

Court

The Honorable Daniel Sheanouse
Clerk of The Supreme Court of South Carolina
P.O. Box 11330
Columbia S.C. ~~29211~~
29211

RECEIVED

APR 29 2013

Dear Sir

S.C. SUPREME COURT

Please find enclosed A Petition For A Writ
of Certiorari in my behalf. Also included
are the following:

1. Petition For Writ of Certiorari
2. Copy of order signed by The Honorable John C Hayes
Dated March 26th 2013
3. Copy of Restrictive Filing Order 2010CP4601613 signed by
The Honorable Lee S ALford dated 11-1-10
4. Copy of PCR Application That was Denied Filing
with Supporting Facts
5. Good Faith Affidavit
6. Exhibits 1 thru 8 in support of issues raised
in A PCR
7. Proof of Service

This order was received by me on 4-1-2013.

Respectfully Submitted
Charles R. Carter 246054
Ridgeland CT
P.O. Box 2039
Ridgeland SC 29936

The circuit Court Erred By summarily W.assing The APCR without a hearing.

1 Pursuant To Wilson vs State - 559 S2d 581

The APCR Should Not have Been dismissed without a hearing and cannot be dismissed as successive or by statute of limitations when Applicant is denied A direct Appeal By ineffective Counsel. A Decision To Waive a direct Appeal must be knowing and intelligently made. In This Case Applicant Tried every way He Could To File A notice of Appeal, Therefore, A Hearing Should Have Been Granted.

2 Rule 71.1-D Requires That PCR Counsel Raise all available Grounds To amend The APCR if necessary and To File a Rule 59E motion if The order of Dismissal Fail To Rule upon All The issues. In This Case PCR Counsel Fail To Do So and was ineffective.

3. Rule 3c States That The Indictment Shall Be Filed with The Clerk of Courts Office Before The Solicitor can act on it. However Indictment in This Case GS 97-46-1609 was never Filed with The Clerk of Court Office Prior To Trial and was not legal and was not Presented To Petitioner on The Way of Trial and was Constructively amended on The Way of Trial To Simple Possession To Give The State and Jury Two shots at Petitioner instead of one. Therefore The Court Was Without Jurisdiction and The This issue Should Have Been Addressed and Ruled upon Before The APCR was dismissed. Therefore This Petition For Writ of Certiorari Should Be Granted.

Charles R Carter 2/26/54

I Had Filed A complaint against Mr Bullard Before He Represented me on PCR- He mentioned it

To me Before The hearing.

STATE OF South Carolina
In The Supreme Court

APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS

John C Hayes Circuit Court Judge

Case NO 2010-CP-4601613

Charles Ray Carter Petitioner

State of South Carolina Respondent

PETITION FOR A WRIT OF CERTIORARI

Charles A Carter Prose
P.O. Box 7039
Ridgeland SC 29936

J. Rutledge Johnson
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 11549
Columbia SC 29211

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Arguments

Certificate of Petitioner Prose

PROSE Petitioner Filing This Petition For A Writ of Certiorari

Questions Presented

1. ~~The~~ The Circuit Court Err By summarily dismissing The Application as successive and barred by statute of limitations and subsequently issuing a Restrictive Filing order
2. PCR Counsel was ineffective for failing to file a Rule 59E motion as required by Rule 71.1-D to have all grounds Rule on by The PCR Court that that were raised in The PCR or at The Hearing but were not ruled on in The order of Dismissal Pursuant TO 17-27-80.
3. was Applicant Denied His Right To Due Process When The Restrictive Filing order issued by Judge Mc Ford Fail To specify or Grant a Deadline or Time Frame To Appeal The order

Questions Presented Continued

4. Should The Honorable John C Hayes Recuse Himself From This matter since He was The Trial Judge and issued this order not To File This APCR.
5. This Honorable Court's Attention is Respectively Directed To Exhibits 5 and 5 B - which consist of Page 160 and 161 of The Trial Record. These Two Pages Show That The Attorney Harry West of The Public Defenders ^{Office} Had Agreed To Represent Applicant At Trial But due To A Conflict of Interest Could not Do So, and The Trial Continued without Counsel Being Appointed. Petitioner Pleads with This Honorable Court To Consider This Matter *Sua Sponte* To decide if Petitioner Was denied His Rights To Counsel at Trial.

