VOLUME TWO

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS
DANIEL D. HALL, CIRCUIT COURT JUDGE

APPELLATE CASE NO: 2015-001004

Antonio Gordon, Appellant,

v.

The State of South Carolina, Respondent.

RECORD ON APPEAL OF APPELLANT

Attorney General Office
Justin James Hunter, Esquire
P.O. Box 11549
Columbia, SC 29211

Antonio Gordon, #259798
Kershaw C.I. P-B#35
4848 Goldmine Hwy
Kershaw, SC 29067

warrantless arrest of applicant,and applicant trial counsel failed to challenge applicant's statement's on the ground that there was no probable cause for the arrest and that applicant statement's were the fruit of the poisonous tree with regard to the illegal arrest.See Wong Sun v. United States,Thus trial counsel was ineffective in allowing applicant to plea guilty and waive the right to challenge the inadmissibility of statement's and reserve the right to appeal meritorious appeal claims.Strickland v. Washington,

Finally,the applicant contends that the police should not have questioned him outside the presence of applicant's attorney in which applicant's mother retained,demanded that questioning cease of his juvenile client and that he be allowed the right to speak with his juvenile client,which was denied by the Rock Hill Police Department,Despite applicant did not sign a waiver in the present of his attorney,applicant was a juvenile,juvenile cannot waive their right to counsel during proceeding against him,unless he does so upon advise of counsel.See State v. Taylor,276 S.E.2d 199.Both applicant and Chyneca Dixon were under age,and should not have been questioned outside the presence of parent and counsel,this would warrant both,the applicant and Chyneca Dixon statement's illegally obtained,therefore, inadmissible,thus these statement's were the First Link In The Chain which [is] clearly a textbook definition of fruit of the poisonous tree doctrine.Wong Sun v united States,trial counsel ineffective for failing to challenge applicant's statement's on the ground that there was no probable cause for the arrest and that applicant's statement's were the fruit of the poisonous tree with regard to the illegal arrest.

For the foregoing reasons applicant sentence should be vacated and a new trial set.

LACK OF PERSONAL JURISDICTION

1. General Sessions Court was without "PERSONAL JURISDICTION OVER GORDON".

Lack of jurisdiction can be raised at any time,including for the first time on Appeal or PCR.

Gordon was sixteen years of age with an IQ that of 68 which placed Gordon in the range of boarderline function arrested upon a minor coerce,threaten,manipulated,intimidated and denied the right to speak with her mother/counsel until she implicated Gordon in the allege crime hearsay statement's. Gordon made two self-incriminating statements which Gordon's mother retained attorney Christopher Welborn to represent her under-age child,thus due to unprofessional police misconduct,applicant was denied the right to speak with counsel at counsel's demand that questioning cease of juvenile client in which the parent had asserted the right to counsel and remain silent. Gordon was automatically tried as an adult without "Family Court" relinquishing jurisdiction pursuant to S.C. Code Ann.§20-7-7605(1),(6),and (10).

General Sessions Court "LACK PERSONAL JURISDICTION",in accepting Gordon's guilty plea due to South Carolina Code Ann.§20-7-6605(1),"DEFINITION OF A CHILD",violates due process of law under the 14th Amendment to the United States Constitution,Federal and State Constitution,and also conflict with other statutory Children's Code of Laws. Specifically S.C. Code Ann.§20-7-400,"EXCLUSIVE ORIGINAL JURISDICTION OF FAMILY COURT,and South Carolina Code Ann.§20-7-7605(1),(6),and (10),"TRANSFER OF JURISDICTION".

South Carolina Code Ann.§20-7--6605(1),gives "two definition" of a "child" and arbitrary exclude a child sixteen years of age from the "definition" of being a "child" if charged with a Class A,B,C, or D felony,this function violates due process under the 14th amendment. However,this definition of a "child" not only exclude a "child" sixteen years of age from the definition of being a child,but define a "child" a person less then seventeen years of age. There are NO set guidelines in which the solicitor should base his arbitrary discriminating discretion

upon trying a "child" sixteen years of age,other then the child have been charge with a felony under section 16-1-20. Gordon asserts that his statutory right to due process of law under the 14th amendment to the United States Constitution,Federal and State constitution have been violated,thus due to prosecutorial misconduct,failure of the "solicitor" to "PETITION" the "EXCLUSIVE ORIGINAL JURISDICTION OF FAMILY COURT" for propr "JURISDICTION" pursuant to S.C. Code Ann §20-7-7605(1),(6),and (10),"TRANSFER OF JURISDICTION" Gordon sentence resulted in a miscarriage of justice. Thus Gordon's conviction's and sentence was unlawfully obtained,plea judge had NO "authority" to accept Gordon's guilty plea upon erroneous code section cited above without the solicitor petitioning the family court for JURISDICTION. The act of a Court with respect to a matter as to which it has "NO JURISDICTION" are void,Guthrie,352 S.C. at 107,572 S.E.2d at 312.

South Carolina Code Ann.§20-7-7605(1),(6),and (10) authorize the Family Court to determine whether it is appropriate to transfer a juvenile sixteen years of age to General Sessions Court who commit murder and other serious offense. The Appellate Court will affirm a transfer order unless the Family Court has abuse it discretion.Sanders v. State,314 S.E.2d 319 (1984),State v. Wright,237 S.E.2d 764 (1977).

> Due process requires the responsibility of the Family Court to include in its waiver of jurisdiction order,sufficient statement of reasons for,and consideration leading to that decision. Conclusory statement,without further explanation will NOT suffice. The order should be sufficient to demonstrate that the statutory requirement of investigation and due process has been met and that the question has received full and careful consideration by the "FAMILY COURT". The salient facts upon which the order is based are to be set forth in the order.In re Sullivan,265 S.E.2d 527 (1980),S.C. Code Ann.§20-7-7605(1),(6),and (10).
>
> Gordon argues that the circuit court lack personal jurisdiction and failed to address subsection six of the transfer statute which specifically deals with when a "child"

has been charged with murder. Moreover,Gordon contends that because this subsection contains "NO" explicit age limitation for waiver,the Circuit Court "LACK PERSONAL JURISDICTION", and erred in accepting Gordon's guilty plea when jurisdiction has not been relinquish from family Court to General Sessions Court (solicitor failed to petition for jurisdiction"). Thus Gordon's guilty plea resulted in a miscarriage of justice,violating Gordon's 14th amendment right to due process of law to the United States Constitution,Federal and State Constitution.Guthrie,Kent,Patton v. Toy,Supra

In interpreting a statue,the Court's primary function is to ascertain the intent of the legislature.E.g.,Whitner v. State,492 S.E.2d 777,779,118 S.ct.1857 (1998). Moreover,there is a basic presumption that the legislature has knowledge of previous legislation when later statutes are enacted concerning related subjects.

Section 20-7-400,titled "EXCLUSIVE ORIGINAL JURISDICTION OF FAMILY COURT",states:

(A). Except as otherwise provided herein,the Court SHALL have exclusive original jurisdiction and SHALL be the sole Court for initiation action:

(3). Concerning any "CHILD" seventeen years of age or over,living or found within the geographical limits of the Court's jurisdiction,alleged have violated or attempted to violate any State or Local law or municipal ordinance prior to having "BECOME SEVENTEEN" years of age and such person "SHALL" be delt with under the provisions of this chapter relating to children's. S.C. Code Ann.§20-7-400 (1985&Supp.1998) (empasis added). Under the Children's Code,the General Sessions Court ordinarily lacks jurisdiction over individuals under the age of seventeen,with certain exception. See S.C. Code Ann.§20-7-7605 reads in pertinent part:

In accordance with the jurisdiction granted to the family court pursuant to section 20-7-400,20-7-410,and 20-7-420,jurisdiction over a case involving a child must be transferred or retained as follows:

App. p. [illegible]
[illegible]
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(1). If,during the pendency of a criminal or quasi-criminal charge against a child in a circuit court of this State,it is ascertain that the child was UNDER the age of SEVENTEEN years at the time of committing the allege offense,it is the duty of the circuit court immediately to transfer the case,together with all the papers,documents,and testimony connected with it,to the family court of competent jurisdiction or in those cases where jurisdiction has properly been transferred to the circuit court by the family court under the provisions of this section. The court making the transfer shall release the child to be taken immediately to the place of detention designated by the court or to that court itself,or shall proceed as provided in this article. The provisions of this section are applicable to all existing offenses and to offenses created in the future unless the General Assembly specifically directs otherwise.

(6). Within thirty days after the filing of a "petition" in the "family court" alleging the "child" has committed the offense of murder or criminal sexual conduct,the "person executing" the petition may request in writing that the case be transferred to the Court of General Sessions with a view to proceeding against the child as a criminal rather than as a child coming within the purview of this article. The "JUDGE" of the "FAMILY COURT IS AUTHORIZED TO DETERMINE THIS REQUEST". If the request is denied,the petitioner may appeal within five days to the circuit court. Upon the hearing of the appeal,the judge of the circuit court is vested with the discretion of exercising and asserting the jurisdiction of the court of general sessions or relinquishing jurisdiction to the family court. If the circuit court judge elects to exercise the jurisdiction of the general sessions court for trial of the case,he shall issue an order to that effect,and then family court has no further jurisdiction in the matter.

(10). If a child fourteen years of age or older is charged with an offense which,if committed by an adult,provides for a term of imprisonment of ten years or more and the child previously has been adjudicated delinquent in the family court or

convicted in circuit court for two prior offense which,if committed by an adult,provides for a term of ten years or more,the court acting as committing magistrate shall bind over the child for proper criminal proceedings to a court which would have trial jurisdiction over the offense if committed by an adult. For purpose of this item,an adjudication or conviction is considered a second offense occurred subsequent to the imposition of the sentence for the first offense. S.C. Code Ann.§20-7-7605 (Supp.1998) (emhasis added).

Pursuant to the Children's Code,"[c]hild" is defined in section 20-7-6605:

> (1). "[C]hild" means a person less than seventeen years of age. "[C]hild does not mean a person sixteen years of age who is charge with a Class A,B,C, or D felony which provides for a maximum term of imprisonment of fifteen years or more. However,a person sixteen years of age who is charged with a Class A,B,C, or D felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court at the discretion of the solicitor. An additional or accompanying charge associated with jurisdiction over the offense contained in this item.

S.C. Code Ann.§20-7-6605(1) (Supp.1998).kent v. United States,383 U.S. 541 (1966),the United States Supreme Court noted the following criteria for determining whether jurisdiction should be waived under the District of Columbia Juvenile Act:

Note: 1

Criminal statutes are construed strictly against State and any ambiguity in them must be resolved in favor of accused,William v. State,410 S.E.2d 563 (1991),State v. Guy Mobile Corp,149 S.E.2d 913 (1966).(2) The S.C. Supreme Court held in State v. Corey D,that the "family court" could waive a child twelve years old to the Court of General Sessions stating that subsection six of §20-7-7605,transfer of jurisdiction,contained no age limitation,thus the S.C. Supreme Court have not address whether the "SOLICITOR" should "PETITION" the "exclusive original jurisdiction of family court",for proper jurisdiction pursuant to subsection 6 of § 20-7-7605,transfer of jurisdiction,pertaing to a "child" sixteen years of age who is charge with a Class A,B,C, or D felony which contain no age limitation.

App. P. [illegible] 7

1. The serious of the allege offense to community and whether the protection of the community requires waiver.

2. Whether the allege offense was committed in an aggressive violent,premeditated or willful manner.

3. Whether the allege offense offense was against person or against property.

4. The prospective merit of the complaint,i.e.,whether there is evidence upon which a grand jury may be to return an indictment.

5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the offense are adults who will be charge with a crime.

6. The sophistication and muturity of juvenile's as determined by consideration of his home,environmental situation,emotional attitude and pattern of living.

7. The record and previous history of the juvenile,including previous contacts with the youth aid division,other law enforcement agencies,juvenile courts and other jurisdictions,prior periods of probation to this court,or prior commitment to juvenile's institutions.

8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of juvenile (if he is found to have committed the allege offense) by the use of procedures,services and facilities currently available to the juvenile court. Id.at 566-67. The South Carolina Supreme Court,in State v. Corey D,529 S.E.2d 20 (2000),concluded that the family court may properly consider the Kent factors when determining whether jurisdiction over a juvenile should be transferred.id.at 117-18,529 S.e.2d at 25-26 ("moreover,the family court specifically consider the Kent factors,which in previous cases the Court has implicitly approved as appropriate criteria.")

Facially and legally,jurisdiction of the offense contained in statutory 20-7-6605(1)"DEFINITION OF A [C]HILD",is erroneously placed with the circuit court. The

reference statutes plainly and luculently demonstrate that the "EXCLUSIVE ORIGINAL JURISDICTION OF FAMILY COURT CONTROLS ALL CHARGES PENDING AGAINST A "CHILD" UNDER THE AGE OF SEVENTEEN". The amalgamation and commingling of pending charges with exclusive original jurisdiction in the family court and exclusive original jurisdiction in the circuit court result in a sentence that cannot be placed in a legally sufficient position by a statute procedure that simplistically eliminates original family court jurisdiction,leaving original jurisdiction circuit court offense,this procedure violates statutory procedural due process of law under the 14th amendment to the United States Constitution,Federal and State Constitution,and statutory procedure of the grand jury function in South Carolina. Thus due to prosecutorial misconduct,failure of the "solicitor" to "petition" family court for proper JURISDICTION,Gordon's guilty plea resulted in a miscarriage of justice,rendering the guilty plea involuntarily made whereas,General Sessions Court Lack Personal Jurisdiction in accepting Gordon's guilty plea.

Gordon's guilty plea should be vacated set aside and a new trial granted due to the miscarriage of justice.

APP. P. [illegible]
[illegible] 9

MISCARRIAGE OF JUSTICE

Wille Thomas Ass. trial solicitor testified FALSELY,and committed PERJURY in violation of Gigilio v. US,U.S V. Bagley,Banks v. Dretke,125 S.ct (2005),prohibition against the use of known perjury testimony,when at the guilty plea,in support of the plea,Thomas stated A.Gordon palm print on victim's BMW driver side door when he knew this was only,in fact,the victim print on his driver side door,not A.Gordon.See Page 188 plea L.12 (1).

This has also been raised as a Brady violation causing the plea itself to be involuntary Gibson v. State. However,this is primarily a issue that amounts to a "manifest miscarriage of justice that is shocking to the universal sense of justice".See United States v. Beggerly,118 S.ct 1848 (1998),Butler v. State,(1990 S.C.),as the entire plea was based on a misrepresented evidence known to the State and the (solicitor) and it was not objected to or raised at trial,at this evidence was not only misrepresented,and suppressed by Willie Thomas etal.

II MISCARRIAGE OF JUSTICE

When raised at the PCR Tara D. Shurling (esq) either lost or destroyed the physical evidence of palm print card that would have shown conclusively Willie Thomas had perjured himself at guilty plea proceedings. And this misrepresentation of the evidence was the primary reason applicant entered a guilty plea.See Brady v. Marland,and Gibson v. State,and thus the plea was involuntary.

Tara D. Shurling over the strenous objection of the applicant "WITHDREW" this issue. Further,she failed to file a Rule 60 (b),(1),to present and preserve this issue-post hearing-based on her mistake,inadvertence excusable neglect (etc) (lost,destroyed,palm print evidence).

(a) However,it now appears Tara D. Shurling acted either with gross negligence and lost the palm print evidence/did not get the palm print from out rule 5/Brady file from the York County solicitor's office or trial counsel D'Agostino. Or she acted to defraud her client out of this miscarriage of justice issue at

(1) THIS WAS ONLY PIECE OF PHYSICAL EVIDENCE (ALLEGELY) LINKING ANTONIO GORDON TO THE CRIME. EVEN VICTIM STATED A.GORDON MERELY PRESENT.

App. P. #4

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the PCR hearing and again failed to file a Rule 60 (b), to show that the solicitor produced known perjured testimony in violation of Gigilo v. United State,

(b) This fraudulent issue must be examined in light of SC case law hagy v. Pruitt, 529 S.E.2d (2001). (Allows evidence of extrinsic fraud upon the Court to be raised at anytime.)

