

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

S.C. SUPREME COURT

J. MARK HAYES, CIRCUIT COURT JUDGE

2020-CP-42-01334

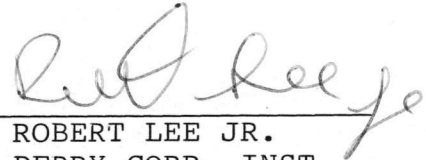
ROBERT LEE JR, APPELANT,

V.

THE STATE, RESPONDENT.

NOTICE OF APPEAL

ROBERT LEE JR. APPEAL'S THE HONORABLE MARK HAYES'S ORDER
OF DISMISSAL DATED THE 12TH DAY OF MARCH, 2021.



ROBERT LEE JR.
PERRY CORR. INST.
430 OAKLAWN RD.
PELZER, SC 29669

OTHER COUNSEL OF RECORD
CHELSEY MARTO, ATTORNEY GENERAL
P.O. BOX 11549
COLUMBIA, SC 29211
(803) 734-3737

FORM 5

STATE OF SOUTH CAROLINA

County of Spartanburg

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2020-CP-42-01334

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 of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence 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) 2010-GS-420-5387 - Murder
 - (b) _____

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SPARTANBURG COUNTY
AMY COX

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 12/1/11 - (life)
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "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. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

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 ANNE W. COX

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attachments
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachments
- (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? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
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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 AMY W. CDX

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) Newly Discovered Evidence
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? N/A
- (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? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
N/A

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. Brendan M. Delaney (Esq.)
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. _____
 - iii. _____

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AMY W. COX
Revised 3/2009

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

Vacate and Remand

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

N/A

STATE OF SOUTH CAROLINA
County of Spartanburg

VERIFICATION

I, Robert Lee Jr., 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.

x Robert Lee Jr.

SWORN to and subscribed before me this 17th
day of April, 2020.

Mary C. Coble (L.S.)
Notary Public

My Commission Expires: 1-23-2023

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SPARTANBURG COUNTY
AMY W. COX
Revised 3/2003

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

I, Robert Lee, Jr., 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.

x Robert Lee Jr.
Applicant

SWORN or affirmed to and subscribed before me this
17th day of April, 2020.
Nancy C. Cople
Notary Public

My Commission Expires: 1-23-2023

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SPARTANBURG COUNTY
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Revised 3/2003

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

(B) Newly Discovered Evidence

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

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

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

§ 18. Formalities of Act.

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

(1)

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

Op. Atty. Gen. 4013, pg. 85.

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

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

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

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

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SPARTANBURG COUNTY
ANDREW W. BAY

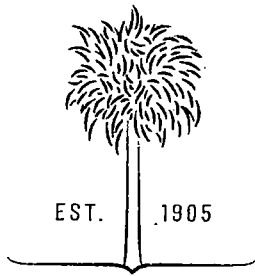
of Archives and History. (See Exhibit 2)

Both Federal and State Constitutions forbid any law impairing the obligations of contracts. Therefore, the obligation of a contract is that duty of performing the contract to its terms and intent which law recognizes and enforces. Again, like any ordinary bill must in order to have force of law, (Must) have the Great Seal of the State attached thereto.....

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

(3)

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SPARTANBURG COUNTY
ALAY W. COX



SOUTH CAROLINA DEPARTMENT OF
ARCHIVES & HISTORY

Exhibit 1

13 April 2020

Mr. Robert Lee Jr. #348833
Perry Correctional Institution Q1A-119
430 Oaklawn Road
Pelzer, SC 29669

Dear Mr. Lee:

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

Sincerely,

Steven D. Tuttle
Deputy Director
Archives & Records Management

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SPARTANBURG COUNTY
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South Carolina Legislative Council

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

GLENN E. MCCONNELL
CHAIRMAN, SENATE JUDICIARY COMMITTEE
THE SENATE

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

ROBERT L. PEELER
PRESIDENT OF THE SENATE

JIM MILES
SECRETARY OF STATE



Exhibit 2

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

STEPHEN T. DRAFFIN
CODE COMMISSIONER AND DIRECTOR

October 21, 2002

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

Dear Spencer:

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

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

Very truly yours,

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

Stephen T. Draffin

STD/gjk
Enc.

