  
)  
)

Applicant,

) **FINAL ORDER OF DISMISSAL**  
)  
)

v.

State of South Carolina,

Respondent.  

---

This matter comes before the Court pursuant to a post-conviction relief application filed by Lonnie Geter (hereafter "Applicant") on May 14, 2019. Respondent moved to summarily dismiss the application on August 16, 2019, because of untimeliness, successiveness, it is barred by the doctrine of laches, and he failed to set forth a *prima facie* case for newly-discovered evidence.

Pursuant to this request, and after reviewing the attached pleadings pertinent to this matter, this Court issued a conditional order of dismissal dated August 20, 2019, provisionally summarily dismissing the application, but affording the applicant twenty days from service of the conditional order to provide sufficient reasons as to why this order should not become final. Applicant was personally served with this conditional order of dismissal on September 9, 2019, as evidenced by the attached affidavit of personal service.

On September 5, 2019, Applicant filed a "motion to alter or amend judgement, pursuant to 59(e)", which the court interprets as a response to the conditional order of dismissal. In the motion, Applicant claims he has recently discovered e-mail correspondence between Counsel and the solicitor concerning a plea deal. Applicant claims plea negotiations broke down and, consequently, Applicant had no choice but to go to a jury trial. Applicant claims he would have

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SOUTH CAROLINA

pled and likely received a shorter sentence but for Counsel's alleged ineffectiveness. This Court has reviewed this response in full and finds it is insufficient to warrant an evidentiary hearing. Consequently, this Court finds this application must be summarily dismissed with prejudice.

In Applicant's PCR application and subsequent filings, he has continued to fail to establish a *prima facie* case of newly discovered evidence. As previously stated, though Applicant alleges that a plea offer was made by the solicitor and not conveyed to him by his trial counsel, review of the e-mails alongside Applicant's application refute the claim. The November 25, 2002, e-mail from Counsel to the State reflects that Counsel initiated negotiations by proposing a potential deal. The November 26, 2002, response from the State is initially favorable. However, the December 2, 2002, e-mail indicates Applicant "didn't seem very interested in the original offer" and implies a new proposal was provided to the State, which the State rejected. Taken together, the e-mails (1) do not reflect any firm plea offer from the State and (2) that Applicant was appraised of Counsel's negotiation efforts and was disinterested. Furthermore, the August 1, 2018, letter by which the e-mails were provided to Applicant reflect that copies were provided to him as early as July 11, 2017, nearly two years before the application was filed. Accordingly, Applicant has failed to provide any reason why these allegations could not by the exercise of due diligence have been discovered before the filing of his previous PCR applications, and failed to show that he filed the application within one year of "discovering" the e-mails. Thus, this matter remains dismissed on the grounds of newly discovered evidence.

Additionally, Applicant failed to show why the doctrine of laches is inapplicable to his case. Nearly fifteen years have passed between when the remittitur from Applicant's direct appeal was issued and when he brought this PCR action. Applicant has offered no justification

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WAYNESBORO, VA

for the delay. Thus, the Court shall summarily dismiss the application as barred by the equitable doctrine of laches.

Additionally, this Court finds that the application is barred through the statute of limitations. Applicant was convicted on December 6, 2002, and the remittitur from his direct appeal issued on July 28, 2004. The most generous conceivable date upon which Applicant could prevail is July 11, 2017. The current application was not filed until May 14, 2019. The Applicant has failed to sufficiently explain the fifteen year delay between the remittitur of his appeal and this pursuit of remedy through the PCR process. Thus, the Court shall dismiss the matter as barred by the statute of limitations.

Further, Applicant's application is barred on successiveness grounds. Applicant's current allegations were or could have been raised in earlier proceedings based upon Applicant's prior PCR applications and Applicant has not sufficiently proven why these issues could not have been raised earlier. Thus, the current application is successive and barred.

Before this 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). Applicant has failed to make such a showing based on the information set forth in his responses, and, consequently, is not entitled to an evidentiary hearing. Thus, the Court reasserts its finding in the conditional order of dismissal that the current PCR application must be dismissed for untimeliness, successiveness, it is barred by the doctrine of laches, and he failed to set forth a *prima facie* case for newly-discovered evidence. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

**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


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prejudice.

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

AND IT IS SO ORDERED this 1<sup>st</sup> day of February, ~~2020~~, <sup>2021</sup>.

  
R. KEITH KELLY<sup>1</sup>  
Chief Administrative Judge  
Seventh Judicial Circuit

Spartanburg, South Carolina

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<sup>1</sup> Judge Hayes is currently the Chief Administrative Judge for Common Pleas for the Seventh Judicial Circuit, but because he heard Applicant's initial PCR action, the proposed final order of dismissal are being sent to the Honorable R. Keith Kelly, Chief Administrative Judge for General Sessions for the Seventh Judicial Circuit.