THE SUPREME COURT OF SOUTH CAROLINA

Allen Jackson, Petitioner

v

State of South Carolina Respondent

2020-CP-40-1485

NOTICE OF APPEAL

Allen Jackson petitioner appeal the order of Honorable L. Casey Manning date Oct 8, 2021

/Allen Jackson #128827
Q3A 212
Perry Corr. Inst
430 Oaklawn Rd
Pelzer S.C. 29669

Yasmeen E. Klein
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina
29211

Exhibit 2

HENRY MCMASTER
ATTORNEY GENERAL

March 23, 2009

Jackson, Allen, # 00178827
Lee Correctional Institution (L3)
Anthony Padula, Warden
990 Wisacky Highway
Bishopville, SC 29010
803-428-2800 or 803-896-2400

Re: 2005CP4002868

Mr. Jackson:

Judge Barber informed me that he was not going to sign off on the State's proposed Final Order of Dismissal; and that your PCR should be set for a hearing on the next available date.

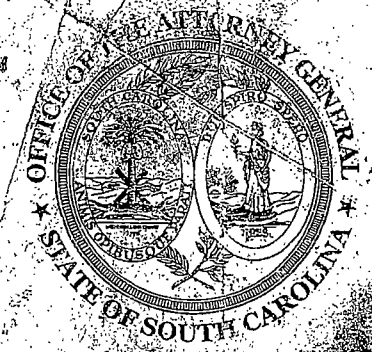
My next hearing date is Monday March 30, 2009 before the Honorable L. Casey Manning.

I will arrange for your transport, the hearing is scheduled for 9:30 AM at the Richland County Courthouse on Monday March 30, 2009.

Sincerely,

Brian T. Petrano
Assistant Attorney General
bpetrano@ag.state.sc.us

Exhibit 2



HENRY MCMASTER
ATTORNEY GENERAL

June 15, 2010

Jackson, Allen, # 00178827
Lee Correctional Institution (L3)
Anthony Padula, Warden
990 Wisacky Highway
Bishopville, SC 29010
803-428-2800 or 803-896-2400

Re: 2005CP4002868

Mr. Jackson:

I received your recent letter. It was my understanding that Judge Manning took the issue under advisement. It is not my intention to request that the Clerk appoint you another attorney. In addition, another hearing is not necessary. We both made our argument(s) before Judge Manning back in 2009. I have a proposed Final Order of Dismissal if he requests one.

227-00

Sincerely,

Brian T. Petrano
Assistant Attorney General
bpetrano@scag.state.sc.us

Exhibit #2

ISSUE 1

Whether Applicant is entitled to an Austin appe-
-al on whether (1) applicant request and was deni-
-ed an opportunity to seek appellate review or
(2) His right to appellate review of previous (PCR) hearing on March 30, 2009 order of dismissal was not knowingly and intelligently waived on claim of ~~Ineffective~~ Assistance of counsel that (PCR) court order failed to make specific findings of facts and conclusions of law on final order of dismissal in accordance with S.C. Code Ann § 17-27-80; see Odom v ~~State~~, 337 S.C at 262, 523 S.E 2d at 756, Hughes v ~~State~~, 2016 WL 1452673.

ISSUE 2

Whether all claims of Ineffective Assistance of counsel are procedually barred from being raise in a second (PCR) action. Regarless of wh-
-ether claim comply with the (PCR) procedure Act, S.C. Code Ann § 17-27-45(B) or (C) under the doctrine of Res judicata.

Austin v State, 409 S.E 2d 395 (S.C 1991) Under Austin a defendent can appeal a denial of a (PCR) application after the statute of limita-tions has expire if the defendant either request and was denied an opportunity to seek appellate review or did not Knowingly and intelligently waive the right to appeal. Odom v. State 523 S.E 2d 753 (S.C 1999).

Here, Respondent (COD) order date Oct 8, 2021 in this action clearly establish this "Ineffective Ass-istance of counsel was risied and persented at (PCR) hearing held on March 30, 2009. (2005-CP--40-2868) befor the honorable L. Casey Manning Applicant as reqest (PCR) counsel before the court but-to proceed Pro-Se at the (PCR) hearing (see Respon-dent (COD) order date Oct 8, 2021 page 8 and 9) that clearly stated that claim is identical to claim now raise in this (PCR) action today.

Applicant admitte that its is the same claim risied and peresented at (PCR) hearing held on Ma-rch 30, 2009. However I had to refied this ineffective assistance of counsel claim be-cause (PCR) court final order of dismissal denying and dismissing (PCR) action with prejudice ... failed to address this claim

rised and presented finding of facts and conclusions of law in accoridance with S.C Code Ann § 17-27-80, 17-27-100, Rule 52 (a) Fisbourne v State 427 S.C 505, Marlar v State 644 S.E.2d 769. Pruitt v State 310 S.C 225 4.