This is in addition to BLACK LETTER LAW that holds issues of miscarriage of justice can also be raised to overcome any PROCEDURAL BARS. US v. Beggerly, Supra, Butler v. State,

Gordon was subjected to miscarriage of justice at the plea, and at the PCr in RE: to presentation of perjured testimony of Willie Thompson of palm print that was sole reason Gordon changed his plea to guilty and waive his right to a trial. Thus State misrepresentation of the only physical evidence caused Gordon to pled guilty when he would have otherwise continued with the trial that was in progress.

Gordon did not knowingly and voluntarily waive the States misrepresentation of the palm print by State, and accompanying Brady Violation, and I Gordon, pur to Ard v. Catoe, (March 2007 SC), for counsel failing to advise his client his print was NOT on victim vehicle but his own vehicle.

Tara D. Shurling either lost or destroyed the physical evidence that palm print on applicant's vehicle (NOT VICTIM) at or prior to the PCR hearing, this issue was NEVER waived and Tara D. Shurling will testify applicant strenously objected to her not raising this issue at PCR.

NEW TRIAL

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL)
ROCK HILL POLICE DEPARTMENT)

a.k.a. Chyanne Dixon App. P 11

PERSONALLY appears before me: Tawanda Burris, who after being duly sworn depeses and says: "My name is Tawanda Burris
Date of Birth: 12-10-76 Social Security Number:
My address is 3710 Vernsdale Rd., RHSC
Place of Employment: n/a
Home Phone Number: 325-1104. Work Phone Number:
I completed 12 years in school and I can (x) cannot ( ) read and write."

The car you're asking me about I've had for two weeks. I got it from my grandmother Angie Burris. I haven't put a tag on it yet. I went to sleep last night and it was in the driveway. My boyfriend is Antonio Gordon. The keys to the car I've got two sets - one I keep around my neck and the other set I keep put up. I didn't have the keys on the string around my neck so Antonio had to give the ke to Chris Lowery. Chris's girlfriend lives across the tracks. Her name is Mimi Gordon. Chris and Junebug (Terrance Mcreary) were at the house today. They wanted to pay me to use the car but I told them the car didn't have no tags and they couldn't use it. They were down there drinking beer. Terrance just got a gold rack for his mouth. It fits over his top teeth. Terrance had a silver revolver and he tried to sell it to me. He didn't say where he got it. I think it's a .38. But I didn't want it. I had been drinking today and fell asleep around 6:30pm. Another guy was down there - they call him Nock (sp?) - his name is Jamie Moore. Monte' Gordon was there too. He's Antonio's brother. The car must have been gone since 6:30pm - anytime after that. Terrance lives in the Glens with Christie Anthony. I don't know where Chris stays. Chris is brown skinned and is about 5-8/5-9 and weighs about 170. Terrance is about 6-3 and has a box cut still. T.B.

Exhibits.
one (1)

Tawanda Burris
Signature of person giving statement

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

APP. 12

PAGE 2

PERSONALLY appears before me: Tawanda Burris

who deposes and says: "I make this statement of my own free will and accord, without reward or hope of reward. I have not been mistreated or threatened in any way. All of the above is truth, the whole truth, and nothing but the truth so help me God."

I have read or had read to me the above statement consisting of 2 pages and have received a copy of the same."

Tawanda Burris

(SIGNATURE)

(WITNESS)

SWORN TO AND SUBSCRIBED TO BEFORE ME
THIS 23 DAY OF July, 19 98

Exhibits
one (1)

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES ON 9-18-2001

STATEMENT TAKEN ON 7-23-98 AT 6:00 AM XX
STATEMENT SIGNED ON 7-23-98 AT 6:50 AM XX

STATEMENT FROM: TAPE ( ); WRITTEN NOTES ( ); DICTATED ( ); INTERVIEW (X).

STATEMENT PREPARED BY: Lt. J. Thickens

STATE OF SOUTH CAROLINA)
CITY OF [illegible]CK HILL)
ROCK HILL POLICE DEPARTMENT)

App. 0. [illegible]
[illegible] 13

PERSONALLY appears before me: Chyneca Dixon, who after being duly sworn deposes and says: "My name is Chyneca Dixon
Date of Birth: 12-10-82 Social Security Number:
My address is 3710 Vernsdale Rd., RHSC
Place of Employment:
Home Phone Number: 325-1104 Work Phone Number:
I completed 10 years in school and I can (X) cannot ( ) read and write."

Tonight my boyfriend Antonio Gordon was working on his car. It's a blue Cheverolet. He was putting a radio in it. There were a few other guys helping. They were Monte Gordon, Gary Moffat, Antonio Cousar, and Terrance McCreary. It was around midnight. [illegible] Terrance, Gary, and Antonio (Cousar) said they were going to leave to get some ass (sex). So Antonio (Gordon) gave them the keys. I don't know who was driving. The three of them left. Monte stayed at the house because he is seeing Foncelia Feely. She lives with me and is pregnant by Monte. Then later on about 2am or 2:30 all three of them drove back up in the car. It was Terrance, Gary, and Antonio Cousar. I was in the bed. They came in the house and started telling u what happened. They told me, Foncella, Monte and Antonio (Gordon). They say they saw a silver BMW driving with the lights off and thought two white girls were driving. They said they were going to holler at them. They say they found out it was two guys in the car so they were just going to take the car from them. Terrance say that the car started backing up and they were asking the boys about having money and the boys said they didn't have any money. The boy: started backing up, Terrance said so he just shot the driver in the shoulder. Then all three of them, Terrance, Gary, and Antonio came back to my house an. told us this. After that Antonio Gordon (suspect vehicle owner) said he needed some wire to hook up the car speakers and Terrance said he had some at home. I don't know where his house is. So Monte took all three of them with him - Monte was driving - and he was going to drop off Terrance, Antonio Cousar, and Gary, then Monte was going to bring the wire back to the house. But then the next thing I knew was my aunt on Vernsdale, Kathy Gordon, called me and said the police was chasing the car coming our way. That's the last thing that happened.

I lied in my first statement because I knew terrance shot the boy and I didn't wan to see him go to jail, and also because the car belongs to my boyfriend and I didn't want him to get into any trouble.

Terrance just got a gold rack to fit over his upper teeth on the front. He also (C.D.) tried to sell me the gun I told you about in my first statement and tonight when he was bragging about shooting the boy he had the gun - a silver revolver. He took it with him when he left the house. Terrance told all of us he shot the boy. He was bragging about it. Chyneca Dixon

Exhibit two (2)

I want to clarify one thing about this statement: Whenever I said Antonio Cousar I mean Antonio Gordon. He's my boyfriend and I didn't want him to get in trouble but he was in the car with Terrance and Gary when the boy got shot.

Chyneca Dixon

Chyneca Dixon
Signature of person giving statement

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

PAGE 2

APP. P. Exhibit 14

PERSONALLY appears before me: Chvmeca Dixon

who deposes and says: "I make this statement of my own free will and accord, without reward or hope of reward. I have not been mistreated or threatened in any way. All of the above is truth, the whole truth, and nothing but the truth so help me God.

I have read or had read to me the above statement consisting of 2 pages and have received a copy of the same."

Chvmeca Dixon
(SIGNATURE)

(WITNESS)

SWORN TO AND SUBSCRIBED TO BEFORE ME
THIS 23 DAY OF July, 1998

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES ON 9-16-2001

Exhibits
two (2)

STATEMENT TAKEN ON 07-23-98 AT 7:30 AM PM
STATEMENT SIGNED ON 07-23-98 AT 8:45 AM PM

STATEMENT FROM: TAPE ( ); WRITTEN NOTES ( ); DICTATED ( ); INTERVIEW (X).

STATEMENT PREPARED BY: Lt. J. Thickens

NEWLY DISCOVERED Evidence

Exhibit (3)

App. P. 15

Antonio Gordon Case

Statement of Chyneca Dixon

01/16/08 @ 7:25pm

Conducted by: Investigators Whiteside and Stewart

Personal Affidavit

In the early morning hours in February or March of 1998, I was at my boyfriend's grandfather's house, who is Willie Gordon. He lived in a trailer on Vernsdale Road. At approximately 5:30am, I was awakened by sirens. We got a knock at the door. We thought they were coming for Curtis Gordon, Antonio's uncle, who lived next door, because he had done something again. They came to Mr. Willie's door instead. It was a tall lanky officer, who asked for the owner of the house.

Gloria Dean answered the door and said that she looks after him and the house. The officer asked if he could come in and the Gloria Dean asked what he wanted to come in for. He said he just wanted to see who was in the house. Gloria Dean asked where his warrant was and he said he didn't have one, but he could go get one. Gloria Dean said "well hell, we haven't done anything wrong so you all can come in".

The officer asked everybody what their name was and then he said what he was there for. He said the car that was in the yard had been identified in a shooting. He asked who the owner of the car was and that's when I stepped forward and said it was my car. The officer then asked me to talk to him on the porch. I said that Curtis had the car because he was going to repair it. It had no heat or air conditioning so that's why Curtis had it to repair it. I had a new baby and needed it fixed. The ignition was stripped so anyone could crank the car. I said I didn't know who was driving the car. The officer me if I could come to the station. He told me I could either come to the station to talk to him or he would have the car towed. I agreed to go to the station because I needed my car.

After they got me in the car, we pulled up next to another police car and there was another girl in the car, Vontella Feely, the girlfriend of Antonio's older brother, Monte. The police officer tells me I'm withholding information, and I tell him I don't know anything and I'm scared.

So, I get down to the police station and he keeps asking me questions and I keep telling him, I don't know, I don't know. He says to me "ok I'll tell you what, either you tell me who was driving this car or you're going to be charged with accessory to murder".

I'm in the police station and I tell him that I want to talk to my Mom or a lawyer and he tells me that I can't and that he can detain me right now for accessory to murder. The officer told me he has my fingerprints on the car and I said of course you do, it's my car. I stand up and say I want to go and he handcuffs me. I was very scared. He told me if I signed something stating who could have driven my car, I could go. I said it could have been Curtis, Antonio, or Monte and so I signed it and he walked me to the front so someone could call my parents for me to go.

I never heard from the officer again.

Further Affiant Sayeth Naught

Chyneca Dixon

Sworn to before me this 20 day of January, 2008

Teresa Skidmore

Notary Public for South Carolina

My Commission Expires: 01/24/2013

NEWLY DISCOVERED EVIDENCE

Exhibit (4)

APP. P. 16

Antonio Gordon Case

Statement of Geraldine Dixon

01/16/08

Conducted by: Investigators Whiteside and Stewart

Personal Affidavit

On a morning in February or March in 1998, at around 9:00am, I got a call from some lady who said she was with the Rock Hill Police Department. She asked me if I was Chyneca Dixon's mother. When I said I was, she put Chyneca on the phone.

Chyneca asked me to come pick her up. When I got to the police department, I went to the Dispatch window and asked what was going on. The lady told me my daughter would be out in five minutes. About five minutes later, Chyneca came out and she was crying. I asked her what was going on and she said the police had questioned her about somebody driving her car in a shooting and the boy had died. I called the police department for the next 2-3 weeks. There was an officer who said he would call me back, but he never did. The police still have never told me why they picked up my daughter or what they had questioned her about.

Further Affiant Sayeth Naught

Geraldine Dixon

Sworn to before me this 20 day of January, 2008

Teresa Dickerson

Notary Public for South Carolina

My Commission Expires: 01/24/2013

Attachment (1) App. P. 17

STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
Antonio Gordon, 259798, Applicant, v. State of South Carolina, Respondent.	2008-CP-46-4951 MOTION TO RESTRICT FUTURE FILINGS

The Applicant's repetitive and abusive filings should be restricted in order to preserve the Court's time and resources and stop any interference with the fair administration of justice.

The Applicant has received his full bite at the apple. Under the PCR rules, an Applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple." This "bite at the apple" includes an Applicant's right to appeal the denial of a post-conviction relief application, and the right to assistance of counsel in that appeal. Matthews v. Evatt, 105 F.3d 907, 916 (1997), Gamble v. State, 298 S.C. 176, 379 S.E.2d 118, 119 (1989), Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999).

The Applicant has filed three (3) PCR Applications on the 1999 convictions, a motion for reconsideration from the dismissal of the first PCR application, an appeal from the dismissal of his first PCR (2001-CP-46-1866), a Federal Petition for Writ of Habeas Corpus which was subsequently denied, a rule 60(b) motion to reconsider and clarify, and a State Petition for Writ of Habeas Corpus which was also

subsequently denied. A new Application was filed on January 9, 2009 and amended on May 19, 2009. He is also now requesting $5,000 from Indigent Defense for an investigator to investigate several allegations that have already been raised and dismissed. The Applicant has had his full bite at the apple at least three (3) times on the 1999 convictions, and has appealed the dismissal of his allegations or reasserted his allegations after each dismissal through a PCR appeal, or Federal or State Petition for Writ of Habeas Corpus, including several amendments to those filings. The Applicant continues to raise the same frivolous and repetitive allegations. The Applicant's filings clearly rise to the level of repetitive and abusive filings, and he must be restricted from future filings.

I. REQUESTED REMEDY

Due to the repetitive and frivolous nature of Applicant's numerous applications, the State would request the Court to direct the York County Clerk of Court not to accept any further PCR applications from the Applicant unless he pays the normal filing fee generally required for the filing of a summons and complaint. The United States Supreme Court has denied litigants who have filed repetitive, frivolous petitions the right to proceed *in forma pauperis*, resulting in the litigants having to pay the required filing fee with that Court. In re Whitaker, 513 U.S. 1, 115 S.Ct. 2, 130 L.Ed.2d 1 (1994); In re Anderson, 511 U.S. 364, 114 S.Ct. 1606, 128 L.Ed.2d 332 (1994); In re Demos, 500 U.S. 16, 111 S.Ct. 1569, 114 L.Ed.2d 20 (1991); In re Sindram, 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991); In re McDonald, 489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989).

The State would also request that the Applicant be required to provide a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous. In In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996), the South Carolina Supreme Court required Maxton, who had filed numerous meritless petitions with the Court, to pay a filing fee and accompany any future filings with a properly notarized affidavit by Maxton certifying that he in good faith believed that the matters he was raising were non-frivolous and proper for the Court to consider. Id. Other courts have required that the abusive litigant file an affidavit certifying that he believes the petition raises an original claim or is non-frivolous before accepting filings from the litigant. In the Matter of Verdone, 73 F.3d 669 (7th Cir.1995); Abdul-Akbar v. Watson, 901 F.2d 329 (3d Cir.1990); Green v. Warden, 699 F.2d 364 (7th Cir.), *cert. denied*, 461 U.S. 960, 103 S.Ct. 2436, 77 L.Ed.2d 1321 (1983).

The State would also request that if the Applicant submits an Application that is accompanied with a notarized affidavit, that, before filing, the Clerk's office be directed to submit the Application to the Chief Administrative Judge. The State would ask the Administrative Judge to then make a finding on whether the issues raised in the Application are non-frivolous and proper for the Court to consider. If the Administrative Judge finds the Application proper, it would then be submitted to the Clerk's office for filing. No Application would be filed without a proper finding from the Chief Administrative Judge.

The State also requests that the Applicant be warned that should he continue to file Applications containing matters that are frivolous, that he may be held in

contempt or for the Court to impose sanctions as circumstances of the case and discouragement of like conduct in the future may warrant. The Supreme Court imposed such warning on an Applicant in In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996).

II. SUPPORTING FACTS

The Applicant's extensive litigation history is necessary to understand this request for injunction:

Underlying Convictions

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the October 1998 term of the York County Grand Jury for Murder (98-GS-46-2847), three counts of Possession of a Firearm During the Commission of a Violent Crime (98-GS-46-2847-A)(98-GS-46-2849-A)(98-GS-46-2850-A), two counts of Attempted Armed Robbery (98-GS-46-2849)(98-GS-46-2850), Criminal Conspiracy (98-GS-46-2851), and Possession of a Pistol by a Person Under Twenty-One (98-GS-46-2852). Daniel D'Agostino, Esquire, represented the Applicant. On July 16, 1999, the Applicant pled guilty as indicted. On July 19, 1999, the Honorable John C. Hayes III sentenced Applicant to confinement for thirty (30) years for Murder; ten (10) years for Attempted Armed Robbery, which was consecutive to the 98-GS-46-4827 charge, but concurrent with present sentence being served; five (5) years concurrent for Possession of a Firearm During the Commission of a Violent Crime; five (5) years concurrent for Criminal Conspiracy; and five (5) years concurrent for Possession of a Pistol by a

Person Under Twenty-One. App. p. 21

The Petitioner filed a timely notice of appeal and an Anders brief was submitted on his behalf pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the Defendant's appeal. State v. Gordon, 2000-UP-747 (S.C. Ct. App. filed December 6, 2000). The Remittitur was sent on January 9, 2001.

