

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
HONORABLE R. LAWTON MCINTOSH, CHIEF ADMINISTRATIVE JUDGE

2020-CP-37-0695

Dennis M. Temple, SCDC # 274802

Appellant,

v.

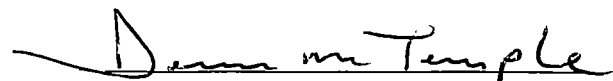
State of South Carolina,

Respondent,

EXPLANATION

Bishopville, South Carolina

December 14, 2021
Dated:



Dennis M. Temple, SCDC # 274802
Lee Correctional Institution F6A-2154
990 Wisacky Highway
Bishopville, South Carolina 29010

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S.C. SUPREME COURT

STATEMENT OF THE CASE

(1). This matter comes before the Court by way of Post-conviction relief (PCR) action commenced by Dennis Maurice Temple (Applicant) on January 18, 2020 proceeding pro se. Applicant second Post-Conviction Relief action raised the following claims: [1] "ineffective of Assistance of counsels," [2] "Schmerber v. California" Hearing Claim and [3] Applicant moves the court for a new trial because the State of South Carolina notified him 1 year and 10 months after direct appeal that his July 16, 2010 preliminary hearing transcript does not exist. Applicant requested that the conviction and 100 years sentences to be vacated and request a new trial.

The State of South Carolina is represented by the Attorney General Office. The State made a late return on September 14, 2021, requesting the action to be summarily dismissed because it was filed after the 1 year statute of limitation had expired; it is successive to Applicant's prior PCR actions; it is barred by res judicata; for failing to state a cognizable claim under the the PCR Act, and because continued litigation by Applicant frustrates the need for finality of litigation. The PCR Court issued a conditional order of dismissal signed September 21, 2021, and filed on September 23, 2021, provisionally denying and dismissing this action, while giving Applicant twenty days from the date of service of said order in which to show why the dismissal should not become final. Attached to this Final order and incorporated therein by reference was an affidavit of service dated October 7, 2021, serving the conditional order of dismissal on Applicant.

October 4, 2021, Applicant filed a motion requesting a thirty-day extension of time in which to file a response to the conditional order of dismissal. He subsequently filed a response on October 27, 2021, which is incorporated herein. The State filed a proposed Final order. Applicant filed objections to the state's proposed Final order of Dismissal. On November 17, 2021 the Chief Administrative Judge R. Lawton McIntosh issued a Final Order of Dismissal denying applicant's second Post-conviction relief action with prejudice.

As of now, applicant is filing this Notice of Appeal with a Explanation pursuant to the South Carolina Appellate Court Rule 203, and 243, which requires an applicant seeking to appeal a unfavorable dismissal in PCR court to file an Explanation along with the Notice of Appeal. The state of South Carolina alleges this Post-Conviction Relief Action is barred as Successive, untimely under the Statute of Limitation, it is barred by res judicata, failure to state a claim and frustrates the need for finality of litigation.

The Applicant alleges that State of South Carolina has not demonstrated or shown the absence of genuine issues of material facts to bar his second PCR action regarding his Second PCR grounds, claims and defenses, which are refuted by the applications, record and pleadings. As a result, the PCR Court has erred in granting the State of South Carolina Final Order of Dismissal as follows: The applicant is entitled to relief.

FACTUAL AND PROCEDURAL HISTORY

(2). In April 2010, Applicant, Dennis Maurice Temple a 38 year- old black male from Seneca, South Carolina began a small business buying products at low prices and reselling them at higher prices. His business began to do well and he had limited room to storage his products. Applicant decided to rent a storage unit. He researched different storage facilities. Applicant selected the All Safe Storage in Seneca, South Carolina because of its security features, surveillance and location it advertised.

(3). On May 2010, Catherine Mcgough a 19 year-old white female Clemson University Student rented a storage unit at the All Safe Storage in Seneca, South Carolina. On May 10, 2010, Catherine Mcgough alleged in her seven (7) page sworn written statement to police at the Oconee Medical Center paraphrased as follows:

“ On May 9, 2010 I arrived at my storage unit at the All Safe Storage Unit in Seneca, South Carolina at 4:30 p.m. When I noticed a black man between the age 20 to 40 walking on site without a car. I became nervous and he tried to sell me some shoes, but I did not want to buy. He then beat me up, dragged me into his storage Unit where he raped me, cleaned me with a blue cloth and left me inside his storage unit tied up. Ultimately, I freed myself and found a cell phone inside the storage unit.

I then called 911 and a Oconee County Sherriff Officer rescued me from the storage unit. Afterwards, I was taken to the Oconee County Medical Center.

(APP. 789 – App. 795. see. Catherine Mcgough Statement. Exhibit # 11.

NOTE : Catherine Mcgough sworn written statement to police at the Oconee Medical Center which, (1) never mention Applicant's name Dennis Temple, (2) victim statement never alleged she identified Applicant in a six man photo lineup, (3) the alleged victim's statement never connected storage Unit # 193 to any criminal activity; (4) the victim's statement never connected Applicant to any criminal activity; (5) the alleged victim statement was the only source of Sergeant, Scott Arnold information and belief provided in the arrest warrants affidavit, which was submitted to Magistrate Judge Blake Norton on May 10, 2010. In support of the arrest warrants, (6) there was no probable cause to arrest Applicant for committing these offenses against the alleged victim Catherine Mcgough.

(4). Later that day, On May 10, 2010 a Oconee County Sherriff's Officer named Sergeant, Scott Arnold went before Magistrate Judge Blake Norton requesting the issuance of three (3) arrest warrants for applicant's arrest for committing the crimes of Grand Larceny more than \$5,000; Kidnapping and Criminal Sexual Conduct 1st degree at the All Safe Storage in Seneca, South Carolina.

GRAND LARCENY ARREST WARRANT

(5). On May 10, 2010 Sgt. Sergeant Scott Arnold swears in his arrest warrant affidavit for Grand Larceny as following :

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

"THE DEFENDANT DID, ON 05-09-10, WITH THE INTENT TO PERMANENTLY DEPRIVE THE OWNER, TAKE AND CARRY AWAY A HONDA ACCORD, WEST VIRGINIA TAG #NL3593, VALUED AT MORE THAN \$5,000, WHICH BELONGED TO CATHERINE MCGOUGH. THIS INCIDENT OCCURRED AT 600 SHILOH RD, SENECA, SC, IN OCONEE COUNTY AND WAS INVESTIGATED BY OCSO. A WRITTEN REPORT IS ON FILE. CASE # 1012105:

(App. 797)

KIDNAPPING ARREST WARRANT

(6). On May 10, 2010 Sgt. Scott Arnold swore in his arrest warrant affidavit for Kidnapping as following:

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID, ON 05-09-10, UNLAWFULLY AND WITHOUT AUTHORITY TO DO SO, ABDUCT, CONFINE AND INVEIGLE THE VICTIM, CATHERINE MCGOUGH, AGAINST HER WILL WHILE ACCOMPANIED BY AGGRAVATED CIRCUMSTANCES. THIS DEFENDANT DID FORCE THE VICTIM FROM HER STORAGE UNIT, UNIT 177, TO HIS PERSONAL STORAGE UNIT, UNIT 193, WHERE HE COMMITTED THE CRIME OF CRIMINAL SEXUAL CONDUCT AGAINST THE VICTIM. THE VICTIM WAS TIED UP AND LEFT INSIDE THE DEFENDANT'S STORAGE UNIT. THIS INCIDENT OCCURRED AT 600 SHILOW RD, SENECA, SC IN OCONEE COUNTY AND WAS INVESTIGATED BY OCSO. A WRITTEN REPORT, PHOTOGRAPHS AND STATEMENTS ARE ON FILE. CASE # 1012105.

(App. 796)

CRIMINAL SEXUAL CONDUCT ARREST WARRANT

(7). On May 10, 2010 Sgt. Scott Arnold swore in his arrest warrant affidavit for Criminal Sexual Conduct, 1st degree as following:

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

"The Defendant Did, on 05-09-10, while committing the crime of Kidnapping engage in Sexual Battery upon the victim Catherine MCGOUGH, by performing sexual intercourse on the victim against her will. The Defendant Did, while at Unit 193. All Safe Storage, 600 Shiloh RD. Seneca, SC in Oconee County force sexual intercourse with the victim, victim was transported to OMC for examinations. Investigated by OCSO. (A written Report. Photograph and statement are on file. case # 1012105.

(App. 798)

(8). Sgt. Scott Arnold affidavits stated his information and belief was a written report, photographs and a statement. We searched the trial files received from Solicitor, Christina Adams and Assistance Solicitor, Lindsey Simmons the documents disclosure,

pursuant to Applicant Rule 5, discovery request. The only written report, photographs and statement on file before and on the day of applicant's arrest. On May 11, 2010 was a seven page sworn written statement by Catherine MCGough, a photographs of six (6) black males. There was no supplemental oral testimony or written report on file before or on the day of Applicant's arrest by Lieutenant Greg Reed on May 11, 2010.

see. Photo lineup at. Exhibit # 12.

PRELIMINARY HEARING

In a preliminary hearing, the state must show that there was "probable cause" to arrest the defendant for the commission of some crime. Absent this showing, the charge must be dismissed. **State v. McClure**, 277 S.C. 432, 289 S.E.2d 158 (S.C. 1982). The defendant's right to request a preliminary hearing is provided solely by state statute. It is not required by either the state or Federal Constitution and is not necessary before a grand jury can indict a person for a crime **State v. Irby**, 166 S.C. 430, 165 S.E. 912 (1932). South Carolina statutory law specifically provides that an accused may be brought to trial under indictment by a grand jury without a preliminary hearing in some cases. **State v. Nesmith**, 213 S.C. 60, 48 S.E.2d 595 (1948). The indictment itself constitutes a finding of probable cause and thus avoids the need for a preliminary hearing. **U.S. V. Werbrock**, 589 F.2d 273 (7th Cir. 1978) cert den. 400 U.S. 962, 99 S.Ct. 1507, 59 L .Ed. 2d 776.

FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION

Section 1. All persons born or naturalized in the United States and subject to the Jurisdiction thereof, are citizens of the United States and of the State are wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES CONSTITUTION, 4TH AMENDMENT SEARCH AND SEIZURES

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

S.C. CONSTITUTION ARTICLE 1, SECTION 10, SEARCHES AND SEIZURES; INVASIONS PRIVACY

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place or thing to be searched, the person or to be seized, and the information to be obtained.

THE SEARCH

The Constitutions of the United States and the State of South Carolina require that Search warrants be " supported by Oath or affirmation." U.S. Const. Amend. IV; S.C. Const. Art. Section 10. This is minimum standard and State legislatures are free to enact stricter requirements for the issuance of search warrants. State v. York, 250 S.C. 30, 156 S.E.2d 326 (1967).

The South Carolina General Assembly has enacted a requirement that search warrants may be issued " only upon affidavit Sworn to before the magistrate... establishing the grounds for the warrants," S.C. Code Ann. section 17-13-140 (1985). A search warrant may still be defective under statute. State v. McKnight, 289 S.C. 167, 337 S.E.2d 208 (1987).

In addition, the statutory requirement that all proceeding before magistrate in criminal cases shall be commenced on information under Oath plainly and substantially setting forth the offense charged, upon which and only which, shall a warrant of arrest issue," cannot be waived. Town of Honea Path v. Wright, 194 S.C. 461, 9 S.E.2d 924 (S.C. 1940); S.C. Code Ann § 22-3-710 (1976); Gist v. Berkeley County Sherriff's Department, 336 S.C. 611, 521 S.E.2d 163 (1999). The purpose of the statute requiring that a warrant be issued only upon affidavit is to provide for timely recording of facts presented to a judicial officer. State v. Sachs, 264 S.C. 541, 216 S.E.2d 501 (S.C. 1975). A warrant affidavit is " insufficient in itself to establish probable cause may be supplement before a magistrate by Sworn oral testimony" State v. Crane, 296 S.C. 336, 372 S.E.2d 587 (1988). However, a warrant issued upon a statement of facts not Sworn to is unconstitutional. State v. Wimbush, 9 S.C. 309 (1878).

An affidavit is a voluntary ex parte statement reduced to writing and Sworn to or affirmed before some person legally authorized to administer an oath in that an affidavit consists of a statement of fact which is Sworn to as the truth. While an Oath is a pledge. While a Sworn, oral statement may be sufficient to satisfy the Constitutional requirement for Oath or affirmation, it does not satisfy the statutory requirement of an affidavit. **State v. Knight**, 289 S.C. 167, 337 S.E.2d 208 (1987).

South Carolina is one of the Jurisdictions allowing affidavit set out on information and belief. When the facts are set out on information and belief, the affiant is required to show the source of his knowledge. S.C. Code of Laws § 61-2-220 et seq. (1976); **State v. York**, 250 S.C. 30, 156 S.E. 2d 326 (1967); **State v. Hill**, 245 S.C. 76, 138 S.E.2d 829 (1964); **Illinois v. Gates**, 402 U.S. 213, 238, 103 S.Ct. 2317, 76 L. Ed. 2D 527 (1983).