This Honorable South Carolina Supreme Court Judges has issue numerous of opinions addressing a (PLR) court failure to make finding of facts and conclusion of law regarding duly rnised issues persented at (PLR) hearing McCray v State 305 S.C. 329.

This South Carolina Supreme Court held that in Austin, appleal is intended to act as an applicant final safeguard against unjust precedural error as in this case. The (PLR) court order failed to address finding of facts and conclusion of law on claim of whether trial counsel was ineffective for failure to move to quash murder indictment that failed to state elements of time, place and cause of death in accordance with S.C. Code Ann § 17-19-30, 17-19-90; Rector 158 S.C 212 and recently in Wilms Op. No. 25958 filed March 28, 2005.

Therefore, Applicant is entitled to an Austin supra review hearing on whether he knowingly and intelligently waived his right to appellate review on issue that trial counsel was ineffective for failure to move to quash murder indictment that failed to state element of time place, and cause of death in accordance with S.C. Code Ann§ 17-19-90. (2003). Because (PCR) court final order of dismissal failed to make findings of facts and conclusone of law in accordance with S.C. Code Ann§ 17-27-80, 17-27-100; Rule 52 (a). Marlar v State 466 S.E.2d 769. Pruitt v State, 310 S.C. 254, 423 S.E.2d 127. and (2) one year statute of limitation do not apply to petitioners appeal form (PCR) court denial of applicant right to appeal. Odom v State 337 S.C. 256; 523 S.E.2d 753 Austin v State 305 S.C. 453, 409 S.E.2d 395 (1991). King v State, 308 S.C. at 348.

ISSUE 2

The doctrine of res judicata does not bar claims of ineffective assistance of counsel that comply with the (PCR) Procedure Act. S.C. Code Ann§ 17-27-45 (B) or (C).

Applicant proceeded to trial 29-31 before the Honorable William B. Traxler Jr. and a jury. The jury found Applicant guilty as indicted and Judge Tra-xler sentenced Applicant to life imprisonment for murder and twenty five years for armed robb-er. Applicant trial counsel filed a timely Notice of Appeal and South Carolina Supreme Court affirmed Applicant conviction and sentence in State v Jackson, Memo. Op No. 92-MO-398) filed December 18, 1992.

Applicant filed an application for (PCR) on Sep-tember 21, 1995. An evidentiary hearing into the matter was convened on March 23, 1998. Applicant was represented at (PCR) hearing by Theresa N. Johns. At the (PCR) hear-ing Applicant ask (PCR) counsel Teresa about amending this indictment claim for the first time and was informed by (PCR) counsel that she did have the time to look into indictment claim at (PCR) hearing and that she feel that I had a good case. But I could come back on other (PCR) case on the indi-

-ctment if we lose because indictment claim is a subject matter jurisdiction issue that could not be WAVE and may be raise at any time. No May 12, 1998 PCR court issued order of dismissal denying Appl-cant PCR with prejudice.

PCR counsel filed a Notice of Appeal on May 12, 1998 and on November 3, 2000 Applicant Appeal was dismissed as improvidently granted by South Carolina Supreme Court. Jackson v. State. Memo. Op. No. 2000-MO-130 (Nov. 3, 2000.

Applicant subsequently filed a Petition for Writ of Habeas Corpus on December 16, 2003 Applicant for the first time raise issue that "Trial Court lacked subject matter jurisdiction to indictment that failed to st-te elements of time, place and cause of death" in Writ filed on December 16, 2003.

The statute that challenge to the suff-iciency of the indictment must be make

before the jury is sworn by trial counsel was effective in 2003. S.C. Code Ann § 17-19-90(2003). Therefore Writ filed on December 16, 2003 is well within one year after statute effective date in 2003. Pursuant to South Carolina Courts Rule 59(E) S.C. Code Ann. 17-27-45(B)(C) Applicant is entil to amend time as ineffective assistance of counsel inaccording with S.C. Code Ann § 17-19-90(2003). In Peloquin v State the South Carolina Supreme Court held applicants are entitled to one year to file after the effective date of statute (S.C. Code Ann § 17-27-90(2003) to file claim under statute of limitations. S.C. Code Ann § 17-27-45(B)(C). Peloquin v. State 321 S.C 468. 469 S.E. 2d 606 (1996).

However, Writ was conditionally dismiss on November 5, 2004 for failure to exhaust (PLR) remedies this exhaustion include filing of applications, rendering of an

order adjudicating the issue and applic-
-ant petitioning for or knowingly waiving
appellate review. Gibson supra 329 S.
C. 37, 495 S.E.2d 426 (1998). Hunter supra
Pennington v. State, 312 S.C. 436, 441 S.E.2d
315 (1994).

