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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No: 2018-001099

GAVIN V. JONES,

APPELLANT,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

Appendix to the Record on Appeal

RECEIVED
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SC Court of Appeals

GAVIN V. JONES
Pro Se Appellant

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ATTORNEYS FOR RESPONDENT

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 COUNTY OF ANDERSON)
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 Gavin V. Jones, #259726,)
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 Applicant,)
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 v.)
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 State of South Carolina,)
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 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 IN THE TENTH JUDICIAL CIRCUIT

2012-CP-04-0861

NOTICE OF MOTION AND
 MOTION TO DISMISS
 PURSUANT TO RULES
 12 AND 4, SCRPC AND
 LACHES

This matter comes before the Court by way of a document filed March 14, 2012, and captioned "Petition for Writ of Mandamus". Respondent now moves to dismiss this writ pursuant to Rule 4 and 12(b)(2),(4),(5), and (6) SCRPC.

PROCEDURAL HISTORY ALLEGED

Petitioner alleges the following procedural history in his pleadings:

Petitioner is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to commitment orders from the Anderson County Clerk of Court. Petitioner was indicted at the January 5, 1999 term of the Anderson County grand Jury for murder (1999-GS-04-0059). The State proceeded to trial, and the petitioner was convicted of murder. The Honorable H. Dean Hall sentenced the Petitioner to life imprisonment on July 15, 1999. Petitioner was represented by David Stoddard, Esquire.

The Petitioner timely filed a Notice of Appeal. The Appeal was perfected by Tara S. Taggart, Esquire of the South Carolina Office of Appellate Defense. The South Carolina Court of Appeals denied Petitioner's appeal by Order dated July 11, 2001.

Petitioner subsequently filed an application for post-conviction relief (PCR). An evidentiary hearing was held on December 15, 2004. Petitioner was present and proceeded pro se with standby counsel. Petitioner's Application was denied and dismissed by an Order filed on January 21, 2005.

Petitioner timely filed a Petition for Writ of Certiorari. The Petition was perfected by Aileen P. Clare of the South Carolina Office of Appellate Defense. By Order dated November 16, 2005, the South Carolina Supreme Court denied the Petition.

The Petitioner subsequently filed a pro se petition for a Writ of Habeas Corpus with the South Carolina Supreme Court. By Order dated May 13, 2011 the South Carolina Supreme Court denied the Petition.

ALLEGATIONS

In the Petition for Writ of Mandamus, the Petitioner alleges a lack of subject matter jurisdiction for the conviction arguing that the January 5, 1999 indictment for murder is invalid because of an Order by Chief Justice Ernest A. Finney, Jr. of the South Carolina Supreme Court dated December 1, 1998. The Order canceled the statutory terms of circuit court in South Carolina for the period beginning January 4, 1999 and ending July 2, 1999. Petitioner argues that the indictment is illegal because the Grand Jury lacked jurisdiction to indict outside of a term of the circuit court. Note that a December 10, 1998 circuit court order convened the Anderson County Grand Jury for the week of January 4, 1999.

Rule 12(b)(2)(4)(5)

Petitioner attempted to serve the State by mailing the summons and petition by regular mail. Providing a copy via regular United States mail does not satisfy any provision of the South Carolina Rules of Civil Procedure. Rule 4(d)(4)(A), SCRPC. The attempted service is not proper under Rule 4, SCRPC and warrants dismissal. See Maybin v. Northside Correctional Center, S.C. Dept. of Corrections, 891 F.2d 72 (4th Cir. 1989). Therefore, the Court lacks personal jurisdiction over the Defendant and the action merits dismissal. Although questions of personal jurisdiction and service of process are closely interrelated, service of process is the means by which the Court gives notice and asserts jurisdiction over the Defendant.

Accordingly, this action should be dismissed for lack of personal jurisdiction, insufficiency of process, insufficiency of service of process under Rule 12(b)(2),(4), and (5), SCRPC.

Rule 12(b)(6), SCRPC

A Court may dismiss a claim when the defendant demonstrates that the plaintiff has failed to state facts sufficient to constitute a cause of action. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Viewing the facts in the light most favorable to the Plaintiff, the Complaint fails to state a claim against the Defendant sufficient to support the requested writ.

