

THE STATE OF SOUTH CAROLINA
-IN THE SUPREME COURT-

RECEIVED

APR 17 2013

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
HON. L. CASEY MANNING FIFTH JUDICIAL CIRCUIT

S.C. Supreme Court

CASE NO. 2012-CP-400-3613

THE STATE OF SOUTH CAROLINARESPONDENTS


v.

MELVIN WILLIAMS #123206APPEALANT

NOTICE OF APPEAL

MEVIN WILLIAMS APPEALS THE ORDER OF JUDGMENT OF THE HONORABLE
CASEY MANNING DATED FEBRUARY 28, 2013.

APRIL 8, 2013.

s/ 

MELVIN WILLIAMS#123206
4460 BROAD RIVER RD.
COLUMBIA, SC 29210

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APR 17 2013

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

S.C. Supreme Court

HONORABLE CASEY MANNING, FIFTH CIRCUIT
CASE NO: 2012-CP-400-3613

STATE OF SOUTH CAROLINA RESPONDENT

v.

MELVIN WILLIAMS APPEALANT

PROOF OF SERVICE

I CERTIFY THAT I HAVE MAILED APPELLANTS NOTICE OF APPEAL TO THOSE
ADDRESSED BELOW FROM THE BRCI MAILROOM, U.S. POSTAGE PREPAID
THIS 11th DAY OF APRIL 2013.

SC ATTORNEY GENERALS OFFICE
ROBERT D. CORNEY
P.O. BOX 11549
COLUMBIA, SC 29211

S. Melvin Williams
MELVIN WILLIAMS #123206
4460 BROAD RIVER RD.
COLUMBIA, SC #29210

RICHLAND COUNTY CLERKS OFFICE
1701 MAIN STREET
COLUMBIA, SC 29201

SC SUPREME COURT
CLERKS OFFICE
P.O. BOX 11330
COLUMBIA, SC 29211

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 11th DAY
OF APRIL 2013.

Susan H. Frye

NOTARY OF SOUTH CAROLINA
My Commission Expires
March 5, 2018

MY COMMISSION EXPIRES

APRIL 8, 2013

PCR

DANIEL E. SHEAROUSE
SC SUPREME COURT
P.O. BOX 11330
COLUMBIA, SC 29211

RE: MELVIN WILLIAMS #123206 V. STATE OF SOUTH CAROLINA
CASE NO: 2012-CP-400-3613

DEAR SIR;

PLEASE FIND ENCLOSED FOR FILING A "NOTICE OF APPEAL" IN THE ABOVE
CAPTIONED CASE. I HAVE ENCLOSED A PROOF OF SERVICE UPON THE RESPONDENT
AND THE RICHLAND COUNTY CLERK OF COURT.

ALSO ENCLOSED ARE COPIES OF THE CONDITIONAL AND FINAL ORDER.

s Melvin Williams

MELVIN WILLIAMS #123206
4460 BROAD RIVER RD.
COLUMBIA, SC 29210

RECEIVED

APR 17 2013

S.C. SUPREME COURT

APRIL 8, 2013

RECEIVED

APR 17 2013

RICHLAND COUNTY CLERK OF COURT
1701 MAIN STREET
COLUMBIA, SC 29201

S.C. Supreme Court

RE: WILLIAMS #123206 V. THE STATE OF SOUTH CAROLINA
CASE NO: 2012-CP-400-3613

DEAR CLERK,

PLEASE FIND ENCLOSED FOR FILING MR. WILLIAMS "NOTICE OF APPEAL" IN
THE ABOVE CAPTIONED CASE.

s/ Melvin Williams

MELVIN WILLIAMS, #123206
4460 BROAD RIVER RD.
COLUMBIA, SC 29210

RECEIVED

APR 17 2013

S.C. SUPREME COURT

Xs
ROBERT D. CORNEY
SC ATTORNEY GENERALS OFFICE
PO BOX 11549
COLUMBIA, SC 29211

RE: MELVIN WILLIAMS #123206 V. THE STATE
CASE NO: 2012-CP-400-3613

DEAR MR. CORNEY;

PLEASE FIND ENCLOSED A COPY OF APPELLANTS NOTICE OF APPEAL IN THE
ABOVE CAPTIONED CASE.

s/ Melvin Williams
MELVIN WILLIAMS #123206
4460 BROAD RIVER RD.
COLUMBIA, SC 29210

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS
Melvin #123306 Williams

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4003613

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for: Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- 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 (formal order to follow) Statement of Judgment by the Court.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 6 June 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Melvin #123306 Williams

Robert Daniel Corney

Melvin #123306 Williams

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

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

WILLIAMS Melvin, #123206,)

2012-CP-40-03613)

Applicant,)

v.)