PCR APPLICATIONS AND OTHER FILINGS

A. Gordon v. State (2000-CP-46-1414)

Filed:	6/19/2001
Conviction:	1999
Allegations:	Ineffective assistance of counsel, subject matter jurisdiction (failure to have waiver hearing to transfer him from Family Court to General Sessions because he was sixteen (16) years old when arrested, and failure to challenge the indictments), involuntary guilty plea (incompetence and limited comprehension because of low IQ), trial court error in failing to grant the severance motion, failing to adequately pursue the Applicant's incompetence to stand trial, failing to make a double jeopardy argument, failing to advise the Applicant that pleading guilty meant he waived his right to appeal the admissibility of his statements on direct appeal, and failing to advise the Applicant he would be subject to community supervision.
Hearing:	7/29/03
Judge:	J. Ernest Kinard, denied 8/19/03
Ruling:	Denied by Order dated 11/27/87
Counsel:	Tara Shurling
Appeal:	Johnson brief, cert. Denied. 8/9/05

B. Gordon v. State (2004-CP-46-1700)

Filed:	7/6/04
Conviction:	1999
Allegations:	Violation of due process and equal protection, lack of

subject matter jurisdiction (failure to have waiver hearing in Family Court, failure to challenge the indictments), failure to request a competency hearing to stand trial,

Hearing: 12/6/04
Judge: Thomas W. Cooper, Jr.
Ruling: Denied by Order dated 5/20/05
Counsel: Pro Se.
Appeal: None.

C. **Federal Petition for Writ of Habeas Corpus (2:05-3327-MBS-R)**

Filed: 1/3/09
Conviction: 1999
Allegations: Objection to Report and Recommendation of Magistrate Judge, ineffective assistance of counsel for failure to advise murder was non-parole offense, failure of PCR counsel to file a 59(e) motion, failure to raise double jeopardy issue, failure to advise him he was waiving his right to appeal admissibility of statements, 4th amendment violation because he was interrogated as a juvenile without counsel or parent present, failure of counsel to challenge the admissibility of his statement that resulted from the invalid interrogation, due process because competency evaluation was conducted by an unlicensed psychologist, trial court erred in denying severance motion, involuntary guilty plea
Hearing: 10/15/90
Judge: Margaret B. Seymour
Ruling: Dismissed without prejudice to permit Petitioner to exhaust all State remedies, dated 2/16/07
Counsel: Pro Se
Appeal: None

D. **Gordon v. State (2006-CP-46-0010)**
(State Petition for Writ of Habeas Petition)

Filed: 1/3/06, Motion to amend 1/23/07
Conviction: 1999
Allegations: Newly discovered evidence, ineffective assistance of counsel, prosecutorial misconduct, Brady violations, involuntary guilty plea, personal jurisdiction
Hearing: 1/23/07

Judge:	John C. Hayes, III
Ruling:	Dismissed with Prejudice dated 4/30/07
Counsel:	Charles B. Burnette, III
Appeal:	None.

E. Rule 60(b) Motion

Filed:	8/7/07
Conviction:	1999
Allegations: M	Motion to reconsider; seeking amendment and clarification; conflict with Judge Hayes.
Judge:	Roger L. Couch
Ruling on Motion:	Granted; clarified and amended order that Petitioner is without prejudice to bring a Habeas Corpus Petition in the original jurisdiction of the South Carolina Supreme Court.
Ruling on State Habeas:	An evidentiary hearing was held before Judge Couch. He dismissed the State Habeas Corpus without prejudice on January 31, 2008.

F. Gordon v. State (2008-CP-46-4951)

Filed:	1/9/09 and amended 5/19/09
Conviction:	1999
Allegations:	Ineffective assistance of counsel, personal jurisdiction (failure to have waiver hearing to transfer him from Family Court to General Sessions because he was sixteen (16) years old when arrested), involuntary guilty plea, Brady violations, 4th amendment/involuntary statement, Defense counsel failed to challenge applicant's statement's on the ground that there was no probable cause for the arrest and that applicant statement's was the fruit of the poisonous tree with regard to the illegal arrest, prosecutorial misconduct, counsel failed to conduct a pretrial investigation, counsel failed to interview key witnesses, failing to advise the Applicant that pleading guilty meant he waived his right to appeal the admissibility of his statements on direct appeal, and failing to advise the Applicant that murder was a non-parole offense
Hearing:	12/1/09
Judge:	Lee S. Alford

Counsel: Tricia Blanchette
Other: Current PCR Application includes a "Motion for Funds for an Investigator" and a "Motion for Funding of Expert"

IV. CONCLUSION

The Applicant's allegations and accusations have become increasingly frivolous and ridiculous. His only success has been to have his Rule 60(b) motion granted to allow him to file a Petition for Habeas Corpus in the original jurisdiction of the South Carolina Supreme Court. Each case is accompanied with numerous requests to amend and other frivolous motions, and often requires a change of venue for the evidentiary hearings. The Applicant continues to waste the time and resources of the York County Clerk of Court's Office, the Chief Administrative and Presiding Judges in the Sixteenth Circuit, the South Carolina Attorney General's Office, numerous appointed attorneys of the York County Bars, Court Personnel, and the South Carolina Supreme Court.

There is a strong interest in finality of the criminal process; judicial review must stop at some juncture and finality must be realized. Aice v. State, 305 448, 409 S.E.2d 392 (1991). The Court quoted Justice Harlan when discussing the importance of finality in litigation when they stated the following:

> All law, criminal or otherwise, is worth having and enforcing, it must some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task stripping a man of his freedom and subject him to institutional restraints. But this does not mean that in doing so, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing a man shall tentatively go to jail today, but

> tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved. A rule of law that fails to take account of these finality interests would do more than subvert the criminal process itself. It would also seriously distort the very limited resources society has allocated to the criminal process...This drain on society's resources is compounded by the fact that issuance of the habeas writ compels a State that wishes to continue enforcing its laws against the successful petitioner to relitigate facts buried in the remote past through presentation of witnesses whose memories of the relevant events often have dimmed. This very act of trying stale facts may well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first.

Anderson v. Leeke, 271 S.C. 435, 441, 248 S.E.2d 120 (1978).

V. PRAYER FOR RELIEF

For these reasons, The State requests the Court to find the following:

1. The Clerk of Court should refuse to accept further petitions from the Applicant asking the Court to entertain matters unless he pays a filing fee generally required for filing motions and petitions with this Court.

2. The Applicant should be prohibited from filing any legal actions in any jurisdiction in South Carolina without submitting the requisite filing fees[1] and providing a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous.

3. Any Applications submitted with properly notarized affidavits be submitted to the Chief Administrative Judge to make a finding on whether the allegations are non-frivolous and proper for the Court before they are filed;

4. The Clerk of Courts should be instructed to return all documents that do not comply with this order, and;

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[1] S.C. Code Ann. §8-21-310(11)(a) (Supp. 2004)

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Received 26

STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS FOR THE 16TH JUDICIAL CIRCUIT Case No.: 2008-CP-46-4951
Antonio Gordon, #259798, Applicant, v. State of South Carolina, Respondent.	**RETURN AND MOTION TO DISMISS**

In response to the amended post-conviction relief application filed on January 9, 2009 and amended on May 19, 2009, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the October 1998 term of the York County Grand Jury for Murder (98-GS-46-2847), three counts of Possession of a Firearm During the Commission of a Violent Crime (98-GS-46-2847-A)(98-GS-46-2849-A)(98-GS-46-2850-A), two counts of Attempted Armed Robbery (98-GS-46-2849)(98-GS-46-2850), Criminal Conspiracy (98-GS-46-2851), and Possession of a Pistol by a Person Under Twenty-One (98-GS-46-2852). Robert D'Agostino, Esquire, represented the Applicant. On July 16, 1999, Applicant pled guilty as charged. On July 19, 1999, the Honorable John C. Hayes, III sentenced the Applicant to confinement for thirty (30) years for Murder; ten (10) years for Attempted Armed Robbery, which was consecutive to the 98-GS-46-4827 charge, but concurrent

with present sentence being served; five (5) years concurrent for Possession of a Firearm During the Commission of a Violent Crime; five (5) years concurrent for Criminal Conspiracy; and five (5) years concurrent for Possession of a Pistol by a Person Under Twenty-One.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. A brief was filed on the Applicant's behalf pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the Defendant's appeal. State v. Gordon, 2000-UP-747 (S.C. Ct. App. filed December 6, 2000). The Remittitur was sent on January 9, 2001.

2000-CP-46-1414

The Applicant subsequently filed his first application for post-conviction relief (PCR) on June 19, 2000[1]. The State made its Return on May 4, 2001. An evidentiary hearing was convened on July 29, 2003, in Richland County, at which the Applicant was present and represented by Tara D. Shurling, Esquire. The Applicant raised the following issues in his first PCR:

1. Ineffective assistance of counsel;
2. Subject Matter Jurisdiction; and
3. Involuntary Guilty Plea.

The Honorable J. Ernest Kinard denied and dismissed Applicant's application by written Order on August 19, 2003.

The Applicant appealed the denial of his PCR application on July 19, 2004, and a Petition was filed on his behalf pursuant to Johnson v. State, 294 S.C. 310,

[1] The Respondent notes that the applicant filed a second PCR application on August 21, 2001, (2001-CP-46-1866) but that it was merged with 2001-CP-46-1414.

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[illegible] 28

364 S.E.2d 201 (1988). The Return was filed on September 10, 2004. The South Carolina Supreme Court denied the Petition for Writ of Certiorari. Remittitur was sent on August 9, 2005.

2004-CP-46-1700

The Applicant subsequently filed a second application for post-conviction relief (PCR) on July 6, 2004. The Respondent made its Return on December 12, 2004. An evidentiary hearing was convened on December 6, 2004, at the Sumter County Courthouse. The Honorable Thomas W. Cooper, Jr., denied and dismissed Applicant's application by written Order on May 20, 2005. The Applicant did not appeal the denial of his PCR application.

Applicant filed a Petition for Writ of Habeas Corpus in federal court (2:05-3327-MBS-R) on December 22, 2005. This Petition was denied by Order dated February 16, 2007.

2006-CP-46-0010

On January 3, 2006 Applicant subsequently filed a third application for PCR in the form of a Petition for State Writ of Habeas Corpus in the York County Clerk of Court. Respondent filed its Return and Motion to Dismiss on April 28, 2006. Applicant filed a Motion to Amend the Habeas Corpus on January 23, 2007. An evidentiary hearing was convened on January 23, 2007 at the Sumter County Courthouse, and Applicant was present and represented by Charles B. Burnette, III. The Applicant raised the following issues in his third PCR:

1. Newly Discovered Evidence;
2. Ineffective Assistance of Trial Counsel;
3. Prosecutorial Misconduct;

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4. Brady Violation;

5. Involuntary Guilty Plea; and

6. Personal Jurisdiction.

The Honorable John C. Hayes, III denied and dismissed Applicant's application by written Order dated April 30, 2006. The Applicant did not appeal the denial of his PCR application.

Applicant then filed a 60(b) Motion, alleging that Honorable Hayes III was in conflict with the case. Respondent filed its Return on August 13, 2007. The Honorable Roger L. Couch granted Petitioner's Motion to Reconsider and amend and clarify Judge Hayes' Order that the Petitioner is without prejudice to bring a Habeas Corpus Petition in the original jurisdiction of the South Carolina Supreme Court. An evidentiary hearing was held before the Honorable Roger L. Couch. He dismissed the State Habeas Corpus without prejudice on January 31, 2008.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Newly Discovered Evidence;

2. Ineffective Assistance of Trial Counsel;

3. Prosecutorial Misconduct;

4. Brady Violation;

5. Involuntary Guilty Plea;

6. Defense counsel failed to challenge applicant's statement's on the ground that there was no probable cause for the arrest and that applicant statement's was

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the fruit of the poisonous tree with regard to the illegal arrest; and

7. Personal Jurisdiction.

For the purpose of this Return, the Respondent incorporates the Clerk of Court records and the South Carolina Department of Corrections' records and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (2003) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a

previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq.

S.C. Code Ann. §17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on July 19, 1999. The Remittitur was sent on January 9, 2001. The Applicant was therefore required to file his application before January 9, 2002. This Application was filed on January 9, 2009, which was well after the statutory filing period had expired.

App. p. [illegible]
32

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ASHLEY A. McMAHAN
Assistant Attorney General

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By: _____

ATTORNEYS FOR RESPONDENT
P.O. Box 11549
Columbia, S.C. 29211

8/20, 2009.

App. p. 34

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
	)	
	)	2008-CP-46-4951
	)	
ANTONIO GORDON,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return and Motion to Dismiss in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Tricia A. Blanchette, Esquire
Post Office Box 12725
Columbia, SC 29211

DATED this 21st day of August, 2009.

Chandra E. Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

App. P. 35

Antonio Gordon, #259798
☐ Plaintiff

v.

State Of South Carolina
☒ Defendant.

CASE NO.
2008-CP-46-4951

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Tricia A. Blanchette, Bar No. Address: PO Box 12725 Columbia, SC 29211 phone: 803-781-4716 fax: e-mail: blanchettelaw@gmail.com other:	Jennifer A. Kinzeler, Bar No. 78378 Address: PO Box 11549 Columbia, SC 29211-1549 phone: 803-734-3737 fax: 803-734-4113 e-mail: other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — November 18, 2009 Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT:
☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: _____ Date:

CLERK'S VERIFICATION

Collected by: _____ Date Filed:

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	2008-CP-46-4951
	)	
Antonio Gordon, #259798	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

FILED-RECEIVED
2010 JAN 25 AM 11:56
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed January 9, 2009 and amended on May 19, 2009. The Respondent made its return and motion to dismiss on July 27, 2009. An evidentiary hearing into the matter was convened on December 1, 2009 at the Moss Justice Center in York County. The Applicant was present at the hearing and was represented by Tricia A. Blanchette, Esquire. Assistant Attorney General Jennifer A. Kinzeler represented the Respondent.

At the hearing, counsel for both parties presented argument to the Court. The Court also had before it copies of the records of the York County Clerk of Court regarding the subject convictions; the Applicant's records from the South Carolina Department of Corrections; the transcript from the motion to suppress hearing and guilty plea; the briefs from the direct appeal; the South Carolina Court of Appeals opinion dismissing the Applicant's appeal; the remittitur from the direct appeal dated January 9, 2001; the application for post-conviction relief (PCR) filed June 20, 2001 (2000-CP-46-1414)[1]; the amendment to the application dated May 8, 2003;

1 The Respondent notes that the Applicant filed a second PCR application on August 21, 2001 (2001-CP-46-1866),

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the Respondent's return to the first PCR action; the consent order changing venue; the transcript of the hearing held respecting the first PCR action; the order filed August 20, 2003 dismissing the first PCR action with prejudice; the order filed December 15, 2003 denying the Applicant's motion for a rehearing and/or motion for reconsideration of the facts; the Johnson petition for writ of certiorari filed on appeal from the denial of the first PCR action; the South Carolina Supreme Court order denying the petition; the remittitur of the appeal from the denial of the first PCR action dated August 9, 2005; the second PCR application filed July 6, 2004 (2004-CP-46-1700); the Respondent's return and motion to dismiss the second PCR action; the conditional order of dismissal filed December 30, 2004 with respect to the second PCR action; the final order filed May 20, 2005 denying and dismissing the second PCR action; the records and documents related to the Applicant's federal petition for writ of habeas corpus (2:05-3327-MBS-RSC) filed on December 22, 2005; the Applicant's state petition for writ of habeas corpus (2006-CP-46-010) filed on January 3, 2006; the Respondent's return and motion to dismiss the state habeas corpus petition; the Applicant's "complaint on unlicensed psychology/psychologist" filed January 23, 2006; an amendment to the state habeas corpus action filed January 23, 2007; the order filed June 1, 2007 dismissing the state habeas corpus action; the Applicant's Rule 60(b) motion to amend and clarify; the Respondent's return to the Rule 60(b) motion; the order granting the Applicant's Rule 60(b) motion to clarify and amend; the current PCR application and amended PCR application (2008-CP-46-4951) including two written statements attached as exhibits to the current PCR application; the Respondent's return and motion to dismiss the current PCR application; the conditional order of dismissal filed August 24, 2009; and the Respondent's

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but that it was merged with 2001-CP-46-1414.