Writ of Mandamus improper form of relief

“Mandamus is the highest judicial writ known to the law.” Edwards v. State, 383 S.C. 82, 95, 678 S.E.2d 412, 419 (2009). “It is a coercive writ which orders a public official to

perform a **ministerial** duty.” Id. (emphasis added). The Supreme Court has noted the requirements for such an extraordinary writ:

For a writ of mandamus to issue, the following must be shown: (1) a duty of the Respondent to perform the act; (2) the ministerial nature of the act; (3) the Petitioner’s specific legal right for which discharge of the duty is necessary; and (4) lack of any other legal remedy. Id., 383 S.C. at 96, 678 S.E.2d 412, 419 (citations omitted). In the instant case, Respondents contend that Petitioner cannot meet any of the four requirements, but would focus this Court’s attention on the last requirement. The sole means for a collateral attack on conviction is an application for post-conviction relief (PCR). Under the Uniform Post-Conviction Procedure Act, PCR takes the place of all other remedies and “shall be used exclusively in place of them.” S.C. Code §17-27-20(b). Accordingly, a writ is unavailable.

Further, the act is not ministerial in nature and the State has no duty to perform a requested act. Finally, Petitioner has no legal right to the act being performed as undoubtedly, the trial court has the power to hear cases based on the charge of murder.

Laches

The doctrine of laches bars the petition. Absent some explanation or justification for the delay in seeking relief, laches will prevent an individual from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the petitioner’s claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981); Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979). Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002).

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement “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." McElrath, 276 S.C. at 283. The instant case represents Petitioner's inappropriate attempt to circumvent the prohibitions against successive applications and avoid the one year statute of limitations for post-conviction relief. Accordingly, dismissal on the grounds of laches is appropriate.

CONCLUSION

This motion is made pursuant to applicable statutory and case law of the State of South Carolina, as well as applicable South Carolina Court Rules, including, but not limited to, Rule 12 (b) (2), (4) and (5); and in the alternative Rule 12 (b)(6) of the South Carolina Rules of Civil Procedure; and upon such affidavits, information or matters outside the pleadings filed and/or to be filed with the Court should the Court convert this motion to one for Summary Judgment pursuant to Rule 56, SCRCP, FOR WHICH SPECIFIC NOTICE IS HEREBY GIVEN TO ALL PARTIES; and upon such additional evidence, information, and argument as the Court may receive.

Accordingly, Respondents request that this petition be dismissed with prejudice.

[FULL SIGNATURE BLOCK ON THE FOLLOWING PAGE]

Respectfully submitted,

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JOHN W. McINTOSH
Chief Deputy Attorney General

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Senior Assistant Deputy Attorney General

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By: 
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Columbia, South Carolina

November 19, 2012

STATE OF SOUTH CAROLINA)
 COUNTY OF ANDERSON)
)
 Gavin V. Jones, #259726,)
 Petitioner,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2012-CP-04-0861

**RETURN TO PETITIONER'S
 "MOTION TO ALTER AND AMEND
 JUDGMENT RULE 59(E)"**

Respondent, by and through undersigned counsel, making its Return to Petitioner's "Motion to Alter and Amend Judgment Rule 59(E)," would respectfully show unto this Court:

I.

Gavin V. Jones (Petitioner) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. During its January 1999 term, the Anderson County Grand Jury indicted Petitioner for Murder (1999-GS-04-59). David Stoddard, Esquire, represented him. On July 12-15, 1999, Petitioner proceeded to trial before the Honorable H. Dean Hall and a jury, where he was convicted as indicted. Judge Hall sentenced Petitioner to a term of life imprisonment without the possibility of parole.

Petitioner filed a timely notice of appeal. Assistant Appellate Defender Tara S. Taggart of the South Carolina Office of Appellate Defense represented Petitioner and perfected an *Anders*¹ brief on his behalf. Thereafter, the South Carolina Court of Appeals dismissed the appeal. *State v. Jones*, Op. No. 2001-UP-55 (S.C. Ct. App. Filed July 11, 2001). Thereafter,

¹ *Anders v. California*, 386 U.S. 738 (1967).

Petitioner filed a Petition for Rehearing, which was denied on August 23, 2001. Subsequently, Petitioner filed a *pro se* Petition for Writ of Certiorari in the Supreme Court of South Carolina, which was denied on January 24, 2002.

2002-CP-04-1817

Petitioner then filed an application for post-conviction relief on July 6, 2002. In his application, Petitioner set forth the following allegations:

1. Counsel was ineffective for presenting and failing to object to evidence of the Applicant's use of drugs;
2. Counsel was ineffective for failing to present evidence that the crime was committed by someone else; and
3. Ineffective assistance of appellate counsel.