Applicant filed second application for PCR
on June 16, 2005 to exhaust PCR remedie
as order alleging one issue. That trial
court lacked subject matter jurisdiction to in-
-dictment that failed to state elements of
time, place and cause of death. The Respon-
-dent made its Return and motion to dismiss
on July 10, 2008. On July 21, 2009, the Hon-
-orable L. Casey Manning issued a (COD)
order prisrisally denying and dimssing the action
while giving Applicant twenty days to show why
the dismissal should not become final.

Applicant maked his response arguing that
he originally filed is issue that trial court
lacked subject matter jurisdiction to murder
indictment that failed to state elements of
time, place and cause of death in writ

filed December 16, 2003 well within one year of South Carolina statute S.C. Code Anno 17-19-90(2003) see S.C. Code Anno 17-27-45(B), Peloquin v State, 321 S.C. 468, 409 S.E.2d 606 (1996).

Therefore because there was still conflating language of whether the trial court has the power to hear a case and whether the indictments is sufficient concept confusion. Untill South Carolina Supreme Courts conclusively held in Gentry supra that indictment challeing to sufficent or defective must be raise before the jury is sworn by trial counsel and not after. Coverruleing a listeing of cases that combined the concept of sufficiency of an indictment and the concept of subject matter jurisdiction of court. State v Gentry 363 S.C. 93, 60 S.E.2d 494 (2005) S.C. Code Anno 17-19-90(2003).

Applicant is entitled to admend subject matter jurisdiction claim as "trial counsel was ineffective for failure to move to quash murder indictment that failed to state elements of time, place

And cause of death in accordance with S.C Code Anns 17-19-90 (2003). See S.C. Code Anns 17-27-45 (B) (). Pelzer v State 321 S.C. 464, 469 S.E. 2d 606 (1996) s

After Applicant response to court (COD) order date Augus 28, 2009, the Honorable James R. Barber III, then Chief Administrative Judge. Order that a (PCR) hearing be convened on the next available date See exhibit #1) S.C Code Anns §17-27-70

The (PCR) hearing was held on March 30 2009. befor the Honorable L. Casey Manning Applicant request (PCR) counsel but had to proceed Pro-Se At the hearing. See exhibit #2) The Respondent was represented by Brian T. Petrano Asistant Attorney General. Applicant argued that trial counsel was ineffective for failing to move to quash murder indictment that failed to state elements of time, place and cause of death as raised in Allegation Attach (See exhibit #3) Respondent argued that indictment was not prejudice Applicant therefor trial counsel was not ineffective for moveing to

quash indictment and that matter lacked a genuine issue of material fact. The Court Ho Norable L. Casey Manning held the matter under advisement until 2011. There issued Final Order of Dismissal denying and dismissing the (PCR) action with prejudice. But the (PCR) Final order of dismissal failed to make finding of facts and conclusions of law one claim persented at (PCR) hearing on whether trial counsel was ineffective for failing to move to quash indictment that failed to state Elements of time, place and cause of death. S.C. Code Anns 17-27-80, (2003) 52(A). Fisburne v State 427 S.C. 505. Mahdar v State 644 S.C. 2d 769 Pruitt v State 310 S.C. 254.

Applicant now filed is current (PCR) application to get a ruling one is issue raise at March 30, 2009 (PCR) hearing, see Exhibit #R) that court failed to make finding of facts and its conclusions of law one ~~the~~ final order of dismissal Moreove, Applicant is entitled to the Austin

Appeal on whether (1) Applicant requested and was denied an opportunity to seek appellate review or (2) whether Applicant knowingly and intelligently waived his right to appellate review. On claim previous presented at (PCR) hearing on March 30, 2008. (See Respondent (LOD) order date Oct 8, 2021, page 8 and 9 that state this claim is identical to claim raised in this action today. (See exhibit #1 #2 #3).

/ Allen Jackson 178827
Q8, A212
Perry Corr Inst
4430 Oaklawn Rd
Pelzer S.C. 29669

FACTS OF CASE

At first (PCR) hearing that convened back in 1998. Trial counsel admitted that he informed me that I was being charged on the following indictments:

Murder Indictment

That Allen Jackson did in Richland County on or about September 15, 1990 feloniously, willfully and with malice aforethought, kill one John Darby, by means of slashing his throat and that the said victim died as a proximate result thereof. (See Exhibit 1-A)

Armed Robbery Indictment

That Allen Jackson did in Richland County on or about September 15, 1990 while armed with a deadly weapon, to wit: broken bottle, feloniously take from the person or presence of John Allen Darby by means of force or intimidation, goods or monies of John Allen Darby such goods or monies being described as follows: to wit: known amount of U.S. money. (See exhibit 1-B)

At first (PCR) hearing counsel said his trial strategy was the lessor included offense of murder. And he tryed to demonstrates is defense ... putting me on the stand to confess ... confess to unintionaly killing Mr Darby on September 15, 1990 with a beer bottle during a fight over a bad drug deal. Tr-254 Counsel at trial demonstrated that this

prosecutor found evidence of what at time believe to be drugs and evidence show Mr Darby had money in his pockits after fight. Tr254 lines 9-12; Tr352 lines 1-14.