App. p. 1088
Appendix 38

motion to restrict future filings filed on November 19, 2009.

PROCEDURAL HISTORY

The Applicant is currently incarcerated in the South Carolina Department of Corrections. He was indicted in October 1998 by the York County Grand Jury for Murder (1998-GS-46-2847), three counts of Possession of a Firearm During the Commission of a Violent Crime (1998-GS-46-2847-A; 1998-GS-46-1949-A; 1998-GS-46-1950-A), two counts of Attempted Armed Robbery (1998-GS-2849, 1998-GS-46-2850), Criminal Conspiracy (1998-GS-46-2851), and Possession of a Pistol by a Person Under Twenty-One (1998-GS-46-2852). Daniel D'Agostino, Esquire, represented the Applicant.

A hearing on the Applicant's motion to suppress was held on July 12, 14, and 16, 1999. On July 16, 1999, following the suppression hearing, the Applicant pled guilty as indicted. On July 19, 1999 the Honorable John C. Hayes, III sentenced the Applicant to confinement for thirty (30) years for Murder; five (5) years for Possession of a Firearm During the Commission of a Violent Crime; five (5) years for Criminal Conspiracy; five (5) years for Possession of a Piston by a Person Under Twenty-One, all to run concurrently; and ten (10) years for Attempted Armed Robbery, running consecutive to the thirty (30) year sentence for Murder. This was a negotiated guilty plea to a cumulative forty (40) years confinement.

The Applicant filed a timely notice of appeal and an Anders brief was submitted on his behalf pursuant to Anders v. California, 386 U.S. 738 (1967). Of note to the present action, the Applicant filed a *pro se* brief in which he raised the issue of probable cause to arrest based on an "informant's" statement to law enforcement allegedly given without being advised of her rights.[2]

2 The "informant" to whom the Applicant is referring is Chyneca Dixon, his girlfriend at the time he committed and

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The Applicant also contended that both he and the informant were under age and should not have been questioned by law enforcement outside the presence of a parent or attorney. As a result, he argued, the informant's statement was inadmissible because it was obtained illegally and could not have established probable cause for his arrest. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Gordon, 2000-UP-747 (S.C. Ct. App. Filed December 6, 2000). The remittitur was issued on January 9, 2001.

The Applicant subsequently filed a PCR application originally dated June 20, 2001 and amended on May 8, 2003 (2000-CP-46-1414). An evidentiary hearing was held on July 29, 2003. Tara D. Shurling, Esquire, represented the Applicant, who was present at the hearing. Jeanette C. Vanginhoven, of the South Carolina Attorney General's Office, represented the Respondent. Of note to the present action, the Applicant alleged his guilty plea was involuntary and that defense counsel was ineffective for failing to discuss with him evidence of a palm-print found on the victim's car door. The Applicant specifically contended that defense counsel failed to investigate or discuss with him "the fact that the palm print on the victim's car door was unidentified until the time of pre-trial," and that the South Carolina Law Enforcement Division (SLED) never tested the palm print. On August 20, 2003, the Honorable J. Ernest Kinard issued an Order denying and dismissing the application. The Applicant subsequently made a "Motion for Rehearing/Motion for Reconsideration of the Facts" on December 9, 2003. The Honorable J. Ernest Kinard dismissed the Applicant's motion by written Order filed December 15, 2003.

The Applicant filed a petition for writ of certiorari appealing the Order dismissing his

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pled guilty to the crimes.

first PCR action.[3] On July 21, 2005, the South Carolina Supreme Court issued an Order denying the petition. The remittitur was issued on August 9, 2005.

On July 6, 2004, while his appeal from the denial of his first PCR action was still pending, the Applicant filed a second PCR application (2004-CP-46-1700). The Applicant raised issues previously raised in his first PCR action, including allegations that his guilty plea was involuntary and that defense counsel was ineffective. On December 30, 2004, the Honorable Lee S. Alford issued a conditional order of dismissal in which he expressed the intent to summarily dismiss the application because the Applicant failed to comply with the filing procedures of the Post-Conviction Procedure Act as set forth in S.C. Code Ann. §17-27-45(A) and §17-27-90, and because the application was an improper successive action, but granted the Applicant twenty (20) days to show why the order should not become final. The Applicant did not respond to the conditional order of dismissal. Thereafter, by Order dated May 20, 2005, the Honorable Lee S. Alford denied and dismissed the Applicant's second PCR action.

The Applicant then filed a federal petition for writ of habeas corpus on December 22, 2005 (2:05-3327-MBS-RSC) and an amendment to his federal habeas corpus action on April 14, 2006. On October 16, 2006, Federal Magistrate Judge Robert S. Carr entered his Report and Recommendation that habeas relief should be denied. On October 30, 2006, the Applicant filed an "Objection to Report and Recommendation of Magistrate Judge." Pertinent to this action, the Applicant raised the probable cause issue regarding his arrest. Specifically, the Applicant contended that his warrantless arrest was unlawful because law enforcement only found probable cause to arrest him based on statements given to them "by a minor whoes [*sic*] parents were not

[3] Assistant Appellate Defender Robert M. Dudek filed a Johnson brief on behalf of the Applicant on July 19, 2004.

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present during questioning."[4] In essence, he asserted that law enforcement's reliance on Chyneca Dixon's statement to establish probable cause led to an unlawful arrest that violated his Fourth Amendment rights. He also claimed that defense counsel was ineffective for failing to advise him that by pleading guilty he waived his right to challenge the lawfulness of his arrest or the statements he made to law enforcement after he was arrested. On February 16, 2007, the Honorable Margaret B. Seymour entered an Order dismissing the Applicant's petition without prejudice to permit him to exhaust all State remedies.

Subsequently, the Applicant filed a state petition for writ of habeas corpus on January 3, 2006 (2006-CP-46-0010). He then filed an amendment to the state habeas corpus action on January 23, 2007 to which he attached Chyneca Dixon's two statements given to law enforcement on July 23, 1998. As it relates to this action, the Applicant alleged that law enforcement did not have probable cause to arrest him because the police relied on Chyneca Dixon's statement to law enforcement that she gave as a result of being threatened outside the presence of her parents. The Applicant asserted that the police should not have questioned Chyneca Dixon ("the minor") outside the presence of her attorney or parents, and that because she was the "probable cause provider," both of their statements to law enforcement, as well as the Applicant's arrest, were all unlawful. The Honorable John C. Hayes denied and dismissed the Applicant's state habeas corpus petition with prejudice by written order dated April 30, 2007 and filed on June 1, 2007.

The Applicant then filed a Rule 60(b) motion in which he alleged a conflict of interest with the Honorable John C. Hayes, III, who was original sentencing judge at the Applicant's

4 The Applicant raised this issue in his "Objection to Report and Recommendation of Magistrate Judge." The

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guilty plea. The Applicant also claimed that the order dismissing his state habeas corpus action did not advise him of right to appeal the order. On January 31, 2008 the Honorable Roger L. Couch granted the Applicant's Rule 60(b) motion to reconsider, amend, and clarify, and issued a written order finding that the Applicant was without prejudice to bring a petition for writ of habeas corpus in the original jurisdiction of the South Carolina Supreme Court.

On January 9, 2009, the Applicant filed his third PCR application currently pending before this Court. He amended the application on May 19, 2009. The Applicant attached to his current application two written statements given by Chyneca Dixon (hereinafter "Chyneca") and her mother, Geraldine Dixon (hereinafter "Ms. Dixon"), on January 20, 2008. The statements were given to an investigator who interviewed them on behalf of the Applicant. The Applicant alleges in his current application that he is being held in custody unlawfully for the following reasons:

1. Newly Discovered Evidence;
2. Ineffective Assistance of Trial Counsel;
3. Prosecutorial Misconduct;
4. Brady Violation;
5. Involuntary Guilty Plea;
6. Defense counsel failed to challenge applicant's statement's on the ground that there was no probable cause for the arrest and that "Applicant statement's was [*sic*] the fruit of the poisonous tree" with regard to the illegal arrest; and
7. Personal Jurisdiction.

"minor" to whom the Applicant refers is Chyenca Dixon.

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The Respondent made its return and motion to dismiss on July 27, 2009 asserting that the application must be summarily dismissed as an improper successive action and as having been filed after the expiration of the applicable statute of limitations. The Honorable John C. Hayes, III issued a conditional order of dismissal on August 24, 2009, in which Judge Hayes expressed the intent to summarily dismiss the application because the Applicant failed to comply with the filing procedures of the Post-Conviction Procedure Act as set forth in S.C. Code Ann. §17-27-45(A) and §17-27-90, and because the application was an improper successive action, but granted the Applicant twenty (20) days to show why the order should not become final. The Respondent also filed a motion to restrict future filings on November 19, 2009 pursuant to In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996). The Applicant did not file a response to the conditional order of dismissal. A hearing into the Respondent's motion for summary dismissal was convened on December 1, 2009. At the hearing, the State proceeded on a motion to dismiss all of the Applicant's claims as procedurally barred by the statute of limitations and successiveness.[5] The State also argued that the two written statements included with the application were not newly discovered evidence, and that any alleged newly discovered evidence was nonetheless barred by the statute of limitations. The State also made a verbal motion to restrict the Applicant from filing another PCR application in the future under In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996).

At the hearing, the Applicant, through counsel, acknowledged that he filed a lengthy

5 Section 17-27-45(A) imposes a one-year statute of limitations on any ground for post-conviction relief. Section 17-27-90 also requires all grounds for relief be raised in the original PCR application, and provides that any ground for relief finally adjudicated, or not so raised or waived, may not be alleged in a subsequent [or successive] application absent a court finding sufficient reason. Under Aice v. State, 305 S.C. 448, 409 S.E.2d 392, an Applicant cannot maintain a successive application alleging ineffective assistance of post—conviction relief counsel (1991).

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application in this case, and that he was only proceeding at the hearing with the newly discovered evidence claim and with an issue regarding the palm print found on the victim's car. Specifically, the Applicant asserted that he discovered new evidence that law enforcement coerced and threatened Chyneca into giving her initial statements, outside the presence of her mother, and that those statements implicated him in the crimes. He contended that because Chyneca's statements were threatened and coerced, they could not have established probable cause to arrest him. Therefore, the Applicant asserts, his arrest was unlawful, and any incriminating statements he gave to law enforcement subsequent to his arrest were the "fruit of the poisonous tree."

The Applicant also raised an issue in his current application regarding the palm print obtained from the victim's car. He claimed that he has attempted to obtain certain documents from SLED regarding the palm print that allegedly show he was "not necessarily" the shooter, but that he has been unable to obtain those documents partly as a result of ineffective assistance of PCR counsel during his first PCR action. The Applicant also maintained that defense counsel was ineffective because he never had the palm print tested by his own expert. The Applicant also claimed that he attempted to raise this issue during his first PCR hearing, but he was "coerced into waiving this issue" at his first PCR hearing by PCR counsel.

At the hearing, the Applicant proffered the testimony of two witnesses, Chyneca Dixon and Geraldine Dixon, in support of his newly discovered evidence claim. The State offered the testimony of Mr. W. William ("Willy") Thompson, the Chief Deputy Solicitor for York County, and Daniel D'Agostino, Esquire, as rebuttal witnesses to the proffered testimony.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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App. P. [illegible]
Appendix 45

This Court has had the opportunity to review the record in its entirety and has heard the argument of counsel presented at the hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. section 17-27-80 (2003).

First, the Applicant proffered the testimony of Chyneca Dixon. She testified that she is twenty-six years old now and currently lives in Lancaster County. She stated that she was involved in the Applicant's criminal case, and that she gave two statements to law enforcement in July 1998 regarding his case. She stated she was fourteen years old at the time she gave her initial statements. Chyneca testified that a police officer came to her house on the night of the murder, and asked her to come with him to the police station. She testified she agreed to go with him. When PCR counsel asked whether she felt free to leave at that time, Chyneca answered "no." When PCR counsel asked whether she had been escorted by police officers, she answered affirmatively.

Chyneca testified that her interview with law enforcement occurred at the police station in an office with a window, and that she was there for "a long time." She testified that an officer asked her questions and typed her answers as she gave them. She stated that officers kept "going back and forth" until one "finally said 'well, I'm getting kind of tired of this. You know more than you say." Chyneca stated that an officer told her she could not go home until she told them exactly what she knew. She testified that she told them she did not know much, but that Antonio Gordon was her boyfriend and that the car involved in the crime belonged to her. Chyneca testified that at that point, she was just saying anything she could to go home. When counsel asked her whether she was allowed to leave after she gave her statements, Chyneca responded affirmatively.

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PCR counsel then asked Chyneca whether she had any further involvement with law enforcement. Chyneca testified that she was trying to get visitation for her and her baby, but that she was told she and her baby could not have any contact [with the Applicant].[6] She testified that she believed it was because of her age, that she "called and called" but that calling "didn't go no where," so after a while she felt like everything was "done" and "just gave up." Chyneca further testified that after she "gave up," she "was real popular and it was all over the place, everybody knew," so she left. She said she did not want to stay in York County any more, and that she only came back one time to try to get child support.

Chyneca testified that she did not have any further contact from law enforcement, the Solicitor's Office, or the Applicant's defense counsel about the case. She also testified that she was not aware that she would have been called as a witness for the State to testify against the Applicant if the case had gone to trial, and that she did not even know the case went to trial. Chyneca explained that the reason she had not come forward before now was because she left after it all happened. She testified here family stayed in York County, but that she stayed in Lancaster County and Charleston County. She then stated that the only time she came back here (York County) is when her grandfather passed away, but that she otherwise tried to avoid York County as must as possible. She stated that she has not seen the Applicant in almost nine years.

When counsel asked whether Chyneca would have testified for the Applicant at his Jackson vs. Denno hearing about her statements, she answered affirmatively. Chyneca also testified that she was never contacted by Ms. Shurling regarding the Applicant's first PCR action, and that she never received any subpoenas or any other document asking her to come to court. She testified that she got

6 PCR Counsel clarified that the Applicant is the father of Chyneca's baby, and was a few months old at the time of

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back in touch with the Applicant recently because the Applicant talked with her mother. She testified that she was at her mother's house one day when the Applicant called, and that she started talking to him on the phone. Chyneca testified that after speaking with the Applicant, she agreed to give a statement to an investigator who came to her house on January 20, 2008.

When counsel asked if there was anything else she wanted to tell the Court during her proffer, she stated that "since that time [she has] grown up and [she] realized that someone was hurt and that cannot be changed." She further stated that she feels like over time "anybody can change," and now when she talks to the Applicant sometimes, she "can see how he has changed." She stated that she regrets any of these events ever happened, that she and the Applicant were young and that as a result, she had to take responsibility of their son by herself. Chyneca stated that she knew someone was hurt, but at the same time she felt "like the judge's sentence should also be fixed for so called witnesses and people who wanted to come forth to help in this situation, but at the same time they get—[she couldn't] find the same word for it." Chyneca also told the Court that she was grateful for the opportunity to say that "some parts of York County justice system is [*sic*] broken," and that the night she was interviewed by law enforcement "lost [her] faith in the justice system."

On cross-examination, Chyenca testified that her correct date of birth is December 12, 1982, and agreed that she gave her first statement to police under the name Tawanda Burris with a December 10, 1976 date of birth. She agreed that she testified on direct examination that she was fourteen at the time she gave her statement.[7] Chyneca further agreed that in her first statement to the officer, she said she had been drinking that day and fell asleep around 6:30 p.m and that she told police officers "Terrance shot the boy," "Terrance said he was driving," and

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the murder.