Thereafter, Petitioner filed a *pro se* document entitled "Applicant's Additional Supplemental to Original Post-Conviction Relief Application" on August 6, 2002. In this amended application, Petitioner raised the following allegations:

1. Counsel was ineffective for failing to properly and thoroughly impeach State witnesses Joshua Stewart and Shirley Rainey with their out-of-court statements;
2. Counsel was ineffective for failing to object to the trial court's circumstantial evidence instruction to the jury;
3. Counsel was ineffective for failing to object to the Solicitor's improper hypothetical questions to the medical examiner;
4. Counsel was ineffective for failing to present favorable witnesses and evidence in the Applicant's defense;
5. Counsel was ineffective for failing to object to the admission of irrelevant evidence;
6. Counsel was ineffective for failing to adequately cross-examine State witnesses; and
7. Appellate counsel was ineffective for failing to raise in a merits brief that the trial court erred in allowing the State to bolster testimony of Jackie Sanders with her consistent out-of-court statement.

Petitioner again amended his application in a document captioned "Applicant's Supplement to Original Post-Conviction Relief Application" on September 13, 2002. In this amendment, he raised the following additional ground for relief:

1. Because the Solicitor failed to comply with the procedures that are laid down by the courts, the trial court did not have jurisdiction to entertain the Applicant's case and convict him.

Respondent made its Return on June 9, 2004, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on December 15, 2004, at the Anderson County Courthouse. Petitioner was present at the hearing and proceeded *pro se*. Assistant Attorney General Christopher L. Newton of the South Carolina Attorney General's Office represented Respondent. By Order dated February 9, 2005, the Honorable J. Cordell Maddox, Jr., denied and dismissed the application with prejudice. Thereafter, Petitioner filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRPC, which Judge Maddox denied on March 5, 2005.

Petitioner filed a timely notice of appeal. Assistant Appellate Defender Aileen P. Clare of the South Carolina Office of Appellate Defense represented Petitioner and perfected an appeal on his behalf. On November 16, 2005, the Supreme Court of South Carolina denied Petitioner's Petition for Writ of Certiorari. The Remittitur was issued on December 2, 2005.

Thereafter, Petitioner filed a *pro se* document in the Circuit Court entitled "Motion for New Trial Based on After Discovered Evidence of Unconstitutional Grand Jury Proceedings" on November 5, 2008. On October 7, 2009, Judge Maddox denied Petitioner's Motion for New Trial and again dismissed Petitioner's post-conviction relief action.

Petitioner appealed from this Order on October 9, 2009, and filed a *pro se* Petition for Writ of Certiorari on February 16, 2010. By Order dated May 13, 2011, the Supreme Court of

South Carolina denied Petitioner's Petition for Writ of Certiorari. The Remittitur was issued on June 1, 2011.

3:06-788-TLW-JRM

Petitioner filed a Petition for Writ of Habeas Corpus on March 24, 2006, in the United States District Court for the District of South Carolina. In his Petition, Petitioner alleged the following grounds:

- Ground One:** Lower Court erred in failing to grant a directed verdict where [sic] evidence was constitutionally insufficient.
- Supporting Facts:** States case was wholly circumstantial, there was no DNA, no forensics, no eyewitness, no fingerprints to place Petitioner at the scene. Coroner did nothing scientific to determine time of death thus giving the State a 6 hr window. State used testimony Petitioner had money days after crime to say he robbed the victim.
- Ground Two:** Counsel was constitutionally ineffective for failing to bring fourth [sic] evidence of third party guilt.
- Supporting Facts:** Counsel admitted during PCR that he only perused the evidence concerning third party guilt the day before trial. Sam Mackey committed murder and a suicide after he was asked [if] he killed the victim. Sam Mackey's nephew gave Statement that Mackey said it was a hit and he was paid . . . to kill victim.
- Ground Three:** Counsel was constitutionally ineffective for failing to ask for an alibi charge.
- Supporting Facts:** Before trial counsel sent a notice of alibi to the State no State witness place Petitioner at the scene during the time period victim was killed. Counsel's defense was to show his client was not at the scene and Petitioner told counsel [sic] from the beginning as counsel . . . at PCR that I was innocent and wasn't there.
- Ground Four:** Counsel was constitutionally ineffective for not pointing out to jury that unseemingly [sic] stain was not blood.
- Supporting Facts:** All of Petitioner[s] clothing was tested by SLED lab and his shirt the State reported no blood identified. However the shirt had two stains that appeared to have dried blood circled with a permanent marker this shirt went back to the

jury. Detective testified when he 1st received shirt there were no stains on shirt.

