T. Michael Farris
7910 Hilllanby Court
Waxhaw, North Carolina 28173

August 19, 2013

The Honorable J. Michael Baxley
Judge, 4th Judicial Circuit
531 East Carolina Avenue
Hartsville, S.C. 29550-4311

Re:Timothy Michael Farris v. State of South Carolina, 2012-CP-16-0814

Dear Judge Baxley:

I was astonished to read the proposed order drafted on behalf of the state by assistant attorney general Joshua L. Thomas. He evidently intends to perpetuate a fraud on the court. Apparently Mr. Thomas presumes you will be too busy to read the pleadings I filed on August 9, and will readily sign the proposed order because it relieves you of hours of work. Fraud on the court, according to *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), is "a fraud directed to the judicial machinery itself, an attempt to corrupt the impartial functions of the court."

Mr. Thomas' proposed order misrepresents facts and law. As to facts, on page two he falsely claims I did not provide any indication of the contents of newly discovered evidence. Yet his page three footnote reveals he received copies of the thirty-two page motion and memorandum for summary judgment, along with the exhibits.

That same footnote falsely claims I was derelict by not filing these documents within the twenty day limit of the Conditional Order. The Order was limited to one issue and required a reply to that single issue: the statute of limitations. (See attached copy.)

Apparently, my reply was satisfactory to the court, since it did not dismiss the application. It also was satisfactory to the attorney general's office, as indicated by the filing of an appearance by Mr. Thomas' predecessor in April, two and a half months after I filed my reply.

Mr. Thomas' statement ignores page two, section three of my reply to the Conditional Order: "**Respondent correctly cites case law applicable to proving the allegations in the application for post-conviction relief. It will become evident to the court when Applicant files his Motion for Summary Judgment that these cases unequivocally entitle Applicant to post-conviction relief**."

Does that not indicate the Motion for Summary Judgment was ready to file as of the date of my reply–February 13, 2013? It was not filed at that time because I was not on the docket.

If the court wanted the motion to be filed immediately, it has the power to issue such orders [Chapter 27, § 17-27-70(a)]: "At any time prior to entry of judgment the court may, when appropriate, issue orders for amendment of the application or any pleading or motion, for pleading over, for filing further pleadings or motions . . .."

The court did not so order. I waited for the July-December 2013 docket. When I realized I was not included on this year's docket, I filed the Motion for Summary Judgment, Statement of Undisputed Facts, Affidavits, an Appendix of Exhibits from the newly discovered evidence, and a Motion to Expedite as well as a third request for appointment of an attorney.

The state cannot be given the chance to read those documents, realize how strong the case is for vacating the conviction, and then be allowed to skirt the court from hearing the evidence. To do so would make a mockery of the Sixth Amendment, and surely result in a remand from the appeals court. The state may not want to deal with this case, but that does not entitle its counsel to direct the judge to disregard it.

Mr. Thomas, as a member of the bar as well as assistant attorney general, is an officer of the court. His misrepresentation of facts with the intent of influencing the court is fraud upon the court.

As defined in *Chewning v. Ford Motor Co.*, 345 S.C. 28, 550 S.E.2d 584 (Ct. App. 2001),

> "Fraud upon the court is 'fraud which . . . subvert[s] the integrity of the Court itself, *or is a fraud perpetrated by officers of the court* so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.' Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1988) (emphasis added) (quoting Lightsey & Flanagan, supra, at 408). It has also been defined as 'fraud that does, or at least attempts to, defile the court itself . . . .' 12 Moore's Federal Practice § 60.21[4][a] (3d. ed. 2000). Historically, after the period to claim relief under Rule 60(b)(1) through (3), SCRCP, has expired, courts have required a showing of extrinsic fraud to vacate a judgment. See Hagy v. Pruitt, 339 S.C. 425, 430, 529 S.E.2d 714, 717 (2000); Evans, 294 S.C. at 529, 366 S.E.2d at 46."

Mr. Thomas wants you, Judge Baxley, to sign an order stating the dismissal is based on your review of my submissions (including the August 9th filings, as noted in his page three footnote), and conclude I did not show "a sufficient reason why the Application is not untimely" (which was decided months ago) "and why the Conditional Order of Dismissal should not become final."

Again, Mr. Thomas misrepresents. My application was not untimely, as detailed in my Reply to the Conditional Order. If required, I could cite more cases, notably *Hooper v. Ebenezer Senior Services*, Opinion No. 26748 (S.C., December 14, 2009), in which the South Carolina Supreme Court said,

> "'The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other.' Hausman v. Hausman, 199 S.W.3d 38, 42 (Tex. App. 2006). Equitable tolling may be applied where it is justified under all the circumstances. We agree, however, that equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use."

Those are a few of the misrepresented facts but Mr. Thomas' misrepresentation of law is no less outrageous. He is wrong that the state cannot be held in default for failing to file within its statute of limitation. There are exceptions, which he would know if he read Rule 55(e), SCRCP with care.