M. HOPE BLACKLEY

SECRETARY OF STATE
EDGAR BROWN BUILDING
COLUMBIA, SOUTH CAROLINA 29211

Section 16-1-57. A person convicted of an offense for which the term of imprisonment is contingent upon the value of the property involved must, upon conviction for a third or subsequent offense, be punished as prescribed for a Class B felony.

Violent crimes defined

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

Section 16-1-60. For purposes of definition under South Carolina law a violent crime includes the offenses of murder (Section 16-3-10); criminal sexual conduct in the first and second degree (Sections 16-3-652 and 16-3-653); criminal sexual conduct with minors, first and second degree (Section 16-1-655); assault with intent to commit criminal sexual conduct, first and second degree (Section 16-1-656); assault and battery with intent to kill (Section 16-1-660); kidnapping (Section 16-3-910); voluntary manslaughter (Section 16-1-30); armed robbery (Section 16-11-330); drug trafficking as defined in Sections 44-53-370(e) and 44-53-375(C); arson in the first degree (Section 16-11-310(A)); burglary in the first degree (Section 16-11-311); and burglary in the second degree (Section 16-11-312(B)); engaging a child for a sexual performance (Section 16-3-810); accessory before the fact to commit any of the above offenses (Section 16-1-40); and attempt to commit any of the above offenses (Section 16-1-80). Only those offenses specifically enumerated in this section are considered violent offenses.

Mandatory minimum terms

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

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

(1) A person under the age of twenty-one sentenced under the provisions of Chapter 19 of Title 24 (Youthful Offenders Act) convicted of armed robbery shall receive and serve a minimum sentence of at least three years, no part of which may be suspended. The person is not eligible for parole or probation until he has served a three-year minimum sentence.

(2) A person between the ages of twenty-one and twenty-five, who is convicted of armed robbery, may not be sentenced under the provisions of Chapter 19 of Title 24 (Youthful Offender Act).

M. HOPE BLACKLEY
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CLERK OF COURT
COURT HOUSE
COLUMBIA, SC

update I

Exhibit 4

Lawmaker: Decade of S. Carolina bills missing required stamp

COLUMBIA, S.C. (AP) — It's possible that a decade's worth of South Carolina laws haven't technically been in effect because they are missing a seal required by the state constitution, a lawmaker told The Associated Press on Thursday.

Rep. Joshua Putnam told the AP he's discovered that the Great Seal of the State of South Carolina hasn't been attached to about 10 years' worth of laws passed by the General Assembly. That technical requirement is listed in the state constitution as one of a handful of requirements before bills become state law.

No bill or joint resolution "shall have the force of law" unless it has passed both the House and Senate and "has had the Great Seal of the State affixed to it," according to the state constitution.

Putnam said he came across the information while researching ways the secretary of state's office could be more efficient and make better use of technology. He has filed to challenge Secretary of State Mark Hammond in next year's GOP primary and has submitted an open-records request for more information.

According to longtime state Senate clerk Frank Caggiano, affixing the seal to approved legislation is among the duties of the secretary of state. However, Caggiano pointed out that this responsibility is ceremonial, adding that, if it weren't, it would give the officeholder veto power. Otherwise, he said, if the secretary refused, the seal could "just as easily be affixed by the clerk of the Senate."

Hammond has been secretary of state for 15 years, and his office didn't immediately return a message seeking comment late Thursday. Putnam, a small businessman first elected to the state House in 2010, said he doesn't think lawmakers would have to re-debate any bills but such a mistake would go beyond sloppy record-keeping.

"I cannot imagine how many laws have been passed in the past 10 years that have been affected by this," Putnam said. "As a private citizen, that is just mindboggling. I think that goes past bad management."

Kinnard can be reached at <http://twitter.com/MegKinnardAP>. Read more of her work at <https://apnews.com/search/meg%20kinnard>.

