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**FILED**

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE  
THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP2102333  
2012 DEC 14 PM 12: 28

Jason Kelly

CONNIE REEL-SHEARIN  
CLERK OF COURT  
FLORENCE COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 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 43(k), SCRCP (Settled);
  - Rule 12(b), SCRCP;
  - Rule 41(a), SCRCP (Vol. Nonsuit);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Rule 40(j) SCRCP;
  - Bankruptcy;
  - 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 INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk:

\_\_\_\_\_  
\_\_\_\_\_

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*Connie Reel Shearin*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

**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)

If applicable, describe the property, including tax map information and address, referenced in the order:

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	Judge Code	12/14/2012 Date
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**For Clerk of Court Office Use Only**

This judgment was entered on December 14, 2012, and a copy mailed first class or placed in the appropriate attorney's box on December 14, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Jason Kelly, #287190  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville, SC 29010

Tyson A. Johnson Sr.  
Post Office Box 11549  
Columbia, SC 292111549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*Connie Reel Shearin*

Connie Reel-Shearin - Clerk of Court

STATE OF SOUTH CAROLINA )  
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 COUNTY OF FLORENCE )  
 )  
 Jason Kelly, 287190 )  
 )  
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 Applicant, )  
 )  
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 )  
 VS. )  
 )  
 State of South Carolina, )  
 )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. NO. 12-CP-21-2333

**FINAL ORDER  
 OF DISMISSAL**

FILED  
 2012 DEC 14 AM 10:38  
 CONNIE REEL-SHEARIN  
 CCP & GS  
 FLORENCE COUNTY, SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed August 31, 2012. Respondent (the State) made its Return and Motion to Dismiss on October 8, 2012, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed October 23, 2012, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Personnel in the South Carolina Department of Corrections caused the Conditional Order of Dismissal to be served upon Applicant on or after October 31, 2012, and Applicant sent his response thereto on or about November 6, 2012

**Applicant's response**

In a document captioned "Objection to Summary Judgment" the Applicant objects to summary dismissal of his action and alleges that "Summary Judgment is not appropriate where further inquiry into the facts of case is desirable to clarify the application of the law." Applicant


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further argues "further because of the substantive standard of "Martinez v. Ryan, which was not a right in existence at the time, the State can not use the doctrine of successive to defeat applicants claim..." Applicant avers his "objection is irrefutable and any attempt by the attorney of the state to file said summary judgment would be clearly inopposite SCRCP Rule 11..." Applicant alleges "that any attempt to summary dismissal would not be in food faith and would be for the sole purpose of delay, because the applicant has put forth legal law, and grounds which can not be disputed."


Applicant's attempt to apply Martinez v. Ryan presumes a retroactivity which does not exist. Applicant's incorrect reliance on Martinez fails to explain why his Application was filed past the statute of limitations, or to explain why his Application should be allowed as it is successive to his last PCR application. S.C. Code § 17-27-45(A) states, "[a]n 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." This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient factual or legal reason has not been shown as to why the Conditional Order of Dismissal should not become final. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become the final Order of the Court.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 13<sup>th</sup> day of December, 2012.

  
D. Craig Brown  
Chief Administrative Judge  
Fourth Judicial Circuit

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FLORENCE COUNTY, S.C.

CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

2012 DEC 14 AM 10:38

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FORM 4  
**FILED**

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

2012 OCT 24 AM 10: 56

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP2102333

Jason Kelly

CONNIE REEL SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

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**IT IS ORDERED AND ADJUDGED:**

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- Statement of Judgment by the Court:

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CLERK OF COURT C.P & G.S  
FLORENCE COUNTY, S.C.



STATE OF SOUTH CAROLINA )  
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 COUNTY OF FLORENCE )  
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 Jason Kelly, 287190 )  
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 Applicant, )  
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 VS. )  
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 State of South Carolina, )  
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 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. NO. 12-CP-21-2333

**CONDITIONAL ORDER  
 OF DISMISSAL**

FILED  
 2012 OCT 23 PM 3:30  
 CONNIE REEL-SHEARIN  
 CCCP & GS  
 FLORENCE COUNTY, SC

This matter is before this Court by way of an application for post-conviction relief (PCR) filed August 31, 2012. The Respondent State of South Carolina filed its return and motion to dismiss on October 8, 2012, moving to dismiss the case with prejudice on the grounds that the PCR application was successive and filed beyond the statute of limitations. This Court has reviewed the pleadings and attachments of both parties and finds the State's motion is well taken and finds that this application should be dismissed.