"Terrance says [*sic*] he shot the driver in the shoulder."[8] Chyneca also agreed that she did not identify the Applicant as the shooter or driver of the car in either of her statements to law enforcement.

Chyneca testified that after giving her statements to the police, she walked to her grandmother's house by herself. She testified that after giving her initial statements, she was "never spoken with any more about this case" until the Applicant's investigator came to get another statement from her in January 2008. Chyneca agreed that the substance of her January 20, 2008 statement to the Applicant's investigator is that at the time she gave her initial statements, she was at the police station for a long time, that she was threatened, and that the officers told her she could not leave until she gave them a statement. Chyneca also testified that she was never charged with a crime in association with the Applicant's case.

The Applicant then proffered the testimony of Geraldine Dixon, Chyneca's mother. Ms. Dixon testified that Chyneca was not at home the night the police came to take her down to the station to give her statement, and that no one called her to let her know Chyneca was at the police department. She testified that she did not know Chyneca was taken to the police department for questioning during the early morning of July 23, 1998 until later that morning when the Applicant's aunt called to tell her. Ms. Dixon also testified that she went to the police station, and that when she tried to talk to the police they "shunned [her] off." She stated they would not give her any information, and that she told them they had no right to question Chyneca without a parent or attorney present. Ms. Dixon further stated the police told her they "had just turned her loose, not to worry about it."

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7 Chenyca would have been fifteen years old at the time she gave her first statements to police.

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Ms. Dixon testified that she later picked Chyneca up at her "grand mamma's," and that the police never contacted her or told her anything else. She testified that she had concerns about her daughter being questioned without her being present. She stated that she was never contacted by any attorney for any of the Applicant's co-defendants, the Applicant's defense attorney, law enforcement, or the Solicitor's Office.

On cross-examination, Ms. Dixon confirmed that she did not know Chyneca was taken to the police department until the next morning. She also testified that she did not see any of the boys involved in what happened that night, and that she did not see anything regarding what happened that night. She agreed that all she knew about the case was that her daughter was questioned by law enforcement and that they never called her. Ms. Dixon then testified that the next time she saw Chyneca was at her "grand momma's" and that was when Chyneca told her what happened. She stated that up until that point, she had not spoken to Chyneca "or the law, or nobody else." Ms. Dixon also testified that the only person who contacted her about the case after that morning was the investigator that came to get her January 2008 statement.

Ms. Dixon then denied to this Court that she gave a sworn statement on January 20, 2008 in which she stated she got a call from the police department, and that she went down to the police department to pick her daughter up. She said that could not be true to her knowledge because the police never contacted her. This Court presented her with her January 2008 statement. Ms. Dixon agreed that it was her signature on the statement, and that it did say she went to pick her daughter up after someone from the police department called her. However, Ms. Dixon testified that she must have "got it wrong then" because she did not pick Chyneca up at

8 The witness was referring to Terrance McCreary, one of the Applicant's co-defendants.

the police station.

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The State called Mr. Willy Thompson, Chief Deputy Solicitor for the York County Solicitor's Office, to testify as a rebuttal witness to the Applicant's proffered testimony. He testified that has worked at the York County Solicitor's Office since 1992, and that he and Assistant Solicitor John Anthony prosecuted the Applicant for his underlying criminal charges. He stated that he was present during Chyneca's testimony at the hearing in which she testified that no one from the Solicitor's Office ever contacted her regarding the Applicant's case.

Mr. Thompson was shown a document that he identified to be a copy of the subpoena that his investigator at the time, Chuck Neal, personally served upon Chyneca on July 8, 1999. Referring to the subpoena, he stated that Chyneca was served at 362 Workman Street in Rock Hill, South Carolina, and that the subpoena was issued to "Chyneca Dixon a/k/a Tawanda Burris." The subpoena was entered into evidence as Respondent's Exhibit 1.

Mr. Thompson testified that he personally met with Ms. Dixon on July 14, 1999, after she was subpoenaed, and that he took notes during their meeting. He testified that at the meeting, he and Chyneca talked about what her testimony would be in this particular case, because the State was going to call her as a witness to testify against the Applicant if the case went to trial.

Mr. Thompson was shown a copy of his notes that he took during his meeting with Chyneca on July 14, 1999. He identified them as a fair and accurate copy of his original notes and confirmed that the notes were written in his handwriting. He testified that the notes from his meeting with Chyneca indicate that she was interviewed in the Solicitor's Office conference room, that it is a large room with a table and chairs, and that he and his investigator were the only people present during the meeting.

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Mr. Thompson further testified that Chyneca told them about the night of the murder. He testified that Chyenca told him on the night of the murder, when the Applicant came back with the other boys, "everyone was hyped up," but that the Applicant did not say anything at first. He stated that Chyneca told him the Applicant had a look on his face that she could not explain, and that when she and the Applicant went in the back bedroom he told her "I killed someone" but "I don't know who."

Mr. Thompson testified that as he and Chyneca continued to talk, he asked her about any coercion when she gave her statements to law enforcement. He testified that she described her interview with law enforcement as "the officers laying a guilt trip on her" by talking about things "like the fact that someone was killed," and that she "wouldn't want this to happen to [her] family," but that she did not describe it to him as coercion. Mr. Thompson's notes from his July 14, 1999 meeting with Chyneca were then admitted into evidence as Respondent's Exhibit 2. Mr. Thompson further testified that it was his understanding if the case went to trial, Chyneca would testify.

Mr. D'Agostino, the Applicant's defense counsel, testified that he has been practicing law since 1992. He testified that he could not swear under oath that he or his investigator spoke with Chyneca Dixon, but that based on his recollection of the case and his reading of the transcript from the Jackson vs. Denno hearing, he felt confident that he or one of his investigators spoke to Chyneca. Defense counsel identified a document presented by PCR counsel that indicated his investigator billed him for serving Chyneca with a subpoena on July 14, 1999. He testified that his investigator billed him for three hours of work and for the twenty five (25) miles he traveled to serve her with the subpoena. The investigator's bill was admitted into the record as

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Applicant's Exhibit 1.

Defense counsel testified that he made several motions to suppress statements and evidence, and that the issues about the voluntariness of Chyneca Dixon's statements were thoroughly explored during the Jackson vs. Denno hearing, but that Judge Hayes ruled against him on all of them. He stated that if he had called Chyneca Dixon to testify at the Jackson vs. Denno hearing, her testimony would have had no impact on the outcome of hearing. Defense counsel further testified that he vigorously cross-examined Captain Charles Cabiness regarding the circumstances surrounding Chyneca's statements to law enforcement.

Defense counsel testified that all three of the Applicant's co-defendants pled guilty on the same day, and that they all agreed to testify against the Applicant at trial. He also testified that he could not have put the Applicant on the stand if the case proceeded to trial because the Applicant confessed to him that "he did it." He further stated that he hired a psychologist to interview the Applicant, and as a result of the psychologist's findings, a mental deficiency defense was never an option.

Counsel testified that he could not put Chyneca on the stand, because her testimony would not have helped the Applicant. Counsel stated that because the Fourth and Fifth Amendment rights that were allegedly violated when she gave her statements to law enforcement were not the Applicant's rights to assert, her testimony would not have helped the defense. He also testified that the Applicant chose to plead guilty that day, after his three co-defendants pled guilty and agreed to testify against him, and after all of the statements made to law enforcement were ruled admissible. Defense counsel testified the Applicant chose to plead guilty, in light of the evidence against him, because he realized by doing so he had a chance of getting out of jail

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before he died. Finally, counsel testified that in his opinion, the Applicant would have been found guilty had he proceeded to trial, which made pleading guilty the best option for the Applicant, and that was his opinion regardless of any testimony Chyneca could have ever given, particularly because the Applicant said he did it.

First, this Court finds that the proffered testimony and evidence admitted during this PCR hearing have no real significance to the Applicant's case. This Court finds that Geraldine Dixon's testimony is not credible. She previously gave a sworn statement that directly contradicted her testimony given under oath at the PCR hearing. One of her statements that she gave under oath must necessarily be false. Regardless, this Court finds that Geraldine Dixon's testimony is irrelevant and immaterial to anything related to the Applicant's case.

Secondly, to the extent the Applicant relies upon an allegation of newly discovered evidence to show good cause for permitting him to pursue this successive application for post-conviction relief, this Court finds that the Applicant failed to make the requisite showing that the matter constitutes newly discovered evidence. There was no new evidence presented in this case that was not available to the Applicant through his prior applications where the allegations could have been fully explored.

Third, with regard to Chyenca Dixon's testimony, this Court heard her testimony about how she was treated by law enforcement when she gave her statements, and notes its concern about making sure the justice system is fair to everyone, including victims. Nevertheless, this Court also finds that Chyneca Dixon was available to the Applicant during the time he filed his prior PCR applications and state and federal habeas corpus actions. Chyneca Dixon testified at the hearing under oath that no one ever contacted her about testifying at trial, or about anything related to this

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case. This Court finds her testimony to be false, particularly in light of Solicitor Thompson's testimony. The Solicitor subpoenaed Chyneca Dixon for trial. Chyenca Dixon also came to the Solicitor's Office to give information to Solicitor Thompson, and she was prepared to testify at trial. The subpoena and Solicitor's Thompson's notes from the meeting with Chyneca Dixon were admitted as part of the record and testified to by the Solicitor. The Applicant was not misled as to the availability of Chyneca Dixon or as to the circumstances under which her statement was obtained.

Fourth, this Court finds that the Applicant's allegation regarding the palm print is not material or relevant. The Applicant has presented no evidence showing how this evidence is material to the Applicant's guilt or innocence, particularly in light of the Applicant's decision to plead guilty.

Finally, this Court finds that defense counsel's testimony is credible. According to Mr. D'Agostino, the Applicant pled guilty because all three of his co-defendants gave statements admitting their guilt, pled guilty, and agreed to testify against him. At the Jackson vs. Denno hearing, the court ruled the Applicant's statements would be admissible at trial. The Applicant had knowledge of all of this evidence against him at the time he pled guilty. Notably, Chyneca Dixon's statements, whether obtained through coercion, intimidation, or otherwise, were not self-incriminating and did not identify the Applicant as the shooter, although she later told Solicitor Thompson that the Applicant admitted to her that he shot someone. Therefore, any coercion or intimidation that may have accompanied Chyneca Dixon's statements to law enforcement was not a significant factor in the Applicant's decision to plead guilty.

Mr. D'Agostino testified that his investigator served a subpoena on Chyneca Dixon regarding

the trial, and thus he had no trouble finding her. Chyneca Dixon was certainly available and has been available, and the Applicant has failed to show any reason why he could not have called Chyneca Dixon as a witness at his prior PCR hearings.

Therefore, this Court finds that the current application for post-conviction relief must be summarily dismissed, first, because it is successive to the Applicant's prior applications for post-conviction relief and other action challenging the conviction and sentence. S.C. Code Ann. §17-27-90 provides that:

> All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, 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.

Successive applications are disfavored, especially when the grounds raised could have been raised in the initial application, Tilley v. State, 334 S.C. 24, 432 S.E.2d 689 (1999); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991), and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. at 448, 409 S.E.2d at 392; Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). The prohibition against successive actions includes federal habeas corpus petitions or "any other proceeding taken to secure relief." Id.

An Applicant requesting a new trial based on after discovered evidence must establish that the evidence:

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(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. State v. Mercer, 381 S.C. 149, 672 S.E.2d (2009); State v Spann, 334 S.C. 618, 513 S.E.2d 98 (1999); Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); State v. Kelly, 285 S.C. 373, 329 S.E.2d 442 (1985).

This Court finds that the Applicant has already presented this newly discovered evidence claim that Chyneca Dixon's statement to law enforcement was given without her mother present as a result of coercion and threats by law enforcement. The Applicant has also already raised the allegation that the palm print lifted from the victim's car does not identify him as the shooter. The Applicant continues to repeatedly pursue these claims which long ago ceased to constitute newly discovered evidence within the definition of the term and which have been decided adversely to him in previous actions. No item of evidence has been discovered since those earlier proceedings that could not have been discovered at the time of the Applicant's first PCR action. Under the rules governing state post-conviction relief actions, the Applicant is foreclosed from relitigating this claim that has been decided previously. Tilley, v. State, 334 S.C. 24, 432 S.E.2d 689 (1999); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1992).

Therefore, this Court finds the Applicant has not provided sufficient reason why he should be able to litigate the newly discovered evidence claim or any of the other allegations presented in this third application for post-conviction relief. The application for post-conviction relief must be dismissed because it is improperly successive to the prior applications or actions and is barred by S.C. Code Ann. §17-27-90.

This Court finds that this application for post-conviction relief must also be summarily

#21

App. P. Motion 57

dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq.

S.C. Code Ann. §17-27-45(A) (2003) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

Also, S.C. Code 17-27-45 (C) (2003) provides:

> 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, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense he challenges in this Application in July 1999. The Supreme Court's decision was filed, after the Applicant's unsuccessful appeal. The remittitur was issued on January 9, 2001. The Applicant was therefore required to file his application before January 9, 2002. This Application was filed on January 9, 2009 and amended on May 19, 2009, which is more than seven years after the expiration of the statutory filing period.

Moreover and to the extent the Applicant contends that newly discovered evidence should permit him to pursue this untimely post-conviction relief action, this Court finds that S.C. Code Ann. §17-27-45(C) requires that all newly discovered evidence claims be raised within one year after the actual date of discovery of the facts giving rise to the claim by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. This Court finds that,

#22

App. p. 15548
Applicant 58

based upon the record before it, the Applicant was aware of and has pursued the basis for this claim beginning in July 1999. This Court finds, alternatively, that upon the exercise of due diligence, the Applicant could have ascertained the facts well in excess of one year prior to filing this current application. He has not presented an item of new evidence and has not established that he could not have ascertained the matter in a timely manner. This Court finds that newly discovered evidence has not been timely asserted in this current application for post-conviction relief, and that the allegation provides no basis to permit the applicant to pursue the current action.

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

This Court further finds that the Applicant has had ample opportunity to present his case. The Applicant has already litigated or had the opportunity to litigate all the claims he presents in this application. The Applicant continues to raise the same groundless claims by repeated collateral attacks on his conviction. The public interest in finality of judgments requires that litigation must eventually come to an end. As a result and pursuant to this Order, the Applicant is prohibited from filing another post-conviction relief application alleging any ground raised in this application, any grounds raised in previous applications, or any allegations that could have been raised previously.

#23

App. P. [illegible]
Appendix 59

CONCLUSION

Based on the foregoing, this Court finds and concludes that the application for post-conviction relief must be summarily dismissed because it was filed beyond the applicable statute of limitations, and because it is an improper successive action. Furthermore, the Applicant's allegations and testimony in support of are not newly discovered evidence. Accordingly, the application is dismissed with prejudice.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief must be dismissed with prejudice;

2. The Applicant is prohibited from filing any future application for post-conviction relief that raises the same grounds raised in this action, any grounds raised in a prior action, or any allegations the Applicant could have raised; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4th day of January, ~~2009~~ 2010.

#24

App. P. 60

LEE S. ALFORD
Presiding Circuit Judge
Sixteenth Judicial Circuit

York, South Carolina

Attachment (N)

AP.P 118
61

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	SIXTEENTH JUDICIAL CIRCUIT
Antonio Gordon,#259798, Petitioner,	Case No: 2006-cp-46-0010
v.	MOTION TO RECONSIDER,ALTER AND AMEND JUDGMENT PURSUANT TO S.C.R. CIV.PROC.RULE 59(e)
State of South Carolina Respondent	

Now Comes Antonio Gordon, the petitioner in the above caption matter moving this Honorable Court on a motion to Reconsider ,Alter and Amend Judgment pursuant to S.C.R. Civ.Proc.Rule 59(e). This motion arises from an Order denying Petitioner's Rule 59(e),motion filed March 25,2015. This court entered its order April 20,2015 and received by petitioner April 30,2015. See Attachment (1),(1)(a) and (1)(b).
It is asked that this Honorable Court reconsider,alter and amend its judgment and grant an evidentiary hearing on Gordon's Austin v. State,409 S.E.2d 395 (1991) claim. This Court found that Gordon had a full and complete post-conviction relief Antonio Gordon v. State,2008-cp-46-4951 after Gordon v. State, 2006-cp-46-0010. Petitioner asserts he "did not" discover that counsel failed to file a Rule 59(e) motion and notice of appeal at his request until "after" gordon v. State,(4951) was complete with a ruling.See Fn1 Therefore, his Austin,supra, claim couls not have been raised in Gordon v. State,(4951). Tilley v. State, 432 S.E.2d 689 (1999).