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

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

Robert Lee, Jr., #348833

) Case No.: 2020-CP-42-01334
)

Applicant,

) **FINAL ORDER OF DISMISSAL**
)

v.

State of South Carolina,

Respondent.

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CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

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This matter comes before the Court pursuant to a post-conviction relief application filed by Applicant Robert Lee, Jr. on April 21, 2020. Respondent moved to summarily dismiss the application on October 27, 2020; for untimeliness, successiveness, and for failure to establish a *prima facie* case of 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 November 9, 2020, 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 be finalized. Applicant was personally served with this conditional order of dismissal on November 23, 2020, as evidenced by the attached affidavit of personal service.

On December 4, 2020, Applicant filed his reply to the conditional order of dismissal. In his reply, he reiterated his claims concerning the missing Great Seal and again argues that this, by itself, entitles him to relief. Applicant claims he is entitled to a hearing because the missing Great Seal renders the law he was convicted under unconstitutional. He also argues the argument cannot be dismissed as untimely and successive because he did not discover the Great Seal was missing until within a year of filing this PCR application.

This Court has reviewed the response in full and finds it is not sufficient enough to warrant an evidentiary hearing. Consequently, this Court finds this application must be summarily dismissed with prejudice.

Applicant has not adequately shown why he is entitled to relief based upon newly discovered evidence. Though Applicant reiterates his recent discovery of the missing Great Seal, this does not entitle him to the relief sought. Applicant's discovery does not constitute newly discovered evidence, because this evidence remained discoverable through exercising reasonable diligence and subsequently raised in Applicant in prior action. Accordingly, this Court finds Applicant has not overcome his procedural hurdle in establishing why the conditional order of dismissal should not take effect.

Additionally, this Court finds that the application is barred for untimeliness. Applicant was convicted on December 1, 2011, and the remittitur from his direct appeal issued on May 2, 2014. Thus, his PCR application was due on May 3, 2015. The current application was not filed until April 21, 2020. Applicant has failed to sufficiently explain the nearly six 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,



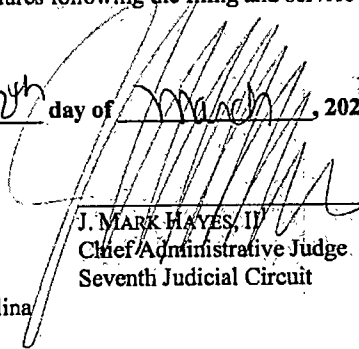
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SOUTH CAROLINA
JANIS L. BROWN
AMM W. BOX

FILED

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, and for failure to establish a *prima facie* case of 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 in this Court's conditional order of dismissal, the PCR application is hereby denied and dismissed with prejudice. This court hereby advises 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 12th day of March, 2021



J. MARK HAYES, II
Chief Administrative Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

CLERK OF COURT
SPARTANBURG COUNTY
MAY 11, 2021

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¹ Judge J. Derham Cole is currently the Chief Administrative Judge for Common Pleas for the Seventh Judicial Circuit, but because he presided over Applicant's trial proceedings, the proposed final order of dismissal are being sent to the Honorable J. Mark Hayes, II, Chief Administrative Judge for General Sessions for the Seventh Judicial Circuit.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated Dogan, Starlen (Server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)

AFFIDAVIT OF PERSONAL SERVICE

On this 23 day of November 2020, I served the Conditional Order of Dismissal, on Inmate Robert Lee, Jr. SCDC Inmate #348833, by delivering personally and leaving a copy of the same at Lee Correctional Institution. Deponent is not a party to this action.

Dogan Starlen
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 23 day of November 2020

Tamara Conwell (L.S.)
Notary Public for South Carolina

My Commission Expires: September 25, 2023

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PCI MAILROOM

ADMISSION OF SERVICE

Service of a copy of the within Conditional Order of Dismissal is admitted at the South Carolina Department of Corrections (Berry Correctional Institution), Greenville County, SC this 23 day of November 2020.

Robert Lee
Inmate
SCDC Inmate #: 348833

2020-CP-42-01334

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SPARTANBURG COUNTY
AMM/COX