CONDITIONAL ORDER OF DISMISSAL)

State of South Carolina,)

Respondent.)

RICHLAND COUNTY
FILED
2012 JUN -6 AM 9:02
JANETTE W. McBRIDE
C.C.P. & G.S.

This matter comes before this Court by way of an application for post-conviction relief filed May 23, 2012.¹

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was indicted at the April 1989 term of the Richland County Grand Jury for Assault and Battery with Intent to Kill (1989-GS-40-01828). The Applicant was represented by counsel on the charge. On May 18, 1989, the Applicant appeared before The Honorable J. Ernest Kinard, Jr., where he pled guilty to the crime as indicted and was sentenced to twenty (20) years imprisonment, nineteen (19) of which were to run concurrently to a previous life

¹<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2012CP4003613&CourtType=G&CaseType=Civil&CourtAgency=40002>

sentence and the remaining one (1) year was to run consecutively to the life sentence.²

It does not appear Applicant had a direct appeal on the 1989 pleas, but did file an application for Post-Conviction Relief (PCR) on April 8, 1992 (1992-CP-40-01581). He was represented by James T. McHale, Esquire, on the action. On June 15, 1993, the Honorable Paul E. Short, Jr., denied and dismissed the application with prejudice. Applicant filed a Notice of Appeal to the South Carolina Supreme Court which was later dismissed. The circuit court received the remittitur on March 23, 1994.

In making its decision, the Court had before it the available records of the County Clerk of Court regarding the subject convictions, and/or the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, and the *Respondent's Return and Motion to Dismiss*.

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

The Applicant Filed a PCR with Spartanburg and Richland County Clerk of Court alleging that he is being denied the right to parole. And is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.
2. Denial of Due Process.

² Applicant was already serving a life sentence on a 1984 Spartanburg Murder conviction (1984-GS-42-02117) which was to be followed by a consecutive 25 year sentence for an additional Armed Robbery conviction (1984-GS-40-02118).

Defendant Melvin Williams #123202 on May 18, 1989, was convicted of the offense of Assault and battery with Intent to Kill. The Honorable Ernest J. Kinard sentenced the Defendant to 20 years incarceration, 19 years concurrent to his life sentence for a previous murder conviction and 10 year consecutive to that conviction. The Department of Probation, Parole and Pardon Services stated an individual given a consecutive sentence, he must complete the initial sentence before the subsequent sentence can begin. Due to the initial sentence being a life sentence, he was not eligible for parole.

The Defendant never was advised of the condition of his plea agreement. Counsel formed a oral understanding enforcing plea agreement.

Due process clause requires that Louisiana process don't violate the defendant's right to a Fundamental Fairness.

Here in the case at bar the Defendant challenged his guilty plea as involuntary on ground that he did not know he would be ineligible for Parole due to sequence of his sentences.

Very similar: to State vs. Tillet, 511 SE 2d 689 (SC 1999) Criminal Law Key 1216 (3) Citing the overview. Here in Tillet the last conviction relief (PCR), Judge correctly ordered that the defendant first serve his mandatory five year sentence for possession of a weapon during commission of a violent crime, before serving his 18 year sentence of first degree Criminal sexual conduct and his life sentence for kidnapping. The sentencing Judge did not intend that the defendant would serve his sentences without parole, but practical effect of Parole Board's interpretation, under which the mandatory five year sentence would be served last, with no chance of parole, even though he was eligible for parole on life sentence and 18 years sentence.

Due to the consecutive nature of his sentence, also due to the sentencing structure, therefore, the parole board interprets the sentence structure and meaning applicant must serve out his term on the next two consecutive sentences.

The sixth Amendment and the mandates set forth by the U.S. Supreme Court in Strickland vs. Washington 461 U.S. 668, 104 S.Ct. 2052 (1984) and its two-pronged test where ineffective assistance of counsel is alleged here counsel conduct undermined the proper functioning of the adversarial process that the trial under standing enforcement idea agreement cannot be relied upon as having produced a just result." also a due process violation.