STANDARD OF REVIEW BY MAGISTRATE JUDGE

In determining the existence of probable cause “ the task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him... , including the “ veracity” and “ basis of knowledge “ of persons supplying hearsay information, there is a fair probability that... evidence of a crime will be found in a particular place.” **State v. Herring**, 387 S.C. 201, 212, 692 S.E.2d 490, 495-96 (2009).(quoting **Illinois v. Gates**, 462 U.S. 213, 238, 103 S.Ct. 2317,2332, 76 L.Ed.2d 527 (1983) for a magistrate to properly perform this function, the affidavit must contain adequate supporting facts about the underlying circumstances to show that probable cause exists. **United States v. Weaver**, 99 f.3d 1372, 1377 (6th Cir. 1996). A magistrate’s findings are entitled to great deference and ‘ the duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed.” **Gates**, 462 U.S. at 238, 103 S.Ct. 2317. Yet, “ the court must... insist that the magistrate perform his neutral and detached function and not serve merely as a rubber stamp for police.” **Aguilar v. Texas**, 378 U.S. 108, 111, 84 S.Ct. 1504, 12 L.Ed. 2d 723 (1964). A such “deference to the issuing magistrate... is not boundless.” **United States v. Leon**, 468 U.S. 897, 914, 104 S.Ct. 3405, 82 L. Ed 677 (1984).

In this present case, the three arrest warrants affidavit by Sgt. Scott Arnold set forth know facts as to why police believed Applicant committed the crimes. **State v. Smith**, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990); **State v. Baccus** , 367 S.C. 41, 625 S.E.2d 216 (S.C. 2006); **State v. Jenkins**, 398 S.C. 215, 727 S.E. 2d 761 (S.C. App. Ct. 2012). The magistrate’s action

cannot be a mere ratification of the bare conclusions of other,” Illinois v. Gates, 462 U.S. at 239, 103 S.Ct. 2317 (1983); State v. Viard, 276 S.C. 147, 276 S.E.2d 531 (1981), the affidavits in this case lacks specificity and contains nothing more than conclusory statements. The affidavit must set forth particular facts and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter.” 367 S.C. at 50-51, 625 S.E.2d at 221 (citing Franks v. Delaware, 438 U.S. 154, 165, 98 S.Ct. 2674, 57 L.Ed. 667 (1978)). The affidavit in this case fails to meet the requirement of showing why police believed Applicant committed the crimes.

Sgt. Scott Arnold affidavits are not based on personal knowledge, but on information and belief. There is a statutory requirement that an affidavit on information and belief must set forth the source of affidavits information is to the end that the magistrate may judicially weigh not only information, but the source thereof, in determining whether or not there is probable cause for the issuance of the warrant. see. S.C. Code of Laws § 61-2-220 et seq. (1976). State v. York, 250 S.C. 30, 156 S.E.2d 326 (1967). State v. Sachs, 264 S.C. 541, 216 S.E.2d 501 (S.C. 1975); States v. Hill, 245 S.C. 76, 138 S.E.2d 829 (1964). Illinois v. Gates, 462 U.S. at 230, 103 S.Ct. 2317 (1983).

In this case, Sgt. Scott Arnold stated his source of his information and belief (or basis of knowledge) at the end of his affidavit statements in all three arrest warrants stating... “ a written Report, Photographs and statements are on file.” This may satisfy the source of information and belief requirement; however, the affidavit does not contain even a conclusory assertion that the information is reliable and that its source is credible. Illinois v. Gates, 462 U.S. at 238, 103 S.Ct. 2317 (1983). (stating the circumstances a magistrate must consider include the “ veracity ” of the persons supplying the information on which the warrant is based), without any information concerning the credibility of the informant and the reliability of his information, the inferences from the facts which lead to the complaint will be drawn not by a neutral and detached, but instead, by a police officer engaged in the often competitive enterprise of ferreting out crime...” State v. Johnson, 302 S.C. 243, 248, 395 S.E.2d 167 (1990). citation and quotation marks omitted).

Moreover, when these arrest warrants were issued by the Magistrate Judge Blake Norton on May 10, 2010. The only “ **Written Report, Photographs and Statement** on file was the

alleged victim's seven (7) page statement and a photo lineup of six black males; however, this Sworn written statement by the alleged victim or the source of Sgt. Scott Arnold information and belief: (1) the victim statement never mention Applicant name Dennis Temple, (2) victim statement never alleged she identified Applicant as the assailant in a six man photo lineup, (3) the victim's statement never connected storage Unit # 193 to any criminal activity); (4) the victim's statement never connected Applicant to any criminal activity; (5) the alleged victim statement was the only source of Sergeant, Scott Arnold information and belief provided in the arrest warrants affidavit. That was submitted to Magistrate Judge Blake Norton on May 10, 2010. (6) there was no probable cause to arrest applicant for the offenses.

Therefore, the information that was included in Sgt. Scott Arnold's affidavit that was never mentioned in the statement by the alleged victim (or source of information) was misleading and false. In Young, the court stated that, " A facially valid search warrant will be found to violate the fourth Amendment if it contains false or misleading statements that are necessary to the finding of probable cause." see. Wilkes v. Young, 28 f.3d 1362, 1365 (4th cir. 1994), cert. denied, 513 U.S. 1151 (1995)(quoting Franks v. Delaware, 438 U.S. 154, 156 (1978)).

Viewing these deficiencies, the conclusionary and false statements, the failure of magistrate Judge Blake Norton to state facts ascertaining the alleged victims Catherine Mcgough's credibility and reliability together and considering the totality of the circumstances. We find that Sgt. Scott Arnold did not provide the Magistrate Judge Blake Norton a substantial basis on which to find probable cause to believe applicant committed these crimes. That Sgt. Scott Arnold committed perjury and fraud upon the court and illegally arrested the Applicant. Magistrate Judge Blake Norton served as a rubber stamp for the police, by neglected his duties, and assisted the police in illegal arrest, which show partiality and unfairness in this case.

MAGISTRATE JUDGE BLAKE NORTON

(9). On May 10, 2010 Magistrate Judge Blake Norton issued the three (3) arrest warrants for applicant's arrest for committing the crimes of Grand Larceny, more than \$5,000; Kidnapping and Criminal Sexual Conduct 1st degree, arrest warrants numbers:

N- 136668, N-136669 & N-136670 at the All Safe Storage in Seneca, South Carolina.

(10). On May 11, 2010 Applicant was arrested by the Oconee County Sherriff's officer Lieutenant Greg Reed for allegedly committing the crimes of Grand Larceny, more than \$ 5,000; Kidnapping; and Criminal Sexual Conduct, 1st degree at the All Safe Storage in Seneca, South Carolina. Where he was detained in the Oconee County Detention Center.

FOX CAROLINA NEWS REPORT

(11). On May 11, 2010. Fox Carolina News stated the following on television quote: Greenville S.C.-- Oconee Sherriff's Office investigators have arrested a man sought in the abduction and sexual assault of a 19- year-old Clemson University student who said the man tied her up and locked her inside his storage unit.

Sherriff's officials said Dennis Maurice Temple, 37 turned himself in to authorities on Tuesday. He was in custody Tues night and scheduled for a Bond hearing on Wednesday.

Warrants had been issued for his arrest on charges of Kidnapping , first-degree criminal sexual conduct and grand larceny of a motor vehicle.

Sherriff's official were called to All- Safe Storage at 600 Shiloh Road in Seneca at about 1 a.m. Monday, they said. They forced their way into one of the storage units and found the woman. She told deputies that she had been delivering items to a unit on Sunday night when she was abducted, sexually assaulted, bound and locked up in his unit. She was able to free herself and called 911, sheriff's officials said.

The man took off in her 1998 Honda Accord, they said. Anderson County deputies found the car on wellborn Drive near Pendleton on Tuesday. Temple was being held on \$200,000 Bond.

see. Exhibit # 13.

MAGISTRATE JUDGE BLAKE NORTON

(12). On May 12, 2010 applicant was taken before Magistrate Judge Blake Norton. Judge Norton issued a \$200,000 bond against applicant to gain his freedom on the Grand Larceny, more than \$5,000; Kidnapping and Criminal Sexual Conduct, 1st degree charges.

(App. 803-804)

(13). Applicant was unable to post bail on the \$200,00 bond and remained detained in the Oconee County Detention Center. However, applicant made arraignment for a friend named, Millie Forrester to pay over \$1,000 to Robert Mills Arial Jr. to get him a Bond Reduction on the \$200,000 Bond.

JUDGE R. LAWTON MCINTOSH

(14). On May 20, 2010, a hearing was held before Judge R. Lawton McIntosh. (App. 1) Lindsey Simmons represented the State, and applicant appeared pro se. **[Upon personal knowledge, the transcript contains a scrivener's error: this hearing was held May 20, 2010, not May 20, 2012].** The purpose of the hearing was to test applicant for Sexual transmitted diseases under S.C. Code Ann. § 16-3-740. Applicant indicated that he chose to represent himself based upon "[p]rior experience with attorneys from Oconee County." (App. 2, ll. 17-20) Judge McIntosh found that applicant freely, voluntarily, and knowingly waived his right to an attorney in the limited context of the hearing. (App. 3 . ll. 13-19) Pursuant to the statute, a finding of probable cause was necessary before testing could be completed. Therefore, the State offered the testimony of Sergeant, Scott Arnold, who claimed that the alleged victim, C.M., identified applicant out of a six- picture photo lineup. (App. 6 l. 6.) Judge McIntosh's finding were as follows:

First, I'm going to find that the victim did make a request for these tests under statute, there's probable cause to believe that [applicant] committed this offense, and further, there's probable cause to find that there were body fluids transmitted and that [applicant] received proper notice of this petition as well as waived his right to have an attorney represent him in this matter. I am going to grant the motion and sign the order as we speak. (App. 7 ll. 2 -10).

ATTORNEY ROBERT MILLS ARIAIL JR.

(15). In May 2010, applicant was called out of the cell at the Oconee County Detention Center to talk with attorney, Robert Mills Ariail Jr. That's when Arial Jr. told Applicant that he had scheduled for a bond reduction hearing that month, but due to the media coverage of the case on the news. Ariail Jr. rescheduled the hearing for June 2010.

(16). On or about June 7, 2010 Applicant filed a Motion for Discovery and Inspection as well as Brady Material under Rule 6 with the Oconee County Clerk of Court regarding **State v. Dennis Temple** , arrest warrants # N-136668, Grand Larceny, more than \$5,000; N-136669 Kidnapping ; and N-136670, Criminal Sexual Conduct 1st degree.

(17). On June 30, 2010 applicant appeared before General Session Court in Oconee County for the Bond Reduction Hearing regarding the Grand Larceny, more than \$ 5,000; Kidnapping and Criminal Sexual Conduct, 1st degree charges before Judge Alexander Macaulay. App. 9. Solicitor, Christina Adams and Assistance Solicitor, Lindsey Simmons appeared on behalf of the State, and Robert Mills Ariail Jr. represented applicant. At that hearing, applicant was brought into the court room. Robert Mills Ariail Jr. took Applicant into a jointing room in the court and told applicant that the judge was going to take his current \$ 200,000 bond. That Applicant must to go before the judge and say he withdraw his bond reconsideration. App. 12 ll. 2 -3. However, Robert Mills Ariail Jr. reviewed the alleged victims Catherine Mcgough's statement that never stated she identified applicant in a photo lineup, (1) never stated Applicant's storage Unit # 193 was involved in any criminal activity; (2) never stated that Applicant (Dennis Temple) was identified as the assailant in a six man photograph lineup, (3) the victim's statement never connected Applicant to any of the criminal activity related to the offenses. (4) but applicant was arrested and detained and received a \$200,000 bond to gain his freedom for allegedly committing the crimes. Robert Mills Ariail Jr. did not inform his client(applicant) about Catherine Mcgoughs statement to police and mislead him. Solicitor, Christina Adam and Assistance Solicitor Lindsey S. Simmons had not disclosed the alleged victims statement to the applicant pursuant discovery yet. Judge Macaulay waived the application for the Public Defender's office and ordered Wilson Burr meet with Applicant to start his representation. That same day, applicant wrote Robert Mills Ariail Jr. a letter requesting his Bond Reduction money back for failing to get him a Bond Reduction. Later, Ariail Jr. wrote Applicant back, stating that he for filled his agreement with Millie Forrester regarding applicant's bond reduction.

ATTORNEYS, SARAH DRAWDY AND KEITH DENNY

(18). In July, 2010, Wilson Burr and Sarah Drawdy came to the Oconee County Detention Center to visit the Applicant. Wilson Burr, Oconee County Chief Public Defender officer informed applicant that he was appointing Sarah Drawdy as attorney to represent him on the charges and was providing another attorney since this was a high profile case. see. Exhibit # 6.