Matter of fact the one year statute of limitation for post-conviction is not applicable to appeals filed pursuant to Austin ,supra, under S.C. Code Ann § 17-27-45(a)(supp.2006). An application for relief must be filed within one year after entry of the judgment or conviction or within one year after

---

Fn1 gordon v. State,(4951) became final January 25,2010 and petitioner last letter addressed to counsel was July 18,2010.See Attachment (c)(3) attached to Rule 60(b)(5)-Austin filed March 9,2015

the sending the remittitture to the lower court from an order of an appeal or the filing of a final decision upon an appeal, which ever is later. Austin appeals are considered "belated appeals" and are used to rectify unjust procedural defects such as when an attorney does not file a timely appeal. See Hope v. State, 492 S.E.2d. 76 (permitting a belated notice of appeal pursuant to Austin in 1992 from a denial of a PCR application in 1989).

Gordon's Austin appeal is attacking the PCR procedural used in his case, not the merits of his sentence so the one year statute of limitation § 17-27-45(a), is not applicable. Petitioner further asserts that his Austin claim must be considered as a post-conviction relief application pursuant to Hendrick v. State, 692 S.E.2d 892 (2010) and Austin v. State, supra, where his original habeas corpus was treated as a post-conviction relief application. See Attachment (c) (Letter from clerk) which is law of the case. Therefore, it is asked that this Court reconsider, alter and amend its judgment.

It is respectfully asked that this court reconsider, alter and amend its judgment and grant petitioner an evidentiary hearing on his Ex Parte Hollman, 60 S.E. 19 (1908) claim where the court held the "constitutionality of a statute under which a defendant held in custody may be tested on habeas corpus." See Fn2 As Petitioner will point out that S.C. Code Ann § 20-7-6605(1)(supp.1998) Titled Defined "[C]hild" statutory is unconstitutional under S.C. Const Art I., § 3 and the 14th amendment to the United States Const because it is "arbitrary and unreasonable" whereas in [arbitrarily] "[e]xclude" sixteen year old children's charged with a class A, B, C, or D felony as defined in section 16-1-20 from the definition

---

Fn2 Petitioner asserts this claim should be considered under S.C. Code Ann § 17-17-10-17-17-200 (supp.2014) pursuant to Hendrick v. State, supra, S.C. Const.Art V., § 4 "subject to the statutory law, the Supreme Court shall make rules governing the practice and procedures in all such courts. Marrochlis, LLc v. Derrick, 682 S.E2d. 301 (2009). A civil procedure may not limit the provisions of a statute. See Hendrick, supra, (Where, as here, the General Assembly has provided a specific procedure to be followed in PCR cases, and that method is inconsistent with the more general procedure of SCRCP, the statutory procedure must be followed).

of being a "[c]hild" and a "[p]erson]" under family court's exclusive original jurisdiction as those "similarly situated" less than seventeen years of age charged with a class A,B,C, or D felony as defined in section 16-1-20. This is inconsistent with rudimentary demands of justice and renders the provision "[v]oid" and constitutionally defective as there is no rational justfication for singling out children's "sixteen" years of age charged with a class A,B,C, or D felony as defined in section 16-1-20 from the definition of being a "[c]hild" and a "[p]erson" under family court's exclusive original jurisdiction as those "similarly situated" less than seventeen years of age charged with a class A,B,C, or D felony as defined in section 16-1-20. Thus in violation of the equal protection and due process clauses of the 14th amendment of the United States const and Art I, §3 of S.C. Const.See Fn3 marley v. Kirby,245 S.E.2d 604 (S.C. 1978) (All persons similarly situated should be treated alike);Barbier v. Connolly,113 U.S. 27 (1885) (same);Central Airelines,INC v. US,138 F3d 333 (8th cir.1988)(Equal protection clause prohibits goverment officials from selectively applying law in discriminatory manner). As well in violation of Gordon's fundamental right to equal protection of the law under S.C. Const Art I.,§ 3 and the 14th amendment to the United States Const

Therefore,the unconstitutional provision deprived the York County Grand Jury of its jurisdiction and renders Gordon's indictments a nullity void ab initio pursuant to State v. McClure '289 S.E.2d 158 (S.C. 1982) (No indictments may be true billed when circuit court lacks jurisdiction) and the conviction void ab inition and a nullity pursuant to State v. England,245 S.E2d 608 (1978) (Defendant was a person under family court exclusive jurisdiction and since jurisdiction had not been relinquished by family court, General Sessions lacked jurisdiction), and the term for which Gordon could lawfully be held under family court's jurisdiction has "[e]xpired" thereof making his custody unlawful pursuant to Kent v. United States,383 U.S. at 556 (1966) (Juvenile defendant can be detained only until he's

[21]). Therefore, Petitioner asserts he's being held in respondent custody unlawfully in violation of his fundamental constitutional rights to equal protection and due process of law under S.C. Const Art I., § 3 and the 14th amendment to the United States const. See Fn4

However, this court found that this claim has been raised and decided against petitioner in his original habeas corpus filed January 3,2005. Petitioner asserts that at page 24 of his original habeas corpus he asserted "General Sessions" lacked jurisdiction in accepting his guilty plea where jurisdiction had not been relinquished by family court which his guilty plea was accepted in violation of his due process rights. Thus its quite clear that Gordon "did not" [test the constitutionality] of section 20-7-6605(1), supra, which he is held in custody under and he "did not" test the lawfulness of his "custody" in his original habeas corpus. Its clear that Gordon did not even mention section 20-7-6605(1), supra, which support his position that the said herein "jurisdiction" claim is totally distinguished and inopposit that of the jurisdiction claim mention at page 24 of his original habeas. See Fn 5 Therefore,, Gordon asserts his claim that the constitutionality of statute under which he held in "custody" can be raised for the first time pursuant to Ex Parte Hollman, supra, in that he may test the legality of his "current detention" on habeas corpus pursuant to Walker v. Wainwright, 390 U.S. 335, 88 S.ct

---

Fn4 Lack of subject matter jurisdiction or jurisdiction of the cause can be raised at any time. See State v. Funderburk, 191 S.E.2d 520 (S.C. 1972)

Fn5 Petitioner asserts because when he filed his habeas corpus and it was recharacterized and filed as a post-conviction. See Attachment (2)(a), supra, which is law of the case, that this current habeas corpus under Ex Parte Hollman, supra, is not a successive action.

962 (1968).

Petitioner asserts failure to hold an evidentiary hearing on his Ex Parte Hollman, supra claim will (1) deprive him of statutory right under §17-17-10-17-17-200(supp.2014) and constitutional remedy pursuant to S.C. Const. Art I.,§18- Pennington v. State, 441 S.E.2d 315 (1994), to test the constitutionality of the statute which he is held under, and to test the legality of his "current detention" as those "similarly situated", and (2) will deprive Gordon of his first and Fourteenth fundamental right to petition the court and state to a redress of grievance as those similarly situated where post-convictionrelief is inadequate and unavailable be cause Gordon is entitled to his immediate release. Therefore, it is asked that this court reconsider its order.

It is respectfully asked that this court reconsider, alter and amend its judgment where this court found petitioner did not file his Rule 59(e), motion in a timely manner. Petitioner will point out he asserted on page one of his motion that he recieved the order of dismissal on March 19,2015. The Clerk of Court mailed the order to Allendale C.I in which it was recieved at that institution on March 16,2015 approx seven days after the order was entered. See Attachment (2) (Envelope order mailed in). See Fn6 Allendale C.I forward the Order to Kershaw C.I. in which Kershaw C.I received it on March 19,2015 and furnish Gordon with said order on March 19,2015. Therefore, approx 10 days had elasp from the time the order was entered and Gordon received it and he filed his Rule 59(e), motion March 25,2015 within 10 days after his receipt of the order. See Attachment (2), supraMarch 19,2015 at Kershaw C.I.

Conclusion

It is respectfully asked that this court reconsider, alter and amend its judgment pursuant to Rule 59(e)
This 7th, day of May 2015.

Antonio Gordon

Antonio Gordon
Kershaw .C.I Smu
4848 Goldmine hwy
Kershaw, S.C 29067

Fn6 At the time the order was mailed Gordon was at Kershw C.I

App. p. 66

Attachment (2)

York County
south carolina

CLERK OF COURT'S OFFICE
Post Office Box 649, York, South Carolina 29745-0649

CHARLOTTE
NC 282
20 MAR 15

SMU 46

Antonio Gordon #259798
ACI SMU B 242
PO Box 1151
Fairfax SC 29827

RECEIVED
MAR 19 2015
KerCI
MAILROOM

29827115151

DID GENERAL SESSION COURT LACK JURISDICTION IN ACCEPTING PETITIONER GUILTY PLEA,WHERE JURISDICTION HAD NOT BEEN RELINQUISHED BY THE FAMILY COURT.

Attachment (C)

The Supreme Court directed that,prior to transfer,a hearing must be held in which certain rights are afforded to juvenile.In an appendix to its opinion in Kent,The Supreme Court quoted,with approval,a District of Columbia policy memorandum which recited eight factors to be considered by the Juvenile Court in making a transfer decision,Although the Supreme Court did not explicitly hold that these factors must be followed by lower courts.In Patton v. Toy,867 F.Supp.356 (D.S.C.1994),at 362 the court held,this court beleives that these factors provided excellent general guidance quoting the eight factor's in Kent.

However,a juvenile waiver hearing must measure up to the essential of Due Process and Fair Treatment.Application of Gault,387 U.S. 1,30,87 S.Ct.1428,(1967), Quoting from Kent v. United States,86 S.Ct.1045 (1966)."Kent and Gault make it unquestionably clear that Juvenile Court proceedings that effect a young person's substantial rights must measure up to the essential of Due Process and fair treatment.Kemplen v. Maryland,428 F.2d.172 (4th Cir.1970).However,in Shaw,274 S.C. 534,265 S.E.2d.522 (1980),the Court encourages Family Court judges in South Carolina to apply the principles of the Kent case when making the decision of whether to transfer a child to adult court.The objective of the Family Court is to provide measures of guidance and rehabilitation for the child and to protect society,not to fix criminal responsibility,guilt or punishment.Each "child" is entitled to Due Process a transfer to adult court,and reviewing court must ensure that each "child" receives such process.

In the case at bar the petitioner was sixteen years of age and was tried as an adult without the ability to go before a Family Court Judge,to determine whether petitioner would be waived up to be tried asa Juvenile or an adult.Petitioner f-urther contends that he received violation of his Due Process right where jurisdiction had not been relinquished in favor of another court.Petitioner was sixteen years of age with only one charge that could carry the penalty of fifteen years or more in which that was burglary 2nd degree.

Therefore,for the forgoing reasons petitioner received violation of his Due Process right.

State of South Carolina
County of York

Antonio Gordon, #259798,
Petitioner,

V.

State of South Carolina,
Respondent.

In The Court of Common Pleas
Sixteenth Judicial Circuit

Case No.: 2006-46-0010

App. P 68

Attachment (1) (B)

Affidavit of Antonio Gordon In Support of his Rule 59(e), motion

I, Antonio Gordon, hereby declares: In Lancaster County S.C. that:

(1) I recieved Judge Hayes order entered March 9, 2015 denying Rule 60(b)(5)-Austin motion On March 19, 2015 and I filed my Rule 59(e), motion March 25, 2015.

(2) I recieved Judge Hall order denying Rule 59(e), motion on April 30, 2015 and filed my Rule 59(e), motion on May 7th, 2015.

(3) I did not discover that counsel failed to file a notice of appeal until after Gordon v. State, (4951) was complete when I called the S.C. Supreme Court and S.C. Court of Appeals as a concern family member on a cellphone in 2011 and was told there was no appeal on file.

(4) I did not assert the constitutionality of section 20-7-6605(1) claim in my original Pleading.

(5) Judge Hall order entered April 20, 2015 was mailed To Perry Correctional Institution and recieved on April 23, 2015 when Gordon is Housed at Kershaw Correctional Inst and recieved it on April 29, 2015 at Kershaw C.I. and Gordon recieved it April 30, 2015.

I assert the foregoing is the truth under the Penalty of perjury.

Sworn to and Subscribed before me
this 7th day of May, 2015
Notary: Catherine A. Cuevas
Exp: My Commission Expires December 22, 2018

Antonio Gordon
Antonio Gordon #259798

State of South Carolina,
County of York

Antonio Gordon, #259798,
Petitioner,

V.

State of South Carolina,
Respondent.

In The Court of Common Pleas
Sixteenth Judicial Circuit

Case No: 2006-CP-46-0010

Certificate of Service

I, Antonio Gordon Certify I have served Petitioner's Rule 59(e) S.C.R.Civ.Proc.Rule 59(e) motion on opposing Counsel at:

Attorney General office
Ashley Anne McMahan
P.O. Box 11549
Columbia, SC 29211-1549

by depositing a copy in the mail this 17th day of MAY 2015 with sufficient Postage.

Antonio Gordon
4848 Goldmine Hwy
Kershaw, SC 29067

Attachment (O)

App. P 69
70

OFFICE OF
CLERK OF COURT
DAVID HAMILTON
POST OFFICE BOX 649
YORK, SOUTH CAROLINA 29745
(803) 684-8507

TO: **Antonio Gordon**

FROM: DAVID HAMILTON, YORK COUNTY CLERK OF COURT

RE: POST CONVICTION RELIEF
WRIT OF HABEAS CORPUS

_____ All correspondence concerning your PCR application must be presented to our office by your appointed attorney.

_____ All PCR's are scheduled directly by the Office of the Attorney General, you may contact them at: PO Box 11549, Columbia, SC 29211.

_____ When filing your PCR application be sure to complete the verification form in full, otherwise the document cannot be filed in our office.

_____ When requesting transcripts from your proceedings you will need to contact the South Carolina Court Administration, 1015 Sumter Street, Suite 200, Columbia, South Carolina 29201.

_____ If you have any question concerning matters in your case and an attorney has been appointed, you must contact your attorney.

_____ You have filed a PCR application and requested that an attorney be appointed to represent you. Please be advised that pursuant to a memorandum issued by Chief Justice Toal dated January 12, 2004 the Clerk of Courts office is not to appoint an attorney until directed to do so by the Office of the Attorney General.

_____ Your PCR was filed on _____ and is being processed.

_____ Requires original signature on filings

_____ Must have "Application to Proceed Without Payment of Costs and Affidavit in Support Thereof " signed and notarized before application can be processed.

XX____ Other You previously filed the same type of motion and an order was signed denying that motion, furthermore an Order Restricting Future Filings is in place therefore our office is returning your motion.

*** If your paperwork has been returned by our office, please address the checked items and return to our office for proper handling. ***

York County Clerk of Court
P. O. Box 649
York, SC 29745

App. P. 71

ALAN WILSON
ATTORNEY GENERAL

March 31, 2015

Daniel D. Hall[1]
Presiding Judge
1675-1J York Highway
York, SC 29745

Attachment (b) (3)

Re: **Antonio Gordon, #259798 vs. State of South Carolina**
2006-CP-46-0010

Dear Judge Hall,

The State is in receipt of Mr. Gordon's "Motion to Reconsider, Alter, and Amend Judgement Pursuant to S.C.R.Civ. Proc. 59(e)" and "Petition for Belated Notice of Appeal & Habeas Corpus." However, this case was fully adjudicated, complete with an Order granting a Rule 60(b) motion. Applicant then had a second PCR action, complete with a full evidentiary hearing (2008-CP-46-4951) and an appeal. First, as this case has been fully adjudicated, the State does not intend to respond to Mr. Gordon's 2015 motions. Second, as per S.C.R.Civ.P. 59(e) mandates, the motion be made "not later than 10 days after the receipt of written notice of entry of judgment." The State's position is these motions are untimely at best and do not merit a formal response unless direct by this Court. Thank you for your time.

