

# The Supreme Court of South Carolina

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MAY 29 2013

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S.C. SUPREME COURT

TO: Kevin Whitfield SCDC# 32 3362

DATE: 5-17-13

We are in receipt of your notice of appeal. It will be necessary for you to provide this office with the following required documents within ~~ten~~ **(10)** days of the date of this notice. Failure to provide the requested documents may result in dismissal of this matter.

proof of service showing notice of appeal was served on opposing counsel, (Attorney General's Office)

a copy of the final order of dismissal

a copy of the conditional order of dismissal (if one was issued)

a copy of the conditional order of dismissal dated \_\_\_\_\_

Please return this sheet with the requested documents. Thank you!

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MAY 29 2013

S.C. SUPREME COURT

cc  
AG  
AT  
SOL  
GS

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 )  
 )  
 )  
 Kevin Whitfield, 323362, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2011-CP-10-6613

**FINAL ORDER OF DISMISSAL**

FILED  
 2013 APR -2 PM 12:10  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 BY \_\_\_\_\_

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 15, 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 June 6, 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 June 27, 2012, serving the Conditional Order of Dismissal on the Applicant.

The Applicant made a response titled "Motion for Reconsideration" on June 25, 2012 by way of counsel, Stan W. Jaskiewicz, Jr., alleging:

1. "That the Post Conviction Relief Act to the extent that it infringes on the applicants Right to Habeas Corpus relief is unconstitutional as it seeks to limit the clear right of



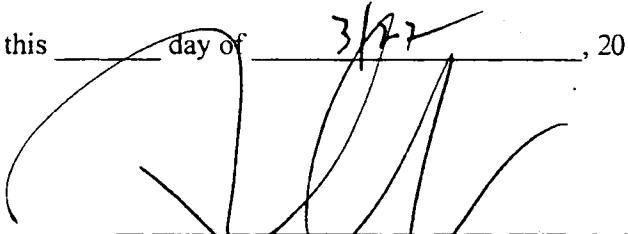
Habeas Corpus as guaranteed by Article 1 Section 18 of the Constitution of the Sovereign State of South Carolina which has not been amended to delete this fundamental right.”

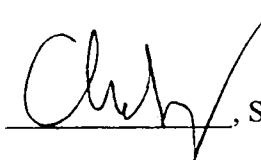
This Court has reviewed the original pleadings and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

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 \_\_\_\_\_ day of 3/22, 2013.

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

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

CC  
AG

AW 9

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 )  
 Kevin Whitfield, #323362, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2011-CP-10-6613

CONDITIONAL ORDER OF DISMISSAL

**FILED**  
 2012 JUN -6 AM 8:48  
 BY JULIE ARMSTRONG  
 CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 15, 2011. In its Return, Respondent requested that the application be summarily dismissed.

**PROCEDURAL HISTORY**

This Court has before it a copy of the records of the Charleston County Clerk of Court and Applicant's records from the South Carolina Department of Corrections. The Applicant was indicted at the January 2007 term of the Charleston County Grand Jury for first degree burglary (2007-GS-10-0483). John Drennan, Esquire represented him. On August 8, 2007 Applicant pled guilty as indicted before the Honorable John C. Few. and was sentenced to twenty-six (26) years imprisonment to run consecutive to his previous sentence. Applicant did not file an appeal.

In his current application for pos- conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
  - a. "Defendant's attorney misrepresented impact of plea agreement."
  - b. "Attorney represented that should he plead he would receive 15 years and be paroled within 5 years."

1 of 3  
 10/13  
 [Signature]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

This Court finds that this matter should be summarily dismissed because Applicant has failed 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:

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 August 8, 2007. Therefore Applicant would have to file his application on or before August 8, 2008. This Application was filed on September 15, 2011, which was well 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 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."

**CONCLUSION**

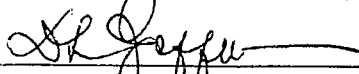
S.C. Code Ann. § 17-27-70(b) states in pertinent part:

When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that Applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and give its reasons for so doing. Applicant shall be given an opportunity to reply to the proposed dismissal.

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:

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

AND IT IS SO ORDERED this 4<sup>th</sup> day of June, 2012.

  
DEADRA L. JEFFERSON  
Chief Judge for Administrative Purposes  
Ninth Judicial Circuit Court

Charleston, South Carolina.

3093  




ALAN WILSON  
ATTORNEY GENERAL

May 30, 2012

The Honorable Julie Armstrong  
Charleston County Clerk of Court  
100 Broad Street, Ste 106  
Charleston, SC 29401

**Re: Kevin Whitfield, #323362 v. State of South Carolina**  
**2011-CP-10-6613**

Dear Ms. Armstrong:

Enclosed please find the original Return and Motion to Dismiss of the Respondent in the above-captioned case for filing in your office.

Sincerely,

Ashleigh R. Wilson  
Assistant Attorney General

ARW/arh

**Enclosures**

Charleston County Clerk's Records  
SCDC Records

cc: Kevin Whitfield, #323362



ALAN WILSON  
ATTORNEY GENERAL

May 30, 2012

The Honorable Deadra L. Jefferson  
Charleston County Judicial Center  
100 Broad St., Suite 336  
Charleston, SC 29401-2236

RE: Kevin Whitfield, #323362 v. State of South Carolina  
2011-CP-10-6613

Dear Judge Jefferson:

Enclosed please find the proposed original Conditional Order of Dismissal in the above-captioned case. If this Order meets with your approval, please sign same and forward to the County Clerk of Court to be filed and served.

Sincerely,

Ashleigh R. Wilson  
Assistant Attorney General

ARW/arh

Enclosure(s)

cc: Kevin Whitfield, #323362

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Kevin Whitfield # SB-52 323302

Lieber Correctional Inst.

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Ridgerville SC 29472

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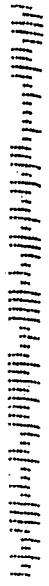
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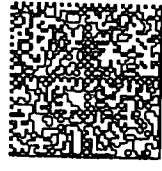
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