(19). Sometime, In July 2010 applicant received from the Solicitor, Christine Adams many documents regarding his' discovery request, which included, but not limited to a seven page sworn written statement by the alleged victim Catherine Mcgough, a photo lineup of six black males and a Fox Carolina News report. see. Exhibits # 11, 12, & 13.

(20). That next week, in July 2010, applicant's attorney Sarah Drawdy came back to the Oconee County Detention Center with attorney, Keith Denny to discuss the case with him. applicant told Ms. Drawdy and Mr. Denny that this case is receiving a lot of media attention in the newspapers and on television. As a result, applicant would like for them to file a Motion for a Change in Venue with the court in the case. Applicant made it clear to Ms. Drawdy and Mr. Denny, " that if any motion is filed on his behalf and regarding the state case against him. Then they must inform him first and provide him with a copy of the motion as well. Ms. Drawdy informed the applicant that his case was schedule for a Preliminary Hearing on July 16, 2010. Applicant told Ms. Drawdy and Denny that on May 10, 2010. That the alleged victim Catherine Mcgough wrote a seven (7) page Sworn written statement to police at the Oconee Medical Center, detailing the incident that happen to her and that she did not alleged he was involved in the crimes against her. Applicant showed his attorneys Sarah Drawdy and Keith Denny the alleged victims statement and told them that photo lineup and did not even involve him or his storage unit in any criminal activity. Ms. Drawdy and Mr.Denny did not say nothing. see. Exhibit # 7.

MAGISTRATE COURT JUDGE WILLIAM DERRICK

(21). On July 16, 2010 a Preliminary hearing was held at the Magistrate Court House in Oconee before Magistrate Judge, William Derrick regarding the arrest warrants that was

issued by Magistrate Judge Blake Norton. Solicitor, Christine Adams, and Assistance Solicitor, Lindsey S. Simmons represented the State. Attorney, Sarah Drawdy and Keith Denny appeared on Applicant's behalf. The Applicant was present as well. Solicitors Adam and Lindsey called Sergeant Scott Arnold to the stand, which he testified that the alleged victim identified Applicant in a six-man photo lineup on May 10, 2010. Moreover, Applicant attorney, Sarah Drawdy and Keith Denny did not raise a fourth Amendment claim regarding the Criminal Sexual Conduct, 1st degree, Kidnapping and Grand Larceny charges that were lodged against their clients, nor did they put up any argument regarding a lack of probable cause for the arrest warrants and seize of his DNA pursuant to a search warrant. see. Exhibit # 8.

JUDGE J. CORDELL MADDOX JR.

(22). On July 29, 2010 another hearing was held before the Judge J. Cordell Maddox, Jr. Roc. 19. Lindsey Simmons appeared on the behalf of the State, and Sarah Drawdy represented Applicant. Applicant had moved to relieve his counsel, Sarah Drawdy and Keith Denny because 1) he previously asked them a question and they told Applicant a lie and; 2) they failed to raise a fourth Amendment claim based on a lack of probable cause to arrest him on the arrest warrants in the preliminary hearing .

The State also had a Motion that Applicant obtain counsel within thirty days of the date of the hearing. According to the State, Wilson " sent the case out of his office to Ms. Drawdy and Mr. Denny." App. 22 ll. 3 – 8. applicant indicated that he had not authorized the court to appoint an attorney. App. 22 ll. 11 -13. Judge Maddox advised applicant against proceeding pro se. App. 23 ll. 18 – 23. Judge Maddox granted both parties' motions. App. 24 l. 21 – App. 25 l. 21.

INDICTMENTS

(23). On September 7, 2010 Applicant was indicted by the Grand Jury on, Count One- Criminal Sexual Conduct 1st degree, Count Two – Criminal Sexual Conduct 1st degree, Kidnapping and Grand Larceny charges. App. 894 – 901.

(24). On September 14, 2010, another hearing was held before the Judge J. Cordell Maddox, Jr. App. 30. Lindsey Simmons appeared on behalf of the State, and Dennis Temple

appeared pro se. At the start of the hearing, the following occurred:

The Court : All right. Yes, ma'am?

Ms. Simmons : Thank you, Your Honor. We are here today in state of South Carolina vs. Dennis Temple. It's an Oconee County case. He has four indictments on 2010- GS-37-00886 through 889. Its two counts of criminal Sexual Conduct in the first degree, kidnapping and Grand Larceny.

On May the 14th of 2010 we filed a motion pursuant to 16-3-740 and served notice on Mr. Temple. That is under the S -T-D testing statute. Judge McIntosh subsequently granted that order and ordered testing on May the 20th of 2010. Mr. Temple has appealed that order and asked that Judge McIntosh reconsider that.

Subsequently to that, Mr. Temple was appointed counsel and had a Preliminary hearing. He was represented by Ms. Drawdy in that matter, and that was on July 16th of 2010.

We filed a Schmerber motion out of an abundance of cation on July 19th, 2010 and served that on his attorneys at the time. The Defendant appeared before Your Honor on July 29, of 2010 for the scheduled Schmerber hearing and to address the issue of representation.

At this time Your Honor relieved Ms. Drawdy and Mr. Denny as his Counsel and gave the defendant 30 days to appear your Honor with an attorney. And the Schmerber issue is still out- standing. App. 32 l. 1 -25 – App. 33 l. 1-3.

In addition, the State claimed that it received a fax from Applicant requesting a speedy trial and indicating that he was going to proceed pro se. (App. 33 ll. 6 -11). Judge Maddox told Applicant that he had a right to represent himself. (App. 33 l. 20 – App. 34 l. 7).

At this hearing, applicant contested the validity of the indictments under the South Carolina Rules of Criminal Procedure. (App. 35 -37). Regarding applicant's representation status, Judge Maddox stated:

Well, see, the option I got is I can let you go forward and sit at the table an represent yourself or I can appoint what's basically in my mind a shadow counsel. In other words, I'll appoint a lawyer to sit there with you. He doesn't represent you. If you are dead set on going and representing yourself then I'm going to appoint somebody to sit with you so that you can answer questions - - you can ask

questions ,they can answer questions. That's only - - that's what I'm comfortable with. App. 39 ll. 10 -19.

Applicant agreed that it would be unwise to represent himself but claimed that past hardship with attorneys who did not act as zealous advocates on his behalf prevented him from proceeding with their representation. App. 39 l. 4 – App. 41 l. 5. Judge Maddox appointed Applicant another attorney:

Well, let me just tell you generic, generic. I'm not talking about your case. If I appointed you Johnny Cochran and he was still alive and he sat down with you and told you that, take this road, and you were going to [take] the other road, that's something you got to work out with your attorney. So every time you got to work out with your attorney. So every time you have a dispute with an attorney you can't come back and ask for another one.

In fact, what I'm going to do is I'm going to appoint you a lawyer. There's a list of lawyers who have agreed to be appointed. They are outside the public defender's office. I don't know who is next on that list but I'm going to appoint them with the caveat that this case is going to be tried December 13th.

Judge Maddox appointed Kurt Tavernier to represent applicant. App. 46 ll. 14 –15.

(25). On September 22, 2010, a Schmerber hearing was held before the Honorable Alexander S. Macaulay.² Chrissy Adams and Lindsey Simmons appeared on behalf of the State, and Kurt Tavernier represented Applicant. (App. 49) Counsel for Applicant stated that blood, buccal swabs, and hair samples were requested. App. 54 ll. 13 -20. Counsel indicated that Applicant refused to consent and would not consent to the issuance of the Schmerber order. App. 54 l. 22- App. 55 ll. 9 – 12. However, counsel for Applicant also sought to suppress any and all DNA which was taken in accordance with a May 13, 2010 search warrant. App. 55 ll. 14 – 22. Based on the premise that those were taken illegally, counsel requested that all of those samples be suppressed and that the search warrant be quashed. App. 56 ll. 2 – 18; App. 57 ll. 9 -14. The State claimed that those samples were never taken to SLED and would not be used. App. 56 ll. 23 – 24.

Judge Macaulay granted applicant's Motion, quashed the search warrant, and suppressed anything obtained. App. 58 ll. 4 -15; App. 59 ll. 2 -6. Counsel renewed applicant's motion that the indictments be quashed, based upon Rule 3(c), SCRCrimP.

App. 62 l. 12 – App. 66 l. 24. Judge Macaulay denied the motion. App. 66 ll. 11-24. applicant’s attorney, Kurt Tavernier failed to raise a fourth Amendment claim on a lack of probable cause on the arrest warrants, which (probable cause) was a requirement for the issuance and seizer of applicant’s DNA pursuant to a Schmerber order.

(26). Another Hearing was held on October 21, 2010 before the Judge J. Cordell Maddox, Jr. with Christine Adams appearing on behalf of the State and Tavernier representing applicant, to “ deal with [applicant’s] representations concerns and issues.” App. 75; App. 77 ll. 10 – 16. Applicant indicated that when Mr. Tavernier was appointed by the court, the court did not “ have [Applicant’s] best interest[s] at stake.” App. 78 ll. 1 – 20. Applicant alleged that Mr. Tavernier threatened his family if he did not plead guilty and also refused to file a motion on his behalf. App. 78 ll. 5 -13. The following conversation took place between Judge Maddox and Applicant:

The Court : Well, what job have you done that was your best? Where did you work that you thought you were most able to do well?

Applicant : I have done welding. I have done plumbing. I’ve done structures.

The Court : Okay. Let me tell you a problem I’ve got. I don’t know anything about welding . And if you were out working welding and I came out and showed you - - and had no idea how to weld and started telling you how to weld, you’d think I was an idiot. And I would be an idiot. What I’m telling you is that, you know, this would be-

Applicant: Are you saying, Your Honor, that I don’t have experience in the law? I have fifteen years’ experience in the law.

App. 79 l. 15 – App. 80 l. 4.

Counsel indicated that Applicant filed a grievance which claimed that he threatened to kill him and his family. App. 81 ll. 13 -24. When asked whether he wanted to represent himself or hire an attorney, Applicant stated:

Well, Your Honor, according to the Constitution, the United States Constitution, I am entitled to a defense attorney. Just because the Court, appoint[ed] me an attorney and he has skills in the law, that doesn’t mean he’s using those skills to

defend me. So I still to this day have not been able to defend myself because you refuse to give me a lawyer to defend me, myself. Refuse. I have had no lawyer to defend me yet to this day.

I want Mr. Tavernier off my case because he has no interest, no best interest - - there's no best - - he don't have my best interest at stake. I am furious with his defense. I cannot work with somebody who's not - - have the best interest of my defense.

App. 84 ll. 6 – 14; App. 85 ll. 15 -20.

Judge Maddox order Mr. Tavernier to stay on the case as standby counsel, applicant's objections notwithstanding. App. 90 ll. 8 -21; App. 96 ll. 1 – 9. Judge Maddox told applicant "the biggest mistake you can make is to show up on December 13th representing yourself."

App. 103 ll. 1 -2.

(27). On December 7, 2010, a pretrial hearing was held before Judge J. Cordell Maddox, Jr. (App. 107). Christina Adams and Lindsey Simmons appeared on behalf of the State, and Kurt Tavernier appeared as standby counsel for applicant. At this hearing, State moved for an order to prohibit applicant from offering any evidence of the victims prior sexual conduct and third- party guilt. App. 110- App. 122, l. 9. In addition, applicant moved to suppress the photographic lineup, search warrant, arrest warrants, D.N.A testing conducted pursuant to Schmerber order for lack of probable cause Motion to Dismiss the indictments, Motion to Compel Discovery and request an injunction and declaration judgment against the jail. (App. 122. l.12- App. 181. l. 1. App. 136 l. 7 – App. 137 l. 7.

The State offered the testimony of Lieutenant Greg Reed, and applicant questioned him on cross examination. (App 138 – App. 148). Catherine Mcgough also testified and was questioned by applicant. (App. 148 – 156). At the conclusion of the hearing, Judge Maddox discussed with applicant his right to counsel:

The second to last thing before I talk about what we're going to do on Monday, Mr. Temple, I've gone over exhaustively your right to counsel. I know you and I don't agree on some of these issues. And that's fine. Unfortunately, the law does basically say that we may not agree, but what I say is final. Mr. Tavernier, who has sat here very quietly all day, deserves to know for his preparation if you have changed your mind about whether or not he's going to represent you or whether

you intend on Monday of next week to represent yourself. For my sake, I just need you to tell me, have you changed your mind? You still want to represent yourself?

(App. 182 I. 20 – App. 183 I.7).

Applicant spoke with Mr. Tavernier, and the latter spoke to the court regarding his representation. (App. 186 I. 9 – App. 192 I. 5). Judge Maddox ruled that Applicant was to proceed pro se with Mr. Tavernier to serve as advisory counsel. (App. 192 I. 11 – 17.