Statement of The Case

on 12-11-97 Petitioner was convicted of PWI A Crack and sentenced to 30 years. His Direct Appeal was dismissed For Failure To Provide The SC. Court of Appeals with A Timely Proof of Service. At Two PCA Hearings - Relief was denied and A Third APCR was dismissed without A Hearing. After Attempts To File a Fourth APCR This Restrictive Filing order was issued. Now Applicant Petitions This Court For a Writ of Certiorari Review. Because He Has not Had A Fair Bite at The Apple.

ARGUMENT

3

The circuit Court Erred By Summarily Dismissing Petitioners APCR and issuing a Restrictive Filing order when The issues That Petitioner was denied His Rights To A Direct Appeal By ineFFective Counsel Pursuant To ST vs Wilson 559-Sc2d 581 and That PCR Counsel was ineFFective For Failing To eFFectively Raise and argue This issue at The Hearing even Though Applicant Requested Him To and For Failing To File a Rule 59E motion Required By Rule 71.1-D. York County Chief Public Defender Harry Nest Had agreed To Represent Applicant at Trial But at The Beginning of Trial on The 2nd day of Trial MR Nest Entered The Court Room To Advise The Court That a Conflict of interest Would Prohibit Him From Representing Petitioner Because His office Represented The Codefendant which He was unaware of at The Time He Had met with Petitioner To Agree To Representing Him Please See Exhibits - 5 - and 5 B which consist of Page 160 and 161 of The Trial Record where MR Nest entered on The Record about The Conflict of interest. However, Counsel Was not Appointed But Should Have Been at That Time. Subsequently after Trial Had ended MR Nest Came To Petitioner's cell and Handed Him Two Pieces of Paper and Told Petitioner what To Write Regarding Filing an Appeal. Petitioner wrote what MR Nest Told Him To. MR Nest Then Hand Delivered These Two Documents To The Clerk of Courts office, But did not Do a proof of Service - Please See Exhibit 1 and 1-B-Check Stamp Dated 12-12-97 - one Day after Trial. There Fore MR Nest actually Filed The Notice of Appeal without Proof of Service.

4

Cont From Page 3

Therefore Pursuant To ST vs Wilson 559 S2d 581
The APCR Should Not Have Been Dismissed By
The Statute of Limitation or as Successive,
When Petitioner has Been Denied His Rights To
a Direct Appeal By Ineffective Counsel. A
Hearing Should Be Granted and MR West Should
Be Brought To Court To Determine The
Outcome of This Issue.

Argument No 2

At Petitioner's First PCR Hearing PCR Counsel Allan Bullard
was Ineffective For Failing To File a Rule 59E Motion
To Have The PCR Court Rule Upon The Issue of The
Chain of Custody and The Indictment Not Being
Filed With The Clerk of Court as Required By
Rule 3. These Issues were Raised in The APCR But
Mr Bullard Fail To Effectively Argue Them at The
Hearing and when The Order of Dismissal Fail To Rule
upon These Issues Pursuant To 17-2780-MR Bullard
Should Have Filed A Rule 59E Motion To Have These
Issues Ruled upon and Preserved For Review and Fail To
Do what was Required By Rule 71.6.D. The Indictment
was Void Because it was never Filed with The Clerk of
Court's Office Prior To Trial in order For The Court
To Convey Jurisdiction, and The State Has Not and
Cannot Produce or Show That The Indictment was
Filed with The Clerk's Office Prior To Trial as Required
By Rule 3. Therefore The Court was without Jurisdiction
To Hold Petitioner For Trial or To impose Sentence,
Because The Indictment is not Legal and is Void.

5.