On June 15, 2006, Respondent filed a Return and Motion for Summary Judgment. By Order dated March 23, 2007, the District Court granted Respondent's Motion for Summary Judgment and dismissed the Petition with prejudice.

On April 26, 2007, Petitioner filed a Notice of Appeal and Request for Certificate of Appealability to the United States Court of Appeals for the Fourth Circuit. The United States Court of Appeals for the Fourth Circuit subsequently denied the certificate of appealability and dismissed the appeal on July 31, 2007. Petitioner subsequently petitioned for rehearing *en banc*, which was denied on September 24, 2007.

II.

Thereafter, on March 14, 2012, Petitioner filed a document captioned "Petition for Writ of Mandamus." In his Petition, Petitioner argues "The State Tried and Convicted the Petitioner for an Unindicted Murder Offense." Petitioner contends the indictment charging him with murder, dated January 5, 1999, is in direct violation of an Order from the South Carolina Supreme Court cancelling the Anderson County General Sessions Court for that day. On November 19, 2012, Respondent made its "Notice of Motion and Motion to Dismiss Pursuant to Rules 12 and 4, SCRCPC and Laches," seeking summary dismissal of the petition. On February 20, 2014, a motions hearing was held before this Court. Petitioner was present at the hearing and

represented by Rodney W. Richey, Esquire². By written Order signed February 6, 2018, and filed February 9, 2018, this Court denied and dismissed the Petition.

On April 11, 2018³, Petitioner filed this "Motion to Alter or Amend Judgment." Respondent received said Motion on April 16, 2018. This Return follows.

III.

In his "Motion to Alter or Amend Judgment Rule 59(E)," Petitioner asserts that the Court's Order overlooks "very important Facts and law . . . as well as the State never addressed amended portion of Mandamus filed 2013." Specifically, Petitioner contends "although subject matter contained in the charging instrument upon which he was tried and convicted appears to be correct he was nevertheless tried and convicted without a **PROPER** and/or lawfully **VALID INDICTMENT**." Moreover, Petitioner takes issue with the grand jury process itself, referring to the process as "*ex parte* hearings."

Respondent submits this Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. *See also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits this Court fully ruled on all issues presented through Petitioner's writ of mandamus and, therefore, Petitioner's "Motion to Alter or Amend Judgment 59(E)" should be denied. As each

² At the onset of the hearing, Mr. Richey informed this Court that Petitioner had moved to relieve counsel, and this Court permitted Petitioner to present his argument *pro se*. Thereafter, this Court granted Petitioner's motion to relieve his counsel.

³ "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC (emphasis added). The Order dismissing Petitioner's Writ of Mandamus was signed February 6, 2018, and filed February 12, 2018. Subsequently, Petitioner was served with a copy of this Order February 15, 2018. Therefore, Petitioner should have filed this motion on or before February 26, 2018. This motion was not filed until April 11, 2018, well after the requisite filing period.

allegation was addressed fully in the Order, Respondent submits Petitioner's assertions are without merit.

IV.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

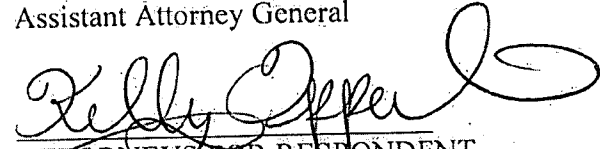
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April 30, 2018.

STATE OF SOUTH CAROLINA)
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 COUNTY OF SPARTANBURG)
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 Gavin v. Jones, # 259726)
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 Applicant,)
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 Respondent.)
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IN THE COURT OF COMMON PLEAS

2012-CP-04-0861

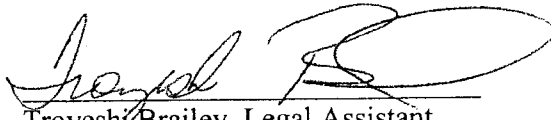
AFFIDAVIT OF SERVICE BY MAIL

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 JAN 14 2020
 SC Court of Appeals

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Notice of Motion and Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Gavin V. Jones, # 259726
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

DATED this 19th day of November, 2012



 Troyeshi Brailey, Legal Assistant
 For Respondent