In trial counsel closeing arguments to the jury he stated as follow!

"Allen has told the stand and admitted to killing Mr Darby with a beer bottle on September 15, 1990 in fight and the only question for you is was it murder or manslaughter. Tr 352 lines 9-12

DISCUSSION

Now ~~CAN~~ prosecutor approache at trial ~~be~~ I had a co-defendce with me on September 15, 1990, and that Mr Darby didn't die on September 15, 1990. But die on January 2, 1991 from pneumonia... that was cause or contributed from wound with beer bottle on September 15, 1990 with the medical experts testimony. TR344 lines 1-5

Now, can prosecutor withheld is critical medical evidence as to my guilt of innocence of the cause of death from pneumonia on January 2, 1991 and that there was a co-defendant with me and that State need medical expert testimony to prove it case. TR344 lines 14-25

The Constitution Double Jeopardy Clause protect prosecutor from withholding critical medical/evidence as to my guilt or innocence from grand jury investion. A matter so vital as the place of death of the party Kill is absolitely necessary to be alleged in a jurisdictional point of view and must be pass upon by the gr-and jury in accordance with the constitutional right of the accuse. Platt, 151 S.C. 206 at 211. The court determined that this matter was jurisdictional in nature, like wise the time of death is also a critical jurisdictional element, in-dictment for murder must allegal in addition to the pl-ace of assault and death, the time of the assault and time of death Rector, 158 S.C. 212; And recently in Winns Op. No. 25958 filed March 28, 2005.

In Winship the courts held that the Due Process Clause applies in both State and Federal proceding. see Sullivan v La 508 U.S. 275 at 278 (1993) The standard protects de-fendants from stigma of convictions, Its protects his liberty interests. And it encourages community su-bstance to the presumption of innocence. Id at 36-64; This Due Process Clause also applies to elements that distinguish a more serious crime from a le-sser one. Apprend. N.J. 530 U.S. 466; 488-92, (2000).

In South Carolina (A.B.I.K) compose of all the ele-ments of murder.... EXCept the death of Mr Darby on January 2, 1991 from pneumonia and punishment at that time could not exceeded (20) years. S.C. Code 16-3-10; and 16-3-620;

In Sutton, A person who was shot in an altercation on the outside of a night club could not be convi-cted of murder but could only be convicted of

Assault and Battery with Intent to Kill (A.B.I.K)...
-because the victim did not die within a year and one day
after the wound was inflicted so there was an conc-
-lusive presumption that the wound from the shooting
did not cause the death. Sutton v State 508 S.E 2d 41 (S.C.
App. 1998).

-The courts in Sutton did not in any way state that me
and grand jury was not entitled to be informed of the pr-
-esumption that the wound inflicted with beer bottle on
September 15, 1990 did not cause or contributed to Mr Dar
-by death from pneumonia on January 2, 1991. Because
the time that elapsed between September 15, 1990 and
January 2, 1991 didn't exceeded the full year and one
day conclusive presumption in Sutton v. State
508 S.E. 2d 41 (S.C. App. 1998).

Both South Carolinas Congress and Legislator have
responded to this need by authorizating the provision
for funds to indigent defendants for expert se-
-rvices in cases such as this. Where its is nece-
-sary to establish adequate truth in the matter. See
ABA Standard 4-41); S.C. Codes §17-3-80; McQueen
v. Stevenson 498 F. 2d 207, at 217.

If the State need an medical expert to link the wound
inflicted with beer bottle on September 15, 1990 to cause
of death from pneumonia on January 2, 1991... then
grand jury needed to be informed of this critic
medical evidence as to my guilt or innocence. I
is obvious one of the most important thing for grand jury to
Know before they indicted me for murder.

Now can grand jury find out about time, places and cause of death without being informed by prosecutor. In South Carolina Grand Jury determines whether there is... probable cause to believe that a crime has been committed and protects citizens against (ill) unfounded prosecutions for (murder.) S.C. Code §17-19-90; S.C. Const Art 5 Sec 11.