Findings of Fact and Conclusions of Law

Timeliness - S.C. Code §17-27-45(a)

This Court agrees with the Respondent that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160.

S.C. 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. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). For the purposes of this Order, the Applicant's conviction/sentence was "finalized" on the date of his conviction or the date of the Remittitur from any direct appeal, whichever was later, i.e. May 18, 1989. Adding

one (1) year per S.C. Code § 17-27-45(a) and one (1) day per Rule 6(a), SCRCP means that this PCR application had to be filed by May 19, 1990. This Application was filed on May 23, 2012, which was well beyond the statutory time for filing.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court shall summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

SUCCESSIVE

The application should be summarily dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) 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, 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." [Emphasis in original]. Id., 305 S.C. 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. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications.

FAILURE TO STATE A COGNIZABLE GROUNDS FOR RELIEF

Finally, Applicant has failed to set forth a cognizable ground for relief through a post-conviction relief action. Aside from two matters specifically mentioned in the statute, post-conviction relief is a proper avenue of relief only when the Applicant mounts a collateral attack challenging the validity of his conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). A credit-related claim or challenge to other conditions of confinement are

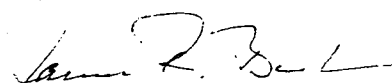
administrative matters and, thus, cannot be raised in a post-conviction relief proceeding. Id. Likewise, a challenge to the conditions upon which parole eligibility is determined or decided is not cognizable in a post-conviction relief application. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000). Applicant's allegation is that the Department of Corrections is improperly calculating his sentences, thereby affecting his parole eligibility. Therefore, these claims are improper for post-conviction relief and rather should be raised first through the South Carolina Department of Corrections' disciplinary and grievance procedures or through the South Carolina Department of Probation, Parole and Pardon Services. If the Applicant is dissatisfied with the decision rendered through those processes, then he may seek review of the decision under the Administrative Procedures Act (APA). Accordingly, this Court finds this allegation fails to set forth any cognizable grounds for relief and, therefore, it must be summarily dismissed.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for the reasons explained above.

Based upon its review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent the Applicant and 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 thirty (30) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Richland County Clerk of Court and shall serve opposing counsel at the following address:

Assistant Attorney General
Robert D. Corney
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 5 day of June, 2012.


The Honorable James R. Barber, III
Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Melvin Williams

Plaintiff

v.

State Of South Carolina

Defendant.

CASE NO.
2012-CP-400-3615

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

RICHLAND COUNTY
FILED
JANETTE W. HARRIS
C.C.P. & G.S.
JUN -6 AM 9:02

Plaintiff's Attorney: Melvin Williams, Bar No. Address: BROAD RIVER CORRECTIONAL INSTITUTION 4460 Broad River Road Columbia, SC, 29210 phone: fax: e-mail: other:	Defendant's Attorney: Robert D. Corney, Bar No. Address: Post Office Box 11549 Columbia, South Carolina 29211 phone: 803-734-5178 fax: 803-734-4113 e-mail: rcorney@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 May 31, 2012
Date submitted

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, SCRCF)
 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: _____



ALAN WILSON
ATTORNEY GENERAL

May 5, 2011

Honorable James R. Barber, III
P.O. Box 192
Columbia, SC, 29202

RE: Melvin Williams, 123206 v. State of South Carolina
2012-CP-400-3613

Dear Judge Barber:

Enclosed please find the Conditional Order of Dismissal on the above reference case. A digital copy of our pleadings is available via email upon request. If this Order meets with your approval, please sign the same and forward it to the Richland County Clerk of Court to be clocked and served on all parties.

Thank you for your time and consideration.

Sincerely,

Robert D. Corney
Assistant Attorney General

Enclosure(s)

cc: Melvin Williams, #123206

Melvin #123306 Williams

CASE NUMBER: 2012CP4003613

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____ Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- 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 (formal order to follow) Statement of Judgment by the Court.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 4 March 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Melvin #123306 Williams

Robert Daniel Corney

Melvin #123306 Williams

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McGrade

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Melvin Williams, #123206,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2012-CP-40-03613

FINAL ORDER

2013 MAR -4 AM 9:55
JEANETTE M. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

This matter comes before this Court by way of an application for post conviction relief (PCR) filed May 23, 2012. The Respondent made its Return and Motion to Dismiss on May 29, 2012, requesting that the Application be summarily dismissed as untimely filed, successive in nature, and for failing to state a claim which would entitle Applicant to post-conviction relief. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Honorable James R. Barber, III, entered a Condition Order of Dismissal on June 6, 2012, provisionally denying and dismissing this action, while giving the Applicant thirty (30) days from the date of said Conditional Order to show why the dismissal should not become final.