See Indictment E 41B11 # 7
and
ST vs Chisolm 584 sez

Therefore Petitioners Sentence is Void. Without a Valid Grand Jury Indictment or a Signed Waiver of Presentment to The Grand Jury. The Court is without Subject Matter Jurisdiction. Therefore MR Bullard was ineffective For Failing To do His duties as Required By Rule 7.1.D. He even Advocated against Petitioner By Saying That it was not A Farnetta VS California issue when Petitioner Attempted To Raised The issue That He was denied Counsel at Trial.

Additionally Pursuant To ST VS Chisolm, The Physical Chain of Custody is Broken when The Custodian That Transported Evidence To Be Tested But is not at Trial To Confront or Cross Examine and does not present a signed statement. At Trial - Petitioner Requested To Call The Custodian named Pete Mitchem To Confront But He Was not At Trial. This issue was Raised At The Hearing But was not Ruled upon in The order of Dismissal. Therefore MR Bullard was ineffective For Failing To File A Rule 59E motion as Required By Rule 7.1.D.F

ARGUMENT NO 3

The Honorable Lee S. Alford Granted The States Motion For A Restrictive Filing order. However, The Order Fail To Specify or Grant a Deadline or Time Frame To Appeal The Order which denied Petitioner His Rights To Due Process By not Allowing Him To Appeal The Order. Finally - Judge John C Hayes Should Recuse Himself From This Matter Because He Was The Trial Judge

Conclusion

6 Therefore since the issues of subject matter jurisdiction was raised in the initial APCR and is raised in the final APCR and BUT it has never been ruled upon by the PCR Court and Counsel fail to file a Rule 59E to have the issue ruled upon and the issues of the chain of custody has never been ruled upon and Counsel failed to file a Rule 59E motion to have the issue ruled upon and was ineffective for failing to do so and the issue of being denied a direct appeal by ineffective counsel is raised again in the present APCR BUT it has never been addressed and ruled upon and PCR Counsel fail to file a Rule 59E motion as required by Rule 71.1-D and was ineffective, Petitioner has not had a fair bite at the apple. Therefore Petitioner pray that this Court grant this petition and remand back to the lower Court for a hearing or vacate his sentence or remand for new sentencing. Finally

The use of two prior convictions of simple possession of cocaine in 1990 and distribution in 1994 could not be used to sentence petitioner to a mandatory minimum sentence of 30 years at 85% because the mandatory minimum was not passed and created until 1995 and was not retroactive making the two priors used to sentence petitioner to 85% violated ex post facto clause because the two priors occurred before the mandatory minimum was passed. Therefore petitioner could only be sentenced to 30 years at 51%. Charles Carter

State of South Carolina
In The Supreme Court
Appeal From York County
Court of Common Pleas
John C Hayes - Circuit Court Judge
Case no-2010-CP-4601613

Charles Ray Carter
State of South Carolina

v

Petitioner
Respondent

Proof of Service

I Charles Ray Carter Certify That I Have Served a copy of A
Petition For a Writ of Certiorari on All Parties By Depositing
a copy of it in The U.S. Mail-Prison mail Box with Proper Postage
and Mailing it To The Honorable Daniel Shearouse Clerk of
The Supreme Court of South Carolina a P.O. Box 11330 COLASC
29211 and To J. Rutledge Johnson - Office of The Attorney
General at P.O. Box 11549 COLASC 29211 on This Day
of April ~~27th~~ 2013.

25th 2013

Charles R Carter 246054
Ridgeland C.I. SA 28
P.O. Box 2039
Ridgeland SC 29936

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2010CP4601613

Charles Ray Carter	South Carolina State of
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
---------------	---

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

Order

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

Circuit Court Judge	2049 Judge Code	3/26/2013 Date
---------------------	--------------------	-------------------

2

For Clerk of Court Office Use Only

This judgment was entered on **March 26, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **March 26, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Charles Ray Carter Kershaw Correctional Institute S-A-A-SI 4848
Goldmine Road Kershaw, SC 29067

ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Rutledge Johnson Office Of The Attorney General PO Box
11549 Columbia, SC 292111549

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Charles Ray Carter, #246054)
 a/k/a Charles R. Burris,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 C.A. No.: 2010-CP-46-1613

ORDER

FILED-RECEIVED
 2013 MAR 26 PM 4:37
 DAVID BRANTON
 C.C. CP 2013
 YORK COUNTY, SC

Charles Ray Carter has filed an Affidavit of Good Faith seeking to be allowed to file an Application for Post-Conviction Relief. By Order of this Court in Case No. 2010-CP-46-1613, Applicant is restricted from filing any such application or motion unless the Applicant files a notarized Affidavit and the Chief Administrative Judge of the appropriate circuit finds the application is “non-frivolous” and proper. (See Order of Judge Lee Alford, dated November 15, 2010).

The undersigned has reviewed Judge Alford’s November 15, 2010 Order and Mr. Carter’s Affidavit of Good Faith. Mr. Carter claims in his affidavit that non-frivolous issues exist at this time, “Chain of Custody;” “Denied Right to a Direct Appeal by Ineffective Counsel” and “Indictment never being filed.”

As to the claim related to direct appeal, it appears from Judge Alford’s Order, that issues related to an appeal have been raised in 1998-CP-46-68 and 2007-CP-46-373. Chain of Custody issues have been raised in 2007-CP-46-373. Indictment issues have also been previously raised by Applicant in 2007-CP-46-373.


4
Additionally, all three of the issues now raised could have, to the extent they were not, been raised in one or all of the applications for Post-Conviction Relief. That is, the issues Applicant now seeks to raise existed prior to the filing of his first Post-Conviction Relief Application.

I find the issues Applicant now seeks to raise are frivolous and now not proper for consideration by the Court of Common Pleas.

Based on the finding above, the Clerk of Court for York County is directed to not file Applicant's current Application for Post-Conviction Relief.

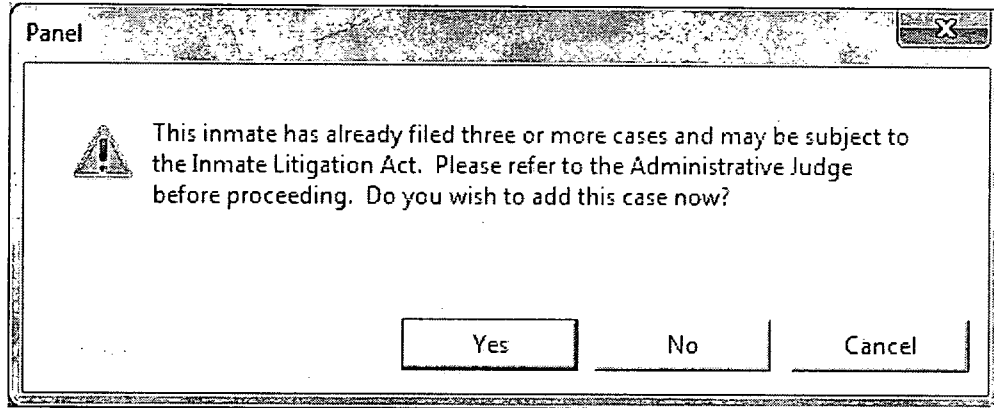
Pursuant to Judge Alford's Order of November 15, 2010, the Clerk of Court for York County is to return to Mr. Carter his "Affidavit of Good Faith" with all documents attached thereto, to wit, the "Supporting facts for the issues raised in this Application," the Application for Post-Conviction Relief dated February 25, 2013, the Application to Proceed without Payment of Costs and Affidavit in support thereof, the "Notice of Appeal" of Case No. 97-GS-46-1609, the January 2, 1998 letter from Martha C. Jeffcoat to Mr. Carter, the South Carolina Court of Appeals Order of Dismissal, the Proof of Service dated 9-12-2001, the Motion to Reinstate filed January 28, 1998, Transcript pages 160, 161, 262, and 263, and Indictment 97-GS-46-1609.