A court's authority to exercise its subject matter jurisdiction over a case may be restricted by failure to comply with requirements that are mandatory in nature and thus are prerequisite to a court lawful exercise of that jurisdiction. Moore v. Com 527 S.E. 2d 415.

South Carolina Criminal Law Provisions for murder are found in both Statutor and common law which dictates the steps to be follow to authority exercise of South Carolina subject matter jurisdiction requirements Notice S.C. Code 17-19-10-30; 16-3-10; S.C. Constitutional Art V, Sec 11.

In Rector, supra, the courts held that the crime of murder is a composite one that the State must prove not only the assault and death occurring from it, but the time of assault and time of death. These necessary elements of the crime of murder must not only be prove before the accused may be convicted, but they ... must be alleged in the indictment returned against accused by grand jury. Rector, supra, (S.C. 1930) 158 S.C. 212, 155 S.E. 2d 585; S.C. Code 17-19-30; S.C. Const Art 5 and 11. Winans v. State Op. No 25958 filed March 28, 2005.

The United State Sixth Amendment right to counsel, notice, confrontation and compulsory process, which are applicable to the State's through the Due Process Clause of the Fourteeth Amendment essentially constitutionalize the right to present a defense in a adversarial criminal trial. State v. Schmitt, (S.C. 1986) 288 S.C. 301, 342 S.E. 2d 402. U.S.C.A. Const. Amend. 6th and 14th.

The court's has held that trial counsel has a duty to investigate and is not eliminated by clients own conclusions or admissions of guilt. (Tr 473 line 19-25). Because clients beliefs may not coincide with the necessary elements of proof to establish guilt by law. S.C. Codes 16--3-10, 16-3-620. His client may not be aware of the significance of the facts regarding intent, mitigation, suppression of evidence or impeachment of witness that only an independent investigation can uncover. ABA Standard 4.-4.1 (Commenting at 4.54. Jacobs v United State, 350 F.2d 57 (4th Cir 1965). Williams v Martin, 618 F. 2d 1021.

Trial counsel duty to investigate time, place and cause of death is obvious one of the most important thing to do befor... advisemeg me to confess to [Killing] Mr Darby with beer bottle doing a fight on September 15, 1990. Tr 284 line 1-25.

Here, it is impossible for trial counsel to advised me to confess to Killing Mr Darby without his own expert to properly advise him as to what cause or contribute to the (pneumonia) that Mr Darby die from on date of May 2, 1991.

Trial counsel was a layman in the medicial profession and could not secure the information needed to advise me to confess to actually killing Mr Darby on September 15, 1990. An expert was need just for counsel to understand what is pneumonia and what cause or contributed to the pneumonia Mr Darby die from on January 2, 1991. Tr 224 line 1-15

With an expert advising hem trial counsel migh well have been able to raise an reasonable doubt as to whether the cut from beer bottle on September 15, 1990, cause or contributed to the death from pneumonia on January 2, 1991. William v. Martine 618 F.2d at 1025; 28 U.S.C. 2244(b)(2)(B)(ii); U.S.C.A. Const Amend 6, 14.

Here, State expert at trial leaves questionable room for doubt of wither the wound with beer bottle on September 15, 1990 was the primary cause of the pneumonia that Mr Darby die from on January 2, 1991 as follow: Tr 224 line 6-25

Q, Dr. Armstrong based on your total examination of both Mr. Darby's medical records prior to the autopsy and your internal and external examinations of the body were you able to come to a conclusion as to the ... cause of death?

A, Yes, he died ultimately or finally of pneumonia.

Q, What causes or what could have cause is

A, We see these in essentially any causes that will disrupt the blood supply. It is a finding we see in people who have strokes where they have a clot form in the artery and block the blood supply. It is seen when somebody breaks a blood vessel and there's bleeding, and also [illegible] occur from

A CASE such as this where at least in my opinion.

Tr 224; 225).

Here trial counsel made no attempt at trial to challenge what cause or contributed to the pneumonia that killed Mr Darby because he was without expert to advise him.

An indigent defendant who need expert assistance because subject matter is beyond comprehension of an layman should not be required to present proof of what an expert would say when he is denied access to expert at 1026. Texas as State need an expert ~~to~~ prove the cause of death. ... I also need an expert to test the firmness of his weak opinions. Tr 224 line 21-15; Jacobs, 350 F. 2d at 573. Williams at 1026

Trial counsel constitutional error in withholding the time, place and cause of death. Knowing or should have Know that time, place of death was also withheld from grand jury. And advising me to confess to actually killing Mr Darby months before he die... demonstrate trial counsel abandoned his role for defense with a classic example of a complete breakdown in the adversarial process that is unreliable. Cronic v U.S. 466 U.S. 648, 104 S.Ct 2639 U.S.C.A. Const. Amend 6, 14;

The essence of an ineffective assistance of counsel claim is did trial counsel unprofessional errors so upset the adversarial balance between defense and prosecution to render the verdict suspect. Strickland v Washington 466 U.S. at 686; 104 S.Ct at 2664; Cronic, 466 U.S. at 655; 104 S.Ct. at 2046.