Copied herein is the affidavit of service containing Applicant's signature dated June 18, 2012, confirming service of the above-mentioned Conditional Order upon Applicant at the South Carolina Department of Corrections.

543cc

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

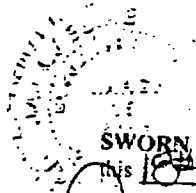
Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated Shirley Jones (Server) as his duly authorized agent for the purpose of making service on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF Richland) AFFIDAVIT OF PERSONAL SERVICE 12-CP-40-3613

On this 18 day of June, 2012, I served the Cond. Order of Dismissal, on Inmate Melvin Williams, SCDC Inmate # 123206 by delivering personally and leaving a copy of same at Broadriver Correctional Institution.

I am not a party to this action.

s/ Shirley Jones
SCDC Server



SWORN TO AND SUBSCRIBED BEFORE ME
this 18 day of June, 2012.
Jacqueline Murrell
Notary Public for South Carolina
My commission expires: 3/15/16

ACCEPTANCE OF SERVICE

Service of a copy of the within Legal Pleadings is accepted at the S.C. Department of Corrections (Broadriver Correctional Institution), Richland County, SC this 18th day of June, 2012.

s/ Melvin Williams # 123206
Inmate SCDC#

SCDC 9-12 (Rev. 5-2010)

Applicant responded to the Conditional Order by way of *pro se* filing dated June 22, 2012, and entitled "Conditional Order of Dismissal Applicant Return Response to Dismissal". In it, Applicant set forth the following objections, in addition to several attached exhibits:

the sentencing judge did not intend that the defendant would serve his sentence without parole, but practical effect of parole board's interpretation, under which the mandatory five year sentence would be served last, with no chance of parole, even though he was eligible for parole on the life sentence and the 18 year sentence Code 1976 § 16-23-490, § 17-27-20.

For example, the Department of Probation, Parole and Pardon Services, here in the case of law stated that Applicant was not eligible for parole due to the consecutive nature of his sentence, also due to the sentence structure. Therefore the parole board interprets the sentencing structure on mandating Applicant must serve out his term on Court date which is life, before he can begin serving out his term on the next two consecutive sentences.

Clearly the Department of Probation, Parole and Pardon Service misinterpreted the sentencing structure as a standard provision by setting out the sentence prison term, the applicant may become eligible for parole, disfavoring the applicant's right to parole. On the basis of a letter that was sent to the applicant by the South Carolina Department of Probation, Parole and Pardon Services on April 22, 2008. Please see attached Exhibit "A"

Dear Mr. Williams:

You are scheduled for parole hearing on June 4, 2008. However upon investigating your conviction and sentence, it is our conclusion that due to the structure of your sentence, you are not eligible for parole. According to our records, on May 18, 1989, you were convicted of the offense of assault and battery with intent to kill. The Honorable Ernest J. Kinard sentenced you to 20 years incarceration 19 (concurrent to your life sentence for a previous murder conviction and one year consecutive to that conviction. When an individual is given a consecutive sentence, he must complete the initial sentence, can begin. Due to the initial sentence being a life sentence, you are currently not eligible for parole.

The Appellant therefore appeal the Department of Probation, parole and Pardon Services Final Decision Docket Number 11-ALJ-15-2020-AP Judge. Robert King Anderson, III dismissed Appellant's notice of appeal on July 14 2011 on the basis of a order that the Appellant received notice of Department's decision on February 16 2011. In his Notice of Appeal, Appellant asserts that he did not receive a Notice of Appeal Form until March 16 2011. Even if this is the case, Appellant had the opportunity to file the Notice on or before March 18, 2011, the thirtieth day from his receipt of the Department's decision. Instead, the Notice of Appeal is dated March 21, 2011, and was filed with the Court on March 23, 2011, the date it was received in the mail room of Brant River Correctional Institution where Appellant is housed. Because Appellant did not file Notice of Appeal within thirty days of receiving the Department's decision, this matter must be dismissed. See attached Exhibit "B".