(28). On December 13, 2010 J. Cordell Maddox Jr. coerced Applicant to proceed pro se in a Jury trial. App. 191. Chrissy Adams and Lindsey Simmons represented the State, and with Kurt Tavernier serving as standby counsel. App. 191. At trial, Catherine Mcgough testified that around 4:30 p.m. on the afternoon on May 9, 2010, she was putting her dormitory items in her storage unit at All Safe Storage located in Seneca, South Carolina, and then began walking to her car when she encountered a black male (whom she identified as applicant at trial and after viewing a photograph layout after the incident) who wanted her to purchase shoes he was selling at that time. App. 84, 1. 5-p. 124, 1. 7. The State presented over fourteen witnesses in its case against Applicant. Then the State rested its case against Applicant. App. 200- Roc. 600.

(29). On December 15, 2010 Applicant called upon the court to present two witnesses in his defense Catherine Mcgough and Nurse Chapman. After the state rested its case. Judge Maddox, denied applicant to present his witness and sent the case out to the Jury for deliberation. A juror pole of 11 white and 1 black found Applicant guilty on all counts. (App. 646 II. 17 – 25). Judge Maddox sentenced Applicant to thirty years' imprisonment on Count One – Criminal Sexual Conduct^{1st} degree; thirty years' imprisonment on Count Two – Criminal Sexual Conduct ^{1st} degree; thirty years' imprisonment on the Kidnapping charge, and ten years' imprisonment on the grand Larceny, more than \$ 5,000 charges, with the sentences to run consecutive in violation of South Carolina offense Code §§§ 16-13-30; 16-3-652 and 16-3-910. App. 655 I. 23 – App. 656 I. 5.

THE DIRECT APPEAL

(30). In December of 2010, Applicant time filed a Notice of Appeal of his conviction and sentences with all parties including the South Carolina Court of Appeals. On September 28, 2012 Wanda Carter, Deputy Chief of Appellate Defense of the South Carolina Commission on Indigent Defense filed an **Anders** Brief pursuant to **Anders v. California**, 386 U.S. 738, 87 S.Ct. 1396 (1967) of behalf Applicant. (App. 658- App 669). In the **Anders** brief, Applicant raised the following issue to the South Carolina Court of Appeals:

The trial judge erred by what was in effect coercing appellant to appear pro se at trial because although appellant waived his right to counsel prior to trial; ultimately, he rescinded the waiver after the jury was selected and re-asserted his right to counsel by requesting representation of appointed counsel for his trial.(**Anders brief, p.3)**

By way of unpublished opinion dated September 11, 2013, the Court of Appeals dismissed Applicant's appeal. App. 704 – App. 705. Unpublished Opinion and granted appellate counsel's request to withdraw. **State v. Dennis Temple** Unpublished No. 2013-UP-350 (Ct. App. filed September 11, 2013). (App. 658). The Opinion reads as follows:

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted. [We decide this case without oral argument pursuant to Rule 215, SCACR.]

APPEAL DISMISSED.

SHORT, WILLIAMS, and THOMAS, JJ., concur.

(31). On November 1, 2012 the Applicant filed a Pro Se Response to the **Anders** brief and where he raised the two (2) following issues:

1. "Did the judge err when he failed to suppress the evidence obtained from the obtained from the arrest warrants that was issued upon a supporting affidavit that did not link Appellant to the criminal activity or storage Unit # 193 to Appellant." (Pro Se Response pp. 1-12).
2. "Did the State commit perjury upon the court when it contended that this case was fast –tracked due to appellant's speedy trial motion." (Pro Se Response pp. 13-16).

(App. 671 – App. 690).

The remittitur was issued on September 27, 2013. (App. 706).

FIRST POST- CONVICTION RELIEF ACTION

(32). On October 15, 2013 Applicant then filed his First Application for Post-Conviction Relief (PCR) in the Oconee County Courthouse (*Dennis Temple v. State* , Civil Action # 2013-CP-37-729). App. 707. Applicant PCR application contained allegations of various Constitutional defects surrounding his trial as well as allegations of ineffective assistance of appellate counsel. App. 714 – App. 735. Applicant filed a Motion to Amend Application for Post-Conviction Relief on October 31, 2013. App. 738 – App. 739. Applicant also filed a “Motion to Amend and Supplement ” on January 14, 2014. App. 743- App. 746. He also filed a Memorandum in Support of Summary Judgment on March 5, 2014. App. 748 -761. Applicant filed an affidavit on February 27, 2014, presumably in support of his application for Post- Conviction Relief. App. 762 – App. 765. On March 5, 2014, Applicant filed an Motion for Summary Judgment. App. 783 – App. 784. On March 19, 2014, Affidavit, also presumably in support of his motions and application. App. 785 – App. 788. He also filed a Notice of Motion and Motion for Default Judgment on May 12, 2014. App. 805 – App. 806. He filed a Memorandum in Support of Default Judgment at the same time. App. 807 – App. – 818. He likewise filed an Affidavit on May 12, 2014. App. 819- App. 823.

MOTION TO AMEND APPLICATION POST- CONVICTION RELIEF

(33). On October 31, 2013 Applicant filed a Motion to Amend Application for Post-Conviction Relief as follows:

STATEMENT OF THE CASE

Upon the filing of my [sic] application for Post- Conviction Relief against the state of South Carolina at which time. I was ignorant of the true facts as correctly stated below, I now do state for the purpose of amending my application that:

- C. (1). Applicant was coerced [sic] to represent himself during trial, and (2) ineffective assistance of appellate counsel. See. (Exhibit 18 & 19).

was incorrect, and should be stated as below:

- C. (1). Ineffective Assistance of Counsels and (2) coerced to represent himself [sic] during trial and (3) ineffective assistance of appellate counsel. See. (Exhibit 18 & 19).

(34). Also, On October 31, 2013 Hugh Welborn, Esquire was Appointed as Applicant's counsel in his First Post-Conviction Relief action by the Attorney General Office. The Oconee County Courthouse, Clerk of Court filed the order. (App. 742).

(35). On July 8, 2014 State filed its responsive pleading. An evidentiary hearing into was convened on July 28, 2014, at the Oconee County Courthouse before the Honorable Edger W. Dickson, Circuit Court Judge(" the PCR Court"). Applicant was Represent at the hearing by Hugh Welborn, Esquire. The State was represented by Walt Whitmire, Esquire, of the South Carolina Attorney General's Office. Applicant raised the following issues:

1. " In violation of S.C. Code Ann. Section 22-3-710, and 4th, 14th Amendments of the U.S. Constitution and S.C. Constitution, Article 1, Section 10 &3; abuse of discretion, or error of law and breach of duty."
 - a. " Applicant, Dennis Maurice Temple was arrested and detained at the Oconee County Detention Center on arrest warrants that was issued upon a supporting affidavit or sworn written statement of the alleged victim that (1) was completely void of facts connecting Applicant to Criminal activity, (2) There was no facts connecting applicant to the storage unit # 193, (3) There was no facts connecting storage unit# 193 to any criminal activity, (4) There was no facts under by the alleged victim stating the applicant was identified as the accused, (5) There was no mentioning of the applicant in the affidavit or sworn written statement of the alleged victim, (6) arrest warrants were issued upon facts never sworn too, (7) There was no probable cause to arrest." **APCR P. 11**; further more redundantly repeated in allegations (b), (f), (g), (h), & (m) on **APCR p.12; pp. 14-15; p.17.**
2. "In violation of the 14th Amendments of the U.S. Constitution and S.C. Constitution, Article 1, Section 3; abuse of discretion, or error of law and breach of duty."

- a. "Judge in suppression hearing on arrest warrants failed to correct the record and failed to make specific findings of facts [sic] to mixed questions of law before its ruling in the suppression hearing on the arrest warrants."
3. " In violation of the 6th and 15th Amendments of the U.S. Constitution; S.C. Constitution, Article 1, Section 14 & 3; abuse of discretion, or error of law and breach of duty."
 - a. "(1) Applicant was coerced to represent himself during trial, and (2) ineffective assistance of appellate counsel." **APCR p. 12**
 4. " In violation of the 5th, 14th Amendments of the U.S. Constitution; S.C. Constitution, Article 1, Section 11 & 3; abuse of discretion, or error of law; and breach of duty."
 - a. " indictments were not issued within 90 days." **APCR p. 12.**
 5. " In violation of the 14th Amendments of the U.S. Constitution and S.C. Constitution, Article, Section 3.'
 - a. " (1) The six man photo lineup of the applicant and five other black was assemble and shaded in a unduly and suggestive way, that gave way to irreparable misidentification and (2) the trial court judge failed to make specific findings of facts to mixed question of law before its ruling in suppression hearing on the photo lineup. **APCR PP. 13-14.**
 6. " In violation of the S.C. Code Ann. Section 16-3-740, and 14th, 5th, 6th, 4th Amendments of the U.S. Constitution and S.C. Constitution, Article 1, Section 3, 12, 14, & 10."
 - a. " Applicant was never accused in the affidavit or sworn statement of the alleged victim of committing a crime and was never identified as the accused, there was [sic] no facts in the search warrants affidavit to support the search and seizure applicant. As a result, the state did not have all of the elements required in the statue to get authorization of the court order to get the search warrant that obtained the evidence that was used against the applicant during trial."
 7. " In violation of the S.C. Code Ann. Section 17-13-140, and 14th, 5th, 6th, 4th Amendments of the U.S. Constitution and S.C. Constitution, Article 1, Section 3, 12, 14, & 10."

- a. "Applicant was never accused in the affidavit or sworn statement of the alleged victim of committing a crime and was never identified as the accused, there was [sic] no facts in the search warrants affidavit to support the search and seizure applicant. As a result, the state did not have all of the elements required in the statute to get authorization of the court order to get the search warrant that obtained the evidence that was used against the applicant during trial."
8. "In violation of Schmerber v. California, 384 U.S. 757 (1966) and 14th, 5th, 6th, 4th Amendments of the U.S. Constitution and S.C. Constitution Article 1, Section 3, 12, 14, & 10."
- a. "Applicant was never accused in the affidavit or sworn statement of the alleged victim of committing a crime and was never identified as the accused, there was [sic] no facts in the search warrants affidavit to support the search and seizure applicant. As a result, the state did not have all of the elements required in the statute to get authorization of the court order to get the search warrant that obtained the evidence that was used against the applicant during trial."
9. "In violation of the 14th Amendments of the U.S. Constitution and S.C. Constitution, Article 1, Section 3."
- a. "The State failed to disclose photos of the alleged victim, her car, state witnesses names who testified during trial and a photo of the applicant which was used during trial to convict the applicant. In addition, the State further failed to disclose other materials [sic] in its possession or control to the applicant which would have contradicted the state's claims or cleared the defendant of blame. **APCR pp. 15-16.**
10. "In violation of the 5th, 6th, 14th Amendments of the U.S. Constitution and S.C. Constitution, Article 1, Section 3 & 14; abuse of discretion, or error of law."
- a. "once the state presented its case against the applicant during trial, the applicant was denied by judge to present witnesses for his defense." **APCR P. 16.**
11. "In violation of the 5th, 14th Amendments of the U.S. Constitution; S.C. Constitution, Article 1, Section 3 & 14"
- a. "Once the initial juror[sic] started making comments about the case before the case was submitted to the jury for deliberation and was replaced by one of the two alternates, The record is void of these transactions and occurrences [sic]."

12. "In violation of the 5th, 6th Amendments of the U.S. Constitution; S.C. Constitution, Article 1, Section 3 & 14" abuse of discretion, or error of law."
 - a. "Threw out the trial the solicitors consistently [sic] claimed that the applicant used cleaning solution to clean out the alleged victim after he raped her. These allegation [sic] was [sic] unfounded by the evidence and cause inflammation, confusion and prejudice among the jurors."

13. "In violation of the 4th, 5th, 6th, 14th Amendments of the U.S. Constitution; S.C. Constitution, and S.C. Code Ann. §22-3-710 (1976) and S.C. Constitutions, Article 1, Section 3, 10 & 14; abuse of discretion, or error of law and breach of duty."
 - a. "Arrest warrants affidavit briefly stated facts unfounded and not true at the time of the arrest of applicant and not sworn too [sic]."

14. " In violation of the 4th, 5th, 6th, 14th Amendments of the U.S. Constitution and S.C. Constitution and S.C. Constitutions, Article 1, Section 3, 14; abuse of discretion, or error of law."
 - a. " Trial judge and solicitor leading the state witness on what to testify to or say on cross examination." **APCR p. 17.**

POST- CONVICTION RELIEF HEARING

(36). As stated above an evidentiary was conducted on July 28, 2014 regarding the First Post-Conviction Relief Application before the Honorable Edgar Dickson. App. 835. Hugh Welborn represented the State. Applicant testified during the hearing to pertinent parts as follows:

Mr. Welborn :

Q. Thank you. We talked about the search. We talked about those allegations. We talked about the jurors that you wanted to come. Tell the court what else that you wanted to complain about that you feel was ineffective assistance of counsel where you should get a new trial.