In Hoffman v United States the Supreme Court's held that compelle testimony is self-incriminating if reasonable cause exists to believe that (my) testim-ony would either ... support a conviction (for murder) or provide a link in the chain of evidence (of expert) leading to a conviction (of murder) 341 U.S. 479 at 486 (1951)

There is no doubt had I been financially able to afford my own defense counsel. He would have un-doubtly informed me of time, place and cause of death and consulted with an expert about whether the wou-nd from beer bottle doing the fight over bad drug deal on September 15, 1990 caused or contributed to the death from pneumonia on January 2, 1991 ... befor helping bolsted State case against me by advis-ing me to confess to actually killing Mr Darby with beer bottle months befor he died. Jacobs v. United State, 350 F.2d 57 (4th Cir. 1965) Williams v. Martin 618 F.2d 1025. S.C. Code §18-3-80. Wilkes v. State Op. No 25958 filed March 28, 2005.

Trial counsel withholding this critical medical evidence as to my guilt or innocence of the actuall killing from me and grand jury. Without putting this critical evidence to any adversarial testing by grand jury or expert befor advising me to confess to actual killing Mr Darby with beer bottle on September 15, 1990 at trial ... infected my entire constitutional right to Double Jeopardy clause and lessor included offense of (A.B.I.K) witch punishment should not have exceeded

twenty(20) year at time of trial. Render a fundamental miscarriage of justice of one who may be actually innocent of cause of death Crouie v U.S. 466 U.S. 648; Strickland v Washington 466 U.S. at 686; 104 S.Ct. at 2064.

The indictment for murder time, place and cause of death of Mr Darby befor grand jury... Clearly contrarged to the law and evidence at trial time, place and cause of death of Mr Darby. Prosecutor was only witness appear befor grand jury on murder indictment. No medical expert at all befor grand jury. deliberation A grand jury is not a prosecutor play thing and the awesome power of the State should not be abused, but should be used deliberately, not in haste. A prosecutor should at all time avoid the appearance or reality of a conflict in interest with respect to his official duties. State v Camps, 2755.E2d 812.

Therefore, the above pro-se petitioner respectfully move this honorable court for appointment of counsel and request a resentencing hearing be convened in this matter.

RICHLAND COUNTY FILED
2019 MAY -6 AM 9:29
JEANETTE M. HOBBS C.C.P. & G.S.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Allen Jackson, #178827 Applicant v. State of South Carolina, Respondent	2020-CP-40-1485 **CONDITIONAL ORDER OF DISMISSAL**

This matter comes before the Court by way of Applicant, Allen Jackson's action for post-conviction relief (PCR) filed March 12, 2020. Respondent made its Return and motion to dismiss on October 5, 2021. The Court hereby grants Respondent's motion to dismiss because the action is untimely, successive to Applicant's prior PCR actions, is barred by the doctrine of *res judicata*, and fails to state a cognizable claim for relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During the December 1990 term, the Richland County Grand Jury indicted Applicant for armed robbery (1990-GS-40-6470) and during the February 1991 term indicted Applicant for murder (1990-GS-40-0934). James P. Rogers, Esquire, represented Applicant.

Applicant proceeded to trial July 29-31, 1991, before the Honorable William B. Traxler, Jr. and a jury. The jury found Applicant guilty as indicted and Judge Traxler sentenced Applicant to life imprisonment for murder, and twenty five years for armed robbery. Applicant filed a timely Notice of Appeal and was represented by the South Carolina Office of Appellate Defense.

Following briefing, the South Carolina Supreme Court affirmed Applicant's convictions and sentence. *State v. Jackson*, Memo. Op. No. 92-MO-298 (filed December 18, 1992).

i. First PCR Action and Subsequent Appeal (1995-CP-40-3325)

Applicant filed an application for PCR on September 21, 1995, in which he alleged the following grounds for relief:

1. "Ineffective assistance of counsel."
2. "Constitutional and statutory violations."

Respondent made its original Return on January 9, 1995, and supplemental Return on August 14, 1996. An evidentiary hearing into the matter was convened on March 23, 1998, at the Richland County Courthouse before the Honorable Larry R. Patterson. Applicant was present at the hearing and was represented by Theresa N. Johns, Esquire. On May 12, 1998, Judge Patterson, issued the Order of Dismissal denying Applicant's application for post-conviction relief with prejudice.