Respectfully,

J. Rutledge Johnson
Assistant Attorney General

Cc: Antonio Gordon #259798
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

David Hamilton
Clerk of Court
P.O. Box 649
York, SC 29745

[1] The Honorable John C. Hayes, III was the plea judge.

Transition Unit Summary Recommendations App p. 72

MIS#: 146096 SSN: Medicaid #:
Last Name: GORDON First Name: ANTONIO

Program Recommendations: ALCOHOL/DRUG EDUCATION/ANGER MANAGEMENT/IMPULSE CONTROL/VALUES CLARIFICATION/CONFLICT RESOLUTION
Medical: ALLERGIC TO BEE STINGS.
Current Medications:
Limiting Physical Conditions: PASSED HEARING. 20/20 VISION
Treatment Needs:
Limiting Mental/Psychological Conditions: FULL SCALE IQ: 68
Recommendations:
Special Needs:
504 Requirements: INDIVIDUAL/GROUP COUNSELING
Education: (see attached class schedule). Chapter I eligible:
READING LEVEL: 4.2, MATH LEVEL: 3.6
Special Educ. Placement:
Speech Screening:
Interim IEP:
Voc. Rehab.
Occupational Interests: AUTOBODY
Comments: HAS SMOKED MARIJUANA IN THE PAST. VERY EASILY ANGERED. HAS ASSAULTED A POLICE OFFICER AT YORK COUNTY ALTERNATIVE SCHOOL. PRIOR MENTAL HEALTH COUNSELING.
CURRENT OFFENSE: PETTY LARCENY
Facility Assignment: NORTHEAST CENTER
PAROLE GUIDELINES: 1-3
RISK/CATEGORY: 9/VI
SCHOOL ASSIGNMENT: 9TH
STAFFING DATE: 10-16-97
Special Program Eligibility:
Parole Guidelines: Next Staffing Date:
SUBCLASS: NO

Antonio Gordon 10-16-97
Juvenile Signature Date

William A. Lee 10-16-97
Chairperson Signature Date

---- **** ----

S.C. Department of Juvenile Parole
Institutional Board Report
January, 1998

App. p. 73

Name: Gordon, Antonio
County: York

MIS#: 146096
Institution: NEC

I. Treatment goals and summary of progress since commitment:
1. To learn to control anger and impulsive behaviors
2. To acknowledge and respect authority, rules, and laws
3. To avoid negative peer influences
4. To accept responsibility for his own actions and their consequences

Mr. Gordon is at the maximum guideline of a 1-3 month guideline indeterminate sentence for Petit Larceny. He admits to the offense but still has some difficulty accepting full responsibility for his own actions. However, he is demonstrating considerable progress in the area of controlling his temper when he is confused or frustrated or angry. And he has shown more and more lately the maturity to seek out the appropriate resources (that being me, in most cases) for getting his needs met and his questions answered. When he first appeared on my caseload, he had little patience and seemed to believe that intimidation or implied threats - and sometimes whining - were the best methods to use to get what he wanted. He has impressed me lately, however, with his apparent understanding of the more appropriate ways to get his needs met.

He has been an active and on-track participant in a couple of psychoeducational social work groups, and he has evidenced an increased ability to follow logical trains of thought. Most importantly, he seems to know the difference between the outcomes of socially and legally acceptable behaviors as opposed to their opposites.

II. Disciplinary reports since last parole review:
None that have been brought to my attention.

III. Release recommendation: YES XXX NO
Rationale:

So long as he is able to maintain a positive frame of mind, Antonio seems to be capable of returning to the community and doing well. I would recommend that he either have follow-up mental health counseling in a community based setting or a regular mentor to help keep him focused on a positive direction for his life and continuing to "do the right thing"; preferably, he would have both. It is also essential that Antonio avoid negative peer influences in the community, as he is definitely a "follower" and easily influenced.

Phillip A. Desilet, LMSW, SW IV June Beasley, LMSW, SW V Date

App. P 74

The Supreme Court of South Carolina

Antonio Gordon, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2018-001593

ORDER

Petitioner has filed a Petition for Writ of Habeas Corpus and Motion for Re-Sentencing Pursuant to *Aiken v. Byars*, 410 S.C. 534, 545, 765 S.E.2d 572, 578, (2014) (before a life without parole sentence is imposed on a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored). He has also filed a request for declaratory judgment on the ground that he has been denied his constitutional rights because he is not permitted to raise allegations of ineffective assistance of prior post-conviction relief (PCR) counsel.

Petitioner was not sentenced to life without parole; therefore, he is not entitled to resentencing under *Aiken v. Byars*. *See State v. Slocumb*, Op. No. 27877 (S.C. Sup. Ct. filed April 3, 2019) (there is no prohibition on imposing aggregate sentences on a juvenile that amount to a *de facto* life sentence). As to Petitioner's allegation in his declaratory judgment action, the argument Petitioner alleges PCR counsel failed to make has been made to and rejected by the circuit court and this Court on several occasions. *See Simpson v. State*, 329 S.C. 43, 495 S.E.2d 429 (1998) (matters cognizable under the PCR Act cannot be raised in a habeas corpus action).

Because Petitioner has not shown a denial of fundamental fairness shocking to the universal sense of justice, we deny his request for a writ of habeas corpus. *See Gibson v. State*, 329 S.C. 37, 495 S.E.2d 426 (1998) (a habeas corpus petition must support the requested relief and must make out a prima facie case showing a

constitutional violation, which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice).

C.J.

J.

J.

J.

J.

Columbia, South Carolina

June 20, 2019

cc:
Alan McCrory Wilson, Esquire
Antonio Gordon, 259798

App. p 76

The Supreme Court of South Carolina

Antonio Gordon, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2018-001593

ORDER

By Order dated June 20, 2019, this Court denied Petitioner's requests for habeas corpus and declaratory judgment. Petitioner has now filed requests for rehearing and rehearing *en banc*. The requests for rehearing are denied.

_____ C.J.

_____ J.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

November 19, 2019

cc:

Antonio Gordon, #259798
Kershaw C.I. CYP 79
4848 Goldmine Hwy
Kershaw, SC 29067

ROA 77

September 9th, 2021

Dear Mr. Thompson;

Enclosed please find Notice and Motion to vacate Conviction and Sentence I am filing with the Court of General Sessions. I am requesting a hearing under Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (S.C. 2001). Thanks in advance.

Respectfully Submitted

Antonio Gordon

cc:
Honorable William McKinnon
Clerk of Court (General Sessions Division)

Antonio Gordon, # 259798
Kershaw C.I. CYP 79
4848 Goldmine Hwy
Kershaw, SC 29067

September 9th, 2021

ROA 78

Dear Clerk:

Please find enclosed Notice and Motion to vacate conviction and sentence I am filing in the General Sessions Court on Indictment numbers 98-GS-46-2847; 2849; 2851. Can you Please forward a copy directly to the Chief Honorable William A. McKinnon and forward me a clock stamp copy back. Thanks in advance.

Respectfully Submitted
Antonio Gordon

cc:
William Walter Thompson, Assistant Solicitor

ROA 79

Antonio Gordon, #259798
Kershaw C.I. CYP 79
4848 Goldmine Hwy
Kershaw, SC 29067

September 9th, 2021

Dear Honorable McKinnon:

Enclosed Please find Notice and Motion to vacate conviction and sentence I am filing with the Court. I am requesting a hearing under Brown v. State, 343 S.C. 342, 540 S.E. 2d 846 (S.C. 2001). Thanks in advance.

Respectfully Submitted

Antonio Gordon

cc:
Clerk of Court
William Walter Thompson, Assistant Solicitor

ROA 80

STATE OF SOUTH CAROLINA.	**IN THE COURT OF GENERAL SESSIONS**
County of York.	**Sixteenth Judicial Circuit**
State of South Carolina. |	**Criminal Case No: 98-GS-46-2847;2849;2851**
v.	***NOTICE AND MOTION TO VACATE CONVICTION AND***
|	***SENTENCE BASED ON "LACK OF SUBJECT MATTER JURISDICTION***
ANTONIO GORDON |	
Defendant	

To: The Honorable Walter William Thompson, Assistant Solicitor

YOU WILL PLEASE TAKE NOTICE that Defendant Antonio Gordon, also referred to as the Movant in this matter, Pro Se, will move before the presiding judge of the captioned Court, not earlier than ten. (10) days after service of this Notice and Motion , unless a different period is fixed by an order of the Court, for an orderr Vacating the Judgment of conviction and sentence that were entered by the Honorable John C. Hayes, III , in this matter on July 19, 1999.

The grounds for this Motion are as follows:

On July 23,1998, the Defendant was sixteen years of age when he was **found violating a criminal law and taken into "Family Court"** custody based on probable cause. See Attachment (A) Pages 80 Line 16-pg 83 Lone 16- pg 88 Line 24-pg 89 Line 10 (Pre Trial Transcript Detective John Thickens Testimony); Attachment (A) Pg 208 Line 19-24 (Pre Trial Transcript Captain Charles Cabiness Testimony); Attachment (A) Pg 138 Line 11 Pg 139 Line 1 (Pre Trial Transcript, Trial Court denying motion to suppress finding there was probable cause to make a warrantless arrest). See Fn1 The record in this case also demonstrate law enforcement did notify the Defendant parents according to statutory law. See Attachment (A) Pg 144 Line 16- Pg 146 (Pre Trial Transcript, Trial Court finding Defendant parents were notified under S.C. Code Ann 20-7-7205(A) (Supp.1998) Titled "Taking a Child into Custody" statute and denied counsel motion to suppress the Defendant confession).

Fn1 Approximately** 6 to 8 **hours after the Defendant was taken into custody he appeared before a city recorder and signed an arrest warrant for murder. Attachment(A) Pg 89 Line 13- Pg 90 Line 12. On July 27, 1998, the Defendant were served arrest warrants for 2 counts if attempted armed robbery, possession of a weapon during the commission of a violent crime, possession of a pistol by a person under twenty one, criminal conspiracy,. The Defendant was appoint Dan Agostino Esq.

1.

On October 19,1998, the York County Grand Jury did during a time ***"Family Court"*** retained jurisdiction, True Billed indictments for murder, 2 counts of attempted armed robbery, 3 counts of possession of a weapon during the commission of a violent crime, possession of a pistol by a person under twenty one, criminal conspiracy and carjacking. See Attachment (B) Pg 225-247 (Indictments).

On July 16,1999, after a Jackson v. Denno hearing the Defendant pled guilty to the true billed indictments in General Sessions Court ***"without Family Court first providing a hearing, notice, counsel and a statement of reason in a order transferring it's first attached jurisdiction"***. On July 19, 1999, the Honorable John C. Hayes, III, sentenced the Defendant to 30 years for murder, 5 years for each possession of a weapon during the commission of a violent crime, 5 years for possession of a pistol by a person under twenty one, 5 years for criminal conspiracy, 10 years for each attempted armed robbery with one of the 10 years ran consecutive to the 30 year murder charge and the carjacking was dismissed. See Attachment (B) Pg 225-247 (Warrants, Indictments and sentencing sheets). See Fn2

ARGUMENT

The jurisdiction of a court over the subject matter of a proceeding is fundamental. Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E. 2d 897, 900 (1989). "Lack of Subject Matter Jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by the court". It is well settled that issues related to subject matter jurisdiction may be raised at any time. Carter v. Carter, 329 S.C. 355, 495 S.E.2d 773 (1998); State v. Funderburk, 259 S.C. 256, 191 S.E.2d 520 (1972). Furthermore, the acts of a court with respect to a matter as to which it has no jurisdiction is void. Funderburk, 191 S.E.2d at 522.

It is well established that in interpreting a statute, the court's primary function is to ascertain the intention of the legislature. First South Saving Bank, Inc v. Gold Coast Assoc,, 301 S.C. 158, 390 S.E.2d 486 (ct. App.1990). When terms of the statute are not clear and unambiguous, the court must apply them according to their literal meaning. I'd Furthermore, in construing a statute, words must be given their plain and ordinary meaning without resort to subtle or force construction to limit or expand the statute's operation. Bryant v. City of Charleston, 259 S.C. 408, 368 S.E.2d 899 (1988). When a statute is penal in nature, it must be construed strictly against the State and in favor of the Defendant. State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 (1980). In construing statutory languages, the statutes must be read as a whole and sections which are apart of the same general statutory law must be construed together and each one given effect. TNS Mills, Inc v. South Carolina Dept of Recenue, 331 S.C. 611, 503 S.E.2d 471 (1998). A statute should not be construed by concentrating on a isolated phrase. Laurens County School District 55 and 56 v. Cox, 308 S.C. 171, 417 S.E. 2d 560 (1992).

The Defendant contends that reading the Children code of laws Act as a whole and each section given effect the trial court was without subject matter jurisdiction to accept his guilty plea and sentence him as an adult offender to a term of years of imprisonment because when the Grand Jury True Billed his indictments, the Court of General Sessions did not have jurisdiction . This is a State v. Funderburk, 259 S.C. 256, 191 S.E.2d 520 (1972); State v. McClure, 277 S.C. 432, 289 S.E.2d 158 (S.C. 1982) violation where our Supreme Court held ***"No indictments may be true billed by grand jury when circuit court lacks jurisdiction, since grand jury's jurisdiction is coextensive with criminal jurisdiction of court in which is impaneled and for which it is to make inquiry".***

2.

The Defendant contends that pursuant to statutory construction and fundamental principle of law " Family Court" properly acquired first jurisdiction in this case because he was a person ***"less than seventeen years of age"*** when he was found violating a criminal law and taken into famiky court custody/jurisdiction based on probably cause under sections 20-7-7205(A) Titled ***"Taking a Child into Custody"***; 20-7-6605(1),(2) (Supp.1998) Titled ***"Definition"***; 20-7-400(A),(1),(d) (Supp.1998) Titled " ***Exclusive Original Jurisdiction of Family Court"***. Section 20-7-7205(A) provides in relevant part:

> ***When*** **a Child found violating a criminal law or ordinance and taken**
>
> **Into custody, the taking into custody is not an arrest. The Jurisdiction**
>
> **Of the Court attaches from the time of the taking into custody.**

Pursuant to the definition statute under the Children code of laws Act section 20-7-6605(2) define the Court as **"Family Court"** and under that same section in subsection (1) defined a [C]hild as a person ***less than seventeen years of age***. Child does not mean a person sixteen years of age or older who is ***[C]harged with a Class A, B, C or D felony or a felony which provides for a maximum term of imprisonment of fifteen years or more.*** See ***Fn2*** Our Supreme Court has held "all statutes are presumed constitutional and will, if possible, be construed as render them valid". Weaver v. Recreation District, 431 S.C. 357, 848 S.E.2d 760 (S.C.2020).

Therefore, the Defendant asserts pursuant to statutory construction and fundamental principle of law on October 19,1999, when the York County Grand Jury convened upon their oath and true billed the indictments in his case, ***"family court still retained jurisdiction"*** and the later subsequent event of the Grand Jury could not operate to take away or oust family court first attached jurisdiction without family court first having a Kent v. United States, 86 S.ct 1045 (1966) hearing, Notice, counsel and a statement of reason and issuing an order transferring jurisdiction to General Sessions pursuant to sections 20-7-400(A),(1),(d);20-7-7605(1),(6) Titled "Transfer of Jurisdiction ";20-7-6605(1),(2). This is a Butler v. White, 230 S.C. 279, 95, S.E.2d 496 (S.C. 1956) violation where our Supreme Court held

---

Fn2 . The Defendant also contends the Children code of laws Act is unconstitutionally vague under the due process clauses of our South Carolina Constitution Article one section 3 and the 14th Amendment to

the United States Constitution as applied to him because the term " who is charged" or the term "charged" as set forth in section 20-7-6605(1) of the children code of laws act does not set forth the proper standard for adjudication as applied to him when he was sixteen years of age when he was found violating a criminal law and taken into family court custody/ jurisdiction based on probable cause under sections 20-7-7205(A);20-7-6605(1),(2);20-7-400(A),(1),(d) and the Defendant contends as a matter of constitutional law his conviction under it is not merely erroneous, but illegal and void. Ex Parte Siebold, 100 U.S. 371-77 (1879).

3.