Mr. Temple :

- A. Based on the fact that there was no probable cause to arrest me - - I was arrested on these arrest warrants. detained. A preliminary hearing was held on July the 16th, 2010. A preliminary hearing's purpose is to determine if there's probable cause. If Sarah Drawdy and Keith Denny are my lawyers and the State presented their probable cause for arresting me and they never objected and stated specifically the reason for the objection in presenting the evidence. What the law applies to the situation, they was ineffective.

App. 858 l-17.

FIRST FEDERAL HABEAS CORPUS

(37). On August 26, 2014, Applicant filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the District of South Carolina. Temple v. McFadden, 8:14-3499-JFA-JDA. The Honorable Jacquelyn D. Austin, United States Magistrate Judge, subsequently issued a report a recommendation that Applicant's petition be dismissed without prejudice for failure to exhaust states remedies on September 9, 2014. Applicant did not file timely objections to the R&R. On September 30, 2014, the Honorable Joseph F. Anderson, Jr., United States District Judge, issued an order dismissing the petition without prejudice in accordance with the R&R and denying a certificate of appealability. Temple v. McFadden, No. 8:14-3499-JFA (D.S.C. Sept.30, 2014). Applicant did not appeal.

ORDER OF DISMISSAL OF PCR

(38). On October 24, 2016, the PCR Court, Judge Edgar W. Dickson issued an Order of Dismissal Denying and dismissing Applicant's PCR application with prejudice. App. 707 – 884. The Order was filed with the Oconee County Clerk of Court's Office on October 31, 2016 stating as follows in pertinent parts:

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This court has reviewed the testimony and evidence presented at the evidentiary hearing, observed the witness presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the prior PCR proceedings, the subject convictions, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2016), this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

Ineffective Assistance of Appellate Counsel

Applicant alleged that his appellate counsel was ineffective for failing to submit the preliminary hearing transcript as part of the record on appeal; failing to argue that there was no probable cause to issue an arrest warrant; and failing to argue he did not freely and voluntarily waive the right to counsel. The State moved for summary dismissal on this allegation. This Court finds summary judgment is appropriate and grants the State's motion. App. 888.

Under Rule 56, SCRPC, a party is entitled to a Judgment as a matter of law if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact. Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences which can be reasonably drawn from the evidence must be viewed in light most favorable to the nonmoving party. Fleming v. Rose, 350 S.C. 488, 493-94, 567 S.C.2d 857, 860 (2002).

This Court first notes that in spite of Applicant's belief concerning the strength of the omitted arguments, his appeal was submitted pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). Where appellate counsel submits an Anders brief, the role of the appellate court is to review the brief submitted by counsel, any pro se response submitted by the appellant, and the record on appeal to determine whether the appeal contains any issues of arguable merit. State v. Lyles, 381 S.C. 442, 444, 673 S.E.2d 811, 813 (2009) (citing State v. Williams, 305 S.C.116, 406 S.E.2d 357 (1991)). If an issue is found which has arguable merit, the appellate court will direct the parties to file merit briefs, and the case will proceed under the normal appellate process. Id. On the other hand, if no issues of arguable merit are found by the appellate court, the appeal is dismissed, and the appellant's counsel is relieved. Id. Applicant's appeal was dismissed after review pursuant to Anders, reflecting that "the appellate court was unable to ascertain a non-frivolous issue which would require counsel to file a merits brief." Id.

In this case, Applicant alleged his appellate counsel was ineffective for failing to argue that his arrest warrant was not supported by probable cause. This issue was raised in Applicant's pro se brief on direct appeal, and therefore considered and determined to be without merit by the appellate court pursuant to Anders. Applicant's allegation that appellate counsel was ineffective for failing to include the transcript from his preliminary hearing in the record is an extension of this argument. Applicant has failed to raise or argue any conceivable prejudice from the fact that this transcript was omitted, particularly in light of the lower court record.

Applicant has also alleged that his appellate counsel was ineffective for failing to argue that he was forced to represent himself. There is no factual basis for this claim-the issue was raised by appellate counsel in its Anders brief. Had the issue been meritorious, then the

appellate court would have ordered a brief on the merits. As discussed above, the record is replete with discussions concerning the dangers of self-representation. This Court is of firm opinion that the Applicant waived his right to counsel with his eyes wide open and in compliance with Faretta. Because Applicant has failed to raise any meritorious arguments that his appellate counsel omitted, this allegation is summarily denied and dismissed.

Res Judicata

Applicant has also raised the following allegations:

1. "Applicant, Dennis Maurice Temple was arrested and detained at the Oconee County Detention Center on arrest warrant that was issued upon a supporting affidavit or sworn written statement of the alleged victim that (1) was completely void of facts connecting applicant to criminal activity, (2). There was no facts connecting applicant to storage unit # 193, (3). There was no facts connecting storage unit # 193 to any criminal activity, (4) There was no facts under by the alleged victim stating the applicant was identified as the accused, (5). There was no mentioning of the applicant in the affidavit or sworn written statement of the alleged victim, (6) arrest warrants were issued upon facts never sworn too. (7). There was no probable cause to arrest." **APCR p.11;** further more redundantly repeated in allegations (b), (f), (g), (h), & (m) on **APCR p. 12; pp.14-15; p.17.**
2. "Applicant was coerced to represent himself during trial." **APCR p.12**

App. 890.

Direct Appeal Issues

The remainder of Applicant's allegations are direct appeal issues that are procedurally barred direct by S.C. Code Ann. § 17-27-20(b) (2003).

1. "indictments were not issued within 90 days." **APCR p.12.**
2. "The six man photo lineup of the applicant and five other black was assemble and shaded in a unduly and suggestive way, that gave way to irreparable misidentification and (2) the trial court judge failed to make specific findings of facts to mixed question of law before its ruling in suppression hearing on the photo lineup. **APCR pp. 13-14.**
3. "Once the state presented its case against applicant during trail, the applicant was denied by judge to present witnesses for his defense." Application for Post-Conviction Relief 'APCR' p.16.
4. "The State failed to disclose photos of the alleged victim, her car, state

witnesses names who testified during trial and a photo of the applicant which was used during trial to convict the applicant. In addition, the state further failed to disclose other materials in it's possession or control to the applicant which would have contradicted the state's claims or cleared the defendant of blame. **APCR p.16.**

5. "one of the initial juror's started making comments about the case before the case was submitted to the jury for deliberation and was replaced by one of the two alternates. The record is void of these transactions and occurrences." **APCR p.16.**
6. "Trial Judge and Solicitor leading the state witnesses on what to testify to or say on cross examination." **APCR p.17.**

App. 891.

Post- Conviction relief is not a substitute for an appeal." *Simmons v. State*, 264 S.C. 417. 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. *Dravion v. Evatt*, 312 S.C. 4,8, 430 S.E.2d 517, 520 (1993). Summary dismissal is therefore appropriate.

Applicant's Motion for Summary Judgment

The Applicant also moved for summary judgment on the ground that the Attorney General's Office did not file its Return in a timely manner, and failed to respond to his summary judgment motion. This motion is denied. Applicant has to show or allege any prejudice from Respondent's delay. See. *Kneece v. State*, 269 S.C. 177, 178, 236 S.E.2d 746 747 (1977).

All Other Allegation

As to any and all allegation that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to Present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

App. 945 – 956.

THE APPEAL FROM THE DENIAL OF PCR

(39). In 2016, applicant' attorney, Hugh Welborn, Esquire timely filed a Notice of Appeal of the order of dismissal of PCR action on applicant's behalf. In 2017, Taylor Gilliam, Esquire of the South Carolina Commission on Indigent Defense was appointed to represent applicant on appeal of denial of PCR action. Applicant appealed from the denial of PCR by way of a **Johnson** Petition for Writ of Certiorari. On August 2, 2017 applicant's filed the **Johnson** Petition for Writ of Certiorari, Petition raised the following issues to the South Carolina Supreme Court:

Did the PCR Court err in granting Summary Judgment to the State on the issue of ineffective assistance of appellate counsel, where there was a genuine issue of material fact as to whether probable cause was established at a pre-trial hearing where the transcript from that hearing was not included in the Record on Appeal?

(**Johnson** Petition for Writ of Certiorari, p. 1). Collateral appellate counsel certified to the Supreme Court the appeal was without merit and asked to withdraw from the case.

On May 23, 2018 Applicant filed a Pro Se Response, to the **Johnson** Petition.

In the Pro se Response, Applicant raised the following issues(s) to the South Carolina Supreme Court:

Did the General session Court have jurisdiction to hear appellant's criminal case? When the Magistrate Court never established, it had probable cause to detain appellant on the arrest warrants.

(Pro se Response, p.2). The appeal was transferred to the South Carolina Court of Appeals by the South Carolina Supreme Court. On October 16, 2018, allegedly after careful consideration of the entire record as required by **Johnson v. State**, 294 S.C. 310, 364 S.E.2d 201 (1988), the South Carolina Court of Appeals denied certiorari and granted counsel's request to be relieved. The Remittitur was issued on November 9, 2018 and filed on November 13, 2018.

SECOND FEDERAL HABEAS CORPUS

(40). On November 29, 2018, Applicant filed a Federal Habeas Corpus in the United States District Court Dennis Maurice Temple v. Warden Scott Lewis , Civil Action No: 8:18-cv-3258-JFA-JDA. The Attorney General Office, Alan Wilson was represented by J. Anthony Mabry. Applicant stated the following issues:

Ground one: The trial judge erred by what was in effect coercing appellant to appear pro se at trial because although appellant waived his right to counsel prior to trial, ultimately, he rescinded that waiver after the jury was selected and re-asserted his right to counsel by requesting the representation of appointment counsel for his trial.

Ground two: The PCR Court erred in granting summary judgment to the State on the issue of ineffective assistance of appellant counsel, where there was a genuine issue of material fact as to whether probable cause was established at a pre-trial hearing and where the transcript from that hearing was not included in the record on Appeal.

Ground Three: Did the General Session Court have jurisdiction to hear appellant's criminal case when the Magistrate never established it had probable cause to detain appellant on the arrest warrants. (See p.31).

On April 1, 2019 the Attorney General Office, J. Anthony J. Mabry filed a Motion for Summary Judgment and a Return and Memorandum of law in Support of Motion for Summary Judgment. On June 20, 2019 Magistrate Judge Jacquelyn D. Austin filed a Report and Recommendation, recommending to grant J. Anthony Mabry's Motion For Summary Judgment and dismissing Applicant's Federal Habeas Corpus petition.

On October 31, 2019 United States District Judge, Joseph F. Anderson issued an order adopting Magistrate Judge Report and Recommendation granting the Summary Judgment Motion and dismissing Applicant's Habeas Corpus with prejudice.

SECOND POST- CONVICTION RELIEF ACTION

(41). On September 18, 2020 Applicant filed his **Second Post-Conviction Relief Application** in the Oconee County Courthouse. see. *Dennis Maurice Temple v. State*, Civil Action No: 2020-CP-37-695. He raised three (3) issues as follows:

1. Ineffective Assistance of counsels [sic]
 - a. Applicant's counsel Sarah Drawdy and Keith Denny [sic] were ineffective assistance of Counsels for failing to object to the state's reasons establishing probable cause and failing to raise a fourth Amendment claim in the July 16, 2010 preliminary hearing.
 - b. Applicant filed an application [sic] for Post-Conviction Relief on October 15, 2013. App. 707. His application contained allegations of various constitution defects surrounding his trial as well as allegations of ineffective assistance of appellate counsel. App. 714- App.735. Applicant filed a motion to Amend Application for Post-Conviction Relief on October 31, 2013. App. 738- App.739. Applicant also filed a " Motion to Amend and Supplement " on January 14, 2014. App. 743- App. 746. He also filed a memorandum in support of Summary Judgment on March 5, 2014. App. 748 -761. Applicant filed an affidavit on February 27, 2014. presumably in support of his application for post- conviction relief. App. 762- App. 765. On March 5, 2014, Applicant filed an affidavit, also presumably in support of his motion and application. App. 785- App. 788. He also filed a notice of motion and motion for Default Judgment on May 12, 2014. App. 805-App. 806. He likewise filed an affidavit an May 12, 2014. App. 819-823.

On May 21, 2014, Hugh Welborn, attorney for Applicant, filed a Notice of Motion [sic] and Motion to be Relieved as counsel. App. 824- App. 825. The state filed a Return and Partial Motion to Dismiss and a motion for a more Definite statement on or about July 7, 2014. App. 826- App. 833.