My point, which I may not have made clear in the Reply to the Conditional Order, was not for the state to be held in default. My point is that justice requires the same standard be applied to both entities. There cannot be limitless leniency for the powerful state and strict deadlines for the powerless citizen.

The reason I asked for the state to be held in default is to balance the state's demand to dismiss my application based on statute of limitations. My intent then, as now, is to have the hearing I was denied. That is why the Reply mentions my intent to file a Motion for Summary Judgment. I do not want the conviction dismissed because of a technicality. I need complete exoneration, based on facts and law.

Far more extreme is Mr. Thomas' misrepresentation of *McCoy v. State*, 401 S.C. 363, 737 s.e.2d 623 (2013). He claims *McCoy*, which I cited in my Reply filed on February 13, is limited to newly discovered evidence in the form of juror misconduct–nothing else. But on page four, #8, I cited this from McCoy:

> "[S]ection 17-27-45(C) provides that if a PCR applicant discovers 'material facts not previously presented and heard that require[] vacation of [his] conviction or sentence,' he may file a PCR application 'within one year after the date of actual discovery . . . or after the date when the facts could have been ascertained by the exercise of reasonable diligence.'"

This misrepresentation is blatant extrinsic fraud. "'[E]xtrinsic fraud' refers to frauds collateral or external to the matter tried such as . . . misleading acts which prevent the movant from presenting all of his case or deprives one of the opportunity to be heard.' Lightsey & Flanagan, supra, at 486; see also Hilton Head Ctr., Inc. v. Pub. Serv. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987) ('Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.')." *Chewning, supra.*

Mr. Thomas' motive is clear. He intends to deprive me of the opportunity to present

my case. The *Berger* court's admonition to prosecutors who represent the federal government applies equally to prosecutors who represent the state: "[W]hile he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." —*Berger v. United States,* 295 U.S. 78,88 (1935).

I have been greatly wronged, as the Motion for Summary Judgment details. If permitted, Mr. Thomas would continue the harm and add to the wrongs. But I am prepared to file, if necessary, a petition for a Writ of Mandamus and to file or oppose an appeal, if either becomes necessary. I will not rest until I have reclaimed my rights and my life.

Sincerely,

T. Michael Farris, Applicant Pro Se

P.S. In the event it becomes necessary to file for relief from a higher court, I am filing this letter with the court as well as mailing it directly.

Enclosure

cc: Joshua L. Thomas
P.O. Box 11549
Columbia, SC 29211-1549

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

12-CP-16-814

Timothy Michael Farris,

Applicant,

v.

State of South Carolina,

Respondent.

FILED
2013 FEB -5 AM 11:30
SCOTT D. SUGGS
CLERK OF COURT P.O.D.
DARLINGTON COUNTY, S.C.

CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed September 24, 2012. Respondent made a Return, requesting summary dismissal of the matter. This Court also has before it the records of the Clerk of Court regarding the subject convictions.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted by the Darlington County Grand Jury for criminal solicitation of a minor (2008-GS-16-1555). Matthew Swilley, Esquire, represented Applicant.

On March 9, 2011, the Applicant pled guilty as indicted before the Honorable Paul M. Burch, who sentenced Applicant to five years imprisonment suspended upon service of four years probation. Applicant did not appeal his sentence.

ALLEGATIONS

Applicant alleges that he is ~~being held in custody unlawfully~~ entitled to PCR for the following reasons:

1. Ineffective Assistance of Counsel

2. Newly discovered evidence

DISCUSSION

This Court finds that the Application should be dismissed with prejudice as it was filed beyond the statute of limitations.

Statute of Limitations

Applicant has failed to comply with the filing procedures of the Act. S.C. Code Ann § 17-27-10 to –160 (1976 & Supp. 1997). The Act 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.

S.C. Code Ann. § 17-27-45(a) (Supp. 1998).

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). Applicant's conviction was on March 9, 2011. This Application was filed September 24, 2012, which was over six months beyond the time the statutory filing period expired.

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) (1985) authorizes the PCR 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 Court finds that it should summarily dismiss the Application for PCR for failure to file within the time mandated by statute.

CONCLUSION

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The 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 by filing any reasons he may have with the Clerk of Court, and serving such reasons with the SC Office of the Attorney General: Attn. Assistant Attorney General Tyson A. Johnson, Sr., Post Office Box 11549, Columbia, SC 29211.

FILED
2013 FEB -5 AM 11:30
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

AND IT IS SO ORDERED this

28th day of JANUARY, 2013.

Honorable J. Michael Baxley
Chief Administrative Judge
4th Circuit

DARLINGTON, South Carolina.

Certificate of Service

A true and correct copy of the **Letter to Judge Baxley** was filed with the court and copies mailed directly to Judge Baxley and to the office of

Assistant Attorney General Joshua L. Thomas

Post Office Box 11549

Columbia, SC 29211

This ____ day of _____, 2013.

_____

Timothy Michael Farris, Pro Se
7910 Hilllanby Court
Waxhaw, North Carolina 28173
(704) 256-9001