Therefore the Appellant filed a Post-Conviction relief (PCR) application on May 23, 2012 to the Richland County Clerk of Court alleging that he is being denied the right to parole and being held in custody unlawfully for the following reasons: Ineffective Assistance of Counsel and Denial of Due Process.

Argument

Appellant submits Counsel never advised him of the condition of his plea agreement. Counsel formed a oral understanding enforcing the agreement. The Due Process Clause requires that law abiding process should not violate the defendant's right to a Fundamental Fairness. Here in the case of the defendant's right to a Fundamental Fairness was violated. Clarified in that, absent a knowing, voluntary, and intelligent waiver on the ground that he did not know he would be ineligible for parole due to sequence of his sentences. Finally, Appellant submits that State vs. Tilley, 511 SE 2d 689 (SC, 1999) gives a clear interpretation and under standing into how the argued principles which are extended on the basis of US Supreme Court precedents apply to the facts in the instant case, where the lower PCR Courts ruling was proper. On the claim that respondent's plea was involuntary the PCR.

After conducting a thorough review of the entirety of the record, all relevant documents contained therein, and the entirety of Applicant's pro se submissions, this Court finds no

WILLIAMS Melvin #123206 - FINAL ORDER OF DISMISSAL (2012-CP-40-03613)
Page 4 of 6

sufficient reason has been set forth why the Conditional Order should not be become final, dismissing the current action with prejudice.

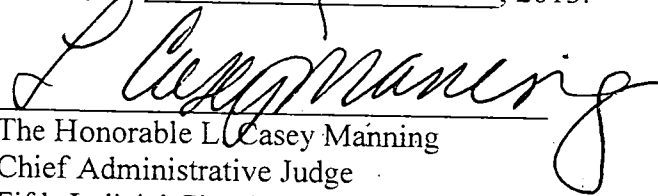
Applicant contends the current application was timely filed following the denial of his appeal of the Parole Board's finding that he was not parole eligible, and that he has set forth a cognizable claim for relief through PCR as his plea attorney "never advised him" that his plea could result in him becoming ineligible for parole. Parole eligibility is a collateral consequence of sentencing which a defendant need not be specifically advised before entering a guilty plea. Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983). Therefore, even assuming *arguendo* this Court were to find the issue properly raised through the current action in a timely manner, Applicant has failed entirely to set forth any genuine issue of material fact which, if taken as true, would entitle him to relief. Therefore, the current action is wholly without merit and must be summarily dismissed for the reasons set forth in the previous Conditional Order, as well as pursuant to S.C. Code § 17-27-80 (c) as there is no genuine issue of material fact and Respondent is entitled to judgment as a matter of law.

Accordingly, for all of the reasons set forth in the previous Conditional Order and those reasons set forth herein, this Court must summarily dismiss the action with prejudice.

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

This Court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty (30) 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 28 day of February, 2013.


The Honorable L. Casey Manning
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Melvin Williams
 Plaintiff

v.

State Of South Carolina
 Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-400-3613

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

2012 MAR -4 AM 9:55
RICHLAND COUNTY
C.C.P. & G.S.
KIMBERLY W. MCBRIDE

Plaintiff's Attorney:
Melvin Williams, Bar No.
Address:
BROAD RIVER CORRECTIONAL
INSTITUTION
4460 Broad River Road
Columbia, SC, 29210
phone: fax:
e-mail: other:

Defendant's Attorney:
Robert D. Corney, Bar No.
Address:
Post Office Box 11549
Columbia, South Carolina 29211
phone: 803-734-5178 fax: 803-734-4113
e-mail: rcorney@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

2/22/13

Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT:
- EXEMPT: (check reason)
 - Rule to Show Cause in Child or Spousal Support
 - 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, SCRCP)
 - 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

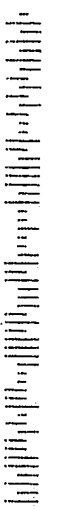
CODE: Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____


N



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DANIEL E. SHEAROUSE

LEGAL OFFICE

SC SUPREME COURT

PO BOX 11330

COLUMBIA, SC 29211

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