An evidentiary hearing [sic] was conducted on July 28, 2014 before then Judge, Edgar Dickson. App. 835. Hugh Welborn represented applicant , and John W. Whitmire represented the state. Applicant testified during the hearing to pertinent parts as follows:

Mr. Welborn:

Q. Thank you. We talked about the search. We talked [sic] about those allegations. We talked about the Jurors that you wanted to come. Tell the court what else that you wanted to complain about that you feel was ineffective assistance of counsel where you should get a new trial.

Mr. Temple:

A. Based on the fact that there [sic] was no probable cause to arrest me – I was arrested on these arrest warrants. detained. A preliminary hearing was held on July the 16th, 2010. A preliminary hearing purpose is to determine if there's probable cause. If Sarah Drawdy and Keith Denny are my lawyers and the state presented their probable cause for arresting me and they never objected and stated specifically the reason for the objection in presenting the evidence, what the law applies to the situation, they was ineffective.

App. 858. l. 17.

In a written order filed on October 31, 2016. Judge Dickson [sic] dismissed Applicant's PCR application granted Summary Judge on the issues of ineffective appellate counsel, and found that some of Applicant's other allegations were barred by res Judicata. App. 684- App. 893. Judge Dickson did not make any findings of facts and conclusion of law regarding his ineffective assistance of counsel claim, but further ruled that some of Applicant's other allegations were direct appeal issues and summarily dismissed them. App. 891.

These failure were in violation of the applicant's 4th, 5th, 6th, & 14th Amendments of the United States Constitution.

In addition, Applicant's PCR Counsel was ineffective [sic] for failing to subpoena counsels to the PCR hearing and for failing to file a 59(e) motion. When the court issued a order of dismissal in the case, which did not include specific findings of facts and conclusion of law on Applicant's ineffective assistance of counsel claim against Sarah Drawdy and Keith Denny.

2. In violation of **Schmerber v. California**, 384 U.S. 757 (1966) and 4th, 5th, 6th, 14th Amendments of the U.S. Constitution [sic] and S.C. Constitution, Article 1, section 3, 12, 14, & 10.

App. 716.

- (a). Applicant was never accused in the affidavit or sworn [sic] statement of the alleged victim of committing a crime and was never identified as the accused. As a result, the state did not have all of the elements required in the statute or case law to get authorization of the court order to get the search warrant that was used against the applicant during trial.

App. 721.

Applicant filed [sic] an application for Post-Conviction Relief on October 15, 2013. App. 707. His application contained allegations of various constitution defects surrounding his trial as well as allegations of ineffective assistance of appellate counsel. App. 714- App.735... et al.

On May 21, 2014, Hugh Welborn, attorney for Applicant, [sic] filed a Notice of Motion and Motion to be Relieved as counsel. App. 824- App. 825. The state filed a Return and Partial Motion to Dismiss and a motion for a more Definite statement on or about July 7, 2014. App. 826 - App. 833.

An evidentiary hearing [sic] was conducted on July 28, 2014 before then Judge, Edgar Dickson. App. 835. Hugh Welborn represented applicant, and John W. Whitmire represented the state. Applicant testified during the hearing to pertinent parts as follows:

In a written order filed on October 31, 2016. Judge Dickson dismissed Applicant's a PCR Application, and summary Judgment on [sic] the issues of ineffective appellate counsel and found that some of applicant's other allegations were barred by res judicata. App. 684- App. 893. Judge Dickson did not make any specific findings of facts and conclusion of law regarding his Schmerber v. California, hearing claim, but further ruled that some of Applicant's other allegations were direct appeal issues and summarily dismissed them. App. 891.

Applicant's Schmerber v. California, claim should have been grounded as a ineffective assistance of Counsel claim against Kurt Tavernier for failing to object to the state's allegation regarding applicant's identification and probable cause to arrest, and failing to raise a fourth Amendment claim in the September 22, 2010 Schmerber hearing.

These failure violated Applicant's 4th, 5th, 6th, & 14th Amendment of the U.S. Constitution and S.C. Constitution, Article 1, section 3, 10, 12, & 14.

In addition, applicant's PCR Counsel was ineffective for failing to Amend the PCR Application as a ineffective assistance of counsel claim against Kurt Tavernier regarding the Schmerber hearing issues, and for failing to file a 59(e) motion. When the court issued a order of dismissal in the case, which did not include specific findings of facts and conclusion of law a on Applicant's Schmerber hearing claim.

3. Applicant moves the court for [sic] a new trial because the state notified Applicant 1 year, 10 months after direct appeal that his preliminary hearing transcript does not exist, which prevented the appellate court from conducting a meaningful appellate review.
- c. Applicant proceeded to a jury trial on December 13, 2010 before Judge J. Cordell Maddox. App. 191. Chrissy Adams and Lindsey Simmons represented the state,

and applicant represented himself with Kurt Tavernier serving as standby counsel.
App. 191.

The jury found Applicant guilty as indicted. App. 646 ll.17-25. Judge Maddox sentenced Applicant to thirty years imprisonment on Two Counts of Criminal Sexual Conduct, first degree charges, thirty years imprisonment on the Kidnapping charge, and ten years imprisonment on the Grand Larceny charges, with the sentences to run consecutive. App. 655 l. 23- App. 656 l. 5.

Wanda Carter, Deputy Chief Appellate Defense (Counsel) filed an Anders brief on behalf of Applicant with the South Carolina Court of Appeals on September 28, 2012. App. 658 – App. 669. Thereafter, Applicant filed a “Pro Se Brief” On November 1, 2012. App. 671- App. 690.

By way of unpublished opinion dated September 11, 2013, the Court of Appeals dismissed Applicant’s appeal. App. 704- App.705. The remittitur was issued on September 27, 2013. App. 706. Applicant filed an application for Post -Conviction relief on October 15, 2013. App. 707. His application contained allegations of various constitutional defects surrounding his trial as well as allegations of ineffective assistance of appellate counsel. App. 714 – App. 735. Applicant filed a motion to Amend Application for Post-Conviction Relief on October 31, 2013. App. 738- App.739. Applicant also filed a “ Motion to Amend and Supplement ” on January 14, 2014. App. 743- App. 746. He also filed a memorandum in support of Summary Judgment on March 5, 2014. App. 748 -761. Applicant filed an affidavit on February 27, 2014. presumably in support of his application for post- conviction relief. App. 762- App. 765. On March 5, 2014, Applicant filed an affidavit, also presumably in support of his motion and application. App. 785- App. 788. He also filed a notice of motion and motion for Default Judgment on May 12, 2014. App. 805-App. 806. He likewise filed an affidavit an May 12, 2014. App. 819-823.

On May 21, 2014, Hugh Welborn, attorney for Applicant, filed a Notice of Motion [sic] and Motion to be Relieved as counsel. App. 824- App. 825. The state filed a Return and Partial Motion to Dismiss and a motion for a more Definite statement on or about July 7, 2014. App. 826- App. 833.

An evidentiary hearing [sic] was conducted on July 28, 2014 before then Judge, Edgar Dickson. App. 835. Hugh Welborn represented applicant , and John W. Whitmire represented the state.

Applicant testified that appellate counsel was ineffective for failing to include all of the pre-trial transcripts, including the preliminary hearing transcript, including all of preliminary hearing transcript, in the record. App. 856 l.9 – App. 857 l. 15.

In particular, Applicant alleged that the court did not have jurisdiction to hear his case due to a defect with the arrest warrant, namely that there was a lack of probable cause.

Based on the fact that there was no probable cause to arrest me -- I was arrested on these arrest warrants, detained. A preliminary hearing was held on July the 16th, 2010. A preliminary hearing 's purpose is to determine if there's probable cause. If Sarah Drawdy and Keith Denny are my lawyers and the state presented their probable cause for arresting me and they never objected and stated specifically the reason for the objection in presenting the evidence, what the law applies to the situation, they was ineffective.

App. 858 ll. 6 -15.

A transcript from that hearing is unavailable. Applicant later testified:

A: " I think that my appellate counsel was ineffective by the very fact that she proceeded with my appeal with not receiving all the transcripts. There could have been more motions that was objected to."

App. 866 ll. 10-13.

On cross – examination the following exchange took place:

Q: So your 're alleging appellate counsel was ineffective for not providing the court with all of your preliminary hearing transcripts; is that correct ?

A: No. I'm alleging that appellate counsel was not effective because she proceeded on my appeal and not had all the transcripts.

Q: Now, what is this transcript you're speaking of ? What date it is ?

A: July the 16th. 2010.

Q: What judge was it before ?

A: It was before -- I'm not even sure because I don't even have the transcript.

Q: You can't remember ?

A: No, I don't.

Q: Did you ever request this supposed transcript at your trial ?

A: Mr. Welborn, I asked attorney --

Q: I mean at your trial.

A: Did I ever request it ?

Q: Uh -- huh (affirmative). A copy of it.

A: It's a part of the record, isn't it ?

Q: This July transcript you speak of doesn't exist. That's why I'm asking you. Did you. Make any efforts to locate it or track it down.

A: Well, my attorneys requested all the transcripts that was available.

App. 869 l. 15 – App. 870 l. 15.

However, prior to trial. On September 14, 2010, another hearing was held before the Honorable J. Cordell Maddox, Jr. **App. 30.** Lindsey Simmons appeared on behalf of the State, and Dennis Temple appeared pro se. During the hearing Ms. Simmons stated the following:

The court: All right. Yes, ma'am ?

Ms. Simmons: Thank You, Your Honor. We are here today in state of South Carolina vs. Dennis Temple. It's an Oconee County case. He has four indictments on 2010-GS-37-886 through 889. It's two counts of criminal Sexual Conduct in the first degree, kidnapping and Grand Larceny.

On May the 14th of 2010 we filed a motion pursuant to 16-3-740 and served notice on Mr. Temple. That is under the S-T-D testing statute. Judge McIntosh subsequently granted that order and ordered testing on May the 20th of 2010. Mr. Temple has appealed that order and asked that Judge McIntosh reconsider that,

Subsequent to that, Mr. Temple has appointed counsel and had a preliminary hearing. He was represented by Ms. Drawdy in that matter, and that was on July 16th of 2010.

We filed a Schmerber motion out of an abundance of caution on July 19th, 2010 and served that on his attorneys at the time. The defendant appeared before your Honor on July 29th of 2010 for the scheduled Schmerber hearing and to address the issue of representation.

At this time your Honor relieved Ms. Drawdy and Mr. Denny as his counsel and gave the defendant 30 days to appear before your Honor with an attorney. And the Schmerber issue is still outstanding. App. 32 l. 1-25 – App. 33 l. 1-3.

As a result, Applicant's 5th, 6th & 14th Amendments of the United States Constitution rights have been violated

ARGUMENT I

FIRST ISSUE PRESENTED

THE STATE HAS FAILED TO SHOW THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT ON IT'S ONE YEAR STATUTE OF LIMITATION DEFENSE, BUT ARE REQUESTING THAT APPLICANT'S SECOND PCR APPLICATION SHOULD BE SUMMARY DISMISSED WITHOUT A HEARING FOR FAILURE TO COMPLY WITH THE ONE YEAR STATUTE OF LIMITATION S.C. CODE ANN. § 17-27-45(A-C) OF THE UNIFORM POST-CONVICTION PROCEDURE ACT.

STATUTE OF LIMITATION

S.C. Code Ann. § 17-27-45(A-C) provides:

- (A) An application for relief filed pursuant to the chapter must be filed within one year after entry of a judgment of Conviction or within one years 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.
- (B) When a court whose decision are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a Substantive standard not previously recognized or a right not in existence at the time of the State Court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
- (C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter 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.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1995. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for Summary Judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, section 17-27-70 (c) authorizes this Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleading . . . there is no

genuine issue judgment as a matter of law.”

All applicants are entitled to a full and fair opportunity to present claims in one PCR application. Successive PCR applications and appeals are generally disfavored because they allow an applicant to receive more than “one bite at the apple as it were” ***Mathews v. State***, 105 F.3d 907, 916 (1997) quoting ***Gamble v. State***, 298 S.C. 176, 379 S.E.2d 118, 119 (1989).

STANDARD OF REVIEW

Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief. S.C. Code Ann. § 17-27-70(b) and (c) (2003). When considering the State’s Motion for Summary dismissal of an application, where no evidentiary hearing has been held, the circuit court must assume facts presented by an applicant are true and view those facts in light most favorable to the applicant. Similarly, when reviewing the propriety of a dismissal, this court must view the facts in the same fashion. see. S.C. Code Ann. § 17-27-80 (2003). (PCR actions are governed by usual rules of civil procedure); ***Wilson v. State***, 348 S.C. 215, 559 S.E.2d 581 (2002); *Al- Shabazz v. State*, 338 S.C. 354, 364, 527 S.E.2d 742, 747 (2000).