IT IS SO ORDERED.



John C. Hayes, III
Chief Administrative Judge

March ^{20th}, 2013
York, South Carolina



Judge Hayes,

This inmate has filed numerous PCR applications and an "Order Restricting Future Filings" has been signed by Judge Alford & filed on Dec. 1, 2010. The order indicates we are to submit to the Chief Administrative Judge for a determination on whether or not this PCR filing is non-frivolous. (copy attached of order).

Thanks.

Donna

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF YORK

CASE NO: 2010CP4601613

IN THE COURT OF COMMON PLEAS

Charles Ray Carter vs. South Carolina State of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a),
 - SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other:
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

ORDER RESTRICTING FUTURE FILINGS

Dated at York, South Carolina, this 15th day of November, 2010.

Court Reporter:

8/ Lee S. Alford

PRESIDING JUDGE - Lee S. Alford

This judgment was entered on the 1st day of December, 2010, and a copy mailed first class this 1st day of December, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Charles Ray Carter Kershaw Correctional
Institute S-A-A-S1 4848 Goldmine Road
Kershaw, SC 29067

Jennifer Kinzeler Office Of The Attorney
General PO Box 11549 Columbia, SC
292111549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

DAVID HAMILTON

SCRPC APP-24/FORM 4

David Hamilton - Clerk of Court



HENRY McMASTER
ATTORNEY GENERAL

November 29, 2010

FILED-RECEIVED
2010 DEC - 1 AM 10:12
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

The Honorable David Hamilton
Clerk of Court, York County
Post Office Box 649
York SC 29745

Re: Charles Ray Carter, 246054 v. State of South Carolina
2010-CP-46-1613

Dear Mr. Hamilton:

Enclosed please find an original and a copy of an Order Restricting Future Filing in connection with the above referenced case. Please file the original and return a certified copy to me in the self-addressed envelope provided for your convenience.

Sincerely,

Jennifer A. Kinzeler
Assistant Attorney General

JAK:cey
Enclosures

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Charles Ray Carter, # 246054
a/k/a Charles R. Burris)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2010-CP-46-1613

DAVID HAMILTON
C.C.P. & C.S.
YORK COUNTY S.C.

2010 DEC - 1 AM 10:12

FILED-RECEIVED

ORDER RESTRICTING
FUTURE FILINGS

This matter comes before the Court by way of an application for post-conviction relief filed April 15, 2010, and Respondent's subsequent motion to restrict future filings filed on or about November 15, 2010.

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).

This is the Applicant's fourth filing collaterally attacking his 1997 drug conviction, in addition to an appeal from the dismissal of his three prior PCR actions including *pro se* response briefs and other petitions and motions to amend, all of which were subsequently denied and dismissed. The Applicant has had his full bite at the apple at least three (3) times on the 1997 conviction, and has appealed the dismissal of his allegations or reasserted his allegations after each dismissal through a PCR appeal

including several *pro se* motions, petitions, and 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.

REMEDY

Due to the repetitive and frivolous nature of Applicant's numerous applications, this Court directs ~~to direct~~ the York County Clerk of Court not to accept any further PCR applications or similar filings and or petitions or motions 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).

This Court also finds that the Applicant is 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).

This Court further finds that if the Applicant submits an application or similar filing collaterally attacking this same conviction, that is accompanied with a notarized affidavit, that, before filing, the Clerk's office is directed to submit the application to the Chief Administrative Judge of this Court. The Administrative Judge will 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, he or she will then submit it to the Clerk's office for filing, but only after notifying the Applicant and receiving proper payment of the applicable filing fee. No application or similar filing would be filed without a proper finding from the Chief Administrative Judge.

This Court further cautions the Applicant 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).

SUPPORTING FACTS

The Applicant's extensive litigation history is necessary to understand this Court's order granting an 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. Applicant was indicted at the May 1997 term of the York County Grand Jury for Possession of Crack Cocaine With Intent to Distribute - 3rd or subsequent offense (1997-GS-46-1609). Applicant was represented by William Bray, Esquire (Counsel).