"Once the jurisdiction of a court attaches, the general rule is that it will not be ousted by subsequent events, this is true even when the events are of such a nature that would have prevented jurisdiction from attaching in the first instance". In Williams v. State, 459 S.o2d 777 (August 29,1984) the Mississippi Supreme Court held in a juvenile case similar to Gordon that "Jurisdiction once acquired is not defeated by subsequent events even though they are of such a character as would have prevented jurisdiction from attaching in the first instance. Circuit Court's jurisdiction based on juvenile defendant indictment for murder was not lost by acceptance of her plea to manslaughter, even tho ugh the offense of manslaughter would not originally confer jurisdiction upon the circuit court". ***See Fn3***

Fn3 The Defendant contends that even though he faced mandatory bindover under section 20-7-6605(1) of the children code of laws Act, there should have been a Petition filed under section 20-7-7605(6) of the children code of laws Act alleging the Defendant was sixteen years of age when he was found violating a criminal law and taken into custody and that he is charged with a Class A, B, C, or D felony or a felony which provides for a maximum term of imprisonment of fifteen years or more under section 20-7-6605(1) and that because the Defendant was not charged with one of the listed felonies when he was taken into custody the children code of laws Act applied to him. See People v. Plummer, 714 N.E.2d 63 (1999) citing People v. Pico, 678 N.E.2d 780 (1997).

Thus, it is clear there was no order issued in this case from the family court transferring jurisdiction to general sessions before the true billed indictments was issued in this case and filed. The Defendant indictments is a nullity pursuant to State v. Funderburk, supra; State v. McClure, supra, and the trial court was without the authority to exercise it's subject matter jurisdiction to accept the Defendant guilty plea and sentence him as an adult offender, the Defendant conviction is void ab intio and should be vacated as a matter of law. State v. Funderburk, supra; State v. McClure,supra

When Defendant filed his first post-conviction relief application under section 17-27-20(1). ***(2000-cp-46-1414).*** In the application Gordon asserted as a ground for relief (a) "***Ineffective assistance of counsel pursuant to family court matters".*** Appendix Volume one pages 248-254.

The Defendant filed a second post-conviction relief application under section 17-27-20(2). ***(2001-cp-46-1866).*** In the application,, Gordon asserted as a ground for relief "***{S}ubject matter jurisdiction" (***b) "***Family Court never relinquished its first acquired jurisdiction".*** See Appendix volume one pages 254-261

Under Rule 15(b) of the SCRCP and section, 17-27-90 Gordon amended his jurisdiction claim and asserted other constitutional challenges to the children's code of laws See Appendix Volume one page 262-274.

Plaintiff was court-appointed Tara D. Shurling, Esq to represent him in the matter as required by Rule 71.1(d) SCRCP.

The ~~Defendant~~ State made a Return to the applications as required by section 17-27-70(a) but did not address Gordon's jurisdiction claim. See Appendix Volume one pages 275(A)-275(d).

An order changing venue was issued transferring Gordon's case to Richland County in which both of Plaintiff applications were consolidated and will be referred to as ***PCR (1414). Appendix Volume one pages 276(A)-276-277.***

An evidentiary hearing was convened on July 29, 2003, before the Honorable Earnest Kinard Jr. PCR counsel Shurling, Esq informed the PCR court: ***"Your Honor, my client also alleges that his indictment is faulty in that he was indicted by the Court of General Sessions and tried as an adult without trial counsel having---and this is actually more of a sixth amendment argument, although my client couched it in terms of subject matter jurisdiction".*** See Appendix Volume one pages 285 line 15-287 line 16 ***(PCR Transcript).*** Counsel proceeded to inform the Court that Gordon asked her to argue his jurisdiction claim and other constitutional claims and ineffective assistance of counsel claims relating to him being tried as an adult without the family court first relinquishing its jurisdiction in an order with a statement of reason. See Appendix Volume one pages 286 line 15-page 287 line 10.

Without no legal argument presented during the PCR hearing on Defendant jurisdiction claim by neither party and at the conclusion of the hearing the court instructed the ~~Defendant~~ State to prepare a proposed order and as instructed by the court the State prepared the order making specific findings of fact and conclusion of law as required by section 17-27-80. However, At claim 5 of the order the State amended their Return and answered Gordon jurisdiction claim out of time according to Rule 12 SCRCP and section 17-27-70(a) when the Respondent injected the language in the order that ***"Pursuant to S.C. Code Ann 20-7-6605, a person sixteen years of age or older who is charged with a Class A.B, C, or D felony as defined in section 16-1-20 or a felony which provides a maximum term of imprisonment of fifteen years or more maybe remanded to the family court for disposition of the charge at the discretion of the solicitor. The Applicant was sixteen years old when he committed the crimes for which he was indicted and the crimes committed were Class A, B, C, or D felonies. Therefore, the General Sessions Court had jurisdiction".*** See Appendix Volume one pages 355 line 2-8 (PCR Order issued August 18th, 2003).

The PCR court signed the order as making specific finding of fact and conclusion of law as required by section 17-27-80 without Gordon first being giving **adequate notice in advance and the opportunity to respond** under section 17-27-70(b) and Rule 12 of the SCRP prior to judgment being issued on the State claim that ***"Pursuant to S.C. Code Ann 20-7-6605, a person sixteen years of age or older is charged with a Class A.B, C, or D felony as defined in section 16-1-20 or a felony which provides a maximum term of imprisonment of*** fifteen ***years or more maybe remanded to the family court for disposition of the charge at the discretion of the solicitor. The Applicant was sixteen years old when he committed the crimes for which he was indicted and the crimes committed were Class A, B, C, or D felonies. Therefore, the General Sessions Court had jurisdiction".***

The record reflects Gordon asked PCR counsel to file a Rule 59(e) motion and a Rule 60(b), SCRCP motion. See Appendix Volume one pages 366 line 16-page 367 line 2 (***Letter from PCR counsel Tara Shurling, Esq to Ms.Richardson***). Counsel stated in her opinion there was no need for such motions and filed a Notice of Appeal in the case.

The Defendant filed a pro se Motion for reconsideration of facts in attempt to protect his procedural right to one full fair bite at the apple. The Court found that all claims was ruled on that were before the court and because Gordon received the order way after the initial appeal in this case, he filed a belated appeal in this Court in which this Court vacated the PCR court order denying the pro se motion as well denied Gordon request to file a belated appeal and post-conviction relief application. See Appendix Volume one page 365.(Order issued from this Court) not dated).

The Plaintiff filed three (3) more applications and reasserted the same jurisdiction claim and the State has asked each court to deny the application as being time-barred and successive under the uniform post-conviction relief act and each court ruled as such.

In Defendant last PCR application 2008-cp-46-4951, the State filed a motion with the court to restrict Gordon from filing any future post-conviction relief applications that raised or could have raised claims in previous applications. However, in the State motion, they alleged Gordon has had more than his fair bite at the apple and showed the court that in every PCR application Gordon asserted his jurisdiction claim. See Appendix Volume two pages 17,21-page 25(***Motion to Restrict Gordon from future filing filed by the state.)*** The Court issued an order restricting Gordon from filing any future PCR applications that raised claims that was raised in previous applications or could have been raised in previous applications and that ineffective assistance of PCR counsel is not a reason to have a second PCR application. See Appendix Volume two page 59 **(Order Restricting future filings).**

The Defendant eventually filed a Declaratory Judgment in the South Carolina Supreme Court original jurisdiction asking the court to find the Uniform Post- Conviction Relief Act was unconstitutional because it did not provide a judicial remedy to remedy the ineffective assistance of pcr counsel. This court denied the petition and held that this Court and the lower courts have said no as to his ineffective assistance of pcr counsel claim that PCR counsel inadequately raised his jurisdiction claim as ineffective assistance of counsel. See Appendix Volume two pages 74-75 (***Order from this Court issued on June 20,2019) Rehearing Order issued on November 19,2019.*** Plaintiff have filed other motions in attempt to be heard.

The Movant hereby asserts that he have been denied his fundamental fairness and his fundamental constitutional rights to due process of law under South Carolina Constitution Article one section 3 and the 14th Amendment to the United States Constitution when he was not given adequate notice in advance and the opportunity to be heard in a meaningful way and manner under South Carolina Constitution Article one section 3 and the 14th amendment to the United States Constitution when the PCR court and the State "did not" provide him with adequate notice in advance and the opportunity to be heard before the signing of the order on the State claim that "***Pursuant to S.C. Code Ann 20-7-6605,a person sixteen years of age or older is charged with a Class A, B, C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more maybe remanded to the Family Court for disposition of the charge at the discretion of the solicitor. The Applicant was sixteen***

years old when he committed the crimes for which he was indicted and the crimes committed were Class A, B, C, or D felonies. Therefore, the General Sessions Court had jurisdiction".

It is clear this is a final ruling on Gordon ***Jurisdiction*** Claim namely, family court never relinquished its first acquired jurisdiction. In the State motion to restrict Movant from future filings the claim is labeled as ***"Subject matter jurisdiction (failure to have a waiver hearing to transfer him from Family Court to General Sessions because he was sixteen (16) years old when arrested)".*** **See Appendix Volume two page 21** ***Gordon v. State (2000-CP-46-1414).*** "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner". Mathews v. Eldridge, 424 U.S. 319,333 (1976). Because fundamental fairness requires that a party have the opportunity to present evidence on the allegations of the complaint and the contested factual issues, the denial of this opportunity renders the judgment void. See Klapprott v. United States, 335 U.S. 601,609 (1949)(Stating That if the evidence is a legal prerequisite to rendition of a valid.... Judgment ,the denial of the opportunity to be heard renders the judgment void). In re Complaint of Bankers Trust Co., 752 F.2d 874,890 (3rd Cir. 1985) (Due process mandates that a judicial proceeding give all parties an opportunity to be heard on the critical and decisive allegations which go to the core of the parties claim or defense and to present evidence on the contested facts);Thompson v. Madison County Bd Educ, 476 F.2d 676,678 (5th Cir.1973) ("noting the importance of an opportunity to present evidence and concluding that a Court can only render a judgment after the parties have been afforded ***a full and fair trial on the claims properly before the court"***);Girandi v. Herp, 203 F.3D 820 (4TH Cir.1999) ("Judgment void where Heep was denied the opportunity to be heard). See Fn4

Fn4 ***Movant asserts this Court should exercise it's authority and Vacate and or reopen the PCR judgment in PCR 2000-cp-46-1414 To properly litigate his subject matter jurisdiction claim as those Similarly Situated. It's clear Plaintiff were denied the opportunity to Be heard on the State claim. .***

However, four years ago the Court In *Mangal v. State*, held the applicant prepared and filed his original PCR application without the assistance of counsel. 421 S.C. 85, 89, 805 S.E.2d 568, 570 (2017). The applicant was appointed counsel and subsequently retained a different attorney who represented him at his PCR hearingg. *Id.* at 90, 805 S.E.2d at 570. No written amendment to the applicant's original application was made. *Id.* During the hearing, PCR counsel asked trial counsel why he failed to object to "improper bolstering" testimony given at trial by one of the State's witnesses—an issue that was not contained in the PCR application—and the State briefly cross-examined trial counsel on the issue. *Id.* at 90, 805 S.E.2d at 571. At the end of the hearing, the applicant argued trial counsel was ineffective in several respects not mentioned in the PCR application, including his failure to object to the allegedly improper bolstering. *Id.* The PCR court denied the applicant relief without addressing the improper bolstering issue. *Id.*

"240 We held the PCR court acted within its discretion in refusing to address the improper bolstering issue. *Id.* at 92, 805 S.E.2d at 571. We explained: (1) the written application contained no indication of a claim based on improper bolstering and no amendment was filed; (2) PCR counsel began the hearing without mentioning additional claims would be presented; (3) even when questioning trial counsel as to why he did not object to the testimony, PCR counsel did not inform the PCR court he would make a claim for ineffective assistance based on trial counsel's failure to make an objection; and (4) the claim was never made with specificity. *Id.* at 92-93, 805 S.E.2d at 571-72. The Court

highlighted the fact that the State had no notice the applicant intended to pursue the claim until the end of the hearing—after all of the evidence had been presented. *Id.* at 95, 805 S.E.2d at 573. Like the State in Mangal case, Plaintiff did not know the Defendant intended to pursue the claim. I'd Procedural due process requires that a litigant be placed on notice of the issues which the court is to consider. *Cameron & Barkley Co. v. South Carolina Procurement* *334 *Review Panel*, 317 S.C. 437, 454 S.E.2d 892 (1995). The Due Process Clause demands "notice reasonably calculated under all circumstances, to apprize interested parties of the pendency of the action and afford them an opportunity to present their objections."). In *Webster v. Clanton*, 259 S.C. 387, 391, 192 S.E.2d 214, 216 (1972), the Supreme Court held:

It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented presenteded on.

Defendant will rely upon the all documents in the file, the Joint Appendix on file in the South Carolina Supreme court in the associated PCR case, and Defendant's Memorandum, if any, and any other materials allowed under the applicable rules.

WHEREFORE, for the reasons outlined in this Motion and based upon the arguments to be presented at the hearing of this Motion, Defendant seeks the following relief:

a. For an order vacating his conviction and sentence in this matter.

b. For such further relief the Court deems just and proper.

/s/ Antonio Gordon

Antonio Gordon

4848 Goldmine Hwy

Kershaw, SC 29067

Dated: September 9th 2021

ROA 88

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

) SIXTEENTH JUDICIAL CIRCUIT

COUNTY OF YORK)

STATE OF SOUTH CAROLINA) **IN THE COURT OF GENERAL SESSIONS**

Criminal Case No. 98-GS-46-2847;2849;2851

vs. **PROOF OF SERVICE** To: Walter William Thompson, Assistant Solicitor

Antonio Gordon.

Defendant/Movant.

I, Antonio Gordon, certify that I served the following individuals a copy of the foregoing

NOTICE OF MOTION AND MOTION TO VACATE DEFENDANT'S SENTENCE AND CONVICTION FOR LACK OF SUBJECT MATTER JURISDICTION by depositing a copy in the United States Mail, postage prepaid, return address clearly visible, addressed as follows on September 9th 2021:

Walter William Thompson, Assistant Solicitor
Sixteenth Circuit Solicitor's office
1675-1A York Highway
York, South Carolina 29745
At Kershaw, SC

/s/ Antonio Gordon

Antonio Gordon #259798
4848 Goldmine Hwy
Kershaw, SC 29067

Dated: September 9th 2021

ROA 89

FILED-RECEIVED
2021 OCT 18 PM 12:46
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

CERTIFIED TRUE COPY
2021 OCT 18 PM 12:50
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
YORK COUNTY)

COURT OF GENERAL SESSIONS
SIXTEENTH JUDICIAL CIRCUIT

Antonio Gordon,

Petitioner,

vs.

State of South Carolina

Respondent.

ORDER DENYING MOTION TO VACATE CONVICTION AND SENTENCE

Case No. 1998-GS-46-2847; 2849; 2851.

This matter comes before this court by way of Antonio Gordon's ("Petitioner") Motion to Vacate Sentence and Conviction. This court received the Petitioner's handwritten motion on September 28, 2021. This handwritten motion requests that the court reconsider jurisdictional issues which have already been litigated in which the court has issued orders denying relief.

As previously ordered by the court, the General Sessions Court had jurisdiction over the Petitioner's guilty plea on July 16, 1999. The Petitioner pled guilty to murder, three counts of possession of a firearm during the commission of a violent crime, two counts of attempted armed robbery, possession of a firearm by a person under twenty-one and criminal conspiracy. Pursuant to the at law the time of this plea, "a person sixteen years of age or older who is charged with a Class A, B, C or D felony defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more" is not a juvenile and may be "remanded to the family court for disposition of the charge at the discretion of the solicitor" See S.C. Code Ann. § 20-7-6606 (Now § 63-19-20). The Petitioner was sixteen years old and charged with a Class A, B, C or D felony defined in Section 16-1-20. Consequently, the General Sessions court had jurisdiction, and the sentence and conviction shall not be vacated.

ROA 90

Therefore, the Petitioner's Motion to Vacate Sentence and Conviction is summarily DENIED without a hearing.

IT IS SO ORDERED.

2761

The Honorable William A. McKinnon
Chief Judge for Administrative Purposes &
Resident Circuit Judge

York, South Carolina

October 13, 2021