On May 12, 1998, PCR Counsel filed a Notice of Appeal on Applicant's behalf. On November 3, 2000, Applicant's petition was dismissed as improvidently granted by the South Carolina Supreme Court. *Jackson v. State*, Memo. Op. No. 2000-MO-130 (filed November 3, 2000).

ii. State Habeas Action (2003-CP-40-5998)

Applicant subsequently filed a Petition for Writ of Habeas Corpus on December 16, 2003. Respondent submitted a Return and Motion to Dismiss on July 13, 2004. On November 5, 2004 The Court issued a Conditional Order of Dismissal provisionally denying and dismissing the action. Applicant submitted an untimely objection to the Conditional Order, and after reviewing the pleading, the Circuit Court found no sufficient reason had been shown to prevent the Order

from becoming final. The Honorable J. Ernest Kinard, Jr. issued a Final Order dismissing the petition on June 30, 2005.

Applicant thereafter filed a Notice of Appeal to the Final Order dismissing his petition. On August 26, 2005, the South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide correspondence regarding the transcript and/or serve and file Applicant's Initial Brief and Designation of Matter as required by Rule 207, 208, and 209, SCACR. Applicant then submitted a Motion for Rehearing and Extension of Time, which was endorsed by the Court of Appeals September 28, 2005. Applicant filed his initial brief October 31, 2005, raising the following issues:

1. "Whether Trial Court lacted subject matter jurisdiction because indictment failed to state time and place:"
2. "Whether Trial Court mandatory malice instruction constituted a denial of fundamental fairness of justice:"

On November 28, 2005, Applicant submitted a Motion to File Designation of Matter out of Time. Respondent made two motions to strike certain matters from Applicant's Designation of Matter to be Included in the Record on Appeal and the Initial Brief of Appellant, which the South Carolina Court of Appeals granted Respondent's motions on April 26, 2006, and August 22, 2006. On October 3, 2006, Applicant's appeal was dismissed due to Applicant's failure to serve and file an Amended Designation of Matter pursuant to Rule 208, SCACR. The Remittitur issued October 19, 2006.

Applicant then made a Motion to Reconsider the Remittitur November 29, 2006. On January 1, 2007, the Court of Appeals recalled the Remittitur, and Applicant filed a Petition for Rehearing of the Order dismissing his Appeal. Applicant's petition was granted and the appeal reinstated on June 26, 2007. Applicant filed a Petition for Writ of Certiorari, and Respondent submitted its brief in response September 27, 2007. On January 8, 2008 by written order, the South Carolina Court of Appeals dismissed Applicant's petition for failure to comply with Rule 210,

SCACR. Applicant untimely filed a Motion for Rehearing, and the Court issued the dismissal and Remittitur on January 30, 2008.

iii. Second PCR Action and Appeal (2008-CP-40-2868)

Applicant filed a second application for PCR on June 16, 2005, in which he alleged the following grounds for relief:

1. "The Court lacked subject matter jurisdiction."
   a. "See attached ground - trial court lacked subject matter jurisdiction because the murder indictment failed to state the time and place of the victim's death."

Respondent made its Return and motion to dismiss on July 10, 2008. On July 21, 2008, the Honorable L. Casey Manning, issued a Conditional Order of Dismissal, provisionally denying and dismissing the action, while giving Applicant twenty days to show why the dismissal should not become final. Applicant filed a response to the Order August 28, 2008. Following receipt of the Applicant's response, the Honorable James R. Barber, III, then Chief Administrative Judge, requested a hearing be set for Applicant to make his requests in open Court. The parties appeared before the Court on March 30, 2009. Respondent argued the matter lacked a genuine issue of material fact for which to have an evidentiary hearing. Applicant raised his claims as pled in his allegation. The Court held the matter under advisement. On October 11, 2008, after reviewing the response and record, Judge Manning, in his capacity as Chief Administrative Judge, issued the Final Order of Dismissal denying and dismissing the PCR action with prejudice.

Applicant appealed, and on November 30, 2011, the South Carolina Supreme Court issued an Order dismissing Applicant's appeal pursuant to Rule 243(c), SCACR, for failing to show an arguable basis for asserting the lower court determination was improper. Applicant thereafter submitted a Motion for Rehearing. Applicant's motion was denied and the Remittitur issued January 11, 2012.

iv. Habeas Corpus Action

Applicant then filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2244, requesting an order authorizing the district court to consider a successive petition for relief pursuant under 28 U.S.C. § 2254. On September 26, 2014, the United State Court of Appeals for the Fourth Circuit denied the motion by written order.

CURRENT APPLICATION

In his third and current application for PCR, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "Trial Court lacked subject Matter Jurisdiction"
    a. "Murder Indictment failed to state Element of time, place and cause of death."
2. "Ineffective Assistance of Counsel"
    a. "Ineffective for failure to move to quash indictment in accordance with S.C. Code Ann § 17-19-90."