On November 19, 1997, the case was called for trial and a pre-trial motions hearing was held before the Honorable John C. Hayes, III. After the motions were heard and a jury was selected, the Applicant

fired Counsel and moved for a continuance to hire another attorney, Michael Brown, Esquire. The motion was granted. On December 9, 1997, the case was again called for trial. Applicant was then represented by David Guyton, Esquire. Mr. Guyton moved for a continuance because he was not retained until earlier that day; however, the motion was denied.

Applicant subsequently fired Mr. Guyton and elected to proceed to trial *pro se*. On December 9-10, 1997, Applicant was convicted by a jury of possession of crack cocaine with intent to distribute - third offense. He was sentenced by the Honorable John C. Hayes, III. to confinement for a period of thirty (30) years.

The Applicant filed a notice of appeal from his conviction; however, the appeal was dismissed for failure to timely serve the notice of appeal. The Applicant's motion to reinstate the appeal was denied by the South Carolina Court of Appeals on March 9, 1998, and his Petition for Writ of Certiorari was denied by the South Carolina Supreme Court on May 15, 1998. The Remittitur was issued on May 21, 1998.

PCR APPLICATIONS AND OTHER FILINGS

A. Carter v. State (1998-CP-46-0068)

Filed: 6/12/1998

Conviction: 1997

Allegations:

- Did not properly know how to appeal - was tried without counsel;
- Denied access to legal material at York County Detention Center - to file appeal;
- Denied the right to counsel;
- Ineffective assistance of counsel;
 - Conflict of interest because attorney violated attorney client privilege.
 - Inadequate performance at suppression hearing in that counsel failed to adequately challenge the seizure of crack cocaine.
- Prosecutorial misconduct;

- Lack of subject matter jurisdiction; and
- Denied right to direct appeal.

Hearing: 6/2/1999
 Judge: H. Dean Hall
 Ruling: Denied by Order dated 11/12/1999
 Counsel: Allen B. Bullard, Esquire
 Appeal: Petition for Writ of Certiorari, dismissed 7/20/2001

Issues on appeal:

- Whether the trial court erred in admitting evidence that was the fruit of an illegal search and seizure (White v. State brief)
- Whether the Applicant effectively waived his right to trial counsel
- Whether the Applicant effectively waived his right to a direct appeal
- Whether there is evidence to support the PCR court's finding that a properly redacted copy of his indictment was presented to the jury
- Whether trial counsel was ineffective present argument during the Applicant's pre-trial suppression hearing

Other: *Pro se* "Supplemental application for post-conviction relief," May 24, 1999, in which the Applicant raised 32 additional allegations.

Pro se Motion for Motion for Reconsideration, denied 12/18/03.

B. Carter v. State (2002-CP-46-2299)

Filed: 10/4/2002
 Conviction: 1997
 Allegations:

- Newly Discovered Evidence;
- Obstruction of Justice;
- Actual innocence;
- False Evidence and Testimony;
- Lack of Subject Matter Jurisdiction;
- Ineffective Assistance of Counsel;
- "Impartial preliminary hearing"; and
- Excessive Sentence

Hearing: 7/23/2004
 Judge: Lee S. Alford
 Ruling: Denied by Order dated 12/18/2003
 Counsel: Leland Greeley, Esquire
 Appeal: Petition for Writ of Certiorari, dismissed 10/16/2006

Issues on appeal:

#5
2010

- Whether former PCR counsel was ineffective in failing to fully investigate and present the Applicant's claims
- Whether the trial court erred in admitting evidence at trial that was the fruit of an illegal search and seizure

Other: *Pro se* Petition for Rehearing, denied 12/6/2006.

C. Carter v. State (2007-CP-46-0373)

Filed: 2/6/2007¹
 Conviction: 1997
 Allegations:

- Wrongfully denied counsel of choice;
- Denied right to direct appeal by counsel and procedural errors;
- Lack of subject matter jurisdiction; and
- Prosecutorial misconduct (impermissible closing arguments).

