

Dear Clerk,

Please accept my apology for the errors. and the fact that I am unable to return to you, as requested the blue Notice Copy of which you sent to inform me of the errors. Due to Lee Correctional Inst. Administration losing my Notice of Appeal.

Therefore I am having to improvise by sending to you the following white copy notice instead. Along with the enclosed Proof of Service and a copy of the Final ~~Copy~~ and Conditional order of Dismissal. All in hopes that my errors are now corrected, where we can begin to move forward.

Sincerely  
Tarone  
Johnson

**RECEIVED**

MAY 23 2013

S.C. SUPREME COURT

The State of South Carolina

in the Court of Appeals  
in the Supreme Courts

Appeal from Charleston County  
Court of Common Pleas

Roger M. Young Sr. Circuit Court Judge

2011-CP-10-7095

Tarone D. Johnson, 260921

Petitioner

VS.

The State of South Carolina

Respondent

Proof of Service

I certify that I have served the Notice of Appeals on Assistant Attorney General, Ashleigh R. Wilson office May 2, 2013. By depositing a copy of it in Lee Correctional institution United States Mail. Address, Office of The Attorney Generals. P.O. Box 11549. Columbia South Carolina 29211-1549

cc: Ashleigh R. Wilson

CC  
AG  
AT

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
)  
)  
)  
)  
)  
Tarone D. Johnson, #260921, )  
)  
Applicant, )  
)  
v. )  
)  
State of South Carolina, )  
)  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

2011-CP-10-7095

CONDITIONAL ORDER OF  
DISMISSAL

FILED  
2012 JUL 16 PM 12:50  
JULIE J. ARMSTRONG  
CLERK OF COURT

In response to the post-conviction relief application filed September 30, 2011, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. Petitioner was indicted at the June 1999 term of the Charleston County Grand Jury for murder (99-GS-10-3890). Harry Shaw, Esquire, represented the Applicant at trial. On August 30 – September 3, 1999, the Petitioner proceeded to trial, after which a jury found him guilty of murder. The Honorable Daniel F. Pieper sentenced the Petitioner to confinement for life.

A timely Notice of Appeal was filed on Petitioner's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Petitioner's conviction and sentence. State v. Johnson, Op. No. 2002-UP-574 (S.C. Ct. App. filed September 17, 2002). The Supreme Court of South Carolina denied certiorari on February 6, 2003. The Remittitur was issued on February 10, 2003.

Petitioner subsequently filed his first application for post-conviction relief on May 16, 2007, in which he raised the following grounds for relief:

1. Ineffective assistance of trial counsel in that trial counsel
  - a. Failed to move for mistrial when jury was deadlocked.
  - b. Failed to object to trial judge's unconstitutional malice charge.
2. Due process violations in that officers lacked probable cause to arrest and charge Applicant with murder, thus violating Applicant's Fourth and Fourteenth Amendment rights.
3. Ineffective assistance of PCR counsel in that PCR counsel did not timely file a PCR application on Applicant's behalf.

The Honorable R. Markley Dennis, Jr. issued a Conditional Order of Dismissal on February 1, 2008.

Petitioner responded, through counsel, on February 11, 2008. Judge Dennis issued a Final Order on March 10, 2008, in which he denied and dismissed the application with prejudice. Petitioner filed a timely notice of appeal on the denial of his application. By Order of Dismissal dated April 15, 2008, the South Carolina Supreme Court dismissed the PCR appeal for failure to show that there is an arguable basis for asserting the determination by the lower court was improper. The Remittitur was issued on May 1, 2008.

Applicant subsequently filed a Petition for Writ of Habeas Corpus on June 1, 2010, in which he alleged the following grounds for relief:

1. Ineffective assistance of trial counsel in that counsel undermined Petitioner receiving a fair trial and did not properly litigate the claim.
2. Trial judge improperly charged the jury on malice.
3. Police did not have probable cause to arrest, interrogate, and then charge Petitioner with murder.
4. Ineffective assistance of appellate counsel.

Applicant's petition was dismissed without a hearing by written order filed February 29, 2012 and signed by the Honorable Deadra L. Jefferson.

*Handwritten signature*

In his current petition for post conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective assistance of counsel/ (2) Twice."
2. "4<sup>th</sup> and 14<sup>th</sup> Amendment; Due Process"
3. "14<sup>th</sup> Amendment; due process & equal protection."

II.