**PROCEDURAL HISTORY**

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the October 2004 term of the Florence County Grand Jury for murder, attempted armed robbery, and possession of a weapon during the commission of a violent crime. Michael G. Nettles, Esquire and Steven G. Mikell, Esquire, Esquire, represented Applicant. On June 17, 2005, Applicant pled guilty to murder and attempted armed robbery and was sentenced by the Honorable B. Hicks Harwell, Jr., to

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*Connie Reel Shearin*  
 CLERK OF COURT C.P & G S  
 FLORENCE COUNTY, S.C.

concurrent sentences of forty years imprisonment for murder and twenty years imprisonment for attempted armed robbery. Applicant indicates he did not appeal his conviction or sentence.

Applicant filed an application for post-conviction relief (PCR) on June 16, 2006. The State filed its return on November 22, 2006. An evidentiary hearing was held at the Florence County Courthouse on February 12, 2007. Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. The PCR application was denied by the Honorable Michael G. Nettles by written order dated March 13, 2007. Applicant appealed, and his petition for writ of certiorari was denied. The remittitur was issued on or about April 24, 2008.

Applicant subsequently filed a motion for relief from judgment on January 27, 2010. This motion was denied by the Honorable Thomas A. Russo by order dated March 5, 2010. Applicant filed a notice of appeal, but the appeal was dismissed for failure of Applicant to file a petition for writ of certiorari and appendix by the Supreme Court's order dated May 12, 2010.

Applicant then filed another PCR on August 19, 2011. Respondent filed its return and motion to dismiss on September 23, 2011, moving to dismiss the case with prejudice on the grounds that the PCR application was successive and filed beyond the statute of limitations. The Court issued a Conditional Order of Dismissal on February 22, 2012, provisionally denying and dismissing this action, while giving the Applicant twenty days from the date of service of said Order in which to show why the Dismissal should not become final. The Court subsequently issued a Final Order on March 28, 2012, indicating that the Applicant had not responded to the Conditional Order. However, the Attorney General's Office indicated that it did receive a response, which it inadvertently did not forward to the Court. Applicant filed a motion pursuant to Rule 59(e), SCRPC after receiving the Final Order. The Court then vacated its March 28, 2012 order and substituted a new Final Order

which took into account Applicant's written response. Applicant then filed a new motion to alter or amend the judgment pursuant to Rule 59(e), SCRCR. In Applicant's motion, he reiterates his position that he was erroneously advised as to parole eligibility when he plead guilty. This Motion denied by order of the Honorable D. Craig Brown September 17, 2012. Applicant did not appeal.

### **ALLEGATIONS**

In his current application, Applicant claims the following grounds on which he bases his allegation that he is being held in custody unlawfully:

- A. "17-27-45(B)"
- B. "Supreme Court of the United States (Martinez v. Ryan)"
- C. "Standard"

### **DISCUSSION**

This Court announces its intention to dismiss this PCR application with prejudice on the grounds that it is successive to his prior PCR application and further, it is filed beyond the statute of limitations.

#### **Successive Application**

This Court finds it should summarily dismiss the current Application because it is clearly successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are clearly disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. ' 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant

has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

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

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present **any** reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, this application should be summarily dismissed.

#### **Statute of Limitations**

The statute of limitations applicable to post-conviction relief actions bars the entire application. S.C. Code Ann. ' 17-27-45 (Supp. 2001) requires an inmate to file a post-conviction relief application "within one year after the entry of a judgment of conviction . . . ." This provision applies to all convictions after the July 1, 1995 effective date of the statute. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

As shown above, the Applicant's conviction and sentence occurred on June 17, 2005. The


Applicant should have filed this application on or before June 17, 2006. As shown above, the Applicant filed this post-conviction relief application over seven years after his conviction. Accordingly, since the Applicant did not present these allegations in a timely manner, this Court finds it should dismiss the application with prejudice as barred by the statute of limitations.

### CONCLUSION

Pursuant to S.C. Code Ann. ' 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed 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. The Applicant shall file any reasons he may have with the Florence County Clerk of Court and shall serve opposing counsel at the following address:

Tyson Andrew Johnson, Sr., Esquire  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

**AND IT IS SO ORDERED**

  
\_\_\_\_\_  
D. Craig Brown  
Chief Administrative Judge  
12<sup>th</sup> Judicial Circuit

Florence, South Carolina  
Oct. 23, 2012