Hearing: None
 Orders/Responses: Conditional Order of Dismissal, 11/14/2007
Pro se "Motion to Amend"
Pro se "Objection to the Conditional Order of Dismissal"
 Judge: Lee S. Alford
 Ruling: Denied by Order dated 7/23/2008
 Counsel: None
 Appeal: None

Other: *Pro se* Response to Respondent's Motion for Merger, in which the Applicant raised additional allegations including but not limited to:

- Abuse of Grand Jury process
- State misconduct regarding indictment
- Discrepancies between the arrest warrant and indictment
- Deprivation of good-time credits in SCDC
- Motion for appointment of counsel
- Subject matter jurisdiction
- Trial court error in admitting evidence in violation of 4th amendment
- Denial of right to counsel because trial counsel's continuance motion was denied
- Chain of custody issues
- Tried for an unindicted offense
- Actual innocence

¹ While this PCR action was pending, Applicant filed a new application for post-conviction relief (2008-CP-46-0265). The two applications were merged into one action, the surviving action being 2007-CP-46-0373.

#6

D. Carter v. State (2007-CP-46-0373)

Filed: 4/15/2010
Conviction: 1997
Allegations:

- "Lack of Subject Matter Jurisdiction";
- "Denial of Counsel";
- "Denial of Right to Appeal"
- "Newly Discovered Evidence";
- "Erroneous Jury Instruction";
- "Illegal Search and Seizure";
- "Unconstitutional use of Prior Convictions at Sentencing"

Hearing: None
Orders/Responses: Conditional Order of Dismissal, 7/1/2010
Pro se "Motion for Enlargement of Time"
Pro se "Response to the Conditional Order of Dismissal" reiterating allegations regarding:

- The chain of custody
- Excessive sentence
- Subject matter jurisdiction
- Denied right to appeal
- Breach of plea agreement
- Actual innocence
- Denial of access to the courts
- Denied mental competency evaluation

Judge: Lee S. Alford
Ruling: *pending*
Counsel: None
Appeal: N/A

CONCLUSION

This Court finds the Applicant's allegations and accusations have become increasingly frivolous and repetitive. Each case is accompanied with numerous requests to amend, objections, responses, and other frivolous motions. 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 and appellate defense, 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).

IT IS THEREFORE ORDERED:

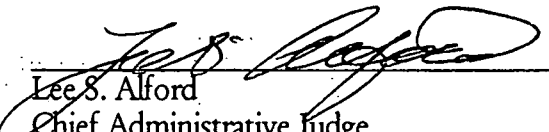
1. The Clerk of Court is to refuse to accept further applications, petitions, motions, responses, or similar filings collaterally attacking this conviction from the Applicant asking the Court to entertain matters unless he pays a filing fee generally required for filing motions and petitions with this Court.
2. The Applicant is prohibited from filing any legal actions in any jurisdiction in South Carolina without submitting the requisite filing fees² and providing a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous.
3. Upon receipt of any such applications, petitions, motions, responses, or similar filings collaterally attacking this conviction submitted with properly notarized

2S.C. Code Ann. '8-21-310(11)(a) (Supp. 2004)

affidavits, the Clerk of Court is directed to submit them 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. If the Administrative Judge finds the application proper, he or she will then submit it to the Clerk's office for filing, but the Clerk must notify the Applicant and receive proper payment of the applicable filing fee prior to filing any of materials found to be non-frivolous.
5. The Clerk of Courts is directed to return all documents that do not comply with this Order, and;
6. The Applicant cautioned that if he continues to file applications, petitions, motions, responses, or similar filings collaterally attacking this conviction containing matter that is frivolous or not proper for this Court to consider, he may be sanctioned under Rule 269, SCAR.

AND IT IS SO ORDERED this 15th day of November, 2010.


Lee S. Alford
Chief Administrative Judge
Sixteenth Judicial Circuit

York, South Carolina.

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OK