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior applications for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

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

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for



post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court finds, further, that this Application for Post-Conviction Relief should 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. S.C. Code Ann. §17-27-45(a) reads as follows: <sup>(B) Give you year</sup>

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

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on September 3, 1999. The Remittitur for the Applicant's appeal was received on February 10, 2003. This Application was filed on September 30, 2011, which was over nine (9) years after the statutory filing period had 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) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief should be summarily dismissed for failure to file within the time mandated by statute and for being successive.

Hoff  
AG

Additionally, this Court intends to summarily dismiss the application as 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. Hint at Rule 60

The Applicant had a full opportunity to litigate all current allegations in prior proceedings and did in fact make similar allegations (e.g. the victim was related to the sheriff) in his prior application for relief. The other grounds present allegations that could have been raised in those prior proceedings. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRPC, the Court will summarily dismiss these claims as barred by *res judicata*. Not entitled

5 of 6  
ALG

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 Charleston County Clerk of Court and shall serve opposing counsel at the following address:

↑ Proof of Dead-line

Office of the Attorney General  
Attn: Ashleigh Wilson, Esquire  
P.O. Box 11549  
Columbia, South Carolina 29211

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

Deadra L. Jefferson  
DEADRA L. JEFFERSON  
Chief Administrative Judge  
Ninth Judicial Circuit Court

Charleston, South Carolina

6/26/12  
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GS

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
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Tarone D. Johnson, 260921, )  
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Applicant, )  
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v. )  
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)  
State of South Carolina, )  
)  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

2011-CP-10-7095

FINAL ORDER OF DISMISSAL

FILED  
2013 APR -2 AM 11:28  
JULIE ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 30, 2011. The Respondent (the State) made a timely Return, 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 July 16, 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. Attached to this Final Order and incorporated herein by reference is Respondent's proof of service dated October 5, 2012, serving the Conditional Order of Dismissal on the Applicant.

In a document captioned "Objection to Respondent Return and Motion to Dismiss Conditional Order of Dismissal," dated August 7, 2012, the Applicant alleges that:

- 1. He has not received the opportunity to contest the illegality of his conviction;

99-GS-10-3890

ATTEST: A TRUE COPY  
JULIE ARMSTRONG (SEAL)  
CLERK, P. S. C.  
By Matthew Shreeve  
DEPUTY CLERK

2. Harry Shaw provided ineffective assistance of counsel by being reluctant in relinquishing the Applicant's files and records to the Applicant's appellate/PRC counsel;
3. Harry Shaw provided ineffective assistance of counsel by failing to object to the trial judge's "unconstitutional malice charge";
4. Harry Shaw provided ineffective assistance of counsel by failing to mention to the jury in closing statement that there was no evidence presented at trial to convict the Applicant [as shown by the trial transcript of the Applicant's co-defendant];
5. Harry Shaw provided ineffective assistance of counsel by allowing the prosecution to enter into evidence his incriminating statement;
6. Douglass Truslow provided ineffective assistance of appellate and PCR counsel;
7. He had "little to no knowledge of the law, explaining his vagueness in which he attempted to present his first PCR petition in layman terms" and he was not informed of the depth in which he must present issues.

In two documents captioned "Motion to amend argument granting PCR" and "Motion for discovery/ actual innocence" dated August 7, 2012, the Applicant alleges that:

1. He was never able to question the lawfulness of his 2007 PCR because he did not receive counsel's defense file.
2. His defense attorney Harry Shaw meticulously manipulated him and the Court should deny and dismiss the conditional order of dismissal unless the State can supply the Court with a theory of the facts to refute the Applicant's claim.
3. His Habeas Petition was dismissed as a PCR petition.



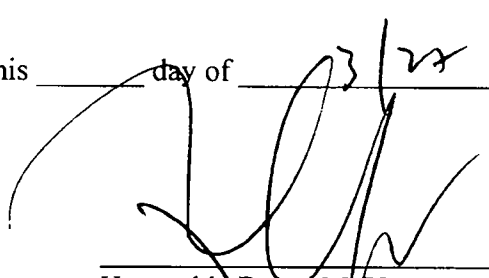
ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & E.C.  
By Matthew Shale  
DEPUTY CLERK

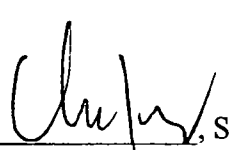
This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.


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.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 31<sup>st</sup> day of March, 2013.

  
\_\_\_\_\_  
Honorable Roger M. Young  
Chief Administrative Judge  
9<sup>th</sup> Judicial Circuit

  
\_\_\_\_\_, South Carolina.

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., GS & F.  
By   
DEPUTY CLERK