An examination of the record shows that the following to place:

- On December 13- 15, 2010 applicant proceeded in a Jury trial and found guilty on all counts and sentenced to a total of 100 years in prison.
- In 2011, Applicant received an appellate counsel to effectuate his direct appeal.
- On 2012, Wanda H. Carter, Chief Deputy Appellate counsel filed a Anders Brief on applicant’s behalf on direct appeal.
- On September 11, 2013, applicant direct appeal was dismissed, including the Pro se brief.
- On October 15, 2013 applicant filed a Post-Conviction Relief action in the Oconee County Courthouse.
- On December 27, 2013 the remittitur from direct appeal was issued back to the lower Court.
- On July 28, 2014 a Post-Conviction Relief hearing was held at the Oconee County

Courthouse.

- On August 26, 2014 applicant filed his First Habeas Corpus petition in the United States District Court.
- On September 9, 2014 Judge Jacquelyn D. Austin, United States Magistrate Judge, subsequently issued a report a recommendation that Applicant's petition be dismissed without prejudice for failure to exhaust states remedies.
- Applicant did not file timely objections to the report and recommendation. R&R On September 30, 2014, the Honorable Joseph F. Anderson, Jr., United States District Judge, issued an order dismissing the petition without prejudice in accordance with the R&R and denying a certificate of appealability
- On October 31, 2016 the PCR Court issued an order of dismissal in the case.
- In 2017, Taylor Gilliam, Esquire of the South Carolina Commission of Indigent Defense was appointed as applicant's counsel on Writ of Certiorari in the South Carolina Supreme Court.
- The South Carolina Supreme Court transferred the case to the South Carolina Court of Appeals
- On October 16, 2018, the South Carolina Court of Appeals denied Applicant's Writ of certiorari.
- The Remittitur was issued on November 9, 2018 and filed on November 13, 2018.
- On November 29, 2018, Applicant filed a Federal Habeas Corpus in the United States District Court **Dennis Maurice Temple v. Warden Scott Lewis** , Civil Action No: 8:18 cv- 3258-JFA-JDA. The State of South Carolina was represented by the Attorney General Office, Alan Wilson and by J. Anthony Mabry.
- On April 1, 2019 the Attorney General Office, J. Anthony J. Mabry filed a Motion for Summary Judgment and a Return and Memorandum of law in Support of Motion for Summary Judgment.
- On June 20, 2019 Magistrate Judge Jacquelyn D. Austin filed a Report and Recommendation, recommending to grant J. Anthony Mabry's Motion For Summary Judgment and dismissing Applicant's Federal Habeas Corpus petition.
- On October 31, 2019 United States District Judge, Joseph F. Anderson issued a order adopting Magistrate Judge Report and Recommendation granting the Summary Judgment Motion and dismissing Applicant's Habeas Corpus with prejudice.

In this present case, first we notice that the record shows that applicant has been on six different appeals in five different courts and one after the other with no lapse or pause in between these appeals. see. record; Statute of limitation, S.C. Code § Ann. 17-27-45(A)(C) applies in this case. Specifically applicant received a remittitur from second Federal Habeas Corpus petition.

The Second events we notice, it appears on the record that during applicant First PCR action he filed a Motion to Amendments PCR application on October 31, 2013, including adding a "Ineffective Assistance of Counsels" claim which was accepted by the PCR court. Also, Applicant filed Schmerber hearing claim. However, PCR Court never issued any **findings of facts and conclusions of law** regarding applicant ineffective assistance of counsels claim against Sarah Drawdy and Keith Denny. App. 884- 893.

The third relevant events that we notice in this case, in the PCR hearing. The applicant stated on the record that Sarah Drawdy and Keith Denny represented him in a July 16, 2010 Preliminary Hearing at the Oconee County Magistrate Court. (quoting..." If Sarah Drawdy and Keith Denny were his lawyers and the State presented their probable cause for arresting me and they never objected and stated specifically the reason for the objection in presenting the evidence, what the law applies to the situation, they was ineffective." App. 858. l. 17.

The fourth, event we noticed in the record was the State admitted in the PCR hearing that Applicant July 16, 2010 preliminary hearing does not exist, but the record clearly and convincingly show a preliminary hearing occurred on July 16, 2010, but was covered up or not transcribed. App. 869 l. 15 – App. 870 l. 15.

For a fifth defense , it appear on the record that prior to applicant's Jury trial on September 14, 2010, another hearing was held before the Judge J. Cordell Maddox. Jr. **App. 30.** Lindsey Simmons appeared on behalf of the State, and Applicant (Dennis Temple) appeared pro se. During the hearing Ms. Simmons (Solicitor) stated the following:

The court: All right. Yes, ma'am ?

Ms. Simmons: Thank You, Your Honor. We are here today in state of South Carolina vs. Dennis Temple. It's an Oconee County case. He has four indictments on 2010-GS-37-886 through 889. It's two counts of criminal Sexual Conduct in the first degree, kidnapping and Grand Larceny. On May the 14th of 2010 we filed a motion pursuant to 16-3-740 and served notice on Mr. Temple. That is under the S-T-D testing statute. Judge McIntosh subsequently granted that order

and ordered testing on May the 20th of 2010. Mr. Temple has appealed that order and asked that Judge McIntosh reconsider that, Subsequent to that, Mr. Temple has appointed counsel and had a preliminary hearing. He was represented by Ms. Drawdy in that matter, and that was on July 16th of 2010.

We filed a Schmerber motion out of an abundance of caution on July 19th, 2010 and served that on his attorneys at the time. The defendant appeared before your Honor on July 29th of 2010 for the scheduled Schmerber hearing and to address the issue of representation.

At this time your Honor relieved Ms. Drawdy and Mr. Denny as his counsel and gave the defendant 30 days to appear before your Honor with an attorney. And the Schmerber issue is still outstanding.

App. 32 l. 1-25 – App. 33 l. 1-3.

The PCR Court denied applicant a full and fair opportunity to present his claim of “ Ineffective assistance of Counsels “ in the first Post-Conviction Relief action by failing to issue an Order of Dismissal presenting it’s finding of facts and conclusion of law regarding his ineffective assistance of Counsels claims. This issue was presented in applicant’s Amended PCR application. Also, applicant testified in the PCR hearing that his ineffective assistance of counsels claim against attorneys Sarah Drawdy and Keith Denny for failing to object to the state probable cause and etc.. etc.. App. 858 ll. 6 -15.

In addition, applicant’s second PCR action regarding this claim: “Applicant moves the court for [sic] a new trial because the state notified Applicant 1 year, 10 months after direct appeal that his preliminary hearing transcript does not exist, which prevented the appellate court from conducting a meaningful appellate review.” is not barred by the statute of limitation. Therefore the state motion to dismiss applicant’s second PCR action regarding the one year statute of limitation should not be granted. see. This issue could not have been raised in Applicant’s first PCR application because the State of South Carolina notified Applicant in the July 28, 2014 PCR hearing “ that the transcript did not exist, 1 year and 10 months after direct appeal.

Our Supreme Court stated, “ Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR

Court, a question of fact is raised which can only be resolved by a hearing." **McCoy**, 401 S.C.at 369, 737 S.E.2d at 626.

ARGUMENT II

SECOND ISSUE PRESENTED

THE STATE HAS FAILED TO SHOW THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT ON IT'S SUCCESSIVE AND RES JUDICATA DEFENSE , BUT ARE REQUESTING THAT APPLICANT'S SECOND PCR APPLICATION SHOULD BE SUMMARY DISMISSED WITHOUT A HEARING BECAUSE IT'S BARRED BY SUCCESSIVE AND RES JUDICATA.

All applicants are entitled to a full and fair opportunity to present claims in one PCR application. Successive PCR applications and appeals are generally disfavored because they allow an applicant to receive more than "one bite at the apple as it were" **Mathews v. State**, 105 F.3d 907, 916 (1997) quoting **Gamble v. State**, 298 S.C. 176, 379 S.E.2d 118, 119 (1989).

The PCR Act 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.

S.C. Code Ann. § 17-27-90.

SUCCESSIVE AND RES JUDICATA

A successive PCR application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in prior proceedings. **Carter v. State**, 293 S.C. 528, 362 S.E.2d 20 (1987); see S.C. Code Ann. § 17-27-90 (1976 & Supp. 1997). In order to be entitled to a successive PCR application, the applicant must establish that the grounds raised in the subsequent application could not have been raised in the previous application. **Tilley v. State**, 334 S.C. 24, 511 S.E.2d 689 (1999).

STANDARD OF REVIEW

Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief. S.C. Code Ann. § 17-27-70(b) and (c) (2003). When considering the State's Motion for Summary dismissal of an application, where no evidentiary hearing has been held, the circuit court must assume facts presented by an applicant are true and view those facts in light most favorable to the applicant. Similarly, when reviewing the propriety of a dismissal, this court must view the facts in the same fashion. see. S.C. Code Ann. § 17-27-80 (2003). (PCR actions are governed by usual rules of civil procedure); *Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581 (2002); *Al- Shabazz v. State*, 338 S.C. 354, 364, 527 S.E.2d 742, 747 (2000).

In this present case, first we notice that the record shows that applicant has been on a six different appeals in five different courts and one after the other with no lapse or pause in between these appeals. see. record. Statute of limitation, S.C. Code § Ann. 17-27-45(A)(C) applies in this case. Specifically applicant received a remittitur from second Federal Habeas Corpus petition. Id.

The Second events we notice, it appears on the record that during applicant First PCR action he filed a Motion to Amendments PCR application on October 31, 2013, including adding a "Ineffective Assistance of Counsels" claim which was accepted by the PCR court. Also, Applicant filed Schmerber hearing claim. However, PCR Court never issued any **findings of facts and conclusions of law** regarding applicant ineffective assistance of counsels claim against Sarah Drawdy and Keith Denny. App. 884- 893.

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convincingly show a preliminary hearing occurred on July 16, 2010, but was covered up or not transcribed. App. 869 l. 15 – App. 870 l. 15.

For a fifth defense, it appears on the record that prior to applicant's Jury trial on September 14, 2010, another hearing was held before the Judge J. Cordell Maddox, Jr. **App. 30.** Lindsey Simmons appeared on behalf of the State, and Applicant (Dennis Temple) appeared pro se. During the hearing Ms. Simmons (Solicitor) stated the following:

The court: All right. Yes, ma'am?

Ms. Simmons: Thank You, Your Honor. We are here today in state of South Carolina vs. Dennis Temple. It's an Oconee County case. He has four indictments on 2010-GS-37-886 through 889. It's two counts of criminal Sexual Conduct in the first degree, kidnapping and Grand Larceny. On May the 14th of 2010 we filed a motion pursuant to 16-3-740 and served notice on Mr. Temple. That is under the S-T-D testing statute. Judge McIntosh subsequently granted that order and ordered testing on May the 20th of 2010. Mr. Temple has appealed that order and asked that Judge McIntosh reconsider that. Subsequent to that, Mr. Temple has appointed counsel and had a preliminary hearing. He was represented by Ms. Drawdy in that matter, and that was on July 16th of 2010.

We filed a Schmerber motion out of an abundance of caution on July 19th, 2010 and served that on his attorneys at the time. The defendant appeared before your Honor on July 29th of 2010 for the scheduled Schmerber hearing and to address the issue of representation.

At this time your Honor relieved Ms. Drawdy and Mr. Denny as his counsel and gave the defendant 30 days to appear before your Honor with an attorney. And the Schmerber issue is still outstanding.

App. 32 l. 1-25 – App. 33 l. 1-3.

The PCR Court denied applicant a full and fair opportunity to present his claim of "Ineffective assistance of Counsels" in the first Post-Conviction Relief action by failing to issue an Order of Dismissal presenting its finding of facts and conclusion of law regarding his ineffective assistance of Counsels claims. This issue was presented in applicant's Amended PCR application. Also, applicant testified in the PCR hearing that his ineffective assistance of counsels claim against attorneys Sarah Drawdy and Keith Denny for failing to object to the state probable cause and etc.. etc.. App. 858 ll. 6 -15.

In addition, applicant's second PCR action is not successive because he presented a new claim: "Applicant moves the court for [sic] a new trial because the state notified Applicant 1 year, 10 months after direct appeal that his preliminary hearing transcript does not exist, which prevented the appellate court from conducting a meaningful appellate review." Therefore the state motion to summary dismiss applicant's second PCR action successive and barred by res judicata should not be granted. see. Second PCR action p.44. This issue could not have been raised in Applicant's first PCR application because the State of South Carolina notified Applicant in the July 28, 2014 PCR hearing " that the transcript did not exist 1, year and 10 months after direct appeal.

Our Supreme Court stated, " Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR Court, a question of fact is raised which can only be resolved by a hearing." McCoy, 401 S.C. at 369, 737 S.E.2d at 626.

ARGUMENT III

THIRD ISSUE PRESENTED

THE STATE HAS FAILED TO SHOW THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT ON IT'S FAILURE TO STATE A CLAIM DEFENSE, BUT ARE REQUESTING THAT APPLICANT'S SECOND PCR APPLICATION SHOULD BE SUMMARY DISMISSED WITHOUT A HEARING BECAUSE IT'S FAILURE TO STATE A CLAIM.