For purposes of this Conditional Order of Dismissal, the Court incorporates the Richland County Clerk of Court records, Applicant's SCDC records, the trial transcript, Applicant's appellate records, the records from Applicant's prior PCR actions and subsequent appeal, the records from Applicant's prior habeas corpus actions, and the records of this PCR action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application as there is no genuine issue of material fact which would necessitate an evidentiary hearing. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to

develop facts and the applicant is not entitled to relief). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

Statute of Limitations

The Court finds that this PCR shall be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

> (A) 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.
>
> (B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
>
> (C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45.

The South Carolina Supreme Court has held 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). 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). Additionally, 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."

In the present case, Applicant is alleging he is entitled to post-conviction relief based on allegations that his counsel was ineffective and that the Court lacked subject matter jurisdiction. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant was convicted on July 31, 1991, and pursued a direct appeal. Applicant's conviction and sentence was affirmed December 18, 1992. Pursuant to section 17-27-4(A), Applicant needed to file his application for post-conviction relief on or before December 19, 1993. Applicant did not file his application until March 12, 2020, well beyond the statute of limitations. Moreover, sections 17-27-45(B) and 17-27-45(C) are inapplicable to Applicant's current PCR application as he alleges no new rights to be applied retroactively, and raised no allegations of newly discovered evidence. Accordingly, this application is untimely pursuant to section 17-27-45 and shall be dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

Successive Applications

The Court further finds the application must be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code 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.

Pursuant to section 17-27-90, successive PCR actions are barred unless an applicant can indicate 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). The South Carolina Supreme Court held the PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." *Id.* at 452, 409 S.E.2d at 395 (citing *Gamble v. State*, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The Court also noted, "[f]inality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice." *Id.* at 451, 409 S.E.2d at 395. Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." *Id.* 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.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

Here, Applicant's current allegations could have been – and in fact *were* – raised in the proceedings based on Applicant's prior applications for post-conviction relief; thus, the current application is successive and barred under section 17-27-90 of the South Carolina Code. Applicant's current allegations are identical to those raised in his prior collateral actions. Applicant has failed to establish any sufficient reason why Applicant could not raise his current allegations in previous applications or why this Court should overlook the fact he has previously raised these exact claims of ineffective assistance and subject matter jurisdiction. Accordingly, Applicant has

failed to meet the burden imposed upon him, and the Court shall summarily dismiss the application as successive to Applicant's previous PCR applications.

Res Judicata

Additionally, the application barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. *Foran v. USAA Casualty Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.*; *see also Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant had a full opportunity to litigate all his allegations in his prior actions. Applicant's present allegations are indistinguishable from those offered in his prior applications for post-conviction relief. The prior PCR Court issued a final judgement on the merits on very same issues that Applicant now raises in his present action. The finality of the previous Court rulings should be respected, and the application shall be summarily dismissed as barred by the doctrine of *res judicata*.

Subject Matter Jurisdiction

This Court finds Applicant's allegations regarding jurisdiction to be without merit "Circuit courts obviously have subject matter jurisdiction to try criminal matters." *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). Applicant alleges the circuit court lacked subject matter jurisdiction because the indictment for murder failed to state the elements of time, place, and cause of death. Our courts have consistently held "[a]n indictment is merely a notice document." *State v. Baker*, 390 S.C. 56, 62, 700 S.E.2d 440, 442 (Ct. App. 2010) (citing *State v. Gentry*, 363 S.C. 93, 102-103, 610 S.E.2d 494, 500 (2005).

Moreover, "an indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." *Id.* at 63, 700 S.E.2d at 443 (citing *State v. Tumbleston*, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007.) Further, to challenge the sufficiency of an indictment, an objection must be made before the jury is sworn in. S.C. Code Ann. §17-19-90 (2003). Therefore, Applicant's allegations regarding jurisdiction, and every part of the application based thereupon, shall be dismissed pursuant to Rule 12(b)(6), SCRCP.

CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Yasmeen E. Klein, Assistant Attorney General
PCR Division – Fifth Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Richland County Clerk of Court and opposing counsel within twenty (20) days from the date of the service of this Order, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 7th day of October, 2021.

L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

ALLEN JACKSON, #178827 Applicant,

v.

STATE OF SOUTH CAROLINA Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Order of Dismissal has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

Allen Jackson, #178827 (Q3A-0212-B)
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

This 14th day of December, 2021.

Katie Wade
Legal Assistant for the Respondent

SWORN to before me this 14th day of December, 2021

Notary Public for South Carolina.
My Commission Expires: May 16 2029