All applicants are entitled to a full and fair opportunity to present claims in one PCR application. Successive PCR applications and appeals are generally disfavored because they allow an applicant to receive more than "one bite at the apple as it were" Mathews v. State, 105 F.3d 907, 916 (1997) quoting Gamble v. State, 298 S.C. 176, 379 S.E.2d 118, 119 (1989). A successive PCR application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in prior proceedings. Carter v. State, 293 S.C. 528, 362 S.E.2d 20 (1987); see S.C. Code Ann. § 17-27-90 (1976 & Supp. 1997). In order to be entitled to a successive PCR application, the applicant must establish that the grounds raised in the subsequent application could not have been raised in the previous

application. Tilley v. State, 334 S.C. 24, 511 S.E.2d 689 (1999).

STANDARD OF REVIEW

Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief. S.C. Code Ann. § 17-27-70(b) and (c) (2003). When considering the State's Motion for Summary dismissal of an application, where no evidentiary hearing has been held, the circuit court must assume facts presented by an applicant are true and view those facts in light most favorable to the applicant. Similarly, when reviewing the propriety of a dismissal, this court must view the facts in the same fashion. see. S.C. Code Ann. § 17-27-80 (2003). (PCR actions are governed by usual rules of civil procedure); Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002); Al-Shabazz v. State, 338 S.C. 354, 364, 527 S.E.2d 742, 747 (2000).

In this present case, first we notice that the record shows that applicant has been on a six different appeals in five different courts and one after the other with no lapse or pause in between these appeals. see. record. Statute of limitation, S.C. Code § Ann. 17-27-45(A)(C) applies in this case. Specifically applicant received a remittitur from second Federal Habeas Corpus petition. id.

The Second events we notice, it appears on the record that during applicant First PCR action he filed a Motion to Amendments PCR application on October 31, 2013, including adding a "Ineffective Assistance of Counsels" claim which was accepted by the PCR court. Also, Applicant filed Schmerber hearing claim. However, PCR Court never issued any **findings of facts and conclusions of law** regarding applicant ineffective assistance of counsels claim against Sarah Drawdy and Keith Denny. App. 884- 893.

The third relevant events that we notice in this case, in the PCR hearing. The applicant stated on the record that Sarah Drawdy and Keith Denny represented him in a July 16, 2010 Preliminary Hearing at the Oconee County Magistrate Court. (quoting..." If Sarah Drawdy and Keith Denny were his lawyers and the State presented their probable cause for arresting me and they never objected and stated specifically the reason for the objection in presenting the evidence, what the law applies to the situation, they was ineffective." App. 858. I. 17.

The fourth, event we noticed in the record was the State admitted in the PCR hearing that Applicant July 16, 2010 preliminary hearing does not exist, but the record clearly and convincingly show a preliminary hearing occurred on July 16, 2010, but was covered up or not transcribed. App. 869 l. 15 – App. 870 l. 15.

For a fifth defense, it appears on the record that prior to applicant's Jury trial on September 14, 2010, another hearing was held before the Judge J. Cordell Maddox, Jr. **App. 30.** Lindsey Simmons appeared on behalf of the State, and Applicant (Dennis Temple) appeared pro se. During the hearing Ms. Simmons (Solicitor) stated the following:

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We filed a Schmerber motion out of an abundance of caution on July 19th, 2010 and served that on his attorneys at the time. The defendant appeared before your Honor on July 29th of 2010 for the scheduled Schmerber hearing and to address the issue of representation.

At this time your Honor relieved Ms. Drawdy and Mr. Denny as his counsel and gave the defendant 30 days to appear before your Honor with an attorney. And the Schmerber issue is still outstanding.

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The PCR Court denied applicant a full and fair opportunity to present his claim of "Ineffective assistance of Counsels" in the first Post-Conviction Relief action by failing to issue an Order of Dismissal by failing to state its finding of facts and conclusion of law regarding his ineffective assistance of Counsels claims. This issue was presented in applicant's Amended PCR application. Also, applicant testified in the PCR hearing that his ineffective assistance of counsels claim against attorneys Sarah Drawdy and Keith Denny for

failing to object to the state probable cause and etc.. etc.. App. 858 Il. 6 -15.

In addition, applicant's second PCR action did not fail to state a claim: "Applicant moves the court for [sic] a new trial because the state notified Applicant 1 year, 10 months after direct appeal that his preliminary hearing transcript does not exist, which prevented the appellate court from conducting a meaningful appellate review." Therefore the state motion to dismiss applicant's second PCR action regarding the failure to state a claim should not be granted. This issue could not have been raised in Applicant's first PCR application because the State of South Carolina notified Applicant in the July 28, 2015 PCR hearing " that the transcript does not exist, 1 year and 10 months after direct appeal.

Our Supreme Court stated, " Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR Court, a question of fact is raised which can only be resolved by a hearing." McCoy, 401 S.C.at 369, 737 S.E.2d at 626.

ARGUMENT IV

FOURTH ISSUE PRESENTED

THE STATE HAS FAILED TO SHOW THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT ON IT'S FRUSTRATION BUT ARE REQUESTING THAT APPLICANT'S SECOND PCR APPLICATION SHOULD BE SUMMARY DISMISSED WITHOUT A HEARING BECAUSE IT'S FAILURE TO STATE A CLAIM.

All applicants are entitled to a full and fair opportunity to present claims in one PCR application. Successive PCR applications and appeals are generally disfavored because they allow an applicant to receive more than "one bite at the apple as it were" Mathews v. State, 105 F.3d 907, 916 (1997) quoting Gamble v. State, 298 S.C. 176, 379 S.E.2d 118, 119 (1989). A successive PCR application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in prior proceedings. Carter v. State, 293 S.C. 528, 362 S.E.2d 20 (1987); see S.C. Code Ann. § 17-27-90 (1976 & Supp. 1997). In order to be entitled to a successive PCR application, the applicant must establish that the grounds raised in the subsequent application could not have been raised in the previous application. Tilley v. State, 334 S.C. 24, 511 S.E.2d 689 (1999).

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The PCR Court denied applicant a full and fair opportunity to present his claim of “ Ineffective assistance of Counsels “ in the first Post- Conviction Relief action by failing to issue an Order of Dismissal stating it's finding of facts and conclusion of law regarding his ineffective assistance of Counsels and Schmerber hearing claims. This issue was presented in applicant's Amended PCR application and in the PCR hearing on July 28,2014. Also, applicant testified in the PCR hearing that his ineffective assistance of counsels claim against attorneys Sarah Drawdy and Keith Denny for failing to object to the state probable cause and etc.. etc..

In addition, “Applicant moves the court for [sic] a new trial because the state notified Applicant 1 year, 10 months after direct appeal that his preliminary hearing transcript does

not exist, which prevented the appellate court from conducting a meaningful appellate review.” Therefore the state motion to Summary dismiss applicant’s second PCR action regarding Frustration of Finality of Conviction is in violation of applicant’s State and Federal statutory and Constitutional rights by deprive him of **“one bite of the apple”** and should not be granted.. This issue could not have been raised in Applicant’s first PCR application because the State of South Carolina notified Applicant in the July 28, 2014 PCR hearing “ that the transcript does not exist, 1 year and 10 months after direct appeal.

Our Supreme Court stated, “ Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR Court, a question of fact is raised which can only be resolved by a hearing.” **McCoy**, 401 S.C.at 369, 737 S.E.2d at 626.

CONCLUSION

In ruling on a PCR application, “ the PCR Court shall make specific findings of facts and state expressly its conclusions of law, relating to each issue presented. “ S.C. Code Ann. section 17-27-80 (2014). The South Carolina Rules of Civil Procedure apply to PCR matters. see. id; Rule 71.1 (a), SCRPC. Rule 52 (a) provides in pertinent part,” In all actions tried upon the facts without a jury... the court shall find the facts specially and state separately its conclusions of law thereon.” Rule 52 (a). SCRPC. “ The PCR Court’s general denial of all claims not specifically addressed in the PCR Court’s order does not constitute a sufficient ruling on any issues since it does not set forth specific finding of facts and conclusions of law.” **Simmon v. State**, 416 S.C. 584, 592, 788 S.E. 2d 220, 225 (2016). **Fishburne v. State**, 427 S.C. 505, 832 S.E.2d 584 (2019).

Pursuant to section 17-27-70 (b-c) of the Uniform Post- Conviction Relief Act. This Court has an affirmative duty to deny the State of South Carolina Motion to Summary Dismiss applicant PCR application. Also, the Court has a duty to grant the applicant’s Second PCR action because he has shown the court on the face of the application and the record that

there are genuine issues of material facts present in this case, which can only be resolved by appointment of counsel and a hearing.

Respectfully Submitted,

Dennis M. Temple

Dennis M. Temple, SCDC # 274802
Lee Correctional Institution F6A-2154
990 Wisacky Highway
Bishopville, South Carolina 29010

December 14, 2021

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Dennis Maurice Temple, SCDC# 274802

Applicant,

v.

State of South Carolina,

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Civil Action Number
2020-CP-37-0695

APPLICANT'S REPLY TO THE
RESPONDENT'S FINAL ORDER OF
DISMISSAL

Pursuant to S.C. Code Section 17-27-70(a) the undersigned pro se applicant respectfully submits the following in reply to the respondents Final Order of Dismissal.

I. THE APPLICANT OBJECTIONS TO THE RESPONDENT'S MISCHARACTERIZATION OF HIS CLAIMS, FACTS, DEFENSES AND THE LAW IN THIS CASE REGARDING HIS INEFFECTIVE ASSISTANCE OF COUNSELS CLAIMS.

a. Applicant has raised a valid ineffective assistance counsel claim against Sarah Drawdy and Keith Denny for failing to raise a fourth Amendment in the July 16, 2010 preliminary hearing. see. Applicant's Response to the state's Conditional order of Dismissal for complete details.

b. The PCR Court did not issue a findings of facts and conclusion of law regard the ineffective assistance of counsels claims against sarah Drawdy and Keith Denny. Applicant's PCR counsel did not or failed to file a 59(e).As a result, PCR counsel was ineffective assistance of PCR counsel. see. Applicant's Response to the State's Conditional Order of Dismissal for complete details.

II. THE APPLICANT OBJECTIONS TO THE RESPONDENT'S MISCHARACTERIZATION OF HIS SCHMERBER V. CALIFORNIA CLAIMS, FACTS, DEFENSES AND THE LAW IN THIS CASE.

a. Applicant has raised a valid Schmerber v. California, claim.

b. The PCR Court did not issue a findings of facts and conclusion of law regarding the applicant's Schmerber v. California claim. Applicant's PCR counsel failed or refused to amend his PCR application upon request, and failed to file a 59(e) motion.

III. THE APPLICANT OBJECTIONS TO THE RESPONDENT'S MISCHARACTERIZATION OF HIS MOTION TO MOVE THE COURT FOR A NEW TRIAL CLAIMS, FACTS, DEFENSES AND THE LAWS IN THIS CASE.

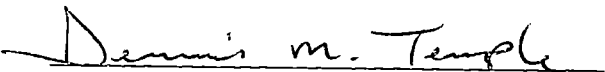
a. Applicant has raised a valid right to move the court for a new trial because the state of south carolina notified Applicant 1 year and 10 months after direct appeal that his preliminary hearing transcript does not exist, which prevented the appellate court from conducting a meaningful appellate review.

b. applicant's PCR Counsel was ineffective for failing to move the court for a new trial pursuant to State v. Ladson, 373 S.C.32 644 SE.2d 271 (2007), during the PCR hearing.

These failure violated the applicant's State of South Carolina and United State Constitutions, and State and Federal Statutory rights.

As a result, applicant has shown this Honorable Court in his pleadings, record and on the face of the application that he is entitled to a new PCR hearing and the state's Final Order of Dismissal should be denied.

Respectfully Submitted,



Dennis M. Temple, # 274802
Lee Correctional Inst.F6A-2154
990 Wisacky Highway
Bishopville, South Carolina 29010

November 25, 2021

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Dennis M. Temple, # 274802

Applicant,

v.

State of South Carolina,

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Civil Action Number:

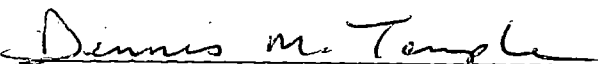
2020-CP-37-0695

CERTIFICATE OF SERVICE

I hereby certify that on this day below, I have served a copy of the foregoing Applicant's Reply to the Respondent's Final Order of Dismissal upon all parties, by United States mail post prepaid at Lee Correctional Institution addressed as following:

Lillian L. Meadows
Attorney for the State
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

November 25, 2021


Dennis M. Temple, # 274802
Lee Correctional Inst. F6A-2154
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